UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CITY OF WESTLAND POLICE AND FIRE RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. METLIFE INC., et al., Defendants.	Civil Action No. 1:12-cv-00256-LAK CLASS ACTION MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF SETTLEMENT, APPROVAL OF PLAN OF ALLOCATION, AND FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AN AWARD TO LEAD PLAINTIFF

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

Page

Page

Page

Page

Page

Page

STATUTES, RULES AND REGULATIONS

SECONDARY AUTHORITIES

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Lead Plaintiff Central States, Southeast and Southwest Areas Pension Fund ("Central States" or "Lead Plaintiff") respectfully submits this memorandum of law in support of its motion for approval of: (1) the $84,000,000 all-cash Settlement; (2) the proposed Plan of Allocation; (3) Lead Counsel's application for an award of attorneys' fees and expenses; and (4) Lead Plaintiff's application for an award pursuant to 15 U.S.C. §77z-1(a)(4) or 15 U.S.C. §78u-4(a)(4).[1]

I. INTRODUCTION

In accordance with the terms of the Stipulation and on behalf of all Defendants, defendant MetLife, Inc. ("MetLife" or the "Company") has caused the payment of $84,000,000 in cash into an interest-bearing escrow account maintained on behalf of the Classes. This proposed Settlement is the result of over eight years of contentious litigation and represents an exceptional recovery achieved in the face of significant risk. The Settlement recovers approximately 32% of Lead Plaintiff's estimated recoverable damages. It is a credit to the Lead Plaintiff and Lead Counsel's vigorous, persistent and creative efforts, and the result of arm's-length settlement negotiations over the course of several years, assisted by one of the country's premier mediators.

While securities class actions pose numerous risks, Lead Plaintiff here was faced with dispositive motions for summary judgment in which Defendants challenged the factual and legal elements of Lead Plaintiff's claims. Defendants, for example, consistently challenged whether they made any materially false or misleading statements. Defendants also asserted due diligence, loss causation and negative causation defenses backed by expert testimony. They similarly moved to

[1] Unless otherwise noted, all capitalized terms used herein are defined in the June 8, 2020 Stipulation of Settlement ("Stipulation"). ECF No. 403.

exclude Lead Plaintiff's experts. Even if Lead Plaintiff had overcome Defendants' summary judgment and *Daubert* motions, it faced the risks of trial and, if successful, an appeal.

Even obtaining discovery was challenging, as Defendants took a narrow view of the case and aggressively objected to Lead Plaintiff's discovery requests in many instances, requiring extensive negotiation efforts. Lead Counsel nevertheless was able to secure, review and analyze over 837,000 pages of documents and participated in over a dozen depositions as it completed fact and expert discovery and successfully obtained class certification. Lead Counsel's diligence paid off as it achieved an $84 million all-cash Settlement, all without the uncertainties of continued litigation and trial.

Further confirming the fairness, reasonableness and adequacy of the Settlement, which is fully supported by the Lead Plaintiff,[2] is the fact that, to date, Class Members appear to agree. Pursuant to the Order Regarding Proposed Settlement Pursuant to Fed. R. Civ. P. 23(e)(1) and Permitting Notice to the Classes ("Notice Order") (ECF No. 406), over 434,700 copies of the Notice were sent to potential Class Members and nominees, and notice was published once in the national edition of *The Wall Street Journal* and once over *Business Wire*. *See* Murray Decl., ¶¶13-14.[3] To date, Lead Plaintiff is not aware of a single objection to any aspect of the Settlement. Lead Counsel, which has substantial experience prosecuting securities class actions, believes that the Settlement is fair, reasonable, and adequate and in the best interests of the Classes. *See* accompanying Declaration of Shawn A. Williams in Support of (1) Final Approval of Settlement; (2) Approval of Plan of Allocation; and (3) an Award of Attorneys' Fees

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[2] *See* Declaration of Charles Lee in Support of Lead Plaintiff and Class Representative Central States, Southeast and Southwest Areas Pension Fund's Motion for Final Approval of Settlement and Award of Attorneys' Fees and Expenses ("Lee Decl."), submitted herewith.

[3] *See* Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date ("Murray Decl."), dated January 28, 2021, submitted herewith.

and Expenses and an Award to Lead Plaintiff ("Williams Declaration" or "Williams Decl."). Accordingly, Lead Plaintiff respectfully requests that the Court grant final approval of the Settlement.

Lead Plaintiff also requests that the Court approve the proposed Plan of Allocation, which was set forth in the Notice sent to Class Members. The Plan of Allocation governs how claims will be calculated and how Settlement proceeds will be distributed among Authorized Claimants. It was prepared in consultation with Lead Plaintiff's damages expert, Dr. Steven P. Feinstein, and is based on both the Securities Act of 1933 claims and the Securities Exchange Act of 1934 claims asserted in the case. The Plan of Allocation aims to equitably distribute the Net Settlement Fund among Members of the Classes based on the timing of purchases and sales of MetLife securities. It is fair, reasonable, and adequate, and should be approved.

Lead Counsel also respectfully applies for an award of attorneys' fees in the amount of twenty-five percent of the Settlement Amount and litigation expenses of $1,856,169.03, plus interest on both amounts. Lead Counsel's fee request, approved by Lead Plaintiff,[4] is within the range of fees awarded in class actions in this District and across the country. It is also reasonable when viewed against the outstanding result achieved here, the time Lead Counsel devoted to the Litigation, and the many risks Lead Counsel faced and overcame during the more than eight years this case was pending. Additional factors supporting the reasonableness of the requested fee include Lead Counsel's diligence in prosecuting and resolving this Litigation over the course of eight-plus years, as well as Lead Counsel's acceptance of this case on a contingency basis on behalf of the Classes.

Finally, Lead Plaintiff applies for an award of $10,880, for its time incurred in prosecuting this Litigation on behalf of the Classes. *See* Lee Decl., ¶9.

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[4] Lee Decl., ¶7.

II. PROCEDURAL AND FACTUAL BACKGROUND

This Litigation alleges violations of §§11, 12(a)(2) and 15 of the Securities Act of 1933 ("Securities Act") and §§10(b) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act") against MetLife and certain Individual Defendants and underwriters relating to the offering materials used to conduct the Offerings and for allegedly false and misleading statements thereafter.[5] Lead Plaintiff alleged that Defendants made untrue statements of material fact and omitted to disclose material information which Defendants were required to disclose in the offering materials for the Offerings and during the 1934 Act Class Period.

For the sake of brevity, the Court is respectfully referred to the accompanying Williams Declaration for a full discussion of, among other things: (1) the factual background and lengthy procedural history of the Litigation; (2) the efforts of Lead Counsel; and (3) the negotiations leading to this Settlement.

III. THE NOTICE OF PROPOSED SETTLEMENT SATISFIES RULE 23 AND DUE PROCESS REQUIREMENTS AND IS REASONABLE

Rule 23(c)(2) requires the "'best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.'" *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974) (class notice designed to fulfill due process requirements).[6] The standard for measuring the adequacy of a class action settlement notice is reasonableness. *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 114 (2d Cir. 2005). "There 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

[5] "Offerings" means MetLife's August 3, 2010 common stock offering at $42.00 per share and MetLife's March 4, 2011 common stock offering at $43.25 per share.

[6] Citations are omitted and emphasis is added throughout, unless otherwise indicated.

proposed settlement and of the options that are open to them in connection with the proceedings.'" *Id*. "Notice is 'adequate if it may be understood by the average class member.'" *Id*.

Here, in accordance with the Notice Order, the Claims Administrator has caused the Notice and Proof of Claim to be mailed to potential Class Members and nominees. *See* Murray Decl., ¶¶4-13. As of January 28, 2021, over 434,700 copies of the Notice have been mailed to potential Class Members and nominees. *Id.*, ¶13. The Court-approved Notice contains a description of the claims asserted, the Settlement, the Plan of Allocation, and Class Members' rights to participate in and object to the Settlement or the fees and expenses that Lead Counsel intend to request. In addition, on December 14, 2020, the Summary Notice was published once over a national newswire service and in *The Wall Street Journal*. *Id.*, ¶14. Information regarding the Settlement, including downloadable copies of the Notice and Proof of Claim, was also posted on a website devoted solely to the administration of the Settlement: www.MetLifeSecuritiesLitigation.com. *Id.*, ¶16.

The Court-approved notice program, which included a Notice and Proof of Claim individually mailed to all potential Class Members and nominees who could be identified with reasonable effort and a Summary Notice published in a preeminent business publication and over the internet, contained all of the information required by §21D(a)(7) of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), and is adequate to meet the due process and Rules 23(c)(2) and (e) requirements for providing notice to the Classes.

IV. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

A. Settlements Are Generally Favored and Encouraged

The court may approve a "class action settlement if it is 'fair, adequate, and reasonable, and not a product of collusion.'" *Wal-Mart*, 396 F.3d at 116. The evaluation of a proposed settlement requires the court to consider "both the settlement's terms and the negotiating process leading to

settlement." *Id*. While the decision to grant or deny approval lies within a court's broad discretion, a general policy favoring settlement exists, especially for class actions. *Id*. (noting "'strong judicial policy in favor of settlements, particularly in the class action context'"). Recognizing that a settlement represents an exercise of judgment by the negotiating parties, the Second Circuit has cautioned that while a court should not give "rubber stamp approval" to a proposed settlement, it should "stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case." *Detroit v. Grinnell Corp.*, 495 F.2d 448, 462 (2d Cir. 1974).

B. The Settlement Is Presumptively Fair

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*, 396 F.3d at 116. Great weight is accorded to the recommendations of counsel, who are most closely acquainted with the litigation. *See In re Luxottica Grp. S.p.A. Sec. Litig.*, 233 F.R.D. 306, 315 (E.D.N.Y. 2006). A court may find the negotiating process is fair where, as here, "the settlement resulted from 'arm's-length negotiations'" and plaintiffs' counsel "'possessed the experience and ability, and have engaged in the discovery, necessary to effective representation of the class's interests.'" *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001).

This initial presumption of fairness and adequacy applies in this case because the Settlement was reached by experienced, fully-informed counsel after substantial arm's-length negotiations with the assistance of the Hon. Layn R. Phillips, a former federal judge and nationally-recognized mediator of complex cases. Williams Decl., ¶¶14, 102-106. *See In re Delphi Corp. Sec., Derivative & ERISA Litig.*, 248 F.R.D. 483, 498 (E.D. Mich. 2008) ("[T]he Court and the parties have had the added benefit of the insight and considerable talents of a former federal judge who is one of the most prominent and highly skilled mediators of complex actions."). The parties held three in-person

mediation sessions with Judge Phillips between March 2017 and September 2019. Williams Decl., ¶¶102-106. Judge Phillips continued to work with the parties until he issued a "Mediator's Proposal" in March 2020. *See* Declaration of Layn R. Phillips in Support of Final Approval of Class Action Settlement ("Phillips Decl."), ¶¶6-15, submitted herewith. As detailed in the Williams Declaration, Lead Counsel was fully informed of the merits and weaknesses by the time the Settlement was reached. Lead Counsel had opposed numerous motions to dismiss, completed fact discovery and expert discovery, reviewing and analyzing over 837,000 pages of documents produced by Defendants and certain non-parties, propounding and responding to interrogatories and participating in over a dozen depositions. Williams Decl., ¶¶22-70. Lead Counsel achieved class certification and had moved for partial summary judgment, opposed Defendants' summary judgment, briefed cross-motions to exclude expert testimony, and had prepared a joint pretrial order with Defendants. *Id*., ¶¶71-101. The accumulation of information resulting from discovery, extensive motion practice and consultation with experts informed Lead Plaintiff and its counsel about the strengths and weaknesses of the case and enabled them to engage in effective settlement discussions designed to maximize any recovery. Thus, the Settlement is entitled to the presumption of procedural fairness in this Circuit.

C. The Settlement Meets All Requirements for Approval

As explained below, the nine factors set forth by the Second Circuit in *Grinnell*, 495 F.2d at 463, which include the following, overwhelmingly favor final approval of the Settlement:

(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.

Id. Additionally, as explained below, the following factors set forth in amendments to Rule 23(e), effective December 1, 2018, some of which overlap with the *Grinnell* factors, support final approval of the Settlement:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3);[7] and

(D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

1. The Settlement Satisfies the Requirements for Final Approval

a. The Complexity, Expense and Duration of the Litigation Justify the Settlement

Without the Settlement, the anticipated complexity, cost, and duration of the Litigation would be considerable. *See In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 175 (S.D.N.Y. 2014) ("the complexity, expense, and likely duration of litigation are critical factors in evaluating the

[7] There are no agreements between the parties other than the Stipulation of Settlement.

reasonableness of a settlement"); *In re Gilat Satellite Networks, Ltd.*, No. CV-02-1510 (CPS)(SMG), 2007 WL 2743675, at *10 (E.D.N.Y. Sept. 18, 2007) (same). This case, which took eight years to resolve, involves complex issues under the Securities Act and the Exchange Act, including whether MetLife misrepresented the adequacy of its Incurred But Not Reported ("INBR") reserves to meet policy obligations, thereby overstating reported income and understating reported expenses, and whether it adequately disclosed ongoing regulatory investigations into MetLife's abandoned property practices.[8] *See, e.g.*, Williams Decl., ¶4. Accordingly, fact discovery was extensive. At the time the Settlement was reached, over 837,000 pages had been produced by Defendants and non-parties (*id.*, ¶7(c)), 12 fact depositions had been taken (*id.*, ¶7(f)), and Lead Counsel had retained five experts and other consultants, in addition to their in-house accounting experts, to evaluate MetLife's reserve practices, disclosures, compliance with GAAP, and related nuanced accounting issues, as well as the issues of materiality, causation, and damages. *Id.*, ¶¶78-92.

In the absence of the Settlement, and assuming Lead Plaintiff prevailed against the pending summary judgment motions and motions to exclude its experts, proceeding through trial and appeals would require substantial expenditures of time and resources – from the parties and the Court – and pose significant risks to recovery. This would potentially add several years of delay before the Classes could enjoy the benefit of a verdict, if any, obtained in their favor. *In re Sony SXRD Rear Projection TV Class Action Litig.*, No. 06 Civ. 5173(RPP), 2008 WL 1956267, at *6 (S.D.N.Y. May 1, 2008) ("Not only would Plaintiffs spend substantial sums in litigating this case through trial and appeals, it could be years before class members saw any recovery, if at all."); *Strougo ex rel. Brazilian Equity Fund, Inc. v. Bassini*, 258 F. Supp. 2d 254, 261 (S.D.N.Y. 2003) (same).

[8] Lead Plaintiff further alleged that the Underwriter Defendants failed to conduct adequate due diligence with respect to the Offerings, and permitted materially false and misleading offering materials to be filed with the SEC and disseminated to the public.

Importantly, there is no guarantee that the outcome would favor the Classes. *See In re IMAX Sec. Litig.*, 283 F.R.D. 178, 189 (S.D.N.Y. 2012) (noting securities class action litigation is "'notably difficult and notoriously uncertain'"). The Settlement avoids all of these risks.

b. The Reaction of the Classes to the Settlement

The reaction of the class to a proposed settlement "is considered perhaps 'the most significant factor to be weighed in considering its adequacy.'" *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115809, at *7 (S.D.N.Y. Nov. 7, 2007) ("*Veeco I*"). In fact, the "'absence of objections may itself be taken as evidencing the fairness of a settlement.'" *City of Providence v. Aeropostale, Inc.*, No. 11 Civ. 7132 (CM)(GWG), 2014 WL 1883494, at *5 (S.D.N.Y. May 9, 2014) (citing *In re PaineWebber Ltd., P'ships Litig.*, 171 F.R.D. 104, 126 (S.D.N.Y. 1997), *aff'd*, 117 F.3d 721 (2nd Cir. 1997)), *aff'd sub nom.*, *Arbuthnot v. Pierson*, 607 F. App'x 73 (2d Cir. 2015). Over 434,700 copies of the Notice, which describes the nature of the Litigation and the terms of the Settlement, were distributed to potential Class Members and nominees. Murray Decl., ¶13. To date, no objections to the Settlement have been received. The Court-ordered deadline for objections is February 26, 2021. Any objections received by that date will be addressed in Lead Plaintiff's reply brief, due on April 3, 2021.

c. The Stage of the Proceedings and Discovery Completed

A court will also consider "'whether the [plaintiffs] had adequate information about their claims such that their counsel can intelligently evaluate the merits of [their] claims, the strengths of the defenses asserted by defendants, and the value of plaintiffs' causes of action for purposes of settlement.'" *In re Bear Stearns Cos., Inc. Sec., Derivative, and ERISA Litig.*, 909 F. Supp. 2d 259, 267 (S.D.N.Y. 2012) (quoting *IMAX*, 283 F.R.D. at 190). "To satisfy this factor, [the] parties need not have even engaged in formal or extensive discovery." *In re Hi-Crush Partners L.P. Sec. Litig.*, No. 12-Civ-8557 (CM), 2014 WL 7323417, at *7 (S.D.N.Y. Dec. 19, 2014) (noting discovery

cannot begin in cases brought under the PSLRA until the motion to dismiss is denied) (citing *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 363 (S.D.N.Y. 2002)).

In this case, there is no question that Lead Plaintiff had sufficient information to make an informed decision on the propriety of the Settlement. As detailed in the Williams Declaration, Lead Plaintiff and Lead Counsel negotiated the Settlement with Defendants after an extensive factual investigation, the drafting of four amended complaints, numerous rounds of briefing on motions to dismiss, class certification, the completion of fact and expert discovery, including document productions, reviews and analysis and the taking or defending of fact and expert depositions, retaining experts and consultants, briefing on cross-motions for summary judgment and to exclude experts, preparation of a joint pretrial order, and participating in three mediation sessions with a highly-respected mediator. Williams Decl., ¶7.

Accordingly, Lead Plaintiff and its counsel "developed a comprehensive understanding of the key legal and factual issues in the [L]itigation and, at the time the Settlement was reached, had 'a clear view of the strengths and weaknesses of their case' and of the range of possible outcomes at trial." *Aeropostale*, 2014 WL 1883494, at *7 (quoting *Teachers' Ret. Sys. of La. v. A.C.L.N., Ltd.*, No. 01-CV-11814 (MP), 2004 WL 1087261, at *3 (S.D.N.Y. May 14, 2004)).

d. The Risks of Establishing Liability

In evaluating the Settlement, the Court will balance the benefits to the Classes, including the immediacy and certainty of a recovery, against the continued risks of litigation. *See Grinnell*, 495 F.2d at 463; *Veeco I*, 2007 WL 4115809, at *8. While Lead Plaintiff strongly believes in its claims, it recognizes that success is not assured, and further believes that this $84 million Settlement, when viewed against the risks of proving liability, is fair, adequate, and reasonable. Indeed, despite the strength of this case, Lead Plaintiff faced numerous hurdles to establishing liability, given that it

shouldered the burden to prove the existence of a material misstatement or omission and overcome Defendants' loss causation and negative causation arguments, and the Underwriter Defendants' due diligence defense. *See* Williams Decl., ¶¶88-89, 109-111.

Defendants maintained throughout the Litigation, including in their summary judgment motions, that they were not liable for any allegedly untrue statements or omissions of material fact. For instance, Defendants argued that GAAP did not require MetLife to establish INBR reserves for claims that are never reported and for which no payment was expected. *See* Williams Decl., ¶94. They also argued that MetLife did not implicitly represent the sufficiency of its INBR reserves. *Id.* Similarly, they maintained that the alleged misrepresentations and omission central to the Litigation were primarily statements of opinion subject to the standards articulated by the Supreme Court in *Omnicare* and Lead Plaintiff would not prove any actionable omissions were anything more than reasonable opinions on matters of high complexity (insurance reserves) for which they disclosed all the materially known facts. Williams Decl., ¶¶108, 111.

Lead Plaintiff would also have to overcome Defendants' "negative causation" arguments afforded to them under §15 U.S.C. 77k(e), *i.e.*, that Defendants' alleged untrue statements or omissions did not cause economic loss. In their summary judgment motions, Defendants argued that there was no statistically significant stock price decline following any corrective disclosure, and no recoverable damages under §11(e)'s statutory formula because the share price decline from the public offerings to the low price of the relevant period occurred prior to the October 6, 2011 disclosure, and included no statistically significant declines related to the alleged misrepresentations. Williams Decl., ¶¶95-96, 109-110. The issues of loss causation would have been hotly contested at trial, with the substantial risk of recovering limited or no damages if the jury sided with the defense.

By the time the parties agreed on the proposed Settlement, Lead Counsel understood that certain of these defenses might resonate with the Court or jurors. While Lead Plaintiff remained confident in its ability to prove its claims and counter any defense, the risk of losing at summary judgment, trial, or on appeal, when weighed against the immediate and substantial benefits of the $84,000,000 Settlement, supports a finding that the Settlement is fair, reasonable, and adequate.

e. The Risks of Establishing Damages

Lead Plaintiff also faced substantial risk in proving damages. *See Hi-Crush*, 2014 WL 7323417, at *9 (discussing difficulty of proving damages in securities cases and the "real risk of no recovery"). Proof of damages is a complex matter requiring expert testimony. Defendants argued that because the Court shortened the class period for Lead Plaintiff's Exchange Act claims, and because the MetLife Defendants could establish a lack of statistically significant price declines, damages were either zero or much lower than Lead Plaintiff has estimated. Williams Decl., ¶¶95-96, 109-110. At trial, Defendants would have challenged Lead Plaintiff's expert's methodology for calculating damages, just as they did at class certification and summary judgment. *Id*., ¶¶109-112. Accordingly, Lead Plaintiff would have faced a "battle of the experts" – a battle in which no party is ever assured to prevail.[9] While Lead Counsel believes its expert was convincing and would have prevailed on this issue, the outcome at later stages or trial was uncertain. A jury could award nothing or far less in damages than Lead Plaintiff recovered in the Settlement – a risk that also favors final approval.

[9] *See, e.g.*, *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 744-45 (S.D.N.Y. 1985) ("In this 'battle of experts,' it is virtually impossible to predict with any certainty which testimony would be credited, and ultimately, which damages would be found to have been caused by actionable, rather than the myriad nonactionable factors such as general market conditions."), *aff'd*, 798 F.2d 35 (2d Cir. 1986).

f. The Risks of Maintaining the Class through Trial

Although the Classes were certified, the Court could have revisited certification at any time. *See Chatelain v. Prudential-Bache Sec., Inc.*, 805 F. Supp. 209, 214 (S.D.N.Y. 1992) ("Even if certified, the class would face the risk of decertification."). The Settlement eliminates any uncertainty regarding this issue.

g. Defendants' Ability to Withstand a Greater Judgment

The ability of a defendant to pay a judgment greater than the amount offered in a settlement may be relevant to a settlement's fairness. *Grinnell*, 495 F.2d at 463. But "the fact that a defendant is able to pay more than it offers in settlement does not, standing alone, indicate that the settlement is unreasonable or inadequate." *PaineWebber*, 171 F.R.D. at 129; *see also IMAX*, 283 F.R.D. at 191 ("'[A] defendant is not required to "empty its coffers" before a settlement can be found adequate.'"). Here, MetLife undoubtedly could endure a larger judgment, but all other factors favor final approval.

h. The Reasonableness of the Settlement in Light of the Best Possible Recovery and the Risks of Litigation

The last two *Grinnell* factors are also satisfied here. The adequacy of the amount offered in settlement must be judged "not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case." *In re Agent Orange Prod. Liab. Litig.*, 597 F. Supp. 740, 762 (E.D.N.Y. 1984), *aff'd*, 818 F.2d 145 (2d Cir. 1987). The Settlement need only fall within a "'range of reasonableness.'" *PaineWebber*, 171 F.R.D. at 130; *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972) ("[I]n any case there is a range of reasonableness with respect to a settlement."); *In re Michael Milken & Assocs. Sec. Litig.*, 150 F.R.D. 57, 66 (S.D.N.Y. 1993) (observing that reasonableness of a settlement "is not susceptible of a mathematical equation yielding a particularized sum") (citing *Newman*, 464 F.2d at 693). In addition, the Court should consider that the Settlement provides for payment to the Classes now, rather than a speculative

payment many years later. *See In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, No. MDL 1500, 2006 WL 903236, at *13 (S.D.N.Y. Apr. 6, 2006) (where settlement fund is in escrow, "the benefit of the Settlement will . . . be realized far earlier than a hypothetical post-trial recovery"). This case has already been pending for more than eight years. Continued litigation would take years until conclusion, with no guarantee of recovery.

The $84 million Settlement represents an exceptional recovery of approximately 32% of the reasonably recoverable damages. Williams Decl., ¶¶ 8, 123. This is many multiples of the median ratio of settlement to investor losses of 1.7% for securities class action settlements in 2020. *See* Janeen McIntosh and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2020 Full-Year Review* (NERA Jan. 25, 2021) at 20, Figure 16 (Ex. A).[10] Moreover, the Settlement eliminates the numerous risks involved in litigation – especially those inherent in securities class action cases. In light of the legal and factual issues typically present in these cases, the unpredictable outcome of a lengthy and complex trial, and the appellate process that would most likely follow, the fairness of this substantial settlement is readily apparent.

In sum, the *Grinnell* factors, individually and collectively, weigh strongly in favor of the Court's approval of the Settlement.

2. The Settlement Meets the Additional Requirements of Amended Rule 23(e)(2)

a. Lead Plaintiff and Lead Counsel Have Adequately Represented the Classes[11]

As explained above and throughout the Williams Declaration, during the over eight-year course of this Litigation, Lead Plaintiff and Lead Counsel have assiduously represented the Classes'

[10] All unreported authorities are attached hereto as Exhibits A-G.

[11] This factor overlaps with the third *Grinnell* factor.

interests. Lead Plaintiff provided substantial assistance to Lead Counsel throughout the Litigation, keeping itself informed of developments over the course of the Litigation, as well as litigation strategy, discovery, class certification, and any potential resolution. *See* Lee Decl., ¶¶5, 6. Specifically, Lead Plaintiff reviewed the complaints and other significant pleadings filed in the case. Lead Plaintiff also searched for and produced responsive documents and interrogatory responses and provided deposition testimony. *Id.*, ¶5. Lead Plaintiff also discussed settlement proposals. *Id.* This factor favors final approval.

b. The Settlement Was Negotiated at Arm's Length

The Settlement was negotiated at arm's length with the assistance of Judge Phillips, a highly-respected mediator known for resolving complex securities litigation. *See* Williams Decl., ¶¶14, 102-105; Phillips Decl., ¶¶6-15. The mediation process included three in-person mediations, which proved unsuccessful, and numerous follow-up discussions with Judge Phillips, and provides compelling evidence that the Settlement is not the product of collusion between the parties. *See Dover v. British Airways, PLC (UK)*, No. 12 CV 5567 (RJD) (CLP), 2018 U.S. Dist. LEXIS 174513, at *10-*11 (E.D.N.Y. Oct. 9, 2018) (the parties' participation in mediation is evidence of arm's-length negotiations); *N.J. Carpenters Health Fund v. Royal Bank of Scot. Grp., PLC*, No. 08 Civ. 5310 (DAB), 2019 U.S. Dist. LEXIS 39807, at *6, *13-*14 (S.D.N.Y. Mar. 8, 2019) (same). Indeed, the fact that the parties could not reach a settlement at the three mediations, itself, is evidence that there was no collusion. *In re Elan Sec. Litig.*, 385 F. Supp. 2d 363, 367, 369 (S.D.N.Y. 2005) (finding "the Court has no reason to question that the Settlement was the product of extended 'arm's length' negotiations" after reaching a settlement after conclusion of the mediation session). This factor is thus satisfied.

c. The Relief Provided for the Classes Is Adequate, Taking into Account the Costs, Risks and Delays of Litigation

This factor, which overlaps with the first, fourth, fifth, and sixth *Grinnell* factors, views the benefit of the Settlement in the context of the costs, risks, and delays associated with continued litigation. As shown above, compared to the many risks of continued litigation, the Settlement provides for an immediate cash recovery of $84,000,000 to the Classes, representing approximately 32% of reasonably recoverable damages – a benefit that provides very real value to the Classes.

d. The Proposed Method of Distributing the Settlement to Class Members Is Fair and Reasonable

The proposed method of distributing Settlement proceeds to Class Members is set forth in the Plan of Allocation, which is addressed below. For the reasons stated therein, the Plan of Allocation is fair and reasonable, and treats Class Members equitably.

e. The Settlement Is Adequate, Taking into Account Lead Counsel's Request for Attorneys' Fees

As explained below, Lead Counsel's request for an award of attorneys' fees and expenses meets all the factors set forth in *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000), other decisions in this District, and other decisions throughout the country.

V. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE AND SHOULD BE APPROVED

If the Court approves the proposed Settlement, upon completion of the claims administration process, the Net Settlement Fund will be distributed to Authorized Claimants according to the Plan of Allocation set forth in the Notice. "[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 apportionment is fair and reasonable in light of that information." *PaineWebber*, 171 F.R.D. at 133. The opinion of experienced and informed counsel carries considerable weight. *In re Am. Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 430 (S.D.N.Y. 2001). Thus, an allocation formula need only have a

reasonable basis, particularly if recommended by experienced class counsel. *Id*. at 429-30. Courts enjoy "broad supervisory powers over the administration of class-action settlements to allocate the proceeds among . . . class members . . . equitably." *Beecher v. Able*, 575 F.2d 1010, 1016 (2d Cir. 1978).

Here, the Plan of Allocation was formulated by Lead Counsel and Lead Plaintiff's economics and damages expert, Dr. Feinstein. The Plan of Allocation calculates each Class Member's recognized loss based on when the MetLife stock was purchased or otherwise acquired and in what amounts, whether they were sold, and, if so, when they were sold and for what amounts. Williams Decl., ¶¶118-119.

Under the Plan of Allocation, each Authorized Claimant will receive a *pro rata* share of the Net Settlement Fund, with that share determined by the ratio that the Authorized Claimant's allowed claim bears to the total allowed claims of all Authorized Claimants. Accordingly, the Plan of Allocation is fair, reasonable, and adequate to the Classes as a whole and treats Class Members equitably, warranting approval. No objections to the Plan of Allocation have been filed with the Court or received by counsel.

VI. AWARD OF ATTORNEYS' FEES

A. Lead Counsel Is Entitled to an Award of Attorneys' Fees from the $84 Million Common Fund Created in the Settlement

"[A] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *accord Goldberger*, 209 F.3d at 47; *Fresno Cty. Emps.' Ret. Ass'n v. Isaacson/Weaver Family Trust*, 925 F.3d 63, 68 (2d Cir. 2019). Courts recognize that awards of attorneys' fees from a common fund "encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes," and discourage misconduct of a similar nature.

In re Telik, Inc. Sec. Litig., 576 F. Supp. 2d 570, 585 (S.D.N.Y. 2008); *accord In re Veeco Instruments, Inc. Sec. Litig.*, No. 05 MDL 01696(CM) 2007 WL 4115808, at *2 (S.D.N.Y. Nov. 7, 2007) ("*Veeco II*"). Indeed, the Supreme Court has emphasized that private securities actions are "an essential supplement to criminal prosecutions and civil enforcement actions" brought by the SEC. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007). Courts in this Circuit have consistently adhered to this precedent. *See In re Interpublic Sec. Litig.*, No. 02Civ.6527 (DLC), 2004 WL 2397190, at *10 (S.D.N.Y. Oct. 26, 2004) ("It is well established that where an attorney creates a common fund from which members of a class are compensated for a common injury, the attorneys who created the fund are entitled to 'a reasonable fee – set by the court – to be taken from the fund.'"); *Fresno Cty.*, 925 F.3d at 68. Fairly compensating plaintiffs' counsel for the risks they take in bringing these actions is essential because "[s]uch actions could not be sustained if plaintiffs' counsel were not to receive remuneration from the settlement fund for their efforts on behalf of the class." *Hicks v. Stanley*, No. 01 Civ. 10071(RJH), 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005).

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

Lead Counsel respectfully submits that the Court should award a fee based on a percentage of the common fund created. Courts routinely find that the percentage of the fee method, under which counsel is awarded a percentage of the fund they created, is the preferred means to determine a fee because it "'directly aligns the interests of the class and its counsel.'" *Wal-Mart*, 396 F.3d at 121; *see also Hayes v. Harmony Gold Mining Co., Ltd.*, 509 F. App'x 21, 24 (2d Cir. 2013) ("[T]he prospect of a percentage fee award from a common settlement fund, as here, aligns the interests of class counsel with those of the class."). The percentage approach also recognizes that the quality of

counsel's work is measured best by the results achieved and is most consistent with the system typically used in the marketplace to compensate attorneys in non-class contingency cases.[12]

The Supreme Court has indicated that attorneys' fees in common-fund cases generally should be based on a percentage of the fund. *See Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) (noting "a reasonable fee is based on a percentage of the fund bestowed on the class"). The Second Circuit has expressly approved the percentage method, recognizing that "the lodestar method proved vexing" and had resulted in "an inevitable waste of judicial resources." *Goldberger*, 209 F.3d at 48-50 (holding that the percentage-of-the-fund or lodestar method may be used); *see also Savoie v. Merchs. Bank*, 166 F.3d 456, 460 (2d Cir. 1999) ("percentage-of-the-fund method has been deemed a solution to certain problems that may arise when the lodestar method is used"). The Second Circuit also has acknowledged that the "trend in this Circuit is toward the percentage method." *Wal-Mart*, 396 F.3d at 121; *accord Davis*, 827 F. Supp. 2d at 183-85; *In re Comverse Tech., Inc. Sec. Litig.*, No. 06-CV-1825 (NGG) (RER), 2010 WL 2653354, at *2 (E.D.N.Y. June 24, 2010). All Courts of Appeal to consider the matter have approved of the percentage method, with two circuits ***requiring*** its use in common-fund cases.[13]

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[12] *See, e.g.*, *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 991 F. Supp. 2d 437, 440 (E.D.N.Y. 2014) ("The percentage method better aligns the incentives of plaintiffs' counsel with those of the class members because it bases the attorneys' fees on the results they achieve for their clients, rather than on the number of motions they file, documents they review, or hours they work . . . . The percentage method also accords with the overwhelming prevalence of contingency fees in the market for plaintiffs' counsel."); *Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172, 184 (W.D.N.Y. 2011) (The "advantages of the percentage method . . . are that it provides an incentive to attorneys to resolve the case efficiently and to create the largest common fund out of which payments to the class can be made, and that it is consistent with the system typically used by individual clients to compensate their attorneys.").

[13] *See In re Thirteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 305-07 (1st Cir. 1995); *In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006); *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 642-43 (5th Cir. 2012); *Rawlings v. Prudential-Bache Props., Inc.*, 9 F.3d 513, 515-17 (6th Cir. 1993); *Harman v. Lyphomed, Inc.*, 945

The PSLRA also supports use of the percentage-of-the-fund method, as it provides that "[t]otal attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a ***reasonable percentage*** of the amount" recovered for the class. 15 U.S.C. §77z-1(a)(6). Several courts have concluded that Congress, in using this language, expressed a preference for the percentage method when determining attorneys' fees in securities class actions. *See, e.g.*, *Telik*, 576 F. Supp. 2d at 586; *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 355 (S.D.N.Y. 2005); *Maley*, 186 F. Supp. 2d at 370.

C. The Requested Attorneys' Fees Are Reasonable Under the Percentage-of-the-Fund Method

The Supreme Court has recognized that an appropriate court-awarded fee is intended to approximate what counsel would receive if they were offering their services in the marketplace. *See Missouri v. Jenkins*, 491 U.S. 274, 285-86 (1989). An "'ideal proxy' for the award should reflect the fees upon which common fund plaintiffs negotiating in an efficient market for legal services would agree." *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 352 (S.D.N.Y. July 8, 2014). If this were a non-representative action, the customary fee arrangement would be contingent, on a percentage basis, and in the range of one-third of the recovery. *See Blum*, 465 U.S. at 903 ("In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers.") (Brennan, J., concurring).

Lead Counsel's efforts have resulted in an $84 million settlement. This recovery of over 32% of recoverable damages, is an outstanding result in a pre-trial settlement in a major PSLRA

F.2d 969, 975 (7th Cir. 1991); *Petrovic v. AMOCO Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *Gottlieb v. Barry*, 43 F.3d 474, 483 (10th Cir. 1994); *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1269-71 (D.C. Cir. 1993). The Eleventh and District of Columbia Circuits have required the use of the percentage method in common fund cases. *See Camden*, 946 F.2d at 774; *Swedish Hosp.*, 1 F.3d at 1271.

case. The percentage of the Settlement Fund that Lead Counsel requests it be paid is fair and reasonable in light of the substantial benefit Lead Counsel's work has conferred on the Classes.

Here, the Court does not need an "ideal proxy" for what counsel would receive if it was bargaining for its services in the marketplace because Lead Plaintiff supports the requested fee percentage. *See* Lee Decl., ¶7. The requested fee is well within the range of fees awarded by other courts within the Second Circuit in securities cases and other complex class actions. *See, e.g.*, *Christine Asia Co. v. Ma*, 1:15-md-02631(CM)(SDA), 2019 U.S. Dist. LEXIS 179836, at *62 (S.D.N.Y. Oct. 16, 2019) (awarded 25% of $250 million settlement); *In re J.P. Morgan Stable Value Fund ERISA Litig.*, No. 12-CV-2548 (VSB), 2019 WL 4734396, at *6 (S.D.N.Y. Sept. 23, 2019) (awarding one-third of $75 million recovery); *In re U.S. Foodservice Inc. Pricing Litig.*, No. 3:07-md-1894 (AWT), 2014 WL 12862264, at *3 (D. Conn. Dec. 9, 2014) (awarding one-third of $99 million recovery); *Landmen Partners Inc. v. Blackstone Grp., L.P.*, No. 08-cv-03601-HB-FM, 2013 WL 11330936, at *3 (S.D.N.Y. Dec. 18, 2013) (awarding 33.33% of $85 million recovery, plus expenses); *In re CIT Grp. Inc. Sec. Litig.*, No. 1:08-cv-06613-BSJ-THK, slip op. at 1 (S.D.N.Y. June 13, 2012) (awarded 26.5% of $75 million recovery, plus expenses) (Ex. B); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (awarding 33.33% of $586 million recovery); *In re Buspirone Antitrust Litig.*, No. MDL 1413 (JGK), 2003 U.S. Dist. LEXIS 26538, at *11 (S.D.N.Y. Apr. 17, 2003) (awarding 33.33% of $220 million recovery); *Maley*, 186 F. Supp. 2d at 370 ("Courts in this Circuit have awarded fees ranging from 15% to 50% of the settlement fund.").

D. A Lodestar Cross-Check Strongly Confirms the Reasonableness of the Fee Request

To ensure the reasonableness of a fee awarded under the percentage-of-the-fund method, the Second Circuit permits courts to "cross-check" the proposed award against counsel's lodestar. *See Goldberger*, 209 F.3d at 50. "Under the lodestar method, the court must engage in a two-step

analysis: first, to determine the lodestar, the court multiplies the number of hours each attorney spent on the case by each attorney's reasonable hourly rate; and second, the court adjusts that lodestar figure (by applying a multiplier) to reflect such factors as the risk and contingent nature of the litigation, the result obtained, and the quality of the attorney's work." *Aeropostale*, 2014 WL 1883494, at *13. Performing the lodestar calculation here confirms that the fee requested by Lead Counsel is reasonable and should be approved. *See also In re Flag Telecom Holdings Inc. Sec. Litig.*, No. 02-CV-03400(CM)(PED), 2010 WL 4537550, at *26 (S.D.N.Y. Nov. 8, 2010) ("'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.'"); *Comverse*, 2010 WL 2653354, at *5 ("Where . . . counsel has litigated a complex case under a contingency fee arrangement, they are entitled to a fee in excess of the lodestar.").

Accordingly, in complex contingent litigation, lodestar multipliers of between 2 and 5 are commonly awarded. *See Wal-Mart*, 396 F.3d at 123 (upholding multiplier of 3.5); *Christine Asia*, 2019 U.S. Dist. LEXIS 179836, at *66-*67 (awarding fee representing a 2.15 multiplier, which court found to be "well within the range commonly awarded in securities class actions of this complexity and magnitude"); *In re BHP Billiton Ltd. Sec. Litig.*, No. 1:16-cv-01445-NRB, slip op. at 1, 3 (S.D.N.Y. Apr. 10, 2019) (awarding fee representing 2.7 multiplier) (Ex. C); *Woburn Ret. Sys. v. Salix Pharms., Ltd.*, No. 14-CV-8925 (KMW), 2017 WL 3579892, at *6 (S.D.N.Y. Aug. 18, 2017) (3.14 multiplier was "within the range of reasonable . . . multipliers approved in this Circuit"); *NECA-IBEW Health & Welfare Fund v. Goldman, Sachs & Co.*, No. 1:08-cv-10783-LAP, 2016 WL 3369534, at *1 (S.D.N.Y. May 2, 2016) (3.9 multiplier on $272 million settlement); *Davis*, 827 F. Supp. 2d at 185 (multiplier of 5.3 was "not atypical" in similar cases); *Cornwell v. Credit Suisse*

Grp., No. 1:08-cv-03758 (VM), slip op. at 4 (S.D.N.Y. July 20, 2011) (4.7 multiplier) (Ex. D); *Comverse*, 2010 WL 2653354, at *5 (2.78 multiplier); *Telik*, 576 F. Supp. 2d at 590 ("In contingent litigation, lodestar multiples of over 4 are routinely awarded by courts, including this Court."); *In re Bisys Sec. Litig.*, No. 04 Civ. 3840 (JSR), 2007 WL 2049726, at *3 (S.D.N.Y. July 16, 2007) (awarding 30% fee representing 2.99 multiplier, which "f[ell] well within the parameters set in this district and elsewhere"); *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 135 (D.N.J. 2002) (4.3 multiplier appropriate in light of contingency risk and quality of result); *Maley*, 186 F. Supp. 2d at 369 (4.65 multiplier was "well within the range awarded by courts in this Circuit" and elsewhere).

This contingent action was litigated for over eight years and the recovery is roughly 32% of reasonably recoverable class-wide damages. Lead Counsel devoted 20,443 hours of attorney and staff time in prosecuting this Litigation, and its lodestar – derived by multiplying the hours each person worked by their current hourly rates – is $11,558,816. *See* Declaration of Shawn A. Williams Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Robbins Geller Decl."), Ex. A.[14] The requested fee represents a slight multiplier of 1.82.[15] Thus, the multiplier here is well below the range of multipliers in cases of this type and fully supports the requested fee.

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[14] Lead Counsel's hourly rates are reasonable and have recently been judicially approved. *See* Hr'g Tr. at 160:22-24, *In re Am. Realty Cap. Props., Inc. Litig.*, No. 15-MC-40 (AKH) (S.D.N.Y. Jan. 23, 2020) (ECF No. 1313) ("I find your lodestar reasonable, the rates appropriate and, in relationship to the work that you did, reasonable") (Ex. E); Hr'g Tr. at 25:12-16, *Kaess v. Deutsche Bank AG*, No. 09-cv-01714 (GHW)(RWL) (S.D.N.Y. June 11, 2020) ("I find that these billable rates [for Robbins Geller] based on the timekeeper's title, specific years of experience, and market rates for similar professionals in their fields . . . to be reasonable in this context.") (Ex. F).

[15] The Supreme Court and courts in this Circuit have long approved the use of current hourly rates to calculate lodestar as a means of compensating for the delay in receiving payment that is inherent in class actions, inflationary losses, and the loss of access to legal and monetary capital that could otherwise have been employed had class counsel been paid on a current basis during the pendency of

A. The *Goldberg* Factors Confirm That the Requested Fee Is Fair and Reasonable

Whether determined on the percentage-of-the fund method or the lodestar method, the Second Circuit has repeatedly held that the appropriate criteria to consider when reviewing a request for attorneys' fees in a common-fund case include 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. These factors, addressed below, support approval of the requested fee.

1. The Time and Labor Expended by Lead Counsel Support the Requested Fee

In the over eight years since this case was filed, Lead Counsel dedicated a substantial amount of time and resources to prosecuting Lead Plaintiff's claims.

As detailed in the Williams Declaration, Lead Counsel, among other things:

> (i) amended the complaint to address shortcomings identified by the Court in its motion to dismiss opinions and opposed four rounds of motions to dismiss those complaints;
>
> (ii) aggressively pursued discovery, including the review and analysis of more than 837,000 pages of documents produced by Defendants and third parties;
>
> (iii) obtained certification of the 1933 Act Class, defeating Defendants' challenge to Lead Plaintiff and Article III standing;
>
> (iv) secured an order certifying the 1934 Act Class pursuant to Fed. R. Civ. P. 23;
>
> (v) took 12 fact depositions, designated three experts, exchanged expert reports, conducted an expert deposition, defended two expert depositions and moved to exclude each of the three experts Defendants designated;
>
> (vi) moved for partial summary judgment for claims brought under the 1933 Act, defended against the MetLife Defendants' and the Underwriter

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the litigation. *See In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.*, 724 F. Supp. 160, 163 (S.D.N.Y. 1989); *Veeco, II*, 2007 WL 4115808, at *9; *Jenkins*, 491 U.S. at 284.

> Defendants' respective motions for summary judgment and motions to exclude Lead Plaintiff's experts;
>
> (vii) filed a proposed joint pretrial order with witness and exhibit lists, evidentiary objections and trial stipulations, and began substantial preparation for trial; and
>
> (viii) prepared for and participated in three in-person mediation sessions with Judge Phillips.

See generally Williams Decl.

Throughout the Litigation, Lead Counsel devoted a significant amount of time and resources to vigorously litigating this action and developing a compelling factual record, but staffed the matter efficiently to avoid unnecessary duplication of effort. Specifically, Lead Counsel spent 20,443 hours prosecuting this case. *See* Robbins Geller Decl., Ex. A. This time and effort confirm that the fee requested here is reasonable. Moreover, additional hours and resources will be expended by Lead Counsel assisting Class Members with the administration process. *See Aponte v. Comprehensive Health Mgmt., Inc.*, No. 10 Civ. 4825 (JLC), 2013 WL 1364147, at *6 (S.D.N.Y. Apr. 2, 2013).

2. The Magnitude and Complexity of the Litigation Support the Requested Fee

As mentioned above, courts have long recognized that securities class actions are "'notably difficult and notoriously uncertain.'" *Flag Telecom*, 2010 WL 4537550, at *27 (quoting *In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 281 (S.D.N.Y. 1999)). This Litigation was no exception. It raised many complex accounting and disclosure issues.

In addition, Defendants raised compelling arguments in connection with the elements of falsity, causation, and damages. Defendants consistently argued that their alleged untrue statements and omissions were complete, accurate and truthful, that they had no duty to disclose further details about INBR, which was the subject of those statements and omissions. *E.g.*, Williams Decl., ¶¶5,

108.[16] With respect to causation and damages, Defendants have challenged the impact their alleged untrue statements and omissions had on the price of MetLife common stock, including by using their expert's report to argue negative causation. These and other issues required substantial effort by Lead Counsel, often through analysis of the factual record and consultation with experts.

Accordingly, the magnitude and complexity of this Litigation support the conclusion that the requested fee is fair and reasonable.

3. The Risks of the Litigation Support the Requested Fee

The risk undertaken in the litigation is often considered the most important *Goldberger* factor. *See, e.g.*, *Comverse*, 2010 WL 2653354, at *5; *Telik*, 576 F. Supp. 2d at 592. The Second Circuit has recognized that the risk associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee award:

> "No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended."

Grinnell, 495 F.2d at 470. When considering the reasonableness of attorneys' fees in a contingency action, the Court should consider the risks of the litigation at the time the suit was brought. *See Goldberger*, 209 F.3d at 54-55; *Parker v. Time Warner Ent. Co., L.P.*, 631 F. Supp. 2d 242, 276 (E.D.N.Y. 2009) (the court should consider "'the contingent nature of the expected compensation'" and the "'risk of non-payment viewed as of the time of the filing of the suit'"), *aff'd sub. nom., Lobur v. Parker*, 378 F. App'x 63 (2d Cir. 2010).

[16] Likewise, the Underwriter Defendants raised a due diligence defense to Lead Plaintiff's allegations (Williams Decl., ¶88), which, if accepted by the Court or the jury, would completely absolve them from liability.

Lead Counsel undertook this case on a wholly contingent basis, recognizing that the Litigation could last for years and would require them to devote substantial attorney time and significant expenses with no guarantee of compensation. *See* Williams Decl., ¶126. Although the case was brought to a successful conclusion (after more than eight years), this was far from guaranteed at the outset – or indeed, through much of the Litigation. "There are numerous class actions in which counsel expended thousands of hours and yet received no remuneration whatsoever despite their diligence and expertise." *Veeco II*, 2007 WL 4115808, at *6. Lead Counsel's assumption of this contingency-fee risk strongly supports the reasonableness of the requested fee. *See Flag Telecom*, 2010 WL 4537550, at *27 ("the risk associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee award"); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 148 (S.D.N.Y. 2010) ("There was significant risk of non-payment in this case, and Plaintiffs' Counsel should be rewarded for having borne and successfully overcome that risk.").

As discussed in the Williams Declaration (¶¶107-111) and above (at 11-13), there were substantial risks here with respect to the ability to prove at trial that Defendants had made material untrue statements and omissions and to overcome Defendants' arguments at trial that their alleged untrue statements and omissions did not cause Lead Plaintiff's losses. Lead Plaintiff faced the risk that the jury would side with Defendants on these issues.

Lead Counsel firmly believes that Lead Plaintiff's claims were meritorious. However, Defendants were represented by highly capable attorneys and the risk of a defense verdict was significant. Lead Counsel's willingness to assume that risk with a significant commitment of time and money demonstrates that this *Goldberger* factor weighs heavily in favor of the requested fee.

4. The Quality of Representation Supports the Requested Fee

The quality of the representation is another important factor that supports the reasonableness of the requested fee. The quality of the representation here is best evidenced by the quality of the result achieved. *See Goldberger*, 209 F.3d at 55. As a result of their skill and substantial experience in the specialized field of shareholder securities litigation (*see* Lead Counsel's firm resume, attached to the Robbins Geller Decl. as Ex. G) and its substantial litigation efforts here, Lead Counsel developed a strong factual record over the course of more than eight years of litigation. That record was critical to negotiating the Settlement. The quality of Lead Counsel's efforts in the Litigation to date, its ability to marshal the necessary resources, and its commitment to the Litigation, enabled Lead Counsel to recover the $84,000,000 for Class Members, a recovery of approximately 32% of the reasonably recoverable class-wide damages.

Finally, courts repeatedly recognize that the quality of opposing counsel should be taken into account in assessing the quality of plaintiffs' counsel's performance. *See, e.g.*, *Marsh*, 265 F.R.D. at 148 ("The high quality of defense counsel opposing Plaintiffs' efforts further proves the caliber of representation that was necessary to achieve the Settlement."). Here, Defendants are represented by Debevoise & Plimpton and DLA Piper LLP, two highly respected law firms, and the defense attorneys brought to bear substantial experience in securities litigation and tenacity in representing their clients. Despite this formidable opposition, Lead Counsel presented a strong case and demonstrated a commitment to vigorously prosecuting this Litigation, which ultimately enabled Lead Counsel to achieve the Settlement.

5. Second Circuit Precedent Supports the Requested Fee as a Reasonable Percentage of the Total Recovery

In considering the requested fee in relation to the settlement, a court will consider the fee as a percentage of the total recovery and compare it "'to fees awarded in similar securities class-action

settlements of comparable value.'" *Comverse*, 2010 WL 2653354, at *3. The requested fee award is well within the range of fees that this and other courts in the Second Circuit have awarded in comparable complex cases. *See In re Bank of N.Y. Mellon Corp. Forex Transactions Litig.*, 148 F. Supp. 3d 303, 309 (S.D.N.Y. 2015); *In re Lehman Bros. Equity/Debt Sec. Litig.*, No. 1:08-cv-05523-LAK, slip op. at 1 (S.D.N.Y. July 15, 2014) (Ex. G). *See also supra* at 22. Accordingly, the fee award requested is reasonable in relation to the size of the Settlement.

6. Public Policy Considerations Support the Requested Fee

Public policy strongly favors rewarding firms for bringing successful securities actions like this one. *See Salix Pharms.*, 2017 WL 3579892, at *7 (fee award was "appropriate, and not excessive, to encourage further securities class actions"); *Flag Telecom*, 2010 WL 4537550, at *29 (If the "important public policy [of enforcing the securities laws] 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."); *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."). Accordingly, public policy favors granting the fee and expense application here.

7. Lead Plaintiff's Approval and the Classes' Reaction Support the Requested Fee

Lead Plaintiff was actively involved in the prosecution and settlement of this Litigation and has considered and approved the requested fee and expense award. *See* Lee Decl., ¶¶5-7. The reaction of the Classes also supports the requested fee. As of January 28, 2021, the Claims Administrator has sent over 434,700 copies of the Notice to potential Class Members and their nominees (Murray Decl., ¶13), informing them that, among other things, Lead Counsel intended to apply for an award of attorneys' fees in an amount not to exceed 25% of the Settlement Amount and

expenses in an amount not to exceed $2,500,000 (plus interest thereon for both). Murray Decl., Ex. A. While the time to object does not expire until February 26, 2021, to date, not a single objection has been received. Any objection received will be addressed in Lead Plaintiff's reply brief, which is due on April 3, 2021.

VII. LEAD COUNSEL'S EXPENSES ARE REASONABLE AND WERE NECESSARILY INCURRED TO ACHIEVE THE SETTLEMENT

Lead Counsel's application includes a request for charges and expenses reasonably incurred in pursuing the claims on behalf of the Classes. Lead Counsel's expenses and certain in-house charges are properly recoverable. *See, e.g.*, *In re China Sunergy Sec. Litig.*, No. 07 Civ. 7895 (DAB), 2011 WL 1899715, at *6 (S.D.N.Y. May 13, 2011) (In a class action, attorneys should be compensated "'for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they were "incidental and necessary to the representation."'"); *Flag Telecom*, 2010 WL 4537550, at *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.").

As detailed in the Robbins Geller Declaration, Lead Counsel requests $1,856,169.03 in expenses for prosecuting this Litigation for the benefit of the Classes. These expenses are of a type necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses and other charges include transcript preparation fees, consultant and expert fees, document-management/litigation support (*i.e.*, managing a database of more than 800,000 pages), online factual and legal research, mediation costs, and travel expenses, among others.

The Notice informed Class Members that Lead Counsel would apply for expenses in an amount not to exceed $2,500,000 to be paid from the Settlement Fund. Murray Decl., Ex. A at 2. The expenses requested, $1,856,169.03, are below that amount. To date, no Class Member has objected to Lead Counsel's request for expenses.

VIII. LEAD PLAINTIFF IS ENTITLED TO A REASONABLE AWARD UNDER 15 U.S.C. §77z-1(a)(4) OR §78u-4(a)(4)

Lead Plaintiff Central States also seeks approval for a modest award to it of $10,880 in recognition of the time and resources it spent representing the Classes since this case began in 2012. The PSLRA allows an "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. §77z-1(a)(4), 15 U.S.C. §78u-4(a)(4). Many courts have approved such awards under the PSLRA to compensate class representatives for the time and effort they spent on behalf of the class. *See, e.g.*, *In re Am. Int'l Grp., Inc. Sec. Litig.*, No. 04 Civ. 8141 (DAB), 2010 WL 5060697, at *3 (S.D.N.Y. Dec. 2, 2010) (granting PSLRA award of $30,000 to lead plaintiffs "to compensate them for the time and effort they devoted on behalf of a class"), *aff'd*, 452 App'x 75 (2d Cir. 2012); *Flag Telecom*, 2010 WL 4537550, at *31 (approving award of $100,000 to lead plaintiff for time spent on the litigation).

As set forth in the Lee Declaration (filed herewith), Lead Plaintiff took an active role in prosecuting the Litigation, including: (1) regularly communicating with Lead Counsel on issues and developments in the Litigation; (2) reviewing significant pleadings and briefs filed in the case; (3) searching for and providing documents and information to Lead Counsel responsive to Defendants' document requests; (4) providing deposition testimony; and (5) consulting with Lead Counsel concerning the mediation and settlement proposals. Lee Decl., ¶¶5-6.

Although Lead Counsel is aware that this Court has generally declined to award such reimbursement, it has awarded them in several cases, and Lead Counsel submits that given the eight year length of this Litigation and the significant efforts undertaken by Lead Plaintiff during that time, a modest award is appropriate here. These are precisely the types of activities courts have found support PSLRA awards to class representatives. *See, e.g.*, *Hicks*, 2005 WL 2757792, at *10

("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."). Pursuant to the PSLRA, Lead Plaintiff requests $10,880. Lee Decl., ¶9.

The Notice informed potential Class Members that Lead Plaintiff may seek an award for its time and expenses incurred in representing the Classes. Murray Decl., Ex. A at 3. To date, no Class Member has objected to such awards to Lead Plaintiff. Accordingly, Lead Plaintiff's request should be granted.

IX. CONCLUSION

Based on the foregoing and the entire record, Lead Plaintiff and Lead Counsel respectfully request that the Court approve: the Settlement and the Plan of Allocation; Lead Counsel's request for an award of attorneys' fees in the amount sought and payment of $1,856,169.03 in expenses; and a reimbursement award of $10,880 to Lead Plaintiff, as contemplated by the PSLRA.

DATED: February 1, 2021

Respectfully submitted,

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Lead Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on February 1, 2021, 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 on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ Shawn A. Williams

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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.

Thomas C. Michaud
,

INDEX OF EXHIBITS TO MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF SETTLEMENT, APPROVAL OF PLAN OF ALLOCATION, AND FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AN AWARD TO LEAD PLAINTIFF

Document	Exhibit
Janeen McIntosh and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2020 Full-Year Review* (NERA Jan. 25, 2021)	A
In re CIT Grp. Inc. Sec. Litig., No. 1:08-cv-06613-BSJ-THK, slip op. (S.D.N.Y. June 13, 2012)	B
In re BHP Billiton Ltd. Sec. Litig., No. 1:16-cv-01445-NRB, slip op. (S.D.N.Y. Apr. 10, 2019)	C
Cornwell v. Credit Suisse Grp., No. 1:08-cv-03758 (VM), slip op. (S.D.N.Y. July 20, 2011)	D
Hr'g Tr., *In re Am. Realty Cap. Props., Inc. Litig.*, No. 15-MC-40 (AKH) (S.D.N.Y. Jan. 23, 2020)	E
Hr'g Tr., *Kaess v. Deutsche Bank AG*, No. 09-cv-01714 (GHW)(RWL) (S.D.N.Y. June 11, 2020)	F
In re Lehman Bros. Equity/Debt Sec. Litig., No. 1:08-cv-05523-LAK, slip op. (S.D.N.Y. July 15, 2014)	G

EXHIBIT A

NERA
ECONOMIC CONSULTING

25 January 2021

Recent Trends in Securities Class Action Litigation: 2020 Full-Year Review

COVID-19-Related Filings Accounted for 10% of Total Filings
Filings Declined, Driven Primarily by Fewer Merger Objections Filed
Even After Excluding "Mega" Settlements, Recent Settlement Values Remained High

By Janeen McIntosh and Svetlana Starykh

Insight in Economics™

Foreword

I am excited to share NERA's Recent Trends in Securities Class Action Litigation: 2020 Full-Year Review. This year's edition builds on work carried out over many years by members of NERA's Securities and Finance Practice. In this year's report, we continue our analyses of trends in filings and resolutions and present information on new developments, including case filings related to COVID-19. Although space does not permit us to present all the analyses the authors have undertaken while working (remotely!) on this year's edition, we hope you will contact us if you want to learn more about our work in and related to securities litigation. On behalf of NERA's Securities and Finance Practice, I thank you for taking the time to review our work and hope you find it informative.

Dr. David Tabak
Managing Director

Recent Trends in Securities Class Action Litigation: 2020 Full-Year Review

COVID-19-Related Filings Accounted for 10% of Total Filings
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Even After Excluding "Mega" Settlements, Recent Settlement Values Remained High

By Janeen McIntosh and Svetlana Starykh[1]

25 January 2021

Introduction and Summary

There were 326 federal securities class actions filed in 2020, a decline of 22% from 2019.[2] Despite this decline, filings for 2020 remained higher than pre-2017 levels, with the exception of 2001, when numerous IPO laddering cases were filed. In addition to a decline in the aggregate number of new cases filed, there was also a decline within each of the five types of cases we consider, though the decline within each category of cases was not consistent in magnitude. As a result, the percentage of new filings that were Rule 10b-5, Section 11, and/or Section 12 cases increased to 64% in 2020. As in 2019, in 2020, the electronic technology and technology services sector had the most securities class action filings. Of cases filed in 2020, 23% were filed against defendants in this sector, followed closely by defendants in the health technology and services sector, which accounted for 22% of new filings. For the first time in the five years ending December 2020, claims related to accounting issues, regulatory issues, or missed earnings guidance were not the most common allegation included in federal securities class action complaints. Instead, for cases filed in 2020, 35% of complaints included an allegation related to misled future performance. The Second, Third, and Ninth Circuits continue to represent a significant proportion of new cases filed in 2020, accounting for more than three-fourths of filings.

The emergence of the COVID-19 pandemic has led to associated filings. Since March 2020, when the first such lawsuit was filed, there have been 33 cases filed with COVID-19-related claims included in the complaint through December 2020. Nearly 25% of these COVID-19 case filings were against defendants in the health technology and health services sector—the highest for any sector—and 21% were filed against defendants in the finance sector.

In 2020, 320 cases were resolved, marking a slight increase from the total number of cases resolved in 2019, but remaining below the number of cases resolved in 2017 and 2018. Despite 2020 aggregate resolutions falling within the historical range for 2011–2019, both the number of cases settled and the number of cases dismissed reached 10-year record levels—settled cases reaching a record low and dismissed cases reaching a record high.

The average settlement value in 2020 was $44 million, more than a 50% increase over the 2019 average of $28 million but still below the 2018 value. Limiting to settlements under $1 billion, the 2020 average settlement value was $30 million, which is lower than the overall average of $44

million after excluding the American Realty Capital Properties settlement of $1.025 billion. Excluding the American Realty Capital Properties settlement, the median annual settlement value for 2020 was $13 million, the highest recorded median value in the last 10 years.

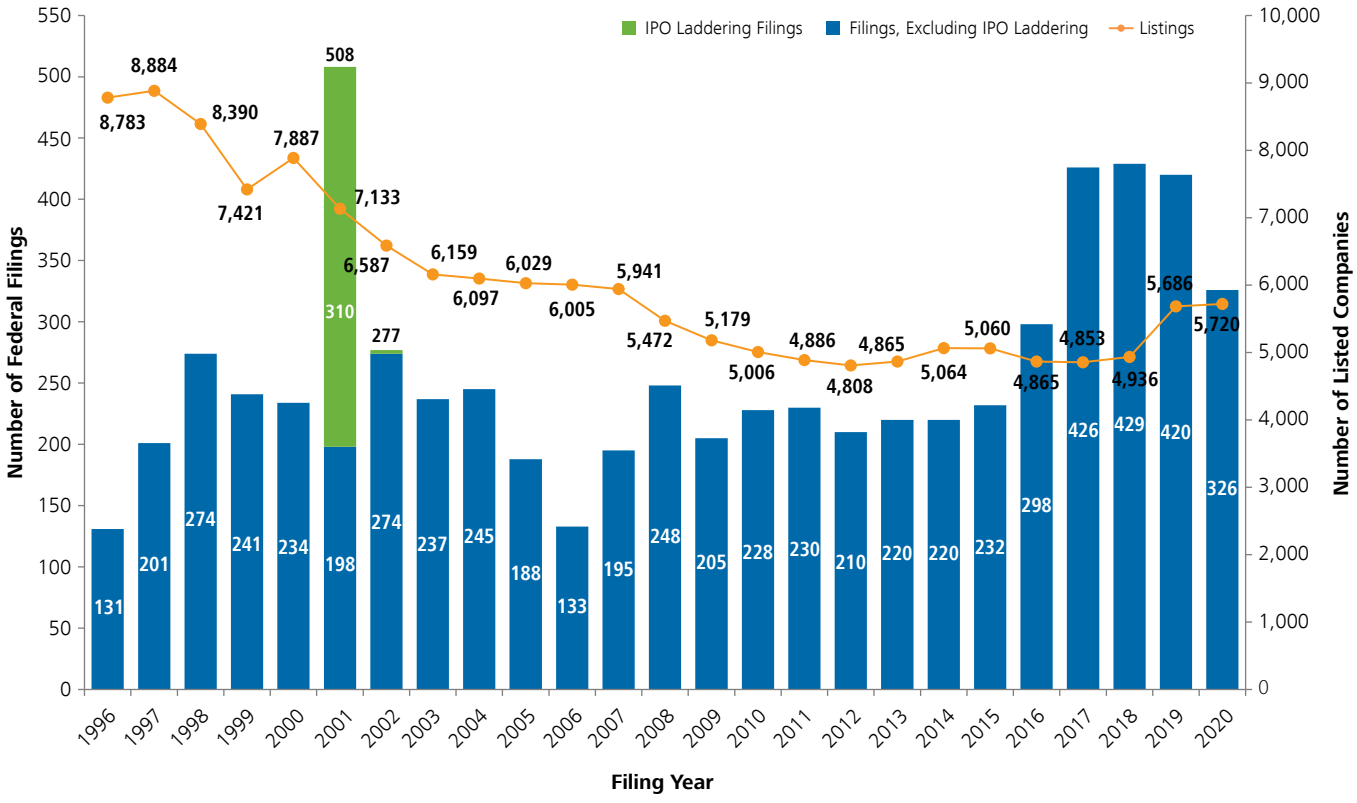
Trends in Filings

Trend in Federal Cases Filed

For the first time since 2016, annual new securities class action filings declined to less than 400 cases.[3] Between 2015 and 2017, new filings grew significantly, by approximately 80%, and remained stable with between 420 and 430 annual filings from 2017 to 2019. There were 326 new case filed in 2020, which, despite the decline, is still higher than the average of 223 observed in the 2010–2015 period. Whether this decline in new filings is the end of the general higher level of filings observed in recent years or a short-term byproduct of the implications of the COVID-19 pandemic is yet to be determined. See Figure 1.

As of October 2020, there were 5,720 companies listed on the NYSE and Nasdaq exchanges.[4] The increase in the number of listed companies in 2020 is a continuation of a general growth trend since 2017. As a result of the decline in the number of new filings and the growth in the number of listed companies in 2020, the ratio of new filings to listed companies declined to 5.7%, the lowest ratio in the last five years. However, this ratio remains higher than the ratios in the first 20 years following the implementation of the PSLRA in 1995.

Figure 1. **Federal Filings and Number of Companies Listed in the United States**
January 1996–December 2020

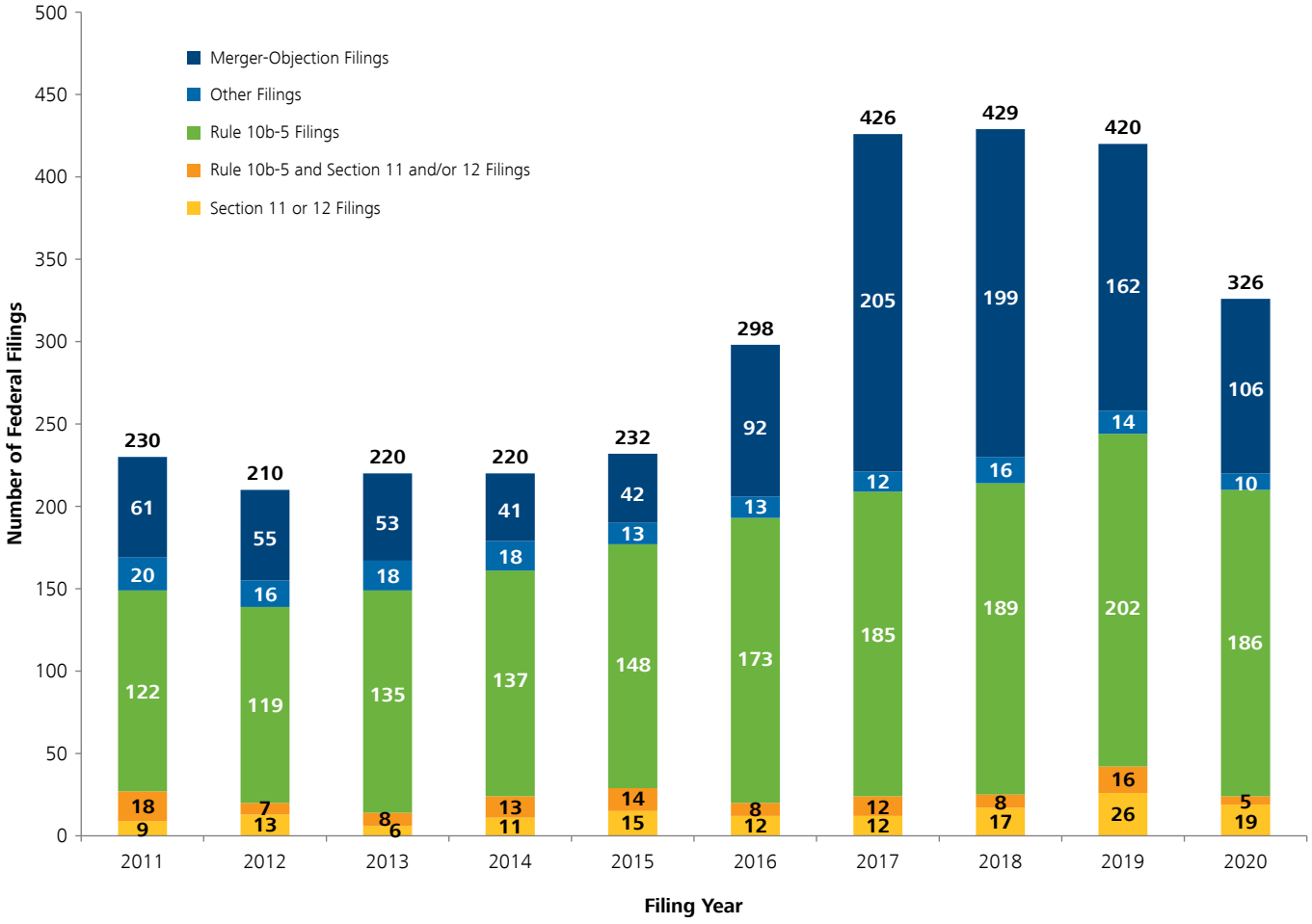


Note: Listed companies include those listed on the NYSE and Nasdaq. Listings data obtained from World Federation of Exchanges (WFE). The 2020 listings data is as of October 2020.

Federal Filings by Type

The decline in federal cases differed by type of case with the largest percentage decline observed among the Rule 10b-5 and Section 11 or Section 12 category of cases. Despite differences in the magnitude of change over the past 12 months, collectively and within each individual category, federal filings of securities class action (SCA) suits decreased. New filings of Rule 10b-5 and Section 11 or Section 12 cases in 2020 declined by more than 65% when compared to 2019. Filings of merger objections, other securities class action cases, and Section 11/Section 12 cases each declined by between 25% and 35%, while Rule 10b-5 cases declined by less than 10%. As a result of the relatively low level of decline in Rule 10b-5 cases, the proportion of new filings that were Rule 10b-5, Section 11, and/or Section 12 cases (standard cases) increased from 58% of new filings in 2019 to 64% of new filings in 2020. See Figure 2.

Figure 2. **Federal Filings by Type**
January 2011–December 2020

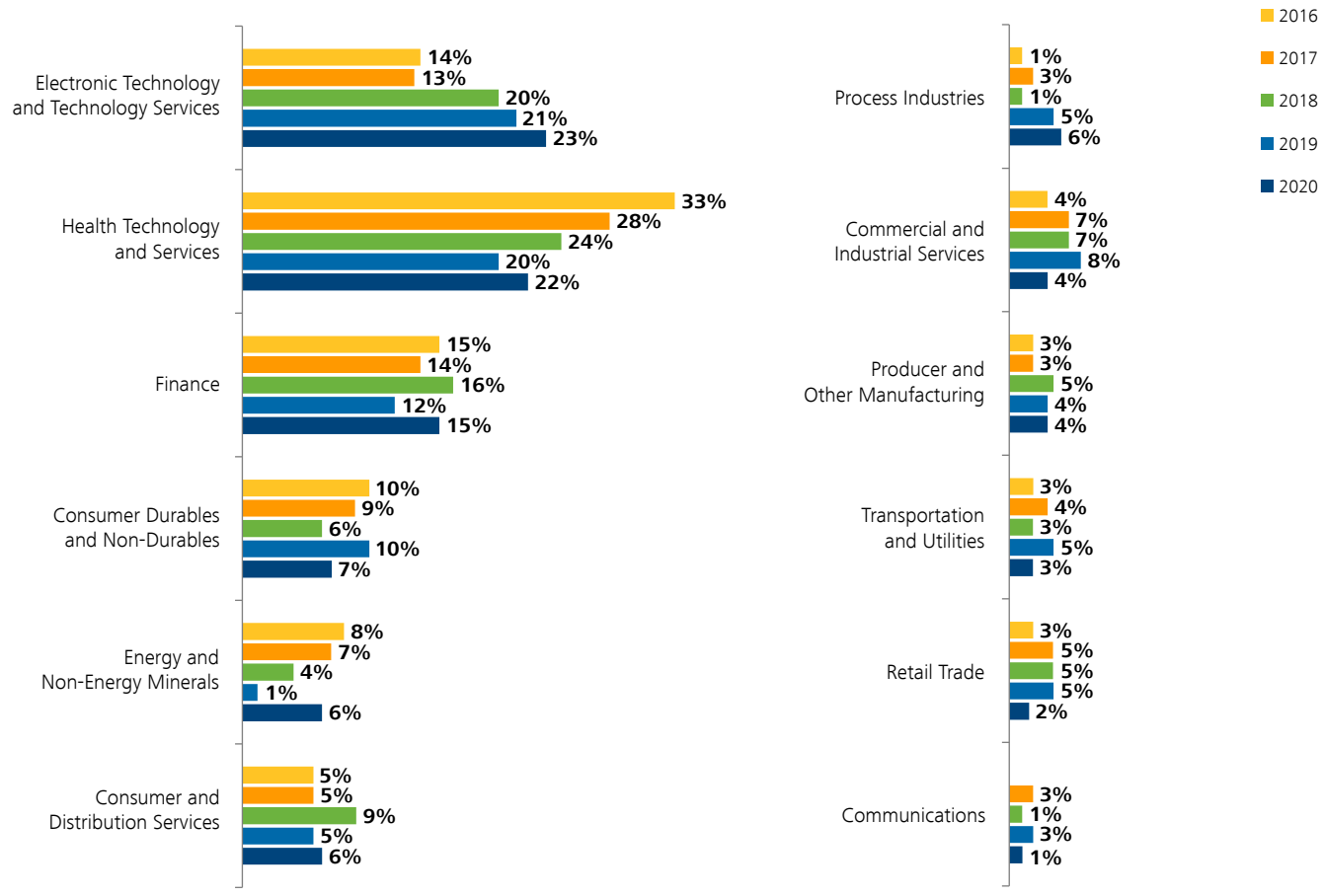


Federal Filings by Sector

Over the 2015–2018 period, the largest proportion of SCA suits filed were against defendants in the health technology and services sector. Because of a gradual downward trend in the proportion of cases filed against companies of this sector between 2016 and 2019, and an accompanying growth in the proportion of cases filed against defendants in the electronic technology and technology sector, in 2020, the electronic technology and technology services sector represented the largest proportion of new cases filed. In 2020, 23% of filings were against defendants in this sector, followed closely by defendants in the health technology and services sector, which accounted for 22% of new filings.

The finance sector observed an increase in the proportion of cases filed against defendants in this sector, from 12% in 2019 to 15% in 2020, while defendants in the consumer durables and non-durables sector observed a decline from 10% to 7%. The energy and non-energy minerals, consumer and distribution services, and process industries sectors each accounted for at least 5% of cases filed in 2020. See Figure 3.

Figure 3. **Percentage of Federal Filings by Sector and Year**
Excludes Merger Objections
January 2016–December 2020

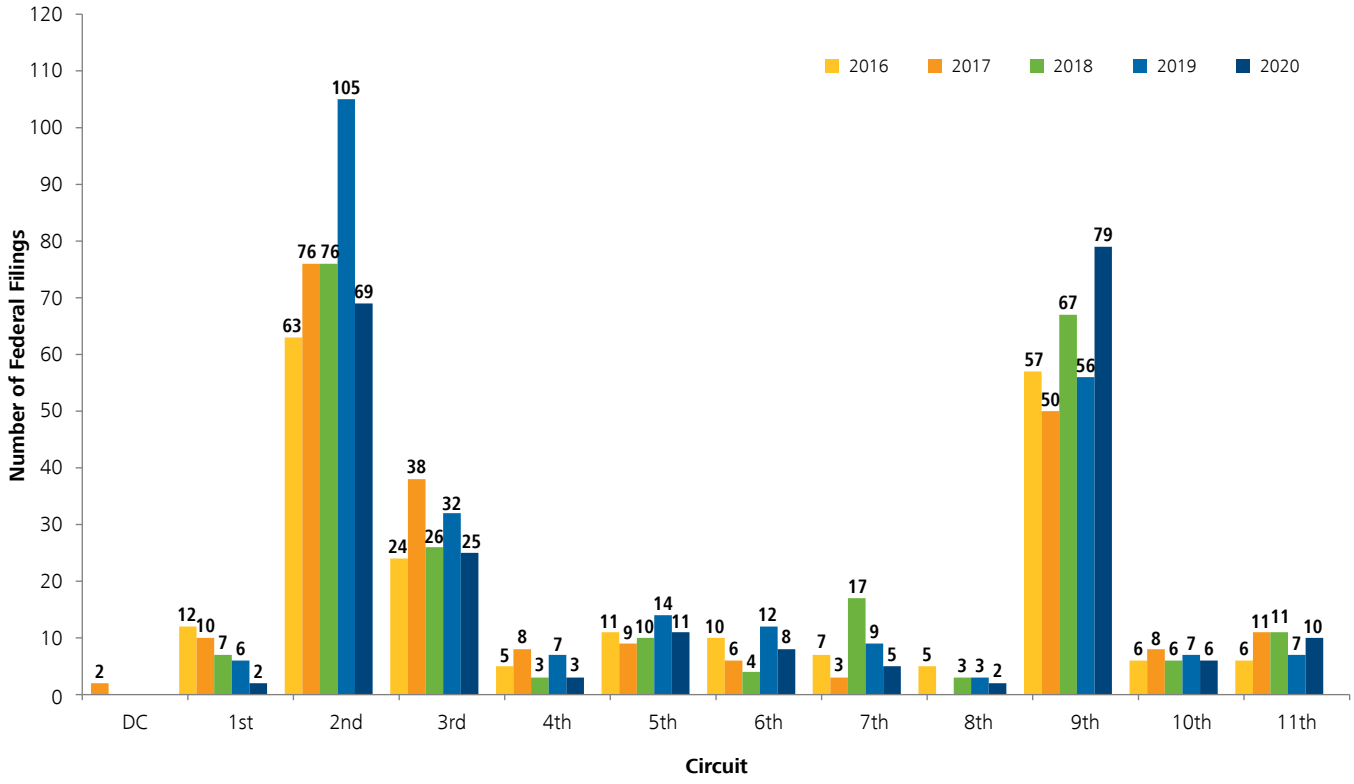


Note: This analysis is based on the FactSet Research Systems, Inc. economic sector classification. Some of the FactSet economic sectors are combined for presentation.

Federal Filings by Circuit

Historically, the Second Circuit—which includes Connecticut, New York, and Vermont—has received the highest number of cases filed. In 2019, we observed a spike in new non-merger-objection filings in the Second Circuit, a pattern that did not persist in 2020. Over the last 12 months, only 69 new cases were filed in the Second Circuit, the lowest level of new cases since 2017. The Third and Ninth Circuits continue to be high-activity jurisdictions for SCA cases, with 25 and 79 cases filed in 2020 in these circuits, respectively. While the number of cases filed in the Second and Third Circuits declined, the Ninth Circuit observed a 41% increase in filings. Taken together, these trends resulted in the Ninth Circuit accounting for the highest proportion of new filings for the first time in the last five years. Combined, the Second, Third, and Ninth Circuits continue to account for a significant proportion of new cases filed, increasing slightly to 79% of all the new non-merger-objection cases filed in 2020. See Figure 4.

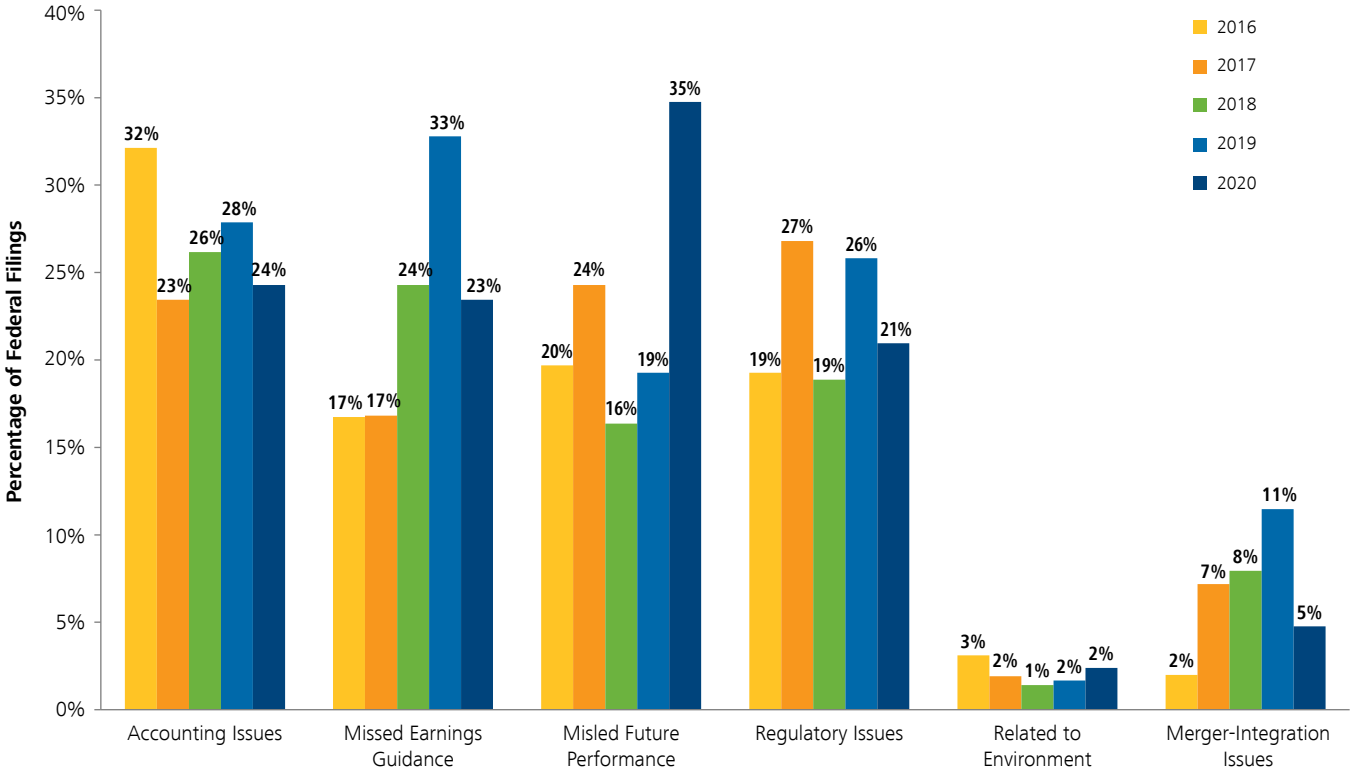
Figure 4. **Federal Filings by Circuit and Year**
Excludes Merger Objections
January 2016–December 2020



Allegations

Over the past three years, there has been year-to-year variation in the most frequently occurring allegation in shareholder class action suits filed.[5] In 2018, the most common allegation included in complaints was related to accounting issues, with 26% of cases including such a claim. This pattern is consistent with the distributions observed in recent years; claims related to accounting issues remain one of the most common and frequent allegations included in complaints. In 2019, we observed a spike in cases involving allegations of missed earnings guidance, with over 30% of cases involving a related claim. However, the proportion of cases alleging claims related to missed earnings guidance decreased to 23% in 2020. For cases filed in 2020, there emerged a new common allegation; 35% of the complaints included a claim related to misled future performance. This is the first time in the last five years that this allegation has been included in more complaints than those alleging accounting issues, missed earnings guidance, or regulatory issues. Although there was an upward trend in the frequency of cases involving allegations related to merger integration issues between 2016 and 2019, this pattern did not continue in 2020, with this category falling to only 5% of cases from 11% in 2019. See Figure 5.

Figure 5. **Allegations**
Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, and/or Section 12
January 2016–December 2020

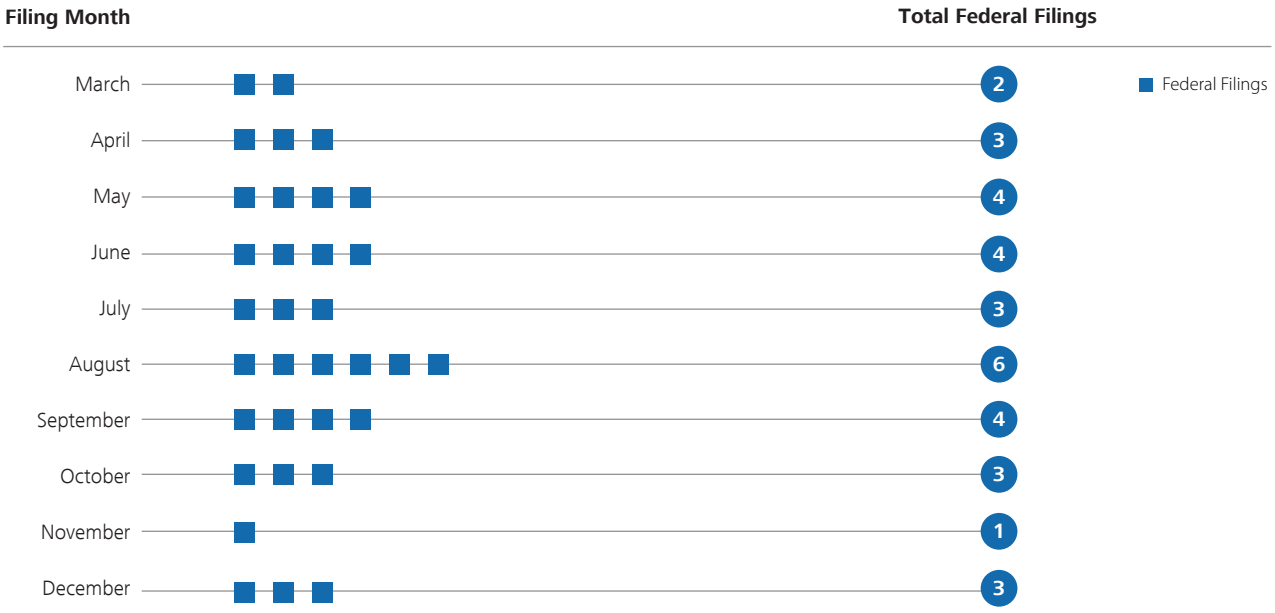


Recent Developments in Federal Filings[6]

COVID-19

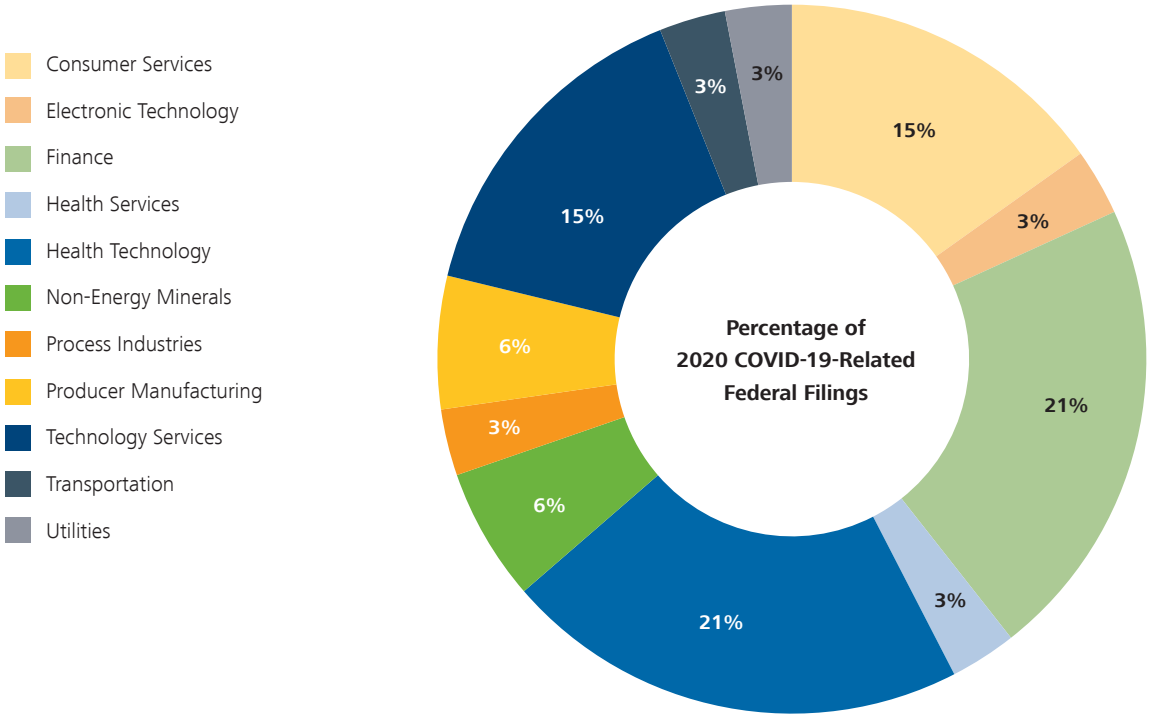
In March of 2020, the COVID-19 pandemic changed the way individuals work, the way they live, and how companies operate. The pandemic's impact on filings has not yet been fully determined and it will likely take time to evaluate if it was the underlying driver of the lower level of cases filed in 2020. On the other hand, the pandemic brought about a new category of event-driven cases, with the first such case filed in March. Since then, there have been 33 cases filed with claims related to COVID-19 included in the complaint. See Figure 6.

Figure 6. **Number of 2020 COVID-19-Related Federal Filings by Month**
March 2020–Decemeber 2020



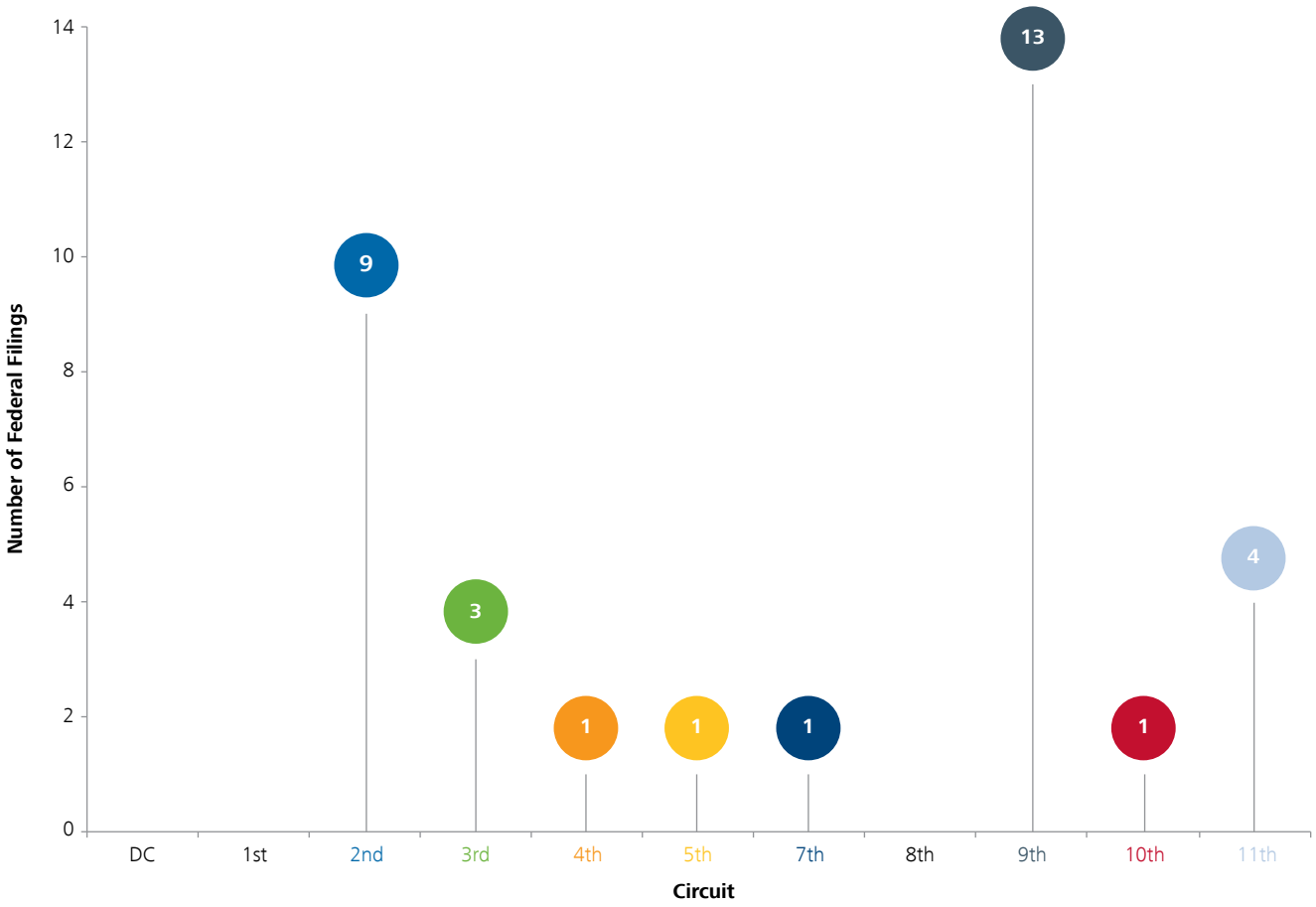
The distribution of these COVID-19-related cases across sectors reveals a pattern similar to the distribution across total cases filed in 2020. The proportion of filings against defendants in the combined health technology and health services sectors was 24%. Approximately 21% of the COVID-19 cases were filed against defendants in the finance sector and the consumer services and technology services sectors each accounted for approximately 15% of cases. See Figure 7.

Figure 7. **Percentage of 2020 COVID-19-Related Federal Filings by Sector**
March 2020–Decemeber 2020



Unlike for the universe of total filings, the top three circuits for most COVID-19 filings were the Ninth, Second, and Eleventh Circuits. Over one-third of the COVID-19-related cases filed were presented in the Ninth Circuit, followed closely by the Second Circuit. See Figure 8.

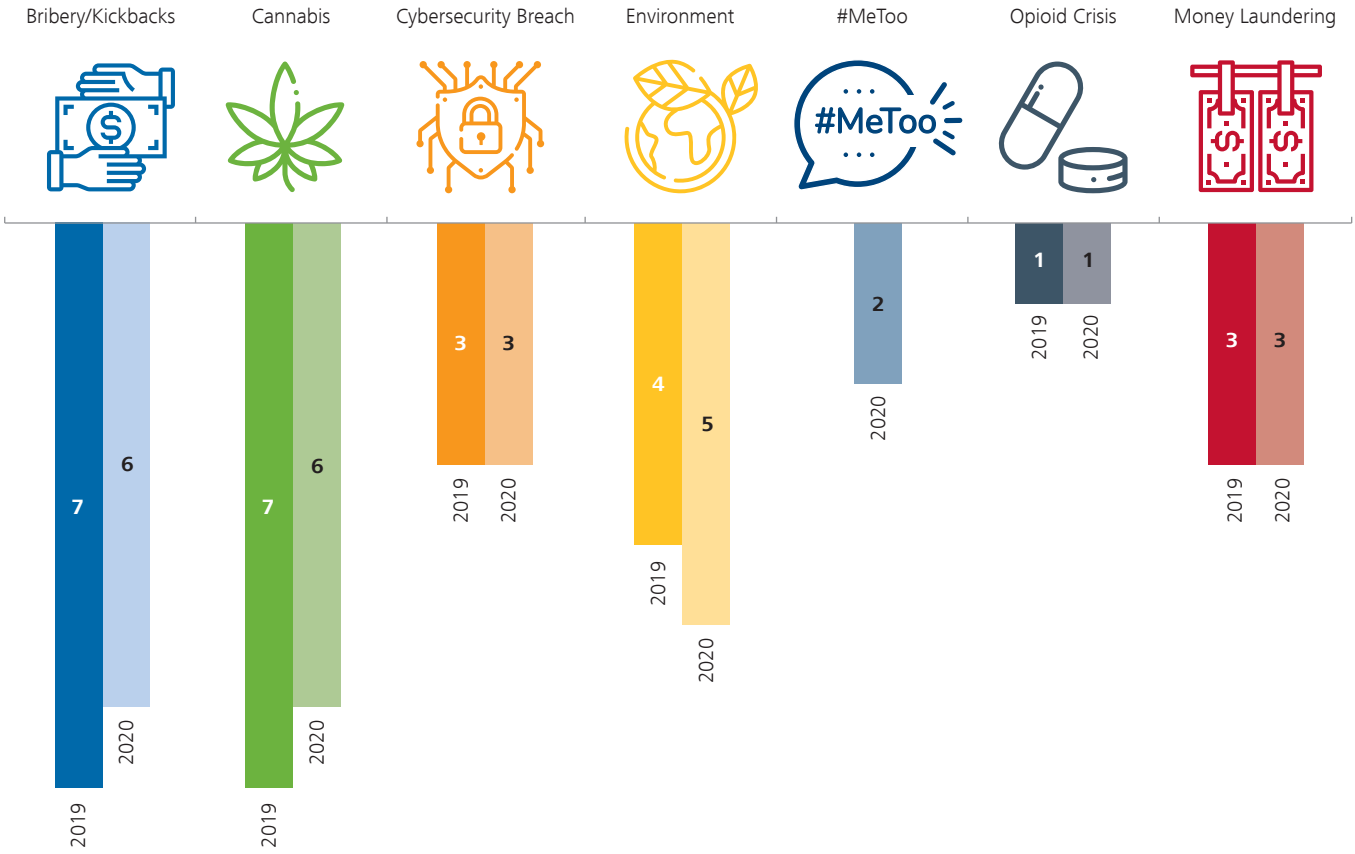
Figure 8. **Number of 2020 COVID-19-Related Federal Filings by Circuit**



The claims alleged in the complaints for these COVID-19-related filings varied. For example, within the NERA database, we identified three cases filed against defendants in the cruise line industry—namely, Norwegian Cruise Line Holdings, Carnival Corporation, and Royal Caribbean Cruises. The complaint filed against Norwegian Cruise Line Holdings alleges the company made false and/or misleading statements and/or failed to disclose that it was providing customers with false statements about COVID-19 to entice them to purchase cruises. The Carnival Corporation lawsuit alleged that the company's misstatements concealed the increasing presence of COVID-19 on the company's ships. In the complaint against Royal Caribbean Cruises, plaintiffs allege there was a failure to disclose material facts related to the company's decrease in bookings outside of China.

In addition to tracking COVID-19-related filings, we have also monitored federal securities class action filings in a number of recent development areas. See Figure 9 for a summary of filings in these areas for 2019 and 2020.

Figure 9. **Event-Driven and Other Special Cases by Filing Year**
January 2019–December 2020



Bribery/Kickbacks

Securities class action suits related to claims of bribery have remained fairly stable over the 2019–2020 period, with six such cases filed in 2019 and five filed in 2020. Of the 11 cases filed in the last two years, all remain pending as of December 2020. These cases span a range of sectors, with the electronic technology and technology services sector accounting for the highest proportion. In addition, cases filed with claims related to kickbacks are still being brought to the courts, with one case filed in both 2019 and 2020. Both of these cases include claims related to regulatory issues.

Cannabis

In last year's report, we identified filings against companies in the cannabis industry as a development area. In 2020, filings within this industry have continued with six new cases. The allegations included in these recent complaints were related to accounting issues, misled future performance, and missed earnings guidance. The majority of cases continue to be presented in the Second Circuit and all defendants but one are in the process industries sector.

Cybersecurity Breach Cases

In 2020, like 2019, there were three new filings related to a cybersecurity breach. The Ninth Circuit continues to be a common venue for these cases. Among the six cases filed between 2019 and 2020, four have included allegations related to missed earnings guidance or misleading future performance, with only one case alleging regulatory issues.

Environment-Related

Similar to bribery-related cases, filings pertaining to environment-related claims have continued to be presented at a steady pace, with five cases filed in 2020 and four cases filed in 2019. Four of the nine cases recently filed include allegations related to regulatory issues and five were filed in the Second and Ninth Circuits.

#MeToo

Following the surge of #MeToo cases filed in 2018, only two such cases have been filed in the last year. Both cases were filed in the second half of 2020.

Opioid Crisis

Only two cases related to the opioid crisis have been filed since 2018, both of which were filed in the Third Circuit and include allegations related to accounting and regulatory issues.

Money Laundering

Cases with claims of money laundering also continue to be filed, with three such cases filed in both 2019 and 2020. All six of these cases included an allegation related to regulatory issues.

Trend in Resolutions

Number of Cases Settled or Dismissed

Following a decline in the total number of cases resolved in 2019, resolutions rose in 2020, returning to a level relatively in line with 2017 and 2018. In 2020, 247 cases were resolved in favor of the defendant and 73 cases were settled, for a total of 320 resolutions for the year. This represents an increase of approximately 4% in resolved suits over the 309 cases resolved in 2019.

Despite the aggregate increase in resolutions, the trend observed in dismissals and settlements differed. While there was a decline of 25% in the number of settled cases, there was an increase in the number of dismissed cases.[7] The number of cases settled in 2020 is the lowest recorded number of settled cases in the most recent 10-year period and is more than 40% lower than the average number of settled cases (122) observed between 2016 and 2018. At this time, there is insufficient evidence to determine whether this lower number of settlements is connected to COVID-19-related factors. The increase in the number of dismissed cases was sufficient to not only offset the decrease in settlements but also to increase the overall number of resolved cases. The number of cases dismissed in 2020 also set a new 10-year record with approximately 6% more cases dismissed than in 2018, the second highest year in the period.

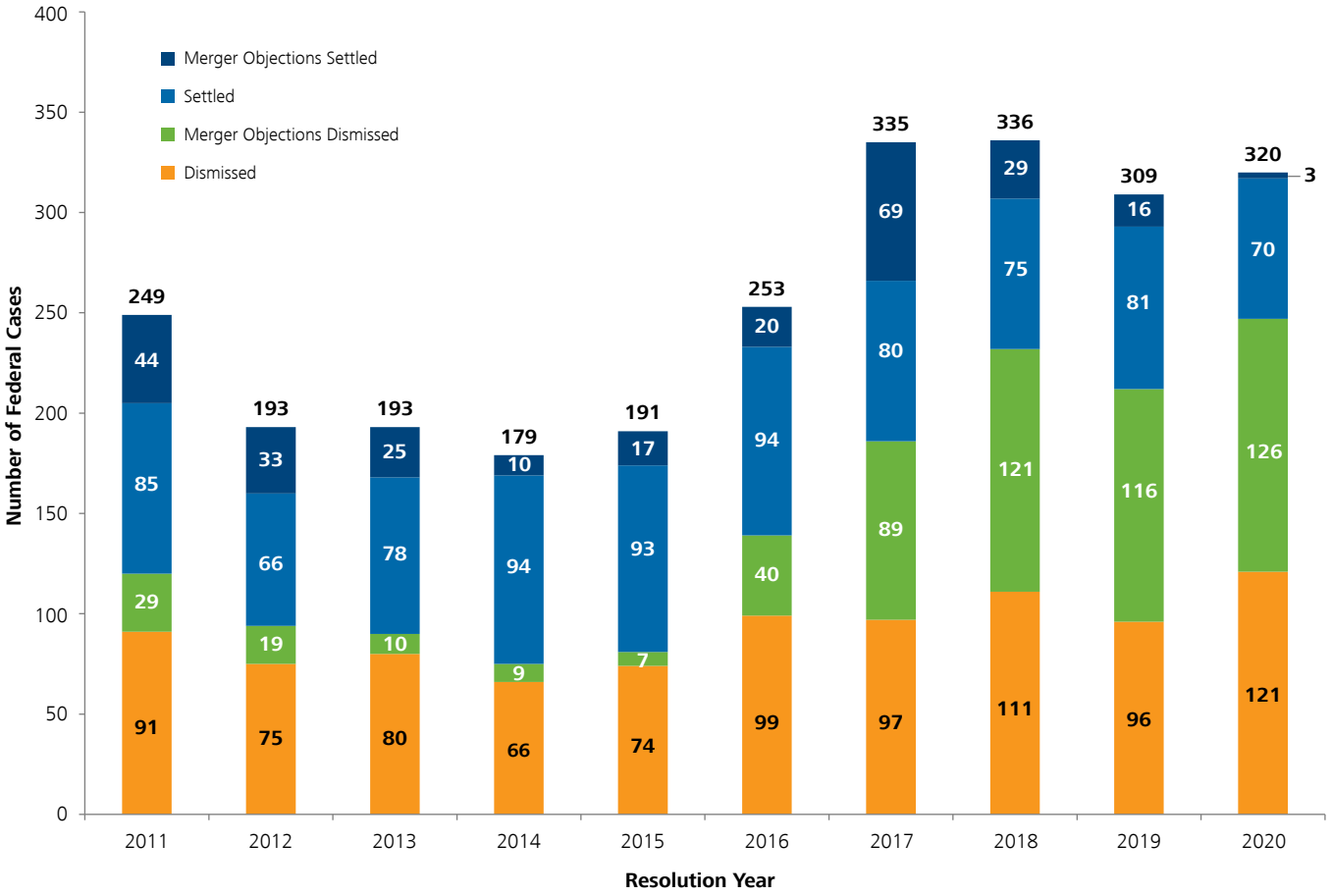
Starting in 2015, there has been a gradual decline in the proportion of cases that were closed due to settling. Of the cases resolved in 2014, 58% were settled. In each subsequent year, this proportion has declined, falling to 44% for cases resolved in 2017. For cases resolved in 2020, the

proportion of resolved cases that were settled is the lowest in recent history, with less than 25% of the cases settling. It is not surprising the proportion declined to a new low given the decrease in the number of cases settled combined with the increase in dismissals that occurred in 2020. See Figure 10.

Although 2020 was a record-setting low year for total settled cases, the magnitude of the decrease in settled cases differed for standard cases and merger-objection cases. Settled non-merger-objection cases decreased by less than 15%, falling to 70 cases, though still within the historical 10-year range. On the other hand, settled merger-objection cases declined by more than 80% to merely three cases, which is substantially lower than the number of such cases settled in any single year in the last 10 years.

There was a 26% increase in dismissals of standard cases and a 9% increase in dismissals of merger-objection cases. For non-merger-objection and for merger-objection cases, the increase in dismissals was enough to establish 2020 as the year with the highest number of dismissals within each category in recent years.

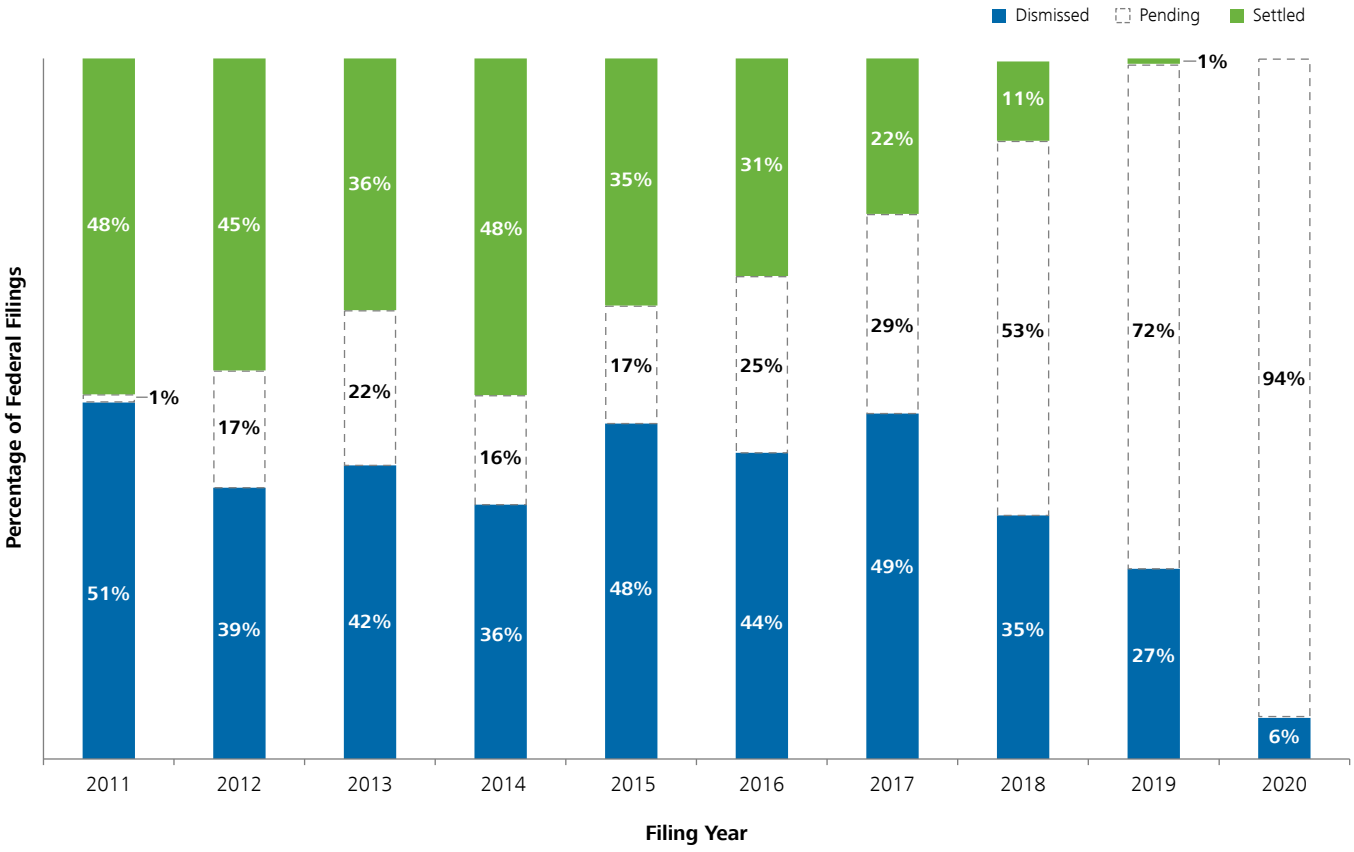
Figure 10. **Number of Resolved Cases: Dismissed or Settled**
January 2011–December 2020



Case Status by Filing Year

A review of the current status of securities class action suits filed after 2014 reveals that within each filing year a greater proportion of cases have been dismissed than have been settled. For cases filed between 2015 and 2017, dismissal rates range from 44% to 49% each year while settlement rates range from 22% to 35%. The difference in current case outcome is even more stark for cases filed in 2018 and 2019. Of the cases filed in 2018, as of December 2020, 35% were resolved in favor of the defendant, 11% were settled, and 53% remained pending. For cases filed in 2019, only 1% were resolved for positive payment, while 27% were dismissed, and 72% were still unresolved. However, the current resolution distribution of cases may not necessarily be an indication of the final outcome for all resolved cases as historical evidence indicates that a larger proportion of the pending cases will result in a positive settlement because settlements typically occur in the latter phases of litigation, whereas motions for summary judgment or dismissal typically occur in the earlier stages. See Figure 11.

Figure 11. **Status of Cases as Percentage of Federal Filings by Filing Year**
Excludes Merger Objections and Verdicts
January 2011–December 2020

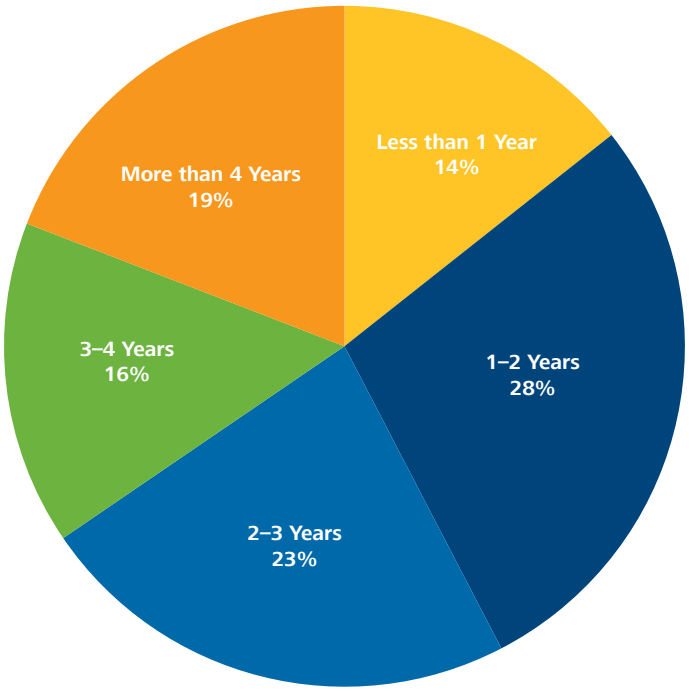


Note: Dismissals may include dismissals without prejudice and dismissals under appeal.

Time From First Complaint Filing to Resolution

A review of the cases filed between 1 January 2002 and 31 December 2016 reveals that a significant proportion of cases are resolved in under four years.[8] Looking at the time from the filing of the first complaint through the resolution of the case, whether a dismissal or a settlement, shows that more than 80% of suits are resolved within four years, and 65% within the first three years. The most common resolution periods in the data are between one and two years (28% of cases) and between two and three years (23% of cases). Within the first year of filing, 14% of cases are resolved. See Figure 12.

Figure 12. **Time from First Complaint Filing to Resolution**
Cases Filed January 2002–December 2020 and Resolved January 2002–December 2020



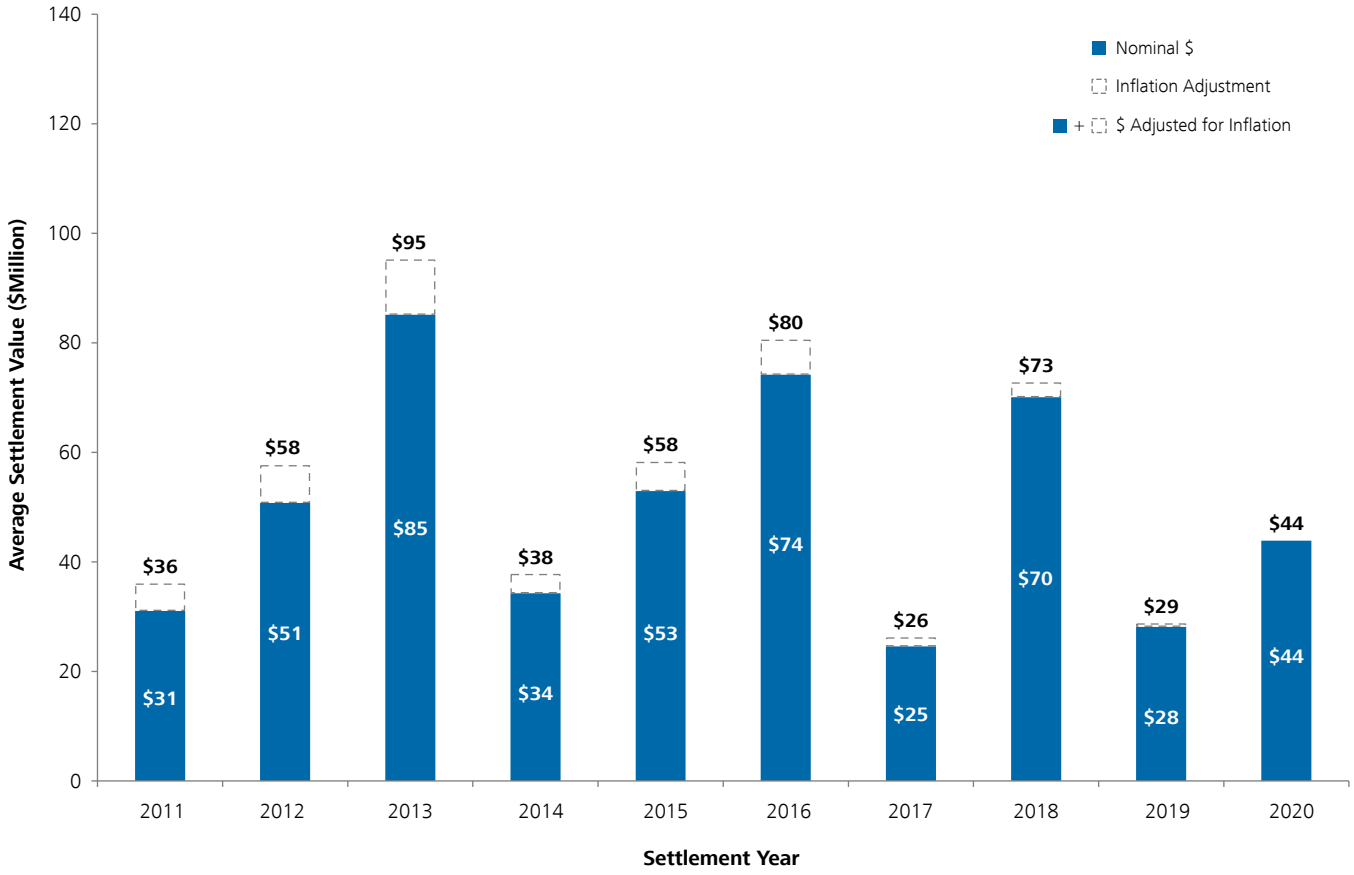
Trend in Settlement Values

Average and Median Settlement Value

To analyze recent trends in settlement values, we calculate and evaluate settlements using multiple alternative measures.[9] First, we evaluate trends by reviewing the annual average settlement value for non-merger-objection cases with positive settlement values. Given that these average settlement values may be impacted by a few high "outlier" settlements, we also review the median settlement value and average settlement for cases under $1 billion, again on an annual basis.

The average settlement value in 2020 was $44 million for non-merger objection cases with settlements of more than $0 to the class. This is a more than 50% increase over the 2019 inflation-adjusted average of $29 million but still below the 2018 inflation-adjusted average of $73 million. Historically, the average settlement value has shown year-to-year variation partly due to the presence or absence of one or two "outlier" settlements. Between 2011 and 2020, the annual inflation-adjusted average settlement value has ranged from a low of $26 million in 2017 to a high of $95 million in 2013. As such, the 2020 average is well within the range observed within the last 10 years. See Figure 13.

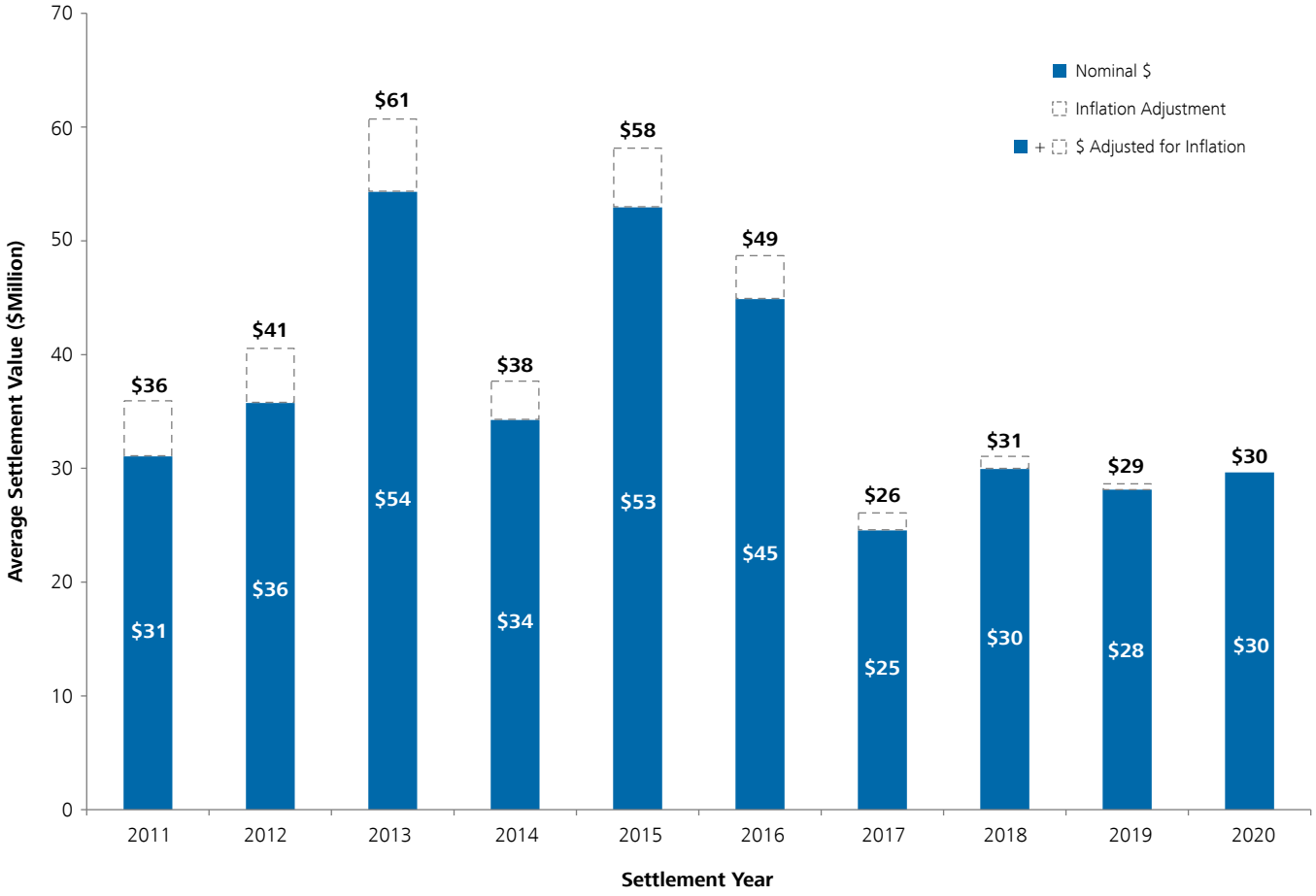
Figure 13. **Average Settlement Value**
Excludes Merger Objections and Settlements for $0 to the Class
January 2011–December 2020



The second measure of trends in settlement values evaluated is the annual average settlement excluding merger objections, settlements for $0 to the class, and individual cases with settlements of $1 billion or greater. Given the infrequency of cases with settlements of $1 billion or greater and the impact these "outlier" settlements can have on the annual averages, this second measure seeks to evaluate the general trend in settlements absent these cases. For example, for 2020 settlements, this measure evaluates the settlement values excluding the American Realty Capital Properties

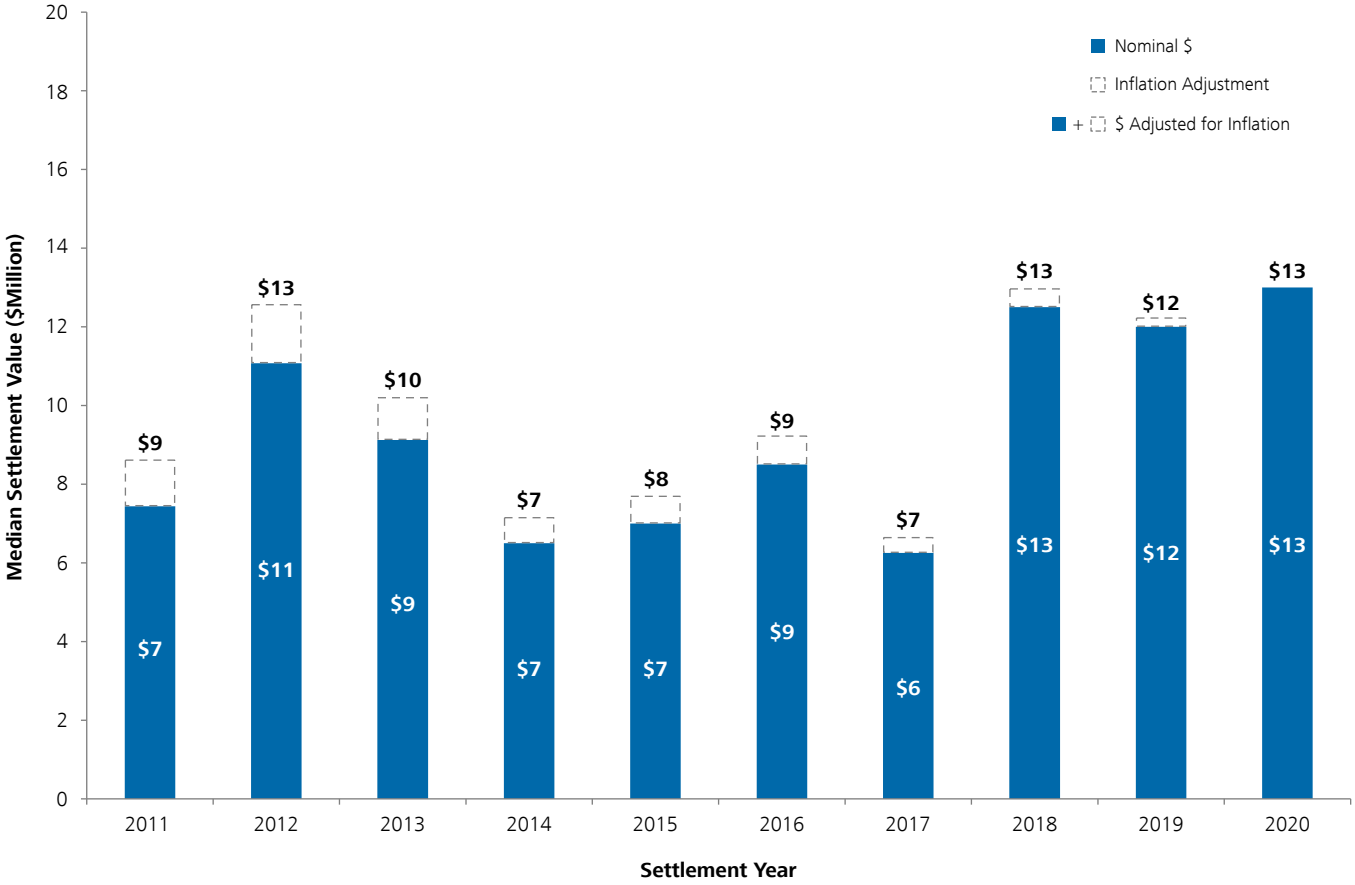
settlement of $1.025 billion. Figure 14 illustrates that once these cases are removed, the annual average settlement values have been stable in recent years, ranging from $26 million to $31 million within the last four years. Though the 2020 average settlement value of $30 million is 3% higher than the 2019 average, it is still substantially lower than the average values for cases settled for under $1 billion in 2015 and 2016, which are $58 million and $49 million respectively.

Figure 14. **Average Settlement Value**
Excludes Settlements over $1 Billion, Merger Objections, and Settlements for $0 to the Class
January 2011–December 2020



The median annual settlement value for 2020 was $13 million, the highest recorded median value in the last 10 years (the median settlement value for cases settled in 2018 was also $13 million). Though the median settlement value for 2020 is less than 10% higher than the inflation-adjusted median in 2019, the 2020 value is nearly twice the inflation-adjusted median settlement value for cases settled in 2017. The general increasing trend in annual median settlement values indicates an upward shift in individual settlement values. In other words, a higher proportion of cases has settled for higher values in the last three years when compared to settlements that occurred in 2017 or before. See Figure 15.

Figure 15. **Median Settlement Value**
Excludes Settlements over $1 Billion, Merger Objections, and Settlements for $0 to the Class
January 2011–December 2020



An evaluation of the change in the distribution of settlement values over the past five years further supports this notion. There has been a downward trend in the proportion of cases with individual settlements less than $10 million and a corresponding increase in the proportion of cases found in the higher settlement ranges. More specifically, in 2017, 61% of cases resolving for positive payment had settlement values of less than $10 million compared to 44% of 2020 cases settled within this category. Similarly, 24% of 2017 settled cases had settlement values between $10 million and $50 million while 40% of the 2020 settled cases had individual settlements within this range. This pattern of a greater proportion of settled cases within the $10–$50 million range in the last three years aligns with the higher annual median settlement values observed in these years.

Top Settlements for 2020

Table 1 summarizes the 10 largest securities class action settlements in 2020. Between 1 January 2020 and 31 December 2020, there was one "mega" settlement—an individual case with a settlement for $1 billion or greater—for a suit against American Realty Capital Properties. This case involved allegations related to accounting issues, including claims that the defendants made materially false and misleading statements. All 10 of the top settlements were reached between January and July of 2020 and accounted for 75% of the total settlements reached in 2020.

The economic sectors of defendants associated with the top 10 settlements varied, with the commercial services and utilities sectors having the highest frequency, with two cases in each category. Eight of the top 10 settlements were cases filed in the Second, Ninth, and Eleventh Circuits. The average and most frequent length of time between first complaint filing and settlement for the top 10 settlements in 2020 was five years and three years, respectively.

Table 1. **Top 10 2020 Securities Class Action Settlements**

Rank	Defendant	Filing Date	Settlement Date	Total Settlement Value ($Million)	Plaintiffs' Attorneys' Fees and Expenses ($Million)	Circuit	Economic Sector
1	American Realty Capital Properties Inc.*	30 Oct 14	22 Jan 20	$1,025.0	$105.2	2nd	Finance
2	First Solar, Inc.	15 Mar 12	30 Jun 20	$350.0	$72.5	9th	Electronic Technology
3	Signet Jewelers Limited	25 Aug 16	21 Jul 20	$240.0	$63.1	2nd	Retail Trade
4	SCANA Corporation	27 Sep 17	17 Jun 20	$192.5	$28.2	4th	Utilities
5	Equifax Inc.	8 Sep 17	26 Jun 20	$149.0	$30.8	11th	Consumer Services
6	SunEdison, Inc.	4 Apr 16	25 Feb 20	$139.6	$29.7	2nd	Utilities
7	SeaWorld Entertainment, Inc.	9 Sep 14	22 Jul 20	$65.0	$16.4	9th	Consumer Services
8	Community Health Systems, Inc.	9 May 11	19 Jun 20	$53.0	$6.3	6th	Health Services
9	HD Supply Holdings, Inc.	10 Jul 17	21 Jul 20	$50.0	$15.3	11th	Distribution Services
10	FleetCor Technologies, Inc.	14 Jun 17	14 Apr 20	$50.0	$13.0	11th	Commercial Services
	Total			**$2,314.1**	**$380.4**		

*Note: Now called VEREIT, Inc.

Despite the presence of one "mega" settlement for $1.025 billion in 2020, the top 10 settlements since the passage of PLSRA remains unchanged. This list last changed in 2018 due to the Petrobras settlement of $3 billion and includes settlements ranging from $1.1 billion to $7.2 billion. See Table 2.

Unlike the 2020 top 10 settlements, the all-time top 10 settlements are more concentrated in specific circuits, with six of the 10 cases in the Second Circuit. The most common economic sector of defendants associated with the top settlements was finance. While there are a few common economic sectors in the top 2020 and all-time lists, some of the economic sectors represented in the 2020 top 10 list are not included in the all-time list, such as utilities and commercial services.

Table 2. **Top 10 Federal Securities Class Action Settlements**
As of 31 December 2020

				Codefendant Settlements					
Rank	Defendant	Filing Date	Settlement Year(s)	Total Settlement Value ($Million)	Financial Institutions Value ($Million)	Accounting Firm Value ($Million)	Plaintiffs' Attorneys' Fees and Expenses ($Million)	Circuit	Economic Sector
1	ENRON Corp.	22 Oct 01	2003–2010	$7,242	$6,903	$73	$798	5th	Industrial Services
2	WorldCom, Inc.	30 Apr 02	2004–2005	$6,196	$6,004	$103	$530	2nd	Communications
3	Cendant Corp.	16 Apr 98	2000	$3,692	$342	$467	$324	3rd	Finance
4	Tyco International, Ltd.	23 Aug 02	2007	$3,200	No codefendant	$225	$493	1st	Producer Mfg.
5	Petroleo Brasileiro S.A. - Petrobras	8 Dec 14	2018	$3,000	$0	$50	$205	2nd	Energy Minerals
6	AOL Time Warner Inc.	18 Jul 02	2006	$2,650	No codefendant	$100	$151	2nd	Consumer Services
7	Bank of America Corp.	21 Jan 09	2013	$2,425	No codefendant	No codefendant	$177	2nd	Finance
8	Household International, Inc.	19 Aug 02	2006–2016	$1,577	Dismissed	Dismissed	$427	7th	Finance
9	Nortel Networks	2 Mar 01	2006	$1,143	No codefendant	$0	$94	2nd	Electronic Technology
10	Royal Ahold, NV	25 Feb 03	2006	$1,100	$0	$0	$170	2nd	Retail Trade
	Total			**$32,224**	**$13,249**	**$1,017**	**$3,368**		

NERA-Defined Investor Losses

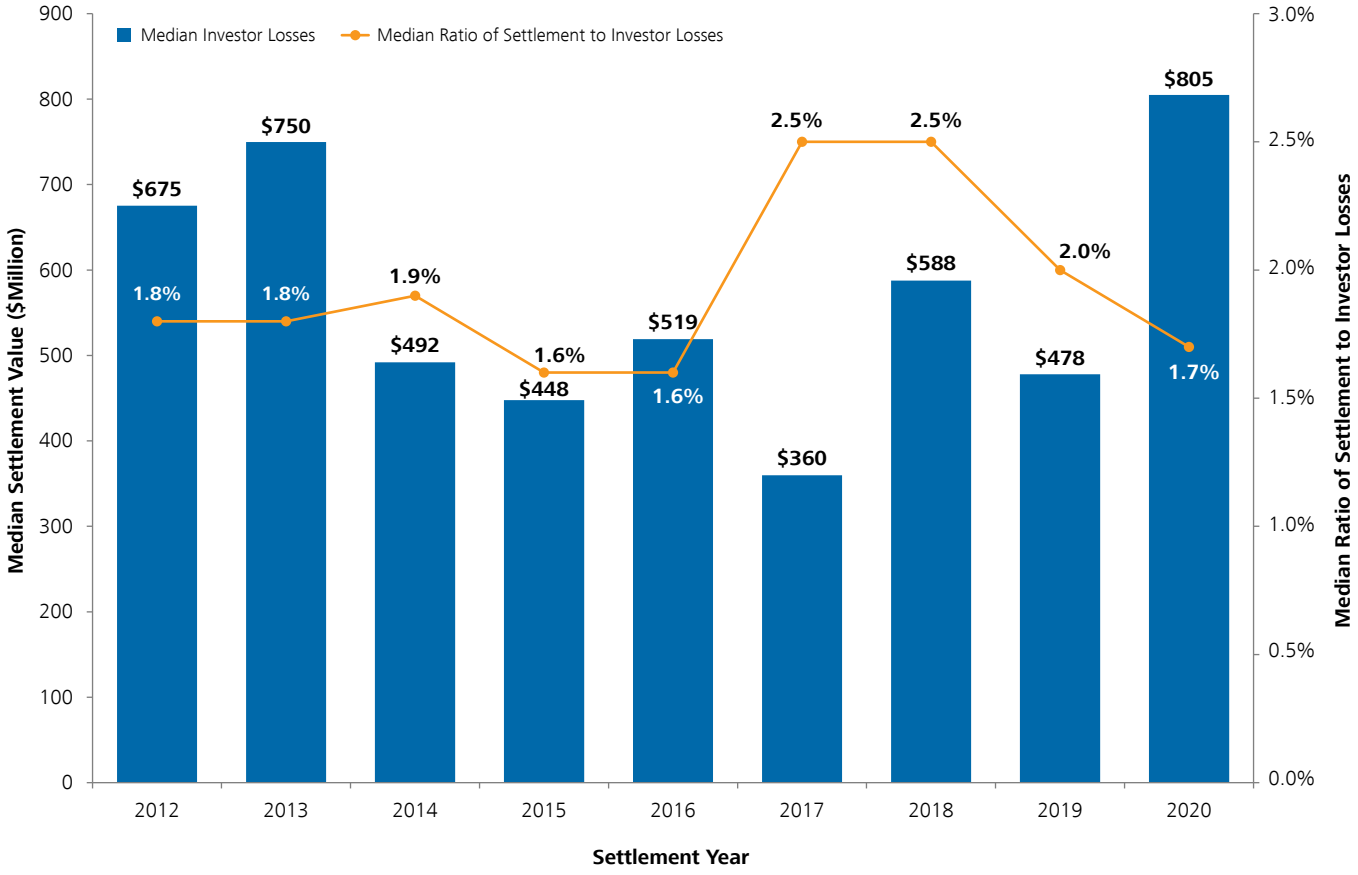
As a proxy to measure the aggregate loss to investors from the purchase of a defendant's stock during the alleged class period, NERA relies on its own proprietary variable, NERA-Defined Investor Losses.[10] This measure of the aggregate amount lost by investors is estimated using publicly available data and is calculated assuming an investor had alternatively purchased stocks that performed similarly to the S&P 500 index during the class period. NERA has reviewed and examined more than 1,000 settlements and found that this proprietary variable is the most powerful predictor of settlement amount. Although losses are highly correlated with settlement values, we have found that settlements do not increase one for one with losses but rather at a slower rate.

For cases settled between 2012 and 2020, the ratio of settlement to Investor Losses is higher for cases with lower settlement values than for cases with higher settlement values. In other words, smaller cases (measured based on the computed Investor Losses) commonly settle for a larger fraction of the estimated Investor Losses than larger cases, though the decline is not linear. In fact, the most dramatic decline occurs between cases with Investor Losses of less than $20 million and cases with Investor Losses of between $20 million and $50 million. More specifically, the median ratio of settlement value to NERA-defined Investor Losses was 24.5% for cases with Investor Losses below $20 million and 5.2% for cases with Investor Losses between $20 million and $50 million. For cases with Investor Losses between $1 billion and $5 billion, the median ratio was 1.2%, and falls below 1% for cases with Investor Losses of $5 billion and higher.

Median Investor Losses and Median Ratio of Actual Settlements to Investor Losses

Following a spike in the median Investor Losses in 2013, the median Investor Losses showed only minor year-to-year fluctuations through 2019. In 2020, the median Investor Losses rose dramatically, reaching a record-setting high of $805 million. This median is nearly 70% higher than the median value for 2019 of $478 million and 7% higher than the 2013 median value of $750 million. For all years between 2017 and 2019, the median ratio of settlement to Investor Losses was above 2%, a higher ratio than was observed in any of the prior five years. Despite the increase in settlement values in 2020, the increase in Investor Losses led to a decline in the median ratio of settlement to Investor Losses. For 2020, the median ratio of settlement to Investor Losses was 1.7%, one of the lowest ratios observed in the last nine years. See Figure 16.

Figure 16. **Median NERA-Defined Investor Losses and Median Ratio of Settlement to Investor Losses by Settlement Year**
January 2012–December 2020



Predicted Settlement Model

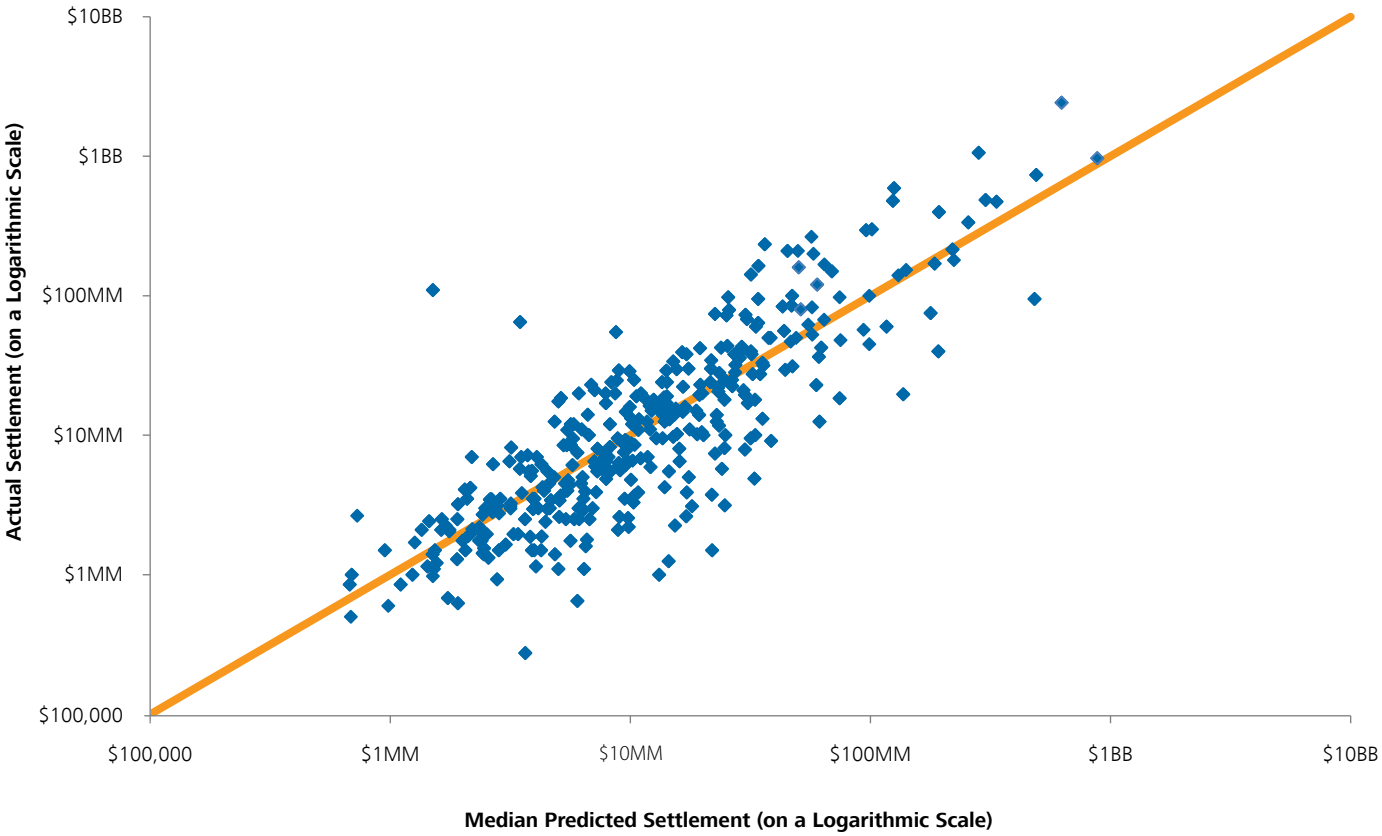
In addition to Investor Losses, NERA identified several other key factors that drive settlement amounts. These factors, when combined with Investor Losses, account for a substantial fraction of the variation observed in actual settlements in our database.

Using the measure of Investor Losses as discussed above in the predicted model, some of the factors that influence settlement values are:

- NERA-Defined Investor Losses (a proxy for the size of the case);
- The market capitalization of the issuer immediately after the end of the class period;
- The types of securities, in addition to common stock, alleged to have been affected by the fraud;
- Variables that serve as a proxy for the merit of plaintiffs' allegations (such as whether the company has already been sanctioned by a governmental or regulatory agency or paid a fine in connection with the allegations);
- The stage of the litigation at the time of settlement; and
- Whether an institution or public pension fund is lead or named plaintiff.

These factors account for a substantial amount of the variation in settlement amounts for the sample of cases in our model with a settlement date between December 2011 and June 2020. In addition, as evidenced in Figure 17, there is significant correlation between the median predicted settlement and actual settlement values for the more than 375 cases in our current model.

Figure 17. **Predicted vs. Actual Settlements**
Investor Losses Using S&P 500 Index



Trends in Plaintiffs' Attorneys' Fees and Expenses

In addition to tracking settlements to plaintiffs, NERA's SCA database also tracks the compensation to plaintiffs' attorneys working on these suits.[11] Plaintiffs' attorneys are commonly compensated for their work related to a lawsuit, specifically in fees, as part of a settlement, if one is reached. This compensation is often determined as a fixed percentage of the settlement amount. Additionally, plaintiffs' attorneys also typically receive reimbursement out of the settlement for any out-of-pocket costs incurred in relation to work performed in connection with the case.

Over the 10-year period ending 31 December 2020, the annual aggregate amount of plaintiffs' attorneys' fees and expenses has varied significantly, ranging from a low of $467 million in 2017 to a high of $1,552 million in 2016. In 2020, the aggregate plaintiffs' attorneys' fees and expenses was $613 million, an approximate 6% increase over the 2019 amount but still below the 2018 amount of $1,202 million. This increase in 2020 was driven by the presence of the American Realty Capital Properties settlement, which accounted for $105 million of the aggregate fees and expenses for the year. Given that plaintiffs' attorneys' compensation is a function of settlement amount, the presence of "mega" settlements—settlements of $1 billion or higher—will result in higher aggregate fees and expenses than settlements for lower values. Although there was an increase in 2020 in the aggregate fees and expenses associated with settlements of $1 billion or higher, there was a decrease in the aggregate fees and expenses related to settlements under $500 million. The increase in the higher settlement range was sufficient to more than offset the decrease in the lower settlement ranges, resulting in an overall increase in aggregate fees and expenses for settlements in 2020. See Figure 18.

Figure 18. **Aggregate Plaintiffs' Attorneys' Fees and Expenses by Settlement Size**
January 2011–December 2020

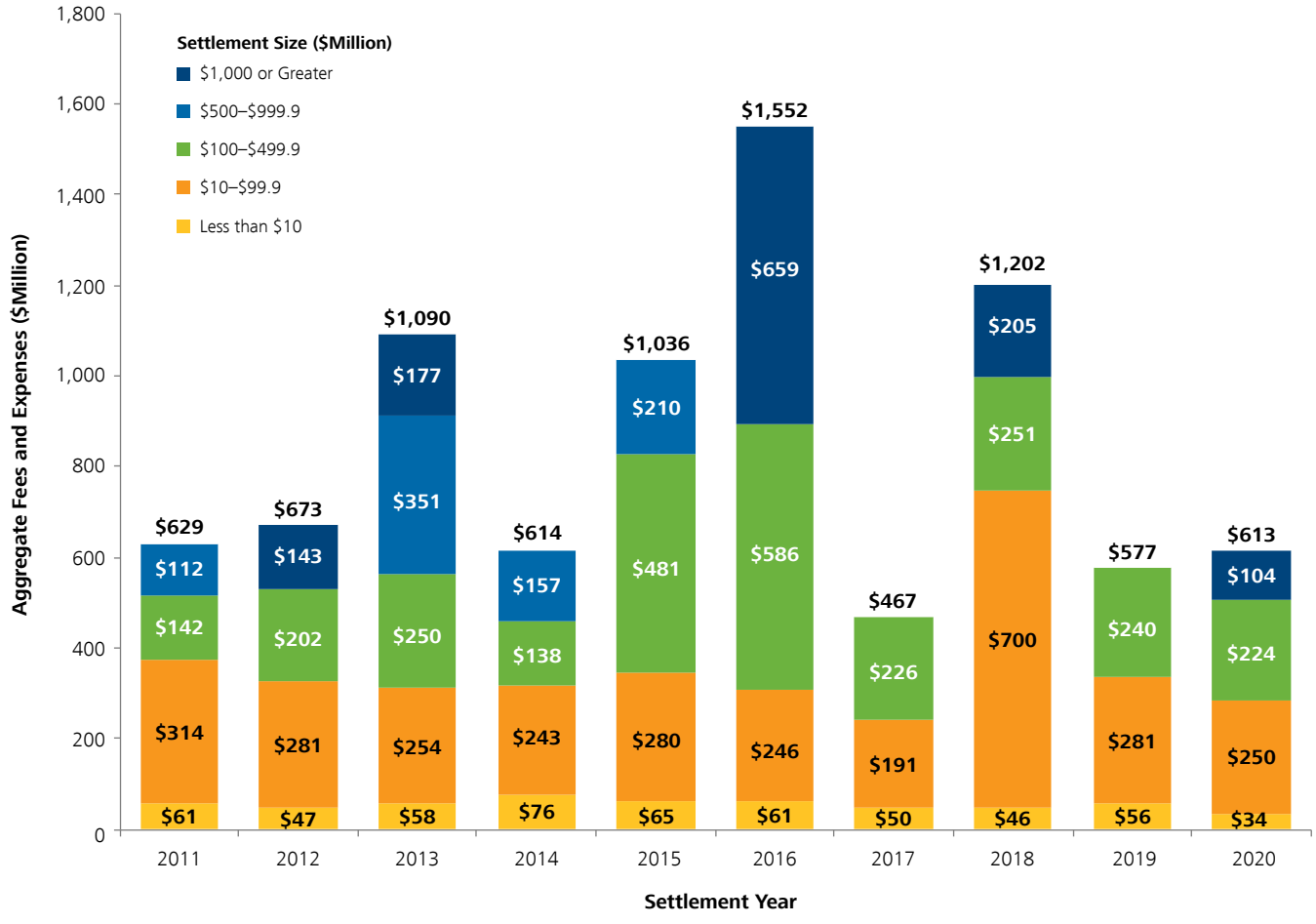
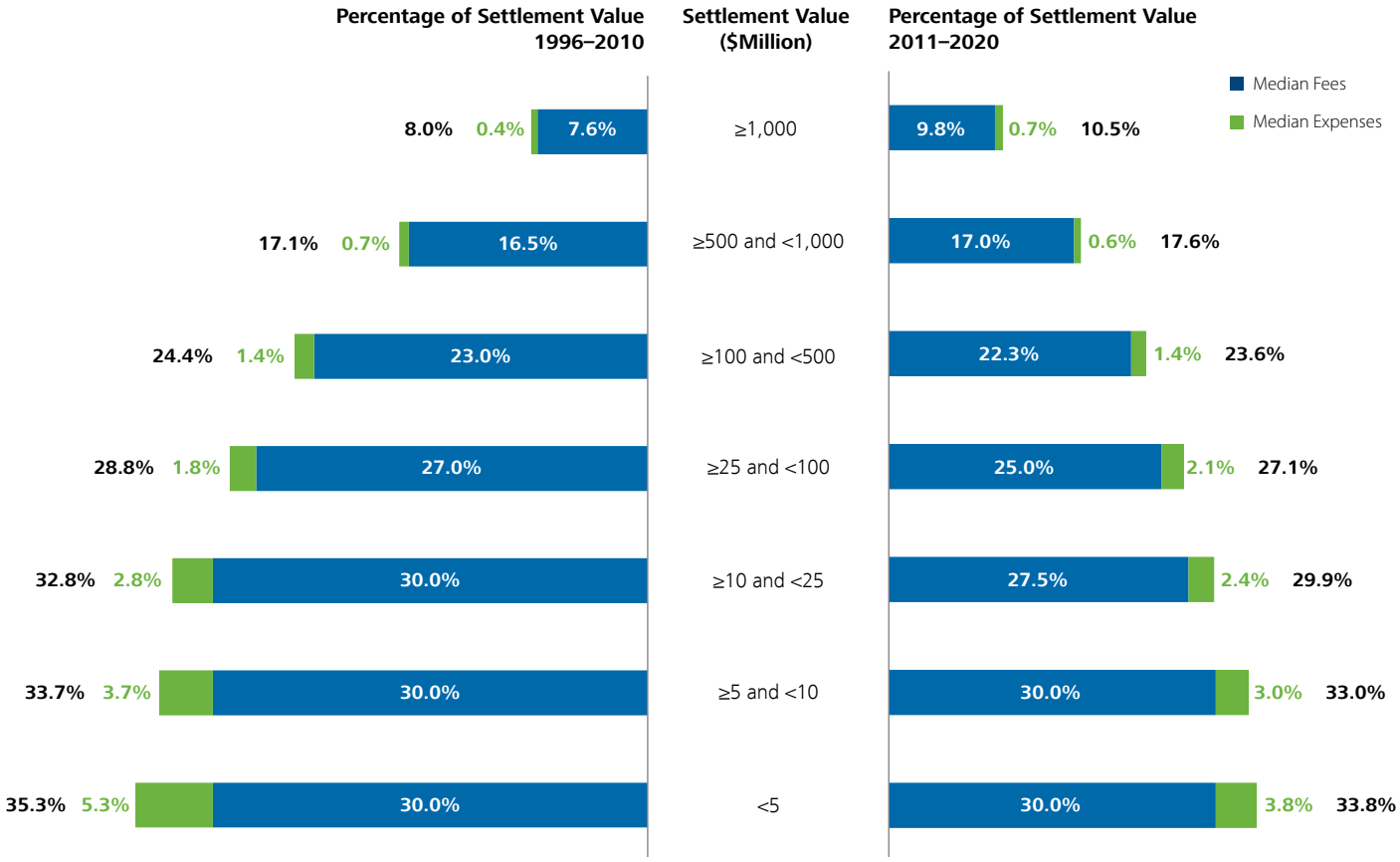


Figure 19 examines the median of plaintiffs' attorneys' fees and expenses as a percentage of settlement value for cases settled between 1996 and 2010 and between 2011 and 2020. As indicated in the chart, plaintiffs' attorneys' fees and expenses represent a declining percentage of settlement value as settlement size increases. This pattern is consistent in settlements reached in the last 10 years and settlements reached between 1996 and 2010. More specifically, for settlements of $5 million and less, attorneys' fees and expenses represent 35% and 34% of the settlement amount for the 1996–2010 and 2011–2020 periods, respectively. In both periods, median plaintiffs' attorneys' fees and expenses as a percentage of settlement size is approximately 24% for settlements between $100 million and $500 million. As settlement size increases to $1 billion or greater, the percentage associated with attorneys' fees and expenses falls to 11% for settlements in the 2011–2020 period and 8% for settlements reached during the 1996–2010 period.

Figure 19. **Median of Plaintiffs' Attorneys' Fees and Expenses by Size of Settlement**
Excludes Merger Objections and Settlements for $0 to the Class



Conclusion

In 2020, there was a decline in total federal filings, resulting from a decrease within each of the five types of case categories we examine. Of these newly filed cases, the percentage that were Rule 10b-5, Section 11, and/or Section 12 increased to 64%, one of the highest proportions in recent years. The electronic technology and technology services sector represented the largest proportion of 2020 new securities class action filings and misled future performance was the most common allegation included in complaints. The Second, Third, and Ninth Circuits continue to account for a substantial proportion of new cases filed, representing more than 75% of the 2020 filings.

Since our 2019 report, the COVID-19 pandemic developed, impacting business operations, performance, revenue, and outlook. In March, the first securities class action lawsuit related to COVID-19 was filed, and another 32 COVID-19-related suits were filed through 31 December 2020. At this time, the pandemic's impact on securities class action litigation has not yet been fully determined and it will likely take months before it is fully revealed.

Between 1 January 2020 and 31 December 2020, 320 cases were resolved, a slight increase from the total number of cases resolved in 2019. Although this number of resolutions is well within the historical range for 2011–2019, the number of settled cases hit a record low while the number of dismissed cases reached a record high for the 10-year period.

For the non-merger-objection cases settled for positive values in 2020, the average settlement value was $44 million. This average value was more than 50% higher than the 2019 average of $28 million. Excluding settlements of $1 billion and higher, the 2020 average settlement value was $30 million, which is within $1 million of the average values in 2018 and 2019. The median annual settlement value for 2020 was $13 million, tying with 2018 for the highest recorded median value in the last 10 years.

Notes

1 This edition of NERA's report on Recent Trends in Securities Class Action Litigation expands on previous work by our colleagues Lucy P. Allen, Dr. Vinita Juneja, Dr. Denise Neumann Martin, Dr. Jordan Milev, Robert Patton, Dr. Stephanie Plancich, and others. The authors thank Dr. David Tabak for helpful comments on this edition. We thank Zhenyu Wang and other researchers in NERA's Securities and Finance Practice for their valuable assistance. These individuals receive credit for improving this report; any errors and omissions are those of the authors. NERA'S proprietary securities class action database and all analyses reflected in this report are limited to federal case filings and resolutions.

2 Data for this report were collected from multiple sources, including Institutional Shareholder Services, complaints, case dockets, Dow Jones Factiva, Bloomberg Finance, FactSet Research Systems, Nasdaq, Intercontinental Exchange, US Securities and Exchange Commission (SEC) filings, and public press reports.

3 NERA tracks class actions involving securities that have been filed in federal courts. Most of these cases allege violations of federal securities laws; others allege violations of common law, including breach of fiduciary duty, as with some merger-objection cases; still others are filed in federal court under foreign or state law. If multiple actions are filed against the same defendant, are related to the same allegations, and are in the same circuit, we treat them as a single filing. However, the first two actions filed in different circuits are treated as separate filings. If cases filed in different circuits are consolidated, we revise our count to reflect the consolidation. Therefore, case counts for a particular year may change over time. Different assumptions for consolidating filings would probably lead to counts that are directionally similar but may, in certain circumstances, lead observers to draw a different conclusion about short-term trends in filings.

4 Due to a recent revision to the methodology used to gather data on the number of listed companies on the NYSE and Nasdaq, the historical counts may differ from the counts presented in prior reports.

5 Most securities class actions complaints include multiple allegations. For this analysis, all allegations from the complaint are included, and as such, the total number of allegations exceeds the total number of filings.

6 It is important to note that due to the small number of cases in some of these categories, the findings summarized here may be driven by one or two cases.

7 Here the word "dismissed" is used as shorthand for all cases resolved without settlement; it includes cases where a motion to dismiss was granted (and not appealed or appealed unsuccessfully), voluntary dismissals, cases terminated by a successful motion for summary judgment, or an unsuccessful motion for class certification.

8 Analyses in this section exclude IPO laddering cases and merger-objection cases.

9 Unless otherwise noted, tentative settlements (those yet to receive court approval) and partial settlements (those covering some but not all non-dismissed defendants) are not included in our settlement statistics. We define "settlement year" as the year of the first court hearing related to the fairness of the entire settlement or the last partial settlement. Analyses in this section exclude merger-objection cases and cases that settle with no cash payment to the class. All charts and statistics reporting inflation-adjusted values are estimated as of November 2020.

10 NERA-Defined Investor Losses is only calculable for cases involving allegations of damages to common stock over a defined class period. As such, we have not calculated this metric for cases such as merger objections.

11 Analyses in this section exclude merger-objection cases and cases that settle with no cash payment to the class.

About NERA

NERA Economic Consulting (**www.nera.com**) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For over half a century, NERA's economists have been creating strategies, studies, reports, expert testimony, and policy recommendations for government authorities and the world's leading law firms and corporations. We bring academic rigor, objectivity, and real-world industry experience to bear on issues arising from competition, regulation, public policy, strategy, finance, and litigation.

NERA's clients value our ability to apply and communicate state-of-the-art approaches clearly and convincingly, our commitment to deliver unbiased findings, and our reputation for quality and independence. Our clients rely on the integrity and skills of our unparalleled team of economists and other experts backed by the resources and reliability of one of the world's largest economic consultancies. With its main office in New York City, NERA serves clients from more than 25 offices across North America, Europe, and Asia Pacific.

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EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re CIT GROUP INC. SECURITIES LITIGATION	Master File No. 1:08-cv-06613-BSJ-THK
	CLASS ACTION
This Document Relates To: ALL ACTIONS.	~~[PROPOSED]~~ ORDER AWARDING ATTORNEYS' FEES AND EXPENSES AND PLAINTIFFS' EXPENSES PURSUANT TO 15 U.S.C. §78u-4(a)(4) AND 15 U.S.C. §77z-1(a)(4)

THIS MATTER having come before the Court on June 13, 2012, on the Motion of Lead Counsel for an award of attorneys' fees and expenses and plaintiffs' expenses incurred in the Litigation; the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of this 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 Settlement Agreement, dated as of March 13, 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 Settlement Class who have not timely and validly requested exclusion.

3. Counsel for the Lead Plaintiff are entitled to a fee paid out of the common fund created for the benefit of the Settlement Class. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478-79 (1980). In class action suits where 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 the proper approach. *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984). The Second Circuit recognizes the propriety of the percentage-of-the-fund method when awarding fees. *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005).

4. The Court has carefully considered the objection to Lead Counsel's fee request submitted by John D. Leonard; finds the objection to be without merit; and hereby overrules the objection.

5. The Court hereby awards attorneys' fees of 26.5% of the Settlement Amount, plus interest at the same rate as earned on the Settlement Fund. The Court finds that a 26.5% fee award is

fair and reasonable based on the circumstances of this case and the factors set forth in *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000).

6. The fees awarded shall be allocated among counsel for plaintiffs 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.

7. The Court hereby awards plaintiffs' counsel's litigation expenses in the amount of $1,141,449.32, plus interest at the same rate as earned on the Settlement Fund until paid.

8. 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 and in particular ¶7.2 thereof, which terms, conditions, and obligations are incorporated herein.

9. Pursuant to 15 U.S.C. §78u-4(a)(4) and 15 U.S.C. §77z-1(a)(4), Lead Plaintiff is hereby awarded the sum of $25,423.00, proposed class representative Road Carriers Local 707 Pension Fund is hereby awarded the sum of $5,868.05, and proposed class representative Don Pizzuti is hereby awarded the sum of $30,000.00 as reimbursement for time and expenses incurred in this Litigation. Such reimbursements are appropriate considering each of the foregoing plaintiffs' participation in the Litigation.

IT IS SO ORDERED.

DATED: 6-12-12

THE HONORABLE BARBARA S. JONES
UNITED STATES DISTRICT JUDGE

709269_1

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re BHP BILLITON LIMITED SECURITIES LITIGATION	Civil Action No. 1:16-cv-01445-NRB
	CLASS ACTION
This Document Relates To: ALL ACTIONS.	[PROPOSED] ORDER AWARDING ATTORNEYS' FEES AND EXPENSES AND AWARD TO LEAD PLAINTIFFS PURSUANT TO 15 U.S.C. §78u-4(a)(4)

This matter having come before the Court on March 5, 2019, on Lead Counsel's motion for an award of attorneys' fees and expenses ("Fee Motion"), the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of this class action (the "Litigation") to be fair, reasonable and adequate, and otherwise being fully informed in the premises and good cause appearing therefor;

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 ("Stipulation" or "Settlement") filed with the Court and the memorandum of law in support of the Fee Motion submitted in support thereof. *See* ECF Nos. 103, 116.

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all members of the Class who have not timely and validly requested exclusion.

3. Notice of Lead Counsel's Fee Motion was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the Class of the Fee Motion met the requirements of Rules 23 and 54 of the Federal Rules of Civil Procedure, 15 U.S.C. §78u-4(a)(7), the Securities Exchange Act of 1934, 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.

4. The Court hereby awards Lead Counsel attorneys' fees of 30% of the Settlement Amount, plus expenses in the amount of $435,998.92, together with the interest earned on such amounts for the same time period and at the same rate as that earned by the Settlement Fund. The

Court finds that the amount of fees awarded is appropriate, fair, and reasonable under the "percentage-of-recovery" method.

5. The fees and expenses shall be allocated among Plaintiffs' other counsel in a manner which, in Lead Counsel's good-faith judgment, reflects the contributions of such counsel to the prosecution and settlement of the Litigation.

6. The awarded attorneys' fees and expenses shall be paid immediately to Lead Counsel subject to the terms, conditions, and obligations of the Stipulation.

7. In making the award to Lead Counsel of attorneys' fees and litigation expenses to be paid from the recovery, the Court has considered and found that:

(a) The Settlement has created a common fund of $50,000,000 in cash and that numerous Class Members who submit acceptable Proofs of Claim will benefit from the Settlement created by the efforts of Lead Counsel;

(b) The requested attorneys' fees and payment of litigation expenses have been approved as fair and reasonable by the Lead Plaintiffs;

(c) Notice was disseminated to Class Members stating that Lead Counsel would be moving for attorneys' fees not to exceed 30% of the Settlement Amount and payment of litigation expenses in an amount not to exceed $500,000, plus interest earned on both amounts;

(d) Lead Counsel has expended substantial time and effort pursuing the Litigation on behalf of the Class;

(e) Lead Counsel pursued the Litigation on a contingent basis, having received no compensation during the Litigation, and any fee award has been contingent on the result achieved;

(f) The Litigation involves complex factual and legal issues and, in the absence of the Settlement, would involve lengthy proceedings whose resolution would be uncertain;

(g) Lead Counsel conducted the Litigation and achieved the Settlement with skillful and diligent advocacy;

(h) Public policy concerns favor the award of reasonable attorneys' fees in securities class action litigation;

(i) The amount of attorneys' fees awarded is fair and reasonable and consistent with awards in similar cases within the Second Circuit; and

(j) Plaintiffs' counsel devoted 10,365 hours, with a lodestar value of $5,516,276.25 to achieve the Settlement.

8. Any appeal or any challenge affecting this Court's approval regarding any attorneys' fee and expense application shall in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

9. Pursuant to 15 U.S.C. §78u-4(a)(4), the Court awards $3,148.20 to Lead Plaintiff City of Birmingham Retirement and Relief System and $3,257.80 to Lead Plaintiff City of Birmingham Firemen's and Policemen's Supplemental Pension System.

10. The Court has considered the objection to the fee award filed by John W. Davis and finds it to be without merit. The objection is therefore overruled in its entirety.

11. In the event that the Settlement is terminated or does not become Final or the Effective Date does not occur in accordance with the terms of the Stipulation, this Order shall be rendered null and void to the extent provided by the Stipulation and shall be vacated in accordance with the Stipulation.

IT IS SO ORDERED.

DATED: April 10, 2019

Naomi Reice Buchwald

THE HON. NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

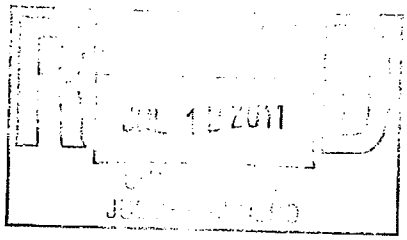
CERTIFICATE OF SERVICE

I, Joseph Russello, hereby certify that on January 29, 2019, I authorized a true and correct copy of the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such public filing to all counsel registered to receive such notice.

/s/ Joseph Russello
JOSEPH RUSSELLO

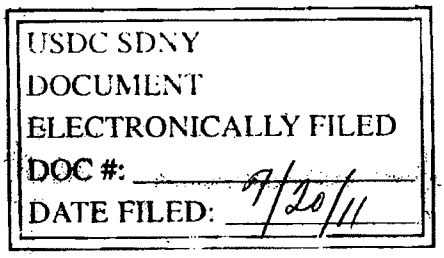
EXHIBIT D

 Marrero, J



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KEVIN CORNWELL, Individually and On Behalf of All Others Similarly Situated, Plaintiff, vs. CREDIT SUISSE GROUP, et al., Defendants.	Civil Action No. 08-cv-03758(VM) **(Consolidated)** CLASS ACTION ORDER AWARDING ATTORNEYS' FEES AND EXPENSES



THIS MATTER having come before the Court on July 18, 2011, on the motion of Lead Plaintiffs' counsel for an award of attorneys' fees 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 7, 2011.

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all members of the Settlement Class who have not timely and validly requested exclusion.

3. Counsel for the Lead Plaintiffs are entitled to a fee paid out of the common fund created for the benefit of the Settlement Class. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478-79 (1980). In class action suits where 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 the proper approach. *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984). The Second Circuit recognizes the propriety of the percentage-of-the-fund method when awarding fees. *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005).

4. Lead Plaintiffs' counsel have moved for an award of attorneys' fees of 27.5% of the Settlement Fund, plus interest.

5. This Court adopts the percentage-of-recovery method of awarding fees in this case, and concludes that the percentage of the benefit is the proper method for awarding attorneys' fees in this case.

6. The Court hereby awards attorneys' fees of 27.5% of the Settlement Fund, plus interest at the same rate as earned on the Settlement Fund. The Court finds the fee award to be fair and reasonable. The Court further finds that a fee award of 27.5% of the Settlement Fund is consistent with awards made in similar cases.

7. Said fees shall be allocated among plaintiffs' counsel by Co-Lead Counsel in manner which, in their good faith judgment, reflects each counsel's contribution to the institution, prosecution and resolution of the Action.

8. The Court hereby awards expenses in an aggregate amount of $285,072.62, plus interest.

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 fort in *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000). In evaluating the *Goldberger* factors, the Court finds that:

(a) Counsel for Lead Plaintiffs expended considerable effort and resources over the course of the Action researching, investigating and prosecuting Lead Plaintiffs' claims. Lead Plaintiffs' counsel have represented that they have reviewed tens of thousands of pages of documents, interviewed witnesses and opposed legally and factually complex motions to dismiss. The parties also engaged in settlement negotiations that lasted several months. The services provided by Lead Plaintiffs' counsel were efficient and highly successful, resulting in an outstanding recovery for the Settlement 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. *In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, 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). Despite the novelty and difficulty of the issues raised, and the procedural posture of the case, Lead Plaintiffs' counsel secured an excellent result for the Settlement Class.

(c) The recovery obtained and the backgrounds of the lawyers involved in the lawsuit are the best evidence that the quality of Lead Plaintiffs' counsel's representation of the Settlement Class supports the requested fee. Lead Plaintiffs' counsel demonstrated that notwithstanding the barriers erected by the PSLRA, they would develop evidence to support a convincing case. Based upon Lead Plaintiffs' counsel's diligent efforts on behalf of the Settlement Class, as well as their skill and reputations, Lead Plaintiffs' counsel were able to negotiate a very favorable result for the Settlement Class. Lead Plaintiffs' 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 Action to a successful conclusion against the Defendants are the best indicator of the experience and ability of the attorneys involved. In addition, Defendants were represented by highly experienced lawyers from a prominent firm. The standing of opposing counsel should be weighed in determining the fee, because such standing reflects the challenge faced by plaintiffs' attorneys. The ability of Lead Plaintiffs' counsel to obtain such a favorable settlement for the Settlement 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 is within the range normally awarded in cases of this nature.

(e) Public policy supports the requested fee, because the private attorney general role is "'vital to the continued enforcement and effectiveness of the Securities Acts.'" *Taft v. Ackermans*, No. 02 Civ. 7951(PKL), 2007 U.S. Dist. LEXIS 9144, at *33 (S.D.N.Y. Jan. 31, 2007) (citation omitted).

(f) Lead Plaintiffs' counsel's total lodestar is $4,049,631.50. A 27.5% fee represents a multiplier of 4.7. Given the public policy and judicial economy interests that support the expeditious settlement of cases, *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 373 (S.D.N.Y. 2002), the requested fee is reasonable.

10. The awarded attorneys' fees and expenses, and interest earned thereon, shall be paid to Co-Lead Counsel from the Settlement Fund immediately after the date this Order is executed subject to the terms, conditions, and obligations of the Settlement Agreement and in particular ¶6.2 thereof, which terms, conditions, and obligations are incorporated herein.

IT IS SO ORDERED.

Dated: New York, NY
18 July, 2011

THE HONORABLE VICTOR MARRERO
UNITED STATES DISTRICT JUDGE

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CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2011, I submitted the foregoing to orders_and judgments@nysd.uscourts.gov and e-mailed to the e-mail addresses denoted on the Court's Electronic Mail Notice List, and I hereby certify that I have 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 July 11, 2011.

s/ Ellen Gusikoff Stewart
ELLEN GUSIKOFF STEWART

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EXHIBIT E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

In Re:

15-MC-40 (AKH)

AMERICAN REALTY CAPITAL
PROPERTIES, INC. LITIGATION,

Fairness Hearing

----------x

New York, N.Y.
January 23, 2019
10:15 a.m.

Before:

HON. ALVIN K. HELLERSTEIN

District Judge

APPEARANCES

ROBBINS GELLER RUDMAN & DOWD LLP
Attorneys for TIAA and Class Plaintiffs
BY: DEBRA J. WYMAN, ESQ.
MICHAEL J. DOWD, ESQ.
ROBERT M. ROTHMAN, ESQ.
ELLEN GUSIKOFF-STEWART, ESQ.

GLANCY PRONGAY & MURRAY LLP
Attorneys for the Witchko Derivative
BY: MATTHEW M. HOUSTON, ESQ.

MILBANK LLP
Attorneys for Defendant ARCP
BY: SCOTT A. EDELMAN, ESQ.

THE COURT: Who is going to do the application for Robbins Geller?

MR. DOWD: I will, your Honor. Michael Dowd.

THE COURT: Good morning, Mr. Dowd.

MR. DOWD: Good morning, your Honor.

THE COURT: I've read your extensive declaration, that is, the declaration of Ms. Wyman.

I want to take up just your fees, your activities. The first to file the class action lawsuit were four firms, who don't seem to be involved: Pomerantz LLP, Wolf Popper LLP, Wolf Haldenstein LLP, and the Rosen Law Firm. Is it clear that they are making no claim?

MR. DOWD: They are making no claim, your Honor.

THE COURT: OK. Did they do anything in the lawsuit?

MR. DOWD: No, your Honor. I mean, I'm sure they filed complaints early on. But the Court, when it appointed us lead plaintiff, told us to work with other firms and form a working group, a global working group. And there were a group of firms, I believe it was nine firms, that agreed to be part of that working group and to work on the case. And we've submitted their time with our time. And those are the only attorneys that would be entitled to fees in this casement.

THE COURT: The second thing, I did not appreciate how many counsel there were. My impression was that there were three or four at the time that I said what you said.

MR. DOWD: Pardon me, your Honor?

THE COURT: I didn't know there were nine other law firms involved.

MR. DOWD: There were, your Honor. The Court --

THE COURT: I didn't know that, I said. When I asked you to coordinate services and organize the plaintiffs' group, I thought there were just two or three law firms.

MR. DOWD: No, they were not. And they each had clients in the case, except I believe there was one firm that did not. But they each had clients. They were all class reps. They were all either on our "may call" or "will call" witness list. And so they provided valuable service. And they did a lot of work in the case. We've limited it and tried to give them discrete projects or dealing with just their plaintiffs, you know, because that's what we thought the Court wanted with the working group, and we did do that. Their time is about 10 percent of our time. And I think that's fair considering what they did in the case.

THE COURT: You have a rather detailed description of the various things you were doing.

MR. DOWD: Yes, your Honor. That would be in Ms. Wyman's, the longer declaration.

THE COURT: The declaration in support of application for award of attorney's fees and expenses is what I'm looking at. I have the larger one as well.

Ms. Wyman's affidavit identifies the lawyers -- all your firm?

MR. DOWD: Yes. They're all our firm.

THE COURT: Why so many lawyers?

MR. DOWD: Well, your Honor, there are different people that helped with different tasks. When I looked at it, this is what struck me. We had a working group that I really thought were the people that were going to be responsible for trying this case. That group was about 15 people, 13 lawyers and the two forensic accountants that were involved in it from beginning to end. Those 15 people account for about 72 percent of our lodestar, $47 million, just those 15 people. They were all people that the Court would probably be familiar with or would have seen their names. Certainly most of us have been here in court.

And then if you add in the four people at our office, three of our internal staff attorneys and another associate, that were primarily responsible for the document review, so that would be another four people, bringing it to 19. I think those people together would account for about 82 percent of our entire lodestar.

So it may look like a lot of people because there were timekeepers that did individual things or who were on the case for a given period of time. But if you look at those people that really drove the case, you're talking about the 15 main

people that did everything. That's 72 percent of the time. And if you take in those other four that were responsible for a lot of the document work, that's, I think, about 82 percent of the lodestar.

THE COURT: 12 people billed more than a thousand hours.

MR. DOWD: Yes, your Honor.

THE COURT: How many people were involved in your firm, Mr. Edelman? Roughly.

MR. EDELMAN: Your Honor, I would bet a comparable number. This was complicated litigation in a big case.

THE COURT: I understand.

MR. EDELMAN: That doesn't sound at all outlandish to me. Their the core team.

THE COURT: OK. Then I pass that observation.

MR. DOWD: That's just Mr. Edelman's firm. There were also Grant Thornton's lawyers.

THE COURT: They had a separate job to do.

MR. DOWD: Well, and we had to do the job on the other side of them as well.

THE COURT: That's true.

MR. DOWD: They had, at summary judgment --

THE COURT: Mr. Dowd, I withdraw that implied criticism.

The hourly rates, for example, what did Jason Forge

do?

MR. DOWD: Jason Forge, your Honor? Jason Forge was a critical part of this team. He worked on the case primarily towards the end at summary judgment, when he got ready for trial. He did fantastic work with their damages experts. He was a former assistant U.S. attorney. He was an AUSA who did huge cases in LA and San Diego before I talked him into coming over to our firm. He's a great lawyer, your Honor. He's been in front of you. I don't think he argued in this case. He was certainly in the courtroom. He's argued in other cases that I've been on with him in front of this Court. So you've met him.

THE COURT: Now, the top billing rate of $1,150 of Samuel Rudman, $1,250, he only had 29 hours.

MR. DOWD: It's really, it's probably Mr. Coughlin, myself, and Mr. Robbins.

THE COURT: Several billing more than a thousand dollars. Those seem like New York rates rather than San Diego rates.

MR. DOWD: Well, Mr. Rudman is in New York. But I think you should look at the rates for lawyers that do this type of litigation. If you look, the *National Law Journal* said over a thousand dollars an hour is common now for partners. If you look at some of the firms on the other side of this case --

THE COURT: I wouldn't try.

MR. DOWD: We submitted a declaration showing that Weil Gotshal -- and they were on the other side of this case, good lawyers -- we showed that they filed an application in the Sears bankruptcy earlier last year, and they had nine lawyers, at $1500 an hour, and dozens at over a thousand dollars an hour. So higher than us.

THE COURT: The bankruptcy rates are out of sight, and that's often because the allowances are heavily discounted.

Tell me now how the other firms worked.

MR. DOWD: How did the other firms work? What did they do, your Honor?

THE COURT: What did they do, yes.

MR. DOWD: Well, I can tell you that, for example, if you just go down the list, if you start with Lowey Dannenberg, for example. They represented Corsair. And Corsair was a shareholder and class member for the Cole shares and also the May 2014 common stock offering. Corsair produced, I believe, 145,000 pages of documents, all of which had to be reviewed for privilege. They were on our "will call" witness list. They are on, I believe, also a "may call" witness list. Their client was deposed. They also assisted with the summary judgment briefing on the discrete project that Ms. Wyman gave them.

THE COURT: What project was that?

MR. DOWD: Do you remember which briefing it was?

MS. WYMAN: Your Honor, we needed some assistance with the research of some tricky issues, and we asked them to help us with that, and they prepared --

THE COURT: You what?

MS. WYMAN: We asked them to help us with some research and prepared an insert to one of the briefs.

MR. DOWD: So you're looking at, your Honor, document review, analysis of the claims, data collection, motion to dismiss, negotiation of discovery disputes. Ms. Wyman would have had to coordinate with them for what their --

THE COURT: You're taking it out of their declaration, what you just said.

MR. DOWD: Pardon me?

THE COURT: What you just read, is that from their declaration?

MR. DOWD: It's from their declaration, yes, your Honor, that was submitted.

THE COURT: Now, Motley Rice makes no description in its declaration. What did they do?

MR. DOWD: Motley Rice, your Honor, they had two clients in the case. They had the national sheet metal workers union. And they were on both the Cole and the May 2014 offering. They were on our "will call" witness list, Mr. Myers. They had also Union Asset Management, which was a German entity that was on the July and December 2013 bond

claims. They had two witnesses that they produced, Mr. Riechwald and Mr. Fischer, who came over from Germany, as I recall, to have their depositions taken. Similarly, Sheet Metal Workers had Mr. Myers, so they had three days of deposition testimony. And all three of those witnesses were on our "will call" witness list. They are coming.

They also assisted us, as I recall, with the motion to dismiss briefing that related, I think, to the Exxon exchange. They attended the first mediation. And they would have spent a lot of time on depo prep and the depositions. And they also would have interacted, I'm sure, with Ms. Wyman in terms of document production and disputes with the defendants, so that, you know, their views would be expressed to the defendants as well.

THE COURT: Johnson Fistel.

MR. DOWD: Johnson Fistel, your Honor, represented their client in the case. There was a class rep. It was Paul Matten. He was an ARCT IV shareholder. He was on our "may call" witness list, I believe. They also assisted, they gave us an associate who came to our office, I believe, in New York, and assisted with document review of the defendants' documents. They also produced documents for their client. And I believe Mr. Matten was also interviewed by the Department of Justice when they were insistent that they wanted one of our class reps, or a couple of our class reps, to be interviewed about

their case.

THE COURT: Cohen Milstein.

MR. DOWD: Cohen Milstein, your Honor, represented the New York City funds. They were in the July 2013 offering, the Cole offering, the May 2014 offering. They produced two witnesses on behalf of the New York City funds, Horan and Jeter. They were both deposed. They were both on our "will call" witness list. They had, your Honor, as I recall, produced 190,000 pages of documents, which had to be reviewed. And they would have been involved, I'm sure, in checking class cert issues. And I believe they assisted also with the motion to dismiss briefing as well, your Honor. So they provided a valuable service. A lot of their work was related to New York City funds. Obviously, if we were trying a case in front of your Honor, in front of a New York jury, it would certainly be helpful to have New York City funds here.

THE COURT: What would they testify on?

MR. DOWD: They would have testified about their purchases in all the different offerings as class reps.

THE COURT: Those would have come in by stipulation.

MR. DOWD: Your Honor, they don't come in by stipulation.

THE COURT: Well, it's a matter of record what they bought and when they bought.

MR. DOWD: Yes. And no one says, we're going to

stipulate to it, your Honor. I've tried a couple of these cases.

THE COURT: There would have been stipulations.

MR. DOWD: Well, I've tried cases, and there weren't stipulations.

THE COURT: You would not need any witnesses on this, and I don't know that the witnesses would have contributed anything.

I'm reacting because a million dollars for each of these law firms, given the $65 million of lodestar that you put into the case, seems excessive.

MR. DOWD: I don't think it was, your Honor. I think what they did, in terms of their clients and document production, producing the documents, defending them at depositions -- we didn't take their depositions. The defendants deposed them.

THE COURT: I understand. But the knowledge of a class member is derivative and really irrelevant. The knowledge is derivative of what the lawyer finds and irrelevant because it doesn't prove any proposition against the defendants. I understand that these depositions are taken as a matter of course by defendants, and they have to be, the clients have to be represented and there's a certain time of preparation, but over a million dollars for each, without time records showing anything, I haven't seen any time records for

them.

MR. DOWD: Well, your Honor, again, we started out from a different premise. We seek a percentage of the fee, a percentage of the fund, as our fee. And that's the trend in the Second Circuit. I know I've argued with your Honor about this in the past. But that's how we seek a fee. When my firm is working on a case --

THE COURT: I just don't do that, Mr. Dowd. I told you in the past, I believe that people who just do it on a basis of percentage do not want to go through the rigor of review and time. I'll award lodestar. And I'll be candid with you right now; you will get an award for your lodestar as well, not as much as you asked for, but you'll get an award. I'm not sure about those other firms. I don't know what they contributed. I don't have a justification of their time. I don't know what activities took up their time. I don't know how they distributed their work between partners and associates. I don't understand the substantial expense factors that they put into this case. It's hard questions.

MR. DOWD: They did break down their time by who the timekeepers were. And they also broke down their expenses. Those are attached to their declarations that they each submitted.

But, again, your Honor, when my firm goes into a case, we negotiated with TIAA. We negotiated for a percentage fee.

And we're not sitting there thinking, let's bring in 50 for attorneys to sit in a room reviewing documents so we can build up our lodestar. And that's the problem with the lodestar analysis. I'm just being honest with your Honor. It encourages lawyers to hire for people that do nothing to add value to the case. And we don't do that.

THE COURT: You don't do that.

MR. DOWD: No, we don't. We work for a percentage. That's what we asked for. If we put people on an assignment, it's because we needed it done. You know, at summary judgment the defendants had like 60 people in the courtroom.

THE COURT: You had expenses paid outside bankruptcy counsel, $171,000, so that they can file a motion in the bankruptcy court to get permission so that they could litigate in this court.

MR. DOWD: That's correct, your Honor.

THE COURT: That's a lot of money.

MR. DOWD: I understand that, your Honor. And when the Court ordered us to go protect those claims and get the stay lifted, we had to hire bankruptcy counsel. It's not like --

THE COURT: Did you pay them, or are they waiting to get paid?

MR. DOWD: No, we paid them.

THE COURT: You are out of pocket.

MR. DOWD: That's out of pocket for us.

And, again, you know, there was a court order saying, you know, go defend the thing in bankruptcy. I'm not a bankruptcy lawyer.

THE COURT: That's right. It is a large amount.

MR. DOWD: I understand.

THE COURT: One is a simple motion, to lift stay, which is ordinarily granted in relationship to a large case like this.

MR. DOWD: And then I think they also had to keep monitoring it, and I think they probably made other appearances. I'm not positive -- I know they did. Right?

THE COURT: It's too high a fee.

MR. DOWD: I understand, your Honor. And we paid out of pocket. We're not trying to give money away. I mean, if you cut it, it just cuts my money. I don't think they're going to give it back.

THE COURT: Why weren't they required to make an application?

MR. DOWD: Because we didn't consider them part of a contingent fee. They wanted to get paid hourly, and that's what we paid.

THE COURT: You paid over a million dollars to Crowninshield Financial Research, Inc.

MR. DOWD: We absolutely did, your Honor.

THE COURT: And you have people on in your firm who do the same work. No?

MR. DOWD: They do similar work. And frankly a lot of the partners at our firm know a lot about damages. I mean, that million dollars, your Honor, was, we had to spend it. I cannot tell you how much work they did.

THE COURT: Were they going to be witnesses?

MR. DOWD: Pardon me?

THE COURT: Were they going to be --

MR. DOWD: Yes. It's Dr. Feinstein. He also testified in front of you on class cert. He was going to testify again at trial, your Honor.

THE COURT: Was his deposition taken?

MR. DOWD: His deposition was taken four times, your Honor.

THE COURT: So this million dollars reflects that activity.

MR. DOWD: Absolutely. And the defendant has six experts, on just loss causation. And you throw in truth on the market, they had 12. And I guarantee you, because I've worked with some of them, they paid a lot more than a million dollars for their 12 guys or six people, whatever you want to call them.

THE COURT: They're not asking me to give them any allowances to have a law firm relationship with a client who

will or will not pay, I think, in advance. I will not give you that. You paid William H. Purcell Consulting over $350,000 --

MR. DOWD: We did.

THE COURT: -- for testimony concerning due diligence issues. I remarked that I did not see the due diligence issues as having experts. It was really a fact and a law issue.

MR. DOWD: Yes. And then defendants --

THE COURT: I understand that, given defendants' insistence to have experts of that like, and a certain degree of uncertainty whether they will or will not be able to use them, you need to have your own.

MR. DOWD: Correct. And they had three.

THE COURT: What about Harvey Pitt?

MR. DOWD: Harvey Pitt, your Honor --

THE COURT: $200,000 to Harvey Pitt --

MR. DOWD: Like 198,000.

THE COURT: -- to trace securities.

MR. DOWD: Well, and he was also going to testify about the SEC regulatory framework.

THE COURT: I told you I wasn't going to allow that.

MR. DOWD: No, I think you said I could award for that. In fact, I'm pretty sure you awarded that --

THE COURT: No. When I commented, you said that he was going to trace shares, a job that an accountant could do.

MR. DOWD: I think you also said he could testify

about the SEC regulatory framework as well.

THE COURT: No, I did not.

MR. DOWD: I think you did, your Honor.

And, you know, your Honor, a lot of Mr. Pitt's bill is because the defendant showed up with between 15 and 20 lawyers in Washington, D.C., to take his deposition for two days. At the end of the first day, I walked out, because I said, this is a waste of time. And then defendants filed a letter brief complaining that I had walked out. And we had to go back for a second day.

I didn't want to have Harvey Pitt get deposed twice to talk about stuff that, you know, frankly I thought was not that remarkable.

THE COURT: You have almost $50,000 paid to John Barron and $384,000 to the firm that Barron went to.

MR. DOWD: Correct. Barron.

THE COURT: Barron.

MR. DOWD: We could have had several experts on accounting. And we found a REIT auditor and accountant who was going to testify to both, as to the company and as to Grant Thornton. I think his expenses are very reasonable.

THE COURT: I find your lodestar reasonable, the rates appropriate and, in relationship to the work that you did, reasonable. I'll go into lodestar a bit later.

The next firm I want to hear from is Lowey Dannenberg.

MR. SKELTON: Good morning, your Honor. Thomas Skelton of Lowey Dannenberg. Ms. Hart sends her apologies. She had a client meeting in California with a client who was in hospice care and may pass at any time and felt that she needed to keep that appointment.

THE COURT: Thank you.

MR. SKELTON: Your Honor, my firm represents the Corsair group of funds. They had a $19 million loss and were the second largest shareholder at the lead plaintiff stage. We were obviously not appointed lead counsel. Throughout the course of the case, we took our direction from Robbins Geller. We worked on numerous aspects of the case, including, as set forth in Ms. Hart's declaration, motions to dismiss, motions for class certification, motions for summary judgment.

THE COURT: What did you do on the motion to dismiss?

MR. SKELTON: We did discrete projects and we reviewed motion papers at the direction of lead counsel, particularly in any issues that might have related to Corsair. And they would apply throughout the case. Much of our work was specifically directed to issues that related to Corsair. For example, one of the issues that went throughout the case was the issue of tracing, as Mr. Dowd alluded to. We were able to find documents through our document platform that showed, in connection with the May 2014 offering, that Corsair purchased shares at the offering price on the date of the offering from

one of the underwriters at a price that was outside of the trading price on that given day.

THE COURT: That's an accountant's work for Corsair. Why was it your work?

MR. SKELTON: Corsair retained to us perform these services and to represent them in the case. And the issue was whether we could trace the shares to the offering. And our work, we did the work analyzing the documents and providing the information to --

THE COURT: But normally that work would be done internally within a company. Corsair is what, a management company?

MR. SKELTON: It's an investment manager, yes.

THE COURT: Investment manager.

MR. SKELTON: Yes.

THE COURT: An investment manager knows what he bought, what he sold, when he bought it, how much he paid.

MR. SKELTON: An investment manager would have had to find all the documents and analyze them. We analyzed them in the context of the arguments that the defendants were making regarding tracing. They argued that we couldn't trace the shares to the offering because shares are fungible and they're held electronically and therefore we couldn't recover on the Section 11 claims. And the client, this is --

THE COURT: You bought these shares on the offerings,

did you not?

MR. SKELTON: Corsair brought the shares on the offering, yes.

THE COURT: Which offering did you buy on?

MR. SKELTON: The May 2014 offering, as well as Cole merger shares. But the offering at issue was the May 2014 offering.

THE COURT: Did you buy from the underwriters?

MR. SKELTON: Yes.

THE COURT: So what was the big problem?

MR. SKELTON: The problem was that the defendants were arguing in the in limine motions and in summary judgment that we couldn't trace the shares to the offering because shares are fungible and, because we couldn't say that these particular shares did not exist before the offering, we couldn't recover on the Section 11 claim.

THE COURT: That's a legal issue.

MR. SKELTON: Yes. And we needed to argue that legal issue with supporting documents. And the documents we were able to find showed that Corsair purchased, on the date of the offering, at the offering price, from one of the underwriters. And we compared that to publicly available information that showed that the lowest trading price of the day was above the price at which Corsair purchased, so therefore they must have purchased on the offering. This is not a routine analysis that

Corsair would do. They didn't understand the nuances of Section 11, of the 1933 Act. We did. They retained us to do this, and that was part of what we did. And we were able to establish, through documentary evidence, that the shares were purchased on the offering. And ultimately, your Honor ruled in favor of the plaintiffs on that issue.

Other matters that we dealt with --

THE COURT: What was your contribution to the result?

MR. SKELTON: Corsair was a certified class representative. They purchased the shares on the open market. They purchased shares in the Cole offering. They purchased shares in the May secondary offering. All of our work, your Honor, was done either at the direction of lead counsel or in consultation with lead counsel, and consult --

THE COURT: Did you take any depositions of the defendants?

MR. SKELTON: We did not, your Honor. We were not asked to do that.

THE COURT: So all you did was represent your client.

MR. SKELTON: Well, we represented our client, who had issues relating to the various -- the offering and the merger and common shares. We were asked to perform tasks on the summary judgment motion, on class certification.

THE COURT: In relationship to your client.

MR. SKELTON: Well, generally, in relation -- in

relation to our client and other tasks that Ms. Wyman called me and asked me if we could do certain research projects related to omissions and related to the admissibility of the financial restatement, which was an earlier issue that came up during the case. Our client produced 145,000 pages of documents. We reviewed the documents for responsiveness and privilege. We dealt with issues relating to the ESI and follow-up questions from the defendants regarding the documents that were produced. Mr. Mishaan of Corsair was deposed. Mr. Rothman from Robbins Geller attended the prep sessions, worked with us to get ready for the deposition. He attended the deposition. And the deposition went very well, and Corsair was certified as a class representative by your Honor.

THE COURT: What did the interview with the Department of Justice and the Securities and Exchange Commission have to do with this lawsuit?

MR. SKELTON: Well, it involved parallel proceedings that the SEC and the U.S. Attorney's Office were contemplating bringing. They wanted to interview Corsair as a witness, and we prepared our client -- and he was the same person who was ultimately deposed.

THE COURT: So why should the class pay for that?

MR. SKELTON: Well, that was time that was spent learning facts that the government had, and they presented hypotheticals to us that helped us to understand some of the

issues that they were considering. And we recognized that the government has different burdens of proof and different elements, but the underlying facts and the approach that the government was taking helped to us understand better the underlying facts in this case.

THE COURT: Why shouldn't that be a fee chargeable to your client, rather than to the class?

MR. SKELTON: Well, the information that we learned and that the client provided to the government was very similar to the information that was being argued in the case. The adjusted funds from operations was one of the issues that was discussed at that meeting. And we believed that that helped sharpen our focus. And Mr. Mishaan, who was the witness at the SEC and DOJ meeting, was also the deponent that Corsair proffered for his deposition.

THE COURT: These interviews with the Department of Justice and with the SEC were not on the record, were they?

MR. SKELTON: No, your Honor.

THE COURT: They couldn't be used in the lawsuit.

MR. SKELTON: No, they could not be used to be submitted as evidence. But it was helpful to us in understanding the government's approach and learning facts about the case that helped us proceed.

Just to put a finer point on it, your Honor, the interview was a short interview. It lasted a couple hours. We

had a prep session the day before. It was not a lengthy period of time. But we do believe that the information that we learned during that process was helpful.

THE COURT: How much of your fees went into that?

MR. SKELTON: I could find it in our time sheets and submit this, your Honor, but it was probably six to eight hours of my time and a couple of hours of Ms. Hart's time.

MR. DOWD: Your Honor, could I just mention one thing? This happens in our cases sometimes, and it did here, where DOJ reaches out and says, we want a victim witness, and since you already have a lawsuit, we want your victim witness. And the first thing I say to them and I'm sure is what we said in this case -- I think Mr. Forge dealt with it -- is, get out of here, go find your own witnesses. And then they say, well, you know, if we want, we can subpoena your witnesses.

And so I think at times, you get stuck in this position with the U.S. Attorney's Office. And I say, you got to go in there and protect them because I don't know what they're going to write down, that your witness may or may not have said, and turn over in Jencks Act discovery before their trial.

And so you have to protect your witness. And it's not our fault, your Honor. We always tell them just go away, find your own witnesses, OK, you do your job, we'll do ours. It's not like they are going to help us.

And I say that with all due respect. I used to be an assistant U.S. attorney, so --

THE COURT: One last question. If I were to give a lesser bonus to your and to the other firms than I give to Robbins Geller, would that it be unjust?

MR. SKELTON: Well, as I understand it, your Honor, Robbins Geller as lead counsel has the discretion, unless your Honor orders otherwise, to distribute the fees in accordance with its discretion as to the contributions that were made by the firms. We believe that our contribution was valid and meritorious, but of course Robbins Geller, they did the lion's share of the work, they took the depositions, they did a phenomenal job and they got a phenomenal result.

THE COURT: My thought was that I would make awards to each of your firms so that Robbins Geller would not have the burden of redistribution.

MR. SKELTON: That is certainly within your discretion, your Honor, to do that and to award what you think our firms' contribution was. We do believe we contributed to the success of the case. I believe that Robbins Geller agrees with that. Obviously Robbins Geller did the lion's share of the work. They took the depositions. And they created a tremendous result. So I'm not going to sit here and tell you that your Honor has to award me the same multiplier that Robbins Geller gets. They were lead counsel. But we do

believe that our contribution was meritorious and that our time was valid and that our application should be granted.

THE COURT: Thank you.

MR. SKELTON: Thank you, your Honor.

THE COURT: Tell me your name again?

MR. SKELTON: Thomas Skelton from Lowey Dannenberg.

THE COURT: I'll hear Motley Rice next.

MR. DOWD: Your Honor, I'm not sure that all the co-counsel came. I mean, we were here to present for them, just like everything else in this case. We tried to keep a tight rein on everybody just so that there wouldn't be waste of time. And I'm pretty sure Cohen Milstein was here on Tuesday and they may have sent a different person today because they couldn't be here again today. But most of the people, we told them, we submitted your time and we'll argue for you. And that's typically the way we did things in this case. We didn't want ten firms showing up. I mean, the Court's order said, "As reported in yesterday's status conference, lead plaintiff's counsel, Robbins Geller, will work with and lead a working group of all interested plaintiff's counsel." And that's what we did.

THE COURT: I understand, Mr. Dowd. But I have to examine the reasonableness of all the constituent parts of your fee, of your fee request, notwithstanding that you're requesting for everybody.

I'm looking at Mr. Levin's declaration, Mr. Levin being a member of Motley Rice. That firm does not have offices in New York, does it?

MR. DOWD: I don't know whether they have an office in New York.

They do. Mr. Rothman says they do.

THE COURT: But the lawyers that worked on the case, were they from the New York office or another office?

MR. ROTHMAN: There was one lawyer who was either from Westchester or Kentucky, maybe from Connecticut, and the rest, Mr. Levin is in the South Carolina office.

THE COURT: It doesn't seem to be right to charge for transportation. I will disallow that charge.

I don't know what they did. What did they do in the case?

MR. DOWD: Well, I talked to you about that already, your Honor. They had the sheet metal workers. They produced Mr. Myers for his deposition. They also had Union Asset Management.

THE COURT: Tell me what they did to contribute to the victory.

MR. DOWD: Well, that does contribute to the victory, your Honor. You're producing deponents and witnesses who bought different offerings that contribute to the victory. I mean, they flew these guys over, as I understand it, from

Germany to have their depositions taken, which is probably part of the travel expenses in this case. They assisted with the motion to dismiss briefing on the Exxon exchange. They attended the first mediation. They did all that depo prep and depo work. They produced respectively about, between them, the two plaintiffs, over 26,000 pages of documents, your Honor.

THE COURT: Johnson Fistel.

MR. DOWD: Johnson Fistel we talked about as well. That was Paul Matten. He was one of the ARCT IV witnesses. They also assisted with the document review. They lent us an associate to assist with document review.

They also produced about 1100 pages of documents on behalf of Mr. Matten. I believe their client was also interviewed by the DOJ.

THE COURT: The Weiss law firm, are they here? Is Weiss here?

MR. DOWD: I don't believe so, your Honor. Again, we kept tight reins on everybody to try to keep the numbers down.

THE COURT: This is an interest in their fee, not a matter of -- they're not getting paid for coming here today. They just have an interest in getting paid.

What about the Weiss law firm? What did they do?

MR. DOWD: Their client was Simon Abadi. He was, I believe, in the Cole offering. And they produced documents for their client. Their client was deposed in the case. He was on

one of the "may call" witness lists. And so they did do work that related to their client in the case.

THE COURT: Stull Stull & Brody.

MR. DOWD: Stull Stull & Brody represented Dr. Esposito and another gentleman named Noah Bender. Esposito was one of the witnesses that really gave a standing on ARCT IV. He was together with Mr. Matten. But Dr. Esposito was deposed, and he was on our "will call" witness list because he gave a standing on the ARCT IV issue. And so they would have represented Dr. Esposito at his deposition and assisted with anything related to Dr. Esposito's briefing.

THE COURT: Gardy & Notis.

MR. DOWD: Gardy & Notis, your Honor, they had a client who was not named as a class rep in this case named Shenker. I think that he sought lead plaintiff appointment. However, because they were on the Cole exchange, they went down to Maryland because there had been a securities case against Cole, and they tried to make sure, their primary role was to make sure that our claims, our claims asserted in this case, didn't get cut out in the release in the Maryland Cole case. Not only did they argue below in this case, in the district court, but then I believe they also argued it on appeal as well, your Honor. And so that was their main role in the case, was objections and appeals in the Cole case to protect our clients to make sure their claims didn't get released in

Maryland, in sort of an end-around. And so that was the work we gave them to do, and they did it, and they did it well.

THE COURT: The Polaszek Law Firm.

MR. DOWD: The Polaszek Law Firm represented the City of Tampa funds. They were on the May 2014 offering. They produced their client, who was one of the class reps, was Ernest Carrera, on behalf of Tampa, obviously, and he was on our "may call" witness list at the end of the day. They produced documents. Their client was deposed.

Frequently, when I looked at their lodestar, I was thinking I would have thought it would have been higher. But that was just my view.

THE COURT: Cohen Milstein.

MR. DOWD: Cohen Milstein we discussed. They represented the New York City funds. They were on a host of offerings, I think three different offerings. They produced two witnesses, Mr. Horan and Mr. Jeter. They were both deposed. They were both on our "will call" witness list. They did significant work in the case. They produced 190,000 pages of documents that had to be reviewed for privilege and responsiveness. And they also assisted with the motion to dismiss briefing in the case, as I recall. And so I think that their work was very good, and they did a good job, and helped us with the case.

MR. LOMETTI: Your Honor, I'm sorry. It's Chris

Lometti from Cohen Milstein. Julie Reiser was here on Tuesday, is in court in California, had a mediation, actually, in California today. She couldn't be here. I'm here if you have any additional questions.

But I think there may have been four offerings that the New York City funds were involved with.

THE COURT: Did you take part in any depositions against defendants?

MR. LOMETTI: No, your Honor.

THE COURT: Or any motions?

MR. LOMETTI: I think the firm worked on the motion to dismiss, on class cert issues, and I believe -- Michael, correct me if I'm wrong -- but there was some work that the firm did in relation to the investment managers in general. New York City funds had five investment managers, and there was a time where the defendants were possibly wanting to depose some or all of them and we had to fight that, and which we did successfully. And we may have been involved with other investment manager-type issues as well in the case, your Honor.

MR. DOWD: That's correct, your Honor.

THE COURT: Thank you.

And Levi & Korsinsky.

MR. DOWD: They had clients Mitchell and Bonnie Ellis. They were on the ARCT IV offering. They were on our "may call" witness list. They produced documents. The defendants did not

take their depositions. I noted that their expenses were zero, which was consistent with that. But that would have been their primary role: protecting their client, producing documents, reviewing them, and responding to issues on motion to dismiss that dealt with their clients.

THE COURT: If I were to give you whatever I give you, as a fee for everyone, what would be the methodology of distribution?

MR. DOWD: What would be our process? I think we would have to --

THE COURT: Your theory of distribution.

MR. DOWD: We would have to look at what everyone did and then figure out how to divide it. A large part of it would be based on what the Court ordered and how much we got, and we would have to think that through and then talk to the firms and make a decision. That's what would happen. It's not like there's some mathematical equation that we use.

THE COURT: I feel I want to reward your law firm more than the others proportionally.

MR. DOWD: Your Honor, I will say this. In this case, we kept those co-counsel to 10 percent of our lodestar, basically. And they did work on the case. And they did good work, with everything they had to do. And they cooperated with us. And they worked with their witnesses. And it added value to the case. I don't think it's fair --

THE COURT: I'm sure they did. But the driving force in this case --

MR. DOWD: Absolutely.

THE COURT: -- and the reason that the result is uncommon, was the work of your firm.

MR. DOWD: I understand, your Honor. But I can't stand here and denigrate these other firms that I feel made a legitimate contribution to this case. And I won't do it.

THE COURT: OK. I'll take a short break and then I'll --

MR. DOWD: Your Honor, I would like to address some other issues too for the Court's consideration.

THE COURT: Go ahead.

MR. DOWD: Is that all right?

THE COURT: Yes, go ahead.

MR. DOWD: Because I know the Court goes with the lodestar approach. I understand. But, you know, in this case, TIAA, the lead plaintiff, did a great job. And the Court actually said they did an excellent job in this case. They held our feet to the fire. We had an ex ante negotiated fee agreement with them, before we were appointed lead plaintiff, calling for 12.4 percent of the fee.

THE COURT: How much?

MR. DOWD: 12.4 percent. You have to do some math on it. But that's what it comes out to. That's where the 127

million comes from, your Honor.

TIAA is one of the largest retirement systems in the world, your Honor. They have almost a trillion dollars in assets.

THE COURT: I'm familiar with that.

MR. DOWD: All I'm saying is, they're used to dealing with lawyers, and they drove a good bargain on behalf of themselves and the class at 12.4 percent. If you look at the Second Circuit law, it says an ex ante negotiated fee agreement, the Second Circuit has said, should be given serious consideration by the court. Other judges in this court have said it's entitled to a presumption of reasonableness or correctness, starting with Judge Lynch, back in the *Global Crossing* case, probably almost 15 years ago.

THE COURT: From the point of view of a client wanting to litigate, there's a choice of paying as you go on a time basis, but the model for defendants is, the client takes each bill that comes and looks at it and says, well, I don't need this service or that service or you billed me too much on that, and you make adjustments. And at the end of the day, when you have a recovery, if the client has been paying you on a time basis and you want a bonus, the client will often say, well, I hired you because you're good, and I hired you because I'm willing to pay the high rates that you charge. So why should I also pay a bonus?

You're getting a percentage from TIAA in lieu of pay as you go. Therefore you've had to wait. And therefore, from the perspective of TIAA, which is one of the beneficiaries of many in this lawsuit, it's not really arm's-length bargaining.

MR. DOWD: It is, though, your Honor.

THE COURT: It's an indication.

MR. DOWD: I understand.

THE COURT: I accept it as an indication.

MR. DOWD: I'll telling you just what some other courts have said.

THE COURT: I understand.

MR. DOWD: That 12.4 --

THE COURT: I understand some give lodestar and some give percentages.

MR. DOWD: Right.

THE COURT: I give lodestar. I don't give percentages.

MR. DOWD: But the negotiated fee agreement is given a presumption of reasonableness in courts. And that 12.4 percent, your Honor, it's lower, lower than what a lot of people get. It is a contingent fee. We're not getting paid by the hour. It's contingent-fee litigation. And people do it on a percentage basis. That's how it works. And in this courthouse last year somebody got 25 percent on 250 million. The Second Circuit in November affirmed 13 percent on 2.3

billion, your Honor, in a case.

THE COURT: The Court of Appeals does not want to substitute itself for my judgment in the case. It's tough work. There are very few legal principles involved.

MR. DOWD: Your Honor, can I just ask you to consider two other issues?

The defendants, in connection with the audit committee investigation and, you know, our suit, as well as other issues, totaled $264 million that they spent. Now, that's not just our case.

THE COURT: Say that again.

MR. DOWD: 264 million.

THE COURT: Who?

MR. DOWD: The defendants. That's what ARCP paid for everything that resulted from the audit committee investigation, a lot of which we had to duplicate and a lot of which was probably directly on our case. They spent $69 1/2 million just in the first three quarters of 2019. In the first three quarters of 2019 I know the lion's share of that money had to be defending our case. 69 1/2 million, that's more than my lodestar, just for three quarters last year.

I would ask the Court to consider that. These numbers are not crazy.

When you look at what happened in this case, your Honor, I mean, the quality of the representation, I can tell

you, your Honor --

THE COURT: I'm not going to cut your lodestar, if that's what you're worrying about.

MR. DOWD: No, no, I'm not worried about that. I'm worried about trying to get more than my lodestar.

THE COURT: You'll get more.

MR. DOWD: I would like to get as much as I could.

THE COURT: I could give you all 12.2 percent, but I'm not going to give you that much.

MR. DOWD: All right, your Honor. Just consider this. Bloomberg News, 2017, had an analyst that said this case would settled for between 33 and 117 million dollars. We got 1.052 billion. Last summer, JPMorgan said, based on what they paid the opt-out litigants in this case, which were huge funds, huge funds -- Vanguard, PIMCO, BlackRock -- they said that we get 450. And we got 1.025 billion, your Honor.

I just, I can't sit down before I tell you that. I mean, we did a remarkable job. And we should benefit from that -- for not taking the 450 and coming in and getting the same lodestar award, for saying, no, we're going to roll the dice on summary judgment and make this case worth more for the class, your Honor. And that's what we did. And we should be rewarded for taking that risk.

That's all I ask the Court to consider. I know the Court wants to rule, and I don't want to belabor it, but I ask

you to consider that.

THE COURT: What did you perceive to be the risk, the probability, of my granting summary judgment to the defendant?

MR. DOWD: I don't know. To be honest, your Honor, I thought that we could very possibly get thrown out on Grant Thornton, who ended up paying 50 million --

THE COURT: What did you think that?

MR. DOWD: I don't know. Because I think that auditors get out of these cases an awful lot. I think they did a study and only like 2 percent --

THE COURT: They were not responsible for the AFFO --

MR. DOWD: Exactly.

THE COURT: But they were responsible to know how their numbers were being used.

MR. DOWD: No, I understand that.

THE COURT: And their numbers were being used in a way that you considered and you were likely to prove to be false and misleading.

MR. DOWD: But it was a risk. And you look at some of these other people that filed opt-out cases, they weren't taking that risk.

THE COURT: I don't mean to denigrate what you did. Because I think what you did was very good. A 50 percent discount of proveable damage is a much lower figure than that, because the number of over $2 billion ascribable to the overall

damage is subject to many, many pitfalls, failures of claims and the like. So your achieving over a billion dollars is highly significant.

MR. DOWD: Thank you.

THE COURT: And I don't want to take away from it. I think you did outstanding work. I think you have to be rewarded for your persistence and your stubbornness and for your leadership in the case. You stood up to the most powerful law firms in the City of New York and were their equal.

MR. DOWD: Thank you, your Honor.

THE COURT: However, your lodestar rates for partners are pretty high.

MR. DOWD: They're also lower than the rates of the firms on the other side.

THE COURT: Yes. But they had to get it on a pay-as-you-go basis, and you're getting it from me.

MR. DOWD: Well, that's even better, your Honor.

THE COURT: You have a significantly lower expense.

MR. DOWD: They're $1500 an hour, your Honor.

THE COURT: I know.

MR. DOWD: They got it in 2014 and 2015, some of these firms. That money is worth 50 percent more now, because they got it then and they had higher rates than us. You know, I mean, it's not -- our rates are not high, you know what. I mean --

THE COURT: We have an imperfect world.

MR. DOWD: I understand that. But, you know, my world isn't much different from theirs when it comes to, you know, meeting salary obligations and funding expenses and everything else. I don't get paid on the 30th day of every month like they do.

THE COURT: Is the transportation from San Diego -- you're in San Diego, right?

MR. DOWD: Yes, your Honor.

THE COURT: And Ms. Wyman is in San Diego.

MR. DOWD: Yes.

THE COURT: Are your transportation costs chargeable as an expense?

MR. DOWD: Yes, it is an expense.

THE COURT: You're taking advantage of a lower cost structure in San Diego, significantly lower structure. Charging the transportation cost and asking to be paid New York rates, that's significant.

MR. DOWD: Your Honor, our transportation costs were significantly higher because we cut out a lot of the airline fees. So out of pocket I'm losing about 130 grand on that, your Honor.

THE COURT: I'll take a short recess.

(Recess)

THE COURT: I've considered the arguments, read the

fee justifications and the expense itemizations. I find the lodestars of each of the firms reasonable and appropriate and the expenses reasonable as well.

My award for all of the counsel who will be sharing this fee is $100 million, plus allowance of expenses of $5,164,539.91.

It comes out to a multiplier of 1.376, but regardless of the accuracy of my arithmetic, the number is $100 million of fee and $5,164,539.91.

I believe that, in this case, as I said before, the services delivered by the Robbins Geller firm were outstanding, that Ms. Wyman, Mr. Dowd, and your colleagues, Mr. Rothman, did outstanding work. I think in the fees of some of the other firms it was hard for me to see the same amount of productivity, in terms of obtaining the result, and in some cases whether or not all the fees that were presented were fees that should be allowed. But it's very hard to pierce through this, as Mr. Dowd has suggested that everything went into the final result, and so I determined that each of the firms would be considered as having had a full lodestar, and that the add-on, the bonus, would be done in the aggregate for all firms.

How the fees are ultimately allocated is something, I guess, the firms are going to have to work out for themselves. As I understand it, I have no continuing jurisdiction, should

there be any dispute.

There's no interest to be awarded on this amount. It will be paid, how did you say, about third, Mr. Dowd, one third on when?

MR. DOWD: Yes, your Honor. There's a third now, a third in 90 days, and a third on the initial distribution, the big distribution.

THE COURT: OK. And it will be payable by the funds that have already been paid by the defendants.

MR. DOWD: Yes, your Honor. The money, we got the money in October, your Honor.

THE COURT: All the money.

MR. DOWD: Yes. And that actually, if we had awaited the final approval like a lot of firms do -- they don't fight for that. We've made the class about $4 million on that alone, just by standing, holding out for that.

THE COURT: That's not unusual. Payment on the agreement.

MR. DOWD: A lot of people won't fight for it anymore, your Honor.

THE COURT: OK. That's my award. And I congratulate all of you. Thank you very much.

MR. DOWD: Thank you, your Honor.

MS. WYMAN: Thank you, your Honor.

MS. GUSIKOFF STEWART: Thank you, your Honor.

MR. HOUSTON: Your Honor --

THE COURT: Two minutes.

MR. DOWD: Your Honor, we have an order that we adjusted, I think we filed it yesterday, to reflect a third, a third, a third. And I think our expenses went down about $9,000.

THE COURT: Hand it up. Then I'll talk to Mr. Houston.

MR. DOWD: Oh, it has a percentage in it. So if you want us to just submit one later?

THE COURT: Yes.

MR. DOWD: Or I can write it in now, whichever you prefer.

THE COURT: You can write it in now.

Meanwhile, I'll hear from Mr. Houston.

MR. HOUSTON: Your Honor, very briefly. We had a couple issues with process on the submissions in the derivative matter. We have asked for, with counsel for VEREIT, that we be given the opportunity to file a reply statement once they have gone through our time records and identified their issues. We think this will create the greatest and clearest record.

THE COURT: I think this is what you do. Without giving me anything, give Mr. Edelman what you propose. Mr. Edelman will then give you his objections. You will negotiate to whatever extent you feel appropriate. And then

there will be a filing on a joint basis, just the way you do with a 2(e) letter, so I don't get separate filings. So just give me the outside date by which you can accomplish all that. Discuss it with Mr. Edelman. And then we'll issue an order.

MR. HOUSTON: Your Honor, that was the second issue. We have discussed some dates. We had asked for a month to put together the records in accordance with your Honor's directive on Tuesday.

THE COURT: How much time do you want?

MR. HOUSTON: OK. So we'll take that month. Mr. Edelman, how long do you want? Do you want your two weeks that you suggested, or longer than that, to review what we are submitting?

MR. EDELMAN: Your Honor, so as I understand it, you want us to do a joint letter.

THE COURT: At the end.

MR. EDELMAN: At the end?

THE COURT: Outlining the positions.

MR. EDELMAN: And do you want us to be limited to the page limits? Because as I understand it, Mr. Houston is planning on now submitting a different set of time records.

THE COURT: What do you propose?

MR. EDELMAN: I would propose that Mr. Houston submit whatever he wants to submit. To the extent that there was stuff in the time records that shouldn't have been in there,

take them out, put them in a letter responding to our position. We put in a letter responding to that. And then your Honor is in a position to decide. And we do it as quickly as we can. We've already had extensive briefing and argument on this.

MR. HOUSTON: The only problem with that is that we never did get the chance to respond to the initial issues. And Mr. Edelman has already said that, on review of the next submission of records, there may be additional issues.

THE COURT: Mr. Houston, February 21, you file with the Court your submission, backed up by whatever supporting data you think is appropriate.

Mr. Edelman, on March 13, you respond.

MR. EDELMAN: Thank you, your Honor.

THE COURT: And Mr. Houston, another week, March 20, to reply. And I'll endeavor to decide on the papers or, if I need to see you, I'll do that as well.

OK? Are those dates satisfactory?

MR. EDELMAN: Thank you, your Honor.

MR. HOUSTON: Yes. Thank you, your Honor.

THE COURT: All right.

Anything further?

MR. EDELMAN: Yes. Your Honor, on behalf of VEREIT and, I think, all the counsel, we want to thank you for all your work and your attention and your good humor throughout what was a very contentious fight. Thank you.

MR. DOWD: Thank you, your Honor. And I would also thank your staff as well. They were fabulous too.

THE COURT: Yes. The staff is fantastic and they make people look good, to the extent I look good. Metaphorically speaking.

It's been a pleasure to have you. It's not common to have a case this well argued, this well presented. There were lots of discovery issues throughout. Your ability to cooperate in this procedure that I have facilitated my work enormously, and where I couldn't resolve it, we had hearings on a short basis. My goal in this, which I don't suppose was accomplished, was to reduce transaction costs as much as possible and move the case along as much as I could. You'll judge me whether I succeeded or not, but that was my goal. And I think it was facilitated by the way you cooperated with each other, while at the same time representing your respective clients most zealously. So I thank you.

MR. DOWD: Thank you.

MR. EDELMAN: Thank you, your Honor.

MS. WYMAN: Thank you, your Honor.

THE COURT: When is finality, Mr. Dowd?

MR. DOWD: Well, there's no objection, so it should be 30 days from judgment, which I believe the Court entered yesterday.

THE COURT: What about my not giving a fee award yet?

I've done everything in the class action.

MR. DOWD: Oh, no, they are separate cases. They weren't even consolidated ever. They were coordinated for discovery but not consolidated, so my case is down right now, and it will be final in 30 days because there are no objections.

MR. EDELMAN: Also, it's our understanding that the derivative judgment makes that case final and the fee issue is separate.

THE COURT: Will be supplementary to the judgment.

MR. HOUSTON: Yes. That's right, your Honor.

THE COURT: OK. Thank you.

MR. DOWD: Thank you.

MR. EDELMAN: Thank you again, your Honor.

(Adjourned)

EXHIBIT F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

NORBERT G. KAESS, et al,

Plaintiffs,

v. 09 CV 1714 (GHW)(RWL)
Telephone Conference

DEUTSCHE BANK AG, et al.,

Defendants.

----------x

New York, N.Y.
June 11, 2020
4:30 p.m.

Before:

HON. GREGORY H. WOODS,

District Judge

APPEARANCES

GLANCY PRONGAY & MURRAY LLP
Attorneys for Plaintiffs
BY: BRIAN P. MURRAY
-and-
ROBBINS GELLER RUDMAN & DOWD LLP
BY: THEODORE J. PINTAR
ERIC NIEHAUS
KEVIN LAVELLE

CAHILL GORDON & REINDEL LLP
Attorneys for Deutsche Bank Defendants
BY: DAVID JANUSZEWSKI
SAMUEL MANN

SKADDEN ARPS SLATE MEAGHER & FLOM LLP
Attorneys for Underwriter Defendants
BY: WILLIAM J. O'BRIEN
ANDREW BEATTY

(The Court and all parties appearing telephonically)

THE COURT: This is Judge Woods.

Is there a court reporter on the line?

(Pause)

THE COURT: Let me just say a few words at the outset of today's conference.

First, you should conceive of this conference as if it was happening in the courtroom. As you know, the dial-in information for this call is publicly available; members of the public and the press are welcome to dial in.

Second, let me ask you to all keep your phones on mute at all times when you're not speaking on the phone. I can hear some background noise right now, shuffling some paper. We should not hear any background noise during the course of the conference. Please keep your phones on mute at all times when you are not speaking during the conference. That will help us to keep a clear record of what we say today.

Third, I'd like to ask each of the people who will speak during this conference to please identify themselves each time that they speak during this conference. So, if you speak during this conference, you should say your name each time that you speak. You should do that regardless of whether or not you've spoken previously during the conference. That will help us to keep a clear record of today's conference.

Last, as you've heard, there is a court reporter on

the line. You should not be surprised if he chimes in at any point. If he does, and if he asks you to do something to help him to hear or understand what you're saying, please do what he asks. That will help us to, again, keep a clear record of the conference today.

Because there is a court reporter on the line transcribing the conference, I'm ordering that there be no recordings or rebroadcasts of any portion of the conference.

So, with those introductory remarks in hand, let me turn to the parties.

I'd like to ask for counsel for each side to identify counsel who are on the line for each of the parties and any representatives for each of the parties. What I'm going to ask is that, if you can, that one person from each side identify herself and the members of her team; that way, we won't have to hear many people chiming in at a time.

So let me begin with counsel for plaintiffs.

Who's on the line for plaintiffs?

MR. PINTAR: Good afternoon, your Honor. It's Ted Pintar, and I'm here with Eric Niehaus and Kevin Lavelle, from Robbins Geller Rudman & Dowd, for plaintiffs.

THE COURT: Good. Thank you very much.

Who is on the line for defendants?

MR. MURRAY: Excuse me. I hate to interrupt, but this is also for plaintiffs, Brian Murray, from Glancy Prongay &

Murray. Sorry to interrupt you.

Now the defendants.

THE COURT: Fine.

Counsel for defendants?

MR. JANUSZEWSKI: Good afternoon, your Honor. This is David Januszewski, and I have my colleague, Samuel Mann. We are both from Cahill Gordon & Reindel, representing Deutsche Bank and the Deutsche Bank defendants. And on the line, we also have, from Deutsche Bank, Stella Tipi, in-house counsel at Deutsche Bank.

THE COURT: Good. Thank you very much.

So, counsel --

MR. O'BRIEN: I'm sorry. Good afternoon, your Honor. I just wanted to introduce myself and my colleagues. William J. O'Brien and Andrew Beatty, from the firm of Skadden Arps Slate Meagher & Flom, on behalf of the underwriter defendants.

THE COURT: Good. Thank you very much.

So, counsel, first, let me thank you all for being on the call. I scheduled this conference as a settlement hearing or approval hearing with respect to the proposed resolution of this case. I have reviewed all of the materials that have been submitted on the docket to date in connection with this matter. I'd like to hear, however, from each of the parties, to hear, in particular, if there's anything that any of you would like to add to any of your written submissions in connection with

the proposed resolution of the case.

Let me begin with counsel for plaintiffs.

Counsel?

MR. PINTAR: Again, good afternoon, your Honor. Ted Pintar, for plaintiffs.

I had a number of things I wanted to mention just at the outset. Obviously, we're here on the final approval of an $18.5 million settlement. We are very proud of that result. As we have indicated, and I won't repeat all of what's in the papers, but it represents a very significant percentage of reasonably recoverable damages.

On February 27, 2020, this Court entered its preliminary approval order. Pursuant to that order, notice was disseminated. The claims administrator mailed over 112,000 notice packages, published the summary notice in the Wall Street Journal and Business Wire, and set up a settlement website where the notice and other settlement-related documents were posted.

And, as a result, there was one objection. It's not clear to me whether that has been withdrawn. I won't attempt to characterize Mr. Agay's email. We submitted it to the Court. He indicates, however, that he would not be participating today. There were only four opt-outs. And I do have some information on claims to date. Over 11,000 claims have been submitted, and they are still processing claims --

the mailed claims, so that number is likely to rise even from there.

So, we believe that not only is it a good settlement, that the class has reacted very positively to it, and, as you know, today we're asking the Court to enter three orders: The final judgment, the order approving plan of allocation, and the order awarding attorneys' fees and expenses and award to class plaintiffs. Other than that, your Honor, I certainly don't have anything to add to our papers. I'm happy to address any questions the Court may have, though.

THE COURT: Good. Thank you very much, counsel.

Let me hear from each of the groups of defendants.

First, counsel for the Deutsche defendants.

MR. JANUSZEWSKI: Yes, your Honor. Again, this is David Januszewski, from Cahill Gordon.

We have nothing to add to what was submitted, which was designed to address the objection that my friend just addressed. We have nothing to add to that.

THE COURT: Good. Thank you very much.

Counsel for the remaining defendants, anything that you'd like to add to your written submissions?

MR. O'BRIEN: Yes. William O'Brien, from the firm of Skadden Arps Slate Meagher & Flom, on behalf of the underwriter defendants.

And like Mr. Januszewski, we have nothing further to

add.

THE COURT: Good. Thank you very much.

Is there anyone else on the line who wishes to be heard?

So, hearing none, counsel, I'm going to approve the proposed resolution of this action, or series of actions. What I'd like to do is to ask you to place your phones, again, on mute, if you would, please. I'd like to review the reasoning for my decision. I'm going to do so now orally. At the end, I'll take up the two orders and judgment that the parties have proposed. Let me begin with, first, an overview.

So, I. Overview:

Plaintiffs brought this securities class action in February 2009 on behalf of all persons who purchased the 7.35 percent Noncumulative Trust Preferred Securities of Deutsche Bank Capital Funding Trust X and/or the 7.60 percent Trust Preferred Securities of Deutsche Bank Contingent Capital Trust III securities from Deutsche Bank AG pursuant to public offerings from November 6, 2007, to February 14, 2008. Plaintiffs allege that defendants violated Sections 11, 12(a)(2), and 15 of the Securities Act (the "Securities Act") and (15, U.S.C., Section 77k, 771(a)(2), and 77o) by omitting material facts from the offering documents. See declaration of Eric I. Niehaus ("Niehaus dec."), Docket No. 308, paragraph 3.

Since then, plaintiffs have extensively litigated this

case. The parties have engaged in significant motion practice, and have completed fact discovery. Niehaus declaration paragraphs 3-4. Now, plaintiffs seek final approval of the class action settlement and approval of their plan for allocating the net proceeds of the settlement. Plaintiffs' counsel also seek an award of attorneys' fees and litigation costs, and the lead plaintiffs seek an award for expenses incurred while representing the class.

Judge Batts presided over this case for almost the entire time that it has been pending in this court. The case was reassigned to me on February 20, 2020, after Judge Batts' untimely death.

II. Class Certification:

On October 2, 2018, pursuant to Rule 23 of the Federal Rules of Civil Procedure, Judge Batts granted plaintiffs' motion to certify a class defined as: All persons or entities who purchased or otherwise acquired the 7.35 percent Noncumulative Trust Preferred Securities of Deutsche Bank Capital Funding Trust X ("7.35 percent Preferred Securities"), and/or the 7.60 percent Trust Preferred Securities of Deutsche Bank Contingent Capital Trust III ("7.60 percent Preferred Securities"), pursuant or traceable to the public offerings that commenced on or about November 6, 2007, and February 14, 2008. Excluded from the class are defendants, the officers and directors of Deutsche Bank, and the underwriter defendants at

all relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns and any entity in which defendants have or had a controlling interest. Docket No. 224 at 10.

III. Approval of the Settlement Agreement:

Rule 23(e) requires court approval for a class action settlement to ensure that it is procedurally and substantively fair, reasonable, and adequate. Federal Rule of Civil Procedure 23(e). To determine procedural fairness, courts examine the negotiating process leading to the settlement. Wal-Mart Stores, Inc. v. Visa USA, Inc., 396 F.3d 96, 116 (2d Cir. 2005). To determine substantive fairness, courts analyze whether the settlement's terms are fair, adequate, and reasonable according to the factors set forth in City of Detroit v. Grinnell Corp., 495 F.2d 448 (2d Cir. 1974).

The court examines procedural and substantive fairness in light of the "strong judicial policy favoring settlements" of class action suits. Wal-Mart Stores, 396 F.3d at 116. A "presumption of fairness, adequacy, and reasonableness may attach to a class action settlement reached in arm's-length negotiations between experienced capable counsel after meaningful discovery." Id. "Absent fraud or collusion, [courts] should be hesitant to substitute [their] judgment for that of the parties who negotiated the settlement." In re EVCI Career Colls. Holding Corp. Sec. Litig., 2007 WL 2230177, at *4

(S.D.N.Y. July 27, 2007).

A. Procedural Fairness:

The settlement is procedurally fair, reasonable, adequate and not a product of collusion. The settlement was reached after the parties had conducted a thorough investigation and evaluated the claims and defenses; the agreement in principle was reached after sessions with the Honorable Judge Layn R. Phillips, a former United States District Judge and an experienced mediator of securities class actions and other complex litigation. Niehaus declaration paragraph 6, 129. In advance of the mediation, the parties exchanged detailed mediation statements addressing both liability and damages. Id. The parties reached a final resolution on September 12, 2019, with the assistance of Judge Phillips, after formal mediation. Id.

B. Substantive Fairness:

The settlement is also substantively fair. The factors set forth in Grinnell provide the analytical framework for evaluating the substantive fairness of a class action settlement. The Grinnell factors are: (1) the complexity, expense, and likely duration of the litigation; (2) the reaction of the class; (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 recovery in light of all of the attendant risks of litigation. Grinnell 295 F.2d at 463. Litigation here through trial will be complex, expensive, and long. It has been complex, expensive, and long. Thus, the first Grinnell factor weighs in favor of final approval. See In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig., 330 F.R.D. 11, 36 (E.D.N.Y 2019) ("Settlement is favored if settlement results in substantial and tangible present recovery, without the attendant risk and delay of trial.").

With respect to the second factor, the class members' reaction to the settlement has been overwhelmingly positive. Of the 112,397 notice packets mailed to potential members of the settlement class, four exclusion requests were received. Supplemental declaration of Ross D. Murray (Supplemental Murray Dec.") Docket No. 324, Paragraphs 4, 6. Only one class member, Mr. Richard Agay, objected. See Richard Agay letter ("Agay letter") Docket No. 320-21.

That objection did not challenge the settlement, the resolution of this case, the reasons for the settlement, the manner in which class plaintiffs and lead counsel prosecuted the litigation, the work lead counsel performed, or lead

counsel's fee and expense application. Instead, the objection asserted only that Mr. Agay received his copy of the notice late, and that he was confused by certain aspects of the submission, and that the claims administrator did not sufficiently respond to Mr. Agay's telephonic inquiry. On June 5, 2020, Mr. Agay emailed lead counsel in an email that I construe as him withdrawing his objections, perhaps because he recognized that he was apparently persuaded by the response of the parties showing that he was not entitled to recovery in the suit. See Docket No. 329. While Mr. Agay received his notice later than expected, he received it with enough time to submit objections, and the delay was caused by a failure at his broker. His objection does not suggest that the overall distribution or notice program was ineffective in design or execution.

The absence of objections, with the exception of one retail investor, who literally withdrew his objection, coupled with the minimal number of requests for exclusion, strongly supports the finding that the settlement plan of allocation and fee and expense requests are fair, reasonable, and adequate. See In re Citigroup, Inc. Sec. Litig., 965 F. Supp. 2d 369, 382 (S.D.N.Y. 2013); In re Bisys Sec. Litig., 2007 WL 2049726, at *1 (S.D.N.Y. July 16, 2007); In re Veeco instruments Inc. Sec. Litig., 2007 U.S. Dist. LEXIS 85629, at *40.

In sum, the overall favorable response demonstrates

that the class approves of the settlement and supports final approval.

The plaintiffs completed fact discovery, so counsel "had an adequate appreciation of the merits of the case before negotiating." Beckman v. KeyBank, N.A., 293 F.R.D. 467, 475 (S.D.N.Y. 2013)(quoting In re Warfarin Sodium Antitrust Litig., 391 F.3d 516, 537 (3rd Cir. 2004); see also Niehaus declaration paragraph 5. Lead plaintiffs spent significant time and resources analyzing and litigating the legal and factual issues of this case, including an extensive factual and legal investigation into the settlement class's claims and engaging in the detailed formal mediation process. Niehaus declaration paragraph 5.

Turning to the fourth and fifth factors, the risk of establishing liability and damages further weighs in favorable of final approval. "Litigation inherently involves risks." In re PaineWebber Ltd. Partnerships Litig., 171 F.R.D. 104, 126 (S.D.N.Y. 1997). Indeed, the primary purpose of settlement is to avoid the uncertainty of a trial on the merits. See Velez v. Majik Cleaning Serv., Inc., 2007 WL 7232783, at *6 (S.D.N.Y. June 25, 2007). Here, plaintiffs face significant risks as to both liability and damages; defendants challenged the premise that the allegedly omitted information was material and the notion that plaintiffs could prove that the drop in price was related to the allegedly omitted information. See Niehaus

declaration paragraphs 106, 115 to 17. The proposed settlement eliminates these uncertainties. These factors, therefore, weigh in favor of final approval.

The risk of obtaining class certification is nonexistent here. Therefore, the sixth Grinnell factor weighs in favor of final approval. Settlement generally eliminates the risk, expense, and delay inherent in the litigation process as a whole.

Turning to the seventh factor, there is nothing to suggest that Deutsche Bank or the underwriter defendants would be unable to withstand a greater judgment than the settlement amount. "But a defendant is not required to empty its coffers before a settlement can be found adequate." Shapiro v. JP Morgan & Co., 2014 WL 1224666, at *11 (S.D.N.Y. Mar. 24, 2014)(quotation omitted).

Deutsche Bank's financial circumstances -- or I should say the defendants' financial circumstances do not ameliorate the force of the other Grinnell factors, which lead to the conclusion that the settlement is fair, reasonable, and adequate.

Finally, the amount of the settlement, in light of the best possible recovery and the attendant risks of litigation, weighs in favor of final approval. The determination of whether a settlement amount is reasonable "is not susceptible of a mathematical equation yielding a particularized sum." In

re Austrian & German Bank Holocaust Litig., 80 F.Supp. 2d 164, 178 (S.D.N.Y. 2000). Instead, "There is a range of reasonableness with respect to a settlement - a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." Newman v. Stein, 464 F.2d 689, 693 (2d Cir. 1972).

Here, lead plaintiffs assert that the settlement would constitute 47 percent of the estimated recoverable damages. Niehaus declaration paragraph 19. This is a reasonable result when compared to the median ratio of settlement to investor losses of 2.1 percent for securities class action settlements in 2019. Id. Therefore, the amount of this immediate recovery is reasonable, and this factor weighs in favor of final approval.

Weighing the Grinnell factors, I find that the settlement is substantively fair and weigh in favor of final approval.

IV. Plan of Allocation:

"To warrant approval, the plan of allocation must also meet the standards by which the settlement was scrutinized - namely, it must be fair and adequate...an allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel." In Re WorldCom, Inc. Sec. Litig., 388 F. Supp. 2d

319, 344 (S.D.N.Y. 2005)(citation and quotation omitted). "A plan of allocation need not be perfect," in re EVCI Career Colleges Holding Corp. Sec. Litig., 2007 WL 2230177, at *11 (S.D.N.Y. July 27, 2007)(collecting cases), or "tailored to the rights of each plaintiff with mathematical precision," PaineWebber, 171 F.R.D. at 133; see also RMed International, Inc. v. Sloan's Supermarkets, Inc., 2000 WL 420548, at *2 (S.D.N.Y. April 18, 2000) (recognizing that "aggregate damages in securities fraud cases are generally incapable of mathematical precision"). Thus, "In determining whether a plan of allocation is fair, courts look primarily to the opinion of counsel." In re EVCI Career Colleges Holding Corp. Sec. Litig., 2007 WL 2230177, at *11.

Lead counsel, who are experienced and competent in complex class actions, prepared the plan of allocation in connection with plaintiffs' damages expert. Niehaus declaration paragraphs 100, 134. The settlement fund, minus attorneys' fees and expenses, will be allocated on a pro rata basis according to the relative size of class members' "Recognized claims." Id. at paragraphs 9, 10. The expert has calculated an estimated individual class members' claim based on (i) allegations when the alleged concealed facts and trends became known (i.e., realization events); (ii) an event study that estimates price changes in the securities as a result of realization events; and (iii) the statutory formula used to

calculate recoverable damages during the settlement class period. Declaration of Steven P. Feinstein ("Feinstein dec"), Docket No. 177-1, paragraphs 29-42.

Because the plan of allocation has a clear rational basis, equitably treats the class members, and was devised by experienced and estimable class counsel, the Court finds it fair and adequate. See In re Telik, Inc. Sec. Litig., 576 F.Supp. 2d, 570, 581 (S.D.N.Y. 2008).

V. Dissemination of Notice:

On February 27, 2020, the Court entered an order granting preliminary approval of the settlement as "fair, reasonable and adequate" to class members. In accordance with that order, lead counsel retained Gilardi & Co. LLC ("Gilardi") as claims administrator to supervise and administer the notice procedure in connection with the settlement and to process all claims. Declaration of Ross D. Murray ("Murray dec"), Docket No. 310, paragraph 2.

Gilardi sent a copy of the notice to potential members of the settlement class. First, Gilardi mailed, by first class mail, the notice packet to 283 nominees - banks, brokerage companies, and other institutions - that Gilardi had in its proprietary database. Id. at paragraph 5.

Next, Gilardi mailed the notice packet to 4,643 additional institutions or entities on the U.S. Securities and Exchange Commission's ("SEC") list of active brokers and

dealers. Id. paragraph 5.

Gilardi also delivered electronic copies of the notice packet to 381 registered electronic filers, primarily institutions and third-party filers, and to the depository trust company ("DTC") on the DTC legal notice system ("LENS"), which enables bank and broker nominees to contact Gilardi for copies of the notice for their beneficial holders. Id. paragraph 7. Gilardi received multiple responses and additional names of potential settlement class members from individuals or other nominees, with requests for over 64,000 notice packets to be forwarded directly to nominees' customers. Id. paragraph 9. Gilardi also published the summary notice in the Wall Street Journal and transmitted it over Business Wire. Id. paragraph 11. Gilardi also posted the date and time of the hearing on the settlement website. Id. paragraph 12.

Gilardi ultimately mailed a total of 112,397 notice packets, including mailing notice packets to persons a second time when the first set were returned as undeliverable. Supplemental Murray declaration paragraph 4.

These notices apprised settlement class members, among other things, of: (i) the amount of the settlement; (ii) the reasons why the parties are proposing the settlement; (iii) the maximum amount of attorneys' fees and expenses that will be sought; (iv) the identity and contact information for representatives of lead counsel available to answer questions

concerning the settlement; (v) the right of settlement class members to object to the settlement; (vi) the right to request exclusion from the settlement class; (vii) the binding effect of a judgment on settlement class members; (viii) the dates and deadlines for certain settlement-related events; and (ix) the way to obtain additional information about the action and the settlement by contacting lead counsel and the settlement administrator. See Federal Rule of Civil Procedure 23(c)(2)(B).

I find that these efforts fairly and adequately advised class members of the terms of the settlement, as well as the right of Rule 23 class members to opt out of, or to object to the settlement, and to appear at the final fairness hearing today. I find that the notice and its distribution comported with all constitutional requirements, including those of due process.

VI. Attorneys' Fees, Costs and Expenses:

Lead counsel requests attorneys' fees in the amount of what the Court calculates to be $6,166,666.67 plus interest earned at the same rate as the settlement fund. This amounts to one-third of the settlement fund, or 33.3 percent of the settlement fund. Lead counsel also seeks reimbursement of: (i) $1,203,502.39 in litigation expenses in total, with Robbins Geller Rudman & Dowd LLP ("Robbins Geller") seeking $1,170,981.31, Glancy Prongay & Murray seeking $28,740.22, and

Murray Frank LLP seeking $3,780.86; and (ii) to approve the award to the lead plaintiffs, or class plaintiffs, of "20,000 in the aggregate pursuant to 15, U.S.C., Section 77Z-1(a)(4) in connection with their representation of the class." Niehaus declaration paragraph 17.

Now, the trend in the Second Circuit is to use the percentage of the fund method to compensate attorneys in common fund cases, although the Court has discretion to award attorneys' fees based on the lodestar method or the percentage of recovery method. See Fresno County Employees' Ret. Association v. Isaacson/Weaver Family Trust, 925 F.3d 63, 68 (2d Cir. 2019).

The notice provided to class members advised that class counsel would apply for attorneys' fees for up to 33.3 percent of the settlement fund, in addition to litigation costs not to exceed 1.3 million. See Gilardi declaration Exhibit A Notice at 2. No class member objected to the request.

A. Goldberger Factors:

Reasonableness is the touchstone when determining whether to award attorneys' fees. In Goldberger v. Integrated Resources, Inc., 209 F.3d 43 (2d Cir. 2000), the Second Circuit set forth the following six factors to determine the reasonableness of a fee application: (1) the time and labor expended by counsel; (2) the magnitude and complexities of the

litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations. Id at 50.

1. Class Counsel's Time and Labor:

Plaintiffs' counsel have expended more than 26,000 hours of attorney time in total over the course of this action, the vast majority of which was time expended by of counsel at Robbins Geller. Declaration of Eric Niehaus in support of lead counsel's motion for an award of attorneys' fees ("Niehaus fee declaration"), Docket No. 311 paragraph 5. Niehaus declaration paragraph 135.

2. Magnitude and Complexity of the Litigation:

The size and difficulty of the issues in a case are significant factors to be considered in making a fee award. In re Prudential Sec, Inc. Ltd. Partnership Litig., 912 F. Supp. 97, 100 (S.D.N.Y. 1996). "In 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 Flag Telecom Holdings Ltd. Sec. Litig., 2010 WL 4537550, at *15 (S.D.N.Y. Nov. 8, 2010) (quotation omitted). This case is one of substantial magnitude. In addition to all of the complications that are attendant to any large securities class action, this matter involved events that happened over ten years ago, extensive discovery, and litigation. The amount sought by plaintiffs'

counsel is commensurate with the magnitude and complexity of this litigation.

3. The Risk of Litigation:

As discussed, lead counsel faced significant risk in prosecuting this action and proving the merits of the claims. All of the fact-finding has concluded. Given the complexity of the case, the risk at summary judgment and trial is significant. Defendants adamantly denied any wrongdoing, and, in the event that litigation had continued, would have continued to aggressively litigate their defenses through summary judgment, Daubert motions, trial, and any appeals.

4. Quality of Representation:

Lead counsel has considerable expertise in securities litigation. See Robbins Geller resume, Niehaus fee declaration, Exhibit G; see also declaration of Brian P. Murray filed on behalf of Glancy Prongay & Murray LLP in support of application for award of attorneys' fees and expenses ("Murphy fee declaration"). Robbins Geller attorneys are currently "lead or [are] named counsel in hundreds of securities class action or large institutional-investor cases" and are "responsible for the largest securities class action in history." Niehaus fee declaration, Exhibit G. RiskMetrics Group has recognized Glancy Prongay & Murray as one of the top plaintiffs' law firms in the United States in its securities class action services report for every year since the inception

of the report in 2003. See Murphy fee declaration, Exhibit I.

The high quality of defense counsel opposing plaintiffs' efforts further proves the caliber of representation that was necessary to achieve the settlement. Cahill Gordon & Reindel and Skadden Arps Slate Meagher & Flom are two prominent defense firms, and "the ability of plaintiffs' counsel to obtain a favorable settlement for the class in the face of such formidable opposition confirms the quality of their representation of the class." In re Marsh ERISA Litig., 265 F.R.D. 128, 148 (S.D.N.Y. 2010).

Accordingly, the Court finds that this Goldberger factor weighs in favor of the requested fee award.

5. The Requested Fee in Relation to the Settlement:

Generally, courts consider the size of a settlement to ensure that the percentage awarded does not constitute a windfall. In this case, the requested fee is 33.3 of the settlement, within the range of reasonableness, in light of other class action settlements in this circuit. See Mohney v. Shelly's Prime Steak, Stone Crab & Oyster Bar, 2009 WL 5851465, at *5 (S.D.N.Y. Mar. 31, 2009)("Class counsel's request for 33 percent of the settlement fund is typical in class action settlements in the Second Circuit.").

6. Public Policy Considerations:

When determining whether a fee award is reasonable, courts consider the social and economic value of the class

action "and the need to encourage experienced and able counsel to undertake such litigation." In re Sumitomo Copper Litig., 74 F. Supp. 2d 393, 399 (S.D.N.Y. 1999). "Courts have, as a generic matter, frequently observed that the public policy of vigorously enforcing the federal securities laws must be considered in calculating an award." In re BioScrip, Inc. Sec. Litig., 273 F.Supp. 3d 474, 502 (S.D.N.Y. 2017)(quotation omitted) affirmed sub nom. Fresno County Employees Retirement Association v. Isaacson/Weaver Family Trust, 925 F.3d 63 (2d Cir. 2019).

Vigorous, private enforcement of the federal securities laws can only occur if private investors can obtain some parity in representation with that available to large corporate defendants. Accordingly, public policy favors granting lead plaintiffs' fee request.

After considering all of the Goldberger factors, the requested fee award appears to be reasonable.

B. Lodestar "Cross Check":

In Goldberger, the Second Circuit "encouraged the practice of requiring documentation of hours as a 'cross check' on the reasonableness of the requested percentage." Goldberger, 209 F.3d at 50. "Of course, where used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court." Id.

As of April 17, 2020, plaintiffs' counsel have

expended over 26,000 hours in total in this case, resulting in a total lodestar of $16,069,646. Niehaus fee declaration paragraph 4, Exhibit A; Murphy fee declaration, Exhibit A. Robbins Geller expended 17,356.85 hours with a lodestar of $12,021,477, Glancy Prongay & Murray LLP expended 8,097.8 hours with a lodestar of $3,639,826.50, the Frank Murray LLP expended 562.2 hours with a lodestar of $355,902.50. Id. Plaintiffs' counsel submitted declarations and time reports in support of their motion for attorneys' fees. Id. Counsel submitted a summary time records detailing the billable rate and hours worked by each attorney and professional support staff in this case. I find that these billable rates based on the timekeeper's title, specific years of experience, and market rates for similar professionals in their fields nationwide and in New York, where Robbins Geller LLP is based, to be reasonable in this context.

Based on plaintiffs' counsel's requested fee - one-third of the settlement, or by the Court's calculation, $6,166,666.67 - the lodestar yields a negative "cross-check" multiplier of about 0.38; therefore, the fee is well below the typically awarded multipliers in this circuit. "Courts regularly award lodestar multipliers from 2 to 6 times lodestar in this circuit." Fleisher v. Phoenix Life Insurance Company, 2015 WL 10847814, at *18 (S.D.N.Y. Sept. 9, 2020)(quotation omitted)(collecting cases). Thus, the lodestar

"cross-check" confirmation that plaintiffs' counsel requested fee is reasonable.

The Court therefore finds that, based on the Goldberger factors and the lodestar "cross-check," that plaintiffs' counsel's requested fees are reasonable.

C. Litigation Expenses:

Plaintiffs' counsel requests $1,203,502.39 total in litigation expenses, including filing fees, process service, mailing expenses, document management and hosting services, investigative and expert witnesses, legal research, travel and mediation. See Niehaus fee declaration paragraph 5, Exhibit B. Robbins Geller seeks $1,170,981.31, Glancy Prongay & Murray seeks $28,740.22, and Murray Frank LLP seeks $3,780.86. The largest component of plaintiffs' counsel's expenses was the cost of experts and consultants, amounting to $750,458, or approximately 62 percent of total expenses. Niehaus fee declaration paragraph 6. The next largest components of plaintiffs' counsel's expenses were for transportation, hotels, and meals ($227,852.66), court transcripts and deposition materials ($68,030.54), and mediation ($27,210). See Niehaus fee declaration, Exhibit B. The notice disclosed that lead counsel would seek up to $1,300,000 in litigation expenses. No objection to these expenses was received.

"It is well-established that counsel who create a common fund are entitled to the reimbursement of expenses that

they advance to a class." In re Giant Interactive Group, Inc., 279 F.R.D. 151, 165 (S.D.N.Y. 2011); see also In re Indep. Energy Holdings, 302 F.Supp. 2d 180, 183 Note 3 (S.D.N.Y. 2003). "Attorneys may be compensated for reasonable out-of-pocket expenses incurred and customarily charged to their clients as long as they were 'incidental and necessary to the representation of those clients.'" (quotation omitted). The expenses for which lead counsel seeks payment are the type of expenses that courts typically approve. See In re Global Crossing Sec. & ERISA Litig., 225 F.R.D. 436, 468 (S.D.N.Y. 2004). Therefore, the Court finds that the requested litigation expenses are reasonable and necessary to the representation of the class and are appropriately reimbursed to class counsel.

D. Lead Plaintiffs' Expenses:

Lead plaintiffs seek an award of $20,000 for both of them in recognition of the time and expense that they incurred on behalf of the class. Motion in support, Docket No. 307, at 31; see also Niehaus declaration paragraph 17. 15, U.S.C., Section 77Z-1(a)(4) allows "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."

As set forth in their declaration, lead plaintiffs dedicated a significant amount of time to the successful

prosecution of this action, including by reviewing pleadings and motions, discussing strengths and risks of the case, and consulting with lead counsel regarding settlement. Kaess and Farrugio declaration paragraphs 2 through 12. These are the kinds of activities which regularly are found to support awards to class representatives.

As set forth in their declaration, lead plaintiffs assert that the value of their time and resources invested in this case is substantially in excess of the $20,000 award that they seek here. Id. And the application here is consistent with the notice, which disclosed that "Class plaintiffs may seek an award pursuant to 15, U.S.C., Section 77z-1(a)(4) in connection with their representation of the class in an amount not to exceed $20,000 in the aggregate." Murphy fee declaration, Exhibit A notice.

Thus, I find that the requested award of $20,000 to lead plaintiffs is reasonable.

VII. Conclusion:

In conclusion, I approve the class action settlement for $18,500,000 and approve the plan for allocating the net proceeds of the settlement. I also award plaintiffs' counsel attorneys' fees in the amount of what the Court calculates to be $6,166,666.67, plus interest earned at the same rate as the settlement fund. This amounts to one-third of the settlement fund, or 33.3 percent of the settlement fund. I am also

awarding $1,203,502.39 in litigation expenses to be divided as outlined by lead counsel. Finally, I award lead plaintiffs $20,000 in the aggregate for time and expenses incurred while representing the class.

So, counsel, thank you very much for your patience as I got through the reasoning for my decision to approve the settlement here.

I received the proposed orders and judgment, and I expect to act on those promptly after today's conference.

Is there anything else that we should take up now, before we adjourn?

First, counsel for plaintiffs?

MR. PINTAR: Not for plaintiffs, your Honor. Again, Ted Pintar. Thank you very much.

THE COURT: Thank you.

Counsel for the Deutsche Bank defendants?

MR. JANUSZEWSKI: Your Honor, David Januszewski.

Nothing else from us.

THE COURT: Good. Thank you.

Counsel for the underwriter defendants?

MR. O'BRIEN: Yes. William O'Brien, from Skadden Arps Slate Meagher & Flom LLP.

Nothing further from us as well.

THE COURT: Good. Thank you, all.

COUNSEL: Thank you. * * *

EXHIBIT G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

LEHMAN BROTHERS SECURITIES AND ERISA LITIGATION

09 MD 2017 (LAK)

This document applies to:

In re Lehman Brothers Equity/Debt Securities Litigation, No. 08-CV-5523 (LAK)

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PRETRIAL ORDER NO. 91
(Motion for Attorneys' Fees - Ernst & Young Settlement)

LEWIS A. KAPLAN, *District Judge.*

As indicated by the Court's remarks on the record during the April 16, 2014 Fairness Hearing and a subsequent telephone conference with Lead Counsel on May 1, 2014, certain of the fee requests associated with the plaintiff class's settlement with Ernst & Young appeared confoundingly large. As a result, at the Fairness Hearing the Court invited one firm – Saxena White L.P. of Boca Raton, Florida – to submit to the Court additional materials to justify its requested fee, which the firm did. On May 1, the Court requested that Saxena White further substantiate its requested fee by supplementing its submission. Saxena White did so and, in its supplemental submission, voluntarily reduced its lodestar by 10 percent.

Having considered the matter further, the Court acts on the basis of the voluntarily reduced Saxena White lodestar, of which it awards a fee that equals 63 percent, consistent with awards to other counsel.

Ernst & Young was the final defendant in this class action. This settlement, together with the settlements resolving the claims against the Underwriter ("UW") and former director and officer ("D&O") defendants, results in a total recovery of $615,218,000.00 for the Settlement Class. The attorneys' fees awarded in consequence of these settlements are equal to 13.98 percent of the total recovery and a lodestar multiplier of 1.01.

Lead Counsel's motion for an award of attorneys' fees and reimbursement of expenses [09 MD 2017 - DI 1381, 08 CV 5523 - DI 549] is granted to the extent that the fees and expenses listed on the following schedule are awarded.

SO ORDERED.

Dated: July 15, 2014

Lewis A. Kaplan
United States District Judge

Schedule

Firm	Fees Awarded	Expenses Approved
Bernstein Litowitz Berger & Grossman LLP	$12,583,036.21	$3,435,678.90
Kessler Topaz Meltzer & Check, LLP	$7,489,779.42	$811,396.15
Grant & Eisenhofer P.A.	$1,044,810.90	$2,318.98
Kirby McInerney LLP	$2,106,763.31	$897.31
Labaton Sucharow LLP	$1,332,653.49	$9,329.01
Law Offices of Bernard M. Gross, P.C.	$879,598.13	$1,049.40
Murray Frank LLP	$121,514.40	$127.27
Spector Roseman Kodroff & Willis, PC	$322,296.19	$195.88
Saxena White P.A.	$3,372,756.27	$18,713.97
Total	**$29,253,208.32**	**$4,279,706.87**