UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

OSHONYA SPENCER, CHARLES STRICKLAND, and DOUGLAS McDUFFIE on behalf of themselves and all others similarly situated,	:	
Plaintiffs,	:	NO. 3:05cv1681 (JCH)
V.	:	
THE HARTFORD FINANCIAL SERVICES GROUP, INC., et al	:	
Defendants.	:	AUGUST 16, 2010

DECLARATION OF DAVID S. GOLUB

David S. Golub, does declare, under penalty of perjury, as follows:

1. I am an attorney admitted to the Bar of this Court and a member of the law firm of Silver Golub & Teitell LLP, one of the law firms representing the Named Plaintiffs and appointed Class Counsel in the above-captioned action. I submit this Declaration in support of Class Counsel's Application for Award of Attorneys' Fees and Reimbursement of Litigation Expenses filed this day in connection with the pending settlement of the class claims in this action.

Procedural Background

2. On June 7, 2010, this Court gave preliminary approval to the settlement of the class claims in this action for $72,500,000 and ordered a hearing for final approval of the settlement to be held on September 21, 2010. Pursuant to the Court's June 7, 2010 Order, notice of the settlement and of the September 21, 2010 approval hearing has been provided to the 22,000 class members by mail and publication.

3. The notice of the settlement provided to class members advised the class that counsel would seek an award of attorneys' fees of up to one-third of the settlement and afforded the class members an opportunity to object to the settlement or to Class Counsel's request for attorneys' fees. To date, no class member has given notice of an objection to the settlement or the request for attorneys' fees.

4. Pursuant to the Court's June 7, 2010 Order, Class Counsel were directed to submit their Application for Award of Attorneys' Fees and Reimbursement of Litigation Expenses within forty days of the mailing of notice to the class of the settlement and approval hearing. The notice was mailed on July 7, 2010. Class Counsel have this day filed their Application (and are posting it on the website established for communications with class members).

5. Class Counsel seek an award of attorneys' fees in the amount of $21.75 million, equal to 30% of the $72.5 million settlement.[1] Plaintiffs further seek reimbursement of litigation expenses in the amount of $823,467.35 that they have incurred in the successful prosecution of this action.

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[1] Class Counsel, who have worked collectively on this matter and stand in a common relationship to the class, have agreed upon the allocation of any attorneys' fee award among themselves, as permitted by District precedent, obviating any decision as to allocation by the Court. *Norflet v. John Hancock Life Insurance Company*, 658 F. Supp.2d 350, 353 (D. Conn. 2009) (Arterton, J.)

6. In this Declaration, and in the Declaration of other of Class Counsel filed in conjunction with this Declaration,[2] Class Counsel will set forth the basis for their requested fee and reimbursement of expenses.

The Settlement

7. The $72.5 million settlement of class claims in this action was reached after 4½ years of hard-fought litigation in which every element necessary to obtain a recovery for the Named Plaintiffs and the class was vigorously contested by defendants' counsel; every aspect of discovery was resisted by defendants; and only after Class Counsel succeeded in defeating defendants' challenges to the legal validity of plaintiffs' claims, succeeded in obtaining class certification of a nationwide RICO and fraud class, and succeeded in defeating defendants' effort to obtain interlocutory reversal by the Court of Appeals of this Court's ruling granting class certification. Prior to agreeing (subject to court approval) to the $72.5 million settlement, Class Counsel rejected inferior settlement proposals and prepared to present this case at trial scheduled for September of this year. The settlement was reached after two day-long sessions of mediation conducted by David Geronemus of JAMS, one of this nation's leading mediators of complex cases.

8. The settlement is undeniably an outstanding settlement for the class members. The $72.5 million equates to a reimbursement of 4.5% of the premiums used for the annuities that funded the structured settlements – a recovery *greater* than the 4% sought in plaintiffs' original Complaint – and to an outstanding 30% recovery of plaintiffs' alleged losses under their broader

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[2] *See* Declaration of Steven L. Bloch, Esq. dated August 16, 2010 (attached as Exhibit A), filed on behalf of Berger & Montague, P.C.; Declaration of Carl S. Kravitz, Esq. dated August 16, 2010 (attached as Exhibit B), filed on behalf of Zuckerman Spaeder LLP; and Declaration of Richard B. Risk, Jr., Esq. dated August 16, 2010 (attached as Exhibit C), filed on behalf of Risk Law Firm.

15% theory.[3] And, unlike class actions in which class members receive no meaningful benefit, each class member in this case will (on average) receive thousands of dollars in settlement monies.

9. Class Counsel represented the Named Plaintiffs and the class on a wholly contingent basis. To obtain this recovery, the four law firms risked thousands of hours of legal time (the overwhelming majority prior to the grant of class certification) and hundreds of thousands of dollars in litigation expense. They did so in a case with highly uncertain prospects, involving a well-financed corporate defendant with a reputation for tenacious litigation and against defense counsel (from one regional and three national law firms) who asserted repeatedly that class certification could never be approved (and, if approved, would never be upheld); that no viable legal theory of liability existed; and that no damages could be ever established.

10. Class Counsel have now applied for an award of attorneys' fees pursuant to the "common fund" doctrine, which authorizes this Court to allocate the fees and costs of litigation among the nearly 22,000 class members. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 47 (2d Cir. 2000). Class Counsel respectfully seek a percentage award of 30% of the settlement fund – a percentage award commensurate with the enormous risk they undertook and the enormous success they achieved, and fully in accord with awards in similar cases of this magnitude and risk.

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[3] *See* Ellen M. Ryan, Laura E. Simmons, *Securities Class Action Settlements, 2009 Review and Analysis*, at 5 (Cornerstone Research, Inc. 2010) (attached as Exhibit D) (in securities class actions settling for between $50 and $124 million in 2009, the median settlement as a percentage of actual investor losses is 3.9%).

The *Goldberger* Factors

11. The Second Circuit has set forth six factors that should be considered in determining the reasonableness of a fee request in common fund class action cases:

> (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 at 50. Consideration of these factors clearly supports an award of a fee of 30% of the settlement fund to Class Counsel in this case.

1. The Significant Time and Labor Expended by Class Counsel

12. The first factor set forth in *Goldberger* for determining an appropriate fee is "the time and labor expended by counsel." *Id.* at 50.

13. The time and labor required to successfully prosecute this litigation and achieve an outstanding settlement for the settlement class fully justifies the requested fee. This case has been vigorously litigated from its commencement. The defendant – a large corporation with virtually unlimited funds at its disposal to defend the case – was represented during the course of this litigation by highly experienced and capable counsel from one regional and three national law firms who mounted a vigorous defense at every step of the litigation.

14. The Named Plaintiffs and the class have been represented by four law firms in this matter. Three law firms – Silver Golub & Teitell LLP of Stamford, Connecticut; Berger & Montague, P.C. of Philadelphia, Pennsylvania; and the Risk Law Firm of Tulsa Oklahoma – have represented the Named Plaintiffs from the outset of this case in 2005. In December 2006, the law firm of Zuckerman Spaeder LLP of the District of Columbia joined plaintiffs' legal team.

15. Class Counsel recognized from the outset that a successful prosecution of plaintiffs' claims necessitated a team approach. Plaintiffs' four law firms worked together on all aspects of the case and coordinated their efforts and strategy with regular team conferences and frequent telephone and multiple email communications. Sixty-seven attorneys and paralegals from the four firms participated in the prosecution of this action.

16. The successful litigation of this matter involved:

- extensive pre-filing investigation into the Hartford and its subsidiaries' claims settlement practices, including their relationship with cooperating broker entities;

- researching and developing legal theories to support the causes of action asserted in plaintiffs' original and Amended Complaints, including causes of action asserting violations of civil RICO and for state-law fraud, breach of contract and unjust enrichment.

- drafting comprehensive fact-specific pleadings, including a 42-page Complaint, a 23-page RICO Case Statement, and a 75-page Amended Complaint.

- litigating defendants' Motion to Dismiss which challenged every legal theory in plaintiffs' Amended Complaint. Class Counsel's response entailed voluminous briefing – including research into the law in six separate jurisdictions – and oral argument before the Court. As a result of Class Counsel's efforts, defendants' Rule 12(b) challenges were denied in their entirety.

- development, through document review and deposition of defendants' executives, of an additional factual theory, substantially enlarging the scope of plaintiffs' claims; and preparation of a 41-page Second Amended Complaint based on those claims which were unknown to plaintiffs at the outset of the litigation. Class Counsel's motion to allow the

proposed Second Amended Complaint entailed extensive litigation and was granted after significant briefing by the parties as well as more than two hours of oral argument before the Court.

- complex class certification proceedings, including early engagement of expert assistance to develop an appropriate protocol to identify a representative sample of the more than 22,000 potential class member annuitants in order to permit the parties to make statistically meaningful assessments of the nature of the representations made to potential class members about the cost and value of the annuities which they received as part of their respective settlements with the Hartford.

The development and implementation of this protocol entailed: initial review of a limited number of claims files in order to permit plaintiffs counsel and their expert to determine the potentially relevant variables to be analyzed; determination of a sampling design and sampling procedure acceptable to the defendant; identification of a statistically significant representative number of claims files composing the universe of files to be analyzed (as well as determination of a statistically significant representative number of each sub-category of claims file composing the overall universe to be analyzed); development of a procedure to select the 603 claims files to be reviewed; pulling and analyzing the identified claim files; pulling in excess of 100 replacement claims files when files identified for inclusion in the sample were subsequently found to be either missing or incomplete; development of a protocol to analyze the more than 96,000 pages of claims files identified by the sampling process; analysis of those claims files; and development of an expert statistical report extrapolating the size and characteristics of

various sub-classes of the potential plaintiff classes based on the characteristics of the sampled claims files.

In order to successfully develop and implement the sampling protocol, Class Counsel engaged in exhaustive consultations not only with their experts but also with defense counsel and a statistician retained by The Hartford, as well as several status conferences with the Court to explain the proposed sampling protocol and the status of the parties' efforts to complete the sampling process.

The successful development of the agreed-upon protocol – *as a result of which the defendants elected not to disclose an expert on class certification issues or to submit a report in response to the expert report of plaintiffs' expert James Dannemiller* – was, ultimately, instrumental in enabling plaintiffs to obtain class certification in this action and resulted in the outstanding settlement on behalf of the class beneficiaries.

- extensive document and deposition discovery. Class Counsel received and reviewed over 540,000 pages of discovery produced by defendant and third party brokers. Class Counsel further conducted depositions of defendants' executives in The Hartford's life insurance and property and casualty divisions, supervisory personnel and actuaries in those divisions, claims adjusters, and third party brokers across the country. Class Counsel also defended depositions of the Named Plaintiffs, and their counsel and representatives, and responded to defendants' discovery requests.

- significant discovery motions practice, including repeated motions to compel defendants to cooperate in depositions; opposition to defendants' efforts to stay the proceedings or class certification, and for protective orders to prevent depositions, and for expedited

discovery orders in support of plaintiffs' efforts to conduct the depositions of key Hartford executives responsible for the development of defendants' program for the settlement of claims through sales of Hartford Life annuity policies as well as third party brokers who participated in the Broker Assistance Program which supported The Hartford's annuity sales practice.

- preparation and litigation of plaintiffs' Motion for Class Certification, supporting Memorandum and Reply Memorandum, supporting factual and legal materials, and supplemental submissions. These materials included voluminous submissions in support of the Motion, including reviews of the laws of 51 separate jurisdictions concerning three causes of action as to which plaintiffs sought class certification, 800 pages of appendices to plaintiffs' memoranda in support of the Motion, and three separate sur-reply notices of additional relevant authority.

- preparation of plaintiffs' response in opposition to defendants' Rule 23(f) petition for interlocutory appeal to the United States Court of Appeals for the Second Circuit of this Court's class certification Order, successfully prevailing over defendants' appellate counsel, the former Solicitor General of the United States.

- development of a class-wide damages analysis based on the statistical sampling protocol developed by plaintiff's expert on issues of class certification.

- extensive merits and damages expert discovery, including participation in the development of expert theories, production of substantial expert reports and rebuttal reports, defense of multiple depositions of plaintiffs' experts and deposition of defendants' experts.

- complex settlement negotiations, including two days of mediation with an extremely able and experienced mediator, numerous conferences, telephone calls, and preparation and submission of voluminous mediation statements and exhibits.

- protracted negotiation of the (36-page) Settlement Agreement and its exhibits, including, *inter alia*, a plan of allocation of the settlement, mail and publication notice, and a complex escrow agreement covering settlement funds and extensive dealings with the Claims Administrator and escrow bank to effectuate the procedures contemplated by the parties' Settlement Agreement.

- extensive dealings with the professional Claims Administrator to develop policies and procedures for class administration after the Court's Order granting class certification, including for issuance of mail and publication notice, development of an informational settlement website, responding to questions from class members, and weekly tracking of class member responses to the initial notice of class eligibility.

17. All of the above was necessary and instrumental to reaching and implementing the class settlement. Class Counsel have expended in excess of 11,900 hours of time in their successful prosecution of this action.[4]

2. The Magnitude, Complexity and Risks of the Litigation

18. The second and third *Goldberger* factors are the magnitude, complexity, and risk of the litigation. *Goldberger* at 50. These considerations clearly support the fee requested by counsel in this case.

19. The Second Circuit has long recognized "the risk of success as 'perhaps the foremost' factor to be considered in determining [a reasonable award of attorneys' fees]." *Id.* at

[4] The legal work on this litigation, moreover, will not end with the Court's approval of the settlement. Plaintiffs' co-counsel have, to date, responded to hundreds of inquiries from class members concerning both the Order certifying the class and the proposed settlement. Counsel reasonably anticipate that they will be required to expend considerable additional time after approval of the settlement in responding to continuing inquiries from class members and overseeing the claims administration process.

54 (citations omitted). The risk is measured as of the commencement of the case, *id.* at 55, rather than with the benefit of hindsight after prosecution of the case proves successful.

20. The settlement achieved in this matter is an outstanding one (and the percentage attorneys' fee sought is reasonable) precisely because the risks of non-recovery (or minimal recovery) were so substantial. Class Counsel faced significant risk that they would be unable to prevail on any theory of liability; that they would be unable to obtain or sustain class certification; and that, even if they prevailed on class certification and established liability, they would be unable to prove significant damages for class members.

21. Each of the four law firms agreed to represent the Named Plaintiffs on a contingent fee basis and to seek to pursue this action as a class action for the Named Plaintiffs and other similarly-situated individuals who entered into settlements with property & casualty ("p&c") companies of defendant The Hartford Financial Services Group, Inc. ("The Hartford") in resolution of personal injury and workers' compensation claims insured by The Hartford's p&c subsidiaries. The firms did not seek a retainer from any of the three Named Plaintiffs, nor did the firms seek to recover any of the litigation expenses they incurred in this action from any of the Named Plaintiffs, even those expenses incurred in specific connection with the Named Plaintiffs' individual claims.

22. The four law firms agreed to undertake this case on a contingent fee basis because each firm understood that there was no other way in which the Named Plaintiffs – or, for that matter, any of the members of the plaintiff class – could otherwise pursue this case. At the time this action was commenced, plaintiffs' theory of liability was that defendants had wrongfully underpaid 4% of the cost or value of structured settlements entered into with plaintiffs in

connection with the resolution of personal injury or workers' compensation claims insured by The Hartford's p&c companies.

23. Named Plaintiff Oshonya Spencer's structured settlement had a purported cost of $52,000, and her actual loss under the 4% theory was $2,080; Named Plaintiff Charles Strickland's structured settlement was $50,071, and his actual loss under this theory was $2,003; and Named Plaintiff Douglas McDuffie's structured settlement was $36,768, and his actual loss under this theory was $1,471.

24. It would, obviously, have been wholly infeasible for any of the Named Plaintiffs to seek to retain counsel on an hourly rate (or agree to pay the likely litigation expenses necessary) to recover these sums. Indeed, no ethical attorney would (or could) have recommended that any of the Named Plaintiffs enter into an hourly rate representation.

25. The four law firms understood that the only practical way this case could have a value substantial enough to warrant the time and expense that would likely be required was if it could be pursued on a class basis. While the Named Plaintiffs were willing to participate in a potential class action, counsel understood, from the outset, that there were substantial financial risks to taking on the time and expense of prosecuting this action given (a) the risk that no viable theory of liability could be established; (b) the risk that even if liability could be established on an individual basis, it would not be possible to establish the common factual and legal grounds of liability necessary for class certification; and (c) the risk that damages could not be established.

26. In regard to liability, this was not a case where a prior government investigation or prosecution had established either the facts or legal bases for holding defendants liable. Class Counsel's theories of liability – both the original 4% claim and the subsequent contention that

defendants had wrongfully withheld 15% of the value of the promised structures – were wholly untested and, as Class Counsel fully expected, were vehemently denied by defendants, who insisted that the individual plaintiffs had received precisely the future revenue streams agreed to in their underlying contract documents. Plaintiffs faced substantial factual and legal risk that they could not prevail on their asserted causes of action. As defendants argued:

- plaintiffs' claims for breach of contract would fail because each claimant received the promised stream of payments described in each release and, thus, received the benefit of his or her bargain and was precluded by the integration clauses in their releases;

- plaintiffs' claims for fraud would fail because defendant either had no statutory or common law obligation to disclose its annuity pricing methodology and/or because its representations concerning the "cost" of the annuity accurately reflected the premium price and its representations concerning the "value" of the annuity were accurate because the purchase price of the annuity accurately reflects its value and/or because plaintiffs would be unable to establish the requisite fraudulent intent;

- plaintiffs' claims for unjust enrichment would fail because they were barred by the terms of the parties' express contractual undertakings or because plaintiffs would be unable to demonstrate that defendant was unjustly enriched by its annuity pricing scheme;

- plaintiffs' RICO cause of action would fail because plaintiffs could not establish the predicate wire or mail fraud if the representations as to the "cost" or "value" of the annuity were either accurate or not fraudulent; or, plaintiffs would be unable to establish an enterprise based on an "association in fact" between The Hartford and the independent brokers sufficient to give rise to RICO statutory liability.

27. Indeed, well into this litigation, both in its Class Certification Order and at oral argument on plaintiffs' Motion for Preliminary Approval of the Settlement, this Court observed that the outcome at trial was uncertain and the risk of limited or no recovery was very real:

> Ultimately, defendants may prevail on the merits by demonstrating that the representations were not fraudulent. They may also succeed in limiting the definition of those damaged (on summary judgment or at trial) to those who fall into one subclass or the other - for example, those whose

> representations specified as "value" as opposed to "cost".... Of course, a jury may ultimately decide that plaintiffs received what they bargained for and thus suffered no injury. Or they may decide that the "value" plaintiffs suffered an injury but the 'cost' plaintiffs did not.

Spencer v. The Hartford Financial Services Group, Inc., 256 F.R.D. 284, 297-98 (D. Conn. 2009).

28. As the Court stated at the hearing on preliminary approval of the settlement:

> ...I will note that the Hartford has from the beginning clearly and vigorously asserted their view that they did nothing wrong. That they gave to each of the settling plaintiffs a product which is what it would have cost that settling plaintiff if they had gone out to buy it from the Travelers or some other annuity company. ....
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> ... I[t] strikes me that the jury could have said at the end of the day they got what they asked for. They wanted an annuity. This is what the annuity cost and they got it. These are different companies. They aren't the same and I think you could have walked away with nothing.

[Transcript of Proceeding, June 7, 2010 (Dkt. 243) at pp. 25-28].

29. In regard to class certification, The Hartford argued that since the representations of cost and value made to the settling claimants were not identical across the class, individualized issues concerning the nature of those representations predominated over any common issues such that class certification was inappropriate. In particular, defendants vociferously asserted both in this Court and in the Court of Appeals that individualized questions concerning the extent and reasonableness of any particular claimant's reliance on the representations made in the claim settlement documents precluded certification of a class on any of the legal theories asserted in plaintiffs' Second Amended Complaint, going so far as to submit more than 2,000 claim file documents in the appendix to defendants' Memorandum in Opposition to plaintiffs' Motion for

Class Certification in an effort to demonstrate the assertedly individualized nature of any claimant's reliance on defendant's alleged representations in this case.[5]

Class Counsel were also aware that The Hartford would argue – as it did – that, with respect to plaintiffs' RICO and state-law fraud claims, issues of individualized reliance precluded class certification.

And there were also substantial risks that, even if a court found that common *factual* questions predominated, variations in the elements and burden of proof for the state-law claims among the laws of the 51 jurisdictions in which the putative class members reside might be a bais for precluding class certification or rendering it inadvisable on plaintiffs' state law claims.

30. In regard to proving damages, The Hartford argued, as expected, that plaintiffs would be unable to prove any (or, at best, minimal) damages. Indeed, defendants vigorously disputed plaintiffs' claims of damages in this action, asserting, among other things, that (a) claimants received their "bargained for" stream of annuity payments; (b) the value of the annuities that claimants received as part of their settlements was equal to or greater than the value of comparable investments in the market, particularly accounting for the tax-free nature of those annuity payments and the guaranteed returns offered by an annuity; and (c) any damages model developed by plaintiffs could not account for subjective considerations that would affect the value of the settlement for each individual claimant. Defendants also vigorously attacked the actuarial assumptions in plaintiffs' expert reports and disclosed two experts to support that attack. At trial, the damage assessments of plaintiffs' and defendants' experts would have varied

[5] Indeed, during the early stages of this litigation, the Second Circuit rendered two high-profile decisions that the The Hartford asserted made class certification in this case problematic. *See In re Initial Public Offerings Securities Litigation*, 471 F.3d 24 (2d Cir. 2006); *McLaughlin v. American Tobacco Company*, 522 F.3d 215 (2d Cir. 2008).

substantially and, in the end, this crucial element at trial would likely have reduced to a "battle of experts." The reaction of a jury to such expert testimony was highly unpredictable and, as this Court recognized, there was substantial risk that plaintiffs would be unable to prevail on the issue of damages and/or that a jury would award minimal damages.[6]

31. Class Counsel were also aware that the principal defendant in this action – The Hartford Financial Services Group, Inc. ("The Hartford") – was a large corporation with substantial resources to defend this action and a reputation as a tenacious litigant. At the time this action was brought, The Hartford was being defended by two large law firms (one regional and one national in size) in a proposed class action lawsuit pending in this District,[7] and Class Counsel understood it was likely that those firms – or equally prominent firms – would be selected to defend The Hartford in this action.

32. Class Counsel, thus, understood going into this lawsuit that there was substantial risk of non-recovery (or of minimal recovery on a non-class basis). Counsel also understood that they were committing to a major, multi-year litigation that would almost certainly require thousands of hours of legal time and likely hundreds of thousands of dollars of litigation expense that might never be recouped.

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[6] Although risk is assessed from the outset of the litigation, it is also worth noting that events that occurred during the course of the litigation also created some risk that any verdict against The Hartford could not be collected. During the national economic crisis in the fall of 2008, and after The Hartford revealed substantial investment exposure in both Lehman Brothers and American International Group, and sustained a third quarter loss of $2.6 billion, the company's stock price fell dramatically. At the time, there was substantial concern in the investment community that The Hartford did not have sufficient capital to sustain its losses and might be required to seek bankruptcy protection.

[7] *See Staehr v. The Hartford Financial Services Group, Inc., et al*, No. 3:04 cv 1740 (CFD). In that case, the law firms of Morrison & Foerster and Wiggin and Dana represented defendants, the same law firms that originally appeared for defendants in this action. In *Staehr*, defendants initially prevailed on a motion to dismiss securities fraud claims. *See* 430 F. Supp. 2d. 329 (D. Conn. July 13, 2006). Over two years later, the Second Circuit reversed. 546 F.3d 406 (2d Cir. Nov. 17, 2008).

33. The factual and legal issues posed by this case were, thus, substantial, and management of the case – including nationwide discovery and massive document production – was likely to (and did) require continuing sophisticated attention by experienced attorneys. Significantly, each of the firms committed, at the outset, that experienced senior attorneys would participate actively in the prosecution of this action – Jonathan M. Levine and I, both partners at Silver Golub & Teitell;[8] Peter R. Kahana and Steven L. Bloch, both partners at Berger & Montague;[9] Carl S. Kravitz, a partner, and Ellen D. Marcus, who became a partner, and Caroline

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[8] Mr. Levine is a graduate of Harvard College (1986), and Yale Law School (1990). He joined Silver Golub & Teitell in 1990 upon graduation from law school, and he became a partner on January 1, 1999. I am a graduate of Yale College (1970) and Yale Law School (1973). I helped found and have been a partner at Silver Golub & Teitell since it was formed in 1978. Both Attorney Levine's and my practices have focused on trial and appellate litigation of complex matters. *See e.g.*, *State of Connecticut v. Philip Morris, Inc., et al*, CV-96-0148414-5(X02) (Conn. Super. CLD at Waterbury) (Mr. Levine and I served as private lead counsel for the State of Connecticut in its sovereign enforcement action against the tobacco industry from 1996-98, resulting in multi-billion recovery for State as part of national settlement and additional $370 million awarded to the State by panel of retired attorneys general based on assessment that contribution of Connecticut's legal team to obtaining the national settlement was in top 5 of 51 jurisdictions); *United States ex rel. Keeth v. United Technologies Corporation*, Civ. No. H-89-323 (AHN) (D. Conn.) (counsel for relator in False Claims Act action resulting in $150,000,000 recovery in 1994 for the United States, then the largest recovery in False Claim Act history, and $22.5 million relator's fee); *Town of New Hartford et al. v. Connecticut Resources Recovery Authority*, 291 Conn. 433 (2009) (lead counsel for class of 70 Connecticut municipalities who obtained judgment of $35.87 million against quasi-public waste authority, largest award against public agency in Connecticut history); *Anglim v Xerox Corporation*, B-83-2511 (EBB) (D. Conn.) (lead counsel for certified class of 40,000 Xerox pension members who recovered additional pension benefits in what was then the largest class action in Connecticut history); *State Employees Bargain Agent Coalition, et al, v. Rowland*, Civ. No. 3:03CV221 (AVC) (D. Conn.) (counsel for certified class of state employee unions and employees in action challenging mass layoffs ordered by Connecticut former Governor; summary judgment pending after successful defense of defendants' interlocutory appeal [*see* 494 F.3d 71 (2d Cir. 2007)]); Retirement Programs of the Town of Fairfield v. Maxam Capital Management, LLC, et al, X05 CV 5011561 S (Conn. Super. CLD at Stamford) (counsel for Town of Fairfield pension funds to recover Madoff-related losses).

[9] Mr. Kahana, a shareholder at Berger & Montague, P.C., is a graduate of Dickinson College (1977) and Villanova Law School (1980), where he was a member of the law review. He clerked for Hon. Gwilym A. Price, Jr. of the Superior Court of Pennsylvania. Mr. Bloch, a shareholder at Berger & Montague, is a graduate of the State University of New York at Albany (1989) and Benjamin N. Cardozo School of Law (1992). Berger & Montague is a nationally recognized class action firm, and its ability and experience in handling major complex litigation in the fields of securities, antitrust, mass torts, civil and human rights, insurance, qui tam and whistleblower cases, employment, and consumer litigation has been noted by courts throughout the country. In addition, the firm's attorneys, including Mr. Kahana, have on several occasions been selected as trial lawyers of the year. Additional information about Messrs. Kahana and Bloch is contained in Berger & Montague's firm brochure, attached to Mr. Bloch's Declaration.

Reynolds, a senior associate, at Zuckerman Spaeder;[10] and Richard B. Risk, Jr., the principal of the Risk Law Firm.[11]

34. Class Counsel, thus, undertook this large, complex action on a wholly contingent fee basis, knowing that it would require them to risk a tremendous amount of time of senior lawyers in their respective firms and substantial out-of-pocket expense to prosecute the action appropriately. It is important to recognize that contingent fee attorneys are limited in the number of substantial matters they can take on at any one time: if they undertake matters unwisely, not only will they lose the time and expense of an unsuccessful action, but they also will lose the opportunity to pursue other more productive litigation.

35. Class Counsel litigated plaintiffs' claims for almost five years and were prepared to begin a full trial of this matter in September of this year. Class Counsel rejected settlement proposals they believed were inadequate and were fully prepared to litigate this case and risk losing their enormous investment of attorney time and substantial out-of-pocket expenses in the

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[10] Mr. Kravitz is a graduate of Harvard College (1977) and Columbia Law School (1980). He clerked for Hon. Stephen Reinhardt, United States Court of Appeals for the Ninth Circuit (1980-81), and has been practicing law in the District of Columbia since 1982. He is a partner in Zuckerman Spaeder LLP and has been chairman of the firm's litigation department for the past ten years. Ms. Marcus is a graduate of Amherst College (1996) and Columbia Law School, where she was a senior editor of the law review. She clerked for Hon. Leonie Brinkema, United States District Court for the Eastern District of Virginia, and is a partner in Zuckerman Spaeder. Ms. Reynolds is a graduate of Colgate University (B.A. 1998), Yale Law School (2002), and the University of Chicago (M.A. 2004). She clerked for Hon. Keith P. Ellison, United States District Court for the Southern District of Texas, and is an associate at Zuckerman Spaeder. Zuckerman Spaeder is a nationally recognized litigation firm, with offices in Washington, New York, Baltimore, Tampa and Wilmington, and has twice been chosen by *The American Lawyer* as one of the top litigation boutiques in the country. More detail on Mr. Kravitz, Ms. Marcus, Ms. Reynolds and Zuckerman Spaeder LLP is attached to Mr. Kravitz's Declaration.

[11] Mr. Risk is a graduate of Oklahoma State University (1963) and the Tulsa College of Law (2001). He has a nationwide practice, based in Tulsa, Oklahoma, devoted to issues related to settlement planning, with a particular focus on structured settlements. He consults with attorneys and structured settlement producers across the country on to help create and administer qualified settlement funds, advise on tax issues relating to settlements. He is founder and director of the Society of Settlement Planners (SSP), a national public policy and educational organization formed in 2001 to assist injury victims, claimants and attorneys in resolving their legal financial claims. In 2010, the SSP bestowed upon the honor of being its first Life Member.

absence of a fair, reasonable and adequate settlement that properly furthered the interests of the class.

36. The enormous contingency risk in this case cannot be seriously disputed. As a matter of economic reality, given the size of each individual class member's claim, absent Class Counsel willing to assume that contingency risk, class members would not have received the benefits obtained by this settlement.

37. In *Goldberger*, the Second Circuit noted that "[r]isk falls along a spectrum, and should be accounted for accordingly." *Id.* at 54. Taking into account the significant litigation and contingency risks in this case, the attorneys' fees requested by Class Counsel are justified.

3. The Quality of Representation and the Result Achieved

38. The result achieved and the quality of the services provided are also important factors to be considered in determining the amount of reasonable attorneys' fees. *Goldberger* at 50; *see, e.g., Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("most critical factor is the degree of success obtained").

39. In this case, the quality of the representation of Class Counsel is best evidenced by the extraordinary recovery obtained for the class – a $72.5 million all cash settlement fund.

40. This settlement is an exceptional result for the members of the Settlement Class, who each stand to recover, on average, thousands of dollars in additional compensation arising out of their structured settlements with The Hartford. The gross settlement payment represents 4.5% of each dollar of premium used to purchase the annuities funding the Class Members' structured settlements. Significantly, the 4.5% recovery exceeds the 4% sought in the plaintiffs' initial complaint and represents a favorable compromise on the plaintiffs' expanded theory that they

pursued after learning in discovery that The Hartford retained, on average, 15% of the economic value of structured settlements to cover profits, taxes and costs. Even on the broader 15% theory, the 4.5% recovery under the settlement provides recoupment of 30% of the class members' actual losses, and represents an extremely favorable result in comparison to the overwhelming majority of class action settlements.

41. Indeed, as this Court commented at the hearing on preliminary approval of the settlement:

> In terms of the agreement itself, I make no final judgment here today but the court's initial assessment is that it is a very favorable outcome for the plaintiffs. In effect, the plaintiffs' initial theory was that they were harmed in the amount of four percent of the total annuity .. And only subsequently after some discovery ... plaintiffs enlarge[d] their claim to be a 15 percent claim of annuity as their measure of damages. The recovery now in the settlement is in excess of the original theory of the claim at four and a half percent of the total annuity premium.
>
> It is almost a third ... of the larger ... theory of the case by the plaintiffs as to which there were substantial litigation risks.

[Transcript of Proceeding, June 7, 2010 (Dkt. 243) at pp. 25].

42. A 2009 study of trends in securities class action settlements has shown that in settlements of between $50 and $124 million, the median settlement as a percentage of investor losses is 3.9%, substantially lower than the percentage of loss recovered for plaintiffs in this case.[12] Indeed, even after deduction of the attorneys' fees requested in Class Counsel's fee application, each class member will still receive a net benefit from the settlement equal to 21% of

[12] *See* Ryan, *Securities Class Action Settlements, 2009 Review and Analysis* (Exhibit D), at 5; *see also* Stephanie Plancich, Ph.D., Svetlana Starykh, *2008 Trends in Securities Class Actions*, at 14 (National Economic Research Associates, Inc. 2008) (copy attached as Exhibit E) (median ratio of settlement to investor losses of cases settled in 2008 was 2.7%, and ranged between 2.2% and 3.2% between 2002 and 2008).

the actual losses under the 15% theory – more than five times the 2009 median. Moreover, at plaintiff's counsel's insistence, *all* net settlement funds will go to class members. None of the settlement funds is subject to any reversion to the defendant.

43. Finally, in evaluating the quality of the representation provided by Class Counsel, it is important to note that, throughout this litigation, The Hartford demonstrated that it was willing to invest substantial resources to defend against plaintiffs' claims, hiring some of the premiere law firms in this country. In addition to retaining the law firm of Wiggin & Dana which has represented The Hartford for years and has significant expertise in insurance law matters, The Hartford was also represented in this litigation by experienced and skilled lawyers from three national law firms – Morrison & Foerster LLP, WilmerHale and Baker Botts LLP – with well-deserved reputations for vigorous advocacy in the defense of complex civil cases. Defendant was so tenacious in its determination to defeat class certification in this case that it hired the former Solicitor General of the United States to pursue its attempt to obtain interlocutory Rule 23(f) review by the Second Circuit of this Court's Order granting class certification of plaintiff's RICO and fraud claims.

44. The ability of Class Counsel to obtain this outstanding settlement in the face of such formidable legal opposition confirms the quality of counsel's representation. *See Taft v. Ackermans*, No. 02 Civ. 7951 (PKL), 2007 WL 414493, at *11 (S.D.N.Y. Jan. 31, 2007) (in determining appropriateness of fee, courts consider backgrounds of the lawyers involved in the suit); *In re KeySpan Corp. Sec. Litig.*, No. CV 2001-5852 (ARR), 2005 WL 3093399, at *11 (E.D.N.Y. Sep. 30, 2005) ("quality of opposing counsel is also important in evaluating the quality of Class Counsel's work").

4. The Relation of the Requested Fee to the Settlement

45. The fifth *Goldberger* factor – the relation of the requested fee to the Settlement – also supports the fee requested in this case.

46. In connection with this fee application, Class Counsel have surveyed percentage fee awards in this District, in this Circuit and across the country in cases of similar magnitude to determine – and confirm – that the 30% percentage fee they seek in this case is reasonable when compared with percentage fee awards in cases of similar magnitude. This review firmly demonstrates that percentage fees of 30% of the settlement have consistently been awarded in cases of similar magnitude and risk and that, overall, 30% is at the lower end of the range of percentage fee awards in similar cases.

47. Thus, in this District, this Circuit and across the country, percentage fees of 30% or more have been awarded in the following cases with settlements of magnitude similar to (or greater than) this case:

Second Circuit	**Case**	**Award / Settlement**
D. Conn.	*In re Priceline.com Sec. Litig.*, No. 3:00-CV-1884 (AVC), 2007 WL 2115592 (D. Conn. Jul. 20, 2007) (Covello, J.)	30% of $80 million
S.D.N.Y.	*In re Bisys Sec. Litig.*, No. 04 Civ. 3840 (JSR), 2007 WL 2049726 (S.D.N.Y. Jul. 16, 2007) (Rakoff, J.)	30% of $65.87 million
S.D.N.Y.	*Kurzweil v. Philip Morris Cos. Inc.*, No. 94 Civ. 2373 (MBM), 1999 WL 1076105 (S.D.N.Y. Nov. 30, 1999) (Mukasey, J.)	30% of $123 million
S.D.N.Y.	*In re Buspirone Antitrust Litig.*, MDL No. 1413 (JGK) (S.D.N.Y. Apr. 17, 2003) (Koeltl, J.)	33⅓% of $300 million
S.D.N.Y.	*In re Wedtech Sec. Litig.* MDL No. 735 (S.D.N.Y. Jul. 30, 1992)	39.2% of $53 million

S.D.N.Y.	*In re Initial Public Offering Sec. Litig.* 671 F. Supp. 2d 467 (S.D.N.Y. 2009) (Scheindlin, J.)	33⅓% of $586 million
E.D.N.Y.	*In re Crazy Eddie Sec. Litig.* 824 F. Supp. 320 (E.D.N.Y. 1993) (Nickerson, J.)	34% of $42 million
Other Circuits		
S.D. Fla.	*Allapattah Servs. v. Exxon Corp.* 454 F. Supp. 2d 1185 (S.D. Fla. 2006)	31⅓% of $65.87 million
E.D. Pa.	*Nicholas v. SmithKlein Beecham Corp.*, No. Civ. A.00-6222, 2005 WL 950616 (E.D. Pa. Apr. 22, 2005)	30% of $65 million
E.D. Pa.	*In re Linerboard Antitrust Litig.*, MDL No. 1261, 2004 WL 1221350 (E.D. Pa. June 2, 2004)	30% of $202 million
D. Mass.	*In re Relafen Antitrust Litig.* No. 01-12239 (WGY) (D. Mass. Apr. 9, 2004)	33⅓% of $175 million
E.D. Pa.	*In re Automotive Refinishing Paint Antitrust Litig.*, MDL No. 1426, (E.D. Pa. 2004)	32% of $66.75 million
S.D. Fla.	*In re Managed Care Litig. v. Aetna, Inc.*, MDL No. 1334, 2003 WL 22850070 (S.D. Fla. Oct. 24, 2003)	35.5% of $310 million
D. Minn.	*In re Monsodium Glutamate Antitrust Litig.* MDL No. 1328, 2003 WL 297276 (D. Minn. Feb. 6, 2003)	30% of $81.4 million
E.D. Mich.	*In re Cardizem CD Antitrust Litig.* MDL No. 1278 (NGE), (E.D. Mich. Nov. 26, 2002)	30% of $110 million
N.D. Ala.	*In re Vesta Ins. Group, Inc. Sec. Litig.* No. 98-1407 (N.D. Ala. Dec. 10, 2001)	34.1% of $61 million
D. D.C.	*In re Vitamins Antitrust Litig.*, No. 99-197, 2001 WL 34312839 (D.D.C. Jul. 16, 2001)	34% of $360 million
M.D. Tenn.	*In re Prison Realty Sec. Litig.* No. 3:99-0458 (M.D. Tenn. Feb. 9, 2001)	30% of $111 million
E.D. Pa.	*In re Aetna Securities Litig.*, MDL No. 1219, 2001 WL 20928 (E.D. Pa. Jan. 4, 2001)	30% of $82.5 million
E.D. Pa.	*In re Ikon Office Solutions, Inc., Sec. Litig.* 194 F.R.D. 166 (E.D. Pa. 2000)	30% of $111 million

N.D. Cal.	*In re Informix Corp. Sec. Litig.* No. 9701289 (N.D. Cal. Nov. 23, 1999)	30% of $137 million
W.D. Pa.	*In re Westinghouse Sec. Litig.*, Nos. 91-354, 97-309, 97-960 (W.D. Pa. Oct. 19, 1999)	35.7% of $67.25 million
S.D. Tex.	*In re Lease Oil Antitrust Litig.* 186 F.R.D. 403 (S.D. Tex. 1999)	30% of $123 million
D. Utah	*In re Commercial Explosives Antitrust Litig.* MDL No. 1093 (D. Utah Dec. 29, 1998)	30% of $77 million
W.D. La.	*In re Combustion, Inc.* 978 F. Supp. 673 (W.D. La. 1997)	36% of $127 million
D. Minn.	*In re Airline Ticket Commission Antitrust Litig.* 953 F. Supp. 280 (D. Minn. 1997)	33.3% of $86.892 million
N.D. Ill.	*Gaskill v. Gordan* 942 F. Supp. 382 (N.D. Ill 1996)	38% of $43.69 million
S.D. Cal.	*In re National Health Laboratories Sec. Litig.* No. 99-1949 (S.D. Cal. Aug. 15, 1995)	30% of $64 million
D. Or.	*In re Melridge, Inc. Sec. Litig.* No. 87-1426 (D. Or. Mar. 19, 1992)	37.1% of $54 million

48. As Class Counsel discuss in our Memorandum in support of our Application, in addition to the fee awards of 30% or more in the cases listed above, there are many cases (generally of smaller magnitude) in which awards of 33⅓% to counsel in common fund cases are standard, as well as additional cases of magnitude similar to this case in which percentage fees slightly under 30% have been awarded. *See* Class Counsel Memorandum in Support of Application for Award of Attorneys' Fees and Reimbursement of Expenses at § II.B.1.

49. What all of these case demonstrate is that the consistent range for common fund percentage fee awards in cases of magnitude equal or greater than this case is approximately 27% - 35%, and that an award of 30% is in the lower to middle end of the range.

50. Class Counsel do not contend that 30% – or any other percentage – is an automatic "benchmark" for a common fund award. Class Counsel are aware that in *Goldberger*, the Second Circuit rejected the concept of a "benchmark" and ruled that each award must be decided on the basis of the circumstances of the case, *Goldberger* at 51, and, in particular, should reflect the level of risk associated with prosecuting each particular class action. *Id.* at 54 ("risk of success" is "'perhaps the foremost' factor to be considered" in determining award of fees). Thus, in cases where there is little risk of non-recovery, a lower percentage award may be warranted. In *Goldberger*, for example, the Second Circuit ruled that the case (a securities fraud case arising out of the notorious Michael Milken-Drexel Burnham fraud) had "almost certain prospects of a large recovery from solvent defendants," benefitted from extensive investigation and legal work performed by federal authorities during civil and criminal actions, and raised no difficult legal issues. *Id.* at 53-54. Under such circumstances, the court ruled that the district court had not abused its discretion in refusing to award a percentage fee or in refusing to enhance the lodestar. *Id.* at 57. Similarly, in *In re Fine Host Sec. Litig.*, MDL No. 1241, 3:97-cv-2619 (JCH), 2000 WL 33116538, at **1-2 (D. Conn. Nov. 8, 2000) (Hall, J.), this Court found that there was little risk of non-recovery (the defendant in a securities fraud case had not even moved to dismiss the plaintiff's 10b-5 action), and awarded only a 17.5% percentage fee in a case. *Id.* at *5.[13]

[13] Class Counsel also recognize that different considerations may apply to the determination of attorneys' fees in "megafund" situations, commonly defined as class action settlements in excess of $100 million, *see Wal-Mart Stores. Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 123 (2d Cir. 2005), *cert. den., sub nom. Leonardo's Pizza by the Slice Inc. v. Wal-Mart Stores Inc.*, 544 U.S. 1044 (2005), in order to avoid extraordinarily large awards where the value obtained in the case is more a function of the size of the class than the efforts of counsel. *See, e.g., In re Rite Aid Corporation Securities Litigation*, 396 F.3d 294, 302-03 (3d Cir. 2005) (recognizing basis for declining percentage of recovery in megafund cases "is the belief that in many instances the increase [in recovery] is merely a factor of the size of the class and has no relationship to the efforts of counsel," but rejecting automatic application of declining percentage or other "overly formulaic approaches" in larger settlement cases); *accord In re Synthroid Marketing Litig.*, 264 F.3d 712, 718 (7th Cir. 2001) (criticizing declining scales in "megafund" cases as leading to economically irrational results that markets would not tolerate).

51. But, as discussed above, Class Counsel faced enormous risk of non-recovery of their time and litigation expenses on every front in this case: as to liability, as to class certification, and as to proof of damages. And, unlike cases in which a private action has been brought only after a governmental enforcement action or criminal prosecution has identified the wrongdoing that establishes the right of relief, there was no prior governmental investigation or prosecution in this case that either identified a potential civil claim or reduced, in any fashion, Class Counsel's burden to establish plaintiffs' causes of action and prosecute their claims. *See In re Gulf Oil/Cities Serv. Tender Offer Litig.*, 142 F.R.D. 588, 597 (S.D.N.Y. 1992) (Mukasey, J.) (awarding 30% of $34 million since "this is not a case where Class Counsel can be cast as jackals to the government's lion, arriving on the scene after some enforcement or administrative agency has made the kill"); *Priceline*, 2007 WL 2115592, at * 5 (noting, with respect to risk of litigation that "the plaintiffs developed their own theory of liability and damages, as there was not a government prosecution in this case"); *contrast Goldberger*, at 53-54 (reduced fee justified by limited risk of non-recovery since "counsel benefitted from the spadework done by federal authorities during the criminal and civil actions brought against Drexel and Milken," and "[t]here was no groundbreaking issue which loomed significant in this case").

52. As the cases cited above make clear, where counsel assumes substantial risk and obtains an excellent result for the class, a percentage award of 30% or more is appropriate.

53. Moreover, in addition to reviewing awards in comparable cases, Class Counsel have also identified a number of empirical studies relied upon by courts to confirm that a percentage fee in the range of 30% of the settlement is customary in cases with this kind of risk and result. A study undertaken by National Economic Research Associates, an economic consulting firm,

surveyed 656 shareholder class actions and determined that "regardless of size, fees average 32 percent of the settlement." *See In re Linerboard,* 2004 WL 1221350 at *14, *citing* to Dunbar, et al, "Recent Trends IV, What Explains Filings and Settlements in Shareholder and Class Actions (NERA, 1996) at 12-13. The Third Circuit has noted that the Dunbar study demonstrates that for "class action settlements over $10 million ... the average percentage fee recovery [was] 31%." *In re Rite Aid*, 396 F.3d at 303. A second study by the Federal Judicial Center involving class actions resolved or settled over a two year period in four selected federal districts found a median percentage fee award range of 27-30%. *Id.* And a third study has demonstrated that even in cases with settlements between $100 and $200 million – where the percentage awarded would be expected to be lower – fee awards in the 25-30% range are "fairly standard." *Id.*; *accord In re Rite-Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 735 (E.D. Pa. 2001) (surveying fee awards in similar cases, including review of 289 class action settlements that demonstrates "average attorneys' fees percentage [of] 31.71% [with a] median [value that] turns out to be one-third"); *In re Linerboard* at *13 (30% fee award on $202 million settlement comparable to recent fee awards in recent cases); *see In re Activision*, 723 F. Supp. at 1377 (surveying class action fee awards, including "many [class action cases] from the Southern and Eastern Districts of New York" and concluding "nearly all common fund awards range around 30%").

54. The studies cited by the Third Circuit in *In re Rite-Aid* were summarized in a Declaration submitted to the district court in that case by Professor John C. Coffee, Jr. of Columbia University Law School, one of the country's leading authorities on class action litigation. In his Declaration, Professor Coffee also referenced another study of 1,280 securities class action cases which similarly found that the average fee awarded to Class Counsel in

securities class actions amounted to 32% of the settlement fund. In his Declaration, Professor Coffee concluded that "30% seems to be the operative fee ... in commercial class actions."[14]

55. The 30% percentage fee requested by Class Counsel is further appropriate because it fairly reflects what would customarily be negotiated in the private marketplace in a complex commercial tort case with significant risk of non-recovery. For more than two decades, a substantial portion of my practice at Silver Golub & Teitell has involved representing individual plaintiffs, groups of plaintiffs, and classes of plaintiffs in complex contingent fee commercial tort and contract litigation.[15] Where, as here, a contingent fee matter is likely to require a significant commitment of legal time and expense and involves substantial risk of non-recovery, a contingent fee of 33⅓% or more is customary. It is my understanding from my co-counsel in this action that a contingent fee of such magnitude (or more) is customary in their practices as well.

56. In awarding percentage fees, courts properly look to the fees "likely to have been negotiated between private parties in a similar case." *In re Aetna Inc.*, 2001 WL 20928 at * 14. As one court has noted:

> What the market would pay is significant because, as the Seventh Circuit has explained, the goal of the fee setting process is to "determine what the lawyer would receive if he were selling his services in the market rather than being paid by Court Order." *In re Continental Ill. Sec. Litig.*, 962 F.2d 566, 568 (7th Cir. 1992).

In re Linerboard, 2004 WL 1221350 at *15; *accord In re Synthroid Marketing Litig.*, 264 F.3d 712, 718 (7th Cir. 2001) ("[W]hen deciding on appropriate fee levels in common-fund cases,

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[14] *See* Declaration of John C. Coffee, Jr. dated April 2, 2001, ¶ 27, submitted in *In re Rite-Aid Corp. Sec. Litig.*, 269 F. Supp. 2d 603 (E.D. Pa. 2003) (copy [without exhibits] attached as Exhibit F).

[15] *See e.g.* n. 7.

courts must do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time."); *Continental Illinois*, 962 F.2d at 572 ("The object ... is to give the lawyer what he would have gotten in the way of a fee in an arm's length negotiation."); *RJR Nabisco Sec. Litig.*, 1992 WL 210138 at *7 ("What should govern such [fee] awards is not the essentially whimsical view of a judge, or even a panel of judges, as to how much is enough in a particular case, but what the market pays in similar cases.").

57. Consideration of what plaintiffs would reasonably expect to pay to retain contingent fee counsel to pursue a class action (with this degree of risk) is particularly salient here, since the benefits obtained for each of the nearly 22,000 class members would not have been possible absent the willingness of Class Counsel to undertake class action representation on a contingent fee basis. This litigation was initiated by three individual plaintiffs, each of whom had entered into a small structured settlement with defendants. None of the Named Plaintiffs would ever have been able to pursue and maintain this action had he or she been required to pay experienced litigation counsel on an hourly basis or pay the hundreds of thousands of dollars in litigation expenses counsel have incurred. Each of the Named Plaintiffs entered into a fee agreement with Class Counsel that provided for representation on a contingent fee basis.

58. While some of the class members have larger structured settlements than the Named Plaintiffs, it would have made no sense for any class member to compensate counsel on an hourly basis for the thousands of hours and hundreds of thousands of dollars of expenses necessary to litigate this case. All of the class members benefitted greatly from counsel's willingness to prosecute the case on a percentage of recovery basis.

59. The percentage method of recovery was essential to enable the class members to benefit from this action, without expense, and to attract experienced counsel by offering an opportunity for sufficient compensation to warrant the risk that no fee would be earned. Courts have recognized that "in order to attract well-qualified Class Counsel who are able to take a case to trial, and who defendants understand are able and willing to do so, it is necessary to provide appropriate financial incentives." *In re WorldCom. Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005).

60. As one court has stated in this regard:

> [It is] imperative that the filing of such contingent lawsuits not be chilled by the imposition of fee awards which fail to adequately compensate counsel for the risks for pursuing such litigation and the benefits which would not otherwise have been achieved but for their persistent and diligent efforts. Private attorneys should be encouraged to take the risks required to represent those who would not otherwise be protected from socially undesirable activities....

Maley, 186 F. Supp. 2d at 374; *accord Goldberger* at 51 (noting the "commendable sentiment in favor of providing lawyers with sufficient incentive to bring common fund cases that serve the public interest"). Counsel in this case, who assumed the risk of recovering no fee for thousands of hours of legal time and no recovery of hundreds of thousands of dollars of litigation expenses, are entitled to a percentage of recovery award not only to reward them for the risk they assumed, but as an incentive to counsel in future cases to assume a similar risk.

61. In approving the 30+% percentage fee awards in the cases listed above, district courts have consistently recognized that a fee in the range of 30% is appropriate because that percentage reflects the going rate in the private marketplace for contingency fee tort litigation. "An award of thirty percent is in line with what is routinely privately negotiated in contingency fee tort litigation." *In re Aetna*, 2001 WL 20928 at *14; *see also In re Linerboard* at *15 (reviewing

evidence that 30% is at or below market rate for commercial class action litigation); *In re U.S. Bioscience Securities Litig.*, 1994 WL 485935, at *15 (E.D. Pa. 1994) (noting Special Master recommendation that 30% is appropriate market rate for contingent fee complex litigation).

62. Indeed, not surprisingly, the three Named Plaintiffs in this action each engaged counsel to proceed on a contingent fee basis, agreeing to pay a contingent fee of 33⅓% of any recovery on their individual claims.

5. Public Policy Considerations

63. The sixth *Goldberger* factor, public policy considerations, also supports the requested fee in this case. *See Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 339 (1980) ("[w]here it is not economically feasible to obtain relief within the traditional framework of a multiplicity of small individual suits for damages, aggrieved persons may be without any effective redress unless they may employ the class action device").

64. In prosecuting the civil RICO claims (and their ancillary state law causes of action) in this case, Class Counsel functioned as "private attorneys general," providing a supplemental enforcement mechanism to the governmental regulatory and prosecutorial function. *Rotella v. Wood*, 528 U.S. 549, 557 (2000) ("The object of civil RICO is thus not merely to compensate victims but to turn them into prosecutors, 'private attorneys general,' dedicated to eliminating racketeering activity."); *Agency Holding Corp.*, 483 U.S. at 151 (civil RICO "bring[s] to bear the pressure of 'private attorneys general' on a serious national problem for which public prosecutorial resources are deemed inadequate"); *Sedima v. Imrex Co.*, 473 U.S. 479, 493 (1985) (describing the "private attorney general provision" in civil RICO as "designed to fill prosecutorial gaps").

65. As the Second Circuit has explained in the context of antitrust actions, awarding appropriate attorneys fees is important to create the necessary incentive for the "private attorney general" where enforcement of statutory protections or vindication of public policy depends on such "private attorney general" litigation:

> [F]ew would dispute the basic proposition that one whose labors produce a favorable result deserves adequate recompense. Such a notion is particularly applicable in the area of antitrust class action, which depends heavily on the notion of the private attorney general as the vindicator of the public policy. In the absence of adequate attorneys' fee awards, many antitrust actions would not be commenced, since the claims of individual litigants, when taken separately, often hardly justify the expense of litigation.

Alpine Pharmacy, 481 F.2d at 1050 (citations omitted); *see also Ressler v. Jacobson*, 149 F.R.D. 651, 657 (M.D. Fla. 1992) ("public policy favors the granting of counsel fees sufficient to reward counsel for bringing [securities] actions and to encourage them to bring additional such actions"); *Allapattah*, 454 F. Supp. 2d at 1217 ("[c]ounsel has risked millions of dollars in unreimbursed attorneys' time and additional millions in out-of-pocket costs. Unless that risk is compensated with a commensurate reward, few firms, no matter how large or well financed, will have any incentive to represent the small stake holders in class actions against corporate America, no matter how worthy the cause or wrongful the defendant's conduct").

The Lodestar Cross-check

66. Under *Goldberger*, a district court applying the percentage of recovery method is "encourage[d]" to "cross-check" the reasonableness of the fee calculated as a percentage of the common fund by comparing that fee to that which counsel would be entitled under the lodestar method. *Goldberger* at 50. This cross-check serves to ensure that counsel is not receiving a "windfall" from a percentage award without having put in legal time to warrant the award.

Where the lodestar is "used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court." *Id.* The court need not review actual time records, but may rely on summaries, as the reasonableness of the claimed lodestar can be tested by the court's familiarity with the case. *Id.*

67. Where counsel have undertaken a difficult matter on a contingency and have secured a favorable result for the class, the normal multiplier is 4-5 times the lodestar. *In re EVCI*, 2007 WL 2230177, at * 17 (noting that "lodestar multipliers of nearly 5 have been deemed 'common' by courts in the Southern District of New York); *Maley*, 186 F. Supp. 2d at 369 (awarding fee equal to 4.65 multiplier was "well within the range awarded by courts in this Circuit and courts throughout the country"); *NASDAQ Market-Makers*, 187 F.R.D. at 489 ("multipliers of between 3 and 4.5 have become common"); *In re Linerboard*, 2004 WL 1221350 at *16, *citing*, Stuart J. Logan, et al., *Attorney Fee Awards in Common Fund Class Actions*, 24 Class Action Reports 167 (2003) ("the average multiplier approved in common fund class actions from 2001-2003 was 4.35 and during the 30 year period from 1973-2003, the average multiplier approved in common fund class actions was 3.89).

68. Sixty-seven attorneys and paralegals[16] at the four law firms responsible for this case assisted in the prosecution of this action. The four firms representing plaintiffs have, together, devoted over 11,900 hours of legal and paraprofessional time to the prosecution of plaintiffs' claims, as follows:

[16] The reimbursement of paralegal and litigation support expenses is expressly authorized by applicable case law. *Missouri v. Jenkins*, 491 U.S. at 285-87; *Chambless*, 885 F.2d at 1059.

Silver Golub & Teitell LLP	
David S. Golub, Esq.	1,401.64 hours
Jonathan M. Levine, Esq.	1,152.49 hours
Marilyn J. Ramos, Esq.	77.63 hours
Craig N. Yankwitt, Esq.	160.03 hours
Jacqueline S. Ruppert, Esq.	36.77 hours
Martha Jackson	82.00 hours (paralegal)
Natasha Gold	62.71 hours (paralegal)
TOTAL	2,973.27 hours

Berger & Montague, P.C.	
Peter R. Kahana, Esq.	1,137.00 hours
Steven L. Bloch, Esq.	2,198.20 hours
Others	1,483.70 hours
TOTAL	4,818.90 hours

Zuckeman Spaeder LLP	
Carl S. Kravitz, Esq.	938.80 hours
Ellen D. Marcus, Esq.	622.90 hours
Caroline E. Reynolds, Esq.	1,216.50 hours
Others	705.80 hours
TOTAL	3,484.00 hours

Risk Law Firm	
Richard B. Risk, Jr.	599.10 hours

Total Hours: 11,910.27 hours.

69. The current[17] hourly rates for the attorneys at Silver Golub & Teitell and the attorneys principally responsible for the prosecution of this litigation at other Class Counsel are, as follows:

Silver Golub & Teitell LLP	
David S. Golub, Esq.	$600/hr (Partner)
Jonathan M. Levine, Esq.	$525/hr (Partner)
Marilyn J. Ramos, Esq	$450/hr (Partner)
Craig N. Yankwitt, Esq.	$350/hr (Associate)
Jacqueline S. Ruppert, Esq.	$250/hr (Associate)
Martha Jackson	$150/hr (Paralegal)
Natasha Gold	$130/hr (Paralegal)

Berger & Montague, P.C.[18]	
Peter R. Kahana, Esq.	$650/hr
Steven L. Bloch, Esq.	$525/hr

Zuckerman Spaeder LLP[19]	
Carl S. Kravitz, Esq.	$750/hr
Ellen D. Marcus, Esq.	$525/hr
Caroline E. Reynolds, Esq.	$435/hr

[17] It is appropriate to utilize current billing rates in calculating the lodestar to make up for the delay in payment over the years the case has been pending. *See Jenkins* at 283-84 (applying current rate is appropriate means to adjust for delay in payment); *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2d Cir. 1998) (current rates "should be applied in order to compensate for the delay in payment").

[18] See Declaration of Steven L. Bloch, Esq. at ¶ 5. In addition, the hourly rates of the other attorneys and paralegals at Berger & Montague who worked on this case are set forth in Attorney Bloch's Declaration at ¶ 5.

[19] See Declaration of Carl S. Kravitz, Esq. at ¶ 4. In addition, the hourly rates of the other attorneys and paralegals at Zuckerman Spaeder who worked on this case are set forth in Attorney Kravitz's Declaration at ¶ 4.

Risk Law Firm[20]	
Richard B. Risk, Jr., Esq.	450/hr

70. The hourly rates for in- and out-of-state counsel set forth above are consistent with the rates charged by counsel in other class actions that have recently settled in this District and that have involved attorneys from Connecticut and other jurisdictions. *See Priceline.com*, No. 3:00-CV-1884 (AVC); *Norflet v. John Hancock Life Ins. Co.*, No. 3:04cv1099 (JBA); *Staehr v. The Hartford Financial Services Group, Inc., et al*, No. 3:04 cv 1740 (CFD).

Thus, for example, the hourly rates charged by attorneys at Silver Golub and Teitell, LLP are lower than the hourly rates charged by attorneys at Scott & Scott, and used for purposes of the lodestar cross-check in *Staehr*. *See Staehr* at Dkt 116-2 (Declaration of Arthur Shingler establishing hourly rates for partners at Scott & Scott in 2009 of $675 and $700). The rates are also comparable to rates charged by Schatz Nobel Izard P.C. in the *Priceline.com* litigation in 2007. *See Priceline.com* at Dkt. 463-5 (Affidavit of Robert A. Izard, Esq., establishing hourly rate of $600 for senior partners).

Similarly, the hourly rates charged by Berger & Montague; Zuckerman Spaeder; and Attorney Risk are closely comparable to the hourly rates charged by out-of-state counsel in these other Connecticut settlements. *See Norflet* at Dkt. 206-01 (Declaration of Seth Lesser, Klafter Olsen & Lesser, LLP establishing hourly rates for New York partners of $630 and $750); *Priceline.com* at Dkt. 463-4 (Declaration of Aaron Brody, Esq., establishing hourly rates for New York partners of Stull, Stull & Brody of $620 to $770 and for associates of between $340 and 545), Dkt. 463-5 (Affidavit of Joseph H. Weiss, establishing hourly rate of $745 for New York

[20] See Declaration of Richard B. Risk, Jr. Esq. at ¶ 8.

partner and rates of $375 and $614 for associates); *Staehr* at Dkt. 115 (Declaration of Joy Ann Bull establishing hourly rates for partners of California firm of Couglin Stoia Geller Rudman & Robbins LLP of between $565 and $715 and of $295 and $495 for associates). To further assist the Court in its assessment of the experience of out-of-state counsel, they are also submitting descriptions of their firms as exhibits to their respective Declarations.

Since the purpose of the lodestar cross-check is only to establish that counsel's requested percentage fee is within a reasonable range and is not itself either the method for calculating reasonable fees nor a rigid parameter for an award of fees, the Court may properly consider this data – as well as the Court's general knowledge of the rates for experienced counsel in sophisticated commercial litigation – in assessing whether the percentage fee sought by Class Counsel in this action will result in an undue windfall.

71. Indeed, at Class Counsel's current hourly fees, the hours devoted by the attorneys and paralegals who participated in the prosecution of this action result in a lodestar, before multiplier enhancement, of over $5.881 million, as follows:

Silver Golub & Teitell LLP	**Hours**	**Rate**	**Total**
David S. Golub, Esq.	1,401.64 hours	x $600	= $ 840,984.00
Jonathan M. Levine, Esq.	1,152.49 hours	x $525	= $ 605,057.25
Marilyn Ramos, Esq.	77.63 hours	x $450	= $ 34,933.50
Craig N. Yankwitt, Esq.	160.03 hours	x $375	= $ 60,011.25
Jacqueline Ruppert, Esq.	36.77 hours	x $250	= $ 9,192.50
Martha Jackson	82.00 hours	x $150	= $ 12,300.00
Natasha Gold	62.71 hours	x $130	= $ 8,152.30
TOTAL	2,973.27 hours		= $1,570,630.80

Berger & Montague, P.C.	Hours	Rate	Total
Peter R. Kahana, Esq.	1,137.00 hours	x $650	= $ 739,050.00
Steven L. Bloch, Esq.	2,198.20 hours	x $525	= $1,154,055.00
Others	1,483.70 hours		= $ 378,428.50[21]
TOTAL	4,818.90 hours		= $2,271,533.50

Zuckerman Spaeder LLP	Hours	Rate	Total
Carl S. Kravitz, Esq.	961.30 hours	x $750	= $ 720,975.00
Ellen D. Marcus, Esq.	622.90 hours	x $525	= $ 327,022.50
Caroline E. Reynolds, Esq.	1,225.20 hours	x $435	= $ 532,962.50
Others	709.60 hours		= $ 188,542.00[22]
TOTAL	3,519.00 hours		= $ 1,769,502.00

Risk Law Firm	Hours	Rate	Total
Richard B. Risk, Jr., Esq.	599.10 hours	x $450	= $ 269,595.00

TOTAL	11,910.27 hours		$ 5,881,261.80

72. As discussed above (in the description of the aspects of this litigation addressed by Class Counsel), the hours expended by counsel are reasonable in view of the magnitude of the work performed to prosecute this case which was very vigorously litigated.

73. Class Counsel's requested percentage fee is thus supported by a lodestar multiplier of 3.70, which is well within the customary range. *See In re EVCI*, 2007 WL 2230177, at * 17 (noting that "lodestar multipliers of nearly 5 have been deemed 'common' by courts in the Southern District of New York); *Maley*, 186 F. Supp. 2d at 369 (awarding fee equal to 4.65

[21] See Declaration of Steven L. Bloch at ¶ 5.

[22] See Declaration of Carl S. Kravitz at ¶ 4..

multiplier was "well within the range awarded by courts in this Circuit and courts throughout the country"); *NASDAQ Market-Makers*, 187 F.R.D. at 489 ("multipliers of between 3 and 4.5 have become common"); *In re Linerboard*, 2004 WL 1221350 at *16, *citing*, Stuart J. Logan, et al., *Attorney Fee Awards in Common Fund Class Actions*, 24 Class Action Reports 167 (2003) ("the average multiplier approved in common fund class actions from 2001-2003 was 4.35 and during the 30 year period from 1973-2003, the average multiplier approved in common fund class actions was 3.89). *See In re Nasdaq*, 187 F.R.D. at 489 ("[i]n recent years, multipliers of between 3 and 4.5 have become common).

Reaction of the Class

73. Finally, "[t]he reaction by members of the Class is entitled to great weight by the Court" and confirms the reasonableness of the requested fee. *Maley*, 186 F. Supp. 2d at 374. The notice sent to the class expressly advised class members that Class Counsel would seek an award of attorneys' fees of up to 33⅓% of the common fund, and that any class member could object to the fee application. Each of the class representatives has advised Class Counsel that he or she consents to counsel's request for an award of attorneys' fees and are submitting Declarations to this Court confirming their agreement to the request. Counsel are unaware of any member of the class who has objected to date to Class Counsel's request for a 30% award.

Recovery of Litigation Expenses

74. Class Counsel also seek to recover the litigation expenses incurred in the successful prosecution of this action. Silver Golub & Teitell has incurred litigation expenses totaling $234,962.53, as follows:

Category	Amount
Filing Fees	$ 400.00
Deposition Transcripts	$ 7,704.12
Court Transcripts	$ 394.40
Expert Consultation Fees	$167,861.59
Expert Deposition Fees	$ 6,125.70
Travel Expenses	$ 6,542.37
Witness Fees/Service	$ 1,286.23
Delivery Expenses	$ 941.36
Mediation Fees	$ 12,544.68
On-line Research (additional service charges only)	$ 272.52
Class Administration Expenses	$ 24,480.00
Photocopying Fees	$ 5,093.41
Communication Expenses	$ 1,316.15
TOTAL	$234,962.53

The Declarations of Attorneys Bloch (Exhibit A) and Kravitz (Exhibit B) detail the expenses incurred by Berger & Montague ($339,890.04) and Zuckerman Spaeder ($248,614.78). The aggregate litigation expenses incurred by Class Counsel, thus, total $823,467.35. Class Counsel request that the Court approve reimbursement from the common fund of these expenses. *See In re Gilat Satellite Networks. Ltd.*, No. 02 Civ. 1510 (CPS), 2007 WL 2743675, at * 19 (S.D.N.Y. Sept. 18, 2007) ("Courts routinely grant the expense requests of class counsel.").

75. Based on the foregoing, it is respectfully submitted that the award of attorneys' fees and reimbursement of litigation expenses sought by Class Counsel's in their Application for Award of Attorneys' Fees and Reimbursement of Litigation Expenses are reasonable and that an award of $21.75 million in attorneys' fees, representing 30% of the settlement achieved in this action, and an award of $823,467.35 in litigation expenses, should be approved.

I declare, pursuant to 28 U.S.C. § 1746, under penalty of perjury, that the foregoing is true and correct.

Executed on August 16, 2010.

/s/
DAVID S. GOLUB

CERTIFICATION

I hereby certify that on August 16, 2010, the foregoing Declaration submitted in Support of Class Counsel's Application for Award of Attorneys' Fees and Reimbursement of Litigation Expenses was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

OSHONYA SPENCER, CHARLES STRICKLAND and DOUGLAS MCDUFFIE, on behalf of themselves and all others similarly situated,	)	
Plaintiffs,	)	
v.	)	No. 3:05CV1681 (JCH)
THE HARTFORD FINANCIAL SERVICES GROUP, INC., HARTFORD LIFE, INC., HARTFORD LIFE INSURANCE COMPANY, HARTFORD ACCIDENT AND INDEMNITY COMPANY, HARTFORD CASUALTY INSURANCE COMPANY, HARTFORD INSURANCE COMPANY OF THE MIDWEST and HARTFORD FIRE INSURANCE COMPANY,	)	
Defendants.	)	

DECLARATION OF STEVEN L. BLOCH, ESQ. ON BEHALF OF BERGER & MONTAGUE, P.C. IN SUPPORT OF CLASS COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSMENT OF EXPENSES

I, Steven L. Bloch, under penalty of perjury and subject to the provisions of 28 U.S.C. § 1746, declare as follows:

1. I am shareholder of Berger & Montague, P.C. ("B&M"). I am submitting this declaration in support of Class Counsel's motion for attorneys' fees and reimbursement of expenses in connection with the services rendered and expenses incurred by B&M in this action.

2. B&M has acted, and was appointed by the Court, as co-lead Class Counsel. Our firm's compensation for services rendered (and expenses incurred) was wholly contingent on the success of this litigation, and was totally at risk.

3. Our firm is nationally recognized for its ability and experience in litigating complex class actions, as is reflected in the firm resume attached as Exhibit A.[1]

4. The total number of hours expended by my firm on this litigation is 4,818.90. The total lodestar amount based on the firm's current rates is $2,271,533.50.

5. The following schedule is a summary of the amount of time spent by each attorney and paralegal at (or engaged by) our firm who was involved in this litigation, and the lodestar calculation based on our firm's current billing rates. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by our firm, which are available to the Court. Time expended in preparing this application for fees and expenses has not been included in this request.

ATTORNEYS/PROFESSIONALS[2]	HOURS	CURRENT HOURLY RATE[3]	LODESTAR
H. Laddie Montague, Jr. (S)	1.20	$750	$900.00
Peter R. Kahana (S)	1,137.00	$650	$739,050.00
Steven Bloch (S)	2,198.20	$525	$1,154,055.00
Gary Cantor (S)	2.40	$650	$1,560.00
Peter B. Nordberg (S)	.40	$575	$230.00
Bart Cohen (S)	.30	$550	$165.00
Craig Porges (A)	84.90	$310	$26,319.00

[1] In the interest of brevity, the attached firm resume contains an excerpted summary description and sampling of the matters in which our firm has been involved, as well as the biographies of the two principal attorneys who worked on this matter: myself and Peter Kahana.

[2] S=Shareholder Attorney; A=Associate Attorney; C=Contract Attorney; P=Paralegal; and LC=Law Clerk.

[3] For timekeepers who are no longer with B&M, lodestar was calculated based on the timekeeper's last hourly rate while employed by the firm.

ATTORNEYS/PROFESSIONALS	HOURS	CURRENT HOURLY RATE	LODESTAR
J. Murland (A)	56.30	$300	$16,890.00
Jeff Osterwise (A)	115.60	$330	$38,148.00
L. Dunbar (A)	103.80	$235	$24,393.00
T. Rehder (A)	14.40	$195	$2,808.00
Bridgit Fasola (C)	50.75	$275	$13,956.25
Chiorna Abara (C)	78.50	$275	$21,587.50
Choya Washington (C)	62.00	$275	$17,050.00
David Schneider (C)	42.55	$275	$11,701.25
Erik Kohan (C)	71.50	$275	$19,662.50
Jeffrey Nydick (C)	80.00	$275	$22,000.00
Kaitlin Reilly (C)	63.90	$275	$17,572.50
Meghan Flavin (C)	62.50	$275	$17,187.50
Mary McKenna (C)	60.00	$275	$16,500.00
Samuel Lehew (C)	79.00	$275	$21,725.00
William Mecoli (P)	14.80	$215	$3,182.00
Diane Werwinski (P)	4.80	$215	$1,032.00
Kim Walker (P)	117.20	$240	$28,128.00
Mark Stein (P)	7.50	$215	$1,612.50
P. V. Telang (P)	3.00	$240	$720.00
Shawn Matteo (P)	235.10	$215	$50,546.50
Y.M. Twersky (LC)	71.30	$40	$2,852.00

6. As co-lead Class Counsel, B&M participated in every phase of this litigation from its inception, as more fully described in the Declaration of David S. Golub, Esq. In brief, our firm and its attorneys, together with co-lead Class Counsel, investigated plaintiffs' claims prior to filing the complaint, prepared the initial complaint and amended complaints, contested defendants' motion to dismiss, conducted discovery, including promulgating and responding to written and document discovery and reviewing and analyzing same, conducted depositions, prepared witnesses for and defended depositions, prepared class certification papers, contested defendants' petition for permission to appeal in the United Court of Appeals for the Second Circuit, retained experts and supervised the production of expert reports, analyzed defendants' expert reports, defended expert depositions, prepared for the depositions of defendants' experts, participated in all court hearings and proceedings, negotiated the settlement of this action at two (2) mediations sessions, prepared settlement documents and the motion for preliminary approval, and is continuing to supervise the class notice and administration process.

7. All of the work performed by the attorneys and staff at (or engaged by) our firm to bring this case to a successful conclusion was conducted effectively, efficiently and economically, so as to avoid unnecessary expenditures of time and expense. The rates at which our firm seeks compensation are its usual and customary hourly rates charged for its attorneys' and professionals' services in similar complex class action litigation.

8. B&M expended a total of $339,890.04 in unreimbursed expenses in connection with the prosecution of this litigation. These expenses, from inception to date, are categorized in the following chart:

Telephone/Facsimile	$1,674.59
Travel	$14,445.95

Reproduction Costs	$5,469.75
Transcripts	$7,094.79
Postage	$67.93
Filing & Misc. Fees	$662.48
Commercial Copying & Printing	$8,147.80
Witness Expense	$60.00
Computer Research	$62,503.72
Delivery & Freight	$726.94
Expert Witness/Consulting Fees	$226,796.09
Advertising/Notice Costs	$12,240.00

9. The expenses incurred pertaining to this case are reflected in the books and records of B&M. These books and records and prepared from expense vouchers and check records and are an accurate record of the expenses incurred.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of August, 2010

Steven L. Bloch, Esq.

EXHIBIT A

Berger & Montague, P.C.

ATTORNEYS AT LAW

Dated: August 16, 2010

BERGER & MONTAGUE, P.C.

THE FIRM:

Berger & Montague has been engaged in the practice of complex and class action litigation from its Center City Philadelphia office for 40 years. The firm has been recognized by courts throughout the country for its ability and experience in handling major complex litigation, particularly in the fields of securities, antitrust, mass torts, civil and human rights, qui tam and whistleblower cases, employment, and consumer litigation. In numerous precedent-setting cases, the Berger firm has played a principal or lead role. The firm has achieved the highest possible rating by its peers and opponents as reported in *Martindale-Hubbell*. Currently, the firm consists of 68 lawyers; 17 paralegals; a professional investigator; and an experienced support staff. Few if any firms in the United States have our breadth of practice and match our successful track record in such a broad array of complex litigation.

Berger & Montague was founded in 1970 by the late David Berger to concentrate on the representation of plaintiffs in a series of antitrust class actions. David Berger helped pioneer the use of class actions in antitrust litigation and was instrumental in extending the use of the class action procedure to other litigation areas, including securities, employment discrimination, civil and human rights, and mass torts. The firm's complement of nationally recognized lawyers has represented both plaintiffs and defendants in these and other areas, and has recovered billions of dollars for its clients. In complex litigation, particularly in areas of class action litigation, Berger & Montague has established new law and forged the path for recovery for victims of fraud and other wrongdoing.

The firm has been involved in a series of notable cases, some of them among the most important in the last 35 years of civil litigation. For example, the firm was one of the principal counsel for plaintiffs in the *Drexel Burnham Lambert/Michael Milken* securities and bankruptcy litigation. Claimants in these cases recovered approximately $2 billion in the aftermath of the collapse of the junk bond market and the bankruptcy of *Drexel* in the late 1980's. The firm was also among the principal trial counsel in the *Exxon Valdez Oil Spill* litigation in Anchorage, Alaska, a trial resulting in a record jury award of $5 billion against Exxon, later reduced by U.S. Supreme Court by $507.5 million. Berger & Montague was lead counsel in the *School Asbestos Litigation*, in which a national class of secondary and elementary schools recovered in excess of $300 million to defray the costs of asbestos abatement. The case was the first mass tort property damage class action certified on a national basis. Berger & Montague was also lead/liaison counsel in the *Three Mile Island Litigation* arising out of a serious nuclear incident.

The firm also tried and obtained a jury verdict in the Rocky Flats Nuclear Weapons Plant Litigation. *Cook v. Rockwell Int'l Corp.*, No. 90-cv-181 (D. Colo.), *on appeal*, Nos. 08-1224, 08-1226, 08-1239 (10th Cir.). The Court entered a judgment for $926 million in 2008, on behalf of a class of approximately 13,000 persons who owned real property near the Rocky Flats Nuclear Weapons Plant in Colorado. The judgment, which included compensatory and punitive damages

as well as prejudgment interest, pertained to an earlier jury verdict for the class on claims arising from plutonium contamination, tried in late 2005 and early 2006 by a team of Berger & Montague lawyers led by Merrill G. Davidoff. The verdict, against former site operators Dow Chemical Company and Rockwell Int'l Corp., was the largest in Colorado history. The case is currently on appeal in the Tenth Circuit.

In the area of securities litigation, the firm has represented public institutional investors - such as the retirement funds for the States of Pennsylvania, Connecticut, New Hampshire, New Jersey, Louisiana and Ohio, as well as the City of Philadelphia and numerous individual investors and private institutional investors. The firm was co-lead counsel in the *Melridge Securities Litigation* in the Federal District Court in Oregon, in which an $88.2 million jury verdict was obtained. Berger & Montague has served as lead or co-lead counsel in numerous other major securities class action cases where substantial settlements were achieved on behalf of investors. Examples of prominent settlements are: *Merrill Lynch* ($475 million), *Rite Aid* ($334 million), *Waste Management* ($220 million), *Sunbeam* ($142 million), *IKON* ($111 million), *Medaphis* ($96 million), *Fleming Companies* ($94 million), *Cigna* ($93 million), *Xcel Energy* ($80 million), and *Alcatel* ($75 million).

Berger & Montague has served as lead or co-lead counsel in 10 of the 100 largest securities class actions settled in the United States since the advent of the Private Securities Litigation Reform Act of 1995 (PSLRA).

In antitrust litigation, the firm has served as lead, co-lead or co-trial counsel on many of the most significant civil antitrust cases over the last 30 years, including *In re Corrugated Container Antitrust Litigation* (recovery in excess of $366 million), the *Infant Formula* case (recovery of $125 million), and the *Brand Name Prescription Drug* price fixing case (settlement of more than $700 million) and the *State of Connecticut Tobacco Litigation* (settlement of $3.6 billion). The firm has also played a leading role in cases in the pharmaceutical arena, especially in cases involving the delayed entry of generic or other rival drug competition, having achieved over $1 billion in settlements in such cases over the past decade. Additionally in the human rights area, the firm, through its membership on the executive committee in the *Holocaust Victim Assets Litigation*, helped to achieve a $1.25 billion settlement with the largest Swiss banks on behalf of victims of Nazi aggression whose deposits were not returned after the Second World War. The firm has also played an instrumental role in bringing about a $4.37 billion settlement with German industry and government for the use of slave and forced labor during the Holocaust.

The *National Law Journal* has selected Berger & Montague in six out of the last seven years (2003-05, 2007-09) to its "Hot List" of top plaintiffs' oriented litigation firms in the United States with a history of high achievement and significant, groundbreaking cases. Normally 15 or fewer firms are chosen for this honor. The *Legal 500*, a guide to worldwide legal services providers, has repeatedly cited Berger & Montague's antitrust practice as "stand[ing] out by virtue of its first-class trial skills." For four straight years, Berger & Montague has been selected by *Chambers and Partners' USA's* America's Leading Lawyers for Business as one of

Pennsylvania's top antitrust firms. *Chambers USA* has specifically noted that Berger & Montague "specializes in plaintiffs' antitrust class actions, and is noted for its exceptional work in pharmaceutical and financial disputes." In 2009, *Employment Law360°* named Berger & Montague as one of the top employment plaintiffs' firms in the U.S. selecting only eight law firms in the country for this honor. Also in 2009, The Public Justice Foundation bestowed its prestigious Trial Lawyer of the Year Award on the Berger & Montague trial team in the Rocky Flats mass environmental tort class action for their "long and hard-fought" victory against "formidable corporate and government defendants," the second time Berger & Montague has won this honor.

JUDICIAL PRAISE FOR BERGER & MONTAGUE ATTORNEYS

Berger & Montague's record of successful prosecution of class actions and other complex litigation has been recognized and commended by judges and arbitrators across the country. Some remarks on the skill, efficiency, and expertise of the firm's attorneys are excerpted below.

Antitrust Litigation

From **Judge William H. Pauley** of the U.S. District Court of the Southern District of New York:

> "Class Counsel did their work on their own with enormous attention to detail and unflagging devotion to the cause. Many of the issues in this litigation . . . were unique and issues of first impression."
>
> * * *
>
> "Class Counsel provided extraordinarily high-quality representation. This case raised a number of unique and complex legal issues . . . The law firms of Berger & Montague and [another firm] were indefatigable. They represented the Class with a high degree of professionalism, and vigorously litigated every issue against some of the ablest lawyers in the antitrust defense bar."

Regarding the work of Berger & Montague shareholders Merrill G. Davidoff and Ruthanne Gordon in ***In re Currency Conversion Fee Antitrust Litigation***, MDL No. 1409, M21-95, slip op. at 33-34 (S.D.N.Y. Oct. 22, 2009)

From **Judge Charles P. Kocoras** of the U.S. District Court for the Northern District of Illinois:

> "The stakes were high here, with the result that most matters of consequence were contested. There were numerous trips to the courthouse, and the path to the trial court and the Court of Appeals frequently traveled. The efforts of counsel for the class has [sic] produced a substantial recovery, and it is represented that the cash settlement alone is the second largest in the history of class action litigation. . . . There is no question that the results achieved by class counsel were extraordinary[.]"

Regarding the work of Berger & Montague shareholders H. Laddie Montague and Peter R. Kahana, among others, in achieving a more than $700 million settlement with some of the defendants in ***In Re Brand Name Prescription Drugs Antitrust Litigation***, 2000 U.S. Dist. LEXIS 1734 at *5-6 (N.D. Ill. Feb. 9, 2000).

From **Judge Peter J. Messitte** of the U.S. District Court for the District of Maryland:

> "The experience and ability of the attorneys I have mentioned earlier, in my view in reviewing the documents, which I have no reason to doubt, the plaintiffs' counsel are at the top of the profession in this regard and certainly have used their expertise to craft an extremely favorable settlement for their clients, and to that extent they deserve to be rewarded."

Concerning the work of senior member, Merrill G. Davidoff, as stated in a Settlement Approval Hearing, Oct. 28, 1994. ***Spawd, Inc. and General Generics v. Bolar Pharmaceutical Co., Inc.***, CA No. PJM-92-3624 (D. Md.).

From **Judge Donald W. Van Artsdalen** of the U.S. District Court for the Eastern District of Pennsylvania:

> "As to the quality of the work performed, although that would normally be reflected in the not immodest hourly rates of all attorneys, for which one would expect to obtain excellent quality work at all times, the results of the settlements speak for themselves. Despite the extreme uncertainties of trial, plaintiffs' counsel were able to negotiate a cash settlement of a not insubstantial sum, and in addition, by way of equitable relief, substantial concessions by the defendants which, subject to various condition, will afford the right, at least, to lessee-dealers to obtain gasoline supply product from major oil companies and suppliers other than from their respective lessors. The additional benefits obtained for the classes by way of equitable relief would, in and of itself, justify some upward adjustment of the lodestar figure."

Commending the skills of firm then chairman David Berger, shareholder Martin Twersky, and other Berger & Montague attorneys, in ***Bogosian v. Gulf Oil Corp.***, 621 F. Supp. 27, 31 (E.D. Pa. 1985).

From **Judge Joseph Blumenfeld** of the U.S. District Court for the District of Connecticut:

> "The work of the Berger firm showed a high degree of efficiency and imagination, particularly in the maintenance and management of the national class actions."

Referencing the leadership of managing partner H. Laddie Montague, co-lead counsel, in ***In re Master Key Antitrust Litigation***, 1977 U.S. Dist. LEXIS 12948 at *34-35 (Nov. 4, 1977).

Securities Litigation

From **Judge Jed Rakoff** of the U.S. District Court for the Southern District of New York at the fairness hearing on the $475 million settlement and request for attorneys' fees:

> "So I congratulate the plaintiffs' counsel in this case for what I thought was a very reasonable request for attorneys' fees.
>
> But part of what I am saying is that in addition to all the traditional factors that are taken account of, percentage of lodestar and what have you, it seems to me it's also important to look at what the investors are getting vis-a-vis what the attorneys are getting, and here I'm delighted to say it seems that the two correspond in a reasonable way.
>
> Now, you have addressed at great length of your excellent submissions all the various factors, but let me hear if there is anything further that you wanted to say here."

In ***In re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA Litigation***, Master File No. 07-cv-9633(JSR)(DFE) (S.D.N.Y.), Judge Rakoff stated that lead plaintiff had made "very full and well-crafted" and "excellent submissions"; that there was a "very fine job done by plaintiffs□ counsel in this case"; that the attorney fees requested were "eminently reasonable" and "appropriately modest"; and that this was "surely a very good result under all the facts and circumstances." Co-lead counsel for the lead plaintiff and the class was Berger & Montague shareholder Lawrence J. Lederer, who was assisted by a team of additional Berger & Montague attorneys including Arthur Stock, Gary Cantor, Robin Switzenbaum and others.

From **Chief Justice Steele** and **Justices Holland, Berger, Jacobs and Ridgely** of the Delaware Supreme Court sitting *en banc:*

Stating that the case was litigated, Chancellor [Chandler] went on to find that:

> "All I can tell you, from someone who has only been doing this for roughly 22 years, is that I have yet to see a more fiercely and intensely litigated case than this case. Never in 22 years have I seen counsel going at it, hammer and tong, like they have gone at it in this case. And I think that's a testimony -- Mr. Valihura correctly says that's what they are supposed to do. I recognize that; that is their job, and they were doing it professionally."

Regarding the work of Lawrence Deutsch and Robin Switzenbaum in ***In re Matter of The Philadelphia Stock Exchange, Inc.***, 945 A.2d 1123, 1143-44 (Del. 2008).

From **Chancellor William Chandler, III** of the Court of Chancery of Delaware when awarding counsel's fee observed:

> "Counsel, again, I want to thank you for your extraordinary efforts in obtaining this result for the class."

Concerning Lawrence Deutsch and Robin Switzenbaum at the Plan of Allocation Approval Hearing in ***Ginsburg v. Philadelphia Stock Exchange, Inc.***, C.A. No. 2202 (Del. Ch.) on July 2, 2008.

From **Judge Michael M. Baylson** of the U.S. District Court for the Eastern District of Pennsylvania:

> "The Court is aware of and attests to the skill and efficiency of class counsel: they have been diligent in every respect, and their briefs and arguments before the Court were of the highest quality. The firm of Berger & Montague took the lead in the Court proceedings; its attorneys were well prepared, articulate and persuasive."

Praising the work of Berger & Montague attorneys including Securities Department Chair Sherrie R. Savett and shareholders Carole A. Broderick and Barbara A. Podell in ***In re CIGNA Corp. Sec. Litig.***, 2007 U.S. Dist. LEXIS 51089, **17-18 (E.D. Pa. July 13, 2007).

From **Judge David S. Doty** of the U.S. District Court for the District of Minnesota:

> "... [A] just result without the assistance of a governmental investigation," plaintiffs' co-lead counsel Berger & Montague "conducted themselves in an exemplary manner," "consistently demonstrated considerable skill and cooperation to bring this matter to an amicable conclusion," and "moved the case along expeditiously".

Praising the work of Berger & Montague attorneys including Securities Department Chair Sherrie R. Savett in *In re Xcel Energy Sec. Deriv. "ERISA" Litig.,* 364 F. Supp. 2d 980, 992, 995-96 (D. Minn. 2005).

From **Judge Stewart Dalzell** of the U.S. District Court for the Eastern District of Pennsylvania:

> "Thanks to the nimble class counsel, this sum, which once included securities worth $149.5 million is now all cash. Seizing on an opportunity Rite Aid

presented, class counsel first renegotiated what had been stock consideration into Rite Aid Notes and then this year monetized those Notes. Thus, on February 11, 2003, Rite Aid redeemed those Notes from the class, which then received $145,754,922.00. The class also received $14,435,104 in interest on the Notes.

"Co-lead counsel ... here were extraordinarily deft and efficient in handling this most complex matter... they were at least eighteen months ahead of the United States Department of Justice in ferreting out the conduct that ultimately resulted in the write down of over $1.6 billion in previously reported Rite Aid earnings. In short, it would be hard to equal the skill class counsel demonstrated here."

Praising the work of Berger & Montague attorneys including Securities Department Chair Sherrie R. Savett and shareholders Carole Broderick and Robin Switzenbaum in ***In re Rite Aid Corp. Securities Litigation***, 269 F. Supp. 2d 603, 605 (E.D. Pa. 2003).

From **Judge Clarence C. Newcomer** of the U.S. District Court for the Eastern District of Pennsylvania:

"...[C]ounsel has conducted this litigation with skill, professionalism and extraordinary efficiency."

Praising the work of Sherrie R. Savett, Securities Department Chair, and Arthur Stock in ***In Re: Unisys Corporation Securities Litigation***, Civil Action No. 99-5333 , 2001 U.S. Dist. LEXIS 20160 at *10 (E.D. Pa. Dec. 6, 2001).

From **Judge Stewart Dalzell** of the U.S. District Court for the Eastern District of Pennsylvania:

"As to 'the skill and efficiency of the attorneys involved,' we can only echo what we said about some of the same lawyers in *U.S. Bioscience*. The results here are outstanding in a litigation that was far ahead of public agencies like the Securities and Exchange Commission and the United States Department of Justice. . . . At the same time, these attorneys have, through the division of their labors, represented the class most efficiently[.]"

Praising the work of Berger & Montague attorneys including Securities Department Chair, Sherrie R. Savett, in achieving settlements of over $190 million in ***In re Rite Aid Inc. Securities Litigation***, 146 F. Supp.2d 706, 735 (E.D. Pa. June 8, 2001).

From **Judge Marvin Katz** of the U.S. District Court for the Eastern District of Pennsylvania:

"Class counsel did a remarkable job in representing the class interests."

Commenting on the work of Berger & Montague attorneys Merrill G. Davidoff, Todd S. Collins and Douglas M. Risen, on the partial settlement for $111 million approved May, 2000, ***In Re: IKON Office Solutions Securities Litigation***, 194 F.R.D. 166, 197 (E.D. Pa. 2000).

From Judge **Wayne R. Andersen** of the U.S. District Court for the Northern District of Illinois:

> "...[Y]ou have acted the way lawyers at their best ought to act. And I have had a lot of cases...in 15 years now as a judge and I cannot recall a significant case where I felt people were better represented than they are here ... I would say this has been the best representation that I have seen."

Praising the work of Sherrie R. Savett , Carole A. Broderick, and Gary E. Cantor at a hearing in ***In Re: Waste Management, Inc. Securities Litigation***, Civil Action No. 97-C 7709 (N.D. Ill. 1999).

From **Judge Helen J. Frye,** United States District Judge for the U.S. District Court for the District of Oregon:

> In order to bring about this result [partial settlements then totaling $54.25 million], Class Counsel were required to devote an unusual amount of time and effort over more than eight years of intense legal litigation which included a four-month long jury trial and full briefing and argument of an appeal before the Ninth Circuit Court of Appeals, and which produced one of the most voluminous case files in the history of this District.
>
> * * *
>
> Throughout the course of their representation, the attorneys at Berger & Montague and Stoll, Stoll, Berne, Lokting & Shlachter who have worked on this case have exhibited an unusual degree of skill and diligence, and have had to contend with opposing counsel who also displayed unusual skill and diligence.

Commenting, *inter alia*, on lead counsel, lead trial counsel and lead appellate counsel Merrill G. Davidoff in awarding fees on April 15, 1996 in *In Re Melridge, Inc. Securities Litigation,* No. CV 87-1426-FR (D. Ore.).

From **Judge Stewart Dalzell** of the U.S. District Court for the Eastern District of Pennsylvania:

> "The quality of lawyering on both sides, but I am going to stress now on the plaintiffs' side, simply has not been exceeded in any case, and we have had some marvelous counsel appear before us and make superb arguments, but they really don't come any better than Mrs. Savett . . . , and the arguments we had on the motion to dismiss [Mrs. Savett argued the motion], both sides were fabulous, but plaintiffs' counsel were as good as they come."

Commenting on the settlement of a securities case litigated by Sherrie R. Savett and Carole A. Broderick, ***In re U.S. Bioscience Securities Litigation***, Civil Action No. 92-0678, hearing held April 4, 1994 (E.D. Pa. 1994).

From **Judge Joseph F. Anderson, Jr.** of the U.S. District Court for the District of South Carolina:

> "I don't have a problem at all approving the settlement. In light of what you've said today and your submission to the Court and I am familiar with the case ... it was a sharply litigated case, with good lawyers on both sides and I think it's an ideal case for settlement. It's the largest settlement I've been called upon to approve in my eight years as a judge."

Praising the work of Sherrie R. Savett, Securities Department Chair in achieving a $32 million settlement in ***In Re: Policy Management Systems Corporation,*** Civil Action No. 3:93-0807-17 (D.S.C. 1993).

From **Judge Harry R. McCue** of the U.S. District Court for the Southern District of California:

> "There can be no doubt that the public good was fully served by the attorneys for the plaintiffs in this case, because they invested their own time, their own money, they invested their special skills and knowledge to vindicate the rights and interests of the thousands of investors who invested their money and placed their trust in the integrity of the securities market. . . . I conclude that the achievement of plaintiffs' counsel under any of those tests was superior. "

Concerning the work of Berger & Montague in achieving a $33 million settlement in ***In re Oak Industries Securities Litigation***, 1986 U.S. Dist. LEXIS 20942 (S.D. Cal. 1986).

From **Judge John F. Keenan** of the U.S. District Court for the Southern District of New York:

> "The quality of work of plaintiffs' counsel on this case is also demonstrated by the efficient manner of prosecution. . . . At the settlement hearing, defense counsel

> conceded that plaintiffs' counsel constitute the 'cream of the plaintiffs' bar.' The court cannot find fault with that characterization."

Regarding the work of Sherrie R. Savett in ***In re Warner Communications Securities Litigation***, 618 F. Supp. 735, 749 (S.D.N.Y. 1985).

Civil/Human Rights Cases

From **Deputy Treasury Secretary Stuart E. Eizenstat**:

> "We must be frank. It was the American lawyers, through the lawsuits they brought in U.S. courts, who placed the long-forgotten wrongs by German companies during the Nazi era on the international agenda. It was their research and their work which highlighted these old injustices and forced us to confront them. Without question, we would not be here without them. . . . For this dedication and commitment to the victims, we should always be grateful to these lawyers."

In his remarks at the July 17, 2000, signing ceremony for the international agreements which established the German Foundation to act as a funding vehicle for the payment of claims to Holocaust survivors.

Customer/Broker Arbitrations

From **Robert E. Conner**, Public Arbitrator with the National Association of Securities Dealers, Inc.:

> ". . . [H]aving participated over the last 17 years in 400 arbitrations and trials in various settings, . . . the professionalism and the detail and generally the civility of everyone involved has been not just a cause for commentary at the end of these proceedings but between ourselves [the arbitration panel] during the course of them, and . . . the detail and the intellectual rigor that went into the documents was fully reflective of the effort that was made in general. I wanted to make that known to everyone and to express my particular respect and admiration."

About the efforts of Berger & Montague shareholders Merrill G. Davidoff and Eric L. Cramer, who achieved a $1.1 million award for their client, in ***Steinman v. LMP Hedge Fund, et al.***, NASD Case No. 98-04152, at Closing Argument, June 13, 2000.

Other

From **Stephen M. Feiler, Ph.D.,** Director of Judicial Education, Supreme Court of Pennsylvania, Administrative Office of Pennsylvania Courts, Mechanicsburg, PA *on behalf of the Common Pleas Court Judges (trial judges) of Pennsylvania*:

> "On behalf of the Supreme Court of Pennsylvania and AOPC's Judicial Education Department, thank you for your extraordinary commitment to the *Dealing with Complexities in Civil Litigation* symposia. We appreciate the considerable time you spent preparing and delivering this important course across the state. It is no surprise to me that the judges rated this among the best programs they have attended in recent years."

About the efforts of Berger & Montague attorneys Merrill G. Davidoff, Peter Nordberg and David F. Sorensen in planning and presenting a CLE Program to trial judges in the Commonwealth of Pennsylvania.

PROMINENT JUDGMENTS AND SETTLEMENTS

The success of Berger & Montague in prosecuting class actions and other complex litigation is best demonstrated by the firm's significant results for its clients. The following is a partial list of some of the more notable judgments and settlements from the past few years:

Antitrust Litigation

In re Currency Conversion Fee Antitrust Litigation: Berger & Montague spearheaded a class action lawsuit alleging that the major credit cards had conspired to fix prices for foreign currency conversion fees imposed on credit card transactions. After eight years of litigation, a settlement of $336 million was finally approved in October 2009. (MDL No. 1409 (S.D.N.Y)).

In re High Fructose Corn Syrup Antitrust Litigation: Berger & Montague was one of three co-lead counsel in this nationwide class action alleging a conspiracy to allocate volumes and customers and to price-fix among five producers of high fructose corn syrup. After nine years of litigation, including four appeals, the case was settled on the eve of trial for $531 million. (MDL. No. 1087, Master File No. 95-1477 (C.D. Ill.)).

In re Linerboard Antitrust Litigation: Berger & Montague was one of a small group of court-appointed executive committee members who led this nationwide class action against producers of linerboard. The complaint alleged that the defendants conspired to reduce production of linerboard in order to increase the price of linerboard and corrugated boxes made therefrom. At the close of discovery, the case was settled for more than $200 million. (98 Civ. 5055 and 99-1341 (E.D. Pa.)).

In re Terazosin Antitrust Litigation: Berger & Montague was one of a small group of firms alleging that Abbott Laboratories was paying its competitors to refrain from introducing less expensive generic versions of Hytrin. The case settled for a $74.5 million settlement. (Case No. 99-MDL-1317 (S.D. Fla.)).

In re Remeron Antitrust Litigation: Berger & Montague was one of a small group of firms alleging that the manufacturer of this drug was paying its competitors to refrain from introducing less expensive generic versions of Remeron. The case settled for a $75 million settlement. (2:02-CV-02007-FSH (D. N.J.).

In re Tricor Antitrust Litigation: Berger & Montague was one of a small group of firms alleging that the manufacturer of this drug was paying its competitors to refrain from introducing less expensive generic versions of Tricor. The case settled for a $250 million settlement. (No. 05-340 (D. Del.)).

In re Relafen Antitrust Litigation: Berger & Montague was one of a small group of firms who prepared for the trial of this nationwide class action against GlaxoSmithKline, which was alleged

to have used fraudulently-procured patents to block competitors from marketing less-expensive generic versions of its popular nonsteroidal anti-inflammatory drug, Relafen (nabumetone). Just before trial, the case was settled for $175 million. (No. 01-12239-WGY (D. Mass.)).

State of Connecticut Tobacco Litigation: Berger & Montague was one of three firms to represent the State of Connecticut in a separate action in state court against the tobacco companies. The case was litigated separate from the coordinated nationwide actions. Although eventually Connecticut joined the national settlement, its counsel's contributions were recognized by being awarded the fifth largest award among the states from the fifty states' Strategic Contribution Fund.

In re Microcrystalline Antitrust Litigation: Berger & Montague was one of two co-lead counsel in this class action alleging a conspiracy to fix the price of microcrystalline cellulose, used in the manufacture of many pharmaceuticals. The case was settled shortly before trial for a total of $50 million. (MDL No. 1402 (E.D. Pa.)).

In re Graphite Electrodes Antitrust Litigation: Berger & Montague was one of the four co-lead counsel in a nationwide class action price-fixing case. The case eventually settled in excess of $130 million. (02 Civ. 99-482 (E.D. Pa.)).

In re Buspirone Antitrust Litigation: The firm served on the court-appointed steering committee in this class action, representing a class of primarily pharmaceutical wholesalers and resellers. The Buspirone class action alleged that pharmaceutical manufacturer BMS engaged in a pattern of illegal conduct surrounding its popular anti-anxiety medication, Buspar, namely, paying a competitor to refrain from marketing a generic version of Buspar; improperly listing a patent with the FDA; and wrongfully prosecuting patent infringement actions against generic competitors to Buspar. On April 11, 2003, the Court finally approved a $220 million settlement. (MDL No. 1410 (S.D.N.Y.)).

In re Cardizem CD Antitrust Litigation: Berger & Montague served on the Executive Committee of firms appointed to represent the class of direct purchasers of Cardizem CD. The suit charged that Aventis (the brand-name drug manufacturer of Cardizem CD) entered into an illegal agreement to pay Andrx (the maker of a generic substitute to Cardizem CD) millions of dollars to delay the entry of the less expensive generic product. On November 26, 2002, the district court approved a final settlement against both defendants for $110 million. (No. 99-MD-1278, MDL No. 1278 (E.D. Mich.)).

In re Brand Name Prescription Drugs Antitrust Litigation: The firm served as co-lead counsel in this antitrust price-fixing class action on behalf of a class of purchasers of brand name prescription drugs. Following certification of the class by the district court, settlements exceeded $717 million. (No. 94 C 897 (M.D. Ill.)).

North Shore Hematology-Oncology Assoc., Inc. v. Bristol-Myers Squibb Co.: The firm was one of several prosecuting an action complaining of Bristol Myers's use of invalid patents to block competitors from marketing more affordable generic versions of its life-saving cancer drug, Platinol (cisplatin). The case settled for $50 million. (No. 1:04CV248 (EGS) (D.D.C.)).

In re Catfish Antitrust Litig. Action: The firm was co-trial counsel in this action which settled with the last defendant a week before trial, for total settlements approximating $27 million. (No. 2:92CV073-D-O, MDL No. 928 (N.D. Miss.)).

In re Carbon Dioxide Antitrust Litigation: The firm was co-trial counsel in this antitrust class action which settled with the last defendant days prior to trial for total settlements approximating $53 million, plus injunctive relief. (MDL No. 940 (M.D. Fla.)).

***In re Infant Formula Antitrust Litigation*:** The firm served as co-lead counsel in an antitrust class action where settlement was achieved two days prior to trial, bringing the total settlement proceeds to $125 million. (MDL No. 878 (N.D. Fla.)).

Red Eagle Resources Corp., Inc., v. Baker Hughes, Inc.: The firm was a member of the plaintiffs' executive committee in this antitrust class action which yielded a settlement of $52.5 million. (C.A. No. H-91-627 (S.D. Tex.)).

In re Corrugated Container Antitrust Litigation: The firm, led by H. Laddie Montague, was co-trial counsel in an antitrust class action which yielded a settlement of $366 million, plus interest, following a trial. (MDL No. 310 (S.D. Tex.)).

Bogosian v. Gulf Oil Corp.: With Berger & Montague as sole lead counsel, this landmark action on behalf of a national class of more than 100,000 gasoline dealers against 13 major oil companies led to settlements of over $35 million plus equitable relief on the eve of trial. (No. 71-1137 (E.D. Pa.)).

In re Master Key Antitrust Litigation: The firm served as co-lead counsel in an antitrust class action that yielded a settlement of $21 million during trial. (MDL No. 45 (D. Conn.)).

Securities Litigation

In re Merrill Lynch Securities Litigation: Berger & Montague, as co-lead counsel, obtained a recovery of $475 million in 2009 for the benefit of the class in one of the largest recoveries among the recent financial crisis cases. (Civil Action No. 07-CV-09633 (S.D.N.Y.)).

In re KLA Tencor Securities Litigation: The firm, as a member of Plaintiffs' Counsel's Executive Committee, obtained a cash settlement of $65 million in 2009 in an action on behalf of investors against KLA-Tencor and certain of its officers and directors. (No. 06-cv-04065 (N.D. Cal.)).

Ginsburg v. Philadelphia Stock Exchange, Inc., et al.: The firm represented certain shareholders of the Philadelphia Stock Exchange in the Delaware Court of Chancery and in 2008, obtained a settlement valued in excess of $99 million settlement. (C.A. No. 2202-CC (Del. Ch.)).

In re Sepracor Inc. Securities Litigation: The firm, as co-lead counsel, obtained a settlement of $52.5 million for the benefit of bond and stock purchaser classes. (Civil Action No. 02-12235-MEL (D. Mass.)).

In re CIGNA Corp. Securities Litigation: The firm, as co-lead counsel, obtained a settlement of $93 million for the benefit of the class. (Master File No. 2:02-CV-8088 (E.D. Pa.)).

In re Fleming Companies, Inc. Securities Litigation: The firm, as lead counsel, obtained a class settlement of $94 million for the benefit of the class. (Civil Action No. 5-03-MD-1530 (TJW) (E.D. Tex.)).

In re Xcel Energy Inc. Securities, Derivative & "ERISA" Litigation: The firm, as co-lead counsel in the securities actions, obtained a cash settlement of $80 million on behalf of investors against Xcel Energy and certain of its officers and directors. (Civil Action No. 02-2677 (DSD/FLN) (D. Minn.)).

Brown v. Kinross Gold U.S.A. Inc.: The firm represented lead plaintiffs as co-lead counsel and obtained $29.25 million cash settlement and an additional $6,528,371 in dividends for a gross settlement value of $35,778,371. (No. 02-CV-0605 (D. Nev.))

In re Campbell Soup Co. Securities Litigation: The firm, as co-lead counsel, obtained a settlement of $35 million for the benefit of the class. (Civil Action No. 00 152 (JEI) (D.N.J.)).

In re Premiere Technologies, Inc. Securities Litigation: The firm, as co-lead counsel, obtained a class settlement of over $20 million in combination of cash and common stock. (Civil Action No.1:98-CV-1804-JOF (N.D. Ga.)).

In re: PSINet, Inc., Securities Litigation: The firm, as co-lead counsel, obtained a settlement of $17.83 million on behalf of investors. (Civ. No. 00-1850-A (E.D. Va.)).

In re Safety-Kleen Corp. Securities Litigation : The firm, as co-lead counsel, obtained a class settlement in the amount of $45 million against Safety-Kleen's outside accounting firm and certain of the Company's officers and directors. The final settlement was obtained 2 business days before the trial was to commence. (C.A. No. 3:00-CV-736-17 (D.S.C.)).

Emil Rossdeutscher and Dennis Kelly v. Viacom: The firm, as lead counsel, obtained a settlement resulting in a fund of $14.25 million for the class. (C.A. No. 98C-03-091 (JEB) (Del. Super. Ct.)).

Aldridge v. A.T. Cross Corp.: The firm represented a class of investors in a securities fraud class action against the A.T. Cross , and won a significant victory in the U.S. Court of Appeals for the First Circuit when that Court reversed the dismissal of the complaint and lessened the pleading standard for such cases in the First Circuit, holding that it would not require plaintiffs in a shareholder suit to submit proof of financial restatement in order to prove revenue inflation. See *Aldridge v. A.T. Cross Corp.*, 284 F.3d 72 (1st Cir. 2002). The case ultimately settled for $1.5 million. (Civil Action 00203 ML (D.R.I.)).

Silver v. UICI: The firm, as co-lead counsel, obtained a settlement resulting in a fund of $16 million for the class. (No. 3:99 CV 2860-L (N.D. Tex.)).

In re Alcatel Alsthom Securities Litigation: In 2001, the firm, as co-lead counsel, obtained a class settlement for investors of $75 million cash. (MDL Docket No. 1263 (PNB) (E.D. Tex.)).

In re Rite Aid Corp. Securities Litigation: The firm, as co-lead counsel, obtained settlements totaling $334 million against Rite Aid's outside accounting firm and certain of the company's former officers. (99 CV 1349 (E.D. Pa.)).

In re Sunbeam Inc. Securities Litigation: As co-lead counsel, the firm obtained a settlement on behalf of investors of $141 million in the action against Sunbeam's outside accounting firm and Sunbeam's officers. (98 CV 8258 (S.D. Fla.)).

***In re Sotheby's Holding, Inc. Securities Litigation*:** The firm, as lead counsel obtained a $70 million settlement, of which $30 million was contributed, personally, by an individual defendant (No. 00 Civ. 1041 (DLC) (S.D.N.Y.)).

In re Waste Management, Inc. Securities Litigation: In 1999, the firm, as co-lead counsel, obtained a class settlement for investors of $220 million cash which included a settlement against Waste Management's outside accountants. (97 CV 7709 (N.D. Ill.)).

In re IKON Office Solutions Inc. Securities Litigation: The firm, serving as both co-lead and liaison counsel, obtained a cash settlement of $111 million in an action on behalf of investors against IKON and certain of its officers. (MDL Dkt. No. 1318 (E.D. Pa.)).

In re Melridge Securities Litigation: The firm served as lead counsel and co-trial counsel for a class of purchasers of Melridge common stock and convertible debentures. A four-month jury trial yielded a verdict in plaintiffs' favor for $88.2 million, and judgment was entered on RICO claims against certain defendants for $239 million. The court approved settlements totaling $55.4 million. (CV-87-1426 FR (D. Ore.)).

Walco Investments, Inc. et al. v. Kenneth Thenen, et al. (Premium Sales): The firm, as a member of the plaintiffs' steering committee, obtained settlements of $141 million for investors victimized by a Ponzi scheme. Reported at: 881 F. Supp. 1576 (S.D. Fla. 1995); 168 F.R.D. 315 (S.D. Fla. 1996); 947 F. Supp. 491 (S.D. Fla. 1996)).

In re The Drexel Burnham Lambert Group, Inc.: The firm was appointed co-counsel for a mandatory non-opt-out class consisting of all claimants who had filed billions of dollars in securities litigation-related proofs of claim against The Drexel Burnham Lambert Group, Inc. and/or its subsidiaries. Settlements in excess of $2.0 billion were approved in August 1991 and became effective upon consummation of Drexel's Plan of Reorganization on April 30, 1992. (90 Civ. 6954 (MP), Chapter 11, Case No. 90 B 10421 (FGC), Jointly Administered, reported at, *inter alia*, 960 F.2d 285 (2d Cir. 1992), *cert. dismissed*, 506 U.S. 1088 (1993) ("Drexel I") and 995 F.2d 1138 (2d Cir. 1993) ("Drexel II")).

In re Michael Milken and Associates Securities Litigation: As court-appointed liaison counsel, the firm was one of four lead counsel who structured the $1.3 billion "global" settlement of all claims pending against Michael R. Milken, over 200 present and former officers and directors of Drexel Burnham Lambert, and more than 350 Drexel/Milken-related entities. (MDL Dkt. No. 924, M21-62-MP (S.D.N.Y.).

RJR Nabisco Securities Litigation: In this action, Berger & Montague represented individuals who sold RJR Nabisco securities prior to the announcement of a corporate change of control. This securities case settled for $72 million. (88 Civ. 7905 MBM (S.D.N.Y.)).

Individual Securities Actions

New Jersey v. Qwest Communications International: The Berger firm represented the pension funds for public employees in the State of New Jersey seeking to recover losses on their investments in Qwest common stock. The action settled for $45 million. (MER-L-3738-02 (N.J. Super. Ct., Mercer Cty.)).

Pennsylvania Public School Employees' Retirement System, et al. v. Time Warner, Inc., et al.: The Berger firm represented a group of pension funds seeking to recover for losses on their investments in AOL/Time Warner common stock. The case settled for $23 million. (July 2003, No. 002103 (Pa. Ct. Com. Pl., Phila. Cty.)).

Kelly v. McKesson HBOC, Inc.: The Berger firm represented a group of private shareholders who sold their companies to a large publicly-held corporation in exchange for $103.5 million in stock. The case settled for a confidential sum on the eve of trial for a percentage of plaintiffs' damages far greater than plaintiffs would have received from a related class action. (C.A. No. 99C-09-265WCC (Del. Super. Ct.)).

Forbes v. GMH: The Berger firm represented a private real estate developer/investor who sold a valuable apartment complex to GMH for cash and publicly-held securities. The case settled for a confidential sum which represented a significant portion of the losses experienced. (C.A. No. 07-cv-00979 (E.D. Pa.)).

Environmental/Mass Tort Litigation

In re Rocky Flats (Colo.) Nuclear Weapons Facility: In February 2006, the firm won a $554 million jury verdict on behalf of thousands of property owners whose homes were exposed to plutonium or other toxins. Judgment in the case was entered by the court in June 2008 which, with interest, totaled $926 million (with proceedings now continuing on appeal). Recognizing this tremendous achievement, the Public Justice Foundation bestowed its prestigious Trial Lawyer of the Year Award for 2009 on Mr. Davidoff, Mr. Sorensen and the entire trial team for their "long and hard-fought" victory against "formidable corporate and government defendants." (No. 90-cv-00181-JLK (D. Colo.)).

***In re Exxon Valdez Oil Spill Litigation*:** On September 16, 1994, a jury trial of several months duration resulted in a record punitive damages award of $5 billion against the Exxon defendants as a consequence of one of the largest oil spills in U.S. history. The award was reduced to $507.5 million pursuant to a Supreme Court decision. David Berger was co-chair of the plaintiffs' discovery committee (appointed by both the federal and state courts). Harold Berger served as a member of the organizing case management committee. H. Laddie Montague was specifically appointed by the federal court as one of the four designated trial counsel. Both Mr. Montague and Peter Kahana shared (with the entire trial team) the 1995 "Trial Lawyer of the Year Award" given by the Trial Lawyers for Public Justice. (No. A89-0095-CVCHRH (D. Alaska)).

***In re Ashland Oil Spill Litigation*:** The firm led by Harold Berger served as co-lead counsel and obtained a $30 million settlement for damages resulting from a very large oil spill. (Master File No. M-14670 (W.D. Pa.)).

***In re School Asbestos Litigation*:** As co-lead counsel, the firm successfully litigated a case in which a nationwide class of elementary and secondary schools and school districts suffering property damage as a result of asbestos in their buildings were provided relief. Pursuant to an approved settlement, the class received in excess of $70 million in cash and $145 million in discounts toward replacement building materials. (No. 83-0268 (E.D. Pa.)).

Drayton v. Pilgrim's Pride Corp.: The firm served as counsel in a consolidation of wrongful death and other catastrophic injury cases brought against two manufacturers of turkey products, arising out of a 2002 outbreak of Listeria Monocytogenes in the Northeastern United States, which resulted in the recall of over 32 million pounds of turkey – the second largest meat recall in U.S. history at that time. A significant opinion issued in the case is *Drayton v. Pilgrim's Pride Corp.*, 472 F.Supp.2d 638 (E.D. Pa. 2006) (denying the defendants' motions for summary

judgment and applying the alternative liability doctrine). All of the cases settled on confidential terms in 2006. (No. 03-2334 (E.D. Pa.)).

In re SEPTA 30th Street Subway/Elevated Crash Class Action: Berger & Montague represented a class of 220 persons asserting injury in a subway crash. Despite a statutory cap of $1 million on damages recovery from the public carrier, and despite a finding of sole fault of the public carrier in the investigation by the National Highway Transit Safety Administration, Berger & Montague was able to recover an aggregate of $3.03 million for the class. (1990 Master File No. 0001 (Pa. Ct. Com. Pls., Phila. Cty.)).

In re Three Mile Island Litigation: As lead/liaison counsel, the firm successfully litigated the case and reached a settlement in 1981 of $25 million in favor of individuals, corporations and other entities suffering property damage as a result of the nuclear incident involved. (C.A. No. 79-0432 (M.D. Pa.)).

Health Care/ERISA Litigation

In re Unisys Corp. Retiree Medical Benefits: The firm, as co-lead counsel, handled the presentation of over 70 witnesses, 30 depositions, and over 700 trial exhibits in this action that has resulted in partial settlements in 1990 of over $110 million for retirees whose health benefits were terminated. (MDL No. 969 (E.D. Pa.)).

Local 56 U.F.C.W. v. Campbell Soup Co.: The firm represented a class of retired Campbell Soup employees in an ERISA class action to preserve and restore retiree medical benefits. A settlement yielded benefits to the class valued at $114.5 million. (No. 93-MC-276 (SSB) (D.N.J.)).

Civil/Human Rights

In re Holocaust Victim Assets Litigation: Through membership on the executive committee in cases brought by Holocaust survivors against the three largest Switzerland-based banks, this litigation was settled for $1.25 billion. (105 F. Supp.2d 139 (E.D.N.Y. 2000)).

In re Nazi Era Cases Against German Defendants Litigation: Through the firm's co-lead counsel role, cases against German industry and banks for the use of slave and forced labor during the Nazi era were ultimately settled in the context of international negotiations which created a fund for victims of $4.5 billion. (198 F.R.D. 429 (D.N.J. 2000)).

Consumer Litigation

Countrywide Predatory Lending Enforcement Action: Berger & Montague advised the Ohio Attorney General (and several other state attorneys general) regarding predatory lending in a

landmark law enforcement proceeding against *Countrywide* (and its parent, Bank of America) culminating in 2008 in mortgage-related modifications and other relief for borrowers across the country valued at some $8.6 billion.

In re Pet Foods Product Liability Litigation: The firm is one of plaintiffs' co-lead counsel in this multidistrict class action suit seeking to redress the harm resulting from the manufacture and sale of contaminated dog and cat food. The case has been settled for $24 million. Many terms of the settlement are unique and highly beneficial to the class, including allowing class members to recover up to 100% of their economic damages without any limitation on the types of economic damages they may recover. There is an appeal pending regarding settlement approval. (1:07-cv-02867 (D.N.J.), MDL Docket No. 1850 (D.N.J.)).

In re TJX Companies Retail Security Breach Litigation: The firm served as co-lead counsel in this multidistrict litigation brought on behalf of individuals whose personal and financial data was compromised in the then-largest theft of personal data in history. The breach involved more than 45 million credit and debit card numbers and 450,000 customers' driver's license numbers. The case was settled for benefits valued at over $200 million. Class members whose driver's license numbers were at risk were entitled to 3 years of credit monitoring and identity theft insurance (a value of $390 per person based on the retail cost for this service), reimbursement of actual identity theft losses, and reimbursement of driver's license replacement costs. Class members whose credit and debit card numbers were at risk were entitled to cash of $15-$30 or store vouchers of $30-$60. (No. 1:07-cv-10162-WGY, (D. Mass.)).

In Re: Heartland Payment Systems, Inc. Customer Data Security Breach Litigation: The firm served on the Executive Committee of this multidistrict litigation and obtained a settlement of cash and injunctive relief for a class of 130 million credit card holders whose credit card information was stolen by computer hackers. The breach was the largest known theft of credit card information in history. The settlement is subject to court approval. (No. 4:09-MD-2046 (S.D. Tex. 2009)).

In re: Countrywide Financial Corp. Customer Data Security Breach Litigation: The firm served on the Executive Committee of this multidistrict litigation and obtained a settlement for a class of 17 million individuals whose personal information was at risk when a rouge employee sold their information to unauthorized third parties. Settlement benefits included: (i) reimbursement of several categories of out-of-pocket costs; (ii) credit monitoring and identity theft insurance for 2 years for consumers who did not accept Countrywide's prior offer of credit monitoring; and (iii) injunctive relief. The settlement is subject to court approval. (3:08-md-01998-TBR (W.D. Ky. 2008)).

In re Educational Testing Service Praxis Principles of Learning and Teaching: Grades 7-12 Litigation: The firm served on the plaintiffs' steering committee and obtained an $11.1 million settlement in 2006 on behalf of persons who were incorrectly scored on a teacher's licensing exam. (MDL No. 1643 (E.D. La.)).

Vadino, et al. v. American Home Products Corporation, et al.: The firm filed a class complaint different from that filed by any other of the filing firms in the New Jersey State Court "Fen Phen" class action, and the class sought in the firm's complaint was ultimately certified. It was the only case anywhere in the country to include a claim for medical monitoring. In the midst of trial, the New Jersey case was folded into a national settlement which occurred as the trial was ongoing, and which was structured to include a medical monitoring component worth in excess of $1 billion. (Case Code No. 240 (N.J. Super. Ct.)).

Parker v. American Isuzu Motors, Inc.: The firm served as sole lead counsel and obtained a settlement whereby class members recovered up to $500 each for economic damages resulting from accidents caused by faulty brakes. (Sept. Term 2003, No. 3476 (Pa. Ct. Com. Pl., Phila. Cty.)).

In re: Bridgestone Firestone, Inc. ATX, ATX II and Wilderness Tires Products Liab. Litig.: The firm filed a complaint that was later consolidated into the master multidistrict litigation (MDL). Claims in the MDL were focused on: (1) products liability claims against Bridgestone/Firestone for faulty tires; and (2) diminution in value (DIV) claims against Ford for the falling value of Ford Explorers. B&M was one of three firms on the Discovery Committee. After surviving in part the motion to dismiss, engaging in substantial discovery, and litigating the motion for class certification, the case was settled on a non-class basis. (Master File No. 00-ml-09374-SEB-JMS (S.D. Ind.), MDL No. 1373).

Salvucci v. Volkswagen of America, Inc. d/b/a Audi of America, Inc.: The firm served as co-lead counsel in litigation brought on behalf of a nationwide class alleging that defendants failed to disclose that its vehicles contained defectively designed timing belt tensioners and associated parts and that defendants misrepresented the appropriate service interval for replacement of the timing belt tensioner system. After extensive discovery, a settlement was reached. (Docket No. ATL-1461-03 (N.J. Sup. Ct. 2007)).

Burgo v. Volkswagen of America, Inc. d/b/a Audi of America, Inc.: The firm served as co-lead counsel in litigation brought on behalf of a nationwide class against premised on defendants' defective tires that were prone to bubbles and bulges. Counsel completed extensive discovery and class certification briefing. A settlement was reached while the decision on class certification was pending. The settlement consisted of remedies including total or partial reimbursement for snow tires, free inspection/replacement of tires for those who experienced sidewall bubbles, blisters, or bulges, and remedies for those class members who incurred other costs related to the tires' defects. (Docket No. HUD-L-2392-01 (N.J. Sup. Ct. 2001)).

Crawford v. Philadelphia Hotel Operating Co.: The firm served as co-lead counsel and obtained a settlement whereby persons who contracted food poisoning at a business convention recovered $1,500 each. (March Term, 2004, No. 000070 (Pa. Ct. Com. Pl., Phila. Cty.)).

***Block v. McDonald's Corporation*:** The firm served as co-lead counsel and obtained a settlement of $12.5 million with McDonald's stemming from its failure to disclose the use of beef fat in its french fries. (No. 01-CH-9137 (Ill. Cir. Ct., Cook Cty.)).

Commercial Litigation

Erie Power Technologies, Inc. v. Aalborg Industries A/S, et al.: Berger & Montague represented a trustee in bankruptcy against officers and directors and the former corporate parent and obtained a very favorable confidential settlement. (No. 04-282E (W.D. Pa.)).

Moglia v. Harris et al.: Berger & Montague represented a liquidating trustee against the officers of U.S. Aggregates, Inc. and obtained a settlement of $4 million. (No. C 04 2663 (CW) (N.D. Cal.)).

Gray v. Gessow et al.: The firm represented a litigation trust and brought two actions, one against the officers and directors of Sunterra Inc. an insolvent company, and the second against Sunterra's accountants, Arthur Andersen and obtained an aggregate settlement of $4.5 million. (Case No. MJG 02-CV-1853 (D. Md.) and No. 6:02-CV-633-ORL-28JGG (M.D. Fla.)).

***Fitz, Inc. v. Ralph Wilson Plastics Co.*:** The firm served as sole lead counsel and obtained, after 7 years of litigation, in 2000 a settlement whereby fabricator class members could obtain full recoveries for their losses resulting from defendants' defective contact adhesives. (No. 1-94-CV-06017 (D.N.J.)).

Provident American Corp. and Provident Indemnity Life Insurance Company v. The Loewen Group Inc. and Loewen Group International Inc.: Berger & Montague settled this individual claim, alleging a 10-year oral contract (despite six subsequent writings attempting to reduce terms to writing, each with materially different terms added, all of which were not signed), for a combined payment in cash and stock of the defendant, of $30 Million. (No. 92-1964 (E.D. Pa.)).

Marilou Whitney (Estate of Cornelius Vanderbilt Whitney) v. Turner/Time Warner: Berger & Montague settled this individual claim for a confidential amount, seeking interpretation of the distribution agreement for the movie, *Gone with the Wind* and undistributed profits for the years 1993-1997, with forward changes in accounting and distribution.

American Hotel Holdings Co., et. al v. Ocean Hospitalities, Inc., et. al.: Berger & Montague defended against a claim for approximately $16 million and imposition of a constructive trust, arising out of the purchase of the Latham Hotel in Philadelphia. Berger & Montague settled the case for less than the cost of the trial that was avoided. (June Term, 1997, No. 2144 (Pa. Ct. Com. Pl., Phila. Cty.))

Creative Dimensions and Management, Inc. v. Thomas Group, Inc.: Berger & Montague defended this case against a claim for $30 million for breach of contract. The jury rendered a verdict in favor of Berger & Montague's client on the claim (i.e., $0), and a verdict for the full amount of Berger & Montague's client on the counterclaim against the plaintiff. (No. 96-6318 (E.D. Pa.)).

Employment Litigation

Employees Committed for Justice v. Eastman Kodak Company: The firm served as co-lead counsel and obtained a settlement of $21.4 million on behalf of a nationwide class of African American employees of Kodak alleging a pattern and practice of racial discrimination (pending final approval). A significant opinion issued in the case is *Employees Committed For Justice v. Eastman Kodak Co.*, 407 F.Supp.2d 423 (W.D.N.Y. 2005) (denying Kodak's motion to dismiss). No. 6:04-cv-06098 (W.D.N.Y.)).

Salcido v. Cargill Meat Solutions Corp.: The firm served as co-lead counsel and obtained a settlement of $7.5 million on behalf of a class of thousands of employees of Cargill Meat Solutions Corp. alleging that they were forced to work off-the-clock and during their breaks. This is one of the largest settlements of this type of case involving a single plant in U.S. history. (Civil Action Nos. 1:07-cv-01347-LJO-GSA and 1:08-cv-00605-LJO-GSA (E.D. Cal.)).

Miller v. Hygrade Food Products, Inc.: The firm served as lead counsel and obtained a settlement of $3.5 million on behalf of a group of African American employees of Sara Lee Foods Corp. to resolve charges of racial discrimination and retaliation at its Ball Park Franks plant. (No. 99-1087 (E.D. Pa.)).

Chabrier v. Wilmington Finance, Inc.: The firm served as co-lead counsel and obtained a settlement of $2,925,000 on behalf of loan officers who worked in four offices of to resolve claims for unpaid overtime wages. A significant opinion issued in the case is *Chabrier v. Wilmington Finance, Inc.*, 2008 WL 938872 (E.D. Pa. April 04, 2008) (denying the defendant's motion to decertify the class). (No. 06-4176 (E.D. Pa.)).

Bonnette v. Rochester Gas & Electric Co.: The firm served as co-lead counsel and obtained a settlement of $2 million on behalf of a class of African American employees of Rochester Gas & Electric Co. to resolve charges of racial discrimination in hiring, job assignments, compensation, promotions, discipline, terminations, retaliation, and a hostile work environment. (No. 07-6635 (W.D.N.Y.)).

Confidential. The firm served as lead counsel and obtained a settlement of $6 million on behalf of a group of African American employees of a Fortune 100 company to resolve claims of racial discrimination, as well as injunctive relief which included significant changes to the Company's employment practices (settled out of court while charges of discrimination were pending with the

U.S. Equal Employment Opportunity Commission).

Other Individual Litigation

Rita Rappaport v. Samuel Rappaport; Estate of Samuel Rappaport, Deceased: Berger & Montague settled this divorce action involving significant marital real estate holdings for in excess of $20 million for the client.

Steven L. Bloch

Since joining Berger & Montague, P.C., Steven L. Bloch has concentrated on class action matters involving insurance and related financial products and services, including annuities, securities and other investment vehicles, consumer fraud, employee benefits and ERISA. Mr. Bloch also has wide-ranging complex litigation experience, and has handled matters involving commercial and corporate disputes, civil RICO, business torts, real estate, securities, banking and credit card transactions and labor and employment. Mr. Bloch holds the highest peer-review rating, "AV," in Martindale-Hubbell and previously has been honored as a Pennsylvania Super Lawyer – Rising Star, in the business litigation arena. Mr. Bloch graduated from Benjamin N. Cardozo School of Law (J.D. 1992) and the State University of New York at Albany (B.A. 1989).

Representative class action matters as co-lead counsel:

- Settlement on behalf of a class of automobile insurance policyholders in West Virginia against Nationwide Mutual Insurance Company for personal injuries and property damage arising out of Nationwide's failure to offer policyholders the ability to purchase statutorily-required optional levels of underinsured ("UIM") and uninsured ("UM") motorist coverage (*Nationwide Mutual Insurance Company v. O'Dell*, Case No. 00-C-37, West Virginia Circuit Court, Roane County) ($75 million).
- Settlement on behalf of a class of policyholders in multiple states against AFLAC, Inc. concerning the improper adjustment of supplemental disability income policies (*Becker v. American Family Life Assurance Company of Columbus and AFLAC, Inc.*, U.S. Dist. Court, D.S.C., Case No. 05-2101) ($7 million).
- Certified nationwide class action involving claims of civil RICO and fraud against The Hartford Financial Services Group, Inc. and affiliates concerning the Hartford's structured settlements practices (*Spencer v. The Hartford Financial Services Group, Inc. et al.*, U.S. Dist. Ct., D.Conn., Case No. 05-cv-1681). (Preliminary approval of $72.5 million settlement granted, June 2010.)
- Certified pending multi-state class action against United American Ins. Co. and certain agents and business affiliates concerning the sale of limited benefit health insurance and related products (*Smith v. Collinsworth et al.*, Circuit Court of Saline County, Arkansas, Case No. CV2004-72-2).

Representative complex commercial and civil litigation matters:

- Prosecution of an action involving the sale of a health-care industry software program, resulting in a seven-figure settlement.
- Prosecution of an action involving the sale of a hair care business and proprietary information, resulting in a seven-figure verdict and permanent injunction.

- Successful defense and settlement (for a nominal sum) of an action by a major credit card brand against a card issuing bank, avoiding enforcement of a long-term contract predicated on price fixing and anticompetitive conduct.
- Prosecution of an action by a card issuing bank against an internet service provider and its merchant bank for improper credit card transactions, resulting in a seven-figure settlement.
- Successful defense and settlement (for a nominal sum) of an action for preliminary and permanent injunctive relief against a food equipment manufacturer alleging misappropriation of proprietary information and trade secrets as well as unfair competition.
- Established basis for liability against a clearing bank under UCC Article 8 predicated on collusion in the illicit conduct of a securities broker-dealer in a case of first impression in the State of New York.
- Successful defense and dismissal of an action against a broker-dealer by a pension fund for alleged fraud and regulatory violations in connection with a so-called "mini" tender offer.
- Secured writ of mandate – upheld on appeal – on behalf of the Philadelphia City Council against the Mayor of Philadelphia to enforce legislation.
- Successful defense of an action for a TRO and preliminary injunction seeking to enjoin construction of a multi-million dollar parking garage facility based on claims of interference with easement, real property and contractual rights.
- Successful prosecution of multiple actions by the Pennsylvania Insurance Commissioner on behalf of insurers in insolvency and liquidation proceedings.

Carole A. Broderick

Carole A. Broderick is a 1952 graduate of Cornell University where she received a Bachelor of Arts degree. She is a 1957 graduate of the University of Pennsylvania Law School, where she was awarded an L.L.B. and was a member of the *Law Review*. She has practiced before the Securities and Exchange Commission and actively participated in the prosecution and trial of complex securities and antitrust litigation. She is admitted to practice law in the Commonwealth of Pennsylvania.

Gary E. Cantor

Gary E. Cantor is a graduate of Rutgers College (B.A., *magna cum laude*, 1974, with highest distinction in economics) where he was a member of Phi Beta Kappa, and the University of Pennsylvania Law School (J.D. 1977), where he was a member of the Moot Court Board and the author of a law review comment on computer-generated evidence. He was admitted to the Pennsylvania bar in 1977. Since joining the Berger firm in 1977, he has concentrated on complex litigation, particularly securities litigation and securities valuations. Among other cases, Mr. Cantor has served as co-lead counsel in *Steiner v. Phillips, et al.* (Southmark Securities), Consolidated C.A. No. 3-89-1387-X (N.D. Tex.), which resulted in several payments

confirmation of a $20 million plan of reorganization for a psychiatric hospital company, and successful defense against a $30 million RICO suit.

In June 1991, Mr. Henkin returned to the Berger firm, and is again trying complex civil matters. Those matters involve areas such as stock fraud, class action personal injury, breach of contract and consumer fraud, and lender liability. In one of his cases, he achieved a $30 million recovery in a claimed 10 year verbal contract case.

Mr. Henkin is admitted to practice law in the Commonwealth of Pennsylvania and the State of Florida.

Peter R. Kahana

Peter R. Kahana is a Phi Beta Kappa graduate of Dickinson College (B.A. *magna cum laude* 1977) with a degree in Philosophy. Mr. Kahana graduated from Villanova Law School (J.D. 1980) where he was a member of the *Villanova Law Review*. He is admitted to practice in the Commonwealth of Pennsylvania and has clerked at the appellate court level for The Honorable Gwilym A. Price, Jr., of the Superior Court of Pennsylvania. Following his clerkship, Mr. Kahana joined the Berger firm in 1981. Mr. Kahana has diverse trial and appellate court experience in complex civil and class action litigation, and he has successfully represented both plaintiffs and defendants in numerous state and federal courts across the country. Mr. Kahana has also played a leading role in major antitrust and environmental litigation, including cases such as *In re Brand Name Prescription Drugs Antitrust Litigation* ($723 million settlement), *In re Ashland Oil Spill Litigation* ($30 million settlement), and *In re The Exxon Valdez* ($286 million compensatory damage and $5 billion punitive damage award – currently on appeal). In connection with his work as a member of the litigation team that prosecuted *In re The Exxon Valdez*, Mr. Kahana was selected to share the 1995 Trial Lawyer of the Year Award by The Trial Lawyers for Public Justice Foundation.

Mr. Kahana has also handled many nationwide, multi-state, and state class action cases involving relief for insurance policyholders, as well as consumers of other types of products or services, who have been victimized by fraudulent conduct or unfair business practices. In 2004, Mr. Kahana was named as the recipient (along with his co-counsel) of the Association of Trial Lawyers of America's Steven J. Sharp Public Service Award for his successful settlement ($20 million) of *Bergonzi v. Central States Health and Life Company of Omaha*, a case involving an insurer's refusal to pay for health insurance benefits to thousands of cancer victims for chemotherapy and radiation treatment. The award is presented annually to those attorneys whose cases tell the story of American civil justice and help educate state and national policy makers and the public about the importance of consumers' rights.

In June 2006, Mr. Kahana was selected as a "Pennsylvania Super Lawyer" in a balloting and blue ribbon panel review process designed to identify attorneys in Pennsylvania who have

attained a high degree of peer recognition and outstanding professional achievement. Five percent of the lawyers in Pennsylvania are named Super Lawyers.

Michael J. Kane

Michael J. Kane graduated from Rutgers University (B.S. 1991) and Ohio Northern University School of Law, with distinction (1994), where he was a member of the Law Review. Mr. Kane is admitted to practice in Pennsylvania and various Federal Courts.

Mr. Kane joined Berger & Montague's antitrust practice in 2005. Prior to joining Berger & Montague, Mr. Kane was affiliated with Mager, White & Goldstein, LLP where he represented clients in complex commercial litigation involving alleged unlawful business practices including: violations of federal and state antitrust and securities laws, breach of contract and other unfair and deceptive trade practices. Mr. Kane has served in prominent roles in high profile antitrust, securities, and unfair trade practice cases filed in courts around the country. Recently, Mr. Kane served as co-lead counsel in *In re Microsoft Corporation Massachusetts Consumer Protection Litigation* (Mass. Super. Ct., Middlesex Cty.), in which plaintiffs alleged that as a result of Microsoft Corporation's anticompetitive practices, Massachusetts consumers paid more than they should have for Microsoft's operating systems and software. The case was settled for $34 million. Other cases in which Mr. Kane has had a prominent role include:

In re Currency Conversion Fee Antitrust Litig. (S.D.N.Y.);
In re Nasdaq Market Makers Antitrust Litig. (S.D.N.Y);
In re Compact Disc Antitrust Litig. (C.D. Cal.);
In re WorldCom, Inc. Securities Litig. (S.D.N.Y);
In re Lucent Technologies, Inc. Securities Litig. (D.N.J.);
City Closets LLC v. Self Storage Assoc., Inc. (S.D.N.Y.);
Rolite, Inc. v. Wheelabrator Environmental Sys. Inc., (E.D. Pa.);
Amin v. Warren Hospital (N.J. Super.).

Lawrence J. Lederer

Lawrence J. Lederer has concentrated in complex commercial litigation for over 20 years, particularly in the securities field.

Mr. Lederer has substantial experience representing state government entities, public pension funds and other institutional investors in securities litigation. For example, Mr. Lederer was one of three co-lead counsel for lead plaintiff State Teachers Retirement System of Ohio which obtained a $475 million recovery in the securities class action litigation *In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation,* Master File No. 07-cv-9633 (JSR) (DFE) (S.D.N.Y.). This case involved Merrill Lynch's disclosures and financial exposures concerning

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

OSHONYA SPENCER, CHARLES STRICKLAND, and DOUGLAS MCDUFFIE, on behalf of themselves and others similarly situated, Plaintiffs, v. THE HARTFORD FINANCIAL SERVICES GROUP, INC., HARTFORD LIFE, INC., HARTFORD LIFE INSURANCE COMPANY, HARTFORD ACCIDENT AND INDEMNITY COMPANY, HARTFORD CASUALTY INSURANCE COMPANY, HARTFORD INSURANCE COMPANY OF THE MIDWEST and HARTFORD FIRE INSURANCE COMPANY, Defendants.	)	No. 3:05CV1681 (JCH) August 16, 2010

**DECLARATION OF CARL S. KRAVITZ, ESQ.
ON BEHALF OF ZUCKERMAN SPAEDER LLP
IN SUPPORT OF CLASS COUNSEL'S MOTION FOR AN AWARD
OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

I, CARL S. KRAVITZ, under penalty of perjury and subject to the provisions of 28 U.S.C. § 1746, declare as follows:

1. I am a partner at Zuckerman Spaeder LLP ("Zuckerman"). I am submitting this declaration on behalf of Zuckerman in support of Class Counsel's motion for attorneys' fees and reimbursement of expenses in connection with services rendered by my firm in the above-captioned class action. Zuckerman is one of four firms appointed by the Court to serve as Class Counsel on behalf of the certified class. I have attached a description of my firm (excerpt from

promotional material) and biographies from our website for the three principal lawyers who worked on this matter, myself, Ellen Marcus, and Caroline Reynolds.

2. Zuckerman does both hourly and plaintiffs' side class action work. The firm has standard hourly rates that it charges clients in the market place throughout the country (including currently a case in Connecticut) and clients routinely pay those hourly rates for the firm's legal services. The firm reviews those hourly rates at the beginning of each calendar year, although sometimes they remain unchanged. The firm's standard hourly rates for 2010 have been used to determine the dollar value of the firm's time – namely, its lodestar – in this case. I am familiar with the rates that lawyers in Washington, D.C. charge and Zuckerman's standard rates are reasonable. Our rates, to the best of my knowledge, are competitive with our peers in Washington, D.C. and generally less than what a firm providing comparable services in New York would charge. Moreover, in recent cases, the firm's standard rates (in effect at the time) have been accepted for the award of fees under the fee shifting provision of ERISA (U.S. District Court in Maryland) and in a major bankruptcy case (Bankruptcy Court in Delaware). We have also submitted our lodestar, again based on our standard rates in effect at the time, as a check in common fund class action cases (*e.g.*, U.S. District Courts in Maryland, Ohio and Tennessee), where the percentage fee awarded led to us receiving a multiple of our lodestar.

3. The total number of hours expended by my firm on this litigation is 3,519. The total lodestar amount based on the firm's current standard hourly rates is $1,769,502.00.

4. The following schedule is a summary of the amount of time spent by each attorney and paralegal of my firm who was involved in this litigation, and the lodestar calculation based on my firm's current standard hourly billing rates. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm, which

are available to the Court. Time expended in preparing this application for fees and expenses has not been included in this request.

TOTAL LODESTAR

ITEM	AMOUNT
Attorney Time	$1,736,812.50
Paralegal Time	$32,689.50
GRAND TOTAL	**$1,769,502.00**

BREAKDOWN OF LODESTAR

Timekeeper	Title	Hours	Current Hourly Rate[1]	Lodestar
Caroline E. Reynolds	Associate	1225.20	$435.00	$532,962.00
Carl S. Kravitz	Partner	961.30	$750.00	$720,975.00
Ellen D. Marcus	Partner	622.90	$525.00	$327,022.50
W. Carey Doolan	Paralegal	153.10	$195.00	$29,854.50
Kurt M. Reiser	Staff Attorney	88.00	$290.00	$25,520.00
David H. Saffern	Staff Attorney	87.80	$280.00	$24,584.00
Meghan P. Smith	Staff Attorney	75.00	$290.00	$21,750.00
Namrata Mohanty	Staff Attorney	66.10	$240.00	$15,864.00
Anika N. Rennie	Contract Attorney	56.70	$250.00	$14,175.00
Nina J. Falvello	Staff Attorney	49.70	$265.00	$13,170.50
Laura Jo Barta	Staff Attorney	45.00	$350.00	$15,750.00
Sloan, Tiffani	Contract Attorney	26.50	$250.00	$6,625.00
Crooks, Jackie P.	Paralegal	13.50	$210.00	$2,835.00
Sepaass Shahidi	Contract Attorney	13.00	$265.00	$3,445.00
Norman L. Eisen	Partner	12.80	$700.00	$8,960.00
Kimberly Gainey	Staff Attorney	11.70	$285.00	$3,334.50
Melissa M. Ihnat	Staff Attorney	10.70	$250.00	$2,675.00
	Total	**3,519.00**	**N/A**	**$1,769,502.00**

5. Zuckerman entered this case as co-counsel in December of 2006. Since that time, Zuckerman has participated, as a team with co-counsel, in all major aspects of the case, including by way of illustration, drafting numerous pleadings and briefs, taking or defending depositions, assisting on or taking the lead on other discovery matters (including expert discovery), reviewing documents and developing the facts and theories for the case, preparing settlement positions and taking part in mediation, and drafting and negotiating the settlement documents.

6. Zuckerman expended a total of $248,614.78 in unreimbursed expenses in connection with the prosecution of this litigation. These expenses, from the time Zuckerman joined the case as co-counsel through the present, are categorized in the following chart.

Category	Amount
Class Notice Expenses	$24,480
Deposition Expenses (Court Reporting Fees, Transcripts)	$20,290.72
Photocopying	$16,510.00
Telephone / Facsimile	$1,242.43
On-Line Legal Research	$29,325.94
Travel Expenses (Transportation / Meals/ Hotels)	$30,564.70
Postage/ Messengers	$1,725.21
Expert Witness / Consulting Fees	$122,925.19
Other (Overtime, Service of Process, Document Processing and Production, Binding, Court Costs)	$1,550.59
TOTAL	**$248,614.78**

7. The expenses Zuckerman incurred pertaining to this case are reflected in the books and records of the firm. These books and records are prepared from expense vouchers and check records and are an accurate record of the expenses incurred.

I declare under penalty of perjury that the foregoing is true and correct.

[1] For timekeepers who have left the firm, Zuckerman calculated the lodestar based on the timekeeper's last rate while still employed at the firm.

Executed this 16th day of August, 2010.

Carl S. Kravitz

CARL S. KRAVITZ, ESQ.

ZUCKERMAN SPAEDER LLP

ABOUT THE FIRM

Zuckerman Spaeder is one of the nation's preeminent litigation firms with over 90 attorneys in Washington, D.C., Wilmington, Baltimore, New York and Tampa, that provides counsel to corporations and individuals in commercial and complex litigation, as well as criminal investigations. The firm, in additional to serving as defense counsel in an array of matters, has a vibrant plaintiff's side practice, with an emphasis on class action cases. When *The American Lawyer* named Zuckerman Spaeder a finalist for "Litigation Boutique of the Year" in 2009, it called the firm "A haven for clients in trouble." Clients turn to Zuckerman Spaeder to resolve their most challenging legal issues because of our dedicated, experienced attorneys. With significant experience litigating in state and federal courts nationwide, Zuckerman Spaeder is well equipped to undertake complex, high-stakes litigation. The firm counts among its ranks many of the nation's leading lawyers, who include former federal prosecutors and public defenders, as well as attorneys who have served in congressional offices and federal agencies.

The firm has received consistent and long-standing recognition as experienced and sophisticated litigators in high-stakes litigation. For example, six of our lawyers are Fellows of the *American College of Trial Lawyers*, an extremely selective organization that represents less than 1 percent of trial attorneys. In the 2010 edition of *Chambers USA: America's Leading Lawyers for Business*, Zuckerman Spaeder LLP is featured as the only top-ranked firm in the District of Columbia in the White-Collar Crime and Government Investigations category. And with four Zuckerman Spaeder partners ranked in this section, no other law firm (of any size) has more individual attorneys recognized in this category. The firm is also ranked in the Bankruptcy/Restructuring category for the District of Columbia and in the General Commercial Litigation category for Maryland. In addition to these firm-wide rankings, 13 Zuckerman Spaeder attorneys were recognized individually. *Chambers USA* described Zuckerman Spaeder in the guide as follows: "This premier litigation boutique is highly respected for its white-collar criminal defense capabilities. The firm comprises a deep bench of talented lawyers with particular strength representing individuals in government and regulatory investigations involving securities, tax fraud and antitrust issues among others."

In 2010, 24 partners from Zuckerman Spaeder were selected by their peers for inclusion in *The Best Lawyers in America 2011* in a variety of practice areas. Fifteen attorneys were listed for white-collar criminal defense, eleven for commercial litigation, six for "bet-the-company litigation," and others were listed for alternative dispute resolution, bankruptcy, professional malpractice, real estate, FDA law, Native American law, insurance, legal malpractice and non-white-collar criminal defense. *The National Law Journal* named the firm to its 2010 "Midsize Hot List," an annual recognition of U.S. law firms with 50-150 attorneys. According to *The National Law Journal*, the 2010 Midsize Hot List includes firms that "experienced a string of successes and that showed innovative ways to run their operations despite the economy." Also in 2010, Paula M. Junghans, a partner in the firm's Washington, DC office, received the 2010 Tax Excellence Award from the Taxation Section of the Maryland State Bar Association (MSBA). MSBA presents this award annually to an attorney, law school professor, public official, or member of the judiciary who exemplifies professional, academic, or public service excellence, integrity, compassion, and commitment in the areas of practicing, teaching, or developing tax law or tax policy.

Legal Times has named several Zuckerman Spaeder attorneys to its "Leading Lawyers" series in the areas of business litigation (2007), criminal defense (2006), and food and drug

law (2005). Other honors our partners have received include being named "Top Corporate Litigation Lawyer" by *Washington Business Journal* in 2006, being named among the "Top Fifteen Black White-Collar Criminal Defense Attorneys" by *Corporate Crime Reporter* in 2007, and being featured in *The New York Law Journal* for the "Top Trials of 2005". Our attorneys have also received international recognition, with seven partners listed in the 2008 edition of *The International Who's Who of Business Crime Lawyers*.

Carl S. Kravitz has been included in the *Super Lawyers* ranking for Washington, D.C., from 2008 through the present. He has received an AV® Rating from Martindale-Hubbell, which recognizes "the highest level of professional excellence." In addition, the *Legal Times* featured Mr. Kravitz in 2007 in an article on ten of the Washington, D.C., area's top business litigation attorneys.

In addition to the above-mentioned recognitions, the firm and its attorneys have also been awarded for our pro bono work. For example, in 2008, Ellen D. Marcus received the Maryland Pro Bono Service Award from the Pro Bono Resource Center of Maryland, honoring her work in recovering damages for Maryland day laborers who were not paid for clean-up work they did on the Gulf Coast in the wake of Hurricane Katrina. In 2010, the firm was awarded 2010 Pro Bono Law Firm of the Year Award in the category for large firms by the District of Columbia Bar, the second largest unified bar association in the United States. With approximately 50 partners, counsels, and associates in its Washington, DC office, Zuckerman Spaeder was chosen by the DC Bar from among much larger DC-based law firms, and DC branch offices of multi-national firms. The DC Bar singled out Zuckerman Spaeder for this year's Pro Bono Law Firm of the Year Award for the firm's "outstanding pro bono work and many hours of service" at no charge to low-income clients in metropolitan Washington, DC. At a time of considerable economic distress in the nation's capital and elsewhere, in 2009 Zuckerman Spaeder attorneys increased their already significant pro bono commitment by almost 60 percent. Attorneys devoted most of their pro bono time to direct legal representations of low-income persons and organizations that serve persons of low-income in the community where we live and work. In 2009 the firm helped an individual accused of capital murder avoid a death penalty charge, a Rwandan genocide survivor secure political asylum after he was tortured by government agents for testifying against those accused of murdering his family, early childcare providers in Anacostia seek increases in childcare subsidies, and grandmothers gain custody of their grandchildren. A long-time supporter of the Legal Aid Society of the District of Columbia, Zuckerman Spaeder won precedent-setting appeals on behalf of the Legal Aid Society and its clients. After helping to establish a pro bono program in the bankruptcy court in 2006, the firm continues to provide pro bono representation to individuals in bankruptcy proceedings. The firm also puts its legal ethics experience to use in advising legal service providers including the Public Defender Service of the District of Columbia.

Over 75% of Zuckerman Spaeder's work involves complex civil and commercial litigation. This work includes some of the most noteworthy nationwide securities litigation, representation of plaintiff's classes in a variety of cases, representations of State Attorneys General in pursuit of claims arising out of corporate misconduct, litigation of complex business disputes and legal malpractice cases, as well as representation of creditors' committees and litigation trusts in suits to recover or increase the assets available to satisfy the claims of creditors.

Our cases often involve multiple parties, complex business or accounting issues, millions of pages of documents, and dozens of witnesses. Our opponents are frequently represented by some of the largest and most prominent national firms.

ZUCKERMAN SPAEDER LLP

CARL S. KRAVITZ

Partner
Washington, DC

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fax: 202.822.8106
ckravitz@zuckerman.com

Carl S. Kravitz litigates complex civil cases for both plaintiffs and defendants at both the trial and appellate levels. Mr. Kravitz has obtained many multimillion dollar recoveries for plaintiffs and groups of plaintiffs, including recoveries exceeding $10 million and one of nearly $400 million. His most recent victories for plaintiffs have been in shareholder litigation involving national banks and in the representation of individuals wrongly convicted of serious crimes based on evidence fabricated by a state crime lab. Mr. Kravitz has also led the defense of several significant matters; he recently obtained a dismissal for his client in the Homestore Securities litigation pending in the Central District of California.

Mr. Kravitz is chairman of Zuckerman Spaeder's litigation department and has been practicing law in Washington, DC since January 1982. He has concentrated his practice in the areas of bad faith insurance litigation, fraud litigation, civil rights, products liability, securities fraud, corporate governance, fraudulent conveyances, mass torts, toxic torts, professional negligence, wrongful death, partnership disputes, ethical requirements for lawyers, and general commercial issues. He has tried cases and argued appeals in state and federal courts around the country.

He has been a frequent faculty member at the National Institute of Trial Practice and other trial practice programs. In April of 2007, *Legal Times* named Mr. Kravitz a "Leading Lawyer" in business litigation.

Before beginning the private practice of law, Mr. Kravitz clerked for Judge Stephen Reinhardt, United States Court of Appeals for the Ninth Circuit.

PRACTICES

Civil Litigation
Class Action
Insurance
Plaintiffs' Litigation
Public Client
Securities Litigation

BAR ADMISSIONS

District of Columbia
Massachusetts
New York
West Virginia

EDUCATION

Columbia Law School
J.D., 1980, Harlan Fiske Stone Scholar
Harvard University
A.B., 1977

ZUCKERMAN SPAEDER LLP

ELLEN D. MARCUS

Partner
Washington, DC
202.778.1815
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emarcus@zuckerman.com

Ellen D. Marcus represents both plaintiffs and defendants in complex civil litigation. Her clients have included lawyers facing malpractice claims and disciplinary proceedings, a Native American tribe, and plaintiffs in cases against large insurance companies for fraudulent sales practices. Many of Ms. Marcus's cases are in federal and state court in Virginia, including the fast-paced U.S. District Court for the Eastern District of Virginia, where she previously clerked.

Ms. Marcus has written articles on topics ranging from electronic document retention to corporate governance. She also maintains an active pro bono practice. For her work on behalf of a group of day laborers, Ms. Marcus was awarded the 2008 Pro Bono Service Award from the Pro Bono Resource Center of Maryland.

Before joining Zuckerman Spaeder LLP, Ms. Marcus was an associate at Debevoise & Plimpton in Washington, DC. She previously clerked for Judge Leonie M. Brinkema of the U.S. District Court for the Eastern District of Virginia. Ms. Marcus received her law degree from the Columbia School of Law, where she was a senior editor for the *Columbia Law Review* and a Harlan Fiske Stone Scholar. She received her bachelor's degree in political science, magna cum laude, from Amherst College.

Experience

- Represented a Native American tribe in a dispute concerning the Indian Gaming Regulatory Act.
- Represented a client who prevailed against legal malpractice claims in the district court and on appeal to the United States Court of Appeals for the Fourth Circuit.
- Represented a victim of a "foreclosure rescue" scam in the District of Columbia Court of Appeals, who was able to keep her home.
- Recovered unpaid wages and additional damages for 46 Maryland day laborers who traveled to the Gulf Coast after Hurricane Katrina to do clean-up and recovery work and who were not paid for their work by their employers.
- Represented clients who obtained dismissals in a number of disciplinary proceedings brought by Bar Counsel and the IRS's Office of Professional Responsibility.

PRACTICES

Civil Litigation
Class Action
Legal Profession & Ethics
Native American
Plaintiffs' Litigation
Securities Litigation

COURT ADMISSIONS

U.S. Bankruptcy Court, Eastern District of Virginia
U.S. Court of Appeals, 4th Circuit
U.S. District Court, District of Columbia
U.S. District Court, Eastern District of Virginia
U.S. District Court, Western District of Virginia

BAR ADMISSIONS

District of Columbia
Virginia

EDUCATION

Columbia Law School
J.D., 1999, Harlan Fiske Stone Scholar, Senior Editor, *Columbia Law Review*
Amherst College
B.A., 1996, magna cum laude

LANGUAGES

Spanish

MEMBERSHIPS

Member, Federal Bar Association, Northern Virginia Chapter

ZUCKERMAN SPAEDER LLP

CAROLINE E. REYNOLDS

Associate
Washington, DC

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creynolds@zuckerman.com

Caroline E. Reynolds focuses her practice on complex civil litigation and white collar criminal defense. She has represented both corporations and individuals in government and internal investigations involving allegations of securities and accounting fraud. Her civil experience includes matters involving insurance coverage, bad faith insurance claims, federal Indian law, and civil rights.

Prior to joining Zuckerman Spaeder, Ms. Reynolds was an associate in the Washington, DC office of Covington & Burling LLP. There she represented a major financial institution in multi-district litigation and a government investigation stemming from a complex securities fraud scheme, among other representative matters.

Ms. Reynolds clerked for the Honorable Keith P. Ellison, in the United States District Court for the Southern District of Texas, from 2003 to 2004.

PRACTICES

Civil Litigation
Securities Litigation

COURT ADMISSIONS

U.S. District Court, District of Columbia

BAR ADMISSIONS

District of Columbia
New York

CLERKSHIPS

U.S. District Court, Southern District of Texas

EDUCATION

Yale Law School
J.D., 2002, Senior Editor, Yale Journal of International Law
University of Chicago
M.A., 2004
Colgate University
B.A., 1998

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

OSHONYA SPENCER, CHARLES STRICKLAND and DOUGLAS MCDUFFIE, on behalf of themselves and all others similarly situated,	)	
Plaintiffs,	)	
v.	)	No. 3:05CV1681 (JCH)
THE HARTFORD FINANCIAL SERVICES GROUP, INC., HARTFORD LIFE, INC., HARTFORD LIFE INSURANCE COMPANY, HARTFORD ACCIDENT AND INDEMNITY COMPANY, HARTFORD CASUALTY INSURANCE COMPANY, HARTFORD INSURANCE COMPANY OF THE MIDWEST and HARTFORD FIRE INSURANCE COMPANY,	)	
Defendants.	)	August 16, 2010

DECLARATION OF CO-COUNSEL RICHARD B. RISK, JR.

Richard B. Risk, Jr., does declare, under penalty of perjury, as follows:

1. I am principal of the Risk Law Firm, a solo practice, admitted to the bar in Oklahoma and to all three federal court districts and all state courts in Oklahoma, and to this Court *pro hac vice*. I am submitting this Declaration in support of Class Counsel's motion for attorneys' fees and reimbursement of expenses in connection with the services rendered and expenses incurred by Risk Law firm.

2. My firm's nominal expenses were advanced by the three other Class Counsel firms and, thus, are incorporated in their respective claims for cost reimbursement.

3. Risk Law firm has acted, and was appointed by the Court, as Co-Class Counsel. The firm's compensation for services rendered was wholly contingent on the success of this litigation, and was totally at risk.

4. The Risk Law Firm is nationally recognized for structured settlements, as is reflected in the firm resume attached as Exhibit "A."

5. My law practice is unique. It is mostly transactional, dealing with a few sections of the Internal Revenue Code pertinent to structured settlements, qualified settlement funds and the taxation of damages. In my practice, I review proposed settlement documents for other attorneys across the country, on behalf of their clients, making recommended revisions often resulting in potential tax savings of hundreds of thousands of dollars. I serve as trustee-administrator for most qualified settlement funds that I set up, submitting to local jurisdictions where the personal physical injury and environmental tort claims are being prosecuted, usually handling very large settlement sums in seven and eight figures. I am sometimes requested to write tax opinions for these clients.

6. I have personally been involved in the establishment and administration of more than 250 qualified settlement funds, which would rank as one of the highest numbers in the country, if not the highest. I have written more than 100 articles published in nationally distributed periodicals, and I am often cited in other articles by tax law commentators. I have chaired tax panels for the education seminars of the Society of Settlement Planners, of which I am a founding member. I have testified before the Internal Revenue Service on proposed regulations affecting taxation of damages and before the National Association of Insurance Commissioners on a proposed model act pertaining to inappropriate solicitation activities by insurance agents.

7. I am licensed in the State of Oklahoma, which allows the practice of transactional law in other jurisdictions, unless prohibited by that jurisdiction. Consequently, I have handled cases in jurisdictions ranging from Anchorage, Alaska, to the U.S. Virgin Islands and from Buffalo, New York, to Los Angeles, California.

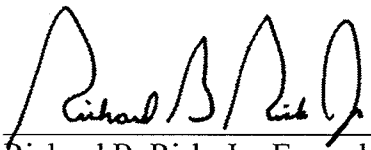
8. I spent conservatively 599.1 hours on this case, excluding time spent on attorney fee issues. My hourly rate is $450, which is my standard rate for non-contingency work that comprises the majority of my practice.

9. As Co-Counsel, I participated in every phase of this litigation from its inception, as more fully described in the Declaration of David S. Golub, Esq. In brief, our firm, together with co-lead counsel, investigated plaintiffs' claims prior to filing the complaint, prepared the initial complaint and amended complaints, contested defendants' motion to dismiss, conducted discovery, including promulgating and responding to written and document discovery and reviewing and analyzing same, conducted depositions, prepared witnesses for and defended depositions, prepared class certification papers, contested defendants' petition for permission to appeal in the United Court of Appeals for the Second Circuit, retained experts and supervised the production of expert reports, analyzed defendants' expert reports, defended expert depositions, prepared for the depositions of defendants' experts, participated in all court hearings and proceedings, negotiated the settlement of this action at two (2) mediations sessions, prepared settlement documents and the motion for preliminary approval, and is continuing to supervise the class notice and administration process.

10. My contribution to this case was also unique among the four firms involved, as my intimate knowledge of structured settlements and insurance industry practices had direct application to this case. While the attorneys in the other law firms have far greater experience in

class action litigation, the gravamen of this case was built on egregious structured settlement practices by the defendants, and that is where I contributed the most. I originally identified the several potential causes of action to be brought against The Hartford Financial Services Group and its affiliates, and drafted the original Complaint, which then underwent several generations of revisions reflecting the contributions of the other firms as they joined this team. I also educated other co-counsel on the tortious practices of the defendants, better enabling them in discovery. The majority of my participation in this case was a direct application of my knowledge and experience.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.



Richard B. Risk, Jr., Esq., phv0785
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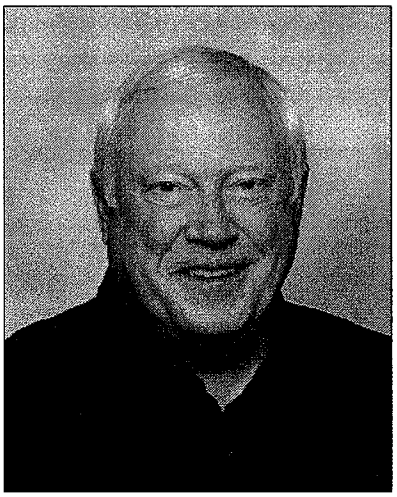
EXHIBIT A

RISK LAW FIRM

A nationwide practice of helping injury victims through their attorneys

Biography: Richard B. Risk, Jr.



Dick has devoted his law practice to issues relating to settlement planning. He works with attorneys of injury victim claimants to help their clients make wise financial decisions to rehabilitate themselves from their injuries, make adjustments in their life style necessitated by their injury, and refocus their life goals. His services are engaged by plaintiffs' attorneys and structured settlement producers across the country to create and administer qualified settlement funds (QSFs), advise on tax issues relating to settlements, and serve as counsel or expert witness in litigation to secure the rights of injury victims and their fair and ethical treatment. He is considered an authority nationally on structured settlement law.

He has written court documents establishing more than 250 qualified settlement funds and has personally administered the majority of them. He frequently gets invited to oversee the resolution of personal physical injury and environmental litigation with very high damage amounts. One attorney client wrote: *"A negligent defendant responsible for causing injury to our clients should not be able to dictate the terms of a structured settlement. Qualified settlement funds are a vehicle for the plaintiff to take control of the settlement process. Dick Risk has assisted us and several of our clients in navigating the complex waters of QSFs."*

He has had several articles published in law journals in multiple states and for 11 years (1996-2007) edited and published the nationally acclaimed newsletter, *Structured Settlements*™. He has testified before the Internal Revenue Service on proposed tax regulations, before the National Association of Insurance Commissioners on proposed model rules, and has been a faculty member for numerous professional education seminars throughout the country.

Dick is a founder and director of the Society of Settlement Planners (SSP), a national public policy and educational organization formed in 2001 and dedicated to assisting injury victims, claimants and attorneys in resolving their legal financial claims, and advocating the injury victim's right to choose settlement planning advisors and financial and guarantee providers. He has been overall coordinator of the SSP's annual educational seminar for several years and, as one part of each seminar, has moderated tax issues panels, including as panelists senior officials of the U.S. Treasury Department and the Internal Revenue Service. He also chaired the development and was co-author of the Standards of Professional Conduct for Settlement Planners. The first president of the SSP said in a message to the membership: *"Dick has been a leader in the battle for plaintiffs' rights in this industry. ... Indeed, a major portion of this industry's movement toward accepting plaintiff specialists in the last few years can be credited to his efforts."* The SSP has recognized him more than once with special awards for his "tireless work and valuable contributions" and in 2010 bestowed on him the honor of being its first and only Life Member.

He consulted with Texas Tech University faculty in the development of the Registry of Settlement Planners' educational component, and was among the first 10 graduates of the program, receiving the Registered Settlement Planner (RSP) designation. He is a member of the American Bar Association (ABA), American Association for Justice (AAJ), the Oklahoma Bar Association (OBA), and past barrister member of the American Inns of Court.

Prior to becoming an attorney, Dick served in the Senior Executive Service of the United States in a sub-Cabinet position as a bureau head in the administration of President Reagan. He was an executive with two publicly held corporations, and served as a staff officer, general's aide and commander in the U.S. Air Force during the Vietnam era, receiving multiple decorations for meritorious service and the Air Force Outstanding Unit Award for a squadron that he commanded in Thailand.

He is a 1963 graduate of Oklahoma State University, receiving a B.A. in Radio & Television, with postgraduate studies at Boston University (Public Communications), the University of Tulsa (Business Administration and Law) and the University of Oklahoma (Public Administration). He received a juris doctorate from the University of Tulsa College of Law in 2001 and is admitted to practice law in all federal and state jurisdictions in Oklahoma. He is certified by the Supreme Court of Oklahoma as a mediator. He and his wife Carroll have two adult children, two grandchildren, and divide their time between homes in Tulsa and St. Petersburg, Florida.■

RISK LAW FIRM

A nationwide practice of helping injury victims through their attorneys

Endorsements

"A negligent defendant responsible for causing injury to our clients should not be able to dictate the terms of a structured settlement. Qualified Settlement Funds are a vehicle for the Plaintiff to take control of the settlement process. Dick Risk has assisted us and several of our clients in navigating the complex waters of QSFs. He has educated us on the benefits of such funds, prepared opinion letters and drafted court documents to establish the fund. Dick's advice and work is cost effective and delivered on time. His capable and professional work has allowed us to maximize recoveries for many clients and I am pleased to recommend him to my colleagues around the country."
Robert F. Spohrer, Esq. — Trial Lawyer, Member of Inner Circle of Advocates, Listed in *Best Lawyers in America*, Spohrer Wilner Maxwell & Matthews, Jacksonville, Florida

"I have been representing injured victims or the families of deceased victims for the past 29 years. During this period, I have had numerous occasions to consult with professionals to assist in protecting the assets recovered as a result years of hard work of hard work. My involvement with Dick Risk in a traumatic birth trauma case involving a severely injured infant was an eye-opening experience. Dick was a professional beyond reproach. His knowledge of the law concerning QSFs and the details involved in protecting the assets of this young person were invaluable. I thought I was somewhat knowledgeable in this area; how wrong I was. Dick's ability to explain the specifics gave me a clear understanding of how easily things can go wrong if not handled by someone with Dick's abilities and knowledge."
George F. McNally, Esq. — Past President, Nevada Trial Lawyers Association, The McNally Law Firm, Ltd., Reno, Nevada

"As Montana's Insurance Commissioner and a member of [the National Association of Insurance Commissioner's] executive committee, I will continue to work with folks like Dick Risk to secure a fair new model law and make sure existing laws are enforced."
John Morrison, J.D. —Auditor, Securities Commissioner and Insurance Commissioner, State of Montana, Helena, Montana

"I want to thank you for all your advice, guidance and recommendations in connection with this settlement. As you know this was a very complex case involving six wrongful deaths and over 100 beneficiaries, most of whom resided outside the United States. Many of these beneficiaries were minors who lived in countries where there were no laws which provided clear guidance on how to handle the distributions in those countries. Additionally we received the settlement proceeds in several installments over many months. By setting up a Qualified Assignment Trust and thru the use of annuities we were able to protect the rights of all the beneficiaries. We appreciate the professional manner in which you handled this process. We could not have navigated thru this complex maze without your assistance."
Robert A. Krause — The Spence Law Firm, LLC, Jackson, Wyoming

"Dick has distinguished himself by becoming the single-most prolific thinker and writer on subjects and topics germane to the structured settlement industry ... widely regarded as the industry's most zealous champion of consumer rights in the settlement process ... instrumental in a project designed to have the Treasury Department issue guidance that would enable more injury victims to protect themselves in all types of settlements."

Jack L. Meligan — President, Settlement Professionals, Inc, Founding President, Society of Settlement Planners, West Linn, Oregon

"Here are the articles we've referred to in the past [on IRC § 130 qualified assignments from single-claimant qualified settlement funds]. The last page is just the first page of a 46-page law review article by Richard Risk. [Three of the four articles cited by the IRS official in a letter to a requestor for tax guidance were written by Risk.]"
Terrance McWhorter — Office of Associate Chief Counsel (Income Tax and Accounting), Internal Revenue Service, U.S. Department of the Treasury, Washington, DC

"Mr. Risk is one of the leading advocates and a pioneer in a nationwide effort seeking the protection of the rights of injured claimants in settling their claims. ... On a daily basis, he is educating the public, researching issues and providing policy input. Mr. Risk is a tireless advocate for the consumer."
Bruno R. Mazzotta — Vice President and Director, Society of Settlement Planners, Structured Settlement Advisors, LLC, St. Louis, Missouri

"A relatively new concept is the qualified settlement fund. It really takes the insurance company who is paying the money into the settlement out of the picture and eliminates some of the abuses that we had where insurance companies come in and want to fund this themselves. It's sort of like they're getting back what they're paying out. I think a plaintiff's attorney does a disservice to his client when he allows the insurance company to do that. After all, if they are telling you they want to pay so much money, then what difference should it make to them where it goes, if they are truly wanting to resolve the matter? It's something that we lawyers need to be aware of. We need to have the benefit of those who are at the cutting edge of these qualified settlement funds, such as Dick Risk."
Edwin W. Ash, Esq. — Fellow of the American College of Trial Lawyers, Listed in *Best Lawyers in America*, Ash Law Firm, Tulsa, Oklahoma

"Our office has come to use the process called a qualified settlement fund. Over these years of working with insurance carriers or large companies, when it comes time to settle and if the choice is made to structure, they want to continue their participation in the business of my client. Very frankly, I've resented that. With the qualified settlement fund, it allows me and [the broker I select] to manage the settlement, without benefit of interference from a defendant or his carrier, to offer a high quality settlement to my client. ... After all, my duty continues in that phase and even after the settlement and, I may add, Mr. Risk has that same duty and it, too, continues after the settlement is made. [The QSF] has been a great asset in the handling of our cases. It gets the defendant away from the negotiating table at the time he should leave, which is the time he places money out there. I have been very satisfied with it, and it has all worked to the benefit of our client.
James E. Frasier, Esq. — Past President, Oklahoma Trial Lawyers Association, Frasier Frasier & Hickman, LLP, Tulsa, Oklahoma

"We were asked to assist the plaintiff law firm in settling a case ($5.0+ million) that was on appeal involving a blind and disabled minor child. The defendant, the State of California, wanted out quickly and was not being cooperative. The State of California didn't want anything to do with a structured settlement. The child's mother wanted to insure her daughter would be taken care of for life and not outlive her money. The plaintiff attorneys also wanted to take advantage of the tax-deferred benefits from structuring their fees to both themselves and their firm. We presented these settlement needs to Richard Risk and he promptly explained to us that a

Qualified Settlement Fund (QSF) was the vehicle that would allow us to fulfill each party's request. First, for the State of California, the QSF would allow them to cash-out quickly and with minimal paperwork. Second, for the plaintiff, the QSF would allow the mother to preserve the ability of her daughter to receive the lifetime tax-free benefits from a structured settlement. Third, for the plaintiff attorneys, the QSF would allow the attorneys to preserve their ability to structure their fees (to both themselves and their firm) and receive significant tax-deferred benefits. Mr. Risk walked us through the QSF process, providing the necessary documents, answering all of the parties' questions (promptly and accurately) and was always available for last-minute adjustments. I would not hesitate to use him in the future."
Robert W. Johnson — Forensic Economist, President, Robert W. Johnson & Associates, Los Altos, CA

"As a Director and Founding Member of the Society of Settlement Planners, a non-profit organization dedicated to assisting injury victims, claimants and attorneys in resolving their legal financial claims, and advocating the injury victim's right to choose settlement planning advisors and the concomitant financial and guarantee providers, I can proudly proclaim Richard "Dick" B. Risk, Jr., Esq., as the consummate consumer advocate for the members of our organization and those we serve. I have worked closely with Dick on a host of legal issues and on a wide variety of cases. Without exception, I have been impressed with Dick's consistent and persistent tenacity in protecting the consumers' rights. I can tell you that there are a lot of people claiming to be experts on 468B QSFs in this country, but Dick is truly at the very top of the list. Dick has been a valuable resource to many of my dearest clients and a good friend of mine for many years now. All of us on the plaintiff side should be glad Dick is on our side and so willing to share his knowledge to help defeat the defense-imposed abuses of the structured settlement industry."
Charles J. Derenne — President (2006) and Director, Society of Settlement Planners, Premier Settlements, Milwaukee, Wisconsin

"Thanks for your help. I could not have done it without you. ...You are worth every penny."
Joseph W. Tombs, J.D. – Partner, Amicus Financial Advisors, LLP, Lubbock, Texas, and President, Registry of Settlement Planners (RSP)

"Dick, you are a gem. I've never sounded smarter [referring to letter drafted by Risk for the attorney].
Steven B. Goff, Esq. — Trial Lawyer, River Falls, Wisconsin

"We'll do it again soon, I'm sure. It was great to work with someone of your standing and passion."
Paul K. Isaac, J.D., President, Settlement Professionals of Buffalo (New York)

"Your input on our recent settlement with a QSF was invaluable. I look forward to working with you on future cases."
Stephen E. Barnes, Esq. — Trial Lawyer, Barnes Firm, P.C., Buffalo, New York ■

RISK LAW FIRM

A nationwide practice of helping injury victims through their attorneys

Published Articles (Partial List): Richard B. Risk, Jr.

— *Attorney Suggests Changes to Proposed Regs on Exclusion of Physical Injury or Sickness Damages*, 2009 TAX NOTES 192-21, Oct. 7, 2009.

— *Attorney Comments on Forthcoming Guidance on Use of Qualified Settlement Funds for Benefit of Single Claimant,* TAX ANALYSTS: TAX NOTES TODAY, 2008 TNT 30-19 (Doc. 2008-3015).

— *Structured Settlements: The Ongoing Evolution from a Liability Insurer's Ploy to an Injury Victim's Boon*, 36 TULSA LAW JOURNAL 865 (2001).

— *A Case for the Urgent Need to Clarify Tax Treatment of a Qualified Settlement Fund Created for a Single Claimant, 23* VIRGINIA TAX REVIEW 639 (2004).

— *Annuity Companies Vie for Structured Settlements*, NATIONAL UNDERWRITER, LIFE & HEALTH/FINANCIAL SERVICES EDITION, July 13, 1998, 29.

— *How Much Do Those Big Number Structured Settlements Really Cost?* THE ADVOCATE (Okla. Trial Lawyers Ass'n, Oklahoma City, Okla.), July-September 1994, 32.

— *Is There an Errors and Omissions Exposure in Failing to Offer a Structured Settlement?* THE ADVOCATE (Okla. Trial Lawyers Ass'n, Oklahoma City, Okla.), October-December 1994, 22.

— *Impaired Life Expectancy of Claimant Often Becomes Obstacle to Settlement: Medical Underwriting Can Provide the Solution*, 8 IN BRIEF (Iowa Trial Lawyers Ass'n, Des Moines, Iowa), 17 (1997).

— *Personal Injury Now Must Be Physical to Be Exempt from Income Taxation, 20* KTLA JOURNAL (Kan. Trial Lawyers Ass'n, Topeka, Kan.), 9 (1997); also ATLA DOCKET (Ark. Trial Lawyers Ass'n, Little Rock, Ark.), Fall 1996, 7; also THE ADVOCATE (Ariz. Trial Lawyers Ass'n, Phoenix, Ariz.) September 1997.

— *Cash Settlement Instead of Structure Means Claimant Gives Up Tax Break*, TRIAL TALK (Colo. Trial Lawyers Ass'n, Denver, Colo.), March 1998, 21; also THE ALASKA TRIAL LAWYER (Alaska Academy of Trial Lawyers, Anchorage, Alaska), (1997).

— *Warning Issued Over Sale of Structured Payments*, 19 VERDICT (Ind. Trial Lawyers Ass'n, Indianapolis, Ind.), 165 (1997); also THE COFFEE-HOUSE (Wyo. Trial Lawyers Ass'n, Cheyenne, Wyo.), Fall 1997, 4; also 32 MTLA QUARTERLY (Mich. Trial Lawyers Ass'n, Lansing, Mich.), 19 (1998).

— *It's Time to Take Control Away From the Defense in Structured Settlement Negotiations*, 17 CTLA FORUM (Conn. Trial Lawyers Ass'n, Hartford, Conn.), 72 (1999).

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— *Attorneys Sued by Client for Failing to Propose a Structured Settlement*, 24 THE VERDICT (Wis. Academy of Trial Lawyers, Madison, Wis.), 37 (2001).

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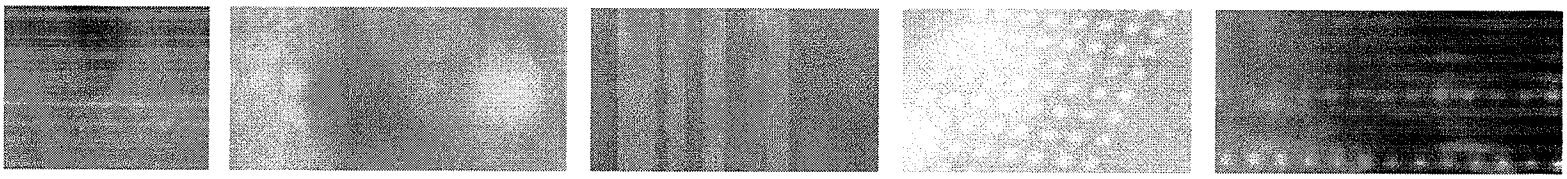
CORNERSTONE RESEARCH

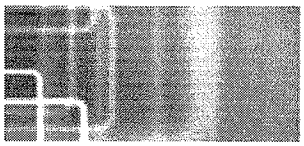
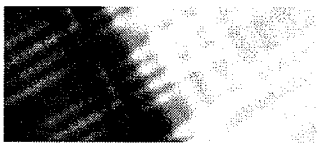
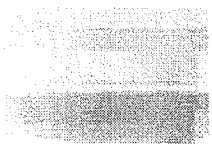
Securities Class Action Settlements

2009 Review and Analysis

Ellen M. Ryan

Laura E. Simmons



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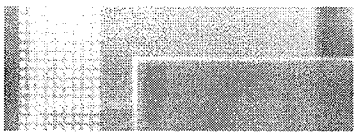


INTRODUCTION

In 2009 there were 103 court-approved securities class action settlements, involving $3.8 billion in total settlement funds. Compared with 2008, settlements approved in 2009 increased both in the number and total value of the settlements. While the increase in the number of settlements approved was relatively small (103 settlements in 2009 compared with 97 in 2008), in dollar terms, the value of cases settled in 2009 represented more than a 35 percent increase over the corresponding amount in 2008.[1] This increase can be attributed, in part, to a $925.5 million settlement that occurred in 2009, whereas the largest single settlement in 2008 was $750.0 million. The 2009 total settlement value was consistent with historical annual averages for case settlements filed since the Private Securities Litigation Reform Act (Reform Act) was passed in late 1995—excluding the unprecedented high levels of settlement values that occurred in 2005 through 2007.[2]

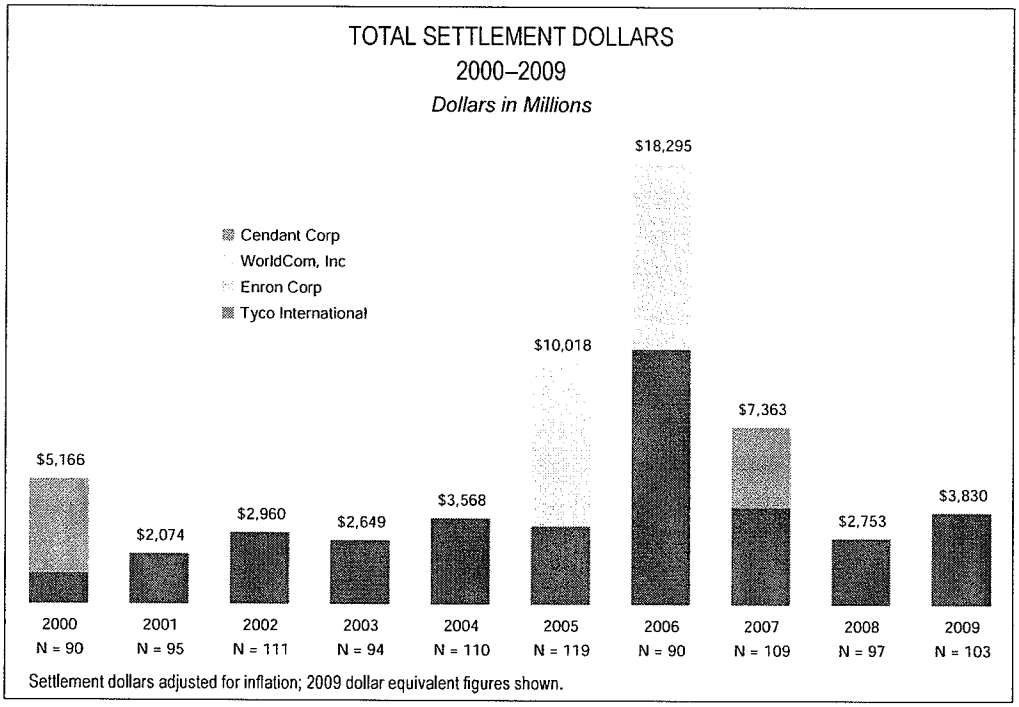
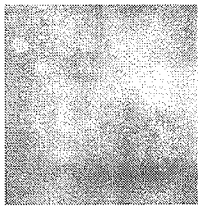


Figure 1

Total settlement dollars were more than 35 percent higher in 2009 than in 2008

This report discusses these and other findings in further detail, including settlement summary statistics, a discussion of methods used to approximate damages and analyses related to alternative damage proxies, as well as an analysis of case characteristics. This report draws upon and updates information provided in our previous reports. Our research sample includes more than 1,100 securities class actions settled from 1996 through 2009. Cases in our sample are limited to those involving allegations of fraudulent inflation in the price of a corporation's common stock. These settlements are identified by RiskMetric Group's Securities Class Action Services (SCAS). In our study, the designated settlement year corresponds to the year in which the hearing to approve the settlement was held. Cases involving multiple settlements are reflected in the year of the most recent partial settlement, provided certain conditions are met.[3]

CASES SETTLED IN 2009



2

The median settlement amount for cases settled in 2009 remained unchanged from 2008 at $8.0 million. While this level is lower than the $9.3 million median settlement reached in 2007, it represents a slight increase over the median of $7.4 million for all cases settled in prior years.

The average settlement rose from $28.4 million in 2008 to $37.2 million in 2009, yet remains substantially below the average of $55.4 million for settlements through 2008. As was the case in 2008, there was no single class action settlement for more than $1 billion. The lack of billion-dollar settlements in these last two years contrasts with 2005 through 2007, during which eight of the past decade's nine settlements in excess of $1 billion occurred.[4] If we exclude the top four post–Reform Act settlements from this analysis, the average settlement amount of $37.2 million in 2009 would be slightly higher than the resulting historical average of $34.4 million for cases settled from 1996 through 2008.

SETTLEMENT SUMMARY STATISTICS

Dollars in Millions

	2009	Settlements Through 2008
Minimum	$0.4	$0.1
Median	$8.0	$7.4
Average	$37.2	$55.4
Maximum	$925.5	$7,696.6
Total Amount	$3,829.5	$56,728.6

Settlement dollars adjusted for inflation; 2009 dollar equivalent figures shown. Excluding the top four settlements detailed in Figure 1, the average and total values are $34.4 million and $35,050.4 million for all settlements through 2008.

Figure 2

The average settlement rose from $28.4 million in 2008 to $37.2 million in 2009

The greatest number of cases settled in 2009 involved firms operating in the finance sector. Despite recent pressures on the financial industry as a whole, there actually have been only a few settlements of class actions related to the "credit crisis," and instead, it was shareholder suits filed from 2003 through 2007 that comprise the 19 settlements in the finance sector. The pharmaceutical and high-technology sectors closely followed the finance sector with 16 and 15 settlements, respectively. Reflecting the prevalence of finance-sector-related settlements, more than 55 percent of the cases settled in 2009 were for issuers whose common stock traded on the New York Stock Exchange (NYSE, including NYSE Amex)—substantially higher than the historical average of approximately 30 percent for cases settled through 2008. Across all sectors represented in the sample, settlements typically occurred approximately three years after filing; however, for cases settled in the last four years (2006–2009), the average time from filing to settlement approval has increased to three and one-half to four years.

Noteworthy among settlement activity in 2009 was the resolution of the consolidated Initial Public Offering Securities Litigation matter involving more than 300 issuer defendants and 55 underwriter defendants. The $586 million aggregate settlement, occurring more than eight years from initial filing, currently ranks as the thirteenth largest post–Reform Act settlement. While the settlement documents provide a proportional allocation by issuer defendant, they stress that the actions are being resolved on a global basis. Due to the global nature of this set of cases, as well as the specific element of damages related to "laddering" claims in the cases, these cases do not meet the sample selection criteria used in this analysis. The selection criteria are designed to provide a homogeneous sample of cases involving Rule 10b-5, Section 11, or Section 12(a)(2) allegations. Thus, while the settlement of this litigation is interesting, excluding this set of cases from our analysis prevents distortion for purposes of drawing inferences about current trends and implications for future securities class action settlements.

Overall, the distribution of settlement amounts in 2009 remained comparable with that observed in recent years. Almost 60 percent of post–Reform Act cases settled for less than $10 million, and more than 80 percent of post–Reform Act cases settled for less than $25 million. Settlements in excess of $100 million remain relatively infrequent, occurring in approximately 7 percent of the cases.[5]

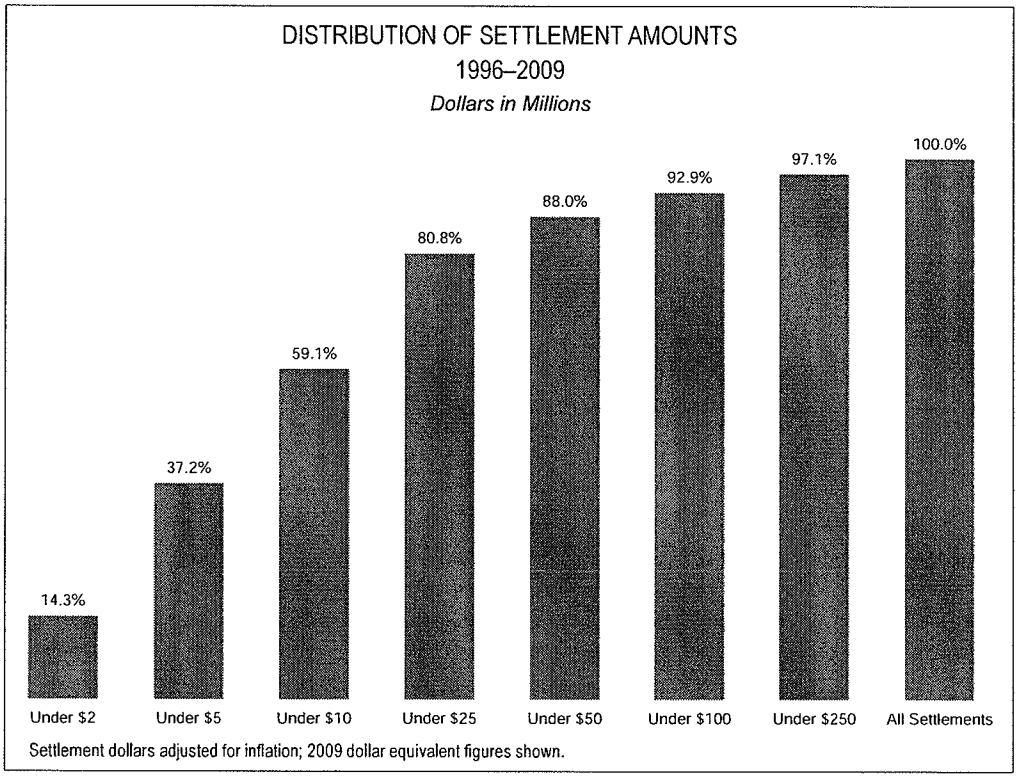
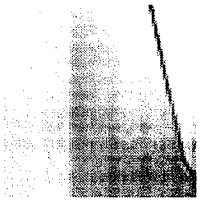


Figure 3

Almost 60 percent of post–Reform Act cases have settled for less than $10 million

SETTLEMENTS AND "DAMAGE ESTIMATES"



Understanding how settlements relate to the size of a case is an important component of our research. In this section we discuss two approaches to calculating a proxy for shareholder damages: one that incorporates reported trading volume and a second based on a simpler approach using the decline in market capitalization. We also discuss the implications for damages estimates of the U.S. Supreme Court decision in *Dura Pharmaceuticals v. Broudo.*

For purposes of our research, we use a highly simplified approach to estimate so-called "plaintiff-style" damages, which is based on a modified version of a calculation method historically used by plaintiffs in securities class actions.[6] We make no attempt to link these simplified calculations of shareholder losses to the allegations included in the associated court pleadings. Accordingly, we do not intend for any damages estimates presented in this report to be indicative of actual economic damages borne by shareholders. While various models and alternative calculations could be used to assess defendants' potential exposure in securities class actions, our application of a consistent method allows us to identify and examine certain trends in estimated "plaintiff-style" damages.[7]

Our analysis of settled cases shows that the dramatic decline in *average* estimated "plaintiff-style" damages observed for cases settled in 2008 reversed in 2009, with average estimated "plaintiff-style" damages returning to levels comparable with settlements from 2003 through 2005. Meanwhile, *median* estimated "plaintiff-style" damages in 2009 remained essentially unchanged from the median value in 2008.

The dramatic decline in average estimated damages in 2008 reversed itself in 2009

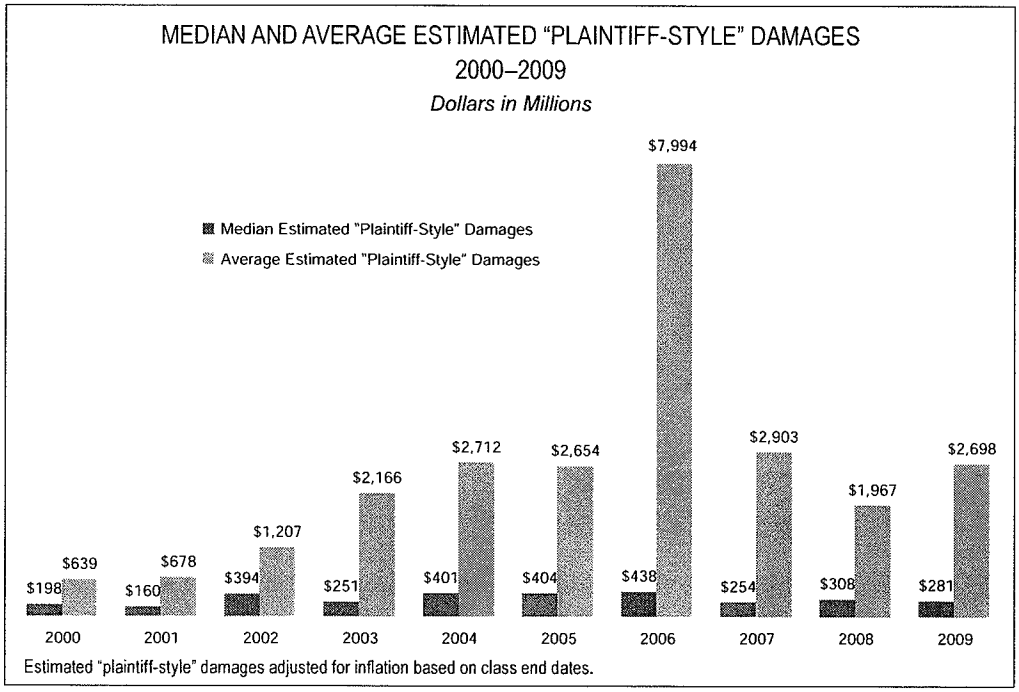
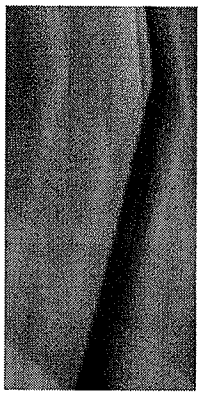


Figure 4



While a number of factors contribute to settlement outcomes, our research indicates that estimated "plaintiff-style" damages are the single most important factor in explaining settlement amounts. However, as we have described in previous reports, settlements as a *percentage* of estimated "plaintiff-style" damages generally decrease as damages increase; this is particularly true for very large cases. Accordingly, since the dramatic escalation in estimated "plaintiff-style" damages that began in 2002, we generally have observed lower median settlements relative to estimated "plaintiff-style" damages.[8] This is true for cases settled in 2009, with a median settlement of 2.3 percent of estimated "plaintiff-style" damages, versus 2.9 percent from 2002 through 2008.

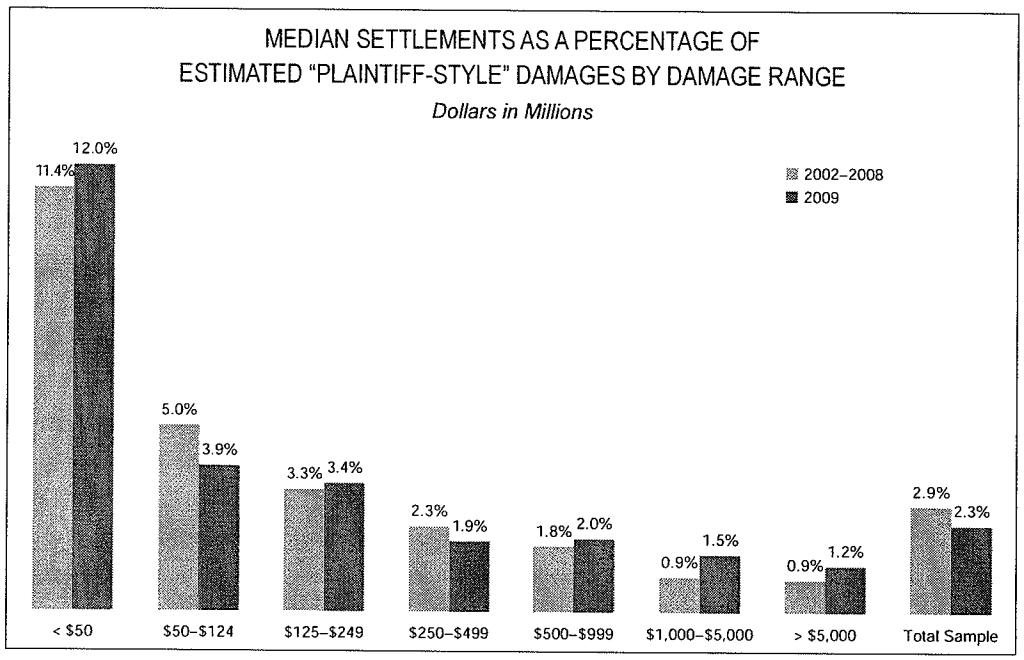
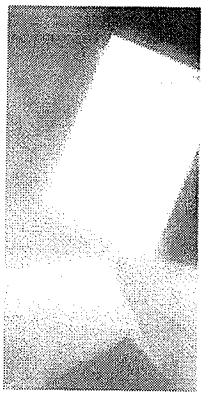


Figure 5

Settlements, as a percentage of estimated damages, generally decrease as damages increase



Disclosure Dollar Loss (DDL) is another simplified measure of shareholder losses. As discussed in the recent report, *Securities Class Action Filings 2009: A Year in Review*, released by the Stanford Law School Securities Class Action Clearinghouse in cooperation with Cornerstone Research (*2009 Filings*), DDL is calculated as the decline in the market capitalization of the defendant firm from the trading day immediately preceding the end of the class period to the trading day immediately following the end of the class period. As in the case of estimated "plaintiff-style" damages, we do not attempt to link DDL to the allegations included in the associated court pleadings. Thus, as this measure does not isolate movements in the defendant's stock price that are related to case allegations, it is not intended to represent an estimate of damages. This measure does not capture additional stock price declines during the alleged class period that may affect certain purchasers' potential damages claims. The DDL calculation also does not apply a model of investors' share-trading behavior to estimate the number of shares damaged.[9]

In 2009 median inflation-adjusted DDL increased to approximately $140 million, representing a nearly 15 percent increase from the 2008 median DDL. Consistent with the pattern discussed earlier in this report with regard to estimated "plaintiff-style" damages, we find that settlements as a percentage of DDL generally decline as DDL increases. In keeping with this finding, the increase in median DDL was accompanied by a decrease in median settlement values as a percentage of DDL. This percentage substantially was lower (5.7 percent) in 2009 relative to the average in prior years (9.2 percent from 1996 to 2008).

Settlements as a percentage of DDL generally decline as DDL increases

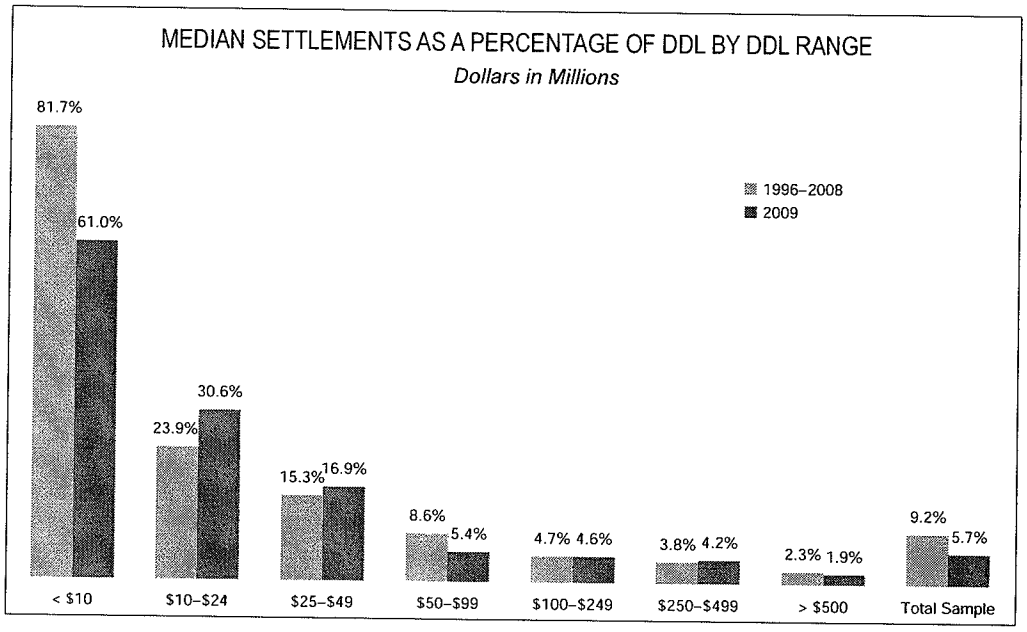


Figure 6

DAMAGE ESTIMATES AND *DURA*

The landmark decision in 2005 by the U.S. Supreme Court in *Dura Pharmaceuticals v. Broudo (Dura)* that determined that plaintiffs must show a causal link between the alleged misrepresentations and the subsequent actual losses suffered by plaintiffs has had considerable influence on securities class action damage calculations. Specifically, following this decision, damages cannot be attributed to shares sold before information regarding the alleged fraud reaches the market. Since securities class actions often involve allegations of multiple misleading statements during the class period, even a rudimentary estimate of damages must incorporate an approach that precludes recovery of damages for shares both purchased and sold between alleged corrective disclosures. Accordingly, to reflect this change in methods for calculating securities class action damages, we have explored an alternative variable to our traditional estimated "plaintiff-style" damages and DDL. This variable is based on the stock-price drops on alleged corrective disclosure dates, and creates a single or tiered value line (depending on the number of disclosure dates), hereafter referred to as "multiple disclosure damages."

We have used regression analysis to test the explanatory power of multiple disclosure damages compared with our traditional estimated "plaintiff-style" damages variable and other measures of investor losses, including DDL. Interestingly, preliminary analysis on a sample of settlements from 2006 to 2009 indicates that our traditional measure of estimated "plaintiff-style" damages remains the strongest determinant of settlements through 2009. However, we find that using the multiple disclosure damages variable as a supplement to estimated "plaintiff-style" damages enhances our ability to predict settlement amounts for this sample. We plan to continue our analysis of this variable in the future.

ANALYSIS OF CASE AND SETTLEMENT CHARACTERISTICS

In addition to estimated "plaintiff-style" damages and DDL, there are a number of other important determinants of settlement outcomes. In this section we provide information regarding these factors, identified from among the more than 60 variables we collect and analyze as part of our research.

Several of the variables that we study are related to accounting allegations. In 2009 allegations related to violations of Generally Accepted Accounting Principles (GAAP) were included in more than 65 percent of settled cases. These cases continued to be resolved with larger settlement amounts than cases not involving accounting allegations. The complexity of cases with accounting allegations may also contribute to the increasing interval between filing date and settlement date that we observed in recent years.

Although outside auditors were named in less than 20 percent of post–Reform Act settlements through 2009, cases in which an outside auditor was named as a defendant settled for relatively higher percentages of estimated "plaintiff-style" damages, when compared with the broader set of all cases in which improper accounting allegations were made. Further, *2009 Filings* noted an increasing number of cases naming auditors as defendants, even while total filings declined, suggesting that auditor defendants may become an increasingly significant factor in securities class action settlements.

Cases with outside auditor defendants settle for higher percentages of estimated "plaintiff-style" damages

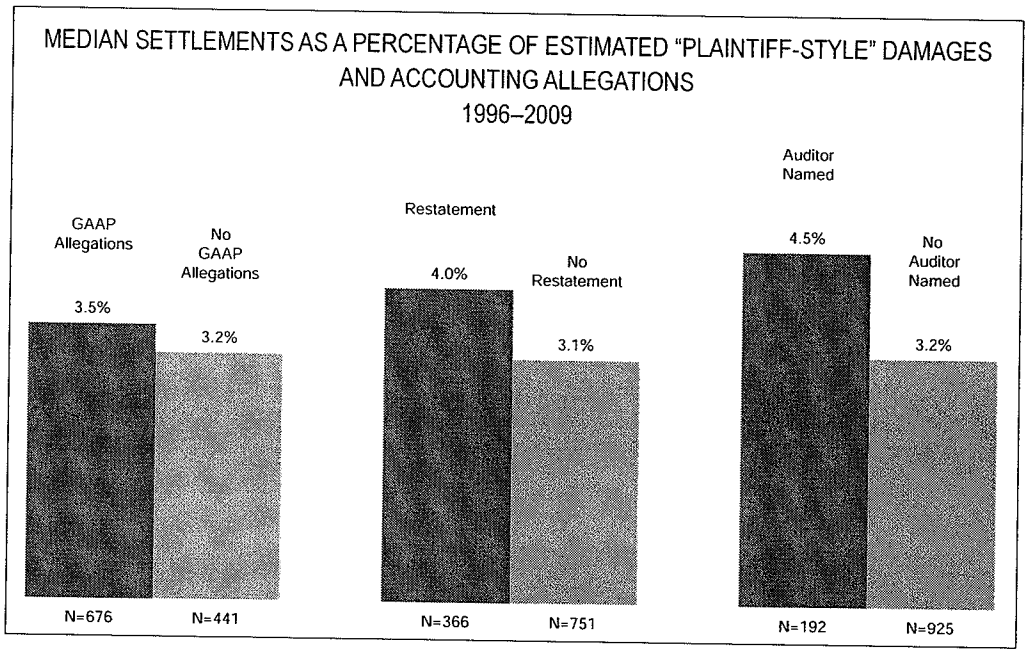


Figure 7

Approximately 45 percent of settlements in 2009 involved restatements of financial statements, compared with slightly more than 30 percent for cases prior to Sarbanes-Oxley (SOX). This contrasts with research that finds that, overall, SOX has resulted in a decrease in the frequency of financial statement restatements.[10] It is possible that improvements in corporate governance as a result of SOX may ultimately lead to a decrease in restatement-related class actions. However, it is too early to determine the impact, if any, of the passage of SOX on the dynamics of settlements.

More than 20 percent of post–Reform Act settlements involve Section 11 and/or 12(a)(2) claims. Median settlement amounts and median settlements as a percentage of estimated "plaintiff-style" damages continued to be higher for these cases. In cases involving an underwriter as a named defendant, settlements as a percentage of estimated "plaintiff-style" damages were even higher.

Although there is considerable overlap between the inclusion of an underwriter as a named defendant and the presence of Section 11 and/or 12(a)(2) claims (in addition to Rule 10b-5 claims), underwriters were named in less than 15 percent of all cases. Multiple regression analyses show that, after controlling for the presence of an underwriter defendant and other factors, Section 11 and/or 12(a)(2) claims are not associated with a statistically significant increase in settlement amounts. As noted in *2009 Filings*, filings of class actions alleging Section 11 and/or 12(a)(2) claims reached historically high levels in 2008 and 2009. As a portion of these newly filed cases settle in the coming years, the importance of Section 11 and/or 12(a)(2) claims in determining settlement amounts may increase.

Settlements involving underwriters as defendants settle for higher amounts

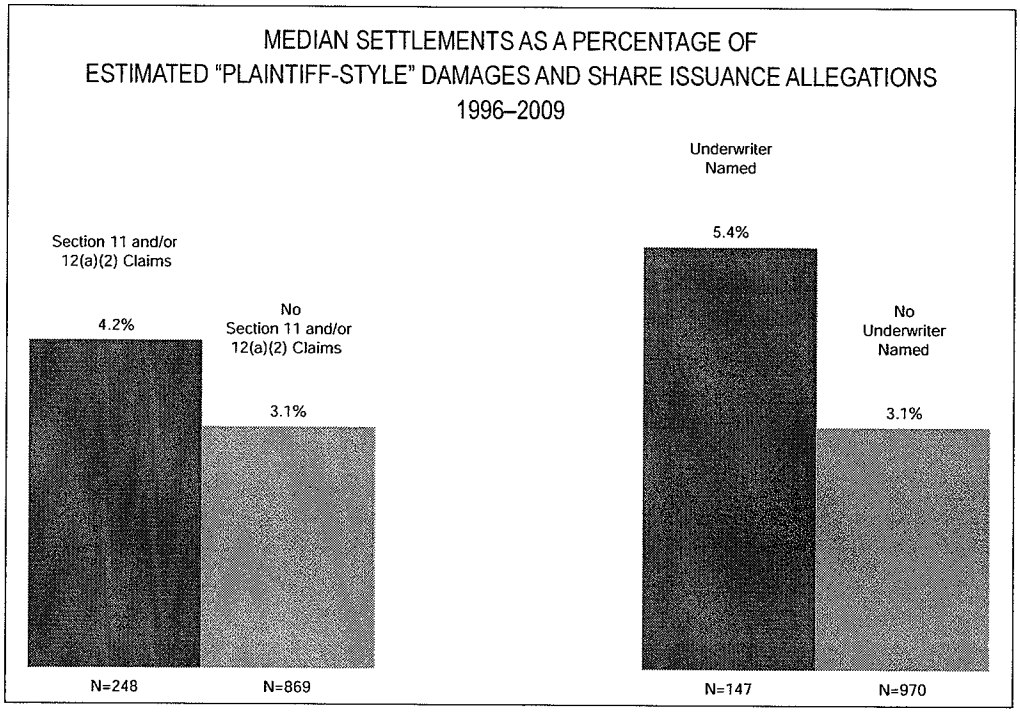


Figure 8

Only a small number of the cases in our sample, 46 cases in total, did not involve Rule 10b-5 claims (that is, involved *only* Section 11 and/or 12(a)(2) claims). Median settlements are generally lower for these cases ($3.5 million) relative to cases involving Rule 10b-5 claims, while median settlements as a percentage of estimated "plaintiff-style" damages are higher (9.5 percent).[11]

Institutional investors continue to actively participate in post–Reform Act class actions, often serving as lead plaintiffs. In 2009 institutions served as lead plaintiffs in nearly 65 percent of settlements—the highest proportion to date among post–Reform Act settlements. Cases involving institutional investors as lead plaintiffs are also associated with significantly higher settlements.[12] Our sample identifies both public pension plans and union funds as a subset of all institutional investors. While the frequency of union funds acting as lead plaintiffs has increased over the past few years, higher settlements are associated with cases involving public pension plans as lead plaintiffs, as opposed to union funds or other types of institutional investors.

In 2009 institutions served as lead plaintiffs in nearly 65 percent of settlements

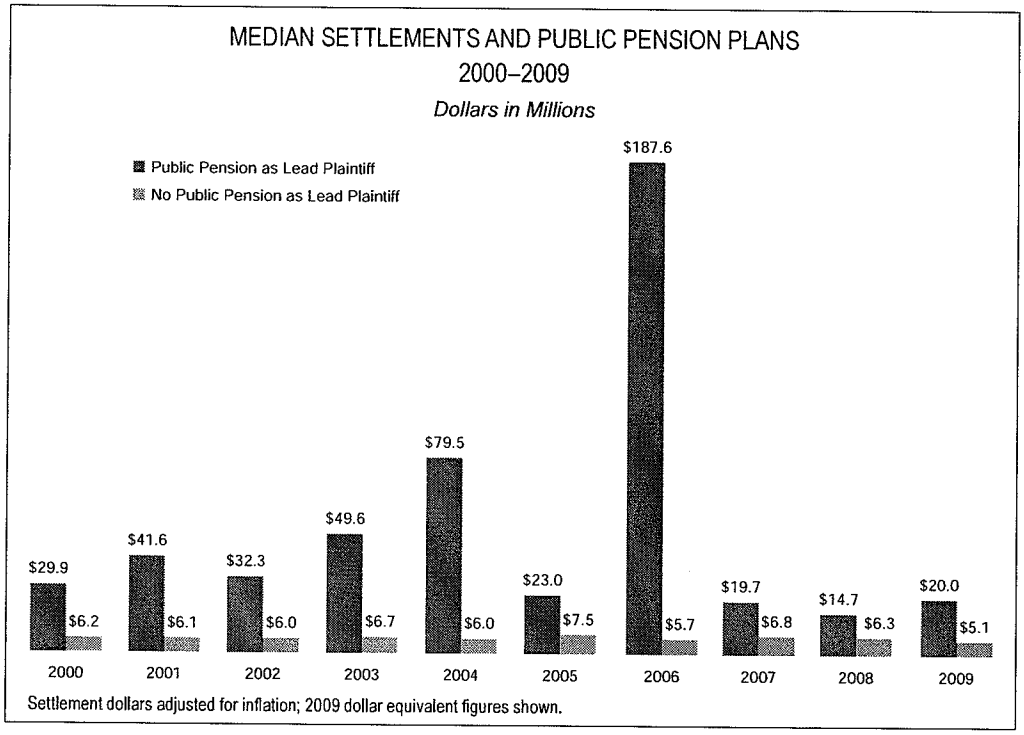


Figure 9

Any relationship between higher settlement outcomes and participation of public pension plans as lead plaintiff may be explained by these relatively sophisticated investors choosing to participate in stronger cases. In addition, public pension plans tend to be involved in larger cases—cases in which the public pension plan may have the potential for a substantial claim against the defendants. However, a statistical analysis of settlement amounts and participation of public pension plans as lead plaintiff shows that even when controlling for estimated "plaintiff-style" damages (case size) and other factors that affect settlement amounts (such as the nature of the allegations), the presence of a public pension plan as lead plaintiff is still associated with a statistically significant increase in settlement size.[13] A list of control variables considered when testing the effect of public pension plans serving as lead plaintiffs can be found on page 16.

The number of cases involving companion derivative actions increased in 2009 compared with 2008, but was still below the proportion for 2007 settlements. Slightly more than 45 percent of cases settled in 2009 were accompanied by a derivative action filing, compared with approximately 40 percent in 2008 and approximately 55 percent in 2007.[14] Although settlement of a derivative action does not necessarily result in a cash payment,[15] settlement amounts for class actions that are accompanied by derivative actions (whether coinciding with the settlement of the underlying class action or occurring at a different time) are significantly higher than those for cases without companion derivative actions. However, settlements as a percentage of estimated "plaintiff-style" damages for cases with accompanying derivative actions are slightly lower than for cases with no identifiable derivative action. The lower percentage of estimated "plaintiff-style" damages statistics for cases with derivative actions likely reflects larger estimated "plaintiff-style" damages for these cases. (As we have noted, settlements as a percentage of estimated "plaintiff-style" damages generally decrease as estimated "plaintiff-style" damages increase.)

Derivative actions tend to be associated with larger class actions (as measured by estimated "plaintiff-style" damages and the assets of the issuer defendant) and class actions involving accounting allegations, actions by the Securities and Exchange Commission (SEC), and public pension plans as lead plaintiffs. Using regression analysis to control for other factors that influence class action settlements, we find that cases involving derivative actions are associated with statistically significant higher settlement amounts.

Slightly more than 45 percent of cases settled in 2009 were accompanied by a derivative action filing

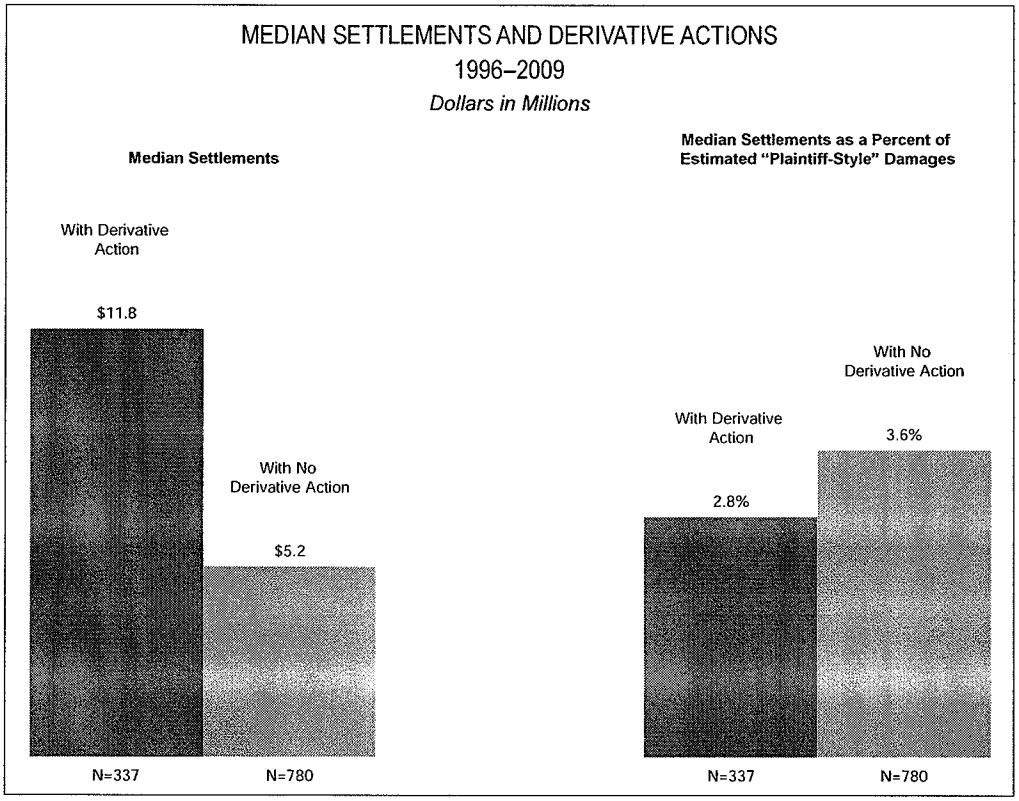


Figure 10

More than 20 percent of all post–Reform Act settlements have involved a remedy of a corresponding SEC action (evidenced by the filing of a litigation release or administrative proceeding) prior to the settlement of the class action, a slightly lower percentage from the level reported in our *Securities Class Action Settlements: 2008 Review and Analysis* report. Cases that involve SEC actions are associated with significantly higher settlements, as well as higher settlements as a percentage of estimated "plaintiff-style" damages.

The widely reported increase in SEC enforcement activity in 2008 and 2009, both in terms of number of actions brought and number of defendants named, may eventually have an effect on the overall frequency of SEC actions related to shareholder suits in our sample. However, as noted in *SEC Enforcement in 2009: A Year of Changes, with More This Year*, there has been a decline in the percentage of cases where charges against defendants were settled at the time of the filing of the SEC action (it is not uncommon for official complaint filings by the SEC to occur simultaneously with settlements by newly named defendants).[16] An increase in the number of cases that the SEC pursues to the litigation stage may delay resolution substantially—possibly slowing the measurable impact of these enforcement actions on the related securities class action settlements.

Cases that involve related SEC actions are associated with significantly higher settlements

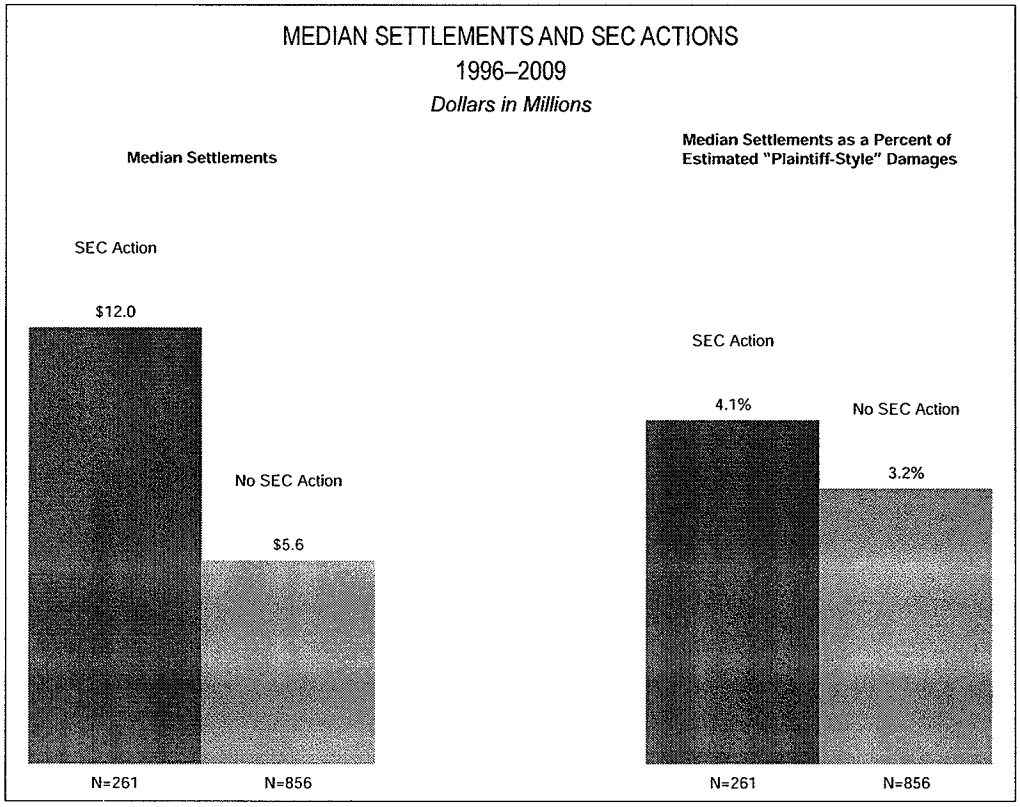
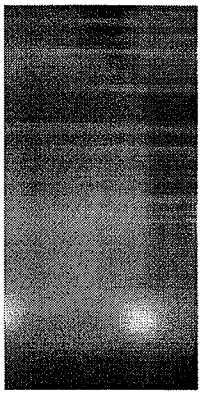


Figure 11



The percentage of settlements involving non-cash components (such as common stock or warrants) has generally declined over the years following enactment of the Reform Act. A mere 1 percent of settlements in 2009 included non-cash components in the agreed-upon settlement fund. This represents the lowest percentage during the past 10 years. The percentage of the total settlement value sourced from the non-cash components included in settlement funds in 2009 was also at a 10-year low.

The inclusion of non-cash components in settlements is associated with a statistically significant increase in settlement value, even when controlling for other factors such as estimated "plaintiff-style" damages and the nature of the allegations.

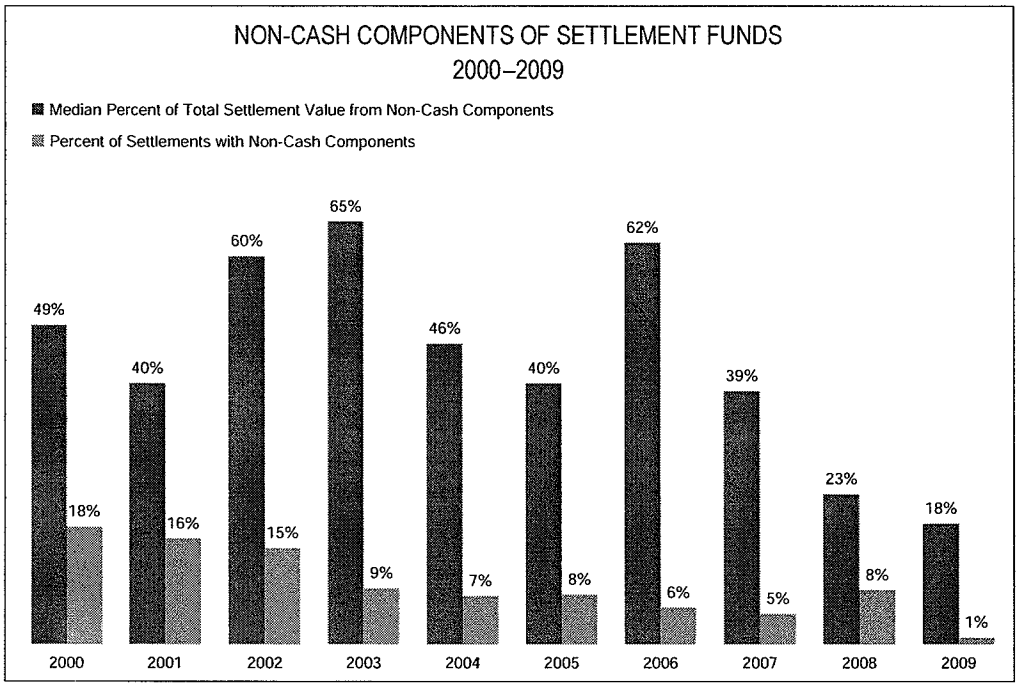
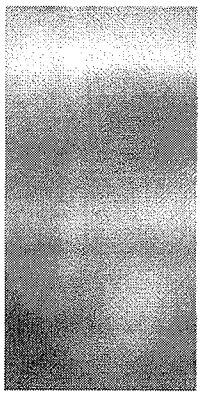


Figure 12

Only 1 percent of settlements in 2009 included non-cash components



SETTLEMENTS BY PLAINTIFF LEAD COUNSEL AND JURISDICTION

In previous years, we reported that the law firms of Coughlin Stoia Geller Rudman & Robbins (which is expected to be renamed Robbins Geller Rudman & Dowd in Spring 2010) and Milberg, as well as its predecessor firm Milberg Weiss Bershad Hynes & Lerach, were involved as lead or co-lead plaintiff counsel in approximately half of all post–Reform Act settlements.[17] While Coughlin Stoia has maintained a significant share of the securities class action settlements, the most active firms, based on the proportion of settlements for 2008 and 2009, continued to shift. Barroway Topaz Kessler Meltzer & Check maintained its position with the second highest percentage of settled cases, and for the first time, Bernstein Litowitz Berger & Grossmann moved into the number three spot in our study. Even when controlling for estimated "plaintiff-style" damages and the nature of certain allegations, the presence of one of the more active plaintiff law firms as lead or co-lead counsel is not associated with a statistically significant increase in settlement amounts.

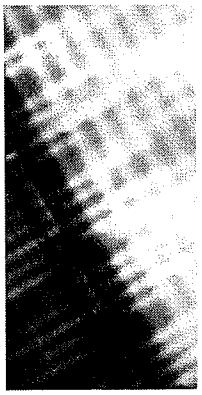
The presence of a highly active plaintiff law firm does not seem to significantly increase settlement outcomes

PLAINTIFF LAW FIRM BY PERCENTAGE OF SETTLED CASES

	2008–2009	
Plaintiff Law Firm	Percent of Settled Cases	Median Settlements as a Percent of Estimated "Plaintiff-Style" Damages
Coughlin Stoia Geller Rudman & Robbins	26%	3.3%
Barroway Topaz Kessler Meltzer & Check	11%	2.9%
Bernstein Litowitz Berger & Grossmann	10%	4.2%
Milberg	9%	2.3%
Labaton Sucharow	7%	1.6%

Table displays those firms involved with more than 5 percent of settled cases approved during the two-year period 2008–2009.

Figure 13



The Ninth Circuit (primarily concentrated in the California district courts) maintained a lead in terms of the number of settled cases in 2009 with 28 settlements, followed by the Second Circuit with 22 cases settled. Generally, individual court circuits are not statistically significant in explaining settlement size; however, we do find that settlements are higher in the Second Circuit even when controlling for the effects of estimated "plaintiff-style" damages and other determinants of settlement amounts.

SETTLEMENTS BY FEDERAL COURT CIRCUIT

Dollars in Millions

	Number of Cases		Median Settlements		Median Settlements as a Percentage of Estimated "Plaintiff-Style" Damages	
Jurisdiction	2009	Through 2008	2009	Through 2008	2009	Through 2008
1	6	64	$3.9	$6.0	2.1%	3.2%
2	22	173	$12.5	$8.8	2.1%	3.8%
3	17	94	$5.0	$7.0	2.3%	3.6%
4	3	34	$3.2	$7.3	9.7%	2.3%
5	6	84	$4.3	$5.6	2.7%	4.9%
6	6	48	$25.0	$13.0	2.5%	2.9%
7	3	49	$30.0	$7.5	5.8%	4.0%
8	2	37	$466.4	$8.0	7.7%	3.1%
9	28	248	$7.5	$6.5	2.2%	3.2%
10	4	42	$11.3	$7.0	2.2%	2.5%
11	3	105	$14.9	$4.3	6.4%	3.8%
All Federal Cases	**100**	**978**	**$11.3**	**$7.0**	**2.5%**	**3.2%**

Figure 14

Other factors being equal, settlements tend to be higher in the Second Circuit

CORNERSTONE RESEARCH'S SETTLEMENT PREDICTION ANALYSIS

Features of securities cases that may affect settlement outcomes are often correlated, as noted in this report. Regression analysis makes it possible to examine the effects of these factors simultaneously. Accordingly, as part of our ongoing research on securities class action settlements, we applied regression analysis to study factors associated with settlement outcomes. Analysis performed on our sample of post–Reform Act cases settled through December 2009 reveals that variables that are important determinants of settlement amounts, either independently or in combination, include:[18, 19]

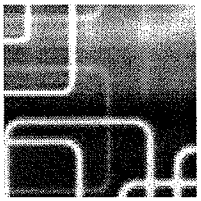
- Simplified estimated "plaintiff-style" damages
- Disclosure dollar loss (DDL)
- Most recently reported total assets of the defendant firm
- Number of entries on the lead case docket
- Indicator of whether intentional misstatements or omissions in financial statements were reported by the issuer
- Indicator of whether a corresponding SEC action against the issuer or other defendants is involved
- Indicator of whether an accountant is a named co-defendant
- Indicator of whether an underwriter is a named co-defendant
- Indicator of whether a companion derivative action is filed
- Indicator of whether a public pension plan is a lead plaintiff
- Indicator of whether non-cash components, such as common stock or warrants, make up a portion of the settlement fund
- Number of days from class end date to the class action filing date
- Indicator of whether securities other than common stock are alleged to be damaged
- Indicator of whether the issuer is financially distressed
- Indicator of whether the case was filed in the Second Circuit
- Indicator of whether estimated "plaintiff-style" damages are greater than $1 billion

Settlements are higher when estimated "plaintiff-style" damages, DDL, defendant asset size, or number of docket entries are higher. Settlements are also higher in cases involving intentional misstatements or omissions in financial statements reported by the issuer, a corresponding SEC action, an accountant named as co-defendant, an underwriter named as co-defendant, a corresponding derivative action, a public pension fund involved as lead plaintiff, a non-cash component to the settlement, or securities other than common stock alleged to be damaged. Settlements are lower if the issuer is experiencing financial distress, if there is a wide interval between class end date and filing date, or if estimated "plaintiff-style" damages exceed $1 billion.

CONCLUDING REMARKS

Overall, the challenging economic environment that continued through 2009 did not have a distinguishable effect either on the number of settled cases or on the total value of securities case settlements approved during the year. However, forecasting the impact of the economic crisis on securities case settlements continues to be difficult because of confounding factors (see our 2008 settlements report for further discussion).

For the most part, cases brought in conjunction with the 2008 stock market decline and surrounding credit-crisis issues have not yet reached settlement. Looking ahead, we anticipate that as these cases are resolved, settlements are likely to increase both in number and value. Although cases filed in 2008 (largely cases with class periods ending in 2008) are expected to increase overall settlements in the future, this will be muted to some extent by the effects from cases filed in 2009. Specifically, as discussed in *2009 Filings*, while one important measure of investor losses (DDL) reached historic highs in 2008, for cases filed in 2009, total DDL ($83 billion) was more than 60 percent lower than in 2008 and almost 40 percent lower than the annual average for the 12 years ending in December 2008.



SAMPLE AND DATA SOURCES

Our database is limited to cases alleging fraudulent inflation in the price of a corporation's common stock (that is, excluding cases filed only by bondholders, preferred stockholders, etc.) and cases alleging fraudulent depression in price. Our sample is also limited to cases alleging Rule 10b-5, Section 11, and/or Section 12(a)(2) claims brought by purchasers of a corporation's common stock. These criteria are imposed to ensure data availability and to provide a relatively homogeneous set of cases in terms of the nature of the allegations.

In addition to SCAS, data sources include Dow Jones Factiva, Bloomberg, The University of Chicago's Center for Research in Security Prices (CRSP), Standard & Poor's Compustat, court filings and dockets, SEC registrant filings, SEC litigation releases and administrative proceedings, LexisNexis, and public press.

ENDNOTES

1 A settlement in excess of $300 million was included in the 2008 settlements in our prior study. That settlement was ultimately renegotiated due to the distressed nature of the defendant and other factors. The revised settlement, amounting to more than $125 million, is included in our 2009 sample and the original amount dropped from the 2008 sample for purposes of our current report.

2 The three largest settlements of all time—the $6.2 billion settlement in the *WorldCom* matter, the $7.2 billion settlement in the *Enron* matter, and the $3.2 billion settlement in the *Tyco International* matter—were approved between 2005 and 2007. Although the WorldCom and Enron settlements comprised a number of partial settlements, we categorize WorldCom as a 2005 settlement and Enron as a 2006 settlement.

3 Movements of partial settlements between years can cause differences in amounts reported for prior years from those presented in earlier reports. For a settlement to be moved from inclusion in an earlier to a more recent year, the subsequent partial settlement must be at least half of the then-current settlement total.

4 There was one settlement in excess of $1 billion in each of the years 2000, 2005, and 2007, and six in 2006.

5 Total settlement value based on an agreed-upon amount at the time of settlement, including the disclosed value of any non-cash components. Figures do not reflect attorney fees, additional amounts that may be paid to the class from related derivative or SEC settlements, or amounts that may have been settled by opt-out investors.

6 Our simplified "plaintiff-style" model is applied to common stock only. For all cases involving Rule 10b-5 claims, damages are determined from a market-adjusted backward value line. For cases involving only Section 11 and/or 12(a)(2) claims, damages are determined from a model that caps the purchase price at the offering price. A volume reduction of 50 percent for shares traded on NASDAQ and 20 percent for shares listed on NYSE or Amex is used. Finally, no adjustments for institutions, insiders, or short sellers are made to the float.

7 Nine settlements out of the 1,127 cases in our sample were excluded from calculations involving estimated "plaintiff-style" damages for lack of available stock price data. The WorldCom settlement was also excluded from these calculations because most of the settlements in that matter related to liability associated with bond offerings (and our research does not compute damages related to securities other than common stock).

8 In 2007 we observed what we now identify as a temporary reversal of this trend—higher median settlements relative to estimated damages (see *2008 Settlements Report*).

9 DDL information is presented in Figure 6 to provide a benchmark for the convenience of readers, since the measure is simple to compute and, as stated, does not require application of a trading model.

10 For example, see "Study: SOX Helps Cut Restatements," *Compliance Week*, March 2007.

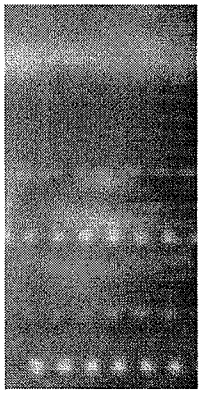
11 The median settlement as a percentage of estimated damages for cases with only Section 11 and/or 12(a)(2) claims was lower in 2009 than for prior years' settlements. For nine of the settlements approved in 2009, claims were limited to Section 11 and/or Section 12(a)(2). The median settlement for these nine matters was $3.6 million, with a median settlement value of 8.1 percent of estimated "plaintiff-style" damages.

12 The extraordinarily high median settlement amount for public-pension-led settlements in 2006 was driven by six separate settlements in excess of $1 billion.

13 This regression analysis may not control for the potential endogeneity in the choice by public pension plans to participate in a class action.

14 Data for 2007 and 2008 are presented in prior settlements reports.

15 Derivative cases are often resolved with changes made to the issuer's corporate governance practices, accompanied by little or no cash payment; this continues to be true despite the increase in corporate controls introduced after the passage of SOX. For purposes of the analyses in this report, a derivative action—generally a case filed against officers and directors on behalf of the issuer corporation—must have allegations similar to the class action in nature and time period to be considered an accompanying action.



16 Posted by Eduardo Gallardo, Gibson, Dunn & Crutcher LLP, on Monday, February 1, 2010, available at the Harvard Law School Forum on Corporate Governance and Financial Regulation (*blogs.law.harvard.edu/corpgov/*).

17 In 2004 the firm split into Milberg Weiss Bershad & Schulman (the firm has since changed its name to Milberg) and Lerach Coughlin Stoia & Robbins (since changed to Coughlin Stoia Geller Rudman & Robbins and, as noted, soon to be renamed Robbins Geller Rudman & Dowd).

18 Our settlement database includes publicly available and measurable information about settled cases. Nonpublic or non-measurable factors, such as relative case merits or the limits of available insurance, are not reflected in the model to the extent that such factors are not correlated with the variables that are accessible to us (that is, publicly available and measurable factors).

19 Due to the presence of a small number of extreme observations in the data, we apply logarithmic transformations to settlement amounts, estimated "plaintiff-style" damages, DDL, the defendant's total assets, number of days between class end date and filing date, and the number of docket entries.

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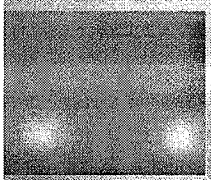
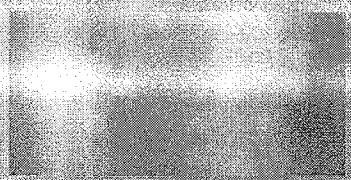
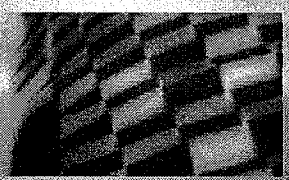
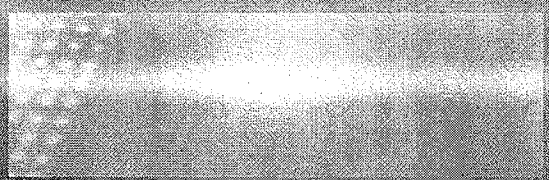
Dr. Simmons's research on pre– and post–Reform Act securities litigation settlements has been published in a number of reports and is frequently cited in the public press and legal journals. She has spoken at various conferences and appeared as a guest on CNBC addressing the topic of securities case settlements. Dr. Simmons was a consultant at Cornerstone Research for over ten years, most recently as a principal. From 1986 to 1991, she was an accountant with Price Waterhouse.

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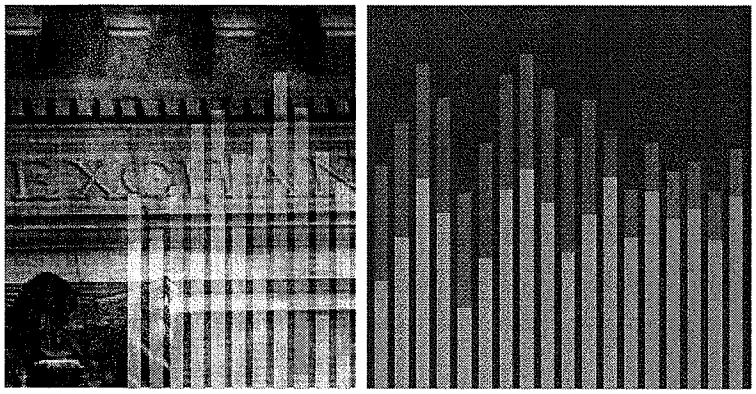


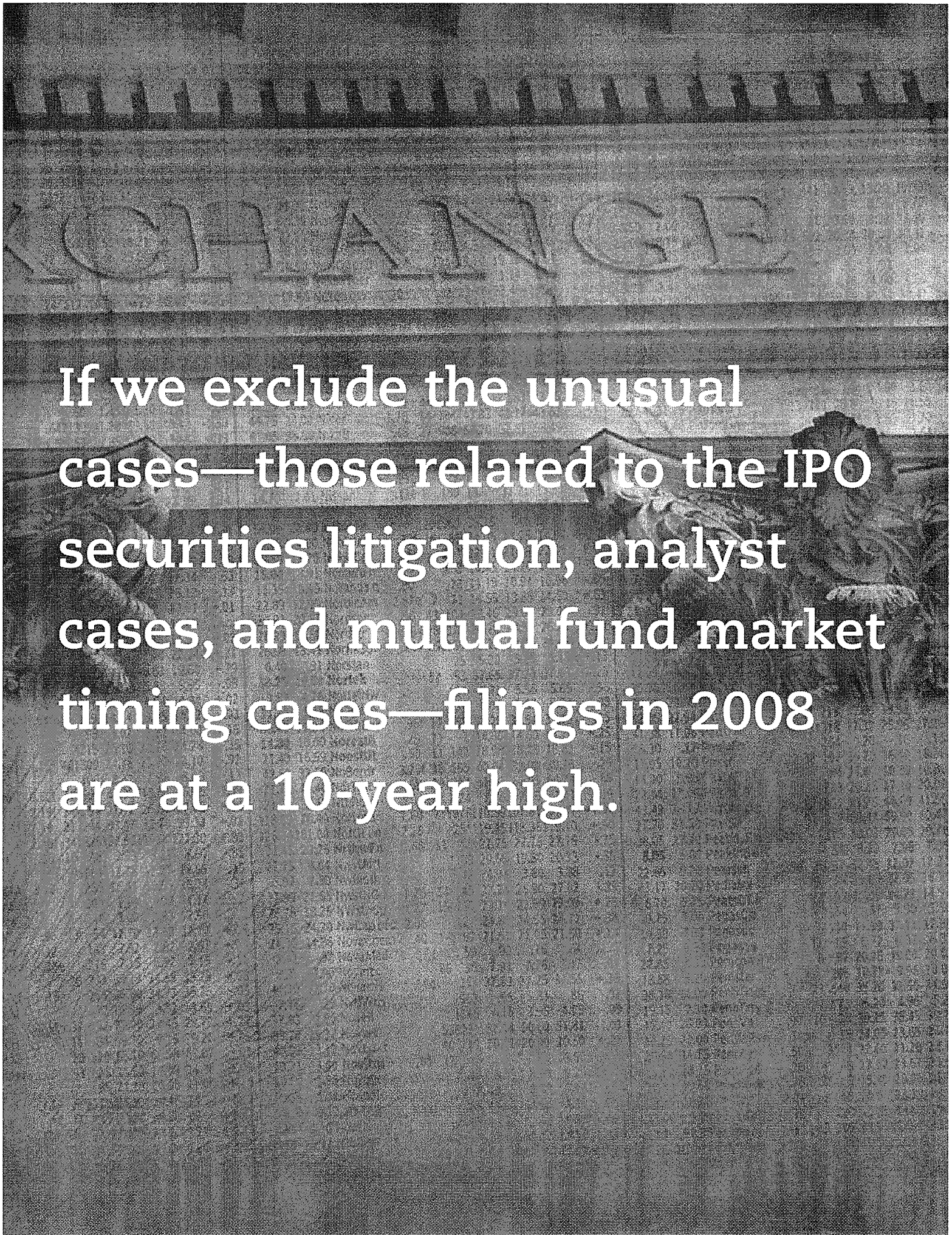
2008 Trends in Securities Class Actions

Annual Filings Are at the Highest Level in Six Years, Driven by the Credit Crisis, While Median Settlement Values Stay Steady

Stephanie Plancich, PhD
Svetlana Starykh

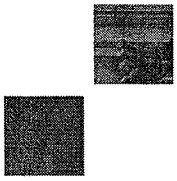
December 2008

How Markets Work℠



If we exclude the unusual cases—those related to the IPO securities litigation, analyst cases, and mutual fund market timing cases—filings in 2008 are at a 10-year high.

Annual Filings Are at the Highest Level in Six Years, Driven by the Credit Crisis, While Median Settlement Values Stay Steady



Stephanie Plancich, PhD, and Svetlana Starykh[1]

December 2008

Introduction

As the securities markets continued to exhibit extraordinary volatility and the economy suffered through a recession in 2008, securities class action litigation intensified. For the year 2008 (through December 14, 2008), 255 securities class actions were filed, up from a 12-year low of only 131 filings in 2006 and 195 in 2007.

The credit crisis drove the surge in filings: 110 cases filed in 2008 had some tie to the credit crisis, up from 40 in 2007. Of the 110 cases related to the credit crisis, 20 were cases related to failures in the auction-rate securities market, and most of these cases were filed in the first half of the year. In addition, almost 50% of the 2008 cases were filed against defendants in the financial sector, up from about 16% of cases in the 2005-2006 period.

While filings have steadily increased from 2006 through 2008, a similar pattern has not been observed in median settlement values. Median settlements have remained relatively stable, staying below $10 million. In 2008, the median settlement resolved for $7.5 million, slightly below the 2007 median of $9.4 million, and above the 2006 median settlement of $7.0 million. As always, a small number of large settlements causes average settlements to exceed median settlements; the 2008 average settlement of $38 million is substantially higher than the median.

Given the surge in credit crisis-related filings, are average and median settlement sizes also likely to grow in the future as these cases begin to resolve? Two opposing factors may come into play with regard to these credit crisis case resolutions. On one hand, the investor losses associated with credit crisis cases filed in 2008 are very large—the median investor loss for such a case is almost $3.5 billion, compared to a median loss of only $387 million for a non-credit crisis case filed this year. Historically, investor losses have been positively correlated with settlement size, so big losses may be an indicator of big settlements to come. On the other hand, defendants with "deep pockets" are the ones who can afford big settlements, and the credit crisis has dramatically shrunk the size of many defendants' pockets.

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[1] This edition of NERA's research on recent trends in shareholder class action litigation expands on previous work by our colleagues Lucy Allen, Elaine Buckberg, Frederick C. Dunbar, Todd Foster, Vinita M. Juneja, Denise Neumann Martin, Ronald I. Miller, and David I. Tabak. We gratefully acknowledge their contribution to previous editions as well as this current version. The authors also thank Jake George, John Montgomery, and David I. Tabak for helpful comments on earlier drafts of the paper. In addition, we thank Nicole Roman, Carlos Soto, Nii Nookwei Tackie, Maria Tarasyuk, Steven D. Towler, and many other NERA researchers for further assistance. These individuals receive credit only for improving this paper; all errors and omissions are ours.

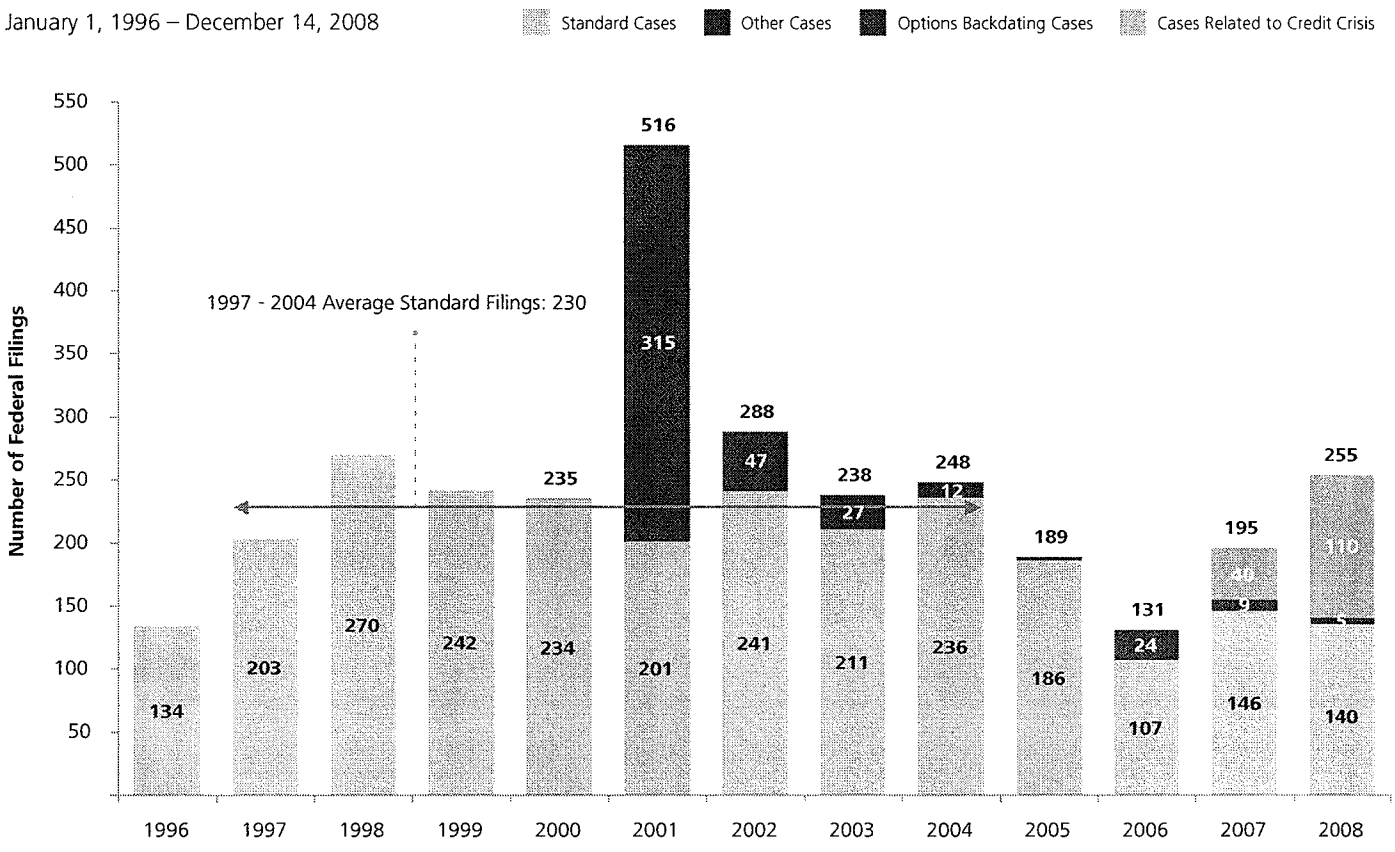
Securities Class Action Filings

Through December 14, 255 federal securities class actions had been filed in 2008, continuing last year's substantial rebound from the recent low of 131 cases in 2006.[2] In fact, if we exclude the unusual cases—those that are related to the IPO securities litigation, analyst cases, and mutual fund market timing cases (i.e., the "Other Cases" in Figure 1)—filings in 2008 are at a 10-year high. If filings continue to come in over the last two weeks of 2008 at the same pace, the total number of cases would reach 267.

Credit crisis-related cases made up approximately one-fifth of all filings in 2007, but make up almost half of the 2008 filings. Options backdating cases peaked in 2006, but still continue to appear, with five brought in 2008.

The first cases related to the subprime meltdown were filed in February 2007. By the second half of 2007, subprime cases were being filed at an increasing pace, and, as the economy moved into a full-blown credit crisis in 2008, other credit-related cases were filed as well (Figure 2). For example, within the broader category of cases related to the crisis, auction-rate securities-related cases peaked in the first half of 2008, with seven filed in the first quarter and nine in the second quarter of the year following the massive failure of auctions in late February.[3] Although the pace of auction-rate securities-related filings has slowed since then, these cases have not disappeared, with four filed in the second half of 2008. While the first surge of these cases was filed against the banks and broker-dealers involved in the creation of

Figure 1. **Federal Filings**
January 1, 1996 – December 14, 2008

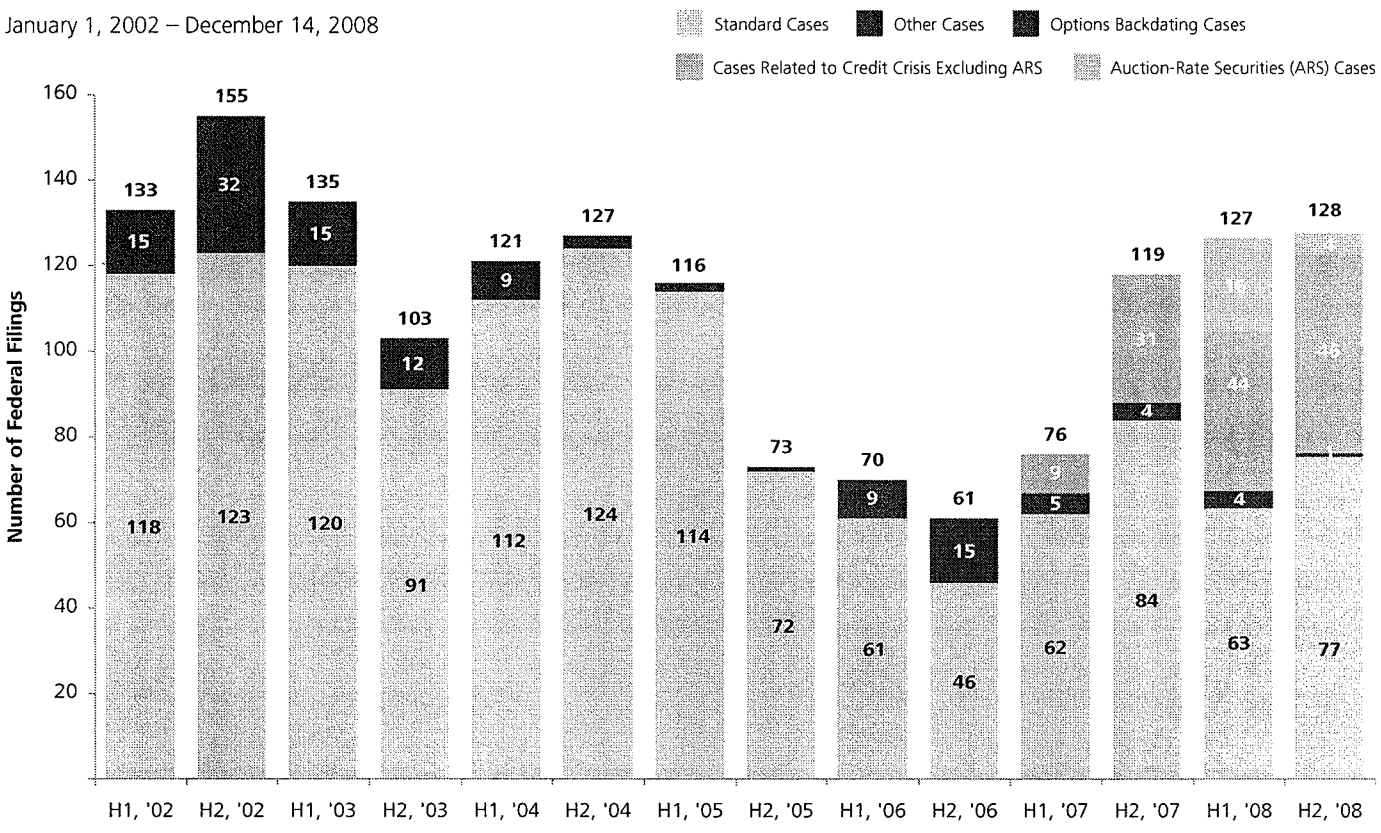


Note: Other Cases include IPO laddering, mutual fund market timing, and analyst cases.

[2] Data on filings come from multiple sources, including RiskMetrics Group/Securities Class Action Services (SCAS), Factiva, Bloomberg, FactSet, SEC filings, and the public press. In compiling our data, we seek information on all unique class actions alleging damages with regard to the purchase, ownership, or sale of securities. Most of our summary statistics below are based on data for cases filed in US Federal Courts. Until cases are consolidated, we report multiple filings that potentially are related to the same alleged fraud if complaints are filed in different Circuits. Similarly, until cases are consolidated, we report multiple filings if different cases are filed on behalf of investors in common stock and other securities. If cases are ultimately consolidated, the data are adjusted.

Figure 2. **Federal Filings: Six-Month Intervals**

January 1, 2002 – December 14, 2008



Note: Other cases include IPO laddering, mutual fund market timing, and analyst cases.

markets for auction-rate securities, at least one "indirect" case has subsequently been filed against a non-bank company, NextWave Wireless Inc., which held these securities in its portfolio. This indirect channel may be a source of additional filings in the weeks to come.

Filings by Circuit

In this year, as in prior years, cases have been concentrated in the Second and the Ninth Circuits (Figure 3).

The particular spike in the Second Circuit cases in 2008 stems directly from the credit crisis: both auction-rate securities cases and other credit crisis-related cases have been clustered in this Circuit, which includes New York, Connecticut, and Vermont.

Credit crisis-related cases made up approximately one-fifth of all filings in 2007, but make up almost half of the 2008 filings.

[3] See NERA working paper, "Auction-Rate Securities: Bidder's Remorse?" by Stephanie Lee. This NERA study can be found at: http://www.nera.com/image/PUB_Auction_Rate_Securities_0708.pdf

Figure 3. **Federal Filings by Circuit, Year, and Type of Case**

January 1, 2006 – December 14, 2008

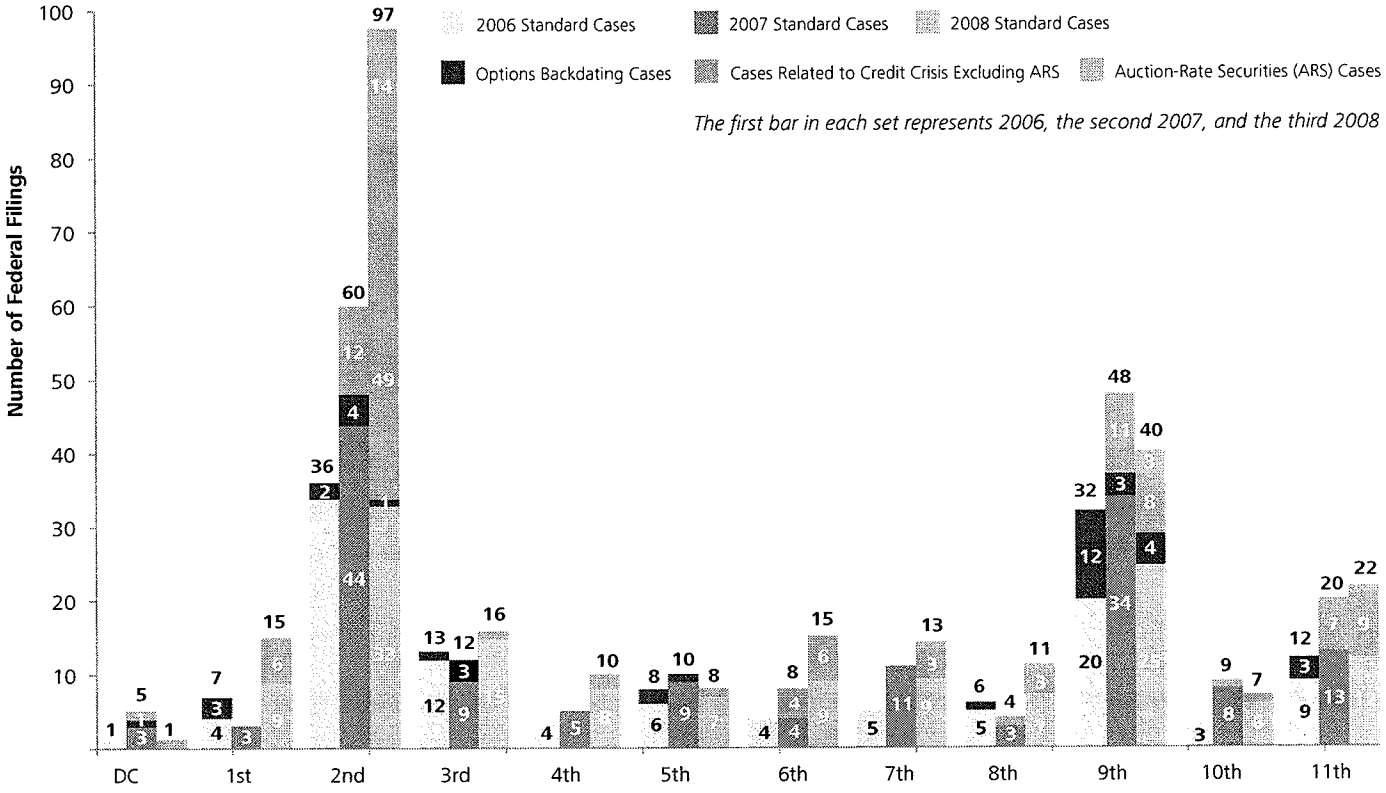
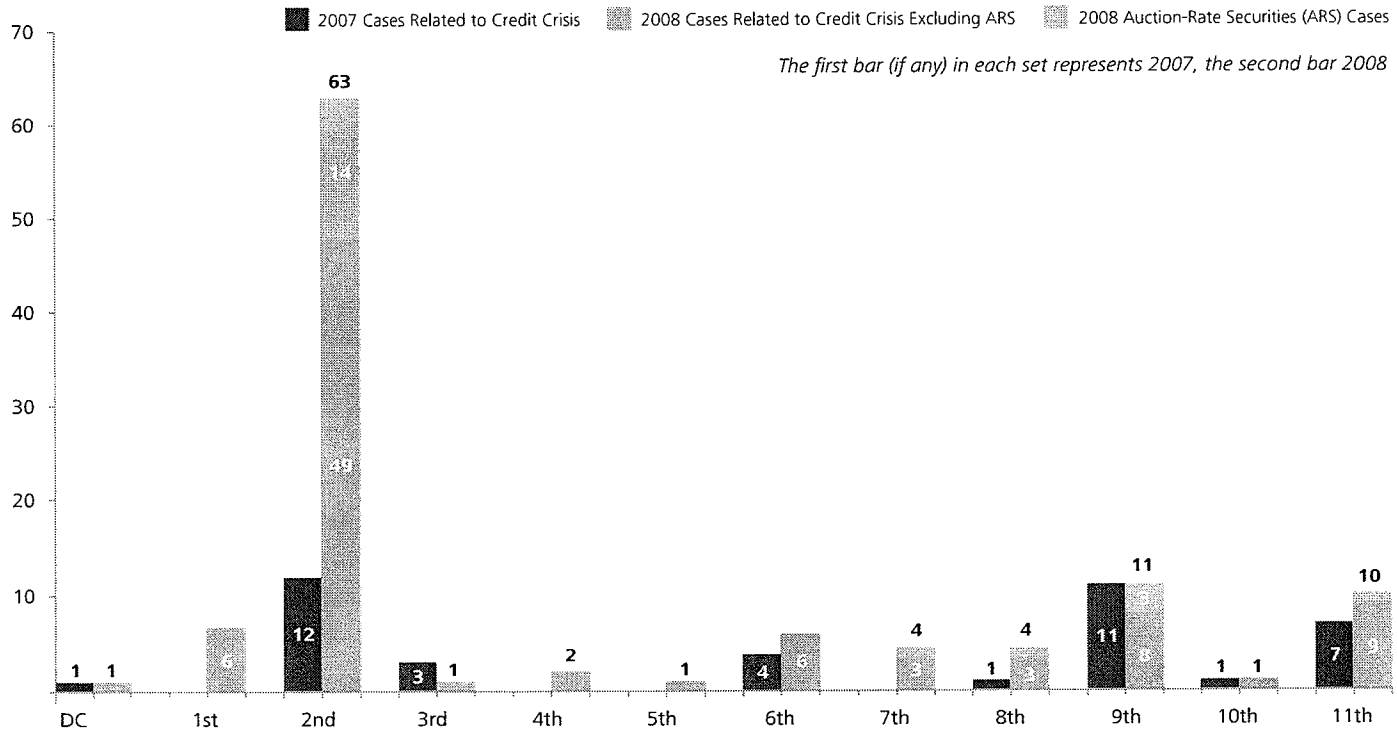


Figure 4. **Cases Related to Credit Crisis by Circuit**

January 1, 2007 – December 14, 2008



While in 2007 only eight Circuits had been affected by the subprime meltdown, in 2008 all Circuits have had at least one credit crisis-related case (Figure 4).

Filings by Sector

In 2005 and 2006, securities class action filings were spread widely across a number of industrial sectors. As the subprime lending markets experienced a meltdown and a full-blown credit crisis began to emerge in 2007, an increasing fraction of all filings were made against firms in the financial sector.

This year, a huge spike in filings occurred against companies in the finance sector, as the credit crisis continued and a number of firms in the finance industry collapsed. Over 120 filings in 2008—almost 50% of all filings—named a company in the finance sector as the primary defendant.

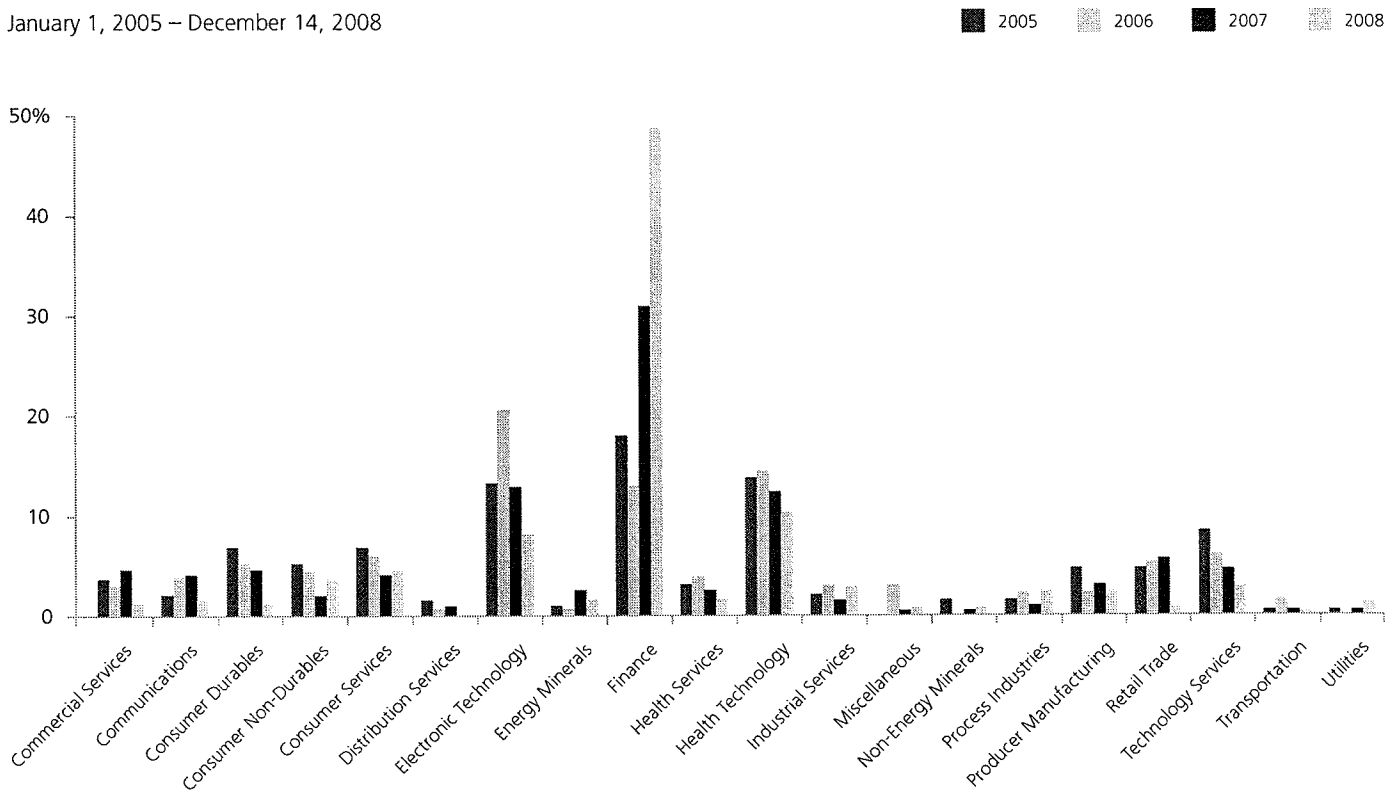
Although the most dramatic trend in filings has been in the finance sector, other sectors also saw continued filing activity. For example, even though the health technology sector has lost ground to the finance sector as a percentage of all filings, the *level* of filings in this sector has slightly increased over the past few years: there were only 19 filings against health technology firms in 2006 and 29 filings in 2008.

For the electronic technology and technology services sectors combined, on the other hand, both the number of filings and the percentage of all filings in that sector are lower in 2008 than in the prior three years.

For some cases, the primary defendant may not be in the financial sector, but a co-defendant in that sector may also be named. Thus, the financial services sector is likely to be even more embroiled in securities class action litigation in 2008 than indicated by the pattern in Figure 5.

Figure 5. **Percent of Filings by Sector**

January 1, 2005 – December 14, 2008



Nearly 50% of all filings in 2008 named a company in the finance sector as the primary defendant.

Specifically, 65 cases filed in 2008 so far have had some financial institution co-defendant named in the complaint. This is a substantial increase from the number of cases with a financial sector co-defendant from the prior year: 9% in 2007 had a financial institution co-defendant, while 25% of cases filed in 2008 name a financial institution as a co-defendant.

Types of Allegations[4]

Approximately 25% of the allegations in cases filed in 2008 are related to accounting, which has been a fairly steady proportion of allegations over the past few years (Figure 6). On the other hand, over 40% of the allegations in 2008 involve product and operational defects, an increase from prior years. Again, this shift is driven by the credit crisis, because a number of these cases relate to alleged failures of financial products to perform as promised.

Trends in Resolutions

While filings have increased over the last two years due to the credit crisis, there has been no clear increasing or decreasing trend in the pattern of resolutions. In fact, most credit crisis-related cases have not yet reached any final resolution, since it can take months or even years for cases to be dismissed, tried, or settled.

Figure 6. **Allegations in Federal Filings**
January 1, 2008 – December 14, 2008

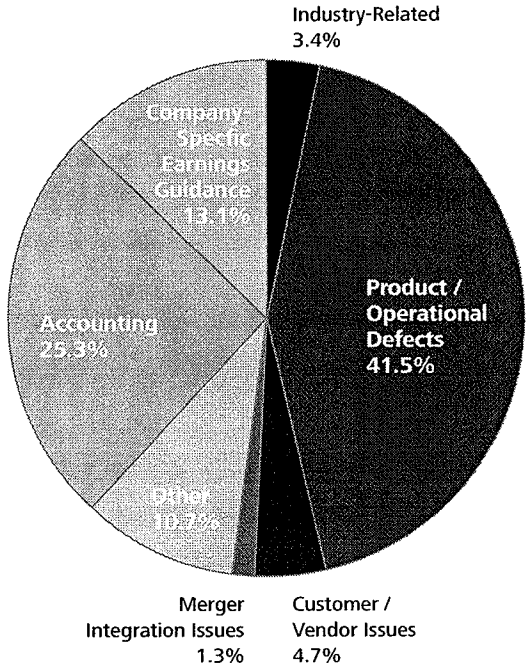
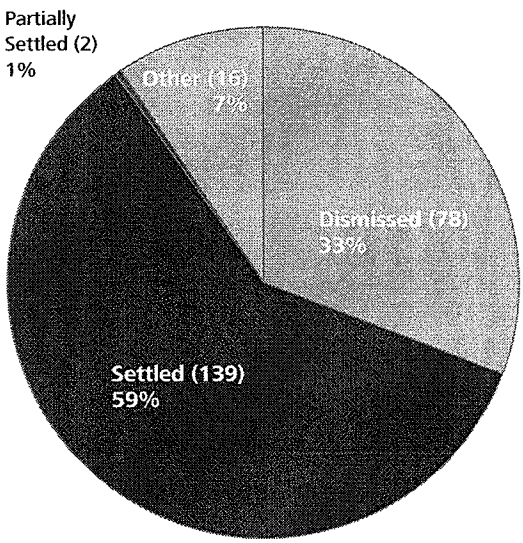


Figure 7. **Status of 235 Federal Shareholder Class Actions Filed in 2000**

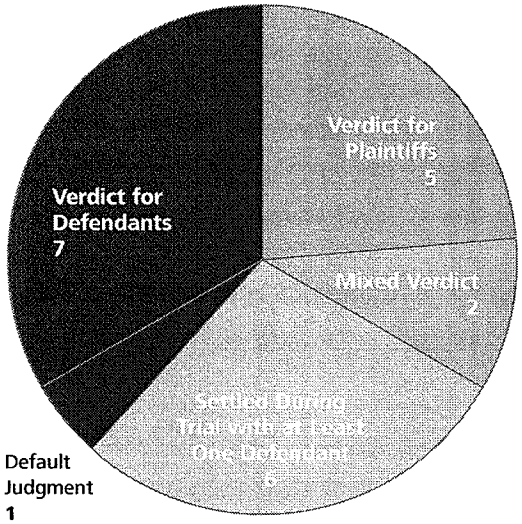


[4] Most securities class action complaints have multiple allegations. All allegations are included in this analysis, such that the total number of allegations exceeds the total number of filings.

Of the 1,121 cases filed between December 14, 2001 and December 14, 2006, 729 have resolved. Almost 45% of these resolved cases ended with a dismissal, and 55% reached a settlement. However, 392 of the filings from this time period remain pending, so these statistics may differ from the ultimate mix of resolutions for all cases.

Because it may take several years for cases to reach a resolution, we have tracked a single cohort of filings over time to see how they ultimately are resolved (Figure 7). Of the cases filed in 2000, 59% have reached final settlement, 1% have reached a partial settlement, and 33% have been dismissed. Note that 7% of these 2000 filings either remain pending or have been abandoned by the plaintiffs, so even after eight years it is impossible to tell the final mix of resolutions for these cases.

Figure 8. **Twenty-One Shareholder Class Actions That Went to Trial After PSLRA**



Verdicts

While the vast majority of securities class action cases result in dismissal or settlement, a tiny fraction of cases ultimately go to trial. For example, only four of the cases filed in 2000 have gone to trial, and all settled with at least one defendant during the trial. A full list of securities class actions that went to trial following the PSLRA is included in Table 1. A brief summary of outcomes for these cases is illustrated in Figure 8.

The vast majority of securities class action cases result in dismissal or settlement; a tiny fraction ultimately go to trial.

Once cases go to trial, they do not always reach an unambiguous plaintiff or defense verdict. Instead, one or more of the defendants might settle during the trial, or a verdict may be reached for one party but later overturned.

For example, in January 2008 the case against Apollo Group resulted in a jury verdict for the plaintiffs of approximately $280 million. In August of this year, however, this verdict was overturned by US District Court Judge Teilborg, who ruled that the plaintiffs had "failed to prove that the company's actions caused any harm."[5]

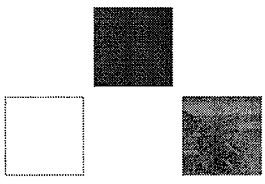
[5] "Apollo Group Wins Reversal of $280M Verdict," by Christine Caulfield, *Law 360*, Portfolio Media, Inc., August 5, 2008.

Table 1. **Twenty-One Shareholder Class Actions That Went to Trial after PSLRA**

Case	Federal Circuit	File Year	Trial Year[1]
I. Verdict for Defendants			
1 Apollo Group, Inc.[2]	9	2004	2007
2 Biogen Inc.	1	1994	1998
3 Everex Systems Inc.[3]	9	1992	2002
4 Health Management, Inc.	2	1996	1999
5 JDS Uniphase Corp.	9	2002	2007
6 Thane International, Inc.[4]	9	2003	2005
7 Tricord Systems, Inc.	8	1994	1997
II. Verdict for Plaintiffs			
1 Claghorn / Scorpion Technologies, Inc.	9	1998	2002
2 Computer Associates International, Inc.	2	1991	2000
3 Helionetics, Inc.	9	1994	2000
4 Real Estate Associates, LP	9	1998	2002
5 US Banknote Corp.[5]	2	1994	1997
III. Mixed Verdict			
1 Clarent Corp.[6]	9	2001	2005
2 ICN Pharmaceuticals, Inc.[7]	2	1987	1996
IV. Settled During Trial[8]			
1 AT&T	3	2000	2004
2 First Union National Bank / First Union Securities / Cyprus Funds	11	2000	2003
3 Globalstar Telecommunications, Ltd.	2	2001	2005
4 Heartland High-Yield / Short Duration High-Yield Municipal Bond Funds	7	2000	2005
5 WorldCom	2	2002	2005
6 Safety-Kleen Corp. (Bondholders Litigation)[9]	4	2000	2005
V. Default Judgment			
1 Equisure Inc.[10]	8	1997	1998

Notes:
Until otherwise noted, all these cases went to a jury trial. Data are from case dockets.

[1] Trial year represents a year in which a jury trial began.
[2] On 8/4/2008 judge overturned a 1/16/2008 jury verdict for plaintiffs. On 8/29/2008 plaintiffs filed an appeal.
[3] 1998 verdict for defendants was reversed and remanded by the Ninth Circuit Court of Appeals; retrial again yielded a verdict for defendants.
[4] Bench trial verdict was reversed and remanded by the Ninth Circuit Court of Appeals; has not yet been retired.
[5] Judge subsequently vacated the jury verdict and approved a settlement.
[6] Chairman of Clarent liable, Ernst & Young not liable.
[7] Hung jury.
[8] At least one defendant settled after the trial began, but prior to judgment.
[9] Some director-defendants settled during the trial; default judgment against CEO and CFO who failed to show up for trial.
[10] Default judgment against Equisure Inc. who failed to show up for trial.



Settlements

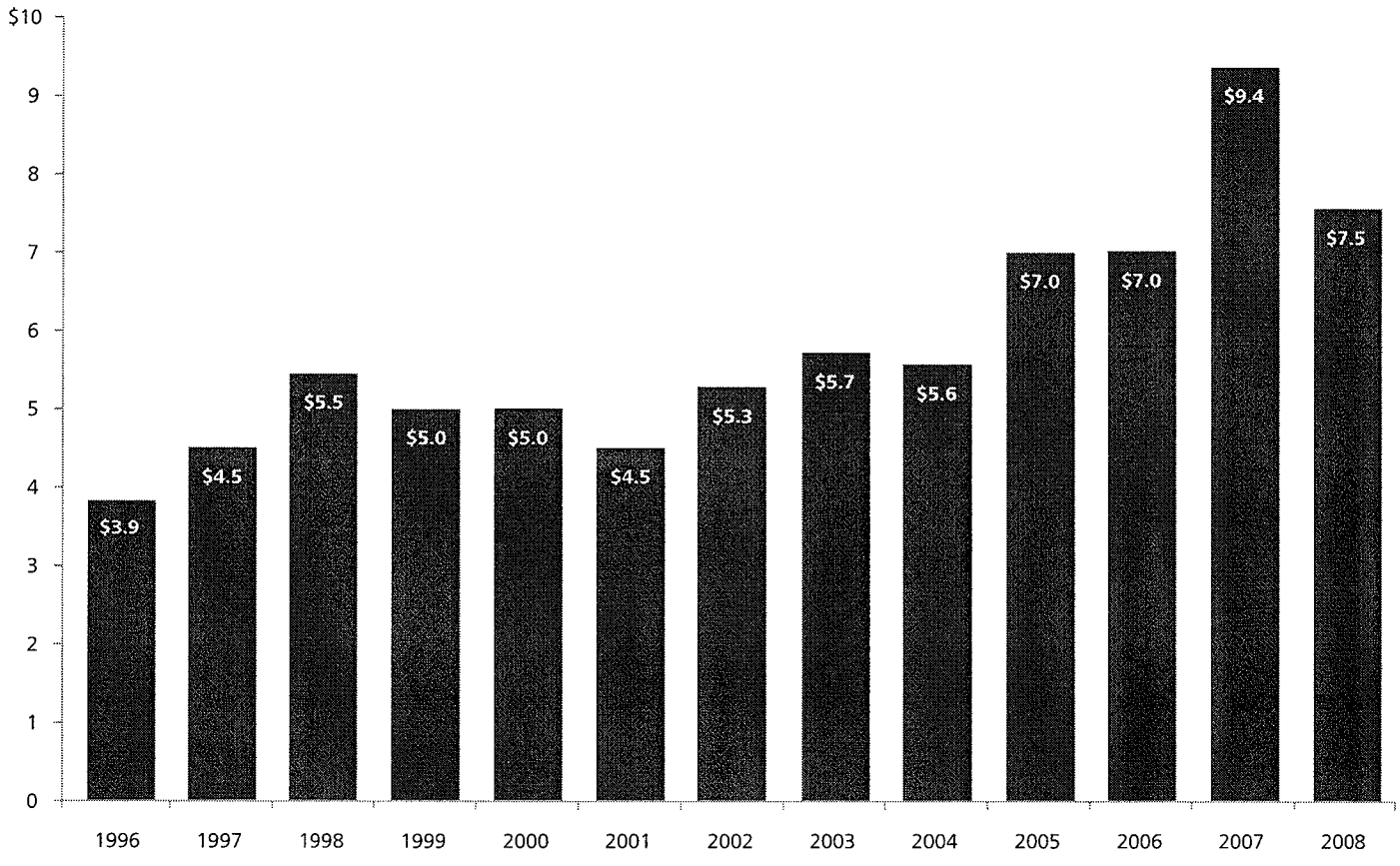
While filings have been increasing sharply over the past two years, median settlements have been relatively steady (Figure 9). Looking over the longer history starting in 1996, median settlements have increased from around $4 million up to $8 million in 2008.[6]

Over the 2005-2008 year period, median settlements ranged from $7.0 million to $9.4 million. While median values increased between 2006 and 2007, they dropped between 2007 and 2008, so, at this time, there is no evidence of an increasing trend in median settlements.

While filings have been increasing sharply over the past two years, median settlements have been relatively steady. ... at this time, there is no evidence of an increasing trend in median settlements.

Figure 9. **Median Settlement Value ($MM)**

January 1, 1996 – December 31, 2008

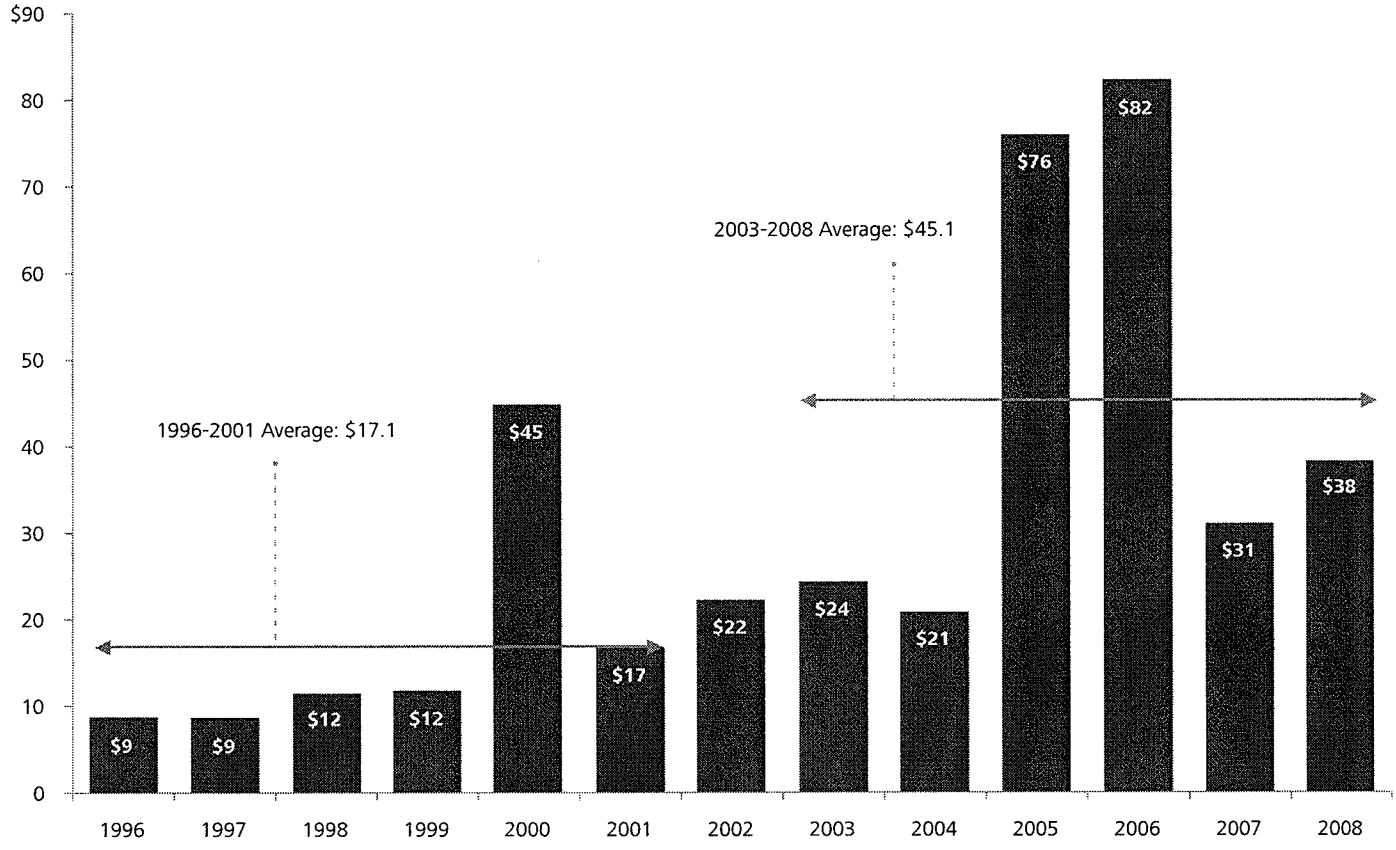


[6] Unless otherwise noted, tentative settlements and cases in which not all non-dismissed defendants have settled are not included in settlement statistics. We define settlement year as the year in which the first court hearing related to the fairness of the settlement occurred. For cases with multiple partial settlements, a settlement year is determined by a court fairness hearing date of the last partial settlement that concludes the case.

There has been substantially more variation in average settlements. The annual average has ranged from $21 million to $82 million during 2003-2008.

Although median settlements have been relatively stable in recent years, there has been substantially more variation in average settlements (Figure 10). The average settlement over the years from 2003 to 2008—the post-Sarbanes-Oxley-Act period—has been $45 million, notably higher than the pre-Sarbanes-Oxley average of $17 million and also above the 2008 average of $38 million. The annual average has ranged from $21 million to $82 million over this six-year period.

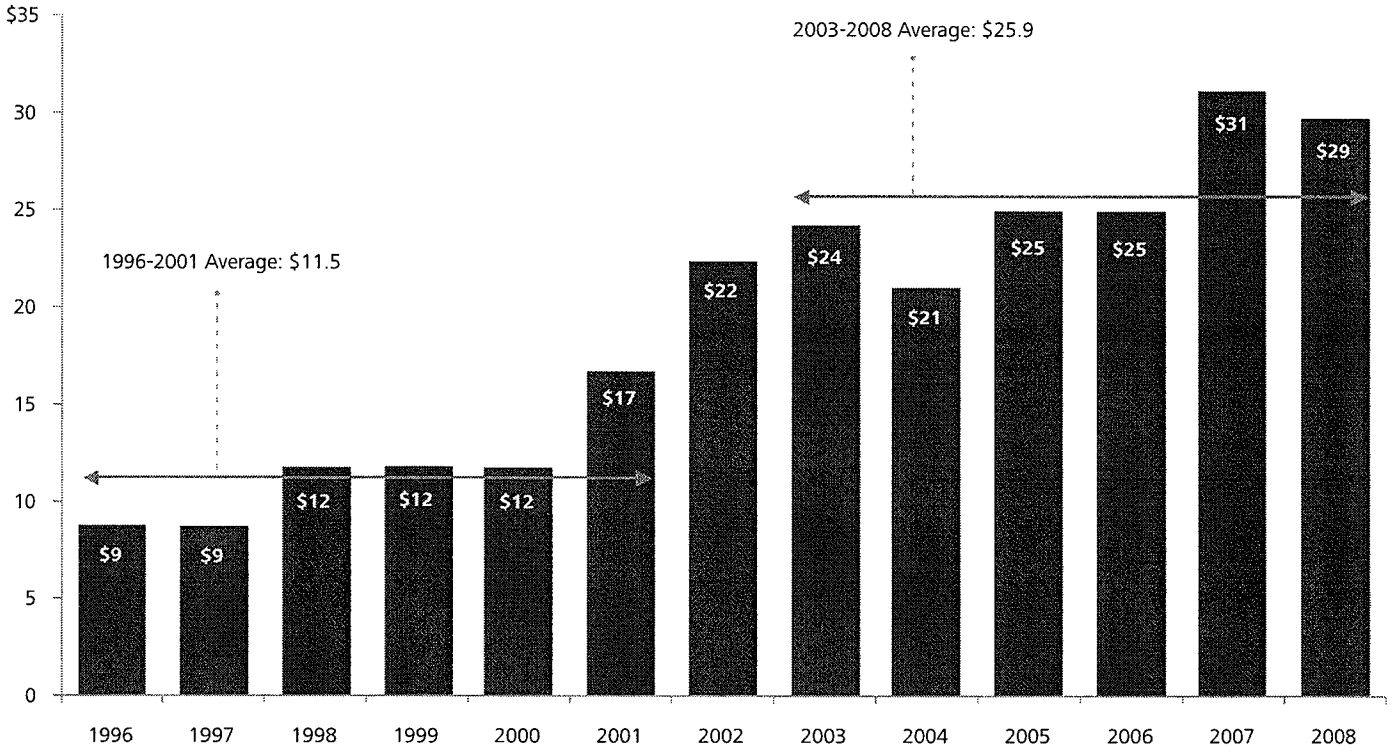
Figure 10. **Average Settlement Value ($MM), All Cases**
January 1, 1996 – December 31, 2008



These average values can be extremely sensitive to the inclusion of large outlier settlements. Removing all settlements of over $1 billion, the 2003-2008 average settlement drops to $26 million, and the range of settlement averages across years becomes much tighter (Figure 11).

The 2008 final settlement of $1.04 billion for McKesson HBOC, Inc. is an example of such an outlier. Removing this settlement from the calculation drops the 2008 average from $38 million down to $29 million, below the 2007 average of $31 million.

Figure 11. **Average Settlement Value ($MM), Excluding Settlements Over $1 Billion**
January 1, 1996 – December 31, 2008



Note: Average settlement shown without final settlements over $1 billion: the 2000 Cendant, 2005 WorldCom, 2006 Royal Ahold, AOL Time Warner, two Nortel Networks, and 2008 McKesson HBOC Inc. settlements.

More generally, the distribution of settlement values has a fairly consistent shape over the past few years (Figure 12). Over 50% of cases have settlements for less than $10 million, and 10% or less have settled for more than $100 million. In 2008, only 6% of cases settled for more than $100 million.

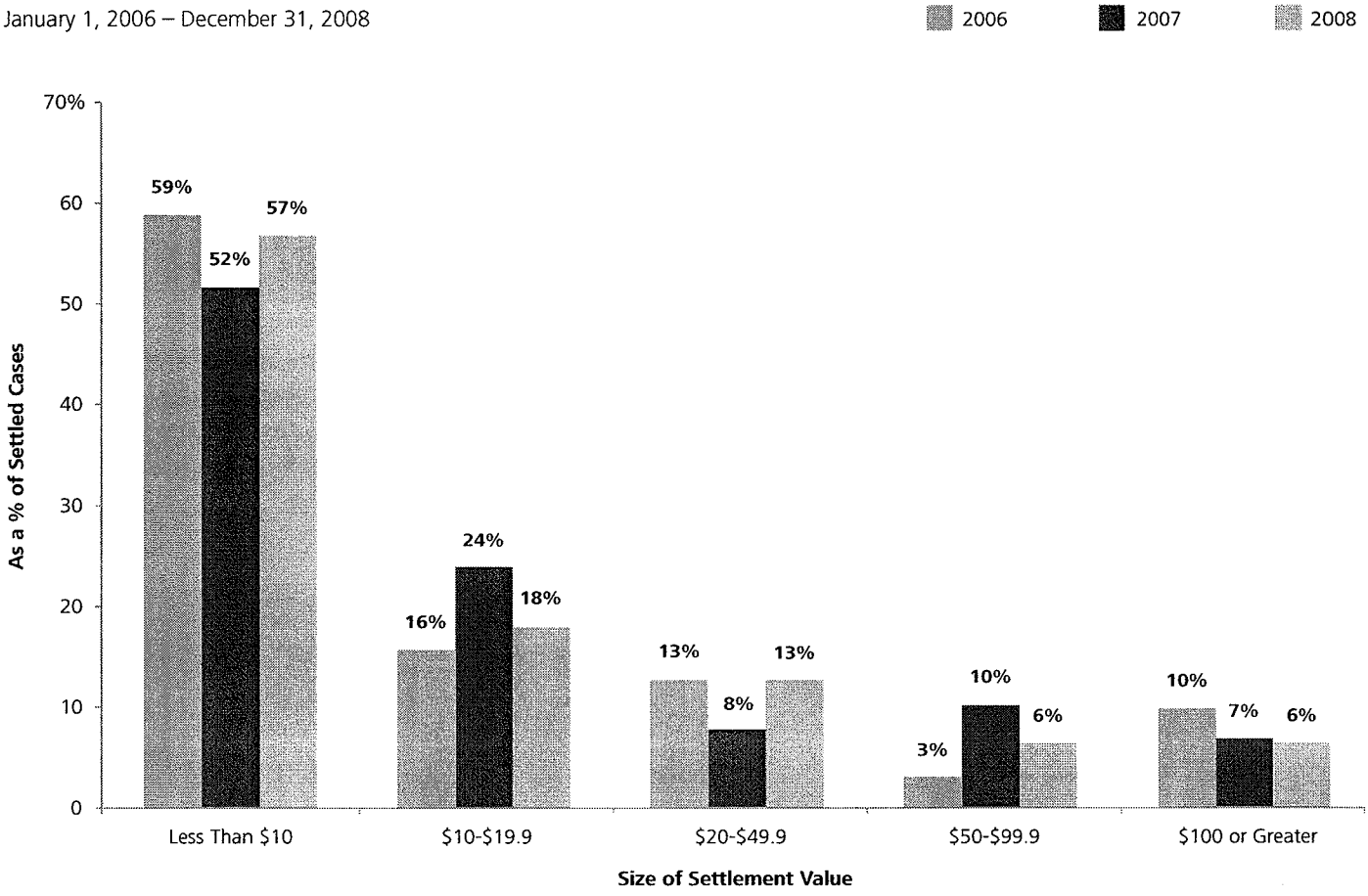
Investor Losses and Settlements

NERA has examined the relationship between settlement size and various case attributes for cases filed since the passage of the PSLRA. We find that investor losses, which can be calculated using publicly available data, historically have been the single most powerful determinant of settlements, explaining approximately 50% of their variation, controlling for other characteristics of the case.[7]

While investor losses are strongly correlated with settlement amounts, the two do not move together at a one-to-one ratio. Instead, as investor losses increase, settlements increase at a much lower rate: a 1.0% increase in investor losses results in an approximately 0.4% increase in the size of the expected settlement, other factors being held constant (Figure 13).[8]

Figure 12. **Distribution of Settlement Values ($MM)**

January 1, 2006 – December 31, 2008



[7] Investor losses are measured by comparing a company's return to the return on the S&P 500 over the class period, and by using the proportional decay trading model to estimate the number of affected shares of common stock. We use investor losses as a crude proxy for plaintiff-style damages. The relationship between settlement values and investor losses is estimated in logs.

[8] This relationship between investor losses and settlements is based on NERA's settlement prediction model, controlling for other case characteristics and overall price inflation. This model explains almost 64% of the variation in settlements, across almost 800 cases filed after January 1, 1996 and settled through June 30, 2008.

Another way to look at the relationship between investor losses and settlement values is to compare the ratio of these two numbers for cases with losses of different amounts. Holding all other case characteristics constant, at their respective means, a case with investor losses of $100 million is expected to have a settlement that is around $5.1 million, or 5.1% of investor losses. A case with $1 billion in investor losses is expected to settle for $12 million, only 1.2% of losses (Figure 14).

Figure 13. **As Investor Losses Rise, Expected Settlements as a Percent of Those Losses Decline**

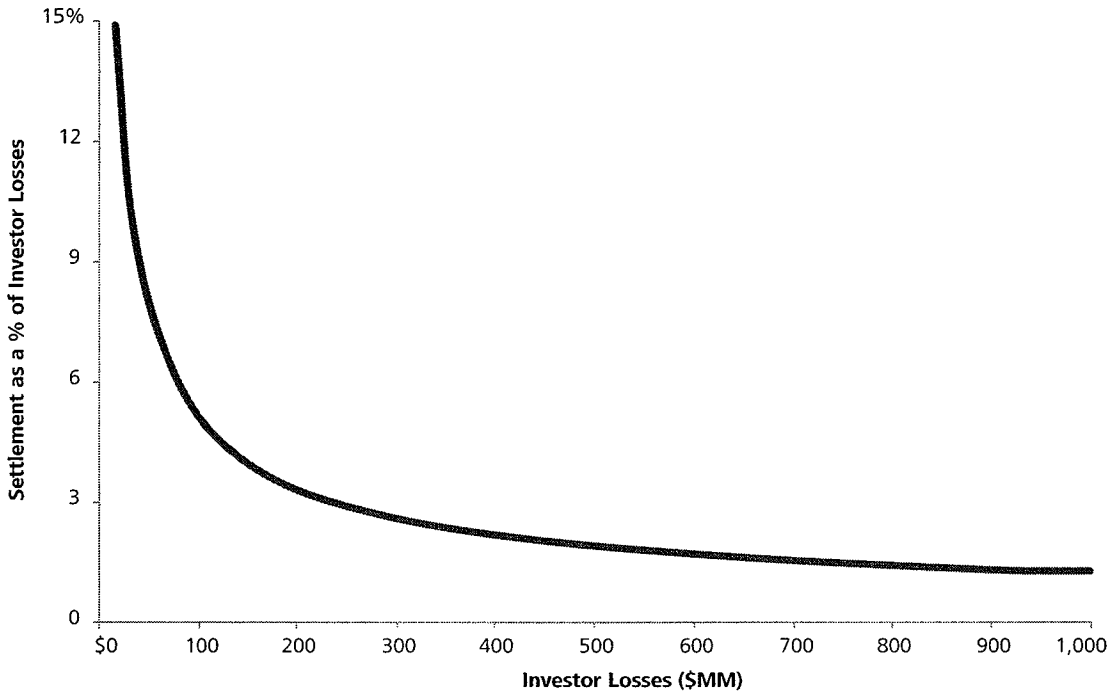
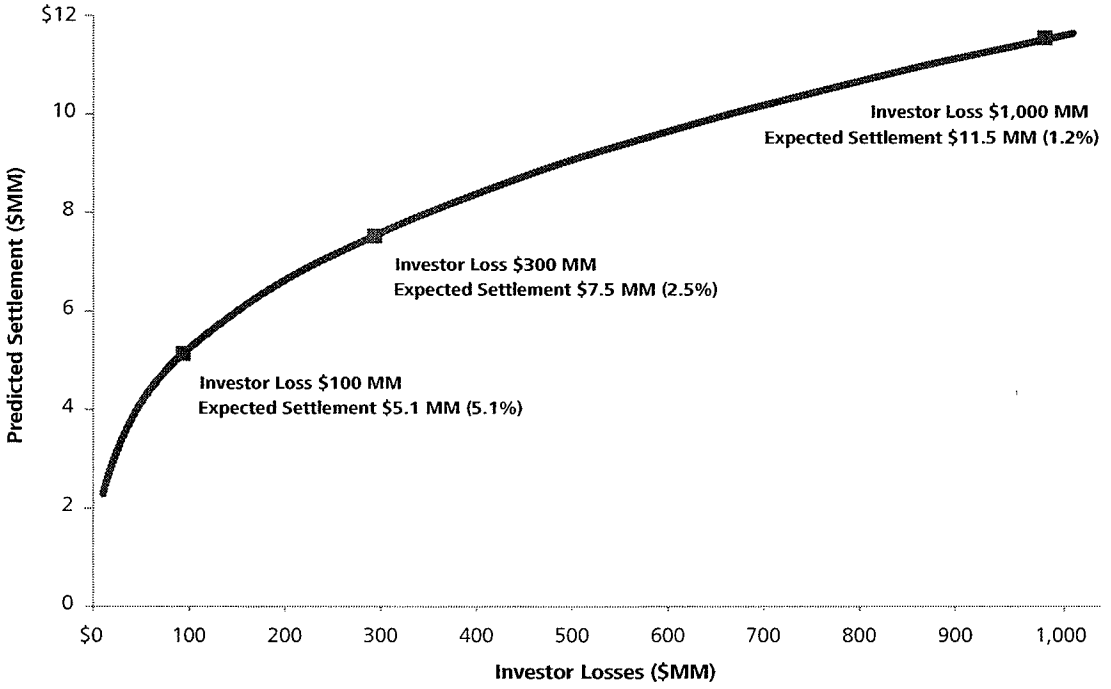


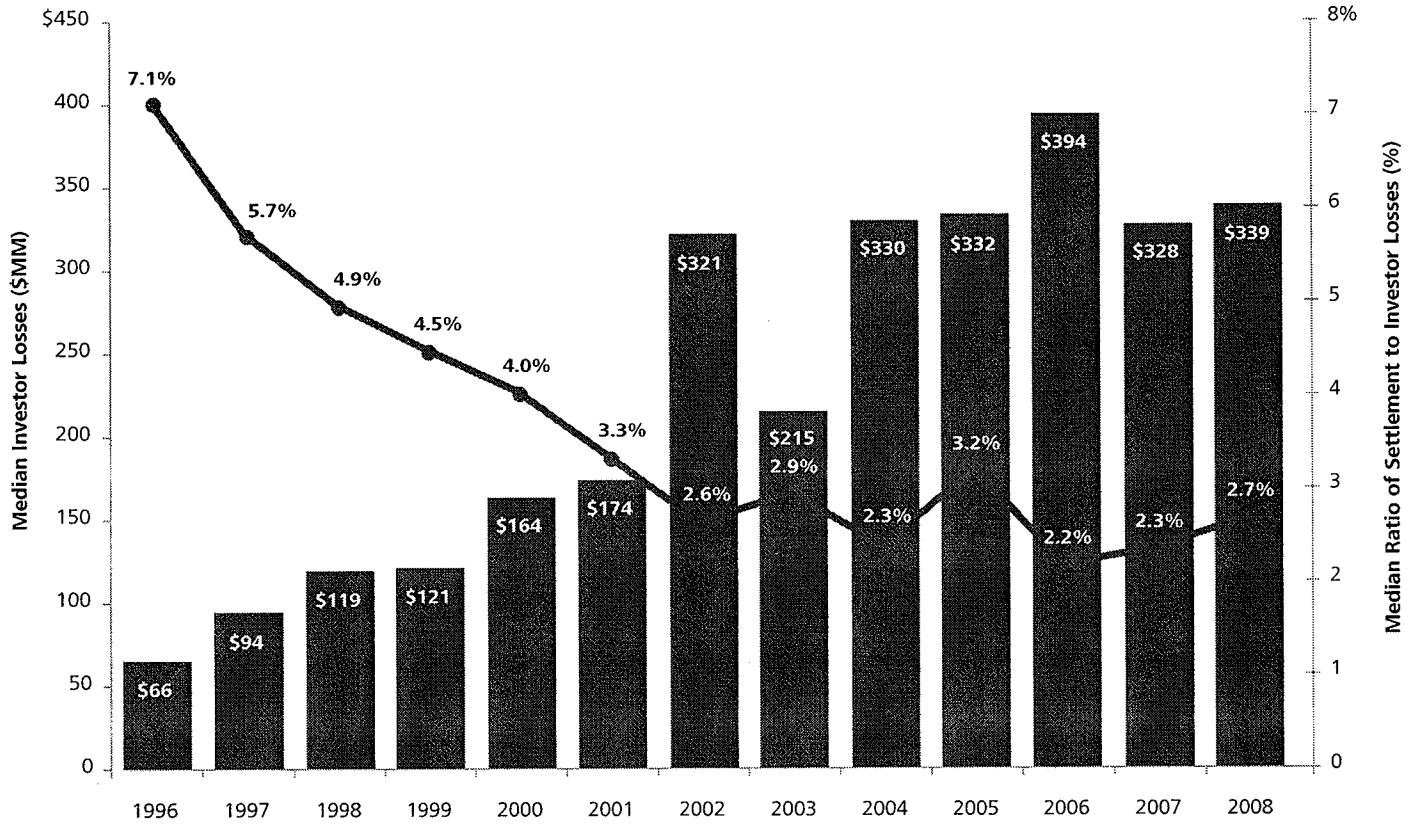
Figure 14. **Expected Settlement Rises More Slowly Than Investor Losses**



Over a longer horizon, there has been a gradual increase in the investor losses of settled cases. A decade ago, the median investor loss estimate for a settled case was around $120 million. This year, the median investor loss estimate for a settled case has been almost $340 million (Figure 15).

A decade ago, the median investor loss estimate for a settled case was around $120 million. This year, the median investor loss estimate for a settled case has been almost $340 million.

Figure 15. **Median Investor Losses and Median Ratio of Settlement to Investor Loss**
January 1, 1996 – December 31, 2008



Focusing on very recent trends, we do not see any increase in the median investor loss for cases resolved in 2008 compared to the 2005-2007 period. Like median settlement amounts, median investor losses have been relatively stable over the past few years. Thus, the ratio of median settlements to investor losses, which had been as high as 7% back in 1996, has also stayed relatively steady in the 2-3% range over the past few years.

Top 10 Settlements

While the majority of settlements over the past decade have been less than $10 million, a small number of "mega-settlements" have dominated the news and had a significant impact on annual average settlement values. The top 10 securities class action settlements of all time are listed in Table 2. All but one of these settlements exceeded $1 billion.

Three of the settlements on the top 10 list are shown with 2008 as a settlement year, but only one of these—McKesson HBOC, Inc.—was finalized in 2008. The other two 2008 settlements have not yet been finalized: although many parties have reached partial settlements in the Enron case, not all defendants have finalized settlements at this time, and the $925 million UnitedHealth Group settlement is still a tentative settlement.

In total, these top 10 settlements add up to more than $28 billion. Note that over $13 billion, or 47%, of this aggregate settlement amount was paid by the "deep pockets" of financial institution co-defendants.

Table 2. **Top 10 Shareholder Class Action Settlements**

Ranking	Company	Settlement Year	Total Settlement Value ($MM)	Settlement with Financial Institution Co-Defendant(s)[1] Value ($MM)	Percent
1	Enron Corp.[2]	2008	$7,242	$6,903	95%
2	WorldCom, Inc.[3]	2005	6,158	6,004	98%
3	Cendant Corp.[4]	2000	3,561	342	10%
4	Tyco International, Ltd.[5]	2007	3,200	*n.a.*	*n.a.*
5	AOL Time Warner Inc.	2006	2,650	*n.a.*	*n.a.*
6	Nortel Networks (I)	2006	1,143	*n.a.*	*n.a.*
7	Royal Ahold, NV	2006	1,100	*n.a.*	*n.a.*
8	Nortel Networks (II)	2006	1,074	*n.a.*	*n.a.*
9	McKesson HBOC Inc.	2008	1,043	10	1%
10	UnitedHealth Group[6]	2008	925	*n.a.*	*n.a.*
	Total		$28,096	$13,259	47%

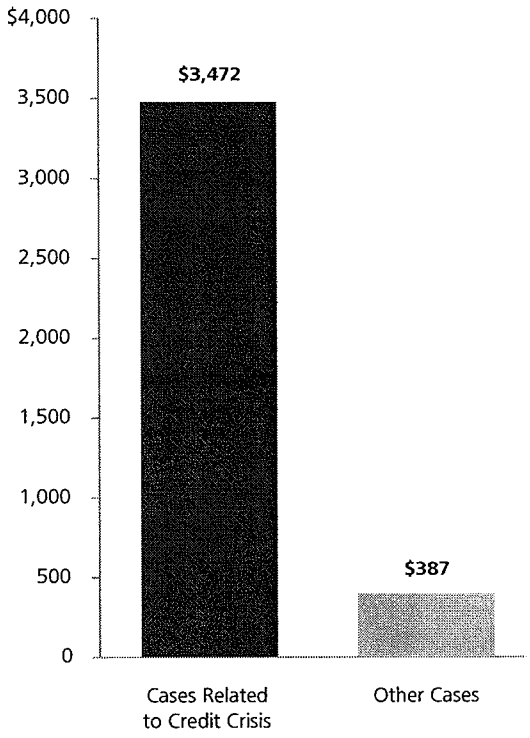
Note that for this summary table only, tentative and partial settlements are included for comparison, and "Settlement Year" in this table represents the year in which the last settlement—whether partial or final—had the first fairness hearing. For partial tentative settlements "Settlement Year" is the year in which this settlement was announced.

[1] If "*n.a.*," either the case did not have an underwriting co-defendant, or none of the settlement value in column (4) was paid by an underwriting co-defendant.
[2] This settlement includes seven partial settlements and one tentative partial settlement.
[3] The settlement value incorporates a $1.6 million settlement in the MCI WorldCom TARGETS case.
[4] The settlement value incorporates a $374 million settlement in the Cendant PRIDES cases. Settlement in the Cendant PRIDES I case was a non-cash settlement valued at $341.5 million.
[5] This settlement is a partial settlement.
[6] This settlement includes two partial tentative settlements.

Looking Forward

While filings over the last 18 months have been dominated by credit crisis-related cases, it is too soon for many of these cases to have reached resolution. When these cases do start to resolve, what are the settlements likely to be?

Figure 16. **Median Investor Losses ($MM) for Cases Related to the Credit Crisis and Other Cases Filed in 2008**



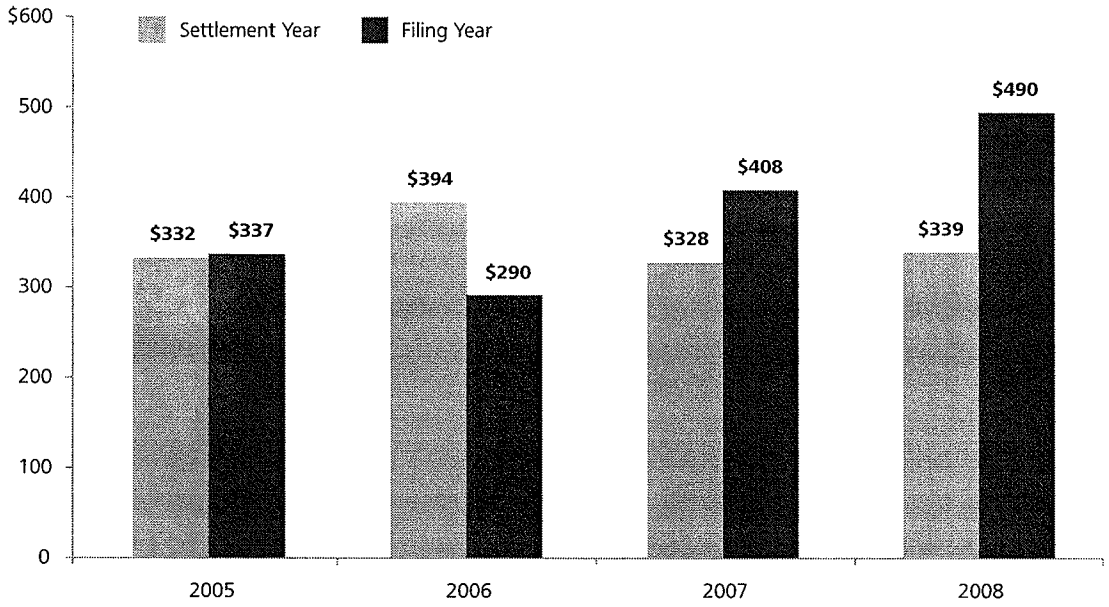
Note: Cases related to the credit crisis include one auction-rate securities case. Other cases include standard and options backdating cases.

Two forces may pull these future settlements in opposite directions. First, the investor losses associated with credit crisis cases are high. As mentioned above, investor losses historically have been the single most important predictor of settlement size. For the median credit crisis case filed in 2008, the investor losses are almost $3.5 billion, compared to a median of $387 million for other, non-credit crisis cases filed this year (Figure 16).

For context, median investor losses for cases *settled* in the past four years have been in the $300 to $400 million range—corresponding to median settlements of less than $10 million—similar to the range of median investor losses on all cases *filed* in 2005 and 2006. Overall median investor losses for filed cases have grown in the last two years. Median investor losses for cases filed in 2007 were over $400 million, and the median investor losses for all cases filed in 2008 are $490 million (Figure 17).

The second force, which may reduce future settlements, is the extent of the "deep pockets" of defendant companies. Historically, indicators of the financial wherewithal of the defendant have been positively and significantly correlated with settlement values: controlling for a number of other factors (although not the merits of a particular case), defendants with higher market capitalization have higher settlements, and companies that are bankrupt or have share prices of less than $1 have significantly lower settlements. As noted above, a substantial fraction of the top 10 settlement payouts have been made from the deep pockets of financial institution co-defendants.

Figure 17. **Federal Filings**
Median Investor Losses ($MM) by Settlement and Filing Year



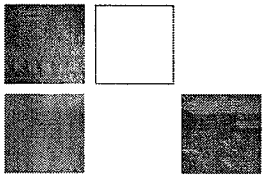
In the wake of this current credit crisis, many of the named defendants and co-defendants, particularly in the finance sector, may be bankrupt or have much smaller pockets at the time of settlement. This factor may put downward pressure on settlement values. As an early hint about this type of settlement pressure, rumors of a $700 million settlement for the IPO litigation against investment banks have circulated, down substantially from the $3 or $4 billion settlement allegedly on the table—and rejected by plaintiffs—in 2006.[9]

Conclusion

The credit crisis and turmoil in the financial sector have been correlated with a notable increase in securities class action filings, beginning in 2007 and continuing throughout 2008. Year to date, filings are at a six-year high, with 110 cases related to the credit crisis. But few of these credit crisis cases have yet to move very far through the resolution process, so it is too early to tell what impact these filings may have on settlement values and dismissal rates.

For now, median settlements remain relatively stable and below $10 million. Only time will tell if the huge investor losses for credit crisis filings may put upward pressure on median settlements in the future, or if the financial distress faced by defendant companies may pull median settlement values down.

[9] Specifically, "The investors' case was led by a six-attorney executive committee, headed by [Mel] Weiss. One committee member, Howard Sirota, said in an interview today that he pressed Weiss to accept a possible settlement of $3 billion or $4 billion, which, Sirota said, the banks appeared willing to pay. Weiss refused to consider anything less than $12.5 billion, Sirota said." David Glovin, "Financial Firms Near $700 Million IPO Suit Settlement", *Bloomberg.com*, October 28, 2008 (http://www.bloomberg.com/apps/news?pid=20601103&sid=a_k3emz_zIYI&refer=news). See also "Will $700 Million Finally Settle Decade-Old IPO Suit?" by Zach Lowe, *The AMLaw Daily*, October 29, 2008 (http://amlawdaily.typepad.com/amlawdaily/2008/10/will-700-millio.html).



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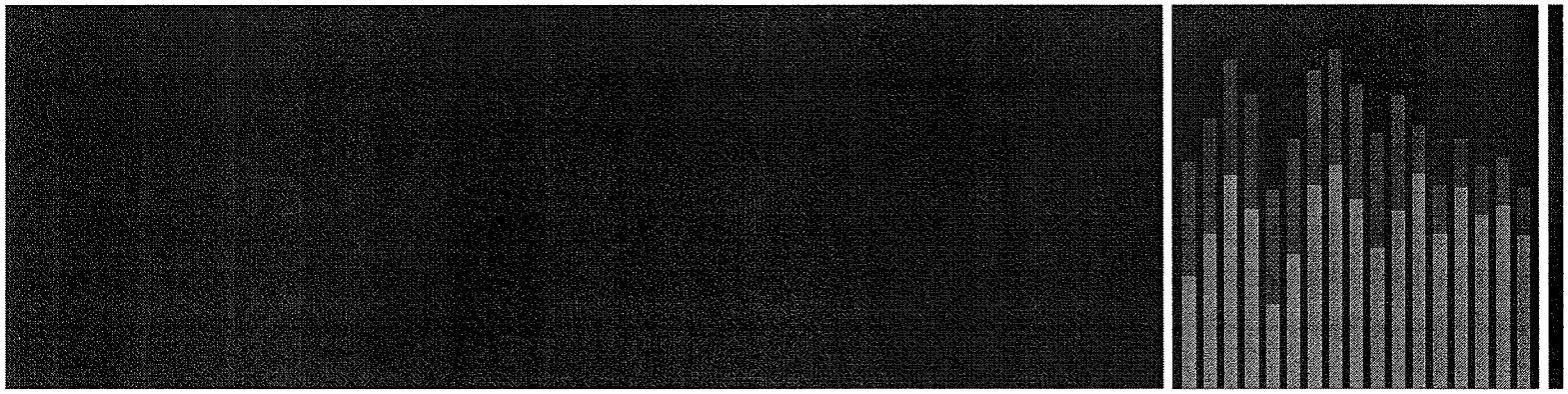

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE RITE AID CORPORATION THIS DOCUMENT RELATES TO: ALL ACTIONS	Master File No. 99-CV-1349 (SD)

DECLARATION OF JOHN C. COFFEE, JR.

JOHN C. COFFEE, JR., under penalty of perjury, declares as follows:

I. Introduction

1. I submit this Declaration in support of Plaintiffs' Motion for Final Approval of Partial Settlement and Plaintiffs' Counsel's Joint Petition for an Award of Fees and Reimbursement of Expenses, dated April 2, 2001. In this declaration, I essentially address only two distinct topics:

(a) whether the proposed settlement is "fair, reasonable and adequate" under the criteria laid down by the Third Circuit; and

(b) whether plaintiffs' counsel's application for an award of attorneys' fees and reimbursement of expenses is fair, appropriate, and justified under applicable precedents and the developing Third Circuit jurisprudence.

2. Because this Court has received a lengthy and highly informative "Joint Declaration of Co-Lead Counsel in Support of Proposed Class Settlement and Joint Petition for

An Award of Fees and Reimbursement of Expenses," and "Plaintiff's Counsel Memorandum of Law In Support of Motion for Award of Attorney's Fees and Reimbursement of Expenses," I will not add to the aggregate paper that it must read or the burden that it is under by restating facts that are set forth in more detail in that petition and memorandum. My focus will be on providing additional information and suggesting what the underlying forces and considerations are that explain the Third Circuit case law and how they apply to this case.

II. Background and Qualifications

3. I am the Adolf A. Berle Professor of Law at Columbia University Law School, where I have taught since 1980, and am a member of the Bars of the State of New York and the District of Columbia. I am also a Fellow of the American Academy of Arts and Sciences, a Fellow of the American Bar Foundation, and a member of, and former Reporter for, the American Law Institute. I have also taught law at the law schools of Stanford University, Georgetown University, the University of Virginia, and the University of Michigan. Prior to that, I practiced law with the firm of Cravath, Swaine & Moore in New York City from 1970 to 1976. I am a 1969 graduate of Yale Law School.

4. As a law professor, one of my principal academic interests has been class action litigation (with a special focus on the management of the large class action and the incentive structure that the law creates to reward the successful plaintiff's attorney). In a series of articles, I have often been critical of the performance of class action plaintiff's attorneys. In contrast, in this case, I do not believe my usual criticisms apply; rather, plaintiffs' attorneys in this case have reached a settlement that, in my judgment, is highly favorable to the class and among the largest securities class action settlements on record.

5. Although my academic interest in class actions does not make me more able than any other competent attorney to cite relevant precedent to this Court, my research has placed me in a position to call to this Court's attention recent empirical evidence concerning class action litigation and attorney fee awards. This data has relevance because it supplies a useful cross-check that assures the court that the partial settlement in this case is reasonable (and indeed exemplary) and that class counsel's requested fee is appropriate and within the prevailing range of reasonableness. Thus, rather than duplicate class counsel's legal memorandum, I will focus instead on recent empirical studies regarding the typical recovery and fee award in class litigation.

6. I have on several occasions testified before Congressional committees with regard to class actions, have appeared as a witness before the Advisory Committee on the Civil Rules of the United States Judicial Conference, and regularly appear as a panelist at symposia and institutes on the topic of class actions, including serving for the past three years as the principal academic lecturer at the annual ABA National Symposium on Class Actions. During 1995, I served as an adviser to the White House's Office of General Counsel with regard to the Private Securities Litigation Reform Act of 1995 (which chiefly seeks to regulate securities class actions), and I have also testified (both in person and by affidavit) on fee awards in a number of class actions.

7. In addition, I have authored the following articles on class actions (which I cite in part to indicate that I am not contradicting prior positions or inventing a novel argument that I would not endorse apart from the facts of this case): Coffee, Rescuing the Private Attorney General: Why the Model of the Lawyer as Bounty Hunter Is Not Working, 42 Md. L. Rev. 215

(1983); Coffee, The Unfaithful Champion: The Plaintiff as Monitor in Shareholder Litigation, 48 Law & Contemp. Problems 5 (Summer 1985); Coffee, Understanding the Plaintiff's Attorney: The Implications of Economic Theory for Private Enforcement of Law Through Class and Derivative Actions, 86 Colum. L. Rev. 669 (1986); Coffee, The Regulation of Entrepreneurial Litigation: Balancing Fairness and Efficiency in the Large Class Action, 54 U. Chi. L. Rev. 877 (1987), Coffee and Schwartz, The Survival of the Derivative Suit: An Evaluation and a Proposed Legislative Reform, 81 Colum. L. Rev. 261 (1981); Coffee, Rethinking the Class Action: A Policy Primer on Reform, 62 Ind. L. Rev. 625 (1987); Coffee, Class Wars: The Dilemma of the Mass Tort Class Action, 95 Colum. L. Rev. 1343 (1995), Coffee, The Future of the Private Securities Litigation Reform Act: or Why the Fat Lady Has Not Yet Sung, 51 Bus. Law. 975 (1996); Coffee, Class Action Accountability: Reconciling Exit, Voice, and Loyalty in Representative Litigation, 100 Colum. L. Rev. 370 (2000). Some of these articles have been cited and relied upon by other federal courts, including the U.S. Supreme Court and the Third Circuit, in well-known decisions dealing with class actions and attorney fee awards. See, e.g., Ortiz v. Fibreboard Corp., 119 S. Ct. 2295, 2317 n. 28 (1999); Amchem Products, Inc. v. Windsor, 521 U.S. 591, 621(1997); In re Asbestos Litig., 134 F.3d 668 (5th Cir. 1998), cert. granted, 117 S. Ct. 2503 (June 27, 1998); In Re General Motors Corp. Pick-up Truck Fuel Tank Prods. Liab. Litig., 55 F.3d 768, 801, 821 (3d Cir. 1995); Georgine v. Amchem Products, Inc., 83 F.3d 610, 618, 636 (3d Cir. 1995); BTZ, Inc. v. Great Northern Nekoosa Corp., 47 F.3d 463, 466 (1st Cir. 1995); In re Pacific Enterprises Secs Litig., 47 F.3d 373, 378 (9th Cir. 1995); Bell Atl. Corp. v. Bolger, 2 F.3d 1304 (3d Cir. 1993).

8. I have also served as an expert witness in a number of significant recent class action cases, including Amchem Products, Inc. v. Windsor, 521 U.S. 591 (1997); In re Nasdaq Market-Makers Antitrust Litigation, 187 F.R.D. 465 (S.D.N.Y. 1998); In re Sumitomo Copper Litig., 74 F. Supp.2d 393 (S.D.N.Y. 1999); In re Waste Management, Inc. Securities Litigation, No. 97C7709 (N.D. Ill. 1999); In re Lease Oil Antitrust Litigation, 186 F.R.D. 403 (S.D. Tex. 1999); Shaw v. Toshiba America Info. Sys., 91 F. Supp.2d 942 (E.D. Tex. 2000); and In re Diet Drugs Products Liability Litigation, MDL Docket No. 1203 (E.D. Pa. 2000).

9. My work in the area of class actions and representative litigation also includes service (for over a dozen years) as a Reporter for the American Law Institute in connection with its effort to codify the common law rules of corporate law and fiduciary duties in a Restatement-like volume. See A.L.I., PRINCIPLES OF CORPORATE GOVERNANCE: Analysis and Recommendations (1992). I served as the Reporter for litigation remedies, and this project specifically recommended standards for plaintiffs' attorney fee awards in direct and derivative shareholder actions. In connection with serving as Reporter for the American Law Institute, I have interviewed and discussed fee award procedures with many of the leading attorneys in the class and derivative action field and have participated in numerous seminars, panels, and informal conferences with judges who have faced similar issues to those involved in this case.

10. Finally, because this is a securities class action, I should note that I have taught securities law and corporate law as a law professor for the last twenty-four years, practiced corporate and securities law before entering academia at the firm of Cravath, Swaine & Moore in New York City, served on the Legal Advisory Committee of the New York Stock Exchange, the Legal Advisory Board of the National Association of Securities Dealers ("NASD"), and the

Market Regulation Committee of NASD Regulation Inc., and am currently a member of the Economic Advisory Board of Nasdaq. I am also the co-author of Jennings, Marsh, Coffee and Seligman, SECURITIES REGULATION: Cases and Materials (8th edition 1998), which was the first and remains the most widely used law school casebook in the securities regulation field. I have also served as a member of the SEC's Advisory Committee on Capital Formation and the Regulatory Process and of other Advisory Committees dealing with the federal securities laws (and their reform) and in 1995 served as special advisor to the White House Counsel's Office with regard to the Private Securities Litigation Reform Act of 1995. In the corporate law area, I have served as a Reporter to the American Law Institute for its PRINCIPLES OF CORPORATE GOVERNANCE: Analysis and Recommendations (1992) and am a co-author of a standard corporations casebook, Choper, Coffee & Gilson, CORPORATIONS: Cases and Materials (Aspen Law and Business, 5th ed. 2000). Finally, I am a corporate and securities law columnist for both the New York Law Journal and the National Law Journal.

III. Settlement Adequacy

11. The instant settlement provides for a minimum fund of $193,000,000 in cash and marketable securities as of January 15, 2002,[1] plus the prospect of additional recoveries against the non-settling defendants. With the exception of the recent Cendant settlements

[1] I understand from the Declaration of Wilbur Ross that the discounted present value of this settlement fund as of April 6, 2001 is $177.1 million. The settlement also incorporates a significant upside potential, as the class members are protected from any decline in the stock's value through January 15, 2002, but would benefit from any appreciation above $7.475 per share.

(approximately $3.1 billion in the main case and approximately $341 million in the Cendant Prides case)[2] and In re Washington Pub. Power Supply Svs. Secs. Litig., 19 F.3d 1291 (9th Cir. 1994), I do not know of clearly larger recoveries in securities class litigation. While Waste Management settled for $220 million in 1999,[3] the recovery in this case could prove to be roughly equivalent, depending on the ultimate market value of the stock to be distributed and the ultimate recovery, if any, against the Non-Settling Defendants.

12. Of course, it might be argued that one should discount the significant size of this settlement on the ground that settlement size is simply a function of the size of the investors' losses. Yet, here the damages sought (in excess of $2 billion by plaintiffs' estimates) were vastly in excess of the defendant's solvency level. Securing a settlement of this size and in under two years was a remarkable accomplishment, given the problems faced. Had the parties not reached a settlement and had plaintiffs prevailed at trial, Rite Aid Corporation would have likely sought the protection of the bankruptcy court, and the class's recovery would be uncertain at best, but certainly delayed.

13. Even if one were to disregard the obvious solvency limits on Rite Aid and presume that $2 billion were the actual recoverable losses (despite the possible loss causation problems that defendants would undoubtedly have raised), the percentage of the losses recovered

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[2] In re Cendant Corp. Sec. Litig., 109 F. Supp. 2d 235 (D.N.J. 2000); In re Cendant Corp. Prides Litig., 2001 U.S. App. LEXIS 4246 (3d Cir. March 21, 2000).

[3] In re Waste Management, Inc., 1999 U.S. Dist. LEXIS 16566 (N.D. Ill. 1999). One other securities class action – In re Paine Webber Ltd. Partnerships Litig., 999 F. Supp. 719 (S.D.N.Y. 1998) – obtained a slightly larger gross recovery ($200 million), but I do not know what portion of this gross recovery was actually paid to class members, as it had a reversionary feature under which the unclaimed portion of the fund reverted to the defendants.

in this case would still be above average. In settlements over $50 million, the median settlement as a percentage of investor losses is 5.20%. See Todd Foster, Denise Martin, Vinita Junega, Frederick Dunbar, and Lucy Allen, "Trends in Securities Litigation and the Impact of the PSLRA" (NERA 1999) at Fig. 13 (Attached as Exhibit A).[4] Here, the percentage recovery would be approximately 10% (on the unrealistic assumption that $2 billion were actually recoverable from Rite Aid), and this percentage would be roughly double the median percentage recovery. To give a "real world" illustration, another district court in Pennsylvania last year approved a $111 million settlement and awarded a 30% fee to class counsel. See In re Ikon Office Solution, Inc. Sec. Litig., 194 F.R.D. 166 (E.D. Pa. 2000). The district court in that case found that "the settlement provides a recovery of approximately 5.2% of the best possible recovery for those who acquired common stock, and approximately 8.7% for those who acquired convertible preferred stock." 2000 WL 567104 at *17 (E.D. Pa. May 9, 2000). Although I do not mean to challenge the propriety of that settlement in any way, it is still obvious that this settlement is larger and recovered a larger percentage of investors' recoverable damages.

14. One way to understand how clearly this settlement falls within the handful of most successful securities class action settlements on record is to focus on the size of the typical recovery in the average securities class action. Here, there is a wealth of data, and results are regularly compiled by NERA. See Frederick C. Dunbar, Todd S. Foster, Vinita M. Junega, Denise N. Martin, Recent Trends III: What Explains Settlements in Shareholder Class Actions?

[4] A more recent study by Cornerstone Research finds that Post-Reform Act settlements of securities class actions have recovered between 5.5% and 6.2% of the class members' estimated losses, depending on the industry category of the issuer. See Laura Simmons, "Securities Lawsuits: Settlement Statistics for Post-Reform Act Cases" (1999) at p. 4 (attached as Exhibit B). On this basis, this settlement is still nearly double the median.

(NERA, June 1995) (hereinafter "NERA Study") (attached as Exhibit C).[5] Based on the 101 cases that settled in 1994, the NERA Study found that the average settlement in a securities class action was $6,143,047 (and the median settlement was $3,575,000). If this study is expanded beyond calendar year 1994 to cover the 319 cases that settled between 1991 and 1994, the average settlement in securities class actions rose to $7,772,016 (and the median settlement rose to $4,025,000). (See NERA Study at Table 2). Whatever standard is used, the instant settlement (i.e., a minimum of $193 million) is over twenty-four times larger than the average class action settlement between 1991 and 1994, and nearly forty-eight times the median settlement over this same period.

15. Other studies show an even greater disparity. The Federal Judicial Center's 1996 study of class action procedures in four federal district courts (which study covered all forms of class actions, not just securities class actions) found that the median settlement in these courts ranged between $1,978,725 (the Eastern District of Pennsylvania) and $5,100,000 (the Northern District of California). See Thomas E. Willging, Laural L. Hooper and Robert J. Niemic, AN EMPIRICAL STUDY OF CLASS ACTIONS IN FOUR FEDERAL DISTRICT COURTS: Final Report to the Advisory Committee on Civil Rules (1996) (hereinafter, "Federal Judicial Center Study"), paragraph 19, at Table 16A4. On this basis, the instant settlement (i.e., $193 million) is over thirty-eight times the average class action settlement in the most "generous district court" in this study, and it is roughly ninety-eight times the average class action settlement in the Eastern District of Pennsylvania. A more recent study by Cornerstone Research, which covers the post-PSLRA period from December, 1995 to mid-1999, finds that post-Reform Act securities class

[5] The NERA Study was updated in 1996. See Denise Martin, Vinita Junega, Todd Foster and Frederick Dunbar, "Recent Trends IV: What Explains Filings and Settlement in Shareholder Class Actions" (1996) (attached hereto as Exhibit D).

actions had a median settlement value of $6.6 million and an average settlement value of $9.8 million. See Laura Simmons, "Securities Lawsuits: Settlement Statistics for Post-Reform Act Cases" (1999). Even on this basis (which involved a limited sample), the instant settlement is roughly twenty-nine times the median settlement and roughly twenty times the average settlement.

16. I recognize that it can be argued (at least in theory) that even a near record settlement might not be fair and adequate if better terms were available. Traditionally, the law in the Third Circuit has therefore looked to a variety of procedural factors in assessing fairness. See Girsch v. Jepson, 521 F.2d 153, 156 (3d Cir. 1975); In re General Motors Corp. Pick-up Truck Fuel Tank Prod. Liab. Litig., 55 F.3d 768, 785 (3d Cir. 1995). Because I do not wish to overburden this Court with a duplicative discussion of factors that class counsel has already stressed, I will selectively emphasize only several of the standard laundry list of factors cited in these cases:

(a) Complexity and Duration. "This factor is intended to capture 'the probable costs, in both time and money, of continued litigation.'" See In re General Motors Corp., 55 F.3d 768, at 812. Evaluating this factor, the Ikon Office Solutions district court opined last year that:

> "In the absence of a settlement, this matter will likely extend for months or even years longer with significant financial expenditures by both defendants and plaintiffs. This is partly due to the inherently complicated nature of large class actions alleging securities fraud...
>
> An equally significant issue is the likely complexity of proof. Many of the allegations relate to defendants' accounting decisions, and extensive expert testimony would certainly be required on the nature of the accounting practice, the significance of various decisions in relation to GAAP, and the effect that those practices ultimately had on stock prices and the plaintiffs' finances. The

> difficulty of presenting these issues ... thus weighs in favor of settlement..." 194 F.R.D. at 179.

If this is true in a case involving a $111 million settlement, it is even truer in a similar, "accounting restatement" case involving a $193 million settlement, particularly one in which liability was not "conceded," but was fiercely contested. Moreover, this was a case where the essential facts changed throughout the litigation, as the defendant twice restated its earnings and the complaint was amended four times as a result. Further, the range of accounting violations in this case exceed those in most other recent "accounting restatement" cases (including Ikon). Nor was this a case similar to Cendant Prides, which involved liability that the defendants conceded and was brought primarily based on Section 11 of the Securities Act of 1933 and thus did not depend upon any showing of scienter.

(b) Class Reaction. This factor looks to whether class members support the settlement. See In re Prudential Ins. Co. of America Sales Practices Litig., 148 F.3d 283, 318 (3d Cir. 1998). Here, there have been no objections filed by any class member with regard to either the settlement or the proposed fee award, even though the class notice indicated that a fee award of up to one third would be sought (rather than the lower percentage actually here sought). In the Ikon Office Solutions case, six parties filed objections to the proposed settlement, and the court felt that this number was "extremely limited." 194 F.R.D. at 179.

(c) Risks of Establishing Liability and Damages. This test seeks to "balance the likelihood of success and the potential damages award if the case were taken to trial against the benefits of an immediate settlement." In re Prudential, 148 F. 3d at 319. Plaintiff's counsel have stressed the usual doctrinal issues that arise under the PSLRA, and I agree that they were substantial. Beyond these significant doctrinal issues that were present in this case, however, an

additional risk existed: a strong possibility was present from the outset of this case that defendants would resort to a bankruptcy reorganization. Indeed, plaintiffs as well as defendants had to fear a litigated outcome that could push Rite Aid into a bankruptcy reorganization. Not only do we have the modern example of Texaco (which filed for bankruptcy protection after losing a $10 billion judgment to Pennzoil), but mass tort class actions have repeatedly resulted in a series of defendants seeking bankruptcy reorganization. Notable examples would include Dow Corning (following its disastrous experiences with silicone gel breast implants) and A.H. Robins (the manufacturer of the Dalkon Shield). Such a reorganization would not only prevent or at least delay any recovery, it would also adversely affect those class members who remained Rite Aid shareholders by restricting dividends and, at least temporarily, suspending trading. Finally, as Mr. Wilbur Ross of the investment banking firm of W.L. Ross & Co. makes clear in his affidavit, Rite Aid was in reality already a financially strained company prior to the filing of this litigation with serious cash flow problems, and there was thus a serious risk throughout this litigation that it might seek protection of the bankruptcy court for reasons independent of this litigation. All these reasons make a near record recoverable settlement more attractive than a record, but not recoverable, judgment.

17. The bottom line issue with respect to any proposed class action settlement is whether it falls within a range of reasonableness. Had this case settled only in the neighborhood of $100 million, I believe that such a settlement could still have been found to be within that range, because such a settlement would still have returned 5% or more of investor losses (which is roughly the median percentage in cases over $50 million), and the ability of Rite Aid to pay more could have been legitimately debated. Thus, I believe it underscores the professionalism

and integrity of the plaintiff attorneys in this case that they held out for (and obtained) a $193 million settlement.

IV. The Proposed Attorney's Fee Award

A. The Empirical Backdrop

18. Although empirical evidence does not necessarily establish what the Court should do as a normative matter in setting the appropriate fee award, it provides both a useful frame of reference and benchmark standards. Such benchmarks have particular importance in this area of the law where the need for predictability and legal certainty is high because plaintiffs' attorneys must be able to make accurate judgments about the fee determinations that courts are likely to make years later if these attorneys are to undertake lengthy and risky litigation on a contingent fee basis, often investing millions of their own money plus billable time in an action based upon an anticipation of the likely fee award if they are successful. This is precisely such a case where plaintiffs' attorneys needed to make such an assessment, because, at the time they undertook this litigation, Rite Aid had not yet restated its financial statements and they thus faced a high-risk litigation in which the defendants could be expected to resist settlement and fight vigorously.

19. Although a number of courts have in the past surveyed fee awards in class action "common fund" cases (and many of these decisions are cited in class counsel's joint petition), even better data, based on a much larger data base, has become available in recent years, which data permits one to generalize about the governing standards in fee awards with greater confidence. The most complete analysis of fee awards in class actions is conducted by the National Economic Research Associates, an economics consulting firm. For the fullest statement of their findings, see Frederick C. Dunbar, Todd S. Foster, Vinita M. Juneja, Denise N. Martin,

Recent Trends III: What Explains Settlements in Shareholder Class Actions? (NERA, June, 1995) (hereinafter "NERA Study") (attached hereto as Exhibit C).[6]

20. Using data from 656 shareholder class actions that were settled, dismissed or resolved by a jury verdict between January 1991 to December 1994, the NERA Study reached a number of findings based on data that is both more current and reliable than that underlying other class action studies. On the central question of attorneys fees, this study reports:

> "Regardless of case size, fees average approximately 32 percent of the settlement." (NERA Study at 7).

21. Given the importance of this conclusion, a closer look at their data seems warranted, and an abbreviated version of Table 5 from this study is thus set forth below:

Table 5

Plaintiffs' Attorney Fees

Settlement Range	Number of Settlements	Average Attorneys Fee as a Percentage	Median Attorney Fee as a Percentage
$0.00-$0.99 Mil	27	30.31%	30.00%
$1.00-$1.99 Mil	45	31.99%	33.33%
$2.00-$9.99 Mil	162	31/99%	33.33%
$10.00-$49.99 Mil	53	31.36%	32.00%
$50.00 + Million	2	31.67%	31.67%
Total or Average:	**289**	**31.71%**	**33.33%**

22. Here, it is immediately apparent that the requested fee (25% of the settlement fund) will fall below these prevailing averages.

[6] The 1995 NERA Study was updated in 1996. See footnote 5 supra. However, there were no significant changes in the relevant data.

23. When plaintiffs' attorney fees and expenses were combined in the NERA Study, the total of fees and expenses averaged 34.74% of the settlement. Here, even when the expenses for which reimbursement is sought (i.e., approximately $475,000) are added to the requested fee award, the resulting sum remains at approximately 25% of the total recovery.

24. At least as a theoretical matter, the objection might be raised that my conclusion that counsel's requested fee and expense award in this case is well below average (and hence reasonable) relies too much on the NERA Study, which could conceivably give a misleading impression of class action litigation for some unknown reason. However, other studies also corroborate its central findings.

25. Another recent study of attorney fee awards, prepared by Vincent O'Brien of the Law & Economics Consulting Center, covered securities fraud cases from April 1988 through September 1996 and collected data from some 1280 securities class action cases. See Vincent E. O'Brien, A Study of Class Action Securities Fraud Cases, 1988-1996 (the "O'Brien Study"). Examining the period from April 1993 to September 1996, the O'Brien Study found that the average fee awarded to plaintiffs' counsel in securities cases amounted to 32% of the settlement fund (which was up from the 29% level that was the average from April 1988 to March 1993). This result is only slightly higher than the 31.7% average fee reported in the NERA Study, and seems closely consistent with that study. The O'Brien Study also reports that some other studies (whose methodology it questions) have found the average fee award to be as high as 40% of the settlement fund. (See O'Brien Study, Part III, page 2).

26. Of course, both the NERA Study and the O'Brien Study focus only on securities class actions. In that light, a wider-angled look at the data may be useful. The earlier noted 1996

study by the Federal Judicial Center focused on all class actions resolved or settled over a two year period in four selected federal district courts (the Eastern District of Pennsylvania, the Northern District of California, the Southern District of Florida, and the Northern District of Illinois) and reached reasonably similar findings to the NERA Study on fee awards. These four districts were chosen because each had substantial experience with, and a high volume of, class actions. Although this study has had a smaller data sample, it covered all class actions in these courts (not just securities class actions). Nonetheless, it reported findings very similar to those in the O'Brien and NERA studies. As to the size of attorney fee awards as a percentage of the recovery, the Federal Judicial Center Study found:

> "Median rates ranged from 27% to 30%. Most fee awards in the study were 20% and 40% of the gross monetary settlement." (Id. at 69).

Interestingly, there was very little variation among the four district courts surveyed in this study. Although geographically and demographically diverse, each district seemed to award fees within the same narrow percentage-of-the-recovery band.

27. As a result, the findings across these three studies are highly consistent and provide both a reliable and contemporary basis for assessing the actually operative benchmarks for fee awards. Nonetheless, even though 30% seems to be the operative fee award benchmark today in complex commercial class actions, the reply is predictable from some that a different and lower standard should be used in the "mega fund" case. Either the claim will be made that

there are greater economies of scale in such a "mega" case that necessitate a lower percentage fee award, or it will be argued that empirically courts have in fact employed a declining percentage fee award in such cases.

28. The empirical claim that the fee award declines as a percentage of the recovery as the recovery rises above some "mega level" is today debatable at best. Although this once was true (or at least was widely believed to be true), the latest NERA Study finds to the contrary. It opines:

> "Regardless of case size, fees average 32 percent of the settlement. This finding holds even for cases with settlements in excess of $50 million." See Recent Trends IV: What Explains Filings and settlements in Shareholder and Class Actions? (NERA 1996) at pp. 12-13.

29. Because the conclusion is counter-intuitive, I set forth below a list of recent "mega" class action settlements over roughly the last decade and the fee award in each case, expressed as a percentage of the recovery. This data comes largely from published sources (most notably Class Actions Reports), and I have attempted no independent verification:

Case	Recovery	Percentage Awarded
1. In Re Ikon Office Solutions, Inc. Securities Litigation, 2000 WL 567104 (E.D. Pa. 2000)	$111 million	30%
2. In re Aetna Inc. Sec. Litig., 2001 U.S. Dist. LEXIS 68 (E.D. Pa. Jan. 4, 2001)	$ 83 million	30%
3. Shaw v. Toshiba America Info. Sys., 91 F. Supp.2d 942 (E.D. Tex. 2000)	$1 billion	15%
4. In re Lease Oil Antitrust Litig., 186 F.R.D. 403 (S.D. Tex. 1999)	$190 million	25%
5. In re NASDAQ Market Makers Antitrust Litig., 187 F.R.D. 465 (S.D.N.Y. 1998)	$1 billion	14%

6. In re Shell Oil Refinery, 155 F.R.D. 552 (E.D. La. 1999)	$170 million	18%
7. In re Combustion, Inc., 968 F. Supp. 1116 (W.D. La. 1997)	$127 million	37%
8. Weatherford Roofing Co. v. Employees National Insurance Co., No. 91-05637-F, 116th Judicial Dist., Dallas Texas (1997)	$140 million	30%
9. In Re Sumitomo Copper Litigation, 199 U.S. Dist. LEXIS 17610 (S.D.N.Y 1999)	$116 million	27.5%
10. In Re Boesky Securities Litigation, 888 F. Supp. 551 (S.D.N.Y. 1995) (Pollack, J.)	$52 million	23%
11. In Re Chambers Development Securities Litigation, 912 F. Supp. 852 (W.D. Pa. 1995)	$95 million	22%
12. In Re First Republicbank Securities Litigation, CA3-88-0641-H (N.D. Tex. Feb. 28, 1992)	$58.2 million	27.5%
13. In Re Fernald Litigation, 1989 WL 267038 (S.D. Ohio 1989)	$78 million	20%
14. In Re Home-Stake Prods. Co. Securities Litigation, MDL No.153 (N.D. Okla. Jan. 2, 1990)	$185 million	30%
15. In Re Louisiana-Pacific Corp. Securities Litigation, No. 95-707-JO (D. Ore. Feb 12, 1997)	$62 million	25%
16. In Re Medical Care America, Inc. Securities Litigation, No. 3-92-CV-1996 (N.D. Tex. Apr. 26, 1996)	$65 million	27.5%
17. In Re Morrison Knudsen Securities Litigation, CV 94-0334-5-EJL (D. Idaho Dec. 12, 1995)	$63 million	25–30%
18. In Re MTC Electronic Tech. Shareholder Litigation, No. 93-CV-0876 (E.D.N.Y. Oct. 14,1998)	$70 million	33%
19. In Re Nucorp Energy Sec. Litig., MDL 514 (S.D. Cal. Jan. 18, 1989)	$54 million	33.3%
20. In Re Prudential Securities Inc. Ltd. Partnership Litigation, 912 F. Supp. 97 (S.D.N.Y. 1996)	$110 million	27%

21. In Re RJR Nabisco, Inc. Sec. Litig., 1992 WL 210138 (S.D.N.Y. Aug. 24, 1992)	$72.5 million	25%
22. In Re Storage Technology Sec. Litig., No. 92-B-1059 (D. Colo. Dec. 1, 1995)	$55 million	30%
23. In Re T Squared Medical, Inc. Sec. Litig., No. 1:94-CV-744-RLV (N.D. Ga. May 19, 1995)	$50 million	28%
24. In Re Wedtech Sec. Litig., MDL 735 (S.D.N.Y. July 31, 1992)	$77.5 million	33.3%

30. The obvious conclusion that emerges from even a cursory review of this data is that once the settlement goes over $1 billion, courts have reduced the fee award to somewhere in the 14 % to 15 % range. But on settlements in the $100 - $200 million range, the 25% to 30% fee range seems fairly standard.

B. Fee Formulas: Percentage Recovery and the Lodestar Cross-Check

31. As this Court is no doubt well aware, there are two recognized methods for computation of a plaintiffs' fee award in a class action: the "lodestar" method and the "percentage of the recovery" method. Suffice it to say (as United States District Judge Milton Pollack has recently written) that eight Courts of Appeal -- the First, Third, Sixth, Seventh, Ninth, Tenth, Eleventh, and the D.C. Circuit -- have endorsed the percentage method in common fund cases.[7] Suffice it to say also that the lodestar method has come in for unrelenting criticism over the past decade or so.

[7] See In re Sumitomo Copper Litig., 74 F. Supp.2d 393 (S.D.N.Y. 1999). In that case, Judge Pollack awarded a fee equal to 27.5% of the recovery (or $32,065,000) on an allowable recovery of $116,600,000.

32. The earlier discussed Federal Judicial Center study of class action practices also noted the increasing prevalence of the percentage method:

> "In recent years, the trend has been toward the percentage of the recovery method."[8]

The study found this method to be the only method used in one of the four districts it studied and the dominant method in two others.

33. Nonetheless, I acknowledge that it is possible to read some recent Third Circuit decisions as requiring that the lodestar formula, although disfavored as the fee formula in a common fund case, must still be considered as a cross-check. In raising this issue, I believe, however, that the Third Circuit has only required significant weight to be placed on the lodestar cross-check under circumstances where there were reasons to be suspicious with the result obtained under the percentage of the recovery approach. Here, it is critical to look at the facts of these cases, not just their broadest dicta.

34. The first Third Circuit decision that raised the desirability of a lodestar cross-check is In re General Motors Corp. Pick-up Truck Tank Prod. Liab. Litig., 55 F.3d 768, 820-822 (3d Cir. 1995). There, the Third Circuit panel did note the desirability of a cross-check, but only under specific circumstances not here present. G.M. Trucks involved a *coupon settlement* as to which the Third Circuit panel expressed its "skepticism of the settlement's valuation." 55 F.3d at 822. In this context, it noted that the lodestar's strength was that it avoided "subjective evaluation of the monetary worth" of the settlement. Id. at 821. Thus, it suggested (but did not mandate) such a cross-check "where, as here, the nature of the settlement evades the precise

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[8] See Federal Judicial Center Study at p. 72.

evaluation needed for the percentage of the recovery method." Id. This problem of subjective or inflated valuation simply does not arise in this settlement, and such a cross-check is thus less important.

35. Another Third Circuit case that has suggested a lodestar cross-check is In Re Prudential Ins. Co. America Sales Practices Litig., 148 F.3d 283, 341 (3d Cir. 1998). There again, the Third Circuit was faced with a recovery that was primarily non-cash and hence could not be easily translated into cash for purposes of a percentage of the recovery calculation. In addition, the Third Circuit panel was expressly concerned that many of the class counsel in that case had earlier litigated the same issues in a New York Life Insurance class action, which earlier action had created a "blueprint" for the Prudential case, and that much of the recovery was attributable to the efforts of governmental regulators. Id. at 341. To the extent that counsel might be free-riding on earlier actions or the efforts of others, it is understandable that a cross-check should be used. But again, that is not the case in this action. No enforcement action preceded the filing of this action.

36. In all candor, one recent Third Circuit decision does represent a potential obstacle to the proposed fee award in this case, but under closer analysis it involves very different facts that are clearly distinguishable from those in this case. In In re Cendant Corporation Prides Litigation, 2001 U.S. App. LEXIS 4246 (3d Cir. March 21, 2001), the Third Circuit recently rejected a proposed fee award that was between seven and ten times the lodestar (depending on the means used to calculate the lodestar). Id. at *59. In remanding to the district court, the Third

Circuit suggested that the appropriate multiplier should not be greater than three *in that case*.[9] Id. at *60. The facts of the Cendant Prides case are, however, highly unusual. First, the Third Circuit found that both Cendant's liability and its ability to pay any judgment to the Prides investors "had been conceded at the outset," and that the case was therefore essentially riskless. Id. at *57. Second, the case was "not a traditional common-fund case, because the unclaimed portion of the settlement fund is returned to Cendant . . ." (id. at *35); in short, Cendant Prides was a suspect reversionary settlement in which the apparent settlement could easily prove illusory. Third, the settlement did not contain any cash component, but instead involved an exotic security with considerable market risk, whose issuance was delayed without price protection being afforded the investors. Fourth, "the case was settled at a very early stage of the litigation, with an agreement being announced two months after Kirby filed for class certification" and with no discovery. Id. at *37.

37. None of these factors are present in this case. First, this is a vested settlement, with no reversion, and with a sizable cash component. The securities to be issued have an easily determined market value in a liquid market and will be freely tradeable. Second, unlike Cendant Prides, this is a case in which class members will receive market protection against any decline in the value of the securities to be issued pending their distribution. Third, class members get the best of both worlds because they also receive any increase in the value of the Rite Aid stock

[9] Literally, the Third Circuit said that the fee award in Cendant Prides should not be greater than three times the size of the lodestar based on the hourly rate of the highest billing plaintiffs' attorney in the case.

above the $7.475 per share level between now and the anticipated January, 2002 valuation period. Fourth, the case settled only after extended negotiations. The other distinctive characteristics of this settlement are best analyzed under the headings mandated by Gunter v. Ridgewood Energy Corp., 223 F.3d 190, 195 n.1 (3d Cir. 2000):

(a) "Complexity and Duration of Litigation." This is an action based on Rule 10b-5, not the strict liability provisions of Section 11 of the Securities Act of 1933. Liability under Rule 10b-5 is never "conceded," particularly not in the wake of the Private Securities Litigation Reform Act. Four amended complaints were filed in this case, and the facts changed substantially during the course of the litigation. At the time the first complaint was filed, Rite Aid had not restated its earnings, but had only made a disappointing earnings announcement. Not until more than two months after that complaint was filed did Rite Aid announce (on June 1, 1999) its initial and relatively modest $23.4 million earnings restatement, and it was not until seven months into this litigation (in October 1999) that Rite Aid first announced a clearly material earnings restatement that it initially estimated to be approximately $500 million. And it was not until another eight months had passed that the actual size of the restatement -- $1.6 billion -- was announced and confirmed in July 2000. Thus, the scope and magnitude of the misstatements in this case were far from clear at the outset, but emerged piecemeal over time. Finally, because of the pendency of separate derivative actions in Delaware and two individual actions by institutional investors, one state and one federal, unique problems of coordination arose in this case, because (understandably) defendants wanted to settle on a global basis.

(b) "Range of Awards." The Ikon court found that "percentages awarded have varied considerably, but most fees appear to fall in the range of nineteen to forty-five percent"). 194 F.R.D. at 194. As earlier noted (see Paragraph 30, supra), fee awards in the 14% to 15% range have been awarded more typically in cases where the recovery exceeded $1 billion. Other low percentages have been the product of auctions, which raise different issues not here relevant.

(c) "Size of the Fund Created and the Number of Persons Benefitted." This is a true fixed fund of at least $193 million (and possibly considerably more) as of January 15, 2002, and not an illusory fund which can revert to the defendant. Class notices were mailed to over 300,000 potential class members, suggesting that the number who will benefit (although not currently estimable with precision) will be substantial.

(d) "Presence or Absence of Objections." No class member has filed an objection, even though the class notice indicated an intent to seek up to a one third fee. In my experience, the absence of a single objector is a rare phenomenon -- especially in a case where 300,000 notices were mailed.

(e) "The Skill and Efficiency of the Attorneys Involved." Class counsel has already made the point in their own filings that they worked long and hard on this case, yet without running up hours simply for the sake of maximizing their lodestar. What I can add on their behalf is a point that they are perhaps constrained from saying for themselves: both lead counsel are universally recognized as among the best, most skilled and professional firms within the plaintiff's bar. Interestingly, one recent study of securities class actions finds that "Milberg Weiss cases settled for a median amount that was 61% higher than the median settlements in

cases involving other attorneys . . .." See M. Bajaj, S. Mazumdar, and A. Sarin, "Securities Class Action Settlements: An Empirical Analysis" (November 16, 2000) at p. 13.

(f) "The Risk of Nonpayment." The risk of nonpayment in this case was greatly enhanced by the threat of bankruptcy. Unless a global settlement was reached, a bankruptcy filing would have been the logical course of action for Rite Aid. Indeed, it had a rational incentive to go to trial, knowing that it could thereafter file for bankruptcy if it lost.

(g) "The Amount of Time Devoted to the Case by Plaintiffs' Attorneys." Plaintiffs' counsel has advised me that they expended over 15,450 hours on this case and have a lodestar that ranges between $5.17 and $8.77 million, depending upon the method of its calculation. Calculated on the basis of the hourly rates of the individual attorneys involved, their total lodestar comes to approximately $5.17 million. Calculated on the basis referred to by the Third Circuit panel in the Cendant Prides decision (that is, by multiplying all hours times the average hourly rate of the highest-billing plaintiffs' attorney of each of the two co-lead counsel), the lodestar comes to approximately $8.77 million. Neither figure strikes me as excessive for a case of this size (indeed, in Ikon Office Solutions, over 40,000 hours were billed for a case that resulted in a considerably lesser settlement). Given that this litigation was resolved within 21 months, an expeditious pace was maintained, with obviously enough time expended to enable counsel to evaluate the merits, but without time being expended simply for its own sake.

38. In order to follow the procedural steps suggested by the Third Circuit, this Court may prudently decide to conduct a lodestar cross-check. The actual mechanics of this cross-check will necessarily depend upon the actual value of the settlement fund on January 15, 2002. In his affidavit, Wilbur Ross places a current discounted net present value of $177.1 million on

the fund, which would result in a fee award of $10.829 million in cash and stock with a current discounted value of $33.45 million (for a total present value award of $44.28 million) if the requested 25% fee award were granted. Conversely, if we assume the fund to be worth $193 million (which is the guaranteed minimum as of January 15, 2002), a 25% fee award would come to $48,250,000 on an undiscounted basis.[10] As earlier noted, the lodestar is either $5.17 million or $8.77 million, depending on whether we look to individualized hourly rates or (as the Third Circuit did in Cendant Prides) to the highest billing plaintiffs' attorney's hourly rate. These different numbers yield a range of multipliers. If we divide $44.28 million by $8.77 million, the multiplier becomes 5.05. If we instead use the $5.17 million lodestar, the multiplier becomes 8.56. If we instead use $48.25 million as the likely fee award, the multiplier becomes either 5.5 or 9.33, depending upon which lodestar is used. In short, the range is between 5.05 and 9.33.

39. Multipliers in this range are frankly above average, but not unprecedented. See, e.g., Weiss v. Mercedes-Benz of N. Am. Inc., 899 F. Supp. 1297, 1304 (D.N.J. 1995), aff'd 66 F.3d 314 (3d Cir. 1995) (awarding a multiplier of 9.3). However, it must be remembered that we are here using this cross-check on a below average percentage of the recovery (i.e., 25%, which is below the national norm of 33%). The appropriate role of the multiplier is simply different when it is used as a cross-check than when it is used directly to determine a fee based on the lodestar formula. Here, we are seeking to determine whether a below average percentage of the recovery fee award should be rejected in the case of an exemplary settlement which was achieved in the face of real risk. It is thus relevant that the settlement contains special protections (no

[10] I understand that the plaintiffs' attorneys will receive 25% of the cash component and 25% of the securities, whatever their value is on that date. This means that the recovery could be 25% of a fund that grows to more than $200 million.

reversion, stock market price protection, and the potential for stock appreciation before issuance) and that an additional recovery may be obtained against the Non-Settling Defendants. More generally, I would urge this Court to consider this general guideline: The more the percentage of the recovery falls below the norm, the more the multiplier may rise above the average. One balances the other. For example, a lodestar multiplier of seven to ten would generally be inappropriate in a case determined under the lodestar formula or in a case where a percentage of the recovery greater than 33% was awarded, but such a lodestar multiplier could well be appropriate as the percentage of the recovery awarded declines to 25% or lower.

40. An important policy reason supports this analysis: If such a balancing approach is not used, the lodestar approach begins to dominate and supercede the percentage of the recovery formula, particularly in those cases where the recovery exceeds the national averages. Presumably, it is in these cases where the plaintiffs' attorney most deserves a fee above that which the lodestar formula provides. Unfortunately, the impact of any mechanical application of the lodestar cross-check is effectively to overrule the original recommendation of the Third Circuit Task Force that the percentage formula should replace the lodestar formula.

41. Given this danger, it may be useful to recall what the objections to the lodestar approach were. Criticism of the lodestar has been persistent, and one 1990 decision describes its methodology as "now thoroughly discredited." See In re Oracle Systems Securities Litigation, 131 F.R.D. 688, 689 (N.D. Cal. 1990). At a minimum, the views of the Third Circuit Task Force resonated with much of the judiciary when it called the lodestar formula a "cumbersome,

enervating and often surrealistic process of preparing and evaluating fee petitions."[11] See Court Awarded Attorney Fees, Report of the Third Circuit Task Force (Arthur Miller, Reporter), 108 F.R.D. 237, 258 (1985). As a result, any fee award formula that averaged the percentage method with lodestar method would be subject to the following objections:

(a) The lodestar methodology wastes judicial time and effectively converts the court into "a public utilities commission, regulating the fees of counsel after the services have been performed, thereby combining the difficulties of rate regulation with the inequities of retrospective rate-setting." Kirchoff v. Flynn, 786 F.2d 320 (7th Cir. 1986);

(b) The lodestar methodology creates a risk of inflated billing rates and overstated claims of hours worked, which the court simply cannot monitor effectively;

(c) The lodestar formula exacerbates the conflict between attorney and client and can encourage collusive settlements by enabling the attorney to build up time so that the attorney profits even if the client does not;

(d) The lodestar formula maximizes unpredictability. Because it supplies what the Oracle Systems court called a "rudderless standard," the lodestar asks plaintiffs' attorneys to undertake multi-year litigation without any clear guidance as to how they will be compensated. Ultimately, everything under it is "up for grabs." Enhancements can be added or subtracted; courts can approve or disapprove billing rates; and allow or disallow attorney and paralegal time. Such uncertainty inherently undercuts the expected value of the action to

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[11] The Second Circuit quoted exactly this language from the Third Circuit Task Force in Savoie v. Merchants Bank, 166 F.3d 456, 460 (2d Cir. 1999).

plaintiffs' attorneys and hence reduces their ability and willingness to engage in sustained litigation with better financed defendants; and

(e) The lodestar stretches out the pace of litigation. Once time is equated with money, expedition becomes not only unnecessary, but counter-productive. Early settlements are arguably discouraged (or at least postponed), and the judicial time is again wasted on needless, but profitable, motions.

42. Because the lodestar cross-check, if applied in a mechanical, formulaic fashion, simply results in a declining percentage of the recovery formula, it also should finally be recognized that recent district court cases in the Third Circuit have resisted the call to use a declining percentage. For example, in In re Ikon Office Solutions, Inc. Sec. Litig., 194 F.R.D. 166, 193 (E.D. Pa. 2000), Judge Katz recently awarded a 30% fee on a $111 million recovery and rejected the argument that he should use a declining percentage approach. Summarizing the views of several recent courts, he wrote:

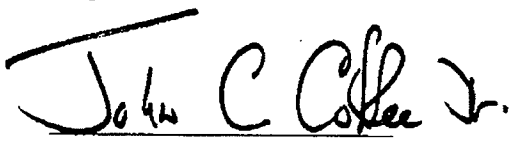
> "In the end, like the courts in Sumitomo and Kurzweil, this court can see no principled basis for reducing the fee award by some arbitrary amount ...
>
> In so ruling, the court is well aware that most decisions addressing similar settlements amounts have adopted some variant of a sliding fee scale, by which counsel is awarded ever diminishing percentages of ever increasing common funds. This court respectfully concludes that such an approach tends to penalize attorneys who recover large settlements. More importantly, it casts doubt on the whole process by which courts award fees by creating a separate, largely unarticulated set of rules for cases in which the recovery is particularly sizable. It is difficult to discern any consistent principle in reducing large awards other than an inchoate feeling that is simply inappropriate to award attorneys' fees above some unspecified dollar amount, even if all other factors ordinarily considered relevant in determining the percentage would support a higher percentage. Such an approach also fails to appreciate the

> immense risks undertaken by attorneys in prosecuting complex cases in which there is a great risk of no recovery. Nor does it give sufficient weight to the fact that 'large attorneys' fees serve to motivate capable counsel to undertake these actions.'" (Id. at 196)

43. To summarize, while it is prudent for a district court to conduct a lodestar cross-check, excessive deference to it would be unwise and is not required by the Third Circuit case law. This is a case in which a below average percentage of the recovery is sought, even though the ultimate recovery is exemplary and could well exceed the minimum recovery of $193 million. On these facts and in a case involving real risk and an exemplary settlement, it is appropriate to award 25% of the recovery. The lodestar cross-check on a higher risk case and better structured settlement, such as are involved here, does not need to fall within the same restrictive boundaries as the Cendant Prides decision imposed in a low-risk case that resulted in a settlement as to which the Court clearly entertained substantive doubts. To overread Cendant Prides so as to require a low lodestar multiplier in all cases would unfortunately take the fee award procedures in this Circuit full circle back to where they were prior to the Third Circuit Task Force Report in 1985. That would be sadly ironic because the majority of the Circuits have learned from the Third Circuit and abandoned the lodestar formula as unworkable and counter-productive.

44. For all the foregoing reasons, I respectfully submit that the proposed partial settlement should be approved as fair and reasonable, and that the requested 25% fee award should be found to be justified and appropriate.

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



John C. Coffee, Jr.

April 2, 2001
New York, New York