UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE TEVA SECURITIES LITIGATION	:	No. 3:17-cv-00558 (SRU)
THIS DOCUMENT RELATES TO:	:	All Class Actions

DECLARATION OF JOSEPH A. FONTI IN SUPPORT OF (I) CLASS REPRESENTATIVES' MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT AND PLAN OF ALLOCATION AND (II) LEAD COUNSEL'S MOTION FOR AWARDS OF ATTORNEYS' FEES, LITIGATION EXPENSES, AND REASONABLE COSTS AND EXPENSES TO CLASS REPRESENTATIVES

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I, Joseph A. Fonti, hereby declare pursuant to Section 1746 of Title 28 of the United States Code:

1. I am an attorney admitted to practice *pro hac vice* in this Court and a founding Partner of Bleichmar Fonti & Auld LLP ("BFA"), Lead Counsel for the Class and counsel for Class Representatives Ontario Teachers' Pension Plan Board and Anchorage Police & Fire Retirement System (together, "Class Representatives" or "Plaintiffs"). I have personal knowledge of the matters set forth herein.[1]

2. I respectfully submit this declaration in support of (1) Class Representatives' motion for final approval of the proposed settlement and approval of the Plan of Allocation; and (2) Lead Counsel's motion for awards of attorneys' fees, litigation expenses, and reasonable costs and expenses to Class Representatives pursuant to the Private Securities Litigation Reform Act of 1995 (the "PSLRA").

I. INTRODUCTION

3. This declaration sets forth Class Counsel's efforts, over more than five years, to litigate this action to the brink of summary judgment and achieve the proposed $420 million settlement. We believe this is a superlative result in what Defendants' counsel has described as "one of the nation's largest pending securities class actions." (No. 21-661 (2d Cir.), ECF 1 at 1.)

4. Based on Class Counsel's research, the $420 million settlement, if approved, would be the second-largest class settlement in this District.[2] Within the Second Circuit, this settlement

[1] "Class Counsel" are BFA; Bleichmar Fonti & Auld Canada ("BFA Canada"); The Law Offices of Susan R. Podolsky; and Carmody Torrance Sandak & Hennessey LLP ("Carmody"). Capitalized terms not defined herein have the meanings specified in the Stipulation of Settlement, dated January 18, 2022 (ECF 919-2).

[2] *See Carlson v. Xerox*, No. 3:00-cv-01621-AWT (D. Conn. Jan. 14, 2009), ECF 528 (approving $750 million settlement).

is the third-largest securities settlement in the last five years, and the fourth-largest ever without a financial restatement or arising from the 2008-09 financial crisis—which are circumstances that reduce plaintiffs' burden and risk and have resulted in some of the largest securities class action settlements.[3] The proposed settlement also sends an important message about preserving the integrity of the securities markets and robust competition in the markets for generic drugs.

5. Under Class Representatives' leadership, Class Counsel's efforts resulted in this action being the first—and, to date, only—case to obtain any meaningful recovery from Teva based on its alleged generics price increases.[4] In the *Generics MDL*, for example, the Court has entered an order indicating that summary judgment briefing will not be complete until early 2024. *See In re Generics Pharmaceuticals Pricing Antitrust Litig.*, 2:16-md-02724 (E.D. Pa.), ECF 1901 at 2. The pending criminal antitrust case against Teva's U.S. subsidiary, filed in August 2020 (nearly four years after this action commenced), has no trial date. The U.S. Securities and Exchange Commission never initiated an inquiry into Teva. By independently working to develop compelling proof and advance this case toward trial, Class Counsel achieved an exceptional settlement result before and independent of any government enforcement action against Teva.

[3] The two larger securities settlements in the last five years are *In re Petrobras Sec. Litig.*, No. 1:14-cv-09662 (S.D.N.Y. July 2, 2018), ECF 838 (approving $3 billion settlement); and *In re American Realty Capital Properties Inc. Litig.*, No. 1:15-mc-00040 (S.D.N.Y. Jan. 22, 2020), ECF 1309 (approving $1.025 billion settlement). The three larger securities settlements without a financial restatement or arising from the 2008-09 financial crisis are *Petrobras*, No. 1:14-cv-09662; *In re Initial Public Offering Sec. Litig.*, No. 1:21-mc-00092 (S.D.N.Y. Oct. 6, 2009), ECF 5861 (approving $586 million settlement); and *In re Pfizer, Inc. Sec. Litig.*, No. 1:04-cv-9866 (S.D.N.Y. Dec. 21, 2016), ECF 728 (approving $486 million settlement).

[4] Last year, Teva reached a $925,000 civil antitrust settlement with one state, Mississippi, and touted the "modest settlement amount." Noah Higgins-Dunn, *Teva reaches $925K settlement with Mississippi in price-fixing case—and it hopes other states will follow suit*, FIERCEPHARMA (June 23, 2021), *available at* https://www.fiercepharma.com/pharma/teva-reaches-925k-settlement-mississippi-as-part-generic-price-fixing-case.

6. The circumstances faced by Class Representatives and Class Counsel were daunting. Far from a "deep pocket" corporate defendant, Teva is financially distressed, saddled with over $20 billion in debt, and facing existential threats on multiple fronts. These include thousands of opioids litigations around the country and a pending criminal prosecution that could end much of Teva's business in the U.S., its largest market. In addition, Teva is a notoriously combative litigant; as just one example, Teva has elected to try multiple opioids cases, resulting in a recent jury trial loss in New York. Further, the core of this litigation—and Class Counsel's work—occurred during the Covid-19 pandemic. Indeed, Class Counsel secured the proposed settlement despite a challenging litigation and corporate environment that has demonstrably resulted in reduced settlement values in securities cases.

7. The $420 million settlement reflects Class Counsel's ability to advance this action and willingness to shoulder these significant risks for over five years. Class Counsel eschewed opportunities for an earlier resolution in order to achieve maximum value for the Settlement Class. For instance, Class Counsel were unwilling to settle this matter in a July 2020 mediation before significant discovery had taken place. Instead, Class Counsel invested heavily in time and expenses to achieve class certification, complete 40 fact and expert depositions, finish fact and expert discovery, and prepare summary judgment and *Daubert* motions.

8. Class Counsel surmounted serious risks at every phase of the litigation. More than half of securities class actions are dismissed at the pleading stage. Here, the Court granted Defendants' initial motions to dismiss. While Class Counsel refined the pleading and largely defeated Defendants' renewed motions through intensive effort, there was no guarantee of ultimate success.

9. In discovery, Defendants vigorously opposed providing important evidence, including complete pricing and sales data fundamental to proving the Class's claims. Defendants' intransigence necessitated three motions to compel and numerous status conferences with the Court. Class Representatives also commenced a separate proceeding to obtain documents from a key third party (Sandoz Inc.). As a result of these efforts, over 8.2 million pages of documents were produced. Class Counsel efficiently mastered this complex record to obtain more than 7,000 pages of testimony from 23 fact witnesses, including all seven Individual Defendants.

10. At class certification, market efficiency for Teva's ADS, Preferred Shares, and Notes was strongly contested. Class Representatives and their expert, David Tabak, Ph.D. of NERA Economic Consulting ("NERA"), faced three experts for the defense and a *Daubert* motion that sought to exclude Dr. Tabak's opinions in full. While the Class was ultimately certified, success was far from assured. After the Court's decision, Defendants continued to contest class certification, filing a Rule 23(f) petition with the Second Circuit, and—despite their stipulation to Class Representatives' adequacy, typicality, and standing—sought broad discovery from Class Representatives and third parties.

11. Further, Class Counsel worked extensively with four merits experts to present opinions on highly technical issues of damages, loss causation, generic drug pricing and competition, materiality, and disclosure requirements; the parties exchanged 17 merits expert reports. Finally, based on the voluminous fact and expert record, Class Counsel marshalled the strongest proof for use at summary judgment and trial, and invested significant effort to complete summary judgment and *Daubert* motions supported by 150 pages of briefing. While these papers were not filed in light of the proposed settlement, Class Counsel were prepared to file them and

litigate through trial when the settlement was reached just hours before the deadline (following two prior extensions).

12. The parties' settlement negotiations, under the auspices of former United States District Judge Layn R. Phillips, were similarly hard-fought. The parties' initial July 2020 mediation was unsuccessful. Over a year elapsed before two arduous full-day mediation sessions took place in September 2021, by which point Class Counsel had completed expert discovery and were preparing summary judgment and *Daubert* motions. These mediation sessions also proved unsuccessful, although the parties' differences narrowed. Numerous follow-up discussions continued through mid-November 2021. Ultimately, in November 2021, Judge Phillips issued a mediator's recommendation to resolve the action for $420 million. (*See* Ex. 1 (Phillips Decl.).) Nearly three more weeks elapsed with no resolution in sight until the last hours. Judge Phillips's Declaration (Exhibit 1 ("Phillips Decl.")) speaks further to the parties' protracted, arm's-length mediation efforts.[5]

13. Class Counsel devoted over 77,000 hours of effort to prosecuting this action, overcame significant risks, and fully developed the merits to obtain the maximum recovery for the Settlement Class.

14. On behalf of Class Counsel, I led the work and played a hands-on role from inception, directing the conception and execution of all major strategic decisions. Class Counsel employed a dedicated, skilled, and efficient team, including a core team of just seven attorneys that committed most of their time to this action at various points over an extended period. This core team's concentrated effort was paired with the effective use of advanced analytics technology and targeted attorney review to efficiently analyze over 8.2 million pages of documentary evidence

[5] The attached Appendix identifies each exhibit to this Declaration, referenced as "Ex.__."

and prepare for 40 depositions. I personally committed the majority of my time over the last several years to this case, which is among the most complex, riskiest, and hardest-fought cases I have encountered in over two decades of securities litigation.

15. Since the Court granted preliminary approval of the proposed settlement, the Court-approved Claims Administrator, Epiq Class Action and Claims Solutions, Inc. ("Epiq"), has implemented a robust notice program through individual mailings to 942,255 potential Settlement Class Members, publishing the Summary Notice, and providing a case-specific website. *See infra* ¶¶340-350; Ex. 2 (McGuinness Decl.) ¶¶3-24. Thus far, only 39 potential requests for exclusion and no objections have been received. (Ex. 2 (McGuinness Decl.) ¶¶30, 32.) The Declaration of Michael McGuinness (Exhibit 2 ("McGuinness Decl.")) describes Epiq's notice program in more detail.

16. In addition, Class Representatives seek approval of the Plan of Allocation as fair and reasonable. As detailed below, Class Counsel developed the Plan of Allocation with the assistance of Class Representatives' damages expert, Dr. Tabak. The Plan of Allocation is designed to achieve the fair, equitable, and reasonable distribution of the Net Settlement Fund, which will be distributed *pro rata* to Authorized Claimants based on estimates of their recognized losses from transactions in Teva Securities during the Class Period.

17. Lead Counsel also seeks awards of a 23.70% attorneys' fee and $9,717,887.47 in litigation expenses, supported by Lead Counsel's memorandum of law and declarations from Jeffrey Davis of Ontario Teachers' (Exhibit 3 ("Davis Decl.")), Edward Jarvis of Anchorage (Exhibit 4 ("Jarvis Decl.")), Judge Christopher Droney (Ret.) (Exhibit 5 ("Droney Decl.")), Professor Geoffrey Miller of New York University Law School (Exhibit 6 ("Miller Decl.")), Joseph A. Fonti on behalf of BFA and BFA Canada (Exhibit 7 ("Fonti F&E Decl.")),

Marc Kurzman on behalf of Carmody (Exhibit 8 ("Kurzman F&E Decl.")), and Susan R. Podolsky on behalf of The Law Offices of Susan R. Podolsky (Exhibit 9 ("Podolsky F&E Decl.")). Lead Counsel respectfully submits that the requested fee is appropriate and reasonable in light of the extraordinary result obtained, the risks surmounted, the magnitude and complexity of this case, the amount of high-quality work performed, and awards granted in comparable class actions. A lodestar cross-check also confirms that the proposed fee is reasonable. Class Counsel's litigation expenses, which are largely driven by expert services, were also reasonably and necessarily incurred to advance this complex and highly technical case to the brink of summary judgment.

18. Finally, the requested awards to Class Representatives of $56,293.02 are reasonable in light of their significant time and effort devoted to this action. As detailed below and in the Davis and Jarvis Declarations, Class Representatives are experienced fiduciaries and PSLRA class representatives that actively collaborated with Class Counsel throughout the litigation. Their diligent work directly contributed to the historic result achieved for the Settlement Class.

II. SUMMARY OF CLAIMS

19. As set forth in the operative pleading (ECF 310), this action asserts claims against Defendants for violations of the federal securities laws and state law. The federal securities claims are asserted under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder, as well as Sections 11, 12(a)(2), and 15 of the Securities Act of 1933 (the "Securities Act").

20. These claims arise from Defendants' alleged misstatements and omissions concerning (among other things) competition in the markets for Teva's generic drugs; Teva's generic drug pricing, including the extent and impact of price increases and price erosion; the attribution of Teva's financial performance to causes other than generics price increases; and

alleged omissions in violation of affirmative disclosure requirements under Item 303 of SEC Regulation S-K and Item 5 of SEC Form 20-F.

21. Class Representatives allege that, as a result of these alleged misstatements and omissions, Class members paid artificially inflated prices for eight Teva Securities: the ADS, Preferred Shares, and six Notes. Class Representatives further allege that when the truth was revealed in piecemeal fashion through a series of corrective events, the prices of the Teva Securities declined, causing investors to suffer losses.

III. PROSECUTION OF THE ACTION

22. Based in New York City, BFA specializes in complex class actions of national scope. BFA is highly selective in the cases it pursues on behalf of its clients, focusing on substantial cases of high public importance. In each matter, BFA develops and relies on a core litigation team to forcefully and effectively litigate all stages of an action. (Ex. 7-A (BFA Firm Resume) at 1-2.)

23. Here, BFA's core team prosecuted this case with the assistance of Ms. Podolsky and attorneys from Carmody. In leading this effort, I developed a concerted strategy to maximize the recovery for the Settlement Class.

24. Class Representatives Ontario Teachers' and Anchorage also dedicated significant time and resources to this action, contributing their extensive experience as lead plaintiffs and class representatives in PSLRA actions and as fiduciaries to their own beneficiaries.

25. Specifically, Ontario Teachers' has served as lead plaintiff in several PSLRA securities actions and recovered nearly $2.4 billion dollars for investors (including in this action). Here, attorneys in Ontario Teachers' General Counsel's office were dedicated to the oversight of the action, directly supervised Class Counsel, and provided valuable direction throughout the case.

Ontario Teachers' was also integrally involved in every phase of mediation and settlement. (*See* Ex. 3 (Davis Decl.).)

26. Similarly, Anchorage has served as lead plaintiff in several PSLRA securities actions and has recovered more than $600 million for investors (including in this action). Edward Jarvis, Anchorage's Director, supervised the litigation, was actively involved in setting litigation strategy, and was integrally involved in the mediation and settlement negotiations in parallel with Ontario Teachers'. (*See* Ex. 4 (Jarvis Decl.).)

27. Class Representatives' and Class Counsel's full experience and commitment were necessary to prosecute this action against Teva, the world's largest generic pharmaceutical company, represented by numerous lawyers from two leading national defense firms and Connecticut counsel. As detailed below, the case was vigorously contested at every stage, requiring more than 77,000 hours of intense work to succeed.

A. Commencement of the Action and Appointment of Lead Plaintiff

1. Class Counsel's Initial Investigation

28. Following the November 3, 2016 publication of the *Bloomberg* article first indicating Teva's potential involvement in widespread generic drug price increases and collusion, the initial complaint was filed by another law firm on behalf of Amram Galmi on November 6, 2016 in the Central District of California (ECF 1). The *Galmi* complaint was only 20 pages and lacked particularity and detail, relying solely on general allegations of concealed price-fixing.

2. Ontario Teachers' Authorization to Seek Appointment as Lead Plaintiff

29. BFA immediately commenced an investigation to assess the merits of the newly filed action. To do so, BFA collected and reviewed Teva's SEC filings, conference call transcripts,

analyst reports, and other information to assess Defendants' statements and disclosures. BFA summarized its findings to Ontario Teachers'.

30. In December 2016, Ontario Teachers' authorized BFA to prepare and file a motion seeking Ontario Teachers' appointment as Lead Plaintiff and approval of BFA as Lead Counsel. This authorization was significant. Although Ontario Teachers' has recovered nearly $2.4 billion dollars for investors over two decades, Ontario Teachers' is highly selective about the cases in which it chooses to participate. (Ex. 3 (Davis Decl.) ¶¶5, 9.) Ontario Teachers' decision to participate in this case reflected the action's significant public importance, including its implications for corporate governance and the integrity of the securities markets, as well as the negative social impact of large price increases on generic drugs.

31. The lead plaintiff process was complex and heavily contested, requiring intensive research and analysis. On January 5, 2017, Ontario Teachers' filed its lead plaintiff motion in the Central District of California (ECF 18), as one of five movants seeking appointment. On the face of the submissions, Ontario Teachers' had only the third-largest financial interest, and therefore was not the presumptively most adequate plaintiff entitled to appointment under the PSLRA.

32. On January 13, 2017, Ontario Teachers' filed its opposition to the other lead plaintiff motions. (ECF 33.) Based on extensive analysis, Ontario Teachers' demonstrated that it in fact had the largest losses. One movant, the Teva Investor Group, consisted of three investors with no pre-existing relationship. (*Id.* at 7-14.) Another movant (TIAA) asserted losses that did not account for "in-and-out" transactions prior to the first corrective disclosure. These alleged losses lacked the causal connection to Defendants' conduct required under *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336, 345-46 (2005). (ECF 33 at 14-19.) Ontario Teachers' argued that the Court should extend *Dura*'s reasoning to the lead plaintiff process. (*Id.*)

33. On January 23, 2017, Ontario Teachers' filed its reply brief in further support of its lead plaintiff motion. (ECF 48.)

34. On March 20, 2017, Ontario Teachers' filed a supplemental brief raising a potential conflict concerning Oregon Public Employees Retirement System ("OPERS"), a member of the competing movant Teva Investor Group. (ECF 68.) The Oregon Attorney General ("AG") (an OPERS decision-maker) had joined the State Attorneys Generals' ("State AGs'") civil antitrust action against Teva, giving it access to confidential discovery, and exposing OPERS to potential conflicts arguments. (*Id.*)

3. Defendants' January 2017 Motion to Transfer from C.D. Cal. to E.D. Pa.

35. In the midst of lead plaintiff briefing, on January 17, 2017, Defendants filed a motion to transfer this action to the Eastern District of Pennsylvania, the location of Teva's U.S. headquarters. (ECF 37.) Ontario Teachers' opposition argued that transfer should be decided after the appointment of lead plaintiff and lead counsel to avoid undue delay to the Class. (ECF 55.) Shortly thereafter, the District Court for the Central District of California *sua sponte* transferred the case to the District of Connecticut, where it was assigned to this Court. (ECF 74.)

4. Post-Transfer, the Lead Plaintiff Motions Are Resolved

36. Following transfer, Ontario Teachers' filed a notice of supplemental authority applying Second Circuit law to the legal issue of calculating movants' financial interests for purposes of appointing a PSLRA lead plaintiff. (ECF 112.)

37. On April 26, 2017, the Court held a 1-hour-and-45-minute hearing on the lead plaintiff motions. I argued on behalf of Ontario Teachers'. (ECF 123.)

38. On July 11, 2017, the Court issued a 28-page decision appointing Ontario Teachers' as Lead Plaintiff and BFA as Lead Counsel. (ECF 124.) The Court applied the *Dura*-based

reasoning advanced by Ontario Teachers' to conclude that Ontario Teachers' had the largest financial interest and was otherwise qualified to serve as lead plaintiff in this action. (*Id.* at 17, 25 (citing *Dura*, 544 U.S. 336).)

B. Class Counsel's Preparation of the Complaints and Oppositions to Defendants' Motions to Dismiss

1. Class Representatives' First Set of Complaints

39. After being appointed as Lead Counsel, BFA devoted significant time and resources to further investigation of Teva's generic drug price increases and resulting profits. This task was complicated because Teva's actual, customer-specific drug pricing was confidential and not available from any public source. Thus, BFA retained a consulting expert to perform econometric analysis of Teva's drug pricing using subscription-based services. Class Counsel also conducted legal research, including into the intersection of antitrust violations and securities law, and consulted with experts and outside consultants regarding antitrust, accounting, disclosure, and damages issues.

a. Class Representatives File Securities Act Complaints to Preserve the Class's Claims

40. Class Counsel also prepared and filed two complaints on behalf of Class Representatives to preserve the Class's claims under the Securities Act of 1933. During the Class Period, Defendants had raised over $22 billion through public offerings of ADS, Preferred Shares, and Notes pursuant to registration statements and offering materials that incorporated certain alleged misstatements and omissions. Because none of the previously filed complaints alleged Securities Act claims, the Class faced potential statute of limitations arguments if such claims were not asserted within one year after Teva's August 4, 2016 disclosure that it had received subpoenas seeking information concerning its generic drug pricing. *See* 15 U.S.C. § 77m.

41. Thus, on August 2, 2017, Ontario Teachers' filed a Class Action Complaint for Violation of the Securities Act concerning the ADS/Preferred Offerings and the Notes Offering. (ECF 129.) Ontario Teachers' had purchased ADS and Preferred Shares in or traceable to the Offerings. As to the Notes (which Ontario Teachers' had not purchased), the Securities Act claims utilized the doctrine of "class standing."

42. Class Counsel and Ontario Teachers' also initiated discussions about the Securities Act claims with Anchorage, which had acquired Teva Notes in the Notes Offering. Ontario Teachers' authorized Class Counsel to file an amended Securities Act complaint with Anchorage as a named plaintiff, and I advised the Court during an August 30, 2017 status conference that Class Representatives would do so. On September 5, 2017, Class Representatives filed their Amended Class Action Complaint for Violation of the Securities Act of 1933 (ECF 138).

b. Class Representatives File the Consolidated Class Action Complaint

43. On September 11, 2017, Class Representatives filed the Consolidated Class Action Complaint (the "Complaint"), alleging both Exchange Act and Securities Act claims concerning the Teva ADS, Preferred Shares, and Notes. (ECF 141.)

44. This pleading significantly expanded the allegations in the original complaints filed in 2016 by other plaintiffs, which were less than 30 pages each. In the Complaint, Class Representatives alleged that Teva was part of a wide-ranging antitrust conspiracy to manipulate the U.S. generic drug market, based on numerous Congressional, DOJ, and State AG investigations and enforcement actions. (*Id.* Section V.B.) Working with consulting experts who performed econometric analysis of data from various subscription-based data services, Class Representatives also identified eight drugs with price increases that allegedly generated

more than $1 billion in revenue during the class period alleged at the time (February 6, 2014 through August 3, 2017). (*Id.* Section V.C.) Class Representatives further alleged that Defendants' concealment of this anticompetitive conduct rendered their statements regarding the competitiveness of Teva's U.S. generic drug business, its financial performance, and Teva's involvement in collusive activity materially false and misleading. (*Id.* Section V.J.) Class Representatives alleged that Defendants were motivated to pursue the scheme to inflate Teva's ADS price and complete the Actavis Acquisition, including the Offerings that were used to pay for it. (*Id.* Section V.E.)

2. Opposition to Defendants' First Round of Motions to Dismiss

45. From the outset, Class Representatives faced significant risks that their claims would be dismissed at the pleading stage. As described further in Section IV.A, motions to dismiss are filed in nearly all securities class actions, and data from recent studies indicate that following the passage of the PSLRA, more than half of such motions are granted with prejudice.

46. Here, on December 1, 2017 and January 16, 2018, the defendants named in the Complaint filed five separate motions to dismiss:

a. The Exchange Act defendants, including certain Teva executives and directors;
b. The Securities Act defendants, including members of Teva's Board of Directors and Teva Finance;
c. The underwriter banks for Teva's offerings of ADS, Preferred Shares, and Notes during the Class Period;
d. PwC Israel, Teva's auditor; and
e. Bank of China London.

47. The defendants' opening briefs totaled 101 pages and challenged nearly every element of Class Representatives' claims, including the sufficiency of the allegations under the

Rule 9(b) and PSLRA pleading standards, timeliness, and (as to Bank of China London) personal jurisdiction. (*See* ECF 187-1, 188-1, 189-1, 190-1, 198-1.)

48. Class Representatives filed a 96-page omnibus opposition to the motions to dismiss on January 10, 2018, addressing each of the defendants' arguments (ECF 196), and filed their opposition to Bank of China London's motion on February 1, 2018. (ECF 203.) In total, Class Representatives presented 101 pages of briefing in opposition to the motions.

49. In the next two weeks, the defendants filed five replies. In total, the parties' motion to dismiss briefing spanned 284 pages.

50. Given the number and complexity of the defendants' arguments, preparation for oral argument was extensive. Among other things, Class Counsel prepared detailed rebuttals to each of the defendants' arguments, and worked with a graphic design firm to prepare demonstratives and a slide presentation to assist the Court.

51. On April 2, 2018, the day before the hearing, Class Representatives submitted by email a notice of additional authority regarding a recent decision from the Southern District of New York denying a motion to dismiss in a securities class action against Mylan N.V. involving alleged collusive generic drug pricing.

52. On April 3, 2018, the Court held an hour-and-a-half hearing on the defendants' motions, where I argued on behalf of Class Representatives. Although the Court indicated that the Complaint was "too unwieldy" and that the antitrust allegations were drawn from law enforcement actions, it recognized that the oral presentation was "more effective" and also noted that "the proof is easier and the damages are the same if you don't plead antitrust." (ECF 218 at 21:7-16; 24:20-24; 45:3-4.) The Court granted the defendants' motions without prejudice to repleading. (ECF 215.)

3. Class Representatives Amend the Complaint

53. In response to the Court's guidance at oral argument that the Complaint would be better framed around the points presented at the hearing, Class Counsel extensively revised the Complaint to clarify that Defendants' alleged misstatements and omissions were false for two distinct reasons: because they concealed (i) the financial impact of Teva's price increases, and (ii) anticompetitive conduct.

54. Amplifying these two separate grounds for falsity paid dividends throughout the case. In particular, focusing on the financial impact of the price increases streamlined the Class's proof by making clear that antitrust violations were not necessary to prove securities liability. Indeed, as detailed below, Class Representatives were able to obtain significant discovery concerning Teva's price increases without being significantly affected by DOJ's intervention or its criminal investigation of Teva and indictment of Teva's U.S. subsidiary. The reformulated pleading also enabled the Class to prove its claims by providing merits experts' analyses of the financial impact of all of Teva's price increases, regardless of whether they were the product of actual collusion.

55. Significantly, Class Counsel also worked with their consulting expert to expand their analysis of Teva's generic drug portfolio to broadly identify: (a) Teva's large generic drug price increases, and (b) Teva's price increases with indicia of collusion. This analysis found 76 large price increases on 60 Teva drugs. (ECF 226 at 11 of 168.) In addition, the investigation found that Teva's price increases on 16 drugs occurred in parallel with competitors (and demonstrated other indicia of collusion). (*Id.* at 156-59 of 168.) Working with the consulting expert, Class Counsel estimated that Teva's 76 price increases generated $2.3 billion in excess profits. (*Id.* at 11 of 168.)

56. Based on this expanded econometric analysis, Class Counsel also provided detailed comparisons between (a) the allegedly concealed financial impact of Teva's price increases and (b) the publicly disclosed financial metrics to which Teva attributed its success. (*See, e.g., id.* ¶¶174-76, 178, 180, 182, 188-90, 192-93, 195, 197, 207-10, 216-17.)

57. Quantitatively, the new pleading's allegations regarding at least 60 drugs, 76 price increases, and $2.3 billion in excess profits significantly surpassed the Complaint, which had alleged price increases on only eight drugs that generated approximately $1 billion in profits. In addition, to bolster the new pleading's allegations of falsity and scienter, BFA engaged an investigative firm to locate and interview former Teva employees on a voluntary basis. The additional facts gained from these efforts expanded and further supported the allegations, including by detailing the internal financial reports tracking the impact of price increases and identifying Teva employees centrally involved in generic drug pricing and alleged collusive activity. (ECF 226 ¶¶241-45.)

58. On June 22, 2018, Class Representatives filed the Amended Consolidated Class Action Complaint (the "Amended Complaint"), which was 145 pages (excluding appendices). (ECF 226.) This more focused pleading targeted the key facts supporting falsity, materiality, and scienter, which proved instrumental in overcoming Defendants' second set of motions to dismiss and securing the discovery necessary to prove the Class's claims.

4. Opposing Defendants' Second Round of Motions to Dismiss

59. On September 14, 2018, Defendants filed three motions to dismiss the Amended Complaint. The motions were filed by: (i) Teva and certain executives (the "Exchange Act Defendants"); (ii) Teva Finance; and (iii) two Teva USA executives (Allan Oberman and Maureen Cavanaugh). Because Defendants sought to dismiss the Amended Complaint with

prejudice—and the Court had already dismissed once with leave to replead—Defendants' renewed motions to dismiss were potentially case-dispositive. To develop the pleadings and oppose Defendants' two rounds of motions to dismiss, Class Counsel invested over 17,000 hours of work that would have resulted in zero recovery if the action were dismissed with prejudice.

60. Again, the motions attacked nearly every element of Class Representatives' claims, including the falsity and materiality of the alleged misstatements and omissions, the adequacy of the scienter and loss causation allegations, and the timeliness of the Securities Act claims. (*See, e.g.*, ECF 238-1, 239-1.) In addition, the Teva USA executives argued that they were not the "makers" of the alleged misstatements or omissions under the securities laws. (ECF 240-1.) The opening briefs totaled 96 pages.

61. Class Representatives filed three opposition briefs, totaling 96 pages, in November 2018. (ECF 244, 246, 247.)

62. On January 11, 2019, Defendants filed an additional 50 pages of reply briefs. In total, the parties' briefs spanned 241 pages.

63. On March 5, 2019, Class Representatives advised the Court that the State AGs had filed an unredacted copy of their antitrust complaint against Teva, which corroborated Class Representatives' prior allegations that Nisha Patel, Teva's Director of Strategic Customer Marketing (referenced as "N.P." in the State AGs' complaint), was involved in price-fixing on generic drugs. (ECF 269.)

64. The hearing on Defendants' renewed motions to dismiss again involved substantial preparation, including detailed responses to each aspect of Defendants' arguments and their cited cases, and collaboration with the graphic design firm to create new demonstratives and a slide presentation.

65. On March 12, 2019, the Court held a two-and-a-half-hour hearing on the motions, where I argued on behalf of Class Representatives.

66. In post-hearing submissions on May 20, 2019 and August 8, 2019, Class Representatives advised the Court that two other courts had recently denied motions to dismiss in securities class actions against Lannett Co. and Allergan plc based on allegations similar to those advanced in the Amended Complaint. (ECF 273-1, 278-1.)

5. The Court's September 25, 2019 Ruling

67. On September 25, 2019, the Court issued a 74-page decision denying Defendants' motions to dismiss in substantial part. (ECF 283.)

68. The opinion held that Class Representatives had alleged actionable misstatements and omissions concerning the competitive nature of Teva's business practices (*id.* at 29-35), Teva's generic drug pricing (*id.* at 35-40), and the sources of Teva's generic segment's financial performance (*id.* at 40-44). As for the pricing statements in particular, the Court held that Class Representatives had adequately alleged Defendants' violations of SEC trend disclosure requirements, and that the statements were adequately alleged to be misleading half-truths. (*Id.* at 35-40.) The Court also sustained the scienter allegations based on extensive allegations of Teva's internal decision-making, reporting, and budgeting of the impact of price increases. (*Id.* at 46-54.)

69. Further, the Court sustained the allegations of loss causation, notwithstanding Defendants' argument that no disclosure revealed the true causes of Teva's profits, concluding that "it is hard to imagine that the price-fixing conspiracy could be constructively disclosed without the price-hike strategy also necessarily being disclosed." (*Id.* at 57-58.)

70. The Court also rejected Defendants' statute of limitations argument with regard to the Securities Act claims (*id.* at 63-68), and confirmed that Ontario Teachers' had class standing to represent investors who purchased Notes in the Notes Offering. (*Id.* at 68-70.)

71. The Court granted Defendants' motions on two issues. First, the Court dismissed claims against Cavanaugh and Oberman on scienter grounds. (*Id.* at 53-54.) Second, the Court held that Defendants were not liable for failing to disclose Teva's receipt of subpoenas concerning generic drug pricing. (*Id.* at 44-46.) In all other respects, Defendants' motions were denied.

C. Consolidation and Intervention, Including as to Related Class Actions, Individual Plaintiffs (Opt-Outs), and the U.S. Department of Justice

72. Both before and during fact discovery, Class Counsel expended significant time addressing various motions to consolidate or intervene in this litigation.

1. Initial Consolidation/Intervention Issues

73. On December 14, 2017, the Court noted that a related case, *Huellemeier v. Teva Pharmaceutical Industries Ltd. et al.*, 17-cv-1938, had been transferred to the District of Connecticut and requested briefing regarding possible consolidation with this action. (ECF 192.) Class Representatives opposed consolidation at such time. (ECF 193.)

74. Over time, several investors also filed individual (non-class) securities actions against Defendants (the "Direct Actions") or sought intervention. Class Counsel endeavored to streamline these entities' involvement. For example, Class Counsel engaged in extensive dialogue with counsel for the California State Teachers' Retirement System ("CALSTRS") regarding its motion to intervene to toll the statute of limitations. The Court eventually permitted CALSTRS to intervene for this limited purpose. (*See* ECF 281.)

2. Joint Consolidation Motion

75. In November 2019, Class Counsel held extensive negotiations with Defendants regarding a joint motion to consolidate three later-filed putative class actions and all then-pending Direct Actions (and any that are later filed) asserting claims against Defendants based on substantially identical allegations to those asserted by Class Representatives.

76. On December 13, 2019, the parties filed a joint motion to consolidate the related cases (ECF 311, 326) and filed the Second Amended Consolidated Class Action Complaint (the "SAC"), which named additional defendants, asserted additional claims, and expanded the Class Period to encompass August 4, 2017 through May 10, 2019 (ECF 310).

77. Importantly, Class Counsel also obtained Defendants' agreement not to "advance at any stage of the case the arguments that Plaintiffs do not have standing to advance the claims that are the subject of the amendments, or that Plaintiffs are not adequate or typical representatives for purposes of representing the class." (ECF 311-1 ¶7; ECF 352 at 4.)

78. The consolidation motion was strongly contested by several other litigants. Three oppositions were filed by: (a) Robert Huellemeier, the named plaintiff in a later-filed putative class action; (b) HMG Global Initiative Inc., a lead-plaintiff movant in a second later-filed putative class action; and (c) the Direct Action Plaintiffs. Class Representatives drafted and filed an omnibus reply brief (ECF 326) and the Court granted consolidation in March 2020 (ECF 341).

79. In addition, Class Representatives successfully opposed HMG's motion to intervene and strike portions of the SAC. (ECF 324.)

80. On March 12, 2020, the Court held a hearing to address issues related to consolidation, and its April 28, 2020 opinion adopted many of Class Representatives' positions, including:

a. The Direct Action Plaintiffs cannot serve separate expert reports;
b. Only one representative of the Direct Action Plaintiffs may communicate with Lead Counsel;
c. Direct Action Plaintiffs' counsel may attend depositions, but may not use any of the Class's seven-hour time limit; and
d. The Direct Action Plaintiffs may only serve non-duplicative discovery requests after conferring and Lead Counsel declining to issue such requests.

(ECF 352.)

3. DOJ Intervention Motion and Related Negotiations

81. In August 2020—nearly a year after fact discovery commenced—the DOJ indicted Teva's U.S. subsidiary for violations of the Sherman Act. DOJ then contacted Class Counsel, stating that it intended to intervene due to a concern over certain fact witnesses being deposed in this action. As a result, Class Counsel had to reassess their deposition strategy to avoid DOJ seeking to stay discovery. Class Counsel also refined their ongoing analysis of the risks posed by Teva's various other litigations, including with regard to Teva's financial capacity to withstand a guilty verdict or other adverse result in the newly filed criminal prosecution.

82. Class Counsel engaged in several discussions with DOJ in an effort to negotiate a compromise that would minimize any impact on this action. Ultimately, DOJ filed a motion to intervene (ECF 550), which Class Representatives opposed (ECF 564), stressing the importance to the Class of permitting this case to go forward and suggesting that certain fact depositions could be temporarily deferred if necessary. Although the Court permitted DOJ to intervene, DOJ was limited to "seeking to stay certain depositions and requesting that it be served simultaneously with any future written discovery requests." (ECF 584 at 4.)

83. Class Representatives eventually agreed to postpone the deposition of seven witnesses until after the close of fact discovery. At the time of settlement, Class Counsel were prepared to pursue their testimony if litigation continued.

D. Class Counsel Devote Significant Time and Resources to Obtaining a Substantial Volume of Document Discovery from Defendants and Third Parties, Efficiently Analyzing the Documents, and Ensuring a Complete Privilege Log

84. Immediately after the PSLRA discovery stay was lifted following the Court's ruling on the motions to dismiss in September 2019, Class Counsel commenced exhaustive discovery efforts, ultimately serving 116 document requests, 13 interrogatories and 119 requests for

admission. Demonstrating that discovery was heavily contested, the Court held a total of twenty hearings and conferences to provide guidance and resolve numerous discovery disputes over nearly two years.

85. The heart of these discovery efforts were Class Representatives' four sets of document requests to Defendants, served between October 3, 2019 and January 27, 2021, and 20 subpoenas to Teva's generic drug competitors. As set forth below, as a result of Class Representatives' vigorous pursuit of these discovery requests (including motions to compel and an enforcement proceeding against a third party), from December 13, 2019 to August 9, 2021, Class Representatives obtained over 8.2 million pages of produced documents from 27 Teva custodians and 23 third parties.

86. Analysis of this large volume of documents required development of robust processes to ensure efficiency and the use of a dedicated review team to analyze documentary evidence in support of the Class's claims and identify deficiencies in the productions and privilege logs. This work paved the way to completing fact depositions and expert discovery, and marshalling the evidence to develop summary judgment and *Daubert* motions and prepare for trial.

1. Obtaining a Timely, Robust, and Organized Document Production from Defendants Required Extensive Effort and Negotiation

87. Ensuring a complete and timely production was not an easy task. Despite Defendants' recalcitrance, Class Counsel were able to negotiate and resolve a number of deficiencies in Defendants' productions and discovery responses without Court intervention, such as:

a. A protocol for Defendants to rapidly resolve technical production deficiencies for specific documents identified by Class Representatives, such as cut-off or missing content;

b. Production of additional documents regarding Teva's internal controls and disclosure controls and procedures, Sarbanes-Oxley certifications, and approvals of SEC filings; and

c. Supplementation of Defendants' deficient interrogatory responses regarding Teva's internal periodic financial reporting and the personnel involved.

88. However, resolving other production disputes required the Court's guidance and rulings. As described more fully below, Class Counsel had to press the issue of the sequencing and progress of Defendants' document production and engage in numerous meet-and-confer conferences before Defendants' production was sufficiently complete to proceed with depositions. (ECF 354 (April 28, 2020 conference), ECF 369 (May 13, 2020 conference), ECF 432 (June 23, 2020 conference), ECF 472 (July 16, 2020), ECF 484 (August 3, 2020 conference), ECF 521 (August 11, 2020 conference), ECF 549 (September 16, 2020 conference), ECF 569 (October 1, 2020 conference), ECF 653 (December 3, 2020 conference); *see also* ECF 375 (stipulation regarding production milestones).) Status conferences were also necessary to secure Defendants' agreements to add custodians, expand the use of the parties' agreed-upon search terms, and adopt an agreed-upon production schedule. (ECF 484, 521.)

89. Defendants' failure to timely produce documents, particularly at the inception of discovery, was a significant problem. Notwithstanding service of Class Representatives' initial document requests in early October 2019, Defendants' production did not begin until several months later. Even then, the first few months of discovery saw production of only a trickle of ancillary documents from relatively junior employees. By the end of March 2020, six months after discovery commenced, Defendants had produced only 22,694 documents in total, of which just 61 documents came from the custody of the seven Individual Defendants.

90. In addition, Defendants initially refused to produce documents on an organized, custodian-by-custodian basis. Instead, Defendants insisted on producing documents by "topic."

This fragmented approach would have impeded Class Counsel's ability to prepare efficiently for depositions because the flow of production would be dictated by Defendants' subjective determination of which documents related to a certain "topic," rather than the ordinary process of completing production for specific custodians to ensure efficient preparation for their depositions.

91. In response to Class Representatives' concerns, at the April 28, 2020 status conference, the Court expressed "frustration with what I perceive to be the slow pace of document production" and indicated that a custodian-by-custodian production, with interim production deadlines for specific custodians, was critical to ensure timely and efficient fact depositions. (*See* ECF 354 at 3-4.)

92. Class Counsel also determined that Defendants were not prioritizing production of the highest-priority documents early in discovery, including custodial files of key Individual Defendants, materials from Teva's Board of Directors, periodic financial reports identified in the SAC, and documents from centralized files. Class Counsel pressed for and secured prompt production of these documents. This prioritization expedited the disclosure of key facts and increased Class Counsel's efficiency in fully developing the merits.

93. As discovery proceeded, Class Counsel also required Defendants to add additional document custodians and focused supplemental search terms. Defendants had initially agreed to 19 document custodians. Based on the developing documentary evidence, Class Counsel demanded that Defendants add eight custodians (for a total of 27) and apply additional search terms targeting key internal financial reports, including Teva's "Long Range Plans," "Annual Operating Plans," and "Latest Best Estimates." Defendants finally agreed to do so on a defined schedule after numerous meet-and-confers and argument before the Court. (*See* ECF 521 at 4.) This effort ensured that important documents were collected and produced.

94. Class Counsel also identified important deficiencies in Defendants' productions. For example, Class Counsel's analysis revealed that Defendants had produced only a handful of materials related to preparation for Teva's earnings calls, and Defendants eventually agreed to produce hundreds of additional documents. Class Counsel also detected a gap in Defendants' production of quarterly spreadsheets detailing Teva's price erosion on generic drugs, which Defendants corrected. In addition, Class Counsel identified telephone numbers associated with Teva-issued mobile devices, which were critical pieces of evidence as to spoliation and collusion (discussed below).

95. Importantly, all of this work substantially accelerated Defendants' document production. As noted above, by March 2020—six months after discovery commenced—Defendants had produced a mere 22,694 documents, largely in haphazard, disorganized fashion. Over the next five months, Defendants' production rate increased more than tenfold: interim agreements in response to the Court's guidance yielded an additional 304,680 documents (1.51 million pages), organized by custodian, by the end of August 2020. Between September and the end of December 2020, Defendants produced an additional 216,651 documents (1.14 million pages). The table below summarizes Defendants' production rate by month:[6]

Month/Year	Documents Produced	Pages Produced	Total Documents Produced	Total Pages Produced
Oct. 2019	0	0	0	0
Nov. 2019	0	0	0	0
Dec. 2019	40	1,503	40	1,503
Jan. 2020	412	35,976	452	37,479
Feb. 2020	11,998	15,483	12,450	52,962
Mar. 2020	10,244	23,577	22,694	76,539
Apr. 2020	14,825	34,787	37,519	111,326

[6] Class Representatives served their first set of requests for production on October 3, 2019. This table includes Defendants' production of telephone records produced to Teva in the *Generics MDL* (comprising 207 documents, or 124,123 pages).

Month/Year	Documents Produced	Pages Produced	Total Documents Produced	Total Pages Produced
May 2020	44,929	108,786	82,448	220,112
June 2020	97,938	441,815	180,386	661,927
July 2020	109,093	594,688	289,479	1,256,615
Aug. 2020	37,895	332,197	327,374	1,588,812
Sept. 2020	21,548	152,108	348,922	1,740,920
Oct. 2020	66,815	436,175	415,737	2,177,095
Nov. 2020	117,706	481,622	533,443	2,658,717
Dec. 2020	10,582	67,585	544,025	2,726,302
Jan. 2021	20,311	156,745	564,336	2,883,047
Feb. 2021	78	2,126	564,421	2,885,171
Mar. 2021	275	1,223	564,696	2,886,394
Apr. 2021	15	239	564,711	2,886,633
May 2021	92	5,739	564,803	2,892,372
June 2021	358	11,900	565,161	2,904,272
July 2021	675	4,706	565,836	2,908,978
Aug. 2021	42	359	565,878	2,909,337
TOTAL			**565,878**	**2,909,337**

96. As indicated above, Class Counsel's efforts ensured that Defendants completed the vast majority of their production before depositions commenced in earnest in January 2021, enabling Class Counsel to efficiently prepare for and complete numerous fact depositions by early May 2021.

2. Class Representatives' Motion to Compel Secured Production of Pricing, Sales, and Profit Data for Teva's Entire Generic Drug Portfolio

97. Early in discovery, while the parties were disputing the timing and sequence of Defendants' production, a crucial dispute arose from Defendants' refusal to produce complete data concerning pricing, sales, and profit for Teva's full generic drug portfolio. Class Counsel recognized that this evidence would form a crucial foundation for future expert work and was necessary to demonstrate the full financial implications of Teva's alleged price increases and rebut Defendants' anticipated defenses.

98. Despite Class Counsel's months-long efforts to obtain this key data, Defendants were only willing to produce certain data for the 60 drugs listed in the Complaint and for a limited time period from 2013 to 2016. (ECF 411.) Defendants also resisted producing complete sets of certain types of reports and data, including in response to interrogatories Class Representatives served on January 27, 2020.

99. After several unsuccessful meet and confer conferences, Class Representatives filed a motion to compel on June 2, 2020. (ECF 411.) Importantly, the Court rejected Defendants' attempt to cabin discovery to 60 drugs, agreeing with Class Representatives that "the entire portfolio is at issue in this case" (ECF 432 (June 23, 2020 Tr.) at 13:20-21, 17:14-16). The Court instructed the parties to confer about the form of production of Defendants' profit reports and data (*id*. at 16:15-21), but subsequent efforts to negotiate with Defendants did not resolve the issue. (ECF 443.) At the next status conference (July 16, 2020), the Court ordered Defendants to "produce profit reports as kept in the ordinary course of business." (ECF 472 at 3.)

100. After efforts to resolve the remaining disputes also proved unsuccessful, the Court held a further conference on August 3, 2020, at which it ordered the parties to submit competing proposed orders regarding Defendants' production of NDC-level[7] data regarding "generic drug pricing, sales, revenue, and profit for the period January 1, 2013 through February 28, 2018." (ECF 484 at 3-4.) Two weeks later, the Court ordered Defendants to produce existing reports and to further confer regarding Defendants' data production. (ECF 521 at 6.)

101. Only after further intense negotiations did Defendants finally agree to an order providing the complete parameters of Defendants' required data production, including sales and

[7] "NDC" refers to National Drug Code, a unique three-segment product identifier for drugs required by law.

profit data for all drugs in Teva's generic drug portfolio from January 1, 2013 through Q1 2018. (ECF 534.) Production milestones were provided in a separate stipulation. (ECF 536.)

102. In the end, Class Counsel's hard-fought efforts to compel Defendants' production of crucial data allowed the Class's experts to perform rigorous analysis to identify Teva's price increases and quantify their financial impact.

3. The Substantial Volume of Documents Required Implementation of an Efficient Method of Analysis

103. The voluminous document production by Defendants and third parties, which included various document formats (such as emails, complex accounting and financial reporting spreadsheets, lengthy slide presentations, customer contracts, and draft SEC filings), required a comprehensive yet efficient review process to identify key evidence and pinpoint production deficiencies to secure additional productions where required.

104. Rather than conduct a simple linear review of productions, Class Counsel used a variety of methods to focus and streamline review, including advanced analytics utilizing state-of-the-art technology; sequencing review to begin with high-value documents related to key custodians and events; and targeted searches. As detailed below, this approach allowed Class Counsel to efficiently identify key documents for depositions and other purposes without excessive staffing.

105. With the benefit of advanced analytics tools, first-level review and analysis was conducted by a team of attorneys that elevated select documents to senior attorneys. Class Counsel continuously monitored and refined the review team's work, and developed protocols to efficiently capture key evidence as the litigation progressed. Class Counsel were also careful to expand the review team only as needed, gradually increasing the team to a maximum of 14 attorneys, and reducing its size as deposition preparations were completed and review needs decreased.

The attorney team devoted to discovery analysis developed detailed factual knowledge of the case and contributed materially to the preparation of deposition outlines and other work product.

a. Preparation for Extensive Document Discovery

106. Beginning in early 2020, as the Covid-19 pandemic and lock-down restrictions created unprecedented and evolving logistical complications, Class Counsel worked to assemble a review team and process that would operate remotely throughout the case, while simultaneously pressing Defendants to complete their productions in a more efficient manner.

107. Among other work, Class Counsel drafted a 30-page document review protocol that summarized the allegations in this action, provided examples of important information, and delineated a process to analyze documents for their overall relevance and significance to discrete, case-specific issues. This protocol was continuously updated as the review progressed and was used to quickly bring new attorneys up to speed.

108. Class Counsel also retained an electronic discovery vendor to host document productions and rapidly process and evaluate incoming productions. With the vendor's assistance, Class Counsel prepared a customized, state-of-the-art document review platform that enabled the review team to run complex searches, efficiently review and analyze prioritized batches of documents, and perform case management and quality control tasks.

109. In addition, Defendants produced certain documents (including important communications involving the Individual Defendants) in Hebrew, requiring Class Counsel to use machine translation for initial review and to obtain certified translations of key documents for use in depositions.

b. Use of Advanced Analytics to Target Review

110. Rather than utilizing a large team of attorneys to manually review every produced document page by page, Class Counsel deployed analytical tools to screen large volumes of

documents and identify those most likely to be relevant. These tools enabled attorney review to focus time and effort on analyzing the most probative and significant documents from the millions of pages produced. This significantly increased Class Counsel's efficiency, enabled lean staffing, and expedited progress on the case.

111. In particular, the advanced analytical tools (developed with Class Counsel's input and refined through continuous testing) scored all incoming documents to rapidly identify the most important documents. This scoring was supplemented with "emotional intelligence" analysis that identified documents with positive or negative tone or content that indicated high-pressure situations or deviations from typical patterns of a custodian's behavior. These tools facilitated Class Counsel's analysis of documents from a particular witness's custodial file, as well as documents referencing that witness from other custodians' files, ensuring a comprehensive review for a given deposition.

112. In addition, Class Counsel analyzed incoming productions' metadata to systematically identify potential high-value documents and potential production deficiencies. For example, Class Counsel received a report for each production breaking down the number of documents produced on a custodian-by-custodian basis, the file types of documents in the production, and other metrics designed to assess the adequacy of production from the Individual Defendants and other key witnesses, and to spotlight technical production defects.

c. Efficient Review Workflow

113. Class Counsel also developed a review structure to maximize focus on high-value documents. The review prioritized documents that: (i) involved the Individual Defendants or other high-level executives; (ii) contained particularly important words or phrases; (iii) were created near the time of significant events; or (iv) received particularly high scores from the advanced analytics modeling described above. As Class Counsel received productions on a rolling

basis, prioritized documents from each production were continuously added for review ahead of lower-priority documents from earlier productions. This approach maximized the review team's efficiency in identifying important emails, presentations, and other documents throughout discovery, and enhanced Class Counsel's preparation for depositions of key witnesses.

114. Further, senior attorneys developed and assigned more than 75 targeted search assignments for review team attorneys to develop factual proof on particular issues. The resulting work product (including compilations of relevant documents and written summaries of findings) was saved in the review platform and logged in a central research database for ease of reference. These searches identified important documents that supported the Class's claims, including lists of generic drug price increases, complete sets of Teva's periodic internal financial reports, materials presented to Teva's Executive Committee and Teva's Board of Directors, and presentations concerning Teva's U.S. generic drug business.

115. Throughout the review process, senior review team members, with the assistance of BFA's eDiscovery manager, performed regular quality control checks, using key search terms and analytics, to ensure that important documents were being efficiently identified and properly analyzed. Review team attorneys provided twice-weekly updates on their work and weekly submissions of the most relevant documents, and used chat and email to elevate important documents to associates in real time.

116. BFA associates and senior review team attorneys also led weekly conferences with the review team to discuss key documents, update targeted assignments, and communicate important findings as discovery progressed. Senior review team attorneys also held weekly conferences with individual review team attorneys to address assignments, quality control, and

questions or concerns. Further, the review team's questions and answers were compiled in a regularly updated "decision log" to provide ongoing guidance.

d. Development of a Detailed Fact Chronology

117. To synthesize the results of discovery analysis, Class Counsel prepared a detailed chronology of the most important documents identified during the review.

118. To do so, associates analyzed all documents elevated by review team leaders as potentially important and determined which should be included in the chronology. Review team leaders and associates summarized those documents' importance and categorized each document as relevant to key issues, such as collusion or the economic impact of Teva's price increases, using a customized review interface. With the assistance of the review interface, Class Counsel then created a chronology that provided the document's date, custodian, and email participants, along with the attorney summary and identification of relevant issues. This approach facilitated Class Counsel's factual analysis regarding specific witnesses, time periods, and events and streamlined regular revision of the chronology as the factual record developed.

119. Although constructing the chronology required substantial effort, it yielded significant dividends, as it served as a primary reference in preparing for dozens of depositions, drafting lengthy responses to Defendants' contention interrogatories, working with the Class's experts, preparing an order of proof, and preparing summary judgment and *Daubert* papers.

4. Substantial Third-Party Discovery Yielded an Additional 5 Million Pages of Documents

120. Concurrently with party discovery and the transaction data dispute with Defendants, Class Counsel launched a concerted effort to secure third-party discovery from former Teva employees, other generic drug manufacturers, Teva's auditor, and the underwriters for the Offerings. Class Counsel served subpoenas on 49 third parties and pursued negotiations that

obtained more than 5 million pages of documents (as well as other key evidence described below). This voluminous evidence was comprehensively analyzed for use in depositions, discovery responses, and summary judgment.

a. Class Representatives' Subpoenas to Competitors, Distributors, and Wholesalers and Motion to Compel Sandoz's Production

121. The heart of third-party discovery was Class Representatives' subpoenas to twenty generic drug manufacturers and four generic drug distributors and wholesalers.

122. These third parties were generally uncooperative, and negotiations with their counsel continued for well over a year in some cases. Ultimately, these extensive efforts paid off, yielding more than 5 million pages of documents.

123. Sandoz Inc. was particularly intransigent. Despite having entered into a Deferred Prosecution Agreement admitting that it had engaged in collusion and price-fixing, and paying a $195 million criminal penalty to DOJ, Sandoz initially insisted that it had no relevant, responsive documents. After months of meet and confer efforts, Sandoz was willing to produce fewer than 10 documents, and only on the condition that Class Representatives waive all rights to seek any additional Sandoz documents. Class Representatives declined this offer and instead filed an enforcement action to compel Sandoz's production.[8]

124. Even after the Court granted Class Representatives' motion on September 10, 2020 and ordered Sandoz to produce documents at its own expense (No. 3:20-cv-01283-SRU (D. Conn.), ECF 36), Sandoz continued to delay and refused to produce key documents or correct deficiencies in its production. All told, Class Counsel's effort to secure Sandoz's compliance with

[8] *In the Matter of Rule 45 Subpoena Issued to Sandoz Inc.*, No. 1:20-mc-00213 (S.D.N.Y.).

the subpoena included three appearances before the Court and ten submissions, resulting in Sandoz's production of 1.8 million pages of documents.

b. Class Representatives' Subpoenas to Former Teva Personnel

125. Class Representatives also subpoenaed five former Teva employees (Maureen Cavanaugh, Kevin Green, Allan Oberman, Nisha Patel, and David Rekenthaler) and a former Teva Board member (Dr. Phillip Frost) to obtain additional documentary evidence. For example, following unsuccessful meet and confer conferences with Defendants, Class Counsel sought—and obtained—a Court order requiring the production of Cavanaugh's "dynamic personal document" (ECF 472 at 3), which substantiated the individuals whose contact information was contained in Cavanaugh's personal files. Oberman, Rekenthaler, and Frost also produced documents.

c. Class Representatives' Subpoenas to Teva's Underwriters and Auditor

126. Class Representatives served a subpoena on eighteen underwriters of Teva's Offerings during the Class Period, which yielded more than 22,000 pages of important documentary evidence concerning the Class's Securities Act allegations.

127. Finally, Class Representatives served a subpoena on PwC Israel, Teva's auditor, which yielded more than 300,000 pages of important evidence concerning Teva's SEC filings and the governing disclosure requirements.

5. Class Counsel Successfully Secured Complete Privilege Logs from Defendants after Extended Effort

128. While working to secure the productions detailed above, Class Counsel also successfully pressed for Defendants to produce custodian-based privilege logs on a rolling basis. This effort enhanced Class Counsel's ability to obtain improperly withheld materials before

depositions of key witnesses, and to examine custodians about particular log entries. Defendants initially resisted the production of rolling privilege logs, but as a result of Class Counsel's persistence and the Court's urging, Defendants finally agreed to a stipulated schedule filed in May 2020 (ECF 375) that imposed interim deadlines for rolling privilege logs, beginning in June 2020, tied to the milestones for custodial productions.

129. Class Counsel effectively policed Defendants' resulting production of privilege logs and identified several deficiencies. For example, in several instances, Defendants failed to provide basic information to substantiate their claims of privilege, including the identities of counsel. And substantively, Defendants improperly asserted privilege or work product protection over numerous documents that were disclosed to third parties, contained business advice, discussed political or lobbying activities and strategies, or were otherwise unrelated to legal advice.

130. Following Defendants' repeated refusals to address such deficiencies, Class Counsel promptly raised their concerns in a July 31, 2020 submission to the Court (ECF 481 at 5). At the August 3, 2020 status conference, Defendants agreed to produce revised privilege logs, resulting in a further order modifying certain production deadlines. (ECF 484.)

131. However, these deficiencies still were not fully corrected. Class Counsel had to pore through thousands of privilege entries and identified numerous remaining deficiencies. Class Counsel raised these issues at the December 3, 2020 status conference, and the Court ordered the parties to again meet and confer. (ECF 653.) After considerable negotiation, Defendants yet again agreed to produce revised logs. As a result of Class Counsel's persistence, Defendants ultimately withdrew their privilege claims over, and therefore produced, numerous documents from their privilege logs.

E. Class Counsel Completed 23 Fact Depositions of Defendants, Teva Personnel, and Third Parties in a Period of Intensive Effort

132. Class Representatives' and Class Counsel's vigorous pursuit of document discovery from Defendants and third parties, as well as their insistence on a rolling privilege log, enabled the commencement of fact depositions.

133. The complexity of this matter required Class Counsel to take a significant number of depositions to establish the relevant facts and obtain impeachment material for trial. Class Counsel took 23 fact depositions. These deponents included all seven Individual Defendants (including Teva's current CEO Schultz); Teva's and Teva Finance's Rule 30(b)(6) representative (over two days); a current member of Teva's Board of Directors and Audit Committee; executives in Teva's senior management, sales, pricing, finance, accounting, and investor relations departments in the U.S. and abroad; and Rule 30(b)(6) representatives of PwC Israel and Barclays Capital Inc., one of the lead underwriters of Teva's Offerings.

134. These depositions yielded important testimony that further supported many elements of the Class's claims, including the falsity and materiality of the alleged misstatements and omissions, Defendants' scienter, loss causation, and damages.

135. Class Counsel initially identified 32 deponents and proposed a deposition schedule of these witnesses to Defendants. In response to Defendants' and/or the DOJ's concerns as to deposing certain witnesses in light of the pending criminal case, Class Counsel expended considerable effort to negotiate a schedule of initial deponents and a separate list of witnesses who would be deposed after the close of fact discovery (the "out of time" depositions). The parties exchanged several proposals before reaching an agreement, which was memorialized in a joint proposal approved by the Court on December 28, 2020. (ECF 677.) The schedule allowed for 32 fact depositions, with 7 designated as "out of time" depositions. (*Id.*) The initial deposition

schedule was further modified as deponents were added and removed. At the March 31, 2021 status conference, the Court permitted Class Representatives to take two additional fact depositions (ECF 751).

136. In light of the pandemic, all depositions were taken remotely. As a result, the parties had to negotiate a deposition protocol to specify the procedures and logistics applicable to remote depositions and to ensure that the resulting testimony would be admissible. An agreement on the protocol was reached in January 2021.

137. To prepare for each deposition, Class Counsel leveraged their review team to perform a comprehensive analysis targeted to each deponent. This process consisted of several steps:

a. The team utilized their advanced analytical modeling tools to score and prioritize each deponent's most important documents for detailed review;

b. In a multi-tiered review process, a targeted subset of the review team and a review team leader reviewed all potentially important documents for each deponent;

c. Based on that review, the team drafted a summary of key documents, organized by issue, for use in deposition outlines; and

d. The taking attorney (or second-chair attorney) used the summary and set of key documents to draft a deposition outline, performed independent research and analysis of other relevant evidence, and planned the highest-impact deployment of critical documents within the overall deposition sequence.

138. In addition, Class Counsel coordinated logistical support for the remote depositions, including delivery of potential exhibits in hard copy to witnesses (including nine deponents located outside of the U.S.) and opposing counsel, and uploading copies of marked exhibits to the remote deposition platform.

139. Class Counsel's 23 fact depositions are listed in Table 4 below. Fact depositions began in earnest on January 21, 2021, and concentrated effort was required to complete these depositions by May 5, 2021, with Class Counsel taking more than one deposition per week on

average. Many depositions took place over two days (with additional debriefing and preparation between sessions) to accommodate time zone differences for witnesses in Israel or Europe. All 23 depositions were conducted by a core group of four BFA attorneys to maximize efficiency and collective knowledge of the factual record as it developed through each deposition.

Date	Deponent (non-US location)	Deponent's Role	Taking Attorney	Tr. Pages
Dec. 8, 2020	Brian Lapp	Revenue Manager, Teva	T. Stoddard	217
Jan. 21, 2021	Jamie Berlanska	VP and Controller, Teva Americas	T. Stoddard	312
Jan. 22, 2021	Mayra Avila	Director and Senior Director, Finance, Teva	B. Burry	368
Jan. 27, 2021	Brendan O'Grady	President and CEO, Teva North America Generics from April 2015 through August 2016	E. Kubota	294
Jan. 28, 2021	Fred Andrush	Associate Director, Business Analysis and Forecasting, Teva	B. Burry	321
Feb. 9, 2021	Gilad Shadur	Senior roles in Teva Global Generic Medicines Financial Planning & Analysis group, and interim CFO, North America	J. Fonti	338
Feb. 11, 2021	Brandon Boyd	Strategic Associate to Allan Oberman (CEO and President, Teva Americas Generics)	B. Burry	310
Feb. 16-17, 2021	Yitzhak Peterburg (Israel)	Individual Defendant; Teva's Interim President and CEO from Feb. 6, 2017 to Oct. 31, 2017, a Teva Director from 2012 until Dec. 2017, and Chairman from Jan. 1, 2015 to Feb. 6, 2017	E. Kubota	277
Feb. 23-24, 2021	Kobi Altman (Israel)	SVP and CFO Teva Americas from Aug. 2013 to July 2014, and SVP and CFO, Global Generics Medicines from July 2014 to April 2015	E. Kubota	312
Mar. 2, 2021	Andrew Boyer	President and CEO, Teva North America Generics from Aug. 2016 to Feb. 2018	E. Kubota	288
Mar. 5, 2021	Sigurdur Olafsson	Individual Defendant; Teva's President and CEO of Global Generics from July 2014 through Jan. 2017	J. Fonti	373
Mar. 8, 2021	Eti Mitrany (Israel)	SVP, Head of Business Analysis and Planning	E. Kubota	223
Mar. 12, 2021	Kevin Mannix	Head of Global Investor Relations, Teva	E. Kubota	308

Date	Deponent (non-US location)	Deponent's Role	Taking Attorney	Tr. Pages
Mar. 24, 2021	Deborah Griffin	Individual Defendant; SVP and Chief Accounting Officer, Teva	E. Kubota	358
Apr. 8-9, 2021	Erez Vigodman (Israel)	Individual Defendant; Teva's President and CEO from Feb. 2014 through Feb. 2017	J. Fonti	456
Apr. 12, 2021	Michael McClellan (Spain)	Individual Defendant; Teva's CFO from July 2017 through Nov. 2019	E. Kubota	225
Apr. 14, 2021	James Gutow	Barclays Capital Inc.'s Rule 30(b)(6) Witness	T. Stoddard	240
Apr. 16, 2021	Kåre Schultz (Israel)	Individual Defendant; Teva's CEO from September 2017 through Present	J. Fonti	254
Apr. 19, 2021	Gerald Lieberman	Teva Board of Directors and Audit Committee member from September 2015 through Present	J. Fonti	356
Apr. 21-22, 2021	Eyal Desheh (Israel)	Individual Defendant; Teva's CFO from July 2008 to June 2017	J. Fonti	452
Apr. 26-27, 2021	Arik Reizner (Israel)	PwC Israel's Rule 30(b)(6) Witness	E. Kubota	314
May 3-4, 2021	John Hassler	Teva's Rule 30(b)(6) Witness	E. Kubota	508
May 5, 2021	Sharon Dror (Israel)	VP, Corporate Controller, Teva	T. Stoddard	228

140. Class Counsel's 23 fact depositions yielded over 7,000 pages of testimony, much of which was likely to be trial testimony. In addition, Class Counsel marked 535 exhibits during fact depositions.

141. This record provided important factual support for the Class's claims. For example, Defendants Vigodman, Desheh, Olafsson, Griffin, and other senior Teva executives testified about their public statements, the SEC filings that they signed or approved, and Teva's generic drug pricing and price erosion; Mayra Avila and Gilad Shadur testified about Teva's internal tracking and reporting of generic drug pricing and price erosion; and Kevin Mannix testified about Teva's share price declines and the alleged corrective disclosures. In addition, the Rule 30(b)(6) representative of Barclays Capital Inc. testified about the Offering Materials, and PwC Israel's

Rule 30(b)(6) representative testified about Teva's SEC filings, PwC Israel's audits, and the applicable disclosure requirements. Several key admissions from the fact depositions were featured in Class Representatives' summary judgment and *Daubert* papers.

142. Importantly, Class Counsel also leveraged the fact depositions to uncover and obtain additional key documents. For example, Teva's Rule 30(b)(6) representative was prepared through numerous meetings with other Teva personnel, and received a lengthy outline of notes from these meetings, among other materials. Defendants initially withheld many of these documents, asserting privilege and work-product protection, but eventually agreed to produce them.

143. Similarly, Class Counsel identified production deficiencies and obtained additional documents based on the deposition testimony of Deborah Griffin (Teva's Chief Accounting Officer during the Class Period). As a result of these efforts, Defendants eventually produced documents concerning Teva's preparation of its SEC filings, Sarbanes-Oxley Act certifications and sub-certifications and a related internal database, and additional reports tracking Teva's price erosion. (*See, e.g.*, ECF 762 at 5.)

144. Finally, at the time of settlement, Class Representatives were prepared to take the limited-scope deposition of Cavanaugh (discussed below) and pursue the remaining "out of time" depositions that had been placed on hold due to the pending criminal matter.

F. Class Representatives Pursued Evidence of Potential Spoliation

145. As document discovery and fact depositions progressed, Class Counsel discovered evidence of over 2,000 text messages that appeared highly relevant to the Class's allegations of collusion and price-fixing between Teva and its competitors. These texts were exchanged both among Teva employees and between Teva personnel and their counterparts at other generic drug manufacturers.

146. Despite two years of litigation on the issue, Defendants never located—much less produced—these texts. Defendants also resisted providing any explanation for the text messages' disappearance. Class Counsel vigorously pursued this issue, and at the time of settlement were on the eve of deposing Maureen Cavanaugh (former SVP, Chief Commercial Officer, Teva North America) regarding the missing text messages.

147. Class Counsel's multi-year pursuit of these text messages began with their October 2019 Requests for Production explicitly targeting relevant text messages, chats, and internal messaging. On January 27, 2020, Class Counsel served a subpoena *duces tecum* on Cavanaugh seeking relevant electronically stored information, including text messages.

148. For the next several months, while Class Counsel pursued Defendants' document production, they also pressed for meet and confer conferences regarding: (a) Teva's efforts (if any) to preserve these types of electronic communications; (b) the status and preservation of Teva employees' mobile devices; and (c) Cavanaugh's mobile devices and text messages.

149. Teva reluctantly provided only limited information concerning certain mobile devices of individual custodians. Meanwhile, Cavanaugh—represented by the same counsel as Teva—refused to provide any specific information about her mobile devices or produce any documents responsive to the subpoena served on her.

150. In summer 2020, Class Counsel made two significant discoveries. First, Class Counsel learned that Teva possessed an electronic image of one of Cavanaugh's mobile phones. Second, Class Counsel secured Teva's production of detailed telephone records regarding communications between Teva-issued mobile devices and those of Teva's competitors. (ECF 509 (Aug. 3, 2020 Tr.) at 67-68.) These telephone records, which had been obtained by the State AGs through subpoenas to third-party phone carriers and produced to Teva in the

Generics MDL action, were voluminous (124,000 pages) and required careful analysis to correlate specific communications with the phone numbers of the Teva-issued devices. Class Counsel were able to use these records to conclusively demonstrate that several former and current Teva employees (including Cavanaugh) had exchanged over 2,000 text messages with each other and/or their counterparts at competing drug manufacturers. Nonetheless, hundreds, and potentially thousands, of highly relevant text messages had not been produced in this case, and neither Teva nor Cavanaugh had any explanation for their absence.

151. After Class Representatives brought these concerns to the Court's attention (ECF 515), the Court noted at the August 11, 2020 status conference that "[w]e're not going to move forward in this case without figuring out what happened to these text messages." (ECF 525 (Aug. 11, 2020 Tr.) at 14:18-20.) The Court thus ordered that "[i]f Cavanaugh or the Defendants have relevant text messages within their possession, custody, or control, those text messages must be produced." (ECF 521 at 4.)

152. While Defendants subsequently produced a limited number of previously withheld text messages, this only confirmed significant discrepancies, including substantial gaps in time where text messages remained missing. For example, neither Teva nor Cavanaugh produced any of her text messages before March 5, 2016, even though the phone records confirmed their existence. Defendants also refused to explain what had happened to these missing text messages. Class Representatives raised these issues at the September 16, 2020 status conference and the Court requested full briefing. (ECF 543, 549.)

153. Class Representatives then moved to compel production of the text messages of Cavanaugh and five other key Teva custodians. (ECF 554, 555, 556.) The motion was necessitated by Class Counsel's discovery of additional missing texts, including Cavanaugh's texts for the

period from July 2016 to April 2017, and Defendants' continued refusal to provide any explanation. (ECF 555 at 4 of 20.) Similar gaps existed as to the text messages of the five other Teva personnel (David Rekenthaler, Nisha Patel, Teri Coward, Kevin Galownia, and Christine Baeder). (*Id*. at 7-8 of 20.)

154. At an October 1, 2020 hearing, the Court found that the "gaps" in Cavanaugh's text messages "are puzzling, to say the least" and ordered a forensic examination of Cavanaugh's mobile devices. (ECF 569 at 4.) The Court further ordered production of (i) full message threads between the six custodians and any individual identified by name or initial in the State AGs' complaint as someone with whom these six custodians communicated; and (ii) all text messages between the six custodians or among these custodians and the Individual Defendants. (*Id.* at 4-5.)

155. The forensic examination, conducted by Stroz Friedberg, was unable to locate any of the missing text messages on Cavanaugh's devices. (*See* ECF 723 at 3.)

156. Over the next six months (from October 2020 through March 2021), Class Counsel continued to press Teva and Cavanaugh to locate and produce the missing text messages or explain how they disappeared. These efforts included serving 119 requests for admission and 11 interrogatories on January 27, 2021, many of which focused on issues related to the missing texts.

157. On March 1, 2021, Class Representatives renewed their September 2020 motion to compel Defendants to produce the missing text messages or explain what happened to them, including a detailed description of any preservation efforts. (ECF 718.) The Court ordered the parties to meet and confer (ECF 729 at 4), and later ordered Defendants "to produce a detailed affidavit setting forth Teva's preservation efforts with respect to the missing text messages from

January 1, 2013 until the present." (ECF 751 at 3-4.) That declaration turned out to be deficient in many respects. (*See* ECF 778-4 (sealed).)

158. At the April 16, 2021 status conference, the Court ordered Defendants to produce additional telephone records and text messages related to potential collusion with Sandoz Inc. (ECF 762 at 5.) During that same conference, Class Counsel suggested that they would pursue information regarding Teva's preservation efforts by deposing Teva's corporate representative under Rule 30(b)(6). (*Id.* at 5-6.) Unfortunately, Teva's designee possessed limited knowledge beyond the deficient declaration. (*See* ECF 813 at 9:21-10:3.)

159. Turning to other avenues, Class Counsel made important discoveries through close scrutiny of Teva's privilege logs, locating evidence (including litigation holds by Teva's legal department) indicating that, contrary to Defendants' position, Teva's preservation duty arose well before the apparent loss or destruction of texts and other evidence. (*See* ECF 778 at 5-6 of 14.) At the May 25, 2021 status conference, the Court ordered the production of "(1) all litigation holds directed to the relevant six custodians . . . between January 1, 2013 and June 30, 2016, and (2) all litigation holds that were issued in general in connection with the matters referenced in the 2014-2016 communications identified by the Plaintiffs in Exhibit B of their pre-conference submission." (ECF 796 at 5.)

160. Despite the Court's order to produce holds through June 30, 2016, Defendants refused to produce a litigation hold issued on June 21, 2016 in response to the DOJ subpoena to Teva. Class Representatives were again forced to seek relief from the Court to obtain the hold. (*See* ECF 829 at 5-6; ECF 847 (Order).)

161. With evidence that the text messages had once existed and facts indicating that Teva was subject to a duty to preserve, the one missing piece was uncovering what had actually happened to the text messages.

162. To get to the bottom of this issue, Class Representatives sought a limited deposition of Cavanaugh regarding spoliation. At the July 15, 2021 status conference, the Court indicated its inclination to allow the deposition and requested further briefing. (ECF 848 (July 15, 2021 Tr.) at 19:20-25); *see also* ECF 838 (Conference Memorandum and Order) at 5.)

163. Further, in August 2021, Class Counsel discovered important new information: a recent filing in the Teva criminal matter disclosed for the first time that DOJ had contacted an unnamed Teva employee as early as spring 2015 as part of DOJ's criminal investigation into generic drug pricing, confirming Teva's duty to preserve and underscoring the need for Cavanaugh's deposition on spoliation. (ECF 885 at 1-6.)

164. Class Representatives brought all of this information to the Court's attention at the September 15, 2021 conference. The Court again indicated its inclination to permit a two-hour deposition of Cavanaugh limited to the spoliation issue, but deferred a formal ruling in order to permit Cavanaugh to file a motion to quash. (ECF 892.) No such motion was ever filed.

165. Class Counsel then negotiated with Cavanaugh's counsel and were prepared to depose Cavanaugh in December 2021. The parties reached agreement on the proposed settlement shortly before the deposition was to be taken.

G. Class Representatives Pursued Other Avenues for Evidence of Collusion

166. Faced with the apparent spoliation of direct communications between Teva and its competitors, Class Representatives pursued other avenues to obtain evidence of collusion. In particular, Class Representatives sought (i) testimonial evidence from Teva's co-conspirator

generics manufacturers and (ii) the memoranda of FBI interviews taken during the DOJ's investigation of Teva's collusive conduct.

a. Declarations from Teva's Co-Conspirators

167. Class Representatives served Rule 30(b)(6) subpoenas on three of Teva's co-conspirators (Apotex Corp., Sandoz, Inc., and Taro Pharmaceuticals USA) to obtain deposition testimony regarding price-fixing with Teva. Ultimately, Class Representatives agreed to accept declarations rather than deposition testimony, thereby avoiding a potential motion by the DOJ to stay those depositions in light of its pending criminal action against Teva and ongoing investigation of the generic drug industry. Each manufacturer's declaration contained testimony that, among other things, confirmed the admissions of price-fixing in their respective Deferred Prosecution Agreements ("DPAs") with the DOJ, and explicitly named Teva as a co-conspirator on specific drugs identified in the DPAs that were also at issue in this class action. Class Counsel also obtained each manufacturer's agreement to testify at trial in this action. (*See* ECF 718 at 2-3.) These declarations provided critical evidence regarding Teva's alleged price-fixing, demonstrating that three of Teva's most significant competitors colluded with Teva employees to fix the prices of, and allocate markets for, generic drugs.

b. The FBI Forms FD-302

168. As a result of carefully tracking events in the *Generics MDL* and the Teva criminal antitrust case, Class Counsel gleaned important information relevant to this securities action. In addition to discovering DOJ's 2015 contact with Teva (described above), Class Counsel discovered that Teva had obtained 200 FBI Forms FD-302 documenting witness interviews in the criminal case, some of which had been accessed by Teva's in-house counsel and certain outside counsel representing Teva in this action.

169. Concerned that Teva's unilateral access to these witness interview memoranda had given defense counsel an unfair strategic advantage in this civil action, Class Representatives moved to compel production of a subset of the FD-302s. (ECF 770-2.)

170. At the April 16, 2021 conference and in its subsequent order, the Court noted concern about defense counsel obtaining an unfair advantage if they had access to the FBI interview memoranda. (*See* ECF 764 (Apr. 16, 2021 Tr.) at 15:10-15; 9:11-13; ECF 762 at 4.) The Court also ordered further briefing (ECF 762 at 3-4), which was completed in June 2021. (*See* ECF 800, 810, 814.)

171. On July 15, 2021, the Court denied the motion without prejudice to renew after conclusion of the criminal case or closer to trial in this class action. (ECF 838 at 4.) Defendants were also ordered "to submit a list of all counsel (both private and in-house) who have worked on this case and who may have, at any time, had access to the relevant FBI 302s" because it was "still important to know how important the information contained in the relevant FBI 302s might have already been in this case." (ECF 838 at 5.) Defendants filed the list on July 29, 2021. (ECF 849.)

H. Class Representatives Responded to Defendants' Class-Wide Merits Discovery Requests

172. On January 27, 2021, as Class Counsel were conducting fact depositions, Defendants served Class Representatives with 57 requests for admission and 18 interrogatories, several of which were contention interrogatories seeking all facts supporting various allegations.

173. On February 26, 2021, Class Representatives served responses and objections to Defendants' requests for admission and initial responses and objections to Defendants' interrogatories.

174. In addition, on October 4, 2021, Class Representatives served comprehensive supplemental responses to certain contention interrogatories. Months of effort were required to

compile the key documentary and testimonial evidence Class Counsel developed over the prior two years of discovery. Class Counsel combed through millions of pages of produced documents, 7,000 pages of fact witness testimony, 600 pages of expert reports, and over 3,000 pages of expert testimony.

175. Class Representatives' supplemental interrogatory responses totaled more than 220 pages and addressed key elements of the Class's claims, including the falsity and materiality of the alleged misstatements and omissions. These responses detailed Class Representatives' extensive proof as to key factual issues, such as:

- The extent of Teva's generic drug price increases and the profits Teva earned from those price increases based on documentary evidence and expert analysis;
- Teva's generic drug price erosion rates throughout the Class Period;
- Information provided (or available) to Teva executives regarding Teva's price increases, their financial impact, and price erosion;
- The adequacy of Teva's disclosure controls and procedures required by SEC regulations; and
- Potential spoliation of key evidence, including text messages and other documents and communications.

I. Class Representatives Obtain Class Certification over Defendants' Vigorous Opposition and Persistent Requests for Additional Discovery

176. Simultaneously with pursuing document discovery and preparing for fact depositions, Class Representatives successfully achieved certification of the Class.

177. Class certification was complex and heavily contested, involving nearly 200 pages of briefs (including a *Daubert* motion against the Class's expert), over 300 pages of expert reports (with more than 400 pages of exhibits), and over 1,400 pages of expert deposition testimony. The primary dispute focused on market efficiency, which Defendants vigorously contested. Demonstrating market efficiency was particularly complex due to, among other things, the eight

Teva Securities at issue (including equity (the ADS), the Preferred Shares, and debt securities (the six Notes)); the length of the Class Period (over five years); and the large amount of Teva-related news released during that time.

178. Further, although Class Counsel had secured Defendants' agreement in December 2019 not to challenge Class Representatives' standing, typicality, or adequacy, Defendants repeatedly sought discovery on those issues, both before and after class certification was granted. While Class Representatives agreed to provide limited documents and testimony, Defendants' persistent demands ultimately required a ruling from the Court, which concluded that "individual discovery" was not "relevant to the class-wide issue of materiality or to a class-wide rebuttal of reliance." (ECF 796 at 4 of 6.)

1. Before Class Certification, Defendants Demanded Documents from Class Representatives and Moved to Compel Production, Including with Respect to Class Representatives' Trading in Teva Securities

179. Class Counsel worked with Class Representatives to determine the locations of potentially relevant documents, including through in-person meetings and custodial interviews, and put in place preservation efforts, including on-site forensic collections from Class Representatives in Ontario, Canada and Anchorage, Alaska.

180. On January 29, 2020, Defendants served Class Representatives with 44 requests for production of documents. Class Representatives served their responses and objections on February 28, 2020. Among other things, Class Representatives objected to Defendants' broad requests seeking investment and trading records in light of Defendants' agreement not to contest Class Representatives' standing, typicality, or adequacy. Class Representatives also objected on privilege and work-product grounds to Defendants' requests regarding former employees who

provided information, and work performed by Class Representatives' consulting expert, in connection with Class Representatives' allegations.

181. On June 2, 2020, Defendants moved to compel Class Representatives' production of a broad set of documents, including various trading records and documents regarding the former employees and consulting expert. (ECF 412.) Class Representatives opposed, arguing (among other things) that trading-related documents were not relevant in light of Defendants' agreement not to challenge Ontario Teachers' or Anchorage's standing, typicality, or adequacy. (*See* ECF 413 at 7 of 37.) Nonetheless, Class Representatives offered to produce documents sufficient to show their transactions in the Teva Securities at issue to avoid an unnecessary dispute. (*Id*.)

182. On June 23, 2020, the Court held a hearing on Defendants' motion to compel. Noting the lack of relevance of plaintiffs' actual detailed investment records, the Court suggested that Defendants should accept Class Representatives' offer. (ECF 432 (June 23, 2020 Tr.) at 21:23-22:4.) The Court also indicated that it was inclined to deny the other aspects of Defendants' motion (*see id.* at 32:4-8, 26:15-19).

183. On July 2, 2020, Defendants filed a notice acknowledging that "Defendants have agreed not to further pursue their Motion to Compel, reserving their rights to do so in the event the Court denies Plaintiffs' Motion for Class Certification" (ECF 442 at 1), which Class Representatives had filed on June 19, 2020 (ECF 419). Later on July 2, Class Representatives produced documents sufficient to show their transactions during the Class Period in the Teva ADS, Preferred Shares, and Notes at issue. Nonetheless, Defendants later persisted in seeking additional discovery concerning Class Representatives' transactions, as described further below.

2. Class Certification Motion, Briefs, and Expert Analysis

184. In support of their motion for class certification, Class Representatives filed a 37-page brief on June 19, 2020 (ECF 419-1). Class Representatives also submitted declarations from Sharon Chilcott, currently Ontario Teachers' Chief of Staff, and formerly Managing Director and Associate General Counsel, Employment Law & Litigation, and Edward Jarvis, Director of Anchorage, confirming Ontario Teachers' and Anchorage's adequacy to represent the proposed class and detailing their active oversight of Class Counsel, participation in strategic decisions, and commitment to actively prosecuting the action in the best interest of the Class. (ECF 419-2, 419-3.)

185. In addition, Class Representatives submitted a detailed expert report from David Tabak, Ph.D. addressing market efficiency and a class-wide damages methodology, which was 253 pages (including exhibits). (ECF 419-5.) To analyze market efficiency, as the Court will recall, Dr. Tabak conducted multiple statistical tests:

- First, Dr. Tabak isolated the Teva-specific price movements of the ADS, Preferred Shares, and Notes during the Class Period by controlling for the effect of market and industry factors.
- Second, Dr. Tabak performed tests (known as the Z-test and Kolmogorov-Smirnov test) to determine the difference in proportions of statistically significant price movements on (i) Teva earnings dates or other dates with Teva-related news, and (ii) dates without such news. Dr. Tabak concluded that the extent of this difference demonstrated that the Teva Securities' prices tended to react to news, supporting market efficiency under the so-called "*Cammer* 5" factor derived from *Cammer v. Bloom*, 711 F. Supp. 1264, 1286-87 (D.N.J. 1989).
- Dr. Tabak also fully analyzed the other factors that are routinely utilized to assess market efficiency, which are derived from *Cammer* and *Krogman v. Sterritt*, 202 F.R.D. 467, 474 (N.D. Tex. 2001).

Finally, Dr. Tabak detailed a proposed methodology for calculating damages on a class-wide basis.

186. On August 8, 2020, Defendants filed their 40-page opposition to class certification (ECF 508) and submitted three expert reports (totaling 165 pages excluding exhibits). Two of

Defendants' experts, Dr. Mukesh Bajaj and Dr. John McConnell, disputed whether the Teva ADS, Preferred Shares and Notes traded in efficient markets and offered numerous highly technical criticisms of Dr. Tabak's analysis. (ECF 508-2, 508-3.) Defendants' third expert, Dr. Christopher James, claimed that public information disclosed Teva's generic drug pricing and further opined that the action involved "multiple theories of injury" that foreclosed a class-wide damages methodology. (ECF 508-4 at 44 of 110.)

187. On December 4, 2020, in the midst of preparing for fact depositions, Class Representatives filed their 40-page reply brief in further support of class certification (ECF 656), accompanied by a detailed reply report from Dr. Tabak (94 pages, plus 120 pages of exhibits). Dr. Tabak's reply report described extensive additional statistical testing he performed to refute the criticisms of Defendants' experts.

188. In connection with class certification, Class Counsel took or defended five expert depositions (with Dr. Tabak being deposed twice), yielding over 1,400 pages of testimony, as set forth below. Each deposition entailed immersion in the technical details of the expert's sources, statistical analysis, and conclusions, with further complexity arising from the fact that Defendants offered three experts with partially overlapping opinions. To ensure efficiency, all of these expert depositions were taken or defended by me or Mr. Kubota, who was primarily responsible for the class certification briefing.

DATE	DEPONENT	DEPONENT'S ROLE	Taking/Defending Attorney (T/D)	Tr. Pages
July 28, 2020	David Tabak	Plaintiffs' Class Certification Expert	J. Fonti - D	319
Oct. 27, 2020	Mukesh Bajaj	Defendants' Class Certification Expert	J. Fonti - T	188
Oct. 30, 2020	Christopher James	Defendants' Class Certification Expert	E. Kubota - T	314
Nov. 6, 2020	John McConnell	Defendants' Class Certification Expert	E. Kubota - T	292

DATE	DEPONENT	DEPONENT'S ROLE	Taking/Defending Attorney (T/D)	Tr. Pages
Dec. 18, 2020	David Tabak	Plaintiffs' Class Certification Expert	J. Fonti - D	297

189. The depositions of Defendants' class certification experts yielded valuable admissions that were featured in Class Representatives' reply papers and Dr. Tabak's reply report. (*See, e.g.*, ECF 656-10 (Tabak Reply Report) at 3, 18, 26, 33, 34, 48, 52, 83, 85, 88, 91.)

3. Defendants' Sur-Reply and *Daubert* Motion

190. On December 30, 2020, Defendants filed a motion to exclude Dr. Tabak's opinions under *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), arguing at length that Dr. Tabak's analysis of market efficiency was unreliable and inadmissible (ECF 678). Defendants' papers included an additional 25-page "declaration" from their expert Dr. Bajaj. On January 20, 2021, Class Representatives filed their 30-page opposition to Defendants' *Daubert* motion. (ECF 686.) On January 27, 2021, Defendants filed their 10-page reply. (ECF 696.)

4. The January 29, 2021 Hearing on Class Certification and Defendants' *Daubert* Motion

191. The Court scheduled argument for January 29, 2021 on both Class Representatives' motion for class certification and Defendants' *Daubert* motion. Underscoring the extent of the parties' disputes at class certification, Defendants sought to call all four experts to testify live, and initially proposed that the hearing should last seven-and-a-half hours. Class Representatives disagreed, as did the Court. The hearing ultimately lasted three hours. In addition to outside counsel, Sharon Chilcott and Tara Rosenblatt of Ontario Teachers' attended remotely. The Court took both motions under advisement and raised a choice-of-law issue as to the Class's state-law claims, which the parties resolved by stipulation on February 12, 2021. (ECF 706.)

5. Defendants Seek to Stay the Court's Ruling

192. After the January 29, 2021 hearing, prompted by a decision in an unrelated action (*Endo*) criticizing BFA and its client in that case, Defendants sought further discovery concerning Class Representatives' transactions in Teva securities. While Class Representatives voluntarily produced additional information regarding their transactions in Teva securities in February 2021, Defendants continued to seek additional discovery.

193. The parties addressed the issue in simultaneous submissions on March 1, 2021. (ECF 718 & 720.) Defendants sought an additional two months of discovery and delay of the Court's class certification decision. (ECF 720 at 2.) Class Counsel explained their strong disagreement with the *Endo* decision, and that the requested discovery was irrelevant to class certification in light of Defendants' stipulation not to contest Ontario Teachers' and Anchorage's standing, typicality, or adequacy at any stage of the litigation. (ECF 718.)

194. At the March 3, 2021 conference, the Court denied Defendants' requests (ECF 729), and subsequently explained that "none of the information [Defendants raised] gives me pause or warrants halting this case's progress to delve into tangentially related topics (at best) that the Defendants either long ago conceded or abandoned" (ECF 735 at 8). The Court further found that Defendants' arguments were "belated, specious, and, in several cases, irrelevant" (*id.* at 4), and that the decision Defendants cited "is virtually irrelevant. So far as I can tell, BFA's written and oral representations to me in this case have been truthful and candid: I do not share the *Endo* Court's concerns regarding BFA." (*Id.* at 7.)

6. The Court's March 9, 2021 Class Certification Decision and Defendants' Rule 23(f) Petition

195. On March 9, 2021, the Court entered an 88-page ruling and order certifying the Class and denying Defendants' motion to exclude Dr. Tabak. (ECF 736; *In re Teva Sec. Litig.*,

2021 WL 872156 (D. Conn. Mar. 9, 2021).) The Court exhaustively addressed each of Defendants' arguments, including with respect to the design of Dr. Tabak's tests; the importance of peer review; directionality; highly technical issues of "reverse causality"; Dr. Tabak's methodology for classifying "news days"; and Defendants' challenges to Dr. Tabak's proposed class-wide damages methodology. (*See id.*)

196. Defendants continued to aggressively litigate class certification, and on March 23, 2021, filed a petition in the United States Court of Appeals for the Second Circuit pursuant to Rule 23(f) of the Federal Rules of Civil Procedure. Defendants' petition argued that the Court "erroneously certifie[d] a class in one of the largest pending securities class actions in the country, where Plaintiffs are seeking billions of dollars in damages." (No. 21-661 (2d Cir.), ECF 1 at 1.) On April 2, 2021, Class Representatives opposed Defendants' Rule 23(f) petition. (*Id.* ECF 17.) On April 9, 2021, Defendants filed a motion for leave to reply. (*Id.* ECF 22.)

197. On June 22, 2021, the Second Circuit denied Defendants' Rule 23(f) petition. (*Id.* ECF 35.)

7. After Class Certification Is Granted, Defendants Persist in Seeking Broad Discovery from Class Representatives

a. The Court Bifurcates Discovery and Trial (and Limits the Scope of Class Representatives' Depositions)

198. On March 10, 2021, the day after the Court granted class certification, Defendants issued thirteen notices of deposition and subpoenas (including to Class Representatives, their current and former personnel, and third-party investment managers) seeking further discovery regarding Class Representatives' investments in Teva securities. Defendants refused to withdraw these notices and subpoenas, and rejected Class Representatives' offer to produce Rule 30(b)(6) witnesses to testify on the topics of Class Representatives' ownership of the Teva Securities at

issue in the case and their profits and losses as a result of that ownership. (*See* ECF 745 at 13; ECF 752 at 19:24-20:6.)

199. On March 29, 2021, Class Representatives informed the Court of Defendants' renewed discovery efforts and opposed the requests. (ECF 745.)

200. At a March 31, 2021 status conference, the Court limited Defendants to a Rule 30(b)(6) deposition of each Class Representative on the issues of their "ownership of the Teva securities at issue in this case and the lead and named plaintiffs' profits and losses as a result of that ownership." (ECF 751.)

201. The Court also permitted additional briefing on Defendants' request for further discovery regarding Class Representatives' individual investment decisions and strategies, and on April 14, 2021, Defendants filed a motion to compel. (ECF 758.) On April 28, 2021, Class Representatives opposed. (ECF 766.) Defendants filed their reply on May 10, 2021. (ECF 774.)

202. On May 25, 2021, the Court held a hearing on Defendants' motion. On May 27, 2021, the Court entered an order denying Defendants' motion without prejudice and ordering that:

> [B]oth discovery and trial shall be bifurcated into two phases. The first phase will regard class-wide issues (*i.e.*, liability), and the second phase will regard individual issues. . . . I disagree with the Defendants' contentions that individual discovery—even of a Class Representative—is relevant to the class-wide issue of materiality or to a class-wide rebuttal of reliance.

(ECF 796 at 4 of 6.) The Court also reiterated its earlier ruling that the scope of permissible discovery was limited to Class Representatives' "ownership of the Teva securities at issue in this case" and "profits and losses as a result of that ownership." (ECF 796 at 3-4.)

b. Defendants Depose Class Representatives' Rule 30(b)(6) Witnesses and Persist in Seeking Further Discovery

203. In the midst of taking and defending merits expert depositions, Class Counsel prepared Class Representatives' Rule 30(b)(6) designees for deposition. Edward Jarvis, Anchorage's Director, was deposed on July 21, 2021, and Jeffrey Davis, Ontario Teachers' Chief Legal and Corporate Affairs Officer, was deposed on August 25, 2021.

204. Although Messrs. Jarvis and Davis properly answered Defendants' questions regarding Class Representatives' ownership of Teva Securities and losses resulting from that ownership, Defendants continued to seek further discovery. On September 2, 2021, Defendants requested that Ontario Teachers' produce another witness to testify regarding the domesticity of Ontario Teachers' purchases of Preferred Shares. Ontario Teachers' objected to the request as outside the scope of the permitted topics and addressed the issue in a September 13, 2021 submission to the Court. (ECF 885.)

205. During the September 15, 2021 status conference, the Court denied Defendants' request for further testimony and directed Ontario Teachers' to provide documentation regarding the domesticity of Ontario Teachers' purchases of Preferred Shares (ECF 892 at 5 of 5), which Ontario Teachers' provided by declaration on October 21, 2021.

J. Expert Discovery

206. In addition to the extensive documentary evidence and fact witness testimony, the highly technical issues in this case required detailed expert analysis for purposes of summary judgment and trial. Specifically, the fluctuating prices and sales volumes of hundreds of Teva's generic drugs over a multi-year period, coupled with the multiple securities and corrective events at issue, demanded a commensurately high level of investment of time and resources to present the most rigorous analysis and most compelling proof.

207. To that end, Class Counsel engaged four leading economics and disclosure experts to opine on damages, loss causation, generic drug pricing and competition, accounting and disclosure controls, SEC disclosure requirements, and materiality. These experts issued 10 merits expert reports (totaling 626 pages, excluding exhibits), and responded to seven reports from Defendants' four experts. Expert discovery—which was the product of months of preparation during fact discovery—closely followed the May 5, 2021 completion of fact depositions, with the parties exchanging opening expert reports on May 28, 2021; rebuttal reports on August 6, 2021; and reply reports on September 20, 2021. Class Counsel also took and defended 10 merits expert depositions from June to September 2021.

208. By investing substantial time and resources to advance this action through the completion of expert discovery, Class Representatives and Class Counsel demonstrated their preparation and willingness to take this case to trial. Had litigation continued, the Class's experts would have relayed their rigorous analyses to the Court and jury to demonstrate the impact of Teva's generics price increases and Defendants' alleged disclosure violations and omissions.

1. The Class's Experts

209. The Class's four experts served 10 reports at the merits stage:

a. David Tabak (four reports): Materiality, loss causation and damages, and rebuttal reports on negative causation

b. David Bradford (two reports): Generic drug pricing and competition; calculation of Teva's excess profits from price increases

c. D. Paul Regan (two reports): Whether Teva's Management Discussion and Analysis ("MD&A") disclosures complied with SEC rules; financial impact of Teva's price increases

d. Lynn Turner (two reports): SEC disclosure requirements and materiality

210. These reports totaled 626 pages, with 749 additional pages of exhibits and appendices.

a. David Tabak, Ph.D.

211. Class Counsel retained Dr. Tabak to opine on loss causation, damages, and materiality. The Court is familiar with Dr. Tabak from his analysis of market efficiency at the class certification stage. A Managing Director at NERA and recognized leader in the securities field, Dr. Tabak holds Bachelor's degrees in Physics and in Economics from the Massachusetts Institute of Technology, and a Master's degree and a Ph.D. in Economics from Harvard University.

212. At the merits stage, Dr. Tabak submitted four reports, totaling 125 pages (plus 135 pages of exhibits).

213. First, on May 28, 2021, Dr. Tabak submitted a 31-page expert report (plus 89 pages of exhibits) on loss causation, damages, and materiality.

214. Dr. Tabak analyzed all eight Teva Securities (ADS, Preferred Shares, and six Notes) and twelve alleged corrective disclosures to quantify per-share damages for each Teva Security during the Class Period. To do so, Dr. Tabak applied the statistical model he had employed at class certification to perform a series of event studies. After excluding market and industry factors, Dr. Tabak concluded that the Teva ADS and Preferred Shares had statistically significant price declines on eight dates that allegedly revealed new information related to Defendants' alleged misstatements and omissions. Dr. Tabak concluded that these price reactions represented responses to new, unexpected information, and thus used them to determine artificial inflation in the prices of Teva ADS and Preferred Shares during the Class Period.

215. Dr. Tabak provided four Exchange Act damages scenarios, depending on (a) the start date for inflation tied to Teva's acquisition of Actavis, and (b) the amount of inflation tied to Teva's August 3, 2017 disclosure, which included disappointing financial results, a $6.1 billion

goodwill impairment charge in its U.S. Generics business, a cut to Teva's dividend, and reduced earnings guidance.

216. Dr. Tabak also explained the analytical basis for his approach to damages, including his focus on the disclosures revealing a change to a different regime in which profits from price increases and collusion would be eliminated going forward, with an associated impact on market participants' views of the value of Teva and its securities, including reputational effects from the revelation of the concealed misconduct. Finally, Dr. Tabak provided opinions on loss causation and calculated Securities Act damages under the statutory formula.

217. Second, also on September 20, 2021, Dr. Tabak submitted a 45-page reply report (plus 30 pages of exhibits) in response to Dr. James's criticisms of Dr. Tabak regarding Exchange Act damages, discussed below. In this report, Dr. Tabak advanced technical critiques of Dr. James's event study, responded to Dr. James's various other criticisms, and presented several alternative damages analyses that accounted for certain of Dr. James's arguments.

218. Third, Dr. Tabak submitted two reports rebutting Defendants' expert Dr. James on Securities Act negative causation. Initially, Dr. James served a report on negative causation on May 28, 2021. Dr. Tabak responded in a 22-page report (plus 3 pages of exhibits), dated August 4, 2021. This report critiqued Dr. James's arguments and criticized inconsistencies and errors in his analysis, including his use of an unreliable model to assess the statistical significance of price movements.

219. Finally, in response to a "Supplemental" report on negative causation from Dr. James that Defendants served on August 6, 2021, Dr. Tabak submitted an additional rebuttal report of 27 pages (plus 13 pages of exhibits) on September 20, 2021. This report refined Dr. Tabak's technical critiques of Dr. James's event study and rebutted, among other things,

Dr. James's improper assumption of negative causation for any statistically insignificant price movements.

b. W. David Bradford, Ph.D.

220. Class Counsel retained Dr. Bradford, the George D. Busbee Chair of Public Policy and Professor in the Department of Public Administration and Policy at the University of Georgia, to provide an expert opinion on generic drug pricing and competition. Dr. Bradford is a health economist who has studied the generic drug industry for over 30 years and published over 80 articles in peer-reviewed publications.

221. Dr. Bradford submitted two expert reports totaling 171 pages (plus 191 pages of appendices and exhibits).

222. First, on May 28, 2021, Dr. Bradford submitted a 94-page expert report (plus 177 pages of appendices and exhibits) that explained the characteristics of U.S. generic drug markets, including the role of competition, and described his comprehensive empirical analysis of Teva's generic drug pricing.

223. Specifically, Dr. Bradford analyzed Teva's entire generics portfolio using Teva's internal pricing and sales data to quantify the extent to which price increases that cannot be explained by legitimate market factors resulted in profits above the levels expected in a normally functioning competitive market. To do so, Dr. Bradford used rigorous techniques to identify unusual price changes. Dr. Bradford then excluded any price increases with apparent market-based explanations (such as active ingredient shortages). For the remaining price increases, using a robust model based on academic literature, Dr. Bradford calculated Teva's excess profits, meaning profits above the level that Teva would have earned on the same drugs in normally functioning competitive markets. Finally, Dr. Bradford identified evidence consistent with collusion by Teva with respect to several drugs identified through his analysis.

224. Second, on September 20, 2021, Dr. Bradford submitted a 77-page reply report (plus 14 pages of appendices), responding at length to criticisms from Defendants' competition economist, Dr. Gaier (discussed below), including by opining that Dr. Gaier's opinions did not explain Teva's actual pricing; that Dr. Gaier's critiques contained various other defects; and that certain of Dr. Gaier's opinions were misleading and did not respond to Dr. Bradford's opinions.

c. D. Paul Regan

225. To opine on the complex disclosure issues in this case, Class Counsel engaged Mr. Regan, a highly experienced accounting expert and CPA with more than 50 years of experience who has provided accounting and/or auditing consulting services on more than 750 litigation matters on behalf of the U.S. Securities and Exchange Commission, DOJ, other law enforcement agencies, and private and public companies.

226. On May 28, 2021, Mr. Regan submitted a 102-page opening report with 275 pages of appendices and exhibits. Mr. Regan's opinions were informed by his decades of experience and thorough review of numerous internal Teva documents and other evidence, including the deposition testimony of 23 fact witnesses, Teva's SEC filings, transcripts of Teva earnings calls and investor presentations, Teva's correspondence with the SEC on disclosure issues, and the relevant disclosure standards.

227. Based on this exhaustive and granular review, Mr. Regan concluded that Teva had violated the governing requirements for the Management's Discussion and Analysis (MD&A) section of its SEC filings by failing to disclose the material revenue and profits generated by Teva's price increases in the U.S. Generics business. Mr. Regan's conclusion was the product of his detailed independent analysis—supported by extensive citations to internal Teva documents and over 250 pages of detailed schedules, including drug-by-drug profit breakdowns—to assess

generic drug price increases' quantitative and qualitative impact on Teva's reported financial results.

228. Based this analysis, Mr. Regan concluded that Teva's Class Period MD&A was materially false and misleading, and that Teva lacked effective disclosure controls and procedures, as required by SEC rules. Further, Mr. Regan opined that Teva's reduced ability to make and sustain price increases in 2016 and 2017 contributed to two goodwill impairment charges in Teva's U.S. Generics business.

229. On September 20, 2021, Mr. Regan issued a 106-page reply report (with a one-page appendix) primarily responding to Defendants' experts Professor Solomon and Mr. Scheck. Mr. Regan emphasized, among other things: (a) management's responsibility for MD&A disclosure; (b) the objective standards for disclosure and materiality issues, which are assessed based on whether information would be significant to a reasonable investor; (c) Mr. Regan's conclusion that Teva violated disclosure requirements; and (d) disclosure controls and procedures.

d. Lynn Turner

230. Class Counsel retained Lynn Turner, a former Chief Accountant of the SEC, to provide expert testimony regarding the responsibility of management and SEC registrants to comply with the applicable disclosure requirements; MD&A disclosure standards; the SEC comment letter process; and the applicable requirements concerning disclosure controls.

231. Mr. Turner has 45 years of business, regulatory, and academic experience, including five years in the Office of the Chief Accountant of the SEC. As the Chief Accountant of the SEC from July 1998 to August 2001, Mr. Turner was the principal advisor to the SEC Chairman and Commission on auditing, financial reporting, disclosures, and related corporate governance matters for publicly traded companies. He oversaw the development of generally accepted accounting principles and generally accepted auditing standards in the United States.

Mr. Turner was also among the principal authors of SEC Staff Accounting Bulletin No. 99, *Materiality*, and Staff Accounting Bulletin No. 101, *Revenue Recognition in Financial Statements*, and involved in drafting the Sarbanes-Oxley Act of 2002 in the wake of corporate scandals like Enron.

232. On May 28, 2021, Mr. Turner submitted a 66-page expert report with 131 pages of exhibits, in which he opined (among other things) that: (a) company management is responsible for ensuring that SEC filings are accurate, adequate, and comply with the applicable SEC rules and regulations; (b) SEC rules (Item 303 of Regulation S-K and Item 5 of Form 20-F) require management to disclose the reasons for material changes in revenue, including material changes attributable to changes in pricing and volume, and an analysis of the reasons and factors contributing to the increase or decrease; and (c) materiality for MD&A is assessed based on the definition established by the SEC, courts, and the perspective of a reasonable investor.

233. On September 20, 2021, Mr. Turner submitted a 56-page reply report (with 16 pages of appendices and exhibits) reiterating his opinions and countering the opinions of Defendants' experts Professor Solomon and Mr. Scheck about the governing disclosure and materiality standards, the documentation of materiality determinations, the SEC comment letter process, and disclosure controls and procedures.

2. Defendants' Experts

234. Defendants responded with four experts who vigorously contested the opinions of the Class's experts, as summarized below.

235. Christopher James, Ph.D.: Dr. James—an economist and professor at the University of Florida—issued four reports on damages, loss causation, and Securities Act negative causation, totaling 354 pages (plus 679 pages of appendices and exhibits). Dr. James's 124-page report on Exchange Act damages and loss causation, served on August 6, 2021, vigorously

disputed the reliability of Dr. Tabak's event studies and other analyses. Dr. James also issued three reports on Securities Act negative causation served on May 28, August 6, and September 20, 2021 (147, 36, and 47 pages, respectively), opining that Defendants' alleged misstatements and omissions did not cause the majority of the price declines in Teva's offered ADS, Preferred Shares, and Notes.

236. Eric Gaier, Ph.D.: Dr. Gaier—an economist at an expert consulting firm—issued a report of 116 pages, plus 54 pages of appendices and exhibits, served on August 6, 2021. In response to Dr. Bradford, Dr. Gaier addressed generic drug pricing and competition, criticizing certain aspects of Dr. Bradford's analysis based on economic theory, addressing Defendants' statements about Teva's price erosion, and analyzing the excess profits Dr. Bradford identified relative to Teva's overall economic performance.

237. Steven Solomon, J.D.: Professor Solomon is an attorney and law professor at the University of California, Berkeley. In his 170-page report served on August 6, 2021, plus 69 pages of appendices and exhibits, Professor Solomon primarily addressed SEC disclosure "custom and practices" of large foreign issuers like Teva and criticized the opinions of the Class's experts Mr. Regan and Mr. Turner on materiality, the applicable disclosure requirements, and other topics.

238. Howard Scheck, J.D.: Mr. Scheck—an attorney and former Chief Accountant in the SEC Division of Enforcement—issued a 57-page report (plus 17 pages of appendices and exhibits) served on August 6, 2021. Similar to Professor Solomon, Mr. Scheck responded to Mr. Regan and Mr. Turner with regard to SEC disclosure practices, the SEC comment letter process, and related topics.

3. Merits Expert Depositions

239. Given the highly technical nature of the Class's claims and allegations, Class Counsel prioritized targeted, effective depositions of Defendants' four experts to obtain

valuable admissions and other testimony for use at summary judgment and trial. From the outset, Class Counsel prepared for each deposition of Defendants' experts with the goal of challenging their most vulnerable positions and supporting *Daubert* motions. To that end, Class Counsel spent hours dissecting the defense experts' reports and voluminous supporting materials (which totaled over 1,500 pages), carefully reviewing their underlying analyses, data, and cited authority for any flaws or inconsistencies, and researching each expert's prior publications and history of exclusion. This effort required immersion into technical issues of MD&A disclosure requirements, generic drug pricing, econometrics, and statistics.

240. From June to September 2021, Class Counsel took five depositions of Defendants' merits experts, deposing Dr. James twice (first on negative causation, and then on Exchange Act loss causation and damages). All five of these depositions were conducted by me or Mr. Kubota (who was primarily responsible for the *Daubert* motions), ensuring a consistent, coordinated approach. In parallel, we defended five depositions of the Class's four experts, which also entailed extensive preparation, including multiple meetings with each expert and review of all relevant materials.

Date	Expert	Taking ("T")/ Defending ("D") Attorney	Tr. Pages
June 15, 2021	Lynn Turner	J. Fonti - D	326
June 22, 2021	David Tabak	E. Kubota - D	372
June 28, 2021	Christopher James	E. Kubota - T	332
July 1, 2021	David Bradford	J. Fonti - D	391
July 8, 2021	Paul Regan	J. Fonti - D	341
Aug. 24, 2021	Steven D. Solomon	E. Kubota - T	374
Aug. 27, 2021	Eric Gaier	E. Kubota - T	319
Aug. 30, 2021	Christopher James	J. Fonti - T	244
Sept. 1, 2021	David Tabak	J. Fonti - D	211
Sept. 14, 2021	Howard Scheck	J. Fonti - T	193

241. In total, the parties exchanged 17 merits expert reports, and Class Counsel took or defended 10 merits expert depositions. Class Counsel's extensive work in expert discovery

provided insight into Defendants' likely arguments and defenses, helped develop arguments for *Daubert* motions against Defendants' experts, yielded impeachment material, and significantly advanced the Class's proof toward summary judgment and trial.

K. Motions for Partial Summary Judgment and to Exclude Defendants' Experts

242. Preparation for summary judgment and *Daubert* motions started months before the completion of expert discovery in September 2021. To organize and synthesize the most compelling evidence Class Counsel had developed since 2019, Class Counsel created a comprehensive order of proof analyzing key portions of the evidentiary record supporting each element of the claims that Class Counsel would be required to prove at trial. The preparation of this detailed order of proof entailed Class Counsel's review of all fact witness testimony, deposition exhibits, and the factual chronology discussed above.

1. Class Counsel Prepare an Affirmative Summary Judgment Motion

243. It is unusual for securities class plaintiffs to move for summary judgment. Empirical analysis by NERA indicates that plaintiffs make affirmative motions for summary judgment in only 1.9% of all securities cases filed and resolved from 2000 to 2018 (versus 7.1% for motions by defendants). (Ex. 10 (Stefan Boettrich and Svetlana Starykh, NERA Economic Consulting, Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review (Jan. 29, 2019) ("NERA 2018 Report")), at 19.)[9]

244. Here, Class Counsel prepared an affirmative motion for partial summary judgment focused on targeted issues of undisputed law and facts. The motion was supported by a 39-page

[9] Since the 1990s, NERA has conducted independent empirical analysis of securities class actions. The NERA reports cited herein were not prepared for purposes of any specific litigation, including this case.

memorandum of law, a statement of undisputed facts, and 59 supporting exhibits. This rare affirmative motion would have increased Defendants' risk by arguing that certain arguments and defenses—including Defendants' effort to demonstrate negative causation under the Securities Act—were without legal or factual support.

245. If successful, the Class's summary judgment motion would have narrowed the issues, increased focus on the crucial issues of falsity, materiality, and scienter, and streamlined proof at trial. However, success under Rule 56's demanding standard was by no means assured. Had litigation continued, Defendants would likely have advanced substantial responses to many aspects of the motion, including complex legal and economic arguments regarding Securities Act negative causation and damages, supported by expert opinions from Dr. James.

246. Further, Defendants would have filed their own summary judgment motion seeking the partial or complete dismissal of this action (and had obtained the Court's permission to file a 90-page memorandum of law and 70-page statement of undisputed material facts, *see* ECF 912). While Class Representatives and Class Counsel believe the claims are meritorious and would have vigorously opposed such a motion—and had prepared extensively to do so—if a plenary summary judgment motion by Defendants were to succeed, the Class would recover nothing.

2. Class Counsel Prepare *Daubert* Motions to Exclude All of Defendants' Expert Testimony

247. In parallel with developing the Class's summary judgment motion, Class Counsel researched and drafted four *Daubert* motions to exclude the opinions and testimony of Defendants' four merits experts in their entirety.

248. The *Daubert* motions, supported by 111 pages of opening briefs, argued that each defense expert's opinions were inadmissible as unreliable, speculative, irrelevant, or otherwise improper under *Daubert* and Fed. R. Evid. 702 (requiring "scientific, technical, or other

specialized knowledge [that] will help the trier of fact to understand the evidence or to determine a fact in issue"; "sufficient facts or data"; "reliable principles and methods"; and that the expert "has reliably applied the principles and methods to the facts of the case").

249. Class Representatives' *Daubert* motions reflected significant effort and leveraged the intensive expert analysis and deposition work outlined above. If successful, these motions would have increased Defendants' risk by foreclosing expert testimony that Defendants would offer to explain their conduct and reduce or eliminate the Class's damages.

250. However, Defendants were also likely to file *Daubert* motions against all of the Class's experts. In this regard, Class Counsel recognized that *Daubert* motions pose asymmetric risk because plaintiffs bear the burden of proof on most issues. In securities cases—where key elements such as loss causation and damages often require expert analysis—successful *Daubert* motions by defendants can be case-terminating. *See In re Pfizer Inc. Sec. Litig.*, 819 F.3d 642, 645-46 (2d Cir. 2016) (in vacating dismissal, explaining that district court excluded plaintiffs' expert on loss causation and damages; "[l]eft with no testimony on these issues, Plaintiffs could not sustain key elements of their claims, and the district court granted Pfizer's motion for summary judgment").

251. Class Representatives' summary judgment motion and four *Daubert* motions were complete and ready to be filed on December 2, 2021 when, just hours before the filing deadline, the parties agreed to the proposed settlement.

IV. RISKS FACED

252. Throughout the five years of litigation, Class Representatives and Class Counsel faced significant risks that could materially reduce or eliminate any recovery for the Class. Indeed, this action is a case study in the factors that heighten the risk of a litigation and require extraordinary resources, effort, and skill to secure a favorable resolution.

253. To begin, securities litigation is inherently risky; as an independent NERA report indicates, over half of cases are dismissed outright. (*See* ¶¶259-68 below.) Moreover, the recent increased-risk environment and overall economic uncertainty have made it more difficult to reach resolution. Since the start of the pandemic over two years ago, settlement values in securities cases have generally declined. For example, NERA has reported that among securities settlements, "[t]he median annual settlement value for 2021 [$8 million] is approximately 40% lower than the inflation-adjusted median value observed in 2018, 2019, and 2020. For 2021, the median settlement value was $8 million, the lowest recorded median value since 2017." (Ex. 11 (Janeen McIntosh and Svetlana Starykh, NERA Economic Consulting, Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review (Jan. 25, 2022) ("NERA 2021 Report")), at 20.)

254. In this pandemic environment, only a handful of large securities settlements have been negotiated and finalized. For 2020 and 2021, excluding three settlements reached pre-pandemic,[10] the largest securities settlement granted final approval was only $154.7 million (Ex. 11 (NERA 2021 Report) at 21), while an $809.5 million settlement was announced in *In re Twitter Securities Litigation* on September 20, 2021, but has not yet received preliminary approval.

255. As for this case specifically, the Class and Class Counsel faced significant risks at each phase of the litigation, as described below. These case-specific risks were compounded by Teva's willingness to follow a highly litigious path even when the consequences of losing are high

[10] In *ARCP*, a $1.025 billion settlement received final approval in January 2020, before the pandemic. *In re American Realty Cap. Props., Inc. Litig.*, No. 1:15-mc-00040 (S.D.N.Y. Jan. 22, 2020), ECF 1309 (Order and Final Judgment). In *First Solar*, a $350 million settlement was reached in February 2020 and received final approval in June 2020. *Smilovits v. First Solar, Inc.*, No. 2:12-cv-00555 (D. Ariz.), ECF 730 (Order and Final Judgment). In *Valeant*, a $1.21 billion settlement was reached in 2019 and received final approval from the special master in June 2020, which the Court adopted in January 2021. *In re Valeant Pharms. Int'l, Inc. Sec. Litig.*, No. 3:15-cv-07658 (D.N.J. Jan. 31, 2021), ECF 575 (Special Master Report and Recommendation) & 657 (Order).

(as demonstrated through its strategy of taking opioid cases to trial after many other defendants chose to settle). Absent the proposed settlement, the Class would face a long road—potentially lasting several years—before realizing any recovery.

256. Moreover, this case did not feature many of the "plus factors" that reduce risk for plaintiffs and tend to precipitate larger settlements earlier in a case. For example, this action did not arise from a financial restatement (*i.e.*, a company's revision of its SEC filings to correct admittedly material misstatements), an SEC enforcement action alleging securities law violations, or proof of wrongdoing such as a criminal conviction. Without such "plus factors," Class Representatives and Class Counsel would have to prove every element of the claims—including materiality, falsity, and scienter—from scratch. The technically complex and expert-intensive allegations added additional risk.

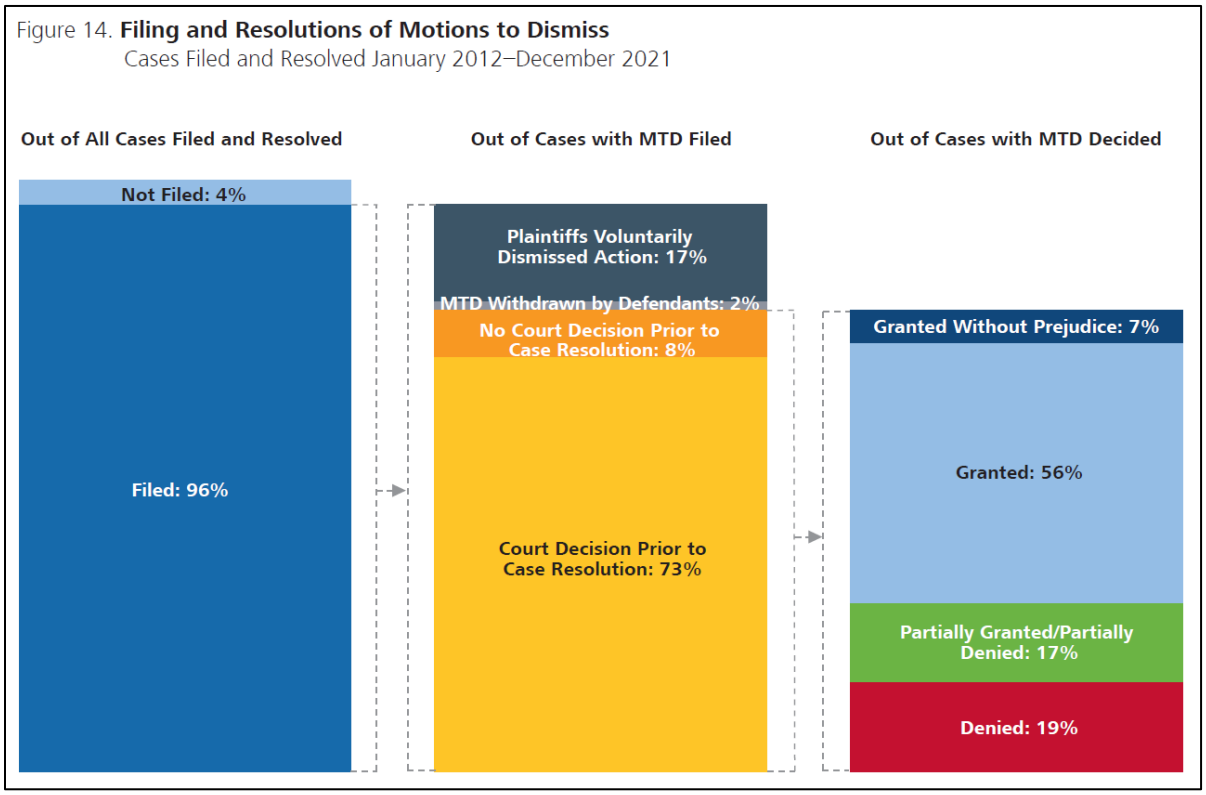
257. Finally, even if the Class were to prevail at trial (and in the inevitable appeals that would follow from a favorable verdict), Teva's financial condition would constrain any recovery the Class might achieve. With material exposures to opioids and other unresolved litigation, more than $20 billion in outstanding debt, and a market capitalization below $10 billion at the time the parties entered the proposed settlement, there is a serious risk that Teva would be unable to pay a judgment in excess of the proposed settlement.

258. Class Representatives and Class Counsel were required to assess and navigate all of these risks and dynamics to secure the $420 million settlement and achieve an immediate, certain, and substantial benefit for the Settlement Class.

A. Over Half of Securities Class Actions Are Dismissed Outright; Those Cases that Survive Dismissal Still Face Substantial Risks at Class Certification and Summary Judgment

259. As the Court is aware, the PSLRA imposes stringent pleading standards on securities class actions and stays discovery during the pendency of a motion to dismiss, limiting

the ability to obtain internal company documents and non-public facts to defeat the motion. As illustrated below, independent empirical research by NERA has shown that defendants move to dismiss in nearly every securities class action filed and resolved over the last decade, with more than half of such motions that reach decision—56%—granted with prejudice. (Ex. 11 (NERA 2021 Report) at 14.)



260. Notably, dismissal rates today are significantly higher than before the PSLRA. For example, NERA has found that "[d]ismissal rates have doubled since [the] PSLRA" was enacted in 1995. (Ex. 12 (Ronald I. Miller, Ph.D., Todd Foster, and Elaine Buckberg, Ph.D., NERA Economic Consulting, Recent Trends in Shareholder Class Action Litigation: Beyond the Mega-Settlements, is Stabilization Ahead? (April 2006)), at 4; *see also id.* at 3 ("Probability of Dismissal" rose from 19.4% in 1993-1995 (pre-PSLRA) to 40.3% in 2003-2005 (post-PSLRA), a 107.7% increase).)

261. The instant action was filed in 2016. Regarding the group of securities class actions filed in that year, NERA found that as of December 31, 2021, 42% had been dismissed and 23% remained pending, while only 35% have settled. (Ex. 11 (NERA 2021 Report) at 12.) These statistics and the dismissal rates cited above confirm that many securities cases fail.

262. Class certification presents another meaningful risk. To begin, 84% of securities cases are either dismissed or settled before a class certification motion is even filed: "A motion for class certification was filed in less than 20% of the securities class action suits filed and resolved between 1 January 2012 and 31 December 2021. This is partly due to the fact that a substantial number of cases are either dismissed or settled before the class-certification stage of the case is reached." (Ex. 11 (NERA 2021 Report) at 15.)

263. In the minority of securities cases that do reach the class certification stage, the resolution of class certification may significantly drive the case's value. From a defense perspective, defeating class certification is a highly significant victory that can effectively terminate the litigation. (*See, e.g.*, ECF 300 at 24:16-23.)

264. Class certification may be denied for a variety of reasons, including the failure to show market efficiency, foreclosing the fraud-on-the-market presumption of reliance necessary to show that common issues predominate under Rule 23(b)(3). Here, as the Court is aware, Defendants vigorously contested market efficiency, deploying voluminous briefing, three experts, and a *Daubert* motion. Indeed, Defendants' counsel at Morgan Lewis had successfully defeated class certification with similar arguments in another securities class action, *Ohio Pub. Emps. Ret. Sys. v. Fed. Home Loan Mortgage Corp.*, No. 4:08-cv-0160, 2018 WL 3861840 (N.D. Ohio Aug. 14, 2018). Here, the risk of proving market efficiency was heightened by the eight securities at issue (including six debt securities). While the Court ultimately issued a thorough 88-page

class certification opinion finding that all of the Teva Securities traded in efficient markets, Defendants' arguments nonetheless posed significant risks.

265. Class certification may also be defeated on Rule 23(a) grounds, including by finding that the proposed class representatives are atypical or inadequate. Here, although Defendants stipulated to Class Representatives' typicality and adequacy, they later sought substantial discovery and requested that the Court stay its decision on class certification in order to probe such topics, as set forth above.

266. Even where class certification is granted, it has become routine for securities defendants to seek immediate reversal by filing a Rule 23(f) petition with the Court of Appeals. Defendants did so here, and their Rule 23(f) petition—though defeated—created further risk and uncertainty for the Class. For example, class certification has been contested for nearly four years in *Arkansas Teacher Retirement System v. Goldman Sachs Group, Inc.* ("*ATRS*"), with three decisions from the Second Circuit, a ruling from the U.S. Supreme Court, *see* 11 F.4th 138, 140-42 (2d Cir. 2021) (summarizing procedural history), and the Second Circuit's grant of yet another Rule 23(f) petition on March 9, 2022 (No. 21-3105 (2d Cir.), ECF 102).

267. Beyond class certification, it is uncommon for securities cases to reach the summary judgment stage. NERA has calculated that summary judgment motions are filed in just 9% of resolved cases. (Ex. 10 (NERA 2018 Report) at 19.) And in the cases that do reach this stage, summary judgment presents its own set of unique, substantial risks. For example, in *In re Xerox Corp. Sec. Litig.*, 935 F. Supp. 2d 448 (D. Conn. 2013), Judge Thompson—five years after certifying the class—granted the defendants' summary judgment motion in its entirety, and the Second Circuit affirmed, 766 F.3d 172 (2d Cir. 2014). As a result, the class obtained no recovery

whatsoever.[11] Here, the parties were on the brink of litigating summary judgment and *Daubert* motions, and both sides had prepared extensive sets of motions, presenting a very real risk to the parties.

268. Finally, securities cases that survive motions to dismiss, class certification, and summary judgment face significant risks at trial. Even a jury verdict in plaintiffs' favor does not ensure a recovery given the prospect of a directed verdict or reversal on appeal. *See, e.g.*, *In re BankAtlantic Bancorp, Inc. Sec. Litig.*, 2011 WL 1585605, at *6, *38 (S.D. Fla. Apr. 25, 2011) (after plaintiffs obtained partially favorable jury verdict, district court granted defendants' motion for judgment as a matter of law), *aff'd sub nom. Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713, 725 (11th Cir. 2012).

B. Class Representatives Faced Substantial Merits Risks Here

269. While Class Representatives and Class Counsel have pursued the Class's claims with tenacity and skill, significant risks remained in continuing to litigate this action through summary judgment and trial. The Class's Exchange Act claims require proof that Defendants (1) made material misstatements or omissions, (2) with scienter, (3) in connection with the purchase or sale of securities, (4) upon which the Class relied, (5) economic loss, and (6) that the Class's reliance caused its losses. *See Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 341-42 (2005). The Class's Securities Act claims require proof of a material misstatement or omission. As detailed below, the elements of falsity, materiality, scienter, and loss causation, as well as the measurement of damages, all presented significant risks in this case.

[11] A prior, unrelated case against Xerox resulted in a $750 million settlement. *See Carlson v. Xerox Corp.*, No. 3:00-cv-1621 (AWT) (D. Conn. Jan. 14, 2009), ECF 528.

270. Importantly, Teva has not issued a financial restatement, an event at the heart of many large securities cases (such as *WorldCom*) that substantially streamlines proof of a material misstatement or omission. Nor have Defendants admitted any fraud or price-fixing; to the contrary, while other pharmaceutical companies have entered criminal antitrust settlements, Teva has refused (and faced indictment as a result). Moreover, while it is sometimes said that corporate defendants are unwilling to take securities cases to trial, Teva regularly tries large, high-risk cases, compounding the risks of its financial constraints, as discussed below.

271. For all of these reasons, there was no assurance of any pre-trial resolution, or of a favorable outcome for the Class. Instead, Class Representatives and Class Counsel expected that the action would continue moving toward trial, and were prepared to prove the entire case—including every element of each claim—from scratch.

1. Risks of Proving Liability

a. Falsity and Materiality

272. One of the most significant litigation risks arose from Defendants' arguments that the challenged statements and omissions were non-actionable and/or immaterial. While the Court largely denied Defendants' motions to dismiss and found falsity and materiality to be adequately alleged at the pleading stage, Defendants would vigorously contest both elements at summary judgment, at trial, and on appeal from any favorable verdict. Because both Exchange Act and Securities Act claims require falsity and materiality, if Defendants could defeat either element, the entire case would be lost and the Class would recover nothing.

273. Defendants' attacks on falsity and materiality likely would take several forms.

274. First, and most notably, Defendants would assert a "truth on the market" defense arguing that Teva's generics price increases and related profits were disclosed and publicly known, and therefore could not have resulted in any misstatements, omissions, or losses to investors.

Defendants' experts argued this position at length. For example, Defendants' damages expert, Dr. James, argued at class certification that during the Class Period "investors had access to a wealth of public information" about Teva's generic drug pricing (ECF 508-4 at 21), and repeated similar arguments at the merits stage. Defendants' disclosure expert, Professor Solomon, advanced similar arguments. While Class Representatives and their experts had strong responses, Defendants' "truth on the market" argument was a significant obstacle to proving liability.

275. Second, Defendants likely would argue that the challenged statements about Teva's sources of financial performance were truthful and not misleading because Teva's disclosed sources of performance (such as new product launches) were in fact larger contributors than any impact from generic drug price increases. Indeed, many Individual Defendants testified to that effect at their depositions, and Defendants presented detailed expert reports on the issue. While Class Representatives again had strong responses, including based on Teva's internal documents and robust expert analysis, such arguments created significant risk and uncertainty as to the falsity and materiality of the statements at the foundation of this action.

276. Third, Defendants likely would argue that many challenged statements were non-actionable because Teva in fact earned the revenues and profits it publicly reported. In this regard, Defendants would also continue to argue that Teva's independent auditor approved its SEC filings, and that Teva (unlike other companies accused of securities law violations) never restated its financial statements filed with the SEC or faced an SEC enforcement action alleging disclosure violations. While Class Representatives believe that such arguments are incorrect and irrelevant, Defendants' assertions could prove persuasive to a jury.

277. Fourth, Defendants likely would argue that any financial impact from Teva's price increases was simply too small to be material, including because Teva's prices on other drugs were

steadily declining, such that Teva's generic drug portfolio as a whole had declining prices. While Class Representatives had strong factual and legal responses, any finding that Teva's price increases were immaterial could negate liability entirely.

278. Fifth, Defendants likely would argue that the regulations forming the basis for the Class's omissions claims—Item 303 of SEC Regulation S-K and Item 5 of SEC Form 20-F—did not require disclosure of the impact of Teva's price increases or pricing trends. While Class Representatives again had strong responses (including an expert report from a former Chief Accountant of the SEC, Mr. Turner, and detailed expert analysis from Mr. Regan), Defendants' argument threatened to eliminate any omissions-based claims.

b. Scienter

279. Class Representatives also faced significant risks in proving scienter: that Defendants knew or recklessly disregarded the true facts at the time of their alleged misstatements and omissions.

280. Defendants vigorously disputed scienter and would continue to do so at summary judgment and trial. For example, Defendants likely would argue that every Teva executive who was deposed categorically denied making any intentional false statements, and that Teva's price increases on certain generic drugs were understood to be an ordinary business activity that merely offset declining prices on other drugs. Further, the Individual Defendants likely would argue that they had global responsibilities, and would not have focused on U.S. generic drug pricing or known of any alleged non-competitive activity, particularly with respect to more junior employees. Defendants also likely would focus on the absence of insider trading allegations to show that the Individual Defendants had no motive to profit from the alleged fraud. Defendants likely would further argue that the challenged statements were reviewed and approved by in-house and outside counsel, as well as Teva's outside auditor, negating an inference of scienter.

281. In response, Class Representatives would present evidence of relevant internal reports and communications among senior executives bearing on Defendants' knowledge, Teva's responses to comment letters from the SEC indicating the company's awareness of the controlling disclosure requirements, and other evidence. Class Representatives would further argue that Teva's management is solely responsible for the MD&A in Teva's SEC filings.

282. Notwithstanding Class Representatives' strong responses, it was far from certain how the issue of scienter would have been determined at summary judgment or trial. If Defendants were to persuade the Court or a jury that scienter was absent, it would eliminate any recovery under the Exchange Act and eliminate the majority of the Class's damages.

c. Proof of Collusion

283. Class Representatives faced additional risk with respect to proving that Teva was aware of and/or participated in collusive conduct regarding generic drugs.

284. To begin, Teva's U.S. subsidiary (Teva USA) continues to fight the criminal antitrust charges against it, recently seeking grand jury evidence as a prelude to moving to dismiss the indictment or arguing that there has been a "constructive amendment" in violation of Teva USA's constitutional rights. *See United States v. Teva Pharm. USA, Inc.*, No. 2:20-cr-200-RBS (E.D. Pa. filed Apr. 1, 2022), ECF 153 at 14-15. Further, in light of DOJ's ongoing criminal investigation and the pending criminal prosecution, it is unlikely that many key Teva witnesses with first-hand knowledge of allegedly collusive activity would be available to testify at trial here.

285. Aware of these risks, Class Counsel creatively pursued other means to secure proof of collusion, including by obtaining phone records to prove interfirm calls and text messages involving Teva executives and obtaining declarations from Teva's co-conspirators regarding collusion.

286. Nonetheless, Defendants would likely contest the admissibility of this evidence, and in all events, the proof of collusion would remain largely circumstantial. As the Court is aware, Class Counsel sought to address this evidentiary gap by meticulously probing whether text messages and other relevant documents were destroyed, culminating in a scheduled deposition of Ms. Cavanaugh. However, there was no guarantee that Ms. Cavanaugh's testimony would lead to a finding of intentional destruction, much less a mandatory adverse inference under Rule 37(e)(2) that the missing evidence indicated collusion.

287. Finally, Defendants' expert Dr. Gaier would likely testify about purported justifications for Teva's generics pricing as a matter of economic theory. While Class Representatives would have moved to exclude these opinions and testimony in full—and the Class's expert Dr. Bradford had strong substantive responses—such arguments heightened the risk that a jury could conclude Teva was not involved in collusive activity.

d. Jury and *Daubert* Risk

288. Class Representatives also faced practical and procedural risks to proving liability.

289. For example, this action did not involve a whistleblower or single "star witness" who would explicitly accuse Defendants of wrongdoing or fraud. Instead, Class Representatives would need to prove much of the case through adverse witnesses, including Individual Defendants Olafsson, Desheh, Vigodman, and Griffin. All of these witnesses vigorously disputed Class Representatives' allegations.

290. Moreover, while the broad topic of generic drug price increases may have significant public interest, the securities claims at issue involve inherently complicated and highly technical subject matter, including: (a) the opaque nature of generic drug pricing; (b) the framework governing the regulatory approval, production, and sale of generic drugs in the U.S.; (c) competing testimony from economic experts; (d) the granular pricing of hundreds of Teva's

generic drugs over a multi-year period; (e) the use of econometric models to determine whether and to what extent Teva's price increases generated supra-competitive profits; and (f) technical issues regarding materiality and the governing disclosure requirements.

291. While these and other complex issues led Class Counsel to invest heavily in leading experts, Defendants likely would have moved to exclude each of the Class's experts, as the parties were on the verge of filing *Daubert* motions when the proposed settlement was reached. And even if the Class defeated such motions, Defendants' four competing experts would attempt to persuade the jury that Teva's pricing conduct was justified and competitive, and that Defendants' public statements were true and not misleading. This would likely result in an inherently unpredictable "battle of the experts" at trial.

2. Risks of Proving Loss Causation and Damages

292. In addition to the numerous risks in proving liability, Class Representatives faced significant challenges in (1) proving loss causation and damages for the Class's Exchange Act claims, and (2) overcoming Defendants' "negative causation" defense under the Securities Act.

293. For example, as to the Exchange Act, Defendants' expert Dr. James argued that the Class's expert Dr. Tabak failed to show loss causation or any damages and employed unreliable methodologies.

294. Dr. James also asserted that each of the eight corrective events that supported Dr. Tabak's Exchange Act damages opinion was not corrective, included so-called "confounding" (non-fraud-related) information, and/or was the materialization of previously disclosed (rather than concealed) risks. Dr. James' expert report devoted over 80 pages to this issue.

295. While Class Representatives had strong responses to each of Dr. James's Exchange Act arguments, if accepted by the Court or a jury, they would substantially reduce or eliminate Exchange Act damages, which account for the majority of the Class's potential damages.

296. Further, Defendants were likely to make a *Daubert* motion to exclude Dr. Tabak's opinions in their entirety. While the Court accepted Dr. Tabak's market efficiency opinions at class certification, there remained a risk that Dr. Tabak's opinions on loss causation, materiality, and damages could be excluded at the merits stage. Although Class Representatives would have vigorously opposed any *Daubert* motion, if Dr. Tabak's merits opinions were excluded, it could foreclose any recovery under the Exchange Act.

297. As to the Securities Act, Defendants invoked a negative causation defense to reduce or eliminate damages with respect to the offered ADS, Preferred Shares, and Notes. The Securities Act provides that "if the defendant proves that any portion or all of such damages represents other than the depreciation in value of such security resulting from [the] part of the registration statement . . . [that contains the material misstatement or omission], such portion of or all such damages shall not be recoverable." 15 U.S.C. § 77k(e); *see also* 15 U.S.C. § 77l(b). In support of Defendants' negative causation arguments, Defendants' expert Dr. James submitted three expert reports totaling 893 pages (including exhibits), which argued that the price declines in the offered Teva Securities were largely caused by factors other than the alleged misstatements.

298. Class Representatives were fully prepared to mount strong responses to Defendants' negative causation arguments, including by a *Daubert* motion to exclude Dr. James's opinions. However, if litigation had continued, Defendants' negative causation arguments posed a risk of substantially reducing the Class's Securities Act damages.

C. Risk of DOJ's Intervention

299. An additional layer of risk arose from DOJ's intervention in this matter. In August 2020, nearly a year after discovery had commenced here, Teva's U.S. subsidiary was indicted. In September 2020, DOJ moved to intervene, arguing that "continued litigation of this action will likely result in the disclosure of information that will harm the United States' ongoing

investigation and pending criminal antitrust cases." (ECF 550-1.) At the time, fact depositions had yet to commence.

300. DOJ's intervention in a civil case can pose a material risk of a stay or other delay, as has occurred in the *Generics MDL*, where key depositions have been stayed since 2017, and the court recently granted DOJ's motion to continue the stay of 47 depositions to July 17, 2022. *In re Generics Pharmaceuticals Pricing Antitrust Litig.*, 2:16-md-02724 (E.D. Pa.), ECF 2045 at 1, 4.

301. Aware of these risks, Class Representatives opposed DOJ's motion to intervene, while continuing to confer in good faith with DOJ about its concerns. (*See* ECF 564 at 6.) On October 20, 2020, the Court allowed DOJ to intervene only "for the limited purposes of seeking to stay certain depositions and requesting that it be served simultaneously with any future written discovery requests." (ECF 584 at 8.)

302. Thereafter, by careful negotiation and pursuing alternatives to potentially sensitive depositions—including the co-conspirator declarations discussed above—Class Representatives completed fact and expert discovery without causing DOJ to seek a stay or affecting the case schedule. Nonetheless, DOJ's intervention threatened to derail this action and impede development of the merits.

D. Financial Risks

303. Even if Class Representatives prevailed on every contested issue of liability and damages, Teva's financial condition posed substantial—and potentially catastrophic—risks throughout this litigation, and seriously constrained any potential recovery. During the first several years of this litigation, Teva's financial condition materially worsened. Teva ADS prices peaked at $72.00 per share in July 2015. However, following the November 3, 2016 publication of the *Bloomberg* article and the November 6, 2016 filing of the first securities action, the Teva ADS traded at approximately $40 per share. As this litigation proceeded, Teva continued to announce

new, negative information, including a total of $16.5 billion in permanent goodwill impairment charges disclosed in August 2017 and February 2018. By the end of the Class Period in May 2019, Teva ADS had dropped to $12.23, and by the time discovery commenced on September 25, 2019, the ADS had plummeted to $6.96. The factors that drove these declines have not abated, and Teva's financial condition today is distressed, with little prospect of a meaningful recovery.

304. First, Teva is saddled with over $20 billion in outstanding debt (much of which was raised from Class Members in the Notes Offering). The debt is currently rated Ba2 (commonly known as "junk") by Moody's, which noted last year that "Teva's credit profile is constrained by its high financial leverage." (Ex. 13 (Moody's August 31, 2021 Credit Opinion Regarding Teva Pharmaceutical Industries Ltd.) at 1.)

305. Compounding Teva's high leverage are operational issues and weak growth. For example, Moody's stated that it is "not forecasting meaningful revenue growth" in Teva's generics business, and "Teva's branded pipeline is weak." (*Id.* at 4.)

306. These factors are reflected in Teva's share price. Far from their Class Period peak of $72.00, Teva's ADS traded within a range of $7.90-$10.14 in the three months before the parties entered the settlement. Likewise, Teva's market capitalization peaked at over $52 billion during the Class Period, but was below $10 billion when the parties entered the proposed settlement. There is a serious risk that Teva, with over $20 billion in outstanding debt, would be unable to pay a judgment in excess of the proposed settlement.

307. Second, Teva faces unresolved, material exposures to opioids litigation. Teva's 2021 10-K explains that "[s]ince May 2014, more than 3,500 complaints have been filed with respect to opioid sales and distribution against various Teva affiliates . . . ." (Ex. 14 (Excerpted Teva 2021 Form 10-K at 140 (filed February 9, 2022)).)

308. Four opioids cases involving Teva have recently reached trial. In December 2021, Teva lost a jury trial in New York,[12] with damages to be determined in further proceedings. (Ex. 14 (Excerpted Teva 2021 Form 10-K) at 141.) Teva also faces opioids-related indemnification claims from Allergan (the entity that sold Actavis to Teva during the Class Period). (*Id*.) While it prevailed in an opioids bench trial in California (also in December 2021), Teva has stated that "absent resolutions, additional trials are expected to proceed in several states in 2022." (*Id*.) Indeed, opioids trials against Teva recently commenced in West Virginia state court, as well as in a federal MDL.[13] The numerous opioids trials (and future determination of damages in New York) present a significant financial threat to Teva. Indeed, opioids exposure has forced some pharmaceutical companies into bankruptcy,[14] a tactic that even financially stronger drug companies have recently used to escape billions of dollars in other products liability.[15]

[12] *See In re Opioid Litigation*, No. 400000/2017 (N.Y. Sup. Ct., Suffolk Cty.); *County of Suffolk v. Purdue Pharma LP et al.*, No. 400001/2017 (N.Y. Sup. Ct., Suffolk Cty.); *County of Nassau v. Purdue Pharma LP et al.*, No. 400008/2017 (N.Y. Sup. Ct., Suffolk Cty.); *State of New York v. Purdue Pharma LP et al.*, No. 400016/2018 (N.Y. Sup. Ct., Suffolk Cty.); *see also Attorney General James Victorious in New York's Opioid Trial*, NY ATTORNEY GENERAL (Dec. 30, 2021), https://ag.ny.gov/press-release/2021/attorney-general-james-victorious-new-yorks-opioid-trial.

[13] *In re Opioid Litig.*, No. 21-C-9000 MFR (W. Va. Cir. Ct. Kanawha Cty.); *City and County of San Francisco v. Purdue Pharma LP et al.*, No. 3:18-cv-07591 (N.D. Cal.).

[14] *See* Maria Chutchian, *Mallinckrodt Makes Final Plea for Approval of Bankruptcy Opioid Deal*, REUTERS (Jan. 6, 2022), *available at* https://www.reuters.com/legal/transactional/mallinckrodt-makes-final-plea-approval-bankruptcy-opioid-deal-2022-01-06/ ("Mallinckrodt filed for bankruptcy in October 2020 to resolve widespread litigation brought by states, local governments and private individuals accusing it of deceptive marketing practices with respect to the sale of its opioids, including downplaying the risks of addiction and abuse.").

[15] *See* Kevin Dunleavy, *Judge backs Johnson & Johnson in bankruptcy ploy for talc litigation, clears way for settlement*, FIERCE PHARMA (Feb. 25, 2022), *available at* https://www.fiercepharma.com/pharma/judge-backs-johnson-johnson-bankruptcy-ploy-talc-litigation-clears-way-settlement.

309. Teva itself has warned that an "adverse resolution of any of [the opioids-related] lawsuits or investigations may involve large monetary penalties, damages, and/or other forms of monetary and non-monetary relief and could have a material and adverse effect on Teva's reputation, business, results of operations and cash flows." (Ex. 14 (Excerpted Teva 2021 Form 10-K) at 142.) More explicitly, Teva has stated that "[t]he loss or settlement of any such claims related to opioids could have a material adverse impact on our liquidity." (*Id.* at 43.)

310. Despite the large number of outstanding opioids litigations and Teva's material exposure, Teva—in contrast to better-capitalized companies—has been unable to achieve a global settlement of these matters. In October 2019, Teva—together with Johnson & Johnson and the distributors AmerisourceBergen, Cardinal Health, and McKesson—announced a proposed opioid settlement. In October 2020, however, the distributors and Johnson & Johnson announced updated terms that did not include Teva, and this global settlement without Teva has advanced toward final approval.[16]

311. Third, Teva faces the risk of a material, adverse financial impact of a conviction or guilty plea in the pending criminal antitrust prosecution. Teva has disclosed that the indictment of its U.S. subsidiary could have a "material adverse effect" on its business. As Teva's 2021 10-K explained (Ex. 14 at 44):

> We are subject to a DOJ civil investigation and a criminal indictment charging Teva USA with criminal felony Sherman Act violations, that, if resulting in a conviction or guilty plea, could have a material adverse effect on our business, including monetary penalties,

[16] *See* Press Release, Distributors Approve Opioid Settlement Agreement (Feb. 25, 2022), *available at* https://www.mckesson.com/About-McKesson/Newsroom/Press-Releases/2022/Distributors-Approve-Opioid-Settlement-Agreement/; Nate Raymond, *Drug distributors, J&J agree to finalize $26 bln opioid settlement*, REUTERS (Feb. 25, 2022), *available at* https://www.reuters.com/legal/litigation/drug-distributors-agree-finalize-opioid-settlement-2022-02-25/ ("Other drugmakers like Israel-based Teva Pharmaceutical Industries Ltd [] as well as major pharmacy chains remain in litigation.").

debarment from federally funded health care programs and reputational harm.

312. Anything short of an acquittal in the criminal case could further impair Teva's ability to satisfy a judgment in this action. As the criminal case proceeded, this material risk—which the Class already shouldered for a lengthy period—would only increase. Even if Teva eventually reaches a negotiated settlement with DOJ, the financial consequences may be material. For example, Sandoz was required to pay a total of $380 million to resolve its criminal and civil antitrust liability.[17]

V. MEDIATION AND SETTLEMENT

313. The proposed settlement follows three formal mediation sessions with the Honorable Layn R. Phillips (Ret.) and extensive related calls and videoconferences. As detailed in Judge Phillips's Declaration (Exhibit 1) and below, the parties' arm's-length settlement negotiations were hard-fought, and importantly, the proposed settlement is the product of Judge Phillips's recommendation. Class Representatives were fully and actively involved throughout the mediation process and attended all three formal sessions, as well as further presentations and numerous meetings regarding settlement demands, offers, and Judge Phillips's recommendation.

314. From the outset, Class Counsel's litigation strategy did not assume a consensual resolution would occur, and Class Representatives and Class Counsel strongly believed in fully

[17] See Department of Justice Press Release, "Major Generic Pharmaceutical Company Admits to Antitrust Crimes," (March 2, 2020), *available at* https://www.justice.gov/opa/pr/major-generic-pharmaceutical-company-admits-antitrust-crimes; Department of Justice Press Release, "Pharmaceutical Companies Pay Over $400 Million to Resolve Alleged False Claims Act Liability for Price-Fixing of Generic Drugs," (Oct. 1, 2021), *available at* https://www.justice.gov/opa/pr/pharmaceutical-companies-pay-over-400-million-resolve-alleged-false-claims-act-liability.

developing the merits to maximize the value of the Class's claims. Thus, in parallel to the mediation sessions, Class Counsel continued vigorously prosecuting the action, ultimately achieving class certification and completing fact and expert discovery to develop the strongest proof on behalf of the Class. These efforts allowed Class Representatives to present a true threat of trial, overcome Teva's minimal incentive to resolve cases, and achieve a substantial settlement.

315. Class Counsel's work to develop the merits also provided a clear understanding of the risks of continued litigation. As outlined above, many of those risks related to the merits, but the Class also faced independent risks, including due to Teva's financial condition and material exposures to other unresolved litigation. To that end, Class Counsel worked closely with a consulting expert to analyze Teva's financial condition to support negotiation strategy. Finally, Class Counsel worked with consulting experts at NERA to analyze aggregate damages.

A. The July 2020 Mediation

316. The first mediation session occurred on July 13, 2020. In advance, Judge Phillips met with Class Counsel, the parties submitted and exchanged extensive written submissions on July 6, 2020, and Teva presented on its financial condition on July 7, 2020. The participants in the July 13, 2020 session with Judge Phillips (held remotely by videoconference) included Class Counsel; Class Representatives; Defendants' counsel; in-house counsel from Teva; and representatives from Defendants' various insurance carriers. Each side made detailed presentations on July 13 to supplement the prior written submissions.

317. The July 13, 2020 mediation ended without progress, and the parties did not exchange any settlement demands or offers. Importantly, at this point, Defendants were only in the early stages of document production, no fact depositions had occurred, and Class Representatives had recently moved for class certification. Recognizing that the merits were not yet fully developed, Class Representatives and Class Counsel—though presented with lower

risk and lower investment in the case—declined to pursue a settlement. Instead, Class Counsel continued investing heavily and working diligently to develop the merits and strengthen the Class's position.

B. The September 17 and 27, 2021 Mediation

318. The parties resumed mediating in September 2021, after the Court had certified the Class. Full-day mediation sessions (by videoconference) occurred on September 17, 2021 and September 27, 2021. By this point, fact and expert discovery had been completed (the parties exchanged expert reply reports on September 20, 2021).

319. In advance of these sessions, Class Counsel developed extensive submissions and presentations based on the large body of evidence amassed in nearly two years of discovery; Defendants likewise submitted and exchanged an updated mediation statement with supporting exhibits. In addition, Class Counsel's consulting experts updated their damages analysis in view of the completed discovery and refined their analysis of Teva's financial condition based on recent developments, including Teva's current debt burden, the ongoing opioid litigations, and the August 2020 indictment of Teva's U.S. subsidiary. The parties also submitted and exchanged discrete information about the assumptions and methodologies used in their respective aggregate damages calculations. Finally, Class Counsel prepared detailed presentations to Judge Phillips—equivalent to trial demonstratives—on liability, damages, and financial condition issues, which included video and audio clips of testimony from Defendants' fact and expert witnesses.

320. The participants in the September 17, 2021 mediation session included Class Counsel; Class Representatives; Defendants' counsel; in-house counsel from Teva; and representatives from Defendants' insurance carriers. Significantly, Teva's insurance tower was complex and required the presence of numerous carrier representatives at the mediation.

321. For the first time after over four years of litigation, on September 17, 2021, the parties exchanged settlement demands and offers. Negotiations continued until after 8:30 PM in New York (and later for participants in the United Kingdom and Israel). While some progress was made, the parties' positions remained far apart.

322. On September 24, 2021, Class Counsel and their consulting expert delivered an additional presentation to Judge Phillips focused on financial issues.

323. Mediation continued on September 27, 2021, and this session again included Class Counsel; Class Representatives; Defendants' counsel; in-house counsel from Teva; and representatives from Defendants' insurance carriers. During this session, Class Counsel engaged in substantive discussions with Judge Phillips, and the parties exchanged several rounds of settlement demands and offers. Negotiations again continued well into the night (until after 10:30 PM in New York) and although the parties continued to make progress, they were again unable to reach a resolution.

C. Extensive Further Negotiations Through November 2021

324. On September 30, 2021, Class Counsel delivered another presentation to Judge Phillips focused on merits issues, including the key evidence obtained from discovery.

325. Thereafter, the parties continued to negotiate, and Class Counsel engaged in multiple follow-up calls and communications with Judge Phillips. These negotiations were protracted and continued throughout October 2021 and into November 2021; during this period, Judge Phillips participated in numerous discussions with each side, and the parties exchanged 11 further rounds of settlement demands and offers. In parallel, Class Counsel finalized the summary judgment and *Daubert* motions described above.

326. Ultimately, on November 14, 2021, Judge Phillips issued a mediator's recommendation to settle the action for a cash payment of $420,000,000.

D. The Parties Consider and Accept the Mediator's Recommendation Hours Before Summary Judgment and *Daubert* Motions Are Due

327. While Class Representatives and Class Counsel carefully considered Judge Phillips's recommendation, until the end, it was far from clear that all parties would accept.

328. The deadline for the parties to respond to the recommendation was initially November 22, 2021, which the parties agreed to extend to November 26, again to November 29, and finally to December 2. To facilitate mediation discussions, Class Representatives also agreed to extend the deadline for summary judgment and *Daubert* motions from November 15, 2021 to November 30, and then to December 2, with filings to commence at 3:00 p.m. ET. (*See* ECF 916.)

329. Finally, on December 2, 2021, Judge Phillips advised that the recommendation had been accepted by all parties. This occurred just hours before the 3:00 p.m. deadline, as Class Counsel were preparing to file their summary judgment and *Daubert* motions.

E. Negotiation of the Term Sheet and Settlement Papers

330. The parties then engaged in two weeks of extensive negotiations to prepare a term sheet outlining the material terms of the settlement, which was executed on December 16, 2021.

331. With the term sheet signed, Class Counsel drafted and negotiated the Stipulation of Settlement and its exhibits, including the Notice, Proof of Claim and Release, Long-Form Notice, and Summary Notice, and developing the Plan of Allocation with expert assistance.

332. The settlement documents and preliminary approval motion were finalized and filed on January 18, 2022. (*See* ECF 919.)

F. Preliminary Approval

333. On January 26, 2022, the Court held a status conference and discussed certain revisions to Exhibits A-1, A-2, A-3, and A-4 to the Stipulation of Settlement. On January 27,

2022, Class Representatives filed revised versions of these exhibits (ECF 928-2, 928-3, 928-4, and 928-5), and the Court entered the Preliminary Approval Order. (ECF 929.)

VI. PLAN OF ALLOCATION

334. The Plan of Allocation, contained in the Long-Form Notice, is designed to achieve the fair, equitable, and reasonable distribution of the Net Settlement Fund to Authorized Claimants based on estimates of their recognized losses in transactions in Teva Securities during the Class Period.

335. Specifically, the Plan of Allocation (developed by Class Counsel with Dr. Tabak's expert assistance) calculates a "Recognized Loss Amount" for each purchase or acquisition of Teva Securities during the Class Period listed on the Proof of Claim and Release for which the claimant provides adequate documentation.

336. Transactions in Teva ADS may result in Exchange Act Recognized Loss Amounts, with the calculation depending on when the claimant purchased and/or sold the ADS and whether the claimant held the ADS through the statutory 90-day look-back period after the end of the Class Period. *See* 15 U.S.C. § 78u-4(e). The estimates of artificial inflation for the ADS are consistent with Dr. Tabak's expert opinions regarding artificial inflation during the prosecution of the action.

337. Transactions in Teva Preferred Shares and Notes (and ADS purchased in the ADS Offering) may result in Securities Act Recognized Loss Amounts. To avoid double-counting, the Plan of Allocation does not provide Exchange Act Recognized Loss Amounts for these securities, since Exchange Act damages for these transactions are subsumed by larger Securities Act damages for the same transactions. The calculation of Securities Act Recognized Loss Amounts generally reflects the statutory damages formula and depends on the amount paid for each of these Teva Securities (not to exceed their offering price) and the security's price or

value at the time of suit or the time of sale. *See* 15 U.S.C. § 78k(e). This approach is consistent with Dr. Tabak's expert opinions during the prosecution of the action.

338. A claimant's "Recognized Claim" will be the sum of the claimant's Recognized Loss Amounts. The Net Settlement Fund will be allocated to Authorized Claimants on a *pro rata* basis based on their Recognized Claims in proportion to all Recognized Claims, as determined by the Court-approved Claims Administrator.

339. In sum, the proposed Plan of Allocation, developed in consultation with the Class's damages expert, Dr. Tabak, was designed to fairly and rationally allocate the Net Settlement Fund among Authorized Claimants based on estimates of recognized losses calculated using the amounts, prices, and dates of their transactions, and appropriately recognizes the different methods to calculate damages under the Securities Act and the Exchange Act. Accordingly, Class Counsel respectfully submit that the proposed Plan of Allocation is fair, reasonable, and adequate and should be approved.

VII. COMPLIANCE WITH PRELIMINARY APPROVAL ORDER AND NOTICE PROGRAM

340. At Class Counsel's direction, immediately after entry of the Preliminary Approval Order, the Court-appointed notice and claims administrator, Epiq, began implementing the Court-approved notice program, including preparing to deliver the Notice to Settlement Class Members and nominees by mail and developing a settlement-specific website, www.TevaSecuritiesLitigation.com. Class Counsel continue to work closely with Epiq and has received regular updates concerning the notice and claims process.

341. On February 16, 2022, in accordance with the Preliminary Approval Order (ECF 929 ¶8), Epiq began mailing Notices directly to the Teva investors identified in the transfer

lists provided by Defendants on January 24 and 26, 2022 and to each entity included on a proprietary list of more than 1,000 nominees. (*See* Ex. 2 (McGuinness Decl.) ¶¶3-4.)

342. On February 21, 2022, Epiq also caused the Notice and related materials to be published by the Depository Trust Corporation ("DTC") on the DTC Legal Notice System ("LENS"), which enables participating banks and brokers to review the Notice and directly contact Epiq to obtain copies of the Notice for clients who may be Settlement Class Members. (*Id.* ¶6.)

343. On February 16, 2022, ahead of the Court-ordered schedule, Epiq activated the Settlement Website (www.TevaSecuritiesLitigation.com). The Settlement Website provides investors with complete access to the Notice, Long-Form Notice, Proof of Claim and Release Forms, FAQs, and instructions for how to submit claims, opt-out from the settlement, or submit an objection. The Settlement Website is available in English and Hebrew and provides the Summary Notice, Notice, Long-Form Notice, and Proof of Claim and Release Form in English and Hebrew versions. Epiq has determined that 32,492 unique visitors have visited the Settlement Website as of April 27, 2022. (*Id*. ¶¶16-20)

344. The Court-approved Summary Notice was published in *Investor's Business Daily* and transmitted over *PR Newswire* on February 21, 2022, and published in *The Wall Street Journal* on February 22, 2022. A Hebrew translation of the Summary Notice was published in the *Globes* business newspaper in Israel on February 23, 2022. (*Id.* ¶14.)

345. At Class Counsel's direction, Epiq also delivered copies of the Notice to potential Settlement Class Members who had contacted Class Counsel throughout the pendency of the litigation, and to other potentially interested parties, including counsel for each of the Direct Action Plaintiffs and the counsel for plaintiffs in the actions that were consolidated. (*Id.* ¶7.)

346. Epiq also took additional steps to ensure nominees and brokers provided necessary information to identify and provide notice to Settlement Class Members. Specifically, Epiq followed up with nominees and brokers to ensure that they had received the Notice, and that they were following the Notice's specific instructions to nominees/brokers to provide beneficial owner information or request copies of the Notice for forwarding to beneficial owners. Epiq has received beneficial owner information or requests for copies of the Notice with respect to 939,219 potential Settlement Class Members as of April 27, 2022. (*See id.* ¶¶9-10.)

347. Overall, Epiq has sent 942,255 Notices, including Notices sent directly to investors identified by nominees and those provided to nominees at their request for transmission to investors. (*Id.* ¶11.)

348. Defendants' counsel have advised that on January 21, 2022, Defendants served the notice required under the Class Action Fairness Act, 28 U.S.C. § 1715 (2005) *et seq*.

349. The Escrow Agents (The Huntington National Bank and Esquire Bank, National Association) have received the full $420 million Settlement Amount. Pursuant to the Stipulation, the full amount has been invested in United States Agency or Treasury securities or other instruments backed by the Full Faith & Credit of the United States Government or an Agency thereof, or fully insured by the Federal Deposit Insurance Corporation ("FDIC") or the United States Government or an Agency thereof.

350. Epiq is prepared to complete the claims administration process expeditiously if the Court approves the proposed settlement. In this regard, Lead Counsel has engaged an independent third party, The JNL Firm, LLC ("JNL"), to provide further assurance that the process is conducted in accordance with industry standards and consistent with the Plan of Allocation. JNL will provide a written submission to the Court concerning the results of the administration, and JNL's fees and

expenses (net of a $5,000 retainer, and not to exceed $50,000 absent further Court approval) will be submitted to the Court in connection with distribution of the Net Settlement Fund.

VIII. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE IN LIGHT OF THE POTENTIAL RECOVERY IN THE ACTION

351. The $420 million settlement is an outstanding result that provides the Settlement Class with a significant, immediate cash recovery. It is also a favorable result relative to the range of potential recovery at trial. As discussed below, potential damages are a broad range that is largely theoretical in light of Teva's limited ability to pay, confirming that the $420 million settlement is a particularly favorable result.

A. The Proposed Settlement Recovers a Reasonable Range of Potential Damages

352. Damages that could be proven at trial in this action depend heavily on three variables: (1) whether scienter is proven under the Exchange Act; (2) whether, if scienter is proven, the number of alleged Exchange Act corrective events for which loss causation is proven; and (3) whether and to what extent Defendants prove their negative causation defense under the Securities Act. Each variable has a substantial impact on damages, resulting in a broad range of potential damages if Class Representatives were to prevail at trial.

353. First, the majority of potential damages arise under the Exchange Act, which requires proof of scienter. Without such proof, the Class would be limited to significantly lower damages under the Securities Act.

354. Under the Securities Act, if Defendants proved negative causation to the full extent articulated in Dr. James's reports, and established that the Securities Act damages formula should use Teva ADS and Preferred Shares' market prices on August 2, 2017, estimated damages would be approximately $576 million. In that scenario, the proposed settlement would amount to a 73% recovery.

355. Maximum Securities Act damages are estimated as approximately $2.97 billion if Class Representatives were to (a) defeat Defendants' negative causation defense and (b) establish that the Securities Act damages formula should use the Teva ADS and Preferred Shares' value at the time of suit. Under this scenario, the proposed settlement would amount to a 14.1% recovery.

356. Second, even if scienter were proven, the full amount of potential Exchange Act damages would require proving loss causation for each of eight corrective events. If the Court or jury were to conclude that certain of these events did not cause any losses on the Teva Securities, Exchange Act damages could be reduced significantly. For example, if two corrective events (the departures of Defendants Vigodman and Olafsson) were eliminated and damages for a third event (Teva's January 6, 2017 guidance reduction) were reduced, estimated damages for all claims would be approximately $7.44 billion.[18] Under this scenario, the proposed settlement represents a 5.6% recovery.

357. Third, if scienter were proven, the Class demonstrated loss causation for each corrective event, and the Class fully defeated Defendants' negative causation argument, Class Representatives would have argued that estimated realistically provable damages for all claims are approximately $12.22 billion.[19] Crucially, this scenario is subject to numerous risks and uncertainties. Among other things, it would require: (a) proving scienter; (b) proving loss causation for all eight corrective events that form the basis of Dr. Tabak's Exchange Act damages analysis; (c) the acceptance of Dr. Tabak's methodology regarding Exchange Act damages; and (d) as to the Securities Act, both (i) defeating Defendants' negative causation defense in its entirety

[18] This estimate assumes negative causation for the Securities Act claims and uses the Teva ADS and Preferred Shares' prices as their values at the time of suit.

[19] This estimate uses the per-share inflation figures from Dr. Tabak's report and the Plan of Allocation.

and (ii) establishing that the Teva ADS and Preferred Shares' value at the time of suit should be used in the Securities Act's statutory damages formula. Under this scenario—which requires the Class to prevail on every contested issue of liability and damages for all claims—the proposed settlement represents 3.4% of potential damages.

358. Thus, depending on the variables outlined above, the $420 million settlement represents from 3.4% to 73% of the Class's estimated potential damages.[20]

359. Importantly, the percentage recoveries above are theoretical and should not be considered in isolation given Teva's financial constraints (discussed herein). Nonetheless, they are above average in securities class actions. For over a decade, the economics consulting firm NERA has independently performed empirical analysis of securities class settlements relative to its proprietary measure of losses. While this measurement is not equivalent to provable damages in a given case, it can provide a relative benchmark and illustrate trends. Overall, for cases with $10 billion or greater in "NERA-Defined Investor Losses," NERA has found historical median settlement values of 0.5%. (*See* Ex. 11 (NERA 2021 Report) at 23.)[21] This analysis further confirms that the $420 million settlement is fair, reasonable, and adequate.

[20] In addition, the dollar amounts and percentages above reflect the conditions under the proposed Plan of Allocation and estimates from a trading model. Any actual recovery after trial would depend on the actual claims submitted; if actual claims were below the model's estimate, actual damages would be lower—and the Class's percentage of recovery would be higher—than stated herein.

[21] NERA has found median settlement values of 1.3% for cases with $1 billion to $4.99 billion in NERA-Defined Investor Losses, and 1.0% for cases between $5 billion and $9.99 billion in NERA-Defined Investor Losses. (*Id.*)

B. The Settlement Recovery Is Reasonable in Light of Teva's Ability to Pay

360. The proposed settlement is a particularly exceptional recovery because there is a serious risk that Teva would be unable to pay a judgment larger than the $420 million settlement amount. As summarized above, Teva today is dramatically weaker than at its Class Period peak, including in light of the company's large amount of outstanding debt and material exposures to opioids, the pending criminal antitrust case, and other unresolved litigation.

361. Because the estimated damages in this case reflect a time when Teva was a much larger company, they far outstrip Teva's current ability to pay. The largest realistically provable damages could exceed Teva's entire market capitalization. Even estimated Securities Act damages alone (up to $2.97 billion) could approach one-third of Teva's market capitalization at the time of settlement and exhaust Teva's free cash flow for over a year.[22] Teva could not realistically pay a judgment of such magnitude. Instead, Teva's management could simply place the company into bankruptcy. Despite these financial constraints, Class Representatives and Class Counsel obtained a substantial $420 million settlement funded by both insurance proceeds and a cash contribution from Teva. Moreover, the proposed settlement provides Settlement Class Members with a prompt, certain recovery, eliminating the risk that Teva's current financial and litigation risks further reduce Teva's ability to pay any settlement or judgment.

362. In these circumstances, the $420 million settlement is an exceptional result that is fair, reasonable, adequate, and in the best interests of the Settlement Class.

[22] *See* Press Release, Teva Reports Fourth Quarter and Full Year 2021 Financial Results, February 9, 2022, *available at* https://s24.q4cdn.com/720828402/files/doc_financials/2021/q4/Press-Release-Q4-2021v2.pdf (reporting Teva's $2.2 billion free cash flow for 2021).

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

363. In addition to seeking final approval of the settlement and Plan of Allocation, Lead Counsel is applying for a fee award of 23.70% of the Settlement Fund to be allocated among Class Counsel. Class Representatives carefully determined the fee that Class Counsel could request, and set forth their reasoning in their respective declarations. (*See* Ex. 3 (Davis Decl.) ¶¶26-36; Ex. 4 (Jarvis Decl.) ¶¶26-35.) In addition, the Droney and Miller Declarations provide relevant empirical data and analysis to inform the Court's assessment of the requested fee. (*See* Ex. 5 (Droney Decl.); Ex. 6 (Miller Decl.).)

364. In particular, Judge Droney analyzed relevant fee awards from this Circuit and District, empirical studies of attorneys' fees in class action settlements (including studies specific to securities class actions), and fee awards in large class settlements around the country. (Ex. 5 (Droney Decl.) ¶¶8-22.) Within the Second Circuit, Judge Droney identified six procedurally advanced securities class actions that settled between $200 million and $500 million as comparable, and found that fee awards in four of the six cases were in the mid-20% range. (*Id.* ¶¶9, 11-12.) Within this District, Judge Droney identified as comparable *In re U.S. Foodservice, Inc. Pricing Litig.*, a $297 million RICO and contract class action where Judge Thompson approved a fee of 33.3%, or $99 million, reflecting a 2.23 multiplier of counsel's lodestar. No. 3:07-md-1894 (AWT), 2014 WL 12862264, at *1, *3 (D. Conn., Dec. 9, 2014). (Ex. 5 (Droney Decl.) ¶12.) Nationally, Judge Droney considered a study by NERA that found a median fee award of 24.5% in securities settlements between $100 million and $500 million from 2012 to 2021 (*id.* ¶¶15, 18; Ex. 11 (NERA 2021 Report) at 27). Based on these authorities (and academic research by Professor Miller and co-authors, as discussed below), Judge Droney concluded that "the requested

percentage and lodestar multiplier are within statistical trends of securities litigation class actions" and consistent with "national data for similar awards." (Ex. 5 (Droney Decl.) ¶¶18, 22.)[23]

365. Judge Droney also considered a summary of Class Counsel's time records and BFA's underlying time detail to assess Class Counsel's work, staffing, and efficiency. (Ex. 5 (Droney Decl.) ¶23.) In this regard, Judge Droney concluded that Class Counsel's "number of hours" worked was "justified by their billing summaries and the course of this litigation"; that Class Counsel's hourly rates were "within the appropriate ranges" relative to similar class actions within this Circuit and a national securities bar; and that "Class Counsel worked efficiently," with tasks "properly allocated to the level of experience and competence" of individual attorneys. (*Id*. ¶¶56-57, 65, 67.) Finally, Judge Droney concluded that the requested expenses appear "justified and reasonable" and were "largely a result of the extensive expert analysis and assistance necessary for this action." (*Id*. ¶70.)

366. Similarly, Professor Geoffrey Miller of New York University Law School, a leading scholar on class action fee awards, surveyed extensive empirical research and concluded that the requested fee is reasonable and supported by data regarding fee percentages, lodestar multipliers, and hourly rates. (*See, e.g.*, Ex. 6 (Miller Decl.) ¶¶10-11.)[24] For example, Professor Miller's academic research has found average percentage fees of 22.3% and an average lodestar multiplier of 2.72 in the top decile of class settlements (which exceed $67.5 million)

[23] *See also* Ex. 5 (Droney Decl.) ¶¶16-18 (citing Ex. 15 (Theodore Eisenberg, Geoffrey Miller, and Roy Germano, *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. L. REV. 937 (2017)) and Ex. 16 (Theodore Eisenberg and Geoffrey Miller, *Attorneys' Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. EMPIRICAL LEGAL STUDIES 248 (2010))).

[24] *See also* Exs. 15, 16, and 17 (Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. EMPIRICAL LEGAL STUDIES 811 (2010)) (each cited in Ex. 6 (Miller Decl.)).

nationwide, supporting Professor Miller's conclusion that Class Counsel's 2.17 multiplier is "well within the range of reason." (*Id.* ¶¶54, 56, 69.) With respect to hourly rates, Professor Miller evaluated Class Counsel's rates within the nationwide market for attorneys in large-scale, complex class litigation and determined they are reasonable in that context. (*Id.* ¶¶35-51.) Professor Miller also addressed the "scaling effect" by which average percentage fees decline in larger settlements. He concluded that the fee requested here is reasonable after accounting for this effect. (*Id.* ¶70.) He further concluded that this action does not present the factors—such as low risk, an early settlement achieved with minimal effort, or an excessively high multiplier—that can raise concerns about the percentage fee in some large cases. (*Id.* ¶¶11, 71-80.)

367. The primary factual bases for the request are summarized below.

A. The Risks and Complexity of This Litigation

368. Class Counsel devoted more than five years to litigating this action, overcoming numerous challenges and substantial risks. As set forth in detail in Section IV above, ¶¶252-312, those risks included significant uncertainty in proving Defendants' liability, loss causation, and damages, as well as the risks posed by *Daubert* motions in this expert-intensive case, DOJ's intervention, and the current litigation environment. Moreover, Teva's distressed financial condition limited and threatened to foreclose any potential recovery for the Class. These case-specific risks compound the more typical risks accompanying securities litigation, such as the fact that this prosecution was undertaken on a fully contingent basis.

369. In that regard, at all points in this case, we have understood that that we were embarking on a difficult, expensive, and lengthy litigation with no guarantee of being compensated fully (or at all) for the substantial investment of time and money the case would require. Nonetheless, we ensured that sufficient resources were dedicated to the prosecution of this action, and that funds were available to compensate staff and to cover the considerable expenses necessary

to litigate this matter effectively, including numerous outside experts and consultants and vendors. The financial burden on my firm as contingent-fee counsel has been far greater than on a firm that is paid on an ongoing basis, particularly where five years of vigorous effort was necessary to achieve the best possible result.

B. Class Counsel's Time and Labor Expended

370. In total, Class Counsel devoted 77,090.70 hours of work to this action through April 14, 2022. As set forth in detail above, this work included:

a. Extensive investigation of the allegations and securing Ontario Teachers' appointment as lead plaintiff (*see supra* ¶¶28-38);

b. Pleading the Complaint and Amended Complaint (*see supra* ¶¶39-44, 53-58);

c. Opposing two rounds of motions to dismiss, which together involved over 500 pages of briefing (*see supra* ¶¶45-52, 59-71);

d. Achieving consolidation (*see supra* ¶¶75-80);

e. Opposing DOJ's intervention motion (*see supra* ¶¶81-83);

f. Achieving class certification over Defendants' vigorous opposition, which entailed nearly 200 pages of briefing, the exchange of six expert reports, five expert depositions (yielding over 1,400 pages of testimony), and Rule 23(f) filings with the Second Circuit (*see supra* ¶¶176-178, 184-197);

g. Extensive document discovery, with Class Representatives serving 116 requests for production and subpoenas on 49 third parties, ultimately yielding over 8.2 million pages of documents, obtained in part through:

   i. Filing three motions to compel;

   ii. Commencing an enforcement proceeding against a third party; and

   iii. Participating in twenty discovery hearings and conferences with the Court (*see supra* ¶¶84-131, 145-165, 168-171);

h. Detailed written discovery, including serving 13 interrogatories and 119 requests for admission and responding to Defendants' 18 interrogatories and 57 requests for admission (*see supra* ¶¶84, 156, 172-175);

i. Discovery from Class Representatives, including two Rule 30(b)(6) depositions and opposing Defendants' two motions to compel (*see supra* ¶¶179-183, 198-205);

j. Taking 23 fact depositions of Teva and third-party witnesses, yielding over 7,000 pages of testimony (*see supra* ¶¶132-144);

k. Exchanging 17 merits expert reports with Defendants and conducting 10 merits expert depositions (*see supra* ¶¶206-241);

l. Completing summary judgment and four *Daubert* motions, supported by 150 pages in briefing (*see supra* ¶¶242-251); and

m. Engaging in a hard-fought and protracted mediation process, including three in-person sessions and numerous further conferences over more than 16 months (*see supra* ¶¶313-332).

371. To provide further information about the work Class Counsel performed in this case, the following table presents Class Counsel's time and lodestar in 10 categories based on time periods:

Category	Date Range	Hours	Lodestar	Starting and Ending Events
Category 1	11/6/16 – 9/11/17	4,509.90	$3,119,374.25	Case inception through filing the Complaint (ECF 141)
Category 2	9/12/17 – 4/3/18	6,736.60	$4,576,107.75	Filing the Complaint (ECF 141) through oral argument on first motions to dismiss
Category 3	4/4/18 – 6/22/18	3,760.50	$2,497,234.00	Oral argument on first motions to dismiss through filing of the Amended Complaint (ECF 226)
Category 4	6/23/18 – 9/25/19	6,474.20	$4,282,374.75	Filing of the Amended Complaint (ECF 226) through the Court's Opinion and Order regarding Defendants' second motions to dismiss (ECF 283)
Category 5	9/26/19 – 6/19/20	11,172.85	$6,886,886.25	The Court's Opinion and Order regarding Defendants' second motions to dismiss (ECF 283) through filing the class certification motion (ECF 419)
Category 6	6/20/20 – 12/7/20	12,980.25	$6,685,739.50	Filing the class certification motion (ECF 419) through the day before fact depositions commenced
Category 7	12/8/20 – 5/5/21	15,333.55	$8,001,323.50	Commencement through completion of deposing defense and third-party fact witnesses

Category	Date Range	Hours	Lodestar	Starting and Ending Events
Category 8	5/6/21 – 9/20/21	11,340.50	$6,569,254.00	Completion of defense and third-party fact witnesses through completion of expert discovery
Category 9	9/21/21 – 12/2/21	3,386.20	$2,221,394.75	Completion of expert discovery through parties' acceptance of Judge Phillips's settlement recommendation
Category 10	12/3/21 – 4/14/22	1,396.15	$997,672.25	Parties' acceptance of Judge Phillips's settlement recommendation through April 14, 2022

372. **Category 1**: This category commences with the inception of the case and continues through the date on which Class Representatives filed the Complaint (ECF 141). During this time frame, Class Counsel briefed the lead plaintiff motions, investigated the conduct alleged, worked with a consulting expert to analyze Teva's generic drug price increases and resulting profits, prepared two Securities Act complaints, and drafted and filed the Complaint (ECF 141). Class Counsel devoted 4,509.90 hours to this phase of the case, resulting in lodestar of $3,119,374.25.

373. **Category 2**: This category commences the day after filing the Complaint and continues through the April 3, 2018 oral argument on the first motions to dismiss (where the Court dismissed the Complaint without prejudice). During this time, Class Counsel conducted factual and legal research, drafted oppositions to five motions to dismiss, and prepared for and presented oral argument. Class Counsel devoted 6,736.60 hours to this phase of the case, resulting in lodestar of $4,576,107.75.

374. **Category 3**: This category commences the day after the April 3, 2018 hearing and continues through the June 22, 2018 filing of the Amended Complaint. (ECF 226.) During this period, Class Counsel drafted the Amended Complaint to clarify that Defendants' alleged misstatements and omissions were false for two distinct reasons and further investigated Defendants' alleged misconduct, including by expanding the consulting expert's analysis of

Teva's generic drug portfolio and by engaging an investigative firm to locate and interview former Teva employees. Class Counsel devoted 3,760.50 hours to this phase of the case, resulting in lodestar of $2,497,234.00.

375. **Category 4**: This category begins the day after Class Representatives filed the Amended Complaint and continues through the Court's September 25, 2019 Opinion and Order denying in substantial part Defendants' motions to dismiss the Amended Complaint. (ECF 283.) During this time, Class Counsel performed additional legal and factual research, drafted oppositions to Defendants' three motions to dismiss, presented oral argument on the motions, filed two notices of supplemental authority, and prepared for fact discovery, including by drafting discovery requests. Class Counsel devoted 6,474.20 hours to this phase of the case, resulting in lodestar of $4,282,374.75.

376. **Category 5**: This category commences the day after the Court's September 25, 2019 Opinion and Order and continues through June 19, 2020, the date on which Class Representatives filed their motion to certify the Class. (ECF 419.) During this time, Class Counsel prepared for and attended the Rule 16 conference; prepared and filed the SAC and successfully pursued consolidation of related class and individual actions; served discovery requests on Defendants and subpoenas on dozens of third parties; negotiated search terms and litigated the structure and timing of Defendants' document productions, including by preparing submissions and arguing at three status conferences; prepared Class Counsel's review team to efficiently analyze incoming discovery; moved to compel discovery from Defendants regarding generic drug pricing, sales, and profits; opposed Defendants' motion to compel discovery from Class Representatives regarding their transactions in Teva Securities; commenced a subpoena enforcement proceeding against Sandoz; and prepared and filed Class Representatives'

class certification motion, accompanied by Dr. Tabak's detailed expert report. Class Counsel devoted 11,172.85 hours to this phase of the case, resulting in lodestar of $6,886,886.25.

377. **Category 6**: This category commences the day after the class certification motion was filed and continues through December 7, 2020, the day before fact depositions commenced. This category includes Class Counsel's work to analyze Defendants' opposition to class certification and three expert reports, take and defend five expert depositions on class certification, research and draft the reply brief, and work with Dr. Tabak regarding his reply report; analyze millions of pages of documents produced by Defendants and third parties and prepare for extensive fact depositions; oppose DOJ's intervention and conduct related negotiations; and prepare submissions and argue at eight status conferences with the Court. These conferences addressed numerous discovery disputes, including Defendants' production of generic drug pricing, sales, and profit data, Class Representatives' motion to compel Defendants' production of text messages, the effort to compel Sandoz's production of documents, and deficiencies in Defendants' privilege logs. Class Counsel also prepared for and attended the July 2020 mediation. Class Counsel devoted 12,980.25 hours to this phase of the case, resulting in lodestar of $6,685,739.50.

378. **Category 7**: This category begins with the commencement of fact depositions on December 8, 2020, and continues through the conclusion of defense and third-party fact depositions on May 5, 2021. During this time, Class Counsel prepared for and took 23 fact depositions, including of all seven Individual Defendants and Rule 30(b)(6) depositions of Teva and Teva Finance, PwC Israel, and Barclays, and secured declarations from three of Teva's co-conspirators. Class Counsel also opposed Defendants' *Daubert* motion to exclude the opinions and testimony of Dr. Tabak in connection with class certification; argued the class certification motion at a three-hour hearing on January 29, 2021; opposed Defendants' effort to stay a decision

on class certification; and, after class certification was granted, opposed Defendants' Rule 23(f) petition to the Second Circuit. Class Counsel also prepared submissions and argued at four status conferences with the Court regarding discovery disputes, including Defendants' continued effort to pursue broad discovery from Class Representatives and their investment managers, Sandoz's production of text messages, Teva's access to FBI Forms FD-302, and issues regarding potential spoliation. Class Counsel devoted 15,333.55 hours to this phase of the case, resulting in lodestar of $8,001,323.50.

379. **Category 8**: This category commences the day after the completion of defense and third-party fact depositions and continues through September 20, 2021, when the parties exchanged expert reply reports and completed expert discovery. During this period, Class Counsel worked extensively with the Class's experts to prepare four opening reports and six reply and rebuttal reports in response to Defendants' four merits experts; conducted ten merits expert depositions; defended Rule 30(b)(6) depositions of both Class Representatives; and prepared submissions and argued at four status conferences regarding various remaining discovery disputes, including regarding text messages between Teva and Sandoz personnel, the FBI Forms FD-302, Defendants' continued demands for broad discovery from Class Representatives and their investment managers, and a limited-scope deposition of Maureen Cavanaugh regarding spoliation. In addition, Class Counsel prepared for the September 2021 mediation and attended the full-day mediation session on September 17, 2021. Class Counsel devoted 11,340.50 hours to this phase of the case, resulting in lodestar of $6,569,254.00.

380. **Category 9**: This category begins the day after the completion of expert discovery and continues through December 2, 2021, when the parties agreed to Judge Phillips's settlement recommendation. During this period, Class Counsel prepared and served more than 200 pages of

supplemental interrogatory responses that detailed the factual bases for Defendants' liability and continued to pursue Cavanaugh's deposition regarding spoliation. Class Counsel also drafted and finalized a motion for partial summary judgment and accompanying Rule 56.1 statement, as well as four detailed *Daubert* motions to exclude the opinions and testimony of Defendants' experts in their entirety, which were ready to be filed at the time Judge Phillips's recommendation was accepted. In addition, Class Counsel prepared for and participated in the September 27, 2021 mediation session and extensive further negotiations under the auspices of Judge Phillips. Class Counsel devoted 3,386.20 hours to this phase of the case, resulting in lodestar of $2,221,394.75.

381. **Category 10**: This category commences on December 3, 2021 and continues through April 14, 2022. During this time, Class Counsel negotiated with Defendants to finalize the terms of the Stipulation of Settlement and Notice, Summary Notice, Long-Form Notice (including the Plan of Allocation), and Proof of Claim and Release Form, and drafted the preliminary approval motion filed on January 18, 2022 (ECF 919). Class Counsel also monitored the funding of the Escrow Accounts and investment of the Settlement Amount; supervised the administration of the notice program and attended to inquiries from potential Settlement Class Members and nominees; and prepared Class Representatives' papers in support of final approval of the settlement. Class Counsel devoted 1,396.15 hours to this phase of the case, resulting in lodestar of $997,672.25.[25]

382. While the complexity and magnitude of this action necessarily required significant effort over a prolonged period, I ensured that our team litigated as efficiently as possible. To that

[25] This category (and all of Class Counsel's submissions) exclude all time and lodestar related to Lead Counsel's motion for awards of attorneys' fees, litigation expenses, and reasonable costs and expenses to Class Representatives.

end, our work was concentrated among a core team of seven attorneys (Joseph Fonti, Susan Podolsky, Wilson Meeks, Evan Kubota, Benjamin Burry, Thayne Stoddard, and Mathew Hough) who at various points over the last five years dedicated the majority of their time to this action, developed the pleadings, handled all briefs, took and defended all depositions, and prepared for summary judgment. This core team accounts for 40.6% of Class Counsel's hours and 52.9% of Class Counsel's lodestar.

383. Tasks were appropriately allocated based on seniority. I oversaw the day-to-day prosecution of the action, presented all oral argument for the Class, took or defended 17 depositions (including four of the seven Individual Defendants), and led the mediation strategy and settlement negotiations. Ms. Podolsky contributed strategic advice, drafted submissions, and led negotiations with DOJ and opposing counsel. Mr. Meeks was extensively involved in drafting the lead plaintiff motion, complaints, and oppositions to Defendants' motions to dismiss prior to his departure from BFA in July 2019. Mr. Kubota, who joined BFA in August 2019, was primarily responsible for drafting complex briefs and motions (including class certification), discovery strategy, depositions, and working with experts.

384. Associates focused on discovery litigation and expert work, among other tasks. Mr. Burry, who joined BFA in January 2020, drafted discovery requests and responses, conducted discovery meet-and-confers and certain depositions, and led third-party discovery. Mr. Stoddard, who joined BFA in February 2018, was heavily involved in researching and drafting the Amended Complaint and opposition to Defendants' motion to dismiss, led the review team's work (discussed herein), focused on discovery from Class Representatives, and conducted certain depositions. Mr. Hough, who joined BFA in August 2020, supported the document discovery and numerous depositions, contributed legal research, and supported expert work.

385. An experienced, focused team of at most 14 attorneys focused on discovery analysis (using technology to focus and streamline work, as detailed above), researched substantive factual issues, prepared initial deposition outlines and related materials, and developed the detailed factual chronology described above.

386. Attached hereto as Exhibits 7-9 are declarations from Joseph Fonti on behalf of BFA and BFA Canada, Marc Kurzman on behalf of Carmody, and Susan R. Podolsky on behalf of The Law Offices of Susan R. Podolsky, respectively, in support of the request for an award of attorneys' fees and litigation expenses. Included with these declarations are schedules that summarize the hours and lodestar of each firm in this action, as well as the expenses incurred by category (the "Fee and Expense Schedules"). The attached declarations and the Fee and Expense Schedules indicate the amount of time spent by each attorney and professional support staff on the case, and the lodestar calculations based on their current billing rates.

387. BFA's and BFA Canada's hourly billing rates for the attorneys involved in this matter (using current rates for current attorneys, and the rate in the final year of employment for attorneys no longer employed by BFA) range from $740 to $985 for partners, $780 for Special Counsel and Of Counsel, $510 to $690 for associates, $415 to $495 for project attorneys, and $360 to $450 for staff associates and staff attorneys. (Exs. 7-C, 7-E.) The billing rates at the Carmody and Podolsky firms range from $225 to $650, as set forth in the respective declarations from Mr. Kurzman and Ms. Podolsky. (Exs. 8-C, 9-B.) The Droney and Miller Declarations provide further empirical data and analysis regarding billing rates. For example, Judge Droney observed that securities class actions tend to be litigated by members of a national securities bar principally based in New York or California. (Ex. 5 (Droney Decl.) ¶65.) After evaluating Class Counsel's rates relative to fee submissions in complex class actions in this District and Circuit, Judge Droney

concluded that Class Counsel's rates are appropriate within the context of a national securities bar. (*Id.* ¶¶66-67.) Professor Miller found that all of Class Counsel's partner rates are below the median 2020 billing rates for the top 50 U.S. law firms, that all of Class Counsel's partner and associate rates are below average rates among New York firms as reported in a 2021 study, and that many leading national firms had average partner rates above $1,100/hour as of 2017. (Ex. 6 (Miller Decl.) ¶¶46-50.)

388. The following chart presents Class Counsel's lodestar numbers:

Firm	Hours	Lodestar
Bleichmar Fonti & Auld LLP	71,604.00	$42,541,475.00
Bleichmar Fonti & Auld Canada	74.50	$73,382.50
The Law Offices of Susan R. Podolsky	3,910.50	$2,541,825.00
Carmody Torrance Sandak & Hennessey LLP	1,501.70	$680,678.50
TOTAL	**77,090.70**	**$45,837,361.00**

C. Quality of Representation

389. Class Counsel are highly experienced and skilled in the securities litigation field and have a long and successful track record in such cases. (*See* Ex. 7-A (BFA Firm Resume).) Class Counsel also have experience representing Ontario Teachers' and Anchorage in prior matters in which they served or sought to serve as representative plaintiffs or class representatives.

390. The $420 million settlement achieved through over five years of unrelenting effort confirms the quality of Class Counsel's representation. By our calculation, the proposed settlement is the second-largest class settlement in the District.[26] Nationally, it is the fifth-largest securities settlement against a pharmaceutical company, and the sixth-largest against a foreign

[26] *See Carlson v. Xerox*, No. 3:00-cv-01621-AWT (D. Conn. Jan. 14, 2009), ECF 528 (approving $750 million settlement).

issuer.[27] It is also the fourth-largest in this Circuit not involving a restatement or the 2008-2009 financial crisis,[28] and among the top 21 securities settlements in this Circuit (and top 43 nationwide) since the passage of the PSLRA.

391. In addition, below are examples of specific litigation decisions that I believe reflect Class Counsel's determination, creativity, and skill in litigating this action:

a. Pursuing independent grounds for falsity: A crucial strategic decision was clarifying that, regardless of any collusion, Defendants' misstatements and omissions were actionable based on the financial impact of Teva's price increases alone. While the 2017 Complaint alleged independent grounds for falsity, the Court's guidance at the first motion to dismiss hearing prompted Class Counsel to clarify the allegations in June 2018. (*See supra* ¶¶53-58.) By doing so, we expressly decoupled the Class's securities claims from the need to plead or prove

[27] The four larger settlements against pharmaceutical companies are *In re Valeant Pharms. Int'l, Inc. Sec. Litig.*, No. 3:15-cv-07658 (D.N.J. Jan. 31, 2021), ECF 575 & 657 (approving $1.21 billion settlement); *In re Merck & Co. Sec. Litig.*, No. 2:05-cv-01151 (D.N.J. June 28, 2016), ECF 896 (approving $1.062 billion settlement); *In re Pfizer, Inc. Sec. Litig.*, No. 1:04-cv-9866 (S.D.N.Y. Dec. 21, 2016), ECF 728 (approving $486 million settlement); and *In re Schering-Plough Corp. / Enhance Sec. Litig.*, No. 2:08-cv-00397 (D.N.J. Oct. 1, 2013), ECF 440 (approving $473 million settlement).

The five larger settlements against foreign issuers are *In re Petrobras Sec. Litig.*, No. 1:14-cv-09662 (S.D.N.Y. July 2, 2018), ECF 838 (approving $3 billion settlement); *Valeant*, No. 3:15-cv-07658; *In re Nortel Networks Corp. Sec. Litig.*, No. 1:01-cv-1855 (S.D.N.Y. Jan. 29, 2007), ECF 194 (approving $1,142,775,308 settlement) ("*Nortel I*"); *In re Royal Ahold N.V. Sec. Litig.*, No. 1:03-md-1539 (D. Md. June 21, 2006), ECF 765 (approving $1.1 billion settlement); and *In re Nortel Networks Corp. Sec. Litig.*, No. 1:04-cv-02115 (S.D.N.Y. Dec. 26, 2006), ECF 177 (approving $1,074,265,298 settlement) ("*Nortel II*").

[28] The three larger settlements in this category are *Petrobras*, No. 1:14-cv-09662; *In re Initial Public Offering Sec. Litig.*, No. 1:21-mc-00092 (S.D.N.Y. Oct. 6, 2009), ECF 5861 (approving $586 million settlement); and *Pfizer*, No. 1:04-cv-9866.

unlawful price-fixing and minimized the impact of DOJ's subsequent intervention on fact discovery.

b. Emphasis on omissions: By alleging that Defendants violated SEC regulations that impose specific affirmative disclosure requirements (Item 303 and Item 5), Class Counsel ensured that material omissions, if proven, would support liability and trigger substantial Securities Act damages.

c. Consolidation and amendment: Class Counsel secured Defendants' agreement to consolidation and the filing of the SAC to ensure that the full Class Period, and all allegations arising from Defendants' common course of conduct, would be litigated in this action. (*See supra* ¶¶75-80.) While the motion prompted opposition, it benefitted the Class by securing the full scope of conduct and damages in a single action under common leadership.

d. Fully developing the merits to maximize the Settlement Class's recovery: When the parties initially mediated in July 2020, many of the riskiest and most resource-intensive stages of the case had yet to occur. (*See supra* ¶¶316-17.) Instead of further pursuing mediation at this earlier stage, Class Counsel fully developed the Class's proof, investing heavily in time and resources to complete fact and expert discovery and drive the $420 million recovery.

e. Class certification: Class Counsel and Dr. Tabak presented extensive high-quality empirical analysis and submissions based on the most recent and persuasive authority. (*See supra* ¶¶176-178, 184-197.)

f. Developing the documentary record:

i. The Court's guidance and Class Counsel's insistence on a rigorous document production schedule overcame Defendants' initial delays and cleared the path for Class Counsel to complete numerous fact depositions efficiently. (*See supra* ¶¶87-96.)

ii. Class Counsel also pursued targeted discovery disputes on key issues, such as to obtain data for Teva's full generic drug portfolio and discovery concerning the missing text messages, as outlined above. (*See supra* ¶¶97-102, 145-165.)

g. Approach to fact depositions:

iii. From the outset, Class Counsel meticulously analyzed the documentary evidence and approached depositions with the expectation that this action would reach trial, with senior attorneys devoting substantial time and effort to each witness. (*See supra* ¶¶103-119, 132-144.)

iv. Class Counsel conducted a full Rule 30(b)(6) deposition, going beyond document collection and preservation, to bind Teva and Teva Finance on merits issues. The deposition lasted two days and yielded nearly 500 pages of testimony. (*See supra* ¶¶133, 139, 142.)

v. In lieu of deposing three Teva co-conspirators, Class Counsel obtained declarations (with agreements to appear at trial), efficiently securing valuable evidence before summary judgment. (*See supra* ¶167.)

h. Substantial investment in experts: Class Counsel engaged four leading experts to deliver reports that rigorously analyzed Teva's actual price increases, the resulting

profits, and Defendants' statements and omissions, as well as issues pertinent to class certification and class-wide damages. (*See supra* ¶¶185, 187, 209-233.)

i. Affirmative summary judgment and *Daubert* motions: Class Counsel completed and were prepared to file a detailed motion for partial summary judgment and *Daubert* motions against all four of Defendants' experts. (*See supra* ¶¶242-251.) Such motions are uncommon for securities plaintiffs,[29] and their preparation confirms Class Counsel's high-quality advocacy in this case.

D. Class Representatives, as Fiduciaries Experienced with PSLRA Securities Actions, Approve the Requested Fee

392. Finally, the requested fee is the product of BFA's arm's-length negotiation with Class Representatives, informed by independent analysis and empirical research, and has their full support.

393. Significantly, both Ontario Teachers' and Anchorage are experienced fiduciaries, both as class representatives in PSLRA actions and with respect to their own beneficiaries. Ontario Teachers' manages more than C$220 billion in net assets on behalf of approximately 331,000 active and retired teachers in Ontario, and has secured nearly $2.4 billion in recoveries for investors in this and other securities actions in which it has served as lead plaintiff. Anchorage manages more than $390 million on behalf of its beneficiaries, and has recovered more than $600 million in this and other securities actions in which it has served as lead plaintiff or class representative.

[29] For example, NERA has found that plaintiffs make affirmative motions for summary judgment in only 1.9% of securities cases (versus 7.1% for motions by defendants). (Ex. 10 (NERA 2018 Report) at 19.)

394. Understanding that any fee award would be subject to the Court's approval, Class Representatives carefully determined the fee that Class Counsel could request based on their assessment of Class Counsel's work and the result. Specifically, Class Representatives undertook an extensive and rigorous process to carefully consider the relevant facts, circumstances, and empirical data in authorizing Lead Counsel to request a fee of 23.70%.

395. It was important to ensure that Ontario Teachers' and Anchorage were fully informed to make this assessment and that the process include a review independent of BFA. To that end, Class Representatives authorized Judge Droney's independent analysis of Class Counsel's time and effort, including our time records, and analysis of academic research and empirical data from fee awards in other complex settlements in the District, the Second Circuit, and nationally. In addition, as described in their respective declarations, Class Representatives have actively participated in all phases of this litigation and are thus intimately familiar with Class Counsel's work here. (*See* Ex. 3 (Davis Decl.); Ex. 4 (Jarvis Decl.).)

396. Based on their analysis and review, Class Representatives support the requested fee. (Ex. 3 (Davis Decl.) ¶34; Ex. 4 (Jarvis Decl.) ¶33.) Their support is significant and recognizes the quality of Class Counsel's work and the substantial result achieved. (*See* Ex. 3 (Davis Decl.) ¶¶26-36; Ex. 4 (Jarvis Decl.) ¶¶26-35.)

X. LEAD COUNSEL'S APPLICATION FOR AN AWARD OF EXPENSES IS REASONABLE AND SHOULD BE APPROVED

A. Counsel Seek Reasonable and Necessary Litigation Expenses

397. Lead Counsel also requests an award from the Settlement Fund of Class Counsel's litigation expenses incurred in connection with the investigation, prosecution, and resolution of

the action, in the amount of $9,717,887.47. This amount is below the $11,000,000 maximum expense amount that the Settlement Class was advised could be requested.[30]

398. Class Counsel's expenses of $9,717,887.47 are itemized in the Fee and Expense Schedules referenced above, with each category of expense set forth in detail. By firm, those expenses are as follows:

CATEGORY	BFA	BFA Canada	Podolsky	Carmody	CATEGORY TOTAL
Computer Research	$45,011.81			$951.83	$45,963.64
Court Reporter Services and Transcript Fees	$222,736.94			$2,257.40	$224,994.34
Expert Fees	$7,269,761.31				$7,269,761.31
Litigation Support Vendor Fees	$1,789,846.78				$1,789,846.78
Outside Counsel	$99,693.37				$99,693.37
Mediation Fees	$118,989.75				$118,989.75
External Photocopies	$18,129.51		$270.64		$18,400.15
Postage & Overnight Mail	$16,193.32			$124.26	$16,317.58
Service and Filing Fees	$7,891.10			$1,250.00	$9,141.10
Accommodations	$43,062.63		$11,349.71		$54,412.34
Meals	$17,017.75	$110.00	$1,090.00	$70.68	$18,288.43
Local Transportation	$20,966.46	$157.99	$798.60		$21,923.05
Out-of-Town Transportation	$15,537.71	$949.87	$8,584.40	$83.65	$25,155.63
The JNL Firm, LLC	$5,000.00				$5,000.00
TOTAL	**$9,689,838.44**	**$1,217.86**	**$22,093.35**	**$4,737.82**	**$9,717,887.47**

(Exs. 7-D, 7-E, 8-D, and 9-C.)

[30] In addition to the expenses described herein, up to $1,750,000 of Notice and Administration Expenses are payable from the Settlement Fund before the Effective Date (ECF 919-2 ¶2.11), while any additional amount will be presented to the Court after the Effective Date.

399. Importantly, because this action was prosecuted on a contingent-fee basis, with no guarantee of any recovery of expenses, Class Counsel were motivated to proceed efficiently and limited expenses to those necessary to effectively and vigorously pursue the action.

400. Notably, of the total expenses, $7,269,761.31, or 74.8%, related to testifying and consulting experts. These experts' work—including the provision of 12 reports and testifying at seven depositions—was essential to the successful prosecution and resolution of this case. For example, Dr. Tabak's analysis was instrumental in achieving class certification. Dr. Tabak provided a total of six expert reports (in addition to extensive deposition testimony) to analyze market efficiency at class certification and damages and loss causation at the merits stage. Dr. Tabak's team at NERA also provided consulting expert work on aggregate damages, supporting Class Counsel's mediation efforts, and with respect to the Plan of Allocation. In addition, Class Counsel retained Dr. Bradford to opine on Teva's generic drug price increases and the resulting profits, and retained Mr. Regan and Mr. Turner to provide opinions on materiality and disclosure issues at the heart of this action—all key merits issues necessary to prove liability and present a true threat of trial.

401. Class Counsel also incurred significant expenses for the services of litigation support vendors, totaling $1,789,846.78, of which the majority related to establishing and maintaining an electronic discovery database for document review and production. This service was necessary in light of the large volume of electronic discovery in this case—including over 8.2 million pages of documents produced by Defendants and third parties—and the duration of discovery, which lasted more than two years. Class Counsel's discovery vendor also provided advanced analytics tools that streamlined discovery analysis, as detailed above.

402. Another component of Class Counsel's expenses, totaling $99,693.37, relates to outside counsel engaged: (i) to represent former Teva employees who provided information to BFA's investigator; (ii) to provide advice regarding antitrust issues; (iii) as local counsel for purposes of filing an opposition to consolidation in the Eastern District of Pennsylvania; (iv) to assist with matters in Israel; and (v) to represent former Ontario Teachers' employees upon whom Defendants served deposition subpoenas.

403. Additionally, Class Counsel incurred expenses of $224,994.34 in connection with court reporter services and transcript fees, including for the 40 fact and expert depositions taken, and to obtain transcripts of numerous status conferences and hearings.

404. Class Counsel's expenses for travel consist of local transportation ($21,923.05), out-of-town transportation ($25,155.63), accommodations ($54,412.34), and business meals ($18,288.43). Class Counsel also utilized outside vendors to print and bind certain documents, including demonstratives for hearings, deposition exhibits for witnesses outside the United States, and other materials, resulting in an expense of $18,400.15.

405. Class Counsel's remaining expenses are the types of expenses that are necessarily incurred in litigation and normally charged to fee-paying clients. These expenses include, among others, court fees, computer research, and postage and delivery expenses (including for overnight and expedited international delivery, such as shipment of deposition exhibits for remote depositions).

406. All of Class Counsel's litigation expenses were necessary for the successful investigation, prosecution, and resolution of this action. Lead Counsel's application for an award of Class Counsel's expenses has been approved by Class Representatives. (*See* Ex. 3 (Davis Decl.) ¶35; Ex. 4 (Jarvis Decl.) ¶34.)

B. An Award of Class Representatives' Costs and Expenses Is Fair and Reasonable

407. Class Representatives Ontario Teachers' and Anchorage also seek awards, pursuant to 15 U.S.C. § 78u-4(a)(4), of their costs and expenses directly related to their representation of the Class. As detailed in the Davis and Jarvis Declarations (Exhibits 3 and 4), based on Class Representatives' time devoted to this action in place of their regular duties, as well as out-of-pocket expenses, Ontario Teachers' seeks an award of $49,213.02 and Anchorage seeks an award of $7,080.00. These amounts, totaling $56,293.02, are below the maximum amount of $100,000 that the Settlement Class was advised could be requested.

408. We respectfully submit that these awards are fully consistent with Congress's intent, as expressed in the PSLRA, of encouraging institutional investors to take active roles in bringing and supervising securities actions. As set forth herein and in the Davis and Jarvis Declarations, Ontario Teachers' and Anchorage have been fully committed to pursuing this action, actively participated and supervised Class Counsel throughout the litigation, and provided discovery, including Rule 30(b)(6) deposition testimony.

409. Both Class Representatives have diligently and effectively fulfilled their obligations as representatives of the Class, and we respectfully submit that their substantial efforts and contributions in this action merit the requested awards.

XI. THE REACTION OF THE SETTLEMENT CLASS

410. As described above, pursuant to the Preliminary Approval Order, 942,255 Notices were mailed to potential Settlement Class Members advising them of the Settlement, the Plan of Allocation, and that Lead Counsel would seek an award of attorneys' fees not to exceed 23.75% of the Settlement Fund, and expenses in an amount not greater than $11,000,000. (*See* Ex. 2 (McGuinness Decl.) ¶11.) The Notice also advised of the deadlines to submit claims, as well as

the May 2, 2022 deadline to seek exclusion from the Settlement Class and the May 12, 2022 deadline to file objections to the Settlement, the Plan of Allocation, and/or the requested fees and expenses.

411. As set forth in the Preliminary Approval Order, Settlement Class Members seeking to exclude themselves from the Settlement Class must be submitted or postmarked "no later than May 2, 2022." (ECF 929 ¶13.) Any objections "must be received or filed, not simply postmarked, on or before May 12, 2022." (*Id.* ¶17.) As of April 27, 2022, Epiq has received 39 potential requests for exclusion and no objections. (Ex. 2 (McGuinness Decl.) ¶¶30, 32.)

412. In addition, pursuant to the Preliminary Approval Order, Direct Action Plaintiffs who wish to participate in the settlement must "(a) dismiss their action and (b) postmark or electronically submit Proof of Claim and Release forms . . . with simultaneous copies emailed to Class Counsel" by "[n]o later than May 2, 2022." (ECF 929 ¶14.) As of April 27, 2022, Class Counsel have not received any Proof of Claim and Release Forms from Direct Action Plaintiffs.

413. As of April 27, 2022, Epiq has received 16,628 Proof of Claim and Release Forms. (Ex. 2 (McGuinness Decl.) ¶26.)

414. Class Representatives and Lead Counsel will report on all exclusion requests and any objections that are received in reply papers due on May 19, 2022.

XII. CONCLUSION

415. In view of the significant recovery to the Settlement Class, the advanced stage of the proceedings and completion of fact and expert discovery, the substantial risks of this litigation, the reaction of the Settlement Class, and other relevant factors, as described above and in the accompanying memorandum of law, I respectfully submit that (a) the settlement should be

approved as fair, reasonable, and adequate, and (b) the proposed Plan of Allocation should be approved as fair, reasonable, and adequate.

416. Additionally, in view of the risks, complexity and magnitude of this litigation, the significant recovery achieved, the extent and quality of Class Counsel's work over more than five years, the contingent nature of the fee, Class Representatives' support, and the other factors addressed above, in the accompanying memorandum of law, and in the Davis, Jarvis, Droney, and Miller Declarations, I respectfully submit that attorneys' fees of 23.70% of the Settlement Fund should be awarded, that litigation expenses in the amount of $9,717,887.47 should be awarded, and that Class Representatives should be awarded reasonable costs and expenses in the amounts of $49,213.02 for Ontario Teachers' and $7,080.00 for Anchorage.

Dated: New York, New York
April 28, 2022

By: */s/ Joseph A. Fonti*
Joseph A. Fonti

APPENDIX – INDEX OF EXHIBITS

EXHIBIT	DESCRIPTION
Exhibit 1	Declaration of Layn R. Phillips in Support of Final Approval of Class Settlement ("Phillips Decl.")
Exhibit 2	Declaration of Michael McGuinness Regarding (I) Mailing of Notice; (II) Publication of Summary Notice; (III) Settlement Website and Contact Center Services; (IV) Claim Filing; and (V) Requests for Exclusion and Objections Received to Date ("McGuinness Decl.") Exhibit A: Notice of Proposed Settlement of Class Action Exhibit B: Proof of Publication of Summary Notice
Exhibit 3	Declaration of Jeffrey Davis, Ontario Teachers' Pension Plan Board, in Support of Final Approval of Class Settlement and Approval of Plan of Allocation, Awards of Attorneys' Fees and Litigation Expenses, and Awards of Reasonable Costs and Expenses to Class Representatives ("Davis Decl.")
Exhibit 4	Declaration of Edward Jarvis, Anchorage Police & Fire Retirement System, in Support of Final Approval of Class Settlement and Approval of Plan of Allocation, Awards of Attorneys' Fees and Litigation Expenses, and Awards of Reasonable Costs and Expenses to Class Representatives ("Jarvis Decl.")
Exhibit 5	Declaration of Judge Christopher F. Droney (Ret.) ("Droney Decl.")
Exhibit 6	Declaration of Professor Geoffrey Parsons Miller ("Miller Decl.")
Exhibit 7	Declaration of Joseph A. Fonti in Support of Lead Counsel's Motion for Awards of Attorneys' Fees and Litigation Expenses, Filed on Behalf of Bleichmar Fonti & Auld LLP and Bleichmar Fonti & Auld Canada ("Fonti F&E Decl.") Exhibit A: BFA Firm Resume Exhibit B: Summary of BFA Timekeeper Qualifications, Experience, and Role in the Action Exhibit C: BFA Timekeeper Lodestar Summary Exhibit D: BFA Expense Summary Exhibit E: BFA Canada Summaries of Timekeeper Qualifications, Experience, and Role in the Action, Lodestar, and Expense
Exhibit 8	Declaration of Marc Kurzman in Support of Lead Counsel's Motion for Awards of Attorneys' Fees and Litigation Expenses, Filed on Behalf of Carmody Torrance Sandak & Hennessey LLP ("Carmody F&E Decl.") Exhibit A: Carmody Firm Litigation Resume Exhibit B: Summary of Carmody Timekeeper Qualifications, Experience, and Role in the Action Exhibit C: Carmody Timekeeper Lodestar Summary Exhibit D: Carmody Expense Summary
Exhibit 9	Declaration of Susan R. Podolsky in Support of Lead Counsel's Motion for Awards of Attorneys' Fees and Litigation Expenses, Filed on Behalf of The Law Offices of Susan R. Podolsky ("Podolsky F&E Decl.") Exhibit A: The Law Offices of Susan R. Podolsky Firm Resume Exhibit B: The Law Offices of Susan R. Podolsky Lodestar Summary Exhibit C: The Law Offices of Susan R. Podolsky Expense Summary

EXHIBIT	DESCRIPTION
Exhibit 10	Stefan Boettrich and Svetlana Starykh, NERA Economic Consulting, Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review (Jan. 29, 2019) ("NERA 2018 Report")
Exhibit 11	Janeen McIntosh and Svetlana Starykh, NERA Economic Consulting, Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review (Jan. 25, 2022) ("NERA 2021 Report")
Exhibit 12	Ronald I. Miller, Ph.D., Todd Foster, and Elaine Buckberg, Ph.D., NERA Economic Consulting, Recent Trends in Shareholder Class Action Litigation: Beyond the Mega-Settlements, is Stabilization Ahead? (April 2006)
Exhibit 13	Moody's August 31, 2021 Credit Opinion
Exhibit 14	Excerpted Teva 2021 Form 10-K
Exhibit 15	Theodore Eisenberg, Geoffrey Miller, and Roy Germano, *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. L. REV. 937 (2017)
Exhibit 16	Theodore Eisenberg and Geoffrey Miller, *Attorneys' Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. EMPIRICAL LEGAL STUDIES 248 (2010)
Exhibit 17	Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. EMPIRICAL LEGAL STUDIES 811 (2010)

CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2022, a copy of the foregoing was filed electronically with the Clerk of Court via CM/ECF. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the court's CM/ECF system.

/s/ Joseph A. Fonti
Joseph A. Fonti

Exhibit 1

Declaration of Layn R. Phillips in Support of Final Approval of Class Settlement

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE TEVA SECURITIES LITIGATION	:	No. 3:17-cv-00558 (SRU)
THIS DOCUMENT RELATES TO:	:	All Class Actions

DECLARATION OF LAYN R. PHILLIPS IN SUPPORT OF FINAL APPROVAL OF CLASS SETTLEMENT

I, Layn R. Phillips, being duly sworn, hereby declare pursuant to Section 1746 of Title 28 of the United States Code:

1. I submit this Declaration in my capacity as the mediator in the above-captioned securities class action ("Action") and in connection with the proposed settlement of the Action.[1] I make this Declaration based on personal knowledge and am competent to so testify.[2]

I. BACKGROUND AND QUALIFICATIONS

2. I am a former United States District Judge, a former United States Attorney, and a former litigation partner with the firm of Irell & Manella LLP. I currently serve as a mediator and arbitrator with my own alternative dispute resolution company, Phillips ADR Enterprises ("Phillips ADR"), which is based in Corona Del Mar, California. I am a member of the bars of Oklahoma, Texas, California, and the District of Columbia, as well as the United States Courts of Appeals for the Ninth and Tenth Circuits and the Federal Circuit.

[1] Capitalized terms not defined herein have the meanings specified in the Stipulation of Settlement, dated January 18, 2022 (ECF 919-2).

[2] While the mediation process is confidential, the Parties have authorized me to inform the Court of the matters set forth herein in support of final approval of the settlement. My statements and those of the parties during the mediation process are subject to a confidentiality agreement and Federal Rule of Evidence 408, and there is no intention on either my part or the parties' part to waive the agreement or the protections of Rule 408.

3. I earned my Bachelor of Science in Economics as well as my J.D. from the University of Tulsa. I also completed two years of L.L.M. work at Georgetown University Law Center in the area of economic regulation of industry. After serving as an antitrust prosecutor and an Assistant United States Attorney in Los Angeles, California, I was nominated by President Reagan to serve as a United States Attorney in Oklahoma, where I served for approximately four years. Thereafter, I was nominated by President Reagan to serve as a United States District Judge for the Western District of Oklahoma. While on the bench, I presided over more than 140 federal trials and sat by designation in the United States Court of Appeals for the Tenth Circuit. I also presided over cases in Texas, New Mexico, and Colorado.

4. I left the federal bench in 1991 and joined Irell & Manella where, for 23 years, I specialized in alternative dispute resolution, complex civil litigation, and internal investigations.

5. Since my retirement from Irell & Manella in 2014, my practice has been devoted full time to alternative dispute resolution: specifically, the arbitration and mediation of high-stakes complex litigation such as this case. I have nearly thirty years of dispute resolution experience, including conducting thousands of mediations and settlement conferences in all types of complex class actions, securities fraud actions and shareholder derivative actions.

II. THE ARM'S-LENGTH SETTLEMENT NEGOTIATIONS

A. The July 2020 Mediation

6. On July 13, 2020, the parties and their counsel remotely attended their first of three full-day mediation sessions, each held via videoconference. The participants included: (i) attorneys from Bleichmar Fonti & Auld LLP, Bleichmar Fonti & Auld Canada, and Susan R. Podolsky of the Law Offices of Susan R. Podolsky, (ii) Class Representatives, (iii) Defendants' counsel from Morgan, Lewis & Bockius LLP ("Morgan Lewis") and Kasowitz Benson Torres

LLP ("Kasowitz"), (iv) in-house counsel from Teva, and (v) numerous representatives from Defendants' various insurance carriers.

7. In advance of this mediation session, the parties submitted and exchanged extensive mediation statements and supporting exhibits addressing liability, loss causation, damages, and Teva's financial condition. I also held separate caucus sessions to discuss the disputed issues with each side, and separately provided detailed merits questions to each side designed to test the strength of their respective positions. In addition, on July 7, 2020, Defendants provided a presentation regarding Teva's financial condition.

8. During the July 13, 2020 mediation, Class Counsel, Defendants' counsel, and representatives from Teva's insurance carriers each presented detailed arguments regarding their clients' positions, and Class Counsel responded to Teva's July 7 financial presentation.[3] The work that went into the mediation statements and competing presentations and arguments was substantial. Although the case was then in the early stages of discovery, it was apparent to me that liability, damages, and financial issues were strongly disputed, and that a consensual resolution would be difficult to attain.

9. The July 13, 2020 mediation session concluded without the parties exchanging any settlement demands or offers.

B. The September 17 and 27, 2021 Mediation

10. The parties resumed mediating in September 2021, and I presided over two full-day mediation sessions on September 17 and 27, 2021. The participants in each session included: (i) Class Counsel, (ii) Class Representatives, (iii) Defendants' counsel from Kasowitz and Morgan

[3] "Class Counsel" refers collectively to Bleichmar Fonti & Auld LLP, Bleichmar Fonti & Auld Canada, The Law Offices of Susan R. Podolsky, and Carmody Torrance Sandak & Hennessey LLP.

Lewis, (iv) in-house counsel from Teva, and (v) numerous representatives from Teva's various insurance carriers.

11. Prior to these sessions, the parties again submitted and exchanged mediation statements and supporting exhibits that addressed liability, loss causation, damages, and Teva's financial condition. These submissions were informed by the developed record, which included certification of the Class, the completion of fact discovery, and the completion of most expert discovery. The parties also submitted and exchanged detailed statements regarding their respective damages inputs and assumptions. I also posed merits questions to each side to again test the strength of their positions.

12. During the September 17, 2021 mediation session, Class Counsel and Defendants' counsel each made further presentations and vigorously argued their clients' positions. During the mediation session, I engaged in extensive discussions with counsel on both sides in an effort to find common ground between the parties' respective positions. I also conducted caucus sessions with the insurance carriers and their representatives. During these discussions, I challenged all participants separately to address the weaknesses in each of their positions and arguments. In addition to vigorously presenting their respective positions, the parties exchanged rounds of settlement demands and offers. While some progress was made, the parties were not able to reach agreement during the mediation session, which concluded after 8:30 p.m. in New York, and later for those participating from the United Kingdom and Israel.

13. Following the September 17 mediation session, I met separately with both sides and received further presentations, including on insurance issues and a presentation on Teva's financial condition delivered by Class Representatives' consulting expert.

14. The parties and insurance representatives participated in another full-day mediation session on September 27, 2021. Each side presented further arguments regarding the merits, and I continued my discussions with all participants, again pressing each on the weaknesses of their respective arguments in an effort to reach a resolution that would be acceptable to all parties. The parties continued to make progress via several further rounds of settlement demands and offers. Again, the parties were not able to reach agreement and remained significantly apart in their respective negotiation positions. The September 27, 2021 mediation session concluded after 10:30 PM in New York.

C. Further Negotiations Through December 2, 2021

15. Between September 28, 2021 and November 14, 2021, I participated in more than a dozen videophonic and telephonic discussions with Class Counsel, Class Representatives, Defendants' counsel, and representatives from Teva's insurance carriers in an effort to resolve the Action. These discussions included additional presentations regarding the merits and other issues. The negotiations were strenuous and hard-fought, and in the period from September 28 to November 14, 2021, the parties exchanged 11 further rounds of settlement demands and offers.

16. In an effort to finally resolve this case, on November 14, 2021, I issued a mediator's recommendation that the parties settle the Action for $420,000,000. The parties then agreed to extend the initial November 22, 2021 deadline to respond to the recommendation to November 26, again to November 29, and finally to December 2, 2021. On December 2, 2021, I informed the parties that all sides had agreed to accept my recommendation. The parties subsequently documented their agreement in a term sheet and the Stipulation of Settlement that was filed with the Court on January 18, 2022.

17. The mediation process was an extremely hard-fought negotiation from beginning to end and was conducted by experienced and able counsel on both sides. Throughout the

mediation process, the negotiations between the Parties were vigorous and conducted at arm's-length and in good faith. Because the parties submitted their mediation statements, presentations, and arguments in the context of a confidential mediation process pursuant to Federal Rule of Civil Procedure 408, I cannot reveal their content. I can say, however, that the arguments and positions asserted by all involved were the product of substantial work, they were complex and highly adversarial, and reflected a detailed and in-depth understanding of the strengths and weaknesses of the claims and defenses in this case. The insurance issues presented were also challenging and complex. Overall, this was among the most complex and challenging mediations I have handled in nearly thirty years of dispute resolution work.

III. CONCLUSION

18. Based on my experience as a litigator, a former United States District Judge, and a mediator, I believe that the settlement represents a recovery and outcome that is reasonable and fair for the Settlement Class and all parties involved. I further believe that it was in the best interests of the parties that they avoid the burdens and risks associated with taking a case of this size and complexity to trial. I support the Court's approval of the settlement in all respects.

19. Lastly, the advocacy on both sides of the case was outstanding. I have experience with attorneys from the law firms on both sides of this case, which are nationally recognized for their work prosecuting and defending large, complex securities class actions such as this one. I am familiar with the effort, creativity, and zeal they put into their work. All counsel displayed the highest level of professionalism in carrying out their duties on behalf of their respective clients. The settlement is the direct result of all counsel's experience, reputation, and ability in these types of complex class actions.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Dated: Newport Beach, California
April 3, 2022

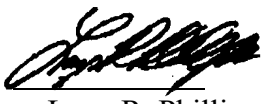
By: 
Layn R. Phillips

Exhibit 2

Declaration of Michael McGuinness Regarding (I) Mailing of Notice; (II) Publication of Summary Notice; (III) Settlement Website and Contact Center Services; (IV) Claim Filing; and (V) Requests for Exclusion and Objections Received to Date

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE TEVA SECURITIES LITIGATION	:	No. 3:17-cv-00558 (SRU)
THIS DOCUMENT RELATES TO:	:	All Class Actions

DECLARATION OF MICHAEL McGUINNESS REGARDING (I) MAILING OF NOTICE; (II) PUBLICATION OF SUMMARY NOTICE; (III) THE SETTLEMENT WEBSITE AND CONTACT CENTER SERVICES; (IV) CLAIM FILING; AND (V) REQUESTS FOR EXCLUSION AND OBJECTIONS RECEIVED TO DATE

I, Michael McGuinness, hereby declare:

1. I am a Project Manager for Epiq Class Action and Claims Solutions, Inc. ("Epiq"). I am providing this declaration at the request of Lead Counsel Bleichmar Fonti & Auld LLP ("BFA"), in connection with Class Representatives' Motion for Final Approval of Class Settlement and Approval of Plan of Allocation.[1] This declaration supplements my prior declaration. (ECF 919-9.) I make this declaration based on personal knowledge, and if called to testify, I could and would do so competently.

2. Pursuant to the January 27, 2022 Order Preliminarily Approving Settlement and Providing for Class Notice (the "Preliminary Approval Order") (ECF 929 ¶11), Epiq is authorized to act as the Claims Administrator in connection with the settlement of the above-captioned action. This declaration provides information regarding: (i) the mailing of the Notice, (ii) the publication of the Summary Notice, (iii) the implementation of the Settlement Website and contact center services; (iv) the current status of claim filings; and (v) the requests for exclusion and objections received by Epiq to date.

[1] Capitalized terms not defined herein have the meanings specified in the Stipulation of Settlement, dated January 18, 2022 (the "Stipulation") (ECF 919-2).

I. MAILING OF THE NOTICE

3. On February 16, 2022, in accordance with the Preliminary Approval Order (ECF 929 ¶8), Epiq began mailing the Court-approved Notice to potential Settlement Class Members and banks, brokers, and other nominees (the "Initial Mailing"). The Initial Mailing included 1,945 Notices that were mailed via first class U.S. Mail, postage pre-paid, to the addresses contained in the Transfer List provided by Defendants.

4. As in most class actions of this nature, the large majority of potential Settlement Class Members are expected to be beneficial purchasers whose securities are held in "street name"—*i.e.*, the securities are purchased and held by brokerage firms, banks, institutions, and other third-party nominees on behalf of the beneficial purchasers. Epiq maintains and updates a proprietary internal list of the largest and most common banks, brokers, and other nominees. The Initial Mailing included 1,091 Notices mailed to addresses from Epiq's internal list of nominees.

5. In total, Epiq mailed 3,036 copies of the Notice as part of the Initial Mailing. A copy of the Notice in the form it was mailed is attached hereto as Exhibit A.

6. On February 21, 2022, Epiq also caused the Notice and related materials to be published by the Depository Trust Corporation ("DTC") on the DTC Legal Notice System ("LENS"), which enables participating banks and brokers to review the Notice and directly contact Epiq to obtain copies of the Notice for clients who may be Settlement Class Members.

7. At BFA's direction, Epiq also delivered copies of the Notice to potential Settlement Class Members who had contacted BFA throughout the pendency of the litigation and to other potentially interested parties, including each Direct Action Plaintiff (through their counsel of record).

8. The Notice directed nominees and brokers who purchased Teva Securities for the beneficial interest of a person or organization other than themselves to, within seven (7) calendar

days of receipt of the Notice, either: (i) provide a list of the names and addresses of all such beneficial owners to Epiq; or (ii) request from Epiq sufficient copies of the Notice to forward to all such beneficial owners, and, within seven (7) calendar days of receipt of those Notices, forward them to all such beneficial owners.

9. At BFA's direction, Epiq took additional steps to follow up with nominees and brokers that it had not yet heard from to ensure that they had received Notices, and that they were following the Notice's specific instructions to provide beneficial owner information or request copies of the Notice for forwarding to beneficial owners. Following the Initial Mailing, Epiq identified the top 36 nominees from Epiq's internal list of nominees. For any of these nominees that had not yet responded to the Notice, an Epiq representative personally called and/or emailed the nominee to remind them to do so, and followed up at least twice with nominees that did not respond to this individual outreach.

10. From the Initial Mailing through April 27, 2022, Epiq received, and mailed Notices to, an additional 299,852 names and addresses of potential Settlement Class Members obtained from brokerage firms, banks, and other nominees. Epiq has also received requests from brokers and nominees for 637,881 Notices to be forwarded by them to their customers, which Epiq provided to those brokers and nominees, as well as requests from potential Settlement Class Members by telephone or correspondence for 1,486 Notices. All such requests have been, and will continue to be, complied with and addressed in a timely manner.

11. As of April 27, 2022, a total of 942,255 Notices have been mailed to potential Settlement Class Members, including Notices sent directly to nominees at their request for transmission to investors.

12. In addition, Epiq has re-mailed 1,466 Notices to persons and entities whose original mailings were returned by the U.S. Postal Service and for whom updated addresses were provided to Epiq by the U.S. Postal Service.

13. While Epiq initially estimated that up to 2.5 million Notices could be mailed (*see* ECF 919-1 at 26 of 37), this estimate was developed before receiving the Transfer List from Defendants and the names and addresses of beneficial owners from brokers and nominees. Epiq believes that the dissemination of 942,255 Notices to date compares favorably with the scope of individual notice in other large securities class action settlements. Further, Epiq believes that, as discussed below, the distribution of 942,255 Notices, together with the publication of the Summary Notice and establishment of the Settlement Website, has provided potential Settlement Class Members with the best notice practicable under the circumstances, and effectively advised them of the settlement and the opportunity to submit claims, object, or seek exclusion.

II. PUBLICATION OF THE SUMMARY NOTICE

14. On February 21, 2022, the Court-approved Summary Notice was published in *Investor's Business Daily* and was transmitted over *PR Newswire*. On February 22, 2022, the Summary Notice was published in *The Wall Street Journal*. On February 23, 2022, a Hebrew translation of the Summary Notice was published in the *Globes* business newspaper in Israel. Copies of proof of publication of the Summary Notice in *Investor's Business Daily*, *The Wall Street Journal*, and the *Globes*, and of transmission over *PR Newswire* are attached hereto as Exhibit B.

III. THE SETTLEMENT WEBSITE

15. Epiq, in coordination with BFA, designed, implemented, and maintains a website dedicated to the settlement of the Action (www.TevaSecuritiesLitigation.com) (the "Settlement Website"). The Settlement Website's address is set forth in the Notice and

Long-Form Notice delivered to potential Settlement Class Members and nominees, and was published in the Summary Notice.

16. The Settlement Website became operational on February 16, 2022, ahead of the Court-ordered schedule, and is accessible 24 hours a day, 7 days a week. The Settlement Website provides summary information regarding the case and settlement, and highlights important dates, including dates to submit claims, opt-out, or file objections, as well as the date of the Settlement Hearing.

17. The Settlement Website (available in English and Hebrew) provides English and Hebrew versions of the Summary Notice, Notice, Long-Form Notice, and Proof of Claim and Release Form, as well as provides in English and Hebrew answers to FAQs, instructions on how to submit claims, how to opt-out of the settlement, and how to submit objections.

18. The Settlement Website also contains downloadable copies of other documents related to the Action, including the Court's Preliminary Approval Order, the Second Amended Consolidated Class Action Complaint filed December 13, 2019, Defendants' Answer filed January 27, 2020, the Court's September 25, 2019 Opinion and Order regarding Defendants' motions to dismiss, and the Court's March 9, 2021 Ruling and Order regarding class certification. In addition, Epiq will promptly post copies of the papers being filed on April 28, 2022 in support of final approval of the settlement, approval of the Plan of Allocation, awards of attorneys' fees and expenses, and awards to Class Representatives.

19. The Settlement Website also includes a link to a claim filing module through which Settlement Class Members may submit their claims online, and a link to a nominee module through which nominees and brokers may electronically submit claims on behalf of Settlement Class Members and lists of the names and addresses of potential Settlement Class Members to which

Epiq will mail Notices. Epiq will continue operating, maintaining and, as appropriate, updating the Settlement Website until the conclusion of the claims administration process.

20. As of April 27, 2022, there have been 32,492 unique visitors to the Settlement Website and 160,588 pageviews. Additionally, of those 160,588 pageviews, 25,451 were of the downloadable Proof of Claim and Release Form.

IV. CONTACT CENTER SERVICES

21. Epiq reserved a toll-free telephone number for the settlement, 1-855-675-3124, and a separate telephone number for callers outside the U.S. and Canada, 1-503-520-4435. Epiq also published those telephone numbers in the Notice and Summary Notice, and on the Settlement Website.

22. Those telephone numbers, which became operational on February 16, 2022, connect callers with an Interactive Voice Response ("IVR") system. The IVR provides callers with access to additional information that has been pre-recorded and is in operation 24 hours a day, 7 days a week. The pre-recorded message provides callers with a brief summary of the settlement and the option to select one of several more detailed recorded messages addressing frequently asked questions. The IVR also allows callers to request that a copy of the Long-Form Notice and Proof of Claim and Release Form be mailed to them, or the caller may opt to speak with a trained operator Monday through Friday from 9:00 a.m. to 9:00 p.m. E.T. (excluding official holidays) regarding the status of the settlement and/or to obtain answers to questions they may have. During other hours, callers may leave a message for an agent to call them back.

23. As of April 27, 2022, Epiq has received a total of 5,946 calls to the telephone numbers dedicated to the settlement, including 1,166 calls that were handled by a live operator. Epiq has promptly responded to each telephone inquiry and mailing request, including messages left by callers, and will continue to do so.

24. Additionally, Epiq maintains and monitors an email address established for this settlement, info@TevaSecuritiesLitigation.com, as well as a P.O. Box dedicated to this settlement for potential Settlement Class Members and nominees to submit questions and inquiries via email and mail. As of April 27, 2022, Epiq has received 8,486 emails and mailed correspondence and responded as appropriate.

V. CLAIM FILING

25. The Notice, Summary Notice, Long-Form Notice, IVR, and Settlement Website inform potential Settlement Class Members that, to be eligible to receive a payment from the Net Settlement Fund, they must submit a Proof of Claim and Release Form online via the Settlement Website by May 17, 2022, or by mail such that it is postmarked by May 17, 2022. As is typical in other claims administration matters of this kind, Epiq will continue to process claims received or postmarked after May 17, 2022 until such time as the receipt and processing of new late claims will impact decisions on disbursements.

26. As of April 27, 2022, Epiq has received 16,628 Proof of Claim and Release Forms from potential Settlement Class Members and brokerage firms, banks, institutions, and other nominees.

27. With regard to Direct Action Plaintiffs, the Notice, Summary Notice, Long-Form Notice, and Settlement Website inform Direct Action Plaintiffs that, should they wish to join the Settlement Class, they must take additional steps by May 2, 2022. Specifically, Direct Action Plaintiffs who wish to join the Settlement Class are instructed to: (a) dismiss their action and (b) electronically submit via the Settlement Website or postmark their Proof of Claim and Release Form no later than May 2, 2022, with simultaneous copies emailed to BFA and counsel for Defendants.

28. As of April 27, 2022, Epiq has not received any Proof of Claim and Release Forms submitted by or on behalf of Direct Action Plaintiffs.

VI. REQUESTS FOR EXCLUSION AND OBJECTIONS

29. The Notice, Summary Notice, Long-Form Notice, and Settlement Website inform potential Settlement Class Members that requests for exclusion from the Settlement Class must be electronically submitted via the Settlement Website or postmarked no later than May 2, 2022. The Notice, Long-Form Notice, and Settlement Website instruct potential Settlement Class Members who wish to exclude themselves from the Settlement Class to submit a written request for exclusion that provides specific information, including records of their transactions in Teva Securities.

30. As of April 27, 2022, Epiq has received 39 potential requests for exclusion. Epiq is following up to the extent that these submissions do not affirmatively request exclusion from the Settlement Class. Epiq has monitored and will continue to monitor the Settlement Website and all mail delivered to the settlement-specific P.O. Box for further potential requests.

31. The Notice, Summary Notice, Long-Form Notice, and Settlement Website also inform potential Settlement Class Members that they may object to the settlement, the proposed Plan of Allocation, or the application for attorneys' fees and expenses, including requests for awards to Class Representatives pursuant to 15 U.S.C. § 78u-4(a)(4); that the objection must be made in writing and filed with the Court in accordance with all of the instructions set forth in the Long-Form Notice; and that objections must be received or filed, not simply postmarked, on or before May 12, 2022.

32. As of April 27, 2022, Epiq has not received any objections to the settlement, the proposed Plan of Allocation, or the application for attorneys' fees and expenses, including requests for awards to Class Representatives pursuant to 15 U.S.C. § 78u-4(a)(4).

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

Dated: New York, New York
April 27, 2022

By: /s/ Michael McGuinness
Michael McGuinness

Exhibit A

Notice of Proposed Settlement of Class Action

Teva Securities Litigation Claims Administrator
c/o Epiq Class & Claims Solutions, Inc.
P.O. Box 3565
Portland, OR 97208-3565

BARCODE NO-PRINT ZONE

FIRST-CLASS MAIL
U.S. POSTAGE
PAID
Portland, OR
PERMIT NO. 2882

IMPORTANT NOTICE FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

NOTICE OF CLASS SETTLEMENT

If you purchased or otherwise acquired Teva Pharmaceutical Industries Ltd. ("Teva") American Depositary Shares ("ADS"), Teva 7.00% mandatory convertible preferred shares ("Preferred Shares"), or certain Teva Pharmaceutical Finance Netherlands III B.V. ("Teva Finance") U.S.-dollar-denominated senior notes ("Notes") during the period from February 6, 2014 through May 10, 2019, inclusive, you may be affected by a proposed class settlement.

THE SETTLEMENT MAY AFFECT YOUR LEGAL RIGHTS. YOU MAY BE ELIGIBLE FOR A CASH PAYMENT. PLEASE READ THIS NOTICE CAREFULLY.

Barcode No-Print Zone

This Notice provides only limited information about the settlement.
For more information, please visit / באתר בקר אנא ,בעברית זה למידע:
www.TevaSecuritiesLitigation.com (the "Settlement Website") or
Call the Claims Administrator at 1-855-675-3124 or 1-503-520-4435 outside the U.S. and Canada

Important Settlement Notice: In re Teva Securities Litigation, No. 3:17-cv-00558 (SRU) (the "Action")

The parties have reached a proposed settlement that, if approved, will resolve the Released Claims against the Released Defendants on behalf of the Settlement Class.

Defendants and/or their insurance carriers have agreed to pay $420,000,000. This amount, plus accrued interest, and after deduction of Court-approved attorneys' fees and expenses (including any awards to Class Representatives), notice and administration costs, and taxes, will be allocated, pursuant to the Plan of Allocation in the Long-Form Notice, among Settlement Class Members who submit valid claims.

You may be a Settlement Class Member if you purchased or otherwise acquired Teva ADS, Preferred Shares, or Notes during the period from February 6, 2014 through May 10, 2019, inclusive.

TO BE ELIGIBLE FOR PAYMENT, YOU MUST SUBMIT A VALID PROOF OF CLAIM AND RELEASE ONLINE OR POSTMARKED BY MAY 17, 2022. THE FORM IS AVAILABLE FROM THE SETTLEMENT WEBSITE, WWW.TEVASECURITIESLITIGATION.COM, OR BY MAIL UPON REQUEST THROUGH THE WEBSITE OR BY CALLING THE CLAIMS ADMINISTRATOR AT 1-855-675-3124 OR 1-503-520-4435 OUTSIDE THE U.S. AND CANADA.

The Settlement Website contains a Long-Form Notice with additional information that you should review.

www.TevaSecuritiesLitigation.com

You must comply with the Long-Form Notice's complete instructions on how to submit a Proof of Claim and Release, exclude yourself, or object. In summary, you have three options:

Option 1: Submit a Proof of Claim and Release Form (with further options to object to the settlement and/or appear at the Settlement Hearing).

Option 2: Exclude yourself from the Settlement Class, as detailed below.

Option 3: Do nothing. You will still be bound by the settlement and will fully release all of the Released Claims against the Released Defendants.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
OPTION 1: SUBMIT A PROOF OF CLAIM AND RELEASE FORM SUBMITTED ONLINE OR POSTMARKED BY MAY 17, 2022	This is the only way to be eligible to get a payment from the settlement. If you wish to participate in the settlement, you will need to complete and submit the Proof of Claim and Release Form, which is available at www.TevaSecuritiesLitigation.com or by calling the Claims Administrator at 1-855-675-3124 or 1-503-520-4435 outside the U.S. and Canada. Settlement Class Members who do not complete and submit the Proof of Claim and Release Form in accordance with the instructions on the Proof of Claim and Release Form and within the time required will be bound by the settlement and shall have fully released all of the Released Claims against the Released Defendants, but will not be eligible to participate in any distribution of the Net Settlement Fund.

OPTION 2: EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION SUBMITTED ONLINE OR POSTMARKED BY MAY 2, 2022	If you wish to exclude yourself from the settlement, you must submit a written request for exclusion that is submitted online or postmarked by May 2, 2022. You will not be bound by the results of the Litigation, you cannot object to the settlement, and you will not receive any payment. This is the only option that allows you to ever bring or be part of any other lawsuit against the Released Defendants related to the issues raised in the Litigation.
OPTION 3: DO NOTHING	If you are a Settlement Class Member but do not request exclusion and do not submit a Proof of Claim and Release Form submitted online or postmarked by May 17, 2022, you will not be eligible to receive any payment from the Settlement Fund. You will, however, be bound by the settlement and shall have fully released all of the Released Claims against the Released Defendants.

If you are a Settlement Class Member, you may also object to the settlement (whether or not you file a Proof of Claim and Release Form) by submitting a written objection so that it is received or filed no later than May 12, 2022. If you believe the settlement is objectionable in any respect, you may write to the Court about why you oppose the settlement, the Plan of Allocation, and/or the request for attorneys' fees, costs, and expenses. You will still be a Settlement Class Member who is bound by the settlement and shall have fully released all of the Released Claims against the Released Defendants.

You may attend the Settlement Hearing on June 2, 2022, at 10:00 a.m., and provide a notice of intention to appear to Class Counsel so that it is received no later than May 12, 2022. You do not need to attend the Settlement Hearing unless you wish to speak in support of the settlement or any objection you may have submitted, and have submitted to Class Counsel a Notice of Intention to Appear so that it is received no later than May 12, 2022. The Court may postpone the Settlement Hearing without further notice to you.

What is this case about? Why is there a settlement? The Action alleges that Defendants made material misstatements and omissions regarding the sources of Teva's financial performance, generic drug pricing, collusion, and other matters. Defendants deny any wrongdoing or liability. The parties disagree on liability and damages. Class Representatives wish to avoid the risk and delay of further litigation and secure a substantial benefit for the Settlement Class. Defendants wish to avoid the cost and distraction of further litigation.

How much will I recover? The estimated average recovery per affected Teva Security is approximately $0.37 per ADS (or $0.64 for ADS purchased in the ADS Offering), $17.65 per Preferred Share, $0.13 per 2018 Note, $0.28 per 2019 Note, $0.61 per 2021 Note, $1.37 per 2023 Note, $2.08 per 2026 Note, and $3.57 per 2046 Note, before deduction of Court-approved fees, expenses, and costs. This amount will vary based on (among other things) the number of valid claims and the size and timing of your transactions in Teva Securities.

The Court will hold a hearing on June 2, 2022 at 10:00 a.m. to consider whether to approve the settlement and Class Counsel Bleichmar Fonti & Auld LLP's request for attorneys' fees not to exceed 23.75% of the Settlement Amount, and expenses not to exceed $11,000,000, including awards to Class Representatives of no more than $100,000 (an average of approximately $0.10 per affected ADS (or $0.17 for ADS purchased in the Offering), $4.65 per affected Preferred Share, $0.03 per affected 2018 Note, $0.07 per affected 2019 Note, $0.16 per affected 2021 Note, $0.36 per affected 2023 Note, $0.55 per affected 2026 Note, and $0.94 per affected 2046 Note). You may, but are not required to, attend, and may also appear through counsel of your choice and at your own expense.

How can I get more information? Visit the Settlement Website at **www.TevaSecuritiesLitigation.com**, contact the Claims Administrator at 1-855-675-3124 or 1-503-520-4435 outside the U.S. and Canada, or contact Class Counsel: Joseph A. Fonti, Bleichmar Fonti & Auld LLP, 7 Times Square, 27th Floor, New York, NY 10036, Telephone: (888) 879-9418.

DIRECT ACTION PLAINTIFFS ONLY

You are only a Direct Action Plaintiff if you retained counsel and filed with the Court one of the lawsuits listed in Appendix B to the Long-Form Notice. If you do not know whether you are a Direct Action Plaintiff, you are unlikely to be one. Direct Action Plaintiffs who wish to participate in the settlement must (a) dismiss their action and (b) electronically submit or postmark their Proof of Claim and Release Forms (including copies of stockbroker confirmation slips, stockbroker statements, or other documents requested therein) no later than May 2, 2022 (with simultaneous copies emailed to Class Counsel (tevasettlement@bfalaw.com) and counsel for Defendants (tevasettlement@kasowitz.com)). If you are a Direct Action Plaintiff and do not timely take the steps listed above, you will not share in the proceeds of the settlement and your claims are not released.

SPECIAL NOTICE TO NOMINEES

Nominees who purchased or otherwise acquired Teva ADS, Preferred Shares, and/or Notes for the beneficial interest of other Persons or entities between February 6, 2014 and May 10, 2019, inclusive, shall either: (i) within seven (7) calendar days of receipt of this Notice, request from the Claims Administrator sufficient copies of the Notice to forward to all such beneficial owners and within seven (7) calendar days of receipt of those Notices forward them to all such beneficial owners; or (ii) within seven (7) calendar days of receipt of this Notice, provide a list of the names and addresses of all such beneficial owners to the Claims Administrator at Epiq Class & Claims Solutions, Inc., *In re Teva Securities Litigation,* P.O. Box 3565, Portland, OR 97208-3565.

If you choose the first option, you must send a statement to the Claims Administrator confirming that the mailing was made and **you must retain your mailing records for use in connection with any further notices that may be provided in the Litigation**.

If you choose the second option, the Claims Administrator will send a copy of the Notice to the beneficial owners.

www.TevaSecuritiesLitigation.com

Upon full and timely compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought.

For more information, please visit / בעברית זה למידע, באתר בקר אנא:
www.TevaSecuritiesLitigation.com (the "Settlement Website") or

Call the Claims Administrator at 1-855-675-3124 or 1-503-520-4435 outside the U.S. and Canada

The following QR code links to the Settlement Website:

www.TevaSecuritiesLitigation.com

www.TevaSecuritiesLitigation.com

Exhibit B

Proof of Publication of Summary Notice

CONFIRMATION OF PUBLICATION

IN THE MATTER OF: ***Teva Securities Litigation***

I, Kathleen Komraus, hereby certify that

(a) I am the Media & Design Manager at Epiq Class Action & Claims Solutions, a noticing administrator, and;
(b) The Notice of which the annexed is a copy was published in the following publications on the following dates:

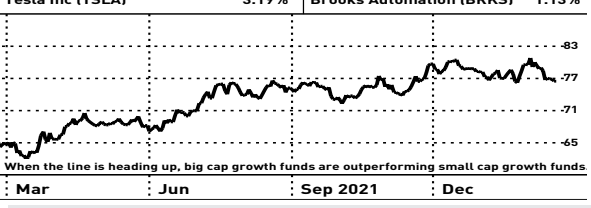
2.21.2022 – IBD Weekly
2.21.2022 – PR Newswire
2.22.2022 – Wall Street Journal
2.23.2022 – Globes

X Kathleen Komraus
(Signature)

Media & Design Manager
(Title)

BIG CAP GROWTH ETF (SPYG) VS SMALL CAP GROWTH ETF (SLYG)

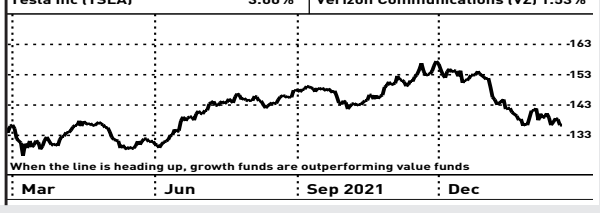
Apple Inc (AAPL)	12.63%	NeoGenomics Inc (NEO)	1.35%
Microsoft Corp (MSFT)	10.02%	Cleveland-Cliffs Inc (CLF)	1.31%
Amazon.com Inc (AMZN)	8.27%	Yeti Holdings Inc (YETI)	1.16%
Facebook Inc Cl A (FB)	3.91%	Omnicell Inc (OMCL)	1.14%
Tesla Inc (TSLA)	3.19%	Brooks Automation (BRKS)	1.13%



When the line is heading up, big cap growth funds are outperforming small cap growth funds

GROWTH ETF (IUSG) VS VALUE ETF (IUSV)

Apple Inc (AAPL)	11.88%	Berkshire Hathaway (BRKB)	2.84%
Microsoft Corp (MSFT)	9.42%	J P Morgan Chase (JPM)	2.43%
Amazon.com Inc (AMZN)	7.78%	Walt Disney Company (DIS)	2.06%
Facebook Inc Cl A (FB)	3.68%	Johnson & Johnson (JNJ)	1.56%
Tesla Inc (TSLA)	3.00%	Verizon Communications (VZ)	1.53%



When the line is heading up, growth funds are outperforming value funds

Top Growth Funds

Last 3 months (all total returns)

Mutual Fund	Performance % Change Last 3 Mo	Rating 36 mos	$ Net Assets
Fidelity NewMillnm	+3	B	2.6 bil
FidelityMgmt MegaCapStk	+2	A	1.6 bil
BlackRock A Exchange	+1	A	214 mil
Fidelity MidCpStkK	+1	+B	7.5 bil
Fidelity MidcapStck	+1	+B	7.5 bil
ClearBridge Inv DivStrtegyA	+0	-A	7.5 bil
Pioneer A CoreEquity		A	2.1 bil
Glenmede SmlEqAdv	-1	+B	1.5 bil
AMG Funds GlobalRet	-1	-A	149 mil
Tocqueville Tocqueville	-2	-A	299 mil
State Frm Asc Growth	-2	-A	6.8 bil
Sit Funds DivGrowthI	-2	-A	240 mil
PRIMECAPOdyssey Stock	-3	+B	7.1 bil
Invesco Funds A RisingDivs	-3	+B	3 bil
Schwab CoreEquity	-3	-A	1.6 bil
Ave Maria Funds RisingDiv	-3	B	909 mil
Thrivent Funds A SmlCapStk	-3	-A	1.5 bil
SEI Port TxMgdLgCpF	-3	-A	4.6 bil
DWS Investments CoreEquity	-3	-A	4.4 bil
Fidelity EnhancedIdx	-3	A	1.6 bil
Neubg Brm InstlSustainEq	-4	-A	1.8 bil
Dimensional USCorEq2I	-4	-A	34.9 bil
JP Morgan Instl USEquity	-4	+A	21.1 bil
Sterling CapitalSpecialIn	-4	-A	641 mil
Glenmede StrategicEq	-4	+B	252 mil

U.S. Stock Fund Cash Position — High (11/00) 6.2% — Low (12/21) 1.5%

20-Jul	1.90%	21-Jan	1.60%	21-Jul	1.70%
20-Aug	1.90%	21-Feb	1.70%	21-Aug	1.70%
20-Sep	1.90%	21-Mar	1.70%	21-Sep	1.70%
20-Oct	1.70%	21-Apr	1.80%	21-Oct	1.70%
20-Nov	1.80%	21-May	1.70%	21-Nov	1.70%
20-Dec	1.60%	21-Jun	1.70%	21-Dec	1.50%

36 Mo Performance Rating	Fund	YTD % Chg	12Wk % Chg	5 Yr % After Tax Rtn	Net Asset Value	NAV Chg
C+	World529E	-6	-3	+61	59.32n	-.46
American Funds F						
$ 2694 bil 800-421-8511						
B+	AMCAP529F1	-14	-12	+88	38.83n	-.43
B+	AMCAPF1	-14	-12	+87	38.53n	-.43
B+	Amer529F	-8	-4	+73	47.40n	-.35
A	Amer529F	-14	-14	+111	62.69n	-.76
C-	Amer529F1	-2	+1	+42	25.19n	-.05
B+	AmerF1	-8	-4	+72	47.48n	-.36
C	BalancedF	-5	-3	+55	31.63n	-.08
C	BalancedF1	-5	-3	+54	31.69n	-.08
D	Bldr529F	-1	+3	+34	69.09n	-.23
E	Bond529F	-4	-4	+16	12.90n	+.02
E	BondF1	-4	-4	+15	12.90n	+.02
B-	CapitalF1	-6	-3	+62	59.50n	-.46
A	F1Growth	-14	-14	+109	63.27n	-.78
C-	Growth529F1	-10	-8	+54	57.57n	-.64
C-	GrowthF1	-10	-8	+53	58.21n	-.65
D	IncomeBldr	-1	+3	+34	69.12n	-.23
D+	IncomeF1	-2	+1	+41	25.19n	-.05
B+	Invs529F1	-8	-4	+76	69.81n	-.56
B+	InvsF1	-8	-4	+75	69.96n	-.56
B-	Mutual529F	-4	+0	+66	50.95n	-.22
B+	Mutual529F1	-6	-1	+78	56.44n	-.26
B+	MutualF1	-6	-1	+77	56.53n	-.26
B-	MutualF1	-4	+0	+65	50.74n	-.22
C+	NewWorldF1	-8	-7	+68	78.46n	-.79
A	Perspective	-12	-10	+110	57.28n	-.61
A-	SmCpWld529F1	-14	-14	+87	69.02n	-.86
B+	SmlCapWldF1	-14	-14	+84	67.35n	-.84
B-	World529F	-6	-3	+63	59.45n	-.46
American Funds F2						
$ 1327 bil 800-421-8511						
B+	AMCAPF2	-14	-12	+89	39.39n	-.44
C	Balanced	-5	-2	+55	31.70n	-.09
E	BondFund	-4	-4	+16	12.90n	+.02
B-	CapitalWrld	-6	-3	+64	59.59n	-.46
D	CaptlIncome	-1	+2	+35	69.07n	-.23
C	EuropacGrth	-10	-8	+55	58.32n	-.65
C-	F2Income	-2	+1	+42	25.24n	-.05
B+	FndmntalInv	-8	-4	+76	69.99n	-.55
A	GrowthFunds	-14	-14	+111	63.59n	-.78
B-	MutualF2	-4	+0	+66	50.99n	-.22
A	NewPerF2	-12	-10	+111	58.17n	-.62
A-	SmlCapWldF2	-14	-14	+87	70.39n	-.88
B+	Washington	-6	-1	+79	56.73n	-.27
American Funds R1						
$ 1276 bil 800-421-8511						
B	AMCAPR1	-14	-13	+80	33.74n	-.37
C-	Balanced	-5	-3	+51	31.42n	-.09
E	BondR1	-4	-4	+12	12.90n	+.02
D	CapitalIncm	-2	+3	+31	69.15n	-.23
C+	CapitalWrld	-6	-3	+59	58.97n	-.46
D+	EuropacGrth	-10	-8	+49	55.31n	-.62
B	FndmntalInv	-8	-4	+72	69.53n	-.55
A	GrowthR1	-14	-14	+102	57.78n	-.71
B+	InvmtCoR1	-8	-5	+68	47.12n	-.35
C+	MutualR1	-4	+0	+62	50.34n	-.22
A	NewPrspR1	-12	-10	+102	54.42n	-.58
B+	SmlCapWldR1	-15	-14	+77	58.42n	-.73
B-	Trgt2045R1	-8	-6	+70	18.95n	-.14
B	WasngtnMutl	-6	-1	+74	56.02n	-.26
American Funds R2						
$ 1385 bil 800-421-8511						
B	AMCAPR2	-14	-13	+80	33.73n	-.38
B+	AmerR2	-8	-5	+68	47.18n	-.36
C-	BalanceR2	-5	-3	+51	31.45n	-.09
E	BondR2	-4	-4	+12	12.90n	+.02
D	CapitalIncm	-2	+3	+31	69.11n	-.23
C+	CapitalWrld	-6	-3	+59	58.76n	-.45
D+	EuropacGrth	-10	-8	+49	55.83n	-.63
B	FndmntalInv	-8	-4	+72	69.43n	-.55
A	GrowthR2	-14	-14	+102	58.59n	-.72
C+	MutualR2	-4	+0	+62	50.26n	-.22
A	NewPrspR2	-12	-10	+102	55.00n	-.59
C	NewWldR1	-8	-7	+63	75.57n	-.76
C	NewWldR2	-8	-7	+63	75.58n	-.76
B+	SmlCapWldR2	-15	-14	+77	58.50n	-.73
B	WasngtnMutl	-6	-1	+74	55.74n	-.25
American Funds R3						
$ 1468 bil 800-421-8511						
B+	AMCAPR3	-14	-12	+84	37.24n	-.42
C-	BalanceR3	-5	-3	+53	31.52n	-.08
E	BondR3	-4	-4	+14	12.90n	+.02
D	CapitalIncm	-2	+3	+33	69.12n	-.22
C+	CapWrld	-6	-3	+61	59.18n	-.45
C-	EuropacGrth	-10	-8	+52	56.97n	-.64
B+	FndmntalInv	-8	-4	+74	69.77n	-.55
A	GrowthR3	-14	-14	+107	62.05n	-.76
D+	IncomeR3	-2	+1	+40	25.15n	-.04
B+	InvmtCoR3	-8	-4	+70	47.39n	-.36
C+	MutualR3	-4	+0	+64	50.52n	-.22
A	NewPrspR3	-12	-10	+107	56.70n	-.61
C+	NewWldR3	-8	-7	+67	77.69n	-.78
B+	SmlCapWldR3	-15	-14	+82	64.08n	-.80
B	WasngtnMutl	-6	-1	+76	56.18n	-.26
American Funds R4						
$ 1492 bil 800-421-8511						
B+	AMCAPR4	-14	-12	+87	38.54n	-.43
C	BalancedR4	-5	-3	+54	31.66n	-.09
E	BondR4	-4	-4	+15	12.90n	+.02
D	CapitalIncm	-1	+3	+34	69.10n	-.23
B-	CapitalWrld	-6	-3	+63	59.48n	-.46
C-	EuropacGrth	-10	-8	+53	57.10n	-.64

Top Growth Funds

Last 36 months (all total returns)

Mutual Fund	Performance % Change YTD	Rating 36 mos	$ Net Assets
Baron Retail Prtnrsretl	-18	+A	7.6 bil
FidelityMgmt Growth	-16	+A	58.1 bil
FidelityMgmt BluChpGr	-16	+A	53.8 bil
Vanguard GrwthIndxInv	-15	+A	79.4 bil
Amana GrwthInvstr	-12	+A	3.5 bil
PriceFds OppFund	-9	+A	8.4 bil
Sit Funds LgCpGr	-14	+A	169 mil
Amer Cent Inv FocusedInv	-17	+A	2.1 bil
AMG Funds GrowthN	-11	+A	287 mil
PgimInvest JennisonGrA	-18	+A	7.4 bil
Thrivent Funds A GrowthA	-14	+A	2.1 bil
BlackRock Instl LrgeCapInst	-14	+A	1 bil
EdgeWood GrwthInstl	-20	+A	28 bil
Commerce ComGrowth	-13	+A	193 mil
Vanguard GrowthInv	-19	+A	45.3 bil
Guinness Atkinson GlobalInnInv	-13	+A	199 mil
Carillon Family CapitalAppA	-13	+A	594 mil
BridBuildLrgCapGrwth	-13	+A	17.1 bil
Gabelli AAA GrowthAAA	-16	+A	989 mil
Delaware A GrwEquity	-13	+A	513 mil
PgimInvest GrowthA	-15	+A	309 mil
Schwab LrgGrowth	-12	+A	272 mil
JP Morgan Instl USEquity	-7	+A	21.1 bil
MFS Funds A GrowthA	-16	+A	42.8 bil
Principal Investors MidCapGroJ	-17	+A	291 mil

36 Mo Performance Rating	Fund	YTD % Chg	12Wk % Chg	5 Yr % After Tax Rtn	Net Asset Value	NAV Chg
B+	FndmntalInv	-8	-4	+75	69.82n	-.55
A	GrowthR4	-14	-14	+109	63.07n	-.77
D+	IncomeR4	-2	+1	+41	25.21n	-.05
B+	InvmtCoR4	-8	-4	+72	47.46n	-.36
B-	MutualR4	-4	+0	+65	50.80n	-.22
A	NewperpR4	-12	-10	+109	57.42n	-.61
C+	NewWldR4	-8	-7	+68	78.51n	-.79
A-	RetireR4	-8	-5	+89	18.92n	-.13
B+	SmlCapWldR4	-14	-14	+85	67.82n	-.85
B+	WasngtnMutl	-6	-1	+78	56.42n	-.26
American Funds R5						
$ 1164 bil 800-421-8511						
B+	AMCAPR5	-14	-12	+89	39.79n	-.45
C	BalancedR5	-5	-2	+56	31.77n	-.09
E	BondR5	-4	-4	+16	12.90n	+.02
D	CapitalIncm	-1	+3	+35	69.16n	-.22
C	EuropacGrth	-10	-8	+55	58.40n	-.65
A	GrowthR5	-14	-14	+112	63.77n	-.78
B+	InvmtCoR5	-8	-4	+73	47.63n	-.36
B-	MutualR5	-4	+0	+67	51.02n	-.22
A	NewperspR5	-12	-10	+111	58.37n	-.62
C+	NewWldR5	-8	-7	+70	79.27n	-.80
A-	SmlCapWldR5	-14	-14	+88	71.80n	-.90
B+	WasngtnMutl	-6	-1	+79	56.77n	-.27
American Funds R6						
$ 1490 bil 800-421-8511						
B+	AMCAPR6	-14	-12	+90	39.69n	-.44
C	BalancedR6	-5	-2	+56	31.74n	-.09
D-	BondR6	-4	-4	+16	12.90n	+.02
D	CapitalIncm	-1	+3	+35	69.13n	-.22
B-	CapitalWrld	-6	-3	+64	59.66n	-.47
C	Europacific	-10	-8	+55	58.46n	-.66
B+	FndmntlInvs	-8	-4	+77	70.04n	-.56
A	GrowthR6	-14	-14	+112	63.86n	-.78
C-	IncomeR6	-2	+1	+42	25.29n	-.04
A	InvmtCoR6	-8	-4	+73	47.62n	-.36
B-	MutualR6	-4	+0	+67	51.04n	-.22
A	NewPerR6	-12	-10	+112	58.47n	-.62
C+	NewWorldR6	-8	-6	+71	79.02n	-.79
A-	SmlCapWld	-14	-14	+88	71.04n	-.88
B+	WasngtnMutl	-6	-1	+79	56.84n	-.26
Amerindo Funds						
$ 85.4 bil 888-832-4386						
B-	CpWrldG#IR5	-6	-3	+64	59.68n	-.46
AMG Funds						
$ 42.6 bil 800-548-4539						
A+	GrowthN	-11	-8	+105	12.21n	-.07
A	MidCapGrZ	-14	-12	+92	15.87n	-.16
A	MidCapI	-14	-12	..	15.79n	-.16
A+	Mont#CldGrI	-11	-8	+108	12.50n	-.06
A	TSMidGrPr	-14	-12	+89	14.87n	-.15
AmSouth A						
$ 107 bil 800-451-8382						
C-	IncomeR5	-2	+1	+42	25.27n	-.05
AQR Funds						
$ 78.0 bil 866-290-2688						
A-	LargeCap	-6	-4	+78	19.00n	+.00
A	Momentum	-10	-9	+102	22.60n	+.00
A	MomentumI	-10	-9	+101	22.71n	+.00
A	MomentumL	-10	-9	+99	22.74n	+.00
A	RiskBalComI	+13	+18	+57	9.13n	+.00
Artisan Funds						
$ 90.7 bil 800-344-1770						

36 Mo Performance Rating	Fund	YTD % Chg	12Wk % Chg	5 Yr % After Tax Rtn	Net Asset Value	NAV Chg
A+	GrowthOppo	-14	-14	+107	32.63n	-.41
A+	MidCapInst	-17	-18	+108	44.27n	-.76
A+	MidCapInv	-17	-19	+103	37.11n	-.64
A-	ValInst	0	+5	+61	14.99n	-.05
Asstmgmt						
$ 13.9 bil 877-225-5266						
A	LargeCpR6	-11	-8	+72	20.80n	+.00
Ave Maria Funds						
$ 2.1 bil 866-283-6274						
A-	Growth	-14	-10	+100	38.67n	-.24
–B–						
Baird Funds						
$ 116 bil 866-442-2473						
E	AggrBndInst	-4	-4	+14	10.93n	+.02
A	MidCapInv	-17	-16	+116	22.35n	-.22
Baron Instl						
$ 10.4 bil 800-992-2766						
A-	Asset	-18	-15	+114	101.72n	-.92
A	BaronGrt	-24	-26	+151	42.43n	-.86
A+	Opportunity	-20	-22	+236	35.05n	-.50
A+	RealEstate	-9	-3	+121	37.71n	-.34
A-	SmallCap	-17	-16	+104	33.48n	-.41
Baron Retail						
$ 7.6 bil 800-992-2766						
A+	Prtnrsretl	-18	-17	+399	163.92n	-2.6
Baron Funds						
$ 7.4 bil 800-992-2766						
A-	Asset	-18	-15	+111	96.55n	-.87
A-	Discovery	-21	-21	+131	27.38n	-.61
A+	Opportunity	-20	-22	+231	33.07n	-.47
A+	RealEstate	-9	-3	+118	36.68n	-.34
Berkshire Funds						
$ 736 mil 877-526-0707						
A+	Focus	-26	-33	+150	26.66n	-.96
BlackRock A						
$ 140 bil 212-810-5596						
A	CapAppInvA	-17	-16	+135	32.42	-.35
A	CoreInv	-10	-6	+84	18.43	-.16
A	EqInvA	-19	-18	+144	33.14	-.47
A	Exchange	-3	+1	+97	1726.77n	-8.0
C-	Glob Alloc	-5	-5	+40	19.83	+.00
A+	LarCapGrInv	-14	-12	+124	19.48	-.22
BlackRock BlRk						
$ 3.4 bil 212-810-5596						
A+	CapAppK	-17	-16	+141	36.88n	-.40
BlackRock C						
$ 149 bil 212-810-5596						
A+	AdvLarCap	-14	-12	+115	15.74n	-.17
A	CapAppInvC	-17	-16	+120	19.47n	-.21
A-	CapCoreInv	-10	-7	+76	14.89n	-.12
A	EqInvC	-19	-19	+134	24.86n	-.35
A-	EquityInvC	-9	-6	+84	13.36n	-.07
D+	GlobAlloc	-5	-5	+35	17.41n	+.00
A-	SmCapGr	0	+0	+68	6.21n	+.00
BlackRock Instl						
$ 168 bil 212-810-5596						
A+	CapAppInst	-17	-16	+140	36.51n	-.39
A	EqInstl	-19	-18	+147	38.88n	-.56
C-	Glob Alloc	-5	-5	+42	20.00n	+.01

36 Mo Performance Rating	Fund	YTD % Chg	12Wk % Chg	5 Yr % After Tax Rtn	Net Asset Value	NAV Chg
A	LarCapCore	-10	-6	+86	19.42n	-.17
A-	LngHrznEqty	-9	-6	+91	13.19n	-.07
A+	LrgeCapInst	-14	-12	+125	20.68n	-.23
A+	Technology	-20	-21	+247	52.91n	-.86
BlackRock K						
$ 34.4 bil 212-810-5596						
A	S#P500Ind	-9	-5	+110	512.45n	-3.6
Blackrock R						
$ 100 bil 212-810-5596						
A	AdvCapCore	-10	-6	+81	16.76n	-.14
A	CapAppR	-17	-16	+128	24.04n	-.26
A	EquityR	-19	-19	+140	32.35n	-.47
D+	Glob Alloc	-5	-5	+38	18.60n	+.00
BlackRock Svc						
$ 28.8 bil 212-810-5596						
A	MidCapEqSvc	-19	-18	+144	34.78n	-.50
A	SmCapGr	0	+0	+89	20.80n	+.00
Blackrock Funds						
$ 143 bil 212-810-5596						
A+	Oppertunity	-20	-21	+229	38.82n	-.64
A	StockIndex	-9	-5	+107	31.81n	-.23
E	StratIncOpp p	-2	-2	+5	9.96n	+.00
E	StratIncOpp p	-2	-2	+7	9.97n	+.00
E	StrtIncOppA p	-2	-2	+6	9.96	+.00
BNY Mellon						
$ 44.4 bil 212-495-1784						
A	EquityOppM	-9	-8	+107	18.00n	-.16
A	LgCapEql	-10	-7	+105	26.38n	-.28
A+	ResearchGrw	-15	-14	+120	18.08n	-.31
A-	ResourcesI	+12	+18	+58	47.16n	-.47
A-	SmMdCpGrI	-16	-17	+119	28.72n	-.63
A	TxSnstvLgCp	-8	-5	+96	19.45n	-.17
A+	WrldwidgrwA	-10	-6	+108	66.67	-.42
BridBuild						
$ 66.7 bil 855-823-3611						
A+	LrgCapGrwth	-13	-11	+137	20.47n	-.21
A-	LrgCapVal	-2	+3	+79	16.99n	-.06
Bridges						
$ 276 mil 203-780-8000						
A+	BridInvst	-12	-9	+119	91.77n	-.95
Bridgeway Funds						
$ 2.7 bil 800-531-4066						
A-	BluChp35Idx	-5	-2	+87	13.68n	-.08
BrightRock						
$ 298 mil 800-826-6101						
A-	QltyLCInstl	-8	-4	+81	21.06n	-.10
Brown Advisory						
$ 9.5 bil 410-537-5400						
A+	EquityInv	-8	-6	+121	31.88n	-.22
A+	FlexEqtInst	-8	-6	+123	31.99n	-.22
A	GrowEqtInst	-19	-18	+141	28.38n	-.36
A+	GrowthI	-18	-17	+172	41.09n	-.55
Buffalo Funds						
$ 4.0 bil 800-492-8332						
A+	SmallCap	-18	-19	+106	15.63n	-.22
–C–						
Calamos Funds						
$ 35.3 bil 630-245-7200						
A-	CalGrwtIncA	-8	-5	+86	43.12	-.31
A-	ConvertI	-9	-9	+80	18.32n	-.17
A-	Gr#IncC	-8	-5	+81	43.46n	-.32
A-	Gr#IncI	-8	-5	+87	41.08n	-.29
A	GrowthC	-15	-15	+80	13.61n	-.19
A	GrowthI	-15	-14	+109	52.63n	-.75
A-	IntlGrowA	-9	-7	+81	21.43	-.19
A-	IntlGrowC	-10	-8	+73	17.96n	-.16
A	IntlGrowI	-9	-7	+83	22.33n	-.20
Calvert Group						
$ 2.9 bil 800-368-2745						
A+	EquityC	-14	-10	+134	35.93n	-.11
Cambiar Funds						
$ 4.7 bil 866-777-8227						
A-	OpportInstl	-3	+1	+68	26.74n	-.13
Carillon Family						
$ 23.8 bil 800-421-4184						
A+	CapApprI	-13	-11	+131	58.09n	-.60
A+	CapitalAppA	-13	-11	+128	54.22	-.57
A-	EglMidCpGrA	-15	-15	+109	76.47	-.95
A-	MidCap	-15	-15	+114	83.56n	-1.0
A-	MidCapGrw	-15	-15	+113	82.65n	-1.0
A-	MidCapGrw	-15	-15	+106	72.86n	-.91
A-	MidCapGrw	-15	-15	+113	82.35n	-1.0
CGM Funds						
$ 414 mil 800-345-4048						
E	Focus	+2	+1	-1	44.24n	-.13
Champlain						
$ 2.0 bil 866-773-3238						
A-	MidCap b	-13	-10	+106	24.29n	-.20
ClearBridge Inv						
$ 31.0 bil 800-691-6960						
A-	DivStrtegyA	-4	+0	+83	29.52	-.08
A	LrgCapGrwA	-16	-15	+118	54.81	-.66
A-	MidCapI	-11	-8	+65	43.50n	-.24
Columbia A						
$ 117 bil 800-345-6611						

36 Mo Performance Rating	Fund	YTD % Chg	12Wk % Chg	5 Yr % After Tax Rtn	Net Asset Value	NAV Chg
A	ContraCore	-7	-3	+97	30.70	-.32
A-	Conv Secs	-8	-8	+82	23.35	-.24
A	GlobalEq	-15	-14	+125	16.74	-.21
A+	LargeGrA	-14	-13	+135	52.47	-.62
A+	LargeGrow	-11	-8	+114	9.57	-.09
A	Lg Cp Idx	-9	-5	+96	56.00n	-.40
A	LrgCapCore	-8	-4	+103	18.77	-.16
A-	LrgEnCore	-7	-3	+89	25.53n	-.16
A-	MidCapGrow	-18	-21	+73	20.62	-.25
A+	SelGlbTch	-13	-8	+192	63.13	-.89
A	SelLgGr	-18	-20	+95	8.97	-.18
A-	SmallGrI	-19	-21	+106	21.12	-.42
A+	Tech#InfoA	-13	-7	+189	113.01	-1.5
A+	Technology	-15	-13	+204	58.80	-.83
Columbia C						
$ 95.3 bil 800-345-6611						
A	Contrar	-7	-3	+90	26.52n	-.28
A-	ConvSecs	-8	-9	+77	23.23n	-.23
A-	LargeCore	-8	-3	+89	12.96n	-.06
A-	LargeGrow	-18	-20	+81	5.78n	-.12
A+	LrgCapGrow	-14	-13	+124	39.07n	-.46
A+	SelgCom#Inf	-13	-7	+169	58.94n	-.80
A+	SelGlbTch	-14	-8	+176	41.32n	-.58
A+	Technology	-15	-13	+194	51.54n	-.73
Columbia I,T&G						
$ 22.9 bil 800-345-6611						
A-	MidCapGrT	-18	-21	+73	20.46	-.24
A-	SmallGrI	-19	-21	+109	23.19n	-.46
Columbia R						
$ 132 bil 800-345-6611						
A	ContraCore	-7	-3	+99	31.78n	-.33
A	Contrar	-7	-3	+95	30.72n	-.32
A+	Contrar	-7	-3	+100	31.74n	-.34
A-	Convert	-8	-8	+84	23.66n	-.23
A-	CoreR5	-8	-3	+97	13.39n	-.06
A	Largecap	-9	-5	+98	57.67n	-.41
A	LargeGrow	-18	-20	+102	10.99n	-.22
A-	LGcap	-7	-3	+87	25.43n	-.16
A-	MidCapGr	-18	-21	+77	23.96n	-.29
A+	SelCom#Inf	-13	-7	+185	104.31n	-1.4
Columbia Y						
$ 39.8 bil 800-345-6611						
A+	ContrarCore	-7	-3	+100	31.77n	-.33
A	LrgCapGr	-18	-20	+103	11.32n	-.22
A	LrgEnCore	-7	-2	+92	25.49n	-.16
Columbia Z						
$ 48.9 bil 800-345-6611						
A-	DisCore	-8	-3	+97	13.46n	-.07
Columbia Funds						
$ 43.1 bil 800-345-6611						
A	ContraCore	-7	-3	+97	30.28	-.32
A-	ConvSecs	-8	-8	+83	23.40n	-.24
A+	LargeGrV	-14	-13	+135	51.79	-.62
A+	SelCom#Inf	-13	-7	+195	129.95n	-1.8
A+	SelGlob	-13	-8	+195	64.98n	-.92
A+	SeligCom	-13	-7	+195	129.07n	-1.8
CONGRESS						
$ 1.3 bil 800-234-4516						
A+	CapGrowth	-13	-10	+140	38.49n	-.39
A+	GrwthRetail	-14	-13	+107	27.49n	-.23
Credit Suisse ABCD						
$ 9.0 bil 877-870-2874						
A+	CommodRtn	+12	+12	+636	27.33	+.02
–D–E–						
Davenport Funds						
$ 1.8 bil 800-846-6666						
A-	Core	-10	-6	+86	30.97n	-.22
A	EquityOpp	-12	-9	+97	23.16n	-.22
Delaware A						
$ 67.5 bil 877-693-3546						
A+	GrwEquity	-13	-10	+123	12.23	-.13
A+	Sci#TechA	-14	-12	+135	61.10	-.77
A-	SMIDCapGrow	-22	-26	+126	23.57	-.66
Delaware C						
$ 40.8 bil 877-693-3546						
A	GrowthC	0	+0	+96	18.19n	+.00
A-	LrgCpGrow	-16	-16	+98	14.19n	-.20
A-	SMIDCapGrow	-22	-26	+91	2.76n	-.08
Delaware Instl						
$ 37.2 bil 877-693-3546						
A-	LargeCap	-16	-16	+110	19.08	-.27
A-	SmidCapGrwt	-22	-26	+136	38.27n	-1.1
A	SmlCpGrow	-15	-14	+99	14.05n	-.19
**DEUTS

Bleichmar Fonti & Auld LLP Announce a Proposed Class Action Settlement Involving Purchasers of Teva Pharmaceutical Securities

NEWS PROVIDED BY
Bleichmar Fonti & Auld LLP →
Feb 21, 2022, 08:00 ET

BRIDGEPORT, Conn., Feb. 21, 2022 /PRNewswire/ --

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE TEVA SECURITIES LITIGATION | No. 3:17-cv-00558 (SRU)

SUMMARY NOTICE OF PENDENCY AND
PROPOSED SETTLEMENT OF CLASS ACTION

TO: Purchasers and acquirers in domestic transactions of Teva Pharmaceutical Industries Ltd. ("Teva") American Depositary Shares, Teva 7.00% mandatory convertible preferred shares, and/or certain Teva Pharmaceutical Finance Netherlands III B.V. ("Teva Finance") U.S.-dollar-denominated senior notes during the period from February 6, 2014 through May 10, 2019, inclusive.

IF YOU PURCHASED OR ACQUIRED TEVA SECURITIES (DEFINED BELOW) FROM FEBRUARY 6, 2014 THROUGH MAY 10, 2019, INCLUSIVE, YOUR RIGHTS MAY BE AFFECTED BY A PROPOSED SETTLEMENT IN THIS LITIGATION (THE "LITIGATION").

THIS SUMMARY NOTICE WAS AUTHORIZED BY THE COURT. IT IS NOT A LAWYER SOLICITATION. PLEASE READ THIS SUMMARY NOTICE CAREFULLY AND IN ITS ENTIRETY.

YOU ARE HEREBY NOTIFIED that a hearing will be held on ***June 2, 2022, at 10:00 a.m.***, before the Honorable Stefan R. Underhill, United States District Judge, at the United States District Court for the District of Connecticut (the "Court"), Brien McMahon Federal Building, 915 Lafayette Boulevard, Bridgeport, CT 06604 for the purpose of determining: (1) whether the proposed settlement of the Litigation, as set forth in the Stipulation dated January 18, 2022, consisting of Four Hundred and Twenty Million U.S. dollars ($420,000,000) in cash, should be approved as fair, reasonable, and adequate to the Settlement Class Members; (2) whether the proposed plan to distribute the Net Settlement Fund (the "Plan of Allocation") is fair, reasonable, and adequate; (3) whether the applications by Class Counsel for attorneys' fees and expenses should be approved; (4) whether Class Representatives should receive awards pursuant to 15 U.S.C. § 78u-4(a)(4) in connection with their representation of the Settlement Class and, if so, in what amount; and (5) whether the proposed Judgment should be entered.

The Litigation has been certified as a class action on behalf of all persons and entities (with certain exclusions) who purchased or acquired Teva Securities from February 6, 2014 through May 10, 2019, inclusive. The "Teva Securities" are: Teva Pharmaceutical Industries Ltd. ("Teva") American Depositary Shares ("ADS") (ISIN No. US8816242098; CUSIP 881624209), Teva 7% mandatory convertible preferred shares ("Preferred Shares") (ISIN No. IL0062905489; CUSIP M8769Q 136), and the following Teva Pharmaceutical Finance Netherlands III B.V. ("Teva Finance") U.S.-dollar-denominated senior notes: 1.400% Senior Notes due July 20, 2018 (ISIN US88167AAA97; CUSIP 88167A AA9); 1.700% Senior Notes due July 19, 2019 (ISIN US88167AAB70; CUSIP 88167A AB7); 2.200% Senior Notes due July 21, 2021 (ISIN US88167AAC53; CUSIP 88167A AC5); 2.800% Senior Notes due July 21, 2023 (ISIN US88167AAD37; CUSIP 88167A AD3); 3.150% Senior Notes due October 1, 2026 (ISIN US88167AAE10; CUSIP 88167A AE1); and 4.100% Senior Notes due October 1, 2046 (ISIN US88167AAF84; CUSIP 88167A AF8) (collectively, the "Notes").

A detailed description of the Litigation, including important information about your rights and options, is in the detailed Long-Form Notice of Pendency and Proposed Settlement of Class Action (the "Long-Form Notice"), available at **www.TevaSecuritiesLitigation.com** or by contacting the Claims Administrator at: Epiq Class Action & Claims Solutions, Inc., *In re Teva Securities Litigation*, P.O. Box 3565, Portland, OR 97208-3565, Telephone: **(855) 675-3124, or 1-503-520-4435 outside the U.S. and Canada**.

To be eligible for a payment from the Net Settlement Fund you must submit a Proof of Claim and Release Form electronically submitted or postmarked by no later than May 17, 2022. To obtain a copy of the Proof of Claim and Release Form, visit **www.TevaSecuritiesLitigation.com** or contact the Claims Administrator at the address above. Failure to submit your Proof of Claim and Release Form by May 17, 2022 will subject your claim to possible rejection and may preclude you from receiving any payment from the settlement.

To be excluded from the settlement, you must submit a written request for exclusion, in accordance with all of the instructions in the Long-Form Notice, ***electronically submitted or postmarked no later than May 2, 2022***. If you request exclusion, you will not receive any payment from the settlement.

If you are a Settlement Class Member and you do nothing, you will not share in the proceeds of the settlement, but you will be bound by the settlement and shall have fully released all of the Released Claims against the Released Defendants.

Direct Action Plaintiffs are those plaintiffs who retained counsel and filed with the Court one of the lawsuits listed in Appendix B to the Long-Form Notice. The foregoing deadlines do not apply to the Direct Action Plaintiffs. Direct Action Plaintiffs who wish to participate in the settlement must take certain steps, specified in the Long-Form Notice, ***no later than May 2, 2022***.

To object to any aspect of the settlement, the Plan of Allocation, the application for attorneys' fees and expenses, or Class Representatives' request for awards pursuant to 15 U.S.C. § 78u-4(a)(4), you must submit a written objection in accordance with all of the instructions in the Long-Form Notice that is ***received or filed, not simply postmarked, on or before May 12, 2022***. If you object, but also want to be eligible for a payment, you must submit a timely Proof of Claim and Release Form.

Inquiries, other than requests for the Long-Form Notice, may be made by emailing Class Counsel at TevaSettlement@bfalaw.com or contacting:

Joseph A. Fonti
Bleichmar Fonti & Auld LLP
7 Times Square, 27th Floor
New York, New York 10036
Telephone: (888) 879-9418

PLEASE DO NOT CONTACT THE COURT OR THE OFFICE OF THE CLERK WITH QUESTIONS REGARDING THIS LITIGATION OR THIS NOTICE.

Dated: February 21, 2022

BY ORDER OF THE COURT:
United States District Court for the
District of Connecticut

SOURCE Bleichmar Fonti & Auld LLP

P2JW053000-0-B00400-17EFFF7178F

Case 3:17-cv-00558-SRU Document 952-2 Filed 04/28/22 Page 27 of 28

AGL Energy Rejects Takeover

By Stuart Condie

SYDNEY—Mike Cannon-Brookes thought Australia's biggest polluter wasn't doing enough to curb its greenhouse gas emissions, so he sought to buy the company.

Mr. Cannon-Brookes, co-founder of Nasdaq-listed software company **Atlassian** Corp. teamed up with Canada's **Brookfield Asset Management** Inc. to try to acquire electricity generator **AGL Energy** Ltd., in a proposal valued at more than $3.5 billion. Central to their ambition is a plan to shut AGL's coal-fired power plants years ahead of schedule and replace them with renewable energy.

AGL, which the Australian government's Clean Energy Regulator says is Australia's largest emitter of greenhouse gases, said Monday that it had rejected the takeover proposal as too low.

KAREN DIAS/BLOOMBERG NEWS

Mike Cannon-Brookes's proposed offer is more than $3.5 billion.

The company plans to close the last of its coal plants by 2045. Mr. Cannon-Brookes and Brookfield, whose head of investing in low-carbon technology is former Bank of England Gov. Mark Carney, say they can make AGL a net-zero emitter by 2035.

"AGL accounts for over 8% of Australia's emissions," Mr. Cannon-Brookes said. That is more than the current emissions of Australia's domestic aviation industry and fleet of jets flying on international routes, or every car on the country's roads, he added.

AGL said shareholders would be better off if AGL advanced a plan to separate its generation business, to be called Accel Energy Ltd., from its retail arm, which would be known as AGL Australia Ltd. The separation is due to be completed before the end of June.

Mr. Cannon-Brookes, 42 years old, is described on Atlassian's website as a "passionate clean energy evangelist" who five years ago helped to broker Tesla Inc.'s construction in South Australia of what was then the world's largest lithium-ion battery. The battery, which has since been expanded, is paired with a wind farm.

The billionaire Australian, who last year publicly argued with Australia's deputy prime minister over what he saw as a lack of detail in government policy, is also an investor in the Sun Cable Australia-Asia PowerLink project, which aims to supply power to Singapore from a northern Australia solar farm.

Mr. Cannon-Brookes's wealth is built on the value of the Class B shares in Atlassian that he owns jointly with co-founder Scott Farquhar. Together they own a majority stake in Atlassian, which is valued at $75.4 billion.

Buying AGL could also be highly profitable if Mr. Cannon-Brookes's bullish view of the shift to zero-carbon technology becomes reality. AGL is one of the country's largest power generators, with a major retail business supplying electricity and gas to households and businesses.

The takeover offer coincided with the share price of AGL hovering close to more than two-decade lows, as equity investors fretted about the impact of low wholesale electricity prices and the Covid-19 pandemic on energy demand. On Monday, AGL's stock closed 11% higher on the bid by Brookfield and Mr. Cannon-Brookes's Grok Ventures investment vehicle.

Mr. Cannon-Brookes said his team had started looking at a proposal as soon as AGL announced its breakup last year. He said bundling carbon-intensive assets into a single entity made little sense economically and that he joined with Brookfield after learning it was working on a similar plan.

Australia relies on coal to generate 75% of its electricity, though the country has one of the highest adoptions of rooftop solar per capita. That installation rate, aided by state-government support, is changing the dynamics of Australia's power-generation sector.

Frank Calabria, chief executive of Origin Energy Ltd., AGL's chief listed competitor, said last week that the company would accelerate the closure of the company's Eraring coal-fired power plant to August 2025, from a previous termination date of 2032. It plans to build a battery of up to 700 megawatts at the site in eastern Australia that can store alternative forms of electricity generation.

Closing coal-fired power plants is expensive. Origin has made a provision of around $173 million for restoring and rehabilitating the site around Eraring.

Another Australian billionaire, Andrew Forrest, said he had looked at a similar plan for AGL before opting to focus on investment in green hydrogen.

"Bringing forward the closure of Australia's coal power plans would be a game-changer for Australia's energy transition that would result in a significant reduction in our greenhouse gas emissions," said Mr. Forrest, who is chairman of iron-ore producer Fortescue Metals Group Ltd.

The consortium comprising Brookfield and Mr. Cannon-Brookes' Grok Ventures said it would spend about 20 billion Australian dollars, equivalent to US$14.4 billion, on overhauling AGL's business, including replacing 7 gigawatts of coal-fired capacity with at least 8 gigawatts of new clean energy and storage.

The consortium's proposal, made Saturday, valued AGL's equity at $3.56 billion. AGL also had roughly $2 billion of net debt on Dec. 31, according to its most recent market filings.

Tesla Plant Waits for Opening

Continued from page B1

pensive imports from its Chinese and U.S. factories.

The latest forecast opening date to come and go was last fall. Tesla Chief Executive Elon Musk said on several occasions the plant would begin building a small number of cars by the end of 2021, and likely begin deliveries in early 2022, but that ramping up to full production would take time.

"It will take a longer time to reach high-volume production than it took to build the factory. It's really difficult," he said at the plant in October.

In a way, Tesla has delivered: The plant is ready to produce cars. The regional economics ministry confirmed in January that Tesla had purchased a section of railroad track to run a shuttle between nearby Erkner and the plant to ease workers' commute. Germany's powerful industrial labor union, IG Metall, said it opened an office outside the plant to organize the workforce. Customers are putting in orders for cars built there.

What is missing to kick off commercial production is the final planning approval.

Environmental opposition to the plant explains some of the delays, but the biggest delay, regional officials and analysts said, was caused by Tesla's late application to build a battery plant that wasn't included in the original permit application.

"That cost them an additional six months," said Stefan Bratzel, director of the Center of Automotive Management, a research institute in Germany. Even so, he said, "the plant is going up in record time."

The Brandenburg state government said it used fast-track laws created in the wake of German reunification to accelerate the approval process. The state issued preliminary approval for the plant in stages, allowing Tesla to construct the plant and build a few vehicles to test systems, but preventing commercial production until final approval.

Under German law, Tesla had to submit an environmental-impact study that was open to public comment. The state collected more than 800 individual complaints during public hearings in 2020 and 2021.

State officials said they need to study each objection and make any required changes to the plant to ensure that the final permit can withstand any legal challenges after the plant has officially opened.

A spokeswoman for the Brandenburg environment ministry said the approval process was in the final phase, but she couldn't name a date for approval.

If approved, the plant could still face roadblocks. A concern expressed by local citizens and by environmental groups is that the plant and service providers who may locate in the area could use too much water, threatening residents' supply. Most of these lawsuits were dismissed by the courts.

The latest forecast opening date to come and go was last fall.

Environmental activists have sued to block a utility provider from increasing the water it draws from the ground to serve the Tesla plant via a second utility. If the court sides with the plaintiffs, the water company says it would have a shortfall so large, the entire community would be affected.

"In a nutshell: No water—no Tesla," the Wasserverband Strausberg-Erkner company said.

Analysts say it is unlikely that approval will be withheld for the factory dubbed Giga Berlin. Such a decision, which could require Tesla to pack up the plant and return the land to its original state, would likely scare investors away from Germany for years, they said.

—Rebecca Elliott contributed to this article.

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CLASS ACTION

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE TEVA SECURITIES LITIGATION — No. 3:17-cv-00558 (SRU)

SUMMARY NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION

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YOU ARE HEREBY NOTIFIED that a hearing will be held on ***June 2, 2022, at 10:00 a.m.***, before the Honorable Stefan R. Underhill, United States District Judge, at the United States District Court for the District of Connecticut (the "Court"), Brien McMahon Federal Building, 915 Lafayette Boulevard, Bridgeport, CT 06604 for the purpose of determining: (1) whether the proposed settlement of the Litigation, as set forth in the Stipulation dated January 18, 2022, consisting of Four Hundred and Twenty Million U.S. dollars ($420,000,000) in cash, should be approved as fair, reasonable, and adequate to the Settlement Class Members; (2) whether the proposed plan to distribute the Net Settlement Fund (the "Plan of Allocation") is fair, reasonable, and adequate; (3) whether the applications by Class Counsel for attorneys' fees and expenses should be approved; (4) whether Class Representatives should receive awards pursuant to 15 U.S.C. § 78u-4(a)(4) in connection with their representation of the Settlement Class and, if so, in what amount; and (5) whether the proposed Judgment should be entered.

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To be eligible for a payment from the Net Settlement Fund you must submit a Proof of Claim and Release Form electronically submitted or postmarked by no later than May 17, 2022. To obtain a copy of the Proof of Claim and Release Form, visit **www.TevaSecuritiesLitigation.com** or contact the Claims Administrator at the address above. Failure to submit your Proof of Claim and Release Form by May 17, 2022 will subject your claim to possible rejection and may preclude you from receiving any payment from the settlement.

To be excluded from the settlement, you must submit a written request for exclusion, in accordance with all of the instructions in the Long-Form Notice, ***electronically submitted or postmarked no later than May 2, 2022***. If you request exclusion, you will not receive any payment from the settlement.

If you are a Settlement Class Member and you do nothing, you will not share in the proceeds of the settlement, but you will be bound by the settlement and shall have fully released all of the Released Claims against the Released Defendants.

Direct Action Plaintiffs are those plaintiffs who retained counsel and filed with the Court one of the lawsuits listed in Appendix B to the Long-Form Notice. The foregoing deadlines do not apply to the Direct Action Plaintiffs. Direct Action Plaintiffs who wish to participate in the settlement must take certain steps, specified in the Long-Form Notice, ***no later than May 2, 2022***.

To object to any aspect of the settlement, the Plan of Allocation, the application for attorneys' fees and expenses, or Class Representatives' request for awards pursuant to 15 U.S.C. § 78u-4(a)(4), you must submit a written objection in accordance with all of the instructions in the Long-Form Notice that is ***received or filed, not simply postmarked, on or before May 12, 2022***. If you object, but also want to be eligible for a payment, you must submit a timely Proof of Claim and Release Form.

Inquiries, other than requests for the Long-Form Notice, may be made by emailing Class Counsel at TevaSettlement@bfalaw.com or contacting:

Joseph A. Fonti
Bleichmar Fonti & Auld LLP
7 Times Square, 27th Floor
New York, New York 10036
Telephone: (888) 879-9418

PLEASE DO NOT CONTACT THE COURT OR THE OFFICE OF THE CLERK WITH QUESTIONS REGARDING THIS LITIGATION OR THIS NOTICE.

Dated: February 22, 2022 — BY ORDER OF THE COURT: United States District Court for the District of Connecticut

BUSINESS OPPORTUNITIES

CRAFT ICE CREAM, NOVELTY & DESSERT MANUFACTURER

LTM Revenue ~$21MM

Sale process underway: Chef-inspired craft ice cream and frozen novelty dessert manufacturer serving branded, premium private label, and foodservice channels. Two SQF Level 3 manufacturing facilities strategically located in the Southeast and Midwest, capacity to produce 13 million gallons of product annually and a wide variety of novelty items including bites, bars, and sandwiches. Serves blue-chip customers across all 50 states and overseas.

SC&H CAPITAL

Contact: Debbie Beall
(443) 951-4854
debbiebeall@schgroup.com

BUSINESS OPPORTUNITIES

INTERNET STARTUP
$5 Million
Wanted
323-603-3443

THE WALL STREET JOURNAL.
THE MARKETPLACE
ADVERTISE TODAY
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dog•ged
/'dôgəd/
adjective

Despite spending my early life in a shelter, there's no dog more determined than me. Thanks to the National Disaster Search Dog Foundation, if you're ever trapped under rubble after a disaster, I'll find you. That's my job, and what I was born to do. You'll never find a dog more *dogged*.

THE NATIONAL DISASTER SEARCH DOG FOUNDATION
Strengthening disaster response in America by rescuing dogs and partnering them with first responders to save lives. Be Part of the Search℠ today. Call (888) 4K9-HERO, visit SearchDogFoundation.org, or write to SDF, 6800 Wheeler Canyon Road, Santa Paula, CA 93060.

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בית משפט מחוזי של ארצות הברית
מחוז קונטיקט

בהתדיינות על ניירות ערך של חברת טבע

מס' 3:17-cv-00558 (SRU)

הודעת סיכום על קנס והסדר פשרה מוצע לתובענה הייצוגית

אל: רוכשים וזוכים להקצאה בעסקאות מקומיות של חברת Teva Pharmaceutical Industries Ltd. ("Teva"), מניות מסוג Depositary Shares, טבע 7.00% מניות חובה מועדפות הניתנות להמרה ו/או איגרות חוב עדיפות מסוימות המבוטאות בדולרים של ארה"ב של Teva Pharmaceutical Finance Netherlands III B.V. ("Teva Finance"), בתקופה שבין 6 בפברואר 2014 ועד 10 במאי 2019, כולל.

אם רכשת או הוקצו לך ניירות ערך של Teva (המוגדרים להלן) מה-6 בפברואר 2014 ועד ל-10 במאי 2019, כולל, זכויותיך עשויות להיות מושפעות מהסדר פשרה מוצע בהתדיינות זו ("ההתדיינות").

הודעת סיכום זו אושרה על ידי בית המשפט. לא מדובר בשידול מצד עורך דין. נא לקרוא את הודעת הסיכום הזו בקפידה ובשלמותה.

מובא בזאת לידיעתך כי ביום **2 ביוני2022 בשעה 10:00** ייערך שימוע בפני כבוד השופט Stefan R. Underhill, שופט מחוזי בארצות הברית, בבית המשפט המחוזי של ארצות הברית במחוז קונטיקט ("בית המשפט"), שכתובתו Brien McMahon Federal Building, 915 Lafayette Boulevard, Bridgeport, CT 06604 לצורך קביעה: (1) האם הסדר הפשרה המוצע של ההתדיינות, כפי שנקבע במסמך מתאריך 18 בינואר 2022, על סך ארבע מאות ועשרים מיליון דולר אמריקאי ($420,000,000) במזומן, ראוי להיות מאושר כהוגן, באופן סביר והולם כהסדר פשרה לנמנים בקבוצת התובענה הייצוגית; (2) האם התוכנית המוצעת לחלוקת קרן הסדר הפשרה נטו ("תוכנית ההקצאה") הינה הוגנת, סבירה, ונאותה; (3) האם יש לאשר את שכר טרחת עורך הדין וההוצאות המבוקשים לתשלום על-ידי עורך הדין המייצג את התובעים; (4) האם על מייצגי התובעים לקבל תשלום על פי סעיף 15 U.S.C. § 78u-4(a)(4) בקשר לייצוגם בתובענה הייצוגית, ואם כן, באיזה סכום; וגם (5) האם יש לקבל את הסדר הפשרה המוצע.

ההתדיינות אושרה כתובענה ייצוגית בשם כל האנשים והישויות (עם החרגות מסוימות) אשר רכשו או הוקצו להם ניירות ערך של Teva החל מ-6 בפברואר 2014 ועד ל-10 במאי 2019, כולל. "ניירות הערך של Teva" הם: מניות Teva Pharmaceutical Industries Ltd. ("Teva") American Depositary Shares ("ADS") (ISIN US8816242098; CUSIP 881624209), מניות חובה של טבע, מועדפות ובנות המרה ("מניות מועדפות") 7% (ISIN IL0062905489; CUSIP M8769Q 136), ואיגרות החוב העדיפות הבאות של Teva Pharmaceutical Finance Netherlands III B.V. ("Teva Finance") המבוטאות בדולרים של ארה"ב": איגרות חוב עדיפות 1.400% עם מועד פירעון 20 ביולי 2018 (ISIN US88167AAA97; CUSIP 88167A AA9); איגרות חוב עדיפות 1.700% עם מועד פירעון 19 ביולי 2019 ISIN US88167AAB70;) (CUSIP 88167A AB7); איגרות חוב עדיפות 2.200% עם מועד פירעון 21 ביולי 2021 (ISIN US88167AAC53; CUSIP 88167A AC5); איגרות חוב עדיפות 2.800% עם מועד פירעון 21 ביולי 2023 ISIN US88167AAD37) (CUSIP 88167A AD3); איגרות חוב עדיפות 3.150% עם מועד פירעון 1 באוקטובר 2026 (ISIN US88167AAE10; CUSIP 88167A AE1); ואיגרות חוב עדיפות 4.100% עם מועד פירעון 1 באוקטובר 2046 (ISIN US88167AAF84; CUSIP 88167A AF8) (כולן יחד, "איגרות החוב").

תיאור מפורט של ההתדיינות, כולל מידע חשוב בנוגע לזכויות ולאפשרויות העומדות לרשותך, מופיע בהודעת העונשין המפורטת בטופס הארוך ובפשרה המוצעת של התביעה הייצוגית ("הודעת הטופס הארוך"), הזמינה בכתובת **www.TevaSecuritiesLitigation.com** או על ידי פנייה למנהל התביעות בכתובת:Epiq Class Action & Claims Solutions, Inc., *In re Teva Securities Litigation*, P.O. Box 3565, Portland, OR 97208-3565, טלפון: **1-503-520-4435 (855) 675-3124**, **או** **מחוץ לארה"ב וקנדה.**

על מנת להיות זכאי לתשלום מתוך קרן הסדר הפשרה נטו, עליך להגיש טופס הוכחת תביעה ושחרור שנשלח באופן אלקטרוני או בדואר לא יאוחר מ-17 במאי 2022. לקבלת עותק של טופס הוכחת התביעה והשחרור, נא להיכנס לכתובת **www.TevaSecuritiesLitigation.com** או ליצור קשר עם מנהל התביעות בכתובת הנ"ל. אם לא תגישו את טופס הוכחת התביעה והשחרור עד ה-17 במאי 2022 הדבר יעמיד את תביעתך במצב של דחייה אפשרית ועשוי למנוע ממך לקבל תשלום כלשהו מהסדר הפשרה.

כדי שלא להיכלל בהסדר הפשרה, יש להגיש בקשה בכתב לאי-הכללה, בהתאם לכל ההוראות בהודעה בטופס הארוך, שתוגש באופן אלקטרוני או **בדואר, לא יאוחר מה-2 במאי 2022.** אם תבקשו שלא להיכלל, לא תקבלו כל תשלום מהסדר הפשרה.

אם אתם נמנים על קבוצת התובענה הייצוגית ואינכם עושים דבר, לא תהיו שותפים לתקבולים של הסדר הפשרה, אך תהיו מחויבים להסדר ותהיו משוחררים מכל התביעות המיושבות כנגד הנתבעים, אשר יהיו פטורים מתביעות.

תובעים ב'פעולה ישירה' הם אותם תובעים ששכרו את שירותיו של היועץ המשפטי והגישו לבית המשפט את אחת מהתביעות המפורטות בנספח ב' בהודעת הטופס הארוך. תאריכי היעד לעיל אינם חלים על התובעים ב'פעולה ישירה'. תובעי פעולה ישירה המעוניינים להשתתף בהסדר הפשרה חייבים לנקוט צעדים מסוימים, כמפורט בהודעת הטופס הארוך, **לא יאוחר מ-2 במאי 2022.**

על מנת להגיש התנגדות לכל היבט של הסדר הפשרה, לתוכנית ההקצאה, לבקשה לקבלת שכר טרחת עורך דין והוצאות, או לבקשת צ'יגי התובעים לקבלת מענקים על פי סעיף 15 U.S.C. § 78u-4(a)(4), יש להגיש התנגדות בכתב בהתאם לכל ההנחיות בהודעת הטופס הארוך, אשר ***התקבלה או הוגשה, ולא רק נשלחה בדואר, ביום 12 במאי 2022 או לפני כן.*** אם תתנגדו לכך, אך תרצו גם להיות זכאים לתשלום, עליכם להגיש בזמן טופס הוכחת תביעה ושחרור.

ניתן לפנות, מלבד בהודעת הטופס הארוך, באמצעות שליחת הודעת דוא"ל לעורך הדין של התובענה הייצוגית באמצעות TevaSettlement@bfalaw.com או באמצעות פניה אל:

Joseph A. Fonti
Bleichmar Fonti & Auld LLP
7 Times Square, 27th Floor
New York, New York 10036
טלפון: (888) 879-9418

נא לא לפנות לבית המשפט או למשרדו של מזכיר בית המשפט בנוגע לשאלות הנוגעות להתדיינות זו או להודעה זו.

תאריך: 23 בפברואר 2022

בהוראת בית המשפט:
בית משפט מחוזי של ארצות הברית
מחוז קונטיקט

מוריה
חברה לפיתוח ירושלים בע"מ

מוריה חברה לפיתוח ירושלים בע"מ
מכרז פומבי (מקוון) מס' 7005/2021
לביצוע עבודות להקמת גני ילדים וכביש גישה, שכונת עיסאוויה, ירושלים

1. מוריה חברה לפיתוח ירושלים בע"מ ("**מוריה**") מזמינה בזה הצעות לביצוע עבודות כמפורט בכותרת.
2. המכרז ינוהל במתכונת של מכרז ממוכן (מקוון). לצורך הגשת הצעה במכרז, על המציעים להסדיר מראש את רישומם במערכת המכרזים האלקטרונית בכתובת https://bids.dekel.co.il/moriah ("**המערכת הממוכנת**"), בהתאם למפורט במסמכי ההליך.
3. **תנאי סף:** רשאים להשתתף במכרז מציעים העומדים בכל תנאי הסף המפורטים בחוברת ההזמנה להציע הצעות, נכון למועד האחרון להגשת הצעות, ואשר רכשו את מסמכי המכרז בעלות של 3,000 ש"ח, אשר לא תוחזר בכל מקרה. ניתן לעיין בתנאי הסף וביתר מסמכי המכרז, ללא תשלום, באתר האינטרנט של מוריה בכתובת: www.moriah.co.il, תחת לשונית "מכרזים".
4. **מפגש מציעים (לא חובה):** יתקיים ביום 7.3.2022 בשעה 12:00 בצהריים, בכתובת - תחנת הדלק "דור אלון" קדמה, ירושלים.
5. **הגשת שאלות הבהרה:** עד ליום 15.3.2022 לא יאוחר מהשעה 12:00 בצהריים, באמצעות הלשונית הייעודית במערכת הממוכנת.
6. **הגשת הצעות: עד ליום 30.3.2022, לא יאוחר מהשעה 12:00 בצהריים. ההצעות תוגשנה באמצעות המערכת הממוכנת בלבד, למעט ערבות המכרז אשר יש להגישה עד למועד האמור לתיבת המכרזים שבמשרדי מוריה (קומה 3).**
7. מובהר, כי האמור במודעה זו הוא תמצית בלבד. תכולת השירותים, התנאים וההוראות המלאות מפורטים במסמכי המכרז, וניתן לעיין בהם ללא תשלום באתר האינטרנט של מוריה. בכל מקרה של אי התאמה בין האמור בפרסום זה לבין האמור במסמכי המכרז, יחייב האמור במסמכי המכרז.

בכבוד רב,
מוריה חברה לפיתוח ירושלים בע"מ

החברה
Haifa Economic corporation
הכלכלית לחיפה

החברה הכלכלית לחיפה בע"מ
קול קורא
לקבלת הצעות להפעלת חוגים במתחם פנאי ונופש המכונה "הספורטן"

1. החברה הכלכלית לחיפה בע"מ(החברה) מזמינה בזאת מציעים להגשת הצעות להפעלת חוגים במתחם פנאי ונופש המוכנה "ספורטן", הכול מפורט במסמכי הקול קורא,
2. הנוסח המלא של הקול קורא מפורסם באתר האינטרנט של החברה הכלכלית שכתובתו: www.hec.co.il.
3. תנאי הסף להגשת ההצעה, שיקולים לבחירת המציע הזוכה וכל שאר התנאים וההגבלות ביחס לקול קורא ולהשתתפות בו, מפורטים במסמכי הקול קורא.
4. את ההצעה יש להגיש בהתאם להוראות שנקבעו במסמכי הקול קורא עד ליום 24.03.2022.
5. החברה שומרת לעצמה את הזכות לשנות כל אחד מתנאי הקול קורא, השינויים יפורסמו באתר האינטרנט של החברה ובאחריות המציעים לבדוק באופן שוטף את ההודעות המתפרסמות באתר האינטרנט ככל שתהיינה.

החברה הכלכלית לחיפה בע"מ

נהריה
הוועדה לתכנון ובניה

עיריית נהריה מפרסמת בזאת להגשת הצעות למכרז לביצוע העבודות:

מס' מכרז	תיאור העבודה	מפגש קבלנים	עלות	מועד אחרון להגשה
006/22 פומבי	צביעת קירות חוץ בבית ספר וייצמן סיווג קבלני נדרש 100 ג 1 ו/או 131 א	מפגש קבלנים חוזר ייערך ביום שני בתאריך 28/2/2022 בשעה 10:00 נפגשים בכניסה לבי"ס וייצמן מרחוב בלפור – סיור חובה	500 ש"ח	6/3/2022
011/22 פומבי	בניית 2 כיתות גן ברחוב אחד העם בנהריה סיווג קבלני נדרש 100 ג 1	מפגש קבלנים חוזר ייערך ביום שני בתאריך 28/2/2022 בשעה 12:00 נפגשים בלובי בנין העירייה – סיור חובה	2,000 ש"ח	7/3/2022

ביחס לכל המכרזים לעיל נדגיש, כי את פרטי ומסמכי המכרז ניתן לעיין ולרכוש דרך אתר האינטרנט של עיריית נהריה ו/או בבניין העירייה קומה ד' מחלקת מכרזים תמורת תשלום שלא יוחזר. המעוניינים יגישו את הצעותיהם במעטפה סגורה לתיבת המכרזים במשרדי העירייה (מחלקת מכרזים) בקומה 4 לא יאוחר מהתאריך הרשום לעיל עד השעה 13:00.

מודגש כי ביצוע העבודות ייעשה בשלבים הקבועים בתנאי המכרז וכפוף לאישור תקציבי

השתתפות בסיור הקבלנים הינה חובה ומהווה תנאי להגשת הצעה למכרז זה.

עיריית נהריה

לפרסום מכרזים ומודעות משפטיות
03-9538712
michraz@globes.co.il

דרוש/ה
קבלן מפתח
לבניית פרויקט מגורים בבני ברק
מרתף+קומה ציבורית+7 קומות
41 יח"ד-5,400 מ"ר
לביצוע מיידי
לפרטים לפנות לטל': 03-6853071

המועצה המקומית בענה
הודעה על המכרז - הזמנה להציע הצעות
מכרז מס' 02/2022 - בעניין הקמת מיזם דיגיטלי מתקדם למרכז חינוך דיגיטלי ולבקרים חכמים

1. המועצה המקומית **בענה** מזמינה בזאת הצעות להקמת מיזם דיגיטליים מתקדם למרכז חינוך דיגיטלי ולבקרים חכמים.
2. רשאים להשתתף במכרז מציעים אשר עומדים בתנאי הסף כמפורט להלן:
   2.1. רשאי להשתתף במכרז זה מציע שהוא יחיד או תאגיד רשום כדין בישראל, העומד בעצמו במועד הגשת הצעה למכרז, בכל התנאים המצטברים להלן המהווים תנאי סף, המפורטים להלן:
   2.2. רשאי להגיש הצעות רק מציע אשר הינו ישות משפטית אחת. המציע אינו רשאי להגיש הצעה משותפת עם גופים אחרים. **יודגש ויובהר כי הצעה, שתוגש במשותף ע"י שני תאגידים/גופים/חברות או יותר, תיפסל על הסף! מציע לא יגיש יותר מהצעה אחת!**
   2.3. מציע שהינו תאגיד יצרף להצעות את המסמכים הבאים:
      2.3.1 תעודת רישום.
      2.3.2. תקנון ההתאגדות.
      2.3.3. תדפיס רשם חברות בתוקף לשנה הנוכחית.
      2.3.4. אישור בדבר מורשה חתימה מאושר ע"י רו"ח או ע"י"ד בתוקף לשנה הנוכחית.
   2.4. אישור תקף על שם המציע בדבר ניהול פנקסי חשבונות ורשומות על פי חוק עסקאות גופים ציבוריים (אכיפת ניהול חשבונות) תשל"ו-1976.
   2.5. אישור תקף על שם המציע לניכוי מס הכנסה במקור.
   2.6. העתק צילום מתעודת עוסק מורשה של המציע לצרכי מע"מ.
   2.7. המציע הנו בעל מחזור עסקי בישראל העולה על 10 מיליון ₪ לפחות, בשנים 2020 עד 2120 ביחד. **לצורך כך המציע יצרף הצהרה החתומה על ידי רו"ח המאשר זאת.**
   2.8. המשתתף במועד הקובע הינו קבלן או ספק פעיל, שעיסוקו העיקרי התקנה ו/או תחזוקה של מערכות דיגיטאליות, הכוללת מערכות ניהול חשמל חכם ואספקת ציוד היקפי למחשוב.
   בין השנים 2017-2020 ביצע המשתתף בקבלן ראשי אספקה התקנה והפעלה **והקמת מיזם דיגיטליים מתקדם למרכז חינוך דיגיטלי ולבקרים אנרגיה חכמים** של לפחות 3 גופים. מובהר בזאת, כי לצורך עמידת המשתתף בתנאי זה יילקחו בחשבון אך ורק פרויקטים שהתקנתם הושלמה.וכפי שקובע במסמכי המכרז.
3. ניתן לרכוש את חוברת המכרז תמורת תשלום **2,500** ש"ח שלא יוחזרו בשום מקרה בין הוגשה הצעה ובין לאו.
4. המשתתף במכרז יצרף ערבות בנקאית **בשווי 20,000** ש"ח שתהא בתוקף עד ליום **30/06/2022** הערבות תהא לפי הנוסח שבמסמכי המכרז. אי צירוף ערבות בנקאית כנדרש בתנאי המכרז יביא לפסילת ההצעה על הסף. לא תתקבל ערבות מחברת ביטוח או שיק בנקאי או כל תחליף לערבות הבנקאית.
5. פרטיים נוספים יוכל המשתתף להשיגם במשרדי מזכיר/גזבר המועצה בימים ב' עד ה', וכן בטלפון 04-9192500 המציע יוכל להפנות שאלות הבהרה למועצה עד **ליום 04/03/2022** שעה 15:00.
6. סיור קבלנים חובה יתקיים **ביום 28/02/2022 בשעה 10:00.** ההתכנסות בבניין המועצה.
7. **ההצעה תוגש במעטפה סגורה בצירוף האישורים הדרושים וזאת עד ליום 07/03/2022 שעה 12:00.**
8. המועצה המקומית וועדת המכרזים רשאים לקחת בחשבון את היכולת הכספית של מגיש ההצעה, ניסיונו בעבודות קודמות ומומחיותו המקצועית בעבודות דומות כולל עמידתו בלוח זמנים.
9. המועצה המקומית לא מתחייבת לקבל ההצעה הזולה ביותר ו/או כל הצעה אחרת, כמו כן המועצה שומרת לעצמה הזכות לבטל המכרז בכללותו או כל חלק ממנו ולא תהיה למציע הזכות לתבוע או לקבל כל פיצוי כתוצאה מכך.

עלי חליל - ראש המועצה

עיריית באר יעקב
מכרז פומבי מס' 5/22
לביצוע סקרי שטח לאיסוף נתונים ומתן שירותי התקנה והטמעה של מערכת מידע גיאוגרפית GIS

מועד הגשה: 23.3.2022 עד השעה 14:00 בתיבת המכרזים בבניין העירייה
שאלות הבהרה: עד ליום 8.3.2022.

ניסים גוזלן - ראש העירייה

עזות 2000 (1999) בע"מ, ח.פ. 512874439 ("החברה")
הודעה לנושים בעניין הגשת בקשה לאישור חלוקה לפי סעיף 303 לחוק החברות, התשנ"ט-1999 ("חוק החברות")
מרחוב שיבת ציון 16 כפר סבא מיקוד 4428619
טלפון: 08-6805220 דוא"ל: sam@ozat.co.il

1. בהתאם להוראות תקנה 2(ב) לתקנות החברות (אישור חלוקה) התשס"א-2001, החברה מודיעה בזאת כי ביום 20.2.2022 הוגשה לבית המשפט המחוזי בתל-אביב-יפו בקשה לאשר הפחתת הונה העצמי של החברה בסך שלא יעלה על 3,000,000 ש"ח, על דרך של רכישה עצמית של מניות החברה מבעל מניותיה, המהווה חלוקה על דרך של הפחתת הון, אשר אינה מקיימת את "מבחן הרווח" (כמשמעות מונח זה בסעיף 302 לחוק החברות) ("**הבקשה**"), נושי החברה רשאים לפנות לבית המשפט ולהתנגד לבקשה תוך שלושים (30) ימים ממועד פרסום זה או בתוך מועד מאוחר יותר כפי שיקבע בית המשפט.
2. סך כל ההון העצמי של החברה, בהתאם לדוחות הכספיים של החברה ליום 30.11.2021, עומד על כ-4,042,104 ש"ח, הסכום הכולל שאותו מבקשת החברה לחלק הינו 3,000 אלפי ₪ שלא מרווחיה.
3. ניתן לעיין בנוסח המלא של הבקשה לאישור החלוקה כאמור וכן לצלמה, על חשבון הנושה, במשרדה הרשום של החברה המפורט לעיל, בימים א'-ה' בשעות העבודה המקובלות לאחר תיאום טלפוני מראש.
4. כמו-כן, ניתן לקבל מידע בקשר להליכים וההחלטות שהתקבלו בבית המשפט, לרבות מידע אודות המועד האחרון להגשת ההתנגדות לאישור החלוקה אם קבע בית המשפט מועד מאוחר משלושים (30) ימים ממועד פרסום זה, על-ידי פנייה לנציג החברה **עו"ד איתי הכהן, משרד עורכי דין**, טלפון: 03-7538811 פקס: 03-7538812.

עזות 2000 (1999) בע"מ

עיזבון המנוחה אנה דישל ז"ל מ"ז 327424198
שנפטרה ביום 5.1.12
הודעה על מינוי מנהל עיזבון והזמנה לנושים

נמסרת בזה הודעה והזמנה לפי סעיף 99 לחוק הירושה, התשכ"ה-1965, בהתאם להחלטת כב' בימ"ש לענייני משפחה בירושלים מיום 26.1.2022 בת"ע 36015-12-21 מונה עו"ד גדליה זיסקויט מ"ז 012757738 כמנהל העיזבון של אנה דישל ז"ל אשר נשאה בחייה ת"ז 327424198.
נושי המורישה ו/או עיזבון מוזמן להודיע לח"מ בכתב ובדואר רשום עפ"י הכתובת שלהלן באם ישנן תביעות כנגד המורישה בתוך 90 ימים ממועד פרסום מודעה זו.

עו"ד גדליה זיסקויט - מנהל העיזבון
רח' הפלמ"ח 18 א' ירושלים
טל': 02-5635224 פקס': 02-5633169

חדרה
עיר עם אנרגיה

לעיריית חדרה דרוש/ה
מנהל/ת מחלקת נוער באגף נוע"ץ מכרז מס' 34/22

נא לפנות לאתר עיריית חדרה: **www.hadera.muni.il**
לקבלת דרישות התפקיד: מכרזים ודרושים-משאבי אנוש.
הגשת מועמדות באמצעות טופס מקוון: תיק תק טפסים ותשלומים (כניסה ללא הזדהות) -טפסים בקליק - אגף ההון האנושי - טופס הגשת מועמדות למכרז.
מועד אחרון להגשת המועמדות ביום חמישי 10.3.22, ז' אדר ב' תשפ"ב עד השעה 12:00
טל': 04-6303138
מועמדים שלא יעמדו בדרישות הסף לא יזומנו

בברכה, דגנית זילבר
מנהלת אגף ההון האנושי

עיריית רמת-גן

מכרז 02/2022
למתן שירותי צילומי אוויר, צילומים אלכסוניים ומודל תלת מימד עבור עיריית רמת גן

עלות מכרז – 500 ₪
המועד האחרון להגשת המכרז עד לתאריך 21.03.2022 עד השעה 12:00 בדיוק.

- הגשת המכרז בלשכת יו"ר ועדת מכרזים עו"ד רועי ברזילי, קומה ב' בבניין העירייה, רח' ביאליק 35, רמת גן.
- בקשה לעיון יש לפנות בדוא"ל michrazim-rg@ramat-gan.muni.il או בטלפון: 03-7408850/8802.
- יש להתעדכן באתר העירייה בשינויים בתנאי המכרז ומועדים.
- קבלת המסמכים בדוא"ל היא באחריות המשתתף בלבד ותבוצע באמצעות השירות המשפטי בלבד.
- מומלץ לעיין במסמכי המכרז טרם רכישתם. מציע אשר רכש את מסמכי המכרז ללא עיון כספו לא יוחזר.

מועצה מקומית מזרעה
הודעה שינוי מועדי ותנאי מכרז גינון
מכרז פומבי מס' 2/2022

עקב האירוע הטרגי שקרה בכפר בתאריך 18.2.2022, נאלצנו לדחות מועדי מכרז מס' 2/2022, ולבטל חובת השתתפות המציעים בסיור הקבלנים.
להלן המועדים המעודכנים:

1. את ההצעות יש להגיש עד ליום **03.03.2022** ועד ולא יאוחר מן **השעה 14:00**, לתיבת המכרזים הנמצאת במבנה המועצה.
2. שאלות הבהרה ניתן לשלוח עד יום **27.02.2022 בשעה 16:00** למייל בלבד hayah@mazraa.muni.il ואישור קריאה תשובות ושלחנה במרוכז לכל המשתתפים.
3. סיור מציעים ייערך ביום חמישי **24.02.2022 בשעה 12:00** ייצא מבניין המועצה, השתתפות בסיור המציעים **אינו חובה.**

פואד עווד - ראש המועצה

החברה הכלכלית לראשון לציון בע"מ
קול קורא 14/2022
להרחבת מאגר היועצים של החברה הכלכלית לראשון לציון בתחומים אינסטלציה ובטיחות באש

החברה הכלכלית לראשון לציון בע"מ (להלן: "**החברה**") מזמינה בזאת מועמדים מתאימים להצטרף למאגר היועצים של החברה בתחומים אינסטלציה ובטיחות באש, לצורך ביצוע הליכים תחרותיים לקבלת שירותים בפטור ממכרז.

ניתן לעיין במסמכי ההליך באתר האינטרנט של החברה בכתובת: http://www.chakar.co.il/.

את ההצעה יש להגיש במעטפה סגורה עד ליום **07.03.2022** בשעה **12:00** באופן המפורט במסמכי ההליך.

בכבוד רב, אמנון ספרן, מנכ"ל

Exhibit 3

Declaration of Jeffrey Davis, Ontario Teachers' Pension Plan Board, in Support of Final Approval of Class Settlement and Approval of Plan of Allocation, Awards of Attorneys' Fees and Litigation Expenses, and Awards of Reasonable Costs and Expenses to Class Representatives

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE TEVA SECURITIES LITIGATION	:	No. 3:17-cv-00558 (SRU)
THIS DOCUMENT RELATES TO:	:	All Class Actions

DECLARATION OF JEFFREY DAVIS, ONTARIO TEACHERS' PENSION PLAN BOARD, IN SUPPORT OF FINAL APPROVAL OF CLASS SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION, AWARDS OF ATTORNEYS' FEES AND LITIGATION EXPENSES, AND AWARDS OF REASONABLE COSTS AND EXPENSES TO CLASS REPRESENTATIVES

I, Jeffrey Davis, hereby declare pursuant to section 1746 of title 28 of the United States Code:

1. I am Chief Legal & Corporate Affairs Officer for Ontario Teachers' Pension Plan Board ("Ontario Teachers'"), one of the Court-appointed Class Representatives in this action (the "Action").[1] I have been employed by Ontario Teachers' continuously since May 2004.

2. I submit this declaration in support of (a) Class Representatives' motion for final approval of the proposed settlement and approval of the Plan of Allocation; and (b) Lead Counsel's motion for awards of attorneys' fees and litigation expenses, and awards to Class Representatives, including Ontario Teachers', pursuant to 15 U.S.C. § 78u-4(a)(4) of the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), of Ontario Teachers' costs and expenses directly related to its representation of the Settlement Class in the amount of $49,213.02.[2]

[1] Unless otherwise indicated, capitalized terms used herein have the meanings contained in the Stipulation of Settlement, dated January 18, 2022. (ECF 919-2.)

[2] As used herein, "Class Counsel" refers collectively to Bleichmar Fonti & Auld LLP, Bleichmar Fonti & Auld Canada, The Law Offices of Susan R. Podolsky, and Carmody Torrance Sandak & Hennessey LLP.

3. I have been one of the primary Ontario Teachers' personnel involved in overseeing Class Counsel's prosecution of the Action and the negotiations leading to the proposed settlement. The matters set forth herein are based on my personal knowledge and/or discussion with Ontario Teachers' personnel and Class Counsel.

I. ONTARIO TEACHERS' OVERSIGHT OF THE LITIGATION

4. Headquartered in Toronto, Ontario Teachers' is the largest single-profession pension plan in Canada, representing approximately 331,000 active and retired teachers in Ontario. Ontario Teachers' manages more than C$220 billion in net assets on behalf of its beneficiaries.

5. As a large institutional investor, Ontario Teachers' investment portfolios include shareholder positions in numerous publicly traded companies. We believe strongly in the integrity of the securities markets and in improving corporate governance, which are issues that have been raised by lawsuits such as the Action. Since the enactment of the PSLRA, we have been highly selective in choosing the cases in which we have sought to participate as a lead plaintiff or class representative. Beyond the significant losses suffered by Ontario Teachers' and other Teva investors, we believe the allegations in this Action—including that Defendants engaged in alleged price-fixing and large price increases on generic drugs used for serious health conditions—have a significant impact on the integrity of the markets in which we invest and accepted standards of corporate governance.

6. In seeking appointment as Lead Plaintiff and as Class Representative in this Action, Ontario Teachers' understood its responsibility to serve the best interests of the Class by supervising the effective prosecution of this litigation, and has diligently done so at all times.

7. On July 11, 2017, the Court appointed Ontario Teachers' as Lead Plaintiff (ECF 124). As the Court-appointed Lead Plaintiff, Ontario Teachers' determined that it would be in the best interests of the proposed Class for Anchorage Police & Fire Retirement System

("Anchorage") to be added as a named plaintiff to pursue Securities Act claims on behalf of Class members who invested in Teva Notes. On March 9, 2021, the Court appointed Ontario Teachers' and Anchorage as Class Representatives, and granted class certification (ECF 736).

8. Attorneys in Ontario Teachers' General Counsel's office were dedicated to the oversight of the Action, have directly supervised Class Counsel, and have been extensively involved in the prosecution and settlement of the Action, as discussed below. The tasks that Ontario Teachers' has performed include, but are not limited to:

a. Regularly communicating with Class Counsel concerning the status, progress, and major strategy decisions regarding the Action;

b. Reviewing major motions and pleadings to provide comments and direction as needed;

c. Attending hearings before the Court (either in person or by Zoom and/or telephone) with respect to the lead plaintiff motions (on April 26, 2017), Defendants' motions to dismiss (on April 3, 2018 and March 12, 2019), the Rule 16 conference (on November 13, 2019), the class certification hearing (on January 29, 2021), and several status conferences regarding discovery disputes;

d. Assisting in locating, collecting, and preserving potentially relevant documents;

e. Responding to discovery requests, including requests for production, interrogatories, and requests for admission, and voluntarily producing information regarding Ontario Teachers' transactions in Teva securities;

f. Preparing for and testifying during my Rule 30(b)(6) deposition, which was taken remotely on August 25, 2021, and thereafter preparing and submitting a declaration

regarding the domesticity of Ontario Teachers' transactions in Teva Preferred Shares; and

g. Preparing for and participating in the mediation sessions with former United States District Judge Layn R. Phillips and extensive further negotiations, including attendance at formal mediation sessions on July 13, 2020, September 17, 2021, and September 27, 2021; attendance at various presentations to the mediator regarding the evidence and Teva's financial condition; and participation in numerous subsequent conferences with Class Counsel and Anchorage as negotiations continued, leading to the parties' acceptance of Judge Phillips's recommendation on December 2, 2021.

II. ONTARIO TEACHERS' STRONGLY ENDORSES APPROVAL OF THE SETTLEMENT

9. Ontario Teachers' has served as lead plaintiff in seven securities class actions which (including this Action) have recovered nearly $2.4 billion for investors. In addition to the Action, these cases are: *In re Computer Sciences Corp. Sec. Litig.*, No. 1:11-cv-00610 (E.D. Va.) ($97.5 million settlement approved Sept. 20, 2013); *In re Washington Mutual, Inc. Sec. Litig.*, No. 2:08-md-01919 (W.D. Wash.) ($208.5 million settlement approved Nov. 4, 2011); *In re Bristol-Myers Squibb Co. Sec. Litig.*, No. 1:07-cv-05867 (S.D.N.Y.) ($125 million settlement approved Dec. 9, 2009); *In re Biovail Corp. Sec. Litig.*, No. 03-cv-08917 (S.D.N.Y.) ($138 million settlement approved Aug. 8, 2008); *In re Williams Companies, Inc. Sec. Litig.*, No. 4:02-00072 (N.D. Okla.) ($311 million settlement approved Feb. 12, 2007); and *In re Nortel Networks Corp. Sec. Litig. II*, No. 05-md-1659 (S.D.N.Y.) ($1,074,265,298 settlement approved Dec. 26, 2006).

10. This Action is the longest running securities class action Ontario Teachers' has led, requiring five years of vigorous litigation by Class Representatives and Class Counsel. The proposed settlement of this Action is the second-largest recovery Ontario Teachers' has achieved.

11. The proposed settlement is the product of Ontario Teachers' and Anchorage's hard-fought negotiation and careful consideration on behalf of the Settlement Class. Ontario Teachers' personnel and Edward Jarvis, Director of Anchorage, were actively involved in settlement strategy and participated in all meditation sessions and settlement negotiations, as set forth below.

12. Mediation efforts began in 2020. Sharon Chilcott (currently Ontario Teachers' Chief of Staff, and formerly Managing Director and Associate General Counsel, Employment Law & Litigation) and Tara Rosenblatt (former Managing Director and Associate General Counsel, Investments) participated in a caucus session with the Honorable Layn R. Phillips (Ret.) and (along with Mr. Jarvis) attended a financial presentation in advance of the formal mediation session.

13. On July 13, 2020, Ms. Chilcott, Ms. Rosenblatt, and Mr. Jarvis participated in a formal full-day mediation session with Judge Phillips, Class Counsel, counsel for Defendants, and representatives of Teva and various insurance carriers. The July 13, 2020 mediation was unsuccessful. At the time, discovery was in its early stages; no depositions had occurred, and no class had been certified.

14. Given these circumstances, Ontario Teachers', in consultation with Anchorage, elected to forgo further settlement discussions at that time, knowing that Class Counsel were prepared to invest the necessary time and financial resources to vigorously pursue the merits by completing document discovery, taking fact depositions, and completing expert discovery. We believed that these efforts to advance the Action would potentially achieve a greater recovery for

the Class by ensuring full consideration of the merits and increasing Defendants' risk. At the same time, a number of variables remained unknown, including the outcome of the recently filed class certification motion, the strength of the full documentary record, the testimony and credibility of fact witnesses who had yet to be deposed, and the complete results of expert analysis.

15. Between July 2020 and September 2021, Class Representatives were in regular contact with Class Counsel regarding the progress of the Action and recent developments. Among other things, Ontario Teachers' received regular litigation status updates from Class Counsel, including with regard to class certification, the U.S. Department of Justice's motion to intervene, Defendants' numerous discovery requests (including to Ontario Teachers' current and former employees and investment managers), and the status of fact and expert discovery; received drafts of motions, submissions, and briefs; and attended the January 29, 2021 class certification hearing, and the March 3, March 31, and April 16, 2021 status conferences.

16. Mediation resumed in September 2021, after the Court had certified the Class and fact discovery was complete, and as the parties concluded the final stages of expert discovery. I was involved in preparing for and attending the extensive mediation sessions and settlement negotiations in fall 2021, as were Ms. Rosenblatt and Mr. Jarvis. Specifically, in advance of the September 2021 mediation sessions, Class Representatives conferred with Class Counsel regarding the strength of the merits and updated expert damages analyses.

17. On September 17, 2021, Ms. Rosenblatt, Mr. Jarvis, and I participated in a full-day mediation session with Judge Phillips.

18. Following that session, Class Representatives further conferred with Class Counsel regarding potential damages and additional presentations to be made to Judge Phillips, conferred with a consulting expert to further understand Teva's financial risks and constraints, and

considered Defendants' insurance coverage, including various complexities and the fact that coverage would diminish as litigation (and Defendants' substantial legal fees) continued. In this regard, Class Representatives also considered analysis of complex insurance issues by Carmody Torrance Sandak & Hennessey LLP ("Carmody").

19. On September 27, 2021, Ms. Rosenblatt, Mr. Jarvis, and I participated in an additional full-day mediation session with Judge Phillips.

20. No resolution was reached on September 27, and extensive negotiations (through Judge Phillips) continued over the ensuing weeks. Throughout this period, Class Representatives continuously conferred with Class Counsel regarding settlement strategy. Ontario Teachers' also conferred with Anchorage, separately from meeting with Class Counsel, to discuss settlement negotiations.

21. On November 14, 2021, Judge Phillips issued a mediator's recommendation to settle the Action in exchange for $420,000,000.

22. Ontario Teachers' carefully and extensively considered Judge Phillips's recommendation in consultation with Anchorage and Class Counsel. In doing so, Ontario Teachers' considered (among other things) consulting expert analyses of Teva's financial situation, including its large debt burden, exposure to opioids litigation, and potential liability in pending antitrust actions. Moreover, while Class Representatives and Class Counsel believed strongly in the merits of the Action, Class Representatives also recognized that further litigation would expose the Class to significant delay and other risks, including that Teva's financial condition could further decline before any recovery could be secured.

23. Based on Ontario Teachers' experience as a court-appointed lead plaintiff and class representative in other cases, its active involvement throughout the Action, its participation in three

mediation sessions and subsequent discussions, and its understanding of the strength of the merits, the amount of damages, and numerous risks (including Teva's financial condition), as outlined above, Ontario Teachers', in consultation with Anchorage, determined that the proposed settlement was fair, reasonable, and adequate to the Settlement Class.

24. On December 2, 2021, only hours before summary judgment and *Daubert* motions were to be filed, the mediator advised that all parties had accepted his recommendation. The parties then negotiated the terms of the Stipulation of Settlement and its exhibits, which was executed and filed on January 18, 2022.

25. Ontario Teachers' believes the settlement represents an outstanding result, particularly in light of the size of the recovery and the substantial risks and uncertainties outlined above. Based on Ontario Teachers' extensive involvement in negotiating the proposed settlement of the Action, and with the benefit of its extensive experience acting as lead plaintiff and class representative in other matters, Ontario Teachers' strongly endorses approval of the settlement by the Court.

III. ONTARIO TEACHERS' SUPPORTS LEAD COUNSEL'S MOTION FOR AWARDS OF ATTORNEYS' FEES AND LITIGATION EXPENSES

26. Ontario Teachers' understands that the PSLRA provides the lead plaintiff the primary role in retaining and overseeing counsel, and Ontario Teachers' has carefully discharged that role in the Action.

27. In retaining Bleichmar Fonti & Auld LLP ("BFA") for this matter, Ontario Teachers' determined that BFA was particularly well-qualified based on Ontario Teachers' extensive work with BFA's named partners in prior securities actions. Ontario Teachers' understood that a core team of BFA attorneys would devote a majority of their time to prosecuting the Action and that BFA would devote the resources necessary to fully prepare the Class's claims

for trial, including by investing heavily in time and expenses to retain leading experts. In addition to BFA, Ontario Teachers' worked closely with, and relied on valuable strategic counsel from, Carmody and Ms. Podolsky throughout the Action, particularly in responding to Defendants' discovery demands and in considering and analyzing the various proposals and counter-proposals to resolve this case.

28. Ontario Teachers' recognizes that the Court must approve any fee award. Together with Anchorage, Ontario Teachers' has engaged in arm's-length negotiation with Lead Counsel, which led to Ontario Teachers' authorization of and support for the requested fee of 23.70% of the Settlement Fund.

29. In particular, Ontario Teachers' considered the quality and amount of Class Counsel's work in the Action, which ultimately resulted in the parties' agreement to the proposed settlement only hours before summary judgment and *Daubert* motions were to be filed; the substantial recovery Class Counsel's efforts achieved for the Settlement Class; the complexity and duration of the Action; the significant risks and uncertainties Class Counsel faced for an extended period; and fees awarded in other cases, including other cases in which Ontario Teachers' has served as lead plaintiff and class representative. Ultimately, in authorizing the requested fee, Ontario Teachers' concluded that Class Counsel delivered on their commitments to forcefully and efficiently litigate the Action and have demonstrated superior skill and ability. I have witnessed the tenacious manner in which Class Counsel litigated against formidable defense counsel and Teva to achieve a highly significant settlement.

30. Ontario Teachers' also considered, and placed significant weight on, the independent opinion of former Judge Christopher Droney in deciding to authorize Lead Counsel's

fee request. Judge Droney's Declaration provides empirical data and analysis that informed Ontario Teachers' consideration of the requested fee.

31. Ontario Teachers' understands that the Court may consider Class Counsel's hourly rates as one component of its analysis of the requested fee. In this regard, Ontario Teachers' regularly retains leading law firms in Canada and the U.S. I have personal experience managing the work of these outside attorneys and I am familiar with their billing rates. Based on this experience, Ontario Teachers' views Class Counsel's hourly rates as comparable to rates charged by other leading complex litigation firms. This is a conservative comparison, as I am mindful that those hourly rates (for attorneys who are paid on a regular basis irrespective of the result) in no way account for the risk that Class Counsel undertook here in litigating a large case for five years, continuously exposed to the real possibility of no recovery at all.

32. Ontario Teachers' is aware that hourly rates for some counsel within the District of Connecticut may be lower than BFA's hourly rates. However, we believe this complex securities class action with antitrust components required special expertise to achieve the best possible result for the Settlement Class. Ontario Teachers' understands that BFA specializes in complex securities and antitrust actions, and Ontario Teachers' is familiar with the high quality of BFA's work from Ontario Teachers' prior experience with BFA's founding partners.

33. Moreover, it is our experience that securities class actions under the PSLRA are a specialized, national practice, with leading class counsel and defense firms concentrated in New York. For these reasons, in every prior securities class action in which Ontario Teachers' has served as lead plaintiff and/or class representative (including cases in the Eastern District of Virginia, Western District of Washington, and Northern District of Oklahoma), Ontario Teachers' selected and retained New York-based counsel and viewed their rates as appropriate to obtain the

best representation for the proposed classes. Consistent with that practice, Ontario Teachers' selected BFA to ensure the highest-caliber representation and the best possible result in this complex and specialized matter.

34. In light of the result achieved, the work performed, and the risks faced over five years of litigation, Ontario Teachers' supports Lead Counsel's request for a fee award of 23.70% of the Settlement Fund and believes the requested amount represents a reasonable attorneys' fee award in the Action.

35. Ontario Teachers' further believes that the litigation expenses for which Lead Counsel is seeking an award are reasonable, and represent costs and expenses necessary for the prosecution and resolution of this complex action, which required significant expert analysis regarding generic drug pricing, the impact of the alleged price increases on Teva's reported financial results, and damages and loss causation, among other matters, as well as expenses for the hosting and analysis of voluminous document productions and conducting numerous fact and expert depositions. I am aware that the analysis by the Class's experts was incorporated into the presentations made in connection with the September 2021 mediation efforts. This analysis significantly advanced the Class's position and maximized the settlement result by demonstrating that Class Counsel were prepared to prove the Class's claims based on rigorous analysis of Teva's price increases and other key merits issues.

36. Based on the foregoing, Ontario Teachers' supports Lead Counsel's motion for awards of attorneys' fees and litigation expenses.

IV. ONTARIO TEACHERS' REQUEST FOR AN AWARD OF REASONABLE COSTS AND EXPENSES

37. Ontario Teachers' understands that the PSLRA authorizes the award of class representatives' reasonable costs and expenses, including lost wages. *See* 15 U.S.C. § 78u-4(a)(4).

Accordingly, Ontario Teachers' seeks an award of its reasonable costs and expenses incurred in connection with its representation of the Settlement Class.

38. Ontario Teachers' costs and expenses in the Action total $49,213.02, consisting of (a) the estimated cost of 274.5 hours of time that Ontario Teachers' staff devoted to the Action in place of their regular duties, in the amount of $32,940; and (b) Ontario Teachers' out-of-pocket expenses incurred in its role as Lead Plaintiff and Class Representative in the amount of $16,273.02. Both categories are further described below.

A. Time Devoted by Ontario Teachers' Personnel to Prosecuting the Action

39. Appendix A hereto identifies the three Ontario Teachers' attorneys who devoted at least 20 hours of time to the Action: myself, Sharon Chilcott, and Tara Rosenblatt. Based on a review of Ontario Teachers' records, these Ontario Teachers' personnel collectively devoted 274.5 hours to the prosecution and settlement of the Action. This is a conservative estimate because (a) it excludes the time of individuals who devoted fewer than 20 hours of time to the Action, and (b) it is based only on time spent attending Court hearings, depositions, mediation sessions, and meetings with Class Counsel and does not include other time devoted by Ontario Teachers' personnel, including time spent reviewing pleadings, discovery responses, motion papers, and other submissions, or working to collect and analyze information at Class Counsel's direction. Further information regarding the work performed by the individuals listed in Appendix A is provided below.

40. My work here was dedicated to overseeing Class Counsel and the litigation and resolution of the Action. This time was primarily spent: consulting and strategizing with Class Counsel; telephonically attending the March 12, 2019 hearing on Defendants' motions to dismiss; preparing for and providing testimony during my August 25, 2021 deposition as

Ontario Teachers' Rule 30(b)(6) witness; attending and participating in mediation sessions and extensive settlement negotiations in fall of 2021, described above; and reviewing settlement-related documents. This work consumed at least 55.50 hours of my time.

41. Sharon Chilcott and Tara Rosenblatt of Ontario Teachers' General Counsel's office were responsible for day-to-day oversight of Class Counsel. Ms. Chilcott's and Ms. Rosenblatt's time was primarily spent: consulting and strategizing with Class Counsel on a regular basis; reviewing pleadings, motion papers, and other filings (including drafts of Class Representatives' filings and documents filed by Defendants); attending to Ontario Teachers' document collection; reviewing and responding to Defendants' discovery requests; attending Court hearings, including in-person attendance at the April 26, 2017 hearing on the lead plaintiff motions and the April 3, 2018 hearing on Defendants' motions to dismiss, and telephonic attendance at the November 13, 2019 Rule 16 conference, January 29, 2021 class certification hearing, and several status conferences; assisting with preparation for my deposition as Ontario Teachers' Rule 30(b)(6) witness; and attending and participating in mediation sessions in summer 2020 and fall 2021, as described above. Ms. Chilcott and Ms. Rosenblatt dedicated at least 219 hours to this work.

42. Using a reasonable overall hourly rate of $120, Ontario Teachers' requests an award of $32,940 in respect of the 274.5 hours of time set forth in Appendix A that its personnel devoted to the prosecution and settlement of the Action in place of their regular duties.[3]

[3] In Ontario Teachers' most recent securities litigation (in 2013), Ontario Teachers' applied an estimated hourly rate of $119 for my time and $90 for the time of other in-house counsel. The court granted Ontario Teachers' request for costs and expenses. *See In re Computer Sciences Corp. Sec. Litig.*, No. 1:11-cv-00610 (E.D. Va.), ECF 324-2.

B. Expenses Incurred by Ontario Teachers' as Lead Plaintiff and Class Representative

43. The expenses incurred by Ontario Teachers' as Lead Plaintiff and Class Representative are summarized in Appendix B, which is based on expense reports and documentation prepared and maintained by Ontario Teachers' in the ordinary course of business.

44. In connection with its representation of the Settlement Class, Ontario Teachers' incurred $3,421.02 in travel expenses, including transportation, accommodations, and business meals. This travel was necessary for Ms. Chilcott and Ms. Rosenblatt to attend the April 26, 2017 hearing on the competing lead plaintiff motions and the April 3, 2018 hearing on Defendants' motions to dismiss, and for me to attend the mediation sessions in September 2021.

45. Ontario Teachers' incurred $8,805 in expenses in compensating two former Ontario Teachers' personnel, Ms. Lefebvre and Mr. Di Re, for their time spent responding to Defendants' subpoenas.

46. Finally, Ontario Teachers' incurred $4,047 in expenses to provide counsel for an external investment manager and its personnel in connection with subpoenas served by Defendants.

V. CONCLUSION

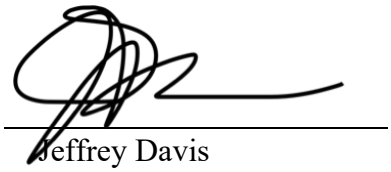
47. As a Court-appointed Lead Plaintiff and Class Representative, Ontario Teachers' strongly endorses the proposed settlement as fair, reasonable, and adequate, and believes it represents an outstanding result for the Settlement Class.

48. Ontario Teachers' further supports Lead Counsel's request for awards of attorneys' fees and litigation expenses and believes that it represents fair and reasonable compensation for Class Counsel in light of the result achieved and the quality and amount of work performed, in the

face of significant risks and uncertainties, over an extended period. Ontario Teachers' also requests an award of its reasonable costs and expenses in the Action, as set forth above.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: April 22, 2022



Jeffrey Davis

Appendix A – Time Devoted by Ontario Teachers' Personnel to Prosecuting the Action

NAME	HOURS
Chilcott, Sharon	88.50
Davis, Jeffrey	55.50
Rosenblatt, Tara	130.50
TOTAL	**274.5**

Appendix B – Expenses Incurred by Ontario Teachers'

EXPENSE	AMOUNT
Travel Expenses	$3,421.02
Compensation for Former Internal Asset Managers	$8,805
Counsel for External Investment Manager	$4,047
TOTAL	$16,273.02

Exhibit 4

Declaration of Edward Jarvis, Anchorage Police & Fire Retirement System, in Support of Final Approval of Class Settlement and Approval of Plan of Allocation, Awards of Attorneys' Fees and Litigation Expenses, and Awards of Reasonable Costs and Expenses to Class Representatives

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE TEVA SECURITIES LITIGATION	:	No. 3:17-cv-00558 (SRU)
THIS DOCUMENT RELATES TO:	:	All Class Actions

DECLARATION OF EDWARD JARVIS, ANCHORAGE POLICE & FIRE RETIREMENT SYSTEM, IN SUPPORT OF FINAL APPROVAL OF CLASS SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION, AWARDS OF ATTORNEYS' FEES AND LITIGATION EXPENSES, AND AWARDS OF REASONABLE COSTS AND EXPENSES TO CLASS REPRESENTATIVES

I, Edward Jarvis, hereby declare pursuant to section 1746 of title 28 of the United States Code:

1. I am the Director of Anchorage Police & Fire Retirement System ("Anchorage"), one of the Court-appointed Class Representatives in this action (the "Action").[1]

2. I submit this declaration in support of (a) Class Representatives' motion for final approval of the proposed settlement and approval of the Plan of Allocation; and (b) Lead Counsel's motion for awards of attorneys' fees and litigation expenses and awards to Class Representatives, including an award to Anchorage, pursuant to 15 U.S.C. § 78u-4(a)(4) of the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), of Anchorage's costs and expenses directly related to its representation of the Settlement Class in the amount of $7,080.[2]

[1] Unless otherwise indicated, capitalized terms used herein have the meanings contained in the Stipulation of Settlement, dated January 18, 2022. (ECF 919-2.)

[2] As used herein, "Class Counsel" refers collectively to Bleichmar Fonti & Auld LLP, Bleichmar Fonti & Auld Canada, The Law Offices of Susan R. Podolsky, and Carmody Torrance Sandak & Hennessey LLP.

3. I have been the primary person from Anchorage involved in overseeing Class Counsel's prosecution of the Action and the negotiations leading to the proposed settlement. The matters set forth herein are based on my personal knowledge and/or discussion with Class Counsel.

I. ANCHORAGE'S OVERSIGHT OF THE LITIGATION

4. Anchorage is a public pension fund located in Anchorage, Alaska, which operates for the exclusive benefit of police officers and firefighters and certain other employees of the municipality of Anchorage. Anchorage has more than $390 million in assets under management.

5. Beyond seeking to recover the significant losses suffered by Anchorage as a result of its investment in Teva Notes, Anchorage is a plaintiff in this Action because the allegations of wrongdoing—including that Defendants engaged in alleged price-fixing and large price increases on generic drugs used for serious health conditions—affect the integrity of the securities markets.

6. In seeking appointment as a Class Representative in this Action, Anchorage understood its responsibility to serve the best interests of the Class by supervising the effective prosecution of this Action, and has diligently done so at all times.

7. On September 5, 2017, Anchorage joined the Action as a named plaintiff to pursue Securities Act claims on behalf of Class members who invested in Teva Notes, and, with Lead Plaintiff Ontario Teachers' Pension Plan Board ("Ontario Teachers'"), filed the Amended Class Action Complaint for Violation of the Securities Act of 1933 (ECF 138). On March 9, 2021, the Court appointed Ontario Teachers' and Anchorage as Class Representatives, and granted class certification (ECF 736).

8. On behalf of Anchorage, I have directly supervised Class Counsel and have been extensively involved in the prosecution and settlement of the Action, as discussed below. The tasks that I have performed include, but are not limited to:

a. Regularly communicating with Class Counsel concerning the status, progress, and major strategy decisions regarding the Action;

b. Reviewing major motions and pleadings to provide comments and direction as needed;

c. Assisting in locating, collecting, and preserving potentially relevant documents;

d. Responding to discovery requests, including requests for production, interrogatories, and requests for admission, and voluntarily producing information regarding Anchorage's transactions in Teva securities;

e. Preparing for and testifying during my Rule 30(b)(6) deposition, which was taken remotely on July 21, 2021; and

f. Preparing for and participating in the mediation sessions with former United States District Judge Layn R. Phillips and extensive further negotiations, including attendance at formal mediation sessions on July 13, 2020, September 17, 2021, and September 27, 2021; attendance at various presentations to the mediator regarding the evidence and Teva's financial condition; and participation in numerous subsequent conferences with Class Counsel and Ontario Teachers' as negotiations continued, leading to the parties' acceptance of Judge Phillips's recommendation on December 2, 2021.

II. ANCHORAGE STRONGLY ENDORSES APPROVAL OF THE SETTLEMENT

9. Anchorage has served as lead plaintiff and/or class representative in three securities class actions which (including this Action) have recovered $660 million for investors. In addition to the Action, these cases are: *Freedman v. Weatherford Int'l, Ltd.*, No. 12-cv-02121 (S.D.N.Y.)

($120 million settlement approved Nov. 4, 2015); and *In re Conseco, Inc. Sec. Litig.*, 1:00-cv-585 (S.D. Ind.) ($120 million settlement approved Aug. 8, 2002).

10. This Action is the longest running securities class action in which Anchorage has participated, requiring five years of vigorous litigation by Class Representatives and Class Counsel. The proposed settlement of this Action is the largest recovery Anchorage has achieved.

11. The proposed settlement is the product of Anchorage's and Ontario Teachers' hard-fought negotiation and careful consideration on behalf of the Settlement Class. With Ontario Teachers' personnel, I was actively involved in settlement strategy and participated in all meditation sessions and settlement negotiations, as set forth below.

12. Mediation efforts began in 2020. I attended a financial presentation in advance of the formal mediation session, as did Sharon Chilcott (currently Ontario Teachers' Chief of Staff, and formerly Managing Director and Associate General Counsel, Employment Law & Litigation) and Tara Rosenblatt (former Ontario Teachers' Managing Director and Associate General Counsel, Investments).

13. On July 13, 2020, Ms. Chilcott, Ms. Rosenblatt, and I participated in a formal full-day mediation session with the Honorable Layn R. Phillips (Ret.), Class Counsel, counsel for Defendants, and representatives of Teva and various insurance carriers. The July 13, 2020 mediation was unsuccessful. At the time, discovery was in its early stages; no depositions had occurred, and no class had been certified.

14. Given these circumstances, Anchorage, in consultation with Ontario Teachers', elected to forgo further settlement discussions at that time, knowing that Class Counsel were prepared to invest the necessary time and financial resources to vigorously pursue the merits by

completing document discovery, taking fact depositions, and completing expert discovery. Anchorage believed that these efforts to advance the Action would potentially achieve a greater recovery for the Class by ensuring full consideration of the merits and increasing Defendants' risk. At the same time, a number of variables remained unknown, including the outcome of the recently filed class certification motion, the strength of the full documentary record, the testimony and credibility of fact witnesses who had yet to be deposed, and the complete results of expert analysis.

15. Between July 2020 and September 2021, Class Representatives were in regular contact with Class Counsel regarding the progress of the Action and recent developments. Among other things, I received regular litigation status updates from Class Counsel, including with regard to class certification, Defendants' numerous discovery requests (including to Anchorage and Anchorage's investment manager), and the status of fact and expert discovery; received drafts of motions, submissions, and briefs; and prepared for and provided testimony during Anchorage's Rule 30(b)(6) deposition.

16. Mediation resumed in September 2021, after the Court had certified the Class and fact discovery was complete, and as the parties concluded the final stages of expert discovery. I was involved in preparing for and attending the extensive mediation sessions and settlement negotiations in fall 2021, as were Ms. Rosenblatt and Jeffrey Davis (Ontario Teachers' Chief Legal and Corporate Affairs Officer). Specifically, in advance of the September 2021 mediation sessions, Class Representatives conferred with Class Counsel regarding the strength of the merits and updated expert damages analyses.

17. On September 17, 2021, Ms. Rosenblatt, Mr. Davis, and I participated in a full-day mediation session with Judge Phillips.

18. Following that session, Class Representatives further conferred with Class Counsel regarding potential damages and additional presentations to be made to Judge Phillips, conferred with a consulting expert to further understand Teva's financial risks and constraints, and considered Defendants' insurance coverage, including various complexities and the fact that coverage would diminish as litigation (and Defendants' substantial legal fees) continued. In this regard, Class Representatives also considered analysis of complex insurance issues provided by Carmody Torrance Sandak & Hennessey LLP ("Carmody").

19. On September 27, 2021, Ms. Rosenblatt, Mr. Davis, and I participated in an additional full-day mediation session with Judge Phillips.

20. No resolution was reached on September 27, and extensive negotiations (through Judge Phillips) continued over the ensuing weeks. Throughout this period, Class Representatives continuously conferred with Class Counsel regarding settlement strategy. Anchorage also conferred with Ontario Teachers', separately from meeting with Class Counsel, to discuss settlement negotiations.

21. On November 14, 2021, Judge Phillips issued a mediator's recommendation to settle the Action in exchange for $420,000,000.

22. Anchorage carefully and extensively considered Judge Phillips's recommendation in consultation with Ontario Teachers' and Class Counsel. In doing so, Anchorage considered (among other things) consulting expert analyses of Teva's financial situation, including its large debt burden, exposure to opioids litigation, and potential liability in pending antitrust actions. Moreover, while Class Representatives and Class Counsel believed strongly in the merits of the Action, Class Representatives also recognized that further litigation would expose the Class to

significant delay and other risks, including that Teva's financial condition could further decline before any recovery could be secured.

23. Based on Anchorage's experience as a court-appointed lead plaintiff and class representative in other cases, its active involvement throughout the Action, its participation in three mediation sessions and subsequent discussions, and its understanding of the strength of the merits, the amount of damages, and numerous risks (including Teva's financial condition), as outlined above, Anchorage, in consultation with Ontario Teachers', determined that the proposed settlement was fair, reasonable, and adequate to the Settlement Class.

24. On December 2, 2021, only hours before motions for summary judgment and *Daubert* motions were to be filed, the mediator advised that all parties had accepted his recommendation. The parties then negotiated the terms of the Stipulation of Settlement and its exhibits, which was executed and filed on January 18, 2022.

25. Anchorage believes the settlement represents an outstanding result, particularly in light of the size of the recovery and the substantial risks and uncertainties outlined above. Based on Anchorage's extensive involvement in negotiating the proposed settlement of the Action, and with the benefit of its extensive experience acting as lead plaintiff and class representative in other matters, Anchorage strongly endorses approval of the settlement by the Court.

III. ANCHORAGE SUPPORTS LEAD COUNSEL'S MOTION FOR AWARDS OF ATTORNEYS' FEES AND LITIGATION EXPENSES

26. As a Class Representative and fiduciary for the Class, Anchorage has carefully supervised the Action and the work of Class Counsel.

27. In retaining Bleichmar Fonti & Auld LLP ("BFA") for this matter, Anchorage determined that BFA was particularly well-qualified based on Anchorage's extensive work with BFA's named partners in prior securities actions. Anchorage understood that a core team of BFA

attorneys would devote a majority of their time to prosecuting the Action and that BFA would devote the resources necessary to fully prepare the Class's claims for trial, including by investing heavily in time and expenses to retain leading experts. In addition to BFA, Anchorage worked closely with, and relied on valuable strategic counsel from, Carmody and Ms. Podolsky throughout the Action, particularly in responding to Defendants' discovery demands and in considering and analyzing the various proposals and counter-proposals to resolve the case.

28. Anchorage recognizes that the Court must approve any fee award. Together with Ontario Teachers', Anchorage has engaged in arm's-length negotiation with Lead Counsel, which led to Anchorage's authorization of and support for the requested fee of 23.70% of the Settlement Fund.

29. In particular, Anchorage has considered the quality and amount of Class Counsel's work in the Action, which ultimately resulted in the parties' agreement to the proposed settlement only hours before summary judgment and *Daubert* motions were to be filed; the substantial recovery Class Counsel's efforts achieved for the Settlement Class; the complexity and duration of the Action; the significant risks and uncertainties Class Counsel faced for an extended period; and fees awarded in other cases. Ultimately, in authorizing the requested fee, Anchorage concluded that Class Counsel delivered on their commitments to forcefully and efficiently litigate the Action and have demonstrated superior skill and ability. I have witnessed the tenacious manner in which Class Counsel litigated against formidable defense counsel and Teva to achieve a highly significant settlement.

30. Anchorage also considered, and placed significant weight on, the independent opinion of former Judge Christopher Droney in deciding to authorize Lead Counsel's fee request.

Judge Droney's Declaration provides empirical data and analysis that informed Anchorage's consideration of the requested fee.

31. Anchorage understands that the Court may consider Class Counsel's hourly rates as one component of its analysis of the requested fee. Anchorage is aware that hourly rates for some counsel within the District of Connecticut may be lower than BFA's hourly rates. However, Anchorage believes this complex securities class action with antitrust components required special expertise to achieve the best possible result for the Settlement Class. Anchorage understands that BFA specializes in complex securities and antitrust actions, and Anchorage is familiar with the high quality of BFA's work from Anchorage's prior experience with BFA's founding partners.

32. Moreover, it is Anchorage's experience that securities class actions under the PSLRA are a specialized, national practice, with leading class counsel and defense firms concentrated in New York. For these reasons, in prior securities class actions in which Anchorage has served as lead plaintiff and/or class representative (including a case in the Southern District of Indiana), Anchorage selected and retained New York-based counsel and viewed their rates as appropriate to obtain the best representation for the proposed classes. Consistent with that practice, Anchorage selected BFA to ensure the highest-caliber representation and the best possible result in this complex and specialized matter.

33. In light of the result achieved, the work performed, and the risks faced over five years of litigation, Anchorage supports Lead Counsel's request for a fee award of 23.70% of the Settlement Fund and believes the requested amount represents a reasonable attorneys' fee award in the Action.

34. Anchorage further believes that the litigation expenses for which Lead Counsel is seeking an award are reasonable, and represent costs and expenses necessary for the prosecution

and resolution of this complex action, which required significant expert analysis regarding generic drug pricing, the impact of the alleged price increases on Teva's reported financial results, and damages and loss causation, among other matters, as well as expenses for the hosting and analysis of voluminous document productions and conducting numerous fact and expert depositions. I am aware that the analysis by the Class's experts was incorporated into the presentations made in connection with the September 2021 mediation efforts. This analysis significantly advanced the Class's position and maximized the settlement result by demonstrating that Class Counsel were prepared to prove the Class's claims based on rigorous analysis of Teva's price increases and other key issues, including materiality, loss causation, and damages.

35. Based on the foregoing, Anchorage supports Lead Counsel's motion for awards of attorneys' fees and litigation expenses.

IV. ANCHORAGE'S REQUEST FOR AN AWARD OF REASONABLE COSTS AND EXPENSES

36. Anchorage understands that the PSLRA authorizes the award of class representatives' reasonable costs and expenses, including lost wages. *See* 15 U.S.C. § 78u-4(a)(4). Accordingly, Anchorage seeks an award of its reasonable costs and expenses incurred in connection with its representation of the Settlement Class.

37. Anchorage's costs and expenses in the Action total $7,080, consisting of the estimated cost of 120 hours of time that I devoted to the Action in place of my regular duties. My work is further described below.

38. Appendix A hereto identifies, based on a review of Anchorage's records that I maintained throughout the Action, 120 hours of time that I devoted to the prosecution and settlement of the Action.

39. My work on this Action was dedicated to overseeing Class Counsel and the litigation and resolution of the Action. This time was primarily spent: consulting and strategizing with Class Counsel on a regular basis; reviewing pleadings, motion papers, and other filings; attending to Anchorage's document collection; reviewing and responding to Defendants' discovery requests; preparing for and testifying during my deposition as Anchorage's Rule 30(b)(6) witness; and attending and participating in mediation sessions in summer 2020 and fall 2021, as described above.

40. Using a reasonable hourly rate of $59, Anchorage requests an award of $7,080 in respect of the 120 hours of time set forth in Appendix A that I devoted to the prosecution and settlement of the Action in place of my regular duties.[3]

V. CONCLUSION

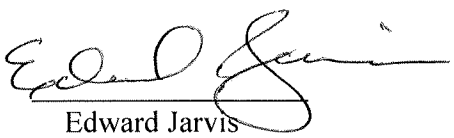
41. As a Court-appointed Class Representative, Anchorage strongly endorses the proposed settlement as fair, reasonable, and adequate, and believes it represents an outstanding result for the Settlement Class.

42. Anchorage further supports Lead Counsel's request for awards of attorneys' fees and litigation expenses and believes that it represents fair and reasonable compensation for Class Counsel in light of the result achieved and the quality and amount of work performed, in the face of significant risks and uncertainties, over an extended period. Anchorage also requests an award of its reasonable costs and expenses in the Action, as set forth above.

[3] My estimated hourly rate is derived from my annual salary and benefits, divided by the number of hours I am expected to work a year.

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

Dated: April 26, 2022



Edward Jarvis

Appendix A – Time Devoted by Anchorage Personnel to Prosecuting the Action

NAME	HOURS
Jarvis, Edward	120.00

Exhibit 5

Declaration of Judge Christopher F. Droney (Ret.)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE TEVA SECURITIES LITIGATION	:	No. 3:17-cv-00558 (SRU)
THIS DOCUMENT RELATES TO:	:	All Class Actions

DECLARATION OF JUDGE CHRISTOPHER F. DRONEY (Ret.)

I, Christopher F. Droney, declare as follows:

I. INTRODUCTION

1. I submit this declaration in support of Lead Counsel Bleichmar Fonti & Auld LLP's ("BFA's") request for attorneys' fees and expenses to be paid from the common fund that is part of the proposed settlement of this action. In my view, the requested attorneys' fees, including the percentage multiplier of the lodestar amount and the percentage of the common fund, are reasonable and justified. I provide my reasons for that opinion below.

2. My professional background as an attorney and judge includes fourteen years as a United States District Judge for the District of Connecticut and eight years as a Judge on the United States Court of Appeals for the Second Circuit. I also served as the United States Attorney for the District of Connecticut and was a private litigator involved in both civil and criminal litigation in the state and federal trial and appellate courts. As a federal judge, I reviewed and ruled on many requests for attorneys' fees in different types of litigation, both at the trial and appeals levels. I believe that extensive experience in reviewing fee requests similar to the one in this case assists me in arriving at my opinion here. My resume is attached as Exhibit A.

3. I have organized my declaration into various parts. First, I provide some more detail on my experience in reviewing similar fee requests, and then I provide what I believe are the guideposts set by the United States Court of Appeals for the Second Circuit for District Courts reviewing fee requests in this context, as well as academic and empirical studies and information concerning similar requests in other courts. I then review the work of Class Counsel here, and finally, present my opinion on the justification for the fees and expenses request.[1]

II. PRIOR RELEVANT EXPERIENCE

4. As a United States District Judge, I reviewed and ruled on many requests for attorney's fees in many contexts, including under the civil rights acts, Title VII, ERISA, federal environmental statutes, The Individuals with Disabilities Education Act, state statutes, private agreements, and common funds in federal securities class actions. My experience in the federal securities matters seems most relevant here, and I ruled on a number of such requests. *See, e.g.*, *In re EIS Int'l, Inc. Sec. Litig.*, No. 3:97-cv-00813-CFD (D. Conn. 2006); *In re Flight Safety Techs. Inc., Sec. Litig.*, No. 3:04-cv-01175-CFD (D. Conn. 2008); *In re PE Corp. Sec. Litig.*, No. 3:00-cv-00705-CFD (D. Conn. 2010); *see also Collins v. Olin Corp.*, No. 3:03-cv-945-CFD (D. Conn. 2010) (applying environmental statutes). In doing so, I applied the factors approved by the United States Court of Appeals for the Second Circuit that I have set forth below, including the percentage of the fund and lodestar cross-check approaches, consideration of multipliers, and the *Goldberger* Factors. On the United States Court of Appeals for the Second Circuit, I also reviewed the application of those factors by the District Courts throughout the Second Circuit. *See, e.g., In re Tremont Sec.*, 699 F. Appx. 8 (2d Cir. 2017) (summary order). I also presided over other similar complex class actions that were not

[1] "Class Counsel" refers to BFA; Bleichmar Fonti & Auld Canada; The Law Offices of Susan R. Podolsky; and Carmody Torrance Sandak & Hennessey LLP.

completely resolved at the time I was elevated to the Second Circuit, *e.g.*, *In re U.S. Foodservice Pricing Litig.*, No. 3:07-md-01894-AWT (D. Conn. 2014). I have also had considerable experience in analyzing issues of federal securities law in the class action context, including authoring opinions for the Second Circuit in that area. *See, e.g.*, *Waggoner v. Barclays PLC*, 875 F.3d 79 (2d Cir. 2017) (preponderance of evidence required to rebut presumption from *Basic Inc. v. Levinson*, 485 U.S. 224 (1988)); *Roach v. T.L. Cannon Corp.*, 778 F. 3d 401 (2d Cir. 2015) (standard for damages at class certification stage).

5. I believe that experience is helpful in not only reviewing the fee and expense request, but also in understanding the course of litigation in this case and evaluating the extent of Class Counsel's work here.

III. ANALYSIS OF FEE AWARDS IN THE SECOND CIRCUIT AND NATIONWIDE

A. Second Circuit

6. District Courts exercise considerable discretion in applying equitable principles in awarding reasonable attorneys' fees from common funds to class counsel after settlements in securities class actions. *Goldberger v. Integrated Resources*, 209 F.3d 43, 47 (2d Cir. 2000). The Second Circuit has held that either the "percentage of the fund" or "lodestar" approach is permitted, but has repeatedly stated that the "percentage of the fund" method is preferred as it reflects counsel's risk in undertaking the action and better rewards their diligence and expertise. *Fresno Cty. Emps. Retirement Ass'n v. Isaacson*, 925 F.3d 63, 68 (2d Cir. 2019) ("an unenhanced lodestar fee does not account for the contingent risk that a lawyer may assume in taking on a case"); *Wal-Mart Stores, Inc. v. Visa U.S.A.*, 396 F.3d 96, 121 (2d Cir. 2005) ("The trend in this Circuit is toward the percentage method, which directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation.") (internal citation and quotation marks omitted); *see also Fields v.*

Kijakazi, 24 F.4th 845, 849 (2d Cir. Jan. 28, 2022) ("A contingency fee charged in any given winning case is likely to be high in relation to the hours actually spent on the case by the lawyer. But, without contingency fees, people in need of good lawyers would often not be able to hire them."). The lodestar method multiplies hours reasonably expended against a reasonable hourly rate. The lodestar analysis still may be a helpful crosscheck on the percentage fee to be awarded. Courts in their discretion may also increase the lodestar measurement by applying a multiplier of it based on the risks of the litigation and the quality of representation. *Goldberger*, 209 F.3d at 47. Regardless of the method employed, what have become known as the "*Goldberger* Factors" are applied to confirm the reasonableness of the award. *Goldberger*, 209 F.3d at 50. The *Goldberger* Factors are the following: (1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of the representation; (5) the requested fee in relation to the settlement; and, (6) public policy considerations. *Goldberger*, 209 F. 3d at 52.

7. In this case, Lead Counsel seeks an attorneys' fee of 23.70% of the common fund of $420 million, or $99.54 million, which would be a multiplier of 2.17 of the lodestar amount of $45,837,361.00. Lead Counsel also seeks payment of $9,717,887.47 in expenses.

8. In reviewing similar decisions by District Courts in the Second Circuit, I concluded that class action settlements in the $200 to $500 million range are most relevant, and that settlements of securities class actions were particularly helpful guideposts, although settlements of other types of class actions with common funds were helpful to my analysis as well. The following sampling of cases from the Second Circuit and the District of Connecticut also was based on other similar factors present in the instant action, including the risks of establishing liability and damages, the extensive litigation before settlement, the number

of years those actions were pending when they were resolved, the complexity of the issues, and the quality of representation by Class Counsel.

9. Given the advanced procedural stage of this action, I believe the most relevant securities cases are those that achieved class certification and reached the stage of summary judgment filings before settlement.[2] The chart below identifies the six securities class action settlements within the Second Circuit in the $200 to $500 million range that meet these criteria, and for each provides the settlement amount, the percentage of the settlement amount the court-approved fee constituted, and the multiplier of the lodestar calculation.

[2] As discussed below, Class Counsel had completed extensive summary judgment and *Daubert* motions, and the parties agreed to the proposed settlement hours before those motions were to be filed.

Securities Fee Awards Within Second Circuit (Listed in Order of Settlement Amount)

Case	Settled	Judge[3]	Settlement Amount	Fee (%)	Fee ($)	Requested Fee (%)	Multiplier	Lodestar
In re Pfizer, Inc. Sec. Litig.[4]	2016	Swain, J.	$486,000,000	28.0%	$136,080,000	28.0%	1.13	$120,437,653
Jones v. Pfizer, Inc.[5]	2015	Hellerstein, J.	$400,000,000	15.0%	$60,000,000	23.5%	1.01	$59,314,844
N.J. Carpenters Health Fund v. Residential Capital, LLC[6]	2015	Failla, J.	$335,000,000	20.8%	$69,512,500	20.8%	1.78	$39,063,012
In re Oxford Health Plans Inc. Sec. Litig.[7]	2003	Brieant, J.	$300,000,000	28.0%	$84,000,000	33.3%	n/a	n/a
In re Signet Jewelers Ltd Sec. Litig.[8]	2020	McMahon, J.	$240,000,000	25.0%	$59,206,000	25.0%	1.98	$29,880,618
Anwar v. Fairfield Greenwich Ltd [Madoff][9]	2016	Marrero, J.	$235,250,000	28.8% (combined rate of four partial settlements)	$67,812,500	28.8%	0.86	$78,776,260

10. The chart below provides the same information for the two largest class action settlements in the District of Connecticut. *Xerox* was a securities case, while *U.S. Foodservice* was a RICO and contract case.[10]

[3] Each settlement is from the Southern District of New York.
[4] *In re Pfizer Inc. Sec. Litig.*, No. 04-cv-9866 (LTS) (HBP) (S.D.N.Y. 2016).
[5] *Jones v. Pfizer Inc., et al.*, Civ. Act. No. 1:10-cv-03864-AKH (S.D.N.Y. 2015).
[6] *N.J. Carpenters Health Fund, et al. v. Residential Capital, LLC, et al.*, No. 08-cv-8781 (KPF) (S.D.N.Y. 2015).
[7] Order currently unavailable due to age.
[8] *In re Signet Jewelers Limited Secs. Litig.*, Civ. Act. No. 1:16-cv-06728-CM-SDA (S.D.N.Y. 2020). The court awarded the requested fee of 25% net of expenses, equal to 24.7% of the settlement amount.
[9] *Anwar v. Fairfield Greenwich Lim., et al.*, Master File No. 09-cv-118 (VM) (FM) (S.D.N.Y. 2013).
[10] I am also aware that this Court has issued a number of fee award decisions in common fund class actions; I do not address them here in light of the Court's greater familiarity with the specific circumstances of each case.

District of Connecticut Fee Awards

Case	Settled	Judge	Settlement Amount	Fee (%)	Fee ($)	Requested Fee (%)	Multiplier	Lodestar
Carlson v. Xerox[11]	2009	Thompson, J.	$750,000,000	16.0%	$120,000,000	20.0%	1.25	$95,942,272
U.S. Foodservice [12]	2014	Thompson, J.	$297,000,000	33.3%	$99,000,000	33.3%	2.23	$44,419,419

11. As these charts show, District Courts in the Second Circuit have approved fees from 15% to 33.3% of the common fund, with several large, procedurally advanced securities cases awarding fees in the 25% to 28% range. Of course, each case is different and has different lodestar and *Goldberger* evaluations (including the amount and intensity of litigation), but it appears that a request in the mid-20% range was met with approval in a number of cases.

12. It also appears that the size of the settlement has some impact. The settlement in this matter of $420,000,000 appears to be the second-highest settlement in the District of Connecticut. But, four of the six comparably sized securities settlements above still permitted fees at least in the mid-20% range. In addition, in *U.S. Foodservice*, a $297 million settlement, Judge Thompson approved a fee of 33.3%, or $99 million; the requested fee in this case is a smaller percentage of the common fund (23.70%) and similar in dollar amount ($99.54 million).

13. With respect to multipliers, among the cases listed above, *U.S. Foodservice* reflected a 2.23 multiplier.[13] In addition, a broader sample of all 42 securities settlements within the Second Circuit above $200 million indicates an average multiplier of approximately 1.97.

[11] *Carlson v. Xerox Corp.*, 355 Fed. Appx. 523, 525 (2d Cir. 2009).
[12] *In re U.S. Foodservice, Inc. Pricing Litig.*, Case No. 3:07-md-1894 (AWT), 2014 WL 12862264, at *1 (D. Conn., Dec. 9, 2014).
[13] *See In re U.S. Foodservice, Inc. Pricing Litig.*, No. 3:07-MD-1894, ECF 510-2 (joint declaration summarizing conduct of litigation); 2014 WL 12862264, at *3 (D. Conn. Dec. 9, 2014) (fee order).

Finally, as discussed further below, academic research has found an average multiplier of 2.72 for class settlements above $67.5 million from 2009 to 2013.

B. Academic Literature and Analysis of Decisions from Other Jurisdictions

i. Academic and Empirical Studies

14. The use of empirical data and research on class action attorneys' fees has become a well-accepted feature of class action adjudication. *See, e.g.*, *In re Heartland Payment Sys., Inc. Customer Data Security Breach Litig.*, 851 F. Supp. 2d 1040, 1080-81 (S.D. Tex. 2012) ("District courts increasingly consider empirical studies analyzing class-action settlement fee awards to set the appropriate percentage benchmark or to test the reasonableness of a given benchmark . . . Using these studies alleviates the concern that the number selected is arbitrary."). As such, I will now compare Lead Counsel's request for attorneys' fees and expenses to leading reports on the subject.

15. The NERA Economic Consulting group's 2021 report[14] on securities class action litigation indicates that between 2012 to 2021—for those such actions that settled for between $100 million and $500 million—the median attorneys' fee percentage of a settlement fund was 24.5% (page 27 of the report). Out of the top ten securities settlements in 2021, the average attorneys' fee was 24.2% (page 21 of the report).

16. A leading academic study of class action settlements and attorneys' fees by Theodore Eisenberg, Geoffrey Miller, and Roy Germano arrived at similar conclusions. Theodore Eisenberg, Geoffrey Miller, and Roy Germano, *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. L. REV. 937 (2017). In analyzing 458 cases between 2009 and 2013, the study concluded that the average attorneys' fee percentage was between 25% and 30%

[14] Janeen McIntosh and Svetlana Starykh, "Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review," NERA, January 25, 2022, Figure 11 at 11.

(averaging 27%) of the gross recovery. *Id.* at 947. Specific to the Second Circuit Court of Appeals, the mean fee percentage was 28%, with a median of 30%. *Id.* at Table 3, at 951. The mean lodestar multiplier in the Second Circuit was 1.93. *Id.* at Table 12, at 965. In the realm of securities litigation, the mean attorneys' fee percentage (on a national basis) was 23%, with a median fee percentage of 25%. *Id.* at Table 4, at 952.

17. Though empirical data suggests that attorneys' fees increase at a slower rate when recoveries become very large,[15] the Eisenberg, Miller, and Germano study divided the cases across the nation between 2009 and 2013 "into deciles of about 45 cases each," and found that even with such a scaling effect, for cases in the top decile—those with recoveries exceeding $67.5 million—the average fee percentage was 22.3%.[16] The study also determined that "[h]igher recoveries are associated with lower percentage fees and higher lodestar multipliers," which tend to "rise with the size of class recovery."[17] The study found an average multiplier of 2.72 for settlements above $67.5 million.[18] In addition, in the previous iteration of the study sampling cases from 1993 to 2008, the mean lodestar multiplier—in cases with class recoveries of more than $175.5 million—was 3.18.[19]

18. In examining Lead Counsel's request for attorneys' fees, it is clear that the requested percentage and lodestar multiplier are within statistical trends of securities class actions. Lead Counsel seeks 23.70% of the gross common fund, which is less than the average percentage of 24.5% awarded for securities settlements of this size (between $100 million and

[15] McIntosh & Starykh, *supra* Figure 25, at 27.
[16] Eisenberg, Miller, & Germano, *supra* at 947-48.
[17] Eisenberg, Miller, & Germano, *supra* at 941, 969.
[18] Eisenberg, Miller, & Germano, *supra* at 967.
[19] Table 15 at 274, Theodore Eisenberg and Geoffrey Miller, *Attorneys' Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. EMPIRICAL LEGAL STUDIES 248 (2010).

$500 million) from 2012 to 2021[20] and comparable to the 22.3% average fee that the Eisenberg, Miller, and Germano study found for class settlements above $67.5 million nationwide.[21] The lodestar multiplier sought (2.17) is also below the average for class settlements above $67.5 million nationwide. As such, the empirical data suggests that the percentage sought and the lodestar multiplier applied are reasonable relative to similar awards.

ii. Decisions From Other Jurisdictions

19. Across the nation, district courts have regularly awarded attorneys' fees exceeding 25% of the common fund in sizable class action settlements. *See Schuh v. HCA Holdings, Inc.*, 3:11-cv-01033, 2016 WL 10570957, at *1 (M.D. Tenn. April 14, 2016) (total settlement amount was $215,000,000, with attorneys' fees granted for 30% of the fund, equaling $64,500,000); *In re Titanium Dioxide Antitrust Litig.*, Master Docket No. 10-CV-00318 (RDB), 2013 WL 6577029, at *1 (D. Md. Dec. 13, 2013) (total settlement amount was $163,500,000, with attorneys' fees granted for 33.3% of the fund, equaling $54,500,000); *Alaska Elec. Pension Fund v. Pharmacia Corp.*, No. 03-cv-01519 (D.N.J. Jan. 30, 2013) (total settlement amount was $164,000,000, with attorneys' fees granted for 27.5% of the fund, equaling $45,100,000); *Compsource Oklahoma et al. v. BNY Mellon*, No. 08-cv-00469, 2012 WL 6864701, at *1 (E.D. Okla. Oct. 25, 2012) (total settlement amount was $280,000,000, with attorneys' fees granted for 25% of the fund, equaling $70,000,000); *Silverman v. Motorola, Inc.*, No. 07 C 4507, 2012 WL 1597388, at *1 (N.D. Ill. May 7, 2012) (total settlement value was $200,000,000, with attorneys' fees granted for 27.5% of the fund, equaling $55,000,000); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330 (S.D. Fla. 2011) (total settlement value was $410,000,000, with attorneys' fees granted for 30% of the fund, equaling $123,000,000).

[20] McIntosh and Starykh, *supra* Figure 25, at 27.
[21] Eisenberg, Miller, & Germano, *supra* at 948.

20. Except for the D.C. Circuit, the mean class action attorneys' fee percentage across the federal circuits between 2009 and 2013 ranged from 23% (5th Circuit) to 30% (11th Circuit). Eisenberg, Miller, & Germano, *supra* Table 3, at 951. At the district court level, the ten districts with the most class action cases all saw mean attorneys' fee percentages above 24%, ranging up to 31%.[22] *Id.*, Table 2, at 950.

21. Many courts have also resisted the "scaling effect," which may produce lower fee percentages for high-award cases. *See, e.g.*, *In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 196-97 (E.D. Pa. 2000) ("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."); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1367 (S.D. Fla. 2011); *In re Vitamins Antitrust Litig.*, No. MISC. 99-197 (TFH), 2001 WL 34312839, at *12 (D.D.C. July 16, 2001). In *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1213 (S.D. Fla. 2006), the court noted that engaging in this practice is "antithetical to the percentage of the recovery method . . . the whole purpose of which is to align the interests of Class Counsel and the Class by rewarding counsel in proportion to the results obtained."

22. It thus appears that Lead Counsel's request here is supported by national data for similar awards.

[22] These courts are, in order, S.D.N.Y., N.D. Cal., S.D. Cal., C.D. Cal., E.D.N.Y., E.D. Pa., D.N.J., E.D. Cal., D. Minn., and W.D. Wash.

IV. CLASS COUNSEL'S WORK IN THIS CASE, AND THE REQUESTED FEES AND EXPENSES

23. I have reviewed a detailed description of Class Counsel's work, many Court filings, summaries of expert reports and other materials exchanged in discovery, the Declaration of Joseph A. Fonti, and a summary of the time records of Class Counsel (by timekeeper and firm), and have thereby become familiar with their work throughout their representation, including the many phases of this case. I have also reviewed this information to determine whether the appropriate attorneys were utilized for the degree of difficulty for the particular tasks. In particular, I have also had access to and considered time records for BFA. I have also reviewed the biographies of all counsel to help determine whether suitable levels of experience were applied to the particular work.

24. Class action litigation in securities matters requires specialized and experienced counsel. This case required an even higher level of expertise, commitment and judgment than the typical litigation of this type because of its intensity and length (over five years), its federal antitrust aspects, and the number and different types of securities affected. Fortunately, the presiding judge was closely involved in many parts of this case and conducted numerous status conferences with his personal involvement, so he is well aware of Class Counsel's representation throughout.

25. The lodestar calculation for all Class Counsel in this matter is $45,837,361.00 based on current rates. That is comprised of $42,541,475.00 for BFA, $73,382.50 for Bleichmar Fonti & Auld Canada, $2,541,825.00 for The Law Offices of Susan R. Podolsky, and $680,678.50 for Carmody Torrance Sandak & Hennessey LLP. The total number of hours

worked for all Class Counsel is 77,090.70. The blended rate for all Class Counsel is $595. The current hourly rates for Class Counsel range from $225 to $985.[23]

26. In summarizing my analysis of the time records here and their relation to the Court's docket, I have generally taken a chronological approach, as that appears the best way to evaluate Class Counsel's work. In light of the Court's extensive involvement in and familiarity with many facets of the litigation, I also endeavor to describe Class Counsel's substantial work on fact and expert discovery that was not presented to the Court, but laid the foundation for summary judgment and trial.

A. Lead Plaintiff Appointment

27. The first stage of Class Counsel's involvement was BFA's initial investigation and preparation of claims assessments based on reviews of documents and other relevant information in late 2016. During that period, BFA met with Plaintiff Ontario Teachers' Pension Plan Board ("Ontario Teachers'") to assess the merits of the action and, subsequently, was granted approval to seek appointment as lead plaintiff. On behalf of Ontario Teachers', BFA also opposed transfer of the action from the Central District of California to the Eastern District of Pennsylvania; ultimately, the action was transferred to the District of Connecticut.

28. Much of the first half of 2017 was spent addressing whether Ontario Teachers' was the appropriate Lead Plaintiff and dealing with opposition by competing plaintiffs to Ontario Teachers' Lead Plaintiff motion. On July 11, 2017, the Court issued a 28-page opinion appointing Ontario Teachers' as Lead Plaintiff and BFA as Lead Counsel.

[23] Bleichmar Fonti & Auld LLP hourly rates range from $330 for a law clerk to $985 per hour for name partners Javier Bleichmar and Joseph Fonti; Bleichmar Fonti & Auld Canada name partner Dominic Auld's hourly rate is $985; Susan R. Podolsky's (of The Law Offices of Susan R. Podolsky) hourly rate is $650; and Carmody Torrance Sandak & Hennessey LLP hourly rates range from $225 for a paralegal to $575 for partner Peter M. Nolin.

B. Preparing the Complaints, Motions to Dismiss, and Consolidation

29. For the period of July 2017 to September 2017, Class Counsel spent a considerable amount of time analyzing five years of factual support for Ontario Teachers' future allegations, including reviewing Teva investor call transcripts, analyst reports, and press coverage. BFA also reviewed the State AGs' civil antitrust complaint and U.S. Department of Justice ("DOJ") allegations concerning generic drug price fixing in violation of federal antitrust laws. That effort also involved extensive legal research, including analysis of the intersection of federal antitrust and securities laws, as well as the effect of concealing sources of financial performance. Experts were also consulted concerning the antitrust/collusion issues, disclosures, public offerings and potential damages.

30. On August 2, 2017, Class Counsel filed Ontario Teachers' Class Action Complaint for violation of the Securities Act of 1933, in part to preserve those claims and protect them from statutes of limitations attacks. Shortly after that filing, BFA advised the Court that an amended complaint would be filed and Anchorage Police & Fire Retirement System ("Anchorage" and, together with Ontario Teachers', "Class Representatives") would be joined as an additional plaintiff. On September 11, 2017, a 300-page Consolidated Class Action Complaint was filed based on the Securities Exchange Act of 1934 as well as the Securities Act of 1933.

31. Five motions to dismiss were filed in December 2017, and in January 2018, 101 pages of responses were filed by Class Counsel that dealt with such issues as the duty to disclose information concerning claimed financial success, statutes of limitations, class standing, auditor liability, claims under foreign law, and personal jurisdiction. The parties' briefs on these issues consumed 284 pages. From February to April 2018, preparation for oral argument on the five motions occurred, and on April 3, 2018, the Court granted the motions to dismiss, but

without prejudice to amending the complaint to add additional detailed allegations on concealment of the sources of Teva's purported financial success.

32. As a result of the Court's decision, BFA engaged in additional expert analysis of generic drug prices across Teva's entire portfolio, resulting in a calculation of more than $2 billion in excess profits. Extensive comparisons were conducted of Teva's claimed metrics to the price increases' impact, as well as categorizing the false statements and omissions. An investigative firm retained by BFA contacted former Teva employees. Those employees detailed the involvement of senior Teva executives in decisions to increase prices and internal tracking of their financial impact.

33. As a result of these additional efforts by Class Counsel, Class Representatives filed an Amended Consolidated Class Action Complaint on June 22, 2018.

34. The period of July 2018 to September 2019 involved the second round of motions to dismiss. Three such motions were filed, and Class Counsel filed 96 pages of briefing in response. The parties' briefs consumed 241 pages. On September 25, 2019, the court issued a 74-page decision largely denying the motions.

35. Following the Court's decision on the motions to dismiss, a considerable effort was spent on attending to consolidation of the various class and individual actions. On December 13, 2019, the parties filed their consolidation motion and Class Counsel filed the Second Amended Consolidated Class Action Complaint, which significantly expanded the Class Period, named additional defendants, and alleged additional claims. The Court granted consolidation in March 2020.

36. In September 2020, the DOJ sought to intervene due to concerns over certain depositions proceeding during its criminal investigation. Ultimately, the Court permitted limited intervention by the DOJ.

C. Class Counsel's Extensive Efforts to Develop the Merits

37. Over the two-year period from September 2019 to September 2021, Class Counsel engaged in considerable discovery of the Defendants to obtain relevant documents, information and admissions for use at summary judgment and trial.

i. Discovery Litigation to Obtain Voluminous Documents

38. The extent of discovery litigation with the Defendants was enormous. Fortunately, the Court is well aware of it because of its continuing and deep involvement in monitoring it, resolving myriad objections, and compelling production. Some indications of the extent of the required involvement of Class Counsel in this stage of the case are the following: 116 requests for production and 119 requests for admissions were served on Defendants; Class Counsel's pursuit of the document production requests resulted in Defendants' production of more than 2.9 million pages of documents from 27 record custodians; three motions to compel discovery were filed, with later Court rulings ordering the production of pricing, sales, and profit data for Teva's entire generic drug portfolio, the production of text messages, and the identification of Defendants' attorneys who had reviewed relevant FBI reports; twenty status conferences with the Court regarding discovery scheduling and disputes; extensive litigation concerning spoliation claims; litigation concerning claims of privilege and privilege logs; and third-party discovery, including filing an action to enforce a subpoena to Sandoz Inc., yielding more than 5 million pages of documents.

39. In total, over 8.2 million pages of documents were produced by Defendants and third parties.

ii. Fact Depositions

40. With voluminous documents in hand, Class Counsel expended significant effort to efficiently and effectively analyze these documents and take depositions of 23 fact witnesses through video conference (resulting in over 7,000 pages of fact witness testimony with 535 exhibits). The majority of these depositions occurred from January through April 2021. The deponents included each Individual Defendant (including Teva's current CEO, a former CEO, and a former interim CEO); a current member of Teva's Audit Committee; other senior Teva executives; and Rule 30(b)(6) representatives of Teva and Teva Finance, Teva's auditor (PwC Israel), and a lead bank that underwrote Teva's securities offerings during the Class Period.

iii. Expert Discovery

41. Discovery of experts was also extensive and occurred principally between May and September 2021, with reports served on May 28, 2021; August 6, 2021; and September 20, 2021. Class Counsel facilitated 10 merits expert reports from four experts, involving over 600 pages (excluding exhibits), on the topics of: (i) materiality, loss causation, and damages (Dr. Tabak); (ii) generic drug pricing and competition, and calculation of Teva's profits from price increases (Dr. David Bradford); (iii) Defendants' compliance with MD&A disclosure requirements and the material financial impact of Teva's price increases (D. Paul Regan); and (iv) SEC disclosure requirements and materiality (Lynn Turner).

42. Class Counsel also analyzed, and facilitated expert responses to, seven reports from Defendants' four economics, legal and securities experts, involving over 600 pages, on topics such as materiality, loss causation, and damages; SEC disclosure requirements and practices; generic drug pricing and competition; the impact of revenue and profits generated by Teva price increases (and their justifications); and public disclosures (including SEC filings).

Class Counsel took five depositions of Defendants' experts and defended five depositions of the Class's experts (yielding thousands of pages of testimony and exhibits).

43. I have reviewed summaries of the parties' expert reports. Class Counsel committed a significant investment of time and resources to develop the merits in advance of summary judgment and trial. My review also indicates that Class Representatives faced significant risks, as Defendants' experts provided detailed opinions that vigorously disputed the claims and appeared to assert numerous defenses, including that Teva's price increases and their impact were publicly known.

iv. Preparation for Summary Judgment and *Daubert* Motions

44. After the completion of expert discovery in September 2021, Class Counsel prepared detailed supplemental responses and objections to Defendants' 18 interrogatories directed to Class Representatives. These responses were more than 200 pages in length, and compiled key documentary and testimonial evidence obtained through Class Counsel's efforts over the prior two years.

45. From September to December 2021, Class Counsel prepared a partial motion for summary judgment on selected issues, and drafted *Daubert*[24] motions to exclude Defendants' four merits experts. I understand that these motions were completed before settlement (though not filed, as discussed below), and were supported by 150 pages of briefing and dozens of exhibits that drew heavily on the evidence Class Counsel had developed over the course of fact and expert discovery in the preceding two years.

[24] Referencing *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993).

D. Class Certification and Discovery from Class Representatives

46. Class Counsel engaged in discovery from Class Representatives and sought and achieved class certification. Much of this work occurred simultaneously with fact and expert discovery.

47. Class Counsel prepared for discovery from Class Representatives by locating potentially relevant documents and performing in-person forensic collections in Toronto and Anchorage. On January 29, 2020, Defendants served Class Representatives with 44 requests for production of documents, for which Class Counsel prepared responses and objections, and then negotiated with defense counsel over those requests. Defendants subsequently filed a Motion to Compel further discovery from Class Representatives (ECF 412); Class Counsel then secured Defendants' agreement that they would not further pursue the motion unless class certification was denied.

48. Class Counsel devoted considerable effort to seeking class certification. Class Counsel retained economist David Tabak, Ph.D. as a class certification expert. He examined the Teva-specific price movements of each of the eight Teva Securities during the Class Period. He also outlined a methodology for calculating damages on a class-wide basis. In June 2020, Class Representatives filed their motion for class certification, accompanied by Dr. Tabak's 252-page report (including exhibits) and an extensive memorandum of law.

49. Defendants filed opposition memoranda, accompanied by reports from three experts. Expert depositions included two depositions of Dr. Tabak as well as depositions of the three experts retained by Defendants. On December 4, 2020, Class Representatives filed a reply brief accompanied by Dr. Tabak's 214-page reply report (including exhibits). On December 30, 2020, Defendants filed a motion to exclude Dr. Tabak.

50. On January 29, 2021, the Court held oral argument on the class certification motion and Defendants' motion to exclude Dr. Tabak. Thereafter, Defendants renewed their requests for discovery from Class Representatives and sought to stay a ruling on class certification.

51. On March 9, 2021, the Court (a) denied Defendants' request for further discovery, and (b) granted the motion for class certification and denied the motion to exclude Dr. Tabak in an 88-page ruling. Defendants sought to appeal the class certification decision of the District Court to the United States Court of Appeals for the Second Circuit, but that Court denied the Defendants' petition to appeal.

52. On March 10, 2021, Defendants issued thirteen notices of deposition and subpoenas seeking further discovery from Class Representatives and others. From March 2021 through May 2021 Class Counsel worked to oppose Defendants' renewed discovery requests. Ultimately, with the Court's guidance, Defendants pursued limited Rule 30(b)(6) depositions of each Class Representative before pursuing their discovery requests to third parties (ECF 751), and the Court then denied Defendants' Motion to Compel, bifurcating the trial between class-wide and individual issues (ECF 796).

53. The later stages of discovery from Class Representatives ranged from June to October 2021. Class Counsel prepared for and defended Anchorage's and Ontario Teachers' Rule 30(b)(6) depositions on July 21, 2021 and August 25, 2021, respectively. Thereafter, Defendants sought additional testimony regarding the domesticity of Ontario Teachers' transactions in Preferred Shares, resulting in a declaration from Ontario Teachers' on October 21, 2021.

E. Mediation

54. In June 2020 preparation for mediation began, including damages calculations with expert assistance, and expert analysis of Teva's financial condition and models for potential settlement. The first session of mediation was on July 13, 2020, with no success. Continued mediation efforts occurred from September 2021 to December 2021, including formal sessions on September 17 and 27, 2021, requiring additional preparation, expert assistance and responses to questions presented by the mediator, a former United States District Judge. Between these sessions and in the weeks following the September 27 mediation session, Class Counsel made additional presentations to the mediator, and engaged in weeks of intensive further negotiations. These efforts resulted in a recommendation from the mediator on November 14, 2021. Class Representatives and Class Counsel then considered the recommendation over several weeks. The recommendation was accepted by all parties on December 2, 2021, hours before the deadline for filing the *Daubert* and summary judgment motions.

55. Following the agreement, Class Counsel drafted the extensive stipulation of settlement with the notice to the class and proof of claim and release; retained a claims administrator and escrow banks; filed the motion for preliminary court approval of the settlement; and prepared the motion for final approval of settlement.

V. THE REQUESTED FEE, HOURLY RATES AND MULTIPLIER

56. In my opinion, Class Counsel's number of hours of 77,090.70 is justified by their billing summaries and the course of this litigation.

57. Based on my review of Class Counsel's billing summaries, time records, and attorney biographical information, the tasks worked on by those attorneys were properly allocated to the level of experience and competence of those attorneys, as discussed below. I also found that Class Counsel worked efficiently, with particularly important litigation work

concentrated among a relatively small team of seven attorneys, which accounted for about 40.6% of total hours and 52.9% of total lodestar. This approach helped to ensure that information was shared efficiently, and that key decisions were informed by knowledge from interrelated areas of the case.

58. Partners performed appropriate tasks, such as developing high-level litigation strategy, taking and defending senior-level and complex depositions, presenting oral argument, interacting with Class Representatives, working with experts, and conducting the mediation and settlement discussions. For example, at the senior partner level, Joseph Fonti oversaw strategy and the prosecution of the action from its inception; presented all oral argument for the Class; took or defended 17 depositions (including four of the seven Individual Defendants); and led the mediation and settlement negotiations. Susan Podolsky, who contributed her extensive prior litigation, trial and securities class actions experience (including prior representations of Ontario Teachers'), was an integral part of the litigation team and negotiated with DOJ and opposing counsel; drafted submissions; and contributed strategic advice in connection with hearings, status conferences, and mediation. In addition to the core team, Javier Bleichmar was involved in important strategic decisions from the inception of the case through the mediation and settlement negotiations.

59. At the junior partner level, Wilson Meeks was extensively involved in drafting the lead plaintiff motion, drafting the complaints, and opposing Defendants' motions to dismiss. After Mr. Meeks departed BFA, Evan Kubota assumed primary responsibility for drafting complex motions (including class certification and the partial summary judgment motion

completed before settlement), developing discovery strategy, taking or defending 16 depositions (including three Individual Defendants), and working closely with experts.[25]

60. Associate work included drafting briefs, discovery requests, and correspondence, conducting meet and confers with opposing counsel, managing the discovery team, drafting deposition outlines, taking certain depositions, and working with experts. Benjamin Burry was primarily responsible for discovery litigation, including preparing requests and responses, conducting meet-and-confers, and leading third-party discovery efforts, and took three fact depositions. Thayne Stoddard led the document review team's extensive work, focused on plaintiff-side discovery issues, and took four fact depositions. Mathew Hough supported all aspects of and second-chaired depositions, contributed legal research, and worked extensively with the Class's experts.

61. In addition, Staff Associates and Staff Attorneys performed discovery analysis (prioritizing high-value documents and custodians), investigated production deficiencies and researched numerous substantive factual issues at Associates' direction, prepared initial deposition outlines and related materials, and developed a detailed chronology of important facts and documents identified in discovery.

62. One aspect that needs particular mention is the number of hours spent by Mr. Fonti, a named partner in BFA. He had the largest number of hours: 7,845.00. This time was incurred from December 2016 to April 2022. In my opinion, Mr. Fonti's hours are appropriate and justified by his involvement in developing this case from start to finish. Mr. Fonti personally argued at each hearing and status conference in the case and was involved

[25] Mr. Kubota was elected a partner of BFA effective January 1, 2022, and prior to that was an associate of the firm.

in all aspects of those hearings, as well as all aspects of the investigation of the case, discovery, motions to dismiss and class certification. In addition, the intense and highly contentious nature of the litigation of so many aspects of the case required the involvement of an attorney with a high level of experience, both in litigation matters generally and in securities class actions in particular. Finally, unlike other, more straightforward securities litigations, this case involved complex and difficult legal matters as it represented the intersection of federal securities law and antitrust law.

63. My review also indicates appropriate use of attorneys from the Connecticut firm Carmody Torrance Sandak & Hennessey LLP. Among other work, Carmody attorneys were actively involved throughout the litigation, contributed to litigation strategy, legal and factual research, and merits discovery (including plaintiff-side discovery), and participated in Class Representatives' mediation efforts, particularly on complex insurance issues.

64. In addition, I understand that BFA made reductions to its lodestar in the exercise of billing judgment, including lodestar for BFA attorneys and staff who billed less than 30 hours and all lodestar associated with Lead Counsel's fee application.

65. I have compared the range of hourly rates of $225 to $985 here to many similar class action fees that have been approved in the Second Circuit, and they are within the appropriate ranges based on the application of the relevant factors. As indicated above, I have had considerable experience with securities class actions on the District Court and the Second Circuit. In my experience, securities class actions are highly technical and require specialized expertise; they therefore tend to be both prosecuted and defended by members of a national securities bar principally based in New York or California.

66. The instant action is consistent with this experience in that both BFA and Defendants' lead counsel at Kasowitz are based in New York. As a United States District Judge for the District of Connecticut, I observed that in complex class actions, lead counsel—for both plaintiffs and defendants—typically was located outside the District. In *U.S. Foodservice*, for example, a Connecticut firm was appointed among several lead counsel, but the majority of work was performed by attorneys in Washington, D.C., New York, and Texas.[26] The fee request in *U.S. Foodservice* indicated a blended hourly rate (total lodestar divided by total hours) of $474.62 and a peak hourly rate of $985, equal to Class Counsel's highest hourly rate here.[27] The rates in *U.S. Foodservice* were submitted in 2014, and I understand that rates have generally increased to the present date.

67. Within the context of a national securities bar, I believe Class Counsel's rates are appropriate. For example, as noted above, I authored the opinion for the Second Circuit affirming class certification in *Waggoner v. Barclays PLC*, 875 F.3d 79 (2d Cir. 2017). I understand that action settled in 2019 for $27 million; the District Court approved a fee of 30%, and in support of the fee application, class counsel indicated a peak hourly rate of $1,000 and a blended rate of $639.54 per hour,[28] higher than Class Counsel's highest rate of $985 and blended rate of $595. I am also aware of authority approving fee awards based on hourly partner billing rates in the range of $700 to $995 as of 2017, over four years ago. *See Woburn Ret. Sys. v. Salix Pharms., Ltd.*, No. 14-CV-8925 (KMW), 2017 WL 3579892, at *5 (S.D.N.Y. Aug. 18, 2017).

[26] No. 3:07-md-1894 (AWT) (D. Conn.), ECF 510-2 at 31 of 38 (lodestar by firm); ECF 510-1 at 49 of 49 (attorney locations).
[27] *Id.*, ECF 510-1 at 12 of 49 & ECF 510-3 at 61 of 112.
[28] *See Strougo v. Barclays PLC*, Case 1:14-cv-05797-VM-DCF (S.D.N.Y.), ECF 144 ¶69, 71; ECF 146 ¶15.

68. I believe that Class Counsel's lodestar is reasonable in view of the extensive work performed, the efficiency of the staffing among a limited number of attorneys, the complexity of the case, the result achieved, the appropriateness of their billing rates, and Class Counsel's exercise of billing judgment.

69. As to the requested multiplier of 2.17 times the lodestar of $45,837,361.00, I also conclude that it is within the range for similar class actions with a common fund, and consistent with empirical research, as shown by my analysis. In particular, the multiplier is below the average multiplier of 2.72 for settlements around the country above $67.5 million and below the 2.23 multiplier in *U.S. Foodservice* (a $297 million settlement). While the requested multiplier is higher than the average of approximately 1.97 for securities cases above $200 million within the Circuit, in my opinion, this is warranted in light of the above-average risks and challenges of this case, discussed below, as well as Class Counsel's ability to achieve a substantial settlement.

70. I have also reviewed the documents supporting Lead Counsel's request for an award of $9,717,887.47 in expenses. By firm, those expenses are as follows: $9,689,838.44 (Bleichmar Fonti & Auld LLP); $1,217.86 (Bleichmar Fonti & Auld Canada); $22,093.35 (The Law Offices of Susan R. Podolsky); and $4,737.82 (Carmody Torrance Sandak & Hennessey LLP). I have reviewed each category of expenses. Although the expenses are considerable, it also appears that they were justified and reasonable, and the amount is largely a result of the extensive expert analysis and assistance necessary for this action. As noted above, I have also reviewed summaries of those expert reports.

VI. DISCUSSION OF THE *GOLDBERGER* FACTORS

71. I respectfully submit that all of the six *Goldberger* Factors are satisfied here. Of course, I recognize that the Court will ultimately make these determinations, and is well positioned to do so given its extensive involvement in the case. As to the time and labor

expanded by Class Counsel, their commitment was enormous, but justified by the particular circumstances of this case, including the extensive discovery litigation, the rounds of contesting the motions to dismiss, the expert witness litigation and discovery related to that (for both Class Representatives' and Defendants' experts), the class certification stage and its complexities, and the preparation of the motion for summary judgment and *Daubert* materials. The magnitude and complexities of the case were particularly significant, even in the context of securities class actions. This action not only had complicated securities law matters involving the alleged price increases and their effects on the relevant eight securities at different times, but also had the intersection of federal antitrust price fixing, complicated by the parallel DOJ investigation and indictment. Class Counsel had no shortcut to proving their case, since Teva did not admit misconduct, restate its financial statements, or face any enforcement action from the SEC. And Defendants were represented by experienced counsel who litigated this case with great intensity.

72. The risk of the litigation to Class Counsel was also greater than in the typical securities class action. It started as a novel concept, a price increase and price-fixing scheme over many years involving many Teva individuals and non-Teva actors, involving hundreds of generic drugs and eight different securities. While Class Counsel's efforts advanced the case through the completion of discovery and the preparation of summary judgment filings, I believe further litigation carried significant risk, as it is clear that the parties had a number of vigorous legal and factual disputes, expressed in part in the lengthy expert reports exchanged. The success achieved by Class Counsel is also noteworthy: the second-largest class action settlement in the District of Connecticut. The quality of the representation by Class Counsel was first-rate, and fortunately, the District Court had much contact with them over the years of this case.

73. As also demonstrated above, the requested fee of 23.70% of the common fund of $420 million is supported by similar cases in this District, the Second Circuit and the nation.

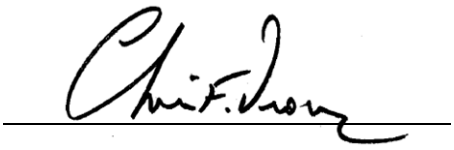
74. Finally, this case had even more public policy importance than the typical securities class action as it involved the pricing of generic drugs, an issue of public concern, and alleged antitrust violations, which resulted in the DOJ obtaining a Sherman Act-based indictment.

VII. CONCLUSION

75. For the reasons above, I respectfully submit to the Court that Lead Counsel's requested fees and expenses are reasonable and justified.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 22nd day of April 2022.



Judge Christopher F. Droney (Ret.)

EXHIBIT A

EXHIBIT A TO
DECLARATION OF JUDGE CHRISTOPHER F. DRONEY (Ret.)

CHRISTOPHER F. DRONEY
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Professional Background

DAY PITNEY LLP, Hartford, Connecticut

Partner, Litigation and Appellate Departments (2020 to present)

Appointed by National Football League Management Council and NFL Players Association as System Arbitrator to resolve disputes under Collective Bargaining Agreement (2021 to present)

UNITED STATES COURTS

United States Court of Appeals Judge for the Second Circuit (2011 to 2020)

Participated in over one thousand appeals; authored approximately one hundred opinions

United States District Judge for the District of Connecticut (1997 to 2011)

Presided over civil and criminal trials and other proceedings over fourteen years on the federal trial bench

U.S. DEPARTMENT OF JUSTICE, New Haven, CT (1993 to 1997)

United States Attorney for the District of Connecticut

Supervised and directed Assistant U.S. Attorneys in prosecuting federal crimes and representing the United States in Connecticut

Initiated new cooperative law enforcement efforts against violent drug enterprises, health care fraud and financial fraud

Personally tried cases against Ku Klux Klan leadership in New England and the leader of a New Haven drug group, and argued in the Second Circuit Court of Appeals on behalf of the United States

Appointed by Attorney General Janet Reno to the Attorney General's Advisory Committee of U.S. Attorneys (1997)

Chair of the Civil Issues Subcommittee of the Attorney General's Advisory Committee of U.S. Attorneys (1993 to 1995)

Bar and Educational Activities

Chair, Selection Committees for U.S. Bankruptcy Judges for the District of Connecticut, 2012-2013 and 2015-2016

Member, Committee for the Administration of the Bankruptcy Courts, United States Judicial Conference, 2011-2017

Member, Board of Directors, Federal Judges Association, 2014-2017

Member, Board of Trustees, Federal Bar Council, 2020-Present

Special Federal Public Defender, U.S. District Court, Connecticut, 1985-1989

Member, Committee for Selection of Dean for the University of Connecticut School of Law, 2012-2013

Lecturer and panelist on evidence, trials and appellate practice at Yale Law School, the University of Connecticut School of Law, and the National Advocacy Center of the United States Department of Justice

Member, The American Law Institute, 2021-present

Education

The University of Connecticut School of Law, J.D., 1979

Notes and Commends Editor, Connecticut Law Review

The College of the Holy Cross, B.A., History, 1976, magna cum laude

Awards

Honorary Doctor of Laws awarded May 22, 2016 by the University of Connecticut

Citizen of the Year, Nutmeg District, Boy Scouts of America, 1994

Distinguished Law Enforcement Award, Hartford Police Union, 1994

Honors Award, Mushaba Force Youth Foundation, 1995

Special Recognition Award, Spanish-American Merchants Association, 1997

Drug Enforcement Administration (DEA) New England Field Division Award, 1997

Distinguished Graduate Award, University of Connecticut School of Law, 2007

University of Connecticut Law School Review Alumni Award, 2012

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE TEVA SECURITIES LITIGATION	:	No. 3:17-cv-00558 (SRU)
THIS DOCUMENT RELATES TO:	:	All Class Actions

Declaration of Professor Geoffrey Parsons Miller

I, Geoffrey Miller, declare as follows:

1. I have been retained to provide an opinion about the reasonableness of Lead Counsel Bleichmar Fonti & Auld LLP's request for an award of attorneys' fees in this action. If called as a witness, I could and would competently testify to the matters stated herein.

Background and Qualifications

2. As set forth in my resume attached hereto as Appendix 1, I am the Stuyvesant Comfort Professor of Law at NYU Law School, where I serve as co-faculty director of the Center on Civil Justice and Senior Faculty Fellow of the Program on Corporate Compliance and Enforcement. I am a founder and past president of the Society for Empirical Legal Studies, a scholarly organization devoted to statistical methods in legal studies. I am a member of the American Law Institute and a 2011 inductee in the American Academy of Arts and Sciences.

3. For nearly thirty years, I have been active in the area of class actions and complex litigation as a teacher, scholar, attorney, consultant, and expert witness. Much of my involvement in these areas concerns the issue of compensation of class counsel.

4. I am presently teaching or have taught classes covering issues of attorneys' fees, including Civil Procedure, Complex Litigation, Corporations, Professional Responsibility, and Securities Regulation. I was a member of the advisory committee for the American Law Institute's Principles of the Law project on Aggregate Litigation, which addressed questions of attorneys' fees in class actions and related cases.

5. I have consulted with attorneys to assist with issues pertaining to awards of attorneys' fees and have testified or provided expert reports in cases in state and federal courts across the

United States, as well as before an international arbitration tribunal. Within this District, I provided an expert opinion regarding attorneys' fees in *In re U.S. Foodservice, Inc. Pricing Litig.*, No. 3:07-MD-1894 (AWT), 2014 WL 12862264 (D. Conn. Dec. 9, 2014).

6. My research on class action cases, especially in the area of attorneys' fees, has been cited as authority by many state and federal courts across the United States and is a leading authority on that topic. A list of cases citing to this empirical research is provided as Appendix 2.

7. I am being compensated in this matter on an hourly basis at my usual billing rate of $950 per hour.

Materials Reviewed

8. I have reviewed the documents related to this case described in Appendix 3. I have discussed the matter with Lead Counsel, reviewed cases dealing with attorneys' fees in class action settlements and evaluated the statistical reports and analyses of class action legal fee awards set forth in Appendix 3.

Summary of Opinion

9. For the reasons stated below, it is my opinion that Lead Counsel's request for a fee equal to 23.70% of the settlement fund is reasonable when compared to fees awarded in similar cases and in light of the *Goldberger* factors and the facts and circumstances of this case.

10. The following opinion evaluates the fee request in two ways. First, I performed an analysis under the lodestar method, which determines counsel's reasonable hours and reasonable hourly rates and adjusts the product of those figures (the lodestar) by a "multiplier" to take account of risk and other factors. Based on that analysis, I conclude that Class Counsel's hours are reasonable and reflect appropriate and efficient staffing, that Class Counsel's rates are reasonable in the national market for attorneys in large-scale, complex class litigation,

and that the proposed multiplier of 2.17 is within the range of reason when judged against empirical data.

11. Second, I analyzed this case under the percentage approach, which considers the relationship between the proposed fee and the recovery achieved for the class. Empirical data and research (including my own empirical studies of class settlements and other studies) confirm that the requested fee is within the range of reason. While research has recognized a "scaling effect" by which percentage fees decline (on average) in larger settlements, the requested fee accounts for this effect, as it is consistent with the range of fees awarded in settlements of comparable size and does not present any of the factors—such as low risk, an early settlement achieved with minimal effort, or an excessively high multiplier—that can raise concerns about the percentage fee in some large cases. Indeed, given the risks of this case, its magnitude and complexity, its duration and advanced procedural stage, the time and effort expended, the quality of Class Counsel's representation, and other factors discussed below, it is my opinion that Lead Counsel's requested fee is appropriate in the present case even if the fee percentage sought here is deemed to be higher than the average fee awarded in cases of similar size.

The Litigation

12. This Court has presided over this complex securities law case for five years and is thoroughly familiar with its history and procedural posture. I will offer only a brief summary of aspects pertinent to my opinion.

13. The case involves claims of misstatements and omissions by Teva Pharmaceutical Industries Ltd., certain of its current or former executives, and Teva Pharmaceutical Finance Netherlands III B.V. (collectively, "Defendants").

14. The litigation commenced in 2016 with the filing of a putative class action in federal district court in California. That case was transferred to the District of Connecticut. In July 2017, this Court selected Ontario Teachers' Pension Plan Board as lead plaintiff; thereafter, the Court added Anchorage Police & Fire Retirement System (with Ontario Teachers', "Plaintiffs" or "Class Representatives") as a named plaintiff. The Court also approved Ontario Teachers' selection of Bleichmar Fonti & Auld LLP as lead counsel for the putative class.

15. In April 2018, the court dismissed the Consolidated Class Action Complaint with leave to replead. Plaintiffs filed their First Amended Consolidated Class Action Complaint in June 2018. On September 25, 2019, after extensive briefing and argument, this Court denied in substantial part Defendants' motions to dismiss. *Ontario Teachers' Pension Plan Bd. v. Teva Pharm. Indus. Ltd.*, 432 F. Supp. 3d 131 (D. Conn. 2019).

16. In December 2019, Plaintiffs and Defendants jointly moved to consolidate related lawsuits – three putative class actions and seventeen individual cases. Several purported plaintiffs in other class and individual actions opposed the motions in whole or in part. This Court granted the motions to consolidate and established a framework for managing the case going forward.

17. Plaintiffs moved for class certification. In January 2021, the Court heard oral argument on the motion and Defendants' related *Daubert* challenge. On March 9, 2021, the Court issued an 88-page opinion granting class certification, confirming the appointment of Ontario Teachers' Pension Plan Board and Anchorage Police & Fire Retirement System as Class Representatives, denying Defendants' *Daubert* challenge, and confirming the appointment of Bleichmar Fonti & Auld LLP as Class Counsel and Carmody Torrance Sandak & Hennessey LLP as Class Liaison Counsel.

18. Layn R. Phillips, one of the foremost mediators in large-scale class action cases in the United States, assisted the parties in their settlement discussions. Despite Judge Phillips's assistance, this case did not settle quickly or easily. The parties' initial mediation occurred in July 2020, before any depositions had occurred. I understand that the parties did not exchange any settlement demands or offers at that time and that the issues were hotly disputed. The parties resumed mediating in September 2021, after the Class was certified and fact discovery was complete. Expert discovery was completed between the two formal mediation sessions in September 2021. At that point, the parties had the information they needed to make informed assessments of the claims and defenses. However, they remained far apart, and their hard-fought and adversarial negotiations did not produce agreement even after numerous subsequent telephone conferences following the September 2021 sessions.

19. In November 2021, Judge Phillips crafted his own recommendation that the case be settled for $420,000,000. The parties agreed to Judge Phillips's proposal on December 2, 2021, the day that summary judgment and *Daubert* motions were due to be filed. I have reviewed Judge Phillips's April 3, 2022 declaration, which attests that this case was among the most complex and challenging mediations he has handled.

The Settlement

20. The proposed settlement would resolve the securities class action claims in exchange for a cash payment of $420,000,000. According to a recent study by NERA Economic Consulting, this was larger than any securities class action settlement nationwide in 2021, and more than four times as large as any settlement in the Second Circuit in that year.[1]

[1] Janeen McIntosh and Svetlana Starykh, Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review, NERA Economic Consulting, January 22, 2022 ("2021 NERA Study"), at 21 Table 1.

21. Lead Counsel seeks an award of fees of 23.70% of the settlement amount.

Analysis

22. This Court has substantial discretion to determine whether Lead Counsel's fee request is reasonable under the circumstances. In exercising that discretion, courts in the Second Circuit consider a variety of factors, including the time and labor expended by counsel, the magnitude and complexity of the litigation, the risk of the litigation, the quality of representation, the requested fee in relation to the settlement, and public policy considerations. *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 50 (2d Cir. 2000). Both the lodestar and the percentage approaches are permissible methodologies for estimating a reasonable fee.

23. I apply the lodestar and percentage methodologies, addressing the *Goldberger* factors in the course of my analysis.

Lodestar Analysis

24. As noted above, the lodestar analysis involves assessment of counsel's reasonable hours, counsel's reasonable hourly rates, and the implied lodestar multiplier (requested fee divided by total lodestar). I address these in turn.

Hours

25. This case has been underway for more than five years, much longer than the average securities class action.[2] During the time the case has pended in this Court, Lead Counsel took or defended forty depositions, obtained production of more than 8 million pages of documents, and exchanged nearly two dozen expert reports. Discovery was often

[2] The 2021 NERA Study found that only 17% of securities class actions filed between 2003 and 2017 and resolved between 2003 and 2021 remained pending for more than 4 years. Id., at 13 Figure 13.

contentious. The case required multiple hearings before this Court. Defendants vigorously contested Plaintiffs' motion for class certification and sought an interlocutory appeal of this Court's order certifying the class.

26. As this Court is aware, this case involved technical and complex questions on issues such as market efficiency, competitive conditions in the generic prescription drug market, the impact of Defendants' statements or omissions on the price of Teva debt and equity securities, and the relationship between Defendants' drug pricing strategies and the price of Teva securities – among others.

27. This high level of activity and complexity translated into a substantial expenditure of time and labor. I am informed that all Class Counsel (BFA; Bleichmar Fonti & Auld Canada; The Law Offices of Susan R. Podolsky; and Carmody Torrance Sandak & Hennessey LLP) have expended a total of 77,090.70 attorney and professional hours through April 14, 2022. More attorney time has been incurred since then and will be incurred in the future as counsel guides this case to conclusion.

28. While I have not donned a "green visor" to perform a forensic audit of Class Counsel's hours, this herculean task was not necessary because the evidence provided is sufficient to assess the reasonableness of the time incurred.

29. In particular, I have reviewed the Declaration of Joseph A. Fonti regarding final approval of the settlement and Lead Counsel's fee request (the "Fonti Declaration"). The Fonti Declaration is nearly unrivaled, in my opinion, in its detailed descriptions of the nature of the tasks performed across different phases of the litigation. The submission describes the dates and pages of briefs and expert reports, the names and roles of deponents, the number of pages of each deposition transcript, and the taking or defending attorney. It breaks down

Class Counsel's hours into ten categories, each of which covers a discrete period in the life of the case. In addition to its granular account of particular features of the case, the Fonti Declaration provides a context for understanding how these activities fit within Class Counsel's overall litigation strategy.

30. My review indicates that this litigation was complex, hard-fought, and unusually taxing on attorney time. These demands arose in part from Defendants' vigorous opposition to many areas of discovery, which required multiple motions to compel and numerous conferences with the Court.

31. Lead Counsel has supplied exhibits showing Class Counsel's hours expended by timekeeper as of April 14, 2022. Review of these exhibits allows an assessment of the distribution of work between senior and junior attorneys. There is no science to this distinction, but a reasonable cut can be made between Class Counsel's partner and non-partner time. Based on this demarcation, partners at Lead Counsel Bleichmar Fonti & Auld LLP and other Class Counsel expended 22,075.25 hours (28.64% of the total) and non-partner attorneys expended 55,015.45 hours (71.36% of the total).

32. The ratio between partner and non-partner attorney time, accordingly, was about 1:2.49. I believe this was an appropriate and efficient division of labor for maintaining control over the litigation and overall strategy at the senior level but allocating routine work to more junior attorneys.

33. Class Counsel's hours were effectively employed. Based on what I have observed, both in my review of the record and my interactions with counsel, I consider the representation provided in this case to be among the best I have observed in more than thirty years of involvement in class action litigation – and particularly notable given the tenacious

opposition presented by Defendants' attorneys. The record of this case, in my opinion, confirms the judgment of this Court in 2017 that Class Counsel "will provide more than adequate representation for the plaintiff class."[3]

34. It is my opinion, therefore, that Class Counsel's hours are reasonable under the circumstances of this case.

Rates

35. Lead Counsel has supplied me with exhibits identifying Class Counsel's timekeepers involved in this matter, their years of graduation from law school, their current positions, their current hourly rates, the number of hours incurred, and their individual lodestar amounts (hours times hourly rate) as of April 14, 2022.

36. Across each category of attorneys, the ranges of Class Counsel's hourly rates were as follows:

Billing Rates by Attorney Category	
Partners	$340-$985
Of Counsel/Special Counsel	$780
Associates	$300-$690
Project and Staff Associates	$415-$495
Staff Attorneys	$360-$450

37. The aggregate lodestar figures across all professional timekeepers were as follows:

Class Counsel's Aggregate Lodestar		
Hours	Blended Hourly Rate	Lodestar
77,090.70	$595	$45,837,361.00

[3] *Galmi v. Teva Pharmaceuticals Industries, Ltd.*, 302 F. Supp. 3d 485, 506 (D. Conn. 2017).

38. The foregoing table reflects counsel's current rather than historical hourly rates. In my opinion, this is the correct approach. Historical rates (*i.e.*, those in effect when the work was performed) are not adjusted for inflation in the price of legal services. To obtain an accurate measure of the value of legal services rendered in the past, it is not necessary to perform the laborious steps of obtaining a reliable measure of the rate of increase in attorney billing rates (which may vary year by year and across seniority levels) and then applying that measure to compute the appropriate compensation in present dollars for each year in which the attorney performed the work. It is simpler and methodologically appropriate to employ current billing rates, which intrinsically incorporate changes in historical prices for legal services.[4]

39. I believe, further, that the appropriate comparison against which to assess Class Counsel's hourly rates is the nationwide market for attorneys in large-scale, complex class litigation. Although this case is pending in the District of Connecticut, many of Defendants' allegedly wrongful actions took place in Israel and elsewhere in the United States (for example, I understand that Teva's U.S. headquarters were in Pennsylvania and are now in New Jersey). Class members purchased or sold Teva securities on national securities markets. The predecessor of this case was filed in California. It was transferred to the District of Connecticut but could have wound up in another federal district court.

40. The lawyers involved in this case reflect its national scope. Attorneys at Lead Counsel Bleichmar Fonti & Auld LLP practice in New York, California, and Ontario. Defendants' counsel at Kasowitz Benson Torres LLP are based in New York (with several other U.S.

[4] I have also considered Class Counsel's lodestar using their historical rates, which is similar to their lodestar using current rates (less than a 10% difference). Thus, my opinion regarding the reasonableness of Class Counsel's lodestar would not change if historical rates were used.

offices),[5] while Morgan Lewis & Bockius LLP, a firm of more than 2,000 lawyers and specialists, maintains offices in more than 30 locations in North America, Europe, Asia, and the Middle East. Its Web Site advertises that "we work in collaboration *around the world* – always ready to respond to the needs of our clients and craft powerful solutions for them."[6]

41. For all of these reasons, I believe that an assessment of the fee request in this case should compare the hourly rates billed by Class Counsel with the rates charged by other firms in complex, large-scale national cases.

42. On the plaintiffs' side, hourly rates commensurate with those sought by counsel in the present case are often reported in large-scale class actions. In *In re Frontier Comms. Corp. Stockholders Litig.*, No. 3:17-cv-01617-VAB (D. Conn. Apr. 5, 2022), for example, counsel Bernstein Litowitz Berger & Grossmann LLP submitted hourly rates of $825 to $1,300 for partners, $775 to $800 for senior counsel, and $475 to $700 for associates. In *Scheufele v. Tableau Software, Inc.*, No. 1:17-cv-05753-JGK (S.D.N.Y. 2021), counsel Robbins Geller Rudman & Dowd LLP and Labaton Sucharow LLP reported hourly partner rates from $760 to $1,325.

43. Similar rates have been reported in complex class actions within this District. As noted above, I provided an expert opinion in *In re U.S. Foodservice, Inc. Pricing Litig.*, No. 3:07-MD-1894 (AWT), 2014 WL 12862264 (D. Conn. Dec. 9, 2014), where counsel's submissions reported individual billing rates of up to $985/hour, equal to Class Counsel's highest rate here, and a blended rate of $474.62/hour.[7]

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[5] https://www.kasowitz.com/find-us/

[6] https://www.morganlewis.com/our-firm (emphasis supplied).

[7] *See* No. 3:07-md-1894 (AWT), ECF 510-1 at 12 of 49; ECF 510-3 at 61 of 112.

44. As legal rates have increased substantially since this submission in 2014, it is appropriate to adjust these rates into constant dollars (accounting for inflation in the market for legal services). Such an adjustment can be performed using the U.S. Bureau of Labor Statistics' Producer Price Index-Office of Lawyers (PPI-OL) based on the ratio of the index of (a) December in the year of the fee award to (b) March 2022, the most recent month available.[8] After this adjustment into constant dollars, in *U.S. Foodservice* the highest individual rate was $1,287/hour, and the blended rate was $620/hour—both above Class Counsel's corresponding figures.

45. Applying the same methodology to rates submitted in other class actions in the District yields similar results. For example, in *In re Priceline.com, Inc. Sec. Litig.*, No. 3:00-cv-1884, 2007 WL 2115592, at *5 (D. Conn. July 20, 2007), an $80 million securities settlement, the highest individual rate was $1,261 in constant dollars ($770 as submitted) and the blended rate was $624 in constant dollars ($381 as submitted)—again above Class Counsel's corresponding figures.[9] In *Carlson v. Xerox Corp.*, 596 F. Supp. 2d 400, 412 (D. Conn. 2009), *aff'd*, 355 F. App'x 523, 526 (2d Cir. 2009), a $750 million securities settlement, the highest individual rate was $1,409 in constant dollars ($925 as submitted), well above Class Counsel's highest rate of $985, and the blended rate was $503 in constant dollars ($330 as submitted).[10]

46. Defense-side hourly rates are also relevant. In this regard, it is instructive to compare the hourly rates reported by Class Counsel with rates reported in a survey of more than 250 U.S.

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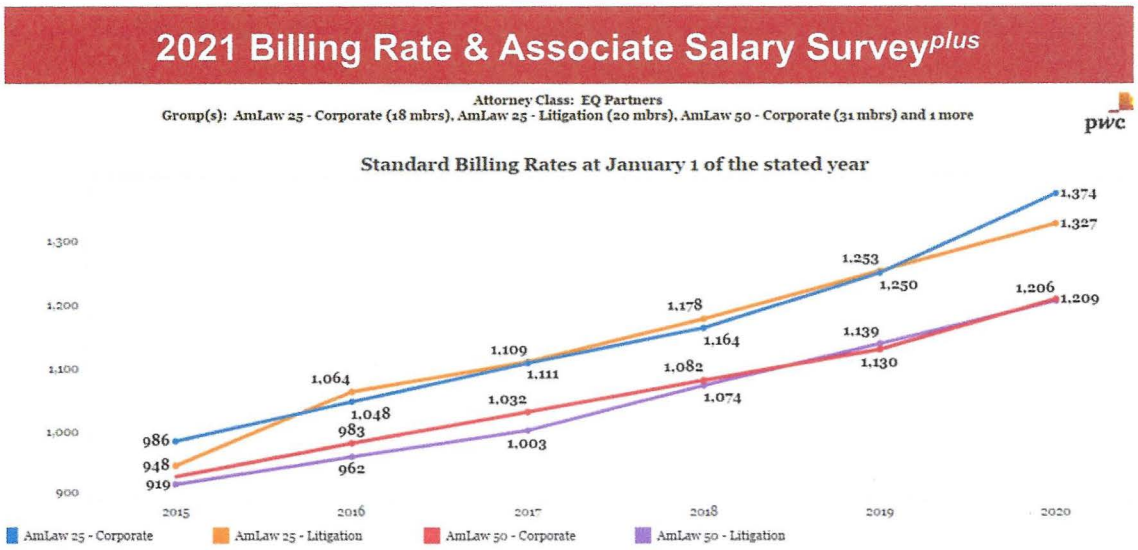
[8] PPI-OL data are available at https://fred.stlouisfed.org/series/PCU54111054 1110.

[9] *See* No. 3:00-cv-1884 (AVC), ECF 463-4 at 14 & 26 of 28; ECF 463-5 at 18 of 19; ECF 463-6 at 9 & 26 of 28; ECF 463-7 at 22 & 35 of 36; ECF 463-8 at 21 of 45.

[10] *See* No. 3:00-cv-01621-AWT, ECF 496-7.

law firms conducted by the international accounting and consulting firm PricewaterhouseCoopers ("PwC"). Although any survey must be evaluated with caution, the PwC data provides a useful perspective. PwC reports the following median billing rates for equity partners in the top 25 and top 50 U.S. firms between 2015 and 2020:[11]



47. According to this survey, the median average 2020 billing rate for litigation equity partners at AmLaw 25 firms was $1,327/hour and for AmLaw 50 firms was $1,206/hour.[12] Notably, these are rates that defense clients pay on a regular basis, regardless of the result. By way of comparison, not a single attorney working on the Plaintiffs' side of this case – even the most senior partners – billed above $1,000/hour. The range of partner hourly rates was $340 to $985.

48. Data on billing rates in firms nationwide in 2021 – all firms, not only top-tier litigation firms specializing in complex cases – are reported in a study conducted by the legal analytics

[11] PwC, "Billing Rate and Associate Salary Survey 2021".

[12] Morgan Lewis & Bockius LLP, one of the firms representing Defendants here, was ranked seventh in the AmLaw rankings for 2020 and 2021.

company ELM Solutions.[13] That study found that the average billing rate for partners at New York firms was $1,034/hour and for New York associates was $712/hour.[14] All of Class Counsel's partner and associate rates are below the averages of New York firms in this survey.

49. Additional data on hourly rates can be gleaned from a survey of median rates charged by partners at top-tier firms in bankruptcy cases in 2009:[15]

Bankruptcy Fee Survey Data (2009)		
Firm	Median Partner Rate	# of Partners Filing Billing Entries
Simpson Thacher	$980	30
Cleary Gottlieb	$960	47
Shearman & Sterling	$950	17
Davis Polk	$948	14
Skadden Arps	$945	38
Paul Weiss	$925	24
Cadwalader	$900	29
Milbank	$900	55
Weil Gotshal	$843	142
Gibson Dunn	$840	29
Fried Frank	$830	518 [sic]
Latham & Watkins	$830	57
White & Case	$825	21
Paul Hastings	$810	46
Sidley Austin	$700	99
Akin Gump	$690	79
Kirkland	$675	149
Sonnenschein	$625	47

[13] See Associate Billing Rates Are Growing Faster Than Partner Rates, https://www.law.com/americanlawyer/2022/02/03/associates-billing-rates-are-growing-faster-than-partner-rates/

[14] For firms nationwide, the average billing rate for partners was $728/hour and average rate for associates was $535/hour.

[15] *See* Amy Kolz, *Bankruptcy Rates Top $1,000 Mark In 2008-09*, THE AM. LAW DAILY (Dec. 16, 2009).

50. The average of these median rates was $843/hour, within the range of hourly rates billed by partners in the present case. Notably, this survey was conducted thirteen years ago. As demonstrated by the time trend in the PwC survey cited above, hourly fees have appreciated substantially since then. For example, based on a 2017 survey, the rates for ten leading national firms were:[16]

2017 NLJ Billing Report				
Firm	Office Location	Partner Billing Rate Low	Partner Billing Rate High	Partner Billing Rate Average
Simpson Thacher	New York	$1,340	$1,360	$1,350
Willkie Farr	New York	$1,150	$1,425	$1,350
Paul Weiss	New York	$1,220	$1,395	$1,320
Gibson Dunn	New York	$925	$1,195	$1,150
Sidley Austin	Chicago	$965	$1,180	$1,135
Kirkland	Chicago	$235 (sic)	$1,410	$1,115
Brown Rudnick	Boston	$905	$1,245	$1,075
King & Spalding	Atlanta	$775	$1,435	$1,000
DLA Piper	New York	$725	$1,120	$985
Jones Day	Washington D.C.	$700	$1,050	$950

[16] ALM Intelligence, *2017 NLJ Billing Report*.

51. Based on these data and my own experience in large-scale cases, I have no difficulty concluding that Class Counsel's hourly rates, and the resulting lodestar, are reasonable in the circumstances of this case.

Lodestar Multiplier

52. Lead Counsel's fee request of 23.70% of the $420,000,000 class recovery works out to a 2.17 multiplier over the base lodestar.

53. Lodestar multipliers of 2.17 and above are often observed in large-scale class action fee awards. *See, e.g.*, *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 123 & n. 27 (2d Cir. 2005) (upholding multiplier of 3.5 in antitrust class action that obtained about $3.4 billion in compensatory relief); *Woburn Retirement Syst. v. Salix Phar. Ltd.*, No. 14 Civ. 8925 (KMW), 2017 WL 3579892, at *6 (S.D.N.Y. 2017) (in a $210 million settlement, finding that a multiplier of 3.14 was within the range of multipliers approved in the Second Circuit); *In re Deutsche Telekom AG Sec. Litig.*, No. 00 Civ. 9475 (NRB), 2005 WL 7984326, at *4 (S.D.N.Y. 2005) (approving a 3.96 multiplier in a $120 million settlement).

54. Systematic evidence on lodestar multipliers in class action fee awards is set forth in a study I co-authored with Theodore Eisenberg and Roy Germano, published in the NYU Law Review in 2017.[17] Our study found that lodestar multipliers increase as class recoveries increase.[18] The following table displays mean multipliers for 292 cases across deciles of class recovery in the Eisenberg-Miller-Germano study. These ranged from .85 for the smallest

[17] Theodore Eisenberg, Geoffrey Miller and Roy Germano, Attorneys' Fees in Class Actions: 2009-2013, 92 N.Y.U. L. Rev. 937 (2017) ("Eisenberg, Miller and Germano").

[18] Id. at 966, Figure 1.

cases (recoveries below $400,000) to 2.72 for cases with recoveries in the highest decile (above $67.5 million):[19]

TABLE 13. MEAN, MEDIAN, AND STANDARD DEVIATION OF MULTIPLIER, CONTROLLING FOR CLASS RECOVERY AMOUNT, 2009–2013

Range of Class Recovery Amount (Millions)	*Mean*	*Median*	*SD*	*N*
Recovery <=0.4	0.85	0.67	0.52	33
Recovery > 0.4 <= 0.75	0.72	0.74	0.32	25
Recovery > 0.75 <= 1.4	1.49	1.42	0.93	20
Recovery > 1.4 <= 2.65	1.26	1.15	0.79	29
Recovery > 2.65 <= 3.9	1.28	1.2	0.75	26
Recovery > 3.9 <= 6.5	1.37	1.03	1.28	29
Recovery > 6.5 <=12	1.48	1.09	0.98	34
Recovery > 12 <= 23.4	1.86	1.35	1.58	29
Recovery > 23.4 <= 67.5	1.65	1.5	1.27	32
Recovery > 67.5	2.72	1.5	3.59	35

Even when looking at cases of all sizes from 2009-2013, this study found mean multipliers of 1.93 for cases in the Second Circuit and 1.79 for securities cases across all circuits.[20]

55. My earlier study (with Professor Eisenberg) of class action fee awards in published cases between 1993 and 2008 also found that multipliers increase across deciles of class recovery, with a mean multiplier of 3.18 for recoveries in the largest decile (above $175.5 million):[21]

[19] Id. at 967, Table 13.

[20] Id. at 965, Table 12.

[21] Theodore Eisenberg and Geoffrey Miller, Attorney Fees and Expenses in Class Action Settlements: 1993–2008, 7 Journal of Empirical Legal Studies 248, 274 Table 15 (2010) ("Eisenberg and Miller").

Table 15: Mean, Median, and Standard Deviation of Multiplier, Controlling for Class Recovery Amount, 1993–2008

Range of Class Recovery (Millions) Decile	*Mean*	*Median*	SD	N
Recovery <= 1.1	0.88	0.74	0.45	33
Recovery > 1.1 <= 2.8	0.95	0.77	0.67	40
Recovery > 2.8 <= 5.3	1.44	1.25	0.74	32
Recovery > 5.3 <= 8.7	1.59	1.25	1.32	34
Recovery > 8.7 <= 14.3	1.49	1.45	0.87	37
Recovery > 14.3 <= 22.8	1.68	1.51	0.85	38
Recovery > 22.8 <= 38.3	1.83	1.44	1.44	33
Recovery > 38.3 <= 69.6	1.98	1.75	1.00	38
Recovery > 69.6 <= 175.5	2.70	2.09	2.43	43
Recovery > 175.5	3.18	2.60	1.99	40

SOURCES: Westlaw, LexisNexis, PACER.

56. A multiplier of 2.17 is well within the range of reason when judged against these data and below the mean multipliers in the largest decile of cases. Indeed, given the trend reflected in these tables, the predicted multiplier for a case with a recovery of $420 million would be even higher than the numbers reported in these studies.

57. As noted above, the multiplier takes account of the risks faced by class counsel. Because the outcome of a given case cannot be known in advance, risks should be assessed from an ex ante perspective and without regard to whether a settlement is ultimately achieved. The risks in the present case were significant. To survive Defendants' motions to dismiss, Plaintiffs needed to satisfy applicable pleading standards – not only the general plausibility requirement under the Federal Rules, but also the enhanced thresholds under the Private Securities Litigation Reform Act and under Federal Rule 9(b). Many securities class actions

fail at this stage.[22] If a motion to dismiss had been successful, counsel would have received no compensation for the hours and expenses they had incurred.

58. Events in this case illustrate this risk. This Court granted the initial motions to dismiss in full in April 2018, but with leave to replead. Defendants renewed their motions after Plaintiffs filed their First Amended Complaint. They argued, inter alia, that Plaintiffs had failed to plausibly allege that the statements in issue were false or misleading, that Plaintiffs failed to meet the applicable pleading standards for fraud or scienter, and that the allegations of loss causation were insufficient. Although this Court denied Defendants' motions to dismiss in substantial part in September 2019, it granted the motions in two respects: Plaintiffs' allegations of scienter against Defendants Cavanaugh and Oberman, and Plaintiffs' allegations regarding the failure to disclose the existence of subpoenas from the Department of Justice and the Connecticut Attorney General. Had the Court dismissed the action with prejudice, Class Counsel would have received no compensation for over two years of work.

59. The case continued to be risky even after Plaintiffs substantially defeated the motions to dismiss. As noted above, I understand that the parties were on the verge of filing summary judgment and *Daubert* motions at the time of settlement. Defendants were likely to seek summary judgment on the ground that Plaintiffs could not meet their burden of showing material misrepresentations or omissions – an argument that could have led to dismissal of the entire action and the total loss of the lodestar and expenses incurred. Defendants were also likely to argue that Plaintiffs failed to meet their burden of proof on scienter – an

[22] Of securities class actions filed and resolved in federal court between 2012 and 2021, 96% involved a motion to dismiss. Plaintiffs dropped 17% of those cases after the filing of the motion. Courts denied the motions to dismiss in full only in 19% of the cases that remained. The motions were granted without prejudice in 7% of the cases, granted in part and denied in part in 17% of the cases, and granted in full in 56% of the cases. 2021 NERA Study at 14, Figure 14.

argument that, if successful, would have wiped out Plaintiffs' claims under the Exchange Act and eliminated most of Plaintiffs' claimed damages. Even if these arguments failed at the summary judgment stage, Defendants could renew them at trial or on appeal.

60. The presence of multiple related cases also posed risk. Had the motion to consolidate not been granted, counsel could have faced the challenge of conducting a case that substantially overlapped with other pending class actions (and direct cases). Counsel's entitlement to a fee would have been threatened if one of the related class actions proceeded separately and generated a global settlement.

61. Defendants launched a full-court press against class certification. They vigorously challenged Plaintiffs' fraud-on-the-market theory on the ground that Plaintiffs had failed to demonstrate that the securities in issue traded in efficient markets and that damages could be determined on a class-wide basis. If the class had not been certified, counsel would have been left with an individual case that, at most, would have generated only a tiny fraction of the amounts ultimately obtained for the class.

62. Defendants' ability to satisfy a judgment was in question. In 2017, Teva drastically reduced its dividend and warned investors that it might have to renegotiate its debt.[23] Moody's dropped the company's debt rating to one grade above "junk."[24] The company reportedly recorded a goodwill impairment charge of $6.1 billion related to the U.S. generics reporting unit in the second quarter of 2017, followed by an additional $10.4 billion charge in the

[23] See Adam Reynolds, Pharma Giant Teva's Troubles Were Predicted. The Path to Recovery Could Be Rocky, Fortune (Aug. 7, 2017, 10:19 AM), https://fortune.com/2017/08/07/teva-stock/

[24] Id.

fourth quarter of 2017, and a $4.6 billion charge in 2020.[25] Further, I understand that the present securities case is only one among many lawsuits facing Teva, including ongoing U.S. litigation related to opioids. If Teva had become insolvent, Plaintiffs' claims would likely have had to participate with other unsecured claims against the bankruptcy estate. Although Teva has never defaulted on its debt, its financial condition—and the prospect of further financial distress—was a risk factor that pervaded this litigation.

63. This litigation was risky, not only because of uncertainties surrounding the legal and factual claims and Teva's financial condition, but also because of the substantial outlay of cash and counsel time required. Counsel had to fund this litigation for years with no payment, and while incurring over $9.7 million in expenses that might never be recouped. In my opinion, the risks Class Counsel faced further confirm that the requested multiplier is reasonable in the circumstances of this case.

Percentage Analysis

64. I turn now to an analysis of Lead Counsel's fee request using the percentage method. Lead Counsel seeks a fee award equal to 23.70% of the $420,000,000 settlement.

65. In analyzing the requested fee percentage, I draw on empirical evidence on fee awards in settled class action cases. These data provide objective information about prevailing norms and standards.

66. Courts in the Second Circuit have awarded counsel fees in large cases similar to the percentage fee requested in the present case. *See, e.g.*, *Christine Asia Co., Ltd. v. Ma*, No. 1:15-md-02631 (SDA) (S.D.N.Y., October 16, 2019) (awarding 25% of a $250,000,000

[25] See Sophie Shulman, Analysis: Teva Pharmaceuticals is bogged down by legal issues, fails to kick-start growth, CTECH (Aug. 11, 2020, 13:57 PM), https://www.calcalistech.com/ctech/articles/0,7340,L-3869892,00.html

settlement fund); *NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.*, No. 1:08-cv-10783-LAP (S.D.N.Y. 2016) (awarding 21% of $272 million).

67. Lead Counsel's fee request is within the range of reason when judged against studies of fee awards in class action settlements generally. My study of class action fee awards in published cases between 2009 and 2013 (co-authored with Professor Theodore Eisenberg and Roy Germano) reports mean fee percentages of 27% across 450 cases nationwide,[26] 28% for 116 cases in the Second Circuit,[27] and 23% for 74 securities cases.[28] My earlier study (with Professor Eisenberg) of class action fee awards in published cases between 1993 and 2008 found a mean percentage fee of 23% for 689 cases nationwide,[29] 23% for 145 cases in the Second Circuit,[30] and 23% for 268 securities cases nationwide.[31] Professor Brian Fitzpatrick's study of federal class action settlements in 2006 and 2007 found a mean fee percentage of 24.7% in 233 securities cases,[32] 23.8% in 72 cases in the Second Circuit,[33] and 25% across all 444 cases in his study.[34]

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[26] Eisenberg, Miller and Germano, 937, 951 Table 3 (2017).

[27] Id. at 951 Table 3 (2017).

[28] Id. at 952 Table 4 (2017).

[29] Eisenberg and Miller, 259 Table 3 (2010).

[30] Id. at 260, Table 4.

[31] Id. at 262, Table 5.

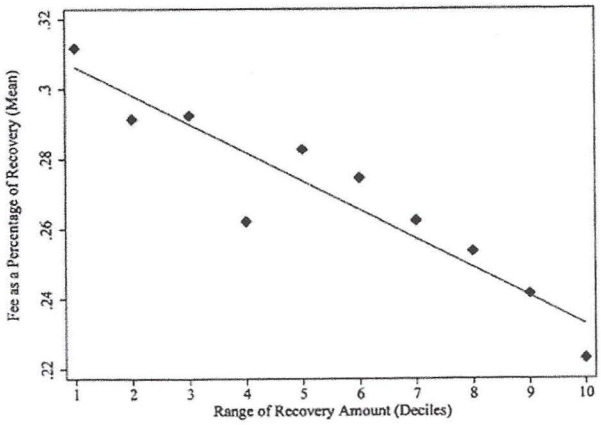
[32] Brian T. Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Awards, 7 Journal of Empirical Legal Studies 811, 835, Table 8 (2010) ("Fitzpatrick").

[33] Id. at 836 Table 9.

[34] Id. at 835 Table 8.

68. The empirical studies cited above observed a "scaling effect" in which average percentage fees decline as class recoveries increase. Eisenberg, Miller and Germano display the effect graphically across ten deciles of class recoveries:[35]

FIGURE 5. FEE PERCENTAGE, BY CLASS RECOVERY AMOUNT (DECILE RANGES), 2009–2013



69. In light of this observed scaling effect, the requested percentage fee should be evaluated in comparison to fees awarded in cases with recoveries of similar size. The percentage fee requested in the present case is within the range of fees reported for the largest class recoveries in the leading empirical studies. Specifically:

- The 2021 NERA Study found median fee awards of 24.5% in securities settlements between $100 million and $500 million, a range that includes the $420 million settlement in this case.[36] Lead Counsel's requested fee of 23.70% is below that value.
- Eisenberg, Miller and Germano found that for recoveries above $67.5 million, the mean percentage fee was 22.3%, close to the 23.70% fee requested here.[37]

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[35] Eisenberg, Miller and Germano, supra, at 948 Figure 5.

[36] 2021 NERA Study, supra, at 27, Figure 25.

[37] Eisenberg, Miller and Germano, supra, at 948 Figure 5. Eisenberg and Miller's 2010 study (covering cases from 1993 to 2008) found a mean percentage fee of 12% for 68 cases in the highest decile (recoveries above $175.5 million). Eisenberg and Miller, supra, at 265 Table 7.

- Fitzpatrick found a mean percentage fee of 18.4% for 45 cases with recoveries in the highest decile ($72.5 million to $6.6 billion)[38] and a mean percentage fee of 17.8% (with a median of 19.5%) for settlements between $250 million and $500 million. Professor Fitzpatrick also found a standard deviation of 7.9%,[39] meaning that most fee awards were within a range 7.9% above and 7.9% below the 17.8% mean award.

70. While each study above has a slightly different data set and approach, taken together, they provide a robust indication of the fee percentages awarded in cases of comparable size. Because Lead Counsel's requested fee is within the general range identified in these studies, and considering the facts and circumstances of this case, the requested fee is reasonable, in my opinion, even taking account of the empirically observed "scaling" of fee percentages in large settlements.

71. I note that the requested fee percentage is higher than the mean percentages reported in Fitzpatrick's paper and my two studies. This does not affect my opinion that the requested fee is reasonable. The real world is not like the fictional Lake Wobegon, where everyone is above average. But neither is it a place where everyone is average. The very concept of an average implies that some cases are above average, and some are below. For that reason, provided that it is justified by other considerations, a percentage fee can be reasonable even if it is above the average fees reported for cases with similar recoveries. That is the case here.

72. *First*, some large cases present significant economies of scale, thus allowing counsel to resolve the litigation quickly without the expenditure of a large number of hours. When these

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However, this appears to be an outlier and I view the mean and median fee awards from the studies described above as more relevant for purposes of this opinion.

[38] Fitzpatrick, supra, at 839 Table 11.

[39] Id.

economies are present, courts appropriately award percentage fees that take account of the lower effort expended by class counsel. Where economies of scale are not present, however, courts award suitably compensatory fees even in larger cases.

73. The present case is an example of a labor-intensive matter. This litigation did not settle early or with little effort. To the contrary, as detailed above, it was litigated for over five years. Discovery was contentious, and the complexity of the action demanded forty depositions and detailed analysis by four experts for the Class. Class Counsel had to participate in three mediation sessions and reach the verge of summary judgment before finally achieving an agreement. The duration and advanced procedural stage of this action, coupled with the presence of a tenacious adversary, led to Class Counsel expending a large number of hours (over 77,000) that yielded a substantial lodestar (over $45.8 million).

74. *Second*, as noted above, the lodestar multiplier implied by Lead Counsel's fee request is substantially below the average multiplier for a case with a recovery of similar size. Because the multiplier is below the norm for similar cases, the requested fee can be judged as reasonable even if the percentage standing alone is above the averages reported in empirical studies.

75. *Third*, the risks of this case justify a suitably compensatory fee. As detailed above, this action could have been defeated at the motion to dismiss, consolidation, class certification, summary judgment, trial, or on appeal. Class Counsel faced external risks regarding Teva's financial condition. Class Counsel expended over 77,000 professional hours and millions of dollars in expenses, all of which would be lost if this case had failed.

76. I recognize that Class Counsel seek a significant fee award in dollar terms. But the size of the request is no reason, in itself, to award less. The large cases examined in the empirical

studies involved large fee awards. Courts awarded these fees in recognition of the size of the class recoveries and of case-specific circumstances that warranted the compensation granted.

77. I note, in this regard, that courts within the District of Connecticut have awarded fees in large settlements that equate to dollar amounts similar to or larger than Lead Counsel's request. *See, e.g.*, *Carlson v. Xerox Corp.*, 355 F. App'x 523, 526 (2d Cir. 2009) (affirming fee award of 16%, or $120 million, in $750 million securities settlement); *In re U.S. Foodservice, Inc. Pricing Litig.*, No. 3:07-MD-1894 (AWT), 2014 WL 12862264 (D. Conn. Dec. 9, 2014) (fee award of 33.3%, or $99 million, in $297 million settlement of RICO and contract class action). In my academic research, I have evaluated fee awards using inflation-adjusted dollars to account for the passage of time.[40] Here, using the Consumer Price Index for All Urban Consumers (CPI-U) as the rate of inflation, the award in *Xerox* equals about $159.76 million in current dollars, and the award in *U.S. Foodservice* equals about $121.22 million in current dollars.[41]

78. The *Goldberger* factors are relevant to this analysis. The factors of the time and labor expended, the magnitude and complexity of the litigation, the risk of the litigation, the quality of representation, and the requested fee in relation to the settlement (each addressed above) all speak favorably for Class Counsel's performance and provide reasons for awarding a fee commensurate with the value conferred.

79. The same is true with regard to public policy considerations. The $420 million settlement obtained by Class Counsel both provides significant compensation to class members and acts as a deterrent to companies or individuals who might think about violating the securities laws

[40] See Eisenberg and Miller, supra, at 253 (2010).

[41] See CPI Inflation Calculator, available at https://www.bls.gov/data/inflation_calculator.htm.

in the future. In this respect, Class Counsel acted as "private attorneys general" by successfully pursuing litigation in the service of otherwise-unrepresented people.

80. Moreover, the complaint in this case alleged that Teva, the largest manufacturer of generic drugs in the world, artificially hiked the prices on several of its products in order to boost its profits, and then concealed this fact from the investing public. This litigation served the public interest by investigating Teva's practices and helping to ensure that investors are accurately informed about pharmaceutical firms' pricing strategies.

The Role of Lead Plaintiffs

81. A final point concerns the role of the representative plaintiffs, Class Representatives Ontario Teachers' Pension Plan Board and Anchorage Police & Fire Retirement System. These entities have overseen Class Counsel's conduct ever since their appointment and are capable of evaluating the reasonableness of Lead Counsel's fee request from the perspective of the best interests of the class. This Court's ruling on the motions for appointment as lead plaintiff recognized that Ontario Teachers' "is an institutional investor with experience as lead plaintiff in a securities action." The Court noted that Ontario Teachers' "maintains an in-house legal department with attorneys dedicated to the oversight of this action" who, in turn, will "supervise retained counsel and actively participate in the litigation with its client and the class's best interests in mind."[42] Anchorage Police & Fire Retirement System, likewise, has the capacity and incentive to provide careful oversight of Class Counsel's conduct of this litigation, including the request for attorney fees.

82. Based on my review of Class Representatives' declarations, it is my opinion that Ontario Teachers' and Anchorage were extensively involved in the prosecution and resolution of this

[42] *Galmi*, 302 F. Supp. 3d at 506.

case by directly supervising Class Counsel, reviewing draft filings, providing deposition testimony, and participating in each formal mediation session and numerous subsequent conferences. Moreover, Class Representatives' declarations attest to their arm's-length negotiation and careful consideration of the requested fee, and their independent review of the quality and amount of Class Counsel's work, the result achieved, the risks Class Counsel faced, fee awards in other cases, Class Counsel's rates, and other relevant factors. The presence of knowledgeable and active class representatives and their diligence in this case provides an additional safeguard over the reasonableness of the fee request.

Conclusion

83. For the reasons stated above, it is my opinion that a fee equal to 23.70% of the settlement fund is reasonable under the circumstances.

Executed this 25th day of April 2022.

Geoffrey Parsons Miller

Appendix 1: Resume

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Education

Columbia Law School, J.D. (1978)
Editor-in-Chief, Columbia Law Review (1977-78)
Princeton University, A.B. *magna cum laude* (1973)

Work Experience

New York University Law School (1995-present)
- Stuyvesant P. Comfort Professor of Law
- Co-Director, Program in Corporate Compliance and Enforcement (2014-2017)
- Senior Faculty Fellow, Program in Corporate Compliance and Enforcement (2017-present)
- Faculty Co-Director, Center on Civil Justice at NYU Law School (2015-present)
- Faculty Director, NYU Center for Financial Institutions (1994-present)
- Co-Director, NYU Center for Law, Economics and Organization (2006-2012)
- Chair, Academic Personnel Committee (1999-2000; 2004-2006)
- Chair, Promotions and Tenure Committee (2007-2009; 2018-2019)

University of Chicago Law School (1983-1995)
- Kirkland & Ellis Professor (1989-1995)
- Editor, Journal of Legal Studies (1989-1995)
- Director, Program in Law and Economics (1994-1995)
- Director, Legal Theory Workshop (1989-1993)
- Associate Dean (1987-1989)
- Professor of Law (1987-1989)
- Assistant Professor of Law (1983-1987)

Distinguished Visiting Professor, Vanderbilt Law School, 2014
Visiting Professor, University of Frankfurt, Summer 2013

Faculty Member, Study Center Gerzensee, Switzerland, Spring 2012, Summer 2016
Visiting Lecturer, University of Genoa Department of Law, 2011
Visiting Lecturer, Collegio Carlo Alberto (Moncalieri, Italy), 2011, 2013
Visiting Scholar, European University Institute, Florence, Italy, Fall/Winter 2010
Visiting Chair on Private Actors and Globalisation, Hague Institute for the Internationalisation of Law, Fall/Winter 2010
Robert B. and Candace J. Haas Visiting Professor of Law, Harvard Law School, Fall 2009
Max Schmidheiny Guest Professor, University of St. Gallen, Switzerland Summer 2009
Faculty Member, NYU-NUS in Singapore, 2009, 2011, 2013
Fresco Endowed Professor of Law, University of Genoa, Italy, Summer 2008, Spring 2009, Summer 2010
Visiting Scholar, University of Minnesota Law School, Spring 2008
Visiting Lecturer, University of Bolzano, Italy, Summer 2007
Commerzbank Visiting Professor, Institute for Law & Finance, University of Frankfurt, Germany, Summer 2004, Summer 2005, Summer 2010
Visiting Professor, Columbia Law School, Fall 2001
Visiting Professor, University of Sydney, Australia, Summer 2002; Summer 2006; Spring 2009
Zaeslin Visiting Professor, University of Basel, Switzerland, Summers 2001-2021
Visiting Scholar, CentER for Economic Research, Tilburg, Holland, Summer 1996
John M. Olin Visiting Scholar, Cornell University Law School, Summer 1992, Spring 1996; Winter 1997, Summer 2005, Spring 2008, Spring 2009, Spring 2010
Visiting Scholar, Bank of Japan, Spring 1995
Visiting Professor, New York University Law School, Fall 1994
Consultant, Federal Reserve Bank of Chicago, 1992-1994
Visiting Scholar, New York University Law School, Fall 1993
Simpson Grierson Butler White Visiting Professor, University of Aukland, New Zealand, Summer 1993

Associate, Ennis, Friedman, Bersoff & Ewing
Washington, D.C. (1982-83)

Attorney Adviser, Office of Legal Counsel
U.S. Department of Justice (1980-82)

Clerk, Hon. Byron R. White
Supreme Court of the United States (1979-80)

Clerk, Hon. Carl McGowan
U.S. Court of Appeals, District of Columbia (1978-79)

Scholarly and Law Reform Activities

Member, American Law Institute (elected 2015)

American Law Institute, Reporter, Principles of the Law, Compliance, Enforcement, and Risk Management for Corporations, Nonprofits, and Other Organizations (2014-present)

Fellow, American Academy of Arts and Sciences (2011-2020)

Society for Empirical Legal Studies
Fellow (2014-present),
Co-Founder and Co-President (2006-2007)
Board Member (2006-2014)

Corporate Service

Board member of the Board of Directors, State Farm Bank (2010-2021). Audit Committee Chair (2015-2021)

Publications

Books

The Economics of Securities Law I (editor) (Edward Elgar 2016)

The Economics of Securities Law II (editor) (Edward Elgar 2016)

The Economics of Financial Law I (editor) (Edward Elgar 2016)

The Economics of Financial Law II (editor) (Edward Elgar 2016)

Banking Law and Regulation, Little, Brown & Co. 1992 (with Jonathan R. Macey); Second Edition, Aspen Law & Business 1997 (with Jonathan R. Macey), Third Edition, Aspen Law & Business 2001 (with Jonathan R. Macey and Richard Scott Carnell); Fourth Edition, Aspen Law & Business 2008 (with Richard Scott Carnell and Jonathan R. Macey), under title "The Law of Banking and Financial Institutions); Fifth Edition (with Richard Scott Carnell and Jonathan R. Macey), under title "The Law of Financial Institutions, Wolters Kluwer Law & Business (2013) [translated into Chinese, The Commercial Press, 2016]; Sixth Edition, under title "The Law of Financial Institutions," Wolters Kluwer Law & Business (2017)

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Banking Law and Regulation: Teacher's Manual (1992; Second Edition 1997; Third Edition 2001, Fourth Edition 2008) (with Jonathan R. Macey and Richard Scott Carnell)

The Law of Governance, Risk Management and Compliance (Wolters Kluwer Law and Business 2014); Second Edition 2017.

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The Governance of International Banking (co-authored with Fabrizio Cafaggi, with Tiago Andreotti, Maciej Borowicz, Agnieszka Janczuk, Eugenia Macchiavello and Paolo Saguato) (Edward Elgar 2013)

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The Origins of the Necessary and Proper Clause (with Gary Lawson, Robert Natelson, and Guy Seidman) (Cambridge University Press 2010)

The Economics of Ancient Law (editor) (Edward Elgar 2010)

Bank Mergers and Acquisitions (editor, with Yakov Amihud) (Kluwer Academic Publishers 1998)

La Banca Central en América Latina: Aspectos Económicos y Juridicos [Central Banks in Latin America and Their New Legal Structure] (in Spanish) (editor, with Ernesto Aguirre and Roberto Junguito Bonnet) (Tercer Mundo: Bogotá 1997)

Costly Policies: State Regulation and Antitrust Exemption in Insurance Markets (AEI Press 1993) (with Jonathan R. Macey)

Articles

Attorneys' Fees

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Constitutional Law

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The Unitary Executive in a Unified Theory of Constitutional Law: The Problem of Interpretation, 15 Cardozo Law Review 201 (1993)

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Compliance and Risk Management

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Financial Institutions

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Intellectual Hazard and the Design of Financial Stability Regulation, in University of St. Gallen Series in Law and Economics, Peter Nobel, ed. (Zurich: Schulthess, 2010) (with Gerald Rosenfeld)

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Nomadism, Dependency, Slavery and Nationhood: Comparative Politics in the Book of Exodus, NYU School of Law, Public Law Research Paper No. 10-49 (2010)

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Patriarchy: The Political Theory of Family Authority in the Book of Genesis (manuscript 2010)

The Dark Age: How the Biblical Narratives Demonstrate the Necessity for Law and Government (NYU School of Law, Public Law Research Paper No. 10-18)

Origin of Obligation: Genesis 2:4b-3:24 (NYU School of Law, Public Law Research Paper No. 09-60)

Sovereignty and Conquest in the Hebrew Bible, NYU School of Law, Public Law Research Paper No. 10-61 (2010)

Golden Calves, Stone Tablets, and Fundamental Law: A Political Interpretation of Exodus 32 (NYU School of Law, Public Law Research Paper No. 10-02)

A Riposte Form in the Song of Deborah, in Tikva Frymer-Kensky, Bernard Levinson and Victor Matthews, eds., Gender and Law in the Hebrew Bible and the Ancient Near East 113-27 (1998)

Foreword: The Development of Ancient Near Eastern Law, 70 Chicago-Kent Law Review 1623 (1996)

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The Song of Deborah: A Legal-Economic Analysis, 144 University of Pennsylvania Law Review 2293 (1996)

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Law and Society

Parental Bonding and the Design of Child Support Obligations, in William S. Comanor, ed., The Law and Economics of Child Support Payments 210-240 (Edward Elgar 2004)

The Legal Function of Ritual, 80 Chicago-Kent Law Review 1181 (2005)

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Norm Enforcement in the Public Sphere: The Case of Handicapped Parking, 71 George Washington Law Review 895-933 (2004)

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Female Genital Mutilation: A Cultural-Legal Analysis (manuscript)

Circumcision: A Legal-Cultural Analysis, 9 Virginia Journal of Social Policy and the Law 498-585 (2002), pre-published as New York University Public Law and Legal Theory Working Paper Series, Working Paper 5 (2000)

Law, Pollution, and the Management of Social Anxiety, 7 Michigan Women's Law Journal 221-289 (2001)

Other:

Richard Posner, 61 N.Y.U. Annual Survey of American Law 13 (2004)

Introduction: The Law and Economics of Risk, 19 Journal of Legal Studies 531 (1990) (with Richard A. Epstein)

Law School Curriculum: A Reply to Kennedy, 14 Seton Hall Law Review 1077 (1984) (under pen name of Chris Langdell)

Book Reviews

Defusing the Banks' Financial Time Bomb, BusinessWeek (Mar. 11, 2010) (review of Robert Pozen, Too Big to Save? How to Fix the U.S. Financial System

Love & Joy: Law, Language and Religion in Ancient Israel, by Yochanan Muffs, 58 Journal of Near Eastern Studies 144-45 (1999)

Jesus and the Jews: The Pharisaic Tradition in John; The Trial Of Jesus; Jesus And The Law, by Alan Watson, 1 Edinburgh Law Review 273 (1997)

No Contest: Corporate Lawyers and the Perversion of Justice in America, by Ralph Nader and Wesley J. Smith, Washington Post (October 13, 1996)

The Rise and Fall of the Classical Corporation: Hovenkamp's Enterprise and American Law: 1836-1937, 59 University of Chicago Law Review 1677 (1993)

Property Rights and the Constitution: A Review of James W. Ely, Jr.'s The Guardian of Every Other Right, 37 American Journal of Legal History 378 (1993)

Anatomy of A Disaster: Why Bank Regulation Failed, 86 Northwestern University Law Review 742 (1992)

The Glittering Eye of Law, 84 Michigan Law Review 1901 (1986)

A Rhetoric of Law, 52 University of Chicago Law Review 247 (1985)

Major Lectures

Revelation as a Source of Legal Authority (Keynote Address, Conference on Religious Liberty, Touro Law School 2013)

Trust, Risk, and Moral Hazard in Financial Markets (University of Genoa, Fresco Chair Lectures in Law and Finance, June 2010)

A Simple Theory of Takeover Regulation in the United States and Europe; Intellectual Hazard (Commerzebank Lectures, University of Frankfurt, May 2010)

The European Union’s Takeover Directive and Its Implementation in Italy (University of Rome III, 2008)

Catastrophic Financial Failures: Enron, HIH and More (Ross Parsons Lecture, Sydney, Australia, 2002)

Das Kapital: Solvency Regulation of the American Business Enterprise (Coase Lecture, University of Chicago Law School, 1993)

Banking in the Theory of Finance; The Simple Economics of Litigation and Settlement; The Economic Structure of Corporation Law (University of Auckland, New Zealand, 1993)

Journal Referee Reports

American Law and Economics Review
Journal of Legal Studies
Journal of Law, Economics and Organization
Review of Law and Economics

Conferences Organized

Law and Banking Conference 2019 (Paris), 2018 (New York), 2017 (Bad Homburgm, co-sponsored with University of Frankfurt); 2016 (New York); 2015 (Zurich); 2014 (New York); 2013 (Zurich); 2012 (New York); 2011 (Florence)

Achieving and Responsible Enterprise: Principles of Effective Compliance and Enforcement (May 8, 2015)

Global Economic Policy Forum, New York 2013 (keynote speakers included Federal Reserve Bank of New York President William Dudley and former Governor of the Bank of England Baron King of Lothbury); New York 2008 (keynote speaker was Jean-Claude Trichet, Chairman of the European Central Bank); 2007 (keynote speaker was Ben Bernanke, Chairman of the Board of Governors of the Federal Reserve)

The Good Bank Debate (New York 2013) (co-sponsored with Mazars)

Judicial Dialogue on Mass Litigation, Florence Italy, October 15-16, 2010 (co-organizer of conference co-sponsored by NYU Law School, the American Law Institute, and the European University Institute)

Finlawmetrics 2010: Central Banking, Regulation & Supervision after the Financial Crisis (co-sponsor and member of steering committee)

Finlawmetrics 2009: After The Big Bang: Reshaping Central Banking, Regulation and Supervision (Milan, Italy, Spring 2009) (co-sponsor and member of steering committee)

NYU Global Economic Policy Forum 2009: The Future of Regulation and Capital Markets (November 5, 2009) (co-organized with Professor Alan Rechtschaffen and with the NYU Law School Alumni Association)

Third Annual Conference on Empirical Legal Studies (Cornell University, Ithaca, New York, Fall 2008) (co-organizer)

Second Annual Conference on Empirical Legal Studies (New York, New York, November 10-11, 2007). Major conference (425 participants) exploring all aspects of the empirical study of law. Co-organized with Jennifer Arlen, Bernard Black, Theodore Eisenberg and Michael Heise.

First Annual Conference on Empirical Legal Studies (Austin, Texas, October 2006). Major conference exploring all aspects of the empirical study of law. Co-organized with Jennifer Arlen, Bernard Black, Theodore Eisenberg and Michael Heise.

Conference on Legal Aspects of the International Activities of Central Banks, Lima Peru, October 1997. This conference, co-sponsored by the central bank of Peru, brought together leaders in the legal and economic issues facing central banks in the management of their external reserves.

Conference on the Governance of Institutional Investors (New York, New York, February 14, 1997). This conference, sponsored by the NYU Stern School of Business Salomon Center in association with the New York University Law School Center for the Study of Central Banks, brought together top executives, attorneys, scholars and others interested in the management and organization, both economic and legal, of the nation's large institutional investors, including its mutual fund industry.

Conference on Bank Mergers and Acquisitions (New York, New York, October 11, 1996). This conference, sponsored by the NYU Stern School of Business Salomon Center in association with the New York University Law School's Center for the Study of Central Banks, brought together leading academics, lawyers, and investment bankers to discuss some of the broader implications of bank mergers and acquisitions. Co-organizer of this conference was Professor Yakov Amihud of the Stern School's Finance Department.

Conference in Central Banks in Latin America (Bogota, Colombia, February, 1996). This conference, co-sponsored by the central bank of Colombia with technical assistance from the Legal Affairs Department of the International Monetary Fund, brought together leaders of Latin American central banks, the international financial community, and scholars from a variety of disciplines, to discuss issues related to the independence of central banks and economic development.

Conference on Central Banks in Asia (Shanghai, China, October, 1995). This conference, co-sponsored with KPMG-Peat Marwick, brought together leaders from commercial banks, investment banks, and industrial firms, as well as central bankers, to discuss Asian central banks to address issues such as the proposed law granting a degree of independence to the central bank of China.

Conference on Ancient Law (Berkeley, California, March 1995). This conference, organized with Professors James Lindgren of Chicago-Kent Law School and Laurent Mayali of the University of California at Berkeley Law School, brought together important figures from a variety of disciplines interested in Ancient Law.

Conference on Central Banks in Eastern Europe and the Newly Independent States (Chicago, Illinois, April 1994). This conference brought together the Prime Minister of Estonia, three present or former Ministers of Finance of Eastern European states (including Boris Fyoderov, former Finance Minister of the Russian Republic), the heads of the central banks of eleven nations in Eastern Europe and the Newly Independent States, together with a wide variety of highly-placed officials from these countries and from the west, to discuss issues related to the independence of central banks and economic development.

Professional Memberships and Positions

New York State Bar
District of Columbia Bar
American Bar Association
American Law Institute (1988-1996; 2017-present)
Member, Paolo Baffi Centre Scientific Advisory Board, Milan, Italy (2008- 2016)
Member, International Academic Council, University of St. Gallen, Switzerland (2004-2016)
Chairman, Section on Business Associations, American Association of Law Schools (1995)
Member of the Board of Directors, American Law and Economics Association (1995-1998)
Member of the Foreign Advisory Committee, Latin American Law and Economics Association (1995-2000)
Member of the Foreign Advisory Board, Universitad Tocurato Di Tella School of Law, Buenos Aires, Argentina (1992-1999)
Member of the Editorial Board, Supreme Court Economic Review
Member of the Advisory Board, University of Hong Kong Faculty of Law Asian Institute of International Financial Law (2001-present)

Courses

Governance, Risk and Compliance (Study Center Gerzensee, Switzerland 2016)
Law and Business of Bitcoin and Block Chain (2015; 2017; 2019-2022) (with David Yermack)
Compliance and Risk Management for Attorneys (2014, 2015, 2017)
Professional Responsibility (1985-93; 1996-98; 2003-2007; 2013; 2019-2022)
The Crisis of 2008 (2009, 2010)
Reading Class: Restructuring Finance (2009); Cutting Issues in Finance (2014-2015);
Reading Class: Law and Politics in Shakespeare (2015-2016; 2019)
Property (1986-87)
Corporations (1985-88; 1991-93; 1997-2000; 2005; 2008; 2012; 2014; 2016)
Seminar on Separation of Powers (1985, 1987)
Civil Procedure (1983-84; 2004-2005; 2011; 2013; 2016; 2018-2020)
Federal Regulation of Banking (1983, 1989-93; 1995-97; 2003, 2006-2010; 2012; 2015)

Law and Business of Banking (2012; with Gerald Rosenfeld)
Land Development (1984-85)
Securities Law (1990-91)
Workshop in Legal Theory (1989-91)
Seminar on Financial Institutions (1992-93 (with Merton Miller) (1996-97)
Ethics in Class Action Practice (Continuing Legal Education Seminar 2002-2005)
Law and Economics (University of Basel, Switzerland 2005, 2007-2014)
Advanced Seminar on Law and Economics (University of Genoa, Italy 2008)
Banking and the Financial Crisis (University of Genoa, Italy 2009)
Trust, Risk, and Moral Hazard in Financial Markets (University of Genoa, Italy, 2010)
International Banking (University of Sydney, Australia, 2002, 2006)
Introduction to Banking Law (University of Basel, Switzerland 2001, 2002, 2003, 2004, 2009, 2010; 2011; 2012; 2013; 2014; 2015; 2016; 2017; 2018)
Banking in the Theory of Finance (University of Frankfurt, Germany 2004, 2005)
Banking Regulation in Crisis (University of Frankfurt, Germany, 2010)
Banking: Law and Economics Issues after the Financial Crisis (Study Center Gerzensee, 2012)

Other Activities

Fellow, Society for Empirical Legal Studies (2015-2020)

Member, Board of Directors, American Law and Economics Association (1996-1999)

Member, Board of Advisors, The Independent Review (1996-present)

Member, Board of Advisors, Asian Institute of International Financial Law (2001-present)

Member, Editorial Advisory Board, Supreme Court Economic Review (1995-2001)

Member, Editorial Advisory Board, The Brookings-Wharton Papers on Financial Policy (1997-present)

President, Section on Financial Institutions and Consumer Financial Services, American Association of Law Schools (1999)

President, Section on Business Associations, American Association of Law Schools (1995)

Member, Board of Contributors, American Bar Association Preview of Supreme Court Cases (1985-1993)

Consultant, Administrative Conference of the United States (1988-89; 1991-1992)

Board of Directors and Volunteer Listener, D.C. Hotline (1980-83)

Awards

1992 Paul M. Bator Award for Excellence in Teaching, Scholarship and Public Service, from the Federalist Society for Law and Public Policy Studies

Podell Distinguished Teaching Award (NYU Law School 2016)

Languages

Moderate reading knowledge of Spanish, French, and Italian.

Blog Posts

Whistleblowing in the Wind, Compliance and Enforcement (June 29, 2016)

Banking's Cultural Revolution, Compliance and Enforcement (June 8, 2016)

Breach of Contract ≠ Fraud, Compliance and Enforcement (May 25, 2016)

Judges are not Potted Plants, Compliance and Enforcement (May 18, 2016)

Compliance Goes to School, Compliance and Enforcement (May 12, 2016)
CFPB Issues Proposed Consumer Arbitration Rule, Compliance and Enforcement (May 5, 2016)

FSOC Socked, Compliance and Enforcement (April 28, 2016)

Compliance and Risk Management: Area for Legal Teaching and Scholarship?, Harvard Law School Forum on Corporate Governance and Financial Regulation (May 22, 2014)

Shorter Works

Defusing The Banks' Financial Time Bomb: Without Tough Reforms, Writes Robert Pozen, We'll Probably Face An Ugly Repeat of Recent History (Business Week, March 11, 2010)

Why Interstate Banking is in the National Interest, Testimony Before the Subcommittee on Financial Institutions Supervision, Regulation and Deposit Insurance of the House Committee on Banking, Housing and Urban Affairs (September 29, 1993)

Challenging the Concept of the Common Law as a Closed System, Columbia Law School Report, Autumn, 1993 (with Norman Silber)

The Insurance Industry's Antitrust Exemption: A Longstanding Tradition Faces its Greatest Challenge, 1992-93 ABA Preview of Supreme Court Cases 198 (1993)

Shootout at the Escheat Corral, 1992-93 ABA Preview of Supreme Court Cases (1993)

Choices and Chances for Consumers, Legal Times, Oct. 12, 1992, at 29-30.

Impeachment Procedures: An Unexplored Territory in the Separation of Powers, 1992-93 ABA Preview of Supreme Court Cases 39 (1992)

An (Ex)changing of the Guard, 21 Journal of Legal Studies iii (1992)

Revisiting the Contingency Factor in Fee-Shifting Awards, 1991-92 ABA Preview of Supreme Court Cases 327 (1992)

The Foreign Sovereign Immunities Act and the Market for Public International Debt, 1991-92 ABA Preview of Supreme Court Cases 307 (1992)

Return of the Tenth Amendment?: Federal Control and State Autonomy over Low Level Radioactive Wastes, 1991-92 ABA Preview of Supreme Court Cases 284 (1992)

What are the Limits on Congressional Power to Influence Pending Cases?, 1991-92 ABA Preview of Supreme Court Cases 158 (1991)

RICO Standing for Securities Fraud: Does the Purchaser-Seller Rule of Rule 10b-5 Apply?, 1991-92 ABA Preview of Supreme Court Cases 155 (1991)

Banking and Investment: Introduction to UPA Index and Microfiche Collection (University Publications of America 1991)

Source of Strength in the Court: Can Bank Holding Companies be Required to Support Failing Subsidiary Banks?, 1991-92 ABA Preview of Supreme Court Cases 42 (1991)

Source of Strength: A Source of Trouble, Legal Times, September 30, 1991 (Special Supplement, pp. 22-25)

The Once and Future American Banking Industry, The American Enterprise (with Jonathan R. Macey)(1991)

The Former Stockholder as Plaintiff in Short-Swing Trading Cases, 1990-91 ABA Preview of Supreme Court Cases (1991)

Disposing of Demand Excuse in Derivative Litigation, 1990-91 ABA Preview of Supreme Court Cases (1991)

Up in the Air: Can Congress Require States to Appoint Members of Congress to State Agencies?, 1990-91 ABA Preview of Supreme Court Cases 294 (1991)

The Statute of Limitations under Rule 10b-5, 1990-91 ABA Preview of Supreme Court Cases (1991)

Tort Claims Against Federal Banking Agencies: New Hope For Shareholders and Officers of Failed Depository Institutions?, 1990-91 ABA Preview of Supreme Court Cases 94 (1991)

Punitive Damages Redux: If the Eighth Amendment Doesn't Apply, What About the Due Process Clause?, 1990-91 ABA Preview of Supreme Court Cases 47 (1990)

Quandaries of Causation: Proxy Solicitation in Freeze-Out Mergers, 1990-91 ABA Preview of Supreme Court Cases 57 (1990)

Racial Statesmanship, Legal Times S31 (July 23, 1990)

Eurodollars, Sovereign Risk, and the Liability of U.S. Banks for Deposits in Foreign Branches, 1989-90 ABA Preview of Supreme Court Cases 281 (1990)

When is a Note a Note?, 1989-90 ABA Preview of Supreme Court Cases 18 (1990)

Interstate Banking and the Commerce Clause, 1989-90 ABA Preview of Supreme Court Cases 168 (1990)

Federal Courts, Municipalities, and the Contempt Power, 1989-90 ABA Preview of Supreme Court Cases 37 (1989)

Shoe Could Still Drop on Issue of Punitive Damages, National Law Journal (August 21, l989)

Punitive Damages and the Constitution, 1988-89 ABA Preview of Supreme Court Cases 391 (l989)

States, Bankruptcy and the Eleventh Amendment, 1988-89 ABA Preview of Supreme Court Cases 412 (1989)

Stockholders, Arbitration, and the Securities Act of 1933, 1988-89 ABA Preview of Supreme Court Cases 383 (1989)

Appropriations Riders, Nondisclosure Agreements, and the Separation of Powers, 1988-89 ABA Preview of Supreme Court Cases 375 (1989)

Judicial Appointments and the ABA: Business as Usual or Brand New World?, 1988-89 ABA Preview of Supreme Court Cases 379 (1989)

S & L Receiverships, State Law, and the Federal Courts, 1988-89 ABA Preview of Supreme Court Cases 255 (1989)

The Non-delegation Doctrine in Taxation: A Different Constitutional Calculus?, 1988-89 ABA Preview of Supreme Court Cases 26l (1989)

Bankruptcy, Tax Liens, and Post-Petition Interest, 1988-89 ABA Preview of Supreme Court Cases (1989)

Federal Courts, State Taxes: A Vexing Dilemma For the Enforcement of Civil Rights in a Federal System, 1989-90 ABA Preview of Supreme Court Cases 95 (1988)

Separation of Powers and the Sentencing Commission, 1988-89 ABA Preview of Supreme Court Cases 23 (1988)

Administering the Savings and Loan Crisis: New Problems for the FSLIC, 1988-89 ABA Preview of Supreme Court Cases (1988)

Federal Procurement and the Separation of Powers, 1988-89 ABA Preview of Supreme Court Cases 26 (1988)

Thinking About a Career in Law, 1988-89 Talbot's Student Planning Book 32 (1988)

Carl McGowan: A Great Judge Remembered, 56 George Washington Law Review 697 (1988)

Separation of Powers: The Independent Counsel Case Tests the Limits, 1987-88 ABA Preview of Supreme Court Cases 390 (1988)

Decisionmaking in Collegial Bodies, Judicature, April/May 1988

The FDIC, Bank Officers and the Due Process Clause, 1987-88 ABA Preview of Supreme Court Cases 326 (1988)

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The Time Value of Money in Bankruptcy Cases, 1987-88 ABA Preview of Supreme Court Cases 116 (1987)

Getting the Fee First? Attorneys and the SSI Program l987-88 ABA Preview of Supreme Court Cases 118 (1987)

The Farmer and the FDIC, 1987-88 ABA Preview of Supreme Court Cases 48 (1987)

Testing the Limits of Securities Fraud: Financial Gossip in the Court, 1987-88 ABA Preview of Supreme Court Cases 26 (1987)

Checks and Balances in the Twenty-First Century, 33 University of Chicago Law School Record 7 (1987)

Separation of Powers May Become Focus Over NSC, Legal Times, Dec. 15, 1986, at 15

If a Bank is a Broker, is a Brokerage a Branch? 1986-87 ABA Preview of Supreme Court Cases 65 (1986)

Attorney's Fees in the Supreme Court, American Bar Association Journal 40 (November, 1986)

The Contingency Factor in Attorney's Fees Reconsidered, 1986-87 ABA Preview of Supreme Court Cases 20 (1986)

Restitution and Bankruptcy in a Federal System, 1986-87 ABA Preview of Supreme Court Cases (1986)

Don't Limit Contingent Fees, Chicago Tribune, June 11, 1986

The Budget and the Separation of Powers: Gramm-Rudman in the Court, 1985-86 ABA Previews of Supreme Court Cases 359 (1986)

Keeping Attorneys' Fees in Proportion, 1985-86 ABA Preview of Supreme Court Cases 325 (1986)

Must the Federal Government Pay Interest on Attorneys' Fees Awards?, 1985-86 ABA Preview of Supreme Court Cases 241 (1986)

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The FCC as Cop: Forcing State Public Service Commissions to Obey Federal Agency Orders, 1985-86 ABA Preview of Supreme Court Cases 191 (1986)

Preemption, Public Utilities, and Power Over Telephone Rate-Setting, 1985-86 ABA Preview of Supreme Court Cases 187 (1986)

A Bank is a Bank is a Bank -- or is it?, 1985-86 ABA Preview of Supreme Court Cases 67 (1985)

Settlement Offers Conditioned on Waiver of Attorneys' Fees: A Legal and Ethical Dilemma Confronts the Court, 1985-86 ABA Preview of Supreme Court Cases 55 (1985)

Bankruptcy and the Environment: The Case of Hazardous Wastes, 1985-86 ABA Preview of Supreme Court Cases 25 (1985)

A Different Approach to Interstate Banking, American Banker (August 8, 1985)

The SEC as Censor: Is Banning an Investment Advice Newsletter a Prior Restraint of the Press?, 1984-85 ABA Preview of Supreme Court Cases 243 (1985)

Enforcing Federal Rights in State Courts, 1984-85 ABA Preview of Supreme Court Cases 277 (1985)

Interstate Banking and the Constitution, 1984-85 ABA Preview of Supreme Court Cases 364 (1985)

The "Sale of Business" Doctrine in the Supreme Court, 1984-85 ABA Preview of Supreme Court Cases 344 (1985)

Sale of Business Revisited: Does the Doctrine Apply to Partial Sales of Corporate Control, 1984-85 ABA Preview of Supreme Court Cases 347 (1985)

Six Cases Shape Business Law, American Bar Association Journal 124 (Jan. 1985)

Offers of Settlement in Civil Rights Cases Pose Attorneys' Fees Question, 1984-85 ABA Preview of Supreme Court Cases 105 (1984)

Using Bankruptcy to Avoid Liability for Cleaning up Toxic Wastes, 1984-85 ABA Preview of Supreme Court Cases 36 (1984)

A Judicial Footnote Cemented the New Deal, Wall Street Journal, September 13, 1984

May Bank Holding Companies Provide Discount Brokerage Savings?, 1984-85 ABA Preview of Supreme Court Cases 575 (1984)

Blum v. Stenson: Fundamental Questions About Attorneys' Fees Awards to Public Interest Lawyers, 1984-85 ABA Preview of Supreme Court Cases 301 (1984)

Myths on the Midway, 30 Chicago Law School Record 13 (1984)

Smith v. Robinson: Another Step Towards Solving the Attorneys' Fees Puzzle? 1983-84 ABA Preview of Supreme Court Cases 437 (1984)

Securities Industry Association v. Board of Governors: Can Banks Distribute Commercial Paper? 1983-84 ABA Preview of Supreme Court Cases 425 (1984)

The "7-Eleven" Case: Arbitration v. Litigation in a Federal System, 1983-84 ABA Preview of Supreme Court Cases 161 (1983)

The Bildisco Case: Reconciling Federal Bankruptcy and Labor Policies, 1983-84 ABA Preview of Supreme Court Cases 169 (1983)

The "Daily Income Fund" Case: What Role Should a Mutual Fund's Board of Directors Play in Disputes over Investment Advisor Fees, 1983-84 ABA Preview of Supreme Court Cases 107 (1983)

Pulliam v. Allen: Should State Judges who Act Unconstitutionally Pay the Plaintiff's Attorneys' Fees?, 1983-84 ABA Preview of Supreme Court Cases 115 (1983)

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The Tax Bill May Be Unconstitutional, Baltimore Sun, August 16, 1982 (with Donald N. Bersoff)

Appendix 2: Cases Citing Geoffrey Miller's Research on Class Actions

- *T.K. Through Leshore v. Bytedance Technology Co., Ltd.*, 2022 WL 888943 (N.D. Illinois 2022)
- *In Re Flint Water Cases,* 2022 WL 340675 (E.D. Michigan 2022)
- *Hager v. Omnicare, Inc.,* 2021 WL 5311307 (S.D. West Virginia 2021)
- *Stechert v. Travelers Home and Marine Insurance Company,* 2021 WL 5235221 (E.D. Pennsylvania 2021)
- *Blondell v. Bouton,* 2021 WL 4173679 (E.D. New York 2021)
- *Strack, Trustee of Patricia Ann Strack Revocable Trust Dtd 2/15/99 v. Continental Resources, Inc.,* --- P.3d ----, 2021 WL 1540516 (Supreme Court of Oklahoma 2021)
- *In re Apple Inc. Device Performance Litigation,* No. 5:18-md-02827-EJD, 2021 WL 1022866 (N.D. California 2021)
- *Monroe County Employees' Retirement System v. Southern Company*, No: 1:17-cv-241-WMR, 2021 WL 451670 (N.D. Georgia 2021)
- *Wood v. Saroj & Manju Investments Philadelphia LLC*, No. 19-2820-KSM, 2020 WL 7711409 (E.D. 2020)
- *City of Birmingham Retirement and Relief System v. Credit Suisse Group AG.*, No. 17 Civ. 10014 (LGS), 2020 WL 7413926 (S.D.N.Y. 2020)
- *In re General Motors LLC Ignition Switch Litigation,* Nos. 14-MD-2543 (JMF) and 14-MC-2543 (JMF), 2020 WL 748129 (S.D.N.Y. 2020)
- *In re LIBOR-Based Financial Instruments Antitrust Litigation,* 11 MD 2262 (NRB), 2020 WL 6891417 (S.D.N.Y. 2020)
- *In re National Prescription Opiate Litigation*, 976 F.3d 664 (6th Circuit 2020) (dissenting opinion)
- *Shah v. Zimmer Biomet Holdings, Inc*., 2020 WL 5627171 (N.D. Indiana 2020)
- *Johnson v. NPAS Solutions, LLC*, 975 F.3d 1244 (11th Cir. 2020) (dissenting opinion)
- *Amador v. Baca*, No. 2:10-cv-01649-SVW-JEM, 2020 WL 5628938 (C.D. California 2020)
- *In re Yahoo! Inc. Customer Data Security Breach Litigation*, 2020 WL 4212811 (N.D. California 2020)
- *Bettencourt v. Jeanne D'Arc Credit Union*, No. 17-cv-12548-NMG, 2020 WL 3316223 (D. Massachusetts 2020)
- *In re GSE Bonds Antitrust Litigation*, No. 19-cv-1704 (JSR), 2020 WL 3250593 (S.D.N.Y. 2020)
- *Claudet v. Cytec Retirement Plan,* No. 17-10027, 2020 WL 3128611 (E.D. Louisiana 2020)
- *In re Samsung Top-load Washing Machine Marketing, Sales Practices and Products Liability Litigation*, MDL Case No. 17-ml-2792-D, 2020 WL 2616711 (W.D. Oklahoma 2020)
- *In re Wells Fargo & Company Shareholder Derivative Litigation*, 445 F.Supp.3d 508 (N.D. California 2020)

- *Dotson v. P.S. Management, Inc*., No. 2:17-cv-00896, 2020 WL 8571844 (S.D. West Virginia 2020)
- *In re Xarelto (Rivaroxaban) Products Liability Litigation*, MDL NO. 2592, 2020 WL 1433923 (E.D. Louisiana 2020)
- *In re Equifax Inc. Customer Data Security Breach Litigation*, 2020 WL 256132 (N.D. Georgia 2020)
- *Arkansas Teacher Retirement System v. State Street Bank and Trust Company*, Nos. 11-10230-MLW, 11-12049-MLW, and 12-11698-MLW. --- F.Supp.3d ----2020 WL 949885 (D. Massachusetts 2020)
- *In Re: The Home Depot, Inc., Customer Data Security Breach Litigation*, 2020 WL 415923 (N.D. Georgia 2020)
- *In re Chinese-Manufactured Drywall Products Liability Litigation*, 2020 WL 128589 (E.D. Louisiana 2020)
- *Flores v. Zorbalas*, No. 27-CV-16-14225, 2019 WL 7142886 (Minnesota Court of Appeals 2019)
- *In re Transpacific Passenger Air Transportation Antitrust Litigation*, 2019 WL 6327363 (N.D. California 2019) (referring to Eisenberg-Miller-Germano paper as a "seminal study")
- *Espinal v. Victor's Café 52nd Street, Inc.*, 2019 WL 5425475 (S.D. New York 2019)
- *Christine Asia Co., Ltd. v. Yun Ma*, 2019 WL 5257534 (S.D. New York 2019)
- *Tussey v. ABB, Inc.*, 2019 WL 3859763 (W.D. Missouri 2019)
- *In re Yahoo! Inc. Customer Data Security Breach Litigation*, 2019 WL 387322 (N.D. California 2019) (referring to Eisenberg and Miller's study of class action attorneys' fees as a "leading study)
- *Grice v. Pepsi Beverages Co*., 363 F.Supp.3d 401 (S.D.N.Y. 2019) ("[c]ourts often look to empirical evidence of attorney's fees awarded in similar cases as a starting point for the baseline reasonable fee inquiry")
- *Hale v. State Farm Mutual Automobile Insurance Company*, 2018 WL 6606079 (S.D. Illinois 2018)
- *Cabot East Broward 2 LLC v. Cabot*, 2018 WL 5905415 (S.D. Florida 2018)
- *In re Vioxx Products Liability Litigation*, 2018 WL 4613941 (E.D. Louisiana 2019)
- *Rodman v. Safeway Inc*., 2018 WL 4030558 (N.D. California 2018)
- *Welsh v. Navy Federal Credit Union*, 2018 WL 7283639 (W.D. Texas 2018)
- *In re Anthem, Inc. Data Breach Litigation*, 2018 WL 3960068 (N.D. California 2018) ("leading study")
- *Carrel v. MedPro Group, Inc*., 2018 WL 3617258 (N.D. Indiana 2018)
- *Rudman v. CHC Group Ltd*., 2018 WL 3594828 (S.D.N.Y. 2018)
- *In re Akorn, Inc. Securities Litigation*, 2018 WL 2688877 (N.D. Illinois 2018)
- *Leung v. XPO Logistics, Inc*., 326 F.R.D. 185 (N.D. Illinois 2018)
- *Xiao Ling Chen v. XpresSpa at Terminal 4 JFK LLC*, 2018 WL 1633027 (E.D.N.Y. 2018)

- *In re: National Collegiate Athletic Association Athletic Grant-In-Aid Cap Antitrust Litigation*, No. 4:14-cv-02758-CW, 2017 WL 6040065 (N.D. Ca. 2017)
- *In re Sears, Roebuck and Co. Front-Loading Washer Products Liability Litig.*, --- F.3d ---, 2017 WL 3470400 (7th Cir. 2017)
- *Good v. West Virginia-American Water Co.*, 2017 WL 2884535 (S.D. W.Va. 2017)
- *Chieftain Royalty Company v. Enervest Energy Institutional Fund XIII-A*, 861 F.3d 1182 (10th Cir. 2017)
- *Nitsch v. DreamWorks Animation SKG Inc*., 2017 WL 2423161 (N.D. Ca. 2017)
- *McGreevy v. Life Alert Emergency Response, Inc*., --- F.Supp.3d ---, 2017 WL 1534452 (S.D.N.Y. 2017)
- *Seijas v. Republic of Argentina*, 2017 WL 1511352 (S.D.N.Y. 2017)
- *Brown v. Rita's Water Ice Franchise Company LLC*, --- F.Supp.3d ----2017 WL 1021025 (E.D. Pa. 2017)
- *Thomas v. FTS USA, LLC*, 2017 WL 1148283 (E.D. Va. 2017)
- *Briggs v. PNC Financial Services Group, Inc.*, 2016 WL 7018566 (N.D. Ill. 2016)
- *Gehrich v. Chase Bank USA, N.A.,* 316 F.R.D. 215 (N.D. Ill. 2016)
- *In re TRS Recovery Services, Inc. and Telecheck Services, Inc., Fair Debt Collection Practices Act (FDCPA) Litigation*, 2016 WL 543137 (D. Me. 2016)
- *In re Urethane Antitrust Litigation*, 2016 WL 406-156 (D. Kan., July 29, 2016)
- *Laffitte v. Robert Half Intern., Inc.* 1 Cal.5th 480 376 P.3d 672 *(*Cal. 2016)
- *In re Polyurethane Foam Antitrust Litigation*, -- F.Supp.3d ---- 2015 WL 7348208 (N.D. Oh. 2015)
- *In re: Cathode Ray Tube (CRT) Antitrust Litigation*, 2016 WL 721680 (N.D. Ca. 2016)
- *In re High-Tech Employee Antitrust Litigation*, 2015 WL 5158730 (N.D. Ca. 2015)
- *Palmer v. Dynamic Recovery Solutions, LLC*, 2016 WL 2348704 (M.D. Fla. 2016)
- *In re: Sears, Roebuck and Co. Front-Loading Washer Products Liability Litigation*, 2016 WL 4765679 (N.D. Ill. 2016)
- *In re Pool Products Distribution Market Antitrust Litigation*, 2015 WL 4528880 (E.D. La. 2015)
- *Abbott v. Lockheed Martin Corp*., 2015 WL 4398475 (S.D. Ill. 2015)
- *Craftwood Lumber Company v. Interline Brands, Inc*., 2015 WL 2147679 (N.D. Ill. 2015)
- *In re IndyMac Mortgage-Backed Securities Litigation*, 94 F.Supp.3d 517 (S.D.N.Y. 2015)
- *Wilkins v. HSBC Bank Nevada, N.A*., 2015 WL 890566 (N.D. Ill. 2015)
- *In re Capital One Telephone Consumer Protection Act Litigation*, 80 F.Supp.3d 781 (N.D. Ill. 2015)
- *In re Dairy Farmers of America, Inc*., 80 F.Supp.3d 838 (N.D. Ill. 2015)
- *In re Colgate-Palmolive Co. ERISA Litigation*, 36 F.Supp.3d 344 (S.D.N.Y. 2014)
- *Haggart v. United States*, 116 Fed. Cl. 131 (Ct. Fed. Claims 2014)
- *Richardson v. L'Oreal USA, Inc.*, --- F.Supp.2d ----, 2013 WL 5941486 (D.D.C. 2013)

- *Swift v. Direct Buy, Inc*., 2013 WL 5770633 (N.D. Ind. 2013)
- *Singleton v. Domino's Pizza, LLC*, --- F.Supp.2d ----, 2013 WL 5506027 (D.Md. 2013)
- *In re Schering-Plough Corp. Enhance Securities Litigation*, 2013 WL 5505744 (D.N.J. 2013)
- *In re Vioxx Products Liability Litigation*, 2013 WL 5295707 (E.D. La. 2013)
- *Evans v. TIN, Inc.*, 2013 WL 4501061 (E.D.La. 2013)
- *Silverman v. Motorola Solutions, Inc*., --- Fed.Appx. ----, 2013 WL 4082893 (7th Cir. 2013)
- *City of Pontiac General Employees' Retirement System v. Lockheed Martin Corp*.. --- F.Supp.2d ---, 2013 WL 3796658 (S.D.N.Y. 2013)
- *Gortat v. Capala Bros*., --- F.Supp.2d ----, 2013 WL 2566622 (E.D.N.Y. 2013)
- *In re Southeastern Milk Antitrust Litigation*, 2013 WL 2155387 (E.D. Tenn. 2013)
- *Strawn v. Farmers Ins. Co. of Oregon,* 353 Or. 210, 297 P.3d 439 (Or. 2013)
- *Heekin v. Anthem, Inc*., 2012 WL 5878032 (S.D. Ind. 2012)
- *Espenscheid v. DirectSat USA, LLC,* 688 F.3d 872, 877 (7th Cir. 2012)
- *In re Trans Union Corp. Privacy Litig.*, 629 F.3d 741, 744 (7th Cir. 2011)
- *Allapattah Servs., Inc. v. Exxon Corp.*, 362 F.3d 739, 760 (11th Cir. 2004) (Judges Tjoflat and Birch, dissenting from denial of en banc review)
- *Strawn v. Farmers Ins. Co. of Oregon*, 353 Or. 210, 297 P.3d 439 (2013)
- *In re Amaranth Natural Gas Commodities Litig.*, No. 07-6377, 2012 U.S. Dist. LEXIS 82599, at *7 n.12 (S.D.N.Y. June 11, 2012)
- *Board of Trustees of AFTRA Ret. Fund v. JPMorgan Chase Bank, N.A.*, No. 09-686, 2012 U.S. Dist. LEXIS 79418, at *5 n.12 (S.D.N.Y. June 7, 2012)
- *Lane v. Page*, No. 06-1071, 2012 U.S. Dist. LEXIS 74273, at *161 (D.N.M. May 22, 2012)
- *Silverman v. Motorola, Inc.*, No. 07-4507, 2012 U.S. Dist. LEXIS 63477, at *15 (N.D. Ill. May 7, 2012)
- *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, MDL No. 09-2046, 2012 U.S. Dist. LEXIS 37326, at *94, *116 (S.D. Tex. Mar. 20, 2012)
- *Walsh v. Popular, Inc.*, No. 09-1552, 2012 U.S. Dist. LEXIS 32991, at *24 (D.P.R. Mar. 12, 2012)
- *Am. Int'l Group, Inc. v. Ace Ina Holdings, Inc.*, No. 07-2898, 2012 U.S. Dist. LEXIS 25265, at *59 (N.D. Ill. Feb. 28, 2012)
- *Ebbert v. Nassau County*, 05-5445, 2011 U.S. Dist. LEXIS 150080, at *41 (E.D.N.Y. Dec. 22, 2011)
- *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1336 n.4 (S.D. Fla. 2011);
- *Latorraca v. Centennial Techs., Inc.*, No. 97-10304, 2011 U.S. Dist. LEXIS 135435, at *11 (D. Mass. Nov. 22, 2011)
- *In re Ky. Grilled Chicken Coupon Mktg. & Sales Litig.*, 2011 WL 5599129 (N.D. Ill. Nov. 16, 2011)
- *Pavlik v. FDIC*, No. 10-816, 2011 U.S. Dist. LEXIS 126016, at *11 (N.D. Ill. Nov. 1, 2011)
- *In re Trans Union Corp. Privacy Litigation*, --- F.3d --- (7th Cir. 2011)

- *Thoroughgood v. Sears, Roebuck & Co.*, 627 F.3d 289 (7th Cir. 2010)
- *Rodriguez v. West Publishing Corp.*, 563 F.3d 948 (9th Cir. 2009)
- *In re Vioxx Products Liability Litigation*, 2011 WL 3563004 (E.D.La. 2011)
- *Wren v. RGIS Inventory Specialists*, 2011 WL 1230826 (N.D.Ca. 2011)
- *In re AT&T Mobility Wireless Data Services Sales Tax Litigation*, 2011 WL 2173746 (N.D.Ill. 2011)
- *Velez v. Novartis Pharmaceuticals Corp.*, 2010 WL 4877852 (S.D.N.Y. 2010)
- *Kay Co. v. Equitable Production Co.*, --- F.Supp.2d ----, 2010 WL 4501572 (S.D.W.Va. 2010)
- *In re Vioxx Products Liability Litig.*, No. 2:05-md-01657-EEF-DEK (E.D. La., October 19, 2010)
- *In re Lawnmower Engine Horsepower Marketing & Sales Practices Litigation*, --- F.Supp.2d ----, 2010 WL 3310264 (E.D.Wis. 2010)
- *Klein v. O'Neal*, Inc., 705 F.Supp.2d 632 (N.D.Tex. 2010)
- *In re Marsh Erisa Litigation*, 265 F.R.D. 128 (S.D.N.Y. 2010)
- *In re MetLife Demutualization Litigation*, 689 F.Supp.2d 297 (E.D.N.Y. 2010)
- *Braud v. Transport Service Co. of Illinois*, 2010 WL 3283398 (E.D.La. 2010)
- *Fiala v. Metropolitan Life Ins. Co., Inc.*, 27 Misc.3d 599, 899 N.Y.S.2d 531, 2010 N.Y. Slip Op. 20071 (N.Y.Sup. 2010)
- *In re Revlon, Inc. Shareholders Litigation*, 990 A.2d 940 (Del.Ch. 2010)
- *Strawn v. Farmers Ins. Co. of Oregon*, 226 P.3d 86 (Or. App. 2010)
- *In re Trans Union Corp. Privacy Litigation*, 2009 WL 4799954 (N.D.Ill. 2009)
- *Hall v. Children's Place Retail Stores, Inc.*, 669 F. Supp. 2d 399 (S.D.N.Y. 2009)
- *Loudermilk Services, Inc. v. Marathon Petroleum Co. LLC*, 623 F.Supp.2d 713 (S.D.W.Va. 2009)
- *In re OCA, Inc. Securities and Derivative Litigation*, 2009 WL 512081 (E.D.La. 2009)
- *Lubin v. Farmers Group*, 2009 WL 3682602 (Tex. App. 2009)
- *Steiner v. Apple Computer Inc.*, 556 F. Supp. 2d 1016 (N.D.Cal. 2008)
- *In re Enron Corp. Securities, Derivative and ERISA Litigation*, 586 F. Supp. 2d 732 (S.D. Tex. 2008)
- *In re Cardinal Health Inc. Securities Litigations*, 528 F.Supp.2d 752 (S.D. Ohio 2007)
- *Acosta v. Trans Union, LLC*, 240 F.R.D. 564 (C.D. Ca. 2007)
- *Turner v. Murphy Oil USA, Inc.*, 472 F. Supp. 2d 830 (E.D. La. 2007)
- *Wang v. Chinese Daily News, Inc.*, 236 F.R.D. 485 (C.D.Ca. 2006)
- *In re Cabletron Sys. Inc. Securities Litigation*, 239 F.R.D. 30 (D.N.H. 2006)
- *In re Educational Testing Service Praxis Principles of Learning and Teaching: Grades 7-12 Litigation*, 447 F.Supp.2d 612 (E.D. La. 2006)
- *In re Chiron Corp. Securities Litigation*, 2007 WL 4249902 (N.D.Cal. 2007)
- *In re Lupron Marketing and Sales Practices Litigation*, 2005 WL 2006833 (D. Mass. 2005)

- *In re Relafen Antitrust Litigation*, 221 F.R.D. 260 (D. Mass. 2004)
- *Allapattah Services, Inc. v. Exxon Corp.*, 362 F.3d 739 (11th Cir. 2004)
- *In re Cendent Corp. Litigation*, 264 F.3d 201 (3d Cir. 2001)
- *Scardeletti v. Debarr*, 265 F.3d 195 (4th Cir. 2001)
- *In re Microstrategy Inc.*, 172 F. Supp. 2d 778 (E.D. Va. 2001)
- *In re Auction Houses Antitrust Litigation*, 197 F.R.D. 71 (S.D.N.Y. 2000)
- *Burke v. Ruttenberg*, 102 F. Supp. 2d 1280 (N.D. Al. 2000)
- *AUSA Life Ins. Co. v. Ernst & Young*, 206 F.3d 202 (2d Cir., 2000)
- *Davis v. Carl Cannon Chevrolet-Olds, Inc.*, 182 F.3d 792 (11th Cir. 1999)
- *In re Texlon Corp. Securities Litigation*, 67 F. Supp. 2d 803 (N.D. Oh. 1999)
- *In re Baan Co. Securities Litigation*, 186 F.R.D. 214 (D.D.C. 1999)
- *In re Quantum Health Resources Inc.*, 962 F. Supp. 1254 (C.D. Ca. 1997)
- *Strong v. BellSouth Telecommunications Inc.*, 173 F.R.D. 167 (W.D. La. 1997)

Appendix 3: Materials Reviewed

Pleadings:

• Consolidated Class Action Complaint, September 22, 2017

• Amended Class Action Complaint, June 22, 2018

• Second Amended Class Action Complaint, December 13, 2019

Decisions, Orders, and Transcripts:

• Rulings on Motion for Appointment as Lead Plaintiff, July 11, 2017

• Order Granting Motions to Dismiss Without Prejudice, April 3, 2018

• Transcript of Hearing, April 3, 2018

• Transcript of Hearing, March 12, 2019

• Opinion on Motion to Dismiss, September 25, 2019

• Order, March 10, 2020

• Order Regarding Pre-Trial Consolidation of Related Actions, April 28, 2020

• Class Certification/Daubert Motions Hearing, January 29, 2021

• Telephonic Status Conference, March 3, 2021

• Order, March 9, 2021

• Ruling and Order on Class Certification, March 9, 2021

• Second Circuit Order Denying Defendants' Request for Leave to Appeal, June 22, 2021

Briefing on Class Certification:

• Plaintiffs' Memorandum of Law in Support of Motion for Class Certification and Appointment of Class Representatives and Class Counsel

• Expert Report of David I. Tabak, Ph.D. (for Plaintiffs)

• Defendants' Opposition to Plaintiffs' Motion for Class Certification and Appointment of Class Representatives and Class Counsel

• Expert Report of John J. McConnell (for Defendants)

• Expert Report of Mukesh Bajaj, Ph.D. (for Defendants)

• Expert Report of Christopher M. James, Ph.D. (for Defendants)

• Plaintiffs' Reply Memorandum of Law in Further Support of Motion for Class Certification and Appointment of Class Representatives and Class Counsel

• Rebuttal Expert Report of David I. Tabak, Ph.D. (for Plaintiffs)

• Memorandum of Law in Support of Defendants' Motion to Exclude Plaintiffs' Expert David Tabak

• Additional Declaration of Mukesh Bajaj, Ph.D.

• Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Exclude the Opinions of David Tabak, Ph.D.

• Defendants' Reply in Support of Motion to Exclude Plaintiffs' Expert David Tabak

• Defendants' Rule 23(f) Petition for Permission to Appeal Order Granting Class Certification

• Plaintiffs'/Respondents' Answer to Defendants' Rule 23(f) Petition

• Defendants' Motion for Leave to File Reply in Support of Rule 23(f) Petition

Merits Expert Reports:

• Expert Report of Christopher M. James, Ph.D. (for Defendants)

• Expert Report of David Bradford (for Plaintiffs)

• Expert Report of David I. Tabak, Ph.D. (for Plaintiffs)

• Expert Report of D. Paul Regan, CPA/CFF, plus schedules (for Plaintiffs)

• Expert Report of Lynn E. Turner (for Plaintiffs)

• Rebuttal Expert Report of David I. Tabak, Ph.D. (for Plaintiffs)

• Expert Report of Eric M. Gaier, Ph.D. (for Defendants)

• Rebuttal Expert Report of Christopher M. James, Ph.D. (for Defendants)

• Rebuttal Report of Prof. Steven Davidoff Solomon (for Defendants)

• Supplemental Section 11 and Section 12 Negative Causation Expert Report of Christopher M. James, Ph.D. (for Defendants)

• Expert Report of Howard Scheck (for Defendants)

• Expert Reply Report of Christopher M. James, Ph.D. (for Defendants)

• Expert Reply Report of David Bradford (for Plaintiffs)

• Reply Expert Report of David I. Tabak, Ph.D. (Damages) (for Plaintiffs)

• Reply Report of D. Paul Regan, CPA/CFF (for Plaintiffs)

• Additional Rebuttal Expert Report of David I. Tabak, Ph.D. (Negative Causation) (for Plaintiffs)

• Reply Report of Lynn E. Turner (for Plaintiffs)

Briefing on Motions to Dismiss

• Defendant Kesselman & Kesselman D/B/A Pwc Israel's Motion to Dismiss the Consolidated Class Action Complaint

• Teva Securities Act-Only Defendants' Motion to Dismiss the Consolidated Class Action Complaint

• Defendants Teva Pharmaceutical Industries Ltd., Vigodman, Desheh, Altman, Oberman, Olafsson, Peterburg, and Bhattacharjee's Motion to Dismiss the Consolidated Class Action Complaint

• Underwriter Defendants' Motion to Dismiss the Consolidated Class Action Complaint

• Plaintiffs' Omnibus Brief in Opposition To Defendants' Motions to Dismiss the Complaint

• Defendant Bank of China Limited London Branch's Motion to Dismiss the Consolidated Class Action Complaint

• Plaintiffs' Opposition to Defendant Bank of China Limited London Branch's Motion to Dismiss the Consolidated Class Action Complaint

• Bank of China Limited London Branch's Reply Memorandum of Law in Support of Its Motion to Dismiss the Consolidated Class Action Complaint

• Reply Memorandum of Law in Support of The Teva Securities Act-Only Defendants' Motion to Dismiss

• Reply Memorandum of Law in Support of Defendants Teva Pharmaceutical Industries Ltd., Vigodman, Desheh, Altman, Oberman, Olafsson, Peterburg, and Bhattacharjee's Motion to Dismiss

• Reply Memorandum of Law In Support of Defendant Kesselman & Kesselman D/B/A PWC Israel's Motion to Dismiss Plaintiffs' Consolidated Class Action Complaint

• Underwriter Defendants' Reply Memorandum of Law in Support Oof Their Motion to Dismiss the Consolidated Class Action Complaint

• Teva Defendants' Response to Plaintiffs' Submission of Additional Authority

• Defendants Maureen Cavanaugh and Allan Oberman's Motion to Dismiss

• Defendant Teva Pharmaceutical Finance Netherlands III B.V.'S Motion to Dismiss

• Defendants Teva Pharmaceutical Industries Ltd., Erez Vigodman, Eyal Desheh, Deborah Griffin and Sigurdur Olafsson's Motion to Dismiss

• Plaintiffs' Opposition to Defendants Teva Pharmaceutical Industries Ltd., Erez Vigodman, Eyal Desheh, Deborah Griffin And Sigurdur Olafsson's Motion to Dismiss Claims Under the Securities Exchange Act of 1934

• Plaintiffs' Opposition to the Motion to Dismiss by Defendants Oberman and Cavanaugh

• Plaintiffs' Opposition to the 33 Act Defendants' Motion to Dismiss the Securities Act Claims in the Amended Consolidated Class Action Complaint

• Reply Memorandum of Law In Support of Defendants Maureen Cavanaugh and Allan Oberman's Motion to Dismiss

• Reply Memorandum of Law in Support of Teva Pharmaceutical Finance Netherlands III B.V.'S Motion to Dismiss

• Reply Memorandum of Law In Support of Defendants Teva Pharmaceutical Industries Ltd., Erez Vigodman, Eyal Desheh, Deborah Griffin, and Sigurdur Olafsson's Motion to Dismiss

• Plaintiffs' Sur-reply to Provide Supplemental Authority in Further Opposition to Defendants' Motions to Dismiss

• Plaintiffs' Further Sur-reply to Provide Supplemental Authority in Further Opposition to Defendants' Motions to Dismiss

Settlement Materials:

• Memorandum of Law in Support of Class Representatives' Unopposed Motion for Preliminary Approval of Class Settlement and Authorization to Disseminate Notice of Settlement

• Stipulation of Settlement

• Notice of Settlement

• Proof of Claim and Release

• Summary Notice of Pendency and Proposed Settlement of Class Action

• Long-Form Notice of Pendency and Proposed Settlement of Class Action

• Order Preliminarily Approving Settlement and Providing for Class Notice

• Declaration of Jeffrey Davis, Ontario Teachers' Pension Plan Board, in Support of Final Approval of Class Settlement and Plan of Allocation, Awards of Attorneys' Fees and Litigation Expenses, and Awards of Reasonable Costs and Expenses to Class Representatives

• Declaration of Edward Jarvis, Anchorage Police & Fire Retirement System, in Support of Final Approval of Class Settlement and Plan of Allocation, Awards of Attorneys' Fees and Litigation Expenses, and Awards of Reasonable Costs and Expenses to Class Representatives

Lodestar Information:

• Declaration of Joseph A. Fonti in Support of (I) Class Representatives' Motion for Final Approval of Class Settlement and Approval of Plan of Allocation and (II) Lead Counsel's Motion for Awards of Attorneys' Fees, Litigation Expenses, and Reasonable Costs and Expenses to Class Representatives

• Declaration of Joseph A. Fonti in Support of Lead Counsel's Motion for Awards of Attorneys' Fees and Litigation Expenses, Filed on Behalf of Lead Counsel Bleichmar Fonti & Auld LLP and Bleichmar Fonti & Auld Canada

• Declaration of Susan R. Podolsky in Support of Lead Counsel's Motion for Awards of Attorneys' Fees and Litigation Expenses, Filed on Behalf of The Law Offices of Susan R. Podolsky

• Declaration of Marc Kurzman in Support of Lead Counsel's Motion for Awards of Attorneys' Fees and Litigation Expenses, Filed on Behalf of Carmody Torrance Sandak & Hennessey LLP

Academic Literature, Empirical Studies, and Reports

• ALM Intelligence, *2017 NLJ Billing Report*

• Theodore Eisenberg and Geoffrey Miller, Attorney Fees and Expenses in Class Action Settlements: 1993–2008, 7 Journal of Empirical Legal Studies 248 (2010)

• Theodore Eisenberg, Geoffrey Miller and Roy Germano, Attorneys' Fees in Class Actions: 2009-2013, 92 N.Y.U. L. Rev. 937 (2017)

• Brian T. Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Awards, 7 Journal of Empirical Legal Studies 811 (2010)

• Amy Kolz, *Bankruptcy Rates Top $1,000 Mark In 2008-09*, The Am. Law Daily (Dec. 16, 2009)

• *Associate Billing Rates Are Growing Faster Than Partner Rates*, https://www.law.com/americanlawyer/2022/02/03/associates-billing-rates-are-growing-faster-than-partner-rates/ (summarizing Wolters Kluwer ELM Solutions, *2021 Real Rate Report*).

• Janeen McIntosh and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review*, NERA Economic Consulting, January 22, 2022

• PwC, *Billing Rate and Associate Salary Survey 2021*

Exhibit 7

Declaration of Joseph A. Fonti in Support of Lead Counsel's Motion for Awards of Attorneys' Fees and Litigation Expenses, Filed on Behalf of Bleichmar Fonti & Auld LLP and Bleichmar Fonti & Auld Canada

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE TEVA SECURITIES LITIGATION	:	No. 3:17-cv-00558 (SRU)
THIS DOCUMENT RELATES TO:	:	All Class Actions

DECLARATION OF JOSEPH A. FONTI IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AWARDS OF ATTORNEYS' FEES AND LITIGATION EXPENSES, FILED ON BEHALF OF BLEICHMAR FONTI & AULD LLP AND BLEICHMAR FONTI & AULD CANADA

I, Joseph A. Fonti, hereby declare pursuant to Section 1746 of Title 28 of the United States Code:

1. I am an attorney admitted to practice *pro hac vice* in this Court and a founding Partner of Bleichmar Fonti & Auld LLP, Lead Counsel for the Class and counsel for Class Representatives Ontario Teachers' Pension Plan Board and Anchorage Police & Fire Retirement System (together, "Class Representatives") in the above-captioned action (the "Action"). I have personal knowledge of the matters set forth herein.[1]

2. This declaration provides further detail regarding the qualifications, experience, hours, rates, and expenses of Bleichmar Fonti & Auld LLP ("BFA") and Bleichmar Fonti & Auld Canada ("BFA Canada") in connection with prosecuting the Action, as well as other information that may assist the Court in determining an appropriate fee award. Class Counsel's prosecution and resolution of the Action is more fully set forth in the Declaration of Joseph A. Fonti in Support of (I) Class Representatives' Motion for Final Approval of Class Settlement and Approval of

[1] Capitalized terms not defined herein have the meanings specified in the Stipulation of Settlement, dated January 18, 2022 (ECF 919-2).

Plan of Allocation and (II) Lead Counsel's Motion for Awards of Attorneys' Fees, Litigation Expenses, and Reasonable Costs and Expenses to Class Representatives, filed herewith.[2]

I. BFA'S WORK, RATES, AND LODESTAR

3. BFA is highly qualified and experienced in prosecuting securities class actions, as well as complex antitrust and consumer class actions. Attached hereto as Exhibit A is BFA's firm resume, which includes biographical information about attorneys and staff members and information about the firm's philosophy, organization, and successes.

4. Attached hereto as Exhibit B is a list of BFA attorneys and professional support staff for whom fees are sought in this Action. Exhibit B also provides further information about each individual's qualifications, experience, and role in the litigation.

5. Exhibit C is a schedule summarizing the amount of time spent by each of the attorneys and professional support staff identified in Exhibit B from the Action's inception through and including April 14, 2022, the rates applicable to each individual, and a lodestar calculation for each individual.

6. Exhibit C is based on contemporaneous time records prepared and maintained by BFA in the ordinary course. As the lead partner responsible for supervising BFA's work on this case, I supervised and participated in the review of these time records to prepare this declaration. The purpose of this review was to confirm both the accuracy of the time entries and the necessity for, and reasonableness of, the time committed to the Action. As a result of this review, reductions were made in the exercise of billing judgment, including excluding all time for BFA attorneys and

[2] "Class Counsel" refers collectively to BFA, BFA Canada, The Law Offices of Susan R. Podolsky, and Carmody Torrance Sandak & Hennessey LLP.

staff who billed less than 30 hours to the Action, and all time expended in preparing this application for fees and expenses.

7. Following this review and the adjustments made, as set forth in Exhibit C, BFA devoted a total of 71,604.00 hours to this Action from its inception through and including April 14, 2022. BFA's total lodestar for that period is $42,541,475.00. I believe that the time reflected in BFA's lodestar calculation, as set forth herein, is reasonable in amount and was necessary for the effective and efficient prosecution and resolution of the Action.

8. As reflected in Exhibit C, the hourly rates for BFA attorneys and professional support staff range from $330 to $985. Current rates are used for current personnel; for attorneys and professional support staff who are no longer employed by BFA, the hourly rate used is the hourly rate for such employee in his or her final year of employment by BFA.

9. BFA's rates are the usual and customary rates set by BFA for each individual. Different timekeepers within the same employment category (*e.g.*, partner, associate) may have different rates depending on their respective years of experience, years at the firm, years in current position, relevant experience, relevant expertise, and/or rates of similarly situated individuals at BFA or at peer firms. BFA's rates are comparable to the rates set by peer firms for attorneys of similar skill and experience, including rates that have been approved by courts in the Second Circuit and this District in other contingent-fee securities and class-action litigation. *See, e.g.*, *In re U.S. Foodservice, Inc. Pricing Litig.*, No. 3:07-MD-1894 (AWT), (D. Conn. filed Aug. 29, 2014), ECF 510-3 at 61 of 112 (2014 rates as high as $985/hour).

10. None of the attorneys included in BFA's lodestar for the Action are (or were) "contract attorneys." All attorneys and employees listed in the attached exhibits were employed by BFA and, like every other attorney employed by BFA, worked in BFA's offices and/or remotely

during the Covid-19 pandemic using BFA-provided hardware. BFA also assigned a firm email address to each attorney and employee listed in these schedules. These employees were fully supervised by BFA partners and associates. Except for the partners listed in the attached exhibits, all other attorneys and professional support staff listed were W-2 employees of the firm eligible for firm benefits, and the firm paid FICA and Medicare taxes, along with state and federal unemployment taxes, on their behalf.

11. BFA Canada is an affiliate firm of BFA with offices in Toronto, Canada. Exhibit E provides biographical information for BFA Canada's timekeeper. As indicated in Exhibit E, BFA Canada devoted a total of 74.50 hours to this Action from its inception through and including April 14, 2022. BFA Canada's total lodestar for that period is $73,382.50. Exhibit E is based on contemporaneous time records prepared and maintained by BFA Canada in the ordinary course, which I reviewed to prepare this declaration.

II. EXPENSES

12. BFA is seeking an award of $9,717,887.47 in expenses incurred by all Class Counsel in the prosecution of the Action. BFA incurred $9,689,838.44 of those expenses.[3] In incurring these expenses, BFA was motivated to proceed efficiently, since it might not recover any of these expenses if the litigation was unsuccessful, and in all events any recovery would only occur after a favorable resolution, which could (and did) take a number of years.

[3] As set forth below in Paragraph 17, BFA Canada incurred $1,217.86 in expenses and, as set forth in the Declarations of Susan R. Podolsky and Marc Kurzman, respectively, The Law Offices of Susan R. Podolsky incurred $22,093.35 in expenses and Carmody Torrance Sandak & Hennessey LLP incurred $4,737.82 in expenses. Together with BFA's expenses, these amounts sum to the total of $9,717,887.47 requested.

13. Exhibit D provides a summary of BFA's expenses by category (*e.g.*, Computer Research, Service and Filing Fees, Accommodations, etc.), with further breakdowns of expert and litigation support fees by vendor.

14. The information provided in Exhibit D is based on information maintained contemporaneously and in the ordinary course by BFA, including receipts, invoices, expense vouchers, check records, and similar documents. As the lead partner supervising BFA's work in the Action, I supervised and participated in the review of this supporting documentation to confirm the accuracy of the expenses incurred, as well as the reasonableness of and necessity for those expenses. As part of the review, certain reductions were made in the exercise of judgment or based on BFA's firm policies capping expense reimbursement for business meals and hotel accommodations (described below in Paragraph 16(j) and (k)).

15. I believe that Exhibit D is an accurate record of the expenses incurred by BFA, and that these expenses were reasonably incurred and necessary for the efficient and effective prosecution of the Action. Further, these expenses are all of a type that would normally be billed to a fee-paying client.

16. The following provides additional information regarding the expenses set forth in Exhibit D:

(a) Computer Research: $45,011.81. This category includes vendors such as PACER and Thomson Reuters. These resources were used to obtain access to legal research, factual databases, and for cite-checking of briefs. This expense represents the expense incurred by BFA for use of these services in connection with the Action. The charges for these vendors vary depending upon the type of services requested. For example, BFA has flat-rate contracts with some of these providers for use of their services. When BFA utilizes online services provided by

a vendor with a flat-rate contract, access to the service is by a billing code entered for the specific case being litigated. At the end of each billing period in which such service is used, BFA's costs for such services are allocated to specific cases based on the percentage of use in connection with that specific case in the billing period.

(b) Court Reporter Services and Transcript Fees: $222,736.94. This category includes vendors who provided transcription and videography services for 40 depositions and fees incurred to obtain hearing transcripts.

(c) Expert Fees: $7,269,761.31. This category includes the fees incurred for the following services:

(i) FIDERES Partners LLP: $50,463.33. FIDERES Partners LLP provided consulting advice concerning generic drug pricing, profits, and competition during the investigation and drafting of the complaints.

(ii) Global Economics Group, LLC: $43,715.00. Global Economics Group, LLC provided consulting advice concerning damages at the outset of the litigation.

(iii) Gryphon Strategies: $83,834.70. Gryphon Strategies provided investigative services concerning former Teva employees in connection with the complaints.

(iv) Hemming Morse LLP: $1,139,013.92. Hemming Morse LLP provided consulting advice regarding accounting issues at various points during the Action, and services in support of D. Paul Regan's and Lynn E. Turner's expert testimony concerning MD&A disclosures, compliance with SEC rules, and the impact of Teva's price increases.

(v) JFM Litigation Consulting, LLC: $73,937.50. JFM Litigation Consulting, LLC provided consulting advice concerning Teva's financial condition.

(vi) Keystone Strategy LLC: $1,540,695.20. Keystone Strategy LLC provided services in support of Dr. Bradford's expert testimony regarding generic drug pricing and competition and the calculation of Teva's excess profits from price increases.

(vii) Legal Economics, LLC: $27,012.50. Legal Economics, LLC provided consulting advice concerning antitrust issues.

(viii) NERA Economic Consulting: $4,279,009.77. NERA Economic Consulting provided (a) services in support of Dr. Tabak's expert testimony at the class certification and merits stages (which included six expert reports and four depositions), and (b) consulting expert services with regard to aggregate damages and the Plan of Allocation.

(ix) Stroz Friedberg LLC: $32,079.39. Stroz Friedberg LLC provided forensic examination services regarding certain mobile devices of Maureen Cavanaugh, a former Teva executive. This amount is the portion of Stroz Friedberg's fee paid by BFA.

(d) Litigation Support Vendor Fees: $1,789,846.78. This category includes fees incurred with respect to outside vendors for the following services:

(i) The Focal Point: $28,397.88. The Focal Point provided graphic design services and assisted in preparing demonstratives and slide presentations for two hearings on Defendants' motions to dismiss.

(ii) Translation Service Providers: $787.50. BFA incurred expenses in retaining translation vendors to (i) translate certain English search terms into Hebrew that Defendants agreed to apply to the files of certain custodians, and (ii) provide translation services in connection with service of process on Defendants located in Israel.

(iii) ONE Discovery Inc.: $9,760.00. ONE Discovery Inc. provided deposition video and transcript hosting services that enabled Class Counsel to extract deposition video clips and perform searches within deposition transcripts.

(iv) TrustPoint.One (formerly Precision Discovery, Inc.): $1,749,628.81. TrustPoint.One provided forensic collection and data hosting services. Specifically, TrustPoint.One facilitated forensic collections of documents from Ontario Teachers' and Anchorage's files, processed the data, and hosted the documents on a document review platform. TrustPoint.One also hosted Defendants' and non-parties' document productions (totaling over 8.2 million pages) for attorney review, provided analysis and review tools to assist with document review and deposition preparations, and translated Hebrew documents produced by Defendants.

(v) Transperfect: $1,272.59. Transperfect conducted a forensic collection of certain electronic documents from Ontario Teachers' files.

(e) Outside Counsel: $99,693.37. This category includes counsel retained: (i) to represent former employees who provided information concerning the allegations in the complaints; (ii) to provide advice regarding antitrust issues; (iii) as local counsel for purposes of filing an opposition to consolidation in the Eastern District of Pennsylvania; (iv) to assist with service of process on Israeli defendants; and (v) to represent former Ontario Teachers' employees upon whom Defendants served deposition subpoenas.

(f) Mediation Fees: $118,989.75. BFA incurred fees for the services of Phillips ADR Enterprises, P.C., which conducted multiple mediation sessions.

(g) External Photocopies: $18,129.51. This category includes outside vendors who provided printing and binding services, including demonstratives for hearings, deposition

exhibits for witnesses outside the United States, and other materials. BFA internally printed most documents and is not seeking an award for those services.

(h) Postage and Overnight Mail: $16,193.32. This category includes postage and outside vendor fees for messenger services and overnight and expedited international delivery (including shipments of deposition exhibits to witnesses and opposing counsel).

(i) Service and Filing Fees: $7,891.10. This category includes Court filing fees and fees for process servers who served the complaints or subpoenas.

(j) Accommodations: $43,062.63. This category includes case-related hotel expenses. BFA firm policy caps hotel expenses at a maximum of $300 per night for large cities and $250 per night for smaller cities. These caps resulted in write-offs totaling $8,876.79, for which BFA is not seeking an award.

(k) Meals: $17,017.75. This category includes (i) meals during business travel and (ii) meals while working in the office (a) on weekends and holidays or (b) after 8:00 p.m. on Monday through Friday. Pursuant to BFA firm policy, these expenses are capped at $45 per person for dinners, $20 per person for lunches, and $15 per person for all other food and drink. These caps resulted in write-offs totaling $4,036.48, for which BFA is not seeking an award.

(l) Local Transportation: $20,966.46. This category includes local travel expenses incurred for, among other things: (i) car service to and from the office when necessary to work during non-business hours or on weekends; (ii) car service to and from local airports when traveling for purposes of prosecuting the action; and (iii) necessary travel to BFA's offices during the Covid-19 pandemic.

(i) Out-of-Town Transportation: $15,537.71. This category includes travel expenses incurred to, among other things: (i) attend court hearings; (ii) meet with

Ontario Teachers' and Anchorage personnel and collect documents in Toronto, Canada and Anchorage, Alaska, respectively; and (iii) meet with experts. These expenses are limited to coach rates, in accordance with BFA firm policy.

(m) In addition to the expenses above, Lead Counsel has paid a $5,000 retainer to The JNL Firm, LLC ("JNL"), an independent third party that will review the claims administration and provide a written submission to the Court. JNL's final fees and expenses (net of the retainer, and not to exceed $50,000 absent further Court approval) will be submitted to the Court in connection with distribution of the Net Settlement Fund.

17. Exhibit E provides a summary by category of BFA Canada's expenses, which total $1,217.86 and are subject to the same policies described above. Exhibit E is based on information maintained contemporaneously and in the ordinary course by BFA Canada, including receipts, invoices, expense vouchers, check records, and similar documents. I supervised and participated in the review of this supporting documentation to confirm the accuracy of the expenses incurred, as well as the reasonableness of and necessity for those expenses.

Dated: New York, New York
April 27, 2022

By: */s/ Joseph A. Fonti*
Joseph A. Fonti

EXHIBIT A

In re Teva Securities Litigation, No. 3:17-cv-00558 (SRU)

BFA Firm Resume

BLEICHMAR
FONTI & AULD LLP

FIRM RESUME

BLEICHMAR FONTI & AULD LLP

OVERVIEW

Bleichmar Fonti & Auld LLP ("BFA" or the "Firm") is a leading class action law firm founded in 2014 and based in New York City with additional offices in Oakland, California; Toronto, Ontario; and Westchester, New York. The Firm focuses on securities fraud class actions and other investment and consumer-related matters on behalf of a wide range of domestic and international clients, including some of the largest institutional investors and asset managers in the world.

BFA's track record reflects the long and extensive experience of the Firm's partners in the last two decades prosecuting securities class actions. Indeed, our collective experience rivals that of our peer firms – as evidenced by our recognition as a top ten firm measured by amount recovered in securities litigation in 2015 (ISS Securities Class Action Services' Top 50 Report for 2015) and a top 15 firm in 2016 (ISS Securities Class Action Services' Top 50 Report for 2016).

BFA's founding partners have worked together for nearly two decades, recovering billions of dollars for investors. In the last ten years, BFA's partners have represented lead plaintiffs in dozens of securities class actions. Our partners are supported by a team recruited for their excellence and dedication to our practice, as they carefully built a talented team who have collaborated for years, ensuring a wealth of experience to draw on for our clients.

Our attorneys are nationally recognized as leading litigators in the field of securities litigation, and our achievements have been profiled in a variety of national publications, including *The Wall Street Journal*, *The New York Times*, *Law 360*, the *National Law Journal's* Plaintiffs' Hot List, and *The Legal 500*. We are also frequently asked to comment on breaking developments in financial fraud, securities, and other investment-related issues.

BLEICHMAR FONTI & AULD LLP

SECURITIES LITIGATION HIGHLIGHTS

BFA partners have represented lead plaintiffs in dozens of securities class actions, as well as investors in direct actions, including the cases featured below.

The Police Retirement System of St. Louis v. Granite Construction Incorporated, et al.

- Northern District of California, No. 19-cv-04744
- Client: The Police Retirement System of St. Louis
- Lead Attorney: Javier Bleichmar

Total Settlement: $129 Million

Background: Plaintiffs alleged that Granite and its senior management fraudulently misrepresented the impact of several of the company's largest joint venture construction projects on Granite's business. Specifically, plaintiffs asserted that Granite and its senior management understated the significant cost overruns and schedule delays the Company was experiencing as well as their impact on Granite's financial statements.

BFA's Role: BFA is sole Lead Counsel for Court-appointed Lead Plaintiff the Police Retirement System of St. Louis.

Status: On March 17, 2022, Judge William Alsup granted final approval of a $129 million settlement BFA secured for Granite investors. The settlement is the third largest approved in the Northern District of California in the last decade, and will compensate investors for 20-30% of their estimated damages, which exceeds by nearly 400% the average rate of recovery in cases alleging claims under Section 10(b) of the Securities Exchange Act of 1934.

BFA filed an amended complaint on February 20, 2020, and in May 2020, Judge Alsup denied defendants' motion to dismiss. In January 2021, Judge Alsup certified the class, naming the Police Retirement System of St. Louis as class representative and BFA as class counsel. The parties reached the settlement following three rounds of mediation totaling 20 hours, including the last round lasting 11 hours.

In approving the settlement, Judge Alsup noted that the "$129 million settlement flowed from the hard work of class counsel, the discovery they took, the investigations they did, and their victories in court." Judge Alsup further observed that the settlement "is almost entirely the result of the hard work of class counsel," that "[c]lass counsel investigated this case in great depth," and that class counsel's efforts "plausibly led to a restatement" whereby Granite admitted that its financial statements could no longer be relied upon.

BLEICHMAR FONTI & AULD LLP

In re Teva Securities Litigation	Case Status: Proposed $420 Million Settlement Pending Court Approval
• District of Connecticut, No. 17-cv-00558 • Clients: Ontario Teachers' Pension Plan Board and Anchorage Police and Fire Retirement System • Lead Attorney: Joseph A. Fonti	

Background: Plaintiffs allege that the company and its senior management made materially false and misleading statements that concealed that Teva had engaged in a multi-year scheme to exponentially increase generic drug prices across its portfolio, in some instances by more than 1000%. Often, these increases were in lock-step with so-called competitors.

BFA's Role: BFA is sole Lead Counsel for the Class and counsel for Court-appointed Class Representatives Ontario Teachers' and Anchorage Police and Fire Retirement System.

Status: The Court appointed Ontario Teachers' as Lead Plaintiff and approved its choice of BFA as Lead Counsel on July 11, 2017. BFA filed an amended complaint on June 22, 2018. In September 2019, the Court denied defendants' motion to dismiss and in December 2019, BFA filed a further amended complaint. In March 2020, the Court granted BFA's motion for consolidation. On March 9, 2021, Judge Underhill granted BFA's motion to certify a class of Teva investors. Judge Underhill also granted BFA's motion to appoint the Ontario Teachers' Pension Plan Board and Anchorage Police and Fire Retirement System as Class Representatives, and BFA as Class Counsel. On January 18, 2022, BFA secured a $420 million settlement for the class. The Court granted preliminary approval of the settlement on January 27, 2022.

In re Citigroup Securities Litigation	Case Status: Pending
• Southern District of New York, No. 20-CV-9132 • Client: Public Sector Pension Investment Board ("PSP") • Lead Attorneys: Javier Bleichmar, Joseph A. Fonti, Erin H. Woods	

Background: Plaintiffs allege that Citigroup and its senior management misrepresented and concealed that the company's internal controls and risk management systems suffered from serious and longstanding deficiencies that exposed the Company to massive regulatory penalties that will cost significantly more than $1 billion to remediate.

BFA's Role: BFA is sole Lead Counsel for Court-appointed Lead Plaintiff PSP.

Status: The Court appointed PSP as Lead Plaintiff and approved its choice of BFA as Lead Counsel on February 4, 2021. BFA filed an Amended Complaint on April 20, 2021. Defendants filed a motion to dismiss the Amended Complaint on June 4, 2021, which remains pending.

In re Align Technology, Inc. Securities Litigation	Case Status: Pending
• Northern District of California, No. 17-cv-5114 • Client: Macomb County Employee's Retirement System • Lead Attorneys: Javier Bleichmar, Nancy Kulesa	

Background: Plaintiffs allege Align and its senior management materially overstated the company's performance in China and misrepresented and concealed significant declines in demand for Align's products.

BFA's Role: BFA is sole Lead Counsel for Court-appointed Lead Plaintiff Macomb County Employee's Retirement System.

Status: The Court appointed Macomb County Employee's Retirement System as Lead Plaintiff and approved its choice of BFA as Lead Counsel on May 20, 2020. After BFA filed an Amended Complaint, the Court dismissed the case on March 9, 2021 with the opportunity to replead. Lead Plaintiff filed an appeal on May 6, 2021. The appeal is pending.

MTA v. Allianz Global Investors U.S., L.L.C.	Case Status: Pending
• Southern District of New York, No. 20-CV-7842 • Client: Metropolitan Transportation Authority • Lead Attorneys: Javier Bleichmar, George Bauer	

Background: Since 2008, the Metropolitan Transportation Authority ("MTA") invested nearly $200 million in Allianz Global Investor's ("AllianzGI") Structured Alpha funds. Due to AllianzGI's negligent and imprudent trading strategies and its failure to implement adequate risk management procedures, despite its commitment to do so, the MTA lost over 90% of its investment. AllianzGI's failure cost the MTA and similar institutional investors hundreds of millions of dollars.

BFA's Role: BFA represents the MTA in their suit against AllianzGI.

Status: BFA filed a complaint against AllianzGI on behalf of the MTA in September 2020. On September 30, 2021, the Court denied defendants' motion to dismiss. The parties are currently engaged in fact discovery.

BLEICHMAR FONTI & AULD LLP

In re MF Global Holdings Ltd. Securities Litigation

- Southern District of New York, No. 11-cv-07866
- Client: Alberta Investment Management Corp. ("AIMCo")
- Lead Attorneys: Javier Bleichmar, Dominic Auld

Total Settlements: $234.3 Million

Background: This litigation arose from MF Global's dramatic bankruptcy in October 2011. Plaintiffs alleged that Defendants misrepresented the company's risk controls, liquidity position, and exposure to European sovereign debt, and failed to properly account for its deferred tax assets.

BFA's Role: BFA represented Court-appointed Co-Lead Plaintiff AIMCo. Partners Javier Bleichmar and Dominic Auld represented AIMCo in this case since its inception in November 2011, and served as Court-appointed Co-Lead Counsel for the putative class since January 2012. When BFA launched in August 2014, the Court approved AIMCo's selection of BFA to serve as Co-Lead Counsel for the putative class, continuing the core litigation team's representation.

Status: Lead Counsel achieved five partial settlements valued at a total of just over $234 million on behalf of investors: (1) a $74 million settlement with Goldman Sachs and certain other underwriters of the company's securities; (2) a $64.5 million settlement with former officers and directors, including MF Global's former CEO Jon Corzine; (3) a $65 million settlement with auditor PricewaterhouseCoopers; (4) a $29.825 million settlement with Jefferies and other underwriters of the final bond offering issued during the Class Period; and (5) a separate $932,828 settlement with another underwriter defendant associated with that last offering. These settlements represent a recovery of as much as 35% of the estimated recoverable damages available at trial – an excellent result, particularly in light of the issuer's bankruptcy.

These settlements were achieved after years of hard-fought litigation. Following the Court's decision sustaining the Complaint and denying Defendants' six motions to dismiss in their entirety, Co-Lead Counsel reviewed millions of documents produced by Defendants and third-parties, and conducted more than 50 depositions of former employees of MF Global and other key witnesses, including four days of testimony from former CEO Jon Corzine. The Court granted Plaintiffs' motion for class certification on October 14, 2015, which assisted in achieving the settlements.

BLEICHMAR FONTI & AULD LLP

In re Genworth Financial Inc. Securities Litigation

- Eastern District of Virginia, No. 14-cv-00682
- Client: Alberta Investment Management Corp. ("AIMCo")
- Lead Attorney: Joseph A. Fonti

Total Settlement: $219 Million

Background: Plaintiffs alleged that Defendants misrepresented the profitability of the company's core business and reported false financial results by grossly understating long-term care insurance reserves. When Genworth announced a $531 million charge to its reserves, the company's stock price fell more than 55% – wiping out billions in market capitalization – and credit rating agencies downgraded the company and its corresponding debt to "junk" status.

BFA's Role: BFA represented Court-appointed Co-Lead Plaintiff AIMCo. In November 2014, the Court approved AIMCo's selection of BFA to serve as Co-Lead Counsel for the putative class.

Notably, BFA secured one of the most thoroughly reasoned, investor-oriented decisions after the then-recent decision in *Omnicare v. Laborers District Council Construction Industry Pension Fund*, 135 S. Ct. 1318 (2015). The District Court ruled that Lead Plaintiffs had sufficiently pled that Defendants' statements were intended to mislead investors and to provide false assurances regarding the company's reserves. The District Court also largely sustained allegations that Defendants falsely certified that the company's internal controls were adequate.

Status: On March 10, 2016, Genworth announced a proposed settlement of $219 million, the largest securities class action recovery achieved in the Eastern District of Virginia, and as much as 44% of estimated recoverable damages available at trial. BFA and AIMCo sought and achieved a significant contribution from the company beyond available insurance; despite significant liquidity issues, the company paid $69 million, and the remaining $150 million was funded by insurance.

The settlement was reached after 15 months of intense and complex litigation. The Eastern District of Virginia is known as the "rocket docket" for its rapid disposition of cases and strict adherence to schedule deadlines. In December 2014, Lead Plaintiffs filed a consolidated complaint and, in February 2015, Defendants filed a motion to dismiss. Partner Joseph Fonti successfully argued against the motion on April 28, 2015, and the securities fraud claims were sustained on May 1, 2015. Lead Plaintiffs filed their motion for class certification on December 3, 2015; fact discovery closed on January 15, 2016; and expert discovery closed on February 11, 2016. In effect, BFA conducted two to four years of litigation in just 15 months. This effort included more than 20 depositions, extensive trial preparation, and full

briefing on motions for class certification and summary judgment. At the time of settlement, BFA attorneys were preparing for trial, which was scheduled to begin on May 9, 2016.

In re Weatherford International Securities Litigation

- Southern District of New York, No. 12-cv-02121
- Client: Anchorage Police and Fire Retirement System
- Lead Attorney: Javier Bleichmar

Total Settlement: $120 Million

Background: Plaintiffs alleged that Weatherford, one of the world's largest oil and gas servicing companies, issued false financial statements that misled investors about its tax structure and internal controls. The company allegedly overstated its earnings by more than $900 million and was forced to issue three restatements due to its failure to comply with Generally Accepted Accounting Principles.

BFA's Role: BFA represented Court-appointed Co-Lead Plaintiff Anchorage Police and Fire Retirement System, and BFA partner Javier Bleichmar represented Anchorage continuously since the case was filed in March 2012.

Status: In June 2015, the company agreed to settle all claims for $120 million of out-of-pocket cash, with no available insurance, or as much as 30% of recoverable damages available at trial. Achieving this settlement required more than three years of intense litigation, including defeating Defendants' motion to dismiss in its entirety; obtaining class certification; completing fact discovery, after more than 20 depositions and the review of more than eight million pages of documents; filing four expert reports; and preparing for expert discovery and summary judgment.

In re Computer Sciences Corp. Securities Litigation

- Eastern District of Virginia, No. 11-cv-00610
- Client: Ontario Teachers' Pension Plan Board
- Lead Attorney: Joseph A. Fonti

Total Settlement: $97.5 Million

Background: Plaintiffs alleged that the company and two of its executive officers misrepresented (i) a multi-billion-dollar contract with the United Kingdom's National Health Service, and (ii) that the company's internal controls were adequate.

BFA Role: BFA partners Javier Bleichmar, Joseph A. Fonti, and Dominic Auld represented Court-appointed Lead Plaintiff Ontario Teachers' at all stages of this case. Upon the founding of the Firm, the Court approved Ontario Teachers' Pension Plan Board's selection of BFA as counsel, continuing the team's representation.

Status: On September 2013, the Court granted final approval to the $97.5 million settlement. At that time, the settlement was the second largest all cash recovery achieved in the Eastern District of Virginia, and represented as much as 38% of recoverable damages at trial.

In re Celestica Inc. Securities Litigation	Total Settlement: $30 Million
• Southern District of New York, No. 07-cv-00312 • Client: New Orleans Employees' Retirement System • Lead Attorney: Joseph A. Fonti	

Background: Plaintiffs alleged false and misleading statements relating to a significant corporate restructuring plan, earnings, profitability, and financial outlook. When Celestica ultimately disclosed the truth, its stock price dropped 50%, reducing market capitalization by $1.3 billion.

BFA's Role: BFA partners Joseph Fonti and Erin Woods represented Lead Plaintiffs in this litigation. Notably, Joseph was successful in arguing before the Court of Appeals for the Second Circuit, securing an investor-oriented interpretation of the pleading standard for scienter. Joseph also successfully argued in favor of Plaintiffs' class certification and summary judgment motions before the District Court, securing the first lower court decision after *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398 (2014) in favor of investors on the issue of class-wide reliance.

Status: In April 2015, Plaintiffs filed a motion for preliminary approval of a proposed $30 million settlement resolving all claims against the company and officer defendants. The final approval hearing was held on July 28, 2015 and, later that day, the Court approved the $30 million settlement.

* * *

BFA attorneys have also played key roles in some of the most significant investor protection litigation in recent history, helping shareholders recover significant losses caused by financial misconduct in various industries across the marketplace. Select cases include:

In re Broadcom Corp. Class Action Litigation, Civ. No. 06-cv-5036 (C.D. Cal.).

This class action against Broadcom was based on allegations that the company inflated its stock price by intentionally backdating its stock option grants for over five years. Ultimately, the company was forced to issue a $2.2 billion restatement of its financial statements for the period spanning from 1998 through 2005, which became the largest restatement ever due to options backdating.

The company acknowledged the "substantial evidence" of backdating, and lead plaintiffs secured a $173.5 million settlement, which, at the time, was the second largest cash settlement ever involving a company accused of options backdating. This was also the only such case in which claims against the auditors were sustained.

In re HealthSouth Corp. Securities Litigation, Civ. No. 03-cv-1501-S (N.D. Ala.).

This case involved the largest securities fraud ever arising out of the healthcare industry, and ultimately resulted in a total settlement amount of $804.5 million for the class. The class action involved claims against HealthSouth for falsifying its revenues and conducting a series of acquisition transactions in order to effectuate a massive fraud against the Medicare system.

False statements by the company and its officers led to the inflation of HealthSouth's stock price, while at the same time company executives were amassing significant personal wealth by selling their own shares of HealthSouth stock.

Significantly, the litigation also resulted in the recovery of $109 million from HealthSouth's outside auditor Ernst & Young LLP, one of the largest recoveries to date against an auditing firm.

In re Schering-Plough Corp. / ENHANCE Securities Litigation, Civ. No. 08-397 (D.N.J.).

Lead Plaintiffs brought litigation in the District of New Jersey against Schering-Plough Corporation and Merck/Schering-Plough Pharmaceuticals, and certain company officers, in *In re Schering-Plough Corp. / ENHANCE Securities Litigation*, alleging that they failed to disclose material information about the prospects of cholesterol-lowering drugs.

After nearly six years of litigation, Defendants agreed to pay $473 million to settle the matter on the eve of trial. This marked the largest securities class action recovery in history obtained from a pharmaceutical company. Together with a related securities class action against Merck, the *ENHANCE* litigation settled for $688 million.

BLEICHMAR FONTI & AULD LLP

CONSUMER LITIGATION HIGHLIGHTS

BFA Partner Lesley Weaver has been appointed to leadership positions in some of the most significant consumer actions of recent years, including: *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, which resulted in settlements totaling greater than $15 billion; *In re Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices and Products Liability*, which resulted in a settlement of $307.5 million; and *In re Facebook, Inc. Consumer Privacy User Profile Litigation* and *In re Google RTB Consumer Privacy Litigation*, both of which are currently pending. These, and additional matters, are described below.

In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation

- MDL No. 2672
- Northern District of California, No. 3:15-md-02672

Total Settlements: $15 Billion

Background: This landmark case resolved claims against Volkswagen, Audi and Porsche in connection with the widely-reported news that the companies had installed emission systems created to avoid regulator detection and defraud customers who believed they were buying Volkswagen and Audi vehicles with "clean diesel" engines. VW admitted that it installed these "defeat devices," which eliminated the emissions reduction during normal driving, and only allowed for reduced fuel emissions when the automobiles were being tested. More than 500 federal lawsuits were filed and consolidated into one complaint against the automaker for its "dirty diesel" vehicles.

BFA's Role: Judge Charles R. Breyer appointed Ms. Weaver to the Plaintiffs' Steering Committee, which, along with lead counsel, has been described as the "dream team" prosecuting this high-profile emissions scandal. Judge Breyer selected Ms. Weaver from a field of 150 of the nation's finest consumer litigation attorneys. Ms. Weaver's leadership position in the case included spearheading the investigation that ultimately uncovered German auto supplier Robert Bosch GmbH's significant role in multiple schemes to place software in vehicles purposefully designed to evade emissions laws. She also led the investigation into additional claims relating to defeat devices in certain gas vehicles, resulting in an additional $96.5 million settlement for the Class.

Status: Lead Counsel and the Plaintiffs' Steering Committee have achieved settlements for Plaintiffs worth approximately $15 billion, the largest automotive class action recovery in history. This includes a $14.7 billion settlement on behalf of eligible owners of Volkswagen and Audi 2.0-liter TDI cars, who were offered a buyback of their cars. In accordance with the consent decree, $2.7 billion of the

settlement will be allocated to projects to reduce nitrogen oxides emissions, with a focus on improving air quality in areas that "bear a disproportionate share of the air pollution burden within their jurisdiction." As the Justice Department's top environmental attorney John Cruden has highlighted, this focus on remediation in low income and minority communities is "unique," and a significant response to the disproportionate pollution burden felt by these communities.

On March 2, 2020, Judge Breyer granted final approval of a $96.5 million settlement for more than 100,000 consumers who purchased or leased certain gasoline-powered Audi, Volkswagen, Porsche, and Bentley vehicles that were initially labeled and marketed with overstated fuel economy and understated carbon dioxide emissions.

Lead Counsel and the Plaintiffs' Steering Committee continue to pursue claims against Defendants related to Porsche-branded gasoline vehicles.

In re Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices and Products Liability Litigation • MDL No. 2777 • Northern District of California, No. 3:17-md-02777	Total Settlements: $307.5 Million

Background: The class alleges that Fiat Chrysler Automobiles deliberately cheated on emission testing of 2014-2016 model Dodge and Jeep trucks marketed and sold as environmentally friendly "eco-diesel" vehicles.

BFA's Role: Judge Edward Chen of the U.S. District Court for the Northern District of California appointed Ms. Weaver as one of nine members of the Plaintiffs' Steering Committee. Ms. Weaver played a key role in litigating the action, including taking depositions and coordinating with experts.

Result: The case has settled for $307 million in cash in addition to extended warranties worth more than $120 million.

In re Facebook, Inc. Consumer Privacy User Profile Litigation • MDL No. 2843 • Northern District of California, No. 3:18-md-02843	Case Status: Pending

Background: This high-profile case seeks redress for Facebook users in the U.S. whose private content was unlawfully shared with thousands of third parties. The detailed complaint documents Facebook's violations of consumer fraud and privacy laws in allowing third party apps, including Cambridge Analytica, to bundle and sell Facebook users' private information without their knowledge or consent.

BFA's Role: In a contested and highly competitive field, Judge Chhabria of the

Northern District of California appointed Ms. Weaver as Co-Lead Counsel for Plaintiffs.

Status: In September 2019, Judge Chhabria largely denied Facebook's motion to dismiss, finding Facebook's argument that plaintiffs have no right to allege a breach of privacy based upon Facebook's sharing of their information with third parties "could not be more wrong." On March 10, 2020, the matter was assigned to Magistrate Judge Corley for the management of discovery. On October 29, 2020, Plaintiffs received a favorable ruling concerning the scope of discovery at issue in the MDL litigation. The order ruled that discoverable user data includes: 1) Data collected from a user's on-platform activity; 2) Data obtained from third parties regarding a user's off-platform activities; and 3) Data inferred from a user's on or off-platform activity. Discovery is ongoing.

In re Google RTB Consumer Privacy Litigation	Case Status: Pending
• Northern District of California, No. 5:21-cv-02155	

Background: The case is the first in the country to demand transparency about what information Google reveals about its users when it auctions ad placements to Google users through Google's "Real-Time Bidding" system.

BFA's Role: Ms. Weaver is a member of the Plaintiffs' Executive Committee.

Status: Plaintiffs filed a consolidated complaint on September 16, 2021 and motion to dismiss briefing is underway.

In re: ZF-TRW Airbag Control Units Products Liability Litigation	Case Status: Pending
• Central District of California, No. 2:19-MD-02905	

Background: The class action complaint alleges the ZF-TRW airbag and seat belt control units in over 15 million cars sold are defective and may prevent airbags from inflating in the event of crash. This defect has been linked to at least eight deaths and several serious injuries. The complaint names as defendants ZF-TRW, STMicro, and vehicle manufacturers, Kia, Hyundai, Hyundai MOBIS, Fiat Chrysler, Toyota, Honda, and Mitsubishi.

BFA's Role: Judge John A. Kronstadt of the Central District of California appointed Lesley Weaver to the Plaintiffs' Steering Committee for this multidistrict litigation.

Status: The parties have briefed motions to dismiss, to stay discovery, and to compel arbitration.

BLEICHMAR FONTI & AULD LLP

U.S. ANTITRUST LITIGATION HIGHLIGHTS

Lesley Weaver has been appointed to leadership positions in significant antitrust actions such as *In re Inductors Antitrust Litigation*. In addition, Lesley and her team play key roles in many additional matters, as described below.

In re Inductors Antitrust Litigation • Northern District of California, No. 5:18-cv-00198	Case Status: Pending

Background: Plaintiffs allege that Defendants, leading Japanese manufacturers of inductors such as Murata and Panasonic Corp., colluded to fix, inflate, or stabilize the price of inductors from at least 2003 until the summer of 2014, in violation of Section 1 of the Sherman Antitrust Act. Inductors are electronic components that work to regulate and store energy in a circuit and are found in thousands of products that rely on electronic circuits for power, such as computers, cars, and televisions. There is a criminal investigation by the Department of Justice pending.

BFA's Role: Judge Edward J. Davila of the Northern District of California appointed Lesley Weaver as Co-Lead Class Counsel, noting that "the efforts expended by BFA and Hausfeld to promptly identify and investigate the claims, coupled with the extensive amount of resources which they have available to expend on this case, renders them superior to represent the putative class."

Status: The parties are briefing motions to dismiss.

In re Domestic Airlines Travel Antitrust Litigation • District of Columbia, No. 1:15-mc-01404	Case Status: $60 million in partial settlements; Remaining litigation pending

Background: Plaintiffs allege a conspiracy by the four largest commercial air passenger carriers in the United States—American Airlines, Inc., Delta Airlines, Inc., Southwest Airlines Co., and United Airlines, Inc.—to fix prices for domestic air passenger transportation services in violation of the Sherman Act by colluding to limit capacity on their respective airlines.

BFA's Role: BFA is a key part of Plaintiffs' nonparty discovery committee and has led meet and confer negotiations with dozens of nonparties, resulting in the production of some of Plaintiffs' best evidence.

Status: Plaintiffs have settled for $15 million with Defendant Southwest Airlines and $45 million with Defendant American Airlines. The parties are briefing motions for summary judgment brought by the remaining Defendants.

In re Local TV Advertising Antitrust Litigation	Case Status:
• MDL No. 2867 • Northern District of Illinois, No. 1:18-cv-0678	Agreements in principle Pending

Background: Plaintiffs allege a price fixing cartel facilitated by an anticompetitive information exchange between and among certain major television station owners and operators to artificially inflate the prices of broadcast television spot advertisements.

BFA's Role: BFA acts as counsel for One Source Heating & Cooling, LLC and is an integral member of the litigation team.

Status: On November 6, 2020, Judge Virginia Kendall of the Eastern District of Illinois denied Defendants' motion to dismiss. Discovery in this matter is ongoing.

In re Disposable Contact Lens Antitrust Litigation	Case Status:
• MDL No. 2626 • Middle District of Florida, No. 3:15-md-02626	$40 million in partial settlements; Remaining litigation pending

Background: Plaintiffs allege claims for horizontal and vertical conspiracies in violation of state and federal antitrust laws due to unilateral pricing policies of four leading contact lens manufacturers.

BFA's Role: BFA is leading discovery efforts against the largest manufacturer, Johnson & Johnson.

Status: Plaintiffs have settled with Defendant CooperVision, Inc. for $3 million and with Defendant Bausch & Lomb for $10 million. Plaintiffs have also sought final approval of a proposed $30.2 million settlement with ABB Optical Group LLC. Discovery in this matter is ongoing, and the parties await a trial date for claims against the remaining Defendants.

In re Mexican Government Bonds Antitrust	Case Status:
• Southern District of New York., No. 1:18-cv-02830	$21 million in settlements; Remaining litigation pending

Background: Plaintiffs allege that Defendant broker-dealers have fixed auctions for securities issued by the Mexican government and manipulated the bid-ask spread in transactions to U.S.-based investors, causing U.S.-based investors to pay artificially inflated prices for their Mexican government bonds.

BFA's Role: BFA represents Southeastern Pennsylvania Transit Authority and is assisting the team litigating the case in the Southern District of New York.

Status: Plaintiffs negotiated ice-breaker settlements with JPMorgan for $15 million and Barclays PLC for $5.7 million, totaling $20.7 million in addition to cooperation in litigating against the remaining defendants, and filed a highly detailed complaint based in part on highly incriminating documents received from the cooperating defendants. The remaining Defendants' motion to dismiss is pending.

In re Farm-Raised Salmon and Salmon Products Litigation • Southern District of Florida, No. 19-CV-21551	Case Status: Pending

Background: Plaintiffs seek redress from Atlantic salmon producers who fixed prices of farm-raised Atlantic salmon sold in the United States, including Norwegian producers. Alleged conduct includes coordinating sales prices and exchanging commercially sensitive information, agreeing to purchase production from other competitors when those other competitors were selling at lower prices, and applying a coordinated strategy to increase spot prices in order to secure higher price levels for long term contracts. As a result, since 2015 farm-raised Atlantic salmon prices have been artificially inflated.

Role: BFA is working closely with the executive team facilitating jurisdictional discovery.

Status: On March 23, 2021, the Court denied Defendants' motion to dismiss, finding Plaintiffs have alleged a plausible conspiracy existed through circumstantial facts.

In re Packaged Seafood Products Antitrust Litigation • MDL No. 2670 • Southern District of California, No. 3:15-md-02670	Case Status: Pending

Background: Plaintiffs allege defendants entered into a conspiracy involving packaged seafood products in violation of the Sherman Act and state antitrust law.

BFA's Role: BFA is part of a critical discovery effort against a key defendant.

Status: On July 30, 2019, Judge Janis L. Sammartino of the Southern District of California granted class certification to a class of direct purchasers. In January 2021, Direct Purchaser Plaintiffs and Defendant Tri-Union Seafoods d/b/a Chicken of the Sea International and Thai Union Group PCL announced a settlement agreement in principle. The remaining parties have briefed motions for summary judgment.

* * *

BFA attorneys have also played key roles in other significant consumer protection litigation in recent history, helping consumers recover significant losses caused by misconduct in various industries across the marketplace. Select cases include:

In re Blood Plasma Antitrust Litigation, MDL No. 2109, No. 1:09-cv-07666 (N.D. Ill.)

Plaintiffs allege that Defendants participated in a multi-year conspiracy to restrict output and fix prices of Ig and Albumin in the United States. Ms. Weaver played a significant role, including deposing the Chief Operating Officer and Chief Marketing Officer of one of the main defendants.

In 2014, the Court granted final approval of the settlements between plaintiffs Defendants Baxter International, Inc., Baxter Healthcare, CSL Limited, CSL Behring LLC, CSL Plasma Inc., and the Plasma Protein Therapeutics Association, for a total settlement worth $128 million.

In re Lithium Ion Batteries Antitrust Litigation, MDL No. 2420, No. 4:13-md-02420 (N.D. Cal.)

Plaintiffs allege that defendants and their co-conspirators engaged in an unlawful conspiracy to fix the prices of lithium ion battery cells, affecting the prices indirect purchasers paid for lithium ion batteries and lithium ion products. Indirect Purchaser Plaintiffs (IPPs) have settled their claims for $19.5 million from Sony Corp., $39 million from LG Chem Ltd., $3.45 million from Hitachi Maxwell Ltd., and $2.5 million from NEX Corp.

BFA represented the cities of Palo Alto and Richmond, California.

On October 27, 2017, the Court gave final approval to the settlement between the IPPs and Hitachi Maxell, NEC Corporation, and LG Chem. The settlement was worth $45 million, bringing the total settlements with IPPs to $64.5 million.

BLEICHMAR FONTI & AULD LLP

TEAM PROFILES

JAVIER BLEICHMAR *Partner*	New York	• Email: jbleichmar@bfalaw.com • Tel: +1 212 789 1341 • www.bfalaw.com/professionals/javier-bleichmar

Javier Bleichmar leads BFA's U.S. Case Evaluation and U.S. Securities Litigation teams. He brings a long career of litigation success to his prosecution of large-scale fraud class actions on behalf of investors. Javier has nearly two decades of experience and has been "recommended" in the field of securities litigation by *The Legal 500*.

Javier currently leads the BFA teams prosecuting class actions led by our clients against Citigroup, Inc. and Align Technology, Inc. Javier is also leading a securities action against Allianz Global Investors U.S., L.L.C. on behalf of the Metropolitan Transportation Authority, and is a member of the team litigating a securities action against Teva Pharmaceutical Industries, Ltd.

Javier previously led the team litigating *In re MF Global Holdings Limited Securities Litigation* on behalf of Her Majesty the Queen in Right of Alberta and MF Global investors, in connection with the company's dramatic collapse on October 31, 2011. Judge Marrero in the Southern District of New York sustained the complaint in its entirety, and plaintiffs secured settlements totaling over $234 million, resolving claims against MF Global's former officers and directors, several underwriter defendants, and MF Global's outside auditor.

Javier also led the team that prosecuted *Freedman v. Weatherford International Ltd., et al.*, on behalf of the Anchorage Police & Fire Retirement System. The case alleged that Weatherford, which made three restatements of audited financials totaling approximately $1 billion, misled investors about the Company's tax accounting. After more than three years of intense litigation, including 22 depositions and complex expert testimony, the parties announced a proposed $120 million settlement on June 30, 2015.

Javier is also a successful appellate advocate, prevailing before the Eighth Circuit in *Public Pension Fund Group v. KV Pharmaceutical, Co.* The Eighth Circuit reversed an earlier dismissal and clarified the standard governing pharmaceutical companies' disclosures relating to FDA notifications.

Javier is active in educating international institutional investors on developing trends in the law, particularly the ability of international investors to participate in

securities class actions outside the United States. Through these efforts, many of Javier's international clients were able to join the organization representing investors (i.e., the Foundation) in the first securities class action settlement under the then-recently enacted Dutch statute against Royal Dutch Shell. He has co-authored articles concerning the developments in the class action landscape in Australia, and also provides thought leadership as a regular contributor on securities issues in the *New York Law Journal*. He has co-authored "IndyMac Leaves Uncertain Landscape for Opt-Out Litigation" and "The Evolving Legacy of Fait v. Regions Financial." Javier is an active member of the National Association of Public Pension Plan Attorneys (NAPPA).

Prior to founding the firm, Javier was a Partner of Labaton Sucharow LLP. He also practiced at Bernstein Litowitz Berger & Grossmann LLP, where he was actively involved in the *In re Williams Securities Litigation*, which resulted in a $311 million settlement, as well as significant securities matters involving Lucent Technologies, Inc., Conseco, Inc. and Biovail Corp. He began his legal career at Kirkland & Ellis LLP.

Javier earned a B.A. from the University of Pennsylvania and a J.D. from Columbia University School of Law (1998), where he was a Harlan Fiske Stone Scholar. During law school, he served as a law clerk to the Honorable Denny Chin, U.S. District Judge for the Southern District of New York. Javier is a native Spanish speaker and fluent in French.

Javier is admitted to practice in New York (1998), the U.S. Supreme Court (2010), and the U.S. Courts of Appeals for the Second Circuit (2010), Eighth Circuit (2010), Ninth Circuit (2010), Tenth Circuit (2013), and Eleventh Circuit (2011). He is also admitted in the U.S. District Courts for the Southern and Eastern Districts of New York (1999).

JOSEPH A. FONTI *Partner*	New York	• Email: jfonti@bfalaw.com • Tel: +1 212 789 1342 • www.bfalaw.com /professionals/joseph-fonti

Joseph A. Fonti leads the Firm's U.S. Securities Litigation team. He has nearly twenty years of experience in prosecuting complex litigations on behalf of institutional investors. His commitment to clients, advocacy skills, and litigation results have resulted in Joseph being "recommended" in the field of securities litigation by *The Legal 500*.

Joseph currently leads the BFA teams prosecuting class actions led by our clients against Teva Pharmaceutical Industries, Ltd. and Citigroup, Inc.

Joseph previously served as co-lead counsel in *In re Genworth Financial Inc. Securities Litigation* in the Eastern District of Virginia – widely known as the "rocket

docket." Joseph led the litigation to a remarkable recovery for the class in the amount of $219 million, the largest securities class action recovery achieved in that jurisdiction. In defeating defendants' motion to dismiss, Joseph secured one of the first pro-investor opinions after the Supreme Court's recent decision in the Omnicare matter. Joseph already had notable success in the high-pressure environment of this Virginia district court. In 2013, as lead trial lawyer on behalf of shareholders of Computer Science Corp., after prevailing at class certification and only four weeks before trial, Joseph and his team secured a $97.5 million settlement – which was at that time the second-largest cash securities settlement in the court's history.

Joseph also contributed to the prosecution and ultimate resolution of the *Weatherford* securities litigation (*Freedman v. Weatherford International Ltd., et al.*). Joseph's contribution to this very intense litigation centered on complex accounting and expert matters, and he took trial testimony of several third-party accountants and consultants who were not expected to appear for trial. Joseph, as part of the team led by partner Javier Bleichmar, contributed to an outstanding recovery of $120 million for Weatherford shareholders.

With over a dozen years of experience in investor litigation, Joseph's career is also marked by significant successes in the area of auditor liability and stock options backdating. For example, he represented shareholders in the $671 million recovery in *In re HealthSouth Securities Litigation*. Particularly, Joseph played a significant role in recovering $109 million from HealthSouth's outside auditor Ernst & Young LLP, one of the largest recoveries to date against an auditing firm. He also contributed to securing a $173.5 million settlement in *In re Broadcom Corp. Securities Litigation*, which, at the time, was the second-largest cash settlement involving a company accused of options backdating. This was the only such case in which claims against the auditors were sustained.

In addition to representing several of the most significant U.S. institutional investors, Joseph has represented a number of Canada's most significant pension systems and asset managers. He also provides thought leadership on issues of particular relevance to these clients. For example, he co-authored "Cross-Listed Securities Cases Present Challenges," for the *National Law Journal*, (May 30, 2016), which addresses recent *Morrison* interpretations in light of modern financial markets. He also led the prosecution of *In re NovaGold Resources Inc. Securities Litigation*, which resulted in the largest settlement under Canada's securities class action laws.

Additionally, Joseph has achieved notable success as an appellate advocate. He successfully argued before the Second Circuit Court of Appeals in *In re Celestica Inc. Securities Litigation*. The Second Circuit reversed an earlier dismissal and turned the tide of recent decisions by realigning pleading standards in favor of investors.

Joseph was also instrumental in the advocacy before the Ninth Circuit Court of Appeals in the *In re Broadcom Corp. Securities Litigation*. This appellate victory marked the first occasion a court sustained allegations against an outside auditor related to options backdating.

Prior to founding the firm, Joseph was a Partner of Labaton Sucharow LLP. He also practiced securities litigation at Bernstein Litowitz Berger & Grossmann LLP, and began his legal career at Sullivan & Cromwell LLP, where he represented Fortune 100 corporations and financial institutions in complex securities litigation, in multifaceted SEC investigations, and at trial.

Joseph is a member of the ABA, the NY State Bar Association, the Bar of the City of New York, and the National Association of Public Pension Attorneys (NAPPA).

Joseph earned a B.A., *cum laude*, from New York University and a J.D. from New York University School of Law (1999), where he was a member of the Marden Moot Court. He is admitted to practice in New York (2000), the U.S. Supreme Court (2007), and the U.S. Courts of Appeals for the Second Circuit (2010), Ninth Circuit (2007), and Tenth Circuit (2013). He also is admitted in the U.S. District Courts for the Southern and Eastern Districts of New York (2001).

DOMINIC J. AULD *Partner*	Toronto	• Email: dauld@bfalaw.com • Tel: +1 212 789 1344 • www.bfalaw.com /professionals/dominic-auld

Dominic J. Auld has more than a decade of experience in representing and advising institutional clients in large-scale securities and investment-related lawsuits. Dominic has been named a "Super Lawyer" in the field of securities litigation by *Super Lawyer* awards and has been "recommended" in the field of securities litigation by *The Legal 500*.

Dominic is responsible for BFA's outreach to pension systems, asset managers, and sovereign wealth funds outside the United States – regularly advising clients in Europe, Australia, Asia, and across his home country of Canada.

Dominic and his team have served as liaison counsel to global investors in many shareholder and investor litigations outside the United States, including class and collective actions against Olympus Corp. (Japan); OZ Minerals Ltd. (Australia); Fortis (Belgium and the Netherlands); Vivendi Universal (France); Volkswagen AG (Germany); and many other companies.

Dominic is sought after as a commentator on topics such as corporate governance, shareholder activism, fiduciary duty, corporate misconduct, and international class and collective litigation. He has been a regular speaker and panelist at law and investment conferences, including past events such as the Canadian Foundation for

Advancement of Investor Rights (FAIR Canada) and Osgoode Hall Law School conference on public and private securities enforcement and investor recovery in Toronto, the IMF Bentham shareholder class action conference in Sydney, and the Annual International Bar Association meeting in Dubai.

Dominic is the author of various articles of interest to the Firm's client base, including an analysis of shareholder remedies in Japan in *Law360*, and a piece regarding custodian bank fees and their impact on pension funds globally in *Nordic Regions Pensions and Investment News* magazine. He is quoted in publications including *The Economist*, *The Financial Times*, *The New York Times*, *USA Today*, *The Times of London*, *The Evening Standard*, *The Guardian*, and *The Daily Mail*, and trade publications such as *Global Pensions*, *OP Risk and Regulation*, *The Lawyer*, *Investments and Pensions Europe*, *Professional Pensions*, and *Benefits Canada*. He also was interviewed by *Corporate Counsel* for a feature article on rogue trading.

Prior to founding the Firm, Dominic was a Partner of Labaton Sucharow LLP. He also practiced securities litigation at Bernstein Litowitz Berger & Grossmann LLP, where he began his career as a member of the team responsible for prosecuting the landmark action *In re WorldCom Inc. Securities Litigation*, which resulted in a settlement of more than $6 billion.

Dominic has years of experience working directly with institutional clients affected by securities fraud. For example, he worked extensively with the Ontario Teachers' Pension Plan Board as it led securities actions *In re Nortel Networks Corp. Securities Litigation*, *In re Williams Securities Litigation*, and *In re Biovail Corp. Securities Litigation* – cases that recovered a total of more than $1.7 billion for investors.

Dominic earned a B.A. from Queen's University in Canada and a J.D. from Lewis and Clark Law School (1998). He is admitted to practice in New York (1998), and in the U.S. District Courts for the Southern and Eastern Districts of New York (2011).

LESLEY E. WEAVER *Partner*	Oakland	• Email: lweaver@bfalaw.com • Tel: +1 415 455 4004 • www.bfalaw.com /professionals/lesley-weaver

In her twenty-five year career, Lesley has focused primarily on cases that protect the public interest, consumers, and public entities. She continues to do so as the Head of BFA's Antitrust and Consumer Litigation Teams, and as the Partner in Charge of BFA's California Office. In 2015, Lesley was appointed by U.S. District Judge Charles R. Breyer to the Plaintiffs' Steering Committee in *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litig.*, MDL No. 2672 CRB (JSC). The PSC in the Volkswagen litigation recovered $14.7 billion for class members and nearly $5 billion for the environment, the largest automotive class action recovery ever.

In July 2018, Judge Chhabria of the Northern District of California appointed Lesley as co-lead counsel for plaintiffs in *In re: Facebook, Inc. Consumer Privacy User Profile Litigation*. The litigation consolidates more than 30 cases filed around the country alleging that Facebook violated consumer fraud and privacy laws in allowing hundreds of third party apps, including Cambridge Analytica, to bundle and sell Facebook users' personally identifiable information without their knowledge or consent.

In April 2018, Lesley was appointed as interim Co-Lead Counsel in *In re Inductors Antitrust Litig.*, Case No. 18-cv-198, representing a class of purchasers of inductors, a passive electronic component that is a key element of electronic circuits found in smart phones, laptops, computers, and other consumer electronic devices.

In June 2017, Lesley was appointed to the Plaintiffs' Steering Committee leading claims against Fiat Chrysler and Bosch in *In re Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices and Products Liability*, MDL No. 17-MD-02777-EMC ("Fiat Chrysler"). Like Volkswagen, the Fiat Chrysler lawsuit seeks to redress harm to consumers arising out of the illegal and deliberate use of devices to sense when vehicles are being tested, so that those vehicles regularly emit significant amounts of pollution on the road.

In pro bono matters, including negotiating reforms in the merger between SunTrust and BBC banks, Lesley represents the National Black Farmers Association, an organization dedicated to securing better economic conditions for farmers with deep historical roots in our country's economic success.

In addition, Lesley has extensive experience representing sophisticated institutional investors in landmark securities actions. Some of those cases include *In re Cavanaugh Securities Litig.* (including an appeal to the Ninth Circuit concerning the method of selecting lead plaintiff and lead counsel after the enactment of the Private Securities Litigation Reform Act.); *In re Marsh & McLennan Cos. Sec. Litig.* ($400 million settlement); *In re Cardinal Health Inc. Sec. Litig.* ($600 million settlement); *In re Cisco Systems, Inc. Sec. Litig.* ($99 million settlement); *In re Northpoint Communications Group, Inc.* (notable decision finding that certain allegations of scienter and falsity in securities suit were pled with particularity required by PSLRA and statements made about potential merger with Verizon were deliberately reckless); and *CommTouch Software, Ltd. Sec. Litig.* (notable decision finding complaint pled with sufficient particularity to support an inference of deliberate misconduct), among other significant cases.

In addition, Lesley counsels clients seeking to opt out of class action litigation, assisting them in negotiating confidential, private settlements with outstanding results.

In October 2014, Lesley tried an internet privacy case against a Chinese-owned, California-based internet site, recovering 100 percent of economic damages and a $15 million punitive damages jury verdict, as well as significant injunctive relief. Her first trial was in 1998 before the Hon. Vaughn Walker on behalf of Amanda Buritica, a U.S. citizen born in Colombia who was unlawfully detained by U.S. Customs at San Francisco International Airport. The case resulted in the largest verdict at the time under the Federal Tort Claims Act.

Lesley is committed to public service through volunteer efforts, and currently serves on the Advisory Council of the East Bay Community Law Center, as well as the Executive Committee of the Securities Section for the Bar Association of San Francisco. She is a past Co-Chair of Bay Area Lawyers for Individual Freedom, a past Co-Chair of the San Francisco LGBT Community Center, past National Chair of the National Center for Lesbian Rights, and past Vice-President and Director of the Board of the Frameline Film Festival. She has previously served on the boards of Women Lawyers of Alameda County, Equality California, the International Gay and Lesbian Human Rights Commission, and the Alice B. Toklas Democratic Club. She also is a member of Public Justice and of the National Association of Public Pension Attorneys (NAPPA).

Lesley holds degrees from the University of Virginia and Harvard College. She studied political science at the University of Bonn (Germany), and attended high school at Haderslev Katedraleskole in Denmark. She speaks German and Danish.

Lesley is admitted to practice in California (1997), the U.S. Court of Appeals for the Ninth Circuit (1998), and the U.S. District Courts for the Northern District (1997) and the Eastern, Central, and Southern Districts of California (1998).

NANCY A. KULESA *Partner*	New York	• Email: nkulesa@bfalaw.com • Tel: +1 860 869 5525 • www.bfalaw.com /professionals/nancy-kulesa

Nancy Kulesa has extensive experience in complex litigation in federal and state courts, including securities litigation, Employee Retirement Income Security Act of 1974 (ERISA) litigation, consumer fraud litigation, mergers and acquisitions cases, and antitrust litigation.

Nancy represents public pension funds, Taft-Hartley funds, and other institutional investors in securities class actions and derivative litigation. She has nearly two decades of experience assisting clients in identifying material losses in their securities portfolios caused by corporate wrongdoing. Nancy consults with institutional investors to help them monitor litigation and to evaluate opportunities for recovery.

Nancy is currently litigating the class action against Align Technology Inc. on behalf of Court-appointed Lead Plaintiff Macomb County Employee's Retirement System. In addition, Nancy is a member of the team prosecuting a securities action against Teva Pharmaceutical Industries, Ltd. Nancy is also litigating an action against certain members of the current and former board of directors of Tesla on behalf of the Police & Fire Retirement System of City of Detroit, and is pursuing confidential derivative actions on behalf of additional institutional clients. Nancy has previously been counsel in numerous high-profile securities fraud litigations that have recovered hundreds of millions of dollars for shareholders including:

- *In re CIT Group Securities Litigation*, 1:08-06613 (S.D.N.Y.) ($75 million)
- *Klugmann v. American Capital Ltd.*, 09-cv-0005 (D. Md.) ($18 million)
- *In re Nuvelo, Inc. Securities Litigation*, 07-cv-4056 (N.D. Cal.) ($8.9 million)
- *Bauer v. Prudential, Inc.*, 09-cv-1120 (JLL) (D. NJ) ($16.5 million)
- *Carlson v. Xerox Corporation*, 3:00CV01621 (ATW) (D Conn.) ($750 million)
- *Fragala v. 500.com Ltd.,* 2:15-cv-01463-MMM (C.D. Cal.) ($2.5 million)

Nancy represented a Taft-Hartley Fund in the historic settlement with Twenty-First Century Fox, Inc. regarding allegations surrounding workplace harassment incidents at Fox News, which resulted in a $90 million derivative settlement and wide-ranging corporate governance reforms at the company.

Nancy has also represented consumers in complex, class action litigation involving false advertising and defective product claims, including serving as court-appointed Lead Counsel in *Logan Landes, et al. v. Sony Mobile Communications, et al.*, 17-cv-02264-JFB-SIL (E.D.N.Y.), which resulted in settlement relief to consumers valued at over $6 million. In that litigation, the Honorable Joseph F. Bianco recognized the high quality of her work, "The quality of the representation, as I noted, has been extremely high, not just in terms of the favorable outcome in terms of the substance of the settlement, but in terms of the diligence and the hard work that has gone into producing that outcome."

Prior to joining BFA, Nancy was a partner at a well-established national securities litigation firm where she represented investors in securities class actions, and created and directed the firm's Portfolio Monitoring Services practice. Nancy has experience in representing corporations seeking antitrust clearance of mergers and acquisitions and has also handled commercial litigation matters and contractual disputes.

Nancy frequently speaks on topics related to securities litigation and investor rights at educational forums for public pension funds and Taft-Hartley funds.

She is a member of the National Conference on Public Employee Retirement Systems (NCPERS), International Foundation of Employee Benefit Plans (IFEBP), Texas Association of Public Employee Retirement Systems (TEXPERS), Florida Public Pensions Trustees Association (FPPTA), Michigan Association of Public Employee Retirement Systems (MAPERS) and Illinois Public Pension Fund Association (IPFFA). Nancy serves as an Officer to the National Association of Shareholder & Consumer Attorneys (NASCAT) as Treasurer.

Nancy was recognized by Lawdragon as a Leading Plaintiff Financial Lawyer.

Nancy earned a B.A. in International Politics from Fordham University in 1998 and a J.D. from the University of Connecticut School of Law in 2001.

Nancy is admitted to practice in Connecticut (2001), the United States District Court for the District of Connecticut (2004), the United States District Court for the Southern District of New York (2015), and the United States Court of Appeals for the Ninth Circuit (2016).

ERIN H. WOODS *Partner*	New York	• Email: ewoods@bfalaw.com • Tel: +1 212 789 1353 • www.bfalaw.com /professionals/erin-woods

As Co-Director of Institutional Investor Relations and the head of BFA's Claims Filing Team, Erin's practice combines her vast experience advising institutional investors on current and potential securities litigation and advising clients in recovering investment losses through filing settlement claims.

With nearly fifteen years in the class action industry, Erin brings a unique blend of years of litigation experience, a decade of representation of institutional investors, and extensive expertise in the claims administration process. Erin is currently a member of the team prosecuting the securities class action against Citigroup, Inc. She also leads institutional investor outreach and advises pension funds and other entities on lawsuits concerning violations of U.S. and non-U.S. securities and investment laws, antitrust and consumer laws, and securities class action settlements.

Prior to joining BFA, Erin was a Director at an industry-leading claims administration firm, where she provided plaintiffs' and defense counsel comprehensive, accurate, and practical approaches to class action and mass tort settlement administration.

While working with BFA's founding partners as an associate at their prior firm, Erin litigated securities class actions such as *In re Celestica Inc. Securities Litigation* and *In re NovaGold Resources Inc. Securities Litigation*, which resulted in a cross-border settlement that was at the time the largest settlement under Canada's

securities class action laws, and two related cases against OppenheimerFunds Inc. that resulted in a $100 million settlement.

Erin is a member of the National Association of Public Pension Attorneys (NAPPA), National Conference of Public Employee Retirement Systems (NCPERS), National Council on Teacher Retirement (NCTR), National Association of State Retirement Administrators (NASRA), State Association of County Retirement Systems (SACRS), California Association of Public Retirement Systems (CALAPRS), and a number of additional organizations.

Erin earned a B.A. from Villanova University in 2004 and a J.D. from Brooklyn Law School in 2008. She is admitted to practice in New York (2009), the U.S. Courts of Appeals for the Ninth Circuit (2010) and Second Circuit (2011), and the U.S. District Court for the Southern District of New York (2009).

MATTHEW MELAMED *Partner*	Oakland	• Email: mmelamed@bfalaw.com • Tel: +1 415 445 5601 • www.bfalaw.com/professionals/Matthew-Melamed

Matthew Melamed joined the firm in 2021, focusing on prosecuting complex consumer and antitrust matters.

Before joining the firm, Matt was a partner at Robbins Geller Rudman & Dowd LLP, where he represented cities, counties, and states in nationwide litigation concerning the marketing, distribution, and dispensing of prescription opioids. Among other roles in those cases, he represented the City and County of San Francisco, whose case was remanded as an MDL bellwether from *In re: National Opiate Litigation*. Matt also litigated numerous securities fraud lawsuits, including *Jones v. Pfizer Inc.*, *In re St. Jude Medical, Inc. Securities Litigation*, and *Villella v. Chemical & Mining Company of Chile, Inc*. He was a member of case teams that recovered more than $1.2 billion.

Matt was previously a law clerk for the Honorable Joseph A. Greenaway, Jr. on both the United States District Court for the District of New Jersey and the United States Court of Appeals for the Third Circuit. He was also the Kazan-Wallace Attorney at Public Justice PC. During law school, Matt was an extern for the Honorable Susan Y. Illston, United States District Court for the Northern District of California.

Matt is admitted to practice in California (2008), the United States Courts of Appeals for the Third (2010) and Tenth (2009) Circuits, and the United States District Courts for the Northern (2010) and Central (2012) Districts of California.

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ANNE DAVIS *Partner*	Oakland	• Email: adavis@bfalaw.com • Tel: +1 415 445 4016 • www.bfalaw.com/professionals/anne-davis

Anne Davis joined BFA in 2018. She has a decade of experience litigating complex matters in both federal and state courts, including the courts of California, Delaware, and Kansas. She focuses her practice on complex investigations and litigation of antitrust, consumer, and securities matters.

Anne plays a key role in litigating *In re: Facebook, Inc. Consumer Privacy User Profile Litigation* and *In re Inductors Antitrust Litigation*; she is also a member of the BFA teams litigating *In re German Automotive Manufacturers Antitrust Litigation* and *In re Domestic Airlines Travel Antitrust Litigation*. She recently co-authored *That's The Ticket – Game On For Plaintiffs Challenging Suppression of the Market For Football Broadcasts* for the September edition of the Antitrust, UCL and Privacy Section E-Brief for California Lawyer's Association, and *The Interplay of the European Union's General Data Protection Regulation and U.S. E-Discovery—One Year Later, the View Remains the Same*, which was published in the Spring 2019 edition of Competition.

Prior to joining BFA, Anne served as a Principal Counsel for Sales Practice Enforcement at the Financial Industry Regulatory (FINRA), where she, as appropriate, brought charges and negotiated resolutions or litigated formal actions pertaining to violations of FINRA, U.S. Securities and Exchange Commission (SEC), and Municipal Securities Rulemaking Board (MSRB) rules, and the federal securities laws by registered individuals and FINRA member firms.

Before FINRA, she was a senior associate at Morrison & Foerster, LLP, where she specialized in securities litigation and enforcement, complex civil litigation, and internal investigations. She also maintained a pro bono practice involving Title IX compliance in California public schools, litigation on behalf of prisoners asserting Section 1983 excessive force claims, and asylum claims.

Anne earned a B.A. with honors from DePaul University (2002), a M.A. (Political Science) from the University of Michigan (2006), and a J.D. from the University of Michigan Law School (2008). She is admitted to practice in California (2009), and the U.S. District Courts for the Northern (2010), Central (2011) and Eastern (2014) Districts of California and the Eastern District of Michigan (2019).

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EVAN KUBOTA *Partner*	New York	• Email: ekubota@bfalaw.com • Tel: +1 212 789 1347 • www.bfalaw.com /professionals/evan-kubota

Evan Kubota brings substantial experience in all stages of litigation, from pre-suit investigation and strategic advice through motion practice, discovery, trial, and appeal. His experience includes complex securities and derivative actions, bankruptcy confirmation and adversary proceedings, and regulatory investigations. He has taken and defended numerous depositions, worked closely with damages and industry experts, and participated in several trials.

Evan is currently a member of the team prosecuting the case against Teva Pharmaceutical Industries, Ltd.

Prior to joining BFA in 2019, Evan was an associate at Paul, Weiss, Rifkind, Wharton & Garrison LLP for nine years, where he litigated high-profile matters on behalf of financial institutions and issuers in a variety of industries. Representative matters include plaintiff's counsel in breach of contract, fraud and civil RICO litigations against a distressed insurance company; debtor's counsel in a leading media company's Chapter 11 bankruptcy, which eliminated over $1 billion in debt; and the defense of numerous RMBS-related litigations, arbitrations, and investigations in the wake of the financial crisis.

Evan earned a B.A. from the University of Florida, *cum laude*, in 2007 and a J.D. from Harvard Law School, *cum laude*, in 2010. He is admitted to practice in New York (2011), as well as the U.S. District Courts for the Southern and Eastern Districts of New York (2011).

ROSS SHIKOWITZ *Partner*	New York	• Email: rshikowitz@bfalaw.com • Tel: +1 212 789 1349 • www.bfalaw.com/professionals/ross-shikowitz

For over a decade, Ross has been advising many of the world's largest and most sophisticated institutional investors concerning their rights and potential legal claims arising out of securities-related matters. He is a senior member of the firm's Client Monitoring and Case Evaluation Group in which he, together with a team of attorneys and financial analysts, develops and recommends legal strategies to the firm's clients.

Ross is also one of the lead attorneys representing investors in the securities class actions concerning Citigroup Inc. and Align Technology, Inc. For his success representing investors, Ross has consistently been named by Super Lawyers as a New York "Rising Star" in the area of securities litigation.

Prior to joining the firm, Ross was an associate at Bernstein Litowitz Berger & Grossmann LLP where he was a senior member of its New Matter Department. Ross was also an instrumental member of the litigation teams responsible for recovering hundreds of millions of dollars on behalf of injured investors that were misled when purchasing residential mortgage-backed securities. He also served as a member of the litigation team prosecuting the securities fraud class action against Volkswagen, which resulted in a recovery of $48 million for investors in Volkswagen American Depositary Receipts. Ross also served as a member of the team litigating the securities class action concerning GT Advanced Technologies, which has resulted in $36.7 million in recoveries to-date.

Ross earned a B.A., *cum laude*, from Skidmore College, and an M.A. from Indiana University-Bloomington. He earned a J.D., *cum laude*, from Brooklyn law School (2010) where he worked as a research assistant to Brooklyn Law School Professor of Law Emeritus Norman Poser, a widely respected expert in international and domestic securities regulation. He also served as a judicial intern to the Honorable Brian M. Cogan of the Eastern District of New York, a legal intern for the Major Narcotics Investigations Bureau of the Kings Country District Attorney's Office, and a summer associate at a prominent defense firm.

Ross is admitted to practice in New York (2011), as well as the U.S. District Court for the Southern District of New York (2011).

KENDRA SCHRAMM *Of Counsel*	New York	• Email: kschramm@bfalaw.com • Tel: +1 212 789 1358 • www.bfalaw.com /professionals/kendra-schramm

Kendra Schramm is a highly valued litigator with over ten years of experience prosecuting complex securities class actions. Kendra is a key member of the Firm's Non-U.S. Litigation and Claims Filing teams. She also assists the Client Reporting and Data Analysis team in assessing clients' loss exposure in both domestic and international matters. Kendra is also a member of the team prosecuting the case against Teva Pharmaceutical Industries, Ltd.

Kendra acts as liaison counsel to institutional investors in securities and investment-related actions across the globe – including in Australia, Europe, and Japan. She provides highly pragmatic advice to sophisticated clients on the risks of participation in these cases, which often require a formal decision to pursue a claim. She is instrumental to BFA's outreach to institutional clients outside the United States. In addition, Kendra recently co-authored "A Look at Shareholder Remedies in Japan" in *Law360*, commenting on the evolving Japanese litigation regime.

Prior to joining the Firm, Kendra was an associate at Labaton Sucharow LLP, where she was a member of the team that recovered more than $1 billion in total

settlements in the landmark securities class action against American International Group and numerous related defendants. She also was instrumental in prosecuting the complex securities litigation against the Federal National Mortgage Association (Fannie Mae), which successfully alleged that investors' losses were caused by the defendants' misstatements and misconduct, rather than the recent financial crisis, and recovered $170 million.

Kendra earned a B.A. from New York University and a J.D. from Brooklyn Law School (2011), where she was an Associate Managing Editor of the *Journal of Law & Policy*. During law school, she served as a law clerk to the Honorable Elizabeth S. Stong, U.S. Bankruptcy Court Judge for the Eastern District of New York. She is admitted to practice in New York (2012), New Jersey (2012), the U.S. Supreme Court (2014), and the U.S. District Courts for the Southern District of New York (2012) and the District of New Jersey (2012).

SARA PILDIS SIMNOWITZ *Special Counsel*	New York	• Email: ssimnowitz@bfalaw.com • Tel: +1 212 789 2309 • www.bfalaw.com/sara-simnowitz

Sara Pildis Simnowitz is Special Counsel at BFA, prosecuting a variety of complex litigations.

Sara has nearly twenty years of experience in all aspects of litigating complex matters. Sara is dedicated to prosecuting securities, antitrust, and consumer fraud class actions on behalf of institutional, municipal, and individual clients. Sara draws on her extensive litigation experience while playing a key role in prosecuting the Firm's antitrust and consumer cases, including *In re Inductors Antitrust Litigation* and *In re: Facebook, Inc. Consumer Privacy User Profile Litigation*.

Sara is also an active member of BFA's securities litigation teams. For example, she is a member of the team in *In re Teva Securities Litigation* and was a member of the team in *In re Genworth Financial Securities Litigation*.

Before joining BFA, Sara was a senior associate at Arnold & Porter LLP, where she focused on complex commercial litigation. She previously practiced at Heller Ehrman LLP in New York and Foley Hoag LLP in Massachusetts, where she focused on complex commercial and securities litigation.

Sara earned a B.A., *summa cum laude*, from Brandeis University, a J.D. from the University of Chicago Law School (2001), and an M.A. from the London School of Economics and Political Science (2002). She is admitted to practice in Massachusetts (2002), New York (2006), the U.S. Supreme Court (2008), the U.S. Court of Appeals for the First Circuit (2003), and the U.S. District Courts for the

District of Massachusetts (2002), the Southern and Eastern Districts of New York (2006), and the Western District of New York (2008).

GEORGE BAUER *Associate*	New York	• Email: gbauer@bfalaw.com • www.bfalaw.com /professionals/george-bauer

For almost nine years, George has taken a lead role in all stages of complex civil litigation, from pre-suit investigation through motion practice, discovery, summary judgment, and trial.

George is currently a member of the teams prosecuting the case against Allianz Global Investors U.S., L.L.C.

While an associate and later junior partner at the international law firm of Kirkland & Ellis LLP, George gained experience taking and defending depositions, working with expert consultants and witnesses, and appearing in court. In addition, George has handled numerous internal investigations and investigations by both the U.S. Department of Justice and the U.S. Securities and Exchange Commission. George has represented clients in connection with complex regulatory enforcement matters dealing with, among other things, securities fraud, commodities fraud, and foreign bribery issues. He has also advised transactional teams on litigation and compliance related risks.

Prior to Kirkland, George attended Brooklyn Law School where he served as a student prosecutor in the Kings County District Attorney's office and led the prosecution of misdemeanor domestic violence cases. He also interned at the New York City Police Department, the U.S. Attorney's Office for the Eastern District of New York, the Federal Trade Commission, and the New York Attorney General's Office.

George earned a B.A. from the University of Massachusetts at Amherst, *cum laude*, in 2008 and a J.D. from Brooklyn Law School, *magna cum laude*, in 2011. He is admitted to practice in New York (2012), the Eastern District of New York (2013), and the Southern District of New York (2014).

ANGELICA ORNELAS *Associate*	Oakland	• Email: aornelas@bfalaw.com • Tel: +1 415 445 4011 • www.bfalaw.com/angelica-ornelas

Angelica Ornelas has substantial experience litigating class actions and other complex matters in federal courts across the country.

Angelica is a key member of the teams litigating *Calhoun et al. v. Google LLC*, *In re: Facebook, Inc. Consumer Privacy User Profile Litigation,* and *In Re: ZF-TRW Airbag Control Units Products Liability Litigation.*

Prior to joining BFA, Angelica was an associate at Girard Sharp, where she specialized in consumer protection and financial products litigation. While at Girard Sharp, Angelica served as co-class counsel in *Prather v. Wells Fargo Bank, N.A.*, representing individuals who received illegal automated calls or text messages from the bank. Angelica was also a member of the litigation team in *Daccache v. Raymond James Financial, Inc.*, brought on behalf of victims of the Jay Peak investment fraud—the largest in the history of the EB-5 visa program—and *Larson v. John Hancock Life Insurance Company (U.S.A)*, a certified class action alleging that John Hancock improperly inflated cost of insurance charges deducted from its customers' life insurance policies.

Before Girard Sharp, Angelica was a Fellow at the California Monitor Program, a program of the California Attorney General, where she worked closely with Congresswoman Katie Porter to ensure that the nation's five largest mortgage servicers delivered the relief Senator Kamala Harris negotiated for Californians as part of the landmark $25 billion National Mortgage Settlement.

Angelica is an active member of the Sedona Conference, Working Group 1 on Electronic Document Retention and Production. She recently presented at the California Employment Lawyers Association's Electronic Discovery Seminar on topics involving collection and production of electronically stored information and advanced search methodologies. Angelica is also a member of the Federal Bar Association and a Mentor for Centro Legal de la Raza's Youth Law Academy. She has been selected as a Northern California Rising Star every year since 2017 and was named to the National Trial Lawyer's Top 40 Under 40 List in 2020 and 2021.

Angelica earned an undergraduate degree from UC Los Angeles and completed a master's program at San José State University before receiving her law degree from UC Berkeley. After law school, she clerked in the United States District Court for the Northern District of California and the United States Bankruptcy Court for the District of Nevada. She is admitted to practice in California (2012), the U.S. Court of Appeal for the Ninth Circuit (2019) and the U.S. District Courts of the Northern District of California (2016), the Central District of California (2017), and the Northern District of Illinois (2019).

BENJAMIN F. BURRY *Associate*	New York	• Email: bburry@bfalaw.com • Tel: +1 212 789 1345 • www.bfalaw.com /professionals/benjamin-burry

Benjamin Burry has substantial experience representing clients in a broad range of complex commercial and statutory litigation matters, including in contract and investment disputes, intellectual property disputes, actions involving a wide array of business torts, fraud, breach of fiduciary duty, securities class actions, shareholder derivative litigation, bankruptcy litigation, and cases involving the Federal Arbitration Act. He has represented clients in federal and state courts throughout the United States, including bankruptcy court, as well as arbitration forums, private mediation, and in enforcement proceedings.

At BFA, Benjamin is a member of the teams prosecuting cases against Teva Pharmaceutical Industries, Ltd. and Citigroup.

Benjamin also maintains an active pro bono practice, including representing New York City parks and community gardens in civil litigation as well as in corporate governance issues, land rights, local law and regulations, licensing and leases.

Prior to joining BFA, Benjamin was a senior associate at Sidley Austin LLP, where he was a member of the firm's securities and shareholder litigation, commercial litigation and disputes, and Supreme Court and appellate practices.

Benjamin earned a B.A., *magna cum laude*, from Illinois Wesleyan University in 2007 and a J.D. from the University of Chicago Law School in 2010. Benjamin is admitted to practice in the U.S. Court of Appeals for the Second Circuit (2014) and the U.S District Courts for the Southern and Eastern Districts of New York (2013). After earning his law degree, Benjamin served as law clerk to the Honorable Susan P. Read of the New York Court of Appeals.

THAYNE STODDARD *Associate*	New York	• Email: tstoddard@bfalaw.com • Tel: +1 212 789 1355 • www.bfalaw.com /professionals/thayne-stoddard

Thayne Stoddard has extensive experience in all aspects of litigation, including investigating and drafting claims, briefing dispositive and other motions, coordinating discovery efforts and leading discovery teams, taking depositions, and preparing for and conducting trial.

At BFA, Thayne primarily prosecutes complex securities fraud cases on behalf of institutional investors, and is a member of the teams prosecuting cases against Teva Pharmaceutical Industries, Ltd. and Citigroup, Inc.

Prior to joining BFA, Thayne was an associate at Kirkland & Ellis LLP for over three years and represented clients in numerous securities class action, complex commercial, shareholder, and bankruptcy cases.

Thayne earned a B.A. from Yale University in 2011, a J.D. from Duke University School of Law in 2014, and a M.A. from Duke University in 2014. Thayne is admitted to practice in New York (2015) and the U.S. District Court for the Southern District of New York (2016).

NICHOLAS DENNANY *Associate*	New York	• Email: ndennany@bfalaw.com • Tel: +1 212 789 1354 • www.bfalaw.com /professionals/nicholas-dennany

Nicholas Dennany focuses his practice on investigating and analyzing pending and potential securities fraud and derivative claims and assists the Firm in advising and recommending strategies to its clients to ensure that their rights are protected. Nick is also a member of the Firm's litigation teams, including the team prosecuting *In re Teva Securities Litigation*, and has more than a decade of litigation experience, with specific expertise in discovery matters and managing large-scale electronic document reviews.

Nick was also a member of the team that prosecuted *Genworth Financial* in the notoriously fast-paced jurisdiction of the Eastern District of Virginia. The case alleged that the defendants misled investors about the true state of the company's deteriorating long-term care business. BFA recovered $219 million for investors – the largest class action settlement in the Eastern District of Virginia.

Nick was also a key contributor to the Firm's success in *MF Global*, in connection with the company's dramatic collapse on October 31, 2011. The plaintiffs secured several settlements totaling more than $234 million, resolving claims against MF Global's former officers and directors, several underwriter defendants, and MF Global's outside auditor.

Prior to joining the Firm, Nick worked with many of the attorneys now at BFA while at Labaton Sucharow LLP, where he was a member of the team that successfully prosecuted securities claims *In re Broadcom Corp. Securities Litigation* ($173.5 million settlement) and *In re NovaGold Resources Inc. Securities Litigation* ($26.6 million settlement).

Nick earned a B.A., *cum laude*, from the University of Florida and a J.D. from the University of Florida, Levin College of Law (2004). He is admitted to practice in New York (2006) and the U.S. District Courts for the Southern and Eastern Districts of New York (2021).

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JOSHUA SAMRA *Associate*	Oakland	• Email: jsamra@bfalaw.com • Tel: +1 415 445 4017 • www.bfalaw.com/joshua-samra

Joshua Samra is an associate in the Firm's Antitrust and Consumer practice group. Josh currently plays a significant role in the *In re: Facebook, Inc. Consumer Privacy User Profile Litigation*.

Prior to joining BFA, Josh was a Deputy District Attorney in Contra Costa County. As a Deputy District Attorney, Josh oversaw all parts of criminal prosecutions, including filing complaints, preparing and arguing motions, interviewing witnesses, trying cases before a jury, and litigating post-trial appeals. During his time in the District Attorney's office, Josh prosecuted ten jury trials to verdict.

Josh earned his B.A. from the University of California Berkeley (2013) and his J.D. from the University of California Los Angeles (2016), where he served as an Associate Editor for the UCLA Law Review. Josh is admitted to practice in California (2016).

MATHEW HOUGH *Associate*	New York	• Email: mhough@bfalaw.com • www.bfalaw.com /professionals/mathew-hough

Mathew Hough's practice focuses on securities litigation, corporate governance, and shareholder rights litigation. Mathew is skilled in all aspects of litigation, including investigating potential securities fraud claims, briefing dispositive motions, coordinating discovery efforts, and working with expert witnesses.

Matt is currently a member of the team prosecuting the securities class action against Teva Pharmaceutical Industries, Ltd.

Prior to joining the Firm, Mathew was an associate at a prominent plaintiffs' securities class action law firm, where he counseled institutional investors on potential legal claims as part of a team of attorneys, financial analysts, and investigators. Mathew was also previously an associate at Sullivan & Cromwell LLP where he worked extensively on complex commercial litigation, securities litigation, enforcement, and internal investigations.

Mathew earned a B.A. from Washington State University in 2012, and a J.D., *magna cum laude*, from Boston University School of Law in 2017. Mathew is admitted to practice in New York (2018).

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FREDERICK WILLIAM GREEN *Associate*	New York	• Email: wgreen@bfalaw.com • Tel: +1 212 789 1348 • www.bfalaw.com /professionals/frederick-green

Frederick William Green joined the firm in 2014 and is currently an Associate who assists with a number of the firm's securities litigation cases, including as a member of the team prosecuting the case against Teva Pharmaceutical Industries, Ltd.

Will previously contributed to the Firm's discovery efforts in *In re Genworth Financial Inc. Securities Litigation*, managing the staff attorney discovery team from inception to settlement. The case alleged that Genworth, the largest seller of long-term care insurance in the U.S., misled investors about the true state of its deteriorating long-term care business. On May 1, 2015, U.S. District Judge James R. Spencer denied defendants' motion to dismiss. The parties reached a settlement of $219 million, establishing a record for securities litigations in the Eastern District of Virginia.

Will also contributed to the Firm's discovery efforts in the securities litigation against Weatherford International Ltd. on behalf of the Anchorage Police & Fire Retirement System (*Freedman v. Weatherford International Ltd., et al.*). The case alleged that Weatherford, which made three restatements of audited financials totaling approximately $1 billion, misled investors about the Company's tax accounting. After more than three years of intense litigation, including 22 depositions and complex expert testimony, plaintiffs reached an outstanding recovery of $120 million on behalf of shareholders.

Will received a B.A. from Union College (2009) and a J.D. from Washington University in St. Louis (2013). Will is admitted to practice in New York (2015) and Massachusetts (2013).

FRANKLYN WILLIAMS *Senior Projects Attorney*	New York	• Email: fwilliams@bfalaw.com • Tel: +1 212 789 1357 • www.bfalaw.com /professionals/franklyn-williams

Franklyn Williams brings nearly a decade of legal experience to his role as a Senior Projects Attorney. Franklyn is an active member of the Firm's securities litigation teams, including the team prosecuting the case against Teva Pharmaceutical Industries, Ltd.

Prior to joining BFA, Franklyn served as a Team Leader on a variety of complex litigations. He was also contracted to serve as part of the team at Robbins Geller

Rudman & Dowd that litigated *Beaver County Emps' Ret. Fund v. Tile Shop Holdings, Inc.*, resulting in a $9.5 million recovery.

Franklyn received his J.D. in 2006 from Boston University School of Law where he served as the Editor in Chief of the Boston University International Law Journal and participated in the Civil Litigation Clinic. Franklyn earned his BA in 2003 from Cornell University with a minor in Law & Society and majors in both government and philosophy. While attending Cornell, Franklyn externed with Judge Patricia Anne Williams of the Bronx County Supreme Court and summer interned with both NYC HRA Bureau of Fraud Investigation and NYC ACS Legal Division.

Franklyn is admitted to practice in New York (2008) and New Jersey (2007).

JANELLE MOODY *Projects Associate*	Oakland	• Email: jmoody@bfalaw.com • Tel: +1 415 445 4006 • www.bfalaw.com/janelle-moody

Janelle Moody joined the Firm in 2016 and is currently a Projects Associate in BFA's Oakland office. Janelle brings extensive experience in all phases of litigation to the Firm. She currently plays a significant role in managing discovery in *the In re Inductors Antitrust Litigation* and *In re Facebook, Inc. Consumer Privacy User Profile Litigation*. Her role of providing strategic discovery advice was integral in the negotiation of electronic discovery issues in the *In re Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices, and Products Litigation*.

Janelle earned her J.D. from Northwestern School of Law at Lewis and Clark College (1997) and is admitted to practice in California (2003) and Oregon (1998).

KATHERINE SULLIVAN *Projects Associate*	Oakland	• Email: ksullivan@bfalaw.com • Tel: +1 415 445 4014 • www.bfalaw.com/katherine-sullivan

Katherine Sullivan ("Kasey") joined the Firm in 2016 and is currently a Projects Associate in BFA's Oakland office. Kasey brings nearly two decades of experience to BFA. She currently plays a significant role in managing third party discovery in the *In re Domestic Airlines Travel Antitrust Litigation* and *In re Facebook, Inc. Consumer Privacy User Profile Litigation*.

Kasey earned her J.D. from Northwestern University School of Law (1999), and is admitted to practice in California (2000).

DAVID WAX *Staff Associate*	New York	• Email: dwax@bfalaw.com • www.bfalaw.com /professionals/david-wax

David Wax has significant experience litigating complex matters in New York Federal and State Courts.

David focuses his practice on the discovery phase of complex commercial litigations and has played an integral role supporting the litigation teams in the Firm's securities, antitrust and consumer class action practice groups, including as a member of the team prosecuting a securities action against Teva Pharmaceutical Industries, Ltd.

Prior to joining BFA, David was an associate at a large New York law firm where he focused his practice on class actions, insurance and contractual disputes, and complex judicial foreclosures.

David earned his J.D. from Fordham University School of Law (2008) and is admitted to practice in New York (2009) and the Southern and Eastern Districts of New York (2009).

SYLVIA SUM *Staff Associate*	Oakland	• Email: ssum@bfalaw.com • Tel: +1 415 445 4003

Sylvia Sum joined the firm in 2016, and is a staff associate at BFA's Oakland office where she focuses on prosecuting consumer and antitrust class actions. Sylvia brings over twenty years of experience to BFA. She has played a meaningful role in litigating several matters including *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation* and *In re Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices, and Products Liability Litigation*. In each of these litigations ,Sylvia's German language skills have been critical in analyzing the evidence underlying plaintiffs' claims.

Sylvia earned her J.D. from the UC Los Angeles School of Law (1997), and is admitted to practice in California (2000) and Oregon (1997).

GLEN TSURUDOME *Staff Associate*	Oakland	• Email: gtsurudome@bfalaw.com • Tel: +1 415 789 1348

Glen Tsurudome joined BFA's Oakland office in 2019. Glen brings over a decade of experience to his role as staff associate, where he focuses on prosecuting consumer

and antitrust class actions. Glen is a key member of the team litigating the *In re Inductors Antitrust Litigation* where his Japanese language skills have played a critical role in investigating plaintiffs' claims.

Glen received a B.A. (2005) from the UC San Diego and a J.D. from the University of San Francisco School of Law (2005). Glen has also completed the Yamasa Institute Academic Intensive Japanese Program (2012). Glen is admitted to practice in California (2005).

CHRISTOHER CAPUOZZO *Director, Client Data and Claims*	New York	• Email: ccapuozzo@bfalaw.com • Tel: +1 212 789 2307 • www.bfalaw.com /professionals/christopher-capuozzo

Christopher Capuozzo is BFA's Director of Client Data and Claims. He joined BFA in January 2017 with more than twelve years of experience in the securities class action and claims filing fields. As Director of the Firm's Data Analysis team, Chris contributes to BFA's Global Investment Monitoring Program and analyzes clients' loss exposure to financial fraud across the global marketplace. He also is a member of the Firm's Claims Filing team and is instrumental in the preparation of claim documents on behalf of eligible clients. His financial analysis assists in the identification and evaluation of potential opportunities for the Firm's clients to serve as lead plaintiff, participate in direct actions, join actions outside the United States, and recover from settled matters.

Prior to joining BFA, Chris was a Data Analytics Manager at a securities litigation firm, where he managed a team of analysts providing portfolio monitoring services to the Firm's client base, and was also a Research Analyst at the Goal Group of Companies, a global leader in class action recovery services. Chris began his career at a prominent claims administrator. During his time there, he processed electronically filed claims from leading financial institutions, and advised the company's software developers about what fields to include and how to structure their secure claim filing website for institutional investors.

VICTORIA TSE *Senior Data Analyst*	New York	• Email: vtse@bfalaw.com • Tel: +1 212 789 3601 • www.bfalaw.com /professionals/victoria-tse

Victoria Tse joined BFA in 2020 as a Senior Data Analyst. Victoria monitors client portfolios to identify and evaluate investment losses, exposure to financial fraud, and potential opportunities for BFA clients to serve as lead plaintiff, participate in direct actions, join class action litigations in non-U.S. jurisdictions, and recover from

class action settlements. In assessing client exposure, she evaluates recovery opportunities for clients based on court-approved loss methodologies for a wide variety of securities fraud allegations. Victoria also helps oversee the acquisition of client investment data from custodians on a monthly basis, as well as maintains clients' accounts by performing annual reviews.

Prior to joining the Firm, Victoria was a senior data analyst at a securities litigation firm.

Elaine Rivera *Data Analyst*	**New York**	• Email: erivera@bfalaw.com • Tel: +1 212 789 3604 • www.bfalaw.com /professionals/elaine-rivera

Elaine Rivera monitors and analyzes client exposure to financial fraud and evaluates investment losses and potential opportunities for clients to serve as lead plaintiff. In assessing client exposure, she evaluates recovery opportunities for clients based on court-approved loss methodologies for a wide variety of securities fraud allegations. Elaine also assists with determining client eligibility to participate in class action settlements and submitting the necessary claim documents on behalf of eligible clients.

Prior to joining BFA, Elaine was a Data Analyst at a securities litigation firm.

Elaine received a Bachelor of Arts from Baruch College.

Jeffrey Esperance *Data Analyst*	**New York**	• Email: jesperance@bfalaw.com • Tel: +1 212 789 2306 • www.bfalaw.com /professionals/ jeffrey-esperance

Jeffrey Esperance monitors and analyzes client exposure to financial fraud and evaluates investment losses and potential opportunities for clients to serve as lead plaintiff. In assessing client exposure, he evaluates recovery opportunities for clients based on court-approved loss methodologies for a wide variety of securities fraud allegations.

Jeffrey also assists with determining client eligibility to participate in international securities cases and in class action settlements.

Prior to joining BFA, Jeffrey was a Data Analyst at a securities litigation firm.

Jeffrey received a Bachelor of Arts from Baruch College.

BLEICHMAR FONTI & AULD LLP

Umang Narayan Suhalka *Data Analyst*	New York	• Email: usuhalka@bfalaw.com • Tel: +1 212 789 3605 • www.bfalaw.com /professionals/Umang-Suhalka

Umang Narayan Suhalka is a Data Analyst at BFA, where he maintains BFA's proprietary database, monitors and analyzes client exposure to financial fraud, and evaluates investment losses and potential opportunities for clients to serve as lead plaintiff. In assessing client exposure, he evaluates recovery opportunities for clients based on court-approved loss methodologies for a wide variety of securities fraud allegations.

Umang also assists with determining client eligibility to participate in international securities cases and in class action settlements.

Prior to joining BFA, Umang interned at a financial services firm.

Umang received a Bachelor of Engineering in Computer Science from the University of Pune and a Masters of Science in Information Technology from New York University.

For more information, please visit: www.bfalaw.com

EXHIBIT B

In re Teva Securities Litigation, No. 3:17-cv-00558 (SRU)

Summary of BFA Timekeeper Qualifications, Experience, and Role in the Action

PARTNERS

Javier Bleichmar (1,126.00 hours): Mr. Bleichmar is a founding Partner of BFA and leads the firm's U.S. Case Evaluation and U.S. Securities Litigation teams. He is a 1998 graduate of Columbia University Law School. Since the inception of the matter, Mr. Bleichmar was actively involved in (a) preparing lead plaintiff motions, (b) drafting the complaints, (c) briefing Defendants' motions to dismiss, (d) Anchorage's document collection, (e) developing litigation strategy throughout the Action, (f) preparing the consolidation motion, (g) preparing the class certification motion, (h) working with the Class's experts, (i) preparing motions for partial summary judgment and to exclude Defendants' experts, and (j) leading the mediation process and settlement negotiations.

Joseph Fonti (7,845.00 hours): Mr. Fonti is a founding Partner of BFA and leads the firm's U.S. Securities Litigation team. He is a 1999 graduate of the New York University Law School. From the inception of the matter, Mr. Fonti oversaw the day-to-day prosecution of the Action, presented oral argument on all motions and at all status and discovery conferences, took or defended 17 depositions, and led and oversaw all aspects of the case, including: (a) preparing the lead plaintiff motions, (b) drafting all complaints, (c) opposing Defendants' motions to dismiss, (d) interviewing Ontario Teachers' document custodians and coordinating the preservation and collection of documents, (e) setting discovery and litigation strategy, (f) overseeing the preparation of all motions and status conference submissions, (g) preparing the class certification motion, (h) defending two depositions of Class Representatives' class certification expert and deposing one of Defendants' class certification experts, (i) deposing six fact witnesses, including four of the seven Individual Defendants, (j) defending four depositions of the Class's merits experts and deposing two of Defendants' merits experts, (k) defending Ontario Teachers' and Anchorage's Rule 30(b)(6) depositions, (l) preparing the motion for partial summary judgment and *Daubert* motions to exclude Defendants' merits experts, (m) leading the mediation process and settlement negotiations, and (n) preparing the preliminary approval and final approval motion papers, including the Plan of Allocation, settlement notice documents, and related submissions.

Evan Kubota (4,667.75 hours): Mr. Kubota is a Partner at BFA and a 2010 graduate of Harvard Law School. Since August 2019, Mr. Kubota was primarily involved in (a) drafting and negotiating the consolidation motion, (b) preparing discovery requests and responses, (c) discovery meet-and-confers, (d) researching and drafting the class certification papers, (e) drafting motions to compel and status conference submissions, (f) deposition strategy, (g) deposing two of Defendants' class certification experts, (h) deposing 10 fact witnesses, including three Individual Defendants, (i) working with the Class's experts, (j) defending the merits deposition of the Class's damages expert and deposing three of Defendants' merits experts, (k) drafting the motion for partial summary judgment and *Daubert* motions to exclude Defendants' merits experts, (l) preparing and submitting mediation papers and formulating mediation and settlement strategy, and (m) preparing the preliminary approval and final approval motion papers, including the

Plan of Allocation, settlement notice documents, and related submissions. Mr. Kubota was elected a partner of BFA effective January 1, 2022, and prior to that was an associate of the firm.

Nancy Kulesa (88.25 hours): Ms. Kulesa is a Partner at BFA and a 2001 graduate of the University of Connecticut School of Law. Since October 2019, Ms. Kulesa was involved in third-party discovery, including preparing subpoenas to wholesalers, competitors, and others based on analysis of Defendants' document productions, and the related meet and confer process.

Wilson Meeks III (3,240.25 hours): Mr. Meeks was a Partner at BFA through May 2019 and graduated from Columbia Law School in 2007. Mr. Meeks was primarily involved in (a) drafting lead plaintiff motions, (b) drafting the complaints, (c) opposing Defendants' motions to dismiss, (d) interviewing Ontario Teachers' current and former employees, (e) drafting written discovery, and (f) preparing discovery and litigation strategy.

OF COUNSEL

Kendra Schramm (607.75 hours): Ms. Schramm is Of Counsel at BFA and a 2011 graduate of Brooklyn Law School. Ms. Schramm was involved in drafting the initial Securities Act and Consolidated Class Action Complaints and related research and drafting the oppositions to Defendants' first set of motions to dismiss.

SPECIAL COUNSEL

Sara Simnowitz (719.25 hours): Ms. Simnowitz is Special Counsel at BFA and a 2001 graduate of the University of Chicago Law School. Ms. Simnowitz was primarily involved in (a) drafting the Consolidated Class Action Complaint, (b) opposing Defendants' first set of motions to dismiss, (c) discovery efforts, (d) overseeing the staff attorneys regarding discovery analysis and document review, and (e) strategy in preparing for fact witness depositions.

ASSOCIATES

Benjamin Burry (4,426.25 hours): Mr. Burry is an Associate at BFA and a 2010 graduate of the University of Chicago Law School. Since January 2020, Mr. Burry was involved in all aspects of discovery, including (a) preparing and analyzing discovery requests and responses, (b) discovery meet-and-confers, (c) leading third-party discovery efforts, including conferring with counsel for more than 20 subpoenaed entities and drafting related correspondence, (d) preparing and filing an action to enforce Plaintiffs' subpoena to a generic drug manufacturer, with ten related status submissions, resulting in the production of 1.8 million pages of documents, (e) analyzing Defendants' document productions, particularly with regard to collusion and spoliation issues, including identifying missing text messages, (f) drafting status submissions regarding discovery disputes, (g) taking three fact witness depositions, (h) securing declarations from three generic drug manufacturers regarding collusion with Teva, (i) working with the Class's merits experts, (j) drafting extensive responses to contention interrogatories seeking all facts supporting the Class's claims, and (k) researching and drafting *Daubert* motions to exclude Defendants' merits experts.

Nicholas Dennany (1,339.00 hours): Mr. Dennany is an Associate at BFA and a 2004 graduate of the University of Florida, Levin College of Law. Mr. Dennany was primarily involved in

(a) evaluating the claims against Defendants during the early stages of the litigation, (b) preparing and submitting lead plaintiff papers, (c) drafting the complaints and related research, and (d) drafting and conducting extensive legal research in connection with the oppositions to Defendants' motions to dismiss.

William Geraci (2,200.25 hours): Mr. Geraci was an Associate at BFA through December 2018 and is a 2005 graduate of The George Washington University Law School. Mr. Geraci was primarily involved in (a) evaluating the claims against Defendants in the early stages of the litigation, (b) preparing lead plaintiff motions, (c) drafting the complaints, (d) leading the research regarding Teva's generic drug price increases during the Class Period in connection with preparation of the complaints, (e) coordinating with Plaintiffs' consulting expert regarding generic drug pricing in connection with preparation of the complaints, and (f) drafting and conducting legal research in connection with the oppositions to Defendants' motions to dismiss.

William Green (3,434.25 hours): Mr. Green is an Associate at BFA and a 2013 graduate of Washington University in St. Louis School of Law. Mr. Green was primarily involved in (a) research for lead plaintiff submissions, (b) drafting and conducting extensive legal and factual research in connection with the complaints, (c) performing legal research to assist in preparing the oppositions to Defendants' motions to dismiss, (d) analyzing document productions from Defendants and third parties, (e) leading review teams, (f) coordinating logistical preparations for remote depositions, including the delivery of potential deposition exhibits to witnesses and their counsel, (g) preparing initial document summaries for fact depositions, and (h) reviewing and proofing motions and submissions to the Court.

Mathew Hough (2,252.00 hours): Mr. Hough is an Associate at BFA and graduated from Boston University School of Law in 2017. Since August 2020, Mr. Hough was primarily involved in (a) supervising the review team and coordinating preparation for fact witness depositions, (b) analyzing document productions from Defendants and third parties and identifying deficiencies, (c) preparing initial fact witness deposition outlines, (d) second-chairing fact and expert depositions, (e) drafting and conducting extensive legal research in connection with numerous status conference submissions, (f) working extensively with the Class's experts, particularly the Class's drug pricing and competition expert, (g) drafting an order of proof supporting the Class's claims based on review of testimony, exhibits, and documents, and (h) researching and drafting the motion for partial summary judgment and *Daubert* motions to exclude Defendants' merits experts.

Jake Nachmani (1,427.25 hours): Mr. Nachmani was an Associate at BFA from May 2018 through August 2019, and graduated from the Georgetown University Law Center in 2010. Mr. Nachmani was primarily involved in (a) drafting the Amended Consolidated Class Action Complaint, (b) researching and drafting the oppositions to Defendants' motions to dismiss the Amended Consolidated Class Action Complaint, (c) researching and drafting Class Representatives' anticipated consolidation motion, and (d) drafting discovery requests.

Thayne Stoddard (4,976.75 hours): Mr. Stoddard is an Associate at BFA and a 2014 graduate of Duke University School of Law. Since February 2018, Mr. Stoddard was primarily involved in (a) drafting the Amended Consolidated Class Action Complaint, (b) conducting legal research and drafting oppositions to Defendants' motions to dismiss the Amended Consolidated Class Action

Complaint, (c) drafting discovery requests, (d) leading the collection, review, and production of Class Representatives' documents, (e) leading the formation and supervision of the review team, (f) meeting and conferring with counsel for Defendants and third parties concerning discovery responses, (g) researching and drafting status conference submissions and motions to compel, (h) taking the depositions of four fact witnesses, (i) preparing fact witness deposition outlines and second-chairing fact and expert depositions, (j) preparing Ontario Teachers' and Anchorage's Rule 30(b)(6) witnesses for, and second-chairing, their depositions, (k) working with the Class's experts, (l) drafting the order of proof and related discovery responses collecting all facts that supported the Class's claims, (m) preparing the motions for partial summary judgment and to exclude Defendants' experts, and (n) drafting settlement notice documents and final approval papers.

Matthew Weiler (64.00 hours): Mr. Weiler was an Associate at BFA from July 2017 through August 2019 and graduated from the University of Michigan Law School in 2004. Mr. Weiler was a member of BFA's Antitrust practice group, and assisted in identifying and engaging antitrust consulting experts and provided legal analysis regarding antitrust claims in connection with the drafting of the complaints.

SENIOR PROJECTS ASSOCIATE

Franklyn Williams (5,989.75 hours): Mr. Williams is a Senior Projects Associate at BFA and a 2006 graduate of Boston University School of Law. Since August, 2017, Mr. Williams was primarily involved in (a) the research and drafting of the complaints, (b) preparing the oppositions to Defendants' motions to dismiss, (c) analysis of fact discovery, including Defendants' and third parties' productions and Class Representatives' documents, (d) preparation for depositions, and (e) preparation of motions, submissions, and other filings. In addition, throughout the litigation, Mr. Williams tracked developments in numerous related actions, including other cases against Teva and generic pharmaceutical manufacturers, and advised more senior team members of substantive developments. He was also responsible for monitoring and analyzing public reporting, SEC filings, and media coverage concerning Teva.

PROJECTS ASSOCIATE

Peter Patrikios (1,640.75 hours): Mr. Patrikios is a Projects Associate at BFA and a 2005 graduate of Quinnipiac University School of Law. Mr. Patrikios was primarily involved in fact discovery, including review and analysis of documents produced by Defendants and various third parties. Mr. Patrikios took a lead role in the preparation for several depositions by reviewing documents, preparing document compilations, and drafting portions of deposition outlines, including for the deposition of Defendant Peterburg.

STAFF ASSOCIATE

David Wax (3,231.75 hours): Mr. Wax is a Staff Associate at BFA and a 2008 graduate of Fordham University School of Law. Mr. Wax took a lead role in the review and analysis of documents collected from Ontario Teachers' and Anchorage and document productions from Defendants and third parties. Mr. Wax also assisted in the supervision of staff attorneys conducting discovery analysis and in the creation of an extensive key document chronology.

He also led teams of staff attorneys in the preparation for several depositions by reviewing documents, preparing document compilations, and drafting portions of deposition outlines.

STAFF ATTORNEYS

Timothy Coleman (1,737.25 hours): Mr. Coleman is a Staff Attorney at BFA and graduated from Fordham University School of Law in 1987. Mr. Coleman has more than twenty years of experience reviewing and analyzing document discovery in complex cases. Mr. Coleman was primarily involved in fact discovery, including review and analysis of documents produced by Defendants and various third parties. He also participated in the preparation for several depositions by reviewing documents.

Joseph Guglielmelli (3,602.00 hours): Mr. Guglielmelli is a Staff Attorney at BFA and a 1981 graduate of Fordham University School of Law. Mr. Guglielmelli has more than ten years of experience reviewing and analyzing document discovery in complex cases. Mr. Guglielmelli was primarily involved in fact discovery, including review and analysis of documents produced by Defendants and various third parties. He also led teams of other Staff Attorneys in the preparation for several depositions by reviewing documents, preparing document compilations, and drafting portions of deposition outlines, including for the depositions of Defendants Olafsson (President and CEO, Global Generic Medicines) and Griffin (SVP and Chief Accounting Officer).

Kelsey Jack (2,007.00 hours): Mr. Jack is a Staff Attorney at BFA and a 2007 graduate of the Georgetown University Law Center. Mr. Jack has more than ten years of experience reviewing and analyzing document discovery in complex cases and internal investigations. Mr. Jack was primarily involved in fact discovery, including review and analysis of documents produced by Defendants and various third parties. In particular, Mr. Jack identified and analyzed internal financial reports and forecasts produced by Defendants. He also participated in the preparation for several depositions by reviewing documents.

Fredric Leslie (1,023.25 hours): Mr. Leslie was a Staff Attorney at BFA and graduated from Boston University School of Law in 1970. Mr. Leslie has more than seven years of experience reviewing and analyzing document discovery in complex cases. Mr. Leslie was primarily involved in fact discovery, including review and analysis of documents produced by Defendants and various third parties. He also participated in the preparation for several depositions by reviewing documents, including the depositions of Defendants Vigodman (CEO), Desheh (CFO), and Griffin (SVP and Chief Accounting Officer).

Scott Manrose (1,897.25 hours): Mr. Manrose was a Staff Attorney at BFA and graduated from the University of Illinois Urbana-Champaign College of Law in 2003. Mr. Manrose has more than ten years of experience reviewing and analyzing document discovery in complex cases. Mr. Manrose was primarily involved in fact discovery, including review and analysis of documents produced by Defendants and various third parties. In particular, Mr. Manrose analyzed documents that Defendants redacted for privilege and logged improper redactions. He also participated in the preparation for several depositions by reviewing documents and preparing deposition exhibits.

Cynthia Markham (1,587.75 hours): Ms. Markham is a Staff Attorney at BFA and graduated from Rutgers Law School in 2012. Ms. Markham has more than five years of experience reviewing

and analyzing document discovery in complex cases. Ms. Markham was primarily involved in fact discovery, including review and analysis of documents produced by Defendants and various third parties. She also participated in the preparation for several depositions by reviewing documents, including the depositions of Defendants Vigodman (CEO), Desheh (CFO), and Griffin (SVP and Chief Accounting Officer).

Craig Messing (2,932.75 hours): Mr. Messing was a Staff Attorney at BFA and graduated from Rutgers Law School in 2010. Mr. Messing has more than nine years of experience reviewing and analyzing document discovery in complex cases. Mr. Messing was primarily involved in fact discovery, including review and analysis of documents produced by Defendants and various third parties. In particular, Mr. Messing identified and collected the periodic financial reporting sent to Defendants regarding Teva's generic drug segment, which included the impact of price increases. He also participated in the preparation for several depositions by reviewing documents and conducting targeted searches for important documents.

Luz Moreno (222.50 hours): Ms. Moreno was a Staff Attorney at BFA and graduated from St. John's University School of Law in 1982. Ms. Moreno has more than nineteen years of experience reviewing and analyzing document discovery in complex cases. Ms. Moreno was primarily involved in fact discovery, including review and analysis of documents produced by Defendants and various third parties. In particular, Ms. Moreno assisted in identifying documents and analyses provided to Teva's Board of Directors.

Steven Reiness (1,545.25 hours): Mr. Reiness was a Staff Attorney at BFA and graduated from the George Washington University Law School in 1997. Mr. Reiness has more than ten years of experience reviewing and analyzing document discovery in complex cases. Mr. Reiness was primarily involved in fact discovery, including review and analysis of documents produced by Defendants and various third parties. He also participated in the preparation for nine depositions by reviewing documents.

Justin Rosenberg (341.50 hours): Mr. Rosenberg was a Staff Attorney at BFA and graduated from the University of Miami School of Law in 2003. Mr. Rosenberg has more than 10 years of experience reviewing and analyzing document discovery in complex cases. Mr. Rosenberg was primarily involved in fact discovery, including review and analysis of documents produced by Defendants and various third parties. He also participated in the preparation for several depositions by reviewing documents.

LAW CLERK

Kyle Ezring (236.00 hours): Mr. Ezring was a Summer Associate and Law Clerk. Mr. Ezring was primarily involved in researching various legal issues related to the motion for class certification, reviewing and analyzing documents produced by Defendants, and researching legal issues concerning various discovery-related disputes.

EDISCOVERY MANAGER

Jennifer Jurmark (2,935.00 hours): Ms. Jurmark is BFA's eDiscovery Manager. Ms. Jurmark has 14 years of experience managing eDiscovery projects. Since March 2020, Ms. Jurmark was primarily involved in managing the technical aspects of document discovery under the supervision

of BFA attorneys, including coordinating the processing of incoming document productions, organizing the documents for review, and crafting searches in connection with discovery analysis, deposition preparations, and quality check reviews.

PARALEGALS

Masiel Feliz (1,332.75 hours): Ms. Feliz is a legal assistant at BFA. She was primarily involved in compiling and organizing documents for use in connection with motions, status conference submissions, and at depositions. She was also involved in maintaining records of BFA's correspondence with counsel for the Defendants and third parties.

DIRECTOR OF OPERATIONS

Michael Russo (745.50 hours): Mr. Russo is BFA's Director of Operations, and oversaw all operational facets of the litigation, including retention of document and deposition hosting vendors, court reporter services, vendors to provide printing services abroad, and operational logistics. Mr. Russo was also involved in preparing, formatting, and finalizing all filings in the case, including those related to the complaints, Defendants' motions to dismiss, consolidation, class certification, status conferences, summary judgment, and settlement.

DATA TEAM

Christopher Capuozzo (107.25 hours): Mr. Capuozzo is BFA's Director of Client Data and Claims. He assisted in calculations of Ontario Teachers' losses for purposes of the lead plaintiff motions, calculated Anchorage's losses during the Class Period in connection with the complaints, analyzed transaction data regarding other plaintiffs, and reviewed and analyzed Ontario Teachers' and Anchorage's trading records in connection with Defendants' discovery requests.

Janel Losoya (74.75 hours): Ms. Losoya was BFA's Director of Data Analysis through June 2019. She assisted in calculations of Ontario Teachers' losses during the Class Period in connection with the lead plaintiff motions, calculated Anchorage's losses during the Class Period in connection with the complaints, and analyzed trading data regarding opt-out plaintiffs to assist in litigation strategy.

EXHIBIT C

In re Teva Securities Litigation, No. 3:17-cv-00558 (SRU)

BFA Timekeeper Lodestar Summary

Inception through and including April 14, 2022

Name	LS Grad. Year	Position	Current Rate	Hours	Lodestar
Bleichmar, Javier	1998	P	$985	1,126.00	$1,109,110.00
Fonti, Joseph	1999	P	$985	7,845.00	$7,727,325.00
Kubota, Evan	2010	P	$800	4,667.75	$3,734,200.00
Kulesa, Nancy	2001	P	$950	88.25	$83,837.50
Meeks, Wilson	2007	P	$740	3,240.25	$2,397,785.00
Schramm, Kendra	2011	OC	$780	607.75	$474,045.00
Simnowitz, Sara	2001	SC	$780	719.25	$561,015.00
Burry, Benjamin	2010	A	$690	4,426.25	$3,054,112.50
Dennany, Nicholas	2004	A	$605	1,339.00	$810,095.00
Geraci, William	2005	A	$510	2,200.25	$1,122,127.50
Green, William	2013	A	$560	3,434.25	$1,923,180.00
Hough, Mathew	2017	A	$605	2,252.00	$1,362,460.00
Nachmani, Jake	2010	A	$560	1,427.25	$799,260.00
Stoddard, Thayne	2014	A	$690	4,976.75	$3,433,957.50
Weiler, Matthew	2004	A	$625	64.00	$40,000.00
Williams, Franklyn	2006	SP	$495	5,989.75	$2,964,926.25
Patrikios, Peter	2005	PA	$415	1,640.75	$680,911.25
Wax, David	2008	SAS	$415	3,231.75	$1,341,176.25
Coleman, Timothy	1987	SA	$390	1,737.25	$677,527.50
Guglielmelli, Joseph	1981	SA	$450	3,602.00	$1,620,900.00
Jack, Kelsey	2007	SA	$415	2,007.00	$832,905.00
Leslie, Fredric	1970	SA	$390	1,023.25	$399,067.50
Manrose, Scott	2003	SA	$360	1,897.25	$683,010.00
Markham, Cynthia	2012	SA	$395	1,587.75	$627,161.25
Messing, Craig	2010	SA	$360	2,932.75	$1,055,790.00
Moreno, Luz	1982	SA	$390	222.50	$86,775.00
Reiness, Steven	1997	SA	$390	1,545.25	$602,647.50
Rosenberg, Justin	2003	SA	$415	341.50	$141,722.50
Ezring, Kyle	NA	LC	$330	236.00	$77,880.00
Jurmark, Jennifer	NA	ED	$425	2,935.00	$1,247,375.00
Feliz, Masiel	NA	PL	$350	1,332.75	$466,462.50
Russo, Michael	NA	DO	$445	745.50	$331,747.50
Capuozzo, Christopher	NA	DT	$390	107.25	$41,827.50
Losoya, Janel	NA	DT	$390	74.75	$29,152.50
TOTAL				**71,604.00**	**$42,541,475.00**

Legend
P – Partner
OC – Of Counsel
SC – Special Counsel
A – Associate
SP – Senior Projects Associate
PA – Projects Associate
ED – eDiscovery Manager
SAS – Staff Associate
SA – Staff Attorney
LC – Law Clerk
PL – Paralegal
DO – Director of Operations
DT – Data Team

EXHIBIT D

In re Teva Securities Litigation, No. 3:17-cv-00558 (SRU)

BFA Expense Summary

Inception through and including April 14, 2022

CATEGORY		***AMOUNT***
Computer Research		$45,011.81
Court Reporter Services and Transcript Fees		$222,736.94
Expert Fees		$7,269,761.31
FIDERES Partners LLP	$50,463.33	
Global Economics Group, LLC	$43,715.00	
Gryphon Strategies	$83,834.70	
Hemming Morse LLP	$1,139,013.92	
JFM Litigation Consulting, LLC	$73,937.50	
Keystone Strategy LLC	$1,540,695.20	
Legal Economics, LLC	$27,012.50	
NERA Economic Consulting	$4,279,009.77	
Stroz Friedberg LLC	$32,079.39	
Litigation Support Vendor Fees		$1,789,846.78
The Focal Point	$28,397.88	
Translation Service Providers	$787.50	
ONE Discovery Inc.	$9,760.00	
TrustPoint.One	$1,749,628.81	
Transperfect	$1,272.59	
Outside Counsel		$99,693.37
Mediation Fees		$118,989.75
External Photocopies		$18,129.51
Postage & Overnight Mail		$16,193.32
Service and Filing Fees		$7,891.10
Accommodations		$43,062.63
Meals		$17,017.75
Local Transportation		$20,966.46
Out-of-Town Transportation		$15,537.71
The JNL Firm, LLC		$5,000.00
TOTAL		***$9,689,838.44***

EXHIBIT E

In re Teva Securities Litigation, No. 3:17-cv-00558 (SRU)

Summary of BFA Canada Timekeeper Qualifications, Experience, and Role in the Action

Dominic Auld (74.50 hours): Mr. Auld is a founding Partner of Bleichmar Fonti & Auld Canada. He is a 1998 graduate of Lewis and Clark Law School. Since inception, Mr. Auld was involved in (a) the lead plaintiff motions, (b) the complaints and opposing Defendants' motions to dismiss, (c) coordinating Ontario Teachers' document collection and interviews with custodians, (d) developing litigation strategy throughout the Action, particularly with regard to Class Representatives' consolidation motion and the class certification motion, and (e) the mediation process and settlement negotiations.

BFA Canada Timekeeper Lodestar Summary

Inception through and including April 14, 2022

Name	LS Grad. Year	Position	Current Rate	Hours	Lodestar
Auld, Dominic	1998	Partner	$985	74.50	$73,382.50

BFA Canada Expense Summary

Inception through and including April 14, 2022

CATEGORY	*AMOUNT*
Meals	$110.00
Local Transportation	$157.99
Out-of-Town Transportation	$949.87
TOTAL	***$1,217.86***

Exhibit 8

Declaration of Marc Kurzman in Support of Lead Counsel's Motion for Awards of Attorneys' Fees and Litigation Expenses, Filed on Behalf of Carmody Torrance Sandak & Hennessey LLP

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE TEVA SECURITIES LITIGATION	:	No. 3:17-cv-00558 (SRU)
THIS DOCUMENT RELATES TO:	:	All Class Actions

DECLARATION OF MARC KURZMAN IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AWARDS OF ATTORNEYS' FEES AND LITIGATION EXPENSES, FILED ON BEHALF OF CARMODY TORRANCE SANDAK & HENNESSEY LLP

I, Marc Kurzman, hereby declare pursuant to Section 1746 of Title 28 of the United States Code as follows:

1. I am an attorney admitted to practice in this Court and a Partner of Carmody Torrance Sandak & Hennessey LLP ("Carmody"). I have personal knowledge of the matters set forth herein.[1]

2. I respectfully submit this declaration in support of Bleichmar Fonti & Auld LLP's ("Lead Counsel's") motion for awards of attorneys' fees and litigation expenses to describe the work performed, and expenses incurred, by Carmody in connection with prosecuting the above-captioned action (the "Action"). My firm served as Class Liaison Counsel and as local counsel for Class Representatives Ontario Teachers' Pension Plan Board and Anchorage Police & Fire Retirement System (together, "Class Representatives") in the Action.

3. Attached hereto as Exhibit A is Carmody's firm resume for its litigation practice. Carmody has been in existence for over 100 years and has extensive state and federal litigation experience, including in antitrust and securities cases.

[1] Capitalized terms not defined herein have the meanings specified in the Stipulation of Settlement, dated January 18, 2022 (ECF 919-2).

4. Carmody worked closely with Lead Counsel and was involved in this Action from the time it was transferred to this Court in April 2017. Our work included: (a) attending each hearing, (b) advising on strategy, including issues of local practice, (c) reviewing and revising pleadings, motion papers, and other submissions, (d) legal research and discovery analysis, (e) negotiating with the Department of Justice, (f) working to address Defendants' extensive discovery requests, including discovery sought from third parties, particularly in early 2021, and (g) actively participating in the parties' mediation efforts, including strategic advice related to complex insurance issues.

5. Attached hereto as Exhibit B is a list of the Carmody attorneys and staff whose time devoted to the Action is being submitted in support of Lead Counsel's motion, with information about each individual's qualifications, experience, and role in the Action.

6. Exhibit C is a schedule summarizing the amount of time spent by each of the attorneys and professional support staff identified in Exhibit B from the Action's inception through and including April 14, 2022, the rates applicable to each individual, and a lodestar calculation for each individual. This schedule was prepared from contemporaneous daily time records prepared and maintained by Carmody in the ordinary course. I reviewed these time records to confirm their accuracy and the necessity for, and reasonableness of, the time committed to the Action. As a result of this review, reductions were made in the exercise of billing judgment. In addition, all time expended in preparing the application for fees and expenses has been excluded.

7. Following this review and the adjustments made, as set forth in Exhibit C, Carmody devoted 1,501.70 hours to prosecuting this Action. Carmody's total lodestar is $680,678.50. I believe that the time reflected in Carmody's lodestar calculation, as set forth herein, is reasonable

in amount and was necessary for the effective and efficient prosecution and resolution of the Action.

8. As reflected in Exhibit C, as of 2022 the hourly rates for Carmody attorneys and professional support staff range from $225 to $575. In calculating the lodestar, current rates are used for current personnel; for attorneys and professional support staff who are no longer employed by Carmody, the hourly rate used for calculation of the lodestar is the hourly rate for such employee in his or her final year of employment by Carmody.

9. Carmody's rates are the usual and customary rates set by Carmody for each individual, and are the same rates that the firm typically charges clients on a non-contingent basis. Different timekeepers within the same employment category (*e.g.*, partner, associate) may have different rates depending on their respective years of experience, years at the firm, years in current position, relevant experience, relevant expertise, or other factors.

10. Exhibit D provides a summary by category of the expenses Carmody incurred in connection with the prosecution of this Action, totaling $4,737.82. The information provided in Exhibit D is based on information maintained contemporaneously and in the ordinary course by my firm, including receipts, invoices, expense vouchers, check records, and similar documents. In preparing this declaration and Exhibit D, I have reviewed these records to confirm the accuracy of the expenses incurred, as well as the reasonableness of and necessity for those expenses.

11. I believe that Exhibit D is an accurate record of the expenses incurred by my firm, and that these expenses were fair and reasonable and were necessary for the efficient and effective prosecution of this Action. Further, these expenses are all of a type that my firm would typically bill to a fee-paying client.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: Stamford, Connecticut
April 27, 2022

By: */s/ Marc Kurzman*
Marc Kurzman

EXHIBIT A

In re Teva Securities Litigation, No. 3:17-cv-00558 (SRU)

Carmody Firm Litigation Resume

Litigation Overview

Carmody has one of the most respected and diverse litigation practices in the Northeast. We have extensive experience in litigating intellectual property, antitrust, securities, product liability, real estate, health care, employment, environmental issues, construction, workout and creditors' rights, insurance, securities and contract matters.

Our Litigation team is led by prominent and skilled trial lawyers and comprises litigators that have been inducted as fellows of the prestigious American College of Trial Lawyers, certified as trial specialists by the National Board of Trial Advocacy, and have served as presidents of such groups as the Connecticut Defense Lawyers Association and the Connecticut Trial Lawyers Association.

Commercial Litigation

Carmody regularly represents Fortune 500 companies, mid-sized, and family businesses in all types of commercial litigation. We take special pride in our successful work in high-stakes, bet-the-company lawsuits. We also counsel business clients as to potential claim exposure and prevention and legal developments affecting their businesses.

We have successfully represented numerous clients in diverse matters involving:

- Contract disputes
- Corporate split-ups
- Distributorship and franchise disputes
- Business fraud claims
- Securities litigation
- Criminal and grand jury matters relating to commercial issues
- Insurance coverage disputes
- Commercial landlord and tenant disputes
- Claims of constructive trust
- Investor litigation
- Antitrust litigation
- Partnership and closely held business disputes

Federal Court Experience

We regularly appear in the federal courts, not simply in the District of Connecticut and the Second Circuit, but in the Southern and Eastern Districts of New York as well as in cases pending in the Eastern District of Pennsylvania, the Eastern District of Virginia and the Middle District of Florida. Our litigators regularly try civil and criminal cases to juries and to the bench. We most often appear as lead counsel in these cases in the District of Connecticut but will appear as local counsel as well where the client has trusted out-of-state counsel who appears pro hac vice.

A few of the areas of law our lawyers have litigated in federal courts follow.

Antitrust Litigation

Our partners have been involved in a number of federal and state antitrust claims, both as lead and local counsel. Carmody lawyers have guided clients through government subpoenas in the milk, road paving, automobile parts, pipe lining and sundry other industries. When the government or private parties have

sued, we have defended clients against price-fixing claims, Robinson Pattman Act claims, and tying claims in federal courts throughout the country. The suits have ranged in size from representing a state claim for bid rigging in the school lunch program to defense of the lead defendant against criminal and civil claims of engaging in a worldwide price fixing scheme in the Nitrile Butadiene Rubber (NBR) industry, that included market players from Mexico and Korea. In one circumstance, we were able to have our client obtain a substantial reduction in sentence by becoming an early co-operator in the investigation and went on to defend the client civilly in the class actions which followed. Within the last several months one of our partners has helped an international services firm headquartered in Asia to respond to a subpoena in the DOJ's latest initiative, stamping out "no poach" agreements. We have also obtained civil judgments in our clients' favor for opponents' violations of the antitrust laws.

Corporate Battles

Many of our cases involve defending the rights of corporate owners against the misdeeds of the officers, directors and managers who owe a duty to operate the company for the benefit of the owners. Infighting within corporations takes many forms. We have battled for minority owners in partnerships, limited partnerships, limited liability companies and corporations. Because Delaware courts have a well-deserved reputation for prompt adjudication of claims, we have handled a number of matters in the Chancery Court, assisted by capable local counsel. In the all too familiar world in which investors have been misled by false representations to make an investment, whether by purchasing stock or similar ownership interest, we have represented the defrauded investor. We also have defended managers of companies against minority shareholder claims brought strategically to leverage management out of the company. We have on occasion represented broker/dealers and fund managers in suits by unhappy investors.

Government Investigations/White Collar Criminal

Two of our partners joined the firm with an extensive resume in criminal prosecution and defense. We regularly respond to government subpoenas, which are often the prelude to a criminal target letter or an indictment. Even more routinely, they lead to claims by the government of fraud and abuse by the company or person receiving the subpoena. Because they have interacted so often with prosecuting

authorities, our partners are usually able to satisfy the government that its suspicions may have been unjustified. In several circumstances, our first interaction with the prosecution included a threat that an indictment was imminent; but after months of working with the government and exchanging information, the government has retracted its target letter, a rare event in government prosecutions. We have handled the response to countless investigations by the various Offices of inspector General who are charged with assuring that the government is not defrauded. These include Department of Defense, Amtrak, Small Business Administration, Department of the Treasury and Internal Revenue Service. In some cases, the government remains unsatisfied with the response of the client and initiates either an indictment or a civil suit. We have still been able post-complaint to defend our client's interests and settle the cases on terms that the client finds acceptable. Our most demanding case involved the investigation of two multi-national construction companies who completed a $500 million capital infrastructure project for a government agency, which alleged fraud in the cost overruns which were actually the fault of mismanagement by Agency employees. The case involved investigators throughout the United States and in London with

proceedings occurring over five years domestically and internationally. The case was resolved entirely to the client's satisfaction.

Intellectual Property Litigation

When it comes to IP, the best prevention is broad protection. However, there are times when it is necessary to enforce and defend your IP rights. If that need arises, Carmody is ready to assist.

Our Intellectual Property Litigation Group is comprised of experienced and talented trial attorneys that deliver results through vigorous and skilled advocacy. Whether through aggressive trial representation, strategic settlement negotiations or alternative dispute resolution, we aim to achieve your business objectives.

Our trial attorneys have extensive litigation experience in courts throughout the United States and handle cases involving all aspects of intellectual property and related claims. Our practice also includes investigations before the International Trade Commission and patentability reviews and reexaminations before the Patent Office.

As the interaction between IP rights and competition law increases, our clients benefit from our anti-trust experience and our ability to represent them in cases concerning breaches of competition law.

We recognize that most intellectual property cases don't require an army of lawyers performing every conceivable task. Instead, we bring to the table the right resources at the right time to achieve effective results in the most cost-efficient way possible. Our clients get the legal talent they expect from a large firm plus the value and personal attention of a firm next door.

We are invested in you as much as your success, so we strive to develop value-driven relationships. Clients appreciate our real-world approach, and we are proud to call many of them friends. As a result, our clients call upon us – repeatedly and exclusively – to represent them in their most significant IP cases throughout the country.

Our clients choose us because we achieve their goals, and our peers recognize us for our accomplishments. Our trial attorneys have been designated as Connecticut and New England Super Lawyers™, *Best Lawyers in America,* Local Litigation Stars by *Benchmark Litigation* and have been included on lists of the "Top 10 Connecticut Super Lawyers," "Connecticut Top 50 Super Lawyers," and "New England Top 100 Super Lawyers".

Carmody's appellate lawyers offer a formidable combination of experience in patent, trademark, trade secret, copyright and law, with a deep understanding of the rules of appellate procedure. Our experience in handling intellectual property appeals spans:

- USPTO actions
- Appeals to the Federal Circuit in patent cases
- ITC Section 337 investigations
- Appeals to the federal courts of appeals in trademark and copyright cases
- Petitions for certiorari

Backed by this powerful combination of IP and appellate experience, we argue regularly before the US Court of Appeals for the Federal Circuit on behalf of our IP clients.

Employment Litigation

We defend employers and business executives accused of violating provisions of employment agreements including confidentiality and non-competes. We also have defended many wrongful discharge, wage and hour, employment discrimination, and harassment and retaliation claims including many ADA, ADEA, Title VII, sexual harassment, constructive discharge, workers' compensation retaliation, and whistle-blower retaliation claims in federal and state forums.

We regularly defend public, private, for profit and non-profit employers. We handle employment matters before federal and state courts, the National Labor Relations Board (NLRB) and the Connecticut Board of Labor Relations, Connecticut Board of Mediation and Arbitration, the Equal Employment Opportunity Commission (EEOC), the Massachusetts Commission Against Discrimination (MCAD), the New York State Division of Human Rights, the Connecticut Commission on Human Rights and Opportunities (CHRO), the U.S. and Connecticut Departments of Labor, U.S. Wage & Hour Division, the Occupational Safety and Health Administration (OSHA) and the Connecticut Workers' and Unemployment Compensation Commissions.

EXHIBIT B

In re Teva Securities Litigation, No. 3:17-cv-00558 (SRU)

Summary of Carmody Timekeeper Qualifications, Experience, and Role in the Action

PARTNERS

Liam S. Burke (9.60 hours): Mr. Burke is a Partner at Carmody and graduated from Michigan State University College of Law in 2007. Mr. Burke was involved in researching and drafting Ontario Teachers' lead plaintiff motion filed in the District of Connecticut.

John Cordani Jr. (61.10 hours): Mr. Cordani was a Partner at Carmody through June 2018 and graduated from Cornell Law School in 2011. He participated in researching and preparing the complaints and the opposition to Defendants' first set of motions to dismiss.

Brian A. Daley (5.40 hours): Mr. Daley was a Partner at Carmody and graduated from Duke University School of Law in 2002. He provided legal analysis regarding amending the complaint and assisted with *pro hac vice* applications.

Marc J. Kurzman (215.10 hours): Mr. Kurzman is a Partner at Carmody and graduated from Columbia University School of Law in 1983. Mr. Kurzman assisted in preparing for and attended hearings and status conferences and was involved in developing litigation strategy throughout the case. Mr. Kurzman was also involved in (a) the lead plaintiff motion process, (b) the drafting of the complaints and opposing the related motions to dismiss, (c) litigation strategy in connection with Defendants' various motions to compel and related submissions seeking further discovery and depositions from Ontario Teachers', Anchorage, and their investment advisors, and (d) participating in mediation sessions and settlement discussions.

Fatima Lahnin (6.50 hours): Ms. Lahnin is a Partner at Carmody and is a 2001 graduate of the Northeastern University School of Law. Beginning in the summer of 2021, Ms. Lahnin advised on litigation and trial strategy.

Todd Michaelis (20.50 hours): Mr. Michaelis is a Partner at Carmody and a 2009 graduate of Boston College Law School. Mr. Michaelis conducted legal research regarding claims under the Securities Act of 1933 in connection with drafting the complaints and conducted legal research regarding insurer liability in connection with mediation strategy.

Peter M. Nolin (6.40 hours): Mr. Nolin is a Partner at Carmody and graduated from the University of Connecticut School of Law in 1981. Beginning in the summer of 2021, Mr. Nolan advised on litigation and trial strategy.

J. Christopher Rooney (706.60 hours): Mr. Rooney is a Partner at Carmody and graduated from the University of Connecticut School of Law in 1984. Mr. Rooney was the lead attorney from Carmody who assisted in preparing for and attended nearly all hearings and status conferences and was involved in developing litigation strategy throughout the case. Mr. Rooney was primarily involved in (a) reviewing, revising, and commenting on all filings in the case, (b) conferring with the Department of Justice regarding fact depositions, (c) participating in the Rule 30(b)(6)

depositions of Ontario Teachers' and one of Teva's lead underwriters, and (d) participating in mediation sessions and settlement discussions.

James Robertson (91.80 hours): Mr. Robertson is a Partner at Carmody and graduated from the University of Connecticut School of Law in 1974. Mr. Robertson joined the litigation team in the summer of 2021 and advised on the litigation, trial, and mediation strategies based on his experience as a mediator, special master, and Connecticut Superior Court Judge. Mr. Robertson also participated in the mediation and settlement efforts.

ASSOCIATES

Timothy A. Smith (367.10 hours): Mr. Smith is an Associate at Carmody and graduated from the Quinnipiac University School of Law in 2009. Mr. Smith was primarily involved in (a) analyzing Defendants' and third parties' document productions and prioritizing key documents, (b) conducting legal research regarding deposition witnesses involved in the Department of Justice's criminal prosecution, (c) analysis of Defendants' privilege logs and strategy to resolve objections to improper privilege designations, and (d) analysis regarding ongoing opioid-related actions against Teva.

PARALEGAL

Shelby S. LaChance (11.60 hours): Ms. LaChance is a Paralegal at Carmody. She assisted in preparing document summaries in connection with discovery responses, expert reports, and the motions for partial summary judgment and exclusion of Defendants' experts.

EXHIBIT C

In re Teva Securities Litigation, No. 3:17-cv-00558 (SRU)

Carmody Timekeeper Lodestar Summary

Inception through and including April 14, 2022

Name	LS Grad. Year	Position	Current Rate	Hours	Lodestar
Burke, Liam S.	2007	P	$375	9.60	$3,600.00
Cordani, John Jr.	2011	P	$340	61.10	$20,774.00
Daley, Brian A.	2002	P	$375	5.40	$2,025.00
Kurzman, Marc J.	1983	P	$540	215.10	$116,154.00
Lahnin, Fatima	2001	P	$470	6.50	$3,055.00
Michaelis, Todd	2009	P	$425	20.50	$8,712.50
Nolin, Peter M.	1981	P	$575	6.40	$3,680.00
Rooney, J. Christopher	1984	P	$510	706.60	$360,366.00
Robertson, James	1974	P	$540	91.80	$49,572.00
Smith, Timothy A.	2009	A	$300	367.10	$110,130.00
LaChance, Shelby S.	NA	PL	$225	11.60	$2,610.00
TOTAL				**1,501.70**	**$680,678.50**

Legend
P – Partner
A – Associate
PL – Paralegal

EXHIBIT D

In re Teva Securities Litigation, No. 3:17-cv-00558 (SRU)

Carmody Expense Summary

Inception through and including April 14, 2022

CATEGORY	***AMOUNT***
Computer Research	$951.83
Court Reporter Services and Transcript Fees	$2,257.40
Postage & Overnight Mail	$124.26
Service and Filing Fees	$1,250.00
Meals	$70.68
Out-of-Town Transportation	$83.65
TOTAL	***$4,737.82***

Exhibit 9

Declaration of Susan R. Podolsky in Support of Lead Counsel's Motion for Awards of Attorneys' Fees and Litigation Expenses, Filed on Behalf of The Law Offices of Susan R. Podolsky

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE TEVA SECURITIES LITIGATION	:	No. 3:17-cv-00558 (SRU)
THIS DOCUMENT RELATES TO:	:	All Class Actions

DECLARATION OF SUSAN R. PODOLSKY IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AWARDS OF ATTORNEYS' FEES AND LITIGATION EXPENSES, FILED ON BEHALF OF THE LAW OFFICES OF SUSAN R. PODOLSKY

I, Susan R. Podolsky, hereby declare pursuant to Section 1746 of Title 28 of the United States Code:

1. I am an attorney admitted to practice *pro hac vice* in this Court and am the Principal of The Law Offices of Susan R. Podolsky. I have personal knowledge of the matters set forth herein.[1]

2. I respectfully submit this declaration in support of Bleichmar Fonti & Auld LLP's ("Lead Counsel's") motion for awards of attorneys' fees and litigation expenses to describe the work performed, and expenses incurred, by my firm in connection with prosecuting the above-captioned action (the "Action"). My firm served as additional counsel for Class Representatives Ontario Teachers' Pension Plan Board and Anchorage Police & Fire Retirement System (together, "Class Representatives") in the Action.

3. Attached hereto as Exhibit A is a brief biography of my firm providing further information regarding my qualifications and experience. I am a 1986 graduate from the University of Virginia Law School. After graduation, I clerked for Judge Albert V. Bryan, Jr.,

[1] Capitalized terms not defined herein have the meanings specified in the Stipulation of Settlement, dated January 18, 2022 (ECF 919-2).

then-Chief Judge for the Eastern District of Virginia, and then joined Jenner & Block where my practice centered on nationwide litigation. I have nearly a decade of experience prosecuting securities class actions, including representing Ontario Teachers' in *Computer Science Corp. Securities Litigation*, which resolved in 2013 for $97.5 million, then the second-largest all-cash recovery in a securities class action in the history of the Eastern District of Virginia. No. 1:11-cv-00610-TSE-IDD (E.D. Va. Sept. 20, 2013), ECF 336. Other recent securities class actions that I have prosecuted include: *In re Willis Towers Watson PLC Proxy Litigation*, No. 1:17-cv-01338-AJT-JFA (E.D. Va. May 21, 2021), ECF 345 ($75 million recovery); *In re Genworth Financial Inc. Securities Litigation*, No. 3:14-cv-00682-JAG-RCY (E.D. Va. Sept. 26, 2016), ECF 214 ($219 million recovery); *In re NII Holdings, Inc. Securities Litigation*, No. 1:14-cv-00227-LMB-JFA (E.D. Va. Sept. 16, 2016), ECF 265 ($41.5 million recovery); and *In re Lumber Liquidators Holdings, Inc. Securities Litigation*, No. 4:13-cv-00157-AWA-DEM (E.D. Va. Nov. 17, 2016), ECF 204 ($45 million recovery).

4. In this Action, I joined the litigation team in September 2018 in connection with opposing Defendants' motions to dismiss the Amended Consolidated Class Action Complaint, and have been integrally involved since that time. My work primarily involved: (a) preparing Class Representatives' discovery requests and responding to Defendants' discovery requests, (b) briefing the consolidation motion; (c) drafting the motions to compel and status conference submissions; (d) conferring and negotiating with counsel for Defendants, the Department of Justice, and third parties in connection with discovery disputes; (e) structuring document review and deposition preparation processes; (f) briefing the class certification motion; (g) developing strategy for fact and expert depositions; (h) formulating strategy for oral argument during hearings and status conferences; (i) working with Plaintiffs' experts; (j) working with Class Representatives

regarding Defendants' discovery requests; (k) drafting an order of proof supporting the Class's claims and developing the evidentiary bases for evidence to be introduced at trial; (l) drafting the motion for partial summary judgment and *Daubert* motions to exclude Defendants' merits experts; (m) preparing for and participating in mediation and settlement discussions; and (n) preparing the preliminary approval and final approval motion papers.

5. Exhibit B is a schedule summarizing my time devoted to this Action from the beginning of my involvement in September 2018 through and including April 14, 2022. This schedule was prepared from contemporaneous daily time records that I regularly prepare and maintain, and I reviewed these records to confirm their accuracy. The time that I expended in preparing the application for fees and expenses has been excluded.

6. Following this review and the adjustments made, as set forth in Exhibit B, I devoted 3,910.50 hours to prosecuting the Action. My total lodestar is $2,541,825.00. I believe the time reflected in this lodestar calculation, as set forth herein, is reasonable in amount and was necessary for the effective and efficient prosecution of the Action.

7. As indicated in Exhibit B, my current hourly rate is $650. This is the same rate that I have submitted to, and that has been accepted by, courts for lodestar cross-checks in other securities class action fee applications. *See Willis Towers Watson PLC Proxy Litig.*, No. 1:17-cv-01338-AJT-JFA (E.D. Va. May 21, 2021), ECF 347; *In re Genworth Financial Inc. Sec. Litig.*, No. 3:14-cv-00682-JAG-RCY (E.D. Va. Sept. 26, 2016), ECF 216.

8. Exhibit C provides a summary by category of the expenses my firm incurred in connection with the prosecution of this Action, totaling $22,093.35. The information provided in Exhibit C is based on information maintained contemporaneously and in the ordinary course by my firm, including receipts, invoices, expense vouchers, check records, and similar documents.

In preparing this declaration and Exhibit C, I have reviewed these records to confirm the accuracy of the expenses incurred, as well as the reasonableness of and necessity for those expenses. As part of the review, certain reductions were made in the exercise of judgment or based on capping expense reimbursement for business meals and hotel accommodations. Specifically, hotel expenses are capped at a maximum of $300 per night for large cities and $250 per night for smaller cities. Case-related meal expenses are capped at $45 per person for dinners, $20 per person for lunches, and $15 per person for all other food and drink. These caps resulted in write-offs totaling $2,518.48, which are not included in Exhibit C and for which Lead Counsel is not seeking an award.

9. I believe that Exhibit C is an accurate record of the expenses incurred by my firm, and that these expenses were fair and reasonable and were necessary for the efficient and effective prosecution of this Action. Further, these expenses are all of a type that I would typically bill to a fee-paying client.

Dated: Alexandria, Virginia
April 27, 2022

By: */s/ Susan R. Podolsky*
Susan R. Podolsky

EXHIBIT A

In re Teva Securities Litigation, No. 3:17-cv-00558 (SRU)

The Law Offices of Susan R. Podolsky Firm Resume

PODOLSKY LAW OFFICES
1800 DIAGONAL ROAD SUITE 600 ALEXANDRIA, VA 22314
TEL 571.366.1702 FAX 703.647.6009
SPODOLSKY@PODOLSKYLAW.COM
PODOLSKYLAW.COM

Educational Background:

J.D., 1986, University of Virginia School of Law.

4-month Leningrad State University Russian Language program (1982).

A.B., 1981, Dartmouth College (*magna cum laude)*. Member of Phi Beta Kappa. Captain of Varsity Tennis Team, sophomore and senior seasons. Major: Russian Language and Literature. Received three commendation awards for highest achievement.

Professional Background:

2006 – present: Solo practitioner, concentrating on civil corporate litigation and advising and assisting corporate clients, associations, and individuals on a variety of legal matters and issues. Recent work includes large securities fraud litigations, large securities arbitration for corporate client, various litigations and litigation-related tasks for corporate and individual clients, various counseling matters such as contract drafting and negotiation.

Securities fraud litigation highlights include: *Ontario Teachers' Pension Plan Board, et al. v. Teva Pharmaceuticals* ($420 million settlement pending approval); *In Re: Willis Towers Watson PLC Proxy Litigation* ($75 million recovery); *In re: Genworth Financial Inc. Securities Litigation* ($219 million recovery); *In re: Computer Sciences Corp. Securities Litigation* ($97.5 million recovery); *In re: NII Holdings, Inc. Securities Litigation* ($41.5 million recovery); *In re: Lumber Liquidators Holdings, Inc. Securities Litigation* ($45 million recovery).

1993 - July 2005: Partner, Jenner & Block LLP.

Awardee of the 2003 Albert E. Jenner Pro Bono Award for litigating race discrimination class action suit for ten years against municipal (Baltimore City) and federal housing agencies.

Member of the Litigation Practice, specializing in large, complex civil commercial cases in a variety of sectors, including telecommunications, contracts, intellectual property, and employment. Tried significant litigation matters of all sizes and consistently obtained successful results. Managed large discovery and document production projects, including electronic discovery projects, related to litigation,

antitrust, and investigation matters. Federal litigation practice included national experience, with a particular focus on the Eastern District of Virginia.

Advised and counseled businesses on various legal matters and issues.

1988-1993: Associate, Jenner & Block LLP.

1986-88: Law clerk for Albert V. Bryan, Jr., then-Chief Judge of the Eastern District of Virginia.

1981-83: Legislative Correspondent and Legislative Assistant to United States Senator Donald W. Riegle, Jr. Responsible for correspondence, legislation, and policy with respect to Senator Riegle's service on the Senate Committee on Commerce, Science & Transportation.

Bar and Court Admissions:

Admitted to practice in the following state and federal jurisdictions: Virginia, District of Columbia, Maryland.

Admitted to practice in the following courts: Eastern District of Virginia, Western District of Virginia, District of Maryland, District Court for the District of Columbia, Court of Appeals for the Fourth Circuit, Court of Appeals for the D.C. Circuit, United States Supreme Court, Virginia Supreme Court, District of Columbia Court of Appeals.

Professional and Non-Profit Associations:

President, Women's Eastern Golf Association

Board Member, Northern Virginia Chapter of the Federal Bar Association

Member, Virginia State Bar

Member, Maryland State Bar

Member, District of Columbia Bar Association

Member, Alexandria Bar Association

Member, Federal Bar Association

American Bar Association

Memberships:

Mount Vernon Country Club

Detroit Golf Club

EXHIBIT B

In re Teva Securities Litigation, No. 3:17-cv-00558 (SRU)

The Law Offices of Susan R. Podolsky Lodestar Summary

Inception through and including April 14, 2022

Name	LS Grad. Year	Position	Current Rate	Hours	Lodestar
Podolsky, Susan R.	1986	Principal	$650	3,910.50	$2,541,825.00

EXHIBIT C

In re Teva Securities Litigation, No. 3:17-cv-00558 (SRU)

The Law Offices of Susan R. Podolsky Expense Summary

Inception through and including April 14, 2022

CATEGORY	***AMOUNT***
External Photocopies	$270.64
Accommodations	$11,349.71
Meals	$1,090
Local Transportation	$798.60
Out-of-Town Transportation	$8,584.40
TOTAL	***$22,093.35***

Exhibit 10

**Stefan Boettrich and Svetlana Starykh,
NERA Economic Consulting,
Recent Trends in Securities Class Action
Litigation: 2018 Full-Year Review (Jan. 29, 2019)**

NERA
ECONOMIC CONSULTING

29 January 2019

Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review

Record Pace of Filings, Despite Slower Merger-Objection Growth
Average Case Size Surges to Record High
Settlement Values Rebound from Near-Record Lows

By Stefan Boettrich and Svetlana Starykh

Insight in Economics™

Foreword

I am excited to share NERA's *Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review* with you. This year's edition builds on work carried out over numerous years by many members of NERA's Securities and Finance Practice. In this year's report, we continue our analyses of trends in filings and settlements and present new analyses, such as how post-class-period stock price movements relate to voluntary dismissals. While space does not permit us to present all the analyses the authors have undertaken while working on this year's edition, or to provide details on the statistical analysis of settlement amounts, we hope you will contact us if you want to learn more about our work related to securities litigation. On behalf of NERA's Securities and Finance Practice, I thank you for taking the time to review our work and hope you find it informative.

Dr. David Tabak
Managing Director

Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review

Record Pace of Filings, Despite Slower Merger-Objection Growth
Average Case Size Surges to Record High
Settlement Values Rebound from Near-Record Lows

By Stefan Boettrich and Svetlana Starykh[1]

29 January 2019

Introduction and Summary[2]

In 2018, the pace of securities class action filings was the highest since the aftermath of the 2000 dot-com crash, with 441 new cases. While merger objections constituted about half the total, filing growth of such cases slowed versus 2017, indicating that the explosion in filings sparked by the *Trulia* decision may have run its course.[3] Filings alleging violations of Rule 10b-5, Section 11, and/or Section 12 of the Securities Act of 1933 ("Securities Act") were roughly unchanged compared to 2017, but accelerated over the second half of the year, with the fourth quarter being one of the busiest on record.

The steady pace of new securities class actions masked fundamental changes in filing characteristics. Aggregate NERA-defined Investor Losses, a measure of total case size, came to a record $939 billion, nearly four times the preceding five-year average. Even excluding substantial litigation against General Electric (GE), aggregate Investor Losses doubled versus 2017. Most growth in Investor Losses stemmed from cases alleging issues with accounting, earnings, or firm performance, contrasting with prior years when most growth was tied to regulatory allegations. Filings against technology firms jumped nearly 70% from 2017, primarily due to cases alleging accounting issues or missed earnings guidance.

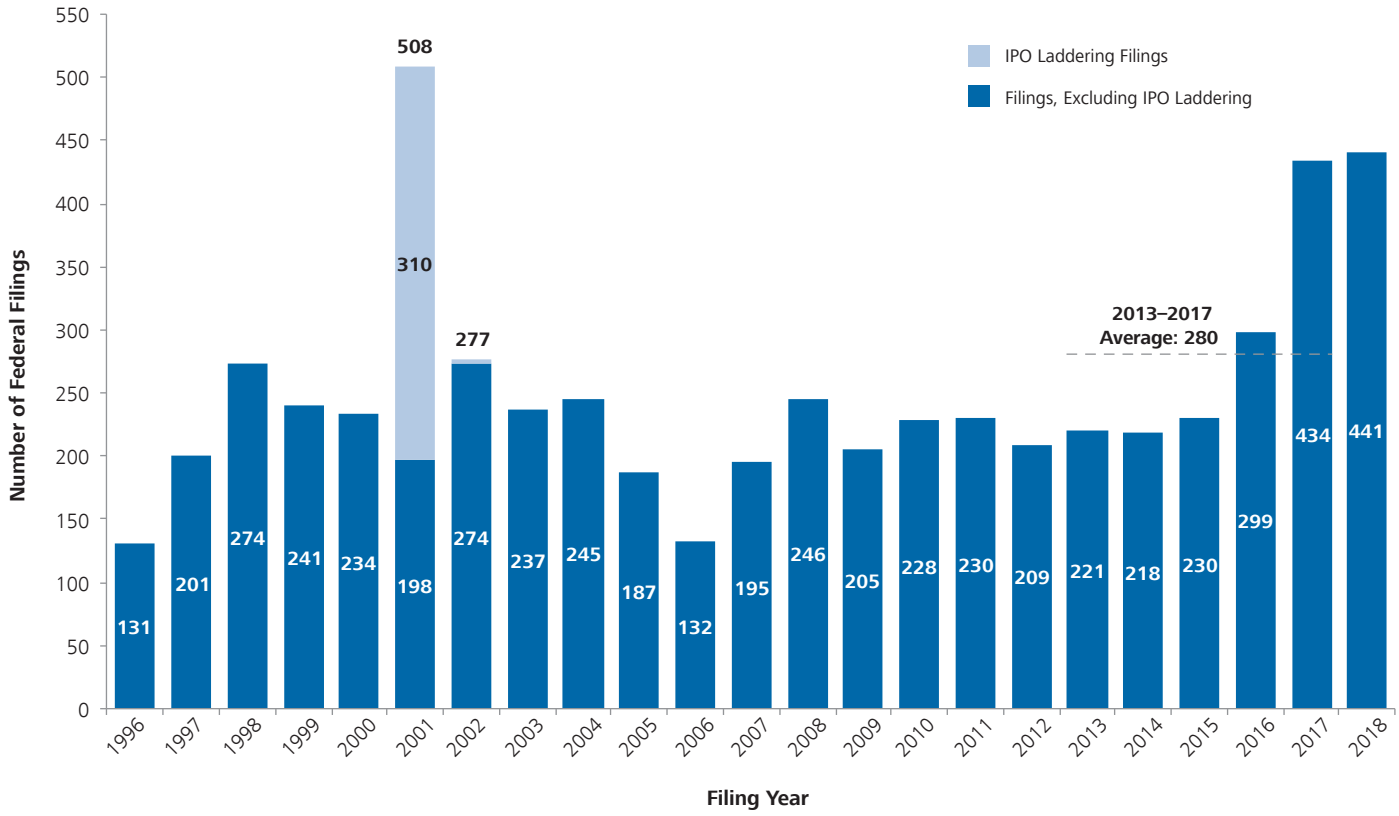
The average settlement value rebounded from the 2017 near-record low, mostly due to the $3 billion settlement against Petróleo Brasileiro S.A.—Petrobras. The median settlement nearly doubled, primarily due to higher settlements of many moderately sized cases. Despite a rebound in settlement values in 2018, the number of settlements remained low, with dismissals outnumbering settlements more than two-to-one. An adverse number of cases were voluntarily dismissed, which can partially be explained by positive returns of targeted securities during the PSLRA bounce-back periods. The robust rate of case resolutions has not kept up with the record filing rate, driving pending litigation up more than 6%.

Trends in Filings

Number of Cases Filed

There were 441 federal securities class actions filed in 2018, the fourth consecutive year of growth (see Figure 1). The filing rate was the highest since passage of the PSLRA, with the exception of 2001 when new IPO laddering cases dominated federal dockets. The dramatic year-over-year growth seen in each of the past few years resulted in a near doubling of filings since 2015, but growth moderated considerably in 2018 to 1.6%. The 2018 filing rate is well above the post-PSLRA average of approximately 253 cases per year, and solidifies a departure from the generally stable filing rate in the years following the 2008 financial crisis.

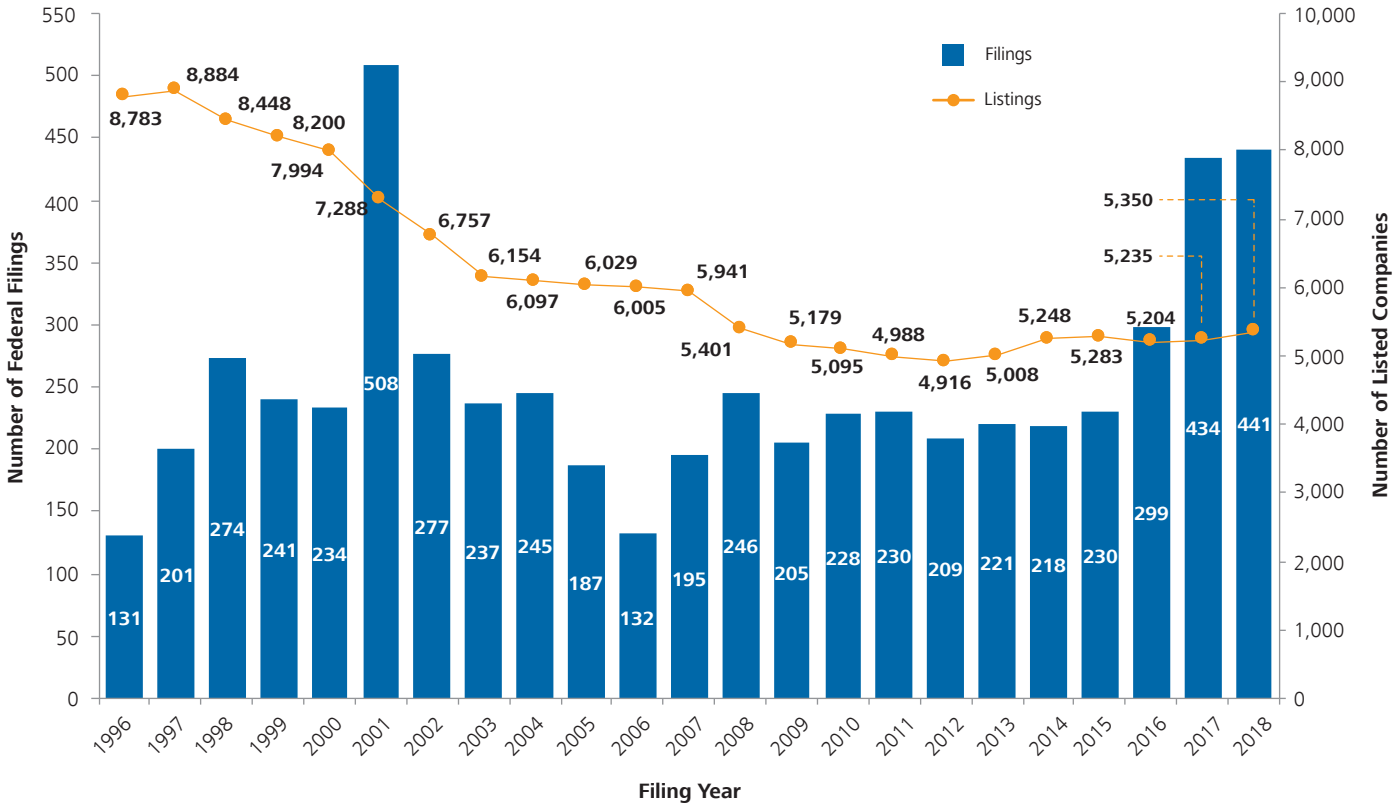
Figure 1. **Federal Filings**
January 1996–December 2018



As of November 2018, there were 5,350 companies listed on the major US securities exchanges (see Figure 2). The 441 federal securities class action suits filed in 2018 involved approximately 8.2% of publicly listed companies. The overall risk of litigation to listed firms has increased substantially since early in the decade, when only about 4.0% of public companies listed on US exchanges were subject to a securities class action.

Broadly, the chance of a publicly listed company being subject to securities litigation depends on the number of filings relative to the number of listed companies. While the number of listed companies has increased by 7% over the last five years, the longer-term trend is toward fewer listings. Since the passage of the PSLRA in 1995, the number of listings on major US exchanges has steadily declined by about 3,000, or nearly 40%. Recent research attributed this decline to fewer new listings and an increase in delistings, mostly through mergers and acquisitions.[4]

Figure 2. **Federal Filings and Number of Companies Listed in the United States**
January 1996–December 2018



Note: Listed companies include those listed on the NYSE and Nasdaq. Listings data from 2016 through 2018 were obtained from World Federation of Exchanges (WFE). The 2018 listings data is as of November 2018. Data for prior years was obtained from Meridian Securities Markets and WFE.

Despite the long-term drop in the number of listed companies, the average number of securities class action filings has *increased* from 216 per year over the first five years after the PSLRA to about 324 per year over the past five years. The long-term trend toward fewer listed companies coupled with more class actions implies that the average probability of a listed firm being subject to such litigation has increased from about 2.6% after passage of the PSLRA to 3.7% over the past five years, and 8.0% over the past two years.

Recently, the rising average risk of class action litigation was driven by dramatic growth in merger-objection cases that, prior to 2016, were mostly filed in various state courts. Since then, state court rulings have driven such litigation onto federal dockets. Hence the increase in the typical firm's litigation risk might be less than indicated above, since 1) the risk of merger-objection litigation is specific to firms planning or engaged in M&A activity and 2) many merger-objection cases would otherwise have been filed in state courts.

The average probability of a firm being targeted by what is often regarded as a "Standard" securities class action—one that alleges violations of Rule 10b-5, Section 11, and/or Section 12—was only 4.0% in 2018, albeit higher than the average probability of about 2.6% following the PSLRA and 3.5% between 2013 and 2017.

Filings by Type

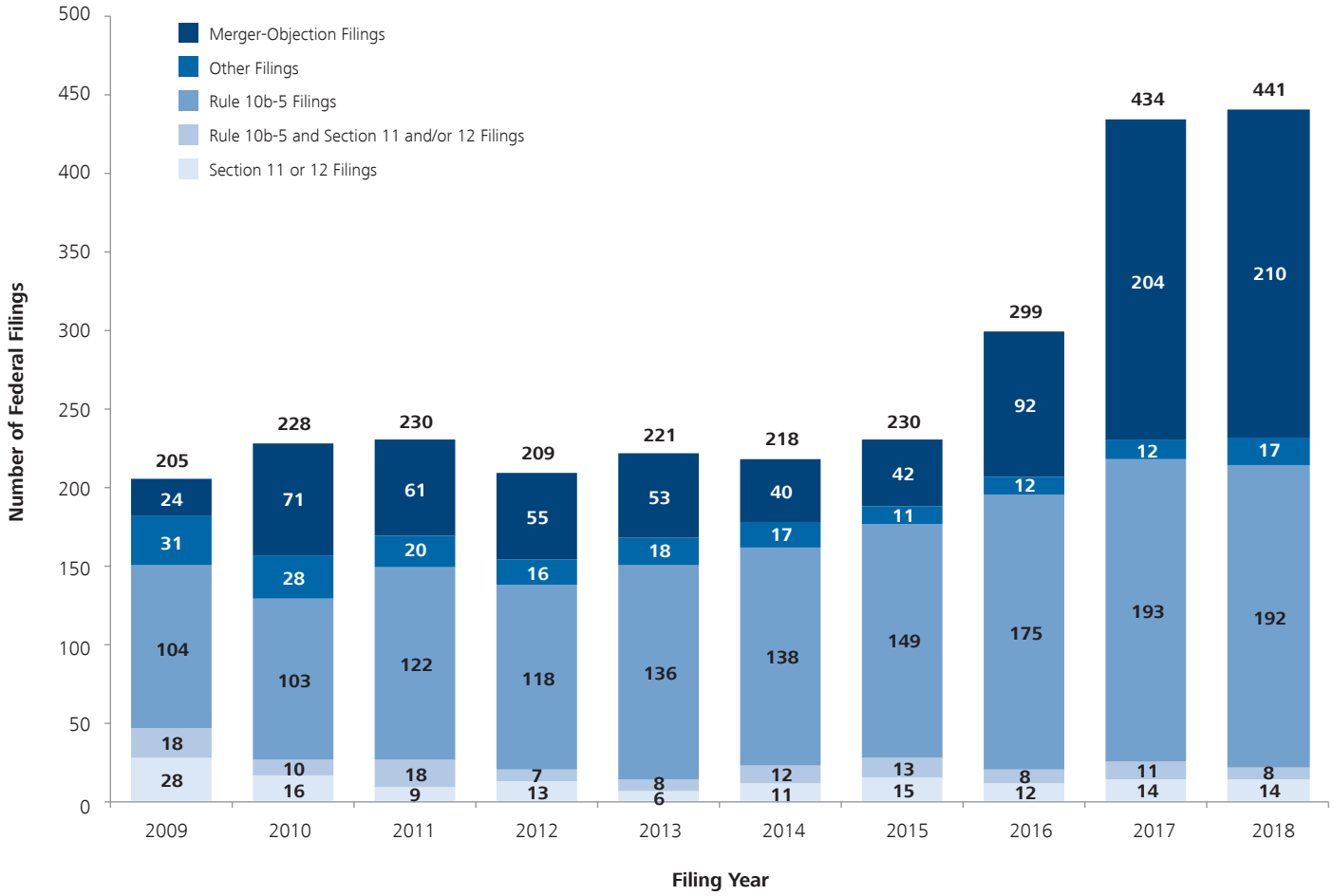
In 2018, the 441 securities class action filings were about evenly split between Standard securities class actions and merger objections, roughly matching the number seen in 2017 (see Figure 3). There were 214 Standard securities cases filed, down slightly from 2017. Prior to 2018, Standard filings grew for five consecutive years, the longest expansion on record, and by over 50% since 2013. Despite the slowdown in 2018, monthly filing growth over the second half of the year was robust, and capped by 64 filings in the fourth quarter, one of the busiest quarters on record.

Despite the 210 merger-objection filings in 2018 making up about half of all filings, yearly filing growth of such cases slowed to almost zero, as the number of filings roughly matched the level seen in 2017. The tepid filing growth implies that the rapid growth following various state-level decisions limiting "disclosure-only" settlements (including the *Trulia* decision) has likely run its course.[5] Rather, the stagnant growth in federal merger-objection filings was likely driven by relatively stagnant M&A activity.[6]

Although aggregate merger-objection filings (including those at the state level) may correspond with the rate of mergers and acquisitions, such deal activity does not appear to have historically been the primary driver of federal merger-objection filings over multiple years. The number of federal merger-objection filings generally fell between 2010 and 2015, despite increased M&A activity. The higher filing counts in 2016 and 2017 likely stemmed from trends in the choice of jurisdiction rather than trends in deal volume.[5]

Besides Standard and merger-objection cases, a variety of other filings rounded out 2018. Several filings alleged fraudulent initial coin and cryptocurrency offerings, manipulation of derivatives (e.g., VIX products and metals futures), and breaches of fiduciary duty (including client-broker disputes involving churning and improper asset allocation).

Figure 3. **Federal Filings by Type**
January 2009–December 2018



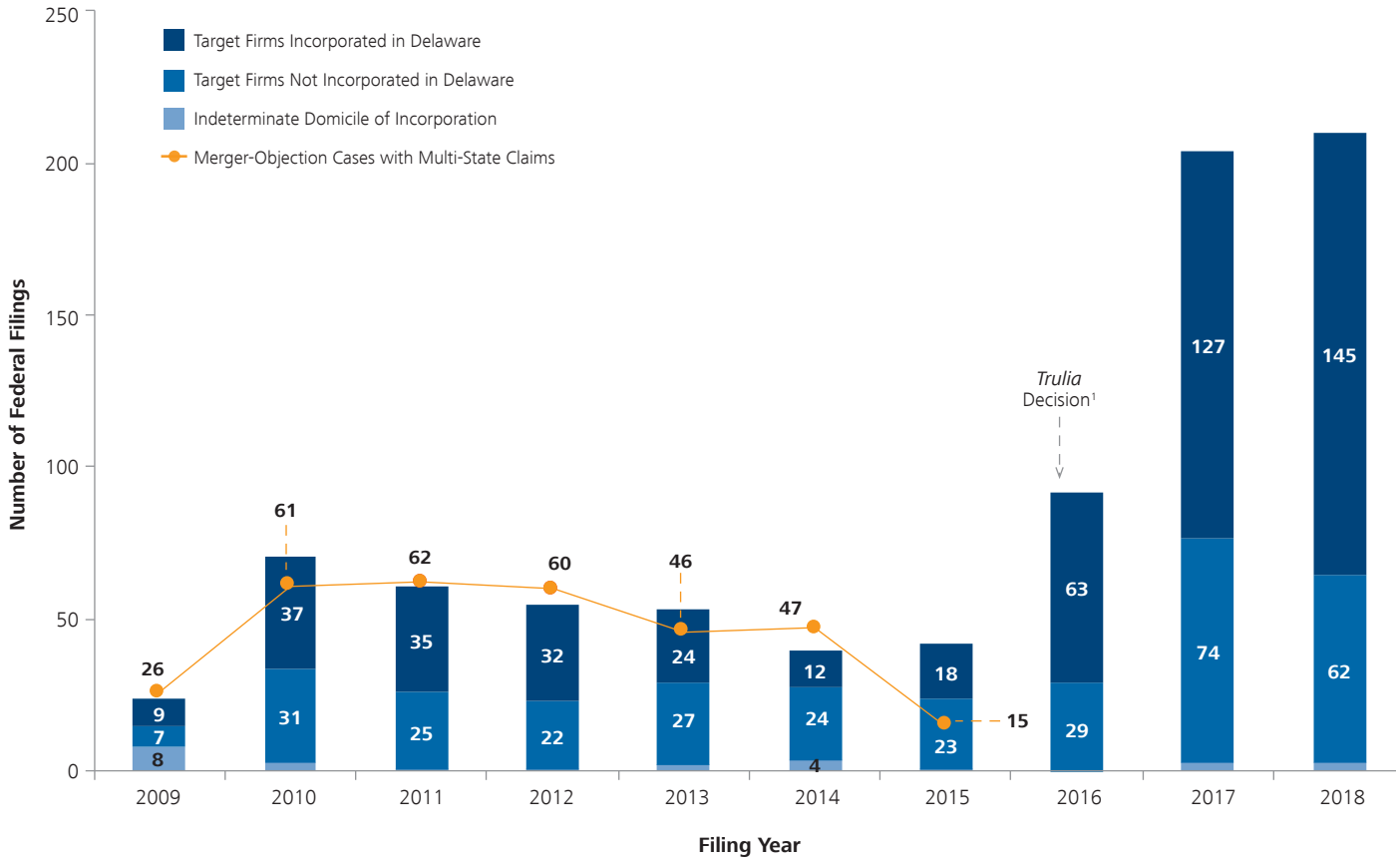
Merger-Objection Filings

In 2018, federal merger-objection filings were relatively unchanged versus 2017 (see Figure 4). Growth in federal merger-objection filings in 2016 and 2017 largely followed various state court rulings barring disclosure-only settlements, the most notable being the 22 January 2016 *Trulia* decision in the Delaware Court of Chancery.[7] Research suggested that such state court decisions would simply drive merger objections to alternative jurisdictions, such as federal courts.[8] This has largely been borne out thus far.

The dramatic slowdown in merger-objection filings growth implies that plaintiff forum selection is less of a growth factor; in 2018 and going forward, merger and acquisition activity will likely be the primary driver of federal merger-objection litigation. This assumes, however, that corporations don't increasingly adopt forum selection bylaws, and that federal courts don't increasingly follow the Delaware Court of Chancery's lead on rejecting disclosure-only settlements.[9] For instance, after the Seventh Circuit ruled strongly against a disclosure-only settlement in *In re: Walgreen Co. Stockholder Litigation*, the proportion of merger objections filed in that circuit fell by more than 60% the following year.[10]

Federal merger-objection filings typically allege a violation of Section 14(a), 14(d), and/or 14(e) of the Securities Exchange Act of 1934, and/or a breach of fiduciary duty by managers of a firm being acquired. Such filings are frequently voluntarily dismissed.

Figure 4. **Federal Merger-Objection Cases and Merger-Objection Cases with Multi-State Claims**
January 2009–December 2018



Notes: Counts of merger-objection cases with multi-state claims based on data obtained from Matthew D. Cain and Steven D. Solomon, "Takeover Litigation in 2015," Berkeley Center for Law, Business and the Economy, 14 January 2016. Data on multi-state claims unavailable for 2016–2018. State of incorporation obtained from the Securities and Exchange Commission.
[1] *In re Trulia, Inc. Stockholder Litigation*, C.A. No. 10020-CB (Del. Ch. Jan. 22, 2016).

Filings Targeting Foreign Companies

Foreign companies with securities listed on US exchanges have been disproportionately targeted in Standard securities class actions since 2010 (see Figure 5).[11] In 2018, foreign companies were targeted in about 25% fewer cases than in 2017, and in only about 20% of complaints, just above the share of listings. This contrasts with persistent growth in foreign firm exposure to securities litigation over the preceding four years.

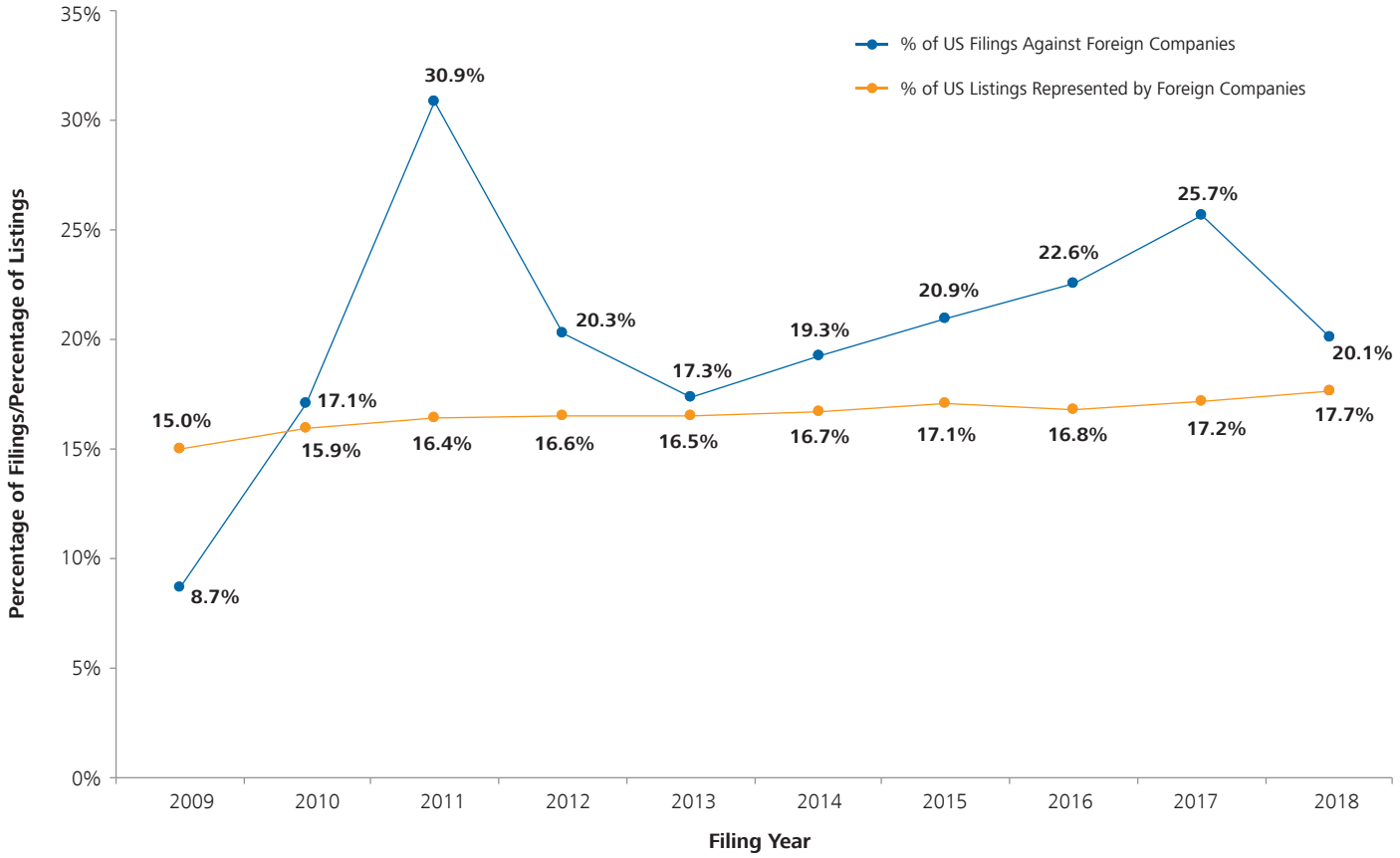
The reversion in claims against foreign firms mirrors a wider slowdown in filings with regulatory allegations. Over the last few years, growth in regulatory filings explained much of the growth in foreign filings, with 50% to 80% of new foreign cases including such allegations. That trend has reversed; in 2018, 75% of the drop in foreign filings stemmed from fewer claims related to regulation.

The slowdown in foreign regulatory filings can also be tied to fewer complaints in 2018 alleging similar regulatory violations, which adversely targeted foreign firms and particularly those domiciled in Europe. For instance, in 2017 there were multiple filings related to pharmaceutical price fixing, emissions defeat devices, and financing schemes by Kalani Investments Limited.

Filings against foreign companies spanned several economic sectors, led by a considerable jump against firms in the Electronic Technology and Technology Services sector (accounting issues were most common). Filings against foreign companies in the Health Technology and Services sector dropped by half. In past years, such filings usually claimed regulatory violations; none did in 2018.

In 2011, a record 31% of filings targeted foreign companies, mostly due to a surge in litigation against Chinese companies, which was mainly related to a proliferation in so-called "reverse mergers" years earlier. A reverse merger is a merger in which a private company merges with a publicly traded company listed in the US, thereby enabling access to US capital markets without going through the process of obtaining a new listing.

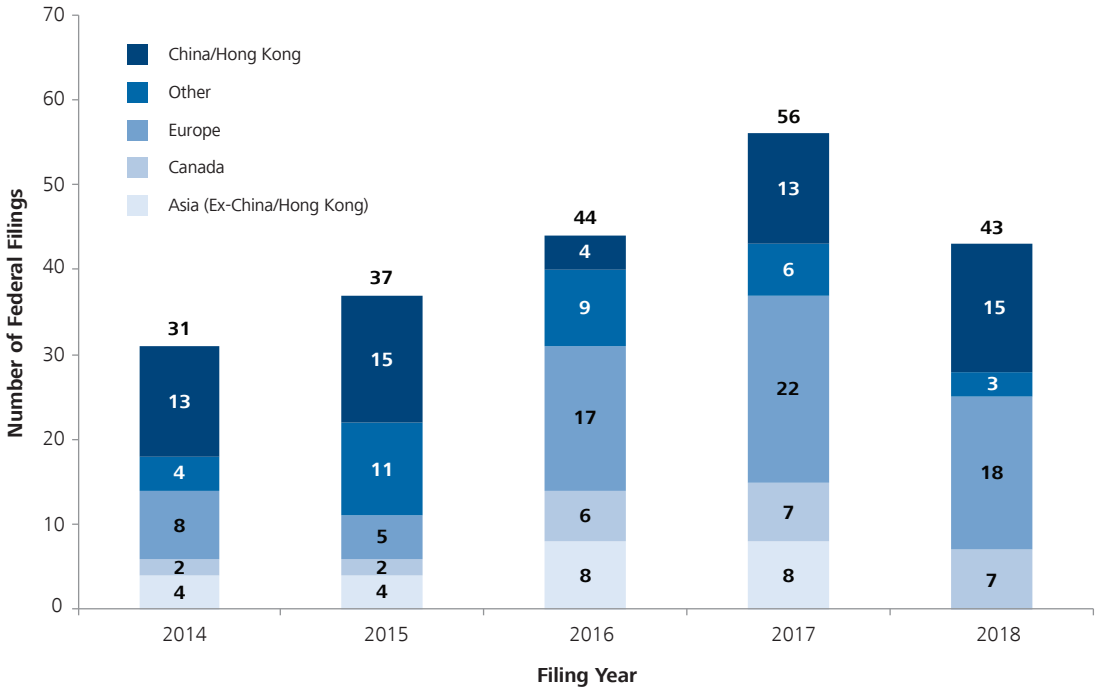
Figure 5. **Foreign Companies: Share of Filings and Share of Companies Listed on US Exchanges**
Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, and/or Section 12
January 2009–December 2018



Note: Foreign issuer status determined based on location of principal executive offices.

Internationally, only Chinese firms listed on US exchanges were subject to more securities class actions in 2018 than in 2017 (see Figure 6). Filings against European firms slowed, partially due to fewer regulatory filings. There were zero filings against Israeli companies, despite an increase in listings and litigation against such companies in previous years.

Figure 6. **Filings Against Foreign Companies**
Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, and/or Section 12 by Region
January 2014–December 2018



Note: Foreign issuer status determined based on location of principal executive offices.

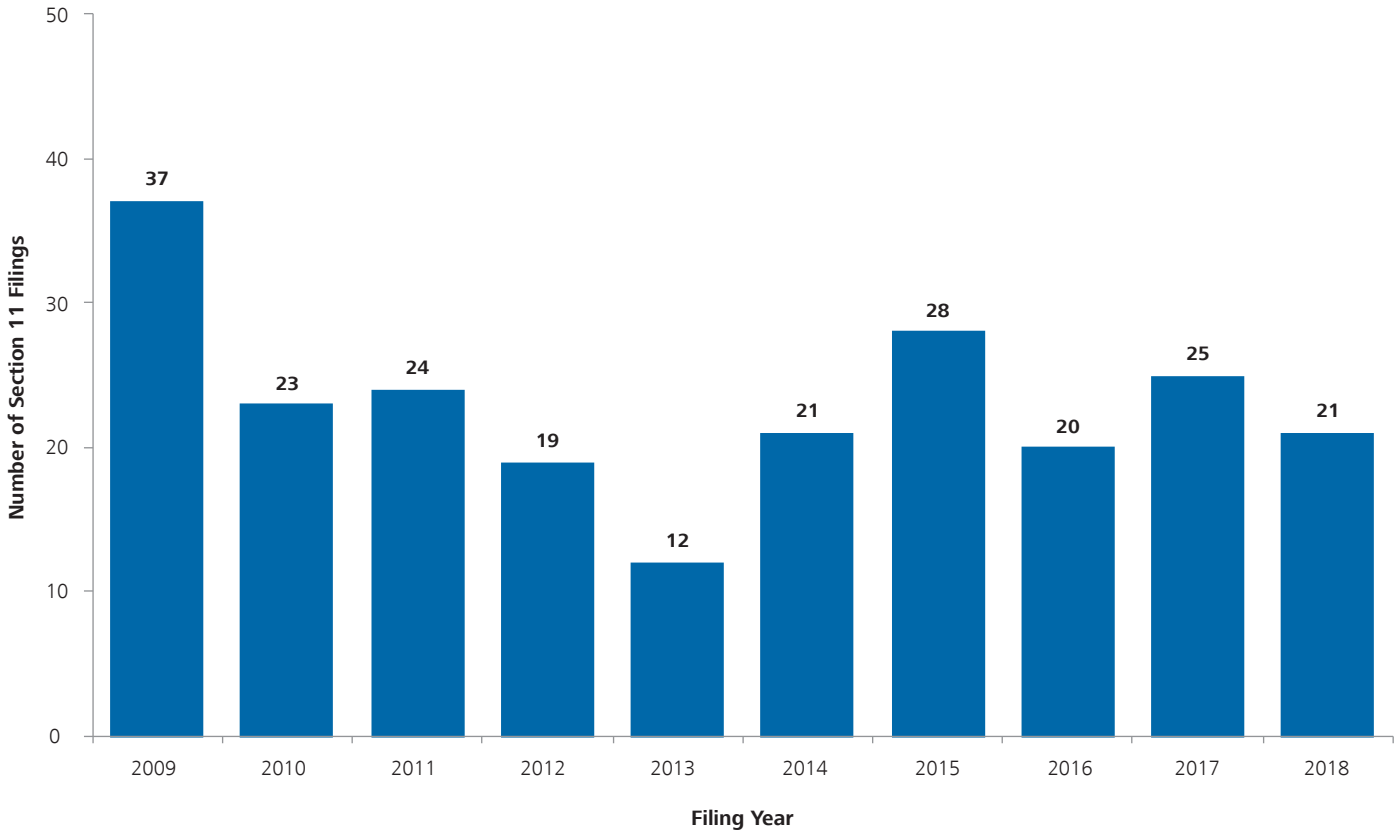
Section 11 Filings

There were 21 federal filings alleging violations of Section 11 in 2018, which approximates the five-year average (see Figure 7).

On 20 March 2018, the US Supreme Court ruled in *Cyan, Inc. v. Beaver County Employees Retirement Fund* that state courts have jurisdiction over class actions with claims brought under the Securities Act.[12] The ruling allows plaintiffs to litigate Section 11 claims in state courts, including plaintiff-friendly California state courts.

The full effect of the *Cyan* decision on federal filing trends remains to be seen, but of the 21 Section 11 filings in 2018, 14% involved firms headquartered in California, down from a quarter in 2016 (prior to the US Supreme Court granting certiorari). Of the three California firms, at least two have stated in filings with the SEC that claims under the Securities Act must only be brought in federal courts.[12]

Figure 7. **Section 11 Filings**
January 2009–December 2018



Aggregate NERA-Defined Investor Losses

In addition to the number of cases filed, we also consider the total potential size of these cases using a metric we label "NERA-defined Investor Losses."

NERA's Investor Losses variable is a proxy for the aggregate amount that investors lost from buying the defendant's stock, rather than investing in the broader market during the alleged class period. Note that the Investor Losses variable is not a measure of damages because any stock that underperforms the S&P 500 would have Investor Losses over the period of underperformance; rather, it is a rough proxy for the relative size of investors' potential claims. Historically, Investor Losses have been a powerful predictor of settlement size. Investor Losses can explain more than half of the variance in the settlement values in our database.

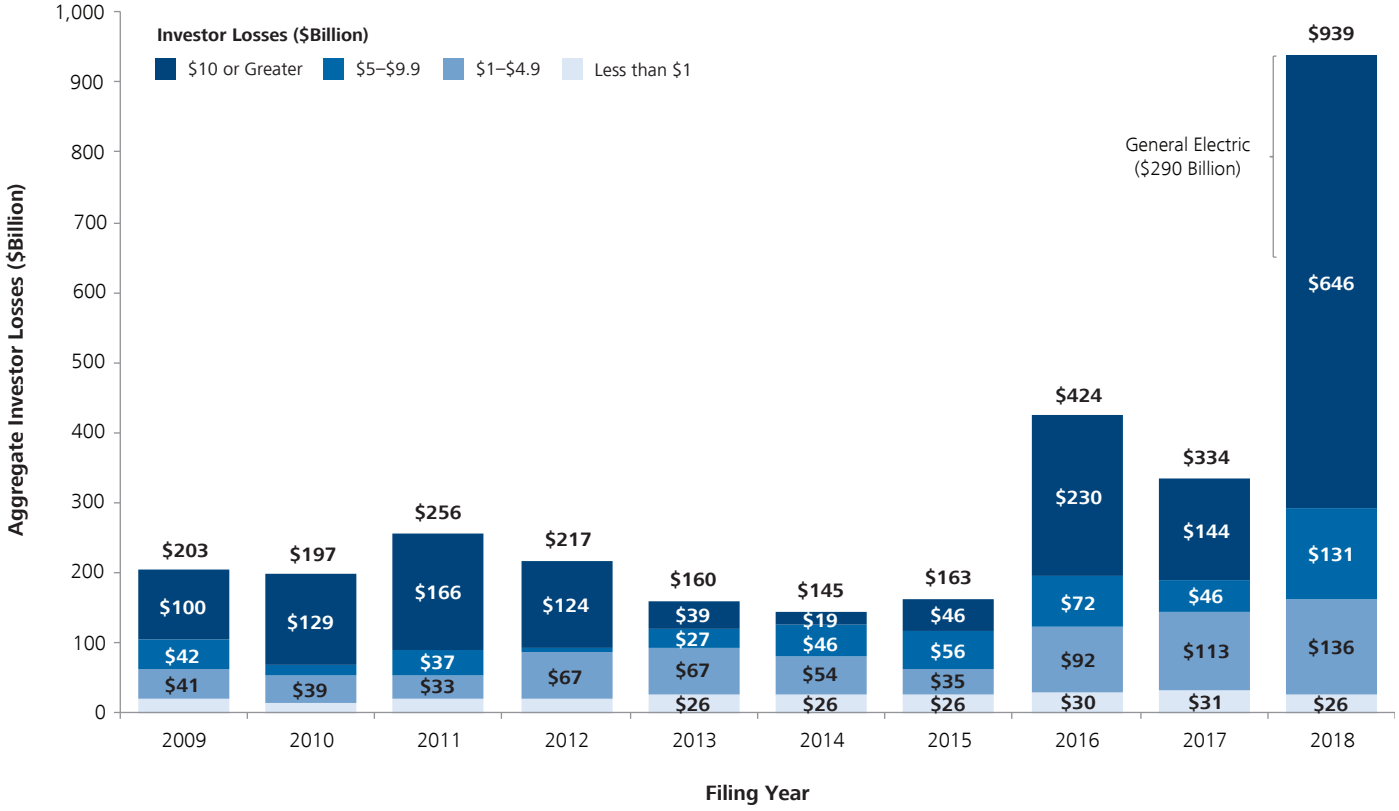
We do not compute NERA-defined Investor Losses for all cases included in this publication. For instance, class actions in which only bonds and not common stock are alleged to have been damaged are not included. The largest excluded groups are IPO laddering cases and merger-objection cases.

Despite a relatively constant rate of Standard filings in 2018, the size of those filings (as measured by NERA-defined Investor Losses) surged to nearly $1 trillion (see Figure 8). Total Investor Losses were dominated by litigation against GE, equal to about 45% of Investor Losses from all other cases combined, an especially impressive metric given the record aggregate case size.

NERA-defined Investor losses in 2018 totaled $939 billion, more than double that of any prior year and nearly four times the preceding five-year average of $245 billion. The total size of filings in all but the smallest strata grew, led by cases with more than $10 billion in Investor Losses. Coupled with the relatively stable overall filing rate, this suggests a systematic shift toward larger filings. In 2018, there were a record number of filings in each of the three largest strata, while only 88 cases had Investor Losses less than $1 billion, a record low.

Once again, there were several very large filings alleging regulatory violations, including a stock drop case against Johnson & Johnson related to claims of allegedly carcinogenic talcum powder, and a data privacy case against Facebook. Besides cases alleging regulatory violations, other very large cases included a filing against NVIDIA regarding excess inventory of GPUs (used for cryptocurrency mining) and large drug development cases against Bristol-Myers Squibb and Celgene.

Figure 8. **Aggregate NERA-Defined Investor Losses**
Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, and/or Section 12
January 2009–December 2018



Over the past couple of years, growth in aggregate Investor Losses was concentrated in filings alleging regulatory violations, a substantial number of which were also *event-driven* securities cases (i.e., stock drop cases stemming from a specific event or occurrence). Between 2015 and 2017, growth in the total size of regulatory cases was due to an increased filing rate (from 31 to 57 cases) and higher median Investor Losses (from $308 million to $811 million).

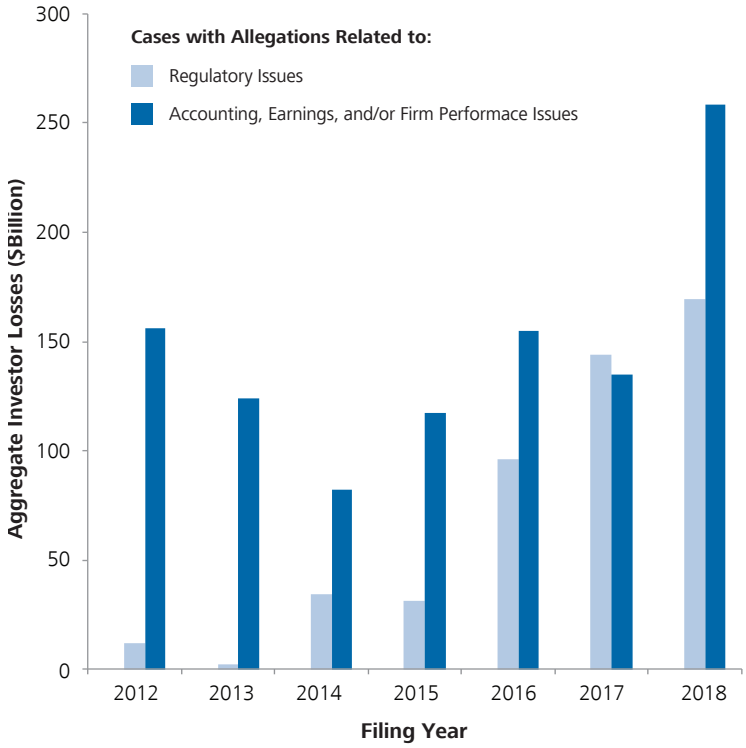
In 2018, regulatory cases were again large (half had Investor Losses greater than $4 billion), but the vast majority of total Investor Losses stemmed from what have historically been more typical securities cases, namely those that allege accounting issues, misleading earnings guidance, and/or firm performance issues.[14] This was led by litigation related to accounting issues at GE. Excluding GE, aggregate Investor Losses of such cases nearly doubled to a record $258 billion (see Figure 9).

Growth in the total size of cases alleging accounting, earnings, and/or performance issues primarily stems from growth in individual case size, as opposed to more filings. The median case with such allegations had more than $650 million in Investor Losses, about twice the average of $322 million over the preceding five years.

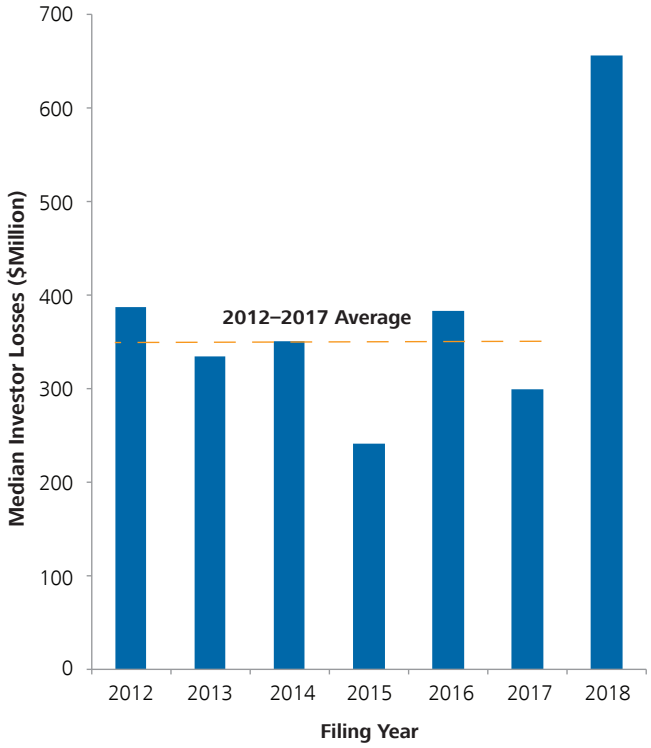
Details of the size of cases with specific types of allegations are discussed in the *Allegations* section below.

Figure 9. **NERA-Defined Investor Losses**
Filings Alleging Accounting Issues, Missed Earnings Guidance, and/or Misleading Future Performance
Excludes 2018 GE Filings

Aggregate NERA-Defined Investor Losses
January 2012–December 2018



Median NERA-Defined Investor Losses
January 2012–December 2018



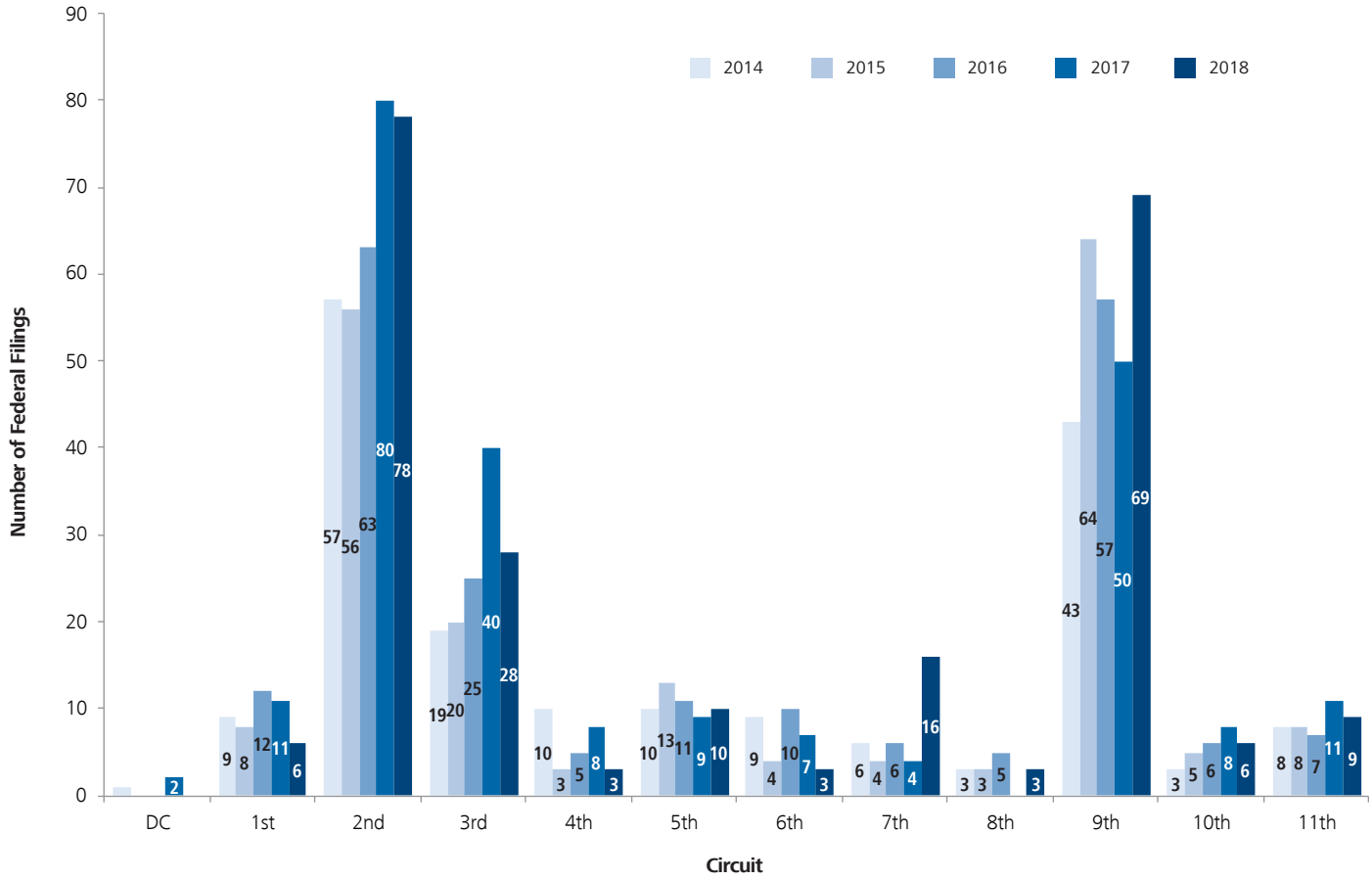
Note: Regulatory cases with parallel accounting, performance, or missed earnings claims are excluded.

Filings by Circuit

Filings in 2018 (excluding merger objections) were again concentrated in the Second and Ninth Circuits. The concentration of filings in these circuits has increased in 2018, during which they received 64% of filings, up from an average of 57% over the prior two years (see Figure 10). While the Second Circuit received the most filings, the most growth was in the Ninth Circuit, which includes Silicon Valley, mostly due to more litigation against firms in the Electronic Technology and Technology Services sector.

Merger-objection filings, not included in Figure 10, have become increasingly active in the Third Circuit, which includes Delaware. The Third Circuit received 82 merger-objection cases in 2018, double the number in 2017 and more than an eightfold increase over 2016. Nearly four-in-ten merger-objection cases were filed in the Third Circuit, twice the concentration of 2017 and coming amidst only a slight increase in the percentage of target firms incorporated in Delaware (see Figure 4). This corresponds with a decline in filings in every other circuit except the Second Circuit, where filings increased from 15 to 26.

Figure 10. **Federal Filings by Circuit and Year**
Excludes Merger Objections
January 2014–December 2018

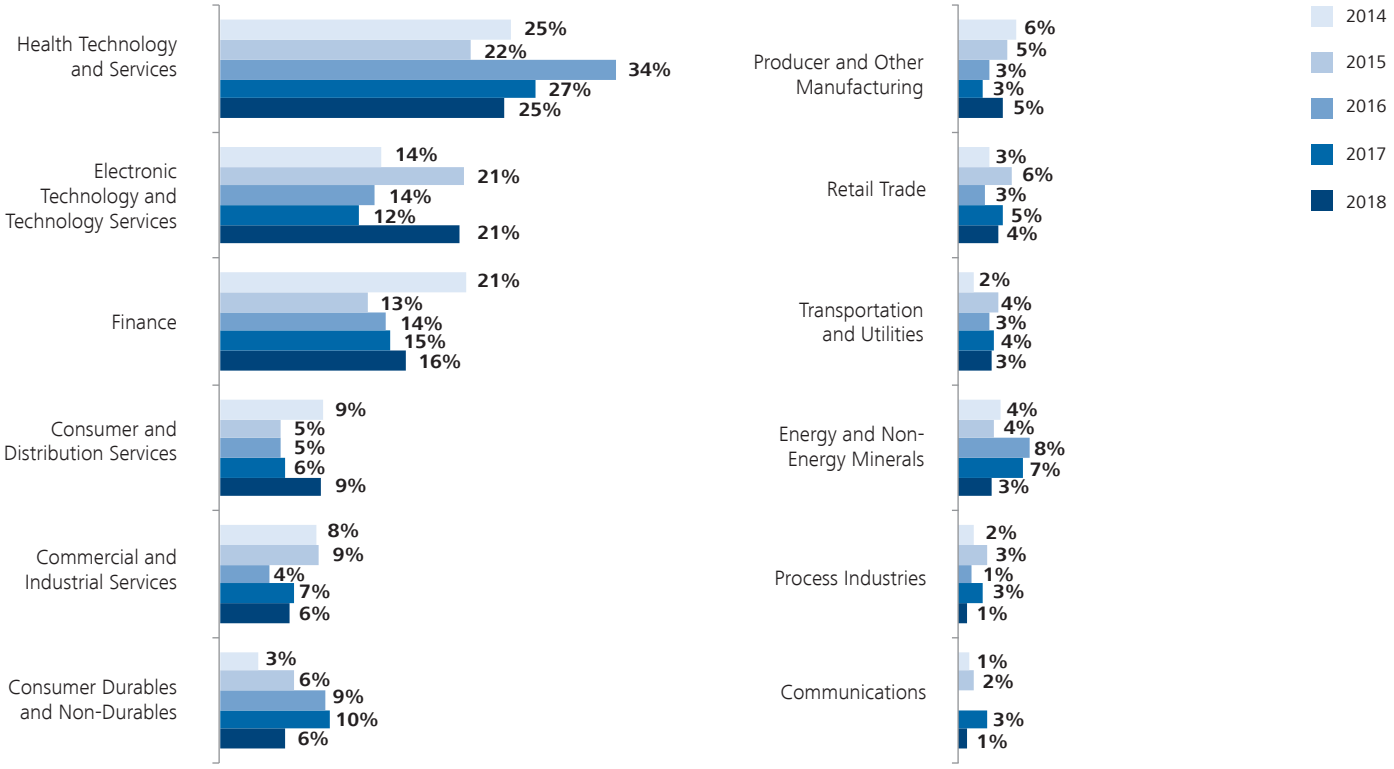


Filings by Sector

In 2018, filing counts were highest in the three historically dominant sectors, which include firms involved in health care, technology, and financial services (see Figure 11). The share of filings in these sectors increased to 62% in 2018 from about 54% in 2017, primarily due to a surge in filings against firms in the technology sector. Despite the drop in the percentage of health care companies targeted, the percentage of targeted firms in the Drugs industry (SIC 283) was nearly unchanged from 2017.

Firms in technological industries were especially at risk of securities class actions alleging accounting issues, misleading earnings guidance, or firm performance issues.[15] The industry with the highest percentage of constituent companies targeted with such allegations was the Computer and Office Equipment industry (SIC 357), with more than 9% of listed companies subject to litigation. This was followed by the Electronic Components and Accessories industry (SIC 367), with 6% of firms targeted. In the Drugs industry (SIC 283), 5% of firms were targeted with a filing with such claims (mostly related to misleading announcements regarding future performance).

Figure 11. **Percentage of Filings by Sector and Year**
Excludes Merger Objections
January 2014–December 2018



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

Allegations

In contrast with growth observed in recent years, filings with regulatory claims (i.e., those alleging a failure to disclose a regulatory issue) slowed to 41 in 2018 from 57 in 2017, a drop from 26% of Standard cases to 19% (see Figure 12). While fewer regulatory cases were filed, the median case size grew fourfold to over $4 billion (as measured by NERA-defined Investor Losses). The slowdown in regulatory filings was partially offset by more allegations of accounting issues and missed earnings guidance, which grew 8% and 13%, respectively.

While the size of filed cases (as measured by NERA-defined Investor Losses) grew in each allegation category, those alleging accounting issues and missed earnings guidance were especially large and more frequently targeted technology firms. The median size of accounting claims exceeded $600 million in 2018 (a level not seen since 2008), with filings over the second half of the year being especially large. Firms in the technology sector had the most accounting claims, making up 29% of the total (up from 21% in 2017). Moreover, more than one-in-three filings against firms in the technology sector alleged accounting issues.

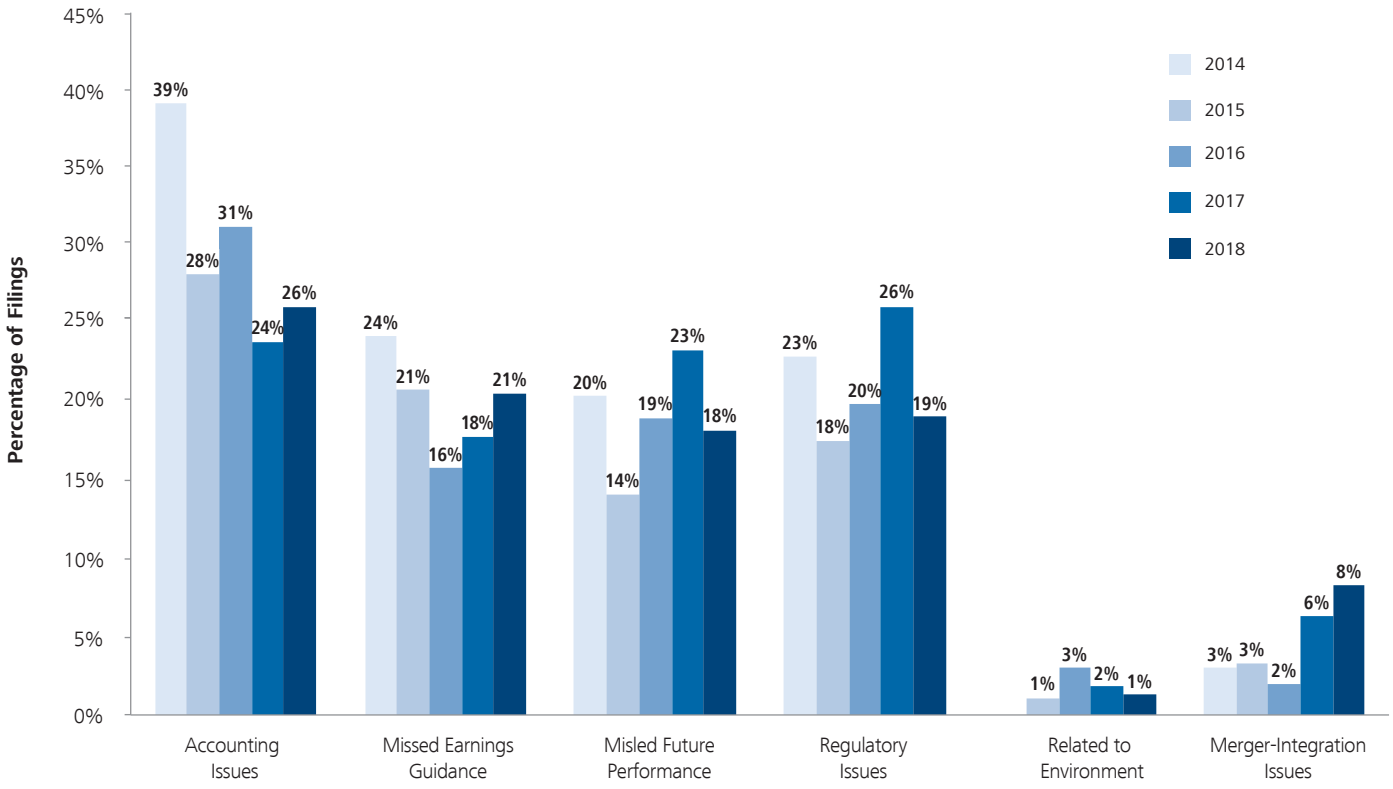
Filings claiming missed earnings guidance grew for the second straight year. Although the percentage of filings alleging missed guidance roughly matched that of 2015, the median case size (as measured by Investor Losses) was three times larger in 2018 than in 2015. Filings against firms in the technology sector with missed earnings guidance claims grew 70% since 2017 and constituted the largest share of such claims (at 27%).

In 2018, 8% of filings included merger integration allegations (i.e., claims of misrepresentations by a firm involved in a merger or acquisition). The substantial increase in litigation in 2017 corresponded with a 14% increase in announced M&A deals with US targets.[16] However, in 2018, despite a 12% slowdown in announced deal activity over the first three quarters, the number of federal merger integration filings rose.[17] The largest merger integration filing related to the failed Tribune Media/ Sinclair merger, making up 20% of total Investor Losses.

As in prior years, most allegations related to misleading firm performance in 2018 were against firms in the health care sector. Within health care, firms in the Drugs industry (SIC 283) were subject to two-in-three filings.

Most complaints include a wide variety of allegations, not all of which are depicted here. Due to multiple types of allegations in complaints, the same case may be included in multiple categories.

Figure 12. **Allegations**
Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, and/or Section 12
January 2014–December 2018

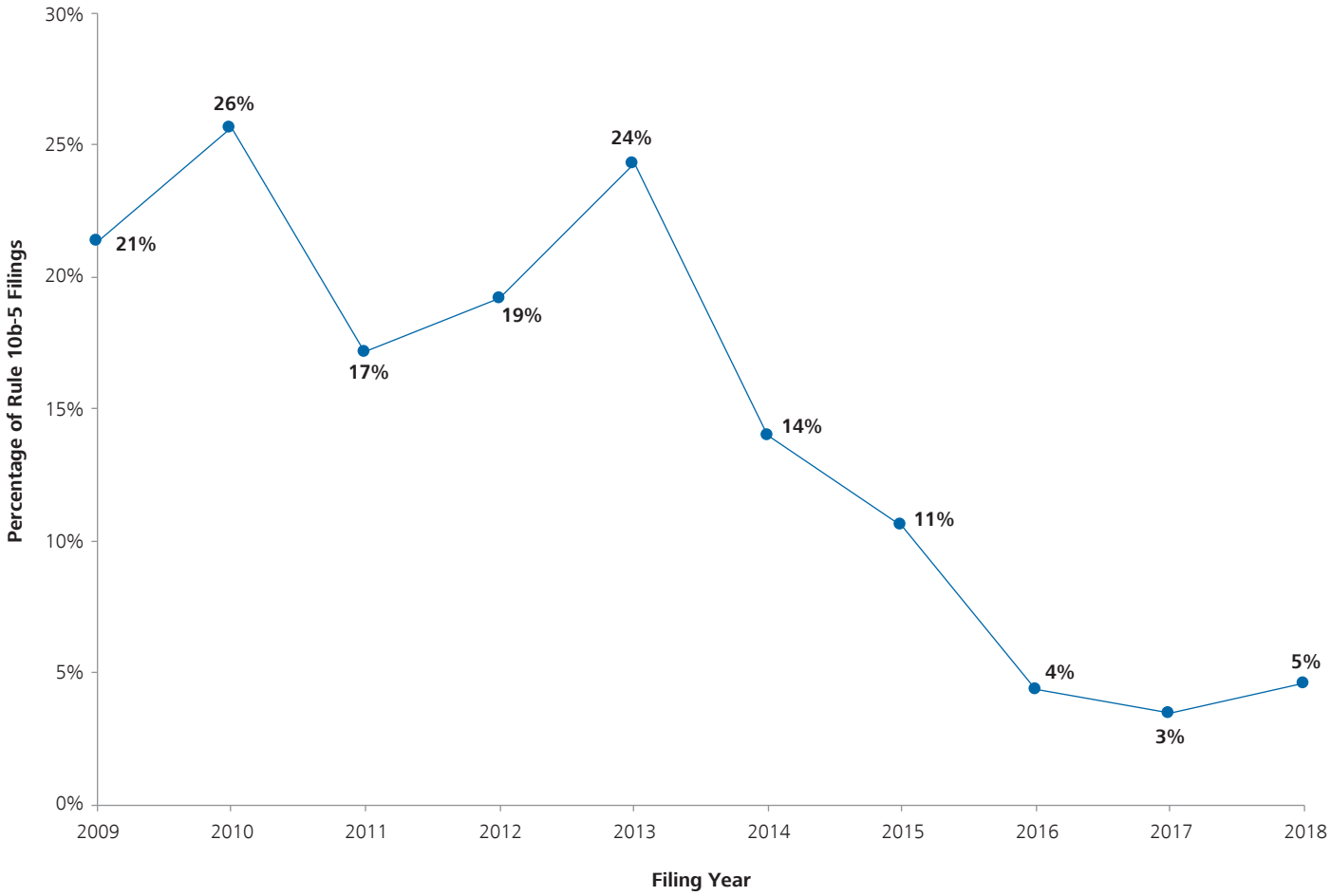


Alleged Insider Sales

Historically, Rule 10b-5 class action complaints have frequently alleged insider sales by directors and officers, usually as part of a scienter argument. Since 2013, in the wake of a multiyear crackdown on insider trading by prosecutors, the percentage of 10b-5 class actions that alleged insider sales has decreased nearly every year (see Figure 13).[18] This trend also corresponds with increased corporate adoption of 10b5-1 trading plans, allowing insiders to plan share sales while purportedly not in possession of material non-public information.[19]

Cases alleging insider sales were more common in the aftermath of the financial crisis, when a quarter of filings included insider trading claims. In 2005, half of class actions filed included such claims.

Figure 13. **Percentage of Rule 10b-5 Filings Alleging Insider Sales by Filing Year**
January 2009–December 2018



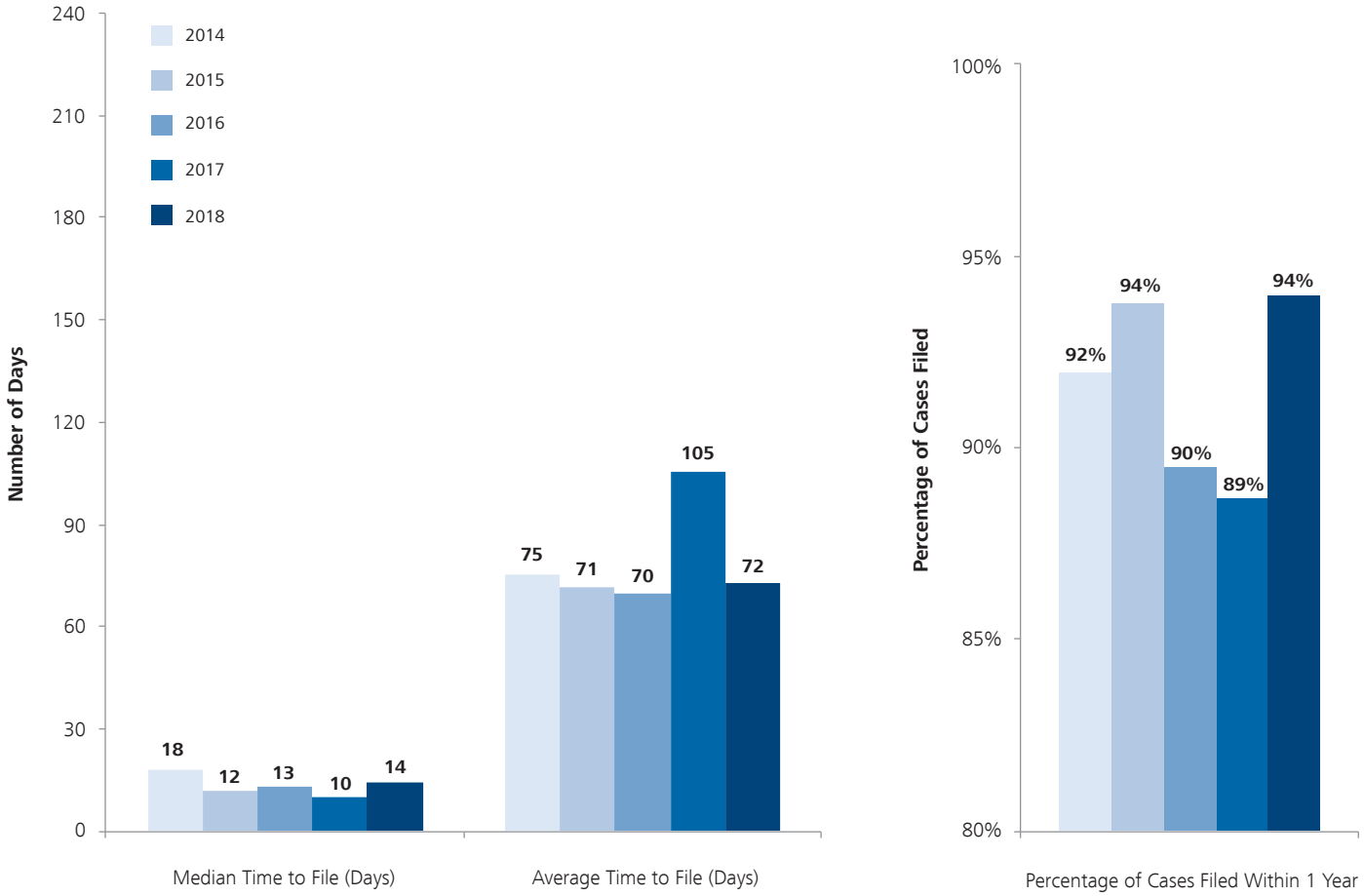
Time to File

The term "time to file" denotes the time that has elapsed between the end of the alleged class period and the filing date of the first complaint. Figure 14 illustrates how the median time and average time to file Rule 10b-5 cases (in days) have changed over the past five years.

The median time to file fell by about half over the last decade, to 14 days in 2018, indicating that it took 14 days or less to file a complaint in 50% of cases. Since the beginning of the decade, there has been a lower frequency of cases with long periods between the point when an alleged fraud was revealed and the filing of a related claim. The average time to file has followed a similar trajectory, but in 2017 was affected by 10 cases with very long filing delays. In 2017, one case against Rio Tinto, regarding the valuation of mining assets in Mozambique, took more than 4.5 years to file and boosted the average time to file by nearly 9%.[20]

Despite the small minority of cases with very long times to file, the data generally point toward a lower incidence of cases with long periods between revelations of alleged fraud and the date a related claim is filed.

Figure 14. **Time to File Rule 10b-5 Cases from End of Alleged Class Period to File Date**
January 2014–December 2018



Note: This analysis excludes cases where the alleged class period could not be unambiguously determined.

Analysis of Motions

NERA's statistical analysis has found robust relationships between settlement amounts and the stage of the litigation at which settlements occur. We track filings and decisions on three types of motions: motion to dismiss, motion for class certification, and motion for summary judgment. For this analysis, we include securities class actions in which purchasers of common stock are part of the class and in which a violation of Rule 10b-5, Section 11, and/or Section 12 is alleged (i.e., Standard cases).

As shown in the figures below, we record the status of any motion as of the resolution of the case. For example, a motion to dismiss that had been granted but was later denied on appeal is recorded as denied.

Motions for summary judgment were filed by defendants in 7.1%, and by plaintiffs in only 1.9%, of the securities class actions filed and resolved over the 2000–2018 period, among those we tracked.[21]

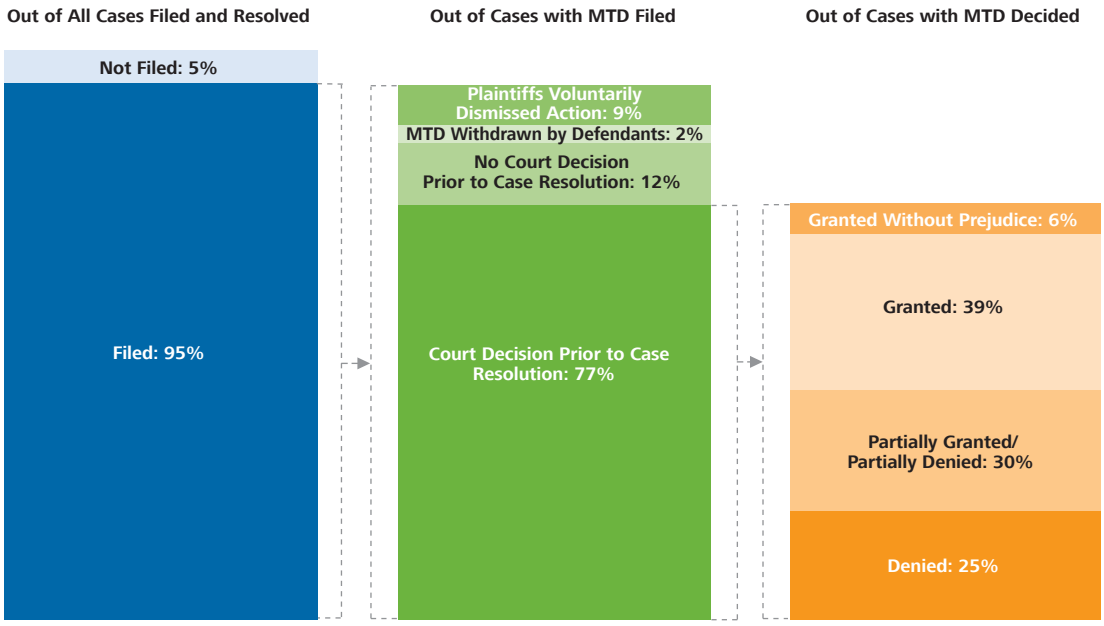
Outcomes of motions to dismiss and motions for class certification are discussed below.

Motion to Dismiss

A motion to dismiss was filed in 95% of the securities class actions tracked. However, the court reached a decision on only 77% of the motions filed. In the remaining 23% of cases, either the case resolved before a decision was reached, plaintiffs voluntarily dismissed the action, or the motion to dismiss was withdrawn by defendants (see Figure 15).

Out of the motions to dismiss for which a court decision was reached, the following three outcomes classify all of the decisions: granted with or without prejudice (45%), granted in part and denied in part (30%), and denied (25%).

Figure 15. **Filing and Resolutions of Motions to Dismiss**
Cases Filed and Resolved January 2000–December 2018



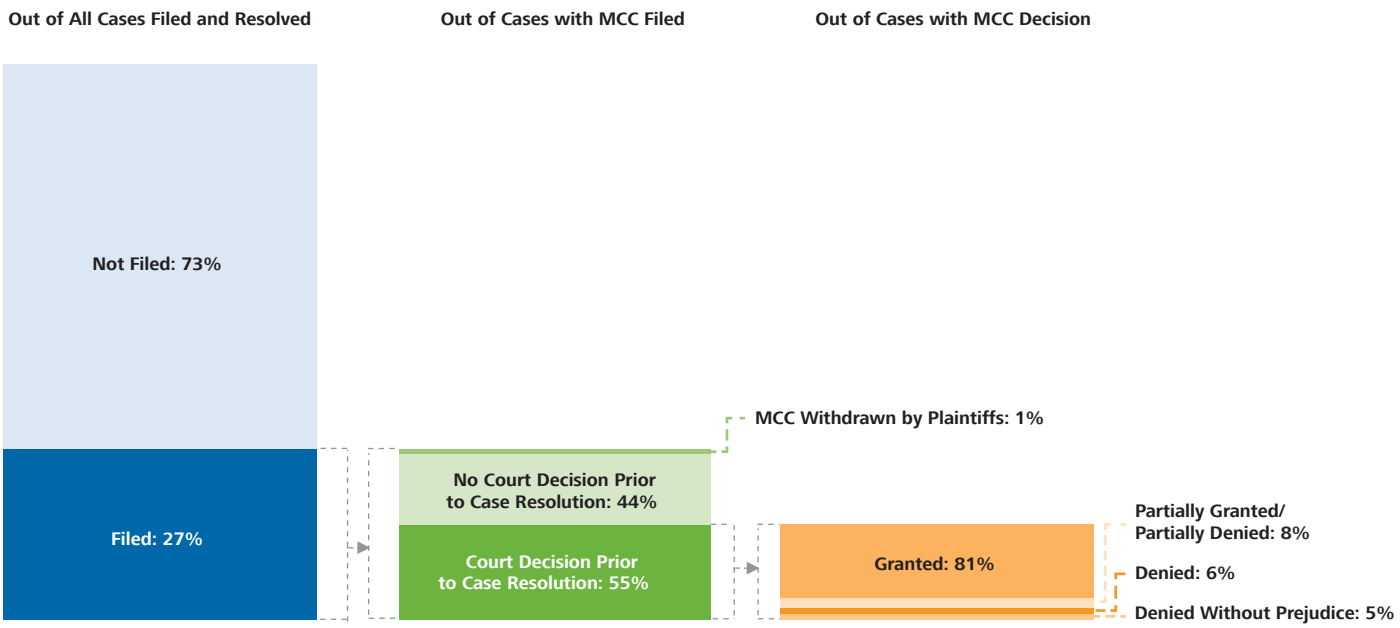
Note: Includes cases in which holders of common stock are part of the class and a Rule 10b-5, Section 11, and/or Section 12 is alleged. Excludes IPO laddering cases.

Motion for Class Certification

Most cases were settled or dismissed before a motion for class certification was filed: 73% of cases fell into this category. Of the remaining 27% (in which a motion for class certification was filed), the court reached a decision in only 55% of cases. Overall, only 15% of the securities class actions filed (or 55% of the 27%) reached a decision on the motion for class certification (see Figure 16).

According to our data, 89% of the motions for class certification that were decided were granted partially or in full.

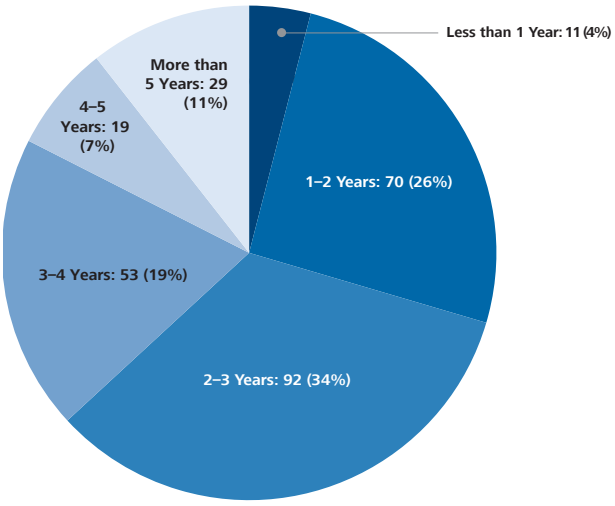
Figure 16. **Filing and Resolutions of Motions for Class Certification**
Cases Filed and Resolved January 2000–December 2018



Note: Includes cases in which holders of common stock are part of the class and a Rule 10b-5, Section 11, and/or Section 12 is alleged. Excludes IPO laddering cases.

Approximately 64% of the decisions handed down on motions for class certification were reached within three years of the complaint's original filing date (see Figure 17). The median time was about 2.5 years.

Figure 17. Time from First Complaint Filing to Class Certification Decision
Cases Filed and Resolved January 2000–December 2018



Note: Includes cases in which holders of common stock are part of the class and a 10b-5 or Rule 10b-5, Section 11, and/or Section 12 is alleged. Excludes IPO laddering cases.

Trends in Case Resolutions

Number of Cases Settled or Dismissed

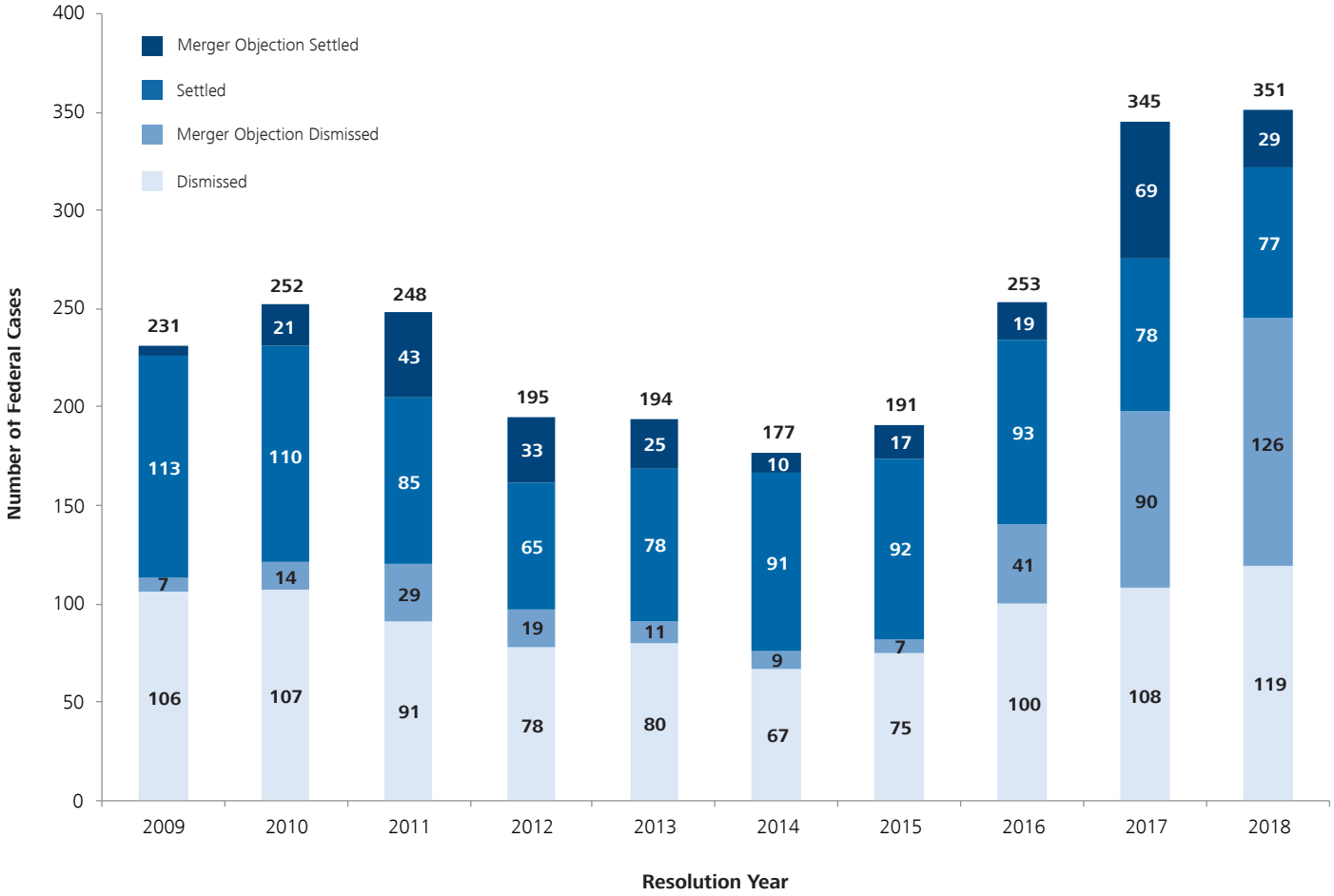
In total, 351 securities class actions were resolved in 2018, the second consecutive year in which a record number of cases concluded (see Figure 18). Resolution numbers were once again dominated by a record number of dismissals, which outnumbered settlements two-to-one for the first time.

Of the 351 resolutions, slightly less than half were resolutions of merger-objection cases (most of which were voluntarily dismissed). The uptick in resolutions over the last few years is largely due to the surge of federal merger-objection cases in the wake of the *Trulia* decision in early 2016.[22] Prior to *Trulia*, only about 13% of resolutions concerned merger-objection litigation. Merger objections had an outsized impact on resolution statistics: despite making up only about 33% of all active cases, they constituted 44% of resolutions.[23]

In 2018, 196 resolutions were of "Standard" securities class actions—those alleging violations of Rule 10b-5, Section 11, and/or Section 12. Standard settlement and dismissal counts closely matched those of 2017, and again more cases were dismissed than settled.

For the second consecutive year, an inordinate number of Standard cases were dismissed within a year of filing, most of which were voluntary dismissals. As shown in Figure 31, the decision to voluntarily dismiss litigation may change with the size of estimated damages to the class. For instance, plaintiffs may be more likely to voluntarily dismiss litigation if the price of the security at issue subsequently increases during the PSLRA bounce-back period.

Figure 18. **Number of Resolved Cases: Dismissed or Settled**
January 2009–December 2018



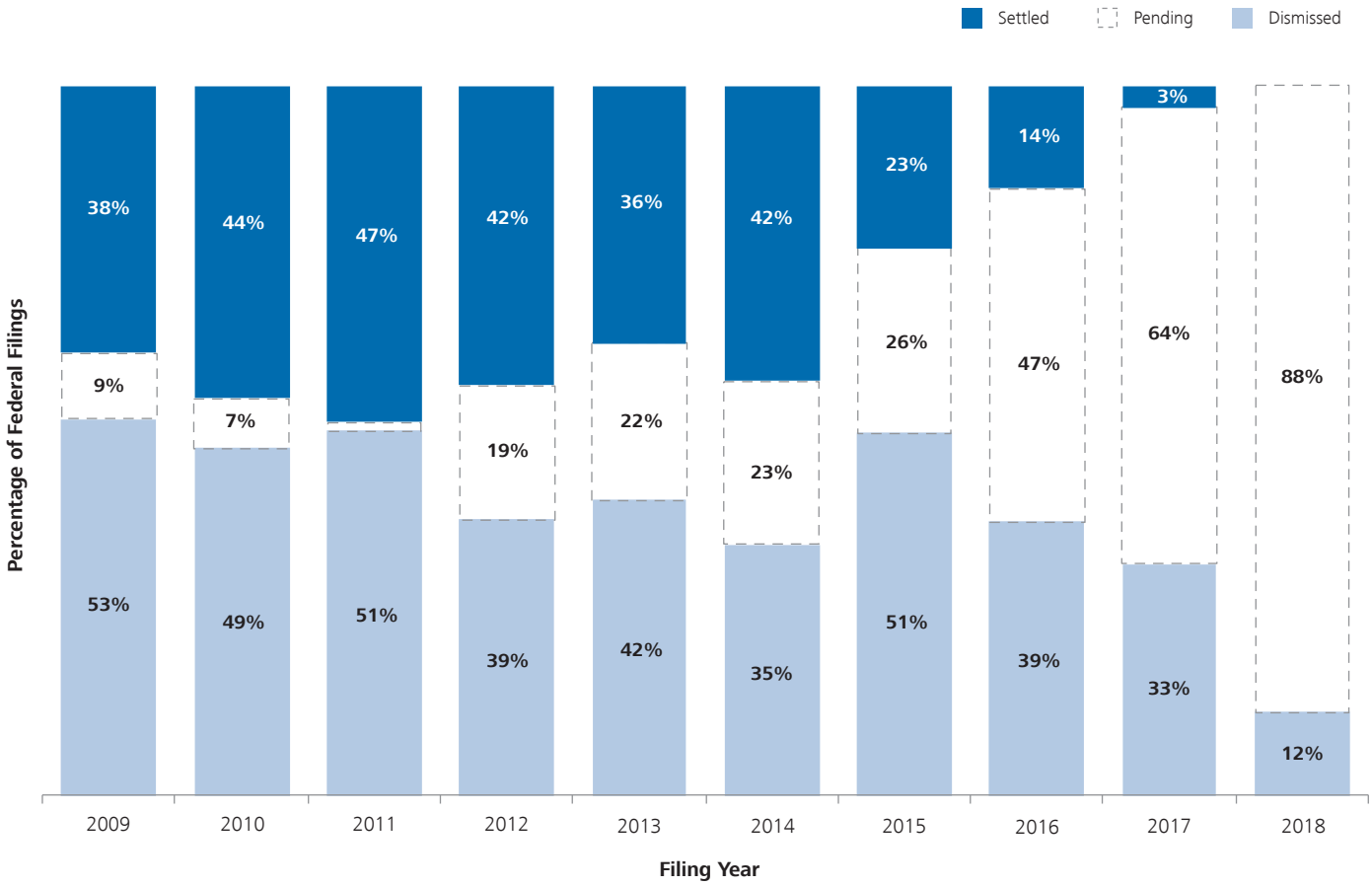
Case Status by Year

Figure 19 shows the current resolution status of cases by filing year. Each percentage represents the current resolution status of cases filed in each year as a proportion of all cases filed in that year. Merger-objection cases are excluded, as are verdicts.

Historically, more cases settled than were dismissed. However, the rate of case dismissal has steadily increased. While only about a third of cases filed between 2000 and 2002 were dismissed, in 2015, the most recent year with substantial resolution data, at least half of filed cases were dismissed.[24]

While dismissal rates have been climbing since 2000, the ultimate dismissal rate for cases filed in more recent years is less certain. On one hand, the dismissal rate may increase further, as there are more pending cases awaiting resolution. On the other hand, it may decrease because recent dismissals have more potential than older ones to be appealed or re-filed, and cases that were recently dismissed without prejudice may ultimately result in settlements.

Figure 19. **Status of Cases as Percentage of Federal Filings by Filing Year**
Excludes Merger Objections and Verdicts
January 2009–December 2018



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

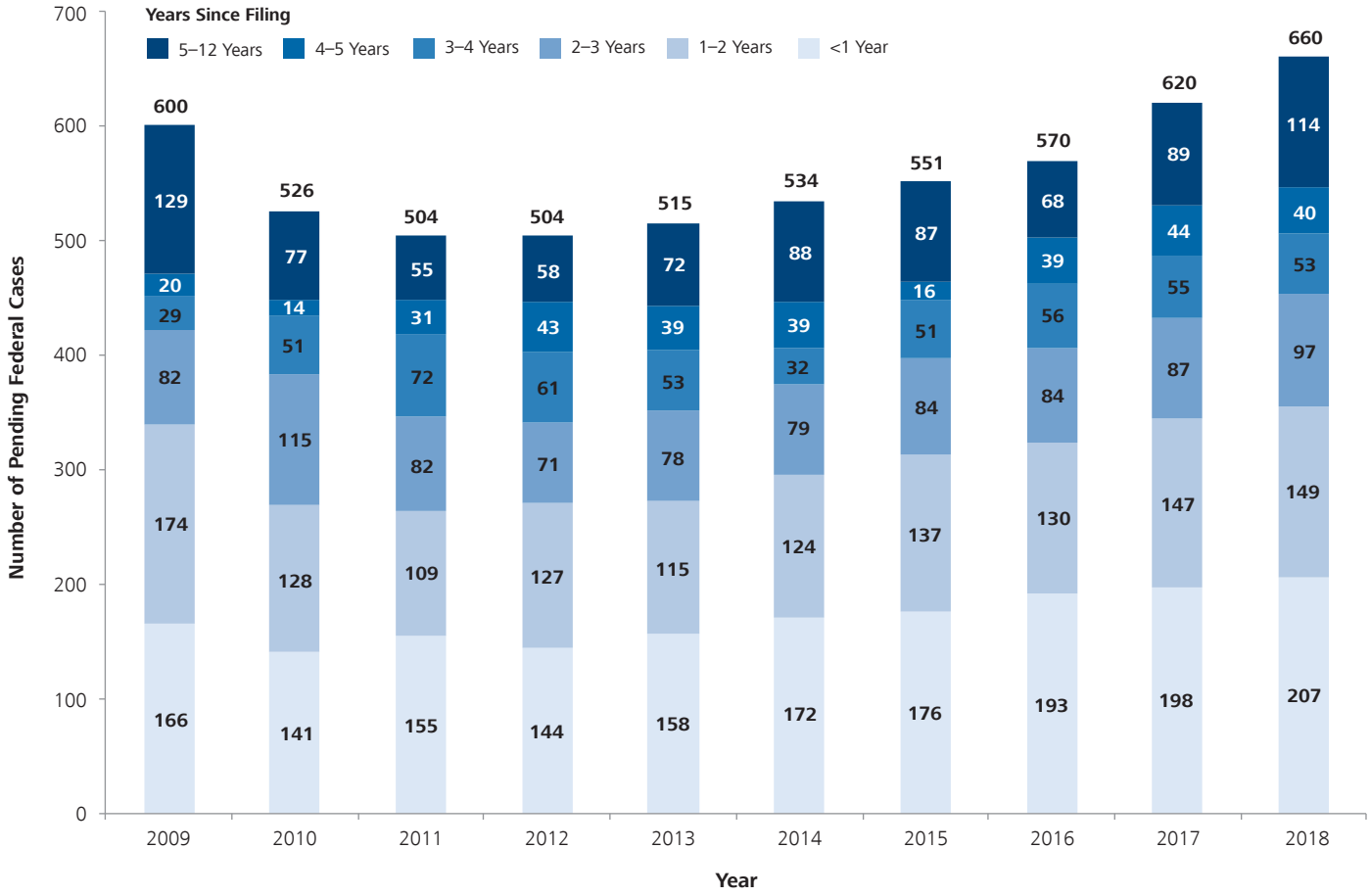
Number of Cases Pending

The number of Standard securities class actions pending in the federal system has steadily increased from a post-PSLRA low of 504 in 2012 (see Figure 20).[25] Since then, pending case counts have increased between 2% and 9% annually. In 2018, the number of pending Standard cases on federal dockets increased to 660, up 6% from 2017 and 31% from 2012.

Generally, since cases are either pending or resolved, a change in filing rate or a lengthening of the time to case resolution potentially contributes to changes in the number of cases pending. If the number of new filings is constant, the change in the number of pending cases can be indicative of whether the time to case resolution is generally shortening or lengthening.

About 50% of the long-term growth in pending litigation can be explained by recent filing growth (filed over the past two years), the vast majority of which is simply due to more cases being filed that have yet to be resolved. Delayed resolution of older filings (i.e., cases filed before 2017) explains the other 50% or so of growth in pending litigation since 2011. More old cases on federal dockets has driven the median age of pending cases up 14% since 2015 to about 1.9 years, the highest since 2010.[26]

Figure 20. **Number of Pending Federal Cases**
Excludes Merger Objections
January 2009–December 2018



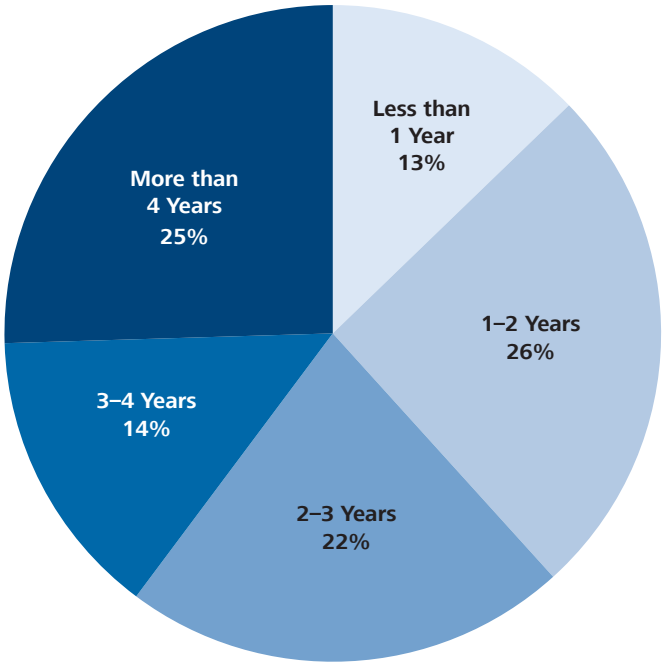
Note: The figure excludes, in each year, cases that had been filed more than 12 years earlier. Years since filing are end-of-year calculations. The figure also excludes IPO laddering cases. The 12-year limit ensure that all pending cases were filed post-PSLRA.

Time to Resolution

The term "time to resolution" denotes the time between the filing of the first complaint and resolution (whether through settlement or dismissal). Figure 21 illustrates the time to resolution for all securities class actions filed between 2001 and 2014, and shows that about 39% of cases are resolved within two years of initial filing and about 61% are resolved within three years.[27]

The median time to resolution for cases filed in 2016 (the last year with sufficient resolution data) was 2.3 years, similar to the range over the preceding five years. Over the past decade, the median time to resolution declined by more than 10%, primarily due to an increase in the dismissal rate (dismissals are generally resolved faster than settlements).

Figure 21. **Time from First Complaint Filing to Resolution**
Cases Filed January 2001–December 2014



Trends in Settlements

We present several settlement metrics to highlight attributes of cases that settled in 2018 and to compare them with cases settled in past years. We discuss two ways of measuring average settlement amounts and calculate the median settlement amount. Each calculation excludes merger-objection cases and cases that settle with no cash payment to the class, as settlements of such cases may obscure trends in what have historically been more typical cases.

In 2018, the average settlement rebounded to $69 million from a near-record low in 2017, largely due to the $3 billion settlement involving Petróleo Brasileiro S.A.—Petrobras, the fifth-highest settlement ever. Even excluding Petrobras (the only settlement of the year exceeding $1 billion), the average settlement exceeded $30 million, which is about average in the post-PSLRA era (after adjusting for inflation). The median settlement in 2018 was more than twice that of 2017, primarily due to higher settlements of many moderately sized cases and, generally, fewer very small settlements.

The upswing in 2018 settlement metrics may be a prelude to higher settlements in the future. Aggregate NERA-defined Investor Losses of pending cases, a factor that has historically been significantly correlated with settlement amounts, increased for the third consecutive year and currently exceeds $1.4 trillion (or $1.1 trillion excluding 2018 litigation against GE). Excluding GE, average Investor Losses of pending Standard cases have also increased for the third consecutive year to $2.4 billion, but have receded from a 10-year high of $3.8 billion in 2011.

To illustrate how many cases settled over various ranges in 2017 compared with prior years, we provide a distribution of settlements over the past five years. We also tabulated the 10 largest settlements of the year.

Average and Median Settlement Amounts

The average settlement exceeded $69 million in 2018, somewhat less than three times the $25 million average settlement in 2017 (see Figure 22). Infrequent large settlements, such as the 2018 Petrobras settlement, are generally responsible for the wide variability in average settlements over the past decade. Similar spikes to the one observed this year were also seen in 2010, 2013, and 2016, each primarily stemming from mega-settlements.

Figure 22. **Average Settlement Value**
Excludes Merger Objections and Settlements for $0 to the Class
January 2009–December 2018

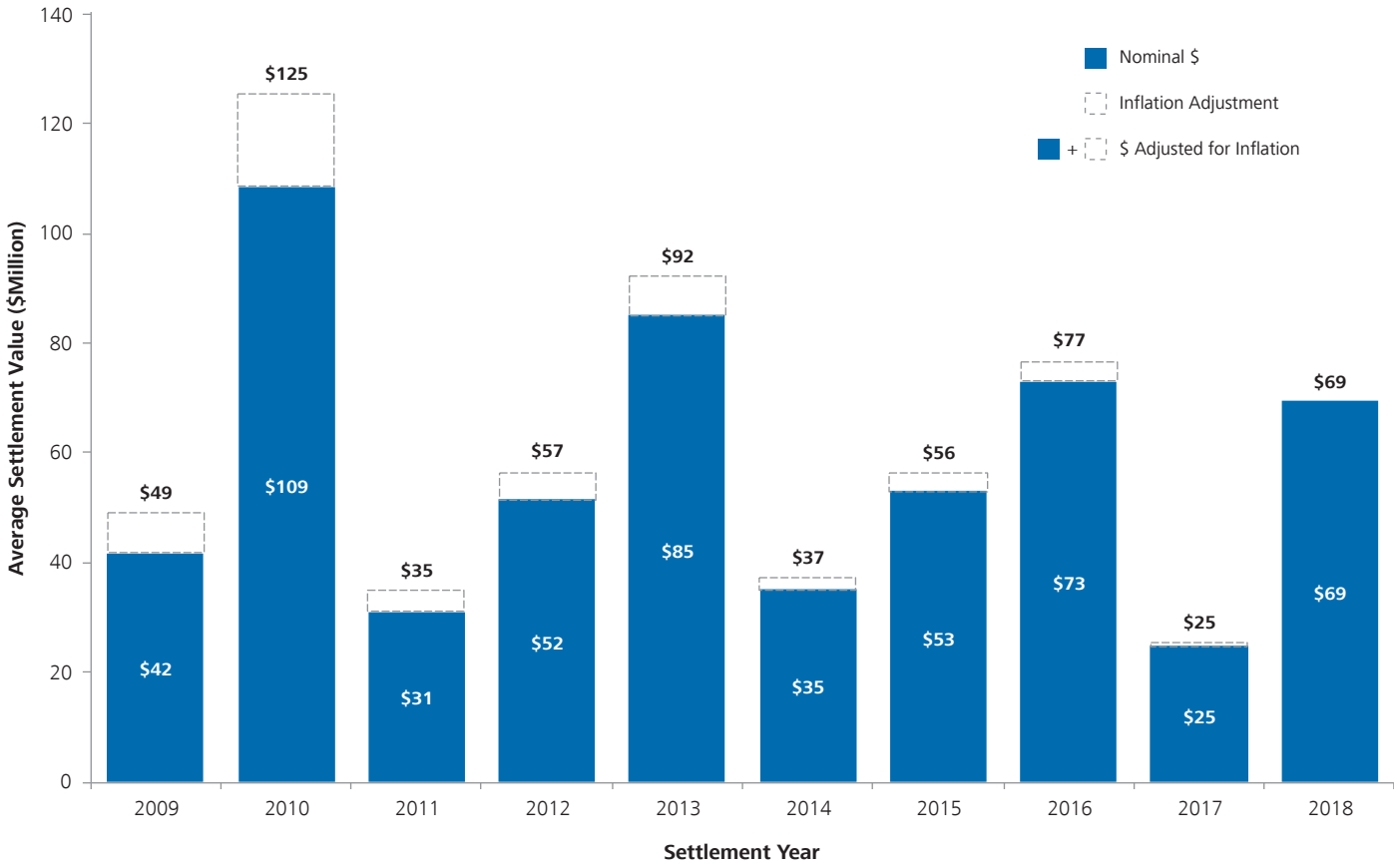
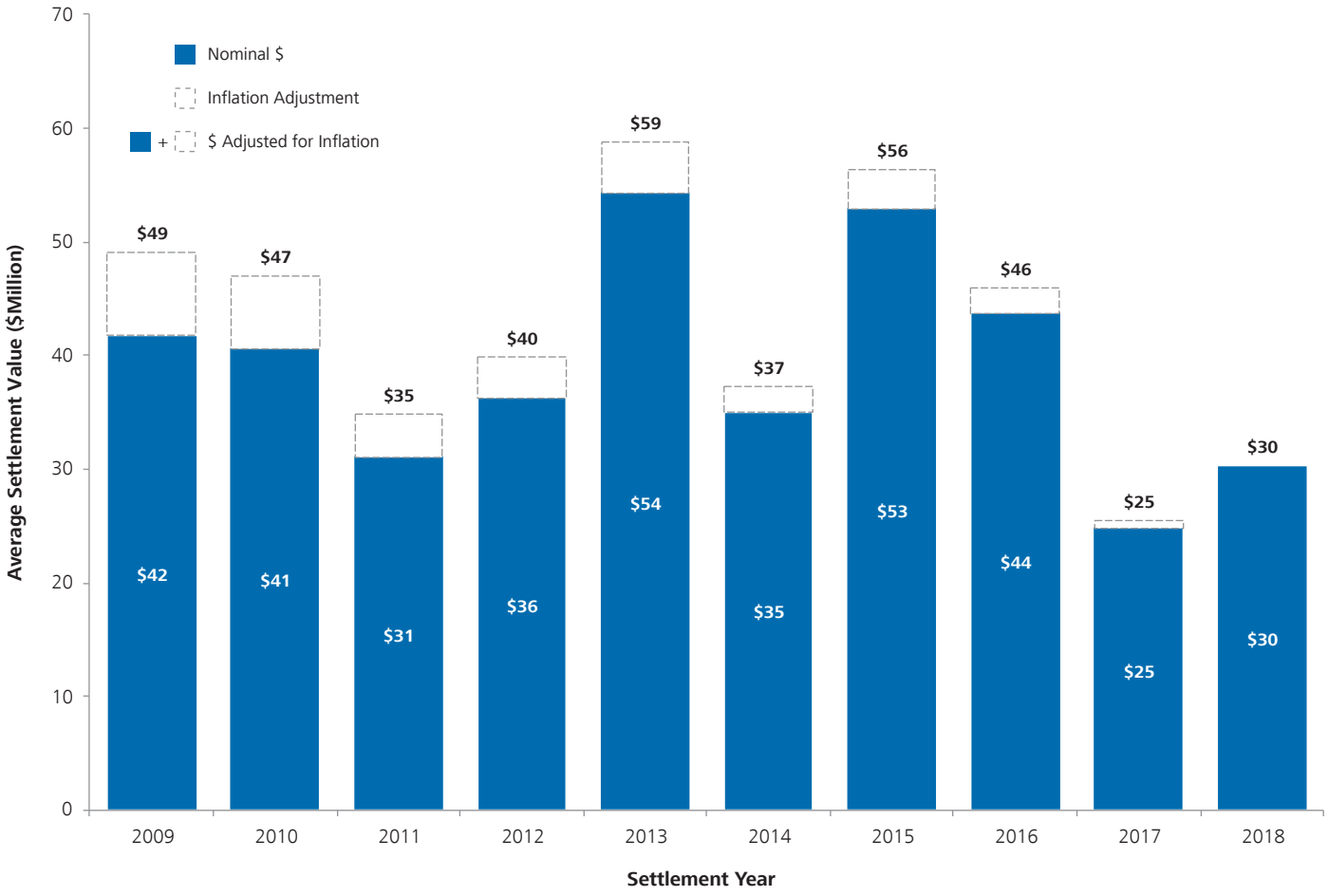


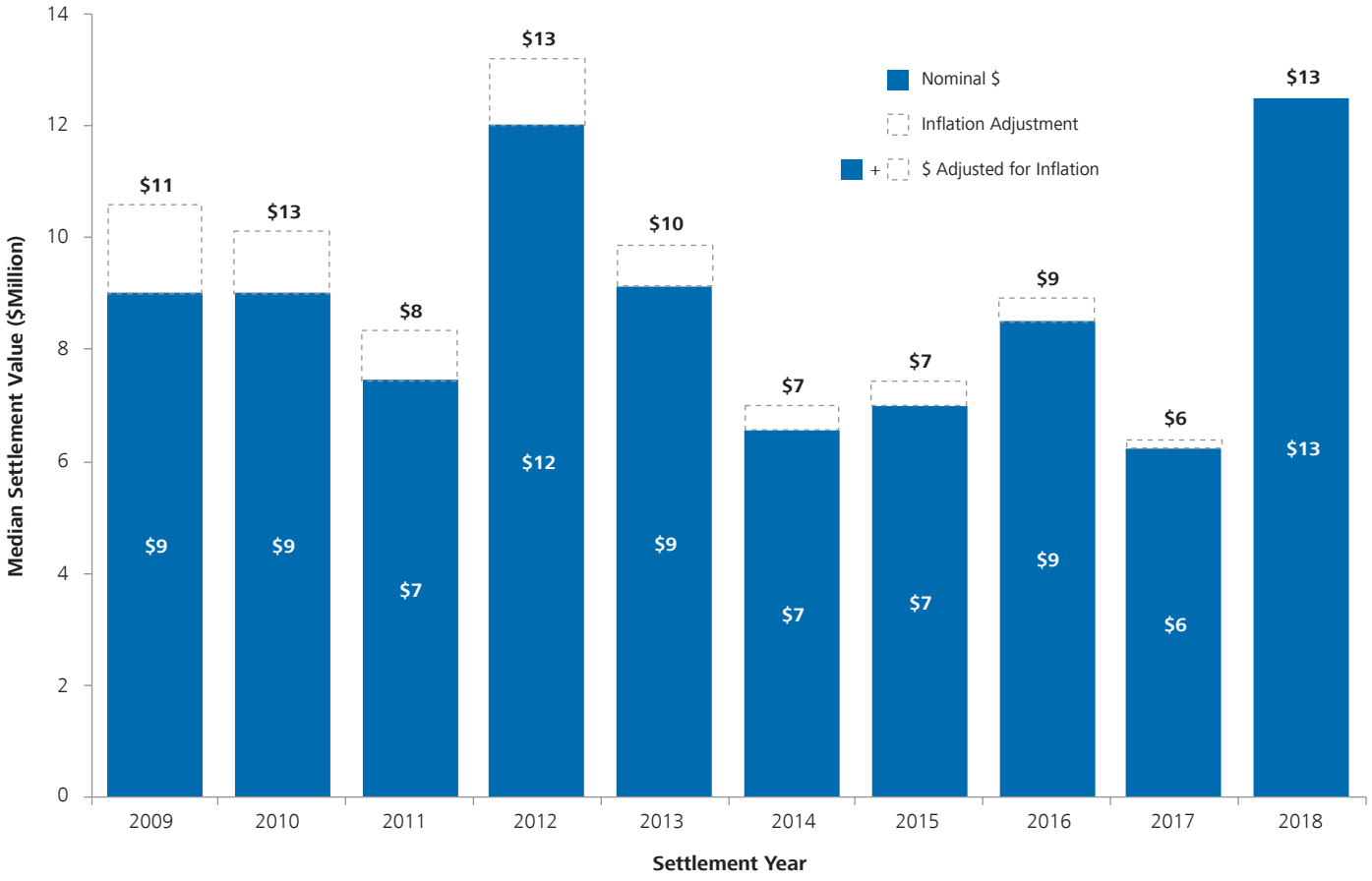
Figure 23 illustrates that, excluding settlements over $1 billion, the average settlement rebounded from the record low seen in 2017 to $30 million. Despite this rebound, and setting aside the $3 billion Petrobras settlement, the 2018 average settlement remained below average compared to the past decade. The metric would have roughly matched the near-record low seen in 2017 but for the $480 million Wells Fargo settlement that was finalized in mid-December 2018.

Figure 23. **Average Settlement Value**
Excludes Settlements over $1 Billion, Merger Objections, and Settlements for $0 to the Class
January 2009–December 2018



The 2018 median settlement was a near-record $13 million. This was driven primarily by relatively high settlements of moderately sized cases (as measured by NERA-defined Investor Losses). Cases of moderate size not only made up the bulk of settlements in 2018 but also had a median ratio of settlement to Investor Losses more than 50% higher than in past years. Moreover, unlike 2017, there were generally few very small settlements.

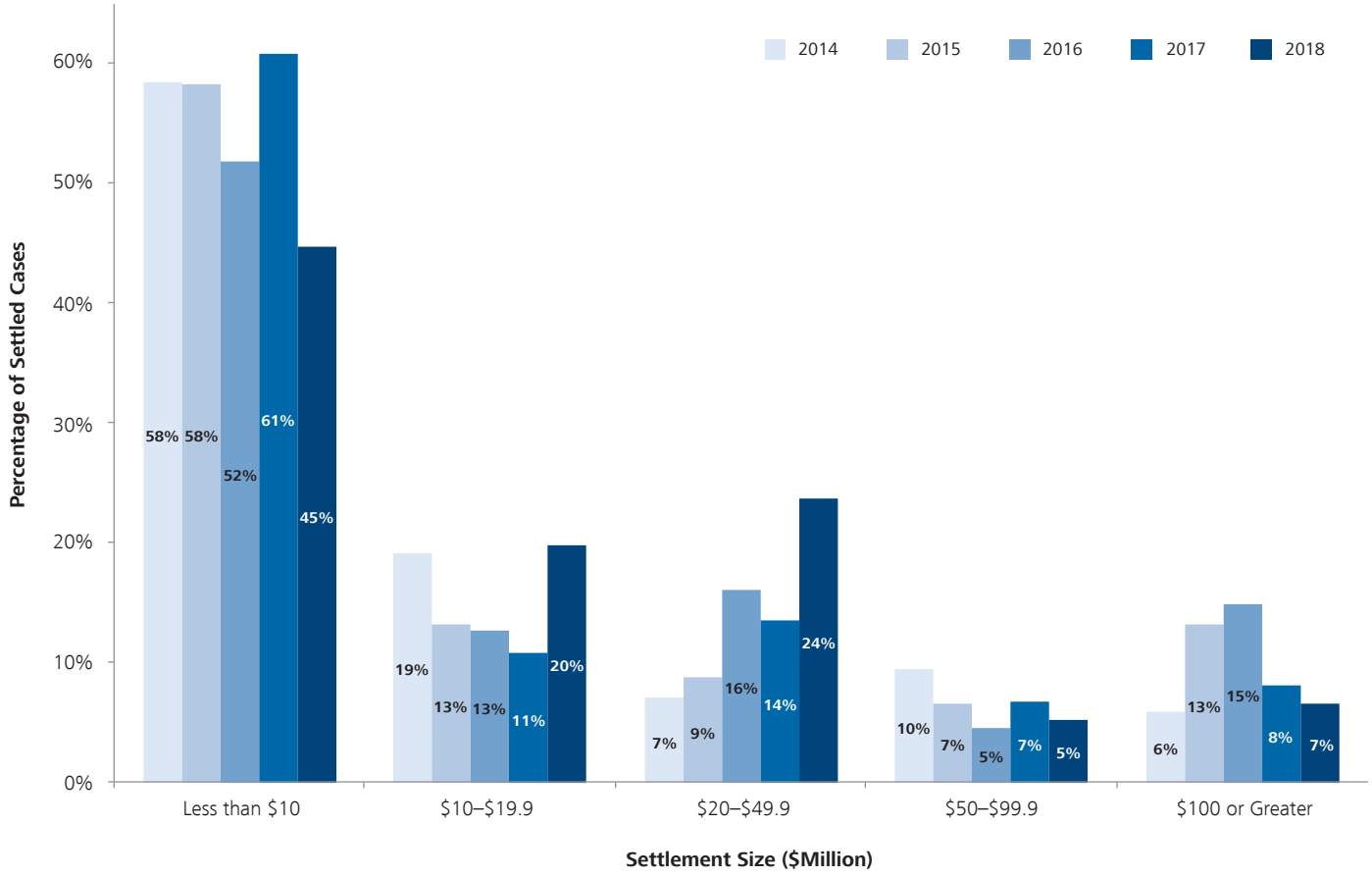
Figure 24. **Median Settlement Value**
Excludes Settlements over $1 Billion, Merger Objections, and Settlements for $0 to the Class
January 2009–December 2018



Distribution of Settlement Amounts

The relatively high settlements of moderately sized cases in 2018 are also captured in the distribution of settlement values (see Figure 25). In 2018, fewer than 45% of settlements were for less than $10 million (the lowest rate since 2010), which stands in stark contrast with 2017, when more than 60% of settlements were in the smallest strata (the highest rate since 2011).

Figure 25. **Distribution of Settlement Values**
Excludes Merger Objections and Settlements for $0 to the Class
January 2014–December 2018



The 10 Largest Settlements of Securities Class Actions of 2018

The 10 largest securities class action settlements of 2018 are shown in Table 1. The two largest settlements, against Petrobras and Wells Fargo & Company, are among many large regulatory cases filed in recent years. Three of the 10 largest settlements involved defendants in the Finance sector. Overall, these 10 cases accounted for about $4.4 billion in settlement value, a near-record 84% of the $5.3 billion in aggregate settlements.

Despite the size of the Petrobras settlement, it is not even half the size of the second-largest settlement since passage of the PSLRA, WorldCom, Inc., at $6.2 billion (see Table 2).

Table 1. **Top 10 2018 Securities Class Action Settlements**

Ranking	Case Name	Total Settlement Value ($Million)	Plaintiffs' Attorneys' Fees and Expenses Value ($Million)
1	Petróleo Brasileiro S.A.—Petrobras (2014)	$3,000.0	$205.0
2	Wells Fargo & Company (2016)	$480.0	$96.4
3	Allergan, Inc.	$290.0	$71.0
4	Wilmington Trust Corporation	$210.0	$66.3
5	LendingClub Corporation	$125.0	$16.8
6	Yahoo! Inc. (2017)	$80.0	$14.8
7	SunEdison, Inc.	$73.9	$19.0
8	Marvell Technology Group Ltd. (2015)	$72.5	$14.1
9	3D Systems Corporation	$50.0	$15.5
10	Medtronic, Inc. (2013)	$43.0	$8.6
	Total	**$4,424.4**	**$527.4**

Table 2. **Top 10 Securities Class Action Settlements**
As of 31 December 2018

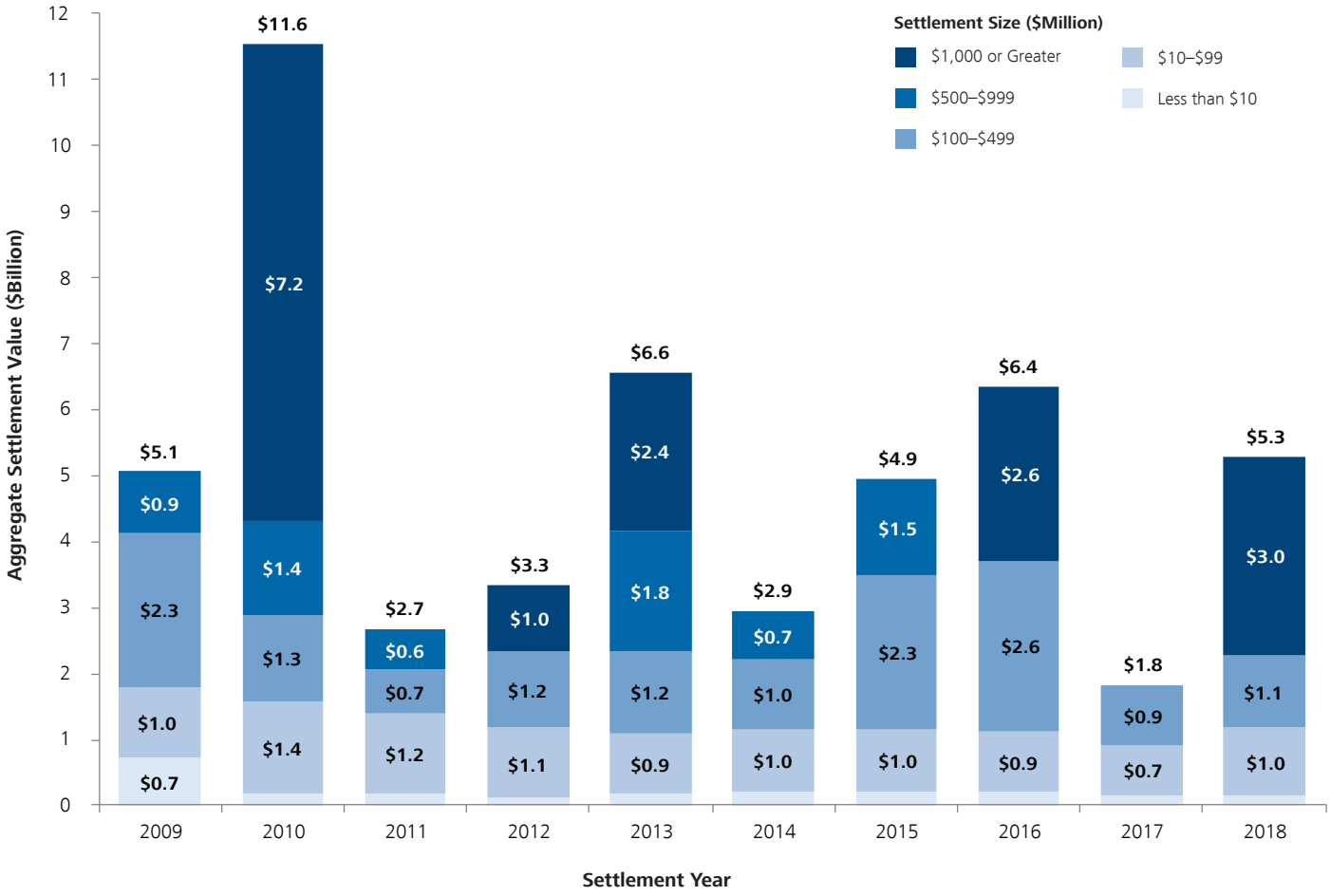
Ranking	Defendant	Settlement Year(s)	Total Settlement Value ($Million)	Codefendant Settlements		Plaintiffs' Attorneys' Fees and Expenses Value ($Million)
				Financial Institutions Value ($Million)	Accounting Firms Value ($Million)	
1	ENRON Corp.	2003–2010	$7,242	$6,903	$73	$798
2	WorldCom, Inc.	2004–2005	$6,196	$6,004	$103	$530
3	Cendant Corp.	2000	$3,692	$342	$467	$324
4	Tyco International, Ltd.	2007	$3,200	No codefendant	$225	$493
5	Petróleo Brasileiro S.A.—Petrobras	2018	$3,000	$0	$50	$205
6	AOL Time Warner Inc.	2006	$2,650	No codefendant	$100	$151
7	Bank of America Corp.	2013	$2,425	No codefendant	No codefendant	$177
8	Household International, Inc.	2006–2016	$1,577	Dimissed	Dismissed	$427
9	Nortel Networks (I)	2006	$1,143	No codefendant	$0	$94
10	Royal Ahold, NV	2006	$1,100	$0	$0	$170
	Total		**$32,224**	**$13,249**	**$1,017**	**$3,368**

Aggregate Settlements

We use the term "aggregate settlements" to denote the total amount of money to be paid to settle litigation by (non-dismissed) defendants based on the court-approved settlements during a year.

Aggregate settlements rebounded to nearly $5.3 billion in 2018, more than double the 2017 total (see Figure 26). More than 80% of the growth stems from the $3.0 billion Petrobras settlement. Excluding Petrobras and Wells Fargo, aggregate settlements are near the 2017 record low, reflecting a persistent slowdown in overall settlement activity.

Figure 26. **Aggregate Settlement Value by Settlement Size**
January 2009–December 2018



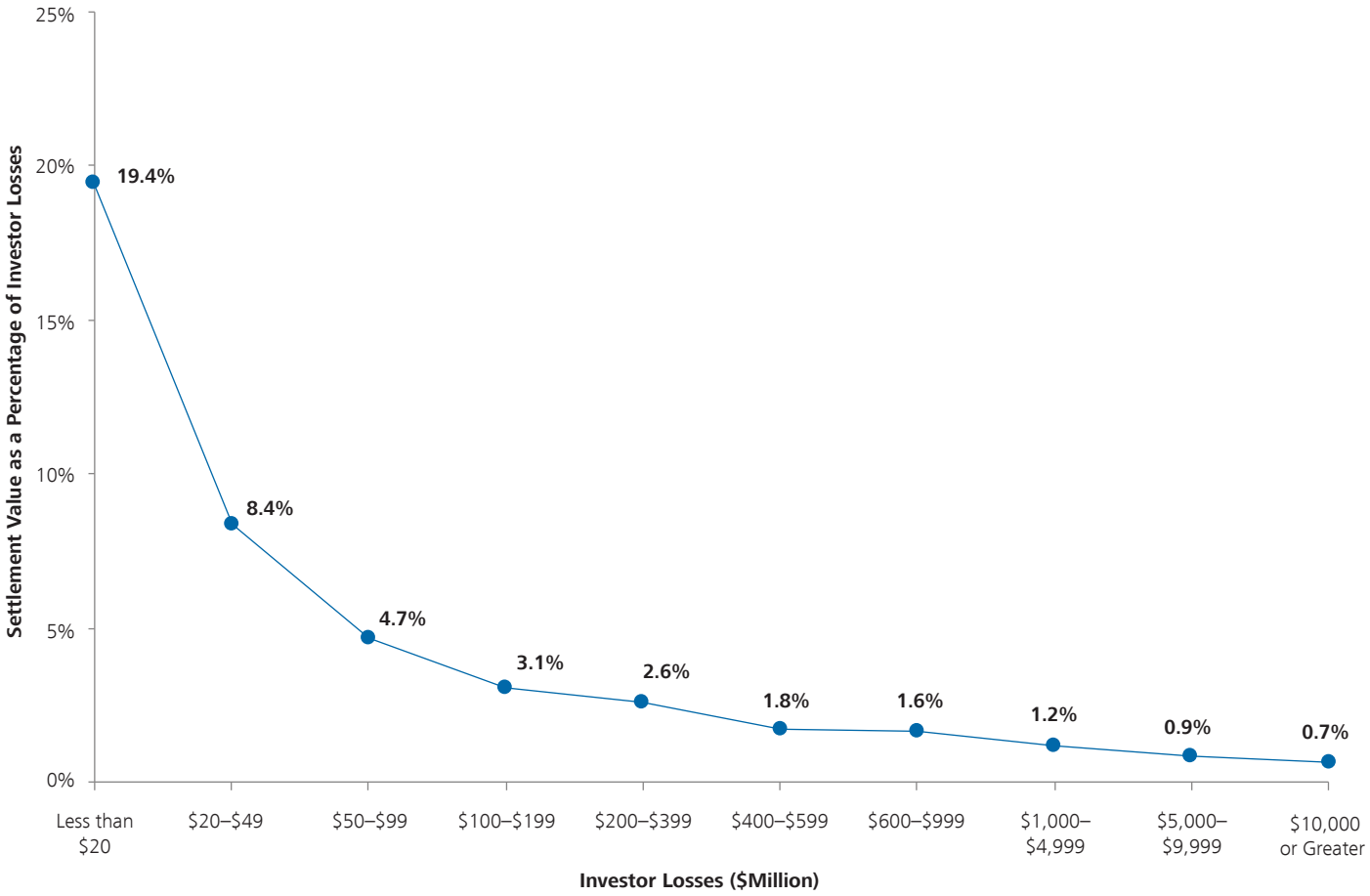
NERA-Defined Investor Losses vs. Settlements

As noted above, our proxy for case size, NERA-defined Investor Losses, is a measure of the aggregate amount investors lost from buying the defendant's stock rather than investing in the broader market during the alleged class period.

In general, settlement size grows as NERA-defined Investor Losses grow, but the relationship is not linear. Based on our analysis of data from 1996 to 2018, settlement size grows less than proportionately with Investor Losses. In particular, small cases typically settle for a higher fraction of Investor Losses (i.e., more cents on the dollar) than larger cases. For example, the ratio of settlement to Investor Loss for the median case was 19.4% for cases with Investor Losses of less than $20 million, while it was 0.7% for cases with Investor Losses over $10 billion (see Figure 27).

Our findings about the ratio of settlement amount to NERA-defined Investor Losses should not be interpreted as the share of damages recovered in settlement, but rather as the recovery compared to a rough measure of the "size" of the case. Notably, the percentages given here apply *only* to NERA-defined Investor Losses. Using a different definition of investor losses would result in a different ratio. Also, the use of the ratio alone to forecast the likely settlement amount would be inferior to a proper all-encompassing analysis of the various characteristics shown to impact settlement amounts, as discussed in the section *Explaining Settlement Values*.

Figure 27. **Median of Settlement Value as a Percentage of NERA-Defined Investor Losses by Level of Investor Losses**
Excludes Settlements for $0 to the Class
January 1996–December 2018

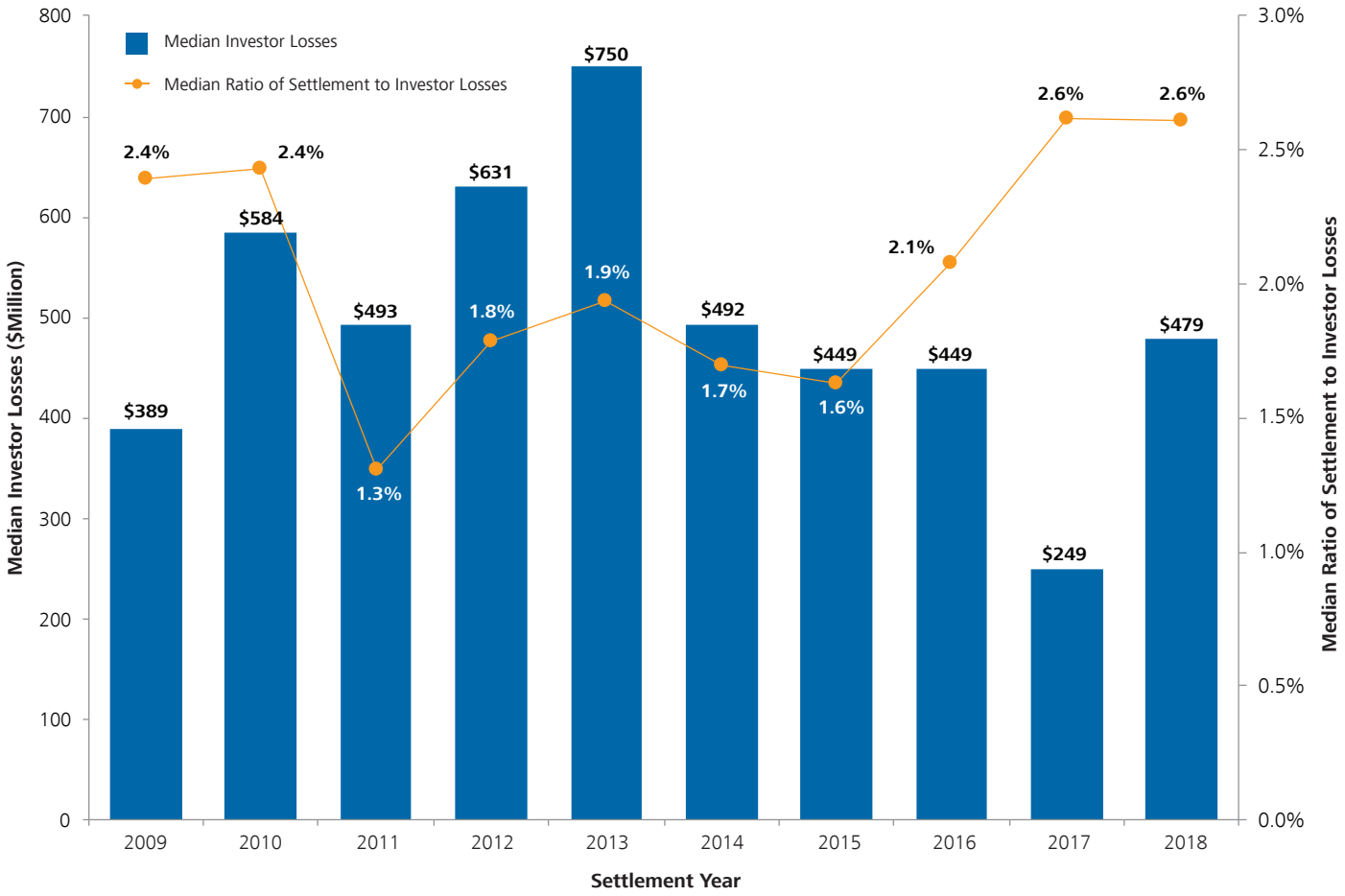


Median NERA-Defined Investor Losses over Time

Prior to 2014, median NERA-defined Investor Losses for settled cases had been on an upward trajectory since the passage of the PSLRA. As described above, the median ratio of settlement size to Investor Losses generally decreases as Investor Losses increase. Over time, the increase in median Investor Losses coincided with a decreasing trend in the median ratio of settlement to Investor Losses. Of course, there are also year-to-year fluctuations.

As shown in Figure 28, the median ratio of settlements to NERA-defined Investor Losses was 2.6% in 2018. This was the third consecutive year of at least a short-term reversal of a long-term downtrend of the ratio between passage of the PSLRA and 2015.

Figure 28. **Median NERA-Defined Investor Losses and Median Ratio of Settlement to Investor Losses by Settlement Year**
January 2009–December 2018



Explaining Settlement Amounts

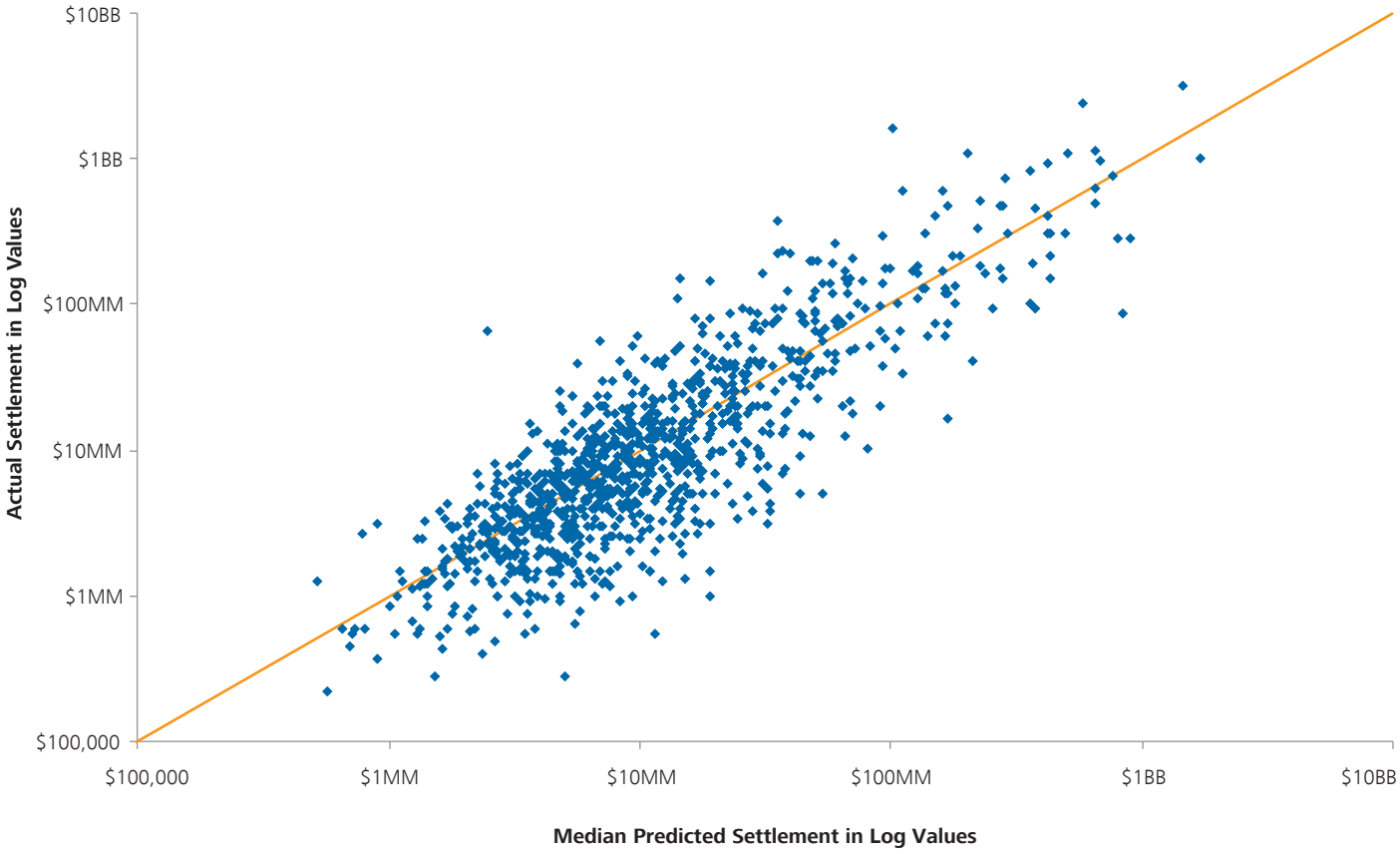
The historical relationship between case attributes and other case- and industry-specific factors can be used to measure the factors correlated with settlement amounts. NERA has examined settlements in more than 1,000 securities class actions and identified key drivers of settlement amounts, many of which have been summarized in this report.

Generally, we find that the following factors have historically been significantly correlated with settlements:

- NERA-defined Investor Losses (a proxy for the size of the case);
- The market capitalization of the issuer;
- Types of securities alleged to have been affected by the fraud;
- Variables that serve as a proxy for the "merit" of plaintiffs' allegations (such as whether the company has already been sanctioned by a governmental or regulatory agency or paid a fine in connection with the allegations);
- Admitted accounting irregularities or restated financial statements;
- The existence of a parallel derivative litigation; and
- An institution or public pension fund as lead plaintiff.

Together, these characteristics and others explain most of the variation in settlement amounts, as illustrated in Figure 29.[28]

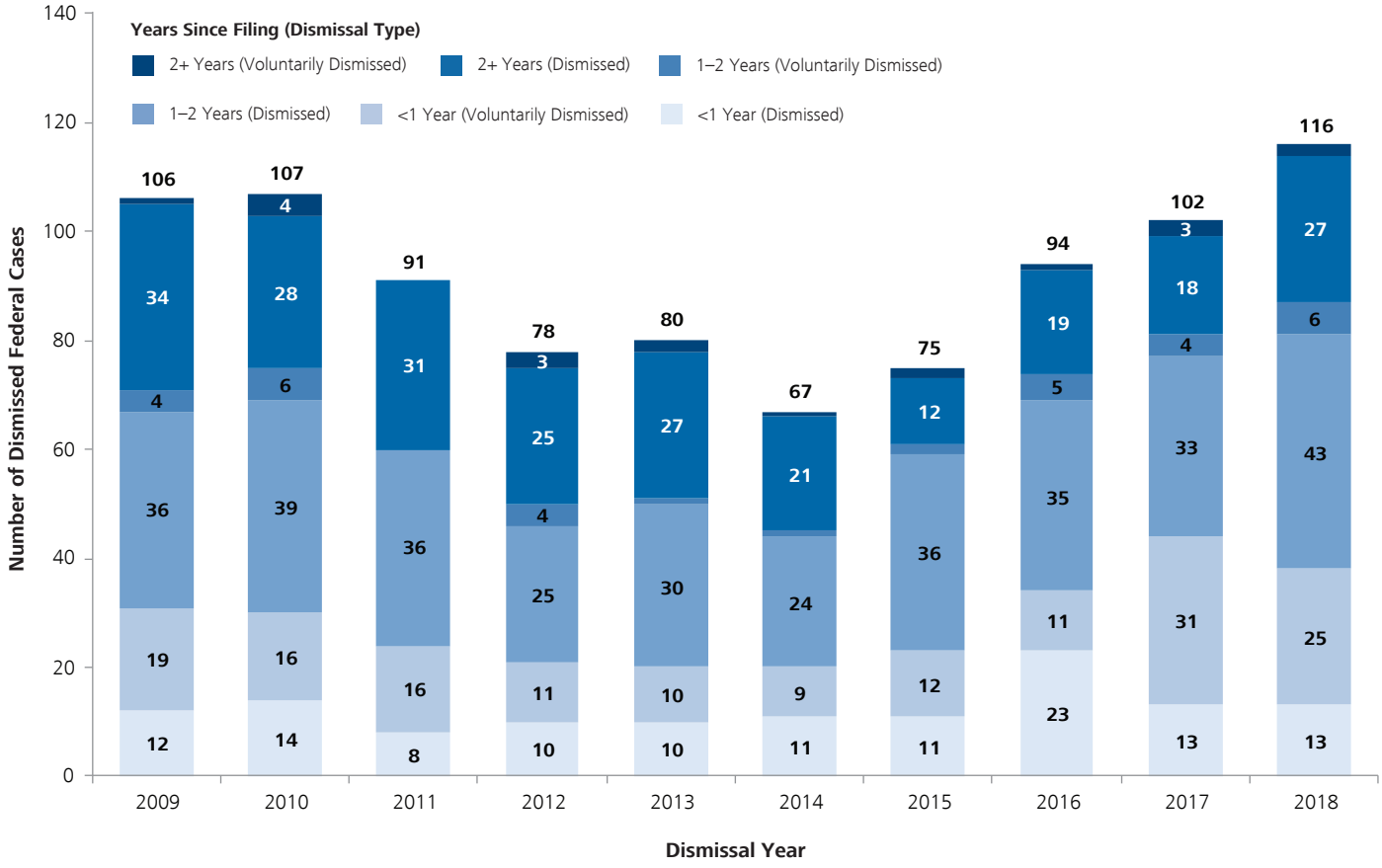
Figure 29. **Predicted vs. Actual Settlements**



Trends in Dismissals

The elevated rate of case dismissal persisted in 2018 (excluding merger objections), with more than 100 dismissals for the second consecutive year (see Figure 30). This partially stems from more cases being filed over the past couple of years, as 75% of dismissals are of cases less than two years old. Additionally, there were 25 voluntary dismissals within a year of filing, an elevated rate for the second year in a row.

Figure 30. **Number of Dismissed Cases by Case Age**
Excludes Merger Objections
January 2009–December 2018



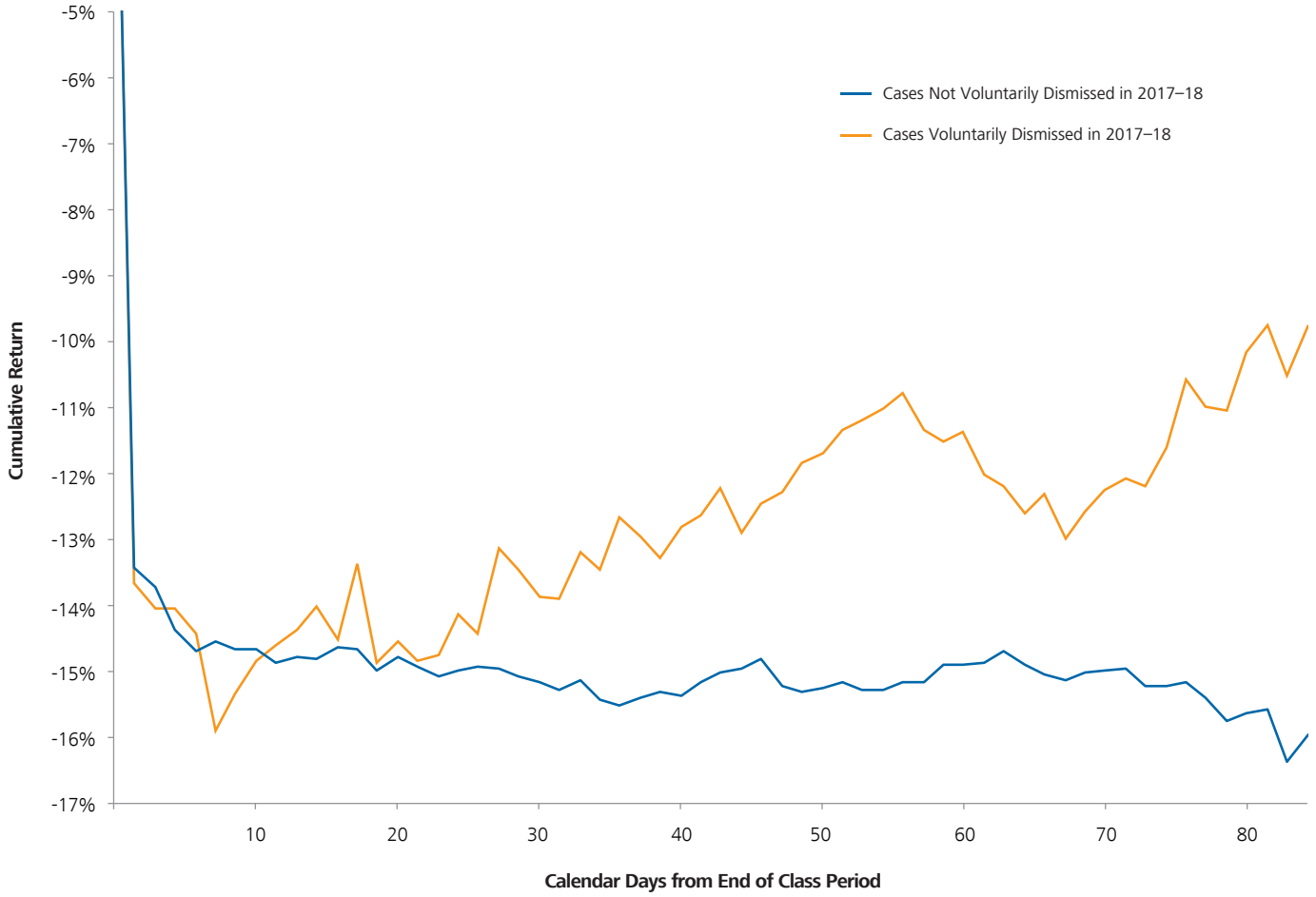
In 2018, about 12% of Standard cases were filed and resolved within the same calendar year, the second-highest rate in at least a decade (after 2017). By the end of the year, 8% of cases were voluntarily dismissed (down from 11% in 2017, but double the 2012–2016 average). Plaintiffs' voluntary dismissal of a case may be a result of perceived case weakness or changes in financial incentives. Recent research also documented forum selection by plaintiffs as a driver of voluntary dismissal without prejudice.[29]

The incentive for plaintiffs (and/or their counsel) to proceed with litigation may change with estimated damages to the class and expected recoveries since filing. For instance, the PSLRA 90-day bounce-back provision caps the award of damages to plaintiffs by the difference between the purchase price of a security and the mean trading price of the security during the 90-day period beginning on the date of the alleged corrective disclosure.

Since most securities class actions are filed well before the end of the bounce-back period (see Figure 14 for time-to-file metrics), plaintiffs may be more likely to voluntarily dismiss litigation if the price of the security at issue subsequently increases. As shown in Figure 31, in 2017 and 2018, the 90-day return of securities underlying cases voluntarily dismissed was about seven percentage points greater, on average, than securities underlying cases not voluntarily dismissed.[30]

The rate of voluntary dismissals was not particularly concentrated in terms of jurisdiction or the specific allegations we track.

Figure 31. **Average PSLRA Bounce-Back Period Returns of Voluntary Dismissals**
Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, or Section 12
January 2017–December 2018



Note: To control for the impact of outliers on the average of each group, for each day the most extreme 5% of cumulative returns are dropped. Observations on the three final trading days of the bounce-back period for each category are dropped due to incomplete return data.

Trends in Attorneys' Fees

Plaintiffs' Attorneys' Fees and Expenses

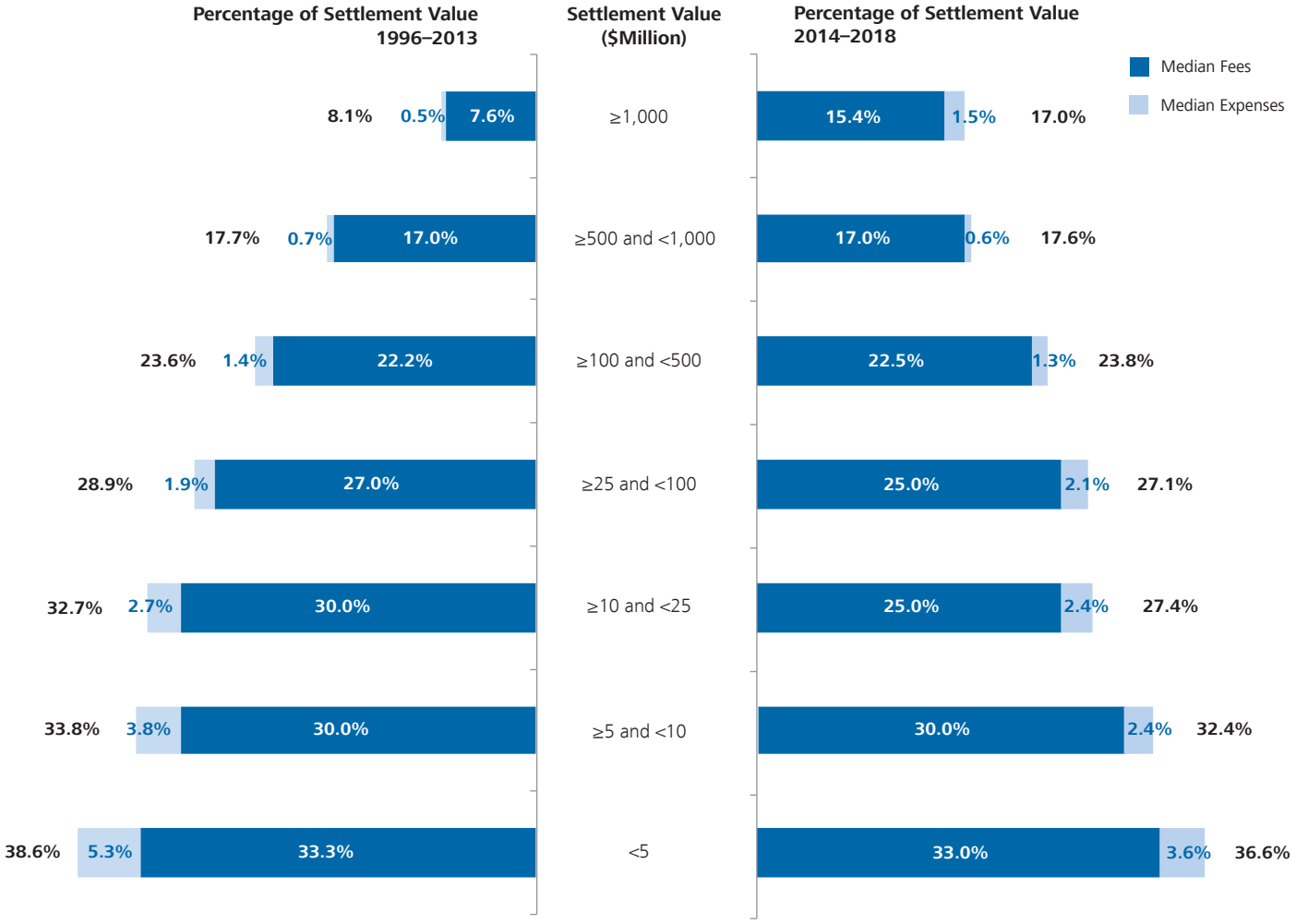
Usually, plaintiffs' attorneys' remuneration is determined as a fraction of any settlement amount in the form of fees, plus expenses. Figure 32 depicts plaintiffs' attorneys' fees and expenses as a proportion of settlement values over ranges of settlement amounts. The data shown in this figure excludes settlements for merger-objection cases and cases with no cash payment to the class.

A strong pattern is evident in Figure 32; typically, fees grow with settlement size, but less than proportionally (i.e., the fee percentage shrinks as the settlement size grows).

To illustrate that the fee percentage typically shrinks as settlement size grows, we grouped settlements by settlement value and reported the median fee percentage for each group. While fees are stable at around 30% of settlement values for settlements below $10 million, this percentage declines as settlement size increases.

We also observe that fee percentages have been decreasing over time, except for fees awarded on very large settlements. For settlements above $1 billion, fee rates have increased.

Figure 32. **Median of Plaintiffs' Attorneys' Fees and Expenses by Size of Settlement**
Excludes Merger Objections and Settlements for $0 to the Class



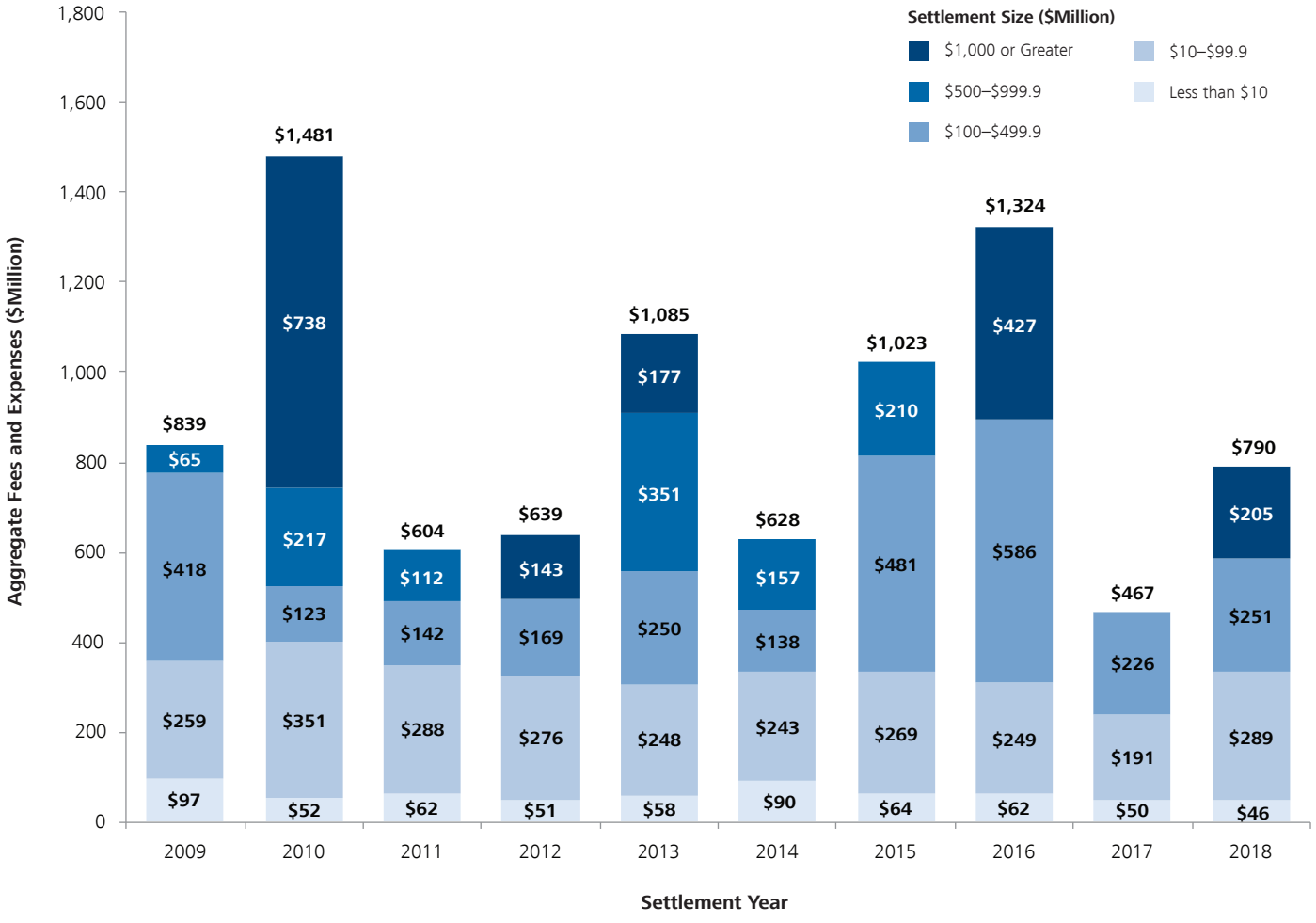
Aggregate Plaintiffs' Attorneys' Fees and Expenses

Aggregate plaintiffs' attorneys' fees and expenses are the sum of all fees and expenses received by plaintiffs' attorneys for all securities class actions that receive judicial approval in a given year.

In 2018, aggregate plaintiffs' attorneys' fees and expenses were $790 million, about 70% higher than in 2017 (see Figure 33). The increase in fees partially reflects the rebound in settlements, but fees grew substantially less than the near-tripling of aggregate settlements. This is partially due to the outsized impact of the $3 billion Petrobras settlement, one of several mega-settlements that historically generates lower fees as a percentage of settlement value.

Note that Figure 33 differs from the other figures in this section because the aggregate includes fees and expenses that plaintiffs' attorneys receive for settlements in which no cash payment was made to the class.

Figure 33. **Aggregate Plaintiffs' Attorneys' Fees and Expenses by Settlement Size**
January 2009–December 2018



Notes

[1] This edition of NERA's report on recent trends in securities class action litigation expands on previous work by our colleagues Lucy Allen, Dr. Vinita Juneja, Dr. Denise Neumann Martin, Dr. Jordan Milev, Robert Patton, Dr. Stephanie Plancich, and others. The authors also thank Dr. Milev for helpful comments on this edition. These individuals receive credit for improving this paper; all errors and omissions are ours.

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

[3] *In re Trulia, Inc. Stockholder Litigation*, C.A. No. 10020-CB (Del. Ch. Jan. 22, 2016).

[4] Craig Doidge, G. Andrew Karolyi, and René M. Stulz, "The U.S. Listing Gap," National Bureau of Economic Research Working Paper No. 21181, May 2015.

[5] *In re Trulia, Inc. Stockholder Litigation*, C.A. No. 10020-CB (Del. Ch. Jan. 22, 2016).

[6] For M&A statistics, see "Mergers & Acquisitions Review: First Nine Months 2018," Thomson Reuters, October 2018, available at http://dmi.thomsonreuters.com/Content/Files/3Q2018_MA_Legal_Advisor_Review.pdf.

[7] *In re Trulia, Inc. Stockholder Litigation*, C.A. No. 10020-CB (Del. Ch. Jan. 22, 2016).

[8] Matthew D. Cain and Steven D. Solomon, "Takeover Litigation in 2015," Berkeley Center for Law, Business and the Economy, 14 January 2016.

[9] Warren S. de Wied, "Delaware Forum Selection Bylaws After Trulia," Harvard Law School Forum on Corporate Governance and Financial Regulation, 25 February 2016.

[10] *In re: Walgreen Co. Stockholder Litigation*, No. 15-3799 (7th Cir. Aug. 10, 2016).

[11] Federal securities class actions that allege violations of Rule 10b-5, Section 11, and/or Section 12 have historically dominated federal securities class action dockets and often been referred to as "Standard" cases.

[12] *Cyan, Inc. v. Beaver County Employees Retirement Fund*, Supreme Court No. 15-1439.

[13] See Restoration Robotics Inc. SEC Form 8-K, filed 17 October 2017, and Snap, Inc. SEC Form S-1, filed 2 February 2017.

[14] Regulatory cases with parallel accounting, performance, or missed earnings claims are excluded.

[15] Industries with fewer than 25 firms listed on US exchanges are dropped.

[16] For M&A statistics, see "Mergers & Acquisitions Review, Full Year 2017," Thomson Reuters, December 2017.

[17] For M&A statistics, see "Mergers & Acquisitions Review, First Nine Months 2018," Thomson Reuters, October 2018.

[18] "SAC to pay $1.8 billion to settle insider trading charges," Chicago Tribune, 4 November 2013, available at https://www.chicagotribune.com/business/ct-xpm-2013-11-04-chi-sac-to-pay-18-billion-to-settle-insider-trading-charges-20131104-story.html.

[19] Filings indicate that most firms in the SP 500 have adopted 10b5-1 plans as of 2014. See "Balancing Act: Trends in 10b5-1 Adoption and Oversight Article," Morgan Stanley, 2019.

[20] This case was filed after the SEC filed a complaint, more than four years after the end of the proposed class period, which plaintiffs in the class action state first revealed the alleged fraud.

[21] Outcomes of the motions for summary judgment are available from NERA but are not shown in this report.

[22] *In re Trulia, Inc. Stockholder Litigation*, C.A. No. 10020-CB (Del. Ch. Jan. 22, 2016).

[23] Active cases equals the sum of pending cases at the beginning of 2018 plus those filed during the year.

[24] Nearly 90% of cases filed before 2012 have been resolved, providing evidence of longer-term trends about dismissal and settlement rates. Data since then is inconclusive given pending litigation.

[25] We only consider pending litigation filed after the PSLRA.

[26] These metrics exclude merger objections.

[27] Each of the metrics in the *Time to Resolution* sub-section exclude IPO laddering cases and merger-objection cases because the former usually take much longer to resolve and the latter are usually much shorter to resolve.

[28] The axes are in logarithmic scale, and the two largest settlements are excluded from this figure.

[29] Commentary regarding a 2017 ruling in the Southern District of New York indicated that "[p]laintiffs in [*Cheung v. Bristol-Myers Squibb*] had originally filed their lawsuits in a federal district court, but after the federal district court issued a ruling that was unfavorable for the plaintiffs, the plaintiffs voluntarily dismissed their lawsuits without prejudice and then refiled them in Delaware state court." See Colin E. Wrabley and Joshua T. Newborn, "Getting Your Company's Case Removed to Federal Court When Sued in Your 'Home' State," *The Legal Intelligencer*, 19 December 2017. The case referred to is *Cheung v. Bristol-Myers Squibb*, Case No. 17cv6223(DLC), (S.D.N.Y. Oct. 12, 2017).

[30] To control for the impact of outliers on the average of each group, for each day the most extreme 5% of daily cumulative returns are dropped. Observations on the three final days of the bounce-back period for each category are dropped due to incomplete return data.

About NERA

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

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

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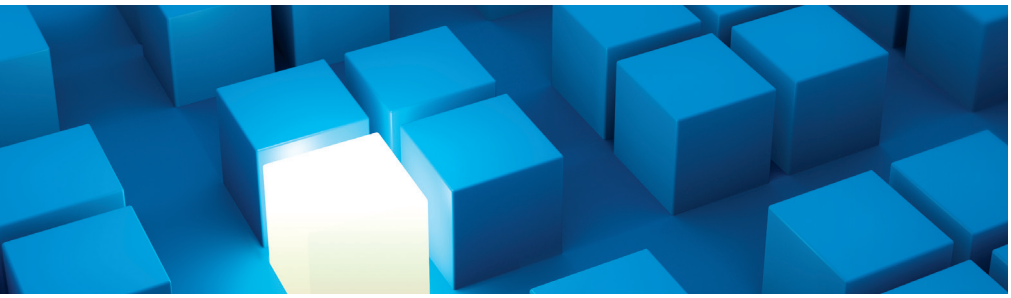
Exhibit 11

**Janeen McIntosh and Svetlana Starykh,
NERA Economic Consulting,
Recent Trends in Securities Class Action
Litigation: 2021 Full-Year Review (Jan. 25, 2022)**

NERA
ECONOMIC CONSULTING

25 January 2022



Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review

Over 10% of New Federal Filings Were Related to Special Purpose Acquisition Companies

Substantially Fewer Merger Objections Filed, Leading to a Decline in Aggregate New Filings

Total Resolutions, Average and Median Settlement Values Declined

By Janeen McIntosh and Svetlana Starykh

Insight in Economics™

Foreword

I am excited to share NERA's Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review with you. This year's edition builds on work carried out over three decades by many members of NERA's Securities and Finance Practice. This year's report continues our analyses of trends in filings and settlements and presents new analyses related to current topics such as special purpose acquisition companies. Although space does not permit us to present all the analyses the authors have undertaken while working on this year's edition or to provide details on the statistical analysis of settlement amounts, we hope you will contact us if you want to learn more about our research or our work related to securities litigations. On behalf of NERA's Securities and Finance Practice, I thank you for taking the time to review our work and hope you find it informative.

Dr. David Tabak
Managing Director

Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review

Over 10% of New Federal Filings Were Related to Special Purpose Acquisition Companies
Substantially Fewer Merger Objections Filed, Leading to a Decline in Aggregate New Filings
Total Resolutions, Average and Median Settlement Values Declined

By Janeen McIntosh and Svetlana Starykh[1]

25 January 2022

Introduction

For the first time since 2016, fewer than 300 new federal securities class action suits were filed.[2] There were 205 cases filed in 2021, a decline from the 321 suits filed in 2020. Although substantially lower than the number of cases filed annually between 2017 and 2019, the 2021 level is well within the pre-2017 historical range. The decline in the aggregate number of new cases filed was driven by the notable decrease in the number of merger-objection suits in 2021. More specifically, new merger-objection filings declined by more than 85% between 2020 and 2021. Of the new cases filed in 2021, over 30% were filed against defendants in the electronic technology and services sector and 40% were filed in the Second Circuit. The most common allegation included in the complaints was misled future performance while the proportion of cases with an allegation related to merger-integration issues doubled, driven primarily by the numerous filings related to special purpose acquisition companies. In 2021, there were 20 securities class action cases filed with a COVID-19-related claim alleged in the complaint, a decrease from the 33 suits filed in 2020.

Of the 239 cases resolved in 2021, 153 were dismissed and 86 resolved through a settlement. This is a decline in total dismissed cases and total resolutions relative to 2020. Compared to 2020, there was an increase in both dismissed and settled non-merger-objection cases. There was a substantial decrease in merger-objection cases dismissed and one more such suit settled than in 2020. This decline in the number of dismissed merger-objection cases not only offset the increase in standard case resolutions, but also led to a lower aggregate number of cases resolved in 2021.

An evaluation of securities class action suits filed and resolved between 1 January 2000 and 31 December 2021 reveals the vast majority had a motion to dismiss filed. Of the 96% of cases with a motion to dismiss filed, a decision was reached in 73% of the cases prior to resolution of the case. Of the cases with a decision on a motion to dismiss, approximately 56% were granted. Among the same group of cases, a motion for class certification was filed in only 16% of the securities class actions. Of that 16%, a decision was reached in 56% of the cases prior to the case resolution, with the motion for class certification granted in 83% of the cases with a decision.

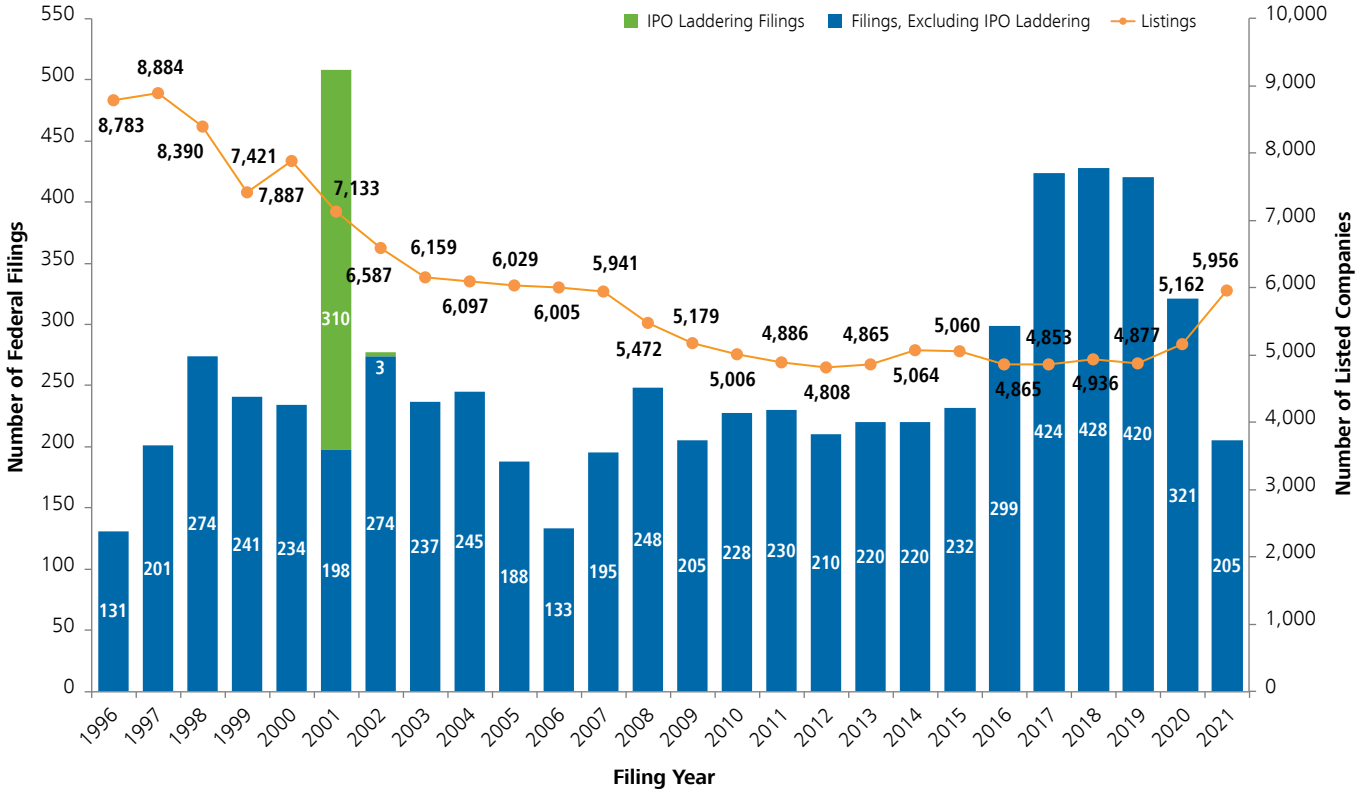
In 2021, aggregate settlements amounted to $1.8 billion, with more than 50% of this amount associated with the top 10 highest settlements for the year. The average settlement value decreased by over 50% in 2021 to $21 million, the lowest recorded average in the last 10 years. Given that there were no "mega" settlements (settlements of $1 billion or greater) in 2021, the average settlement value after excluding "mega" settlements remains unchanged at $21 million. For 2021, the median settlement value was $8 million, the lowest recorded median value since 2017. The median annual settlement value for 2021 is approximately 40% lower than the inflation-adjusted median value observed in the prior three years.

Trends in Filings

Following the passage of PSLRA in 1996, there have been over 100 federal securities class action (SCA) suits filed each year. With the exception of 2001, when numerous IPO laddering cases were filed, there were fewer than 300 new cases filed annually between 1996 and 2016. In 2017, there were substantially more new suits filed, with more than 415 annual cases recorded—a trend that continued through 2019. This uptick in filings was mostly due to the considerable increase in merger-objection cases. However, in both 2020 and 2021, this higher annual level of new cases filed did not persist.[3]

For the second consecutive year, new securities class action filings declined, falling to the lowest level since 2009. In 2021, there were 205 new cases filed, which is more than 50% lower than the annual levels of filings recorded each year between 2017 and 2019. See Figure 1.

Figure 1. **Federal Filings and Number of Companies Listed in the United States**
January 1996–December 2021

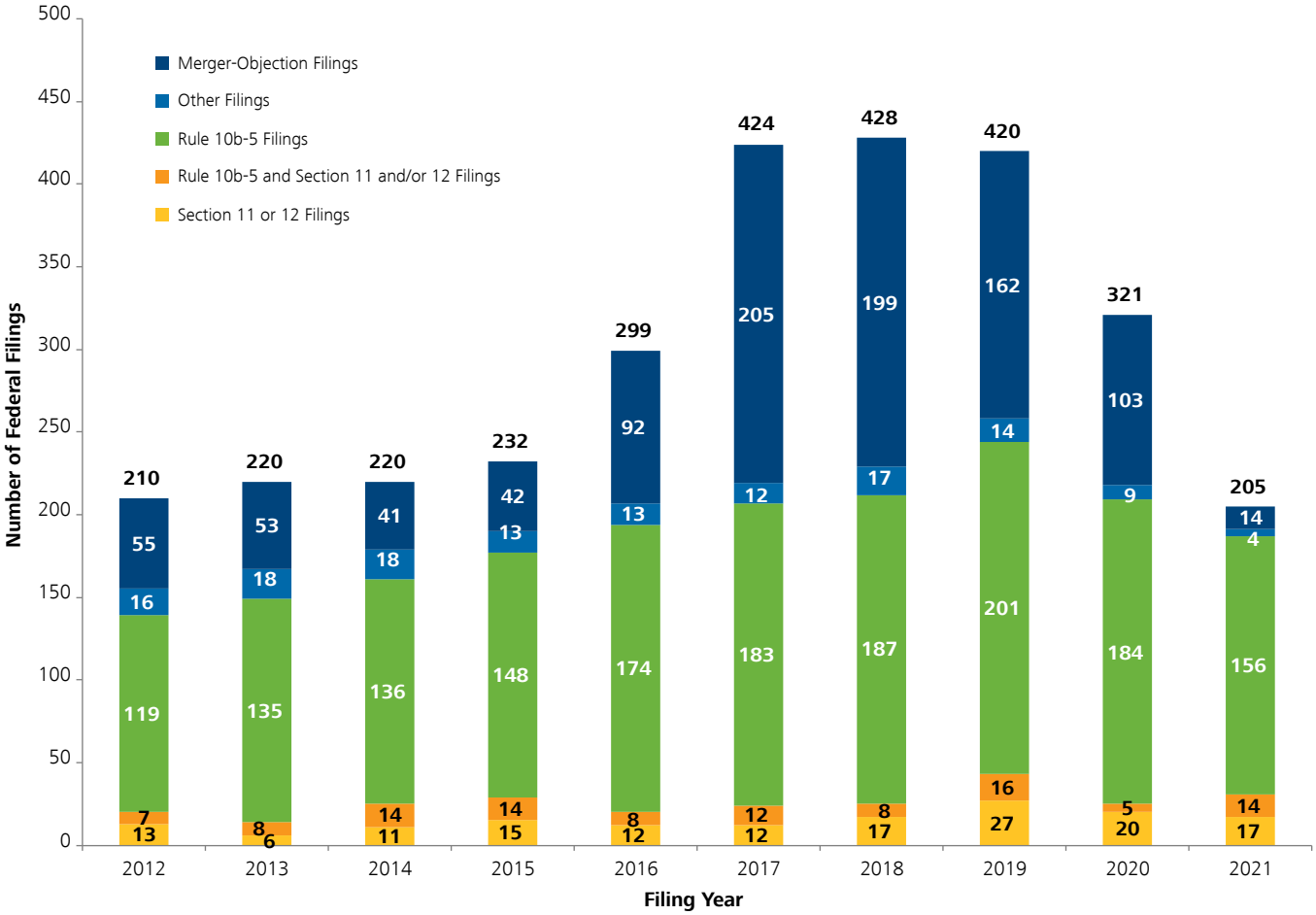


Note: Listed companies include those listed on the NYSE and Nasdaq. Listings data obtained from World Federation of Exchanges (WFE). The 2021 listings data is as of September 2021.

In addition to analyzing trends in aggregate filings, we also evaluated the number of filings relative to the number of companies listed on the NYSE and Nasdaq exchanges. There were 5,956 listed companies as of September 2021, which represents a 15% increase over the 2020 level and a noteworthy change from the minor year-to-year fluctuations observed between 2016 and 2019.

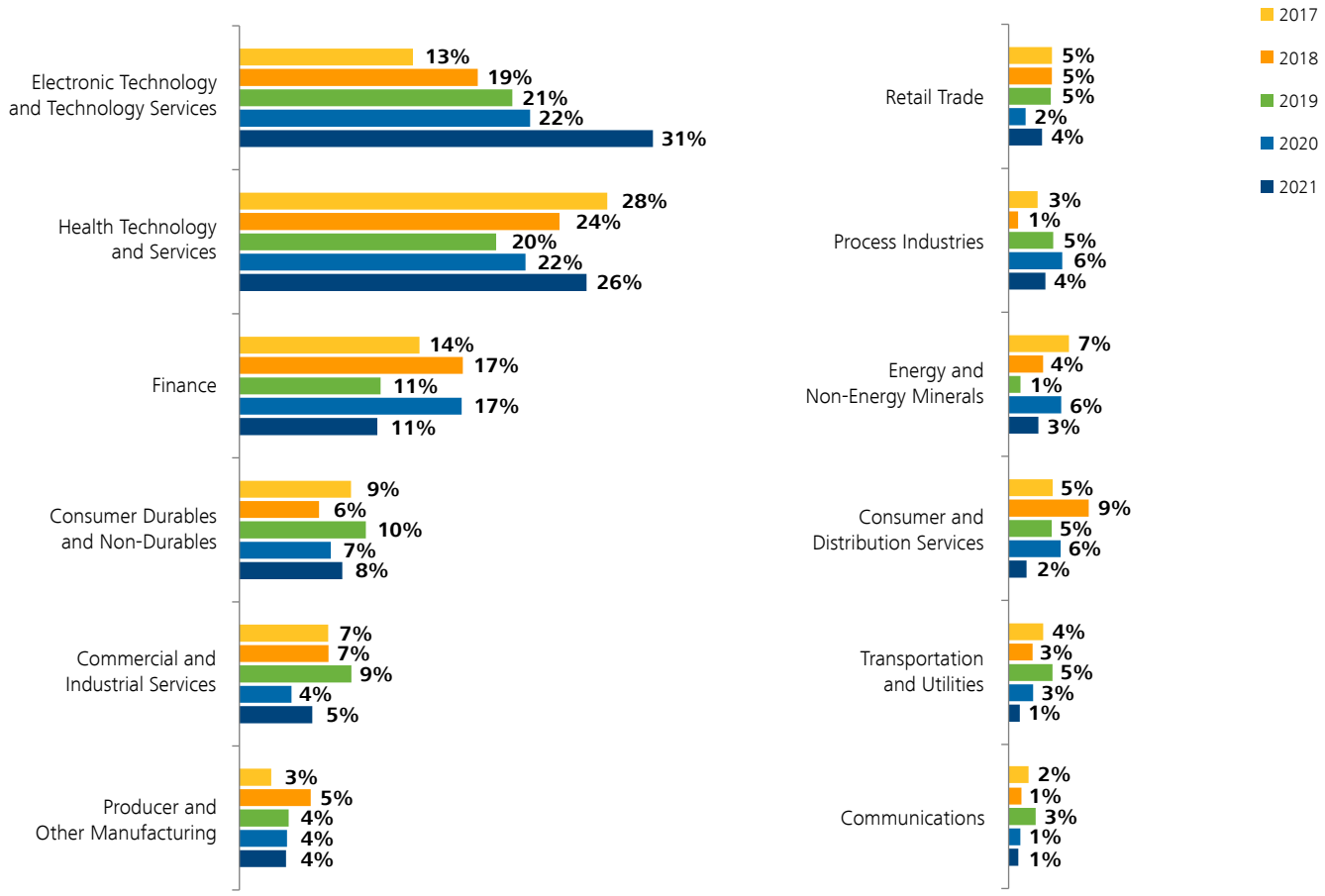
Even though there was a significant decrease in new federal SCA filings in 2021, the decline was not consistent across all case types. While new filings of Rule 10b-5, Section 11, and/or Section 12 cases (standard cases) increased, new filings of merger objections, Rule 10b-5 only, Section 11 and/or 12 only, and other SCA cases declined. The most notable was the decline in merger-objection filings, which decreased by more than 85% from 103 new filings in 2020 to only 14 new filings in 2021. See Figure 2.

Figure 2. **Federal Filings by Type**
January 2012–December 2021



Since 2018, the percentage of securities class action suits filed against defendants in the electronic technology and services sector has shown steady growth. Of the new cases filed in 2017, less than 15% were filed against defendants in the electronic technology and services sector compared to over 30% against defendants in the same sector in 2021. Between 2019 and 2021, the percentage of securities class action suits filed against defendants in the health technology and services sector also increased from 20% to 26%. See Figure 3.

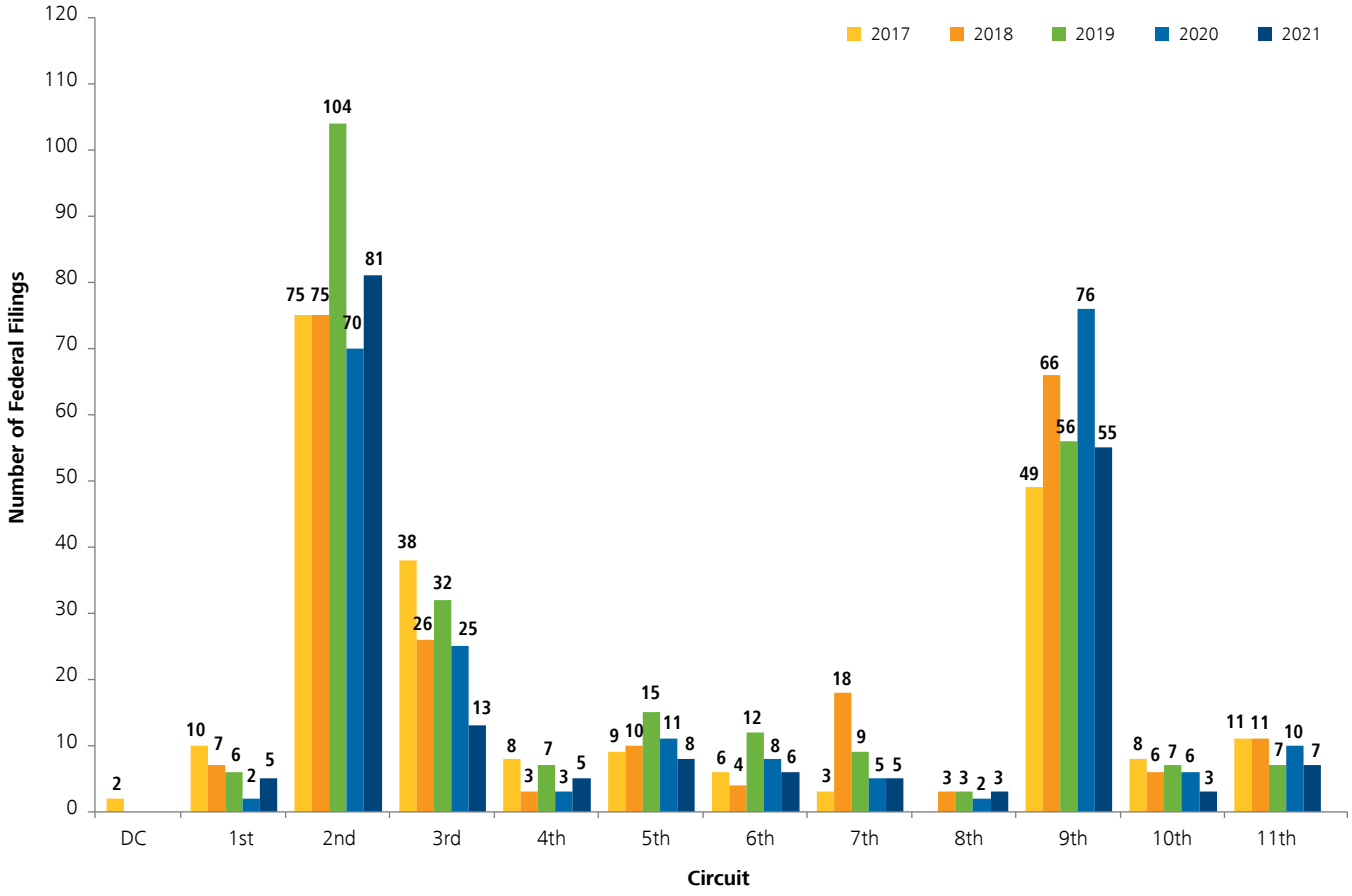
Figure 3. **Percentage of Federal Filings by Sector and Year**
Excludes Merger Objections
January 2017–December 2021



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

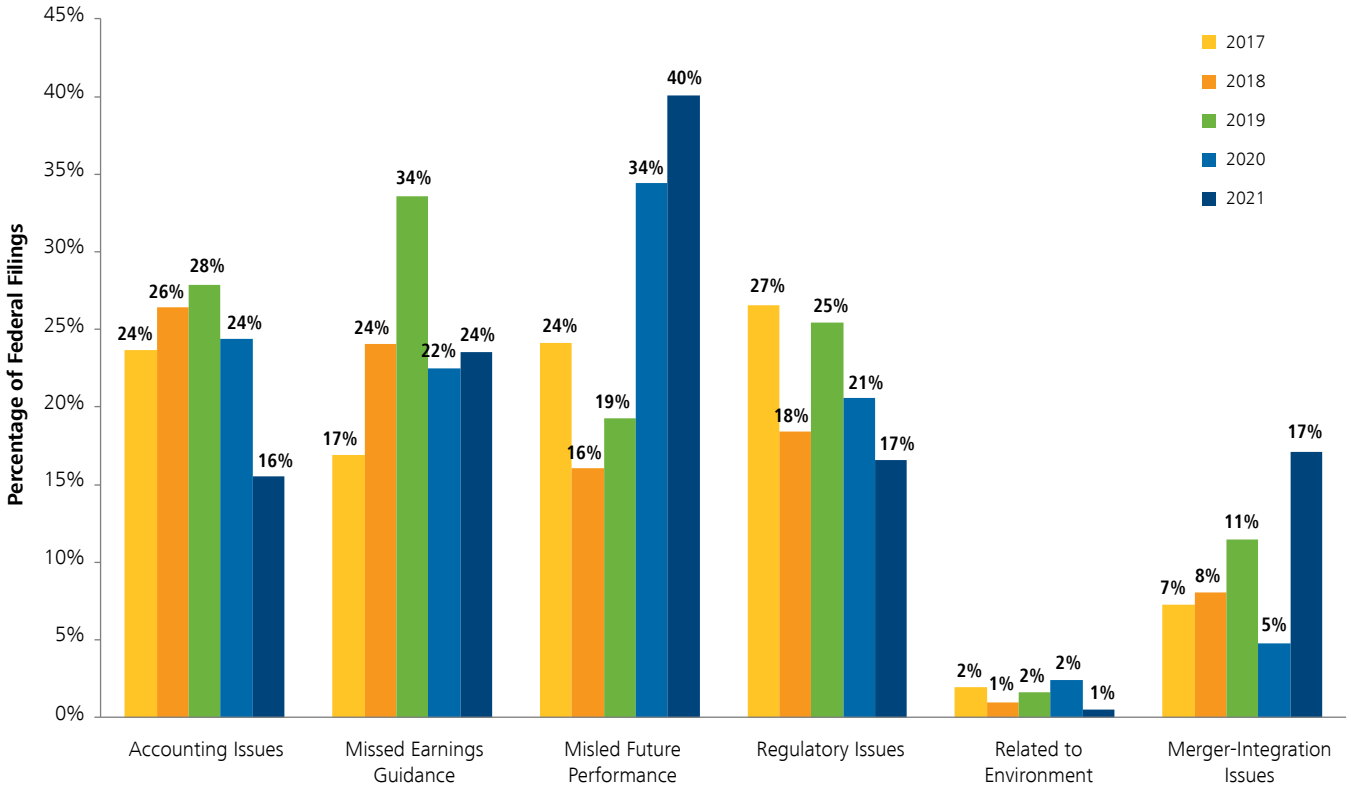
In 2020, we observed a spike in new federal securities class action filings in the Ninth Circuit. This pattern did not persist in 2021. In 2021, the Second Circuit received the highest number of new SCA cases filed while the number of filings in the Ninth Circuit returned to pre-2020 levels. However, the number of new filings in the Third Circuit declined to a five-year low with fewer than 15 cases filed in this circuit in 2021. See Figure 4.

Figure 4. **Federal Filings by Circuit and Year**
Excludes Merger Objections
January 2017–December 2021



Of the new federal securities class action cases filed in 2021, 40% alleged violations related to misleading future performance, the most common alleged violation for the year.[4] Allegations of violations related to missed earnings guidance continue to be a common allegation, with 24% of cases involving this claim. The percentage of cases alleging violations of accounting issues and regulatory issues declined in 2021, each occurring in less than 20% of new cases filed. In 2021, there was an uptick in the number of SCA filings with an allegation related to merger-integration issues included in the complaint. This increase was driven by the substantial number of cases involving special purpose acquisition companies (SPAC) filed in 2021. Excluding these SPAC cases, only 5% of cases included an allegation related to merger-integration issues. See Figure 5.

Figure 5. **Allegations**
Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, and/or Section 12
January 2017–December 2021



Event-Driven and Special Cases

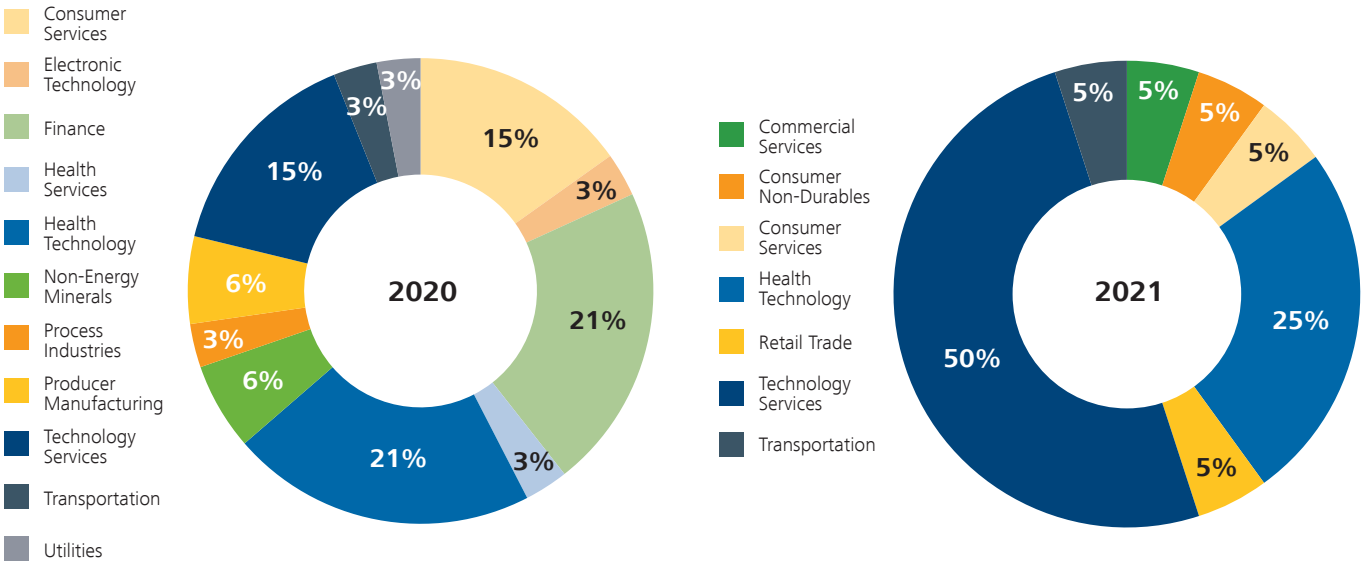
As part of our annual review process, we identify potential development areas for securities class action filings and review any new trends on previously identified areas.[5] Below, we summarize some of these areas for the last three years.

COVID-19

The first federal securities class action suit with claims related to COVID-19 included in the complaint was filed in March 2020. Since then, there have been a total of 52 additional suits. In 2021, there were 20 securities class action cases filed with a COVID-19-related claim, a decrease from the 33 suits filed in 2020. While the Ninth Circuit was the jurisdiction with the highest percentage of COVID-19-related filings in 2020, the Second Circuit was the most common venue in 2021.

Of the 2021 cases filed with a COVID-19-related claim in the complaint, 50% were against defendants in the technology services economic sector. Among the 2020 cases filed with a COVID-19 claim, only 15% were against defendants within this sector. See Figure 6.

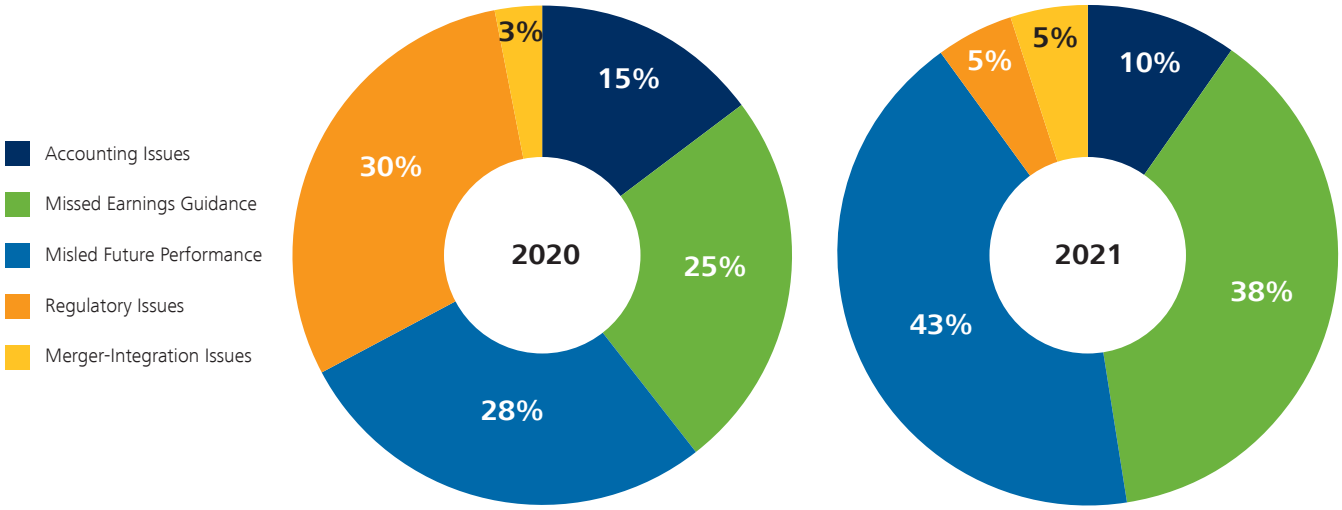
Figure 6. **Percentage of COVID-19-Related Federal Filings by Sector and Year**
March 2020–December 2021



Note: Due to rounding, percentages may not add to 100%.

In 2020, a violation related to regulatory issues was the most common allegation among the COVID-19-related cases. However, in 2021, only one case with a COVID-19 claim included an allegation of regulatory issues. In contrast, the most common allegation included in the COVID-19-related suits filed in 2021 related to future performance. See Figure 7.

Figure 7. **Percentage of COVID-19-Related Federal Filings by Allegation and Year**
March 2020–December 2021



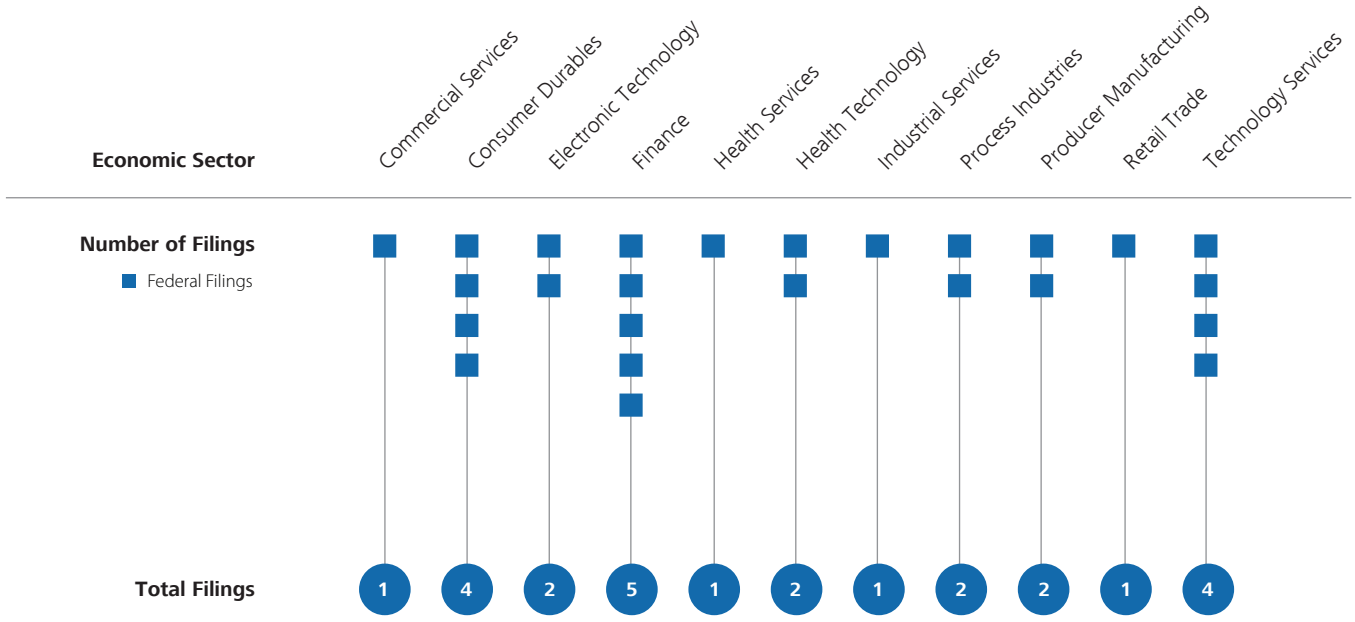
Note: Due to rounding, percentages may not add to 100%.

SPAC

In 2021, numerous federal cases were filed related to special purpose acquisition companies (SPACs). Between January 2021 and December 2021, a total of 24 cases related to SPACs were filed, a substantial increase from the one case filed in 2020.

These suits were filed against defendants in a number of sectors, with defendants in the consumer durables, technology services, and finance sectors being the most frequently targeted in 2020–2021. See Figure 8.

Figure 8. **Number of SPAC-Related Federal Filings by Sector**
December 2020–December 2021



Of the 25 SPAC cases filed in 2020 and 2021, all but one included an allegation related to merger-integration issues. Claims related to misleading earnings guidance were found in 11 of the 25 SPAC cases. In total, these suits included 49 allegations, or an average of approximately two allegations per suit. See Figure 9.

Figure 9. **Number of SPAC-Related Federal Filings by Allegation**
December 2020–December 2021

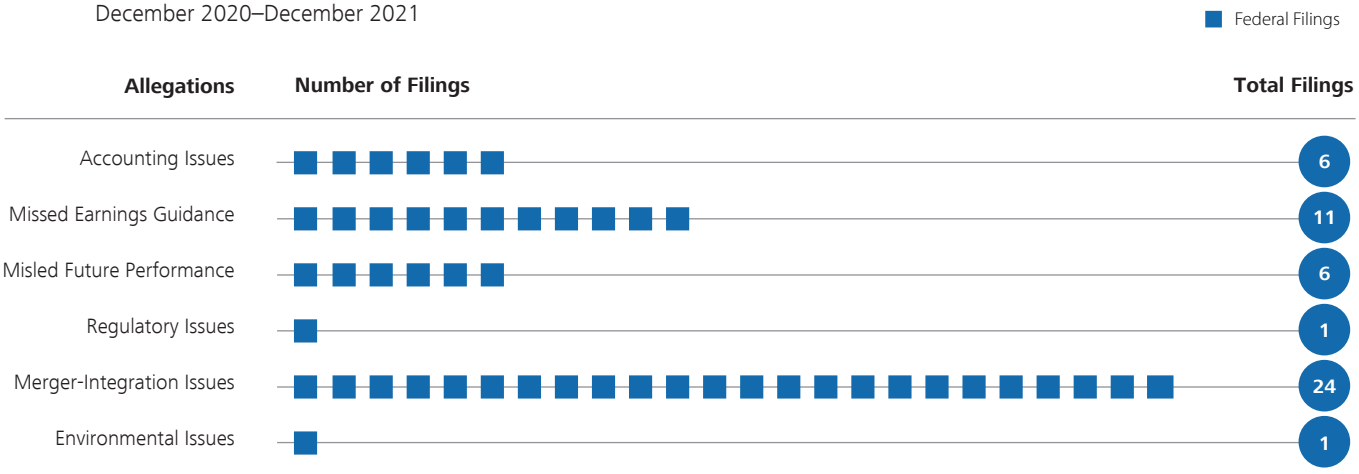
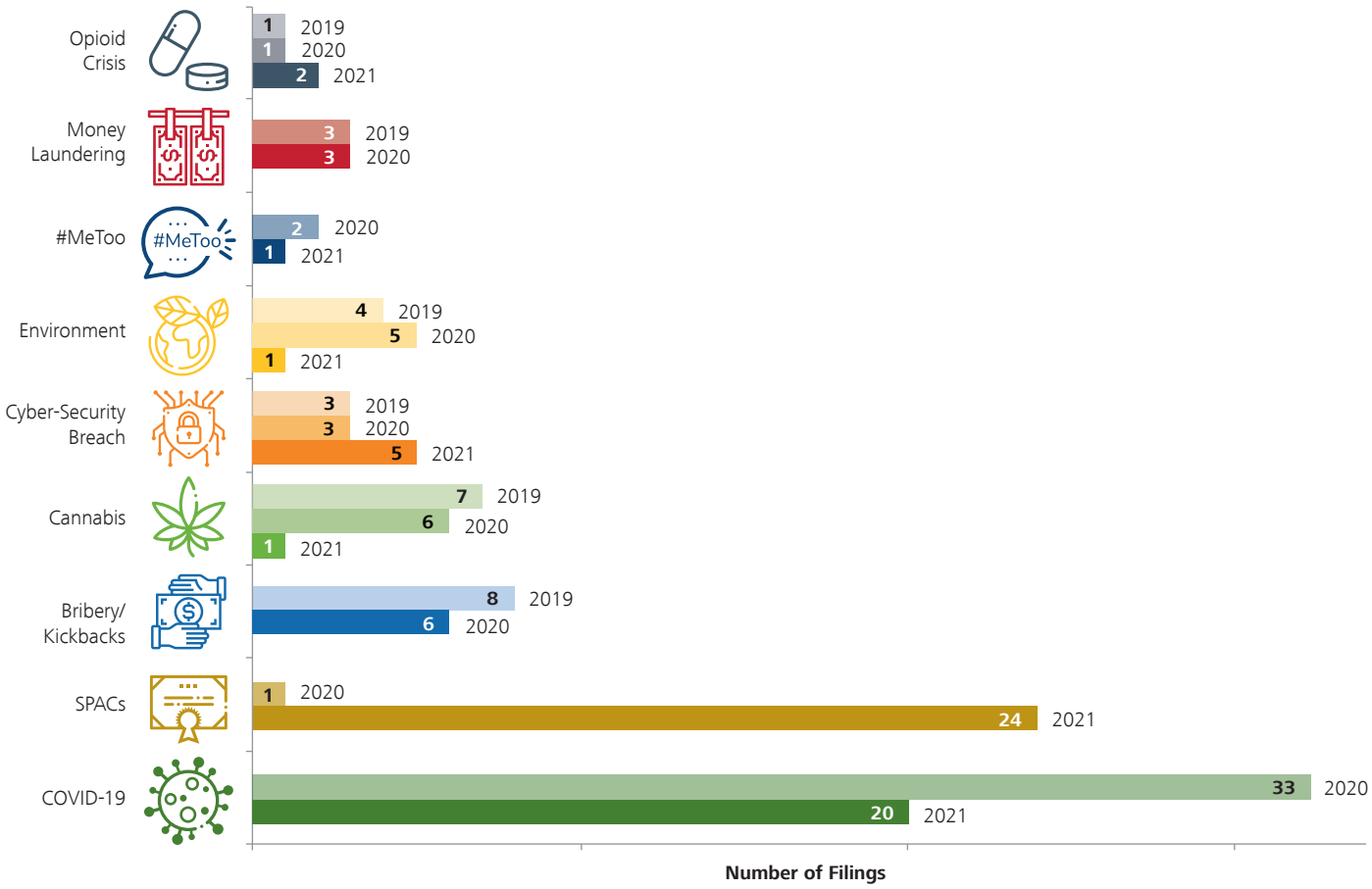


Figure 10. **Event-Driven and Other Special Cases by Filing Year**
January 2019–December 2021



Bribery/Kickbacks

In 2019 and 2020, there were eight and six bribery/kickback-related securities class action cases filed, respectively. However, in 2021, there were no such cases filed. See Figure 10.

Cannabis

Over the 2019–2020 period, 13 cases were filed against defendants in the cannabis industry. In 2021, only one such securities class action case was filed. See Figure 10.

Cybersecurity Breach

Unlike some other development or special interest areas, securities class action filings related to a cybersecurity breach continued to be filed in 2021. In both 2019 and 2020 individually, three cases were filed related to a cybersecurity breach. While still only a handful of cases, there was an increase in 2021 with five such cases filed. See Figure 10.

Environment

In 2021, there was one environment-related case filed. This is a decrease from the five cases filed in 2020 and the four cases filed in 2019. See Figure 10.

Money Laundering

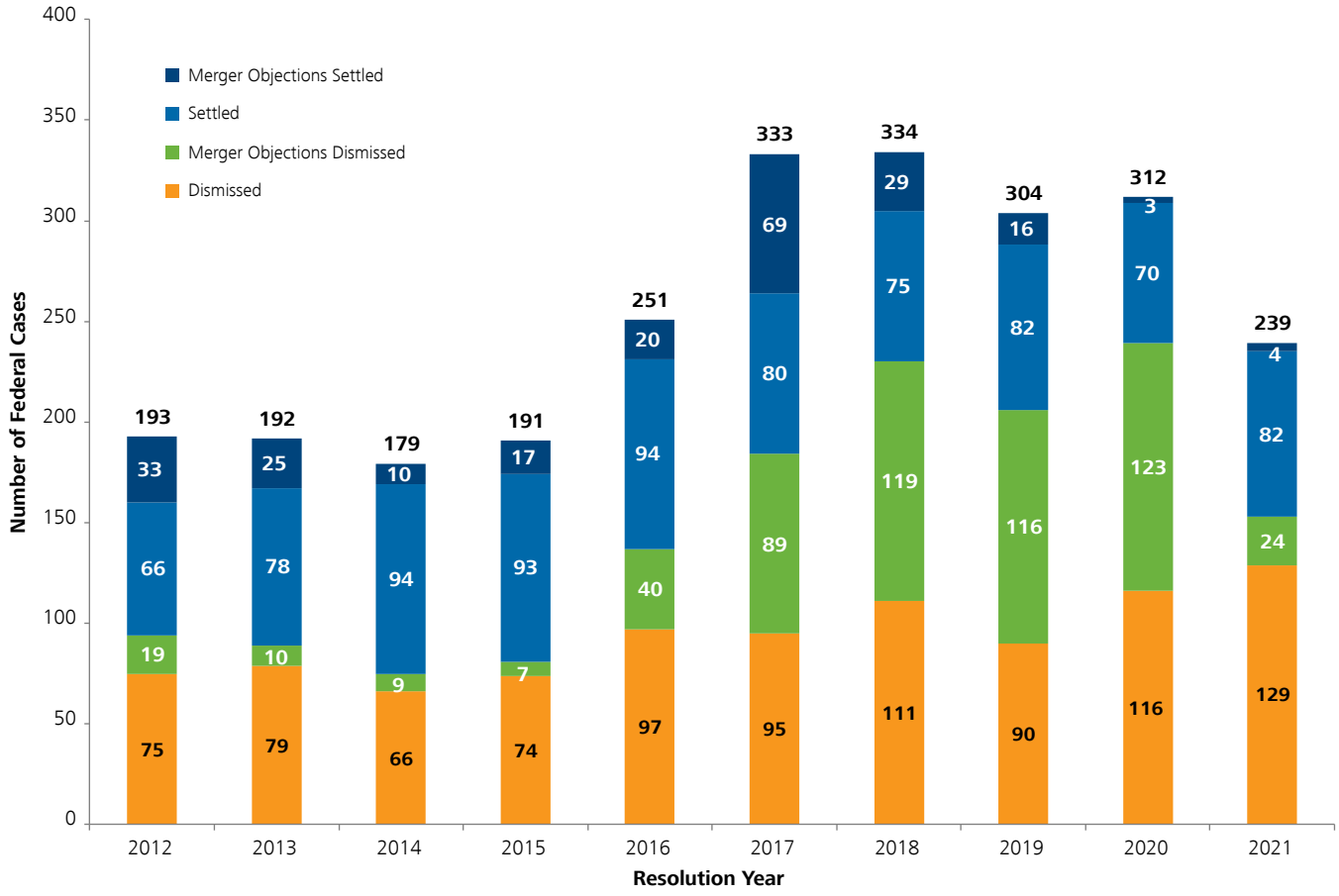
In total, six cases with claims of money laundering were filed in the 2019–2020 period, with three cases filed each year. No cases with money laundering claims were filed in 2021. See Figure 10.

Trends in Resolutions

Resolutions consist of both dismissed and settled cases.[6] In any one year, the aggregate number of resolutions may be affected by changes in either or both categories. For our analysis, we review changes within these categories as well as the trends for merger objections and non-merger-objection cases separately. In addition, we review the current status of securities class action suits filed in the last 10 years.

In 2021, 239 cases were resolved, the lowest recorded level of resolutions since 2015. Of those, 153 were dismissed and 86 resolved through a settlement. This is a decrease in both aggregate resolutions and dismissals compared to 2020. However, compared to the pre-2017 resolutions, the 239 cases resolved is well within the historical range of annual resolutions. See Figure 11.

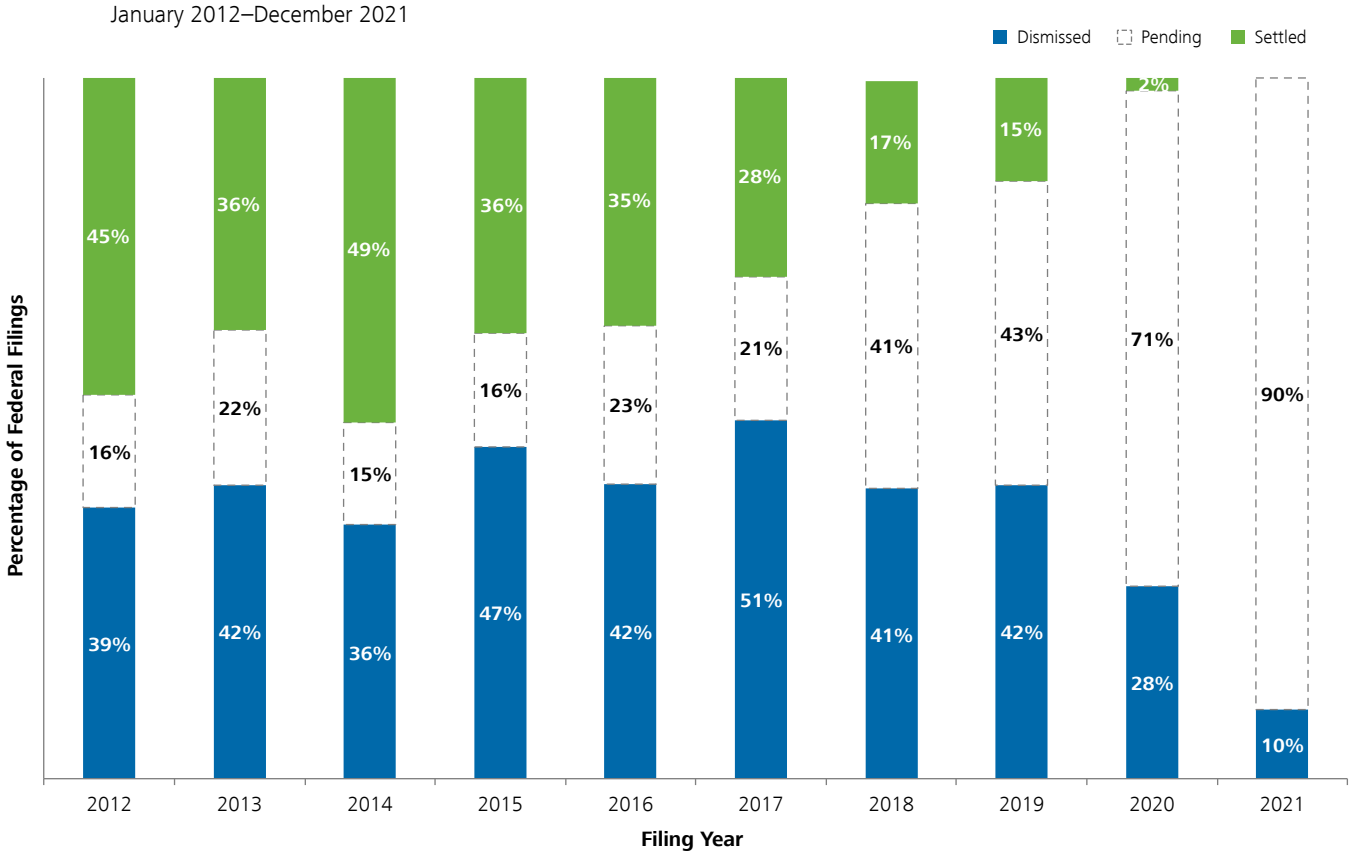
Figure 11. **Number of Resolved Cases: Dismissed or Settled**
January 2012–December 2021



A review of the resolution pattern by type of case reveals differing trends. Although not a substantial increase, the number of non-merger-objection resolutions in 2021 was the highest recorded in the last 10 years. While there was a modest increase in both the number of non-merger-objection suits dismissed and settled relative to 2020, there was a decrease in dismissed merger-objection cases. In fact, the number of merger-objection suits dismissed in 2021 was more than 80% fewer than the number of similar suits dismissed in 2020. This decline in the number of dismissed merger-objection suits was more than sufficient to offset the increase in standard case resolutions, resulting in a lower aggregate number of cases resolved in 2021.

For each filing year since 2015, more cases have been resolved in favor of the defendant than have been settled. This is consistent with historical trends, which have indicated that settlements typically occur later in the litigation process. Reviewing cases filed in 2020, as of December 2020, 6% were dismissed and 94% remained pending.[7] For the same group of cases, as of December 2021, 28% were dismissed and only 2% were settled. Of the cases filed in 2021, a higher proportion of cases were dismissed in the year of filing than the cases filed in 2020, with 10% dismissed as of year-end 2021. See Figure 12.

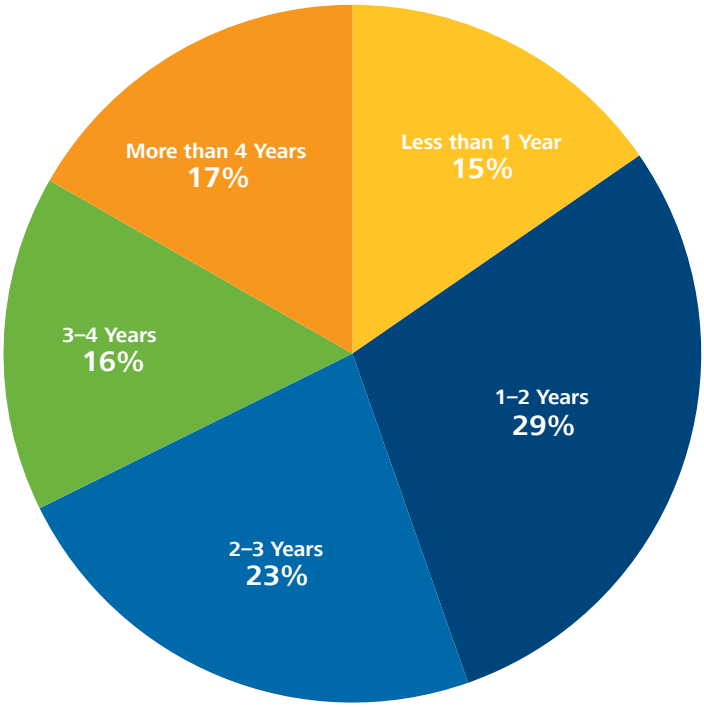
Figure 12. **Status of Cases as Percentage of Federal Filings by Filing Year**
Excludes Merger Objections and Verdicts
January 2012–December 2021



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

While 83% of cases resolve in four years or less, over half of cases are resolved between one and three years after filing.[8] See Figure 13.

Figure 13. **Time from First Complaint Filing to Resolution**
Excludes Merger Objections and Laddering Cases
Cases Filed January 2003–December 2017 and Resolved January 2003–December 2021



"The number of merger-objection suits dismissed in 2021 was more than 80% fewer than the number of similar suits dismissed in 2020. This decline in the number of dismissed merger-objection suits was more than sufficient to offset the increase in standard case resolutions, resulting in a lower aggregate number of cases resolved in 2021."

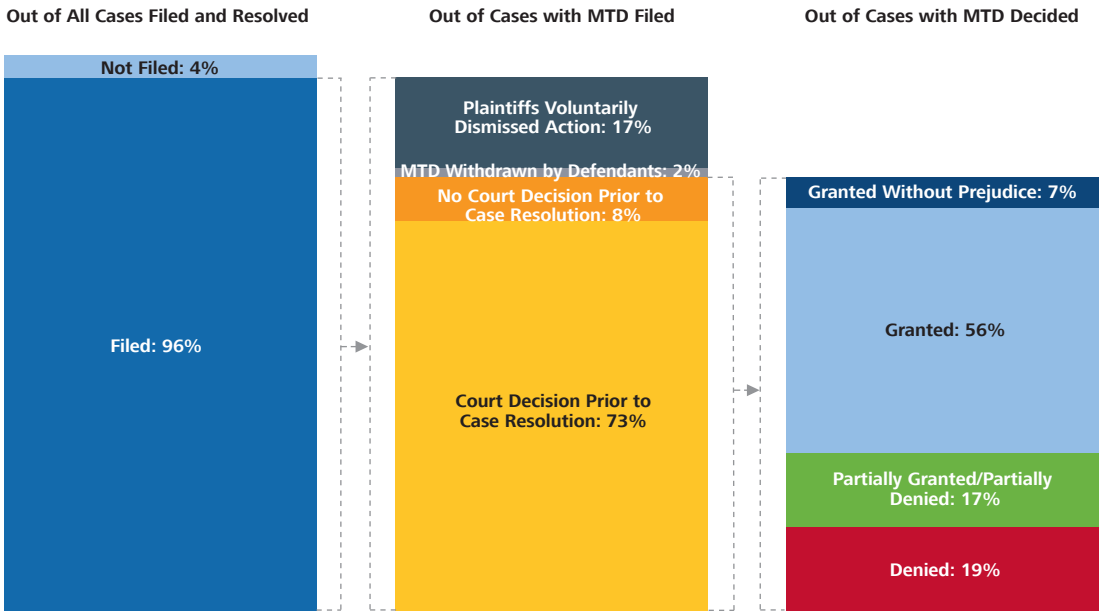
Analysis of Motions

In addition to tracking filing and resolution information for federal securities class actions, NERA also tracks decisions on motions to dismiss and motions for class certification, and the status of any motion as of the resolution of each case.[9]

Motion to Dismiss

Of the securities class action cases filed and resolved between 1 January 2012 and 31 December 2021, a motion to dismiss was filed in 96%. Among those, a decision was reached in 73% of cases. Of the cases with a decision on a motion to dismiss, approximately 56% were granted while only 19% were denied. Lastly, of the 96% of cases with a motion to dismiss filed, plaintiffs voluntarily dismissed the action in 17%, while the motion to dismiss was withdrawn by defendants only in an additional 2%. See Figure 14.

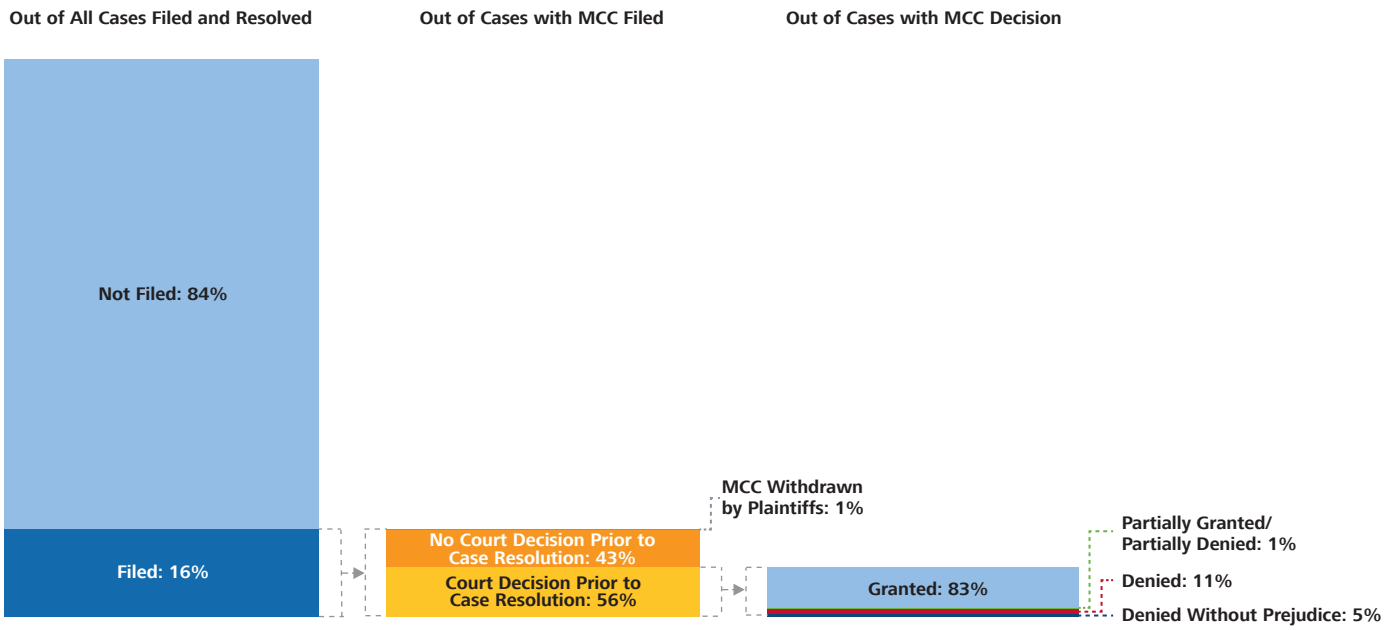
Figure 14. **Filing and Resolutions of Motions to Dismiss**
Cases Filed and Resolved January 2012–December 2021



Motion for Class Certification

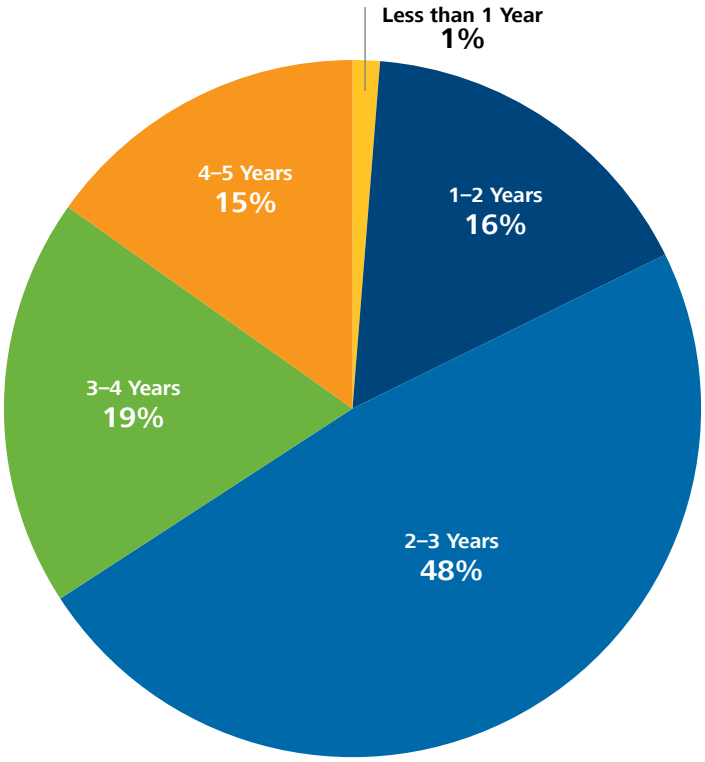
A motion for class certification was filed in less than 20% of the securities class action suits filed and resolved between 1 January 2012 and 31 December 2021. This is partly due to the fact that a substantial number of cases are either dismissed or settled before the class-certification stage of the case is reached. A decision was reached in 56% of the cases where a motion for class certification was filed, with the motion being withdrawn by plaintiffs in an additional 1% of the cases. Among the cases with a decision, the motion for class certification was granted in 83% and partially granted and partially denied in an additional 1% of cases. See Figure 15.

Figure 15. **Filing and Resolutions of Motions for Class Certification**
Cases Filed and Resolved January 2012–December 2021



Approximately half of decisions on motions for class certification occur between two and three years after the filing of the first complaint. See Figure 16.

Figure 16. **Time from First Complaint Filing to Class Certification Decision**
Cases Filed and Resolved January 2012–December 2021

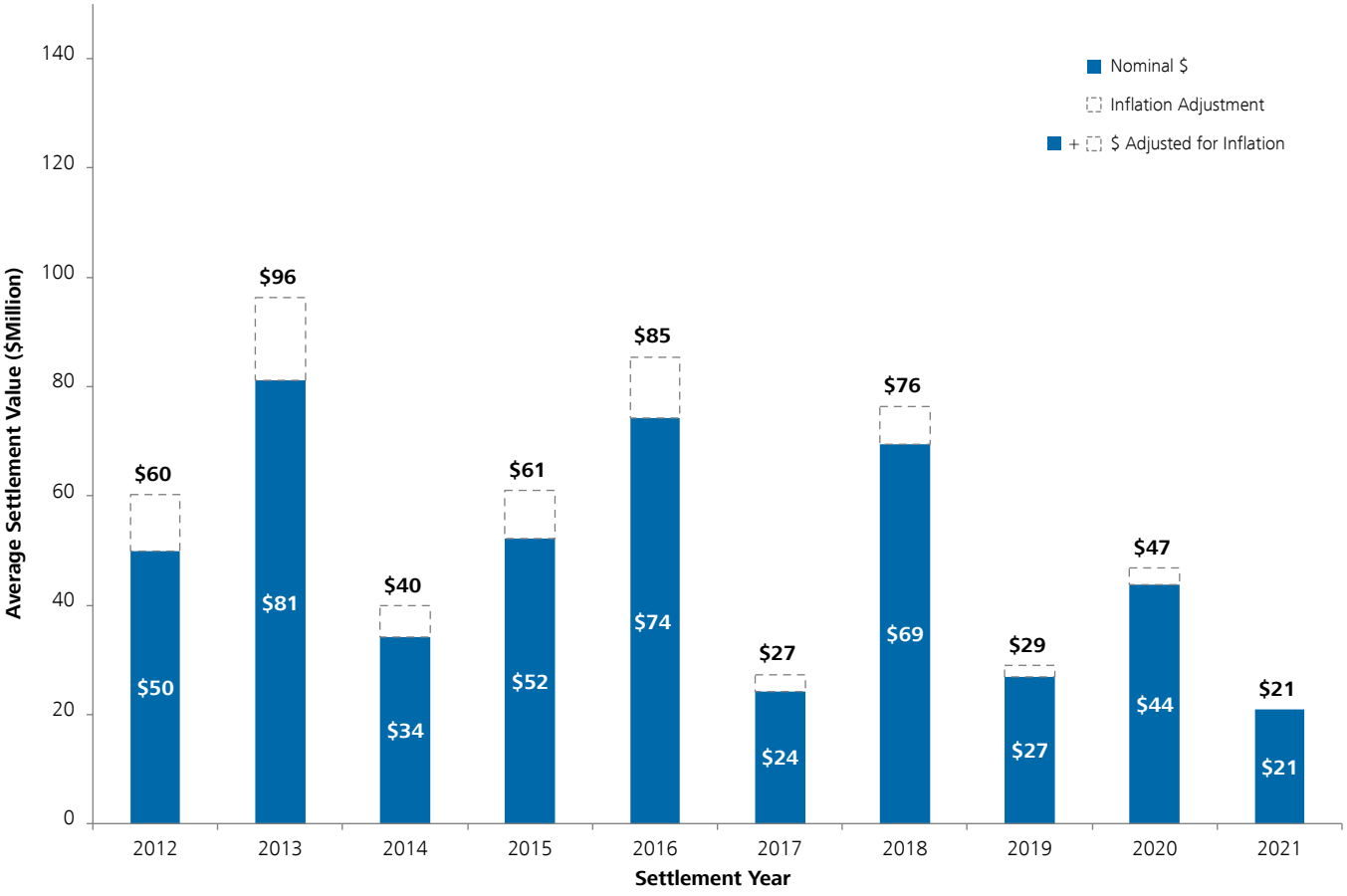


"A motion for class certification was filed in less than 20% of the securities class action suits filed and resolved between 1 January 2012 and 31 December 2021."

Trends in Settlement Values

In 2021, aggregate settlements amounted to $1.8 billion. This amount is $400 million lower than the inflation-adjusted $2.2 billion aggregate settlement amount in 2019, and considerably lower than the inflation-adjusted amounts of $3.1 billion and $5.2 billion in 2020 and 2018, respectively. Trends in settlement values can be evaluated using a variety of metrics, including distributions of settlement values, average settlement values, and median settlement values. While annual average settlement values can be a helpful statistic, these values may be impacted by one or, in some cases, a few very high settlement amounts. Unlike averages, the median settlement value is unaffected by these very high "outlier" settlement amounts and gives insight into the most frequent settlement amounts. To understand what more "typical" cases look like, we also analyze the average and median settlement values for cases with a settlement amount under $1 billion, thus excluding these "outlier" settlement amounts. For the analysis of settlement values, our data is limited to non-merger-objection cases with positive settlement values.[10]

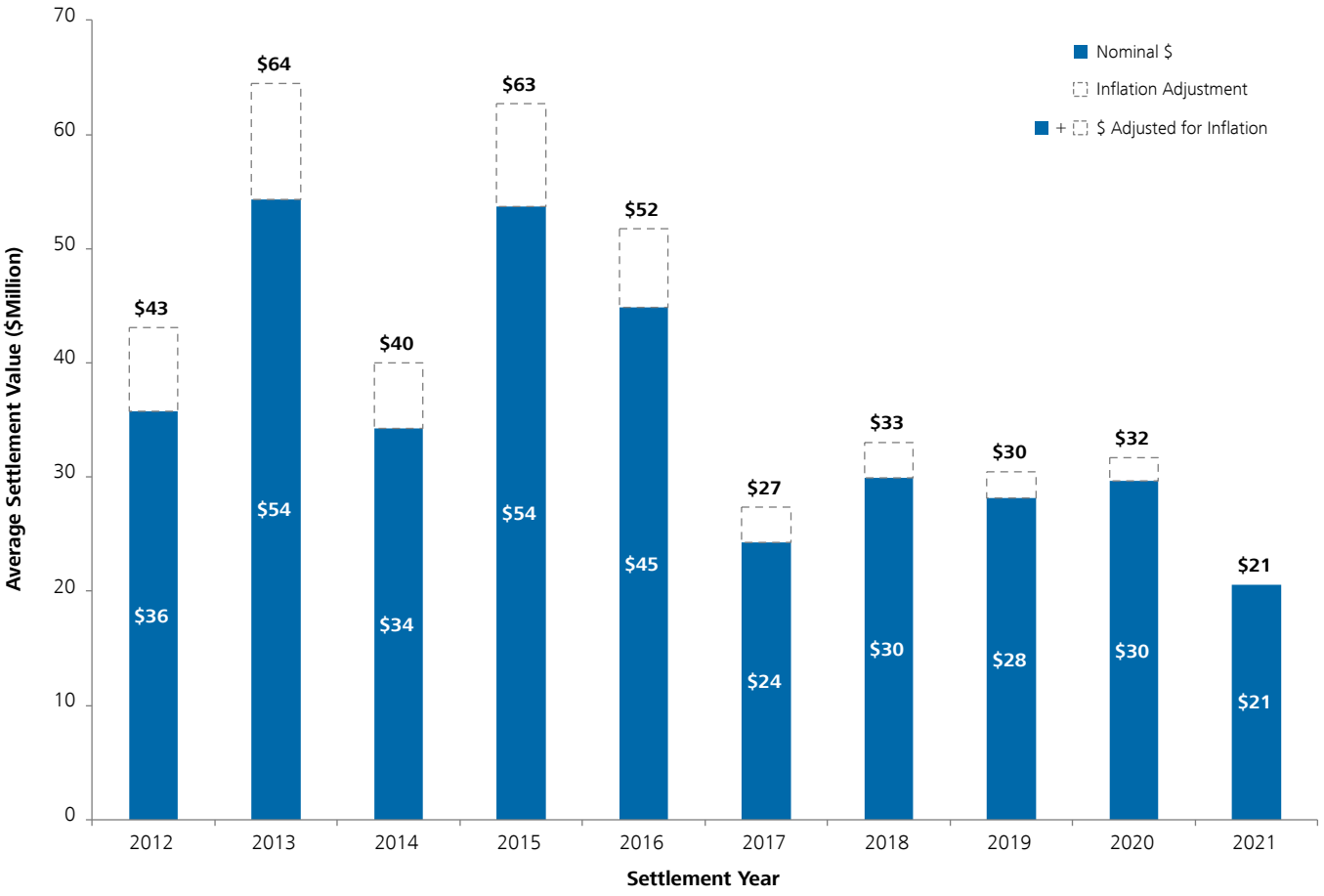
Figure 17. **Average Settlement Value**
Excludes Merger Objections and Settlements for $0 to the Class
January 2012–December 2021



The average settlement value in 2021 was $21 million, which is more than 50% lower than the 2020 inflation-adjusted average of $47 million and marks the lowest recorded average in the last 10 years. The inflation-adjusted average settlement value has ranged from a low of $21 million in 2021 to a high of inflation-adjusted $96 million in 2013, partly due to the presence or absence of one or two "outlier" or "mega" settlements, which for this purpose are single case settlements of $1 billion or higher. See Figure 17. Unlike in 2020 when there was one "mega" settlement, there were no cases resolved with a settlement amount above $1 billion in 2021. In fact, the highest recorded settlement amount is 2021 was $155 million.

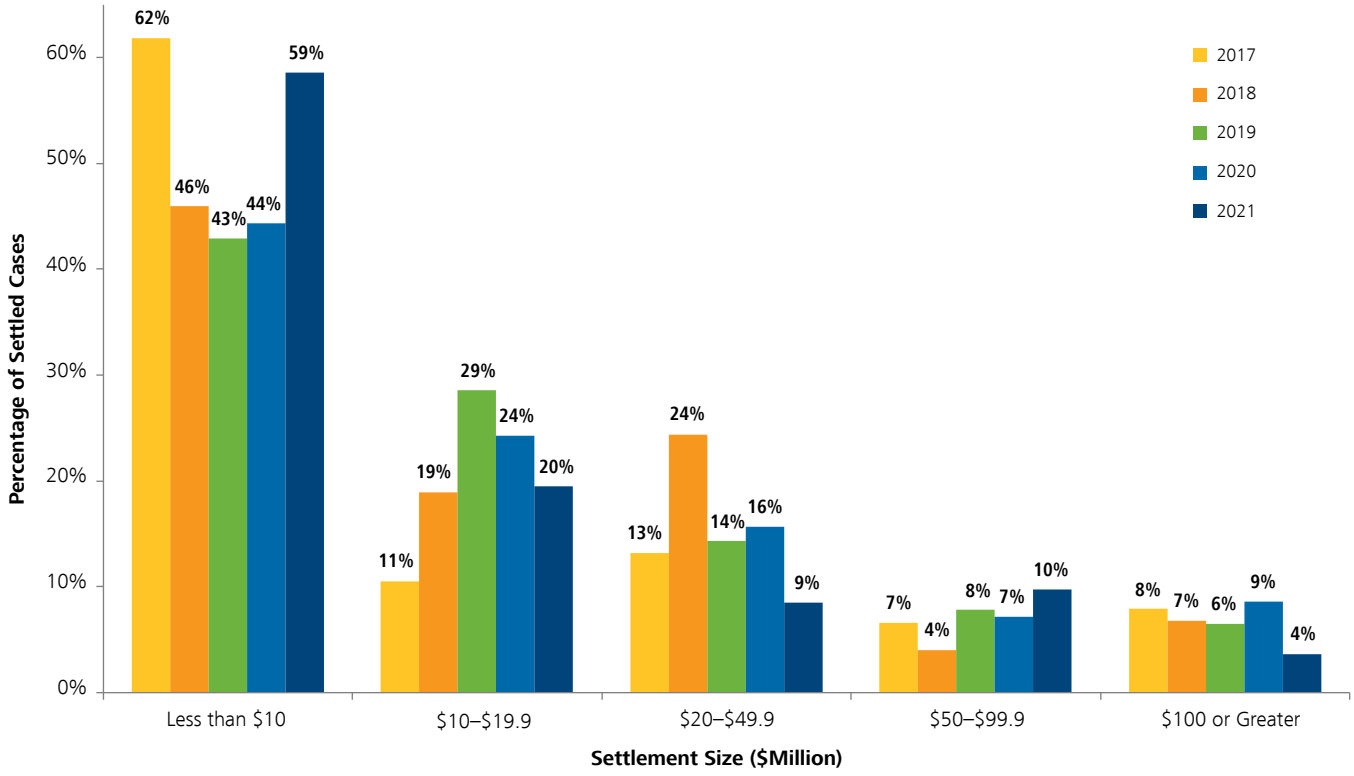
Once settlements greater than $1 billion are excluded, the inflation-adjusted annual average settlement values trend is more stable, ranging from $21 million to $33 million in the last five years. In this group of settlements, the average settlement value for 2021 was $21 million, still the lowest annual average within the most recent 10 years. See Figure 18.

Figure 18. **Average Settlement Value**
Excludes Settlements over $1 Billion, Merger Objections, and Settlements for $0 to the Class
January 2012–December 2021



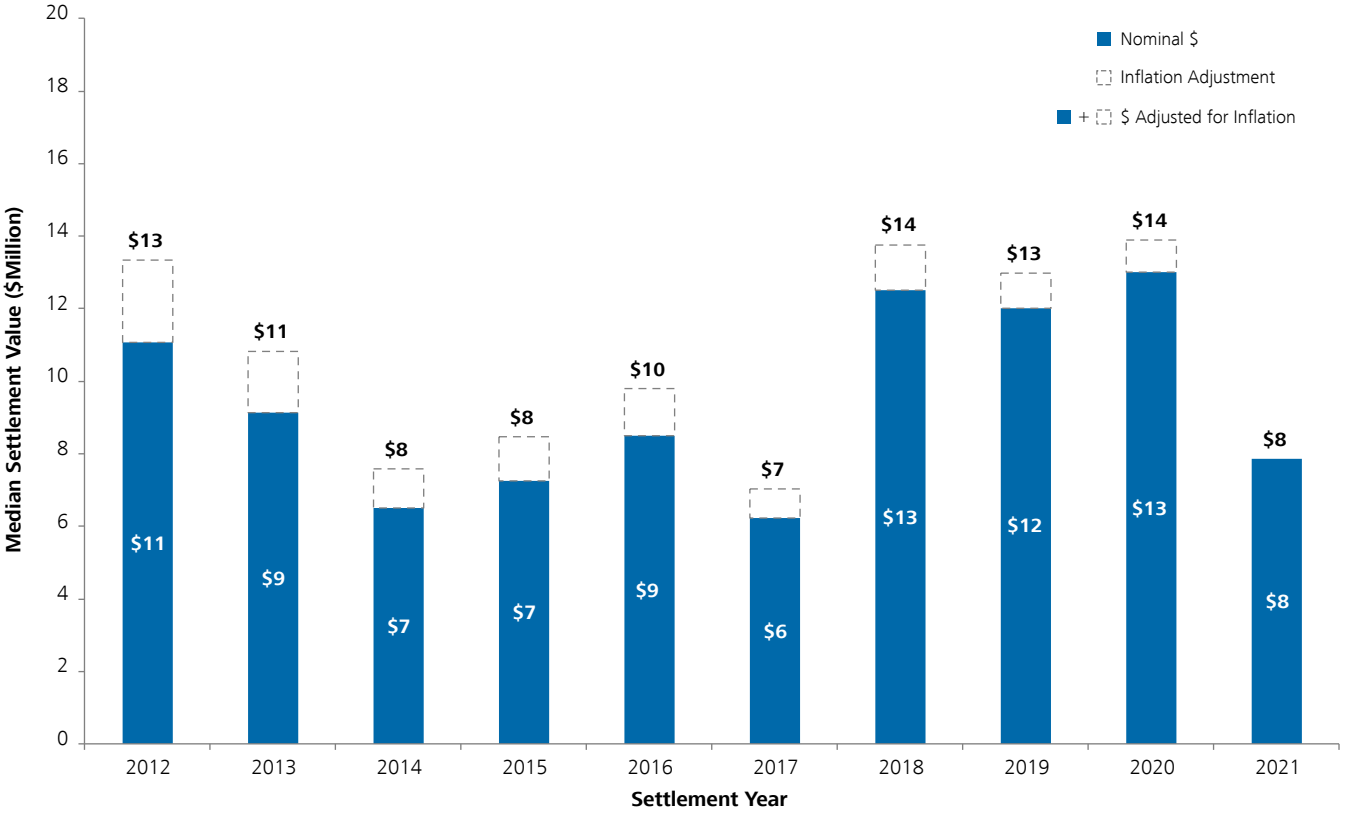
While there was a shift upward in the annual distribution of nominal settlement values between 2017 and 2020, this trend did not persist in 2021. Instead, in 2021, nearly 60% of cases resolved for settlement amounts less than $10 million. This increase in the proportion of cases settling for lower values in 2021 was accompanied by a decrease in the proportion of cases resolving for $100 million or greater, with fewer than 5% of settlements falling in this range. See Figure 19.

Figure 19. **Distribution of Settlement Values**
Excludes Merger Objections and Settlements for $0 to the Class
January 2017–December 2021



The median annual settlement value for 2021 is approximately 40% lower than the inflation-adjusted median value observed in 2018, 2019, and 2020. For 2021, the median settlement value was $8 million, the lowest recorded median value since 2017. See Figure 20.

Figure 20. **Median Settlement Value**
Excludes Settlements over $1 Billion, Merger Objections, and Settlements for $0 to the Class
January 2012–December 2021



Top Settlements in 2021

Table 1 summarizes the 10 largest settlements reached in securities class action suits between 1 January 2021 and 31 December 2021. In total, the 10 largest settlements accounted for more than 50% of the aggregate settlement amount reached in 2021. Six of the top 10 settlements were reached with defendants in the health technology and services or technology services economic sectors. The Second Circuit was the most common circuit for these cases, accounting for four of the top 10 settlements.

Table 1. **Top 10 2021 Securities Class Action Settlements**

Ranking	Defendant	Filing Date	Settlement Date	Total Settlement Value ($Million)	Plaintiffs' Attorneys' Fees and Expenses Value ($Million)	Circuit	Economic Sector
1	Snap, Inc.	16 May 17	09 Mar 21	$154.7	$41.0	9th	Technology Services
2	DaVita Inc.	1 Feb 17	30 Mar 21	$135.0	$41.0	10th	Health Services
3	Allergan plc (f/k/a Actavis plc)	22 Dec 16	17 Nov 21	$130.0	$35.2	3rd	Health Technology
4	Tableau Software, Inc.	28 Jul 17	14 Sep 21	$95.0	$27.7	2nd	Technology Services
5	Cognizant Technology Solutions Corp.	5 Oct 16	20 Dec 21	$95.0	$19.5	3rd	Technology Services
6	The Southern Company	20 Jan 17	05 Feb 21	$87.5	$24.9	11th	Utilities
7	MetLife, Inc.	12 Jan 12	14 Apr 21	$84.0	$23.5	2nd	Finance
8	Towers Watson & Co.	21 Nov 17	21 May 21	$75.0	$13.7	4th	Commercial Services
9	CannTrust Holdings Inc.	10 Jul 19	02 Dec 21	$66.4	$0	2nd	Health Technology
10	Chemical and Mining Company of Chile Inc.	19 Mar 15	26 Apr 21	$62.5	$12.1	2nd	Process Industries
	Total			**$985.1**	**$238.5**		

Note: Fees only, expenses are not available yet.

Table 2 summarizes the 10 largest federal securities class action settlements since the passage of PSLRA. Since the Petrobras settlement in 2018, the settlements in this list have all been above $1 billion, ranging from $1.1 billion to $7.2 billion.

Table 2. **Top 10 Federal Securities Class Action Settlements** (As of 31 December 2021)

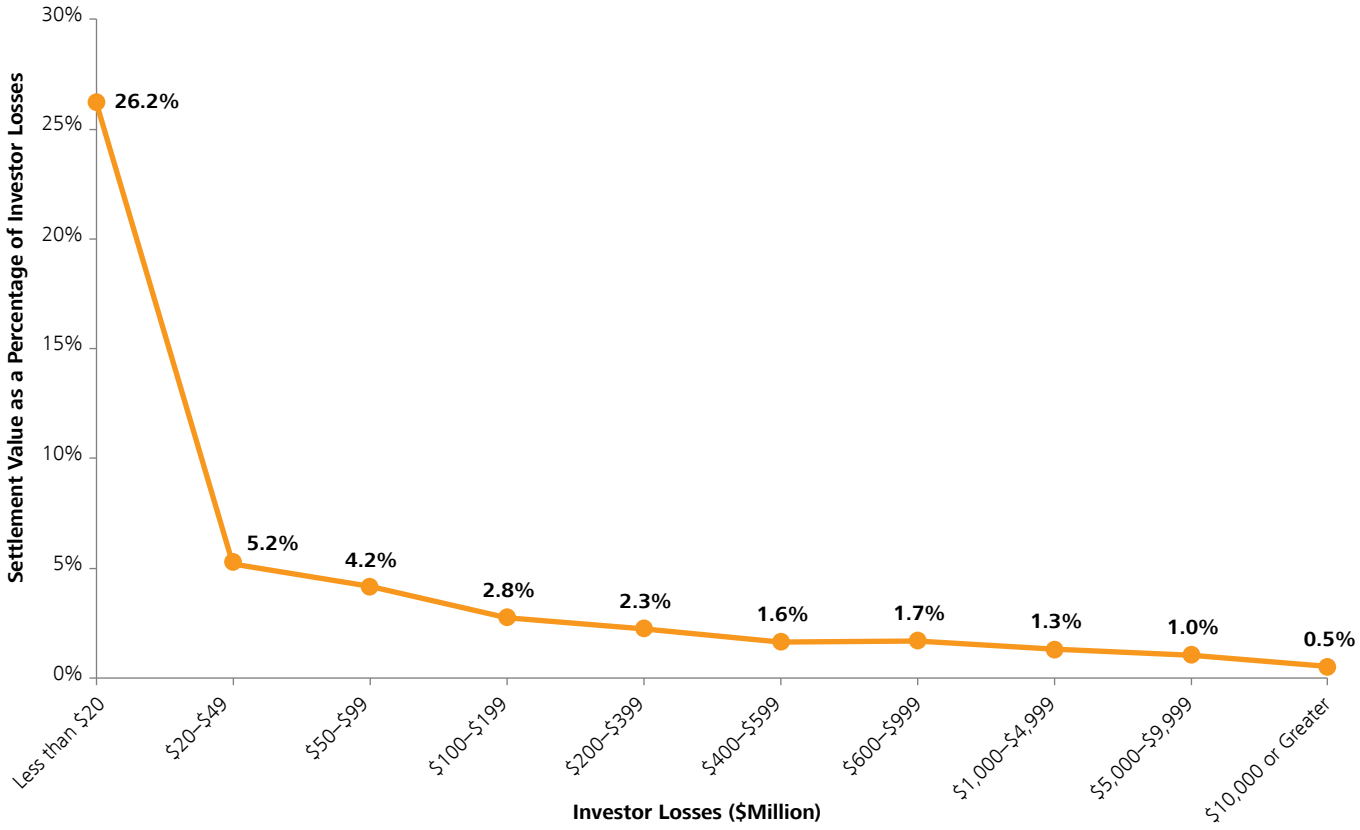
Ranking	Defendant	Filing Date	Settlement Year(s)	Total Settlement Value ($Million)	Codefendent Settlements		Plaintiffs' Attorneys' Fees and Expenses Value ($Million)	Circuit	Economic Sector
					Financial Institutions Value ($Million)	Accounting Firms Value ($Million)			
1	ENRON Corp.	22 Oct 01	2003–2010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

NERA-Defined Investor Losses

To estimate the potential aggregate loss to investors as a result of purchasing the defendant's stock during the alleged class period, NERA has developed its own proprietary variable, NERA-Defined Investor Losses, using publicly available data. The NERA-Defined Investor Losses measure is constructed assuming investors had invested in stocks during the class period whose performance was comparable to that of the S&P 500 Index. Over the years, NERA has reviewed and examined more than 2,000 settlements and found, of the variables analyzed, this proprietary variable is the most powerful predictor of settlement amount.[11]

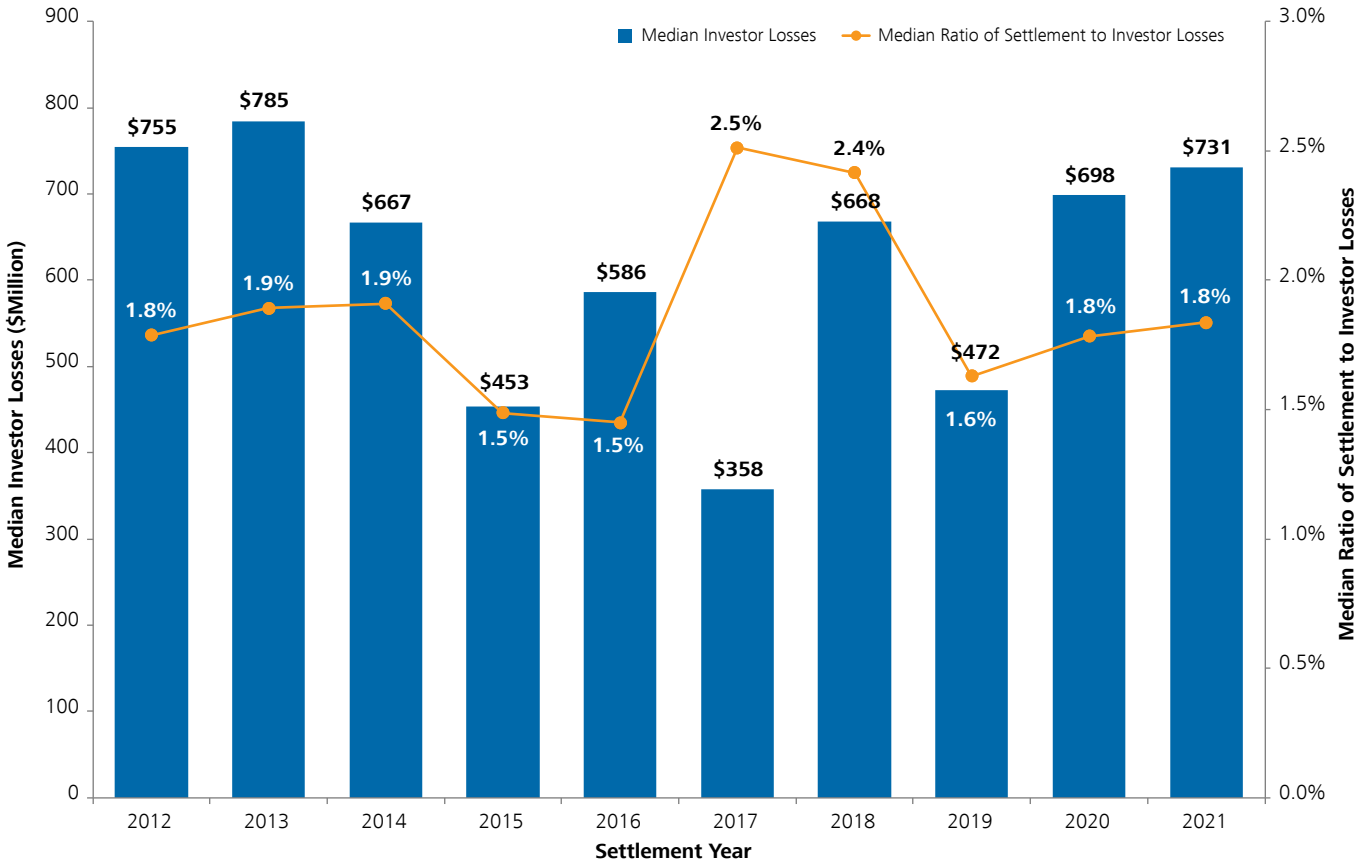
While settlement values are highly correlated with Investor Losses, the relationship between settlement amount and Investor Losses is not linear. More specifically, the ratio is higher for smaller cases than for cases with larger NERA-Defined Investor Losses. See Figure 21.

Figure 21. **Median Settlement Value as a Percentage of NERA-Defined Investor Losses**
By Investor Losses
Cases Filed and Setted December 2012–December 2021



The median Investor Losses for cases settled in 2021 was $731 million, the highest recorded value since 2013, but less than 5% higher than the 2020 value. Over the last 10 years, the annual median Investor Losses have ranged from a high of $785 million to a low of $358 million. Following an uptick in the median ratio of settlement amount to Investor Losses in 2017 to 2.5%, the ratio declined through 2019, with only modest increases in both 2020 and 2021. See Figure 22.

Figure 22. **Median NERA-Defined Investor Losses and Median Ratio of Settlement to Investor Losses by Settlement Year**
January 2012–December 2021

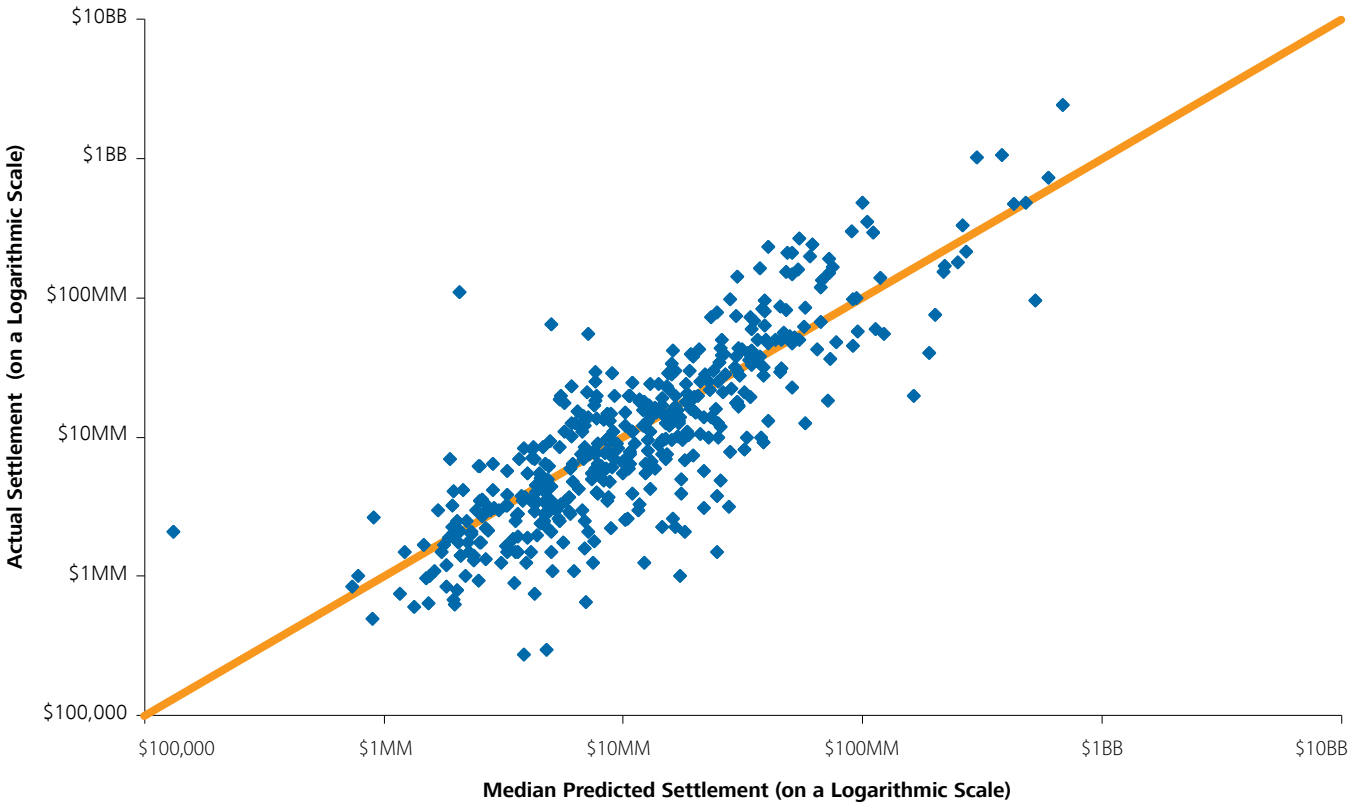


In analyzing drivers of settlement amounts, NERA has identified the following key factors:

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

Among cases settled between December 2012 and September 2021, these factors account for a substantial fraction of the variation observed in actual settlements. See Figure 23.

Figure 23. **Predicted vs. Actual Settlements**
Investor Losses Using S&P 500 Index
Cases Settled December 2012–September 2021

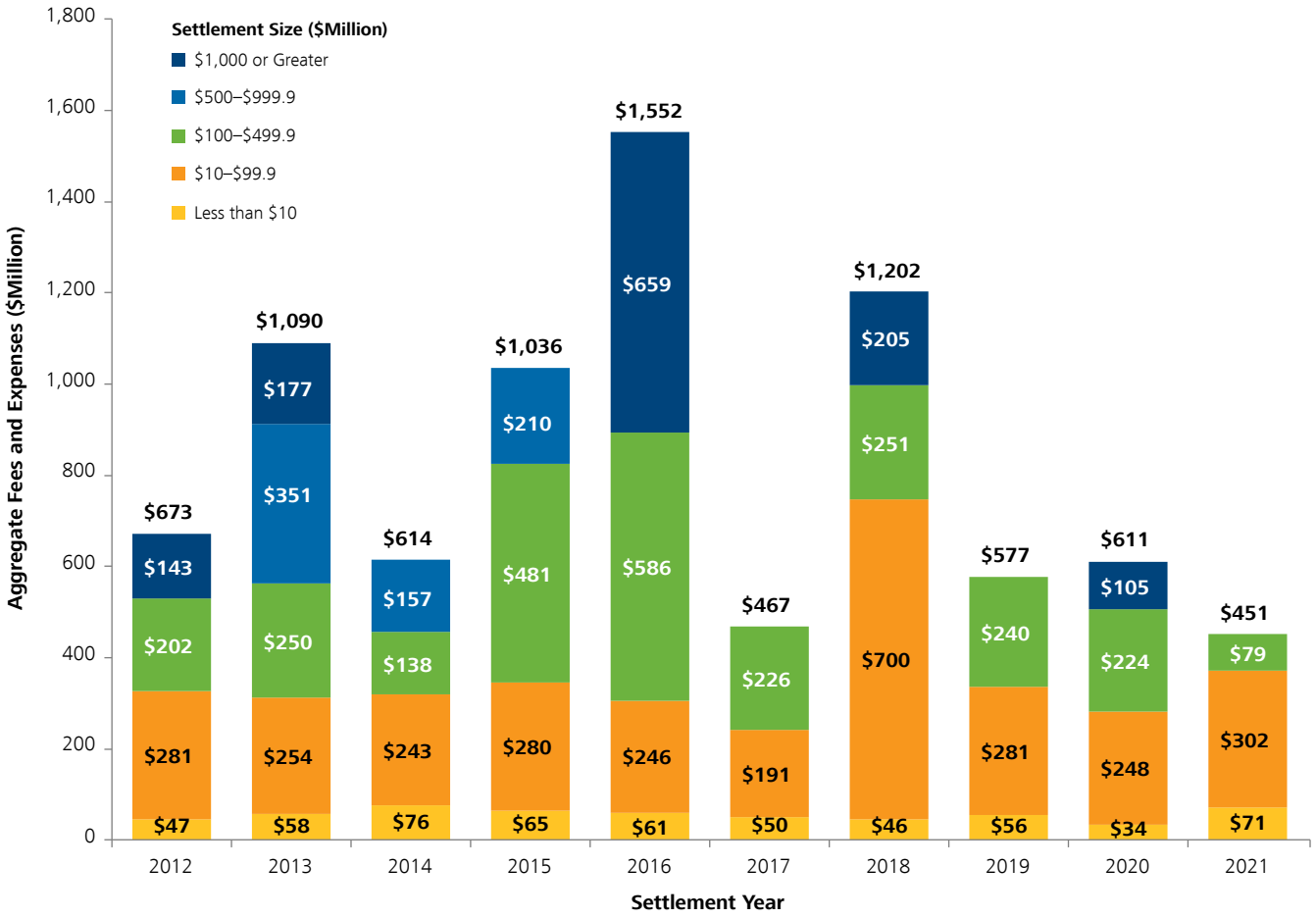


Trends in Plaintiffs' Attorneys' Fees and Expenses

Plaintiffs' attorneys' fees and expenses related to work on securities class action suits have varied substantially over time by settlement size. However, the median of plaintiffs' attorneys' fees and expenses as a percentage of settlement amount has been fairly consistent since 1996.

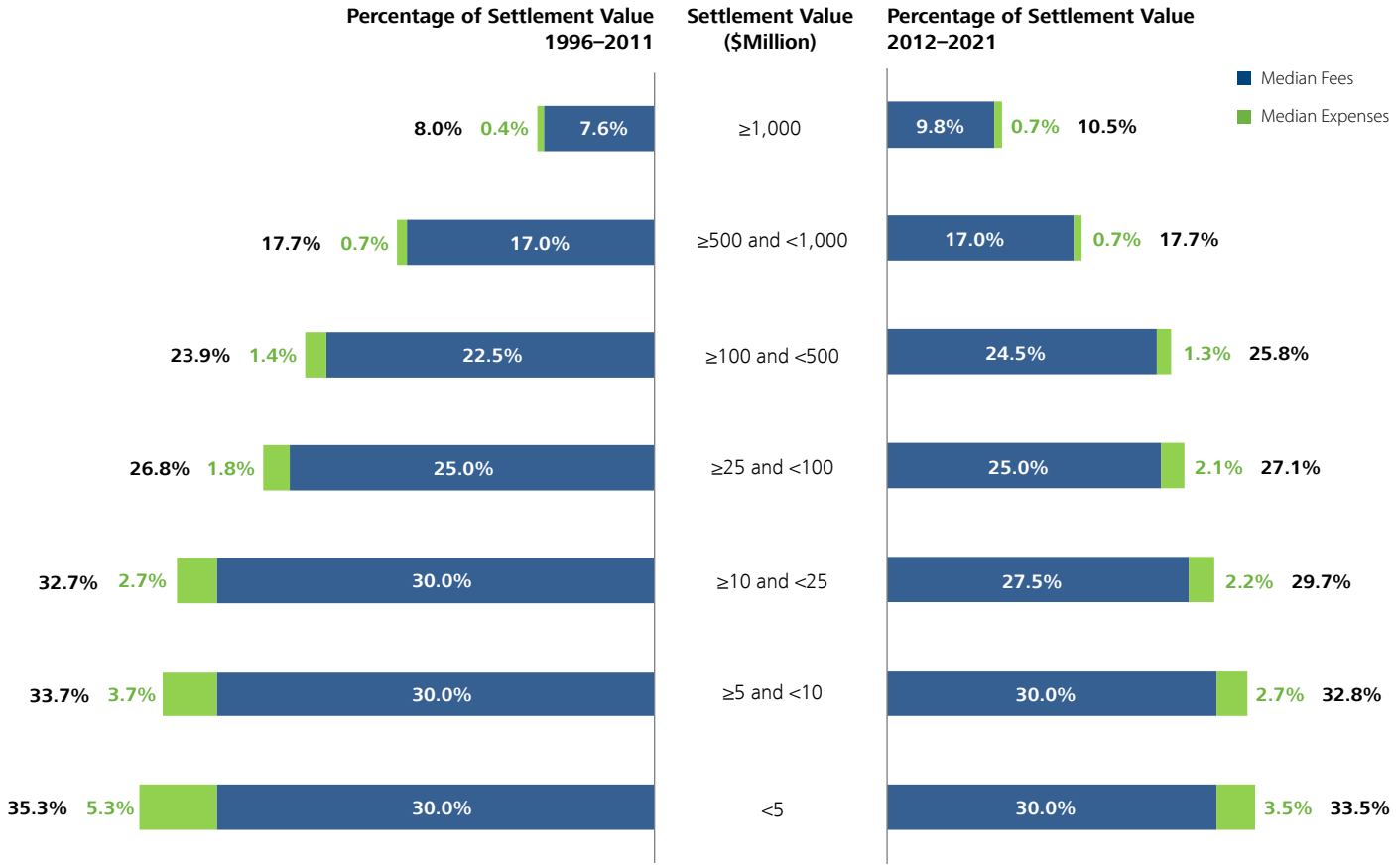
Between 2012 and 2020, the annual aggregate plaintiffs' attorneys' fees and expenses ranged from a low of $467 million in 2017 to a high of $1.6 billion in 2016. For 2021, the aggregate plaintiffs' attorneys' fees and expenses associated with settled cases was $451 million. Given the absence of any settlements above $500 million in 2021, similar to 2019, there were no plaintiffs' attorneys' fees and expenses associated with settlements of $500 million or higher. And while there was an increase in the aggregate fees and expenses for settlements under $100 million, there was an offsetting decrease in the aggregate fees and expenses for settlements between $100 million and $500 million. See Figure 24.

Figure 24. **Aggregate Plaintiffs' Attorneys' Fees and Expenses by Settlement Size**
January 2012–December 2021



As settlement size increases, fees and expenses represent a declining percentage of settlement value. More specifically, while the percentage is only 10.5% for cases that settled for over $1 billion in the last 10 years, for cases with settlement amounts under $5 million, fees and expenses represent 34% of the settlement. See Figure 25.

Figure 25. **Median of Plaintiffs' Attorneys' Fees and Expenses by Size of Settlement**
Excludes Merger Objections and Settlements for $0 to the Class



Conclusion

New securities class action cases filed declined to 205 in 2021, the lowest number of annual filings in the last 10 years but well within the historical range. This decline in total filings was driven primarily by the 85% decrease in merger-objection cases between 2020 and 2021. Due to the numerous filings related to SPACs, the percentage of cases alleging a violation related to merger integration issues increased to 17% while violations related to misled future performance, the most common allegation, were included in 40% of the 2021 suits filed. In 2021, there was a decline in total resolutions, resulting from a notable decrease in the number of merger-objection cases dismissed.

Of the 96% of cases with a motion to dismiss filed, a decision was reached in 73% of the cases prior to resolution of the case, with the motion to dismiss granted in approximately 56% of these cases. Among cases with a motion for class certification filed, a decision was reached in 56% prior to the case resolution, with the motion for class certification granted in 83% of the cases with a decision.

Aggregate settlements in 2021 amounted to $1.8 billion, the lowest total in the 2018–2021 period. No cases resolved with a settlement amount of $1 billion or higher in the last year. The average settlement value for all non-merger-objection cases with positive settlement values, and cases of less than $1 billion, decreased in 2021 to $21 million. The median settlement value showed a similar trend, declining by approximately 40% to $8 million.

Notes

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

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

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

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

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

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

7 See Janeen McIntosh and Svetlana Starykh, "Recent Trends in Securities Class Action Litigation: 2020 Full-Year Review," NERA Economic Consulting, p. 13, Figure 11, available at https://www.nera.com/publications/archive/2021/recent-trends-in-securities-class-action-litigation--2020-full-y.html.

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

9 NERA's analysis of motions only includes securities class action suits involving common stock, with or without other securities, and an allegation of Rule 10b-5 violation alone or accompanied by Section 11, and/or Section 12 violation.

10 For our analysis, NERA includes settlements that have had the first hearing of approval of case settlement by the court. This means we do not include partial settlements or tentative settlements that have been announced by plaintiffs and/or defendants. When evaluating trends in average and median settlement values, we limit our data to non-merger-objection cases with settlements of more than $0 to the class.

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

About NERA

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

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Exhibit 12

Ronald I. Miller, Ph.D., Todd Foster, and Elaine Buckberg, Ph.D., NERA Economic Consulting, Recent Trends in Shareholder Class Action Litigation: Beyond the Mega-Settlements, is Stabilization Ahead? (April 2006)

NERA
Economic Consulting

April 2006

Recent Trends in Shareholder Class Action Litigation: Beyond the Mega-Settlements, is Stabilization Ahead?

Ronald I. Miller, Ph.D.
Todd Foster
Elaine Buckberg, Ph.D.

How Markets Work℠

In 2005 and the first two months of 2006, the list of the ten largest shareholder class action settlements was almost completely rewritten.

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NERA Economic Consulting is an international firm of economists who understand how markets work. Our 45 years of experience creating strategies, studies, reports, expert testimony, and policy recommendations reflects our specialization in industrial and financial economics. Our global team of more than 500 professionals operates in 20 offices across North and South America, Europe, Asia, and Australia.

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Recent Trends in Shareholder Class Action Litigation: Beyond the Mega-Settlements, is Stabilization Ahead?

Ronald I. Miller, Ph.D., Todd Foster, Elaine Buckberg, Ph.D.[1]

April 2006

Top Ten Shareholder Class Action Settlements

As of March 1, 2006

Ranking	Company	Year	Settlement Value ($MM)
1	Enron Corp.★	2005	$7,144
2	WorldCom, Inc.	2005	6,156
3	Cendant Corp. ★★	2000	3,528
4	AOL Time Warner Inc.★	2006	2,650
5	Nortel Networks★★★	2006	2,474
6	Royal Ahold, NV★★★	2006	1,100
7	McKesson HBOC Inc.★★★	2005	960
8	Lucent Technologies, Inc.	2003	517
9	BankAmerica Corp.; NationsBank Corp.	2002	490
10	Dynegy Inc.	2005	474

★ *This is a partial settlement including only some defendants.*
★★ *The settlement value incorporates a $341 million settlement in the Cendant PRIDES case.*
★★★ *This is a tentative settlement.*

Settlement Records Keep Toppling

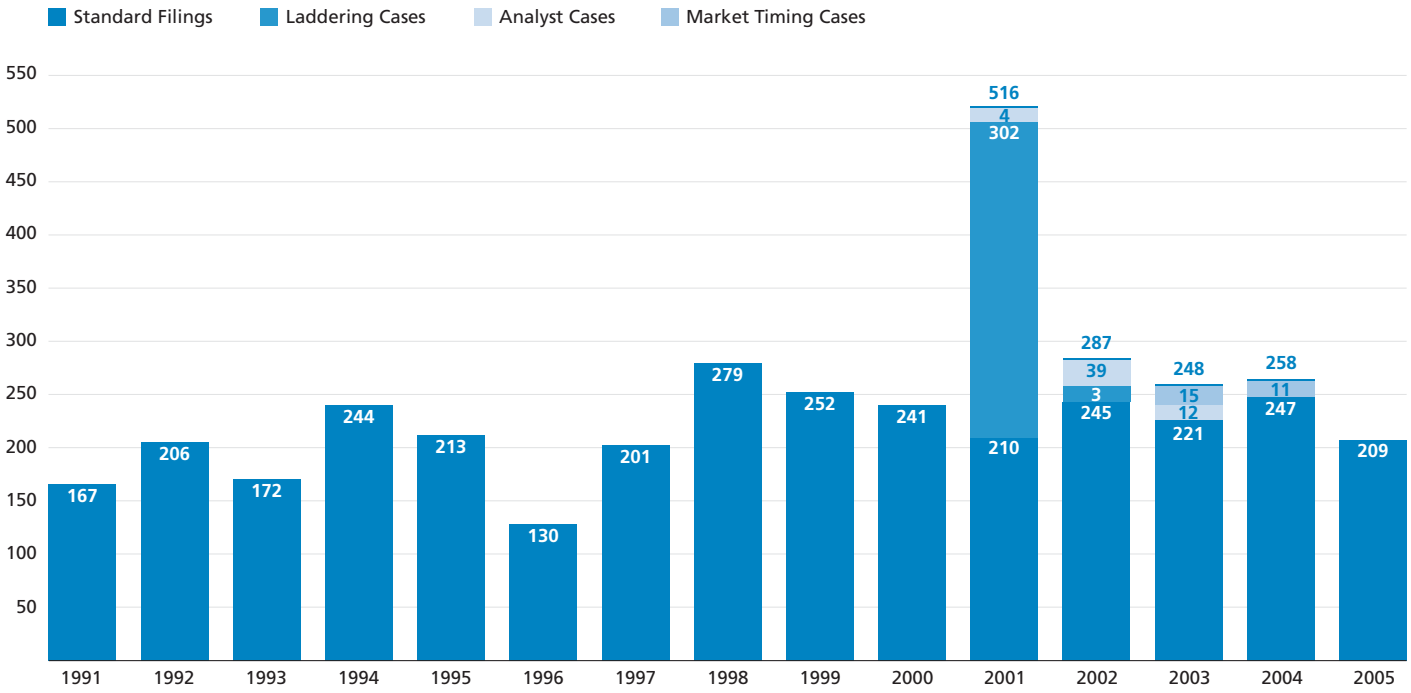
With CIBC's $2.4 billion settlement, the total settlement pool for the Enron shareholder class action became the largest ever at $7.1 billion, passing the $6.2 billion mark set by WorldCom only months earlier.[2] CIBC's contribution exceeded its 2004 earnings. Because some of the other Enron defendants, including more of Enron's bankers, have not yet reached settlements the final tally may rise much higher. The Enron settlement, though still incomplete, nearly doubles the pre-2005 record in Cendant, which reached $3.5 billion.[3] In the remarkable cases of both Enron and WorldCom, outside co-defendants have financed nearly the whole settlement.

The WorldCom and Enron settlements share a common characteristic of the recent mega-settlements: they compensate enormous investor losses. In the case of WorldCom, the investor losses are larger by a substantial multiple than for any other settled case filed since 1991. Investor losses, a simplified plaintiffs' style measure of damages, is the single most powerful predictor of settlement size.[4] The recent huge settlements have been associated with huge losses.

In 2005 and the first two months of 2006, the list of the ten largest shareholder class action settlements was almost completely rewritten. Seven slots on the list are now filled by 2005 and 2006 settlements. As of 2004, Cendant was the only settlement larger than one billion dollars. Now there are six. In what will surely be chilling news to non-United States issuers already wary of being embroiled in U.S. litigation, two of those six settlements, those of Nortel Networks of Canada and Royal Ahold N.V. of the Netherlands, involved foreign companies.[5] The Nortel settlement exceeds the previous record for a foreign issuer, Daimler-Chrysler, by a factor of more than eight.

Federal Filings

January 1991 – December 2005



Filings Fall in 2005: A Dip or a Trend?

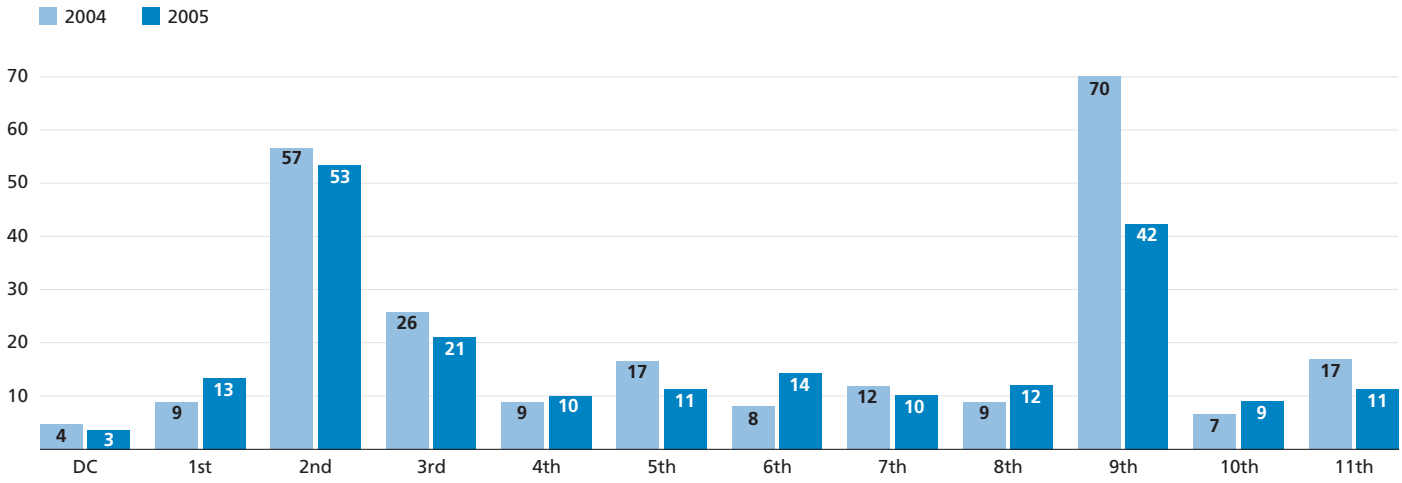
In 2005, plaintiffs filed 209 cases in Federal Courts, substantially fewer than the 247 standard filings in 2004 and the post-Private Securities Litigation Reform Act ("PSLRA") average of 238 standard filings each year.[6] This is the lowest number of federal filings since 1997, when filings were depressed by a move to state courts by plaintiffs seeking to avoid the constraints of the PSLRA.

The low rate of filings in 2005 is evidence that the surge in filings that started in the late 1990s has lost momentum, but it is far too early to conclude that there is a downward trend. First, statistical testing finds that the 2005 dip is not statistically different from either the post-PSLRA average or from a longer-term trend. Second, the drop is far from evenly distributed: almost all of the difference between the 2004 and 2005 totals is accounted for by a sharp fall in filings in the Ninth Circuit.

One possible cause of this drop is that Sarbanes-Oxley ("SOX"), passed in July 2002, has had enough time to induce an improvement in corporate governance, prevented fraud, and thus reduced the number of resulting shareholder class actions. But if the beneficial effects of SOX were really the root cause of the slowdown in filings, we would have expected the fall in filings to be much more evenly distributed across the circuits. It seems unlikely that corporate governance was much more improved on the West Coast than in the rest of the country. Some of the drop may be accounted for by the collapse of the high-tech bubble. Reflecting the mix of industries on the West Coast, many Ninth Circuit filings are against issuers in high-tech industries. There has been some drop in filings against high-tech issuers as compared to 2004, but insufficient to explain the overall drop in filings. The most likely explanation for the remainder of the drop is simply random year-to-year variation.

Standard Federal Filings By Circuit

2004 vs. 2005



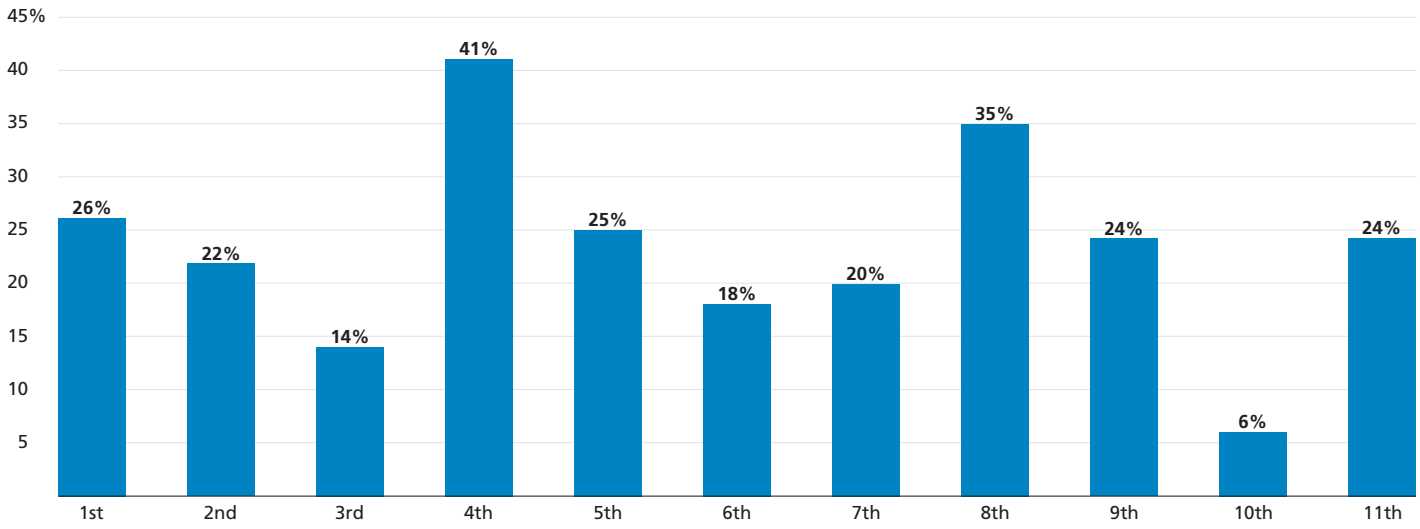
Based on the 2003–2005 filing rate, we estimate that over a five-year period, the average public corporation has nearly a 10% probability that it will face at least one shareholder class action lawsuit.[7] The annual likelihood of a suit has risen approximately 8% from pre-PSLRA levels, from 1.8% to 1.9%. However, the increased likelihood of a suit is more than offset by the increased dismissal rate. The probability of a company facing a suit that survives a motion to dismiss has fallen from 1.4% in 1993–1995 to 1.2% over 2003–2005.

There has been some drop in filings against high-tech issuers as compared to 2004, but insufficient to explain the overall drop in filings.

Companies Face a 2% Chance of Suit Each Year

	1993–1995	2003–2005	Change
No. of Publicly Traded Companies	11,688	12,287	5.1%
Annual Filings	210	238	13.7%
Probability of Shareholder Class Action (SCA)	1.8%	1.9%	8.1%
Probability of Dismissal	19.4%	40.3%	107.7%
Probability of SCA that Survives Motion to Dismiss	1.4%	1.2%	-19.9%

Dismissal Rates By Circuit Within Two Years Of Filing

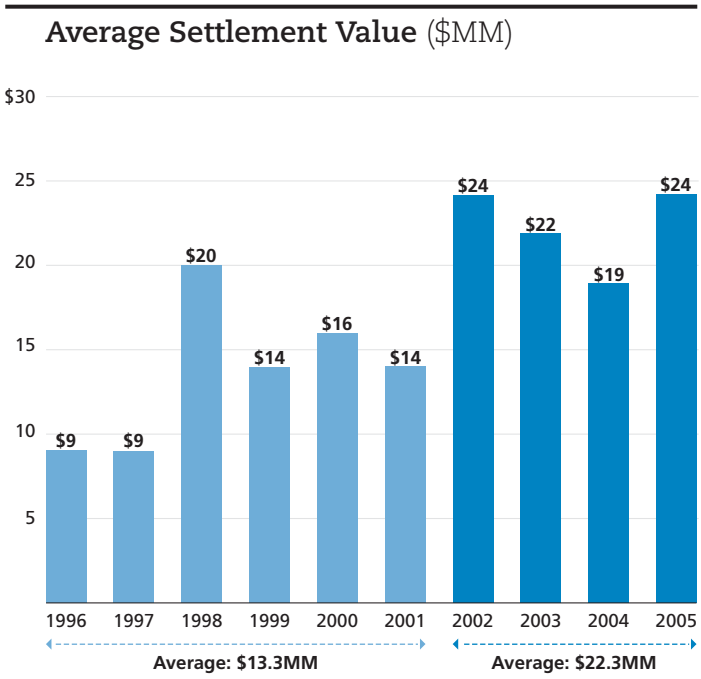


Dismissals

Dismissal rates have doubled since PSLRA.[8] Dismissals accounted for only 19.4% of dispositions for cases filed between 1991 and 1995. More recently, for cases filed between 1998 and 2003, dismissals have accounted for 40.3% of dispositions.[9] Our post-PSLRA dismissal rate may be slightly overstated, as it may include some dismissals without prejudice that will be reversed by amended and better-pled complaints or dismissals with prejudice that will be successfully appealed. There is no indication that dismissal rates have continued to rise after an initial adjustment to the tougher pleading provisions of PSLRA.

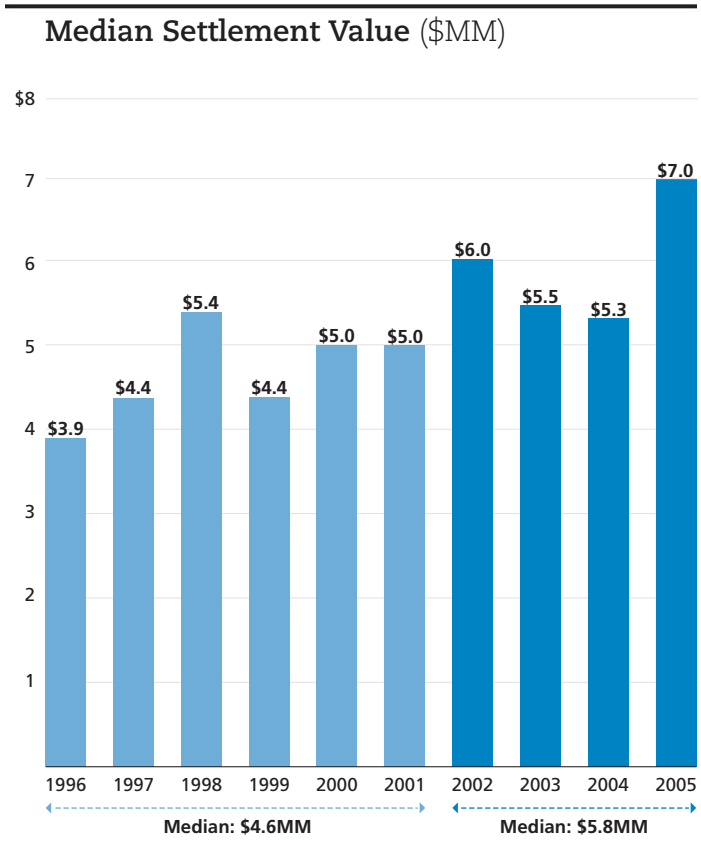
Dismissal rates vary by circuit. Both the Second and Ninth Circuits, which together receive the majority of cases, dismiss approximately 25% of cases within two years of the filing date. The Fourth Circuit has the highest rate, dismissing more than 40% of filings within two years.

Although high, it appears that settlements have reached a plateau as opposed to being on a continually rising trend.



Settlements Reached New Highs in 2005

Average settlement values hit a new peak in 2005, even excluding WorldCom and Enron.[10] The mean settlement value reached $24.3 million, barely exceeding the prior high of $23.7 million in 2002.[11] Including WorldCom would bring the average to nearly $71 million. Although high, with the addition of the results from 2005 it appears that settlements have reached a plateau that began in 2002 as opposed to being on a continually rising trend. Just as for filings, for average settlements there is some stabilization occurring, underneath the biggest of the mega-settlements.



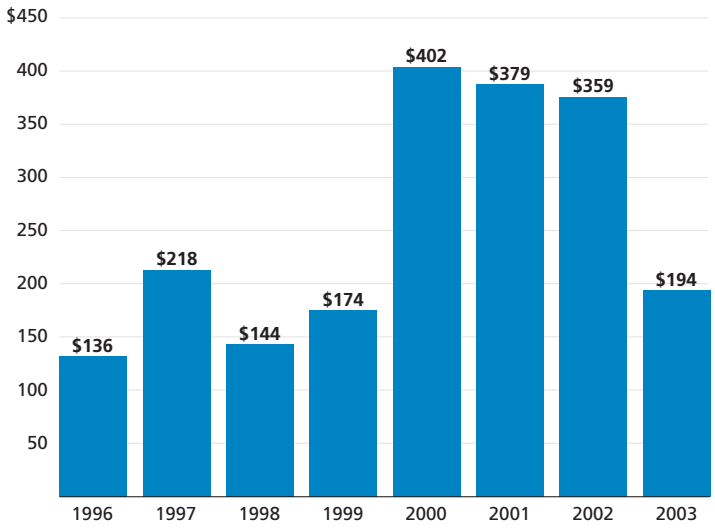
The Median Settlement Surged

Median settlement values in 2005 hit $7.0 million, exceeding the past record by more than 15% and the 2004 level by one-third. The average settlement value tends to be dominated by the very largest settlements, while the median is more descriptive of typical cases. The driving factor behind this increase is the sharp reduction in settlements under $3 million, which accounted for nearly 45% of settlements in 1996 but constituted only 27% of settlements in 2005.

Settlements May Fall From Their Peak

There is good reason to expect that, apart from the biggest of the mega-settlements, average settlements will not rise further over the next two or three years and, instead, could even fall. Our analysis indicates that the high value of settlements in 2002–2005 is due to higher investor losses, not due to changes in the litigation environment. Many of the largest suits in this recent period have class periods ending during the collapse of the stock market bubble in 2000–2002. The large market losses that came with the end of this bubble have led to large settlements.

Median Investor Losses
By End-of-Class Period Year ($MM)

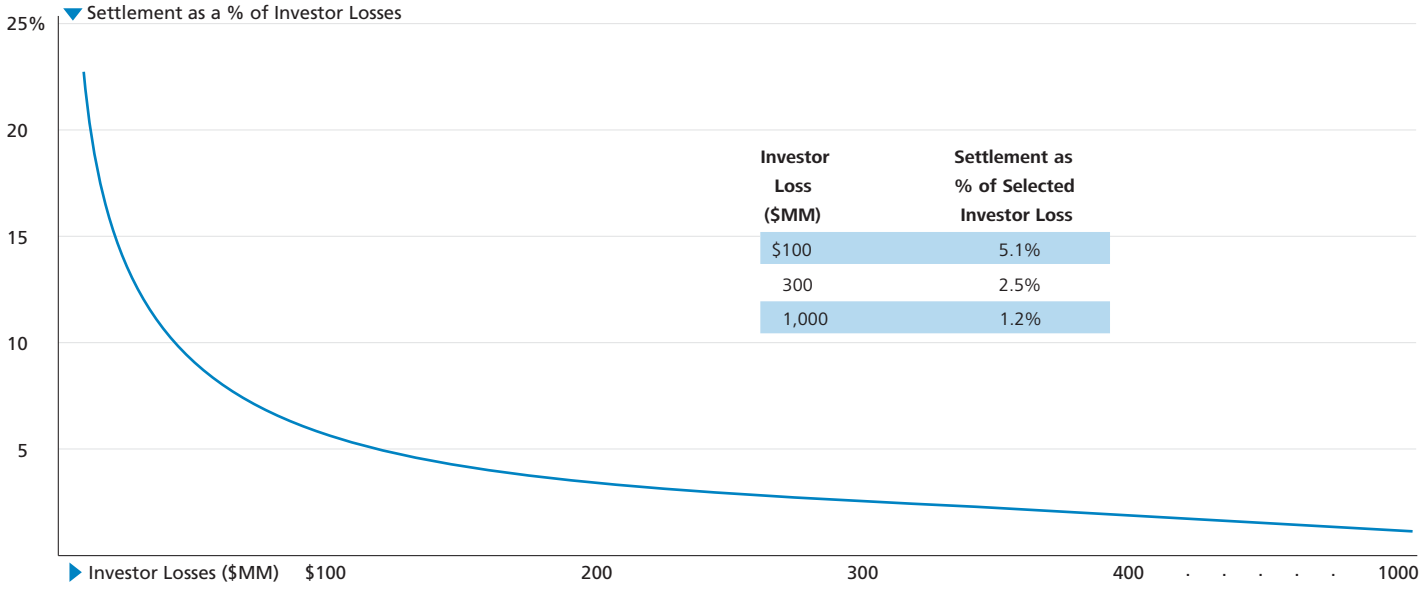


Median investor losses for cases with class periods ending in 2000-2002 are far higher than for any other period, peaking at $402 million in 2000.

The high settlements of recent years are likely to continue for several more years, as cases from the bear market proceed to settlement. Our analysis of median investor losses by end-of-class-period year for settled cases shows the point. Median investor losses for cases with class periods ending in 2000–2002 are far higher than for any other period, peaking at $402 million for class periods ending in 2000. For settled cases with class periods ending in 2003, of which there are 40 through 2005, median investor losses are only $194 million. As time passes we expect to see more settlements with more recent class periods which are likely to be smaller than those from the end of the bubble. But the backlog of earlier cases will keep settlements high for at least a few more years.

We find no statistically significant change in settlement values since the passage of Sarbanes-Oxley, once we control for other factors including investor losses.[12] Higher investor losses explain the rise in settlements, as we will discuss further below.

Expected Settlements Rise More Slowly Than Investor Losses ($MM)



Investor Loss ($MM)	Settlement as % of Selected Investor Loss
$100	5.1%
300	2.5%
1,000	1.2%

Explaining Settlements

NERA has estimated a statistical model for predicting settlements that explains over 60% of the variation in settlements, using data on cases filed after 1 January 1996. This model allows us to assess the impact of various lawsuit characteristics on settlement values. All the sensitivity measures described below are calculated controlling for other characteristics of the suit and consumer price inflation.

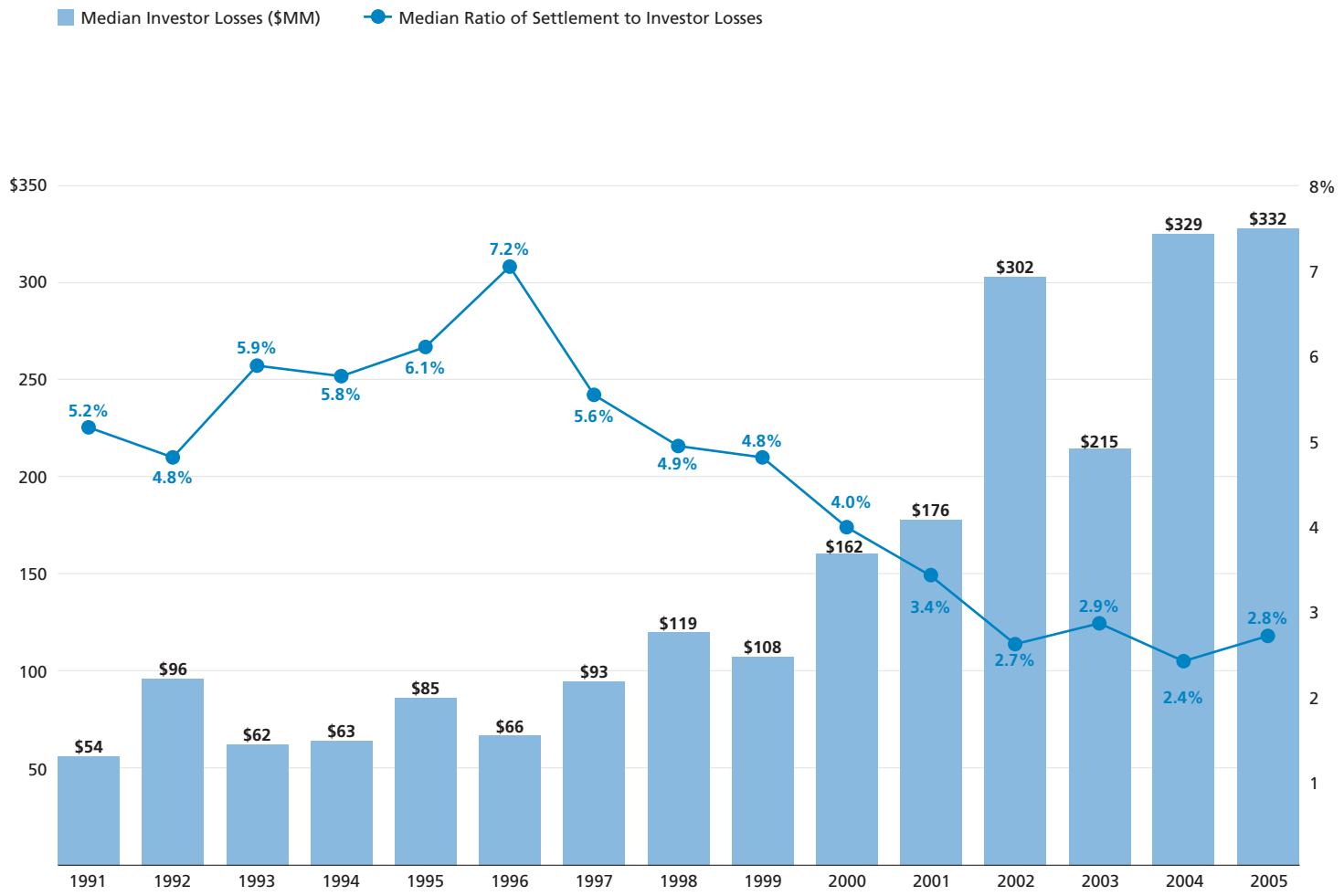
If the defendant firm is in bankruptcy or has a stock price of less than $1 per share at settlement, the settlement will typically be approximately 25% lower.

By far the biggest single driver of settlement values is investor losses, a measure of what investors lost over a class period relative to an investment in the S&P500. High investor losses in recent years completely explain the high average settlements we have seen. On average, a 1.0% increase in investor losses results in an approximately 0.4% increase in the size of the expected settlement, meaning that as investor losses rise, the ratio of settlement to investor losses falls.[13]

In 1996, the investor losses in an average settled suit were only $140 million. By 2005, average investor losses had ballooned to $2.6 billion. As well, median investor losses have been rising rapidly since 1996 and set a new record in 2005 at $332 million. But that was only a shade above the 2004 median of $329 million. Investor losses appear to be stabilizing, consistent with our analysis by end-of-class period. Similarly, the median share of settlements to investor losses also appears to be stabilizing after a long declining trend: in the early 1990s the median share was in excess of 5%, but since 2002 it has hovered between 2.5% and 3.0%.

Our investor loss measure covers only losses faced by holders of common stock. Settlement values increase dramatically in cases in which holders of other classes of securities—bonds, options, preferred stock—share in the settlement. Effectively, the claims of the holders of these other securities represent losses above and beyond those measured by investor losses.

Investor Losses Have Risen More Rapidly Than Settlements—But May Be Stabilizing



Settlements are greater when defendants have deeper pockets. For each 1% increase in the company's market capitalization on the day after the end of the class period, the typical settlement will increase by more than 0.1%. If the company's fortunes change before settlement, there may be less money to go around. If the defendant firm is in bankruptcy or has a stock price of less than $1 per share at settlement, the settlement will typically be approximately 25% lower. In addition, the involvement of outside co-defendants can lead to larger settlements. In cases with an accounting firm co-defendant, settlements increase by more than three-quarters, controlling for all other characteristics of the case.

Cases with accounting allegations result in higher settlements for other reasons too. The presence of allegations regarding accounting issues will raise average settlement values by approximately 20%. Settlements in cases in which accounting irregularities are admitted increase by a further half.

When the allegations of a suit are subject to official investigation, for example by the SEC or the New York Attorney General's Office, or result in a consent agreement or official punishment; settlements are higher. This outside evidence of the merits of a case leads to an approximately 25% increase in expected settlement value.

One of Congress's major goals for the PSLRA was to involve institutional investors as lead plaintiffs. In this the PSLRA has been effective, though the effect has taken time. In 2000, 14% of settled cases had an institutional lead plaintiff. In 2005, the figure was 38%. Controlling for other case characteristics, cases with an institutional investor lead plaintiff settle for a statistically significant one-third more. It is possible that institutional investors are more likely to choose to be involved in cases with greater merit, although we are controlling for other easily observable features of the suit. Alternatively, institutional investors as lead plaintiffs may retain more effective counsel, supervise counsel more effectively, and provide an independent contribution to strategy.

Our model also indicates that settlements increase by more than one-third if an IPO is involved. All such cases involve potential Section 11 claims, which may result in higher alleged damages than the accompanying 10b-5 claims and are also governed by different liability standards.

Only the health services sector pays markedly different settlements than do other industries. Settlements involving companies in the health services sector are typically one-third higher than settlements involving any other industry, controlling for other case characteristics. This finding may relate to the existence of concurrent billing fraud allegations against health services companies brought under the federal False Claims Act.

Conclusion

The huge settlements from the Enron and WorldCom suits have grabbed attention in 2005, far surpassing any previous settlements. Another wave of mega-settlements has already begun in 2006. But for the greater mass of shareholder class action defendants, the situation appears to be stabilizing. We see evidence of stabilization in several key areas. An increase in federal filings followed passage of the PSLRA, but that trend has leveled. Average settlements reached a new high this year, but already cases with class periods ending after the end of the bubble-deflation are starting to bring the average down. Along with that leveling off, the share of settlements in investor losses has also stabilized after a long period of rapid decrease. It may be that for all the record-breaking settlements and all the headlines, shareholder class action litigation is entering a new period of normalcy.

End Notes

1 This edition of NERA's research on recent trends in shareholder class action litigation expands on previous work by our colleagues Lucy Allen, Frederick C. Dunbar, Vinita M. Juneja, Denise Neumann Martin, Stephanie Plancich and David I. Tabak. We gratefully acknowledge their contribution to previous editions as well as this current version. In addition, the authors thank Christopher Enright and Christopher Lyon for supervising the research effort. These individuals receive credit only for improving this paper; all errors and omissions are ours.

2 CIBC's settlement, as well as JPMorgan Chase's for $2.2 billion and Citigroup's for $2.0 billion, all in the Enron litigation, have not yet received court approval.

3 Including the $341 million Cendant PRIDES settlement.

4 Investor losses are calculated in a standardized fashion and do not take into account the specific facts of any case apart from the stock price movements. Actual damages claimed by plaintiffs may be very different from investor losses in any particular case. Nonetheless, we have consistently found investor losses to be a powerful predictor of settlement values.

5 Neither of these settlements is yet court approved.

6 The post-PSLRA average is calculated for 1998-2005, thus excluding 1996 and 1997. There was a large drop in federal filings in 1996 and 1997, as plaintiffs filed in state courts to avoid the restrictions of PSLRA. As such, filings in those years are atypical. Standard filings are defined to exclude the laddering, analyst and mutual fund market timing cases.

7 The probability of not facing a suit is 97.9% per year. Assuming that the probability of facing a suit in each year is independent and compounding over five years yields a 90.7% chance of no suit, or a 9.3% chance of at least one suit, in five years.

8 Our dismissal statistics include summary judgments but exclude partial dismissals.

9 Because it is not uncommon for judges to take up to two years from the filing date to rule on motions to dismiss, it would be premature to evaluate dismissal rates of cases filed in 2004–2005. The increase in dismissals is statistically significant.

10 Enron is excluded because it is still incomplete and, for the purpose of calculating statistics, we date a settlement by the year it became complete and finalized.

11 Excluding Cendant from the 2000 average.

12 This is true for cases settled after SOX as well as for cases filed after SOX.

13 The illustrated figures represent the expected settlement as a percentage of investor loss, when all other predictive variables are at their mean levels. The expected settlement percentage may be very different for any particular settlement. NERA's statistical model of settlements allows calculation of the expected settlement percentage for individual cases with any specific set of characteristics.

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Exhibit 13

Moody's August 31, 2021 Credit Opinion

MOODY'S INVESTORS SERVICE

CREDIT OPINION
31 August 2021

Update

Rate this Research

RATINGS

Teva Pharmaceutical Industries Ltd

Domicile	Petach Tikva, Israel
Long Term Rating	Ba2
Type	LT Corporate Family Ratings
Outlook	Negative

Please see the ratings section at the end of this report for more information. The ratings and outlook shown reflect information as of the publication date.

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Teva Pharmaceutical Industries Ltd

Update to credit analysis: Opioid resolution looms while business performance continues to improve

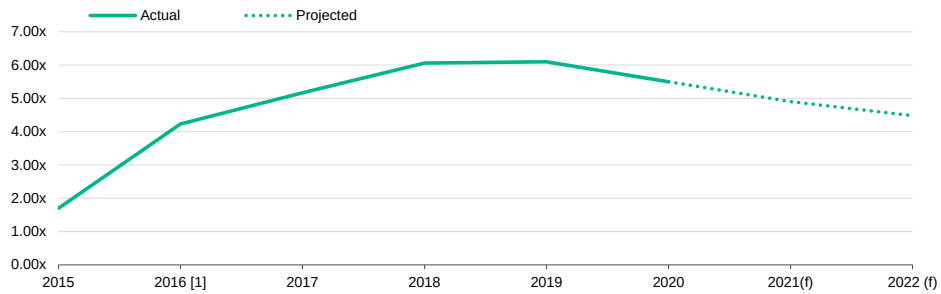
Summary

Teva's credit profile reflects its significant scale in both generic and branded drugs, its global diversity, and its position as the world's largest generic drug company. While earnings declines are moderating, Teva's future earnings growth depends on the relative stability of its global generics business, coupled with the ramp up of newer branded drugs, such as AJOVY and Austedo. Teva's credit profile is constrained by its high financial leverage. Adjusted debt/EBITDA was 5.3x for the twelve months ended June 30, 2021, inclusive of debt repayment that occurred in July. We believe that, with committed debt repayment, leverage will steadily decline, to below 4.5x in 2022, driven also by our expectation for generally stable earnings over the next 12-18 months. We expect that Teva will use a majority of its cash flow to pay down debt. Key social risk factors for Teva include material exposures to opioid and other litigation, including alleged generic drug price fixing.

Exhibit 1

Absent major cash outflows for litigation, Teva's leverage will decline to under 4.5x in 2022 after peaking in mid-2019

Moody's Adjusted debt/EBITDA



[1] Pro forma estimate for acquisition of Actavis Generics on 8/2/2016
Source: Moody's Financial Metrics™, Moody's estimates

Credit strengths

» Largest global generic drug manufacturer

» Good product, segment, and geographic diversity

» Revenue opportunity in launch of AJOVY

» Good cash flow which has been consistently used to repay debt

Credit challenges

» High financial leverage

» Volatile US generics business; Copaxone will continue to decline

» Opioid-related and other litigation is a key social and financial risk

» Weak branded pipeline raises question for long-term growth

Rating outlook

The outlook is negative, reflecting the risk that potential cash outflows related to Teva's ongoing opioid litigation will be worse than presently proposed, delaying Teva's deleveraging.

Factors that could lead to an upgrade

» Material improvement in operating performance and liquidity

» Ability to more than offset generic price erosion with new product launches

» Debt/EBITDA sustained below 4.5 times

» Resolution/greater certainty with respect to Teva's opioid and other litigation exposures

Factors that could lead to a downgrade

» Operating performance or liquidity weakens

» Failure to address large debt maturities well in advance

» Weak free cash flow for an extended period of time

» If we expect that debt/EBITDA will remain above 5 times

» Negative litigation developments, which we believe will materially reduce Teva's ability to deleverage

Key indicators

Exhibit 2

Key Indicators for Teva Pharmaceutical Industries Ltd[1][2][3]

in US millions	FYEDec-2016	FYEDec-2017	FYEDec-2018	FYEDec-2019	FYEDec-2020	LTMMar-2021	2021-proj.	2022-proj.
Revenue	$21,903.0	$22,385.0	$18,271.0	$16,887.0	$16,659.0	$16,284.0	16,200	16,400
Debt / EBITDA	5.1x	5.2x	6.1x	6.1x	5.5x	5.8x	5.0x	4.48x
CFO / Debt	14.0%	6.5%	8.8%	3.1%	4.7%	2.0%	10%	12.0%
Pharmaceutical Cash Coverage of Debt	2.7%	2.8%	5.8%	6.9%	8.0%	6.6%	6.0%	7.0%

[1] All figures and ratios are calculated using Moody's estimates and standard adjustments.

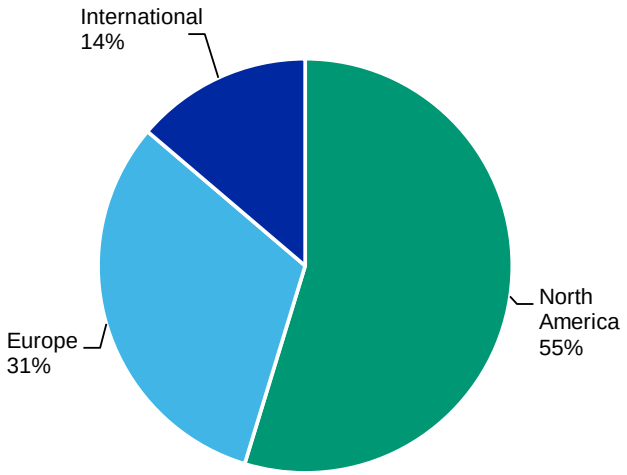
This publication does not announce a credit rating action. For any credit ratings referenced in this publication, please see the ratings tab on the issuer/entity page on www.moodys.com for the most updated credit rating action information and rating history.

[2]Periods are Financial Year-End unless indicated. LTM = Last Twelve Months.
[3] Moody's Forecasts (f) or Projections (proj.) are Moody's opinion and do not represent the views of the issuer.
Source: Moody's Investors Service

Profile

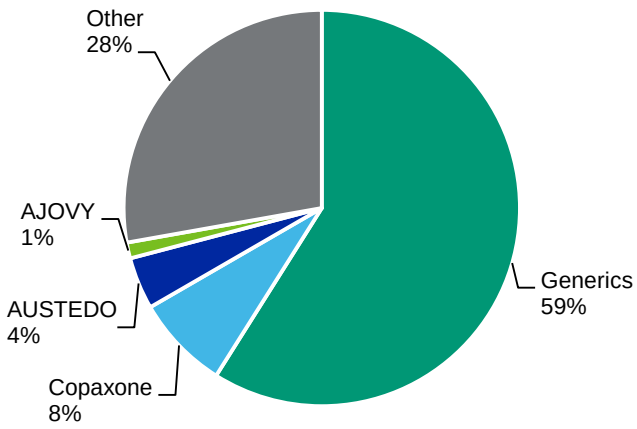
Headquartered in Petah Tikvah, Israel, Teva Pharmaceutical Industries Ltd. is a global pharmaceutical company offering a mix of generic and branded products. Reported revenue for the twelve months ended June 30, 2021 was approximately $16.3 billion.

Exhibit 3
Teva's revenue by geography



Data reflects twelve months ended June 30, 2021
Source: Company filings

Exhibit 4
Teva's revenue breakdown by product type



Data reflects twelve months ended June 30, 2021
Source: Company filings

Detailed credit considerations

Significant scale and diversity; business spans generic and branded drugs

Teva's credit profile is supported by the company's significant scale as the world's largest global generic company, broad geographic footprint, and mix of branded and generic drugs. Teva's generic revenues of around $9.3 billion are greater than its competitors, including Novartis' Sandoz division and Viatris' generic business.

Generic utilization will grow globally as more people gain access to healthcare (particularly in emerging markets) and payors (whether it be insurers, governments or individuals) look for ways to reduce healthcare costs. Despite pressure from a consolidated customer base, Teva's scale is important in negotiations as a reliable source of global supply on what is the largest portfolio of generic products in the industry.

Teva also has a sizeable branded pharmaceuticals business which adds diversity and scale. The branded business generates good cash flows, despite steady erosion in Teva's largest product, Copaxone, and several smaller branded products in the US. For the twelve months ended June 30, 2021, Copaxone generated over $1.2 billion in sales, globally. Margins in the branded business are significantly higher than in the generics business. The company also generates roughly $1.3 billion of revenue from other sources, including Teva's drug distribution business and manufacturing of active pharmaceutical ingredients that add revenue diversity.

The company is well diversified geographically with about 55% of revenue generated in North America, 32% in Europe and 14% from other international markets. This diversity helps mitigate the impact of a disruption in any given market. Teva benefits from significant vertical integration by operating the world's largest active pharmaceutical ingredients business, which sustains a competitive cost base.

Vertical integration also allows for greater control over its supply chain, allowing Teva to react more quickly to market changes. In addition, Teva has a sizeable (though very low margin) drug distribution business in the US and Israel.

2023 deleveraging targets increasingly achievable; improving financial flexibility

Teva's commitment to deleveraging will continue to drive debt/EBITDA declines over the next couple of years. Debt/EBITDA for the twelve months ended June 30, 2021 remained high at approximately 5.3x (pro forma for debt repaid in July). But with modest EBITDA growth and debt repayment, we expect debt/EBITDA closer to 5.0x by the end of 2021 (Teva repaid $1.475 billion in July 2021). With upcoming debt maturities through 2022, Teva has the ability to delever to 4.5x debt/EBITDA. Teva has a publicly stated target of net debt/EBITDA below 3x in 2023, which we believe is increasingly achievable driven by Teva's resilient cash generation and debt repayment. Since 2016, Teva has repaid over $12 billion of debt. Our forecasts assume that Teva will repay about $2 billion of debt per year over the next two years with free cash flow, absent of any large cash outflows that could cause delays.

Our view of modest EBITDA growth through 2022 assumes: 1) growing contributions from Austedo and AJOVY, 2) further cost reductions or controlled cost inflation in certain regions 3) decelerating erosion in Copaxone earnings, which has faced generic competition for a several years now, and 4) gradual recovery in prescription volumes most affected by pandemic lockdowns globally.

Teva may tap the debt markets to refinance a portion of its maturities over the next 18-24 months. Teva's next debt maturities are $1.2 billion in November 2021 and $2 billion maturing in 2022. Teva has a sizable stack of debt of $4.4 billion maturing in 2023.

Reliance on AJOVY and AUSTEDO for future growth as Teva's branded pipeline is weak

Teva will remain reliant on the continued uptake of AUSTEDO and AJOVY for it to grow earnings, as growth in other parts of the business remain flat or slowly contracting. AJOVY and AUSTEDO will continue to be growth drivers through 2022 as their markets expand. AJOVY is Teva's branded injectable drug to prevent migraines. AUSTEDO is Teva's branded drug to treat motion disorders. We believe that earnings growth in these two products will exceed the annual loss of revenue in Copaxone due to generic competition. Despite strong competition, we expect global sales in AJOVY to steadily improve with market access expanding in the EU, and potentially in Japan. With LTM June 2021 sales below $150 million, three years on since its first approval, we do not expect the product to reach blockbuster status at peak. AUSTEDO, on the other hand, has become Teva's most important growth asset, with sales that we expect will approach $1 billion in 2022. Austedo is in phase III for the treatment of cerebral palsy, which if approved in the expanded indication, will further drive growth in the next several years.

Outside of the phase III line extension in AUSTEDO, we believe Teva's pipeline remains weak, as a driver for long-term revenue and earnings growth. Within its branded pipeline, Teva only has fasinumab, and its future prospects are uncertain. Fasinumab is a biologic product for the treatment of osteoarthritic pain, in collaboration with Regeneron. It is in phase III, and has yet to be filed with the FDA. In April 2021, an FDA advisory committee for a competitor product in the class, tanezumab, recommended against its approval due to its risk/benefit profile, which may affect the class broadly. It's unclear at this point whether Teva and Regeneron will choose to file fasinumab for FDA approval.

While Teva's generics business is more stable than in past years, we are not forecasting meaningful revenue growth. This is because we see few traditional primary care blockbuster drugs that will face competition. In contrast to the last 10 years, we believe the biggest drug opportunities coming off patent in the next 10 years will be biologic drugs. The biosimilar market requires higher investments by generic manufacturers. Further, generic entrants are typically able to garner only a limited market share after launch. That said, revenues from biosimilars are ultimately more durable because of fewer competitors.

Critical mass in biosimilars still a few years away

We believe Teva lags other companies in the biosimilar space but it is making notable progress. The market for biosimilars is growing, albeit slower in the US than in many European markets. A number of blockbuster biologic products will be opening up to competition in the next five years in the US, and the market for biosimilars remains attractive longer term. Teva has four biosimilars in phase III or filed, three of which are partnered products. One of these is a recent partnership with BioEq to commercialize a biosimilar version of Lucentis in Europe and other non-US markets.

Exhibit 5
Teva's disclosed biosimilar pipeline

Originator product	Partner	Clinical Phase	LTM sales	Expiration year
Humira (adalimumab)	Alvotech	Under review	16,110	2023
Lucentis (ranibizumab)	BioEq	Pre-submission	2141	EU 2018
Prolia (denosumab)	In-house	Phase III	2,006	2025
Stelara (ustekinumab)	Alvotech	Phase III	5,240	2023

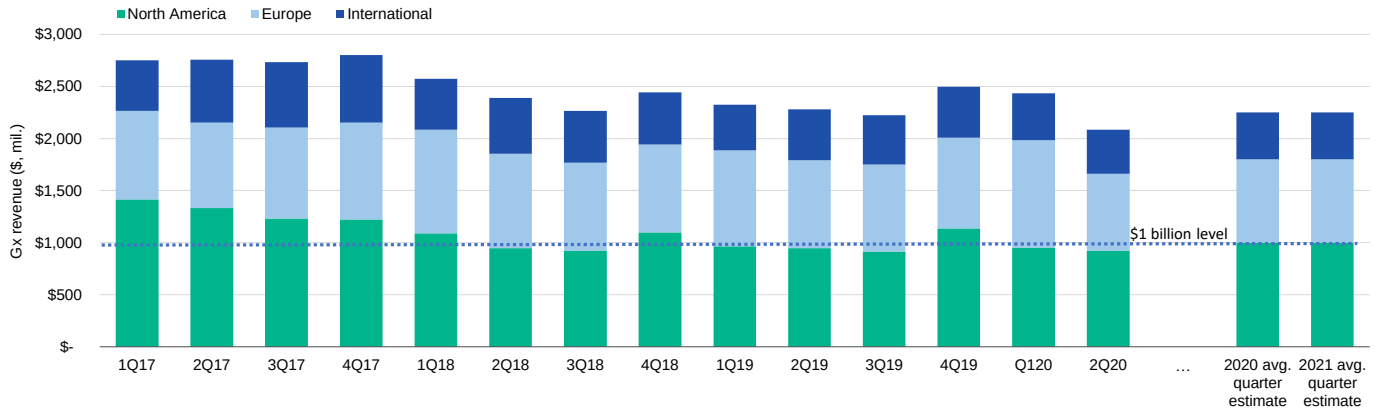
As of June 30, 2021; Sales in Lucentis are rest of world sales.
Source: Company filings

Biosimilars will contribute increasingly to Teva's revenue base. With partner Celltrion, Truxima (Rituxan biosimilar) continues to be a success and is the only biosimilar in the US in Rituxan's rheumatoid arthritis indication. Teva's market share as of the second quarter 2021 was above 25% in terms of volume. We expect Truxima to be a stable contributor to revenue despite some fluctuations due to the pandemic. Teva also sells a biosimilar version of Herceptin, Herzuma, albeit the contribution is small.

Several products are advancing in the pipeline through Teva's exclusive strategic partnership with Alvotech. We continue to believe the partnership offers Teva an opportunity to gain a greater position in the growing biosimilar market. We believe this will be a source for revenue growth, but not for several years. The partnership was announced in August 2020 and covers the commercialization in the US for five biosimilar candidates. Alvotech is responsible for the development, registration, and supply of the product, while Teva will be responsible for commercialization. The candidates disclosed to date include biosimilar Humira, which is presently under regulatory review, and biosimilar Stelara. The five originator products are said to generate around $35 billion in US sales.

Stability in US generics pricing; no major launches forecasted through 2022

Exhibit 6
North American generic revenues will be stable at ~$1 billion per quarter through 2022



Source: Company filings, Moody's estimates

We expect Teva's generics business will continue to be stable over the next 12 months. Stability stems from new product introductions that are generally enough to offset erosion in the base business. With stability in generics, Teva has been able to make progress expanding its operating margins, benefitting from holding its spend base flat or declining. We expect operating margins to expand by another 100 basis points through 2023, in line with Teva's long term target of 28% operating margin (on Teva's calculated basis). Part of the improvement will also come from its segment mix, shifting more to brand over time.

Teva's US generics business will generally be flat revenue year to year. We believe price erosion on the base of Teva's existing portfolio of products is in the mid-single digits range, with dynamics generally stable with the three largest purchasing groups. While Teva will continue to bring new complex product launches to market, contributions will mostly be offseting erosion in its existing base portfolio. In 2021, Teva's US business benefitted from the exclusive launch of generic Truvada, although there are now multiple players in that market, reducing the opportunity. Generic prescription volumes in the US tied to doctor's visits and elective procedures remain impacted but we expect a gradual recovery.

In Europe, we expect modest generic drug revenue growth over the next few years driven by volume growth from new product launches. In other international markets, we see modest revenue growth on a local currency basis.

ESG considerations

Opioid settlement nears; resolution likely within 12 months

The potential for payments related to Teva's exposure to litigation remains high. Any payouts due to judgments or settlements to resolve litigation could delay the company's ability to delever by consuming cash that would otherwise be used for debt repayment. While there is significant uncertainty around the timing and amount of potential payouts, our current forecasts assume annual cash outflows for miscellaneous litigation payments of $300-$400 million. As of June 30, 2021, Teva's provision for legal settlements and contingencies was approximately $1.7 billion. Teva's two main exposures relate to opioid-related litigation and allegations of generic drug price fixing.

We believe a global resolution to Teva's opioid-related litigation exposure will occur within 12 months. But an agreement will depend on receiving broad consensus among the plaintiff parties with any near final proposal from Teva. The latest settlement proposal remains unchanged since October 2019, when Teva reached an agreement in principle with four state Attorneys General for a nationwide settlement framework. Under the proposed opioid settlement framework, Teva would donate buprenorphine naloxone (sublingual tablets), in quantities of up to the amount needed to meet the majority of the currently estimated US patient need over the next 10 years. Teva has estimated that this would be valued at approximately $23 billion of wholesale acquisition cost, but has not provided estimates on the cost of production. There would also be a modest cash component of $250 million over 10 years.

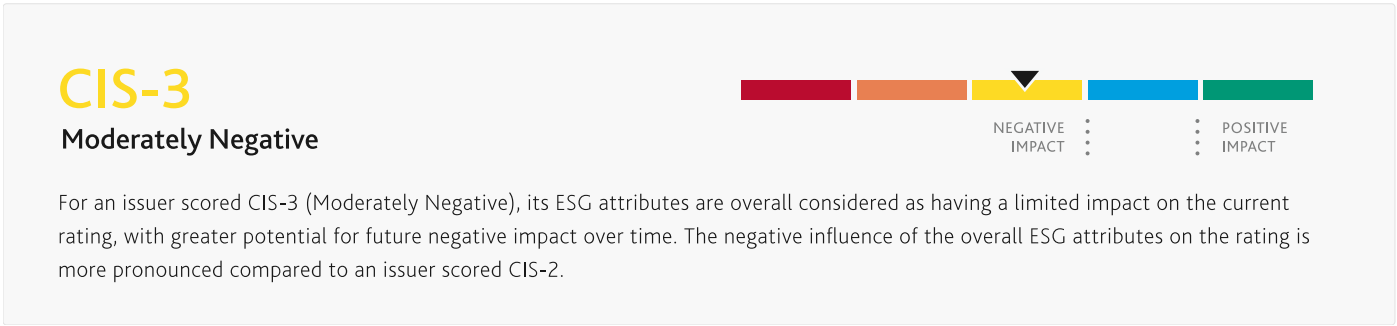
As progress is made on its deleveraging targets, we believe Teva's ability to financially accommodate the present settlement agreement increases. At the time the settlement was agreed to in principle, Teva's debt/EBITDA exceeded 6.5x. We forecast Teva's debt/EBITDA approaching 5x in 2021, which will lessen the burden of a settlement. That said, the agreement is in principle only and has received some opposition from certain states, highlighting the risk that a settlement could be larger than currently proposed.

Teva also faces other investigations and lawsuits including allegations of generic drug price fixing. Several other generic drug companies have settled in price fixing investigations. In July 2020, Taro Pharmaceuticals agreed to pay more than $400 million to resolve all of its price fixing claims. In March 2020, Novartis' generics unit, Sandoz agreed to pay $195 million to settle criminal charges. Separately, in August 2020, the US Government sued Teva alleging that it used charitable foundations to pay kickbacks on Copaxone copays.

Whether these regulatory bodies find fault with any of Teva's practices is impossible to gauge and the timing and magnitude of any financial penalties and cash outlays, if any, are hard to predict. Until Teva's financial leverage materially declines from current levels, we believe its financial flexibility will be limited to absorb large potential cash outlays, if any.

Teva Pharmaceutical Industries Ltd's ESG Credit Impact Score is moderately negative CIS-3.

Exhibit 7
ESG Credit Impact Score



Source: Moody's Investors Service

CIS-3. ESG risks are having a moderately negative impact on ratings, but could worsen if cash outflows related to settlements on litigations materialize. Specifically, Teva is one of the most exposed to opioid litigation and to allegations of generic drug price-fixing

lawsuits in the US. Teva sells generic drugs globally (but also branded drugs), which reduces its exposure to drug pricing legislation than most issuers in the sector.

Exhibit 8
ESG Issuer Profile Scores

Source: Moody's Investors Service

Environmental

E-2. The company does not face any observable environmental risks causing it to deviate from the sector score

Social

S-5. Teva faces very high social risk exposures. These include high exposure to litigation, specifically opioids and allegations of generic drug price-fixing. Because branded business is still significant and represents a large share of cash flow, drug pricing risk in the US is a key social risk for Teva as well.

Governance

G-3. Teva's score reflect significant improvements in ability to provide accurate guidance, a commitment to using free cash flow for debt repayment, and executing successfully on cost reduction goals. Debt/EBITDA remains elevated reflected in Financial Strategy and Risk Management score.

Liquidity analysis

Teva's SGL-2 Speculative Grade Liquidity Rating reflects our view that its liquidity will remain good over the next 12-15 months. Teva will have more than $1.5 billion of cash by year end 2021 assuming ongoing repayment of debt maturities in 2021. We project free cash flow of $2 billion annually 2021 and 2022. Teva has a $2.3 billion unsecured revolver most of which will expire in April 2024 ($2.22 billion). The revolver contains financial covenants including a minimum interest coverage test of 3.50x and a maximum net debt/EBITDA test of 5.00x in the second half of 2021, and 4.50x in the first half of 2022, with step-downs for the remaining term of the facility. We expect good cushion through 2022. We believe Teva will have sufficient internal cash sources to repay debt maturities through 2022.

Structural considerations

All of Teva's debt is unsecured and rated Ba2, the same as the Ba2 Corporate Family Rating. Because of prior acquisitions and legal and tax strategies by the company, Teva has debt issued out of various subsidiaries. None of Teva's issuing entities have operating assets. Teva Pharmaceutical Industries Limited is the parent company and unconditionally guarantees all of the unsecured debt obligations at its subsidiaries.

Rating methodology and scorecard factors

Exhibit 9

Scorecard factors

Scorecard Factors				
Teva Pharmaceutical Industries Ltd				
Pharmaceutical Industry Scorecard [1][2]	Current LTM 3/31/2021		Moody's 12-18 Month Forward View As of August 2021 [3]	
Factor 1 : Scale (25%)	**Measure**	**Score**	**Measure**	**Score**
a) Revenue (USD Billion)	$16.3	A	$16.4	A
Factor 2 : Business Profile (40%)				
a) Product and Therapeutic Diversity	Baa	Baa	Baa	Baa
b) Geographic Diversity	Baa	Baa	Baa	Baa
c) Patent Exposures	B	B	B	B
d) Pipeline Quality	Ba	Ba	Ba	Ba
Factor 3 : Leverage & Cash Coverage (25%)				
a) Debt / EBITDA	5.8x	B	4.5x	Ba
b) (Cash Flow from Operation) / Debt	2.0%	Caa	12%	B
c) Pharmaceutical Cash Coverage of Debt	6.6%	B	7%	B
Factor 4 : Financial Policy (10%)				
a) Financial Policy	Ba	Ba	Ba	Ba
Rating:				
a) Scorecard-Indicated Outcome		Ba1		Ba1
b) Actual Rating Assigned				Ba2

[1] All ratios are based on 'Adjusted' financial data and incorporate Moody's Global Standard Adjustments for Non-Financial Corporations.

[2] As of 3/31/2021(L); Source: Moody's Financial Metrics™

[3] This represents Moody's forward view; not the view of the issuer; and unless noted in the text, does not incorporate significant acquisitions and divestitures

[4] LTM CFO/Debt does not include cash flows from investing associated with Teva's securitization program

Source: Moody's financial metrics; Moody's estimates

Ratings

Exhibit 10

Category	Moody's Rating
TEVA PHARMACEUTICAL INDUSTRIES LTD	
Outlook	Negative
Corporate Family Rating	Ba2
Speculative Grade Liquidity	SGL-2
TEVA PHARMA FINANCE NETHERLANDS III BV	
Outlook	Negative
Bkd Senior Unsecured	Ba2/LGD4
TEVA PHARMACEUTICAL FINANCE NETHERLANDS II BV	
Outlook	Negative
Bkd Senior Unsecured -Dom Curr	Ba2/LGD4
TEVA PHARMACEUTICAL FINANCE COMPANY, LLC	
Outlook	Negative
Bkd Senior Unsecured	Ba2/LGD4
TEVA PHARMACEUTICAL FIN. CO B.V. (CURACAO)	
Outlook	Negative
Bkd Senior Unsecured	Ba2/LGD4
TEVA PHARMACEUTICAL FINANCE NETHERLANDS IV BV	
Outlook	Negative
Bkd Senior Unsecured	Ba2/LGD4

TEVA PHARMACEUTICAL FINANCE IV B.V.	
Outlook	Negative
Bkd Senior Unsecured	Ba2/LGD4

Source: Moody's Investors Service

Appendix

Exhibit 11

Moody's-Adjusted Debt Reconciliation for Teva Pharmaceutical Industries Ltd[1][2]

in US millions	FYE Dec-2016	FYE Dec-2017	FYE Dec-2018	FYE Dec-2019	FYE Dec-2020	LTM Mar-2021
As Reported Debt	**35,800.0**	**32,475.0**	**28,916.0**	**26,908.0**	**25,919.0**	**24,985.0**
Non-Standard Public Adjustments	113.0	216.0	304.0	312.0	0.0	0.0
Securitization	621.0	799.0	686.0	690.0	734.0	734.0
Leases	643.1	600.0	717.5	553.0	595.0	595.0
Moody's-Adjusted Debt	**37,177.1**	**34,090.0**	**30,623.5**	**28,463.0**	**27,248.0**	**26,314.0**

[1] All figures are calculated using Moody's estimates and standard adjustments.
[2] Periods are Financial Year-End unless indicated. LTM = Last Twelve Months.
Source: Moody's Financial Metrics™

Exhibit 12

Moody's-Adjusted EBITDA Reconciliation for Teva Pharmaceutical Industries Ltd[1][2]

in US millions	FYE Dec-2016	FYE Dec-2017	FYE Dec-2018	FYE Dec-2019	FYE Dec-2020	LTM Mar-2021
As Reported EBITDA	**2,894.0**	**-15,392.0**	**166.0**	**1,338.0**	**-1,886.0**	**-1,666.0**
Unusual Items - Income Stmt	4,200.0	21,772.0	4,680.0	3,145.0	6,666.0	6,069.0
Leases	164.0	200.0	175.0	166.0	148.0	148.0
Securitization	10.4	20.4	30.8	16.7	15.4	11.8
Moody's-Adjusted EBITDA	**7,268.4**	**6,600.4**	**5,051.8**	**4,665.7**	**4,943.4**	**4,562.8**

[1] All figures are calculated using Moody's estimates and standard adjustments.
[2] Periods are Financial Year-End unless indicated. LTM = Last Twelve Months.
Source: Moody's Financial Metrics™

Exhibit 13

Peer Comparison[1][2]

	Teva Pharmaceutical Industries Ltd Ba2 Negative			Mylan N.V. Baa3 Stable			AbbVie Inc. Baa2 Stable			Amgen Inc. Baa1 Stable		
in US millions	FYE Dec-19	FYE Dec-20	LTM Mar-21	FYE Dec-18	FYE Dec-19	LTM Sep-20	FYE Dec-19	FYE Dec-20	LTM Jun-21	FYE Dec-19	FYE Dec-20	LTM Jun-21
Revenue	$16,887.0	$16,659.0	$16,284.0	$11,433.9	$11,500.5	$11,514.3	$33,266.0	$45,804.0	$53,729.0	$23,362.0	$25,424.0	$25,484.0
OPERATING PROFITS	$2,751.9	$3,140.3	$2,785.1	$1,179.1	$921.4	$1,322.7	$13,662.0	$15,678.2	$17,233.3	$9,691.4	$9,153.2	$8,936.2
EBITDA	$4,665.7	$4,943.4	$4,562.8	$3,374.6	$3,028.9	$3,206.0	$16,001.0	$22,476.0	$24,780.0	$12,837.0	$13,219.0	$12,882.0
Total Debt (Gross)	$28,463.0	$27,248.0	$26,314.0	$14,586.5	$13,557.8	$13,167.7	$73,298.0	$93,898.0	$89,980.0	$37,165.0	$39,020.0	$38,816.0
Cash & Cash Equivalents	$1,975.0	$2,177.0	$1,743.0	$388.1	$475.6	$664.5	$39,924.0	$8,449.0	$8,546.0	$6,037.0	$6,266.0	$6,630.0
EBIT / Interest Expense	3.0x	3.0x	2.6x	2.1x	1.7x	2.6x	9.0x	7.0x	6.1x	8.0x	7.4x	7.7x
Debt / EBITDA	6.1x	5.5x	5.8x	4.3x	4.5x	4.1x	4.6x	4.2x	3.6x	2.9x	3.0x	3.0x
RCF / Net Debt	6.7%	14.0%	13.1%	18.3%	18.3%	19.3%	25.5%	11.6%	16.8%	20.6%	20.4%	20.1%
FCF / Debt	0.8%	2.2%	-0.7%	14.4%	11.1%	11.9%	9.4%	9.7%	11.9%	13.5%	15.7%	12.9%
CFO / Debt	3.1%	4.7%	2.0%	16.6%	13.3%	14.0%	19.0%	18.9%	22.9%	25.1%	27.4%	25.2%
Pharmaceutical Cash Coverage of Debt	6.9%	8.0%	6.6%	2.7%	3.5%	5.0%	54.6%	9.3%	9.9%	24.0%	27.3%	20.8%

[1] All figures & ratios calculated using Moody's estimates & standard adjustments.
[2] FYE = Financial Year-End. LTM = Last Twelve Months. RUR* = Ratings under Review, where UPG = for upgrade and DNG = for downgrade.
Source: Moody's Financial Metrics™

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REPORT NUMBER 1300176

CLIENT SERVICES

Americas	1-212-553-1653
Asia Pacific	852-3551-3077
Japan	81-3-5408-4100
EMEA	44-20-7772-5454

Exhibit 14

Excerpted Teva 2021 Form 10-K

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

(Mark One)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2021

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

Commission file number 001-16174

TEVA PHARMACEUTICAL INDUSTRIES LIMITED

(Exact name of registrant as specified in its charter)

Israel	**Not Applicable**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**

124 Dvora HaNevi'a St., Tel Aviv, ISRAEL, 6944020
(Address of principal executive offices and Zip Code)

+972 (3) 914-8213
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
American Depositary Shares, each representing one Ordinary Share	**TEVA**	**New York Stock Exchange**

Securities registered pursuant to Section 12(g) of the Act:

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232-405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files.) Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	☒	Accelerated filer	☐
Non-accelerated filer	☐	Smaller reporting company	☐
		Emerging growth company	☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☒

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

The aggregate market value of the voting common equity held by non-affiliates of the registrant, computed by reference to the closing price at which the American Depositary Shares were last sold on the New York Stock Exchange, as of the last business day of the registrant's most recently completed second fiscal quarter (June 30, 2021), was approximately $9.55 billion. Teva Pharmaceutical Industries Limited has no non-voting common equity. For purpose of this calculation only, this amount excludes ordinary shares and American Depositary Shares held by directors and executive officers and by each person who owns or may be deemed to own 10% or more of the registrant's common equity at June 30, 2021.

As of December 31, 2021, the registrant had 1,103,329,696 ordinary shares outstanding.

Portions of the registrant's definitive proxy statement for its annual meeting of shareholders to be filed within 120 days after the close of the registrant's fiscal year are incorporated by reference into Part III of this Annual Report on Form 10-K.

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Compliance, regulatory and litigation risks

Our operations are subject to complex legal and regulatory environments. If we fail to comply with applicable laws and regulations we may suffer legal consequences that may have a material effect on our business, operations or reputation.

We operate around the world in complex legal and regulatory environments. Any failure to comply with applicable laws, rules and regulations may result in civil and/or criminal legal proceedings and lead to fines, damages, mandated compliance programs and other sanctions and remedies that may materially affect our business and operations as well as our reputation. In addition, as rules and regulations change or as interpretations of those rules and regulations evolve, our prior conduct or that of companies we have acquired may be investigated.

Examples of rules and regulations impacting our operations include rules and regulations applicable to the sales and marketing of our products, competition laws, trade control laws, anti-bribery laws, privacy laws, compliance with cGMP, labor laws, safety and laws regarding manufacturing practices, product labeling, advertising and post marketing reporting including adverse event reports and field alerts due to manufacturing quality concerns, tax and financial reporting laws and environmental laws.

We are currently subject to several governmental and civil proceedings and litigations relating to our pricing and marketing practices, intellectual property, product liability, competition matters, opioids, securities disclosure and corporate governance and environmental matters. These investigations and litigations are costly and involve a significant diversion of management attention. Such proceedings are unpredictable and may develop over lengthy periods of time. An adverse resolution of these proceedings may result in large monetary fines, damages, additional litigation, such as securities and derivative actions, and other non-monetary sanctions and remedies, such as mandated compliance agreements, which can be expensive and disruptive to operations.

Due to increasing numbers of securities claims over the last several years and related payouts under insurance policies, in addition to increased settlement values in “event-driven” litigation and a growing number of plaintiff shareholder law firms eager to bring claims, premiums and deductibles for insurance, including D&O insurance, have been increasing and some insurers are reducing the number of companies they insure, causing the supply of insurance to lag behind demand. This could increase our premiums, reduce the scope and capacity of our coverage, and adversely affect our ability to maintain and renew our existing insurance policies on favorable terms or at all. While we continue to maintain insurance coverage intended to address certain risks, such coverage may be insufficient to cover claims and losses we face.

Public concern over the abuse of opioid medications, including increased legal and regulatory action, could negatively affect our business.

Certain governmental and regulatory agencies are focused on the abuse of opioid medications in the United States. U.S. federal, state and local governmental and regulatory agencies are conducting investigations of us, other pharmaceutical manufacturers and other supply chain participants with regard to the manufacture, sale, marketing and distribution of opioid medications. A number of state attorneys general, including a coordinated multistate effort, are investigating our marketing, sales and distribution of opioids, and we have received subpoenas from the DOJ seeking documents relating to the manufacture, marketing and sale of opioid medications. In addition, we are currently litigating civil claims and administrative actions brought by various states and political subdivisions as well as private claimants, against various manufacturers, distributors and retail pharmacies throughout the United States in connection with our manufacture, marketing, sale and distribution of opioids. Also, several jurisdictions and consumers in Canada have initiated litigation regarding opioids alleging similar claims as those in the United States, and we may be sued in other jurisdictions globally for similar claims as well. The loss or settlement of any such claims related to opioids could have a material adverse impact on our liquidity. For further information, see “Opioids Litigation” in note 12b to our consolidated financial statements.

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In addition to the costs and potential consequences associated with defending the governmental investigations and legal proceedings, legislative, regulatory or industry measures to address the misuse of prescription opioid medications may also affect our business in ways that we are not able to predict. For example, a number of states, including New York, have enacted legislation that requires the payment of assessments or taxes on the sale or distribution of opioid medications in those states. If other state or local jurisdictions successfully enact similar legislation and we are not able to mitigate the impact on our business through operational changes or commercial arrangements, such legislation in the aggregate may have a material adverse effect on our business, financial condition and results of operations.

Furthermore, we utilize controlled substances in certain of our current products and products in development, and therefore must meet the requirements of the Controlled Substances Act of 1970 and related regulations administered by the DEA in the U.S., as well as the requirements of similar laws and regulations in other countries where we operate, relating to the manufacture, shipment, storage, sale, and use of controlled substances. While we are committed to compliance and have robust compliance systems in place, risk associated with these laws and regulations cannot be entirely eliminated by policies and procedures. The DEA and other regulatory agencies also set annual procurement quotas that limit the availability of the controlled substances used in certain of our current products and products in development, and quota levels may impact our ability to meet commercial demand or complete clinical trials. In addition, prescription drug abuse and the diversion of opioids and other controlled substances are the frequent subject of public attention, which presents significant reputational risk. The occurrence of any of the above risks could have a material adverse effect on our business, financial condition, results of operations, cash flows, and/or share price.

The pharmaceutical sector is facing increased government scrutiny from competition and pricing authorities around the world, which may expose us to significant damages and commercial restrictions that can materially and adversely affect our business.

We are required to comply with competition laws in the territories where we do business around the world. Compliance with these laws has been the subject of increasing focus and activity by regulatory authorities, both in the United States and Europe, in recent years. Alleged actions by our employees, in violation of such laws, or evolving interpretations of competition law as applicable to certain practices, have exposed us, and may further expose us, to investigations and legal proceedings, which may result in significant liability for violations of competition laws, which may have a material adverse effect on our reputation, business, financial condition and results of operations.

We are subject to a DOJ civil investigation and a criminal indictment charging Teva USA with criminal felony Sherman Act violations, that, if resulting in a conviction or guilty plea, could have a material adverse effect on our business, including monetary penalties, debarment from federally funded health care programs and reputational harm. In addition, we are a party to numerous civil claims brought by state officials and private plaintiffs alleging that Teva, together with other pharmaceutical manufacturers, engaged in conspiracies to fix prices and/or allocate market share of generic products in the United States.

We have been involved in numerous litigations involving challenges to the validity or enforceability of listed patents (including our own), and therefore settling patent litigations has been and will likely continue to be an important part of our business. There is continued scrutiny of our patent settlements, including from the U.S. Federal Trade Commission (“FTC”) and the European Commission. Accordingly, we may receive formal or informal requests from competition law authorities around the world for information about a particular settlement agreement, and there is a risk that governmental authorities, customers, other downstream purchasers or others may commence actions against us alleging violations of antitrust laws based on our settlement agreements. We are currently defendants in antitrust actions brought by U.S. states, the European Commission and private plaintiffs involving numerous settlement agreements and, since 2015, we are subject to a consent decree with the FTC, which imposes on us certain injunctive reliefs with respect to our ability to enter into patent settlements in the United States. The U.S. Congress and certain state legislatures in the United States have also passed, or

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on the allegations raised in the August 2020 complaint filed by the U.S. Attorney's Office in Boston. On April 2, 2021, Teva filed a motion to dismiss the claims on the grounds that the claims are time-barred and/or insufficiently pled, and that motion remains pending.

In April 2021, a city and county in Washington sued Teva in the United States District Court for the Western District of Washington for alleged violations of the Racketeer Influenced and Corrupt Organizations Act, Washington's Consumer Protection Act, and unjust enrichment concerning Teva's sale of COPAXONE. Plaintiffs purport to represent a nationwide class of health plans and a subclass of Washington-based health plans that purchased and/or reimbursed health plan members for COPAXONE. Plaintiffs allege that Teva engaged in several fraudulent schemes that resulted in plaintiffs and the putative class members purchasing and/or reimbursing plan members for additional prescriptions of COPAXONE and/or at inflated COPAXONE prices. Plaintiffs seek treble damages for the excess reimbursements and inflated costs, as well as injunctive relief. On September 28, 2021, plaintiffs filed an amended complaint. On November 17, 2021, Teva moved to dismiss the suit, on the grounds that plaintiffs' claims are barred by the applicable statutes of limitations and the direct purchaser rule, suffer from jurisdictional defects, and fail to plausibly allege fraud or other elements of their claims. That motion remains pending.

On June 29, 2021, Mylan Pharmaceuticals sued Teva in District Court for the District of New Jersey for alleged violations of the Lanham Act, unfair competition, monopolization, tortious interference, and trade libel. Plaintiffs claim Teva was involved in an unlawful scheme to delay and hinder generic competition concerning COPAXONE sales. Plaintiffs seek damages for lost profits and expenses, disgorgement, treble damages, attorneys' fees and costs, and injunctive relief. On November 19, 2021, Teva filed a motion to dismiss the complaint on the grounds, among others, that none of its challenged conduct violates the law. Briefing on Teva's motion remains ongoing.

Opioids Litigation

Since May 2014, more than 3,500 complaints have been filed with respect to opioid sales and distribution against various Teva affiliates, along with several other pharmaceutical companies, by a number of cities, counties, states, other governmental agencies, tribes and private plaintiffs (including various putative class actions of individuals) in both state and federal courts. Most of the federal cases have been consolidated into a multidistrict litigation in the Northern District of Ohio ("MDL Opioid Proceeding") and many of the cases filed in state court have been removed to federal court and consolidated into the MDL Opioid Proceeding. Two cases that were included in the MDL Opioid Proceeding were transferred back to federal district court for additional discovery, pre-trial proceedings and trial. Those cases are: City of Chicago v. Purdue Pharma L.P. et al., No. 14-cv-04361 (N.D. Ill.) and City and County of San Francisco v. Purdue Pharma L.P. et al., No. 18-cv-07591-CRB (N.D. Cal.). Other cases remain pending in various states. In some jurisdictions, such as Illinois, New York, Pennsylvania, South Carolina, Texas, Utah and West Virginia, certain state court cases have been transferred to a single court within their respective state court systems for coordinated pretrial proceedings. Complaints asserting claims under similar provisions of different state law, generally contend that the defendants allegedly engaged in improper marketing and distribution of opioids, including ACTIQ ® and FENTORA ® . The complaints also assert claims related to Teva's generic opioid products. In addition, over 950 personal injury plaintiffs, including various putative class actions of individuals, have asserted personal injury and wrongful death claims in over 600 complaints, nearly all of which are consolidated in the MDL Opioid Proceeding. Furthermore, approximately 700 non-personal injury complaints and approximately 100 personal injury complaints have named Anda, Inc. (and other distributors and manufacturers) alleging that Anda failed to develop and implement systems sufficient to identify suspicious orders of opioid products and prevent the abuse and diversion of such products to individuals who used them for other than legitimate medical purposes. Plaintiffs seek a variety of remedies, including restitution, civil penalties, disgorgement of profits, treble damages, attorneys' fees and injunctive relief. Certain plaintiffs assert that the

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TEVA PHARMACEUTICAL INDUSTRIES LIMITED
Notes to Consolidated Financial Statements—(Continued)

measure of damages is the entirety of the costs associated with addressing the abuse of opioids and opioid addiction and certain plaintiffs specify multiple billions of dollars in the aggregate as alleged damages. The individual personal injury plaintiffs further seek non-economic damages. In many of these cases, plaintiffs are seeking joint and several damages among all defendants.

On April 19, 2021, a bench trial in California (The People of the State of California, acting by and through Santa Clara County Counsel James R. Williams, et. al. v. Purdue Pharma L.P., et. al.) commenced against Teva and other defendants focused on the marketing of branded opioids. On December 14, 2021, the court issued its final judgment in favor of the defendants on all claims. Teva expects that the plaintiffs will appeal this judgment. On June 29, 2021, a jury trial in New York (*In re Opioid Litigation* , Index No. 400000/2017)) commenced against Teva and other defendants, focused on the marketing and distribution of opioids. The case was bifurcated between liability and damages. On December 30, 2021, the jury returned a liability verdict in favor of plaintiffs (the County of Suffolk, the County of Nassau and the State of New York), on the plaintiffs' public nuisance claim. It is anticipated that discovery with respect to the damages portion of the case will begin in 2022 followed by a damages trial. Teva intends to appeal and expects that both Teva and the plaintiffs will file post-trial motions with respect to the liability portion of the case. Absent resolutions, additional trials are expected to proceed in several states in 2022.

In May 2019, Teva settled the Oklahoma litigation brought by the Oklahoma Attorney General (State of Oklahoma, ex. rel. Mike Hunter, Attorney General of Oklahoma vs. Purdue Pharma L.P., et. al.) for $85 million. The settlement did not include any admission of violation of law for any of the claims or allegations made. As the Company demonstrated a willingness to settle part of the litigation, for accounting purposes, management considered a portion of opioid-related cases as probable and, as such, recorded an estimated provision in the second quarter of 2019. Given the relatively early stage of the cases, management viewed no amount within the range to be the most likely outcome. Therefore, management recorded a provision for the reasonably estimable minimum amount in the assessed range for such opioid-related cases in accordance with Accounting Standards Codification 450 "Accounting for Contingencies."

Additionally, on October 21, 2019, Teva reached a settlement with the two plaintiffs in the MDL Opioid Proceeding that was scheduled for trial for the Track One case, Cuyahoga and Summit Counties of Ohio. Under the terms of the settlement, Teva agreed to provide the two counties with opioid treatment medication, buprenorphine naloxone (sublingual tablets), known by the brand name Suboxone ® , with a value of $25 million at wholesale acquisition cost and distributed over three years to help in the care and treatment of people suffering from addiction, and a cash payment in the amount of $20 million, which has been paid.

Also on October 21, 2019, Teva and certain other defendants reached an agreement in principle with a group of Attorneys General for a nationwide settlement. This nationwide settlement was designed to provide a mechanism by which the Company attempts to seek resolution of remaining potential and pending opioid claims by both the U.S. states and political subdivisions (i.e., counties, tribes and other plaintiffs) thereof.

On July 21, 2021, it was announced that four other defendants (not including Teva) have reached a nationwide settlement, subject to certain conditions, which includes payment of up to approximately $26 billion spread over up to 18 years. During the passage of time since then, the Company has continued to negotiate the terms and conditions of a nationwide settlement. There remain many complex financial and legal issues still outstanding, including indemnification claims by Allergan against the Company, arising from the acquisition of the Actavis Generics business, which makes the timing of any outcome uncertain. In that regard, Allergan is also in settlement negotiations over various opioid matters and has asked Teva, pursuant to indemnification provisions in agreements between Teva and Allergan arising from Teva's acquisition of the Actavis generics business, to contribute to those settlements. On December 8, 2021, Allergan reached a settlement in the New

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York opioids litigation. Allergan has indicated that it may seek indemnification from Teva for a significant portion of that New York settlement, and that it could initiate arbitration proceedings to resolve the dispute. Teva disputes that, under the circumstances, Teva is obligated to provide indemnification in connection with Allergan's New York settlement.

On September 28, 2021, Teva reached an agreement with the Attorney General of Louisiana that settles the state's opioid-related claims. The agreement is contingent that, by mid-February, 2022, all political subdivisions of Louisiana will formally release Teva as part of the settlement, which Teva was advised has occurred by the Attorney General of Louisiana. Under the terms of the settlement, Teva will pay Louisiana $15 million over an 18-year period and will provide buprenorphine naloxone (sublingual tablets) valued at $3 million (wholesale acquisition cost).

On February 4, 2022, the Company reached an agreement with the Attorney General of the State of Texas that settles Texas' and its subdivisions opioid-related claims. The settlement is contingent on confirmation by the state, by March 10, 2022, that at least 96% of the population of subdivisions will formally release Teva as part of the settlement, which Teva believes is achievable based on its discussions with the Attorney General of Texas and plaintiffs' counsel. Under the terms of the settlement, Teva will pay Texas $150 million over a 15-year time period and will provide its recently launched, lifesaving medicine generic Narcan ® (naloxone hydrochloride nasal spray), valued at $75 million (wholesale acquisition cost) over 10 years.

As a result of the settlement with Texas and recent decisions in California, Oklahoma and New York, the Company has reconsidered the potential settlement outcome and revised its provision. The revised provision is a reasonable estimate of the ultimate costs if a nationwide settlement is finalized. However, if not finalized for the entirety of the cases, a reasonable upper end of a range of loss cannot be determined. An adverse resolution of any of these lawsuits or investigations may involve large monetary penalties, damages, and/or other forms of monetary and non-monetary relief and could have a material and adverse effect on Teva's reputation, business, results of operations and cash flows.

Separately, on April 27, 2018, Teva received subpoena requests from the United States Attorney's office in the Western District of Virginia and the Civil Division seeking documents relating to the manufacture, marketing and sale of branded opioids. Teva has not received communication regarding the investigation for several years. In August 2019, Teva received a grand jury subpoena from the United States Attorney's Office for the Eastern District of New York for documents related to the Company's anti-diversion policies and procedures and distribution of its opioid medications, in what the Company understands to be part of a broader investigation into manufacturers' and distributors' monitoring programs and reporting under the Controlled Substances Act. In September 2019, Teva received subpoenas from the New York State Department of Financial Services (NYDFS) as part of an industry-wide inquiry into the effect of opioid prescriptions on New York health insurance premiums. This was followed by a Statement of Charges and Notice of Hearing filed by the NYDFS, although no merits hearing date is currently set. Currently, Teva cannot predict how a nationwide settlement (if finalized) will affect these investigations and administrative actions. In addition, a number of state attorneys general, including a coordinated multistate effort, have initiated investigations into sales and marketing practices of Teva and its affiliates with respect to opioids. Other states are conducting their own investigations outside of the multistate group. Teva is cooperating with these ongoing investigations and cannot predict their outcome at this time.

In addition, several jurisdictions and consumers in Canada have initiated litigation regarding opioids alleging similar claims as those in the United States. The cases in Canada may be consolidated and are in their early stages.

Exhibit 15

Theodore Eisenberg, Geoffrey Miller, and Roy Germano,
***Attorneys' Fees in Class Actions: 2009-2013*,**
92 N.Y.U. L. REV. 937 (2017)

ATTORNEYS' FEES IN CLASS ACTIONS: 2009–2013

THEODORE EISENBERG,* GEOFFREY MILLER,† AND ROY GERMANO‡

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INTRODUCTION

When a class action settles (or, rarely, when it generates a litigated outcome), the court is faced with the job of awarding an appropriate attorneys' fee. The issue is important. If fees are set too low, counsel will not receive fair compensation for their services to the class. Worse yet, if fees are too low, then qualified counsel will not bring these cases in the first place. Injured parties will receive no

* Professor Eisenberg was the Henry Allen Mark Professor of Law and Adjunct Professor of Statistical Sciences at Cornell University. Although Professor Eisenberg died before this paper was written, we have followed the methodology he developed in earlier papers on attorneys' fees co-authored with Professor Miller. He is in every sense a co-author of the present paper. The authors would like to thank the excellent research assistants who contributed to this project: Lauren Citrome, Colin S. Huston-Liter, Adam Karman, Jacob Millikin, Jack B. Neff, Joshua Matthew Pirutinsky, Jeremy Schiffres, and Peter Van Valkenburgh.

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redress, and potential wrongdoers will no longer be deterred out of fear of potential class action liability. If fees are set too high, attorneys will receive an unjustified windfall, and some of the benefits that should have gone to class members will be diverted to class counsel. Excessive class counsel fees might also induce class counsel to bring weak cases. Setting an appropriate counsel fee is thus crucial to the effective functioning of class action litigation.

But how is the court to determine the fee? In ordinary cases, the fee is determined by private negotiation between lawyer and client, subject only to minimal regulations against unfair or exorbitant fees. Not so for class actions: In these cases, there is no negotiation over fees between class counsel and absent class members. There may be a retainer agreement between counsel and the representative plaintiff, which can provide valuable information, but the retainer agreement cannot bind absent class members. Unlike most issues presented to a court in litigation, moreover, the judge cannot rely on adversarial presentation to inform her of the possibilities for decision. In "common fund" cases, the fee is taken out of the class recovery.[1] At this stage, class counsel has a potential conflict with their own clients because each dollar that goes to the attorneys is a dollar that does not go to class members. Defendants, for their part, have no stake in how the settlement amounts are distributed between class counsel and class members. Even in consumer cases where the defendant agrees to pay the class's counsel fees, the adversarial process is disarmed because the settlement includes the defendant's agreement to pay the fee up to a specified amount. Adversarial presentation is not completely absent: Objectors may take issue with the size of the fee request, for example. But even when their objections are bona fide, objectors can rarely mount an effective challenge to the fee request: They usually have limited time and resources and have limited access to the relevant facts.

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[1] *See* Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980) (noting that the common fund doctrine derives from the equitable principle that those benefitting from a fund should share costs); Florida v. Dunne, 915 F.2d 542, 545 (9th Cir. 1990) (endorsing percentage-of-recovery method for common fund calculation); Brown v. Phillips Petroleum Co., 838 F.2d 451, 454 (10th Cir. 1988) (exploring the "basic differences in the rationale for calculating attorneys' fees in common fund cases"); *In re* Fine Paper Antitrust Litig., 751 F.2d 562, 583 & n.19 (3d Cir. 1984) (noting that there are different public policy considerations in common fund and fee-shifting cases); *In re* Smithkline Beckman Corp. Sec. Litig., 751 F. Supp. 525, 532–33 (E.D. Pa. 1990) (explaining the rationale behind using different fee-setting methods in common fund and statutory fee-shifting cases); Mashburn v. Nat'l Healthcare, Inc., 684 F. Supp. 679, 689 (M.D. Ala. 1988) (explaining the differences between common fund and statutory fee-setting).

A review of other class action fee awards is central to the court's analysis.[2] But here, too, the courts face a difficulty. Over the past few decades, courts have ruled on thousands of class action fee requests. No judge has the time to engage in a comprehensive review of awards in similar cases, and the cases provided to the court by counsel may not be an unbiased sample of awards in similar cases because counsel's interest is in persuading the court that their fee request is reasonable.

Here is where the empirical analysis of law can offer genuine help. Although courts are not able to conduct a thorough review of awards in similar cases, empirical researchers can do so. The analysis of class counsel fees is thus a telling example of the potential benefits of empirical analysis of law as a discipline: It can both illuminate legal practices and help researchers better understand the operation of our legal system, and it can also offer judges concrete assistance when deciding important and difficult litigation issues.

Federal judges recognize the value of empirical research in the area of class action attorneys' fees and rely extensively on those studies when assessing fee requests in particular cases.[3] The leading empirical studies are papers by two of the authors of the present paper (Eisenberg and Miller) published in 2004 and 2010, and a 2010 paper by Professor Brian Fitzpatrick.[4] These authors use contrasting, but complementary, approaches to the topic. Eisenberg and Miller's studies are broad—covering all reported decisions in which fees could be determined over two time periods: The first Eisenberg and Miller paper reported on 362 opinions issued in the years 1993–2002,[5] and the second Eisenberg and Miller paper examined data from nearly 700 common-fund settlements between 1993 and 2008.[6] Fitzpatrick, in contrast, focused on a shorter time period but included unreported as

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[2] *See, e.g.*, Johnson v. Ga. Highway Express, Inc., 488 F.2d 714, 717–19 (5th Cir. 1974) (referring to factors for fee calculation, including "[a]wards in similar cases" (emphasis omitted)).

[3] *See, e.g.*, *In re* Heartland Payments Sys., Inc. Customer Data Sec. Breach Litig., 851 F. Supp. 2d 1040, 1080–81 (S.D. Tex. 2012) ("District courts increasingly consider empirical studies analyzing class-action-settlement fee awards to set the appropriate percentage benchmark or to test the reasonableness of a given benchmark. . . . Using these studies alleviates the concern that the number selected is arbitrary.").

[4] Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 J. Empirical Legal Stud. 27 (2004) [hereinafter Eisenberg & Miller I]; Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: 1993–2008*, 7 J. Empirical Legal Stud. 248 (2010) [hereinafter Eisenberg & Miller II]; Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical Legal Stud. 811 (2010).

[5] Eisenberg & Miller I, *supra* note 4, at 45.

[6] *See* Eisenberg & Miller II, *supra* note 4, at 251 (stating that the total sample size was 689 cases).

well as reported cases: He analyzed nearly 700 common-fund settlements in 2006 and 2007.[7] The whole of this literature is more than the sum of its parts; even though Eisenberg/Miller and Fitzpatrick examined somewhat different data sets, the empirical results they reported were remarkably consistent.

The data examined in these studies did not extend past 2008. Much has happened during the ensuing years—most importantly, the financial crisis of 2007–2009, and the legal, political, and attitudinal changes associated with that event.[8] Those events were of such a magnitude as to raise the question whether the patterns observed in previous years would continue as they had before, or whether some significant long-term changes would be observed.

This study seeks to answer that question. We study 458 cases reported in the five years from 2009–2013. Our present study examined a larger number of cases per year than we had examined in previous research, due to the increased availability of PACER as a resource to supplement information that could be obtained from reported decisions alone. This resulted in more comprehensive coverage and also generated a somewhat greater number of smaller-value cases in the overall mix. The overarching headline of the present study is that despite the financial crisis and its many effects on our national life, little has changed in class action attorneys' fees. Average fee percentages are in line with prior studies. We continue to find a "scaling" effect, in the sense that fees as a percentage of the recovery tend to decrease as the size of the recovery increases—an effect that appears to be due to the economies of scale that can sometimes be achieved in very large cases.[9] The key fee determinant continues to be the size of the class recovery: The amazingly regular relationship between these variables continues in the present data.[10] As in the previous

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[7] *See* Fitzpatrick, *supra* note 4, at 813 (reviewing 688 published and unpublished class action settlements).

[8] The financial crisis exacerbated public distrust in financial institutions and thus might have resulted in higher class action awards against those institutions, or against big business in general, and might have increased counsel fees as a way of rewarding and incentivizing litigation against these institutions. Studies of the crisis are legion; for a sampling, see, for example, BEN S. BERNANKE, THE FEDERAL RESERVE AND THE FINANCIAL CRISIS (2013); ALAN S. BLINDER, AFTER THE MUSIC STOPPED: THE FINANCIAL CRISIS, THE RESPONSE, AND THE WORK AHEAD (2013); TIMOTHY F. GEITHNER, STRESS TEST: REFLECTIONS ON FINANCIAL CRISES (2014); GARY B. GORTON, SLAPPED BY THE INVISIBLE HAND: THE PANIC OF 2007 (2010); MERVYN KING, THE END OF ALCHEMY: MONEY, BANKING AND THE FUTURE OF THE GLOBAL ECONOMY (2016); MICHAEL LEWIS, PANIC: THE STORY OF MODERN FINANCIAL INSANITY (2009).

[9] Eisenberg & Miller I, *supra* note 4, at 28; Eisenberg & Miller II, *supra* note 4, at 263–64.

[10] Eisenberg & Miller I, *supra* note 4, at 28; Eisenberg & Miller II, *supra* note 4, at 250.

Eisenberg/Miller studies,[11] we find that fees are a function of the risk of the case—large fees in high-risk cases—although in the most recent data the effect is only weakly statistically significant. As in prior work,[12] we document an inverse relationship between the percentage fee and the lodestar multiplier (the enhancement factor that applies when fees are determined on the basis of hours and hourly rate)[13]: Cases with lower percentage fees are associated with higher multipliers—a factor we associate with the economies of scale that can be realized for legal representation in large cases. Likewise, and for similar reasons, lodestar multipliers tend to rise with the size of class recovery.

I
Empirical Analysis

Our data set consists of all class action cases reported during the 2009–2013 period from which usable information on counsel fees could be obtained.[14] We harvested this data using the same technique as in our prior studies: We conducted a search of reported cases using

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[11] Eisenberg & Miller I, *supra* note 4, at 77; Eisenberg & Miller II, *supra* note 4, at 279.

[12] Eisenberg & Miller I, *supra* note 4, at 39, 55; Eisenberg & Miller II, *supra* note 4, at 273–74.

[13] *See infra* Section I.B describing fee calculation methods.

[14] We conducted our research as follows. First, we searched the Westlaw™ database for all state and federal decisions, using the search term: "settlement" & "class action" & approv! & attorney! /2 fee! & DA(aft 1-1-2000) & TI("et al." "et anon." other! "behalf" "similarly" "class" representative! "in re" derivative! shareholder!). We reviewed the results of that search and weeded out cases that were obviously not relevant (for example, lawsuits that were neither class action nor derivative cases). Where necessary, we supplemented the information obtained from a review of the published opinion by information obtained about the case from the federal courts PACER database. We coded the cases for a variety of variables. Most of these have a straightforward interpretation. The class recovery was the total quantified recovery for the class. This included monetary recovery and other non-monetary recovery the value of which was quantified by the court. The fee was the fee awarded by the court. We coded the method of fee calculation by a review of the methodology used by the court. Sometimes the court was explicit about its methodology; at other times, the methodology could be determined by an analysis of the court's calculations. In many cases, the court used both the percentage and the lodestar methods as cross checks. Case types were usually straightforward to code; in rare cases of ambiguity the coder used judgment to assign the case to the category that was most pertinent. As in the previous Eisenberg and Miller studies, we coded risk as "high" if the court described it in these terms in the opinion awarding fees. A case was coded as "low" in risk if the court described it in these terms or if the case followed on criminal or civil enforcement actions involving the same or overlapping facts. We coded a settlement as involving "soft relief" if it included a significant element of nonpecuniary relief that was not measured in the dollar value obtained for the class. A case was designated as a settlement class if the settlement included an agreement to certify the matter as a class action. Our measure of costs was the amount of expenses and court costs awarded to class counsel by the court (if any). We also included shareholders' derivative cases, but there were too few of these in our data set to generate reliable results.

computerized legal research tools, and then supplemented that research by examining the federal court's PACER database in order to locate additional pertinent information.[15] This resulted in a larger number of cases harvested and analyzed per year because the PACER data was more comprehensive in the more recent data. We begin by examining short- and long-term trends in recoveries and fees over time. We follow by investigating potential determinants of fee awards and fee percentages.

A. Class Recoveries and Attorneys' Fees over Time

Figure 1 shows mean and median recoveries and mean and median attorneys' fees from 2003–2013. The data have been adjusted for inflation and transformed into base 10 logarithms to account for the fact that the distributions are skewed heavily to the left with a few extreme outliers. Logging the data helps to normalize the distributions and reduce the influence of outliers on the mean. These units are interpretable as powers of 10. A value of 6, for instance, is equal to 10^6, or $1,000,000. Figure 1a shows recoveries and fees for all cases from 2003–2013. It appears from these data that recoveries and fees decreased over the 2003–2013 period, particularly after the onset of the financial crisis in 2007–2008. We urge caution, however, in interpreting Figure 1a. PACER, the database we used to build these data sets, became more available and more complete over the years we are examining. As a result, more cases with small recoveries came into the database over time. We therefore believe that the presence of more large-recovery cases in the earlier years of the series is driving up the mean and median values in the 2003–2008 data set compared to the 2009–2013 data set.

To account for this possibility, we split our sample into cases with recoveries of less than $50 million (Figure 1b) and recoveries greater than $50 million (Figure 1c). Figure 1b shows that among cases with recoveries of less than $50 million, mean and median recoveries and fees held more or less constant between 2003 and 2013. A t-test indicates that the mean fee in 2013 was not statistically different than the mean fee in 2003. Figure 1c indicates that among cases with recoveries greater than $50 million, recoveries and fees did not follow a discernable up or down pattern over the 2003–2013 period. It is therefore safe to say that recoveries and fees did not increase over the 2003–2013 period.

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[15] *See* Eisenberg & Miller I, *supra* note 4, at 44 (describing search methodology); Eisenberg & Miller II, *supra* note 4, at 251 (same).

FIGURE 1. CLASS RECOVERY AND ATTORNEY FEES OVER TIME, MEAN AND MEDIAN (LOG 10), 2003–2013

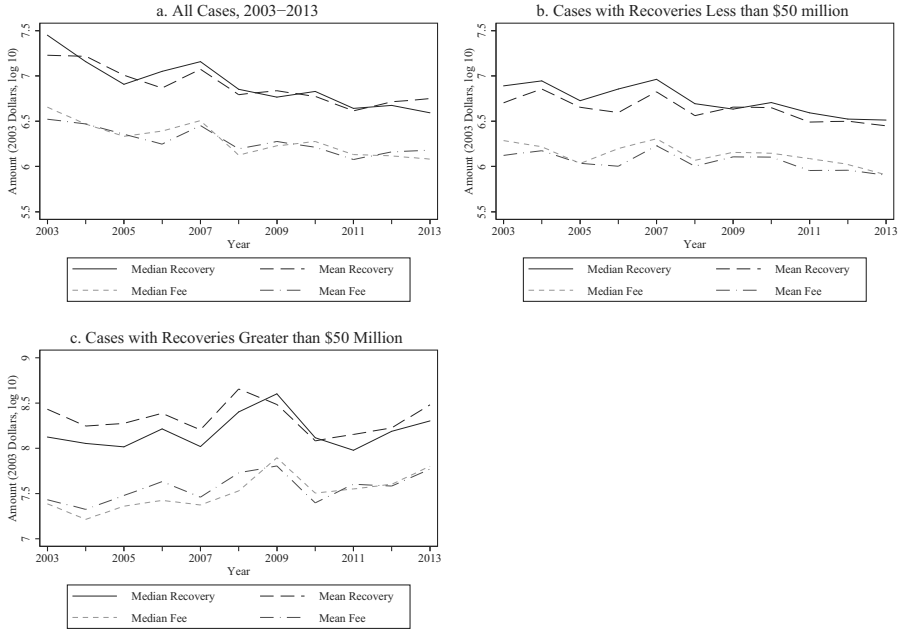
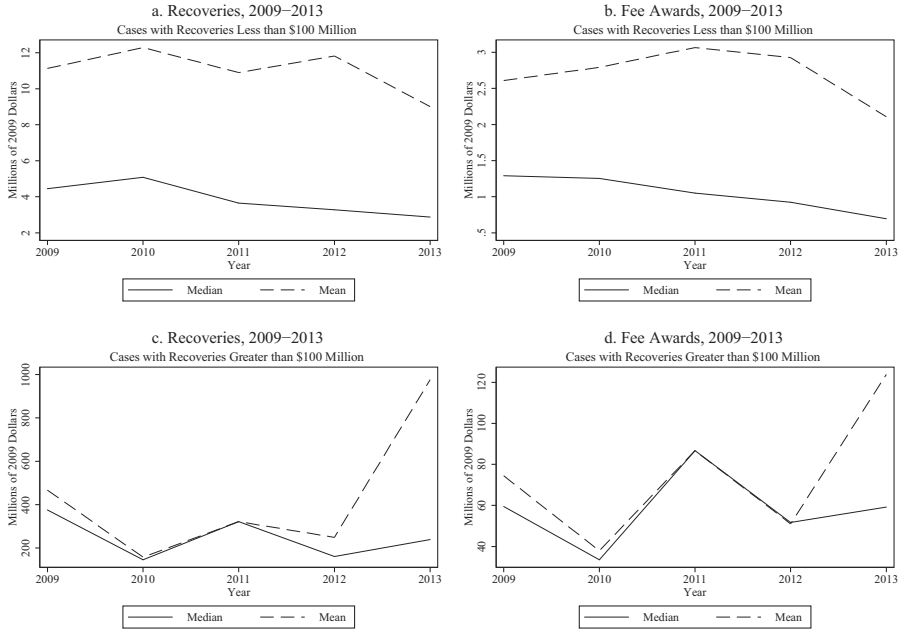


Figure 2 presents median and mean recoveries and fees during the 2009–2013 period, the focus of this article. The data have been adjusted for inflation and disaggregated by cases with recoveries of less than $100 million (Figures 2a and 2b) and cases with recoveries greater than $100 million (Figures 2c and 2d). The majority of cases during the 2009–2013 period (92%) had recoveries under $100 million. Figure 2a shows that the mean recovery for these smaller cases ranged from a low of $9 million in 2013 to a high of $12.2 million in 2010; the median recovery ranged from a low of $2.9 million in 2013 to a high of $5.1 million in 2010. Figure 2b shows that the mean fee award for cases with recoveries under $100 million increased from $2.6 million in 2009 to $3.1 million in 2011, then decreased to $2.1 million by 2013. Median fees, on the other hand, decreased steadily from a high of $1.3 million in 2009 to a low of $695,000 in 2013.

Looking now at cases with recoveries greater than $100 million, we see greater volatility in annual changes in mean and median recoveries and fees. Figure 2c shows that the mean recovery decreased from $467 million in 2009 to $158 million in 2010, then went back up to $322 million in 2011 and back down to $249 million in 2012. The mean recovery then surged in 2013 to a staggering $976 million—an increase that was driven primarily by an unprecedented settlement by Visa,

Mastercard, and other credit card companies worth $7.25 billion.[16] As a point of reference, note that only 1.5% of class action cases over the 2009–2013 period resulted in recoveries greater than $500 million. The three largest recoveries after $7.25 billion were $1.08 billion,[17] $926 million,[18] and $730 million.[19] Figure 2d depicts similar volatility in mean and median fees for cases with recoveries greater than $100 million. The mean fee, for instance, decreased from $74.4 million in 2009 to $37.9 million in 2010. It then rose to $86.7 million in 2011, decreased to $51 million in 2012, and surged to $124 million in 2013.

FIGURE 2. RECOVERIES AND FEES IN INFLATION-ADJUSTED DOLLARS, 2009–2013.



B. Fee Method and the Strong Linear Fee-Recovery Relationship

Attorneys' fees are calculated using the lodestar method, a percentage method, a mix of the two methods, or by leaving the fee to

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[16] Robb Mandelbaum, *Visa and MasterCard Settle Lawsuit, but Merchants Aren't Celebrating*, N.Y. TIMES, Aug. 9, 2012, at B6. This settlement was thrown out in June 2016. Rachel Abrams, *Credit Card Settlement Overturned on Appeal*, N.Y. TIMES, July 1, 2016, at B3.

[17] *In re* TFT-LCD (Flat Panel) Antitrust Litig., No. M 07-1827 SI, 2013 WL 1365900, at *7 (N.D. Cal. Apr. 3, 2013).

[18] *In re* UnitedHealth Grp. Inc. PSLRA Litig., 643 F. Supp. 2d 1094, 1099 (D. Minn. 2009).

[19] *In re* Citigroup Inc. Bond Litig., 988 F. Supp. 2d 371, 372 (S.D.N.Y. 2013).

judicial discretion. The lodestar method involves multiplying the reasonable hours expended by attorneys by a reasonable hourly rate, then using certain factors to adjust the fee award up or down. The percentage method multiplies the gross recovery by a fixed percentage to determine the fee award. The mixed method usually employs a percentage method, which is then crosschecked with the lodestar method to ensure that the percentage method has not resulted in an excessively high fee. Table 1 shows the breakdown of cases by fee calculation methodology for cases in which the methodology could be determined.[20]

TABLE 1. FREQUENCY OF METHOD USED, 2009–2013.

	N	*% of Cases in Time Period*
Lodestar	27	6.29
Percent	230	53.61
Both	164	38.23
Discretion	8	1.86
Total	429	100

The vast majority of fee awards during the 2009–2013 period were decided using the percentage method or the mixed method. The percentage method was used in 53.61% of cases and used in combination with a lodestar check in an additional 38.23% of cases. The use of the pure lodestar method, on the other hand, was used in only 6.29% of cases during the 2009–2013 period. This is down from 13.6% during the 1993–2002 period[21] and 9.6% during the 2003–2008 period.[22]

Not surprisingly, we find that the strong positive relationship between fee award and recovery amount that we reported in analyses of 1993–2008 data[23] persists over the 2009–2013 period as well. Figure 3a shows the relationship between fee awards and class recoveries for all cases (n = 458) and Figure 3b shows the relationship between fee awards and recoveries for cases where recoveries were larger than $100 million (n = 34). Both figures indicate that these variables are strongly correlated, even in cases with large recoveries. When all cases are assessed, the correlation coefficient is 0.99. This is comparable to

[20] Often the method of calculating the fee was explicit in the cases. Where it was not, we coded the method if it could reasonably be deduced from the court's analysis; if not, we omitted the information.

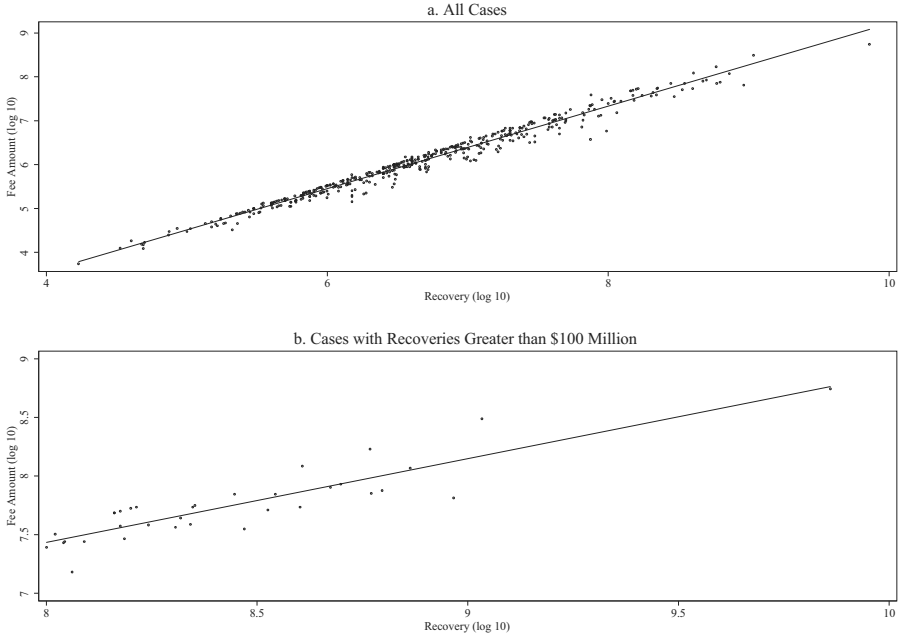
[21] Eisenberg & Miller II, *supra* note 4, at 267.

[22] *Id.*

[23] *Id.* at 253–54.

what we reported in our analyses of the 1993–2008 data.[24] When the 34 outlying cases are assessed independently, the correlation coefficient remains high at 0.89. This 0.89 correlation is stronger than the 0.77 correlation coefficient we reported for cases with large recoveries over the 1993–2008 period.[25] While both correlations are strong, the stronger correlation we find in the 2009–2013 data suggests that the percentage method is being used more often in large-recovery cases in recent years compared to past years.

FIGURE 3. FEES AS A FUNCTION OF RECOVERY, 2009–2013

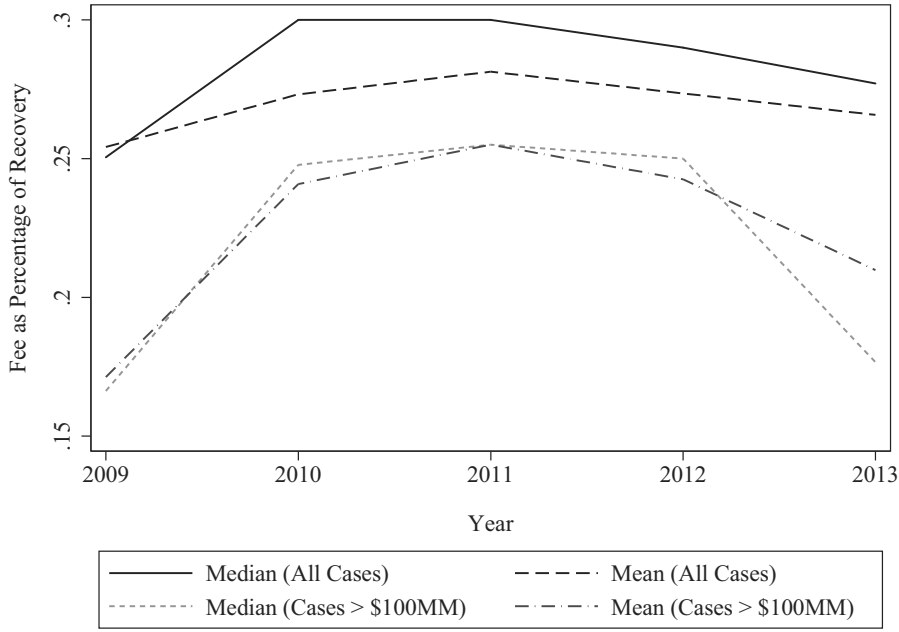


An important difference between Figures 3a and 3b is the slope of the regression lines. When all cases are assessed, the slope of the line in Figure 3a is nearly equal to one. This signifies that, in general, attorneys' fees increase in direct proportion to increases in recovery amounts. As recoveries become very large, however, the fee increases at a slower pace. So although the recovery size has a significant influence on the fee size, the fee-to-recovery ratio tends to be lower in cases with very large recoveries. How much lower? Figure 4 shows the mean and median fee-to-recovery ratios over the 2009–2013 period for all cases and for cases with recoveries larger than $100 million. Between 2009 and 2013, the mean and median ratio fluctuated from a

[24] *See id.* at 253 (finding a 0.94 correlation coefficient).
[25] *Id.* at 254.

minimum of 0.25 to a maximum of 0.30. The average fee percentage during this period, in other words, was between 25% and 30% of the gross recovery. On average, fees were 27% of gross recovery during the 2009–2013 period, which is higher than the average fee percentage of 23% that we reported in our analyses of the 1993–2008 period.[26] Figure 4 also shows that the fee-to-recovery ratio over the 2009–2013 period was lower for cases with recoveries larger than $100 million. Looking only at cases with recoveries larger than $100 million, we see that mean and median fee percentages varied from a low of 16.6% in 2009 to a high of 25.5% in 2011—variation that is probably due to the significantly smaller number of very large cases in our data set.

FIGURE 4. MEAN AND MEDIAN FEE PERCENTAGES, 2009–2013



C. *Scaling Effect*

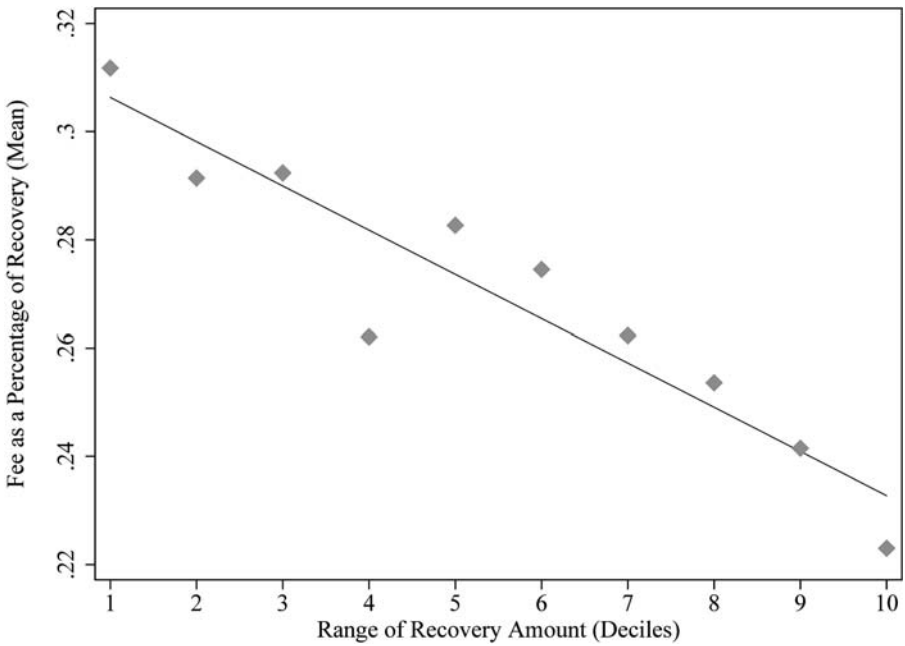
The flatter slope we observed in Figure 3b and the lower fee percentages we see in Figure 4 for cases with recoveries larger than $100 million are indicative of a scaling effect that we discussed in prior studies.[27] Figure 5 presents more insight into this hypothesized scaling effect by breaking recoveries into deciles of about 45 cases each and showing corresponding mean and median fee percentages for cases with recovery amounts in those ranges. The first marker on the x-axis

[26] *Id.* at 258.

[27] *Id.* at 263–64; Eisenberg & Miller I, *supra* note 4, at 54–55, 64.

of Figure 5, for instance, represents the first decile, or cases with recovery amounts under $400,000. The second marker represents the second decile, or cases with recovery amounts in the range of $400,000 to $750,000, and so on all the way up to the tenth marker, which represents the tenth decile, or cases with recovery amounts exceeding $67.5 million. Figure 5 indicates that as recovery amount increases, the ratio of the size of the attorneys' fee relative to the size of the recovery (i.e., the fee percentage) tends to decrease. This is especially true for recoveries in ranges higher than the fifth decile, in which the maximum amount is $3.9 million. Average fee percentages range between 28% and 31% for cases with recoveries of less than $3.9 million. Beyond $3.9 million, average fee percentages fall steadily from 27.4% in the sixth decile to 22.3% in the tenth decile.

FIGURE 5. FEE PERCENTAGE, BY CLASS RECOVERY AMOUNT (DECILE RANGES), 2009–2013



Class recovery ranges are as follows. First decile: less than $400,000; second decile: $400,000–$750,000; third decile: $750,000–$1.4 million; fourth decile: $1.4–$2.65 million; fifth decile: $2.65–$3.9 million; sixth decile: $3.9–$6.5 million; seventh decile: $6.5–$12 million; eighth decile: $12–$23.4 million; ninth decile: $23.5–$67.5 million; tenth decile: greater than $67.5 million.

D. Locale and Case Category

Table 2 shows the 10 federal district courts with the most class action cases. By far the largest number of class action cases was brought in the Southern District of New York and the Northern District of California. The Southern District of New York accounted for 76 of the 458 cases in the data set and the Northern District of California accounted for 53. These are the only two districts that account for more than 10% of the total cases by themselves, and combined they account for over 25% of all cases. Only one other district, the Southern District of California, accounted for more than 5% of the cases in the sample. Table 2 shows some variation in the mean and median fee percentages, attorneys' fees, and recoveries awarded in these districts. Of note is the large average recovery in the Eastern District of New York. This $381.96 million average recovery—nearly eight times larger than the overall average recovery—is driven by the record credit card settlement mentioned earlier. Examining median values, which are less sensitive to outliers than the mean, we see that the largest median recoveries were awarded in the District of New Jersey ($11.38 million), the Eastern District of New York ($9.25 million), and the District of Minnesota ($8.95 million). The lowest average fee percentages were 24%, awarded in the Central District of California and the Western District of Washington; the highest were 30%, awarded in the Eastern District of Pennsylvania and the District of New Jersey.

Table 2 shows that the difference in fee percentages between state courts and federal courts that we discussed in our analyses of the 1993–2008 period has not carried over to the 2009–2013 period.[28] Note that the mean and median fee percentages in state courts were 27% and 30%, respectively, which are nearly identical to the fee percentages for federal courts. It is also important to note that only a small fraction of cases were brought to state courts—1.7% of all cases in our data set. Over the 1993–2008 period, more than 10% of cases were state cases.[29] This shift from state to federal courts suggests that the Class Action Fairness Act of 2005[30] may have been successful in routing class action cases away from state courts to federal courts.[31]

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[28] *See* Eisenberg & Miller II, *supra* note 4, at 259 tbl.3, 261 (finding that the mean fee-to-recovery ratio was lower in state courts than in federal courts).

[29] *See id.* at 257 tbl.1 (stating that 10.89% of the study's opinions were brought in state courts).

[30] Class Action Fairness Act of 2005 (CAFA), Pub. L. No. 109-2, 119 Stat. 4 (codified as amended at 28 U.S.C. §§ 1332(d), 1453, 1711–1715 (2012)).

[31] *See* Tanoh v. Dow Chem. Co., 561 F.3d 945, 952 (9th Cir. 2009) ("[T]he Act's purposes make[ ] clear [that] CAFA was designed primarily to curb perceived abuses of

TABLE 2. FEE AND CLASS RECOVERIES, BY LOCALE, 2009–2013

		Recoveries		*Fees*		*Fee Percentages*	
Court	*N*	*Mean (millions of dollars)*	*Median (millions of dollars)*	*Mean (millions of dollars)*	*Median (millions of dollars)*	*Mean (%)*	*Median (%)*
S.D.N.Y.	78	63.77	3.7	11.14	1.04	27	31
N.D. Cal.	53	37.2	5.13	10.34	1.32	26	25
S.D. Cal.	24	6.03	2.58	1.45	0.61	25	25
C.D. Cal.	21	30.88	3.63	5.36	0.88	24	25
E.D.N.Y.	21	381.96	9.25	36.08	2.56	27	30
E.D. Pa.	19	15.74	4	4.92	1	30	30
D.N.J.	18	41.78	11.38	8.66	3.77	30	33
E.D. Cal.	16	1.52	0.93	0.45	0.25	31	31
D. Minn.	10	100.43	8.95	8.55	1.99	26	29
W.D. Wash.	9	27.53	2.75	5.83	0.55	24	21
State	8	33.08	21.5	8.37	5	27	30
Federal	6	14.25	1.79	4.26	0.57	29	30
Appeal	3	30.48	42	7.65	10.5	27	25
Other	172	21.5	3.39	5.38	0.99	27	29
Total	458	48.53	3.93	8.20	0.99	27	29

At the federal level, if the circuit has issued a binding opinion regarding fee awards, that opinion will dictate how fees are awarded within the circuit. Table 3 explores variation between circuits. This table presents the mean and median of the fee award, the recovery, and fee-to-recovery ratio (excluding state cases) for each circuit. The largest median recoveries were in the Fifth Circuit ($13.75 million), the D.C. Circuit ($11.64 million), and the First Circuit ($8.2 million). The highest median fees were awarded in the Fifth Circuit ($2.66 million), the D.C. Circuit ($2.21 million), and the Seventh Circuit ($2.17 million). Mean fee percentages ranged from a low of 19% in the D.C. Circuit to a high of 30% in the Eleventh Circuit. The D.C. Circuit and the Eleventh Circuit also registered the highest and lowest median fee percentages at 19% and 33%, respectively.

the class action device which, in the view of CAFA's proponents, had often been used to litigate multi-state or even national class actions in state courts." (citing CAFA § 2)).

TABLE 3. FEE AND CLASS RECOVERIES, BY FEDERAL CIRCUIT, 2009–2013

		Recoveries		*Fees*		*Fee Percentages*	
Circuit	*N*	*Mean (millions of dollars)*	*Median (millions of dollars)*	*Mean (millions of dollars)*	*Median (millions of dollars)*	*Mean (%)*	*Median (%)*
1st	11	45.77	8.2	9.62	1.85	26	23
2nd	116	113.14	3.38	14.31	0.99	28	30
3rd	46	24.48	6.45	5.84	1.71	29	32
4th	22	25	3.66	5.9	0.91	26	25
5th	12	27.72	13.75	6.61	2.66	23	24
6th	23	23.2	5.2	6.38	1.5	26	30
7th	14	30.76	7.38	9.17	2.17	28	30
8th	21	50.74	4.2	5.04	1.11	29	32
9th	144	23.86	3	5.96	0.78	26	25
10th	18	30.07	6.21	7.5	1.36	27	25
11th	11	2.2	2.02	0.65	0.65	30	33
D.C.	6	34.72	11.64	6.57	2.21	19	19
Fed.	6	14.25	1.79	4.26	0.57	29	30
Total	450	48.8	3.83	8.2	1	27	29

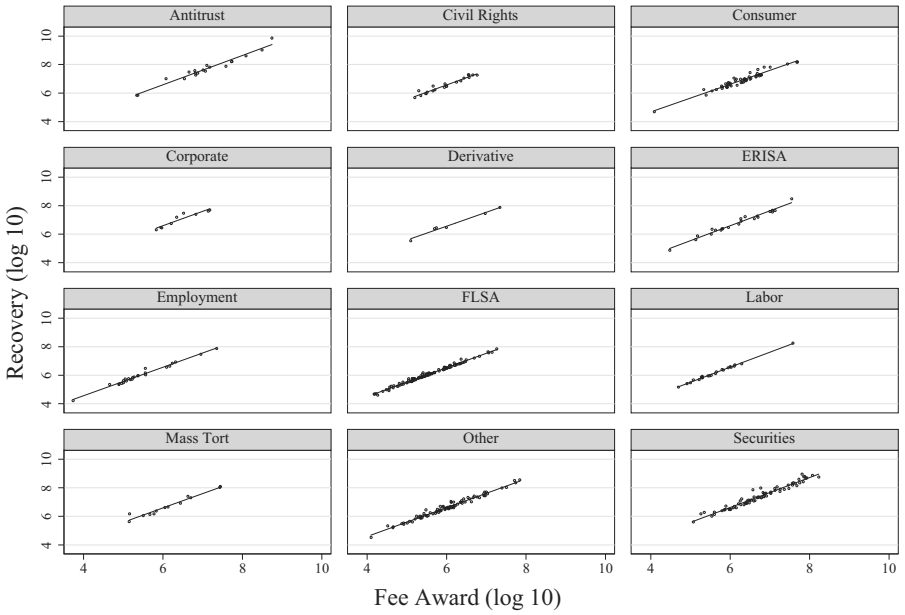
Table 4 shows the mean and median of fee, recovery, and ratio of fee to recovery by case type. The most common class action case category during the 2009–2013 period was Fair Labor Standards Act (FLSA) cases with 108 cases. The next largest case categories were Securities (74), Consumer (52), Employment (25), Labor (23), Employee Retirement Income Security Act (ERISA) (22), Civil Rights (21), and Antitrust (19). Excluding Truth in Lending Act (TILA) cases—a category with data for just two cases, one of which had a relatively low recovery and the other a very high recovery—we find that the categories with the highest median recoveries were Antitrust ($37.3 million) and Securities ($22.25 million). Major case categories with the lowest median recoveries were Employment ($670,000) and FLSA ($1,025,000). Again excluding TILA cases, the highest median fees were awarded in Antitrust ($10.25 million), Securities ($5.16 million), and Products Liability ($4.56 million) cases. Major case categories with the lowest median fee awards were Employment ($170,000), FLSA ($300,000), and Labor ($330,000). The mean of the fee percentage ranged from a low of 23% in Securities, up to 28%–30% in Fair Labor Standards Act, Employment, Civil Rights, and Products Liability.

TABLE 4. FEE AND CLASS RECOVERIES, BY CASE CATEGORY, 2009–2013

		Recoveries		*Fees*		*Fee Percentages*	
Case Category	*N*	*Mean (millions of dollars)*	*Median (millions of dollars)*	*Mean (millions of dollars)*	*Median (millions of dollars)*	*Mean (%)*	*Median (%)*
Antitrust	19	501.09	37.3	64.1	10.25	27	30
Civil Rights	21	6.51	3	1.66	0.91	28	30
Consumer	52	18.8	8.75	4.81	2.21	26	25
Corporate	9	19.47	16	5.01	2.2	27	29
Derivative	6	18.68	2.88	5.61	0.77	29	31
Employment	25	5.6	0.67	1.63	0.17	28	30
ERISA	22	25.75	6.6	4.92	1.75	26	26
FCRA	4	1.34	1.41	0.34	0.36	29	29
FDCPA	2	0.41	0.41	0.1	0.1	26	26
FLSA	108	4.15	1.03	1.19	0.3	30	33
Health Care	5	72.08	4	14.64	1.21	28	30
Labor	23	9.44	1	2.17	0.33	29	30
Mass Tort	13	23.34	4.2	5.5	1.11	27	28
Other	60	13.27	4.14	3.11	1.04	25	25
Products Liability	10	24.99	16.2	7.47	4.56	28	30
Securities	74	106.45	22.25	18.75	5.16	23	25
TILA	2	168.4	168.4	25.75	25.75	23	23
Unknown	3	0.86	1	0.22	0.18	27	30

Figure 6 demonstrates that the positive relationship between fee amount and recovery amount is strong across case categories. This result is consistent with findings reported for the 1993–2008 period.[32]

FIGURE 6. FEE AND RECOVERY BY CASE CATEGORY, 2009–2013



[32] Eisenberg & Miller II, *supra* note 4, at 263.

Table 5 shows the breakdown of the four largest case types among the 10 district courts with the most class action cases. These case types include FLSA, Securities, Consumer, and Employment. For each case category, the first column (*N*) shows how many cases of that type were brought in various districts, while the second column (%) shows the percentage of each category's cases that were brought in a particular district. The large percentage of cases in the Southern District of New York is mostly attributable to its dominance in FLSA and Securities cases—the two most common case categories. Nearly 40% of all FLSA cases and more than 28% of Securities cases were brought in the Southern District of New York. The Southern District of New York also has a sizeable fraction of Employment cases. The Northern District of California dominates in Consumer cases and Employment. It holds twice as many Consumer cases as the District of New Jersey and nearly twice as many Employment cases as the Eastern District of California.

TABLE 5. CLASS ACTION CASES BY LOCALE AND CASE CATEGORY, 2009–2013

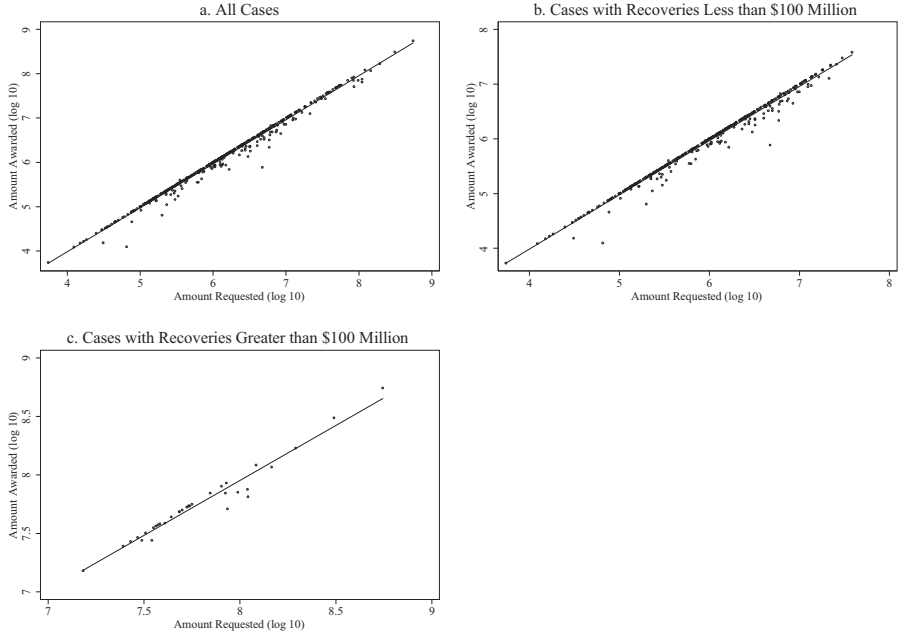
	All Categories		*FLSA*		*Securities*		*Consumer*		*Employment*	
Locale	*N*	%	*N*	%	*N*	%	*N*	%	*N*	%
S.D.N.Y.	78	17.03	43	39.81	21	28.38	0	0	3	12
N.D. Cal.	53	11.57	10	9.26	5	6.76	10	19.23	7	28
S.D. Cal.	24	5.24	3	2.78	3	4.05	4	7.69	1	4
C.D. Cal.	21	4.59	5	4.63	2	2.70	4	7.69	3	12
E.D.N.Y.	21	4.59	8	7.41	4	5.41	2	3.85	1	4
E.D. Pa.	19	4.15	2	1.85	3	4.05	3	5.77	0	0
D.N.J.	18	3.93	3	2.78	3	4.05	5	9.62	0	0
E.D. Cal.	16	3.49	3	2.78	0	0	0	0	4	16
D. Minn.	10	2.18	0	0	1	1.35	1	1.92	0	0
W.D. Wash.	9	1.97	0	0	1	1.35	2	3.85	0	0
State	8	1.75	0	0	2	2.70	1	1.92	0	0
Federal	6	1.31	0	0	0	0	0	0	1	4
Appeal	3	0.66	1	0.93	1	1.35	0	0	0	0
Other	172	37.55	30	27.78	28	37.84	20	38.46	5	20
Total Number of Cases	458	100	108	100	74	100	52	100	25	100

E. Fee Requests

In 78% of cases, the requested fee was awarded. Figure 7a shows the strong positive relationship between the fee requested and the fee awarded for all cases in our data set. This relationship holds up not only in typical cases with recoveries less than $100 million (Figure 7b), but also in cases with recoveries greater than $100 million (Figure 7c). Exact fee requests were not granted in 100 of the 452 cases examined. In only six of those cases did the courts grant a fee that was higher than the fee requested, and most of those were only nominally

higher.[33] In the remaining 94 cases, the fee granted was less than what was requested. The fee granted was between 1% and 25% lower than the amount requested in 47 of the 94 cases, between 26% and 49% lower than the amount requested in 28 of the 94 cases, and between 50% and 83% lower than the amount requested in just nine of the 94 cases. This tells us that even when courts do not grant fees exactly as requested, they typically award amounts that are close to the amount requested. Only in rare instances do courts grant fees that are significantly lower than the amount requested.

FIGURE 7. FEE AWARDS AS A FUNCTION OF FEE REQUESTS, 2009–2013



Courts may be willing to grant fee requests because fee requests are standardized around certain common fee percentages, as evidenced by Figure 8. Figure 8 shows the frequency with which particular fee percentages were requested during the 2009–2013 period. By far, the most popular fee percentage requested was between 33% and 34%—i.e., one-third—of the gross recovery. Nearly 29% of cases were in the 33%–34% fee range. The next most popular fee requests were 25% and 30% of gross recovery. A 25% fee request was made in 12% of cases, and a fee request of 30% was made in 11% of cases.

[33] In one of the six cases, however, the fee granted was significantly higher than the fee requested: 14%, or $1.1 million.

Overall, a fee request between 25% and 34% of the gross recovery was made in 72% of cases during the 2009–2013 period.

FIGURE 8. COMMON FEE REQUESTS, 2009–2013

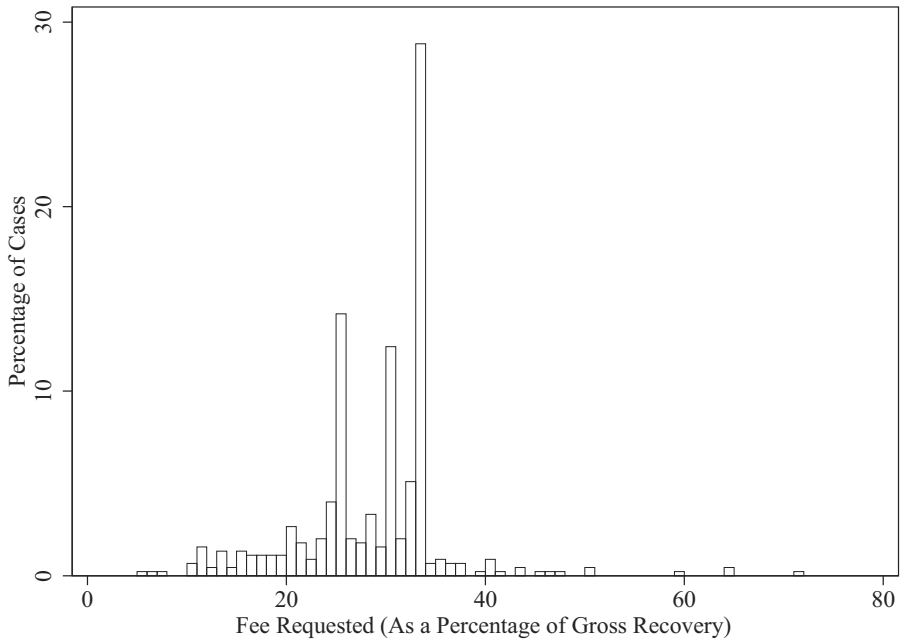
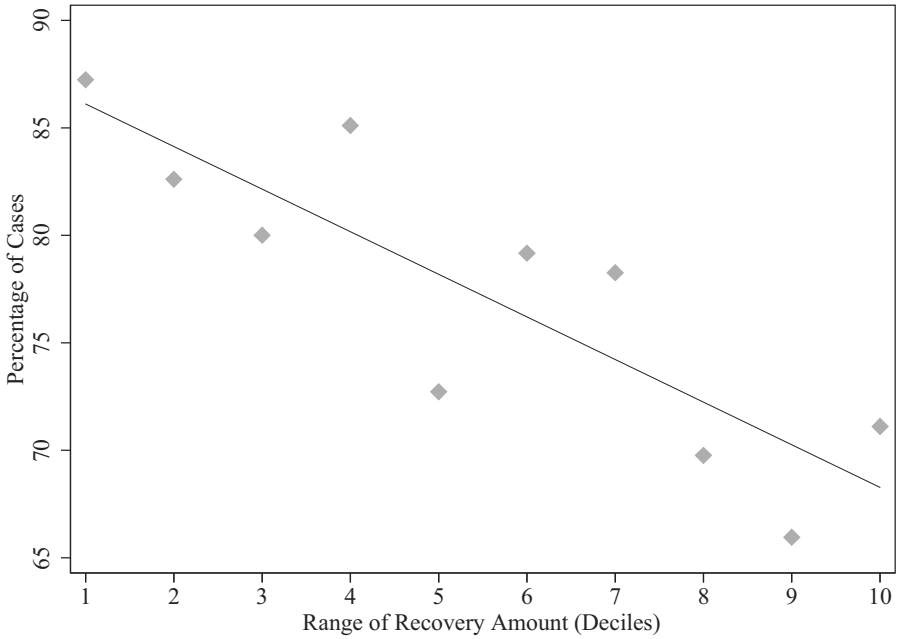


Figure 9 suggests that judges are more likely to scrutinize fee requests in high-recovery cases. Here, we see that the likelihood that a fee request will be granted decreases as the size of the recovery increases. Cases in the two lowest-recovery deciles, for instance, had requested fees granted 85% of the time, compared to 60%–71% of the time in the two highest-recovery deciles.

FIGURE 9. PERCENTAGE OF CASES WHERE FEE GRANTED WAS SAME AS FEE REQUESTED, BY CLASS RECOVERY AMOUNT (DECILE-RANGES), 2009–2013



Note: Class recovery ranges are as follows. First decile: less than $400,000; second decile: $400,000–$750,000; third decile: $750,000–$1.4 million; fourth decile: $1.4–$2.65 million; fifth decile: $2.65–$3.9 million; sixth decile: $3.9–$6.5 million; seventh decile: $6.5–$12 million; eighth decile: $12–$23.4 million; ninth decile: $23.5–$67.5 million; tenth decile: greater than $67.5 million.

Are fee requests granted in full at the same rate, or do grant rates vary according to case type or jurisdiction? Table 6 explores these questions. It discloses a surprising degree of variation. Fees were granted in full in each of the 10 Products Liability cases in the data set but only granted in full in half of the Truth in Lending, Fair Credit Reporting, and Fair Debt Collection Practices cases. The District of New Jersey granted more than 94% of fee requests in full, compared with the Northern District of California, which granted only about 57%. The differences might be due to norms or conventions that arise in specialized contexts or particular courts.

Table 6. Percentage of Cases Full Fee Granted, by Case Type and District, 2009–2013

A. Case Type

	N	*Full Fee Request Granted (% of Cases)*
Products Liability	10	100.0
FLSA	108	87.0
Labor	23	87.0
Derivative	6	83.3
Health Care	5	80.0
Other	60	80.0
Corporate	9	77.8
Mass Tort	13	76.9
Antitrust	19	73.7
Consumer	52	73.1
Civil Rights	21	71.4
Securities	74	70.3
Employment	25	68.0
Unknown	3	66.7
ERISA	22	63.6
FCRA	4	50.0
FDCPA	2	50.0
TILA	2	50.0

B. District

	N	*Full Fee Request Granted (% of Cases)*
D.N.J.	18	94.4%
E.D. Pa.	19	89.5%
S.D. Cal.	24	87.5%
E.D.N.Y.	21	85.7%
E.D. Cal.	16	81.3%
S.D.N.Y.	78	74.4%
W.D. Wash.	9	77.8%
C.D. Cal.	21	61.9%
D. Minn.	10	60.0%
N.D. Cal.	53	58.5%

F. Risk

Eisenberg and Miller's study of 1993–2008 data presented evidence in support of the hypothesis that high-risk cases are associated with higher percentage fees.[34] They found that for each case category except one, cases with high risk resulted in a higher fee percentage on average.[35] Table 7, Panel A suggests that the association between risk and fee percentage continues in the 2009–2013 data. However, the association is not as clear-cut. In the four largest case categories (FLSA, Consumer, Employment, and Securities), only high-risk cases in the Consumer and Employment categories had significantly higher fee percentages compared to low- and medium-risk cases. FLSA cases show a small increase in fee percentage for high-risk cases, while Securities cases actually show a lower fee percentage for high-risk cases. Table 7, Panel B shows that when all categories are combined, we see little difference between the mean fee percentages in high-risk cases and those in low- and medium-risk cases. The high-risk cases have a mean fee percentage that is 1% greater than the low- and medium-risk cases, and that difference is not statistically significant. High-risk cases, on the other hand, do have larger fee awards. The mean fee award for high-risk cases was $15.3 million, while the mean fee award for low- and medium-risk cases was $4.76 million—a statistically significant difference ($p < 0.05$). The median fee awards are also different. The median fee award for high-risk cases was $1.73 million, while the median fee award for low- and medium-risk cases was $943,000—a difference of $787,000 ($p < 0.05$).

[34] Eisenberg & Miller II, *supra* note 4, at 265.
[35] *Id.*

TABLE 7. MEAN FEE PERCENTAGE, BY RISK LEVEL, 2009–2013

A. By Case Category

	High Risk		*Low/Medium Risk*	
	N	*Mean Fee %*	*N*	*Mean Fee %*
ERISA	9	27.21	12	24.52
FCRA	1	21.42	3	31.68
FDCPA	1	27.87	1	25
FLSA	23	30.41	79	29.99
TILA	1	15.25	1	30
Antitrust	10	26.49	5	24.91
Civil Rights	4	32.5	12	27.2
Consumer	17	27.27	32	24.27
Corporate	5	30.46	4	22.02
Derivative	4	26.55	1	36.69
Employment	4	30.96	20	27.31
Health Care	2	26.67	3	28.53
Labor	12	29.11	10	28.57
Mass Tort	2	27.92	9	26.95
Products Liability	-	-	10	28.47
Securities	20	23.06	50	24.04
Other	8	28.74	47	24.58

B. All Categories Combined

	N	*Mean Fee %*	*Mean Fee Award (millions of dollars)*	*Median Fee Award (millions of dollars)*
High Risk	123	27.6	15.3	1.73
Low/Medium Risk	302	26.7	4.76	0.943
Difference		0.9	10.54	0.787

G. Opt-Outs and Objectors

Table 8 reports the relationship between the fee percentage and two class action case characteristics: whether any objection was filed (Panel A) and whether any class members opted out (Panel B). We find that cases with no objectors obtained a statistically significantly higher fee percentage on average than cases with objectors ($p < 0.01$),

but a lower average fee award. The mean fee award for cases with objectors was $13.2 million compared to a mean fee award of $3.73 million for cases with no objectors. This difference is statistically significant ($p < 0.01$). Cases with no opt-outs generated a statistically significantly higher fee percentage on average than cases with opt-outs ($p < 0.01$), but a lower average fee award. The mean fee award for cases with opt-outs was $6.79 million compared to a mean fee award of $2.22 million for cases with no opt-outs.

TABLE 8. OBJECTORS AND OPT-OUTS, 2009–2013

A. Presence of an Objector

	N	*Fee %*	*Mean Fee Award (millions of dollars)*	*Median Fee Award (millions of dollars)*
Objection Filed	269	24.53	13.2	2.85
No Objector	189	28.24	3.73	0.55
Difference		-3.70	9.45	2.3

B. Number of Opt-Outs

	N	*Fee %*	*Mean Fee Award (millions of dollars)*	*Median Fee Award (millions of dollars)*
One or More Opt-Outs	187	26.49	6.79	1.20
No Opt-Outs	91	28.82	2.22	0.35
Difference		-2.32	4.57	0.85

We also examined the frequency of objectors and opt-outs. As in prior work,[36] we find that both opt-outs and objectors were uncommon. Objectors averaged only 0.115% of the class in the 286 cases for which this information was available—approximately one objector for every 1000 class members. Opt-outs averaged 0.544% of the class in the 244 cases for which this information was available—approximately one opt-out per 200 class members.

[36] *See* Theodore Eisenberg & Geoffrey Miller, *The Role of Opt-Outs and Objectors in Class Action Litigation: Theoretical and Empirical Issues*, 57 VAND. L. REV. 1529, 1546 & tbl.1 (2004) (stating that the median percentage of opt-outs was 0.1% and the median percentage of objectors was zero).

H. Soft Relief

Some class action settlements include items of "soft" relief—our term for nonpecuniary relief that is not measured in the dollar value obtained for the class. One might expect that the presence of such soft relief would lead to larger attorneys' fees because courts would reward counsel for obtaining a result that benefited class members, even if the amount of the benefit could not be quantified.[37] Table 9 examines this question and finds that percentage fees tended to be lower in cases where soft relief constituted an important part of the recovery obtained by the class, although the differences were only weakly significant for mean fee percentage ($p = 0.066$) and not significant for mean fee amount ($p = 0.8905$).

TABLE 9. THE IMPACT OF SOFT RELIEF ON FEES, 2009–2013

	N	*Mean Fee %*	*Mean Fee Award (millions of dollars)*	*Median Fee Award (millions of dollars)*
Not Significant	371	27.44	6.39	0.98
Significant	55	25.65	6.8	1.2

I. Settlement Classes

Many class actions are resolved as settlement classes—meaning that the parties settle the class certification issue at the same time as they settle the merits, and present both agreements to the judge for approval at the fairness hearing.[38] Settlement classes were common in our data, constituting approximately three-quarters of the cases: Of the 422 cases for which data were available, 318 were settlement classes and 104 were litigation classes. Table 10 shows significant variation in the frequency of settlement classes across case types.

[37] *See* Staton v. Boeing Co., 327 F.3d 938, 974 (9th Cir. 2003) (holding that while the value of injunctive relief can rarely be included in the calculation of the common fund, "courts should consider the value of the injunctive relief obtained as a 'relevant circumstance' in determining what percentage of the common fund class counsel should receive as attorneys' fees" (quoting Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1049 (9th Cir. 2002))).

[38] *See* FED. R. CIV. P. 23(e)(2) (stating that a proposal to settle a class action that binds class members can only be approved "after a hearing and on finding that it is fair, reasonable, and adequate").

TABLE 10. FREQUENCY OF SETTLEMENT CLASSES BY CASE TYPE, 2009–2013

	Total Number of Cases by Type	*Number of Settlement Classes*	*% Settlement Classes*
ERISA	20	15	75.00
FCRA	4	4	100.00
FDCPA	2	0	0.00
FLSA	99	83	83.84
Other	55	37	67.27
TILA	2	2	100.00
Antitrust	16	11	68.75
Civil Rights	19	14	73.68
Consumer	51	39	76.47
Corporate	7	3	42.86
Derivative	4	2	50.00
Employment	23	19	82.61
Health Care	5	3	60.00
Labor	23	17	73.91
Mass Tort	10	7	70.00
Products Liability	10	9	90.00
Securities	69	51	73.91
Unknown	3	2	66.67

Table 11 shows that settlement classes were significantly associated with higher mean fee amount ($p = 0.0069$), but not with mean fee percentage ($p = 0.695$).

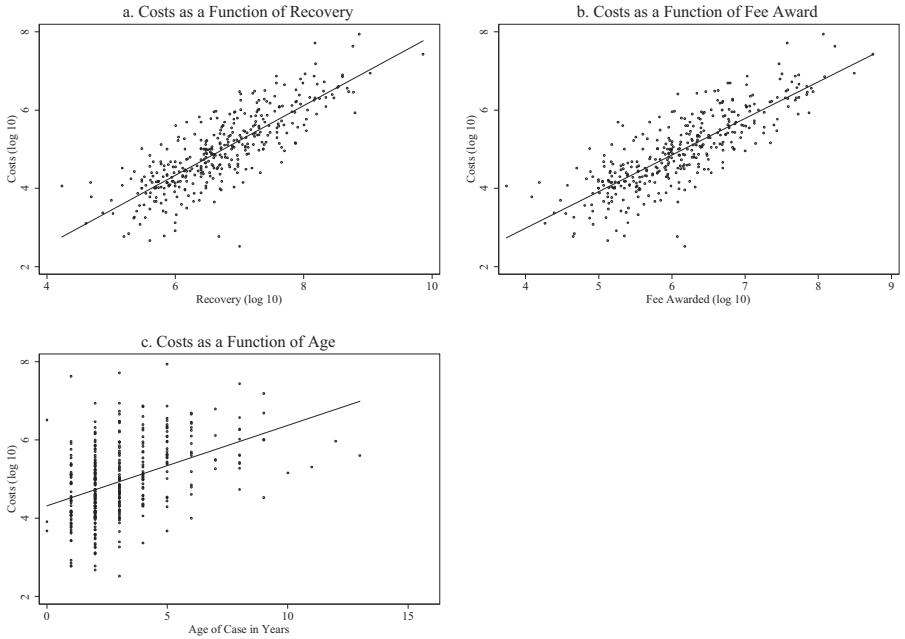
TABLE 11. THE IMPACT OF SETTLEMENT CLASSES ON FEES, 2009–2013

	N	*Mean Fee %*	*Mean Fee Award (millions of dollars)*	*Median Fee Award (millions of dollars)*
No	104	26.81	16.1	1.07
Yes	318	27.15	5.6	0.99

J. Costs and Expenses

As we found with the previous data,[39] costs and expenses tended to make up a relatively low percentage of the recovery. For the 379 cases in this data set where data were available, the median costs as a percentage of recovery were 1.71%, while mean costs as a percentage of recovery were 3.93%. To dig deeper, we explored cost as a function of three variables: recovery, fee award, and the age of the case. These relationships are shown in Figure 10. The graphs show a strong association between costs and both recovery ($r = 0.81$) and fees ($r = 0.81$), and a relatively strong association between costs and age ($r = 0.43$).

FIGURE 10. COSTS AS A FUNCTION OF RECOVERY, FEES, AND AGE, 2009–2013



K. Fee Methods and Multipliers

Although the pure lodestar method was rarely used during the 2009–2013 period, courts frequently used the percentage method with a lodestar check. This means computing the lodestar fee and adjusting the percentage fee if it markedly deviates from the lodestar calculation. The multiplier is calculated by dividing the fee award by the

[39] *See* Eisenberg & Miller II, *supra* note 4, at 274 (finding that from 1993 to 2002, mean costs were 2.8% of recovery and median costs were 1.7% while, from 2003 to 2008, mean costs were 2.7% of recovery and median costs were 1.7%).

lodestar. Table 12 reports the average multiplier in each federal circuit and for each case category. The mean multipliers ranged from 0.57 in the Eleventh Circuit to 2.52 in the First Circuit, and from 0.52 in FDCPA cases to 4.61 in Health Care cases. These two categories, however, have one and two cases, respectively, so they are not necessarily representative of the larger sample; of categories with at least five cases, the mean multiplier ranged from 0.92 for ERISA cases to 1.81 for Securities cases. In contrast to our analysis of 1993–2008 data,[40] we did not find a statistically significant difference in the multiplier if there was a fee-shifting statute available: The 42 cases available with no statute had an average multiplier of 1.82, and the 49 cases with a fee-shifting statute had an average multiplier of 1.63.

[40] *Id.* at 273.

TABLE 12. MEAN MULTIPLIER BY CIRCUIT AND CASE CATEGORY, 2009–2013

A. Circuit

	N	*Mean Multiplier*
1st	5	2.4
2nd	76	1.93
3rd	41	1.35
4th	11	1.4
5th	6	1.75
6th	16	1.13
7th	7	1.76
8th	17	1.47
9th	97	1.26
10th	9	1.18
11th	4	0.57
Federal	2	1.96
D.C.	2	1.33
Total	294	1.48

B. Case Type

	N	*Mean Multiplier*
Antitrust	15	1.61
Civil Rights	10	1.51
Consumer	36	1.32
Corporate	6	1
Derivative	3	0.74
Employment	16	1.28
ERISA	15	0.88
FCRA	4	1.72
FDCPA	1	0.52
FLSA	68	1.54
Health Care	2	4.61
Labor	13	1.06
Mass Tort	8	1.18
Other	33	1.65
Products Liability	8	1.08
Securities	57	1.79
TILA	2	1.94
Total	297	1.48

Figure 11 shows the relationship between fee percentage and multiplier and the relationship between recovery size and the multiplier. In our previous studies of the 1993–2002 and 2003–2008 periods, we hypothesized and presented evidence for a negative correlation between the multiplier and the fee percentage.[41] The logic was that a high multiplier indicates that the fee percentage is too high under the percentage method and should be brought into check. As Figure 11a shows, the relationship still appears to be negative during the 2009–2013 period; however, the relationship is weaker. We suspect that this change from prior periods could be due to increasing convergence in the legal community around acceptable fee percentages. Figure 11b shows the relationship between the multiplier and recovery amount. As we found previously,[42] higher multipliers are associated with higher recoveries.

FIGURE 11. RELATIONSHIPS BETWEEN MULTIPLIERS AND FEE PERCENT & RECOVERY SIZE, 2009–2013

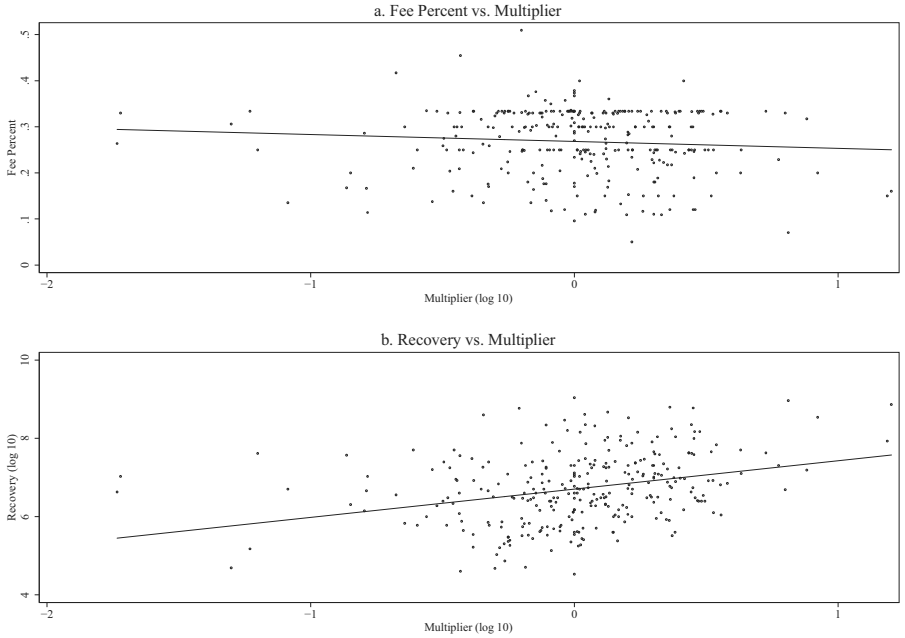


Table 13 shows the mean and standard deviation of the multiplier by recovery size deciles. Here we see that the multiplier is relatively low in the first two deciles and relatively high in the last decile. It is worth noting that the standard deviation of the multiplier tends to

41 *Id.* at 273–74.
42 *Id.* at 274.

increase with the recovery amount, suggesting that there is more variation in the multiplier at higher recovery levels.

TABLE 13. MEAN, MEDIAN, AND STANDARD DEVIATION OF MULTIPLIER, CONTROLLING FOR CLASS RECOVERY AMOUNT, 2009–2013

Range of Class Recovery Amount (Millions)	*Mean*	*Median*	*SD*	*N*
Recovery <=0.4	0.85	0.67	0.52	33
Recovery > 0.4 <= 0.75	0.72	0.74	0.32	25
Recovery > 0.75 <= 1.4	1.49	1.42	0.93	20
Recovery > 1.4 <= 2.65	1.26	1.15	0.79	29
Recovery > 2.65 <= 3.9	1.28	1.2	0.75	26
Recovery > 3.9 <= 6.5	1.37	1.03	1.28	29
Recovery > 6.5 <=12	1.48	1.09	0.98	34
Recovery > 12 <= 23.4	1.86	1.35	1.58	29
Recovery > 23.4 <= 67.5	1.65	1.5	1.27	32
Recovery > 67.5	2.72	1.5	3.59	35

L. Regression Analysis

This section uses regression analysis to explore the effects of some of the variables mentioned above on the fees awarded in class action settlements. The dependent variable is the log-transformed fee award. The key independent variables are the log-transformed gross recovery amount and fee request, both of which we found to be strongly correlated with the fee award in figures presented earlier. Our models also control for variables that appear as if they might have an impact on the fee, such as the costs and expenses requested by the plaintiffs' attorneys, and dummy variables identifying high-risk cases, cases where the pure lodestar method was used in lieu of the percentage method or percentage method with lodestar check, cases where opt-outs and objectors were present, and cases where the defendant paid the fee. In some models we included fixed effects for case categories and federal circuits. Table 14 presents summary statistics for the dependent and independent variables.

TABLE 14. SUMMARY STATISTICS

Variable	*N*	*Mean*	*Std. Dev.*	*Min*	*Max*
Fee Award (log)	458	6.061025	0.8359642	3.736243	8.744136
Gross Recovery (log)	458	6.648762	0.8789425	4.230449	9.860338
Fee Request (log)	454	6.089077	0.8392878	3.736243	8.744136
Costs and Expenses (log)	371	4.961283	0.9602119	2.522444	7.940662
High Risk Case	425	0.2894118	0.4540238	0	1
Lodestar Method Used	429	0.0629371	0.2431333	0	1
Incentive Bonus (log)	318	4.202167	0.5929221	1.431364	7.164353
Case with Objectors	343	0.4489796	0. 4981168	0	1
Case with Opt-Outs	278	0.6726619	0. 4700881	0	1
Soft Relief Significant	426	0.129108	0.3357137	0	1
Settlement Class	422	0.7535545	0.4314525	0	1
Defendant Pays Fee	453	0.1059603	0.308127	0	1

Table 15 presents regression results. Considering the strong positive relationships we observed in Figures 3a and 7a, we are not surprised to find that gross recovery and fee request are reliable predictors of fee award. Models 1 and 2 show that a one-unit increase in the gross recovery or fee request results in a near-one-unit increase in the fee awarded. The R-squared for these models demonstrates that on their own, gross recovery and fee request account for 97.7% and 99% of variance in the dependent variable, respectively. When we put the variables for gross recovery and fee request on the right-hand side of the same regression model, we notice that the variable for fee request has a larger substantive effect on the dependent variable than does the gross recovery variable. This may be due to the fact that the size of the gross recovery influences the amount requested by the plaintiffs' attorneys, and the amount requested then tends to determine the fee award. The strong association between fee award and both the recovery amount and the fee request are robust to the inclusion of several additional controls (Models 4–8). These relationships continue to hold up in models where fixed effects for case category and circuit are added (Models 9–11).

Other variables that appeared to be associated with higher or lower fees in Sections A–M also demonstrate statistically significant associations in the regression models, although not to the extent that the variables for gross recovery and fee request do. First, we find that all else equal, cases determined by the pure lodestar method result in a lower fee on average than cases determined by the percentage method or the percentage method with lodestar check (Models 6–11).

The difference between fees determined by the lodestar method or others, however, is substantively small—only about 1% on average on the log 10 scale in which the dependent variable has been coded. Second, we find evidence that high-risk cases are more likely to result in higher fees (Model 5). The substantive effect of this variable, however, is small compared to the effects of the fee requested and gross recovery variables. In crosstabs presented in Table 8, we observed that cases with opt-outs and cases without objectors had higher average fees. The statistically significant differences we reported earlier, however, are not robust to the addition of control variables. We also included a dummy variable for cases where the defendant paid the fee. Although we found this variable to have a statistically significant effect in our analyses of the 1993–2002 period,[43] it is not statistically significant here. The presence of soft relief or settlement classes is not statistically significant. Finally, the size of the incentive award is significantly associated with higher fee awards in most specifications of the model.

Conclusion

In sum, our regression models show that the size of the recovery and the fee requested are by far the strongest predictors of attorneys' fees in class actions. The strong associations hold up across locales and case types and are robust to the inclusion of several control variables. We also find that high-risk cases are, all else equal, associated with somewhat higher fees on average, and that cases that use the pure lodestar method are associated with somewhat lower fees. A pronounced scaling effect exists: Higher recoveries are associated with lower percentage fees and higher lodestar multipliers. There appears to be a trend towards convergence in fee awards, indicating that courts are gaining experience in this area and, possibly, that they are relying more heavily on the robust empirical literature on fee awards. Overall, our data are broadly consistent with the results of studies of fee awards in earlier time periods. Together with other empirical research, the results of our study can provide useful information to attorneys, judges, and policymakers interested in rationalizing and improving the procedures and methodology used for calculating fees in class action cases.

[43] Eisenberg & Miller I, *supra* note 4, at 77.

Table 15. Regression Results. Dependent Variable: Fee Award (log 10)

VARIABLES	(1) Fee (log)	(2) Fee (log)	(3) Fee (log)	(4) Fee (log)	(5) Fee (log)	(6) Fee (log)	(7) Fee (log)	(8) Fee (log)	(9) Fee (log)	(10) Fee (log)	(11) Fee (log)
Gross Recovery (log)	0.940***		0.230***	0.148***	0.142***	0.133***	0.166***	0.182***	0.183***	0.196***	0.196***
	(0.00677)		(0.0268)	(0.0286)	(0.0285)	(0.0289)	(0.0337)	(0.0416)	(0.0461)	(0.0434)	(0.0448)
Fee Request (log)		0.992***	0.754***	0.832***	0.832***	0.842***	0.802***	0.797***	0.798***	0.784***	0.795***
		(0.00478)	(0.0281)	(0.0298)	(0.0297)	(0.0300)	(0.0345)	(0.0430)	(0.0472)	(0.0448)	(0.0458)
Costs and Expenses (log)				0.00929	0.0114*	0.0102	0.0107	0.00313	0.000710	-0.00385	-0.000486
				(0.00673)	(0.00676)	(0.00682)	(0.00734)	(0.00887)	(0.00932)	(0.00913)	(0.00949)
High Risk Case					0.0179**	0.0146*	0.0240***	0.0224*	0.0200	0.0183	0.0263**
					(0.00842)	(0.00844)	(0.00923)	(0.0122)	(0.0127)	(0.0126)	(0.0128)
Lodestar Method Used						-0.0799***	-0.0756***	-0.0555**	-0.0608**	-0.0749***	-0.109***
						(0.0161)	(0.0200)	(0.0234)	(0.0267)	(0.0265)	(0.0313)
Incentive Bonus (log)							0.0269***	0.0282***	0.0274***	0.0224**	0.0146
							(0.00799)	(0.00976)	(0.0102)	(0.0101)	(0.0114)
Case with Objectors								-0.0225*	-0.0185	-0.00795	-0.0150
								(0.0125)	(0.0130)	(0.0125)	(0.0141)
Case with Opt-Outs								-0.0143	-0.0122	-0.0127	-0.00337
								(0.0122)	(0.0127)	(0.0124)	(0.0125)
Soft Relief Significant									-0.0143	-0.00734	-0.000316
									(0.0168)	(0.0166)	(0.0195)
Settlement Class									-0.0102	-0.0149	-0.00938
									(0.0151)	(0.0148)	(0.0157)
Defendant Pays Fee									-0.000656	-0.0252	-0.0259
									(0.0257)	(0.0247)	(0.0243)
Constant	-0.189***	0.0154	-0.0626**	-0.0366	-0.0153	-0.00633	-0.0968**	-0.124**	-0.113*	-0.0670	-0.131*
	(0.0454)	(0.0294)	(0.0287)	(0.0299)	(0.0303)	(0.0307)	(0.0415)	(0.0582)	(0.0631)	(0.0676)	(0.0687)
Category Fixed Effects	No	No	No	No	No	No	No	No	Yes	No	Yes
Circuit Fixed Effects	No	No	No	No	No	No	No	No	No	Yes	Yes
Observations	458	454	454	371	353	339	242	142	136	136	136
R-squared	0.977	0.990	0.991	0.993	0.993	0.993	0.993	0.993	0.993	0.994	0.996

Standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.10

Exhibit 16

Theodore Eisenberg and Geoffrey Miller,
***Attorneys' Fees and Expenses in Class Action Settlements: 1993-2008*,**
7 J. EMPIRICAL LEGAL STUDIES 248 (2010)

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Attorney Fees and Expenses in Class Action Settlements: 1993–2008

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Attorney Fees and Expenses in Class Action Settlements: 1993–2008

*Theodore Eisenberg and Geoffrey P. Miller**

We report on a comprehensive database of 18 years of available opinions (1993–2008, inclusive) on settlements in class action and shareholder derivative cases in state and federal courts. An earlier study, covering 1993–2002, revealed a remarkable relationship between attorney fees and class recovery size: regardless of the methodology for calculating fees ostensibly employed by the courts, the class recovery size was the overwhelmingly important determinant of the fee. The present study, which nearly doubles the number of cases in the database, confirms that relationship. Fees display the same relationship to class recoveries in both data sets and neither fees nor recoveries materially increased over time. Although the size of the class recovery dwarfs other influences, significant associations exist between the fee amount and both the fee method used and the riskiness of the case. We found no robust evidence of significant differences between federal and state courts. The strong association between fee and class recovery persists in cases with recoveries of $100 million or more, as do the significant associations between fee level and fee method and risk. Fees were not significantly affected by the existence of a settlement class, the presence of objectors, or opt outs from the class. Courts granted the requested fee in over 70 percent of the cases, with the Second Circuit granting the requested amount least often. In cases denying the requested fee, the mean fee was 68 percent of the requested amount. Fees and costs exhibit scale effects with the percent of each decreasing as the class recovery amount increased. Costs are strongly associated with hours expended on the case.

I. Introduction and Background

Class actions and their close cousins, shareholder derivative lawsuits, are vital mechanisms by which the legal system copes with mass harms—similar injuries to a large number of people. Long a feature of the U.S. landscape, class actions have recently begun to spread across the world.[1]

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We have from time to time acted as expert witnesses or consultants on the issue of attorney fees in class action cases. We thank participants at the International Conference on Empirical Legal Studies, Tel Aviv University and Kevin Clermont for comments, and Thomas P. Eisenberg, Nicholas Germain, and Erica Miller for excellent research assistance.

[1]See, e.g., Samuel Issacharoff & Geoffrey Miller, Will Aggregate Litigation Come to Europe? 62 Vanderbilt L. Rev. 179 (2009).

A crucial issue for all class and derivative litigation is the matter of compensating counsel. Unless class counsel are adequately compensated, class and derivative litigation will be undersupplied in the legal market. On the other hand, if class action attorneys are overcompensated they may bring too many of these lawsuits and receive an excessive share of the settlement value in cases that are brought.

In normal litigation the attorney compensation can be set by private agreement between lawyer and client, but private agreement does not work in the case of class action and derivative litigation: in these contexts there is no client capable of negotiating with the attorney. In class actions, the clients are disorganized and, prior to notice of certification, usually do not even know that a lawsuit has been filed on their behalf. Except perhaps in the case of private securities litigation, the representative plaintiff cannot effectively negotiate with the attorneys over fees and costs: he or she has only a minority stake in the matter (in consumer cases, often a miniscule one), is often unsophisticated, and may be strongly influenced by the attorney's advice. In derivative cases, the ostensible client—the corporation—is usually managed by defendants in the lawsuits and therefore is unwilling to pay any fee to incentivize an attorney to bring the lawsuit. In both settings, therefore, the court must independently determine the appropriate attorney fee award.

Where can the court look for information on this question? No private stakeholder is a reliable source of information. The class attorneys' suggested fee is not impartial since, at the time of the settlement, their interest is to seek the largest possible award. Nor can the court rely on the defendant's recommendations. Settlement agreements often contain "clear-sailing" clauses under which defendants agree not to object to a fee request up to a certain amount. However, clear-sailing agreements are of little value when the defendant is not paying the fee—indeed, it is not clear that the defendant has any "skin in the game" when the fee will be paid out of the class recovery. Even when the defendant does pay the fee—as in the typical consumer class action—the clear-sailing agreement has limited probative value unless the parties have deferred fee negotiations until after achieving a definite agreement on the merits. Otherwise, there is reason for concern that the defendant may have agreed to pay class counsel a premium in exchange for reductions in the amount going to the class. The reaction of the class to the settlement and proposed fee is also not a reliable guide. Empirical research suggests that the vast majority of class members are rationally indifferent to class action settlements; their failure to opt out of a settlement does not indicate approval of the proposed fee.[2] Nor can the court rely on objectors to the settlement. Few objectors appear at class action fairness hearings,[3] and those who show up may not object to the fee. Even if objectors do complain about the fee, they have only a small amount at stake and thus lack the incentive to thoroughly research the fee question.

Lacking reliable guidance from class counsel, the defendant, class members, or objectors, the judge has no alternative but to make an independent investigation. Where, however, should the judge look for information pertinent to the task of setting fees? Among

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[2]See Theodore Eisenberg & Geoffrey Miller, The Role of Opt-Outs and Objectors in Class Action Litigation: Theoretical and Empirical Issues, 57 Vanderbilt L. Rev. 1529 (2004).

[3]Id.

the factors that judges typically examine in setting fees, the most important is probably that of "awards in similar cases."[4] Precedents of fees awarded by other courts should, in theory, be relatively reliable guides because the prior courts were presumably exercising the requisite rigorous scrutiny and judicial independence when they set the fees, and because class counsel will have presumably considered the relevant case law in calculating whether to take on the litigation in the case at bar. But even this approach is not problem-free. In the typical class action settlement, the fee is taken from the common fund generated on behalf of the class. No party, in this case, has the right incentives to vigorously research the precedents running contrary to counsel's fee request. Unless the judge does his or her own research, he or she may not have access to unbiased information about fees in similar cases.

The present empirical study is intended to assist courts in the task of fee setting—and counsel in the task of identifying appropriate fees to request—by supplying an account of compensation practices in courts across the country, studied over an extended period of time, and conducted in an academic setting outside the fires of litigation. The information provided in this article is the best data on "awards in similar cases" from cases with available opinions. If used effectively, our study may be of material assistance in further rationalizing the compensation of class counsel.

We find, regardless of the methodology for calculating fees ostensibly employed by the courts, that the overwhelmingly important determinant of the fee is simply the size of the recovery obtained by the class. Fees display the same relationship to class recoveries in data sets spanning both 1993 to 2002 and 2003 to 2008. Neither fees nor recoveries materially increased over time. Although the size of the class recovery dwarfs other influences, significant associations exist between the fee amount and both the fee method used and the riskiness of the case. We found no robust evidence of significant differences between federal and state courts. The strong association between fee and class recovery persists in cases with recoveries of $100 million or more, as do the significant associations between fee level and fee method and risk.

Courts granted the requested fee in over 70 percent of the cases, with courts in the Second Circuit granting the requested amount least often. In cases in which the requested fee was not awarded, the mean fee was 68 percent of the requested amount. Costs are modest, with both means and median costs comprising less than 3 percent of the class recovery. Fees and costs both exhibit scale effects, with the percent of each decreasing as the class recovery amount increased. Costs are strongly associated with hours expended on the case. Fees were not significantly affected by the existence of a settlement class, the presence of objectors, or opt outs from the class.

Section II of this article describes the data gathering and coding. Section III presents the relation between fee amount and class recovery and fee percent and class recovery over time, and by locale (including state and federal courts), and by case category. It also explores the relation between the fee and risk, settlement class, and the presence of opt outs and objectors. Section IV assesses the relation between the fee and the method used to compute

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[4]See, e.g., Thompson v. Connick, 553 F.3d 836 (5th Cir. 2008); Gunter v. Ridgewood Energy Corp., 223 F.3d 190, 195 n.1 (3d Cir. 2000); Spell v. McDaniel, 824 F.2d 1380, 1402 n.18 (4th Cir. 1987).

the fee, as well as the pattern of multipliers used in connection with lodestar fees. Section V reports on the pattern of costs and expenses. Section VI presents multivariate results that confirm our core findings. Section VII discusses the results and Section VIII concludes.

II. Methodology

The results reported here were gathered in two segments. The first segment covered cases reported from 1993 to 2002 and its results are reported in previous work.[5] That study also described the motivation for the variables used in this study. The basis for believing that the variables studied might relate to fee awards is reasonably self-evident and need not be repeated here.

As previously reported, we searched in the WESTLAW™ "AllCases" database using the search "settlement & 'class action' & attorney! w/2 fee! & date(=[1993–2002])". This search's results were checked against a search of the LEXIS™ "Mega" database using equivalent search terms. We also compiled lists of citations in the cases found by these search requests and included any additional cases meeting the basic search criteria. We further checked the list against the CCH™ Federal Securities and Trade Regulation Reporters. Once cases had been identified by this method, we sometimes gathered additional information about case characteristics from other sources—for example, information on the Internet or docket entries in the U.S. Courts PACER system. The second segment covered the period 2003 to 2008, inclusive. We replicated the WESTLAW search (expanded to include the term "derivative" to make doubly sure we picked up all derivative settlements) and checked the results, in many cases, against information available on the Internet or in PACER.

The present study focuses solely on common fund cases and does not assess cases in which a court applied a statutory fee-shifting statute to assess fees. Our searches and exclusion criteria yielded recovery and fee information for a total sample of 689 common fund cases. Relatively more cases come from the later period (301 cases for six years from 2003 to 2008 compared with 388 cases for the preceding 10 years). This was principally due to the significantly expanded coverage of the PACER system in the later period, and also to our inclusion of cases in which fee-shifting statutes could have been applied but the fee was not determined by formally applying the fee-shifting statute.

We used the following conventions for coding in both searches. If the court stated a range of value (e.g., for the amount of class recovery), we used the midpoint. If there was no better estimate available but a maximum recovery value could be ascertained, we used the maximum possible recovery. If the court estimated the relief at "over" or "more than" a sum, the sum that was the minimum was used. Where the settlement amount included post- or prejudgment interest, we included that in the amount of the settlement. We collected only the number of attorney hours, thus excluding, where possible, the (usually minor) hours reported for paralegals or law clerks.

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[5]For our prior empirical study of class action attorney fees, see Theodore Eisenberg & Geoffrey P. Miller, Attorney Fees in Class Action Settlements: An Empirical Study, 1 J. Empirical Legal Stud. 27 (2004).

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To code the court's fee calculation method, we tracked whether the court engaged in a lodestar calculation and, if so, the purity of the lodestar approach. This generated the following fee method categories: (1) percentage method cases in which no lodestar calculation exists, (2) cases in which both the lodestar calculation and the percentage approach were used (usually with the lodestar being employed as a "cross-check" on the percentage fee), and (3) pure lodestar cases in which the lodestar method was the exclusive method used. If the lodestar amount was not specified, but could be estimated with reasonable accuracy, we included it. We used plaintiffs' own estimates of their lodestar only when these estimates were not contested by the court. In some cases, the court simply reported a fee without explaining its methodology; these we recorded as missing or as "negotiated" if the approved fee was the one negotiated by the parties.

The coding of variables related to fee shifting was somewhat subtle. Many class action cases are brought under numerous claims for relief, some of which authorize the court to award fees to the prevailing plaintiff or prevailing party. When these cases settle, the courts often set fees without reference to the fee-shifting statute. Even when fee-shifting statutes are potentially available, the fee is often awarded out of the class recovery. Our "fee-shifting" variable codes whether the fee *could* have been calculated under a fee-shifting statute had the case progressed to a litigated judgment, regardless of whether the court actually invoked the fee-shifting statute as a basis for awarding the fee. For the later cases (2003–2008), we kept track of whether the court had actually used the fee-shifting statute as a basis for awarding the fee. In that period, a fee-shifting statute was available in 177 cases but was used as the basis for awarding the fee in only 21 cases, 11.9 percent. We included as common fund cases the 156 cases in which fee-shifting statutes were available but were not used. Preliminary regression models indicated no significant difference in fee awards between these cases and "purer" common fund cases.

For many other variables, coding was reasonably straightforward. In employment discrimination and civil rights cases, two prominent categories of fee-shifting statute cases, the amount of the relief to the class, as expected, often was difficult to quantify because an important element of relief in such cases was often injunctive. For civil rights cases involving only injunctive relief, the cost to the defendant was used as a measure of the value of the relief for the class when this was available. In some fee-shifting cases, the court awarded attorney fees but it was impossible to estimate the amount of class damages. These fee and recovery coding conventions led to usable values for the fee amount and the client recovery, two of our core variables, in the 689 cases studied here.

We also coded cases for risk. Where the court addressed the question of risk, we coded according to our best estimate of the court's evaluation. In many cases, however, the court did not explicitly address the risk of the litigation. Coding therefore depended on assuming that risk was not prominent in cases in which courts did not mention it. We divided the cases into three risk categories. If nothing was said about risk or if the court's discussion suggested a normal degree of risk, the case was coded as being medium risk. If the court affirmatively indicated the existence of substantial risk, or if exceptional risk was evident from the facts or procedural history of the case, we coded the case as having high risk. If the court indicated or the facts otherwise suggested that the case was very likely to generate a substantial recovery for the class at the time it was brought (e.g., if the case grew

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out of a prior government prosecution that had resulted in fines or convictions), we coded the case as low risk.

As in our earlier work, two caveats about using published opinions are in order. First, our data include only opinions that were published in some readily available form. Obviously, therefore, we have not included the full universe of cases in our data set. Although published opinions are not necessarily representative of the universe of all cases, they can lead to important insights. For judges seeking to inform their fee decisions with knowledge of other cases, published opinions are the prime source of data. Further, the present study expands on the published opinion data by delving into unpublished materials available on PACER when these could supply information missing from the published case reports.

A second caveat about the published opinion data is that this methodology overweights federal cases. Opinions of state trial court judges are published less frequently than opinions of federal district courts; and since fee awards are typically reported in the court of first instance, we found many more federal than state opinions responsive to our search request. Further, the PACER system allowed us to "dig" for more information in the case of federal opinions. There is no state analog to PACER, and therefore we could only rarely discover information about fees and related issues when a state opinion on a class action or derivative case failed to report the necessary data.

III. Bivariate Results: Fee Amount and Fee Percent

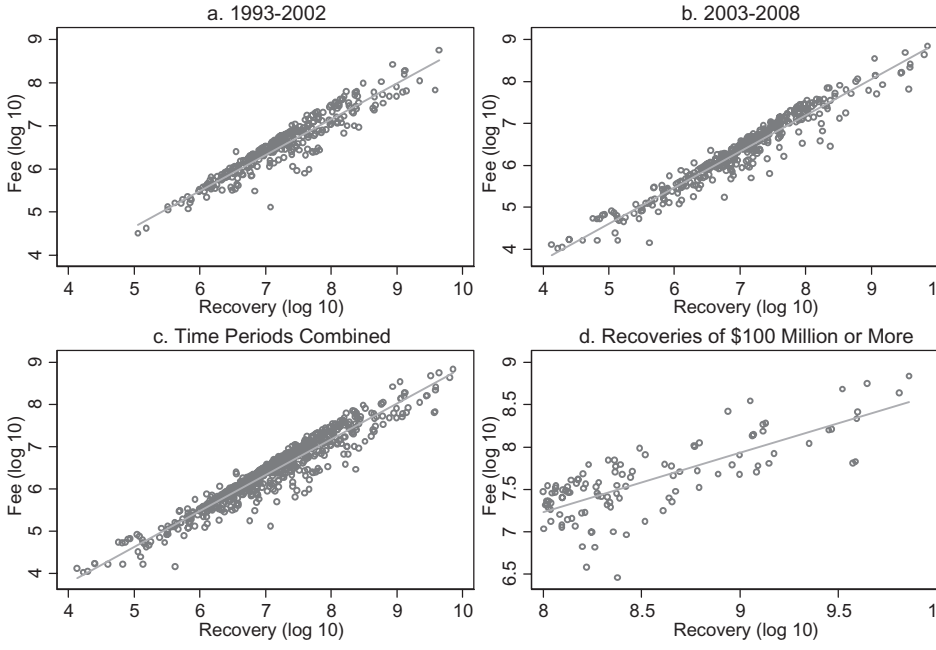
We first examine bivariate results—that is, the relation between either the fee amount or the fee percent and one of the other variables coded in our data. We outline the persistent regular relationship between fees and recovery in both data sets (1993–2002 and 2003–2008). We then examine the pattern of fees across other dimensions such as time, locale, case category, risk, settlement class status, and the presence of opt outs and objectors. All amounts are in 2008 inflation-adjusted dollars.

A. The Persistent Relation Between Fee and Recovery

The relation between fee amount and class recovery has remained consistent over time. Figure 1 shows scatterplots of the fee amount and class recovery for each of the two time periods (Figures 1a and 1b), for the time periods combined (Figure 1c), and for cases with recoveries greater than or equal to $100 million (Figure 1d). The scales have been transformed into log10 units to address the bunching of cases at the lower end of the recovery scale that would occur in a linear dollar scale. Units of log10 can easily be interpreted because the log10 scale is simply based on powers of 10 (e.g., a value of 9 on a log10 scale is equal to $1 billion, or one followed by nine zeros).

Figures 1a and 1b show that the pattern is virtually unchanged over time. The associations between fee and recovery are striking and large. The linear correlation between fee and recovery exceeds 0.94 for each time period and the slope of the relationships appears constant for the two time periods. In a regression model with a dummy

Figure 1: Fees as a function of recovery.



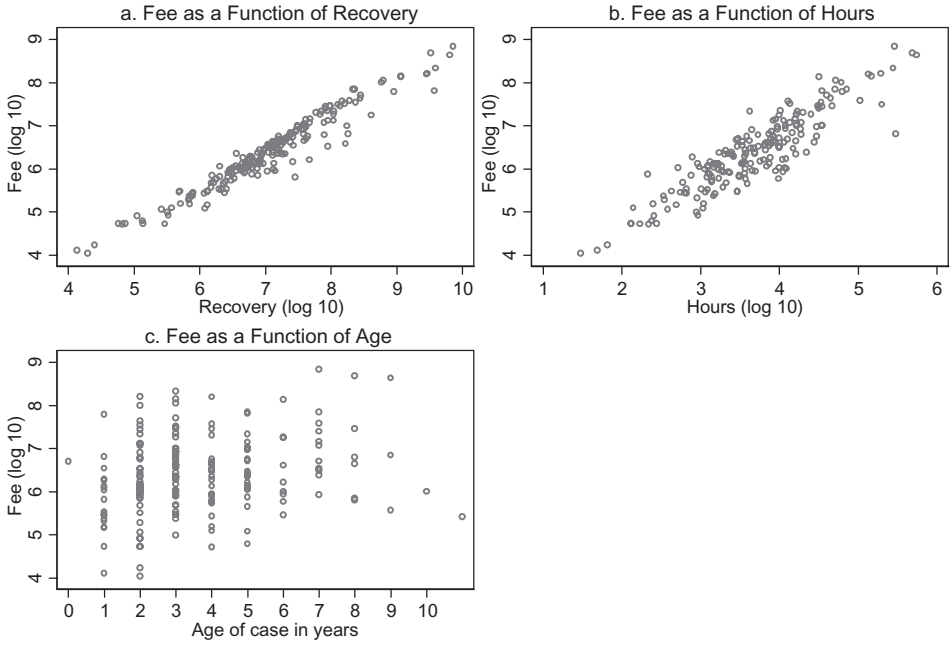
variable for time period and an interaction term consisting of the product of the time period dummy variable and the class recovery size, one cannot reject the hypothesis that the dummy variable and the interaction term coefficients are jointly zero, thus confirming the consistency of the pattern. The relation between fees and class recoveries is also observed when the data are combined, as shown in Figure 1c. In both the separate and combined data sets, the size of the class recovery swamps all other influences on the size of the fee, as shown in regression models in Section VI of this article.[6] Figure 1d, which is limited to large cases, also shows a strong linear relation between fee and recovery. For these 109 cases, the linear correlation coefficient is 0.77 ($p < 0.0001$). The decreased slope for the high end of case recoveries is consistent with the scaling effect discussed in Section III.B.4 of this article.

Figure 2 further supports the primacy of the recovery as the explanation for the fee award. For ease of comparison, Figure 2a reproduces the combined time period data from Figure 1c. Figures 2b and 2c show that neither the hours claimed nor the age of a case are as strongly associated with the fee amount as is the class recovery amount.

With six additional years of data, we can extend our prior analysis of the pattern of fees and class recoveries over time. One notable earlier finding was the absence of

[6]Figure 1b shows the later time period with more low-recovery cases (less than $100,000). This is likely attributable to our inclusion in the non-fee-shifting sample cases in which a fee-shifting statute existed but was not used, as well as to the information about smaller cases now available on PACER See Section II.

Figure 2: Fee as a function of recovery, hours, and age, 2003–2008.



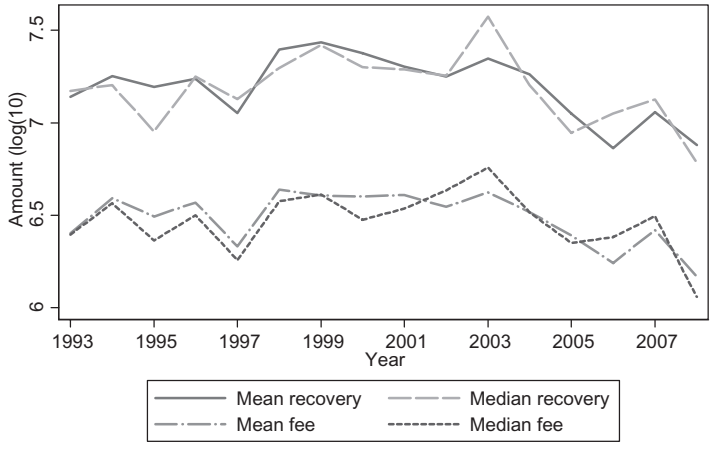
increases in class recoveries or fees over time,[7] a finding that heartened opponents of attempts to reform the class action system via the Class Action Fairness Act of 2005 (CAFA)[8] and prompted a response from a noted Yale Law School professor.[9] The newer data reveal that the level of both class recoveries and attorney fees has not varied substantially over time. As Figure 3 shows, these amounts have shown no distinct time trend for most of 16 years. Inflation-adjusted recoveries and fees through 2007 were at levels not significantly different from levels in 1993 and in fact are lower in inflation-adjusted dollars. In 2008, a noticeable drop in mean and median recoveries and fees occurred. The difference in class recovery medians between 2008 and all earlier years combined is statistically significant at $p = 0.002$, and the difference in fees between 2008 and earlier years is significant at $p = 0.0003$. The difference in the median ratio of fee to recovery (ratio of the logs) did not significantly differ between 2008 and earlier years

[7]Eisenberg & Miller, supra note 5.

[8]Class Action Fairness Act, Pub. L. No. 109-2, 119 Stat. 4 (2005). See 149 Cong. Rec. S1299902 (Oct. 22, 2003) (remarks of Senator Feingold); 151 Cong. Rec. S1086-02 (Feb. 8, 2005) (remarks of Senator Feingold).

[9]George L. Priest, What We Know and What We Don't Know About Modern Class Actions: A Review of the Eisenberg-Miller Study (Feb. 2005, Manhattan Inst.).

Figure 3: Class recovery and attorney fee over time, mean and median.



SOURCES: Westlaw, LexisNexis, PACER.

($p = 0.517$).[10] We therefore do not view the changes in 2008 as necessarily indicating anything significant about longer-term fee patterns.

B. Locales, Case Categories, and Other Factors

Table 1 shows the distribution of cases by locale. It combines all 25 federal appellate opinions into one category, "Appeal," and all 75 state cases into one category, "State." Federal district court cases dominate the sample, accounting for approximately 85 percent of the cases. The federal class action cases cluster by districts. The Southern District of New York accounted for 103 of 589 federal district court cases, and the Eastern District of Pennsylvania accounted for 70 such cases. They are the only two districts to account for 10 percent or more of the federal trial court portion of the sample and together accounted for 25 percent of all cases in the sample. Two other districts accounted for more than 5 percent of the federal court portion of the sample: the Northern District of California had 47 cases

[10]This pattern of average and median fees in more recent years may be partly due to the increase in smaller cases that we were able to code by accessing the PACER database and to inclusion in the later period of cases in which fee-shifting statutes were theoretically available but not used to set the fee. We investigated whether a changing mix of cases explained the pattern by separately assessing, for the two time periods, cases with recoveries greater than or equal to $5 million and recoveries less than $5 million. For both recovery size groups, the difference in recovery across the two time periods was not statistically significantly different. The difference over time in medians for cases with recoveries greater than or equal to $5 million was significant at $p = 0.590$; for cases with recoveries less than $5 million, the difference in medians was significant at $p = 0.749$. But the smaller cases were more prevalent in the later period. Cases with recoveries of less than $5 million comprised 33 percent of the later period cases compared to 24 percent of the earlier period cases, a difference statistically significant at $p = 0.022$. Thus the decreasing recovery amount over time is attributable to a different mix of cases in our sample, and not to differences in treatment of similar cases over time. Thus, throughout more than a decade of civil litigation reform efforts based on claims of increasing awards and fees, the pattern in available opinions, which tend to include the largest cases, has not significantly changed.

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Table 1: Frequency of Class Action Fee Opinions, by Court, 1993–2008

Locale	N	*% of Cases*
Other	161	23.37
SDNY	103	14.95
State	75	10.89
EDPA	70	10.16
NDCA	47	6.82
DNJ	35	5.08
NDIL	29	4.21
EDNY	26	3.77
APPEAL	25	3.63
DDC	18	2.61
EDMI	17	2.47
DMN	16	2.32
EDLA	13	1.89
MDFL	12	1.74
EDCA	12	1.74
CDCA	10	1.45
DMA	10	1.45
SDCA	10	1.45
Total	689	100.00

SOURCES: Westlaw, LexisNexis, PACER.

and the District of New Jersey 35 cases. The Northern District of Illinois had just under 5 percent of the federal district cases. Together, these five districts accounted for over 50 percent of the federal district court opinions.

These results suggest that class action litigation in the federal system is heavily concentrated in a few jurisdictions. Of the 94 federal district courts, nearly half of all class actions in our data set occurred in five courts. Even adjusting for population (the popular class action districts also tend to be ones with large populations), the concentration ratio remains striking. We take this as evidence that certain jurisdictions offer advantages for class action litigation, either in the form of experienced judges who can handle these cases in a fair and expeditious manner, faster dockets, a sense on the part of plaintiffs' attorneys that the courts in these districts are reasonably well-inclined toward class action litigation, or a concentration of class action attorneys specializing in the practice.

We also investigated whether different federal courts appear to specialize in different types of cases. Table 2 shows the breakdown of the four largest case types, plus the residual case type, "Other," in the federal district courts with the largest number of class action settlements in our data (those listed in Table 1). For each case category, one column shows the percent of cases in each district and a second column shows the number of cases. For example, the Southern District of New York accounted for 70 of 253 securities cases, 28 percent of that category. Thus, the Southern District of New York tends to dominate securities class actions, whereas the Eastern District of Pennsylvania is the leader in antitrust

Table 2: Class Action Case Categories by Locale, 1993–2008

	Antitrust		*Consumer*		*Employment*		*Securities*		*Other*		*Total*	
District	%	N	%	N	%	N	%	N	%	N	%	N
Other	16	10	35	34	30	15	21	52	38	49	27	160
SDNY	7	4	1	1	10	5	28	70	18	23	18	103
EDPA	20	12	14	13	2	1	14	36	6	8	12	70
NDCA	7	4	7	7	14	7	8	19	8	10	8	47
DNJ	8	5	7	7	2	1	6	15	5	7	6	35
NDIL	10	6	7	7	4	2	5	12	2	2	5	29
EDNY	5	3	7	7	2	1	6	14	1	1	4	26
DDC	16	10	1	1	0	0	1	2	4	5	3	18
EDMI	3	2	0	0	0	0	2	6	7	9	3	17
DMN	5	3	3	3	4	2	2	6	2	2	3	16
EDLA	0	0	3	3	4	2	2	4	3	4	2	13
EDCA	0	0	2	2	16	8	0	0	2	2	2	12
MDFL	2	1	2	2	2	1	3	7	1	1	2	12
CDCA	0	0	2	2	6	3	1	3	2	2	2	10
DMA	2	1	5	5	0	0	1	2	2	2	2	10
SDCA	0	0	2	2	4	2	2	5	1	1	2	10
Total	100	61	100	96	100	50	100	253	100	128	100	588

NOTE: Table includes only federal district court cases.
SOURCES: Westlaw, LexisNexis, PACER.

and consumer cases. The Northern and Eastern Districts of California are the leaders in employment cases. Table 2 shows that the SDNY's dominance is almost completely attributable to its large role in securities cases.

1. Fees Across Locales

Table 3 shows summary statistics about fees and recoveries by locale. The mean fee to recovery ratio was 0.23, or 23 percent of the class award, but this percent varies by recovery size, as shown in Figure 5 and Table 7. The mean fee was $12.8 million and the median was $2.3 million. The mean class recovery was $116.0 million and the median was $12.5 million.

Some bankruptcy case fee studies[11] and other studies of case outcomes show notable interdistrict variation. Like these studies, we find significant variation across federal districts. For the 16 federal districts with at least 10 cases with necessary information in the

[11]See Lynn M. LoPucki & Joseph W. Doherty, The Determinants of Professional Fees in Large Bankruptcy Reorganization Cases, 1 J. Empirical Legal Stud. 111, 114, 136 (2004) (showing significant fee request reduction variation across Delaware and the Southern District of New York); Stephen J. Lubben, Corporate Reorganization and Professional Fees, 82 Am. Bankr. L.J. 82 (2008) (showing some significant Delaware and Southern District of New York effects). But see Lynn M. LoPucki & Joseph W. Doherty, Professional Overcharging in Large Bankruptcy Reorganization Cases, 5 J. Empirical Legal Stud. 983, 1010 (2008) (tbl. 5, showing insignificant Delaware and Southern District of New York effects).

Table 3: Fee and Class Recoveries, by Locale, 1993–2008

	Mean Ratio	*Median Ratio*	*Mean Fee*	*Median Fee*	*Mean Gross Recovery*	*Median Gross Recovery*	*Number of Cases*
APPEAL	0.19	0.20	5.89	2.15	57.86	13.37	25
CDCA	0.25	0.25	3.93	2.75	16.30	19.90	10
DDC	0.22	0.22	16.69	2.14	134.79	13.00	18
DMA	0.16	0.15	11.50	7.00	118.55	81.00	10
DMN	0.25	0.27	8.77	4.75	40.99	14.25	16
DNJ	0.21	0.22	32.26	7.80	503.42	36.88	35
EDCA	0.26	0.25	0.40	0.12	3.26	0.54	12
EDLA	0.26	0.23	7.79	1.77	43.53	8.61	13
EDMI	0.22	0.20	6.56	1.34	34.80	11.75	17
EDNY	0.32	0.25	11.33	2.38	142.42	9.03	26
EDPA	0.28	0.29	12.66	1.51	75.79	6.88	70
MDFL	0.21	0.21	3.64	2.66	18.23	14.87	12
NDCA	0.26	0.25	4.44	2.00	24.06	9.25	47
NDIL	0.24	0.24	12.14	2.75	51.45	12.50	29
Other	0.24	0.25	20.47	3.25	154.98	16.38	161
SDCA	0.26	0.25	4.66	1.14	63.12	4.90	10
SDNY	0.22	0.22	11.54	2.13	127.97	12.85	103
State	0.20	0.20	5.94	2.00	61.61	12.32	75
Total	0.23	0.24	12.84	2.33	116.01	12.50	689

NOTE: Dollar amounts are in millions of 2008 dollars.
SOURCES: Westlaw, LexisNexis, PACER.

sample (including "Other" as a district), a test of the hypothesis that the median ratio of fee to class recovery does not differ significantly can be rejected, with a Mann-Whitney test yielding a significance level of $p = 0.014$. Given the strong association between fee and class recovery, we explored these initial interdistrict differences by accounting for recovery level and case category in regression models. The district dummy variables were collectively statistically significant ($p = 0.035$), indicating that when the size of class recoveries and case categories are accounted for, one can reject the hypothesis of no statistically significant interdistrict differences. Table 3's first two numerical columns suggest that interdistrict differences can be nontrivial but are not dramatic. With one exception, the District of Massachusetts, the median ratio always ranges from 0.20 to 0.29.

In federal courts, attorney fee doctrine is dictated at the circuit court level if the appeals court has issued an opinion on point (the Supreme Court has never offered definitive guidance on this issue). The Ninth Circuit has a 25 percent benchmark fee in common fund cases but allows departures based on individual case factors,[12] and the Eleventh Circuit has indicated that its district courts view 25 percent as a benchmark.[13]

[12]E.g., Torrisi v. Tucson Elec. Power Co., 8 F.3d 1370, 1376 (9th Cir. 1993).

[13]Camden I Condo. Ass'n v. Dunkle, 946 F.2d 768, 775 (11th Cir. 1991).

Table 4: Fee and Class Recoveries, by Federal Circuit, 1993–2008

Circuit	*Mean Ratio*	*Median Ratio*	*Mean Fee*	*Median Fee*	*Mean Gross Recovery*	*Median Gross Recovery*	*Number of Cases*
1st	0.20	0.20	31.83	3.50	227.41	19.32	21
2nd	0.23	0.24	10.58	2.13	119.06	11.63	145
3rd	0.26	0.26	17.38	3.00	193.50	13.38	120
4th	0.20	0.21	29.27	1.89	320.07	13.55	8
5th	0.24	0.23	42.39	2.63	368.34	15.65	26
6th	0.23	0.23	10.42	3.33	94.65	15.50	42
7th	0.26	0.24	8.79	2.15	38.37	10.07	42
8th	0.25	0.30	11.21	4.18	68.35	14.70	29
9th	0.25	0.25	4.53	1.80	32.97	9.50	101
10th	0.22	0.23	12.46	7.42	63.96	32.00	22
11th	0.21	0.22	17.35	4.22	87.09	26.85	34
DC	0.21	0.22	15.17	1.94	122.04	11.00	20
Total	0.24	0.25	13.74	2.40	123.12	12.50	610

NOTE: Three Federal Circuit cases and all state court cases are omitted. Dollar amounts are in millions of 2008 dollars.
SOURCES: Westlaw, LexisNexis, PACER.

The Eleventh and D.C. Circuits mandate the percentage methodexclusively, while other circuits allow percentage or lodestar methods.[14] The Second Circuit's *Goldberger* decision rejected the use of benchmarks and mandated a fact-specific inquiry.[15]

Table 4 explores intercircuit variation, showing summary statistics about fees and recoveries by circuit, and excludes state court cases. The median and mean fee to recovery ratios were 0.24 and 0.25, respectively. In regression models of the ratio, circuit dummy variables were not collectively statistically significant ($p = 0.124$), indicating that when the size of class recoveries and case categories are accounted for, one cannot reject the hypothesis of no statistically significant intercircuit differences. We also explored differences between particular circuits and all other circuits based on announced benchmarks and methods. In regression models using dummy variables for individual circuits, and controlling for case category and recovery size, none of the individual circuit effects were statistically significant. Nor were differences within the Second Circuit significantly different pre- and post-*Goldberger*.[16]

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[14]Swedish Hosp. Corp. v. Shalala, 1 F.3d 1261, 1271 (D.C. Cir. 1993); Camden I Condo. Ass'n v. Dunkle, 946 F.2d 768, 774 (11th Cir. 1991).

[15]Goldberger v. Integrated Res., Inc., 209 F.3d 43 (2d Cir. 2000).

[16]Nor was the variance in fee percent significantly different between the Ninth or Eleventh Circuits and other circuits. For a more in-depth exploration of the effect (or lack of effect) of the *Goldberger* decision, see Theodore Eisenberg, Geoffrey Miller & Michael Perino, A New Look at Judicial Impact: Attorneys' Fees in Securities Class Actions After *Goldberger v. Integrated Resources, Inc.*, 29 Wash. U. J. Law & Policy 5 (2009).

2. State-Federal Differences

We hypothesized that the fee percent would tend to be higher in class actions in state court than in federal court.[17] Beliefs in differences in how federal and state courts process class actions were cited as reasons for enactment of CAFA.[18] The Congress that enacted CAFA intended to route interstate class actions to federal court, "with the expressed intent of defeating the plaintiffs' bar's manipulation of state courts."[19] President George W. Bush declared that it "marks a critical step toward ending the lawsuit culture in our country."[20] Empirical support for CAFA was almost entirely lacking, however, with both Federal Judicial Center (FJC) research[21] and our own prior work[22] suggesting little in the way of significant state-federal defferences.

Table 3 shows that the mean fee to class recovery ratio for state court cases was 0.20, lower than the overall mean ratio of 0.24. Regression models of the fee (log 10) or the ratio (of logs) as a function of the case category and the class recovery size indicate that the federal-state difference was sometimes statistically significant in the direction suggested by Table 3—namely, that state courts award lower percentage fees.[23] The direction of the effect is surprising if one believes federal courts are less receptive to class actions than are state courts. A lower fee to recovery ratio suggests somewhat less encouragement of class action activity by state courts compared to federal courts.

3. Case Categories

Table 5 summarizes fees, recoveries, and their ratios by case categories. Mean fees ranged from 11 percent of the class recovery in tax cases to 27 percent in employment cases. In the

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[17]Eisenberg & Miller, supra note 5.

[18]Pub. L. No. 109-2, 119 Stat. 4 (2005) (codified in scattered sections of 28 U.S.C.). See generally Kevin M. Clermont & Theodore Eisenberg, CAFA Judicata: A Tale of Waste and Politics, 156 U. Pa. L. Rev. 1553 (2008); Georgene M. Vairo, Class Action Fairness Act of 2005 (2005).

[19]Clermont & Eisenberg, supra note 18, at 1554–55.

[20]Remarks on Signing the Class Action Fairness Act of 2005, 41 Weekly Comp. Pres. Doc. 265, 265 (Feb. 18, 2005); see also Edward A. Purcell, Jr., The Class Action Fairness Act in Perspective: The Old and the New in Federal Jurisdictional Reform, 156 U. Pa. L. Rev. 1823 (2008) (stressing partisan support for CAFA).

[21]Thomas E. Willging & Shannon R. Wheatman, Attorney Choice of Forum in Class Action Litigation: What Difference Does it Make? 81 Notre Dame L. Rev. 591, 645, 652–54 (2006) (finding insignificant differences in state court and federal court treatment of class actions, and observing that "[a]ttorney perceptions of judicial predispositions toward their clients' interests show little or no relationship to the judicial rulings in the surveyed [state and federal class action] cases"). See also Section VII.

[22]Eisenberg & Miller, supra note 5.

[23]The state court effect was significant in multilevel models with a random intercept for case category. The effect was insignificant in models with dummy variables for case category.

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Table 5: Fee and Class Recoveries, by Case Category, 1993–2008

	Mean Ratio	*Median Ratio*	*Mean Fee*	*Median Fee*	*Mean Gross Recovery*	*Median Gross Recovery*	*Number of Cases*
Antitrust	0.22	0.23	21.02	9.15	163.48	39.36	71
Civil rights	0.24	0.23	4.10	1.52	16.53	7.48	18
Consumer	0.25	0.20	10.04	1.70	128.42	9.33	125
Corporate	0.21	0.19	3.35	1.12	16.51	9.86	30
Employment	0.27	0.25	2.43	0.75	12.28	3.00	55
ERISA	0.23	0.25	6.61	3.46	29.54	14.00	43
Securities	0.23	0.25	14.78	2.52	141.96	12.50	268
Tax refund/tax	0.11	0.06	12.96	5.50	188.01	60.07	8
Tort	0.21	0.20	30.15	6.33	254.60	25.86	29
Other	0.23	0.25	13.59	2.00	61.86	10.75	42
Total	0.23	0.24	12.84	2.33	116.01	12.50	689

NOTE: Dollar amounts are in millions of 2008 dollars.
SOURCES: Westlaw, LexisNexis, PACER.

Table 6: Frequency of Case Categories, by Time Period

	Non-Fee-Shifting Cases			
	1993–2002		*2003–2008*	
	N	*% of Cases in Period*	N	*% of Cases in Period*
Antitrust	36	11.9	35	9.1
Civil rights	2	0.7	16	4.2
Consumer	52	17.2	73	18.9
Corporate	15	5.0	15	3.9
Employment	7	2.3	48	12.4
ERISA	7	2.3	36	9.3
Securities	142	46.9	126	32.6
Tax refund/tax	6	2.0	2	0.5
Tort	17	5.6	12	3.1
Other	19	6.3	23	6.0
Total	303	100	386	100

SOURCES: Westlaw, LexisNexis, PACER.

larger case categories, fees ranged from 21 percent to 27 percent of recoveries. A test of the hypothesis that the median ratio of fees to recoveries is the same across case categories can be rejected at $p < 0.022$, if one includes the small civil rights and tax categories. But the effect becomes statistically insignificant if one excludes the two smallest categories ($p = 0.222$).

The case category makeup of the samples varied over time. Table 6 shows the case category breakdown for the time period of our prior study and the years 2003 to 2008, added for purposes of this study. In each time period, securities cases were the dominant case category, but they declined as a proportion of the sample in the later time period. This

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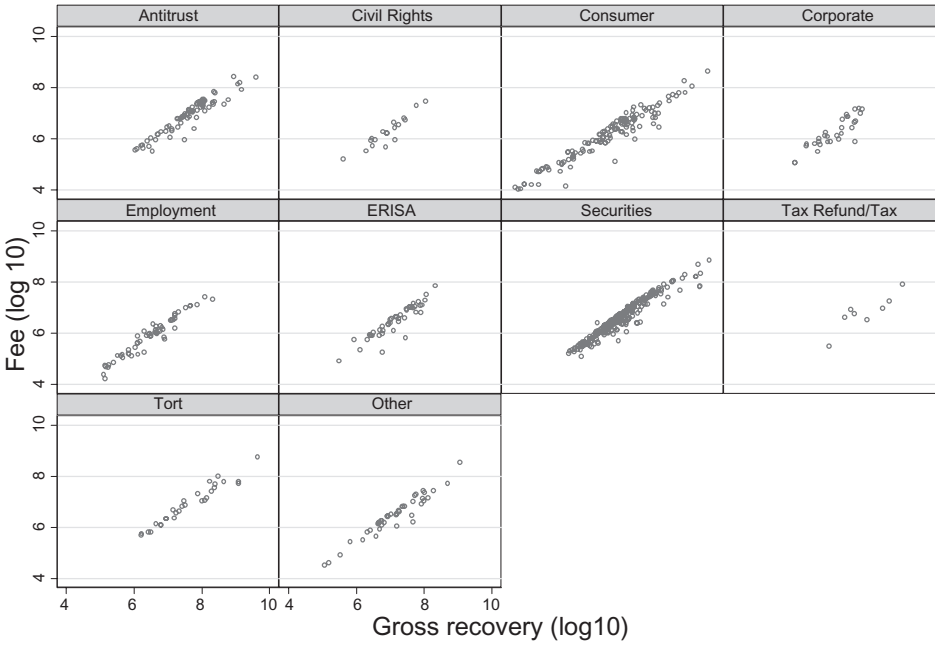
Figure 4: Fee and recovery by case category, 1993–2008.



SOURCES: Westlaw, LexisNexis, PACER.

is due to the increase in the proportion of civil rights, employment, and ERISA cases, which likely increased because of the change in coding, discussed above, to allow inclusion with common fund cases, cases subject to a fee-shifting statute but in which the fee was not determined pursuant to the statute, as well as to increased availability of information through the PACER database.

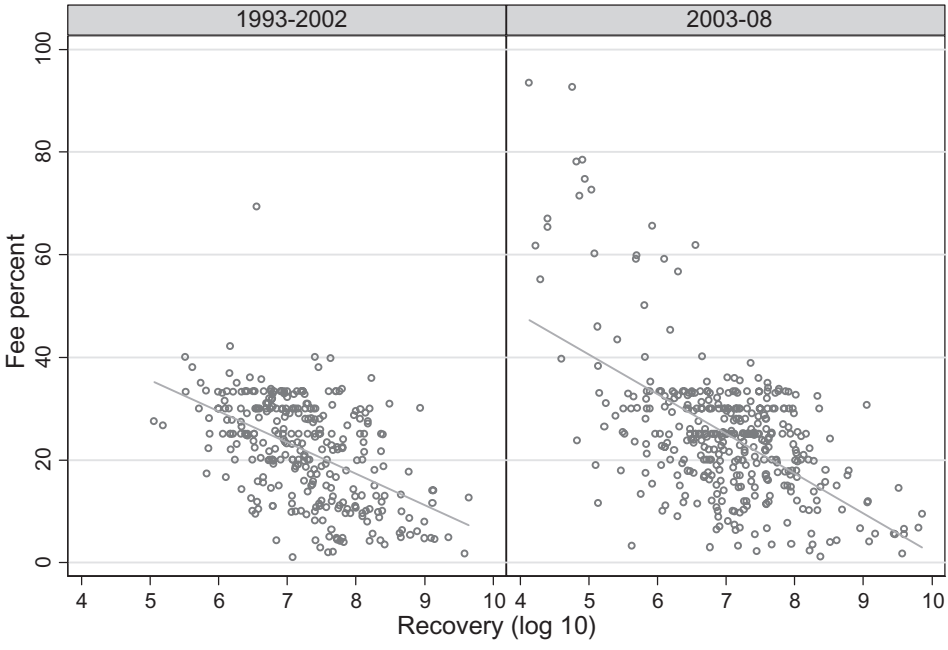
Figure 4 explores whether the core relation between fee amount and class recovery varies by case category. It shows that relation through separate scatterplots for 10 case categories. The consistency of the pattern across category is striking. Every category shows the same basic relation between fee and recovery.

4. Scaling Effect

The existence of a scaling effect—the fee percent decreases as class recovery increases—is central to justifying aggregate litigation such as class actions. Plaintiffs' ability to aggregate into classes that reduce the percentage of recovery devoted to fees should be a hallmark of a well-functioning class action system.[24] As Figure 5 shows, a substantial scaling effect existed

[24]Eisenberg & Miller, supra note 5.

Figure 5: Fee as a percent of recovery for two time periods.



SOURCES: Westlaw, LexisNexis, PACER.

in the 2003–2008 period, as well as in the earlier 1993–2002 period. The linear correlation coefficient for 2003–2008 was −0.57 and for 1993–2002 was −0.50, both statistically significant at $p < 0.0001$. The lines in the figure show the best-fitting regression line for each data subset.

Table 7 presents additional information about the scale effect. For purposes of this table, we divided the range of class recoveries into deciles of about 69 cases each. Table 7's first column shows the bounds on the deciles, starting with the lowest decile of class recoveries. Thus the table's first numerical row includes cases with class recoveries in the first decile, those recoveries less than or equal to $1.1 million. The table's last row includes cases in the highest decile, those with recoveries greater than $175.5 million. The table's columns show, within each decile range, the mean, median, and standard deviation of the fee percent for the row decile. Thus, for the 69 cases with class recoveries of less than $1.1 million, the mean fee percent award was 37.9 percent in 69 cases, the median fee percent award was 32.3 percent, and the standard deviation was 19.6 percent. Although there is some fluctuation in the scale effect trend across the middle deciles, the overall trend is clear, with the highest decile having less than one-third of the median and mean percentage fee of the lowest decile.

Table 7: Mean, Median, and Standard Deviation of Fee Percent, Controlling for Class Recovery Amount, 1993–2008

Range of Class Recovery (Millions) Decile	*Mean*	*Median*	SD	N
Recovery <= 1.1	37.9	32.3	19.6	69
Recovery > 1.1 <= 2.8	27.1	26.4	9.1	69
Recovery > 2.8 <= 5.3	26.4	25.0	9.8	69
Recovery > 5.3 <= 8.7	22.8	22.1	8.4	69
Recovery > 8.7 <= 14.3	23.8	25.0	8.1	69
Recovery > 14.3 <= 22.8	22.7	23.5	7.5	69
Recovery > 22.8 <= 38.3	22.1	24.9	8.7	68
Recovery > 38.3 <= 69.6	20.5	21.9	10.0	70
Recovery > 69.6 <= 175.5	19.4	19.9	8.4	69
Recovery > 175.5	12.0	10.2	7.9	68

SOURCES: Westlaw, LexisNexis, PACER.

Table 8: Fee Percent, by Risk Level

	High Risk		*Low/Medium Risk*	
	N	*Fee %*	N	*Fee %*
Antitrust	9	20.1	62	22.2
Civil rights	4	29.3	13	23.2
Consumer	14	31.3	110	24.7
Corporate	4	23.4	26	20.8
Employment	4	35.1	51	26.2
ERISA	5	24.6	38	23.2
Securities	45	26.4	217	22.7
Tax refund/tax	—	—	8	10.8
Tort	8	25.1	21	19.0
Other	13	22.1	29	23.9
Total	106	26.1	575	23.1

SOURCES: Westlaw, LexisNexis, PACER.

5. Risk

Standards applied to attorney fees uniformly indicate that greater risk warrants an increased fee.[25] Table 8 reports, by case category, the mean fee percent separately for high risk and other cases. It confirms that courts systematically reward risk. For every case category except antitrust and "other," mean fee percents were higher in high-risk cases than in other cases. The difference within a case category between high-risk cases and other cases

[25]E.g., Goldberger v. Integrated Res., Inc., 209 F.3d 43, 50 (2d Cir. 2000).

Table 9: Fee Percent and Settlement Classes, Opt Outs, Objectors

	Period 2003–2008	
	N	*Fee %*
A. Settlement Class Status		
Settlement class	208	24.4%
Not a settlement class	160	25.4%
B. Presence of Objectors		
Any objector	142	23.4%
No objector	123	28.6%
C. Number of Opt Outs		
No opt outs	28	34.6%
One opt out	20	37.2%
>One opt out	116	23.6%

Sources: Westlaw, LexisNexis, PACER.

was statistically significant only for the large securities category (t test significance level, $p = 0.006$).

6. Settlement Classes, Opt Outs, and Objectors

Table 9 reports the relation between the fee percent and three class action case characteristics: settlement class status (Panel A),[26] whether any objection was filed (Panel B), and the number of class members opting out of the class (Panel C). We collected useful data on these issues only for the later time period (2003–2008). No significant difference in fee percent for settlement class cases compared to nonsettlement class cases emerged. There were significant differences in the fee percent for cases with and without objectors. Cases with objectors tended to have lower fee percents than cases without objectors. Cases with more than one opting-out class member tended to have lower fee percents than cases with zero or one opting-out class member. But, in regression models that supplement those reported in Table 17, the objector and opt-out variables were found not to be significant once one controlled for recovery size.

IV. Bivariate Results: Fee Methods and Multipliers

The dominant method used to calculate fees in class actions has evolved from considering multiple factors[27] to the dominance of two other methods, the lodestar and percentage

[26]A settlement class is a case in which a class was certified for settlement purposes only.

[27]The factors include the time and labor required, the customary fee, whether the fee is fixed or contingent, the amount involved and the results obtained, the experience, reputation, and ability of the attorneys, awards in similar

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Table 10: Frequency of Method Used, by Time Period

	1993–2002		*2003–2008*	
	N	*% of Cases in Period*	N	*% of Cases in Period*
Lodestar	38	13.6	37	9.6
Percent	158	56.4	146	37.8
Both (usually % with LS check)	68	24.3	165	42.8
Other	16	5.7	38	9.8
Total	280	100	386	100

NOTE: LS = lodestar method.
SOURCES: Westlaw, LexisNexis, PACER.

methods. Under the lodestar method, courts multiply the reasonable number of hours expended by counsel by a reasonable hourly rate and then adjust the product for various factors.[28] Under the percentage method, the court multiplies the amount recovered on behalf of the class by a percentage factor. Some courts adopt a blended approach that checks the percentage method for reasonableness against a lodestar calculation.[29] We explore here the rates at which courts use the fee calculation methods, the relation between those methods and fees, the rates at which courts granted requested fees, and the use of multipliers in cases using the lodestar method.

A. Lodestar

1. Frequency of Use of Lodestar Versus Percent

Table 10 reports the rate of use of competing methods of computing a fee award. One result is the decline in the use of the lodestar method. From 1993 to 2002, 13.6 percent of cases used a pure lodestar method. From 2003 to 2008, only 9.6 percent of cases used the lodestar method, a notable but not statistically significant reduction ($p = 0.136$). This is likely due to the relatively few cases using the lodestar method exclusively.

Table 10 also suggests a reduction in use of the pure percent method, from 56.4 percent to 37.8 percent, but this understates the dominance of the percent method. For the 1993 to 2002 period, we coded which method was primary and which was used as a check. In non-fee-shifting cases in this period, 61 cases used the percent method with a lodestar

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cases, the nature and length of the professional relationship with the client, the time limitations imposed by the client or the circumstances, the preclusion of other employment by the attorney due to acceptance of the case, the novelty and difficulty of the questions, the skill needed to perform the legal services, and the "undesirability" of the case. The leading precedent outlining this multifactor approach is Johnson v. Georgia Highway Express, 488 F.2d 714, 717–19 (5th Cir. 1974).

[28]E.g., Gisbrecht v. Barnhart, 535 U.S. 789 (2002). See Charles Silver, Unloading the Lodestar: Toward a New Fee Award Procedure, 70 Tex. L. Rev. 865 (1992); Charles Silver, Due Process and the Lodestar Method: You Can't Get There from Here, 74 Tulane L. Rev. 1809 (2000).

[29]See notes 12–15 supra for circuit level case law addressing the fee method to be used.

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Figure 6: Pure lodestar use over time.

check compared with three cases that used the lodestar method with the percent method as a check. The 68 cases shown as using "both" methods in the earlier period included an additional four cases that used both methods without indicating which was dominant. So cases coded as using "both" methods were almost always percent method cases with a lodestar check. We used less detailed coding of the method in the second period. If a case used both methods, we simply coded it as "both." Nevertheless, it is reasonable to assume that the "both" cases in the second period are similar to those in the earlier period and are dominated by the percent method with the lodestar as a check. So our best estimate is that the percent method is the overwhelmingly dominant method of computing fees, either as the sole method or as the primary method with the lodestar as a check. Figure 6 shows the rate of pure lodestar use over time, with a separate line for the large subset of securities class actions. Figure 1's strong linear correlation between fee and recovery supports this assessment as a lodestar-dominated system would likely show a less strong association between fee and class recovery.

Table 11 limits the sample to federal cases and shows the fee method used broken down by circuit. As suggested by Table 10, the use of the percent method, combined with the use of the percent method with a lodestar check, dominates. Table 11 shows that this is the pattern in every circuit, regardless of formal fee method doctrine. The lodestar method peaks at 21 percent of cases in the Sixth Circuit and only the Second Circuit combines nontrivial lodestar use with a substantial number of cases. The table slightly overstates the more recent federal rate of lodestar use, which totaled only 9 percent in cases from 2003 to 2008.

Table 11: Fee Method by Circuit, Federal Cases, 1993–2008

	Lodestar		*Percent*		*Both*		*Other*		*Total*	
Circuit	%	N	%	N	%	N	%	N	%	N
1st	5	1	60	12	35	7	0	0	100	20
2nd	19	26	37	51	40	55	5	7	100	139
3rd	5	6	37	43	56	65	3	3	100	117
4th	13	1	50	4	38	3	0	0	100	8
5th	20	5	40	10	36	9	4	1	100	25
6th	21	8	62	24	13	5	5	2	100	39
7th	10	4	61	25	17	7	12	5	100	41
8th	0	0	59	17	34	10	7	2	100	29
9th	9	9	48	48	30	30	13	13	100	100
10th	9	2	41	9	45	10	5	1	100	22
11th	3	1	52	17	36	12	9	3	100	33
D.C.	0	0	50	10	35	7	15	3	100	20
Federal Circuit	0	0	100	3	0	0	0	0	100	3
Total	11	63	46	273	37	220	7	40	100	596

SOURCES: Westlaw, LexisNexis, PACER.

Table 12: Fee Percent by Method Used, by Time Period

	1993–2002		*2003–2008*	
	N	*Mean Fee % of Recovery*	N	*Mean Fee % of Recovery*
Lodestar	38	17.2	37	31.6
Percent	158	23.4	146	25.3
Both (usually % with LS check)	68	22.9	165	21.9
Other	16	11.4	38	28.7
Total	280	21.7	386	24.8

NOTE: LS = lodestar method.

SOURCES: Westlaw, LexisNexis, PACER.

2. Is Use of the Lodestar Method Associated with Lower Fee Awards?

Table 12 explores the relation between fee method and fee percent. Although the table's first row suggests a substantial increase in fee percents in lodestar cases over time, the higher fee percents in recent lodestar cases are an artifact of case category. Consumer cases comprise 37 percent of the lodestar category and the difference between percent and lodestar methods vanishes if one excludes consumer cases. The consumer case category percent of cases changed for the two periods in our sample. Consumer cases were 59.5 percent of the lodestar cases in the later period compared to 15.8 percent of the lodestar cases in the earlier period. The lodestar method was used at a higher rate, 23.0 percent, in consumer cases than in any case category other than the small tax category. These high-percent consumer cases (see Table 8) are the source of the change in mean lodestar fee percents over time. The increased prominence of consumer cases in the later period

sample is likely attributable to our including as common fund cases those in which a fee-shifting statute was theoretically available but was not in fact used. In regression models, reported below (see Table 18), the percent and "both" fee methods have positive and statistically significant coefficients compared to the lodestar method once case category is controlled for.

For the period 2003 to 2008, we coded the hours worked by attorneys in cases with opinions reporting that information. The lower lodestar awards appear to be a consequence of fewer hours worked, or at least fewer hours claimed in court filings. Fewer hours were worked, on average, in lodestar method cases than in other cases and fewer hours were worked in consumer cases than in any other case category. As in regressions of the fee amount, regression of hours worked that controlled for fee method, case category, and circuit yielded coefficients for the percent and "both" method dummy variables that are statistically significant and positive compared to lodestar cases.

B. Fee Grant Rates

Fee requests were generally granted in the amount requested, with 72.5 percent of requests granted in full, as shown in Table 13's last row (Panel A). Our data for the rate of grants is limited to the 2003 to 2008 period because requested amounts were not recorded for the earlier time period. Table 13 shows that strong intercircuit differences ($p = 0.012$, excluding the two Federal Circuit cases) in the grant rate existed, with the Second Circuit granting the requested amount statistically significantly less often than the Third Circuit or the Ninth Circuit. These intercircuit differences remain significant in logistic regression models that control for case category and recovery amount, and in models that exclude securities cases. The table also shows that state courts tended to grant award requests at a lower rate than federal courts. The difference between federal and state grant rates was only statistically significant at $p = 0.148$.

Fee requests were not granted in full in 100 of 363 cases. In those cases, the mean fee grant was 68 percent of the request and the median was 74 percent. The mean grant of 61 percent in state court cases was lower than the 69 percent in federal court cases and the median of 66 percent in state court cases was also lower than the median of 75 percent in federal court cases. However, only nine of the 100 cases with less than full grants were state court cases.

Table 13, Panel B, shows the rate at which requested fees were granted in relation to the range of class of recovery, using the same decile ranges as Table 7. It shows a declining grant rate as the class recovery increases. The grant rate for the lowest recovery decile was 83 percent compared to 56 percent for the highest recovery decile. We interpret this as indicating that judges tend to scrutinize fee requests in large cases more closely than they do for smaller cases. Panel C shows the grant rate in relation to the percent of class recovery requested as fees. Instead of using class recovery deciles, it uses deciles of the percent of recovery requested, which range from the lowest decile of requests up to 11.8 percent of the recovery to the highest decile of requests over 35.7 percent. It shows a trend of decreasing grant rates as the percent of the recovery requested increased. Attorneys requesting the lowest percents received requested amounts

Table 13: Rates at Which Requested Fees Were Given, 2003–2008

A. By Locale

Locale	*Proportion of Fee Requests Granted in the Amount Requested*	N
1st	0.70	10
2nd	0.54	74
3rd	0.83	64
4th	0.60	5
5th	0.69	13
6th	0.79	24
7th	0.79	14
8th	0.83	18
9th	0.83	72
10th	0.77	13
11th	0.64	22
D.C.	0.80	10
Federal Circuit	0.50	2
State court	0.59	22
Total	0.72	363

B. By Range of Class Recovery (Millions)

Range of Class Recovery (Millions) Decile	*Rate Granted*	N
Recovery <= 1.1	0.83	52
Recovery > 1.1 <= 2.8	0.75	36
Recovery > 2.8 <= 5.3	0.82	38
Recovery > 5.3 <= 8.7	0.67	33
Recovery > 8.7 <= 14.3	0.77	35
Recovery > 14.3 <= 22.8	0.68	34
Recovery > 22.8 <= 38.3	0.76	33
Recovery > 38.3 <= 69.6	0.68	34
Recovery > 69.6 <= 175.5	0.67	36
Recovery > 175.5	0.56	32

C. By Range of Class Recovery Percent Requested Decile

	Rate Granted	N
Percent of recovery requested <= 11.8%	0.81	36
Percent of recovery requested > 11.8% <= 17.8%	0.86	36
Percent of recovery requested > 17.8% <= 21.9%	0.62	37
Percent of recovery requested > 21.9% <= 25%	0.76	75
Percent of recovery requested > 25.0% <= 30.0%	0.72	72
Percent of recovery requested > 30.0% <= 33.3%	0.71	35
Percent of recovery requested > 33.3% <= 35.7%	0.67	36
Percent of recovery requested > 35.7%	0.61	36

NOTE: In Panel C, the number of observations in the fourth and fifth rows reflects the bunching of fee requests at 25 percent and 30 percent. They each occupy approximately two deciles of fee requests.

SOURCES: Westlaw, LexisNexis, PACER.

Table 14: Mean Multiplier by Circuit and Case Category

	Mean Multiplier	N
A. Circuit		
1st	2.10	15
2nd	1.58	97
3rd	2.01	87
4th	2.43	7
5th	2.07	15
6th	1.97	22
7th	1.85	16
8th	2.30	14
9th	1.54	50
10th	1.91	14
11th	1.19	19
D.C.	2.23	11
Federal	1.54	1
Total	1.81	368
B. Case Category		
Antitrust	2.24	38
Civil rights	1.99	11
Consumer	1.82	60
Corporate	1.94	7
Employment	1.24	21
ERISA	1.58	29
Securities	1.75	177
Tort	1.83	11
Other	2.35	14
Total	1.81	368

SOURCES: Westlaw, LexisNexis, PACER.

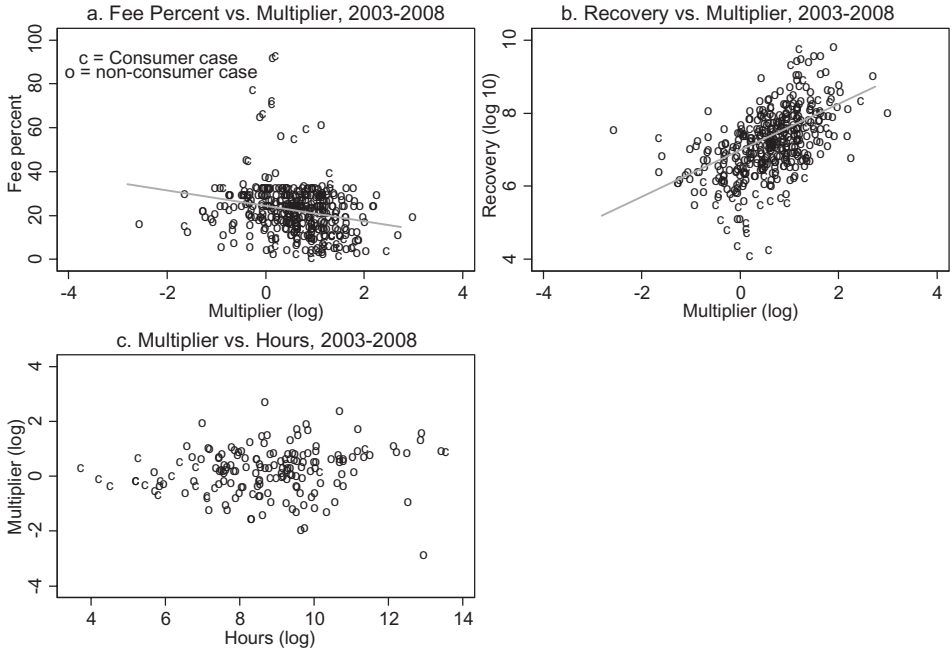
in 81 percent of cases compared to 61 percent for attorneys requesting the highest percents. This result suggests that attorneys who make more modest fee requests have a greater chance of having their requests granted.

We explored the effects of the class recovery amount, percent of recovery requested, circuit, and type of case in logistic regression models in which whether the requested fee was granted was a dichotomous dependent variable. The class recovery amount and the percent of recovery requested were highly statistically significant (each $p < 0.001$), the circuit dummy variables were jointly significant at $p = 0.005$, and the case type dummy variables were not statistically significant ($p = 0.262$).

C. Multipliers

Courts often check the percentage-based attorney fee against the lodestar award. If the percentage fee grossly exceeds the lodestar amount, the fee may be deemed excessive, and the courts can adjust the fee downward to a more reasonable range. Table 14 reports, for

Figure 7: Relation between multipliers and fee percent, recovery, and hours, 2003–2008.



Sources: Westlaw, LexisNexis, PACER.

federal cases, the mean multiplier applied by circuit and by case category. The sample is limited to those cases that reported a multiplier that was not equal to 1.

The mean multiplier ranged from 1.19 in the Eleventh Circuit to 2.43 in the Fourth Circuit. Across case categories, the mean multiplier ranged from 2.35 in "other" to 1.24 in employment cases. But, in regression models of the multiplier (log) as a function of circuits and case categories, neither the dummy variables for circuits nor for case categories were collectively significant. We therefore cannot reject the hypotheses that multipliers are similar across circuits and case categories.

We do, however, find significantly different multipliers used in cases in which fee-shifting statutes were available and cases in which they were not. With no statute in the background, multipliers averaged 1.96 in 161 cases with necessary data. If a fee-shifting statute was available, multipliers averaged 1.38 in 66 cases. The difference in medians was significant at $p = 0.021$.

Figure 7 shows the relation between the fee outcomes, class recovery amount, and multipliers (Figures 7a and 7b), and between multiplier and hours reported (Figure 7c).

Since a suspected fee windfall is most likely to occur when the percentage method would yield what is perceived to be too high a fee, we expect the multiplier to tend to bring high percentage fee cases into a more moderate range. We therefore predicted and found, in our prior study, a strong negative correlation between the lodestar multiplier (fee award

Table 15: Mean, Median, and Standard Deviation of Multiplier, Controlling for Class Recovery Amount, 1993–2008

Range of Class Recovery (Millions) Decile	*Mean*	*Median*	SD	N
Recovery <= 1.1	0.88	0.74	0.45	33
Recovery > 1.1 <= 2.8	0.95	0.77	0.67	40
Recovery > 2.8 <= 5.3	1.44	1.25	0.74	32
Recovery > 5.3 <= 8.7	1.59	1.25	1.32	34
Recovery > 8.7 <= 14.3	1.49	1.45	0.87	37
Recovery > 14.3 <= 22.8	1.68	1.51	0.85	38
Recovery > 22.8 <= 38.3	1.83	1.44	1.44	33
Recovery > 38.3 <= 69.6	1.98	1.75	1.00	38
Recovery > 69.6 <= 175.5	2.70	2.09	2.43	43
Recovery > 175.5	3.18	2.60	1.99	40

SOURCES: Westlaw, LexisNexis, PACER.

divided by the lodestar) and the percentage fee awarded.[30] A similar relation exists for 2003–2008, as shown in Figure 7a.

Higher multipliers should, in general, lead to higher recoveries, a result shown in Figure 7b. Increased multipliers do not appear to be being used a reward for hours worked. Figure 7c shows no clear positive association between mutlipliers and hours.

Table 15 presents more detailed information about the relation between class recovery and multipliers. It uses the recovery deciles reported in Table 7, but Table 15 includes fewer observations because the sample is limited to cases with multipliers not equal to 1. The table reports the mean, median, and standard deviation for each recovery decile. The pattern for the mean and median multiplier confirms that suggested by Figure 7b. As the recovery decile increases, the multiplier also tends to increase, with the multiplier in the highest recovery decile more than triple that of the multiplier in the lowest recovery decile.

V. Costs and Expenses

Costs and expenses (collectively "costs") tended to be a small percentage of the class recovery and have remained a fairly constant percentage over time. For the 232 cases from 1993 to 2002 for which cost data were available, mean costs were 2.8 percent of the recovery and median costs were 1.7 percent. For the 304 cases with necessary data from 2003 to 2008, mean costs were 2.7 percent of the recovery and median costs remained at 1.7 percent. As before, we found no evidence that the cost percent increased over time.[31]

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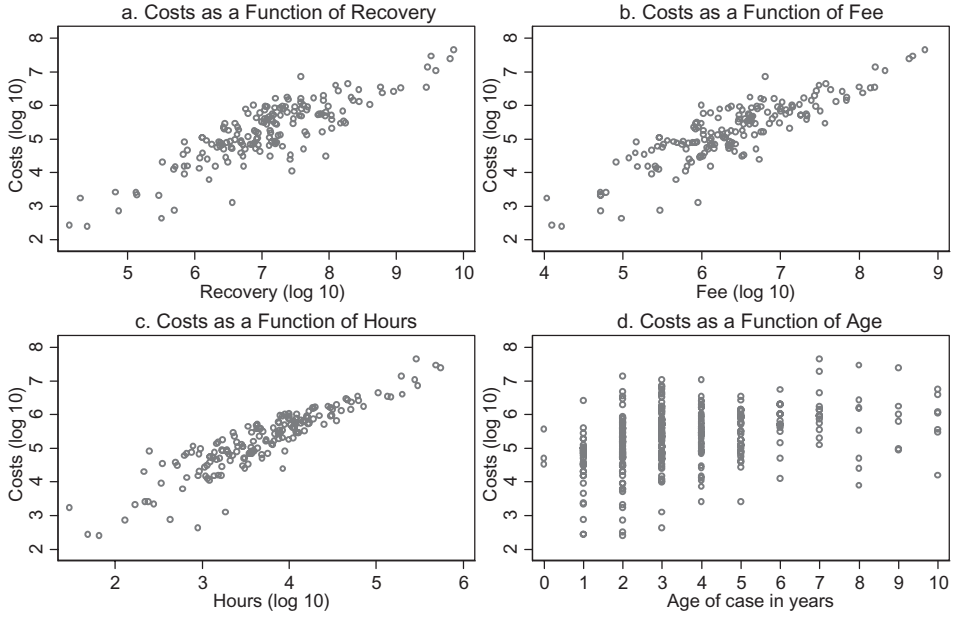
[30]Eisenberg & Miller, supra note 5.

[31]Id.

Figure 8: Costs as a function of recovery, fees, hours, and age, non-fee-shifting cases, 2003–2008.



NOTE: Cases with age greater than 10 years old are coded as 10 years old.
SOURCES: Westlaw, LexisNexis, PACER.

We further explored costs as a function of four variables: (1) the class recovery, (2) the fee, (3) the hours reported in the court's opinion, and (4) the age of the case in years. We only coded hours billed and case age beginning with the 2003 to 2008 data. Figure 8 shows the relation between costs and the four factors and limits the sample to cases in which hours were reported in opinions and costs were at least $100. All four factors are positively associated with costs. The figure also suggests that the strongest association is between costs and hours.

Table 16 shows the correlation coefficients between costs and the four factors in Figure 8. The first four numerical columns cover the period 2003–2008, for which hours data were recorded. The last two numerical columns show the correlation between costs and fee and recovery for the period 1993–2002. The correlations between costs and recovery and fee for either period do not reach the strength of association of hours and costs in the later period. The weaker correlation between costs and age may be in part a function of age being coded only in whole years and therefore providing a less continuous measure of that factor.

A regression model, not reported here, of costs as a percent of recovery controls for case category and other factors. It shows that costs, like fees, have a scale effect: their percent of recovery significantly declines as the size of the recovery increases. The cost

Table 16: Correlations Between Costs and Four Factors

	Fee (Log10)	*Recovery (Log10)*	*Hours (Log)*	*Age in Years*	*Fee (Log10)*	*Recovery (Log10)*
	Period = 2003–2008				*Period = 1993–2002*	
Correlation Coeff.	0.86	0.85	0.91	0.34	0.77	0.71
Significance	<0.0001	<0.0001	<0.0001	<0.0001	<0.0001	<0.0001
N	167	167	167	167	232	232

Sources: Westlaw, LexisNexis, PACER.

percent significantly increases with hours. In a model with both case age and hours as explanatory variables, only hours were statistically significant.

VI. Multivariate Results

Some of the above results are so strong and robust that no further analysis is needed to support their credibility. The strong correlation between fees and class recovery and the scale effect survive any reasonable analysis, are reasonably represented by Figures 1 and 5, and are confirmed in regression models reported below. Other key results consist of factors associated with the level of the fee award. These include:

1. The tendency of state courts to award a lower percent of recovery as a fee,
2. The relation between case category and fee percent,
3. The tendency of high-risk cases to receive a higher percent of the class recovery as a fee, and
4. The tendency of lodestar awards in non-fee-shifting cases to be lower than percent-method awards.

This section first explores the robustness of these results to simultaneous control for recovery level and then reports regression models.

A. The Relation Between the Fee Award and State Court Status, Risk, and the Lodestar Method

As Figure 1 and our earlier work suggest, for most explanatory variables, the size of the class recovery is the most important potential confounding factor in assessing the relation between other covariates and the fee award. From Figures 1 and 5, we know that: (1) the fee award increased with class recovery, and (2) the fee award was a declining percent of the class recovery as the class recovery increased. Regression models assessing nonrecovery covariates thus require both a dummy variable for the covariate, and an interaction term between the covariate and the class recovery. That is, the covariate may influence both the intercept and the slope of the line representing the relation between the covariate and the fee award. The use of class recovery, a dummy covariate, and an interaction term raises problems of multicollinearity in the regression model, which preliminary analysis confirmed. The problems arose even when a single covariate and interaction term were

Table 17: Influence of Locale, Risk, and Lodestar Method on Percent Fee Award, Controlling for Class Recovery Amount, 1993–2008

	Federal-State		*Risk*		*Lodestar*	
Range of Class Recovery (Millions) Decile	*Federal Case*	*State Case*	*Low-/Medium-Risk Case*	*High-Risk Case*	*Other Methods*	*Pure Lodestar*
Recovery <= 1.1	38.7	27.2	37.1	48.4	32.3	58.0
N	64	5	64	5	53	15
Recovery > 1.1 <= 2.8	26.8	30.4	26.7	29.5	26.6	33.4
N	63	6	60	9	64	5
Recovery > 2.8 <= 5.3	27.0	23.2	26.0	29.3	26.8	17.9
N	58	11	61	8	65	2
Recovery > 5.3 <= 8.7	22.7	23.2	21.8	26.8	23.3	20.5
N	61	8	55	14	54	9
Recovery > 8.7 <= 14.3	24.1	21.4	23.3	26.8	24.8	19.0
N	61	8	58	11	56	11
Recovery > 14.3 <= 22.8	23.3	15.6	22.7	23.0	23.3	16.3
N	62	6	63	6	61	6
Recovery > 22.8 <= 38.3	22.3	20.8	20.9	29.2	24.0	11.7
N	58	10	58	10	53	11
Recovery > 38.3 <= 69.6	21.2	15.7	19.9	24.6	21.6	9.8
N	61	9	62	8	61	7
Recovery > 69.6 <= 175.5	19.6	16.0	17.3	24.7	20.0	10.0
N	64	5	50	19	62	4
Recovery > 175.5	12.6	6.5	10.6	16.5	12.7	4.3
N	61	7	52	16	62	5

SOURCES: Westlaw, LexisNexis, PACER.

included in regression models, and were magnified when multiple covariates and interaction terms were used. Rather than simply report possibly questionable regression models, we first used a simpler technique to explore the possible influence of certain covariates on the fee award while simultaneously accounting for the class recovery.

Table 17 expands on Section III's tables by reporting in more detail, for non-fee-shifting cases, the relation between the fee awarded and three key covariates—state court status, risk, and use of the lodestar method—while controlling for the size of the class recovery. As was done for Tables 7, 13, and 15, we divided the range of class recoveries into deciles. Table 17's first column shows the bounds on the deciles, starting with the lowest decile of class recoveries. Each decile's statistics are reported in two rows; the first shows the fee percent and the second row shows the number of cases included in the fee percent calculation. Thus the table's first two numerical rows include cases with class recoveries in the first decile, those recoveries less than or equal to $1.1 million. The table's last two rows include cases in the highest decile, those with recoveries greater than $175.5 million. The table's second and third columns show, within each decile range, the mean fee percent award and the number of cases, divided by federal court versus state court status. Thus, for the 69 cases with class recoveries of less than $1.1 million, the mean federal case fee percent award was 38.7 percent in 64 cases and the mean state case fee percent award was 27.2

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percent in five cases. The table's fourth and fifth columns show the same information, but now divided by high-risk case status versus low-/medium-risk case status. The table's sixth and seventh columns show the same information divided by use of the pure lodestar method versus use of all other methods.

With respect to federal versus state court status, the mean state case fee percent is lower than the mean federal percent for every recovery decile except the second and fourth. Thus, after controlling for class recovery size, state courts tend to award lower fees than federal courts but not overwhelmingly so. The pattern is even more consistent with respect to risk. For every recovery decile, the fee percent is higher in high-risk cases than in low-/medium-risk cases. The lodestar effect follows the same trend, with every class recovery decile except the lowest two showing a lower fee percent in pure lodestar cases than in other cases. In the low recovery deciles, of course, the lodestar method can compensate attorneys for substantial efforts that a percent fee award may not fully reflect. Section III's results for these three covariates therefore survive analysis that controls for the key potential confounder, the class recovery size.

B. Regression Models

Table 18 reports ordinary least squares regression models that confirm our core results. Model 1 shows that over 90 percent of the variance in the fee is explained by the size of the

Table 18: Regression Models of Fees

	1	*2*	*3*	*4*	*5*
	Dependent Variable = Fee (Log10)				
Gross recovery (log10)	0.850	0.850	0.846	0.833	0.827
	(74.37)**	(73.79)**	(73.32)**	(62.21)**	(61.35)**
State court case		−0.088	−0.083	−0.040	0.003
		(8.25)**	(8.15)**	(3.13)**	(0.15)
High-risk case			0.111	0.102	0.098
			(7.16)**	(6.06)**	(5.06)**
Lodestar = reference category					
Percent method				0.188	0.169
				(4.76)**	(4.22)**
Both methods				0.181	0.158
				(4.82)**	(4.15)**
Other methods				0.032	0.028
				(0.62)	(0.51)
Constant	0.374	0.382	0.395	0.331	0.440
	(4.91)**	(4.69)**	(4.92)**	(3.28)**	(3.64)**
Case category dummies	No	No	No	No	Yes
Observations	689	688	681	663	663
R^2	0.92	0.92	0.92	0.93	0.93

NOTES: Robust *t* statistics in parentheses; *significant at 5 percent; **significant at 1 percent; standard errors are clustered by locale.

SOURCES: Westlaw, LexisNexis, PACER.

recovery. None of the other models add materially to the explanatory power of this simple model. Nevertheless, it is noteworthy that the model with the largest set of explanatory variables, Model 5, shows no statistically significant difference between state and federal courts. The models also consistently confirm that fee methods other than the pure lodestar method tend to have higher fees. The models confirm the association between greater risk and increased fees.[32] In Model 5, a test of the hypothesis that the case category dummy variables are jointly equal to zero can be rejected at $p = 0.0003$. Their significance persists if one omits the two small cases categories, civil rights and tax, but the significance level increases to $p = 0.012$. The significance of the results in Table 18 persists if one limits the sample to the 106 cases with recoveries of $100 million or more but the sizes of the coefficients do change. The percent of variance explained then ranges from 72 percent to 77 percent, depending on the model.

We also tested whether the use of a lodestar "cross-check" generated a different pattern of fees than when fees were calculated according to the percentage method alone. A regression analysis not reported here does not find any statistically significant difference between fees calculated by the percentage method alone and those calculated by the percentage method with the lodestar cross-check. This result may raise questions about the utility of the lodestar cross-check, which can involve a time-consuming analysis of the reasonableness of the attorneys' hours and hourly rates.

VII. Discussion

The data support several major conclusions.

Strength of Relation and Dominance of Method. The percentage fee method is overwhelmingly the method used by courts in awarding fees in class actions. It is so widely used and so consistently employed that other information about cases adds little explanatory power to study of the fee award. The amount of the class recovery dwarfs all other effects. Even in circuits that eschew the percentage method, it appears to be the dominant de facto method used and best explains the pattern of awards. The consistent pattern may help attorneys to calibrate their fee requests and lead to courts usually approving the requested fee amount.

Scale Effect and Aggregate Litigation. The pattern of class action awards continues to exhibit a strong scale effect. Attorneys receive a smaller proportion of the recovery as the size of the recovery increases. Aggregation of claims thus appears to have produced the kind of efficiency hoped for. This characteristic of aggregate litigation should be considered when evaluating devices designed to preclude or discourage aggregate litigation or arbitration, such as prohibitions on class arbitration.[33]

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[32]Multilevel models, using random intercepts for locale and case category, do not yield materially different results.

[33]For a study suggesting possible efforts to discourage aggregate litigation, see Theodore Eisenberg, Geoffrey P. Miller & Emily Sherwin, Mandatory Arbitration for Customers But Not for Peers: A Study of Arbitration Clauses in Consumer

The Scope and Nature of Our Sample. Some perspective on the scope of our sample relative to the universe of class action cases comes from a study of class actions against insurers from 1993 through 2002. The RAND Institute for Civil Justice surveyed 269 property and casualty insurers and 207 life and health insurers, received responses from 205 companies, and obtained usable information from 199 insurers.[34] Of 564 attempted class actions, 12 percent led to a class settlement.[35] In 32 cases, the respondents provided information about the aggregate pool of funds offered to settle the case and its associated expenses. The amounts ranged from $360,000 to $150 million, with a mean fund size of $12.8 million and a median size of $2.6 million. Almost two-thirds of the cases, 62.5 percent, resulted in a common fund of less than $5 million.[36] In 48 cases, the respondents supplied information about the award to class counsel for fees and expenses. Fees and expenses ranged from $50,000 to $50,000,000, with a mean of $3.4 million and a median of $554,000.[37] The overall median fee and expense ratio from the pooled data was thus about 21 percent ($554,000 divided by $2.6 million). This compares to a pooled median fee of $2.33 million and median gross recovery of $12.5 million in our sample, as shown in Table 3, which yields a pooled ratio of 19 percent. The scaling effect, combined with our higher median gross recovery, probably helps explain the lower ratio in our sample of cases.

Aside from the RAND study's similar findings about fee levels, the study shows the small fraction of class action filings that lead to information about fees, even in the absence of being limited to available opinions. In the RAND data, 564 purported class actions led to 78 certified classes and 32 cases with available fee information. Thus, less than 15 percent of purported class actions were certified and about 6 percent led to usable fee information. If the same proportions are assumed to apply more broadly, then our 689 fee cases can be thought of as representing over 12,000 purported class action filings.

Federal-State Differences. Despite claims that CAFA was needed to redress differences in state and federal court processing of class actions, our data provide little evidence of federal-state differences. The fee per amount recovered did not systematically differ between federal and state courts, as shown in Table 17. Table 13 shows that state courts were, if anything, less likely than federal courts to grant the requested fee amount.

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and Non-Consumer Contracts, 92 Judicature 118 (Nov.–Dec. 2008); Theodore Eisenberg, Geoffrey P. Miller & Emily Sherwin, Arbitration's Summer Soldiers: An Empirical Study of Arbitration Clauses in Consumer and Nonconsumer Contracts, U. Mich J.L. Reform 871 (2008), reprinted in 4 ICFAI U.J. of Alternative Disp. Resol. 51 (2008).

[34]Nicholas M. Pace, Stephen J. Carroll, Ingo Vogelsang & Laura Zakaras, Insurance Class Actions in the United States 9–10 (2007).

[35]Id. at 47 (tbl. 3.16).

[36]Id. at 54.

[37]Id. at 55.

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The absence of pro-class bias in state courts is consistent with sources cited above[38] and with additional research. In the RAND insurance study, of 564 attempted class actions, 12 percent led to a class settlement, with 12 percent of the 465 state court cases and 15 percent of the 98 federal court cases settling.[39] The modal outcome of a pretrial ruling for the defense did not significantly differ between federal and state courts.[40] The settlement rate for the cases with certified classes did not statistically significantly differ between federal and state courts.[41]

Thus, available evidence about comparative state-federal judicial performance in class actions consistently suggests no strong differences.

VIII. Conclusion

Over the course of 16 years, attorney fees in class action cases have displayed a strikingly strong linear relation to class recoveries. Significant associations also exist between the fee amount and both the fee method and the riskiness of the case. Despite CAFA's premise of differences between federal and state court treatment of class actions, our findings add to a growing body of evidence that little hard data support claims of significant state-federal differences. Core results persisted in mega-cases, those with recoveries of $100 million or more, in cases with settlement classes, and in cases with and without objectors and opt outs. Fees and costs decline as a percent of the recovery as the recovery amount increases, suggesting the efficiency of this form of aggregate litigation. In this data set that likely includes the most significant class action decisions, those that lead to an available opinion, neither fees nor recoveries materially increased over time.

We hope that the information contained in this study can be of use to courts charged with the important and sometimes daunting task of setting counsel fees in class action and derivative cases.

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[38]Text accompanying notes 18–22 supra.

[39]Pace et al., supra note 34, at 47 (tbl. 3.16).

[40]Id.

[41]Id. at 48 (tbl. 3.17). The study did not distinguish between orders certifying the case for a class trial, those certifying for settlement purposes only, and those certifying on a provisional basis only. Id. at 17. Neil Marchand reports that plaintiffs' preferences for state or federal court in Michigan class actions vary depending on the governing substantive law, with preference for state courts in cases governed by state substantive law and preference for federal courts in cases governed by federal substantive law. Neil J. Marchand, Class Action Activity in Michigan's State and Federal Courts, available at <http://ssrn.com/abstract=1334923>.

Exhibit 17

Brian T. Fitzpatrick,
***An Empirical Study of Class Action Settlements and Their Fee Awards*,**
7 J. EMPIRICAL LEGAL STUDIES 811 (2010)

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An Empirical Study of Class Action Settlements and Their Fee Awards

*Brian T. Fitzpatrick**

This article is a comprehensive empirical study of class action settlements in federal court. Although there have been prior empirical studies of federal class action settlements, these studies have either been confined to securities cases or have been based on samples of cases that were not intended to be representative of the whole (such as those settlements approved in published opinions). By contrast, in this article, I attempt to study every federal class action settlement from the years 2006 and 2007. As far as I am aware, this study is the first attempt to collect a complete set of federal class action settlements for any given year. I find that district court judges approved 688 class action settlements over this two-year period, involving nearly $33 billion. Of this $33 billion, roughly $5 billion was awarded to class action lawyers, or about 15 percent of the total. Most judges chose to award fees by using the highly discretionary percentage-of-the-settlement method, and the fees awarded according to this method varied over a broad range, with a mean and median around 25 percent. Fee percentages were strongly and inversely associated with the size of the settlement. The age of the case at settlement was positively associated with fee percentages. There was some variation in fee percentages depending on the subject matter of the litigation and the geographic circuit in which the district court was located, with lower percentages in securities cases and in settlements from the Second and Ninth Circuits. There was no evidence that fee percentages were associated with whether the class action was certified as a settlement class or with the political affiliation of the judge who made the award.

I. Introduction

Class actions have been the source of great controversy in the United States. Corporations fear them.[1] Policymakers have tried to corral them.[2] Commentators and scholars have

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[1]See, e.g., Robert W. Wood, Defining Employees and Independent Contractors, Bus. L. Today 45, 48 (May–June 2008).

[2]See Private Securities Litigation Reform Act (PSLRA) of 1995, Pub. L. No. 104-67, 109 Stat. 737 (codified as amended in scattered sections of 15 U.S.C.); Class Action Fairness Act of 2005, 28 U.S.C. §§ 1453, 1711–1715 (2006).

suggested countless ways to reform them.[3] Despite all the attention showered on class actions, and despite the excellent empirical work on class actions to date, the data that currently exist on how the class action system operates in the United States are limited. We do not know, for example, how much money changes hands in class action litigation every year. We do not know how much of this money goes to class action lawyers rather than class members. Indeed, we do not even know how many class action cases are resolved on an annual basis. To intelligently assess our class action system as well as whether and how it should be reformed, answers to all these questions are important. Answers to these questions are equally important to policymakers in other countries who are currently thinking about adopting U.S.-style class action devices.[4]

This article tries to answer these and other questions by reporting the results of an empirical study that attempted to gather all class action settlements approved by federal judges over a recent two-year period, 2006 and 2007. I use class action settlements as the basis of the study because, even more so than individual litigation, virtually all cases certified as class actions and not dismissed before trial end in settlement.[5] I use federal settlements as the basis of the study for practical reasons: it was easier to identify and collect settlements approved by federal judges than those approved by state judges. Systematic study of class action settlements in state courts must await further study;[6] these future studies are important because there may be more class action settlements in state courts than there are in federal court.[7]

This article attempts to make three contributions to the existing empirical literature on class action settlements. First, virtually all the prior empirical studies of federal class action settlements have either been confined to securities cases or have been based on samples of cases that were not intended to be representative of the whole (such as those settlements approved in published opinions). In this article, by contrast, I attempt to collect every federal class action settlement from the years 2006 and 2007. As far as I am aware, this study is the first to attempt to collect a complete set of federal class action settlements for

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[3]See, e.g., Robert G. Bone, Agreeing to Fair Process: The Problem with Contractarian Theories of Procedural Fairness, 83 B.U.L. Rev. 485, 490–94 (2003); Allan Erbsen, From "Predominance" to "Resolvability": A New Approach to Regulating Class Actions, 58 Vand. L. Rev. 995, 1080–81 (2005).

[4]See, e.g., Samuel Issacharoff & Geoffrey Miller, Will Aggregate Litigation Come to Europe?, 62 Vand. L. Rev. 179 (2009).

[5]See, e.g., Emery Lee & Thomas E. Willing, Impact of the Class Action Fairness Act on the Federal Courts: Preliminary Findings from Phase Two's Pre-CAFA Sample of Diversity Class Actions 11 (Federal Judicial Center 2008); Tom Baker & Sean J. Griffith, How the Merits Matter: D&O Insurance and Securities Settlements, 157 U. Pa. L. Rev. 755 (2009).

[6]Empirical scholars have begun to study state court class actions in certain subject areas and in certain states. See, e.g., Robert B. Thompson & Randall S. Thomas, The Public and Private Faces of Derivative Suits, 57 Vand. L. Rev. 1747 (2004); Robert B. Thompson & Randall S. Thomas, The New Look of Shareholder Litigation: Acquisition-Oriented Class Actions, 57 Vand. L. Rev. 133 (2004); Findings of the Study of California Class Action Litigation (Administrative Office of the Courts) (First Interim Report, 2009).

[7]See Deborah R. Hensler et al., Class Action Dilemmas: Pursuing Public Goals for Private Gain 56 (2000).

any given year.[8] As such, this article allows us to see for the first time a complete picture of the cases that are settled in federal court. This includes aggregate annual statistics, such as how many class actions are settled every year, how much money is approved every year in these settlements, and how much of that money class action lawyers reap every year. It also includes how these settlements are distributed geographically as well as by litigation area, what sort of relief was provided in the settlements, how long the class actions took to reach settlement, and an analysis of what factors were associated with the fees awarded to class counsel by district court judges.

Second, because this article analyzes settlements that were approved in both published and unpublished opinions, it allows us to assess how well the few prior studies that looked beyond securities cases but relied only on published opinions capture the complete picture of class action settlements. To the extent these prior studies adequately capture the complete picture, it may be less imperative for courts, policymakers, and empirical scholars to spend the considerable resources needed to collect unpublished opinions in order to make sound decisions about how to design our class action system.

Third, this article studies factors that may influence district court judges when they award fees to class counsel that have not been studied before. For example, in light of the discretion district court judges have been delegated over fees under Rule 23, as well as the salience the issue of class action litigation has assumed in national politics, realist theories of judicial behavior would predict that Republican judges would award smaller fee percentages than Democratic judges. I study whether the political beliefs of district court judges are associated with the fees they award and, in doing so, contribute to the literature that attempts to assess the extent to which these beliefs influence the decisions of not just appellate judges, but trial judges as well. Moreover, the article contributes to the small but growing literature examining whether the ideological influences found in published judicial decisions persist when unpublished decisions are examined as well.

In Section II of this article, I briefly survey the existing empirical studies of class action settlements. In Section III, I describe the methodology I used to collect the 2006–2007 federal class action settlements and I report my findings regarding these settlements. District court judges approved 688 class action settlements over this two-year period, involving over $33 billion. I report a number of descriptive statistics for these settlements, including the number of plaintiff versus defendant classes, the distribution of settlements by subject matter, the age of the case at settlement, the geographic distribution of settlements, the number of settlement classes, the distribution of relief across settlements, and various statistics on the amount of money involved in the settlements. It should be noted that despite the fact that the few prior studies that looked beyond securities settlements appeared to oversample larger settlements, much of the analysis set forth in this article is consistent with these prior studies. This suggests that scholars may not need to sample unpublished as well as published opinions in order to paint an adequate picture of class action settlements.

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[8]Of course, I cannot be certain that I found every one of the class actions that settled in federal court over this period. Nonetheless, I am confident that if I did not find some, the number I did not find is small and would not contribute meaningfully to the data reported in this article.

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In Section IV, I perform an analysis of the fees judges awarded to class action lawyers in the 2006–2007 settlements. All told, judges awarded nearly $5 billion over this two-year period in fees and expenses to class action lawyers, or about 15 percent of the total amount of the settlements. Most federal judges chose to award fees by using the highly discretionary percentage-of-the-settlement method and, unsurprisingly, the fees awarded according to this method varied over a broad range, with a mean and median around 25 percent. Using regression analysis, I confirm prior studies and find that fee percentages are strongly and inversely associated with the size of the settlement. Further, I find that the age of the case is positively associated with fee percentages but that the percentages were not associated with whether the class action was certified as a settlement class. There also appeared to be some variation in fee percentages depending on the subject matter of the litigation and the geographic circuit in which the district court was located. Fee percentages in securities cases were lower than the percentages in some but not all other areas, and district courts in some circuits—the Ninth and the Second (in securities cases)—awarded lower fee percentages than courts in many other circuits. Finally, the regression analysis did not confirm the realist hypothesis: there was no association between fee percentage and the political beliefs of the judge in any regression.

II. Prior Empirical Studies of Class Action Settlements

There are many existing empirical studies of federal securities class action settlements.[9] Studies of securities settlements have been plentiful because for-profit organizations maintain lists of all federal securities class action settlements for the benefit of institutional investors that are entitled to file claims in these settlements.[10] Using these data, studies have shown that since 2005, for example, there have been roughly 100 securities class action settlements in federal court each year, and these settlements have involved between $7 billion and $17 billion per year.[11] Scholars have used these data to analyze many different aspects of these settlements, including the factors that are associated with the percentage of

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[9]See, e.g., James D. Cox & Randall S. Thomas, Does the Plaintiff Matter? An Empirical Analysis of Lead Plaintiffs in Securities Class Actions, 106 Colum. L. Rev. 1587 (2006); James D. Cox, Randall S. Thomas & Lynn Bai, There are Plaintiffs and . . . there are Plaintiffs: An Empirical Analysis of Securities Class Action Settlements, 61 Vand. L. Rev. 355 (2008); Theodore Eisenberg, Geoffrey Miller & Michael A. Perino, A New Look at Judicial Impact: Attorneys' Fees in Securities Class Actions after *Goldberger v. Integrated Resources, Inc.*, 29 Wash. U.J.L. & Pol'y 5 (2009); Michael A. Perino, Markets and Monitors: The Impact of Competition and Experience on Attorneys' Fees in Securities Class Actions (St. John's Legal Studies, Research Paper No. 06-0034, 2006), available at <http://ssrn.com/abstract=870577> [hereinafter Perino, Markets and Monitors]; Michael A. Perino, The Milberg Weiss Prosecution: No Harm, No Foul? (St. John's Legal Studies, Research Paper No. 08-0135, 2008), available at <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1133995> [hereinafter Perino, Milberg Weiss].

[10]See, e.g., RiskMetrics Group, available at <http://www.riskmetrics.com/scas>.

[11]See Cornerstone Research, Securities Class Action Settlements: 2007 Review and Analysis 1 (2008), available at <http://securities.stanford.edu/Settlements/REVIEW_1995-2007/Settlements_Through_12_2007.pdf>.

the settlements that courts have awarded to class action lawyers.[12] These studies have found that the mean and median fees awarded by district court judges are between 20 percent and 30 percent of the settlement amount.[13] These studies have also found that a number of factors are associated with the percentage of the settlement awarded as fees, including (inversely) the size of the settlement, the age of the case, whether a public pension fund was the lead plaintiff, and whether certain law firms were class counsel.[14] None of these studies has examined whether the political affiliation of the federal district court judge awarding the fees was associated with the size of awards.

There are no comparable organizations that maintain lists of nonsecurities class action settlements. As such, studies of class action settlements beyond the securities area are much rarer and, when they have been done, rely on samples of settlements that were not intended to be representative of the whole. The two largest studies of class action settlements not limited to securities class actions are a 2004 study by Ted Eisenberg and Geoff Miller,[15] which was recently updated to include data through 2008,[16] and a 2003 study by Class Action Reports.[17] The Eisenberg-Miller studies collected data from class action settlements in both state and federal courts found from court opinions published in the Westlaw and Lexis databases and checked against lists maintained by the CCH Federal Securities and Trade Regulation Reporters. Through 2008, their studies have now identified 689 settlements over a 16-year period, or less than 45 settlements per year.[18] Over this 16-year period, their studies found that the mean and median settlement amounts were, respectively, $116 million and $12.5 million (in 2008 dollars), and that the mean and median fees awarded by district courts were 23 percent and 24 percent of the settlement, respectively.[19] Their studies also performed an analysis of fee percentages and fee awards. For the data through 2002, they found that the percentage of the settlement awarded as fees was associated with the size of the settlement (inversely), the age of the case, and whether the

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[12]See, e.g., Eisenberg, Miller & Perino, supra note 9, at 17–24, 28–36; Perino, Markets and Monitors, supra note 9, at 12–28, 39–44; Perino, Milberg Weiss, supra note 9, at 32–33, 39–60.

[13]See, e.g., Eisenberg, Miller & Perino, supra note 9, at 17–18, 22, 28, 33; Perino, Markets and Monitors, supra note 9, at 20–21, 40; Perino, Milberg Weiss, supra note 9, at 32–33, 51–53.

[14]See, e.g., Eisenberg, Miller & Perino, supra note 9, at 14–24, 29–30, 33–34; Perino, Markets and Monitors, supra note 9, at 20–28, 41; Perino, Milberg Weiss, supra note 9, at 39–58.

[15]See Theodore Eisenberg & Geoffrey Miller, Attorney Fees in Class Action Settlements: An Empirical Study, 1 J. Empirical Legal Stud. 27 (2004).

[16]See Theodore Eisenberg & Geoffrey Miller, Attorneys' Fees and Expenses in Class Action Settlements: 1993–2008, 7 J. Empirical Legal Stud. 248 (2010) [hereinafter Eisenberg & Miller II].

[17]See Stuart J. Logan, Jack Moshman & Beverly C. Moore, Jr., Attorney Fee Awards in Common Fund Class Actions, 24 Class Action Rep. 169 (Mar.–Apr. 2003).

[18]See Eisenberg & Miller II, supra note 16, at 251.

[19]Id. at 258–59.

district court went out of its way to comment on the level of risk that class counsel had assumed in pursuing the case.[20] For the data through 2008, they regressed only fee awards and found that the awards were inversely associated with the size of the settlement, that state courts gave lower awards than federal courts, and that the level of risk was still associated with larger awards.[21] Their studies have not examined whether the political affiliations of the federal district court judges awarding fees were associated with the size of the awards.

The Class Action Reports study collected data on 1,120 state and federal settlements over a 30-year period, or less than 40 settlements per year.[22] Over the same 10-year period analyzed by the Eisenberg-Miller study, the Class Action Reports data found mean and median settlements of $35.4 and $7.6 million (in 2002 dollars), as well as mean and median fee percentages between 25 percent and 30 percent.[23] Professors Eisenberg and Miller performed an analysis of the fee awards in the Class Action Reports study and found the percentage of the settlement awarded as fees was likewise associated with the size of the settlement (inversely) and the age of the case.[24]

III. Federal Class Action Settlements, 2006 and 2007

As far as I am aware, there has never been an empirical study of all federal class action settlements in a particular year. In this article, I attempt to make such a study for two recent years: 2006 and 2007. To compile a list of all federal class settlements in 2006 and 2007, I started with one of the aforementioned lists of securities settlements, the one maintained by RiskMetrics, and I supplemented this list with settlements that could be found through three other sources: (1) broad searches of district court opinions in the Westlaw and Lexis databases,[25] (2) four reporters of class action settlements—*BNA Class Action Litigation Report*, *Mealey's Jury Verdicts and Settlements*, *Mealey's Litigation Report*, and the *Class Action World* website[26]—and (3) a list from the Administrative Office of Courts of all district court cases

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[20]See Eisenberg & Miller, supra note 15, at 61–62.

[21]See Eisenberg & Miller II, supra note 16, at 278.

[22]See Eisenberg & Miller, supra note 15, at 34.

[23]Id. at 47, 51.

[24]Id. at 61–62.

[25]The searches consisted of the following terms: ("class action" & (settle! /s approv! /s (2006 2007))); (((counsel attorney) /s fee /s award!) & (settle! /s (2006 2007)) & "class action"); ("class action" /s settle! & da(aft 12/31/2005 & bef 1/1/2008)); ("class action" /s (fair reasonable adequate) & da(aft 12/31/2005 & bef 1/1/2008)).

[26]See <http://classactionworld.com/>.

coded as class actions that terminated by settlement between 2005 and 2008.[27] I then removed any duplicate cases and examined the docket sheets and court orders of each of the remaining cases to determine whether the cases were in fact certified as class actions under either Rule 23, Rule 23.1, or Rule 23.2.[28] For each of the cases verified as such, I gathered the district court's order approving the settlement, the district court's order awarding attorney fees, and, in many cases, the settlement agreements and class counsel's motions for fees, from electronic databases (such as Westlaw or PACER) and, when necessary, from the clerk's offices of the various federal district courts. In this section, I report the characteristics of the settlements themselves; in the next section, I report the characteristics of the attorney fees awarded to class counsel by the district courts that approved the settlements.

A. Number of Settlements

I found 688 settlements approved by federal district courts during 2006 and 2007 using the methodology described above. This is almost the exact same number the Eisenberg-Miller study found over a *16*-year period in both federal *and* state court. Indeed, the number of annual settlements identified in this study is *several times* the number of annual settlements that have been identified in any prior empirical study of class action settlements. Of the 688 settlements I found, 304 were approved in 2006 and 384 were approved in 2007.[29]

B. Defendant Versus Plaintiff Classes

Although Rule 23 permits federal judges to certify either a class of plaintiffs or a class of defendants, it is widely assumed that it is extremely rare for courts to certify defendant classes.[30] My findings confirm this widely held assumption. Of the 688 class action settlements approved in 2006 and 2007, 685 involved plaintiff classes and only three involved

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[27]I examined the AO lists in the year before and after the two-year period under investigation because the termination date recorded by the AO was not necessarily the same date the district court approved the settlement.

[28]See Fed. R. Civ. P. 23, 23.1, 23.2. I excluded from this analysis opt-in collective actions, such as those brought pursuant to the provisions of the Fair Labor Standards Act (see 29 U.S.C. § 216(b)), if such actions did not also include claims certified under the opt-out mechanism in Rule 23.

[29]A settlement was assigned to a particular year if the district court judge's order approving the settlement was dated between January 1 and December 31 of that year. Cases involving multiple defendants sometimes settled over time because defendants would settle separately with the plaintiff class. All such partial settlements approved by the district court on the same date were treated as one settlement. Partial settlements approved by the district court on different dates were treated as different settlements.

[30]See, e.g., Robert H. Klonoff, Edward K.M. Bilich & Suzette M. Malveaux, Class Actions and Other Multi-Party Litigation: Cases and Materials 1061 (2d ed. 2006).

defendant classes. All three of the defendant-class settlements were in employment benefits cases, where companies sued classes of current or former employees.[31]

C. Settlement Subject Areas

Although courts are free to certify Rule 23 classes in almost any subject area, it is widely assumed that securities settlements dominate the federal class action docket.[32] At least in terms of the number of settlements, my findings reject this conventional wisdom. As Table 1 shows, although securities settlements comprised a large percentage of the 2006 and 2007 settlements, they did not comprise a majority of those settlements. As one would have

Table 1: The Number of Class Action Settlements Approved by Federal Judges in 2006 and 2007 in Each Subject Area

	Number of Settlements	
Subject Matter	*2006*	*2007*
Securities	122 (40%)	135 (35%)
Labor and employment	41 (14%)	53 (14%)
Consumer	40 (13%)	47 (12%)
Employee benefits	23 (8%)	38 (10%)
Civil rights	24 (8%)	37 (10%)
Debt collection	19 (6%)	23 (6%)
Antitrust	13 (4%)	17 (4%)
Commercial	4 (1%)	9 (2%)
Other	18 (6%)	25 (6%)
Total	304	384

NOTE: Securities: cases brought under federal and state securities laws. Labor and employment: workplace claims brought under either federal or state law, with the exception of ERISA cases. Consumer: cases brought under the Fair Credit Reporting Act as well as cases for consumer fraud and the like. Employee benefits: ERISA cases. Civil rights: cases brought under 42 U.S.C. § 1983 or cases brought under the Americans with Disabilities Act seeking nonworkplace accommodations. Debt collection: cases brought under the Fair Debt Collection Practices Act. Antitrust: cases brought under federal or state antitrust laws. Commercial: cases between businesses, excluding antitrust cases. Other: includes, among other things, derivative actions against corporate managers and directors, environmental suits, insurance suits, Medicare and Medicaid suits, product liability suits, and mass tort suits.

SOURCES: Westlaw, PACER, district court clerks' offices.

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[31]See Halliburton Co. v. Graves, No. 04-00280 (S.D. Tex., Sept. 28, 2007); Rexam, Inc. v. United Steel Workers of Am., No. 03-2998 (D. Minn. Aug. 29, 2007); Rexam, Inc. v. United Steel Workers of Am., No. 03-2998 (D. Minn. Sept. 17, 2007).

[32]See, e.g., John C. Coffee, Jr., Reforming the Security Class Action: An Essay on Deterrence and its Implementation, 106 Colum. L. Rev. 1534, 1539–40 (2006) (describing securities class actions as "the 800-pound gorilla that dominates and overshadows other forms of class actions").

expected in light of Supreme Court precedent over the last two decades,[33] there were almost no mass tort class actions (included in the "Other" category) settled over the two-year period.

Although the Eisenberg-Miller study through 2008 is not directly comparable on the distribution of settlements across litigation subject areas—because its state and federal court data cannot be separated (more than 10 percent of the settlements were from state court[34]) and because it excludes settlements in fee-shifting cases—their study through 2008 is the best existing point of comparison. Interestingly, despite the fact that state courts were included in their data, their study through 2008 found about the same percentage of securities cases (39 percent) as my 2006–2007 data set shows.[35] However, their study found many more consumer (18 percent) and antitrust (10 percent) cases, while finding many fewer labor and employment (8 percent), employee benefits (6 percent), and civil rights (3 percent) cases.[36] This is not unexpected given their reliance on published opinions and their exclusion of fee-shifting cases.

D. Settlement Classes

The Federal Rules of Civil Procedure permit parties to seek certification of a suit as a class action for settlement purposes only.[37] When the district court certifies a class in such circumstances, the court need not consider whether it would be manageable to try the litigation as a class.[38] So-called settlement classes have always been more controversial than classes certified for litigation because they raise the prospect that, at least where there are competing class actions filed against the same defendant, the defendant could play class counsel off one another to find the one willing to settle the case for the least amount of money.[39] Prior to the Supreme Court's 1997 opinion in *Amchem Products, Inc. v. Windsor*,[40] it was uncertain whether the Federal Rules even permitted settlement classes. It may therefore be a bit surprising to learn that 68 percent of the federal settlements in 2006 and 2007 were settlement classes. This percentage is higher than the percentage found in the Eisenberg-Miller studies, which found that only 57 percent of class action settlements in

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[33]See, e.g., Samuel Issacharoff, Private Claims, Aggregate Rights, 2008 Sup. Ct. Rev. 183, 208.

[34]See Eisenberg & Miller II, supra note 16, at 257.

[35]Id. at 262.

[36]Id.

[37]See Martin H. Redish, Settlement Class Actions, The Case-or-Controversy Requirement, and the Nature of the Adjudicatory Process, 73 U. Chi. L. Rev. 545, 553 (2006).

[38]See Amchem Prods., Inc v Windsor, 521 U.S. 591, 620 (1997).

[39]See Redish, supra note 368, at 557–59.

[40]521 U.S. 591 (1997).

state and federal court between 2003 and 2008 were settlement classes.[41] It should be noted that the distribution of litigation subject areas among the settlement classes in my 2006–2007 federal data set did not differ much from the distribution among nonsettlement classes, with two exceptions. One exception was consumer cases, which were nearly three times as prevalent among settlement classes (15.9 percent) as among nonsettlement classes (5.9 percent); the other was civil rights cases, which were four times as prevalent among nonsettlement classes (18.0 percent) as among settlements classes (4.5 percent). In light of the skepticism with which the courts had long treated settlement classes, one might have suspected that courts would award lower fee percentages in such settlements. Nonetheless, as I report in Section III, whether a case was certified as a settlement class was not associated with the fee percentages awarded by federal district court judges.

E. The Age at Settlement

One interesting question is how long class actions were litigated before they reached settlement. Unsurprisingly, cases reached settlement over a wide range of ages.[42] As shown in Table 2, the average time to settlement was a bit more than three years (1,196 days) and the median time was a bit under three years (1,068 days). The average and median ages here are similar to those found in the Eisenberg-Miller study through 2002, which found averages of 3.35 years in fee-shifting cases and 2.86 years in non-fee-shifting cases, and

Table 2: The Number of Days, 2006–2007, Federal Class Action Cases Took to Reach Settlement in Each Subject Area

Subject Matter	*Average*	*Median*	*Minimum*	*Maximum*
Securities	1,438	1,327	392	3,802
Labor and employment	928	786	105	2,497
Consumer	963	720	127	4,961
Employee benefits	1,162	1,161	164	3,157
Civil rights	1,373	1,360	181	3,354
Debt collection	738	673	223	1,973
Antitrust	1,140	1,167	237	2,480
Commercial	1,267	760	163	5,443
Other	1,065	962	185	3,620
All	1,196	1,068	105	5,443

SOURCE: PACER.

[41]See Eisenberg & Miller II, supra note 16, at 266.

[42]The age of the case was calculated by subtracting the date the relevant complaint was filed from the date the settlement was approved by the district court judge. The dates were taken from PACER. For consolidated cases, I used the date of the earliest complaint. If the case had been transferred, consolidated, or removed, the date the complaint was filed was not always available from PACER. In such cases, I used the date the case was transferred, consolidated, or removed as the start date.

medians of 4.01 years in fee-shifting cases and 3.0 years in non-fee-shifting cases.[43] Their study through 2008 did not report case ages.

The shortest time to settlement was 105 days in a labor and employment case.[44] The longest time to settlement was nearly 15 years (5,443 days) in a commercial case.[45] The average and median time to settlement varied significantly by litigation subject matter, with securities cases generally taking the longest time and debt collection cases taking the shortest time. Labor and employment cases and consumer cases also settled relatively early.

F. The Location of Settlements

The 2006–2007 federal class action settlements were not distributed across the country in the same way federal civil litigation is in general. As Figure 1 shows, some of the geographic circuits attracted much more class action attention than we would expect based on their docket size, and others attracted much less. In particular, district courts in the First, Second, Seventh, and Ninth Circuits approved a much larger share of class action settlements than the share of all civil litigation they resolved, with the First, Second, and Seventh Circuits approving nearly double the share and the Ninth Circuit approving one-and-one-half times the share. By contrast, the shares of class action settlements approved by district courts in the Fifth and Eighth Circuits were less than one-half of their share of all civil litigation, with the Third, Fourth, and Eleventh Circuits also exhibiting significant underrepresentation.

With respect to a comparison with the Eisenberg-Miller studies, their federal court data through 2008 can be separated from their state court data on the question of the geographic distribution of settlements, and there are some significant differences between their federal data and the numbers reflected in Figure 1. Their study reported considerably higher proportions of settlements than I found from the Second (23.8 percent), Third (19.7 percent), Eighth (4.8 percent), and D.C. (3.3 percent) Circuits, and considerably lower proportions from the Fourth (1.3 percent), Seventh (6.8 percent), and Ninth (16.6 percent) Circuits.[46]

Figure 2 separates the class action settlement data in Figure 1 into securities and nonsecurities cases. Figure 2 suggests that the overrepresentation of settlements in the First and Second Circuits is largely attributable to securities cases, whereas the overrepresentation in the Seventh Circuit is attributable to nonsecurities cases, and the overrepresentation in the Ninth is attributable to both securities and nonsecurities cases.

It is interesting to ask why some circuits received more class action attention than others. One hypothesis is that class actions are filed in circuits where class action lawyers

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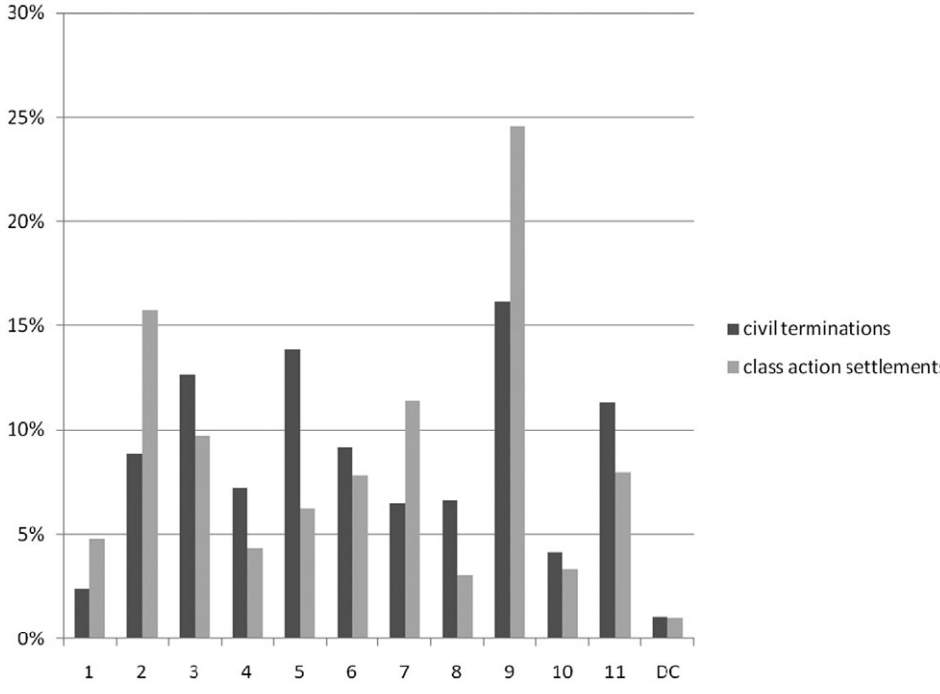
[43]See Eisenberg & Miller, supra note 15, at 59–60.

[44]See Clemmons v. Rent-a-Center W., Inc., No. 05-6307 (D. Or. Jan. 20, 2006).

[45]See Allapattah Servs. Inc. v. Exxon Corp., No. 91-0986 (S.D. Fla. Apr. 7, 2006).

[46]See Eisenberg & Miller II, supra note 16, at 260.

Figure 1: The percentage of 2006–2007 district court civil terminations and class action settlements in each federal circuit.



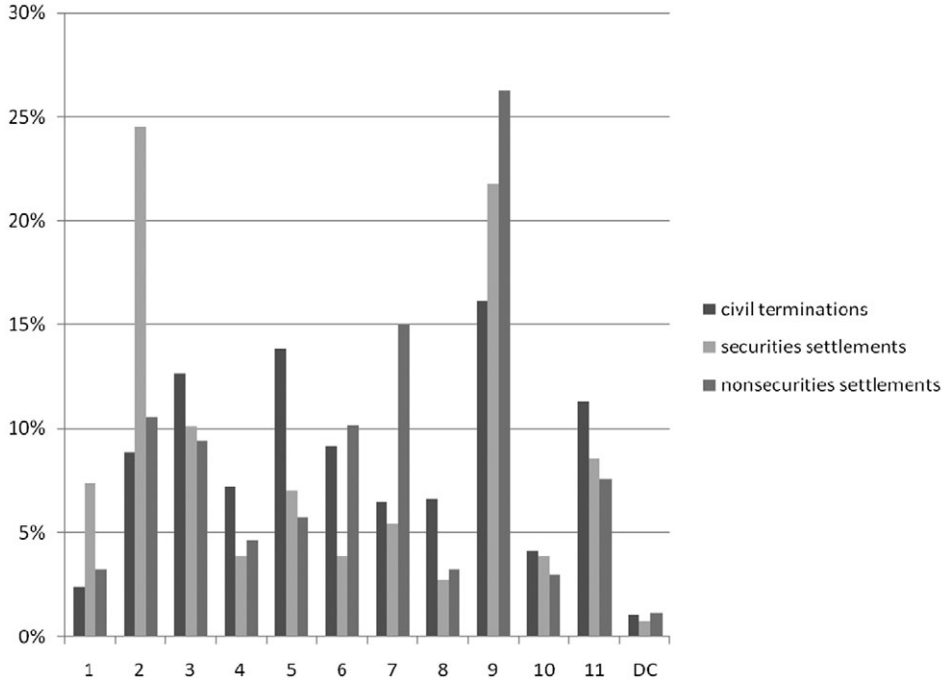
SOURCES: PACER, Statistical Tables for the Federal Judiciary 2006 & 2007 (available at <http://www.uscourts.gov/stats/index.html>).

believe they can find favorable law or favorable judges. Federal class actions often involve class members spread across multiple states and, as such, class action lawyers may have a great deal of discretion over the district in which file suit.[47] One way law or judges may be favorable to class action attorneys is with regard to attorney fees. In Section III, I attempt to test whether district court judges in the circuits with the most over- and undersubscribed class action dockets award attorney fees that would attract or discourage filings there; I find no evidence that they do.

Another hypothesis is that class action suits are settled in jurisdictions where defendants are located. This might be the case because although class action lawyers may have discretion over where to file, venue restrictions might ultimately restrict cases to jurisdic-

[47]See Samuel Issacharoff & Richard Nagareda, Class Settlements Under Attack, 156 U. Pa. L. Rev. 1649, 1662 (2008).

Figure 2: The percentage of 2006–2007 district court civil terminations and class action settlements in each federal circuit.



SOURCES: PACER, Statistical Tables for the Federal Judiciary 2006 & 2007 (available at <http://www.uscourts.gov/stats/index.html>).

tions in which defendants have their corporate headquarters or other operations.[48] This might explain why the Second Circuit, with the financial industry in New York, sees so many securities suits, and why other circuits with cities with a large corporate presence, such as the First (Boston), Seventh (Chicago), and Ninth (Los Angeles and San Francisco), see more settlements than one would expect based on the size of their civil dockets.

Another hypothesis might be that class action lawyers file cases wherever it is most convenient for them to litigate the cases—that is, in the cities in which their offices are located. This, too, might explain the Second Circuit's overrepresentation in securities settlements, with prominent securities firms located in New York, as well as the

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[48]See 28 U.S.C. §§ 1391, 1404, 1406, 1407. See also Foster v. Nationwide Mut. Ins. Co., No. 07-04928, 2007 U.S. Dist. LEXIS 95240 at *2–17 (N.D. Cal. Dec. 14, 2007) (transferring venue to jurisdiction where defendant's corporate headquarters were located). One prior empirical study of securities class action settlements found that 85 percent of such cases are filed in the home circuit of the defendant corporation. See James D. Cox, Randall S. Thomas & Lynn Bai, Do Differences in Pleading Standards Cause Forum Shopping in Securities Class Actions?: Doctrinal and Empirical Analyses, 2009 Wis. L. Rev. 421, 429, 440, 450–51 (2009).

overrepresentation of other settlements in some of the circuits in which major metropolitan areas with prominent plaintiffs' firms are found.

G. Type of Relief

Under Rule 23, district court judges can certify class actions for injunctive or declaratory relief, for money damages, or for a combination of the two.[49] In addition, settlements can provide money damages both in the form of cash as well as in the form of in-kind relief, such as coupons to purchase the defendant's products.[50]

As shown in Table 3, the vast majority of class actions settled in 2006 and 2007 provided cash relief to the class (89 percent), but a substantial number also provided in-kind relief (6 percent) or injunctive or declaratory relief (23 percent). As would be

Table 3: The Percentage of 2006 and 2007 Class Action Settlements Providing Each Type of Relief in Each Subject Area

Subject Matter	*Cash*	*In-Kind Relief*	*Injunctive or Declaratory Relief*
Securities ($n = 257$)	100%	0%	2%
Labor and employment ($n = 94$)	95%	6%	29%
Consumer ($n = 87$)	74%	30%	37%
Employee benefits ($n = 61$)	90%	0%	34%
Civil rights ($n = 61$)	49%	2%	75%
Debt collection ($n = 42$)	98%	0%	12%
Antitrust ($n = 30$)	97%	13%	7%
Commercial ($n = 13$)	92%	0%	62%
Other ($n = 43$)	77%	7%	33%
All ($n = 688$)	89%	6%	23%

NOTE: Cash: cash, securities, refunds, charitable contributions, contributions to employee benefit plans, forgiven debt, relinquishment of liens or claims, and liquidated repairs to property. In-kind relief: vouchers, coupons, gift cards, warranty extensions, merchandise, services, and extended insurance policies. Injunctive or declaratory relief: modification of terms of employee benefit plans, modification of compensation practices, changes in business practices, capital improvements, research, and unliquidated repairs to property.

SOURCES: Westlaw, PACER, district court clerks' offices.

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[49]See Fed. R. Civ. P. 23(b).

[50]These coupon settlements have become very controversial in recent years, and Congress discouraged them in the Class Action Fairness Act of 2005 by tying attorney fees to the value of coupons that were ultimately redeemed by class members as opposed to the value of coupons offered class members. See 28 U.S.C. § 1712.

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expected in light of the focus on consumer cases in the debate over the anti-coupon provision in the Class Action Fairness Act of 2005,[51] consumer cases had the greatest percentage of settlements providing for in-kind relief (30 percent). Civil rights cases had the greatest percentage of settlements providing for injunctive or declaratory relief (75 percent), though almost half the civil rights cases also provided some cash relief (49 percent). The securities settlements were quite distinctive from the settlements in other areas in their singular focus on cash relief: every single securities settlement provided cash to the class and almost none provided in-kind, injunctive, or declaratory relief. This is but one example of how the focus on securities settlements in the prior empirical scholarship can lead to a distorted picture of class action litigation.

H. Settlement Money

Although securities settlements did not comprise the majority of federal class action settlements in 2006 and 2007, they did comprise the majority of the money—indeed, the *vast majority* of the money—involved in class action settlements. In Table 4, I report the total amount of ascertainable value involved in the 2006 and 2007 settlements. This amount

Table 4: The Total Amount of Money Involved in Federal Class Action Settlements in 2006 and 2007

	Total Ascertainable Monetary Value in Settlements (and Percentage of Overall Annual Total)			
Subject Matter	*2006* (n = *304*)		*2007* (n = *384*)	
Securities	$16,728	76%	$8,038	73%
Labor and employment	$266.5	1%	$547.7	5%
Consumer	$517.3	2%	$732.8	7%
Employee benefits	$443.8	2%	$280.8	3%
Civil rights	$265.4	1%	$81.7	1%
Debt collection	$8.9	<1%	$5.7	<1%
Antitrust	$1,079	5%	$660.5	6%
Commercial	$1,217	6%	$124.0	1%
Other	$1,568	7%	$592.5	5%
Total	$22,093	100%	$11,063	100%

NOTE: Dollar amounts are in millions. Includes all determinate payments in cash or cash equivalents (such as marketable securities), including attorney fees and expenses, as well as any in-kind relief (such as coupons) or injunctive relief that was valued by the district court.

SOURCES: Westlaw, PACER, district court clerks' offices.

[51]See, e.g., 151 Cong. Rec. H723 (2005) (statement of Rep. Sensenbrenner) (arguing that consumers are "seeing all of their gains go to attorneys and them just getting coupon settlements from the people who have allegedly done them wrong").

includes all determinate[52] payments in cash or cash equivalents (such as marketable securities), including attorney fees and expenses, as well as any in-kind relief (such as coupons) or injunctive relief that was valued by the district court.[53] I did not attempt to assign a value to any relief that was not valued by the district court (even if it may have been valued by class counsel). It should be noted that district courts did not often value in-kind or injunctive relief—they did so only 18 percent of the time—and very little of Table 4—only $1.3 billion, or 4 percent—is based on these valuations. It should also be noted that the amounts in Table 4 reflect only what defendants *agreed to pay*; they do not reflect the amounts that defendants *actually paid* after the claims administration process concluded. Prior empirical research has found that, depending on how settlements are structured (e.g., whether they awarded a fixed amount of money to each class member who eventually files a valid claim or a pro rata amount of a fixed settlement to each class member), defendants can end up paying much less than they agreed.[54]

Table 4 shows that in both years, around three-quarters of all the money involved in federal class action settlements came from securities cases. Thus, in this sense, the conventional wisdom about the dominance of securities cases in class action litigation is correct. Figure 3 is a graphical representation of the contribution each litigation area made to the total number and total amount of money involved in the 2006–2007 settlements.

Table 4 also shows that, in total, over $33 billion was approved in the 2006–2007 settlements. Over $22 billion was approved in 2006 and over $11 billion in 2007. It should be emphasized again that the totals in Table 4 understate the amount of money defendants agreed to pay in class action settlements in 2006 and 2007 because they exclude the unascertainable value of those settlements. This understatement disproportionately affects litigation areas, such as civil rights, where much of the relief is injunctive because, as I noted, very little of such relief was valued by district courts. Nonetheless, these numbers are, as far as I am aware, the first attempt to calculate how much money is involved in federal class action settlements in a given year.

The significant discrepancy between the two years is largely attributable to the 2006 securities settlement related to the collapse of Enron, which totaled $6.6 billion, as well as to the fact that seven of the eight 2006–2007 settlements for more than $1 billion were approved in 2006.[55] Indeed, it is worth noting that the eight settlements for more than $1

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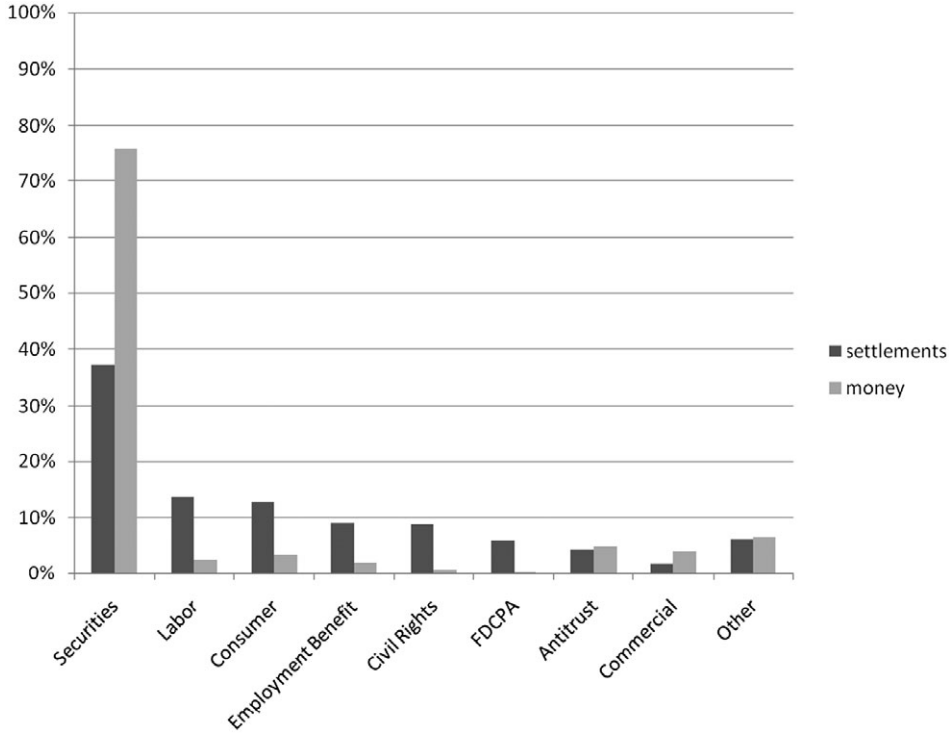
[52]For example, I excluded awards of a fixed amount of money to each class member who eventually filed a valid claim (as opposed to settlements that awarded a pro rata amount of a fixed settlement to each class member) if the total amount of money set aside to pay the claims was not set forth in the settlement documents.

[53]In some cases, the district court valued the relief in the settlement over a range. In these cases, I used the middle point in the range.

[54]See Hensler et al., supra note 7, at 427–30.

[55]See In re Enron Corp. Secs. Litig., MDL 1446 (S.D. Tex. May 24, 2006) ($6,600,000,000); In re Tyco Int'l Ltd. Multidistrict Litig., MDL 02-1335 (D.N.H. Dec. 19, 2007) ($3,200,000,000); In re AOL Time Warner, Inc. Secs. & "ERISA" Litig., MDL 1500 (S.D.N.Y. Apr. 6, 2006) ($2,500,000,000); In re: Diet Drugs Prods. Liab. Litig., MDL 1203 (E.D. Pa. May 24, 2006) ($1,275,000,000); In re Nortel Networks Corp. Secs. Litig. (Nortel I), No. 01-1855 (S.D.N.Y. Dec. 26, 2006) ($1,142,780,000); In re Royal Ahold N.V. Secs. & ERISA Litig., 03-1539 (D. Md. Jun. 16, 2006)

Figure 3: The percentage of 2006–2007 federal class action settlements and settlement money from each subject area.



SOURCES: Westlaw, PACER, district court clerks' offices.

billion accounted for almost $18 billion of the $33 billion that changed hands over the two-year period. That is, a mere 1 percent of the settlements comprised over 50 percent of the value involved in federal class action settlements in 2006 and 2007. To give some sense of the distribution of settlement size in the 2006–2007 data set, Table 5 sets forth the number of settlements with an ascertainable value beyond fee, expense, and class-representative incentive awards (605 out of the 688 settlements). Nearly two-thirds of all settlements fell below $10 million.

Given the disproportionate influence exerted by securities settlements on the total amount of money involved in class actions, it is unsurprising that the average securities settlement involved more money than the average settlement in most of the other subject areas. These numbers are provided in Table 6, which includes, again, only the settlements

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($1,100,000,000); Allapattah Servs. Inc. v. Exxon Corp., No. 91-0986 (S.D. Fla. Apr. 7, 2006) ($1,075,000,000); In re Nortel Networks Corp. Secs. Litig. (Nortel II), No. 05-1659 (S.D.N.Y. Dec. 26, 2006) ($1,074,270,000).

Table 5: The Distribution by Size of 2006–2007 Federal Class Action Settlements with Ascertainable Value

Settlement Size (in Millions)	*Number of Settlements*
[$0 to $1]	131 (21.7%)
($1 to $10]	261 (43.1%)
($10 to $50]	139 (23.0%)
($50 to $100]	33 (5.45%)
($100 to $500]	31 (5.12%)
($500 to $6,600]	10 (1.65%)
Total	605

NOTE: Includes only settlements with ascertainable value beyond merely fee, expense, and class-representative incentive awards.
SOURCES: Westlaw, PACER, district court clerks' offices.

Table 6: The Average and Median Settlement Amounts in the 2006–2007 Federal Class Action Settlements with Ascertainable Value to the Class

Subject Matter	*Average*	*Median*
Securities ($n = 257$)	$96.4	$8.0
Labor and employment ($n = 88$)	$9.2	$1.8
Consumer ($n = 65$)	$18.8	$2.9
Employee benefits ($n = 52$)	$13.9	$5.3
Civil rights ($n = 34$)	$9.7	$2.5
Debt collection ($n = 40$)	$0.37	$0.088
Antitrust ($n = 29$)	$60.0	$22.0
Commercial ($n = 12$)	$111.7	$7.1
Other ($n = 28$)	$76.6	$6.2
All ($N = 605$)	$54.7	$5.1

NOTE: Dollar amounts are in millions. Includes only settlements with ascertainable value beyond merely fee, expense, and class-representative incentive awards.
SOURCES: Westlaw, PACER, district court clerks' offices.

with an ascertainable value beyond fee, expense, and class-representative incentive awards. The average settlement over the entire two-year period for all types of cases was almost $55 million, but the median was only $5.1 million. (With the $6.6 billion Enron settlement excluded, the average settlement for all ascertainable cases dropped to $43.8 million and, for securities cases, dropped to $71.0 million.) The average settlements varied widely by litigation area, with securities and commercial settlements at the high end of around $100

million, but the median settlements for nearly every area were bunched around a few million dollars. It should be noted that the high average for commercial cases is largely due to one settlement above $1 billion;[56] when that settlement is removed, the average for commercial cases was only $24.2 million.

Table 6 permits comparison with the two prior empirical studies of class action settlements that sought to include nonsecurities as well as securities cases in their purview. The Eisenberg-Miller study through 2002, which included both common-fund and fee-shifting cases, found that the mean class action settlement was $112 million and the median was $12.9 million, both in 2006 dollars,[57] more than double the average and median I found for all settlements in 2006 and 2007. The Eisenberg-Miller update through 2008 included only common-fund cases and found mean and median settlements in federal court of $115 million and $11.7 million (both again in 2006 dollars),[58] respectively; this is still more than double the average and median I found. This suggests that the methodology used by the Eisenberg-Miller studies—looking at district court opinions that were published in Westlaw or Lexis—oversampled larger class actions (because opinions approving larger class actions are, presumably, more likely to be published than opinions approving smaller ones). It is also possible that the exclusion of fee-shifting cases from their data through 2008 contributed to this skew, although, given that their data through 2002 included fee-shifting cases and found an almost identical mean and median as their data through 2008, the primary explanation for the much larger mean and median in their study through 2008 is probably their reliance on published opinions. Over the same years examined by Professors Eisenberg and Miller, the Class Action Reports study found a smaller average settlement than I did ($39.5 million in 2006 dollars), but a larger median ($8.48 million in 2006 dollars). It is possible that the Class Action Reports methodology also oversampled larger class actions, explaining its larger median, but that there are more "mega" class actions today than there were before 2003, explaining its smaller mean.[59]

It is interesting to ask how significant the $16 billion that was involved annually in these 350 or so federal class action settlements is in the grand scheme of U.S. litigation. Unfortunately, we do not know how much money is transferred every year in U.S. litigation. The only studies of which I am aware that attempt even a partial answer to this question are the estimates of how much money is transferred in the U.S. "tort" system every year by a financial services consulting firm, Tillinghast-Towers Perrin.[60] These studies are not directly

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[56]See Allapattah Servs. Inc. v. Exxon Corp., No. 91-0986 (S.D. Fla. Apr. 7, 2006) (approving $1,075,000,000 settlement).

[57]See Eisenberg & Miller, supra note 15, at 47.

[58]See Eisenberg & Miller II, supra note 16, at 262.

[59]There were eight class action settlements during 2006 and 2007 of more than $1 billion. See note 55 supra.

[60]Some commentators have been critical of Tillinghast's reports, typically on the ground that the reports overestimate the cost of the tort system. See M. Martin Boyer, Three Insights from the Canadian D&O Insurance Market: Inertia, Information and Insiders, 14 Conn. Ins. L.J. 75, 84 (2007); John Fabian Witt, Form and Substance in the Law of

comparable to the class action settlement numbers because, again, the number of tort class action settlements in 2006 and 2007 was very small. Nonetheless, as the tort system no doubt constitutes a large percentage of the money transferred in all litigation, these studies provide something of a point of reference to assess the significance of class action settlements. In 2006 and 2007, Tillinghast-Towers Perrin estimated that the U.S. tort system transferred $160 billion and $164 billion, respectively, to claimants and their lawyers.[61] The total amount of money involved in the 2006 and 2007 federal class action settlements reported in Table 4 was, therefore, roughly 10 percent of the Tillinghast-Towers Perrin estimate. This suggests that in merely 350 cases every year, federal class action settlements involve the same amount of wealth as 10 percent of the entire U.S. tort system. It would seem that this is a significant amount of money for so few cases.

IV. Attorney Fees in Federal Class Action Settlements, 2006 and 2007

A. Total Amount of Fees and Expenses

As I demonstrated in Section III, federal class action settlements involved a great deal of money in 2006 and 2007, some $16 billion a year. A perennial concern with class action litigation is whether class action lawyers are reaping an outsized portion of this money.[62] The 2006–2007 federal class action data suggest that these concerns may be exaggerated. Although class counsel were awarded some $5 billion in fees and expenses over this period, as shown in Table 7, only 13 percent of the settlement amount in 2006 and 20 percent of the amount in 2007 went to fee and expense awards.[63] The 2006 percentage is lower than the 2007 percentage in large part because the class action lawyers in the Enron securities settlement received less than 10 percent of the $6.6 billion corpus. In any event, the percentages in both 2006 and 2007 are far lower than the portions of settlements that contingency-fee lawyers receive in individual litigation, which are usually at least 33 percent.[64] Lawyers received less than 33 percent of settlements in fees and expenses in virtually every subject area in both years.

Counterinsurgency Damages, 41 Loy. L.A.L. Rev. 1455, 1475 n.135 (2008). If these criticisms are valid, then class action settlements would appear even more significant as compared to the tort system.

[61]See Tillinghast-Towers Perrin, U.S. Tort Costs: 2008 Update 5 (2008). The report calculates $252 billion in total tort "costs" in 2007 and $246.9 billion in 2006, id., but only 65 percent of those costs represent payments made to claimants and their lawyers (the remainder represents insurance administration costs and legal costs to defendants). See Tillinghast-Towers Perrin, U.S. Tort Costs: 2003 Update 17 (2003).

[62]See, e.g., Brian T. Fitzpatrick, Do Class Action Lawyers Make Too Little? 158 U. Pa. L. Rev. 2043, 2043–44 (2010).

[63]In some of the partial settlements, see note 29 supra, the district court awarded expenses for all the settlements at once and it was unclear what portion of the expenses was attributable to which settlement. In these instances, I assigned each settlement a pro rata portion of expenses. To the extent possible, all the fee and expense numbers in this article exclude any interest known to be awarded by the courts.

[64]See, e.g., Herbert M. Kritzer, The Wages of Risk: The Returns of Contingency Fee Legal Practice, 47 DePaul L. Rev. 267, 284–86 (1998) (reporting results of a survey of Wisconsin lawyers).

Table 7: The Total Amount of Fees and Expenses Awarded to Class Action Lawyers in Federal Class Action Settlements in 2006 and 2007

	Total Fees and Expenses Awarded in Settlements (and as Percentage of Total Settlement Amounts) in Each Subject Area	
Subject Matter	*2006 (n = 292)*	*2007 (n = 363)*
Securities	$1,899 (11%)	$1,467 (20%)
Labor and employment	$75.1 (28%)	$144.5 (26%)
Consumer	$126.4 (24%)	$65.3 (9%)
Employee benefits	$57.1 (13%)	$71.9 (26%)
Civil rights	$31.0 (12%)	$32.2 (39%)
Debt collection	$2.5 (28%)	$1.1 (19%)
Antitrust	$274.6 (26%)	$157.3 (24%)
Commercial	$347.3 (29%)	$18.2 (15%)
Other	$119.3 (8%)	$103.3 (17%)
Total	$2,932 (13%)	$2,063 (20%)

NOTE: Dollar amounts are in millions. Excludes settlements in which fees were not (or at least not yet) sought (22 settlements), settlements in which fees have not yet been awarded (two settlements), and settlements in which fees could not be ascertained due to indefinite award amounts, missing documents, or nonpublic side agreements (nine settlements).

SOURCES: Westlaw, PACER, district court clerks' offices.

It should be noted that, in some respects, the percentages in Table 7 overstate the portion of settlements that were awarded to class action attorneys because, again, many of these settlements involved indefinite cash relief or noncash relief that could not be valued.[65] If the value of all this relief could have been included, then the percentages in Table 7 would have been even lower. On the other hand, as noted above, not all the money defendants agree to pay in class action settlements is ultimately collected by the class.[66] To the extent leftover money is returned to the defendant, the percentages in Table 7 understate the portion class action lawyers received relative to their clients.

B. Method of Awarding Fees

District court judges have a great deal of discretion in how they set fee awards in class action cases. Under Rule 23, federal judges are told only that the fees they award to class counsel

[65]Indeed, the large year-to-year variation in the percentages in labor, consumer, and employee benefits cases arose because district courts made particularly large valuations of the equitable relief in a few settlements and used the lodestar method to calculate the fees in these settlements (and thereby did not consider their large valuations in calculating the fees).

[66]See Hensler et al., supra note 7, at 427–30.

must be "reasonable."[67] Courts often exercise this discretion by choosing between two approaches: the lodestar approach or the percentage-of-the-settlement approach.[68] The lodestar approach works much the way it does in individual litigation: the court calculates the fee based on the number of hours class counsel actually worked on the case multiplied by a reasonable hourly rate and a discretionary multiplier.[69] The percentage-of-the-settlement approach bases the fee on the size of the settlement rather than on the hours class counsel actually worked: the district court picks a percentage of the settlement it thinks is reasonable based on a number of factors, one of which is often the fee lodestar (sometimes referred to as a "lodestar cross-check").[70] My 2006–2007 data set shows that the percentage-of-the-settlement approach has become much more common than the lodestar approach. In 69 percent of the settlements reported in Table 7, district court judges employed the percentage-of-the-settlement method with or without the lodestar cross-check. They employed the lodestar method in only 12 percent of settlements. In the other 20 percent of settlements, the court did not state the method it used or it used another method altogether.[71] The pure lodestar method was used most often in consumer (29 percent) and debt collection (45 percent) cases. These numbers are fairly consistent with the Eisenberg-Miller data from 2003 to 2008. They found that the lodestar method was used in only 9.6 percent of settlements.[72] Their number is no doubt lower than the 12 percent number found in my 2006–2007 data set because they excluded fee-shifting cases from their study.

C. Variation in Fees Awarded

Not only do district courts often have discretion to choose between the lodestar method and the percentage-of-the-settlement method, but each of these methods leaves district courts with a great deal of discretion in how the method is ultimately applied. The courts

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[67]Fed. R. Civ. P. 23(h).

[68]The discretion to pick between these methods is most pronounced in settlements where the underlying claim was not found in a statute that would shift attorney fees to the defendant. See, e.g., In re Thirteen Appeals Arising out of San Juan DuPont Plaza Hotel Fire Litig., 56 F.3d 295, 307 (1st Cir. 1995) (permitting either percentage or lodestar method in common-fund cases); Goldberger v. Integrated Res. Inc., 209 F.3d 43, 50 (2d Cir. 2000) (same); Rawlings v. Prudential-Bache Props., Inc., 9 F.3d 513, 516 (6th Cir. 1993) (same). By contrast, courts typically used the lodestar approach in settlements arising from fee-shifting cases.

[69]See Eisenberg & Miller, supra note 15, at 31.

[70]Id. at 31–32.

[71]These numbers are based on the fee method described in the district court's order awarding fees, unless the order was silent, in which case the method, if any, described in class counsel's motion for fees (if it could be obtained) was used. If the court explicitly justified the fee award by reference to its percentage of the settlement, I counted it as the percentage method. If the court explicitly justified the award by reference to a lodestar calculation, I counted it as the lodestar method. If the court explicitly justified the award by reference to both, I counted it as the percentage method with a lodestar cross-check. If the court calculated neither a percentage nor the fee lodestar in its order, then I counted it as an "other" method.

[72]See Eisenberg & Miller II, supra note 16, at 267.

that use the percentage-of-the-settlement method usually rely on a multifactor test[73] and, like most multifactor tests, it can plausibly yield many results. It is true that in many of these cases, judges examine the fee percentages that other courts have awarded to guide their discretion.[74] In addition, the Ninth Circuit has adopted a presumption that 25 percent is the proper fee award percentage in class action cases.[75] Moreover, in securities cases, some courts presume that the proper fee award percentage is the one class counsel agreed to when it was hired by the large shareholder that is now usually selected as the lead plaintiff in such cases.[76] Nonetheless, presumptions, of course, can be overcome and, as one court has put it, "[t]here is no hard and fast rule mandating a certain percentage . . . which may reasonably be awarded as a fee because the amount of any fee must be determined upon the facts of each case."[77] The court added: "[i]ndividualization in the exercise of a discretionary power [for fee awards] will alone retain equity as a living system and save it from sterility."[78] It is therefore not surprising that district courts awarded fees over a broad range when they used the percentage-of-the-settlement method. Figure 4 is a graph of the distribution of fee awards as a percentage of the settlement in the 444 cases where district courts used the percentage method with or without a lodestar cross-check and the fee percentages were ascertainable. These fee awards are exclusive of awards for expenses whenever the awards could be separated by examining either the district court's order or counsel's motion for fees and expenses (which was 96 percent of the time). The awards ranged from 3 percent of the settlement to 47 percent of the settlement. The average award was 25.4 percent and the median was 25 percent. Most fee awards were between 25 percent and 35 percent, with almost no awards more than 35 percent. The Eisenberg-Miller study through 2008 found a slightly lower mean (24 percent) but the same median (25 percent) among its federal court settlements.[79]

It should be noted that in 218 of these 444 settlements (49 percent), district courts said they considered the lodestar calculation as a factor in assessing the reasonableness of the fee percentages awarded. In 204 of these settlements, the lodestar multiplier resulting

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[73]The Eleventh Circuit, for example, has identified a nonexclusive list of 15 factors that district courts might consider. See Camden I Condo. Ass'n, Inc. v. Dunkle, 946 F.2d 768, 772 n.3, 775 (11th Cir. 1991). See also In re Tyco Int'l, Ltd. Multidistrict Litig., 535 F. Supp. 2d 249, 265 (D.N.H. 2007) (five factors); Goldberger v. Integrated Res. Inc., 209 F.3d 43, 50 (2d Cir. 2000) (six factors); Gunter v. Ridgewood Energy Corp., 223 F.3d 190, 195 n.1 (3d Cir. 2000) (seven factors); In re Royal Ahold N.V. Sec. & ERISA Litig., 461 F. Supp. 2d 383, 385 (D. Md. 2006) (13 factors); Brown v. Phillips Petroleum Co., 838 F.2d 451, 454 (10th Cir. 1988) (12 factors); In re Baan Co. Sec. Litig., 288 F. Supp. 2d 14, 17 (D.D.C. 2003) (seven factors).

[74]See Eisenberg & Miller, supra note 15, at 32.

[75]See Staton v. Boeing Co., 327 F.3d 938, 968 (9th Cir. 2003).

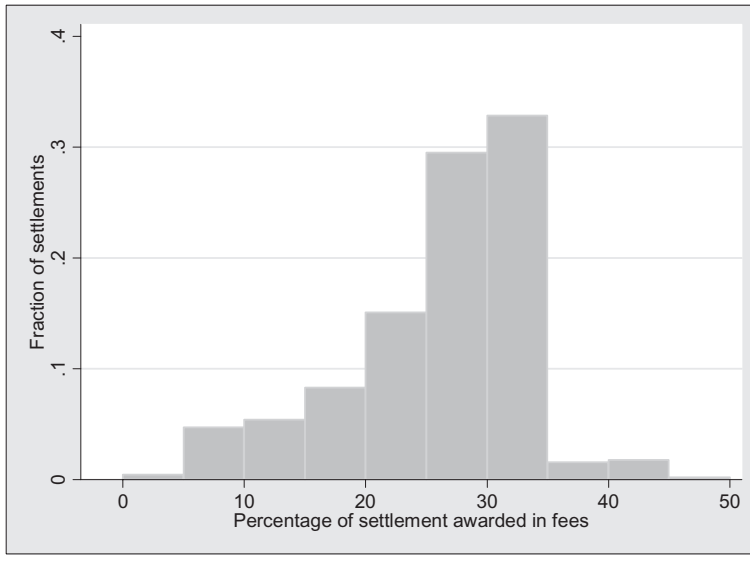
[76]See, e.g., In re Cendant Corp. Litig., 264 F.3d 201, 282 (3d Cir. 2001).

[77]*Camden I Condo. Ass'n*, 946 F.2d at 774.

[78]*Camden I Condo. Ass'n*, 946 F.2d at 774 (alterations in original and internal quotation marks omitted).

[79]See Eisenberg & Miller II, supra note 16, at 259.

Figure 4: The distribution of 2006–2007 federal class action fee awards using the percentage-of-the-settlement method with or without lodestar cross-check.



SOURCES: Westlaw, PACER, district court clerks' offices.

from the fee award could be ascertained. The lodestar multiplier in these cases ranged from 0.07 to 10.3, with a mean of 1.65 and a median of 1.34. Although there is always the possibility that class counsel are optimistic with their timesheets when they submit them for lodestar consideration, these lodestar numbers—only one multiplier above 6.0, with the bulk of the range not much above 1.0—strike me as fairly parsimonious for the risk that goes into any piece of litigation and cast doubt on the notion that the percentage-of-the-settlement method results in windfalls to class counsel.[80]

Table 8 shows the mean and median fee percentages awarded in each litigation subject area. The fee percentages did not appear to vary greatly across litigation subject areas, with most mean and median awards between 25 percent and 30 percent. As I report later in this section, however, after controlling for other variables, there were statistically significant differences in the fee percentages awarded in some subject areas compared to others. The mean and median percentages for securities cases were 24.7 percent and 25.0 percent, respectively; for all nonsecurities cases, the mean and median were 26.1 percent and 26.0 percent, respectively. The Eisenberg-Miller study through 2008 found mean awards ranging from 21–27 percent and medians from 19–25 percent,[81] a bit lower than the ranges in my

[80]It should be emphasized, of course, that these 204 settlements may not be representative of the settlements where the percentage-of-the-settlement method was used without the lodestar cross-check.

[81]See Eisenberg & Miller II, supra note 16, at 262.

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Table 8: Fee Awards in 2006–2007 Federal Class Action Settlements Using the Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

	Percentage of Settlement Awarded as Fees	
Subject Matter	*Mean*	*Median*
Securities ($n = 233$)	24.7	25.0
Labor and employment ($n = 61$)	28.0	29.0
Consumer ($n = 39$)	23.5	24.6
Employee benefits ($n = 37$)	26.0	28.0
Civil rights ($n = 20$)	29.0	30.3
Debt collection ($n = 5$)	24.2	25.0
Antitrust ($n = 23$)	25.4	25.0
Commercial ($n = 7$)	23.3	25.0
Other ($n = 19$)	24.9	26.0
All ($N = 444$)	25.7	25.0

SOURCES: Westlaw, PACER, district court clerks' offices.

2006–2007 data set, which again, may be because they oversampled larger settlements (as I show below, district courts awarded smaller fee percentages in larger cases).

In light of the fact that, as I noted above, the distribution of class action settlements among the geographic circuits does not track their civil litigation dockets generally, it is interesting to ask whether one reason for the pattern in class action cases is that circuits oversubscribed with class actions award higher fee percentages. Although this question will be taken up with more sophistication in the regression analysis below, it is worth describing here the mean and median fee percentages in each of the circuits. Those data are presented in Table 9. Contrary to the hypothesis set forth in Section III, two of the circuits most oversubscribed with class actions, the Second and the Ninth, were the only circuits in which the mean fee awards were *under* 25 percent. As I explain below, these differences are statistically significant and remain so after controlling for other variables.

The lodestar method likewise permits district courts to exercise a great deal of leeway through the application of the discretionary multiplier. Figure 5 shows the distribution of lodestar multipliers in the 71 settlements in which district courts used the lodestar method and the multiplier could be ascertained. The average multiplier was 0.98 and the median was 0.92, which suggest that courts were not terribly prone to exercise their discretion to deviate from the amount of money encompassed in the lodestar calculation. These 71

Table 9: Fee Awards in 2006–2007 Federal Class Action Settlements Using the Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

	Percentage of Settlement Awarded as Fees	
Circuit	*Mean*	*Median*
First ($n = 27$)	27.0	25.0
Second ($n = 72$)	23.8	24.5
Third ($n = 50$)	25.4	29.3
Fourth ($n = 19$)	25.2	28.0
Fifth ($n = 27$)	26.4	29.0
Sixth ($n = 25$)	26.1	28.0
Seventh ($n = 39$)	27.4	29.0
Eighth ($n = 15$)	26.1	30.0
Ninth ($n = 111$)	23.9	25.0
Tenth ($n = 18$)	25.3	25.5
Eleventh ($n = 35$)	28.1	30.0
DC ($n = 6$)	26.9	26.0

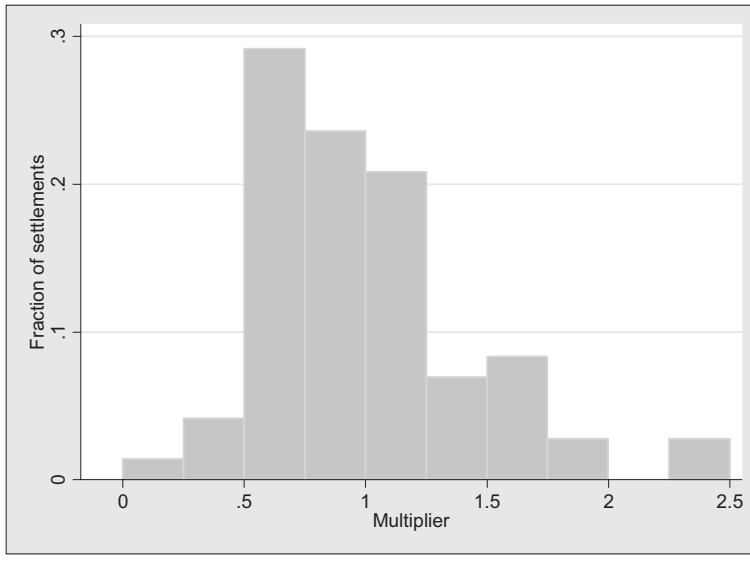
SOURCES: Westlaw, PACER, district court clerks' offices.

settlements were heavily concentrated within the consumer (median multiplier 1.13) and debt collection (0.66) subject areas. If cases in which district courts used the percentage-of-the-settlement method with a lodestar cross-check are combined with the lodestar cases, the average and median multipliers (in the 263 cases where the multipliers were ascertainable) were 1.45 and 1.19, respectively. Again—putting to one side the possibility that class counsel are optimistic with their timesheets—these multipliers appear fairly modest in light of the risk involved in any piece of litigation.

D. Factors Influencing Percentage Awards

Whether district courts are exercising their discretion over fee awards wisely is an important public policy question given the amount of money at stake in class action settlements. As shown above, district court judges awarded class action lawyers nearly $5 billion in fees and expenses in 2006–2007. Based on the comparison to the tort system set forth in Section III, it is not difficult to surmise that in the 350 or so settlements every year, district court judges

Figure 5: The distribution of lodestar multipliers in 2006–2007 federal class action fee awards using the lodestar method.



SOURCES: Westlaw, PACER, district court clerks' offices.

are awarding a significant portion of all the annual compensation received by contingency-fee lawyers in the United States. Moreover, contingency fees are arguably the engine that drives much of the noncriminal regulation in the United States; unlike many other nations, we regulate largely through the ex post, decentralized device of litigation.[82] To the extent district courts could have exercised their discretion to award billions more or billions less to class action lawyers, district courts have been delegated a great deal of leeway over a big chunk of our regulatory horsepower. It is therefore worth examining how district courts exercise their discretion over fees. This examination is particularly important in cases where district courts use the percentage-of-the-settlement method to award fees: not only do such cases comprise the vast majority of settlements, but they comprise the vast majority of the money awarded as fees. As such, the analysis that follows will be confined to the 444 settlements where the district courts used the percentage-of-the-settlement method.

As I noted, prior empirical studies have shown that fee percentages are strongly and inversely related to the size of the settlement both in securities fraud and other cases. As shown in Figure 6, the 2006–2007 data are consistent with prior studies. Regression analysis, set forth in more detail below, confirms that after controlling for other variables, fee percentage is strongly and inversely associated with settlement size among all cases, among securities cases, and among all nonsecurities cases.

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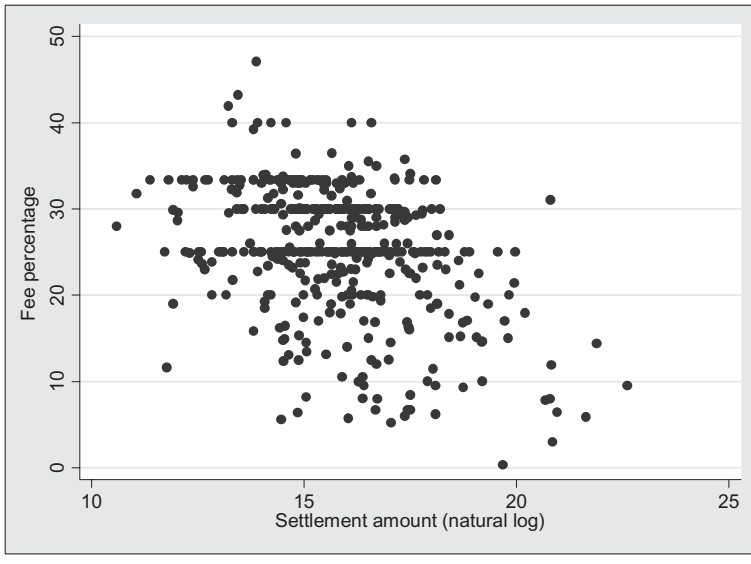
[82]See, e.g., Samuel Issacharoff, Regulating after the Fact, 56 DePaul L. Rev. 375, 377 (2007).

Figure 6: Fee awards as a function of settlement size in 2006–2007 class action cases using the percentage-of-the-settlement method with or without lodestar cross-check.



SOURCES: Westlaw, PACER, district court clerks' offices.

As noted above, courts often look to fee percentages in other cases as one factor they consider in deciding what percentage to award in a settlement at hand. In light of this practice, and in light of the fact that the size of the settlement has such a strong relationship to fee percentages, scholars have tried to help guide the practice by reporting the distribution of fee percentages across different settlement sizes.[83] In Table 10, I follow the Eisenberg-Miller studies and attempt to contribute to this guidance by setting forth the mean and median fee percentages, as well as the standard deviation, for each decile of the 2006–2007 settlements in which courts used the percentage-of-the-settlement method to award fees. The mean percentages ranged from over 28 percent in the first decile to less than 19 percent in the last decile.

It should be noted that the last decile in Table 10 covers an especially wide range of settlements, those from $72.5 million to the Enron settlement of $6.6 billion. To give more meaningful data to courts that must award fees in the largest settlements, Table 11 shows the last decile broken into additional cut points. When both Tables 10 and 11 are examined together, it appears that fee percentages tended to drift lower at a fairly slow pace until a settlement size of $100 million was reached, at which point the fee percentages plunged well below 20 percent, and by the time $500 million was reached, they plunged well below 15 percent, with most awards at that level under even 10 percent.

[83]See Eisenberg & Miller II, supra note 16, at 265.

Table 10: Mean, Median, and Standard Deviation of Fee Awards by Settlement Size in 2006–2007 Federal Class Action Settlements Using the Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

Settlement Size (in Millions)	*Mean*	*Median*	SD
[$0 to $0.75] ($n = 45$)	28.8%	29.6%	6.1%
($0.75 to $1.75] ($n = 44$)	28.7%	30.0%	6.2%
($1.75 to $2.85] ($n = 45$)	26.5%	29.3%	7.9%
($2.85 to $4.45] ($n = 45$)	26.0%	27.5%	6.3%
($4.45 to $7.0] ($n = 44$)	27.4%	29.7%	5.1%
($7.0 to $10.0] ($n = 43$)	26.4%	28.0%	6.6%
($10.0 to $15.2] ($n = 45$)	24.8%	25.0%	6.4%
($15.2 to $30.0] ($n = 46$)	24.4%	25.0%	7.5%
($30.0 to $72.5] ($n = 42$)	22.3%	24.9%	8.4%
($72.5 to $6,600] ($n = 45$)	18.4%	19.0%	7.9%

SOURCES: Westlaw, PACER, district court clerks' offices.

Table 11: Mean, Median, and Standard Deviation of Fee Awards of the Largest 2006–2007 Federal Class Action Settlements Using the Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

Settlement Size (in Millions)	*Mean*	*Median*	SD
($72.5 to $100] ($n = 12$)	23.7%	24.3%	5.3%
($100 to $250] ($n = 14$)	17.9%	16.9%	5.2%
($250 to $500] ($n = 8$)	17.8%	19.5%	7.9%
($500 to $1,000] ($n = 2$)	12.9%	12.9%	7.2%
($1,000 to $6,600] ($n = 9$)	13.7%	9.5%	11%

SOURCES: Westlaw, PACER, district court clerks' offices.

Prior empirical studies have not examined whether fee awards are associated with the political affiliation of the district court judges making the awards. This is surprising because realist theories of judicial behavior would predict that political affiliation would influence fee decisions.[84] It is true that as a general matter, political affiliation may influence district court judges to a lesser degree than it does appellate judges (who have been the focus of most of the prior empirical studies of realist theories): district court judges decide more routine cases and are subject to greater oversight on appeal than appellate judges. On the other hand, class action settlements are a bit different in these regards than many other decisions made by district court judges. To begin with, class action settlements are almost never appealed, and when they are, the appeals are usually settled before the appellate court hears the case.[85] Thus, district courts have much less reason to worry about the constraint of appellate review in fashioning fee awards. Moreover, one would think the potential for political affiliation to influence judicial decision making is greatest when legal sources lead to indeterminate outcomes and when judicial decisions touch on matters that are salient in national politics. (The more salient a matter is, the more likely presidents will select judges with views on the matter and the more likely those views will diverge between Republicans and Democrats.) Fee award decisions would seem to satisfy both these criteria. The law of fee awards, as explained above, is highly discretionary, and fee award decisions are wrapped up in highly salient political issues such as tort reform and the relative power of plaintiffs' lawyers and corporations. I would expect to find that judges appointed by Democratic presidents awarded higher fees in the 2006–2007 settlements than did judges appointed by Republican presidents.

The data, however, do not appear to bear this out. Of the 444 fee awards using the percentage-of-the-settlement approach, 52 percent were approved by Republican appointees, 45 percent were approved by Democratic appointees, and 4 percent were approved by non-Article III judges (usually magistrate judges). The mean fee percentage approved by Republican appointees (25.6 percent) was slightly *greater* than the mean approved by Democratic appointees (24.9 percent). The medians (25 percent) were the same.

To examine whether the realist hypothesis fared better after controlling for other variables, I performed regression analysis of the fee percentage data for the 427 settlements approved by Article III judges. I used ordinary least squares regression with the dependent variable the percentage of the settlement that was awarded in fees.[86] The independent

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[84]See generally C.K. Rowland & Robert A. Carp, Politics and Judgment in Federal District Courts (1996). See also Max M. Schanzenbach & Emerson H. Tiller, Reviewing the Sentencing Guidelines: Judicial Politics, Empirical Evidence, and Reform, 75 U. Chi. L. Rev. 715, 724–25 (2008).

[85]See Brian T. Fitzpatrick, The End of Objector Blackmail? 62 Vand. L. Rev. 1623, 1640, 1634–38 (2009) (finding that less than 10 percent of class action settlements approved by federal courts in 2006 were appealed by class members).

[86]Professors Eisenberg and Miller used a square root transformation of the fee percentages in some of their regressions. I ran all the regressions using this transformation as well and it did not appreciably change the results. I also ran the regressions using a natural log transformation of fee percentage and with the dependent variable natural log of the fee amount (as opposed to the fee percentage). None of these models changed the results

variables were the natural log of the amount of the settlement, the natural log of the age of the case (in days), indicator variables for whether the class was certified as a settlement class, for litigation subject areas, and for circuits, as well as indicator variables for whether the judge was appointed by a Republican or Democratic president and for the judge's race and gender.[87]

The results for five regressions are in Table 12. In the first regression (Column 1), only the settlement amount, case age, and judge's political affiliation, gender, and race were included as independent variables. In the second regression (Column 2), all the independent variables were included. In the third regression (Column 3), only securities cases were analyzed, and in the fourth regression (Column 4), only nonsecurities cases were analyzed.

In none of these regressions was the political affiliation of the district court judge associated with fee percentage in a statistically significant manner.[88] One possible explanation for the lack of evidence for the realist hypothesis is that district court judges elevate other preferences above their political and ideological ones. For example, district courts of both political stripes may succumb to docket-clearing pressures and largely rubber stamp whatever fee is requested by class counsel; after all, these requests are rarely challenged by defendants. Moreover, if judges award class counsel whatever they request, class counsel will not appeal and, given that, as noted above, class members rarely appeal settlements (and when they do, often settle them before the appeal is heard),[89] judges can thereby virtually guarantee there will be no appellate review of their settlement decisions. Indeed, scholars have found that in the vast majority of cases, the fees ultimately awarded by federal judges are little different than those sought by class counsel.[90]

Another explanation for the lack of evidence for the realist hypothesis is that my data set includes both unpublished as well as published decisions. It is thought that realist theories of judicial behavior lose force in unpublished judicial decisions. This is the case because the kinds of questions for which realist theories would predict that judges have the most room to let their ideologies run are questions for which the law is ambiguous; it is

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appreciably. The regressions were also run with and without the 2006 Enron settlement because it was such an outlier ($6.6 billion); the case did not change the regression results appreciably. For every regression, the data and residuals were inspected to confirm the standard assumptions of linearity, homoscedasticity, and the normal distribution of errors.

[87]Prior studies of judicial behavior have found that the race and sex of the judge can be associated with his or her decisions. See, e.g., Adam B. Cox & Thomas J. Miles, Judging the Voting Rights Act, 108 Colum. L. Rev. 1 (2008); Donald R. Songer et al., A Reappraisal of Diversification in the Federal Courts: Gender Effects in the Courts of Appeals, 56 J. Pol. 425 (1994).

[88]Although these coefficients are not reported in Table 8, the gender of the district court judge was never statistically significant. The race of the judge was only occasionally significant.

[89]See Fitzpatrick, supra note 85, at 1640.

[90]See Eisenberg & Miller II, supra note 16, at 270 (finding that state and federal judges awarded the fees requested by class counsel in 72.5 percent of settlements); Eisenberg, Miller & Perino, supra note 9, at 22 ("judges take a light touch when it comes to reviewing fee requests").

Table 12: Regression of Fee Percentages in 2006–2007 Settlements Using Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

	Regression Coefficients (and Robust t *Statistics)*				
Independent Variable	*1*	*2*	*3*	*4*	*5*
Settlement amount (natural log)	−1.77	−1.76	−1.76	−1.41	−1.78
	(−5.43)**	(−8.52)**	(−7.16)**	(−4.00)**	(−8.67)**
Age of case (natural log days)	1.66	1.99	1.13	1.72	2.00
	(2.31)**	(2.71)**	(1.21)	(1.47)	(2.69)**
Judge's political affiliation (1 = Democrat)	−0.630	−0.345	0.657	−1.43	−0.232
	(−0.83)	(−0.49)	(0.76)	(−1.20)	(−0.34)
Settlement class		0.150	0.873	−1.62	0.124
		(0.19)	(0.84)	(−1.00)	(0.15)
1st Circuit		3.30	4.41	0.031	0.579
		(2.74)**	(3.32)**	(0.01)	(0.51)
2d Circuit		0.513	−0.813	2.93	−2.23
		(0.44)	(−0.61)	(1.14)	(−1.98)**
3d Circuit		2.25	4.00	−1.11	—
		(1.99)**	(3.85)**	(−0.50)	
4th Circuit		2.34	0.544	3.81	—
		(1.22)	(0.19)	(1.35)	
5th Circuit		2.98	1.09	6.11	0.230
		(1.90)*	(0.65)	(1.97)**	(0.15)
6th Circuit		2.91	0.838	4.41	—
		(2.28)**	(0.57)	(2.15)**	
7th Circuit		2.55	3.22	2.90	−0.227
		(2.23)**	(2.36)**	(1.46)	(−0.20)
8th Circuit		2.12	−0.759	3.73	−0.586
		(0.97)	(−0.24)	(1.19)	(−0.28)
9th Circuit		—	—	—	−2.73
					(−3.44)**
10th Circuit		1.45	−0.254	3.16	—
		(0.94)	(−0.13)	(1.29)	
11th Circuit		4.05	3.85	4.14	—
		(3.44)**	(3.07)**	(1.88)*	
DC Circuit		2.76	2.60	2.41	—
		(1.10)	(0.80)	(0.64)	
Securities case		—			—
Labor and employment case		2.93		—	2.85
		(3.00)**			(2.94)**
Consumer case		−1.65		−4.39	−1.62
		(−0.88)		(−2.20)**	(−0.88)
Employee benefits case		−0.306		−4.23	−0.325
		(−0.23)		(−2.55)**	(−0.26)
Civil rights case		1.85		−2.05	1.76
		(0.99)		(−0.97)	(0.95)
Debt collection case		−4.93		−7.93	−5.04
		(−1.71)*		(−2.49)**	(−1.75)*
Antitrust case		3.06		0.937	2.78
		(2.11)**		(0.47)	(1.98)**

Table 12 *Continued*

	Regression Coefficients (and Robust t *Statistics)*				
Independent Variable	*1*	*2*	*3*	*4*	*5*
Commercial case		−0.028		−2.65	0.178
		(−0.01)		(−0.73)	(0.05)
Other case		−0.340		−3.73	−0.221
		(−0.17)		(−1.65)	(−0.11)
Constant	42.1	37.2	43.0	38.2	40.1
	(7.29)**	(6.08)**	(6.72)**	(4.14)**	(7.62)**
N	427	427	232	195	427
R^2	.20	.26	.37	.26	.26
Root MSE	6.59	6.50	5.63	7.24	6.48

NOTE: **significant at the 5 percent level; *significant at the 10 percent level. Standard errors in Column 1 were clustered by circuit. Indicator variables for race and gender were included in each regression but not reported.

SOURCES: Westlaw, PACER, district court clerks' offices, Federal Judicial Center.

thought that these kinds of questions are more often answered in published opinions.[91] Indeed, most of the studies finding an association between ideological beliefs and case outcomes were based on data sets that included only published opinions.[92] On the other hand, there is a small but growing number of studies that examine unpublished opinions as well, and some of these studies have shown that ideological effects persisted.[93] Nonetheless, in light of the discretion that judges exercise with respect to fee award decisions, it hard to characterize *any* decision in this area as "unambiguous." Thus, even when unpublished, I would have expected the fee award decisions to exhibit an association with ideological beliefs. Thus, I am more persuaded by the explanation suggesting that judges are more concerned with clearing their dockets or insulating their decisions from appeal in these cases than with furthering their ideological beliefs.

In all the regressions, the size of the settlement was strongly and inversely associated with fee percentages. Whether the case was certified as a settlement class was not associated

[91]See, e.g., Ahmed E. Taha, Data and Selection Bias: A Case Study, 75 UMKC L. Rev. 171, 179 (2006).

[92]Id. at 178–79.

[93]See, e.g., David S. Law, Strategic Judicial Lawmaking: Ideology, Publication, and Asylum Law in the Ninth Circuit, 73 U. Cin. L. Rev. 817, 843 (2005); Deborah Jones Merritt & James J. Brudney, Stalking Secret Law: What Predicts Publication in the United States Courts of Appeals, 54 Vand. L. Rev. 71, 109 (2001); Donald R. Songer, Criteria for Publication of Opinions in the U.S. Courts of Appeals: Formal Rules Versus Empirical Reality, 73 Judicature 307, 312 (1990). At the trial court level, however, the studies of civil cases have found no ideological effects. See Laura Beth Nielsen, Robert L. Nelson & Ryon Lancaster, Individual Justice or Collective Legal Mobilization? Employment Discrimination Litigation in the Post Civil Rights United States, 7 J. Empirical Legal Stud. 175, 192–93 (2010); Denise M. Keele et al., An Analysis of Ideological Effects in Published Versus Unpublished Judicial Opinions, 6 J. Empirical Legal Stud. 213, 230 (2009); Orley Ashenfelter, Theodore Eisenberg & Stewart J. Schwab, Politics and the Judiciary: The Influence of Judicial Background on Case Outcomes, 24 J. Legal Stud. 257, 276–77 (1995). With respect to criminal cases, there is at least one study at the trial court level that has found ideological effects. See Schanzenbach & Tiller, supra note 81, at 734.

with fee percentages in any of the regressions. The age of the case at settlement was associated with fee percentages in the first two regressions, and when the settlement class variable was removed in regressions 3 and 4, the age variable became positively associated with fee percentages in nonsecurities cases but remained insignificant in securities cases. Professors Eisenberg and Miller likewise found that the age of the case at settlement was positively associated with fee percentages in their 1993–2002 data set,[94] and that settlement classes were not associated with fee percentages in their 2003–2008 data set.[95]

Although the structure of these regressions did not permit extensive comparisons of fee awards across different litigation subject areas, fee percentages appeared to vary somewhat depending on the type of case that settled. Securities cases were used as the baseline litigation subject area in the second and fifth regressions, permitting a comparison of fee awards in each nonsecurities area with the awards in securities cases. These regressions show that awards in a few areas, including labor/employment and antitrust, were more lucrative than those in securities cases. In the fourth regression, which included only nonsecurities cases, labor and employment cases were used as the baseline litigation subject area, permitting comparison between fee percentages in that area and the other nonsecurities areas. This regression shows that fee percentages in several areas, including consumer and employee benefits cases, were lower than the percentages in labor and employment cases.

In the fifth regression (Column 5 of Table 12), I attempted to discern whether the circuits identified in Section III as those with the most overrepresented (the First, Second, Seventh, and Ninth) and underrepresented (the Fifth and Eighth) class action dockets awarded attorney fees differently than the other circuits. That is, perhaps district court judges in the First, Second, Seventh, and Ninth Circuits award greater percentages of class action settlements as fees than do the other circuits, whereas district court judges in the Fifth and Eighth Circuits award smaller percentages. To test this hypothesis, in the fifth regression, I included indicator variables only for the six circuits with unusual dockets to measure their fee awards against the other six circuits combined. The regression showed statistically significant association with fee percentages for only two of the six unusual circuits: the Second and Ninth Circuits. In both cases, however, the direction of the association (i.e., the Second and Ninth Circuits awarded *smaller* fees than the baseline circuits) was opposite the hypothesized direction.[96]

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[94]See Eisenberg & Miller, supra note 15, at 61.

[95]See Eisenberg & Miller II, supra note 16, at 266.

[96]This relationship persisted when the regressions were rerun among the securities and nonsecurities cases separately. I do not report these results, but, even though the First, Second, and Ninth Circuits were oversubscribed with securities class action settlements and the Fifth, Sixth, and Eighth were undersubscribed, there was no association between fee percentages and any of these unusual circuits except, again, the inverse association with the Second and Ninth Circuits. In nonsecurities cases, even though the Seventh and Ninth Circuits were oversubscribed and the Fifth and the Eighth undersubscribed, there was no association between fee percentages and any of these unusual circuits except again for the inverse association with the Ninth Circuit.

The lack of the expected association with the unusual circuits might be explained by the fact that class action lawyers forum shop along dimensions other than their potential fee awards; they might, for example, put more emphasis on favorable class-certification law because there can be no fee award if the class is not certified. As noted above, it might also be the case that class action lawyers are unable to engage in forum shopping at all because defendants are able to transfer venue to the district in which they are headquartered or another district with a significant connection to the litigation.

It is unclear why the Second and Ninth Circuits were associated with lower fee awards despite their heavy class action dockets. Indeed, it should be noted that the Ninth Circuit was the baseline circuit in the second, third, and fourth regressions and, in all these regressions, district courts in the Ninth Circuit awarded smaller fees than courts in many of the other circuits. The lower fees in the Ninth Circuit may be attributable to the fact that it has adopted a presumption that the proper fee to be awarded in a class action settlement is 25 percent of the settlement.[97] This presumption may make it more difficult for district court judges to award larger fee percentages. The lower awards in the Second Circuit are more difficult to explain, but it should be noted that the difference between the Second Circuit and the baseline circuits went away when the fifth regression was rerun with only nonsecurities cases.[98] This suggests that the awards in the Second Circuit may be lower *only* in securities cases. In any event, it should be noted that the lower fee awards from the Second and Ninth Circuits contrast with the findings in the Eisenberg-Miller studies, which found no intercircuit differences in fee awards in common-fund cases in their data through 2008.[99]

V. Conclusion

This article has attempted to fill some of the gaps in our knowledge about class action litigation by reporting the results of an empirical study that attempted to collect all class action settlements approved by federal judges in 2006 and 2007. District court judges approved 688 class action settlements over this two-year period, involving more than $33 billion. Of this $33 billion, nearly $5 billion was awarded to class action lawyers, or about 15 percent of the total. District courts typically awarded fees using the highly discretionary percentage-of-the-settlement method, and fee awards varied over a wide range under this method, with a mean and median around 25 percent. Fee awards using this method were strongly and inversely associated with the size of the settlement. Fee percentages were positively associated with the age of the case at settlement. Fee percentages were not associated with whether the class action was certified as a settlement class or with the

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[97]See note 75 supra. It should be noted that none of the results from the previous regressions were affected when the Ninth Circuit settlements were excluded from the data.

[98]The Ninth Circuit's differences persisted.

[99]See Eisenberg & Miller II, supra note 16, at 260.

political affiliation of the judge who made the award. Finally, there appeared to be some variation in fee percentages depending on subject matter of the litigation and the geographic circuit in which the district court was located. Fee percentages in securities cases were lower than the percentages in some but not all of the other litigation areas, and district courts in the Ninth Circuit and in the Second Circuit (in securities cases) awarded lower fee percentages than district courts in several other circuits. The lower awards in the Ninth Circuit may be attributable to the fact that it is the only circuit that has adopted a presumptive fee percentage of 25 percent.