UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

WASHTENAW COUNTY EMPLOYEES' RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. WALGREEN CO. et al., Defendants.	Civil Action No. 1:15-cv-3187 Honorable Sharon Johnson Coleman

CLASS COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION EXPENSES

Court-appointed Class Counsel, Kessler Topaz Meltzer & Check, LLP, respectfully moves this Court, on behalf of Plaintiff's Counsel, for entry of an Order awarding attorneys' fees and Litigation Expenses.[1]

This Motion is made pursuant to Rules 23(e) and 23(h) of the Federal Rules of Civil Procedure and is supported by the following documents filed herewith: (i) the Memorandum of Law, (ii) the Joint Declaration, (iii) the Declaration of Andrew L. Zivitz on Behalf of Kessler Topaz Meltzer & Check, LLP in Support of Class Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses, (iv) the Declaration of James E. Barz Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses, (v) the Declaration of Jan Østergaard on behalf of Industriens Pensionsforsikring A/S, and (vi) the Stipulation, as well as the other papers and proceedings herein.

Dated: September 2, 2022

Respectfully submitted,

KESSLER TOPAZ
MELTZER & CHECK, LLP

/s/ Andrew L. Zivitz

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[1] Capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement dated June 23, 2022 (Doc. 505) ("Stipulation") or in the Joint Declaration of David Kessler and Andrew L. Zivitz in Support of (I) Class Representative's Motion for Final Approval of Settlement and Plan of Allocation; and (II) Class Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses ("Joint Declaration") filed herewith.

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MEMORANDUM OF LAW IN SUPPORT OF CLASS COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION EXPENSES

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Pursuant to Rule 23(h) of the Federal Rules of Civil Procedure ("Rules"), Court-appointed Class Counsel Kessler Topaz Meltzer & Check, LLP ("Kessler Topaz" or "Class Counsel") respectfully submits this memorandum of law in support of its motion for (i) an award of attorneys' fees for Plaintiff's Counsel[1] in the amount of 27.5% of the Settlement Fund; (ii) payment of $2,250,420.62 for Litigation Expenses reasonably and necessarily incurred by Plaintiff's Counsel in prosecuting and resolving the Action; and (iii) reimbursement of $32,960 to Court-appointed Class Representative Industriens Pensionsforsikring A/S for its costs directly related to representing the Class, as authorized by the PSLRA.[2]

I. PRELIMINARY STATEMENT

Following more than seven years of litigation, Class Counsel successfully negotiated the Settlement with Defendants which, if approved by the Court, will resolve this highly contentious Action in its entirety in exchange for $105,000,000 in cash for the benefit of the Class. Based on Class Counsel's and Class Representative's thorough understanding of the risks and uncertainties in this Action, the Settlement is an excellent result. The Settlement recovers a significant portion of the Class's estimated damages (*see infra* Section II.D.1), and eliminates both the possibility of an adverse ruling for the Class on Defendants' anticipated *Daubert* motions, as well as the risk,

[1] Plaintiff's Counsel consists of: (i) Kessler Topaz; and (ii) Court-appointed Liaison Counsel Robbins Geller Rudman & Dowd LLP ("Robbins Geller").

[2] All capitalized terms not defined herein have the meanings set forth in the Stipulation and Agreement of Settlement dated June 23, 2022 (Doc. 505) ("Stipulation"), or in the Joint Declaration of David Kessler and Andrew L. Zivitz in Support of (I) Class Representative's Motion for Final Approval of Settlement and Plan of Allocation; and (II) Class Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses ("Joint Declaration" or "Joint Decl.") filed herewith. The Joint Declaration is an integral part of this submission, and Class Counsel respectfully refers the Court to it for a detailed description of, *inter alia*: the procedural history of the Action and Plaintiff's Counsel's extensive litigation efforts (¶¶ 18-118, 150-207); the settlement negotiations (¶¶ 113-116); and the risks of continued litigation (¶¶ 119-132). Citations to "¶ __" herein refer to paragraphs in the Joint Declaration. All internal citations, quotation marks, and footnotes have been omitted and emphasis has been added unless otherwise indicated.

delays, and expense of trial and post-trial appeals. And, in absolute terms, the Settlement ranks as one of the ten largest securities class action settlements in the Seventh Circuit.

As detailed in the Joint Declaration, Class Counsel—as the sole Court-appointed lead counsel for the Class—vigorously prosecuted this Action from its outset. Among its efforts, Class Counsel directed a far-ranging investigation, resulting in two detailed amended complaints which, in part, withstood Defendants' motions to dismiss. ¶¶ 7, 22-23, 62, 150. Class Counsel also pursued myriad sources for document discovery (through a bifurcated process), including propounding comprehensive document requests on Defendants and serving subpoenas on numerous non-parties, as well as moving to compel additional discovery on no less than six occasions. ¶¶ 29, 35, 37-41, 47-54. As a result of these efforts, Class Counsel obtained and analyzed more than 1.1 million pages of documents. ¶¶ 55-60. Class Counsel also deposed 23 fact witnesses—including the Individual Defendants, other then-current or former Walgreens employees, and representatives from two market analyst firms—and prepared for and defended the depositions of Industriens and its external investment advisor. ¶¶ 41, 47. Additionally, Class Counsel consulted extensively with experts on loss causation and damages, budgetary forecasting, generic price trends, and SEC disclosures, resulting in eight separate expert reports. ¶¶ 88-100. Class Counsel also took or defended 10 expert depositions. *Id.*

Additionally, Class Counsel obtained class certification, oversaw an extensive Class-notice campaign, moved for partial summary against Defendants, partially defeated Defendants' motion for summary judgment, opposed Defendants' motion for reconsideration of the Court's Summary Judgment Order, and had substantially prepared *Daubert* motions to limit or exclude the testimony of Defendants' experts at trial, which were due to be filed on June 23, 2022 (the day the Stipulation was executed). In the midst of these efforts, Class Counsel engaged in two in-person mediation

sessions with Defendants' Counsel (on May 21, 2019 and November 17, 2021), each of which included extensive mediation briefing. ¶¶ 113-115. Following the November 2021 mediation with the Honorable Layn R. Phillips (Ret.) of Phillips ADR, the Parties continued their negotiations over the next six months and ultimately accepted Judge Phillips' proposal to resolve the Action for $105,000,000. ¶ 115.

As set forth in the Joint Declaration, the litigation risks in this complex case were substantial. ¶¶ 119-132. Plaintiff's Counsel assumed all of these risks by taking this case on a fully contingent basis and devoted substantial resources to prosecuting the Action against highly-skilled opposing counsel. ¶¶ 232-238. To succeed in the Action, Class Counsel deployed a large, dedicated group of professionals to develop, support, and aggressively pursue the Action, including not only litigators skilled in the area of securities litigation, but also highly experienced investigators, paralegals, and administrative staff. ¶¶ 236, 150-207.

As compensation for these efforts and its commitment to bringing the Action to a successful conclusion with a cash recovery for the Class, Class Counsel, on behalf of Plaintiff's Counsel, requests a fee of 27.5% of the Settlement Fund. Class Counsel respectfully submits that the amount of quality legal work it dedicated to prosecuting this Action over seven years—and the significant risk it assumed by prosecuting and funding this Action with no guarantee of recovery—justifies the request. Further, if approved, a 27.5% fee would result in a *negative* multiplier of 0.976 on Plaintiff's Counsel's lodestar. ¶ 151. Thus, despite the substantial contingency risk Plaintiff's Counsel faced (which would otherwise justify a positive multiplier), Class Counsel is requesting a fee that represents a discount on the value of Plaintiff's Counsel's actual time. Class Counsel also requests payment from the Settlement Fund of $2,250,420.62 for Plaintiff's Counsel's Litigation Expenses and reimbursement of $32,960 to Class Representative for its costs

incurred in representing the Class. ¶ 243. After its diligent supervision of the Action, Class Representative—a sophisticated, institutional investor and precisely the type of fiduciary envisioned by Congress when enacting the PSLRA—has reviewed and approved Class Counsel's request for attorneys' fees and Litigation Expenses.[3]

The reaction of the Class to date also supports Class Counsel's requests. Pursuant to the Court's Preliminary Approval Order, 278,052 Postcard Notices and 4,749 Settlement Notices have been mailed to potential Class Members and nominees.[4] These notices advise that Class Counsel would be applying to the Court for attorneys' fees in an amount not to exceed 27.5% of the Settlement Fund, plus Litigation Expenses in an amount not to exceed $2.6 million. Schachter Decl., Exs. A & B. While the September 16, 2022 deadline to object has not yet passed, to date, there have been no objections to the fee and expense amounts set forth in the notices. ¶¶ 146, 243.[5]

In light of the excellent recovery for the Class, the time and effort devoted for more than seven years, the quality of the work performed, the wholly contingent nature of the representation, and the considerable risks undertaken, Class Counsel respectfully submits that the requested fee is reasonable and should be approved by the Court. In addition, the costs and expenses incurred by Plaintiff's Counsel and Class Representative are reasonable in amount and were necessarily incurred prosecuting the Action, and they too should be approved.

II. CLASS COUNSEL'S REQUEST FOR ATTORNEYS' FEES IS REASONABLE AND SHOULD BE APPROVED

A. Plaintiff's Counsel Are Entitled to Attorneys' Fees from the Common Fund

[3] *See* accompanying Declaration of Jan Østergaard submitted on behalf Industriens ("Østergaard Decl."), ¶¶ 6-7; *see also infra* Section II.D.4.

[4] *See* accompanying Declaration of Eric Schachter submitted on behalf of the Court-authorized Claims Administrator, A.B. Data, Ltd. ("Schachter Decl."), ¶ 9.

[5] In its reply to be filed on September 30, 2022, Class Counsel will address any objections received.

The propriety of awarding attorneys' fees from a common fund is well established. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("[A] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole."); *Florin v. NationsBank of Ga., N.A.*, 34 F.3d 560, 563 (7th Cir. 1994) ("When a case results in the creation of a common fund for the benefit of the plaintiff class, the common fund doctrine allows plaintiffs' attorneys to petition the court to recover its fees out of the fund."). Courts recognize that awarding attorneys' fees from a common fund serves to "encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons, and to discourage future misconduct of a similar nature." *In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *23 (S.D.N.Y. Nov. 8, 2010); *see also Halverson v. Convenient Food Mart, Inc.*, 458 F.2d 927, 931 n.5 (7th Cir. 1972) ("Substantial counsel fees may even be an acceptable incentive to encourage forceful prosecution of cases[.]").

B. The Court Should Award the Requested Percentage of the Common Fund

An award of attorneys' fees and the method used to determine that award are within the discretion of the court. *See Americana Art China Co., Inc. v. Foxfire Printing & Packaging, Inc.*, 743 F.3d 243, 247 (7th Cir. 2014) ("[I]n our circuit, it is legally correct for a district court to choose either" the percentage method or the lodestar method in determining fee awards.). The Seventh Circuit, however, has strongly endorsed the percentage method, pursuant to which fees are awarded as a percentage of the common fund, because it most closely approximates the manner in which attorneys are compensated in the marketplace for contingent work. *See Gaskill v. Gordon*, 160 F.3d 361, 362 (7th Cir. 1998) ("When a class suit produces a fund for the class, it is commonplace to award the lawyers for the class a percentage of the fund, in recognition of the fact that most suits for damages in this country are handled on the plaintiff's side on a contingent-fee basis"); *see also In re Dairy Farmers of Am., Inc. Cheese Antitrust Litig.*, 80 F. Supp. 3d 838, 844

(N.D. Ill. 2015) (finding percentage method has "emerged as the favored method for calculating fees in common-fund cases in this district"). The use of the percentage method also comports with the PSLRA, which states that "[t]otal attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a ***reasonable percentage*** of the amount of any damages and prejudgment interest actually paid to the class." 15 U.S.C. § 78u-4(a)(6).

The Seventh Circuit also recognizes that "attorneys' fees from analogous class action settlements are indicative of a rational relationship between the record . . . and the fees awarded by the district court." *Taubenfeld v. AON Corp.*, 415 F.3d 597, 600 (7th Cir. 2005). In complex class actions like this case, courts within this Circuit have held that fee percentages in the range of 33 1/3% to 40% of the recovery are appropriate. *See Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, 2001 WL 1568856, at *4 (N.D. Ill. Dec. 10, 2001) ("A customary contingency fee would range from 33 1/3% to 40% of the amount recovered.").[6] Accordingly, there is ample precedent in this Circuit to support awarding the 27.5% fee being requested here. *See, e.g.*, *Silverman v. Motorola, Inc.*, 2012 WL 1597388, at *1, *5 (N.D. Ill. May 7, 2012) (awarding 27.5% of $200 million settlement), *aff'd*, 739 F.3d 956 (7th Cir. 2013); *In re: Potash Antitrust Litig.*, 2013 WL 12470850, at *1 (N.D. Ill. June 12, 2013) (awarding one-third of $90 million); *Heekin v. Anthem, Inc.*, 2012 WL 5878032, at *1 (S.D. Ind. Nov. 20, 2012) (awarding one-third of $90 million); *City of Sterling Heights Gen. Emps' Ret. Sys. v. Hospira, Inc.*, 2014 WL 12767763, at *1 (N.D. Ill. Aug. 5, 2014) (awarding 30% of $60 million); *Shah v. Zimmer Biomet Holdings, Inc.*, 2020 WL 5627171, at *5, *13 (N.D. Ind. Sept.18, 2020) (awarding 30% of $50 million); *In re Groupon, Inc. Secs. Litig.*, 2016 WL 3896839, at *3-4 (N.D. Ill. July 13, 2016) (awarding 30%

[6] *See also Swift v. Direct Buy, Inc.*, 2013 WL 5770633, at *8 (N.D. Ind. Oct. 24, 2013); ("[P]ayment of 33% of the common fund is widely accepted by the Seventh Circuit as a reasonable fee in a class action."); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 598 (N.D. Ill. 2011) ("[A]n award of 33.3% of the settlement fund is within the reasonable range.").

of $45 million); *In re Peregrine Fin. Grp. Customer Litig.*, No. 12-cv-5546, slip op. at 3, 6 (N.D. Ill. Oct. 15, 2015), ECF No. 441 (awarding 31% of 44.5 million); *Wong v. Accretive Health, Inc.*, 2014 WL 7717579, at *1 (N.D. Ill. Apr. 30, 2014) (Coleman, J.) (awarding 30% of $14 million).[7] In sum, the fee percentage requested here is well within the range of fee percentages awarded in comparable cases.

C. The Reasonableness of the Requested Fee Is Confirmed by a Lodestar Cross-Check

While Courts are not required to use the lodestar/multiplier method as a cross-check, *see Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 636 (7th Cir. 2011); *Bell v. Pension Comm. of ATH Holding Co., LLC*, 2019 WL 4193376, at *5 (S.D. Ind. Sept. 4, 2019), this analysis also confirms the appropriateness of Class Counsel's fee request. The lodestar/multiplier method entails multiplying the number of hours that each attorney or other professional expended on the case by his or her hourly rate (i.e., the lodestar) and then, typically, adjusting the lodestar by applying a *positive* multiplier to take into account the various factors in the litigation that affect the reasonableness of the requested fee, including "the complexity of the legal issues involved, the degree of success obtained, and the public interest advanced by the litigation." *Gastineau v. Wright*, 592 F.3d 747, 748 (7th Cir. 2010). Courts also consider the risk that counsel will recover nothing for their time and expenses. *See Americana Art*, 743 F.3d at 247.

[7] The requested fee is also consistent with class action fee awards in other circuits. *See, e.g.*, *Schuh v. HCA Holdings Inc.*, 2016 WL 10570957, at *1 (M.D. Tenn. Apr. 14, 2016) (awarding 30% of $215 million); *In re Wilmington Tr. Secs. Litig.*, No. 10-cv-00990-ER, slip op. at 3-4 (D. Del. Nov. 19, 2018), ECF No. 842 (awarding 28% of $210 million); *Alaska Elec. Pension Fund v. Pharmacia Corp.*, 2013 WL 12153597, at *1 (D.N.J. Jan. 30, 2013) (awarding 27.5% of $164 million settlement); *In re Apollo Grp. Inc. Sec. Litig.*, 2012 WL 1378677, at *7 (D. Ariz. Apr. 20, 2012) (awarding 33.33% of $145 million settlement); *In re Deutsche Telekom AG Sec. Litig.*, 2005 WL 7984326, at *4 (S.D.N.Y. June 9, 2005) (awarding 28% of $120 million); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1046, 1050 (9th Cir. 2002) (affirming award of 28% of nearly $97 million); *In re Celebrex (Celecoxib) Antitrust Litig.*, 2018 WL 2382091, at *5 (E.D. Va. Apr. 18, 2018) (awarding one-third of $94 million settlement); *In re Priceline.com, Inc. Sec. Litig.*, 2007 WL 2115592, at *4-5 (D. Conn. July 20, 2007) (awarding 30% of $80 million).

As detailed in the Joint Declaration, Plaintiff's Counsel have devoted over 56,000 hours—resulting in an aggregate lodestar of $29,591,935.75—to the prosecution and resolution of this Action through August 26, 2022. ¶ 151.[8] Accordingly, the requested 27.5% fee ($28.875 million plus interest) represents a multiplier of approximately 0.976 on Plaintiff's Counsel's lodestar. *Id*. In other words, the requested fee represents *less than* the lodestar value of the time that Plaintiff's Counsel dedicated to the Action. As noted above, this "negative" multiplier is below the range of *positive* multipliers regularly awarded in complex contingent litigation. *See, e.g.*, *Harman v. Lyphomed, Inc.*, 945 F.2d 969, 976 (7th Cir. 1991) (noting approval of multipliers between 1.0 and 4.0);[9] *see also In re Amgen Inc. Sec. Litig.*, 2016 WL 10571773, at *9 (C.D. Cal. Oct. 25, 2016) ("[C]ourts have recognized that a percentage fee that falls below counsel's lodestar strongly supports the reasonableness of the [fee] award.").

Accordingly, the 27.5% fee request here is reasonable under both the percentage method and lodestar cross-check.

D. Other Factors Courts in the Seventh Circuit Commonly Consider Further Support the Requested Fee

The Seventh Circuit has "held repeatedly that, when deciding on appropriate fee levels in common-fund cases, courts must do their best to award counsel the market price for legal services,

[8] The Supreme Court has approved the use of current hourly rates to calculate the base lodestar figure as a means of compensating for the delay in receiving payment, inflation, and the loss of interest. *See Missouri v. Jenkins*, 491 U.S. 274, 284 (1989). Plaintiff's Counsel's Fee and Expense Declarations filed herewith include a description of the legal background and experience of Plaintiff's Counsel, which supports the hourly rates submitted. By way of comparison, Walgreens' defense counsel in this Action, Sidley Austin LLP, reported hourly rates ranging from $675 to $945 for associates and up to $1,500 for partners in a recent bankruptcy filing. *See* Fee Application, *In re BDC Inc.*, No. 20-10010 (CSS) (Bankr. Del. Feb. 22, 2021), ECF No. 1424. These rates are clearly in line with, or exceed, Plaintiff's Counsel's rates.

[9] *Pension Tr. Fund for Operating Eng'rs v. DeVry Educ. Grp., Inc.*, No. 16-cv-5198, slip op. at 2-3 (N.D. Ill. Dec. 6, 2019), ECF No. 162 (approving multiplier of approximately 2.1); *Wong*, 2014 WL 7717579, at *1 (approving multiplier of approximately 4.7) & *Wong v. Accretive Health, Inc.*, No. 12CV03102 (N.D. Ill. Dec. 13, 2013), ECF No. 73, at 22; *Williams v. Rohm & Haas Pension Plan*, 2010 WL 4723725, at *2 (S.D. Ind. Nov. 12, 2010) (approving multiplier of 5.85), *aff'd*, 658 F.3d 629 (7th Cir. 2011).

in light of the risk of nonpayment and the normal rate of compensation in the market at the time." *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001). To this end, courts in this Circuit consider, *inter alia*: (i) the quality of plaintiff's counsel's performance, (ii) the amount of work necessary to resolve the litigation, (iii) the risk of nonpayment, and (iv) the stakes of the case. *See, e.g.*, *Camp Drug Store, Inc. v. Cochran Wholesale Pharm., Inc.*, 897 F. 3d 825, 833 (7th Cir. 2018); *Synthroid*, 264 F.3d at 721; *Taubenfeld*, 415 F.3d at 599. Each of these factors strongly supports the fee requested here.

1. Plaintiff's Counsel Provided Quality Legal Services That Produced an Excellent Result for the Class

In evaluating a fee request, the Seventh Circuit has held that courts may consider the "quality of legal services rendered" by plaintiffs' counsel. *Taubenfeld*, 415 F.3d. at 600; *see also Synthroid*, 264 F.3d at 721. From the inception of this Action, Plaintiff's Counsel—two firms that practice extensively in the highly challenging field of complex class action litigation and have skillfully litigated these types of actions in courts across the country[10]—engaged in a skillful and concerted effort to obtain the maximum recovery for the Class. This case required an in-depth and ongoing investigation, a thorough understanding of complicated factual and legal issues, and the skill to respond to the host of challenges that Defendants raised during the litigation. *See generally* Joint Declaration.

Plaintiff's Counsel's efforts resulted in an excellent result for the Class, particularly in light of the risks of continued litigation. Notably, the Settlement represents a substantial portion—approximately 9.5%—of the Class's estimated *maximum* aggregate damages (i.e., approximately $1.1 billion) based on the analysis of the Class's damages expert. ¶¶ 12, 149. Defendants, however,

[10] *See* ¶¶ 226-231; *see also* resumes of Kessler Topaz and Robbins Geller attached to the Fee and Expense Declarations filed herewith.

strenuously maintained, and would continue to maintain, that no damages or minimal damages could be proven at trial, and the percentage recovery of potential aggregate damages would vary widely depending on the findings returned by a jury. ¶¶ 127-129. The significance of this recovery is further underscored by the fact that only two sets of statements and a single corrective disclosure remained to be tried at the time of settlement. ¶ 149. Accordingly, the quality of the legal services provided by Plaintiff's Counsel over the course of the past seven+ years, together with their substantial experience in complex class actions, and commitment to the litigation, enabled Class Counsel to obtain the Settlement.

The quality and vigor of opposing counsel is also relevant in evaluating the quality of the services rendered and result obtained by Plaintiff's Counsel. *See Arenson v. Bd. of Trade of City of Chi.*, 372 F. Supp. 1349, 1354 (N.D. Ill. 1974). Here, nationally-recognized law firms with undeniable experience and skill spared no effort zealously defending their clients for more than seven years. ¶¶ 232-234. Notwithstanding this formidable opposition, Plaintiff's Counsel presented a strong case and demonstrated their willingness to vigorously prosecute it through trial.

2. Plaintiff's Counsel Worked Extensively on Behalf of the Class

Plaintiff's Counsel expended and invested substantial resources prosecuting this Action on behalf of the Class. As detailed in the Joint Declaration, this Action was vigorously litigated and defended. Plaintiffs' Counsel's efforts included, among other things: (i) investigating the case; (ii) working extensively with experts; (iii) researching complex issues of law; (iv) preparing and filing two amended complaints; (v) researching and briefing two rounds of motions to dismiss; (vi) engaging in substantial fact and expert discovery, including reviewing and analyzing more than 1.1 million pages of documents produced by Defendants and non-parties, taking and defending 25 fact witness and 10 expert witness depositions, and engaging in numerous meet and confers; (vii) engaging in extensive class certification discovery and obtaining class certification;

(viii) overseeing an extensive Class-notice program; (ix) moving for partial summary judgment against Defendants; (x) opposing Defendants' summary judgment motion and motion for reconsideration; (xi) preparing *Daubert* motions; (xii) drafting detailed mediation submissions; and (xiii) engaging in extensive settlement negotiations with two separate mediators. ¶¶ 150, 155-207.[11] The foregoing unquestionably represents a significant commitment of time, personnel, and out-of-pocket expenses by Plaintiff's Counsel, while consistently facing the risk of recovering nothing for their efforts.

3. This Contingent-Fee Action was Risky to Litigate and the Stakes of the Action Were Exceedingly High

As the Seventh Circuit noted in *Synthroid*, "[t]he market rate for legal fees depends in part on the risk of nonpayment a firm agrees to bear." 264 F.3d at 721; *see also Silverman*, 739 F.3d at 958 ("The greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel."). Thus, "[w]hen determining the reasonableness of a fee request, courts put a fair amount of emphasis on the severity of the risk (read: financial risk) that class counsel assumed in undertaking the lawsuit." *Dairy Farmers*, 80 F. Supp. 3d at 847-48.

Plaintiff's Counsel undertook this Action on an entirely contingent fee basis, thereby assuming the risk that the litigation would yield little to no recovery and leave them uncompensated for their time and out-of-pocket expenses. Class Counsel also understood at the outset that a significant amount of time and effort and considerable out-of-pocket expenses would

[11] In an effort to ease the Court's burden in evaluating the reasonableness of the time expended, the tasks performed by Class Counsel on an annual basis, as well as a detailed description of the staffing of the matter, are set forth in a timeline provided in the Joint Declaration. ¶¶ 150-225. This annual timeline of tasks and staffing is also accompanied by charts that set forth, among other things, (i) the average hourly rate for Class Counsel, as well as the individual categories of attorneys and professionals who worked on the matter (¶ 211), (ii) the percentage of work performed (by hour and by lodestar) for each such category of personnel (¶ 222), and (iii) an identification of Class Counsel's primary attorneys and professional staff devoted to the case during its more than seven year history (¶ 212).

be required to prosecute this Action. Moreover, the time spent by Plaintiff's Counsel here was at the expense of time that they could have devoted to other matters.

As detailed in the Joint Declaration, Plaintiff's Counsel faced numerous risks in this case that could have resulted in a recovery smaller than the Settlement Amount or no recovery at all. ¶¶ 119-132. Indeed, these risks were born out, as an earlier mediation in 2019 was unsuccessful, and the Court narrowed the scope of this Action several times throughout the litigation, resulting in only two statements and one corrective disclosure remaining to be tried. ¶ 149. In addition, at the time of settlement, the Parties were actively preparing *Daubert* motions to limit or exclude expert testimony at trial. ¶ 112. An adverse ruling for the Class on one or more of these motions could have significantly narrowed the available evidence at trial or led to the disposition of this Action altogether. Had the Action continued, the only certainty was that Defendants would have aggressively litigated their defenses through trial and post-trial appeals.

In light of the uncertainties regarding the outcome of the case, it is clear that Plaintiff's Counsel were never "assured of a paycheck." *See Florin v. NationsBank of Ga., N.A.*, 60 F.3d 1245, 1247 (7th Cir. 1995). Plaintiff's Counsel have not been compensated for any of their time or expenses since the case began *over seven years ago*. Since inception, Plaintiff's Counsel have incurred $29,591,935.75 in lodestar and $2,250,420.62 in expenses.[12] Unlike defense counsel—who typically receive payment on a timely and regular basis throughout a case, whether they win or lose—Plaintiff's Counsel carried the significant risk of funding the expenses of this Action and receiving no compensation whatsoever unless they prevailed at trial.[13] The enormous amount of

[12] If the Court approves the Settlement, Class Counsel will continue to perform legal work for no compensation on behalf of the Class. For example, Class Counsel will assist Class Members with their Claims and related inquiries, and work with A.B. Data to ensure a successful claims process. ¶ 208.

[13] Successful trial verdicts can be overturned on appeal. *See In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 747-48 (S.D.N.Y. 1985) ("Even a victory at trial is not a guarantee of ultimate success. If [Class Representative was] successful at trial and obtained a judgment for substantially more than the amount of

time and expenses devoted to this Action, along with the risk assumed by Plaintiff's Counsel, support approval of the requested fee.

4. Class Representative's Approval and the Class's Reaction to Date Support the Requested Fee

Class Representative, which was actively involved in the prosecution and settlement of the Action and has supervised the work of Plaintiff's Counsel over the past seven years, has authorized Class Counsel's fee and expense request. Østergaard Decl., ¶¶ 6-7. The endorsement of the requested fee by a sophisticated investor like Class Representative, in recognition of the result obtained for the Class and the risks undertaken by Plaintiff's Counsel, further supports approving the requested fee. *Id.* ¶ 239-241; *see also In re Marsh & McLennan Cos., Inc. Sec. Litig.*, 2009 WL 5178546, at *16 (S.D.N.Y. Dec. 23, 2009) ("[P]ublic policy considerations support fee awards where, as here, large public pension funds, serving as lead plaintiffs, conscientiously supervised the work of lead counsel, and gave their endorsement to lead counsel's fee request.").

The Class's reaction to date also supports the requested fee. The Postcard Notice and Settlement Notice provide that Class Counsel would apply for attorneys' fees up to 27.5% of the Settlement Fund. The notices also advise Class Members of their right to object to the fee request and the procedures for doing so. *Id*. To date, no objections have been received. ¶ 146.

III. PLAINTIFF'S COUNSEL'S LITIGATION EXPENSES SHOULD BE APPROVED

Class Counsel also respectfully requests that this Court approve payment of $2,250,420.62 for Litigation Expenses that Plaintiff's Counsel incurred in connection with the Action. "It is well established that counsel who create a common fund like this one are entitled to the reimbursement of litigation costs and expenses." *Bell*, 2019 WL 4193376, at *6.

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the proposed settlement, the defendants would appeal such judgment. An appeal could seriously and adversely affect the scope of an ultimate recovery, if not the recovery itself."), *aff'd*, 798 F.2d 35 (2d Cir. 1986); *see also* Settlement Memorandum, at 9 n8.

As set forth in the Joint Declaration and Plaintiff's Counsel's Fee and Expense Declarations, the expenses for which Class Counsel seeks payment were reasonably necessary for prosecuting and resolving this Action. These expenses include, among others, expert witness and consultant costs, document management charges, the cost of the Class Notice campaign, online research costs, court reporting costs, photocopying and postage expenses, and the cost of mediation. ¶¶ 254, 246-250. All of these expenses would typically be charged to paying clients in the marketplace. *See Abbott v. Lockheed Martin Corp.*, 2015 WL 4398475, at *4 (S.D. Ill. July 17, 2015) (reimbursable expenses included "expert witness costs; computerized research; court reporters; travel expense; copy, phone and facsimile expenses and mediation").[14] These expense items are separate and apart from Plaintiff's Counsel's hourly rates.

As part of its request for Litigation Expenses, Class Counsel also seeks an award of $32,960 to reimburse Class Representative for costs it incurred directly related to its representation of the Class. The PSLRA specifically provides that an "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class" may be made to "any representative party serving on behalf of a class." 15 U.S.C. § 78u-4(a)(4).

Here, Class Representative took an active role in the litigation and has been fully committed to pursuing the Class's claims. Østergaard Decl., ¶¶ 3-4. These efforts, which included regularly communicating with Class Counsel concerning significant developments in the litigation and case strategy; reviewing significant pleadings and briefs filed in the Action; responding to discovery requests and collecting responsive documents; preparing and sitting for a deposition; participating in protracted settlement negotiations; and evaluating and approving the Settlement,

[14] *See also Wong*, 2014 WL 7717579, at *1 & Final Hearing Transcript, *Wong v. Accretive Health, Inc.*, No. 12CV03102 (N.D. Ill. May 18, 2014), ECF No. 85 (approving total expense request including amount for computerized legal and factual research).

required Industriens' employees to dedicate time to the Action they otherwise would have devoted to their regular duties for Industriens. Østergaard Decl., ¶¶ 3-4, 9-10. The amount requested by Class Representative—$32,960—is based on the number of hours that Industriens' employees committed to the Action, multiplied by a reasonable hourly rate for each employee. This request is reasonable and justified under the PSLRA, and Courts have routinely granted such awards to plaintiffs.[15]

The Settlement notices inform Class Members that Class Counsel would apply for Litigation Expenses in an amount not to exceed $2.6 million, which may include reimbursement of Class Representative' costs. The total amount requested—$2,283,380.62, including $2,250,420.62 for Plaintiff's Counsel's expenses and $32,960 for Class Representative—is below the amount set forth in the notices. To date, there has been no objections to this request. ¶ 243.

IV. CONCLUSION

For the reasons stated herein and in the Joint Declaration, Class Counsel respectfully requests that the Court award attorneys' fees in the amount of 27.5% of the Settlement Fund and approve payment of Plaintiff's Counsel's Litigation Expenses in the amount of $2,250,420.62, as well as the requested award of $32,960 for Class Representative.

[15] *See, e.g.*, *See Public Emps.' Ret. Sys. of Miss. v. Treehouse Foods, Inc.*, No. 16-CV-10632, slip op. at 3 (N.D. Ill. Nov. 18, 2021), ECF No. 190 (awarding $47,935 to lead plaintiff); *Duncan v. Joy Global Inc.*, No. 16-cv-1229, slip op. at 2 (E.D. Wis. Dec. 27, 2018), ECF No. 79 (awarding lead plaintiffs amounts ranging from $2,400 to $23,000 for reimbursement of reasonable costs and expenses); *In re Bank of Am. Corp. Sec., Derivative & ERISA Litig*., 772 F.3d 125, 132-133 (2d Cir. 2014) (affirming $453,003.04 award to representative plaintiffs for time spent by their employees); *see generally In re Gilat Satellite Networks, Ltd.*, 2007 WL 2743675, at *19 (E.D.N.Y. Sept. 18, 2007) (granting PSLRA awards where, as here, "the tasks undertaken by employees of Lead Plaintiffs reduced the amount of time those employees would have spent on other work and these tasks and rates appear reasonable to the furtherance of the litigation").

Dated: September 2, 2022

Respectfully submitted,

KESSLER TOPAZ
MELTZER & CHECK, LLP

/s/ Andrew L. Zivitz
Andrew L. Zivitz (*Pro Hac Vice*)
David Kessler (*Pro Hac Vice*)
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Class Counsel for the Class

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Liaison Counsel for the Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

WASHTENAW COUNTY EMPLOYEES' RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. WALGREEN CO. et al., Defendants.	Civil Action No. 1:15-cv-3187 Honorable Sharon Johnson Coleman

DECLARATION OF ANDREW L. ZIVITZ ON BEHALF OF KESSLER TOPAZ MELTZER & CHECK, LLP IN SUPPORT OF CLASS COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION EXPENSES

I, Andrew L. Zivitz, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a partner in the law firm of Kessler Topaz Meltzer & Check, LLP ("Kessler Topaz"). I submit this declaration in support of Class Counsel's motion for an award of attorneys' fees in connection with services rendered by Plaintiff's Counsel in the above-captioned securities class action ("Action"), as well as for payment of Litigation Expenses incurred in connection with the Action.[1] Unless otherwise stated, I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

2. As Court-appointed Class Counsel, my firm was involved in all aspects of the prosecution of the Action and its resolution, as set forth in the Joint Declaration of David Kessler and Andrew L. Zivitz in Support of (i) Class Representative's Motion for Final Approval of Settlement and Plan of Allocation; and (ii) Class Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses filed concurrently herewith.

3. Based on my work in the Action, as well as the review of time records reflecting work performed by other attorneys and professional support staff employees at or on behalf of Kessler Topaz in the Action ("Timekeepers"), as reported by the Timekeepers, I directed the preparation of the table set forth as Exhibit A hereto. The table in Exhibit A: (i) identifies the names and employment positions (i.e., titles) of the Timekeepers who devoted thirty (30) or more hours to the Action; (ii) provides the number of hours that each Timekeeper expended in connection with work on the Action, from the time when potential claims were being investigated through August 26, 2022; (iii) provides each Timekeeper's 2022 hourly rate (for current employees) unless otherwise noted; and (iv) provides the lodestar of each Timekeeper and the

[1] All capitalized terms that are not otherwise defined herein shall have the meanings set forth in the Stipulation and Agreement of Settlement dated June 23, 2022 (Doc. 505).

entire firm. For Timekeepers who are no longer employed by Kessler Topaz, the hourly rate used is the hourly rate for such employee in his or her final year of employment by my firm. The table in Exhibit A was prepared from daily time records regularly prepared and maintained by my firm in the ordinary course of business, which are available at the request of the Court. All time expended in preparing Class Counsel's motion for attorneys' fees and expenses has been excluded.

4. The number of hours expended by Kessler Topaz in the Action, from inception through August 26, 2022, as reflected in Exhibit A, is 54,791.40. The lodestar for my firm, as reflected in Exhibit A, is $28,653,949.50, consisting of $27,414,915.50 for attorneys' time and $1,239,034.00 for professional support staff time.

5. The hourly rates for the Timekeepers, as set forth in Exhibit A, are their standard rates. My firm's hourly rates are largely based upon a combination of the title, the specific years of experience for each attorney and professional support staff employee, as well as market rates for practitioners in the field. These hourly rates are the same as, or comparable to, rates submitted by Kessler Topaz and accepted by courts in other complex contingent class actions for purposes of "cross-checking" lodestar against a proposed fee based on the percentage-of-the-fund method, as well as determining a reasonable fee under the lodestar method.

6. I believe that the number of hours expended and the services performed by the attorneys and professional support staff employees at or on behalf of Kessler Topaz were reasonable and necessary for the effective and efficient prosecution and resolution of the Action.

7. Expense items are reported separately and are not duplicated in my firm's hourly rates. As set forth in Exhibit B hereto, Kessler Topaz is seeking payment for $2,235,229.37 in expenses incurred in connection with the prosecution and resolution of the Action. In my judgment, these expenses were reasonable and expended for the benefit of the Class in this Action.

8. The following is additional information regarding certain of the expenses set forth in Exhibit B.

(a) **Court Filing Fees**: $1,200.00. This amount reflects United States District Court for the Northern District of Illinois *pro hac vice* admission fees for Kessler Topaz attorneys.

(b) **Service of Process**: $6,119.00. This amount reflects payments to Keating & Walker Attorney Service, Inc., Class Action Research and Litigation Support, Inc., and Harmon Legal Process Service, LLC, primarily for service of subpoenas upon various out-of-state nonparties.

(c) **Overnight Mail & Messenger Services**: $9,170.93. In connection with the prosecution of the Action, Kessler Topaz incurred charges associated with overnight delivery via Federal Express as well as messenger services. Messenger services (in the total amount of $729.25) were used for, among other things, delivery of courtesy copies to the Court.

(d) **OnLine Legal / Factual Research**: $69,478.51. During the course of this Action, Kessler Topaz incurred costs associated with online legal and factual research necessary to the investigation, prosecution, and resolution of the Action. These costs include charges from online vendors such as Westlaw, LexisNexis, Courtlink, TransUnion Risk & Alternative Data Solutions Inc.,[2] Thomas Reuters Accelus, PACER, and others, and reflect costs associated with obtaining access to court filings, financial data, and performing legal and factual research. The expenses in this category are tracked using the specific client-matter number for the Action and are based upon the costs assessed by each vendor. There are no administrative charges in this figure.

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[2] TransUnion Risk & Alternative Data Solutions Inc. is a database providing information on business risk, fraud mitigation, skip tracing, insurance claims management, asset recovery, and identity authentication. This database is used for factual research, and provides information such as telephone numbers, emails, addresses, criminal history, civil litigation history, and other consumer related information.

(e) **Reproduction Costs**: $53,839.17. Kessler Topaz incurred costs related to document reproduction. For internal reproduction, my firm charges $0.10 per page. Each time a photocopy is made or a document is printed, our billing system requires that a case or administrative billing code be entered into the copy-machine or computer being used, and this is how the 146,290 pages copied or printed (for a total of $14,629.00) were identified as attributable to this Action. Kessler Topaz also paid a total of $39,210.17 to various outside copy vendors.

(f) **Travel**: $73,833.87. In connection with the prosecution and resolution of this Action over the past seven years, Kessler Topaz attorneys incurred travel-related expenses for travel to, among other things, depositions, Court hearings and conferences, and mediations. Kessler Topaz applied "caps" to certain of these travel expenses as is routinely done by my firm. For example, airfare was capped at coach/economy rates. Kessler Topaz also incurred $791.01 in local work-related transportation (e.g., taxicabs home after working late in the office).

(g) **In-Office Working Meals**: $1,604.92. During the course of the Action, Kessler Topaz employees incurred the costs of meals when working through meals while in the office. Kessler Topaz applies a $20.00 per-person cap to working meals.

(h) **Experts / Consultants**: $1,325,834.37.

(i) Global Economics Group, LLC ($514,541.25)—Kessler Topaz engaged Chad Coffman, C.F.A. of Global Economics Group, LLC to investigate and testify regarding the economic importance of the information allegedly misrepresented and/or concealed by Defendants, loss causation and damages. In connection with class certification, Mr. Coffman prepared two market efficiency reports and, later in connection with expert discovery, Mr. Coffman prepared two expert reports on loss causation and damages. Mr. Coffman was deposed twice, on June 15, 2017 and January 29, 2021. In addition, in connection with the Parties' mediation efforts,

Global Economic Group, LLC provided numerous detailed analyses of class-wide damages. Class Counsel also consulted with Global Economics Group, LLC in developing the Plan of Allocation.

(ii) The Brattle Group, Inc. ($414,497.50)—Kessler Topaz retained the services of The Brattle Group, Inc., and specifically Benjamin Sacks, to testify regarding whether Walgreens' internal financial forecasts, analyses, and other data available to it during the relevant time period, supported Walgreens' publicly disseminated FY16 EBIT Goal. In November 2020, Class Counsel served the expert report of Mr. Sacks, and Defendants deposed Mr. Sacks on December 30, 2020.

(iii) Greylock McKinnon Associates ($221,410.00)—Kessler Topaz engaged the services of Greylock McKinnon Associates, and specifically Dr. Rena Conti, an Associate Professor at Questrom School of Business, Boston University, to testify regarding generic drug prices and trends, and the customary reimbursement mechanisms that Walgreens and other U.S. pharmacies employ to earn revenue from the sale of generic drugs. In November 2020, Class Counsel served the expert report of Dr. Conti and, in December 2020, Class Counsel served Dr. Conti's rebuttal report to respond to the opinions set forth in the report of Defendants' expert. Defendants deposed Dr. Conti on February 10, 2021.

(iv) Professor Frank Partnoy ($158,125.00)—Kessler Topaz engaged Professor Frank Partnoy, the Adrian A. Kragen Professor of Law at the UC Berkley School of Law and co-chair of the UC Berkley Center for Law and Business, to respond to the testimony of Defendants' SEC disclosure expert. Class Counsel served the rebuttal report of Professor Partnoy on December 14, 2020. Defendants deposed Professor Partnoy on February 5, 2021.

(v) Additional Consultants ($17,260.62)—In addition to the four testifying experts listed above, Class Counsel also engaged the services of several additional consultants over the course of this Action to assist with complex factual issues. For example, Class

Counsel consulted with A&J Consulting, LLC at the outset of the litigation regarding the prescription pricing market and retail industry trends.

(i) **Document Hosting / Management**: $329,270.85. Class Counsel retained outside vendors, Fronteo USA, Inc. and later, KLDiscovery to host the document database utilized to effectively and efficiently review and analyze the more than one million pages of electronic documents produced by Defendants and non-parties during the course of the Action. Charges from Fronteo USA, Inc. and KLDiscovery total $320,113.42. Class Counsel also utilized the outside vendors, Everchron and Driven, Inc./Innovative Driven, to organize and prepare evidence for summary judgment, mediation, and trial, and these charges are also reflected in this expense category.

(j) **Court Reporters, Transcripts & Deposition Services**: $84,723.72. This amount consists of payments to court reporters for transcription and video services at depositions taken and defended in the Action, and for copies of deposition and hearing transcripts and corresponding videos.

(k) **Class Notice**: $215,700.23. This category reflects the costs incurred by the Court-authorized Claims Administrator A.B. Data, Ltd. for conducting the notice campaign in connection with the Court's certification of the Class.

(l) **Mediation**: $64,453.80. During the course of the Action, the Parties retained two mediators with extensive experience in mediating complex securities actions such as this one, Mr. Jed. D. Melnick, Esq. of JAMS and the Honorable Layn R. Phillips (Ret.) of Phillips ADR, to assist with settlement negotiations. The Parties participated in a formal mediation with Mr. Melnick in May 2019 and a formal mediation with Judge Phillips in November 2021. Following the second mediation with Judge Phillips, the Parties continued their negotiations with Judge Phillip's

assistance over several months and ultimately accepted his recommendation to resolve the Action for $105 million.

9. The expenses incurred by Kessler Topaz in the Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred. I believe these expenses were reasonable and expended for the benefit of the Class in the Action.

10. With respect to the standing of my firm, attached hereto as Exhibit C is a firm résumé, which includes information about my firm and biographical information concerning the firm's attorneys.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on September 2, 2022, in Radnor, Pennsylvania.

/s/ Andrew L. Zivitz
ANDREW L. ZIVITZ

EXHIBIT A

Washtenaw County Employees' Retirement System v. Walgreen Co. et al.
Civil Action No. 1:15-cv-3187 (N.D. Ill.)

KESSLER TOPAZ MELTZER & CHECK, LLP

TIME REPORT

From Inception Through August 26, 2022

NAME	HOURLY RATE	HOURS	LODESTAR
Partners			
Amjed, Naumon A.	$865.00	46.00	$39,790.00
Berman, Stuart L.	$1,000.00	132.60	$132,600.00
Bocian, David A.	$950.00	768.50	$730,075.00
Gerard, Eric*	$780.00	1,016.50	$792,870.00
Greenstein, Eli R.	$950.00	4,614.90	$4,384,155.00
Joost, Jennifer L.	$865.00	476.00	$411,740.00
Kessler, David	$1,000.00	463.70	$463,700.00
Whitman, Jr., Johnston de F.	$950.00	1,697.70	$1,612,815.00
Zivitz, Andrew	$1,000.00	821.10	$821,100.00
Counsel / Associates			
Breucop, Paul	$475.00	770.60	$366,035.00
Cook, Rupa Nath	$425.00	997.60	$423,980.00
Degnan, Ryan T.**	$525.00	31.30	$16,432.50
DeSanto, Mark	$400.00	748.40	$299,360.00
Dodemaide, Andrew	$400.00	66.10	$26,440.00
Enck, Jennifer L.	$740.00	327.30	$242,202.00
Gerard, Eric*	$690.00	1,434.20	$989,598.00
Grey, Stephanie	$390.00	439.20	$171,288.00
Hoey, Evan R.	$480.00	73.30	$35,184.00
Koneski, Megan	$450.00	178.60	$80,370.00
McEvilly, James	$690.00	498.80	$344,172.00
Newcomer, Michelle M.	$740.00	4,239.40	$3,137,156.00
Rader, Melanie	$400.00	1,060.80	$424,320.00
Rotko, Daniel B.	$560.00	113.80	$63,728.00
Schwartzberg, Nicole	$390.00	152.00	$59,280.00

NAME	HOURLY RATE	HOURS	LODESTAR
Shao, Peng	$425.00	517.70	$220,022.50
Staff Attorneys			
Alsaleh, Sara	$410.00	564.50	$231,445.00
Berger, Stacey	$385.00	650.60	$250,481.00
Calhoun, Elizabeth W.	$410.00	4,577.30	$1,876,693.00
Dragovich, Elizabeth	$410.00	554.50	$227,345.00
Gamble, Kimberly V.	$410.00	254.00	$104,140.00
Greenwald, Keith S.	$410.00	164.50	$67,445.00
Grossi, John	$385.00	1,143.40	$440,209.00
Hu, Sufei	$385.00	4,957.90	$1,908,791.50
Rosseel, Allyson M.	$410.00	209.90	$86,059.00
Sechrist, Michael J.	$410.00	117.40	$48,134.00
Smith, Quiana	$410.00	156.80	$64,288.00
Starks, Melissa J.	$410.00	3,318.20	$1,360,462.00
Swerdloff, Julie	$385.00	700.60	$269,731.00
Thomer, Brian W.	$410.00	1,191.90	$488,679.00
Tomich, Alexandra	$385.00	683.00	$262,955.00
Weiler, Kurt W.	$410.00	1,017.40	$417,134.00
Contract Attorneys			
Carlson, Matthew H.	$350.00	1,626.00	$569,100.00
Lawlor, Jonathan	$340.00	695.20	$236,368.00
Link, Steven	$340.00	363.20	$123,488.00
Melvin, Alisha	$340.00	704.00	$239,360.00
Noll, Timothy A.	$350.00	2,610.50	$913,675.00
Shaner, Roberta	$350.00	2,687.20	$940,520.00
Paralegals			
Bigelow, Emily	$320.00	1,939.10	$620,512.00
Giordano, Jessica	$275.00	204.70	$56,292.50
Hankins, Andrew	$275.00	131.00	$36,025.00
Hindmarsh, Lisa	$255.00	363.20	$92,616.00
Jayasuriya, Yasmin	$275.00	303.10	$83,352.50
Paffas, Holly	$275.00	138.90	$38,197.50
Sim, Joan	$275.00	552.70	$151,992.50
Swift, Mary	$320.00	87.80	$28,096.00

NAME	HOURLY RATE	HOURS	LODESTAR
Investigators			
Angrisano, Fabiana	$300.00	41.00	$12,300.00
Jeffrey, Carolyn	$300.00	74.80	$22,440.00
Maginnis, Jamie	$315.00	207.30	$65,299.50
Molina, Henry	$315.00	42.70	$13,450.50
Righter, Caitlyn	$260.00	71.00	$18,460.00
TOTALS		**54,791.40**	**$28,653,949.50**

* Eric Gerard was promoted to partner at the conclusion of 2020. As reflected in this chart, Mr. Gerard's partner hourly rate is being used for purposes of calculating his lodestar from January 1, 2021 onwards; Mr. Gerard's counsel hourly rate is being used for purposes of calculating his lodestar prior to January 1, 2021.

** Ryan Degnan is currently a partner at Kessler Topaz. Since all of Mr. Degnan's work on this case was performed when he was an associate, his associate hourly rate is being used for purposes of calculating his lodestar.

EXHIBIT B

Washtenaw County Employees' Retirement System v. Walgreen Co. et al.
Civil Action No. 1:15-cv-3187 (N.D. Ill.)

KESSLER TOPAZ MELTZER & CHECK, LLP

EXPENSE REPORT

CATEGORY	AMOUNT
Court Filing Fees	$1,200.00
Service of Process	$6,119.00
Overnight Mail	$8,441.68
Messenger Services	$729.25
Online Legal / Factual Research	$69,478.51
External Reproduction Costs	$39,210.17
Internal Reproduction Costs	$14,629.00
Out of Town Travel (Transportation, Hotels & Meals)	$73,042.86
Local Work-Related Transportation	$791.01
In-Office Working Meals	$1,604.92
Experts / Consultants	$1,325,834.37
Document Hosting / Management	$329,270.85
Court Reporters, Transcripts & Deposition Services	$84,723.72
Class Notice	$215,700.23
Mediation	$64,453.80
TOTAL EXPENSES:	**$2,235,229.37**

EXHIBIT C

Washtenaw County Employees' Retirement System v. Walgreen Co. et al.
Civil Action No. 1:15-cv-3187 (N.D. Ill.)

KESSLER TOPAZ MELTZER & CHECK, LLP

FIRM RESUME

KESSLERTOPAZ MELTZERCHECK LLP

ATTORNEYS AT LAW

FIRM PROFILE

Since 1987, Kessler Topaz Meltzer & Check, LLP has specialized in the prosecution of securities class actions and has grown into one of the largest and most successful shareholder litigation firms in the field. With offices in Radnor, Pennsylvania and San Francisco, California, the Firm is comprised of 94 attorneys as well as an experienced support staff consisting of over 80 paralegals, in-house investigators, legal clerks and other personnel. With a large and sophisticated client base (numbering over 350 institutional investors from around the world -- including public and Taft-Hartley pension funds, mutual fund managers, investment advisors, insurance companies, hedge funds and other large investors), Kessler Topaz has developed an international reputation for excellence and has extensive experience prosecuting securities fraud actions. For the past several years, the National Law Journal has recognized Kessler Topaz as one of the top securities class action law firms in the country. In addition, the Legal Intelligencer recently awarded Kessler Topaz with its Class Action Litigation Firm of The Year award. Lastly, Kessler Topaz and several of its attorneys are regularly recognized by Legal500 and Benchmark: Plaintiffs as leaders in our field.

Kessler Topaz has recovered billions of dollars in the course of representing defrauded shareholders from around the world and takes pride in the reputation we have earned for our dedication to our clients. Kessler Topaz devotes significant time to developing relationships with its clients in a manner that enables the Firm to understand the types of cases they will be interested in pursuing and their expectations. Further, the Firm is committed to pursuing meaningful corporate governance reforms in cases where we suspect that systemic problems within a company could lead to recurring litigation and where such changes also have the possibility to increase the value of the underlying company. The Firm is poised to continue protecting rights worldwide.

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NOTEWORTHY ACHIEVEMENTS

During the Firm's successful history, Kessler Topaz has recovered billions of dollars for defrauded stockholders and consumers. The following are among the Firm's notable achievements:

SECURITIES FRAUD LITIGATION

In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation, Master File No. 09 MDL 2058:
Kessler Topaz, as Co-Lead Counsel, brought an action on behalf of lead plaintiffs that asserted claims for violations of the federal securities laws against Bank of America Corp. ("BoA") and certain of BoA's officers and board members relating to BoA's merger with Merrill Lynch & Co. ("Merrill") and its failure to inform its shareholders of billions of dollars of losses which Merrill had suffered before the pivotal shareholder vote, as well as an undisclosed agreement allowing Merrill to pay up to $5.8 billion in bonuses before the acquisition closed, despite these losses. On September 28, 2012, the Parties announced a $2.425 billion case settlement with BoA to settle all claims asserted against all defendants in the action which has since received final approval from the Court. BoA also agreed to implement significant corporate governance improvements. The settlement, reached after almost four years of litigation with a trial set to begin on October 22, 2012, amounts to 1) the sixth largest securities class action lawsuit settlement ever; 2) the fourth largest securities class action settlement ever funded by a single corporate defendant; 3) the single largest settlement of a securities class action in which there was neither a financial restatement involved nor a criminal conviction related to the alleged misconduct; 4) the single largest securities class action settlement ever resolving a Section 14(a) claim (the federal securities provision designed to protect investors against misstatements in connection with a proxy solicitation); and 5) by far the largest securities class action settlement to come out of the subprime meltdown and credit crisis to date.

In re Tyco International, Ltd. Sec. Litig., No. 02-1335-B (D.N.H. 2002):
Kessler Topaz, which served as Co-Lead Counsel in this highly publicized securities fraud class action on behalf of a group of institutional investors, achieved a record $3.2 billion settlement with Tyco International, Ltd. ("Tyco") and their auditor PricewaterhouseCoopers ("PwC"). The $2.975 billion settlement with Tyco represents the single-largest securities class action recovery from a single corporate defendant in history. In addition, the $225 million settlement with PwC represents the largest payment PwC has ever paid to resolve a securities class action and is the second-largest auditor settlement in securities class action history.

The action asserted federal securities claims on behalf of all purchasers of Tyco securities between December 13, 1999 and June 7, 2002 ("Class Period") against Tyco, certain former officers and directors of Tyco and PwC. Tyco is alleged to have overstated its income during the Class Period by $5.8 billion through a multitude of accounting manipulations and shenanigans. The case also involved allegations of looting and self-dealing by the officers and directors of the Company. In that regard, Defendants L. Dennis Kozlowski, the former CEO and Mark H. Swartz, the former CFO have been sentenced to up to 25 years in prison after being convicted of grand larceny, falsification of business records and conspiracy for their roles in the alleged scheme to defraud investors.

As presiding Judge Paul Barbadoro aptly stated in his Order approving the final settlement, "[i]t is difficult to overstate the complexity of [the litigation]." Judge Barbadoro noted the extraordinary effort required to pursue the litigation towards its successful conclusion, which included the review of

more than 82.5 million pages of documents, more than 220 depositions and over 700 hundred discovery requests and responses. In addition to the complexity of the litigation, Judge Barbadoro also highlighted the great risk undertaken by Co-Lead Counsel in pursuit of the litigation, which he indicated was greater than in other multi-billion dollar securities cases and "put [Plaintiffs] at the cutting edge of a rapidly changing area of law." In sum, the Tyco settlement is of historic proportions for the investors who suffered significant financial losses and it has sent a strong message to those who would try to engage in this type of misconduct in the future.

In re Tenet Healthcare Corp. Sec. Litig., No. CV-02-8462-RSWL (Rx) (C.D. Cal. 2002):
Kessler Topaz served as Co-Lead Counsel in this action. A partial settlement, approved on May 26, 2006, was comprised of three distinct elements: (i) a substantial monetary commitment of $215 million by the company; (ii) personal contributions totaling $1.5 million by two of the individual defendants; and (iii) the enactment and/or continuation of numerous changes to the company's corporate governance practices, which have led various institutional rating entities to rank Tenet among the best in the U.S. in regards to corporate governance. The significance of the partial settlement was heightened by Tenet's precarious financial condition. Faced with many financial pressures — including several pending civil actions and federal investigations, with total contingent liabilities in the hundreds of millions of dollars — there was real concern that Tenet would be unable to fund a settlement or satisfy a judgment of any greater amount in the near future. By reaching the partial settlement, we were able to avoid the risks associated with a long and costly litigation battle and provide a significant and immediate benefit to the class. Notably, this resolution represented a unique result in securities class action litigation — personal financial contributions from individual defendants. After taking the case through the summary judgment stage, we were able to secure an additional $65 million recovery from KPMG – Tenet's outside auditor during the relevant period – for the class, bringing the total recovery to $281.5 million.

In re Wachovia Preferred Securities and Bond/Notes Litigation, Master File No. 09 Civ. 6351 (RJS) (S.D.N.Y.):
Kessler Topaz, as court-appointed Co-Lead Counsel, asserted class action claims for violations of the Securities Act of 1933 on behalf of all persons who purchased Wachovia Corporation ("Wachovia") preferred securities issued in thirty separate offerings (the "Offerings") between July 31, 2006 and May 29, 2008 (the "Offering Period"). Defendants in the action included Wachovia, various Wachovia related trusts, Wells Fargo as successor-in-interest to Wachovia, certain of Wachovia's officer and board members, numerous underwriters that underwrote the Offerings, and KPMG LLP ("KPMG"), Wachovia's former outside auditor. Plaintiffs alleged that the registration statements and prospectuses and prospectus supplements used to market the Offerings to Plaintiffs and other members of the class during the Offerings Period contained materially false and misleading statements and omitted material information. Specifically, the Complaint alleged that in connection with the Offerings, Wachovia: (i) failed to reveal the full extent to which its mortgage portfolio was increasingly impaired due to dangerously lax underwriting practices; (ii) materially misstated the true value of its mortgage-related assets; (iii) failed to disclose that its loan loss reserves were grossly inadequate; and (iv) failed to record write-downs and impairments to those assets as required by Generally Accepted Accounting Principles ("GAAP"). Even as Wachovia faced insolvency, the Offering Materials assured investors that Wachovia's capital and liquidity positions were "strong," and that it was so "well capitalized" that it was actually a "provider of liquidity" to the market. On August 5, 2011, the Parties announced a $590 million cash settlement with Wells Fargo (as successor-in-interest to Wachovia) and a $37 million cash settlement with KPMG, to settle all claims asserted against all defendants in the action. This settlement was approved by the Hon. Judge Richard J. Sullivan by order issued on January 3, 2012.

In re Initial Public Offering Sec. Litig., Master File No. 21 MC 92(SAS):
This action settled for $586 million on January 1, 2010, after years of litigation overseen by U.S. District Judge Shira Scheindlin. Kessler Topaz served on the plaintiffs' executive committee for the case, which was based upon the artificial inflation of stock prices during the dot-com boom of the late 1990s that led to the collapse of the technology stock market in 2000 that was related to allegations of laddering and excess commissions being paid for IPO allocations.

In re Longtop Financial Technologies Ltd. Securities Litigation, No. 11-cv-3658 (S.D.N.Y.):
Kessler Topaz, as Lead Counsel, brought an action on behalf of lead plaintiffs that asserted claims for violations of the federal securities laws against Longtop Financial Technologies Ltd. ("Longtop"), its Chief Executive Officer, Weizhou Lian, and its Chief Financial Officer, Derek Palaschuk. The claims against Longtop and these two individuals were based on a massive fraud that occurred at the company. As the CEO later confessed, the company had been a fraud since 2004. Specifically, Weizhou Lian confessed that the company's cash balances and revenues were overstated by hundreds of millions of dollars and it had millions of dollars in unrecorded bank loans. The CEO further admitted that, in 2011 alone, Longtop's revenues were overstated by about 40 percent. On November 14, 2013, after Weizhou Lian and Longtop failed to appear and defend the action, Judge Shira Scheindlin entered default judgment against these two defendants in the amount of $882.3 million plus 9 percent interest running from February 21, 2008 to the date of payment. The case then proceeded to trial against Longtop's CFO who claimed he did not know about the fraud - and was not reckless in not knowing – when he made false statements to investors about Longtop's financial results. On November 21, 2014, the jury returned a verdict on liability in favor of plaintiffs. Specifically, the jury found that the CFO was liable to the plaintiffs and the class for each of the eight challenged misstatements. Then, on November 24, 2014, the jury returned its damages verdict, ascribing a certain amount of inflation to each day of the class period and apportioning liability for those damages amongst the three named defendants. The Longtop trial was only the 14th securities class action to be tried to a verdict since the passage of the Private Securities Litigation Reform Act in 1995 and represents a historic victory for investors.

Operative Plasterers and Cement Masons International Association Local 262 Annuity Fund v. Lehman Brothers Holdings, Inc., No. 1:08-cv-05523-LAK (S.D.N.Y.):
Kessler Topaz, on behalf of lead plaintiffs, asserted claims against certain individual defendants and underwriters of Lehman securities arising from misstatements and omissions regarding Lehman's financial condition, and its exposure to the residential and commercial real estate markets in the period leading to Lehman's unprecedented bankruptcy filing on September 14, 2008. In July 2011, the Court sustained the majority of the amended Complaint finding that Lehman's use of Repo 105, while technically complying with GAAP, still rendered numerous statements relating to Lehman's purported Net Leverage Ration materially false and misleading. The Court also found that Defendants' statements related to Lehman's risk management policies were sufficient to state a claim. With respect to loss causation, the Court also failed to accept Defendants' contention that the financial condition of the economy led to the losses suffered by the Class. As the case was being prepared for trial, a $517 million settlement was reached on behalf of shareholders --- $426 million of which came from various underwriters of the Offerings, representing a significant recovery for investors in this now bankrupt entity. In addition, $90 million came from Lehman's former directors and officers, which is significant considering the diminishing assets available to pay any future judgment. Following these settlements, the litigation continued against Lehman's auditor, Ernst & Young LLP. A settlement for $99 million was subsequently reached with Ernst & Young LLP and was approved by the Court.

Minneapolis Firefighters' Relief Association v. Medtronic, Inc. et al. Case No. 0:08-cv-06324-PAM-AJB (D. Minn.):

Kessler Topaz brought an action on behalf of lead plaintiffs that alleged that the company failed to disclose its reliance on illegal "off-label" marketing techniques to drive the sales of its INFUSE Bone Graft ("INFUSE") medical device. While physicians are allowed to prescribe a drug or medical device for any use they see fit, federal law prohibits medical device manufacturers from marketing devices for any uses not specifically approved by the United States Food and Drug Administration. The company's off-label marketing practices have resulted in the company becoming the target of a probe by the federal government which was revealed on November 18, 2008, when the company's CEO reported that Medtronic received a subpoena from the United States Department of Justice which is "looking into off-label use of INFUSE." After hearing oral argument on Defendants' Motions to Dismiss, on February 3, 2010, the Court issued an order granting in part and denying in part Defendants' motions, allowing a large portion of the action to move forward. The Court held that Plaintiff successfully stated a claim against each Defendant for a majority of the misstatements alleged in the Complaint and that each of the Defendants knew or recklessly disregarded the falsity of these statements and that Defendants' fraud caused the losses experienced by members of the Class when the market learned the truth behind Defendants' INFUSE marketing efforts. While the case was in discovery, on April 2, 2012, Medtronic agreed to pay shareholders an $85 million settlement. The settlement was approved by the Court by order issued on November 8, 2012.

In re Brocade Sec. Litig., Case No. 3:05-CV-02042 (N.D. Cal. 2005) (CRB):

The complaint in this action alleges that Defendants engaged in repeated violations of federal securities laws by backdating options grants to top executives and falsified the date of stock option grants and other information regarding options grants to numerous employees from 2000 through 2004, which ultimately caused Brocade to restate all of its financial statements from 2000 through 2005. In addition, concurrent SEC civil and Department of Justice criminal actions against certain individual defendants were commenced. In August, 2007 the Court denied Defendant's motions to dismiss and in October, 2007 certified a class of Brocade investors who were damaged by the alleged fraud. Discovery is currently proceeding and the case is being prepared for trial. Furthermore, while litigating the securities class action Kessler Topaz and its co-counsel objected to a proposed settlement in the Brocade derivative action. On March 21, 2007, the parties in In re Brocade Communications Systems, Inc. Derivative Litigation, No. C05-02233 (N.D. Cal. 2005) (CRB) gave notice that they had obtained preliminary approval of their settlement. According to the notice, which was buried on the back pages of the Wall Street Journal, Brocade shareholders were given less than three weeks to evaluate the settlement and file any objection with the Court. Kessler Topaz client Puerto Rico Government Employees' Retirement System ("PRGERS") had a large investment in Brocade and, because the settlement was woefully inadequate, filed an objection. PRGERS, joined by fellow institutional investor Arkansas Public Employees Retirement System, challenged the settlement on two fundamental grounds. First, PRGERS criticized the derivative plaintiffs for failing to conduct any discovery before settling their claims. PRGERS also argued that derivative plaintiff's abject failure to investigate its own claims before providing the defendants with broad releases from liability made it impossible to weigh the merits of the settlement. The Court agreed, and strongly admonished derivative plaintiffs for their failure to perform this most basic act of service to their fellow Brocade shareholders. The settlement was rejected and later withdrawn. Second, and more significantly, PRGERS claimed that the presence of the well-respected law firm Wilson, Sonsini Goodrich and Rosati, in this case, created an incurable conflict of interest that corrupted the entire settlement process. The conflict stemmed from WSGR's dual role as counsel to Brocade and the Individual Settling Defendants, including WSGR Chairman and former Brocade Board Member

Larry Sonsini. On this point, the Court also agreed and advised WSGR to remove itself from the case entirely. On May 25, 2007, WSGR complied and withdrew as counsel to Brocade. The case settled for $160 million and was approved by the Court.

In re Satyam Computer Services, Ltd. Sec. Litig., No. 09 MD 02027 (BSJ) (S.D.N.Y.):
Kessler Topaz served as Co-Lead Counsel in this securities fraud class action in the Southern District of New York. The action asserts claims by lead plaintiffs for violations of the federal securities laws against Satyam Computer Services Limited ("Satyam" or the "Company") and certain of Satyam's former officers and directors and its former auditor PricewaterhouseCoopers International Ltd. ("PwC") relating to the Company's January 7, 2009, disclosure admitting that B. Ramalinga Raju ("B. Raju"), the Company's former chairman, falsified Satyam's financial reports by, among other things, inflating its reported cash balances by more than $1 billion. The news caused the price of Satyam's common stock (traded on the National Stock Exchange of India and the Bombay Stock Exchange) and American Depository Shares ("ADSs") (traded on the New York Stock Exchange ("NYSE")) to collapse. From a closing price of $3.67 per share on January 6, 2009, Satyam's common stock closed at $0.82 per share on January 7, 2009. With respect to the ADSs, the news of B. Raju's letter was revealed overnight in the United States and, as a result, trading in Satyam ADSs was halted on the NYSE before the markets opened on January 7, 2009. When trading in Satyam ADSs resumed on January 12, 2009, Satyam ADSs opened at $1.14 per ADS, down steeply from a closing price of $9.35 on January 6, 2009. Lead Plaintiffs filed a consolidated complaint on July 17, 2009, on behalf of all persons or entities, who (a) purchased or otherwise acquired Satyam's ADSs in the United States; and (b) residents of the United States who purchased or otherwise acquired Satyam shares on the National Stock Exchange of India or the Bombay Stock Exchange between January 6, 2004 and January 6, 2009. Co-Lead Counsel secured a settlement for $125 million from Satyam on February 16, 2011. Additionally, Co-Lead Counsel was able to secure a $25.5 million settlement from PwC on April 29, 2011, who was alleged to have signed off on the misleading audit reports.

In re BankAtlantic Bancorp, Inc. Sec. Litig., Case No. 07-CV-61542 (S.D. Fla. 2007):
On November 18, 2010, a panel of nine Miami, Florida jurors returned the first securities fraud verdict to arise out of the financial crisis against BankAtlantic Bancorp. Inc., its chief executive officer and chief financial officer. This case was only the tenth securities class action to be tried to a verdict following the passage of the Private Securities Litigation Reform Act of 1995, which governs such suits. Following extensive post-trial motion practice, the District Court upheld all of the Jury's findings of fraud but vacated the damages award on a narrow legal issue and granted Defendant's motion for a judgment as a matter of law. Plaintiffs appealed to the U.S. Court of Appeals for the Eleventh Circuit. On July 23, 2012, a three-judge panel for the Appeals Court found the District Court erred in granting the Defendant's motion for a judgment as a matter of law based in part on the Jury's findings (perceived inconsistency of two of the Jury's answers to the special interrogatories) instead of focusing solely on the sufficiency of the evidence. However, upon its review of the record, the Appeals Court affirmed the District Court's decision as it determined the Plaintiffs did not introduce evidence sufficient to support a finding in its favor on the element of loss causation. The Appeals Court's decision in this case does not diminish the five years of hard work which Kessler Topaz expended to bring the matter to trial and secure an initial jury verdict in the Plaintiffs' favor. This case is an excellent example of the Firm's dedication to our clients and the lengths it will go to try to achieve the best possible results for institutional investors in shareholder litigation.

In re AremisSoft Corp. Sec. Litig., C.A. No. 01-CV-2486 (D.N.J. 2002):
Kessler Topaz is particularly proud of the results achieved in this case before the Honorable Joel A. Pisano. This case was exceedingly complicated, as it involved the embezzlement of hundreds of millions of dollars by former officers of the Company, one of whom remains a fugitive. In settling the action, Kessler Topaz, as sole Lead Counsel, assisted in reorganizing AremisSoft as a new company to allow for it to continue operations, while successfully separating out the securities fraud claims and the bankrupt Company's claims into a litigation trust. The approved Settlement enabled the class to receive the majority of the equity in the new Company, as well as their pro rata share of any amounts recovered by the litigation trust. During this litigation, actions have been initiated in the Isle of Man, Cyprus, as well as in the United States as we continue our efforts to recover assets stolen by corporate insiders and related entities.

In re CVS Corporation Sec. Litig., C.A. No. 01-11464 JLT (D.Mass. 2001):
Kessler Topaz, serving as Co-Lead Counsel on behalf of a group of institutional investors, secured a cash recovery of $110 million for the class, a figure which represents the third-largest payout for a securities action in Boston federal court. Kessler Topaz successfully litigated the case through summary judgment before ultimately achieving this outstanding result for the class following several mediation sessions, and just prior to the commencement of trial.

In re Marvell Technology, Group, Ltd. Sec. Lit., Master File No. 06-06286 RWM:
Kessler Topaz served as Co-Lead Counsel in this securities class action brought against Marvell Technology Group Ltd. ("Marvell") and three of Marvell's executive officers. This case centered around an alleged options backdating scheme carried out by Defendants from June 2000 through June 2006, which enabled Marvell's executives and employees to receive options with favorable option exercise prices chosen with the benefit of hindsight, in direct violation of Marvell's stock option plan, as well as to avoid recording hundreds of millions of dollars in compensation expenses on the Marvell's books. In total, the restatement conceded that Marvell had understated the cumulative effect of its compensation expense by $327.3 million, and overstated net income by $309.4 million, for the period covered by the restatement. Following nearly three years of investigation and prosecution of the Class' claims as well as a protracted and contentious mediation process, Co-Lead Counsel secured a settlement for $72 million from defendants on June 9, 2009. This Settlement represents a substantial portion of the Class' maximum provable damages, and is among the largest settlements, in total dollar amount, reached in an option backdating securities class action.

In re Delphi Corp. Sec. Litig., Master File No. 1:05-MD-1725 (E.D. Mich. 2005):
In early 2005, various securities class actions were filed against auto-parts manufacturer Delphi Corporation in the Southern District of New York. Kessler Topaz its client, Austria-based mutual fund manager Raiffeisen Kapitalanlage-Gesellschaft m.b.H. ("Raiffeisen"), were appointed as Co-Lead Counsel and Co-Lead Plaintiff, respectively. The Lead Plaintiffs alleged that (i) Delphi improperly treated financing transactions involving inventory as sales and disposition of inventory; (ii) improperly treated financing transactions involving "indirect materials" as sales of these materials; and (iii) improperly accounted for payments made to and credits received from General Motors as warranty settlements and obligations. As a result, Delphi's reported revenue, net income and financial results were materially overstated, prompting Delphi to restate its earnings for the five previous years. Complex litigation involving difficult bankruptcy issues has potentially resulted in an excellent recovery for the class. In addition, Co-Lead Plaintiffs also reached a settlement of claims against Delphi's outside auditor, Deloitte & Touche, LLP, for $38.25 million on behalf of Delphi investors.

In re Royal Dutch Shell European Shareholder Litigation, No. 106.010.887, Gerechtshof Te Amsterdam (Amsterdam Court of Appeal):
Kessler Topaz was instrumental in achieving a landmark $352 million settlement on behalf non-US investors with Royal Dutch Shell plc relating to Shell's 2004 restatement of oil reserves. This settlement of securities fraud claims on a class-wide basis under Dutch law was the first of its kind, and sought to resolve claims exclusively on behalf of European and other non-United States investors. Uncertainty over whether jurisdiction for non-United States investors existed in a 2004 class action filed in federal court in New Jersey prompted a significant number of prominent European institutional investors from nine countries, representing more than one billion shares of Shell, to actively pursue a potential resolution of their claims outside the United States. Among the European investors which actively sought and supported this settlement were Alecta pensionsförsäkring, ömsesidigt, PKA Pension Funds Administration Ltd., Swedbank Robur Fonder AB, AP7 and AFA Insurance, all of which were represented by Kessler Topaz.

In re Computer Associates Sec. Litig., No. 02-CV-1226 (E.D.N.Y. 2002):
Kessler Topaz served as Co-Lead Counsel on behalf of plaintiffs, alleging that Computer Associates and certain of its officers misrepresented the health of the company's business, materially overstated the company's revenues, and engaged in illegal insider selling. After nearly two years of litigation, Kessler Topaz helped obtain a settlement of $150 million in cash and stock from the company.

In re The Interpublic Group of Companies Sec. Litig., No. 02 Civ. 6527 (S.D.N.Y. 2002):
Kessler Topaz served as sole Lead Counsel in this action on behalf of an institutional investor and received final approval of a settlement consisting of $20 million in cash and 6,551,725 shares of IPG common stock. As of the final hearing in the case, the stock had an approximate value of $87 million, resulting in a total settlement value of approximately $107 million. In granting its approval, the Court praised Kessler Topaz for acting responsibly and noted the Firm's professionalism, competence and contribution to achieving such a favorable result.

In re Digital Lightwave, Inc. Sec. Litig., Consolidated Case No. 98-152-CIV-T-24E (M.D. Fla. 1999):
The firm served as Co-Lead Counsel in one of the nation's most successful securities class actions in history measured by the percentage of damages recovered. After extensive litigation and negotiations, a settlement consisting primarily of stock was worth over $170 million at the time when it was distributed to the Class. Kessler Topaz took on the primary role in negotiating the terms of the equity component, insisting that the class have the right to share in any upward appreciation in the value of the stock after the settlement was reached. This recovery represented an astounding approximately two hundred percent (200%) of class members' losses.

In re Transkaryotic Therapies, Inc. Sec. Litig., Civil Action No.: 03-10165-RWZ (D. Mass. 2003):
After five years of hard-fought, contentious litigation, Kessler Topaz as Lead Counsel on behalf of the Class, entered into one of largest settlements ever against a biotech company with regard to non-approval of one of its drugs by the U.S. Food and Drug Administration ("FDA"). Specifically, the Plaintiffs alleged that Transkaryotic Therapies, Inc. ("TKT") and its CEO, Richard Selden, engaged in a fraudulent scheme to artificially inflate the price of TKT common stock and to deceive Class Members by making misrepresentations and nondisclosures of material facts concerning TKT's prospects for FDA approval of Replagal, TKT's experimental enzyme replacement therapy for Fabry disease. With the assistance of the Honorable Daniel Weinstein, a retired state court judge from California, Kessler Topaz secured a $50 million settlement from the Defendants during a complex and arduous mediation.

In re PNC Financial Services Group, Inc. Sec. Litig., Case No. 02-CV-271 (W.D. Pa. 2002):
Kessler Topaz served as Co-Lead Counsel in a securities class action case brought against PNC bank, certain of its officers and directors, and its outside auditor, Ernst & Young, LLP ("E&Y"), relating to the conduct of Defendants in establishing, accounting for and making disclosures concerning three special purpose entities ("SPEs") in the second, third and fourth quarters of PNC's 2001 fiscal year. Plaintiffs alleged that these entities were created by Defendants for the sole purpose of allowing PNC to secretly transfer hundreds of millions of dollars worth of non-performing assets from its own books to the books of the SPEs without disclosing the transfers or consolidating the results and then making positive announcements to the public concerning the bank's performance with respect to its non-performing assets. Complex issues were presented with respect to all defendants, but particularly E&Y. Throughout the litigation E&Y contended that because it did not make any false and misleading statements itself, the Supreme Court's opinion in Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A., 511 U.S. 164 (1993) foreclosed securities liability for "aiding or abetting" securities fraud for purposes of Section 10(b) liability. Plaintiffs, in addition to contending that E&Y did make false statements, argued that Rule 10b-5's deceptive conduct prong stood on its own as an independent means of committing fraud and that so long as E&Y itself committed a deceptive act, it could be found liable under the securities laws for fraud. After several years of litigation and negotiations, PNC paid $30 million to settle the action, while also assigning any claims it may have had against E&Y and certain other entities that were involved in establishing and/or reporting on the SPEs. Armed with these claims, class counsel was able to secure an additional $6.6 million in settlement funds for the class from two law firms and a third party insurance company and $9.075 million from E&Y. Class counsel was also able to negotiate with the U.S. government, which had previously obtained a disgorgement fund of $90 million from PNC and $46 million from the third party insurance carrier, to combine all funds into a single settlement fund that exceeded $180 million and is currently in the process of being distributed to the entire class, with PNC paying all costs of notifying the Class of the settlement.

In re SemGroup Energy Partners, L.P., Sec. Litig., No. 08-md-1989 (DC) (N.D. Okla.):
Kessler Topaz, which was appointed by the Court as sole Lead Counsel, litigated this matter, which ultimately settled for $28 million. The defense was led by 17 of the largest and best capitalized defense law firms in the world. On April 20, 2010, in a fifty-page published opinion, the United States District Court for the Northern District of Oklahoma largely denied defendants' ten separate motions to dismiss Lead Plaintiff's Consolidated Amended Complaint. The Complaint alleged that: (i) defendants concealed SemGroup's risky trading operations that eventually caused SemGroup to declare bankruptcy; and (ii) defendants made numerous false statements concerning SemGroup's ability to provide its publicly-traded Master Limited Partnership stable cash-flows. The case was aggressively litigated out of the Firm's San Francisco and Radnor offices and the significant recovery was obtained, not only from the Company's principals, but also from its underwriters and outside directors.

In re Liberate Technologies Sec. Litig., No. C-02-5017 (MJJ) (N.D. Cal. 2005):
Kessler Topaz represented plaintiffs which alleged that Liberate engaged in fraudulent revenue recognition practices to artificially inflate the price of its stock, ultimately forcing it to restate its earning. As sole Lead Counsel, Kessler Topaz successfully negotiated a $13.8 million settlement, which represents almost 40% of the damages suffered by the class. In approving the settlement, the district court complimented Lead Counsel for its "extremely credible and competent job."

In re Riverstone Networks, Inc. Sec. Litig., Case No. CV-02-3581 (N.D. Cal. 2002):
Kessler Topaz served as Lead Counsel on behalf of plaintiffs alleging that Riverstone and certain of its officers and directors sought to create the impression that the Company, despite the industry-wide downturn in the telecom sector, had the ability to prosper and succeed and was actually prospering. In that regard, plaintiffs alleged that defendants issued a series of false and misleading statements concerning the Company's financial condition, sales and prospects, and used inside information to personally profit. After extensive litigation, the parties entered into formal mediation with the Honorable Charles Legge (Ret.). Following five months of extensive mediation, the parties reached a settlement of $18.5 million.

SHAREHOLDER DERIVATIVE ACTIONS

In re Facebook, Inc. Class C Reclassification Litig., C.A. No. 12286-VCL (Del. Ch. Sept. 25, 2017):
Kessler Topaz served as co-lead counsel in this stockholder class action that challenged a proposed reclassification of Facebook's capital structure to accommodate the charitable giving goals of its founder and controlling stockholder Mark Zuckerberg. The Reclassification involved the creation of a new class of nonvoting Class C stock, which would be issued as a dividend to all Facebook Class A and Class B stockholders (including Zuckerberg) on a 2-for-1 basis.The purpose and effect of the Reclassification was that it would allow Zuckerberg to sell billions of dollars worth of nonvoting Class C shares without losing his voting control of Facebook. The litigation alleged that Zuckerberg and Facebook's board of directors breached their fiduciary duties in approving the Reclassification at the behest of Zuckerberg and for his personal benefit. At trial Kessler Topaz was seeking a permanent injunction to prevent the consummation of the Reclassification. The litigation was carefully followed in the business and corporate governance communities, due to the high-profile nature of Facebook, Zuckerberg, and the issues at stake. After almost a year and a half of hard fought litigation, just one business day before trial was set to commence, Facebook and Zuckerberg abandoned the Reclassification, granting Plaintiffs complete victory.

In re CytRx Stockholder Derivative Litig., Consol. C.A. No. 9864-VCL (Del. Ch. Nov. 20, 2015):
Kessler Topaz served as co-lead counsel in a shareholder derivative action challenging 2.745 million "spring-loaded" stock options. On the day before CytRx announced the most important news in the Company's history concerning the positive trial results for one of its significant pipeline drugs, the Compensation Committee of CytRx's Board of Directors granted the stock options to themselves, their fellow directors and several Company officers which immediately came "into the money" when CytRx's stock price shot up immediately following the announcement the next day. Kessler Topaz negotiated a settlement recovering 100% of the excess compensation received by the directors and approximately 76% of the damages potentially obtainable from the officers. In addition, as part of the settlement, Kessler Topaz obtained the appointment of a new independent director to the Board of Directors and the implementation of significant reforms to the Company's stock option award processes. The Court complimented the settlement, explaining that it "serves what Delaware views as the overall positive function of stockholder litigation, which is not just recovery in the individual case but also deterrence and norm enforcement."

International Brotherhood of Electrical Workers Local 98 Pension Fund v. Black, et al., Case No. 37-2011-00097795-CU-SL-CTL (Sup. Ct. Cal., San Diego Feb. 5, 2016) ("Encore Capital Group, Inc."):
Kessler Topaz, as co-lead counsel, represented International Brotherhood of Electrical Workers Local 98 Pension Fund in a shareholder derivative action challenging breaches of fiduciary duties and other

violations of law in connection with Encore's debt collection practices, including robo-signing affidavits and improper use of the court system to collect alleged consumer debts. Kessler Topaz negotiated a settlement in which the Company implemented industry-leading reforms to its risk management and corporate governance practices, including creating Chief Risk Officer and Chief Compliance Officer positions, various compliance committees, and procedures for consumer complaint monitoring.

In re Southern Peru Copper Corp. Derivative Litigation, Consol. CA No. 961-CS (Del. Ch. 2011):
Kessler Topaz served as co-lead counsel in this landmark $2 billion post-trial decision, believed to be the largest verdict in Delaware corporate law history. In 2005, Southern Peru, a publicly-traded copper mining company, acquired Minera Mexico, a private mining company owned by Southern Peru's majority stockholder Grupo Mexico. The acquisition required Southern Peru to pay Grupo Mexico more than $3 billion in Southern Peru stock. We alleged that Grupo Mexico had caused Southern Peru to grossly overpay for the private company in deference to its majority shareholder's interests. Discovery in the case spanned years and continents, with depositions in Peru and Mexico. The trial court agreed and ordered Grupo Mexico to pay more than $2 billion in damages and interest. The Delaware Supreme Court affirmed on appeal.

Quinn v. Knight, No. 3:16-cv-610 (E.D. Va. Mar. 16, 2017) ("Apple REIT Ten"):
This shareholder derivative action challenged a conflicted "roll up" REIT transaction orchestrated by Glade M. Knight and his son Justin Knight. The proposed transaction paid the Knights millions of dollars while paying public stockholders less than they had invested in the company. The case was brought under Virginia law, and settled just ten days before trial, with stockholders receiving an additional $32 million in merger consideration.

Kastis v. Carter, C.A. No. 8657-CB (Del. Ch. Sept. 19, 2016) ("Hemispherx Biopharma, Inc."):
This derivative action challenged improper bonuses paid to two company executives of this small pharmaceutical company that had never turned a profit. In response to the complaint, Hemispherx's board first adopted a "fee-shifting" bylaw that would have required stockholder plaintiffs to pay the company's legal fees unless the plaintiffs achieved 100% of the relief they sought. This sort of bylaw, if adopted more broadly, could substantially curtail meritorious litigation by stockholders unwilling to risk losing millions of dollars if they bring an unsuccsessful case. After Kessler Topaz presented its argument in court, Hemispherx withdrew the bylaw. Kessler Topaz ultimately negotiated a settlement requiring the two executives to forfeit several million dollars' worth of accrued but unpaid bonuses, future bonuses and director fees. The company also recovered $1.75 million from its insurance carriers, appointed a new independent director to the board, and revised its compensation program.

Montgomery v. Erickson, Inc., et al., C.A. No. 8784-VCL (Del. Ch. Sept. 12, 2016):
Kessler Topaz represented an individual stockholder who asserted in the Delaware Court of Chancery class action and derivative claims challenging merger and recapitalization transactions that benefitted the company's controlling stockholders at the expense of the company and its minority stockholders. Plaintiff alleged that the controlling stockholders of Erickson orchestrated a series of transactions with the intent and effect of using Erickson's money to bail themselves out of a failing investment. Defendants filed a motion to dismiss the complaint, which Kessler Topaz defeated, and the case proceeded through more than a year of fact discovery.Following an initially unsuccessful mediation and further litigation, Kessler Topaz ultimately achieved an $18.5 million cash settlement, 80% of which was distributed to members of the stockholder class to resolve their direct claims and 20% of which was paid to the company to resolve the derivative claims. The settlement also instituted changes to the company's governing documents to prevent future self-dealing transactions like those that gave rise to the case.

In re Helios Closed-End Funds Derivative Litig., No. 2:11-cv-02935-SHM-TMP (W.D. Tenn.):
Kessler Topaz represented stockholders of four closed-end mutual funds in a derivative action against the funds' former investment advisor, Morgan Asset Management. Plaintiffs alleged that the defendants mismanaged the funds by investing in riskier securities than permitted by the funds' governing documents and, after the values of these securities began to precipitously decline beginning in early 2007, cover up their wrongdoing by assigning phony values to the funds' investments and failing to disclose the extent of the decrease in value of the funds' assets.In a rare occurrence in derivative litigation, the funds' Boards of Directors eventually hired Kessler Topaz to prosecute the claims against the defendants on behalf of the funds. Our litigation efforts led to a settlement that recovered $6 million for the funds and ensured that the funds would not be responsible for making any payment to resolve claims asserted against them in a related multi-million dollar securities class action. The fund's Boards fully supported and endorsed the settlement, which was negotiated independently of the parallel securities class action.

In re Viacom, Inc. Shareholder Derivative Litig., Index No. 602527/05 (New York County, NY 2005):
Kessler Topaz represented the Public Employees' Retirement System of Mississippi and served as Lead Counsel in a derivative action alleging that the members of the Board of Directors of Viacom, Inc. paid excessive and unwarranted compensation to Viacom's Executive Chairman and CEO, Sumner M. Redstone, and co-COOs Thomas E. Freston and Leslie Moonves, in breach of their fiduciary duties. Specifically, we alleged that in fiscal year 2004, when Viacom reported a record net loss of $17.46 billion, the board improperly approved compensation payments to Redstone, Freston, and Moonves of approximately $56 million, $52 million, and $52 million, respectively. Judge Ramos of the New York Supreme Court denied Defendants' motion to dismiss the action as we overcame several complex arguments related to the failure to make a demand on Viacom's Board; Defendants then appealed that decision to the Appellate Division of the Supreme Court of New York. Prior to a decision by the appellate court, a settlement was reached in early 2007. Pursuant to the settlement, Sumner Redstone, the company's Executive Chairman and controlling shareholder, agreed to a new compensation package that, among other things, substantially reduces his annual salary and cash bonus, and ties the majority of his incentive compensation directly to shareholder returns.

In re Family Dollar Stores, Inc. Derivative Litig., Master File No. 06-CVS-16796 (Mecklenburg County, NC 2006):
Kessler Topaz served as Lead Counsel, derivatively on behalf of Family Dollar Stores, Inc., and against certain of Family Dollar's current and former officers and directors. The actions were pending in Mecklenburg County Superior Court, Charlotte, North Carolina, and alleged that certain of the company's officers and directors had improperly backdated stock options to achieve favorable exercise prices in violation of shareholder-approved stock option plans. As a result of these shareholder derivative actions, Kessler Topaz was able to achieve substantial relief for Family Dollar and its shareholders. Through Kessler Topaz's litigation of this action, Family Dollar agreed to cancel hundreds of thousands of stock options granted to certain current and former officers, resulting in a seven-figure net financial benefit for the company. In addition, Family Dollar has agreed to, among other things: implement internal controls and granting procedures that are designed to ensure that all stock options are properly dated and accounted for; appoint two new independent directors to the board of directors; maintain a board composition of at least 75 percent independent directors; and adopt stringent officer stock-ownership policies to further align the interests of officers with those of Family Dollar shareholders. The settlement was approved by Order of the Court on August 13, 2007.

Carbon County Employees Retirement System, et al., Derivatively on Behalf of Nominal Defendant Southwest Airlines Co. v. Gary C. Kelly, et al. Cause No. 08-08692 (District Court of Dallas County, Texas):

As lead counsel in this derivative action, we negotiated a settlement with far-reaching implications for the safety and security of airline passengers.

Our clients were shareholders of Southwest Airlines Co. (Southwest) who alleged that certain officers and directors had breached their fiduciary duties in connection with Southwest's violations of Federal Aviation Administration safety and maintenance regulations. Plaintiffs alleged that from June 2006 to March 2007, Southwest flew 46 Boeing 737 airplanes on nearly 60,000 flights without complying with a 2004 FAA Airworthiness Directive requiring fuselage fatigue inspections. As a result, Southwest was forced to pay a record $7.5 million fine. We negotiated numerous reforms to ensure that Southwest's Board is adequately apprised of safety and operations issues, and implementing significant measures to strengthen safety and maintenance processes and procedures.

The South Financial Group, Inc. Shareholder Litigation, C.A. No. 2008-CP-23-8395 (S.C. C.C.P. 2009):

Represented shareholders in derivative litigation challenging board's decision to accelerate "golden parachute" payments to South Financial Group's CEO as the company applied for emergency assistance in 2008 under the Troubled Asset Recovery Plan (TARP).

We sought injunctive relief to block the payments and protect the company's ability to receive the TARP funds. The litigation was settled with the CEO giving up part of his severance package and agreeing to leave the board, as well as the implementation of important corporate governance changes one commentator described as "unprecedented."

OPTIONS BACKDATING

In 2006, the Wall Street Journal reported that three companies appeared to have "backdated" stock option grants to their senior executives, pretending that the options had been awarded when the stock price was at its lowest price of the quarter, or even year. An executive who exercised the option thus paid the company an artificially low price, which stole money from the corporate coffers. While stock options are designed to incentivize recipients to drive the company's stock price up, backdating options to artificially low prices undercut those incentives, overpaid executives, violated tax rules, and decreased shareholder value.

Kessler Topaz worked with a financial analyst to identify dozens of other companies that had engaged in similar practices, and filed more than 50 derivative suits challenging the practice. These suits sought to force the executives to disgorge their improper compensation and to revamp the companies' executive compensation policies. Ultimately, as lead counsel in these derivative actions, Kessler Topaz achieved significant monetary and non-monetary benefits at dozens of companies, including:

Comverse Technology, Inc.: Settlement required Comverse's founder and CEO Kobi Alexander, who fled to Namibia after the backdating was revealed, to disgorge more than $62 million in excessive backdated option compensation. The settlement also overhauled the company's corporate governance and internal controls, replacing a number of directors and corporate executives, splitting the Chairman and CEO positions, and instituting majority voting for directors.

Monster Worldwide, Inc.: Settlement required recipients of backdated stock options to disgorge more than $32 million in unlawful gains back to the company, plus agreeing to significant corporate governance measures. These measures included (a) requiring Monster's founder Andrew McKelvey to reduce his voting control over Monster from 31% to 7%, by exchanging super-voting stock for common stock; and (b) implementing new equity granting practices that require greater accountability and transparency in the granting of stock options moving forward. In approving the settlement, the court noted "the good results, mainly the amount of money for the shareholders and also the change in governance of the company itself, and really the hard work that had to go into that to achieve the results…."

Affiliated Computer Services, Inc.: Settlement required executives, including founder Darwin Deason, to give up $20 million in improper backdated options. The litigation was also a catalyst for the company to replace its CEO and CFO and revamp its executive compensation policies.

MERGERS & ACQUISITIONS LITIGATION

City of Daytona Beach Police and Fire Pension Fund v. ExamWorks Group, Inc., et al., C.A. No. 12481-VCL (Del. Ch.):
On September 12, 2017, the Delaware Chancery Court approved one of the largest class action M&A settlements in the history of the Delaware Chancery Court, a $86.5 million settlement relating to the acquisition of ExamWorks Group, Inc. by private equity firm Leonard Green & Partners, LP.

The settlement caused ExamWorks stockholders to receive a 6% improvement on the $35.05 per share merger consideration negotiated by the defendants. This amount is unusual especially for litigation challenging a third-party merger. The settlement amount is also noteworthy because it includes a $46.5 million contribution from ExamWorks' outside legal counsel, Paul Hastings LLP.

In re ArthroCare Corporation S'holder Litig., Consol. C.A. No. 9313-VCL (Del. Ch. Nov. 13, 2014):
Kessler Topaz, as co-lead counsel, challenged the take-private of Arthrocare Corporation by private equity firm Smith & Nephew. This class action litigation alleged, among other things, that Arthrocare's Board breached their fiduciary duties by failing to maximize stockholder value in the merger. Plaintiffs also alleged that that the merger violated Section 203 of the Delaware General Corporation Law, which prohibits mergers with "interested stockholders," because Smith & Nephew had contracted with JP Morgan to provide financial advice and financing in the merger, while a subsidiary of JP Morgan owned more than 15% of Arthrocare's stock. Plaintiffs also alleged that the agreement between Smith & Nephew and the JP Morgan subsidiary violated a "standstill" agreement between the JP Morgan subsidiary and Arthrocare. The court set these novel legal claims for an expedited trial prior to the closing of the merger. The parties agreed to settle the action when Smith & Nephew agreed to increase the merger consideration paid to Arthrocare stockholders by $12 million, less than a month before trial.

In re Safeway Inc. Stockholders Litig., C.A. No. 9445-VCL (Del. Ch. Sept. 17, 2014):
Kessler Topaz represented the Oklahoma Firefighters Pension and Retirement System in class action litigation challenging the acquisition of Safeway, Inc. by Albertson's grocery chain for $32.50 per share in cash and contingent value rights. Kessler Topaz argued that the value of CVRs was illusory, and Safeway's shareholder rights plan had a prohibitive effect on potential bidders making superior offers to acquire Safeway, which undermined the effectiveness of the post-signing "go shop."

Plaintiffs sought to enjoin the transaction, but before the scheduled preliminary injunction hearing took place, Kessler Topaz negotiated (i) modifications to the terms of the CVRs and (ii) defendants' withdrawal of the shareholder rights plan. In approving the settlement, Vice Chancellor Laster of the Delaware Chancery Court stated that "the plaintiffs obtained significant changes to the transaction . . . that may well result in material increases in the compensation received by the class," including substantial benefits potentially in excess of $230 million.

In re MPG Office Trust, Inc. Preferred Shareholder Litig., Cons. Case No. 24-C-13-004097 (Md. Cir. Oct. 20, 2015):
Kessler Topaz challenged a coercive tender offer whereby MPG preferred stockholders received preferred stock in Brookfield Office Properties, Inc. without receiving any compensation for their accrued and unpaid dividends. Kessler Topaz negotiated a settlement where MPG preferred stockholders received a dividend of $2.25 per share, worth approximately $21 million, which was the only payment of accrued dividends Brookfield DTLA Preferred Stockholders had received as of the time of the settlement.

In re Globe Specialty Metals, Inc. Stockholders Litig., C.A. 10865-VCG (Del. Ch. Feb. 15, 2016):
Kessler Topaz served as co-lead counsel in class action litigation arising from Globe's acquisition by Grupo Atlantica to form Ferroglobe. Plaintiffs alleged that Globe's Board breached their fiduciary duties to Globe's public stockholders by agreeing to sell Globe for an unfair price, negotiating personal benefits for themselves at the expense of the public stockholders, failing to adequately inform themselves of material issues with Grupo Atlantica, and issuing a number of materially deficient disclosures in an attempt to mask issues with the negotiations. At oral argument on Plaintiffs' preliminary injunction motion, the Court held that Globe stockholders likely faced irreparable harm from the Board's conduct, but reserved ruling on the other preliminary injunction factors. Prior to the Court's final ruling, the parties agreed to settle the action for $32.5 million and various corporate governance reforms to protect Globe stockholders' rights in Ferroglobe.

In re Dole Food Co., Inc. Stockholder Litig., Consol. C.A. No. 8703-VCL, 2015 WL 5052214 (Del. Ch. Aug. 27, 2015):
On August 27, 2015, Vice Chancellor J. Travis Laster issued his much-anticipated post-trial verdict in litigation by former stockholders of Dole Food Company against Dole's chairman and controlling stockholder David Murdock. In a 106-page ruling, Vice Chancellor Laster found that Murdock and his longtime lieutenant, Dole's former president and general counsel C. Michael Carter, unfairly manipulated Dole's financial projections and misled the market as part of Murdock's efforts to take the company private in a deal that closed in November 2013. Among other things, the Court concluded that Murdock and Carter "primed the market for the freeze-out by driving down Dole's stock price" and provided the company's outside directors with "knowingly false" information and intended to "mislead the board for Mr. Murdock's benefit." Vice Chancellor Laster found that the $13.50 per share going-private deal underpaid stockholders, and awarded class damages of $2.74 per share, totaling $148 million. That award represents the largest post-trial class recovery in the merger context. The largest post-trial derivative recovery in a merger case remains Kessler Topaz's landmark 2011 $2 billion verdict in *In re Southern Peru*.

In re Genentech, Inc. Shareholders Lit., Cons. Civ. Action No. 3991-VCS (Del. Ch. 2008):
Kessler Topaz served as Co-Lead Counsel in this shareholder class action brought against the directors of Genentech and Genentech's majority stockholder, Roche Holdings, Inc., in response to Roche's July 21, 2008 attempt to acquire Genentech for $89 per share. We sought to enforce provisions of an Affiliation Agreement between Roche and Genentech and to ensure that Roche

fulfilled its fiduciary obligations to Genentech's shareholders through any buyout effort by Roche. After moving to enjoin the tender offer, Kessler Topaz negotiated with Roche and Genentech to amend the Affiliation Agreement to allow a negotiated transaction between Roche and Genentech, which enabled Roche to acquire Genentech for $95 per share, approximately $3.9 billion more than Roche offered in its hostile tender offer. In approving the settlement, then-Vice Chancellor Leo Strine complimented plaintiffs' counsel, noting that this benefit was only achieved through "real hard-fought litigation in a complicated setting."

In re GSI Commerce, Inc. Shareholder Litig., Consol. C.A. No. 6346-VCN (Del. Ch. Nov. 15, 2011):
On behalf of the Erie County Employees' Retirement System, we alleged that GSI's founder breached his fiduciary duties by negotiating a secret deal with eBay for him to buy several GSI subsidiaries at below market prices before selling the remainder of the company to eBay. These side deals significantly reduced the acquisition price paid to GSI stockholders. Days before an injunction hearing, we negotiated an improvement in the deal price of $24 million.

In re Amicas, Inc. Shareholder Litigation, 10-0174-BLS2 (Suffolk County, MA 2010):
Kessler Topaz served as lead counsel in class action litigation challenging a proposed private equity buyout of Amicas that would have paid Amicas shareholders $5.35 per share in cash while certain Amicas executives retained an equity stake in the surviving entity moving forward. Kessler Topaz prevailed in securing a preliminary injunction against the deal, which then allowed a superior bidder to purchase the Company for an additional $0.70 per share ($26 million). The court complimented Kessler Topaz attorneys for causing an "exceptionally favorable result for Amicas' shareholders" after "expend[ing] substantial resources."

In re Harleysville Mutual, Nov. Term 2011, No. 02137 (C.C.P., Phila. Cnty.):
Kessler Topaz served as co-lead counsel in expedited merger litigation challenging Harleysville's agreement to sell the company to Nationwide Insurance Company. Plaintiffs alleged that policyholders were entitled to receive cash in exchange for their ownership interests in the company, not just new Nationwide policies. Plaintiffs also alleged that the merger was "fundamentally unfair" under Pennsylvania law. The defendants contested the allegations and contended that the claims could not be prosecuted directly by policyholders (as opposed to derivatively on the company's behalf). Following a two-day preliminary injunction hearing, we settled the case in exchange for a $26 million cash payment to policyholders.

CONSUMER PROTECTION & FIDUCIARY LITIGATION

In re: J.P. Jeanneret Associates Inc., et al., No. 09-cv-3907 (S.D.N.Y.):
Kessler Topaz served as lead counsel for one of the plaintiff groups in an action against J.P. Jeanneret and Ivy Asset Management relating to an alleged breach of fiduciary and statutory duty in connection with the investment of retirement plan assets in Bernard Madoff-related entities. By breaching their fiduciary duties, Defendants caused significant losses to the retirement plans. Following extensive hard-fought litigation, the case settled for a total of $216.5 million.

In re: National City Corp. Securities, Derivative and ERISA Litig, No. 08-nc-7000 (N.D. Ohio):
Kessler Topaz served as a lead counsel in this complex action alleging that certain directors and officers of National City Corp. breached their fiduciary duties under the Employee Retirement Income Security Act of 1974. These breaches arose from an investment in National City stock during

a time when defendants knew, or should have known, that the company stock was artificially inflated and an imprudent investment for the company's 401(k) plan. The case settled for $43 million on behalf of the plan, plaintiffs and a settlement class of plan participants.

Alston, et al. v. Countrywide Financial Corp. et al., No. 07-cv-03508 (E.D. Pa.):
Kessler Topaz served as lead counsel in this novel and complex action which alleged that Defendants Countrywide Financial Corporation, Countrywide Home Loans, Inc. and Balboa Reinsurance Co. violated the Real Estate Settlement Procedure Act ("RESPA") and ultimately cost borrowers millions of dollars. Specifically, the action alleged that Defendants engaged in a scheme related to private mortgage insurance involving kickbacks, which are prohibited under RESPA. After three and a half years of hard-fought litigation, the action settled for $34 million.

Trustees of the Local 464A United Food and Commercial Workers Union Pension Fund, et al. v. Wachovia Bank, N.A., et al., No. 09-cv-00668 (DNJ):
For more than 50 years, Wachovia and its predecessors acted as investment manager for the Local 464A UFCW Union Funds, exercising investment discretion consistent with certain investment guidelines and fiduciary obligations. Until mid-2007, Wachovia managed the fixed income assets of the funds safely and conservatively, and their returns closely tracked the Lehman Aggregate Bond Index (now known as the Barclay's Capital Aggregate Bond Index) to which the funds were benchmarked. However, beginning in mid-2007 Wachovia significantly changed the investment strategy, causing the funds' portfolio value to drop drastically below the benchmark. Specifically, Wachovia began to dramatically decrease the funds' holdings in short-term, high-quality, low-risk debt instruments and materially increase their holdings in high-risk mortgage-backed securities and collateralized mortgage obligations. We represented the funds' trustees in alleging that, among other things, Wachovia breached its fiduciary duty by: failing to invest the assets in accordance with the funds' conservative investment guidelines; failing to adequately monitor the funds' fixed income investments; and failing to provide complete and accurate information to plaintiffs concerning the change in investment strategy. The matters was resolved privately between the parties.

In re Bank of New York Mellon Corp. Foreign Exchange Transactions Litig., No. 1:12-md-02335 (S.D.N.Y.):
On behalf of the Southeastern Pennsylvania Transportation Authority Pension Fund and a class of similarly situated domestic custodial clients of BNY Mellon, we alleged that BNY Mellon secretly assigned a spread to the FX rates at which it transacted FX transactions on behalf of its clients who participated in the BNY Mellon's automated "Standing Instruction" FX service. BNY Mellon determining this spread by executing its clients' transactions at one rate and then, typically, at the end of the trading day, assigned a rate to its clients which approximated the worst possible rates of the trading day, pocketing the difference as riskless profit. This practice was despite BNY Mellon's contractual promises to its clients that its Standing Instruction service was designed to provide "best execution," was "free of charge" and provided the "best rates of the day." The case asserted claims for breach of contract and breach of fiduciary duty on behalf of BNY Mellon's custodial clients and sought to recover the unlawful profits that BNY Mellon earned from its unfair and unlawful FX practices. The case was litigated in collaboration with separate cases brought by state and federal agencies, with Kessler Topaz serving as lead counsel and a member of the executive committee overseeing the private litigation. After extensive discovery, including more than 100 depositions, over 25 million pages of fact discovery, and the submission of multiple expert reports, Plaintiffs reached a settlement with BNY Mellon of $335 million. Additionally, the settlement is being administered by Kessler Topaz along with separate recoveries by state and federal agencies which bring the total recovery for BNY Mellon's custodial customers to $504 million. The settlement was

The settlement was finally approved on September 24, 2015. In approving the settlement, Judge Lewis Kaplan praised counsel for a "wonderful job," recognizing that they were "fought tooth and nail at every step of the road." In further recognition of the efforts of counsel, Judge Kaplan noted that "[t]his was an outrageous wrong by the Bank of New York Mellon, and plaintiffs' counsel deserve a world of credit for taking it on, for running the risk, for financing it and doing a great job."

CompSource Oklahoma v. BNY Mellon Bank, N.A., No. CIV 08-469-KEW (E.D. Okla. October 25, 2012):

Kessler Topaz served as Interim Class Counsel in this matter alleging that BNY Mellon Bank, N.A. and the Bank of New York Mellon (collectively, "BNYM") breached their statutory, common law and contractual duties in connection with the administration of their securities lending program. The Second Amended Complaint alleged, among other things, that BNYM imprudently invested cash collateral obtained under its securities lending program in medium term notes issued by Sigma Finance, Inc. -- a foreign structured investment vehicle ("SIV") that is now in receivership -- and that such conduct constituted a breach of BNYM's fiduciary obligations under the Employee Retirement Income Security Act of 1974, a breach of its fiduciary duties under common law, and a breach of its contractual obligations under the securities lending agreements. The Complaint also asserted claims for negligence, gross negligence and willful misconduct. The case recently settled for $280 million.

Transatlantic Holdings, Inc., et al. v. American International Group, Inc., et al., American Arbitration Association Case No. 50 148 T 00376 10:

Kessler Topaz served as counsel for Transatlantic Holdings, Inc., and its subsidiaries ("TRH"), alleging that American International Group, Inc. and its subsidiaries ("AIG") breached their fiduciary duties, contractual duties, and committed fraud in connection with the administration of its securities lending program. Until June 2009, AIG was TRH's majority shareholder and, at the same time, administered TRH's securities lending program. TRH's Statement of Claim alleged that, among other things, AIG breached its fiduciary obligations as investment advisor and majority shareholder by imprudently investing the majority of the cash collateral obtained under its securities lending program in mortgage backed securities, including Alt-A and subprime investments. The Statement of Claim further alleged that AIG concealed the extent of TRH's subprime exposure and that when the collateral pools began experiencing liquidity problems in 2007, AIG unilaterally carved TRH out of the pools so that it could provide funding to its wholly owned subsidiaries to the exclusion of TRH. The matter was litigated through a binding arbitration and TRH was awarded $75 million.

Board of Trustees of the AFTRA Retirement Fund v. JPMorgan Chase Bank, N.A. – Consolidated Action No. 09-cv-00686 (SAS) (S.D.N.Y.):

On January 23, 2009, the firm filed a class action complaint on behalf of all entities that were participants in JPMorgan's securities lending program and that incurred losses on investments that JPMorgan, acting in its capacity as a discretionary investment manager, made in medium-term notes issue by Sigma Finance, Inc. – a now defunct structured investment vehicle. The losses of the Class exceeded $500 million. The complaint asserted claims for breach of fiduciary duty under the Employee Retirement Income Security Act (ERISA), as well as common law breach of fiduciary duty, breach of contract and negligence. Over the course of discovery, the parties produced and reviewed over 500,000 pages of documents, took 40 depositions (domestic and foreign) and exchanged 21 expert reports. The case settled for $150 million. Trial was scheduled to commence on February 6, 2012.

In re Global Crossing, Ltd. ERISA Litigation, No. 02 Civ. 7453 (S.D.N.Y. 2004):
Kessler Topaz served as Co-Lead Counsel in this novel, complex and high-profile action which alleged that certain directors and officers of Global Crossing, a former high-flier of the late 1990's tech stock boom, breached their fiduciary duties under the Employee Retirement Income Security Act of 1974 ("ERISA") to certain company-provided 401(k) plans and their participants. These breaches arose from the plans' alleged imprudent investment in Global Crossing stock during a time when defendants knew, or should have known, that the company was facing imminent bankruptcy. A settlement of plaintiffs' claims restoring $79 million to the plans and their participants was approved in November 2004. At the time, this represented the largest recovery received in a company stock ERISA class action.

In re AOL Time Warner ERISA Litigation, No. 02-CV-8853 (S.D.N.Y. 2006):
Kessler Topaz, which served as Co-Lead Counsel in this highly-publicized ERISA fiduciary breach class action brought on behalf of the Company's 401(k) plans and their participants, achieved a record $100 million settlement with defendants. The $100 million restorative cash payment to the plans (and, concomitantly, their participants) represents the largest recovery from a single defendant in a breach of fiduciary action relating to mismanagement of plan assets held in the form of employer securities. The action asserted claims for breach of fiduciary duties pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA") on behalf of the participants in the AOL Time Warner Savings Plan, the AOL Time Warner Thrift Plan, and the Time Warner Cable Savings Plan (collectively, the "Plans") whose accounts purchased and/or held interests in the AOLTW Stock Fund at any time between January 27, 1999 and July 3, 2003. Named as defendants in the case were Time Warner (and its corporate predecessor, AOL Time Warner), several of the Plans' committees, as well as certain current and former officers and directors of the company. In March 2005, the Court largely denied defendants' motion to dismiss and the parties began the discovery phase of the case. In January 2006, Plaintiffs filed a motion for class certification, while at the same time defendants moved for partial summary judgment. These motions were pending before the Court when the settlement in principle was reached. Notably, an Independent Fiduciary retained by the Plans to review the settlement in accordance with Department of Labor regulations approved the settlement and filed a report with Court noting that the settlement, in addition to being "more than a reasonable recovery" for the Plans, is "one of the largest ERISA employer stock action settlements in history."

In re Honeywell International ERISA Litigation, No. 03-1214 (DRD) (D.N.J. 2004):
Kessler Topaz served as Lead Counsel in a breach of fiduciary duty case under ERISA against Honeywell International, Inc. and certain fiduciaries of Honeywell defined contribution pension plans. The suit alleged that Honeywell and the individual fiduciary defendants, allowed Honeywell's 401(k) plans and their participants to imprudently invest significant assets in company stock, despite that defendants knew, or should have known, that Honeywell's stock was an imprudent investment due to undisclosed, wide-ranging problems stemming from a consummated merger with Allied Signal and a failed merger with General Electric. The settlement of plaintiffs' claims included a $14 million payment to the plans and their affected participants, and significant structural relief affording participants much greater leeway in diversifying their retirement savings portfolios.

Henry v. Sears, et. al., Case No. 98 C 4110 (N.D. Ill. 1999):
The Firm served as Co-Lead Counsel for one of the largest consumer class actions in history, consisting of approximately 11 million Sears credit card holders whose interest rates were improperly increased in connection with the transfer of the credit card accounts to a national bank. Kessler Topaz successfully negotiated a settlement representing approximately 66% of all class members' damages, thereby providing a total benefit exceeding $156 million. All $156 million was distributed automatic-

ally to the Class members, without the filing of a single proof of claim form. In approving the settlement, the District Court stated: ". . . I am pleased to approve the settlement. I think it does the best that could be done under the circumstances on behalf of the class. . . . The litigation was complex in both liability and damages and required both professional skill and standing which class counsel demonstrated in abundance."

ANTITRUST LITIGATION

In re: Flonase Antitrust Litigation, No. 08-cv-3149 (E.D. Pa.):
Kessler Topaz served as a lead counsel on behalf of a class of direct purchaser plaintiffs in an antitrust action brought pursuant to Section 4 of the Clayton Act, 15 U.S.C. § 15, alleging, among other things, that defendant GlaxoSmithKline (GSK) violated Section 2 of the Sherman Act, 15 U.S.C. § 2, by engaging in "sham" petitioning of a government agency. Specifically, the Direct Purchasers alleged that GSK unlawfully abused the citizen petition process contained in Section 505(j) of the Federal Food, Drug, and Cosmetic Act and thus delayed the introduction of less expensive generic versions of Flonase, a highly popular allergy drug, causing injury to the Direct Purchaser Class. Throughout the course of the four year litigation, Plaintiffs defeated two motions for summary judgment, succeeded in having a class certified and conducted extensive discovery. After lengthy negotiations and shortly before trial, the action settled for $150 million.

In re: Wellbutrin SR Antitrust Litigation, No. 04-cv-5898 (E.D. Pa.):
Kessler Topaz was a lead counsel in an action which alleged, among other things, that defendant GlaxoSmithKline (GSK) violated the antitrust, consumer fraud, and consumer protection laws of various states. Specifically, Plaintiffs and the class of Third-Party Payors alleged that GSK manipulated patent filings and commenced baseless infringement lawsuits in connection wrongfully delaying generic versions of Wellbutrin SR and Zyban from entering the market, and that Plaintiffs and the Class of Third-Party Payors suffered antitrust injury and calculable damages as a result. After more than eight years of litigation, the action settled for $21.5 million.

In re: Metoprolol Succinate End-Payor Antitrust Litigation, No. 06-cv-71 (D. Del.):
Kessler Topaz was co-lead counsel in a lawsuit which alleged that defendant AstraZeneca prevented generic versions of Toprol-XL from entering the market by, among other things, improperly manipulating patent filings and filing baseless patent infringement lawsuits. As a result, AstraZeneca unlawfully monopolized the domestic market for Toprol-XL and its generic bio-equivalents. After seven years of litigation, extensive discovery and motion practice, the case settled for $11 million.

In re Remeron Antitrust Litigation, No. 02-CV-2007 (D.N.J. 2004):
Kessler Topaz was Co-Lead Counsel in an action which challenged Organon, Inc.'s filing of certain patents and patent infringement lawsuits as an abuse of the Hatch-Waxman Act, and an effort to unlawfully extend their monopoly in the market for Remeron. Specifically, the lawsuit alleged that defendants violated state and federal antitrust laws in their efforts to keep competing products from entering the market, and sought damages sustained by consumers and third-party payors. After lengthy litigation, including numerous motions and over 50 depositions, the matters settled for $36 million.

OUR PROFESSIONALS

PARTNERS

JULES D. ALBERT, a Partner of the Firm, concentrates his practice in mergers and acquisition litigation and stockholder derivative litigation. Mr. Albert received his law degree from the University of Pennsylvania Law School, where he was a Senior Editor of the University of Pennsylvania Journal of Labor and Employment Law and recipient of the James Wilson Fellowship. Mr. Albert also received a Certificate of Study in Business and Public Policy from The Wharton School at the University of Pennsylvania. Mr. Albert graduated magna cum laude with a Bachelor of Arts in Political Science from Emory University. Mr. Albert is licensed to practice law in Pennsylvania, and has been admitted to practice before the United States District Court for the Eastern District of Pennsylvania.

Mr. Albert has litigated in state and federal courts across the country, and has represented stockholders in numerous actions that have resulted in significant monetary recoveries and corporate governance improvements, including: *In re Sunrise Senior Living, Inc. Deriv. Litig., No. 07-00143 (D.D.C.); Mercier v. Whittle, et al., No. 2008-CP-23-8395 (S.C. Ct. Com. Pl., 13th Jud. Cir.); In re K-V Pharmaceutical Co. Deriv. Litig., No. 06-00384 (E.D. Mo.); In re Progress Software Corp. Deriv. Litig., No. SUCV2007-01937-BLS2 (Mass. Super. Ct., Suffolk Cty.); In re Quest Software, Inc. Deriv. Litig. No 06CC00115 (Cal. Super. Ct., Orange Cty.); and Quaco v. Balakrishnan, et al., No. 06-2811 (N.D. Cal.).*

NAUMON A. AMJED, a Partner of the Firm, concentrates his practice on new matter development with a focus on analyzing securities class action lawsuits, direct (or opt-out) actions, non-U.S. securities and shareholder litigation, SEC whistleblower actions, breach of fiduciary duty cases, antitrust matters, data breach actions and oil and gas litigation. Mr. Amjed is a graduate of the Villanova University School of Law, cum laude, and holds an undergraduate degree in business administration from Temple University, cum laude. Mr. Amjed is a member of the Delaware State Bar, the Bar of the Commonwealth of Pennsylvania, the New York State Bar, and is admitted to practice before the United States Courts for the District of Delaware, the Eastern District of Pennsylvania and the Southern District of New York.

As a member of the Firm's lead plaintiff practice group, Mr. Amjed has represented clients serving as lead plaintiffs in several notable securities class action lawsuits including: *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation*, No. 09MDL2058 (S.D.N.Y.) (settled -- $2.425 billion); *In re Wachovia Preferred Securities and Bond/Notes Litigation*, No. 09-cv-6351 (RJS) (S.D.N.Y.) ($627 million recovery); *In re Lehman Bros. Equity/Debt Securities Litigation,* No. 08-cv-5523 (LAK) (S.D.N.Y.) ($615 million recovery) and *In re JPMorgan Chase & Co. Securities Litigation,* No. 12-3852-GBD ("London Whale Litigation") ($150 million recovery). Additionally, Mr. Amjed served on the national Executive Committee representing financial institutions suffering losses from Target Corporation's 2013 data breach – one of the largest data breaches in history. The Target litigation team was responsible for a landmark data breach opinion that substantially denied Target's motion to dismiss and was also esponsible for obtaining certification of a class of financial institutions. See *In re Target Corp. Customer Data Sec. Breach Litig.,* 64 F. Supp. 3d 1304 (D. Minn. 2014); *In re Target Corp Customer*

Data Sec. Breach Litig., No. MDL 14-2522 PAM/JJK, 2015 WL 5432115 (D. Minn. Sept. 15, 2015). At the time of its issuance, the class certification order in Target was the first of its kind in data breach litigation by financial institutions.

Mr. Amjed also has significant experience conducting complex litigation in state and federal courts including federal securities class actions, shareholder derivative actions, suits by third-party insurers and other actions concerning corporate and alternative business entity disputes. Mr. Amjed has litigated in numerous state and federal courts across the country, including the Delaware Court of Chancery, and has represented shareholders in several high profile lawsuits, including: *LAMPERS v. CBOT Holdings, Inc. et al.,* C.A. No. 2803-VCN (Del. Ch.); *In re Alstom SA Sec. Litig.,* 454 F. Supp. 2d 187 (S.D.N.Y. 2006); *In re Global Crossing Sec. Litig.*, 02— Civ. — 910 (S.D.N.Y.); *In re Enron Corp. Sec. Litig.,* 465 F. Supp. 2d 687 (S.D. Tex. 2006); and *In re Marsh McLennan Cos., Inc. Sec. Litig.* 501 F. Supp. 2d 452 (S.D.N.Y. 2006).

ETHAN J. BARLIEB, a Partner of the Firm, concentrates his practice in the areas of ERISA, consumer protection and antitrust litigation. Mr. Barlieb received his law degree, magna cum laude, from the University of Miami School of Law in 2007 and his undergraduate degree from Cornell University in 2003. Mr. Barlieb is licensed to practice in Pennsylvania and New Jersey.

Prior to joining Kessler Topaz, Mr. Barlieb was an associate with Pietragallo Gordon Alfano Bosick & Raspanti, LLP, where he worked on various commercial, securities and employment matters. Before that, Mr. Barlieb served as a law clerk for the Honorable Mitchell S. Goldberg in the U.S. District Court for the Eastern District of Pennsylvania.

STUART L. BERMAN, a Partner of the Firm, concentrates his practice on securities class action litigation in federal courts throughout the country, with a particular emphasis on representing institutional investors active in litigation. Mr. Berman received his law degree from George Washington University National Law Center, and is an honors graduate from Brandeis University. Mr. Berman is licensed to practice in Pennsylvania and New Jersey.

Mr. Berman regularly counsels and educates institutional investors located around the world on emerging legal trends, new case ideas and the rights and obligations of institutional investors as they relate to securities fraud class actions and individual actions. In this respect, Mr. Berman has been instrumental in courts appointing the Firm's institutional clients as lead plaintiffs in class actions as well as in representing institutions individually in direct actions. Mr. Berman is currently representing institutional investors in direct actions against Vivendi and Merck, and took a very active role in the precedent setting Shell settlement on behalf of many of the Firm's European institutional clients.

Mr. Berman is a frequent speaker on securities issues, especially as they relate to institutional investors, at events such as The European Pension Symposium in Florence, Italy; the Public Funds Symposium in Washington, D.C.; the Pennsylvania Public Employees Retirement (PAPERS) Summit in Harrisburg, Pennsylvania; the New England Pension Summit in Newport, Rhode Island; the Rights and Responsibilities for Institutional Investors in Amsterdam, Netherlands; and the European Investment Roundtable in Barcelona, Spain. Mr.Berman also serves as General Counsel to Kessler Topaz Meltzer & Check, LLP.

DAVID A. BOCIAN, a Partner of the Firm, focuses his practice on whistleblower representation and False Claims Act litigation. Mr. Bocian received his law degree from the University of Virginia School of Law and graduated cum laude from Princeton University. He is licensed to practice law in the Commonwealth of Pennsylvania, New Jersey, New York and the District of Columbia.

Mr. Bocian began his legal career in Washington, D.C., as a litigation associate at Patton Boggs LLP, where his practice included internal corporate investigations, government contracts litigation and securities fraud matters. He spent more than ten years as a federal prosecutor in the U.S. Attorney's Office for the District of New Jersey, where he was appointed Senior Litigation Counsel and managed the Trenton U.S. Attorney's office. During his tenure, Mr. Bocian oversaw multifaceted investigations and prosecutions pertaining to government corruption and federal program fraud, commercial and public sector kickbacks, tax fraud, and other white collar and financial crimes. He tried numerous cases before federal juries, and was a recipient of the Justice Department's Director's Award for superior performance by an Assistant U.S. Attorney, as well as commendations from federal law enforcement agencies including the FBI and IRS.

Mr. Bocian has extensive experience in the health care field. As an adjunct professor of law, he has taught Healthcare Fraud and Abuse at Rutgers School of Law – Camden, and previously was employed in the health care industry, where he was responsible for implementing and overseeing a system-wide compliance program for a complex health system.

GREGORY M. CASTALDO, a Partner of the Firm, concentrates his practice in the area of securities litigation. Mr. Castaldo received his law degree from Loyola Law School, where he received the American Jurisprudence award in legal writing. He received his undergraduate degree from the Wharton School of Business at the University of Pennsylvania. He is licensed to practice law in Pennsylvania and New Jersey.

Mr. Castaldo served as one of Kessler Topaz's lead litigation partners in *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation,* No. 09 MDL 2058 (S.D.N.Y.) (settled -- $2.425 billion). Mr. Castaldo also served as the lead litigation partner in In re Tenet Healthcare Corp., No. 02-CV-8462 (C.D. Cal. 2002), securing an aggregate recovery of $281.5 million for the class, including $65 million from Tenet's auditor. Mr. Castaldo also played a primary litigation role in the following cases: *In re Liberate Technologies Sec. Litig*., No. C-02-5017 (MJJ) (N.D. Cal. 2005) (settled — $13.8 million); *In re Sodexho Marriott Shareholders Litig.,* Consol. C.A. No. 18640-NC (Del. Ch. 1999) (settled — $166 million benefit); *In re Motive, Inc. Sec. Litig.,* 05-CV-923 (W.D.Tex. 2005) (settled — $7 million cash, 2.5 million shares); and *In re Wireless Facilities, Inc., Sec. Litig.,* 04-CV-1589 (S.D. Cal. 2004) (settled — $16.5 million). In addition, Mr. Castaldo served as one of the lead trial attorneys for shareholders in the historic In re Longtop Financial Technologies Ltd. Securities Litigation, No. 11-cv-3658 (S.D.N.Y.) trial, which resulted in a verdict in favor of investors on liability and damages.

DARREN J. CHECK, a Partner of the Firm, manages Kessler Topaz's portfolio monitoring & claims filing service, *SecuritiesTracker*™, and works closely with the Firm's litigators and new matter development department. He consults with institutional investors from around the world with regard to implementing systems to best identify, analyze, and monetize claims they have in shareholder litigation.

In addition, Mr. Check assists Firm clients in evaluating opportunities to take an active role in shareholder litigation, arbitration, and other loss recovery methods. This includes U.S. based litigation and arbitration, as well as actions in an increasing number of jurisdictions around the globe. With an increasingly complex investment and legal landscape, Mr. Check has experience advising on traditional class actions, direct actions (opt-outs), non-U.S. opt-in actions, fiduciary actions, appraisal actions and arbitrations to name a few. Over the last twenty years Mr. Check has become a trusted advisor to hedge funds, mutual fund managers, asset managers, insurance companies, sovereign wealth funds, central banks, and pension funds throughout North America, Europe, Asia, Australia, and the Middle East.

Mr. Check regularly speaks on the subjects of shareholder litigation, corporate governance, investor activism, and recovery of investment losses at conferences around the world. He has also been actively involved in the precedent setting Shell and Fortis settlements in the Netherlands, the Olympus shareholder case in Japan, direct actions against Petrobras and Merck, and securities class actions against Bank of America, Lehman Brothers, Royal Bank of Scotland (U.K.), and Hewlett-Packard. Currently Mr. Check represents investors in numerous high profile actions in the United States, the Netherlands, Germany, France, Japan, and Australia.

Mr. Check received his law degree from Temple University School of Law and is a graduate of Franklin & Marshall College. He is admitted to practice in numerous state and federal courts across the United States.

EMILY N. CHRISTIANSEN, a Partner of the Firm, focuses her practice in securities litigation and international actions, in particular. Ms. Christiansen received her Juris Doctor and Global Law certificate, cum laude, from Lewis and Clark Law School in 2012. Ms. Christiansen is a graduate of the University of Portland, where she received her Bachelor of Arts, cum laude, in Political Science and German Studies. Ms. Christiansen is currently licensed to practice law in New York and Pennsylvania.

While in law school, Ms. Christiansen worked as an intern in Trial Chambers III at the International Criminal Tribunal for the Former Yugoslavia. Ms. Christiansen also spent two months in India as foreign legal trainee with the corporate law firm of Fox Mandal. Ms. Christiansen is a 2007 recipient of a Fulbright Fellowship and is fluent in German.

Ms. Christiansen devotes her time to advising clients on the challenges and benefits of pursuing particular litigation opportunities in jurisdictions outside the U.S. In those non-US actions where Kessler Topaz is actively involved, Emily liaises with local counsel, helps develop case strategy, reviews pleadings, and helps clients understand and successfully navigate the legal process. Her experience includes non-US opt-in actions, international law, and portfolio monitoring and claims administration. In her role, Ms. Christiansen has helped secure recoveries for institutional investors in litigation in Japan against *Olympus Corporation* (settled - ¥11 billion) and in the Netherlands against *Fortis Bank N.V.* (settled - €1.2 billion).

JOSHUA E. D'ANCONA, a Partner of the Firm, concentrates his practice in the securities litigation and lead plaintiff departments of the Firm. Mr. D'Ancona received his J.D., magna cum laude, from the Temple University Beasley School of Law in 2007, where he served on the Temple Law Review and as president of the Moot Court Honors Society, and graduated with honors from Wesleyan University. He is licensed to practice in Pennsylvania and New Jersey.

Before joining the Firm in 2009, he served as a law clerk to the Honorable Cynthia M. Rufe of the United States District Court for the Eastern District of Pennsylvania.

RYAN T. DEGNAN, a Partner of the Firm, concentrates his practice on new matter development with a specific focus on analyzing securities class action lawsuits, antitrust actions, and complex consumer actions. Mr. Degnan received his law degree from Temple University Beasley School of Law, where he was a Notes and Comments Editor for the Temple Journal of Science, Technology & Environmental Law, and earned his undergraduate degree in Biology from Johns Hopkins University

While a law student, Mr. Degnan served as a Judicial Intern to the Honorable Gene E.K. Pratter of the United States District Court for the Eastern District of Pennsylvania. Mr. Degnan is licensed to practice in Pennsylvania and New Jersey.

As a member of the Firm's lead plaintiff litigation practice group, Mr. Degnan has helped secure the Firm's clients' appointments as lead plaintiffs in: *In re HP Sec. Litig.,* No. 12-cv-5090, 2013 WL 792642 (N.D. Cal. Mar. 4, 2013); *In re JPMorgan Chase & Co. Securities Litigation*, No. 12-3852-GBD ("London Whale Litigation") ($150 million recovery); *Freedman v. St. Jude Medical, Inc., et al.,* No. 12-cv-3070 (D. Minn.); *United Union of Roofers, Waterproofers & Allied Workers Local Union No. 8 v. Ocwen Fin. Corp.,* No. 14 Civ. 81057 (WPD), 2014 WL 7236985 (S.D. Fla. Nov. 7, 2014); *Louisiana Municipal Police Employees' Ret. Sys. v. Green Mountain Coffee Roasters, Inc., et al.,* No. 11-cv-289, 2012 U.S. Dist. LEXIS 89192 (D. Vt. Apr. 27, 2012); and *In re Longtop Fin. Techs. Ltd. Sec. Litig.,* No. 11-cv-3658, 2011 U.S. Dist. LEXIS 112970 (S.D.N.Y. Oct. 4, 2011). Additional representative matters include: *In re Bank of New York Mellon Corp. Foreign Exchange Transactions Litig.,* No. 12-md-02335 (S.D.N.Y.) ($335 million settlement); and *Policemen's Annuity and Benefit Fund of the City of Chicago, et al. v. Bank of America, NA, et al.,* No. 12-cv-02865 (S.D.N.Y.) ($69 million settlement).

SEAN M. HANDLER, a Partner of the Firm and member of Kessler Topaz's Management Committee, currently concentrates his practice on all aspects of new matter development for the Firm including securities, consumer and intellectual property. Mr. Handler earned his Juris Doctor, cum laude, from Temple University School of Law, and received his Bachelor of Arts degree from Colby College, graduating with distinction in American Studies. Mr. Handler is licensed to practice in Pennsylvania, New Jersey and New York.

As part of his responsibilities, Mr. Handler also oversees the lead plaintiff appointment process in securities class actions for the Firm's clients. In this role, Mr. Handler has achieved numerous noteworthy appointments for clients in reported decisions including *Foley v. Transocean,* 272 F.R.D. 126 (S.D.N.Y. 2011); *In re Bank of America Corp. Sec., Derivative & Employment Ret. Income Sec. Act (ERISA) Litig., 258 F.R.D. 260 (S.D.N.Y. 2009) and Tanne v. Autobytel, Inc., 226 F.R.D. 659 (C.D. Cal. 2005) and has argued before federal courts throughout the country.*

Mr. Handler was also one of the principal attorneys in In re Brocade Securities Litigation (N.D. Cal. 2008), where the team achieved a $160 million settlement on behalf of the class and two public pension fund class representatives. This settlement is believed to be one of the largest settlements in a securities fraud case in terms of the ratio of settlement amount to actual investor damages.

Mr. Handler also lectures and serves on discussion panels concerning securities litigation matters, most recently appearing at American Conference Institute's National Summit on the Future of Fiduciary Responsibility and Institutional Investor's The Rights & Responsibilities of Institutional Investors.

NATHAN A. HASIUK, a Partner of the Firm, concentrates his practice on securities litigation. Mr. Hasiuk received his law degree from Temple University Beasley School of Law, and graduated summa cum laude from Temple University. He is licensed to practice in Pennsylvania and New Jersey and has been admitted to practice before the United States District Court for the District of New Jersey. Prior to joining the Firm, Mr. Hasiuk was an Assistant Public Defender in Philadelphia.

GEOFFREY C. JARVIS, a Partner of the Firm, focuses on securities litigation for institutional investors. Mr. Jarvis graduated from Harvard Law School in 1984, and received his undergraduate degree from Cornell University in 1980. He is licensed to practice in Pennsylvania, Delaware, New York and Washington, D.C. Following law school, Mr. Jarvis served as a staff attorney with the Federal Communications Commission, participating in the development of new regulatory policies for the telecommunications industry.

Mr. Jarvis had a major role in Oxford Health Plans Securities Litigation, Daimler Chrysler Securities Litigation, and Tyco Securities Litigation all of which were among the top ten securities settlements in U.S. history at the time they were resolved, as well as a large number of other securities cases over the past 16 years. He has also been involved in a number of actions before the Delaware Chancery Court, including a Delaware appraisal case that resulted in a favorable decision for the firm's client after trial, and a Delaware appraisal case that was tried in October, argued in 2016, which is still awaiting a final decision.

Mr. Jarvis then became an associate in the Washington office of Rogers & Wells (subsequently merged into Clifford Chance), principally devoted to complex commercial litigation in the fields of antitrust and trade regulations, insurance, intellectual property, contracts and defamation issues, as well as counseling corporate clients in diverse industries on general legal and regulatory compliance matters. He was previously associated with a prominent Philadelphia litigation boutique and had first-chair assignments in cases commenced under the Pennsylvania Whistleblower Act and in major antitrust, First Amendment, civil rights, and complex commercial litigation, including several successful arguments before the U.S. Court of Appeals for the Third Circuit. From 2000 until early 2016, Mr. Jarvis was a Director (Senior Counsel through 2001) at Grant & Eisenhofer, P.A., where he engaged in a number of federal securities, and state fiduciary cases (primarily in Delaware), including several of the largest settlements of the past 15 years. He also was lead trial counsel and/or associate counsel in a number of cases that were tried to a verdict (or are pending final decision).

JENNIFER L. JOOST, a Partner in the Firm's San Francisco office, focuses her practice on securities litigation. Ms. Joost received her law degree, cum laude, from Temple University Beasley School of Law, where she was the Special Projects Editor for the Temple International and Comparative Law Journal. Ms. Joost earned her undergraduate degree with honors from Washington University in St. Louis. She is licensed to practice in Pennsylvania and California and is admitted to practice before the United States Courts of Appeals for the Second, Fourth, Ninth, and Eleventh Circuits, and the United States District Courts for the Eastern District of Pennsylvania, the Northern District of California and the Southern District of California.

Ms. Joost has represented institutional investors in numerous securities fraud class actions including *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act* (ERISA) Litigation, No. 09 MDL 2058 (S.D.N.Y.) (settled -- $2.425 billion); *In re Citigroup Bond Litigation, No. 08-cv-09522-SHS* (S.D.N.Y.) ($730 million recovery); *David H. Luther, et al., v. Countrywide Financial Corp., et. al.,* 2:12-cv-05125 (C.D.Cal. 2012) (settled -- $500 million); *In re JPMorgan Chase & Co. Securities Litigation, No. 12-3852-GBD* ("London Whale Litigation") ($150 million recovery); *Minneapolis Firefighters' Relief Association v. Medtronic, Inc.,* No. 08-cv-06324-PAM-AJB (D. Minn.) (settled -- $85 million); *In re MGM Mirage Securities Litigation,* Case No. 2:09-cv-01558-GMN-VCF (D. Nev.) ($75 million settlement); and *In re Weatherford Int'l Securities Litigation,* No. 11-cv-01646-LAK-JCF (S.D.N.Y.) (settled -- $52.5 million).

STACEY KAPLAN, a Partner in the Firm's San Francisco office, concentrates her practice on prosecuting securities class actions. Ms. Kaplan received her J.D. from the University of California at Los Angeles School of Law in 2005, and received her Bachelor of Business Administration from the University of Notre Dame in 2002, with majors in Finance and Philosophy. Ms. Kaplan is admitted to the California Bar and is licensed to practice in all California state courts, as well as the United States District Courts for the Northern and Central Districts of California.

During law school, Ms. Kaplan served as a Judicial Extern to the Honorable Terry J. Hatter, Jr., United States District Court, Central District of California. Prior to joining the Firm, Ms. Kaplan was an associate with Robbins Geller Rudman & Dowd LLP in San Diego, California.

DAVID KESSLER, a Partner of the Firm, is a worldwide leader in securities litigation. His reputation and track record earn instant credibility with judges and bring opponents to the bargaining table in complex, high-stakes class actions. Mr. Kessler has been recognized for excellence by publications including Benchmark Plaintiff and Law Dragon.

As co-head of the firm's securities litigation practice, Mr. Kessler has led several of the largest class actions ever brought under the federal securities laws and the Private Securities Litigation Reform Act of 1995. Since the financial crisis began in 2008, he has helped recover well over $5 billion for clients and class members who invested in financial companies such as Wachovia, Bank of America, Citigroup and Lehman Brothers. Prior to 2008, Mr. Kessler guided some of the largest cases both in size—including allegations of a massive scandal regarding the unfair allocation of IPO shares by more than 300 public companies—and in notoriety—including the Tyco fraud and mismanagement litigation that resolved for over $3 billion.

Mr. Kessler brings his background as a certified public accountant to bear in actions involving complex loss causation issues and damages arising from losses in public offerings, open market purchases, and mergers and acquisitions. As head of the firm's settlement department, Mr. Kessler also has extensive experience in mediation, settlements, claims administration and distributions.

A sought-after lecturer on securities litigation issues, Mr. Kessler has been invited to speak by plaintiffs' firms, defense firms, mediators and insurance carriers on a variety of topics related to securities class actions. He recently assisted in authoring a chapter on mediations in a publication soon to be released by a federal mediator.

JAMES MARO, JR., a Partner of the Firm, concentrates his practice in the Firm's case development department. Jim also has litigation experience in the areas of consumer protection, ERISA, mergers and acquisitions, and shareholder derivative actions.

Currently, Mr. Maro focuses on developing client relationships and seeking to help individuals recover losses caused by unlawful conduct. His efforts to research, develop and initiate cases have resulted in the recovery of millions of dollars for clients and class members.

JOSHUA A. MATERESE., a Partner of the Firm, is an experienced and trusted securities litigator. He devotes his practice almost entirely to advising and representing institutional and individual investors in class or direct actions arising from fraud, market manipulation, or other corporate misconduct. Mr. Materese currently serves as one of the lead trial attorneys in pending securities class actions involving General Electric, Kraft-Heinz, Goldman Sachs, and Boeing, and in direct actions involving Teva Pharmaceutical and Perrigo Co. During his career, Mr. Materese has helped clients recover substantial monetary losses, including most recently *In re Allergan, Inc. Proxy Violation Securities Litigation*, No. 14-cv-02004 (C.D. Cal.) ($290 million recovery), *In re JPMorgan Chase & Co. Sec. Litig., No*. 12-cv-03852 (S.D.N.Y.) ($150 million recovery); *Lou Baker v. SeaWorld Entertainment, Inc., et al.*, No. 14-cv-02129 (S.D. Cal.) ($65 million recovery); *Quinn v. Knight,* No. 16-cv-00610 (E.D. Va.) ($32 million recovery). Josh also successfully litigated claims on behalf of over 100 U.S. and international institutional investors in direct actions against Brazil's state-run oil company, Petrobras, arising out of a decade-long bid-rigging scheme—the largest corruption scandal in Brazil's history.

In addition to his direct litigation responsibilities, Mr. Materese advises the Firm's institutional clients on potential claims they may have in shareholder litigation. He is one of the partners at the Firm responsible for client relations and outreach in the U.S., and assists with overseeing Kessler Topaz's proprietary portfolio monitoring and claims filing service, *SecuritiesTracker™.*

Mr. Materese also maintains an active pro bono practice. He serves as Co-Chair of the Firm's Pro Bono Committee and frequently represents clients referred to the Firm on matters concerning federal disability benefits, felony pardons, and wrongful convictions.

MARGARET E. MAZZEO, a Partner of the Firm, concentrates her practice in the area of securities fraud litigation. Since joining the firm, Ms. Mazzeo has represented shareholders in several securities fraud class actions and direct actions, through all aspects of pre-trial proceedings, including complaint drafting, litigating motions to dismiss and for summary judgment, conducting document, deposition and expert discovery, and appeal. Ms. Mazzeo was a member of the trial team that recently won a jury verdict in favor of investors in the *In re Longtop Financial Technologies Ltd. Securities Litigation*, No. 11-cv-3658 (S.D.N.Y.) action.

JAMIE E. MCCALL, a Partner of the Firm, concentrates on securities fraud litigation. Prior to joining the Firm, Mr. McCall spent twelve years with the Department of Justice in the U.S. Attorney's Offices for Miami, Florida and Wilmington, Delaware, where he oversaw complex criminal investigations ranging from securities, tax, bank and wire frauds, to the theft of trade secrets and cybercrime.

Mr. McCall has successfully tried numerous jury trials, including a seven-week securities fraud trial, which arose from financial conduct during the Great Recession, and resulted in trial verdicts against four bank executives and a $60 million civil settlement to victim-shareholders; and a five-week multi-defendant stalking-murder case, which stemmed from the 2013-shootout at the New Castle County Courthouse in Delaware, and resulted in first-in-the-nation convictions for "cyberstalking resulting in death" under the Violence Against Women Act. For his work on both of these cases, Mr. McCall was twice awarded the Director's Award for Superior Performance by the Department of Justice. Most recently, Mr. McCall served as the section chief for the National Security and Cybercrime Division for the Delaware U.S. Attorney's office.

Mr. McCall also spent several years practicing civil law at Morgan, Lewis & Bockius in Philadelphia, where he worked on major, high-stakes litigation matters involving Fortune 250 companies. Mr. McCall began his legal career as a Judge Advocate in the Marine Corps, working primarily as a prosecutor and achieving the rank of Captain. In 2004, Mr. McCall served for nearly five months as the principal legal advisor to 1st Battalion, 5th Marine Regiment in and around Fallujah, Iraq, including during the First Battle of Fallujah.

Mr. McCall maintains an active membership in the Federal Bar Association, District of Delaware chapter. He has presented on numerous issues involving corporate and securities fraud. He was also a featured interview on CBS's "60 Minutes" in a segment about theft of original correspondence by Christopher Columbus, most recently aired in August 2020.

Mr. McCall has received numerous awards for his work in securities fraud and cybercrime, along with respective military service awards, including the Navy & Marine Corps Commendation Medal, Navy & Marine Corps Achievement Medal, Combat Action Ribbon, and Global War Against Terrorism Expeditionary Medal.

JOSEPH H. MELTZER, a Partner of the Firm, leads the firm's Fiduciary, Consumer Protection and Antitrust groups.

A pioneer in prosecuting breach of fiduciary duty cases, Mr. Meltzer has been lead or co-lead counsel in numerous nationwide class actions brought under fiduciary laws including ERISA. Joe represents institutional investor clients in a variety of breach of fiduciary duty cases and has some of the largest settlements in fiduciary breach actions including several recoveries in the hundreds of millions of dollars.

The firm also has a robust Consumer Protection department which represents individuals, businesses, and governmental entities that have sustained losses as a result of defective products or improper business practices. Kessler Topaz is highly selective in these matters – the firm litigates only complex cases that it deems suitable for judicial resolution.

In his antitrust work, Mr. Meltzer represents clients injured by anticompetitive and unlawful business practices, including overcharges related to prescription drugs, health care expenditures and commodities. Mr. Meltzer has also represented various states in pharmaceutical pricing litigation as a Special Assistant Attorney General.

MATTHEW L. MUSTOKOFF is a Partner of the Firm and is a nationally recognized securities litigator. He has argued and tried numerous high-profile cases in federal courts throughout the country in fields as diverse as securities fraud, corporate takeovers, antitrust, unfair trade practices, and patent infringement.

Mr. Mustokoff is currently litigating several nationwide securities cases on behalf of U.S. and overseas investors. He serves as lead counsel for shareholders in *In re Celgene Securities Litigation* (D.N.J.), involving allegations that Celgene fraudulently concealed clinical problems with a developmental multiple sclerosis drug. Mr. Mustokoff is also class counsel in *Sjunde AP-Fonden v. The Goldman Sachs Group* (S.D.N.Y.), a securities fraud case implicating Goldman Sachs' pivotal role in the 1Malaysia Development Berhad (1MDB) money laundering scandal, one of the largest financial frauds involving a Wall Street firm in recent memory. Mr. Mustokoff recently led the team that secured a $130 million recovery for plaintiffs in *In re Allergan Generic Drug Pricing Securities Litigation* (D.N.J.), arising out of the industrywide price-fixing scheme in the generic drug market. This marks the first settlement of a federal securities case stemming from the long-running price-fixing conspiracy which is believed to be the largest domestic pharmaceutical cartel in U.S. history.

Mr. Mustokoff played a major role in prosecuting *In re Citigroup Bond Litigation* (S.D.N.Y.), involving allegations that Citigroup concealed its exposure to subprime mortgage debt on the eve of the 2008 financial crisis. The $730 million settlement marks the second largest recovery ever in a Securities Act class action brought on behalf of corporate bondholders. Mr. Mustokoff represented the class in *In re Pfizer Securities Litigation* (S.D.N.Y.), a twelve-year fraud case alleging that Pfizer concealed adverse clinical results for its pain drugs Celebrex and Bextra. The case settled for $486 million following a victory at the Second Circuit Court of Appeals reversing the district court's dismissal of the action on the eve of trial. Mr. Mustokoff also served as class counsel in *In re JPMorgan Chase Securities Litigation* (S.D.N.Y.), arising out of the 2012 "London Whale" derivatives trading scandal. The case resulted in a $150 million recovery.

Mr. Mustokoff served as lead counsel to several prominent mutual funds in securities fraud actions in Manhattan federal court against Brazil's state-run oil company, Petrobras, involving a decade-long bid-rigging scheme, the largest corruption scandal in Brazil's history. In *Connecticut Retirement Plans & Trust Funds v. BP plc* (S.D. Tex.), a multi-district litigation stemming from the 2010 Deepwater Horizon oil-rig explosion in the Gulf of Mexico, Mr. Mustokoff successfully argued the opposition to BP's motion to dismiss and obtained a landmark decision sustaining fraud claims under English law on behalf of investors on the London Stock Exchange—the first in a U.S. court. Mr. Mustokoff's significant courtroom experience includes serving as one of the lead trial lawyers for shareholders in the only securities fraud class action arising out of the 2008 financial crisis to be tried to jury verdict.

Prior to joining the Firm, Mr. Mustokoff practiced at Weil, Gotshal & Manges LLP in New York where he represented clients in SEC enforcement actions, white collar criminal matters, and shareholder litigation.

A frequent speaker and writer on securities law and litigation, Mr. Mustokoff's publications have been cited in more than 75 law review articles and treatises. He has published in the *Rutgers University Law Review, Maine Law Review, Temple Political & Civil Rights Law Review, Hastings Business Law Journal, Securities Regulation Law Journal, Review of Securities & Commodities Regulation, and The Federal Lawyer*, among others. He has been a featured panelist at the American Bar Association's Section of Litigation Annual Conference and NERA Economic Consulting's Securities and Finance Seminar. Since 2010, Mr. Mustokoff has served as the Co-Chair of the ABA Subcommittee on Securities Class Actions.

Mr. Mustokoff is a Phi Beta Kappa honors graduate of Wesleyan University. He received his law degree from the Temple University School of Law.

SHARAN NIRMUL, a Partner of the Firm, concentrates his practice in the area of securities, consumer and fiduciary class action and complex commercial litigation, exclusively representing the interests of plaintiffs and particularly, institutional investors.

Mr. Nirmul represents a number of the world's largest institutional investors in cutting edge, high stakes complex litigation. In addition to his securities litigation practice, he has been at the forefront of developing the Firm's fiduciary litigation practice and has litigated ground-breaking cases in areas of securities lending, foreign exchange, and MBS trustee litigation. Mr. Nirmul was instrumental in developed the underlying theories that propelled the successful recoveries for customers of custodial banks in *Compsource Oklahoma v. BNY Mellon,* a $280 million recovery for investors in BNY Mellon's securities lending program, and *AFTRA v. JP Morgan,* a $150 million recovery for investors in JP Morgan's securities lending program. In *Transatlantic Re v. A.I.G.,* Mr. Nirmul recovered $70 million for Transatlantic Re in a binding arbitration against its former parent, American International Group, arising out of AIG's management of a securities lending program.

Focused on issues of transparency by fiduciary banks to their custodial clients, Mr. Nirmul served as lead counsel in a multi-district litigation against BNY Mellon for the excess spreads it charged to its custodial customers for automated FX services. Litigated over four years, involving 128 depositions and millions of pages of document discovery, and with unprecedented collaboration with the U.S.

Department of Justice and the New York Attorney General, the litigation resulted in a settlement for the Bank's custodial customers of $504 million. Mr. Nirmul also spearheaded litigation against the nation's largest ADR programs, Citibank, BNY Mellon and JP Morgan, which alleged they charged hidden FX fees for conversion of ADR dividends. The litigation resulted in $100 million in recoveries for ADR holders and significant reforms in the FX practices for ADRs.

Mr. Nirmul has served as lead counsel in several high-profile securities fraud cases, including a $2.4 billion recovery for Bank of America shareholders arising from BoA's shotgun merger with Merrill Lynch in 2009. More recently, Mr. Nirmul was lead trial counsel in litigation arising from the IPO of social media company Snap, Inc., which has resulted in a $187.5 million settlement for Snap's investors, claims against Endo Pharmaceuticals, arising from its disclosures concerning the efficacy of its opioid drug, Opana ER, which resulted in a recovery of $80.5 million for Endo's shareholders, and claims against Ocwen Financial, arising from its mortgage servicing practices and disclosures to investors, which settled on the eve of trial for $56 million. Mr. Nirmul currently serves as lead trial counsel in pending securities class actions involving General Electric, Kraft-Heinz, and the stunning collapse of Luckin Coffee Inc., following disclosure of a massive accounting fraud just ten months after its IPO. He also currently serves on the Executive Committee for the multi-district litigation involving the Chicago Board Options Exchange and the manipulation of its key product, the Cboe Volatility Index.

Mr. Nirmul received his law degree from The George Washington University National Law Center and undergraduate degree from Cornell University. He was born and grew up in Durban, South Africa.

LEE D. RUDY, a partner of the Firm, practices in the area of corporate governance litigation, with a focus on transactional and derivative cases. Representing both institutional and individual shareholders in these actions, he has helped cause significant monetary and corporate governance improvements for those companies and their shareholders.

Mr. Rudy regularly practices in the Delaware Court of Chancery, where he served as co-lead trial counsel in the landmark case of *In re S. Peru Copper Corp. S'holder Derivative Litig.* (2011), a $2 billion trial verdict against Southern Peru's majority shareholder, and *In re Facebook, Inc. Class C Reclassification Litigation* (2017), which forced Facebook and its founder Mark Zuckerberg to abandon plans to issue a new class of nonvoting stock to entrench Zuckerberg as the company's majority stockholder. Mr. Rudy also recently served as lead counsel in *In re Allergan, Inc. Proxy Violation Securities Litigation* (C.D. Cal. 2017), which was brought by a class of Allergan stockholders who sold shares while Pershing Square and its founder Bill Ackman were buying Allergan stock in advance of a secret takeover attempt by Valeant Pharmaceuticals, and which settled for $250 million just weeks before trial. Mr. Rudy previously served as lead counsel in dozens of high profile derivative actions relating to the "backdating" of stock options.

Prior to civil practice, Mr. Rudy served for several years as an Assistant District Attorney in the Manhattan (NY) District Attorney's Office, and as an Assistant United States Attorney in the US Attorney's Office (DNJ), where he tried dozens of jury cases to verdict. Mr. Rudy received his law degree from Fordham University, and his undergraduate degree, cum laude, from the University of Pennsylvania. Mr. Rudy is licensed to practice in Pennsylvania and New York.

RICHARD A. RUSSO, JR., a partner of the Firm, concentrates his practice in the area of securities litigation, and principally represents the interests of plaintiffs in class actions and complex commercial litigation.

Mr. Russo specializes in prosecuting complex securities fraud actions arising under the Securities Exchange Act of 1934 and the Securities Act of 1933, and has significant experience in all stages of pre-trial litigation, including drafting pleadings, litigating motions to dismiss and motions for summary judgment, conducting extensive document and deposition discovery, and appeals.
Mr. Russo has represented both institutional and individual investors in a number of notable securities class actions. These matters include In re Bank of America Securities Litigation, where shareholders' $2.43 billion recovery represents one of the largest recoveries ever achieved in a securities class action and the largest recovery arising out of the 2008 subprime crisis; In re Citigroup Inc. Bond Litigation, where the class's $730 million recovery was the second largest recovery ever for claims brought under Section 11 of the Securities Act of 1933; and In re Lehman Brothers, where shareholders recovered $616 million from Lehman's officers, directors, underwriters and auditors following the company's bankruptcy filing.

Mr. Russo is currently representing shareholders in high-profile securities fraud actions against General Electric, Precision Castparts Corp., Kraft Heinz Corp. and Luckin Coffee Co. Mr. Russo has also assisted in prosecuting whistleblower actions and patent infringement matters.

In 2016, Mr. Russo was selected as an inaugural member of Benchmark Litigation's Under 40 Hot List, an award meant to honor the achievements of the nation's most accomplished attorneys under the age of 40. Mr. Russo was again selected as a member of the 40 & Under Hot List in 2018, 2019, and 2020. Rick has also been selected by his peers as a Pennsylvania Super Lawyers Rising Star on five occasions.

MARC A. TOPAZ, a partner of the Firm, has a keen eye for what makes a successful case. As one of the firm's most experienced litigators, he helps clients focus their efforts on cases with a favorable mix of facts, law and potential recovery. Mr. Topaz oversees case initiation and development in complex securities fraud, ERISA, fiduciary, antitrust, shareholder derivative, and mergers and acquisitions actions.

Mr. Topaz has counselled clients in high-profile class action litigation stemming from the subprime mortgage crisis, including cases seeking recovery for shareholders in companies affected by the crisis, and cases seeking recovery for 401K plan participants who suffered losses in their retirement plans.

Mr. Topaz's commitment to making things right for clients shows in the cases he pursues. Recognizing the importance of effective corporate governance policies in safeguarding investments, Mr. Topaz has used fiduciary duty litigation to fight for meaningful policy changes. He also played an active role in using option-backdating litigation as a vehicle to re-price erroneously issued options and improve corporate governance.

MELISSA L. TROUTNER, is a Partner in the Firm's Fiduciary, Consumer Protection, and Antitrust Group. A seasoned litigator with nearly two decades of experience litigating in federal courts nationwide, Ms. Troutner manages and litigates complex class action litigation, with a focus on consumer fraud, unfair trade practices, breach of contract and implied duties, warranty, and antitrust actions.

Ms. Troutner has played a leading role in the Firm's successful litigation of claims against numerous large corporations accused of defrauding consumers and engaging in anticompetitive conduct. Her practice has also focused on new matter development, including the investigation and analysis of consumer fraud, antitrust, and securities matters. Prior to joining the Firm, Ms. Troutner clerked for the Honorable Stanley S. Brotman in the District of New Jersey and defended corporations in complex commercial, antitrust, product liability, and patent matters. Ms. Troutner's 12 years of experience as a litigator at large defense firms makes her uniquely suited to evaluate potential claims, develop litigation strategy, and negotiate cooperatively and effectively with defense counsel. Ms. Troutner currently represents consumers and entities in class action litigation against, among others, General Motors Company, FCA US LLC, Toyota Motor Corporation, Bank of Nova Scotia, Netflix, Hulu, State Farm Mutual Automobile Insurance Company, and the federal government.

JOHNSTON DE F. WHITEMAN, JR. is a Partner of the Firm, and his primary practice area is securities litigation.

Mr. Whitman represents individual and institutional investors pursuing claims for securities fraud. In this capacity, Mr. Whitman has helped clients obtain substantial recoveries in numerous class actions alleging claims under the federal securities laws, and has also assisted in obtaining favorable recoveries for institutional investors pursuing direct securities fraud claims.

ROBIN WINCHESTER, a Partner of the Firm, represents private investors and public institutional investors in derivative, class and individual actions and has helped recover hundreds of millions of dollars for corporations and stockholders injured by purported corporate fiduciaries.

Ms. Winchester has extensive experience in federal and state stockholder litigation seeking to hold wayward fiduciaries accountable for corporate abuses.

Ms. Winchester seeks not only to recover losses for the corporations and stockholders who have been harmed but also to ensure corporate accountability by those who have been entrusted by stockholders to act as faithful fiduciaries. She litigates cases involving all areas of corporate misconduct including excessive executive compensation, misuse and waste of corporate assets, unfair related-party transactions, failure to ensure compliance with state and federal laws, insider selling and other breaches of fiduciary duty which impinge on stockholder rights. Ms. Winchester has successfully resolved dozens of cases which have required financial givebacks as well as the implementation of extensive corporate governance reforms that will hopefully prevent similar misconduct from recurring, strengthen the company, and make the members of the board of directors more effective and responsive representatives of stockholder interests.

ERIC L. ZAGAR, a Partner of the Firm, co-manages the Firm's Mergers and Acquisitions and Shareholder Derivative Litigation Group, which has excelled in the highly specialized area of prosecuting cases involving claims against corporate officers and directors.

Since 2001, Mr. Zagar has served as lead or co-lead counsel in numerous shareholder derivative actions nationwide and has helped recover billions of dollars in monetary value and substantial corporate governance relief for the benefit of shareholders.

TERENCE S. ZIEGLER is a Partner of the Firm and has worked since 2005. Since joining the Firm, he has focused his practice on antitrust and complex consumer litigation. Mr. Ziegler is currently involved in a number of class action lawsuits against large pharmaceutical manufacturers in antitrust cases alleging improper reverse payment and generic suppression schemes.

Mr. Ziegler also served as a special assistant attorney general to several states in litigation involving the sales and marketing practices of major pharmaceutical companies. These cases led to important injunctive relief and significant monetary recovery for those states.

Mr. Ziegler's extensive experience in complex cases also includes consumer class actions alleging improper insurer and lender practices in violation of RICO and RESPA.

Examples of Mr. Ziegler's recent notable cases include *In re Flonase Antitrust Litigation* ($150 million settlement on behalf of direct purchasers); *In re Wellbutrin SR Antitrust Litigation* ($21.5 million settlement on behalf of end-payors); *Alston v. Countrywide, et al.* ($34 million settlement on behalf of borrowers); and *Ligouri v. Wells Fargo & Co., et al.* ($12.5 million settlement on behalf of borrowers).

Mr. Ziegler received his bachelor's degree from Loyola University in 1989. He earned his juris doctor from Tulane University in 1992. He is a member of the Pennsylvania and Louisiana bars and is admitted to practice in several federal district and appellate courts across the country.

ANDREW L. ZIVITZ, a Partner of the Firm, has achieved extraordinary results in securities fraud cases. His work has led to the recovery of more than $1 billion for damaged clients and class members.

Mr. Zivitz has represented dozens of major institutional investors in securities class actions and private litigation. He is skilled in all aspects of complex litigation, from developing and implementing strategies, to conducting merits and expert discovery, to negotiating resolutions. Mr. Zivitz has served as lead or co-lead counsel in many of the largest securities class actions in the U.S., including cases against Bank of America, Celgene, Goldman Sachs, Hewlett-Packard, JPMorgan, Pfizer, Tenet Healthcare, and Walgreens.

Mr. Zivitz's extensive courtroom experience serves his clients well in trial situations, as well as pre-trial proceedings and settlement negotiations. He served as one of the lead plaintiffs' attorneys in the only securities fraud class action arising out of the financial crisis to be tried to a jury verdict, has handled a Daubert trial in the U.S. District Court for the Southern District of New York, and successfully argued dispositive motions before federal district and appeals courts throughout the country.

COUNSEL

ASHER S. ALAVI, Counsel to the Firm, concentrates his practice exclusively on whistleblower litigation, particularly cases brought under the qui tam provisions of the federal False Claims Act. Mr. Alavi has worked on a variety of whistleblower cases involving fraud against government programs, including cases involving healthcare fraud, kickback violations, and government contract fraud. Asher has devoted his entire post-college career to working on behalf of whistleblowers, both as a lawyer and as an advocate for whistleblower rights. During law school, Mr. Alavi served as a Note Editor for Boston College Law School's Journal of Law and Social Justice, and interned with the Department of Justice's Office of Professional Responsibility.

JENNIFER L. ENCK, Counsel to the Firm, concentrates her practice in the area of securities litigation and settlement matters. Ms. Enck's practice includes negotiating and documenting complex class action settlements, obtaining the required court approval for settlements and developing and assisting with the administration of class notice programs.

TYLER S. GRADEN, Counsel to the Firm, has served as lead or co-lead counsel in multiple nationwide class actions brought on behalf of consumers and investors.

In cases brought around the country, Ms. Graden has helped thousands of borrowers injured by predatory mortgage servicing practices, has aided retirement plans in recovering from imprudent investment advice, and assisted others defrauded by kickback schemes disguised as legitimate business transactions.

LISA LAMB PORT, Counsel to the Firm, concentrates her practice on consumer, antitrust, and securities fraud class actions. Ms. Lamb Port received her law degree, Order of the Coif, summa cum laude, from the Villanova University School of Law in 2003 and her Bachelor of Arts, cum laude, from Princeton University in 2000. Ms. Lamb Port is licensed to practice law in the Commonwealth Pennsylvania.

Prior to joining Kessler Topaz, Ms. Lamb Port was a partner at another class action firm, where she represented institutional and individual investors in securities fraud, breach of fiduciary duty, and shareholder derivative cases, as well as in litigation resulting from mergers and acquisitions.

DONNA SIEGEL MOFFA serves as Counsel to the Firm. Throughout her career, both in private practice and in her early years as an attorney in the Bureau of Consumer Protection at the Federal Trade Commission in Washington, D.C., she has concentrated her work in the area of consumer protection litigation. Ms. Moffa has substantial experience handling and supervising all aspects of the prosecution and resolution of national class action litigation asserting claims challenging predatory lending, lending discrimination, violations of RESPA, consumer fraud and unfair, deceptive and anticompetitive practices in federal courts throughout the country. Currently, Ms. Moffa is involved in a number of antitrust class action lawsuits alleging that large pharmaceutical manufacturers have engaged in improper reverse payment and generic suppression schemes.

Donna also has been involved in significant appellate work, in both state and federal appeals courts representing individuals, classes, and non-profit organizations participating as amici curiae in appeals.

JONATHAN NEUMANN, Counsel to the Firm, concentrates his practice on securities fraud and fiduciary matters. Mr. Neumann represents sophisticated investors in complex litigation brought under federal and state laws. In this role, Mr. Neumann has litigated many high stakes cases from the pleading stage to the eve of trial, resulting in substantial recoveries for aggrieved investors.

Prior to joining the Firm, Mr. Neumann served as a law clerk to the Hon. Douglas E. Arpert of the United States District Court for the District of New Jersey. While in law school, Mr. Neumann was an editor for the Temple International and Comparative Law Journal and a member of the Moot Court Honor Society.

MICHELLE M. NEWCOMER, Counsel to the Firm, concentrates her practice in the area of securities litigation. Ms. Newcomer has been involved in dozens of class actions in which the Firm has served as Lead or Co-Lead Counsel, through all aspects of pre-trial proceedings, including complaint drafting, litigating motions to dismiss, for class certification and for summary judgment, conducting document, deposition and expert discovery, and appeals. Ms. Newcomer was also part of the trial team in the Firm's most recent securities fraud class action trial, which resulted in a jury verdict on liability and damages in favor of investors.

Ms. Newcomer has represented many types of individual and institutional investors, including public pension funds, asset managers and Sovereign Wealth Funds. Ms. Newcomer's experience includes traditional class actions, direct actions, and non-U.S. collective actions.

Ms. Newcomer began her legal career with the Firm in 2005. Prior to joining the Firm, she was a summer law clerk for the Hon. John T.J. Kelly, Jr. of the Pennsylvania Superior Court.

ASSOCIATES

HELEN J. BASS, graduated from Stanford Law School in 2021. While in law school, Ms. Bass was a member of the Environmental Pro Bono project and the Stanford Journal of Civil Rights & Civil Liberties.

MATTHEW C. BENEDICT, an Associate of the Firm, concentrates his practice in the area of mergers and acquisition litigation and stockholder derivative litigation. Mr. Benedict has represented both plaintiffs and defendants in numerous high-profile securities fraud class actions concerning Wall Street institutions' conduct before, during, and in the wake of the 2008 financial crisis.

KEVIN E.T. CUNNINGHAM, JR., an Associate of the Firm, and focuses his practice in securities litigation. Mr. Cunningham is a graduate of Temple University Beasley School of Law. Prior to joining the Firm, Mr. Cunningham served as a law clerk for the Hon. Judge Paula Dow of the New Jersey Superior Court, Burlington County - Chancery Division. Mr. Cunningham also served as a law clerk to the Hon. Brian A. Jackson of the United States District Court for the Middle District of Louisiana. Mr. Cunningham is licensed to practice in Pennsylvania and the District of Columbia.

GRANT D. GOODHART III, an Associate of the Firm, concentrates his practice in the areas of merger and acquisition litigation and shareholder derivative actions. Through his practice, Mr. Goodhart helps institutional and individual shareholders obtain significant financial recoveries and corporate governance reforms.

Mr. Goodhart graduated from Temple University Beasley School of Law in 2015. While in law school, Mr. Goodhart interned as a law clerk to the Hon. Thomas C. Branca of the Montgomery County Court of Common Pleas, the Hon. Anne E. Lazarus of the Pennsylvania Superior Court, and U.S. Magistrate Judge Lynne A. Sitarski of the U.S. District Court for the Eastern District of Pennsylvania. Grant also served as the Executive Articles Editor for the Temple International and Comparative Law Journal.

ALEX B. HELLER, an Associate of the Firm, concentrates his practice in the areas of securities litigation and corporate governance.

Mr. Heller received his law degree from the George Mason University Antonin Scalia Law School in 2015 and his undergraduate degree from American University in 2008. While in law school, Mr. Heller served as an associate editor for the George Mason Law Review. Prior to joining the Firm, Mr. Heller was a partner at a plaintiffs' litigation firm, where he served as chair of the shareholder derivative litigation practice group. Mr. Heller is a Certified Public Accountant (CPA). Prior to his legal career, Mr. Heller practiced as a CPA for several years, advising businesses and auditing large corporations.

EVAN R. HOEY, an Associate of the Firm, focuses his practice in securities litigation. Mr. Hoey received his law degree from Temple University Beasley School of Law, where he graduated cum laude, and graduated summa cum laude from Arizona State University. He is licensed to practice in Pennsylvania and is admitted to practice before the United States District Court for the Eastern District of Pennsylvania.

JORDAN E. JACOBSON, an Associate of the Firm, concentrates her practice in securities litigation. Ms. Jacobson received her law degree from Georgetown University in 2014 and her undergraduate degrees in history and political science from Arizona State University in 2011.Prior to joining the Firm, Ms. Jacobson clerked for the honorable Deborah J. Saltzman, United States Bankruptcy Judge, in the Central District of California. Ms. Jacobson was also previously an associate at O'Melveny & Myers LLP, and an attorney in the General Counsel's office of the Pension Benefit Guaranty Corporation in Washington, D.C. Ms. Jacobson is licensed to practice law in California and Virginia and will sit for the July 2020 Pennsylvania bar exam.

KAREN KAM, an Associate of the Firm, concentrates her practice in the areas of merger and acquisition litigation and shareholder derivative actions. Through her practice, Ms. Kam helps institutional and individual shareholders obtain significant financial recoveries and corporate governance reforms. Ms. Kam received her law degree from Temple University in 2021 and her undergraduate degree in mathematics and economics from the University of Pennsylvania. She also has a master's degree in mathematics in finance from New York University Courant Institute of Mathematical Sciences. She received Temple's Certificate in Business Law. While in law school, Ms. Kam interned as a summer associate at Stradley Ronon. She is an alumni of the Philadelphia Diversity Law Group (PDLG). She participated in the Asian Pacific American Law School Association while in law school.

AUSTIN W. MANNING, an Associate of the Firm, graduated magna cum laude from Temple University's James E. Beasley School of Law and received her Bachelor of Science in Economics from Penn State University. During law school, Ms. Manning served as a Staff Editor for the Temple Law Review. In her final year, she studied at the University of Lucerne in Lucerne, Switzerland where she received her Global Legal Studies Certificate with a focus on international economic law, human rights, and sustainability. While in Law School, Ms. Manning served as a judicial intern to the Hon. Michael M. Baylson of the U.S. District Court for the Eastern District of Pennsylvania and to the Hon. Arnold L. New of the Pennsylvania Court of Common Pleas. Prior to joining the firm, Ms. Manning was a regulatory and litigation associate for a boutique environmental law firm in the Philadelphia area.

JOHN A. MERCURIO, JR., an Associate of the Firm, concentrates his practice in the area of international actions. Mr. Mercurio is an associate in the Firm's Philadelphia office and graduated magna cum laude from Syracuse University College of Law and received his Bachelor of Arts in Criminal Justice and Psychology from Temple University. While in law school, Mr. Mercurio served as a judicial intern to the Hon. Thérèse Wiley Dancks of the U.S. District Court for the Northern District of New York and spent a semester in Washington D.C. working with the Narcotic and Dangerous Drug Section of the U.S. Department of Justice. He also served as a legal intern at the Office of the New York State Attorney General. Mr. Mercurio is licensed to practice law in Pennsylvania.

VANESSA M. MILAN, an Associate of the Firm, concentrates her practice in the area of securities fraud litigation. Ms. Milan is an associate in the Firm's Philadelphia office and received her law degree from Temple University Beasley School of Law in 2019 and her undergraduate degrees in Government & Law and English from Lafayette College in 2016. While in law school, Ms. Milan served as an Articles Editor for the Temple Law Review. Prior to joining the firm, Ms. Milan served as a judicial law clerk to the Honorable Robert D. Mariani, United States District Court Judge for the Middle District of Pennsylvania. Ms. Milan is licensed to practice law in New York and Pennsylvania.

JONATHAN NAJI, an Associate of the Firm, develops and initiates cases involving shareholder derivative and securities fraud, class and individual actions.Mr. Naji seeks to help individuals recover losses caused by unlawful conduct. Mr. Naji received his law degree from Temple University Beasley School of Law and graduated from Franklin & Marshall College. In law school, Mr. Naji interned as a law clerk to the Honorable C. Darnell Jones II of the United States District Court for the Eastern District of Pennsylvania and worked as a summer associate at Berger Harris, LLP.

DANIEL B. ROTKO, an Associate of the Firm, concentrates his practice in the area of securities-related litigation matters. Prior to joining Kessler Topaz, Mr. Rotko was an associate for over five years at Drinker Biddle & Reath LLP (now known as Faegre Drinker Biddle & Reath LLP) and his practice primarily concerned representing insurers in civil matters litigated across the country. Mr. Rotko received his law degree from the University of Pennsylvania and his undergraduate degree from Gettysburg College. Daniel is admitted to practice in Pennsylvania and New Jersey.

KARISSA J. SAUDER, an Associate of the Firm, concentrates her practice on new matter development with a focus on analyzing securities, consumer, and antitrust class action lawsuits, as well as direct (or opt-out) actions. Prior to joining the firm, Ms. Sauder was an associate with Berger Montague, where she litigated complex antitrust class action lawsuits, and served as a judicial law clerk to the Honorable Eduardo C. Robreno, United States District Judge for the Eastern District of Pennsylvania. Ms. Sauder received her law degree from Harvard Law School in 2014 and her undergraduate degree from Eastern Mennonite University in 2010. While in law school, Ms. Sauder served as Managing Editor of the Harvard Law Review.

BARBARA SCHWARTZ, an Associate of the Firm, concentrates her practice on new matter development with a focus on analyzing consumer and antitrust class action lawsuits. Ms. Schwartz received her law degree from Yale Law School in 2013 and her undergraduate degree from Temple University in 2010. Prior to joining the firm, Ms. Schwartz was an associate with Duane Morris, where she handled various complex commercial and antitrust matters.

KELSEY V. SHERONAS, an Associate of the Firm, concentrates her practice in the area of consumer protection. Ms. Sheronas received her undergraduate degree from Cornell University in 2016 and her law degree from the Temple University Beasley School of Law in 2021. While at Temple, Ms. Sheronas was recognized for Outstanding Oral Advocacy and was the only member of her graduating class to complete certificates in both Business Law and Trial Advocacy. She served as Executive Editor of the Temple International and Comparative Law Journal from 2020 to 2021. She is licensed to practice in Pennsylvania.

NATHANIEL SIMON, an Associate of the Firm, concentrates his practice in securities litigation. Before joining the firm, Mr. Simon served as a judicial law clerk to the Honorable Mark A. Kearney, United States District Judge for the Eastern District of Pennsylvania. Mr. Simon received his law degree from Villanova University, Charles Widger School of Law in 2018 and his undergraduate degree from Gettysburg College in 2014. While in law school, Mr. Simon served as an Articles Editor for the Villanova Law Review.

MARIA THEODORA STARLING, an Associate of the Firm, concentrates her practice in the area of corporate governance litigation. Ms. Starling graduated from the Villanova University Charles Widger School of Law in 2020. While in law school, Ms. Starling interned as a law clerk to the Hon. Steven C. Tolliver of the Montgomery County Court of Common Pleas and as a summer associate at Fox Rothschild. Ms. Starling was also a member of the Villanova Law Moot Court Board and the Vice President of the Fashion Law Society.

STAFF ATTORNEYS

SARA ALSALEH, a Staff Attorney of the Firm, received her law degree from Widener University School of Law in Wilmington, Delaware and her undergraduate degree in Marketing, with a minor in International Business, from Pennsylvania State University in State College, Pennsylvania. Ms. Alsaleh currently concentrates her practice at the Firm in the area of securities fraud litigation.

Prior to joining the Firm, Ms. Alsaleh practiced in the areas of pharmaceutical & health law litigation. Sara clerked at the U.S. Food and Drug Administration, as well as the Delaware Department of Justice (Consumer Protection & Fraud Division), where she was heavily involved in protecting consumers within a wide variety of subject areas.

LAMARLON R. BARKSDALE, a Staff Attorney of the Firm, was a former Assistant District Attorney in the Philadelphia DA's Office and veteran of the US Navy.

Mr. Barksdale has experience with securities fraud litigation, complex pharmaceutical litigation, criminal litigation and bankruptcy litigation. Mr. Barksdale has also has also lectured criminal law courses at Delaware Technical and Community College, Newark, Delaware. At KTMC, Mr. Barksdale practices in the area of securities fraud litigation.

ELIZABETH W. CALHOUN, a Staff Attorney of the Firm, concentrates her practice in securities litigation. Ms. Calhoun has represented investors in major securities fraud and has also represented shareholders in derivative and direct shareholder litigation.

Ms. Calhoun has over ten years of experience in pharmaceutical-related litigation including both securities and products liability matters. Prior to joining Kessler, Topaz, Meltzer & Check, Ms. Calhoun was employed with the Wilmington, Delaware law firm of Grant & Eisenhofer, P.A. and before that was an associate in the Philadelphia offices of Dechert, LLP and Ballard Spahr, LLP.

ELIZABETH K. DRAGOVICH, a Staff Attorney of the Firm, concentrates her practice in the area of securities litigation. Ms. Dragovich received her law degree from the University of Pennsylvania Law School in 2002, and her undergraduate degree from Carnegie Mellon University in 1999. Ms. Dragovich is licensed to practice law in Pennsylvania. Prior to joining Kessler Topaz, Elizabeth was a staff attorney with the Wilmington, Delaware law firm of Grant & Eisenhofer, P.A.

STEPHEN J. DUSKIN, a Staff Attorney of the Firm, concentrates his practice in the area of antitrust litigation. Mr. Duskin received his law degree from Rutgers School of Law at Camden in 1985, and his undergraduate degree in Mathematics from the University of Rochester in 1976. Mr. Duskin is licensed to practice law in Pennsylvania.

Prior to joining Kessler Topaz, Mr. Duskin practiced corporate and securities law in private practice and in corporate legal departments, and also worked for the U.S. Securities and Exchange Commission and the Resolution Trust Corporation.

DONNA K. EAGLESON, an Staff Attorney of the Firm, concentrates her practice in the area of securities litigation discovery matters. She received her law degree from the University of Dayton School of Law in Dayton, Ohio. Ms. Eagleson is licensed to practice law in Pennsylvania.

Prior to joining Kessler Topaz, Ms. Eagleson worked as an attorney in the law enforcement field, and practiced insurance defense law with the Philadelphia firm Margolis Edelstein.

PATRICK J. EDDIS, an Staff Attorney of the Firm, concentrates his practice in the area of corporate governance litigation. Mr. Eddis received his law degree from Temple University School of Law in 2002 and his undergraduate degree from the University of Vermont in 1995. Mr. Eddis is licensed to practice in Pennsylvania.

Prior to joining Kessler Topaz, Mr. Eddis was a Deputy Public Defender with the Bucks County Office of the Public Defender. Before that, Mr. Eddis was an attorney with Pepper Hamilton LLP, where he worked on various pharmaceutical and commercial matters.

DEEMS A. FISHMAN, an Staff Attorney of the Firm, concentrates his practice in the area of Securities Fraud.

KIMBERLY V. GAMBLE, an Staff Attorney of the Firm, concentrates her practice in the area of securities litigation. She received her law degree from Widener University, School of Law in Wilmington, DE. While in law school, she was a CASA/Youth Advocates volunteer and had internships with the Delaware County Public Defender's Office as well as The Honorable Judge Ann Osborne in Media, Pennsylvania. She received her Bachelor of Arts degree in Sociology from The Pennsylvania State University. Ms. Gamble is licensed to practice law in the Commonwealth of Pennsylvania. Prior to joining Kessler Topaz, she worked in pharmaceutical litigation.

KEITH S. GREENWALD, an Staff Attorney of the Firm, concentrates his practice in the area of securities litigation. Mr. Greenwald received his law degree from Temple University, Beasley School of Law in 2013 and his undergraduate degree in History, summa cum laude, from Temple University in 2004. Mr. Greenwald is licensed to practice law in Pennsylvania.

Prior to joining Kessler Topaz, Mr. Greenwald was a contract attorney on various projects in Philadelphia and was at the International Criminal Tribunal for the Former Yugoslavia, at The Hague in The Netherlands, working in international criminal law.

CANDICE L.H. HEGEDUS, an Staff Attorney of the Firm, concentrates her practice in securities fraud class actions. She received her law degree from Villanova University Charles Widger School of Law and her Bachelor of Arts from Muhlenberg College, cum laude. Ms. Hegedus is licensed to practice in Pennsylvania.

Prior to joining the firm, Ms. Hegedus spent several years at another class action litigation firm where she practiced in the areas of securities fraud, antitrust and consumer matters.

JOSHUA A. LEVIN, an Staff Attorney of the Firm, concentrates his practice in the area of securities litigation. Mr. Levin received his law degree from Widener University School of Law, and earned his undergraduate degree from The Pennsylvania State University. Mr. Levin is licensed to practice in Pennsylvania and New Jersey. Prior to joining Kessler Topaz, he worked in pharmaceutical litigation.

JOHN J. MCCULLOUGH, an Staff Attorney of the Firm, concentrates his practice in the area of securities litigation. In 2012, Mr. McCullough passed the CPA Exam. Mr. McCullough earned his Juris Doctor degree from Temple University School of Law, and his undergraduate degree from Temple University. Mr. McCullough is licensed to practice in Pennsylvania.

STEVEN D. MCLAIN, an Staff Attorney of the Firm, concentrates his practice in mergers and acquisition litigation and stockholder derivative litigation. He received his law degree from George Mason University School of Law, and his undergraduate degree from the University of Virginia. Mr. McLain is licensed to practice in Virginia. Prior to joining Kessler, Topaz, he practiced with an insurance defense firm in Virginia.

STEFANIE J. MENZANO, an Staff Attorney of the Firm, concentrates her practice in the area of securities litigation. Ms. Menzano received her law degree from Drexel University School of Law in 2012 and her undergraduate degree in Political Science from Loyola University Maryland. Ms. Menzano is licensed to practice law in Pennsylvania and New Jersey. Prior to joining Kessler Topaz, Ms. Menzano was a fact witness for the Institute for Justice. During law school, Ms. Menzano served as a case worker for the Pennsylvania Innocence Project and as a judicial intern under the Honorable Judge Mark Sandson in the Superior Court of New Jersey, Atlantic County.

TIMOTHY A. NOLL, an Staff Attorney of the Firm, concentrates his practice in the area of securities fraud litigation. Mr. Noll received his law degree from the Southwestern University School of Law and his undergraduate degree in Communications from Temple University. Prior to joining the Firm, Mr. Noll was a staff attorney at Grant & Eisenhofer, P.A. and also worked in pharmaceutical litigation.

ELAINE M. OLDENETTEL, an Staff Attorney of the Firm, concentrates her practice in consumer and ERISA litigation. She received her law degree from the University of Maryland School of Law and her undergraduate degree in International Studies from the University of Oregon. While attending law school, Ms. Oldenettel served as a law clerk for the Honorable Robert H. Hodges of the United States Court of Federal Claims and the Honorable Marcus Z. Shar of the Baltimore City Circuit Court. Ms. Oldenettel is licensed to practice in Pennsylvania and Virginia.

ANDREW M. PEOPLES, an Staff Attorney of the Firm, concentrates concentrates his practice in the area of Consumer Protection.

ALLYSON M. ROSSEEL, an Staff Attorney of the Firm, concentrates her practice at Kessler Topaz in the area of securities litigation. She received her law degree from Widener University School of Law, and earned her B.A. in Political Science from Widener University. Ms. Rosseel is licensed to practice law in Pennsylvania and New Jersey. Prior to joining the Firm, Ms. Rosseel was employed as general counsel for a boutique insurance consultancy/brokerage focused on life insurance sales, premium finance and structured settlements.

MICHAEL J. SECHRIST, an Staff Attorney of the Firm, Concentrates his practice in the area of securities litigation. Mr. Sechrist received his law degree from Widener University School of Law in 2005 and his undergraduate degree in Biology from Lycoming College in 1998. Mr. Sechrist is licensed to practice law in Pennsylvania. Prior to joining Kessler Topaz, Mr. Sechrist worked in pharmaceutical litigation.

ROBERTA A. SHANER, an Staff Attorney of the Firm, concentrates her practice in the area of securities litigation. She received her JD degree from the New York University School of Law. She graduated from Dartmouth College with a BA in Asian Area Studies. Ms. Shaner is licensed in Pennsylvania.

IGOR SIKAVICA, an Staff Attorney of the Firm, practices in the area of corporate governance litigation, with a focus on transactional and derivative cases. Mr. Sikavica received his J.D. from the Loyola University Chicago School of Law and his LL.B. from the University of Belgrade Faculty Of Law. Mr. Sikavica is licensed to practice in Pennsylvania. Mr. Sikavica's licenses to practice law in Illinois and the former Yugoslavia are no longer active.

Prior to joining Kessler Topaz, Mr. Sikavica has represented clients in complex commercial, civil and criminal matters before trial and appellate courts in the United States and the former Yugoslavia. Also, Mr. Sikavica has represented clients before international courts and tribunals, including – the International Criminal Tribunal for the Former Yugoslavia (ICTY), European Court of Human Rights and the UN Committee Against Torture.

QUIANA SMITH, an Staff Attorney of the Firm, concentrates her practice in the area of securities litigation. She received her law degree from Temple University Beasley School of Law in Pennsylvania and her Bachelor of Science in Management and Organizations from The Pennsylvania State University. Ms. Smith is licensed to practice law in the Commonwealth of Pennsylvania. Prior to joining Kessler Topaz, she worked in pharmaceutical litigation.

MELISSA J. STARKS, an Staff Attorney of the Firm, concentrates her practice in the area of securities litigation. Ms. Starks earned her Juris Doctor degree from Temple University--Beasley School of Law, her LLM from Temple University--Beasley School of Law, and her undergraduate degree from Lincoln University. Ms. Starks is licensed to practice in Pennsylvania.

MICHAEL P. STEINBRECHER, an Staff Attorney of the Firm, concentrates his practice in the area of securities litigation. Prior to joining Kessler Topaz, Mr. Steinbrecher worked in pharmaceutical litigation.

ERIN E. STEVENS, an Staff Attorney of the Firm, concentrates her practice in the area of securities litigation. Ms. Stevens was a former associate attorney at a general practice firm where she litigated for a variety of civil and bankruptcy cases.

BRIAN W. THOMER, an Staff Attorney of the Firm, concentrates his practice in the area of securities fraud litigation. Prior to joining Kessler Topaz, Mr. Thomer worked in pharmaceutical litigation.

KURT W. WEILER, an Staff Attorney of the Firm, concentrates his practice in the area of securities litigation.

Prior to joining the Firm, Mr. Weiler was associate corporate counsel for a publicly-traded, Philadelphia-based mortgage company, where he specialized in the areas of loss mitigation and bankruptcy.

ANNE M. ZANESKI, is a Staff attorney in the Firm's Securities Practice Group. Anne focuses her practice in the areas of securities and consumer litigation on behalf of institutional and individual investors. Selected matters that Anne has been involved with include the Valeant Pharmaceuticals-Pershing Square Capital insider trading certified class action team ($250 million settlement) and Lehman Brothers securities fraud litigation co-counsel team ($616 million settlement).

Prior to joining the Firm, Anne was an associate with a New York securities litigation boutique law firm where she was part of the team on the Engel, et al. v. Refco commodities case at the National Futures Association still one of the largest collected arbitration awards ($43 million) on behalf of public customers against a brokerage firm. Anne also previously served as a legal counsel for the New York City Economic Development Corporation and New York City Industrial Development Agency in the areas of project finance, bond financing and complex litigation, involving infrastructure projects in a variety of industries including healthcare, education and sports and entertainment, and facilitating tax-exempt and taxable financings. While in law school, Anne was a recipient of the CALI Excellence Award and Kosciuszko Foundation Scholarship and a member of the Securities Arbitration Clinic.

PROFESSIONALS

WILLIAM MONKS, CPA, CFF, CVA, Director of Investigative Services at Kessler Topaz Meltzer & Check, LLP ("Kessler Topaz"), brings nearly 30 years of white collar investigative experience as a Special Agent of the Federal Bureau of Investigation (FBI) and "Big Four" Forensic Accountant. As the Director, he leads the Firm's Investigative Services Department, a group of highly trained professionals dedicated to investigating fraud, misrepresentation and other acts of malfeasance resulting in harm to institutional and individual investors, as well as other stakeholders.

Mr. Monks's recent experience includes being the corporate investigations practice leader for a global forensic accounting firm, which involved widespread investigations into procurement fraud, asset misappropriation, financial statement misrepresentation, and violations of the Foreign Corrupt Practices Act (FCPA).

While at the FBI, Mr. Monks worked on sophisticated white collar forensic matters involving securities and other frauds, bribery, and corruption. He also initiated and managed fraud investigations of entities in the manufacturing, transportation, energy, and sanitation industries. During his 25 year FBI career, Mr. Monks also conducted dozens of construction company procurement fraud and commercial bribery investigations, which were recognized as a "Best Practice" to be modeled by FBI offices nationwide.

Mr. Monks also served as an Undercover Agent for the FBI on long term successful operations targeting organizations and individuals such as the KGB, Russian Organized Crime, Italian Organized Crime, and numerous federal, state and local politicians. Each matter ended successfully and resulted in commendations from the FBI and related agencies.

Mr. Monks has also been recognized by the FBI, DOJ, and IRS on numerous occasions for leading multi-agency teams charged with investigating high level fraud, bribery, and corruption investigations. His considerable experience includes the performance of over 10,000 interviews incident to white collar criminal and civil matters. His skills in interviewing and detecting deception in sensitive financial investigations have been a featured part of training for numerous law enforcement agencies (including the FBI), private sector companies, law firms and accounting firms.

Among the numerous government awards Mr. Monks has received over his distinguished career is a personal commendation from FBI Director Louis Freeh for outstanding work in the prosecution of the West New York Police Department, the largest police corruption investigation in New Jersey history.

Mr. Monks regards his work at Kessler Topaz as an opportunity to continue the public service that has been the focus of his professional life. Experience has shown and Mr. Monks believes, one person with conviction can make all the difference. Mr. Monks looks forward to providing assistance to any aggrieved party, investor, consumer, whistleblower, or other witness with information relative to a securities fraud, consumer protection, corporate governance, qui-tam, anti-trust, shareholder derivative, merger & acquisition or other matter.

BRAM HENDRIKS, European Client Relations Manager at Kessler Topaz Meltzer & Check, LLP ("Kessler Topaz"), guides European institutional investors through the intricacies of U.S. class action litigation as well as securities litigation in Europe and Asia. His experience with securities litigation allows him to translate complex document and discovery requirements into straightforward, practical action. For shareholders who want to effect change without litigation, Mr. Hendriks' advises on corporate governance issues and strategies for active investment.

Mr. Hendriks' has been involved in some of the highest-profile U.S. securities class actions of the last 20 years. Before joining Kessler Topaz, he handled securities litigation and policy development for NN Group N.V., a publicly-traded financial services company with approximately EUR 197 billion in assets under management. He previously oversaw corporate governance activities for a leading Amsterdam pension fund manager with a portfolio of more than 4,000 corporate holdings.

A globally-respected investor advocate, Mr. Hendriks' has co-chaired the International Corporate Governance Network Shareholder Rights Committee since 2009. In that capacity, he works with investors from more than 50 countries to advance public policies that give institutional investors a voice in decision-making. He is a sought-after speaker, panelist and author on corporate governance and responsible investment policies.

Based in the Netherlands, Mr. Hendriks' is available to meet with clients personally and provide hands-on-assistance when needed.

MICHAEL KANIA, Director of Operations – Securities Monitoring and Claims Filing at the Firm has over 20 years of experience in securities custody operations, specializing in securities class actions, corporate actions, and proxy voting.

Mr. Kania has designed and built securities class action claims processes and applications to support the filing and payment of tens of thousands claims annually, recovering billions of dollars for damaged investors. Mr. Kania has worked with some of largest institutional investors worldwide to educate them about the securities litigation process and to provide or suggest securities litigation solutions to meet their needs. Prior to joining the Firm, Mr. Kania was employed with The Bank of New York Mellon, where he was a Vice President and Manager in Asset Servicing (Securities Custody) Operations.

MICHAEL A. PENNA, serves as the Firm's Client Relations Manager and focuses specifically on the Taft-Hartley community. Coming from a family with a long line of labor union workers, Mr. Penna followed suit and has over 10 years of experience in servicing the Taft-Hartley world in finance and accounting.

Prior to joining the firm, Mr. Penna served in many roles in the Taft-Hartley world, spending seven years as an auditor for various labor union funds across the country followed by becoming the assistant controller for the Iron Workers District Council of Philadelphia.

IAN YEATES, Director of Financial Research & Analysis at Kessler Topaz brings a wealth of experience in investment research and data analysis to the firm. Mr. Yeates leads a group of professionals within Kessler Topaz's Lead Plaintiff Department that are dedicated to protecting the firm's clients by identifying and researching corporate fraud or malfeasance that has resulted in harm to investors and other stakeholders. By leveraging the firm's resources and technology, Mr. Yeates and his team efficiently evaluate and identify potential new matters to pursue on behalf of Kessler Topaz's clients.

Prior to joining Kessler Topaz, Ian spent several years in the private equity industry. Mr. Yeates spent four years with Hamilton Lane Advisors, L.P. before joining the National Bank of Kuwait ("NBK") in New York. At NBK, Mr. Yeates was part of a team tasked with evaluating, structuring and monitoring investments for the bank's proprietary private equity portfolio.

JUAN PABLO VILLATORO, Head of the Firm's *SecuritiesTracker*™ Development. Mr. Villatoro has over 15 years of experience and is responsible for driving continuous improvement and best practices for portfolio monitoring and claims filing for the U.S. and international institutional investors. As a visionary, accomplished Operations and Development Executive, Mr. Villatoro has become an expert in US and non-U.S. securities litigation for domestic and international clients on numerous opt-in securities matters. Over the last few years, Mr. Villatoro has spearheaded the development of best-in-class Securities Litigation Class Action monitoring and claims filing platforms. He is responsible for the development and design of technology platforms and the creation and maintenance of databases and sophisticated data analytics.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

WASHTENAW COUNTY EMPLOYEES' RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. WALGREEN CO., et al., Defendants.	Case No. 1:15-cv-03187 CLASS ACTION Hon. Sharon Johnson Coleman

DECLARATION OF JAMES E. BARZ FILED ON BEHALF OF ROBBINS GELLER RUDMAN & DOWD LLP IN SUPPORT OF APPLICATION FOR AWARD OF ATTORNEYS' FEES AND EXPENSES

I, JAMES E. BARZ, declare as follows:

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, expenses and charges ("expenses") in connection with services rendered in the above-entitled action (the "Action").

2. I am the partner who oversaw the Action for Robbins Geller. This declaration and the supporting exhibits were prepared by, or with the assistance of, other lawyers and staff at the Firm, and reviewed by me before signing. The information contained herein is believed to be accurate based on what I know and what I have learned from others at the Firm.

3. This Firm is Counsel for Plaintiff Washtenaw County Employees' Retirement System and Liaison Counsel for the Class.

4. The information in this declaration regarding the Firm's time and expenses is taken from time and expense reports and supporting documentation prepared and maintained by the Firm in the ordinary course of business. I reviewed these reports in connection with the preparation of this declaration. The purpose of this review was to review both the accuracy of the entries on the reports 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 have been previously approved by courts in class action cases and would normally be charged to a fee paying client in the private legal marketplace.

5. After the reductions referred to above, the number of hours spent on the Action by the Firm is 1,216.30. A breakdown of the lodestar is provided in the attached Exhibit A. The lodestar amount for attorney and paraprofessional time based on the Firm's current rates is $937,986.25. The hourly rates shown in Exhibit A are the usual and customary rates in contingent cases set by the Firm for each individual and submitted in support of other recent fee applications. The Firm's rates are set based on periodic analysis of rates charged by firms performing comparable work both on the plaintiff and defense side. For personnel who are no longer employed by the Firm, the "current rate" used for the lodestar calculation is based upon the rate for that person in his or her final year of employment with the Firm.

6. The Firm seeks an award of $15,191.25 in expenses and charges in connection with the prosecution of the Action. Those expenses and charges are summarized by category in the attached Exhibit B.

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

(a) Filing and Other Fees: $3,305.50. These expenses have been paid to the Court for filing fees and to an attorney service firm who served process of the complaint, obtained court filings, and delivered courtesy copies of documents to the Court. The vendors who were paid for these services are set forth in the attached Exhibit C.

(b) Business Wire: $800.00. This expense was necessary under the Private Securities Litigation Reform Act of 1995's ("PSLRA") "early notice" requirements, which provides, among other things, that "[n]ot later than 20 days after the date on which the complaint is filed, the plaintiff or plaintiffs shall cause to be published, in a widely circulated national business-oriented publication or wire service, a notice advising members of the purported plaintiff class – (I) of the pendency of the action, the claims asserted therein, and the purported class period; and (II) that, not later than 60 days after the date on which the notice is published, any member of the purported class

may move the court to serve as lead plaintiff of the purported class." *See* 15 U.S.C. §78u-4(a)(3)(A)(i).

(c) Court Hearing Transcripts: $570.90. The vendors who were paid for these services are listed in the attached Exhibit D.

(d) Investigator (Ron Braver & Associates LLC): $6,770.74. Ron Braver is an experienced investigator and former federal law enforcement agent. Mr. Braver was retained to provide investigative services such as locating and identifying potential witnesses, interviewing potential witnesses, drafting memoranda of interviews, and conducting follow-up interviews with counsel.

(e) Photocopies: $217.89. In connection with this case, the Firm made 593 black and white copies. The Firm requests $0.15 per copy for a total of $88.95. Each time an in-house copy machine is used, our billing system requires that a case or administrative billing code be entered, and that is how the 593 copies were identified as related to the Action. The Firm also paid $128.94 to outside copy vendors. A breakdown of these outside charges by date and vendor is set forth in the attached Exhibit E.

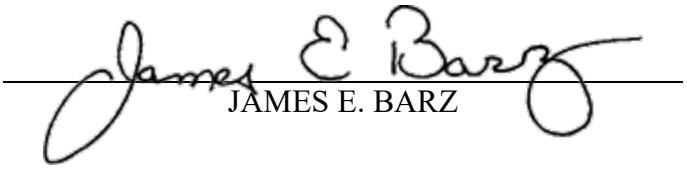
(f) Online Research: $3,252.27. This category includes vendors such as LexisNexis, PACER, and Westlaw. These resources were used to obtain access to legal and financial research, and for cite-checking briefs. This expense represents the expenses incurred by Robbins Geller for use of these services in connection with this Action. 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, it is able to obtain 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.

8. 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.

9. The identification and background of my Firm and its partners is attached hereto as Exhibit F.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 17th day of August, 2022, at Chicago, Illinois.



JAMES E. BARZ

EXHIBIT A

EXHIBIT A

Washtenaw County Emps' Ret. Sys. v. Walgreen Co., et al., Case No. 15-cv-03187
Robbins Geller Rudman & Dowd LLP
Inception through July 15, 2022

NAME		***HOURS***	***RATE***	***LODESTAR***
Barz, James E.	(P)	241.10	1150	$ 277,265.00
Bays, Lea M.	(P)	0.75	840	630.00
Cochran, Brian E.	(P)	98.65	770	75,960.50
Geller, Paul J.	(P)	2.00	1350	2,700.00
Gronborg, Tor	(P)	1.00	1150	1,150.00
Myers, Danielle S.	(P)	2.40	950	2,280.00
Reise, Jack	(P)	18.50	1025	18,962.50
Richter, Frank A.	(P)	338.95	770	260,991.50
Robbins, Darren J.	(P)	7.80	1350	10,530.00
Williams, Shawn A.	(P)	4.50	1150	5,175.00
Buschatzke, Gina M.	(A)	27.80	400	11,120.00
Edelman, William J.	(A)	65.40	595	38,913.00
Loverde, Dominic C.	(A)	10.10	450	4,545.00
Blasy, Mary K.	(OC)	8.75	925	8,093.75
Mccormick, Tricia	(OC)	21.50	955	20,532.50
Walton, David C.	(OC)	54.10	1090	58,969.00
Sader, Brad C.	(FA)	66.25	625	41,406.25
Yurcek, Christopher J.	(FA)	47.00	775	36,425.00
Barhoum, Anthony J.	(EA)	3.50	430	1,505.00
Cabusao, Reggie F.	(EA)	47.00	335	15,745.00
Topp, Jennifer M.	(EA)	0.40	335	134.00
Uralets, Boris	(EA)	12.00	415	4,980.00
Roelen, Scott R.	(RA)	33.70	295	9,941.50
Wilhelmy, David E.	(RA)	6.25	295	1,843.75
Brandon, Kelley T.	(I)	0.20	290	58.00
Torres, Michael	(LS)	10.90	400	4,360.00
Paralegals		58.95	350-375	21,045.00
Document Clerk		1.75	150	262.50
Shareholder Relations		25.10	95-100	2,462.50
TOTAL		***1,216.30***		***$ 937,986.25***

(P) Partner
(A) Associate
(OC) Of Counsel
(FA) Forensic Accountant
(EA) Economic Analyst
(RA) Research Analyst
(I) Investigator
(LS) Litigation Support

EXHIBIT B

EXHIBIT B

Washtenaw County Emps' Ret. Sys. v. Walgreen Co., et al., Case No. 15-cv-03187

Robbins Geller Rudman & Dowd LLP

Inception through January 18, 2021

CATEGORY		***AMOUNT***
Filing and Other Fees		$3,305.50
Business Wire		800.00
Messenger, Overnight Delivery		273.95
Court Hearing Transcripts		570.90
Investigator (Ron Braver & Associates LLC)		6,770.74
Photocopies		217.89
Outside	$ 128.94	
In-House Black and White (593 copies at $0.15 per page)	88.95	
Online Research		3,252.27
TOTAL		***$15,191.25***

EXHIBIT C

EXHIBIT C

Washtenaw County Emps' Ret. Sys. v. Walgreen Co., et al., Case No. 15-cv-03187
Robbins Geller Rudman & Dowd LLP

Filing and Other Fees: $3,305.50

DATE	***VENDOR***	***PURPOSE***
11/19/14	Class Action Research & Litigation Support Services, Inc.	Misc. Job: Obtain Docket Items
12/09/14	Class Action Research & Litigation Support Services, Inc.	Misc. Job: Obtain Documents
04/11/15	Clerk of the Court	04/10/15 - New Complaint Filing Fee
06/10/15	Class Action Research & Litigation Support Services, Inc.	Court Filing: Courtesy Copy for Judge's Chambers; Motion of Industriens Pensionsforsikring A/S for Appointment as Lead Plaintiff and Approval of its Selection of Counsel; Memorandum of Law in support thereof
08/27/17	Class Action Research & Litigation Support Services, Inc.	04/13/17 Misc. Job: Courtesy Copy for Judge's Chambers; Lead Plaintiff's Motion to Compel Defendants; Exhibits Cited in Lead Plaintiff's Motion to Compel
04/18/18	Class Action Research & Litigation Support Services, Inc.	11/13/17 Personal Service: Walgreen Co., Summons and Complaint
06/30/18	Class Action Research & Litigation Support Services, Inc.	12/08/17 Misc. Job: Courtesy Copy for Judge's Chambers; Joint Initial Status Report
12/27/18	Class Action Research & Litigation Support Services, Inc.	06/05/18 Misc. Job: Courtesy Copy for Judge's Chambers; Notice of Motion for Order Adopting the Parties' Pretrial Schedule and Modifying Discovery Limits

DATE	***VENDOR***	***PURPOSE***
02/25/19	Class Action Research & Litigation Support Services, Inc.	12/26/18 Misc. Job: Courtesy Copy for Judge's Chambers; Lead Plaintiff's Motion for Leave to File Under Seal; Notice of Motion; Redacted First Amended Consolidated Complaint; Sealed First Amended Consolidated Complaint
03/31/19	Class Action Research & Litigation Support Services, Inc.	08/17/18 Misc. Job: Courtesy Copy for Judge's Chambers; Notice of Motion to File Under Seal; Motion to File Under Seal; Proposed Order; Notice of Motion to Compel; Redacted Motion to Compel; Exhibit List; Sealed Motion to Compel; Sealed Exhibits 6, 9, 10
03/31/19	Class Action Research & Litigation Support Services, Inc.	08/22/18 Misc. Job: Courtesy Copy for Judge's Chambers; Notice of Motion for Leave to File Under Seal; Notice of Motion to Compel Documents; Lead Plaintiff's Motion for Leave to File Under Seal; Redacted Lead Plaintiff's Motion Compel Documents; Sealed Lead Plaintiff's Motion to Compel
04/07/19	Class Action Research & Litigation Support Services, Inc.	09/06/18 Misc. Job: Courtesy Copy for Judge's Chambers; Motion for Leave to File a Reply in Support of Lead Plaintiff's Motion to Compel; Notice of Motion
07/27/19	Class Action Research & Litigation Support Services, Inc.	12/11/18 Misc. Job: Courtesy Copy for Judge's Chambers; Plaintiff's Submission- Redacted; List of Exhibits; Lead Plaintiff's Motion for Leave to File Under Seal; Notice of Motion; Plaintiff's Submission - Sealed

EXHIBIT D

EXHIBIT D

Washtenaw County Emps' Ret. Sys. v. Walgreen Co., et al.: Case No. 15-cv-03187
Robbins Geller Rudman & Dowd LLP

Court Hearing Transcripts: $570.90

DATE	***VENDOR***	***PURPOSE***
04/21/17	Pamela S. Warren	Transcript of proceedings before Hon. M. Rowland
10/17/18	Patrick Mullen	Transcript dated 10/15/18
01/04/19	Tracey D. McCullough	Transcript of proceedings held on 01/03/19

EXHIBIT E

EXHIBIT E

Washtenaw County Emps' Ret. Sys. v. Walgreen Co., et al., Case No. 15-cv-03187
Robbins Geller Rudman & Dowd LLP

Photocopies: $217.89

In-house black and white: $88.95 (593 copies at $0.15 per copy)

Outside Photocopies: $128.94 (detailed below)

DATE	***VENDOR***	***PURPOSE***
11/22/14	Cook County First Municipal	Printing documents from Miquelon case
01/15/15	Chancery Court of Cook County	Outside photocopies
01/31/15	Cook County First Municipal	Printing documents from Miquelon case
09/10/16	Cook County First Municipal	Printing documents from Miquelon case

EXHIBIT F

FIRM RESUME

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INTRODUCTION

Robbins Geller Rudman & Dowd LLP ("Robbins Geller" or the "Firm") is a 200-lawyer firm with offices in 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. 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 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.

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 securities class action recovery in 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 Valeant Pharms. Int'l, Inc. Sec. Litig.***, No. 3:15-cv-07658 (D.N.J.). As sole lead counsel, Robbins Geller attorneys obtained a $1.2 billion settlement in the securities case that *Vanity Fair* reported as "the corporate scandal of its era" that had raised "fundamental questions about the functioning of our health-care system, the nature of modern markets, and the slippery slope of ethical rationalizations." The settlement resolves claims that defendants made false and misleading statements regarding Valeant's business and financial performance during the class period, attributing Valeant's dramatic growth in revenues and profitability to "innovative new marketing approaches" as part of a business model that was low risk and "durable and sustainable." *Valeant* is the largest securities class action settlement against a pharmaceutical manufacturer and the ninth largest ever.

- ***In re Am. Realty Cap. Props., Inc. Litig.***, No. 1:15-mc-00040 (S.D.N.Y.). As sole lead counsel, Robbins Geller attorneys zealously litigated the case arising out of ARCP's manipulative accounting practices and obtained a $1.025 billion settlement. For five years, the litigation team prosecuted nine different claims for violations of the Securities Exchange Act of 1934 and the Securities Act of 1933, involving seven different stock or debt offerings and two mergers. The recovery represents the highest percentage of damages of any major PSLRA case prior to trial and includes the largest personal contributions by individual defendants in history.

- ***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 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 Cnty.). 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 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.

- ***Smilovits v. First Solar, Inc.***, No. 2:12-cv-00555 (D. Ariz.). As sole lead counsel, Robbins Geller obtained a $350 million settlement in *Smilovits v. First Solar, Inc.* The settlement, which was reached after a long legal battle and on the day before jury selection, resolves claims that First Solar violated §§10(b) and 20(a) of the Securities Exchange Act of 1934 and SEC Rule 10b-5. The settlement is the fifth-largest PSLRA settlement ever recovered in the Ninth Circuit.

- ***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 more than 30% of the aggregate classwide 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, one of the largest IPOs 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.

- ***City of Pontiac Gen. Emps.' Ret. Sys. v. Wal-Mart Stores, Inc.***, No. 5:12-cv-05162 (W.D. Ark.). Robbins Geller attorneys and lead plaintiff City of Pontiac General Employees' Retirement System achieved a $160 million settlement in a securities class action case arising from allegations published by *The New York Times* in an article released on April 21, 2012 describing an alleged bribery scheme that occurred in Mexico. The case charged that Wal-Mart portrayed itself to investors as a model corporate citizen that had proactively uncovered potential corruption and promptly reported it to law enforcement, when in truth, a former in-house lawyer had blown the whistle on Wal-Mart's corruption years earlier, and Wal-Mart concealed the allegations from law enforcement by refusing its own in-house and outside counsel's calls for an independent investigation. Robbins Geller "achieved an exceptional [s]ettlement with skill, perseverance, and diligent advocacy," said Judge Hickey when granting final approval.

- ***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.

- ***In re LendingClub Sec. Litig.***, No. 3:16-cv-02627 (N.D. Cal.). Robbins Geller attorneys obtained a $125 million settlement for the court-appointed lead plaintiff Water and Power Employees' Retirement, Disability and Death Plan of the City of Los Angeles and the class. The settlement resolved allegations that LendingClub promised investors an opportunity to get in on the ground floor of a revolutionary lending market fueled by the highest standards of honesty and integrity. The settlement ranked among the top ten largest securities recoveries ever in the Northern District of California.

- ***Knurr v. Orbital ATK, Inc.***, No. 1:16-cv-01031 (E.D. Va.). In the *Orbital* securities class action, Robbins Geller obtained court approval of a $108 million recovery for the class. The Firm succeeded in overcoming two successive motions to dismiss the case, and during discovery were required to file ten motions to compel, all of which were either negotiated to a resolution or granted in large part, which resulted in the production of critical evidence in support of plaintiffs' claims. Believed to be the fourth-largest securities class action settlement in the history of the Eastern District of Virginia, the settlement provides a recovery for investors that is more than ten times larger than the reported median recovery of estimated damages for all securities class action settlements in 2018.

- ***Hsu v. Puma Biotechnology***, No. SACV15-0865 (C.D. Cal.). After a two-week jury trial, Robbins Geller attorneys won a complete plaintiffs' verdict against both defendants on both claims, with the jury finding that Puma Biotechnology, Inc. and its CEO, Alan H. Auerbach, committed securities fraud. The Puma case is only the fifteenth securities class action case tried to a verdict since the Private Securities Litigation Reform Act was enacted in 1995.

- ***Marcus v. J.C. Penney Co., Inc.***, No. 13-cv-00736 (E.D. Tex.). Robbins Geller attorneys obtained a $97.5 million recovery on behalf of J.C. Penney shareholders. The result resolves claims that J.C. Penney and certain officers and directors made misstatements and/or omissions regarding the company's financial position that resulted in artificially inflated stock prices. Specifically, defendants failed to disclose and/or misrepresented adverse facts, including that J.C. Penney

would have insufficient liquidity to get through year-end and would require additional funds to make it through the holiday season, and that the company was concealing its need for liquidity so as not to add to its vendors' concerns.

- ***Monroe County Employees' Retirement System v. The Southern Company***, No. 1:17-cv-00241 (N.D. Ga.). As lead counsel, Robbins Geller obtained an $87.5 million settlement in a securities class action on behalf of plaintiffs Monroe County Employees' Retirement System and Roofers Local No. 149 Pension Fund. The settlement resolves claims for violations of the Securities Exchange Act of 1934 stemming from defendants' issuance of materially misleading statements and omissions regarding the status of construction of a first-of-its-kind "clean coal" power plant in Kemper County, Mississippi. Plaintiffs alleged that these misstatements caused The Southern Company's stock price to be artificially inflated during the class period. Prior to resolving the case, Robbins Geller uncovered critical documentary evidence and deposition testimony supporting plaintiffs' claims. In granting final approval of the settlement, the court praised Robbins Geller for its "hard-fought litigation in the Eleventh Circuit" and its "experience, reputation, and abilities of [its] attorneys," and highlighted that the firm is "well-regarded in the legal community, especially in litigating class-action securities cases

- ***Chicago Laborers Pension Fund v. Alibaba Grp. Holding Ltd.***, No. CIV535692 (Cal. Super. Ct., San Mateo Cnty.). Robbins Geller attorneys and co-counsel obtained a $75 million settlement in the Alibaba Group Holding Limited securities class action, resolving investors' claims that Alibaba violated the Securities Act of 1933 in connection with its September 2014 initial public offering. Chicago Laborers Pension Fund served as a plaintiff in the action.

- ***Luna v. Marvell Tech. Grp., Ltd.***, No. 3:15-cv-05447 (N.D. Cal.). In the *Marvell* litigation, Robbins Geller attorneys represented the Plumbers and Pipefitters National Pension Fund and obtained a $72.5 million settlement. The case involved claims that Marvell reported revenue and earnings during the class period that were misleading as a result of undisclosed pull-in and concession sales. The settlement represents approximately 24% to 50% of the best estimate of classwide damages suffered by investors who purchased shares during the February 19, 2015 through December 7, 2015 class period.

- ***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 fourth-largest securities recovery ever in the district and one of the largest in a decade.

- ***Plumbers & Pipefitters Nat'l Pension Fund v. Burns***, No. 3:05-cv-07393 (N.D. Ohio). After 11 years of hard-fought litigation, Robbins Geller attorneys secured a $64 million recovery for shareholders in a case that accused the former heads of Dana Corp. of securities fraud for trumpeting the auto parts maker's condition while it actually spiraled toward bankruptcy. The Firm's Appellate Practice Group successfully appealed to the Sixth Circuit Court of Appeals twice, reversing the district court's dismissal of the action.

- ***Villella v. Chemical and Mining Company of Chile Inc.***, No. 1:15-cv-02106 (S.D.N.Y.) Robbins Geller attorneys, serving as lead consel, obtained a $62.5 million settlement against Sociedad

Química y Minera de Chile S.A. ("SQM"), a Chilean mining company. The case alleged that SQM violated the Securities Exchange Act of 1934 by issuing materially false and misleading statements regarding the company's failure to disclose that money from SQM was channeled illegally to electoral campaigns for Chilean politicians and political parties as far back as 2009. SQM had also filed millions of dollars' worth of fictitious tax receipts with Chilean authorities in order to conceal bribery payments from at least 2009 through fiscal 2014. Due to the company being based out of Chile and subject to Chilean law and rules, the Robbins Geller litigation team put together a multilingual litigation team with Chilean expertise. Depositions are considered unlawful in the country of Chile, so Robbins Geller successfully moved the court to compel SQM to bring witnesses to the United States.

- ***In re BHP Billiton Ltd. Sec. Litig.***, No. 1:16-cv-01445 (S.D.N.Y.). As lead counsel, Robbins Geller obtained a $50 million class action settlement against BHP, a Australian-based mining company that was accused of failing to disclose significant safety problems at the Fundão iron-ore dam, in Brazil. The Firm achieved this result for lead plaintiffs City of Birmingham Retirement and Relief System and City of Birmingham Firemen's and Policemen's Supplemental Pension System, on behalf of purchasers of the American Depositary Shares ("ADRs") of defendants BHP Billiton Limited and BHP Billiton Plc (together, "BHP") from September 25, 2014 to November 30, 2015.

- ***In re St. Jude Med., Inc. Sec. Litig.***, No. 0:10-cv-00851 (D. Minn.). After four and a 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.

- ***Deka Investment GmbH v. Santander Consumer USA Holdings Inc.***, No. 3:15-cv-02129 (N.D. Tex.). Robbins Geller and co-counsel secured a $47 million settlement in a securities class action against Santander Consumer USA Holdings Inc. ("SCUSA"). The case alleges that SCUSA, 2 of its officers, 10 of its directors, as well as 17 underwriters of its January 23, 2014 multi-billion dollar IPO violated §§11, 12(a)(2), and 15 of the Securities Act of 1933 as a result of their negligence in connection with misrepresentations in the prospectus and registration statement for the IPO ("Offering Documents"). The complaint also alleged that SCUSA and two of its officers violated §§10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 as a result of their fraud in issuing misleading statements in the IPO Offering Documents as well as in subsequent statements to investors.

- ***Snap Inc. Securities Cases***, JCCP No. 4960 (Cal. Super. Ct., Los Angeles Cnty). Robbins Geller, along with co-counsel, reached a settlement in the Snap, Inc. securities class action, providing for the payment of $32,812,500 to eligible settlement class members. The securities class action sought remedies under §§11, 12(a)(2) and 15 of the Securities Act of 1933. The case alleged that Snap, certain Snap officers and directors, and the underwriters for Snap's Initial Public Offering ("IPO") were liable for materially false and misleading statements and omissions in the Registration Statement for the IPO, related to trends and uncertainties in Snap's growth metrics, a potential patent-infringement action, and stated risk factors.

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 and 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 & Fire Ret. Sys. 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 Cnty.). 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 Cnty.). 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 Cnty.). 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 Pharms., Inc. S'holder Derivative Litig.***, No. CIV 499030 (Cal. Super. Ct., San Mateo Cnty.). 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 Cnty.). 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.

- ***In re Community Health Sys., Inc. S'holder Derivative Litig.***, No. 3:11-cv-00489 (M.D. Tenn.). Robbins Geller obtained unprecedented corporate governance reforms on behalf of Community Health Systems, Inc. in a case against the company's directors and officers for breaching their fiduciary duties by causing Community Health to develop and implement admissions criteria that systematically steered patients into unnecessary inpatient admissions, in contravention of Medicare and Medicaid regulations. The governance reforms obtained as part of the settlement include two shareholder-nominated directors, the creation of a Healthcare Law Compliance Coordinator with specified qualifications and duties, a requirement that the board's compensation committee be comprised solely of independent directors, the implementation of a compensation clawback that will automatically recover compensation improperly paid to the company's CEO or CFO in the event of a restatement, the establishment of an insider trading controls committee, and the adoption of a political expenditure disclosure policy. In addition to these reforms, $60 million in financial relief was obtained, which is the largest shareholder derivative recovery ever in Tennessee and the Sixth Circuit.

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 KLA-Tencor, including $33.2 million in cash payments by certain former executives and their directors' and officers' insurance carriers.

- ***In re Marvell Tech. 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 Tesla Motors, Inc. S'holder Litig.*,** No. 12711-VCS (Del. Ch.). Robbins Geller, along with co-counsel, secured a $60 million partial settlement after nearly four years of litigation against Tesla. This partial settlement is one of the largest derivative recoveries in a stockholder action challenging a merger. This partial settlement resolves the claims brought against defendants Kimbal Musk, Antonio J. Gracias, Stephen T. Jurvetson, Brad W. Buss, Ira Ehrenpreis, and Robyn M. Denholm, but not the claims against defendant Elon Musk.

- ***In re Kinder Morgan, Inc. S'holders Litig.***, No. 06-C-801 (Kan. Dist. Ct., Shawnee Cnty.). In the largest recovery ever for corporate takeover class action litigation, the Firm negotiated a settlement fund of $200 million in 2010.

- ***In re Dole Food Co., Inc. S'holder 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.

- ***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.

- ***In re Rural Metro Corp. S'holders 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 $110 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 Cap. Mkts., LLC v. Jervis*, 129 A.3d 816 (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 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 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.

- ***Laborers' Local #231 Pension Fund v. Websense, Inc.***, No. 37-2013-00050879-CU-BT-CTL (Cal. Super. Ct., San Diego Cnty.). Robbins Geller successfully obtained a record-breaking $40 million in *Websense*, which is believed to be the largest post-merger common fund settlement in California state court history. The class action challenged the May 2013 buyout of Websense by Vista Equity Partners (and affiliates) for $24.75 per share and alleged breach of fiduciary duty against the former Websense board of directors, and aiding and abetting against Websense's financial advisor, Merrill Lynch, Pierce, Fenner & Smith, Inc. Claims were pursued by the plaintiff in both California state court and the Delaware Court of Chancery.

- ***In re Onyx Pharms., Inc. S'holder Litig.***, No. CIV523789 (Cal. Super. Ct., San Mateo Cnty.). Robbins Geller obtained $30 million in a case against the former Onyx board of directors for breaching its fiduciary duties in connection with the acquisition of Onyx by Amgen Inc. for $125 per share at the expense of shareholders. At the time of the settlement, it was believed to set the record for the largest post-merger common fund settlement in California state court history. Over the case's three years, Robbins Geller defeated defendants' motions to dismiss, obtained class certification, took over 20 depositions, and reviewed over one million pages of documents. Further, the settlement was reached just days before a hearing on defendants' motion for summary judgment was set to take place, and the result is now believed to be the second largest post-merger common fund settlement in California state court history.

- ***Harrah's Entertainment***, No. A529183 (Nev. Dist. Ct., Clark Cnty.). 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 Cnty.). The Firm's efforts helped to obtain an additional $800 million in increased merger consideration for Chiron shareholders.

- ***In re Dollar Gen. Corp. S'holder Litig.***, No. 07MD-1 (Tenn. Cir. Ct., Davidson Cnty.). 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 Prime Hosp., 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 UnitedGlobalCom, Inc. S'holder Litig.***, No. 1012-VCS (Del. Ch.). The Firm secured a common fund settlement of $25 million just weeks before trial.

- ***In re eMachines, Inc. Merger Litig.***, No. 01-CC-00156 (Cal. Super. Ct., Orange Cnty.). After four years of litigation, the Firm secured a common fund settlement of $24 million on the brink of trial.

- ***In re PeopleSoft, Inc. S'holder Litig.***, No. RG-03100291 (Cal. Super. Ct., Alameda Cnty.). 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 Cnty.). 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.

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.

- ***In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation***, MDL No. 1720 (E.D.N.Y.). Robbins Geller attorneys, serving as co-lead counsel on behalf of merchants, obtained a settlement amount of $5.5 billion. In approving the settlement, the court noted that Robbins Geller and co-counsel "demonstrated the utmost professionalism despite the demands of the extreme perseverance that this case has required, litigating on behalf of a class of over 12 million for over fourteen years, across a changing legal landscape, significant motion practice, and appeal and remand. Class counsel's pedigree and efforts alone speak to the quality of their representation."

- ***Dahl v. Bain Cap. Partners, LLC***, No. 07-cv-12388 (D. Mass). Robbins Geller attorneys served as co-lead counsel on behalf of shareholders in this antitrust action against the nation's largest private equity firms that colluded to restrain competition and suppress prices paid to shareholders of public companies in connection with leveraged buyouts. Robbins Geller attorneys recovered more than $590 million for the class from the private equity firm defendants, including Goldman Sachs Group Inc. and Carlyle Group LP.

- ***Alaska Elec. Pension Fund v. Bank of Am. Corp.***, No. 14-cv-07126 (S.D.N.Y.). Robbins Geller attorneys prosecuted antitrust claims against 14 major banks and broker ICAP plc who were 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 in contravention of the competition laws. The class action was brought on behalf of investors and market participants who entered into interest rate derivative transactions between 2006 and 2013. Final approval has been granted to settlements collectively yielding $504.5 million from all defendants.

- ***In re Currency Conversion Fee Antitrust Litig.***, 01 MDL No. 1409 (S.D.N.Y.). Robbins Geller attorneys served as lead counsel and recovered $336 million for a class of credit and debit cardholders. The court praised the Firm as "indefatigable," noting that the Firm's lawyers "vigorously litigated every issue against some of the ablest lawyers in the antitrust defense bar."

- ***In re SSA Bonds Antitrust Litig.***, No. 1:16-cv-03711 (S.D.N.Y.). Robbins Geller attorneys are serving as co-lead counsel in a case against several of the world's largest banks and the traders of certain specialized government bonds. They are alleged to have entered into a wide-ranging price-fixing and bid-rigging scheme costing pension funds and other investors hundreds of millions. To date, three of the more than a dozen corporate defendants have settled for $95.5 million.

- ***In re Aftermarket Auto. Lighting Prods. Antitrust Litig.***, 09 MDL No. 2007 (C.D. Cal.). Robbins Geller attorneys served as 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 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 Cnty.). 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 and Privacy

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, privacy, 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 and privacy practice.

- ***In re Nat'l Prescription Opiate Litig.*** Robbins Geller serves on the Plaintiffs' Executive Committee to spearhead more than 2,900 federal lawsuits brought on behalf of governmental entities and other plaintiffs in the sprawling litigation concerning the nationwide prescription opioid epidemic. In reporting on the selection of the lawyers to lead the case, *The National Law Journal* reported that "[t]he team reads like a 'Who's Who' in mass torts."

- ***Apple Inc. Device Performance Litigation***. Robbins Geller serves on the Plaintiffs' Executive Committee to advance judicial interests of efficiency and protect the interests of the proposed class in the *Apple* litigation. The case alleges Apple misrepresented its iPhone devices and the nature of updates to its mobile operating system (iOS), which allegedly included code that significantly reduced the performance of older-model iPhones and forced users to incur expenses replacing these devices or their batteries.

- ***In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Pracs. & Antitrust Litig.*** Robbins Geller served as co-lead class counsel in a case against Mylan Pharmaceuticals and Pfizer alleging anti-competitive behavior that allowed the price of ubiquitous, life-saving EpiPen auto-injector devices to rise over 600%, resulting in inflated prices for American families. Two settlements totaling $609 million were reached after five years of litigation and weeks prior to trial.

- ***Cordova v. Greyhound Lines, Inc.*** Robbins Geller represented California bus passengers *pro bono* in a landmark consumer and civil rights case against Greyhound for subjecting them to discriminatory immigration raids. Robbins Geller achieved a watershed court ruling that a private company may be held liable under California law for allowing border patrol to harass and racially profile its customers. The case heralds that Greyhound passengers do not check their rights and dignity at the bus door and has had an immediate impact, not only in California but nationwide. Within weeks of Robbins Geller filing the case, Greyhound added "know your rights" information to passengers to its website and on posters in bus stations around the country, along with adopting other business reforms.

- ***In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig.*** As part of the Plaintiffs' Steering Committee, Robbins Geller reached a series of settlements on behalf of purchasers, lessees, and dealers that total well over $17 billion, the largest settlement in history, concerning illegal "defeat devices" 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.

- ***In re Facebook Biometric Info. Privacy Litig.,*** No. 3:15-cv-03747 (N.D. Cal.). Robbins Geller served as co-lead class counsel in a cutting-edge certified class action, securing a record-breaking $650 million all-cash settlement, the largest privacy settlement in history. The case concerned Facebook's alleged privacy violations through its collection of its users' biometric identifiers without informed consent through its "Tag Suggestions" feature, which uses proprietary facial recognition software to extract from user-uploaded photographs the unique biometric identifiers (*i.e.*, graphical representations of facial features, also known as facial geometry) associated with people's faces and identify who they are. The Honorable James Donato called the settlement "a groundbreaking settlement in a novel area" and praised the unprecedented 22% claims rate as "pretty phenomenal" and "a pretty good day in class settlement history."

- ***Yahoo Data Breach Class Action***. Robbins Geller helped secure final approval of a $117.5 million settlement in a class action lawsuit against Yahoo, Inc. arising out of Yahoo's reckless disregard for the safety and security of its customers' personal, private information. In September 2016, Yahoo revealed that personal information associated with at least 500 million user accounts, including names, email addresses, telephone numbers, dates of birth, hashed passwords, and security questions and answers, was stolen from Yahoo's user database in late 2014. The company made another announcement in December 2016 that personal information associated with more than one billion user accounts was extracted in August 2013. Ten months later, Yahoo announced that the breach in 2013 actually affected all three billion existing accounts. This was the largest data breach in history, and caused severe financial and emotional damage to Yahoo account holders. In 2017, Robbins Geller was appointed to the Plaintiffs' Executive Committee charged with overseeing the litigation.

- ***Trump University***. After six and a 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 are eligible for upwards of $35,000 in restitution. The settlement resolves claims that President 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.

- ***In re Morning Song Bird Food Litig.*** Robbins Geller obtained final approval of a settlement in a civil Racketeer Influenced and Corrupt Organizations Act consumer class action against The Scotts Miracle-Gro Company and its CEO James Hagedorn. The settlement of up to $85 million provides full refunds to consumers around the country and resolves claims that Scotts Miracle-Gro knowingly sold wild bird food treated with pesticides that are hazardous to birds. In approving the settlement, Judge Houston commended Robbins Gelller's "skill and quality of work [as] extraordinary" and the case as "aggressively litigated." The Robbins Geller team battled a series of dismissal motions before achieving class certification for the plaintiffs in March 2017, with the court finding that "Plaintiffs would not have purchased the bird food if they knew it was poison." Defendants then appealed the class certification to the Ninth Circuit, which was denied, and then tried to have the claims from non-California class members thrown out, which was also denied.

- ***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.

- ***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.

- ***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 $15 million settlement.

- ***Tobacco Litigation***. 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.

- ***Garment Workers Sweatshop Litigation***. 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, one which alleged overtime violations by the garment factories under the Fair Labor Standards Act and local labor law, and another 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.

- ***In re Intel Corp. CPU Mktg., Sales Pracs. & Prods. Liab. Litig.*** Robbins Geller serves on the Plaintiffs' Steering Committee in *Intel*, a massive multidistrict litigation pending in the United States District Court for the District of Oregon. *Intel* concerns serious security vulnerabilities – known as "Spectre" and "Meltdown" – that infect nearly all of Intel's x86 processors manufactured and sold since 1995, the patching of which results in processing speed degradation of the impacted computer, server or mobile device.

- ***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.

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 Cnty.). 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, the 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 public school children and parents in Tennessee challenging the state's private school voucher law, known as the Education Savings Account (ESA) Pilot Program. Robbins Geller helped achieve favorable rulings enjoining implementation of the ESA for violating the Home Rule provision of the Tennessee Constitution, which prohibits the General Assembly from passing laws that target specific counties without local approval.

- Representing California bus passengers *pro bono* in a landmark consumer and civil rights case against Greyhound for subjecting them to discriminatory immigration raids. Robbins Geller achieved a watershed court ruling that a private company may be held liable under California law for allowing border patrol to harass and racially profile its customers. The case heralds that Greyhound passengers do not check their rights and dignity at the bus door and has had an immediate impact, not only in California but nationwide. Within weeks of Robbins Geller filing the case, Greyhound added "know your rights" information to passengers to its website and on posters in bus stations around the country, along with adopting other business reforms.

- Working with the Homeless Action Center (HAC) to provide no-cost, barrier-free, culturally competent legal representation that makes it possible for people who are homeless (or at risk of becoming homeless) to access social safety net programs that help restore dignity and provide sustainable income, healthcare, mental health treatment, and housing. Based in Oakland and Berkeley, the non-profit is the only program in the Bay Area that specializes in legal services to those who are chronically homeless. In 2016, HAC provided assistance to 1,403 men and 936 women, and 1,691 cases were completed. An additional 1,357 cases were still pending when the year ended. The results include 512 completed SSI cases with a success rate of 87%.

- Representing Trump University students in two class actions against President Donald J. Trump. The historic settlement provides $25 million to approximately 7,000 consumers. This means individual class members are 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.

PROMINENT CASES, PRECEDENT-SETTING DECISIONS, AND JUDICIAL COMMENDATIONS

Prominent Cases

Over the years, Robbins Geller attorneys have 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 securities class action recovery in 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, 2016 U.S. Dist. LEXIS 156921, at *8 (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 Valeant Pharms. Int'l, Inc. Sec. Litig.***, No. 3:15-cv-07658 (D.N.J.). As sole lead counsel, Robbins Geller attorneys obtained a $1.2 billion settlement in the securities case that *Vanity Fair* reported as "the corporate scandal of its era" that had raised "fundamental questions about the functioning of our health-care system, the nature of modern markets, and the slippery slope of ethical rationalizations." The settlement resolves claims that defendants made false and misleading statements regarding Valeant's business and financial performance during the class period, attributing Valeant's dramatic growth in revenues and profitability to "innovative new marketing approaches" as part of a business model that was low risk and "durable and sustainable." *Valeant* is the largest securities class action settlement against a pharmaceutical manufacturer and the ninth largest ever.

- ***In re Am. Realty Cap. Props., Inc. Litig.***, No. 1:15-mc-00040 (S.D.N.Y.). As sole lead counsel, Robbins Geller attorneys zealously litigated the case arising out of ARCP's manipulative accounting practices and obtained a $1.025 billion settlement. For five years, the litigation team prosecuted nine different claims for violations of the Securities Exchange Act of 1934 and Securities Act of 1933, involving seven different stock or debt offerings and two mergers. The recovery represents the highest percentage of damages of any major PSLRA case prior to trial and includes the largest personal contributions by individual defendants in history.

  In approving the settlement, the Honorable Alvin K. Hellerstein lauded the Robbins Geller litigation team, noting: "My own observation is that plaintiffs' representation is adequate and that the role of lead counsel was fulfilled in an extremely fine fashion by [Robbins Geller]. At every juncture, the representations made to me were reliable, the arguments were cogent, and the representation of their client was zealous."

- ***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 numerous 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: "[T]his is an extraordinary settlement relative to all the other settlements in cases of this nature and certainly cases of this magnitude. . . . This was an outstanding settlement. . . . [I]n most instances, if you've gotten four cents on the dollar, you've done well. You've gotten twenty cents on the dollar, so that's been extraordinary. *In re Cardinal Health, Inc. Sec. Litig.*, No. 2:04-CV-575, Transcript at 16, 32 (S.D. Ohio Oct. 19, 2007). Judge Marbley further stated:

> 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 Cnty.). 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 Facebook Biometric Info. Privacy Litig.,*** No. 3:15-cv-03747 (N.D. Cal.). Robbins Geller served as co-lead class counsel in a cutting-edge certified class action, securing a record-breaking $650 million all-cash settlement, the largest privacy settlement in history. The case concerned Facebook's alleged privacy violations through its collection of its users' biometric identifiers without informed consent through its "Tag Suggestions" feature, which uses proprietary facial recognition software to extract from user-uploaded photographs the unique biometric identifiers (*i.e.*, graphical representations of facial features, also known as facial geometry) associated with people's faces and identify who they are. The Honorable James Donato called the settlement "a groundbreaking settlement in a novel area" and praised the unprecedented 22% claims rate as "pretty phenomenal" and "a pretty good day in class settlement history."

- ***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 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."

- ***Smilovits v. First Solar, Inc.***, No. 2:12-cv-00555 (D. Ariz.). As sole lead counsel, Robbins Geller obtained a $350 million settlement in *Smilovits v. First Solar, Inc.* The settlement, which was reached after a long legal battle and on the day before jury selection, resolves claims that First Solar violated §§10(b) and 20(a) of the Securities Exchange Act of 1934 and SEC Rule 10b-5. The settlement is the fifth-largest PSLRA settlement ever recovered in the Ninth Circuit.

- ***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 more than 30% of the aggregate classwide 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, 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, one of the largest IPOs 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 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 Cnty.). 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 Cnty.). 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 Pracs. 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 vanguard of complex class action of litigation. Our work often changes the legal landscape, resulting in an environment that is more-favorable for obtaining recoveries for our clients.

- ***Stoyas v. Toshiba Corp.***, 896 F.3d 933 (9th Cir. 2018), *cert. denied*, 588 U.S. __ (2019). In July 2018, the Ninth Circuit ruled in plaintiffs' favor in the *Toshiba* securities class action. Following appellate briefing and oral argument by Robbins Geller attorneys, a three-judge Ninth Circuit panel reversed the district court's prior dismissal in a unanimous, 36-page opinion, holding that Toshiba ADRs are a "security" and the Securities Exchange Act of 1934 could apply to those ADRs that were purchased in a domestic transaction. *Id.* at 939, 949. The court adopted the Second and Third Circuits' "irrevocable liability" test for determining whether the transactions were domestic and held that plaintiffs must be allowed to amend their complaint to allege that the purchase of Toshiba ADRs on the over-the-counter market was a domestic purchase and that the alleged fraud was in connection with the purchase.

- ***Cyan, Inc. v. Beaver Cnty. Emps. Ret. Fund***, No. 15-1439 (U.S.). In March 2018, the U.S. Supreme Court ruled in favor of investors represented by Robbins Geller, holding that state courts continue to have jurisdiction over class actions asserting violations of the Securities Act of 1933. The court's ruling secures investors' ability to bring Securities Act actions when companies fail to make full and

fair disclosure of relevant information in offering documents. The court confirmed that the Securities Litigation Uniform Standards Act of 1998 was designed to preclude securities class actions asserting violations of state law – not to preclude securities actions asserting federal law violations brought in state courts.

- ***Mineworkers' Pension Scheme v. First Solar Inc.***, 881 F.3d 750 (9th Cir. 2018), *cert. denied*, 588 U.S. __ (2019). In January 2018, the Ninth Circuit upheld the district court's denial of defendants' motion for summary judgment, agreeing with plaintiffs that the test for loss causation in the Ninth Circuit is a general "proximate cause test," and rejecting the more stringent revelation of the fraudulent practices standard advocated by the defendants. The opinion is a significant victory for investors, as it forecloses defendants' ability to immunize themselves from liability simply by refusing to publicly acknowledge their fraudulent conduct.

- ***In re Quality Sys., Inc. Sec. Litig.***, No. 15-55173 (9th Cir.). In July 2017, Robbins Geller's Appellate Practice Group scored a significant win in the Ninth Circuit in the *Quality Systems* securities class action. On appeal, a three-judge Ninth Circuit panel unanimously reversed the district court's prior dismissal of the action against Quality Systems and remanded the case to the district court for further proceedings. The decision addressed an issue of first impression concerning "mixed" future and present-tense misstatements. The appellate panel explained that "non-forward-looking portions of mixed statements are not eligible for the safe harbor provisions of the PSLRA . . . . Defendants made a number of mixed statements that included projections of growth in revenue and earnings based on the state of QSI's sales pipeline." The panel then held *both* the non-forward-looking and forward-looking statements false and misleading and made with scienter, deeming them actionable. Later, although defendants sought rehearing by the Ninth Circuit sitting *en banc*, the circuit court denied their petition.

- ***Local 703, I.B. of T. Grocery & Food Emps. Welfare Fund v. Regions Fin. Corp.***, No. CV-10-J-2847-S (N.D. Ala.). In the *Regions Financial* securities class action, Robbins Geller represented Local 703, I.B. of T. Grocery and Food Employees Welfare Fund and obtained a $90 million settlement in September 2015 on behalf of purchasers of Regions Financial common stock during the class period. In August 2014, the Eleventh Circuit Court of Appeals affirmed the district court's decision to certify a class action based upon alleged misrepresentations about Regions Financial's financial health before and during the recent economic recession, and in November 2014, the U.S. District Court for the Northern District of Alabama denied defendants' third attempt to avoid plaintiffs' motion for class certification.

- ***Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund***, No. 13-435 (U.S.). In March 2015, the U.S. Supreme Court ruled in favor of investors represented by Robbins Geller that investors asserting a claim under §11 of the Securities Act of 1933 with respect to a misleading statement of opinion do not, as defendant Omnicare had contended, have to prove that the statement was subjectively disbelieved when made. Rather, the court held that a statement of opinion may be actionable either because it was not believed, or because it lacked a reasonable basis in fact. This decision is significant in that it resolved a conflict among the federal circuit courts and expressly overruled the Second Circuit's widely followed, more stringent pleading standard for §11 claims involving statements of opinion. The Supreme Court remanded the case back to the district court for determination under the newly articulated standard. In August of 2016, upon remand, the district court applied the Supreme Court's new test and denied defendants' motion to dismiss in full.

- ***NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.***, 693 F.3d 145 (2d Cir. 2012). 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*, 563 U.S 27, 48-49 (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***, 563 U.S 27 (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 Cap. 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.

- ***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.'"

- ***Dent v. National Football League***, No. 15-15143 (9th Cir.). In September 2018, the United States Court of Appeals for the Ninth Circuit issued an important decision reversing the district court's previous dismissal of the *Dent v. National Football League* litigation, concluding that the complaint brought by NFL Hall of Famer Richard Dent and others should not be dismissed on labor-law preemption grounds. The case was remanded to the district court for further proceedings.

- ***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:

- On February 4, 2021, in granting final approval of the settlement, the Honorable Mark H. Cohen of the United States District Court for the Northern District of Georgia stated: "Lead Counsel successfully achieved a greater-than-average settlement 'in the face of significant risks.'" Robbins Geller's "hard-fought litigation in the Eleventh Circuit" and "[i]n considering the experience, reputation, and abilities of the attorneys, the Court recognize[d] that Lead Counsel is well-regarded in the legal community, especially in litigating class-action securities cases." *Monroe County Employees' Retirement System v. The Southern Company*, No. 1:17-cv-00241, Order at 8-9 (N.D. Ga. Feb. 4, 2021).

- On December 18, 2020, at the final approval hearing of the settlement, the Honorable Yvonne Gonzalez Rogers of the United States District Court for the Northern District of California commended Robbins Geller, stating: "Counsel performed excellent work in not only investigating and analyzing the core of the issues, but in negotiating and demanding the necessary reforms to prevent malfeasance for the benefit of the shareholders and the consumers. The Court complements counsel for its excellence." *In re RH S'holder Derivative Litig.*, No. 4:18-cv-02452-YGR, Order and Final Judgment at 3 (N.D. Cal. Dec. 18, 2020).

- On October 23, 2020, at the final approval hearing of the settlement, the Honorable P. Kevin Castel of the United States District Court for the Southern District of New York praised the firm, "[Robbins Geller] has been sophisticated and experienced." He also noted that: "[T]he quality of the representation . . . was excellent. The experience of counsel is also a factor. Robbins Geller certainly has the extensive experience and they were litigating against national powerhouses . . . ." *City of Birmingham Ret. & Relief Sys. v. BRF S.A.*, No. 18 Civ. 2213 (PKC), Transcript at 12-13, 18 (S.D.N.Y. Oct. 23, 2020).

- In May 2020, in granting final approval of the settlement, the Honorable Mark L. Wolf praised Robbins Geller: "[T]he class has been represented by excellent honorable counsel . . . . [T]he fund was represented by experienced, energetic, able counsel, the fund was engaged and informed, and the fund followed advice of experienced counsel. Counsel for the class have been excellent, and I would say honorable." Additionally, Judge Wolf noted, "I find that the work that's been done primarily by Robbins Geller has been excellent and honorable and efficient. . . . [T]his has been a challenging case, and they've done an excellent job." *McGee v. Constant Contact, Inc.*, No. 1:15-cv-13114-MLW, Transcript at 21, 31, 61 (D. Mass. May 27, 2020).

- In December 2019, the Honorable Margo K. Brodie noted in granting final approval of the settlement that "[Robbins Geller and co-counsel] have also demonstrated the utmost professionalism despite the demands of the extreme perseverance that this case has required, litigating on behalf of a class of over 12 million for over fourteen years, across a changing legal landscape, significant motion practice, and appeal and remand. Class counsel's pedigree and efforts alone speak to the quality of their representation." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, No. 1:05-md-01720-MKB-JO, Memorandum & Order (E.D.N.Y. Dec. 16, 2019).

- In October 2019, the Honorable Claire C. Cecchi noted that Robbins Geller is "capable of adequately representing the class, both based on their prior experience in class action lawsuits and based on their capable advocacy on behalf of the class in this action." The court further commended the Firm and co-counsel for "conduct[ing] the [l]itigation . . . with skill, perseverance, and diligent advocacy." *Lincoln Adventures, LLC v. Those Certain Underwriters at Lloyd's, London Members*, No. 2:08-cv-00235-CCC-JAD, Order at 4 (D.N.J. Oct. 3, 2019); *Lincoln Adventures, LLC v. Those Certain Underwriters at Lloyd's, London Members of Syndicates*, No. 2:08-cv-00235-CCC-JAD, Order Awarding Attorneys' Fees and Expenses/Charges and Service Awards at 3 (D.N.J. Oct. 3, 2019).

- In June 2019, the Honorable T.S. Ellis, III noted that Robbins Geller "achieved the [$108 million] [s]ettlement with skill, perseverance, and diligent advocacy." At the final approval hearing, the court further commended Robbins Geller by stating, "I think the case was fully and appropriately litigated [and] you all did a very good job. . . . [T]hank you for your service in the court. . . . [You're] first-class lawyers . . . ." *Knurr v. Orbital ATK, Inc.*, No. 1:16-cv-01031, Order Awarding Attorneys' Fees and Expenses at 3 (E.D. Va. June 7, 2019); *Knurr v. Orbital ATK, Inc.*, No. 1:16-cv-01031, Transcript at 28-29 (E.D. Va. June 7, 2019).

- In June 2019, in granting final approval of the settlement, the Honorable John A. Houston stated: Robbins Geller's "skill and quality of work was extraordinary . . . . I'll note from the top that this has been an aggressively litigated action." *In re Morning Song Bird Food Litig.*, No. 3:12-cv-01592-JAH-AGS, Transcript at 4, 9 (S.D. Cal. June 3, 2019).

- In May 2019, in granting final approval of the settlement, the Honorable Richard H. DuBois

stated: Robbins Geller is "highly experienced and skilled" for obtaining a "fair, reasonable, and adequate" settlement in the "interest of the [c]lass [m]embers" after "extensive investigation." *Chicago Laborers Pension Fund v. Alibaba Grp. Holding Ltd.*, No. CIV535692, Judgment and Order Granting Final Approval of Class Action Settlement at 3 (Cal. Super. Ct., San Mateo Cnty. May 17, 2019).

- In April 2019, the Honorable Kathaleen St. J. McCormick noted: "[S]ince the inception of this litigation, plaintiffs and their counsel have vigorously prosecuted the claims brought on behalf of the class. . . . When Vice Chancellor Laster appointed lead counsel, he effectively said: Go get a good result. And counsel took that to heart and did it. . . . The proposed settlement was the product of intense litigation and complex mediation. . . . [Robbins Geller has] only built a considerable track record, never burned it, which gave them the credibility necessary to extract the benefits achieved." *In re Calamos Asset Mgmt., Inc. S'holder Litig.*, No. 2017-0058-JTL, Transcript at 87, 93, 95, 98 (Del. Ch. Apr. 25, 2019).

- In April 2019, the Honorable Susan O. Hickey noted that Robbins Geller "achieved an exceptional [s]ettlement with skill, perseverance, and diligent advocacy." *City of Pontiac Gen. Emps.' Ret. Sys. v. Wal-Mart Stores, Inc.*, No. 5:12-cv-5162, Order Awarding Attorneys' Fees and Expenses at 3 (W.D. Ark. Apr. 8, 2019).

- In January 2019, the Honorable Margo K. Brodie noted that Robbins Geller "has arduously represented a variety of plaintiffs' groups in this action[,] . . . [has] extensive antitrust class action litigation experience . . . [and] negotiated what [may be] the largest antitrust settlement in history." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 34 (E.D.N.Y. 2019).

- On December 20, 2018, at the final approval hearing for the settlement, the court lauded Robbins Geller's attorneys and their work: "[T]his is a pretty extraordinary settlement, recovery on behalf of the members of the class. . . . I've been very impressed with the level of lawyering in the case . . . and with the level of briefing . . . and I wanted to express my appreciation for that and for the work that everyone has done here." The court concluded, "your clients were all blessed to have you, [and] not just because of the outcome." *Duncan v. Joy Global, Inc.*, No. 16-CV-1229, Transcript at 12, 20-21 (E.D. Wis. Dec. 20, 2018).

- In October 2017, the Honorable William Alsup noted that Robbins Geller and lead plaintiff "vigorously prosecuted this action." *In re LendingClub Sec. Litig.*, No. 3:16-cv-02627-WHA, Order at 13 (N.D. Cal. Oct. 20, 2017).

- On November 9, 2018, in granting final approval of the settlement, the Honorable Jesse M. Furman commented: "[Robbins Geller] did an extraordinary job here. . . . [I]t is fair to say [this was] probably the most complicated case I have had since I have been on the bench. . . . I cannot really imagine how complicated it would have been if I didn't have counsel who had done as admirable [a] job in briefing it and arguing as you have done. You have in my view done an extraordinary service to the class. . . . I think you have done an extraordinary job and deserve thanks and commendation for that." *Alaska Elec. Pension Fund v. Bank of Am. Corp.*, No. 1:14-cv-07126-JMF-OTW, Transcript at 27-28 (S.D.N.Y. Nov. 9, 2018).

- On September 12, 2018, at the final approval hearing of the settlement, the Honorable William H. Orrick of the Northern District of California praised Robbins Geller's "high-quality lawyering" in a case that "involved complicated discovery and complicated and novel legal issues," resulting in an "excellent" settlement for the class. The "lawyering . . . was excellent" and the case was "very well litigated." *In re Lidoderm Antitrust Litig.*, No. 14-MDL-02521-WHO, Transcript at 11, 14, 22 (N.D. Cal. Sept. 12, 2018).

- On March 31, 2017, in granting final approval of the settlement, the Honorable Gonzalo P. Curiel hailed the settlement as "extraordinary" and "all the more exceptional when viewed in light of the risk" of continued litigation. The court further commended Robbins Geller for prosecuting the case on a *pro bono* basis: "Class Counsel's exceptional decision to provide nearly seven years of legal services to Class Members on a *pro bono* basis evidences not only a lack of collusion, but also that Class Counsel are in fact representing the best interests of Plaintiffs and the Class Members in this Settlement. Instead of seeking compensation for fees and costs that they would otherwise be entitled to, Class Counsel have acted to allow maximum recovery to Plaintiffs and Class Members. Indeed, that Eligible Class Members may receive recovery of 90% or greater is a testament to Class Counsel's representation and dedication to act in their clients' best interest." In addition, at the final approval hearing, the court commented that "this is a case that has been litigated – if not fiercely, zealously throughout." *Low v. Trump Univ., LLC*, 246 F. Supp. 3d 1295, 1302, 1312 (S.D. Cal. 2017), *aff'd*, 881 F.3d 1111 (9th Cir. 2018); *Low v. Trump University LLC and Donald J. Trump*, No. 10-cv-0940 GPC-WVG, and *Cohen v. Donald J. Trump*, No. 13-cv-2519-GPC-WVG, Transcript at 7 (S.D. Cal. Mar. 30, 2017).

- In January 2017, at the final approval hearing, the Honorable Kevin H. Sharp of the Middle District of Tennessee commended Robbins Geller attorneys, stating: "It was complicated, it was drawn out, and a lot of work clearly went into this [case] . . . . I think there is some benefit to the shareholders that are above and beyond money, a benefit to the company above and beyond money that changed hands." *In re Community Health Sys., Inc. S'holder Derivative Litig.*, No. 3:11-cv-00489, Transcript at 10 (M.D. Tenn. Jan. 17, 2017).

- In November 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 fourth-largest securities recovery ever in the Middle District of Tennessee and one of the largest in more than a decade. *Garden City Emps.' Ret. Sys. v. Psychiatric Sols., Inc.*, No. 3:09-cv-00882, 2015 U.S. Dist. LEXIS 181943, at *6-*7 (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 Cnty. 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 commented that the Firm "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 Cnty. 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)), *aff'd in part and vacated in part on other grounds*, 762 F.3d 1248 (11th Cir. 2014).

- 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 Techs., 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 Cnty. 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 Gen. Emps.' Ret. Sys. v. Langone*, No. 2006-122302, Findings of Fact in Support of Order and Final Judgment at 2 (Ga. Super. Ct., Fulton Cnty. 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, 2006).

- 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).

ATTORNEY BIOGRAPHIES

Mario Alba Jr. | Partner

Mario Alba is a partner in the Firm's Melville office. He is 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 securities cases involving: Acadia Healthcare Company, Inc.; Reckitt Benckiser Group plc; Livent Corporation; Ryanair Holdings plc; Southwest Airlines Co.; Green Dot Corporation; and XPO Logistics, Inc. Alba's institutional clients are/were also involved in other types of class actions, namely: *In re National Prescription Opiate Litigation*, *In re Epipen (Epinephrine Injection, USP) Marketing, Sales Practices and Antitrust Litigation* ($345 million partial settlement achieved a few months prior to trial; additional $264 million settlement pending approval), *Forth v. Walgreen Co.*, and *In re Humira (Adalimumab) Antitrust Litigation*.

Alba 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 hundreds of millions of dollars in numerous actions, including cases against BHP Billiton Limited ($50 million recovery), BRF S.A. ($40 million recovery), L3 Technologies, Inc. ($34.5 million recovery), Impax Laboratories Inc. ($33 million recovery); Super Micro Computer, Inc. ($18.25 million recovery); NBTY, Inc. ($16 million recovery), OSI Pharmaceuticals ($9 million recovery), Advisory Board Company ($7.5 million recovery), Iconix Brand Group, Inc. ($6 million recovery), and PXRe Group, Ltd. ($5.9 million).

Alba has lectured at numerous institutional investor conferences throughout the United States on various shareholder issues, including at the Opal Public Funds Summit, Koried Plan Sponsor Educational Institute, Georgia Association of Public Pension Trustees (GAPPT) Annual Conference, 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

Rising Star, *Super Lawyers Magazine*, 2012-2013, 2016-2017; B.S., Dean's List, St. John's University, 1999; Selected as participant in Hofstra Moot Court Seminar, Hofstra University School of Law

Michael Albert | Partner

Michael Albert is a partner in the Firm's San Diego office, where his practice focuses on complex securities litigation. Albert is a member of the Firm's Lead Plaintiff Advisory Team, which advises institutional investors in connection with lead plaintiff motions, and assists them in securing appointment as lead plaintiff. He is also part of the Firm's SPAC Task Force, which is dedicated to rooting out and prosecuting fraud on behalf of injured investors in special purpose acquisition companies.

Albert has been a member of litigation teams that have successfully recovered hundreds of millions of dollars for investors in securities class actions, including: *NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.* ($272 million recovery), *City of Pontiac General Employees' Retirement Systems v. Wal-Mart Stores, Inc.* ($160 million recovery), and *In re LendingClub Securities Litigation* ($125 million recovery). Albert was also a member of the litigation team that recently obtained a $85 million cash settlement in a consumer class action against Scotts Miracle-Gro.

Education

B.A., University of Wisconsin-Madison, 2010; J.D., University of Virginia School of Law, 2014

Honors / Awards

Rising Star, *Super Lawyers Magazine*, 2020-2021; Managing Board Member, *Virginia Tax Review*, University of Virginia School of Law

Matthew I. Alpert | Partner

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 XPO Logistics (D. Conn.), Canada Goose (S.D.N.Y.), Inogen (C.D. Cal.), and Under Armour (D. Md.). Most recently, Alpert and a team of Robbins Geller attorneys obtained a $1.21 billion settlement in *In re Valeant Pharms. Int'l, Inc. Sec. Litig.* (D.N.J.), a case that *Vanity Fair* reported as "the corporate scandal of its era" that had raised "fundamental questions about the functioning of our health-care system, the nature of modern markets, and the slippery slope of ethical rationalizations." This is the largest securities class action settlement against a pharmaceutical manufacturer and the ninth largest ever. Alpert was also a member 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.

Some of Alpert's previous cases include: the individual opt-out actions of the AOL Time Warner class action – *Regents of the Univ. of Cal. v. Parsons* (Cal. Super. Ct., Los Angeles Cnty.) and *Ohio Pub. Emps. Ret. Sys. v. Parsons* (Ohio. Ct. of Common Pleas, Franklin Cnty.) (total settlement over $600 million); *Local 703, I.B. of T. Grocery & Food Emps. Welfare Fund v. Regions Fin. Corp.* (N.D. Ala.) ($90 million settlement); *In re MGM Mirage Sec. Litig.* (D. Nev.) ($75 million); *In re CIT Grp. Inc. Sec. Litig.* (S.D.N.Y.) ($75 million settlement); *Luna v. Marvell Tech. Grp., Ltd.* (N.D. Cal.) ($72.5 million settlement); *Deka Investment GmbH v. Santander Consumer USA Holdings Inc.* (N.D. Tex.) ($47 million settlement); *In re Bridgestone Sec. Litig.* (M.D. Tenn.) ($30 million settlement); *In re Walter Energy, Inc. Sec. Litig.* (N.D. Ala.) ($25 million); *City of Hialeah Emps.' Ret. Sys. & Laborers Pension Trust Fund for N. Cal. v. Toll Brothers, Inc.* (E.D. Pa.) ($25 million settlement); *In re Molycorp, Inc. Sec. Litig.* (D. Colo.) ($20.5 million settlement); *In re Banc of California Sec. Litig.* (C.D. Cal.) ($19.75 million); *Zimmerman v. Diplomat Pharmacy, Inc.* (E.D. Mich.) ($14.1 million); *Batwin v. Occam Networks, Inc.* (C.D. Cal.) ($13.9 million settlement); *Int'l Brotherhood of Elec. Workers Local 697 Pension Fund v. Int'l Game Tech.* (D. Nev.) ($12.5 million settlement); *Kmiec v. Powerwave Techs. Inc.* (C.D. Cal.) ($8.2 million); *In re Sunterra Corp. Sec. Litig.* (D. Nev.) ($8 million settlement); and *Luman v. Anderson* (W.D. Mo.) ($4.25 million settlement).

Education

B.A., University of Wisconsin at Madison, 2001; J.D., Washington University, St. Louis, 2005

Honors / Awards

Rising Star, *Super Lawyers Magazine*, 2015-2019

Darryl J. Alvarado | Partner

Darryl Alvarado is a partner in the Firm's San Diego office. He focuses his practice on securities fraud and other complex civil litigation. Alvarado was a member of the trial team in *Smilovits v. First Solar, Inc.*, which recovered $350 million for aggrieved investors. The *First Solar* settlement, reached on the eve of trial after more than seven years of litigation and an interlocutory appeal to the U.S. Supreme Court, is the fifth-largest PSLRA recovery ever obtained in the Ninth Circuit. Alvarado recently litigated *Monroe County Employees' Retirement System v. The Southern Company*, which recovered $87.5 million for investors after more than three years of litigation. The settlement resolved securities fraud claims stemming from defendants' issuance of misleading statements and omissions regarding the construction of a first-of-its-kind "clean coal" power plant in Kemper County, Mississippi. Alvarado helped secure $388 million for investors in J.P. Morgan residential mortgage-backed securities in *Fort Worth Employees' Retirement 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 Litigation*.

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. Alvarado was also a member of a team of attorneys responsible for obtaining for aggrieved investors $27 million in *In re Cooper Companies Securities Litigation*, $19.5 million in *City of Pontiac General Employees' Retirement System v. Lockheed Martin Corporation*, and comprehensive corporate governance reforms to address widespread off-label marketing and product safety violations in *In re Johnson & Johnson Derivative Litigation*.

Education

B.A., University of California, Santa Barbara, 2004; J.D., University of San Diego School of Law, 2007

Honors / Awards

40 & Under Hot List, *Benchmark Litigation*, 2018-2021; Top 40 Under 40, *Daily Journal*, 2021; Rising Star, *Super Lawyers Magazine*, 2015-2021; "Outstanding Young Attorneys," *San Diego Daily Transcript*, 2011

X. Jay Alvarez | Partner

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. Litig.* ($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 Donald J. Trump. The settlement provides $25 million to approximately 7,000 consumers. This result means individual class members are 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

Honors / Awards

Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2020

Dory P. Antullis | Partner

Dory Antullis is a partner in the Firm's Boca Raton office and has been practicing law for 17 years, first at a major defense firm and the last 9-1/2 at Robbins Geller. Her practice focuses on complex class actions, including consumer fraud, RICO, public nuisance, data breach, pharmaceuticals, and antitrust litigation.

Antullis, along with other Robbins Geller attorneys, is currently leading the effort on behalf of cities and counties around the country in *In re Nat'l Prescription Opiate Litig.*, No. 1:17-MD-2804 (N.D. Ohio). She also serves as a primary counsel for named plaintiffs in the consolidated Third Party Payer class action in *In re Zantac (Ranitidine) Prods. Liab. Litig.*, No. 9:20-md-02924-RLR (S.D. Fla.), and is as a core member of the MDL Class Committee responsible for drafting, defending, and proving products liability, RICO, and consumer protection allegations on behalf of both TPPs and consumers nationwide.

Antullis has been an integral part of Robbins Geller's history of successful privacy and data breach class action cases. She is currently serving as Interim Co-Lead Class Counsel in *In re Luxottica of America, Inc. Data Breach Litig.*, No. 1:20-cv-00908-MRB (S.D. Ohio). Her heavy lifting at every stage of the litigation in *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 5:16-md-02752-LHK (N.D. Cal.), helped to secure a $117.5 million recovery in the largest data breach in history. Antullis successfully defeated two rounds of dispositive briefing, worked with leadership and computer privacy and damages experts to plan a winning strategy for the case, and drafted an innovative motion for class certification that immediately preceded a successful mediation with defendants in that litigation. Antullis also provided meaningful "nuts-and-bolts" support in other data breach class actions, including *In re Am. Med. Collection Agency, Inc., Customer Data Sec. Breach Litig.*, No. 2:19-md-02904-MCA-MAH (D.N.J.) (representing class of LabCorp customers), and *In re Solara Med. Supplies Customer Data Breach Litig.*, No. 3:19-cv-02284-H-KSC (S.D. Cal.) (representing victims of a protected health information data breach).

Education

B.A., Rice University, 1999; J.D., Columbia Law School, 2003

Honors / Awards

500 Leading Plaintiff Consumer Lawyer, *Lawdragon*, 2022; National Merit Scholar, Rice University; Golden Key National Honor Society, Rice University; Nominated for *The Rice Undergraduate* academic journal, Rice University; Michael I. Sovern Scholar, Columbia Law School; Hague Appeal for Peace, Committee for a Just and Effective Response to 9/11, Columbia Law School; Columbia Mediation and Political Asylum Clinics, Columbia Law School; Harlem Tutorial Program, Columbia Law School; Journal of Eastern European Law, Columbia Law School; Columbia Law Women's Association, Columbia Law School

Stephen R. Astley | Partner

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 Gen. Emps.' Ret. Sys. v. Hospira, Inc.* Other notable representations include: *In re ADT Inc. S'holder Litig.* (Fla. Cir. Ct., 15th Jud. Cir.) ($30 million settlement); *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. | Partner

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. He is also part of the Firm's SPAC Task Force, which is dedicated to rooting out and prosecuting fraud on behalf of injured investors in special purpose acquisition companies. Most recently, in *In re Dole Food Co., Inc. S'holder 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 obtain 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 Hosp., 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

Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2022; Recommended Lawyer, *The Legal 500*, 2017-2019; M&A Litigation Attorney of the Year in California, *Corporate International*, 2015; Super Lawyer, *Super Lawyers Magazine*, 2014-2017; 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 | Partner

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, along with other Robbins Geller attorneys, is currently leading the effort on behalf of cities and

counties around the country in *In re National Prescription Opiate Litigation*. She has also been appointed to the Plaintiffs' Steering Committee in *In re Juul Labs, Inc., Marketing Sales Practices and Product Liability Litigation*, currently pending before the Honorable William H. Orrick in the Northern District of California. She serves on the expert and trial committees and represents, among others, one of the trial bellwethers. Baig and her team have recently completed discovery and are currently preparing for expert reports and trial. She has also been appointed by the Honorable Charles R. Breyer in the Northern District of California to the Plaintiffs' Steering Committee in *In re McKinsey & Co., Inc. National Prescription Opiate Consultant Litigation*.

Additionally, Baig prosecuted an action against Wells Fargo's directors and officers accusing the giant of engaging in the robosigning of 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 and a team of Robbins Geller attorneys recently obtained a $62.5 million settlement in *Villella v. Chemical and Mining Company of Chile Inc.*, a securities class action against a Chilean mining company. The case alleged that Sociedad Química y Minera de Chile S.A. ("SQM") violated the Securities Exchange Act of 1934 by issuing materially false and misleading statements regarding the Company's failure to disclose that money from SQM was channeled illegally to electoral campaigns for Chilean politicians and political parties as far back as 2009. SQM had also filed millions of dollars' worth of fictitious tax receipts with Chilean authorities in order to conceal bribery payments from at least 2009 through fiscal 2014. Due to the company being based out of Chile and subject to Chilean law and rules, Baig and the Robbins Geller litigation team put together a multilingual litigation team with Chilean expertise. Baig was also 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

Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2022; 500 Leading Plaintiff Consumer Lawyer, *Lawdragon*, 2022; Leading Lawyer in America, *Lawdragon*, 2020-2022; Best Lawyer in America: One to Watch, *Best Lawyers*®, 2021-2022; Plaintiffs' Lawyers Trailblazer, *The National Law Journal*, 2021; Best Lawyer in Northern California: One to Watch, *Best Lawyers*®, 2021; Featured in "Lawyer Limelight" series, *Lawdragon*, 2020; Litigation Trailblazer, *The National Law Journal*, 2019; California Trailblazer, *The Recorder*, 2019; Super Lawyer, *Super Lawyers Magazine*, 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 | Partner

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, and 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 Cnty.), where Baron obtained an unprecedented $200 million common fund for former Kinder Morgan shareholders, the largest merger & acquisition class action recovery in history; *In re Dole Food Co., Inc. S'holder Litig.* (Del. Ch.), where he went to trial in the Delaware Court of Chancery on claims of breach of fiduciary duty on behalf of Dole Food Co., Inc. shareholders and obtained $148 million, the largest trial verdict ever in a class action challenging a merger transaction; and *In re Rural/Metro Corp. S'holders Litig.* (Del. Ch.), where Baron and co-counsel obtained nearly $110 million total recovery 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. Most recently, Baron successfully obtained a partial settlement of $60 million in *In re Tesla Motors, Inc. S'holder Litig.*, a case that alleged that the members of the Tesla Board of Directors breached their fiduciary duties, unjustly enriched themselves, and wasted corporate assets in connection with their approval of Tesla's acquisition of SolarCity Corp. in 2016.

Education

B.A., University of Colorado at Boulder, 1987; J.D., University of San Diego School of Law, 1990

Honors / Awards

Fellow, Advisory Board, Litigation Counsel of America (LCA); Rated Distinguished by Martindale-Hubbell; Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2022; Hall of Fame, *The Legal 500*, 2020-2022; Leading Lawyer, *Chambers USA*, 2016-2022; Plaintiffs' Lawyer Trailblazer, *The National Law Journal*, 2022; Leading Lawyer in America, *Lawdragon*, 2011, 2017-2019, 2021-2022; Best Lawyer in America, *Best Lawyers®*, 2019-2022; Southern California Best Lawyer, *Best Lawyers®*, 2019-2021; Super Lawyer, *Super Lawyers Magazine*, 2014-2016, 2018-2020; National Practice Area Star, *Benchmark Litigation*, 2019-2020; Local Litigation Star, *Benchmark Litigation*, 2018, 2020; Leading Lawyer, *The Legal 500*, 2014-2019; Litigation Star, *Benchmark Litigation*, 2016-2019; California Star, *Benchmark Litigation*, 2019; State Litigation Star, *Benchmark Litigation*, 2019; Winning Litigator, *The National Law Journal*, 2018; Titan of the Industry, *The American Lawyer*, 2018; Recommended Lawyer, *The Legal 500*, 2017; 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; 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 | Partner

James Barz is a partner with the Firm and manages the Firm's Chicago office. He has tried 18 cases to verdict, conducted numerous evidentiary hearings, drafted many appeals, and argued 9 cases in the Seventh Circuit. Barz is a registered CPA, former federal prosecutor, and an adjunct professor at Northwestern University School of Law from 2008 to 2021, 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 $2 billion. Most recently, Barz was lead counsel in *In re Valeant Pharms. Int'l, Inc. Sec. Litig.*, and secured a $1.21 billion recovery for investors, a case that *Vanity Fair* reported as "the corporate scandal of its era" that had raised "fundamental questions about the functioning of our health-care system, the nature of modern markets, and the slippery slope of ethical rationalizations." This is the largest securities class action settlement against a pharmaceutical manufacturer and the ninth largest securities class action settlement ever. Barz was recognized as a Litigator of the Week by *The American Lawyer* for his work in *In re Valeant Pharms. Int'l, Inc. Sec. Litig.*

Barz has also secured substantial recoveries for investors in *HCA* ($215 million, M.D. Tenn.); *Motorola* ($200 million, N.D. Ill.); *Sprint* ($131 million, D. Kan.); *Orbital ATK* ($108 million, E.D. Va.); *Psychiatric Solutions* ($65 million, M.D. Tenn.); *Dana Corp.* ($64 million, N.D. Ohio); *Hospira* ($60 million, N.D. Ill.); *Career Education* ($27.5 million, N.D. Ill.); *Accretive Health* ($14 million, N.D. Ill.); *LJM Funds Management, Ltd.* ($12.85 million, N.D. Ill.); and *Camping World* ($12.5 million). He has been 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 also handles whistleblower cases, including successful settlements in *United States v. Signature Healthcare LLC* (M.D. Tenn.) ($30 million) and *Goodman v. Arriva Medical LLC* (M.D. Tenn.) ($160 million settlement with government and $28.5 million award to whistleblower). Barz also handles antitrust cases, including currently serving on the Plaintiffs' Steering Committee in *In re Dealer Management Systems Antitrust Litigation* (N.D. Ill.).

Education

B.B.A., Loyola University Chicago, School of Business Administration, 1995; J.D., Northwestern University School of Law, 1998

Honors / Awards

Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2022; Midwest Trailblazer, *The American Lawyer*, 2022; Award for Excellence in Pro Bono Service, United States District Court for the Northern District of Illinois, 2021; Litigator of the Week, *The American Lawyer*, 2021; Super Lawyer, *Super Lawyers Magazine*, 2018-2021; Leading Lawyer, Law Bulletin Media, 2018; B.B.A., *Summa Cum Laude*, Loyola University Chicago, School of Business Administration, 1995; J.D., *Cum Laude*, Northwestern University School of Law, 1998

Lea Malani Bays | Partner

Lea Malani Bays is a partner 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 New York 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

Leading Lawyer, *Chambers USA*, 2019-2022; 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

Nathan W. Bear | Partner

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. Bear has been part of Robbins Geller litigation teams which have 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 Australian class actions, potential group actions in the United Kingdom, settlements in the European Union under the Wet Collectieve Afwikkeling Massaschade (WCAM), the Dutch Collective Mass Claims Settlement Act, as well as representative actions in Germany utilizing the Kapitalanlegermusterverfahrensgesetz (KapMuG), the Capital Market Investors' Model Proceeding Act. In *Abu Dhabi Commercial Bank v. Morgan Stanley & Co. Inc.*, Bear was a member of the litigation team which achieved 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 pursued banks over their manipulation of LIBOR, FOREX, and other benchmark rates. Additionally, Bear represents investors damaged by the defeat device scandal enveloping German automotive manufacturers, including Volkswagen, Porsche, and Daimler.

Education

B.A., University of California at Berkeley, 1998; J.D., University of San Diego School of Law, 2006

Honors / Awards

Rising Star, *Super Lawyers Magazine*, 2015-2016; "Outstanding Young Attorneys," *San Diego Daily Transcript*, 2011

Alexandra S. Bernay | Partner

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 $7.2 billion for investors. Bernay currently serves as co-lead counsel in *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, in which a settlement of $5.5 billion was approved in the Eastern District of New York. This case was brought on behalf of millions of U.S. merchants against Visa and MasterCard and various card-issuing banks, challenging the way these companies set and collect tens of billions of dollars annually in merchant fees. The settlement is believed to be the largest antitrust class action settlement of all time.

Additionally, Bernay is involved in *In re Remicade Antitrust Litig.* pending in the Eastern District of Pennsylvania – a large case involving anticompetitive conduct in the biosimilars market, where the Firm is sole lead counsel for the end-payor plaintiffs. She is also part of the litigation team in *In re Dealer Mgmt. Sys. Antitrust Litig.* (N.D. Ill.), which involves anticompetitive conduct related to dealer management systems on behalf of auto dealerships across the country. Another representative case is *Persian Gulf Inc. v. BP West Coast Prods. LLC* (S.D. Cal.), a massive case against the largest gas refiners in the world brought by gasoline station owners who allege they were overcharged for gasoline in California as a result of anticompetitive conduct.

Education

B.A., Humboldt State University, 1997; J.D., University of San Diego School of Law, 2000

Honors / Awards

Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2022; Litigator of the Week, *Global Competition Review*, October 1, 2014

Erin W. Boardman | Partner

Erin Boardman is a partner in the Firm's Melville office, where her practice focuses on representing individual and institutional investors in class actions brought pursuant to the federal securities laws. She has been involved in the prosecution of numerous securities class actions that have resulted in millions of dollars in recoveries for defrauded investors, including: *Medoff v. CVS Caremark Corp*. (D.R.I.) ($48 million recovery); *Construction Laborers Pension Tr. of Greater St. Louis v. Autoliv Inc*. (S.D.N.Y.) ($22.5 million recovery); *In re Gildan Activewear Inc. Sec. Litig*. (S.D.N.Y.) (resolved as part of a $22.5 million global settlement); *In re L.G. Phillips LCD Co., Ltd., Sec. Litig*. (S.D.N.Y.) ($18 million recovery); *In re Giant Interactive Grp., Inc. Sec. Litig*. (S.D.N.Y.) ($13 million recovery); *In re Coventry HealthCare, Inc. Sec. Litig*. (D. Md.) ($10 million recovery); *Lenartz v. American Superconductor Corp*. (D. Mass.) ($10 million recovery); *Dudley v. Haub* (D.N.J.) ($9 million recovery); *Hildenbrand v. W Holding Co*. (D.P.R.) ($8.75 million recovery); *In re Doral Fin. Corp. Sec. Litig*. (D.P.R.) ($7 million recovery); and *Van Dongen v. CNinsure Inc*. (S.D.N.Y.) ($6.625 million recovery). During law school, Boardman served as Associate Managing Editor of *the Journal of Corporate, Financial and Commercial Law*, interned in the chambers of the Honorable Kiyo A. Matsumoto in the United States District Court for the Eastern District of New York, and represented individuals on a *pro bono* basis through the Workers' Rights Clinic.

Education

B.A., State University of New York at Binghamton, 2003; J.D., Brooklyn Law School, 2007

Honors / Awards

Leading Plaintiff Financial Lawyer, *Lawdragon*, 2022; Rising Star, *Super Lawyers Magazine*, 2015-2018; B.A., *Magna Cum Laude*, State University of New York at Binghamton, 2003

Douglas R. Britton | Partner

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 | Partner

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 served as trial counsel in *Jaffe v. Household International* 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. Other prominent cases recently prosecuted by Brooks include *Fort Worth Emps.' Ret. 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. *Reuters* described the settlement as a "landmark" deal and emphasized that it was the "first time S&P and Moody's have settled accusations that investors were misled by their ratings." An article published in *Rolling Stone* magazine entitled "The Last Mystery of the Financial Crisis" similarly credited Robbins Geller with uncovering "a mountain of evidence" detailing the credit rating agencies' fraud. Most recently, Brooks served as lead counsel in *Smilovits v. First Solar, Inc.*, and obtained a $350 million settlement on the eve of trial. The settlement is fifth-largest PSLRA settlement ever recovered in the Ninth Circuit.

Education

B.A., University of Massachusetts at Amherst, 1997; J.D., University of San Francisco, 2000

Honors / Awards

Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2022; Local Litigation Star, *Benchmark Litigation*, 2017-2018, 2020; California Star, *Benchmark Litigation*, 2019; State Litigation Star, *Benchmark Litigation*, 2019; Recommended Lawyer, *The Legal 500*, 2017-2018; Member, *University of San Francisco Law Review*, University of San Francisco

Spencer A. Burkholz | Partner

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 25 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 International* 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. 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).

Education

B.A., Clark University, 1985; J.D., University of Virginia School of Law, 1989

Honors / Awards

Rated AV Preeminent by Martindale-Hubbell; Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2022; Plaintiffs' Lawyer Trailblazer, *The National Law Journal*, 2020, 2022; Leading Lawyer in America, *Lawdragon*, 2018-2022; Best Lawyer in America, *Best Lawyers®*, 2018-2022; Top Lawyer in San Diego, *San Diego Magazine*, 2013-2021; Southern California Best Lawyer, *Best Lawyers®*, 2018-2021; Super Lawyer, *Super Lawyers Magazine*, 2015-2016, 2020; Top 100 Trial Lawyer, *Benchmark Litigation*, 2018-2020; National Practice Area Star, *Benchmark Litigation*, 2020; Local Litigation Star, *Benchmark Litigation*, 2015-2018, 2020; Lawyer of the Year, *Best Lawyers®*, 2020; Recommended Lawyer, *The Legal 500*, 2017-2019; Top 20 Trial Lawyer in California, *Benchmark Litigation*, 2019; California Star, *Benchmark Litigation*, 2019; State Litigation Star, *Benchmark Litigation*, 2019; Plaintiff Attorney of the Year, *Benchmark Litigation*, 2018; B.A., *Cum Laude*, Clark University, 1985; *Phi Beta Kappa*, Clark University, 1985

Michael G. Capeci | Partner

Michael Capeci is a partner in the Firm's Melville office. His practice focuses on prosecuting complex securities class action lawsuits in federal and state courts. Throughout his tenure with the Firm, Capeci has played an integral role in the teams prosecuting cases such as: *In re BHP Billiton Ltd. Sec. Litig.* ($50 million recovery); *Galestan v. OneMain Holdings, Inc.* ($9 million recovery); *Carpenters Pension Tr. Fund of St. Louis v. Barclays PLC* ($14 million recovery); *City of Pontiac General Emps.' Ret. Sys. v. Lockheed Martin Corp.* ($19.5 million recovery); and *Plumbers and Pipefitters Local Union No. 630 Pension-Annuity Tr. Fund v. Arbitron Inc.* ($7 million recovery). Capeci is currently prosecuting numerous cases in federal and state courts alleging violations of the Securities Exchange Act of 1934 and the Securities Act of 1933. Recently, Michael led the litigation team that achieved the first settlement of a 1933 Act claim in New York state court, *In re EverQuote, Inc. Sec. Litig.* ($4.75 million recovery), following the U.S. Supreme Court's landmark decision in *Cyan, Inc. v. Beaver Cnty. Emps. Ret. Fund* in 2018.

Education

B.S., Villanova University, 2007; J.D., Hofstra University School of Law, 2010

Honors / Awards

Rising Star, *Super Lawyers Magazine*, 2014-2020; J.D., *Cum Laude,* Hofstra University School of Law, 2010

Jennifer N. Caringal | Partner

Jennifer Caringal is a partner in the Firm's San Diego office, where her practice focuses on complex antitrust and securities litigation. She is also part of the Firm's SPAC Task Force, which is dedicated to rooting out and prosecuting fraud on behalf of injured investors in special purpose acquisition companies.

Caringal served as lead counsel in *In re Am. Realty Cap. Props., Inc. Litig.*, a case arising out of ARCP's manipulative accounting practices, and obtained a $1.025 billion recovery. For five years, she and the litigation team prosecuted nine different claims for violations of the Securities Exchange Act of 1934 and the Securities Act of 1933, involving seven different stock or debt offerings and two mergers. The recovery represents the highest percentage of damages of any major PSLRA case prior to trial and includes the largest personal contributions by individual defendants in history.

Education

B.A., University of Illinois, 2006; J.D., Washington University in St. Louis, School of Law, 2012

Honors / Awards

They've Got Next: The 40 Under 40, *Bloomberg Law*, 2022; Leading Plaintiff Financial Lawyer, *Lawdragon*, 2022; Best Lawyer in America: One to Watch, *Best Lawyers*®, 2021-2022; Rising Star, *Super Lawyers Magazine*, 2021; Best Lawyer in Southern California: One to Watch, *Best Lawyers*®, 2021

Brian E. Cochran | Partner

Brian Cochran is a partner in the Firm's San Diego and Chicago offices. He focuses his practice on complex securities, shareholder, consumer protection, and ERISA litigation. Cochran is also a member of Robbins Geller's SPAC Task Force. Cochran specializes in case investigation and initiation and lead plaintiff issues arising under the Private Securities Litigation Reform Act of 1995. He has developed dozens of cases under the federal securities laws and recovered hundreds of millions of dollars for injured investors and consumers. Several of Cochran's cases have pioneered new ground, such as cases on behalf of cryptocurrency investors, and sparked follow-on governmental investigations into corporate malfeasance. Cochran has spearheaded litigation on behalf of injured investors in blank check companies, developing one of the first securities class actions arising from the latest wave of blank check financing, *Alta Mesa Resources*. On March 31, 2021, the United States District Court for the Southern District of Texas denied defendants' motions to dismiss in their entirety.

Brian was a member of the litigation team that achieved a $1.21 billion settlement in the *Valeant Pharmaceuticals* securities litigation. Brian also developed the *Dynamic Ledger* securities litigation, one of the first cases to challenge a cryptocurrency issuer's failure to register under the federal securities laws, which settled for $25 million. In addition, Brian was part of the team that secured a historic $25 million settlement on behalf of Trump University students, which Brian prosecuted on a *pro bono* basis. Other notable recoveries include: *Scotts Miracle-Gro* (up to $85 million); *Psychiatric Solutions* ($65 million); *SQM Chemical & Mining Co. of Chil*e ($62.5 million); *Big Lots* ($38 million*); REV Group* ($14.25 million, subject to court approval*); Fifth Street Finance* ($14 million); *Third Avenue Management* ($14 million); *LJM* ($12.85 million); *Camping World* ($12.5 million); *FTS International* ($9.875 million); and *JPMorgan ERISA* ($9 million).

Education

A.B., Princeton University, 2006; J.D., University of California at Berkeley School of Law, Boalt Hall, 2012

Honors / Awards

Next Generation Partner, *The Legal 500*, 2020-2022; 40 & Under Hot List, *Benchmark Litigation*, 2021; Rising Star, *Super Lawyers Magazine*, 2020-2021; Rising Star, *The Legal 500*, 2019; A.B., With Honors, Princeton University, 2006; J.D., Order of the Coif, University of California at Berkeley School of Law, Boalt Hall, 2012

Sheri M. Coverman | Partner

Sheri Coverman is a partner in the Firm's Boca Raton office. Her practice focuses on complex class actions, including securities, corporate governance, and consumer fraud litigation.

Coverman is 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, on issues related to corporate fraud, shareholder litigation, and corporate governance issues. Coverman frequently addresses trustees regarding their options for seeking redress for losses due to violations of securities laws and assists in ongoing litigation involving many Firm clients. Coverman's institutional clients are also involved in other types of class actions, namely: *In re National Prescription Opiate Litigation*.

Education

B.A., University of Florida, 2008; J.D., University of Florida Levin College of Law, 2011

Desiree Cummings | Partner

Desiree Cummings is a partner with the Firm and is based in the Manhattan office. Cummings focuses her practice on complex securities litigation, consumer and privacy litigation, and breach of fiduciary duty actions.

Before joining Robbins Geller, Cummings spent several years prosecuting securities fraud as an Assistant Attorney General with the New York State Office of the Attorney General's Investor Protection Bureau. As an Assistant Attorney General, Cummings was instrumental in the office's investigation and prosecution of J.P. Morgan and Goldman Sachs in connection with the marketing, sale and issuance of residential mortgage-backed securities, resulting in recoveries worth over $1.6 billion for the State of New York. In connection with investigating and prosecuting securities fraud as part of a federal and state RMBS Working Group, Cummings was awarded the Louis J. Lefkowitz Award for Exceptional Service. Cummings began her career as a litigator at Paul, Weiss, Rifkind, Wharton & Garrison LLP where she spent several years representing major financial institutions, a pharmaceutical manufacturer, and public and private companies in connection with commercial litigations and state and federal regulatory investigations.

At Robbins Geller, Cummings currently serves as counsel in a data breach and privacy class action and in numerous securities fraud class actions pending in the United States District Court for the Southern District of New York and the United States District Court for the District of Minnesota. Cummings also serves as counsel in several breach of fiduciary duty actions presently pending in the Court of Chancery of the State of Delaware.

Education

B.A., Binghamton University, 2001, *cum laude*; J.D., University of Michigan Law School, 2004

Honors / Awards

Leading Plaintiff Financial Lawyer, *Lawdragon*, 2022; Louis J. Lefkowitz Award for Exceptional Service, New York State Office of the Attorney General, 2012

Joseph D. Daley | Partner

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: *City of Birmingham Ret. & Relief Sys. v. Davis*, 806 F. App'x 17 (2d Cir. 2020); *City of Providence v. Bats Glob. Mkts., Inc.*, 878 F.3d 36 (2d Cir. 2017); *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 Quality Sys., Inc. Sec. Litig.*, 865 F.3d 1130 (9th Cir. 2017); *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

Seven-time Super Lawyer, *Super Lawyers Magazine*; 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 | Partner

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. *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 is an advisor to political and financial leaders throughout the world. He counsels private and state government pension funds and fund managers in the United States, 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 "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

Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2022; Rising Star of Corporate Governance, Yale School of Management's Milstein Center for Corporate Governance & Performance, 2008; One of the 20 Most Influential Lawyers in the State of California Under 40 Years of Age, *Daily Journal*; B.A., *Cum Laude*, University of California, Berkeley, 1993

Stuart A. Davidson | Partner

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, and antitrust violations. He has served as class counsel in some of the nation's most significant privacy and consumer cases, including: *In re Facebook Biometric Info. Privacy Litig.*, No. 3:15-cv-03747 (N.D. Cal.) ($650 million recovery in a cutting-edge class action concerning Facebook's alleged privacy violations through its collection of user's biometric identifiers without informed consent); *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 5:16-md-02752 (N.D. Cal.) ($117.5 million recovery in the largest data breach in history); *In re Sony Gaming Networks & Customer Data Sec. Breach Litig.*, No. 3:11-md-02258 (S.D. Cal.) (settlement valued at $15 million concerning the massive data breach of Sony's PlayStation Network); and *Kehoe v. Fid. Fed. Bank & Tr.*, No. 9:03-cv-80593 (S.D. Fla.) ($50 million recovery in Driver's Privacy Protection Act case on behalf of half-a-million Florida drivers against a national bank).

Davidson currently serves as Plaintiffs' Co-Lead Counsel in *In re American Medical Collection Agency, Inc. Customer Data Security Breach Litigation*, No. 2:19-md-02904-MCA-MAH (D.N.J.) (representing class of LabCorp customers), *Garner v. Amazon.com, Inc.*, No. 2:21-cv-00750-RSL (W.D. Wash.) (alleging Amazon's illegal wiretapping through Alexa-enabled devices), *In re American Financial Resources, Inc. Data Breach Litigation*, No. 2:22-cv-01757-MCA-JSA (D.N.J.), and *In re Solara Medical Supplies Data Breach Litigation*, No.

3:19-cv-02284-H-KSC (S.D. Cal.) ($5 million cash settlement for victims of healthcare data breach, pending approval), and on Plaintiffs' Executive Committee in *In re Lakeview Loan Servicing Data Breach Litigation*, No. 1:22-cv-20955-DPG (S.D. Fla.).

Davidson also spearheaded several aspects of *In re EpiPen (Epinephrine Injection, USP) Marketing, Sales Practices & Antitrust Litigation*, No. 2:17-md-02785-DDC-TJJ (D. Kan.) ($609 million total recovery achieved weeks prior to trial in certified class action alleging antitrust claims involving the illegal reverse payment settlement to delay the generic EpiPen, which allowed the prices of the life-saving EpiPen to rise over 600% in 9 years), and served as Plaintiffs' Co-Lead Counsel in *In re NHL Players' Concussion Injury Litigation*, No. 0:14-md-02551-SRN-BRT (D. Minn.) (representing retired National Hockey League players in multidistrict litigation suit against the NHL regarding injuries suffered due to repetitive head trauma and concussions), and in *In re Pet Food Products Liability Litigation*, No. 1:07-cv-02867-NLH-AMD (D.N.J.) ($24 million recovery in multidistrict consumer class action on behalf of thousands of aggrieved pet owners nationwide against some of the nation's largest pet food manufacturers, distributors, and retailers). He also served as Plaintiffs' Co-Lead Counsel in *In re UnitedGlobalCom, Inc. Shareholder Litigation*, C.A. No. 1012-VCS (Del. Ch.) ($25 million recovery weeks before trial); *In re Winn-Dixie Stores, Inc. Shareholder Litigation*, No. 16-2011-CA-010616 (Fla. Cir. Ct.) ($11.5 million recovery for former Winn-Dixie shareholders following the corporate buyout by BI-LO); and *In re AuthenTec, Inc. Shareholder Litigation*, No. 5-2012-CA-57589 (Fla. Cir. Ct.) ($10 million recovery for former AuthenTec shareholders following a merger with Apple). The latter two cases are the two largest merger and acquisition recoveries in Florida history.

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 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 College of Law, 1996

Honors / Awards

Super Lawyer, *Super Lawyers Magazine*, 2021-2022; Leading Plaintiff Financial Lawyer, *Lawdragon*, 2020-2022; 500 Leading Plaintiff Consumer Lawyer, *Lawdragon*, 2022; One of "Florida's Most Effective Lawyers" in the Privacy category, American Law Media, 2020; J.D., *Summa Cum Laude*, Nova Southeastern University Shepard Broad College of Law, 1996; Associate Editor, *Nova Law Review*, Book Awards in Trial Advocacy, International Law, and Criminal Pretrial Practice

Jason C. Davis | Partner

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. Most recently, he was part of the litigation team in *Luna v. Marvell Tech. Grp., Ltd.*, resulting in a $72.5 million settlement that represents approximately 24% to 50% of the best estimate of classwide damages suffered by investors.

Before 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 | Partner

Mark Dearman is a partner in the Firm's Boca Raton office, where his practice focuses on consumer fraud, securities fraud, mass torts, antitrust, and whistleblower litigation. Dearman, along with other Robbins Geller attorneys, is currently leading the effort on behalf of cities and counties around the country in *In re National Prescription Opiate Litig*. He was recently appointed to the Plaintiffs' Steering Committee in *In re Zantac (Ranitidine) Prods. Liab. Litig*., and as Chair of the Plaintiffs' Executive Committee in *In re Apple Inc. Device Performance Litig*., Dearman obtained a $310 million settlement. His other recent representative cases include *In re FieldTurf Artificial Turf Mktg. Pracs. Litig*., No. 3:17-md-02779 (D.N.J.); *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 Pracs. & 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), *aff'd*, 833 F.3d 151 (2d Cir. 2016); *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 Cnty.); *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 Cnty.). 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; Leading Plaintiff Financial Lawyer, *Lawdragon*, 2020-2022; 500 Leading Plaintiff Consumer Lawyer, *Lawdragon*, 2022; Super Lawyer, *Super Lawyers Magazine*, 2014-2020; In top 1.5% of Florida Civil Trial Lawyers in *Florida Trend*'s Florida Legal Elite, 2004, 2006

Kathleen B. Douglas | Partner

Kathleen Douglas is a partner in the Firm's Boca Raton office. She focuses her practice on securities fraud class actions and consumer fraud. Most recently, Douglas and a team of Robbins Geller attorneys obtained a $1.21 billion settlement in *In re Valeant Pharms. Int'l, Inc. Sec. Litig.*, a case that *Vanity Fair* reported as "the corporate scandal of its era" that had raised "fundamental questions about the functioning of our health-care system, the nature of modern markets, and the slippery slope of ethical rationalizations." This is the largest securities class action settlement against a pharmaceutical manufacturer and the ninth largest ever.

Douglas was also a key member of the litigation team in *In re UnitedHealth Grp. Inc. PSLRA Litig.*, in which she and team of Robbins Geller attorneys achieved a substantial $925 million recovery. In addition to the monetary recovery, UnitedHealth also made critical changes to a number of its corporate governance policies, including electing a shareholder-nominated member to the company's Board of Directors. Likewise, in *Nieman v. Duke Energy Corp.*, she and a team of attorneys obtained a $146.25 million recovery, which is the largest recovery in North Carolina for a case involving securities fraud and is one of the five largest recoveries in the Fourth Circuit. In addition, Douglas was a member of the team of attorneys that represented investors in *Knurr v. Orbital ATK, Inc.*, which recovered $108 million for shareholders and is believed to be the fourth-largest securities class action settlement in the history of the Eastern District of Virginia. Douglas has served as class counsel in several class actions brought on behalf of Florida emergency room physicians. These cases were against some of the nation's largest Health Maintenance Organizations and settled for substantial increases in reimbursement rates and millions of dollars in past damages for the class.

Education

B.S., Georgetown University, 2004; J.D., University of Miami School of Law, 2007

Honors / Awards

40 & Under Hot List, *Benchmark Litigation*, 2021; Rising Star, *Super Lawyers Magazine*, 2012-2017; B.S., *Cum Laude*, Georgetown University, 2004

Travis E. Downs III | Partner

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 65 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 Community Health Sys., Inc. S'holder Derivative Litig.* ($60 million in financial relief and unprecedented corporate governance reforms); *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); *In re Nvidia Corp. Derivative Litig.* ($15 million in financial relief and extensive corporate governance enhancements); and *City of Pontiac Gen. Emps.' Ret. Sys. v. Langone* (achieving landmark corporate governance reforms for investors).

Downs 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

Rated AV Preeminent by Martindale-Hubbell; Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2022; Best Lawyer in America, *Best Lawyers®*, 2018-2022; Top Lawyer in San Diego, *San Diego Magazine*, 2013-2021; Southern California Best Lawyer, *Best Lawyers®*, 2018-2021; Board of Trustees, Whitworth University; Super Lawyer, *Super Lawyers Magazine*, 2008; B.A., Honors, Whitworth University, 1985

Daniel S. Drosman | Partner

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*, *The Coca-Cola Company*, *Petco*, *PMI*, and *America West*. Drosman served as lead trial counsel in *Jaffe v. Household International* 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 helped secure a $388 million recovery for investors in J.P. Morgan residential mortgage-backed securities in *Fort Worth Employees' Retirement Fund v. J.P. Morgan Chase & Co.* On a percentage basis, that settlement is the largest recovery ever achieved in an RMBS class action. Drosman also served as lead counsel in *Smilovits v. First Solar, Inc.*, and obtained a $350 million settlement on the eve of trial. The settlement is fifth-largest PSLRA settlement ever recovered in the Ninth Circuit.

Most recently, Drosman was part of the Robbins Geller litigation team in *Monroe County Employees' Retirement System v. The Southern Company* in which an $87.5 settlement was reached after three years of litigation. The settlement resolved claims for violations of the Securities Exchange Act of 1934 stemming from defendants' issuance of materially misleading statements and omissions regarding the status of construction of a first-of-its-kind "clean coal" power plant that was designed to transform coal into synthetic gas that could then be used to fuel the power plant. In another recent case, Drosman and the Robbins Geller litigation team obtained a $62.5 million settlement in *Villella v. Chemical and Mining Company of Chile Inc.*, which alleged that Sociedad Química y Minera de Chile S.A. ("SQM") violated the Securities Exchange Act of 1934 by issuing materially false and misleading statements regarding the Company's failure to disclose that money from SQM was channeled illegally to electoral campaigns for Chilean politicians and political parties as far back as 2009. SQM had also filed millions of dollars' worth of fictitious tax receipts with Chilean authorities in order to conceal bribery payments from at least 2009 through fiscal 2014.

In a pair of cases – *Abu Dhabi Commercial Bank, et al. v. Morgan Stanley & Co. Inc.* ("*Cheyne*" litigation) and *King County, Washington, et al. v. IKB Deutsche Industriebank AG* ("*Rhinebridge*" litigation) – Drosman led a group of attorneys prosecuting fraud claims against the credit rating agencies, where he is distinguished as one of the few plaintiffs' counsel to defeat the rating agencies' traditional First Amendment defense and their motions for summary judgment based on the mischaracterization of credit ratings as mere opinions not actionable in fraud.

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

West Trailblazer, *The American Lawyer*, 2022; Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2022; Top Plaintiff Lawyer, *Daily Journal*, 2022; Plaintiff Litigator of the Year, *Benchmark Litigation*, 2022; Lawyer of the Year, *Best Lawyers®*, 2022; Titan of the Plaintiffs Bar, *Law360*, 2022; Leading Lawyer in America, *Lawdragon*, 2018-2022; Best Lawyer in America, *Best Lawyers®*, 2019-2022; Southern California Best Lawyers, *The Wall Street Journal*, 2021; Southern California Best Lawyer, *Best Lawyers®*, 2019-2021; Super Lawyer, *Super Lawyers Magazine*, 2017-2020; Recommended Lawyer, *The Legal 500*, 2017-2018; Top 100 Lawyer, *Daily Journal*, 2017; 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 | Partner

Tom Egler is a partner in the Firm's San Diego office and focuses his practice on representing clients in major complex, multidistrict litigations, such as *Lehman Brothers*, *Countrywide Mortgage Backed Securities*, *WorldCom*, *AOL Time Warner*, and *Qwest*. He has represented institutional investors both as plaintiffs in individual actions and as lead plaintiffs in class actions.

Egler also serves as a Lawyer Representative to the Ninth Circuit Judicial Conference from the Southern District of California, and in the past has served on the Executive Board of the San Diego chapter of the Association of Business Trial Lawyers. 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

Super Lawyer, *Super Lawyers Magazine*, 2017-2018; Associate Editor, *Catholic University Law Review*

Alan I. Ellman | Partner

Alan Ellman is a partner in the Firm's Melville office, where he concentrates his practice on prosecuting complex securities fraud cases on behalf of institutional investors. Most recently, Ellman was on the team of Robbins Geller attorneys who obtained a $34.5 million recovery in *Patel v. L-3 Communications Holdings, Inc.*, which represents a high percentage of damages that plaintiffs could reasonably expect to be recovered at trial and is more than eight times higher than the average settlement of cases with comparable investor losses. He was also 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.

Ellman was also on the team of Robbins Geller attorneys who achieved final approval in *Curran v. Freshpet, Inc.*, which provides for the payment of $10.1 million for the benefit of eligible settlement class members. Additionally, he was on the team of attorneys who obtained final approval of a $7.5 million recovery in *Plymouth County Retirement Association v. Advisory Board Company*. 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, *Super Lawyers Magazine*, 2017-2020; Rising Star, *Super Lawyers Magazine*, 2014-2015; B.S., B.A., *Cum Laude*, State University of New York at Binghamton, 1999

Jason A. Forge | Partner

Jason Forge is a partner in the Firm's San Diego office. He specializes in complex investigations, litigation, and trials. As a federal prosecutor and private practitioner, Forge has conducted and supervised scores 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. He recently obtained approval of a $160 million recovery in the first successful securities fraud case against Wal-Mart Stores, Inc. in *City of Pontiac General Employees' Retirement System v. Wal-Mart Stores, Inc.* In addition, Forge was a member of the Firm's trial team in *Hsu v. Puma Biotechnology, Inc.*, a securities fraud class action that resulted in a verdict in favor of investors after a two-week jury trial.

After the trial victory over Puma Biotechnology and Alan Auerbach, Forge joined a Robbins Geller litigation team that had defeated 12 motions for summary judgment against 40 defendants and was about to depose 17 experts in the home stretch to trial. Forge and the team used these depositions to disprove a truth-on-the-market argument that nine defense experts had embraced. Soon after the last of these expert depositions, the Robbins Geller team secured a $1.025 billion settlement from American Realty Capital Properties and other defendants that included a record $237 million contribution from individual defendants and represented more than twice the recovery rate obtained by several funds that had opted

out of the class.

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 Donald J. Trump. The settlement refunds over 90% of the money thousands of students paid to "enroll" in Trump University. He represented the class on a *pro bono* basis. Forge has also successfully defeated motions to dismiss and obtained class certification against several prominent defendants, including the first federal RICO case against Scotts Miracle-Gro, which recently settled for up to $85 million. He was a member of the litigation team that obtained a $125 million settlement in *In re LendingClub Securities Litigation*, a settlement that ranked among the top ten largest securities recoveries ever in the Northern District of California.

In a case against another prominent defendant, Pfizer Inc., Forge 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 reopening 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.

Education

B.B.A., The University of Michigan Ross School of Business, 1990; J.D., The University of Michigan Law School, 1993

Honors / Awards

Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2022; Leading Lawyer in America, *Lawdragon*, 2022; Best Lawyer in America, *Best Lawyers*®, 2019-2022; Southern California Best Lawyer, *Best Lawyers*®, 2019-2021; Local Litigation Star, *Benchmark Litigation*, 2020; Plaintiffs' Lawyer Trailblazer, *The National Law Journal*, 2018; Top 100 Lawyer, *Daily Journal*, 2017; Litigator of the Year, *Our City San Diego,* 2017; 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

William J. Geddish | Partner

William Geddish is a partner with the Firm and is based in the Melville office, where his practice focuses on complex securities litigation. Before joining the Firm, he was an associate in the New York office of a large international law firm, where his practice focused on complex commercial litigation.

Since joining the Firm, Geddish has played a significant role in the following litigations*: In re Barrick Gold Sec. Litig.* ($140 million recovery); *Scheufele v. Tableau Software, Inc.* ($95 million recovery); *Landmen Partners, Inc. v. The Blackstone Grp., L.P.* ($85 million recovery); *In re Jeld-Wen Holding, Inc. Sec. Litig.* ($40 million recovery); *City of Austin Police Ret. Sys. v. Kinross Gold Corp.* ($33 million recovery); *City of Roseville Emps' Ret. Sys. v. EnergySolutions, Inc.* ($26 million recovery); *Beaver Cnty. Emps' Ret. Fund v. Tile Shop Holdings, Inc.* ($9.5 million recovery); and *Barbara Marciano v. Schell & Kampeter, Inc.* ($2 million recovery).

Education

B.A., Sacred Heart University, 2006, J.D., Hofstra University School of Law, 2009

Honors / Awards

Rising Star, *Super Lawyers Magazine*, 2013-2020; J.D., *Magna Cum Laude*, Hofstra University School of Law, 2009; Gina Maria Escarce Memorial Award, Hofstra University School of Law

Paul J. Geller | Partner

Paul Geller, managing partner of the Firm's 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 29 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 and multi-district litigation, providing him with 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 governmental entities and other plaintiffs in the sprawling litigation concerning the nationwide prescription opioid epidemic. In reporting on the selection of the lawyers to lead the case, *The National Law Journal* reported that "[t]he team reads like a 'Who's Who' in mass torts." Geller was also a critical member of the team that negotiated over $26 billion in settlements against certain opioid distributors and manufacturers. Prior to the opioid litigation, Geller was a member of the leadership team representing consumers in the massive *Volkswagen "Clean Diesel"* emissions case. The San Francisco legal newspaper *The Recorder* labeled the group that was appointed in that case, which settled for more than $17 billion, a "class action dream team."

Geller is currently serving as a Lead Counsel in *In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Pracs. & Antitrust Litig.*, a nationwide class action that alleges that pharmaceutical company Mylan N.V. and others engaged in anti-competitive and unfair business conduct in its sale and marketing of the EpiPen auto-injector device. The case was recently settled for $609 million.

Some of Geller's other recent noteworthy successes include the largest privacy class action settlement in history – a $650 million recovery in a cutting-edge class action in *In re Facebook Biometric Info. Privacy Litig.*, concerning Facebook's use of biometric identifiers through its "tag" feature. In addition to the monetary recovery, Facebook recently disabled the tag feature altogether, deleting user facial profiles and discontinuing the use of facial recognition software.

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; Super Lawyer, *Super Lawyers Magazine*, 2007-2022; Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2022; Leading Lawyer, *Chambers USA*, 2021-2022; 500 Leading Plaintiff Consumer Lawyer, *Lawdragon*, 2022; Leading Lawyer in America, *Lawdragon*, 2006-2007, 2009-2022; Best Lawyer in America, *Best Lawyers®*, 2017-2022; Florida Best Lawyer in America, *Best Lawyers®*, 2017-2021; One of "Florida's Most Effective Lawyers" in the Privacy category, American Law Media, 2020; Legend, *Lawdragon*, 2020; Recommended Lawyer, *The Legal 500*, 2016, 2019; Plaintiffs' Lawyer Trailblazer, *The National Law Journal*, 2018; Lawyer of the Year, *Best Lawyers®*, 2018; Attorney of the Month, *Attorney At Law*, 2017; Featured in "Lawyer Limelight" series, *Lawdragon*, 2017; 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

Robert D. Gerson | Partner

Robert Gerson is a partner in the Firm's Melville office, where he practices securities fraud litigation and other complex matters. Before joining Robbins Geller, Gerson was associated with a prominent plaintiffs' class action firm, where he represented institutional investors in numerous securities fraud class actions, as well as "opt out" litigations. Gerson is a member of the Committee on Securities Litigation of the Bar Association of the City of New York. He is admitted to practice before the courts of the State of New York, as well as the United States Courts of Appeals for the Second and Eighth Circuits, and the United States District Courts for the Southern and Eastern Districts of New York.

Education

B.A., University of Maryland, 2006; J.D., New York Law School, 2009

Honors / Awards

Rising Star, *Super Lawyers Magazine*, 2015-2020

Jonah H. Goldstein | Partner

Jonah Goldstein is a partner in the Firm's San Diego office and is 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), *In re Cisco Sec. Litig.* (approximately $100 million), and *Marcus v. J.C. Penney Company, Inc.* ($97.5 million recovery). Goldstein also served on the Firm's trial team in *In re AT&T Corp. Sec. Litig.*, MDL No. 1399 (D.N.J.), which settled after two weeks of trial for $100 million, and aided in the $65 million recovery in *Garden City Emps.' Ret. Sys. v. Psychiatric Solutions, Inc.*, the fourth-largest securities recovery ever in the Middle District of Tennessee and one of the largest in more than a decade. Most recently, he was part of the litigation team in *Luna v. Marvell Tech. Grp., Ltd.*, resulting in a $72.5 million settlement that represents approximately 24% to 50% of the best estimate of classwide damages suffered by investors. Before 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

Recommended Lawyer, *The Legal 500*, 2018-2019; Comments Editor, *University of Denver Law Review*, University of Denver College of Law

Benny C. Goodman III | Partner

Benny Goodman is a partner in the Firm's San Diego office. He primarily represents plaintiffs in shareholder actions on behalf of aggrieved corporations. Goodman has recovered hundreds of millions of dollars in shareholder derivative actions pending in state and federal courts across the nation. Most recently, he led a team of lawyers in litigation brought on behalf of Community Health Systems, Inc., resulting in a $60 million payment to the company, the largest recovery in a shareholder derivative action in Tennessee and the Sixth Circuit, as well as best-in-class value-enhancing corporate governance reforms that included two shareholder-nominated directors to the Community Health Board of Directors.

Similarly, Goodman recovered a $25 million payment to Lumber Liquidators and numerous corporate governance reforms, including a shareholder-nominated director, in *In re Lumber Liquidators Holdings, Inc. S'holder Derivative Litig*. In *In re Google Inc. S'holder Derivative Litig.*, Goodman achieved groundbreaking corporate governance reforms designed to mitigate regulatory and legal compliance risk associated with online pharmaceutical advertising, including among other things, the creation of a $250 million fund to help combat rogue pharmacies from improperly selling drugs online.

Education

B.S., Arizona State University, 1994; J.D., University of San Diego School of Law, 2000

Honors / Awards

Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2021; Super Lawyer, *Super Lawyers Magazine*, 2018-2021; Recommended Lawyer, *The Legal 500*, 2017

Elise J. Grace | Partner

Elise Grace is a partner in the San Diego office and counsels the Firm's institutional clients on options to secure premium recoveries in securities litigation both within the United States and internationally. Grace is a frequent lecturer and author on securities and accounting fraud, and develops annual MCLE and CPE accredited educational programs designed to train public fund representatives on practices to protect and maximize portfolio assets, create long-term portfolio value, and best fulfill fiduciary duties. Grace has routinely been named a Recommended Lawyer by *The Legal 500* and named a Leading Plaintiff Financial Lawyer by *Lawdragon*. Grace has prosecuted various significant securities fraud class actions, as well as the AOL Time Warner state and federal securities opt-out litigations, which resulted in a combined settlement of over $629 million for defrauded investors. Before joining the Firm, Grace practiced at Clifford Chance, where she defended numerous 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

Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2022; Recommended Lawyer, *The Legal 500*, 2016-2017; J.D., *Magna Cum Laude*, Pepperdine School of Law, 1999; American Jurisprudence Bancroft-Whitney Award – Civil Procedure, Evidence, and Dalsimer Moot Court Oral Argument; Dean's Academic Scholarship Recipient, 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

Tor Gronborg | Partner

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 $4.4 billion for investors. Most recently, Gronborg and a team of Robbins Geller attorneys obtained an $809 million settlement in *In re Twitter, Inc. Sec. Litig.*, a case that did not settle until the day before trial was set to commence.

In addition to *Twitter*, Gronborg's work has included significant recoveries against corporations such as Valeant Pharmaceuticals ($1.21 billion), Cardinal Health ($600 million), Motorola ($200 million), Duke Energy ($146.25 million), Sprint Nextel Corp. ($131 million), and Prison Realty ($104 million), to name a few. Gronborg was also a member of the Firm's trial team in *Hsu v. Puma Biotechnology, Inc.*, No. SACV15-0865 (C.D. Cal.), a securities fraud class action that resulted in a verdict in favor of investors after a two-week jury trial and ultimately settled for 100% of the claimed damages plus prejudgment interest.

On three separate occasions, Gronborg's pleadings have been upheld by the federal Courts of Appeals (*Broudo v. Dura Pharms., Inc.*, 339 F.3d 933 (9th Cir. 2003), *rev'd on other grounds*, 544 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)).

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

West Trailblazer, *The American Lawyer*, 2022; Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2022; Leading Lawyer in America, *Lawdragon*, 2022; Best Lawyer in America, *Best Lawyers*®, 2022; Super Lawyer, *Super Lawyers Magazine*, 2013-2021; Plaintiffs' Lawyer Trailblazer, *The National Law Journal*, 2019; Moot Court Board Member, University of California, Berkeley; AFL-CIO history scholarship, University of California, Santa Barbara

Ellen Gusikoff Stewart | Partner

Ellen Stewart is a partner in the Firm's San Diego office, and is a member of the Firm's Summer Associate Hiring Committee. She currently practices in the Firm's settlement department, negotiating and documenting complex securities, merger, ERISA, and derivative action settlements. Notable settlements include: *In re Facebook Biometric Info. Privacy Litig.* (N.D. Cal. 2021) ($650 million); *KBC Asset Management v. 3D Systems Corp.* (D.S.C. 2018) ($50 million); *Luna v. Marvell Tech. Grp.* (N.D. Cal. 2018) ($72.5 million); *Garden City Emps.' Ret. Sys. v. Psychiatric Solutions, Inc.* (M.D. Tenn. 2015) ($65 million); and *City of Sterling Heights Gen. Emps.' Ret. Sys v. Hospira, Inc.* (N.D. Ill. 2014) ($60 million).

Stewart has served on the Federal Bar Association Ad Hoc Committee for the revisions to the Settlement Guidelines for the Northern District of California and was a contributor to the Guidelines and Best Practices – Implementing 2018 Amendments to Rule 23 Class Action Settlement Provisions manual of the Bolch Judicial Institute at the Duke University School of Law.

Education

B.A., Muhlenberg College, 1986; J.D., Case Western Reserve University, 1989

Honors / Awards

Rated Distinguished by Martindale-Hubbell

Robert Henssler | Partner

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 and a team of Robbins Geller attorneys a $1.21 billion settlement in *In re Valeant Pharms. Int'l, Inc. Sec. Litig.*, a case that *Vanity Fair* reported as "the corporate scandal of its era" that had raised "fundamental questions about the functioning of our health-care system, the nature of modern markets, and the slippery slope of ethical rationalizations." This is the largest securities class action settlement against a pharmaceutical manufacturer and the ninth largest ever.

Henssler was also 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 achieved represents more than 30% of the aggregate classwide damages, far exceeding the typical recovery in a securities class action. Henssler also led the litigation teams in *Marcus v. J.C. Penney Company, Inc.* ($97.5 million recovery), *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), to name a few.

Education

B.A., University of New Hampshire, 1997; J.D., University of San Diego School of Law, 2001

Honors / Awards

Leading Plaintiff Financial Lawyer, *Lawdragon*, 2020-2022; California Lawyer of the Year, *Daily Journal*, 2022; Plaintiffs' Lawyer Trailblazer, *The National Law Journal*, 2020; Recommended Lawyer, *The Legal 500*, 2018-2019

Steven F. Hubachek | Partner

Steve Hubachek is a partner in the Firm's San Diego office. He is a member of the Firm's appellate group, where his practice concentrates on federal appeals. He has more than 25 years of appellate experience, has argued over 100 federal appeals, including 3 cases before the United States Supreme Court and 7 cases before en banc panels of the Ninth Circuit Court of Appeals. Prior to his work with the Firm, Hubachek joined Perkins Coie in Seattle, Washington, as an associate. He was admitted to the Washington State Bar in 1987 and was admitted to the California State Bar in 1990, practicing for many years with Federal Defenders of San Diego, Inc. He also had an active trial practice, including over 30 jury trials, and was Chief Appellate Attorney for Federal Defenders.

Education

B.A., University of California, Berkeley, 1983; J.D., Hastings College of the Law, 1987

Honors / Awards

AV rated by Martindale-Hubbell; Top Lawyer in San Diego, *San Diego Magazine*, 2014-2021; Super Lawyer, *Super Lawyers Magazine*, 2007-2009, 2019-2021; 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); *The Daily Transcript* Top Attorneys, 2007; J.D., *Cum Laude*, Order of the Coif, Thurston Honor Society, Hastings College of Law, 1987

Maxwell R. Huffman | Partner

Maxwell Huffman is a partner in the Firm's San Diego office. He focuses his practice on representing institutional and individual investors in shareholder class and derivative actions in the context of mergers, acquisitions, recapitalizations, and other major corporate transactions. Huffman was a member of the litigation team for *In re Dole Food Co., Inc. S'holder Litig.*, where he went to trial in the Delaware Court of Chancery on claims of breach of fiduciary duty on behalf of Dole Food Co., Inc. shareholders and obtained a $148 million recovery, which is the largest trial verdict ever in a class action challenging a merger transaction. Most recently, Huffman successfully obtained a partial settlement of $60 million in *In re Tesla Motors, Inc. S'holder Litig.*, a case which alleged that the members of the Tesla Board of Directors breached their fiduciary duties, unjustly enriched themselves, and wasted corporate assets in connection with their approval of Tesla's acquisition of SolarCity Corp. in 2016.

Huffman is part of Robbins Geller's SPAC Task Force, which is dedicated to rooting out and prosecuting fraud on behalf of injured investors in special purpose acquisition companies. The rise in "blank check" financing poses unique risks to investors, and this group – comprised of experienced litigators, investigators, and forensic accountants – represents the vanguard of ensuring integrity, honesty, and justice in this rapidly developing investment arena.

Education

B.A., California State University, Sacramento, 2005; J.D., Gonzaga University School of Law, 2009

Honors / Awards

Top 40 Under 40, *Daily Journal*, 2020; Recommended Lawyer, *The Legal 500*, 2019; Winning Litigator, *The National Law Journal*, 2018; Titan of the Industry, *The American Lawyer*, 2018

James I. Jaconette | Partner

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 achieved represents more than 30% of the aggregate classwide 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

Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2022; 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

Rachel L. Jensen | Partner

Rachel Jensen is a partner in the Firm's San Diego office. Jensen has developed a nearly 20-year track record of success in helping to craft impactful business reforms and recover billions of dollars on behalf of individuals, businesses, and government entities injured by unlawful business practices, fraudulent schemes, and hazardous products.

Jensen was one of the lead attorneys who secured a historic recovery on behalf of Trump University students nationwide, providing $25 million and nearly 100% refunds to class members. Jensen represented the class on a *pro bono* basis. As a member of the Plaintiffs' Steering Committee in the Fiat Chrysler EcoDiesel litigation, Jensen helped obtain an $840 million global settlement for concealed defeat devices in "EcoDiesel" SUVs and trucks. Jensen also represented drivers against Volkswagen in one of the most brazen corporate frauds in recent history, helping recover $17 billion for emission cheating in "clean" diesel vehicles. Jensen also serves as one of the lead counsel for policyholders against certain Lloyd's of London syndicates for collusive practices in the insurance market. Most recently, Jensen's representation of California passengers in a landmark consumer and civil rights case against Greyhound for subjecting them to discriminatory immigration raids had an immediate impact as Greyhound now provides "know your rights" information to passengers and implemented other business reforms.

Among other recoveries, Jensen has played significant roles in *In re LendingClub Sec. Litig.*, No. 3:16-cv-02627-WHA (N.D. Cal.) ($125 million settlement that ranked among the top ten largest securities recoveries ever in N.D. Cal.); *Negrete v. Allianz Life Ins. Co. of N. Am.*, No. CV056838CAS(MANx) (C.D. Cal.) ($250 million to senior citizens targeted for exorbitant deferred annuities that would not mature in their lifetimes); *In re Ins. Brokerage Antitrust Litig.*, No. 04-5184(CCC) (D.N.J.) ($200 million recovered for policyholders who paid inflated premiums due to kickback scheme among major insurers and brokers); *In*

re Morning Song Bird Food Litig., No. 3:12-cv-01592-JAH-AGS (S.D. Cal.) ($85 million settlement in refunds to bird lovers who purchased Scotts Miracle-Gro wild bird food treated with pesticides that are hazardous to birds); *City of Westland Police & Fire Ret. Sys. v. Stumpf*, No. 3:11-cv-02369-SI (N.D. Cal.) ($67 million in homeowner down-payment assistance and credit counseling for cities hardest hit by the foreclosure crisis and computer integration for mortgage servicing segments in derivative settlement with Wells Fargo for "robo-signing" of foreclosure affidavits); *In re Mattel, Inc., Toy Lead Paint Prods. Liab. Litig.*, No. 2:07-ml-01897-DSF-AJW (C.D. Cal.) ($50 million in refunds and quality assurance business reforms for toys made in China with lead and magnets); and *In re Checking Account Overdraft Litig.*, No. 1:09-md-2036-JLK (S.D. Fla.) ($500 million in settlements with major banks for manipulating debit transactions to maximize overdraft fees).

Before joining the practice, Jensen clerked for the late Honorable Warren J. Ferguson on the Ninth Circuit Court of Appeals; was associated with Morrison & Foerster LLP in San Francisco; and worked abroad in Arusha, Tanzania as a law clerk in the Office of the Prosecutor at the International Criminal Tribunal for Rwanda ("ICTR") and 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

Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2022; 500 Leading Plaintiff Consumer Lawyer, *Lawdragon*, 2022; Leading Lawyer in America, *Lawdragon*, 2017-2022; Best Lawyer in America: One to Watch, *Best Lawyers*®, 2021-2022; Super Lawyer, *Super Lawyers Magazine*, 2016-2021; Best Lawyer in Southern California: One to Watch, *Best Lawyers*®, 2021; Top Woman Lawyer, *Daily Journal*, 2017, 2020; California Trailblazer, *The Recorder*, 2019; Plaintiffs' Lawyer Trailblazer, *The National Law Journal*, 2018; Rising Star, *Super Lawyers Magazine*, 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*

Steven M. Jodlowski | Partner

Steven Jodlowski is a partner in the Firm's San Diego office. His practice focuses on high-stakes complex litigation, often involving antitrust, securities, and consumer claims. In recent years, he has specialized in representing investors in a series of antitrust actions involving the manipulation of benchmark rates, including the *ISDAfix Benchmark* litigation, which to date resulted in the recovery of $504.5 million on behalf of investors, and *In re SSA Bonds Antitrust Litig*., which resulted in the recovery of $95.5 million on behalf of investors. He is currently serving as interim co-lead class counsel in *Thompson v. 1-800 Contacts, Inc*., where the court has granted preliminary approval of $24.9 million in settlements. Jodlowski was also part of the trial team in an antitrust monopolization case against a multinational computer and software company.

Jodlowski has successfully prosecuted numerous antitrust and RICO cases. These cases resulted in the recovery of more than $1 billion for investors and policyholders. Jodlowski has also represented institutional and individual shareholders in corporate takeover actions in state and federal court. He has handled pre- and post-merger litigation stemming from the acquisition of publicly listed companies in the biotechnology, oil and gas, information technology, specialty retail, electrical, banking, finance, and real estate industries, among others.

Education

B.B.A., University of Central Oklahoma, 2002; J.D., California Western School of Law, 2005

Honors / Awards

Rising Star, *Super Lawyers Magazine*, 2015-2019; Outstanding Antitrust Litigation Achievement in Private Law Practice, American Antitrust Institute, 2018; CAOC Consumer Attorney of the Year Award Finalist, 2015; J.D., *Cum Laude*, California Western School of Law, 2005

Chad Johnson | Partner

Chad Johnson is the Managing Partner of the Firm's Manhattan office. Johnson has been handling complex securities cases and breach of fiduciary duty actions for more than 30 years. Johnson's background includes significant experience as a plaintiffs' lawyer, a securities-fraud prosecutor, and as a defense lawyer.

Johnson served as the head of New York's securities fraud unit referred to as the Investor Protection Bureau. In that role, Johnson prosecuted cases that resulted in billions of dollars of recoveries for New Yorkers and helped make new law in the area of securities enforcement for the benefit of investors. Johnson's experience in that law enforcement position included prosecuting Wall Street dark pool operators for their false statements to the investing public.

Johnson represents institutional and individual investors in securities and breach of fiduciary duty cases, including representing investors in direct or "opt-out" actions and in class actions. Johnson represents some of the world's largest and most sophisticated asset managers, public pension funds, and sovereign wealth funds. Johnson also represents whistleblowers in false claims act or "*qui tam*" actions.

Johnsons cases have resulted in some of the largest recoveries for shareholders on record. This includes recoveries in the following securities cases: *WorldCom* (which recovered more than $6 billion for shareholders); *Wachovia* (which recovered $627 million for shareholders); *Williams* (which recovered $311 million for shareholders); and *Washington Mutual* (which recovered $208 million for shareholders). Johnson also helped recover $16.65 billion from Bank of America and $13 billion from JP Morgan Chase on behalf of state and federal working groups focused on toxic residential mortgage-backed securities (RMBS) devised and sold by those banks.

Johnson has tried cases in federal and state courts, in the Delaware Court of Chancery, and before arbitration tribunals in the United States and overseas. Johnson also advises investors about how best to enforce their rights as shareholders outside the United States.

Education

B.A., University of Michigan, 1989; J.D., Harvard Law School, 1993

Honors / Awards

J.D., *Cum Laude*, Harvard Law School, 1993; B.A., High Distinction, University of Michigan, 1989

Evan J. Kaufman | Partner

Evan Kaufman is a partner in the Firm's Melville office. He focuses his practice in the area of complex litigation, including securities, ERISA, corporate fiduciary duty, 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); *EnergySolutions, 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 Third Avenue Mgmt. Sec. Litig.* ($14.25 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, *Super Lawyers Magazine*, 2013-2015, 2017-20120; Member, *Fordham International Law Journal*, Fordham University School of Law

David A. Knotts | Partner

David Knotts is a partner in the Firm's San Diego office and, in addition to ongoing litigation work, teaches a full-semester course on M&A litigation at the University of California Berkeley School of Law. He focuses his practice on securities class action litigation in the context of mergers and acquisitions, representing both individual shareholders and institutional investors. Knotts has been counsel of record for shareholders on a number of significant recoveries in courts and throughout the country, including *In re Rural/Metro Corp. S'holders Litig.* (nearly $110 million total recovery, affirmed by the Delaware Supreme Court in *RBC v. Jervis*), *In re Del Monte Foods Co. S'holders Litig.* ($89.4 million), *Websense* ($40 million), *In re Onyx S'holders Litig.* ($30 million), and *Joy Global* ($20 million). *Websense* and *Onyx* are both believed to be the largest post-merger class settlements in California state court history. When Knotts recently presented the settlement as lead counsel for the stockholders in *Joy Global*, the United States District Court for the Eastern District of Wisconsin noted that "this is a pretty extraordinary settlement, recovery on behalf of the members of the class. . . . [I]t's always a pleasure to work with people who are experienced and who know what they are doing."

Before 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, and unfair competition claims.

Education

B.S., University of Pittsburgh, 2001; J.D., Cornell Law School, 2004

Honors / Awards

40 & Under Hot List, *Benchmark Litigation*, 2018, 2020-2021; Next Generation Partner, *The Legal 500*, 2019-2021; Recommended Lawyer, *The Legal 500*, 2017-2019; 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 | Partner

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. Largent was part of the litigation team that obtained a $265 million recovery 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. She also helped obtain $67.5 million for Wyeth shareholders in *City of Livonia Emps.' Ret. Sys. v. Wyeth*, settling claims that the defendants misled investors about the safety and commercial viability of one of the company's leading drug candidates. Most recently, Largent was on the team that secured a $64 million recovery for Dana Corp. shareholders in *Plumbers & Pipefitters Nat'l Pension Fund v. Burns*, in which the Firm's Appellate Practice Group successfully appealed to the Sixth Circuit Court of Appeals twice, reversing the district court's dismissal of the action. Some of Largent's other cases include: *In re Sanofi-Aventis Sec. Litig.* (S.D.N.Y.) ($40 million); *In re Bridgepoint Educ., Inc. Sec. Litig.* (S.D. Cal.) ($15.5 million); *Ross v. Abercrombie & Fitch Co.* (S.D. Ohio) ($12 million); *Maiman v. Talbott* (C.D. Cal.) ($8.25 million); *In re Cafepress Inc. S'holder Litig.* (Cal. Super. Ct., San Mateo Cnty.) ($8 million); and *Krystek v. Ruby Tuesday, Inc.* (M.D. Tenn.) ($5 million). Largent's current cases include securities fraud cases against Dell, Inc. (W.D. Tex.) and Banc of California (C.D. Cal.).

Largent is a past board member on the San Diego County Bar Foundation and the San Diego Volunteer Lawyer Program. She has also served as an Adjunct Business Law Professor at Southwestern College in Chula Vista, California.

Education

B.B.A., University of Oklahoma, 1985; J.D., University of Tulsa, 1988

Honors / Awards

Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2022; Board Member, San Diego County Bar Foundation, 2013-2017; Board Member, San Diego Volunteer Lawyer Program, 2014-2017

Kevin A. Lavelle | Partner

Kevin Lavelle is a partner in the Firm's San Diego office, where his practice focuses on complex securities litigation.

Lavelle has served on numerous litigation teams and helped obtain over $500 million for investors. His work includes several significant recoveries against corporations, including HCA Holdings, Inc. ($215 million); Altria Group and JUUL Labs ($90 million); Endo Pharmaceuticals ($63 million); and Intercept Pharmaceuticals ($55 million), among others.

Education

B.A., College of the Holy Cross, 2008; J.D., Brooklyn Law School, 2013

Honors / Awards

J.D., *Cum Laude*, Brooklyn Law School, 2013; B.A., *Cum Laude*, College of the Holy Cross, 2008

Arthur C. Leahy | Partner

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 over 20 years of experience successfully litigating securities actions and derivative cases. Leahy has recovered well over two 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 Nazarene University, 1987; J.D., University of San Diego School of Law, 1990

Honors / Awards

Rated AV Preeminent by Martindale-Hubbell; Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2021; Top Lawyer in San Diego, *San Diego Magazine*, 2013-2021;Super Lawyer, *Super Lawyers Magazine*, 2016-2017; 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

Nathan R. Lindell | Partner

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 Emps.' Ret. Fund v. J.P. Morgan Chase & Co.* ($388 million recovery); *NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.* ($272 million recovery); *In re Morgan Stanley Mortg. Pass-Through Certificates Litig.* ($95 million recovery); *Massachusetts Bricklayers & Masons Tr. Funds v. Deutsche Alt-A Sec., Inc.* ($32.5 million recovery); *City of Ann Arbor Emps.' Ret. Sys. v. Citigroup Mortg. Loan Trust Inc.* ($24.9 million recovery); *Plumbers' Union Local No. 12 Pension Fund v. Nomura Asset Acceptance Corp.* ($21.2 million recovery); and *Genesee Cnty. Emps.' Ret. Sys. v. Thornburg Mortg., Inc.* ($11.25 million recovery). In October 2016, Lindell successfully argued in front of the New York Supreme Court, Appellate Division, First Judicial Department, for the reversal of an earlier order granting defendants' motion to dismiss in *Phoenix Light SF Limited v. Morgan Stanley*.

Lindell was 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, and ultimately resulted in a $272 million recovery for investors.

Education

B.S., Princeton University, 2003; J.D., University of San Diego School of Law, 2006

Honors / Awards

Rising Star, *Super Lawyers Magazine*, 2015-2017; Charles W. Caldwell Alumni Scholarship, University of San Diego School of Law; CALI/AmJur Award in Sports and the Law

Ryan Llorens | Partner

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

Rising Star, *Super Lawyers Magazine*, 2015

Andrew S. Love | Partner

Andrew Love is a partner in the Firm's San Francisco office. His practice focuses primarily on appeals of securities fraud class action cases. Love has briefed and argued cases on behalf of defrauded investors and consumers in several U.S. Courts of Appeal, 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

Erik W. Luedeke | Partner

Erik Luedeke is a partner in the Firm's San Diego office, where he represents individual and institutional investors in shareholder derivative and securities litigation. As corporate fiduciaries, directors and officers are duty-bound to act in the best interest of the corporation and its shareholders. When they fail to do so they breach their fiduciary duty and may be held liable for harm caused to the corporation. Luedeke's shareholder derivative practice focuses on litigating breach of fiduciary duty and related claims on behalf of corporations and shareholders injured by wayward corporate fiduciaries. Notable shareholder derivative actions in which he recently participated and the recoveries he helped to achieve include *In re Community Health Sys., Inc. S'holder Derivative Litig.* ($60 million in financial relief and unprecedented corporate governance reforms), *In re Lumber Liquidators Holdings, Inc. S'holder Derivative Litig.* ($26 million in financial relief plus substantial governance), and *In re Google Inc. S'holder Derivative Litig.* ($250 million in financial relief to fund substantial governance).

Luedeke's practice also includes the prosecution of complex securities class action cases on behalf of aggrieved investors. Luedeke was a member of the litigation team in *Jaffe v. Household Int'l, Inc.*, No. 02-C-5893 (N.D. Ill.), that resulted in a record-breaking $1.575 billion settlement after 14 years of litigation, including a six-week jury trial ending in a plaintiffs' verdict. He was also a member of the litigation teams in *In re UnitedHealth Grp. Inc. PSLRA Litig.*, No. 06-CV-1691 (D. Minn.) ($925 million recovery), and *In re Questcor Pharms., Inc. Sec. Litig.*, No. 8:12-cv-01623 (C.D. Cal.) ($38 million recovery).

Education

B.S./B.A., University of California Santa Barbara, 2001; J.D., University of San Diego School of Law, 2006

Honors / Awards

Rising Star, *Super Lawyers Magazine,* 2015-2017; Student Comment Editor, *San Diego International Law Journal*, University of San Diego School of Law

Christopher H. Lyons | Partner

Christopher Lyons is a partner in the Firm's Nashville office. He focuses his practice on representing institutional and individual investors in merger-related class action litigation and in complex securities litigation. Lyons has been a significant part of litigation teams that have achieved substantial recoveries for investors. Notable cases include *CoreCivic* (*Grae v. Corrections Corporation of America*) ($56 million recovered), *Good Technology* ($52 million recovered for investors in a privately held technology company), *The Fresh Market* (*Morrison v. Berry*) ($27.5 million recovered), and *Calamos Asset Management* ($22.4 million recovered). His *pro bono* work includes representing individuals who are appealing denial of necessary medical benefits by TennCare (Tennessee's Medicaid program), through the Tennessee Justice Center.

Before joining Robbins Geller, Lyons practiced at a prominent Delaware law firm, where he mostly represented officers and directors defending against breach of fiduciary duty claims in the Delaware Court of Chancery and in the Delaware Supreme Court. Before that, he clerked for Vice Chancellor J. Travis Laster of the Delaware Court of Chancery. Lyons now applies the expertise he gained from those experiences to help investors uncover wrongful conduct and recover the money and other remedies to which they are rightfully entitled.

Education

B.A., Colorado College, 2006; J.D., Vanderbilt University Law School, 2010

Honors / Awards

Best Lawyer in America: One to Watch, *Best Lawyers*®, 2022; 40 & Under Hot List, *Benchmark Litigation*, 2021; Rising Star, *Super Lawyers Magazine*, 2018-2020; B.A., Distinction in International Political Economy, Colorado College, 2006; J.D., Law & Business Certificate, Vanderbilt University Law School, 2010

Noam Mandel | Partner

Noam Mandel is a partner in the Firm's Manhattan office. Mandel has extensive experience in all aspects of litigation on behalf of investors, including securities law claims, corporate derivative actions, fiduciary breach class actions, and appraisal litigation. Mandel has represented investors in federal and state courts throughout the United States and has significant experience advising investors concerning their interests in litigation and investigating and prosecuting claims on their behalf.

Mandel has served as counsel in numerous outstanding securities litigation recoveries, including in *In re Nortel Networks Corporation Securities Litigation* ($1.07 billion shareholder recovery), *Ohio Public Employees Retirement System v. Freddie Mac* ($410 million shareholder recovery), and *In re Satyam Computer Services, Ltd. Securities Litigation* ($150 million shareholder recovery). Mandel has also served as counsel in notable fiduciary breach class and derivative actions, particularly before the Court of Chancery of the State of Delaware. These actions include the groundbreaking fiduciary duty litigation challenging the CVS/Caremark merger (*Louisiana Municipal Police Employees' Retirement System v. Crawford*), which resulted in more than $3.3 billion in additional consideration for Caremark shareholders. Mandel currently serves as counsel in *In re Dell Technologies Inc. Class V Stockholders Litigation*, which is presently before the Court of Chancery of the State of Delaware.

Education

B.S., Georgetown University, School of Foreign Service, 1998; J.D., Boston University School of Law, 2002

Honors / Awards

J.D., *Cum Laude*, Boston University School of Law, 2002; Member, *Boston University Law Review*, Boston University School of Law

Carmen A. Medici | Partner

Carmen Medici is a partner in the Firm's San Diego office and focuses on complex antitrust class action litigation and unfair competition law. He represents businesses and consumers who are the victims of price-fixing, monopolization, collusion, and other anticompetitive and unfair business practices. Medici specializes in litigation against giants in the financial, pharmaceutical, and commodities industries.

Medici currently serves as co-lead counsel in *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, in which a settlement of $5.5 billion was approved in the Eastern District of New York. This case was brought on behalf of millions of U.S. merchants against Visa and MasterCard and various card-issuing banks, challenging the way these companies set and collect tens of billions of dollars annually in merchant fees. The settlement is believed to be the largest antitrust class action settlement of all time. He is also a part of the co-lead counsel team in *In re SSA Bonds Antitrust Litig.*, pending in the Southern District of New York, representing bond purchasers who were defrauded by a brazen price-fixing scheme perpetrated by traders at some of the nation's largest banks. Medici is also a member of the litigation team in *In re Dealer Mgmt. Sys. Antitrust Litig.*, a lawsuit brought on behalf of car dealerships pending in federal court in Chicago, where one defendant has settled for nearly $30 million.

Education

B.S., Arizona State University, 2003; J.D., University of San Diego School of Law, 2006

Honors / Awards

Rising Star, *Super Lawyers Magazine*, 2015-2021

Mark T. Millkey | Partner

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, *Super Lawyers Magazine*, 2013-2020

David W. Mitchell | Partner

David Mitchell is a partner in the Firm's San Diego office and focuses his practice on antitrust and securities fraud litigation. He is a former federal prosecutor who has tried nearly 20 jury trials. As head of the Firm's Antitrust and Competition Law Practice Group, he has served as lead or co-lead counsel in numerous cases and has helped achieve substantial settlements for shareholders. His most notable antitrust cases include *Dahl v. Bain Cap. Partners, LLC*, obtaining more than $590 million for shareholders, and *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, in which a settlement of $5.5 billion was approved in the Eastern District of New York. This case was brought on behalf of millions of U.S. merchants against Visa and MasterCard and various card-issuing banks, challenging the way these companies set and collect tens of billions of dollars annually in merchant fees. The settlement is believed to be the largest antitrust class action settlement of all time.

Additionally, Mitchell served as co-lead counsel in the ISDAfix Benchmark action against 14 major banks and broker ICAP plc, obtaining $504.5 million for plaintiffs. Currently, Mitchell serves as court-appointed lead counsel in *In re Aluminum Warehousing Antitrust Litig.*, *City of Providence, Rhode Island v. BATS Global Markets Inc.*, *In re SSA Bonds Antitrust Litig.*, *In re Remicade Antitrust Litig.*, and *In re 1-800 Contacts Antitrust Litig*.

Education

B.A., University of Richmond, 1995; J.D., University of San Diego School of Law, 1998

Honors / Awards

Member, Enright Inn of Court; Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2022; Leading Lawyer in America, *Lawdragon*, 2020-2022; Best Lawyer in America, *Best Lawyers®*, 2018-2022; Top 50 Lawyers in San Diego, *Super Lawyers Magazine*, 2021; Southern California Best Lawyer, *Best Lawyers®*, 2018-2021; Super Lawyer, *Super Lawyers Magazine*, 2016-2021; Honoree, Outstanding Antitrust Litigation Achievement in Private Law Practice, American Antitrust Institute, 2018; Antitrust Trailblazer, *The National Law Journal*, 2015; "Best of the Bar," *San Diego Business Journal*, 2014

Danielle S. Myers | Partner

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 who 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. She is also part of Robbins Geller's SPAC Task Force, which is dedicated to rooting out and prosecuting fraud on behalf of injured investors in special purpose acquisition companies.

Myers advises the Firm's clients in connection with lead plaintiff applications and has helped secure appointment of the Firm's clients as lead plaintiff and the Firm's appointment as lead counsel in hundreds of securities class actions, which cases have yielded more than $4 billion for investors, including 2018-2021 recoveries in *In re Valeant Pharms. Int'l, Inc. Sec. Litig.*, No. 3:15-cv-07658 (D.N.J.) ($1.2 billion); *In re Am. Realty Cap. Props., Inc. Litig.*, No. 1:15-mc-00040 (S.D.N.Y.) ($1.025 billion); *Smilovits v. First Solar, Inc.*, No. 2:12-cv-00555 (D. Ariz.) ($350 million); *City of Pontiac Gen. Ret. Sys. v. Wal-Mart Stores, Inc.*, No. 5:12-cv-5162 (W.D. Ark.) ($160 million); *Evellard v. LendingClub Corp.*, No. 3:16-cv-02627 (N.D. Cal.) ($125 million); *Knurr v. Orbital ATK, Inc.*, No. 1:16-cv-01031 (E.D. Va.) ($108 million); and *Marcus v. J.C. Penney Co., Inc.*, No. 6:13-cv-00736 (E.D. Tex.) ($97.5 million). Myers is also a frequent lecturer on securities fraud and corporate governance reform at conferences and events around the world.

Education

B.A., University of California at San Diego, 1997; J.D., University of San Diego, 2008

Honors / Awards

Leading Plaintiff Financial Lawyer, *Lawdragon*, 2022; Leading Lawyer, *The Legal 500*, 2020-2022; Leading Lawyer in America, *Lawdragon*, 2022; Best Lawyer in America: One to Watch, *Best Lawyers*®, 2021-2022; Best Lawyer in Southern California: One to Watch, *Best Lawyers*®, 2021; Future Star, *Benchmark Litigation*, 2019-2020; Next Generation Lawyer, *The Legal 500*, 2017-2019; Recommended Lawyer, *The Legal 500*, 2019; Rising Star, *Super Lawyers Magazine*, 2015-2018; 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 | Partner

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 Deutsche Bank AG Sec. Litig.* (S.D.N.Y); *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. Before 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

Rising Star, *Super Lawyers Magazine*, 2015-2016; J.D., *Cum Laude*, California Western School of Law, 2005; Member, *California Western Law Review*

Brian O. O'Mara | Partner

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 Elec. Pension Fund v. Bank of Am. Corp.* (S.D.N.Y.). Most recently, O'Mara served as class counsel in the ISDAfix Benchmark action against 14 major banks and broker ICAP plc, obtaining $504.5 million for plaintiffs.

O'Mara has been responsible for a number of significant rulings, including*: Alaska Elec. Pension Fund v. Bank of Am. Corp.*, 175 F. Supp. 3d 44 (S.D.N.Y. 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. 2013*); In re Constar Int'l Inc. Sec. Litig.*, 2008 U.S. Dist. LEXIS 16966 (E.D. Pa. 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. 2006); and *In re Dura Pharms., 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

Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2022; Super Lawyer, *Super Lawyers Magazine*, 2016-2021; Outstanding Antitrust Litigation Achievement in Private Law Practice, American Antitrust Institute, 2018; CALI Excellence Award in Securities Regulation, DePaul University, College of Law

Lucas F. Olts | Partner

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 recently served as lead counsel in *In re Facebook Biometric Info. Privacy Litig.*, a cutting-edge class action concerning Facebook's alleged privacy violations through its collection of users' biometric identifiers without informed consent that resulted in a $650 million settlement. Olts has 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 Emps.' Ret. 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 Sec. & 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. Olts also served on the litigation team in *In re Deutsche Bank AG Sec. Litig.*, in which the Firm obtained *a* $18.5 million settlement in a case against Deutsche Bank and certain of its officers alleging violations of the Securities Act of 1933. Before 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

Future Star, *Benchmark Litigation*, 2018-2020; Next Generation Lawyer, *The Legal 500*, 2017; Top Litigator Under 40, *Benchmark Litigation*, 2017; Under 40 Hotlist, *Benchmark Litigation*, 2016

Steven W. Pepich | Partner

Steve Pepich is a partner in the Firm's San Diego office. His practice has focused primarily on securities class action litigation, but has also included a wide variety of complex civil cases, including representing plaintiffs in 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. Inc. Sec. & Derivative Litig.* ($95 million recovered); *In re Boeing Sec. Litig.*($92 million recovery); *In re Louisiana-Pacific Corp. Sec. Litig.* ($65 million recovery); *Haw. Structural Ironworkers Pension Trust Fund v. Calpine Corp.* ($43 million recovery); *In re Advanced Micro Devices Sec. Litig.* ($34 million recovery); and *Gohler v. Wood*, ($17.2 million recovery). Pepich was a member of the plaintiffs' trial team in *Mynaf v. Taco Bell Corp.*, which settled after two months of trial on terms favorable to two plaintiff classes of restaurant workers for recovery of unpaid wages. He was also a member of the plaintiffs' trial team in *Newman v. Stringfellow* where, after a nine-month trial in Riverside, California, all claims for exposure to toxic chemicals were ultimately resolved for $109 million.

Education

B.S., Utah State University, 1980; J.D., DePaul University, 1983

Daniel J. Pfefferbaum | Partner

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 Sols., 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 Pharms., 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 Donald J. Trump. The settlement provides $25 million to approximately 7,000 consumers. This result means individual class members are 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

40 & Under Hot List, *Benchmark Litigation*, 2016-2020; Future Star, *Benchmark Litigation*, 2018-2020; Top 40 Under 40, *Daily Journal*, 2017; Rising Star, *Super Lawyers Magazine*, 2013-2017

Theodore J. Pintar | Partner

Ted Pintar is a partner in the Firm's San Diego office. Pintar has over 20 years of experience prosecuting securities fraud actions and derivative actions and over 15 years of experience prosecuting insurance-related consumer class actions, with recoveries in excess of $1 billion. He was part of the litigation team in the AOL Time Warner state and federal court securities opt-out actions, which arose from the 2001 merger of America Online and Time Warner. These cases resulted in a global settlement of $618 million. Pintar was also on the trial team in *Knapp v. Gomez*, which resulted in a plaintiff's verdict. Pintar has successfully prosecuted several RICO cases involving the deceptive sale of deferred annuities, including cases against Allianz Life Insurance Company of North America ($250 million), American Equity Investment Life Insurance Company ($129 million), Midland National Life Insurance Company ($80 million), and Fidelity & Guarantee Life Insurance Company ($53 million). He has participated in the successful prosecution of numerous other insurance and consumer class actions, including: (i) actions against major life insurance companies such as Manufacturer's Life ($555 million initial estimated settlement value) and Principal Mutual Life Insurance Company ($380+ million), involving the deceptive sale of life insurance; (ii) actions against major homeowners insurance companies such as Allstate ($50 million) and Prudential Property and Casualty Co. ($7 million); (iii) actions against automobile insurance companies such as the Auto Club and GEICO; and (iv) actions against Columbia House ($55 million) and BMG Direct, direct marketers of CDs and cassettes. Pintar and co-counsel recently settled a securities class action for $32.8 million against Snap, Inc. in *Snap Inc. Securities Cases*, a case alleging violations of the Securities Act of 1933. Additionally, Pintar has served as a panelist for numerous Continuing Legal Education seminars on federal and state court practice and procedure.

Education

B.A., University of California, Berkeley, 1984; J.D., University of Utah College of Law, 1987

Honors / Awards

Rated AV Preeminent by Martindale-Hubbell; Top Lawyer in San Diego, *San Diego Magazine*, 2013-2021; Super Lawyer, *Super Lawyers Magazine*, 2014-2017; 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

Ashley M. Price | Partner

Ashley Price is a partner in the Firm's San Diego office. Her practice focuses on complex securities litigation. Price served as lead counsel in *In re Am. Realty Cap. Props., Inc. Litig.*, a case arising out of ARCP's manipulative accounting practices, and obtained a $1.025 billion recovery. For five years, she and the litigation team prosecuted nine different claims for violations of the Securities Exchange Act of 1934 and the Securities Act of 1933, involving seven different stock or debt offerings and two mergers. The recovery represents the highest percentage of damages of any major PSLRA case prior to trial and includes the largest personal contributions by individual defendants in history.

Most recently, Price was a key member of the Robbins Geller litigation team in *Monroe County Employees' Retirement System v. The Southern Company* in which an $87.5 settlement was reached after three years of litigation. The settlement resolved claims for violations of the Securities Exchange Act of 1934 stemming from defendants' issuance of materially misleading statements and omissions regarding the status of construction of a first-of-its-kind "clean coal" power plant that was designed to transform coal into synthetic gas that could then be used to fuel the power plant.

Education

B.A., Duke University, 2006; J.D., Washington University in St. Louis, School of Law, 2011

Honors / Awards

40 & Under Hot List, *Benchmark Litigation*, 2021; Rising Star, *Super Lawyers Magazine*, 2016-2021

Willow E. Radcliffe | Partner

Willow Radcliffe is a partner in the Firm's San Francisco office, where she concentrates her practice in securities class action litigation in federal court. She has been significantly involved in the prosecution of numerous securities fraud claims, including actions filed against Pfizer, Inc. ($400 million recovery), CoreCivic (*Grae v. Corrections Corporation of America*) ($56 million recovery), Flowserve Corp. ($55 million recovery), Santander Consumer USA Holdings Inc. ($47 million), NorthWestern Corp. ($40 million recovery), Ashworth, Inc. ($15.25 million recovery), and Allscripts Healthcare Solutions, Inc. ($9.75 million recovery). Additionally, Radcliffe 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. Before 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

Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2022; Best Lawyer in America: One to Watch, *Best Lawyers*®, 2021-2022; Best Lawyer in Northern California: One to Watch, *Best Lawyers*®, 2021; Plaintiffs' Lawyer Trailblazer, *The National Law Journal*, 2020; J.D., *Cum Laude*, Seton Hall University School of Law, 1998; Most Outstanding Clinician Award; Constitutional Law Scholar Award

Jack Reise | Partner

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. Most recently, Reise and a team of Robbins Geller attorneys obtained a $1.21 billion settlement in *In re Valeant Pharms. Int'l, Inc. Sec. Litig.* (D.N.J.), a case that *Vanity Fair* reported as "the corporate scandal of its era" that had raised "fundamental questions about the functioning of our health-care system, the nature of modern markets, and the slippery slope of ethical rationalizations." This is the largest securities class action settlement against a pharmaceutical manufacturer and the ninth largest ever. As lead counsel, Reise has also 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, Inc. Sec. Litig.* (S.D.N.Y.) ($41 million settlement); *In re ADT Inc. S'holder Litig.* (Fla. Cir. Ct., 15th Jud. Cir.) ($30 million settlement); *In re Red Hat, Inc. Sec. Litig.* (E.D.N.C.) ($20 million settlement); and *In re AFC Enters., Inc. Sec. Litig.* (N.D. Ga.) ($17.2 million settlement).

Education

B.A., Binghamton University, 1992; J.D., University of Miami School of Law, 1995

Honors / Awards

Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2022; 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

Frank A. Richter | Partner

Frank Richter is a partner in the Firm's Chicago office, where he focuses on shareholder, antitrust, and class action litigation.

Richter was an integral member of the Robbins Geller team that secured a $1.21 billion settlement in *In re Valeant Pharms. Int'l, Inc. Sec. Litig.* (D.N.J.), which is the ninth-largest securities class action settlement in history and the largest ever against a pharmaceutical manufacturer. In addition to *Valeant*, Richter has been a member of litigation teams that have secured hundreds of millions of dollars in securities class action settlements throughout the country, including in *HCA* ($215 million, E.D. Tenn.), *Sprint* ($131 million, D. Kan.), *Orbital ATK* ($108 million, E.D. Va.), *Dana Corp.* ($64 million, N.D. Ohio), *LJM Funds* ($12.85 million, N.D. Ill.), and *Camping World* ($12.5 million, N.D. Ill.).

Richter also works on antitrust matters, including serving on the Plaintiffs' Steering Committee in *In re Dealer Mgmt. Sys. Antitrust Litig.* (N.D. Ill.), and he represents plaintiffs as local counsel in class action and derivative shareholder litigation in Illinois state and federal courts.

Education

B.A., Truman State University, 2007; M.M., DePaul University School of Music, 2009; J.D., DePaul University College of Law, 2012

Honors / Awards

Rising Star, *Super Lawyers Magazine*, 2017-2022; 40 & Under Hot List, *Benchmark Litigation*, 2021; J.D., *Summa Cum Laude*, Order of the Coif, CALI Award for highest grade in seven courses, DePaul University College of Law, 2012

Darren J. Robbins | Partner

Darren Robbins is a founding partner of Robbins Geller Rudman & Dowd LLP. Over the last two decades, Robbins has served as lead counsel in more than 100 securities class actions and has recovered billions of dollars for investors. Robbins recently served as lead counsel in *In re Am. Realty Cap. Props., Inc. Litig.*, a securities class action arising out of improper accounting practices, recovering more than $1 billion for class members. The *American Realty* settlement represents the largest recovery as a percentage of damages of any major class action brought pursuant to the Private Securities Litigation Reform Act of 1995 and resolved prior to trial. The $1+ billion settlement included the largest personal contributions ($237.5 million) ever made by individual defendants to a securities class action settlement.

Robbins also led Robbins Geller's prosecution of wrongdoing related to the sale of residential mortgage-backed securities (RMBS) prior to the global financial crisis, including an RMBS securities class action against Goldman Sachs that yielded a $272 million recovery for investors. Robbins 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 securities class action settlements ever involving claims brought solely under the Securities Act of 1933.

One of the hallmarks of Robbins' practice has been his focus on corporate governance reform. In *UnitedHealth*, a securities fraud class action arising out of an options backdating scandal, Robbins represented lead plaintiff CalPERS and obtained the cancellation of more than 3.6 million stock options held by the company's former CEO and secured a record $925 million cash recovery for shareholders. He also negotiated sweeping corporate governance reforms, including the election of a shareholder-nominated director 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. Recently, Robbins led a shareholder derivative action brought by several pension funds on behalf of Community Health Systems, Inc. that yielded a $60 million payment to Community Health as well as corporate governance reforms that included two shareholder-nominated directors, the creation and appointment of a Healthcare Law Compliance Coordinator, the implementation of an executive compensation clawback in the event of a restatement, the establishment of an insider trading controls committee, and the adoption of a political expenditure disclosure policy.

Education

B.S., University of Southern California, 1990; M.A., University of Southern California, 1990; J.D., Vanderbilt Law School, 1993

Honors / Awards

Leading Lawyer, *The Legal 500*, 2020-2022; Leading Lawyer, *Chambers USA*, 2014-2022; Best Lawyer in America, *Best Lawyers®*, 2010-2022; California Lawyer of the Year, *Daily Journal*, 2022; Top 50 Lawyers in San Diego, *Super Lawyers Magazine*, 2015, 2021; Litigator of the Week, *The American Lawyer*, 2021; Southern California Best Lawyer, *Best Lawyers®*, 2012-2021; Local Litigation Star, *Benchmark Litigation*, 2013-2018, 2020; Recommended Lawyer, *The Legal 500*, 2011, 2017, 2019; Benchmark California Star, *Benchmark Litigation*, 2019; State Litigation Star, *Benchmark Litigation*, 2019; Lawyer of the Year, *Best Lawyers®*, 2017; Influential Business Leader, *San Diego Business Journal*, 2017; Litigator of the Year, *Our City San Diego*, 2017; 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 | Partner

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. Most recently, Robbins and a team of Robbins Geller attorneys obtained a $1.21 billion settlement in *In re Valeant Pharms. Int'l, Inc. Sec. Litig.*, a case that *Vanity Fair* reported as "the corporate scandal of its era" that had raised "fundamental questions about the functioning of our health-care system, the nature of modern markets, and the slippery slope of ethical rationalizations." This is the largest securities class action settlement against a pharmaceutical manufacturer and the ninth largest ever. Robbins has also been a key member of litigation teams responsible for the successful prosecution of many other securities class actions, including: *Hospira* ($60 million recovery); *3D Systems* ($50 million); *CVS Caremark* ($48 million recovery); *Baxter International* ($42.5 million recovery); *R.H. Donnelley* ($25 million recovery); *Spiegel* ($17.5 million recovery); *TECO Energy* ($17.35 million recovery); *AFC Enterprises* ($17.2 million recovery); *Accretive Health* ($14 million recovery); *Lender Processing Services* ($14 million recovery); *Imperial Holdings* ($12 million recovery); *Mannatech* ($11.5 million recovery); *Newpark Resources* ($9.24 million recovery); *Gilead Sciences* ($8.25 million recovery); *TCP International* ($7.175 million recovery); *Cryo Cell International* ($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

Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2022; Rising Star, *Super Lawyers Magazine*, 2015-2017; 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

Caroline M. Robert | Partner

Caroline Robert is a partner in the Firm's San Diego office, where her practice focuses on complex securities litigation. Robert has maintained an active role in litigation at the heart of the worldwide financial crisis. She was part of the litigation teams that secured settlements for institutional investors against Wall Street banks for their role in structuring residential mortgage-backed securities and their subsequent collapse. Currently, she is litigating *China Development Industrial Bank v. Morgan Stanley & Co. Inc*.

Robert also serves as liaison to some the Firm's institutional investor clients abroad. She is currently representing investors damaged by Volkswagen's defeat device scandal in representative actions in Germany against Volkswagen and Porsche SE under the Kapitalanlegermusterverfahrensgesetz (KapMuG), the Capital Market Investors' Model Proceeding Act.

Education

B.A., University of San Diego, 2004; J.D., University of San Diego School of Law, 2007

Honors / Awards

B.A., *Magna Cum Laude*, University of San Diego, 2004

Henry Rosen | Partner

Henry Rosen is a partner in the Firm's San Diego office, where he is a member of the Hiring Committee and the 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 | Partner

David Rosenfeld, a partner in the Firm's Melville office, has focused his legal practice for more than 20 years in the area of securities litigation. He has argued in courts throughout the country, has been appointed 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 teams of Robbins Geller attorneys in recovering $95 million for shareholders of Tableau Software, Inc., $90 million for shareholders of Altria Group, Inc., $40 million for shareholders of BRF S.A, $20 million for shareholders of Grana y Montero (where shareholders recovered more than 90% of their losses), and $34.5 million for shareholders of L-3 Communications Holdings, Inc.

Rosenfeld also led the Robbins Geller team in recovering in excess of $34 million for investors in Overseas Shipholding Group, 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. 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. In connection with this lawsuit, Rosenfeld met with and interviewed Madoff in federal prison in Butner, North Carolina.

Rosenfeld has also achieved remarkable recoveries against companies in the financial industry. In addition to being appointed lead counsel in the securities fraud lawsuit against First BanCorp ($74.25 million recovery), he recovered $70 million for investors in Credit Suisse Group and $14 million for Barclays investors.

Education

B.S., Yeshiva University, 1996; J.D., Benjamin N. Cardozo School of Law, 1999

Honors / Awards

Super Lawyer, *Super Lawyers Magazine*, 2014-2020; Future Star, *Benchmark Litigation*, 2016-2020; Recommended Lawyer, *The Legal 500*, 2018; Rising Star, *Super Lawyers Magazine*, 2011-2013

Robert M. Rothman | Partner

Robert Rothman is a partner in the Firm's Melville office and a member of the Firm's Management Committee. He has recovered well in excess of $1 billion on behalf of victims of investment fraud, consumer fraud, and antitrust violations.

Recently, Rothman served as lead counsel in *In re Am. Realty Cap. Props., Inc. Litig.* where he obtained a $1.025 billion cash recovery on behalf of investors. Rothman and the litigation team prosecuted nine different claims for violations of the Securities Exchange Act of 1934 and the Securities Act of 1933, involving seven different stock or debt offerings and two mergers. The recovery represents the highest percentage of damages ever obtained in a major PSLRA case before trial and includes the largest personal contributions by individual defendants in history. Additionally, Rothman has recovered hundreds of millions of dollars for investors in cases against First Bancorp, Doral Financial, Popular, iStar, Autoliv, CVS Caremark, Fresh Pet, The Great Atlantic & Pacific Tea Company (A&P), NBTY, Spiegel, American Superconductor, Iconix Brand Group, Black Box, OSI Pharmaceuticals, Gravity, Caminus, Central European Distribution Corp., OneMain Holdings, The Children's Place, CNinsure, Covisint, FleetBoston Financial, Interstate Bakeries, Hibernia Foods, Jakks Pacific, Jarden, Portal Software, Ply Gem Holdings, Orion Energy, Tommy Hilfiger, TD Banknorth, Teletech, Unitek, Vicuron, Xerium, W Holding, and dozens of others.

Rothman also 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. He also actively litigates consumer fraud cases, including a case alleging false advertising where the defendant agreed to a settlement valued in excess of $67 million.

Education

B.A., State University of New York at Binghamton, 1990; J.D., Hofstra University School of Law, 1993

Honors / Awards

Leading Plaintiff Financial Lawyer, *Lawdragon*, 2022; Northeast Trailblazer, *The American Lawyer*, 2022; Super Lawyer, *Super Lawyers Magazine*, 2011, 2013-2022; New York Trailblazer, *New York Law Journal*, 2020; 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 | Partner

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 26-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. Rudman is also part of the Firm's SPAC Task Force, which is dedicated to rooting out and prosecuting fraud on behalf of injured investors in special purpose acquisition companies. 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 $62.5 million recovery in *SQM*, a $50 million recovery in *TD Banknorth*, a $48 million recovery in *CVS Caremark*, a $34.5 million recovery in *L-3 Communications Holdings*, a $32.8 million recovery in *Snap, Inc*., and a $18.5 million recovery in *Deutsche Bank*.

Education

B.A., Binghamton University, 1989; J.D., Brooklyn Law School, 1992

Honors / Awards

Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2022; Leading Lawyer, *Chambers USA*, 2014-2022; Leading Lawyer in America, *Lawdragon*, 2016-2022; Super Lawyer, *Super Lawyers Magazine*, 2007-2020; New York Trailblazer, *New York Law Journal*, 2020; Plaintiffs' Lawyer Trailblazer, *The National Law Journal*, 2020; National Practice Area Star, *Benchmark Litigation*, 2019-2020; Local Litigation Star, *Benchmark Litigation*, 2013-2020; Recommended Lawyer, *The Legal 500*, 2018-2019; Litigation Star, *Benchmark Litigation*, 2013, 2017-2019; 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 | Partner

Joseph Russello is a partner in the Firm's Melville office. He began his career as a defense lawyer and now represents investors in securities class actions at the trial and appellate levels.

Rusello spearheaded the team that recovered $85 million in litigation against The Blackstone Group, LLC, a case that yielded a landmark decision from the Second Circuit Court of Appeals on "materiality" in securities actions. *Litwin v. Blackstone Grp., L.P.*, 634 F.3d 706 (2d Cir. 2011). He also led the team responsible for partially defeating dismissal and achieving a $50 million settlement in litigation against BHP Billiton, an Australia-based mining company accused of concealing safety issues at a Brazilian iron-ore dam. *In re BHP Billiton Ltd. Sec. Litig.*, 276 F. Supp. 3d 65 (S.D.N.Y. 2017).

Recently, Rusello was co-counsel in a lawsuit against Allied Nevada Gold Corporation, recovering $14.5 million for investors after the Ninth Circuit Court of Appeals reversed two dismissal decisions. *In re Allied Nev. Gold Corp. Sec. Litig.*, 743 F. App'x 887 (9th Cir. 2018). He was also instrumental in obtaining a settlement and favorable appellate decision in litigation against SAIC, Inc., a defense contractor embroiled in a decade-long overbilling fraud against the City of New York. *Ind. Pub. Ret. Sys. v. SAIC, Inc.*, 818 F.3d 85 (2d Cir. 2016). Other notable recent decisions include: *In re Qudian Sec. Litig.*,189 A.D. 3d 449 (N.Y. App. Div., 1st Dep't 2020); *Kazi v. XP Inc.*, 2020 WL 4581569 (N.Y. Sup. Ct. Aug. 5, 2020); *In re Dentsply Sirona, Inc. S'holders Litig.*, 2019 WL 3526142 (N.Y. Sup. Ct. Aug. 2, 2019); and *Matter of PPDAI Grp. Sec. Litig.*, 64 Misc. 3d 1208(A), 2019 WL 2751278 (N.Y. Sup. Ct. 2019). Other notable settlements include: *NBTY, Inc.* ($16 million); *LaBranche & Co., Inc.* ($13 million); *The Children's Place Retail Stores, Inc.* ($12 million); and *Prestige Brands Holdings, Inc.* ($11 million).

Education

B.A., Gettysburg College, 1998; J.D., Hofstra University School of Law, 2001

Honors / Awards

Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2022; Super Lawyer, *Super Lawyers Magazine*, 2014-2020; *Law360* Securities Editorial Advisory Board, 2017

Scott H. Saham | Partner

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 a member of the litigation team that obtained a $125 million settlement in *In re LendingClub Sec. Litig.*, a settlement that ranked among the top ten largest securities recoveries ever in the Northern District of California. He was also part of the litigation teams in *Schuh v. HCA Holdings, Inc.*, which resulted in a $215 million recovery for shareholders, the largest securities class action recovery ever in Tennessee, and *Luna v. Marvell Tech. Grp., Ltd.*, which resulted in a $72.5 million settlement that represents approximately 24% to 50% of the best estimate of classwide damages suffered by investors. 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

Honors / Awards

Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2022

Juan Carlos Sanchez | Partner

Juan Carlos Sanchez is a partner in the Firm's San Diego office, where his practice focuses on complex securities litigation. Sanchez was a member of the litigation team that secured a $60 million settlement – the largest shareholder derivative recovery ever in Tennessee and the Sixth Circuit – and unprecedented corporate governance reforms in *In re Community Health Sys., Inc. S'holder Derivative Litig*. More recently, Sanchez's representation of California passengers in a landmark consumer and civil rights case against Greyhound Lines, Inc. led to a ruling recognizing that transit passengers do not check their rights and dignity at the bus door.

In addition to actively litigating cases, Sanchez is also a member of the Firm's Lead Plaintiff Advisory Team, which evaluates clients' exposure to securities fraud, advises them on lead plaintiff motions, and helps them secure appointment as lead plaintiff. Sanchez's efforts have assisted institutional and retail clients secure lead plaintiff appointments in more than 40 securities class actions.

Sanchez is also part of Robbins Geller's SPAC Task Force, which is dedicated to rooting out and prosecuting fraud on behalf of injured investors in special purpose acquisition companies. The rise in "blank check" financing poses unique risks to investors, and this group – comprised of experienced litigators, investigators, and forensic accountants – represents the vanguard of ensuring integrity, honesty, and justice in this rapidly developing investment arena.

Education

B.S., University of California, Davis, 2005; J.D., University of California, Berkeley School of Law (Boalt Hall), 2014

Vincent M. Serra | Partner

Vincent Serra is a partner in the Firm's Melville office and focuses his practice on complex securities, antitrust, consumer, and employment litigation. His efforts have contributed to the recovery of over a billion dollars on behalf of aggrieved plaintiffs and class members. Notably, Serra has contributed to several significant recoveries, including *Dahl v. Bain Cap. Partners, LLC* ($590.5 million recovery), an antitrust action against the world's largest private equity firms alleging collusive practices in multi-billion dollar leveraged buyouts, and *Samit v. CBS Corp.* ($14.75 million recovery, pending final approval), a securities action alleging that defendants made false and misleading statements about their knowledge of former CEO Leslie Moonves's exposure to the #MeToo movement.

Additionally, Serra was a member of the litigation team that obtained a $22.75 million settlement fund on behalf of route drivers in an action asserting violations of federal and state overtime laws against Cintas Corp. He was also part of the successful trial team in *Lebrilla v. Farmers Grp., Inc.*, which involved Farmers' practice of using inferior imitation parts when repairing insureds' vehicles. Other notable cases include *Alaska Elec. Pension Fund v. Pharmacia Corp.* ($164 million recovery) and *In re Priceline.com Sec. Litig.* ($80 million recovery). Serra is currently litigating several actions against manufacturers and retailers for the improper marketing and sale of purportedly "flushable" wipes products. In *Commissioners of Public Works of the City of Charleston (d.b.a. Charleston Water System) v. Costco Wholesale Corp.*, Serra serves as court-appointed class counsel in connection with a settlement that secured an unprecedented commitment of Kimberly-Clark to meet the national municipal wastewater standard for flushability. He also obtained up to $20 million for consumers who purchased Kimberly-Clark's "flushable" wipes in *Kurtz v. Costco Wholesale Corp.* and *Honigman v. Kimberly-Clark Corp.* (pending final approval).

Education

B.A., University of Delaware, 2001; J.D., California Western School of Law, 2005

Honors / Awards

Wiley W. Manuel Award for Pro Bono Legal Services, State Bar of California

Jessica T. Shinnefield | Partner

Jessica Shinnefield is a partner in the Firm's San Diego office. Currently, her practice focuses on initiating, investigating, and prosecuting securities fraud class actions. Shinnefield served as lead counsel in *In re Am. Realty Cap. Props., Inc. Litig.*, a case arising out of ARCP's manipulative accounting practices, and obtained a $1.025 billion recovery. For five years, she and the litigation team prosecuted nine different claims for violations of the Securities Exchange Act of 1934 and the Securities Act of 1933, involving seven different stock or debt offerings and two mergers. The recovery represents the highest percentage of damages of any major PSLRA case prior to trial and includes the largest personal contributions by individual defendants in history. Shinnefield also served as lead counsel in *Smilovits v. First Solar, Inc.*, and obtained a $350 million settlement on the eve of trial. The settlement is fifth-largest PSLRA settlement ever recovered in the Ninth Circuit.

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 in *Abu Dhabi Commercial Bank v. Morgan Stanley & Co. Incorporated* and *King County, Washington v. IKB Deutsche Industriebank AG*. These cases were among the first to successfully allege fraud against the rating agencies, whose ratings have traditionally been protected by the First Amendment. Shinnefield also litigated individual opt-out actions against AOL Time Warner – *Regents of the Univ. of Cal. v. Parsons* and *Ohio Pub. Emps. Ret. Sys. v. Parsons* (recovery more than $600 million). Additionally, she litigated an action against Omnicare, in which she helped obtain a favorable ruling for plaintiffs from the United States Supreme Court. Shinnefield has also successfully appealed lower court decisions in the Second, Seventh, and Ninth Circuit Courts of Appeals.

Education

B.A., University of California at Santa Barbara, 2001; J.D., University of San Diego School of Law, 2004

Honors / Awards

Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2022; Plaintiffs' Lawyers Trailblazer, *The National Law Journal*, 2021; Litigator of the Week, *The American Lawyer*, 2020; Rising Star, *Super Lawyers Magazine*, 2015-2019; 40 & Under Hot List, *Benchmark Litigation*, 2018-2019; B.A., *Phi Beta Kappa*, University of California at Santa Barbara, 2001

Elizabeth A. Shonson | Partner

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); *In re ADT Inc. S'holder Litig.* (Fla. Cir. Ct., 15th Jud. Cir.) ($30 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).

Education

B.A., Syracuse University, 2001; J.D., University of Florida Levin College of Law, 2005

Honors / Awards

Rising Star, *Super Lawyers Magazine*, 2016-2019; 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 | Partner

Trig Smith is a partner in the Firm's San Diego office where he focuses his practice on complex securities litigation. He has been involved in the prosecution of numerous securities class actions that have resulted in over a billion dollars in recoveries for investors. His cases have included: *In re Cardinal Health, Inc. Sec. Litig.* ($600 million recovery); *Jones v. Pfizer Inc.* ($400 million recovery); *Silverman v. Motorola, Inc.* ($200 million recovery); and *City of Livonia Emps.' Ret. Sys. v. Wyeth* ($67.5 million). Most recently, he was a member of the Firm's trial team in *Hsu v. Puma Biotechnology, Inc.*, a securities fraud class action that resulted in a verdict in favor of investors after a two-week jury trial.

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 | Partner

Mark Solomon is a founding and managing partner of the Firm and leads its international litigation practice. Over the last 29 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 was first admitted to the Bar of England and Wales as a Barrister (he is non-active) and is an active member of the Bars of Ohio, California, and various United States federal district and appellate courts.

Since 1993, 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. 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 in the late 1990s and early 2000s as class counsel in *In re Informix Corp. Sec. Litig.* in the federal district court for the Northern District of California, and recovering $131 million for Informix investors; and serving as class counsel in *Schwartz v. TXU Corp.* in the federal district court for the Northern District of Texas, where he helped obtain a recovery of over $149 million for a class of purchasers of TXU securities as well as securing important governance reforms. He litigated and tried the securities class action *In re Helionetics, Inc. Sec. Litig.*, where he won a $15.4 million federal jury verdict in the federal district court for the Central District of California.

Solomon is currently counsel to a number of pension funds serving as lead plaintiffs in cases throughout the United States. He represents the UK's Norfolk Pension Fund in *Hsu v. Puma Biotechnology, Inc.* where, in the federal district court for the Central District of California, after three weeks of trial, the Fund obtained a jury verdict valued at over $54 million in favor of the class against the company and its CEO. Solomon also represents Norfolk Pension Fund in separate class actions currently pending against Apple Inc. and Apple executives in the federal district court for the Northern District of California and against Anadarko Petroleum Corporation and former Anadarko executives in the federal district court for the Southern District of Texas. He represented the British Coal Staff Superannuation Scheme and the Mineworkers' Pension Scheme in *Smilovits v. First Solar, Inc.* in the federal district court for the District of Arizona, in which the class recently recovered $350 million on the eve of trial. That settlement is the fifth-largest recovered in the Ninth Circuit since the advent in 1995 of statutory reforms to securities litigation that established the current legal regime. Solomon also represents the same coal industry funds in the recently filed class action against Citrix Inc. and Citrix executives in the federal district court for the Southern District of Florida, and he represents North East Scotland Pension Fund in a class action pending against Under Armour and Under Armour executives in the federal district court for the District of Maryland. In addition, he is currently representing Los Angeles County Employees Retirement Association in a class action pending against FirstEnergy and FirstEnergy executives in the federal district court for the Southern District of Ohio and he is representing Strathclyde Pension Fund in a class action pending against Bank OZK and its CEO in the federal district court for the Eastern District of Arkansas.

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

Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2022; Super Lawyer, *Super Lawyers Magazine*, 2017-2018; Recommended Lawyer, *The Legal 500*, 2016-2017; 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

Hillary B. Stakem | Partner

Hillary Stakem is a partner in the Firm's San Diego office, where her practice focuses on complex securities litigation. Stakem was a member of the litigation 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 was also part of the litigation teams that secured a $388 million recovery for investors in J.P. Morgan residential mortgage-backed securities in *Fort Worth Employees' Retirement Fund v. J.P. Morgan Chase & Co.* and a $131 million recovery in favor of plaintiffs in *Bennett v. Sprint Nextel Corp*. Additionally, Stakem helped to obtain a landmark settlement, 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 structured investment vehicles in *Abu Dhabi Commercial Bank v. Morgan Stanley & Co. Inc*. Stakem also obtained a $350 million settlement on the eve of trial in *Smilovits v. First Solar, Inc.*, the fifth-largest PSLRA settlement ever recovered in the Ninth Circuit, and was on the team of Robbins Geller attorneys who obtained a $97.5 million recovery in *Marcus v. J.C. Penney Company, Inc*.

Most recently, Stakem was a member of the Robbins Geller litigation team in *Monroe County Employees' Retirement System v. The Southern Company* in which an $87.5 settlement was reached after three years of litigation. The settlement resolved claims for violations of the Securities Exchange Act of 1934 stemming from defendants' issuance of materially misleading statements and omissions regarding the status of construction of a first-of-its-kind "clean coal" power plant that was designed to transform coal into synthetic gas that could then be used to fuel the power plant.

Education

B.A., College of William and Mary, 2009; J.D., UCLA School of Law, 2012

Honors / Awards

40 & Under Hot List, *Benchmark Litigation*, 2021; Rising Star, *Super Lawyers Magazine*, 2021; B.A., *Magna Cum Laude*, College of William and Mary, 2009

Jeffrey J. Stein | Partner

Jeffrey Stein is a partner in the Firm's San Diego office, where he practices securities fraud litigation and other complex matters. He was a member of the litigation team that secured a historic recovery on behalf of Trump University students in two class actions against President Donald J. Trump. The settlement provides $25 million to approximately 7,000 consumers. This result means individual class members are eligible for upwards of $35,000 in restitution. Stein represented the class on a *pro bono* basis.

Before joining the Firm, Stein focused on civil rights litigation, with special emphasis on the First, Fourth, and Eighth Amendments. In this capacity, he helped his clients secure successful outcomes before the United States Supreme Court and the Ninth Circuit Court of Appeals.

Education

B.S., University of Washington, 2005; J.D., University of San Diego School of Law, 2009

Christopher D. Stewart | Partner

Christopher Stewart is a partner in the Firm's San Diego office. His practice focuses on complex securities and shareholder derivative litigation. Stewart served as lead counsel in *In re Am. Realty Cap. Props., Inc. Litig.*, a case arising out of ARCP's manipulative accounting practices, and obtained a $1.025 billion recovery. For five years, he and the litigation team prosecuted nine different claims for violations of the Securities Exchange Act of 1934 and the Securities Act of 1933, involving seven different stock or debt offerings and two mergers. The recovery represents the highest percentage of damages of any major PSLRA case prior to trial and includes the largest personal contributions by individual defendants in history. Most recently, Stewart served as lead counsel in *Smilovits v. First Solar, Inc.*, and obtained a $350 million settlement on the eve of trial. The settlement is fifth-largest PSLRA settlement ever recovered in the Ninth Circuit.

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. Stewart also served on the litigation team in *In re Deutsche Bank AG Sec. Litig.*, in which the Firm obtained a $18.5 million settlement in a case against Deutsche Bank and certain of its officers alleging violations of the Securities Act of 1933.

Education

B.S., Santa Clara University, 2004; M.B.A., University of San Diego School of Business Administration, 2009; J.D., University of San Diego School of Law, 2009

Honors / Awards

Rising Star, *Super Lawyers Magazine*, 2015-2020; J.D., *Magna Cum Laude*, Order of the Coif, University of San Diego School of Law, 2009; Member, *San Diego Law Review*

Sabrina E. Tirabassi | Partner

Sabrina Tirabassi is a partner in the Firm's Boca Raton office, where her practice focuses on complex securities litigation, including the Firm's lead plaintiff motion practice. In this role, Tirabassi remains at the forefront of litigation trends and issues arising under the Private Securities Litigation Reform Act of 1995. Further, Tirabassi has been an integral member of the litigation teams responsible for securing significant monetary recoveries on behalf of shareholders, including: *Villella v. Chemical and Mining Company of Chile Inc.*, No. 1:15-cv-02106 (S.D.N.Y.); *In re ADT Inc. S'holder Litig.*, No. 502018CA003494XXXXMB-AG (Fla. Cir. Ct., 15th Jud. Cir.); *KBC Asset Mgmt. NV v. Aegerion Pharms., Inc.*, No. 1:14-cv-10105-MLW (D. Mass.); *Sohal v. Yan,* No. 1:15-cv-00393-DAP (N.D. Ohio); *McGee v. Constant Contact, Inc.,* No. 1:15-cv-13114-MLW (D. Mass.); and *Schwartz v. Urban Outfitters, Inc.*, No. 2:13-cv-05978-MAK (E.D. Pa.).

Education

B.A., University of Florida, 2000; J.D., Nova Southeastern University Shepard Broad College of Law, 2006, *Magna Cum Laude*

Honors / Awards

Rising Star, *Super Lawyers Magazine*, 2010, 2015-2018; J.D., *Magna Cum Laude*, Nova Southeastern University Shepard Broad College of Law, 2006

Douglas Wilens | Partner

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 and precedent-setting appeals in *Ind. Pub. Ret. Sys. v. SAIC, Inc.*, 818 F.3d 85 (2d Cir. 2016) (addressing duty to disclose under SEC Regulation Item 303 in §10(b) case), *Mass. Ret. Sys. v. CVS Caremark Corp.*, 716 F.3d 229 (1st Cir. 2013) (addressing pleading of loss causation in §10(b) case), and *Lormand v. US Unwired, Inc.*, 565 F.3d 228 (5th Cir. 2009) (addressing pleading of falsity, scienter, and loss causation in §10(b) case).

Before 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 | Partner

Shawn Williams, a founding partner of the Firm, is the managing partner of the Firm's San Francisco office and a member of the Firm's Management Committee. Williams specializes in complex commercial litigation focusing on securities litigation, and has served as lead counsel in a range of actions resulting in more than a billion dollars in recoveries. For example, Williams was among lead counsel in *In re Facebook Biometric Info. Privacy Litig.*, charging Facebook with violations of the Illinois Biometric Information Privacy Act, resulting in a $650 million recovery for injured Facebook users, the largest ever privacy class action.

Williams led the team of Robbins Geller attorneys in the investigation and drafting of comprehensive securities fraud claims in *Hefler v. Wells Fargo & Co.*, alleging widespread opening of unauthorized and undisclosed customer accounts. The *Hefler* action resulted in the recovery of $480 million for Wells Fargo investors. In *City of Westland Police & Fire Ret. Sys. v. Metlife, Inc.*, Williams led the Firm's team of lawyers alleging MetLife's failure to disclose and account for the scope of its use and non-use of the Social Security Administration Death Master File and its impact on MetLife's financial statements. The *Metlife* action resulted in a recovery of $84 million. Williams also served as lead counsel in the following actions resulting in significant recoveries: *Chicago Laborers Pension Fund v. Alibaba Grp. Holding Ltd.* ($75 million recovery); *In re Krispy Kreme Doughnuts, Inc. Sec. Litig.* ($75 million recovery); *In re Medtronic, Inc. Sec. Litig.* ($43 million recovery); *In re Cadence Design Sys., Inc. Sec. Litig.* ($38 million recovery); and *City of Sterling Heights Gen. Emps'. Ret. Sys. v. Prudential Fin., Inc.* ($33 million recovery).

Williams is also a member of the Firm's Shareholder Derivative Practice Group which has secured tens of millions of dollars in cash recoveries and comprehensive corporate governance reforms in a number of high-profile cases including: *In re McAfee, Inc. Derivative Litig.*; *In re Marvell Tech. Grp. Ltd. Derivative Litig.*; *In re KLA-Tencor Corp. S'holder Derivative Litig.*; *The Home Depot, Inc. Derivative Litig.*; and *City of Westland Police & Fire Ret. Sys. v. Stumpf (Wells Fargo & Co.)*.

Williams led multiple shareholder actions in which the Firm obtained favorable appellate rulings, including: *W. Va. Pipe Trades Health & Welfare Fund v. Medtronic, Inc.*, 845 F.3d 384 (8th Cir. 2016); *Knollenberg v. Harmonic, Inc.*, 152 F. App'x 674 (9th Cir. 2005); *Nursing Home Pension Fund, Local 144 v. Oracle Corp.*, 380 F.3d 1226 (9th Cir. 2004); *Lynch v. Rawls*, 429 F. App'x 641 (9th Cir. 2011); and *Barrie v. Intervoice-Brite, Inc.*, 409 F.3d 653 (5th Cir. 2005).

Before 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.

Education

B.A., The State of University of New York at Albany, 1991; J.D., University of Illinois, 1995

Honors / Awards

Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2022; Top Plaintiff Lawyer, *Daily Journal*, 2022; Most Influential Black Lawyers, *Savoy*, 2022; Leading Lawyer in America, *Lawdragon*, 2018-2022; Best Lawyer in America, *Best Lawyers®*, 2022; Top 100 Lawyer, *Daily Journal*, 2019, 2021; Super Lawyer, *Super Lawyers Magazine*, 2014-2017, 2020-2021; California Trailblazer, *The Recorder*, 2019; Titan of the Plaintiffs Bar, *Law360*, 2019; Plaintiffs' Lawyer Trailblazer, *The National Law Journal*, 2019; Board Member, California Bar Foundation, 2012-2014

David T. Wissbroecker | Partner

David Wissbroecker is a partner in the Firm's San Diego and Chicago offices. He focuses his practice on securities class action litigation in the context of mergers and acquisitions, representing both individual shareholders and institutional investors. As part of the litigation team at Robbins Geller, Wissbroecker has helped secure monetary recoveries for shareholders that collectively exceed $1 billion. Wissbroecker has litigated numerous high-profile cases in Delaware and other jurisdictions, including shareholder class actions challenging the acquisitions of Dole, Kinder Morgan, Del Monte Foods, Affiliated Computer Services, Intermix, and Rural Metro. His practice has recently expanded to include numerous proxy fraud cases in federal court, along with shareholder document demand litigation in Delaware. Before 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

Leading Plaintiff Financial Lawyer, *Lawdragon*, 2020-2022; Recommended Lawyer, *The Legal 500*, 2019; Rising Star, *Super Lawyers Magazine*, 2015; J.D., *Magna Cum Laude*, University of Illinois College of Law, 2003; B.A., *Cum Laude*, Arizona State University, 1998

Christopher M. Wood | Partner

Christopher Wood is the partner in charge of Robbins Geller Rudman & Dowd LLP's Nashville office, where his practice focuses on complex securities litigation. He has been a member of the 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); *Grae v. Corrections Corporation of America* (*CoreCivic*) ($56 million recovery); *In re Micron Tech., Inc. Sec. Litig.* ($42 million recovery); and *Winslow v. BancorpSouth, Inc.* ($29.5 million recovery).

Working together with Public Funds Public Schools (a national campaign founded by the Southern Poverty Law Center and Education Law Center), Wood helped to strike down Tennessee's school voucher program, which would have diverted critically needed funds from public school students in Nashville and Memphis. Wood has also provided pro bono legal services through Tennessee Justice for Our Neighbors, Volunteer Lawyers & Professionals for the Arts, the Ninth Circuit's Pro Bono Program, and the San Francisco Bar Association's Volunteer Legal Services Program.

Education

B.A., Vanderbilt University, 2003; J.D., University of San Francisco School of Law, 2006

Honors / Awards

40 & Under Hot List, *Benchmark Litigation*, 2021; Rising Star, *Super Lawyers Magazine*, 2011-2013, 2015-2020

Debra J. Wyman | Partner

Debra Wyman is a partner in the Firm's San Diego office. She specializes in securities litigation and has litigated numerous cases against public companies in state and federal courts that have resulted in over $2 billion in securities fraud recoveries. Wyman served as lead counsel in *In re Am. Realty Cap. Props., Inc. Litig.*, a case arising out of ARCP's manipulative accounting practices, and obtained a $1.025 billion recovery. For five years, she and the litigation team prosecuted nine different claims for violations of the Securities Exchange Act of 1934 and the Securities Act of 1933, involving seven different stock or debt offerings and two mergers. The recovery represents the highest percentage of damages of any major PSLRA case prior to trial and includes the largest personal contributions by individual defendants in history. Most recently, Wyman was part of the litigation team in *Monroe County Employees' Retirement System v. The Southern Company* in which an $87.5 settlement was reached after three years of litigation. The settlement resolved claims for violations of the Securities Exchange Act of 1934 stemming from defendants' issuance of materially misleading statements and omissions regarding the status of construction of a first-of-its-kind "clean coal" power plant that was designed to transform coal into synthetic gas that could then be used to fuel the power plant.

Wyman was also 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 achieved represents more than 30% of the aggregate classwide damages, far exceeding the typical recovery in a securities class action. Wyman prosecuted the complex securities and accounting fraud case *In re HealthSouth Corp. Sec. Litig.*, one of the largest and longest-running corporate frauds in history, in which $671 million was recovered for defrauded HealthSouth investors. She 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. Wyman was also part of the litigation team that secured a $64 million recovery for Dana Corp. shareholders in *Plumbers & Pipefitters National Pension Fund v. Burns*, in which the Firm's Appellate Practice Group successfully appealed to the Sixth Circuit Court of Appeals twice, reversing the district court's dismissal of the action.

Education

B.A., University of California Irvine, 1990; J.D., University of San Diego School of Law, 1997

Honors / Awards

Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2022; Leading Lawyer in America, *Lawdragon*, 2020-2022; Top 250 Women in Litigation, *Benchmark Litigation*, 2021; San Diego Litigator of the Year, *Benchmark Litigation*, 2021; Plaintiff Litigator of the Year, *Benchmark Litigation*, 2021; Top Woman Lawyer, *Daily Journal*, 2017, 2020; MVP, *Law360*, 2020; Litigator of the Week, *The American Lawyer*, 2020; Litigator of the Year, *Our City San Diego*, 2017; Super Lawyer, *Super Lawyers Magazine*, 2016-2017

Jonathan Zweig | Partner

Jonathan Zweig is a partner with the Firm and is based in the Manhattan office. Zweig's practice focuses primarily on complex securities litigation, corporate control cases, and breach of fiduciary duty actions on behalf of investors.

Before joining Robbins Geller, Zweig served for over six years as an Assistant Attorney General with the New York State Office of the Attorney General's Investor Protection Bureau, where he prosecuted civil securities fraud actions and tried two major cases on behalf of the State. In *New York v. Exxon Mobil Corporation*, a high-profile securities fraud case concerning climate risk disclosures, Zweig examined numerous witnesses and delivered the State's closing argument at trial. In *New York v. Laurence Allen et al.*, Zweig and his colleagues achieved a total victory at trial for defrauded investors in a private equity fund, and established for the first time the retroactive application of the Martin Act's expanded statute of limitations. Zweig also conducted data-intensive investigations of Credit Suisse concerning its alternative trading system and its wholesale market making business, resulting in joint settlements with the SEC totaling $70 million from Credit Suisse. On three occasions, Zweig was awarded the Louis J. Lefkowitz Award for Exceptional Service.

Zweig was previously a litigator at Davis Polk & Wardwell LLP, where he represented clients in securities litigation, mass tort, and other matters. Zweig also clerked for Judge Jacques L. Wiener, Jr. of the U.S. Court of Appeals for the Fifth Circuit, and Judge Sarah S. Vance of the U.S. District Court for the Eastern District of Louisiana.

Education

B.A., Yale University, 2007; J.D., Harvard Law School, 2010

Honors / Awards

Louis J. Lefkowitz Award for Exceptional Service, New York State Office of the Attorney General, 2015, 2020, 2021; J.D., *Magna Cum Laude*, Harvard Law School, 2010; B.A., *Summa Cum Laude*, Yale University, 2007

Susan K. Alexander | Of Counsel

Susan Alexander is Of Counsel to the Firm and is based in the San Francisco office. Alexander's 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 *Mineworkers' Pension Scheme v. First Solar Inc.* ($350 million recovery), *In re VeriFone Holdings, Inc. Sec. Litig.* ($95 million recovery), and the successful appellate ruling in *Alaska Elec. Pension Fund v. Flowserve Corp.* ($55 million recovery). Other representative results include: *Stoyas v. Toshiba Corp.*, 896 F.3d 933 (9th Cir. 2018) (reversing dismissal of securities fraud action and holding that the Exchange Act applies to unsponsored American Depositary Shares); *W. Va. Pipe Trades Health & Welfare Fund v. Medtronic, Inc.*, 845 F.3d 384 (8th Cir. 2016) (reversing summary judgment of securities fraud action on statute of limitations grounds); *In re Ubiquiti Networks, Inc. Sec. Litig.*, 669 F. App'x 878 (9th Cir. 2016) (reversing dismissal of §11 claim); *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); *Barrie v. Intervoice-Brite, Inc.*, 397 F.3d 249 (5th Cir.) (reversing dismissal of securities fraud complaint, focused on scienter), *reh'g denied and op. modified*, 409 F.3d 653 (5th Cir. 2005); and *Pirraglia v. Novell, Inc.*, 339 F.3d 1182 (10th Cir. 2003) (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, *Super Lawyers Magazine*, 2015-2021; 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

Laura M. Andracchio | Of Counsel

Laura Andracchio is Of Counsel in the Firm's San Diego office. Having first joined the Firm in 1997, she was a Robbins Geller partner for ten years before her role as Of Counsel. As a partner with the Firm, Andracchio led dozens of securities fraud cases against public companies throughout the country, recovering hundreds of millions of dollars for injured investors. Her current focus remains securities fraud litigation under the federal securities laws.

Most recently, Andracchio was a member of the litigation team in *In re American Realty Cap. Props., Inc. Litig.* (S.D.N.Y.), in which a $1.025 billion recovery was approved in 2020. She was also on the litigation team for *City of Pontiac Gen. Emps.' Ret. Sys. v. Walmart Stores, Inc.* (W.D. Ark.), in which a $160 million recovery for Walmart investors was approved in 2019. She also assisted in litigating a case brought against J.P. Morgan Chase & Co., *Fort Worth Emps.' Ret. Fund v. J.P. Morgan Chase & Co.* (S.D.N.Y.), on behalf of investors in residential mortgage-backed securities, which resulted in a recovery of $388 million in 2017.

Andracchio was also a lead member of the trial team in *In re AT&T Corp. Sec. Litig.*, recovering $100 million for the class after two weeks of trial in district court in New Jersey. Before trial, she managed and litigated the case, which was pending for four years. She also led the trial team in *Brody v. Hellman*, a case against Qwest and former directors of U.S. West seeking an unpaid dividend, recovering $50 million for the class, which was largely comprised of U.S. West retirees. Other cases Andracchio has litigated include: *City of Hialeah Emps.' Ret. Sys. v. Toll Brothers, Inc.*; *Ross v. Abercrombie & Fitch Co.*; *In re GMH Cmtys. Tr. Sec. Litig.*; *In re Vicuron Pharms., Inc. Sec. Litig.*; and *In re Navarre Corp. Sec. Litig.*

Education

B.A., Bucknell University, 1986; J.D., Duquesne University School of Law, 1989

Honors / Awards

Order of the Barristers, J.D., with honors, Duquesne University School of Law, 1989

Matthew J. Balotta | Of Counsel

Matt Balotta is Of Counsel in the Firm's San Diego office, where his practice focuses on securities fraud litigation. Balotta earned his Bachelor of Arts degree in History, *summa cum laude*, from the University of Pittsburgh and his Juris Doctor degree from Harvard Law School. During law school, Balotta was a summer associate with the Firm and interned at the National Consumer Law Center. He also participated in the Employment Law and Delivery of Legal Services Clinics and served on the General Board of the Harvard Civil Rights-Civil Liberties Law Review.

Education

B.A., University of Pittsburgh, 2005; J.D., Harvard Law School, 2015

Honors / Awards

B.A., *Summa Cum Laude,* University of Pittsburgh, 2005

Randi D. Bandman | Of Counsel

Randi Bandman is Of Counsel in the Firm's San Diego office. Throughout her career, she has represented and advised hundreds of clients, including pension funds, managers, banks, and hedge funds, such as the Directors Guild of America, Screen Actors Guild, Writers Guild of America, and Teamster funds. Bandman's cases have yielded billions of dollars of recoveries. Notable cases include the AOL Time Warner, Inc. merger ($629 million), *In re Enron Corp. Sec. Litig.* ($7.2 billion), Private Equity litigation (*Dahl v. Bain Cap. Partners, LLC*) ($590.5 million), *In re WorldCom Sec. Litig.* ($657 million), and *In re Facebook Biometric Info. Privacy Litig.* ($650 million).

Bandman is currently representing plaintiffs in the Foreign Exchange Litigation pending in the Southern District of New York which alleges collusive conduct by the world's largest banks to fix prices in the $5.3 trillion a day foreign exchange market and in which billions of dollars have been recovered to date for injured plaintiffs. Bandman is part of the Robbins Geller Co-Lead Counsel team representing the class in the "High Frequency Trading" case, which accuses stock exchanges of giving unfair advantages to high-speed traders versus all other investors, resulting in billions of dollars being diverted. Bandman was instrumental in the landmark state settlement with the tobacco companies for $12.5 billion. Bandman also led an investigation with congressional representatives on behalf of artists into allegations of "pay for play" tactics, represented Emmy winning writers with respect to their claims involving a long-running television series, represented a Hall of Fame sports figure, and negotiated agreements in connection with a major motion picture. Recently, Bandman was chosen to serve on the Law Firm Advisory Board of the Association of Media & Entertainment Counsel, an organization made up of thousands of attorneys from studios, networks, guilds, talent agencies, and top media companies, dealing with protecting content distributed through a variety of formats worldwide.

Education

B.A., University of California, Los Angeles; J.D., University of Southern California

Mary K. Blasy | Of Counsel

Mary Blasy is Of Counsel to the Firm 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 until December 2018 reviewed the qualifications of candidates seeking public election to New York State Supreme Courts in the 10th Judicial District. She also served on the *Law360* Securities Editorial Advisory Board from 2015 to 2016.

Education

B.A., California State University, Sacramento, 1996; J.D., UCLA School of Law, 2000

Honors / Awards

Super Lawyer, *Super Lawyers Magazine*, 2016-2020; *Law360* Securities Editorial Advisory Board, 2015-2016; Member, Independent Judicial Election Qualification Commission, 2014-2018

William K. Cavanagh, Jr. | Of Counsel

Bill Cavanagh is Of Counsel in the Firm's Washington, D.C. office. Cavanagh concentrates his practice in employee benefits law and works with the Firm's Institutional Outreach Team. Prior to joining Robbins Geller, Cavanagh was employed by Ullico for the past nine years, most recently as President of Ullico Casualty Group. The Ullico Casualty Group is the leading provider of fiduciary liability insurance for trustees in both the private as well as the public sector. Prior to that he was President of the Ullico Investment Company.

Preceding Cavanagh's time at Ullico, he was a partner at the labor and employee benefits firm Cavanagh and O'Hara in Springfield, Illinois for 28 years. In that capacity, Cavanagh represented public pension funds, jointly trusteed Taft-Hartley, health, welfare, pension, and joint apprenticeship funds advising on fiduciary and compliance issues both at the Board level as well as in administrative hearings, federal district courts, and the United States Courts of Appeals. During the course of his practice, Cavanagh had extensive trial experience in state and the relevant federal district courts. Additionally, Cavanagh served as co-counsel on a number of cases representing trustees seeking to recover plan assets lost as a result of fraud in the marketplace.

Education

B.A., Georgetown University, 1974; J.D., John Marshall Law School, 1978

Honors / Awards

Rated AV Preeminent by Martindale-Hubbell

Christopher Collins | Of Counsel

Christopher Collins is Of Counsel in the Firm's San Diego office and his practice focuses on antitrust and consumer protection. 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 California Energy Manipulation antitrust litigation, 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 where he was in charge of the Domestic Violence Unit.

Education

B.A., Sonoma State University, 1988; J.D., Thomas Jefferson School of Law, 1995

Patrick J. Coughlin | Of Counsel

Patrick Coughlin is Of Counsel to the Firm and is based in the San Diego office. He has been lead counsel for several major securities matters, including one of the earliest and largest class action securities cases to go to trial, *In re Apple Computer Sec. Litig.*, No. C-84-20148 (N.D. Cal.). Coughlin was a member of the Firm's trial team in *Hsu v. Puma Biotechnology, Inc.*, No. SACV15-0865 (C.D. Cal.), a securities fraud class action that resulted in a verdict in favor of investors after a two-week jury trial. He also served as lead counsel in *In re Facebook Biometric Info. Privacy Litig.*, No. 3:15-cv-03747-JD (N.D. Cal.), a cutting-edge class action concerning Facebook's alleged privacy violations through its collection of users' biometric identifiers without informed consent that resulted in a $650 million settlement. Coughlin currently serves as co-lead counsel in *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, in which a settlement of $5.5 billion was approved in the Eastern District of New York. This case was brought on behalf of millions of U.S. merchants against Visa and MasterCard and various card-issuing banks, challenging the way these companies set and collect tens of billions of dollars annually in merchant fees. The settlement is believed to be the largest antitrust class action settlement of all time.

Coughlin was one of the lead attorneys who secured a historic $25 million recovery on behalf of approximately 7,000 Trump University students in two class actions against President Donald J. Trump, which means individual class members are 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, in which $7.2 billion was recovered; the *Qwest* litigation, in which a $445 million recovery was obtained; and the *HealthSouth* litigation, in which a $671 million recovery was obtained.

Education

B.S., Santa Clara University, 1977; J.D., Golden Gate University, 1983

Honors / Awards

Rated AV Preeminent by Martindale-Hubbell; Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2022; Best Lawyer in America, *Best Lawyers®*, 2006-2022; Top Lawyer in San Diego, *San Diego Magazine*, 2013-2021; Super Lawyer, *Super Lawyers Magazine*, 2004-2021; Southern California Best Lawyer, *Best Lawyers®*, 2012-2021; Hall of Fame, *Lawdragon*, 2020; Plaintiffs' Lawyer Trailblazer, *The National Law Journal*, 2019; Outstanding Antitrust Litigation Achievement in Private Law Practice, American Antitrust Institute, 2018; Senior Statesman, *Chambers USA*, 2014-2018; Antitrust Trailblazer, *The National Law Journal*, 2015; Top 100 Lawyers, *Daily Journal*, 2008; Leading Lawyer in America, *Lawdragon*, 2006, 2008-2009

Vicki Multer Diamond | Of Counsel

Vicki Multer Diamond is Of Counsel to the Firm and is based in the Firm's Melville office. She has over 25 years of experience as an investigator and attorney. Her practice at the Firm focuses on the initiation, investigation, and prosecution of securities fraud class actions. Diamond played a significant role in the factual investigations and successful oppositions to the defendants' motions to dismiss in a number of cases, including *Tableau*, *One Main*, *Valeant*, and *Orbital ATK*.

Diamond has served as an investigative consultant to several prominent law firms, corporations, and investment firms. Before joining the Firm, she was an Assistant District Attorney in Brooklyn, New York, where she served as a senior Trial Attorney in the Felony Trial Bureau, and was special counsel to the Special Commissioner of Investigations for the New York City schools, where she investigated and prosecuted crime and corruption within the New York City school system.

Education

B.A., State University of New York at Binghamton, 1990; J.D., Hofstra University School of Law, 1993

Honors / Awards

Member, *Hofstra Property Law Journal*, Hofstra University School of Law

Michael J. Dowd | Of Counsel

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 International* 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, where he handled dozens of jury trials and was awarded the Director's Award for Superior Performance.

Education

B.A., Fordham University, 1981; J.D., University of Michigan School of Law, 1984

Honors / Awards

Rated AV Preeminent by Martindale-Hubbell; Director's Award for Superior Performance, United States Attorney's Office; Leading Plaintiff Financial Lawyer, *Lawdragon*, 2019-2022; Best Lawyer in America, *Best Lawyers®*, 2015-2022; Top Lawyer in San Diego, *San Diego Magazine*, 2013-2021;Southern California Best Lawyer, *Best Lawyers®*, 2015-2021; Super Lawyer, *Super Lawyers Magazine*, 2010-2020; Lawyer of the Year, *Best Lawyers®*, 2020; Recommended Lawyer, *The Legal 500*, 2016-2019; Hall of Fame, *Lawdragon*, 2018; Litigator of the Year, *Our City San Diego*, 2017; Leading Lawyer in America, *Lawdragon*, 2014-2016; 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; B.A., *Magna Cum Laude*, Fordham University, 1981

Richard W. Gonnello | Of Counsel

Richard Gonnello is Of Counsel in the Firm's Manhattan office. He has two decades of experience litigating complex securities actions.

Gonnello has successfully represented institutional and individual investors. He has obtained substantial recoveries in numerous securities class actions, including *In re Royal Ahold Sec. Litig.* (D. Md.) ($1.1 billion) and *In re Tremont Sec. Law, State Law & Ins. Litig.* (S.D.N.Y.) ($100 million). Gonnello has also obtained favorable recoveries for institutional investors pursuing direct opt-out claims, including cases against Qwest Communications International, Inc. ($175 million) and Tyco International Ltd ($21 million).

Gonnello has co-authored the following articles appearing in the *New York Law Journal*: "*Staehr* Hikes Burden of Proof to Place Investor on Inquiry Notice" and "Potential Securities Fraud: 'Storm Warnings' Clarified."

Education

B.A., Rutgers University, 1995; J.D., UCLA School of Law, 1998

Honors / Awards

B.A., *Summa Cum Laude*, Rutgers University, 1995

Mitchell D. Gravo | Of Counsel

Mitchell Gravo is Of Counsel to the Firm and is a member of the Firm's institutional investor client services group. With more than 30 years of experience as a practicing attorney, he serves as liaison to the Firm's institutional investor clients throughout the United States and Canada, advising them on securities litigation matters.

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

Dennis J. Herman | Of Counsel

Dennis Herman is Of Counsel 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

Best Lawyer in America, *Best Lawyers*®, 2018-2022; Northern Californa Best Lawyer, *Best Lawyers*®, 2018-2021; Super Lawyer, *Super Lawyers Magazine*, 2017-2018; 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

Helen J. Hodges | Of Counsel

Helen Hodges is Of Counsel in the Firm's San Diego office. She specializes in securities fraud litigation. Hodges has been involved in numerous securities class actions, including: *Dynegy*, which was settled for $474 million; *Thurber v. Mattel*, which was settled for $122 million; *Nat'l Health Labs*, which was settled for $64 million; and *Knapp v. Gomez*, Civ. No. 87-0067-H(M) (S.D. Cal.), in which a plaintiffs' verdict was returned in a Rule 10b-5 class action. Additionally, beginning in 2001, Hodges focused on the prosecution of *Enron*, where a record $7.2 billion recovery was obtained for investors.

Education

B.S., Oklahoma State University, 1979; J.D., University of Oklahoma, 1983

Honors / Awards

Rated AV by Martindale-Hubbell; Hall of Fame, Oklahoma State University, 2022; served on the Oklahoma State University Foundation Board of Trustees, 2013-2021; Top Lawyer in San Diego, *San Diego Magazine*, 2013-2021; Philanthropist of the Year, Women for OSU at Oklahoma State University, 2020; Super Lawyer, *Super Lawyers Magazine*, 2007

David J. Hoffa | Of Counsel

David Hoffa is Of Counsel in the Firm's Washington D.C. office. He has served 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 and single and multi-employer U.S. Taft-Hartley benefit funds. In addition to serving 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

Andrew W. Hutton | Of Counsel

Drew Hutton is Of Counsel in the Firm's San Diego and New York offices. Hutton has prosecuted a variety of securities actions, achieving high-profile recoveries and results. Representative cases against corporations and their auditors include *In re AOL Time Warner Sec. Litig.* ($2.5 billion) and *In re Williams Cos. Sec. Litig.* ($311 million). Representative cases against corporations and their executives include *In re Broadcom Sec. Litig.* ($150 million) and *In re Clarent Corp. Sec. Litig.* (class plaintiff's 10b-5 jury verdict against former CEO). Hutton is also active in shareholder derivative litigation, achieving monetary recoveries and governance changes, including *In re Affiliated Computer Servs. Derivative Litig.* ($30 million), *In re KB Home S'holder Derivative Litig.* ($30 million), and *In re KeyCorp Derivative Litig.* (modified CEO stock options and governance). Hutton has also litigated securities cases in bankruptcy court (*In re WorldCom, Inc.* – $15 million for individual claimant) and a complex options case before FINRA (eight-figure settlement for individual investor). Hutton is also experienced in complex, multi-district consumer litigation. Representative nationwide insurance cases include *In re Prudential Sales Pracs. Litig.* ($4 billion), *In re Metro. Life Ins. Co. Sales Pracs. Litig.* ($2 billion), and *In re Conseco Life Ins. Co. Cost of Ins. Litig.* ($200 million). Representative nationwide consumer lending cases include a $30 million class settlement of Truth-in-Lending claims against American Express and a $24 million class settlement of RICO and RESPA claims against Community Bank of Northern Virginia (now PNC Bank).

Hutton is the founder of Hutton Law Group, a plaintiffs' litigation practice currently representing retirees, individual investors, and businesses. Before founding Hutton Law and joining Robbins Geller, Hutton was a public company accountant, Certified Public Accountant, and broker of stocks, options, and insurance products. Hutton has also served as an expert litigation consultant in both financial and corporate governance capacities. Hutton is often responsible for working with experts retained by the Firm in litigation and has conducted dozens of depositions of financial professionals, including audit partners, CFOs, directors, bankers, actuaries, and opposing experts.

Education

B.A., University of California, Santa Barbara, 1983; J.D., Loyola Law School, 1994

Nancy M. Juda | Of Counsel

Nancy Juda is Of Counsel to the Firm and is based in the Firm's Washington, D.C. office. Her practice focuses on advising Taft-Hartley pension and welfare funds on issues related to corporate fraud in the United States securities markets. Juda's experience as an ERISA attorney provides her with unique insight into the challenges faced by pension fund trustees as they endeavor to protect and preserve their funds' assets.

Prior to joining Robbins Geller, Juda was employed by the United Mine Workers of America Health & Retirement Funds, where she began her practice in the area of employee benefits law. She was also associated with a union-side labor law firm 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.

Using her extensive experience representing employee benefit funds, Juda advises trustees regarding their options for seeking redress for losses due to securities fraud. She currently advises trustees of funds providing benefits for members of unions affiliated with North America's Building Trades of the AFL-CIO. Juda also represents funds in ERISA class actions involving breach of fiduciary claims.

Education

B.A., St. Lawrence University, 1988; J.D., American University, 1992

Francis P. Karam | Of Counsel

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

Super Lawyer, *Super Lawyers Magazine*, 2019-2020; "Who's Who" for Securities Lawyers, *Corporate Governance Magazine*, 2015

Ashley M. Kelly | Of Counsel

Ashley Kelly is Of Counsel in the San Diego office, where she represents large institutional and individual investors as a member of the Firm's antitrust and securities fraud practices. Her work is primarily federal and state class actions involving the federal antitrust and securities laws, common law fraud, breach of contract, and accounting violations. Kelly's case work has been in the financial services, oil & gas, e-commerce, and technology industries. In addition to being an attorney, she is a Certified Public Accountant. Kelly was an important member of the litigation team that obtained a $500 million settlement on behalf of investors in *Luther v. Countrywide Fin. Corp.*, which was the largest residential mortgage-backed securities purchaser class action recovery in history.

Education

B.S., Pennsylvania State University, 2005; J.D., Rutgers University-Camden, 2011

Honors / Awards

Rising Star, *Super Lawyers Magazine*, 2016, 2018-2021

Jerry E. Martin | Of Counsel

Jerry Martin is Of Counsel in the Firm's Nashville office. He 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 was a member of the litigation team that obtained a $65 million recovery in *Garden City Emps.' Ret. Sys. v. Psychiatric Solutions, Inc.*, the fourth-largest securities recovery ever in the Middle District of Tennessee and one of the largest in more than a decade.

Before joining the Firm, 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 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, and was a 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, *Super Lawyers Magazine*, 2016-2019

Ruby Menon | Of Counsel

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 | Of Counsel

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 | Of Counsel

Roxana Pierce is Of Counsel in Robbins Geller Rudman & Dowd LLP's Washington D.C. office. She is an international lawyer whose practice focuses on protecting investor rights and the rights of victims of consumer fraud, waste, and abuse, including county pension funds, institutional investors, and state and city governmental entities. She zealously represents her clients with claims for consumer protection, securities, products liability, contracts, and other violations, whether through litigation, arbitration, mediation, or negotiation. She has represented clients in over 75 countries and 12 states, with extensive experience in the Middle East, Asia, Russia, the former Soviet Union, Germany, Belgium, the Caribbean, and India. Pierce's client base includes large institutional investors, state, county, and city retirement funds, pension funds, attorneys general, international banks, asset managers, foreign governments, multi-national corporations, sovereign wealth funds, and high-net-worth individuals. She presently has over 20 class, private, and group actions on file, including cases against the largest pharmaceutical and automobile manufacturers in the world for securities fraud consumer rights violations.

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.

Pierce has been assisting the litigation team at Robbins Geller with the investigation of the opioids and e-cigarette issues facing many states, cities, and municipalities for more than four years. In particular, she has been working closely with doctors and other health care providers to obtain evidence relating to the opioid crisis facing Maryland, the District of Columbia, Pennsylvania, and Florida.

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; Humanitarian Spirit Award for Advocacy, The National Center for Children and Families, 2019

Sara B. Polychron | Of Counsel

Sara Polychron is Of Counsel in the Firm's San Diego office, where her practice focuses on complex securities litigation. She is part of the litigation team prosecuting actions against investment banks and the leading credit rating agencies for their role in the structuring and rating of residential mortgage-backed securities and their subsequent collapse.

Sara earned her Bachelor of Arts degree with honors from the University of Minnesota, where she studied Sociology with an emphasis in Criminology and Law. As an undergraduate she interned with the Hennepin County Attorney's Office, where she advocated for victims of domestic violence and assisted in sentencing negotiations in Juvenile Court. Sara received her Juris Doctor degree from the University of San Diego School of Law, where she was the recipient of two academic scholarships. While in law school, she interned with the Center for Public Interest Law and was a contributing author and assistant editor to the California Regulatory Law Reporter. She also worked as a legal research assistant at the law school and clerked for two San Diego law firms.

Education

B.A., University of Minnesota, 1999; J.D., University of San Diego School of Law, 2005

Svenna Prado | Of Counsel

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. Before 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

Stephanie Schroder | Of Counsel

Stephanie Schroder is Of Counsel in the Firm's San Diego office. Schroder advises institutional investors, including public and multi-employer pension funds, on issues related to corporate fraud in the United States and worldwide financial markets. Schroder has been with the Firm since its formation in 2004, and has over 20 years of securities litigation experience.

Schroder has represented institutional investors in securities fraud litigation that has resulted in collective recoveries of over $2 billion. Most recently, Schroder was part of the Robbins Geller team that obtained a $1.21 billion settlement in *In re Valeant Pharms. Int'l, Inc. Sec. Litig.*, a case that *Vanity Fair* reported as "the corporate scandal of its era" that had raised "fundamental questions about the functioning of our health-care system, the nature of modern markets, and the slippery slope of ethical rationalizations." This is the largest securities class action settlement against a pharmaceutical manufacturer and the ninth largest securities class action settlement ever. Additional prominent cases include: *In re AT&T Corp. Sec. Litig.* ($100 million recovery at trial); *In re FirstEnergy Corp. Sec. Litig.* ($89.5 million recovery); *Rasner v. Sturm* (*FirstWorld Communications*); and *In re Advanced Lighting Sec. Litig.* Schroder also specializes in derivative litigation for breaches of fiduciary duties by corporate officers and directors. Significant litigation includes *In re OM Grp. S'holder Litig.* and *In re Chiquita S'holder Litig.* Schroder previously represented clients that suffered losses from the Madoff fraud in the *Austin Capital* and *Meridian Capital* litigations, which were also successfully resolved. In addition, Schroder is a frequent lecturer on securities fraud, shareholder litigation, and options for institutional investors seeking to recover losses caused by securities and accounting fraud.

Education

B.A., University of Kentucky, 1997; J.D., University of Kentucky College of Law, 2000

Kevin S. Sciarani | Of Counsel

Kevin Sciarani is Of Counsel to the Firm and is based in the San Diego office, where his practice focuses on complex securities litigation. Sciarani earned Bachelor of Science and Bachelor of Arts degrees from the University of California, San Diego. He graduated *magna cum laude* from the University of California, Hastings College of the Law with a Juris Doctor degree, where he served as a Senior Articles Editor on the *Hastings Law Journal*.

During law school, Sciarani interned for the U.S. Securities and Exchange Commission and the Antitrust Section of the California Department of Justice. In his final semester, he served as an extern to the Honorable Susan Illston of the United States District Court for the Northern District of California. Sciarani also received recognition for his *pro bono* assistance to tenants living in foreclosed properties due to the subprime mortgage crisis.

Education

B.S., B.A., University of California, San Diego, 2005; J.D., University of California, Hastings College of the Law, 2014

Honors / Awards

J.D., *Magna Cum Laude*, Order of the Coif, University of California, Hastings College of the Law, 2014; CALI Excellence Award, Senior Articles Editor, Hastings Law Journal, University of California, Hastings College of the Law

Christopher P. Seefer | Of Counsel

Christopher Seefer is Of Counsel in the Firm's San Francisco office. He concentrates his practice in securities class action litigation, including cases against Verisign, UTStarcom, VeriFone, Nash Finch, NextCard, Terayon, and America West. Seefer served as an Assistant Director and Deputy General Counsel for the Financial Crisis Inquiry Commission, which reported to Congress in January 2011 its conclusions as to the causes of the global financial crisis. 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 | Of Counsel

Arthur Shingler is Of Counsel 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 | Of Counsel

Leonard Simon is Of Counsel in the Firm's San Diego office. His practice has been devoted to litigation in the federal courts, including both the prosecution and the 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 United States Supreme Court, several federal Courts of Appeals, and several California appellate courts. He has also represented large, publicly traded corporations. Simon served as plaintiffs' co-lead counsel in *In re Am. Cont'l Corp./Lincoln Sav. & Loan Sec. Litig.*, MDL No. 834 (D. Ariz.) (settled for $240 million), and *In re NASDAQ Market-Makers Antitrust Litig.*, MDL No. 1023 (S.D.N.Y.) (settled for more than $1 billion). He was also in a leadership role in several of the state court antitrust cases against Microsoft, and the state court antitrust cases challenging electric prices in California. He was centrally involved in the prosecution of *In re Washington Pub. Power Supply Sys. Sec. Litig.*, MDL No. 551 (D. Ariz.), 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 has lectured extensively on securities, antitrust, and complex litigation in programs sponsored by the American Bar Association Section of Litigation, the Practicing Law Institute, and ALI-ABA, and at the UCLA Law School, the University of San Diego Law School, and the Stanford Business School. 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

Rated AV Preeminent by Martindale-Hubbell; Top Lawyer in San Diego, *San Diego Magazine*, 2016-2020; Super Lawyer, *Super Lawyers Magazine*, 2008-2016; J.D., Order of the Coif and with Distinction, Duke University School of Law, 1973

Laura S. Stein | Of Counsel

Laura Stein is Of Counsel in the Firm's Philadelphia office. Since 1995, she has practiced in the areas of securities class action litigation, complex litigation, and legislative law. Stein has served as one of the Firm's and the nation's top asset recovery experts with a focus on minimizing losses suffered by shareholders due to corporate fraud and breaches of fiduciary duty. She also seeks to deter future violations of federal and state securities laws by reinforcing the standards of good corporate governance. Stein works with over 500 institutional investors across the nation and abroad, and her 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, 1st Bancorp, Enron, Dynegy, Inc., Honeywell International, Bridgestone, LendingClub, Orbital ATK, and Walmart, to name a few. Many of the cases led by Stein's clients have accomplished groundbreaking corporate governance achievements, including obtaining shareholder-nominated directors. She is a frequent presenter and educator on securities fraud monitoring, litigation, and corporate governance.

Education

B.A., University of Pennsylvania, 1992; J.D., University of Pennsylvania Law School, 1995

John J. Stoia, Jr. | Of Counsel

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; Top Lawyer in San Diego, *San Diego Magazine*, 2013-2020; Super Lawyer, *Super Lawyers Magazine*, 2007-2017; Litigator of the Month, *The National Law Journal*, July 2000; LL.M. Top of Class, Georgetown University Law Center

Christopher J. Supple | Of Counsel

Chris Supple is Senior Counsel to Robbins Geller, having joined the Firm after spending the past decade (2011-2021) as Deputy Executive Director and General Counsel at MassPRIM (the Massachusetts Pension Reserves Investment Management Board). While at MassPRIM, Supple also served for the last half-decade as Chair and Co-Chair of the Securities Litigation Committee of NAPPA (the National Association of Public Pension Attorneys). Supple is very familiar with, and experienced in, the role that institutional investors play in private securities litigation, having successfully directed MassPRIM's securities litigation activity in dozens of actions that recovered more than a billion dollars for investors, including *Schering-Plough* ($473 million), *Massey Energy* ($265 million), and *Fannie Mae* ($170 million).

Supple's 30-plus years of experience in law and investments also includes over five years as a federal prosecutor, six years in senior leadership positions for two Massachusetts Governors, and over ten years in private law practice where his clients included MassPRIM and also its sibling Health Care Security/State Retiree Benefits Trust Fund. Supple began his career (after a federal court clerkship) as a litigating attorney assigned to securities cases at the Boston law firm of Hale and Dorr (now called WilmerHale). Supple has litigated in state and federal courts throughout the nation, and has successfully tried over 25 cases to jury verdict, tried dozens of cases to judges sitting without juries, argued hundreds of evidentiary and non-evidentiary motions, and settled dozens of cases by negotiated agreement. Supple holds the Investment Foundations™ Certificate awarded by the CFA (Chartered Financial Analyst) Institute, and for nearly a decade was an adjunct law professor teaching a course in Federal Criminal Prosecution.

Education

B.A., The College of the Holy Cross, 1985; J.D., Duke University School of Law, 1988

Honors / Awards

J.D., with Honors, Duke University School of Law, 1988

David C. Walton | Of Counsel

David Walton was a founding partner of the Firm. For over 25 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.

Walton is a member of the Bar of California, a Certified Public Accountant (California 1992), a Certified Fraud Examiner, and is fluent in Spanish. 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

Recommended Lawyer, *The Legal 500*, 2019; Super Lawyer, *Super Lawyers Magazine*, 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

Bruce Gamble | Special Counsel

Bruce Gamble is Special Counsel to the Firm in the Firm's Washington D.C. office and is a member of the Firm's institutional investor client services group. He serves as liaison with the Firm's institutional investor clients in the United States and abroad, advising them on securities litigation matters. Gamble formerly served as Of Counsel to the Firm, providing a broad array of highly specialized legal and consulting services to public retirement plans. Before working with Robbins Geller, Gamble 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

Tricia L. McCormick | Special Counsel

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 the state and federal courts which resulted in hundreds of millions of dollars in recoveries to 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

R. Steven Aronica | Forensic Accountant

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 | Forensic Accountant

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 | Forensic Accountant

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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

WASHTENAW COUNTY EMPLOYEES' RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. WALGREEN CO. et al., Defendants.	Civil Action No. 1:15-cv-3187 Honorable Sharon Johnson Coleman

APPENDIX OF CASE LAW PUBLISHED ONLY IN AN ELECTRONIC DATABASE CITED IN CLASS COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION EXPENSES

TAB	CASE
1.	*Abbott v. Lockheed Martin Corp.*, 2015 WL 4398475 (S.D. Ill. July 17, 2015)
2.	*Alaska Elec. Pension Fund v. Pharmacia Corp.*, 2013 WL 12153597 (D.N.J. Jan. 30, 2013)
3.	*In re Amgen Inc. Sec. Litig.*, 2016 WL 10571773 (C.D. Cal. Oct. 25, 2016)
4.	*In re Apollo Grp. Inc. Sec. Litig.*, 2012 WL 1378677 (D. Ariz. Apr. 20, 2012)
5.	*In re BDC Inc.*, No. 20-10010 (CSS) (Bankr. Del. Feb. 22, 2021), ECF No. 1424
6.	*Bell v. Pension Comm. of ATH Holding Co., LLC*, 2019 WL 4193376 (S.D. Ind. Sept. 4, 2019)
7.	*In re Celebrex (Celecoxib) Antitrust Litig.*, 2018 WL 2382091 (E.D. Va. Apr. 18, 2018)
8.	*City of Sterling Heights Gen. Emps' Ret. Sys. v. Hospira, Inc.*, 2014 WL 12767763 (N.D. Ill. Aug. 5, 2014)
9.	*In re Deutsche Telekom AG Sec. Litig.*, 2005 WL 7984326 (S.D.N.Y. June 9, 2005)
10.	*Duncan v. Joy Global Inc.*, No. 16-cv-1229, slip op. (E.D. Wis. Dec. 27, 2018), ECF No. 79

TAB	CASE
11.	*In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550 (S.D.N.Y. Nov. 8, 2010)
12.	*In re Gilat Satellite Networks, Ltd.*, 2007 WL 2743675 (E.D.N.Y. Sept. 18, 2007)
13.	*In re Groupon, Inc. Secs. Litig.*, 2016 WL 3896839 (N.D. Ill. July 13, 2016)
14.	*Heekin v. Anthem, Inc.*, 2012 WL 5878032 (S.D. Ind. Nov. 20, 2012)
15.	*In re Marsh & McLennan Cos., Inc. Sec. Litig.*, 2009 WL 5178546 (S.D.N.Y. Dec. 23, 2009)
16.	*Pension Tr. Fund for Operating Eng'rs v. DeVry Educ. Grp., Inc.*, No. 16-cv-5198, slip op. (N.D. Ill. Dec. 6, 2019), ECF No. 162
17.	*In re Peregrine Fin. Grp. Customer Litig.*, No. 12-cv-5546, slip op. (N.D. Ill. Oct. 15, 2015), ECF No. 441
18.	*In re: Potash Antitrust Litig.*, 2013 WL 12470850 (N.D. Ill. June 12, 2013)
19.	*In re Priceline.com, Inc. Sec. Litig.*, 2007 WL 2115592 (D. Conn. July 20, 2007)
20.	*Public Emps.' Ret. Sys. of Miss. v. Treehouse Foods, Inc.*, No. 16-CV-10632, slip op. (N.D. Ill. Nov. 18, 2021), ECF No. 190
21.	*Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, 2001 WL 1568856 (N.D. Ill. Dec. 10, 2001)
22.	*Schuh v. HCA Holdings Inc.*, 2016 WL 10570957 (M.D. Tenn. Apr. 14, 2016)
23.	*Shah v. Zimmer Biomet Holdings, Inc.*, 2020 WL 5627171 (N.D. Ind. Sept.18, 2020)
24.	*Silverman v. Motorola, Inc.*, 2012 WL 1597388 (N.D. Ill. May 7, 2012)
25.	*Swift v. Direct Buy, Inc.*, 2013 WL 5770633 (N.D. Ind. Oct. 24, 2013)
26.	*Williams v. Rohm & Haas Pension Plan*, 2010 WL 4723725 (S.D. Ind. Nov. 12, 2010)
27.	*In re Wilmington Tr. Secs. Litig.*, No. 10-cv-00990-ER, slip op. (D. Del. Nov. 19, 2018), ECF No. 842
28.	*Wong v. Accretive Health, Inc.*, No. 12CV03102 (N.D. Ill. Dec. 13, 2013), ECF No. 73

TAB	CASE
29.	*Wong v. Accretive Health, Inc.*, 2014 WL 7717579 (N.D. Ill. Apr. 30, 2014)
30.	*Wong v. Accretive Health, Inc.*, No. 12CV03102 (N.D. Ill. May 18, 2014), ECF No. 85

EXHIBIT 1

2015 WL 4398475
United States District Court, S.D. Illinois.

Anthony ABBOTT et al., Plaintiffs,
v.
LOCKHEED MARTIN CORP. et al., Defendants.

No. 06–cv–701–MJR–DGW
|
Signed July 17, 2015

Attorneys and Law Firms

Heather Lea, Jason P. Kelly, Jerome J. Schlichter, Troy A. Doles, Andrew D. Schlichter, Mark G. Boyko, Michael A. Wolff, Sean E. Soyars, Schlichter, Bogard et al., St. Louis, MO, Nelson G. Wolff, Schlichter, Bogard, Belleville, IL, for Plaintiffs.

James G. Martin, James E. Crowe, III, Dowd Bennett LLP, St. Louis, MO, Michael E. Lackey, Jr., Michelle N. Webster, Robert P. Davis, Brian D. Netter, Mayer Brown LLP, Peter H. White, Schulte Rother & Zabel LLP, Washington, DC, for Defendants.

ORDER REGARDING PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

Reagan, Chief Judge:

***1** This matter is before the Court in connection with Plaintiffs' Motion for Attorneys' Fees and Reimbursement of Expenses and for Case Contribution Awards for Named Plaintiffs. (Doc. 501). In their Motion, Class Counsel, the law firm of Schlichter, Bogard & Denton, requests a court approved fee for its role in obtaining a settlement of class claims under the Employee Retirement Income Security Act ("ERISA"). The settlement provides a $62 million monetary recovery for the benefit of as many as 181,000 current and former participants in two 401(k) plans offered to employees of Lockheed Martin, as well as powerful affirmative relief designed to reduce fees and improve investment offerings.

Class Counsel has asked this Court to approve a fee award of one-third of the monetary settlement obtained, or $20,666,666. Class Counsel has also asked this Court to award it $1,644,929.82 for outstanding expenses. Additionally, Class Counsel has requested this Court approve $25,000 incentive awards to each of the six Class Representatives and $10,000 to Named Plaintiff Roger Menhennett.

Pursuant to the Settlement Agreement and the Court's Order, Class Counsel directed the mailing of individual notices to the Class and created a Class website to provide information to the Class. It is noteworthy that individual notices were mailed to over 181,000 potential Class Members, yet only five objected to Class Counsel's request for fees and costs. This Court finds the lack of any meaningful number of objections to be an unmistakable sign of the Class's overwhelming support for Class Counsel's Application.

This Court has witnessed many examples over the past eight and a half years of Class Counsel's zealous representation of the Class. The Court admires Class Counsel's exceptional commitment and perseverance in representing employees and retirees seeking to improve their retirement plans. Mr. Schlichter and the firm of Schlichter, Bogard & Denton have demonstrated its well-earned reputation as a pioneer and the leader in the field of retirement plan litigation. Class Counsel's Motion (**Doc. 501**) is **GRANTED.** This Order explains this Court's conclusion that Class Counsel's fee and cost request is reasonable and merited.

I. FINDINGS AND CONCLUSIONS

A. Class Counsel's Request for Attorneys' Fees

Under the "common-fund" doctrine, a class counsel is entitled to a reasonable fee drawn from the commonly held fund created by a settlement for the benefit of the class. See, e.g. *Boeing Co. v. VanGemert,* 444 U.S. 472, 478 (1980). Additionally, the United States Court of Appeals for the Seventh Circuit has found that attorneys' fees based on the common fund doctrine are appropriate in ERISA cases. See, *Florin v. Nationsbank,* 34 F.3d 560, 563 (7th Cir. 1994). A court must also consider the substantial affirmative relief when evaluating the overall benefit to the class. *Beesley v. Int'l Paper Co.,* No. 06–703, 2014 U.S.Dist.LEXIS 12037 at 5, 2014 WL 375432 (S.D.Ill. Jan 31, 2014)(J. Herndon); citing Manual for Complex Litigation, Fourth, § 21.71, at 337 (2004); Principles of the Law of Aggregate Litigation, § 3.13 and *Blanchard v. Bergeron,* 489 U.S. 87, 95 (1989)(cautioning against an "undesirable emphasis" on monetary "damages" that might "shortchange efforts to seek effective injunctive or declaratory relief"). This is important so as to encourage attorneys to obtain effective

affirmative relief. It is noteworthy that Class Counsel did not agree to a settlement after agreement was reached on the monetary terms. Instead, Class Counsel sought substantial non-monetary relief as a condition of settlement. Class Counsel's insistence on widespread affirmative relief, in addition to the monetary relief, added tremendous material value to the Lockheed Martin 401(k) plans. It will benefit the classes, as well as future Plan participants, year after year into the future.

***2** In determining whether to grant a fee application in a class action settlement, the Seventh Circuit Court of Appeals requires the Court to determine whether a requested fee is within the range of fees that would have been agreed to at the outset of the litigation in an arms-length negotiation given the risk of nonpayment and the normal rate of compensation in the market at the time. See, *In re Synthroid Marketing Litig.,* 264 F.3d 712, 718 (7th Cir. 2001). In common fund cases, "the measure of what is reasonable [as an attorney fee] is what an attorney would receive from a paying client in a similar case." *Montgomery v. Aetna Plywood, Inc.,* 231 F.3d 399, 408 (7th Cir. 2000). "It is not the function of the judge in fee litigation to determine the equivalent of the medieval just price. It is to determine what the lawyer would receive if he were selling his services in the market rather than being paid by the court." *Matter of Cont'l Ill. Sec. Litig.,* 962 F.2d 566, 568 (7th Cir. 1992). This requires the district judge to "ascertain the appropriate rate for cases of similar difficulty and risk, and of similarly limited potential recovery." *Kirchoff v. Flynn,* 786 F.2d 320, 326 (7th Cir. 1986).

When determining a reasonable fee, the Seventh Circuit Court of Appeals uses the percentage basis rather than a lodestar or other basis. *Gaskill v. Gordon,* 160 F.3d 361, 363 (7th Cir. 1998); *Florin,* 34 F.3d at 566. A one-third fee is consistent with the market rate in settlements concerning this particularly complex area of law. *Beesley v. Int'l Paper Co.,* 2014 U.S.Dist.LEXIS 12037 at 10, 2014 WL 375432; *Will v. General Dynamics Corp.,* No. 06–698, 2010 U.S.Dist.LEXIS 123349 at 9, 2010 WL 4818174 (S.D.Ill. Nov. 22, 2010)(finding that in ERISA 401(k) fee litigation, "a one-third fee is consistent with the market rate")(J. Murphy). Further, the Court agrees with Special Master Goldenberg: "while one-third is reasonable, the fee can also be calculated as 20.4% of the settlement when the non-monetary relief is considered." Doc. 497 at 12. This Court agrees with prior courts in finding that the market for Class Counsel's work in ERISA fiduciary breach cases is a contingent fee market and not an hourly market. Comprising 33 1/3 % of the monetary recovery, and only 20.4% of the settlement's value when non-monetary relief is considered, as it must be, Class Counsel's fee application is certainly reasonable. At 20.4% of the value of the settlement, the requested fee is actually far less than the market rate in national ERISA litigation such as that practiced by Schlichter, Bogard & Denton.

The Court also agrees with Mary Ellen Signorille, ERISA senior staff attorney with the AARP Foundation in Washington, D.C., who described the settlement as "*an exceptional recovery*" for the class that "was only made possible by Schlichter, Bogard & Denton risking tremendous sums of time and money while providing an exceptional level of professional services throughout eight years of litigation." Doc. 498–1 at 7. In this way, Schlichter, Bogard & Denton's work embodies the finest attributes of a private attorney general, risking significant resources for the good of those saving for their retirement.

Class Counsel's fee request is more than justified in this case given the extraordinary risk counsel accepted in agreeing to represent the Class; the fact that Class Counsel brought this kind of case when no one else had; Class Counsel's demonstrated willingness to pursue this action over more than eight and a half years of intense, adversarial litigation; the monetary recovery, which is the largest of any such case (Doc. 497 at 47); and the enormous value of the plan improvements and future relief included in this settlement.

Schlichter, Bogard & Denton demonstrated extraordinary skill and determination in obtaining this result for the Class. Class Counsel performed substantial work for over a year before filing suit, including investing hundreds of hours of attorney time, investigating, speaking with Plan Participants, obtaining documents from public sources and the Plan administrator, reviewing and analyzing Plan documents and financial statements, developing expertise regarding industry practices, conducting extensive legal research and fashioning the Class's causes of action at a time when such cases did not exist. This careful evaluation of claims, a hallmark of Schlichter, Bogard & Denton, added tremendous value to the Class throughout the litigation.

***3** Since filing this case on September 11, 2006, Class Counsel has been committed to the interests of the participants and beneficiaries of the Lockheed Martin 401(k) plans in pursuing this case and several other 401(k) fee cases of first impression. The law firm Schlichter, Bogard & Denton has had a "humongous" impact over the entire

401(k) industry, which has benefited employees and retirees throughout the country by bringing sweeping changes to fiduciary practices. Linda Stern, *Stern Advice—How 401(k) Lawsuits Are Bolstering Your Retirement Plan,* REUTERS, Nov. 5, 2013 (quoting Mike Alfred, co-founder and CEO of Brightscope, an independent firm that provides data about retirement plans); see also *Nolte v. Cigna, Corp.,* Case 07–2046, Doc. 413 at 3–4 (C.D.Ill. Oct. 15, 2013)(in which Judge Baker stated that nationwide, "fee reductions attributed to Schlichter, Bogard & Denton's fee litigation and the Department of Labor's disclosure regulations approach $2.8 billion in annual savings for American workers and retirees."); Gretchen Morgenson, *A Lone Ranger of the 401(k)'s,* THE NEW YORK TIMES (March 29, 2014) (Schlichter's cases have been "good news for all 401(k) holders").

The use of a lodestar cross-check is no longer recommended in the Seventh Circuit. See *In re Synthroid Marketing Litig.,* 325 F.3d 974, 979–80 (7th Cir. 2003)("The client cares about the outcome alone" and class counsel's efficiency should not be used "to reduce class counsel's percentage of the fund that their work produced."); *Beesley,* 2014 U.S.Dist.LEXIS 12037 at 10, 2014 WL 375432 ("The use of a lodestar cross-check has fallen into disfavor."); *Will,* 2010 U.S.Dist.LEXIS 123349 at 10, 2010 WL 4818174 ("The use of a lodestar cross-check in a common fund case is unnecessary, arbitrary, and potentially counterproductive."). Nevertheless, this Court finds that Class Counsel spent 20,124 attorney hours and 4,960 hours of non-attorney professional time litigating this case.[1] By handling the matter without separately-appointed local counsel, Class Counsel was able to provide additional value to the Class without added expense. Class Counsel will also spend substantial time over the next three years because Class Counsel is committed to monitor compliance by Defendants with the terms of the settlement agreement and has committed to bring an enforcement action if needed without cost to the Class.

[1] The Court may rely on summaries submitted by attorneys and need not review actual billing records. *Will,* 2010 U.S. Dist. LEXIS 123349, at *11, 2010 WL 4818174 (citing *In re Rite Aid Corp. Sec. Litig.,* 396 F.3d 294, 306–07 (3d Cir. 2005)).

Additionally, few lawyers or law firms are capable of handling this type of national litigation. But for Class Counsel's determined prosecution of this action, the Lockheed Martin 401(k) plans and their participants would not have obtained any recovery because it is extremely unlikely that they would have found other qualified counsel to assume the burden and risk of pursuing these claims. If the participants had been able to find counsel who was willing to take on this case, the market for legal services in cases such as this is a national one. *Beesley,* 2014 U.S.Dist.LEXIS 12037 at 11, 2014 WL 375432. Class Counsel's proposed rates are reasonable and consistent with market rates at that time and could be enhanced to today's rates.

This Court finds that the reasonable hourly rate for Class Counsel's services are as follows: for attorneys with at least 25 years of experience, $974 per hour; for attorneys with 15–24 years of experience, $826 per hour; for attorneys with 5–14 years of experience, $595 per hour; for attorneys with 2–4 years of experience, $447 per hour; for Paralegals and Law Clerks, $300 per hour; for Legal Assistants, $186 per hour. Given these rates, the lodestar value for Class Counsel's services with no enhancement for risk would be $15,541,544. Class Counsel's fee request for $20,666,666 represents a risk multiplier of less than 1.33. Between 1993 and 2008, the mean multiplier in class actions in the Seventh Circuit was 1.85. Theodore Eisenberg & Geoffrey Miller, Attorneys' Fees and Expenses in class Action Settlement: 1993–2008, 7 J. Empirical Legal Stud. 248, 272 (Table 14) (2010). In developing, risky litigation such as this, the Court would anticipate a risk multiplier exceeding the mean. That Class Counsel's request represents only a fraction of the mean reflects a substantial bargain for the Class.

***4** This Court further finds that the expenses for which Class Counsel's seek reimbursement were reasonable and necessary. It is well established that counsel who create a common fund like this one are entitled to the reimbursement of litigation costs and expenses, which includes such things as expert witness costs; computerized research; court reporters; travel expense; copy, phone and facsimile expenses and mediation. Fed.R.Civ.P. 23; *Boeing v. Van Gemert,* 444 U.S. 472, 478 (1980). Class Counsel had a strong incentive to keep expenses at a reasonable level due to the high risk of no recovery when, as here, the fee is contingent. Additionally, Class Counsel incurred these expenses over the course of over nine years. Further, the fact that Class Counsel does not seek interest as compensation for the time value of money or costs associated with advancing these expenses to the Class makes this fee request all the more reasonable.

Finally, Plaintiffs request $25,000 incentive awards to each of the six Class Representatives and $10,000 for Named

Plaintiff Roger Menhennett. "Incentive awards are justified when necessary to induce individuals to become named representatives." *In re Synthroid Marketing Litig.*, 264 F.3d at 722–23. The record suggests that the Named Plaintiffs initiated the action, took on a substantial risk, and remained in contact with Class Counsel. Additionally, as noted by the Special Master, "the named Plaintiffs have been active, hands-on participants in the litigation, expending significant amounts of their own time to the benefit of the Class." Doc. 497 at 56. "Further, unlike in consumer and most other class actions, each Plaintiff was willing to alienate their employer, longtime friends loyal to Lockheed and current and future employers unlikely to embrace an employee who files an action against his employer." *Id.* at 47.

Awards of $10,000 to $25,000 for a Named Plaintiff award and total Named Plaintiff awards of less than one percent of the fund are well within the ranges that are typically awarded in comparable cases. Doc. 497 at 59. Accordingly, the Court adopts the recommendations of the Special Master and awards $25,000 to each of the six Class Representatives and $10,000 to Named Plaintiff Menhennett.

II. CONCLUSION

After consideration of Class Counsel's Motion, and consistent with the findings of the Special Master—whom the Court again commends for remarkably thorough and dedicated service—this Court concludes that the requested attorneys' fees and cost reimbursements are fair, reasonable and merited by the Counsel's enormous efforts resulting in relief for the class.

Accordingly, Class Counsel's motion (**Doc.501**) is **GRANTED.** It is **ORDERED** that the requested attorneys' fees of $20,666,666 are **APPROVED**. It is **FURTHER ORDERED** that the requested reimbursement of $1,644,929.82 in outstanding costs is **APPROVED**. The Settlement Administrator shall pay the combined sum of $22,311,595.82 to the firm of Schlichter, Bogard & Denton out of the Settlement Fund; and shall separately pay Plaintiffs Abbott, Fankhauser, DeMartini, Jordan, Tombaugh and Ketterer $25,000 each; and shall pay Plaintiff Menhennett $10,000.

IT IS SO ORDERED.

All Citations

Not Reported in Fed. Supp., 2015 WL 4398475, 61 Employee Benefits Cas. 1691

End of Document

EXHIBIT 2

2013 WL 12153597
Only the Westlaw citation is currently available.
United States District Court, D. New Jersey.

ALASKA ELECTRICAL PENSION FUND, et al., On Behalf of Themselves and All Others Similarly Situated, Plaintiffs,
v.
PHARMACIA CORPORATION, et al., Defendants.

No. 03-1519 (AET) (Consolidated)
|
Signed 01/30/2013

Attorneys and Law Firms

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ORDER AWARDING PLAINTIFFS' COUNSEL'S ATTORNEYS' FEES AND EXPENSES

THE HONORABLE ANNE E. THOMPSON, UNITED STATES DISTRICT JUDGE

***1** THIS MATTER having come before the Court on January 30, 2013, 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 the Litigation 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 as of October 5, 2012 (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. Class Counsel are entitled to a fee paid out of the common fund created for the benefit of the Class. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478-79 (1980). In class action suits when a fund is recovered and fees are awarded therefrom by the court, the Supreme Court has indicated that computing fees as a percentage of the common fund recovered is proper. *See Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984). The Third Circuit expressly recognizes that a percentage-of-the-fund is the preferred method of determining fees in a common fund case. *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768,820 n.39 (3d. Cir. 1995). Moreover, the Private Securities Litigation Reform Act of 1995 ("PSLRA") embodies a clear policy preference for awarding fees through the percentage-of-the-fund method. *See In re Cendant Sec. Litig.*, 404 F.3d 178, 188 n.7 (3d Cir. 2005).

4. Lead Counsel have moved for an award of attorneys' fees of 27.5% of the Settlement Amount, plus interest.

5. This Court adopts the percentage-of-recovery method of awarding fees in this case.

6. The Court hereby awards attorneys' fees of 27.5% of the Settlement Amount, plus expenses of $3,439,536.90, plus any interest on said amounts at the same rate as earned on the Settlement Amount. The Court finds the amount of the fees and expenses to be fair and reasonable. The Court further finds that a fee award of 27.5% of the Settlement Amount is consistent with awards made in similar cases and in accordance with guidance provided by the Third Circuit.

7. The Court further finds that the amount of fees awarded is fair and reasonable when cross checked under the lodestar/multiplier method, given the substantial risks of non-recovery, the time and effort involved, and the result obtained for the Class.

8. The awarded fees and expenses shall be allocated among Plaintiffs' counsel by Lead Counsel in a manner which, in

their good faith judgment, reflects each counsel's contribution to the institution, prosecution and resolution of the Litigation.

9. In making this award of attorneys' fees and expenses to be paid from the Settlement Fund, the Court has considered each of the applicable factors set forth in *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000). In evaluating the *Gunter* factors, the Court finds that:

***2** (a) Class Counsel expended considerable effort and resources over the course of the Litigation researching, investigating, and prosecuting Lead Plaintiffs' claims. The services provided by Class Counsel 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.

(b) Cases brought under the federal securities laws are notably difficult and notoriously uncertain. *See, e.g., In re AOL Time Warner, Inc. Sec. & ERISALitig., No.MDL* 1500,2006 U.S. Dist. LEXIS 17588, at *31 (S.D.N.Y. Apr. 6, 2006). "[S]ecurities actions have become more difficult from a plaintiff's perspective in the wake of the PSLRA." *In re Ikon Office Solutions, Inc., Sec. Litig.*, 194 F.R.D. 166,194 (E.D. Pa. 2000). This case was not aided by any governmental investigation. Despite the novelty and difficulty of the issues raised, Class Counsel secured a very good result for the Class.

(c) The recovery obtained and the backgrounds of the lawyers involved in the lawsuit are the best evidence that the quality of Class Counsel's representation of the Class supports the requested fee. Class Counsel demonstrated that notwithstanding the barriers erected by the PSLRA, they would develop evidence to support a convincing case. Based upon Class Counsel's diligent efforts on behalf of the Class, as well as their skill and reputations, Class Counsel were able to negotiate a very favorable result for the Class. Class Counsel are among the most experienced and skilled practitioners in the securities litigation field, and have unparalleled experience and capabilities as preeminent class action specialists. Their efforts in efficiently bringing the Litigation to a successful conclusion are a significant indicator of the experience and ability of the attorneys involved. In addition, Defendants were represented by highly experienced lawyers. The standing of opposing counsel should be weighed in determining the fee, because such standing reflects the challenge faced by Lead Plaintiffs' attorneys. The ability of Class Counsel to obtain such a favorable settlement for the Class in the face of such formidable opposition confirms the superior quality of their representation and the reasonableness of the fee request.

(d) The requested fee of 27.5% of the Settlement Amount is within the range normally awarded in cases of this nature.

(e) Plaintiffs' counsel's total lodestar is $27,071,101.50. A 27.5% fee represents a multiplier of 1.67 to their aggregate lodestar.

10. The awarded attorneys' fees and expenses, and any interest earned thereon, shall be paid to Lead Counsel from the Settlement Fund pursuant to the terms, conditions and obligations of the Stipulation, and in particular ¶ 6.2 thereof, which terms, conditions, and obligations are incorporated herein.

11. The Court finds that, pursuant to 15 U.S.C. § 78u-4(a)(4), an award of reasonable costs and expenses (including lost wages) to Lead Plaintiffs in connection with their representation of the Class is appropriate. Lead Plaintiffs Alaska Electrical Pension Fund, PACE Industry Union-Management Pension Fund and New England Health Care Employees Pension Fund, are hereby awarded $6,608.92, $15,941.98 and $10,500.00, respectively.

12. The Court has considered the objection to the fee award submitted by William T. Zorn, and finds that it is without merit, and overrules it in its entirety.

***3** IT IS SO ORDERED.

All Citations

Not Reported in Fed. Supp., 2013 WL 12153597

EXHIBIT 3

2016 WL 10571773
Only the Westlaw citation is currently available.
United States District Court, C.D. California.

IN RE AMGEN INC. SECURITIES LITIGATION

Case No. CV 7-2536 PSG (PLAx)
|
Filed 10/25/2016

Attorneys and Law Firms

Attorneys Present for Plaintiff(s): Not Present

Attorneys Present for Defendant(s): Not Present

Proceedings (In Chambers): Order GRANTING Class Representative's Motion for Final Approval of Proposed Class Action Settlement and Plan of Allocation, and GRANTING Class Counsel's Motion for Attorneys' Fees and Payment of Expenses

Philip S. Gutierrez, United States District Judge

***1** Before the Court are Class Representative's Motion for Final Approval of Proposed Class Action Settlement and Plan of Allocation, and Class Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses. Dkts. # 589, 590. Class Counsel has also provided the Court with a Reply Memorandum and supplemental declarations that describe letters received from class members regarding the settlement. *See* Dkts. # 594, 595, 596. The Court held a final fairness hearing in this matter on October 25, 2016. Having considered the arguments in all of the submissions, the Court GRANTS Class Representative's Motion for Final Approval and Class Counsel's Motion for Attorneys' Fees and Expenses.

I. Background

In this class action lawsuit, Plaintiff Connecticut Retirement Plans and Trust Funds ("Plaintiff," "Class Representative," or "Connecticut Retirement") alleged that Amgen, a Fortune 200 global biotechnology company, along with a number of its officers and directors, violated sections 10(b) and 20(a) of the Securities Exchange Act of 1934, U.S.C. §§ 78j(b) and 78t(a), by making a series of misleading statements and omissions that artificially inflated the value of Amgen stock during the class period. Specifically, Plaintiffs asserted that Defendants misled investors concerning the safety of two of Amgen's flagship products: Aranesp® (darbepoetin alfa) and Epogen® (epoetin alfa).

The parties litigated this case for nine years. In that time, they exchanged extensive discovery, including more than 22 million pages of documents, thirty-six expert reports, seventy interrogatories, and 150 requests for admission. *See Class Representative's Motion for Final Approval of Class Action Settlement* ("*Mot. for Final Approval*"), Dkt. # 589, 7:8-14; 18:24-26. The parties also litigated the Court's class certification order to the U.S. Supreme Court—an appeal that clarified the law and established that proof of materiality is not a prerequisite to class certification in a securities fraud action. *See id.* 5:12-20; *Amgen, Inc. v. Connecticut Retirement Plans & Tr. Funds*, 133 S. Ct. 1184, 1191 (2013).

In 2015 and early 2016, the parties participated in two mediation sessions before the Honorable Vaughn R. Walker and the Honorable Dickran M. Tevrizian. *See McDonald Decl.*, ¶¶ 115-17. Although both mediation sessions ended without resolution, the parties agreed to continue conversations. *Id.* ¶¶ 116-17. In June 2016, Judge Tevrizian communicated a "mediator's proposal" that the parties accepted. *Id.* ¶ 118. The proposed $95 million cash settlement in principle was reached less than four weeks before trial and little more than a week before the scheduled hearing on the parties' summary judgment motions. *See id.* ¶ 114.

On July 20, 2016, the parties executed a Stipulation and Agreement of Settlement. *See* Dkt. # 581, Ex. 3. Pursuant to the Stipulation, the proceeds of the settlement will be allocated and distributed by Epiq Class Action & Claims Solutions, Inc. ("Epiq"), who will determine each class member's pro rata share of the net settlement based on several factors, including when the class member purchased the common stock, call options, or bonds, and whether class members sold or held the securities during the class period. *See id.* ¶ 123. Class Representative's expert estimates that the average recovery per share of Amgen common stock will be approximately $0.08 per share and approximately $1.25 per bond with a par value of $1,000 after deduction of attorneys' fees and expenses. *Notice of Proposed Class Action Settlement*, Dkt. # 581, Ex. 3, at 3.

***2** The Court granted preliminary approval of the class action settlement on August 9, 2016. *See* Dkt. # 587. Class Counsel now seeks final approval of the settlement and the plan of allocation, as well as attorneys' fees and expenses, and

the reasonable expenses of Class Representative. *See* Dkts. # 589, 590.

II. Discussion

A. Final Approval of the Class Settlement

i. Legal Standard

A court may finally approve a class action settlement "only after a hearing and on finding that the settlement ... is fair, reasonable and adequate." Fed. R. Civ. P. 23(e)(2). In determining whether a settlement is fair, reasonable, and adequate, the district court must "balance a number of factors: the strength of the plaintiffs' case; the risk, expense, complexity and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of proceedings; the experience and views of counsel; the presence of a government participant; and the reaction of the class members to the proposed settlement." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998); *see also Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003); *Officers for Justice v. Civil Serv. Comm'n of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982) (noting that the list of factors is "by no means an exhaustive list").

The district court must approve or reject the settlement as a whole. *See Hanlon*, 150 F.3d at 1026 ("It is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness."). The Court may not delete, modify, or rewrite particular provisions of the settlement. *Id.* The Court is cognizant that the settlement "is the offspring of compromise; the question ... is not whether the final product could be prettier smarter or snazzier, but whether it is fair, adequate and free from collusion." *Id.* Moreover, the Ninth Circuit had recognized that "there is a strong judicial policy that favors settlements, particularly where complex class action litigation is concerned." *In re Synocor ERISA Litig.*, 516 F.3d 1095, 1011 (9th Cir. 2008).

ii. *Discussion*

This Section discusses each of the *Hanlon* factors for determining whether a settlement is reasonable and favorable to a class. Ultimately, the Court finds that the settlement is favorable, and it grants Class Representative's Motion for Final Approval of the Settlement.

a. Strength of Plaintiff's Case

The first important consideration in judging the reasonableness of a settlement is the strength of plaintiffs' case on the merits balanced against the amount offered in the settlement. *See Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 488 (C.D. Cal. 2010) (internal quotation marks omitted). Although Class Counsel believes that the case that it developed is strong, counsel understands that there are significant risks of less or no recovery. *Mot. for Final Approval*, 12:24-13:2.

To prove liability under the Exchange Act, Plaintiffs need to show that (1) Defendants were responsible for allowing materially false or misleading representations to enter the market, (2) Defendants acted with scienter, (3) Plaintiffs' losses were caused by Defendants' misrepresentations, and (4) Class Representative and the class members suffered damages. *See Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 341-42 (2005). Plaintiffs recognized that proving each of these elements posed significant risks. *See Mot. for Final Approval*, 13:3-16:20.

***3** To take the element of scienter as an example, courts have recognized that a defendant's state of mind in a securities case is the most difficult element of proof and one that is rarely supported by direct evidence. *See id.* 14:16-24. Because of the difficulties associated with direct evidence, class counsel likely would have relied on circumstantial evidence to show that Defendants were aware that Aranesp demonstrated an increased risk to consumers. *McDonald Decl.*, ¶ 108. Class Counsel faced the risk that the Court would exclude Plaintiffs' most convincing circumstantial evidence, namely, Defendants' criminal plea transcript, hearing transcript, or plea agreement, under the Rules of Evidence. *Mot. for Final Approval*, 14:25-27. These evidentiary concerns presented Plaintiffs with no assurance that a jury would interpret the available evidence to find scienter. *Id.* 14:19-22.

Plaintiffs further point out that the proposed settlement award is a proper compromise between the risks of litigation and the guarantee of recovery. *Id.* 16:8-26. Plaintiffs acknowledge that the complex questions presented by the elements of falsity, scienter, and loss causation would have required the parties to present competing scientific and damages expert

witnesses at trial. *Id.* Courts have recognized that, in a "battle of experts," the outcome cannot be guaranteed. *See, e.g.*, *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 587 (N.D. Cal. 2015); *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 744-45 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 735 (2d Cir. 1986). The settlement eliminates the risk that the jury might award less than the amount of the settlement or nothing at all to the class. Given the above considerations, the Court agrees that this factor weighs in favor of approving the settlement.

b. Risk, Expense, Complexity, and Duration of Further Litigation

The second factor in assessing the fairness of the proposed settlement is the complexity, expense, and likely duration of the lawsuit if the parties had not reached a settlement agreement. *Officers for Justice*, 688 F.2d at 625. A trial of a complex, fact-intensive case like this could have taken weeks, and the likely appeals of rulings on summary judgment and at trial could have added years to the litigation. *See Mot. for Final Approval* 17:5-7. This litigation has already been underway for nine years, and trial and appeal would only push recovery further down the road. *Id.* 1:11-15. Given these considerations, the Court agrees that this factor weighs in favor of approving the settlement.

c. Value of Settlement

The third factor in assessing the fairness of the proposed settlement is the amount of the settlement. "[T]he very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.' " *Officers for Justice*, 688 F.2d at 624. The Ninth Circuit has explained that "it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Id.* at 625 (citations omitted). Rather, any analysis of a fair settlement amount must account for the risks of further litigation and trial, as well as expenses and delays associated with continued litigation.

The parties have agreed to settle all claims for a $95 million cash settlement. *Mot. for Final Approval*, 18:1. Class Representative's expert estimates that the average recovery per share of Amgen common stock would be approximately $0.08 per share and approximately $1.25 per bond with a par value of $1,000 after the deduction of attorneys' fees and expenses. *Notice of Proposed Class Action Settlement*, 3. This settlement amount exceeds both the average and median reported securities class action settlement amounts since the Private Securities Litigation Reform Act ("PSLRA") in 1995. *Id.* 18:1-16. The average settlement amount in 2015 was $52 million. *Id.* Class counsel believes that this settlement is the second highest securities class action settlement in California over the past two years. *See McDonald Decl.*, ¶ 142. The Court agrees with Plaintiffs' assessment of the value of the settlement. Accordingly, the Court finds that this factor too counsels in favor of approving the settlement.

d. The Extent of Discovery Completed and the Stage of the Proceedings

***4** The next factor requires the Court to gauge whether Plaintiffs have sufficient information to make an informed decision about the merits of their case. *See Dunleavy*, 213 F.3d at 459. The more discovery that has been completed, the more likely it is that the parties have "a clear view of the strengths and weaknesses of their cases." *Young v. Polo Retail, LLC*, C 02-4546 VRW, 2007 WL 951821, at *4 (N.D. Cal. Mar. 28, 2007) (internal quotation marks and citations omitted).

This case has been litigated for more than nine years, *Mot. for Final Approval* 1:11-15, and included an interlocutory appeal to the Ninth Circuit and, ultimately, to the U.S. Supreme Court. The parties reached a settlement nine days before summary judgment motions were to be argued and twenty-seven days before trial. *Id.* Class representative and Defendants had already exchanged trial exhibit lists, witness lists, and deposition designations. *Id.* 18:22-24. Over the course of discovery, the parties exchanged more than 22 million pages of documents and thirty-six expert reports on clinical trials, biostatistics, oncology, FDA rules and regulations, marketing, loss causation, and damages. *Id.* 7:8-14; 18:24-26. Class representative served or responded to more than seventy interrogatories and 150 requests for admission. *Id.* Given that discovery had been completed and this case was on the verge of trial at the time of the settlement, the Court finds that Class Representative had enough information to make an informed decision about settlement based on the strengths and weaknesses of its case. This factor thus weighs in favor of granting final approval.

e. The Experience and Views of Class Counsel

The recommendations of Plaintiffs' counsel are given a presumption of reasonableness. *See, e.g.*, *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008) (citation omitted). "Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pac. Enter Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995).

Here, Class Counsel has extensive experience in securities-fraud class action litigation. *Mot. for Final Approval*, 20:1-24. Labaton Sucharow LLP has participated as lead or co-lead counsel for major institutional investors in numerous class actions, including *In re American Int'l Grp., Inc. Sec. Litig.*, No. 4-8141 (S.D.N.Y.) (settlement in the amount of $1 billion); *In re Countrywide Fin. Corp. Sec. Litig.*, No. C 07-5295 (C.D. Cal.) (settlement in the amount of $600 million); and *In re HealthSouth Corp. Sec. Litig.*, No CV-03-1500 (N.D. Ala.) (settlement in the amount of $600 million). *See id.* 20. Class Counsel believes that the settlement is a "very favorable result" that is in the best interest of the class. *Mot. for Final Approval*, 20:25-21:5. The Court sees no reason to rebut the presumption that Class Counsel's recommendation should be regarded as reasonable. This factor thus weighs in favor of class approval.

f. Presence of a Government Participant

Because no government entities are participants in this case, this factor is neutral.

g. Class Members' Reaction to the Proposed Settlement

In evaluating the fairness, adequacy, and reasonableness of settlement, courts also consider the reaction of the class to the settlement. *Molski v. Gleich*, 318 F.3d 937, 953 (9th Cir. 2003). "It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class action settlement are favorable to the class members." *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528–29 (C.D. Cal. 2004); *see also Arnold v. Fitflop USA, LLC*, CV 11-973 W (KSCx), 2014 WL 1670133, at *8 (S.D. Cal. Apr. 28, 2014) (concluding that the reaction to the settlement "presents the most compelling argument favoring settlement").

***5** Class counsel retained Epiq to provide notice and administration services for this litigation. *Thurin Decl.*, ¶ 2. Epiq mailed more than 1.5 million notice packets to potential class members or their nominees. *See Supplemental Thurin Decl.*, ¶ 3. As of October 18, 2016, Epiq received nine exclusion requests and objections from five individuals: Jeff Brown, Don F. Hanks, Sanford J. Morganstein, and Richard and Betsy Jasinski. *Id.* ¶¶ 7-8; *see also Supplemental McDonald Decl.*, Exs. 2, 8, 11, 13.

Three preliminary observations about the objections are important. First, the objectors are few in number. *See Hanlon*, 150 F.3d at 1027 ("[T]he fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness."). Against the 1.5 million notice packets sent, the settlement prompted only four objections. *See generally McDonald Decl.* That is a miniscule percentage of the participating class. Second, Class Representative has shown that at least one of the objectors is a "professional" objector. This objector, Jeff Brown, has objected in at least twelve other class actions and filed an identical objection in another class action on the same date that he filed his objection in this class action. *See Reply Memorandum in Further Support of the Motion for Final Approval* ("*Reply*"), Dkt. # 594, 4:11-13 & 4 n.4; *see also Supplemental McDonald Decl.*, Ex. 2-7. Courts in the Ninth Circuit have routinely discounted objections from such "professional" objectors. *See In re NVIDIA GPU Litig.*, 539 F. App'x 822 (9th Cir. 2013); *Howertown v. Cargill, Inc.*, 13-446 LEK (BMKx), 2014 WL 6976041, at *3 (D. Haw. Dec. 8, 2014). Third, it is questionable whether two of the five objectors have standing to challenge the settlement. Brown has not submitted trading data to establish that he held Amgen stock during the relevant period. *See Reply* 3:13-19. Hanks bought Amgen stock in 2004 and 2006, and sold it in January 2006, before the first disclosure in this case. *See id.* 7:2-7. Hanks may have also released claims against Amgen when he settled an employment dispute with the company in 2014. *See id.* 7:1-20; *Supplemental McDonald Decl.*, Ex. 9. Because Brown and Hanks have not shown that they were aggrieved by Amgen's conduct, they may lack standing to object to the settlement. *See In re First Capital Holdings Corp. Fin. Prods. Secs. Litig.*, 33 F.3d 29, 30 (9th Cir. 1994).

With these observations in mind, the Court now turns to the content of the objections. Three of the objectors take issue

with the fee and expense requests of Class Counsel, arguing that Class Counsel has not sufficiently disclosed the basis for its fee request or is undeserving of the fee amount. *See Reply* 2:22. One of the objectors raises a broad concern that class action security litigation benefits only Class Counsel and not shareholders. *See Supplemental McDonald Decl.*, Ex. 13 ("How does this help my financial interest in the company? All this settlement does is essentially pay me pennies per share (hardly worth the paperwork) for the shares I own, then reduces the value of my over all investment in the company by the price of the legal fees paid to lead counsel."). Another objector asks the Court to withhold a portion of Class Counsel's fee until the entire distribution process is complete. *See McDonald Decl.*, 2.

The Court overrules these objections. Having reviewed Class Counsel's request for attorneys' fees and expenses, the Court finds Class Counsel's request reasonable in light of the duration of this lawsuit, its complexity, and the fact that Class Counsel's request covers only a portion of its total costs, as discussed in further detail below. Moreover, the Court recognizes that securities class action litigation, while costly, is necessary to ensure the enforcement of federal securities laws. *See Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1307 (9th Cir. 1990) (recognizing that class action litigation "may be the 'superior' and only viable method" to achieve the objectives of deterrence and enforcement in addition to class compensation). Therefore, these objections do not render the settlement unfair or unreasonable.

***6** Apart from the objections related to attorneys' fees and expenses, there are five other objections. Generally, they involve: (1) inadequate oversight over the distribution process, (2) class members who do not know when to expect payment, (3) confusion over the *cy pres* procedure, (4) whether the Court should grant the class access to sealed and redacted records, and (5) a request to clarify that the settlement stipulation excludes the ERISA class action, CV 7-5442 PSG (PLAx). *See Supplemental McDonald Decl.*, Ex. 2 at pp. 2-4, Ex. 8, at p. 6. The Court finds these remaining objections equally unavailing. [1]

[1] One additional class member, Michael Lent, submitted a letter to the Court stating that he received the Settlement Notice too late to request exclusion from the class, opt-back into the class, or object to the Settlement. *See Supplemental McDonald Decl.*, Ex. 14. Because the Court has received only one objection of this kind, the Court concludes that Lent's letter does not reflect a pervasive problem with administration of this Settlement.

As to the first and third objections, the settlement agreement addresses these concerns directly. The first objection is without merit because the Court, by virtue of this Order, retains jurisdiction over the settlement and all matters relating to the litigation. Moreover, the parties have agreed to apply to the Court for a further order that approves Epiq's distribution of the claims. *See Stipulation*, ¶ 21. These processes ensure that the Court will have adequate oversight of the distribution process. As to the third objection, the Court finds the Notice clear in stating that the Court will need to review and approve any future *cy pres* designees. *See Stipulation*, ¶ 25 (concluding that any unclaimed balance from the Net Settlement Fund "shall be contributed to non-sectarian, not-for-profit charitable organization(s) designated by Class Representative and approved by the Court"). Because the Notice provided the class with adequate information about the distribution and the *cy pres* process, the Court overrules the first and third objections. *See Settlement Notice* 19.

The second and fourth objections concern access to information, and these objections too do not warrant reconsideration of the underlying settlement. Objectors fault the Settlement Administrator for failing to provide the class with a specific date of payment. However, because the date of the payment will depend on how quickly the Settlement Administrator processes claims and other events outside of the Administrator's control, the Settlement Administrator cannot reasonably provide the class with an exact date. *See Reply* 5:3-10. The fourth objection as to sealed documents is also without merit because the public docket already contains much of the information that the objector seeks, and because courts have recognized that objectors are not entitled to "unfettered" discovery. *See id.* 8; *Miller v. Ghirardelli Chocolate Co.*, CV 12-4936 (LBx), 2015 WL 758094, at *10.

The fifth objection concerns the adequacy of the notice sent to the class. Specifically, the objectors assert that the Notice did not clearly state that the settlement excludes the related ERISA class action. However, having reviewed the Notice, the Court finds it exceedingly clear on this point. *See Settlement Notice*, Dkt. # 591, Ex. 3 ("For the avoidance of doubt, Released Claims do not include ... *Harris v. Amgen, Inc.*, CV 7-5442 (C.D. Cal.) ....). Because the Notice clearly defines what claims are released and what claims are not, the Court overrules the fifth objection.

***7** Having reviewed all objections and letters received by the Settlement Administrator, the Court finds no reason to conclude that the settlement is unfair or unreasonable. Even more importantly, the Court finds that the relatively few objections, even if meritorious, would not detract from the overwhelmingly positive response from the remainder of the class. Because only a miniscule percentage of the class has objected, this factor suggests that the terms of the proposed settlement are favorable to class members and counsels in favor of approving the settlement.

h. Fair and Honest Negotiations

Evidence that a settlement agreement is the result of genuine "arms-length, non-collusive, negotiated resolution" supports a conclusion that the settlement is fair. *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009). Here, the parties negotiated the settlement with two experienced mediators, the Honorable Vaughn R. Walker and the Honorable Dikran Tevrizian. *McDonald Decl.*, ¶¶ 115-16. Retired judge Tevrizian has filed a declaration in support of the settlement. *Id.*, Ex. 2. In it, he convincingly expressed his belief that "this was a hard-fought litigation that resulted in substantial recovery for the Class and an equitable settlement." *Id.* ¶ 11. The Court concurs, having observed the parties in the courtroom and reviewed the parties' filings, and finds no reason to question that the negotiations were "adversarial, fair, and non-collusive." Accordingly, the Court finds that this factor too counsels in favor of approval of the settlement.

i. Conclusion

Having reviewed the relevant factors and found that none counsel against approval of final settlement, the Court accordingly GRANTS Class Representative's motion for final approval of the class action settlement.

B. Plan of Allocation

A plan of allocation under Rule 23 "is governed by the same standards of review applicable to the settlement as a whole; the plan must be fair, reasonable and adequate." *Vinh Nguyen v. Radient Pharma. Corp.*, SACV 11-406 DOC (MLGx), 2014 WL 1802293, at *5 (C.D. Cal. 2014). To be approved, the plan needs to have a reasonable, rational basis. *Id.*

The settlement amount is $95 million in cash. After the Court deducts attorneys' fees, expenses, and the class representative award, the settlement allows each class member to receive a pro rata share of the net settlement amount based on the Settlement Administrator's calculation of the claimant's recognized losses. *See Mot. for Final Approval*, 22:15-27. The parties have agreed to a series of formulas for calculating "recognized loss" that account for the type of security (i.e., common stock, option, bond) purchased by claimant, and whether the securities were sold (or held) during the class period. *See Thurin Decl.*, Ex. B, at 13-19 (providing formulas for how to calculate "recognized loss"); *see also McDonald Decl.*, ¶ 123. The allocation plan is consistent with the analysis of Class Representative's damage expert concerning the corrective disclosure dates and the effect on Amgen stock. *See McDonald Decl.*, ¶ 122.

The mechanics of the plan of distribution are also sound. All class members who want to participate in the distribution of the net settlement must submit a Proof of Claim by December 23, 2016. *Id.* ¶ 119. If any amount remains unclaimed, Class Representative may petition the Court to approve a *cy pres* designation to a "non-sectarian, not-for-profit charitable organization" that would receive the remaining funds. *See Stipulation*, ¶ 25. No amount of the settlement will revert back to Defendants. *Id.* ¶ 26.

***8** The Court finds that the plan of allocation is rationally grounded in a formula that will compensate class members for the losses related to their Amgen securities. The Court additionally finds and concludes that due and adequate notice was directed to persons and entities who are Class Members, advising them of the proposed Plan of Allocation and their right to object thereto, and a full and fair opportunity was accorded to persons and entities who are Class Members to be heard with respect to the Plan of Allocation. The form and method of notifying the Class of the proposed Plan of Allocation 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 PSLRA, due process, and any other applicable law, and constituted due and sufficient notice, and the best notice practicable, to all persons and entities entitled thereto.

The Court is cognizant of two purported objections to the Plan of Allocation, submitted by Don Hanks and Sanford Morganstein. As noted above, Hanks likely does not have standing to object to the settlement. But, even if he did,

the Court would overrule his objection and the Morganstein objection because the Court has no reason to believe that the Plan of Allocation and the accompanying Settlement Notice are anything other than fair, reasonable, and adequate.

The Court thus approves the plan of allocation.

C. Motion for Attorneys' Fees and Expenses

Class counsel requests that the following be disbursed from the settlement amount: (1) $23,750,000 in attorneys' fees, which constitutes 25 percent of the total settlement amount; (2) $6,577,512.31 for litigation expenses; and (3) $30,983.99 for the reasonable expenses of the Class Representative. *See Class Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses* ("*Attorneys' Fees Mot.*") 3:5-21, 18:14-20:28, 21:1-22:8. Class Counsel asserts that its attorneys' fees request is reasonable under the common fund doctrine and the lodestar methods of calculation.

i. Legal Standard

Awards of attorneys' fees in class action cases are governed by Federal Rule of Civil Procedure 23(h), which provides that after a class has been certified, the Court may award reasonable attorneys' fees and nontaxable costs. The Court "must carefully assess" the reasonableness of the fee award. *See Staton*, 327 F.3d at 963; *see also Browne v. Am. Honda Motor Co., Inc.*, No. CV 09-06750 MMM (DTBx), 2010 WL 9499073, at *3–5 (C.D. Cal. Oct. 5, 2010) (explaining that in a class action case, the court must scrutinize a request for fees when the defendant has agreed to not oppose a certain fee request as part of a settlement).

Where litigation leads to the creation of a common fund, courts can determine the reasonableness of a request for attorneys' fees using either the common fund method or the lodestar method. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 944–45 (9th Cir. 2011) (finding that when a settlement establishes a common fund for the benefit of a class, courts may use either method to gauge the reasonableness of a fee request, but encouraging courts to employ a second method as a cross-check after choosing a primary method). The Court will analyze counsel's fee request under both theories.

ii. Discussion

a. Percentage of the Common Fund

Under the percentage-of-recovery method, courts typically calculate 25 percent of the fund as a "benchmark" for a reasonable fee award. *See In re Bluetooth*, 654 F.3d at 942. When assessing the reasonableness of a fee award under the common fund theory, courts consider "(1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases." *Viscaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–50 (9th Cir. 2002).

***9** Class counsel requests that the Court approve an attorneys' fee award of 25 percent of the total settlement amount. The Court finds this request reasonable under the percentage of the common fund method because it both matches the "benchmark" and meets the *Viscaino* reasonableness factors.

Turning to the *Viscaino* factors, the Court first finds that the results are favorable to the class, given that the settlement amount exceeds both the average and median reported securities class action litigation settlements since the passage of the PSLRA. *Attorneys' Fees Mot.* 7:19-24. Second, the Court finds that the risks of litigation were real and substantial, given the strict requirements imposed by the PSLRA and the highly technical and complex claims involved in the litigation. Had Plaintiffs proceeded to trial, they would have encountered significant challenges in presenting highly technical evidence to the jury and risks in the possibility that the jury would agree with Defendants' experts. Third, the duration of the case—lasting now for nine years—counsels in favor of a large attorneys' fees award. Fourth, Class Counsel has litigated this case on a contingent fee basis, and this too counsels in favor of approving the award. *See Attorneys' Fees Mot.* 14:11-18. Fifth, the request for attorneys' fees in the amount of 25 percent falls below the range allowed in similar cases. *See, e.g.*, *In re Mattel, Inc.*, CV 99-10368 MRP (CWx), slip. op. at 2 (C.D. Cal. Sept. 29, 2003) (awarding fees of 27 percent of $122 million settlement); *In re Hewlett-Packard Co. Sec. Litig.*, CV 11-1404 AG (RNBx), slip. op. at 2-3 (C.D. Cal. Sept. 15, 2014) (awarding fees of 25 percent of $57 million settlement); *In re Mercury Interactive Corp. Sec. Litig.*, C 2-2270 JW (PVTx), slip. op. at 1 (N.D. Cal. Apr. 24, 2007) (awarding 25 percent of $78 million settlement).

Given the above considerations, the Court finds Class Counsel's attorneys' fees request reasonable under the common fund theory.

b. Lodestar Cross-Check

Although an analysis of the lodestar is not required for an award of attorneys' fees in the Ninth Circuit, a cross-check of the fee request with a lodestar amount can demonstrate the fee request's reasonableness. *See In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 109 F.3d 602, 607 (9th Cir. 1997).

Class counsel's combined "lodestar" is $49,633,060.25. This lodestar represents the hourly rates and hours worked of more than 125 attorneys at six different law firms. *See McDonald Decl.*, Ex. 11. The fees for the attorneys at Labaton Sucharow LLP in New York City comprise approximately 97 percent of the lodestar amount. *See id.* Class Counsel lodestar comprises 93,137.55 hours of work at a billing rate ranging from $750 to $985 per hour for partners, $500 to $800 per hour for "of counsels"/senior counsel, and $300 to $725 per hour for other attorneys. The Court has reviewed the attorneys' hourly rates and hours worked, and found them reasonable, given the duration of this litigation and the favorable settlement for the class.

Moreover, courts have recognized that a percentage fee that falls below counsel's lodestar strongly supports the reasonableness of the award. *See, e.g.*, *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, CV 2-3400 (CM), 2010 WL 4537550, at *26 (S.D.N.Y. Nov. 8, 2010) ("Lead Counsel's request for a percentage fee representing a significant discount from their lodestar provides additional support for the reasonableness of the fee request."). Here, the percentage fee of $23.75 million represents a significant discount from the lodestar amount of $49.6 million—a negative multiplier of approximately .47. Such a "negative" multiplier indicates that Class Counsel is seeking payment for only a portion of the hours that they expended on the action. Because Class Counsel seeks reimbursement for a portion of their work and because Class Counsel will need to perform additional work to supervise the claims administration process, the Court finds the lodestar amount reasonable.

***10** Having reviewed the hourly rates, the hours worked, and the multiplier requested by Class Counsel, the Court finds the requested fee amount reasonable under either the lodestar method or the percentage of the common fund. The Court therefore GRANTS Class Counsel's motion for attorneys' fees.

c. Litigation Costs

In addition to attorneys' fees, class counsel requests reimbursement of expenses in the amount of $6,577,512.31. *See Attorneys' Fees Motion* 18:14-18. Courts have recognized that "[a]ttorneys who created a common fund are entitled to the reimbursement of expenses they advanced for the benefit of the class." *See Vincent v. Reser*, C 11-3572 (CRB), 2013 WL 621865, at *5 (N.D. Cal. Feb. 19, 2013). In assessing whether counsel's expenses are compensable in a common fund case, courts look to whether the costs are of the type typically billed by attorneys to paying clients. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994). Class counsel has provided the Court with a record of all costs incurred to date in this litigation. *See McDonald Decl.*, Ex. 5-10. The Court is satisfied that the costs are reasonable and are of the type that would typically be billed to clients, and therefore, the Court GRANTS Class Counsel's motion for costs in the amount of $6,577,512.31.

d. Reasonable Expenses of the Class Representative

Finally, Class Representative requests $30,983.99 in expenses related to its participation in this litigation. *Attorneys' Fees Mot.* 21:9-11. Under the PSLRA, a class representative's recovery must be "equal, on a per share basis, to the portion of the final judgment or settlement award to all other members of the class," but the PSLRA also notes that "[n]othing in this paragraph shall be construed to limited the award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of the class." *See* 15 U.S.C. § 78u-4(a)(4). Thus, courts have awarded reasonable payments to compensate class representatives for the time, effort, and expenses devoted to litigating on behalf of the class. *See, e.g.*, *In re Broadcom Corp. Class Action Litig.*, CV 6-5036 R (CWx) (C.D. Cal. Dec. 4, 2012), slip. op. at 2 (awarding costs and expenses to class representative in the amount of $21,087); *Dusek v. Mattel, Inc.*, CV 99-10864 MRP (C.D. Cal. Sept. 29, 2003), slip. op. at 2 (awarding $117,426 to three lead plaintiffs).

Connecticut Retirement monitored case developments and directed Class Counsel by reviewing and commenting on substantial filings. *See McDonald Decl.*, Ex. 13, ¶¶ 6-7. Class Representative also attended hearings in California and Washington D.C., and prepared for a two-day deposition in Los Angeles. *Id.* ¶¶ 8-9. Class Representative seeks reimbursement for the time of Catherine LaMarr, General Counsel, Office of Treasury, and the time of Solicitor General Gregory T. D'Auria and Assistant Attorney General Mark F. Kohler. *Id.* ¶ 12. The Court has reviewed Class Representative's request for costs and expenses, and found it reasonable. Accordingly, the Court GRANTS Class Representative's motion for payment of reasonable expenses.

III. Conclusion

For the reasons stated above, Class Representative's Motion for Final Approval of Proposed Class Action Settlement and Plan of Allocation, and Class Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses are GRANTED. It is HEREBY ORDERED AS FOLLOWS:

***11** 1. The Court approves settlement of the action between Plaintiffs and Defendant, as set forth in the Settlement Agreement as fair, reasonable, and adequate. The Parties are directed to perform their settlement in accordance with the terms set forth in the Settlement Agreement;

2. Class Counsel is awarded $23,750,000 in attorneys' fees and $6,577,512.31 in litigation expenses. Class Representative Connecticut Retirement Plans and Trust Funds is awarded $30,983.99 in reasonable expenses associated with its pursuit of this litigation. The Court finds that these amounts are warranted and reasonable for the reasons set forth in the moving papers before the Court and the reasons stated in this Order;

3. If there is any balance remaining in the Net Settlement Fund after six months from the date of initial distribution and after the payment of any outstanding attorneys' fees and expenses, the Settlement Administrator shall contribute the remaining balance to non-sectarian, not-for-profit charitable organization(s) designated by Class Representative and approved by the Court.

4. Epiq is authorized to disburse funds pursuant to the terms of this Settlement Agreement and this Order;

5. This Order incorporates by reference the consistent and additional terms of the accompanying Judgment and Order Approving the Class Action Settlement;

5. Without affecting the finality of this judgment in any way, this Court hereby retains exclusive jurisdiction over Defendant and the Settlement Class Members for all matters relating to the Litigation, including the administration, interpretation, effectuation, or enforcement of the Settlement Agreement and this Order.

IT IS SO ORDERED.

All Citations

Not Reported in Fed. Supp., 2016 WL 10571773

End of Document

EXHIBIT 4

2012 WL 1378677
United States District Court, D. Arizona.

In re APOLLO GROUP INC.
SECURITIES LITIGATION.
This Document Relates To: All Actions.

Master File Nos. CV 04–2147–PHX–JAT, CV 04–2204–PHX–JAT, CV 04–2334–PHX–JAT.
|
April 20, 2012.

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FINAL APPROVAL ORDER AND JUDGMENT

JAMES A. TEILBORG, District Judge.

***1** Pending before the Court are: (1) Plaintiffs' Motion for Approval of Stipulation and Agreement (Doc. 739), (2) Plaintiff's Stipulation and Agreement regarding Final Approval Order and Judgment (Doc. 730), (3) Plaintiffs' Motion for Attorneys' Fees (Doc. 740), and (4) Defendants' Unopposed Motion to Vacate Judgment (Doc. 747). Pursuant to Federal Rules of Civil Procedure 23(e), a hearing was held on April 16, 2012 at 10:00 a.m. The Court now rules on the Motions.

I. BACKGROUND

This is a consolidated class action proceeding, wherein lead Plaintiff, on behalf of a class of persons who purchased Apollo common stock between February 27, 2004 and September 14, 2004, alleged that Defendants violated section 10(b) of the Securities and Exchange Act of 1934 and Securities and Exchange Commission Rule 10(b)–5. On January 16, 2008, a jury verdict was entered in favor of lead Plaintiff. (Doc. 490). On August 4, 2008, this Court granted Defendants' motion for judgment as a matter of law and entered judgment in favor of Defendants. (Doc. 560).

On June 23, 2010, the Ninth Circuit Court of Appeals reversed the judgment in favor of Defendants and remanded with instructions that this Court enter judgment in accordance with the jury's verdict. (Doc. 679–1). On April 6, 2011, this Court entered that judgment. (Doc. 695). The Parties then engaged in mediation in an attempt to resolve outstanding disputes regarding claims administration procedures. As a result of this mediation, the Parties ultimately agreed to a settlement.

This matter came before the Court for hearing pursuant to its November 29, 2011 Preliminary Approval Order (Doc. 737) on the application of the Parties pursuant to Rule 23(e) of the Federal Rules of Civil Procedure for final approval of the class settlement recited in the Stipulation and Agreement (Doc. 729).

II. THE MOTION FOR FINAL APPROVAL OF STIPULATION AND AGREEMENT (Docs. 739 & 730).

A. Legal Standard

Rule 23(e) provides that a class action shall not be dismissed or compromised without court approval following "a hearing and on finding that the [the compromise] is fair, reasonable, and adequate." Fed.R.Civ.P. 23(e). The Ninth Circuit Court of Appeals has articulated several factors relevant to the evaluation of the fairness of a class action settlement: (1) the strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the consideration offered in settlement; (5) the extent of discovery completed, the stage of the proceedings; (6)

the experience and views of counsel; and (7) the reaction of the class to the proposed settlement. *Hanlon v. Chrysler Corp.,* 150 F.3d 1011, 1026 (9th Cir.2011). As this Court concluded in its Preliminary Approval Order, these factors favor a finding of fairness, reasonableness, and adequacy, and demonstrate that the settlement recited in the Settlement Agreement falls within the range of settlements qualified for judicial approval and is in the best interests of the Settlement Class.

1. The Strength of Plaintiffs' Case, the Risk of Continued Litigation, the Risk of Maintaining Class Action Status, and the Complexity, Expense, and Duration of the Litigation

***2** This case differs from a typical class action settlement because this case has already proceeded through trial and appeal and the sole outstanding disputes relate to claims administration procedures. The settlement contemplates, among other things, quantifying, for all Class Members, on an aggregate basis, the per share damages determined in the Judgment and the calculation and allocation of recognized claimant recovery. The parties reached this settlement as the result of a mediation conducted by Retired Judge Nicholas Politan. The settlement allows the Parties to avoid further delays in a lawsuit that has been pending since 2004.

The Court finds that the terms of the settlement are fair and reasonable and there is substantial uncertainty that future litigation regarding these terms would result in a more favorable settlement for Plaintiffs. By comparison, the terms agreed to by the Parties provide certainty with regard to the relief the Class Members will obtain. These considerations therefore favor granting final settlement approval. *See, e.g., Nat'l Rural Telecomms. Coop v. DIRECTV, Inc.,* 221 F.R.D. 523, 526 (C.D.Cal.2004) ("unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.").

2. The Consideration Offered in the Settlement

To determine if the amount offered in settlement is fair, "[i]t is the complete package taken as a whole, rather than the individual component parts, that must be examined for overall fairness." *Officers for Justice v. Civil Svc. Comm'n,* 688 F.2d 615, 628 (9th Cir.1982). In this case, the jury determined an amount that it felt each share was worth and the Parties have agreed to a quantification of those shares on an aggregate basis. Accordingly, the relief provided by the Parties' settlement is substantial and supports final settlement approval.

3. The Stage of the Proceedings, and Experience and Views of Counsel.

There is no question that the Parties have a full understanding of the legal and factual issues surrounding this case. The Parties have proceeded through a full jury trial, an appeal to the Ninth Circuit Court of Appeals and petitioned for a writ of certiorari to the United States Supreme Court. Thereafter, the Parties engaged in a mediation, wherein they were able to reach a settlement regarding the terms of the settlement. There is no evidence that there has been anything other than a genuine arms-length negotiation in this case.

Further, Class Counsel has been involved in this case since 2004 and is familiar with all of the issues in this case.

> Great weight is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation. This is because parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in the litigation. Thus, the trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel.

***3** *Nat'l Rural,* 221 F.R.D. at 528 (internal quotations and citations omitted). Class Counsel have demonstrated a high degree of competence in the eight years of litigation of this case and have represented to the Court that the settlement is a fair, adequate, and a reasonable resolution of the Class's dispute with Defendants and is preferable to continued litigation.

4. The Reaction of the Class to the Proposed Settlement

In assessing whether to grant approval of a settlement, courts consider the reactions of the members of the class, particularly the class representatives. *Nat'l Rural,* 221 F.R.D. at 528

(citing 5 MOORE'S FEDERAL PRACTICE, § 23.85(d)(d) (Matthew Bender 3d ed.)). The Class Representatives, who have a substantial understanding and experience with this action and the settlement, have voiced their support for the settlement.

"[T]he absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members." *Nat'l Rural,* F.R.D. at 529. Here, more than 166,000 Notices of the Settlement Agreement were mailed to potential Class Members, brokerage firms, and other institutions and the court-approved Summary Notice was published in *Investor's Business Daily.* Under the circumstances, the Parties' notice plan constituted the best notice practicable, adequately informed the Class Members regarding the terms of the proposed settlement, including their rights to exclude themselves or opt-out and by when, and fully satisfied the requirements of Rule 23, the requirements of due process, and any other applicable law. This Notice included clear instructions about how to object to the Proposed Settlement if the Class Members opposed final approval of the Proposed Settlement. There have been no objections from Class Members or potential class members, which itself is compelling evidence that the Proposed Settlement is fair, just, reasonable, and adequate. *See id.* at 529.

Based on the foregoing, and due and adequate notice having been given of the settlement as required in the Preliminary Approval Order, and the Court having considered all papers filed and proceedings held and otherwise being fully informed and good cause appearing:

IT IS ORDERED granting the Parties' Joint Motion for Final Approval of the Class Action Settlement and Entry of Final Judgment and Order of Dismissal. (Doc. 739).

IT IS FURTHER ORDERED granting Plaintiff's Stipulation and Agreement regarding Final Approval Order and Judgment (Doc. 730) as follows:.

Unless otherwise indicated, all terms used herein shall have the same meanings as those terms have in the Stipulation (Doc. 730).

This Court finds that due and adequate notice was given of the Judgment entered on April 6, 2011 (Doc. 695) in the above matter, and of the Stipulation, and Class Counsel's application for an award of attorneys' fees and reimbursement of expenses as directed by this Court's Preliminary Approval Order, and that the forms and methods for providing such notice to Class Members constituted the best notice practicable under the circumstances, including individual notice to all Members of the Class who could be identified through reasonable effort, and satisfied all of the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, and all other applicable laws.

***4** This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Class Members.

The Court has previously certified, pursuant to Rule 23 of the Federal Rules of Civil Procedure, and hereby reconfirms its order certifying a class. As set forth in the Judgment entered April 6, 2011 (Doc. 695), the Class consists of all persons and entities who, during the period of February 27, 2004 through and including September 14, 2004 ("the Class Period"), purchased the securities of the Apollo Group, Inc. ("Apollo") on the open market, and held those shares through September 21, 2004. Excluded from the Class are the Defendants, any entity in which Defendants or any excluded person has or had a controlling ownership interest, the officers and directors of Apollo, members of their immediate families, and the legal affiliates, representatives, heirs, controlling persons, successors, and predecessors in interest or assigns of any such excluded party. The Class also excludes those Persons who timely and validly requested exclusion from the Class pursuant to the Notice sent to Class Members as provided in this Court's Class Certification Order of August 28, 2007 (Doc. 275), who are listed in Exhibit A hereto. This Court's Class Certification Order of August 28, 2007 is reaffirmed and adopted herein as Final.

The Court finds that all the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of Class Members is so numerous that joinder of all Members of the Class was and is impracticable; (b) there were and are questions of law and fact common to each Member of the Class; (c) the claims of the Lead Plaintiff were and are typical of the claims of the Class it has represented; (d) the Lead Plaintiff has fairly and adequately represented 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. Class Counsel have

fairly and adequately protected the interests of the Class at all times throughout this action.

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, this Court hereby approves the Stipulation (Doc. 730) and finds that it is, in all respects, fair, reasonable, and adequate to, and is in the best interests of, Lead Plaintiff and each of the Class Members.

Upon the Effective Date, Lead Plaintiff and each of the Class Members (except those persons and/or entities identified in Exhibit A attached hereto who previously validly and timely requested exclusion from the Class), shall be deemed to have, and by operation of this Final Approval Order and Stipulation shall have, fully, finally, and forever released, relinquished and discharged all Released Claims against the Released Parties as provided in the Stipulation, and the Action, including all claims contained therein, are hereby dismissed with prejudice as to Lead Plaintiff and all Class Members.

***5** Upon the Effective Date, all Class Members shall be forever barred and enjoined from bringing or instituting, directly or indirectly, any claim, suit or cause of action of any kind whatsoever against Lead Plaintiff or Class Counsel, or their officers, directors, trustees, agents, experts, consultants, partners, or employees, concerning, arising from or in connection with the Stipulation or its fairness, adequacy or reasonableness.

The Court finds that, during the course of the Action, the Settling Parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11.

This Court hereby approves the Claims Allocation, Administration and Procedures ("Plan") as set forth in the Stipulation and Notice, and directs Lead Counsel and the Claims Administrator, Heffler, Radetich & Saitta LLP, to proceed with the processing of Proofs of Claim and the administration of the Claims pursuant to the terms of the Plan and, upon completion of the claims processing procedure, to present to this Court a proposed final distribution order for the distribution of the Net Common Fund to Authorized Claimant Class Members with respect to their eligible shares purchased during the Class Period and held through September 21, 2004, as determined by the Claims Administrator, as provided in the Stipulation.

In the event that the Stipulation does not become Final in accordance with the terms of the Stipulation, or the Effective Date does not occur, or in the event that the Common Fund, or any portion thereof, is returned to the Defendants, then this Final Approval Order shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation and each party shall be restored to his, her or its respective position as it existed immediately before execution of the Stipulation, including all monies paid into the Common Fund by Defendants being returned to Defendants, except for the payment out of the Common Fund of notice and settlement administration expenses actually incurred and properly due and owing in connection with the Stipulation.

Without affecting the finality of this Final Approval Order in any way, this Court hereby retains continuing jurisdiction over (a) implementation and enforcement of any award or distribution from the Common Fund; (b) disposition of the Common Fund; (c) payment of taxes by the Common Fund, (d) all parties hereto for the purpose of construing, enforcing, and administering the Stipulation, and (e) any other matters related to finalizing the Stipulation and distribution of the proceeds of the Common Fund.

III. PETITION FOR AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES (Doc. 740).

Class Counsel moves for an award of attorneys' fees in the amount of 33% of the settlement pursuant to Federal Rules of Civil Procedure 23(h). Rule 23(h) provides, "In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed.R.Civ.P. 23(h). In the Stipulation and Agreement re: Final Approval Order and Judgment (Doc. 730), Defendants agreed to take no position on Class Counsel's fee and expenses request. (Doc. 730 at 28). This is typically referred to as a "clear sailing clause." However, "courts have an independent obligation to ensure that the award, like the settlement itself, is reasonable, even if the parties have already agreed to an amount." *Bluetooth Headset Prods. Liab. Litig.v. Brennan,* 654 F.3d 935, 941 (9th Cir.2011) (internal citations omitted). Further, Class members National Automatic Sprinkler Pension Fund and Sprinkler Industry Supplemental Pension Fund (collectively the "Sprinkler Fund") object to the Petition for Award of Attorneys' Fees.

***6** The two primary objections asserted by the Sprinkler Fund are that the lodestar method of determining attorneys' fees, and not the percentage-of-fund method, is the appropriate way to determine attorneys' fees in this case and Class Counsel has not provided enough information to properly determine a lodestar calculation in this case. The Sprinkler Fund also argues that there are disparities in Class Counsel's attorneys' fees application, and as a result of these disparities, the Court should appoint a Special Master to resolve the attorneys' fees issue. In Response, Class Counsel argues that the percentage-of-fund method is clearly appropriate in this case, and that its attorneys' fees motion is appropriate and without any disparities. The Court will now discuss whether the requested attorneys' fees and expenses are fair and reasonable.

A. Lodestar vs. Percentage of Fund Methods

"In class action litigation, awards of attorneys' fees serve the dual purpose of encouraging persons to seek redress for damages caused to an entire class of persons and discouraging future misconduct." *In re Lifelock, Inc. Mktg. and Sales Practices Litig.,* MDL No. 08–1977–MHM, 2010 WL 3715138, at *8 (D.Ariz. Aug.31, 2010) (internal citation omitted). The Ninth Circuit Court of Appeals has approved two different methods for calculating reasonable attorneys' fees depending on the circumstances. *Bluetooth,* 654 F.3d at 941. The lodestar method is appropriate in class actions brought under fee-shifting statutes, where the relief obtained is primarily injunctive in nature and not easily monetized, and the legislature wants to compensate counsel for undertaking socially beneficially litigation. *Id.* In cases with a common fund settlement, the court has the discretion to apply the lodestar method or the percentage-of-recovery method. *Id.* at 942. "Because the benefit to the class is easily quantified in common-fund settlements," courts can award attorneys a percentage of the common fund "in lieu of the often more time-consuming task of calculating the lodestar." *Id.* "Though courts have discretion to choose which calculation method they use, their discretion must be exercised so as to achieve a reasonable result." *Id.*

1. The Lodestar Method

The lodestar figure is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation (as supported by adequate documentation) by a reasonable hourly rate for the region and for the experience of the lawyer. Though the lodestar figure is presumptively reasonable, the court may adjust it upward or downward by an appropriate positive or negative multiplier reflecting a host of reasonableness factors ... Foremost among these considerations is the benefit achieved for the class.

Id. at 941–42 (internal citations omitted). Rare and exceptional circumstances that can be taken into account for an enhancement of the lodestar figure are (1) when the hourly rate does not represent the attorneys' true market value (court can calculate by linking the attorneys' ability to the prevailing market rate), (2) when the litigation includes an extraordinary outlay of expenses and is exceptionally protracted (court can calculate by, for example, applying a standard rate of interest to the qualifying outlays and expenses), and (3) when there is an exceptional delay in the payment of fees (court can calculate by basing the award on current hourly rates or by adjusting the fee based on historical rates to reflect the present value). *Perdue v. Kenny A. ex rel. Winn,* 559 U.S. 542, 130 S.Ct. 1662, 1674–75, 176 L.Ed.2d 494 (2010).

2. Percentage of the Fund Method

***7** Applying the Percentage of the Fund Calculation Method, Courts calculate "25% of the fund as a 'benchmark' for a reasonable fee award, providing adequate explanation in the record of any 'special circumstances' justifying a departure." *Bluetooth,* 654 F.3d at 942. When using the Percentage of the Fund Calculation Method, a Court can cross-check the fee amount with the lodestar amount to "confirm that percentage of recovery amount does not award counsel an exorbitant hourly rate." *Id.* at 945 (internal quotations omitted). "If the lodestar amount over-compensates the attorneys according to the 25% benchmark standard, then a second look to evaluate the reasonableness of the hours worked and rates claimed is appropriate." *Id.* (internal quotations omitted).

A Court may apply a risk multiplier to the Percentage of the Fund Calculation in Common Fund Cases if it would be appropriate in that specific case. Factors that the Ninth Circuit Court of Appeals has approved of in determining a risk multiplier include: (1) whether an exceptional result was achieved, (2) whether the case was extremely risky for class counsel to pursue, (3) incidental or non-monetary benefits conferred by the litigation, and (4) the burdens faced by counsel in litigating the case, including an exceptional amount of time and money expended on a case and whether counsel gave up significant other work resulting in the decline of the

firm's annual income. *Vizcaino v. Microsoft Corp.,* 290 F.3d 1043, 1048–50 (9th Cir.2002). [1]

1 In its Response to the Petition for Attorneys' Fees, it appears that the Sprinkler Fund argues that applying risk multiplier factors in a common fund case in inappropriate in light of the United States Supreme Court's decision in *Perdue v. Kenny A. ex rel. Wynn,* 559 U.S. 542, 130 S.Ct. 1662, 176 L.Ed.2d 494 (2010). However, in *Perdue,* the Court did not address applying risk percentage factors in *common fund* cases, but merely discussed what factors are properly taken into account to enhance a fee award under the lodestar calculation when a fee award is made pursuant to federal fee-shifting statutes.
Further, the Ninth Circuit has specifically recognized that while it is not appropriate to apply risk percentage factors in statutory fee cases, the same concerns are not present in common fund cases. *See Vizcaino,* 290 F.3d at 1051 ("The bar against risk multipliers in statutory fee cases does not apply to common fund cases. Indeed, courts have routinely enhanced the lodestar to reflect the risk of non-payment in common fund cases. This mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases. In common fund cases, attorneys whose compensation depends on their winning the case must make up in compensation in the cases they win for the lack of compensation in the cases they lose.") (internal quotations and citations omitted).
The reasoning in *Perdue* has not been extended to common fund cases, and Ninth Circuit precedent distinguishes between common fund cases and statutory fee cases. Further, Class Counsel point to two district court cases distinguishing *Perdue* from cases involving common fund settlements: *In re Vioxx Prods. Liab. Litig.,* 760 F.Supp.2d 640, 661 (E.D.La.2010) and *Klein v. O'Neal, Inc.,* 705 F.Supp.2d 632 (N.D.Tex.2010). Accordingly, *Perdue* does not prevent the Court from applying risk multiplier factors in common fund cases.

i. Analysis

Based on the Court's experience with this case, the seven years of history, and the unique and favorable settlement on behalf of Plaintiffs, the Court finds a fee award of 33.33% more than reasonable in this case. An upward departure from the 25% benchmark figure is warranted in this case because an exceptional result was achieved and it was extremely risky for Class Counsel to pursue this case through seven years of litigation. As Class Counsel point out in their Petition for Attorneys' fees, since the enactment of the Private Securities Litigation Securities Reform Act ("PLSRA"), securities class actions rarely proceed to trial. Because Plaintiffs faced the burden of proving multiple factors relating to securities fraud, there was great risk that this case would not result in a favorable verdict after trial. Further, after the jury verdict, this Court granted judgment as a matter of law in favor of Defendants and Class Counsel pursued a risky and successful appeal to the Ninth Circuit Court of Appeals. Thereafter, Class Counsel successfully opposed a petition for certiorari to the United State Supreme Court. Based on this procedural history and the seven years of diligence in representing the Class, Class Counsel achieved an exceptional result for the Class. Such a result is unique in such securities cases and could not have been achieved without Class Counsel's willingness to pursue this risky case throughout trial and beyond. Further, a Lodestar cross-check on the reasonableness of the figure also supports this Court's award. Class Counsel aver a total lodestar amount of $27,818,725.00 [2] and seek a multiplier of 1.74 to that amount ($48,404,581.50). The Ninth Circuit Court of Appeals has upheld a multiplier of 3.65 in a similar case. *See Vizcaino,* 290 F.3d at 1047–1051 (where district court found that class counsel achieved exceptional results, the case was extremely risky for class counsel to pursue, non-monetary benefits were conferred on class, and counsel represented the class on a contingency basis that extended over eleven years, entailed hundreds of thousands of dollars of expenses, and required counsel to forgo significant other work that resulted in a decline in the firms' annual income, a 3.64 multiplier of lodestar figure was reasonable and well-within the range of multipliers applied in common fund cases). Because, as discussed above, Plaintiffs' Lead Counsel achieved exceptional results for the Class and pursued the litigation despite great risk, a lodestar multiplier amount of 1.74 is reasonable. *See id.* at 1051 (collecting cases and finding that multiples ranging from one and four are frequently awarded in common fund cases). Accordingly, the lodestar crosscheck confirms that a fee of 33.33% is more than reasonable in this case.

2 The Sprinkler Fund objects to the lodestar amount because (1) it is unsupported by an itemized

statement of legal services rendered, (2) Class Counsel applied 2011 hourly rates to work done over seven years ago, and (3) Class Counsel seek to recover fees paid to contract attorneys. However, none of these objections prevent the Court from finding a reasonable attorneys' fees amount in this case. *See* 15 U.S.C. § 1(a)(6) (The PLSRA provides that "[t]otal attorneys' fees and expenses shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class."). First, an itemized statement of legal services is not necessary for an appropriate lodestar cross-check. Further, it was appropriate for Lead Plaintiff's Counsel to apply 2011 hourly rates to its hourly calculations. *In re Washington Public Power Supply Sys. Sec.Litig,* 19 F.3d 1291, 1305 (9th Cir.1994) ("The district court's use of current rates for attorneys still at the firm was not improper.... Full compensation requires charging current rates for all work done during the litigation, or by using historical rates enhanced by an interest factor .... the district court is, of course, free to use either current rates for attorneys of comparable ability and experience or historical rates coupled with a prime rate enhancement."). Finally, Class Counsel may recover fees paid to contract attorneys. Accordingly, the Court is unpersuaded by the Sprinkler Fund's contention that these issues with the lodestar calculation indicate that Class Counsel lacks credibility. Nor does the Court find that the attorneys' fees award should be reduced as a result of these issues.

Further, the Sprinkler Fund does not contest the amount of hours worked, but, rather, takes exception to the detail included for calculation of the lodestar amount. Because there is no dispute with regard to the amount of hours worked, this Court is capable of determining a reasonable hourly rate that should be applied to the various attorneys' work in this case. Further, although the Sprinkler Fund argues that a Special Master should be appointed to examine the underlying documentation supporting the lodestar amount, in this case, a Special Master could not duplicate this Court's experience with the totality of the litigation and, thus, this Court is in the best position to determine the reasonableness of any requested fees.

3. Expenses

8** In addition to attorneys' fees, Class Counsel seeks expenses totaling $1,810,462.12. Pursuant to Federal Rule of Civil Procedure 23(h), a court may award reasonable ***nontaxable costs in a certified class action. From the original Motion seeking attorneys' fees and costs, it appeared to the Court that Class Counsel did not distinguish between recovery of taxable and nontaxable costs. The Clerk of the Court already awarded Plaintiffs taxable costs of $78,278.76 that they were entitled to when Judgment was entered after the successful appeal to the Ninth Circuit Court of Appeals. (Doc. 715). Because Rule 23(h) only allows the Court to award nontaxable costs, the Court ordered Class Counsel to supplement their Motion for Attorneys Fees noting that Class Counsel failed to "differentiate between taxable and nontaxable costs." The Court ordered that the supplement solely address nontaxable costs.

Rather than "solely addressing nontaxable costs" in their supplement, Class Counsel informed the Court that it was seeking both taxable and nontaxable costs because, as part of the settlement in this case, Plaintiffs released Defendants from their obligation to reimburse the nontaxable costs pursuant to the Clerk's Judgment. (Doc. 761 at 1, n. 1). Class Counsel does not cite to any authority that states that they are entitled to recover taxable costs because Plaintiffs released Defendants from the obligation to pay such costs.

Further, in their supplement, rather than distinguishing between taxable and nontaxable costs, Class Counsel cite to the same cases that they cited to in their original Motion for Attorneys' Fees and Costs. The cases cited by Class Counsel do not address awards of nontaxable costs under Federal Rule of Civil Procedure 23(h).

For example, the first case that Class Counsel cite to in their Supplement is *Harris v. Marhoefer,* 24 F.3d 16, 19 (9th Cir.1994). Class Counsel cite this case for the proposition that they are entitled to recovery of all expenses that "would normally be charged to a fee paying client." *Harris,* 24 F.3d at 20. However, *Harris* has nothing to do with costs awarded under Federal Rule of Civil Procedure 23(h). Rather, the successful party in *Harris* was entitled to attorneys fees and costs under 42 U.S.C.A. § 1988. Further, in *Harris,* after the Ninth Circuit Court of Appeals stated that "Harris may recover as part of the award of attorney's fees those out-of-pocket expenses that 'would normally be charged to a fee paying client,' in the very next sentence, the Court stated "Thus reasonable expenses, *though greater than taxable costs,* may be proper. *Id.* at 21 (emphasis added). Accordingly,

Harris does not aid this Court in determining what nontaxable costs Class Counsel may be entitled to under Federal Rule of Civil Procedure 23(h), but rather stands for the proposition that under 42 U.S.C.A. § 1988, the prevailing party may recover some non-taxable costs. Likewise, the other cases cited by Class Counsel likewise do not address the award of taxable costs under Federal Rule of Civil Procedure 23(h).

***9** Because Class Counsel have failed to address what non-taxable costs they have incurred and continue to seek both taxable and non-taxable costs incurred throughout the entire litigation, despite this Court's Order to supplement the Motion for Attorneys' Fees and Costs solely to address *non-taxable* costs, the Court will not award any costs that might be classified as taxable costs. [3] Accordingly, after deducting possible taxable costs from the requested costs, Class Counsel will be awarded $1,557,692.33 in costs.

3 This includes: Clerk's Fees and Service Fees ($895.00 and $12,726.45), trial transcripts and depositions ($181,129.85), witness fees ($200.30), and exemplification and copies of papers ($55,066.02). *See* 28 U.S.C. § 1920, 28 U.S.C. § 1821, and LRCiv 54.1(e).

Based on the foregoing,

IT IS ORDERED that Plaintiffs' Motion for Attorneys' Fees (Doc. 740) is granted as follows:

This Court hereby awards Class Counsel attorneys' fees equal to 33.33% ($48,404,581.50) of the Common Fund, plus reimbursement of their out-of-pocket expenses in the amount of $1,557,692.33, with interest to accrue on the fees and expenses at the same rate and for the same periods as the Common Fund to the date of actual payment of said attorneys' fees and expenses to Class Counsel as provided in paragraph 12 of the Stipulation. The Court finds that the amount of attorneys' fees awarded herein to Class Counsel for Plaintiff and the Class to be fair and reasonable based on: the work performed and costs incurred by Class Counsel; the complexity of the case; the risks undertaken by Class Counsel and the contingent nature of their employment; the results achieved by Class Counsel including, inter alia, the January 16, 2008 Verdict, their successful handling of the appellate process in the Action, the securing of the April 6, 2011 Judgment and establishment of the Common Fund of One Hundred and Forty-five Million Dollars ($145,000,000.00); and the benefits achieved for Class Members through the Stipulation. The Court also finds that the requested reimbursement of expenses is proper as the expenses incurred by Class Counsel, including the costs of experts, were reasonable and necessary in the prosecution of this Action on behalf of Class Members.

All payments of attorneys' fees and reimbursement of expenses to Class Counsel in the Action shall be made from the Common Fund, and the Released Parties shall have no liability or responsibility for the payment of any of Class Counsels' attorneys' fees or expenses except as expressly provided in the Stipulation with respect to the cost of Notice and Administration. Allocation of the fee award granted herein shall be made by Lead Counsel, Barrack, Rodos & Bacine to and among Class Counsel as it deems fair and in its sole discretion, based on the contributions and efforts made by Class Counsel appearing in the Action.

Any appellate review of the award to Class Counsel of attorneys' fees and/or reimbursement of expenses shall not disturb or affect the final approval of the Stipulation and each shall be considered separate for the purposes of appellate review of this Final Approval Order and Judgment.

IV. MOTION TO VACATE JUDGMENT

Defendants Apollo Group, Inc., Todd S. Nelson, and Kenda B. Gonzales move this Court to vacate the judgment entered by the Court on April 6, 2011 (Doc. 695) pursuant to Rule 60(b) of the Federal Rules of Civil Procedure.

***10** Although the Ninth Circuit Court of Appeals issued a mandate requiring the Court to enter the judgment that Defendants now seek to have vacated, "the district court may consider motions to vacate once the mandate has issued." *Gould v. Mutual Life Ins. Co.,* 790 F.2d 769, 772 (9th Cir.1986); *see Standard Oil Co. of Cal. v. United States,* 429 U.S. 17, 18–19, 97 S.Ct. 31, 50 L.Ed.2d 21 (1976).

Whether the Court may vacate a judgment because the parties have settled the case involves a balancing of the desire to encourage voluntary settlements and reduce appeals with the public interest in preserving the judgment to enhance judicial economy by allowing it to be used for issue preclusion purposes and in avoiding the possibility that repeat litigants effectively may control the development of the law by erasing unfavorable judgments. The standard that applies to consideration of whether to vacate a judgment changes depending on the procedural posture of the case. *See U.S. Bancorp Mortgage Co. v. Bonner Mall P'ship,*

513 U.S. 18, 29, 115 S.Ct. 386, 130 L.Ed.2d 233 (1994) ("mootness by reason of settlement does not justify vacatur of a judgment under review" by a Court of Appeals unless exceptional circumstances are shown, but even in the absence of extraordinary circumstances, a district court may consider such a request pursuant to Federal Rule of Civil Procedure 60(b)). This case is unique because all appeals have been exhausted on the judgment, resulting from a jury verdict, that Defendant seeks to have vacated.

Rule 60(b) may be utilized to seek to vacate a judgment on the ground that the case has been settled so that it would not be equitable to have it remain in effect. This equitable determination is necessarily dependent on the facts of the specific case before the Court. In deciding whether to vacate the judgment, the Court must balance "the competing values of finality of judgment and right to relitigation of unreviewed disputes" and consider "the consequences and attendant hardships of dismissal or refusal to dismiss." *Bates v. Union Oil Co. of Calif.,* 944 F.2d 647, 650 (9th Cir.1991); (internal citation omitted); *Am. Games, Inc. v. Trade Prods., Inc.,* 142 F.3d 1164, 1168 (9th Cir.1998) (internal citations omitted).

Here, vacating the judgment incorporating the jury's verdict was contemplated as a part of the settlement, was not a condition of the settlement, and "the Court should, where appropriate, support the negotiations and terms of settlement." *Click Entm't., Inc. v. JYP Entm't. Co., Ltd.,* No. 07–00342–ACK–KSC, 2009 WL 3030212, at *2 (D.Haw. Sept.22, 2009) (citing *Ahern v. Cent. Pac. Freight Lines,* 846 F.2d 47, 48 (9th Cir.1988)). Although there would be no hardship in refusing to vacate the judgment, this policy of supporting the terms of settlement weighs slightly in favor of vacating the judgment. *Id.*

Further, concerns that are normally prevalent in considering whether to vacate a judgment, such as removing precedent from case law are not present here. The judgment, which represents the jury verdict, does not itself carry precedential value that would facilitate the resolution of disputes in future cases. Further, a vacated judgment still holds informational value and, here, the jury verdict has been incorporated as part of the settlement. Accordingly, the equities weigh slightly in favor of vacating the judgment in this case.

***11 IT IS ORDERED** that Defendants' Unopposed Motion to Vacate Judgment (Doc. 747) is granted. The Clerk of the Court shall vacate this Court's Judgment of April 6, 2011 (Doc. 695).

V. CONCLUSION

Based on the foregoing,

IT IS ORDERED granting the Parties' Joint Motion for Final Approval of the Class Action Settlement and Entry of Final Judgment and Order of Dismissal. (Doc. 739).

IT IS FURTHER ORDERED granting Plaintiff's Stipulation and Agreement regarding Final Approval Order and Judgment (Doc. 730) as set forth herein.

IT IS FURTHER ORDERED that Plaintiffs' Motion for Attorneys' Fees (Doc. 740) is granted as set forth herein.

IT IS FINALLY ORDERED that Defendants' Unopposed Motion to Vacate Judgment (Doc. 747) is granted. The Clerk of the Court shall vacate this Court's Judgment of April 6, 2011 (Doc. 695).

EXHIBIT A

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All Citations

Not Reported in F.Supp.2d, 2012 WL 1378677, Fed. Sec. L. Rep. P 96,813

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EXHIBIT 5

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: BDC Inc., *et al.*, Debtors.[1]	Chapter: 11 Case No. 20-10010 (CSS) (Jointly Administered) **Obj. Deadline: March 15, 2021 at 4:00 p.m. (ET)** **Hearing Date: April 6, 2021 at 10:00 a.m. (ET)**

SUMMARY COVER SHEET OF THIRTEENTH MONTHLY AND FINAL FEE APPLICATION OF SIDLEY AUSTIN LLP FOR ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSES INCURRED FOR (I) THE PERIOD FROM JANUARY 1, 2021 TO AND INCLUDING JANUARY 7, 2021, AND (II) THE FINAL PERIOD FROM JANUARY 15, 2020 TO AND INCLUDING JANUARY 7, 2021

Name of Applicant:	Sidley Austin LLP
Authorized to Provide Professional Services to:	Official Committee of Unsecured Creditors of Borden Dairy Company, *et al.*
Date of Retention:	January 15, 2020, order entered on March 13, 2020 *nunc pro tunc* to January 15, 2020
Period for which Monthly Compensation and Reimbursement is Sought:	January 1, 2021 – January 7, 2021
Amount of Monthly Compensation Sought as Actual, Reasonable and Necessary:	$2,934.00
Amount of Monthly Expense Reimbursement Sought as Actual, Reasonable and Necessary:	$0.00

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: BDC Inc. (1509); BDC Holdings, LLC (8504); ND, LLC (9109); BDC of Alabama, LLC (5598); BDC of Cincinnati, LLC (1334); BTC of Cincinnati, LLC (3462); BDC of Florida, LLC (5168); BDC of Kentucky, LLC (7392); BDC of Louisiana, LLC (4109); BDC of Madisonville, LLC (7310); BDC of Ohio, LLC (2720); BTC of Ohio, LLC (7837); BDC of South Carolina, LLC (0963); BDC of Texas, LLC (5060); CAS, LLC (9109); GSSD, LLC (9109); NDHT, LLC (7480); and BDC of Madisonville Sub, LLC (0314). The location of the Debtors' service address is: 2807 Allen Street, Box 833, Dallas, TX 75204-4062.

Period for which Final Compensation and Reimbursement is Sought:	January 15, 2020 – January 7, 2021
Total amount of Final Compensation Sought as Actual, Reasonable and Necessary:	$2,561,313.84[2]
Total amount of Final Expense Reimbursement Sought as Actual, Reasonable and Necessary:	$24,048.31

This is a: ☒ monthly ☐ interim ☒ final application.

This monthly fee application includes 0.6 hours and $285.00 in fees incurred in connection with the preparation of this monthly fee application.

[2] The total includes an estimated amount of $20,000 in compensation sought as actual, reasonable, and necessary incurred from January 8, 2021, through and including the date of the hearing on the Final Fee Applications (the "Post-Effective Date Period"). Only those fees actually incurred will be paid as part of the Final Fee Application.

Prior monthly fee applications (not included in an interim):

Date Filed/ Docket No.	Period Covered	Requested		Approved to Date		Court Order/ CNO Filed/ Docket No.
		Fees ($)	Expenses ($)	Fees ($)	Expenses ($)	
12/01/2020 D.I. 1298	10/01/2020 to 10/31/2020	132,858.90	927.87	106,287.12	927.87	12/22/2020 D.I. 1343
12/28/2020 D.I. 1347	11/01/2020 to 11/30/2020	46,997.55	1,456.55	37,598.04	1,456.55	01/20/2021 D.I. 1368
02/03/2021 D.I. 1382	12/01/2020 to 12/31/2020	55,571.85	60.43	44,457.48	60.43	TBD
	TOTAL	**235,428.30**	**2,444.85**	**188,342.64**	**2,444.85**	

Prior interim fee applications:

Date Filed/ Docket No.	Period Covered	Requested		Approved to Date		Court Order/ CNO Filed/ Docket No.
		Fees ($)	Expenses ($)	Fees ($)	Expenses ($)	
05/20/2020 D.I. 651	01/15/2020 to 03/31/2020	956,826.44	14,011.30	946,186.24[3]	13,002.40	06/24/2020 D.I. 898
08/14/2020 D.I. 1049	04/01/2020 to 06/30/2020	918,617.85	5,026.32	918,617.85[4]	5,026.32	09/16/2020 D.I. 1128
09/15/2020 D.I. 1126	07/01/2020 to 09/30/2020	439,335.45	2,565.84	438,144.45[5]	2,565.84	12/14/2020 D.I. 1329
	Total	**2,314,779.74**	**21,603.46**	**2,302,948.54**	**20,594.56**	

[3] *Omnibus Order Approving First Interim Fee Requests of Estate Professionals*, dated June 24, 2020 [Docket No. 898] ("First Interim Order").

[4] *Omnibus Order Approving Second Interim Fee Requests of Estate Professionals*, dated September 16, 2020 [Docket No. 1128] ("Second Interim Order").

[5] *Omnibus Order Approving Third Interim Fee Requests of Estate Professionals*, dated December 14, 2020 [Docket No. 1329] ("Third Interim Order").

SUMMARY OF MONTHLY TOTAL FEES AND HOURS BY ATTORNEYS AND PARAPROFESSIONALS

Name	Position/Area of Expertise	Year Admitted/ Years of Experience	Hourly Billing Rate ($)	Total Hours Billed	Total Compensation ($)
Burke, Michael G.	Partner Restructuring	2003	1,200	0.6	720.00
Fishel, Michael	Associate Restructuring	2012	1,025	2.2	2,255.00
Santos, Pamela	Paralegal		475	0.6	285.00
			Subtotal	3.4	3,260.00
			50% Non-Working Travel Reduction		(0.00)
			10% Fees Discount		(326.00)
			TOTAL AMOUNT	**3.4**	**2,934.00**

SUMMARY OF FINAL FEES AND HOURS BY ATTORNEYS AND PARAPROFESSIONALS

Name	Position/Area of Expertise	Year Admitted/ Years of Experience	2020 Hourly Billing Rate ($)	2021 Hourly Billing Rate ($)	Total Hours Billed	Total Compensation ($)
Plaskon, Leslie A.	Partner Finance	1992	1,500.00	N/A	13.0	19,500.00
Lowe, James W.	Partner Finance	1990	1,350.00	N/A	2.8	3,780.00
Clemente, Matthew	Partner Restructuring	1998	1,275.00	N/A	351.3	447,907.50
Ducayet, James	Partner Securities	1996	1,225.00	N/A	52.2	63,945.00
Burke, Michael G.	Partner Restructuring	2003	1,150.00	1,200.00	699.4	804,340.00
Weiner, Genevieve G.	Counsel Restructuring	2007	1,025.00	N/A	334.3	342,657.50
Fishel, Michael	Associate Restructuring	2012	945.00	1,025.00	831.7	786,132.50
Garvey, Kathleen	Associate Litigation	2013	945.00	N/A	35.6	33,642.00
Curtin, William	Associate Restructuring	2002	920.00	N/A	4.6	4,232.00
Miller, Jeri Leigh	Associate Restructuring	2016	840.00	N/A	13.3	11,172.00
Bromagen, Eric A.	Associate Restructuring	2017	775.00	N/A	3.0	2,325.00
McFarlane, Amanda A.	Associate Finance	2017	775.00	N/A	7.9	6,122.50
Quejada, Maegan	Associate Restructuring	2017	775.00	N/A	1.3	1,007.50
Johnson, Zebulun G.	Associate Restructuring	2018	675.00	N/A	272.3	183,802.50
Santos, Pamela	Staff		410.00	475.00	356.1	146,040.00
Berry, John	Staff		275.00	N/A	21.0	5,775.00
				Subtotal	2999.8	2,862,381.00
			50% Non-Working Travel Reduction			(25,556.50)
			10% Fees Discount			(283,679.46)
				TOTAL AMOUNT	**2999.8**	**2,553,145.04**[6]

[6] This figure represents total fees before reductions were taken pursuant to Docket Nos. 898 and 1329.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: BDC Inc., *et al.*, Debtors.[1]	Chapter: 11 Case No. 20-10010 (CSS) (Jointly Administered) **Obj. Deadline: March 15, 2021 at 4:00 p.m. (ET)** **Hearing Date: April 6, 2021 at 10:00 a.m. (ET)**

THIRTEENTH MONTHLY AND FINAL FEE APPLICATION OF SIDLEY AUSTIN LLP FOR ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSES INCURRED FOR (I) THE PERIOD FROM JANUARY 1, 2021 TO AND INCLUDING JANUARY 7, 2021, AND (II) THE FINAL PERIOD FROM JANUARY 15, 2020 TO AND INCLUDING JANUARY 7, 2021

Sidley Austin LLP ("Sidley"), co-counsel for the Official Committee of Unsecured Creditors (the "Committee"), files its combined thirteenth monthly and final fee application (the "Final Fee Application") seeking payment of compensation for services rendered and reimbursement of expenses incurred as counsel to the Committee (i) on a monthly basis, for the period from January 1, 2021 through and including the Effective Date (as defined in the Confirmation Order)[2] (the "Monthly Application Period") and (ii) on a final basis, for the period from January 15, 2020 through and including the Effective Date (the "Final Application Period") under sections 330 and 331 of title 11 of the United States Code (the "Bankruptcy Code"), Rule 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Rule 2016-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Bankruptcy Rules"), the *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* [Docket No. 372] (the "Interim Compensation Order"), and the *Order Authorizing and Approving the Employment of*

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: BDC Inc. (1509); BDC Holdings, LLC (8504); ND, LLC (9109); BDC of Alabama, LLC (5598); BDC of Cincinnati, LLC (1334); BTC of Cincinnati, LLC (3462); BDC of Florida, LLC (5168); BDC of Kentucky, LLC (7392); BDC of Louisiana, LLC (4109); BDC of Madisonville, LLC (7310); BDC of Ohio, LLC (2720); BTC of Ohio, LLC (7837); BDC of South Carolina, LLC (0963); BDC of Texas, LLC (5060); CAS, LLC (9109); GSSD, LLC (9109); NDHT, LLC (7480); and BDC of Madisonville Sub, LLC (0314). The location of the Debtors' service address is: 2807 Allen Street, Box 833, Dallas, TX 75204-4062.

[2] *Findings of Fact, Conclusions of Law, and Order Approving and Confirming The Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation of Borden Dairy Company and Its Affiliated Debtors* [Docket No. 1331] (the "Confirmation Order").

Sidley Austin LLP As Counsel to the Official Committee of Unsecured Creditors Nunc Pro Tunc to January 15, 2020 [Docket No. 408] (the "Retention Order").

By this Final Fee Application, Sidley seeks a final allowance of compensation in the amount of $2,561,313.84 plus actual and necessary expenses in the amount of $24,048.31 for the Final Application Period. The total compensation sought represents 2999.8 hours of professional attorney and paraprofessional services with a blended hourly rate of $848. In support of this Final Fee Application, Sidley respectfully represents as follows:

Jurisdiction and Venue

1. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Committee confirms its consent pursuant to Local Rule 9013-1(f) to the entry of a final order by this Court in connection with this Application to the extent that it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue of this proceeding and this Application is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 330, 331 and 1103 of the Bankruptcy Code, Bankruptcy Rule 2016, and Local Rule 2016-2.

Background

4. On January 5, 2020 (the "Petition Date"), each of the Debtors filed a voluntary petition with the Court for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware.

5. On January 15, 2020 (the "Formation Date"), the United States Trustee for Region 3 (the "U.S. Trustee") appointed the Committee pursuant to Sections 1102(a) and (b) of the Bankruptcy Code. The Committee originally consisted of the following five (5) members: (i) Central States, Southeast and Southwest Areas Pension Fund (Chair); (ii) Tetra Pak, Inc.;

(iii) Packaging Corporation of America; (iv) Silgan White Cap LLC; and (v) International Brotherhood of Teamsters.

6. On January 15, 2020, the U.S. Trustee filed its *Notice of Appointment of Committee of Unsecured Creditors* [Docket No. 108].

7. At a meeting held on January 15, 2020, the Committee, among other things, voted to retain Sidley as its counsel, subject to Court approval.

8. On March 4, 2019, the Delaware Court signed the Interim Compensation Procedures Order, authorizing certain professionals and members of any official committee ("Professionals") to submit monthly fee applications for interim compensation and reimbursement for expenses, pursuant to procedures specified therein. The Interim Compensation Procedures Order provides, among other things, that a Professional may submit monthly fee applications. If no objections are made within twenty-one (21) days after service of the monthly fee application the Debtor is authorized to pay the Professional eighty percent (80%) of the requested fees and one hundred percent (100%) of the requested expenses. Beginning with the period ending March 31, 2020 and at three-month intervals or such other intervals convenient to the Court, each Professional shall file and serve an interim application for allowance of the amounts sought in its monthly fee applications for that period. All fees and expenses paid are on an interim basis until final allowance by the Court.

9. On March 13, 2020, the Court entered the *Order Authorizing and Approving the Employment of Sidley Austin LLP as Counsel to the Official Committee of Unsecured Creditors, nunc pro tunc to January 15, 2020* [Docket No. 408] (the "Retention Order").

10. The Retention Order authorizes the Committee to compensate and reimburse Sidley in accordance with the terms and conditions set forth in the Committee's application to retain Sidley, subject to Sidley's application to the Court.

Summary of Services Rendered During the Monthly Application Period

11. Attached hereto as **Exhibit 1** is a chart detailing the services rendered by each professional and paraprofessional at Sidley during the Application Period by task code.

12. The total sum due to Sidley for professional services rendered on behalf Committee during the Application Period is $2,934.00. This amount reflects a 10% discount of $326.00. Sidley submits that the professional services it rendered on behalf of the Committee during this

time were reasonable and necessary.

Actual and Necessary Expenses During the Monthly Application Period

13. Sidley incurred no expenses during the Application Period.

14. The undersigned hereby attests that he has reviewed the requirements of Local Rule 2016-1 and this Fee Application conforms to such requirements, including that, if applicable, travel time was not billed at more than half rate and copying charges were only $0.10 per page.

15. A true and correct copy of the supporting invoices for the services rendered and expenses incurred, if any, is attached hereto as **Exhibit 2**.

16.

Summary of Services Rendered During the Final Application Period

17. The invoices for the Final Application Period were attached to the previously filed Monthly Fee Applications [Docket Nos. 461, 527, 606, 939, 965, 1004, 1126, 1165, 1249, 1298, 1347 and 1382]. These invoices contain the daily time logs describing the time spent by each attorney and paraprofessional for these periods. A summary by task code of the timekeepers that rendered services on behalf of the Committee during the Final Application Period is attached hereto as **Exhibit 3**.

Actual and Necessary Expenses During the Final Application Period

18. Sidley incurred actual and necessary out-of-pocket expenses during the Final Application Period in the performance of services rendered as counsel to the Committee. Descriptions of each of these expenses are set forth on **Exhibit 4**. The expenses are broken down into categories, including, among other things, the following: travel charges, online research charges, court filing charges, and business meals. To the extent such itemization is insufficient to satisfy the requirements of Local Rule 2016-2(e)(ii), Sidley respectfully requests that the Court waive strict compliance with such Local Rule.

19. Pursuant to Local 2016-2, Sidley represents that its rate for copying charges is $0.10 per page and all electronic research is billed at the standard Lexis & Westlaw rates charged by the firm. Sidley has not billed the Committee for any facsimile transmissions.

20. Sidley and the Committee have agreed to the budgets and staffing plans as previously filed with the Court and as attached hereto as **Exhibit 5**.

Relief Requested

21. Sidley makes this Application for final approval and allowance of compensation for professional services rendered in the amount of $2,561,313.84 together with reimbursement for actual and necessary expenses incurred in the amount of $24,048.31 for the Final Application Period, and further requests such other and further relief as the Court may deem just and proper.

Statement of Applicant

22. In addition, Sidley respectfully states as follows to address the questions set forth under section C.5 of the UST Guidelines:

a. During the time period covered by this Final Fee Application, and as previously disclosed, Sidley agreed to a ten percent (10%) discount but did not otherwise agree to any variations from, or alternatives to, its standard or customary billing rates, fees or terms for services.

b. The fees sought in this Final Fee Application do not exceed the fees budgeted for the time period covered in this Final Fee Application by 10%.

c. The professionals included in this Final Fee Application did not vary their hourly rate based on the geographic location of the bankruptcy case.

d. This Final Fee Application does not include any fees related to reviewing or revising time records or preparing, reviewing, or revising invoices that would not be compensable outside of bankruptcy.

e. During the Final Application Period, in addition to amounts previously disclosed on the interim applications, if applicable, Sidley spent approximately 1.0 hours with a value of $475 to ensure that the time entries subject to this Final Fee Application (a) comply with the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, and (b) do not disclose privileged or confidential information. This review (and any revisions associated therewith) was a necessary component of Sidley's preparation of the Final Fee Application.

f. Consistent with Sidley's engagement letter with the Committee, and as filed with the Court at Docket No. 1348, Sidley's rates were increased in the ordinary course in January 2021.

Blended Rates Schedule

23. As requested by Appendix B to the UST Guidelines, attached hereto as **Exhibit 6** is a summary and comparison of the aggregate blended hourly rates for Sidley's timekeepers for non-bankruptcy matters during the preceding fiscal year and the blended hourly rates billed to the Committee during the Final Application Period.

WHEREFORE, Sidley hereby requests final approval and allowance of compensation for professional services rendered in the amount of $2,561,313.84 plus actual fees incurred through the Post-Effective Date Period, together with reimbursement for actual and necessary expenses incurred in the amount of $24,048.31 plus actual expenses incurred through the Post-Effective Date Period, for the Final Application Period, and further requests such other and further relief as the Court may deem just and proper.

Dated: February 22, 2021

Respectfully submitted,

SIDLEY AUSTIN LLP

/s/ Michael G. Burke

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Counsel for the Official Committee of Unsecured Creditors

EXHIBIT 6

2019 WL 4193376
Only the Westlaw citation is currently available.
United States District Court, S.D.
Indiana, Indianapolis Division.

Mary BELL, Janice Grider, Cindy Prokish, John Hoffman, and Pamela Leinonen, Plaintiffs,
v.
PENSION COMMITTEE OF ATH HOLDING COMPANY, LLC, ATH Holding Company, LLC, Board of Directors of ATH Holding Company, LLC, Defendants.

Case No. 1:15-cv-02062-TWP-MPB
|
Signed 09/04/2019

Attorneys and Law Firms

Aaron E. Schwartz, Pro Hac Vice, Andrew D. Schlichter, Pro Hac Vice, Heather Lea, Pro Hac Vice, Jerome J. Schlichter, Pro Hac Vice, Kurt C. Struckhoff, Pro Hac Vice, Michael A. Wolff, Pro Hac Vice, Sean Soyars, Pro Hac Vice, Troy A. Doles, Pro Hac Vice, Alexander L. Braitberg, Pro Hac Vice, Schlichter Bogard & Denton, LLP, St. Louis, MO, for Plaintiff Mary Bell.

Aaron E. Schwartz, Andrew D. Schlichter, Pro Hac Vice, Heather Lea, Pro Hac Vice, Jerome J. Schlichter, Pro Hac Vice, Kurt C. Struckhoff, Pro Hac Vice, Michael A. Wolff, Pro Hac Vice, Troy A. Doles, Pro Hac Vice, Alexander L. Braitberg, Pro Hac Vice, Schlichter Bogard & Denton, LLP, St. Louis, MO, for Plaintiffs Janice Grider, Cindy Prokish.

Aaron E. Schwartz, Andrew D. Schlichter, Pro Hac Vice, Heather Lea, Troy A. Doles, Jerome J. Schlichter, Pro Hac Vice, Alexander L. Braitberg, Pro Hac Vice, Schlichter Bogard & Denton, LLP, St. Louis, MO, for Plaintiffs John Hoffman, Pamela Leinonen.

Ada W. Dolph, Pro Hac Vice, Ian Hugh Morrison, Jason Priebe, Pro Hac Vice, Megan E. Troy, Shannon Marie Callahan, Pro Hac Vice, Seyfarth Shaw LLP, Chicago, IL, for Defendants Pension Committee of ATH Holding Company, LLC, ATH Holding Company, LLC.

Ada W. Dolph, Pro Hac Vice, Ian Hugh Morrison, Jason Priebe, Pro Hac Vice, Megan E. Troy, Seyfarth Shaw LLP, Chicago, IL, for Defendant Board of Directors of ATH Holding Company, LLC.

ORDER APPROVING FEES, COSTS AND AWARDS

TANYA WALTON PRATT, JUDGE

***1** Pending before the Court is Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses and Case Contribution Awards for Named Plaintiffs. (Filing No. 371.) In their Motion, Class Counsel requests that the Court approve a fee for obtaining a settlement of class claims under the Employee Retirement Income Security Act ("ERISA"). The settlement provides a $23,650,000.00 monetary recovery for the benefit of Class Members. Taking into account the significant and powerful non-monetary relief and benefit of tax deferral, the total benefit to the Class exceeds $62 million dollars.

Class Counsel has asked this Court to approve a fee award of $7,882,545 which constitutes one-third of the monetary award. Additional improvements to the Plan as a result of the litigation and settlement bring the actual value to the Class far higher to a total value of over $62 million dollars. Class Counsel has also asked this Court to award it $513,015.32 for expenses. Additionally, Class Counsel has requested this Court approve incentive awards to the Class Representatives and also to the Individual Named Plaintiffs. For the reasons set forth below, Class Counsel's Motion is **GRANTED**.

I. BACKGROUND

Pursuant to the Settlement Agreement and this Court's Preliminary Approval Order, Class Counsel directed the mailing of individual notices to the Class and created a Class website to provide information to the Class. Individual notices were mailed to over 127,000 Class Members and, with an objection deadline of August 5, 2019, only one Class Member filed a timely objection. Filing No. 377 at 6.[1] This Court finds that only one objection compared to a total class of over 127,000 is a remarkable sign of the Class's overwhelming support for this Settlement and Class Counsel's request. As noted in this Court's final approval order and for the reasons stated therein, the lone objection to this Settlement is **denied**.

1 Current participants were not required to do anything to receive their share of the settlement.

> One other Class Member filed a notice that he was not a Class Member and requested that he be removed from the Class Member list. Filing No. 374 (stating that his participation in the Plan was outside the Settlement Period).

For over a decade, Class Counsel, in pioneering a new area of the law, have continuously demonstrated an unwavering and zealous commitment to represent American employees and retirees seeking to recover losses incurred due to alleged retirement plan mismanagement. Jerome Schlichter and Schlichter Bogard & Denton actually created the field of 401(k) excessive fee litigation which did not exist before. Filing No. 372-1 ¶13−15. Before Jerome Schlichter and the firm of Schlichter Bogard & Denton filed a series of cases in 2006 regarding excessive fees in 401(k) plans, there had never been a case brought for excessive fees in a 401(k) plan by any lawyer in the United States. *Id.* Class Counsel is firmly established as the "pioneer and the leader in the field of retirement Plan litigation." *Abbott v. Lockheed Martin Corp.*, No. 06-701, 2015 WL 4398475, at *1, 2015 U.S. Dist. LEXIS 93206, at *8 (S.D. Ill. July 17, 2015) (Reagan, C.J.).

***2** Class Counsel are "experts in ERISA litigation" with extraordinary skill and determination required to litigate these complex cases. *Krueger v. Ameriprise Fin., Inc.*, No. 11-2781, 2015 WL 4246879, at *2, 2015 U.S. Dist. LEXIS 91385, at *6 (D. Minn. July 13, 2015). This Court notes that no 401(k) excessive fee cases had been filed before Class Counsel pioneered them, and agrees with other courts that the work of Jerome Schlichter and Schlichter Bogard & Denton "illustrates an exceptional example of a private attorney general risking large sums of money and investing thousands of hours for the benefit of employees and retirees." *Will v. General Dynamics Corp.*, No. 06-698, 2010 WL 4818174, at *2, 2010 U.S. Dist. LEXIS 123349, at *8 (S.D. Ill. Nov. 22, 2010) (J. Murphy).

II. FINDINGS AND CONCLUSIONS

Under the "common-fund" doctrine, class counsel is entitled to a reasonable fee drawn from the commonly held fund created by a settlement for the benefit of the class. *See, e.g., Boeing Co. v. VanGemert*, 444 U.S. 472, 478, 100 S.Ct. 745, 62 L.Ed.2d 676 (1980). Additionally, the United States Court of Appeals for the Seventh Circuit has found that attorneys' fees based on the common fund doctrine are appropriate in ERISA cases. *See Florin v. Nationsbank*, 34 F.3d 560, 563 (7th Cir. 1994). A court must also consider the overall benefit to the class, including non-monetary benefits, when evaluating the fee request. *Spano v. Boeing Co.*, No. 06-743, 2016 WL 3791123, at *1, 2016 U.S. Dist. LEXIS 161078, at *5 (S.D. Ill. Mar. 31, 2016) (J. Rosenstengel) (citing Manual for Complex Litigation, Fourth, § 21.71, at 337 (2004)). An assessment of the non-monetary benefits and relief obtained as part of a settlement is important so as to encourage attorneys to obtain future meaningful relief. As set forth below and as demonstrated through expert testimony offered via declaration, Class Counsel's efforts to secure additional relief beyond the monetary amount added significant value to the Settlement and ultimately to Class Members.

In determining whether to grant a requested fee in a class action settlement, the Seventh Circuit Court of Appeals requires an analysis of whether the requested fee is within the range of fees that would have been agreed to at the outset of the litigation in an arms-length negotiation given the risk of nonpayment and the normal rate of compensation in the market at the time. *See In re Synthroid Marketing Litig.*, 264 F.3d 712, 718 (7th Cir. 2001). In common fund cases, "the measure of what is reasonable [as an attorney fee] is what an attorney would receive from a paying client in a similar case." *Montgomery v. Aetna Plywood, Inc.*, 231 F.3d 399, 408 (7th Cir. 2000). "[I]t is not the function of judges in fee litigation to determine the equivalent of the medieval just price. It is to determine what the lawyer would receive if he were selling his services in the market rather than being paid by court order." *Matter of Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 568 (7th Cir. 1992). This requires the district judge to "ascertain the appropriate rate for cases of similar difficulty and risk, and of similarly limited potential recovery." *Kirchoff v. Flynn*, 786 F.2d 320, 326 (7th Cir. 1986).

***3** In a common fund class action settlement, the Seventh Circuit Court of Appeals uses a percentage of the relief obtained rather than a lodestar or other basis. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998); *see also Florin*, 34 F.3d at 566 (but leaving to the discretion of the district court the determination as to which method is the most efficient and suitable in a given case). "A one-third fee [percentage] is consistent with the market rate in settlements concerning this particularly complex area of law." *Spano,* 2016 WL 3791123, at *2, 2016 U.S. Dist. LEXIS 161078, at *7 (quoting *Abbott*, 2015 WL 4398475, at *2, 2015 U.S. Dist. LEXIS 93206, at *7); *Beesley v. Int'l Paper Co.*, No. 06-703, 2014 WL 375432, at *2, 2014 U.S. Dist. LEXIS 12037, at *10 (S.D. Ill. Jan 31, 2014) (J. Herndon); *Will,* 2010 WL 4818174, at *3, 2010 U.S. Dist. LEXIS 123349, at *9 (finding that in ERISA 401(k) fee

litigation, "a one-third fee is consistent with the market rate"). In this case, Class Counsel's fee request totaling 33 1/3% of the monetary recovery, and a much smaller percentage when including non-monetary relief (as it must be), is reasonable and consistent with the awards in many other cases also brought by Class Counsel, including those in this Circuit.

Case	Fee %
Sims v. BB&T, No. 15-732, Filing No. 450 (M.D.N.C. May 6, 2019)	33.3%
Ramsey v. Philips N.A., No. 18-1099, Filing No. 27 (S.D.Ill. Oct. 15, 2018)	33.3%
In re Northrop Grumman Corp. ERISA Litig., No. 06-6213, 2017 WL 9614818 (C.D.Cal. Oct. 24, 2017)	33.3%
Gordan v. Mass. Mut. Life Ins. Co., No. 13-30184, 2016 WL 11272044 (D.Mass. Nov. 3, 2016)	33.3%
Kruger v. Novant Health, Inc., No. 14-208, 2016 WL 6769066, 1-2 (M.D.N.C. Sept. 29, 2016)	33.3%
Spano v. Boeing Co., No. 06-743, 2016 WL 3791123 (S.D.Ill. Mar. 31, 2016)	33.3%
Abbott v Lockheed Martin Corp., No. 06-701, 2015 WL 4398475 (S.D.Ill. July 17, 2015)	33.3%
Krueger v. Ameriprise Fin., Inc., No. 11-2781, 2015 WL 4246879 (D.Minn. July 13, 2015)	33.3%
Beesley v. Int'l Paper Co., No. 06-703, 2014 WL 375432 (S.D.Ill. Jan. 31, 2014)	33.33%
Nolte v. Cigna Corp., No. 07-2046, 2013 WL 12242015 (C.D.Ill. Oct. 15, 2013)	33.33%
George v. Kraft Foods Global, Inc., Nos. 08-3899, 07-1713, 2012 WL 13089487 (N.D.Ill. June 26, 2012)	33.33%
Will v. Gen. Dynamics Corp., No. 06-698, 2010 WL 4818174 (S.D.Ill. Nov. 22, 2010)	33.33%
Martin v. Caterpillar Inc., No. 07-1009, 2010 WL 11614985 (C.D.Ill. Sept. 10, 2010)	33.33%

Class Counsel's fee request is wholly appropriate given the extraordinary risk Class Counsel accepted in agreeing to represent the Class; the fact that Class Counsel brought this kind of case when no one else had; Class Counsel's demonstrated willingness to devote tremendous resources for many years to the case as it has done in other cases; the substantial monetary recovery; and the additional value of the future relief included in this settlement to Plan participants.

A $7,882,545 fee would be justified without considering non-monetary relief and other benefits to the Class. However, as it must, the Court finds that the non-monetary benefits are real and significant improvements to the Plan that must be considered. The Court finds that the non-monetary relief is significant and valuable. That relief includes the following:

1. Within the first year of the agreed upon three-year Settlement Period, the Plan's Pension Committee shall cause to be published to then current Plan participants

invested in the Plan's money market fund the fund fact sheet or similar disclosure that explains the risks of the Plan's money market fund investment option, the historical returns of the money market fund over the last 10 years, and the benefits of diversification;

2. By the end of the first year of the Settlement Period, the Pension Committee shall engage an independent Investment Consultant familiar with investment options in defined contribution retirement plans who shall, within a reasonable time after being engaged, review the Plan's fund lineup and make recommendations regarding the investment options offered in the Plan (including, but not limited to the money market fund). The Investment Consultant will make recommendations regarding whether to add a stable value fund to the Plan's investments;

3. The Pension Committee shall meet within one hundred fifty (150) days after receipt of the Investment Consultant's report and recommendations to review the Investment Consultant's report and evaluate whether and to what extent to implement the Investment Consultant's recommendations;

***4** 4. The Pension Committee shall consider, with the assistance of the Investment Consultant, among other factors: (a) the lowest-cost share class available to the Plan for any mutual fund considered for inclusion in the Plan as well as other criteria applicable to different share classes; (b) the availability of revenue sharing rebates on any share class available to the Plan for any mutual fund considered for inclusion in the Plan; and (c) the availability of collective trusts and or separately managed accounts, to the extent such investments are permissible and are otherwise have similar risks and features to a mutual fund considered for inclusion in the Plan;

5. Within thirty (30) business days of the Pension Committee's consideration of the Investment Consultant's evaluation and recommendations, counsel for the Defendants will provide to Class Counsel a written summary of the Investment Consultant's recommendations and the decisions of the Pension Committee;

6. During the first eighteen (18) months of the Settlement Period, the Plan's fiduciaries will conduct a request for proposal for recordkeeping services for the Plan. The request for proposal shall request that any proposal provided by a service provider for basic recordkeeping services to the Plan include a fee proposal based on a total fixed fee and on a per participant basis. After conducting the request for proposal ("RFP"), the Plan fiduciaries may decide to keep the Plan's current recordkeeper or retain a new recordkeeper based on the factors, including cost, that the Plan fiduciaries deem appropriate under the circumstances;

7. Within thirty (30) days of making a decision regarding selection of a recordkeeper based upon the RFP, Defendants' Counsel shall provide to Class Counsel a summary of the finalist proposals received, the decision made, and the reasons supporting the decision. This summary shall include the final agreed-upon fee for basic recordkeeping services; and,

8. Class Counsel will both monitor compliance with the settlement for three years and take any necessary enforcement action without cost to the Class.

Filing No. 367-1 at 26–27.

As demonstrated below, these benefits represent a substantial value to the Plan above and beyond the monetary settlement. In this regard, Class Counsel engaged Dr. Stewart Brown, a nationally recognized economist and authority on investment costs, to provide the Court with an estimate of the present value on just a portion of these provisions. As for the stable value relief portion of the Settlement, and based on the expected difference in returns using the ten-year average spread between the Vanguard Stable Value Fund and the Plan's Vanguard Federal Money Market Fund investment, Plan participants are expected to obtain discounted savings of an additional $31,775,413 in enhanced returns. *See* Filing No. 372-3 at ¶¶8–12. Dr. Brown also estimated the fee savings associated with a reduction in the Plan's recordkeeping fees as a result of a competitive bidding process are $2,223,195. *Id.* at ¶¶5–7. Dr. Brown concludes that the affirmative relief under the terms of the settlement will provide a combined present value to the class up to $33,998,608. *Id.* at 5−12.

When combined with the tax-deferred value of the monetary portion (Filing No. 372 at 15), the total value of the benefit to the Class exceeds $62 million. *Id.* at 18. [2] Class Counsel's fee request is just under 13% of that amount. Accordingly, the fee requested by Class Counsel is significantly less than one-third of the value of the total benefit to the class.

2 The benefit of tax deferral for 20 years is an additional 18.6%. Peter Brady, *Marginal Tax Rates and the Benefits of Tax Deferral*, Investment Company Institute (Sept. 17, 2013). Here, based on this data, the tax deferral would increase the actual value of the cash by $4,398,900, enhancing the value of the monetary portion to $28,048,900.

***5** This value is very substantial and was earned through Class Counsel's reputation as the authority in 401(k) excessive fee cases and then demonstrated the skill and determination in obtaining this result for the Class on a case that was set for trial. As this Court is well-aware and as noted below, Class Counsel performed substantial work from investigating this case, developing potential claims, responding to and overcoming dispositive motions and *Daubert* challenges, analyzing thousands of pages of documents produced during discovery, and engaging in substantial discovery motion practice. Filing No. 372-2 at ¶¶6–25. The significant result and benefits to the Class are evidence of those efforts, and this Court is firmly convinced that the scope and value of this Settlement was reached only due to Schlichter, Bogard & Denton's established reputation as "the preeminent firm in 401(k) litigation," *Nolte v. Cigna, Corp.*, No. 07-2046, 2013 WL 12242015, at *2, 2013 U.S. Dist. LEXIS 184622 at *8 (C.D. Ill. Oct. 15, 2013) (J. Baker), and their skill and perseverance in litigating similar 401(k) excessive fee cases.

Class Counsel's reputation undoubtedly played a part in creating this Settlement. This Court agrees that Class Counsel's efforts have "educated plan administrators, the Department of Labor, the courts and retirement plan participants about the importance of monitoring recordkeeping fees." *Tussey v. ABB, Inc.*, 2015 WL 8485265, at *2, 2015 U.S. Dist. LEXIS 164818, at *7–8 (W.D. Mo. Dec. 9, 2015). Indeed, as noted by multiple courts, "[t]he fee reduction attributed to Schlichter, Bogard & Denton's fee litigation and the Department of Labor's fee disclosure regulations approach $2.8 billion in annual savings for American workers and retirees." *Nolte*, 2013 WL 12242015, at *2, 2013 U.S. Dist. LEXIS 184622, at *6 (J. Baker).

In addition, it is notable that the Independent Fiduciary has independently assessed the reasonableness of the requested fee. After a detailed analysis, the Independent Fiduciary concluded that the requested fee and reimbursement of expenses is reasonable. Filing No. 377-1 (letter of Newport Trust Company approving the terms of the Settlement, including Class Counsel's fees and expenses).

In determining fees in a common fund class action settlement the use of a lodestar cross-check is no longer recommended in the Seventh Circuit. *See In re Synthroid Marketing Litig.*, 325 F.3d 974, 979–80 ("The client cares about the outcome alone" and class counsel's efficiency should not be used "to reduce class counsel's percentage of the fund that their work produced."); *Beesley*, 2014 WL 375432, at *2, 2014 U.S. Dist. LEXIS 12037, at *10 ("The use of a lodestar cross-check has fallen into disfavor."); *Will*, 2010 WL 4818174, at *3, 2010 U.S. Dist. LEXIS 123349, at *10 ("The use of a lodestar cross-check in a common fund case is unnecessary, arbitrary, and potentially counterproductive."). Nevertheless, applying a lodestar cross-check analysis confirms the reasonableness of the award to Class Counsel.

In particular, this Court finds that Class Counsel spent 7,820.60 attorney hours and 1,354.20 hours of non-attorney professional time litigating this case. Filing No. 372-2 at ¶ 5.[3] Class Counsel will also spend substantial time during the Settlement Period because Class Counsel has committed to monitoring Defendants' compliance with the terms of the Settlement and has committed to bring an enforcement action if needed without cost to the Class. Thus, Class Counsel is committing to a possibility of substantial future time without compensation if that occurs.

3 "The Court may rely on summaries submitted by attorneys and need not review actual billing records." *Abbott*, 2015 WL 4398475, at *3 n.1, 2015 U.S. Dist. LEXIS 93206, at n.1 (citing authority).

If a lodestar cross-check is done, this Court finds that a national market rate is the relevant community for determining a reasonable hourly rate for this specialized area of complex litigation. *Beesley,* 2014 WL 375432, at *2, 2014 U.S. Dist. LEXIS 12037, at *11. Although Class Counsel works solely on a contingent fee basis, within the last several months, other courts have found that a national fee rate of up to $1,060.00 per hour, depending on years of attorney experience, was a reasonable national hourly rate for Class Counsel's time. *Sims v. BB&T Corp.*, No. 15-cv-00732, (M.D.N.C. May 6, 2019), and *Clark v. Duke University*, 16-cv-1044, Filing No. 166 at 8–9 (M.D.N.C. Jun. 24, 2019) (finding that the reasonable hourly rate was $1,060/hour for attorneys with at least 25 years of experience, $900/hour for attorneys with 15–24 years of experience, $650/hour for attorneys with 5–14 years of experience, $490/hour for

attorneys with 2–4 years of experience, $330 for paralegals and law clerks). Filing No. 372-2 at ¶ 5.

***6** Based on these 2018 rates and actual hours incurred to date, a straight lodestar fee would be $5,905,851. Filing No. 372-2 at ¶ 6. However, in cases like this one, where counsel "had no sure source of compensation for their services," the Court must apply a risk multiplier to compensate the attorneys for the risk of nonpayment in the event the litigation was unsuccessful. *Florin I*, 34 F.3d at 565. The Seventh Circuit has specifically "held that risk multipliers are appropriate in cases that are initiated under ERISA and settled with the creation of a common fund." *Cook v. Niedert*, 142 F.3d 1004, 10143 (7th Cir. 1998). The purpose of the multiplier is to "compensat[e] in a manner that provides adequate incentive for the attorney to bring this type of case." *Harman v. Lyphomed, Inc.*, 945 F.2d 969, 974 (7th Cir. 1991). Applying this formula, the fee sought by Class Counsel, without even accounting for the significant value from the non-monetary relief as valued above, would result in a multiplier of only 1.33. In light of the substantial risk of non-payment, particularly in light of the adverse precedent cited at length by Defendants in their dispositive motions, the protracted length of the litigation, and the fact that very few ERISA fiduciary breach cases have been successfully resolved at trial in favor of the plaintiffs, this small multiplier amount is reasonable. Again, however, and as noted above, apart from any lodestar multiplier, Class Counsel's requested attorney fee award is less than 13% of the total benefit to the class.

This Court further finds that the $513,015.32 in expenses for which Class Counsel seeks reimbursement is warranted. "It is well established that counsel who create a common fund like this one are entitled to the reimbursement of litigation costs and expenses, which includes such things as expert witness costs; computerized research; court reporters; travel expense; copy, phone and facsimile expenses and mediation." *Abbott*, 2015 WL 4398475, at *3, 2015 U.S. Dist. LEXIS 93206, at *13 (citing Fed. R. Civ. P. 23); *Boeing v. Van Gemert*, 444 U.S. at 478, 100 S.Ct. 745. Given the high-stakes nature of this case, the Court finds that Class Counsel's incurred expenses are reasonable and should be reimbursed from the common fund. Indeed, this final expense item is significantly below the anticipated submitted expense of $650,000. Filing No. 368 at 6.

Plaintiffs request that Named Plaintiffs Mary Bell, John Hoffman, and Pamela Leinonen, who were successfully appointed by the Court to serve as Class Representatives in this action, receive a case contribution award of $20,000.00. Plaintiffs further request that Named Plaintiffs Janice Grider and Cindy Prokish, who were not named as Class Representatives but remained in the case in their individual capacity, receive a case contribution award of $5,000.00. "Incentive awards are justified when necessary to induce individuals to become named representatives." *In re Synthroid Marketing Litig.*, 264 F.3d at 722–23. Without their commitment to pursuing these claims, the successful recovery for the Class would not have been possible. Accordingly, the Court approves these respective awards.

III. CONCLUSION

After consideration of Class Counsel's Motion, and consistent with the findings of the Independent Fiduciary, the Court concludes that the requested attorneys' fee and expense reimbursements are fair, reasonable, and merited by Class Counsel's efforts resulting in relief for the Class. Accordingly, it is **ORDERED** that the requested attorneys' fee of $7,882,545 is **APPROVED**.

It is **FURTHER ORDERED** that the requested reimbursement of expenses in the amount of $513,015.32 is **APPROVED**. Thus, the Settlement Administrator shall pay the combined sum of **$8,395,560.32** to the firm of Schlichter, Bogard & Denton out of the Settlement Fund. The Settlement Administrator shall separately pay Named Plaintiffs Mary Bell, John Hoffman, and Pamela Leinonen each $20,000.00, and Named Plaintiffs Janice Grider and Cindy Prokish, who were not named as Class Representatives but remained in the case in their individual capacity, each $5,000.00.

Finally, and for the reasons stated on the record at the hearing held on September 4, 2019, the sole objection to the amount of the attorneys' fees, requested reimbursement of expenses, and incentive awards is **OVERRULED**.

SO ORDERED.

All Citations

Not Reported in Fed. Supp., 2019 WL 4193376

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End of Document

EXHIBIT 7

2018 WL 2382091
United States District Court, E.D. Virginia,
Norfolk Division.

IN RE CELEBREX (CELECOXIB) ANTITRUST LITIGATION

This document relates to: Direct Purchaser Actions

Lead Case No. 2:14-cv-00361
|
Signed 04/18/2018

ORDER GRANTING DIRECT PURCHASER CLASS PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF SETTLEMENT AND DISTRIBUTION PLAN, ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, SERVICE AWARDS TO THE CLASS REPRESENTATIVE PLAINTIFFS, AND ENTRY OF FINAL JUDGMENT AND ORDER OF DISMISSAL

Hon. Arenda L. Wright Allen, United States District Judge

***1** WHEREAS, this matter having come before the Court by way of Direct Purchaser Class Plaintiffs' Unopposed Motion for Final Approval of Settlement and Entry of Final Judgment and Order of Dismissal ("Final Approval Motion"), and by way of Direct Purchaser Class Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Service Awards to the Class Representative Plaintiffs (ECF No. 617) ("Attorneys' Fees Motion");

WHEREAS, on November 20, 2017, the direct purchasers and the defendants, Pfizer, Inc., G.D. Searle LLC, and Pfizer Asia Pacific Pte. Ltd. (collectively "Pfizer"), entered into a settlement agreement that, if finally approved by the Court, will result in a settlement of the direct purchasers' claims in the above-captioned action (the "Settlement Agreement") (ECF No. 609-1);

WHEREAS, the terms of the Settlement Agreement create a common fund that will confer an immediate monetary benefit to the previously certified Class (ECF No. 443) of $94,000,000 (plus interest but less litigation expenses and attorneys' fees) (ECF No. 609-1);

WHEREAS, on December 8, 2017, this Court granted Direct Purchaser Class Plaintiffs' Unopposed Motion For Preliminary Approval Of Settlement, Approval Of Form And Manner Of Settlement Notice, Appointment Of Settlement Administrator And Escrow Agent, And Order Setting Schedule For Final Fairness Hearing ("Preliminary Approval Order") (ECF No. 615);

WHEREAS, on December 18, 2017, a Court-approved settlement notice was mailed to each of the class members via postage-prepaid U.S. First Class mail, and the contents of the notice were posted on the litigation-specific website established by the settlement administrator (http://www.celebrexdirectlitigation.com) (ECF No. 616);

WHEREAS, no class member opted out of the class or objected to the settlement (ECF No. 609-4);

WHEREAS, on January 8, 2018, the direct purchasers publicly filed, under Rule 23(e) of the Federal Rules of Civil Procedure, their Fees Motion, and supporting papers, requesting (i) reimbursement of reasonable costs and expenses incurred in the prosecution of this action of $1,819,457; (ii) payment of $100,000 as a service award to each of the three Court-appointed Class Representatives (totaling $300,000 in service awards); and (iii) an award of attorneys' fees in the amount of one-third of the Settlement Fund (after deducting for requested reimbursement of litigation expenses and adding interest earned on that amount since the Settlement Fund was created (i.e., an award of $30,723,777) (ECF No. 617).

WHEREAS, on January 8, 2018, AmerisourceBergen Drug Corporation, Cardinal Health, Inc., and McKesson Corporation, three of the largest class members with the majority of the aggregate purchases, submitted letters supporting the settlement, reimbursement of expenses, payment of service awards, and payment of attorney's fees as outlined above. (ECF Nos. 619-4-619-6).

WHEREAS on February 21, 2018, H.D. Smith, another class member with the fourth largest share of aggregate purchases, submitted a letter supporting the settlement, reimbursement of expenses, payment of service awards, and payment of attorney's fees as outlined above. WHEREAS, on February 21, 2018, the direct purchasers filed, under Rule 23(e) of the Federal Rules of Civil Procedure, their Final Approval Motion and supporting papers;

***2** WHEREAS, this Court has considered, among other things, the materials filed in support of both the direct purchasers' Fees Motion and Final Approval Motion;

WHEREAS, this Court held a Fairness Hearing on April 18, 2018, and has considered all of the submissions and arguments with respect to the Settlement, and otherwise being fully informed, and good cause appearing therefore;

WHEREAS, this Order incorporates herein and makes a part hereof, the Settlement Agreement and its exhibits, and the Preliminary Approval Order.

WHEREAS, this Court has jurisdiction over this action and all parties thereto, including, but not limited to, all Class members, for all matters relating to this action, and the Settlement, including, without limitation, the administration, interpretation, effectuation, or enforcement of the Settlement and this Order.

WHEREAS, this Court has considered the direct purchasers' Final Approval Motion and the direct purchasers' Fees Motion, and their accompanying submissions and argument thereon, it is hereby ORDERED that these Motions are GRANTED.

A. Direct Purchaser Class Plaintiffs' Final Approval Motion is Granted

1. Class Notice

1. The record shows, and the Court finds, that notice has been given to the Class in substantially the manner approved by this Court in its Preliminary Approval Order. This Court finds that such notice constitutes: (i) the best notice practicable to the Class under the circumstances; (ii) notice that was reasonably calculated, under the circumstances, to apprise the Class of the pendency of the action and the terms of the Settlement, their right to exclude themselves from the Settlement or to object to any part thereof, their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense), and the binding effect of the orders, the Final Order, and the Final Judgment, whether favorable or unfavorable, on all persons who do not exclude themselves from the Settlement; (iii) due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) notice that fully satisfies the requirements of the United States Constitution (including the Due Process Clause), Rule 23 of the Federal Rules of Civil Procedure, and any other applicable law.

2. Due and adequate notice of the proceedings having been given to the Class and a full opportunity having been offered to Class members to participate in the Fairness Hearing, it is hereby determined that all Class members are bound by the terms of this Order.

2. Final Approval of Settlement Agreement

3. The Court finds that the Settlement resulted from extensive, good faith, arm's-length negotiations between the parties, through experienced counsel, and with the assistance of two separate mediations in the August to October 2017 timeframe —the second of which taking place before Magistrate Judge Krask.

4. Under Federal Rule of Civil Procedure 23(e), the Court hereby finally approves in all respects the Settlement and finds that it benefits the Class members. The Court further finds that the Plan of Distribution and all other parts of the Settlement and its administration, are in all respects, fair, reasonable, and adequate, and in the best interest of the Class, within a range that responsible and experienced attorneys could accept considering all relevant risks and factors, and are in full compliance with all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), and the Class Action Fairness Act (28 U.S.C. § 1715). Accordingly, the Settlement shall be consummated in accordance with its terms and provisions.

***3** 5. The Court further finds that the Settlement is fair, reasonable, and adequate in light of the factors set forth in *In re Jiffy Lube Securities Litigation*, 927 F.2d 155 (4th Cir. 1991), and based on the following factors, among others:

a. This case was highly complex, expensive, and time consuming and it would have continued to be so through trial had the case not settled;

b. If the case were to continue, the Class would face substantial risks in establishing liability and damages;

c. The Settlement was reached after extensive, arm's-length negotiations held in good faith and with the benefit of two mediations, the latter mediation taking place before Magistrate Judge Krask in the month prior to the Settlement being reached;

d. There were no objections to the Settlement, and no opt-out requests. Each of the Class Representatives, class member H.D. Smith, and the three largest class members (who collectively constitute approximately 94% of the total aggregate class purchases of celecoxib

during the class period), provided express support for the Settlement;

e. Because the case settled after the close of fact and expert discovery, after the parties had briefed discovery, class certification, *Daubert* motions, summary judgment motions, and motions *in limine*, and the parties were within a month of empaneling a jury and beginning trial, Class Counsel has had a full appreciation of the strengths and weaknesses of the direct purchasers' case while negotiating the Settlement;

f. The Class Counsel assessing the adequacy of the settlement are well-experienced, highly regarded attorneys who have held numerous lead counsel positions in complex antitrust class action cases, specifically in the pharmaceutical sector;

g. The Settlement amount is well within the range of reasonableness in light of the best possible recovery and the risks the parties faced if the case continued to verdicts as to both liability and damages.

3. Plan of Distribution is Approved

6. The Court approves the Plan of Distribution proposed by Lead Counsel (ECF No. 609-4). Consistent with the descriptions provided in the long form notice (mailed via first-class mail to all Class members), distributions from the Net Settlement Fund (i.e., the settlement fund plus accrued interest and less Court-awarded fees, expenses, service awards, applicable taxes, and administration costs) will be made on a *pro rata* basis.

7. Distributions to each class member will be in proportion to how much brand and generic Celebrex that class member purchased during the Class Period, as compared to all other class members who filed a valid Claim Form. The proposed Plan of Distribution is fair, efficient, and is approved.

8. The Court directs Epiq Class Action & Claims Solutions, Inc. ("Epiq"), in conjunction with Lead Counsel, to administer the Settlement, determine the distribution amounts to Claimants, and distribute the Net Settlement Fund proceeds.

9. Epiq, working in conjunction with Lead Counsel, shall distribute an individualized Claim Form to each Class member by first class mail within 10 days of the date of this Order granting final approval of the Settlement (or if the 10th day lands on a weekend or holiday, the first business day thereafter). The submission of the Claim Form to the Settlement Administrator (with any necessary supporting documentation if the Claimant does not agree with information contained in its Claim Form) will be deemed timely if it is received by the Claims Administrator or post-marked within 60 days from the date of this Order (or if the 60th day lands on a weekend or holiday, the first business day thereafter). At Lead Counsel's discretion, this deadline may be extended another 30 days. Lead Counsel may also seek further extensions of the deadline by order of the Court after any initial extension. Untimely Claims Forms may be subject to disallowance.

B. Direct Purchaser Class Plaintiffs' Fee Motion is Granted

***4** 10. The Court finds that the $94,000,000 cash settlement (plus accrued interest and less attorneys' fees, expenses, administration costs, and service awards) confers an immediate and substantial benefit to the class. The benefit is substantial both in absolute terms and when assessed in light of the risks of establishing liability and damages in this case.

11. In assessing requests for attorneys' fees in common fund cases, this Court, as other courts in this District have done, relies on the percentage-of-the-fund method followed by a lodestar cross-check. *See, e.g., In re NeuStar, Inc. Sec. Litig.*, No. 14-cv-885, 2015 U.S. Dist. LEXIS 165320, at *20-21 (E.D. Va. Dec. 8, 2015); *see also In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 261 (E.D. Va. 2009).

12. As part of assessing the percentage-of-the-fund method, this Court applied the following factors:

1. The results obtained for the class;

2. The presence or absence of substantial objections by members of the class;

3. The quality and skill of the attorneys involved;

4. The complexity and duration of the litigation;

5. The risk of non-payment;

6. Public policy considerations; and

7. Awards in similar cases.

Upon consideration of these factors, the Court finds that these factors support the requested award.

13. There were no objections to the Settlement, the requested fee award, or the requested reimbursement of expenses, and no class members have opted out of the Settlement.

14. The three largest Class members, who collectively constitute approximately 94% of the total aggregate class purchases of celecoxib during the class period, have each submitted letters to the Court. Those letters articulate express support for the Settlement, the direct purchasers' counsel's ("Class Counsel") fee and expense requests, and the requested service awards.

15. The letters of support from these three large sophisticated Class members are an indication that the fee sought in this matter is akin to what would have been privately negotiated outside the context of Rule 23.

16. Class Counsel have effectively and efficiently prosecuted this difficult and complex action, which was vigorously litigated by both sides, on behalf of the members of the Class for approximately three and a half years, with no guarantee they would be compensated for their time or reimbursed for their out-of-pocket costs.

17. Class Counsel undertook numerous and significant risks of nonpayment in connection with the prosecution of this action.

18. Class Counsel have reasonably incurred $1,819,457 in out of-pocket expenses (including substantial expert expenses), in prosecuting this action with no guarantee of recovery.

19. The Settlement achieved for the benefit of the Class was obtained as a direct result of Class Counsel's skillful advocacy and vigorous prosecution of this case.

20. The Settlement was reached only after extensive negotiations held in good-faith and in the absence of collusion.

21. This lawsuit serves the public interest. It focused on whether there was fraud on the U.S. government and then efficiently litigated, via the class action mechanism, the alleged fraud along with alleged unlawful monopolization in the marketplace. Courts encourage these types of worthy class action lawsuits, and, particularly here, where the fee award is anchored entirely to the actual cash value of the settlement (rather than a fee award based in part on a valuation of a non-cash benefit).

***5** 22. Fee awards of one-third of the settlement amount are commonly awarded in cases analogous to this one (i.e., complex Hatch-Waxman antitrust cases). *See, e.g., In re K-Dur Antitrust Litig.*, 01-1652, (D.N.J. Oct. 5, 2017) (33⅓ % fee awarded on $60 million settlement); *In re Neurontin Antitrust Litig.*, 02-1830 (D.N.J. Aug. 6, 2014) (33 ⅓% fee awarded on $191 million settlement); *In re Flonase Antitrust Litig.*, 08-cv-3149 (E.D. Pa. June 14, 2013) (33⅓ % fee awarded on $150 million settlement); *In re Tricor Direct Purchaser Antitrust Litig.*, 05-cv-340 (D. Del. April 23, 2009) (33⅓% fee awarded on $250 million settlement); *In re Remeron Direct Purchaser Antitrust Litig.*, 2005 U.S. Dist. LEXIS 27013 (D.N.J. Nov. 9, 2005); (33⅓% fee awarded on $75 million settlement).

23. In light of the factors and findings described above, the fee award is within the applicable range of reasonable percentage-of-the-fund awards.

24. Class Counsel have reasonably spent more than 31,000 hours prosecuting this complex, contingent antitrust litigation over the past three and a half years, resulting in a total lodestar of $ 15,781,983 (using historic rates). At those rates, the lodestar multiplier calculates to 1.94. This is a reasonable multiplier in this Circuit. Further, Class counsel is continuing to expend additional hours (not included in the lodestar cross-check calculations) to facilitate the settlement administration process, handle related settlement logistics, respond to class member inquiries, and prepare the necessary papers required to obtain Final Approval, as well as prepare for, and appear at, the Final Approval hearing.

25. Accordingly, Class Counsel are hereby awarded attorneys' fees to be paid from the Settlement Fund in the amount of $30,723,777 (or one-third of the $94 million settlement, after deduction for requested reimbursement of litigation expenses, plus interest on that amount) plus interest in an amount equal to the interest earned on $30,723,777 since the Settlement Fund was created. The Court finds this award to be fair and reasonable.

26. This Court further approves reimbursement of $1,819,457 in expenses, which were reasonable and necessary expenses incurred in representing the Class.

27. Numerous courts have found it appropriate to specifically reward named class plaintiffs with service awards to recognize the benefits they have conferred on the litigation.

28. No objections were filed concerning the requested service awards and, in fact, the requested service awards have garnered the written support of the largest class members.

29. The Class Representatives diligently and fully fulfilled their obligations to the Class. They stepped forward and pursued the Class's interests by filing suit on behalf of the members of the Class, sitting for depositions, participating in the negotiations culminating in the Settlement Agreement, and undertaking other responsibilities attendant upon serving as a named plaintiff.

30. These Class Representatives—American Sales Company, LLC, Rochester Drug Co-Operative, Inc., and Cesar Castillo, Inc.—are each awarded $100,000, payable from the Settlement Fund, for their role in bringing about this recovery on behalf of the Class. This amount is in addition to whatever monies the Class Representatives will receive from the Settlement Fund under the Court-approved Plan of Distribution.

C. Final Judgment and Order of Dismissal

IT IS HEREBY ADJUDGED AND DECREED PURSUANT TO RULE 58 OF THE FEDERAL RULES OF CIVIL PROCEDURE AS FOLLOWS:

31. Having found the Settlement to be fair, reasonable, and adequate, within the meaning of Rule 23(e) of the Federal Rules of Civil Procedure as to Class members, and that due, adequate, and sufficient notice has been provided to all persons or entities entitled to receive notice satisfying the requirements of the United States Constitution (including the Due Process Clause), Rule 23 of the Federal Rules of Civil Procedure, and any other applicable law, the Final Approval Motion shall be granted and the Settlement shall be consummated in accordance with its terms as set forth in the Settlement Agreement.

***6** 32. Having found the direct purchasers' Fees Motion to be fair and reasonable, and adequate within the meaning of Federal Rule of Civil Procedure 23 as to Class members, and that due, adequate, and sufficient notice has been provided to all persons or entities entitled to receive notice satisfying the requirements of the United States Constitution (including the Due Process Clause), Rule 23 of the Federal Rules of Civil Procedure, and any other applicable law, the direct purchasers' Fees Motion shall be granted.

33. The Court approves the proposed Plan of Distribution of the Net Settlement Fund.

34. This Action is hereby dismissed with prejudice and, except as provided for in Section 9 of the Settlement Agreement, without costs and without attorneys' fees recoverable under 15 U.S.C. § 15(a).

35. Releasors' Released Claims with respect to Released Parties are hereby released, such release being effective as of the Effective Date. [1]

[1] Capitalized terms in this paragraph are defined in the Settlement Agreement.

36. Releasors are permanently enjoined and barred from instituting, commencing, or prosecuting any action or other proceeding asserting any Released Claims against any Released Party.

37. With respect to any non-released claim, no rulings, orders, or judgments in this Action shall have any *res judicata*, collateral estoppel, or offensive collateral estoppel effect.

38. This Court retains exclusive jurisdiction over the Settlement and the Settlement Agreement including its administration and consummation;

39. There being no just reason for delay, the Court directs that judgment of dismissal of all the direct purchasers' claims against Pfizer shall be final and appealable. The Clerk of this Court is requested to enter this Order and Final Judgment.

IT IS SO ORDERED.

All Citations

Not Reported in Fed. Supp., 2018 WL 2382091, 2018-1 Trade Cases P 80,357

End of Document

EXHIBIT 8

2014 WL 12767763
Only the Westlaw citation is currently available.
United States District Court, N.D. Illinois, Eastern Division.

CITY OF STERLING HEIGHTS GENERAL EMPLOYEES' RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated, Plaintiff,
v.
HOSPIRA, INC., et al., Defendants.

No. 1:11-cv-08332-AJS
|
Signed 08/05/2014

Attorneys and Law Firms

Jack Reise, Stephen R. Astley, Jesse Johnson, Robbins Geller Rudman & Dowd LLP, Boca Raton, FL, Aaron Scott Chait, Edward Anthony Wallace, Kenneth A. Wexler, Kara Anne Elgersma, Wexler Wallace LLP, James E. Barz, Robbins Geller Rudman & Dowd LLP, Katharine Crane Byrne, Cooney & Conway, Chicago, IL, Ellen Gusikoff Stewart, Robbins Geller Rudman & Dowd LLP, San Diego, CA, Badge Humphries, Lewis, Babcock & Griffin, L.L.P., Sullivan's Island, SC, for Plaintiff.

Mark Robert Filip, Joshua Z. Rabinovitz, Patrick M. Crook, Robert J. Kopecky, Sallie Gamble Smylie, Kirkland & Ellis LLP, Chicago, IL, for Defendants.

ORDER AWARDING ATTORNEYS' FEES AND EXPENSES AND AN AWARD TO LEAD PLAINTIFFS PURSUANT TO 15 U.S.C. § 78u-4(a)(4)

THE HONORABLE AMY J. ST. EVE, UNITED STATES DISTRICT JUDGE

***1** THIS MATTER having come before the Court on the motion of Lead Plaintiffs for an award of attorneys' fees and expenses and an award to Lead Plaintiffs for time and expenses incurred in the action; the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of the 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 Settlement Agreement dated March 27, 2014 (the "Settlement Agreement").

2. The 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. Pursuant to and in full compliance with Rule 23 of the Federal Rules of Civil Procedure, the Court finds and concludes that due and adequate notice of Lead Plaintiffs' motion for an award of attorneys' fees and expenses was directed to all Persons and entities who are Class Members, including individual notice to those who could be identified with reasonable effort, advising them of the application for fees and expenses and of their right to object thereto, and a full and fair opportunity was accorded to all Persons and entities who are members of the Class to be heard with respect to the motion for fees and expenses.

4. The Court hereby awards Lead Counsel attorneys' fees of 30% of the Settlement Fund and expenses of $348,288.49, 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. Said fees shall be allocated among Lead Plaintiffs' counsel by Lead Counsel in a manner which, in their good-faith judgment, reflects each counsel's contribution to the institution, prosecution, and resolution of the Action. The Court finds that the amount of fees awarded is fair and reasonable under the "percentage-of recovery" method considering, among other things that:

(a) the requested fee is consistent with percentage fees negotiated *ex ante* in the private market for legal services;

(b) the contingent nature of the Action favors a fee award of 30%;

(c) the Settlement Fund of $60 million was not likely at the outset of the Action;

(d) the awarded fee is in accord with Seventh Circuit authority and consistent with empirical data regarding fee awards in cases of this size;

(e) the quality legal services provided by Lead Counsel produced the settlement;

(f) the Lead Plaintiffs appointed by the Court to represent the Class reviewed and approved the requested fee;

(g) the stakes of the litigation favor the fee awarded; and

(h) the reaction of the Class to the fee request supports the fee awarded.

5. The Court finds that, pursuant to 15 U.S.C. § 78u-4(a)(4), an award of $9,487.50 to KBC Asset Management NV, $6,572.00 to Sheet Metal Workers' National Pension Fund, $6,000.00 to Heavy & General Laborers' Locals 472 & 172 Pension & Annuity Funds, and $3,125.00 to Roofers Local No. 149 Pension Fund is appropriate.

***2** 6. The awarded attorneys' fees and expenses, and interest earned thereon, shall be paid to Lead Counsel and each of the Lead Plaintiffs from the Settlement Fund immediately after the date this Order is executed subject to the terms, conditions, and obligations of the Settlement Agreement, which terms, conditions, and obligations are incorporated herein.

IT IS SO ORDERED.

All Citations

Not Reported in Fed. Supp., 2014 WL 12767763

End of Document

EXHIBIT 9

2005 WL 7984326
Only the Westlaw citation is currently available.
United States District Court,
S.D. New York.

In re DEUTSCHE TELEKOM
AG SECURITIES LITIGATION.

Civil Action No. 00–CV–9475 (NRB).
|
Signed June 9, 2005.
|
Filed June 14, 2005.

ORDER AND FINAL JUDGEMENT

NAOMI R. BUCHWALD, District Judge.

***1** On the *7th* day of *June,* 2005, a hearing having been held before this Court to determine: (1) whether the terms and conditions of the Stipulation and Agreement of Settlement dated January 28, 2005 (the "Stipulation"), including the release of the Defendants and the Released Parties, are fair, reasonable and adequate for the settlement of all claims asserted by the Class against the Defendants in the Complaint now pending in this Court under the above caption and should be approved; (2) whether judgment should be entered dismissing the Complaint on the merits and with prejudice in favor of the Defendants and as against all persons or entities who are members of the Class herein; (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 settlement and hearing substantially in the form approved by the Court was mailed to all persons or entities reasonably identifiable, who purchased ordinary shares of stock in the form of American Depository Shares of Deutsche Telekom AG during the period from June 19, 2000 to and including February 21, 2001 (the "Class Period"), as shown by the records of Deutsche Telekom's transfer agent and the records compiled by the Claims Administrator in connection with its previous mailing of a Notice of Pendency of Class Action, at the respective addresses set forth in such records, except those persons or entities excluded from the definition of the Class or who previously excluded themselves from the Class, and that a summary notice of the hearing substantially in the form approved by the Court was published in the national editions of *The Wall Street Journal* and *The New York 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 Defendants.

2. The Court, having previously found that this Action meets the requirements of Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure for certification as a class action, and having previously directed notice of the pendency of this Action as a class action be given to the members of the Class and such notice having been given, now finds again and finally confirms that the prerequisites for 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.

***2** 3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure this Court hereby finally certifies this action as a class action on behalf of all persons who purchased ordinary shares of stock in the form of American Depository Shares ("ADSs") of Deutsche Telekom AG ("Deutsche Telekom") during the period from June 19, 2000 to and including February 21, 2001. Excluded from the Class are the defendants and the underwriters of the Offering and all officers, affiliates and immediate family members of such entities, including their heirs, legal representatives, successors, predecessors in interest and assigns. Also excluded from the Class are the persons and/or entities who previously excluded themselves from the Class by filing a

request for exclusion in response to the Notice of Pendency, as listed on Exhibit 1 annexed hereto.

4. Notice of the proposed Settlement of this Action was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the Class of the settlement 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, 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 is hereby dismissed with prejudice and without costs, except as provided in the Stipulation, as against the Defendants.

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 any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation (whether foreign or domestic), including both known claims and Unknown Claims, accrued claims and not accrued claims, foreseen claims and unforeseen claims, matured claims and not matured claims, class or individual in nature, that have been or could have been asserted from the beginning of time to the end of time in any forum by the Class Members or any of them against any of the Released Parties which arise out of or relate in any way to the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, referred to in this Action or that could have been asserted relating to the purchase, transfer or acquisition of ordinary shares of stock in the form of American Depository Shares ("ADSs") of Deutsche Telekom AG ("Deutsche Telekom") during the Class Period, except claims relating to the enforcement of the settlement of the Action (the "Settled Claims") against any and all of the Defendants, their past or present subsidiaries, parents, successors and predecessors, and their respective officers, Management Board members, Supervisory Board members, directors, agents, employees, affiliates, attorneys, advisors, insurers, auditors, stockholders, heirs, executors, trusts, assigns, and underwriters (including the Underwriters) (the "Released Parties"). 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.

***3** 8. The Defendants and the successors and assigns of any of them, are hereby permanently barred and enjoined from instituting, commencing or prosecuting any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law 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 Defendants, the Underwriters 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"). 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.

9. 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 Defendants as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any of the 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 Defendants;

(b) offered or received against the 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 Defendant;

(c) offered or received against the Defendants as evidence of a presumption, concession or admission with respect to

any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the 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, Defendants may refer to it to effectuate the liability protection granted them hereunder;

(d) construed against the 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 the Lead Plaintiffs or any of the Class Members that any of their claims are without merit, or that any defenses asserted by the Defendants have any merit, or that damages recoverable under the Complaint would not have exceeded the Gross Settlement Fund.

***4** 10. 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.

11. 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.

12. Plaintiffs' Counsel are hereby awarded *28* % of the Gross Settlement Fund in fees, which sum the Court finds to be fair and reasonable, and $ *1,444,565.23* 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 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.

13. Lead Plaintiff Allan Kramer is hereby awarded $ *15,000.* and Lead Plaintiff Bruce Holberg is hereby awarded $ *15,000.,* which amounts shall be paid from the Gross Settlement Fund. Such awards are for reimbursement of these Lead Plaintiffs' reasonable costs and expenses (including lost wages) directly related to their representation of the Class.

14. 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 $120,000,000 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) Over 100,000 copies of the Notice were disseminated to putative Class Members. Such Notice disclosed that Plaintiffs' Counsel were moving for attorneys' fees in the amount not greater than 28% of the Gross Settlement Fund and for reimbursement of expenses in an amount not greater than $1.5 million. No objections by putative class members 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;

(d) The action involves complex factual and legal issues and was actively prosecuted over four 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 the Lead Plaintiffs and the Class may have recovered less or nothing from the Defendants; and

(f) Plaintiffs' Counsel have devoted over 20,000 hours, with a lodestar value of over $8,470,000, to achieve the Settlement.

***5** 15. 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.

16. 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.

17. 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.

EXHIBIT 1

**IN RESPONSE TO THE NOTICE OF PENDENCY
(timely, by Plaintiffs' Submission Pursuant to the
Court's Order dated March 25, 2003 (filed July 8, 2003))**

List of Persons and Entities Excluded from the Class in the *In re Deutsche Telekom AG Securities Litigation,* Civil Action No. 00–CV–9475 (SHS)

The following persons and entities, and only the following persons and entities, have properly excluded themselves from the Class:

Joseph Citardi 534 Stanwich Road Greenwich, Connecticut 06831–3129	Eugene H. Dunn 12939 Camino Ramillette San Diego, California 92128–1538
James M. Fowler TTEE James M. Fowler Trust 1941 Skycrest Dr., Apt. 2 Walnut Creek, California 94595	Mary Regina Freeland 5219 Clairmont Mesa Blvd. San Diego, California 92117–2206
Heil Associates Heil Associates A Partnership (William R. Heil Sr.) 236 Buddington Road Shelton, Connecticut 06484–5311	Kary Daniel Kielhofer and Judith W. Kielhofer 36600 Palmdale Street Rancho Mirage, California 92270–2200
Marianne Lent 1730 Halford Ave., Apt. 142 Santa Clara, California 95051	Rainer Link Dresdener Strasse 38 D–65232 Tannusstein Germany
Mary K. O'Connell 9312 So. Montgomery Drive Orland Park, Illinois 60462	Nils Paellmann 305 Second Avenue, Apt. 344 New York, New York 10003

Diana L. Purcell, Executor for John R. Purcell (Deceased) 11720 Birch Glen Court San Diego, California 92131–2304	Geary Rummler, TTEE and Margaret Rummler TTEE Geary & Margaret Rummer Rev Trust 9–26–94/Brandes Global 3780 E. Sumo Quinto Tucson, Arizona 85718–6067
Charles M. Simmons 1120 Shady Oaks Lane Fort Worth, Texas 76107–3558	Robert L. Stauffer, IRA 2332 Autumn Run Wooster, Ohio 44691
Robert L. Stauffer & Elisabeth Stauffer Jt. Ten. 2332 Autumn Run Wooster, Ohio 44691	Andres C. Tapia 40 Windsor Ter., Dept. J2 White Plains, New York 10601
Katharine Whild 99 Deerbrook Farm North Yarmouth, Maine 04097	
Josef Higa, TTEE U/A DTD 03/30/1998 659 Kerryton Place Circle Ballwin, Missouri 63021	Robert B. Pease 326 Dewey Avenue Pittsburgh, Pennsylvania
James D. Coyer 10374 Wateridge Circle # 334 San Diego, California 92121	Ivan W. Sellers 2001 Harrisburg Pike Apt. B–224 Lancaster, Pennsylvania 17601–2641
Robert L, Stauffer & Elisabeth Stauffer, Goldman, Sachs & Co. Joint Account Robert L. Stauffer, Goldman, Sachs & Co. IRA Account 2332 Autumn Run	Joseph Webb, TTEE Joseph H. Webb 1996 CRT 11719 Point Overlook Place Strongsville, Ohio 44136–4525

Wooster, Ohio 44691

Belinda Zanfardino

3160 Mahaffey Lane

Paris, Texas 75460

All Citations

Not Reported in F.Supp.2d, 2005 WL 7984326

End of Document

EXHIBIT 10

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

STEVEN DUNCAN, PETER CAHILL and CHARLES CAPARELLI, Individually and on Behalf of All others Similarly Situated,

Plaintiffs,

v. Case No. 16-cv-1229-pp

JOY GLOBAL INC., EDWARD L. DOHENY II, JOHN NILS HANSON, STEVEN L. GERARD, MARK J. GLIEBE, JOHN T. GREMP, GALE E. KLAPPA, RICHARD B. LOYND, P. ERIC SIEGERT and JAMES H. TATE,

Defendants.

ORDER GRANTING MOTION FOR ENTRY OF AN ORDER FOR REIMBURSEMENT OF REASONABLE COSTS AND EXPENSES INCURRED BY LEAD PLAINTIFFS (DKT. NO. 68) AND AWARDING REIMBURSEMENT OF LEAD PLAINTIFFS' COSTS AND EXPENSES

The lead plaintiffs filed a motion, asking the court to enter an order reimbursing them for their reasonable costs and expenses. Dkt. No. 68. The court has considered the documents supporting that order, as well as the arguments of counsel for the lead plaintiffs made at the final approval hearing on December 20, 2018 (dkt. nos. 74, 75), and **ORDERS:**

1. All the capitalized terms used in this order have the same meanings as set forth in the Stipulation of Settlement dated May 22, 2018 (dkt. no. 52).

2. The court has jurisdiction over the subject matter of this application and all related matters, including all Members of the Class who have not timely and validly requested exclusion.
3. The court **GRANTS** the lead plaintiffs' motion for entry of an order for reimbursement of reasonable costs and expenses. Under 15 U.S.C. §78u-4(a)(4), the court **AWARDS:** (i) Lead Plaintiff Peter Cahill his reasonable costs and expenses (including lost wages) directly related to his representation of the Settlement Class in the amount of $23,000.00; and (ii) Lead Plaintiff Charles Caparelli his reasonable costs and expenses (including wages) directly related to his representation of the Settlement Class in the amount of $2,400.00.
4. The reimbursement awards for the class representatives are to be paid from the Settlement Fund immediately after the date this Order is executed subject to the terms, conditions, and obligations of the Stipulation, which terms, conditions, and obligations are incorporated herein.

Dated in Milwaukee, Wisconsin this 27th day of December, 2018.

BY THE COURT:

HON. PAMELA PEPPER
United States District Judge

EXHIBIT 11

2010 WL 4537550
Only the Westlaw citation is currently available.

This decision was reviewed by West editorial staff and not assigned editorial enhancements.

United States District Court,
S.D. New York.

In re FLAG TELECOM HOLDINGS, LTD. SECURITIES LITIGATION.
This Document Relates to: All Actions.

Master File No. 02–CV–3400 (CM)(PED).
|
Nov. 8, 2010.

DECISION AND ORDER APPROVING THE SETTLEMENT, CERTIFYING THE CLASS FOR SETTLEMENT PURPOSES, APPROVING THE PLAN OF ALLOCATION OF THE SETTLEMENT FUND, AND AWARDING ATTORNEYS' FEES

McMahon, District Judge.

***1** Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Lead Plaintiffs and Class Representatives Peter T. Loftin and Joseph Coughlin (collectively, "Lead Plaintiffs" or the "Class Representatives") have moved for an order granting: (1) final approval of the proposed settlement of this action (the "Action") against Citigroup Global Markets, Inc. ("CGMI") and seven former officers and directors (the "Individual Defendants") [1] of FLAG Telecom Holdings, Limited ("FLAG") [2] (collectively, with CGMI, "Defendants") for $24.4 million in cash; (2) final approval of the proposed Plan of Allocation of the settlement proceeds; (3) an award of attorneys' fees and reimbursement of counsels' expenses incurred in connection with the prosecution and settlement of the Action; and (4) an award to Lead Plaintiffs for their services in prosecuting the Action. The motion is not opposed by defendants.

1 The seven individual defendants are Andres Bande, Edward McCormack, Edward McQuaid, Philip Seskin, Daniel Petri, Dr. Lim Lek Suan and Larry Bautista.

2 Former Defendant/non-party FLAG filed a Chapter 11 bankruptcy petition on April 12, 2002. FLAG emerged from its Chapter 11 proceeding on October 9, 2002, with FLAG Telecom Group Limited ("FTGL") becoming its successor. In late 2003, FTGL was purchased by Reliance Gateway Net Limited, a subsidiary of Reliance Communications Limited.

I. PRELIMINARY STATEMENT

This Settlement is the culmination of more than eight years of intense, complex and unremitting litigation. The claims and defenses, which center on allegations of materially false statements made by Defendants in a scheme to artificially inflate the value of FLAG'S common stock, were sharply disputed and aggressively litigated by all parties. Despite the long pendency of this case, it would be a mistake to presume that the pace of the litigation was, at any time, "leisurely." A detailed chronology of the case, attached as Exhibit A to the moving Declaration of Brad N. Friedman, demonstrates that significant activity occurred throughout the entire eight year period. The major judicial proceedings which—included two motions to dismiss, a motion for judgment on the pleadings, a motion for partial summary judgment, numerous discovery motions, a petition for a Writ of Mandamus, class certification and the appeal of class certification to the Second Circuit, as well as significant litigation in the District Court for the District of Columbia and in the High Court of Justice in England—represent just a small fraction of the nearly-constant activity in the case.

Discovery and discovery-related disputes required massive time and effort: Plaintiffs reviewed more than 2.4 million pages of documents produced by Defendants; analyzed privilege logs with more than 9,000 entries; issued document requests by subpoena or Hague Request to over fifty (50) non-parties, including companies in France and England, and received nearly 300,000 pages of documents in response; and conducted sixteen (16) fact depositions, including seven taken in Europe pursuant to Hague Convention requests. Each of three proposed Class Representatives, as well as Plaintiffs' expert, were deposed by the Defendants. Frequent and protracted discovery disputes resulted in hundreds of letters and emails among the parties, and multiple written

opinions from multiple jurisdictions in the U.S., and in London.

Settlement negotiations in this case were extraordinarily complicated due, among other reasons, to a Directors and Officers Insurance policy involving twenty-two insurance carriers on eight separate layers of coverage. Negotiations were further complicated by parallel litigation,[3] which also had to be settled for the Individual Defendants to achieve total peace. The Settlement eventually was achieved with the assistance of the Honorable Daniel Weinstein, a retired California Superior Court Judge, after three full-day mediation sessions that were preceded by extensive written submissions from the parties on both liability and damage issues. Along the way, Plaintiffs also mediated a division of any recovery with the *Rahl* plaintiffs, in a mediation overseen by the Honorable Nicholas H. Politan, a retired Judge from the U.S. District Court for the District of New Jersey. Ultimately, all parties, including the *Rahl* plaintiffs, agreed to Judge Weinstein's "Mediator's Proposal."

3 *Rahl v. Bande,* C.A. No. 04–CV–1019 (CM)(PED) (*"Rahl"*).

***2** Even the drafting of the settlement documents was fiercely contested. From the time the Mediator's Proposal was signed by all parties on November 6, 2009, it took more than seven months, scores of emails, and multiple written submissions to and binding rulings by the mediator, for the parties to agree on the terms of the Stipulation and Agreement of Settlement and other settlement documents.

Members of the Class appear to agree with Lead Counsel's conclusion that the proposed Settlement is fair, reasonable and adequate and that the requested fee is fair and reasonable. Pursuant to the Court's Preliminary Order, as of August 31, 2010, over 43,450 copies of the Notice have been mailed to Class Members or their nominees. (Fishbein Aff., ¶ 8.) In addition, a Summary Notice was published in the national editions of The Wall Street Journal and over the National Circuit of *Business Wire* on July 21, 2010. (Andrejkovics Aff., ¶ 2.) The Notice informed potential Class Members of their right to object or request exclusion from the Class by September 22, 2010. No one has filed an objection to any aspect of the Settlement, including counsel's request for attorneys' fees and reimbursement of expenses, and no member of the Class has requested exclusion from the Class.

II. FACTUAL BACKGROUND%

At all times relevant to this Action, FLAG functioned as a global telecommunications network and services provider, offering a range of products and services to international telecommunications carriers, application service providers and Internet service providers. FLAG offered its shares to the general public in an initial public offering ("IPO") that commenced on February 11, 2000 and closed on February 16, 2000, during which FLAG sold 27,963,980 common shares at $24.00 per share and pre-IPO shareholders sold 8,436,320 shares at that price for total net proceeds to the company of approximately $634.6 million.

FLAG stated in its IPO Prospectus, which was incorporated into the Registration Statement filed with the SEC, that its goal was to become "the leading global carriers' carrier by offering a wide range of cost-effective capacity use options and wholesale products and services across our global network." To further that goal, FLAG was constructing the FLAG Atlantic cable system (the "FA–1 system"), a 50/50 joint venture with GTS TransAtlantic Carrier Services Ltd. ("GTS"), which would connect London and Paris to New York and have a potential capacity of fifteen times the maximum of the most advanced cable system in service on the Atlantic at that time. FLAG'S IPO prospectus stated, among other things, that FLAG intended to finance the construction of the FA–1 system with $600 million in bank financing and presale capacity commitments in excess of $750 million.[4]

4 In telecom industry parlance, "presales" are capacity sales made on a system prior to the date the system is put into service.

Plaintiffs allege that, in FLAG's IPO Prospectus and, indeed, throughout the Class Period, the market was misled about the source and nature of FLAG's presales relating to the FA–1 system, the demand for FLAG's telecommunications bandwidth, the value of FLAG's assets, and FLAG's profitability. Plaintiffs claim that FLAG's IPO Prospectus was misleading and omissive because, among other things, a substantial portion of the supposed $750 million in presales were "at cost"—including $200 million to FLAG'S co-venture partner, GTS. Plaintiffs allege that these "at cost" sales were mere financing facilities rather than true presales and, therefore, were not true indicators of profit or demand on the FA–1 system. Plaintiffs also allege that the motivating factor behind the "at cost" presales was to satisfy bank covenants so that FLAG could obtain financing to build the FA–1 system. Plaintiffs claim that, in turn, the motivating factor for FLAG's construction of the FA–1 system was to

create a positive story and, therefore, favorable conditions for an IPO of FLAG's common stock, notwithstanding the failure of FLAG's previously existing cable system and FLAG management's substantial doubts about FLAG and FA–1's future prospects.

***3** Plaintiffs also contend that certain Defendants (1) artificially and fraudulently inflated FLAG's reported revenues and EBITDA during fiscal years 2000 and 2001 by causing FLAG to enter into reciprocal "swap" sales with its competitors (such as Qwest and Global Crossing), which did not need the capacity, and then immediately booking the revenue from those sales while amortizing the cost over time; (2) failed to record a substantial impairment of FLAG'S long-lived assets in a timely fashion; and (3) made false and misleading statements about the demand in the marketplace for FLAG'S products and services between April 24, 2001 and November 6, 2001.

Plaintiffs' claims arise under Sections 11, 12(a)(2) and 15 of the Securities Act of 1933 (the "'33 Act claims") and Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b–5 promulgated thereunder (the "'34 Act claims").

Defendants contend that Plaintiffs' allegations are untrue and without any factual support and that Defendants made no false or misleading or omissive statements.

Two years after the IPO, on February 13, 2002, FLAG announced that "approximately 14% of GAAP revenues for the full year 2001 was associated with reciprocal transactions entered into with other telecommunications companies and service providers" and that FLAG anticipated that, if business conditions did not improve, the company would run out of cash sometime in 2003 unless it was able to obtain cash from another source. Following this announcement, the market price of FLAG common stock, which had traded as high as $41 per share during the Class Period, declined by 46% from its February 12, 2002 closing price, to a closing price of $0.36 per share on February 13, 2002, on trading volume more than 10 times its daily average.

III. HISTORY OF THE LITIGATION

A. *Plaintiffs' Investigation, the Initial Complaint, and the Appointment of Lead Counsel*

Beginning in early 2002, Plaintiffs conducted extensive legal and factual investigations into the facts ultimately alleged in the initial complaint. This investigation and research included, *inter alia:* collecting and analyzing FLAG'S financial statements and other public statements; assembling and reviewing a comprehensive collection of analyst reports, SEC filings and major financial news service reports on FLAG and the telecom industry from a variety of sources; consulting with Lead Counsels' in-house forensic accounting experts and analyzing the relevant provisions of GAAP and related commentary; and extensively researching the applicable law.

As a direct result of Plaintiffs' investigatory efforts, the initial complaint on behalf of plaintiff Peter T. Loftin was filed on May 1, 2002. On October 18, 2002, the Honorable William C. Conner consolidated several related actions under the caption above and appointed Mr. Loftin as Lead Plaintiff and Milberg LLP, f/k/a Milberg Weiss Bershad Hynes & Lerach LLP ("Milberg"), as Lead Counsel.

***4** Plaintiffs thereafter began work on a Consolidated Amended Complaint. Lead Counsel's in-house investigative unit, working with outside investigators both in the United States and in England, identified, located and interviewed more than thirty potential witnesses, six of whom became confidential sources who provided information set forth in the Complaint, In addition, Plaintiffs retained and consulted extensively with damages expert Dr. Scott Hakala. Plaintiffs filed a Consolidated Amended Complaint on March 20, 2003.

Lead Plaintiff and eventual Class Representative Peter Loftin played a central role during this period, devoting many days to assisting the research and development of Plaintiffs' claims. Mr. Loftin, who lost more than $24 million on his FLAG investment, was particularly instrumental in shaping Plaintiffs' claims against former defendant Verizon Communications, Inc. ("Verizon") and even contributed draft allegations for the complaint.

On November 19, 2003, J. Andrew Rahl, as Trustee of the Flag Litigation Trust (the "Trustee"), filed the *Rahl* action in State Court in New York against some of the same defendants as this Action, and others. The *Rahl* Defendants removed that action to this Court, where it was assigned to Judge Conner as a related case. Plaintiffs' Lead Counsel and Trustee's counsel in *Rahl* thereafter entered into an informal joint prosecution agreement.

B. *The Amended and Second Amended Complaint and the Motions to Dismiss the Second Amended Complaint*

Plaintiffs filed a 76–page, 226–paragraph Corrected Consolidated Amended Complaint on April 15, 2003, which three different sets of law firms (Shearman & Sterling for the Individual Defendants and former defendant FLAG; Milbank Tweed for CGMI; and Kirkland & Ellis for Verizon) moved and filed separate briefs against. Plaintiffs filed a Second Consolidated Amended Complaint (the "2CAC") that made a technical correction to the name of the defendant FLAG entity (from FTGL to FLAG), on December 1, 2003, and the prior briefing was deemed directed towards that pleading. In their various briefs, the then-defendants argued that (1) the challenged statements in the Registration Statement were neither false nor misleading; (2) Plaintiffs failed to allege facts to establish that the Defendants knew, but failed to disclose, information they had a legal duty to disclose; (3) the challenged statements regarding market demand and bandwidth pricing made during the Class Period were neither false nor misleading; and (4) the allegations of GAAP violations relating to allegedly improper swap transactions and the failure to timely write down assets were inaccurate and/or insufficiently specific and/or vitiated by the fact that the challenged transactions had been reviewed by outside auditors.

In a forty-three page decision issued on February 25, 2004, the Court dismissed the 2CAC without prejudice. [5]

5 *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 308 F.Supp.2d 249 (S.D.N.Y.2004).

C. *The Third Amended Complaint and the Motions to Dismiss That Complaint*

***5** Pursuant to the Court's Order, Plaintiffs then filed a 109–page, 299–paragraph Third Consolidated Amended Complaint ("3CAC"), on April 14, 2004. In response to the Court's concerns expressed in its February 25, 2004 decision about standing under Section 12(a) (2) of the '33 Act, in addition to Peter T. Loftin, the 3CAC included as an additional plaintiff Norman H. Hunter, who purchased 200 FLAG shares in FLAG'S IPO. Mr. Hunter sold those shares prior to the end of the Class Period. Joseph Coughlin, who purchased shares traceable to the IPO in February 2000 and additional shares in February 2001, and who held his shares throughout the Class Period, moved to intervene as an additional plaintiff and proposed class representative on February 11, 2005.

The 3CAC contained a plethora of new facts to support Plaintiffs' claims. On June 23, 2004, the Individual Defendants and FLAG moved to dismiss the 3CAC, renewing their claims regarding the inadequacy of Plaintiffs' allegations of misleading statements and omissions and, in addition, asserting that Hunter's claims were time-barred because of his late entry into the case. Verizon and CGMI, separately, moved to dismiss as well.

After extensive briefing, the Court issued a sixty-five page decision on January 12, 2005, denying in part and granting in part the motions to dismiss. [6] The Court held that Plaintiffs had not pled facts demonstrating that the statements regarding demand in FLAG's prospectus were false as of the time of the IPO; however, the Court held that Plaintiffs *had* "alleged facts sufficient to demonstrate that the Prospectus contained a material misstatement or omission in connection with the Alcatel Sales Agreement," an agreement by which FLAG had (allegedly) fraudulently inflated the amount of its FA–1 presales. [7] The Court also held that the 3CAC included allegations sufficient to sustain Plaintiffs' claims regarding: (1) improper accounting related to FLAG's swap transactions; (2) FLAG'S failure to write down the value of its assets in a timely manner; and (3) misstatements concerning demand and the optimistic outlook for FA–1 made by Bande and McCormack between April 1, 2001 and the end of the Class Period. The Court also held that the allegations in the 3CAC raised the requisite strong inference of *scienter* required for the '34 Act claims against Bande, McCormack and Bautista, but not Evans.

6 *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 352 F.Supp.2d 429 (S.D.N.Y.2005).

7 *Id.* at 451.

The Court upheld Plaintiffs' claims that FLAG'S financial results issued between June 23, 2000 and February 13, 2002 were materially false or misleading when issued because FLAG had entered into improper swap transactions to artificially inflate its revenues. In this regard, the Court specifically cited supporting statements Lead Counsel had obtained from confidential sources developed during its investigation. The Court further held that Hunter's claims had been tolled by the filing of Plaintiffs' May 2002 complaint and, thus, were timely raised in the 3CAC.

***6** Plaintiffs' '33 Act claims against defendants Bautista and Evans were dismissed because they had not signed the Registration Statement and, despite "a host of new allegations" in the 3CAC regarding Verizon's alleged status as a control person of FLAG and use of FLAG as a corporate

piggy bank, the Court again dismissed Plaintiffs' claims against Verizon. [8] Plaintiffs' claims against FLAG and Evans were dismissed with prejudice and the claims against Verizon were dismissed without prejudice. The motions to dismiss by Bande, McCormack, Rubin, Petri, McQuaid, Seskin, Suan, and Salomon Smith Barney, Inc. n/k/a CGMI, were denied.

8 *Id.* at 457.

D. ***Motion for Judgment on the Pleadings***

On June 23, 2005, CGMI moved to dismiss Plaintiffs' Securities Act claims pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, based on an affirmative defense of negative causation. CGMI also asserted that Plaintiffs' claims were barred by the statute of limitations. On January 23, 2006, the Court denied Defendants' motion in its entirety, holding that (1) Defendants had failed to establish "that the decline [in FLAG'S stock price] was not due, at least in part, to the alleged misrepresentations concerning pre-sales in Flag's Prospectus" and (2) that the new allegations in the 3CAC arose from the same conduct charged in the May 2002 complaint and were, therefore, not time-barred. [9]

9 *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 411 F.Supp.2d 377 (S.D.N.Y.2006).

E. ***Motion for Class Certification***

On February 11, 2005, Plaintiffs moved to certify a class and also moved to have Joseph Coughlin, who purchased shares traceable to the IPO in February 2000 and additional shares in February 2001, intervene as an additional plaintiff and proposed Class Representative. Defendants aggressively opposed this motion, filing a fifty-page brief and a declaration with more than 1,850 pages of exhibits.

Defendants also challenged the adequacy of the named Plaintiffs to represent the class, claiming that the Plaintiffs were insufficiently engaged in the management of the case and, in particular, were not sufficiently concerned with the then-pending indictment of Lead Counsel and its potential consequences, although Defendants themselves said they did "not [challenge] the competence or adequacy" of Lead Counsel. [10]

10 Defendants' Joint Memorandum of Law In Opposition to Plaintiffs' Motion for Class Certification, at 22 n. 65.

Plaintiffs responded with a twenty-page reply brief refuting Defendants' contentions, accompanied by a sworn Declaration from one of Plaintiffs' previously confidential sources (FLAG's former Vice President of Sales for North America); a sworn Declaration from damages expert Dr. Scott Hakala (eighty-five pages with exhibits); and a sworn Declaration of Lead Counsel (491 pages with exhibits). Defendants submitted a 256–page sur-reply (including exhibits). Plaintiffs filed a twenty-five page response to Defendants' sur-reply. On September 4, 2007, the District Court issued a fifty-page decision granting Plaintiffs' motion for class certification. The Court included in-and-out traders in the class because, "in light of Hakala's affidavit ... it is conceivable" that the in-and-out purchasers may be able to prove loss causation based on events prior to the end of the Class Period. [11] The Court appointed Peter T. Loftin, Norman H. Hunter, and Joseph Coughlin as the Class Representatives, and appointed Milberg as Class Counsel.

11 *Id.* at 167.

F. ***Discovery and Discovery Disputes***

***7** Discovery in this case was, itself, a multi-front war with battles frequently occurring simultaneously on two continents. Defendants opposed or objected to nearly every discovery request. Productions were often delayed, at least in part because documents, and especially critical accounting documents, were resident on difficult-to-access computer systems owned by overseas non-party FTGL. Disputes over discovery were frequently the subject of letters to the Court, resulting in numerous court appearances, multiple written Court decisions, a petition (by the Individual Defendants) for a Writ of Mandamus to the Court of Appeals, and thousands of pages of briefs and correspondence among the parties.

Plaintiffs have, since 2005, obtained approximately 2,391,600 pages of documents from the Individual Defendants, including approximately 2,381,800 pages of documents from FTGL that were produced by Defendant McCormack pursuant to an unusual court Order. In addition, Plaintiffs ultimately received 39,425 pages of accounting documents generated from FTGL's accounting system under an agreement with the Individual Defendants pursuant to which a third-party vendor generated reports and Plaintiffs (with the *Rahl* Trustee) paid one-half of the costs. Plaintiffs also obtained 37,725 pages of documents from CGMI and another 268,500 pages of documents from more than fifty (50) non-parties to whom Plaintiffs issued subpoenas and/or the Court issued Hague Convention requests in England and France.

Plaintiffs deposed sixteen witnesses, six of whom were deposed overseas pursuant to Requests for International Judicial Assistance Pursuant to the Hague Convention. At the time of the Settlement, eight additional Hague Convention requests had been issued by the Court and more overseas depositions had been scheduled.

In connection with class certification, the proposed Class Representatives, including Norman Hunter, were deposed and produced over 4,000 pages of documents. Defendants also deposed and obtained documents from Plaintiffs' damages expert, Dr. Scott Hakala.

At the time of the Settlement, Plaintiffs had issued Plaintiffs' Notice of Deposition to CGMI pursuant to Fed.R.Civ.P. 30(b)(6); Plaintiffs' Second Set of Supplemental Interrogatories to CGMI and Request for Production of Documents; and Plaintiffs' Corrected First Set of Requests for Admission to CGMI.

The parties to this Action and the *Rahl* litigation entered into a number of stipulations governing the conduct of discovery. While these stipulations greatly enhanced the efficiency of discovery for all parties, and permitted the plaintiffs in the two litigations each to access the discovery obtained by the other, the process of negotiating and drafting the stipulations was complex and extremely time-consuming.

It is totally unnecessary to recount here the massive amount of discovery litigation (and concomitant sanctions litigation) in which the parties engaged once discovery finally commenced (due to the PSLRA stay, discovery did not begin until 2005!). Suffice it to say that the parties are still unable to read each others' descriptions of their many discovery battles without having war break out anew. Nothing between the parties came easily.

***8** Plaintiffs' efforts to obtain discovery from non-parties also required huge investments of time and effort. As mentioned above, Plaintiffs issued subpoenas and/or the Court issued Hague Convention requests to more than fifty (50) non-parties. Several of those parties resisted discovery, necessitating collateral litigation. There was litigation between plaintiffs and the law firm of Gibson, Dunn & Crutcher, which previously represented FLAG in certain matters and which received a subpoena to produce documents in this case. Multiple hearings relating to discovery in this matter were held by the High Court of Justice in London, which required Plaintiffs to retain a Barrister in addition to their Solicitor. There were also interlocutory appeals relating to third party discovery in the Second Circuit.

G. *The Motions for Summary Judgment and the Operative Complaint*

On June 25, 2007, in response to the Individual Defendants' request for permission to file a motion for partial summary judgment dismissing Plaintiffs' ′33 Act claims in their entirety, Plaintiffs moved for leave to amend the 3CAC to further detail their ′33 Act claims. That motion was granted. Plaintiffs filed the Fourth Consolidated Amended Complaint on October 15, 2007. The final and operative complaint, the Corrected Fourth Consolidated Amended Complaint (the "Complaint"), was filed on January 10, 2008 . [12]

12 The Correction removed vestigal references to Verizon as a defendant.

After the completion of further discovery targeted specifically at the more detailed ′33 Act allegations, on May 13, 2008, both sets of remaining Defendants (the Individual Defendants and CGMI) filed a motion pursuant to Rule 56 of the Federal Rules of Civil Procedure seeking summary judgment on Plaintiffs' ′33 Act claims. Defendants asserted in their motion that the Registration Statement was not false or misleading because:

(i) FLAG had approximately $774 million in FA–1 presales at the time of the IPO and, therefore, the challenged statement at issue—that FLAG had "presales in excess of $750 million"—was true;

(ii) the challenged statement could not have misled potential investors about market demand because the statement was in a section of the Registration Statement dealing with financing, not demand;

(iii) even if a reasonable investor could have understood the challenged statements to be about demand for capacity on the FA–1 system, cautionary language in the Registration Statement about future demand for FLAG'S products was sufficient to make the Registration Statement on the whole not misleading; and

(iv) the specific presales transactions challenged by Plaintiffs were legitimate and the relevant terms of the transactions were disclosed in the Registration Statement.

Collectively, the briefing on this motion included over 175 pages of legal memoranda and over 3,300 pages of declarations and appendices.

On March 23, 2009, the Court issued a twenty-three page opinion denying Defendants' motion in its entirety. [13]

13 *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 618 F.Supp.2d 311 (S.D.N.Y.2009).

H. *The Rule 23(f) Appeal of Class Certification*

***9** On September 19, 2007, Defendants each filed a petition pursuant to Rule 23(f) of the Federal Rules of Civil Procedure seeking interlocutory review of the Court's class certification decision. The Second Circuit granted Defendants' Rule 23(f) petitions on December 12, 2007.

On July 22, 2009, the Second Circuit affirmed virtually all of the Court's class certification Order, rejecting all but one of the Defendants' arguments. However, the Second Circuit agreed with Defendants that "as a matter of law" there was insufficient evidence of loss causation prior to the last day of the Class Period for in-and-out traders to remain in the Class. The Court of Appeals therefore vacated the Court's class certification Order with respect to those Class Members who sold their FLAG common stock prior to February 13, 2002, and ruled that Norman H. Hunter, who sold all of his shares before the end of the Class Period, could not serve as a Class Representative. Unfortunately for Plaintiffs, this decision dramatically reduced the total potential recovery in this case, from more than $360 million to approximately $14.2 million. [14]

14 Prior to the Second Circuit's decision, Plaintiffs' damage expert, Dr. Scott Hakala, calculated that the potential damages in this case were in the range of $362.3 million to $465.5 million, depending on whether one used the economic loss method or the investment loss method of calculating damages, and whether the date of the first significant corrective disclosure is considered to be April 2, 2001 or June 18, 2001.

On August 5, 2009, Plaintiffs filed a petition pursuant to Rules 35 and 40 of the Federal Rules of Appellate Procedure seeking rehearing of the appeal and/or rehearing *en banc*. By Order dated October 6, 2009, the Second Circuit Court of Appeals denied Plaintiffs' petition for rehearing and/or rehearing *en banc*.

I. *Judge Conner's Death and the September 2009 Status Conference*

In early July 2009, the parties learned that the Judge who had so ably presided over this matter since its inception, Judge Conner, had died. Shortly thereafter the case was re-assigned, and on August 7, 2009, the parties were advised that the Court would hold a status conference on September 17, 2009. At that status conference, the Court informed the parties that it would not be overly sympathetic to resolving prior to trial yet another defense motion for partial summary judgment, this time on the '34 Act claims, because a trial was already a near certainty in light of the denial of the motion for summary judgment on the '33 Act claims. The Court also informed the parties that it thought the motion for rehearing in the Second Circuit (which was then pending) was unlikely to be granted, and that if it was in fact denied, the Court would not be sympathetic to a renewed motion, based on additional evidence, to certify a class of in-and-out traders. The Court set a schedule to complete discovery and advised the parties that it expected the case to be resolved—whether by settlement or trial—within the year.

IV. HISTORY OF THE SETTLEMENT NEGOTIATIONS

In a case of this complexity and magnitude, one expects to encounter certain obstacles to settlement. In this case, settlement negotiations were exponentially more complicated than usual due to the Byzantine structure of the Directors and Officers ("D & O") Insurance policy covering the Individual Defendants, disputes between the two sets of defendants and among the insurance carriers and the Defendants, and the existence of the parallel *Rahl* action.

***10** The $250 million D & O policy is comprised of one primary and seven excess coverage layers, with multiple carriers sharing each layer. For example, the second excess layer includes five carriers. In all, there are 22 different carriers, with several appearing in more than one layer. [15] According to the terms of the policy, the carriers in any particular layer are not obligated to make any payment unless and until all the coverage layers below are exhausted. This coverage structure results in a situation where any carrier that would be required to pay into a possible settlement can effectively veto the settlement even though that veto may expose carriers on higher layers to greatly increased liability; and, unless the vetoing carrier itself appears on a higher layer, it has no incentive to accept the settlement. Further

complicating the situation, certain carriers in the insurance tower, at various times, threatened to and/or did disclaim coverage of the '33 Act claims [16] and/or coverage of CGMI.

15 The first layer is $20 million (two carriers share 50/50); the second layer is $30 million after the first $20 million is exhausted (two carriers share 50/50); the third layer is $50 million after the prior $50 million is exhausted (five carriers have 20% each); the fourth layer is $50 million after the prior $100 million is exhausted (one carrier has 82.16%, plus two others); the fifth layer is $25 million after the prior $150 million is exhausted (one is 40% and three others are 20% each); and the sixth through eighth layers are $25 million each (each is a different single carrier).

16 Astoundingly, certain excess insurance policies in the tower did not "follow form."

The parties' long-running dispute over loss causation also posed a very significant obstacle to settlement. In addition to raising the issue in their motions to dismiss, motion for judgment on the pleadings, summary judgment motion, opposition to class certification and in their appeal of the class certification decision, Defendants continually asserted causation as a defense throughout the settlement negotiations, maintaining that damages were only a small fraction of those claimed by Plaintiffs.

A. *Judge Weinstein Presides Over the First Mediation Session Between Plaintiffs and the Individual Defendants*

On October 17, 2007, Plaintiffs' Lead Counsel (with the assistance of Mr. Loftin's personal in-house counsel), counsel for the Individual Defendants (with the assistance of defendant McCormack), and counsel for several of the insurance carriers, conducted a full-day mediation session before retired California Superior Court Judge Daniel Weinstein of JAMS. [17] Formal written mediation statements were submitted by both sides in advance of the mediation. At the Mediator's request, both sides also submitted a supplemental mediation statement on the issue of loss causation. At the beginning of the mediation counsel for both sides, as well as Mr. McCormack, made oral presentations. At the conclusion of the session Plaintiffs made a settlement demand to which the Individual Defendants did not respond, and the mediation ended without success.

17 CGMI and plaintiff's counsel in *Rahl* were not part of the initial mediation efforts.

B. *Periodic Efforts Continue Over the Next Year and a Half*

Although formal mediation did not resume until June 2009, Judge Weinstein periodically kept in contact with both sides, and even occasionally met in person with several of the insurance carriers to discuss this case—including at least once for breakfast in the summer of 2008. However, Lead Counsel refused to attend any further meetings absent a commitment that such a meeting would result in a meaningful response to the outstanding settlement. As the insurance carriers would not make such a commitment, no meeting occurred.

***11** In addition, Lead Counsel exchanged a few telephone calls with counsel for CGMI, to see whether CGMI had any interest in discussing settlement. Counsel for CGMI had no interest at that time in mediation, but was willing to consider a direct negotiation if the parties were in the same financial ballpark. It quickly became clear that the parties were not in the same ballpark, and so no such negotiations occurred.

C. *Judge Weinstein Presides Over the Second Mediation Session Between Plaintiffs and the Individual Defendants*

By Spring 2009, the insurance carriers finally agreed to make a meaningful response to Lead Counsel's outstanding settlement demand, and on June 2, 2009, Plaintiffs' Lead Counsel (again with the assistance of Mr. Loftin's in-house counsel), counsel for the Individual Defendants, and counsel for several of the insurance carriers (including counsel for certain additional insurance carriers who had not attended the prior mediation session), renewed their mediation efforts before Judge Weinstein. By this time, the primary insurance layer was entirely or almost entirely exhausted by defense costs. Once again, however, the mediation was unsuccessful.

D. *Judge Politan Presides Over a Mediation Session Between Plaintiffs and the Plaintiff in Rahl*

Lead Counsel and plaintiff's counsel in *Rahl* agreed that, for a variety of reasons, it would make sense if the plaintiffs in the two competing actions could agree (subject to the later approval by this Court now being sought) upon an allocation between them of any recovery in both cases. Accordingly, on June 24, 2009, Plaintiffs' Lead Counsel and counsel for the Trustee in *Rahl* conducted a full-day mediation session before

retired United States District Court Judge Nicholas H. Politan, to see whether these two sets of plaintiffs could agree upon a division between them of any future recovery. This mediation resulted in an agreement that the Class would receive 70% of any recovery from the Individual Defendants, plus 100% of any recovery from CGMI. Certain document production issues were also mediated and resolved as between the Trustee and the Class.

In retrospect, the importance of this agreement cannot be overstated. At the time—June 2009—the Second Circuit had not yet issued its ruling on loss causation. Had Lead Plaintiffs won the loss causation issue in the Circuit (as Lead Counsel reasonably believed they would) the 70–30 split with *Rahl* might well have turned out to be a mildly bad deal, or at least a neutral deal, for the Class. *However,* by "hedging" against the possibility of a bad result in the Circuit, Plaintiffs ultimately were able to achieve *more* than a full recovery in their negotiations with the Defendants. This agreement also removed a significant complication in connection with achieving a global settlement.

E. *Judge Weinstein Presides Over a Third Mediation Session. This Time Among the Plaintiffs in Both Cases, the Individual Defendants, and CGMI*

***12** The mediation before Judge Weinstein finally convened for the third time on October 29, 2009, this time with the addition of counsel for the Trustee, as well as counsel for CGMI, who learned about the planned mediation shortly before-hand and requested (and was granted) permission to attend. The parties did not reach agreement during this session. However, this session did eventually result in a "Mediator's Proposal" that was accepted by all parties on November 6, 2009. As a result of this proposal, and Plaintiffs' earlier agreement with the Trustee, Plaintiffs have agreed to settle this action for 70% of the $34 million in cash being paid on the Individual Defendants' behalf to settle this action and *Rahl,* plus $600,000 in cash being paid by CGMI (all of which is going to the Class in this Action). The total settlement consideration to the Class in this Action is $24.4 million.

F. *"Litigation" Ensues Before Judge Weinstein Over the Terms of the Final Settlement Agreement*

Even the signing of the Mediator's Proposal did not end the legal battle. Over a period of more than seven months after the Mediator's Proposal was signed, the parties exchanged multiple drafts of the Stipulation and Agreement of Settlement, Notice of Pendency and other documents, but were not able to resolve all outstanding issues. Fortunately, however, as part of the Mediator's Proposal to which all parties agreed, Judge Weinstein retained "binding authority" to resolve any disputes in connection with finalizing the settlement papers.

In February and March 2010, numerous issues were submitted to Judge Weinstein for decision pursuant this binding authority, and multiple responses and replies were submitted by Plaintiffs and the Individual Defendants. Additional disputes, as between the insurance carriers and the Individual Defendants, were also submitted to Judge Weinstein for resolution, thereby causing further delay. The Stipulation and Agreement of Settlement was finally executed on June 21, 2010.

V. THE ISSUANCE OF NOTICE AND THE REACTION OF THE CLASS TO THE PROPOSED SETTLEMENT

Subsequent to the Settlement, Lead Plaintiffs retained a claims administrator on behalf of the Class (the "Claims Administrator"). The Claims Administrator was chosen after a competitive bidding process and extensive negotiations thereafter to significantly reduce third party costs, such as broker nominee charges typically incurred during securities class action settlement administrations.

After the parties submitted documentation requesting preliminary approval of the Settlement, this Court entered an Order on June 23, 2010, preliminarily approving the Settlement embodied in the Stipulation (the "Preliminary Approval Order"). The Preliminary Approval Order: (1) approved a form of Notice; (2) approved the form of publication notice; (3) ordered that any Class members wishing to exclude themselves from the Class do so by letters postmarked no later than September 22, 2010; (4) ordered that any Class members wishing to object to the Settlement file their papers by September 22, 2010; and (5) ordered a fairness hearing to take place at 2 p.m. on October 29, 2010. The Court also approved the Claims Administrator in the Preliminary Approval Order.

***13** In accordance with the Preliminary Approval Order, on July 16, 2010, Lead Counsel caused the Notice to be mailed to all Class members who could be identified from FLAG'S stock transfer records and through the efforts of the Claims Administrator. As of August 31, 2010, a total of over 43,450 Notices were sent to potential Class members. (Fishbein Aff., ¶ 8.) Additionally, and also pursuant to the

Preliminary Approval Order, on July 21, 2010, a Summary Notice was published in the national editions of The Wall Street Journal and over the National Circuit of *Business Wire.* (Andrejkovics Aff., ¶ 2.)

The Notice provided a detailed description of: (1) the Action; (2) the nature of the claims; (3) the history of the litigation; (4) the potential outcome if this Action were to proceed to trial; (5) the terms of the proposed settlement and the Plan of Allocation, including the manner in which the Settlement Fund would be divided among the Class; (6) the process and deadline for filing objections, requests for exclusion and claim forms; (7) the date, time, and place of the Court's hearing to determine the fairness of the Settlement; (8) the right of Class members to be heard at the hearing; and (9) the claims to be released. The Notice also informed the Class that Lead Plaintiffs would apply for: (1) reimbursement of their expenses in the approximate amount of two million dollars, plus an award of attorneys' fees in the amount of 30% of the remaining balance of the Gross Settlement Fund after reimbursement of these expenses and payment of any PSLRA awards to the Lead Plaintiffs; and (b) awards to the Lead Plaintiffs for their services in prosecuting the Action in the amounts of $100,000 for Lead Plaintiff Peter T. Loftin and $5,000 for Lead Plaintiff Joseph Coughlin.

Both the Notice and Summary Notice are available on the Internet on the websites of Lead Counsel and the Claims Administrator and at the website flagtelecomsecuritiessettlement.com. To date, Lead Plaintiffs have paid $66,714.44 out of the Settlement Fund to cover the costs related to Settlement notice and administration.

Pursuant to the terms of the Notice and the Court's preliminary approval Order of June 23, 2010, Class Members have until September 22, 2010 to opt-out of or object to this Settlement pursuant to Fed.R.Civ.P. 23. No Class Members have exercised their right to opt out and no Class Members have objected to the proposed Settlement.

VI. THE COURT GRANTS FINAL APPROVAL TO THE PROPOSED SETTLEMENT

A. *The Standard for Evaluating Class Action Settlements*

The standard for reviewing a proposed class action settlement is whether the settlement is "fair, reasonable and adequate." *In re EVCI Career Colleges Holding Corp. Sec. Litig.,* Nos. 05 Civ. 10240(CM) *et. al.,* 2007 WL 2230177, at *3 (S.D.N.Y. July 27, 2001) (*citing Maywalt v. Parker & Parsley Petroleum Co.,* 67 F.3d 1027, 1079 (2d. Cir.1995)). "A proposed class action settlement enjoys a strong presumption that it is fair, reasonable and adequate if, as is the case here, it was the product of arm's-length negotiations conducted by capable counsel, well-experienced in class action litigation arising under the federal securities laws." *EVCI,* 2007 WL 2230177, at *4 (*citing In re Sumitomo Copper Litis.,* 189 F.R.D. 274, 280 (S.D.N.Y.1999)); *New York & Maryland v. Nintendo of Am.,* 775 F.Supp. 676, 680–81 (S.D.N.Y.1991)); *accord Wal–Mart Stores, Inc. v. Visa U.S.A., Inc.,* 396 F.3d 96, 116 (2d Cir.2005), *cert. denied,* 544 U.S. 1044, 125 S.Ct. 2277, 161 L.Ed.2d 1080 (2005). "There is a 'strong judicial policy in favor of settlements, particularly in the class action context.' " *In re Telik, Inc. Sec. Litig.,* 576 F.Supp.2d 570, 575 (S.D.N.Y.2008) (*quoting In re Paine Webber Ltd. P'ships Litig.,* 147 F.3d 132, 138 (2d Cir.1998)). Moreover, " 'great weight' is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation." *Maley v. Del Global Techs. Corp.,* 186 F.Supp.2d 358, 366 (S.D.N.Y.2002) (internal quotation and citation omitted).

***14** The presumption in favor of the negotiated settlement in this case is strengthened by the fact that settlement was reached in an extended mediation supervised by Judge Weinstein. *See In re Telik,* 576 F.Supp.2d at 576 ("Judge Weinstein's role in the settlement negotiations strongly supports a finding that they were conducted at arm's-length and without collusion."); *In re Elan Sec. Litig.,* 385 F.Supp.2d 363, 369 (S.D.N.Y.2005) ("[T]he Court has no reason to question that the Settlement was the product of extended 'arm's length' negotiations, including, among other things, the two-day settlement conference before Judge Politan."); *In re Interpublic Sec. Litig.,* Nos. 02 Civ. 6527(DLC), 03 Civ. 1194(DLC), 2004 WL 2397190, at *7 (S.D.N.Y. Oct. 26, 2004) (negotiations were arm's-length where, among other things, parties met with magistrate judge and document discovery was complete).

All parties were represented throughout the Settlement negotiations by able counsel experienced in class action and securities litigation: Plaintiffs by Brad N. Friedman of Milberg, LLP; CGMI by Douglas Henkin of Milbank, Tweed, Hadley and McCloy; and the Individual Defendants by Jerome Fortinsky of Shearman & Sterling. The Trustee was represented by Grant & Eisenhofer. *See In re Global Crossing Sec. & ERISA Litig.,* 225 F.R.D. 436, 461 (S.D.N.Y.2004) ("Both sides have been represented well.... Counsel for

plaintiffs, the Settling Defendants, and STB possessed the requisite expertise to negotiate a fair settlement."); *In re NASDAQ Market–Makers Antitrust Litig.,* 187 F.R.D. 466, 474 (S.D.N.Y.1998) (approving settlement where "[t]he process by which the parties reached the Proposed Settlements was arm's-length and hard fought by skilled advocates").

In sum, the Settlement was negotiated at arm's-length by sophisticated counsel before an experienced mediator, and after the completion of significant discovery. These facts establish that the process leading to the Settlement was fair to absent Class Members. The Court should therefore accord the strongest presumption of fairness to the Settlement in this case.

B. *The Settlement Is Fair, Reasonable and Adequate and in the Best Interests of the Class*

Courts in this Circuit evaluate the fairness, adequacy and reasonableness of a class action settlement according to the *"Grinnell* factors:"

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of the litigation.

***15** *City of Detroit v. Grinnell Corp.,* 495 F.2d 448, 463 (2d Cir.1974); *see also County of Suffolk v. Long Island Lighting Co.,* 907 F.2d 1295, 1323–24 (2d Cir.1990); *In re Sumitomo,* 189 F.R.D. at 281. "In finding that a settlement is fair, not every factor must weigh in favor of settlement, 'rather the court should consider the totality of these factors in light of the particular circumstances.' " *In re Global Crossing,* 225 F.R.D. at 456 (*quoting Thompson v. Metropolitan Life Ins. Co.,* 216 F.R.D. 55, 61 (S.D.N.Y.2003)).

i. Continued Litigation Would Be Complex and Consume Substantial Judicial and Private Resources

The complexity, expense and possible duration of this litigation weigh in favor of settlement. "[I]n evaluating the settlement of a securities class action, federal courts, including this Court, 'have long recognized that such litigation is notably difficult and notoriously uncertain.' " *Sumitomo,* 189 F.R.D. at 281 (*quoting In re Michael Milken and Assoc. Sec. Litig.,* 150 F.R.D. 46, 53 (S.D.N.Y.1993)). Indeed, the courts recognize that "[s]ecurities class actions are generally complex and expensive to prosecute." *In re Gilat Satellite Networks, Ltd.,* No. CV–02–1510, 2007 WL 1191048, at *10 (E.D.N.Y. Apr. 19, 2007). Thus, "[c]lass action suits readily lend themselves to compromise because of the difficulties of proof, the uncertainties of the outcome, and the typical length of the litigation." *In re Luxottica Group S.p .A. Litig.,* 233 F.R.D. 306, 310 (E.D.N.Y.2006) (citations omitted).

Although Plaintiffs have conducted significant fact discovery, the costs and duration of completing fact discovery, conducting expert discovery, additional motion practice, trial preparation, the trial itself, post-trial motions, and any appeals would be substantial. At the time this proposed Settlement was reached, six additional overseas depositions were scheduled. In total, at least twelve additional depositions would have been conducted by Plaintiffs in preparation for trial. Expert discovery would be particularly expensive and time-consuming as both sides would require the services of experts in the telecommunications industry in addition to accounting and damages experts.

Finally, whatever the outcome of any eventual trial, which would likely require several months and involve the introduction of hundreds (if not thousands) of exhibits, vigorously contested motions and significant expenses, it is virtually certain that appeals would be taken from any verdict. All of the foregoing would delay the ability of the Class to recover for years assuming, of course, that Plaintiffs would ultimately be successful in proving their claims. Settlement at this juncture unequivocally results in a substantial and tangible present recovery for the Class, without any attendant risk of delay, or of continued litigation through, for example, summary judgment on the '34 Act claims, a protracted trial, and post-trial proceedings. *See Hicks v. Stanley,* No. 01 Civ.

10071(RJH), 2005 WL 2757792, at *6 (S.D.N.Y. Oct.19, 2005) ("Further litigation would necessarily involve further costs; justice may be best served with a fair settlement today as opposed to an uncertain future settlement or trial of the action.").

ii. The Reaction of the Class to the Proposed Settlement Has Been Overwhelmingly Positive

***16** The reaction of the Class to the Settlement is a significant factor—perhaps the most significant factor to be weighed in considering its adequacy. *In re Veeco Instruments Secs. Litig.* (*"Veeco I"*), No. 05 MDL 0165(CM), 2007 WL 4115809, at *7 (S.D.N.Y. Nov.7, 2007); *see also Maley,* 186 F.Supp.2d at 362; *In re American Bank Note Holographics, Inc., Sec. Litig.,* 127 F.Supp.2d 418, 425 (S.D.N.Y.2001).

The Class's reaction to the Settlement in this case is overwhelmingly positive. More than 43,450 Notices were mailed to Class Members or their nominees. To date, no Class Members have exercised their right to opt out and no Class Members have objected to the proposed Settlement. This is an exceptionally strong indication of the fairness of the Settlement. *See Strougo v. Bassini,* 258 F.Supp.2d 254, 258 (S.D.N.Y.2003) (*citing In re SmithKline Beckman Corp. Sec. Litig.,* 751 F.Supp. 525, 530 (E.D.Pa.1990) ("Both the utter absence of objections and the nominal number of shareholders who have exercised their right to opt out ... militate strongly in favor of approval of the settlement."). The absence of objections to the Settlement supports the inference that it is fair, reasonable and adequate. *See Maley,* 186 F.Supp.2d at 374.

iii. Settlement Was Reached at an Advanced Stage of Litigation After Significant Discovery and Extensive Consultation with a Damages Expert

The advanced stage of this litigation and the extensive amount of discovery completed militate in favor of approval of the Settlement. As detailed above, the parties have been vigorously litigating this case for more than eight years, through multiple motions to dismiss, a motion for judgment on the pleadings, discovery and countless discovery motions, a class certification motion, a motion for partial summary judgment, and an interlocutory appeal of the Court's class certification Order. Plaintiffs have reviewed more than 2.5 million pages of documents and taken 16 depositions. Defendants have deposed each of the Class Representatives plus plaintiff Norman Hunter and Plaintiffs' damages expert. The parties conducted multiple full-day mediation sessions before Judge Weinstein (plus Plaintiffs' and the Trustee's mediation before Judge Politan) and exchanged extensive mediation statements on both liability and damages. Throughout all phases of the litigation, Lead Counsel has consulted with and received the advice of Dr. Scott Hakala, a recognized expert on the subject of damages in securities cases.

Thus, the parties reached an agreement to settle the litigation at a point when they had a well-informed understanding of the legal and factual issues surrounding the case. Having sufficient information to properly evaluate the strengths and weaknesses of their case, Lead Counsel were able to settle the litigation on terms highly favorable to the Class without the substantial risk, uncertainty, and delay of continued litigation. *See Veeco I,* 2007 WL 4115809, at *8 ("It is evident that Plaintiffs have a clear view of the strengths and weaknesses of their case and of the adequacy of the Settlement.") (internal quotations omitted) (*citing Meijer, Inc. v. 3M,* Civil Action No. 04–5871, 2006 WL 2382718, at *14 (E.D.Pa. Aug.14, 2006) (Parties had "an adequate appreciation of the merits" of case at time settlement negotiated where Class Counsel, *inter alia,* reviewed hundreds of thousands of pages of documents and depositions and consulted extensively with economic expert; and parties engaged in mediation, including exchange of mediation statements regarding merits of respective positions in order to inform and facilitate negotiations.)).

iv. Establishing Liability, Particularly with Respect to Defendants' *Scienter,* Involves Significant Risks

***17** While Plaintiffs maintain that their claims against Defendants are valid, they would face significant legal challenges if this case were to continue, and there is a real risk that they would ultimately fail to establish liability. "Courts routinely recognize that securities class actions present hurdles to proving liability that are difficult for plaintiffs to clear." *In re Top Tankers, Inc., Sec. Litig.,* No. 06 Civ. 13761(CM), 2008 WL 2944620, at *4 (S.D.N.Y. July 31, 2008); *see In re AOL Time Warner, Inc. Sec. & ERISA Litig.,* No. MDL 1500, 02 Civ. 5575(SWK), 2006 WL 903236, at *4 (S.D.N.Y. Apr. 6, 2006) ("The difficulty of establishing liability is a common risk of securities litigation."); *In re Indep. Energy Holdings PLC Sec. Litig.,* No. 00 Civ. 6689(SAS), 2003 WL 22244676, at *3 (S.D.N.Y. Sept.29, 2003) (noting difficulty of proving *scienter*); *see also Tellabs, Inc. v. Makor Issues & Rights, Ltd.,* 551 U.S. 308, 321–22, 127 S.Ct. 2499, 168 L.Ed.2d 179 (2007).

In their various motions, answers to the Complaint, and during the multiple mediation sessions, the Individual Defendants have asserted that:

- the disclosures in FLAG's registration statement regarding presales were accurate and not misleading;
- the Individual Defendants' Class Period statements regarding demand were true and not misleading;
- all of FLAG's accounting for capacity sales during the Class Period was accurate and in accordance with GAAP;
- the allegedly improper "swap" transactions were legitimate business transactions and were properly accounted for;
- FLAG was not required to report an impairment during the Class Period; and
- Plaintiffs could not prove causation and damages.

Defendant CGMI has asserted numerous additional defenses, including negative causation and that it conducted sufficient due diligence. Had this case not settled, Defendants could be expected to gather additional evidence for each of these defenses and to assert them in a motion for summary judgment and/or at trial and, if necessary, on appeal.

The Individual Defendants have also claimed that Plaintiffs face insurmountable hurdles in proving *scienter* against the three remaining Individual Defendants on Plaintiffs' '34 Act claims. Plaintiffs believe they would ultimately prevail on this issue but acknowledge that proving *scienter* in this case would be particularly challenging in light of the following: (1) there is no evidence that any of the '34 Act Defendants exercised options on or sold FLAG stock during the Class Period; (2) the '34 Act Defendants claim to have relied in good faith on the advice of multiple sets of accountants who approved the relevant accounting decisions; and (3) the '34 Act Defendants claim their alleged misstatements were supported by contemporaneous documents and reports that, in and of themselves, negate any inference of *scienter*.

Moreover, at trial, Plaintiffs would face the additional risks posed by conflicting evidence and testimony. Since many witnesses likely would be aligned with Defendants and, as a result, would be hostile to Plaintiffs' case, Plaintiffs would be required to rely primarily on documents and expert witnesses to establish their case. The risk of establishing liability would be exacerbated by the risks inherent in all shareholder litigation, such as the unpredictability of a lengthy and complex jury trial, the risks that witnesses would suddenly become unavailable or jurors could react to the evidence in unforeseen ways, and the risks that the jury would find that Defendants reasonably believed in the propriety of their actions at the time and, consequently, Plaintiffs failed to prove *scienter*.

v. Establishing Recoverable Damages, Particularly with Respect to Loss Causation, Also Involves Significant Risks

***18** Plaintiffs also faced significant risk in proving causation and the amount of damages.

> In order to prove loss causation and damages, Lead Plaintiff would be required to prove that Defendants' alleged false and misleading statements and omissions of material fact inflated the price of [defendant's] common stock during the Class Period, and that upon the Company's disclosure of such misinformation, the price of [defendant's] common stock dropped and damaged Lead Plaintiff and the Class. Lead Plaintiff would also be required to prove the amount of artificial inflation in the price of [defendant's] common stock.

In re Top Tankers, 2008 WL 2944620, at *5. Plaintiffs anticipate that, in the absence of settlement, Defendants would move for summary judgment on the ' 34 Act claims at the close of discovery, renewing the multiple arguments made in their motions to dismiss and for judgment on the pleadings.

The most significant risk to Plaintiffs' claim for damages was actually realized in this case, when the Second Circuit held, as a matter of law, that there was insufficient evidence on which in-and-out traders could establish the element of loss causation. As previously noted, this decision probably caused a very significant reduction in Plaintiffs' recoverable damages, from over $360 million to approximately $14.2 million. Although Plaintiffs initially considered a motion asking that the District Court reformulate the Class to include

at least some of the individuals excluded by the Second Circuit's decision, the likelihood of success on such a motion was slim, and the Court so advised the parties during the September 17, 2009 status conference.

With regard to the damages remaining viable in the case, Defendants likely would contend that actual damages, if indeed there were any at all, were far less than even $14.2 million. First, Defendants would claim that any losses suffered by the Class during the Class period were caused not by the acts of the Individual Defendants but, rather, by the general stock market decline and, in particular, the collapse of the telecommunications market. Second, Defendants would argue that the decline in FLAG'S stock price following its announcement on February 13, 2002 resulted primarily from statements indicating that the company might not be able to continue operations in 2003, not from the "corrective disclosures" related to the fraud alleged by Plaintiffs. Finally, even if Plaintiffs prevailed on issues of liability and damage causation, Defendants would likely present an expert to testify that the proper calculation of damages would result in a recovery of only minimal damages at most.

Even in a less challenging case, "[c]alculation of damages is a 'complicated and uncertain process, typically involving conflicting expert opinion' about the difference between the purchase price and the stock's 'true' value absent the alleged fraud." *Global Crossing,* 225 F.R.D. at 459 (*quoting Mayley,* 186 F.Supp.2d at 365). Undoubtedly, in this action, establishing the amount of damages at trial would have resulted in a "battle of experts." The jury's verdict with respect to damages would thus depend on its reaction to the complex testimony of experts, a reaction that is inherently uncertain and unpredictable. *See EVCI Career College,* 2007 WL 2230177, at *8 (*citing In re PaineWebber Ltd. P'ships Litig.,* 171 F.R.D. 104, 129 (S.D.N.Y.1997), *aff'd,* 117 F.3d 721 (2d Cir.1997) (noting unpredictability of outcome of battle of damage experts)).

***19** Thus, the very substantial challenges facing Plaintiffs in their attempts to prove liability, loss causation and damages weigh heavily in favor of approval of the proposed Settlement.

vi. The Risk of Maintaining a Class Action Through Trial Also Weighs in Favor of Approval

In addition to the risks of establishing liability and damages, the nature of the Second Circuit's decision was such that there remained a risk of maintaining class status through trial. From the beginning of the case, Defendants strongly contested class certification on various grounds. It is likely that, after the conclusion of expert discovery, Defendants would renew their argument that conflicts among class members relating to liability and damages make class treatment improper or, alternatively, require the certification of subclasses. The Second Circuit, while upholding the certification of a single class including both ′33 Act and ′34 Act plaintiffs, cautioned:

> [W]e do not suggest that the issue described by Defendants does not deserve the careful and continued attention of the district court, but merely that it does not inevitably lead at the present time to the decertification of the class. As the lower court recognized, if Plaintiffs are able to prove loss causation with respect to both the ′33 and ′34 Act claims, then it will be necessary for a jury "to determine the extent of harm caused by each [misstatement], and it is here that the interests of class members could diverge." We are confident in the lower court's wisdom and ability to utilize the available case management tools to see that all members of the class are protected, including but not limited to the authority to alter or amend the class certification order pursuant to Rule 23(c)(1)(C), to certify subclasses pursuant to Rule 23(c)(5), and the authority under Rule 23(d) to issue orders ensuring "the fair and efficient conduct of the action."

In re Flag Telecom Holdings, Ltd. Sec. Litig., 574 F.3d 29, 37 (2d Cir.2009) (internal citations omitted) (*citing In re Flag,* 245 F.R.D. at 160). Thus, there remained in this case the very real risk of decertification or modification of the class at a later stage of the proceedings. *See In re NASDAQ Market–Makers Antitrust Litig.,* 187 F.R.D. 466, 476–77 (S.D.N.Y.1998) (decertification can occur if management problems arise during litigation; decertification or reversal of certification would deprive class of any recovery).

vii. The Ability of the Defendants to Withstand a Greater Judgment

If Plaintiffs somehow were successful in undoing the implications of the Second Circuit's loss causation ruling, then the ′34 Act Defendants would lack sufficient insurance, and presumably would lack sufficient resources, to pay a judgment in the full amount of the claimed damages. CGMI recently needed a well-publicized infusion of taxpayer dollars just to survive. In any event, "the mere ability to withstand a greater judgment does not suggest the settlement is unfair." *AOL Time Warner,* 2006 WL 903236, at *42, This is particularly true where, as here, the settlement appears

to exceed the recoverable damages, in light of the Second Circuit's ruling.

viii. The Settlement is Reasonable When Viewed in Light of the Best Possible Recovery and the Risks of Continued Litigation

***20** The last two substantive factors courts consider are the range of reasonableness of the settlement funds in light of (1) the best possible recovery and (2) litigation risks. In analyzing these last two factors, the issue for the Court is not whether the Settlement represents the "best possible recovery," but how the Settlement relates to the strengths and weaknesses of the case. The Court "consider[s] and weigh[s] the nature of the claim, the possible defenses, the situation of the parties, and the exercise of business judgment in determining whether the proposed settlement is reasonable." *Grinnell,* 495 F.2d at 462. Courts agree that the determination of a "reasonable" settlement "is not susceptible of a mathematical equation yielding a particularized sum." *PaineWebber,* 171 F.R.D. at 130 (*quoting Milken,* 150 F.R.D. at 66). Instead, "in any case there is a range of reasonableness with respect to a settlement." *Newman v. Stein,* 464 F.2d 689, 693 (2d Cir.1972); *see Indep. Energy,* 2003 WL 22244676, at *4.

Under the proposed Settlement, the Class will receive $24.4 million, well in excess of the $14.2 million estimated by Plaintiffs' expert to be the potential damages in light of the Second Circuit ruling excluding in-and-out traders from the Class. More aggressive methods of calculation could result in damages ranging from approximately $25 million to approximately $120 million .[18] Even under the most favorable, $120 million scenario, the proposed settlement amounts to over 20% of the potential damages, well within the "range of reasonableness." *See In re Merrill Lynch Research Rep. Sec. Litig.,* Nos. 02 MDL 1484(JFK), 02 Civ. 3176(JFK), 02 Civ. 7854(JFK), 02 Civ. 10021(JFK), 2007 WL 313474, at *10 (S.D.N.Y. Feb. 1, 2007) (settlement representing 6.25% of estimated damages found to be "at the higher end of the range of reasonableness of recovery in class action securities litigations"); *In re PaineWebber,* 171 F.R.D., at 132 (recovery between 7% and 20% is "well within the range of reasonableness"); *see also In re Telik,* 576 F.Supp.2d at 580 (settlement representing 25% of recoverable damages is "well above that in most securities class actions"); *Veeco I,* 2007 WL 4115809, at *11 (settlement representing 23.2% of possible recovery is "squarely within the range of reasonableness") (internal quotations omitted).

18 To achieve these results, Class Members (those who held their shares throughout the Class Period) would have to prove loss causation prior to the end of the Class Period notwithstanding the Second Circuit's holding that "as a matter of law" there is insufficient evidence of such loss causation. In addition, to obtain the most favorable damages scenario ($120 million), Plaintiffs would need to argue that the Court should calculate damages based on the "constant percentage inflation" method, not the "constant dollar" method —*i.e.,* that artificial inflation (and, consequently, damages) should be measured by the *percentage* by which FLAG'S stock price dropped when corrective information was revealed to the market, not simply by the *dollar amount* by which FLAG's price dropped upon the disclosure of corrective information. While Plaintiffs believe that each of these approaches for calculating legally compensable damages is economically sound, and while valid legal and factual arguments exist in support of each of these approaches, such approaches are not universally accepted and have not been accepted by all courts. *See, e.g., In re Williams Sec. Litig.,* 496 F.Supp.2d 1195, 1270 (N.D.Okla.2007) (rejecting the "constant percentage inflation" method), *aff'd,* 558 F.3d 1144 (10th Cir.2009).

By all measures, the proposed Settlement compares favorably with settlements reached in other securities class actions in recent years. According to objective data recently published by Cornerstone Research, the $24.4 million recovery here is more than three times the median settlement ($7.4 million) in class actions reported during the period 1996 through 2008 and three times the median settlement ($8.0 million) reported for 2009 settlements. The median settlement in class actions securities cases was 2.9% of estimated damages for the period 2002 through 2008 and 2.3% of estimated damages in 2009. In cases with estimated damages of less than $50 million, the median settlement was 11.4% of estimated damages for the period 2002 through 2008 and 12% of estimated damages in 2009. Here, the settlement amount represents 170% of the potential damages (with damages of $14.2 million), and 20% of the maximum potential damages under the most aggressive possible approach (with damages of $120 million).

***21** In light of these circumstances and all of the delay and uncertainty that would be inherent in continued litigation, the

Settlement falls well within the range of possible recovery considered fair, reasonable and adequate.

VII. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE

A Plan of Allocation is fair and reasonable as long as it has a "reasonable, rational basis." *Maley,* 186 F.Supp.2d at 367. Courts recognize that "the adequacy of an allocation plan turns on whether counsel has properly apprised itself of the merits of all claims, and whether the proposed apportionment is fair and reasonable in light of that information." PaineWebber, 171 F.R.D. at 133. An allocation formula need only have a reasonable and rational basis, particularly if recommended by experienced and competent counsel. Counsel's conclusion here that the Plan of Allocation is fair and reasonable is therefore entitled to great weight. *American Bank Note,* 127 F.Supp.2d at 430 (approving allocation plan and according counsel's opinion "considerable weight" because there were "detailed assessments of the strengths and weaknesses of the claims asserted, the applicable damages, and the likelihood of recovery").

The Plan of Allocation proposed herein has been prepared by Plaintiffs' Lead Counsel utilizing their Damages Expert's report and data concerning causation and damages. The Plan reflects the proposition that the price of FLAG common stock was artificially inflated from the beginning of the '33 Act Class Period on February 11, 2000, and at the beginning of the '34 Act Class Period on March 6, 2000, and through February 12, 2002, but that much of the artificial inflation was suddenly eliminated on February 13, 2002 when FLAG made disclosures that at least partially corrected its prior misstatements, and that any remaining artificial inflation was eliminated by April 11, 2002. The Plan reflects the requirements for establishing damages promulgated by *Dura Pharmaceuticals, Inc. v. Broudo,* 544 U.S. 336, 125 S.Ct. 1627, 161 L.Ed.2d 577 (2005), and complies with the requirements of the PSLRA.

The Plan of Allocation separately allocates the Net Individual Defendants' Settlement Fund differently than the CGMI Settlement Fund, based on the fact that CGMI was only alleged to be liable under the Securities Act for the IPO, while the Individual Defendants were alleged to be liable under both the Securities Act for the IPO and under Section 10(b) of the Exchange Act for the Class Period.

The Plan provides for the distribution of the Net Individual Defendants' Settlement Fund to all Class Members on a *pro rata* basis based on a formula that takes into account the alleged artificial inflation paid on the shares of FLAG stock purchased during the entire period February 11, 2000 through February 12, 2002, that were still held at the close of trading on February 12, 2002.

The Plan separately provides for the distribution of the Net CGMI Settlement Fund to all IPO Class Members on a *pro rata* basis based on a formula that takes into account the alleged artificial inflation paid on shares of FLAG stock purchased during the IPO period February 11, 2000 through May 10, 2000, that were still held at the close of trading on February 12, 2002.

***22** The Plan's formula subtracts the Asserted Value of the shares on the day of purchase from the purchase price actually paid to calculate the amount of artificial inflation allegedly paid, and either uses that, or a maximum of $5.08 per share, the amount by which the corrective disclosure reduced the alleged inflation, to give the Claimant a "Recognized Claim" from those shares. If the shares were sold after February 12, 2002 for more than their Asserted Value, then the amount received in excess of the Asserted Value can reduce the Recognized Claim. The Net Individual Defendants' Settlement Fund will be distributed *pro rata* to Class Members who submit acceptable Proofs of Claim ("Authorized Claimants") based on their particular Recognized Claim as compared to the total of all Class Members' Recognized Claims. The Net CMGI Settlement Fund will be distributed *pro rata* to Authorized Claimants based on their particular IPO Recognized Claim as compared to the total of all IPO Class Members' Recognized Claims.

The Plan of Allocation is set forth in full in the Settlement Notice, and there have been no objections to the Plan.

Accordingly, the court concludes that the Plan of Allocation provides a fair and reasonable method for allocating the Net Settlement Funds among Class Members based on their relative compensable losses, and should be approved.

VIII. LEAD COUNSEL'S REQUEST FOR FEES AND EXPENSES IS FAIR AND REASONABLE

Lead Counsel, having achieved recovery of $24.4 million in what appears to be a case worth substantially less, seek reimbursement of expenses in the amount of $1,910,420.76, plus an award of attorneys' fees in the amount of 30% of the *remaining* balance of the Settlement Fund *after* reimbursement of these expenses and payment of any PSLRA

awards to the Class Representatives; *i.e.,* Lead Counsel seek a fee award that is 30% of the Settlement Fund "net" of expenses and awards to the Class Representatives. On the more traditional "gross" basis, this would amount to an award of only approximately 27.5%. In dollar terms this amount—approximately $6,715,374, plus a *pro rata* share of the accrued interest—is less than 32% of Lead Counsel's approximately $21,000,000 of lodestar in this case.

The $24.4 million Settlement obtained for the benefit of the Class is the result of literally tens of thousands of hours spent by Lead Counsel and the skill and perseverance of Lead Counsel in litigating this Action. It represents a remarkable result for the Class in a complex case that posed a great many obstacles to recovery. Lead Counsel's considerable expenditure of time and resources on a difficult and protracted case, where Lead Counsel ultimately obtained a superior result in light of the size of the Class and the amount of recoverable damages, justifies the requested fee.

Lead Counsel devoted over 45,500 hours to the prosecution of this case over more than eight years. Lead Counsel prosecuted the Action on an entirely contingent-fee basis. The significant outlay of cash and personnel resources by Lead Counsel has been completely at risk. Given the uncertainties inherent in securities class actions generally and the difficulties in this particular case, there was a significant possibility that Lead Counsel would recover nothing for their substantial efforts. They are in any event recovering only a portion of their outlay.

***23** Courts in this District and throughout the nation, recognizing the risks and effort generally expended by counsel to obtain favorable results, have not hesitated to award 30% of the "gross" recovery, or more, in complicated securities fraud cases such as this. Furthermore, the Settlement amount here far exceeds the national medians —in straight dollar terms and as a percentage of the recovery compared to the total alleged damages—for class action securities settlements after the passage of the PSLRA.

The reaction of the Class (or, rather, the lack of reaction of the Class) to the proposed fee award supports Lead Counsel's request. The support of the Class is not surprising, for even after payment of expenses of $1,910,420.76, PSLRA awards to Loftin of $100,000 and to Coughlin of $5,000, and Lead Counsel's requested fee of 30% of the remainder, the net payment to the Class—approximately $15,669,205, plus interest—still would be more than 100% of a $14.2 million damage figure.

A. *Lead Counsel Are Awarded Fees from the Common Fund Created as a Result of the Settlement*

Courts have long recognized that " 'attorneys who create a common fund to be shared by a class are entitled to an award of fees and expenses from that fund as compensation for their work.' " *Veeco I,* 2007 WL 4115809, at *2 (*quoting American Bank Note,* 127 F.Supp.2d at 430); *see Boeing Co. v. Van Gemert,* 444 U.S. 472, 100 S.Ct. 745, 62 L.Ed.2d 676 (1980). The purpose of the common fund doctrine is to fairly and adequately compensate class counsel for services rendered and to prevent the unjust enrichment of persons who benefit from a lawsuit without shouldering its costs. *Mills v. Electric Auto–Lite Co.,* 396 U.S. 375, 392, 90 S.Ct. 616, 24 L.Ed.2d 593 (1970). Moreover, awards of attorneys' fees from a common fund "serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons, and to discourage future misconduct of a similar nature." *In re Telik,* 576 F.Supp.2d at 585. Accordingly, Lead Counsel are entitled to an award of attorneys' fees and expenses from the Settlement Fund.

Courts traditionally have used two methods to calculate attorneys' fees in common fund cases: the percentage method, which awards attorneys' fees as a percentage of the common fund created for the benefit of the class; and the lodestar/multiplier or "presumptively reasonable fee" approach, which multiplies the number of hours expended by counsel by the hourly rate normally charged for similar work by attorneys of comparable skill and experience, and enhances the resulting lodestar figure by an appropriate multiplier to reflect litigation risk, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors. *Savoie v. Merchants Bank,* 166 F.3d 456, 460 (2d Cir.1999). The Second Circuit has held that both the percentage and lodestar/multiplier methods are available to district courts in awarding attorneys' fees in common fund cases. *Goldberger v. Integrated Res., Inc.,* 209 F.3d 43, 50 (2d Cir.2000). However, as has often and emphatically been noted, the percentage of recovery methodology is considered the "most efficient and logical means" for calculating attorneys' fees. *In re Telik,* 576 F.Supp.2d at 584.

***24** Under either method—percentage or lodestar/multiplier —the fees awarded in common fund cases must be "reasonable" under the circumstances. *Goldberger,* 209 F.3d at 47; *In re Fine Host Corp. Sec. Litig.,* No. MDL 1241, 3:97–CV–2619 JCH, 2000 WL 33116538, at *4 (D.Conn. Nov.8,

2000). The Second Circuit has instructed that, in the exercise of their discretion,

> [D]istrict courts should continue to be guided by the traditional criteria in determining a reasonable common fund fee, including: "(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."

Goldberger, 209 F.3d at 50 (*quoting In re Union Carbide Corp. Consumer Prod. Bus. Sec. Litig.,* 724 F.Supp. 160, 163 (S.D.N.Y.1989)).

The fee requested in this case—30% of the "net" Settlement Fund (approximately 27.5% of the "gross" Settlement Fund) is reasonable in light of the extensive efforts and risks faced over the course of nearly eight years of litigation and is well within the range of fees awarded (even on "gross" settlements) by courts in this Circuit. *See, e.g., In re Bisys Sec. Litig.,* No. 04 Civ. 3840(JSR), 2007 WL 2049726, at * 2 (S.D.N.Y. July 16, 2007) (30% of $65.87 million settlement); *In re Priceline.com, Inc Sec. Litig.,* No. 3:00–CV–1884(AVC), 2007 WL 2115592, at *4–5 (D.Conn.2007) (30% of $80 million settlement); *Hicks v. Stanley,* No. 01 Civ. 10071(RJH), 2005 WL 2757792, at *9 (S.D.N.Y. Oct.24, 2005) (30% of $10 million settlement); *In re Warnaco Group. Inc. Sec. Litig.,* No. 00 Civ. 6266(LMM), 2004 WL 1574690, at *3 (S.D.N.Y. July 13, 2004) (30% of $12.85 million settlement); *Kurzweil v. Phillip Morris Co., Inc.,* Nos. 94 Civ. 2373(MBM), 94 Civ. 2546(BMB), 1999 WL 1076105, at *1 (S.D.N.Y. Nov. 30, 1999) (30% of $123 million settlement).

Indeed, as this Court wrote in *In re Veeco Instruments* (*"Veeco II"*), there are numerous other common fund cases in this District alone where fees were awarded in the amount of 33 1/3% of the gross settlement fund. *Veeco Instruments Inc. Sec. Litig.,* No. 05 MDL 01695(CM), 2007 WL 4115808, at *4 n. 5 (S.D.N.Y. Nov.7, 2007) (*"Veeco II"*) (collecting cases). [19]

19 *See also In re Blech Sec. Litig.,* 2002 WL 31720381, at * 1 (S.D.N.Y. Dec.4, 2002) (33.3%); *In re APAC Teleservice, Inc. Sec. Litig.,* 1999 WL 1052004, at *1 (S.D.N.Y. Nov.19, 1999) (33 1/3% of $21 million settlement); *Becher v. Long Island Lighting Co.,* 64 F.Supp.2d 174, 182 (E.D.N.Y.1999) (one-third fee, plus expenses, is "well within the range accepted by courts in this circuit"); *In re Medical X–Ray Film Antitrust Litig.,* 1998 WL 661515, at *2 (E.D.N.Y. Aug.7, 1998) (awarding 33 1/3% of $39.36 million after concluding such an award is "well within the range accepted by courts in this circuit").

Likewise, courts in other circuits around the country commonly award attorneys' fees equal to or higher than the compensation requested here. "Awards of 30% or more of a settlement fund are not uncommon in § 10(b) common fund cases such as this." *Ressler v. Jacobson,* 149 F.R.D. 651, 655 (M.D.Fla.1992); *see also In re Rite Aid Corp. Sec. Litig.,* 146 F.Supp.2d 706, 735 (E.D.Pa.2001) (noting that in a study of 287 settlements ranging from less than $1 million to $50 million, "the median turns out to be one-third"). As this Court observed in *In re Telik* (awarding attorneys' fees of 25% of the settlement amount):

> ***25** The requested fee is also less than the fee awards in many cases such as this throughout the rest of the country. *See, e.g., In re Ravisent Techs., Inc. Sec. Litig.,* 2005 WL 906361, at *15 (E.D.Pa. Apr.18, 2005) (awarding attorneys' fees of one-third of $7 million settlement); *In re Corel Corp. Inc. Sec. Litig.,* 293 F.Supp.2d 484, 497 (E.D.Pa.2003) ("[T]he 33 1/3% fee request in this complex case is within the reasonable range."); *Faircloth v. Certified Fin. Inc.,* 2001 WL 527489, at *12 (E.D.La. May 16, 2001) (awarding attorneys' fees of 35% of settlement plus interest and reimbursement of expenses).

In re Telik, 576 F.Supp.2d at 587 (additional citations omitted). [20]

20 *See also In re Managed Care Litig.,* 2003 WL 22850070, at *2 (S.D.Fla. Oct.24, 2003) (awarding 35.5%).

The Second Circuit "encourages" an analysis of counsel's lodestar "as a 'cross check' on the reasonableness of the requested percentage." *Goldberger,* 209 F.3d at 50; EVCI, 2007 WL 2230177, at * 17. Where the lodestar is used as a cross-check, "the hours documented by counsel need not be exhaustively scrutinized by the district court." *Goldberger, 209 F.3d at 50*.

A lodestar analysis begins with the calculation of the lodestar, which is "comprised of the amount of hours devoted by counsel multiplied by the normal, non-contingent hourly billing rate of counsel." *In re Prudential Sec. Inc. Ltd. Pshps, Litig.,* 985 F.Supp. 410, 414 (S.D.N.Y.1997), Here,

Lead Counsel devoted over 45,500 hours to this matter and their lodestar was $20,955,697.50. (Milberg Decl., ¶ 6 and Exh. A.)[21] Lead Counsel's efforts are described in detail *supra,* and in the accompanying Friedman Declaration. Lead Counsel is also overseeing all aspects of the settlement process, a responsibility that will continue into the coming months.

21 In addition, Finkelstein Thompson devoted 46.9 hours to this matter on a fully contingent basis, and their lodestar was $17,590.00, in connection with Lead Counsels' efforts to compel the production of documents from Gibson, Dunn & Crutcher. (Finkelstein Decl. ¶¶ 2, 5 and Exh. 1.) All other law firms that assisted Lead Counsel were foreign firms that may not legally be paid contingently, or, in one instance, an American bankruptcy firm that would not work contingently, and so these fees and expenses were advanced by Lead Counsel and are being treated by Lead Counsel as an expense to Lead Counsel. (Milberg Decl., Exhs. B and C.)

Lead Counsel are highly experienced in prosecuting complex securities class action cases. (Milberg Decl., Exh. D.) Consequently, Lead Counsel "were presumably able to perform the various tasks necessary to advance Plaintiffs' and the Class's interests in a more efficient manner than would have counsel with a lesser degree of specialization in the field." *In re Telik,* 576 F.Supp.2d at 588–89 (*citing Teachers Ret. Sys. of La. v. A.C.L.N ., Ltd.,* No. 01–CV–11814(MP), 2004 WL 1087261, at *6 (S.D.N.Y. May 14, 2004) (noting that the skill and prior experience of counsel in the specialized field of shareholder securities litigation is relevant in determining fair compensation)).

Finally, in evaluating the reasonableness of the hours expended on this case, it is critical to note that until the Second Circuit decision on July 22, 2009—that is, for more than seven years of the pendency of this case—the estimated amount of damages available to the Class was between $362 million and $465.5 million.

In a lodestar analysis, the appropriate hourly rates are " 'those [rates] prevailing in the community for similar services of lawyers of reasonably comparable skill, experience and reputation.' " *Cruz v. Local Union No. 3 of the IBEW,* 34 F.3d 1148, 1159 (2d Cir.1994) (*quoting Blum v. Stenson,* 465 U.S. 886, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984)); *see also Luciano v. Olsten Corp.,* 109 F.3d 111, 115–16 (2d Cir.1997); *Veeco II,* 2007 WL 4115808, at *9. In complex securities class actions in this Circuit and around the country, courts have repeatedly found rates similar to those charged by Lead Counsel here to be reasonable; indeed, the American Lawyer recently reported that the *median* billing rate for partners at many leading law firms exceeds $900/hour.[22] The median rates for the firms representing defendants in this case were reported to be $950/hour for Shearman & Sterling and $900/hour for Milbank, Tweed, Hadley & McCloy. And, of course, we know that counsel for the Individual Defendants, Shearman & Sterling, who were paid currently and on a risk-free basis, long ago exhausted the entirety of a $20 million primary layer of insurance on defense costs.

22 *Bankruptcy Billing,* The American Lawyer, February 2010, at 44–45.

***26** "Under the lodestar method, a positive multiplier is typically applied to the lodestar in recognition of the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors." *In re Marsh & McLennan Cos., Inc. Sec. Litig.,* No. 04 Civ. 8144(CM), 2009 WL 5178546, at *20 (S.D.N.Y. Dec.23, 2009) (*citing Goldberger,* 209 F.3d at 47); *Savoie v. Merchants Bank,* 166 F.3d 456, 460 (2d Cir.1999). "In contingent litigation, lodestar multiples of over 4 are routinely awarded by courts, including this Court." *In re Telik,* 576 F.Supp.2d at 590 (a multiplier of 4 .65 was "well within the range awarded by courts in this Circuit and courts throughout the country") (*citing Maley,* 186 F.Supp.2d at 369). In this case, the percentage fee requested represents a fractional multiplier of less than 0.32 times the lodestar. Thus, even though Lead Counsel here assumed very substantial risk in prosecuting this case and achieved an excellent result considering all the circumstances, they will nevertheless recoup far less than their lodestar.

Lead Counsel's request for a percentage fee representing a significant discount from their lodestar provides additional support for the reasonableness of the fee request. *See In re Initial Pub. Offering Sec. Litig.,* 671 F.Supp.2d 467, 515 (S.D.N.Y.2009) (awarding fees of 33 1/3%, noting that even in a mega-fund case, there is "no real danger of overcompensation" where the award represents a fractional multiplier to the lodestar); *Veeco II,* 2007 WL 4115808, at *10 ("Not only is Plaintiffs' Counsel not receiving a premium on their lodestar to compensate them for the contingent risk factor, their fee request amounts to a deep discount from their lodestar. Thus, the lodestar 'cross-check' unquestionably

supports a percentage fee award of 30%."); *In re Blech Sec. Litig.,* Nos. 94 CIV. 7696(RWS), 95 CIV. 6422(RWS), 2000 WL 661680, at *5 (S.D.N.Y. May 19, 2000) (awarding lead counsel 30% of the settlement, and confirming that the award was reasonable because it represented a fractional multiplier of lead counsel's lodestar).

Finally, the Second Circuit has stated that whether the Court uses the percentage method or the lodestar approach, it should continue to consider the following traditional criteria: (1) the time and labor expended by counsel; (2) the risks of the litigation; (3) the magnitude and complexity of the litigation; (4) the requested fee in relation to the settlement; (5) the quality of representation; and (6) public policy considerations. *Goldberger,* 209 F.3d at 50. An analysis of these factors demonstrates that the requested fee is reasonable.

Lead Counsel has devoted over 45,500 hours to the prosecution and settlement of this case. (Milberg Decl., ¶ 6 and Exh. A.) As detailed *supra* and in the accompanying Friedman Declaration, these efforts were reasonable and necessary to the effective prosecution of this Action.

***27** The reasonableness of the requested fee is also supported by an evaluation of the risks undertaken by Lead Counsel in prosecuting this Action. The Second Circuit has recognized that "despite the most vigorous and competent of efforts, success is never guaranteed." *Grinnell,* 495 F.2d at 471. Securities class actions such as this are "notably difficult and notoriously uncertain." *In re Sumitomo,* 189 F.R.D. at 281.

Lead Counsel undertook this Action on a wholly contingent basis, investing substantial amounts of time and money to prosecute this litigation with no guarantee of compensation or even the recovery of out-of-pocket expenses. Unlike counsel for Defendants, who are paid substantial hourly rates and reimbursed for their expenses on a regular basis, Lead Counsel have not been compensated for any time or expenses since this case began more than eight years ago. Courts in the Second Circuit have recognized that the risk associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee award. *See, e.g., American Bank Note,* 127 F.Supp.2d at 433 (concluding it is "appropriate to take this [contingent-fee] risk into account in determining the appropriate fee to award"); *In re Prudential,* 985 F.Supp.2d at 417 ("Numerous courts have recognized that the attorney's contingent fee risk is an important factor in determining the fee award.").

Lead Counsel prosecuted this action essentially by itself against teams of defense lawyers from two large and well-funded firms—Shearman & Sterling and Milbank, Tweed, Hadley & McCloy—plus other substantial defense firms who represented earlier defendants (*e.g.,* Kirkland & Ellis on behalf of Verizon) and/or who appeared in connection with discovery disputes (*e.g.,* Gibson Dunn, appearing *pro se*).

Moreover, there was no prior governmental action against FLAG on which Lead Counsel could "piggy back." The burden and the risk here were borne solely by Lead Counsel. As this Court wrote in *Veeco II:*

> Indeed, the risk of non-payment in complex cases, such as this one, is very real. There are numerous class actions in which counsel expended thousands of hours and yet received no remuneration whatsoever despite their diligence and expertise. There is no guarantee of reaching trial, and even a victory at trial does not guarantee recovery. As the Court stated in *Warner:* "Even a victory at trial is not a guarantee of ultimate success.... An appeal could seriously and adversely affect the scope of an ultimate recovery, if not the recovery itself." 618 F.Supp. at 747–48.

2007 WL 4115808, at *6 (*quoting In re Warner Commc'n Sec. Litig.,* 618 F.Supp. 735, 747–48 (S.D.N.Y.1985)).

The risks involved in this case were compounded by the complexity of the issues. Lead Counsel faced enormous obstacles in proving the liability of the Defendants. Assuming these hurdles could be overcome, Lead Counsel still faced the burden of proving both the extent of the Class's damages and that those damages were caused by Defendants' conduct, a "complicated and uncertain" process at best. *Global Crossing,* 225 F.R.D. at 459. Moreover, the risk of this case for Lead Counsel increased as a result of developments in the law during the course of this litigation, especially in the areas of loss causation and class certification.

***28** Much of the risk borne by Lead Counsel here was realized when the Second Circuit held that in-and-out traders should be excluded from the Class, because there was no loss causation prior to the end of the Class Period (thus also arguably limiting the remaining Class's damages). As a result of this decision, the maximum potential damages available to the Class arguably were reduced from more than $362 million to potentially as little as $14.2 million.

Notwithstanding the foregoing significant risks of continued litigation, Lead Counsel zealously represented the Class and secured for them a sizable recovery—indeed, a recovery greater than what may have been the maximum potential recoverable damages. The risks associated with this litigation clearly support the reasonableness of Lead Counsel's fee request.

As discussed above, the proposed fee—30% of the "net" Settlement amount—is well within the range of fees awarded by courts in this Circuit and other circuits in securities class actions. Thus, this factor weighs in favor of the reasonableness of the requested fee.

The quality of the representation and the standing of Lead Counsel are important factors that also support the reasonableness of the requested fee. Lead Counsel have immense experience in complex federal civil litigation, particularly the litigation of securities and other class actions and have received significant recognition for their work. Lead Counsel's experience allowed them to identify the complex issues involved in this case and formulate appropriate and effective litigation strategies. Lead Counsel aggressively prosecuted this Action for roughly eight years and ultimately obtained an extraordinary recovery for the Class.

The skill and sophistication of Lead Counsel's representation in this case enabled Plaintiffs to prevail in battle after battle, critical motion after critical motion, including, most notably, the motions to dismiss, the motion for judgment on the pleadings, countless discovery motions, the motion for class certification (in which Plaintiffs also won every issue on appeal other than loss causation), and the partial summary judgment motion. But nowhere was the skill of Lead Counsel more dramatically displayed than in the mediation and negotiation with the *Rahl* Trustee and the subsequent mediation with the Defendants, which led to the Plaintiffs obtaining FLAG's privileged documents from FTGL, and ultimately to the Plaintiffs receiving 70% of the total recovery from the Individual Defendants in both cases.

Furthermore, the Settlement was obtained in the face of extremely aggressive opposition from the Defendants, represented by the pre-eminent defense firms of Shearman & Sterling and Milbank, Tweed, Hadley & McCloy. The quality of the opposition should be taken into consideration in assessing the quality of Lead Counsel's performance. *See, e.g., Teachers Ret. Sys.*, 2004 WL 1087261, at *20; *Maley.*, 186 F.Supp.2d at 373.

***29** Courts in the Second Circuit have held that "[p]ublic policy concerns favor the award of reasonable attorneys' fees in class action securities litigation." *In re Merrill Lynch Tyco,* 249 F.R.D. 124, 141–42 (S.D.N.Y.2008) (" 'In order to attract well qualified plaintiffs' counsel who are able to take a case to trial, and who defendants understand are able and willing to do so, it is necessary to provide appropriate financial incentives.' ") (*quoting In re Worldcom, Inc. Sec. Litig.*, 388 F.Supp.2d 319, 359 (S.D.N.Y.2005)). Moreover, "public policy supports granting attorneys fees that are sufficient to encourage plaintiffs' counsel to bring securities class actions that supplement the efforts of the SEC." *In re Bristol–Myers,* 361 F.Supp.2d 229, 236 (S.D.N.Y.2005); *see also Maley,* 186 F.Supp.2d at 373 ("In considering an award of attorney's fees, the public policy of vigorously enforcing the federal securities laws must be considered."); *In re Visa Check/Master Money Antitrust Litig.,* 297 F.Supp.2d 503, 524 (E.D.N.Y.2003) ("The fees awarded must be reasonable, but they must also serve as an inducement for lawyers to make similar efforts in the future."), *aff'd sub nom. Wal–Mart Stores, Inc. v. Visa U.S.A. Inc.,* 396 F.3d 96 (2d Cir.2005).

If this important public policy is to be carried out, the courts should award fees which will adequately compensate Lead Counsel for the value of their efforts, taking into account the enormous risks they undertook. In this case, Lead Counsel seeks a fee that is significantly less than its accrued lodestar. As such, public policy considerations favor granting the fee request.

Finally, numerous courts have noted that the lack of objection from members of the class is one of the most important factors in determining the reasonableness of a requested fee. *Maley,* 186 F.Supp.2d at 374 ("The reaction by members of the Class is entitled to great weight by the Court."); *Ressler,* 149 F.R.D. at 656 (lack of objections is "strong evidence" of the reasonableness of the fee request); *In re Prudential Sec. Inc. Ltd. P'ships Litig.,* 912 F.Supp. 97, 103 (S.D.N.Y.1996) (court determined that an "isolated expression of opinion" should be considered "in the context of thousands of class members who have not expressed themselves similarly"), *aff'd, Toland v. Prudential Sec. P'ship Litig.,* 107 F.3d 3 (2d Cir.1996).

Over 43,450 Notices have been mailed to potential Class Members and a Summary Notice was also published in *The Wall Street Journal* . (Fishbein Aff., ¶ 8; Andrejkovics

Aff., ¶ 2.) The Notice mailed to Class Members stated that Lead Counsel would seek reimbursement of expenses in the approximate amount of $2 million, plus an award of attorneys' fees in the amount of 30% of the remaining balance of the Gross Settlement Fund after reimbursement of these expenses and payment of any PSLRA awards to the Lead Plaintiffs. Notably, not one Class Member has objected to this request. The overwhelmingly positive response to date by the Class attests to the approval of the Class with respect to both the Settlement and the fee and expense application.

IX. THE REQUEST FOR REIMBURSEMENT OF EXPENSES IS REASONABLE AND APPROPRIATE

***30** It is well accepted that counsel who create a common fund are entitled to the reimbursement of expenses that they advanced to a class. *See, e.g., Teachers' Ret. Sys.,* 2004 WL 1087261, at *6; *American Bank Note,* 127 F.Supp.2d at 430. " 'Courts in the Second Circuit normally grant expense requests in common fund cases as a matter of course.' " *EVCI,* 2007 WL 2230177, at * 18 (*quoting In re McDonnell Douglas Equip. Lease Fee Litig.,* 842 F.Supp. 733, 746 (S.D.N.Y.1994)). Courts have awarded such expenses so long as counsel's documentation of them is "adequate." *NASDAQ Market–Makers,* 187 F.R.D. at 489.

In the Milberg and Finkelstein Declarations, counsel have detailed and documented the $1,910,420.76 in expenses that they incurred in connection with this action.[23] These expenses are of the type that law firms typically bill to their clients, including photocopying of documents, mediation fees, court filing fees, deposition transcripts, fees for foreign counsel, on-line research, creation of a document database, messenger service, postage and next day delivery, long distance and facsimile expenses, transportation, travel, and other expenses directly related to the prosecution of this Action. All of these expenses are customary and necessary expenses for a complex securities action, and were necessary for Lead Counsel to successfully prosecute this case.

23 Of the total expenses set forth in text, only a relatively small amount—$1,165.83—were incurred by Finkelstein Thompson.

In addition, Lead Counsel retained accounting, damages and other experts. These experts assisted Lead Counsel in the factual investigation and analysis in connection with the amended complaints and during merits discovery, and also assisted Lead Counsel in preparing their submissions for mediation and a potential trial. This Court and others have reimbursed such expert witness fees where "[t]he expenses incurred were essential to the successful prosecution and resolution of [the] Action." *Veeco II,* 2007 WL 4115808, at *11 (quoting EVCI, 2007 WL 2230177, at *18.)

Finally, the expenses for which reimbursement is sought amount to less than the expense figure of $2 million referred to in the Notice, to which no objection was filed.

Accordingly, Lead Counsel's request for reimbursement of these expenses is granted.

X. LEAD PLAINTIFFS ARE ENTITLED TO AN AWARD PURSUANT TO 15 U.S .C. § 78U–4(A)(4)

Under the PSLRA, the Court may award "reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of a class." 15 U.S.C. § 78u–4(a)(4). *See also Hicks,* 2005 WL 2757792, at *10. Lead Plaintiffs devoted substantial amounts of their time to the oversight of, and participation in, the litigation on behalf of the Class. (*See* Loftin Declaration at ¶¶ 6–17; Coughlin Declaration at ¶¶ 5–9.)

As Judge Conner wrote in his decision granting class certification, the Lead Plaintiffs "all received and reviewed the pleadings, consulted with [Lead Counsel] on various issues relevant to the lawsuit, produced documents and participated in depositions. Loftin, for example, is intimately familiar with the claims and was uniquely involved in the drafting of the Complaint, particularly with respect to the decision to initially name Verizon as a defendant.... And Coughlin, during his deposition, cogently explained the underlying basis for the litigation."[24]

24 *In re Flag Telecom,* 245 F.R.D. at 160–63.

***31** The Settlement Notice advised Class Members that application "will also be made for reimbursement to the Lead Plaintiffs for an amount not to exceed $100,000 for Lead Plaintiff Peter T. Loftin and for an amount not to exceed $5,000 for Lead Plaintiff Joseph Coughlin."[25]

25 Settlement Notice, at 2.

No objections to these requests have been filed. They are granted.

Mr. Loftin, who lost over $24 million in FLAG stock, has been actively involved in this litigation since its inception in 2002.[26] As set forth in the Loftin Declaration, he reviewed and authorized the various complaints, as well as countless other pleadings, and, incredibly, even assisted in researching and drafting significant parts of the complaint. He consulted regularly with counsel, and insisted on Lead Counsel visiting him at his home in Florida for a full-day in-person briefing. He also traveled from Miami to New York for his deposition, which lasted a full day, as well as a preparation session the day before. He also produced over 4,000 pages of documents from his and his business's files. And, of course, he also sent his in-house counsel to attend several of the mediation sessions in person. In total, Mr. Loftin estimates that he has spent more than four hundred hours on this litigation over the eight years it has been pending. (Loftin Decl., ¶ 17.)

26 Mr. Loftin founded and was, for many years, the Chairman and CEO of a domestic long distance phone company named BTI. Today he owns Casa Casuarina, an upscale South Beach, Florida hotel and event location in the former Versace Mansion. Over the course of the Class Period, especially the summer of 2000, he purchased a total of 1,700,000 FLAG shares at various prices, primarily in the range of $15.50 per share. He sold 297,300 of these shares in early April 2001, at prices ranging from approximately $2.72 to $4.02 per share, and held the remainder until FLAG filed for bankruptcy.

Mr. Coughlin responded to Lead Counsel's statutory lead plaintiff notice at the beginning of the case, but because his loss was much smaller than Mr. Loftin's, he did not seek to intervene as an additional Lead Plaintiff and Class Representative until February 2005, in response to threats from the Defendants that they would challenge Mr. Loftin as a Class Representative in light of his prior work for BTI.[27] Because he became involved significantly later in the case, Mr. Coughlin spent much less time on this matter than did Mr. Loftin, but he still spent a meaningful amount of time.

27 Mr. Coughlin served in the Air Force from 1958 to 1962, and then spent six years with the CIA in cryptographic communications, at times posted overseas in classified locations; both positions required a security clearance. He then spent six years as a facilities analyst at IBM. Prior to retiring he spent 20 years as a court reporter. Mr. Coughlin purchased 250 shares traceable to the IPO at prices just under $31.25 per share on February 23, 2000, and purchased an additional 100 shares on July 3, 2001 for $5.17 per share. He held these shares until FLAG filed for bankruptcy.

In addition to reviewing the complaint and other pleadings and communicating with Lead Counsel, Mr. Coughlin collected his documents for production to the Defendants, and travelled from Florida to New York to sit for a half-day deposition, and also spent time preparing for his deposition the night before. In total, Mr. Coughlin estimates that he has spent approximately twenty hours on this litigation, including travel time. Coughlin Decl., ¶ 9.

XI. CONCLUSION

For the reasons set forth above, the Court grants the motion for an order granting: (1) final approval of the proposed Settlement; (2) final approval of the proposed Plan of Allocation for the settlement proceeds; (3) reimbursement of $1,910,420.76 for expenses incurred in connection with the prosecution and settlement of the Action and attorneys' fees in the amount of 30% of the remaining balance of the Settlement Fund after reimbursement of these expenses and payment of any PSLRA awards to the Lead Plaintiffs; and (4) awards to Lead Plaintiffs for their services in prosecuting the Action in the amounts of $100,000 for Lead Plaintiff Peter T. Loftin and $5,000 for Lead Plaintiff Joseph Coughlin.

All Citations

Not Reported in F.Supp.2d, 2010 WL 4537550

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EXHIBIT 12

2007 WL 2743675
United States District Court,
E.D. New York.

In re GILAT SATELLITE NETWORKS, LTD.

No. CV-02-1510 (CPS)(SMG).
|
Sept. 18, 2007.

Attorneys and Law Firms

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Joseph P. Cyr, Andrew M. Behrman, Lovells, New York, NY, Thomas Bush, Lovells, Chicago, IL, for Defendants.

MEMORANDUM OPINION AND ORDER

SIFTON, Senior Judge.

***1** On January 17, 2003, eleven class actions alleging violations of federal securities laws by Defendants Gilat Satellite Networks, Ltd. ("Gilat"), Yoel Gat, and Yoav Leibovitch (collectively "Defendants") were consolidated in this Court and Leumi PIA Sector Fund, Leumi PIA World Fund, and Leumi PIA Export Fund were appointed Lead Plaintiffs. [1] On May 13, 2003, Lead Plaintiffs filed a Consolidated Class Action Complaint (the "Original Consolidated Complaint"), alleging against all Defendants violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and Rule 10b-5 promulgated under the Exchange Act, 17 C.F.R. § 240j.10b-5. The complaint also alleges against Gat and Leibovitch a violation of Section 20(a) of the Exchange Act. On April 19, the undersigned certified the settlement class and granted the parties' motions for preliminary approval of a proposed Settlement Agreement, preliminary approval of a Plan of Allocation, and approval of the proposed manner and form of Notice to the settlement class and of the proposed Proof of Claim form. A Fairness Hearing was held on July 19, 2007 to consider final approval of the settlement. Now before the Court are the parties' joint motion for final approval of the proposed Settlement Agreement, Plaintiffs' Co-Lead Counsel's motion for attorney's fees and expenses, and Imanuel Liban's [2] motion for attorney's fees and expenses, as well as Mr. Liban's August 20, 2007 supplemental filing entitled "Clarification On Behalf of Mr. Imanuel Liban." For the reasons set forth below, the parties' motion for final approval of the Settlement Agreement is granted, Lead Counsel's motion for attorney's fees and expenses is granted in part and denied in part, and Imanuel Liban' motion for attorney's fees and expenses is denied.

1 In 2005, while this case was pending, Leumi PIA, which owns and manages the three mutual funds referred to herein, was sold to Harel Insurance Investments Ltd. and is now known as "Harel-PIA Group." The names of the individual funds have also changed. To avoid confusion, the parties continue to refer to Lead Plaintiffs by their prior names, except where noted.

On February 12, 2003, Glancy Binkow & Goldberg LLP, Bernstein Liebhard & Lifshitz, LLP, and Cohen, Milstein, Hausfeld & Toll, P.L.L.C. were appointed co-lead counsel for Lead Plaintiffs.

2 Although Mr. Liban describes himself as an objector, he does not in fact object to any part of the settlement or Lead Counsel's fee award.

BACKGROUND

Familiarity with the underlying facts and procedural history of this case, as set forth in prior decisions of this Court, is presumed. Only those facts relevant to the present motion are discussed herein.

Gilat's Business

Gilat is a provider of products and services for satellite-based communications products and services, including Very Small Aperture Terminal ("VSAT") satellite dishes. During the relevant time periods, February 10, 2000 through May 31, 2002, Yoel Gat was Gilat's Chief Executive Officer and Yoav Leibovitch was Gilat's Chief Financial Officer.

In January 2000, Gilat formed a joint venture, StarBand, with Microsoft and EchoStar Communications, to provide internet access via satellite dishes. Customers would purchase a VSAT

manufactured by Gilat and then pay a monthly fee to receive internet access. The StarBand service was made available to the public in November 2000.

During the relevant time periods, Gilat common stock was traded on the NASDAQ National Market System ("NASDAQ"). From 1997 to 2000, Gilat reported substantial growth in revenues and its stock rose significantly. On February 28, 2000, Gilat stock closed on the NASDAQ at $160.50 a share.

Claims Against Defendants

***2** According to the Amended Consolidated Complaint, Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder and defendants Gat and Leibovitch violated Section 20(a) of the Exchange Act.[3] More specifically, Lead Plaintiffs allege that Defendants artificially inflated Gilat's financial results through deceptive financial statements which overstated Gilat's revenues. Although Defendants purported to follow Generally Accepted Accounting Principles ("GAAP"),[4] they allegedly inflated reported revenues in press statements and Securities and Exchange Commission ("SEC") filings through premature revenue recognition, recording revenue from sales in excess of actual purchases, recognizing revenue from sales prior to delivering the product to customers, recognizing revenue from sales to uncreditworthy customers, recording goods placed on consignment as sold, and engaged in related-party transactions. Lead Plaintiffs further allege that the defendants misrepresented the performance of StarBand and the market for its services, claiming significant success while there were allegedly serious problems with the service and in signing up new subscribers. The Amended Consolidated Complaint also alleges that Defendants failed to disclose that Echostar Communications had not marketed Starband as promised and that Starband's lenders had withdrawn a $37 million line of credit and that the Defendants falsely stated that Gilat's total financial exposure to Starband would not exceed $75 million. According to Lead Plaintiffs, as a result of these materially false and misleading statements, made between February 10, 2000 and May 31, 2002 (the "Class Period"),[5] they and other class members suffered damages because they purchased or otherwise acquired Gilat securities at prices which were artificially inflated. The maximum estimated damages alleged by Lead Plaintiffs amount to $187 million.

3 For the purposes of this motion, I only discuss those claims in the Complaint which survived Defendants' October 29, 2004 motion to dismiss, which I granted in part and denied in part.

4 According to the complaint, "GAAP are those principles recognized by the SEC and the accounting profession as the conventions, rules, and procedures necessary to define proper accounting practice at a particular time." Amended Consolidated Complaint, ¶ 192. 17 C.F.R. § 210.4-01 states that financial statements filed with the SEC that are not in accordance with GAAP are presumed to be misleading or inaccurate.

5 As discussed below, the initial alleged fraud is said to have occurred on February 9, 2000 after the close of the markets. Accordingly, the Class Period begins on February 10.

Settlement Negotiations and Preliminary Approval

In June 2006, the parties engaged in two days of mediation before retired California Superior Court Judge Daniel Weinstein.[6] As a result of that mediation, the parties reached an agreement on the terms of the settlement.

6 An earlier attempt at mediation had failed.

On December 1, 2006, the parties moved for (1) certification of a settlement class; (2) preliminary approval of a proposed Settlement Agreement; (3) approval of proposed Plan of Allocation; (4) approval of the proposed manner and form of Notice to the settlement class and of the proposed Proof of Claim form; and (5) scheduling of a date for a Fairness Hearing to consider final approval of the settlement. On January 4, 2007, this Court certified the settlement class, but denied the motions for preliminarily approval of the Settlement Agreement and the Plan of Allocation without prejudice,[7] and, accordingly, denied the motions for approval of the proposed Notice and for scheduling of a date for a Fairness Hearing.[8]

7 Specifically, I held that the Settlement Agreement and Plan of Allocation failed to sufficiently set forth factual bases for presumptions about the timing of alleged disclosures, contained internal inconsistencies regarding dates and recovery amounts, and provided no explanation for the

parties' decision to include a $5 minimum claim amount.

8 In denying those motions, the Court also alerted the parties to minor typographical errors and aspects of the Notice which required clarification.

The parties then revised the settlement in light of this Court's ruling and moved again for the same relief and on April 19, 2007, I(1) certified an amended settlement class; (2) granted preliminary approval of the Settlement Agreement; (3) granted preliminary approval of the proposed Plan of Allocation; (4) approved the proposed manner and form of Notice and the proposed Proof of Claim form; and (5) scheduled a Fairness Hearing for July 19, 2007. *See In re Gilat Satellite Networks, Ltd.,* 2007 WL 1191048 (E.D.N.Y.2007). I also issued an Order specifying, among other things, the dates by which the parties had to provide notice and the dates by which Class Members had to file objections or requests for exclusion from the Class.[9] In addition, I set September 3, 2007 as the date by which Proof of Claim forms had to be returned by Class Members. *See In re Gilat Satellite Networks, Ltd.,* 2007 WL 1191137 (E.D.N.Y.2007).

9 Objections and requests for exclusion were to be received no later than 20 days before the Fairness Hearing.

Mailing of Notice

***3** The parties submitted an affidavit on July 5, 2007, confirming that Notice was mailed on May 9 to 374 shareholders of record and 2,748 brokerage firms, banks, institutions and others who may serve as nominee owners, as required; that a copy of the Notice was placed on the website of the Claims Administrator, Garden City Group ("GCG"), on May 9, as required; that copies of the Notice were placed on the websites of Plaintiff's Co-Lead Counsel on May 17 and May 18, 1 and 2 days later than was required, though the delay was due to inadvertent error;[10] that toll-free phone numbers for inquires with English and Hebrew speaking operators were placed into service by GCG by May 14, as required;[11] that local counsel in Israel placed into service a local phone number for inquires, as required;[12] and that Summary Notice was published in *Wall Street Journal* on May 23, *Ha'aretz* and the *Jerusalem Post* on May 22, and *Globes* on May 21, as required. Since the original date of the mailings, nominee owners have requested that GCG mail Notice directly to 17,417 potential Class Members and that GCG mail an additional 4,178 copies of the Notice to nominee owners for forwarding to potential Class Members. GCG has responded to these requests as they were made in a timely manner. In addition, the Postal Service has provided updated address information for each of the 374 shareholders of record and Notice has been re-mailed to them. As a result, on July 23, 2007, I ordered that the deadline for requests for exclusion and objections by Class Members who had not received actual Notice prior to July 15, 2007 be extended until September 3, 2007.

10 Though this Court's Order required Notice to be placed on the websites within 7 days of mailing of the Notice, this inadvertent error isharmless.

11 As of July 5, 108 calls were received by the Claims Administrator and all requests for a return call have been responded to.

12 The affidavit does not state when the local number was put into service. However, at the Fairness Hearing, Israeli counsel for the Lead Plaintiff's, Jacob Sabo, confirmed that the number was his office number. No calls were made to that number as of July 5.

No requests for exclusion or objections to the Settlement Agreement have been received by GCG, the parties or this Court as of the date of this Opinion.[13]

13 As discussed below, the Liban motion, though titled an "Objection ... to Proposed Settlement/Fees," is, in fact, a request for fees and not an objection to the Settlement Agreement or the awarding of attorneys fees.

Settlement Agreement

I. Members of the Class & Identity of Lead Plaintiffs

According to the Amended Settlement Agreement, the Class consists of "all persons and entities who purchased or otherwise acquired Gilat common stock between February 10, 2000 and May 31, 2002, inclusive."[14] Amended Stipulation and Agreement of Settlement, ¶ 1(c)) ("Amended Settlement").

14 In the Plan of Allocation, the parties note that:

> Common stock (and other securities) may be acquired by means other than purchase on the open market. Examples of other methods of

> acquisition include acquiring stock through by exercising warrants or stock options, or acquiring stock through an employer stock distribution.
>
> Amended Notice of Proposed Settlement, n. 1 ("Amended Notice").

> Excluded from the Class are Defendants, members of the immediate family of each of Defendants, any person, firm, trust, corporation, officer, director, or other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any of the Defendants, and the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded party. "Related to or affiliated with" means all companies, subsidiaries, joint ventures, joint subsidiaries, or other entities controlled by any Defendant, or any entity that is or was under common corporate ownership or control with any Defendant.
>
> *Id.*

Lead Plaintiffs in this case are three mutual funds, managed by Harel-PIA Group, Israel's longest established mutual fund management company, representing more the $3 billion in assets. Harel-PIA Group is owned by Harel Insurance Investments Ltd., a publically traded Israeli insurance company. The three funds who serve as Lead Plaintiffs manage between $7 million and $17.5 million in assets each.

***4** None of these three funds owned Gilat stock at the beginning of the Class Period and they each purchased and sold shares during several of the time periods described in the Plan of Allocation below.[15] Exhibit A annexed to the Declaration of Michael Civer (filed with the December 2006 motion) reflects that Leumi PIA World Fund purchased 87,950 shares of Gilat stock during periods 1, 3 and 4 and sold stock during periods 1, 3 and 4; the fund sold all its stock before the end of the Class Period. Civer Declaration, ¶ 6, Exhibit A. Leumi PIA Export Fund purchased 11,000 shares of Gilat stock during period 1, sold 4,000 shares during period 1 and held the remainder until after the end of period 5. *Id.* Leumi PIA Sector Fund purchased 6,000 shares during period 1 and sold all of its shares during period 3. *Id.* Lead Plaintiffs will not receive any compensation or recovery under the settlement for acting as Lead Plaintiffs.[16]

15 The time periods, detailed below, are (1) February 10, 2000 through March 9, 2001 at 2:40 P.M.; (2) March 9, 2001 after 2:40 P.M. through March 11, 2001; (3) March 12, 2001 through October 2, 2001; (4) October 3, 2001 through May 31, 2002; and (5) the 90-day period after the end of the Class Period, beginning May 31, 2002 and ending August 28, 2002.

16 Lead Plaintiffs' motion for reimbursement of expenses is discussed below.

II. *Released Parties*

Under the terms of the Settlement Agreement, the "Released Parties" are:

> any and all of Defendants and their respective present and former affiliates, predecessors, successors, and assigns, and each of their respective family members, heirs, executors, and administrators, and any corporate entity affiliated with any of the Defendants,
>
> including, but not limited to, Gilat, and its presents and former officers, directors, employees, partners, principals, trustees, attorneys, auditors, accountants, investment bankers, consultants, agents, insurers and co-insurers and each of their respective heirs, executors, administrators, predecessors, successors (including, but not limited to, successors inbankruptcy) and assigns.

Amended Settlement, ¶ 1(q).

III. *Claims Administrator*

Lead Plaintiffs' counsel have proposed GCG as their Claims Administrator.[17] GCG has been in the business of administering class action settlements for twenty years and has administered hundreds of class action settlements, including several well-known securities settlements. First Affidavit of Shandarese Garr, ¶ 2-3 ("Garr First Affidavit") (attached to December 2006 motion).[18] The firm has experience handling international aspects of class action settlements, and it has in the past provided such services as toll-free numbers and websites which accommodate non-English speakers. *Id.,* ¶ 6. The firm strives to complete all work and provide final reports within six months of the claims-filing deadline and foresees no reason why it could not adhere to that timeline in this case. *Id.,* ¶ 8.

17 Pursuant to this Court's April 19 Order, GCG was engaged to send out the Notice and provide related services.

18 The securities class action settlements administered by GCG include *Worldcom Securities Litigation and Nortel Networks Corp. Securities Litigation.*

Lead Plaintiffs' counsel selected GCG after reviewing the available options. All three firms have had favorable experiences with GCG in prior securities settlements and have found that "GCG provides professional and high quality work, at competitive rates." Declaration of Daniel Sommers, ¶ 8 ("Sommers Declaration") (attached to December 2006 motion). [19]

19 The parties note that while GCG's rates are "not necessarily the lowest among claims administrators," they are reasonable and justified by the quality of the work. GCG has also submitted a document listing "Standard Hourly Billing Rates," though no estimated total cost for their services in this matter has been provided. Garr First Affidavit, Exhibit A.

IV. *Settlement Fund*

***5** Under the Settlement Agreement, Defendants have agreed to pay $20 million to the Class ("Gross Settlement Fund"), [20] in exchange for release of all claims "arising out of, based upon or related to the purchase of Gilat common stock during the Class Period and that facts, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act that were alleged in Action ." Amended Settlement, ¶ 1(r)), 5(a), 5(b). After accounting for (1) taxes on the income from the Settlement Fund, (ii) the notice and administrative costs of settlement, (iii) attorneys' fees and expenses awarded by this Court, and (iv) additional administrative expenses, the "Net Settlement Fund" will be distributed according to the Plan of Allocation among Class members who do not opt-out of the settlement and who submit valid proofs of claim. *Id.,* ¶ 7, 13-16.

20 As of the date of the Fairness Hearing, the Gross Settlement Fund had accrued $320,688 in interest.

Under the Settlement Agreement, Lead Plaintiffs' counsel may expend, without further approval from the Court, up to $300,000 from the Gross Settlement Fund to pay the reasonable costs and expenses associated with identifying Class members, publishing, printing and mailing notice and the administrative fees charged by the Claims Administrator in connection with providing notice and processing submitted claims. *Id.,* ¶ 8. The Amended Settlement also provides that Lead Counsel will apply to the Court for an award of attorneys fees of up to 30% of the Gross Settlement Amount and reimbursement of expenses, also payable from the Gross Settlement Amount; these fees and expenses are to be allocated among counsel in proportion to their respective contributions to the prosecution and resolution of this suit. *Id.,* ¶ 9.

V. Amended Plan of Allocation

The Amended Plan of Allocation proposed by the Lead Plaintiffs is set out in the Amended Notice of Proposed Settlement and was prepared with the assistance of a damages consultant, Michael Marek, CFA. *See* Declaration of Michael Marek. The Plan of Allocation "reflects the Lead Plaintiffs' allegations that the price of Gilat's common stock was inflated artificially during the Class Period." Amended Notice, ¶ 38. According to Lead Plaintiffs, the artificial inflation began on or before February 10, 2000 and Gilat's stock remained inflated throughout the Class Period, until May 31, 2002. *Id.* However, at certain times during the Class Period, Gilat made disclosures which partially revealed the alleged fraud and caused the stock price to fall, thereby reducing the amount of artificial inflation caused by earlier allegedly false and misleading statements. Accordingly, the Plan of Allocation identifies five different time periods and allocates damages on the basis of the amount of artificial inflation remaining in the stock price during each of these periods. "Each Authorized Claimant shall be allocated a pro rata share of the Net Settlement Fund based on his, her or its Recognized Claim as compared to the total Recognized Claims of all Authorized Claimants." *Id.,* ¶ 41.

1) Time Period 1: February 10, 2000-March 9, 2001 at 2:40 PM

***6** According to the Amended Consolidated Complaint, after the close of the markets on February 9, 2000, Bloomberg reported on comments made by Gat at a conference regarding StarBand's business prospects which were "materially false and misleading." Amended Consolidated Complaint, ¶¶ 66-67; see also Marek Declaration, ¶ 5. Accordingly, the relevant Class Period begins on February 10, the first trading day after the allegedly false statements.

"The first alleged partial disclosure of fraud occurred on March 9, 2001, when Defendants revealed that a previously announced initial public offering of StarBand stock would not proceed." Amended Notice, ¶ 38. According to the parties' damages consultant, the disclosure was made at 2:40 P.M.

EST. Marek Declaration, ¶ 7. For stock purchased before 2:40 P.M. on March 9, 2001 the damages consultant concluded that the price of Gilat stock was inflated by $16.62 per share. Therefore

> for common stock purchased prior to 2:40 p.m. EST on March 9, 2001 and held through the end of the Class Period, the Plan of Allocation provides for a maximum Recognized Loss of $16.62.[21] For stock sold earlier than the end of the Class Period, and thus before the full amount of alleged inflation had gone out of the stock, the Recognized Loss will be lower than the maximum.

[21] The Recognized Loss is "a calculation of a particular Authorized Claimant's losses that are recognized as compensable in some measure under the Settlement." Notice, ¶ 37.

Amended Notice, ¶ 38. Since some Class Members will be unable to prove the time at which they purchased their Gilat stock on that day, the stock price of $32.875 will be used as a proxy under the Plan, since $32.875 was the price per share of the last trade prior to the 2:40 PM disclosure. Trades at or above $32.875 will be deemed to have occurred prior to 2:40 PM and trades below that amount will be deemed to have occurred after 2:40 PM. *Id.,* n. 6.[22]

[22] According to the damages consultant, 99% of trades above $32.875 were made prior to 2:40 PM. Marek Declaration, ¶ 10.

2) Time Period 2: March 9, 2001 after 2:40 P.M.-March 11, 2001[23]

[23] There was no trading on March 10 or March 11.

Gilat's stock price fell on March 9 after the disclosure at 2:40 P.M. and, according to the damages consultant, $1.19 of the decline was attributable to the StarBand announcement of March 9, leaving $15.43 of artificial inflation in the stock. Amended Notice, ¶ 38.

> Accordingly, for purchases after 2:40 p.m. EST on March 9, 2001 but prior to March 12, 2001, and held through the end of the Class Period, the Plan of Allocation provides for a maximum Recognized Loss of $15.43. For stock sold earlier than the end of the Class Period, and thus before the full amount of alleged inflation had gone out of the stock, the Recognized Loss will be lower than the maximum.

Id.

3) Time Period 3: March 12, 2001-October 2, 2001

According to Lead Plaintiffs, the alleged fraud was further partially revealed on March 12, 2001, prior to the opening of the market,[24] "when Defendants announced downwardly-revised earnings guidelines for Gilat," leading to a further decline in Gilat's stock price, $13.10 of which was attributable to that disclosure; as a result, Gilat's stock price after the disclosure was inflated by $2.33. *Id.*

[24] The press release disclosing this information was at 8:57 A.M. EST. Marek Declaration, ¶ 12.

***7** Accordingly, for purchases on or after March 12, 2001 but before October 3, 2001 and held through the end of the Class Period, the Plan of Allocation provides for a maximum Recognized Loss of $2.33. For stock sold earlier than the end of the Class Period, and thus before the full amount of alleged inflation had gone out of the stock, the Recognized Loss will be lower than the maximum.
Id.

4) Time Period 4: October 3, 2001-May 31, 2002

According to Lead Plaintiffs, Defendants made additional disclosures on October 2, 2001, after the close of the markets,[25] announcing that Gilat would take "tens of millions of dollars in charges and make an additional bad debt reserve of $10 million." *Id.* After this disclosure, the remaining $2.33 in inflation was removed from the stock. However, the disclosure allegedly contained an additional misstatement which caused a new inflation of $0.30. *Id.*

25 The press release disclosing this information was at 5:53 P.M. EST. Marek Declaration, ¶ 15.

Accordingly, for common stock purchased on or after October 3, 2001 but on or before May 31, 2002, and held through the end of the Class Period, the Plan of Allocation provides for a maximum Recognized Loss of $0.30. For stock sold earlier than the end of the Class Period, and thus before the full amount of alleged inflation had gone out of the stock, the Recognized Loss will be lower than the maximum.
Id.

5) Time Period 5: May 31, 2002-August 28, 2002
According to Lead Plaintiffs, the final disclosure occurred on May 31, 2002, when Defendants filed a Form 20F with the S.E.C. which announced "increased reserves for uncollectible accounts receivables." *Id.* [26] Accordingly, "no purchases after this date are recognized under the Plan of Allocation." *Id.* In addition, the Plan of Allocation reflects a limitation on damages in securities cases imposed under the Private Securities Litigation Reform Act ("PSLRA"), limiting recovery for Class Members who sold after the close of the Class Period, namely May 31, 2002. [27] See 15 U.S.C. § 78u-4. Under the Plan, recovery on stock sold between May 31, 2002 and August 28, 2002 may be no greater than the purchase price of the stock minus the average trading price of the stock between May 31, 2002 and the date of sale. Recovery for stock sold after August 28, 2002 may be not exceed the purchase price of the stock minus the 90-day mean trading price of $0.95. *Id.,* n. 8.

26 The time of the filing is not available, but since such filings are normally submitted after the close of business and the price decline on Gilat stock did not occur until the next trading day, the damages consultant concluded that the disclosure occurred after the close of trading on May 31. *Id.,* ¶ 19.

27 Under the PSLRA, plaintiff's damages are limited in securities class actions by the mean stock trading price for the 90-day period (the 'lookback' period) subsequent to the corrective disclosure-recovery cannot be greater than the purchase price minus the mean trading price during the lookback period. Similarly, if a party sold the stock during that same 90-day period, the damages may not exceed the difference between the purchase price and the mean trading price of the security from the date of disclosure until the date of sale.

The Plan of Allocation also provides that transactions resulting in recognized gains will be excluded from the calculation of the net Recognized Claim; the costs/proceeds associated with securities purchased or sold by reason of having exercised an option or warrant shall be incorporated into the price accordingly; shares originally sold short shall have a Recognized Claim of $0; and no payments will be made on a claim where the potential distribution is less than $5.00. [28] Amended Notice, ¶ 40.

28 As set out in the Opinion on preliminary approval, this Court's understanding of this clause is that claims which, under the optimal distribution scenario, are worth less than $5 will not be paid out. However, claims which are potentially worth more than $5 but, after the allocations have been determined are worth less in practice, will be paid out.

In summary, the Plan of Allocation establishes the following claim calculations. For authorized claimants who purchased stock between February 10, 2000 and March 9, 2001 at 2:40 P.M., inclusive, claims will be calculated as follows:

***8** (1) for stock retained until the end of trading on August 28, 2002, the Recognized Loss shall be the lesser of (a) $16.62 per share or (b) the difference between the purchase price per share and $0.95;

(2) for stock sold between February 10, 2000 and 2:40 P.M. on March 9, 2001, inclusive, there shall be no Recognized Loss;

(3) for stock sold after March 9, 2001 at 2:40 P.M. but prior to March 12, 2001, the Recognized Loss shall be the lesser of (a) $1.19 per share or (b) the difference between the purchase price per share and the sales price per share;

(4) for stock sold between March 12, 2001 and October 2, 2001, inclusive, the Recognized Loss shall be the lesser of (a) $14.29 per share or (b) the difference between the purchase price per share and the sales price per share;

(5) for stock sold between October 3, 2001 and May 31, 2002, inclusive, the Recognized Loss shall be the lesser of (a) $16.32 per share or (b) the difference between the purchase price per share and the sales price per share;

(6) for stock sold between June 1, 2002 and August 28, 2002, inclusive, the Recognized Loss shall be the lesser or (a) $16.62 per share, (b) the difference between the purchase price per share and the sales price per share or (c) the difference between the purchase price per share and the mean closing price of Gilat common stock between May 31, 2002 and the date of sale. Amended Notice, ¶ 39(a).

For authorized claimants who purchased stock on after 2:40 P.M. on March 9, 2001 but before March 12, 2001, claims will be calculated as follows:

(1) for stock retained until the end of trading on August 28, 2002, the Recognized Loss shall be the lesser of (a) $15.43 per share or (b) the difference between the purchase price per share and $0.95;

(2) for stock sold on March 9, 2001, there shall be no Recognized Loss;

(3) for stock sold between March 12, 2001 and October 2, 2001, inclusive, the Recognized Loss shall be the lesser of (a) $13.10 per share or (b) the difference between the purchase price per share and the sales price per share;

(4) for stock sold between October 3, 2001 and May 31, 2002, inclusive, the Recognized Loss shall be the lesser of (a) $15.13 per share or (b) the difference between the purchase price per share and the sales price per share;

(5) for stock sold between June 1, 2002 and August 28, 2002, inclusive, the Recognized Loss shall be the lesser or (a) $15.43 per share, (b) the difference between the purchase price per share and the sales price per share or (c) the difference between the purchase price per share and the mean closing price of Gilat common stock between May 31, 2002 and the date of sale. Amended Notice, ¶ 39(b).

For authorized claimants who purchased stock between March 12, 2001 and October 2, 2001, inclusive, claims will be calculated as follows:

(1) for stock retained until the end of trading on August 28, 2002, the Recognized Loss shall be the lesser of (a) $2.33 per share or (b) the difference between the purchase price per share and $0.95;

***9** (2) for stock sold between March 12, 2001 and October 2, 2001, inclusive, there shall be no Recognized Loss;

(3) for stock sold between October 3, 2001 and May 31, 2002, inclusive, the Recognized Loss shall be the lesser of (a) $2.03 per share or (b) the difference between the purchase price per share and the sales price per share;

(4) for stock sold between June 1, 2002 and August 28, 2002, inclusive, the Recognized Loss shall be the lesser or (a) $2.33 per share, (b) the difference between the purchase price per share and the sales price per share or (c) the difference between the purchase price per share and the mean closing price of Gilat common stock between May 31, 2002 and the date of sale. Amended Notice, ¶ 39(c)).

For authorized claimants who purchased stock between October 3, 2001 and May 31, 2002, inclusive, claims will be calculated as follows:

(1) for stock retained until the end of trading on August 28, 2002, the Recognized Loss shall be the lesser of (a) $0.30 per share or (b) the difference between the purchase price per share and $0.95;

(2) for stock sold between October 3, 2001 and May 31, 2002, inclusive, there shall be no Recognized Loss;

(3) for stock sold between June 1, 2002 and August 28, 2002, inclusive, the Recognized Loss shall be the lesser or (a) $0.30 per share, (b) the difference between the purchase price per share and the sales price per share or (c) the difference between the purchase price per share and the mean closing price of Gilat common stock between May 31, 2002 and the date of sale. Amended Notice, ¶ 39(d).

DISCUSSION

I. Final Approval of Settlement and Plan of Allocation

Under Rule 23(e) of the Federal Rules of Civil Procedure, class actions "shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs." Fed.R.Civ.P. 23(e).

"The central question raised by [a] proposed settlement of a class action is whether the compromise is fair, reasonable, and adequate." *Weinberger v. Kendrick,* 698 F.2d 61, 73 (2d

Cir.1982). To determine whether this standard has been met, the court must "compare the terms of the compromise with the likely rewards of litigation." *In re Warner Communications Securities Litigation,* 618 F.Supp. 735, 741 (S.D.N.Y.1985) (citations omitted). In evaluating the substantive fairness of a proposed settlement, the Court is guided by the nine factors initially enumerated in *City of Detroit v. Grinnell Corp.,* 495 F.2d 448, 463 (2d Cir.1974):

> (1) the complexity, expense and likely duration of the litigation, (2) the reaction of the class to the settlement, (3) the stage of the proceedings and the amount of discovery completed, (4) the risks of establishing liability, (5) the risks of establishing damages, (6) the risks of maintaining the class action through the trial, (7) the ability of the defendants to withstand a greater judgment, (8) the range of reasonableness of the settlement fund in light of the best possible recovery, (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation[.]

***10** *D'Amato v. Deutsche Bank,* 236 F.3d 78, 86 (2d Cir.2001) (citations omitted). The court must also examine the negotiating process that gave rise to the settlement to determine if it was achieved through arms-length negotiations by counsel with the experience and ability to effectively represent the class's interests. *See In re Warner Communications Securities Litigation,* 618 F.Supp. at 741; *see also D'Amato,* 236 F.3d at 85 ("The District Court determines a settlement's fairness by examining the negotiating process leading up to the settlement as well as the settlement's substantive terms.").

1) Complexity, Expense and Likely Duration of the Litigation

Securities class action litigation " 'is notably difficult and notoriously uncertain.' " *In re Sumitomo Copper Litigation,* 189 F.R.D. 274, 281 (S.D.N.Y.1999) (quoting *In re Michael Milken and Associates Securities Litigation,* 150 F.R.D. 46, 53 (S.D.N.Y.1993)). In this case, the costs of litigating are anticipated to be significant, since extensive discovery remains to be completed and since both Gilat and the companies with which Gilat did business under the allegedly fraudulent scheme are located overseas,[29] which will increase the cost and complexity of discovery. *See Schwartz v. Novo Industri A/S,* 119 F.R.D. 359, 363 (S.D.N.Y.1988) (weighing the complications of discovery with a foreign defendant in favor of settlement). In addition, the parties state that if the case were litigated and Plaintiffs prevailed, Defendants would appeal the verdict, adding further delay and expense. *See In re Am. Bank Note Holographics, Inc.,* 127 F.Supp.2d 418, 425 (S.D.N.Y.2001) ("Add on time for a trial and appeals, and the class would have seen no recovery for years. Class counsel properly considered this factor as well").

29 Sales related to the alleged fraud were made to companies around the world, including Zimbabwe, Brazil, China, Indonesia, and Kazakhstan.

2) Reaction of the Class

No objections or requests for exclusion have been filed in this case, indicating general approval of the Settlement by Class Members. *See In re Mexico Money Transfer Litigation (Western Union and Orlandi Valuta),* 164 F.Supp.2d 1002, 1021 (N.D.Ill.2000) (99.9% of class members having neither opted out nor filed objections indicated strong circumstantial evidence in favor of settlement.).

3) Stage of the Proceedings

The stage of the proceedings and the amount of discovery the parties have conducted is "relevant to the parties' knowledge of the strengths and weaknesses of the various claims in the case, and consequently affects the determination of the settlement's fairness." *In re Painewebber Ltd. Partnerships Litigation,* 171 F.R.D. 104, 126 (S.D.N.Y., 1997). The parties have spent significant time over the last four years investigating the legal and factual issues in this case and appear to be well informed as to the operative facts. Although little formal discovery has been completed, Lead Counsel has interviewed several former employees of Gilat and obtained a number of internal documents,[30] and all parties have conducted extensive research in connection with their submissions in connection with Defendants' motion to dismiss and in preparation for mediation.

30 Discovery is discussed in more detail below, in regard to attorneys fees.

4 & 5) Risks of Establishing Liability & Damages

***11** "In assessing the adequacy of a settlement, a court must balance the benefits of a certain and immediate [relief] against the inherent risks of litigation." *In re Medical X-Ray Antitrust Litigation,* 1998 WL 661515, at *4 (E.D.N.Y.1998). In this case, the risks of establishing liability and damages are considerable. "To prevail on its federal securities fraud claims, [Plaintiffs] must demonstrate that its injuries were caused by defendants' omission of material information," *Emergent Capital Investment Management, LLC v. Stonepath Group, Inc.,* 343 F.3d 189, 196 (2d Cir.2003), and must also prove that Defendants acted with scienter. *Ernst & Ernst v. Hochfelder,* 425 U.S. 185, 96 S.Ct. 1375, 47 L.Ed.2d 668 (1976). Establishing scienter is "a difficult burden to meet," *Adair v. Bristol Technology Systems, Inc.,* 1999 WL 1037878, at *2 (S.D.N.Y.1999), and proving it will be especially challenging in this case where, apparently, neither the individual defendants nor any other Gilat executive profited from their Gilat investments. In addition, at trial Defendants would likely introduce experts to contest Lead Plaintiffs' allegations as to the causes of the stock price declines, leading to a "battle of the experts," the outcome of which is uncertain. Specifically, while Lead Plaintiffs allege that the most significant stock decline, which occurred on March 12, 2001, was related to Gilat's financial announcement of that day, Defendants dispute this and argue instead that the stock decline was related to prior announcements and, moreover, that the announcement of March 12 did not reveal any fraud. Accordingly, it is uncertain whether Lead Plaintiffs will be able to demonstrate loss causation related to the March 12 announcement, which would reduce alleged damages from $187 million to $27 million.

6) Risks of Maintaining the Class Action through the Trial

The parties contend that Defendants, should settlement not be approved, may challenge the certification of the Class before trial (and appeal any adverse ruling) on the grounds that there was no predominance of common issues among the Class Members, as required under Fed.R.Civ.P. 23. However, having previously approved the Class and found that the claims of Class Members all resulted from the alleged fraud which caused the inflated stock price, I find there to be little risk that the Class would not be maintained through trial.

7) Ability of Defendants to Withstand Greater Judgement

It remains an open question whether Defendants could withstand a greater judgment. The parties have represented that Gilat was forced to restructure $350 million of debt in 2002, that its stock price is in the single digits, and that Gilat's insurance would not cover an award of Lead Plaintiff's total estimated damages.[31] However, the parties have not provided this Court with any specific information as to the value of Gilat's assets or the impact that higher judgement amounts would have on Gilat's ability to continue as a functioning entity. Accordingly, this factor weighs neither in favor nor against settlement.

31 Gilat has filed insurance coverage information under seal.

8 & 9) Range of Reasonableness of the Settlement Fund in Light of the Best Possible Recovery & Range of Reasonableness of the Settlement Fund to a Possible Recovery in Light of all the Attendant Risks of Litigation

***12** As this court has observed, "the adequacy of the amount offered must be judged not in comparison with the best possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of the plaintiffs' case." *In re Medical X-Ray Antitrust Litigation,* 1998 WL 661515 at *5 (internal quotations and citations omitted). As stated above, Defendants have agreed to contribute $20 million to the Gross Settlement Fund.[32] $20 million represents 10.6% of the maximum amount which Plaintiffs believe could be recovered at trial, and is within the range of settlements that have been awarded in securities class actions. *See Kurzweil v. Philip Morris Companies, Inc.,* 1999 WL 1076105, at *2 (S.D.N.Y.1999) ("[I]ndependent research discloses that recoveries in securities class actions tend to fall in the 7% to 15% range."); Cornerstone Research, *Post Reform Act Securities Settlements, 2005 Review and Analysis* (submitted as Exhibit B) (Finding a median settlement amount of $7.5 million, an average settlement amount of $28.5 million,[33] and a median settlement amount as a percentage of estimated damages of 3.1% in 2005); PriceWaterhouseCoopers, *2005 Securities Litigation Study* (submitted as Exhibit A) (Finding a median settlement amount of $9.5 million and an average settlement amount of $71.1 million in 2005[34]). Given the risks involved in proving liability and damages, were this case to proceed to trial there is a significant possibility that the Class would recover much less or even nothing, while incurring additional costs in the process.

32 After attorney's fees and other costs associated with this action, the Net Settlement Fund will likely be in the range of $13 million to $14 million.

33 These figures exclude two settlements of over a billion dollars.

34 These figures exclude three settlements of over a billion dollars.

In addition, as I set out in my Opinion on preliminary approval, the parties have established a reasonable formula for allocating recovery to Class Members on the basis of each Class Member's injury and the date and time of various disclosures by Defendants.

10) Arms Length Negotiations

In my Opinion on preliminary approval, I concluded that the Settlement Agreement was procedurally fair as well. The parties mediated the case before a retired state court judge who has attested to the thoroughness, reasonableness and 'arms-length' nature of the negotiations. *See In re Independent Energy Holdings PLC,* 2003 WL 22244676, at *4 (S.D.N.Y.2003) ("the fact that the Settlement was reached after exhaustive arm's-length negotiations, with the assistance of a private 'mediator experienced in complex litigation, is further proof that it is fair and reasonable."). Further, there is no unduly preferential treatment to class representatives, who will receive no additional compensation from the settlement for their role as Lead Plaintiffs. Therefore, there appears to be no collusion and I conclude that the negotiations were conducted at 'arms-length.'

Balancing all these factors, which weigh substantially in favor of settlement, I find the Settlement and Plan of Allocation to be fair, reasonable and adequate.

II. Co-Lead Counsel's Fee and Expense Request

***13** Plaintiff's Co-Lead Counsel move for an award of 30% (equivalent to $6 million) of the Gross Settlement Fund as payment for fees and for an additional reimbursement of $588,810.43 for expenses incurred in connection with this action. I will first discuss the fee award and then deal with the request for expenses.

Method of Determining Amount of Recovery

"[Where] an attorney succeeds in creating a common fund from which members of a class are compensated for a common injury inflicted on the class .... the attorneys whose efforts created the fund are entitled to a reasonable fee-set by the court-to be taken from the fund." *Goldberger v. Integrated Resources, Inc.,* 209 F.3d 43, 47 (2d Cir.2000) (internal citations omitted). To determine the amount of the fee award, courts use two approaches: the "lodestar" method (number of hours reasonably billed multiplied by an appropriate hourly rate) and the "simpler" method of setting "some percentage of the recovery as a fee." *Id.* In either case, "the fees awarded in common fund cases may not exceed what is 'reasonable' under the circumstances," which is committed to the sound discretion of the trial court. *Id.*

In the present case, counsel requests a fee based on a percentage of recovery. "The trend in this Circuit is toward the percentage method, ... which directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.,* 396 F.3d 96, 121 (2d Cir.2005) (internal citations and quotations omitted). "Use of the percentage method also comports with the statutory language of the Private Securities Litigation Reform Act ("PSLRA"), which specifies that '[t]otal attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class.' " *In re NTL Inc. Securities Litigation,* 2007 WL 1294377, at *4 (S.D.N.Y.2007) (quoting 15 U.S.C. § 78u-4(a)(6)). Accordingly, the percentage method requested by counsel is an appropriate method to calculate the fees award.

That said, "even when the percentage of the fund method is used, 'the lodestar remains useful as a baseline even if the percentage method is eventually chosen. Indeed [the Second Circuit] encourage[s] the practice of requiring documentation of hours as a 'cross check' on the reasonableness of the requested percentage.' " *Id.* (quoting *Goldberger,* 209 F.3d at 50).

Reasonableness of Counsel's Request

To evaluate the reasonableness of fee requests, courts apply the *Goldberger* factors: "(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." *Goldberger,* 209 F.3d at 50 (internal citations and quotations omitted).

(1) Time and Labor

***14** Over the last four years, Plaintiffs' Counsel has spent 9,958 hours prosecuting this action.[35] Counsel expended significant effort analyzing Gilat's SEC filings and financial statements; reviewing analyst and news service reports on Gilat; researching the applicable law regarding claims and potential defenses; interviewing former employees with knowledge related to the action; drafting a Consolidated Complaint and an Amended Consolidated Complaint; and engaging in motion practice, including a motion to dismiss. The parties also began formal discovery, developing a plan of discovery and exchanging Rule 26 materials. Pursuant to the discovery plan, Defendants also produced several thousand documents in an initial disclosure, while Plaintiffs' Counsel subpoenaed documents from third-party stock analysts.[36] Further, Plaintiffs' Counsel consulted a forensic accountant and also engaged an economic consultant to evaluate defendants' loss causation theories and to calculate class damages and develop the Plan of Allocation.[37] Finally, counsel engaged in two separate mediation sessions and, as a result of the second of these sessions, prepared the settlement agreement and supporting documentation. While formal discovery was limited and counsel did not engage significantly in "the major attorney time user[s] .... namely depositions, trial or appeal," the extensive investigation, analysis, motion practice and settlement negotiations which have taken place over the last four years demonstrate that counsel has expended significant time and effort in furtherance of this litigation. *In re Sterling Foster & Co., Inc.,* 2006 WL 3193744, at *8 (E.D.N.Y.2006); *cf. In re AremisSoft Corp. Securities Litigation,* 210 F.R.D. 109, 133 (D.N.J.2002) ("Informal discovery leading to an early settlement that avoids such costs favors approval of the fee application.").

35 Glancy Binkow expended approximately 2,887 hours, Bernstein Liebhard expended approximately 3,381 hours, Cohen, Milstein expended approximately 2,430 hours and the Law Office of Jacob Sabo, who acted as Israeli counsel, expended approximately 1,259 hours.

36 The parties also discussed the manner in which third-party discovery would be served on Gilat's customers and the scope of documentation requested, as well as the scope of Plaintiffs' subpoena of Gilat's auditors in Israel. Due to the fact that the parties were able to reach a settlement relatively early in the process of litigation, the parties ultimately did not engage in extensive formal discovery.

37 As discussed below, the consulting fees are included in the requested expense reimbursement.

(2) Magnitude and Complexity of Litigation

As noted above, securities class action litigation is difficult and uncertain. With regards to this factor, courts evaluate whether the action was particularly large or complex, relative to other securities class actions. *See In re Merrill Lynch & Co., Inc. Research Reports Securities Litigation,* 2007 WL 313474, at *15 (S.D.N.Y.2007) ("The magnitude and complexity of a case, however, also should be evaluated in comparison with other securities class litigations."); *In re Bristol-Myers Squibb Securities Litigation,* 361 F.Supp.2d 229, 234 (S.D.N.Y.2005) ("Certainly, managing the large class of plaintiffs and reaching a $300 million settlement was not a simple task for Lead Counsel, but, in the realm of securities class actions, prosecution of this action was less complex than most. All of the alleged misstatements were easily found in the public record. The public expressions of optimism uttered by the Company and its officers provided the bases for the Erbitux claims and the financials laid bare the channel-stuffing claims.... Neither the facts nor the legal and accounting theories were complicated. Among securities class actions, this case as a whole was neither unique nor complex.").

***15** Plaintiffs' Counsel argues that this case, had it gone to trial, would have required voluminous document and deposition discovery. Plaintiffs would have had to demonstrate that Gilat recorded revenue in violation of GAAP, which would have been complicated by the fact that the transactions occurred 6 to 8 years ago and involved companies located around the world. Further, as noted above, Plaintiffs would have had to demonstrate that Defendants perpetrated a fraud and that the fraud caused Plaintiffs' losses, and would also have needed to establish the amount of loss which resulted. According to Plaintiffs' Counsel, since Gilat never actually restated its financial results, proof of accounting fraud would require circumstantial evidence which is primarily within Defendants' control.

While litigation in this case is undoubtedly complicated and would have taken a significant amount of time and effort to investigate,[38] Plaintiffs' claims are not particularly "novel," nor does proof of these claims appear to be so complex so as to "weigh[ ] significantly in favor of the

award of generous attorneys' fees." *In re Merrill Lynch & Co., Inc. Research Reports Securities Litigation,* 2007 WL 313474, at *15-16 (S.D.N.Y.2007); *see In re Elan Securities Litigation,* 385 F.Supp.2d 363, 374 (S.D.N.Y.2005) ("[A]lthough this case was 'large and complex' involving a great many separate finance and accounting issues, the factual and legal issues were not exceptionally 'novel.' "); *cf. In re VisaCheck/Mastermoney Litigation,* 297 F.Supp.2d 503, 523 (E.D.N.Y.2003) (finding magnitude and complexities of case "enormous" where the "case involved almost every U.S. bank and more than five million U.S. merchants"); *In re Sumitomo Copper Litigation,* 74 F.Supp.2d at 395 (case involved "almost overwhelming magnitude and complexity"); *In re NASDAQ Market-Makers Antitrust Litigation,* 187 F.R.D. 465, 474, 488 (S.D.N.Y.1998) (finding that "liability in this case requires proof of an unusually complex conspiracy involving 37 Defendants and a 'checkerboard' of fact situations and disparate periods for each of 1,659 different securities" and that "the issues were novel and difficult requiring a challenge to a long-standing industry practice and the exercise of skill and imagination").

38 I note that, unlike in some other cases, there was no public investigation being made by a government or regulatory body which would could have assisted Plaintiffs. *See, e.g., In re Merrill Lynch & Co., Inc. Research Reports Securities Litigation,* 2007 WL 313474 at *17 ("Actions stemmed from the highly publicized NYAG's investigation into the alleged undisclosed conflict of interest.").

(3) Risks of Litigation

"Courts of this Circuit have recognized the risk of litigation to be 'perhaps the foremost factor to be considered in determining' the award of appropriate attorneys' fees." *In re Merrill Lynch & Co., Inc. Research Reports Securities Litigation,* 2007 WL 313474 at *16 (quoting *In re Elan Securities Litigation,* 385 F.Supp.2d 363, 374 (S.D.N.Y.2005) (internal quotations and citation omitted). "It is well-established that litigation risk must be measured as of when the case is filed." *Goldberger,* 209 F.3d at 55.

"There is generally only a very small risk of non-recovery in securities class litigation." *In re Merrill Lynch & Co., Inc. Research Reports Securities Litigation,* 2007 WL 313474 at *16 (citing *In re Dreyfus Aggressive Growth Mutual Fund Litigation,* 2001 WL 709262, at *4 (S.D.N.Y.2001) ("What empirical data does exist indicates that all but a small percentage of class actions settle, thereby guaranteeing counsel payment of fees and minimizing the risks associated with contingency fee litigation."). That said, Plaintiffs' Counsel, in undertaking this case on a contingency basis, "did take some risk in undertaking the representation." *In re Sterling Foster & Co., Inc.,* 2006 WL 3193744 at *7. As noted, Plaintiffs would have to demonstrate that Defendants caused its injuries by their fraud and that Defendants acted with scienter, and it is far from certain that Plaintiffs would have prevailed or, to the degree they did prevail, that a jury would agree as to the amount of damages alleged. [39] Accordingly, while the odds of *some* recovery were not low, counsel did assume a significant litigation risk by taking the case on contingency. *But see In re NTL Inc. Securities Litigation,* 2007 WL 1294377 at *7 ("The chance of some sort of settlement was fairly high even at the beginning of the lawsuit, before Judge Kaplan sustained several of class plaintiffs' claims in denying defendants' motion to dismiss. Accordingly, the Court finds that the risk of non-recovery here was low and does not militate in favor of an 'enhanced' award of attorneys' fees."); *In re Bristol-Myers Squibb Securities Litigation,* 361 F.Supp.2d at 234 ("[T]he circumstances preceding the filing of the Complaint, ... particularly the Company's restatement of its financials, support a finding that this case falls along the low end of the continuum of risk.").

39 Plaintiffs' Counsel also states that there was a risk that a class would not be certified. However, as indicated above and in my Opinion on preliminary approval, it does not appear that there was much risk that a court would not find that the central question which survived the motion to dismiss, namely whether Defendants engaged in fraudulent representations which artificially inflated the price of Gilat stock, predominated over the individual claims of each class member.

(4) Quality of Representation

***16** "To determine the 'quality of the representation,' courts review, among other things, the recovery obtained and the backgrounds of the lawyers involved in the lawsuit." *Taft v. Ackermans,* 2007 WL 414493, at *10 (S.D.N.Y.2007).

As I have previously noted, Plaintiffs' Counsel in this case are qualified and experienced in this type of litigation and their preparation and advocacy have been praised by the mediator. As for the recovery amount, the $20 million Gross Settlement Fund equals 10 .6% of Plaintiffs' highest damages estimate (and a much higher percentage of more conservative damages estimates). Given the risk involved in proving liability and

establishing the amount of damages, such a recovery, while perhaps not as "excellent" as counsel claims, is within the range of settlements that are common in securities class actions.

(5) Relationship of Fee to Settlement

Plaintiffs' Counsel proposes a fee of 30%, or $6 million leaving the settlement fund with $14 million before deducting other expenses.

Although counsel has cited other cases in which courts have granted a fee award of 30%,[40] "reference to awards in other cases is of limited usefulness," *In re KeySpan Corp. Securities Litigation,* 2005 WL 3093399 at *13 (E.D.N.Y.2005), because "fee awards should be assessed based on the unique circumstances of each case." *In re Bristol-Myers Squibb Securities Litigation,* 361 F .Supp.2d at 236. Moreover, "[s]ince *Goldberger,* courts in the Second Circuit have tended to award attorneys' fees in amounts considerably less than 30% of common funds in securities actions, even where there is a substantial contingency risk." *In re KeySpan Corp. Securities Litigation,* 2005 WL 3093399 at *12 (internal quotations omitted) (citing cases); *see In re Twinlab Corp. Securities Litigation,* 187 F.Supp.2d 80, 88 (E.D.N.Y.2003) (Awarding a 12% fee after finding "that a 25% fee ... would be excessive considering that the parties did not engage in extensive discovery, motion practice, trial or appeals and that the action was settled shortly after the motions to dismiss were decided."). In the present case, although the case was complicated and required counsel to encounter some risk, a 30% fee, which is at the high range of what courts award, is not mandated by the nature of the claims and the process of the litigation.[41]

40 *See Taft,* 2007 WL 414493 (30% fee awarded on $15 million settlement, where lodestar was $3.2 million); *Hicks v. Stanley,* 2005 WL 2757792 (S.D.N.Y.2005) (30% fee awarded on $10 million settlement, where lodestar was $1.6 million); *Schnall v. Annuity and Life Re (Holdings), Ltd., et al,* 02-CV-2133 (January 21, 2005) (Awardeing a fee of 33 1/3% on $16.5 million settlement, where loadstar was $1.8 million). However, two cases cited by counsel are distinguishable since the fee awarded under the percentage method was less than the lodestar amount. *See In re Blech Securities Litigation,* 2002 U.S. Dist. LEXIS 23170 (S.D.N.Y.2002); *Baffa v. Donaldson Lufkin & Jenrette Securities Corp.,* 2002 U.S. Dist. LEXIS 10732 (S.D.N.Y.2002). Another case cited by plaintiffs, *In re ESC Medical Systems Ltd. Securities Litigation,* 98-CV-7530 (April 1, 2002) contains no explanation of the reason the fee was awarded or what the loadstar would have been. The remaining cases cited by plaintiff were decided pre-Goldberger. *See In re Medical X-Ray Film Antitrust Litigation,* 1998 WL 661515 (E.D.N.Y.1998); *In re Warner Communications Securities Litigation,* 618 F.Supp. 735 (S.D.N.Y.1985).

41 Given the modest size of the total settlement, I am not concerned that a 30% fee would constitute a windfall for counsel. *See In re Indep. Energy Holdings PLC,* 2003 WL 22244676, at *6 (S.D.N.Y.2003) ("[T]he percentage used in calculating any given fee award must follow a sliding-scale and must bear an inverse relationship to the amount of the settlement. Otherwise, those law firms who obtain huge settlements, whether by happenstance or skill, will be over-compensated to the detriment of the class members they represent.").

(6) Public Policy

"Public policy concerns favor the award of reasonable attorneys' fees in class action securities litigation." *In re Merrill Lynch & Co., Inc. Research Reports Securities Litigation,* 2007 WL 313474 at *21; *see also In re WorldCom, Inc. Securities Litigation,* 388 F.Supp.2d 319, 359 (S.D.N.Y.2005) ("In order to attract well-qualified plaintiffs' counsel who are able to take a case to trial, and who defendants understand are able and willing to do so, it is necessary to provide appropriate financial incentives."); *In re VisaCheck/ Mastermoney Litigation,* 297 F.Supp.2d at 524 ("The fees awarded must be reasonable, but they must also serve as an inducement for lawyers to make similar efforts in the future."). However, "[a]n award of fees in excess of that required to encourage class litigation ... does not necessarily serve public policy." *In re Merrill Lynch & Co., Inc. Research Reports Securities Litigation,* 2007 WL 313474 at *21 (finding the public policy did not require an award of 28% of the settlement fund, which would be an "exceedingly high rate of compensation."); *but see In re Sterling Foster & Co., Inc.,* 2006 WL 3193744 at *8 ("The 25% contingent fee is a fair and reasonable fee and follows the emerging trend within the Second Circuit in securities class actions ."). In the present case, while public policy does favor a significant

fee award to Plaintiffs' Counsel, to compensate them both for their time and their risk, a fee award of 30% is not necessary to accomplish that goal.

Cross-Check

***17** As noted above, the Second Circuit encourages courts applying the percentage method to "cross-check" against the lodestar amount to establish a baseline for reasonableness. "Of course, where used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court. Instead, the reasonableness of the claimed lodestar can be tested by the court's familiarity with the case (as well as encouraged by the strictures of Rule 11)." *Goldberger,* 209 F.3d at 50.

In the present case, Plaintiffs' Counsel has worked approximately 9,958 hours on this action which, applying their normally hourly rates, yields a lodestar amount of $4,641,785.95.[42] Billing records show a range of rates charged by Plaintiffs' Counsel, starting at $325 for associates[43] and up to $725 for certain partners. While these fees are high, they are not out of line with the rates of major law firms engaged in this type of litigation.[44] *See In re Merrill Lynch & Co., Inc. Research Reports Securities Litigation,* 2007 WL 313474 at *22 (Hourly rates of $515/hour for associates and up to $850/hour for partners, "though high, are not inordinate for top-caliber New York law firms ."); *In re NTL Inc. Securities Litigation,* 2007 WL 1294377 at *8 (approving rates up to $695 for partners); *but see In re KeySpan Corp. Securities Litigation,* 2005 WL 3093399 at *15 (Finding that, in 2005, a firm which charged from $350/hour for associates and up to $675/hour for partners was on the higher end for securities class action suits and that $550/hour for senior associates was "beyond [the] prevailing rate."). Though partners in these firms, who bill at the highest rates, did spend significant time on these cases, it does not appear that the firms relied primarily or inappropriately on partners to do work more properly performed by more junior members of the firm.[45] [46]

42 "Current 'market rates' are proper because such rates more adequately compensate for inflation and loss of use of funds." *Stanley,* 2005 WL 2757792, at *10 (citing *Missouri v. Jenkins,* 491 U.S. 274, 283-84, 109 S.Ct. 2463, 105 L.Ed.2d 229 (1989)).

43 A single "of counsel" attorney who worked for less than 13 hours on the case for Bernstein Liebhard was billed at a rate of $185/hour.

44 Bernstein Liebhard, and Cohen, Milstein are based in New York City, while Glancy Binkow is based in Los Angeles. At Bernstein Liebhard, partners involved in the case charge up to $725/hour and associates charge up to $525/hour. At Cohen, Milstein partners involved in the case charge up to $675/hour and associates charge up to $325/hour. At Glancy Binkow partners involved in the case charge up to $625/hour and associates charge up to $525/hour. The Law Office of Jacob Sabo charged a rate of $395/hour for the work of Mr. Sabo, which he states is his normal billing rate.

45 At Bernstein Liebhard, 30% of the time was spent by one associate, at a rate of $495/hour, and partners account for less than 50% of the time. At Cohen, Milstein, partners account for approximately 50% of the total hours spent by attorneys and paralegals. At Glancy Binkow, partners (and "of-counsel" billing at partner rates) account for just under 50% of the total hours spent by attorneys and paralegals. The exception is that Mr. Sabo, who is a solo practitioner, personally performed all the work at his firm.

46 That said, the paralegal rates at Bernstein Liebhard, which were routinely above $200/hour and reach $250/hour, and Glancy Binkow, which start at $255/hour and reach $275, do appear to be above prevailing market norms. *See In re KeySpan Corp. Securities Litigation,* 2005 WL 3093399 at *15 (Paralegal rate of $215/hour and 'law clerk' rate of $275/hour are "excessive."). However, the total lodestar for paralegal work at these two firms was, based on this Court's best estimate from the data provided, approximately $188,000, or just 4% of the total lodestar, and so, to the degree the rates were excessive, their impact on the lodestar is minimal.

It was not immediately clear from the submissions of Bernstein Liebhard which employees who worked on this case were attorneys and which employees were paralegals or law clerks. However, by looking at the firm's internet site, I was able to identify the names of attorneys at the firm and, by

process of elimination, determine which listed employees were paralegals or law clerks. *See* http://www.bernlieb.com/ (last visited on July 20, 2007).

"Under the lodestar method of fee computation, a multiplier is typically applied to the lodestar. The multiplier represents the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors." *In re Merrill Lynch & Co., Inc. Research Reports Securities Litigation,* 2007 WL 313474 at *22. The $6 million fee requested here represents a multiplier of just under 1.3. "In this Circuit, contingency fees of 1.85 times the lodestar and greater have been deemed reasonable by the courts." *Hicks v. Stanley,* 2005 WL 2757792, at *10 (S.D.N.Y.2005); *see In re Interpublic Securities,* 2004 WL 2397190, at *12 (S.D.N.Y.2004) (approving 12% fee representing multiplier of 3.96 times lodestar) (internal citation and quotation omitted); *In re Arakis Energy Corp. Securities Litigation,* 2001 WL 1590512, at *15 (E.D.N.Y.2001) (Multiplier of 1.2 would not "deviate materially from post-*Goldberger* decisions of courts within the Second Circuit."). Though greater and lesser multipliers have been applied, a 1.3 multiplier is not out of line with other cases recently decided in this circuit.

***18** Finally, in performing this cross-check, the Court typically "confirm that the percentage amount does not award counsel an exorbitant hourly rate." *In re Bristol-Meyers Squibb Securities Litigation,* 361 F.Supp.2d at 233. In the present case, the average hourly rate, based on the hours work and the $6 million fee, would be $602/hour for all personnel. While that amount is significant, it does not appear to be exorbitant. See *In re Merrill Lynch & Co., Inc. Research Reports Securities Litigation,* 2007 WL 313474 at *22 (Finding effective rate of $1,193.51/hour to be "exorbitant.").

Balancing all these factors, and accounting for the lodestar calculation, it appears to the undersigned that this case does not merit an award at the very high-end of fees given out by courts in this circuit, but does merit a significant award of 25% ($5 million), which adequately compensates Plaintiffs' Counsel for their time, effort and risk. [47]

47 I am not concerned that this represents a multiplier of less than 1.1 since the hourly rates charged by these firms, which establish the lodestar baseline, are at the very top-end of rates charged by similar firms and, accordingly, compensate counsel for their risk. *See, e.g., In re KeySpan Corp. Securities Litigation,* 2005 WL 3093399, at *16 (E.D.N.Y.2005) ("[T]he use of rates which are higher than reasonable serves to meet the concerns of Class Counsel that they will be properly compensated for value lost due to the contingent nature of the fee arrangement and for the risk associated with this litigation, and alleviates the necessity of the application of a heightened multiplier.") (internal quotations omitted).

B. Expenses

Plaintiffs' Counsel also requests reimbursement for out-of-pocket expenses totaling $588,810.43, below the $600,000 estimate in the Amended Notice. These expenses include both standard office expenses, travel and the expenses incurred in consulting fees for Plaintiffs' experts and investigators. The expenses are broken down as follows: Bernstein Liebhard spent $54,523.56, Cohen, Milstein spent $98,852.67, Glancy Binkow spent $337,770.20, and the Law Office of Jacob Sabo spent $87,664. Lead Plaintiffs also incurred expenses of $10,000.

"Courts routinely grant the expense requests of class counsel." *In re KeySpan Corp. Securities Litigation,* 2005 WL 3093399 at *18; *see In re Arakis Energy Corp. Securities Litigation,* 2001 WL 1590512 at *17 n. 12 ("Courts in the Second Circuit normally grant expense requests in common fund cases as a matter of course."). However, while "nit-picking" is not required, it is still the responsibility of the district court to review the expenses and address any concerns. *In re KeySpan Corp. Securities Litigation,* 2005 WL 3093399 at *18.

Plaintiffs' Counsels' Expenses

At the request of the undersigned, counsel has provided some additional detail under seal as to the cost of consultants and experts, which account for approximately $285,000 of the total expenses.

After reviewing the information submitted by counsel, the rates for experts and consultants appear reasonable given the expertise involved, as does the total amount spent on these services. *See In re Ashanti Goldfields Securities Litigation,* 2005 WL 3050284, at *5 (E.D.N.Y.2005) ("By far the largest expense, totaling over $500,000, was for the services

of expert witnesses .... This is not unusual in securities litigation actions.") (internal citations omitted). In addition, the remaining office, travel and research expenses also appear fair and reasonable and, accordingly, the motion for Plaintiffs' Counsels' expenses is granted.

Lead Plaintiffs' Expenses

***19** At the request of the undersigned, counsel has submitted a translated copy of Lead Plaintiffs' description of their $10,000 in expenses. Lead Plaintiffs spent 25 hours, at a rate of $300/hour, managing the case; 10 hours, at a rate of $100/hour, performing economic analysis; 20 hours, at a rate of $50/hour, providing audit services; and also spent another $500 in computer expenses. Lead Plaintiffs also filed, under seal, an affidavit which lists the tasks performed by Lead Plaintiffs and the basis for the hourly rates listed. "Courts in this Circuit routinely award such costs and expenses both to reimburse the named plaintiffs for expenses incurred through their involvement with the action and lost wages, as well as to provide an incentive for such plaintiffs to remain involved in the litigation and to incur such expenses in the first place." *Hicks,* 2005 WL 2757792, at *10.[48] Since the tasks undertaken by employees of Lead Plaintiffs reduced the amount of time those employees would have spent on other work and these tasks and rates appear reasonable to the furtherance of the litigation, the motion for $10,000 in expenses for Lead Plaintiffs is granted.[49]

48 Under the PSLRA, the share of any final judgment "awarded to a [class] representative ... shall be equal, on a per share basis, to" the amount awarded to all other members of the class but "[n]othing in this paragraph shall be construed to limit the award of reasonable costs and expenses (including lost wages) directly related to the representation of the class to any representative party." 15 U.S.C. § 78u-4(a)(4).

49 The "computer expenses" are presumably out-of-pocket costs which are also reimbursable.
While Plaintiffs' Counsel disclosed their intent to move for fees and expenses in the Notice, Lead Plaintiffs first made their request for reimbursement along with motion for fees and expenses filed by Plaintiffs' Counsel. Since Class Members had no prior notice of Lead Plaintiffs' intention to make such a request, I entertained objections to such expenses until September 3, 2007, the date for filing of Proof of Claim forms. No such objections have been filed.

II. Liban Fee Request[50]

50 Although Mr. Liban's papers are labeled as an "objection," Mr. Liban does not object to the settlement itself or to the awarding of the requested fees to Lead Counsel. Rather, he only seeks an additional award of fees for his efforts.

In a brief submitted July 3, 2007, Imanuel Liban filed an "objection to the fee component" of the Settlement Agreement.[51] According to Mr. Liban, he is a Class Member under the terms of the Settlement Agreement, and on April 15, 2002, filed a suit against defendants[52] in the District Court of Tel Aviv, as well as an application to recognize his suit as a class action, specifying as the class all those who purchased Gilat shares between May 16, 2000 and October 2, 2001.[53] According to Mr. Liban, the Tel Aviv suit "concerns the false and misleading nature of the quarterly financial statement publications of Gilat for the year 2000 and for the first two quarters of the year 2001" which resulted in Gilat shares being traded at an "exaggerated artificial price." Following the filing of Mr. Liban's claim, defendants applied for a stay of proceedings[54] and on October 10, 2002, the Tel Aviv District Court ordered the proceedings stayed until "the granting of a judgment or other operative rulings from the appropriate Court in the USA."[55]

51 Mr. Liban also served notice that his attorneys would appear at the Fairness Hearing. However, no one appeared on that date. Mr. Liban and his lawyers later apologized for their absence, stating the absence was due to personal reasons of Mr. Liban's lawyers. Clarification on Behalf of Mr. Liban, filed August 20, 2007, ¶ 1.

52 Mr. Liban's suit also named Gilat's auditors, Kost, Fuhrer and Gabai-Ernst Young, but the claims against them have been "deleted" according to Mr. Liban.

53 A copy of the filing papers have not been provided to this Court. This litigation was originally filed in this district on March 11, 2002, a week before Mr. Liban's attorneys began working on the case on March 18, 2002and a month before Mr. Liban actually filed his suit in Israel.

54 Mr. Liban states that he submitted a reply to that application, in which he apparently objected to the stay.

55 *Gilat Satellite Networks Ltd. v. Emanuel Liban,* No. A 1456/02, slip op. at 6 (Dist. Ct. of Tel Aviv, Oct. 10, 2002). Although Mr. Liban did not provide a copy of the Tel Aviv court's decision, Lead Counsel has provided me with a certified translation (attached as Exhibit 2 to Lead Plaintiffs' Response to the Clarification on Behalf of Mr. Imanuel Liban, Docket # 136).

Mr. Liban now argues that his attorneys should be awarded fees and he should be reimbursed for the expenses he incurred in filing the suit in Tel Aviv since his claim materially advanced the settlement of the matter.[56] According to Mr. Liban, while American law requires proof of scienter to establish liability for this type of securities fraud, a plaintiff need only demonstrate negligence before an Israeli court and, accordingly, even if an American court found that there was no scienter, the case could have been revived in Tel Aviv under the more plaintiff-friendly Israeli law.[57] Mr. Liban argues that it is "self-evident" that Defendants took this factor into account and that it played an important part in motivating Defendants to settle the action.

56 Mr. Liban request attorneys fees of $110,302.50 and reimbursement of$15,000 in expenses. According to the documents provided by Mr. Liban, his attorneys spent 382 hours preparing the claim and preparing a reply to the application for a stay. No documentation has been provided for Mr. Liban's expenses, which he says are for translation of documents, accounting and financial consultation, photocopying and binding.

57 Though Mr. Liban provided no proof that Israeli law requires only a finding of negligence, Mr. Sabo confirmed that to be the case.

***20** A district court is authorized to provide "compensation for attorneys' fees and expenses where a proper showing has been made that the settlement was improved as a result of [applicant's] efforts."[58] *White v. Auerbach,* 500 F.2d 822, 828 (2d Cir.1974). In this case, Mr. Liban's application revolves around his claim that Defendants were motivated to settle at least in part by the possibility of an Israeli court applying the more plaintiff-friendly Israeli law. However, in its decision staying the proceedings, the Tel Aviv court found that "the relevant law for the action ... is American law" since the contract was signed in New York and because the securities were purchased "based on expectations and reliance on the American Securities Laws."[59] Given this determination as to choice of law, Defendants had little to be concerned about the possible application of Israeli law, and, accordingly, the filing of Mr. Liban's suit cannot be said to have materially advanced the settlement.[60] Moreover, while Mr. Liban claims that it is "self-evident" that his suit induced the settlement, there is nothing in the record which indicates that Defendants took the Israeli action into account at any point. In fact, Mr. Liban did not participate in the settlement discussions nor did he apply to be a Lead Plaintiff. Though Mr. Liban filed a "Clarification On Behalf of Mr. Imanuel Liban" (the "Clarification"), on August 20, 2007, the Clarification contains nothing more than the rehashing of Mr. Liban's conclusory claims that the Israeli proceedings "acted as a catalyst, encouraging the defendants in the United States" to settle.[61] A conclusory allegation unsupported by the record is an insufficient basis on which to award fees which would reduce the settlement fund available to the Class.

58 While the Court in *White* was specifically discussing fees for objectors, I see no material difference between objectors and others whose efforts in the period prior to the appointment of lead counsel improved the settlement. *See In re Auction Houses Antitrust Litig.,* 2001 WL 210697, at *4 (S.D.N.Y.2001) (denying fee application where attorneys "jumped on the band wagon" and filed complaints, since "the mere filing of complaints did not benefit the class."); *In re Cendant Corp. Securities Litigation,* 404 F.3d 173,195 (3d Cir.2005) ("If an attorney creates a substantial benefit for the class [in the period prior to the appointment of lead counsel]-by, for example, discovering wrongdoing through his or her own investigation, or by developing legal theories that are ultimately used by lead counsel in prosecuting the class action-then he or she will be entitled to compensation whether or not chosen as lead counsel.").

59 *Gilat Satellite Networks, Ltd. v. Emanuel Liban,* No. A 1456/02, slip op. at 4 (Dist. Ct. Of Tel-Aviv, Oct. 10, 2002); *see also* Declaration of Jacob Sabo, ¶ 4. Even if the court in Tel Aviv was merely indicating how it was likely to rule on choice of

law, rather than actually making a ruling, it is clear that Defendants had little to be concerned about regarding the application of the more lenient Israeli law.

60 At the Fairness Hearing, Defendants' counsel confirmed that they were aware of the Israeli action but that such knowledge did not factor into their determination as to the amount of the settlement.

61 Clarification, ¶ 12.

While it was unclear from Mr. Liban's initial filing whether he also implicitly requested exclusion from the Class, [62] Mr. Liban states in his Clarification that, ***"he does not intend to withdraw from the class"*** (emphasis in original). I find that Mr. Liban has not requested exclusion from the Class, nor is he entitled to attorneys fees or expenses.

62 At the Fairness Hearing, I directed counsel for the parties to contact Mr. Liban and instruct him to inform me whether he was indeed seeking exclusion, which they did by hand-delivered letter to Mr. Liban's attorneys on July 26, 2007. The Clarification was sent in response.

Conclusion

For the reasons set forth above, the parties' motion for final approval of the Settlement Agreement is granted, Lead Counsel's motion for attorney's fees and expenses is granted in part and denied in part, and Imanuel Liban's motion for attorney's fees and expenses is denied. The Clerk is directed to transmit a copy of the within to all parties and to Chief Magistrate Judge Gold.

SO ORDERED.

All Citations

Not Reported in F.Supp.2d, 2007 WL 2743675, Fed. Sec. L. Rep. P 94,385

End of Document

EXHIBIT 13

2016 WL 3896839
Only the Westlaw citation is currently available.
United States District Court, N.D. Illinois.

IN RE GROUPON, INC. SECURITIES LITIGATION.
This Document Relates to all Cases.

Master File No.: 12 CV 2450
|
Signed 07/13/2016

ORDER OF FINAL APPROVAL AND FINAL JUDGMENT

CHARLES R. NORGLE, UNITED STATES DISTRICT JUDGE

***1** THIS MATTER is before the Court upon Class Plaintiffs Michael Carter Cohn ("Cohn") amd Eric Durdov ("Durdov")'s unopposed Motion for Final Approval of Settlement and Plan of Allocation (the "Motion"). The Court has carefully reviewed this Motion and the entire court file and is otherwise fully advised in the premises.

Class Plaintiffs Cohn and Durdov (collectively, "Class Plaintiffs") have submitted for final approval a proposed settlement of this class action, which is unopposed by Defendants Groupon, Inc., Andrew Mason, Jason Child, Joseph Del Preto, Eric Lefkofsky, Howard Schultz, Kevin Efrusy and Theodore Leonsis, Jr. (collectively, "Defendants").

By an Order dated September 23, 2014, this Court granted class certification, appointed Cohn and Durdov Class Representatives, and appointed their lawyers, Pomerantz LLP, Class Counsel. As subsequently modified, the Class is defined to include:

> All persons or entities who purchased or acquired shares of Groupon's Class A common stock, par value $0.0001 per share (the "Common Stock"), in or traceable to Groupon's Initial Public Offering between November 4, 2011 and March 30, 2012, both dates inclusive ("the Class Period"), and were or may have been damaged thereby, and all such persons or entities who purchased or acquired shares of Common Stock between February 9, 2012 and March 30, 2012, both dates inclusive ("the Subclass Period") and were or may have been damaged thereby. Excluded from the Class are: (1) Defendants and Former Underwriter Defendants and their immediate families; (2) any entity in which Defendants or Former Underwriter Defendants have or had a majority interest; (3) past and present Officers and Directors of Groupon, Inc.; and (4) the legal representatives, heirs, successors, or assigns of any excluded Party.

See Dkt. No. 254.

By an Order dated April 8, 2016, the Court ordered that the Notice of Proposed Settlement substantially in the form of Exhibit B to the Stipulation be mailed no later than twenty (20) days of the entry thereof to each Class Member reasonably identifiable by the process outlined in the Order, together with a Proof of Claim form substantially in the form of Exhibit D to the Stipulation. The Court further ordered that separate Summary Notice be published twice in a national business internet newswire, substantially in the form of Exhibit C to the Stipulation.

On July 13, 2016, the Court conducted a Final Approval Hearing to determine:

a. Whether the Settlement, on the terms and conditions provided for in the Settlement Agreement, should be finally approved by the Court as fair, reasonable, and adequate;

b. Whether the proposed Plan of Allocation is fair, just, reasonable, and adequate;

c. Whether the Action should be dismissed on the merits and with prejudice as to the Defendants;

d. Whether the Court should permanently enjoin the assertion of any claims that arise from or relate to the subject matter of the Action;

e. Whether the application for attorneys' fees and expenses to be submitted by Class Counsel in connection with the Final Approval Hearing to which the Defendants do not oppose should be approved; and

***2** f. Whether the application for a reimbursement award to Class Plaintiffs to be submitted in connection with the final settlement hearing should be approved.

Class Members were informed in the Notice of their right to exclude themselves from the Settlement, of their right to object to the Settlement (or to the Plan of Allocation, request for award of attorneys' fees and expenses or request for a reimbursement award). Class Members and all interested parties were afforded the opportunity to be heard. The Court has duly considered all of the submissions and arguments presented on the proposed Settlement and Stipulation thereof. After due deliberation and for the reasons set out below, the Court has determined that the Settlement and Stipulation thereof is fair, reasonable, and adequate and should therefore be approved.

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED that Class Plaintiffs' unopposed Motion for Final Approval of Settlement be approved and the same is hereby **GRANTED** as follows:

1. This Order of Final Approval and Final Judgment (the "Judgment") incorporates by reference the definitions in the Stipulation, and all capitalized terms used in this Judgment that are not otherwise identified herein have the meanings assigned to them as set forth in the Stipulation.

2. The Court has jurisdiction over the subject matter of the Action and over all Parties to the Action, including all members of the Class.

3. On July 13, 2016, the Court held a Final Approval Hearing, after due and proper notice, to consider the fairness, reasonableness and adequacy of the proposed Stipulation. In reaching its decision in this Action, the Court considered the Stipulation, the Court file in this case, the presentation by Class Counsel on behalf of the Class Plaintiffs and other Class Members in support of the fairness, reasonableness and adequacy of the Settlement, and all other submissions.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby affirms its order maintaining the Class and Sub-Class as defined in its September 23, 2014 Order.

5. In the Preliminary Approval Order (Dkt. No. 359), the Court preliminarily approved the Notice and found that the proposed form and content of the Notice to the Class Members satisfied the requirements of due process, as well as the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. § 78u4(a)(7). The Court reaffirms that finding and holds that the best practicable notice was given to Class Members under the circumstances and constitutes due and sufficient notice of the Settlement, Stipulation in support thereof and Final Approval Hearing to all persons affected by and/or entitled to participate in the Settlement or the Final Approval Hearing. No Class Member is relieved from the terms of the Settlement, including the releases provided for therein, based on the contention or proof that such Class Member failed to receive actual or adequate notice. The Court finds that a full opportunity has been afforded to Class Members to object to the Settlement and/or to participate in the Final Approval Hearing. Furthermore, the Court hereby affirms that due and sufficient notice has been given to the appropriate State and Federal officials pursuant to the Class Action Fairness Act ("CAFA"), 28 U.S.C § 1715.

***3** 6. The Court has determined that the Settlement is fair, reasonable and adequate and is hereby finally approved in all respects. In making this determination, the Court has considered factors with respect to fairness, which include "the strength of plaintiffs' case compared to the amount of defendants' settlement offer, an assessment of the likely complexity, length and expense of the litigation, an evaluation of the amount of opposition to settlement among affected parties, the opinion of competent counsel, and the stage of the proceedings and the amount of discovery completed at the time of settlement." *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006) (*quoting Isby v. Bayh,* 75 F.3d 1191, 1199 (7th Cir. 1996)).

7. The Court has considered the submissions of the Parties, the discovery conducted in this case, along with the Court file, all of which show that there remains a risk and uncertainty as to whether the Class Plaintiffs and the Settlement Class would ultimately prevail on their claims at trial and/or appeal, and the amount of damages they would recover if they did prevail. In light of this risk and uncertainty, the Court finds that the benefits available directly to the Class Members, as

reflected in the payment set forth in ¶ 8 below, represent a fair, reasonable and adequate resolution.

8. Defendants have, agreed to pay, or cause to be paid $45,000,000 in cash for the benefit of the Class. Among other things, the recovery of individual Class Members depends on the number of shares of Groupon Class A Common Stock those Class Members purchased and sold, the timing and prices of those transactions, and the transactions of other Class Members who filed claims.

9. The Court finds that the proposed Plan of Allocation is fair, just, reasonable and adequate and is finally approved in all respects.

10. In addition to finding the terms of the proposed Settlement to be fair, reasonable and adequate, the Court determines that there was no fraud or collusion between the Parties or their counsel in negotiating the terms of the Settlement, and that all negotiations were made at arm's length. Furthermore, the terms of the Stipulation make it clear that the process by which the Settlement was achieved was fair. Finally, there is no evidence of unethical behavior, want of skill or lack of zeal on the part of Class Counsel or counsel for Defendants or Former Underwriter Defendants.

11. This Judgment shall be binding on all Class Members, including Class Plaintiffs, except for the Class Members who filed timely and valid requests for exclusion, as listed on Exhibit 1, attached hereto. Further, the Action and Released Claims are hereby dismissed with prejudice as against Released Defendants' Parties. The Parties are to bear their own costs, except as otherwise provided in the Stipulation.

12. Upon the Effective Date, Class Plaintiffs and each Class Member, shall be deemed to have, and by operation of the Judgment shall have, fully, finally and forever released, relinquished and discharged all Released Claims against the Released Defendants' Parties, whether or not any individual Class Member executes and delivers the Proof of Claim.

13. Upon the Effective Date, Class Plaintiffs and each Class Member and anyone claiming through or on behalf of any of them, by operation of this Judgment, shall be forever barred and enjoined from commencing, instituting or continuing to prosecute any action or any proceeding in any court of law or equity, arbitration, tribunal, administrative forum or other forum of any kind, asserting any of the Released Claims against any of the Released Defendants' Parties.

***4** 14. Upon the Effective Date, Defendants, on behalf of themselves and the Released Defendants' Parties, shall hereby be deemed to have, and by operation of this Judgment shall have, fully, finally and forever, released, relinquished, settled and discharged the Class Plaintiffs, the members of the Class, and any of their attorneys, including Class Counsel, and shall be permanently barred and enjoined from instituting, commencing, or prosecuting any Released Defendants' Claims against any of them directly, indirectly or in any other capacity.

15. In accordance with 15 U.S.C. § 78u-4(f)(7) and any other applicable law or regulation, any and all claims for contribution, indemnity at law or in equity, or any claims however designated that seek equivalent relief are hereby permanently barred and discharged if the claim or claims:

i. arise out of the Action or any Released Claim, including any claim arising out of, relating to, or connected in any way with (a) the purchase of Common Stock on the open market during the Class Period; and (b) the facts, transactions, events, occurrences, acts, disclosures, statements, alleged omissions, or failures to act which were, or could have been alleged, in the Action or in any other forum, based upon, relating to or arising from the facts which were or could have been alleged in the Action; and

ii. are filed by any Person against Groupon or any Individual Defendant, or filed by Groupon or any Individual Defendant against any Person; except that Groupon expressly reserves the right to seek contribution, indemnity, or any claim seeking equivalent relief against any Person (other than the Individual Defendants and Released Plaintiffs' Parties, as defined in the Stipulation) whose liability has been extinguished by the Settlement.

Notwithstanding the foregoing, nothing in this Judgment shall bar or otherwise affect any rights or claims of any Released Person under any directors' and officers' liability insurance or other applicable insurance coverage. Additionally, notwithstanding the foregoing, nothing in the Stipulation nor this Final Judgment shall bar or otherwise affect Former Underwriter Defendants' rights or claims for contribution or indemnity from Groupon, including, without limitation rights under the November 3, 2011 Underwriter Agreement between Groupon and the Former Underwriter Defendants.

16. The Court finds and concludes that during the course of this Action, Defendants, Former Underwriter Defendants, Class Plaintiffs, and their respective counsel complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure. No Party or their respective counsel violated any of the requirements of Rule 11 of the Federal Rules of Civil Procedure with respect to any of the complaints filed in this Action, any responsive pleadings to any of the above complaints or any motion with respect to any of the above complaints. The Court further finds that Class Plaintiffs and Class Counsel adequately represented the Class Members for purposes of entering into and implementing the Settlement.

17. The Court hereby awards Class Counsel 30% of the Settlement Fund, or $13,500,000, in attorneys' fees, plus interest at the same rate as earned by the Settlement Fund. The Court also awards Class Counsel reimbursement of $1,045,363.21 of expenses in the aggregate. [1] These awards are to be allocated in the sole discretion of Class Counsel.

[1] This figure includes $1,045,222.06 that Class Counsel has indicated it incurred directly and $141.15 that Class Counsel has indicated was incurred by the law firm of Cafferty, Clobes, Meriwether & Sprengel LLP, working under its direction.

***5** 18. The Court hereby awards Class Plaintiffs Cohn and Durdov reimbursement of $5,000 each for the time and expenses they incurred in prosecuting this action.

19. The attorneys' fees and expenses approved by the Court herein shall be payable from the Settlement Fund to Class Counsel within five (5) business days after entry of this Judgment, notwithstanding the existence of any potential appeal or collateral attack on this Judgment. The reimbursement awards approved by the Court herein shall be payable from the Settlement Fund to the respective Class Plaintiffs within five (5) business days after the Effective Date.

20. 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.

21. Upon the Effective Date, the Court authorizes up to $200,000 of funds to be transferred from the Settlement Fund to the Class Notice and Administration Account, as set forth in the Stipulation, to be used for the purpose of paying the reasonable fees and expenses incurred by, and the reasonable fees charged by, the Claims Administrator in connection with the administration of the Settlement. This authorization is in addition to the authorization described in the Preliminary Approval Order.

22. If the Settlement is terminated as provided in the Stipulation or the Effective Date otherwise fails to occur, this Judgment shall be vacated, rendered null and void and be of no further force and effect, except as otherwise provided by the Stipulation, and this Judgment shall be without prejudice to the rights of the Parties, and the Parties shall revert to their respective positions in the Action immediately prior to their execution of the Stipulation as provided therein.

23. Nothing in this Judgment shall in any way impair or restrict the rights of the Parties to enforce the terms of the Stipulation.

24. Without affecting the finality of this Judgment, the Court reserves continuing and exclusive jurisdiction over all matters relating to the administration, implementation, effectuation and enforcement of the Stipulation, the Settlement and this Judgment.

25. There is no just reason for delay in the entry of this 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.

SO ORDERED in the Northern District of Illinois on 7-13, 2016.

EXHIBIT 1

1. Brandon Bell

Yardley, PA

2. Dustin R. Bell

Centreville, VA

3. John R. Helphrey

Culver, IN

4. Luis John Carreno Joicey

Madrid, Spain

5. Marcus E. North &

Joanne R. North

Victoria, TX

6. Steven Osborne

Duluth, MN

7. Darren Kwong

Alhambra, CA

8. Christine Milhollan

Colorado Springs, CO

9. Stephen B. Marcum

Lake Forest, CA

All Citations

Not Reported in Fed. Supp., 2016 WL 3896839

End of Document

EXHIBIT 14

2012 WL 5878032
Only the Westlaw citation is currently available.
United States District Court,
S.D. Indiana,
Indianapolis Division.

Kevin T. HEEKIN, Mary E. Ormond, and the Estate of Mary A. Moore, On behalf of Themselves and all Others Similarly Situated, Plaintiffs,
v.
ANTHEM, INC., Anthem Insurance Companies, Inc., Defendants.

No. 1:05–cv–01908–TWP–TAB.
|
Nov. 20, 2012.

Attorneys and Law Firms

Dennis Paul Barron, Dennis Paul Barron LLC, Naples, FL, Edward O'Donnell Delaney, Kathleen Ann Delaney, Delaney & Delaney LLC, Indianapolis, IN, Eric Hyman Zagrans, Elyria, OH, H. Laddie Montague, Jr., Peter R. Kahana, Todd S. Collins, Neil F. Mara, Berger & Montague, P.C., Philadelphia, PA, Lynn L. Sarko, T. David Copley, Cari C. Laufenberg, Keller Rohrback, L.L.P., Seattle, WA, Michael F. Becker, The Becker Law Firm Co., L.P.A., Cleveland, OH, for Plaintiffs.

Adam K. Levin, Craig A. Hoover, Peter R. Bisio, Hogan Lovells US LLP, Washington, DC, Anne Kramer Ricchiuto, Christopher G. Scanlon, Kevin M. Kimmerling, Matthew Thomas Albaugh, Paul A. Wolfla, Faegre Baker Daniels LLP Indianapolis, IN, for Defendants.

AMENDED ENTRY ON MOTION FOR ATTORNEYS' FEES, COSTS, AND CASE CONTRIBUTION AWARDS

TANYA WALTON PRATT, District Judge.

***1** This matter is before the Court on the Plaintiffs' Motion for Attorneys' Fees, Costs, and Case Contribution Awards filed on behalf of attorneys representing the Class. In a separate Entry, the Court approved the Settlement between the parties that established a $90 million common fund to be distributed pro rata to Class Members, after necessary fees, costs, and case contribution awards have been subtracted and granted $614,112.59 in administrative costs. Class Counsel request 33.3% of the common fund as attorneys' fees, $6,243,278.10 in expenses, and $25,000.00 case contribution or incentive awards, to each of the two class Representatives. The Court held a Fairness Hearing on October 25, 2012, at which the litigation expenses, administrative costs, and incentive awards were orally approved. The Court took the request for attorneys' fees under advisement. The Court now rules that Plaintiffs' motion (Dkt.724) is **GRANTED** *nunc pro tunc* as of November 20, 2012.

I. *BACKGROUND*

The Plaintiffs in this class action case are over 700,000 former mutual company members who received *cash* in exchange for their interests in the demutualization of Anthem Insurance Companies. The dispute in this case was zealously litigated by both sides from 2005 until recently, when the parties, with the assistance of a private mediator reached a Settlement Agreement which was approved by this Court on November 16, 2012 (Dkt.780). As a result, the background and facts have been described multiple times by both the parties and the Court in numerous entries. The Court will set forth additional facts below as necessary.

II. *DISCUSSION*

A. Incentive Award

"Because a named plaintiff is an essential ingredient of any class action, an incentive award is appropriate if it is necessary to induce an individual to participate in the suit." *Cook v. Niedert,* 142 F.3d 1004, 1016 (7th Cir.2009). When deciding whether an incentive award is reasonable, courts consider the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefited from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation." *Id.*

One Class Member, Mr. Raymond Rusnak, objects to the proposed $25,000.00 incentive awards. He suggests limiting the awards to $1.00 for each named plaintiff. The Court overrules Mr. Rusnak's objection. In this case, the factors listed above are easily met. Mr. Heekin and Mrs. Ormond committed considerable time and effort over the seven years of litigation. *See* Dkts. 726, 726 (affidavits of Mrs. Ormond and Mr. Heekin). Both have conferred and participated with Class Counsel to make key litigation decisions, traveled to Indianapolis to attend hearings, and reviewed the Settlement

to ensure it was a fair recovery for the Class. Mr. Rusnak's suggestion of a $1.00 incentive award ignores these efforts. In view of Mr. Heekin's and Mrs. Ormond's efforts and the benefits they afforded to the Class, the Court authorizes payment of a $25,000.00 incentive award each to Mr. Heekin and Mrs. Ormond. [1]

[1] In a subsequent filing with the Court, Mr. Rusnak appears to confuse the request for incentive awards and litigation expenses. He argues Class Members were not made aware of any request in excess of $25,000.00. As this objection relates to the incentive award, it is incorrect and does not change the Court's ruling.

B. Attorneys' Fees

***2** Class Counsel request 33.3% of the common fund, or $30 million. To determine if the fee is appropriate, the Court follows the *ex ante* approach. This approach asks the Court to assign fees that "mimic a hypothetical *ex ante* bargain between the class and its attorneys." *Williams v. Rohm & Haas Pension Plan,* 658 F.3d 629, 635 (7th Cir.2011). Courts "must do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time" the litigation began. *In re Synthroid Mktg. Litig.,* 264 F.3d 712, 718 (7th Cir.2001) (*"Synthroid I"*). When determining market price, courts should look to the contracts entered into by the parties and class counsel in similar cases, information from other cases, and any applicable lead counsel auctions. *Taubenfield v. AON Corp.,* 415 F.3d 597, 599 (7th Cir.2005). Additional factors include the quality of the attorneys' performances, the amount of work necessary to resolve litigation, and the stakes in the case. *Synthroid I,* 264 F.3d at 721.

1. Objections

Class counsel seek a 33.3% award of the Settlement fund, or $30 million in attorneys' fees. Out of the over 705,000 Class Members, three Class Members—Raymond C. Rusnak, Edwin H. Paul, and Franklin DeJulius—have objected that the award is excessive. Mr. Rusnak's objection urges the Court to award no more than 10% of the Settlement for attorneys' fees, but provides no reasoning or support for his position. He argues Class Counsel and other attorneys are engaging in price-fixing of outlandish fees. Because Mr. Rusnak fails to address any of the *Synthroid I* factors, or otherwise provide evidence of a reasonable *ex ante* fee, his objection is overruled.

Mr. Paul's objection recognizes that Class Counsel should be compensated at the market rate, but argues the average fee in the market is "around 25%." Dkt. 748 at 6. Mr. Paul focuses on the "information from other cases" *Synthroid I* factor. Citing studies, Mr. Paul argues the median fee award is 25%, or well below 33.3%. *See* Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards,* 7 J. Empirical Legal Studies 811 (2010) (study of nearly every federal class action settlement from 2006 and 2007); Theodore Eisenberg & Geoffrey Miller, *Attorneys' Fees and Expenses in Class Action Settlements: 1993–2008,* 7 J. Empirical Legal Stud. 248 (2010); Theodore Eisenberg & Geoffrey P. Miller, *Attorneys Fees in Class Action Settlements: An Empirical Study,* 1 J. Empirical Legal Stud. 27 (2004) (study of two comprehensive class action data sets covering 1993–2002). Although the Court finds the empirical studies helpful, they do not replace the analysis required under *Synthroid I.* Mr. Paul fails to meaningfully apply the remaining *Synthroid I* factors.

Mr. Paul also argues the Court should utilize a lodestar cross-check in calculating an appropriate fee. In doing so, Mr. Paul overstates the importance of the lodestar method in this Circuit. "[C]onsideration of a lodestar check is not an issue of required methodology." *Williams,* 658 F.3d at 636. Moreover, Class Counsel has provided the Court with a lodestar value in summary reports. The lodestar data was helpful to the Court in providing a clearer understanding of the amount of time spent by class counsel in bringing this lawsuit to resolution in the trial court and to provide a cross-check to assist in determining the reasonableness of the fee award. For the purposes used by the Court, more detailed billing records are not required and none will be ordered. For these reasons, Mr. Paul's objection is overruled.

***3** Mr. DeJulius's objection argues that the appropriate fee range in megafund class actions is between 10% and 20%, with an average of 15%. He further argues that the commonly-cited 33% rate typically applies in individual cases, where the damages are expected to be no more than a few million dollars." Dkt. 746 at 2. Mr. DeJulius applies *Synthroid I,* focusing on *Newby v. Enron,* 586 F.Supp.2d 732 (S.D.Tex.2008) (sliding scale fee award totaling more than $2 billion in fees) and *In re Tyco International MDL Litigation,* 535 F.Supp.2d 249 (D.N.H.2007) (awarding 8.7% of a $3.2 billion dollar recovery) as similar cases to establish the market rate. However, these two cases are easily distinguishable from this case. Most notably, the size of the recovery in both cases

was in the billions of dollars. Moreover, despite utilizing analyses different than in this Circuit, both courts in *Enron* and *Tyco* considered similar factors: reasonableness given the circumstances of the cases and percentages awarded in similar cases. The awards in these cases were consistent with those cases with settlement amounts over $400 million. Therefore, the Court finds the actual percentages reached in those cases unhelpful for determining the market rate in this case, which has a settlement of $90 million.

Mr. DeJulius also relies on *In re Synthroid Marketing Litigation,* 325 F.3d 974 (7th Cir.2003) (*"Synthroid II"*), which awarded attorneys' fees on a sliding scale. He argues *Synthroid II* mandates a sliding scale fee award. The Court flatly rejects this argument. A sliding scale fee award may be indicative of the market rate and circumstances of a case, but the Seventh Circuit does not require it. *See, e.g., Williams,* 658 F.3d at 636 (reviewing percentage fee award and affirming district court's award). Even if a sliding scale fee were appropriate in this case, Mr. DeJulius has not established why the scale he recommends—33% of the first $20 million, 20% of the next $30 million, and 15% of everything over $50 million—is reflective of the market rate or the relative risk presented by this case. Furthermore, Mr. DeJulius suggests the Court should stay the proceedings until the Seventh Circuit decides *Silverman v. Motorola, Inc.,* Nos. 12–2339 and 12–2354. The Court rejects this suggestion. *Hubbard v. Midland Credit Mgmt.,* No. 05–0216, 2009 WL 2148131, at *1 (S.D.Ind. July 16, 2009) (noting that district courts can benefit from "knowing how the Seventh Circuit will decide in similar pending cases," but "the work in the district court goes on *except in very unusual circumstances"* (emphasis added)). Mr. DeJulius has provided the Court no reason why this case should be stayed or why the Court should not apply the clearly established law.

Finally, the Court finds Mr. DeJulius's argument that 33.3% awards should only be awarded in "garden variety individual contingent litigation" to be at odds with decisions in this Circuit. *See, e.g., ., Campbell v. Advantage Sales & Mktg. LLC,* No. 09–01430, 2012 WL 1424417, at *2 (S.D.Ind. Apr. 24, 2012) (McKinney, J.) (awarding one-third of recovery as attorneys' fees); *In re Guidant Corp. ERISA Litig.,* No. 05–1009, slip op. at 2 (S.D.Ind. Sept. 10, 2010) (McKinney, J.) (38% of the common fund); *In re Ready–Mixed Concrete Antitrust Litig.,* No. 05–00979, 2010 WL 3282591, at *3 (S.D.Ind. Aug. 17, 2010) (Barker, J.) (33.3% of the common fund); Order Granting Plaintiffs' Motion for Approval of Proposed Plan of Distribution of Settlement Funds, Award of Attorneys' Fees and Reimbursement of Expenses, and Award of Class Representatives' Incentive Fee, *In re Ready–Mixed Concrete Antitrust Litig.,* No. 05–00979, Dkt. 732, slip op. at 13 (S.D.Ind. Mar. 31, 2009) (Barker, J.) (awarding 33.3% of the common fund; citing a 2008 data that fee awards of 30% and more were granted in 11 out of 16 cases where the recovery was $100 million or less). The Court has carefully considered Mr. DeJulius's objections, but finds that he has failed to establish that the market rate, considering all of the *Synthroid I* factors, is between 10% and 20%. The objection is overruled.

2. The Attorneys' Fees Are Approved

***4** As stated in other entries, this case involved Anthem's demutualization, a complex and heavily regulated process where members liquidated their ownership interests in exchange for stock or cash. Anthem embarked on an initial public offering ("IPO") of 48 million shares of stock in its parent company, not only did the demutualization hatch a new publicly-traded company, it also hatched this class action lawsuit on behalf of hundreds of thousands of former Anthem mutual members who received cash from the demutualization. The pretrial matters were fully litigated and on the eve of trial, the parties settled. The Court has considered the quality of the attorneys' performances, the amount of work necessary to resolve litigation, and the stakes in the case, as well as the contracts entered into by the parties and class counsel in similar cases, information from other cases, and any applicable lead counsel auctions. [2]

[2] Class Counsel submit that they are unaware of any lead counsel "auctions" in cases of this type. Objector Mr. DeJulius provides evidence of auctions in the securities context, but the Court agrees with Class Counsel that auctions in securities actions have little bearing on this case.

First, the Court finds that the risk undertaken by Class Counsel was significant, especially considering the lack of similar cases, complex legal theories, and vigorous defense. In particular, this case presented several unique hurdles in that the transaction had been approved by the Indiana Commissioner of Insurance as "fair, reasonable, and adequate", the State of Indiana actively intervened on behalf of the Defendants and the legal theories that survived summary judgment were close calls. Defendants were represented by pre-eminent law firms and attorneys with many years of litigation and trial experience and those counsel provided a vigorous and effective defense. Further,

the Court's familiarity with the issues in this case, the parties' presentations at oral arguments and briefing, Class Counsel's presentation at the Settlement Fairness Hearing and presentations in affidavits convinces the Court that the risk of nonpayment weighs in favor of the requested fee.

Second, as this Court has previously stated, "the quality of work by counsel has been impressive, and the sheer quantity of the motions practice has been astonishing". (*See* Dkt. 446 at 4). The parties briefed and the Court ruled on numerous potentially dispositive motions, including motions to dismiss, for judgment on the pleadings, for summary judgment, and to strike Plaintiffs' experts as well as motions for class certification and decertification. There were numerous trips to the courthouse and the matter was fully prepared to be tried. Though representing multiple law firms, Class Counsel worked as a unified legal team for the benefit of the Class. The origin of the case was with Attorney Dennis Barron, a small firm practitioner who for much of the last four years of the case, worked on this matter on a full-time basis. Eric Zagrans was involved in the case from its inception and when the Washington D.C. law firm where he worked decided not to accept the case, he left the position, returned to Cleveland, Ohio and became a sole practitioner who dedicated much of his practice to this case. Lynn Sarko and the attorneys' of Keller Rohrback L.L.P.'s complex litigation team are national leader in plaintiff's class actions, as are the attorneys from Berger & Montague, P.C. and Becker Law Firm Co., L.P.A. Local counsel from the firm of Delaney and Delaney L.L.C ., represented the Class with their usual high degree of skill and professionalism. The Court finds Class Counsel's performance in this case was outstanding as is reflected by the result achieved. The quality work performed by the multiple law firms and counsel has produced a substantial recovery for the Class Members, one of the largest in the Southern District of Indiana. Moreover, the named Plaintiffs attest to their satisfaction with the quality of legal services received.

***5** Third, the Court finds this case required Class Counsel to put forth considerable time and effort. The lodestar calculations illustrate this factor, as Class Counsel and staff completed more than 40,800 hours on this case. This included work on discovery, dispositive motions, an appeal, and intensive trial preparation. Class Counsel's request represents a multiplier of 1.5, which is within range of comparable cases.

Fourth, the Court finds this case had incredibly high stakes. The Defendants faced a multi-million dollar claim for which there was a denial of insurance coverage for any judgment or settlement and were vigorous participants in this litigation. Likewise, the sum of Class Members' total losses was significant, estimated by Class Counsel as between $227 and $448 million. Class Counsel also had a great deal at stake, with the risk of non-payment, burden of advancing litigation costs of over $6 million, and the "opportunity costs" of turning down other lucrative clients.

Fifth, the Court notes that named plaintiffs, Mrs. Ormond and Mr. Heekin, entered into contingent fee agreements with Class Counsel agreeing to pay a fee of 33.3% and up to 45% of the recovery, depending on the stage of litigation. Moreover, Class Counsel and expert Paul Slater have attested that they would not have accepted this litigation, in light of the risks and complexity, with anything less than a 33.3% fee agreement.

Sixth, the Court finds there is support from other cases in this Circuit and nationally to support a percentage market rate of 33.3%. [3] Class Counsel have provided the Court with evidence of numerous cases in which common funds over $50 million resulted in 33 .3% fee awards. As discussed above, the objectors have failed to establish this fee is unreasonable. The cases provided by Class Counsel are more closely comparable to this one in terms of common fund size, risk factors, and complexity. *See* Dkt. 776–2. Therefore, for all the reasons stated, the Court finds that a 33.3% attorneys' fee award reflects the *ex ante* market rate and takes into account the risk of nonpayment. The requested fee is granted.

3 In addition to cases cited above, see, Dkt. 776–2; *George v. Kraft Foods Global, Inc.,* No. 08–3799, slip op. at 2 (N.D. Ill. June 26, 2012) (one-third fee); *Pavlik v. FDIC,* No. 10–816, 2011 WL 5184445, at *4 (N.D.Ill. Nov.1, 2011) (one-third fee); *Schulte v. Fifth Third Bank,* 805 F.Supp.2d 560, 597–600 (N.D.Ill.2011) (one-third fee); *Martin v. Caterpillar, Inc.,* No. 07–1009, slip op. at 7 (C.D.Ill. Sept.10, 2010) (one-third fee); *Burkholder v. City of Ft. Wayne,* 750 F.Supp.2d 990, 997 (N.D.Ind.2010) (one-third fee); *Kitson v. Bank of Edwardsville,* No. 08–507, 2010 WL 331730, at *2 (S.D.Ill. Jan.25, 2010) (one-third fee); *Will v. Gen. Dynamics Corp.,* No. 06–698, 2010 WL 4818174, at *3 (S.D.Ill. Nov.22, 2010) (one-third fee). *See also Mansfield v. Air Line Pilots Ass'n Intl'l,* No. 06–6869, slip op. at 7 (N.D.Ill.Dec. 14, 2009) (35% of the common fund); *Kelly v. Bluegreen Corp.,* No. 08–401, slip op. at 4 (W.D.Wis. Oct. 30, 2009) (one-third of common

fund); *Perry v. Nat'l City Bank,* No. 05–891, slip op. at 2 (S.D.Ill. Mar. 3, 2008) (one-third award); *Retsky Family Ltd. P'ship v. Price Waterhouse LLP,* No. 97–7694, 2001 WL 1568856, at *4 (N.D.Ill.Dec.10, 2001) ("A customary contingency fee would range from 33 1/3% to 40% of the amount recovered."); *In re Mercury Fin. Co.,* No. 97–3035, slip ops. at 2 (N.D. Ill. July 6, 2001 and July 26, 2000) (one-third fee); *In re Lithotripsy Antitrust Litig.,* No. 98–8394, 2000 WL 765086, at *2 (N.D.Ill. June 12, 2000) (noting that "[m]any courts in this district have utilized" the percentage method to set fees in class actions; "33.3% of the fund plus expenses is well within the generally accepted range of the attorneys fee awards"); *Goldsmith v. Tech. Solutions Co.,* No. 92–4374, 1995 WL 17009594, at *8 (N.D.Ill. Oct.10, 1995) (noting that courts in the Seventh Circuit award attorneys' fees "equal to approximately one-third or more of the recovery"); *Spicer v. Chi. Bd. Options Exch., Inc.,* 844 F.Supp. 1226, 1252 (N.D.Ill.1993) (awarding 29% of common fund).

Additionally, Class Counsel request reimbursement for litigation expenses totaling $6,243,278.10. Having reviewed the expense reports and previously granted the request at the Settlement Hearing, the Court finds the request is reasonable and grants $6,243,278.10 in litigation expenses to Class Counsel.

III. *CONCLUSION*

For the reasons set forth above, Class Counsel's request for attorneys' fees in the amount of 33.3%, or $30 million and for $6,243,278.10 in litigation expenses is **GRANTED.** Class Representatives Mrs. Ormond and Mr. Heekin are each entitled to a $25,000.00 incentive award.

SO ORDERED.

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EXHIBIT 15

2009 WL 5178546
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United States District Court,
S.D. New York.

In re MARSH & McLENNAN COMPANIES, INC. SECURITIES LITIGATION.

No. 04 Civ. 8144(CM).
|
Dec. 23, 2009.

West KeySummary

1 **Compromise, Settlement, and Release** Securities

Proposed settlement of class action, wherein proposed class members alleged that they were injured by corporation's fraudulent scheme to artificially inflate corporate securities prices by making false and misleading statements about its contingent commission practices, was fair, reasonable, and adequate. The litigation involved complex issues of securities law and insurance industry practice, making it extremely complicated to bring to trial and with significant costs, so considering that class certification was still pending, the proposed settlement was procedurally fair. Moreover, the majority of the proposed class approved of the proposed settlement.

32 Cases that cite this headnote

DECISION AND ORDER APPROVING THE SETTLEMENT, CERTIFYING THE CLASS FOR SETTLEMENT PURPOSES, APPROVING THE PLAN OF ALLOCATION OF THE SETTLEMENT FUND, AWARDING ATTORNEYS' FEES, AND REJECTING THE OBJECTIONS

McMAHON, District Judge.

INTRODUCTION

***1** Lead Plaintiffs the Public Employees Retirement System of Ohio, the State Teachers Retirement System of Ohio and the Ohio Bureau of Workers' Compensation (collectively, the "Ohio Plaintiffs"), and the State of New Jersey, Department of the Treasury, Division of Investment, on behalf of itself and the Common Pension Fund A, the DCP Equity Fund and the Supplemental Annuity Collective Trust Fund (collectively, the "New Jersey Plaintiffs" and, together with the Ohio Plaintiffs, "Lead Plaintiffs"), on behalf of themselves and the Class (as defined herein), move for final approval of a proposed settlement of $400 million (the "Settlement") with Defendants Marsh & McLennan Companies, Inc. ("MMC"), Marsh, Inc. ("Marsh"), Jeffrey Greenberg ("Greenberg") and Roger Egan ("Egan") (collectively, "Defendants"). The Court preliminarily approved the Settlement in its Preliminary Approval Order of November 10, 2009 (Docket No. 301.) Only a handful of Class members have offered any objection to the Settlement. Not one potential Class member has objected to the amount of the Settlement, or to any of the substantive terms of the Settlement. For the reasons stated below, the Court approves the Settlement, concluding that it is fair, reasonable and adequate.

With the approval of Lead Plaintiffs, the law firms of Grant & Eisenhofer, P.A. and Bernstein Liebhard LLP (together, "Lead Counsel"), move for (1) an award of attorneys' fees in the amount of 13.5% of the Settlement amount (the "Fee Application"); (2) reimbursement of $7,848,411.84 of expenses incurred by Lead Counsel in litigating this action; and (3) reimbursement of $214,657.14 of expenses incurred by Lead Plaintiffs ($70,000 for the Ohio Plaintiffs and $144,657.14 for the New Jersey Plaintiffs) in representing the Class (the "PSLRA Award Request"). [1] For the reasons stated below, the Court grants all three requests.

1 In their brief submitted in support of their request for fees and expenses, Lead Counsel first request an award of $320,000 for Lead Plaintiffs. (Mem. in Supp. of Lead Counsel's App. for an Award of Attorneys' Fees, Reimbursement of Expenses for Lead Counsel, and an Award of Expenses to Lead Pls., Dec. 18, 2009 ("Fees Br."), at 1.)

However, Lead Counsel then state: "Pursuant to the PSLRA, Ohio Plaintiffs and the New Jersey Plaintiffs request an award totaling $214,657.14 to compensate them for their reasonable costs and expenses incurred in managing this litigation and representing the Class," and "request[ ] that the Court award the Ohio Plaintiffs $70,000 and the New Jersey Plaintiffs $ 144,657.14." (*Id.* at 23–25.) Thus, the Court construes the PSLRA Award Request as a request for $214,657.14.

BACKGROUND

I. Lead Plaintiffs' Allegations and Claims

Lead Plaintiffs allege that Defendants engaged in a systematic plan to increase insurance placement revenues through improper bid manipulation and illicit client steering, all designed to generate a critical source of income known as "contingent commissions." Lead Plaintiffs further allege that Defendants violated federal securities laws by making materially false and misleading statements about their contingent commission practices, which caused the price of MMC stock to be artificially inflated during the Class Period (as defined herein), and to drop precipitously when the truth about the scheme was finally revealed, causing massive losses to investors.

Lead Plaintiffs brought claims against all Defendants under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934. Lead Plaintiffs also brought a claim against MMC under Section 11 of the Securities Act of 1933. Specifically, Lead Plaintiffs' Second Amended Consolidated Class Action Complaint (the "Amended Complaint") alleges, inter alia, that Defendants lied to the investing public by misrepresenting that: (1) contingent commission payments played no role in Marsh's recommendations to its clients about which carrier to choose for insurance coverage; (2) contingent commissions were paid in exchange for "services" provided by Marsh to the insurance carriers; and (3) Marsh fully disclosed contingent commissions to its clients. Lead Plaintiffs further allege that when the scheme ultimately was revealed in late 2004, following a suit brought by the New York Attorney General ("NYAG"), and the truth about Defendants' misstatements began to come out, MMC's stock price collapsed and investors suffered billions of dollars in damages.

II. Procedural Background

***2** This Settlement comes about after more than five years of hard-fought litigation. The litigation began on October 15, 2004, when the first of several class-action complaints was filed in the Southern District of New York against MMC, its subsidiary, Marsh, and others, including Greenberg, the former CEO of MMC, and Egan, the former President of Marsh. The complaints were assigned to the late Judge Kram for consolidated pretrial proceedings and the action was styled *In re Marsh & McLennan Companies, Inc. Securities Litigation,* No. 04 Civ. 8144. By Order dated January 26, 2005, Judge Kram appointed the Ohio Plaintiffs and the New Jersey Plaintiffs as Lead Plaintiffs, and Grant & Eisenhofer and Bernstein Liebhard as Lead Counsel.

Lead Plaintiffs filed their Consolidated Class Action Complaint on April 19, 2005. All Defendants moved to dismiss all claims asserted against them. On July 19, 2006, Judge Kram granted in part and denied in part the motions to dismiss. Judge Kram's decision substantially narrowed the claims and allegations asserted against Defendants and dismissed all of the state-law claims. *See In re Marsh & McLennan Cos., Inc. Sec. Litig.,* No. 04 Civ. 8144, 2006 WL 2057194 (S.D.N.Y. July 19, 2006). Lead Plaintiffs filed the Amended Complaint on October 13, 2006, asserting only the claims and allegations that Judge Kram had not dismissed. Defendants answered the Amended Complaint on December 12, 2006.

With the discovery stay lifted, the parties proceeded to conduct extensive and vigorously contested fact discovery. Given the intensity of discovery, Judge Kram appointed a Special Master, L. Peter Parcher, to hear and rule on disputed discovery issues. Lead Plaintiffs brought twenty such motions to the Special Master and Defendants brought five, on which the Special Master issued twenty opinions. (Fees Br. at 6.)

Lead Plaintiffs and Defendants each retained an expert to address Lead Plaintiffs' motion for class certification, with each side filing detailed initial and rebuttal expert witness submissions. As discovery continued, Lead Plaintiffs retained six experts to address liability, damages and causation issues, and Defendants retained two experts. The parties exchanged lengthy, detailed initial reports from all of the experts, and rebuttal reports from four experts. By the time the parties had agreed in principle to settle, both Lead Plaintiffs and Defendants had already deposed one of the other side's expert witnesses. Both sides were preparing their other expert witnesses for depositions, which were set to continue the same week the parties reached their agreement to settle.

Lead Plaintiffs moved for certification of a class of purchasers of MMC securities from October 14, 1999 through October 13, 2004. Defendants opposed that motion. The class certification issues were hotly contested, and numerous briefs were filed on the certification question. At the time the parties agreed to settle, the Court had not yet ruled on Lead Plaintiffs' class certification motion. On November 10, 2009, at the request of Lead Plaintiffs and Defendants, the Court certified the Class for settlement purposes only in the Preliminary Approval Order.

***3** At all times, the parties sharply disputed the merits of the case, class certification and damages. Defendants denied, and still deny, each claim alleged against them. Defendants asserted, and still assert, that they made no material misrepresentations or omissions and that, even if they did, they did so without intent such that they are not liable under the federal securities laws. Further, Defendants maintain that, even if they were found liable, the amount of the damages suffered by the Class is negligible or nonexistent.

Through an experienced mediator, the Honorable Daniel Weinstein (the "Mediator")—a retired Judge of the Superior Court of California—Lead Counsel engaged in intensive, arm's-length negotiations with Defendants over a one-and-a-half year period, with the aim of settling the issues in dispute and achieving the best relief possible consistent with the interests of the Class. Formal mediation sessions were held on April 7, 2008, February 4, 2009 and October 14–15, 2009. The mediation sessions involved sophisticated demonstrative aides and written and oral presentations to Judge Weinstein, as well as separate sessions with an independent damages expert retained for the sole purpose of advising the Mediator. On November 10, 2009, a settlement was reached.

III. Summary of the Settlement

The Settlement is the result of several rounds of mediation between Lead Plaintiffs and Defendants, conducted before the Mediator. Judge Weinstein has submitted a declaration attesting to his belief that the Settlement is a fair and reasonable resolution of this matter, taking into account the complexities of the issues involved, the strengths and weaknesses of each side's position and the uncertainty of continued litigation. (*See* Decl. of Judge Weinstein, Dec. 18, 2009, ¶ 14.)

The Settlement provides for the payment of $400 million for the benefit of Lead Plaintiffs and the Class into a settlement fund (the "Settlement Fund"). Additionally, the Stipulation and Agreement of Settlement, dated November 10, 2009 (Docket No. 300) (the "Stipulation") allows Lead Counsel to request an attorneys' fee of up to 13.5% of the Settlement Fund and reimbursement of expenses of up to $13 million, as well as to request reimbursement for class representative expenses incurred by Lead Plaintiffs.

IV. Notice of Settlement

Pursuant to the Preliminary Approval Order, Lead Plaintiffs provided notice of the Settlement to Class members in several significant ways: (1) Lead Plaintiffs, through their claims agent, caused the Court-approved Notice of Proposed Settlement (the "Notice") to be mailed by first-class mail, postage prepaid, to all reasonably identifiable Class members and their nominees (Joint Decl. of Keith M. Fleischman & Stanley D. Bernstein, Dec. 18, 2009 ("Joint Decl."), ¶ 96; Aff. of Charlene Young, Dec. 18, 2009 ("Young Aff"), ¶ 11); (2) Lead Plaintiffs caused a copy of the Summary Notice of Proposed Settlement (the "Summary Notice") to be published in the national edition of *The Wall Street Journal* (Joint Decl. ¶ 97; Young Aff. ¶ 6); (3) Lead Plaintiffs caused a copy of the Notice to be transmitted over *Business Wire* (Joint Decl. ¶ 98; Young Aff. ¶ 6); and (4) Lead Plaintiffs established the website www.MMCSecuritiesLitigation.com, on which was published the Notice, the Proof of Claim and Release Form (the "Proof of Claim"), various Court documents and additional information regarding the Settlement (Joint Decl. ¶ 99; Young Aff. ¶ 7). The Notice described the terms of the Settlement; explained the claims and defenses in the lawsuit; provided instructions for Class members to exclude themselves from the Settlement or to object to any part of the Settlement; provided detailed information about the final Settlement fairness hearing on December 23, 2009 (the "Settlement Fairness Hearing"); and provided contact information for the claims agent and Lead Plaintiffs' counsel, among other things.

V. Objections Received

***4** Lead Plaintiffs have received only seven objections from potential Class members. (Joint Decl. ¶ 115.) In addition, twenty potential Class members have asked to be excluded from the Settlement. (*Id.* ¶ 113; Young Aff. ¶ 14.)

DISCUSSION

I. The Settlement Is Fair, Reasonable and Adequate

There is a "strong judicial policy in favor of settlements, particularly in the class action context." *In re PaineWebber Ltd. P'ships Litig.,* 147 F.3d 132, 138 (2d Cir.1998). "Settlement approval is within the Court's discretion, which should be exercised in light of the general judicial policy favoring settlement." *In re Sumitomo Copper Litig.,* 189 F.R.D. 274, 280 (S.D.N.Y.1999) (internal quotations omitted). In a class-action settlement, there is a presumption of fairness, reasonableness and adequacy when the settlement is the product of "arms-length negotiations between experienced, capable counsel after meaningful discovery." *Id.* at 280 (*citing Manual for Complex Litigation* (Third) § 30.42 (1995)).

A. Standards for Approval of a Class–Action Settlement

In evaluating a proposed settlement under Federal Rule of Civil Procedure 23, the Court must determine whether the settlement, taken as a whole, is fair, reasonable and adequate. *Maywalt v. Parker & Parsley Petroleum Co.,* 67 F.3d 1072, 1079 (2d Cir.1995); *see In re WorldCom, Inc. Sec. Litig.,* No. 02 Civ. 3288, 2004 WL 2591402, at *10 (S.D.N.Y. Nov. 12, 2004). It is well-established that courts in this Circuit examine the fairness, adequacy and reasonableness of a class-action settlement according to the *"Grinnell* factors":

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund in light of all the attendant risks of litigation.

City of Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir.1974) (citations omitted). "In finding that a settlement is fair, not every factor must weigh in favor of settlement, 'rather the court should consider the totality of these factors in light of the particular circumstances.' " *In re Global Crossing Sec. & ERISA Litig.,* 225 F.R.D. 436, 456 (S.D.N.Y.2004) (quoting *Thompson v. Metro. Life Ins. Co.,* 216 F.R.D. 55, 61 (S.D.N.Y.2003)). In deciding whether to approve a settlement, a court "should not attempt to approximate a litigated determination of the merits of the case lest the process of determining whether to approve a settlement simply substitute one complex, time consuming and expensive litigation for another." *White v. First Am. Registry, Inc.,* No. 04 Civ. 1611, 2007 WL 703926, at *2 (S.D.N.Y. Mar. 7, 2007).

B. Application of the *Grinnell* Factors Supports Approval of the Settlement

1. The Complexity, Expense and Likely Duration of the Litigation

***5** "[I]n evaluating the settlement of a *securities* class action, federal courts, including this Court, have long recognized that such litigation is notably difficult and notoriously uncertain." *In re Sumitomo,* 189 F.R.D. at 281 (emphasis in original) (internal quotations omitted). This is certainly true with respect to the claims in this case.

This litigation involved not only complex issues of securities law, but also specific issues involving the highly regulated insurance industry and its use and understanding of contingent commissions. These industry-specific issues were complex enough to require Lead Plaintiffs to hire two industry experts, at significant expense, to assist Lead Counsel during most of the five years of the litigation. (*See* Joint Decl. ¶ 74.)

This case would have been extremely complicated to bring to trial, with the prospects for Lead Plaintiffs and the Class being highly uncertain. Even the most optimistic estimates did not have trial commencing until early 2011, with the Class not receiving any recovery until at least 2013. There would have been significant additional resources and costs expended to litigate the case through trial and through the inevitable appeals of any judgment that might have been entered against Marsh. The Settlement, by contrast, provides certain and substantial recompense to Class members now, and avoids their having to await the uncertain outcome of what would have been a lengthy trial and appeals process.

Thus, the complexity, expense and uncertainty of the litigation supports approval of the Settlement.

2. The Reaction of the Class to the Settlement

The Class's reaction to the Settlement also supports approval. Lead Counsel provided Notice by mail and by publication to all ascertainable Class members, and a website was established to handle inquiries. As the Court remarked at the preliminary approval hearing on November 10, 2009, the quality of the Notice provided by Lead Counsel is exceptionally high. Lead Counsel have received only seven purported objections and twenty requests for exclusion. This is an extremely strong indication of the fairness of the Settlement. [2]

[2] Counsel disagree over whether the requests for exclusion (which come from a group of entities represented by the same lawyer) were great enough to trigger Marsh's right to walk away from the Settlement. But in exchange for an opportunity to convince these opt-outs of the error of their ways, Marsh has decided not to exercise any right it might have to walk away, and has asked the Court to approve the Settlement. The Court has today signed an order giving these twenty opt-outs additional time to rethink their position.

3. The Stage of the Proceedings and the Amount of Discovery Completed

At the time of the Settlement, the parties had just completed merits discovery and were in the process of conducting expert depositions. (Joint Decl. ¶ 76.) The parties had already exchanged expert reports and rebuttal reports. (*Id.* ¶ 74.) By this time, Lead Plaintiffs had, inter alia, (1) inspected, reviewed and analyzed over thirty-four million pages of documents produced by Defendants; (2) subpoenaed 100 non-parties and inspected, reviewed and analyzed over two million pages produced by non-parties; (3) taken and defended over 100 depositions; and (4) researched the applicable law concerning Lead Plaintiffs' claims and potential defenses thereto, as well as numerous pretrial issues.

***6** The advanced stage of the litigation and extensive amount of discovery completed weigh heavily in favor of approval. The parties' counsel were clearly in a position to realistically evaluate the strengths and weaknesses of the claims, and to evaluate the fairness of the proposed Settlement. *See In re Lloyd's Am. Trust Fund. Litig.,* No. 96 Civ. 1262, 2002 WL 31663577, at *15 (S.D.N.Y. Nov. 26, 2002); *see also In re Sumitomo,* 189 F.R.D. at 281–82 (finding that the stage of the proceedings "strongly" favored approval of settlement reached after "[p]laintiffs had conducted extensive discovery, investigation and analyses, and the proceedings were in the advanced stage of pointing or preparing for trial"). This is not a case where the parties engaged only in "settlement discovery." Thus, this *Grinnell* factor strongly supports approval.

4. The Risks of Establishing Liability

There is some risk that Lead Plaintiffs ultimately might have failed to establish Defendants' liability. Courts have acknowledged that "the legal requirements for recovery under the securities laws present considerable challenges, particularly with respect to loss causation and the calculation of damages." *In re AOL Time Warner, Inc. Sec. & "ERISA" Litig.,* No. 02 Civ. 5575, 2006 WL 903236, at *9 (S.D.N.Y. Apr. 6, 2006) (citations omitted). For example, with respect to the Rule 10b–5 claims, Lead Plaintiffs may have had difficulty proving that Defendants acted with scienter, or that the alleged decline in MMC's stock price was due entirely to the conduct alleged in the Amended Complaint and not to other unrelated factors.

5. The Risks of Establishing Damages

If there is anything in the world that is uncertain when a case like this one is taken to trial, it is what the jury will come up with as a number for damages. On damages, this case would have ended up as a classic "battle of the experts." There is the undeniable risk that a "jury could be swayed by experts for the Defendants, who [c]ould minimize the amount of Plaintiffs' losses." *Maley v. Del Global Tech. Corp.,* 186 F.Supp.2d 358, 365 (S.D.N.Y.2002); *see Strougo v. Bassini,* 258 F.Supp.2d 254, 259 (S.D.N.Y.2003); *In re Lloyd's,* 2002 WL 31663577, at *21. The risk that Lead Plaintiffs would be unable to establish damages exceeding the $400 million that the Settlement provides to the Class supports approval of the Settlement. Even if Lead Plaintiffs were successful in establishing liability, they have avoided substantial risks in proving damages by virtue of this proposed Class Settlement.

6. The Risk of Maintaining the Class Action Through Trial

There is also the risk that the Court might have denied Lead Plaintiffs' motion for class certification, and thereby precluded any recovery for the Class whatsoever. At the time of the Settlement, the class certification motion was pending before the Court. Defendants had vigorously contested class certification, arguing, inter alia, that Lead Plaintiffs are

not entitled to the "fraud-on-the-market" presumption. The briefing was voluminous, intense and complex. Had the Court rejected Lead Plaintiff's motion, no class action could have been maintained. Although Defendants have stipulated to certification of the Class for purposes of the Settlement, there would have been no such stipulation had Lead Plaintiffs brought this case to trial. Thus, the uncertainty surrounding class certification supports approval of the Settlement. *See In re AOL,* 2006 WL 903236, at *12 (finding that risk of plaintiffs' not succeeding in certifying class supported approval of settlement); *In re Global Crossing,* 225 F.R.D. at 460 (same).

7. The Ability of Defendants to Withstand a Greater Judgment

***7** It is undeniable that the current economic climate is not strong. Marsh's financial condition undoubtedly has been adversely affected by the economic turmoil of the past year. Moreover, the value of MMC stock has not recovered since the alleged wrongdoing giving rise to this litigation. In October 2004, during the five days following the announcement of the NYAG's lawsuit, the value of MMC stock dropped from $46.01 per share to $24.10. (Am.Compl.¶ 10.) MMC stock is currently trading even lower, at approximately $22 per share. There exists the legitimate concern that Defendants might not be able to pay an award higher than the Settlement, even if Lead Plaintiffs were to prevail at trial. Accordingly, this factor supports approval of the Settlement.

8. The Range of Reasonableness of the Settlement Fund in Light of the Best Possible Recovery and All the Attendant Risks of Litigation

The determination of a "reasonable" settlement "is not susceptible of a mathematical equation yielding a particularized sum ." *In re Michael Milken & Assocs. Sec. Litis.,* 150 F.R.D. 57, 66 (S.D.N.Y.1993); *In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litis.,* 718 F.Supp. 1099, 1103 (S.D.N.Y.1989). Rather, "in any case there is a range of reasonableness with respect to a settlement." *Newman v. Stein,* 464 F.2d 689, 693 (2d Cir.1972) "The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." *Grinnell,* 495 F.2d at 455 & n. 2 ("In fact there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery.")

The Settlement is well within the range of reasonableness in light of the best possible recovery and all the attendant risks of litigation. A recovery totaling $400 million is an excellent result when success on the claims asserted is uncertain, class certification is being vigorously challenged, and the condition of the economy and of MMC in particular is questionable. Accordingly, the eighth and ninth *Grinnell* factors support approval of the Settlement.

C. The Proposed Settlement Is Procedurally Fair

"In addition to ensuring the substantive fairness of the settlement through full consideration of the *Grinnell* factors, the Court must also 'ensure that the settlement is not the product of collusion.' " *In re Global Crossing,* 225 F.R.D. at 461 (*quoting In re NASDAQ Market–Makers Antitrust Litig.,* 187 F.R.D. 465, 474 (S.D.N.Y.1998)). However, "As long as the integrity of the negotiating process is ensured by the Court, it is assumed that the forces of self-interest and vigorous advocacy will of their own accord produce the best possible result for all sides." *Banyai v. Mazur,* No. 00 Civ. 9806, 2007 WL 927583, at *12 (S.D.N.Y. Mar.27, 2007) (approving settlement reached after months of good-faith, arm's-length negotiations) (*quoting In re PaineWebber Ltd. P'Ships Litig.,* 171 F.R.D. 104, 132 (S.D.N.Y.1997)).

***8** Where, as here, "the settlement is the result of arm's length negotiations conducted by experienced counsel after adequate discovery and the settlement provokes only minimal objections, then it is entitled to '[a] strong initial presumption of fairness.' " *In re Global Crossing,* 225 F.R.D. at 461 (citation omitted). As set forth in Lead Counsel's Joint Declaration, Lead Counsel entered into this Settlement after conducting extensive discovery and arm's-length negotiations, based on their good-faith belief that the Settlement is in the best interests of the Class. The Settlement was the result of protracted, difficult negotiations that stretched out over a year and a half. Moreover, those negotiations were conducted with the assistance of Judge Weinstein, a highly regarded mediator with extensive experience in securities litigation, who has submitted a declaration in support of the Settlement. There is no reason to doubt that the Settlement is procedurally fair.

II. Certification of a Settlement Class Is Appropriate Under Rule 23

The Preliminary Approval Order certified the Class pursuant to Rules 23(a) and (b)(3) on behalf of all persons who

purchased or otherwise acquired MMC securities between October 14, 1999 and October 13, 2004 (the "Class Period"), and that claim to have suffered losses as a result of such purchase or acquisition. The Class excludes the following: (1) MMC, Marsh and their officers, directors, employees, affiliates, parents, subsidiaries, representatives, predecessors and assigns; (2) Greenberg and Egan and their immediate families, employees, affiliates, representatives, heirs, predecessors, successors and assigns, as well as any entity in which either Greenberg or Egan has a controlling interest; and (3) those persons that would otherwise be members of the Class but that submit valid and timely requests for exclusion in accordance with the Preliminary Approval Order. The Court also certified Lead Plaintiffs as Class Representatives and Lead Counsel as Class Counsel, for purposes of Settlement only, pursuant to Rule 23.

The Second Circuit has long acknowledged the propriety of certifying a class solely for purposes of a class-action settlement. *See Weinberger v. Kendrick,* 698 F.2d 61, 73 (2d Cir.1982). Classes certified for settlement purposes, like all other classes, must meet the requirements of Rule 23(a) and at least one of three requirements set forth in Rule 23(b). *See In re Prudential Sec. Inc. Ltd. P'ships Litis.,* 163 F.R.D. 200, 205–10 (S.D.N.Y.1995).

A. The Requirements of Rule 23(a) Are Satisfied

Certification under Rule 23(a) is proper if (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the class representatives are typical of the claims or defenses of the class; and (4) the class representatives will fairly and adequately protect the interests of the class.

1. The Settlement Class Is Sufficiently Numerous

***9** Rule 23(a)(1) requires a showing that the Class is so numerous that joinder of all members is impracticable. Numerosity is generally presumed when a class consists of forty or more members. *See Consol. Rail Corp. v. Town of Hyde Park,* 47 F.3d 473, 483 (2d Cir.1995). "In securities fraud class actions relating to publicly owned and nationally listed corporations, the numerosity requirement may be satisfied by a showing that a large number of shares were outstanding and traded during the relevant period." *In re Vivendi Universal, S.A. Sec. Litig.,* 242 F.R.D. 76, 84 (S.D.N.Y.2007) (*quoting Teachers Ret. Sys. v. ACLN Ltd.,* No. 01 Civ. 11814, 2004 WL 2997957, at *3 (S.D.N.Y. Dec.27, 2004)).

At the time of the Amended Complaint, MMC was the largest insurance broker in the United States, and one of the largest in the world, with approximately $11 billion in annual revenues. (Am.Compl.¶ 43.) MMC has traded on the NYSE during all relevant times, and undoubtedly has had millions of shares outstanding at any given time. Further, Lead Plaintiffs have caused the Notice to be mailed to thousands of potential Class members or nominees, and there have been over 7,000 viewers at the Settlement website. (Young Aff. ¶ 8.) In short, the numerosity of the Class cannot seriously be disputed.

2. There Are Questions of Law or Fact Common to the Class

Rule 23(a)(2) requires a showing that common issues of fact or law affect all Class members. "The commonality requirement, particularly in securities fraud litigation, is generally considered a low hurdle easily surmounted. Commonality does not demand that every question of law or fact be common to every class member, but instead merely requires that the claims arise from a common nucleus of operative facts. *In re Omnicom Group, Inc. Sec. Litig.,* No. 02 Civ. 4483, 2007 WL 1300781, at *3 (S.D.N.Y. Apr. 30, 2007) (internal quotations and citations omitted); *In re Vivendi,* 242 F.R.D. at 84 (stating that commonality requirement is applied "permissively" in securities litigation). In fact, a single common question may be sufficient to satisfy the commonality requirement. *See, e.g., German v. Fed. Home Mortgage Loan Corp.,* 885 F.Supp. 537, 553 (S.D.N.Y.1995). Where, as here, plaintiffs allege that class members have been injured by the same fraudulent scheme, the commonality requirement is satisfied. *See, e.g., Berwecky v. Bear, Stearns & Co.,* 197 F.R.D. 65, 68–69 (S.D.N.Y.2000); *In re Towers Fin. Corp. Noteholders Litis.,* 177 F.R.D. 167, 170 (S.D.N.Y.1997).

Here, Lead Plaintiffs allege that they and all Class members were injured by a fraudulent scheme to artificially inflate and maintain the price of MMC securities, and that Defendants engaged in manipulative and deceptive acts in furtherance of that scheme by, among other things, making false and misleading statements about the nature of their contingent commission practices and revenues. Common questions include (1) whether Defendants engaged in a fraudulent scheme; (2) whether Defendants acted with scienter; (3) whether Defendants' acts affected the market for MMC securities; and (4) whether Defendants' conduct had the effect

of concealing the circumstances that bore on the ultimate loss. There are clearly sufficient common questions to satisfy Rule 23(a)(2).

3. Lead Plaintiffs' Claims Are Typical of Those of the Class

***10** Rule 23(a)(3) requires that Lead Plaintiffs' claims be "typical" of those of the Class, Lead plaintiffs' claims are typical where, as here, they "arise from the same practice or course of conduct that gives rise to the claims of the proposed class members." *In re Vivendi,* 242 F.R.D. at 85 (*quoting Marisol A. v. Giuliani,* 929 F.Supp. 662. 691 (S.D.N.Y.1996)). Typicality thus embraces the principle that class representatives "have the incentive to prove all the elements of the cause of action which would be presented by the individual members of the class were they initiating individual actions." *In re NASDAQ,* 172 F.R.D. at 126 (internal quotations and citation omitted).

"Typical" does not mean "identical." *See In re Omnicom,* 2007 WL 1300781, at *4; *Trief v. Dun & Bradstreet Corp.,* 144 F.R.D. 193, 200 (S.D.N.Y.1992). Accordingly, the "typicality requirement is not defeated by minor variations in the fact patterns of individual class member[s'] claims." *Abdul–Malik v. Coombe,* No. 96 Civ. 1021, 1996 WL 706914, at *3 (S.D.N.Y. Dec.6, 1996). Factual differences involving the date of acquisition, type of securities purchased and manner by which the investor acquired the securities will not destroy typicality if each class member was the victim of the same material misstatements and the same fraudulent course of conduct. *See, e.g., In re Baldwin–United Corp. Litig.,* 122 F.R.D. 424, 428 (S.D.N.Y.1986); *Dura–Bilt Corp. v. Chase Manhattan Corp.,* 89 F.R.D. 87, 99 (S.D.N.Y.1981).

Lead Plaintiffs' claims are typical of those of the Class because their claims arise out of the same course of conduct—Defendants' alleged participation in the fraudulent scheme to artificially inflate and maintain the price of MMC securities. Lead Plaintiffs, like the members of the Class they represent, purchased MMC securities during the Class Period and suffered significant losses as a result of the violations of the federal securities laws alleged in the Amended Complaint. Lead Plaintiffs stand in the same position as other investors who purchased MMC securities during the Class Period, having suffered the same type of injury (purchasing MMC securities at artificially inflated prices and suffering losses when the fraud was revealed) as a result of Defendants' conduct. Such a showing is sufficient to meet the typicality requirement of Rule 23(a)(3).

4. Lead Plaintiffs Have Fairly and Adequately Protected the Interests of the Class

Rule 23(a)(4) is satisfied if "the representative parties will fairly and adequately protect the interests of the class." Courts consider two factors in measuring adequacy of representation: (1) whether the claims of the lead plaintiffs conflict with those of the class; and (2) whether the lead plaintiffs' counsel is qualified, experienced and generally able to conduct the litigation. *See In re Drexel Burnham Lambert Group, Inc.,* 960 F.2d 285, 291 (2d Cir.1992); *In re Oxford Health Plans,* 191 F.R.D. 369, 376 (S.D.N.Y.2000). As many courts have observed, "the issues of typicality and adequacy tend to merge because they 'serve as guideposts for determining whether ... the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.' " *In re Vivendi,* 242 F.R.D. at 85 (*quoting Gen. Tel. Co. of Sw. v. Falcon,* 457 U.S. 147, 157 n. 13, 102 S.Ct. 2364, 72 L.Ed.2d 740 (1982)).

***11** As discussed above, Lead Plaintiffs and the members of the Class they represent were injured by the same wrongful course of conduct. Accordingly, it is in Lead Plaintiffs' interest to vigorously prosecute this action on behalf of the Class. Lead Counsel are experienced securities class action law firms and they have more than adequately represented the interests of the Class. Accordingly, Lead Plaintiffs and Lead Counsel meet the requirements of Rule 23(a)(4).

B. The Requirements of Rule 23(b)(3) Are Satisfied

Rule 23(b)(3) authorizes class certification if "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Both requirements are satisfied here.

1. Common Questions of Law or Fact Predominate

"Class-wide issues predominate if resolution of some of the legal or factual questions that qualify each class member's case as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the issues subject only to individualized proof." *Moore v. Paine Webber, Inc.,* 306 F.3d 1247, 1252 (2d Cir.2002). "Courts generally focus on the liability issue in deciding whether the predominance requirement is met, and if the liability issue is common to the class, common

questions are held to predominate over individual questions." *In re Prudential,* 163 F.R.D. at 206 (*quoting Dura–Bilt,* 89 F.R.D. at 93). Accordingly, as the Supreme Court has noted, "Predominance is a test readily met in certain cases alleging ... securities fraud." *Amchem Prods., Inc. v. Windsor,* 521 U.S. 591, 625, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997).

Here, the critical issues for establishing Defendants' liability include whether the Defendants (1) made misstatements or omissions of material fact; (2) with scienter; (3) in connection with the purchase or sale of securities; (4) upon which plaintiffs relied; and (5) that plaintiffs' reliance was the proximate cause of their injury. Each of these issues is susceptible of generalized proof and, accordingly, the predominance requirement of Rule 23(b)(3) is satisfied. *See, e.g., In re Salomon Analyst Metromedia,* 236 F.R.D. 208, 218 (S.D.N.Y.2006).

2. A Class Action Is the Superior Method of Adjudication

The last prong of Rule 23(b)(3) requires a court to consider whether a class action is superior to other methods of adjudication. A class action is particularly appropriate for addressing the claims at issue in this case. Lead Plaintiffs represent a Class consisting of a large number of investors in MMC securities whose individual damages are likely small enough to render individual litigation prohibitively expensive. Superiority is readily found where, as here, "the alternatives [to a class action] are either no recourse for thousands of stockholders ... or a multiplicity and scattering of suits with the inefficient administration of litigation which follows in its wake." *Green v. Wolf Corp.,* 406 F.2d 291, 301 (2d Cir.1968).

***12** Rule 23(b)(3) specifies four factors that a court should consider in determining whether a class action is superior to other methods of adjudication: (1) the class members' interests in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (4) the difficulties likely to be encountered in the management of a class action. Each of these factors weighs in favor of certification of the Settlement Class.

Class members have limited interest in individually controlling the prosecution or defense of separate actions given the prohibitive cost of instituting individual actions for securities fraud. Accordingly, the courts recognize that a class action is uniquely suited to resolving securities claims. *See In re Vivendi,* 242 F.R.D. at 91; *see also Green,* 406 F.2d at 296. This point is underscored by the fact that, to date, only a small number of Class members have opted out of this class action. Further, concentrating litigation in a single forum plainly has a number of benefits, including eliminating the risk of inconsistent adjudications and promoting the fair and efficient use of the judicial system, and "the Southern District of New York is well known to have expertise in securities law." *Albert Fadem Trust v. Duke Energy Corp.,* 214 F.Supp.2d 341, 344 (S.D.N.Y.2002). Finally, in determining whether a class action is a superior method of adjudication, a court must also consider "the management difficulties likely to be encountered if the action is continued as a class suit, such as the burden of complying with Rule 23's notice requirements." *In re Vivendi,* 242 F.R.D. at 107. Securities class actions are routinely certified and raise no unusual manageability issues. Indeed, as shown below, the streamlined and timely manner by which Lead Plaintiffs identified and notified Class members of the Settlement demonstrates that class treatment here is manageable and efficient.

III. Transmission of the Notice to the Class Satisfied Both the Preliminary Approval Order and Applicable Law

Rule 23(c) (2)(B) requires that notice of class certification must be served on all class members who can be identified through reasonable efforts. Further, Rule 23(e)(1) instructs courts to "direct notice in a reasonable manner to all class members who would be bound by the proposal." Such notice to class members need only be reasonably calculated under the circumstances to apprise interested parties of the pendency of the settlement proposed and to afford them an opportunity to present their objections. *See Thompson v. Metro. Life Ins. Co.,* 216 F.R.D. 55, 67 (S.D.N.Y.2003) ("Although no rigid standards govern the contents of notice to class members, the notice must fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with [the] proceedings." (internal quotations and citations omitted)).

***13** As with the notice approved by the court in *Thompson,* the Notice provided to Class members here provided, "in language easily understandable to a layperson, the essential terms of the settlement, including the claims asserted; who would be covered by the settlement; how to participate in or opt-out of the settlement; the settlement benefits; the contact information of the lawyers representing the class

members and the amount sought for named Class members; how to object to the settlement and the time and place of the Court's scheduled fairness hearing if an objector or his counsel wished to appear; and who to contact if further information is sought." *Id.* at 68 (citations omitted). Indeed, as the Court stated at the preliminary approval hearing, the Notice provided by Lead Counsel was among the best the Court has encountered.

The Preliminary Approval Order authorized Lead Plaintiffs to retain Rust Consulting, Inc. as the Claims Administrator, and directed the Claims Administrator to (1) cause the Notice and Proof of Claim to be mailed, by first-class mail, postage prepaid, by November 13, 2009, to all reasonably identifiable Class members; and (2) cause the Summary Notice to be published in the *Wall Street Journal* and transmitted over *Business Wire.* In addition, the Preliminary Approval Order directed Lead Counsel to file proof of the publication of the Summary Notice and mailing of the Notice with the Court at least three days before the Settlement Fairness Hearing. Lead Plaintiffs have fully complied with these requirements. (Joint Decl. ¶¶ 96–98; Young Aff. ¶¶ 6, 7, 11.) This is sufficient to satisfy Rule 23. Accordingly, the form and manner of Notice provided to Class members satisfies both the Preliminary Approval Order and Rule 23.

IV. The Plan of Allocation Is Reasonable, Fair and Equitable

"When formulated by competent and experienced class counsel, an allocation plan need have only a 'reasonable, rational basis.' " *In re Global Crossing Sec. & ERISA Litig.,* 225 F.R.D. 436, 462 (S.D.N.Y.2004) (*quoting In re Am. Bank Note Holographics, Inc. Sec. Litig.,* 127 F.Supp.2d 418, 429–30 (S.D.N.Y.2001)). In determining whether a plan of allocation is fair, courts look largely to the opinion of counsel. *See In re Painewebber Ltd. P'shps. Litig.,* 171 F.R.D. 104, 133 (S.D.N.Y.1997).

The Plan of Allocation (the "Plan") in this case meets these standards of rationality and reasonableness. As set forth in the Joint Declaration, the Plan is the product of Lead Counsel's investigation, discovery and consultation with their damages expert. In developing the Plan, Lead Counsel and their experts considered numerous factors, including (1) the volume of publicly traded MMC securities purchased, acquired or sold during the Class Period; (2) the time period in which an MMC security was purchased or acquired, or an MMC put option was sold; (3) whether the security was held until after the end of the Class Period or whether it was sold during the Class Period, and if so, when it was sold and at what price; (4) the artificial inflation in the price of MMC securities (or "artificial deflation" for put options) allegedly attributable to Defendants' misstatements; and (5) the type of security involved. The Court concludes that the Plan is rational and reasonable.

V. Attorneys' Fees

***14** Lead Counsel (1) submit their Fee Application for an award of attorneys' fees in the amount of 13.5% of the Settlement Fund; (2) petition for reimbursement of litigation expenses in the amount of $7,848,411.84; and (3) make, on behalf of Lead Plaintiffs, a PSLRA Award Request for reimbursement of class representative expenses totaling $214,657.14–$70,000 for the Ohio Plaintiffs and $144,657.14 for the New Jersey Plaintiffs. For the reasons stated below, the Court grants these requests.

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

Pursuant to the "equitable" or "common fund" doctrine, established more than a century ago in *Trustees v. Greenough,* 105 U.S. 527, 532–33, 26 L.Ed. 1157 (1881), attorneys who create a common fund to be shared by a class are entitled to an award of fees and expenses from that fund as compensation for their work. *In re Telik, Inc. Sec. Litig.,* 576 F.Supp.2d 570, 584–85 (S.D.N.Y.2008). The Supreme Court has recognized that a lawyer who recovers a common fund for the benefit of persons other than his client is entitled to a reasonable attorney's fee from the fund as a whole. *Boeing Co. v. Van Gemert,* 444 U.S. 472, 478, 100 S.Ct. 745, 62 L.Ed.2d 676 (1980). Fees and expenses are paid from the common fund so that all class members contribute equally toward the costs associated with litigation pursued on their behalf. *See Goldberger v. Integrated Res., Inc.,* 209 F.3d 43, 47 (2d Cir.2000).

Courts traditionally have used two methods to calculate reasonable attorneys' fees in common fund cases: the "percentage method" and the "lodestar method." *Id.* The percentage method is the simpler method of the two and involves awarding counsel a percentage of the recovery as a fee. *Id.* The lodestar method requires the court to scrutinize the fee petition to ascertain the number of hours reasonably billed, then multiply that figure by an appropriate hourly rate. *Id.*

Although district courts may use both methods when approving an award of attorneys' fees, the Second Circuit encourages using the lodestar method only as a cross-check for the percentage method. *Id.* at 50; *see Strougo v. Bassini,* 258 F.Supp.2d 254, 263 (S.D.N.Y.2003). Indeed, the percentage method continues to be the trend of district courts in this Circuit and has been expressly adopted in the vast majority of circuits, *See In re Telik,* 576 F.Supp.2d at 586 & n. 6 (collecting cases). Further, the percentage method comports with the PSLRA, which provides that "attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable *percentage* of the amount of any damages and prejudgment interest actually paid to the class." *See* 15 U.S.C. § 78u–4(a)(6) (emphasis added).

Whether determined by lodestar or percentage, the fees awarded in common fund cases must be "reasonable" under the circumstances. *Goldberger,* 209 F.3d at 47. "What constitutes a reasonable fee is properly committed to the sound discretion of the district court, and will not be overturned absent an abuse of discretion." *Id.* (internal citation omitted). The Second Circuit has instructed that, in exercising their discretion:

> ***15** [D]istrict courts should continue to be guided by the traditional criteria in determining a reasonable common fund fee, including: "(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 the representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations."

Id. at 50 (*quoting In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.,* 724 F.Supp. 160, 163 (S.D.N.Y.1989)). In applying these criteria, "a Court essentially makes no more than a qualitative assessment of a fair legal fee under all the circumstances of the case." *See In re Union Carbide,* 724 F.Supp. at 166. In this case, the fee requested by Lead Counsel is warranted under either the percentage or lodestar method.

B. The Requested Attorneys' Fees Are Reasonable Under the Percentage of the Fund Method

The requested fee of 13.5% of the Settlement Fund is reasonable. Lead Counsel vigorously pursued this litigation over the course of five years. The requested fee represents only 0.44% of the total value of Lead Counsel's lodestar. When considering percentage fee awards in securities class actions settled in the $100–$600 million range, Lead Counsel's request for 13.5% of the $400 million Settlement Fund is at the low end of the spectrum in this Circuit and elsewhere. *See, e.g., In re Initial Pub. Offering Sec. Litig.,* Master File No. 21 MC 92, 2009 WL 3397238 (S.D.N.Y. Oct. 5, 2009) ($586 million; 33.33%); *In re Adelphia Commc'ns Corp. Sec. & Derivative Litig.,* No. 03 MDL 1529, 2006 U.S. Dist. LEXIS 84621 (S.D.N.Y. Nov. 16, 2006) ($455 million; 21.4%); *In re Qwest Commc'ns Int'l. Inc. Sec. Litig.,* No. 01 Civ. 01451, 2006 U.S. Dist. LEXIS 71267 (D.Colo. Sept.28, 2006) ($400 million; 15%); *In re Lucent Techs., Inc. Sec. Litis.,* 327 F.Supp.2d 426 (D.N.J.2004) ($517 million; 17%); *In re BankAmerica Corp. Sec. Litis.,* 228 F.Supp.2d 1061 (E.D.Mo.2002) ($490 million; 18%); *In re Prison Realty Sec. Litis.,* No. 3:99–0458, 2001 U.S. Dist. LEXIS 21942 (M.D.Tenn. Feb. 9, 2001) ($104 million; 30%); *In re Ikon Office Solutions, Inc. Sec. Litis.,* 194 F.R.D. 166 (E.D.Pa.2000) ($111 million; 30%); *Kurzweil v. Philip Morris Cos., Inc.,* Nos. 94 Civ. 2373, 2546, 1999 WL 1076105 (S.D.N.Y. Nov.30, 1999) ($124 million; 30%); *In re Prudential Sec. Inc. Ltd. P'ships Litig. .,* 912 F.Supp. 97 (S.D.N.Y.1996) ($110 million; 27%).

Further, Lead Counsel have based their fee request on the percentage method because Lead Plaintiffs chose the percentage method for determining the fees that Lead Counsel could seek. (Decl. of Carol G. Jacobson, Dec. 18, 2009, ¶ 22; Decl. of Dennis P. Smith, Dec. 18, 2009, ¶ 16.) Since the passage of the PSLRA, courts have found such an agreement between fully informed lead plaintiffs and their counsel to be presumptively reasonable. *See In re Cendant Corp. Litig.,* 264 F.3d 201, 282 (3d Cir.2001); *In re Lucent,* 327 F.Supp.2d at 433–34; *In re Global Crossing Sec. & ERISA Litis.,* 225 F.R.D. 436, 466 (S.D.N.Y.2004) (citing *In re Cendant* for proposition that "in class action cases under the PSLRA, courts presume fee requests submitted pursuant to a retainer agreement negotiated at arm's length between lead plaintiff and lead counsel are reasonable").

***16** Indeed, public policy considerations support fee awards where, as here, large public pension funds, serving as lead plaintiffs, conscientiously supervised the work of lead counsel, and gave their endorsement to lead counsel's fee request. *See In re WorldCom. Inc. Sec. Litis.,* 388 F.Supp.2d 319, 356 (S.D.N.Y.2005) (finding that when "class counsel in a securities lawsuit have negotiated an arm's length agreement with a sophisticated lead plaintiff possessing a large stake in the litigation, and when that lead plaintiff endorses the application following close supervision of the litigation, the court should give the terms of that agreement great weight").

Moreover, the requested fee award is plainly warranted and reasonable in light of the six *Goldberger* criteria.

C. The Fee Application Is Reasonable Under the *Goldberger* Factors

1. Lead Counsel's Time, Labor and Lodestar Are Reasonable

The first *Goldberger* factor for determining a fee's reasonableness is "the time and labor expended by counsel." 209 F.3d at 50. Similarly, the first step of the lodestar analysis is to multiply the number of hours reasonably expended in the litigation by each attorney by the appropriate hourly rate for that attorney. *Strougo,* 258 F.Supp.2d at 263. Lead Counsel have unquestionably expended an enormous amount of time over the course of five years to bring this case to a resolution. As set forth in the Joint Declaration, through November 2009, Lead Counsel have collectively spent 309,537.80 hours of attorney and litigation support time valued at $119,556,484.25, and have advanced or incurred $7,848,411.84 in expenses to litigate this case. The requested 13.5% fee represents a multiplier of 0.44—in other words, a negative multiplier—that is amply justified by application of the relevant factors.

(a) Lead Counsel's Hours Are Reasonable

Where the lodestar is used as a cross-check, "the hours documented by counsel need not be exhaustively scrutinized by the district court." *Goldberger,* 209 F.3d at 50. The Court concludes that the hours Lead Counsel expended in litigating this action are plainly reasonable given the magnitude and complexity of the case, the fierce defenses mounted and the relatively late stage at which the Settlement was reached.

The extensive history of this litigation, the nature of the services performed, and the time expended by each attorney or other professional, are set forth in depth in the Joint Declaration and other papers submitted by Lead Counsel. All of merits discovery has been completed, including the production, review and analysis of over thirty-six million pages produced by Defendants and third parties, as well as the taking of ninety and defending of twenty depositions. Numerous procedural and substantive motions were fully briefed and argued. A substantial portion of complex expert discovery has been completed. (Joint Decl. ¶¶ 44, 68, 70, 73–76 .) Lead Counsel supervised and managed every aspect of this litigation. (*Id.* ¶ 131.) They in turn were supervised closely by Lead Plaintiffs—in effect, by the Attorneys General of Ohio and New Jersey—who exercised their oversight responsibilities zealously and with an eye to keeping fees as low as possible, given the nature and duration of this action.

***17** Given the five years over which this case has been pending, Lead Counsel's zealous prosecution of the litigation, Lead Counsel's success in overcoming Defendants' motions to dismiss, the briefing and affidavits submitted regarding class certification, and the expansive nature of discovery, with the corresponding intense and lengthy disputes that arose and required resolution by the Court-appointed Special Master, the Court concludes that the total hours billed by Lead Counsel are reasonable.

(b) Lead Counsel's Hourly Rates Are Reasonable

In a lodestar analysis, the appropriate hourly rates are those rates that are normally charged in the community where counsel practices—that is, the market rate. *Luciano v. Olsten Corp.,* 109 F.3d 111, 115–16 (2d. Cir.1997) ("The 'lodestar' figure should be 'in line with those [rates] prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.' " (*quoting Blum v. Stenson,* 465 U.S. 886, 896 n. 11, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984))). Thus, awards in comparable cases are an appropriate measure of the market value of counsel's time. Courts in this Circuit and around the country have repeatedly found rates similar to those charged by Lead Counsel to be reasonable in other securities class actions. In short, a market check and substantial precedent demonstrates that the rates used by Lead Counsel in calculating their lodestars are reasonable.

2. The Magnitude and Complexity of the Litigation Support the Requested Fee

The second *Goldberger* factor—the magnitude and complexity of the case—also supports the requested fee award. A securities fraud class action's magnitude and complexity must be evaluated in comparison to similarly complex cases. *See In re Bristol–Myers Squibb Sec. Litig.,* 361 F.Supp.2d 229, 234 (S.D.N.Y.2005). Shareholder class actions are notoriously complex and difficult to prove.

This action is an example of large-scale, highly complex litigation. At $400 million, the Settlement is one of the top twenty-five recoveries for shareholders in lawsuits of this nature in American history. Complex, fact-intensive pleadings were prepared and filed; multiple motions to

dismiss were filed and opposed; Lead Counsel reviewed more than thirty-six million pages in electronic and paper discovery produced by Defendants; over 100 third parties were subpoenaed; 110 depositions were taken and defended; and Lead Counsel pursued class certification and engaged in attendant fact and expert discovery, which included reports and testimony from multiple experts concerning complex damage and loss causation theories and analyses. (Joint Decl. 31–34, 44, 70.)

In addition, throughout the course of the litigation, many disputes among the parties have required judicial interaction and resolution. Numerous hearings were conducted before the Special Master, either in person or telephonically. The negotiations relating to this Settlement spanned one and a half years, and included three sessions with the Mediator and countless phone conferences and meetings. In sum, considering the magnitude and complexity of this case, the 13.5% Fee Application is reasonable.

3. The Risks of the Litigation Support the Requested Fee

***18** The Second Circuit has identified "the risk of success as perhaps the foremost factor to be considered in determining [a reasonable award of attorneys' fees]." *See Goldberger,* 209 F.3d at 54 (internal quotations omitted). While risk is measured as of when the case is filed, *id.* at 55, changes in the law during the course of litigation can increase those risks considerably. During the course of this litigation, significant changes occurred in the well-established standards governing the critical issue of class certification. *See, e.g., Miles v. Merrill Lynch & Co.,* 471 F.3d 24 (2d Cir.2006).

Courts in this Circuit have long recognized that the risk associated with a case bears heavily upon the determination of an appropriate fee award. *See In re Am. Bank Note Holographies, Inc. Sec. Litig.,* 127 F.Supp.2d 418, 432–33 (S.D.N.Y.2001) ("[It is] appropriate to take this [contingent fee] risk into account in determining the appropriate fee to award."); *In re Warner Commc'ns Sec. Litig.,* 618 F.Supp. 735, 747 (S.D.N.Y.1985), *aff'd,* 798 F.2d 35 (2d Cir.1986) ("Numerous cases have recognized that the attorneys' contingent fee risk is an important factor in determining the fee award.").

Enormous risk is inherent in massive and highly complex cases like this one. As noted above, there is great uncertainty in taking a case such as this to a jury trial in what would have been a battle of the experts.

(a) Risk of Non–Payment

Lead Counsel pursued this case for five years on an entirely contingent basis, without receiving any reimbursement and with the ever-present and substantial risk of non-payment. In numerous class actions, including complex securities cases, plaintiffs' counsel have expended thousands of hours and advanced significant out-of-pocket expenses and received no remuneration whatsoever. *See, e.g., State Univs. Ret. Sys. of Ill, v. AstraZeneca PLC,* No. 08 Civ. 3185, 2009 U.S.App. LEXIS 13674 (2d Cir. June 25, 2009) (affirming district court's dismissal of securities class action); *Freedman v. Value Health, Inc.,* 34 F. App'x 408 (2d Cir.2002) (affirming district court's grant of summary judgment in favor of defendants in securities class action); *Steinberg v. Ericsson LM Tel. Co.,* No. 07 Civ. 9615, 2008 WL 5170640 (S.D.N.Y. Dec. 10, 2008) (dismissing securities class action). Here, Lead Counsel worked for five years on this large, complex case on a wholly contingent fee basis, facing the real and heightened risk that they would receive nothing for their efforts. Accordingly, the Court finds that the risk of non-payment weighs in favor of granting Lead Counsel's Fee Application.

(b) Risks of Establishing Liability and Maintaining the Class Action Through Trial

In assessing the risk of establishing liability, the Court must balance the benefits afforded to the Class, including the immediacy and certainty of a recovery, against the continuing risks of litigation. Courts have recognized the considerable risks of failing to recover anything in securities class actions. *See In re AOL Time Warner, Inc.,* No. 02 Civ. 5575, 2006 WL 903236, at *11–12 (S.D.N.Y. Apr. 6, 2006).

***19** Throughout the course of this litigation, Lead Counsel encountered the risks of developing law in the areas of loss causation, pleading requirements and class certification jurisprudence. *See, e.g., Dura Pharms., Inc. v. Broudo,* 544 U.S. 336, 125 S.Ct. 1627, 161 L.Ed.2d 577 (2005); *Miles,* 471 F.3d 24. The risks of this case for Lead Counsel increased with those legal developments.

In sum, the risks associated with this litigation support the reasonableness of Lead Counsel's Fee Applicartion.

4. The Quality of Lead Counsel's Representation of the Class Supports the Fee Application

The fourth *Goldberger* factor is the "quality of representation" delivered in the litigation. 209 F.3d at 50. To evaluate the quality of representation, courts in the Second Circuit "review the recovery obtained and the backgrounds of the lawyers involved in the lawsuit." *In re Merrill Lynch Tyco Research Sec. Litis.,* 249 F.R.D. 124, 141 (S.D.N.Y.2008).

There is no doubt that Lead Counsel has immense experience in complex federal civil litigation, particularly the litigation of securities and other class actions. Both Grant & Eisenhofer and Bernstein Liebhard have received significant recognition for their work in these areas.

Another consideration for assessing the quality of services rendered by Lead Counsel is the quality of opposing counsel. Here, all Defendants were represented by first-rate attorneys who vigorously contested Lead Plaintiffs' claims and allegations. Accordingly, the Court concludes that the quality of Lead Counsel's representation of the Class supports the Fee Application.

5. The Fee Request Is Fair and Reasonable in Relation to the Settlement Amount

In determining whether the Fee Application is reasonable in relation to the settlement amount, the Court compares the Fee Application to fees awarded in similar securities class-action settlements of comparable value. As demonstrated above, when compared with fee requests in securities class-action settlements ranging from $100–$600 million, Lead Counsel's requested fee of 13.5% of the $400 million Settlement Fund is at the low end of the spectrum. *See supra* Discussion V.B.; *In re Ikon,* 194 F.R.D. at 194 ("Percentages awarded have varied considerably, but most fees appear to fall in the range of nineteen to forty-five percent."). Thus, the Court finds that Lead Counsel's fee request is fair and reasonable in relation to the $400 million Settlement.

6. Public Policy Considerations Support the Requested Fee

Public policy is the sixth factor a court considers in determining the reasonableness of a fee request. *Goldberger,* 209 F.3d at 50. "Public policy concerns favor the award of reasonable attorneys' fees in class action securities litigation." *In re Merrill Lynch,* 249 F.R.D. at 141–42; *see In re WorldCom,* 388 F.Supp.2d at 359 ("In order to attract well-qualified plaintiffs' counsel who are able to take a case to trial, and who defendants understand are able and willing to do so, it is necessary to provide appropriate financial incentives.") Moreover, "public policy supports granting attorneys fees that are sufficient to encourage plaintiffs' counsel to bring securities class actions that supplement the efforts of the SEC." *In re Bristol–Myers,* 361 F.Supp.2d at 236.

***20** Here, Lead Counsel's willingness to assume the risks of this litigation resulted in a substantial benefit to a large Class of purchasers of MMC securities, and Lead Counsel must be adequately compensated for their efforts. Further, Lead Counsel seek a fee that is substantially less than their accrued lodestar. Public policy considerations favor granting the Fee Application,

D. A "Cross–Check" of Lead Counsel's Lodestar Demonstrates the Reasonableness of the Requested Fee

In *Goldberger.* the Second Circuit held that even in cases in which the percentage method is chosen, "documentation of hours" remains "a [useful] 'cross-check' on the reasonableness of the requested percentage." 209 F.3d at 50. However, "where used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court .... Instead, the reasonableness of the claimed lodestar can be tested by the court's familiarity with the case ...." *Id.* (internal citation omitted).

Under the lodestar method, a positive multiplier is typically applied to the lodestar in recognition of the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors. *See id.* at 47; *Savoie v. Merchs. Bank,* 166 F.3d 456, 460 (2d Cir.1999). In this case, the cumulative lodestar reported by Lead Counsel is $119,556,484.25. (Fees Br. at 22.) The percentage fee requested represents a negative multiplier of 0.44 to the lodestar. Thus, not only are Lead Counsel not receiving a premium on their lodestar, their fee request amounts to a deep discount from their lodestar. The lodestar "cross-check" therefore unquestionably supports the requested percentage fee award of 13.5%.

E. The Expenses Incurred by Lead Counsel Were Reasonable and Necessary to the Effective Prosecution of this Action

Counsel who create a common fund are entitled to the reimbursement of expenses that they advance to a class. Lead Counsel requests reimbursement of $7,848,411.84 in expenses advanced or incurred by Lead Counsel while litigating this action. Those expenses relate principally

to electronic document hosting, retention of a battery of highly regarded and experienced experts, legal research and photocopying services, deposition expenses, as well as travel expenses related to extensive discovery, settlement negotiations and mediations, court appearances and depositions. (*See* Decl. of Stanley D. Bernstein, Dec. 18, 2009 (summarizing and categorizing Lead Counsel's expenses); Decl. of Keith M. Fleischman, Dec. 18, 2009 (same).)

After reviewing the requested expenses, the Court finds that they were necessary litigation expenses that were reasonably incurred, reasonably related to the interests of the members of the Class, and adequately documented. The fact that Lead Plaintiffs, who have reviewed the requested expenses, believe that this payment represents fair and reasonable compensation to Lead Counsel, further supports the reasonableness of Lead Counsel's request for reimbursement. Accordingly, the Court grants Lead Counsel's petition for reimbursement of expenses in the amount of $7,848,411.84.

F. Lead Plaintiffs Are Entitled to an Award of Reasonable Costs and Expenses

***21** The PSLRA states that "Nothing in this paragraph shall be construed to limit the award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of a class," 15 U.S.C. § 78u–4(a)(4); *see Hicks v. Stanley,* No. 01 Civ. 10071, 2005 WL 2757792, at *10 (S.D.N.Y. Oct. 24, 2005) ("Courts in this Circuit routinely award such costs and expenses both to reimburse the named plaintiffs for expenses incurred through their involvement with the action and lost wages, as well as to provide an incentive for such plaintiffs to remain involved in the litigation and to incur such expenses in the first place.").

Here, the Ohio Plaintiffs and the New Jersey Plaintiffs have been actively involved in this action since its inception. Pursuant to the PSLRA, the Ohio Plaintiffs and the New Jersey Plaintiffs request an award totaling $214,657.14–$70,000 for the Ohio Plaintiffs and $144,657.14 for the New Jersey Plaintiffs—to compensate them for their reasonable costs and expenses incurred in managing this litigation and representing the Class. (Fees Br. at 23–25.)

Lead Plaintiffs have pursued their claims against Defendants for five years. These large institutional investors have actively and effectively fulfilled their obligations as representatives of the Class. As set forth in the Joint Declaration and in the other papers submitted by Lead Plaintiffs, they (1) reviewed and approved the complaints and other pleadings filed in this action; (2) had extensive and regular telephonic, email, and in-person communications with Lead Counsel regarding strategy and developments in the case; (3) reviewed and commented on Lead Counsel's submissions to the Court, the Special Master and the Mediator; (4) oversaw and assisted their own personnel in responding to discovery requests, including requests for production of documents and interrogatories; (5) reviewed and approved responses and objections to discovery requests drafted by Lead Counsel; (6) proffered several representatives to give deposition testimony; (7) reviewed and approved the retention of experts and consultants; and (8) fully participated in all mediation sessions and settlement discussions on behalf of the Class. These are precisely the types of activities that support awarding reimbursement of expenses to class representatives.

The Notice provided to Class members stated that Lead Plaintiffs would apply to the Court for approval of their PSLRA Award Request. To date, only one objection to this request has been received. (Fees Br. at 25) The Court thus awards the Ohio Plaintiffs $70,000 and the New Jersey Plaintiffs $144,657.14 as compensation for their reasonable costs and expenses incurred in representing the Class.

VI. Objections Received

Pursuant to the Preliminary Approval Order, Rust Consulting, Inc., the Claims Administrator, implemented an extensive notice program to potential Class members. The Claims Administrator mailed a total of 596,517 copies of the Notice and Proof of Claim (together, the "Notice Packet") to potential Class Members. (Young Aff. ¶ 11.) The Claims Administrator also had the Summary Notice published in the national edition of *The Wall Street Journal* and had a copy of the Summary Notice transmitted over *Business Wire.* (*Id.* Ex. B.)

***22** Through these efforts, the Claims Administrator reached hundreds of thousands of Class members, fully informing them of the Settlement terms and their rights, including the right to object to the Settlement or any part of it (including the Plan of Allocation, Lead Counsel's application for attorneys' fees and reimbursement of expenses, and reimbursement of costs and expenses for Lead Plaintiffs). Only *seven* potential Class members have objected. (Lead Pls.' Mem. in Resp. to Objections, Dec. 18, 2009, at 1.) These seven objections represent a mere 0.0012% of the Notices mailed to potential Class members.

Of these seven objectors, only one complied with the Notice's clearly stated procedures for filing a proper objection. That single objection was filed by Edward F. Siegel, Esq. ("Siegel") on behalf of purported Class member Hermine Union ("Ms. Union" or "Objector Union"). (Objection of Hermine Union, Dec. 14, 2009 ("Union Objection") (Docket No. 303).) That objection has been withdrawn. (Docket No. 330.)

A. Any Suggestion That the Requested Fee Award Is "Unreasonable" and "Excessive" Is Meritless

One objector, James M. McCague, asserts that the requested fee award is unreasonable. (*See* Decl. of Brian S. Cohen, Dec. 18, 2009 ("Cohen Decl."), Ex. 10 (McCague objection).) That is simply not so. The law in this Circuit is clear: a district court must consider several specific factors in determining the reasonableness of a fee award for class counsel. *See Goldberger v. Integrated Res., Inc.,* 209 F.3d 43, 50 (2d Cir.2000). After considering those factors, the Court has little trouble rejecting McCague's objection. *Cf. In re Lorazepam & Clorazepate Antitrust Litig.,* 205 F.R.D. 369, 378 (D.D.C.2002) (rejecting broad, unsupported objections because "[they] are of little aid to the Court in determining whether these settlements are fair, adequate, and reasonable."

The Court-approved Notice clearly describes the massive efforts engaged in by Lead Counsel in litigating the action. The Notice explains, inter alia, the extensive and vigorously contested fact discovery (including the review of over thirty-six million pages of documents), the huge number of depositions taken and defended, the intensive class certification motion practice, and the thorough expert witness work.

Mr. McCague acknowledges these efforts, but complains that he does not understand why counsel needed to take all the actions listed. (*Id.*) The Court easily concludes that Lead Counsel's efforts were necessary for the zealous and effective prosecution of this action on behalf of the Class.

That only two objections to the fee request were received, and just one continues to be pressed, is powerful evidence that the requested fee is fair and reasonable. *See In re Prudential Sec. Inc. Ltd. P'ships Litig.,* 912 F.Supp. 97, 103 (S.D.N.Y.1996) (concluding that a single "isolated expression of opinion" should be considered "in the context of thousands of class members who have not expressed themselves similarly"); *In re Crazy Eddie Sec. Litig.,* 824 F.Supp. 320, 327 (E.D.N.Y.1993) (finding fact that "only one person has opposed the fee" to support its reasonableness). The reaction by members of the Class is entitled to great weight by the Court. The Notice was sent to hundreds of thousands of prospective Class members. Only two objections relating to the Fee Application were submitted. That strongly supports a finding that the request is fair and reasonable.

B. The Remaining Objections to the Notice Program Are Meritless

***23** Six people challenge the Notice on the ground that it was not "timely received." None of these individuals filed proper objections. Both the Notice and Summary Notice informed the Class that any objection to the Settlement must be filed with the Court and served on Lead Counsel no later than December 14, 2009. The Notice states that an objector must "include ... proof of the number of MMC securities ... purchased and sold during the Class Period." (Notice at 19.) Objectors William N. Weld ("Weld"), John F. Mencer ("Mencer"), Robert G. Coplin ("Coplin"), McCague, Thomas and Carolynn Kane ("the Kanes"), and an unidentified individual claiming via email that he/she did not receive the Notice until December 14, 2009 ("Anonymous"), failed to include this information. (*See* Cohen Decl. Exs. 7–12 (copies of objections of Weld, Mencer, Coplin, McCague, the Kanes, and Anonymous).)

Even if their objections had been proper, however, they are meritless. As the Court recognized in the Preliminary Approval Order, the Notice plan satisfied due process. Notice was first mailed on November 13, 2009. Objections were due thirty days later on December 14, 2009. Courts have repeatedly found such a time period to constitute sufficient notice. *See, e.g., Miller v. Republic Nat'l Life Ins. Co.,* 559 F.2d 426, 429–30 (5th Cir.1977) (concluding, in securities fraud class action, that a period of "almost four weeks between the mailing of the notices and the settlement hearing" was adequate time, particularly when only one class member objected to the timing); *In re BankAmerica Corp. Sec. Litig.,* 210 F.R.D. 694, 707–08 (E.D.Mo.2002) (finding that timing of notice comported with due process where "[t]here were three to four weeks between the mailing of class notice and the last date to object") (*citing Grunin v. Int'l House of Pancakes,* 513 F.2d 114, 120–21 (8th Cir.1975) (finding nineteen-day notice period sufficient, particularly when case had been ongoing for two years)); *see also Torrisi v. Tucson Elec. Power Co.,* 8 F.3d 1370, 1374–75 (9th Cir.1993) (holding that initial notice sent thirty-one days before deadline for written objections was adequate); *In re AOL Time Warner S'holder Derivative Litig.,* No. 02 Civ. 6302, 2006 WL 2572114

(S.D.N.Y. Sept. 6, 2006) (finding distribution of notice thirty-four days before the deadline for objections was adequate).

It is well-established class-action jurisprudence in this Circuit that courts focus the due process lens on the notice efforts made by counsel, not whether class members actually received notice. *See In re "Agent Orange" Prod. Liab. Litis.,* 818 F.2d 145, 168 (2d Cir.1987) (determining that class notice was adequate and rejecting the proposition that actual notice had to be given to each and every class member); *see also Buxbaum v. Deutsche Bank AG,* 216 F.R.D. 72, 80 (S.D.N.Y.2003) ("It is widely recognized that for the due process standard to be met it is not necessary that every class member receive actual notice, so long as class counsel acted reasonably in selecting means likely to inform persons affected.") (internal quotations and citation omitted). As the Second Circuit recently held:

> ***24** Because notice of the settlement was reasonably provided through individually mailed notice to all known and reasonably identifiable class members, publication in several major newspapers, and entered on the district court's docket sheet, actual notice was not necessary and the notice provided here was sufficient. It is clear that for due process to be satisfied, not every class member need receive actual notice, as long as class counsel "acted reasonably in selecting means likely to inform persons affected."

In re Adelphia Commc'ns Corp. Sec. & Derivative Litis., 271 F. App'x 41, 44 (2d Cir.2008) (*quoting Weigner v. City of N.Y.,* 852 F.2d 646, 649 (2d Cir.1988)).

In this case, a total of 596, 517 Notice Packets were mailed to potential Class members. (Young Aff. ¶¶ 5, 9–10.) In addition, Summary Notice was transmitted over *Business Wire* on November 16, 2009, and a copy of the Summary Notice was published in the national edition of *The Wall Street Journal* the next day. (*Id* . ¶ 6.) The Court easily concludes that the Class as a whole had adequate notice.

It must be noted that certain objectors received Notice later than others because they held their shares in "street name"—i.e., in the name of a nominee/brokerage house. Pursuant to the Preliminary Approval Order, the Claims Administrator used "reasonable efforts to give notice to nominee purchasers such as brokerage firms and other Persons that purchased or otherwise acquired MMC securities during the Class Period as record owners but not as beneficial owners." (Preliminary Approval Order at 4; *see* Young Aff. ¶¶ 3–4, 10.) In addition, the Preliminary Approval Order provides that "Such nominee purchasers are directed within seven (7) days of their receipt of the Notice to forward copies of the Notice and Proof of Claim to their beneficiaries that are Members of the Class." (Preliminary Approval Order at 4–5.)

That certain objectors' brokers failed to comply with the Preliminary Approval Order and forward their clients the necessary paperwork in a timely fashion is no fault of Lead Counsel. That is the risk a shareholder takes in registering his or her securities in street name. Moreover, "notice provided to the class members' nominees—i.e., the brokerage houses—has been deemed sufficient even if brokerage houses failed to timely forward the notice to the beneficial owners." *Fidel v. Farley,* 534 F.3d 508, 514 (6th Cir.2008) (*citing DeJulius v. New England Health Care Employees Pension Fund,* 429 F.3d 935, 936, 945–47 (10th Cir.2005) (finding notice sufficient where two beneficial owners received notice of class settlement two weeks after deadline for filing objections and on the same day as the final fairness hearing); *Silber v. Mabon,* 18 F.3d 1449, 1453–54 (9th Cir.1994) (finding notice adequate where 1,000 beneficial owners received notice after the opt-out deadline as a result of late response of brokerage house); *Torrisi,* 8 F.3d at 1374–75 (concluding notice was sufficient where notice was mailed to some beneficial owners after deadline for filing objections had passed).

***25** Accordingly, the Court rejects the remaining objections to the timeliness of the Notice program.

C. The Single Objection to the Format of the Claim Form Is Meritless

Only one objector challenges the Proof of Claim form, arguing that it is unreasonably burdensome and complex, and should be filled out by the lawyers and not the potential Class members. (*See* Cohen Decl. Ex. 11 (objection of the Kanes).) The Proof of Claim form simply asks Class members to list purchases, sales and holdings of MMC stock within the Class Period. Without that necessary information, the Claims Administrator could not calculate claimants' distributions. The single objector's claim that the lawyers should fill out the Proof of Claim form and that potential Class members should simply verify the information does not comport with the long-approved procedures for the efficient management of class-action settlement distributions. *See In re WorldCom. Inc. Sec. Litig.,* No. 02 Civ. 3288, 2004 WL 2591402, at *12 (S.D.N.Y. Nov. 12, 2004) (holding that "[t]he [one] objection to the length and complexity of the proof of claim form is ... meritless," as "the information that claimants are required

to submit is necessary in order for a fair distribution of the settlement proceeds").

D. The Single Objection to the Exclusion of Former Employees Is Meritless

One objector claims that it is "unfair" to exclude former employees from the Settlement Class. (*See* Cohen Decl. Ex. 7 (Weld objection).) Yet Lead Plaintiffs have always asserted—in the Amended Complaint, Lead Plaintiffs' class certification motion and the Stipulation of Settlement—that the wrongful conduct underlying their claims against Defendants were engaged in on a company-wide basis and ingrained in Marsh's business model. Accordingly, the Class definition has always excluded MMC and Marsh employees, and the sole objection to the definition's exclusion of former employees is rejected.

CONCLUSION

For the reasons stated above, the Court (1) approves the Settlement; (2) grants Lead Counsel's Fee Application of 13.5% of the Settlement Fund; (3) grants Lead Counsel's request for reimbursement of expenses in the amount of $7,848,411.84; and (4) grants Lead Plaintiffs' PSLRA Award Request for expenses totaling $214,657.14 ($70,000 for the Ohio Plaintiffs and $144,657.14 for the New Jersey Plaintiffs).

All Citations

Not Reported in F.Supp.2d, 2009 WL 5178546

EXHIBIT 16

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PENSION TRUST FUND FOR OPERATING ENGINEERS, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. DEVRY EDUCATION GROUP, INC., DANIEL HAMBURGER, RICHARD M. GUNST, PATRICK J. UNZICKER, AND TIMOTHY J. WIGGINS, Defendants.	Case No. 1:16-CV-05198 Hon. Mary M. Rowland

ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

This matter came before the Court for hearing on December 6, 2019 (the "Final Approval Hearing") on Lead Counsel's motion for an award of attorneys' fees and payment of expenses. The Court having considered all matters submitted to it at the Final Approval Hearing and otherwise; and it appearing that notice of the Final Approval Hearing substantially in the form approved by the Court was mailed to all Settlement Class Members who could be identified with reasonable effort, and that a summary notice of the hearing substantially in the form approved by the Court was published in *The Wall Street Journal* and was transmitted over *PR Newswire* 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,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Stipulation of Settlement, dated August 29, 2019 (the "Settlement Agreement"), and all capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Settlement Agreement.

2. The Court has jurisdiction to enter this Order and over the subject matter of the Action and all Parties to the Action, including all Settlement Class Members.

3. Notice of Lead Counsel's motion for an award of attorneys' fees and payment of expenses 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 motion satisfied the notice requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), and 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"); constituted the best notice practicable under the circumstances; and constituted due, adequate, and sufficient notice to all Persons entitled thereto.

4. Lead Counsel is hereby awarded, on behalf of all Plaintiffs' Counsel, attorneys' fees in the amount of $7,425,000, plus interest at the same rate earned by the Settlement Fund (which is 27% of the Settlement Fund), and payment of litigation expenses in the amount of $184,192.69, plus accrued interest, which sums the Court finds to be fair and reasonable. Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs' Counsel in a manner which it, in good faith, believes reflects the contributions of such counsel to the institution, prosecution, and settlement of the Action.

5. Lead Plaintiff Utah Retirement Systems is hereby awarded $10,000.00 from the Settlement Fund, pursuant to the PSLRA, as reimbursement for its reasonable costs and expenses directly related to its representation of the Settlement Class.

6. The award of attorneys' fees and expenses may be paid to Lead Counsel from the Settlement Fund immediately upon entry of this Order, subject to the terms, conditions, and obligations of the Settlement Agreement, which terms, conditions, and obligations are incorporated herein.

7. In making this award of attorneys' fees and expenses to be paid from the Settlement Fund, the Court has analyzed the factors considered within the Seventh Circuit and found that:

(a) The Settlement has created a fund of $27,500,000 in cash, pursuant to the terms of the Settlement Agreement, and numerous Settlement Class Members who submit acceptable Claim Forms will benefit from the Settlement created by the efforts of Plaintiffs' Counsel;

(b) The fee sought by Lead Counsel has been reviewed and approved as reasonable by the Lead Plaintiff, a sophisticated institutional investor that was directly involved in the prosecution and resolution of the Action and who has a substantial interest in ensuring that any fees paid to counsel are duly earned and not excessive;

(c) The amount of attorneys' fees awarded are fair and reasonable and are consistent with fee awards approved in cases within the Seventh Circuit with similar recoveries;

(d) Plaintiffs' Counsel have conducted the litigation and achieved the Settlement with skill, perseverance, and diligent advocacy and are highly experienced in the field of securities class action litigation;

(e) Plaintiffs' Counsel devoted more than 6,600 hours, with a lodestar value of $3,486,985.50, to achieve the Settlement;

(f) Plaintiffs' Counsel undertook the Action on a contingent basis, and have received no compensation during the Action, and any fee and expense 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; and

(h) 67,813 copies of the Notice were mailed to potential Settlement Class Members and nominees stating that Lead Counsel would apply for attorneys' fees in an amount not to exceed 27% of the Settlement Fund and expenses in an amount not to exceed $225,000, and there were no objections to the requested attorneys' fees and expenses.

8. Any appeal or any challenge affecting this Court's approval regarding any of the attorneys' fees and expense applications shall in no way disturb or affect the finality of the Judgment.

9. In the event that the Settlement is terminated or the Effective Date of the Settlement otherwise fails to occur, this Order shall be rendered null and void to the extent provided by the Settlement Agreement.

10. There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

DATED this 6th day of December, 2019

BY THE COURT:

Mary M Rowland

Honorable Mary M. Rowland
UNITED STATES DISTRICT JUDGE

EXHIBIT 17

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re Peregrine Financial Group Customer Litigation	Civil Action No. 12-cv-5546 Judge Sara L. Ellis Magistrate Judge Daniel G. Martin

ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

The Court, having considered (a) Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Expenses; (b) the Memorandum of Law in support; (c) the Plan of Allocation for the Settlement Class (as set out in Exhibit D to the Settlement Agreement, ECF 410-7, and as summarized in the proposed Notice (ECF 410-4) previously approved by this Court (ECF 417-4); (d) the Declarations filed in support and any exhibits thereto; and having held a hearing on October 13, 2015, and considered all of the submissions and arguments with respect thereto; pursuant to Rule 23 of the Federal Rules of Civil Procedure, and in accordance with the terms of the Settlement Agreement dated June 18, 2015, filed as ECF No. 410-2 (the "Settlement Agreement") between the Customer Representative Plaintiffs ("Plaintiffs"), US Bank, N.A. ("U.S. Bank" or "Defendant"), and Ira Bodenstein (the "Trustee"), not individually, but solely as Chapter 7 Trustee for the estate of Peregrine Financial Group, Inc., it is hereby ORDERED that:

1. This Order incorporates by reference the definitions in the Settlement Agreement, and all terms used herein shall have the same meaning set forth in the Settlement Agreement.

2. Plaintiffs have moved for an award of attorneys' fees and reimbursement of expenses. Pursuant to Rules 23(h)(3) and 54(d) of the Federal Rules of Civil Procedure, this Court makes the following findings of fact and conclusions of law:

(a) The instant litigation between Plaintiffs and U.S. Bank arose from the collapse of Peregrine Financial Group, Inc., in July 2012, when it was discovered that Peregrine's owner had misappropriated $200 million or more belonging to Peregrine's customers, allegedly from accounts held at U.S. Bank and JPMorgan;

(b) Plaintiffs allege that U.S. Bank breached legal duties in connection with its holding of Peregrine's customers' funds at U.S. Bank;

(c) U.S. Bank has vigorously defended itself, both on liability grounds and on the grounds that (assuming it were to be found liable) it could be held liable for at most only a fraction of the total loss incurred;

(d) U.S. Bank settled for $18 million claims brought by the Commodity Futures Trading Commission ("CFTC"), which were based on allegations similar to those made by the Plaintiffs, and the record demonstrates (and the parties acknowledge) that the efforts by Co-Lead Counsel in this litigation substantially contributed to the $18 million payment in the CFTC litigation;

(e) The Settlement entered into between Plaintiffs, the Trustee, and U.S. Bank provides that U.S. Bank will pay an additional $44.5 million to settle this litigation;

(f) Counsel's efforts have conferred an impressive monetary benefit on the Settlement Class: the funds recovered from U.S. Bank are substantial—both in absolute terms and when assessed in light of the risks of establishing liability and damages in this case;

(g) The Settlement was reached following negotiations held in good faith and in the absence of collusion;

(h) Because this Settlement generated a common fund for the Settlement Class, it is appropriate to compensate the attorneys who helped recover the fund, *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Sutton v. Bernard*, 504 F.3d 688, 691-92 (7th Cir. 2007);

(i) To calculate an appropriate attorneys' fee award, the Court approximates the "market price" for the legal services provided, *Sutton v. Bernard*, 504 F.3d 688, 692 (7th Cir. 2007), including by taking into account the factors set forth in *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001);

(j) It is within this Court's discretion to determine the market rate based on either the "percentage of the fund" or the "lodestar" method, though the courts in the Seventh Circuit have increasingly opted for the former approach, *see Florin v. Nationsbank of Ga., N.A.*, 34 F.3d 560, 565-66 (7th Cir. 1994); *Gaskill v. Gordon*, 160 F.3d 361, 362 (7th Cir. 1998); *In re Dairy Farmers of Am., Inc.*, 80 F. Supp. 3d 838 (N.D. Ill. 2015);

(k) Based on the circumstances of this litigation, the law of the Seventh Circuit, the nature of the Settlement, and the efforts by Co-Lead Counsel on behalf of the Settlement Class, the Court opts to employ the percentage of the fund method in determining the appropriate amount of an attorney fee award in this case;

(l) Plaintiffs have filed a motion for an award of attorneys' fees in the amount of $13,795,000, which represents 31% of the $44.5 million sum that U.S. Bank agreed to pay through the Settlement, and less than 31.4% of the net benefit accruing to the

Settlement Class—in other words, 31.4% of $43,967,559.12 (which is $44.5 million less (i) the $437,440.88 sum reflecting Co-Lead Counsel's recovery of out-of-pocket expenses, (ii) the combined $45,000 in service awards to the nine customer representatives, and (iii) the $50,000 maximum cost of Settlement notice and administration);

(m) Although the Court finds, as discussed below, that the requested fee award is fully supported without taking into account the additional $18 million paid by U.S. Bank in the CFTC litigation, the Court also notes that with that $18 million payment also taken into account, Co-Lead Counsel is requesting an award substantially lower than 31% of the total benefit derived from the litigation against U.S. Bank for which they are wholly or substantially responsible;

(n) The requested attorney fee award of approximately 31% of the Settlement Amount is at least on par with (and is arguably below) what the market would support;

(o) "A customary contingency fee would range from 33 1/3% to 40% of the amount recovered," *Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, No. 97-C-7694, 2001 WL 1568856, at *4 (N.D. Ill. Dec. 10, 2001);

(p) When Plaintiffs' counsel are retained by public entity and corporate clients for litigation services, those contracts typically contain provisions for the payment of contingent fees ranging from 30-40%, and these retention agreements are entered into with sophisticated in-house counsel, indicating that the requested percentage is consistent with market rates, *see Taubenfeld v. AON Corp.*, 415 F.3d 597, 599 (7th Cir. 2005); *Goldsmith v. Tech. Solutions Co.*, 1995 WL 17009594, at *8 (N.D. Ill. Oct. 10, 1995);

(q) Fee awards in other class actions in the Seventh Circuit confirm that 31% is at or below what the market would pay for the services rendered, *see Taubenfeld,* 415 F.3d at 599-600; *Teamsters Local Union No. 604 v. Inter-Rail Transport, Inc.*, 2004 WL 768658, *1 (S.D. Ill. 2004); *Meyenburg v. Exxon Mobil Corp*., No. 05-cv-15-DGW, 2006 WL 2191422, at *2 (S.D. Ill. July 31, 2006);

(r) The *Synthroid* factors also confirm the propriety of the requested fee award: Co-Lead Counsel undertook numerous and significant risks of nonpayment in connection with the prosecution of this high stakes action, and the benefit achieved for the Settlement Class was obtained only because of Co-Lead Counsel's skillful advocacy over the course of nearly three years of litigation against well-funded and intense opposition from U.S. Bank;

(s) Settlement Class members were advised in the Notice of Settlement, approved by this Court, that Co-Lead Counsel would ask the Court to approve a payment of up to 31% percent of U.S. Bank's $44.5 million payment, plus payment of up to $500,000 for the expenses they have incurred in the prosecution of this action and the payment of service awards;

(t) There were no objections by Settlement Class members to the requested fee award;

(u) Although Seventh Circuit precedent does not require this Court to compute the lodestars of Plaintiffs' counsel, either as a method for computing the fee or as a crosscheck, the Court notes that utilization of the lodestar method would lead to the same conclusion: the requested fee award is reasonable and appropriate;

(v) Plaintiffs' counsel and their professional support staff reasonably expended over 20,000 hours in this action for a lodestar totaling $9,909,060.75 (net of the $312,500 already awarded as part of the JPMorgan settlement) on behalf of the Plaintiffs and Settlement Class, and also incurred $437,440.88 in out of pocket expenses (net of the $351,509.55 already awarded for reimbursement as part of the JPMorgan settlement) in prosecuting this action;

(w) As detailed in the declaration submitted in support of the fee application, a fee award of $13,795,000 would equate to a modest lodestar multiplier of approximately 1.39, which is reasonable in light of the circumstances discussed above;

3. Accordingly, Co-Lead Counsel are hereby awarded attorneys' fees in the amount of $13,795,000—an award the Court deems to be fair and reasonable.

4. Further, Co-Lead Counsel are hereby awarded $437,440.88 out of the Settlement Amount to reimburse them for the expenses they incurred in the prosecution of this lawsuit, which the Court finds to be well-documented, and fairly and reasonably incurred to achieve the benefits to the Settlement Class obtained in the Settlement.

SO ORDERED this 15th day of October, 2015.

The Honorable Sara L. Ellis
United States District Judge

EXHIBIT 18

2013 WL 12470850
Only the Westlaw citation is currently available.
United States District Court, N.D. Illinois.

IN RE: POTASH ANTITRUST LITIGATION (II)
This Document Applies to: All Direct Purchaser Actions

MDL Docket No. 1996
|
Civil No. 1:08-cv-06910
|
Signed 06/12/2013

ORDER GRANTING DIRECT PURCHASER PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND CLASS REPRESENTATIVE INCENTIVE AWARDS

RUBEN CASTILLO, UNITED STATES DISTRICT JUDGE

***1** This Court, having considered Direct Purchaser Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Class Representative Incentive Awards (the "Motion") and memorandum in support thereof, after a duly noticed hearing, hereby finds that:

1. The Motion seeks an award of attorneys' fees of $30,000,000, representing one-third of the $90,000,000.00 Settlement Funds that comprise the settlement payments paid into escrow by all Settling Defendants. Class Counsel for Direct Purchaser Plaintiffs also seek an order awarding $791,124.63 in expenses incurred during the pendency of this action that were not previously requested and awarded. Finally, the Motion seeks an incentive award of $15,000.00 for each Class Representative.

2. The amount of attorneys' fees requested is fair and reasonable under the percentage-of-the-fund method, which is confirmed by a lodestar "cross-check."

3. The attorneys' fees requested were entirely contingent upon a successful outcome for the Class. The risk undertaken by Class Counsel was significant, especially considering the lack of any related government proceedings, the complex legal theories advanced in the case, the vigorous defense by experienced defense counsel, the lengthy appellate proceedings, and the proposed novel discovery methodology.

4. In addition to risking time and effort, Class Counsel advanced substantial costs and expenses in connection with the prosecution of the litigation for the benefit of the Class with no guarantee of compensation.

5. An award of one-third of the Settlement Funds is reasonable and warranted for the reasons set forth in Direct Purchaser Plaintiffs' Memorandum in Support of their Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Class Representative Incentive Awards (the "Memorandum"), including, but not limited to, the following: the outstanding result obtained for the Class – payment by Defendants of $90,000,000 in cash; the quality of work product and quantity of work performed by Class Counsel, including extensive motion practice, substantial discovery efforts, mediation, and appellate practice, all involving complex issues of fact and law that were zealously litigated since 2008; and the risks faced throughout the litigation, which existed from the outset and continued until the ultimate settlement of the case.

6. Therefore, upon consideration of the Motion and accompanying Memorandum, and based upon all matters of record in this action, the Court hereby finds that: (1) the requested attorneys' fees are warranted and just; (2) the requested expenses were necessary, reasonable, and proper; and (3) the requested class representative incentive awards are justified.

Having considered Direct Purchaser Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Class Representative Incentive Awards,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. Class Counsel are awarded attorneys' fees in the amount of $30,000,000 or one-third of the Settlement Funds of $90,000,000.

***2** 2. Class Counsel are awarded $791,124.63 as remuneration for their unreimbursed costs and expenses incurred during the course of the litigation.

3. The Following Class Representatives shall each receive $15,000.00 as incentive awards: Gage's Fertilizer & Grain, Inc., Kraft Chemical Company, Minn-Chem, Inc., Shannon

D. Flinn, Thomasville Feed & Seed, Inc., and Westside Forestry Services, Inc. d/b/a/ Signature Lawn Care.

4. The awarded attorneys' fees, reimbursed expenses, and incentive awards shall be paid from the Settlement Funds.

5. The awarded attorneys' fees and reimbursed expenses shall be equitably distributed among Class Counsel by Co-Lead Counsel in a good-faith manner that in Co-Lead Counsel's judgment reflects each individual Class Counsel's contribution to the institution, prosecution, and resolution of the litigation.

6. The Court finding no just reason for delay, this Order shall be entered as of this date pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

All Citations

Slip Copy, 2013 WL 12470850

EXHIBIT 19

2007 WL 2115592
United States District Court, D. Connecticut.

In re PRICELINE.COM, INC.
SECURITIES LITIGATION.
This document relates to:
All Actions.

Master File No. 3:00–CV–1884(AVC).
|
July 20, 2007.

RULING ON MOTIONS FOR APPROVAL OF CLASS ACTION SETTLEMENT AND ATTORNEYS' FEES AND EXPENSES

ALFRED V. COVELLO, United States District Judge.

***1** This is an action for damages brought on behalf of a class of all persons and entities who purchased or acquired Priceline.com securities during the class period of January 27, 2000 through October 4, 2000, and were damaged thereby. [1] It is brought pursuant to sections 10(b), 15 U.S.C. § 78j(b), and 20(a), 15 U.S.C. § 78t, of the Securities and Exchange Act of 1934, as amended by the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S .C. §§ 78a78mm, and Rule 10b–5, 17 C.F.R. § 240.10b–5. The complaint alleges that the defendants made certain misleading statements with respect to the profitability of Priceline.com and WebHouse Club, causing the plaintiff class to suffer losses on their investments in Priceline.com securities. On May 4, 2007, the plaintiffs reached a settlement with the defendants Priceline.com, Jay Walker, Dan Schulman, Richard Braddock and N.J. Nichols. On July 2, 2007, the court held a hearing to address the fairness of the proposed settlement in accordance with Federal Rule of Civil Procedure 23(e). [2] For the following reasons, the court hereby approves the parties proposed settlement and the plaintiffs' requested attorneys' fees and expenses.

1 Excluded from the class are the following: (1) the settling defendants; (2) the officers and directors of Priceline.com, at all relevant times; (3) members of the settling defendants' immediate families and their legal representatives, heirs, successors or assigns; (4) any entity in which the settling defendants have or at any time had a controlling interest; and (5) Deloitte & Touche LLP, or any of Deloitte's partners, officers and directors.

2 Federal Rule of Civil Procedure 23(e) provides, in relevant part, that "the court may approve a settlement ... that would bind class members only after a hearing and on finding that the settlement ... is fair, reasonable, and adequate." Fed.R.Civ.P. 23(e)(1)(C).

FACTS

Examination of the complaint and the papers filed in connection with the parties' proposed settlement and the arguments made during the July 2, 2007, hearing reveal the following facts:

On October 2, 2000, the plaintiffs filed the complaint in this case, alleging that the defendants made certain misleading statements with respect to the profitability of Priceline.com and WebHouse Club, causing the plaintiff class to suffer losses on their investments in Priceline.com securities. On November 29, 2000, the court consolidated nine of the within cases. On September 12, 2001, the court consolidated the remaining 21 cases under the above-titled case number. On September 12, 2001, the court appointed lead plaintiff for the putative class. On October 29, 2001, the plaintiff filed a consolidated amended complaint. On February 28, 2002, the defendant, Deloitte and Touche ("Deloitte"), and the defendants Priceline, Walker, Schulman, Braddock and Nichols ("Priceline Defendants"), filed motions to dismiss the consolidated amended complaint. On October 7, 2004, the court, the honorable Dominic J. Squatrito, granted in part and denied in part the defendants motions to dismiss and dismissed a portion of the allegations against the Priceline defendants and all of the allegations against Deloitte. On January 7, 2005, the plaintiffs filed a motion to certify the class. On April 4, 2006, the court certified the plaintiff class to include all persons and entities who purchased or acquired Priceline.com securities during the class period of January 27, 2000 through October 4, 2000, and were damaged thereby. During the pendency of this case, the parties filed numerous discovery motions and have produced and reviewed 5.29 million pages of WebHouse and Priceline documents.

***2** On May 4, 2007, the plaintiffs reached agreement with defendants Priceline.com, Walker, Schulman, Braddock and

Nichols for a cash settlement of $80 million. On July 2, 2007, the court held a hearing to address the fairness of the proposed settlement in accordance with Federal Rule of Civil Procedure 23(e).

STANDARD

Federal Rule of Civil Procedure 23(e) provides as follows:

> (A) The court must approve any settlement ... of the claims, issues, or defenses of a certified class.
>
> (B) The court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise.
>
> (C) The court may approve a settlement ... that would bind class members only after a hearing and on finding that the settlement ... is fair, reasonable, and adequate.

Fed.R.Civ.P. 23(e)(1). The second circuit has recognized that "[t]he standard for the adequacy of a settlement notice in a class action under either the Due Process Clause or the Federal Rules is measured by reasonableness." *Wal–Mart Stores, Inc. V. Visa U.S.A ., Inc.,* 396 F.3d 96, 113 (2d Cir.2005). The court further stated that "[t]here are no rigid rules to determine whether a settlement notice to the class satisfies constitutional or rule 23(e) requirements: the settlement notice must 'fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings.' " *Id.* at 114 (citing *Weinberger v. Kendrick,* 698 F.2d 61, 70 (2d Cir.1982) (internal quotation marks and brackets omitted)).

The second circuit has further recognized that "[a] court may approve a class action settlement if it is fair, reasonable and adequate and not a product of collusion." *Wal–Mart Stores, Inc. V. Visa U.S.A., Inc.,* 396 F.3d 96, 113 (2d Cir.2005). "A court determines a settlement's fairness by looking at both the settlement's terms and the negotiating process leading to settlement ." *Id.* (citing *D'Amato v. Duetsche Bank,* 236 F.3d 78, 85 (2d Cir.2001)). Further, the court has recognized a strong policy in favor of class action settlements and also that a " 'presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery.' " *Id.* at 116–17 (quoting *Manual for Complex Litigation, Third,* § 30.42 (1995)).

DISCUSSION

I. *Adequacy of Notice to the Class*

Federal Rule of Civil Procedure 23(e)(1)(B) requires that the court "direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise." Fed.R.Civ.P. 23(e)(1)(B). In addition, Federal Rule of Civil Procedure 23(c)(2)(B) requires that the court "direct to class members the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must concisely and clearly state in plain, easily understood language:

***3** • the nature of the action

• the definition of the class certified,

• the class claims, issues, or defenses,

• that a class member may enter an appearance through counsel if the member so desires,

• that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded, and

• the binding effect of a class judgment on class members under Rule 23(c)(3)."

Fed.R.Civ.P. 23(c)(2).

In this case, the claims administrator, Strategic Claims Services ("Strategic Claims"), mailed individual notices, by first-class mail, to all class members at their last known-addresses. Strategic Claims mailed a total of 88,893 packets of individual notice materials. In addition, the notice of this settlement was published in the *Wall Street Journal* and *USA Today.* Further, a press release announced the settlement over the PR newswire for national distribution and the notice of settlement and settlement agreement are currently posted on the claims administrator's website. Finally, Priceline

described the settlement in its 2007 first quarter Form 10–Q, which it filed on May 10, 2007.

The court concludes that notice to the class in this case was adequate in form and content to satisfy the requirements of the federal rules and due process. The notice was sufficient for class members to understand the proposed settlement and their options.

II. ***Fairness of the Settlement***

The federal rules next require the court to determine whether "the settlement ... is fair, reasonable, and adequate." Fed.R .Civ.P. 23(e)(1)(C). The second circuit has stated that courts should consider the following factors when determining whether a particular settlement is fair: "(1) the complexity, expense and likely duration of the litigation ...; (2) the reaction of the class to the settlement ...; (3) the stage of the proceedings and the amount of discovery completed ...; (4) the risks of establishing liability ...; (5) the risks of establishing damages ...; (6) the risks of maintaining the class action through the trial ...; (7) the ability of the defendants to withstand a greater judgment ...; (8) the range of reasonableness of the settlement fund in light of the best possible recovery ...; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation...." *City of Detroit v. Grinnell Corp.,* 495 F.2d 448, 463 (2d Cir.1974). Further, the second circuit has recognized that a " 'presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery.' " *Wal–Mart Stores, Inc. V. Visa U.S.A., Inc.,* 396 F.3d 96, 116–17 (2d Cir.2005) (quoting *Manual for Complex Litigation, Third,* § 30.42 (1995)).

In this case, the parties met in four mediation sessions before reaching agreement. The honorable Nicholas H. Politan, retired U.S. district judge, and Robert A. Meyer, esq., conducted the negotiations between the parties. The settlement in this case was ably negotiated at arms' length with the impartial participation of Judge Politan and attorney Meyer and is, therefore, entitled to a presumption of fairness and adequacy. Further, the above-referenced factors militate in favor of approving the parties' proposed settlement. This is a complex case involving many complex accounting issues and violations of the securities laws. While two entities have raised issues with respect to the amount of class counsels' fee, the reaction of the class to the terms of the proposed settlement could not be more favorable. Not one member of the class has objected to the settlement. With respect to the stage of the proceedings, the parties have been litigating this case for almost seven years. During that time, they have completed review of several millions of pages of documents and assembled and utilized teams of investigators and experts to analyze and quantify their claims. Consequently, the parties are certainly in a position to understand and gauge the strengths and weaknesses of their case and to determine an adequate settlement. *See In re AOL Time Warner, Inc. Securities,* 2006 WL 903236 *10 (S.D.N.Y. April 6, 2006). With respect to the risks of establishing liability, absent the within settlement, the plaintiffs would face motions for summary judgment and complex and fact-intensive analysis of accounting and fraud issues. The plaintiffs would also face significant obstacles in proving damages in this case with respect to differences between the stock's purchase price and the stock's "true" value. The determination of damages would depend upon the jury's reaction to and interpretation of conflicting expert opinions on the issue. Such a determination would be difficult to predict with any certainty. With respect to the risks of maintaining the class action through trial, although the court has certified the class in this case, the prospects of decertification certainly exist in light of the defendants' vigorous opposition to the plaintiffs' motions for certification and the defendants' defeat of one of the plaintiffs' motions for appointment of a lead plaintiff as a class representative. With respect to the defendants' ability to withstand a greater judgment, the plaintiffs' memorandum states that class counsel relied on this factor in deciding to settle this case. On its 2007 Form 10–Q, Priceline reported that $30 million of the $80 million dollar settlement amount is being funded through its insurance policies. In addition, the form states that Priceline's current liabilities exceed its current assets and that it reported an operating loss of $31.7 million for its most recent quarter. Finally, the range of reasonableness of the settlement in light of the best possible recovery and litigation risks weighs in favor of approving the parties settlement. Given the procedural history of this case, the previously discussed risks of proceeding to trial and the defendants' financial circumstances, the court concludes that the settlement here represents a fair, adequate and reasonable result for the class.

***4** As part of the fairness determination, the court must determine whether the settlement's proposed allocation of the proceeds is fair and reasonable. "[T]he adequacy of an allocation plan turns on whether counsel has properly

apprised itself of the merits of all claims, and whether the proposed settlement is fair and reasonable in light of that information." *In re Paine Webber Partnerships Litigation,* 171 F.R.D. 104, 133 (S.D.N.Y.1997), *aff'd,* 117 F.3d 721 (2d Cir.1997). In this case, the settlement provides for distribution of the net settlement funds on a pro rata basis and involves a formula based upon liability and damages. The settlement agreement seeks to reimburse class members for the excess amount they paid for Priceline stock because of the artificial inflation of the stock by reason of the defendants' misrepresentations. The court notes that not one class member has objected to the proposed plan of allocation. Upon careful review of the settlement agreement's allocation of the settlement fund, the court concludes that it is fair and has a "reasonable rational basis" in light of the circumstances of this case. *See* *Maley v. Del Global Techs. Corp.,* 186 F.Supp.2d 358, 367 (S.D.N.Y.2002).

III. ***Attorneys' Fees***

Lead plaintiffs' counsel have also filed a motion for an award of attorneys fees in the amount of 30% of the $80 million dollar settlement and for reimbursement of litigation expenses. For the foregoing reasons, the motion is granted.

The plaintiffs argue that 30% of the settlement fund is a fair and reasonable fee in this case. The New York State Teachers' Retirement System ("NYSTRS") has filed an opposition to the requested fee and argues that the facts of this case do not support a fee award in that amount. In addition, the Pennsylvania Public Schools Employees' Retirement System ("PPSERS") has filed an objection to the proposed attorneys' fee request.

The second circuit has recognized that "where an attorney succeeds in creating a common fund from which members of a class are compensated for a common injury inflicted on the class .... the attorneys whose efforts created the fund are entitled to a reasonable fee-set by the court-to be taken from the fund. *Goldberger v. Integrated Resources, Inc.,* 209 F.3d 43, 47 (2d Cir.2000) (citations omitted). The second circuit has recognized two methods for calculating a reasonable fee. "The first is the loadstar, under which the district court scrutinizes the fee petition to ascertain the number of hours reasonably billed to the class and then multiplies that figure by an appropriate hourly rate. Once that initial computation has been made, the district court may, in its discretion, increase the loadstar by a multiplier based on 'other less objective factors,' such as the risk of litigation and the performance of the attorneys." *Id.* (Citation omitted) (internal quotation marks omitted in original). Under the second method, "the court sets some percentage of the recovery as a fee." *Id.* The second circuit has recognized that regardless of the method used, "the fees awarded in common fund cases may not exceed what is 'reasonable' under the circumstances." *Id.* The second circuit has stated that whether using the loadstar or percentage methods, "the district courts should continue to be guided by the traditional criteria in determining a reasonable common fund fee, including: '(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of litigation ...; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.' " *Id.* at 50 (quoting *In re Union Carbide Corp. Consumer Products Business Securities,* 724 F. Supp 160, 163 (S.D.N.Y.1989)).

***5** In this case, counsel have expended 31,768 hours at rates of between $50 and $770 per hour for a total of 12.1 million in fees. Counsel in this case state that they have investigated publicly available materials, reviewed millions of pages of documents, consulted with experts, conducted ongoing research and drafted court documents for an extensive motions practice, formulated litigation strategy, prepared for and participated in multiple mediation sessions, and negotiated and administered the within settlement. The magnitude and complexity of this case are apparent from the more than six years of contentious discovery, intricate issues regarding proof of liability and loss and complex accounting issues. With respect to the risk of litigation, the plaintiffs developed their own theory of liability and damages, as there was not a government prosecution in this case. Proving the elements of this case would be a necessary and formidable task. Further, litigation brought issues of collectibility against these defendants, a risk that the class would not be certified, and risks associated with taking a case on a contingent fee basis. The quality of representation here is demonstrated, in part, by the result achieved for the class. Further, it has been this court's experience, throughout the ongoing litigation of this matter, that counsel have conducted themselves with the utmost professionalism and respect for the court and the judicial process. The relation of the requested fee to the settlement weighs in favor of the requested 30% fee award. The effort by counsel in this case, the result obtained and similar awards in comparable cases in this circuit, all weigh in favor of the requested fee. *See e.g.,* *Gwozdzinnsky v. Sandler Assoc.,* 159 F.3d 1346 (2d Cir.1998) (summary order)

(affirming district court's award of 25% of the common fund); *Strougo ex rel. Brazilian Equity Fund, Inc. v. Bassini,* 258 F.Supp.2d 254, 262 (S.D.N.Y.2003) (granting attorneys fees in amount of 33 and 1/3% of the settlement fund); *Maley v. Del Global Technologies Corp.,* 186 F.Supp.2d 358, 370 (S.D.N.Y.2002) (granting attorneys' fees in amount of 33 and 1/3% of the settlement fund); *In re RJR Nabisco,* No. 88 Civ. 7905, 1992WL210138 (S.D.N.Y. Aug. 24, 1992) (recognizing that the courts increasingly use the percentage of the fund method over the loadstar method in attorneys' fee award).

Finally, public policy considerations also support the requested fee. The award of the percentage requested here will encourage enforcement of the securities laws and support attorneys' decisions to take these types of cases on a contingent fee basis. The fee fairly compensates competent counsel in a complex securities case and helps to perpetuate the availability of skilled counsel for future cases of this nature.

A cross check of the loadstar in this case also demonstrates the reasonableness of the requested percentage. The percentage requested equals a 1.98 multiplier of the $12.1 million dollar loadstar amount. Taking into consideration all of the aforementioned factors, the risks associated with contingent fee litigation, and the quality of representation here and the results obtained, this multiplier is reasonable in light of the circumstances of this case. *See In re Lloyd's American Trust Fund Litigation,* 2002 WL 31663577 *26–28 (S.D.N.Y.26, 2002) (recognizing that courts typically apply a multiplier to the loadstar amount to recognize the risks of litigation and a contingent fee). The court, therefore, orders a fee award equal to 30% of the settlement amount plus accrued interest to the date of the award. The amount of the fee award shall be allocated among the plaintiffs' counsel in a fashion which fairly compensates counsel for their respective contributions in litigating this case.

***6** Class plaintiffs' counsel also request an award for reimbursement of their litigation expenses advanced to prosecute this case, in the amount of $1,394,422.57. Counsel have submitted thorough records of their requested expenses. Absent any objection thereto and after careful review of the expenses at issue, the court grants the plaintiffs' request. The plaintiffs' counsel shall be reimbursed for the full amount of the expenses they have advanced in this matter.

IV. *Opt Out Provision*

The notice to the class of the proposed settlement gave class members the option to opt out of the settlement. On June 4, 2007, class member Barbara A. Res filed a request to opt out of the settlement in accordance with the procedures set forth in the notice of settlement. Her request is granted and she will not be part of the within settlement. In addition, Arnold J. Hoffman filed a request to opt out with respect to several trusts. That request is addressed in a separate order filed simultaneously herewith.

CONCLUSION

For the foregoing reasons, the plaintiffs' motion for final approval of the proposed class action settlement (document no. 462) and the motion for award of attorneys' fees and reimbursement of expenses (document no. 463) are **GRANTED.**

It is so ordered.

All Citations

Not Reported in F.Supp.2d, 2007 WL 2115592, Fed. Sec. L. Rep. P 94,433, 68 Fed.R.Serv.3d 273

EXHIBIT 20

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF MISSISSIPPI, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. TREEHOUSE FOODS, INC., SAM K. REED, DENNIS F. RIORDAN and CHRISTOPHER D. SLIVA, Defendants.	Case No.: 16-CV-10632 Judge Robert M. Dow, Jr.

ORDER GRANTING AN AWARD OF LEAD COUNSEL'S ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, LEAD PLAINTIFF'S PSLRA AWARD, AND APPROVING PLAN OF ALLOCATION OF NET SETTLEMENT FUND

This matter came for a duly noticed hearing on November 16, 2021 (the "Fairness Hearing"), upon Lead Plaintiff's Motion for Final Settlement Approval, an Award of Attorneys' Fees, Reimbursement of Expenses, and Approval of Plan of Allocation (the "Motion") in the above-captioned action (the "Action"). The Court has considered the Motion, including the Fee and Expense Application, Lead Plaintiff's PSLRA Award, the proposed plan of allocation of the Net Settlement Fund, and all supporting and other related materials, including the matters presented at the Fairness Hearing. Due and adequate notice of the Stipulation of Settlement with Defendants entered into on July 13, 2021 (the "Settlement Agreement") having been given to the Class Members; the Fairness Hearing having been held; and the Court having considered all papers filed and proceedings conducted herein, having found the Settlement of the 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. Unless otherwise defined herein, all capitalized terms used herein shall have the same meanings set forth and defined in the Settlement Agreement.

2. This Court has personal jurisdiction over Lead Plaintiff, Defendants, and all Class Members who have not timely and validly requested exclusion and subject matter jurisdiction over the Action to approve the Settlement Agreement and all exhibits attached thereto.

3. Notice of the Fee and Expense Application, and the Plan of Allocation, was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Private Securities Litigation Reform Act of 1995 (15 U.S.C. § 78u-4(a)(7)), due process, and all other applicable laws and rules, 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 finds and concludes that the formula for the calculation of the claims of Claimants as set forth in the Plan of Allocation provided and made available to Settlement Class Members provides a fair and reasonable basis upon which to allocate the proceeds of the Net Settlement Fund among Settlement Class Members with due consideration having been given to administrative convenience and necessity.

5. The Court hereby finds and concludes that the Plan of Allocation is, in all respects, fair and reasonable to the Settlement Class. Accordingly, the Court hereby approves the Plan of Allocation proposed by Lead Plaintiff.

6. The Court hereby awards Lead Counsel attorneys' fees of 25% of the Settlement Fund (or $6,750,000) and litigation expenses of $327,242.20, together with interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund until paid.

7. Lead Counsel is hereby authorized to allocate the attorneys' fees award in a manner in which, in Lead Counsel's good faith judgment, reflects the contributions of such counsel to the institution, prosecution and settlement of the Action.

8. The Court finds that the amount of fees awarded is fair and reasonable under the "percentage-of recovery" method considering, among other things that:

a. the Fee Award is in accord with Seventh Circuit authority and consistent with fee awards in similar cases;

b. the contingent nature of the Action favors the Fee Award;

c. the quality of legal services provided by Lead Counsel produced the Settlement;

d. Lead Counsel's lodestar supports the reasonableness of the Fee Award; and

e. the reaction of the Class to the Fee and Expense Application supports the fee awarded.

9. Consistent with the explanation provided on the record during the Fairness Hearing, the Court hereby awards Lead Plaintiff Public Employees' Retirement System of Mississippi a PSLRA Award of $ 47,935 for its service as Lead Plaintiff in this Action.

10. In the event that the Settlement is terminated or the Effective Date does not occur in accordance with the terms of the Settlement, this Order shall be null and void, of no further force or effect, and without prejudice to any of the Parties, and may not be introduced as evidence or used in any actions or proceedings by any Person against the Parties.

11. The Fee and Expense Application and Lead Plaintiff's PSLRA Award awarded herein may be paid to Lead Counsel and Lead Plaintiff from the Settlement Fund immediately upon entry of this Order, subject to the terms, conditions, and obligations of the Settlement Agreement which terms, conditions, and obligations are incorporated herein. party given the inability of both sides to interview or depose those individuals prior to the hearing.

Dated: November 18, 2021

Robert M. Dow, Jr.
United States District Judge

EXHIBIT 21

2001 WL 1568856
Only the Westlaw citation is currently available.
United States District Court, N.D. Illinois, Eastern Division.

RETSKY FAMILY LIMITED PARTNERSHIP, Plaintiff,
v.
PRICE WATERHOUSE LLP, Defendant.

No. 97 C 7694.
|
Dec. 10, 2001.

MEMORANDUM OPINION AND ORDER

DARRAH, J.

***1** Plaintiff the Retsky Family Limited Partnership ("Plaintiff" or "Retsky") seeks approval of a settlement for a class of all persons who purchased or otherwise acquired common stock of System Software Associates, Inc. ("SSA") during a period from December 15, 1994 through January 7, 1997, and thereby suffered damages. Plaintiff also seeks an award of attorney's fees and reimbursement of expenses from the proceeds of the proposed settlement. For the reasons that follow, the proposed class settlement, award of attorney's fees and reimbursement of expenses to be paid from the proceeds of the settlement and special award are approved.

The Proposed Class Settlement

LEGAL STANDARD

A class settlement will be approved if it is fair, reasonable and adequate. *Isby v. Bayh,* 75 F.3d 1191, 1196 (7th Cir.1996). A court will consider the following factors in determining whether a proposed settlement is fair, reasonable and adequate: "(1) 'the strength of the case for the plaintiffs on the merits, balanced against the amount offered in settlement'; (2) '[T]he defendant's ability to pay'; (3) '[T]he complexity, length and expense of further litigation'; (4) '[T]he amount of opposition to the settlement' '; (5) the presence of collusion in reaching a settlement; (6) the reaction of members of the class to the settlement; (7) the opinion of competent counsel; and (8) the stage of the proceedings and the amount of discovery to be completed. *Armstrong v. Bd. of Sch. Dirs.,* 471 F.Supp. 800, 804 (E.D.Wis.1979) (citing Manual for Complex Litigation § 1.46 at 56 (1977) (supplement to Charles Alan Wright & Arthur Miller, Federal Practice and Procedure (1969-1985)); 3B Moore's Federal Practice ¶ 23.80(4) (2d ed.1978)). However, the court is not to convert the settlement hearing into a trial on the merits. *See Mars Steel Corp. v. Continental Ill. Nat'l Bank & Trust Co.,* 834 F.2d 677, 684 (7th Cir.1987), *aff'd en banc,* 880 F.2d 928 (7th Cir.1989).

BACKGROUND

On October 31, 1997, Plaintiff filed a complaint against Price Waterhouse LLP ("PW"), the predecessor firm to PriceWaterhouse Coopers LLP, on behalf of all persons who purchased or otherwise acquired SSA common stock between December 15, 1994 and January 7, 1997, thereby suffering damages. Days before trial, the parties agreed to settle the case through a four-day arbitration. The agreement to settle the case through arbitration was reached after extensive negotiations between Plaintiff's counsel and PW's counsel.

At completion of arbitration, the plaintiff class was awarded $14,000,000 to settle its claims. This amount has been earning interest for the plaintiff class since June 29, 2001. This amount, less taxes, approved costs, attorney's fees and expenses, will be distributed to members of the plaintiff class who submit valid, acceptable Proofs of Claim. Pursuant to order of the Court, Plaintiff arranged for the mailing and publication of notice to the class. Plaintiff then filed its request that this Court approve the settlement as fair, reasonable and adequate.

DISCUSSION

***2** The strength of Plaintiff's case balanced against the amount offered in settlement favors a determination that the proposed settlement is fair, reasonable and adequate. The instant case involves securities litigation. Many cases like this one have been lost at trial, on post-trial motion or appeal. *See, e.g., Backman v. Polaroid Corp.,* 910 F.2d 10 (1st Cir.1990) (reversing jury finding of liability in suit brought under section 10(b) of the Securities Exchange Act of 1934).

It is not certain that Plaintiff would have been able to obtain a favorable monetary result against PW at trial. A jury may have found PW's witnesses to be more credible. PW would have presented evidence that its conduct had not caused

any monetary damages to Plaintiffs. A determination as to whether the plaintiff class had sustained monetary damages would have required extensive expert testimony as set out below. No one knows whose experts would have been more persuasive to a jury. The settlement provides certainty of recovery that was not available with litigation.

Furthermore, any judgment obtained at trial, however substantial, may not be distributed to the plaintiff class for many years due to post-trial motions and appeals. The plaintiff class has received a $14,000,000 cash settlement. This immediate and substantial recovery favors a determination that the proposed settlement is fair, reasonable and adequate.

Second, PW is able to pay the proposed settlement. Thus, this factor also favors approval of the settlement as fair, reasonable and adequate.

The complexity, length and expense of further litigation favor approval of the settlement. Securities fraud litigation is long, complex and uncertain. *See Trief v. Dun & Bradstreet Corp.,* 840 F.Supp. 277, 281 (S.D.N.Y.1993); *Hoffman Elec., Inc. v. Emerson Elec. Co.,* 800 F.Supp. 1289, 1295 (W.D.Pa.1992). In this case, each side had identified multiple trial experts to testify on the issues in the case. In fact, at least five experts were expected to testify at trial. In the final pretrial order submitted to the Court, the parties identified over 1,000 exhibits, forty witnesses and indicated that they anticipated that the trial would last fifteen to twenty-eight days. This evidence supports the conclusion that the case is very complex.

Furthermore, the settlement avoids the expense of continuing the litigation. Continued litigation would require significant attorney and expert time, use of computer graphics and technical support in the courtroom, as well as the usual cost of trial, such as travel or copying. Thus, the cost of litigation is quite high and is significantly reduced by settlement.

The procedure that was used clearly demonstrates the absence of collusion between the parties and favors approval of the settlement as fair, reasonable and adequate. Settlement negotiations that are conducted at arm's length and in good faith demonstrate that a settlement is not the product of collusion. *Scholes v. Stone, McGuire & Benjamin,* 839 F.Supp. 1314, 1318 (N.D.Ill.1993). Here, the arbitration was conducted over a four-day period. (Dumain Aff. ¶ 33.) Plaintiff's counsel was permitted to give opening and closing statements, conduct direct and cross-examination of witnesses and present legal arguments concerning loss causation to the Arbitrator. (Dumain Aff. ¶ 33.) This evidence is sufficient to establish that the negotiations were conducted at arm's length and in good faith. Thus, there was no possibility of collusion between the parties.

***3** Plaintiff's counsel deem the settlement to be fair, reasonable and adequate. The Court can consider the opinion of competent counsel in determining whether a settlement is fair, reasonable and adequate. *Isby,* 75 F.3d at 1200. Plaintiff's counsel are "experienced and skilled practitioners in the securities litigation field, and are responsible for significant settlements as well as legal decisions that enable litigation such as this to be successfully prosecuted." (Dumain Aff. ¶ 69.) Thus, Plaintiff's counsel are competent. Therefore, their opinion that the settlement is fair, reasonable and adequate also favors approval of the settlement.

The absence of objection to a proposed class settlement is evidence that the settlement is fair, reasonable and adequate. *Ressler v. Jacobson,* 149 F.R.D. 651, 656 (M.D.Fla.1992); *Schwartz v. Novo Indus.,* 119 F.R.D. 359, 363 (S.D.N.Y.1988). Pursuant to the Court's order, Plaintiff caused to be mailed more than 17,786 copies of the Notice to Class Members, and a summary notice of the proposed settlement and hearing was published in the Wall Street Journal. (Dumain Aff. ¶ 46.) The deadline for filing objections was October 29, 2001, and no objections have been received. Thus, the absence of objection to the settlement is evidence that the settlement is fair, reasonable and adequate.

Finally, the stage of litigation at which the settlement was reached also favors approval of the settlement. In *Armstrong,* the court found that this factor weighed in approving the proposed settlement because the litigation had progressed to a stage where the court and counsel could evaluate the merits of the case and the probable course of future litigation. 471 F.Supp. at 805, 806. Likewise, here, the settlement was reached after four years of litigation and the completion of fact and expert discovery, while parties were actively preparing for trial. The final pretrial order as well as a motion for summary judgment had been filed. It is clear that, in this case, both counsel and the Court have evaluated the merits of the case and the course of future litigation. It is also clear that counsel have a firm basis on which to assess the proposed settlement.

Therefore, based on the foregoing, the Court finds that the proposed settlement is fair, reasonable and adequate. Accordingly, the proposed settlement is approved. The Court also approves the proposed Plan of Allocation. The same standards of fairness, reasonableness and adequacy that apply to the settlement apply to the Plan of Allocation. The Court finds that these standards have been met with respect to the Plan of Allocation.

Attorney's Fees

Plaintiff requests attorney's fees of 33 1/3 % of the settlement amount, or $4,666,667.67, plus interest, and counsel's out-of-pocket expenses of $996,343.66. (Dumain Aff. ¶ 56.) Under either the percentage method or the lodestar method, Plaintiff's requested attorney's fees are reasonable.

***4** "When a case results in the creation of a common fund for the benefit of the plaintiff class, the common fund doctrine allows plaintiffs' attorneys to petition the court to recover its fees out of the fund." *Florin v. Nationsbank, N.A.,* 34 F.3d 560, 563 (7th Cir.1994). A court may determine reasonable attorney's fees as either a percentage of the fund or the lodestar amount, i.e. the number of hours worked multiplied by the attorney's hourly rate. *Florin,* 34 F.3d at 563. "[C]ourts may not enhance a fee award above the lodestar amount to reflect risk of loss or contingency." *Florin,* 34 F.3d at 564. "[T]he decision whether to use a percentage method or a lodestar method remains in the discretion of the district court." *Florin,* 34 F.3d at 566.

Courts try to approximate the market in determining reasonable attorney's fees. "The class counsel are entitled to the fee they would have received had they handled a similar suit on a contingent fee basis, with a similar outcome, for a paying client." *Steinlauf v. Continental Ill. Corp. (In re Continental Ill. Sec. Litig.),* 962 F.2d 566, 572 (7th Cir.1992). A customary contingency fee would range from 33 1/3% to 40% of the amount recovered. *See, e.g., Kirchoff v. Flynn,* 786 F.2d 320, 324 (7th Cir.1986); *In re Sell Oil Refinery,* 155 F.R.D. 552, 572 (E.D.La.1993) ("The customary contingency fee is between 33 1/3% and 40%."). Thus, the requested one-third of the common fund constitutes a reasonable attorney's fee.

Plaintiff's counsel worked 14,085.18 hours on this case. Under the lodestar method, this would amount to $4,842,573.55 in attorney's fees. (Dumain Aff. ¶ 57.) Attorney's fees determined by the percentage method amount to $4,666,667.67. This amount is lower than the amount determined by the lodestar method, which suggests that one-third of the common fund is a reasonable attorney's fee. Furthermore, no member of the plaintiff class has objected to the request for attorney's fees. This also suggests that the requested attorney's fees are reasonable. *See Ressler,* 149 F.R.D. at 656. Therefore, the Plaintiff's request for attorney's fees and costs is granted.

In *Cook v. Niedert,* 142 F.3d 1004, 1016 (7th Cir.1998) (citing *Spicer v. Chicago Bd. Options Exchange, Inc.,* 844 F.Supp. 1226, 1267 (N.D.Ill.1993)), the Seventh Circuit held that a court may grant a special award to the named plaintiff in a class action based on "the actions the plaintiff had taken to protect the interests of the class, the degree to which the class benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation." Based on the representations of counsel as to the services rendered by the Retsky Family Limited Partnership in the prosecution of the class action, as more fully set out in the transcript of the proceedings of November 19, 2001, the Court finds that a special award is appropriate and that the sum of $7,500 is reasonable compensation.

CONCLUSION

***5** For the reasons stated herein, the proposed settlement is approved, and Plaintiff's request for an award of attorney's fees, reimbursement of expenses and a special award is granted.

IT IS SO ORDERED.

All Citations

Not Reported in F.Supp.2d, 2001 WL 1568856

End of Document

EXHIBIT 22

2016 WL 10570957
Only the Westlaw citation is currently available.
United States District Court, M.D.
Tennessee, Nashville Division.

Karsten SCHUH, Individually and on Behalf of All Others Similarly Situated, Plaintiff,
v.
HCA HOLDINGS, INC., et al., Defendants.

Civil Action No. 3:11–cv–01033
|
Signed 04/14/2016

Attorneys and Law Firms

Darren J. Robbins, David C. Walton, Debra J. Wyman, James I. Jaconette, Robbins Geller Rudman & Dowd LLP, San Diego, CA, Douglas S. Johnston, Jr., Scott P. Tift, Timothy L. Miles, Barrett Johnston Martin & Garrison, LLC, Nashville, TN, Francis A. Bottini, Bottini & Bottini, Inc., La Jolla, CA, for Plaintiff.

Brian M. Burnovski, Davis, Polk & Wardwell, Jamie L. Wine, Latham & Watkins LLP, New York, NY, Everett C. Johnson, Jr., J. Christian Word, Nathan H. Seltzer, Sarah Ann Greenfield, Latham & Watkins LLP, Washington, DC, Milton S. McGee, III, Steven Allen Riley, Riley, Warnock & Jacobson, Nashville, TN, for Defendants.

ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

KEVIN H. SHARP, CHIEF UNITED STATES DISTRICT JUDGE

***1** This matter having come before the Court on April 11, 2016, on the motion of counsel for the Lead Plaintiff for an award of attorneys' fees and expenses incurred in this action, 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 December 18, 2015 (the "Stipulation"). Dkt. No. 534.

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 Plaintiff's counsel attorneys' fees of 30% of the Settlement Amount, and litigation expenses in the amount of $2,016,508.52, 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. Said fees and expenses shall be allocated amongst counsel in a manner which, in Lead Counsel's good faith judgment, reflects each such counsel's contribution to the institution, prosecution and resolution of the Litigation. The Court finds that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method considering, among other things, the following: the highly favorable result achieved for the Class; the contingent nature of Lead Plaintiff's counsel's representation; Lead Plaintiff's counsel's diligent prosecution of the Litigation; the quality of legal services provided by Lead Plaintiff's counsel that produced the Settlement; that the Lead Plaintiff appointed by the Court to represent the Class approved the requested fee; the reaction of the Class to the fee request; and that the awarded fee is in accord with Sixth Circuit authority and consistent with other fee awards in cases of this size.

4. The awarded attorneys' fees and expenses shall be paid to Lead Counsel immediately after the date this Order is executed subject to the terms, conditions and obligations of the Stipulation and in particular ¶6.2 thereof, which terms, conditions and obligations are incorporated herein.

5. Pursuant to 15 U.S.C. § 77z–1(a)(4), Lead Plaintiff New England Teamsters & Trucking Industry Pension Fund is awarded $6,081.25 as payment for its time spent in representing the Class.

6. The Court has considered the objection to the fee award filed by Class Members Mathis and Catherine Bishop, and finds it to be without merit. The objection is therefore overruled in its entirety.

IT IS SO ORDERED.

2016 WL 10570957

All Citations

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EXHIBIT 23

2020 WL 5627171
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United States District Court, N.D. Indiana, South Bend Division.

Rajesh M. SHAH, et al., Plaintiffs,
v.
ZIMMER BIOMET HOLDINGS, INC., et al., Defendants.

Case No. 3:16-cv-815-PPS-MGG
|
Signed 09/18/2020

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OPINION AND ORDER

PHILIP P. SIMON, JUDGE

***1** After nearly four years of complex and contested litigation, this securities class action has settled. Before me are Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation [DE 254] and Lead Counsel's Motion for Award of Attorneys' Fees and Reimbursement of Litigation Expenses [DE 256.] I previously granted preliminary approval of the settlement and certified a class for settlement purposes. [DE 251; *Shah v. Zimmer Biomet Holdings, Inc.*, 2020 WL 2570050 (N.D. Ind. May 21, 2020).] The parties then sent notice of the settlement to the class and allowed class members to make claims, opt-out, or object to the proposal.

On September 3, 2020, I held a telephonic final fairness hearing in which any objectors or other members of the public could attend. I also heard from both plaintiffs' class counsel and defendants' counsel. It is clear that the settlement has been well-received by the class, and I stated on the record the reasons why I found the proposed settlement to be plainly fair, adequate and reasonable. This opinion elaborates on those findings and reduces them to writing. It further grants the requested reimbursements of costs and expenses to class counsel and lead plaintiffs. Lastly, while I reserved judgment on class counsel's motion for attorneys' fees at the hearing, I will now grant that motion as well, albeit in part. While I think counsel has done a tremendous job litigating this case on behalf of the class, the requested 33.3% is simply beyond the "market rate" for this case and a reduced percentage fee will be awarded.

Background

Plaintiffs filed this lawsuit against a multitude of defendants, both corporate and individual, affiliated with Zimmer Biomet Holdings, Inc. (ZBH for short). ZBH is a multi-billion-dollar medical device manufacturer headquartered in Warsaw, Indiana. It came into existence in June 2015 after two cross-town rivals (Zimmer Holdings, Inc. and Biomet, Inc.) merged with one another. At its core, the complaint alleged that, from June 7, 2016 to November 7, 2016, ZBH and its senior leadership misled investors and concealed material information from the market in violation of various federal securities laws. Plaintiffs sought to represent a class of all persons who traded in shares of ZBH during the relevant time period and harmed as a result.

Although the substance of the complaint is not all that integral to the motions presently before me, it's worth summarizing what this lawsuit was about, as alleged by plaintiffs (but of course not admitted to by ZBH). At issue was a major ZBH manufacturing facility known as "North Campus." By spring 2016, ZBH knew that North Campus was badly out of compliance with federal regulations and has serious issues with its quality systems. ZBH learned this after conducting a series of internal audits. Those audits were conducted in response to systemic regulatory problems with the FDA over non-compliance and quality control issues at a different facility, known as West Campus, the year before. North Campus was in such a state that it would likely need to be completely overhauled to bring it up to snuff and would likely be shut down in the process. This, of course, would have a dramatic effect on production and thus ZBH's sales.

***2** Plaintiffs allege that given ZBH's experience with West Campus and other then-recent remediations (specifically one known as "Project Trident"), the company knew how costly and extensive the remediation of North Campus was going to

be and that the FDA had the company under a microscope. Plaintiffs say ZBH was under a duty to disclose the problems at North Campus pursuant to the requirements of Item 303 of SEC Regulation S-K which requires companies to "[d]escribe 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).

But even knowing what it knew about North Campus, ZBH was issuing investor guidance which contained ambitious revenue and sales targets. Those statements were made during investor calls and conferences, two prospectuses relating to stock offerings in June and August 2016, and regular SEC filings. Plaintiffs contend that in order to meet the targets the company was announcing and committing itself to, ZBH needed North Campus to be running at full capacity. But full capacity was mutually exclusive with doing the necessary remediation at North Campus. So instead ZBH took a chance, telling the market it was on track to hit its revenue and sales targets and engaging in a few quick-fixes at North Campus in the hopes that everything would work out with anticipated FDA inspections of North Campus later in 2016.

Things didn't work out as planned. The FDA's inspection of North Campus began on September 16, 2016 and the issues at North Campus were immediately evident. This led to a complete and almost immediate hold on all products being manufactured out of North Campus. This devasted ZBH's product supply and therefore its revenue. When ZBH announced its third quarter financial results during an October 31, 2016 investor call, they weren't great. The company announced a drop in growth, and it reduced its projected revenue guidance for both the fourth quarter and the year. During the call, ZBH's CEO stated that the revenue misses were the result of unanticipated supply constraints related to the company's ongoing efforts to merge its two predecessor entities' operations. But there was no mention of North Campus's problems or the FDA's ongoing inspection of the facility. Investors and analysts were apparently blindsided by the news, and the company's stock fell 14%.

Plaintiffs allege that the reasons given on the October 31 call were knowingly false and an effort by ZBH to concoct a coverup for the issues at North Campus. Former senior employees at ZBH have stated as much, saying there were directives from the top to create a different story to explain the company's performance. Regardless, it didn't work. In the days following the October 31 investor call, analysts learned of and began reporting on the ongoing FDA inspection at North Campus and the problems being encountered. Plaintiffs say it was this which forced ZBH to finally come clean about its problems.

On November 8, 2016, ZBH disclosed what plaintiffs say were the true cause of the company's problems in its quarterly SEC filings and a press release. This caused another drop in the company's stock price. Later that month, much of the scope of the issues were confirmed when the FDA concluded its audit and issued a letter to ZBH which plaintiffs say mirror what ZBH already knew from its own audits. As mentioned, plaintiffs say the concealment of the problems at North Campus were fraudulent because ZBH had a duty to disclose this information pursuant to Item 303 of SEC Regulation S-K. Plaintiffs further allege that the problems needed to be disclosed because ZBH knew North Campus was going to be audited by the FDA after what had happened at West Campus. They further state that the statements made during the October 31 call were flat out falsehoods.

***3** After several amendments to the complaint, four motions to dismiss were filed and I granted them in part. I dismissed some defendants and claims but left the primary case against ZBH and its senior management in place. [DE 119; *Shah v. Zimmer Biomet Holdings, Inc.*, 348 F. Supp. 821 (N.D. Ind. 2019).] Simply put, there was enough factual matter alleged in the complaint to overcome the substantial pleading hurdles in securities fraud cases. ZBH sought an interlocutory appeal of that decision because the Seventh Circuit had not ruled before on the issue of whether claims premised on a duty to disclose under Item 303 of SEC Regulation S-K were actionable under Section 10(b) of the Securities Exchange Act of 1934. While I agreed that the Seventh Circuit had not specifically addressed this issue, that was not reason enough to grant an interlocutory appeal. [DE 183; *Shah v. Zimmer Biomet Holdings, Inc.*, 2019 WL 762510 (N.D. Ind. Feb. 20, 2019).] The case then proceeded to discovery.

While plaintiffs' motion for class certification was pending, the parties alerted the Court that they had reached a proposed settlement of the case. The settlement was the result of a mediation conducted by the Hon. Daniel Weinstein (Ret.) and Jed Melnick, two highly respected and experienced mediators who have mediated several other large securities class actions. [DE 258-1.]

On May 13, 2020, I held a hearing on plaintiffs' motion for preliminary approval of the proposed settlement. [DE 250.]

At bottom, the proposed settlement set aside $50,000,000 to be divided up amongst class members who make valid claims. Plaintiffs' counsel also indicated that they would seek an award of attorneys' fees equal to 33.3% of the settlement fund and reimbursement of up to $1.9 million in costs and expenses. On May 21, 2020, I granted preliminary approval of the proposed settlement, finding that it was well within the range of what is fair, adequate and reasonable and that the proposed plan to give notice to potential class members was sufficient. [DE 251; *Shah*, 2020 WL 2570050.]

After preliminary approval was granted, notice packets containing information about the proposed settlement and how to make a claim were sent out. A summary notice was further published in *Investor's Business Daily* and transmitted over the *PR Newswire*. Class members were then allowed to make claims by submitting a claim to an administrator. As of August 25, 2020, 1,655 claims have been made. [DE 260-1.] In addition, the claims administrator received eight opt-outs from class members who requested to be excluded from the proposed settlement. [*Id.*] But there was only one objection to the proposed settlement. [DE 259.] On July 30, 2020, the plaintiffs filed their Motion for Final Approval and Application for Fees and Expenses. No opposition to those motions or additional objections were received by the August 13, 2020 deadline. On September 3, 2020, I held a final fairness hearing in which I heard from counsel for the plaintiffs and defendants. [DE 264.] Due to the ongoing COVID-19 pandemic, an in-person hearing on the motion was not safe or feasible and the hearing in this matter was held telephonically using a conference line listed on the docket and which members of the class and the public at large were able to call into. No objectors appeared for the hearing.

Discussion

A. The Proposed Settlement Class Satisfies Rule 23(a) and Rule 23(b)(3).

Federal Rule of Civil Procedure 23 is the starting place for almost anything class action related. Rule 23(a) has four specific requirements that must be met before a class may be certified. Those are commonly referred to as (1) numerosity ("the class is so numerous that joinder of all members is impracticable"); (2) commonality ("there are questions of law or fact common to the class"); (3) typicality ("the claims or defenses of the representative parties are typical of the claims or defenses of the class"); and (4) adequacy of representation ("the representative parties will fairly and adequately protect the interests of the class"). Fed. R. Civ. P. 23(a). In addition, the class must also satisfy one of the subsections in Rule 23(b). Here that's subsection 23(b)(3).

4** As stated in my preliminary approval order, Rule 23(a)'s requirements are clearly satisfied in this case. ***First, numerosity is practically a foregone conclusion in a large securities class action like this. "The issue ordinarily receives only summary treatment ... and often is uncontested." Rubenstein, William B., Ed., Newberg on Class Actions § 3:12 (5th ed. 2019); *id.* ("[I]n class actions involving nationally traded securities, courts generally presume that the numerosity requirement is met."); *see also Teachers' Ret. Sys. of La. V. ACLN Ltd.*, 2004 2997957, at *3 (S.D.N.Y. Dec. 27, 2004).

Second, there are numerous common questions of law and fact common to the class. The primary substantive issues in this case were what legal duties ZBH had to disclose, what it disclosed, and whether those disclosures were misleading. Those are all common to the class and thus commonality is satisfied. *Schleicher v. Wendt*, 618 F.3d 679, 681 (7th Cir. 2010) ("Whether statements are false is one common question. Whether the falsehoods are intentional (*i.e.*, whether each defendant acted with the required state of mind) is another. Whether the falsehoods affect the stock's price is a third.").

Third, typicality is satisfied, as each of the named plaintiffs traded in ZBH shares during the class period. And trading in ZBH shares during the class period is the *sine quo non* of the class.

Fourth, I must be sure the named plaintiffs have "fairly and adequately protect the interests of the class" in their representative capacity. Fed. R. Civ. P. 23(a)(4). This requirement is satisfied so long as the class representatives do not have clear conflicts of interest with the absent class members and have shown a willingness to vigorously pursue the litigation on behalf of the class. There was no evidence or argument of a conflict mentioned in the opposition to the motion for class certification. Nothing else has come to light since either. Likewise, the named plaintiffs pursued the case diligently, although obviously class counsel were the ones doing the lion's share of the work.

With all four of Rule 23(a)'s requirements satisfied, it is time to move on to Rule 23(b)(3) and it's predominance and superiority requirements. Fed. R. Civ. P. 23(b)(3)

(requiring "questions of law or fact common to class members predominate over any questions affecting only individual members" and a finding that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy"). I'll start with superiority because it's easy to satisfy in a case like this. Securities fraud cases are something of a prototypical class action. You generally have a group of thousands of people, all of whom were allegedly harmed by the same activity and for the same reasons. But most of them were only harmed in small dollar amounts. As Judge Posner once quipped, "only a lunatic or a fanatic sues for $30." *Carnegie v. Household Int'l*, 376 F.3d 656, 661 (7th Cir. 2004). And no lawyer is going to take a case worth so little on a contingency fee basis either. But multiply that times several thousand and you've got yourself something, both for the plaintiffs and the lawyers. *Id.* ("The *realistic* alternative to a class action is not 17 million individual suits, but zero individuals suits[.]") (italics in original). Furthermore, while in some instances concerns over trial management might weigh against a class action being truly superior, I need not concern myself with that here. *See Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997) ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried would present intractable management problems for the proposal is that there be no trial.").

***5** The common questions of law and fact further predominate over individual ones. "The predominance inquiry focuses on whether a proposed class is sufficiently cohesive to warrant adjudication by representation. It is akin to, but ultimately a more demanding criterion than, the commonality inquiry under Rule 23(a)." *In re Barrick Gold Sec. Litig.*, 314 F.R.D. 91, 99 (S.D.N.Y. 2016) (citations and quotation marks omitted). The main issue in the case is whether statements made by ZBH to the investing public were fraudulent. It is common to all members of the class. Furthermore, plaintiffs may use the fraud-on-the-market theory to show reliance on class-wide basis and thus overcome individual reliance issues. *See generally Basic Inc. v. Levinson*, 485 U.S. 224 (1988). Finally, while individualized damages are inevitable in a securities class action, plaintiffs' allocation model prevents them from "predominating" over the common questions of law and fact. The allocation model accounts for the price, date of a trade, and other factors relevant to determining the harmed suffered by each plaintiff and thus each class member's recovery. As such, the twin requirements of Rule 23(b)(3) are satisfied.

B. The Proposed Settlement is Fair, Adequate and Reasonable.

Having found that the requirements to certify a settlement class are met here, it's time to get to the heart of the matter: whether the substance of the settlement is fair, reasonable and adequate. This standard is candidly a bit mushy, but there are some factors that help to guide the decision-making process. "(1) the strength of the case for plaintiffs on the merits, balanced against the extent of settlement offer; (2) the complexity, length, and expense of further litigation; (3) the amount of opposition to the settlement; (4) the reaction of members of the class to the settlement; (5) the opinion of competent counsel; and (6) stage of the proceedings and the amount of discovery completed." *Wong v. Accretive Health, Inc.*, 773 F.3d 859, 863 (7th Cir. 2014) (citations omitted); Fed. R. Civ. P. 23(e)(2) (enumerating factors for courts to consider in determining whether a settlement is fair, reasonable and adequate).

To be blunt, I think the $50 million settlement fund represents a superb result for the class. Plaintiffs' retained expert calculated the class's maximum potential recovery at $625 million. But, of course, that's a pie in the sky, best case scenario. It's the *potential* result only if plaintiffs survived summary judgment on all of their claims and theories of liability, took the case to trial, won on liability, had the jury agree to award them their full claimed damages, and finally had the verdict upheld on appeal. That was going to be perilous journey, to say the least. *See Great Neck Capital Appreciation Inv. Partnership, L.P. v. PricewaterhouseCoopers, L.L.P.*, 212 F.R.D. 400, 409 (E.D. Wis. 2002) ("Shareholder class actions are difficult and unpredictable, and skepticism about optimist forecasts of recovery is warranted."). I'm not casting doubt on the substance of plaintiffs' claims, just remarking on the reality of litigation.

The settlement amount thus represents roughly 8% of plaintiffs' maximum possible damages. But again, that's only if the case crossed the finish line fully intact and the plaintiffs hit the proverbial grand slam at trial. In addition to the possibility of plaintiffs losing outright at summary judgment or at trial, there were clear ways in which their recovery could have been cabined. For example, there were potential problems with plaintiffs' case relating to loss causation stemming from ZBH's October 31, 2016 disclosures about the cause of the company's revenue misses—although obviously plaintiffs don't concede the issue. If plaintiffs failed to prove loss causation as to those statements, according to their

own experts, potential damages would plummet by 85% to $95 million. In that scenario, the proposed settlement would represent more than 50% of the potential maximum recovery.

If an 8% recovery was a good result for the class, settling for 50 cents on the dollar at this still relatively early stage in the litigation would be a phenomenal deal. That much is true when the result is compared against the median percentage recovery in securities fraud class action lawsuits. According to a report from a firm called Cornerstone Research, in 2019 the median percentage recovery in securities class action settlements was 4.8%: with cases alleging $500-$999 million settling at a median of 3.3% and cases alleging $75-$149 million settling at a median of 9.4%. [DE 246-2.] With that in mind, the 8% recovery scenario is at the high end of the spectrum and it's more than double the median amount of recent cases which share a price bracket with this case. If I valued this case at $95 million, then the settlement here would be nearly nine times the median amount. In either case, it's beyond doubt that $50 million is a terrific result for the class.

***6** The raw numbers only tell part of the story, but the remainder is a tale of a hard-fought result on behalf of the class. Both plaintiffs' and defendants' counsel are experienced securities class action litigators. That experience and expertise was brought to bear in all three of the major contested motions in this case. That they reached this settlement at arms' length supports the notion that it is fair and reasonable. *See, e.g.*, *Mangone v. First USA Bank*, 206 F.R.D. 222, 226 (S.D. Ill. 2001). Lastly, the settlement was the product of two lengthy mediation sessions which were conducted by two of the leading mediators in this field, Jed Melnick and the Hon. Daniel Weinstein (Ret.). They both believe the settlement "represents a fair and reasonable resolution of this complex and uncertain litigation." [DE 258-1 at ¶ 5.] "A strong presumption of fairness attaches to a settlement agreement when it is the result of this type of negotiation." *Great Neck Capital Appreciation Inv. P'ship, L.P. v. PricewaterhouseCoopers, L.L.P.*, 212 F.R.D. 400, 410 (E.D. Wis. 2002) (citing *Anderson v. Torrington Co.*, 755 F. Supp. 834, 838 (N.D. Ind. 1991)); *Hale v. State Farm Mut. Auto. Ins. Co.*, No. 12-0660-DRH, 2018 WL 6606079, at *3 (S.D. Ill. Dec. 16, 2018) (same).

The plan of allocation in this case is also fair and reasonable. *See Great Neck Capital*, 212 F.R.D. at 410 ("A plan of allocation of settlement proceeds in a class action must also be fair and reasonable."). "When formulated by competent and experienced counsel, a plan for allocation of net settlement proceeds 'need have only a reasonable, rational basis" in order to be fair and reasonable. *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 192 (S.D.N.Y. 2012) (citation and quotation marks omitted). Here, the settlement proceeds are not disbursed purely on a pro rata basis, as that would make little sense given the securities at issue were traded at different times and at different prices over the course of many months. *See Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 590 (N.D. Ill. 2011) ("The way in which the settlement allocates benefits is fair because it recognizes these important differences among Class Members. What would be arbitrary, unreasonable and unfair would be to distribute 72% of the settlement fund to the 7% of Class Members who have the weakest claims.") (cleaned up). Instead, what each individual class member receives is determined by an allocation model devised by plaintiffs' counsel and their retained experts. [DE 246-1 at 75-82.] The allocation model is admittedly complex but was explained in detail in the notice that went out to class members. [*Id.*] Each settlement class member will have a "recognized loss" calculated which takes into account factors such as when they purchased or sold ZBH shares, the type of ZBH shares purchased or sold, the price of ZBH shares purchased or sold, as well as the "artificial inflation or deflation" of the price at the time of the trade. [*Id.*; *see also* DE 255 at 20-21.] Finally, there have been no objections to the allocation model in particular, which supports it being reasonable on top of the generally deferential nature courts have towards the nitty gritty of settlement allocation. *See In re IMAX Sec. Litig.* 283 F.R.D. at 192.

C. Notice to the Class Was Sufficient and the Class's Reaction to the Settlement Has Been Overwhelmingly Positive.

Because this is a class certified pursuant to Rule 23(b)(3), class members must receive "the best notice that is practicable under the circumstances" including notice to all individual class members that can reasonably be identified. This is to give class members the ability to opt out if they would rather pursue their claims individually and not settle with the lot. *See* Fed. R. Civ. P. 23(c)(2)(B). Plaintiffs provided notice primarily through a physical mailing to class members (both individuals and institutions) who traded in ZBH stock during the relevant period. Class members were identified based on records from ZBH, brokerage firms and other nominees for beneficial purchasers of securities. As a backstop, the notice appeared on a settlement website and the shorter summary notice was published in *Investor's Business Daily* and transmitted over the *PR Newswire.* Additional information was available on the website and the claims

administrator has operated a toll-free telephone number to help address any inquiries. This type of notice meets the all the applicable requirements.

***7** Thus far, more than 1650 claims have been submitted. While this is a relatively small number compared to the more than 156,000 notice packets mailed, in the world of class actions it isn't an unreasonable "take-rate." What's more, the time for individual class members to make claims has not yet expired. Both the settlement administrator and class counsel both have stated that in their experience, large institutional investors, who are quite likely to be some of the major shareholders here, tend to not make their claims until closer to the end of the deadline. [DE 260-1 at ¶ 10 ("a significant number of claims are submitted on, or near, the claim filing deadline, which is October 19, 2020.").] Since there's nothing to indicate that isn't true, I can only assume the number of claims will continue to climb.

The number of claims looks even better though compared to the number of class members who have opted out. Only seven class members timely submitted forms requesting to be excluded from the settlement. [DE 260-1 at ¶ 7.] Another request for exclusion was received after the cut-off date. Of those eight opt-outs, three of them did not contain the necessary information allowing the claims administrator to confirm the individuals were actually members of the class. In other words, they did not provide the necessary proof to show they purchased or sold ZBH securities. Thus, there were only five timely filed and sufficiently completed opt-outs to the class action filed compared to 1655 claims and a total of more than 156,000 notice packets sent. [*See id.* at ¶¶ 2, 10-11.]

The number of objections to the settlement is even smaller. The Court received only a single objection from Joseph R. Sahid. [DE 259.] Mr. Sahid's objection is perfunctory at best. In the objection, he states that the reason for his objection is that "[t]he instructions sent me [*sic*] were useless." This appears to relate to instructions in the notice packet not to contact the Court with questions concerning the substance of the settlement (the notice packet stated those should be directed to counsel) and to other instructions which stated that any objections must be filed with the Court (so that they may be considered). I'm not sure I fully understand Mr. Sahid's supposed confusion, it's straightforward and unambiguous. In any event, reading two unrelated passages in a document, separated by 25 pages as being in conflict to create an alleged ambiguity is a very lawyerly thing for Mr. Sahid to do, but that doesn't mean it has any merit. These are standard instructions for large, complex class actions such as this.

He next states that the time for him to object was insufficient and then questions whether this "rush" was "so that objectors do not have the time to understand the proposal?" It was of course ample time for him to file his objection and there is no indication it was insufficient time for any other would be-objector. The deadline to mail the notice was June 19, 2020, and objections were due on August 13, 2020. [DE 251 at 16.] That was a period of 55 days and nearly two months. Even if it took a few weeks for Mr. Sahid or others to receive their notice that was more than enough time to review the notice and file objections. Additionally, there were two weeks between the date of the filing of class counsel's motion for attorneys' fees (July 30, 2020) and the deadline to object (August 13, 2020). *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 994 (9th Cir. 2010) (holding that Fed. R. Civ. P. 23(h) and due process mandates that deadline to object come after the date for the filing of the motion for attorneys' fees); *see also In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 789 F. Supp. 2d 935, 969 (N.D. Ill. 2011) (applying *In re Mercury* and finding one week sufficient time to objection). This provided enough time and opportunity to file an objection if a class member wanted to.

***8** Mr. Sahid then appeals to his own authority as a former partner at "a large Wall Street law firm and at a plaintiff's class action firm" to say that the requested fees in this case are "absurd" when compared to the per share recovery. [DE 259.] Evidently, Mr. Sahid wants me to simply accept that fact based on who he is. But I like to decide things based on reason. And Mr. Sahid has provided me no *reasons* as to why the settlement here is unfair or inadequate. He just wants me to accept his conclusion that it is "absurd." Thanks, but no thanks.

Finally, Mr. Sahid says that the settlement "will contribute to the widespread believe [*sic*] that the Judges and the plaintiff's lawyers are in cahoots." [DE 259.] I'm not sure what widespread belief he is referring to—presumably it is just his own. As an experienced lawyer, Mr. Sahid should know better than to make these kinds of baseless accusations. In any event, that is not a valid objection either. I was uninvolved in the settlement discussions in this case. Those were handled by the parties at arms-length and with the assistance of experienced mediators whose resumes could choke a horse. At bottom, this objection reads as nothing more than axe grinding and not

grounded in any specific substance related to this particular case.

Beyond the lack of substance, the objection can be set aside for a more fundamental reason. Mr. Sahid fails to show that he is a member of the class with standing to object. "Any class member has standing to object to a class settlement. Filing a proof of claim to the settlement fund is one way, but not the only way, for an objector to demonstrate that he is a member of the class." *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 638–39 (5th Cir. 2012) (citing *Devlin v. Scardelletti,* 536 U.S. 1, 6–7 (2002)). Mr. Sahid not only fails to offer any proof that he is a member of the class, he doesn't even claim to be one. He states he received a notice packet, but the subset of people receiving notice packets is aimed to be over-inclusive. Without any indication that he actually bought or sold any share of ZBH, I cannot simply assume he is a member of the class. As such, the objection of Joseph Sahid to the settlement is overruled for both a lack of standing and a lack of merit.

D. Lead Plaintiff Incentive Awards are Reasonable.

"[A] named plaintiff is an essential ingredient of any class action." *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998). Thus, courts in this circuit try to incentivize quality lead plaintiffs to participate in class actions. And we do that in the best way any of us know how, with cash. This is done with an incentive award on top of whatever the lead plaintiffs receive as members of the class. "To determine if an incentive award is warranted, a district court evaluates 'the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation.' " *Camp Drug Store, Inc. v. Cochran Wholesale Pharm., Inc.*, 897 F.3d 825, 834 (7th Cir. 2018) (quoting *Cook*, 142 F.3d at 1016).

Each of the lead plaintiffs (Rajesh M. Shah, Matt Brierley, Steven Castillo, and Anthony G. Speelman on behalf of institutional plaintiff UFCW Local 1500) provided a declaration in support of their requests. [DE 258-4, 285-5, 258-6, and 258-7.] Frankly, the affidavits are a bit perfunctory. All four are nearly identical documents and affirm that each of these individuals generally participated in the case by speaking with counsel, reviewing pleadings, reviewing written discovery responses and collecting documents. [*Id.*] They then request and state they believe it is reasonable that they each receive $15,000 to compensate for time they would have otherwise spent on their jobs, or in Mr. Brierley's case his "investment activities." [*Id.*] But none of them tell me or even estimate how much time they spent on the lawsuit. That missing data and the obvious uniformity of each declaration make it difficult to evaluate these requests on any individual level.

***9** But each of them did at least have to sit for a deposition in connection with discovery and class certification. That obviously involved several hours of unpleasantness and preparation in service of their fellow class members. And the case has been going for over three and a half years. While it is certainly my preference that lead plaintiffs provide *some* estimate of the actual time they spent on the case before asking for $15,000, I think the excellent result for the class can justify the incentive awards here. Furthermore, courts have approved of similarly sized and even larger incentive awards in cases where both the individual and class recovery were much smaller than in this case. *E.g., In re Sw. Airlines Voucher Litig.*, 799 F.3d 701, 716 (7th Cir. 2015) (approving $15,000 incentive award for lead plaintiffs without conflicts of interest in coupon settlement class action); *Masters v. Wilhelmina Model Agency, Inc.*, 472 F.3d 423, 430 (2d Cir. 2007) (approving $25,000 incentive awards for lead plaintiffs who sat for depositions in case where settlement included a $22 million common fund). Thus, each of the four lead plaintiffs will receive their requested [1] $15,000 incentive awards.

[1] Mr. Brierley will be especially pleased with the result today. Because his affidavit (and the others) were so conclusory, I thought it would be prudent to read the depositions to get a flavor for what the lead plaintiffs had to do in working on the case. There I learned that when told that he would have to spend two or three weeks in Northwest Indiana for the trial, he declared it "the armpit of the world" and that he dreaded the possibility of having to travel here for trial. [DE 226-4.] It's enough to say that we are all pleased he was spared that "burden."

E. Class Counsel's Motion for Attorneys' Fees and Cost Reimbursement.

With approval of the settlement complete, the final issue to address is class counsel's motion for attorneys' fees and reimbursement of costs. [DE 256.] In the motion for preliminary approval, class counsel stated that they would be seeking a fee of a third of the settlement fund and estimated their expenses at no greater than $1,900,000. [DE 244-45.] In the final motion for fees they now seek the full 33.3%

and reimbursement of costs and expenses in the amount of $1,535,402.94.

At first blush, I thought that seemed like an exceedingly high contingency fee. Excluding interest, that comes out to $16,650,000 for work in a case that settled before any decision on class certification, before discovery was completed, and obviously before summary judgment was briefed or decided. My gut instinct was that something in the range of 20-25% would represent a reasonable attorneys' fee in a case like this. As discussed below, after a review of a lot of data and caselaw, as well as the particular risks taken by counsel in this case, a fee roughly in the middle of what counsel requested and my initial instincts is appropriate and reasonable.

The Seventh Circuit has stated "[i]t is not the function of judges in fee litigation to determine the equivalent of the medieval just price" in divining what the appropriate fee award should be. *In re Continental l Ill. Sec. Litig.,* 962 F.2d 566, 568 (7th Cir. 1992). Instead, "[i]t is to determine what the lawyer would receive if he were selling his services in the market rather than being paid by court order." *Id.* This is a difficult inquiry when I only have briefing from the party who wants their request approved. And candidly, calling it a market rate and then having district court judges, who are almost always untrained in economics and often even untrained in the private practice of law, come up with a number is only a step removed from St. Thomas Aquinas's just price endeavor. To put it plainly, all I have is myself and some brilliant law clerks to assist me. But the mandate is to do my best to ascertain a market rate. So that's what I'll attempt to do.

The factors or "benchmarks" to consider when setting the market rate ex post include: "(1) actual fee agreements; (2) data from large common fund cases where the parties negotiated the fees privately, and (3) bids and results from class counsel auction cases for insight into the fee levels attorneys in competition were willing to accept." *Sutton v. Bernard*, 504 F.3d 688, 692, n.2 (7th Cir. 2007) (citing *In re Synthroid Mkgt. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001)).

***10** On the first benchmark, actual fee agreements, I'm at something of a loss. There is no fee agreement in the case before me and class counsel in this case have not included any fee agreements from other securities class actions in their motion.[2] But I think it's fair to say that if there were fee agreements in similar cases with a flat 33.3% fee, counsel would have included them with their briefing. Thus, their absence somewhat undercuts the requested amount. But at the same time, if the requested award of 33.3% was way out of line, I would also expect some legitimate opposition or objections to the proposed settlement, either from large institutional investors or a group like the Center for Class Action Fairness who pay attention to such things. *See* https://hlli.org/class-action-fairness. As discussed above, there was none of that in this case. I could order additional briefing on this point or conduct my own independent research to try and find such agreements, but I have my doubts that either of those would result in anything definitive. Thus, I really view this benchmark as not particularly relevant here.

2 Defendants have taken the approach common in class action settlements in which they express no view on the requested award, even if it is their money being distributed.

That brings me to empirical data on the subject. Thankfully, there's something of an embarrassment of riches. I won't go into a detailed analysis of the methodology of the studies in this subset of law and economics. I'm hardly qualified to do that. But I can report on and utilize the top-line findings from each study. While their conclusions are not uniform, they offer important touchstones that any judge taking their duty to ascertain a market rate for legal services seriously should consider.

The first frequently cited study in this field is one by Professors Theodore Eisenberg and Geoffrey Miller. They originally published their study in 2004 and then updated it in 2010. The updated study analyzed class action fee awards in cases from 1993 to 2008. Theodore Eisenberg & Geoffrey P. Miller, *Attorneys Fees in Class Action Settlements: 1993-2008,* 7 J. Empirical Legal Studies 248 (2010). While it analyzed all class actions, it broke out fee awards by case type. In securities class actions, fee awards had, as a percentage of the total settlement amount, a mean of 23% and a median of 25%. Those percentages translated into a mean fee of $14.78 million and median fee of $2.52 million across 268 cases. *Id.* at 262. Another study from 2010 concluded that there were similar ranges of fees awarded, with a mean and median hovering around 25% in securities class actions. *See* Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical Legal Studies 811, 835 (2010). For cases in which the settlement amount was $30 - $72.5 million, the mean award as a percentage was 22.3% and the median 24.9%. *Id.* at 839. It seems that studies consistently have found the mean and median fee awards in securities class actions to fall "between 20 percent and

30 percent of the settlement amount." *Id.* at 815 (discussing and summarizing prior research studies in the field). Thus, it seems that 25% is fairly standard in large securities class actions, and 30% is at the high end.

Another key aspect of these studies is their agreement on a "scaling effect" in which as the amount of the settlement increased, the percentage of the attorneys' fee award decreased. *See* Eisenberg & Miller, at 263-64 ("a substantial scaling effect existed in the 2003-2008 period, as well as in the earlier 1993-2002 period"); Fitzpatrick at 837 ("[F]ee percentages are strongly and inversely related to the size of the settlement both in securities fraud and other cases."). For example, in cases where the class recovery was $1.1 million or less, the mean attorney fee percentage was 37.9% and the median was 32.3%. Eisenberg & Miller at 265. For cases in the $38.3 – $69.6 million range (*i.e.*, this case), the mean was 22.1% and median 24.9%. *Id.* In the highest bracket, cases with recovery greater than $175.5 million, the mean was 12% and the median 10.2%. *Id.*; *see also In re Capital One Telephone Consumer Protection Act Litig.*, 80 F. Supp.3d 781, 797-799 (reviewing the same empirical data on fee awards in class actions). Thus, while a 33.3% fee may be common in personal injury cases or class actions where the recovery is "only" seven figures, that is simply not the case when dealing with much larger dollar amounts.

***11** Likely anticipating this data, plaintiffs included with their motion a joint declaration from Professors Charles Silver and Brian Fitzpatrick—the same professor whose article is discussed above. [DE 258-2.] There are two broad points made in that declaration. First, while Professor Fitzpatrick states that his 2010 article on the subject is still "the most comprehensive examination of class action settlements and attorneys' fees that has ever been published" (*id.* at ¶ 10), they direct me to studies on contingency fee patent litigation and a narrower data set of "related pharmaceutical antitrust cases, in which approximately 20 drug wholesalers sued drug manufacturers on a contingency fee basis." [DE 257 at 17-18.] In the patent cases, the mean rate of attorneys' fees was 38.6% of the recovery. In the large pharmaceutical direct purchaser antitrust cases, there were fee agreements of 33.3% supported by sophisticated class members. [*Id.*] But neither of those data sets relate to securities class actions, or even class actions. As discussed, there's an abundance of data on fee arrangements in securities class actions. Since I'm dealing with a securities class action, that's the more relevant data compared to patent or large pharmaceutical antitrust cases.

Second, Professors Fitzpatrick and Silver make another point in their declaration which I think has greater salience in the context of this case. Contrary to the conventional wisdom which embraces a sliding scale where the fee award percentage goes down as the total amount of recovery goes up, they posit that the better way to incentivize class counsel to get the best deal for the class is to have a scaling effect in the *opposite* direction. [DE 258-2 at ¶¶ 58-64.] That is, as the amount of the settlement increases, so should the percentage of the attorneys' fee. This provides a direct incentive for class counsel to push for a higher settlement figure, rather than accept the first good offer. The idea is that the last dollar is much harder to get than the first dollar is. Other courts have noted a similar concept. *Allahpattah Servs. Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1213 (S.D. Fla. 2006) ("By not rewarding Class Counsel for the additional work necessary to achieve a better outcome for the class, [this] approach creates the perverse incentive for Class Counsel to settle too early for too little."); *In re Auction Houses Antitrust Litig.*, 197 F.R.D. 71, 80 (S.D.N.Y. 2000) ("By adjusting downward the percentage of the recovery awarded to counsel as plaintiffs' recovery increases, [downward sliding scale] arrangement arguably limits windfall attorney's fee awards. However, this method may give rise to an attorney incentive problem by creating declining marginal returns to effort for counsel.").

An analogy is perhaps in order. Imagine you're working with a real estate agent who gets 3% of the home's sale price as a commission. For them, the difference between selling a home for $250,000 today compared to waiting and working several more weeks to sell it for $300,000 is only $1,500 ($7,500 vs. $9,000). But for you the seller, the higher sale amount translates to $48,500 more. In such a situation, the seller's and their real estate agent's incentives begin to diverge because of decreasing marginal returns for the real estate agent's efforts, assuming you're not in a huge rush to sell.

So too in the class action settlement context, assuming everyone is behaving in their own self-interest. *See In re Sw. Airlines Voucher Litig.*, 799 F.3d at 711 ("Judicial scrutiny of class action fee awards and class settlements more generally is based on the assumption that class counsel behave as economically rational actors who seek to serve their own interests first and foremost, particularly in classes certified under Rule 23(b)(3) that seek primarily monetary relief."). Hypothetically, class counsel could settle at early stages of the case for $30,000,000 and get a 25% award (equally $7,500,000). Or they could spend two additional years slogging through discovery and motion practice (a cost

counsel is "eating" in the meantime) and settle the case for $50,000,000. Then they might receive a 20% award (equaling $12,500,000). $5,000,000 isn't anything to scoff at, but when a case like this incurs several million dollars in legal fees and expenses every year, rational class counsel is likely going to take the quick but still substantial settlement. In that situation, the class members (most of whom probably have no idea the case exists) lose because they missed out on an extra $15,000,00, after fees.

***12** The third benchmark is insight from class counsel auctions. Some judges have had success in creating a market price in securities class actions ex ante by holding a competitive auction near the outset and awarding the case out to the lowest reasonable bid by a plaintiffs' firm. *See, e.g.*, *In re Auction Houses Antitrust Litig.*, 197 F.R.D. at 82 ("[T]his case is singularly appropriate for the use of an auction for several reasons."); *In re Comdisco Sec. Litig.*, 141 F. Supp.2d 951 (N.D. Ill. 2001) (ordering sealed bids to be filed by potential class counsel). Like many economic exercises, it works tremendously in theory but runs into a host of complications in the real world. Professors Fitzpatrick and Silver agree as much and state in their joint declaration that "[t]he obstacles are so severe that experimentation with auctions has ceased." [DE 258-2 at ¶ 40.] The case law seems to bear that out, as reported cases with auctions drop off dramatically after 2001. *See In re Capital One Telephone Consumer Protection Act Litig.*, 80 F. Supp.3d 781, 800-801 (N.D. Ill. 2015) ("As far as the court can tell, there are at least fourteen class action cases—twelve securities actions and two antitrust actions—where district court judges have selected lead counsel and negotiated a fee structure using a competitive process.") (collecting cases all predating 2002).

This case is a good example of how an auction likely wouldn't have done much good. There was no competition between plaintiffs' law firms to bring this case. As far as I can tell, this was the only lawsuit filed in relation to ZBH's 2016 stock price drops. There was no publicly disclosed SEC investigation before or after the complaint was filed, and no copycat complaints filed either. No other firm (or group of firms) moved to try to represent the class at any point. It was thus a market of one, and monopolies and monopsonies aren't exactly famous for efficiency. Perhaps I could have announced an auction, and additional class counsel would have come knocking, but that's pure speculation. In all likelihood, an auction at the outset of the case wouldn't have helped much with figuring out a market rate for attorneys' fees in this case.

While the lack of competition amongst plaintiffs' lawyers may have made holding an auction impracticable or unhelpful, that fact can still help inform the market rate for a case like this. Precipitous stock price drops are blood in the water for securities class action firms. Lawsuits almost always follow, and there are frequently multiple competing lawsuits that must be consolidated, whether piecemeal or through the Judicial Panel on Multidistrict Litigation. But here, that didn't happen. This case was filed on December 2, 2016, four weeks after the relevant disclosures by ZBH and attendant drops in the company's stock price. Given ZBH's massive market capitalization, it was clear there would be hundreds of millions of dollars on the line. As such, I can only assume that if more entrepreneurial lawyers thought there was a viable case, they would have done their own investigations and filed their own lawsuits. But no one else did. That's probably because this was going to be a difficult case and one in which the chances of success were low. No litigation is a sure-fire win, but this one was riskier than the average lawsuit and certainly riskier than the average securities litigation class action. Any market-based fee award should take that into account.

After considering these benchmarks, I think some enhancement over the "standard" 25% fee award for large securities class actions makes sense in this case. By so doing, I've admittedly brought myself back into the realm of counting the number of angels that fit on the head of a pin or divining a just price for lawyers' fees, but there's no way out of it. Five specific facts or elements about this case justify an increase in the fee award: (1) substantial independent investigation on counsel's part was required (there were no regulatory actions to piggyback off of and numerous confidential witnesses were located, interviewed and relied upon to adequately plead the case); (2) the somewhat novel legal theory used in connection with the duty to disclose and the Section 10b claims (discussed at length in my prior opinion on the motion for interlocutory appeal, *see Shah*, 2019 WL 762510); (3) an incentive for being the first/only mover in the field where no other counsel sought to represent the class (a monopoly award something akin to a patent); (4) the fact settlement was achieved only after counsel did the work of creating a damages model, fully brief class certification, and multiple rounds with experienced mediators; and (5) that class counsel held out until there was a settlement offer well in excess of what similar cases settle for in terms of a percentage of total possible recovery. [3]

[3] I think of this consideration as distinct from a result-oriented view of basing the fee percentage on the success or total size of the settlement award, an approach the Seventh Circuit has frowned upon multiple times. *See, e.g. Sullivan*, 504 F.3d at 693 ("The trouble we have with the district court's methodology is that the fee determination began and ended with the amount actually recovered for the class" which only accounted for the district court's "subjective judgment regarding [Counsel's] work[.]"). The point here is to properly incentivize class counsel to not have a diminishing marginal rate of return on the "last dollar" and instead work to maximize the amount recovered for the class.

***13** Given these things, I think a fee award of 30% represents a reasonable market rate. That number could be thought of as a percentage point increase for each of the five elements listed above. And it likewise splits the baby between the requested 33.3% and large securities class action standard rate of 25%. Most importantly, it accurately takes into account the market forces that would be at play if sophisticated parties were negotiating a fee for this case at the outset. In particular, the risk of nonpayment to counsel and investment of millions of dollars' worth of attorney time taken on in advancing a novel legal theory in a case where there are some strong indications that no one else was willing to. It's less than counsel's requested award of 33.3% but is still indisputably at the high end of the spectrum of percentage of fund awards. In dollar amount, it comes out to $15,000,000 (excluding any additional amount for interest earned on the settlement fund). And for whatever value the lodestar crosscheck still has, *see In re Synthroid,* 325 F.3d at 979-80, the award is in line with the lodestar amount provided by counsel, which came out to $14,675,216.00. [DE 258 at ¶ 140.]

As for the requested amount of costs and expenses in this case, counsel's requested amount of $1,535,402.94 is reasonable. "It is well established that counsel who create a common fund like this one are entitled to the reimbursement of litigation costs and expenses, which includes such things as expert witness costs; computerized research; court reports; travel expense; copy, phone and facsimile expenses and mediation." *Beesley v. Int'l Paper Co.*, No. 3:06-CV-703-DRH-CJP, 2014 WL 375432, at *3 (S.D. Ill. Jan. 31, 2014). To be sure, it's a lot of costs, but that's the nature of high-stakes complex litigation like this. More than 80% of those costs ($1,237,009.78) related to expert witness costs. [DE 258 at ¶ 160.] This case required consultation with many experts in fields of medical device regulation and accounting given the subject matter of the case and experts on economic damages, market efficiency, and loss causation given its nature as a securities class action. [*Id.*] As detailed in counsel's declaration, all of the costs and expenses sought are of the type and nature that a paying client and consumer of high-end legal services would be expected to pay in a case billed at an hourly rate. They are thus fully recoverable.

Conclusion

For the reasons stated on the record during the final fairness hearing and in this opinion, Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation [DE 254] is GRANTED; and Lead Counsel's Motion for Award of Attorneys' Fees and Reimbursement of Litigation Expenses [DE 256], is GRANTED, in part.

It is ORDERED that once final disbursement of the settlement fund is authorized, plaintiffs' counsel shall be paid attorneys' fees in the amount of 30% of the settlement fund as of that date; it is further ORDERED that plaintiffs' counsel be reimbursed costs and expenses from the settlement fund in the amount of $1,595,402.94; and it is further ORDERED that each of the lead plaintiffs, Rajesh M Shah, Matt Brierley, UFCW Local 1500, and Steven Castillo each be paid $15,000 from the settlement fund as incentive awards and reimbursement for serving as lead plaintiffs.

SO ORDERED on September 18, 2020.

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EXHIBIT 24

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N.D. Illinois,
Eastern Division.

Eric SILVERMAN, On Behalf of Himself and All Others Similarly Situated, Plaintiffs,
v.
MOTOROLA, INC., et al., Defendants.

No. 07 C 4507.
|
May 7, 2012.

Attorneys and Law Firms

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MEMORANDUM OPINION AND ORDER

AMY J. ST. EVE, District Judge.

***1** Plaintiffs have filed a motion for an award of attorney's fees and expenses and reimbursement of the class representatives' expenses pursuant to 15 U.S.C. § 78u–4(a)(4). For the reasons explained below, the Court grants in part and denies in part Plaintiffs' motion. In the present order, the Court assumes familiarity with the underlying facts of the case, which are set forth in detail in the Court's summary judgment order. *See Silverman v. Motorola, Inc.*, 798 F.Supp.2d 954 (N.D.Ill.2011).

LEGAL STANDARD

"In a certified class action, the court may award reasonable attorney's fees ... that are authorized by law or by the parties' agreement." Fed.R.Civ.P. 23(h). In determining a reasonable fee, the Court "must balance the competing goals of fairly compensating attorneys for their services rendered on behalf of the class and of protecting the interests of the class members in the fund." *Skelton v. Gen. Motors Corp.*, 860 F.2d 250, 258 (7th Cir.1988), *cert. denied*, 493 U.S. 810, 110 S.Ct. 53, 107 L.Ed.2d 22 (1989). To determine the reasonableness of the sought-after fee in a common-fund case, "courts must do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time." *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir.2001). The probability of success at the outset of the litigation is relevant to this inquiry. *See Florin v. Nationsbank of Ga., N.A.*, 34 F.3d 560, 565 (7th Cir.1994).

In *Synthroid,* the Seventh Circuit held that the "market rate for legal fees depends in part on the risk of nonpayment a firm agrees to bear, in part on the quality of its performance, in part on the amount of work necessary to resolve the litigation, and in part on the stakes of the case." *Synthroid,* 264 F.3d at 721. The Seventh Circuit has further explained that "[t]he object in awarding a reasonable attorney's fee ... is to give the lawyer what he would have gotten in the way of a fee in arm's length negotiation, had one been feasible." *In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 572 (7th Cir.1992). *See also In re Trans Union Corp. Privacy Litig.*, 629 F.3d 741, 744 (7th Cir.2011) (recognizing that "[s]uch [an] estimation is inherently conjectural").

The Federal Rules of Civil Procedure allow the Court, in a certified class action, to "award reasonable ... nontaxable costs that are authorized by law or by the parties' agreement." Fed.R.Civ.P. 23(h). The Seventh Circuit has explained that district courts must exercise their discretion to "disallow particular expenses that are unreasonable whether because excessive in amount or because they should not have been incurred at all." *Zabkowicz v. W. Bend Co., Div. of Dart Indus.,*

Inc., 789 F.2d 540, 553 (7th Cir.1986) (quoting *Henry v. Webermeier,* 738 F.2d 188, 192 (7th Cir.1984)).

ANALYSIS

The proposed settlement in this case is $200 million (the "Settlement Amount"), which Plaintiffs represent is the third-largest securities class action settlement in the Seventh Circuit. (R. 455, Mem. of Law at 1.) Class Counsel seek an attorney's fee award of 27.5% of the Settlement Amount, litigation costs of $4,814,298.54, and reimbursement of the litigation expenses incurred by the class representatives, Macomb County Employees' Retirement System ("Macomb County") and St. Clair Shores Police & Fire Retirement System ("St.Clair"), in the amount of $6,450.00 and $4,350.00, respectively. (*Id.*)

I. Attorney's Fees

***2** On March 19, 2012, Plaintiffs filed their motion for final approval of the settlement, the plan of allocation, and class counsel's fee and expense request. (R. 454, Mot.) Class members had until April 2, 2012 to object. Only one class member, Mr. Edward Falkner ("Mr.Falkner"), timely objected to the attorney fee request. [1] He sets forth two arguments, both of which the Court rejects.

[1] Class member Paul Liles filed an objection to the proposed settlement and to Class Counsel's request for attorney's fees on April 30, 2012, which was 28 days after the objection deadline. Mr. Liles did not, however, sufficiently explain the basis for his objection to the request for attorney's fees, stating only that "[i]n light of both class counsel's failure to follow the notice requirements of the PSLRA with regard to The Notice to absent class members; and, the size of the settlement fund, I maintain that the proposed $55 million in attorney's fee is both unreasonable and excessive." (R. 466, Liles Obj. at 4.) Because the Court determines that the attorney's fee request is reasonable, as explained herein, Mr. Liles' objection is overruled. The Court has addressed Mr. Liles' objection to the proposed settlement in a separate order. *See* R. 468.

First, Mr. Falkner argues that Class Counsel did not give reasonable notice of the fee motion to class members. (R. 463, Falkner Obj. at 1.) Pursuant to the Court's Order, Class Counsel, through a third party claims administrator, sent a Notice of Proposed Settlement of Class Action (the "Notice") to class members on February 27, 2012 and also published the Notice with the Depository Trust Corporation's Legal Notice System. (R. 462, Sylvester Decl. ¶¶ 4–7.) The Notice stated that "[i]f the settlement is approved by the Court, Plaintiffs' counsel will apply to the Court for attorneys' fees of 27.5% of the Settlement Fund and expenses not to exceed $4,950,000, plus interest thereon, to be paid from the Settlement Fund .... In addition, each of the two Plaintiffs may seek up to $7,500 in expenses incurred in representing the Class." (R. 462–1, Notice § IV.) The Notice further provided that the deadline for objections to the motion for attorney's fees and expenses was April 2, 2012. (*Id.* § XVIII.) Finally, the Notice provided that class members could examine the papers on the Court's docket "for a more detailed statement of the matters involved in the Litigation," and could contact Class Counsel if they had questions about the settlement. (*Id.* § XX.) Moreover, the Court's Order Preliminarily Approving Settlement and Providing for Notice, which was available on the Claims Administrator's website, stated that Class Counsel's request for attorney's fees was due by March 19, 2012 and that objections were due on April 2, 2012. (R. 450, Order at ¶¶ 2, 10, 12; R. 462, Slyvester Decl. ¶ 12.)

Mr. Falkner nevertheless contends that notice was inadequate under Federal Rule of Civil Procedure 23(h) because Class Counsel did not provide reasonable service of the actual motion for attorney's fees to the class. (R. 463, Falkner Obj. at 1, relying on *In re Mercury Interactive Corp. Sec. Litig.,* 618 F.3d 988, 993–94 (9th Cir.2010).) *Mercury Interactive* is inapposite, however, because the issue in that case was whether the "district court erred in setting the objection deadline for class members on a date before the deadline for lead counsel to file their fee motion." *Id.* at 993. Unlike in *Mercury Interactive,* class members in this case were provided with an "adequate opportunity to object to the motion itself," which was filed two weeks before the objection deadline. *Id.* at 994. Indeed, although he argues that class members were not afforded an adequate opportunity to object to the motion, Mr. Falker himself timely objected to the motion. The Court therefore rejects his first argument.

***3** Mr. Falkner's second argument fares no better. Relying on *Taubenfeld v. AON Corp.,* 415 F.3d 597, 599 (7th Cir.2005), he argues that the class representatives did not "discharge their fiduciary duty" to negotiate an *ex ante* fee agreement with counsel. (R. 463, Falkner Obj. at 3.) He further contends that the Court should award, at most, 15% of the Settlement

Amount in attorney's fees. (*Id.* at 6.) Contrary to Mr. Falkner's contention, the *Taubenfeld* court did not hold, or even suggest, that lead plaintiffs must negotiate a fee agreement at the outset of the case. [2] The Private Securities Litigation Reform Act similarly contains no such requirement. Moreover, the Court declines Mr. Falkner's invitation to adopt the fee award percentage negotiated in *In re Enron Corp. Sec., Derivative & ERISA Litig.,* 586 F.Supp.2d 732 (S.D.Tex.2008), a markedly different case than the present one, as the "market rate." (R. 463, Falkner Obj. at 4.) The Court likewise rejects Mr. Falkner's request to award Class Counsel a fee "of no more than 15%." Instead, after evaluating the factors the Seventh Circuit set forth in *Synthroid,* as discussed more fully below, the Court finds that the request of 27.5% of the Settlement Amount is consistent with the market rate.

2 Indeed, the Seventh Circuit in *Taubenfeld* affirmed the district court's attorney's fee award of 30% of the settlement fund, noting that the district court had correctly considered awards made by courts in other class actions where counsel was awarded 30–39% of the settlement fund. *Id.* at 600. Likewise, Class Counsel has listed several securities fraud class actions in this District in which courts have awarded more than 30% of the settlement fund in attorney's fees. (R. 455, Mem. of Law at 32 n. 11.)

The risk of nonpayment and the stakes of this complex securities fraud case were significant. Class Counsel litigated this case aggressively for four and one-half years, on a fully contingent basis, before securing what appears to be the third-largest settlement amount in a securities fraud class action in the Seventh Circuit. Despite successfully defeating Motorola's motion for summary judgment, Plaintiffs faced significant risks at trial in proving both loss causation and damages. Trial undoubtedly would have been lengthy and would have involved numerous witnesses, both fact and expert.

The representation that Class Counsel provided to the class was significant, both in terms of quality and quantity. The parties engaged in four and one-half years of complex litigation and formal settlement negotiations. Among other things, Class Counsel (1) conducted detailed investigative interviews of witnesses, including former Motorola employees; (2) successfully opposed Defendants' motion to dismiss; (3) obtained certification of the class (which included expert reports and discovery); (4) conducted significant merits discovery, including reviewing and analyzing approximately 3.8 million pages of documents and deposing or defending the depositions of 50 fact witnesses and 7 expert witnesses; (5) responded to discovery requests from Defendants; (6) litigated numerous complex discovery motions; (7) completed expert discovery, including preparing multiple expert witnesses and reviewing Defendants' expert reports; (8) successfully litigated Defendants' motions for summary judgment, involving extensive briefing and the submission of hundreds of exhibits; (9) fully briefed seven *Daubert* motions; (10) commenced extensive trial preparation, including completing exhibit and witness lists and preparing motions in limine, videotaped deposition designations, and jury instructions; (11) participated in multiple formal and lengthy mediation sessions with Judge Daniel Weinstein (Ret.), a nationally-recognized and highly-respected mediator, including preparing comprehensive mediation presentations; and (12) negotiated the final terms of the settlement contained in the parties' stipulation. Moreover, there were no governmental investigations or prosecutions related to the alleged fraud upon which Class Counsel could rest their theory of the case. Rather, they investigated the facts and developed their theory of liability from scratch, involving significant time and expense.

***4** The two class representatives, Macomb County and St. Clair, both of which are institutional investors that have significant financial stakes in this litigation, have assessed the issue of attorney's fees independently of Class Counsel and have approved Class Counsel's request to seek a 27.5% fee award. (R. 458, Provenzano Decl. ¶¶ 3–4; R. 459, Haddad Decl. ¶ 5.) Both class representatives were actively involved in this litigation and are, as a result, uniquely familiar with Class Counsel's work on the case. Additionally, Class Counsel retained an expert, Professor Charles Silver, [3] to evaluate the reasonableness of the fee request in light of the risks Class Counsel faced, the quality of their representation, the caliber of the result obtained, and contingent fees awarded in similar litigation. Professor Silver concluded that the fee request was reasonable and in line with privately-negotiated arrangements in similar cases. (R. 457, Silver Rep., *passim.*)

3 Professor Silver is the Roy W. And Eugenia C. McDonald Endowed Chair in Civil Procedure at the University of Texas School of Law, where he also serves a Co–Director of the Center on Lawyers, Civil Justice, and the Media. He received an M.A. in political science at the University of Chicago and a J.D. from the Yale Law School. From 2003 to 2010, he served as an Associate Reporter on the

> American Law Institute's Project on the Principles of Aggregate Litigation. Federal and state judges, as well as leading treatises, have cited his work.

Given all of the relevant factors, Class Counsel's fee request of 27.5% of the Settlement Amount is reasonable. It is unnecessary to resort to a lodestar calculation to reinforce the same conclusion. *See Florin,* 34 F.3d at 566 ("We ... restate the law of this circuit that in common fund cases, the decision whether to use a percentage method or a lodestar method remains in the discretion of the district court. We recognize here ... that there are advantages to utilizing the percentage method in common fund cases because of its relative simplicity of administration."); *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.,* 792 F.Supp.2d 1028, 1040 (N.D.Ill.2011) (same; citing cases); *Will v. Gen. Dynamics Corp.,* No. 06–CV–698, 2010 WL 4818174, at *3 (S.D.Ill. Nov. 22, 2010) ("The use of a lodestar cross-check in a common fund case is unnecessary, arbitrary, and potentially counterproductive.") (citing cases).

II. Class Counsel's Costs and Plaintiffs' Litigation–Related Expenses

Class Counsel seek an award of costs in the amount of $4,814,298.54. They submit declarations from representatives of the Miller Law Firm and Robbins Gellar Rudman & Dowd LLP in support of their request, which detail the litigation-related expenses those firms incurred during this case. (R. 460, Park Decl.; R. 461, Miller Decl.) No class member has objected to Class Counsel's request for costs, which amount consists of 2.4% of the relief obtained for the class. *Cf.* Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study,* 1 J. EMPIRICAL LEGAL STUD. 27, 70 (2004) (finding that "[c]osts and expenses for the sample as a whole were, on average 4 percent of the relief for the class[.]").

The Court finds Class Counsel's request for costs reasonable with one exception. The Seventh Circuit and courts in this District have held that computer research expenses are not recoverable as costs in common fund cases where, as here, the attorneys recover fees based on a percentage of the common fund. *See, e.g., Montgomery v. Aetna Plywood,* 231 F.3d 399, 409–410 (7th Cir.2000), *cert. denied,* 532 U.S. 1038, 121 S.Ct. 2000, 149 L.Ed.2d 1003 (2001), ("As a form of attorneys' fees, the charges associated with [computer] research are not separately recoverable expenses. When a court uses the percentage-of-recovery method of calculating attorney's fees, such charges are simply subsumed in the award of attorneys' fees."); *Adams v. Van Kampen Funds, Inc.,* No. 01 C 7538, 2006 WL 163023, at *5 (N.D.Ill. Jan.18, 2006). Accordingly, the Court will subtract $84,555.38 from Class Counsel's request, representing the costs incurred for computerized legal research, and will award costs in the amount of $4,729,743.16.

***5** No class member has objected to the request for reimbursement of the class representatives' litigation-related expenses, which are allowable under 15 U.S.C. § 78u–4(a)(4). The Court therefore awards $6,450.00 and $4,350.00 to Macomb County and St. Clair, respectively. These amounts are reasonable and reflect the class representatives' time spent reviewing pleadings, preparing for depositions, complying with discovery requests, consulting with Class Counsel, and participating in mediation.

CONCLUSION

The Court awards attorney's fees in the amount of 27.5% of the Settlement Amount and awards $4,729,743.16 in costs. The Court further awards reimbursement of expenses to Macomb County in the amount of $6,450.00 and to St. Clair in the amount of $4,350.00.

All Citations

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EXHIBIT 25

2013 WL 5770633
Only the Westlaw citation is currently available.
United States District Court,
N.D. Indiana,
Hammond Division.

Jamila SWIFT, et al., Plaintiffs,
v.
DIRECT BUY, INC., et al., Defendants.
Janice Harris, et al., Plaintiffs,
v.
DirectBuy, Inc., et al., Defendants.
Brian Vance, et al., Plaintiffs,
v.
DirectBuy, Inc., et al., Defendants.
Phil Ganezer, et al., Plaintiffs,
v.
DirectBuy, Inc., et al., Defendants.

Cause Nos. 2:11–CV–401–TLS, 2:11–CV–415–TLS, 2:11–CV–417–TLS, 2:12–CV–45–TLS.
|
Oct. 24, 2013.

OPINION AND ORDER

PHILIP P. SIMON, District Judge.

***1** This matter is before the Court on the Plaintiffs' Motion for Final Approval of Class Action Settlement Agreement as well as related matters [ECF No. 171]. Forty-two Plaintiffs, individually and on behalf of the class that was stipulated for purposes of settlement, and Defendants DirectBuy, Inc. and related entities, entered the Settlement Agreement to resolve four class action lawsuits that had been transferred here and consolidated. For simplicity sake, I will refer to all of the defendants collectively as simply DirectBuy. One additional lawsuit, *Wilson v. DirectBuy, Inc.,* 2:11–cv–416–TLS–PRC, was not consolidated because the plaintiffs in that case are unwilling to join the Settlement, and are continuing to prosecute their claims separately. [1]

[1] To the extent not otherwise noted, capitalized terms have the definitions assigned in the Settlement Agreement [ECF No. 137–1].

BACKGROUND

DirectBuy is a franchisor of a national network of buying clubs. A consumer may only purchase products from DirectBuy after buying a membership, which can be renewed annually. The club offers products directly from manufacturers and their authorized suppliers, purportedly without a retail markup.

Beginning in 2008, the Plaintiffs initiated several actions alleging that DirectBuy violates various laws through their marketing materials and sales practices. According to the complaints, DirectBuy fails to disclose material information to prospective club members regarding the true prices for its products, including the fact that DirectBuy receives payments from vendors, manufacturers, and suppliers and does not pass these savings along to consumers. The Plaintiffs also complain about the addition of shipping and handling fees to the manufacturers' price. Put simply, the Plaintiffs believe that they did not enjoy savings that were commensurate with their membership fees or DirectBuy's representations.

In December 2010, the Plaintiffs in the *Wilson* case reached a settlement with the Defendants, which they submitted for approval to the United States District Court in the District of Connecticut. The court rejected that settlement. *Wilson v. DirectBuy, Inc.,* No. 3:09–CV–590 (JCH), 2011 WL 2050537 (D.Conn. May 16, 2011). At the Defendants' request, the District of Connecticut then transferred the case to this Court. *See Wilson v. DirectBuy, Inc.,* 821 F.Supp.2d 510 (D.Conn.2011). Four other related cases were also transferred and consolidated.

The parties held in-person mediation sessions on June 11–12, 2012, and August 22, 2012, before a neutral mediator, the Honorable Richard Neville (Ret.) of JAMS, and conducted numerous telephone conferences with Judge Neville and directly with each other in negotiating the resolution of this dispute. On February 8, 2013, the Plaintiffs in four of the cases and DirectBuy presented the Court with a Settlement Agreement, and asked the Court to preliminarily approve the Settlement, certify a proposed Class for settlement purposes, approve the form and manner of giving notice of the Settlement to the proposed Class, and set a hearing date for the final approval of the Settlement and the award to Class Counsel of attorneys' fees, costs, and expenses, and of incentive awards to the Plaintiffs.

***2** On March 22, 2013, Judge Springmann preliminarily certified the Class and approved the Settlement Agreement, and the case was subsequently transferred to me. The Settlement required DirectBuy to pay $1.9 million into a settlement fund. After a reduction of no more than $900,000 for attorneys' fees, the settlement funds would be distributed to the Class Members—made up of Current DirectBuy Members and Former DirectBuy Members who submitted timely and valid claim forms. The Current DirectBuy Members would have the option of choosing a $10 discount off any online order of at least $20 from DirectBuy's website instead of receiving the cash distribution. Additionally, DirectBuy agreed not to collect any charges and unpaid late fees that Defaulted DirectBuy Members had incurred as a result of failing to make payments to Defendant Beta Finance Company. The Defendants agreed to pay the notice and administration expenses associated with the Settlement. Pursuant to Federal Rule of Civil Procedure 23(g), the Court preliminarily appointed the law firms of Cohen & Malad, LLP, and Brager, Eagel & Squire, P.C., as counsel for the Class. The Court approved Epiq Class Action & Claims Solutions, Inc. as the Settlement Administrator.

On April 10, 2013, DirectBuy transferred $1.9 million to an escrow account established by Epiq. Additionally, Epiq provided all the notices that were required under the Preliminary Approval Order to the Class Members, the United States Attorney General, and state officials.

Seventeen class members filed submissions with the Court that could be considered objections. Many of the objectors complain that the settlement amount is too low or that the attorneys' fees are too high. A common alternative suggested by these objectors is that they receive a full refund of their several thousand dollar membership fee. Others complain that they were not allowed to cancel their membership contracts, were pressured into buying the membership, or did not receive benefits that justified the cost of the membership. Nearly 49,000 class members filed claims to participate in the settlement. Another 83,380 will receive benefits without having to file a claim because they are defaulted DirectBuy Members whose late payment penalties are being waived. Epiq received 425 requests for exclusion from the Settlement.

On September 10, 2013, I conducted a fairness hearing. None of the objectors appeared at the hearing. At the hearing, I requested the parties to supplement their submissions with additional information regarding DirectBuy's financial condition, and they have complied with that request.

DISCUSSION

A. Class Certification and Notice

As noted above, Judge Springmann preliminarily certified a Class for purposes of the Settlement consisting of all Current DirectBuy Members, all Former DirectBuy Members, and all Defaulted DirectBuy Members who did not elect to opt out. I find that the requirements of Federal Rule of Civil Procedure 23(a) and (b)(3) are satisfied, and certify a Class for purposes of approving the Settlement Agreement.

***3** Rule 23 requires that the Class Members receive "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed.R.Civ.P. 23(c)(2)(B). Reasonable notice is required to all class members who would be bound by a proposed settlement. Fed.R.Civ.P. 23(e)(1). The Federal Judicial Center's checklist on class notice instructs that class notice should strive to reach between 70% and 95% of the class. *See* Federal Judicial Center, *Judges Class Action Notice and Claims Process Checklist & Plain Language Guide* 3 (2010) ("It is reasonable to reach between 70–95%. A study of recent published decisions showed that the median reach calculation on approved notice plans was 87%.").

According to DirectBuy's records, the class contains 847,860 class members—308,844 Current DirectBuy Members; 455,636 Former DirectBuy Members; and 83,380 Defaulted DirectBuy Members. The Class Period extends from October 11, 2002, through the preliminary approval date. Epiq's implementation of the notice plan, which is detailed in the Declaration of the Settlement Administrator [ECF No. 169–1] and the Updated Declaration of the Settlement Administrator [ECF No. 185–1], has resulted in actual individualized notice to around 99% of the Class. Given these near perfect delivery percentages, it is plain that due process and the notice requirements of Rule 23 have been satisfied.

B. Adequacy of the Settlement Agreement

A district court must scrutinize and evaluate a class action settlement to determine whether it is "fair, reasonable, and adequate." *Williams v. Rohm & Haas Pension Plan,* 658 F.3d 629, 634 (7th Cir.2011) (quoting Fed.R.Civ.P. 23(e)(2)). In making these determinations, the court considers five factors: (1) the strength of plaintiffs' case compared to the defendants'

offered settlement amount; (2) the likely complexity, length, and expense of the litigation; (3) the amount of opposition to settlement among affected parties; (4) the opinion of competent counsel; and (5) the stage of the proceedings and the amount of discovery completed at the time of settlement. *Synfuel Techs., Inc. v. DHL Express (USA), Inc.,* 463 F.3d 646, 653 (7th Cir.2006).

In most cases, a court cannot make an informed judgment about the fairness, reasonableness, and adequacy of a class without assessing the likelihood and value to the class of the case's possible outcomes, referred to as the net expected value of the litigation. *See Williams,* 658 F.3d at 634 (citing *Synfuel,* 463 F.3d at 653). A court must normally "weigh the value of the proposed settlement against the total amount that the class could recover, discounted by the weaknesses and risks inherent in the class' claims ." *Schulte v. Fifth Third Bank,* 805 F.Supp.2d 560, 578 (N.D.Ill.2011). Although DirectBuy highlights the uncertainty surrounding the viability of obtaining class certification outside of a settlement, as well as other weaknesses in the merits of the Plaintiffs' claims, the parties do not present evidence that would allow the Court to quantify the value to the class of continued litigation. This omission of the total amount the Class could recover was intentional. As the parties see it, any discussion about the strength of the Plaintiffs' claims and, ultimately, about whether the settlement terms are fair, reasonable, or adequate, must be viewed in light of one crucial overriding factor: DirectBuy's severely leveraged financial position. They contend that DirectBuy's compromised financial condition dictates the total amount the class could hope to recover, regardless of other existing strengths or weaknesses. I agree. Having considered the record in its entirety, further litigation may well be pointless given DirectBuy's dire financial situation.

***4** But in looking closely at the factors that I need to consider, it's worth mentioning at the outset that this case does not present "suspicious circumstances." *Reynolds v. Beneficial Nat'l Bank,* 288 F.3d 277, 284 (7th Cir.2002). In *Reynolds,* the history of the parties' settlement negotiations suggested that the parties may have colluded and performed a "reverse auction"—where the defendant in a series of class actions picks the most ineffectual class lawyers to negotiate a settlement with in the hope that the district court will approve a weak settlement that will preclude other claims against the defendant. *Id.* at 282. The *Reynolds* court was particularly concerned because the settlement would have extinguished a similar pending lawsuit that appeared promising without providing the class with consideration for releasing the claims involved in that suit. *Id.* at 283–84. In such a case, the district court must perform a more searching inquiry into the fairness of the settlement. *Id.* at 284.

There is nothing suspicious at play here. In response to the settlement that was presented to the Connecticut court for approval in the *Wilson* litigation, Class Counsel filed a series of objections opposing the settlement on grounds that it was inadequate. After the court rejected the *Wilson* settlement, Class Counsel ensured that settlement discussions going forward involved as many representative Plaintiffs and counsel who were willing to participate. This is not a situation where DirectBuy chose to settle with particular parties and attorneys in the hope of extinguishing cases filed by superior lawyers. Moreover, the Settlement Agreement does not extinguish any other suits without providing the class with consideration. For example, the *Wilson* plaintiffs have now opted out of the Settlement Agreement and will be pursuing their individual claims against DirectBuy.

Negotiations were hard fought, not collusive, in this case. Class Counsel assured the Court at the fairness hearing that settlement was the result of extensive negotiations with adversaries who had established they could vigorously defend the action, and who were adamantly opposed to any cash settlement. An agreement was reached only after extensive arm's length negotiations during three days of in-person formal mediation with Judge Neville and additional negotiations thereafter. Judge Neville participated in and exchanged hundreds of emails and phone calls with the parties to negotiate a settlement over a two-month period. Attorney Eagle's expertise in finance allowed him to confirm the Defendants' critical financial position, and the near certainty that the Plaintiffs would see no cash even if they were awarded damages after successfully litigating the merits. In particular, during the time of the negotiations, DirectBuy was in default on $335 million in senior secured debt. In November 2012, DirectBuy completed restructuring of that indebtedness, whereby the senior bondholder received 100% of the equity of the company, and $100 million in other secured notes. Even after restructuring, DirectBuy has substantial secured indebtedness that exceeds the value of its tangible assets.

***5** Although $20 (the expected pro rata award of the net settlement fund for each class member who filed a claim notice) is not significant in a vacuum, "a dollar today is worth a great deal more than a dollar ten years from now," *Reynolds,*

288 F.3d at 284, and a major benefit of the settlement is that class members will obtain these benefits much more quickly than had the parties not settled. The parties have informed the Court that this case, were it to proceed, would face numerous challenges such that, even if the case reached trial, the class members would not receive benefits for many years, if they received any at all. Faced with the prospect of receiving no recovery—both because DirectBuy might have succeeded in any aspect of what would have been a vigorous defense absent settlement and because DirectBuy had no unencumbered assets—Class Counsel is confident that payment of up to $20.00 per household is an excellent result in this litigation. The parties assert that because the only amount the Plaintiffs could hope to recover after an award of damages is zero, a settlement involving any cash should be considered adequate.

Under these difficult circumstances, I find that it is appropriate to place significant weight on the opinion of counsel in concluding that the Settlement is reasonable in light of the value of further litigation. In addition to the benefits that can be measured in dollars ($1.9 million in a settlement fund to be distributed pro rata, $360,000 in administrative costs associated with providing notice, forgiveness of over $3 million worth of late payment penalty fees), the Defendants have also agreed to include a three-day right of cancellation in all future membership agreements, which will positively impact consumers across multiple states. Several factors show that this is a significant and valuable benefit. First, it is meaningful when considered against the backdrop of DirectBuy's financial position, which limited the ways in which counsel could successfully add value to the Class Members and promote the interests of the public. Second, comments by several of the objectors suggest that it is a term they would have valued, and is thus a benefit that future members will value. The fact that various states have legislation requiring a right of cancellation in consumer contracts and purchases also demonstrates its import on a larger scale. The interests of the public as a whole in a consumers' rights action is a consideration of the broader implication of a class action settlement, *see Armstrong v. Bd. of Sch. Dirs. of City of Milwaukee,* 616 F.2d 305, 313 (7th Cir.1980) *overruled on other grounds by Felzen v. Andreas,* 134 F.3d 873 (7th Cir.1998), and this particular benefit could not have been obtained absent a settlement because the Plaintiffs have not alleged that DirectBuy's current cancellation practices are illegal. Finally, although the benefit to the Class Members is not direct, the provision will generate good will for DirectBuy and enhance their public image. This, in turn, is beneficial to all members of the more than 100 DirectBuy clubs in the United States and Canada who can only continue to receive the benefits of their memberships if the franchises stay in operation.

***6** The terms of the Settlement include real out-of-pocket payments, not just compensation in kind. *Cf. In re Mexico Money Transfer Litig.,* 267 F.3d 743, 748 (7th Cir.2001) (viewing with suspicion the adequacy of a settlement where everyone other than the plaintiffs had been paid in cash). In addition, DirectBuy has offered a significant benefit that impacts the interests of the public as a whole, and has agreed to forego the collection of up to $3 million of late fees and charges despite their precarious financial position. I find that balancing these benefits against the value of further litigation weighs in favor of accepting the Settlement.

A brief analysis of the remaining factors shows that they also support approval of the Settlement as fair, reasonable, and adequate. First, the complexity, length, and expense of continued litigation, *Synfuel,* 463 F.3d at 653, strongly favors settlement. By approving the Settlement Agreement, the present lawsuit will come to an end and class members will realize benefits. By contrast, denying approval will lead to protracted litigation, with no end in sight. Discovery would be needed touching on both the merits of the claims and the propriety of class certification. The nature of the claims would require massive discovery. As the Defendants note, the class period spans over ten years, and the allegations regarding pricing implicate millions of products over that time span, including products offered by third party retailers. In sum, "it would be a monumental undertaking for Plaintiffs to attempt to create any reliable comparison between DirectBuy pricing and that of countless retailers on millions of products going over the past ten-year period." (Br. in Resp. 23, ECF No. 183.) Even after obtaining the data, experts would be needed to review and analyze it. Similar scenarios exist for the Plaintiffs' other claims. Obtaining any result in this litigation —good or bad—would be years away if the litigation were to continue, which weighs in favor of approving the Settlement Agreement.

Second, the limited opposition to the Settlement Agreement among affected parties, *Synfuel,* 463 F.3d at 653, also favors settlement. The participation rate is 100 times higher than the opt out and objection rate. None of the objectors attended the fairness hearing. Additionally, and perhaps more significantly, this case involves no opposition from regulatory agencies or consumer advocacy groups. DirectBuy provided

proper notice of the Settlement Agreement to the appropriate state and federal officials pursuant to the Class Action Fairness Act of 2005 (CAFA), and the only comments they received were to request that the final judgment be amended to facilitate the ability of defaulted class members to defend collection actions that might be brought against them in the future. DirectBuy agreed to this request. In comparison, the rejected settlement in the *Wilson* litigation prompted the attorney generals from the majority of states across the country to join together in opposition to "forcefully argue that the settlement [was] both overstated and undervalued." *Wilson,* 2011 WL 2050537, at *9. "Although CAFA does not create an affirmative duty for either state or federal officials to take any action in response to a class action settlement, CAFA presumes that, once put on notice, state or federal officials will raise any concerns that they may have during the normal course of the class action settlement procedures." *Garner v. State Farm Mut. Auto. Ins. Co.,* No. CV–08–1365–CW (EMC), 2010 WL 1687832, at *14 (N.D.Cal. Apr. 22, 2010).

***7** Third, as the Court has already noted, the "opinion of competent counsel" supports a determination that the settlement is fair, reasonable, and adequate under Rule 23. *Synfuel,* 463 F.3d at 653. Class Counsel has extensive experience in consumer class actions and complex litigation, and there is no indication that the Settlement Agreement is the result of collusion. Class Counsel reasonably concluded that one of the most significant factors in negotiating a fair and adequate settlement for the Class was the financial condition of DirectBuy. *See, e.g., Torrisi v. Tucson Elec. Power Co.,* 8 F.3d 1370, 1376 (9th Cir.1993) (stating that the Defendant's leveraged financial condition was the "one factor" that "predominate[d] to make clear that the district court acted within its discretion" in the balancing of factors to determine if a settlement was fair, adequate, and reasonable); *In re Montgomery Cnty. Real Estate Antitrust Litig.,* 83 F.R.D. 305, 316 (D.Md.1979) (including the solvency of the defendant and the likelihood of recovery on a litigated judgment as one of the factors to weigh against the amount tendered to the plaintiffs to determine if the proposed settlement was adequate).

The financial condition of the defendant in class action settlement is a legitimate—if not entirely pragmatic—consideration, as the Eighth Circuit has held. *See In re Wireless Tele. Fed. Cost Recovery Fees Litig.,* 396 F.3d 922, 932 (8th Cir.2005) (the financial condition of the defendant is one of the factors that a court must consider in determining whether a settlement is fair, reasonable, and adequate). Other courts have referred to this as the defendant's ability "to withstand a greater judgment." *See City of Detroit v. Grinnel Corp.,* 495 F.2d 448, 463 (2d Cir.1974), *overruled on other grounds by Goldberger v. Integrated Res., Inc.,* 209 F.3d 43 (2d Cir.2000). Put simply, faced with the prospect of a bankrupt judgment debtor down the road, I cannot say that Class Counsel did not follow a reasonable course in this litigation and ultimately achieve a fair and adequate settlement.

The final consideration, "the stage of the proceedings and the amount of discovery completed at the time of settlement" *Synfuel,* 463 F.3d at 653, is a relevant factor because it determines "how fully the district court and counsel are able to evaluate the merits of plaintiffs' claims," *Armstrong,* 616 F.2d at 325. The parties concede that pre-settlement discovery was limited to the Defendants' audited financial statements and other matters directly related to DirectBuy's financial position. However, they urge that it was this discovery that permitted them to make an accurate assessment of the likelihood of realizing any recovery, even if the Plaintiffs were to prevail on the merits of their claims. I find that discovery was sufficient for effective representation, and that formal discovery would have only taken more time and resulted in the expenditure of additional funds on both sides without achieving a more attractive settlement or any other appreciable benefit. The recognition by the Eight Circuit that "[t]he parties to a class action are not required to incur immense expense before settling as a means to justify that settlement," *DeBoer v. Mellon Mortg. Co.,* 64 F.3d 1171, 1178 (8th Cir.1995), rings particularly true under these circumstances. Counsel's decision to forgo additional discovery upon learning of DirectBuy's worsened financial condition, in the hopes of minimizing costs and achieving a quick recovery, was fair and reasonable.

***8** None of the objectors who complain about the recovery being too low address the factors that this Court must consider when determining the adequacy of a settlement. It must be remembered that the "essence of a settlement is compromise." *Armstrong,* 616 F.2d at 315. A settlement will not be rejected solely because it does not provide a complete victory to the plaintiffs. *EEOC v. Hiram Walker & Sons, Inc.,* 768 F.2d 884, 889 (7th Cir.1985). Additionally, many of the issues the objectors raised go to the merits of the claims and are essentially the same issues raised in the pleadings. Unsurprisingly, in light of their pro se status, the objectors do

not focus—as this Court must—on the principles governing approval of class action settlements.

For the reasons set forth above, the Court finds that the Settlement is fair, reasonable, and adequate. The Court approves the pro rata distribution of the Net Settlement Cash Fund by check, mailed directly to each Class Member who is entitled to payment, with costs of distribution to be paid by DirectBuy.

C. Attorneys' Fees and Incentive Awards

The Plaintiffs submit that an award of $900,000 is fair and reasonable in light of the benefits provided to Class Members under the Settlement; the litigation efforts of Class Counsel to date; compensation levels in the relevant market for such legal services; and the substantial risk of nonpayment at the time Class Counsel undertook the representation of Plaintiffs in this litigation.

In deciding an appropriate fee in common fund cases, the Seventh Circuit has "consistently directed district courts to 'do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time.' " *Sutton v. Bernard,* 504 F.3d 688, 692 (7th Cir.2007) (quoting *In re Synthroid Mktg. Litig.,* 264 F.3d 712, 718 (7th Cir.2001)); *see also Montgomery v. Aetna Plywood, Inc.,* 231 F.3d 399, 408 (7th Cir.2000) (finding that in common fund cases, "the measure of what is reasonable [as an attorney fee] is what an attorney would receive from a paying client in a similar case").

Relying on *Cullen v. Whitman Med. Corp.,* 197 F.R.D. 136, 147 (E.D.Pa.2000) (finding it reasonable to award fees based on the total value of the settlement, which included the forgiveness of debt for students who were delinquent in paying back their loans) and *In re Lloyd's Am. Trust Fund Litig.,* No. 96 Civ.1262 RWS, 2002 WL 31663577, at * 16 (S.D.N.Y.2002) (awarding fees of 28% of the total settlement consideration, which included credit notes class members could use to reduce debt owed to defendants), Class Counsel submits that the Total Settlement Value in this case should include the $3 million in charged and unpaid late fees that were incurred by defaulted members and which the Defendants agree not to collect. An award of attorneys' fees in the amount of $900,000 represents less than 20% of the Total Settlement Value. Class Counsel also notes that payment of 33% of the common fund is widely accepted by the Seventh Circuit as a reasonable fee in a class action. *See Gaskill v. Gordon,* 160 F.3d 361, 362–63 (7th Cir.1998) (noting that typical contingency fees are between 33% and 40% and that "[s]ome courts have suggested 25 percent as a benchmark figure for a contingent-fee award in a class action"); *In re Mexico Money Transfer Litig.,* 164 F.Supp.2d 1002, 1033 (N.D.Ill.2000) (recognizing "the established 30% benchmark for an award of fees in class actions."); *Spicer v. Chi. Bd. Options Exch., Inc.,* 844 F.Supp. 1226, 1251–52 (N.D.Ill.1993) (awarding 29% of a common fund); *Meyenburg v. Exxon Mobil Corp.,* No. 3:05–cv–15–DGW, 2006 WL 2191422, at *2 (S.D.Ill. July 31, 2006) ("33 1/3% to 40% (plus the cost of litigation) is the standard contingent fee percentages in this legal marketplace for comparable commercial litigation"); *Teamsters Local Union No. 604 v. Inter–Rail Transp., Inc.,* No. 02–CV–1109–DRH, 2004 WL 768658, at *1 (S.D.Ill. Mar. 19, 2004) ("In this Circuit, a fee award of thirty-three and one-third percent (33 1/3%) in a class action i[s] not uncommon").

***9** Class Counsel assumed a substantial risk of non-payment given the complexity of the action and DirectBuy's position that it stood ready at all times to vigorously defend the lawsuit. In light of the significant likelihood that Class Counsel could have ultimately recovered nothing, Class Counsel had every incentive to litigate this matter in the most efficient manner possible. Class Counsel has also submitted an affidavit stating that the recovery is below the fees and expenses they actually incurred, and they have sufficiently outlined the efforts undertaken in this multi-jurisdictional litigation. The Court therefore approves the request for $900,000 for Class Counsel's fees.

Finally, Class Counsel requests that the Court award each class representative an incentive award of $500 from the common fund. Because there are 34 class representatives, the total cost of the requested award is $17,000. "Incentive awards are justified when necessary to induce individuals to become named representatives." *Synthroid,* 264 F.3d at 722; *see also Cook v. Niedart,* 142 F .3d 1004, 1016 (7th Cir.1998).

Incentive payments of $500 for each class representative are appropriate. First, class representatives knew that this litigation would be long and complex and that they might be subject to depositions and cross examination at trial. Even if they were successful after such protracted litigation, the award was not likely to include significant monetary benefit. In addition, $500 is below the average incentive payment awarded to class representatives in other consumer class actions, *see* Theodore Eisenberg & Geoffrey P. Miller,

Incentive Awards to Class Action Plaintiffs: An Empirical Study, 53 UCLA L.Rev. 1303, 1333 (2006), which suggests that $1,000 is the market rate for incentive reimbursements. Finally, the $17,000 total award is only a small percentage of the Class's overall recovery. The incentive payments are therefore approved.

CONCLUSION

For the reasons set forth above, the Plaintiffs' Motion for Final Approval of Class Action Settlement, Approval of Distribution of Net Cash Settlement Fund, Award of Attorneys' Fees, and Award of Class Representatives' Incentive Fee [ECF No. 171] is **GRANTED.** A Final Judgment will be issued consistent with this Opinion and Order and with the Settlement Agreement.

SO ORDERED.

All Citations

Not Reported in F.Supp.2d, 2013 WL 5770633

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EXHIBIT 26

2010 WL 4723725
Only the Westlaw citation is currently available.
United States District Court,
S.D. Indiana,
New Albany Division.

Gary WILLIAMS, Individually and on behalf of all others similarly situated, Plaintiffs,
v.
ROHM AND HAAS PENSION PLAN, Defendant.

No. 4:04–CV–0078–SEB–WGH.
|
Nov. 12, 2010.

Attorneys and Law Firms

Douglas R. Sprong, Steven A. Katz, Korein Tillery LLC, St. Louis, MO, James T. Malysiak, Lee A. Freeman, Jr., Jenner & Block LLP, Chicago, IL, T. J. Smith, Louisville, KY, William K. Carr, Law Office of William K. Carr, Denver, CO, for Plaintiffs.

Andrew J. Rolfes, Cozen O'Connor, Philadelphia, PA, Anthony J. Morrone, Cozen O'Connor, Chicago, IL, Bart A. Karwath, Robert D. MacGill, Barnes & Thornburg LLP, Indianapolis, IN, for Defendant.

ENTRY AWARDING ATTORNEY FEES

SARAH EVANS BARKER, District Judge.

***1** This matter is before the Court on the Plaintiff's Petition For Attorney Fees, Costs and Incentive Award filed on behalf of the attorneys representing the class. In resolving the attorneys fees issues, we have previously discussed in detail the challenging "*ex ante*" approach which the Seventh Circuit requires a district court to undertake in determining the appropriateness of an attorney fee request in a successful class action such as the one before us.[1] Such a *post-facto* determination of the theoretical results of hypothetical negotiations between counsel and a sophisticated legal services consumer as of the time the representation began, despite its difficulties, remains the preferred method in this Circuit for awarding a market-based fee. Earlier in this case with regard to the fee petition process, class counsel insisted that "lodestar" information (i.e. the hours worked by and hourly rates of legal professionals performing work on the case) had no relevance to an *ex ante* determination of a market-based fee award, when the preferred basis for such an award in a common-fund case is a percentage of the fund and class counsel accepts cases only on a contingency basis. Overruling their relevancy objection, we required class counsel to provide estimated summaries of hours worked and the hourly rates which they claim are appropriate for those professionals who worked on the matter within Plaintiff's counsel's firm.

[1] See the Court's orders of April 21, 2010 and June 1, 2010.

Those summaries submitted by class counsel were helpful to our analysis in providing a clearer understanding of the amount of time spent to date by class counsel in bringing this lawsuit to resolution in the trial court and as this matter proceeds on appeal. Even more enlightening was the sworn declaration of Paul Slater which class counsel submitted along with its summaries. Mr. Slater, obviously a very experienced litigator of complex cases, asserts that the absence of any reliable data from which to accurately estimate the amount of time and effort required to prosecute this action or the likelihood and scope of success leaves qualified competent counsel with no alternative other than to negotiate a contingency fee arrangement. He further opines that in his experience and judgment no competent counsel would negotiate a fee of anything less than 30% of the recovery for this type of work. In fact, the actual agreement between Mr. Williams and class counsel provided for a contingency fee of 33 1/3%. Mr. Slater's affidavit complements the affidavits of the attorneys which class counsel previously submitted in support of the petition for fees.

Clearly, in this case a substantial risk existed that class counsel's efforts might go unrewarded. The eventual class size and common fund could not have been accurately predicted. In addition, we have commented on numerous occasions regarding the unexpected twists and turns which have characterized the course of this litigation. We recognize that this lawsuit has been highly complex involving difficult and sometimes novel factual and legal issues, requiring superior skills and an extraordinary level of attention by counsel well versed in practicing in this specialty area.

***2** In attempting to determine the percentage fee that would have been negotiated by Plaintiff and Plaintiff's counsel at the inception of this litigation, the Seventh Circuit instructs that the trial judge consider several factors, including: (a) the contracts entered into by the parties and class counsel

in similar cases; (b) information from other cases; and, (c) any applicable lead counsel auctions. *Taubenfeld v. AON Corp.,* 415 F.3d 597, 599 (7th Cir.2005). No evidence of lead counsel auctions in any comparable cases have been proffered. While counsel for certain of the objectors to the settlement discussed various bits of anecdotal information regarding litigation where hourly and contingency fee rates were awarded that were lower than the percentage sought here and the hourly rates assigned by Plaintiff's counsel in their summaries, there is no question that the affidavits and information provided by class counsel with respect to other contingency fee agreements and awards were from cases more closely comparable to this one in terms of complexity. In short, the factors identified by the Seventh Circuit in structuring the determination of the appropriate fee percentage support Class counsel's requested fee.

Plaintiff's counsel have also requested our approval of an incentive award in the amount of $5,000 for Class Representative, Gary Williams, to be deducted from the fees and costs awarded by the Court. Because a named plaintiff plays a significant role in a class action, an incentive award is appropriate as a means of inducing that individual to participate in the expanded litigation on behalf of himself and others. *See In re Continental Illinois Securities Litigation,* 962 F.2d 566, 571 (7th Cir.1992). "In deciding whether such an award is warranted, relevant factors include the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation." *Cook v. Niedert,* 142 F.3d 1004, 1016 (7th Cir.1998). Mr. Williams spearheaded this lawsuit and helped bring it to a successful conclusion by which Class members received an estimated $180 million in additional pension benefits. In view of his efforts and the benefits they afforded to the Class, the Court authorizes payment of the requested $5,000 incentive award to Mr. Williams.

In conclusion, the objections to class counsel's attorneys' fees request are OVERRULED. Class counsel's fee and cost reimbursement petition is GRANTED. The Plan therefore shall pay to class counsel for attorneys' fees the amount of $43,500,000 in accordance with the terms in the parties' settlement agreement. The $5,000 incentive award payable to the named Plaintiff and class representative, Gary Williams, is GRANTED and shall be deducted from the aforementioned fee and cost award.

IT IS SO ORDERED.

All Citations

Not Reported in F.Supp.2d, 2010 WL 4723725

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EXHIBIT 27

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

IN RE WILMINGTON TRUST SECURITIES LITIGATION	Master File No. 10-cv-00990-ER (Securities Class Action) Hon. Eduardo C. Robreno
This document relates to: ALL ACTIONS	

ORDER AWARDING ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

WHEREAS, this matter came on for hearing on November 5, 2018 (the "Settlement Hearing") on Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses. 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 Class Members who could be identified with reasonable effort, and that a summary notice of the hearing substantially in the form approved by the Court was published in the *Investor's Business Daily* and was transmitted over the *PR Newswire* 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 litigation expenses requested;

WHEREAS, pursuant to the Stipulation and Agreement of Settlement with Wilmington Trust Defendants and Underwriter Defendants dated May 15, 2018 (D.I. 821-1) (the "Wilmington Trust/Underwriter Stipulation"), a settlement fund of $200,000,000 plus all interest earned thereon (the "Wilmington Trust/Underwriter Settlement Fund") has been funded into escrow;

WHEREAS, pursuant to the Stipulation and Agreement of Settlement with KPMG dated May 25, 2018 (D.I. 821-2) (the "KPMG Stipulation," and together with the Wilmington

Trust/Underwriter Stipulation, the "Stipulations"), a settlement fund of $10,000,000 plus all interest earned thereon (the "KPMG Settlement Fund," and together with the Wilmington Trust/Underwriter Settlement Fund, the "Settlement Funds") has been funded into escrow; and

WHEREAS, this Order incorporates by reference the definitions in the Stipulations and in the Joint Declaration of Hannah Ross and Joseph E. White, III in Support of (I) Lead Plaintiffs' Motion for Final Approval of Class Action Settlements and Plan of Allocation and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses dated September 17, 2018 (D.I. 836) (the "Joint Declaration"), and all capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulations or the Joint Declaration.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. **Jurisdiction** – The Court has jurisdiction to enter this Order and over the subject matter of the Action, as well as personal jurisdiction over all of the parties and each of the Class Members.

2. **Notice** – Notice of Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation 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 an award of attorneys' fees and expenses satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §§ 77z-1, 78u-4, as amended ("PSLRA"), and all other applicable law and rules; constituted the best notice practicable under the circumstances; and constituted due and sufficient notice to all persons and entities entitled thereto.

3. **Fee and Expense Award** – Plaintiffs' Counsel are hereby awarded attorneys' fees in the amount of 28% of each of the Settlement Funds and $6,790,044.82 in

reimbursement of Plaintiffs' Counsel's litigation expenses (which expenses shall be paid from the Settlement Funds in proportion to the size of the Settlement Funds), which sums the Court finds to be fair and reasonable.

4. **Factual Findings** – In making this award of attorneys' fees and reimbursement of litigation expenses to be paid from the Settlement Funds, the Court has considered and found that:

(a) The approved Settlements have created a total cash recovery of $210,000,000 that has been funded into escrow pursuant to the terms of the Stipulations, and that numerous Class Members who submit acceptable Claim Forms will benefit from the Settlements that occurred because of the efforts of Plaintiffs' Counsel;

(b) The fee sought by Lead Counsel has been reviewed and approved as reasonable by the Court-appointed Lead Plaintiffs, who oversaw the prosecution and resolution of the claims asserted in the Action on behalf of the Class;

(c) More than 92,000 copies of the Notice were mailed to potential Class Members and nominees stating that Lead Counsel would apply for attorneys' fees in an amount not to exceed 28% of each Settlement Fund and reimbursement of litigation expenses in an amount not to exceed $7,500,000, and there were no objections to the requested attorneys' fees and expenses;

(d) Lead Counsel have conducted the litigation and achieved the Settlements with skill and dilligence;

(e) The Action raised a number of complex issues;

(f) Had Lead Counsel not achieved the Settlements there would remain a significant risk that Lead Plaintiffs and the other Class Members may have recovered less or nothing from Defendants;

(g) Plaintiffs' Counsel devoted more than 195,000 hours, with a lodestar value of approximately $79,976,000, to achieve the Settlements; and

(h) The amount of attorneys' fees awarded and litigation expenses to be reimbursed from the Settlement Funds are fair and reasonable and consistent with awards in similar cases.

5. **PLSRA Awards** – Lead Plaintiff Coral Springs Police Pension Fund is hereby awarded $7,556.00 from the Settlement Funds (which award shall be paid from the Settlement Funds in proportion to the size of the Settlement Funds) as reimbursement for its reasonable costs and expenses directly related to its representation of the Class.

6. Lead Plaintiff St. Petersburg Firefighters' Retirement System is hereby awarded $22,109.00 from the Settlement Funds (which award shall be paid from the Settlement Funds in proportion to the size of the Settlement Funds) as reimbursement for its reasonable costs and expenses directly related to its representation of the Class.

7. Lead Plaintiff Pompano Beach General Employees Retirement System is hereby awarded $11,538.24 from the Settlement Funds (which award shall be paid from the Settlement Funds in proportion to the size of the Settlement Funds) as reimbursement for its reasonable costs and expenses directly related to its representation of the Class.

8. Lead Plaintiff Merced County Employees' Retirement Association is hereby awarded $14,252.82 from the Settlement Funds (which award shall be paid from the Settlement Funds in proportion to the size of the Settlement Funds) as reimbursement for its reasonable costs and expenses directly related to its representation of the Class.

9. **No Impact on Judgments** – Any appeal or any challenge affecting this Court's approval regarding any attorneys' fees and expense application shall in no way disturb or affect the finality of the Judgments.

10. **Retention of Jurisdiction** – 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 Stipulations and this Order.

11. **Termination of Settlement** – In the event that either of the Settlements is terminated or the Effective Date of either of the Settlements otherwise fails to occur, this Order shall be rendered null and void to the extent provided by the Stipulations.

12. **Entry of Order** – There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

SO ORDERED this 19th day of November, 2018.

/s/ Eduardo C. Robreno
The Honorable Eduardo C. Robreno
United States District Judge

EXHIBIT 28

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

LINDA WONG, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. ACCRETIVE HEALTH, INC., et al., Defendants.	No. 1:12-cv-03102 CLASS ACTION Judge Sharon Johnson Coleman Magistrate Judge Arlander Keys

DECLARATION OF JAMES E. BARZ IN SUPPORT OF LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF DISTRIBUTION OF SETTLEMENT PROCEEDS, AND AWARD OF ATTORNEYS' FEES AND EXPENSES

I, JAMES E. BARZ, declare as follows:

1. I am a member of Robbins Geller Rudman & Dowd LLP ("Robbins Geller" or "Lead Counsel"). My firm was appointed by the Court as Lead Counsel for Indiana State Police Benefit System ("Lead Plaintiff") and the proposed Class. I have been actively involved in the prosecution and resolution of this Action, am familiar with its proceedings and have knowledge of the matters set forth herein based upon my participation in material aspects of the litigation and my supervision of or communications with other lawyers and staff assigned to this matter.[1] This declaration was prepared with the assistance of other lawyers at the firm, reviewed by me before signing, and the information contained herein is believed to be accurate based on what I know and what I have been told by others.

2. The purpose of this declaration is to set forth the basis for and background of the litigation, its procedural history, and the negotiations that led to settlement. This declaration demonstrates why the Settlement is fair, reasonable, and adequate and should be approved by the Court, why the Plan of Distribution is reasonable, and why the motion for attorneys' fees and expenses is reasonable and should be approved by the Court.[2]

I. PRELIMINARY STATEMENT

3. The Settlement, which this Court preliminarily approved in its Order Preliminary Approving Settlement and Providing Notice on October 4, 2013 (Dkt. No. 69), provides for the payment of $14,000,000 in cash for the benefit of the Class to settle all claims asserted in this Action

[1] Defendants along with other capitalized terms are defined in §IV of the Settlement Agreement dated September 19, 2013. Dkt. No. 65.

[2] Also submitted in conjunction with this Declaration are: (i) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Distribution of Settlement Proceeds, and Award of Attorneys' Fees and Expenses, (ii) Lead Counsel's Memorandum of Points and Authorities in Support of Motion for Award of Attorneys' Fees and (iii) Lead Plaintiff's Memorandum of Points and Authorities in Support of Motion for Final Approval of Class Action Settlement and Plan of Distribution of Settlement Proceeds.

and the release of all related claims by Lead Plaintiff and Class Members against Defendants and their affiliated persons and entities.

4. The Settlement is an excellent result considering the substantial risks possible in continuing the litigation. Additionally, the Settlement has the support of Lead Plaintiff. *See* Declaration of James Holden in Support of Motion for Final Approval of Class Action Settlement, Award of Attorneys' Fees and Expenses ("Holden Decl."), submitted herewith.

5. As set forth more fully below, Lead Plaintiff might not have achieved such a meaningful recovery for the Class following continued litigation, and even if it ultimately prevailed on the pending motion to dismiss and at trial, any judgment would be inevitably subject to an appeal, and any potential recovery for the Class substantially delayed. Defendants' asserted defenses that presented numerous risks concerning Lead Plaintiff's ability to prove liability, particularly with respect to falsity and scienter, as well as the amount of damages suffered by Lead Plaintiff and the Class. In spite of these obstacles, Lead Counsel obtained a highly favorable settlement that will result in immediate recovery for the Class. In total, the Settlement confers an immediate benefit to the Class and eliminates the risk of continued litigation under circumstances where a favorable outcome was not assured.

6. The Settlement was reached only after Lead Counsel: (i) reviewed and analyzed documents filed publicly by the Company with the U.S. Securities and Exchange Commission ("SEC"); (ii) reviewed other publicly available information, including press releases, news articles and other public statements issued by or concerning the Company and the Individual Defendants, as well as research reports issued by financial analysts concerning the Company; (iii) reviewed other publicly available information and data concerning investigations conducted and reports issued by the Minnesota Attorney General and the Minnesota Department of Health; (iv) reviewed U.S. Senate hearing transcripts regarding Accretive and its business practices; (v) reviewed certain Accretive and

Fairview Hospital Services ("Fairview") internal emails and documents received from the Minnesota Attorney General; (vi) reviewed pleadings filed in other pending litigation naming certain of the Defendants here as defendants or nominal defendants; (vii) researched applicable law governing the claims and potential defenses; (viii) retained and supervised investigators who identified hundreds of potential witnesses, contacted many, and interviewed several former Accretive and Fairview employees and others persons with relevant knowledge; (ix) consulted with internal Robbins Geller analysts on valuation, damages, and causation issues; (x) prepared a fact intensive Lead Plaintiff's Class Action Complaint for Violations of the Federal Securities Laws (Dkt. No. 33) (the "Complaint"); (xi) opposed, through briefing and oral argument, Defendants' motion to dismiss; and (xii) attended an arm's length mediation session and participated in subsequent negotiations led by an experienced and qualified mediator.

7. After Defendants' motion to dismiss was fully briefed and oral argument had been heard, but before a ruling on the motion, the Settling Parties reached an agreement to settle this action when the mediator's proposal was accepted on August 15, 2013. The agreement was achieved after approximately five weeks of ongoing settlement discussions following a formal mediation before Mediator Jed Melnick, Esq. ("Melnick") of JAMS, on July 3, 2013 in New York. The mediation included comprehensive briefing and thorough presentations by counsel highlighting the strengths and weaknesses of each side.

8. Accordingly, it is respectfully submitted that: the Settlement and Plan of Distribution of Settlement Proceeds should be approved as fair, reasonable, and adequate; and Lead Counsel should be awarded 30% of the Settlement Fund and payment of its litigation expenses.

II. HISTORY OF THE LITIGATION

9. This is a federal securities class action against Accretive and certain of its officers, brought by Lead Plaintiff under §§10(b) and 20(a) of the Securities Exchange Act of 1934 (the

"Exchange Act") and Rule 10b-5 promulgated thereunder on behalf of Lead Plaintiff and all persons or entities who purchased or otherwise acquired the publicly traded common stock of Accretive from November 10, 2010 to and through April 27, 2012, inclusive (the "Class Period"). The relevant allegations in this case are summarized below and more fully set forth in the Complaint.

A. Relevant Allegations

1. Accretive and Its Contracts with Fairview

10. Accretive was founded in 2003, and went public in 2010. ¶45.[3] It provides three basic services to healthcare providers: Revenue Cycle Management, Quality and Total Cost of Care ("QTCC") Services, and Physician Advisory Services. *Id.* Of importance to this Action are the Company's Revenue Cycle Operations agreement ("RCA") and the QTCC with Fairview, a non-profit, academic health system headquartered in Minneapolis, Minnesota. ¶¶46, 47.

11. In 2005, the Minnesota Attorney General conducted a compliance review of Fairview where it was discovered that collection activities were not consistent either with the mission or the responsibility of a Minnesota charitable organization. ¶48. As a result, Fairview entered into an agreement with the Minnesota Attorney General (the "AG Agreement"), a two-year remedial agreement, which was renewed in 2007 for an additional five years and imposed numerous restrictions on Fairview. ¶¶48, 49. Both the RCA and QTCC required Accretive and its employees to comply with the terms of the AG Agreement. ¶50.

12. The RCA with Fairview accounted for approximately 12% of Accretive's revenues. ¶46. The purpose of the RCA was to maximize collections from insurance, third-party payors, and patients in an attempt to improve Fairview's revenues. ¶45. Accretive also provided services to Fairview to improve patient registration, insurance and benefit verification and collections. ¶51. In

[3] All ¶__ or ¶¶__ refer to the Complaint.

order to implement its RCA services, Accretive assumed full responsibility for the management and cost of Fairview's revenue cycle and supplemented Fairview's staff with Accretive personnel. *Id.* As a result of this control, the RCA was subject to termination if Accretive's actions jeopardized Fairview's not-for-profit status or if applicable laws and regulations were not followed. ¶55.

13. The QTCC was of utmost importance to Accretive during the Class Period as it was touted as a new service offering and future source of revenue. ¶¶2, 13, 46, 56-57. Through the QTCC, Accretive purported to work with patients and care providers to get "the right care" to improve overall health resulting in fewer hospitalizations and minimize costs of emergency room visits and hospital stays. ¶45. As with the RCA, Fairview could terminate the QTCC for a number of reasons, including if Accretive was sanctioned or under investigation by a government agency for material violations of law. ¶60.

2. Accretive's Compliance Failures and Related Failure to Train and Monitor Compliance

14. Lead Plaintiff alleged that, during the Class Period, Accretive failed to conform its practices to comply with the Fairview contracts, the AG Agreement, and applicable laws and regulations regarding debt collection and protection of private Protected Health Information ("PHI"), and failed to train its personnel to comply and monitor compliance. ¶61. The Complaint detailed Accretive's non-compliance and is supported by the typical sources of information including public information and four confidential witnesses. ¶¶39-46. However, unlike a typical securities fraud case and despite the Private Securities Litigation Reform Act of 1995 ("PSLRA") discovery stay, the Complaint was also supported by internal Accretive and Fairview documents that were obtained as a result of the Attorney General's investigation as well as regulatory findings (not simply allegations), and testimony provided during Senate hearings. *See, e.g.*, ¶20.

a. Accretive Failed to Register as Licensed Debt Collector

15. The Complaint alleged that even though Accretive began performance on the RCA in March 2010, Accretive did not register as a foreign corporation with the Minnesota Secretary of State until December 2010 and failed to become a licensed debt collector with the Minnesota Department of Commerce until January 20, 2011, when the Company registered under its assumed name "Medical Financial Solutions" ("MFS"). ¶62. Once registered, Accretive failed to register all of its over 100 debt collectors as required, but instead just registered one. *Id.* In addition, the unlicensed individuals were never approved by Fairview's Board of Directors as authorized to collect debts from patients, in violation of the AG Agreement. *Id.* As a result, on July 30, 2012, Accretive reached an agreement with the Minnesota Attorney General whereby Accretive would be suspended from collecting debts in Minnesota for six years. ¶157.

b. Accretive Failed to Secure Protected Health Information and Monitor Compliance with Securing Protected Health Information

16. Lead Plaintiff alleged that Accretive failed to secure PHI, which violated Minnesota state laws, in addition to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the Health Information Technology for Economic and Clinical Health Act ("HITECH"). ¶¶63-64. As required by HIPAA, on February 18, 2010, Accretive and Fairview entered into a business associate agreement that provided written assurances regarding the use, disclosure, and safeguards of PHI, as well as the reporting of security breaches. ¶65. The Complaint alleged that compliance with this agreement was never a priority for Accretive. ¶¶63-74. For example, during the Class Period, Accretive employees had multiple laptops containing PHI "smashed and grabbed" from their cars even though failure to safeguard PHI could result in "HIPAA fines and penalties up to $1.5 [million] per incident." ¶66. Following a June 2, 2010 theft of an employee laptop in Minnesota, Accretive failed to notify Fairview of the incident. ¶68. More than a

year later, on July 25, 2011, another laptop was stolen out of an employee's car, but this laptop was not encrypted and contained confidential PHI of approximately 23,000 Fairview patients. ¶69. The Complaint alleged the employee had access to PHI that was unnecessary to perform his responsibilities because Accretive had not taken proper steps to limit access to, and implement and monitor compliance with, the appropriate safeguards for PHI. ¶¶62-74. Further, approximately 30 laptops were unencrypted and Accretive took no steps to monitor the lack of encryption, leaving the patient data stored on them vulnerable to theft and improper disclosure. ¶67.

c. Accretive's Collection Practices Violated State and Federal Laws, the Fairview Contracts, and the AG Agreement

17. Lead Plaintiff alleged that Accretive's debt collections tactics violated the Fairview contracts and the AG Agreement for a number of reasons. ¶¶61-103. For example, Accretive threatened to report patients who were unable to pay to credit agencies and failed, as required by the AG Agreement, to notify patients that MFS, Accretive's debt collector, was a collection agency. ¶103. Accretive attempted to collect from patients based on estimated costs, prior to collecting from insurance, and prior to treatment, in violation of various laws, the AG Agreement and the Fairview contracts. ¶¶88-92. Accretive created what was described as a "boiler room" atmosphere by placing immense pressure on its Fairview employees to improve patient collections by providing gifts and bonuses to high performers and firing low performers. ¶77.

18. In order to increase collections, Accretive and Fairview employees were encouraged to collect from patients prior to their receipt of treatment. ¶79. Accretive also sought to collect patient balances relating to upcoming treatment as well as prior unpaid balances, each of which discouraged patients from seeking treatment if they could not pay. *Id.* Lead Plaintiff alleged this conduct violated Emergency Medical Treatment and Labor Act ("EMTALA"), which prohibited Accretive from discouraging those unable to pay from seeking emergency treatment. ¶¶87, 100-102.

19. The Complaint details that these were not isolated collection practices, but standard practices governed by collection "scripts" with instructions on how to continue insisting on payment based on various patient responses. ¶97. In addition, Accretive used patient access restrictions and patient stop lists as a means to target patients for pre-treatment collections. ¶¶95-102. The purpose of patient access restrictions was to identify patients without insurance prior to or immediately following treatment in order to ferret out alternative funding options. ¶95. Patient stop lists targeted patients at entry through the use of financial "counselors." ¶96. Accretive's aggressive tactics led many patients to believe that they would not receive the necessary access to treatment if they failed to pay or set up installment payments. ¶97.

20. The Complaint alleges that not only were these standard business practices, but Fairview specifically warned Accretive on multiple occasions that it was acting in violation of the contracts and AG Agreement. *See, e.g.*, ¶112 (November 12, 2010 email from Fairview CFO stating gift card program violated corporate policy); ¶114 (March 28, 2011 notification by Fairview of increased complaints regarding collection attempts in violation of AG Agreement); ¶116 (May 5, 2011 negative audit report of Accretive's compliance with the AG Agreement); ¶119 (September 30, 2011 reminder that Fairview terminated previous pre-collections vendor for "performance issues"); ¶¶123-125 (December 30, 2011 second negative audit report detailing violations). Thus, Lead Plaintiff alleged that Defendants knew throughout the Class Period that the Company was in violation of the AG Agreement.

d. Accretive's Attempted Cover-Up

21. The Complaint also alleged that Accretive took steps to try to cover up its wrongdoing, which served as further evidence that Defendants had knowledge of the Company's misdeeds. ¶¶153-159. First, following a special hearing to investigate Accretive's improper conduct and in response to United States Senator Al Franken's ("Franken") inquiry, in an attempt to deflect

criticism of the abusive collection practices at Fairview, Accretive claimed that Fairview was in charge of employees and could fire Accretive employees. ¶155. Senator Franken was not fooled, as he quickly noted that Accretive had claimed the exact opposite in its SEC filings. ¶156. Second, Lead Plaintiff alleged that Accretive attempted to mislead the AG during its investigation. ¶158. Specifically, Accretive lacked the required documentation relating to a written business associate agreement and its access to PHI. *Id.* Rather than admit this, Accretive subsequently created a contract and attempted to make it appear as though the written agreement had been in place several months earlier through misleading communications and the document dating. *Id.*

3. Accretive's Conduct Led to Numerous Government Investigations

22. As a result Accretive's unlawful practices, Defendants' conduct was reviewed by the U.S. Senate Committee on Health, Education, Labor and Pensions under the direction of Senator Franken, subject to litigation by the Attorney General, investigated by the Minnesota Department of Commerce, which temporarily suspended Accretive's debt collection license, and subject to findings by the Minnesota Department of Health. ¶¶3, 17, 20, 127-132, 153-159.

4. Defendants' False and Misleading Statements

23. In the Complaint, Lead Plaintiff alleged that Defendants made false statements: (1) regarding their purported compliance with the Fairview contracts and applicable laws and regulations, as well as training and monitoring of compliance (*see, e.g.*, ¶¶179, 186); (2) that Accretive's practices were improving the quality of patient care and the relationship with Fairview was strong (*see, e.g.*, ¶¶161, 165, 193, 226); (3) that Accretive would see robust financial improvement as a result (*see, e.g.*, ¶¶172, 174, 196); and (4) that Accretive had appropriate safeguards in place to protect PHI and monitor compliance (*see, e.g.*, ¶¶169, 187, 213, 240-241). Many of these statements were alleged to be directly false, and others were alleged to be misleading,

because Defendants omitted to disclose their business practices were in violation of or placed the Company in substantial risk of violating the Company's contracts with Fairview, the AG Agreement, EMTALA, and other laws and regulations. The specific statements alleged to be false and misleading and the reasons they were false and misleading, were set forth in the Complaint and argued in the briefing on motion to dismiss and during oral argument. *See* ¶¶160-250.

5. The Price of Accretive Stock Declines as the Truth Is Partially Revealed Via Three Corrective Disclosures

24. The Complaint alleged the artificial inflation of the stock price caused by the false and misleading statements was removed after three corrective disclosures which had the effect of causing Accretive common stock to decline from a Class Period high of $30.80 per share on August 1, 2011, to $9.33 per share on April 27, 2012. ¶¶271-280. These alleged corrective disclosures were:

(a) March 29, 2012 Form 8-K: On March 29, 2012, Accretive filed a Form 8-K with the SEC announcing that, in response to a lawsuit filed by the Minnesota Attorney General, Accretive had agreed to no longer collect debts on behalf of Fairview and would transition management under the RCA back to Fairview. ¶245. As a result of the cancellation of the RCA, the price of Accretive common stock dropped $4.46 per share, or nearly 19%, to close at $19.60 per share on March 29, 2012. ¶¶19, 246.

(b) April 24, 2012 Release of Attorney General Compliance Review: On April 24, 2012, the Minnesota Attorney General released a six-volume report that detailed the aggressive and illegal practices alleged to be employed by Fairview throughout its relationship with Fairview. ¶20, 251-252; *see also* Complaint, Exs. A-F. The Attorney General Compliance Review was based on a review of more than 100,000 documents produced by Accretive and Fairview. In response, the

price of Accretive common stock dropped $7.63 per share to close at $10.86 per share on April 25, 2012, a one-day decline of 41%. ¶¶22, 253.

(c) April 27, 2012 *Minneapolis St. Paul Business Journal* Article: Prior to the close of trading on April 27, 2012, the *Minneapolis St. Paul Business Journal* released an article entitled "Fairview CEO considering cutting all ties with Accretive," which revealed that Fairview was actively deciding whether to terminate its QTCC contract with Accretive. ¶¶23, 255. In response to concern that the QTCC contract would be terminated, the price of Accretive common stock dropped 11.1%, or $1.17 per share, from $10.50 per share on April 26, 2012, to close at $9.33 per share on April 27, 2012. ¶¶23, 256. After that market closed that day, Accretive announced that the QTCC contract had indeed been terminated by Fairview. ¶257.

B. The Commencement of the Action

25. The original complaint in this Action was filed on April 26, 2012. Dkt. No. 1. At a status conference held on August 13, 2012, the Court appointed Indiana State Police Benefit System as Lead Plaintiff and approved Lead Plaintiff's selection of counsel, and appointed Robbins Geller as Lead Counsel. Dkt. No. 32.

C. Investigation and Analysis

26. Lead Counsel engaged in an extensive pre-filing investigation and analysis. Lead Counsel thoroughly reviewed and analyzed a substantial volume of publicly available information regarding Accretive, including, but not limited to, its SEC filings, press releases, securities analysts' reports, pleadings and documents from other litigation against the Company, and publicly available information regarding Fairview. Lead Counsel retained an investigator to attempt to uncover non-public information, and the investigator identified hundreds of potential witnesses, contacted many and interviewed several former Accretive and Fairview employees and other persons with relevant information. Additionally, Lead Counsel reviewed Minnesota Attorney General's reports,

complaints, and various pleadings concerning Accretive; reviewed the Minnesota Department of Health's findings regarding Accretive; reviewed information regarding a U.S. Senate hearing regarding Accretive's conduct; and reviewed of a large number of Accretive internal emails and documents provided by the Minnesota Attorney General's Office in response to a request for such documents from Lead Counsel.

D. Defendants' Motion to Dismiss the Complaint

27. In moving to dismiss, Defendants argued their statements were neither false nor misleading and the Complaint failed to adequately allege Defendants' acted with scienter. Defendants argued that any violations of law that occurred did not constitute securities fraud. Lead Plaintiff asserted that the Complaint sufficiently alleged the statements were false or misleading and alleged scienter. Lead Plaintiff argued that violations of other laws do not necessarily make out a claim of securities fraud, but it does when, as alleged in this case, investors rely upon and the stock is artificially inflated by Defendants knowingly or recklessly claiming that the Company, which operated in the highly regulated area of health care, reassures investors they are complying with such laws when they are not.

28. Defendants also argued that any wrongdoing was limited to a few employees and Lead Plaintiff had not sufficiently alleged scienter. Among other things, Lead Plaintiff responded that the alleged wrongdoing constituted widely known and approved business practices, was done pursuant to "scripts," and was encouraged by a high-pressure system that gave bonuses to top performers and fired low performers, and that Accretive was repeatedly warned by Fairview of its improper practices. Moreover, given how often Defendants spoke about Fairview and compliance, Lead Plaintiff argued that it was implausible that Defendants did not know of what they spoke and were instead fed lies from those reporting to them.

29. The case settled after oral argument, but prior to a ruling on the motion to dismiss.

III. SETTLEMENT

30. On July 3, 2013, the Settling Parties mediated this Action with the assistance of mediator, Mr. Melnick, of JAMS, in New York. Prior to the start of mediation, the Settling Parties exchanged detailed mediation statements outlining their positions. Additionally, each side gave detailed arguments at the mediation assisted by powerpoint presentations.

31. At the conclusion of the mediation session, the parties had not reached a settlement. They did, however, agree to continue negotiating through the mediator.

32. On August 14, 2013, after further negotiations, Mr. Melnick submitted a mediator's proposal to the Settling Parties to settle the case for $14,000,000 in cash. The Settling Parties accepted Mr. Melnick's proposal shortly thereafter. For the reasons more fully set forth herein, Lead Counsel believes this was an excellent result.

IV. THE STRENGTHS AND WEAKNESSES OF THE CASE AND THE RISKS FACED BY LEAD PLAINTIFF IN THE LITIGATION

33. In deciding to enter into the Settlement, Lead Plaintiff and Lead Counsel considered: (i) the likelihood of success on the motion to dismiss, at summary judgment and at trial; (ii) the range of possible recovery; (iii) the point in the range of possible recovery at which a settlement is fair, adequate, and reasonable; (iv) the complexity, expense, and duration involved in continuing litigation; (v) the amount of insurance coverage available and Defendants' ability to pay a judgment; and (vi) the timing of, and possible substantial delay and increased risk of uncertainty of, any potential recovery to the Class if the settlement was rejected.

A. Risks of Establishing Liability and Damages

34. Although securities fraud is a complex area and dismissals are not uncommon, Lead Counsel was optimistic that Lead Plaintiff had a good chance of surviving Defendants' motion to dismiss. The outcome, however, was uncertain and there was a chance of dismissal and no recovery.

Defendants' arguments that certain statements constituted puffery or inactionable forward-looking statements and that the Complaint failed to sufficiently allege Defendants were aware of the alleged improper practices, which they claimed related to a small segment of the business, could not be completely discounted as having no chance of success, at least in part.

35. Given the amount of pre-filing information available in this case, which included internal Company documents which are normally not obtainable prior to formal discovery, Lead Counsel was optimistic that, with further discovery, Lead Plaintiff had a good chance of getting past summary judgment and prevailing at trial. But, there were substantial uncertainties and risks that faced the Class. For example, there was the possibility that further discovery would not prove beneficial, for example if the documents obtained from the Minnesota Attorney General's review already identified the best documents.

36. Moreover, even if the motion to dismiss were denied and the Court agreed that the Complaint sufficiently alleged a plausible inference of scienter, Lead Plaintiff faced significant risks and uncertainties in proving it. Defendants asserted that Lead Plaintiff could not establish that the Individual Defendants were aware of the alleged fraudulent activity or the Company's predatory business practices. Defendants noted that when Accretive settled with the Minnesota Attorney General, the Company did not admit fault.

37. Even if liability were established in part, Lead Plaintiff faced further risk and uncertainty regarding proof of loss causation and damages. Defendants may have challenged the length of the Class Period and argued that scienter could not be shown for the earliest statements in the Class Period. Defendants likely would have attempted to retain experts to challenge some or all of the corrective disclosures and argued that the stock price was caused, in whole or in part, by non-fraud related factors. The outcome of these challenges is uncertain and there is a risk that the Class

Period could be shortened and damages could have been reduced, perhaps significantly, through further litigation.

38. In sum, Lead Plaintiff faced numerous obstacles in proving both liability and damages and there was no certainty, given Defendants' asserted defenses, that Lead Plaintiff and the Class would prevail on either and no certainty that if they did, the recovery would exceed the settlement. Additionally, Defendants would inevitably appeal any substantial verdict and damages award. The entire litigation process could span several years, delaying any recovery by Class Members for several years and increasing the risk that an intervening change in the law or other unforeseeable changed circumstances could reduce or eliminate a recovery. An appeal of a verdict would also carry the risk of reversal, resulting in either no recovery or significant further delayed recovery for the Class.

39. As a result of these risks and the delays associated with continued litigation and eventually proceeding to trial, there was a risk that the Class' recovery would be no better or worse than the settlement and delayed by several years. Obtaining a better result was thus speculative at best. Therefore, Lead Counsel believes that the Settlement is in the best interest of the Class Members.

B. Possible Range of Recovery

40. Accretive's available insurance and ability to pay were factors considered by Lead Plaintiff and Lead Counsel in determining the reasonableness of the settlement. Indeed, had the case continued in litigation for several years, as many securities class actions do, the expenses of litigation would have consumed a significant amount of the available insurance. In addition, Class members' recovery would be subject to unforeseeable financial changes for the Company and Individual Defendants which could reduce their ability to pay a judgment exceeding available insurance.

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41. There was substantial uncertainty regarding the provable damages. Defendants indicated they would vigorously contest damages in this case. Had the case continued, loss causation and damages issues would have evolved into a proverbial "battle of the experts," and the outcome of further litigation is unpredictable and uncertain. For these additional reasons, achieving a substantial settlement at this stage of the litigation was a meaningful achievement that avoids the considerable expense, delay, and risk of further litigation.

C. Reaction of the Class

42. Pursuant to the Court's Order Preliminarily Approving Settlement and Providing for Notice, the Notice and Proof of Notice was mailed to over 34,200 potential Class Members beginning on October 14, 2013. *See* Declaration of Carole K. Sylvester Re A) Mailing of the Notice of Pendency and Proposed Settlement of Class Action and the Proof of Claim and Release Form, B) Publication of the Summary Notice, and C) Internet Posting ("Sylvester Decl."), ¶10, submitted herewith. The Notice apprised the Class Members of their right to, and procedure for, objecting to the Settlement, the Plan of Distribution, or to Lead Counsel's application for attorneys' fees and expenses. The time to file objections will expire on December 27, 2013. At the time of the filing of this declaration, I have been informed that no objections have been raised to any aspect of the Settlement, the Plan of Distribution, or Lead Counsel's request for attorneys' fees and expenses and that no Requests for Exclusions have been received.

D. Stage of Proceedings

43. At the time of Settlement, the Settling Parties had sufficient information to evaluate the strengths and weaknesses of their respective cases. Lead Plaintiff conducted an intensive investigation of its claims and prepared a detailed Complaint. The various government investigations into Accretive, including investigation by the Minnesota Attorney General, Minnesota

Department of Health, and the U.S. Senate Committee assisted Lead Plaintiff in evaluating its position.

44. In sum, Lead Counsel strongly endorses the Settlement. In light of the potential risks of establishing liability and damages, Lead Counsel and Lead Plaintiff respectfully submit that the Settlement represents an extremely favorable result for the Class under the circumstances. It provides Class Members with a substantial cash benefit now, rather than a potential recovery after several more years of continued litigation – and the possibility of no recovery at all. It is rare to obtain such a significant settlement prior to a ruling on a motion to dismiss.

E. Mailing and Publication of Notice of Settlement

45. The Court's Order Preliminarily Approving Settlement and Providing for Notice was entered on October 4, 2013. Dkt. No. 69. It directed Gilardi & Co. LLC ("Claims Administrator") to cause the mailing of the Notice and the Proof of Claim and Release Form by First-Class Mail to all Class Members identifiable with reasonable efforts, no later than October 14, 2013. Pursuant to the Order, and under Robbins Geller's supervisions, the Claims Administrator mailed 34,252 copies of the Notice and Proof of Claim to all potential Class Members. *See* Sylvester Decl., ¶10.

46. The Order also directed the Claims Administrator to cause the Summary Notice to be published once in a national edition of *Investor's Business Daily* and once over the *Business Wire* no later than October 24, 2013. Pursuant to the Order, the Claims Administrator caused the publication of the Summary Notice in *Investor's Business Daily* and over the *Business Wire* on October 22, 2013 and October 23, 2013, respectively. *See* Sylvester Decl., ¶13.

V. THE PLAN OF DISTRIBUTION

47. Upon approval by the Court, the Plan of Distribution governs the method by which the Net Settlement Fund will be distributed to Class Members who submit valid, timely Proof of Claim and Release Forms ("Authorized Claimants"). The Plan of Distribution was fully described in

the Notice distributed to the Class Members, and provides for a distribution to those Authorized Claimants who have a net loss arising out of transactions involving Accretive common stock purchased or acquired during the Class Period. No distributions will be made to Authorized Claimants who would otherwise receive a distribution of less than $10.00.

48. For purposes of determining the amount an Authorized Claimant may recover under the Plan of Distribution, Lead Counsel has consulted with their damages consultant. The Plan of Distribution does not reflect an assessment of the damages that could have been recovered at trial or Lead Counsel's assessment of the likelihood of establishing liability.

49. To the extent there are sufficient funds in the Net Settlement Fund, each Authorized Claimant will receive an amount equal to the Authorized Claimant's claim, as defined below. If, however, and as is more likely, the amount in the Net Settlement Fund is not sufficient to permit payment of the total claim of each Authorized Claimant, then each Authorized Claimant shall be paid the percentage of the Net Settlement Fund that each Authorized Claimant's claim bears to the total of the claims of all Authorized Claimants. Payment in this manner shall be deemed conclusive against all Authorized Claimants.

50. The total of all profits shall be subtracted from the total of all losses from transactions involving Accretive common stock purchased or acquired during the Class Period to determine if a Class Member has a claim. Only if a Class Member had a net loss from the Accretive common stock purchased or acquired during the Class Period, will such Class Member be eligible to receive a distribution from the Net Settlement Fund.

51. Specifically, the Plan of Distribution provides for the calculation of claims as follows:

1. For shares of Accretive common stock purchased or otherwise acquired on or between November 10, 2010 through April 26, 2012, inclusive, the claim per share shall be as follows:

(a) If sold on or between November 10, 2010 through April 26, 2012, inclusive, the claim per share shall be the lesser of (i) the inflation in Table A at the time of purchase less the inflation in Table A at the time of sale; and (ii) the difference between the purchase price and the selling price.

(b) If retained at the end of April 26, 2012 and sold before July 25, 2012, the claim per share shall be the least of (i) the inflation in Table A at the time of purchase; (ii) the difference between the purchase price and the selling price; and (iii) the difference between the purchase price per share and the average closing price per share up to the date of sale as set forth in Table B below.

(c) If retained at the close of trading on July 24, 2012, or sold thereafter, the claim per share shall be the lesser of (i) the inflation in Table A at the time of purchase; and (ii) the difference between the purchase price per share and $10.91 per share.

2. For shares of Accretive common stock purchased or otherwise acquired on April 27, 2012, the claim per share shall be zero.

TABLE A

Time Period	**Inflation**
November 10, 2010 – March 28, 2012	$13.37
March 29, 2012 – April 24, 2012	$8.91
April 25, 2012 – April 26, 2012	$1.17

TABLE B

Date	Closing Price	Average Closing Price
27-Apr-12	$9.33	$9.33
30-Apr-12	$10.06	$9.70
1-May-12	$9.18	$9.52
2-May-12	$8.71	$9.32
3-May-12	$8.46	$9.15
4-May-12	$8.57	$9.05
7-May-12	$8.65	$8.99
8-May-12	$8.85	$8.98
9-May-12	$10.54	$9.15
10-May-12	$10.53	$9.29
11-May-12	$10.86	$9.43
14-May-12	$11.40	$9.60
15-May-12	$11.83	$9.77
16-May-12	$12.56	$9.97
17-May-12	$11.86	$10.09
18-May-12	$11.37	$10.17
21-May-12	$11.83	$10.27
22-May-12	$11.41	$10.33
23-May-12	$11.42	$10.39
24-May-12	$11.30	$10.44
25-May-12	$11.24	$10.47
29-May-12	$11.84	$10.54
30-May-12	$11.13	$10.56
31-May-12	$11.76	$10.61
1-Jun-12	$11.10	$10.63
4-Jun-12	$10.89	$10.64
5-Jun-12	$11.11	$10.66
6-Jun-12	$11.51	$10.69
7-Jun-12	$10.97	$10.70
8-Jun-12	$11.18	$10.72
11-Jun-12	$10.73	$10.72
12-Jun-12	$10.76	$10.72
13-Jun-12	$10.82	$10.72
14-Jun-12	$10.50	$10.71
15-Jun-12	$11.06	$10.72
18-Jun-12	$12.00	$10.76
19-Jun-12	$12.22	$10.80
20-Jun-12	$12.37	$10.84
21-Jun-12	$11.84	$10.87
22-Jun-12	$11.92	$10.89
25-Jun-12	$11.16	$10.90

Date	Closing Price	Average Closing Price
26-Jun-12	$10.85	$10.90
27-Jun-12	$10.69	$10.89
28-Jun-12	$10.69	$10.89
29-Jun-12	$10.96	$10.89
2-Jul-12	$11.43	$10.90
3-Jul-12	$11.24	$10.91
5-Jul-12	$11.29	$10.92
6-Jul-12	$10.88	$10.92
9-Jul-12	$11.11	$10.92
10-Jul-12	$10.73	$10.92
11-Jul-12	$10.96	$10.92
12-Jul-12	$10.98	$10.92
13-Jul-12	$10.85	$10.92
16-Jul-12	$10.62	$10.91
17-Jul-12	$10.79	$10.91
18-Jul-12	$11.27	$10.92
19-Jul-12	$11.15	$10.92
20-Jul-12	$11.16	$10.92
23-Jul-12	$11.02	$10.93
24-Jul-12	$10.38	$10.92
25-Jul-12	$10.61	$10.91

VI. LEAD COUNSEL'S ATTORNEYS' FEES AND EXPENSES

52. Lead Counsel respectfully requests that the Court award 30% of the $14,000,000 settlement for attorneys' fees. Robbins Geller believes a $4.2 million fee in this Action is reasonable and appropriate in light of the resources the firm expended in prosecuting the case, and the inherent risk of nonpayment from representing the Class in this case on a contingent basis. Lead Counsel further requests payment of $63,911.14 in expenses and charges incurred by Lead Counsel. To date, there have been no objections to these requests. The legal authorities supporting the requested fees and expenses are set forth in Lead Counsel's separate Fee Memorandum.

A. Time, Labor and Fee Percentage Requested

53. Lead Counsel has devoted a significant amount of time and resources in the research, investigation, and prosecution of this Action. Submitted herewith is the Declaration of James E.

Barz Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Motion for Award of Attorneys' Fees and Expenses ("Robbins Geller Declaration"). Included with the Robbins Geller Declaration is a schedule that summarizes the lodestar of the firm, as well as expenses incurred by category after having been reviewed and reduced in the exercise of billing judgment. In particular, the Robbins Geller Declaration, and the fee and expense schedules contained within, indicate the amount of time spent on this case by each attorney and professional support staff employed by Lead Counsel, and the lodestar calculations based on their current billing rates. The declaration was prepared from contemporaneous daily time records regularly prepared and maintained by Robbins Geller. The hourly rates for attorneys and professional support staff included in this schedule are the same as the regular current rates Robbins Geller would charge for their services in non-contingent matters or that have been submitted to or approved by other Courts.

54. Lead Counsel has expended more than 1,850 hours in the investigation, prosecution and resolution of the Action against Defendants, for a collective lodestar value of $890,114.25.

55. Robbins Geller has significant experience in representing investors in securities fraud cases and the undersigned is an experienced trial lawyer with numerous jury trials in this District. Lead Counsel's representation of the Class in this case required considerable briefing on the motion to dismiss and oral argument by the undersigned. Lead Counsel's substantial experience and advocacy were required in presenting oral argument concerning the strength of the case during mediation in an effort to achieve the best possible settlement and convince Defendants, their insurers, defense counsel, and the mediator of the risks they faced from not settling, even prior to a ruling on the motion to dismiss.

56. The fee request is based upon a percentage of the recovery after discussion with and approval by Lead Plaintiff. Holden Decl., ¶¶4-5. The fee request is similar to other requests

approved by judges in this District, as set forth in the memorandum in support of approval of attorneys' fees.

B. The Risk, Magnitude, and Complexity of the Litigation

57. As detailed above, the Action involved complex issues of law and fact that presented considerable risk to Lead Plaintiff's case. This case involved litigating complex violations of §§10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder. Thus, when Lead Counsel undertook this representation there was no assurance that the Action would survive a motion to dismiss, a motion for summary judgment, trial and/or any appeals and therefore no assurance Lead Counsel would recover any payment for its services.

58. Lead Counsel accepted the representation on a contingent basis in a securities fraud class action wherein, even if a recovery was obtained, any payment for Lead Counsel's services was likely to be delayed for several years. These cases present formidable challenges as there are numerous decisions ruling in favor of Defendants at each stage of litigation. The motion to dismiss raised complex and challenging arguments that required experience and considerable effort to respond to in opposing Defendants' motion to dismiss. Further preparation was required for oral argument on the motion. Although the case settled prior to the motion to dismiss, an early recovery was unlikely at the outset of this litigation as these cases rarely settle prior to a motion to dismiss and typically require several years of litigation. If the case had not settled, Lead Counsel was fully prepared to litigate this case through the complex stages of fact discovery, expert discovery, class certification, summary judgment, trial and appeal. Each of those stages of litigation poses considerable challenges and expense in securities fraud class actions. Proving fraud, analyzing and proving loss causation and damages requires substantial expertise and effort. In addition to the legal complexities, this litigation did require and had it continued would have continue to require, review of complex business transactions and contracts.

C. Quality of the Representation

59. Lead Counsel worked diligently to obtain an excellent result for the Class. From the outset, Lead Counsel employed considerable resources and spent considerable time researching and investigating facts to support a pleading that could survive a motion to dismiss and position the litigation for class certification. Theories of damages were complex and Lead Counsel devoted extensive time and analysis working to formulate a class-wide method of calculating damages.

60. The recovery obtained for the Class is the direct result of the significant efforts of highly-skilled and specialized attorneys who possess substantial experience in the prosecution of complex securities class actions. Lead Counsel are among the most experienced securities class action attorneys in the country. The Settlement represents a substantial recovery for the Class, one that is attributable to the diligence, determination, hard work, and reputation of Lead Counsel.

61. The quality of opposing counsel is also important in evaluating the quality of Lead Counsel's work. Defendants were represented by experienced and highly skilled lawyers from Kirkland & Ellis LLP, a well-respected defense firm. Defense counsel has a reputation for vigorous advocacy in the defense of complex securities cases such as this. The ability of Lead Counsel to obtain a favorable settlement in the face of such quality opposition confirms the excellence of Lead Counsel's representation.

62. When Lead Counsel undertook to represent Lead Plaintiff and the Class, it was with the expectation that we would have to devote a significant amount of time and effort in its prosecution, and advance large sums in out-of-pocket expenses on experts, case related travel, mediation, and discovery. The time spent by Lead Counsel on this case was at the expense of the time that they could have devoted to other matters. Lead Counsel undertook this case solely on a contingent fee basis, assuming a substantial risk that the case would yield no recovery and leave us uncompensated. Unlike counsel for Defendants, who are paid an hourly rate and reimbursed for

their expenses on a regular basis, Lead Counsel has not been compensated for any time or expenses since this case began. When Lead Counsel undertook to represent Lead Plaintiff and the Class in this matter, it was with the knowledge that we would spend many hours of hard work against some of the best defense lawyers in the United States with no assurance of ever obtaining any compensation for our efforts. The only way we would be compensated was to achieve a successful result.

63. As discussed above, the Settlement is an excellent result for the Class in light of the risk and obstacles to recovery presented in this case, and the difficulty in establishing liability and damages at trial if Lead Plaintiff would have ultimately been successful in certifying a class and prevailed at the summary judgment stage. Instead of facing additional years of uncertain, costly and time-consuming litigation, the Settlement will provide Class Members a benefit now without the risk of no recovery if the Action were to continue.

VII. THE REQUESTED EXPENSES ARE FAIR AND REASONABLE

64. Lead Counsel also requests payment of expenses incurred in connection with the prosecution and resolution of this Action, in the total amount of $63,911.14. Robbins Geller has submitted a declaration, which states that the expenses are (i) reflected in the books and records maintained by the firm; and (ii) accurately recorded in their declaration. *See* Robbins Geller Declaration.

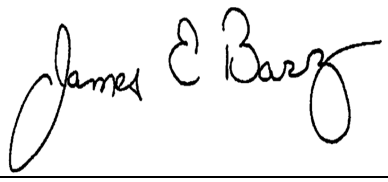
65. Lead Counsel submits that the expenses are reasonable and were necessary for the successful prosecution of this Action. Lead Counsel was aware that they may not recover any of these expenses unless and until this Action was successfully resolved against Defendants. Accordingly, Robbins Geller took steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of Lead Plaintiff's claims.

66. Lead Counsel's expenses reflect routine and typical expenditures incurred in the course of litigation, such as the costs of legal research (*i.e.*, Westlaw and Lexis fees), travel, document duplication, consultants, investigators, and expedited mail delivery, for example. These expenses are reasonable and were necessary for the successful prosecution of the litigation.

VIII. CONCLUSION

67. In light of the significant recovery to the Class and the substantial risks of this Action, as described above and in the accompanying memoranda in support of the settlement and fees and expenses, Lead Counsel respectfully submits that the Settlement and Plan of Distribution should be approved as fair and reasonable. In addition, as a result of the recovery obtained in the face of substantial risks, including the contingent nature of the fees and the complexity of the case, Lead Counsel respectfully submits that the Court should award a fee in the amount of 30% of the Settlement Amount plus $63,911.14 in expenses, plus the interest earned thereon at the same rate and for the same period as that earned on the Settlement Amount until paid.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 13th day of December, 2013, at Chicago, Illinois.



JAMES E. BARZ

CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2013, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on December 13, 2013.

s/ Ellen Gusikoff Stewart
ELLEN GUSIKOFF STEWART

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Mailing Information for a Case 1:12-cv-03102

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Manual Notice List

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

- (No manual recipients)

EXHIBIT 29

2014 WL 7717579
Only the Westlaw citation is currently available.
United States District Court, N.D. Illinois, Eastern Division.

Linda WONG, Individually and on Behalf of All Others Similarly Situated, Plaintiff,
v.
ACCRETIVE HEALTH, INC., et al., Defendants.

No. 1:12–cv–03102
|
Signed April 30, 2014

Attorneys and Law Firms

James E. Barz, Robbins Geller Rudman & Dowd LLP, Chicago, IL, for Plaintiff.

Adam T. Humann, Andrew B. Clubok, Kristin Sheffield–Whitehead, Kirkland & Ellis LLP, New York, NY, Leonid Feller, Kirkland & Ellis LLP, Chicago, IL, for Defendants.

CLASS ACTION

ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

SHARON JOHNSON COLEMAN, UNITED STATES DISTRICT JUDGE

***1** THIS MATTER having come before the Court on the motion of Lead Plaintiff for an award of attorneys' fees and expenses; the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of the 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 Settlement Agreement dated September 19, 2013 (the "Stipulation").

2. The 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. Pursuant to and in full compliance with Rule 23 of the Federal Rules of Civil Procedure, the Court finds and concludes that due and adequate notice of Lead Plaintiff's motion for an award of attorneys' fees and expenses was directed to all Persons and entities who are Class Members, including individual notice to those who could be identified with reasonable effort, advising them of the application for fees and expenses and of their right to object thereto, and a full and fair opportunity was accorded to all Persons and entities who are members of the Class to be heard with respect to the motion for fees and expenses.

4. The Court hereby awards Lead Counsel attorneys' fees of 30% of the Settlement Fund and expenses of $63,911.14, 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. Said fees shall be allocated among Lead Plaintiff's counsel by Lead Counsel in a manner which, in their good-faith judgment, reflects each counsel's contribution to the institution, prosecution, and resolution of the Litigation. The Court finds that the amount of fees awarded is fair and reasonable under the "percentage-of recovery" method considering, among other things that:

(a) the requested fee is consistent with percentage fees negotiated *ex ante* in the private market for legal services;

(b) the contingent nature of the Action favors a fee award of 30%;

(c) the Settlement Fund of $14 million was not likely at the outset of the Action;

(d) the awarded fee is in accord with Seventh Circuit authority and consistent with empirical data regarding fee awards in cases of this size;

(e) the quality legal services provided by Lead Counsel produced the settlement;

(f) the Lead Plaintiff appointed by the Court to represent the Class reviewed and approved the requested fee;

(g) the stakes of the litigation favor the fee awarded; and

(h) the reaction of the Class to the fee request supports the fee awarded.

5. The awarded attorneys' fees and expenses, and interest earned thereon, shall be paid to Lead Counsel from the Settlement Fund immediately after the date this Order is executed subject to the terms, conditions, and obligations of the Stipulation, which terms, conditions, and obligations are incorporated herein.

***2** 6. The Court has considered the objection filed by James Hayes, and finds it to be without merit. The objection is therefore overruled in its entirety.

IT IS SO ORDERED.

All Citations

Not Reported in Fed. Supp., 2014 WL 7717579

EXHIBIT 30

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LINDA WONG, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. ACCRETIVE HEALTH, INC., et al., Defendants.	No. 12 C 3102 April 30, 2014 Chicago, Illinois 1:40 p.m. Fairness Hearing

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE SHARON JOHNSON COLEMAN

APPEARANCES:

For the Plaintiff:
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BY: MR. JAMES E. BARZ

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BY: MR. LEONID FELLER

TRACEY DANA McCULLOUGH, CSR, RPR
Official Court Reporter
219 South Dearborn Street
Room 1426
Chicago, Illinois 60604
(312) 435-5570

THE CLERK: 12 C 3102, Wong versus Accretive Health.

MR. BARZ: Good afternoon, Your Honor. Jim Barz on behalf of the plaintiffs.

MS. STEWART: Good afternoon, Your Honor. Ellen Gusikoff Stewart on behalf of the plaintiffs.

MR. FELLER: And good afternoon, Your Honor. Leonid Feller on behalf of Accretive Health and the individual defendants.

THE COURT: All right. Thank you for your patience. I had my other important parties that I had to deal with. And we are here on a fairness hearing. The Court has had an opportunity to review the proposed judgment and the attendant documents and order. Anything else to present to the Court on this issue? And is there an objector here? I understand there was an objection.

MS. STEWART: Your Honor, thank you. We're happy to stand on our papers. And there was an objector, and I just want to update the Court and let the Court know that we have asked that the Court overrule that objection. And ask certainly that the Court rule with respect to his objection to the plan of allocation and to the fee, that the Court find that Mr. Hayes has no standing. We have now confirmed with the claims administrator that Mr. Hayes never submitted a claim form in this matter, and so he has no injury. He has no interest in either of the plan of allocation or the fee. He

does have standing obviously as a class member to object to the settlement.

But for the reasons that we have stated in our reply brief and the defendants stated in their brief, that objection ought to be overruled on the merits. But we would ask that the Court find that with respect to the plan of allocation and to the extent he objects to the fee, that the Court find he has no standing.

THE COURT: And unless I hear different and considering Mr. Hayes isn't here, the Court will grant that motion.

MS. STEWART: Thank you, Your Honor.

THE COURT: All right. And based on the Court's review of the papers unless there's something else to present to Court, the Court will --

MR. BARZ: One more thing, Your Honor. There is a split of authority in this district about legal research, Lexis and Westlaw.

THE COURT: As to the payments.

MR. BARZ: So some judges have allowed it as a recoverable fee. Other judges, for example, in a case that this firm, our firm handled and myself personally before Judge St. Eve and Motorola, she said that those sort of go into your legal fees and they're not separately recoverable. So we wanted to bring that to your attention. We've asked for a fee

recovery -- oh, separate from fees, but the expenses. We've asked for 30 percent of a fee. We have asked for expenses of $63,911.14. Within that is a category that we call legal research and financial research. We think financial research is recoverable. It's separate, but we just put them lumped together, and that was $3,448.40. So some Courts have approved it.

THE COURT: Do you have what it would be separately?

MR. BARZ: If you take it out -- yes. The Lexis fee is $2,034.83. And the financial research I'm told is $1,167.61. Combined those are $3,448.40, which is set out in my declaration as an exhibit.

THE COURT: All right. Thank you for --

MR. BARZ: And we've got -- I just filed -- I just did a settlement last week before Judge Darrah. And I noted that. And in that approval we -- do we have a copy of that?

MS. STEWART: That order hasn't been signed.

MR. BARZ: No, but the final.

MS. STEWART: Oh. I have a copy of the fee brief, but I don't have a copy --

MR. BARZ: Okay. So you'll see, Your Honor, I'm one of the counsel in that case with some other counsel. And this was actually -- so this is the Ross versus Career Education case, and it's case 12 C 276, and it's document No. 119. And I'm going to tender up a copy to the Court to supplement our

filings in this case with this split of authority. And you'll see it's footnote 8 on page 14 of that brief where we sort of lay out the split of authority.

THE COURT: All right.

MR. BARZ: If I could tender a copy of that to Your Honor.

(Document tendered.)

THE COURT: All right. No objection to the Court receiving it?

MR. FELLER: No objection.

THE COURT: All right.

MR. BARZ: And so we don't have any further argument on it, Your Honor. You know, whatever Your Honor decides, we'll live with. We just wanted to highlight that issue for the Court.

THE COURT: And what I want to do is I haven't had for a little while any attorney's fees. I want to make sure I'm consistent. I think I'm pretty sure about what I've done, but I want to make sure that I am consistent. All right. And so I'll make the ruling when I enter the orders later. Other than that, the orders will be entered.

MS. STEWART: Okay.

MR. BARZ: Okay. Great. But when you say as to the fees, you're talking about the 30 percent we've suggested or the expenses?

THE COURT: No. No. As to the split in authority as to the computerized computer research versus the financial research.

MR. BARZ: Excellent.

THE COURT: All right. Anything else?

MR. FELLER: No, Your Honor.

MR. BARZ: No.

MS. STEWART: Thank you, Your Honor.

THE COURT: I'll enter the orders this afternoon. Thank you very much.

MR. BARZ: And is the motion for the fees, the 30 percent is that granted, Your Honor?

THE COURT: That's granted.

MR. BARZ: Thank you, Your Honor.

THE COURT: All right. Thank you very much.

MR. BARZ: You have a great afternoon.

THE COURT: You too.

CERTIFICATE

I HEREBY CERTIFY that the foregoing is a true, correct and complete transcript of the proceedings had at the hearing of the aforementioned cause on the day and date hereof.

/s/TRACEY D. McCULLOUGH *May 3, 2014*

Official Court Reporter Date
United States District Court
Northern District of Illinois
Eastern Division