

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

TIM DOYLE, Individually and On Behalf of
All Others Similarly Situated, *et al.*,

Plaintiffs,

v.

REATA PHARMACEUTICALS, INC., *et al.*,

Defendants.

Case No. 4:21-cv-00987-ALM
LEAD

CLASS ACTION

Judge Amos L. Mazzant, III

**DECLARATION OF DANIEL HUME IN SUPPORT OF:
(I) LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION; AND
(II) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES
AND REIMBURSEMENT OF LITIGATION EXPENSES**

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TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>
1	Declaration of Jessie Mahn Regarding: (I) Mailing of Notice and Proof of Claim Form; (II) Publication of Summary Notice; (III) Call Center Services; (IV) the Settlement Website; and (V) Requests for Exclusion and Objections Received to Date
2	Declaration of Marlene Igel-Harris on Behalf of Wespath in Support of: (I) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses
3	Declaration of Daniel Hume, Esq. in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses Filed on Behalf of Kirby McInerney LLP
4	Declaration of Robert V. Prongay, Esq. in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses Filed on Behalf of Glancy Prongay & Murray LLP
5	Declaration of Bruce William Steckler, Esq. in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses Filed on Behalf of Steckler Wayne & Love PLLC
6	Declaration of Jed D. Melnick in Support of Final Approval of Class Action Settlement
7	Declaration of Brian T. Fitzpatrick
8	True and correct copy of Edward Flores & Svetlana Starykh, <i>Recent Trends in Securities Class Action Litigation: 2023 Full-Year Review</i> , NERA Economic Consulting (Jan. 23, 2024)
9	True and correct copy of Laarni T. Bulan & Laura E. Simmons, <i>Securities Class Action Settlements: 2022 Review and Analysis</i> , Cornerstone Research (2023)
10	Table compiled by Lead Counsel with: (1) billing rates for plaintiffs' firms in cases involving securities and other comparable complex class actions; and (2) billing rates of law firms that regularly defend securities and comparable complex class actions

I, Daniel Hume, declare, pursuant to 28 U.S.C. § 1746, as follows:

I. Introduction

1. I am a partner of the law firm Kirby McInerney LLP (“Kirby McInerney”), the Court-appointed Lead Counsel (“Lead Counsel”) and counsel for the Court-appointed Lead Plaintiff UMC Benefit Board, Inc., US Equity Fund-P Series, a series of the Wespath Funds Trust, US Equity Index Fund-P Series, a series of the Wespath Funds Trust, Wespath Institutional Investments LLC, US Equity Index Fund-I Series, a series of the Wespath Funds Trust, and US Equity Index Fund-I Series, a series of the Wespath Funds Trust (“Lead Plaintiff” or “Wespath”) in the above-captioned action (the “Action”).¹ I am admitted *pro hac vice* to practice before this Court. I have personal knowledge of the matters set forth herein based on my supervision of and active participation in all material aspects of the Action.

2. I respectfully submit this declaration in support of Lead Plaintiff’s motion, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for final approval of the proposed \$45,000,000 settlement (the “Settlement”) that the Court preliminary approved by Order dated November 27, 2023 (the “Preliminary Approval Order”) (ECF No. 76), as well as of the proposed plan for allocating the proceeds of the Net Settlement Fund to eligible Settlement Class Members (the “Plan of Allocation”) (collectively, the “Final Approval Motion”).

3. I also respectfully submit this declaration in support of Lead Counsel’s motion, on behalf of all Plaintiffs’ Counsel,² for: an award of attorneys’ fees in the amount of 30% of the

¹ Unless otherwise defined, all capitalized terms herein have the same meanings as set forth in the Stipulation and Agreement of Settlement dated October 30, 2023 (the “Stipulation”). *See* ECF No. 74-2. References herein to “Ex. ___” are to the exhibits annexed hereto. Citations to exhibits that have attached exhibits will be referenced as “Ex. ___ - ___.” The first numerical reference is to the entire exhibit and the second alphabetical reference is to the exhibit within that exhibit.

² “Plaintiffs’ Counsel” collectively refers to Kirby McInerney, Glancy Prongay & Murray LLP (“Glancy”), and Court-appointed Local Liaison Counsel, Steckler Wayne & Love PLLC (“Steckler”).

Settlement Fund, which equates to \$13,500,000, plus interest earned at the same rate as the Settlement Fund; reimbursement of Plaintiffs' Counsel's out-of-pocket Litigation Expenses in the amount of \$204,323.08, plus interest earned at the same rate as the Settlement Fund; and an award in accordance with the Private Securities Litigation Reform Act of 1995 ("PSLRA") of \$10,000 for costs and expenses incurred by Lead Plaintiff related to its representation of the Settlement Class (the "Fee and Expense Application").

4. The proposed Settlement now before the Court provides for the resolution of all claims in the Action in exchange for a cash payment of \$45,000,000. As detailed below, Lead Counsel respectfully submits that the Settlement is fair, reasonable, and adequate and should be finally approved by the Court.

5. This case was vigorously litigated from its commencement in December 2021 through the execution of the Stipulation on October 30, 2023. As explained in greater detail herein, the Settlement was achieved only after Plaintiffs' Counsel, *inter alia*: (i) conducted a comprehensive investigation into the merits of the claims alleged and the likely damages that could be recovered by the Settlement Class, which included a review and analysis of publicly available information concerning Defendants³ as well as consultations with merits and damages experts, including an expert on the Food and Drug Administration ("FDA")'s drug approval process; (ii) prepared the detailed Consolidated Amended Class Action Complaint ("CAC") (ECF No. 37); (iii) researched and drafted a comprehensive opposition to Defendants' motion to dismiss (ECF No. 60); (iv) engaged in months of arm's length settlement negotiations overseen by Jed Melnick, Esq.

³ "Defendants" refers collectively to: (i) Reata Pharmaceuticals, Inc. ("Reata"); (ii) J. Warren Huff, Colin J. Meyer, and Manmeet Soni (the "Officer Defendants"); (iii) R. Kent McGaughy, Jr., Jack B. Nielsen, William E. Rose, William D. McClellan, Jr., and James E. Bass (the "Director Defendants" and together with Reata and the Officer Defendants, the "Reata Defendants"); and (iv) Jefferies LLC, SVB Securities LLC, f/k/a SVB Leerink LLC, Stifel, Nicolaus & Company, Incorporated, Robert W. Baird & Co., Inc., Ladenburg Thalmann & Co., Inc., Cantor Fitzgerald & Co., Citigroup Global Markets Inc., Barclays Capital Inc., and Goldman Sachs & Co. LLC (the "Underwriter Defendants").

of JAMS (“Mr. Melnick”), which involved, among other things, two formal mediation sessions, the exchange of multiple written mediation submissions, and the review of over two million pages of non-public documents produced by the Reata Defendants; and (v) engaged in substantial, additional confirmatory discovery, including a review of thousands of additional pages of non-public documents produced by the Reata Defendants and interviews with Officer Defendants J. Warren Huff and Colin J. Meyer. As a result, Lead Plaintiff and Plaintiffs’ Counsel were well-informed of the strengths and weaknesses of the claims and defenses in the Action prior to executing the Stipulation.

6. As discussed in detail below, the Settlement confers a substantial, immediate benefit to the Settlement Class and is eminently fair, reasonable, and adequate in light of the risks, delays, and expenses of continuing to litigate the Action through a decision on Defendants’ pending motion to dismiss, class certification, discovery, summary judgment, trial, and inevitable appeals.

7. According to NERA Economic Consulting (“NERA”), the median settlement between 2014 and 2023 in securities cases with investor losses between \$1 billion and \$4.999 billion recovered 1.3% of investor losses. *See* Ex. 8 at 25. The \$45 million Settlement here represents *over three times* that amount, equating to 4% of the \$1.138 billion in class-wide damages that Lead Plaintiff and Lead Counsel believe could have been recovered in the Action in the event of a trial victory that withstood subsequent appeals. The \$45 million Settlement is also well above the median settlement value in securities class actions settled in both 2022 and 2023, reported by Cornerstone Research and NERA to be \$13 million and \$14 million, respectively. *See* Ex. 9 at 1; Ex. 8 at 20.

8. Moreover, the Settlement was achieved in the face of vigorous opposition by

Defendants who, absent settlement, would have continued to raise numerous defenses that could have significantly reduced the Settlement Class's recovery or eliminated it altogether. For example, had the Action continued, Defendants would have continued to challenge the falsity of the alleged misstatements, arguing that they were either truthful or nonactionable under the PSLRA safe harbor and/or the standards set forth in *Omnicare, Inc. v. Laborers Dist. Council Const. Indus. Pension Fund*, 575 U.S. 175 (2015). Defendants would also have continued to argue that they had no duty to disclose the allegedly omitted information. Additionally, Defendants would have continued to assert that even if their alleged statements were false and/or misleading, they were not made with scienter.

9. Had the litigation continued, Defendants would also likely have argued that (i) one or more of the alleged corrective disclosures were not actually corrective of any misleading statement, and/or (ii) they did not cause any claimed losses, including because, at the time of the alleged disclosures, Reata also announced other news unrelated to the alleged fraud that could have impacted Reata's share price. Thus, issues relating to loss causation and damages, including disaggregation and the proper treatment of confounding information, would likely have come down to an unpredictable battle of the experts. Accordingly, in the absence of settlement, there was a very real risk that the Settlement Class could have recovered nothing or an amount significantly less than the negotiated Settlement Amount.

10. With respect to the proposed Plan of Allocation, Lead Counsel submits that the Plan is fair, reasonable, and adequate. As discussed further herein, the Plan of Allocation was developed by Lead Counsel with the assistance of Lead Plaintiff's consulting damages expert and provides for distribution of the Net Settlement Fund to Settlement Class Members who submit eligible Claim Forms on a *pro rata* basis based on their losses attributable to the alleged fraud. As

such, the proposed Plan of Allocation also warrants this Court's approval.

11. With respect to the Fee and Expense Application, Lead Counsel submits that the requested fee of 30% of the Settlement Fund represents a fair market rate for Plaintiffs' Counsel's services and is fair to both the Settlement Class and Plaintiffs' Counsel.

12. The requested fee is lower than the figure proposed in the Notice (*see* Ex. 1-A ¶¶ 5, 73) and is well within the parameters recognized as appropriate in federal securities class actions, such as this litigation, both under a percentage-of-recovery analysis and under a lodestar cross-check analysis. The fee request is further supported by the contingent risk borne by Plaintiffs' Counsel, the quality of their representation, the nature of the legal services performed, the risks of this litigation, and the substantial benefit that Plaintiffs' Counsel conferred on the Settlement Class. Moreover, the out-of-pocket Litigation Expenses incurred were all reasonable and necessary for the prosecution of the Action and are considerably less than the maximum figure proposed in the Notice available to the Settlement Class. *See id.*

13. Significantly, following the dissemination of 30,582 Notice Packets to potential Settlement Class Members and nominees, no objections have been filed to date to any aspect of the Settlement, Plan of Allocation, or Fee and Expense Application. *See* Ex. 1 ¶¶ 10, 22. Additionally, to date, there have been no requests for exclusion from the Settlement Class. *See id.* ¶ 20. The deadline for Settlement Class Members to file objections to the Settlement and/or request exclusion from the Settlement Class is March 8, 2024. *See* Ex. 1 ¶¶ 19, 21; Ex. 1-A ¶¶ 74, 80.

14. For these reasons and those discussed below, Lead Counsel respectfully submits that: the \$45 million Settlement is an excellent result for the Settlement Class and should be approved as fair, reasonable, and adequate; the proposed Plan of Allocation is equitable and just and should be approved; and the requested fee award of 30% of the \$45 million Settlement Fund

and reimbursement of Plaintiffs' Counsel's Litigation Expenses should be awarded in full.

II. Factual Background

15. Reata is a biopharmaceutical company headquartered in Plano, Texas. *See* CAC ¶ 3. During the Class Period, Reata sought to develop its leading drug candidate, bardoxolone methyl ("Bard"), as a treatment for Alport Syndrome, a form of chronic kidney disease ("CKD"). *See id.*

16. CKD involves the deterioration of the kidneys' ability to filter waste products from the bloodstream. *See id.* ¶ 55. The kidneys' filtering ability, known as the "glomerular filtration rate" or "GFR" is measured by a metric termed "estimated GFR" or "eGFR." *Id.* ¶¶ 55-56.

17. A drug that boosts eGFR can indicate efficacy in treating CKD. *See id.* ¶¶ 69-72. However, reliance on eGFR alone leaves uncertainty as to whether the treatment merely produces short-term pharmacodynamic ("PD") effects that vanish after treatment ends, or whether the treatment truly slows the decline in kidney function and thus alters the course of the disease. *See id.* ¶¶ 4, 71, 73. Measuring "retained eGFR" resolves this uncertainty by removing a drug's PD effects, thus clarifying the remaining effects as disease-modifying. *See id.* ¶¶ 4, 74-83. Retained eGFR measurements remove a drug's PD effects from the equation by measuring eGFR after (i) ceasing drug treatment, and (ii) waiting for an additional "washout period" sufficient for the drug's PD effects to be fully eliminated from the body. *See id.*

18. To market Bard as a treatment for Alport Syndrome, Reata needed FDA approval, which required a clinical study demonstrating Bard's efficacy and safety. *See id.* ¶ 3. The Class Period began on November 14, 2016, when Reata announced that it had received "guidance" from the FDA on how that study should be designed and what results would be sufficient to support FDA approval of Bard. *See id.* ¶ 5. Per Defendants' account of the FDA's guidance: (i) the FDA

required evidence that Bard had a retained eGFR benefit; and (ii) to generate such evidence, the study should be designed to measure eGFR levels following (a) extended Bard treatment (*i.e.*, one and two years on-treatment), and (b) a four-week washout period. *See id.*

19. Reata commenced that clinical study, known as CARDINAL, in early 2017 and completed it in late 2020. *See id.* ¶ 6. Per the FDA’s purported guidance, CARDINAL measured participants’ “retained eGFR” after one year on-treatment following a four-week washout period and again after two years on-treatment following a four-week washout period. *See id.* ¶¶ 89-92. Throughout the trial, Defendants repeatedly represented that CARDINAL’s design faithfully reflected the above-mentioned FDA guidance, and that the FDA’s guidance, including with respect to the four-week washout period, had not changed during the course of the trial. *See id.* ¶¶ 6, 94, 134, 298. Defendants also repeatedly represented that Bard’s PD effects fully washed out in 10-14 days and, as a result, CARDINAL’s use of a four-week washout period was more than sufficient to demonstrate Bard’s efficacy. *See id.* ¶¶ 9, 114, 141-43.

20. As the trial progressed and CARDINAL’s results appeared to successfully demonstrate Bard’s retained eGFR benefits, Reata’s share price more than sextupled, rising from below \$30 per share to above \$200 per share. *See id.* ¶ 10. Allegedly taking advantage of this price inflation, Defendants conducted four secondary public offerings during the Class Period, in which they sold more than 11.9 million Reata shares for more than \$1.1 billion. *See id.* Officer Defendants Huff and Meyer, as well as certain other Reata officers, realized a further \$50 million from selling personal Reata shareholdings as Reata’s shares neared their peak prices. *See id.* ¶¶ 10, 419-27.

21. Shortly after (i) announcing, on November 9, 2020, positive CARDINAL retained eGFR results following two years on-treatment and a four-week washout period, which caused Reata’s share price to jump 32.4% that day, and (ii) completing its fourth secondary public offering

on December 1, 2020, Reata submitted a New Drug Application (“NDA”) with the FDA in February 2021, with the CARDINAL results as its centerpiece (the “Bard NDA”). *See id.* ¶ 11.

22. The FDA scheduled a public Advisory Committee meeting to consider the Bard NDA for December 8, 2021. *See id.* ¶ 12. On December 6, 2021, the FDA released a 96-page report concerning the Bard NDA (the “FDA Briefing Book”). *See id.* ¶¶ 12-13. Lead Plaintiff contends that the FDA Briefing Book revealed that Reata had not been transparent with investors concerning its interactions with the FDA. *See id.*

23. The FDA Briefing Book explained that Reata allegedly had not obtained FDA concurrence on CARDINAL’s design – most specifically, on CARDINAL’s four-week washout period. *See id.* ¶ 14. Rather, the FDA Briefing Book explained that the FDA had allegedly repeatedly questioned the adequacy of a four-week washout period throughout the trial’s duration. *See id.* Consequently, the FDA allegedly was not convinced that CARDINAL’s “retained eGFR” results were truly indicative of Bard’s efficacy. *See id.* ¶ 15.

24. Following the FDA Briefing Book’s publication, Reata’s shares lost 37.8% of their value that same day, falling from \$78.69 to \$48.92 per share, on trading volume of 5.5 million shares – the second most active trading day in Reata’s existence. *See id.* ¶ 17. On December 9, 2021, after the Advisory Committee voted unanimously against Bard’s approval, Reata’s share price fell further still, declining by \$25.31 per share, or 46.5%, to close at \$29.11 per share, on even heavier trading volume. *See id.*

25. Throughout the Class Period, Defendants allegedly made materially false and/or misleading statements – including in connection with Reata’s secondary stock offerings – concerning the FDA’s guidance, CARDINAL’s design and results, and Bard’s washout period. As a result, Lead Plaintiff and Settlement Class Members allegedly suffered significant losses and

damages. *See id.* ¶ 18.

III. Procedural History

A. Commencement of the Action and Appointment of Lead Plaintiff and Lead Counsel

26. On December 20, 2021, Tim Doyle commenced a securities class action in this Court against Reata and Officer Defendants Huff and Soni, asserting claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) during the period between November 9, 2020 and December 8, 2021, inclusive (the “Initial Class Period”). *See* ECF No. 1. Two other putative class actions involving Reata followed.⁴

27. On February 18, 2022, Wespath moved for appointment as Lead Plaintiff and further moved the Court to appoint Kirby McInerney as Lead Counsel and Steckler as Local Counsel. *See* ECF No. 20. Several other movants also filed for appointment as lead plaintiff along with their respective chosen counsel. *See* ECF Nos. 18-19, 21-24.

28. On April 22, 2022, the Court appointed Wespath as Lead Plaintiff, Kirby McInerney as Lead Counsel, and Steckler as Local Liaison Counsel. *See* ECF Nos. 33-34.

B. Lead Counsel’s Investigation and Filing of the CAC

29. Lead Counsel conducted an extensive investigation prior to filing the CAC. Specifically, Lead Counsel investigated Reata’s allegedly wrongful acts by, among other things: (i) engaging the services of a highly experienced private investigator; and (ii) reviewing and analyzing (a) Reata’s public filings with the U.S. Securities and Exchange Commission (“SEC”), (b) public reports, including research reports, prepared by securities and financial analysts, as well as news articles concerning Reata, (c) Reata’s investor call transcripts, and (d) other publicly

⁴ *See Filbert v. Reata Pharms. Inc., et al.*, No. 22 Civ. 00012 (E.D. Tex.); *Laborers’ Dist. Council, et al. v. Reata Pharms. Inc., et al.*, No. 22 Civ. 00041 (E.D. Tex.).

available material related to Reata and the Individual Defendants. Lead Counsel also consulted with merits and damages experts, including an expert on the FDA approval process.

30. On June 21, 2022, Lead Plaintiff filed the CAC asserting claims against: (i) Reata and the Officer Defendants under Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder; (ii) the Officer Defendants under Section 20(a) of the Exchange Act; (iii) Reata, the Director Defendants, the Underwriter Defendants, and Officer Defendants Huff and Meyer, under Section 11 of the Securities Act of 1933 (the “Securities Act”); (iv) all Defendants under Section 12(a)(2) of the Securities Act; and (v) the Officer Defendants and the Director Defendants under Section 15 of the Securities Act. *See* CAC ¶¶ 449-63, 527-602.

31. Among other things, the CAC alleged that Defendants made false and misleading statements and omitted to disclose material adverse information concerning the CARDINAL trial, including in the offering documents for Reata’s November 14, 2019 and December 1, 2020 secondary stock offerings (the “2019 Offering” and the “2020 Offering,” respectively). *See id.* The CAC further alleged that the prices of Reata’s publicly traded securities were artificially inflated as a result of Defendants’ allegedly false and misleading statements, and declined when the truth was revealed. *See id.* Notably, the CAC expanded the Initial Class Period to include all purchases of Reata common stock during the period between November 14, 2016 through December 8, 2021, inclusive (the “Class Period” or “Settlement Class Period”). *See id.* ¶ 1.

C. Defendants’ Motion to Dismiss the CAC

32. On September 7, 2022, Defendants moved to dismiss the CAC. *See* ECF No. 59. Defendants’ motion raised numerous legal issues aimed at undermining Lead Plaintiff’s claims.

33. Defendants argued, among other things, that Lead Plaintiff failed to allege with the required specificity, why the alleged misstatements were false or misleading, and failed to plead

the highly particularized allegations of scienter required by Rule 9(b) of the Federal Rules of Civil Procedure and the PSLRA. With regard to falsity, Defendants argued that the CAC's allegations were insufficiently particularized because the CAC allegedly failed to plead the dates on which the FDA purportedly expressed concerns about the adequacy of CARDINAL's four-week washout period and thus, the dates on which Defendants' statements allegedly became false and/or misleading. *See id.* at 23-25, 37-41. Defendants also argued that many of the alleged misstatements were either protected by the PSLRA safe harbor or were non-actionable statements of opinion under *Omnicare*. *See id.* at 32-37. Defendants further argued that the FDA had not, in fact, expressed any real concerns about the four-week period's adequacy and even if they had, Defendants had no duty to disclose such "interim feedback" from the FDA. *See id.* at 25-28.

34. With respect to scienter, Defendants argued that Lead Plaintiff failed to allege particularized facts concerning the state of mind of any of the Officer Defendants. *See id.* at 42-49. Specifically, Defendants argued, *inter alia*, that: (i) the CAC improperly relied on the "core operations" doctrine; (ii) scienter could not be inferred from the Officer Defendants' mere refusal to comment on Reata's FDA interactions and/or their decision to remove the term "retained eGFR" from Reata's SEC filings; and (iii) the CAC's motive allegations were insufficient. *See id.*

35. On November 23, 2022, Lead Plaintiff filed its opposition to the motion to dismiss. *See* ECF No. 60. With respect to falsity, Lead Plaintiff argued that: (i) Defendants' motion improperly relied upon non-public documents that were not incorporated by reference into the CAC; (ii) the CAC had, in fact, alleged the timeframe in which the FDA's concerns were communicated to Reata with the necessary particularity; (iii) none of the alleged statements were non-actionable statements of opinion; and (iv) none of the statements identified by Defendants were protected by the PSLRA safe harbor because they were (a) not forward-looking and/or (b)

not accompanied by sufficiently meaningful cautionary language. *See id.* at 17-27, 32-38. Lead Plaintiff also argued that Defendants, did, in fact, have a duty to disclose the FDA's concerns because: (i) disclosure was necessary to prevent Defendants' statements regarding the FDA's purported guidance from being misleading; and (ii) those concerns were not mere interim feedback regarding methodology and process; they were concerns about a key trial measurement that was *critical* to Bard's approval. *See id.* at 28-30.

36. Lead Plaintiff also argued that the CAC's allegations were more than sufficient to raise a strong inference of scienter, including allegations that the Officer Defendants: (i) frequently spoke to investors in detail about Bard, CARDINAL, and Reata's FDA interactions, thus demonstrating their intimate knowledge and expertise on the subject matter of the alleged misrepresentations; (ii) abruptly refused to comment on Reata's FDA interactions and removed references to "retained eGFR" from Reata's SEC filings *following major negative events* with the FDA; and (iii) were not only motivated to raise capital at inflated share prices, but *personally profited* from those inflated prices to the tune of tens of millions of dollars by selling their Reata shares in a suspicious and unusual manner. *See id.* at 39-50.

37. On January 9, 2023, Defendants filed their reply brief in further support of their motion to dismiss. *See* ECF No. 65.

D. Settlement Negotiations and Discovery

38. While Defendants' motion to dismiss was *sub judice*, the Parties agreed to engage in mediation, and they selected Mr. Melnick, one of the country's leading neutrals, to mediate the Parties' settlement negotiations.

39. On February 10, 2023, the Parties notified the Court of their intention to mediate with Mr. Melnick. *See* ECF No. 66. On February 13, 2023, the Court formally referred the Action

to mediation and assigned Mr. Melnick as mediator. *See* ECF No. 67.

40. In advance of the first formal mediation session, Lead Plaintiff and the Reata Defendants exchanged and provided to Mr. Melnick detailed mediation statements and exhibits that addressed the issues of liability and damages.

41. On April 25, 2023, Lead Counsel, Glancy, and counsel for the Reata Defendants, along with certain of the Reata Defendants and Lead Plaintiff's Associate General Counsel, participated in a formal mediation session with Mr. Melnick and his staff in New York, New York. The April 2023 mediation session ended without an agreement to settle. However, the Reata Defendants agreed to produce to Lead Plaintiff non-public documents relating to matters alleged in the CAC, including documents reflecting Reata's non-public communications with the FDA, to further the Parties' settlement negotiations.

42. Over the next several months, the Reata Defendants produced, and Lead Plaintiff and Plaintiffs' Counsel reviewed, over two million pages of documents. Plaintiffs' Counsel also actively engaged with experts across a variety of disciplines, including experts in the fields of FDA administration and financial economics, to more fully understand the issues involved and what it would ultimately take to present Lead Plaintiff's case to a jury.

43. Thereafter, Lead Counsel and counsel for the Reata Defendants exchanged supplemental written submissions and exhibits and participated with client representatives in a second formal mediation session with Mr. Melnick and his staff on July 24, 2023 in Dallas, Texas.

44. Following the second mediation session, Mr. Melnick made a mediator's proposal to resolve the Action for \$45,000,000 in cash for the benefit of the Settlement Class. The Parties accepted Mr. Melnick's recommendation on July 27, 2023.

45. Mr. Melnick has submitted a declaration regarding the Parties' settlement

negotiations, which he describes as “rigorous,” “professional,” and “highly adversarial.” Ex. 6 ¶¶ 2, 13. Mr. Melnick’s declaration also states that, in his opinion, the Settlement is “reasonable,” “arm’s length,” “consistent with the risks and potential rewards” of the case, and represents “a well-reasoned and sound resolution of the complicated and uncertain claims” at issue in the Action. *Id.* ¶ 2.

E. Confirmatory Discovery and Papering the Settlement

46. On September 1, 2023, the Parties memorialized the Settlement in a confidential Term Sheet to Settle Class Action (the “Term Sheet”). The Term Sheet set forth the Parties’ agreement to settle and release all claims asserted in the Action in return for a cash payment by or on behalf of Defendants of \$45,000,000 for the benefit of the Settlement Class, subject to certain terms and conditions and the execution of a “long form” stipulation and related papers.

47. Thereafter, the Parties worked diligently to negotiate the full settlement terms. They also engaged in substantial confirmatory discovery. Specifically, the Reata Defendants produced, and Plaintiffs’ Counsel’s reviewed, an additional 16,023 pages of non-public documents. Lead Counsel also conducted interviews with Officer Defendants Huff and Meyer on September 29, 2023 and October 3, 2023, respectively.

48. On October 30, 2023, the Parties executed the Stipulation, which was filed with the Court on November 3, 2023 (ECF No. 74-2) in connection with Lead Plaintiff’s unopposed motion for preliminary approval of the Settlement (the “Preliminary Approval Motion”). *See* ECF No. 74.

49. Pursuant to the Stipulation, Defendants agreed to make a cash payment of \$45 million and stipulated for settlement purposes to certification of the following Settlement Class:

All persons or entities who purchased or otherwise acquired the publicly traded common stock of Reata between November 14, 2016 and December 8, 2021, inclusive (the “Settlement Class Period”), including all persons or entities who purchased or otherwise acquired Reata common stock pursuant and/or traceable to

Reata's 2019 Offering and/or 2020 Offering (the "Offerings Subclass").

Stipulation ¶¶ 1(zz), 2. Upon the Settlement becoming effective, the Parties will provide mutual releases, as defined in the Stipulation.

F. Preliminary Approval of the Settlement

50. On November 3, 2023, Lead Plaintiff filed the Preliminary Approval Motion. *See* ECF No. 74.

51. On November 27, 2023, the Court entered the Preliminary Approval Order, which, among other things: (i) certified the Settlement Class for settlement purposes; (ii) preliminarily approved the Settlement; (iii) approved the form of Notice, Summary Notice, and Claim Form, and directed that notice of the Settlement be disseminated to potential Settlement Class Members; (iv) established procedures and deadlines by which Settlement Class Members could participate in the Settlement, request exclusion from the Settlement Class, or object to the Settlement, the proposed Plan of Allocation, and/or the Fee and Expense Application; and (v) set a schedule for filing opening and reply papers in support of final approval of the Settlement, Plan of Allocation, and Fee and Expense Application. *See* ECF No. 76 ¶¶ 1-4, 7-19, 26. The Preliminary Approval Order also scheduled a Settlement Hearing for March 29, 2024 to determine, among other things, whether the Settlement should be finally approved as fair, reasonable, and adequate. *See id.* ¶ 5.

IV. Lead Plaintiff's Compliance with the Court's Preliminary Approval Order Requiring Issuance of Notice

52. The Preliminary Approval Order found Lead Plaintiff's proposed method of notice to be adequate and directed that the Notice Packet, comprised of the Notice and the Claim Form, be disseminated to all Settlement Class Members who could be identified with reasonable effort, as well as to brokerage firms and other nominees. *See id.* ¶¶ 7-9. The Preliminary Approval Order also set the March 8, 2024 deadline for Settlement Class Members to submit objections to the

Settlement, the Plan of Allocation, and/or the Fee and Expense Application, or to request exclusion from the Settlement Class. *See id.* ¶¶ 16-19.

53. Pursuant to the Preliminary Approval Order, Lead Counsel instructed Epiq Class Action & Claims Solutions, Inc. (“Epiq”), the Court-approved Claims Administrator, to disseminate copies of the Notice Packet to potential Settlement Class Members and to publish the Summary Notice. The Notice contains, among other things: a description of the Action; the definition of the Settlement Class; a summary of the terms of the Settlement and the proposed Plan of Allocation; and a description of Settlement Class Members’ rights to participate in the Settlement, object to the Settlement, the Plan of Allocation, and/or the Fee and Expense Application, or to exclude themselves from the Settlement Class. *See Ex. 1-A* ¶¶ 1-4, 11-23, 28-38, 49-72, 74-86. The Notice also informs Settlement Class Members of Lead Counsel’s intention to apply for (i) an award of attorneys’ fees in an amount not to exceed 33⅓% of the Settlement Fund, (ii) reimbursement of Plaintiffs’ Counsel’s Litigation Expenses in an amount not to exceed \$500,000, and (iii) an award of \$10,000 for the costs incurred by Lead Plaintiff in connection with its representation of the Settlement Class. *See id.* ¶¶ 5, 73.

54. To disseminate the Notice, Epiq obtained Reata’s list of shareholders who purchased or otherwise acquired Reata common stock during the Settlement Class Period. *See Ex. 1* ¶ 5. In addition, Epiq maintains a proprietary list with names and addresses of known broker firms, dealers, banks, and other institutions involving publicly traded securities (the “Broker Mailing Database”). *See id.* ¶ 6. On December 26, 2023, Epiq disseminated 1,573 copies of the Notice Packet by first-class mail to the individuals and entities contained within Reata’s list of shareholders and the Broker Mailing Database. *See id.* ¶¶ 5-7. As of February 21, 2024, Epiq had disseminated a total of 30,582 Notice Packets. *See id.* ¶ 10.

55. On January 8, 2024, in accordance with the Preliminary Approval Order, Epiq also caused the Summary Notice to be published in *Investor's Business Daily* and to be transmitted over the *PR Newswire*. *See id.* ¶ 12.

56. Lead Counsel also caused Epiq to establish a dedicated settlement website, www.ReataSecuritiesLitigation.com (the "Settlement Website"), to provide potential Settlement Class Members with information concerning the Settlement and access to downloadable copies of the Stipulation, Notice, and Claim Form, as well as the CAC and Preliminary Approval Order. *See id.* ¶¶ 16-17. Lead Counsel also made copies of the Notice and Claim Form available on its firm website, <https://www.kmlp.com/cases-investigations/doyle-v-reata-pharmaceuticals>.

57. Additionally, Lead Counsel caused Epiq to establish a case-specific, toll-free telephone helpline to accommodate potential Settlement Class Members with questions about the Action and the Settlement and/or to allow Settlement Class Members to request copies of the Notice and Claim Form. *See id.* ¶¶ 13-14.

58. As set forth above, the deadline for Settlement Class Members to file objections to the Settlement, the Plan of Allocation, and/or the Fee and Expense Application, or to request exclusion from the Settlement Class, is March 8, 2024. To date, no requests for exclusion and no objections to the Settlement, the Plan of Allocation, or the Fee and Expense Application have been received by the Claims Administrator, Lead Counsel, or filed with the Court. *See id.* ¶¶ 20, 22. Lead Counsel will file reply papers on March 22, 2024, that will address any requests for exclusion and any objections that may be received hereafter.

V. The Settlement Falls within a Reasonable Range of Recovery

59. Lead Counsel submits that the Settlement is fair and reasonable in light of the amount of damages potentially recoverable in the Action.

60. According to NERA, the median settlement between 2014 and 2023 in securities cases with investor losses between \$1 billion and \$4.999 billion recovered 1.3% of investor losses. *See* Ex. 8 at 25. The \$45 million Settlement here constitutes *over three times* that amount, equating to 4% of the \$1.138 billion in class-wide damages that Lead Plaintiff and Lead Counsel believe could have been recovered in the Action in the event of a trial victory that withstood subsequent appeals. Notably, the \$1.138 billion damages estimate properly accounts for known litigation risks, discussed further below, including (i) Defendants' anticipated argument that the alleged August 2020 and August 2021 corrective disclosures did not cause any claimed losses or otherwise directly relate to the alleged fraud, and (ii) Lead Counsel's assessment, following its review of Reata's document productions and interviews with Officer Defendants Huff and Meyer, that falsity and/or scienter would likely be difficult to prove with respect to Defendants' pre-October 2018 misstatements and omissions.⁵

61. The \$45 million Settlement is also well above the median settlement value in securities class actions settled in both 2022 and 2023, reported by Cornerstone Research and NERA to be \$13 million and \$14 million, respectively. *See* Ex. 9 at 1; Ex. 8 at 20.

62. The foregoing numbers, however, tell only part of the story. As summarized in the next section, there were very real risks that could have resulted in a much smaller recovery or no recovery at all if the case had proceeded through a decision on Defendants' motion to dismiss, formal discovery, motions for class certification and summary judgment, trial, and likely appeals. When viewed in light of the risks of continued litigation, the Settlement not only falls within a

⁵ Even if liability could have been established with respect to *all* claims for the *entirety* of the Class Period, Lead Plaintiff's consulting damages expert estimates that maximum aggregate damages potentially recoverable under the Exchange Act would have been approximately \$2.392 billion. The Settlement represents approximately 1.9% of this amount, which is still more than the median recovery of 1.3% obtained in securities class actions involving similar damages amounts. *See* Ex. 8 at 25.

reasonable range of recovery, it represents a truly excellent recovery for the Settlement Class.

VI. The Risks of Continued Litigation

63. Based on publicly available information, information obtained through Lead Counsel's investigation, and the discovery conducted during the settlement negotiations and confirmatory process, Lead Counsel believes that it has adduced substantial evidence to support Settlement Class Members' claims. However, Lead Counsel also realizes that the Action presented substantial risks that could have precluded any recovery at all, let alone a recovery greater than the Settlement Amount. Lead Counsel carefully considered these risks during the months leading up to the Settlement and throughout the settlement negotiations with Defendants.

A. Risks on Defendants' Pending Motion to Dismiss

64. At the time the Settlement was reached, Defendants' motion to dismiss remained pending. As discussed at Point III.C, *supra*, Defendants' motion argued, *inter alia*, that Defendants did not make any false or misleading statements, and even if they did, they did not do so with scienter. *See* ECF No. 59 at 23-50. Defendants also denied any duty to disclose the FDA's purported concerns, arguing that any such concerns (i) did not relate to the adequacy of a four-week washout period, and (ii) were, in any event, mere interim feedback expressed during ordinary back-and-forth between Reata and the FDA. *See id.* at 25-28. Defendants further argued that the CAC's allegations were not pleaded with sufficient particularity because the CAC allegedly did not specify, among other things, the dates on which the FDA conveyed its alleged concerns to Reata. *See id.* at 37-42.

65. Although Lead Plaintiff and Lead Counsel believed in their prospects of success on the motion, success was far from certain. An adverse decision could have drastically shortened the Class Period or could have resulted in the Action's dismissal in part or in its entirety.

B. Risks to Proving Falsity and Scienter

66. Even if Lead Plaintiff defeated Defendants’ motion to dismiss entirely, it still had to ultimately prove falsity and scienter at summary judgment and trial. As noted above, the Reata Defendants’ documents, produced during the settlement negotiation process, as well as the information obtained during Lead Counsel’s interviews with Officer Defendants Huff and Meyer, plausibly suggested an absence of falsity and/or scienter with respect to Defendants’ pre-October 2018 statements and omissions. Moreover, Defendants have maintained, and would have continued to maintain, that: (i) the FDA did not express any concerns about the adequacy of the four-week washout period, not just during the period prior to October 2018, but at any point prior to the FDA Briefing Book’s publication in December 2021; and (ii) relevant documents in Defendants’ possession are allegedly consistent with that position.

67. Furthermore, Lead Counsel knew that discovery from the FDA – the only other party to the alleged communications with Reata – was unlikely to be forthcoming. As a result, Lead Plaintiff would have had to rely almost entirely on documents and testimony from Reata’s own witnesses to prove that Defendants’ statements and omissions were materially false, and that Defendants acted with the requisite scienter.

68. Accordingly, despite believing this Action to be meritorious, Lead Plaintiff and Lead Counsel were aware of the high hurdles they would have to surmount to successfully prove falsity and scienter at summary judgment and trial.

C. Risks to Proving Loss Causation and Damages

69. Even if Lead Plaintiff overcame the risks of establishing falsity and scienter, it would also have confronted considerable challenges in establishing loss causation and damages.

70. Pursuant to *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336 (2005), it is Lead

Plaintiff's burden to prove loss causation and damages. This would require Lead Plaintiff to proffer expert testimony as to: (a) the "true value" of Reata's stock had there been no alleged material misstatements or omissions; (b) the amount by which Reata's stock was inflated (or deflated) by the alleged material misstatements and omissions; and (c) the amount of artificial inflation removed by the purported corrective disclosures.

71. Defendants, however, would have presented their own theories and conclusions as to the reasons for the decline in Reata's stock price. For example, Defendants would likely have argued that the decline in Reata's stock price on one or more of the corrective disclosure dates was caused by the disclosure of information unrelated to the alleged fraud that could have impacted its share price. Thus, any price decline flowing from the alleged fraud would need to be disaggregated from other confounding news. Defendants would also likely have argued that the alleged corrective disclosures in August 2020 and August 2021 were not related to the FDA's alleged concerns over the adequacy of CARDINAL's four-week washout period but were instead related to the FDA's unrelated concerns over data collected *prior to* the end of the four-week washout period. Moreover, Defendants almost certainly would have presented their own damages expert(s) to support their theories and conclusions. As a result, proving loss causation and damages would inevitably require a jury to decide a "battle of the experts" – an expensive and intrinsically unpredictable process.

72. Indeed, expert testimony can often rest on many assumptions, any of which risks being rejected by a jury. A jury's reaction to such expert testimony is highly unpredictable and Lead Plaintiff recognizes that, in such a battle, there is the possibility that a jury could be swayed by Defendants' experts and could find that only a fraction of Settlement Class Members' damages truly resulted from the alleged fraud. Thus, the amount of damages that the Settlement Class would recover at trial, even if successful on liability issues, was uncertain. Similarly, there was no

assurance that Lead Plaintiff's key evidence and trial testimony relating to loss causation and damages would be admitted as evidence by the Court at trial. This could have seriously affected Lead Plaintiff's ability to successfully prosecute the Action.

73. In sum, had any of Defendants' loss causation and damages arguments been accepted at summary judgment or trial, they could have dramatically limited – if not eliminated – any potential recovery by the Settlement Class.

D. Additional Risks of Continued Litigation, Trial, and Appeals

74. Any future recovery in the Action would require Lead Plaintiff to prevail at several later stages of the litigation, each of which presents significant risks in complex class actions such as this one. For example, Lead Plaintiff would have to move to certify the class, which, if granted, would likely result in Defendants filing a Rule 23(f) petition for interlocutory appellate review. Moreover, if Defendants were able to demonstrate that Wespath was atypical in any way, it could put the entire case in jeopardy.

75. Lead Plaintiff would also have to complete substantial additional fact and expert discovery, which would entail, among other things, document production, review and analysis of documents produced by Defendants and third parties, taking and/or defending percipient and expert depositions, propounding and responding to interrogatories and requests for admission, and defending Lead Plaintiff's deposition. The costs of each of these tasks would assuredly be high, and the fruits of each endeavor would be highly uncertain. Furthermore, as discussed above, Lead Plaintiff would have to successfully prevail on Defendants' pending motion to dismiss and anticipated motion(s) for summary judgment, as well as at trial.

76. Lead Counsel knew from experience that despite the most vigorous and competent efforts, success at trial in complex litigation is never assured. In recent years, Kirby McInerney

lost a two-week bench trial in the Southern District of New York following four years of hard-fought litigation even after plaintiff's claims arising under the Investment Company Act of 1940 had survived motions to dismiss and for summary judgment. *See Chill ex rel. Calamos Advisors LLC*, 417 F. Supp. 3d 208 (S.D.N.Y. 2019). Similarly, within the last couple of years, Glancy lost a six-week antitrust jury trial in the Northern District of California after five years of litigation, which included many overseas depositions and the expenditure of more than a million dollars in hard costs. *See In re Korean Ramen Indirect Antitrust Litig.*, No. 13 Civ. 04115 (N.D. Cal.).

77. Moreover, even if Lead Plaintiff prevailed at trial, it would have to succeed on any appeals that would surely follow. This process could extend for years and might ultimately lead to a smaller recovery, or no recovery at all.⁶

78. In sum, having evaluated the relative strengths and weaknesses of the Action in light of Defendants' arguments, and having considered the very real risks presented by the significant hurdles of class certification, summary judgment, trial, and any eventual appeals, it is the informed judgment of Lead Counsel, based upon all of the proceedings to date and its extensive experience litigating class actions under the federal securities laws (*see* Ex. 3-C), that the proposed Settlement is fair, reasonable, and adequate and in the best interests of the Settlement Class.

79. Lead Counsel's conclusion that the Settlement is fair, reasonable, and adequate is also supported by Lead Plaintiff. *See* Ex. 2 ¶¶ 7, 13.

VII. The Proposed Plan of Allocation

80. Pursuant to the Preliminary Approval Order, all Settlement Class Members who

⁶ *See Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (reversing \$81 million jury verdict for plaintiffs); *In re BankAtlantic Bancorp, Inc. Sec. Litig.*, No. 07 Civ. 61542, 2011 WL 1585605 (S.D. Fla. Apr. 25, 2011) (granting defendants' motion for judgment as a matter of law following trial verdict for plaintiffs); *In re Apple Computer Sec. Litig.*, No. 84 Civ. 20148, 1991 WL 238298 (N.D. Cal. Sept. 6, 1991) (overturning jury verdict for plaintiffs after extended trial).

wish to participate in the distribution of the Settlement proceeds must submit a valid Claim Form, including all required information, that is postmarked, emailed, or submitted online no later than April 24, 2024. *See* ECF No. 76 ¶¶ 10-12; Ex. 1-A ¶ 38. As provided in the Notice, the Net Settlement Fund, which is the Settlement Fund (*i.e.*, the \$45,000,000 Settlement Amount plus any and all interest earned thereon) less any: (a) taxes; (b) Notice and Administration Costs; (c) Litigation Expenses awarded by the Court; and (d) attorneys' fees awarded by the Court, will be distributed according to a Court-approved plan of allocation. *See* Ex. 1-A ¶¶ 2, 49-72.

81. The proposed Plan of Allocation, set forth in full in the Notice, was prepared by Lead Counsel with the assistance of Lead Plaintiff's consulting damages expert and was designed to achieve an equitable and rational distribution of the Net Settlement Fund. The Plan of Allocation provides for distribution of the Net Settlement Fund among Authorized Claimants⁷ on a *pro rata* basis based on "Recognized Loss" formulas tied to liability and damages. *See* Ex. 1-A ¶¶ 49-72.

82. In developing the Plan of Allocation, Lead Plaintiff's damages expert considered the amount of artificial inflation present in Reata's common stock throughout the Settlement Class Period that was purportedly caused by the alleged fraud. This analysis entailed studying the price declines associated with Reata's allegedly corrective disclosures, adjusted to (i) eliminate the effects attributable to general market or industry conditions, and (ii) account for Lead Counsel's assessment of potential loss causation defenses, including the potential argument, discussed above, that the August 2020 and August 2021 corrective disclosures did not cause any claimed losses or otherwise relate directly to the fraud.

83. For Authorized Claimants who purchased Reata common stock pursuant and/or

⁷ An "Authorized Claimant" is a Settlement Class Member who submits a Claim Form to the Claims Administrator that is approved by the Court for payment from the Net Settlement Fund. *See* Stipulation ¶ 1(e).

traceable to the 2019 or 2020 Offerings, the Plan of Allocation provides for an enhancement to their Recognized Loss Amounts with respect to those shares to account for the fact that a *prima facie* Section 11 claim does not require proof of scienter, reliance, or loss causation. *See id.* ¶ 53.

84. The Plan of Allocation also accounts for Lead Counsel’s conclusion, discussed above, that Exchange Act claims based on pre-October 23, 2018 statements and omissions involved significant difficulties of proof, by applying a downward adjustment to Authorized Claimants’ Recognized Loss Amounts for shares purchased prior to that date. *See id.* ¶ 54.

85. Under the Plan of Allocation, the sum of each Authorized Claimant’s Recognized Loss Amounts for each share of Reata common stock purchased or otherwise acquired during the Settlement Class Period is known as the Authorized Claimant’s “Recognized Claim.” *See id.* ¶ 64. Each Authorized Claimant will receive a “Distribution Amount” under the Plan of Allocation, calculated by dividing his or her Recognized Claim by the total Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. *See id.* ¶ 70.⁸

86. In sum, the Plan of Allocation ensures that Settlement Class Members’ recoveries are based upon the relative losses they sustained in relation to their respective litigation risks. It also ensures that eligible Settlement Class Members will receive a *pro rata* distribution from the Net Settlement Fund calculated in the same manner. As a result, Lead Counsel believes that the Plan of Allocation provides a fair and reasonable method to equitably allocate the Net Settlement Fund. To date, there have been no objections to the Plan of Allocation. *See Ex. 1* ¶ 22.

VIII. Lead Counsel’s Application for an Award of Attorneys’ Fees, Reimbursement of Litigation Expenses, and an Award for Lead Plaintiff’s Costs and Expenses

87. Lead Counsel seeks an award of attorneys’ fees of 30% of the Settlement Fund (*i.e.*,

⁸ If any claimant’s Distribution Amount calculates to less than \$10.00, it will not be included in the calculation and no distribution will be made to such claimant. *See id.*

\$13,500,000) to compensate Plaintiffs' Counsel for the services they have rendered on behalf of the Settlement Class. Lead Counsel also requests reimbursement of the Litigation Expenses incurred by Plaintiffs' Counsel in connection with their prosecution of the Action in the amount of \$204,323.08. Finally, pursuant to 15 U.S.C. § 78u-4(a)(4), Lead Counsel requests an award for Lead Plaintiff of \$10,000 for the costs it incurred in representing the Settlement Class. The legal authorities supporting these requests are set forth more fully in the concurrently filed Fee and Expense Application. The primary factual bases for the requested fee and reimbursement of Litigation Expenses are summarized below.

A. Lead Counsel's Request for an Award of Attorneys' Fees

1. Lead Counsel's Fee Request Is Reasonable under both the Percentage Method and the Lodestar Cross-Check Method

88. Kirby McInerney, Glancy, and Steckler have each submitted declarations in support of Lead Counsel's Fee and Expense Application. *See* Exs. 3-5. Based upon those declarations, I respectfully submit that Lead Counsel's requested fee award is fair, reasonable, and justified, whether calculated as a percentage of the fund or as a multiplier of counsel's lodestar.

a. Lead Counsel's Fee Request Is Reasonable under the Preferred Percentage-of-the-Fund Method

89. As set forth in the Fee and Expense Application, the percentage method is the preferred method for determining attorneys' fees because, unlike the lodestar method, it aligns the lawyers' interest with that of the Settlement Class, motivating lawyers to achieve the maximum recovery possible in the shortest amount of time required. *See* Fee & Expense Application at 5-6; Ex. 7 ¶¶ 10-11. It also minimizes any unnecessary drain on court resources. *See id.* Moreover, the percentage method most closely mimics the market for complex litigation, which is almost always conducted on a contingency, percentage fee basis. *See* Fee & Expense Application at 8-9; Ex. 7 ¶¶

11, 14. The percentage method is also specifically contemplated by the PSLRA. *See* 15 U.S.C. § 78u-4(a)(6)); *see also* Ex. 7 ¶ 12; Fee & Expense Application at 6.

90. Here, Lead Counsel requests a fee of 30% of the Settlement Fund, which equates to \$13,500,000. Courts within the Fifth Circuit have consistently found fee requests of 30% or more to be reasonable. *See* Ex. 7 ¶¶ 15-17; Fee & Expense Application at 7-8. In addition, courts in the Fifth Circuit routinely grant such awards, including in cases involving comparably sized or larger settlement funds. *See id.*

91. Moreover, Lead Plaintiff, a sophisticated institutional investor, entered into a contingency fee agreement with Kirby McInerney that provided for attorneys' fees, subject to Court approval, of up to 33% of any recovery in the Action, plus expenses. This also supports the reasonableness of the 30% fee request. *See* Ex. 7 ¶ 14; Fee & Expense Application at 9. The request is also strongly supported and should be approved based on the facts of this case, including the superb result achieved, the skill required, the quality of the work performed, and the risk of pursuing claims on a contingency basis. *See* Points V & VI, *supra* and Point VIII.A.2, *infra*.

92. Accordingly, Lead Counsel respectfully submits that the requested 30% fee award is fair and reasonable and well within the range of percentages awarded in complex class actions with comparable settlements in this Circuit. In addition, the requested fee award has been approved by Lead Plaintiff. *See* Ex. 2 ¶¶ 8-9.

b. A Lodestar Cross-check Confirms the Reasonableness of the Requested Fee

93. As noted in the Fee and Expense Application, a full lodestar analysis is not required here. *See* Fee & Expense Application at 5-6. However, when utilizing the percentage method, courts sometimes perform a lodestar "cross-check" to confirm the reasonableness of the requested percentage and to ensure that it does not result in an extraordinary windfall. *See* Fee & Expense

Application at 10; Ex. 7 ¶ 21.

94. Here, the requested 30% fee represents a 2.24 multiplier on the lodestar value of Plaintiffs' Counsel's time (which is discussed in further detail below at Point VIII.A.2.b, *infra*). This multiplier is well within the range of multipliers regularly awarded in securities class actions and other comparable litigation in the Fifth Circuit and elsewhere. *See* Fee & Expense Application at 12; Ex. 7 ¶ 25.

2. The *Johnson* Factors Further Support the Reasonableness of the Requested Fee

95. Lead Counsel submits that, for the reasons discussed below and in the Fee and Expense Application, the additional factors identified by the Fifth Circuit in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), further demonstrate that the requested fee is reasonable and appropriate here. *See* Fee & Expense Application at 12-22.

a. The Skill and Qualifications of Plaintiffs' Counsel and the Quality of the Work Performed

96. Lead Counsel, Kirby McInerney, has extensive experience in complex class action litigation, including securities litigation. Those credentials are set forth in Kirby McInerney's firm resume attached hereto. *See* Ex. 3-C. Likewise, Glancy and Court-appointed Local Liaison Counsel, Steckler, have extensive experience in complex class action litigation, including securities litigation, as set forth in their firm resumes attached hereto. *See* Exs. 4-C & 5-C.

97. As discussed above, Plaintiffs' Counsel prosecuted this Action vigorously against Defendants and obtained a thorough understanding of the strengths and weaknesses of the Parties' claims and defenses. As a result of their extensive litigation and settlement efforts, Plaintiffs' Counsel achieved an excellent result for the Settlement Class, and they spent substantial time and resources doing so. *See* Point III, *supra*. Once a settlement in principle was reached, Plaintiffs'

Counsel also worked diligently to finalize and document the Settlement through negotiations with Defendants and through the drafting and filing of the Preliminary Approval Motion and Final Approval Motion. *See id.* Lead Counsel also oversaw the Claims Administrator and notice process. *See* Point IV, *supra*. Furthermore, Lead Counsel will be appearing at the Settlement Hearing and will continue to oversee the Settlement's administration.

98. The quality of Plaintiffs' Counsel's work in attaining the Settlement is especially notable in light of the quality of the opposition. Defense counsel was equally well-informed regarding the case, and their representation of Defendants was no less rigorous than Plaintiffs' Counsel's representation of the Settlement Class. To defend the Action, Defendants hired the top defense law firms of Davis Polk & Wardwell LLP and Vinson & Elkins LLP to represent the Reata Defendants and Shearman & Sterling LLP to represent the Underwriter Defendants. These firms litigated the case aggressively on behalf of the Defendants they represented. In the face of this experienced and formidable opposition, Lead Counsel was nonetheless able to develop a case that was sufficiently strong to persuade Defendants to settle on terms favorable to the Settlement Class.

b. The Time and Labor Expended

99. As set forth more fully above, the investigation, prosecution, and settlement of this Action required an extensive effort on the part of Plaintiffs' Counsel, given the complexity of the issues raised and the vigorous defenses mounted by Defendants. The many tasks undertaken by Plaintiffs' Counsel in this case are detailed above at Points III & IV, *supra*.

100. Attached hereto are declarations from Plaintiffs' Counsel in support of Lead Counsel's request for an award of attorneys' fees and expenses. *See* Exs. 3-5. Included in those declarations are schedules that summarize (i) the time that each firm spent prosecuting and settling the Action, (ii) each firm's lodestar calculations, *i.e.*, their hours multiplied by their hourly rates,

and (iii) the Litigation Expenses incurred by each firm, broken down by category. *See* Exs. 3-A, 3-B, 4-A, 4-B, 5-A, & 5-B. The declarations were prepared from the daily time records regularly prepared and maintained by the respective firms, which are available at the request of the Court.

101. As set forth in each declaration, each firm's lodestar figures are based upon the firms' current billing rates (subject to annual increases) and do not include charges for expense items. *See* Ex. 3 ¶¶ 3, 7; Ex. 4 ¶¶ 3, 7; Ex. 5 ¶¶ 3, 7; *see also Missouri v. Jenkins by Agyei*, 491 U.S. 274, 283-86 (1989) (courts may use either current rates or past rates with interest when calculating the lodestar amount because either method provides "[a]n adjustment for delay in payment [which] is . . . an appropriate factor in the determination of what constitutes a reasonable attorney's fee"). For personnel who are no longer employed by the firms, the lodestar calculations are based on the billing rates for such personnel in their final year of employment. *See* Ex. 3 ¶ 3. Billing rates for first-level document review have been capped at the reduced rate of \$400 per hour. *See* Ex. 3 ¶ 3; Ex. 4 ¶ 3. In addition, time expended on Lead Counsel's Fee and Expense Application has been excluded. *See* Ex. 3 ¶ 4; Ex. 4 ¶ 4; Ex. 5 ¶ 4. Each firm reviewed its time and expenses for accuracy, necessity, and reasonableness. *See id.*

102. The hourly rates of Plaintiffs' Counsel range from \$715 to \$1,250 for partners, \$700 to \$1,200 for of counsels, \$400 to \$800 for associates, and \$350 to \$400 for staff attorneys. *See* Exs. 3-A, 4-A, & 5-A. The declarants from each firm comprising Plaintiffs' Counsel attest that the hourly rates for their attorneys and professional support staff⁹ are in line with the rates of other lawyers and staff at law firms handling large, complex class action litigation and/or which have been accepted in other complex or class action litigation, subject to the subsequent annual

⁹ Plaintiffs' Counsel's hourly rates for professional support staff range from \$350 to \$475 for analysts and \$175 to \$300 for paralegals. *See* Exs. 3-A, 4-A, & 5-A. Analyst and paralegal time is compensable as part of Lead Counsel's fee award, and courts have regularly approved hourly rates for analysts and paralegals that are comparable to, or higher than, the rates at issue here. *See* Fee & Expense Application at 11 n.11.

increases. *See* Ex. 3 ¶ 5; Ex. 4 ¶ 5; Ex. 5 ¶ 5. Exhibit 10, attached hereto, is a table of hourly rates for other plaintiffs' firms and defense firms compiled by Lead Counsel. This analysis shows that across all types of attorneys, Plaintiffs' Counsel's rates are consistent with the firms surveyed. *See* Ex. 10; *see also* Fee & Expense Application at 10-11.

103. The following chart summarizes the aggregate hours, lodestar, and expenses of Plaintiffs' Counsel set forth in the attached declarations.

Table 1: Plaintiffs' Counsel Summary of Hours, Lodestar, and Expenses			
Firm Name	Hours	Lodestar	Expenses
Kirby McInerney LLP	6,921.3	\$5,689,792.50	\$184,317.79
Glancy Prongay & Murray LLP	397.9	\$259,040.00	\$19,337.60
Steckler Wayne & Love PLLC	145.0	\$70,105.00	\$667.69
Total:	7,464.2	\$6,018,937.50	\$204,323.08

104. From the Action's inception, the total number of hours expended by Plaintiffs' Counsel is 7,464.2. The total lodestar is \$6,018,937.50 consisting of \$5,504,345.00 for attorney time and \$514,592.50 for professional support staff time. The requested fee of \$13,500,000 (or 30% of the Settlement Fund) results in a multiplier of approximately 2.24 to Plaintiffs' Counsel's total submitted lodestar, which, as discussed above, is well within the range of multipliers accepted by courts in this Circuit. Moreover, if final approval is granted, additional time will be expended by Plaintiffs' Counsel during the administration of the Settlement.

c. The Novelty and Difficulty of the Questions Presented

105. Courts within the Fifth Circuit have long acknowledged that securities class actions are "notoriously difficult and unpredictable." *Maier v. Zapata Corp.*, 714 F.2d 436, 455 (5th Cir. 1983); *see* Fee & Expense Application at 14-15.

106. As detailed at Point VI, *supra*, this Action presented substantial risks to proving Defendants' liability and damages. These case-specific risks were in addition to the more typical

risks accompanying securities class action litigation generally, including the fact that this Action is governed by the stringent PSLRA requirements and case law interpreting federal securities laws and was undertaken by Plaintiffs' Counsel on an entirely contingent basis.

d. The Contingent Nature of the Fee

107. From the outset, Lead Counsel understood that it was embarking on a complex, expensive, and lengthy litigation with no guarantee of compensation for the substantial investment of time and money the case would require. In undertaking that responsibility, Lead Counsel ensured that sufficient resources were dedicated to the prosecution of the Action, and that funds were available to compensate staff and to cover the considerable litigation costs that a case like this requires. With an average lag time of several years for securities class actions to conclude, the financial burden on contingent fee counsel is far greater than on a firm that is paid on an ongoing, hourly basis. Indeed, Plaintiffs' Counsel have represented the Settlement Class on a wholly contingent basis for over two years, not receiving any payment for their services or reimbursement for the expenses they have incurred in prosecuting this Action and negotiating the Settlement. Despite receiving no compensation, Plaintiffs' Counsel have expended 7,464.2 hours of time for a total lodestar of \$6,018,937.50 and have incurred \$204,323.08 in Litigation Expenses in order to prosecute the Action for the benefit of the Settlement Class. *See* Point VIII.A.2.b, *supra*.

108. Plaintiffs' Counsel also bore the risk that no recovery would be achieved. As discussed above, from the outset, this case presented multiple risks and uncertainties that could have prevented any recovery whatsoever. Lead Counsel knows from experience that the commencement of a class action does not guarantee a recovery. To the contrary, it takes hard work and diligence by skilled counsel to develop the facts and theories that are needed to sustain a complaint or win at trial, or to induce sophisticated defendants to engage in serious settlement

negotiations at meaningful levels.

109. For this reason, courts have repeatedly recognized that it is in the public interest to have experienced and able counsel enforce the securities laws and regulations pertaining to the duties of officers and directors of public companies. *See Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 320 n.4 (2007) (“[P]rivate securities litigation [] is an indispensable tool with which defrauded investors can recover their losses – a matter crucial to the integrity of domestic capital markets.”). As recognized by Congress through the passage of the PSLRA, vigorous private enforcement of the federal securities laws can only occur if private investors take an active role in protecting shareholders’ interests. If this important public policy is to be carried out, the courts must award fees that adequately compensate plaintiffs’ counsel for the contingency risks undertaken in prosecuting securities class actions.

e. The Amount Involved and the Result Obtained

110. Courts in the Fifth Circuit have recognized that the result achieved is a significant factor to be considered in awarding fees. *See Fee & Expense Application* at 18.

111. Here, the \$45,000,000 Settlement is a very favorable result, particularly when considered in light of the substantial risks and obstacles to recovery if the Action was to continue through a decision on Defendants’ pending motion to dismiss, class certification, summary judgment, trial, and through likely post-trial motions and appeals. *See Points V & VI, supra*.

112. This recovery was the result of thorough and creative litigation and investigative efforts, complicated motion practice, and lengthy, adversarial settlement negotiations. As a result of this Settlement, Settlement Class Members will benefit and receive compensation for their losses and avoid the very substantial risk of no recovery in the absence of a settlement.

B. Lead Counsel's Request for Reimbursement of Litigation Expenses

113. Lead Counsel seeks payment from the Settlement Fund of \$204,323.08 in out-of-pocket Litigation Expenses reasonably and necessarily incurred by Plaintiffs' Counsel in connection with prosecuting and settling the claims in this Action.

114. Throughout the pendency of this Action, Lead Counsel has sought to ensure that sufficient resources were dedicated to prosecuting Lead Plaintiff's and Settlement Class Members' claims. Plaintiffs' Counsel advanced the Litigation Expenses required to pursue and complete such complex litigation with no guarantee of repayment.

115. As set forth in Exhibits 3-B, 4-B, and 5-B, Plaintiffs' Counsel incurred a total of \$204,323.08 in unreimbursed Litigation Expenses.

116. The following schedule was prepared from Exhibits 3-B, 4-B, and 5-B:

Table 2: Cumulative Expenses by Category		
Expense Category	Cumulative Expense	Percentage of Expenses
Court Filing Fees	\$702.00	0.34%
Document Management	\$15,306.78	7.49%
Experts	\$73,703.00	36.07%
Investigator	\$31,117.00	15.23%
Mediation	\$50,243.42	24.59%
Online Research (Westlaw, LEXIS, PACER)	\$13,018.93	6.37%
Postage and Mailing	\$123.86	0.06%
Printing and Photocopying	\$180.62	0.09%
PSLRA Mandated Press Release	\$110.00	0.05%
Service of Process	\$2,079.19	1.02%
Travel, Meals, Lodging	\$17,738.28	8.68%
Total Expenses:	\$204,323.08	100%

117. Lead Counsel believes that these expenses were all reasonably necessary to the prosecution of this Action. Lead Counsel also believes that they are the type of expenses that (i) Plaintiffs' Counsel would normally incur in litigation, and (ii) would normally be reimbursed by

clients under fee arrangements where the client is responsible for paying expenses.

C. The Reaction of Lead Plaintiff and the Settlement Class

118. As set forth in the declaration submitted by Lead Plaintiff, attached hereto, Lead Plaintiff has concluded that the requested fees and Litigation Expenses are fair and reasonable, based on the work performed by Plaintiffs' Counsel, the recovery obtained, and the risks of the Action. *See* Ex. 2 ¶¶ 8-10. Lead Counsel represented Lead Plaintiff throughout the litigation. Lead Plaintiff has been intimately involved in this case since its earliest stages, and its endorsement of the fee request and request for reimbursement of Litigation Expenses supports the reasonableness of those requests and should be given substantial weight by the Court.

119. The reaction of the Settlement Class to date also supports approval of the requested fee and expense awards. The Notice informed Settlement Class Members that Lead Counsel would apply for attorneys' fees of up to 33⅓% of the Settlement Fund, plus reimbursement of expenses up to \$500,000. *See* Ex. 1-A ¶¶ 5, 73. As noted above, as of February 21, 2024, a total of 30,582 copies of the Notice Packet had been mailed to potential Settlement Class Members and nominees. *See* Ex. 1 ¶ 10. To date, no Settlement Class Member has objected to the amount of attorneys' fees or Litigation Expenses disclosed in the Notice. *See id.* ¶ 22.

120. Notably, Lead Counsel's Fee and Expense Application seeks less than the maximum fee set forth in the Notice. It also requests reimbursement of Litigation Expenses in an amount far less than the \$500,000 set forth in the Notice. The deadline for Settlement Class Members to file objections to the Fee and Expense Application is March 8, 2024. *See* Ex. 1-A ¶ 80. As discussed above, Lead Counsel will address any future objections filed by Settlement Class Members in its reply papers due March 22, 2024.

D. Lead Counsel's Request for an Award of Reasonable Costs and Expenses for Lead Plaintiff

121. Lead Counsel respectfully requests a \$10,000 award for Lead Plaintiff to be paid from the Settlement Fund. To date, no member of the Settlement Class has objected to the amount of the proposed award (*see* Ex. 1 ¶ 22), which was set forth in the Notice. *See* Ex. 1-A ¶¶ 5, 73.

122. To the best of my knowledge, I believe that Lead Plaintiff's representatives: (a) regularly communicated with Lead Counsel regarding the posture and progress of the case; (b) compiled Wespath's trading data and completed a certification in connection with its motion to be appointed Lead Plaintiff; (c) reviewed pleadings and briefs filed in the Action; (d) consulted with Lead Counsel regarding the settlement negotiations and mediation, as well as the Parties' mediation submissions; (e) physically attended the mediation sessions with Mr. Melnick in New York, New York and Dallas, Texas; (f) reviewed certain documents produced during the settlement negotiation process; and (g) evaluated and approved the proposed Settlement. *See* Ex. 2 ¶¶ 4-5; ECF No. 20-2. In the opinion of Lead Counsel, Lead Plaintiff is deserving of the requested award having worked with Lead Counsel to obtain a terrific result for the Settlement Class.

IX. Conclusion

123. In view of the recovery to the Settlement Class and the substantial risks of this Action, Lead Counsel respectfully submits that the Court should: finally approve the Settlement as fair, reasonable, and adequate; approve the Plan of Allocation as fair, reasonable, and adequate; and affirm its certification of the Settlement Class for settlement purposes.

124. Lead Counsel, on behalf of all Plaintiffs' Counsel, also respectfully submits that an award of attorneys' fee in the amount of 30% of the Settlement Fund (\$13,500,000) and reimbursement of Litigation Expenses in the amount of \$204,323.08 is fair and reasonable to both Plaintiffs' Counsel and the Settlement Class, and that the requested award of \$10,000 for Lead

Plaintiff is well-deserved and reasonable.

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

Dated: February 23, 2024
New York, New York

By: 
Daniel Hume, Esq.

EXHIBIT 1

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

TIM DOYLE, Individually and on Behalf of All
Others Similarly Situated, *et al.*,

Plaintiffs,

v.

REATA PHARMACEUTICALS, INC., *et al.*

Defendants.

Case No. 4:21-cv-00987-ALM
LEAD

CLASS ACTION

Judge Amos L. Mazzant, III

**DECLARATION OF JESSIE MAHN REGARDING: (I) MAILING OF NOTICE AND
PROOF OF CLAIM FORM; (II) PUBLICATION OF SUMMARY NOTICE; (III) CALL
CENTER SERVICES; (IV) THE SETTLEMENT WEBSITE; AND (V) REQUESTS FOR
EXCLUSION AND OBJECTIONS RECEIVED TO DATE**

I, Jessie Mahn, declare and state, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a Project Manager employed by Epiq Class Action & Claims Solutions, Inc. (“Epiq”). Pursuant to the Court’s Order Preliminarily Approving Settlement and Providing for Notice dated November 27, 2023 (ECF No. 76, the “Preliminary Approval Order”), Epiq was retained to act as the Claims Administrator for the Settlement in the above-captioned action (the “Action”).¹

2. The following statements are based on my personal knowledge and information provided by Epiq employees working under my supervision, and if called on to do so, I could and would testify competently thereto.

3. I submit this Declaration to provide the Court and the Parties with information regarding, among other things, the mailing of the Court-approved Notice of: (I) Pendency of Class Action, Certification of Settlement Class, and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses (the “Notice”) and the Proof of Claim and Release Form (the “Claim Form” together with the Notice, the “Notice Packet”), as well as the publication and transmission of the Summary Notice, and establishment of the website and toll-free number dedicated to this Action, in accordance with the Preliminary Approval Order.

I. MAILING OF THE NOTICE AND CLAIM FORM

4. Pursuant to the Preliminary Approval Order, Epiq was responsible for disseminating the Notice Packet to potential Settlement Class members at the mailing addresses set forth in the records provided by Reata Pharmaceuticals, Inc. (“Reata”). By definition,

¹ Unless otherwise defined, all capitalized terms herein shall have the meaning ascribed to them in the Stipulation and Agreement of Settlement, dated October 30, 2023 (ECF No. 74-2, the “Stipulation”).

Settlement Class Members are all persons and entities who purchased or otherwise acquired the publicly traded common stock of Reata between November 14, 2016 and December 8, 2021, inclusive (the “Settlement Class Period”), including all persons or entities who purchased or otherwise acquired Reata common stock pursuant and/or traceable to Reata’s 2019 Offering and/or 2020 Offering. Excluded from the Settlement Class are: (i) Defendants; (ii) any person who served as a partner, control person, executive officer and/or director of Reata during the Settlement Class Period, and members of their Immediate Family; (iii) present and former parents, subsidiaries, assigns, successors, affiliates, and predecessors of Reata; (iv) any entity in which Defendants have or had a controlling interest during the Settlement Class Period; (v) any trust of which any Individual Defendant is the settlor or that is for the benefit of any Individual Defendant and/or member(s) of their Immediate Family; and (vi) the legal representatives, heirs, successors, and assigns of any person or entity excluded under provisions (i) through (v) hereof; *provided, however*, that any Investment Vehicle shall not be excluded from the Settlement Class. Also excluded from the Settlement Class are any persons and entities who or that validly exclude themselves by submitting a request for exclusion that is accepted by the Court.

5. On November 28, 2023, Epiq received from Reata the names and addresses of potential members of the Settlement Class (as required by Paragraph 7(a) of the Preliminary Approval Order), identifying its shareholders of record for Reata common stock during the Settlement Class Period. The data received resulted in 575 unique mailing records with valid addresses. On December 26, 2023, Epiq caused Notice Packets to be mailed via first class U.S. mail, postage pre-paid, to the 575 unique and valid mailing records contained in the data provided by Reata.

6. 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 by brokerage firms, banks, institutions, and other third-party nominees in the name of the nominee, 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. At the time of the Initial Mailing, Epiq’s internal broker list contained 998 mailing records. On December 26, 2023, Epiq caused Notice Packets to be mailed to the 998 mailing records contained in its internal broker list.

7. In total, Epiq mailed 1,573 copies of the Notice Packet as part of its initial mailing notice program (the “Initial Mailing”). A copy of the Notice is attached hereto as Exhibit A and a copy of the Claim Form is attached hereto as Exhibit B.

8. The Notice directed those who purchased Reata common stock during the Settlement Class Period for the beneficial interest of a person or organization other than themselves to, within seven (7) calendar days of receipt of the Notice, either: (a) provide to Epiq a list(s) of shareholders of record (consisting of names and addresses) for Reata common stock during the Settlement Class Period; or (b) request additional copies of the Notice Packet from Epiq to forward to such beneficial owners within seven (7) calendar days of receipt of the Notice Packets.

9. Through February 21, 2024, Epiq mailed an additional 13,724 Notice Packets to potential Settlement Class Members whose names and addresses were received from individuals or brokerage firms, banks, institutions, and other nominees requesting that Notice Packets be mailed to such persons or entities. Epiq also mailed another 15,285 Notice Packets to brokers and other nominee holders who requested Notice Packets to forward to their customers. All such requests have been, and will continue to be, complied with, and addressed in a timely manner.

10. As of February 21, 2024, a total of 30,582 Notice Packets have been disseminated to potential Settlement Class Members and nominees by first-class mail.

11. In addition, Epiq has been prompted to re-mail 40 Notice Packets to persons whose original mailings were returned by the U.S. Postal Service (“USPS”) and for whom updated addresses were provided to Epiq by the USPS. As of February 21, 2024, a total of 136 Notice Packets remain undeliverable.

II. PUBLICATION OF THE SUMMARY NOTICE

12. In accordance with Paragraph 7(d) of the Preliminary Approval Order, Epiq caused the Summary Notice to be published once in *Investor’s Business Daily* and transmitted once over *PR Newswire* on January 8, 2024. Copies of proof of publication of the Summary Notice in *Investor’s Business Daily* and over *PR Newswire* are attached hereto as Exhibit C.

III. CALL CENTER SERVICES

13. Epiq reserved a toll-free phone number for the Settlement, (877) 664-7398, and published that toll-free number in the Notice Packet (*see* Ex. A at pg. 17; Ex. B at pgs. 1, 5, and 9) and on the website dedicated to the Settlement, www.ReataSecuritiesLitigation.com, (the “Settlement Website”).

14. The toll-free number became operational on December 22, 2023. The toll-free number connects callers with an Interactive Voice Recording (“IVR”). The IVR provides potential Settlement Class Members and others who call the toll-free telephone number access to additional information that has been pre-recorded. The toll-free telephone line with pre-recorded information is available 24 hours-a-day, 7 days-a-week. Specifically, 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 Notice Packet be mailed to them, or the caller may opt to speak live with a trained operator. Callers are able to speak to a live operator regarding the status of the Settlement and/or obtain answers to questions they may have Monday through Friday, from 8:00 a.m. to 8:00 p.m. Central Time (excluding official holidays).

15. As of February 21, 2024, Epiq has received a total of 25 calls to the toll-free number dedicated to the Settlement, including 14 that were handled by a live operator. Epiq has promptly responded to each telephone inquiry and will continue to address potential Settlement Class Members' inquiries.

IV. THE SETTLEMENT WEBSITE

16. In accordance with Paragraph 7(c) of the Preliminary Approval Order, Epiq, in coordination with Lead Counsel, designed, implemented, and currently maintains a Settlement Website dedicated to the Action, www.ReataSecuritiesLitigation.com. The address for the Settlement Website is set forth in the Notice, Claim Form, and Summary Notice. *See* Ex. A at pgs. 8, 9, and 17; Ex. B at pgs. 1, 5, and 9; Ex. C at pgs. 2, 4, and 5.

17. The Settlement Website became operational on December 22, 2023, and is accessible 24 hours-a-day, 7 days-a-week. Among other things, the Settlement Website includes information regarding the proposed Settlement, including the exclusion, objection, and claim-filing deadlines and the date and time of the Court's Settlement Hearing as well as instructions on how to attend the Settlement Hearing. The Settlement Website also includes a link to an online claim filing module through which Settlement Class Members can submit their claims. In addition, copies of the Notice, Claim Form, Stipulation of Settlement, Preliminary Approval Order, and other documents related to the Action are posted on the Settlement Website and are available for

download. Epiq will continue operating, maintaining, and, as appropriate, updating the Settlement Website until the conclusion of this administration.

18. As of February 21, 2024, there have been 1,638 unique visitors to the Settlement Website and 4,229 pageviews.

V. REQUESTS FOR EXCLUSION AND OBJECTIONS

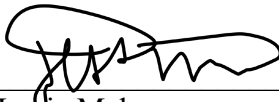
19. The Notice, Summary Notice, and Settlement Website inform Settlement Class Members that requests for exclusion from the Settlement Class must be received by March 8, 2024. *See* Ex. A at pg. 15; Ex. C at pgs. 2 and 5. The Notice directs Settlement Class Members who wish to request exclusion to mail their request to Doyle v. Reata Pharmaceuticals, Inc., EXCLUSIONS. c/o Epiq. P.O. Box 5566. Portland, OR 97228-5566. *See* Ex. A at pg. 15. The Notice also sets forth the information that must be included in each request for exclusion. *See id.* Epiq monitors all mail delivered to this P.O. Box.

20. As of February 21, 2024, Epiq has received no requests for exclusion. Epiq has monitored and will continue to monitor all mail delivered to this address. Epiq will submit a supplemental declaration after the March 8, 2024 deadline addressing any requests for exclusion received.

21. The Notice, Summary Notice, and Settlement Website also inform Settlement Class Members that: they may object to the Settlement, the proposed Plan of Allocation, or Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses; the objections must be in writing, and must be filed with the Court and delivered to Lead Counsel and Defendants' Counsel such that they are received on or before March 8, 2024. *See* Ex. A at pg. 16; Ex. C at pgs. 2 and 5.

22. Through February 21, 2024, Epiq has not been informed of any objections to the Settlement, the Plan of Allocation, or Lead Counsel's application for attorneys' fees and reimbursement of Litigation Expenses, which includes a reimbursement award to Lead Plaintiff. Epiq will submit a supplemental declaration after the March 8, 2024 deadline addressing any objections received.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 22, 2024, in Seattle, WA.



Jessie Mahn

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

TIM DOYLE, Individually and On Behalf of
All Others Similarly Situated, *et al.*,

Plaintiffs,

v.

REATA PHARMACEUTICALS, INC., *et al.*,

Defendants

Case No. 4:21-cv-00987-ALM
LEAD

CLASS ACTION

**NOTICE OF (I) PENDENCY OF CLASS ACTION, CERTIFICATION OF
SETTLEMENT CLASS, AND PROPOSED SETTLEMENT; (II) SETTLEMENT
HEARING; AND (III) MOTION FOR AN AWARD OF
ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

A Federal Court authorized this Notice. This is not a solicitation from a lawyer.

NOTICE OF PENDENCY OF CLASS ACTION: Please be advised that your rights may be affected by the above-captioned securities class action (the “Action”)¹ pending in the United States District Court for the Eastern District of Texas (the “Court”), if, during the period between November 14, 2016 and December 8, 2021, inclusive (the “Settlement Class Period”), you purchased or otherwise acquired the common stock of Reata Pharmaceuticals, Inc. (“Reata” or the “Company”), including Reata common stock purchased or otherwise acquired pursuant and/or traceable to Reata’s 2019 Offering and/or 2020 Offering² (the “Offerings Subclass”).

NOTICE OF SETTLEMENT: Please also be advised that the Court-appointed Lead Plaintiff,³ on behalf of itself and the Settlement Class (as defined in ¶ 23 below), have reached a proposed settlement of the Action for \$45,000,000 in cash that, if approved, will resolve all claims in the Action (the “Settlement”).

PLEASE READ THIS NOTICE CAREFULLY. This Notice explains important rights you may have, including the possible receipt of cash from the Settlement. If you are a member of the Settlement Class, your legal rights will be affected whether or not you act.

If you have any questions about this Notice, the proposed Settlement, or your eligibility to participate in the Settlement, please DO NOT contact Reata, any other Defendants in the Action, or their counsel. All questions should be directed to Lead Counsel or the Claims Administrator (see ¶ 89 below).

1. **Description of the Action and the Settlement Class:** This Notice relates to a proposed Settlement of claims in a pending securities class action brought by investors alleging, among other things, that defendant Reata, defendants J. Warren Huff, Colin J. Meyer, and Manmeet S. Soni (the “Officer Defendants”), defendants James E. Bass, William D. McClellan, Jr., R. Kent McGaughy, Jack B. Nielsen, and William E. Rose (the “Director Defendants”), and defendants Barclays Capital Inc., Cantor Fitzgerald & Co., Citigroup Global Markets Inc., Goldman Sachs & Co. LLC, Jefferies LLC, Ladenburg Thalmann & Co., Inc., Robert W. Baird & Co. Incorporated, Stifel, Nicolaus & Company, Incorporated, and SVB Securities LLC, f/k/a SVB Leerink LLC, n/k/a Leerink Partners LLC (the “Underwriter Defendants”),⁴ violated the federal securities laws by purportedly making false and misleading

¹ All capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated October 30, 2023 (the “Stipulation”), which is available at www.ReataSecuritiesLitigation.com.

² The “2019 Offering” means Reata’s secondary stock offering, conducted on or about November 14, 2019, of 2.76 million shares of Reata common stock at \$183.00 per share. The “2020 Offering” means Reata’s secondary stock offering, conducted on or about December 1, 2020, of 2.0 million shares of Reata common stock at \$140.85 per share.

³ Lead Plaintiff is UMC Benefit Board, Inc., US Equity Fund-P Series, a series of the Wespath Funds Trust, US Equity Index Fund-P Series, a series of the Wespath Funds Trust, Wespath Institutional Investments LLC, US Equity Fund-I Series, a series of the Wespath Funds Trust, and US Equity Index Fund-I Series, a series of the Wespath Funds Trust (collectively referred to herein as “Wespath” or “Lead Plaintiff”).

⁴ The Officer Defendants and Director Defendants are collectively referred to herein as the “Individual Defendants.” The Individual Defendants and Reata are collectively referred to herein as the “Reata Defendants.” The Reata Defendants and Underwriter Defendants are collectively referred to herein as “Defendants.”

statements and omissions to investors. A more detailed description of the Action is set forth in paragraphs 11-22 below. The proposed Settlement, if approved by the Court, will settle claims of the Settlement Class, as defined in paragraph 23 below.

2. **Statement of the Settlement Class's Recovery:** Subject to Court approval, Lead Plaintiff, on behalf of itself and the Settlement Class, has agreed to settle the Action in exchange for a settlement payment of \$45,000,000 in cash (the "Settlement Amount") to be deposited into an escrow account. The Net Settlement Fund (*i.e.*, the Settlement Amount plus any and all interest earned thereon (the "Settlement Fund") less any (a) Taxes, (b) Notice and Administration Costs, (c) Litigation Expenses awarded by the Court, (d) attorneys' fees awarded by the Court, and (e) any other costs or fees approved by the Court) will be distributed in accordance with a plan of allocation that is approved by the Court, which will determine how the Net Settlement Fund shall be allocated among members of the Settlement Class. The proposed plan of allocation (the "Plan of Allocation") is set forth in paragraphs 49-72 below.

3. **Estimate of Average Amount of Recovery Per Share:** Based on Lead Plaintiff's damages expert's estimates of the number of shares of Reata common stock purchased during the Settlement Class Period that may have been affected by the conduct at issue in the Action, and assuming that all Settlement Class Members elect to participate in the Settlement, the estimated average recovery (before the deduction of any Court-approved fees, expenses, and costs as described herein) per eligible share is \$1.67. Settlement Class Members should note, however, that the foregoing average recovery per share is only an estimate. Some Settlement Class Members may recover more or less than this estimated amount depending on, among other factors, when and at what prices they purchased/acquired or sold their shares of Reata common stock, and the total number of valid Claim Forms submitted. Distributions to Settlement Class Members will be made based on the Plan of Allocation set forth herein (*see* paragraphs 49-72 below) or such other plan of allocation as may be ordered by the Court.

4. **Average Amount of Damages Per Share:** The Parties do not agree on the average amount of damages per share that would be recoverable if Lead Plaintiff were to prevail in the Action. Among other things, Defendants do not agree with the assertion that they violated the federal securities laws or that any damages were suffered by any members of the Settlement Class as a result of their conduct.

5. **Attorneys' Fees and Expenses Sought:** Plaintiffs' Counsel have been prosecuting the Action on a wholly contingent basis since its inception in 2021. Consequently, Plaintiffs' Counsel have not received any payment of attorneys' fees for their representation of the Settlement Class and have advanced the funds to pay expenses necessarily incurred to prosecute the Action. Court-appointed Lead Counsel, Kirby McInerney LLP, will apply to the Court for an award of attorneys' fees for all Plaintiffs' Counsel in an amount not to exceed 33⅓% of the Settlement Fund. In addition, Lead Counsel will apply for reimbursement of Litigation Expenses paid or incurred in connection with the institution, prosecution, and resolution of the claims against Defendants, in an amount not to exceed \$500,000, which may include an application for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiff directly related to its representation of the Settlement Class in an amount not to exceed \$10,000. Any fees and expenses awarded by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses. Estimates of the average cost per affected share of Reata common stock, if the Court approves Lead Counsel's fee and expense application, is \$0.57 per eligible share.

6. **Identification of Attorneys' Representatives:** Lead Plaintiff and the Settlement Class are represented by Daniel Hume, Esq. of Kirby McInerney LLP, 250 Park Avenue, Suite 820, New York, NY 10177, (212) 371-6600, dhume@kmlp.com.

7. **Reasons for the Settlement:** Lead Plaintiff's principal reason for entering into the Settlement is the substantial immediate cash benefit for the Settlement Class without the risk or the delays inherent in further litigation. Moreover, the substantial cash benefit provided under the Settlement must be considered against the significant risk that a smaller recovery – or indeed no recovery at all – might be achieved after contested motions, a trial of the Action and the likely appeals that would follow a trial. This process could be expected to last several years. Defendants, who deny all allegations of wrongdoing or liability whatsoever, are entering into the Settlement solely to eliminate the uncertainty, burden, and expense of further protracted litigation.

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:

SUBMIT A CLAIM FORM ONLINE, VIA EMAIL, OR POSTMARKED NO LATER THAN APRIL 24, 2024.	This is the only way to be eligible to receive a payment from the Settlement Fund. If you are a Settlement Class Member and you remain in the Settlement Class, you will be bound by the Settlement as approved by the Court and you will give up any Released Plaintiffs' Claims (defined in ¶ 32 below) that you have against Defendants' Releasees (defined in ¶ 33 below), so it is in your interest to submit a Claim Form.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION SO THAT IT IS RECEIVED NO LATER THAN MARCH 8, 2024.	If you exclude yourself from the Settlement Class, you will not be eligible to receive any payment from the Settlement Fund. This is the only option that allows you ever to be part of any other lawsuit against any of the Defendants' Releasees concerning the Released Plaintiffs' Claims.
OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS RECEIVED NO LATER THAN MARCH 8, 2024.	If you do not like the proposed Settlement, the proposed Plan of Allocation, or the request for attorneys' fees and reimbursement of Litigation Expenses, you may write to the Court and explain why you do not like them. You cannot object to the Settlement, the Plan of Allocation, or the fee and expense request unless you are a Settlement Class Member and do not exclude yourself from the Settlement Class.
GO TO A HEARING CURRENTLY SCHEDULED FOR MARCH 29, 2024 AT 9:00 A.M., AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS RECEIVED NO LATER THAN MARCH 8, 2024.	Filing a written objection and notice of intention to appear by March 8, 2024 allows you to speak in Court, at the discretion of the Court, about the fairness of the proposed Settlement, the Plan of Allocation, and/or the request for attorneys' fees and reimbursement of Litigation Expenses. If you submit a written objection, you may (but you do not have to) attend the hearing and, at the discretion of the Court, speak to the Court about your objection.
DO NOTHING.	If you are a member of the Settlement Class and you do not submit a valid Claim Form, you will not be eligible to receive any payment from the Settlement Fund. You will, however, remain a member of the Settlement Class, which means that you give up your right to sue about the claims that are resolved by the Settlement, and you will be bound by any judgments or orders entered by the Court in the Action.

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WHY DID I RECEIVE THIS NOTICE?

8. The Court directed that this Notice be mailed to you because you or someone in your family or an investment account for which you serve as a custodian may have purchased or otherwise acquired Reata common stock during the Settlement Class Period. The Court has directed us to send you this Notice because, as a potential Settlement Class Member, you have a right to know about your options before the Court rules on the proposed Settlement. Additionally, you have the right to understand how this class action lawsuit may generally affect your legal rights. If the Court approves the Settlement and the Plan of Allocation (or some other plan of allocation), the claims administrator selected by Lead Plaintiff and approved by the Court will make payments pursuant to the Settlement after any objections and appeals are resolved.

9. The purpose of this Notice is to inform you of the existence of this case, that it is a class action, how you might be affected, and how to exclude yourself from the Settlement Class if you wish to do so. It is also being sent to inform you of the terms of the proposed Settlement, and of a hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement, the proposed Plan of Allocation, and the motion by Lead Counsel for an award of attorneys' fees and reimbursement of Litigation Expenses (the "Settlement Hearing"). See paragraph 79 below for details about the Settlement Hearing, including the date and location of the hearing.

10. The issuance of this Notice is not an expression of any opinion by the Court concerning the merits of any claim in the Action, and the Court still has to decide whether to approve the Settlement. If the Court approves the Settlement and a plan of allocation, then payments to Authorized Claimants will be made after any appeals are resolved and after the completion of all claims processing. Please be patient, as this process can take some time to complete.

WHAT IS THIS CASE ABOUT?

11. A class action complaint was filed in the Court on December 20, 2021, styled *Doyle et al. v. Reata Pharmaceuticals, Inc. et al.*, No. 4:21-cv-00987.

12. By Order dated April 22, 2022, Wespeth was appointed Lead Plaintiff, and its selection of Kirby McInerney LLP to serve as Lead Counsel and Steckler Wayne Cochran Cherry PLLC to serve as Liaison Counsel was approved by the Court.

13. On June 21, 2022, Lead Plaintiff filed and served its Consolidated Amended Class Action Complaint for Violation of the Federal Securities Laws (the "CAC") asserting claims against: (i) Reata and the Officer Defendants under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder; (ii) the Officer Defendants under Section 20(a) of the Exchange Act; (iii) Reata, the Director Defendants, the Underwriter Defendants, and officer defendants Huff and Meyer, under Section 11 of the Securities Act of 1933 (the "Securities Act"); (iv) all Defendants under Section 12(a)(2) of the Securities Act; and (v) the Individual Defendants under Section 15 of the Securities Act. Among other things, the CAC alleged that Reata's public statements and offering materials contained false and misleading statements, and omitted to disclose material adverse information, concerning a phase 2/3 trial for Reata's drug, bardoxolone ("Bard"), known as CARDINAL. The CAC further alleged that the prices of Reata's publicly-traded securities were artificially inflated as a result of the allegedly false and misleading statements, and declined when the truth was allegedly revealed.

14. On September 7, 2022, Defendants moved to dismiss the CAC in full. On November 23, 2022, Lead Plaintiff filed its opposition to the motion to dismiss and, on January 9, 2023, Defendants filed a reply in further support of their motion to dismiss.

15. On February 10, 2023, while the motion to dismiss was *sub judice*, the Parties notified the Court of their intention to mediate with Jed D. Melnick, Esq. of JAMS. On February 13, 2023, the Court entered an order referring the Action to mediation and appointing Mr. Melnick to serve as mediator.

16. Thereafter, Lead Counsel and counsel for the Reata Defendants exchanged extensive mediation statements and exhibits that addressed, among other things, issues related to liability and damages. On April 25, 2023, Lead Counsel and counsel for the Reata Defendants, along with certain of the Reata Defendants and Lead Plaintiff's representative, participated in an in-person mediation session with Mr. Melnick. The session ended without an agreement to settle.

17. During the mediation session, the Reata Defendants agreed to produce to Lead Plaintiff approximately 2,046,586 pages of non-public documents relating to matters alleged in the CAC. Following the Reata Defendants' production (and Lead Plaintiff's review) of these documents, Lead Counsel and counsel for the Reata Defendants exchanged extensive supplemental mediation statements and exhibits and then participated with client representatives in a second full-day, in-person mediation session before Mr. Melnick on July 24, 2023.

18. The second mediation session culminated in a mediator's recommendation to resolve the Action for \$45,000,000 for the benefit of the Settlement Class, which Lead Plaintiff and the Reata Defendants subsequently accepted. The Parties further entered into a settlement term sheet on September 1, 2023 (the "Term Sheet").

19. Following execution of the Term Sheet, Lead Plaintiff and the Reata Defendants engaged in confirmatory discovery. Specifically, the Reata Defendants produced, and Lead Plaintiff reviewed, an additional 16,023 pages of documents and Lead Counsel interviewed Individual Defendants Huff and Meyer.

20. Based on the investigation and mediation of the case and Lead Plaintiff's direct oversight of the prosecution of this matter and with the advice of their counsel, Lead Plaintiff has agreed to settle and release the claims raised in the Action pursuant to the terms and provisions of the Stipulation, after considering, among other things: (a) the substantial financial benefit that Lead Plaintiff and the other members of the Settlement Class will receive under the proposed Settlement; and (b) the significant risks and costs of continued litigation and trial.

21. Defendants are entering into the Stipulation solely to eliminate the uncertainty, burden, and expense of further protracted litigation. Each of the Defendants denies any and all wrongdoing, and the Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any of the Defendants, or any other of the Defendants' Releasees (defined in ¶ 33 below), with respect to any claim or allegation of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that Defendants have, or could have, asserted. Similarly, the Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of Lead Plaintiff of any infirmity in any of the claims asserted in the Action, or an admission or concession that any of Defendants' defenses to liability had any merit.

22. On November 27, 2023, the Court preliminarily approved the Settlement, authorized this Notice to be disseminated to potential Settlement Class Members, and scheduled the Settlement Hearing to consider whether to grant final approval to the Settlement.

HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT? WHO IS INCLUDED IN THE SETTLEMENT CLASS?

23. If you are a member of the Settlement Class, you are subject to the Settlement, unless you timely request to be excluded. The Settlement Class consists of:

All persons or entities who purchased or otherwise acquired the publicly traded common stock of Reata between November 14, 2016 and December 8, 2021, inclusive (the "Settlement Class Period"), including all persons or entities who purchased or otherwise acquired Reata common stock pursuant and/or traceable to Reata's 2019 Offering and/or 2020 Offering (the "Offerings Subclass").

Excluded from the Settlement Class are: (i) Defendants; (ii) any person who served as a partner, control person, executive officer, and/or director of Reata during the Settlement Class Period, and members of their Immediate Family; (iii) present and former parents, subsidiaries, assigns, successors, affiliates, and predecessors of Reata; (iv) any entity in which Defendants have or had a controlling interest during the Settlement Class Period; (v) any trust of which any Individual Defendant is the settlor or that is for the benefit of any Individual Defendant and/or member(s) of their Immediate Family; and (vi) the legal representatives, heirs, successors, and assigns of any person or entity excluded under provisions (i) through (v) hereof; *provided, however*, that any "Investment Vehicle" shall not be excluded from the Settlement Class. Investment Vehicle means any investment company or pooled investment fund, including but not limited to, mutual fund families, exchange traded funds, fund of funds and hedge funds, in which Defendants, or any of them, have, has or may have a direct or indirect interest, or as to which its affiliates may act as an investment advisor, but in which any Defendant alone or together with its, his or her respective affiliates is not a majority owner or does not hold a majority beneficial interest. Also excluded from the Settlement Class are any persons or entities who or which exclude themselves by submitting a request for exclusion in accordance with the requirements set forth in this Notice. *See* "What if I Do Not Want to Be a Member of the Settlement Class? How Do I Exclude Myself," on page 15 below.

PLEASE NOTE: RECEIPT OF THIS NOTICE DOES NOT MEAN THAT YOU ARE A SETTLEMENT CLASS MEMBER OR THAT YOU WILL BE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT. IF YOU ARE A SETTLEMENT CLASS MEMBER AND YOU WISH TO BE ELIGIBLE TO PARTICIPATE IN THE DISTRIBUTION OF PROCEEDS FROM THE SETTLEMENT, YOU ARE REQUIRED TO SUBMIT THE CLAIM FORM THAT IS BEING DISTRIBUTED WITH THIS NOTICE AND THE REQUIRED SUPPORTING DOCUMENTATION AS SET FORTH THEREIN ONLINE OR POSTMARKED NO LATER THAN APRIL 24, 2024.

WHAT ARE LEAD PLAINTIFF'S REASONS FOR THE SETTLEMENT?

24. Lead Plaintiff and Lead Counsel believe that the claims asserted against Defendants have merit. They recognize, however, the expense and length of continued proceedings necessary to pursue their claims against the remaining Defendants through trial and appeals, as well as the very substantial risks they would face in establishing liability and damages. For example, Defendants argued and would have continued to argue that: (i) they disclosed to investors all material information about the Company that they were required to disclose; (ii) to the extent that the United States Food and Drug Administration ("FDA") had questions about the CARDINAL trial's design, Defendants were under no duty to disclose such concerns, to the extent that they even knew of them; (iii) certain of the Defendants' statements are subject to legal protections because, among other reasons, they were accompanied by adequate risk-factor disclosures and/or constituted Defendants' good-faith opinions; and (iv) Defendants did not intend to deceive investors about the CARDINAL trial or any other subject. Additionally, Lead Plaintiff would have to prevail at several stages – motion to dismiss, class certification, motions for summary judgment, trial, and if it prevailed on those, on the appeals that were likely to follow. Thus, there were very significant risks attendant to the continued prosecution of the Action.

25. In light of these risks, the amount of the Settlement, and the immediacy of recovery to the Settlement Class, Lead Plaintiff and Lead Counsel believe that the proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class. Lead Plaintiff and Lead Counsel believe that the Settlement provides a substantial benefit to the Settlement Class, namely \$45,000,000 in cash (less the various deductions described in this Notice), as compared to the risk that the claims in the Action would produce a smaller, or no recovery after the motion to dismiss, summary judgment, trial, and appeals, possibly years in the future.

26. Defendants have denied the claims asserted against them in the Action and deny having engaged in any wrongdoing or violation of law of any kind whatsoever. Defendants have agreed to the Settlement solely to eliminate the burden and expense of continued litigation. Accordingly, the Settlement may not be construed as an admission of any wrongdoing by Defendants.

WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?

27. If there were no Settlement and Lead Plaintiff failed to establish any essential legal or factual element of the claims asserted against Defendants, neither Lead Plaintiff nor the other members of the Settlement Class would recover anything from Defendants. Also, if Defendants were successful in proving any of their defenses, either at the motion to dismiss stage, class certification, summary judgment, trial, or appeal, the Settlement Class could recover substantially less than the amount provided in the Settlement, or nothing at all.

HOW ARE SETTLEMENT CLASS MEMBERS AFFECTED BY THE ACTION AND THE SETTLEMENT?

28. As a Settlement Class Member, you are represented by Lead Plaintiff and Lead Counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file a notice of appearance on your behalf and must serve copies of his or her appearance on the attorneys listed in the section below entitled, "When and Where Will the Court Decide Whether to Approve the Settlement?"

29. If you are a Settlement Class Member and do not wish to remain a Settlement Class Member, you may exclude yourself from the Settlement Class by following the instructions in the section below entitled, "What if I Do Not Want to Be a Member of the Settlement Class? How Do I Exclude Myself?"

30. If you are a Settlement Class Member and you wish to object to the Settlement, the Plan of Allocation, or Lead Counsel's application for attorneys' fees and reimbursement of Litigation Expenses, and if you do not exclude yourself from the Settlement Class, you may present your objections by following the instructions in the section below entitled, "When and Where Will the Court Decide Whether to Approve the Settlement?"

31. If you are a Settlement Class Member and you do not exclude yourself from the Settlement Class, you will be bound by any orders issued by the Court. If the Settlement is approved, the Court will enter a judgment (the "Judgment"). The Judgment will dismiss with prejudice the claims against Defendants and will provide that, upon the Effective Date of the Settlement, Lead Plaintiff and each of the other Settlement Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns, in their capacities as such, will have fully, finally, and forever compromised, settled, released, resolved, relinquished, waived,

and discharged any and all Released Plaintiffs' Claims (as defined in ¶ 32 below) against the Defendants' Releasees (as defined in ¶ 33 below), and shall forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs' Claims against any and all of the Defendants' Releasees.

32. "Released Plaintiffs' Claims" means all claims, causes of action, demands, losses, and rights of every nature and description, whether known claims or Unknown Claims (as defined below), whether arising under federal, state, common, or foreign law, that Lead Plaintiff or any other member of the Settlement Class (or their successors, assigns, executors, administrators, representatives, attorneys, and agents, in their capacities as such): (i) asserted in the CAC; (ii) could have asserted in any forum that arise out of or are based upon, in any way, directly or indirectly, any of the allegations, transactions, facts, events, matters, or occurrences, representations, or omissions involved, set forth, or referred to in the CAC; (iii) could have asserted in any other forum that arise out of or are based upon, in any way, directly or indirectly, the purchase, acquisition, sale, or disposition of any Reata securities during the Settlement Class Period; and/or (iv) could have asserted in any forum that arise out of or are based upon, in any way, directly or indirectly, Defendants' and/or their attorneys' defense or settlement of the Action and/or claims alleged therein. Released Plaintiffs' Claims do not include: (i) any claims relating to the enforcement of the Settlement; and (ii) any claims of any person or entity who or that submits a request for exclusion that is accepted by the Court.

33. "Defendants' Releasees" means Defendants, Defendants' insurance carrier(s), Defendants' counsel, and any of their respective parents, subsidiaries, and affiliates (and all of their current and former officers, directors, agents, parents, affiliates, subsidiaries, successors, predecessors, assigns, assignees, insurers, reinsurers, employees, employers, agents, servants, representatives, partners, limited partners, heirs, advisors and attorneys, in their capacities as such, and each of their respective heirs, executors, administrators, successors, and assigns).

34. "Unknown Claims" means any Released Plaintiffs' Claims that Lead Plaintiff or any other Settlement Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, and any Released Defendants' Claims that any Defendant or any other Defendants' Releasee does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, that, if known by him, her, or it, might have affected his, her, or its decision(s) with respect to this Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement, Lead Plaintiff and Defendants shall expressly waive, and each of the other Settlement Class Members and each of the other Defendants' Releasees shall be deemed to have waived, and by operation of the Judgment or the Alternate Judgment (as defined in the Stipulation), if applicable, shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, that is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Lead Plaintiff and Defendants acknowledge, and each of the other Settlement Class Members and each of the other Defendants' Releasees shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement.

35. The Judgment will also provide that, upon the Effective Date of the Settlement, Defendants and each of the other Defendants' Releasees, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, will have fully, finally and forever compromised, settled, released, resolved, relinquished, waived, and discharged any and all Released Defendants' Claims (as defined in ¶ 36 below) against Lead Plaintiff and other Plaintiffs' Releasees (as defined in ¶ 37 below), and shall forever be barred and enjoined from prosecuting any or all of the Released Defendants' Claims against any of the Plaintiffs' Releasees.

36. "Released Defendants' Claims" means all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, common, or foreign law, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims asserted in the Action against the Defendants. Released Defendants' Claims do not include: (i) any claims relating to the enforcement of the Settlement; (ii) any claims against any person or entity who or that submits a request for exclusion from the Settlement Class that is accepted by the Court; (iii) any indemnity obligations owed by any Defendant to any other Defendant; or (iv) any rights of any Underwriter Defendant against any other Underwriter Defendant.

37. "Plaintiffs' Releasees" means Lead Plaintiff, all other plaintiffs in the Action, their respective attorneys, and all other Settlement Class Members, and their respective current and former officers, directors, agents, parents, affiliates, subsidiaries, successors, predecessors, assigns, assignees, employees, and attorneys, in their capacities as such.

HOW DO I PARTICIPATE IN THE SETTLEMENT? WHAT DO I NEED TO DO?

38. To be eligible for a payment from the proceeds of the Settlement, you must be a member of the Settlement Class and you must timely complete and submit the Claim Form with adequate supporting documentation: **(i) online using the electronic version of the Claim Form hosted at www.ReataSecuritiesLitigation.com no later than April 24, 2024; (ii) by email to info@ReataSecuritiesLitigation.com no later than April 24, 2024, or (iii) by first-class mail to *Doyle v. Reata Pharmaceuticals, Inc.*, c/o Epiq, P.O. Box 5566, Portland, OR, 97228-5566 postmarked no later than April 24, 2024.** A Claim Form is included with this Notice, or you may obtain one from the website maintained by the Claims Administrator for the Settlement, www.ReataSecuritiesLitigation.com, or you may request that a Claim Form be mailed to you by calling the Claims Administrator toll free at 1-877-664-7398. Please retain all records of your ownership of and transactions in Reata common stock, as they may be needed to document your Claim. If you request exclusion from the Settlement Class or do not submit a timely and valid Claim Form, you will not be eligible to share in the Net Settlement Fund.

HOW MUCH WILL MY PAYMENT BE?

39. At this time, it is not possible to make any determination as to how much any individual Settlement Class Member may receive from the Settlement.

40. Pursuant to the Settlement, Defendants have agreed to pay or caused to be paid forty-five million dollars (\$45,000,000) in cash. The Settlement Amount will be deposited into an escrow account. The Settlement Amount plus any interest earned thereon is referred to as the “Settlement Fund.” If the Settlement is approved by the Court and the Effective Date occurs, the “Net Settlement Fund” (that is, the Settlement Fund less: (a) all federal, state, and/or local taxes on any income earned by the Settlement Fund and the reasonable costs incurred in connection with determining the amount of and paying taxes owed by the Settlement Fund (including reasonable expenses of tax attorneys and accountants); (b) the costs and expenses incurred in connection with providing notice to Settlement Class Members and administering the Settlement on behalf of Settlement Class Members; (c) any attorneys’ fees and Litigation Expenses awarded by the Court; and (d) any other costs or fees approved by the Court) will be distributed to Settlement Class Members who submit valid Claim Forms, in accordance with the proposed Plan of Allocation or such other plan of allocation as the Court may approve.

41. The Net Settlement Fund will not be distributed unless and until the Court has approved the Settlement and a plan of allocation, and the time for any petition for rehearing, appeal, or review, whether by certiorari or otherwise, has expired.

42. Neither Defendants nor any other person or entity that paid any portion of the Settlement Amount on their behalf are entitled to get back any portion of the Settlement Fund once the Court’s order or judgment approving the Settlement becomes Final. Defendants shall not have any liability, obligation, or responsibility for the administration of the Settlement, the disbursement of the Net Settlement Fund, or the plan of allocation.

43. Approval of the Settlement is independent from approval of a plan of allocation. Any determination with respect to a plan of allocation will not affect the Settlement, if approved.

44. Unless the Court otherwise orders, any Settlement Class Member who fails to submit a Claim Form online, by email, or by mail postmarked on or before April 24, 2024 shall be fully and forever barred from receiving payments pursuant to the Settlement, but will in all other respects remain a Settlement Class Member and be subject to the provisions of the Stipulation, including the terms of any Judgment entered and the releases given. This means that each Settlement Class Member releases the Released Plaintiffs’ Claims (as defined in ¶ 32 above) against Defendants’ Releasees (as defined in ¶ 33 above) and will be enjoined and prohibited from filing, prosecuting, or pursuing any of the Released Plaintiffs’ Claims against any of Defendants’ Releasees whether or not such Settlement Class Member submits a Claim Form.

45. Participants in and beneficiaries of a plan covered by ERISA (“ERISA Plan”) should NOT include any information relating to their transactions in Reata common stock held through the ERISA Plan in any Claim Form that they may submit in this Action. They should include ONLY those shares that they purchased or acquired outside of the ERISA Plan. Claims based on any ERISA Plan’s purchases or acquisitions of Reata common stock during the Settlement Class Period may be made by the plan’s trustees. To the extent any of the Defendants or any of the other persons or entities excluded from the Settlement Class are participants in the ERISA Plan, such persons or entities shall not receive, either directly or indirectly, any portion of the recovery that may be obtained from the Settlement by the ERISA Plan.

46. The Court has reserved jurisdiction to allow, disallow, or adjust on equitable grounds the Claim of any Settlement Class Member.

47. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her, or its Claim Form.

48. Only Settlement Class Members, *i.e.*, persons and entities who purchased or otherwise acquired Reata common stock during the Settlement Class Period and were damaged as a result of such purchases or acquisitions will be eligible to share in the distribution of the Net Settlement Fund. Persons and entities that are excluded from the Settlement Class by definition or that exclude themselves from the Settlement Class pursuant to request will not be eligible to receive a distribution from the Net Settlement Fund and should not submit Claim Forms. The only securities that are included in the Settlement are shares of Reata common stock.

PROPOSED PLAN OF ALLOCATION

49. The Plan of Allocation set forth below is the plan for the distribution of the Net Settlement Fund that is being proposed by Lead Plaintiff and Lead Counsel to the Court for approval. The Court may approve this Plan of Allocation or modify it without additional notice to the Settlement Class. Any order modifying the Plan of Allocation will be posted on the Settlement website at www.ReataSecuritiesLitigation.com.

50. The objective of the Plan of Allocation is to equitably distribute the Settlement proceeds to those Settlement Class Members who suffered economic losses as a proximate result of the alleged wrongdoing. The calculations made pursuant to the Plan of Allocation are not intended to be estimates of, nor indicative of, the amounts that Settlement Class Members might have been able to recover after a trial. Nor are the calculations pursuant to the Plan of Allocation intended to be estimates of the amounts that will be paid to Authorized Claimants pursuant to the Settlement. The computations under the Plan of Allocation are only a method to weigh the claims of Authorized Claimants against one another for the purposes of making *pro rata* allocations of the Net Settlement Fund.

51. The Action alleges claims under the Securities Act with respect to: (i) Reata common stock purchased or otherwise acquired pursuant or traceable to the 2019 Offering; and (ii) Reata common stock purchased or otherwise acquired pursuant or traceable to the 2020 Offering. It alleges claims under the Exchange Act with respect to all purchases or acquisitions of Reata common stock during the Settlement Class Period.⁵

52. Reata common stock purchased during the period November 14, 2019 through the closing of the 2019 Offering on November 18, 2019, both dates inclusive, at a purchase price equal to \$183.00 per share, shall be considered an acquisition of Reata common stock pursuant or traceable to the Company's 2019 Offering. Reata common stock purchased during the period December 2, 2020 through the closing of the 2020 Offering on December 4, 2020, both dates inclusive, at a purchase price equal to \$140.85 per share, shall be considered an acquisition of Reata common stock pursuant or traceable to the Company's 2020 Offering.

53. Based on the formulas set forth below, a "Recognized Loss Amount" shall be calculated by the Claims Administrator for each purchase or acquisition of Reata common stock during the Settlement Class Period that is listed in the Claim Form and for which adequate documentation is provided. The Recognized Loss Amount for shares of Reata common stock purchased or otherwise acquired pursuant or traceable to the 2019 Offering or the 2020 Offering shall be calculated as described below in "Calculation of Recognized Loss Amount Per Share Under the Securities Act." Any Recognized Loss Amount calculated under the Securities Act that is greater than zero will then be increased by an additional 50% by multiplying that Recognized Loss Amount by 1.50. For all other shares of Reata common stock purchased or otherwise acquired during the Settlement Class Period, the Recognized Loss Amount shall be calculated as described below in "Calculation of Recognized Loss Amount Per Share Under the Exchange Act." This approach to calculating Recognized Loss Amounts is intended to reflect the determination of Lead Counsel that, although the claims alleged and damages alleged to be recoverable under the Exchange Act and the Securities Act generally relate to similar alleged misconduct, the Securities Act claims add value to the overlapping Exchange Act claims because they would be easier to prove and therefore more likely to prevail if the Action were litigated to a conclusion.

54. Additionally, in weighing the strengths and weaknesses of the claims of Settlement Class Members, Lead Counsel has concluded that claims for Reata common stock purchased during the Settlement Class Period *prior* to October 23, 2018 involved difficulties of proof that justify an adjustment under this Plan of Allocation. Accordingly, the Recognized Loss Amount for shares of Reata common stock purchased *prior* to October 23, 2018, shall be reduced by 80% by multiplying that Recognized Loss Amount by 0.20.

⁵ During the Settlement Class Period, Reata common stock was listed on the NASDAQ Global Market under the ticker symbol "RETA."

55. In the Action, Lead Plaintiff alleges that Defendants made false statements and omitted material facts during the Settlement Class Period (*i.e.*, November 14, 2016 through December 8, 2021, inclusive), including in the 2019 Offering Documents and the 2020 Offering Documents, which allegedly had the effect of artificially inflating the price of Reata common stock. Lead Plaintiff also alleges that corrective disclosures removed the artificial inflation from the price of Reata common stock on August 10, 2020, August 10, 2021, December 6, 2021 and December 9, 2021 (the “Corrective Disclosure Dates”). Recognized Loss Amounts are based primarily on the price declines in Reata common stock, as quantified by Lead Plaintiff’s consulting damages expert, on the Corrective Disclosure Dates, as well as Lead Counsel’s assessment of potential loss causation defenses associated with each Corrective Disclosure Date. The estimated alleged artificial inflation in the price of Reata common stock during the Settlement Class Period is reflected in Table 1 below.

56. In order to have recoverable damages in the Action, disclosures correcting the alleged misrepresentations must be the cause of the decline in the price of Reata common stock. Accordingly, in order to have a Recognized Loss Amount, Reata common stock must have been purchased or acquired during the Settlement Class Period and held at the opening of trading on at least one of the alleged Corrective Disclosure Dates. To the extent a Claimant’s transactions in Reata common stock do not satisfy the conditions set forth in the preceding sentence, his, her or its Recognized Loss Amount for those transactions will be zero.⁶

Table 1* Estimated Alleged Artificial Inflation in Reata Common Stock		
From	To	Price Inflation
November 14, 2016	August 9, 2020	\$60.56
August 10, 2020	August 9, 2021	\$55.53
August 10, 2021	December 5, 2021	\$53.51
December 6, 2021 ⁷	December 7, 2021	\$24.73
December 9, 2021 ⁸	Thereafter	\$0.00

* For each day during the Settlement Class Period, price inflation in Reata common stock on the date of purchase shall be limited to that day’s closing price for the stock.

57. The “90-day look back” provision of the PSLRA is incorporated into the Calculation of Recognized Loss Amount Per Share Under the Exchange Act. This limitation provides that the Recognized Loss Amount for Reata common stock purchased or otherwise acquired during the Settlement Class Period and held as of the close of the 90-day period subsequent to the Settlement Class Period (the “90-Day Lookback Period”) cannot exceed the difference between the purchase price paid for such stock and its average price during the 90-Day Lookback Period. The Recognized Loss Amount for Reata common stock purchased during the Settlement Class Period and sold during the 90-Day Lookback Period cannot exceed the difference between the purchase price paid for such stock and its rolling average price during the portion of the 90-Day Lookback Period elapsed as of the date of sale.

58. In the calculations below, all purchase and sale prices shall exclude any fees, taxes, and commissions. If a Recognized Loss Amount is calculated to be a negative number, that Recognized Loss Amount shall be set to zero.

⁶ Section 11 of the Securities Act provides for an affirmative defense of negative causation which prevents recovery for losses that defendants prove are not attributable to misrepresentations and/or omissions alleged by plaintiffs in the registration statement. Thus, the Calculation of Recognized Loss Amount Per Share Under the Securities Act assumes that the decline in the price of Reata common stock, net of market and industry effects, in response to the Corrective Disclosures alleged by Lead Plaintiff, is the only compensable loss.

⁷ The alleged corrective disclosure on December 6, 2021 occurred at approximately 9:30 a.m. Transactions in Reata common stock on December 6, 2021 at a price greater than \$72.67 per share (*i.e.*, the opening price of Reata common stock that day) shall be deemed to have occurred *prior to* the alleged corrective disclosure with price inflation of \$53.51 per share. All other transactions in Reata common stock that day shall be treated as a transaction that occurred after the alleged corrective disclosure with price inflation of \$24.73 per share.

⁸ Trading in Reata common stock on December 8, 2021 was halted until after market close at approximately 6:20 p.m. Transactions in Reata common stock on December 8, 2021 shall be deemed to have occurred during the next regular trading session (*i.e.*, on December 9, 2021) with price inflation of \$0.00 per share.

**CALCULATION OF RECOGNIZED LOSS AMOUNT PER SHARE
UNDER THE EXCHANGE ACT**

59. Based on the formula set forth below, a Recognized Loss Amount shall be calculated under the Exchange Act for each purchase or acquisition of Reata common stock during the Settlement Class Period (*i.e.*, November 14, 2016 through December 8, 2021, both dates inclusive), other than shares of Reata common stock purchased or otherwise acquired pursuant or traceable to the 2019 Offering or the 2020 Offering, that is listed in the Claim Form and for which adequate documentation is provided.⁹

- i. For each share that was sold prior to August 10, 2020, the Recognized Loss Amount per share is \$0.00.
- ii. For each share that was purchased during the Settlement Class Period and subsequently sold during the period August 10, 2020 through December 8, 2021, both dates inclusive, the Recognized Loss Amount per share is *the lesser of*:
 - a. the amount of price inflation on the date of purchase as appears in Table 1 above *minus* the amount of price inflation on the date of sale as appears in Table 1 above; or
 - b. the purchase price *minus* the sale price.
- iii. For each share that was purchased during the Settlement Class Period and subsequently sold during the period December 9, 2021 through March 7, 2022, both dates inclusive (*i.e.*, sold during the 90-Day Lookback Period), the Recognized Loss Amount per share is *the least of*:
 - a. the amount of price inflation on the date of purchase as appears in Table 1 above; or
 - b. the purchase price *minus* the sale price; or
 - c. the purchase price *minus* the “90-Day Lookback Value” on the date of sale as appears in Table 2 below.
- iv. For each share that was purchased during the Settlement Class Period and still held as of the close of trading March 7, 2022, the Recognized Loss Amount per share is *the lesser of*:
 - a. the amount of price inflation on the date of purchase as appears in Table 1 above; or
 - b. the purchase price *minus* the average closing price for Reata common stock during the 90-Day Lookback Period, which is \$27.78.

⁹ As described in ¶ 53, the Recognized Loss Amount for shares of Reata common stock purchased or otherwise acquired pursuant or traceable to the 2019 Offering or the 2020 Offering shall be calculated as described below in “Calculation of Recognized Loss Amount Per Share Under the Securities Act.”

Table 2 90-Day Lookback Values					
Sale/ Disposition Date	90-Day Lookback Value	Sale/ Disposition Date	90-Day Lookback Value	Sale/ Disposition Date	90-Day Lookback Value
12/9/2021	\$29.11	1/7/2022	\$28.16	2/7/2022	\$27.74
12/10/2021	\$29.22	1/10/2022	\$28.17	2/8/2022	\$27.70
12/13/2021	\$28.90	1/11/2022	\$28.23	2/9/2022	\$27.68
12/14/2021	\$28.90	1/12/2022	\$28.24	2/10/2022	\$27.63
12/15/2021	\$28.98	1/13/2022	\$28.23	2/11/2022	\$27.57
12/16/2021	\$28.96	1/14/2022	\$28.25	2/14/2022	\$27.52
12/17/2021	\$29.02	1/18/2022	\$28.23	2/15/2022	\$27.50
12/20/2021	\$29.04	1/19/2022	\$28.21	2/16/2022	\$27.49
12/21/2021	\$28.97	1/20/2022	\$28.18	2/17/2022	\$27.47
12/22/2021	\$28.82	1/21/2022	\$28.11	2/18/2022	\$27.43
12/23/2021	\$28.75	1/24/2022	\$28.06	2/22/2022	\$27.39
12/27/2021	\$28.60	1/25/2022	\$28.02	2/23/2022	\$27.34
12/28/2021	\$28.41	1/26/2022	\$27.97	2/24/2022	\$27.31
12/29/2021	\$28.21	1/27/2022	\$27.86	2/25/2022	\$27.28
12/30/2021	\$28.09	1/28/2022	\$27.77	2/28/2022	\$27.38
12/31/2021	\$27.98	1/31/2022	\$27.78	3/1/2022	\$27.49
1/3/2022	\$27.94	2/1/2022	\$27.83	3/2/2022	\$27.58
1/4/2022	\$28.05	2/2/2022	\$27.83	3/3/2022	\$27.64
1/5/2022	\$28.06	2/3/2022	\$27.80	3/4/2022	\$27.72
1/6/2022	\$28.13	2/4/2022	\$27.76	3/7/2022	\$27.78

**CALCULATION OF RECOGNIZED LOSS AMOUNT PER SHARE
UNDER THE SECURITIES ACT**

2019 Offering

60. Based on the formula set forth below, a Recognized Loss Amount shall be calculated under the Securities Act for each purchase or acquisition of Reata common stock pursuant or traceable to the 2019 Offering that is listed in the Claim Form and for which adequate documentation is provided.

- i. For each share that was sold prior to August 10, 2020, the Recognized Loss Amount per share is \$0.00.
- ii. For each share that was sold during the period August 10, 2020 through December 8, 2021, both dates inclusive, the Recognized Loss Amount per share is *the lesser of*:
 - a. \$60.56 *minus* the amount of price inflation on the date of sale as appears in Table 1 above; or
 - b. the offering price (*i.e.*, \$183.00) *minus* the sale price.

- iii. For each share that was sold during the period December 9, 2021 through June 20, 2022,¹⁰ both dates inclusive, the Recognized Loss Amount per share is *the lesser of*:
 - a. \$60.56; or
 - b. the offering price (*i.e.*, \$183.00) *minus* the sale price.
- iv. For each share that was still held as of the close of trading on June 20, 2022, the Recognized Loss Amount per share is \$60.56.

2020 Offering

61. Based on the formula set forth below, a Recognized Loss Amount shall be calculated under the Securities Act for each purchase or acquisition of Reata common stock pursuant or traceable to the 2020 Offering that is listed in the Claim Form and for which adequate documentation is provided.

- i. For each share that was sold prior to August 10, 2021, the Recognized Loss Amount per share is \$0.00.
- ii. For each share that was sold during the period August 10, 2021 through December 8, 2021, both dates inclusive, the Recognized Loss Amount per share is *lesser of*:
 - a. \$55.53 *minus* the amount of price inflation on the date of sale as appears in Table 1 above; or
 - b. the offering price (*i.e.*, \$140.85) *minus* the sale price.
- iii. For each share that was sold during the period December 9, 2021 through June 20, 2022, both dates inclusive, the Recognized Loss Amount per share is *the lesser of*:
 - a. \$55.53; or
 - b. the offering price (*i.e.*, \$140.85) *minus* the sale price.
- iv. For each share that was still held as of the close of trading on June 20, 2022, the Recognized Loss Amount per share is \$55.53.

ADDITIONAL PROVISIONS

62. The Net Settlement Fund will be allocated among all Authorized Claimants whose Distribution Amount (defined in paragraph 70 below) is \$10.00 or greater.

63. **LIFO Matching:** Purchases/acquisitions and sales of Reata common stock shall be matched on a Last In, First Out (“LIFO”) basis. Under LIFO, a Claimant’s sales of Reata common stock during the Settlement Class Period will be matched against his, her, or its previous acquisitions of Reata common stock in reverse-chronological order, beginning with the most recent acquisition that is not already matched to a sale.

64. **Calculation of Claimant’s “Recognized Claim”:** A Claimant’s “Recognized Claim” under the Plan of Allocation shall be the sum of his, her, or its Recognized Loss Amounts as calculated above under “Calculation of Recognized Loss Amount Per Share Under the Securities Act” with respect to all shares of Reata common stock purchased or otherwise acquired pursuant or traceable to the 2019 Offering or the 2020 Offering, *plus* the sum of his, her, or its Recognized Loss Amounts as calculated above under “Calculation of Recognized Loss Amount Per Share Under the Exchange Act” with respect to all other shares of Reata common stock purchased or otherwise acquired during the Settlement Class Period.

65. **“Purchase/Sale” Dates:** Purchases/acquisitions and sales of Reata common stock shall be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement” or “payment” date. The receipt or grant by gift, inheritance, or operation of law of Reata common stock during the Settlement Class Period shall not be deemed a purchase/acquisition of Reata common stock for the calculation of an Authorized Claimant’s Recognized Loss Amount, nor shall the receipt or grant be deemed an assignment of any claim relating to the purchase/acquisition of any Reata common stock unless (i) the donor/decedent purchased or otherwise acquired such Reata common stock during the Settlement Class Period; (ii) no Claim Form was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to such Reata common stock; and (iii) it is specifically so provided in the instrument of gift or assignment.

¹⁰ June 20, 2022 is the filing date of the CAC, which was the first complaint stating a claim under the Securities Act for shares acquired pursuant or traceable to the 2019 Offering or the 2020 Offering.

66. **Short Sales:** The date of covering a “short sale” is deemed to be the date of purchase or acquisition of Reata common stock. The date of a “short sale” is deemed to be the date of sale of Reata common stock. Under the Plan of Allocation, however, the Recognized Loss Amount on “short sales” is zero. In the event that a Claimant has an opening short position in Reata common stock, the earliest Settlement Class Period purchases or acquisitions shall be matched against such opening short position, and not be entitled to a recovery, until that short position is fully covered.

67. **Option Contracts:** Option contracts are not securities eligible to participate in the Settlement. With respect to Reata common stock purchased through the exercise of an option, the purchase date of the stock shall be the exercise date of the option, and the purchase price of the stock shall be the strike price of the option. Any Recognized Loss Amount arising from purchases of Reata common stock acquired during the Settlement Class Period through the exercise of an option on Reata common stock shall be computed as provided for other purchases of Reata common stock in the Plan of Allocation.

68. **Market Gains and Losses:** To the extent a Claimant had a market gain with respect to his, her, or its overall transactions in Reata common stock during the Settlement Class Period, the value of the Claimant’s Recognized Claim shall be zero. To the extent that a Claimant suffered an overall market loss with respect to his, her, or its overall transactions in Reata common stock during the Settlement Class Period, but that market loss was less than the total Recognized Claim calculated above, then the Claimant’s Recognized Claim shall be limited to the amount of the actual market loss.

69. For purposes of determining whether a Claimant had a market gain with respect to his, her, or its overall transactions in Reata common stock during the Settlement Class Period or suffered a market loss, the Claims Administrator shall determine the difference between (i) the Total Purchase Amount¹¹ and (ii) the sum of the Total Sales Proceeds¹² and the Total Holding Value.¹³ If the Claimant’s Total Purchase Amount *minus* the sum of the Total Sales Proceeds and the Total Holding Value is a positive number, that number will be the Claimant’s market loss on such Reata common stock; if the number is a negative number or zero, that number will be the Claimant’s market gain on Reata common stock.

70. **Determination of Distribution Amount:** The Net Settlement Fund will be distributed to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Claims. Specifically, a “Distribution Amount” will be calculated for each Authorized Claimant, which shall be the Authorized Claimant’s Recognized Claim divided by the total Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. If any Authorized Claimant’s Distribution Amount calculates to less than \$10.00, it will not be included in the calculation and no distribution will be made to such Authorized Claimant. Any Distribution Amounts of less than \$10.00 will be included in the pool distributed to those Settlement Class Members whose Distribution Amounts are \$10.00 or greater.

71. After the initial distribution of the Net Settlement Fund, the Claims Administrator shall make reasonable and diligent efforts to have Authorized Claimants cash their distribution checks. To the extent any monies remain in the fund at least nine (9) months after the initial distribution, if Lead Counsel, in consultation with the Claims Administrator, determines that it is cost-effective to do so, the Claims Administrator shall conduct a re-distribution of the funds remaining, after payment of any unpaid fees and expenses incurred in administering the Settlement, including for such re-distribution, to Authorized Claimants who have cashed their initial distributions and who would receive at least \$10.00 from such re-distribution. Additional re-distributions to Authorized Claimants, who have cashed their prior checks and who would receive at least \$10.00 in such additional re-distributions, may occur thereafter if Lead Counsel, in consultation with the Claims Administrator, determines that additional re-distributions, after the deduction of any additional fees and expenses incurred in administering the Settlement, including for such re-distributions, would be cost-effective. At such time as it is determined that the re-distribution of funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance shall be contributed to a non-sectarian, not-for-profit organization approved by the Court.

¹¹ The “Total Purchase Amount” is the total amount the Claimant paid (excluding commissions and other charges) for all Reata common stock purchased or acquired during the Settlement Class Period.

¹² The Claims Administrator shall match a Claimant’s sales of Reata common stock during the Settlement Class Period against his, her, or its holdings on a LIFO basis. The proceeds from those sales that matched to the Claimant’s opening position will not be considered for purposes of calculating market gains or losses. The total amount received for the remaining sales that are matched to shares of Reata common stock that were acquired during the Settlement Class Period (excluding commissions and other charges) shall be the Claimant’s “Total Sales Proceeds.”

¹³ For each share of Reata common stock purchased or acquired during the Settlement Class Period that was still held as of the close of trading on December 8, 2021, the Claims Administrator shall ascribe a “Holding Value” of \$27.78 per share. A Claimant’s total Holding Values for all shares of Reata common stock purchased or acquired during the Settlement Class Period that were still held as of the close of trading on December 8, 2021 shall be the Claimant’s “Total Holding Value.”

72. Payment pursuant to the Plan of Allocation, or such other plan of allocation as may be approved by the Court, shall be conclusive against all Claimants. No person shall have any claim against Lead Plaintiff, Plaintiffs' Counsel, Lead Plaintiff's consulting damages expert, Defendants, Defendants' Counsel, or any of the other Releasees, or the Claims Administrator or other agent designated by Plaintiffs' Counsel arising from distributions made substantially in accordance with the Stipulation, the plan of allocation approved by the Court, or further Orders of the Court. Lead Plaintiff, Defendants, and their respective counsel, and all other Defendants' Releasees, shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Fund, the Net Settlement Fund, the plan of allocation, or the determination, administration, calculation, or payment of any Claim Form or nonperformance of the Claims Administrator, the payment or withholding of Taxes owed by the Settlement Fund, or any losses incurred in connection therewith.

**WHAT PAYMENT ARE THE ATTORNEYS FOR THE SETTLEMENT CLASS SEEKING?
HOW WILL THE LAWYERS BE PAID?**

73. Plaintiffs' Counsel have not received any payment for their services in pursuing claims against the Defendants on behalf of the Settlement Class, nor has Lead Counsel been reimbursed for its out-of-pocket expenses. Before final approval of the Settlement, Lead Counsel will apply to the Court for an award of attorneys' fees for all Plaintiffs' Counsel in an amount not to exceed 33⅓% of the Settlement Fund. At the same time, Lead Counsel also intends to apply for reimbursement of Litigation Expenses in an amount not to exceed \$500,000, which may include an application for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiff directly related to its representation of the Settlement Class in an amount not to exceed \$10,000. The Court will determine the amount of any award of attorneys' fees or reimbursement of Litigation Expenses. Such sums as may be approved by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses.

**WHAT IF I DO NOT WANT TO BE A MEMBER OF THE SETTLEMENT CLASS?
HOW DO I EXCLUDE MYSELF?**

74. Each Settlement Class Member will be bound by all determinations and judgments in this lawsuit, whether favorable or unfavorable, unless such person or entity mails or delivers a written Request for Exclusion from the Settlement Class, addressed to *Doyle v. Reata Pharmaceuticals, Inc.*, EXCLUSIONS, c/o Epiq, P.O. Box 5566, Portland, OR 97228-5566. The exclusion request must be **received** no later than March 8, 2024. You will not be able to exclude yourself from the Settlement Class after that date. Each Request for Exclusion must: (a) state the name, address, and telephone number of the person or entity requesting exclusion, and in the case of entities, the name and telephone number of the appropriate contact person; (b) state that such person or entity "requests exclusion from the Settlement Class in *Doyle et al. v. Reata Pharmaceuticals, Inc. et al.*, No. 4:21-cv-00987"; (c) identify and state the number of shares of Reata common stock that the person or entity requesting exclusion purchased/acquired and/or sold during the Settlement Class Period (i.e., between November 14, 2016 and December 8, 2021, inclusive), as well as the dates and prices of each such purchase/acquisition and/or sale; and (d) be signed by the person or entity requesting exclusion or an authorized representative. A Request for Exclusion shall not be valid and effective unless it provides all the information called for in this paragraph and is received within the time stated above, or is otherwise accepted by the Court.

75. If you do not want to be part of the Settlement Class, you must follow these instructions for exclusion even if you have a pending proceeding, or later file another lawsuit, arbitration, or other proceeding relating to any Released Plaintiffs' Claim against any of the Defendants' Releasees.

76. If you ask to be excluded from the Settlement Class, you will not be eligible to receive any payment out of the Net Settlement Fund.

77. Defendants have the right to terminate the Settlement if valid requests for exclusion are received from persons and entities entitled to be members of the Settlement Class in an amount that exceeds an amount agreed to by Lead Plaintiff and Defendants.

**WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE
SETTLEMENT? DO I HAVE TO COME TO THE HEARING?
MAY I SPEAK AT THE HEARING IF I DO NOT LIKE THE SETTLEMENT?**

78. Settlement Class Members do not need to attend the Settlement Hearing. The Court will consider any submission made in accordance with the provisions below even if a Settlement Class Member does not attend the hearing. You can participate in the Settlement without attending the Settlement Hearing.

79. The Settlement Hearing is currently scheduled to be held on March 29, 2024 at 9:00 a.m., before the Honorable Amos L. Mazzant III at the United States District Court for the Eastern District of Texas, Paul Brown United States Courthouse, 101 East Pecan Street, Sherman, Texas 75090. The Court reserves the right to approve the Settlement, the Plan of Allocation, Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, and/or any other matter related to the Settlement, at or after the Settlement Hearing without further notice to the members of the Settlement Class. The Court also reserves the right to hold the Settlement Hearing telephonically or via videoconference.

80. Any Settlement Class Member who or which does not request exclusion may object to the Settlement, the proposed Plan of Allocation, or Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses. Objections must be in writing. You must file any written objection, together with copies of all other papers and briefs supporting the objection, with the Clerk's Office at the United States District Court for the Eastern District of Texas at the address set forth below on or before March 8, 2024. You must also serve the papers on Lead Counsel and on Defendants' Counsel at the addresses set forth below so that the papers are **received on or before March 8, 2024**.

<u>Clerk's Office</u>	<u>Lead Counsel</u>	<u>The Reata Defendants' Counsel</u>
United States District Court Eastern District of Texas Clerk of the Court Paul Brown United States Courthouse 101 East Pecan Street, Sherman, TX 75090	Kirby McInerney LLP Daniel Hume, Esq. Meghan Summers, Esq. 250 Park Avenue, Suite 820 New York, NY 10177	Davis Polk & Wardwell LLP Neal Potischman, Esq. 1600 El Camino Real Menlo Park, CA 94025 -or- Craig J. Bergman, Esq. 450 Lexington Avenue New York, NY 10017 <u>The Underwriter</u> <u>Defendants' Counsel</u> Shearman & Sterling LLP R. Thaddeus Behrens, Esq. Dan Gold, Esq. 2601 Olive Street, 17 th Floor Dallas, TX 75201

81. Any objection must: (a) state the name, address, and telephone number of the person or entity objecting and must be signed by the objector; (b) contain a statement of the Settlement Class Member's objection or objections, and the specific reasons for each objection, including any legal and evidentiary support the Settlement Class Member wishes to bring to the Court's attention; and (c) include documents sufficient to prove membership in the Settlement Class, including the number of shares of Reata common stock that the objecting Settlement Class Member purchased/acquired and/or sold during the Settlement Class Period (*i.e.*, between November 14, 2016 and December 8, 2021 inclusive), as well as the dates and prices of each such purchase/acquisition and/or sale. You may not object to the Settlement, the Plan of Allocation, or Lead Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses if you exclude yourself from the Settlement Class or if you are not a member of the Settlement Class.

82. You may file a written objection without having to appear at the Settlement Hearing. You may not, however, appear at the Settlement Hearing to present your objection unless you first file and serve a written objection in accordance with the procedures described above, unless the Court orders otherwise.

83. If you wish to be heard orally at the hearing in opposition to the approval of the Settlement, the Plan of Allocation, or Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, and if you timely file and serve a written objection as described above, you must also file a notice of appearance with the Clerk's Office and serve it on Lead Counsel and Defendants' Counsel at the addresses set forth above so that it is **received on or before March 8, 2024**. Persons who intend to object and desire to present evidence at the Settlement Hearing must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing. Such persons may be heard orally at the discretion of the Court.

84. You are not required to hire an attorney to represent you in making written objections or in appearing at the Settlement Hearing. However, if you decide to hire an attorney, it will be at your own expense, and that attorney must file a notice of appearance with the Court and serve it on Lead Counsel and Defendants' Counsel at the addresses set forth in ¶ 80 above so that the notice is **received on or before March 8, 2024**.

85. The Settlement Hearing may be adjourned by the Court, or held telephonically or via videoconference, without further written notice to the Settlement Class. If you intend to attend the Settlement Hearing, you should confirm the date, time, and location on the settlement website www.ReataSecuritiesLitigation.com, or with Lead Counsel, given potential changes as a result of the COVID-19 pandemic.

86. Unless the Court orders otherwise, any Settlement Class Member who does not object in the manner described above will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the proposed Settlement, the proposed Plan of Allocation, or Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses. Settlement Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval.

WHAT IF I BOUGHT SHARES ON SOMEONE ELSE'S BEHALF?

87. If you purchased or otherwise acquired Reata common stock between November 14, 2016 and December 8, 2021 inclusive, for the beneficial interest of persons or organizations other than yourself, you must either: (a) within seven (7) calendar days of receipt of this Notice, request from the Claims Administrator sufficient copies of the Notice and Claim Form (the "Notice Packet") to forward to all such beneficial owners and within seven (7) calendar days of receipt of those Notice Packets forward them to all such beneficial owners; or (b) within seven (7) calendar days of receipt of this Notice, provide a list of the names and addresses of all such beneficial owners to *Doyle v. Reata Pharmaceuticals, Inc.*, c/o Epiq, P.O. Box 5566, Portland, OR 97228-5566. If you choose the second option, the Claims Administrator will send a copy of the Notice and the Claim Form to the beneficial owners. Upon full compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred—up to a maximum of \$0.50 per Notice Packet mailed; \$0.05 per Notice Packet transmitted by email; or \$0.10 per name, mailing address, and email address (to the extent available) provided to the Claims Administrator—by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Any dispute concerning the reasonableness of reimbursement costs shall be resolved by the Court. Copies of this Notice and the Claim Form may also be obtained from the website maintained by the Claims Administrator, www.ReataSecuritiesLitigation.com, or by calling the Claims Administrator toll-free at 1-877-664-7398.

CAN I SEE THE COURT FILE? WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?

88. This Notice contains only a summary of the terms of the proposed Settlement. For more detailed information about the matters involved in this Action, you are referred to the papers on file in the Action, including the Stipulation, which may be inspected during regular office hours at the Office of the Clerk, United States District Court for the Eastern District of Texas, Paul Brown United States Courthouse, 101 East Pecan Street, Sherman, Texas 75090. Additionally, copies of the Stipulation and any related orders entered by the Court will be posted on the website maintained by the Claims Administrator, www.ReataSecuritiesLitigation.com.

89. All inquiries concerning this Notice and the Claim Form should be directed to:

Doyle v. Reata Pharmaceuticals, Inc.
c/o Epiq
P.O. Box 5566
Portland, OR 97228-5566
1-877-664-7398
www.ReataSecuritiesLitigation.com
info@ReataSecuritiesLitigation.com

and/or

Daniel Hume, Esq.
KIRBY MCINERNEY LLP
250 Park Avenue, Suite 820
New York, NY 10177
(212) 371-6600
dhume@kmlp.com

DO NOT CALL OR WRITE THE COURT, THE OFFICE OF THE CLERK OF THE COURT, DEFENDANTS, OR THEIR COUNSEL REGARDING THIS NOTICE.

Dated: December 26, 2023

By Order of the Court
United States District Court
Eastern District of Texas

EXHIBIT B

Doyle v. Reata Pharmaceuticals, Inc.
c/o Epiq
P.O. Box 5566
Portland, OR 97228-5566
Toll Free Number: 1-877-664-7398
Settlement Website: www.ReataSecuritiesLitigation.com
Email: info@ReataSecuritiesLitigation.com

PROOF OF CLAIM AND RELEASE FORM

To be eligible to receive a share of the Net Settlement Fund in connection with the Settlement of this Action, you must be a Settlement Class Member and complete and sign this Proof of Claim and Release Form (“Claim Form”) and submit it online using the electronic version of this Claim Form hosted at www.ReataSecuritiesLitigation.com, submit it via email to the above email address, or mail it by first-class mail to the above address. If submitted online or via email, it must be **submitted no later than April 24, 2024**. If submitted by first-class mail, **it must be postmarked no later than April 24, 2024**.

Failure to submit your Claim Form by the date specified will subject your claim to rejection and may preclude you from being eligible to recover any money in connection with the Settlement.

Do not mail or deliver your Claim Form to the Court, the settling parties, or their counsel. Submit your Claim Form only to the Claims Administrator at the address set forth above.

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Beneficial Owner's First Name	MI	Beneficial Owner's Last Name
Co-Beneficial Owner's First Name	MI	Co-Beneficial Owner's Last Name

[illegible][illegible][illegible][illegible]

City	State	ZIP Code

[illegible]

Last four digits of Social Security Number or Taxpayer Identification Number

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Telephone Number (home) - -

Telephone Number (work) - -

Email address (Email address is not required, but if you provide it you authorize the Claims Administrator to use it in providing you with information relevant to this claim)

[illegible][illegible]

☐ Individual (includes joint owner accounts) ☐ Pension Plan ☐ Trust
☐ Corporation ☐ Estate
☐ IRA/401K ☐ Other _____ (please specify)

02-CA40069317
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PART II – GENERAL INSTRUCTIONS

1. It is important that you completely read and understand the Notice of (I) Pendency of Class Action, Certification of Settlement Class, and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Settlement Notice") that accompanies this Claim Form, including the Plan of Allocation of the Net Settlement Fund set forth in the Settlement Notice. The Settlement Notice describes the proposed Settlement, how Settlement Class Members are affected by the Settlement, and the manner in which the Net Settlement Fund will be distributed if the Settlement and Plan of Allocation are approved by the Court. The Settlement Notice also contains the definitions of many of the defined terms (which are indicated by initial capital letters) used in this Claim Form. By signing and submitting this Claim Form, you will be certifying that you have read, and that you understand, the Settlement Notice, including the terms of the releases described therein and provided for herein.

2. This Claim Form is directed to all persons or entities who or that, between November 14, 2016, and December 8, 2021, inclusive (the "Settlement Class Period"), purchased or otherwise acquired Reata Pharmaceuticals, Inc. ("Reata") common stock ("Reata Stock") (the "Settlement Class"), including all persons or entities who purchased or otherwise acquired Reata Stock pursuant and/or traceable to Reata's 2019 Offering and/or 2020 Offering (as defined in the Stipulation) (the "Offerings Subclass").² All persons and entities that are members of the Settlement Class are referred to as "Settlement Class Members."

3. Excluded from the Settlement Class are: (i) Defendants; (ii) any person who served as a partner, control person, executive officer, and/or director of Reata during the Settlement Class Period, and members of his or her Immediate Family; (iii) present and former parents, subsidiaries, assigns, successors, affiliates, and predecessors of Reata; (iv) any entity in which Defendants have or had a controlling interest during the Settlement Class Period; (v) any trust of which any Individual Defendant is the settlor or that is for the benefit of any Individual Defendant and/or member(s) of his or her Immediate Family; and (vi) the legal representatives, heirs, successors, and assigns of any person or entity excluded under provisions (i) through (v) hereof; *provided, however*, that any "Investment Vehicle" shall not be excluded from the Settlement Class. Investment Vehicle means any investment company or pooled investment fund, including but not limited to, mutual fund families, exchange traded funds, fund of funds and hedge funds, in which Defendants, or any of them, have, has or may have a direct or indirect interest, or as to which its affiliates may act as an investment advisor, but in which any Defendant alone or together with its, his or her respective affiliates is not a majority owner or does not hold a majority beneficial interest. Also excluded from the Settlement Class are any persons and entities who or that validly exclude themselves by submitting a request for exclusion in accordance with the requirements set forth in the Settlement Notice that is accepted by the Court.

4. If you are not a Settlement Class Member do not submit a Claim Form. **YOU MAY NOT DIRECTLY OR INDIRECTLY PARTICIPATE IN THE SETTLEMENT IF YOU ARE NOT A SETTLEMENT CLASS MEMBER. THUS, IF YOU ARE EXCLUDED FROM THE SETTLEMENT CLASS (AS SET FORTH IN PARAGRAPH 3 ABOVE), ANY CLAIM FORM THAT YOU SUBMIT, OR THAT MAY BE SUBMITTED ON YOUR BEHALF, WILL NOT BE ACCEPTED.**

5. If you are a Settlement Class Member, you will be bound by the terms of any judgments or orders entered in the Action **WHETHER OR NOT YOU SUBMIT A CLAIM FORM**, unless you submit a request for exclusion from the Settlement Class. Thus, if you are a Settlement Class Member, the Judgment will release, and you will be barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any action or other proceeding, in any court of law or equity, arbitration tribunal, or administrative forum, asserting any and all Released Plaintiffs' Claims (including Unknown Claims) against Defendants' Releasees.

6. You are eligible to participate in the distribution of the Net Settlement Fund only if you are a member of the Settlement Class and if you complete and return this form as specified below. If you fail to submit a timely, properly addressed, and completed Claim Form with the required documentation, your claim may be rejected, and you may be precluded from receiving any distribution from the Net Settlement Fund.

7. Submission of this Claim Form does not guarantee that you will share in the proceeds of the Settlement. The distribution of the Net Settlement Fund will be governed by the Plan of Allocation set forth in the Settlement Notice, if it is approved by the Court, or by such other plan of allocation approved by the Court.

² Reata common stock purchased during the period November 14, 2019 through the closing of the 2019 Offering on November 18, 2019, both dates inclusive, at a purchase price equal to \$183.00 per share, shall be considered an acquisition of Reata common stock pursuant or traceable to the Company's 2019 Offering. Reata common stock purchased during the period December 2, 2020 through the closing of the 2020 Offering on December 4, 2020, both dates inclusive, at a purchase price equal to \$140.85 per share, shall be considered an acquisition of Reata common stock pursuant or traceable to the Company's 2020 Offering.

8. Please use the Schedules of Transactions in Part III of this Claim Form to supply all required details of your transaction(s) (including free transfers) in, and holdings of, the applicable Reata Stock. On the Schedules of Transactions, please provide all the requested information with respect to your holdings, purchases, acquisitions, and sales of the applicable Reata Stock, whether such transactions resulted in a profit or a loss. Failure to report all transaction and holding information during the requested time periods may result in the rejection of your claim.

9. Please note: To be eligible under the Settlement, you must have purchased or otherwise acquired Reata Stock during the Settlement Class Period (*i.e.*, from November 14, 2016 to December 8, 2021, inclusive). However, because the PSLRA provides for a “90 day look-back period” (described in the Plan of Allocation set forth in the Settlement Notice), you must provide documentation related to your purchases and sales of Reata Stock during the period from December 9, 2021 through and including June 20, 2022 in order for the Claims Administrator to calculate your Recognized Loss Amount under the Plan of Allocation and process your claim.

10. You are required to submit genuine and sufficient documentation for all your transactions and holdings of the applicable Reata Stock set forth in the Schedules of Transactions in Part III of this Claim Form. Documentation may consist of copies of brokerage confirmation slips or monthly brokerage account statements, or an authorized statement from your broker containing the transactional and holding information found in a broker confirmation slip or account statement. The Parties and the Claims Administrator do not independently have information about your investments in Reata Stock. **IF SUCH DOCUMENTS ARE NOT IN YOUR POSSESSION, PLEASE OBTAIN COPIES OR EQUIVALENT CONTEMPORANEOUS DOCUMENTS FROM YOUR BROKER. FAILURE TO SUPPLY THIS DOCUMENTATION MAY RESULT IN THE REJECTION OF YOUR CLAIM. DO NOT SEND ORIGINAL DOCUMENTS. Please keep a copy of all documents that you send to the Claims Administrator. Also, please do not highlight any portion of the Claim Form or any supporting documents.**

11. Separate Claim Forms should be submitted for each separate legal entity (*e.g.*, a claim from joint owners should not include separate transactions through an account that is in the name of just one of the joint owners, and an individual should not combine his or her IRA transactions with transactions made through an account in the individual's name). Conversely, a single Claim Form should be submitted on behalf of one legal entity, including all transactions made by that entity, no matter how many separate accounts that entity has (*e.g.*, a corporation with multiple brokerage accounts should include all transactions made in all accounts on one Claim Form).

12. All joint beneficial owners must sign this Claim Form. If you purchased or otherwise acquired Reata Stock during the Settlement Class Period and held the securities in your name, you are the beneficial owner as well as the record owner and you must sign this Claim Form to participate in the Settlement. If, however, you purchased or otherwise acquired Reata Stock during the Settlement Class Period and the securities were registered in the name of a third party, such as a nominee or brokerage firm, you are the beneficial owner of these securities, but the third party is the record owner. The beneficial owner, not the record owner, must sign this Claim Form.

13. Agents, executors, administrators, guardians, and trustees must complete and sign the Claim Form on behalf of persons represented by them, and they must:

- (a) expressly state the capacity in which they are acting;
- (b) identify the name, account number, Social Security Number (or taxpayer identification number), address, and telephone number of the beneficial owner of (or other person or entity on whose behalf they are acting with respect to) the Reata Stock; and
- (c) furnish herewith evidence of their authority to bind to the Claim Form the person or entity on whose behalf they are acting. (Authority to complete and sign a Claim Form cannot be established by stockbrokers demonstrating only that they have discretionary authority to trade stock in another person's accounts).

14. By submitting a signed Claim Form, you will be swearing that you:

- (a) own(ed) the Reata Stock you have listed in the Claim Form; or
- (b) are expressly authorized to act on behalf of the owner thereof.

15. By submitting a signed Claim Form, you will be swearing to the truth of the statements contained therein and the genuineness of the documents attached thereto, subject to penalties of perjury under the laws of the United States of America. The making of false statements, or the submission of forged or fraudulent documentation, will result in the rejection of your claim and may subject you to civil liability or criminal prosecution.

16. If the Court approves the Settlement, payments to eligible Authorized Claimants pursuant to the Plan of Allocation (or such other plan of allocation as the Court approves) will be made after the completion of all claims processing. This could take substantial time. Please be patient.

17. PLEASE NOTE: As set forth in the Plan of Allocation, each Authorized Claimant shall receive his, her, or its pro rata share of the Net Settlement Fund. If the prorated payment to any Authorized Claimant, however, calculates to less than \$10, it will not be included in the calculation and no distribution will be made to that Authorized Claimant.

18. If you have questions concerning the Claim Form or need additional copies of the Claim Form or the Settlement Notice, you may contact the Claims Administrator, Epiq, at *Doyle v. Reata Pharmaceuticals, Inc.* P.O. Box 5566, Portland, OR 97228-5566, by email at info@ReataSecuritiesLitigation.com, or by calling toll-free at 1-877-664-7398, or you may download the documents from the Settlement website, www.ReataSecuritiesLitigation.com.

19. NOTICE REGARDING ELECTRONIC FILES: Certain Claimants with large numbers of transactions may request, or may be requested, to submit information regarding their transactions in electronic files. To obtain the mandatory electronic filing requirements and file layout, you may visit the Settlement website at www.ReataSecuritiesLitigation.com or you may email the Claims Administrator's electronic filing department at info@ReataSecuritiesLitigation.com. Any file not in accordance with the required electronic filing format will be subject to rejection. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues an email to that effect after processing your file with your claim numbers and respective account information. Do not assume that your file has been received or processed until you receive this email. If you do not receive such an email within 10 days of your submission, you should contact the electronic filing department at info@ReataSecuritiesLitigation.com to inquire about your file and confirm it was received and acceptable.

20. NOTICE REGARDING ONLINE FILING: Claimants who are not Representative Filers may submit their claims online using the electronic version of the Claim Form hosted at www.ReataSecuritiesLitigation.com. If you are not acting as a Representative Filer, you do not need to contact the Claims Administrator prior to filing; you will receive an automated e-mail confirming receipt once your Claim Form has been submitted. If you are unsure if you should submit your claim as a Representative Filer, please contact the Claims Administrator at info@ReataSecuritiesLitigation.com or by calling toll-free at 1-877-664-7398. If you are not a Representative Filer, but your claim contains a large number of transactions, the Claims Administrator may request that you also submit an electronic spreadsheet showing your transactions to accompany your Claim Form.

IMPORTANT: PLEASE NOTE

YOUR CLAIM IS NOT DEEMED FILED UNTIL YOU RECEIVE AN ACKNOWLEDGEMENT POSTCARD. THE CLAIMS ADMINISTRATOR WILL ACKNOWLEDGE RECEIPT OF YOUR CLAIM FORM BY MAIL WITHIN 60 DAYS. IF YOU DO NOT RECEIVE AN ACKNOWLEDGEMENT POSTCARD WITHIN 60 DAYS, PLEASE CALL THE CLAIMS ADMINISTRATOR TOLL FREE AT 1-877-664-7398.

PART III – SCHEDULE OF TRANSACTIONS IN REATA STOCK

Complete this Part III if and only if you purchased/acquired Reata Stock during the period from November 14, 2016 and December 8, 2021 inclusive. Please include proper documentation with your Claim Form as described in detail in Part II – General Instructions, Paragraph 10, above. Do not include information in this section regarding securities other than Reata Stock.

1. BEGINNING HOLDINGS – State the total number of shares of Reata Stock held as of the open of trading on November 14, 2016 (which must be documented). If none, write “zero” or “0.”

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2. PURCHASES/ACQUISITIONS DURING THE SETTLEMENT CLASS PERIOD THROUGH JUNE 20, 2022 – Separately list each and every purchase/acquisition (including free receipts) of Reata Stock from after the opening of trading on November 14, 2016 through and including the close of trading on June 20, 2022. (Must be documented.)

Date of Purchase/Acquisition (List Chronologically - Month/Day/Year)	Number of Shares Purchased/Acquired (check box if purchase/ acquisition was made to cover a short sale)	Purchase/Acquisition Price Per Share	Total Purchase/ Acquisition Price (excluding taxes, commissions, and fees)
- -		\$.	\$.
- -		\$.	\$.
- -		\$.	\$.
- -		\$.	\$.

3. SALES DURING THE SETTLEMENT CLASS PERIOD THROUGH JUNE 20, 2022 – Separately list each and every sale/disposition (including free deliveries) of Reata Stock from after the opening of trading on November 14, 2016, through and including the close of trading on June 20, 2022 (which must be documented).

**IF NONE,
CHECK HERE**

☐

Date of Sale/Delivery (List Chronologically - Month/Day/Year)	Number of Shares Sold (check box if sale was a short sale)	Sale Price Per Share	Total Sale Price (excluding taxes, commissions, and fees)
- -		\$.	\$.
- -		\$.	\$.
- -		\$.	\$.
- -		\$.	\$.

4. ENDING HOLDINGS – State the total number of shares of Reata Stock held as of the close of trading on June 20, 2022 (which must be documented). If none, write “zero” or “0.”

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**IF YOU NEED ADDITIONAL SPACE TO LIST YOUR TRANSACTIONS, YOU MUST
PHOTOCOPY THIS PAGE AND CHECK THIS BOX.**

☐

IF YOU DO NOT CHECK THIS BOX THESE ADDITIONAL PAGES WILL NOT BE REVIEWED.

PART IV – RELEASE OF CLAIMS AND SIGNATURE**YOU MUST ALSO READ THE RELEASE AND CERTIFICATION BELOW AND SIGN
ON PAGE 8 OF THIS CLAIM FORM.**

I (we) hereby acknowledge that as of the Effective Date of the Settlement, pursuant to the terms set forth in the Stipulation, I (we), on behalf of myself (ourselves) and my (our) successors and assigns, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally, and forever waived, released, discharged, and dismissed any and all Released Plaintiffs' Claims (as defined in the Stipulation and in the Settlement Notice) against Defendants' Releasees (as defined in the Stipulation and in the Settlement Notice) and shall forever be barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, or administrative forum asserting any and all of the Released Plaintiffs' Claims against any Defendants' Releasees.

CERTIFICATION

By signing and submitting this Claim Form, the Claimant(s) or the person(s) who represent(s) the Claimant(s) certifies (certify), as follows:

1. that I (we) have read and understand the contents of the Settlement Notice and this Claim Form, including the releases provided for in the Settlement and the terms of the Plan of Allocation;
2. that the Claimant(s) is (are) a Settlement Class Member(s), as defined in the Settlement Notice and in paragraph 2 on page 3 of this Claim Form, and is (are) not excluded from the Settlement Class by definition or pursuant to request as set forth in the Settlement Notice and in paragraph 3 on page 3 of this Claim Form;
3. that I (we) own(ed) the Reata Stock identified in the Claim Form and have not assigned the claim against the Defendants' Releasees to another, or that, in signing and submitting this Claim Form, I (we) have the authority to act on behalf of the owner(s) thereof;
4. that the Claimant(s) has (have) not submitted any other claim covering the same purchases/acquisitions of Reata Stock and knows (know) of no other person having done so on the Claimant's (Claimants') behalf;
5. that the Claimant(s) submits (submit) to the jurisdiction of the Court with respect to Claimant's (Claimants') claim and for purposes of enforcing the releases set forth herein;
6. that I (we) agree to furnish such additional information with respect to this Claim Form as Lead Counsel, the Claims Administrator, or the Court may require;
7. that the Claimant(s) waives (waive) the right to trial by jury, to the extent it exists, and agrees (agree) to the Court's summary disposition of the determination of the validity or amount of the claim made by this Claim Form;
8. that I (we) acknowledge that the Claimant(s) will be bound by and subject to the terms of any judgment(s) that may be entered in the Action; and
9. that the Claimant(s) is (are) NOT subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code because (a) the Claimant(s) is (are) exempt from backup withholding, or (b) the Claimant(s) has (have) not been notified by the IRS that he/she/it (they) is (are) subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified the Claimant(s) that he/she/it (they) is (are) no longer subject to backup withholding. **If the IRS has notified the Claimant(s) that he/she/it (they) is (are) subject to backup withholding, please strike out the language in the preceding sentence indicating that the claim is not subject to backup withholding in the certification above.**

UNDER THE PENALTIES OF PERJURY, I (WE) CERTIFY THAT ALL OF THE INFORMATION PROVIDED BY ME (US) ON THIS CLAIM FORM IS TRUE, CORRECT, AND COMPLETE, AND THAT THE DOCUMENTS SUBMITTED HERewith ARE TRUE AND CORRECT COPIES OF WHAT THEY PURPORT TO BE.

Signature of Claimant

Date: - -
MM DD YYYY

Print your name here

Signature of joint Claimant, if any

Date: - -
MM DD YYYY

Print your name here

If the Claimant is other than an individual, or is not the person completing this form, the following also must be provided:

Signature of person signing on behalf of Claimant

Date: - -
MM DD YYYY

Print your name here

CAPACITY OF PERSON SIGNING ON BEHALF OF CLAIMANT, IF OTHER THAN AN INDIVIDUAL, *E.G.*, EXECUTOR, PRESIDENT, TRUSTEE, CUSTODIAN, *ETC.* (MUST PROVIDE EVIDENCE OF AUTHORITY TO ACT ON BEHALF OF CLAIMANT – SEE PARAGRAPH 13 ON PAGE 4 OF THIS CLAIM FORM).

REMINDER CHECKLIST:

1. Please sign the above release and certification. If this Claim Form is being made on behalf of joint Claimants, then both must sign.
2. Remember to attach only **copies** of acceptable supporting documentation as these documents will not be returned to you.
3. Please do not highlight any portion of the Claim Form or any supporting documents.
4. Do not send original security certificates or documentation. These items cannot be returned to you by the Claims Administrator.
5. Keep copies of the completed Claim Form and documentation for your own records.
6. The Claims Administrator will acknowledge receipt of your Claim Form by mail, within 60 days. Your claim is not deemed filed until you receive an acknowledgement postcard. **If you do not receive an acknowledgement postcard within 60 days, please call the Claims Administrator toll free at 1-877-664-7398.**
7. If your address changes in the future, or if this Claim Form was sent to an old or incorrect address, please send the Claims Administrator written notification of your new address. If you change your name, please inform the Claims Administrator.
8. If you have any questions or concerns regarding your claim, please contact the Claims Administrator at the address below, by email at info@ReataSecuritiesLitigation.com, or by calling toll-free at 1-877-664-7398, or visit www.ReataSecuritiesLitigation.com. Please **DO NOT** call Reata or any of the other Defendants or their counsel with questions regarding your claim.

THIS CLAIM FORM MUST BE MAILED TO THE CLAIMS ADMINISTRATOR BY FIRST-CLASS MAIL, POSTMARKED NO LATER THAN APRIL 24, 2024, ADDRESSED AS FOLLOWS:

Doyle v. Reata Pharmaceuticals, Inc.
c/o Epiq
P.O. Box 5566
Portland, OR 97228-5566

OR SUBMITTED VIA EMAIL TO INFO@REATASECURITIESLITIGATION.COM OR ONLINE AT WWW.REATASECURITIESLITIGATION.COM ON OR BEFORE APRIL 24, 2024.

A Claim Form received by the Claims Administrator shall be deemed to have been submitted when posted, if a postmark date on or before April 24, 2024 is indicated on the envelope and it is mailed First-Class and addressed in accordance with the above instructions. In all other cases, a Claim Form shall be deemed to have been submitted when actually received by the Claims Administrator.

You should be aware that it will take a significant amount of time to fully process all Claim Forms. Please be patient and notify the Claims Administrator of any change of address.

EXHIBIT C

CONFIRMATION OF PUBLICATION

IN THE MATTER OF: *Doyle v. Reata Pharmaceuticals, Inc.*

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:

1.8.2024 – Investor’s Business Weekly

1.8.2024 – PR Newswire

x *Kathleen Komraus*
(Signature)

Media & Design Manager
(Title)

INVESTORS.COM

MUTUAL FUND PERFORMANCE

WEEK OF JANUARY 8, 2024

3&Mo Performance Rating	YTD 12Wk Fund	5 Yr % After Asset NAV	Net Value	3&Mo Performance Rating	YTD 12Wk Fund	5 Yr % After Asset NAV	Net Value
A	MLP&EInlc	+0	+7	+7	7.64	-0.07	
A	MLP&Ppe	+0	+10	+6	14.28	-0.09	
Touchstone Family Fd							
A	Mid Cap	-4	+10	+8	50.28	0.01	
A	Focused	-1	+9	+10	62.14	-0.17	
A	MC Value	-2	+10	+6	21.74	-0.04	
Touchstone Funds Gro							
A	Lrg Cp Foc	-1	+9		58.44	-0.20	
A	Value	-1	+11	+6	10.81	-0.02	
Transamerica A							
A	Sm/Md Cap V	-1	+10	+4	26.74	-0.08	
Trust for Professional Manager							
A	Rock Qlt LC	-1	+9	+9	20.74	-0.03	
D	T-StratBnd	-1	+7	0	19.56	-0.08	
Tweedie Browne Fds							
B+	Intl Val	-1	+7	+3	27.22	0.06	
A	Value	-1	+8	+4	18.40	0.03	
Ultimus							
A	US Val Eqty	-2	+16	+6	22.45	-0.05	
UM Funds							
A	Behl Val	-2	+16	+6	78.38	0.10	
USAA Aggressive Gr							
B-	AggressiveG	-3	+11	+8	50.91	-0.19	

3&Mo Performance Rating	YTD 12Wk Fund	5 Yr % After Asset NAV	Net Value	3&Mo Performance Rating	YTD 12Wk Fund	5 Yr % After Asset NAV	Net Value
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Transamerica A							
A	Sm/Md Cap V	-1	+10	+4	26.74	-0.08	
Trust for Professional Manager							
A	Rock Qlt LC	-1	+9	+9	20.74	-0.03	
D	T-StratBnd	-1	+7	0	19.56	-0.08	
Tweedie Browne Fds							
B+	Intl Val	-1	+7	+3	27.22	0.06	
A	Value	-1	+8	+4	18.40	0.03	
Ultimus							
A	US Val Eqty	-2	+16	+6	22.45	-0.05	
UM Funds							
A	Behl Val	-2	+16	+6	78.38	0.10	
USAA Aggressive Gr							
B-	AggressiveG	-3	+11	+8	50.91	-0.19	

3&Mo Performance Rating	YTD 12Wk Fund	5 Yr % After Asset NAV	Net Value	3&Mo Performance Rating	YTD 12Wk Fund	5 Yr % After Asset NAV	Net Value
A	MLP&EInlc	+0	+7	+7	7.64	-0.07	
A	MLP&Ppe	+0	+10	+6	14.28	-0.09	
Touchstone Family Fd							
A	Mid Cap	-4	+10	+8	50.28	0.01	
A	Focused	-1	+9	+10	62.14	-0.17	
A	MC Value	-2	+10	+6	21.74	-0.04	
Touchstone Funds Gro							
A	Lrg Cp Foc	-1	+9		58.44	-0.20	
A	Value	-1	+11				

Kirby McInerney LLP Announces Pendency of Class Action and Proposed Settlement Involving Purchasers of Reata Pharmaceuticals, Inc. Common Stock

NEWS PROVIDED BY
Kirby McInerney LLP →
08 Jan, 2024, 08:00 ET

SHERMAN, Texas, Jan. 8, 2024 /PRNewswire/ --

TO: All persons and entities who, during the period between November 14, 2016 through December 8, 2021 inclusive, purchased or otherwise acquired the common stock of Reata Pharmaceuticals, Inc. ("Reata" or the "Company") (NASDAQ: RETA) (the "Settlement Class"), including all persons or entities who purchased or otherwise acquired Reata common stock pursuant and/or traceable to Reata's 2019 Offering and/or 2020 Offering (the "Offerings Subclass").

PLEASE READ THIS NOTICE CAREFULLY, YOUR RIGHTS WILL BE AFFECTED BY A CLASS ACTION LAWSUIT PENDING IN THIS COURT.

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Eastern District of Texas, that the above-captioned litigation (the "Action") has been certified as a class action on behalf of the Settlement Class, except for certain persons and entities who are excluded from the Settlement Class by definition as set forth in the full printed Notice of (I) Pendency of Class

Action, Certification of Settlement Class, and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice").

YOU ARE ALSO NOTIFIED that Lead Plaintiff in the Action has reached a proposed settlement of the Action for \$45,000,000 in cash (the "Settlement"), that, if approved, will resolve all claims in the Action.

A hearing is scheduled to be held on March 29, 2024 at 9:00 a.m., before the Honorable Amos L. Mazzant III at the United States District Court for the Eastern District of Texas, Paul Brown United States Courthouse, 101 East Pecan Street, Sherman, Texas 75090, to determine whether: (i) the proposed Settlement should be approved as fair, reasonable, and adequate; (ii) the Action should be dismissed with prejudice against Defendants, and the Releases specified and described in the Stipulation and Agreement of Settlement dated October 30, 2023 (and in the Notice) should be granted; (iii) the proposed Plan of Allocation should be approved as fair and reasonable; and (iv) Lead Counsel's application for an award of attorneys' fees and reimbursement of expenses should be approved.

If you are a member of the Settlement Class, your rights will be affected by the pending Action and the Settlement, and you may be entitled to share in the Settlement Fund. If you have not yet received the Notice and Claim Form, you may obtain copies of these documents by contacting the Claims Administrator at *Doyle v. Reata Pharmaceuticals, Inc.*, c/o Epiq, P.O. Box 5566, Portland, OR 97228-5566, 1-877-664-7398. Copies of the Notice and Claim Form can also be downloaded from the website maintained by the Claims Administrator, www.ReataSecuritiesLitigation.com.

If you are a member of the Settlement Class, in order to be eligible to receive a payment under the proposed Settlement, you must submit a Claim Form *online, by email, or by mail postmarked* no later than **April 24, 2024**. If you are a Settlement Class Member and do not submit a proper Claim Form, you will not be eligible to share in the distribution of the net proceeds of the Settlement, but you will nevertheless be bound by any judgments or orders entered by the Court in the Action.

If you are a member of the Settlement Class and wish to exclude yourself from the Settlement Class, you must submit a request for exclusion such that it is *received* no later than **March 8, 2024**, in accordance with the instructions set forth in the Notice. If you properly exclude yourself from the Settlement Class, you will not be bound by any judgments or orders entered by the Court in the Action and you will not be eligible to share in the proceeds of the Settlement.

Any objections to the proposed Settlement, the proposed Plan of Allocation, or Lead Counsel's motion for attorneys' fees and reimbursement of expenses, must be filed with the Court and delivered to Lead Counsel and Defendants' Counsel such that they are *received* no later than **March 8, 2024**, in accordance with the instructions set forth in the Notice.

Please do not contact the Court, the Clerk's office, Defendants, or their counsel, regarding this notice. All questions about this notice, the proposed Settlement, or your eligibility to participate in the Settlement, should be directed to Lead Counsel or the Claims Administrator.

Requests for the Notice and Claim Form should be made to:

Doyle v. Reata Pharmaceuticals, Inc.

c/o Epiq

P.O. Box 5566

Portland, OR, 97228-5566

1-877-664-7398

www.ReataSecuritiesLitigation.com

info@ReataSecuritiesLitigation.com

Inquiries, other than requests for the Notice and Claim Form, should be made to Lead Counsel:

KIRBY MCINERNEY LLP

Daniel Hume, Esq.

250 Park Avenue, Suite 820

New York, NY 10177



www.kmllp.com

dhume@kmllp.com

By Order of the Court

URL: www.ReataSecuritiesLitigation.com, www.kmllp.com/cases-investigations/doyle-v-reata-pharmaceuticals

SOURCE Kirby McInerney LLP



EXHIBIT 2

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

TIM DOYLE, Individually and On Behalf of
All Others Similarly Situated, *et al.*,

Plaintiffs,

v.

REATA PHARMACEUTICALS, INC., *et al.*,

Defendants.

Case No. 4:21-cv-00987-ALM
LEAD

CLASS ACTION

Judge Amos L. Mazzant, III

**DECLARATION OF MARLENE IGEL-HARRIS ON BEHALF OF WESPATH
IN SUPPORT OF: (I) LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION; AND
(II) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND
REIMBURSEMENT OF LITIGATION EXPENSES**

I, Marlene Igel-Harris, declare as follows, pursuant to 28 U.S.C. § 1746:

1. I am Associate General Counsel for Court-appointed Lead Plaintiff UMC Benefit Board, Inc., US Equity Fund-P Series, a series of the Wespath Funds Trust, US Equity Index Fund-P Series, a series of the Wespath Funds Trust, Wespath Institutional Investments LLC, US Equity Index Fund-I Series, a series of the Wespath Funds Trust, and US Equity Index Fund-I Series, a series of the Wespath Funds Trust (“Lead Plaintiff” or “Wespath”),¹ in the above-captioned action (the “Action”). *See* ECF No. 34. I submit this declaration in support of: (a) Lead Plaintiff’s motion for final approval of the Settlement and Plan of Allocation; and (b) Lead Counsel’s motion for an award of attorneys’ fees and reimbursement of Litigation Expenses, including approval of Lead Plaintiff’s request to recover reasonable costs that it incurred in connection with its representation of the Settlement Class in the prosecution of this Action.

2. I am aware of and understand the requirements and responsibilities of a representative plaintiff in a securities class action, including those set forth in the Private Securities Litigation Reform Act of 1995 (“PLSRA”), 15 U.S.C. § 77z-1 and 15 U.S.C. § 78u-4. On behalf of Wespath, I have discharged those duties to the best of my ability. I have personal knowledge of the matters set forth in this declaration, as I have been directly involved in monitoring and overseeing the prosecution of the Action, as well as the negotiations leading to the Settlement, and I could and would testify competently to these matters.

3. In fulfillment of Wespath’s responsibilities as a named plaintiff and proposed class representative, Wespath worked closely with Lead Counsel, Kirby McInerney LLP (“Kirby McInerney”), additional Plaintiffs’ Counsel, Glancy Prongay & Murray LLP (“Glancy”), and

¹ Unless otherwise defined, all capitalized terms herein have the same meanings as set forth in the Stipulation and Agreement of Settlement dated October 30, 2023. *See* ECF No. 74-2.

Court-appointed Local Liaison Counsel, Steckler Wayne & Love PLLC (“Steckler”), to obtain an excellent result in this case.

I. Lead Plaintiff’s Oversight of the Litigation

4. Wespath first became involved in the prosecution of this case in approximately February 2022, in connection with its motion for appointment as Lead Plaintiff. *See* ECF No. 20. Wespath purchased shares of Reata common stock during the Class Period, including pursuant to the 2019 and 2020 secondary stock offerings of Defendant Reata Pharmaceuticals, Inc. (“Reata”), which occurred on November 14, 2019 and December 1, 2020, respectively. Accordingly, Wespath has standing to assert claims arising under both the Securities Act of 1933 and the Securities Exchange Act of 1934.

5. Throughout the litigation, Wespath received periodic status reports from Kirby McInerney on case developments, and participated in regular discussions concerning the prosecution of the Action, the strengths and weaknesses of the claims, and potential settlement. In particular, throughout the course of this Action, I: (a) regularly communicated with Wespath’s attorneys at Kirby McInerney regarding the posture and progress of the case as well as litigation strategy; (b) reviewed pleadings and briefs filed in the Action; (c) reviewed Court orders and discussed them with Lead Counsel; (d) reviewed discovery produced by the Reata Defendants; (e) prepared for the mediation sessions by, among other things, discussing with Lead Counsel the mediation statements and mediation strategy; (f) traveled to New York City and Dallas, Texas to attend both mediation sessions with the mediator, Jed Melnick, Esq. of JAMS, in person; (g) consulted with Kirby McInerney attorneys regarding the mediations and settlement negotiations; (h) evaluated the Settlement Amount, conferred with Lead Counsel, and ultimately approved the Settlement; and (i) communicated with Lead Counsel regarding the process of finalizing the

Settlement. My oversight of Wespath's participation in the litigation was assisted by other staff, including.

II. Approval of the Settlement

6. As detailed in the paragraphs above, through its active participation in the Action, Wespath was well-informed of the status and progress of the litigation, and of the progress of the settlement negotiations in the Action. Wespath was also well-informed of the strengths and weaknesses of the claims and defenses in the Action and of the risks associated with continued litigation.

7. Based on Wespath's involvement in the prosecution and resolution of the claims asserted in the Action, Wespath believes that the Settlement provides a fair, reasonable, and adequate recovery for the Settlement Class, particularly in light of the risks of continued litigation, and Wespath endorses final approval of the Settlement by the Court.

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

A. Attorneys' Fees and Litigation Expenses

8. Wespath believes that Lead Counsel's request for an award of attorneys' fees in the amount of 30% of the Settlement Fund is fair and reasonable in light of the work Plaintiffs' Counsel performed on behalf of the Settlement Class.

9. Wespath has evaluated Lead Counsel's fee request by considering: (i) the quality and amount of work performed; (ii) the recovery obtained for the Settlement Class; and (iii) the risks Plaintiffs' Counsel bore in prosecuting this Action on behalf of Wespath and the Settlement Class on a fully contingent basis. Indeed, Plaintiffs' Counsel was not paid during the pendency of this Action and they fronted all Litigation Expenses, which totaled approximately \$204,323.08. Wespath has authorized this fee request for the Court's ultimate determination.

10. Wespath further believes that the Litigation Expenses being requested for reimbursement to Plaintiffs' Counsel are reasonable and represent costs and expenses necessary for the prosecution and resolution of the claims in the Action. Based on the foregoing, and consistent with Wespath's obligation to the Settlement Class to obtain the best result in the most cost-efficient manner, Wespath fully supports Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses.

B. Lead Plaintiff's Litigation-Related Costs and Expenses

11. I understand that reimbursement of a class representative's reasonable costs and expenses is authorized under the PSLRA. *See* 15 U.S.C. § 77z-1(a)(4) & 15 U.S.C. § 78u-4(a)(4). For this reason, in connection with Lead Counsel's request for reimbursement of Litigation Expenses, Wespath is requesting reimbursement for the costs that it incurred directly relating to its representation of the Settlement Class in the Action, as described in detail above.

12. The time that my colleagues and I devoted to the representation of the Settlement Class in this Action was time that we otherwise would have spent on other activities, and thus, represented a cost to Wespath. Wespath respectfully requests reimbursement in the amount of \$10,000 for the time it devoted to participating in this Action. It is my belief that this request for reimbursement is fair and reasonable and that the time and effort Wespath devoted to this litigation was necessary to help achieve an excellent result for the Settlement Class.

IV. Conclusion

13. As set forth herein, Wespath was actively involved in the prosecution and settlement of the claims in this Action, strongly endorses the Settlement as fair, reasonable, and adequate, and believes that the Settlement represents a significant recovery for the Settlement Class. Accordingly, Wespath respectfully requests that the Court approve: (a) Lead Plaintiff's

motion for final approval of the Settlement and Plan of Allocation; (b) Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses; and (c) Wespath's request for reimbursement of the reasonable costs (including lost wages) that it incurred in prosecuting the Action on behalf of the Settlement Class.

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

Executed on February __, 2024, in 2/20/2024.

DocuSigned by:

EA97D8D194564EA
Matthew R. Harris
Associate General Counsel, Wespath

EXHIBIT 3

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

TIM DOYLE, Individually and On Behalf of
All Others Similarly Situated, *et al.*,

Plaintiffs,

v.

REATA PHARMACEUTICALS, INC., *et al.*,

Defendants.

Case No. 4:21-cv-00987-ALM
LEAD

CLASS ACTION

Judge Amos L. Mazzant, III

**DECLARATION OF DANIEL HUME, ESQ. IN SUPPORT OF LEAD COUNSEL'S
MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF
LITIGATION EXPENSES FILED ON BEHALF OF KIRBY MCINERNEY LLP**

I, Daniel Hume, declare as follows, pursuant to 28 U.S.C. § 1746:

1. I am a partner of the law firm Kirby McInerney LLP (“Kirby McInerney”),¹ Court-appointed Lead Counsel in the above-captioned action (the “Action”). *See* ECF No. 34. I submit this declaration in support of Lead Counsel’s application for an award of attorneys’ fees in connection with services rendered in the Action, as well as for reimbursement of Litigation Expenses incurred in connection with the Action. I have personal knowledge of the facts set forth herein based on my active supervision of, and participation in, the prosecution and settlement of the claims asserted in the Action and, if called upon, could and would testify thereto.

2. Kirby McInerney, as Lead Counsel, was involved in all aspects of the Action and its settlement as set forth in the Declaration of Daniel Hume in Support of: (I) Lead Plaintiff’s Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (II) Lead Counsel’s Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses.

3. The schedule attached hereto as Exhibit A is a detailed summary indicating the amount of time spent by attorneys and professional support staff employees of my firm who, from the inception of the Action through and including February 21, 2024, billed ten or more hours to the Action, and the lodestar calculation for those individuals based on my firm’s current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such personnel in their final year of employment by my firm. The billing rate for first level document review work performed by attorneys has been capped at the reduced rate of \$400 per hour. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm.

¹ Unless otherwise defined, all capitalized terms herein have the same meanings as set forth in the Stipulation and Agreement of Settlement dated October 30, 2023. *See* ECF No. 74-2.

4. I am the partner who oversaw or conducted the day-to-day activities in the Action and I reviewed these daily time records in connection with the preparation of this declaration. The purpose of this review was to confirm both the accuracy of the records as well as the necessity for, and reasonableness of, the time committed to the litigation. As a result of this review, I made reductions to certain of my firm's time entries such that the time included in Exhibit A reflects that exercise of billing judgment. Based on this review and the adjustments made, I believe that the time of Kirby McInerney's attorneys and staff reflected in Exhibit A was reasonable and necessary for the effective and efficient prosecution and resolution of the Action. No time expended on the application for fees and reimbursement of expenses has been included.

5. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are consistent with the rates approved by courts in other securities or shareholder litigation when conducting a lodestar cross-check.

6. The total number of hours reflected in Exhibit A is 6,921.3 hours. The total lodestar reflected in Exhibit A is \$5,689,792.50 consisting of attorneys' and support staff's time.

7. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

8. As detailed in Exhibit B, attached hereto, my firm is seeking reimbursement of a total of \$184,317.79 in Litigation Expenses incurred in connection with the prosecution of this Action.

9. The Litigation Expenses incurred in the Action are reflected in the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the Litigation Expenses incurred. The

Litigation Expenses reflected in Exhibit B are the expenses actually incurred by my firm in connection with the prosecution of this Action.

10. Attached hereto as Exhibit C is a brief biography of Kirby McInerney, including the attorneys who were involved in the Action.

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

Executed on February 22, 2024, in New York, New York..



Daniel Hume

EXHIBIT A***Doyle v. Reata Pharmaceuticals, Inc., et al.,***
Case No. 4:21-cv-00987**Kirby McInerney LLP****LODESTAR REPORT**
FROM INCEPTION THROUGH FEBRUARY 21, 2024

TIMEKEEPER	STATUS	HOURS	RATE	LODESTAR
ATTORNEYS:				
Meghan Summers	Partner	1,680.6	\$1,100	\$1,848,660.00
Daniel Hume	Partner	862.5	\$1,250	\$1,078,125.00
Thomas Elrod	Partner	202.6	\$1,100	\$222,860.00
David Kovel	Partner	12.9	\$1,250	\$16,125.00
Anthony Maneiro	Partner	15.5	\$900	\$13,950.00
Ira Press	Of Counsel	447.4	\$1,200	\$536,880.00
Sawa Nagano	Of Counsel	210.9	\$800	\$168,720.00
Sawa Nagano**	Of Counsel	123.9	\$400	\$49,560.00
Karina Kosharskyy	Of Counsel	60.2	\$850	\$51,170.00
Karina Kosharskyy**	Of Counsel	218.9	\$400	\$87,560.00
Sarah Flohr	Associate	673.0	\$700	\$471,100.00
Beldon Nago	Associate	353.1	\$800	\$282,480.00
Beldon Nago**	Associate	86.8	\$400	\$34,720.00
Emily Rice*	Associate	173.8	\$450	\$78,210.00
Faisal Q. Haider	Associate	1.2	\$450	\$540.00
Faisal Q. Haider**	Associate	108.1	\$400	\$43,240.00
Rohan Kulkarni	Associate	85.4	\$400	\$34,160.00
Cynthia Markham	Staff Attorney	256.0	\$400	\$102,400.00
Chriselda Tan*	Staff Attorney	205.4	\$350	\$71,890.00
TOTAL ATTORNEY:		5,778.2		\$5,192,350.00
PROFESSIONAL STAFF:				
Ori Braun	Senior Analyst	832.1	\$475	\$395,247.50
Elaine Mui	Senior Analyst	19.7	\$475	\$9,357.50
Lu Liu	Analyst	47.0	\$450	\$21,150.00
Julia Clementi*	Senior Paralegal	69.2	\$300	\$20,760.00
Kristen Bolster	Senior Paralegal	68.0	\$300	\$20,400.00
Fabiha Khan*	Senior Paralegal	31.7	\$300	\$9,510.00
Elizabeth Ely*	Senior Paralegal	11.3	\$300	\$3,390.00

Daniel Sokolin*	Paralegal	34.0	\$275	\$9,350.00
Casey Liu	Paralegal	15.1	\$275	\$4,152.50
Marya Jureidini	Paralegal	15.0	\$275	\$4,125.00
TOTAL PROFESSIONAL STAFF:		1,143.1		\$497,442.50
TOTAL:		6,921.3		\$5,689,792.50

* The time for former employees was recorded prior to their departures and reflect billing rates in those employees' final year of employment.

** The lodestar for Sawa Nagano, Karina Kosharsky, Belden Nago, and Faisal Haider is less than the product of their hours and their normal billing rates because their rate was capped at \$400/hour for the first-level document review work that they performed.

EXHIBIT B

Doyle v. Reata Pharmaceuticals, Inc., et al.,
Case No. 4:21-cv-00987

Kirby McInerney LLP

EXPENSE REPORT

FROM INCEPTION THROUGH FEBRUARY 21, 2024

ITEM	AMOUNT
Court Filing Fees	\$300.00
Document Management	\$15,306.78
Experts	\$59,193.00
Investigator	\$31,117.00
Mediation	\$50,243.42
Online Research (Lexis, Pacer, Westlaw)	\$11,128.14
Postage and Mailing (FedEx)	\$38.79
Service of Process	\$2,079.19
Travel, Meals, Lodging	\$14,911.47
GRAND TOTAL	\$184,317.79

EXHIBIT C
Kirby McInerney LLP
FIRM RESUME



Kirby McInerney LLP is a specialist plaintiffs' litigation firm with expertise in securities, antitrust, commodities, structured finance, whistleblower, health care, consumer, and other fraud litigation.

KM brings experience, intelligence, creativity and dedication to bear in defending our clients' interests against losses, generally in cases of corporate malfeasance. We utilize cutting edge strategies that bring high – and have even brought unprecedented – recoveries for our clients: institutional and other types of investors. We have achieved and are pursuing landmark results in the fields of securities fraud, corporate governance, commodities fraud, consumer, antitrust, health care and ERISA litigation, representing our clients in class actions or, if appropriate, individual litigation.

KM has been a pioneer in securities class action law, and is one of the oldest firms in the field, with over 70 years of experience. Throughout the history of our firm, we have procured ground-breaking victories for our clients. From our victory in *Schneider v. Lazard Freres*, No. 38899, M-6679 (N.Y. App. Div. 1st Dept. 1990), which set the precedent that investment banks have direct duties to the shareholders of the companies they advise, to our procurement of the first-ever appellate reversal of a lower court's dismissal of a class action suit pursuant to the PSLRA in *In re GT Interactive Securities Litigation*, No. 98-cv-0095 (S.D.N.Y. 2000), to our recovery of an unprecedented 100 cents on the dollar for our clients in *In re Cendant Corp. PRIDES Litigation*, No. 98-cv-2819 (D. N.J. 2000), KM has helped to chart the nuances of the U.S. securities laws, and has procured superior results in the process. KM has recovered billions of dollars for our clients, and the average recoveries that we procure in each individual case are among the very best in the field.

Today, our attorneys are leading some of the largest and most significant securities litigations related to the subprime fallout of 2008 on behalf of investors such as the New York State Common Retirement Fund and the New York City Pension Funds. The firm settled one of the largest of all of the subprime cases – *In re Citigroup Inc. Securities Litigation*, No. 07-cv-9901 (S.D.N.Y.) – for \$590 million. We also obtained a \$168 million recovery for the class in *In re National City Corporation Securities, Derivative & ERISA Litigation*, No. 08-cv-70004 (N.D. Oh), a case related to the alleged misrepresentation of the nature and quality of many of National City's loans, the company's designation of unsellable loans as "held for sale," and their alleged understatement of the loan loss reserves, amongst other offenses. Finally, we also procured a \$75 million settlement for the class in *In re Wachovia Equity Securities Litigation*, No. 08-cv-6171 (S.D.N.Y.), a similar subprime-related lawsuit.

Some of our other notable securities work includes:

- *In re BISYS Securities Litigation*, No. 04-cv-3480 (S.D.N.Y. 2007). We were co-lead counsel to the Police and Fire Retirement System for the City of Detroit and to a class of investors in connection with securities class action litigation against BISYS and Dennis Sheehan, BISYS President and Chief Operating Officer. The claim alleged that BISYS and Sheehan violated 10(b) of the Securities Exchange

Act of 1934 and Rule 10-5 thereunder by disseminating false and misleading information in press releases and SEC filings throughout the class period. Plaintiffs alleged that as a result of the misleading statements including inaccurate financial reporting, the price of BISYS common stock was inflated and investors who purchased stock at this time were damaged. Our work in this case included: drafting and oversight of pleadings and briefs; motions for *inter alia*, lead plaintiff appointment, dismissal, class certification; propounding and responding to discovery requests; review of document production; taking and defending of depositions; and filing and taking of appeals. This securities class action resulted in a total recovery of \$66 million for the class.

- *In re Adelphia Communications Corp. Securities & Derivative Litigation*, No. 03 MDL 1529 (S.D.N.Y. 2007). We were co-lead counsel to Argent Classic Convertible Arbitrage Fund L.P., Argent Classic Convertible Arbitrage Fund, Ltd., Argent Lowlev Convertible Arbitrage Fund, Ltd., and a class of investors in *In re Adelphia Communications Corp. Securities & Deriv. Litig.*, one of the largest cases of improper self-dealing by insiders in corporate history. Our work on this case included drafting and oversight of pleadings and briefs relating to lead plaintiff appointment, motions to dismiss, and collateral litigation concerning, *inter alia*, the issuer's bankruptcy. Our work also included review of document production, consultation with experts, negotiations in settlement mediation, settlement, and advocacy of the proposed settlement in district court and on appeal. This securities class action resulted in a total recovery of \$478 million for the class.
- *In re AT&T Wireless Tracking Stock Securities Litigation*, No. 00-cv-8754 (S.D.N.Y. 2006). We acted as sole lead counsel to the Soft Drink & Brewery Workers Local 812 Retirement Fund, a Taft-Hartley pension fund, and a class of investors in connection with *In re AT&T Corp. Securities Litigation*. The class was comprised of investors who purchased AT&T Wireless tracking stock in an April 26, 2000 initial public offering and through May 1, 2000 on the open market. The action asserted that the prospectus and registration statement used for the IPO misled investors about AT&T's prospects and recent results. Our work in this case included: drafting and oversight of pleadings and briefs; arguing motions for *inter alia*, lead plaintiff appointment, dismissal, class certification, expert and evidence disqualifications, and assorted motions relating to discovery disputes; propounding and responding to discovery requests; review of document production; and taking and defending of over one hundred depositions. KM succeeded in procuring a settlement of \$150 million for the class on the eve of trial, following extensive trial preparation.
- *Rite Aid Corp.* (E.D. Pa. 2005). We represented a group of investment funds that lost more than \$10 million in Rite Aid common stock and debt transactions in connection with an individual action, *Argent Classic v. Rite Aid*. Although an investor class action was already underway, KM filed the individual action on the belief that our clients could realize greater *pro rata* recovery on their multi-million dollar losses through an individual action than through a class action, where classwide damages were in the billions of dollars (and likely exceeded the ability of Rite Aid to pay). KM's clients were able to assert claims under Section 18 of the 1934 Act, which many courts hold cannot be asserted on a classwide basis. The class action eventually settled for less than 10¢ on the dollar. Thereafter, with the stay lifted, KM defeated defendants' motion to dismiss the individual action, and the parties agreed to mediate the claims. KM ultimately settled the claims of their institutional clients. Although confidentiality agreements entered in connection with the settlement prevent disclosure of terms, the settlement provided our clients with a percentage recovery which the clients found very satisfactory and which vindicated the decision to pursue an individual claim.



Daniel Hume is a managing partner based in our New York office. He leverages more than 25 years of experience to help institutional investors, financial institutions, and individuals recover losses and achieve favorable outcomes in class action and direct securities litigation.

Additionally, he has prosecuted antitrust class actions and obtained significant monetary relief for consumers. Mr. Hume is a partner in our New York office and a member of the firm's management committee.

Some of Mr. Hume's securities work includes:

- Lead counsel representing Wespeth, the General Board of Pension and Health Benefits of the United Methodist Church, in *Doyle v. Reata Pharmaceuticals*, a securities class action alleging that Reata made false and/or misleading statements – including in connection with its secondary public stock offerings – concerning, inter alia, the FDA guidance regarding the design of the clinical trial (CARDINAL) for Reata's drug candidate, bardoxolone methyl. When the FDA revealed serious concerns it had previously raised to Reata, the share price declined materially. The case has resulted in a \$45 million settlement.
- Counsel in *Maverick Neutral Levered Fund, Ltd. v. Valeant Pharmaceuticals International, Inc.*, alleging that Valeant materially misrepresented its business model, touting artificial and unsustainable growth that was enabled by the company's deceptive and illegal conduct.
- Representation in a shareholder derivative lawsuit against officers and directors of HSBC Holdings and its subsidiaries, alleging that HSBC ran money laundering operations out of New York City. The litigation settled for \$72.5 million, the then largest foreign derivatives settlement ever reached and one of the largest insurer-funded cash payments achieved in a U.S. derivatives lawsuit.
- Lead counsel for the investor class in *In re AT&T Wireless Tracking Stock Securities Litigation*, a securities class action which resulted in recovery of \$150 million for the class.
- Lead counsel for a group of Singapore-based investors in a securities class action, *Dandong v. Pinnacle Performance Ltd*, against Morgan Stanley pertaining to notes issued by Cayman Islands-registered Pinnacle Performance Ltd. This litigation resulted in a \$20 million recovery.
- Lead counsel for the investor class in *In re MOL Global, Inc. Securities Litigation*, a securities class action lawsuit alleging that e-payment enabler MOL Global misled shareholders prior to its initial public offering. This litigation resulted in a \$8.5 million recovery.
- Representation of foreign financial institutions in individual lawsuits against Morgan Stanley, Credit Agricole Corporate and Investment Bank, UBS, Deutsche Bank, Credit Suisse, Goldman Sachs, J.P. Morgan, and Barclays pertaining to a number of fraudulent structured investment vehicles and asset-backed collateralized debt obligations.

Some of Mr. Hume's antitrust work includes:

- Lead counsel for consumer classes in connection with antitrust proceedings against Microsoft in the United States and consulting and advisory counsel to Canadian lead counsel in Canada. These litigations have resulted in settlements totaling over \$1 billion for consumers in Canada, Florida, New York, Tennessee, West Virginia, and Minnesota, where the litigation proceeded to trial.
- Representation of a class of retailers in *In re Visa Check/Master Money Antitrust Litigation*, an antitrust case which resulted in a settlement of over \$3 billion for the class.
- Special fiduciary representation for the exchange-based class in *In re Foreign Exchange Benchmark Rates Antitrust Litigation* for a putative class of participants who traded futures and options in the FX market. The case has already resulted in partial settlements of more than \$2.3 billion.

Mr. Hume is admitted to the New York State Bar, U.S. District Courts for the Southern and Eastern Districts of New York, U.S. Courts of Appeals for the Second, Third, Fourth, Fifth, Eighth, and Ninth Circuits, The Appellate Division of the Supreme Court of the State of New York, First Judicial Department, and The United States Supreme Court. Mr. Hume graduated from State University of New York at Albany (B.A. *magna cum laude*, 1988) and Columbia Law School (J.D. 1991).



David E. Kovel is Co-Managing Partner of the firm and is based in our New York office. A former commodities trader, he has extensive experience representing plaintiffs in groundbreaking whistleblower, commodities, antitrust, securities, and corporate governance matters, including on appeal. His work in these areas, which often deals with fraud related to complex financial instruments, continues to set precedents both in terms of the law and size of settlements.

Since June 2021, amongst other activities, Mr. Kovel obtained the then-largest publicly announced single whistleblower award arising under the Dodd-Frank and IRS whistleblower programs, and successfully reversed a lower court ruling that dismissed a large number of foreign banks from *In re Libor-Based Financial Instruments Antitrust Litigation*, the high-profile litigation related to the banks' alleged fixing of the LIBOR benchmark rate, which is now proceeding against certain non-settling defendants.

Mr. Kovel is the head of the litigation section of the New York City Bar Association Committee on Futures and Derivatives Regulation and is a former member of the New York City Bar Association

Antitrust Committee. Prior to joining KM, Mr. Kovel practiced at Simpson Thacher & Bartlett LLP. He speaks Spanish and at one time played professional soccer in Nicaragua.

Some of Mr. Kovel's public whistleblower work includes:

- Represented the person who received nearly \$200 million, the largest-ever individual whistleblower award arising under the Dodd-Frank whistleblower reward program and the then-largest arising under other whistleblower programs including the IRS and the federal and state false claims acts (CFTC WB Award No. 21-WB-07). The information the whistleblower provided catalyzed investigations by the Commodity Futures Trading Commission (CFTC), a U.S. federal regulator, and a foreign regulator into the manipulation of crucial financial benchmarks used by global banks as the basis for the pricing of fixed income securities and derivative products. The CFTC initially rejected the whistleblower's award application, but Mr. Kovel's advocacy resulted in a successful appeal for the client.
- Obtained an \$8.5 million award – the largest-ever settlement in a declined New York State False Claims Act case – for a whistleblower in *Anonymous, et ano. v. Moody's Corporation, et al.*, a groundbreaking case against Moody's and others under the New York State False Claims Act. The litigation brought to light a multi-year, multi-million-dollar tax fraud scheme executed by Moody's and its consultants wherein the company repeatedly underpaid city and state taxes by maintaining a sham insurance corporation as a subsidiary. Mr. Kovel was successful both before the trial court as well as on appeal before the New York City First Department.
- Representation of a whistleblower who alleges that waste-to-energy plant operator Covanta violated environmental regulations by creating hazardous ash as a by-product of the burning of garbage from multiple Long Island towns in *State of New York v. Covanta Hempstead Company et al.* The case has been brought on behalf of New York State, certain local governments on Long Island, and the Long Island Power Authority (LIPA). Over the course of a decade, these local governments paid \$890 million to Covanta to take their communities' garbage in an environmentally safe way. As alleged, Covanta did not, in fact, abide by the necessary protocols to keep the ash that was dumped in the Brookhaven landfill from being hazardous.

Some of Mr. Kovel's confidential ongoing and resolved whistleblower work includes:

- Commodities
- Securities
- Procurement fraud
- Medical Device/Pharmaceutical fraud

Some of Mr. Kovel's appellate work includes:

- Achieved reversal by the Second Circuit under antitrust pleading standards in *Wacker v. J.P. Morgan Chase & Co.* on behalf of traders of silver futures, alleged victims of market manipulation. The case preceded a related Department of Justice criminal investigation into J.P. Morgan that resulted in an over-\$920 million criminal penalty, the then-largest amount of

monetary relief ever imposed by the CFTC.

- Mr. Kovel is involved in various appeals before the Second Circuit on pleading standards, jurisdiction, class certification, and other matters stemming from the high-profile *In re Libor-Based Financial Instruments Antitrust Litigation*, including *Gelboim v. Credit Suisse Group AG*, alleging the fixing of prices of the LIBOR benchmark interest rate.
- Obtained an \$8.5 million award – the largest-ever settlement in a declined New York State False Claims Act case – for a whistleblower in *Anonymous, et ano. v. Moody's Corporation, et al.*, a groundbreaking case against Moody's and others under the New York State False Claims Act. The litigation brought to light a multi-year, multi-million-dollar tax fraud scheme executed by Moody's and its consultants wherein the company repeatedly underpaid city and state taxes by maintaining a sham insurance corporation as a subsidiary. Mr. Kovel was successful both before the trial court as well as on appeal before the New York City First Department.
- Argued an appeal before the Second Circuit on behalf of natural gas futures traders in *Anastasio v. Total Gas & Power North America* alleging market manipulation.

Some of Mr. Kovel's commodities work includes:

- Court-appointed co-liaison counsel for all class actions in the multi-district litigation and co-lead counsel for exchange-based class in the high-profile *In re Libor-Based Financial Instruments Antitrust Litigation and FTC Capital GMBH et al. v. Credit Suisse Group AG et al.* alleging the fixing of prices of a benchmark interest rate. This litigation has already resulted in partial settlements totaling approximately \$187 million, which collectively represent the largest historical class-wide recovery for a "futures only" settlement under the Commodity Exchange Act.
- Representation of exchange-based investors in *Shak v. JPMorgan Chase & Co.*, and related cases alleging monopolization and manipulation of the silver futures market in violation of federal antitrust and commodity exchange laws. The parties successfully reached a private settlement. Mr. Kovel and the firm obtained a favorable appeal decision at the Second Circuit Court of Appeals under antitrust laws. The case preceded a related Department of Justice criminal investigation into J.P. Morgan that resulted in an over-\$920 million criminal penalty, the then-largest amount of monetary relief ever imposed by the CFTC.
- Lead counsel on behalf of the New Mexico Attorney General's Office and the New Mexico State Investment Council in *In re Credit Default Swaps Auctions Litigation* alleging that leading credit default swap (CDS) dealers took part in a more than decade-long, multibillion-dollar scheme to manipulate the benchmark prices used to value credit default swap contracts at settlement.
- Selected by the court as co-lead counsel in *In re J.P. Morgan Treasury Futures Spoofing Litigation*, alleging that defendants manipulated U.S. Treasury futures for more than a decade and that this conduct contributed to the bank's recent \$920 million settlement with the DOJ, CFTC, and SEC. The case resulted in a settlement of \$15.7 million.

- Representation of a putative class of exchange-based investors in *Dennis v. The Andersons, Inc. et al.* alleging monopolization and manipulation of Chicago Board of Trade soft red winter wheat futures contracts in violation of federal antitrust and commodity exchange laws.
- Counsel to a putative class of investors in *In re Deutsche Bank Spoofing Litigation* alleging manipulation through “spoofing” of U.S. Treasury futures traded on the Chicago Board of Trade and Eurodollar futures traded on the Chicago Mercantile Exchange.
- Court-appointed executive committee member and class counsel in *In re Bank of Nova Scotia Spoofing Litigation* alleging that defendants manipulated precious metals futures traded on the New York Mercantile Exchange and the Commodity Exchange, Inc.
- Court-appointed executive committee member and class counsel representing cattle producers and cattle futures traders in *In re Cattle Antitrust Litigation*. The suit alleges that the “Big 4” meatpacking firms conspired to suppress prices for fed cattle and manipulated live cattle futures traded on the Chicago Mercantile Exchange.
- Co-lead counsel in *In re Reformulated Gasoline (RFG) Antitrust and Patent Litigation and Related Actions*, an antitrust class action pertaining to Unocal’s alleged manipulation of the standard-setting process for low-emissions reformulated gasoline in California, which plaintiffs claim caused inflated retail prices. The case resulted in a \$48 million settlement for indirect purchasers.
- Co-lead counsel for a class of propane purchasers in *In re BP Propane Indirect Purchaser Antitrust Litigation* alleging that defendants monopolized, artificially inflated and/or otherwise improperly manipulated the price of TET propane in the United States, in violation of state and federal antitrust laws. The case resulted in a \$15 million settlement.
- Acted as part of a leadership group which secured a \$13 million settlement for a class of potash purchasers in *In re Potash Antitrust Litigation*, a case alleging certain suppliers of potash, an ingredient in agricultural fertilizers, fixed prices in violation of the Section 1 of the Sherman Act.
- Representation of the defendant in *CFTC v. Shak*, a case brought by the CFTC under the Commodity Exchange Act’s newest provisions for violations of an administrative order in the gold futures market.
- Counsel for a plaintiff on behalf of gold purchasers in *In re Commodity Exchange, Inc., Gold Futures and Options Trading Litigation*, a market manipulation case. The case resulted in settlements of \$152 million.
- Acted as an expert for bankrupt debtor, a purchaser of metals, in *In re Exide Technologies* opining on the dynamics of plaintiffs’ side representation in antitrust and commodities market cases.

Some of Mr. Kovel’s other antitrust work includes:

- Co-lead counsel on behalf of the Wayne County Pension Fund in *In re Ductile Iron Pipe Fittings Antitrust Litigation* alleging the raising and fixing of prices in the market for ductile iron pipe fittings. The case resulted in a settlement of \$4.1 million.

- Lead counsel to various classes of indirect purchasers in connection with major antitrust proceedings against Microsoft. The litigations resulted in settlement totaling nearly a billion dollars for consumers in the states of New York, Florida, Tennessee, West Virginia, and Minnesota (where the litigation proceeded to trial).
- Representation of the City of New York against GlaxoSmithKline in *The City of New York v. GlaxoSmithKline PLC and SmithKline Beecham Corporation* to recover overcharges incurred in connection with the City's purchases for Paxil. The case alleged violations of the federal and state antitrust laws and fraudulent and deceptive conduct before the U.S. Patent Trademark Office and the United States Food and Drug Administration. The case resulted in a recovery of over \$1 million for the City Medicaid Program.

Some of Mr. Kovel's corporate governance work includes:

- Lead counsel in *In re Pfizer Inc. Shareholder Derivative Litigation*, a shareholder derivative action. Mr. Kovel and the firm obtained a \$75 million award and groundbreaking changes to the Board of Director's oversight of regulatory matters.
- Representation of an ad hoc group of shareholders in *In re: Intelsat S.A., et al.*, the Intelsat bankruptcy proceedings, successfully obtaining warrants for the shareholders in a multi-party trial before the bankruptcy court in Virginia.

In addition to his work listed above, Mr. Kovel has an active pro bono practice. He currently serves as General Counsel to the World Jurist Association in a *pro bono* capacity, and has represented, amongst others: clients in need of housing referred through the office of *pro se* litigation in the Southern District of New York; whistleblowers in various governmental settings; clients in foreclosure matters; and a Latino soccer association in its efforts organize and obtain a fair proportion of field time from a municipality.

Mr. Kovel is admitted to the New York State Bar, the Connecticut State Bar, the U.S. District Courts for the Southern, Eastern, and Western Districts of New York, the U.S. Court of Appeals for the First Circuit, Second Circuit, and D.C. Circuit. He has been a member of the New York City Bar Association Committee on Futures and Derivatives Regulation and is a former member of the New York City Bar Association Antitrust Committee. He graduated from Yale University (B.A.), Columbia University School of Law (J.D.), and Columbia University Graduate School of Business (M.B.A.).



Thomas W. Elrod is a partner based in our New York office focusing on securities, commodities, and antitrust litigation. Mr. Elrod joined the firm in 2011.

Some of Mr. Elrod's securities experience includes:

- Lead counsel representing Wespath, the General Board of Pension and Health Benefits of the United Methodist Church, in *Doyle v. Reata Pharmaceuticals*, a securities class action alleging that Reata made false and/or misleading statements — including in connection with its secondary public stock offerings — concerning, inter alia, the FDA guidance regarding the design of the clinical trial (CARDINAL) for Reata's drug candidate, bardoxolone methyl. When the FDA revealed serious concerns it had previously raised to Reata, the share price declined materially. The case has resulted in a \$45 million settlement.
- Co-lead counsel in *Macovski v. Groupon Inc. et al.*, a securities class action alleging that the company made materially false and misleading statements and failed to disclose to investors its financial health before ending its sale of physical goods and announcing the departure of two top executives. The case resulted in a \$13.5 million settlement that has received final approval.
- Lead counsel in *In re Citigroup Inc Securities Litigation*, a class action arising out of Citigroup's alleged misrepresentations regarding their exposure to losses associated with numerous collateralized debt obligations. This case settled for \$590 million.
- Class counsel in *Shah v. Zimmer Biomet Holdings*, a securities class action alleging that a medical device company did not disclose systemic quality issues at its manufacturing facility. The case resulted in a \$50 million settlement.
- Co-lead counsel in *Kokareva v. Bristow Group Inc.*, a securities class action alleging that an aviation services provider focused on the oil and gas sector made materially false and misleading statements about its internal controls relating to covenants in the company's secured financing agreements. The case resulted in a \$6.25 million settlement that has received final approval.
- Lead counsel in *In re Hi-Crush Partners L.P. Securities Litigation*, a securities class action alleging that fracking sand producer Hi-Crush Partners misled shareholders regarding a major customer relationship. This case resulted in a \$3.8 million settlement.
- Lead counsel in *Barfuss v. DGSE Companies, Inc.*, a securities class action alleging that a company that sold precious metals to wholesale and retail customers filed materially misleading financial statements. The case resulted in a \$1.7 million settlement.
- Co-lead counsel in *In re Resonant Inc. Securities Litigation*, a securities class action alleging that a mobile phone component company misled investors concerning its ability to meet the terms of a development agreement. The case resulted in a \$2.75 million settlement.
- Representation of municipal issuers, including governmental entities and hospital systems, in FINRA arbitrations alleging misrepresentations by underwriters in connection with Auction Rate Securities issuances.

Some of Mr. Elrod's antitrust and commodities experience includes:

- Selected by the Court as co-lead counsel in *In re J.P. Morgan Treasury Futures Spoofing Litigation*, alleging that defendants manipulated U.S. Treasury futures for more than a decade and that this conduct contributed to the bank's recent \$920 million settlement with the DOJ, CFTC, and SEC. The case has a putative settlement of \$15.7 million.
- Representation of the exchange-based class in *In re LIBOR-Based Financial Instruments Antitrust Litigation*, an antitrust case alleging that defendant banks colluded to misreport and manipulate LIBOR. This litigation has resulted in partial settlements totaling approximately \$187 million, which collectively represent the largest historical class-wide recovery for a "futures only" settlement class.
- Special fiduciary representation for the exchange-based class in *In re Foreign Exchange Benchmark Rates Antitrust Litigation* for a putative class of participants who traded futures and options in the FX market. The case has already resulted in partial settlements of more than \$2.3 billion.
- Court-appointed executive committee member and class counsel in *In re Cattle Antitrust Litigation*, representing cattle producers and cattle futures traders. The suit alleges that the "Big 4" meatpacking firms conspired to suppress prices for fed cattle and manipulated live cattle futures traded on the Chicago Mercantile Exchange.
- Lead counsel on behalf of a proposed class of Brent crude oil futures traders alleging benchmark manipulation in *In re North Sea Brent Crude Oil Futures Litigation*.
- Representation of exchange-based investors in *Shak v. J.P. Morgan Chase & Co.*, alleging monopolization and manipulation of the silver futures market in violation of federal antitrust and commodity exchange laws. The parties successfully reached a private settlement. The case preceded a related Department of Justice criminal investigation into J.P. Morgan that remains ongoing.

Some of Mr. Elrod's other relevant experience includes:

- Representation of a whistleblower who received the largest-ever individual award (nearly \$200 million) arising under the Dodd-Frank whistleblower reward program after he provided information regarding the manipulation of crucial financial benchmarks used by global banks as the basis for the pricing of fixed income securities and derivative products.
- Representation of a nationwide class of residential mortgage loan borrowers in *Rothstein v. GMAC Mortgage LLC*, a class action alleging violations of the Racketeer Influence and Corrupt Organizations Act. This litigation resulted in a \$13 million settlement against GMAC Mortgage.

- Representation of SEC, CFTC, and FCA whistleblowers who claim that their companies have violated federal law or defrauded the United States Government.

Mr. Elrod is admitted to the New York State Bar, New Jersey State Bar, U.S. District Courts for the Southern and Eastern Districts of New York, U.S. District Court for the District of New Jersey, and U.S. Courts of Appeals for the 2nd, 3rd, 7th, and 9th Circuits. He graduated from the University of Chicago (B.A. 2005) and Boston University School of Law (J.D. 2009).



David A. Bishop is a partner practicing out of our New York office, where he coordinates domestic client and government relations. David Bishop has been a Kirby McInerney partner since 2008. He coordinates domestic client relations for the firm, working with individuals and institutions on securities, corporate governance, and antitrust matters. Mr. Bishop works with institutions on establishing fraud monitoring programs. He has initiated successful litigation on behalf of a credit union damaged by purchasing built-to-fail credit default options, securities investors harmed by a pharmaceutical company's misrepresentations regarding a drug's viability, and purchasers of financial instruments who were struggling in a manipulated market. He successfully argued an appeal that brought accountability to the board of a large international bank that engaged in systematic illegal money laundering.

Prior to joining the firm, he was a legislator elected in Suffolk County, New York, where he wrote laws reducing pesticide use, addressing water pollution from storm water runoff, increasing childcare, and establishing a living wage.

Some of Mr. Bishop's relevant experience includes:

- Representation of exchange-based investors in *Shak v. JPMorgan Chase & Co.*, alleging monopolization and manipulation of the silver futures market in violation of federal antitrust and commodity exchange laws. The parties successfully reached a private settlement. The case preceded a related Department of Justice criminal investigation into JPMorgan that remains ongoing.
- Representation in a shareholder derivative lawsuit against officers and directors of HSBC Holdings and its subsidiaries, alleging that HSBC ran money laundering operations out of New York City. The litigation settled for \$72.5 million, the then largest foreign derivatives settlement ever reached and one of the largest insurer-funded cash payments achieved in a U.S. derivatives lawsuit.
- Representation in a class action on behalf of homeowners in minority neighborhoods in Nassau County concerning the County's unfair assessment practices.

Representation of the NY State Common Retirement Fund as lead plaintiff in *In re National City Corporation Securities, Derivative & ERISA Litigation*, a securities class action arising from National City's alleged misrepresentations regarding exposure to subprime mortgage-related losses. During the class period, the company's stock fell from approximately \$37 to \$6. This case resulted in a settlement of \$168 million.

- Lead counsel for classes of consumers harmed by price fixing in the LCD flat panel and SRAM markets.
- Co-lead counsel for a class of investors in Goldman Sachs common stock in a securities class action, *Lapin v. Goldman Sachs Group, Inc.*, pertaining to Goldman's alleged instruction to their research analysts to favor procurement of investment banking deals over accuracy in their research. This litigation resulted in a recovery of \$29 million for the class.

Mr. Bishop is admitted to the New York State Bar and U.S. District Court for the Southern and Eastern Districts of New York. He graduated from American University (B.A. 1987) and Fordham University Law School (J.D. 1993).



Anthony F. Fata is a partner based in our Chicago office. For more than 20 years, Mr. Fata has represented clients in complex financial matters, including claims arising under the commodity, securities, antitrust, and whistleblower laws. Mr. Fata has regularly appeared before federal and state courts throughout the United States and in regulatory matters overseen by the Securities and Exchange Commission, Commodity Futures Trading Commission, Financial Industry Regulatory Authority, Chicago Mercantile Exchange, and other governmental and self-regulatory agencies. Mr. Fata has developed and litigated numerous proprietary cases and served in leadership positions.

Prior to joining KM, Mr. Fata practiced at McDermott, Will & Emery LLP, where he defended SEC enforcement matters, securities class actions, shareholder derivative suits, and consumer class actions. He then joined Cafferty Clobes Meriwether & Sprengel LLP to lead the firm's efforts in commodity manipulation matters.

In addition to his law practice, since 2016, Mr. Fata has been an adjunct professor at Seton Hall University School of Law. He teaches J.D., M.S.J., and LL.M candidates in a wide range of financial services courses, including Securities Regulation, Regulating Broker Dealers, Regulating Funds and Advisors, Corporate Finance, Corporate Governance, Financial Crimes Compliance, Regulating Depository Institutions, Financial Privacy, and Corporate Law.

Mr. Fata is active in the Chicago Bar Association, where he serves on the Board of Managers, Co-Chairs the Securities Law Committee and serves on the Editorial Board of the CBA Record. Mr. Fata is also a recurring panelist for the Practising Law Institute Internal Investigations Seminar conducted in Chicago

each year.

Some of Mr. Fata's commodities experience includes:

- Representation of exchange-based investors in *Shak v. JPMorgan Chase & Co.*, alleging monopolization and manipulation of the silver futures market in violation of federal antitrust and commodity exchange laws. The parties successfully reached a private settlement. The case preceded a related Department of Justice criminal investigation into JPMorgan that remains ongoing.
- *In re Cattle Antitrust Litigation*, No. 19-cv-1222 (D. Minn.): Mr. Fata led efforts to develop this proprietary case on behalf of cattle producers and cattle futures traders. Mr. Fata continues to serve in a leadership capacity on behalf of live cattle futures traders. The suit alleges that the “Big 4” meatpacking firms conspired to suppress prices for fed cattle and manipulated live cattle futures traded on the Chicago Mercantile Exchange.
- *Dennis v. The Andersons, Inc. et al.*, No. 20-cv-04090 (N.D. of Ill.): Co-lead counsel of a putative class of exchange-based investors alleging monopolization and manipulation of Chicago Board of Trade soft red winter wheat futures contracts in violation of federal antitrust and commodity exchange laws. Mr. Fata has led all phases of this litigation.
- *Dufoe v. DraftKings Inc., et al*, 1:23-cv-10524 (D. Mass.). Counsel to a class of investors that purchased non-fungible tokens (NFTs) from DraftKings Inc., which operates as a daily fantasy sports contest and sports betting company. The case alleges that DraftKings sold unregistered securities and ensured that money stayed on DraftKings’ private and exclusively controlled marketplace, propping up the market for an overall valuation of DraftKings’ NFTs and significantly harming investors.
- *In re Deutsche Bank Spoofing Litigation*, No. 20-cv-03638 (N.D. of Ill.): Co-lead counsel on behalf of a putative class of investors alleging manipulation through “spoofing” of U.S. Treasury futures traded on the Chicago Board of Trade and Eurodollar futures traded on the Chicago Mercantile Exchange. Mr. Fata has led all phases of this litigation.
- *In re Bank of Nova Scotia Spoofing Litigation*, No. 20-cv-11059 (D.N.J.). As a court-appointed Executive Committee member, Mr. Fata has served in a leadership capacity in this suit alleging that defendants manipulated precious metals futures traded on the New York Mercantile Exchange and the Commodity Exchange, Inc.
- *Hershey v. Pacific Investment Management Company LLC*, No. 05-cv-4681 (N.D. Ill.). Mr. Fata served as local counsel and assisted lead counsel's litigation efforts en route to securing a \$118 million settlement from PIMCO, which was accused of manipulating CBOT treasury note futures.

Some of Mr. Fata's consumer experience includes:

- *Apple Device Performance Litigation*, No. 18-md-02827 (N.D. Cal.). Mr. Fata was appointed as

an executive committee member and co-chair of the damages and settlement committee. The case alleges that Apple throttled iPhones to obscure battery issues. The \$325 million settlement in the case was approved by the district court and is awaiting review by the Ninth Circuit.

- *Apple iPhone Warranty Litigation*, No. 10-cv-01610 (N.D. Cal.) Mr. Fata developed and filed the first complaint in this proprietary case alleging that Apple breached its warranty to iPhone customers by denying claims based on a pretext of water damage purportedly shown by “liquid contact indicators.” After similar complaints were filed, Mr. Fata worked cooperatively with other plaintiffs’ firms and led efforts to secure a \$53 million global settlement for the class.
- *Apple Gift Card Litigation*, No. 20-cv-04812 (N.D. Cal.). Serving as co-lead counsel to a class of consumers who were victims of gift-card scams and from whom Apple allegedly withholds funds. Mr. Fata developed and filed the first complaint in this proprietary case. Drawing on his financial crimes expertise, Mr. Fata developed the factual theories underpinning the case, helped to organize counsel, and led and is currently co-leading efforts on behalf of the class.
- *Midway Moving Sales Practices Litigation*, No. 2003-CH-16091 (Cir. Ct. Cook Cty). Mr. Fata developed and filed this proprietary case alleging that a moving company used bait-and-switch estimating practices. He successfully obtained an order certifying the class, and defended it on appeal, *Ramirez v. Midway Moving and Storage, Inc.*, 378 Ill. App. 3d 51, 880 N.E. 2d 653 (Ill. App. 1st Dist. 2007). Following extensive litigation efforts, on the eve of trial, the matter was successfully resolved via a class-wide settlement that returned 100% of claimed damages to customers.
- *eWork Inc. Sales Practices Litigation*, No. 06-cv-00686 (D. Colo.). Mr. Fata developed and filed this proprietary case alleging that an internet job-consultant matchmaker utilized deceptive practices to lure independent consultants to pay for referral services for jobs that did not actually exist. After defeating defendants’ motion to dismiss, *Ramirez v. eWork, Inc.*, No. 06-CV-00686, 2007 WL 2746634 (D. Colo. Sept. 18, 2007), and through additional hard-fought litigation, Mr. Fata successfully led settlement efforts that forced the company to turn 100% of its cash and liquid assets over to the aggrieved customers. The company ceased operations shortly thereafter.

Mr. Fata is also advising clients in confidential ongoing whistleblower matters:

- Securities
 - pump and dump manipulation
 - evidence tampering during investigation
 - asset management fees
- Commodities
 - market manipulation

Mr. Fata regularly authors articles concerning corporate finance, financial markets, and class actions, including:

- *Protecting (or Cracking) the Nest Egg: Why Titles and Contracts Matter When Selecting a*

Financial Professional, CBA Record (February 2021) (co-authored with Delaney Slater)

- *Whistleblowers Among Us: The New Regulatory and Self-Policing Paradigm*, CBA Record (May 2018) (co-authored with David Kovel);
- *The Blockchain Bandwagon-Cryptocurrency on the Move: Marketplace Overview and Regulatory Developments*, CBA Record (January 2018) (co-authored with Brian O'Connell)
- *Corporate Cons in the 21st Century: Dealing with the Global Employee Fraud Epidemic*, PLI Internal Investigations Handbook (March 2017) (co-authored with Corey M. Martens)
- *Mitigating, Detecting, and Dealing with Employee Fraud - The Problem of the Inside Job*, CBA Record (January 2017) (co-authored with Corey M. Martens)
- *The Investigation is Internal, But Is This Document Privileged? An Overview of Privilege Issues in Internal Investigations*, PLI Internal Investigations Handbook (April 2016)
- *The Securities Exchange Commission's Whistleblower Program*, PLI Internal Investigations Handbook (March 2015)
- *The Commodity Futures Trading Commission's Whistleblower Program*, PLI Internal Investigations Handbook (March 2014)
- *Untangling the Seamless Web: Seven Critical Assumptions When Planning Investigations*, PLI Internal Investigations Handbook (2013)
- *Doomsday Delayed: How the Court's Party Neutral Clarification of Class Certification Standards in Walmart v. Dukes Actually Helps Plaintiffs*, 62 DePaul Law Review 675 (March 2013)

Mr. Fata is admitted to the Illinois State Bar, U.S. District Courts for the Northern District of Illinois, U.S. District Court for the Eastern District of Michigan, U.S. District Court for the District of Colorado, and U.S. Courts of Appeals for the Sixth, Seventh, and Ninth Circuits. He graduated from Miami University (B.A. 1995) and Ohio State University Moritz College of Law (J.D. 1999).



Randall M. Fox is a partner in our New York office who represents whistleblowers in False Claims Act and IRS, SEC, and CFTC matters about tax, healthcare, procurement, and investment frauds. He was named the Whistleblower Lawyer of the Year for 2021 by The Anti-Fraud Coalition.

Before representing whistleblowers, Mr., Fox served as a government lawyer handling cases filed by whistleblowers alleging frauds committed against public monies. He was the founding Bureau Chief of New York Attorney General's Taxpayer Protection Bureau and, before that, was part of the Attorney General's Medicaid Fraud Control Unit. At the government, he played a key role in several ground-breaking False Claims Act cases, including leading the state's investigation and intervention into a tax whistleblower case against cell phone giant Sprint Corporation, which later settled for \$330 million, and he filed the States' first government-initiated New York False Claims Act case, which recovered more than \$61 million for the New York Medicaid program from pharmaceuticals giant Merck, which was alleged to have falsely marketed its drug Vioxx.

In private practice, Mr. Fox has successfully represented whistleblowers in cases about a wide range of industries. He represented the whistleblower in New York's largest income tax *qui tam* case, which resulted in a \$105 million settlement with a hedge fund billionaire claimed to have disguised the New York source of his income. The whistleblower award was \$22.05 million.

Before his government service, Mr. Fox was a litigation partner at the law firm of LeBoeuf, Lamb, Greene & MacRae, LLP, where his practice focused on defending corporate clients in class actions, commercial disputes, and securities and consumer fraud actions.

Some of Mr. Fox's experience includes:

- Represented the whistleblower in *New York ex rel Tooley LLC v. Sandell*, a New York False Claims Act *qui tam* case against a hedge fund owner for evading New York taxes on about \$475 million in deferred compensation. The case resulted in a \$105 million settlement with a 21% whistleblower award.
- Represented the whistleblower in the healthcare kickbacks case of *New York State ex rel. WB Bros LLC v. Toobian*, where the government intervened in the case and is pursuing criminal kickback charges against radiology businesses and their owner.
- Represented the whistleblower in *United States ex rel. Doe v. FPR Specialty Pharmacy*, a federal False Claims Act *qui tam* case against compounding pharmacy and its owners alleging kickbacks to doctors, independent sales representatives, and patients in the sale of pain creams. The case settled for all of the defendants' limited assets, with a 21% whistleblower award.
- Represented the whistleblower in *New York ex. rel. Raw Data Analytics, LLC v. J.P. Morgan Chase*, a case that established the broad scope of obligations subject to whistleblower claims under the New York False Claims Act.
- Represented the whistleblower in *New York ex rel. Choe v. Spa Castle, Inc.*, a New York False

Claims Act case resulting in a civil settlement with a 23% whistleblower award and the criminal conviction of defendants for tax evasions that had been previously unknown to the government.

Mr. Fox is admitted to the New York State Bar, U.S. District Courts for the Southern, Eastern, Western, and Northern Districts of New York, U.S. Courts of Appeals for the Second, Third, Eighth, and Ninth Circuits, and U.S. Tax Court. He graduated from Williams College (B.A. 1988) and New York University (J.D. 1991).



Robert J. Gralewski, Jr. is a partner based in San Diego and manages our California office. Mr. Gralewski has dedicated his entire 24-year legal career to obtaining economic justice for businesses and consumers victimized by price fixing, monopolistic practices, consumer fraud, privacy violations, and unfair employment practices. He has successfully prosecuted a wide variety of federal and state court class actions against multinational conglomerates and Fortune 500 companies in industries including technology, food, automotive, consumer services, and healthcare, including at trial.

Mr. Gralewski has significant experience deposing CEOs, presidents, and other senior executives in high-stakes litigation, including in foreign languages. For example, Mr. Gralewski has first-chaired apex depositions of Samsung, StarKist, and Foster Farms executives in the *In re Cathode Ray Tube (CRT) Antitrust Litigation*, the *In re Packaged Seafood Products Antitrust Litigation*, and the *In re Broiler Chicken Antitrust Litigation* matters, respectively.

In addition to his class cases, Mr. Gralewski maintains an active pro bono practice. Working with Casa Cornelia since 2018, he has succeeded in helping four separate refugees obtain asylum after direct examinations in contested administrative proceedings. In recognition of his dedication and accomplishments, Casa Cornelia awarded Mr. Gralewski its Pro Bono Publico Award in 2019. He is also helped establish COSAL's (The Committee to Support the Antitrust Laws) Diversity, Equity, and Inclusion Committee on which he previously served.

Mr. Gralewski was drafted by the Cincinnati Reds after his senior year in high school but elected to attend college instead.

Some of Mr. Gralewski's experience includes:

- Ongoing representation of a proposed class of Division I college coaches whose wages were illegally fixed at \$0 in *Colon v. National Collegiate Athletic Association*. Recently, the federal judge overseeing the case overruled the NCAA's motion to dismiss the case. The litigation seeks to recover years of back wages on behalf of thousands of hard-working employees who were not paid due to a conspiracy among the NCAA and its member schools.
- Mr. Gralewski leads the KM team as one of the core firms in *In re Cathode Ray Tube (CRT)*

Antitrust Litigation, an indirect purchaser antitrust case against some of the largest electronics manufacturers in the world. The case has resulted in settlements on behalf of end payers exceeding \$575 million, and the firm continues to pursue one remaining defendant with a trial set to commence in early 2024. The Special Master in the CRT litigation noted that, "Kirby played an integral role in this case and assumed significant risk....Kirby's work was at a very high level [and] Kirby's work greatly benefitted the Class."

- Representation of a class of purchasers in *In re: Hard Disk Drive Suspension Assemblies Antitrust Litigation*, a case alleging that defendants fixed the prices of suspension assemblies (a critical component of hard disk drives) which artificially increased the prices of computers throughout the U.S. Through the course of his work on the case, Mr. Gralewski has taken several foreign-language depositions of high-level witnesses in Thailand.
- Serving as counsel on behalf of a certified class of restaurants and other commercial and institutional businesses in *In re Broiler Chicken Antitrust Litigation*, a case alleging that numerous poultry producers, such as Tyson and Perdue Farms, conspired to limit production and increase the price of broiler chickens, one of the most common menu items everywhere.
- One of the core firms representing a certified class of everyday-consumers in *In re Packaged Seafood Products Antitrust Litigation*. This case alleges that StarKist, Bumble Bee, Chicken of the Sea, and their parent companies, conspired to fix the price of packaged tuna. StarKist, Bumble Bee and some of their executives have already pleaded guilty, and Bumble Bee's former president was convicted of price fixing by a jury. This case seeks damages for increased prices of this food staple.
- First-chaired numerous arbitration hearings on behalf of employees of a nationwide fast casual chain who were subject to a mandatory arbitration provision. Relying upon JAMS' Employment Arbitration Minimum Standards, he convinced many arbitrators to order broad e-discovery concerning the respondent's practices despite the relatively low-dollar value of the individual proceedings. Ultimately, Mr. Gralewski and KM obtained economic justice for thousands of minimum-wage employees.
- For over a decade, Mr. Gralewski represented classes of businesses and consumers in monopoly cases against Microsoft Corporation in several states and served as consulting and advisory counsel to Canadian lead counsel in a similar Canadian class action. He was an integral member of the trial teams in the Minnesota and Iowa Microsoft class actions which both settled for more than \$350 million after months of hard-fought jury trials. During both trials, Mr. Gralewski was responsible for the evidence and argued evidentiary issues before the trial judges daily. Ultimately, he helped recover more than \$2 billion in the aggregate for businesses and consumers alleged to be overcharged as a result of Microsoft's monopolistic practices.

Mr. Gralewski is admitted to the California State Bar, all of the U.S. District Courts for the State of California, and U.S. District Court for the District of Colorado. He graduated from Princeton University (B.A. 1991) and California Western School of Law (J.D. *cum laude*, 1997).



Karen M. Lerner is a partner in our New York office focused on antitrust and commodities litigation.

Over the course of her career, Ms. Lerner has successfully litigated complex class actions that have recovered billions of dollars on behalf of institutional and individual plaintiffs. She has played important roles in several landmark antitrust cases and remains one of the few women ever appointed as Interim Co-Lead Class Counsel in a Commodity Exchange Act case. In addition to her litigation work, she also advises individuals, corporations and non-profits regarding business practices and corporate governance. In 2022, Ms. Lerner was named a Fellow of the American Bar Foundation, a global honorary society limited to one percent of lawyers licensed to practice in each jurisdiction.

Prior to joining KM, Ms. Lerner was of counsel at McDonough, Korn & Eichhorn, where she handled cases up to and including at trial.

Ms. Lerner is actively involved in promoting volunteerism in the legal community and through women's organizations and is an advocate for diversity and inclusion and is a member of Women Antitrust Plaintiffs' Attorneys (WAPA), an organization for female attorneys who focus their legal practice on representing businesses injured by cartels or other anticompetitive activities. Finally, in addition to her legal practice and activities, Ms. Lerner has served as a member of the Board of Directors for several charitable organizations.

Some of Ms. Lerner's antitrust and commodities experience includes:

- Co-lead counsel in *In re Credit Default Swaps Auctions Litigation*, a class action brought by the firm and the Office of the Attorney General for the State of New Mexico alleging antitrust violations and market manipulation in the credit default swaps market. The case is ongoing.
- Court appointed Executive committee member and class counsel in *In re Digital Advertising Antitrust Litigation*, representing publishers alleging that Google monopolized and suppressed competition in online display advertising.
- Representation of the exchange-based class in *In re LIBOR-Based Financial Instruments Antitrust Litigation*, an antitrust case alleging that defendant banks colluded to misreport and manipulate LIBOR. This litigation has already resulted in partial settlements totaling approximately \$187 million, which collectively represent the largest historical class-wide recovery for a "futures only" settlement class.
- Special fiduciary representation for the exchange-based class in *In re Foreign Exchange Benchmark Rates Antitrust Litigation* for a putative class of participants who traded futures and options in the FX market. The case has already resulted in partial settlements of more than \$2.3 billion.

- Counsel in the benchmark antitrust *litigation In re Commodity Exchange, Inc., Gold Futures and Options Trading Litigation*, on behalf of a putative class of gold derivative traders. The case has resulted in settlements of \$152 million.
- Selected by the Court as co-lead counsel in *In re JPMorgan Treasury Futures Spoofing Litigation*, alleging that defendants manipulated U.S. Treasury futures for more than a decade and that this conduct contributed to the bank's recent \$920 million settlement with the DOJ, CFTC, and SEC. The case has a putative settlement of \$15.7 million.
- Court appointed Executive committee member and class counsel in *In re Cattle Antitrust Litigation*, representing cattle producers and cattle futures traders. The suit alleges that the "Big 4" meatpacking firms conspired to suppress prices for fed cattle and manipulated live cattle futures traded on the Chicago Mercantile Exchange.
- Representation of exchange-based investors in *Shak v. JPMorgan Chase & Co.*, alleging monopolization and manipulation of the silver futures market in violation of federal antitrust and commodity exchange laws. The parties successfully reached a private settlement. The case preceded a related Department of Justice criminal investigation into JPMorgan that remains ongoing.
- Counsel in *In re Deutsche Bank Spoofing Litigation* on behalf of a putative class of investors alleging manipulation through "spoofing" of U.S. Treasury futures traded on the Chicago Board of Trade and Eurodollar futures traded on the Chicago Mercantile Exchange.
- Court appointed to the Executive Committee and class counsel in *In re Bank of Nova Scotia Spoofing Litigation*, alleging that defendants manipulated precious metals futures traded on the New York Mercantile Exchange and the Commodity Exchange, Inc.
- Representation of a putative class of exchange-based investors in *Dennis v. The Andersons, Inc. et al.*, alleging monopolization and manipulation of Chicago Board of Trade soft red winter wheat futures contracts in violation of federal antitrust and commodity exchange laws.
- Court appointed Discovery Committee Co-Chair in *In re Effexor XR Antitrust Litigation* for a putative class of direct purchasers of brand name and generic equivalents of extended-release venlafaxine hydrochloride capsules against drug manufacturers. Among the claims, Defendants are alleged to have delayed market entry of generic versions and entered into reverse payment settlements.
- Representation as sole lead counsel in *In re North Sea Brent Crude Oil Futures Litigation*.

Some of Ms. Lerner's other relevant experience includes:

- Representation of a whistleblower in *Anonymous, et ano. v. Moody's Corporation, et al.*, No. 103997/2012 (Sup. Ct. N.Y. Cty. and First Dept.), alleging millions of dollars of tax fraud using a sham captive insurance company for over a decade regarding domestic and international transactions. The litigation settled for \$8.5 million.

- *Maverick v. Valeant Pharmaceuticals International, Inc.*, alleging that Valeant materially misrepresented its business model, touting artificial and unsustainable growth that was enabled by the company's deceptive and illegal conduct.

Ms. Lerner is admitted to the New York State Bar, New Jersey State Bar, District of Columbia Bar, United States Supreme Court, U.S. Court of Appeals for the Second and Third Circuits, U.S. Court of Appeals for the District of Columbia, U.S. District Court for the Southern and Eastern Districts of New York, and U.S. District Court for the District of New Jersey. She graduated from University of Albany SUNY (B.A. 1988, *summa cum laude*, Phi Beta Kappa) and University of Pennsylvania School of Law (J.D. 1991).



Anthony E. Maneiro is a partner practicing out of our Chicago office who concentrates on securities, commodities, and antitrust matters.

Mr. Maneiro was selected for the Federal Bar Council American Inn of Court for the Inn and is a member of the Hispanic National Bar Association and the New York City Bar Association, where he serves on the Antitrust and Trade Regulation Committee. Mr. Maneiro joined the firm in 2016.

Some of Mr. Maneiro's antitrust and commodities experience includes:

- Co-lead counsel in *In re Credit Default Swaps Auctions Litigation*, a class action brought by the firm and the Office of the Attorney General for the State of New Mexico alleging antitrust violations and market manipulation in the credit default swaps market. The case is ongoing.
- Representation of the exchange-based class in *In re LIBOR-Based Financial Instruments Antitrust Litigation*, an antitrust case alleging that defendant banks colluded to misreport and manipulate LIBOR. This litigation has resulted in partial settlements totaling approximately \$187 million, which collectively represent the largest historical class-wide recovery for a "futures only" settlement class.
- Special fiduciary representation for the exchange-based class in *In re Foreign Exchange Benchmark Rates Antitrust Litigation* for a putative class of participants who traded futures and options in the FX market. The case has already resulted in partial settlements of more than \$2.3 billion.
- Counsel in the benchmark antitrust litigation *In re Commodity Exchange, Inc., Gold Futures and Options Trading Litigation*, on behalf of a putative class of gold derivative traders. The case has resulted in settlements of \$152 million.
- Selected by the Court as co-lead counsel in *In re JPMorgan Treasury Futures Spoofing Litigation*, alleging that defendants manipulated U.S. Treasury futures for more than a decade and that this conduct contributed to the bank's recent \$920 million settlement with the DOJ,

CFTC, and SEC. The case has a putative settlement of \$15.7 million.

- Representation of exchange-based investors in *Shak v. JPMorgan Chase & Co.*, alleging monopolization and manipulation of the silver futures market in violation of federal antitrust and commodity exchange laws. The parties successfully reached a private settlement. The case preceded a related Department of Justice criminal investigation into JPMorgan that remains ongoing.
- Court appointed Discovery Committee Co-Chair in *In re Effexor XR Antitrust Litigation* for a putative class of direct purchasers of brand name and generic equivalents of extended-release venlafaxine hydrochloride capsules against drug manufacturers. Among the claims, Defendants are alleged to have delayed market entry of generic versions and entered into reverse payment settlements.
- Court appointed Executive committee member and class counsel in *In re Cattle Antitrust Litigation*, representing cattle producers and cattle futures traders. The suit alleges that the “Big 4” meatpacking firms conspired to suppress prices for fed cattle and manipulated live cattle futures traded on the Chicago Mercantile Exchange.
- Representation of a putative class of exchange-based investors in *Dennis v. The Andersons, Inc. et al.*, alleging monopolization and manipulation of Chicago Board of Trade soft red winter wheat futures contracts in violation of federal antitrust and commodity exchange laws.
- Counsel in *In re Deutsche Bank Spoofing Litigation* on behalf of a putative class of investors alleging manipulation through “spoofing” of U.S. Treasury futures traded on the Chicago Board of Trade and Eurodollar futures traded on the Chicago Mercantile Exchange.
- Court appointed to the Executive Committee and class counsel in *In re Bank of Nova Scotia Spoofing Litigation*, alleging that defendants manipulated precious metals futures traded on the New York Mercantile Exchange and the Commodity Exchange, Inc.
- Representation of exchange-based investors in *Anastasio v. Total Gas & Power North America, Inc.*, alleging price manipulation of physical natural gas as well as price manipulation of natural gas futures and other derivative natural gas contracts.

Some of Mr. Maneiro’s other relevant experience includes:

- Representation in a shareholder derivative lawsuit against officers and directors of HSBC Holdings and its subsidiaries, alleging that HSBC ran money laundering operations out of New York City. The litigation settled for \$72.5 million, the then largest foreign derivatives settlement ever reached and one of the largest insurer-funded cash payments achieved in a U.S. derivatives lawsuit.
- Representation in an individual securities fraud action alleging that in marketing their auto-loan ABS securitizations to investors, TCF Bank and Gateway One materially misrepresented the key metric used by investors to evaluate and price the securitizations’ certificates.

- Representation of a whistleblower in *Anonymous, et ano. v. Moody's Corporation, et al.*, No. 103997/2012 (Sup. Ct. N.Y. Cty. and First Dept.), alleging millions of dollars of tax fraud using a sham captive insurance company for over a decade regarding domestic and international transactions. The litigation settled for \$8.5 million.

Mr. Maneiro is admitted to the Massachusetts, Illinois and New York State Bars, the U.S. District Court for the District of Massachusetts, the U.S. District Courts for the Eastern and Southern Districts of New York, and the U.S. District Court for the Northern District of Illinois. Mr. Maneiro graduated from Grove City College (B.A. 2010, *magna cum laude*), the London School of Economics and Political Science (M.Sc. 2011), and the Boston University School of Law (J.D. LL.M. 2016).



Andrew M. McNeela is a partner in our New York office focusing on securities, antitrust, commodities, and structured finance litigation. Mr. McNeela joined the firm in 2008.

Prior to joining KM, Mr. McNeela served as an Assistant United States Attorney in the Civil Division of the United States Attorney's Office for the Southern District of New York. In this capacity, he represented the United States in a wide array of civil litigation. Mr. McNeela has argued over twenty cases before the United States Court of Appeals for the Second Circuit.

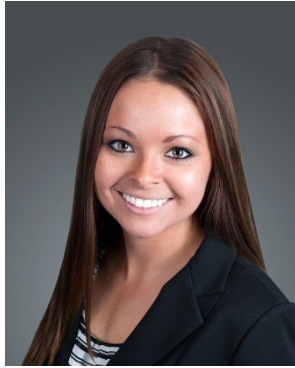
Some of Mr. McNeela's experience includes:

- Representation of exchange-based investors in *Shak v. JPMorgan Chase & Co.*, alleging monopolization and manipulation of the silver futures market in violation of federal antitrust and commodity exchange laws. The parties successfully reached a private settlement. The case preceded a related Department of Justice criminal investigation into JPMorgan that remains ongoing.
- Lead counsel in a seven-day bench trial in the S.D.N.Y., representing mutual fund investors who alleged that their advisor, Calamos Advisors LLC, charged excessive fees (decision under submission). At the conclusion of trial, the judge praised counsel for "an extraordinarily well-trying case."
- Representation of a Japanese bank that asserted fraud in connection with its purchase of synthetic CDOs from several prominent New York City-based financial institutions, which resulted in favorable confidential settlements.
- Representation of the New York City Pension Funds as lead plaintiff in a class action against Wachovia Corporation arising from Wachovia's alleged misrepresentations of their exposure to the subprime market. This case resulted in a settlement of \$75 million.
- Representation of the NY State Common Retirement Fund as lead plaintiff in *In re National City*

Corporation Securities, Derivative & ERISA Litigation, a securities class action arising from National City's alleged misrepresentations regarding exposure to subprime mortgage related losses. This case resulted in a settlement of \$168 million.

- Lead counsel in *Dandong v. Pinnacle Performance Limited*, a class action lawsuit against Morgan Stanley pertaining to \$154.7 million of notes issued by Pinnacle Performance Ltd. Plaintiffs allege that Morgan Stanley engineered the Pinnacle notes, which it marketed as a safe investment, to fail, investing money into collateralized debt obligations linked to risky companies, while actively shorting the same assets and betting against their clients. This case settled for \$20 million.
- Representation of the exchange-based class in *In re LIBOR-Based Financial Instruments Antitrust Litigation*, an antitrust case alleging that defendant banks colluded to misreport and manipulate LIBOR. This litigation has already resulted in partial settlements totaling approximately \$187 million, which collectively represent the largest historical class-wide recovery for a "futures only" settlement class.
- Lead counsel on behalf of a proposed class of Brent crude oil futures traders alleging benchmark manipulation in *In re North Sea Brent Crude Oil Futures Litigation*.
- Lead counsel in the securities class action *In re Herley Industries Inc. Securities Litigation* on behalf of investors. This litigation resulted in a recovery of \$10 million for the class.
- Co-lead counsel for a class of investors in Goldman Sachs common stock in a securities class action, *Lapin v. Goldman Sachs Group, Inc.*, pertaining to Goldman's alleged instruction to their research analysts to favor procurement of investment banking deals over accuracy in their research. This litigation resulted in a recovery of \$29 million for the class.

Mr. McNeela is admitted to the New York State Bar, U.S. District Courts for the Southern and Eastern Districts of New York, and U.S. Court of Appeals for the Second Circuit. He graduated from Washington University (B.A. 1995) and Hofstra University School of Law (J.D. *cum laude*, 1998), where he was a member of the Law Review.



Meghan Summers is a partner based in our New York office focusing on securities, structured finance, and antitrust litigation.

Ms. Summers began working at the firm in 2008 as a paralegal and law clerk before becoming an associate in 2012 and then a partner in 2017.

Some of Ms. Summers' securities and structured finance experience includes:

- Lead counsel representing Wespath, the General Board of Pension and Health Benefits of the United Methodist Church, in *Doyle v. Reata Pharmaceuticals*, a securities class action alleging that Reata made false and/or misleading statements — including in connection with its secondary public stock offerings — concerning, inter alia, the FDA guidance regarding the design of the clinical trial (CARDINAL) for Reata's drug candidate, bardoxolone methyl. When the FDA revealed serious concerns it had previously raised to Reata, the share price declined materially. The case has resulted in a \$45 million settlement.
- Counsel in *Maverick Neutral Levered Fund, Ltd. v. Valeant Pharmaceuticals International, Inc.*, alleging that Valeant materially misrepresented its business model, touting artificial and unsustainable growth that was enabled by the company's deceptive and illegal conduct.
- Lead counsel in *Dandong v. Pinnacle Performance Limited*, a class action lawsuit against Morgan Stanley pertaining to \$154.7 million of notes issued by Pinnacle Performance Ltd. Plaintiffs alleged that Morgan Stanley engineered the Pinnacle notes, which it marketed as a safe investment, to fail, investing money into collateralized debt obligations linked to risky companies, while actively shorting the same assets and betting against their clients. This litigation resulted in a \$20 million settlement.
- Representation of foreign financial institutions in individual lawsuits against Morgan Stanley, Credit Agricole Corporate and Investment Bank, UBS, Deutsche Bank, Credit Suisse, Goldman Sachs, JP Morgan, and Barclays pertaining to a number of fraudulent structured investment vehicles and asset-backed collateralized debt obligations.
- Lead counsel in *In re MOL Global, Inc. Securities Litigation*, a class action lawsuit alleging that e-payment enabler MOL Global misled shareholders prior to its initial public offering. This litigation resulted in a \$8.5 million settlement.
- Lead counsel in *Rudman v. CHC Group, Ltd.*, a securities class action alleging that CHC Group had misled investors by failing to disclose that one of its two largest customers had stopped making payments on its contracts prior to the company's initial public offering. This litigation resulted in a \$3.85 million settlement.
- Representation in individual securities fraud actions against Merck and Schering-Plough related to the commercial viability of the companies' anti-cholesterol medication, Vytarin, and the subsequent drop in Merck's and Schering-Plough's share price.
- Representation in individual securities fraud actions against Merck related to the safety and commercial viability of its medication, Vioxx, and the subsequent drop in Merck's share price.

- Representation in an individual securities fraud action against BP plc related to the Deepwater Horizon explosion on April 20, 2010, and the subsequent drop in BP's share price.
- Representation in an individual securities fraud action alleging that, in marketing their auto-loan ABS securitizations to investors, TCF Bank and Gateway One materially misrepresented the key metric used by investors to evaluate and price the securitizations' certificates.
- Representation in a shareholder derivative lawsuit against officers and directors of HSBC Holdings and its subsidiaries, alleging that HSBC ran money laundering operations out of New York City. The litigation settled for \$72.5 million, the then largest foreign derivatives settlement ever reached and one of the largest insurer-funded cash payments achieved in a U.S. derivatives lawsuit.

Some of Ms. Summers' antitrust experience includes:

- Representation of the exchange-based class in *In re LIBOR-Based Financial Instruments Antitrust Litigation*, an antitrust case alleging that defendant banks colluded to misreport and manipulate LIBOR. This litigation has already resulted in partial settlements totaling approximately \$187 million, which collectively represent the largest historical class-wide recovery for a "futures only" settlement class.
- Special fiduciary representation for the exchange-based class in *In re Foreign Exchange Benchmark Rates Antitrust Litigation* for a putative class of participants who traded futures and options in the foreign exchange market. This litigation has already resulted in partial settlements of more than \$2.3 billion.
- Representation in individual lawsuits against Citibank, JPMorgan, Goldman Sachs, and Barclays, alleging that the banks colluded to prevent a patented method for structuring airline special facility revenue bonds from entering the airline municipal bond market in violation of New York's Donnelly Act.
- Consulting and advisory counsel to Canadian lead counsel in an antitrust case against Microsoft. This litigation resulted in a settlement of \$395 million.

As a law clerk, Ms. Summers worked on a variety of matters, including *In re Citigroup Inc. Securities Litigation*, *In re Wachovia Corporation*, *In re Libor-Based Financial Instruments Antitrust Litigation*, *In re AT&T Wireless Tracking Stock Securities Litigation*, *Dandong v. Pinnacle Performance Limited*, and private antitrust proceedings against Microsoft in the United States and Canada.

Ms. Summers is admitted to the New York State Bar, U.S. District Court for the Southern and Eastern Districts of New York, U.S. District Court for the District of Colorado, U.S. Court of Appeals for the Second and Third Circuits. She graduated from Cornell University (B.S. *summa cum laude*, 2008), where she was ranked first in her major, Pace University School of Law (J.D. *summa cum laude*, 2012), where she was Salutatorian and Articles Editor for the Pace Law Review, and King's College, London (Postgraduate Diploma with Merit, EU Competition Law, 2019).



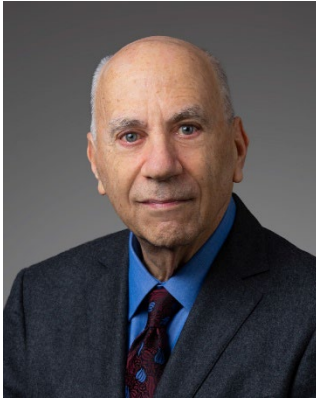
Karina Kosharskyy is Of Counsel to the firm. She is based in our New York office and focuses on securities and antitrust litigation. Ms. Kosharskyy joined the firm in 2005.

Ms. Kosharskyy is fluent in Russian.

Some of Ms. Kosharskyy's relevant work includes:

- Lead counsel for consumer classes in connection with antitrust proceedings against Microsoft in the United States and consulting and advisory counsel to Canadian lead counsel in Canada. These litigations have resulted in settlements totaling over \$1 billion for consumers in Canada, Florida, New York, Tennessee, West Virginia and Minnesota, where the litigation proceeded to trial.
- Special fiduciary representation for the exchange-based class in *In re Foreign Exchange Benchmark Rates Antitrust Litigation* for a putative class of participants who traded futures and options in the FX market. The case has already resulted in partial settlements of more than \$2.3 billion.
- Representation of the exchange-based class in *In re LIBOR-Based Financial Instruments Antitrust Litigation*, an antitrust case alleging that defendant banks colluded to misreport and manipulate LIBOR. This litigation has already resulted in partial settlements totaling approximately \$187 million, which collectively represent the largest historical class-wide recovery for a “futures only” settlement class.
- Representation of indirect purchasers in *In re Cathode Ray Tube (CRT) Antitrust Litigation*, a price fixing anti-trust case wherein it is alleged that defendant entities conspired to control prices of television and monitor components resulting in a settlement of \$576 million.

Ms. Kosharskyy is admitted to the New York and New Jersey State Bars, the U.S. District Courts for the Southern and Eastern Districts of New York, and the U.S. District Court for the District of New Jersey. Ms. Kosharskyy graduated from Boston University (B.A. 2000) and the New York Law School (J.D. 2007).



John Low-Beer is Of Counsel to the firm and focuses on whistleblower litigation.

Mr. Low-Beer has represented plaintiffs in class actions and whistleblower litigation including *Tyngsboro Sports II Solar, LLC v. Nat'l Grid USA Services Co.*, Case No. 1:22-cv-11791 (D. Mass.) (ongoing litigation challenging fees on independent solar generation), and *Anonymous, et ano. v. Moody's Corporation, et al.*, No. 103997/2012 (Sup. Ct. N.Y. Cty. and First Dept.) (successful claim re taxation of captive insurance company).

He is an Adjunct Professor at Cornell Law School and also has a separate *pro bono* and “low bono” practice, primarily representing community groups and civic organizations in land use cases including *Avella v. City of New York*, 29 N.Y.3d 967 (2017) (invalidating a plan to build a shopping mall on parkland in Queens), *Howard v. 1919 Bedford Realty, LLC*, Index No. 507391/2022 (upholding covenant protecting National Register property in Lefferts Manor, Brooklyn), and *Peyton v. New York City Board of Standards and Appeals*, 36 N.Y.3d 271 (2020) (4-3 decision reversing 1st Dept.’s holding that rooftop garden of a luxury building in Manhattan could not be counted as “open space” within the meaning of the Zoning Resolution).

Mr. Low-Beer was formerly a Senior Counsel in the Affirmative Litigation Division of the NYC Law Department, where he was lead attorney on complex and highly publicized matters, including litigation concerning City taxation of consular and U.N. mission staff housing, a successful challenge to New York State’s misallocation of \$750 million in federal stimulus funding, a lawsuit forcing the Governor to implement State takeover of \$2.5 billion in City debt, and cases against more than 40 pharmaceutical companies recovering \$240 million.

Mr. Low-Beer has a B.A. from Brown University, a Ph.D. from Harvard University, and a J.D. from Yale Law School. He clerked for Judge Leonard Garth on the U.S. Court of Appeals for the Third Circuit. Previous to that, he was Associate Professor at York College, CUNY, and Assistant Professor at Yale School of Management and Department of Sociology. He is the author of a book, Protest and Participation (Cambridge University Press 1978), a prize-winning note in the Yale L.J., “The Constitutional Imperative of Proportional Representation,” and numerous articles, including “Why Community Groups Can Never Win Against Developers,” NYLJ Sept. 19, 2019.



Alice McInerney is Of Counsel to the firm and practices out of our New York office. She concentrates on antitrust and consumer matters, and also handles securities class actions. Ms. McInerney joined the firm in 1995 and has over 30 years of experience as an attorney.

Prior to joining KM, Ms. McInerney was Chief of the Investor Protection Bureau and Deputy Chief of the Antitrust Bureau of the New York Attorney General's office. While there, she chaired the Enforcement Section of the North American Securities Administrators Association and also chaired the Multi-State Task Force on Investigations for the National Association of Attorneys General. Alice is also a member of the National Association of Public Pension Attorneys (NAPPA).

Some of Ms. McInerney's relevant work includes:

- Lead counsel for consumer classes in antitrust cases against Microsoft. These litigations resulted in settlements totaling over \$1 billion dollars for consumers in Florida, New York, Tennessee, West Virginia and Minnesota.
- Representation of a class of retailers in *In re Visa Check/MasterMoney Antitrust Litigation*, an antitrust case which resulted in a settlement of over \$3 billion for the class.
- Representation of public entities in connection with ongoing Medicaid fraud and False Claims Act litigations arising from health expenditures of these state and local governmental entities.
- Representation of California homeowners in litigation arising from mortgage repayment irregularities. This litigation resulted in settlements that afforded millions of California homeowners clear title to their property. The cases resulted in the notable decision *Bartold v. Glendale Federal Bank*.

Ms. McInerney is admitted to the New York State Bar, the U.S. Supreme Court, the U.S. Court of Appeals for the Second Circuit, and the U.S. District Courts for the Eastern, Northern, Southern, and Western Districts of New York. Ms. McInerney graduated from Smith College (B.A. 1970) and Hofstra School of Law (J.D. 1976).



Beverly Mirza is Of Counsel to the firm and practices out of our New York office, concentrating on antitrust and securities litigation.

Ms. Mirza joined the firm in 2004.

Some of Ms. Mirza's relevant experience includes:

- Representation of a class of consumers in connection with *In re Reformulated Gasoline (RFG) Antitrust and Patent Litigation and Related Actions*. This case involves Unocal's manipulation of the standard-setting process for low-emissions reformulated gasoline in California, which increased retail prices of reformulated gasoline. This litigation resulted in a \$48 million recovery for the class.
- Representation of the exchange-based class in *In re LIBOR-Based Financial Instruments Antitrust Litigation*, an antitrust case alleging that defendant banks colluded to misreport and manipulate LIBOR. This litigation has already resulted in partial settlements totaling approximately \$187 million, which collectively represent the largest historical class-wide recovery for a "futures only" settlement class.
- Representation, as one of the firms with primary responsibility for the case, of a class of purchasers of computers containing Intel's microprocessor chips in Coordination Proceedings Special Title, Intel x86 Microprocessor Cases.
- Representation, as executive committee member, of a class of retailers in *In re Chocolate Confectionary Antitrust Litigation*, alleging price fixing claims against a group of chocolate manufacturers in the United States and abroad.
- Representation of a class of sellers in *In re Ebay Seller Antitrust Litigation*, alleging monopolization claims against Ebay.
- Representation of an objector to the settlement in *Reynolds v. Beneficial National Bank* in the United States Northern District Court for the District of Illinois. Ms. Mirza and KM were lauded by the presiding judge for their "intelligence and hard work," and for obtaining "an excellent result for the class."

Ms. Mirza is admitted to the California State Bar and the U.S. District Courts for the Northern and Central Districts of California. She graduated from California State University of Los Angeles (B.S. *magna cum laude*, 2000) and California Western School of Law (J.D. 2004).



Sawa Nagano is Of Counsel to the firm. She focuses on the representation of clients in relation to price-fixing litigation under the Sherman Antitrust Act and other federal and state laws to recover overcharges caused by international price-fixing cartels. Ms. Nagano joined the firm in 2013.

Prior to joining KM, Ms. Nagano worked with the law firms of both Orrick, Herrington, and Sutcliffe LLP and Crowell and Morning LLP, where she assisted in the investigation of conspiracies to engage in price-fixing and anticompetitive practices by manufacturers and multinational conglomerates, and she represented cable operators on matters arising before the Federal Communications Commission as well as in their relations with local and state franchising authorities. She also worked for the New York bureau of a major Japanese television network. Additionally, she interned with the Office of Commissioner Furchtgott-Roth at the Federal Communications Commission and worked as a student counsel at the Art, Sports and Entertainment Law Clinic of the Dickinson School of Law of the Pennsylvania State University.

Some of Ms. Nagano's experience includes:

- Representation of a class of purchasers in *In re: Hard Disk Drive Suspension Assemblies Antitrust Litigation*, a case alleging that defendants fixed the prices of suspension assemblies (a critical component of hard disk drives) which artificially increased the prices of computers throughout the U.S.
- Representation of an end-user class of businesses and consumers in connection with *In re Cathode Ray Tube (CRT) Antitrust Litigation*. In this case, the manufacturers of cathode ray tubes conspired to fix, raise, maintain and/or stabilize prices. Because of Defendants' alleged unlawful conduct, Plaintiffs and other Class Members paid artificially inflated prices for CRT Products and have suffered financial harm.
- Court appointed Executive committee member and class counsel in *In re Digital Advertising Antitrust Litigation*, representing publishers alleging that Google monopolized and suppressed competition in online display advertising.
- Representation of a whistleblower who alleges that waste-to-energy plant operator Covanta violated environmental regulations by creating hazardous ash as a by-product of the burning of garbage from multiple Long Island towns in *State of New York v. Covanta Hempstead Company et al.* The case has been brought on behalf of New York State, certain local governments on Long Island, and the Long Island Power Authority (LIPA). Over the course of a decade, these local governments paid \$890 million to Covanta to take their communities' garbage in an environmentally safe way. As alleged, Covanta did not, in fact, abide by the necessary protocols to keep the ash that was dumped in the Brookhaven landfill from being hazardous.
- Obtained an \$8.5 million award – the largest-ever settlement in a declined New York State False Claims Act case – for a whistleblower in *Anonymous, et ano. v. Moody's Corporation, et al.*, a

groundbreaking case against Moody's and others under the New York State False Claims Act. The litigation brought to light a multi-year, multi-million-dollar tax fraud scheme executed by Moody's and its consultants wherein the company repeatedly underpaid city and state taxes by maintaining a sham insurance corporation as a subsidiary. The KM team was successful both before the trial court as well as on appeal before the New York City First Department.

- Representation of the exchange-based class in *In re LIBOR-Based Financial Instruments Antitrust Litigation*, an antitrust case alleging that defendant banks colluded to misreport and manipulate LIBOR. This litigation has already resulted in partial settlements totaling approximately \$187 million, which collectively represent the largest historical class-wide recovery for a “futures only” settlement class.
- Special fiduciary representation for the exchange-based class in *In re Foreign Exchange Benchmark Rates Antitrust Litigation* for a putative class of participants who traded futures and options in the FX market. The case has already resulted in partial settlements of more than \$2.3 billion.

Ms. Nagano graduated from Sophia University, Tokyo, Japan (B.A. 1989), New York University (M.A. 1992), and The Dickinson School of Law of the Pennsylvania State University (J.D. 2000).



TL Popejoy is Of Counsel to the firm and practices out of our New York office. He focuses on antitrust, whistleblower, derivative, and securities litigation involving complex financial products. Mr. Popejoy joined the firm in 2020.

Prior to joining KM, Mr. Popejoy practiced as an attorney at Quinn Emanuel Urquhart & Sullivan, LLP and a startup litigation boutique, where he worked on high-profile cases involving complex financial products in large antitrust class actions, contract disputes, and numerous FINRA and SEC investigations.

He has also represented pro bono low-income tenants in New York City, as well as New York City public school students in suspension hearings.

Before law school, Mr. Popejoy was a Director in algorithmic trading at Credit Suisse and RBC Capital Markets. He is co-inventor of a patent with the founders of the IEX stock exchange that protects institutional investors from high frequency trading arbitrage, and he has argued successfully before the U.S. Patent and Trademark Office.

Mr. Popejoy is the author of *The Invention of Potential Life: The Police Power over Women in Reproductive Rights Jurisprudence*, a law review article published during Mr. Popejoy's time in law school by the *Women's Rights Law Reporter*, a review founded by the late U.S. Supreme Court Justice Ruth Bader Ginsburg. See 37 *Women's Rights Law Reporter* 83 (Fall 2015).

Some of Mr. Popejoy's experience includes:

- Lead counsel on behalf of the New Mexico Attorney General's Office and the New Mexico State Investment Council in *In re Credit Default Swaps Auctions Litigation* alleging that leading credit default swap (CDS) dealers took part in a more than decade-long, multibillion-dollar scheme to manipulate the benchmark prices used to value credit default swap contracts at settlement.

Some of Mr. Popejoy's experience at his prior firms includes:

- *In re European Government Bonds Antitrust Litigation; In re Chicago Board Options Exchange Volatility Index Manipulation Antitrust Litigation*, a class action concerning settlement of the VIX "fear index;"
- *Iowa Public Employees' Retirement System v. Bank of America Corporation*, a class action concerning collusive behavior in the stock loan industry;
- *In re Interest Rate Swaps Antitrust Litigation; Alaska Electrical Pension Fund v. Bank Of America Corporation*, a class action concerning price manipulation of the ISDAfix benchmark;
- *In re Treasury Securities Auction Antitrust Litigation; Scott v. AT&T Inc.*, involving the sale of customer "geolocation" information; and
- *Williams v. AT&T Mobility LLC*, representing a victim of "SIM swapping" in a case involving cryptocurrency.

Mr. Popejoy is admitted to the New York State Bar and the U.S. District Court for the Southern and Eastern Districts of New York. He graduated from Amherst College (B.A. *summa cum laude*), Johns Hopkins University (M.A. Ph.D.), and City University of New York School of Law (J.D.).



Ira M. Press is Of Counsel to our New York office. Mr. Press's practice focuses on securities and consumer litigation. He joined the firm in 1993, and currently leads the firm's institutional investor monitoring program. In this capacity, he has provided advisory services to numerous government pension funds and other institutional investors. He has authored articles on securities law topics and has lectured to audiences of attorneys, experts and institutional investor fiduciaries.

Mr. Press's advocacy has resulted in several landmark appellate decisions, including *Rothman v. Gregor*, the first ever appellate reversal of a lower court's dismissal of a securities class action suit pursuant to the 1995 Private Securities Litigation Reform Act.

Prior to joining KM, Mr. Press practiced at Warshaw Burstein Cohen Schlesinger & Kuh, LLP, where he focused on commercial litigation.

Some of Mr. Press's relevant experience includes:

- Lead counsel representing Wespath, the General Board of Pension and Health Benefits of the United Methodist Church, in *Doyle v. Reata Pharmaceuticals*, a securities class action alleging that Reata made false and/or misleading statements — including in connection with its secondary public stock offerings — concerning, inter alia, the FDA guidance regarding the design of the clinical trial (CARDINAL) for Reata's drug candidate, bardoxolone methyl. When the FDA revealed serious concerns it had previously raised to Reata, the share price declined materially. The case has resulted in a \$45 million settlement.
- Co-lead counsel in *Kokareva v. Bristow Group Inc.*, a securities class action alleging that an aviation services provider focused on the oil and gas sector, made materially false and misleading statements about its internal controls relating to covenants in the company's secured financing agreements. The case resulted in a \$6.25 million settlement that has received final approval.
- Counsel in *Maverick Neutral Levered Fund, Ltd. v. Valeant Pharmaceuticals International, Inc.*, alleging that Valeant materially misrepresented its business model, touting artificial and unsustainable growth that was enabled by the company's deceptive and illegal conduct.
- Representation of the NY State Common Retirement Fund as lead plaintiff in *In re National City Corporation Securities, Derivative & ERISA Litigation*, a securities class action arising from National City's alleged misrepresentations regarding exposure to subprime mortgage related losses. During the class period, the company's stock fell from approximately \$37 to \$6. This case resulted a settlement of \$168 million.
- Representation of the New York City Pension Funds as lead plaintiff in a class action against Wachovia Corporation arising from Wachovia's alleged misrepresentations of their exposure to the subprime market. This case resulted in a settlement of \$75 million.
- Lead counsel in *In re Citigroup Inc Securities Litigation*, a class action arising out of Citigroup's alleged misrepresentations regarding their exposure to losses associated with numerous collateralized debt obligations. This case settled for \$590 million.

Mr. Press is admitted to the New York State Bar, U.S. District Courts for the Eastern, Northern and Southern Districts of New York, U.S. District Court for the District of Colorado, and the U.S. Courts of Appeals for the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Circuits. He graduated from Yeshiva University (B.A. *magna cum laude*, 1986) and New York University Law School (J.D. 1989).



Henry Telias is Of Counsel to the firm and practices out of our New York office, specializing in accountants' liability and securities litigation. Mr. Telias joined the firm in 1997.

In addition to his legal work, Mr. Telias is also the firm's chief forensic accountant. He holds the CFF credential (Certified in Financial Forensics) and the PFS credential (Personal Financial Specialist) from the American Institute of Certified Public Accountants. He received his CPA license from New York State in 1982. Prior to practicing as an attorney, he practiced exclusively as a certified public accountant from 1982 to 1989, including 3 years in the audit and tax departments of Deloitte Haskins & Sells' New York office.

Some of Mr. Telias' relevant experience includes:

- Lead counsel in *In re Citigroup Inc. Securities Litigation*, a class action arising out of Citigroup's alleged misrepresentations regarding their exposure to losses associated with numerous collateralized debt obligations. This case recently settled for \$590 million.
- Representation of the NY State Common Retirement Fund as lead plaintiff in *In re National City Corporation Securities, Derivative & ERISA Litigation*, a securities class action arising from National City's alleged misrepresentations regarding exposure to subprime mortgage related losses. This case resulted in a settlement of \$168 million.
- Representation of the New York City Pension Funds as lead plaintiff in a class action against Wachovia Corporation arising from Wachovia's alleged misrepresentations of their exposure to the subprime market. This case resulted in a settlement of \$75 million.
- Lead counsel for a certified class of purchasers of PRIDES securities in connection with the Cendant Corporation accounting fraud in *In re Cendant Corporation PRIDES Litigation*. This litigation resulted in an approximate \$350 million settlement for the certified class – an unprecedented 100 percent recovery.

Mr. Telias is admitted to the New York State Bar and the U.S. District Court for the Southern District of New York. He graduated from Brooklyn College (B.S. *cum laude*, 1980) and Hofstra University School of Law (J.D. 1989).



Edward M. Varga, III is Of Counsel to the firm and practices out of our New York office. Mr. Varga joined the firm in 2006 and concentrates on securities and antitrust litigation.

Mr. Varga's relevant experience includes:

- Lead counsel in *In re Citigroup Inc Securities Litigation*, a class action arising out of Citigroup's alleged misrepresentations regarding their exposure to losses associated with numerous collateralized debt obligations. This case settled for \$590 million.
- Representation, as counsel for lead plaintiff and other shareholders, in a derivative action brought against members of the Board of Directors and senior executives of Pfizer, Inc. Plaintiffs made a breach of fiduciary duty claim because defendants allegedly allowed unlawful promotion of drugs to continue even after receiving numerous "red flags" that the improper drug marketing was systemic. Pfizer agreed to pay a proposed settlement of \$75 million and to make groundbreaking changes to the Board's oversight of regulatory matters.
- Lead counsel for a group of Singapore-based investors in a securities class action against Morgan Stanley pertaining to notes issued by Cayman Islands-registered Pinnacle Performance Ltd. Plaintiffs allege that Morgan Stanley routed Pinnacle investors' principal into synthetic collateralized debt obligations (CDOs) that it built to fail and then bet against. As the CDOs failed by design, plaintiffs' principal was swapped to Morgan Stanley, enriching Morgan Stanley while rendering the Pinnacle Notes an all-but-total loss. This case settled for \$20 million.
- Representation of companies that offered IPO securities in antitrust litigation against the 27 largest investment banks in the United States. Plaintiffs allege that the banks conspired to price fix underwriting fees in the mid-sized IPO market.
- Representation of the NY State Common Retirement Fund as lead plaintiff in *In re National City Corporation Securities, Derivative & ERISA Litigation*, a securities class action arising from National City's alleged misrepresentations regarding exposure to subprime mortgage related losses. This case settled for \$168 million.

Mr. Varga is admitted to the New York State Bar. He graduated from Cornell University (B.S. 2000) and New York University Law School (J.D. 2006).



Sarah Flohr is an associate practicing out of our New York office where she focuses on antitrust, consumer fraud, and securities fraud litigation. Ms. Flohr also works with attorneys in our Chicago office representing clients in Illinois courts.

Ms. Flohr has extensive experience in all stages of litigation, including drafting motions and pleadings, discovery requests, arguing motions, conducting trials, negotiating settlements, and taking fact and expert depositions. Prior to joining KM, she worked as an associate in Chicago practicing in mass tort litigation.

During this time, she played an integral role on numerous teams representing Fortune 500 companies throughout the country. Ms. Flohr drafted and won two motions to exclude experts, resulting in summary judgment being granted on all counts brought against her firm's client in a multi-million-dollar product liability and breach of contract case, which was upheld on appeal by the United States Circuit Court of Appeals for the Second Circuit.

Some of Ms. Flohr's work includes:

- Lead counsel to a class of small package delivery companies in *Fli-Lo Falcon Llc v. Amazon.Com Inc.*, et al., who were defrauded by Amazon under its Delivery Service Partners (DSP) Program. The case alleges that the DSP program represents an unlawful scheme to shield Amazon from its responsibilities to DSPs, their drivers, and the public; minimize the risk of unionization among drivers; foist costs that Amazon would otherwise bear as an employer of drivers onto DSPs despite the fact that the drivers are functionally Amazon employees; and limit Amazon's delivery costs by imposing policies and rules intended to prevent DSPs from achieving performance-related payments.
- Co-lead counsel in *Macovski v. Groupon Inc. et al.*, a securities class action alleging that the company made materially false and misleading statements and failed to disclose to investors its financial health before ending its sale of physical goods and announcing the departure of two top executives. The case resulted in a \$13.5 million settlement that has received final approval.
- Lead counsel representing Wespeth, the General Board of Pension and Health Benefits of the United Methodist Church, in *Doyle v. Reata Pharmaceuticals*, a securities class action alleging that Reata made false and/or misleading statements — including in connection with its secondary public stock offerings — concerning, inter alia, the FDA guidance regarding the design of the clinical trial (CARDINAL) for Reata's drug candidate, bardoxolone methyl. When the FDA revealed serious concerns it had previously raised to Reata, the share price declined materially. The case has resulted in a \$45 million settlement.
- Co-lead counsel in *Apple Gift Card Litigation*, representing a class of consumers who were victims of gift-card scams and from whom Apple allegedly withholds funds.
- Counsel in *Maverick Neutral Levered Fund, Ltd. v. Valeant Pharmaceuticals International, Inc.*, alleging that Valeant materially misrepresented its business model, touting artificial and

unsustainable growth that was enabled by the company's deceptive and illegal conduct.

Ms. Flohr is admitted to the New York State Bar, Illinois State Bar, Missouri State Bar, and the U.S. District Courts for the Eastern and Southern Districts of New York and the Northern District of Illinois. She graduated from Indiana University (B.A. 2008) University of Illinois Chicago School of Law (J.D. 2014).



Faisal Haider is an associate practicing out of our New York office. Prior to joining KM, Mr. Haider served as a Pro Bono Law Clerk to the Honorable Zahid N. Quraishi of the U.S. District Court for the District of New Jersey. During law school, Mr. Haider worked as a Summer Honors Program legal intern at the U.S. Securities and Exchange Commission's Division of Investment Management and as a Research Assistant to Professor Morgan Ricks of Vanderbilt University Law School.

Some of Mr. Haider's work includes:

- Representation of a family office as plaintiff in *The Stone Family Trust v. Credit Suisse AG, et al.*, an opt-out lawsuit from *Chahal v. Credit Suisse Grp. AG, et al.* The cases arise from the collapse, on February 5, 2018, of XIV, an Exchange Traded note issued and underwritten by Credit Suisse designed to replicate the inverse of the daily performance of the S&P 500 VIX Short-Term Futures Index. Defendants had failed to disclose material risks to investing in XIV in its offering documents or public statements, and on February 5, 2018, XIV lost 96% of its value, or approximately \$1.56 billion.
- *Dufoe v. DraftKings Inc., et al*, 1:23-cv-10524 (D. Mass.). Counsel to a class of investors that purchased non-fungible tokens (NFTs) from DraftKings Inc., which operates as a daily fantasy sports contest and sports betting company. The case alleges that DraftKings sold unregistered securities and ensured that money stayed on DraftKings' private and exclusively controlled marketplace, propping up the market for an overall valuation of DraftKings' NFTs and significantly harming investors.
- Representation of a putative class of exchange-based investors in *Dennis v. The Andersons, Inc. et al.*, alleging monopolization and manipulation of Chicago Board of Trade soft red winter wheat futures contracts in violation of federal antitrust and commodity exchange laws.
- Court appointed Executive committee member and class counsel in *In re Digital Advertising Antitrust Litigation*, representing publishers alleging that Google monopolized and suppressed competition in online display advertising.
- Lead counsel to a class of small package delivery companies in *Fli-Lo Falcon Llc v. Amazon.Com Inc., et al.*, who were defrauded by Amazon under its Delivery Service Partners (DSP) Program. The case alleges that the DSP program represents an unlawful scheme to shield

Amazon from its responsibilities to DSPs, their drivers, and the public; minimize the risk of unionization among drivers; foist costs that Amazon would otherwise bear as an employer of drivers onto DSPs despite the fact that the drivers are functionally Amazon employees; and limit Amazon's delivery costs by imposing policies and rules intended to prevent DSPs from achieving performance-related payments.

- Lead counsel representing Wespath, the General Board of Pension and Health Benefits of the United Methodist Church, in *Doyle v. Reata Pharmaceuticals*, a securities class action alleging that Reata made false and/or misleading statements — including in connection with its secondary public stock offerings — concerning, inter alia, the FDA guidance regarding the design of the clinical trial (CARDINAL) for Reata's drug candidate, bardoxolone methyl. When the FDA revealed serious concerns it had previously raised to Reata, the share price declined materially. The case has resulted in a \$45 million settlement.

Mr. Haider is admitted to the New Jersey State Bar. He graduated from New York University (B.A. 2016), Vanderbilt University Law School (J.D. 2021), where he served as the Executive Development Editor of the Vanderbilt Journal of Transnational Law, and from Vanderbilt University Owen Graduate School of Management (M.S. 2021). He additionally is an author of *Chancery Court Refuses to Dismiss Action to Enforce Post-Merger Covenant Due to Ambiguities in Merger Agreement*, 73 Vand. L. Rev. En Banc 27 (2020). Mr. Haider joined the firm in 2022.



James Isacks is a law clerk practicing out of our New York office. His admission is pending before the New York State Bar. Upon admission to the bar, Mr. Isacks will be an associate.

Prior to joining KM, Mr. Isacks was a student attorney at the Washington University School of Law's First Amendment Clinic, where he researched and wrote portions of briefs filed in the Federal District Court and Eighth Circuit Court of Appeals. Additionally, he served as a Judicial Extern at the Equal Employment Opportunity Commission while in law school.

Some of Mr. Isacks' work includes:

- Court appointed Executive Committee member and class counsel representing cattle producers and cattle futures traders in *In re Cattle Antitrust Litigation*. The suit alleges that the "Big 4" meatpacking firms conspired to suppress prices for fed cattle and manipulated live cattle futures traded on the Chicago Mercantile Exchange.
- Court appointed Executive committee member and class counsel in *In re Digital Advertising Antitrust Litigation*, representing publishers alleging that Google monopolized and suppressed competition in online display advertising.
- Counsel in *In re Deutsche Bank Spoofing Litigation* on behalf of a putative class of investors

alleging manipulation through “spoofing” of U.S. Treasury futures traded on the Chicago Board of Trade and Eurodollar futures traded on the Chicago Mercantile Exchange.

- Representation of a putative class of exchange-based investors in *Dennis v. The Andersons, Inc. et al.*, alleging monopolization and manipulation of Chicago Board of Trade soft red winter wheat futures contracts in violation of federal antitrust and commodity exchange laws.

Mr. Isacks graduated from Louisiana State University, (B.A. 2019) and Washington University in St. Louis School of Law (J.D. 2022). During law school, he served as the Executive Notes Editor of Washington University's Journal of Law and Policy and authored Deepwater Horizon JO Years Later: Regulations, Rollbacks, and Where We Go from Here, 69 Wash. U. J. L. & POL'Y 1 (2022). Mr. Isacks joined the firm in 2022.



Rohan Kulkarni is an associate practicing out of our New York office. During law school, Mr. Kulkarni worked as a law clerk for Barrows Levy PLLC and Essex-Newark Legal Services. As a law clerk, he assisted clients in all aspects of commercial litigation, drafted pleadings filed in federal and state courts, and conducted legal research.

Some of Mr. Kulkarni's work includes:

- Lead counsel representing Wespath, the General Board of Pension and Health Benefits of the United Methodist Church, in *Doyle v. Reata Pharmaceuticals*, a securities class action alleging that Reata made false and/or misleading statements — including in connection with its secondary public stock offerings — concerning, inter alia, the FDA guidance regarding the design of the clinical trial (CARDINAL) for Reata's drug candidate, bardoxolone methyl. When the FDA revealed serious concerns it had previously raised to Reata, the share price declined materially. The case has resulted in a \$45 million settlement.
- Court appointed Executive committee member and class counsel in *In re Digital Advertising Antitrust Litigation*, representing publishers alleging that Google monopolized and suppressed competition in online display advertising.

Mr. Kulkarni is also working on confidential ongoing whistleblower matters:

- Securities/Cryptocurrencies
 - market manipulation
 - money laundering
 - insider trading

Mr. Kulkarni is admitted to the New York State Bar. He graduated from Rutgers University (B.S. 2018), the Maurice A. Deane School of Law at Hofstra University (J.D. 2022), and Frank G. Zarb School of

Business at Hofstra University (M.B.A. 2022).



Lauren Molinaro is an associate practicing out of our New York office. Prior to joining KM, Ms. Molinaro was an associate at a major New York plaintiffs' firm, where her practice focused on securities fraud litigation.

Some of Ms. Molinaro's work includes:

- Representation of persons and entities that purchased or otherwise acquired *Lordstown Motors Corp. securities in Lim v. Hightower et al.* The lawsuit alleges that, throughout the Class Period, Lordstown represented publicly that it had been working collaboratively with Hon Hai Technology Group ("Foxconn") in the context of the companies' joint venture. However, Lordstown revealed in a court filing that, contrary to Lordstown's Class Period representations, the Company's vital partnership with Foxconn had long been in jeopardy and Foxconn's conduct toward Lordstown had been anything but collaborative.

Ms. Molinaro is admitted to the New York State Bar and the U.S. District Courts for the Southern and Eastern Districts of New York. She graduated from the University of Wisconsin-Madison (B.A. 2015) and from Fordham University School of Law (J.D. 2021) where she was a staff member of the International Law Journal and a recipient of the Archibald R. Murray Public Service Award. During law school, Ms. Molinaro was a student attorney for the Corporate Social Responsibility Clinic at Fordham University School of Law, where she researched and reported human trafficking in global food supply chains to an international NGO. Additionally, she served as a Judicial Intern for a judge in the New York State Supreme Court. Ms. Molinaro joined the firm in 2023.



Belden Nago is an associate based in our New York office. Mr. Nago joined the firm in 2011 and focuses on securities litigation.

Some of Mr. Nago's relevant experience includes:

- Lead counsel representing Wespath, the General Board of Pension and Health Benefits of the United Methodist Church, in *Doyle v. Reata Pharmaceuticals*, a securities class action alleging that Reata made false and/or misleading statements — including in connection with its secondary public stock offerings — concerning, inter alia, the FDA guidance regarding the design of the clinical trial (CARDINAL) for Reata's drug candidate, bardoxolone methyl. When the FDA revealed serious concerns it had previously raised to Reata, the share price declined materially. This case has resulted in a \$45 million settlement.

- Co-lead counsel in Apple Gift Card Litigation, representing a class of consumers who were victims of gift-card scams and from whom Apple allegedly withholds funds.
- Counsel in *In re Deutsche Bank Spoofing Litigation* on behalf of a putative class of investors alleging manipulation through “spoofing” of U.S. Treasury futures traded on the Chicago Board of Trade and Eurodollar futures traded on the Chicago Mercantile Exchange.
- Representation of a putative class of exchange-based investors in *Dennis v. The Andersons, Inc. et al.*, alleging monopolization and manipulation of Chicago Board of Trade soft red winter wheat futures contracts in violation of federal antitrust and commodity exchange laws.
- Representation in a shareholder derivative lawsuit against officers and directors of HSBC Holdings and its subsidiaries, alleging that HSBC ran money laundering operations out of New York City. The litigation settled for \$72.5 million, the then largest foreign derivatives settlement ever reached and one of the largest insurer-funded cash payments achieved in a U.S. derivatives lawsuit.
- Representation of a family office as plaintiff in *The Stone Family Trust v. Credit Suisse AG, et al.*, an opt-out lawsuit from *Chahal v. Credit Suisse Grp. AG, et al.* The cases arise from the collapse, on February 5, 2018, of XIV, an Exchange Traded note issued and underwritten by Credit Suisse designed to replicate the inverse of the daily performance of the S&P 500 VIX Short-Term Futures Index. Defendants had failed to disclose material risks to investing in XIV in its offering documents or public statements, and on February 5, 2018, XIV lost 96% of its value, or approximately \$1.56 billion.
- Co-lead counsel on behalf of a putative class of investors in *In re Natwest Treasury Futures Spoofing Litigation*, a trading markets manipulation case alleging manipulation through “spoofing” of U.S. Treasury futures. This matter is important in that it seeks to curb manipulative and abusive practices by dominant financial institutions and make Treasury futures markets more efficient.
- Court appointed Executive Committee member and class counsel representing cattle producers and cattle futures traders in *In re Cattle Antitrust Litigation*. The suit alleges that the “Big 4” meatpacking firms conspired to suppress prices for fed cattle and manipulated live cattle futures traded on the Chicago Mercantile Exchange.
- Co-lead counsel in *Macovski v. Groupon Inc. et al.*, a securities class action alleging that the company made materially false and misleading statements and failed to disclose to investors its financial health before ending its sale of physical goods and announcing the departure of two top executives. The case resulted in a \$13.5 million settlement that has received final approval.
- Representation of an ad hoc group of shareholders in *In re: Intelsat S.A., et al.*, the Intelsat bankruptcy proceedings, successfully obtaining warrants for the shareholders in a multi-party trial before the bankruptcy court in Virginia.
- Lead counsel in *In re Citigroup Inc Securities Litigation*, a class action arising out of Citigroup’s alleged misrepresentations regarding their exposure to losses associated with

numerous collateralized debt obligations. This case settled for \$590 million.

- Selected by the Court as co-lead counsel in *In re JPMorgan Treasury Futures Spoofing Litigation*, alleging that defendants manipulated U.S. Treasury futures for more than a decade and that this conduct contributed to the bank's recent \$920 million settlement with the DOJ, CFTC, and SEC. The case has a putative settlement of \$15.7 million.
- Lead counsel on behalf of the New Mexico Attorney General's Office and the New Mexico State Investment Council in *In re Credit Default Swaps Auctions Litigation* alleging that leading credit default swap (CDS) dealers took part in a more than decade-long, multibillion-dollar scheme to manipulate the benchmark prices used to value credit default swap contracts at settlement.
- Counsel for a plaintiff on behalf of gold purchasers in *In re Commodity Exchange, Inc., Gold Futures and Options Trading Litigation*, a market manipulation case. The case resulted in settlements of \$152 million.
- Special fiduciary representation for the exchange-based class in *In re Foreign Exchange Benchmark Rates Antitrust Litigation* for a putative class of participants who traded futures and options in the FX market. The case has already resulted in partial settlements of more than \$2.3 billion.
- Representation of municipal issuers, including governmental entities and hospital systems, in FINRA arbitrations alleging misrepresentations by underwriters in connection with Auction Rate Securities issuances.
- Representation of the exchange-based class in *In re LIBOR-Based Financial Instruments Antitrust Litigation*, an antitrust case alleging that defendant banks colluded to misreport and manipulate LIBOR. This litigation has already resulted in partial settlements totaling approximately \$187 million, which collectively represent the largest historical class-wide recovery for a "futures only" settlement class.
- Representation of a whistleblower in *Anonymous, et ano. v. Moody's Corporation, et al.*, No. 103997/2012 (Sup. Ct. N.Y. Cty. and First Dept.), alleging millions of dollars of tax fraud using a sham captive insurance company for over a decade regarding domestic and international transactions. The litigation was settled for \$8.5 million.
- Representation of the proposed class of investors in *Shah v. Zimmer Biomet Holdings*, a securities class action alleging that a medical device company did not disclose systemic quality issues at its manufacturing facility.

Prior to joining KM, Mr. Nago was an associate in the Structured Finance department at Orrick, Herrington & Sutcliffe LLP. He is admitted to the New York State Bar and the U.S. Patent and Trademark Office. Mr. Nago graduated from Northwestern University (B.S. 1997), the Massachusetts Institute of Technology (M.Eng., 1998), and Columbia Law School (J.D. 2003).



Marko Radisavljevic is an associate practicing out of our California office. Mr. Radisavljevic joined the firm in 2016 and concentrates on class action, consumer fraud, and antitrust matters.

Some of Mr. Radisavljevic's recent work includes:

- First-chaired numerous arbitration hearings on behalf of employees of a nationwide fast casual chain who were subject to a mandatory arbitration provision. Relying upon JAMS Employment Arbitration Minimum Standards, Mr. Radisavljevic convinced many arbitrators to order broad e-discovery concerning the respondent's practices despite the relatively low-dollar value of the individual proceedings.
- Representation of the exchange-based class in *In re LIBOR-Based Financial Instruments Antitrust Litigation*, an antitrust case alleging that defendant banks colluded to misreport and manipulate LIBOR. This litigation has already resulted in partial settlements totaling approximately \$187 million, which collectively represent the largest historical class-wide recovery for a "futures only" settlement class.
- Special fiduciary representation for the exchange-based class in *In re Foreign Exchange Benchmark Rates Antitrust Litigation* for a putative class of participants who traded futures and options in the FX market. The case has already resulted in partial settlements of more than \$2.3 billion.
- *In re Effexor XR Antitrust Litigation* for a putative class of direct purchasers of brand name and generic equivalents of extended-release venlafaxine hydrochloride capsules against drug manufacturers. Among the claims, defendants are alleged to have delayed market entry of generic versions and entered reverse payment settlements.

Mr. Radisavljevic has experience in all stages of litigation, including drafting pleadings and motions, discovery requests, working with experts, negotiating settlements, and both taking and defending fact and expert depositions. In addition to his class cases, Mr. Radisavljevic has worked with Casa Cornelia since 2019. He has assisted in helping three separate refugees obtain asylum after direct examinations in contested administrative proceedings.

Mr. Radisavljevic is fluent in Serbian and many former Yugoslavian dialects.

Mr. Radisavljevic is admitted to the California State Bar. He graduated from the University of San Diego (B.A. Biology with minors in Chemistry and Philosophy, 2005) and the California Western School of Law (J.D. 2015).



Lauren Wands is an associate practicing out of our New York office. Prior to joining KM, Ms. Wands was an associate at two large international law firms in New York, where she represented clients in federal securities fraud class action litigation, SEC and other regulatory inquiries, and internal investigations. She has co-authored several amicus briefs submitted to the U.S. Supreme Court, including amicus briefs in support of Congress in the consolidated cases *Trump v. Mazars USA, LLP* and *Trump v. Deutsche Bank AG*, and in support of the U.S. *Department of Justice in United States v. Texas*.

Ms. Wands is admitted to the New York State Bar and the District of Columbia Bar. She graduated from the University of Washington (B.A. 2012) and Georgetown University Law Center (J.D., 2018), where she served as the Symposium & Communications Editor for The Georgetown Law Journal. During law school, Ms. Wands served as a law clerk for Senator Dianne Feinstein on the U.S. Senate Committee on the Judiciary. She also held an externship in the Criminal Division of the U.S. Attorney's Office for the Central District of California. Ms. Wands joined the firm in 2023.



Kelsey Jack is a staff attorney practicing out of our New York office. Prior to joining KM, Mr. Jack developed extensive experience in antitrust, consumer and data protection, and securities litigation working with firms including Lief Cabraser Heimann & Bernstein, LLP and Bleichmar Fonti & Auld LLP.

Mr. Jack is a Certified Information Privacy Professional (CIPP/US) and was a member of the American Bar Association's (SIL) Privacy, Cybersecurity & Digital Rights Committee.

Mr. Jack participated in the Sponsor for Educational Opportunity (SEO) career program for investment banking before attending law school. He currently serves as a volunteer youth sports coach and mentor in his local community.

Mr. Jack is admitted to the New York State Bar and the U.S. District Courts for the Southern and Eastern Districts of New York. He graduated from Baruch College, CUNY (B.B.A. magna cum laude, 2002) and from Georgetown University Law Center (J.D. 2007), where he was a member of the Georgetown Journal of International Law and earned a Certificate in Refugee and Humanitarian Affairs.



Cynthia Markham is a staff attorney practicing out of our New York office. Prior to joining KM in 2023, Ms. Markham was a staff attorney at Labaton Sucharow and Bleichmar Fonti & Auld, LLP, where she focused on complex commercial and securities matters. Ms. Markham was a member of the teams that successfully prosecuted and resolved cases against Intuitive Surgical, Inc., Teva Pharmaceutical Industries Ltd., and Granite Construction, Inc. She was also involved in the *In re: Facebook, Inc. Consumer Privacy User Profile* litigation.

Some of Ms. Markham's work includes:

- Court appointed Executive committee member and class counsel in *In re Digital Advertising Antitrust Litigation*, representing publishers alleging that Google monopolized and suppressed competition in online display advertising.
- Lead counsel representing Wespeth, the General Board of Pension and Health Benefits of the United Methodist Church, in *Doyle v. Reata Pharmaceuticals*, a securities class action alleging that Reata made false and/or misleading statements — including in connection with its secondary public stock offerings — concerning, inter alia, the FDA guidance regarding the design of the clinical trial (CARDINAL) for Reata's drug candidate, bardoxolone methyl. When the FDA revealed serious concerns it had previously raised to Reata, the share price declined materially. This case has resulted in a \$45 million settlement.

Ms. Markham is admitted to the New York State Bar. She graduated from John Jay College of Criminal Justice (B.A. 2008) and Rutgers Law School (J.D. 2012).



Nodira Rakhmatkarieva is a staff attorney practicing out of our New York office. Prior to joining KM, Ms. Rakhmatkarieva was a staff attorney at Walden, Macht and Haran, LLP, where she was part of the teams working on DOJ and DEA investigation of a pharmaceutical company in connection with the opioid crisis and a financial institution's internal compliance investigation. Ms. Rakhmatkarieva has extensive experience in the electronic discovery of complex civil litigations, including high profile financial, pharmaceutical and RMBS matters as well as SEC and FTC investigations.

Ms. Rakhmatkarieva is fluent in Russian and currently studies French.

Some of Ms. Rakhmatkarieva's work includes:

- Court appointed Executive committee member and class counsel in *In re Digital Advertising Antitrust Litigation*, representing publishers alleging that Google monopolized and suppressed competition in online display advertising.

- Lead counsel on behalf of the New Mexico Attorney General's Office and the New Mexico State Investment Council in *In re Credit Default Swaps Auctions Litigation* alleging that leading credit default swap (CDS) dealers took part in a more than decade-long, multibillion-dollar scheme to manipulate the benchmark prices used to value credit default swap contracts at settlement.

Ms. Rakhmatkarieva is admitted to the New York State Bar and the New Jersey State Bar. She graduated from Rutgers University (B.A. 2001) and from New York Law School (J.D. 2004).

Client & Adversary Recognition

KM received the highest available commendations from the City of New York four years in a row for its work on the AWP Litigation. In each of those four years, KM's efforts on the City's behalf received the overall rating of "excellent". The City elaborated, "*Kirby did a truly excellent job and the results reflect that.*"

**Plaintiff / client,
In re Pharmaceutical Industry Average Wholesale Price Litigation**

"The case has been in front of the Supreme Court of the United States once, and in front of the Ninth Circuit no fewer than three times. Throughout, [KM] has . . . brought a considerable degree of success . . . and thwarted attempts by other counsel who sought to settle . . . and destroy a potential billion dollars of class rights."

**Plaintiff / client,
Epstein v. MCA, Inc.**

"[KM] represented us diligently and successfully. Throughout [KM's] representation of our firm, [KM's] commitment and attention to client concerns were unimpeachable."

**European institutional defendant/client
involved in a multi-million dollar NASO arbitration**

"Against long odds, [KM] was able to obtain a jury verdict against one of the larger, more prestigious New York law firms."

**Plaintiff / client,
Vladimir v. U.S. Banknote Corporation**

"[KM] represented our investors with probity, skill, and diligence. There is too much money involved in these situations to leave selection of class counsel to strangers or even to other institutions whose interests may not coincide."

**Plaintiff / institutional client,
In re Cendant Corporation PRIDES Litigation**

Notables

The firm has repeatedly demonstrated its ability in the field of securities, antitrust, commodities, structured finance, whistleblower, health care, consumer, and other fraud litigation, and our success has been widely recognized. For example:

CFTC Whistleblower Program award of nearly \$200 million to whistleblower client in connection with recoveries from global banks that manipulated benchmark rates.

State of NY ex rel. Tooley, LLC v. Sandell, et al., No. 101494/2018. Whistleblower client received award of 21% of \$105 million recovery.

Michael Mason-Mahon v. Douglas J. Flint et al., Index No. 602052/2014 (Sup. Ct. Nassau Cty.). Representation in a shareholder derivative lawsuit against officers and directors of HSBC Holdings and its subsidiaries. \$72.5 million settlement.

In re Bristow Group Inc. Securities Litigation, No. 19-cv-00509 (S.D.Tex.2019). Co-lead counsel. \$6.25 million settlement.

Anonymous v. Anonymous, Index No. 103997/2012 (Sup. Ct., N.Y. Cty. 2019). Representation of whistleblower. Client received award of 30% of \$8.5 million recovery.

Sullivan v. Barclays PLC, No. 13-cv-02811 (S.D.N.Y.). Class counsel. This case has already resulted in partial settlements of more than \$300 million.

In re Foreign Exchange Benchmark Rates Antitrust Litigation, No. 13-cv-07789 (S.D.N.Y.). Special fiduciary representation for the exchange-based class. This case has already resulted in partial settlements of over \$2.3 billion.

In re Cathode Ray Tube (CRT) Antitrust Litigation, No. MDL No. 1917 (N.D. Cal. 2019). Representation of indirect purchasers. \$576 million settlement.

State of New York ex rel. Choe v. Spa Castle, Inc., No. 101243/2014 (N.Y. Sup. Ct. 2018). Representation of whistleblower. Client received award of 23% of \$2.5 million recovery.

Esposito v. American Renal Assocs. Holdings, Inc., No. 16-cv-11797 (D. Mass. 2018). Lead counsel. \$4 million settlement.

In re Resonant Inc. Securities Litigation, No. 15-cv-01970 (C.D. Cal. 2017). Co-lead counsel. \$2.75 million settlement.

In re MolyCorp, Inc. Securities Litigation, No. 13-cv-05697 (S.D.N.Y. 2017). Lead counsel. \$1.25 million settlement.

In re AudioEye, Inc. Securities Litigation, No. 15-cv-00163 (D. Ariz. 2017). Lead counsel. \$1.525 million settlement.

In re Bio-Rad Laboratories, Inc. Stockholder Litigation, C.A. No. 11387 (Del. Ch. Ct.). Co-lead counsel in a shareholder derivative action. The case settled with a parallel action in California state court. As a result of this settlement, Bio-Rad to adopt industry leading, state-of-the-art corporate governance and compliance measures to provide for greater effectiveness of the Board of Directors in responding to potential violations of the Foreign Corrupt Practices Act (FCPA) and similar anti-corruption laws.

Rothstein v. GMAC Mortgage LLC, No. 12-cv-3412 (S.D.N.Y.). Lead counsel. \$13 million settlement against GMAC Mortgage LLC in *In re Residential Capital, LLC, et al.*, No. 12-12020 (Bankr. S.D.N.Y. 2016).

U.S. ex rel. Dickhudt v. Winds Enterprises, No. 13-cv-01142 (W.D. Wa.). Representation of whistleblower. Client received award of 20% of \$1.5 million settlement.

In re MOL Global, Inc. Securities Litigation, No. 14-cv-09357 (S.D.N.Y. 2016). Lead counsel. \$8.5 million settlement.

Globis Capital Partners, L.P., et al. v. The Cash Store Financial Services Inc., et al., No. 13-cv-3385 (S.D.N.Y. 2015): Co-lead counsel. CAD \$13,779,167 cash settlement, representing roughly 50% of total class-wide stock losses.

Dandong v. Pinnacle Performance Ltd., No. 10-cv-08086 (S.D.N.Y. 2015). Lead counsel. \$20 million settlement.

In re Hi-Crush Partners L.P. Securities Litigation, No. 12-cv-8557 (S.D.N.Y. 2015). Lead counsel. \$3.8 million settlement while class certification was pending.

In re Citigroup Inc. Securities Litigation, No. 07-cv-9901 (S.D.N.Y. 2013). Lead counsel. \$590 million settlement.

Barfuss v. DGSE Companies, Inc., No. 12-cv-3664 (N.D. Tex. 2013). Lead Counsel. \$1.7 million settlement.

In re National City Corporation Securities, Derivative & ERISA Litigation, No. 08-cv-70004 (N.D. Ohio 2012). Lead counsel. \$168 million settlement.

In re Wachovia Equity Securities Litigation, No. 08-cv-6171 (S.D.N.Y. 2012). Lead counsel. \$75 million settlement.

In re BP Propane Indirect Purchaser Antitrust Litigation, No. 06-cv-3541 (N.D. Ill. 2010). Co-lead counsel. \$15 million settlement on behalf of propane purchasers.

In re J.P. Morgan Chase Cash Balance Litigation, No. 06-cv-732 (S.D.N.Y. 2010). Co-lead counsel.

"Plaintiffs counsel operated with a strong, genuine belief that they were litigating on behalf of a group of employees who had been injured and who needed representation and a voice, and, at great expense to [themselves], made Herculean efforts on behalf of the class over years. they're to be commended for their fight on behalf of people that they believed had been victimized."

In re Pfizer Inc. Shareholder Derivative Litigation, No. 09-cv-7822 (S.D.N.Y.). Pfizer agreed to pay a proposed settlement of \$75 million and to make groundbreaking changes to the Board's oversight of regulatory matters.

In re Pharmaceutical Industry Average Wholesale Price Litigation, MDL No. 1456; *City of New York, et al. v. Abbott Laboratories, et al.*, No. 01 Civ. 12257 (D. Mass). KM represented the State of Iowa, the City of New York, and forty-two New York State counties in a lawsuit against forty defendant drug manufacturers asserting that they manipulated their average wholesale price data to inflate prices charged to government drug benefits payers. Recovery of over \$225 million for the plaintiffs.

In re Reformulated Gasoline (RFG) Antitrust and Patent Litigation and Related Actions, No. 05-cv-01671 (C.D. Cal). Lead counsel. \$48 million settlement for indirect purchasers.

In re BISYS Securities Litigation, No. 04-cv-3840 (S.D.N.Y. 2007). Co-lead counsel. \$66 million settlement.

"In this Court's experience, relatively few cases have involved as high level of risk, as extensive discovery, and, most importantly, as positive a final result for the class members as that obtained in this case."

Cox v. Microsoft Corporation, Index No. 105193/00, Part 3 (N.Y. Sup. Ct.). Lead counsel. \$350 million settlement.

In re AT&T Corp. Securities Litigation, No. 00-cv-8754 (S.D.N.Y. 2006). Lead counsel. \$150 million settlement.

In re Adelpia Communications, Inc. Securities Litigation, No. 04-cv-05759 (S.D.N.Y. 2006). Co-lead counsel. \$478 million settlement.

"[T]hat the settlements were obtained from defendants represented by 'formidable opposing counsel from some of the best defense firms in the country' also evidences the high quality of lead counsels' work."

Lapin v. Goldman Sachs & Co., No. 04-cv-2236 (S.D.N.Y.). Co-lead counsel. \$29 million settlement.

Montoya v. Herley Industries, Inc., No. 06-cv-2596 (E.D. Pa). Lead counsel. \$10 million settlement.

Carnegie v. Household International Inc., et al., No. 98-cv-2178 (N.D. Ill. 2006). Co-lead counsel. \$39 million settlement.

"Since counsel took over the representation of this case . . ., they have pursued this case, conducting discovery, hiring experts, preparing for trial, filing motions where necessary, opposing many motions, and representing the class with intelligence and hard work. They have obtained an excellent result for the class."

Dutton v. Harris Stratex Networks Inc. et al., No. 08-cv-00755 (D. Del). Lead counsel. \$8.9 million settlement.

In re Isologen Inc. Securities Litigation, No. 05-cv-4983 (E.D. Pa.). Lead counsel. \$4.4 million settlement.

In re Textron, Inc. Securities Litigation, No. 02-cv-0190 (D.R.I.). Co-lead counsel. \$7 million settlement.

Argent Convertible Classic Arbitrage Fund, L.P. v. Amazon.com, Inc. et al., No. 01-cv-0640L (W.D. Wash. 2005). Lead counsel. \$20 million settlement for class of convertible euro-denominated bond purchasers.

Muzinich & Co., Inc. et al. v. Raytheon Company et al., No. 01-cv-0284 (D. Idaho 2005). Co-lead counsel. \$39 million settlement.

Gordon v. Microsoft Corporation, No. 00-cv-5994 (Minn. Dist. Ct., Henn. Cty. 2004). Co-lead counsel. \$175 million settlement following two months of trial.

In re Visa Check/MasterMoney Antitrust Litigation, No. 96-cv-5238 (E.D.N.Y. 2003). \$3 billion monetary settlement and injunctive relief.

In re Florida Microsoft Antitrust Litigation, No. 99-cv-27340 (Fl. Cir. Ct. 11th Cir., Miami/Dade Cty. 2003). Co-lead counsel. \$200 million settlement of antitrust claims.

In re Churchill Securities, Inc. (SIPA Proceeding), No. 99 B 5346A (Bankr. S.D.N.Y. 2003). Lead counsel. Over \$9 million recovery for 500+ victims of pyramid scheme perpetrated by defunct brokerage firm.

In re Laidlaw Bondholder Securities Litigation, No. 00-cv-2518-17 (D. S.C. 2002). Lead counsel. \$42.8 million settlement.

Cromer Finance v. Berger et al. (*In re Manhattan Fund Securities Litigation*), No. 00-cv-2284 (S.D.N.Y. 2002). Co-lead counsel. \$65 million settlement in total.

In re Boeing Securities Litigation, No. 97-cv-715 (W.D. Wash. 2001). \$92.5 million settlement.

In re MCI Non-Subscriber Telephone Rates Litigation, MDL No. 1275 (S.D. Ill. 2001). Chairman of steering committee. \$88 million settlement.

In re General Instrument Corp. Securities Litigation, No. 01-cv-1351 (E.D. Pa. 2001). Co-lead counsel. \$48 million settlement.

In re Bergen Brunswick/Bergen Capital Trust Securities Litigation, 99-cv-1305 and 99-cv-1462 (C.D. Cal. 2001). Co-lead counsel. \$42 million settlement.

Steiner v. Aurora Foods, No. 00-cv-602 (N.D. Cal. 2000). Co-lead counsel. \$36 million settlement.

Gerber v. Computer Associates International, Inc., No. 91-cv-3610 (E.D.N.Y. 2000). Multi-million dollar jury verdict in securities class action.

Rothman v. Gregor, 220 F.3d 81 (2d Cir. 2000). Principal counsel of record in appeal that resulted in first ever appellate reversal of the dismissal of a securities fraud class action under the Securities Reform Act of 1995.

Bartold v. Glendale Federal Bank, 81 Cal.App.4th 816 (2000). Ruling on behalf of hundreds of thousands of California homeowners establishing banks' duties regarding title reconveyance.

In re Cendant Corporation PRIDES Litigation, 51 F. Supp. 2d 537, 542 (D. N.J. 1999). Lead counsel. \$340 million settlement.

"[R]esolution of this matter was greatly accelerated by the creative dynamism of counsel." * * * "We have seen the gifted execution of responsibilities by a lead counsel."

In re Waste Management, Inc. Securities Litigation, No. 97C 7709 (N.D. Ill. 1999). Co-lead counsel. \$220 million settlement.

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

In re Bennett Funding Group, Inc. Securities Litigation, No. 96-cv-2583 (S.D.N.Y. 1999). Co-lead counsel. \$140 million settlement (\$125 million recovered from Generali U.S. Branch, insurer of Ponzi scheme instruments issued by Bennett Funding Group; \$14 million settlement with Mahoney Cohen, Bennett's auditor).

In re MedPartners Securities Litigation, No. 98-cv-06364 (Ala. June 1999). Co-lead counsel. \$56 million settlement.

In re MTC Electronic Technologies Shareholder Litigation, No. 93-cv-0876 (E.D.N.Y. 1998). Co-lead counsel. Settlement in excess of \$70 million.

Skouras v. Creditanstalt International Advisers, Inc., et al., NASD Arb., No. 96-05847 (1998). Following an approximately one month hearing, successfully defeated multi-million dollar claim against major European institution.

In re Woolworth Corp. Securities Class Action Litigation, No. 94-cv-2217 (S.D.N.Y. 1997). Co-lead counsel. \$20 million settlement.

In re Archer Daniels Midland Inc. Securities Litigation, No. 95-cv-2877 (C.D. Ill. 1997). Co-lead counsel. \$30 million settlement.

Vladimir v. U.S. Banknote Corp., No. 94-cv-0255 (S.D.N.Y. 1997). Multi-million dollar jury verdict in § 10(b) action.

In re Archer Daniels Midland Inc. Securities Litigation, No. 95-cv-2877 (C. D. Ill. 1997). Co-lead counsel. \$30 million settlement.

Epstein et al. v. MCA, Inc., et al., 50 F.3d 644 (9th Cir. 1995), *rev'd and remanded on other grounds*, *Matsushita Electric Industrial Co., Ltd. et al. v. Epstein et al.*, No. 94-1809, 116 S. Ct. 873 (February 27, 1996). Lead counsel. Appeal resulted in landmark decision concerning liability of tender offeror under section 14(d)(7) of the Williams Act, SEC Rule 14d-10 and preclusive effect of a release in a state

court proceeding. In its decision granting partial summary judgment to plaintiffs, the court of appeals for the Ninth Circuit stated:

"The record shows that the performance of the Epstein plaintiffs and their counsel in pursuing this litigation has been exemplary."

In re Abbott Laboratories Shareholder Litigation, No. 92-cv-3869 (N.D. Ill. 1995). Co-lead counsel. \$32.5 million settlement.

"The record here amply demonstrates the superior quality of plaintiffs' counsel's preparation, work product, and general ability before the court."

In re Morrison Knudsen Securities Litigation, No. 94-cv-334 (D. Id. 1995). Co-lead counsel. \$68 million settlement.

In re T2 Medical Inc. Securities Litigation, No. 94-cv-744 (N.D. Ga. 1995). Co-lead counsel. \$50 million settlement.

Gelb v. AT&T, No. 90-cv-7212 (S.D.N.Y. 1994). Landmark decision regarding filed rate doctrine leading to injunctive relief.

In re International Technology Corporation Securities Litigation, No. 88-cv-40 (C.D. Cal. 1993). Co-lead counsel. \$13 million settlement.

Colaprico v. Sun Microsystems, No. 90-cv-20710 (N.D. Cal. 1993). Co-lead counsel. \$5 million settlement.

Steinfink v. Pitney Bowes, Inc., No. B90-340 (JAC) (D. Conn. 1993). Lead counsel. \$4 million settlement.

In re Jackpot Securities Enterprises, Inc. Securities Litigation, No. CV-S-89-05-LDG (D. Nev. 1993). Lead counsel. \$3 million settlement.

In re Nordstrom Inc. Securities Litigation, No. C90-295C (W.D. Wa. 1991). Co-lead counsel. \$7.5 million settlement.

United Artists Litigation, No. CA 980 (Sup. Ct., L.A., Cal.). Trial counsel. \$35 million settlement.

In re A.L. Williams Corp. Shareholders Litigation, C.A. No. 10881 (Delaware Ch. 1990). Lead counsel. Benefits in excess of \$11 million.

In re Triangle Inds., Inc., Shareholders' Litigation, C.A. No. 10466 (Delaware Ch. 1990). Co-lead counsel. Recovery in excess of \$70 million.

Schneider v. Lazard Freres, No. 38899, M-6679 (N.Y. App. Div. 1st Dept. 1990). Co-lead counsel. Landmark decision concerning liability of investment bankers in corporate buyouts. \$55 million settlement.

Rothenberg v. A.L. Williams, C.A. No. 10060 (Delaware. Ch. 1989). Lead counsel. Benefits of at least \$25 million to the class.

Kantor v. Zondervan Corporation, No. 88-cv-C5425 (W.D. Mich. 1989). Lead counsel. Recovery of \$3.75 million.

King v. Advanced Systems, Inc., No. 84-cv-C10917 (N.D. Ill. E.D. 1988). Lead counsel. Recovery of \$3.9 million (representing 90% of damages).

Straetz v. Cordis, No. 85-cv-343 (S.D. Fla. 1988). Lead counsel.

"I want to commend counsel and each one of you for the diligence with which you've pursued the case and for the results that have been produced on both sides. I think that you have displayed the absolute optimum in the method and manner by which you have represented your respective clients, and you are indeed a credit to the legal profession, and I'm very proud to have had the opportunity to have you appear before the Court in this matter."

In re Flexi-Van Corporation, Inc. Shareholders Litigation, C.A. No. 9672 (Delaware. Ch. 1988). Co-lead counsel. \$18.4 million settlement.

Entezed, Inc. v. Republic of Nigeria, I.C.C. Arb. (London 1987). Multi-million dollar award for client.

In re Carnation Company Securities Litigation, No. 84-cv-6913 (C.D. Cal. 1987). Co-lead counsel. \$13 million settlement.

In re Data Switch Securities Litigation, B84 585 (RCZ) (D. Conn. 1985). Co-lead counsel. \$7.5 million settlement.

Stern v. Steans, No. 80-cv-3903. The court characterized the result for the class obtained during trial to jury as "unusually successful" and "incredible" (Jun 1, 1984).

In re Datapoint Securities Litigation, No. 82-cv-338 (W.D. Tex.). Lead counsel for a Sub-Class. \$22.5 million aggregate settlement.

Malchman, et al. v. Davis, et al., No. 77-cv-5151 (S.D.N.Y. 1984).

"It is difficult to overstate the far-reaching results of this litigation and the settlement. Few class actions have ever succeeded in altering commercial relationships of such magnitude. Few class action settlements have even approached the results achieved herein.... In the present case, the attorneys representing the class have acted with outstanding vigor and dedication . . . Although the lawyers in this litigation have appeared considerably more in the state courts than in the federal court, they have appeared in the federal court sufficiently for me to attest as to the high professional character of their work. Every issue which has come to this court has been presented by both sides with a thoroughness and zeal which is outstanding In sum, plaintiffs and their attorneys undertook a very large and difficult litigation in both the state and federal courts, where the stakes were enormous. This litigation was hard fought over a period of four years. Plaintiffs achieved a settlement which altered commercial relationships involving literally hundreds of millions of dollars."

EXHIBIT 4

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

TIM DOYLE, Individually and On Behalf of
All Others Similarly Situated, *et al.*,

Plaintiffs,

v.

REATA PHARMACEUTICALS, INC., *et al.*,

Defendants.

Case No. 4:21-cv-00987-ALM
LEAD

CLASS ACTION

Judge Amos L. Mazzant, III

**DECLARATION OF ROBERT V. PRONGAY, ESQ. IN SUPPORT OF LEAD
COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND
REIMBURSEMENT OF LITIGATION EXPENSES FILED ON BEHALF OF
GLANCY PRONGAY & MURRAY LLP**

I, Robert V. Prongay, declare as follows, pursuant to 28 U.S.C. § 1746:

1. I am a partner of the law firm of Glancy Prongay & Murray LLP (“GPM”),¹ which assisted Court-appointed Lead Counsel in the above-captioned action (the “Action”). *See* ECF No. 34. I submit this declaration in support of Lead Counsel’s application for an award of attorneys’ fees in connection with services rendered in the Action, as well as for reimbursement of litigation expenses incurred in connection with the Action. I have personal knowledge of the facts set forth herein based on my active supervision of, and participation in, the prosecution and settlement of the claims asserted in the Action and, if called upon, could and would testify thereto.

2. GPM, among other things: (a) researched, drafted and filed the initial Complaint in this action; (b) assisted in the preparation of filings; (c) conducted legal research; (d) reviewed and analyzed discovery; (e) attended the April 2023 mediation session with the mediator, Jed Melnick, Esq. of JAMS, and (f) participated in consultations with merits and damages experts.

3. The schedule attached hereto as Exhibit A is a detailed summary indicating the amount of time spent by attorneys and professional support staff employees of my firm who, from inception of the Action through and including February 12, 2024, billed ten or more hours to the Action, and the lodestar calculation for those individuals based on my firm’s current billing rates. The billing rate for document review work performed by attorneys has been capped at the reduced rate of \$400 per hour. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm.

4. I am the partner who oversaw or conducted the day-to-day activities in the Action on behalf of GPM and I reviewed these daily time records in connection with the preparation of

¹ Unless otherwise defined, all capitalized terms herein have the same meanings as set forth in the Stipulation and Agreement of Settlement dated October 30, 2023. *See* ECF No. 74-2.

this declaration. The purpose of this review was to confirm both the accuracy of the records as well as the necessity for, and reasonableness of, the time committed to the litigation. As a result of this review, I made reductions to certain of my firm's time entries such that the time included in Exhibit A reflects that exercise of billing judgment. Based on this review and the adjustments made, I believe that the time of GPM's attorneys and staff reflected in Exhibit A was reasonable and necessary for the effective and efficient prosecution and resolution of the Action. No time expended on the application for fees and reimbursement of expenses has been included.

5. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are consistent with the rates approved by courts in other securities or shareholder litigation when conducting a lodestar cross-check.

6. The total number of hours reflected in Exhibit A is 397.90 hours. The total lodestar reflected in Exhibit A is \$259,040.00 consisting of attorneys' and support staff's time.

7. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

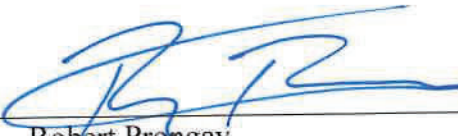
8. As detailed in Exhibit B, attached hereto, my firm is seeking reimbursement of a total of \$19,337.60 in expenses incurred in connection with the prosecution of this Action.

9. The litigation expenses incurred in the Action are reflected in the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred. The expenses reflected in Exhibit B are the expenses actually incurred by my firm in connection with the prosecution of this Action.

10. Attached hereto as Exhibit C is a brief biography of GPM, including the attorneys who were involved in the Action.

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

Executed on February 16, 2024, in Los Angeles, California.



Robert Prongay

EXHIBIT A

Doyle v. Reata Pharmaceuticals, Inc., et al.,
Case No. 4:21-cv-00987

Glancy Prongay & Murray LLP

**LODESTAR REPORT
FROM INCEPTION THROUGH FEBRUARY 12, 2024**

TIMEKEEPER/CASE	STATUS	HOURS	RATE	LODESTAR
ATTORNEYS:				
Robert Prongay	Partner	151.00	\$900.00	\$135,900.00
Christopher Fallon	Senior Counsel	83.60	\$700.00	\$58,520.00
Christopher Del Valle*	Associate	149.30	\$400.00	\$59,720.00
TOTAL ATTORNEY:		383.90		\$254,140.00
PROFESSIONAL STAFF				
John D. Belanger		14.00	\$350.00	\$4,900.00
TOTAL PROFESSIONAL STAFF:		14.00		\$4,900.00
TOTAL LODESTAR		397.90		\$259,040.00

* At the request of Lead Counsel, Christopher Del Valle billing rate was capped at \$400/hour for the document review work that he performed.

EXHIBIT B

Doyle v. Reata Pharmaceuticals, Inc., et al.,
Case No. 4:21-cv-00987

Glancy Prongay & Murray LLP

EXPENSE REPORT

FROM INCEPTION THROUGH FEBRUARY 12, 2024

ITEM	AMOUNT
Experts	\$14,510.00
PSLRA Mandated Press Release	\$110.00
Online Research	\$1,890.79
Travel Airfare	\$587.80
Travel Auto	\$427.03
Travel Hotel	\$1,701.94
Travel Meals	\$110.04
GRAND TOTAL	\$19,337.60

EXHIBIT C
Glancy Prongay & Murray LLP
FIRM RESUME



FIRM RESUME

Glancy Prongay & Murray LLP (the "Firm") has represented investors, consumers and employees for over 25 years. Based in Los Angeles, with offices in New York City and Berkeley, the Firm has successfully prosecuted class action cases and complex litigation in federal and state courts throughout the country. As Lead Counsel, Co-Lead Counsel, or as a member of Plaintiffs' Counsel Executive Committees, the Firm's attorneys have recovered billions of dollars for parties wronged by corporate fraud, antitrust violations and malfeasance. Indeed, the Institutional Shareholder Services unit of RiskMetrics Group has recognized the Firm as one of the top plaintiffs' law firms in the United States in its Securities Class Action Services report for every year since the inception of the report in 2003. The Firm's efforts have been publicized in major newspapers such as the *Wall Street Journal*, the *New York Times*, and the *Los Angeles Times*.

Glancy Prongay & Murray's commitment to high quality and excellent personalized services has boosted its national reputation, and we are now recognized as one of the premier plaintiffs' firms in the country. The Firm works tenaciously on behalf of clients to produce significant results and generate lasting corporate reform.

The Firm's integrity and success originate from our attorneys, who are among the brightest and most experienced in the field. Our distinguished litigators have an unparalleled track record of investigating and prosecuting corporate wrongdoing. The Firm is respected for both the zealous advocacy with which we represent our clients' interests as well as the highly-professional and ethical manner by which we achieve results. We are ideally positioned to pursue securities, antitrust, consumer, and derivative litigation on behalf of our clients. The Firm's outstanding accomplishments are the direct result of the exceptional talents of our attorneys and employees.

SECURITIES CLASS ACTION SETTLEMENTS

Appointed as Lead or Co-Lead Counsel by judges throughout the United States, Glancy Prongay & Murray has achieved significant recoveries for class members in numerous securities class actions, including:

In re Mercury Interactive Corporation Securities Litigation, USDC Northern District of California, Case No. 05-3395-JF, in which the Firm served as Co-Lead Counsel and achieved a settlement valued at over \$117 million.

In re Real Estate Associates Limited Partnership Litigation, USDC Central District of California, Case No. 98-7035-DDP, in which the Firm served as local counsel and plaintiffs achieved a \$184 million jury verdict after a complex six week trial in Los Angeles, California and later settled the case for \$83 million.

In Re Yahoo! Inc. Securities Litigation, USDC Northern District of California, Case No. 5:17-cv-00373-LHK, in which the Firm served as Co-Lead Counsel and achieved an \$80 million settlement.

The City of Farmington Hills Employees Retirement System v. Wells Fargo Bank, N.A., USDC District of Minnesota, Case No. 10-cv-04372-DWF/JJG, in which the Firm served as Co-Lead Counsel and achieved a settlement valued at \$62.5 million.

Shah v. Zimmer Biomet Holdings, Inc., USDC Northern District of Indiana, Case No. 3:16-cv-815-PPS-MGG, a securities fraud class action in which the Firm served as Lead Counsel for the Class and achieved a settlement of \$50 million.

Schleicher v. Wendt, (Conseco Securities Litigation), USDC Southern District of Indiana, Case No. 02-1332-SEB, a securities fraud class action in which the Firm served as Lead Counsel for the Class and achieved a settlement of over \$41 million.

Robb v. Fitbit, Inc., USDC Northern District of California, Case No. 3:16-cv-00151, a securities fraud class action in which the Firm served as Lead Counsel for the Class and achieved a settlement of \$33 million.

Yaldo v. Airtouch Communications, State of Michigan, Wayne County, Case No. 99-909694-CP, in which the Firm served as Co-Lead Counsel and achieved a settlement valued at over \$32 million for defrauded consumers.

Lapin v. Goldman Sachs, USDC Southern District of New York, Case No. 03-0850-KJD, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of \$29 million.

In re Heritage Bond Litigation, USDC Central District of California, Case No. 02-ML-1475-DT, where as Co-Lead Counsel, the Firm recovered in excess of \$28 million for defrauded investors and continues to pursue additional defendants.

In re Livent, Inc. Noteholders Litigation, USDC Southern District of New York, Case No. 99 Civ 9425-VM, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of over \$27 million.

Mild v. PPG Industries, Inc., USDC Central District of California, Case No. 18-cv-04231, a securities fraud class action in which the Firm served as Lead Counsel for the Class and achieved a settlement of \$25 million.

Davis v. Yelp, Inc., USDC Northern District of California, Case No. 18-cv-0400, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of \$22.5 million.

In re ECI Telecom Ltd. Securities Litigation, USDC Eastern District of Virginia, Case No. 01-913-A, in which the Firm served as sole Lead Counsel and recovered almost \$22 million for defrauded ECI investors.

In re Sesen Bio, Inc. Securities Litigation, USDC Southern District of New York, Case No. 21-cv-07025, a securities fraud class action, in which the Firm served as Lead Counsel for the Class and achieved a settlement of \$21 million.

Senn v. Sealed Air Corporation, USDC New Jersey, Case No. 03-cv-4372-DMC, a securities fraud class action, in which the Firm acted as Co-Lead Counsel for the Class and achieved a settlement of \$20 million.

In re Gilat Satellite Networks, Ltd. Securities Litigation, USDC Eastern District of New York, Case No. 02-1510-CPS, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of \$20 million.

In re Lumenis, Ltd. Securities Litigation, USDC Southern District of New York, Case No. 02-CV-1989-DAB, in which the Firm served as Co-Lead Counsel and achieved a settlement valued at over \$20 million.

Wilson v. LSB Industries, Inc., USDC Southern District of New York, Case No. 15-cv-07614, a securities fraud class action in which the Firm served as Lead Counsel for the Class and achieved a settlement of \$18.45 million.

In re Infonet Services Corporation Securities Litigation, USDC Central District of California, Case No. CV 01-10456-NM, in which as Co-Lead Counsel, the Firm achieved a settlement of \$18 million.

Pierrelouis v. Gogo Inc., USDC Northern District of Illinois, Case No. 18-cv-04473, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of \$17.3 million.

In re ESC Medical Systems, Ltd. Securities Litigation, USDC Southern District of New York, Case No. 98 Civ. 7530-NRB, a securities fraud class action in which the Firm served as sole Lead Counsel for the Class and achieved a settlement valued in excess of \$17 million.

Macovski v. Groupon, Inc., USDC Northern District of Illinois, Case No. 20-cv-02581, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of \$13.5 million.

In re Musicmaker.com Securities Litigation, USDC Central District of California, Case No. 00-02018-CAS, a securities fraud class action in which the Firm was sole Lead Counsel for the Class and recovered in excess of \$13 million.

In re Lason, Inc. Securities Litigation, USDC Eastern District of Michigan, Case No. 99 76079-AJT, in which the Firm was Co-Lead Counsel and recovered almost \$13 million for defrauded Lason stockholders.

In re Inso Corp. Securities Litigation, USDC District of Massachusetts, Case No. 99 10193-WGY, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement valued in excess of \$12 million.

In re National TechTeam Securities Litigation, USDC Eastern District of Michigan, Case No. 97-74587-AC, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement valued in excess of \$11 million.

Taft v. Ackermans (KPNQwest Securities Litigation), USDC Southern District of New York, Case No. 02-CV-07951-PKL, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement worth \$11 million.

Derr v. RA Medical Systems, Inc., USDC Southern District of California, Case No. 19-cv-01079, a securities fraud class action in which the Firm served as Lead Counsel for the Class and achieved a settlement of \$10 million.

Jenson v. First Trust Corporation, USDC Central District of California, Case No. 05-cv-3124-ABC, in which the Firm was appointed sole lead counsel and achieved an \$8.5 million settlement in a very difficult case involving a trustee's potential liability for losses incurred by investors in a Ponzi scheme. Kevin Ruf of the Firm also successfully defended in the 9th Circuit Court of Appeals the trial court's granting of class certification in this case.

ANTITRUST PRACTICE GROUP AND ACHIEVEMENTS

Glancy Prongay & Murray's Antitrust Practice Group focuses on representing individuals and entities that have been victimized by unlawful monopolization, price-fixing, market allocation, and other anti-competitive conduct. The Firm has prosecuted significant antitrust cases and has helped individuals and businesses recover billions of dollars. Prosecuting civil antitrust cases under federal and state laws throughout the country, the Firm's Antitrust Practice Group represents consumers, businesses, and Health and Welfare Funds and seeks injunctive relief and damages for violations of antitrust and commodities laws. The Firm has served, or is currently serving, as Lead Counsel, Co-Lead Counsel or Class Counsel in a substantial number of antitrust class actions, including:

In re Nasdaq Market-Makers Antitrust Litigation, USDC Southern District of New York, Case No. 94 C 3996-RWS, MDL Docket No. 1023, a landmark antitrust lawsuit in which the Firm filed the first complaint against all of the major NASDAQ market makers and served on Plaintiffs' Counsel's Executive Committee in a case that recovered \$900 million for investors.

Sullivan v. DB Investments, USDC District of New Jersey, Case No. No. 04-cv-2819, where the Firm served as Co-Lead Settlement Counsel in an antitrust case against DeBeers relate to the pricing of diamonds that settled for \$295 million.

In re Korean Air Lines Antitrust Litig., USDC Central District of California, Master File No. CV 07-05107 SJO(AGRx), MDL No. 07-0189, where the Firm served as Co-Lead Counsel in a case related to fixing of prices for airline tickets to Korea that settled for \$86 million.

In re Urethane Chemical Antitrust Litig., USDC District of Kansas, Case No. MDL 1616, where the Firm served as Co-Lead counsel in an antitrust price fixing case that settled \$33 million.

In re Western States Wholesale Natural Gas Litig., USDC District of Nevada, Case No. MDL 1566, where the Firm served as Class Counsel in an antitrust price fixing case that settled \$25 million.

In re Aggrenox Antitrust Litig., USDC District of Connecticut, Case No. 14-cv-2516, where the Firm played a major role in achieving a settlement of \$54,000,000.

In re Solodyn Antitrust Litig., USDC District of Massachusetts, Case No. MDL 2503, where the Firm played a major role in achieving a settlement of \$43,000,000.

In re Generic Pharmaceuticals Pricing Antitrust Litig., USDC Eastern District of Pennsylvania, Case No. 16-md-2427, where the Firm is representing a major Health and Welfare Fund in a case against a number of generic drug manufacturers for price fixing generic drugs.

In re Actos End Payor Antitrust Litig., USDC Southern District of New York, Case No. 13-cv-9244, where the Firm is serving on Plaintiffs' Executive Committee.

In re Heating Control Panel Direct Purchaser Action, USDC Eastern District of Michigan, Case No. 12-md-02311, representing a recreational vehicle manufacturer in a price-fixing class action involving direct purchasers of heating control panels.

In re Instrument Panel Clusters Direct Purchaser Action, USDC Eastern District of Michigan, Case No. 12-md-02311, representing a recreational vehicle manufacturer in a price-fixing class action involving direct purchasers of instrument panel clusters.

In addition, the Firm is currently involved in the prosecution of many market manipulation cases relating to violations of antitrust and commodities laws, including *Sullivan v. Barclays PLC* (manipulation of Euribor rate), *In re Foreign Exchange Benchmark Rates Antitrust Litig.*, *In re LIBOR-Based Financial Instruments Antitrust Litig.*, *In re Gold Futures & Options Trading Litig.*, *In re Platinum & Palladium Antitrust Litig.*, *Sonterra Cap. Master Fund v. Credit Suisse Group AG* (Swiss Libor rate manipulation), *Twin City Iron Pension Fund v. Bank of Nova Scotia* (manipulation of treasury securities), and *Ploss v. Kraft Foods Group* (manipulation of wheat prices).

Glancy Prongay & Murray has been responsible for obtaining favorable appellate opinions which have broken new ground in the class action or securities fields, or which have promoted shareholder rights in prosecuting these actions. The Firm successfully argued the appeals in a number of cases:

In *Smith v. L'Oreal*, 39 Cal.4th 77 (2006), Firm partner Kevin Ruf established ground-breaking law when the California Supreme Court agreed with the Firm's position that waiting penalties under the California Labor Code are available to *any* employee after termination of employment, regardless of the reason for that termination.

OTHER NOTABLE ACHIEVEMENTS

Spearheaded by Firm attorney Kevin Ruf, the Firm served as Co-Lead Counsel for a class of drivers misclassified as independent contractors in the landmark case *Lee v. Dynamex*, Case No. BC332016 (Super. Ct. of Cal), which made new law for workers' rights in the California Supreme Court. The *Dynamex* decision altered 30 years of California law and established a new definition of employment that brings more workers within the protections of California's Labor Code. The California legislature, in response to the *Dynamex* decision, promulgated AB5, a statute that codifies the law of the *Dynamex* case and expands its reach.

Headed by Firm attorney Kara Wolke, the Firm served as additional plaintiffs' counsel in *Christine Asia Co. Ltd., et al. v. Jack Yun Ma et al. ("Alibaba")*, 1:15-md-02631 (SDNY), a securities class action on behalf of investors alleging violations of the Securities Exchange Act of 1934 in connection with Alibaba's historic \$25 billion IPO, the then-largest IPO in history. After hard-fought litigation, including a successful appeal to the Second Circuit and obtaining class certification, the case settled for \$250 million.

Other notable Firm cases include: *Silber v. Mabon I*, 957 F.2d 697 (9th Cir. 1992) and *Silber v. Mabon II*, 18 F.3d 1449 (9th Cir. 1994), which are the leading decisions in the Ninth Circuit regarding the rights of opt-outs in class action settlements. In *Rothman v. Gregor*, 220 F.3d 81 (2d Cir. 2000), the Firm won a seminal victory for investors before the Second Circuit Court of Appeals, which adopted a more favorable pleading standard for investors in reversing the District Court's dismissal of the investors' complaint. After this successful appeal, the Firm then recovered millions of dollars for defrauded investors of the GT Interactive Corporation. The Firm also argued *Falkowski v. Imation Corp.*, 309 F.3d 1123 (9th Cir. 2002), *as amended*, 320 F.3d 905 (9th Cir. 2003), and favorably obtained the substantial reversal of a lower court's dismissal of a cutting edge, complex class action initiated to seek redress for a group of employees whose stock options were improperly forfeited by a giant corporation in the course of its sale of the subsidiary at which they worked.

The Firm also has been involved in the representation of individual investors in court proceedings throughout the United States and in arbitrations before the American Arbitration Association, National Association of Securities Dealers, New York Stock Exchange, and Pacific Stock Exchange. Mr. Glancy has successfully represented litigants in proceedings against such major securities firms and insurance companies as

A.G. Edwards & Sons, Bear Stearns, Merrill Lynch & Co., Morgan Stanley, PaineWebber, Prudential, and Shearson Lehman Brothers.

One of the Firm's unique skills is the use of "group litigation" - the representation of groups of individuals who have been collectively victimized or defrauded by large institutions. This type of litigation brought on behalf of individuals who have been similarly damaged often provides an efficient and effective economic remedy that frequently has advantages over the class action or individual action devices. The Firm has successfully achieved results for groups of individuals in cases against major corporations such as Metropolitan Life Insurance Company, and Occidental Petroleum Corporation.

Glancy Prongay & Murray LLP currently consists of the following attorneys:

PARTNERS

LEE ALBERT, a partner, was admitted to the bars of the Commonwealth of Pennsylvania, the State of New Jersey, and the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey in 1986. He received his B.S. and M.S. degrees from Temple University and Arcadia University in 1975 and 1980, respectively, and received his J.D. degree from Widener University School of Law in 1986. Upon graduation from law school, Mr. Albert spent several years working as a civil litigator in Philadelphia, PA. Mr. Albert has extensive litigation and appellate practice experience having argued before the Supreme and Superior Courts of Pennsylvania and has over fifteen years of trial experience in both jury and non-jury cases and arbitrations. Mr. Albert has represented a national health care provider at trial obtaining injunctive relief in federal court to enforce a five-year contract not to compete on behalf of a national health care provider and injunctive relief on behalf of an undergraduate university.

Currently, Mr. Albert represents clients in all types of complex litigation including matters concerning violations of federal and state antitrust and securities laws, mass tort/product liability and unfair and deceptive trade practices. Some of Mr. Albert's current major cases include *In Re Automotive Wire Harness Systems Antitrust Litigation* (E.D. Mich.); *In Re Heater Control Panels Antitrust Litigation* (E.D. Mich.); *Kleen Products, et al. v. Packaging Corp. of America* (N.D. Ill.); and *In re Class 8 Transmission Indirect Purchaser Antitrust Litigation* (D. Del.). Previously, Mr. Albert had a significant role in *Marine Products Antitrust Litigation* (C.D. Cal.); *Baby Products Antitrust Litigation* (E.D. Pa.); *In re ATM Fee Litigation* (N.D. Cal.); *In re Canadian Car Antitrust Litigation* (D. Me.); *In re Broadcom Securities Litigation* (C.D. Cal.); and has worked on *In re Avandia Marketing, Sales Practices and Products Liability Litigation* (E.D. Pa.); *In re Ortho Evra Birth Control Patch Litigation* (N.J. Super. Ct.); *In re AOL Time Warner, Inc. Securities Litigation* (S.D.N.Y.); *In re WorldCom, Inc. Securities Litigation* (S.D.N.Y.); and *In re Microsoft Corporation Massachusetts Consumer Protection Litigation* (Mass. Super. Ct.).

BRIAN D. BROOKS joined the New York office of Glancy Prongay & Murray LLP in 2019, specializing in antitrust, consumer, and securities litigation. His current cases include *In re Zetia Antitrust Litigation*, No. 18-md-2836 (E.D. Va.); *Staley, et al. v. Gilead Sciences*,

Inc., et al., No. 3:19-cv-02573-EMC (N.D. Cal.); and *In re: Seroquel XR (Extended Release Quetiapine Fumarate) Litigation*, No. 1:19-cv-08296-CM (S.D.N.Y.).

Prior to joining the firm, Mr. Brooks was an associate at Murray, Frank & Sailer, LLP in New York, where his practice was focused on antitrust, consumer, and securities matters, and later a partner at Smith, Segura & Raphael, LLP, in New York and Louisiana. During his tenure at Smith Segura & Raphael, LLP, Mr. Brooks represented direct purchasers in numerous antitrust matters, including *In re: Suboxone (Buprenorphine Hydrochloride and Naloxone) Antitrust Litigation*, No. 2:13-md-02445 (E.D. Pa.), *In re: Niaspan Antitrust Litigation*, No. 2:13-md-02460 (E.D. Pa.), and *In re: Novartis & Par Antitrust Litigation (Exforge)*, No. 18-cv-4361 (S.D.N.Y.), and was an active member of the trial team for the class in *In re: Nexium (Esomeprazole) Antitrust Litigation*, No. 12-md-2409 (D. Mass.), the first post-Actavis reverse-payment case to be tried to verdict. He was also an active member of the litigation teams in the *King Drug Company of Florence, Inc. et al. v. Cephalon, Inc., et al. (Provigil)*, No. 2:06-cv-1797 (E.D. Pa.); *In re: Prograf Antitrust Litigation*, No. 1:11-md-2242 (D. Mass.) and *In re: Miralax* antitrust matters, which collectively settled for more than \$600 million, and a member of the litigation teams in *In re: Relafen Antitrust Litigation*, No. 01-cv-12239 (D. Mass.); *In re: Buspirone Antitrust Litigation*, MDL Dkt. No. 1410 (S.D.N.Y.); *In re: Remeron Antitrust Litigation*, No. 02-2007 (D.N.J.); *In re: Terazosin Hydrochloride Antitrust Litigation*, No. 99-MDL-1317 (S.D. Fla.); and *In re K-Dur Antitrust Litigation*, No. 10-cv-1652 (D.N.J.).

Mr. Brooks received his B.A. from Northwestern State University of Louisiana in 1998 and his J.D. from Washington and Lee School of Law in 2002, where he was a staff writer for the Environmental Law Digest and clerked for the Alderson Legal Assistance Program, handling legal matters for inmates of the Federal Detention Center in Alderson, West Virginia. He is admitted to practice in all state courts in New York and Louisiana, as well as the United States District Courts for the Southern and Eastern Districts of New York and the Eastern and Western Districts of Louisiana.

JOSEPH D. COHEN has extensive complex civil litigation experience, and currently oversees the firm's settlement department, negotiating, documenting and obtaining court approval of the firm's securities, merger and derivative settlements.

Prior to joining the firm, Mr. Cohen successfully prosecuted numerous securities fraud, consumer fraud, antitrust and constitutional law cases in federal and state courts throughout the country. Cases in which Mr. Cohen took a lead role include: *Jordan v. California Dep't of Motor Vehicles*, 100 Cal. App. 4th 431 (2002) (complex action in which the California Court of Appeal held that California's Non-Resident Vehicle \$300 Smog Impact Fee violated the Commerce Clause of the United States Constitution, paving the way for the creation of a \$665 million fund and full refunds, with interest, to 1.7 million motorists); *In re Geodyne Res., Inc. Sec. Litig.* (Harris Cty. Tex.) (settlement of securities fraud class action, including related litigation, totaling over \$200 million); *In re Cmty. Psychiatric Centers Sec. Litig.* (C.D. Cal.) (settlement of \$55.5 million was obtained from the company and its auditors, Ernst & Young, LLP); *In re McLeodUSA Inc., Sec. Litig.* (N.D. Iowa) (\$30 million settlement); *In re Arakis Energy Corp. Sec. Litig.* (E.D.N.Y.) (\$24 million settlement); *In re Metris Cos., Inc., Sec. Litig.* (D. Minn.) (\$7.5 million settlement);

In re Landry's Seafood Rest., Inc. Sec. Litig. (S.D. Tex.) (\$6 million settlement); and *Freedman v. Maspeth Fed. Loan and Savings Ass'n*, (E.D.N.Y.) (favorable resolution of issue of first impression under RESPA resulting in full recovery of improperly assessed late fees).

Mr. Cohen was also a member of the teams that obtained substantial recoveries in the following cases: *In re: Foreign Exchange Benchmark Rates Antitrust Litig.* (S.D.N.Y.) (partial settlements of approximately \$2 billion); *In re Washington Mutual Mortgage-Backed Sec. Litig.* (W.D. Wash.) (settlement of \$26 million); *Mylan Pharm., Inc. v. Warner Chilcott Public Ltd. Co.* (E.D. Pa.) (\$8 million recovery in antitrust action on behalf of class of indirect purchasers of the prescription drug Doryx); *City of Omaha Police and Fire Ret. Sys. v. LHC Group, Inc.* (W.D. La.) (securities class action settlement of \$7.85 million); and *In re Pacific Biosciences of Cal., Inc. Sec. Litig.* (Cal. Super. Ct.) (\$7.6 million recovery).

In addition, Mr. Cohen was previously the head of the settlement department at Bernstein Litowitz Berger & Grossmann LLP. While at BLB&G, Mr. Cohen had primary responsibility for overseeing the team working on the following settlements, among others: *In Re Merck & Co., Inc. Sec., Deriv. & "ERISA" Litig.* (D.N.J.) (\$1.062 billion securities class action settlement); *New York State Teachers' Ret. Sys. v. General Motors Co.* (E.D. Mich.) (\$300 million securities class action settlement); *In re JPMorgan Chase & Co. Sec. Litig.* (S.D.N.Y.) (\$150 million settlement); *Dep't of the Treasury of the State of New Jersey and its Division of Inv. v. Cliffs Natural Res. Inc., et al.* (N.D. Ohio) (\$84 million securities class action settlement); *In re Penn West Petroleum Ltd. Sec. Litig.* (S.D.N.Y.) (\$19.76 million settlement); and *In re BioScrip, Inc. Sec. Litig.* (\$10.9 million settlement).

LIONEL Z. GLANCY, a graduate of University of Michigan Law School, is the founding partner of the Firm. After serving as a law clerk for United States District Judge Howard McKibben, he began his career as an associate at a New York law firm concentrating in securities litigation. Thereafter, he started a boutique law firm specializing in securities litigation, and other complex litigation, from the Plaintiff's perspective. Mr. Glancy has established a distinguished career in the field of securities litigation over the last thirty years, having appeared and been appointed lead counsel on behalf of aggrieved investors in securities class action cases throughout the country. He has appeared and argued before dozens of district courts and a number of appellate courts. His efforts have resulted in the recovery of hundreds of millions of dollars in settlement proceeds for huge classes of shareholders. Well known in securities law, he has lectured on its developments and practice, including having lectured before Continuing Legal Education seminars and law schools.

Mr. Glancy was born in Windsor, Canada, on April 4, 1962. Mr. Glancy earned his undergraduate degree in political science in 1984 and his Juris Doctor degree in 1986, both from the University of Michigan. He was admitted to practice in California in 1988, and in Nevada and before the U.S. Court of Appeals, Ninth Circuit, in 1989.

MARC L. GODINO has extensive experience successfully litigating complex, class action lawsuits as a plaintiffs' lawyer. Since joining the firm in 2005, Mr. Godino has played a primary role in cases resulting in settlements of more than \$100 million. He has prosecuted securities, derivative, merger & acquisition, and consumer cases throughout the country in both state and federal court, as well as represented defrauded investors at FINRA arbitrations. Mr. Godino manages the Firm's consumer class action department.

While a senior associate with Stull Stull & Brody, Mr. Godino was one of the two primary attorneys involved in *Small v. Fritz Co.*, 30 Cal. 4th 167 (April 7, 2003), in which the California Supreme Court created new law in the State of California for shareholders that held shares in detrimental reliance on false statements made by corporate officers. The decision was widely covered by national media including *The National Law Journal*, the *Los Angeles Times*, the *New York Times*, and the *New York Law Journal*, among others, and was heralded as a significant victory for shareholders.

Mr. Godino's successes with Glancy Prongay & Murray LLP include: *Good Morning To You Productions Corp., et al., v. Warner/Chappell Music, Inc., et al.*, Case No. 13-04460 (C.D. Cal.) (In this highly publicized case that attracted world-wide attention, Plaintiffs prevailed on their claim that the song "Happy Birthday" should be in the public domain and achieved a \$14,000,000 settlement to class members who paid a licensing fee for the song); *Ord v. First National Bank of Pennsylvania*, Case No. 12-766 (W. D. Pa.) (\$3,000,000 settlement plus injunctive relief); *Pappas v. Naked Juice Co. of Glendora, Inc.*, Case No. 11-08276 (C.D. Cal.) (\$9,000,000 settlement plus injunctive relief); *Astiana v. Kashi Company*, Case No. 11-1967 (S.D. Cal.) (\$5,000,000 settlement); *In re Magma Design Automation, Inc. Securities Litigation*, Case No. 05-2394 (N.D. Cal.) (\$13,500,000 settlement); *In re Hovnanian Enterprises, Inc. Securities Litigation*, Case No. 08-cv-0099 (D.N.J.) (\$4,000,000 settlement); *In re Skilled Healthcare Group, Inc. Securities Litigation*, Case No. 09-5416 (C.D. Cal.) (\$3,000,000 settlement); *Kelly v. Phiten USA, Inc.*, Case No. 11-67 (S.D. Iowa) (\$3,200,000 settlement plus injunctive relief); *(Shin et al., v. BMW of North America*, 2009 WL 2163509 (C.D. Cal. July 16, 2009) (after defeating a motion to dismiss, the case settled on very favorable terms for class members including free replacement of cracked wheels); *Payday Advance Plus, Inc. v. MIVA, Inc.*, Case No. 06-1923 (S.D.N.Y.) (\$3,936,812 settlement); *Esslinger, et al. v. HSBC Bank Nevada, N.A.*, Case No. 10-03213 (E.D. Pa.) (\$23,500,000 settlement); *In re Discover Payment Protection Plan Marketing and Sales Practices Litigation*, Case No. 10-06994 (\$10,500,000 settlement); *In Re: Bank of America Credit Protection Marketing and Sales Practices Litigation*, Case No. 11-md-02269 (N.D. Cal.) (\$20,000,000 settlement).

Mr. Godino was also the principal attorney in the following published decisions: *In re Zappos.com, Inc., Customer Data Sec. Breach Litigation*, 714 Fed Appx. 761 (9th Cir. 2018) (reversing order dismissing class action complaint); *Small et al., v. University Medical Center of Southern Nevada, et al.*, 2017 WL 3461364 (D. Nev. Aug. 10, 2017) (denying motion to dismiss); *Sciortino v. Pepsico, Inc.*, 108 F.Supp. 3d 780 (N.D. Cal. June 5, 2015) (motion to dismiss denied); *Peterson v. CJ America, Inc.*, 2015 WL 11582832 (S.D. Cal. May 15, 2015) (motion to dismiss denied); *Lilly v. Jamba Juice Company*, 2014 WL 4652283 (N. D. Cal. Sep 18, 2014) (class certification granted in part); *Kramer v. Toyota Motor Corp.*, 705 F. 3d 1122 (9th Cir. 2013) (affirming denial of

Defendant's motion to compel arbitration); *Sateriale, et al. v. R.J. Reynolds Tobacco Co.*, 697 F. 3d 777 (9th Cir. 2012) (reversing order dismissing class action complaint); *Shin v. BMW of North America*, 2009 WL 2163509 (C.D. Cal. July 16, 2009) (motion to dismiss denied); *In re 2TheMart.com Securities Litigation*, 114 F. Supp. 2d 955 (C.D. Cal. 2002) (motion to dismiss denied); *In re Irvine Sensors Securities Litigation*, 2003 U.S. Dist. LEXIS 18397 (C.D. Cal. 2003) (motion to dismiss denied).

The following represent just a few of the cases Mr. Godino is currently litigating in a leadership position: *Small v. University Medical Center of Southern Nevada*, Case No. 13-00298 (D. Nev.); *Courtright, et al., v. O'Reilly Automotive Stores, Inc., et al.*, Case No. 14-334 (W.D. Mo); *Keskinen v. Edgewell Personal Care Co., et al.*, Case No. 17-07721 (C.D. CA); *Ryan v. Rodan & Fields, LLC*, Case No. 18-02505 (N.D. Cal)

MATTHEW M. HOUSTON, a partner in the firm's New York office, graduated from Boston University School of Law in 1988. Mr. Houston is an active member of the Bar of the State of New York and an inactive member of the bar for the Commonwealth of Massachusetts. Mr. Houston is also admitted to the United States District Courts for the Southern and Eastern Districts of New York and the District of Massachusetts, and the Second, Seventh, Ninth, and Eleventh Circuit Court of Appeals of the United States. Mr. Houston repeatedly has been selected as a New York Metro Super Lawyer.

Mr. Houston has substantial courtroom experience involving complex actions in federal and state courts throughout the country. Mr. Houston was co-lead trial counsel in one the few ERISA class action cases taken to trial asserting breach of fiduciary duty claims against plan fiduciaries, *Brieger et al. v. Tellabs, Inc.*, No. 06-CV-01882 (N.D. Ill.), and has successfully prosecuted many ERISA actions, including *In re Royal Ahold N.V. Securities and ERISA Litigation*, Civil Action No. 1:03-md-01539. Mr. Houston has been one of the principal attorneys litigating claims in multi-district litigation concerning employment classification of pickup and delivery drivers and primarily responsible for prosecuting ERISA class claims resulting in a \$242,000,000 settlement; *In re FedEx Ground Package Inc. Employment Practices Litigation*, No. 3:05-MD-527 (MDL 1700). Mr. Houston recently presented argument before the Eleventh Circuit Court of Appeals on behalf of a class of Florida pickup and delivery drivers obtaining a reversal of the lower court's grant of summary judgment. Mr. Houston represented the interests of Nevada and Arkansas drivers employed by FedEx Ground obtaining significant recoveries on their behalf. Mr. Houston also served as lead counsel in multi-district class litigation seeking to modify insurance claims handling practices; *In re UnumProvident Corp. ERISA Benefits Denial Actions*, No. 1:03-cv-1000 (MDL 1552).

Mr. Houston has played a principal role in numerous derivative and class actions wherein substantial benefits were conferred upon plaintiffs: *In re: Groupon Derivative Litigation*, No. 12-cv-5300 (N.D. Ill. 2012) (settlement of consolidated derivative action resulting in sweeping corporate governance reform estimated at \$159 million) *Bangari v. Lesnik, et al.*, No. 11 CH 41973 (Illinois Circuit Court, County of Cook) (settlement of claim resulting in payment of \$20 million to Career Education Corporation and implementation of extensive corporate governance reform); *In re Diamond Foods, Inc. Shareholder Litigation*, No. CGC-11-515895 (California Superior Court, County of San Francisco)

(\$10.4 million in monetary relief including a \$5.4 million clawback of executive compensation and significant corporate governance reform); *Pace American Shareholder Litigation*, 94-92 TUC-RMB (securities fraud class action settlement resulting in a recovery of \$3.75 million); *In re Bay Financial Securities Litigation*, Master File No. 89-2377-DPW, (D. Mass.) (J. Woodlock) (settlement of action based upon federal securities law claims resulting in class recovery in excess of \$3.9 million); *Goldsmith v. Technology Solutions Company*, 92 C 4374 (N.D. Ill. 1992) (J. Manning) (recovery of \$4.6 million as a result of action alleging false and misleading statements regarding revenue recognition).

In addition to numerous employment and derivative cases, Mr. Houston has litigated actions asserting breach of fiduciary duty in the context of mergers and acquisitions. Mr. Houston has been responsible for securing millions of dollars in additional compensation and structural benefits for shareholders of target companies: *In re Instinet Group, Inc. Shareholders Litigation*, C.A. No. 1289 (Delaware Court of Chancery); *Jasinover v. The Rouse Company*, Case No. 13-C-04-59594 (Maryland Circuit Court); *McLaughlin v. Household International, Inc.*, Case No. 02 CH 20683 (Illinois Circuit Court); *Sebesta v. The Quizno's Corporation*, Case No. 2001 CV 6281 (Colorado District Court); *Crandon Capital Partners v. Sanford M. Kimmel*, C.A. No. 14998 (Del. Ch.); and *Crandon Capital Partners v. Kimmel*, C.A. No. 14998 (Del. Ch. 1996) (J. Chandler) (settlement of an action on behalf of shareholders of Transnational Reinsurance Co. whereby acquiring company provided an additional \$10.4 million in merger consideration).

JASON L. KRAJCIER is a partner in the firm's Los Angeles office. He specializes in complex securities cases and has extensive experience in all phases of litigation (fact investigation, pre-trial motion practice, discovery, trial, appeal).

Prior to joining Glancy Prongay & Murray LLP, Mr. Krajcier was an Associate at Goodwin Procter LLP where he represented issuers, officers and directors in multi-hundred million and billion dollar securities cases. He began his legal career at Orrick, Herrington & Sutcliffe LLP, where he represented issuers, officers and directors in securities class actions, shareholder derivative actions, and matters before the U.S. Securities & Exchange Commission.

Mr. Krajcier is admitted to the State Bar of California, the Bar of the District of Columbia, the United States Supreme Court, the Ninth Circuit Court of Appeals, and the United States District Courts for the Central and Southern Districts of California.

SUSAN G. KUPFER is the founding partner of the Firm's Berkeley office. Ms. Kupfer joined the Firm in 2003. She is a native of New York City, and received her A.B. degree from Mount Holyoke College in 1969 and her Juris Doctor degree from Boston University School of Law in 1973. She did graduate work at Harvard Law School and, in 1977, was named Assistant Dean and Director of Clinical Programs at Harvard, supervising and teaching in that program of legal practice and related academic components.

For much of her legal career, Ms. Kupfer has been a professor of law. Her areas of academic expertise are Civil Procedure, Federal Courts, Conflict of Laws, Constitutional

Law, Legal Ethics, and Jurisprudence. She has taught at Harvard Law School, Hastings College of the Law, Boston University School of Law, Golden Gate University School of Law, and Northeastern University School of Law. From 1991 through 2002, she was a lecturer on law at the University of California, Berkeley, Boalt Hall, teaching Civil Procedure and Conflict of Laws. Her publications include articles on federal civil rights litigation, legal ethics, and jurisprudence. She has also taught various aspects of practical legal and ethical training, including trial advocacy, negotiation and legal ethics, to both law students and practicing attorneys.

Ms. Kupfer previously served as corporate counsel to The Architects Collaborative in Cambridge and San Francisco, and was the Executive Director of the Massachusetts Commission on Judicial Conduct. She returned to the practice of law in San Francisco with Morgenstein & Jubelirer and Berman DeValerio LLP before joining the Firm.

Ms. Kupfer's practice is concentrated in complex antitrust litigation. She currently serves, or has served, as Co-Lead Counsel in several multidistrict antitrust cases: *In re Photochromic Lens Antitrust Litig.* (MDL 2173, M.D. Fla. 2010); *In re Fresh and Process Potatoes Antitrust Litig.* (D. ID. 2011); *In re Korean Air Lines Antitrust Litig.* (MDL No. 1891, C.D. Cal. 2007); *In re Urethane Antitrust Litigation* (MDL 1616, D. Kan. 2004); *In re Western States Wholesale Natural Gas Litigation* (MDL 1566, D. Nev. 2005); and *Sullivan et al v. DB Investments et al* (D. N.J. 2004). She has been a member of the lead counsel teams that achieved significant settlements in: *In re Sorbates Antitrust Litigation* (\$96.5 million settlement); *In re Pillar Point Partners Antitrust Litigation* (\$50 million settlement); and *In re Critical Path Securities Litigation* (\$17.5 million settlement).

Ms. Kupfer is a member of the bar of Massachusetts and California, and is admitted to practice before the United States District Courts for the Northern, Central, Eastern and Southern Districts of California, the District of Massachusetts, the Courts of Appeals for the First and Ninth Circuits, and the U.S. Supreme Court.

CHARLES H. LINEHAN is a partner in the firm's Los Angeles office. He graduated summa cum laude from the University of California, Los Angeles with a Bachelor of Arts degree in Philosophy and a minor in Mathematics. Mr. Linehan received his Juris Doctor degree from the UCLA School of Law, where he was a member of the UCLA Moot Court Honors Board. While attending law school, Mr. Linehan participated in the school's First Amendment Amicus Brief Clinic (now the Scott & Cyan Banister First Amendment Clinic) where he worked with nationally recognized scholars and civil rights organizations to draft amicus briefs on various Free Speech issues.

GREGORY B. LINKH works out of the New York office, where he litigates antitrust, securities, shareholder derivative, and consumer cases. Greg graduated from the State University of New York at Binghamton in 1996 and from the University of Michigan Law School in 1999. While in law school, Greg externed with United States District Judge Gerald E. Rosen of the Eastern District of Michigan. Greg was previously associated with the law firms Dewey Ballantine LLP, Pomerantz Haudek Block Grossman & Gross LLP, and Murray Frank LLP.

Previously, Greg had significant roles in *In re Merrill Lynch & Co., Inc. Research Reports Securities Litigation* (settled for \$125 million); *In re Crompton Corp. Securities Litigation* (settled \$11 million); *Lowry v. Andrx Corp.* (settled for \$8 million); *In re Xybernaut Corp. Securities MDL Litigation* (settled for \$6.3 million); and *In re EIS Int'l Inc. Securities Litigation* (settled for \$3.8 million). Greg also represented the West Virginia Investment Management Board ("WVIMB") in *WVIMB v. Residential Accredited Loans, Inc., et al.*, relating to the WVIMB's investment in residential mortgage-backed securities.

Currently, Greg is litigating various antitrust and securities cases, including *In re Korean Ramen Antitrust Litigation*, *In re Automotive Parts Antitrust Litigation*, and *In re Horsehead Holding Corp. Securities Litigation*.

Greg is the co-author of *Inherent Risk In Securities Cases In The Second Circuit*, NEW YORK LAW JOURNAL (Aug. 26, 2004); and *Staying Derivative Action Pursuant to PSLRA and SLUSA*, NEW YORK LAW JOURNAL, P. 4, COL. 4 (Oct. 21, 2005).

BRIAN MURRAY is the managing partner of the Firm's New York Park Avenue office and the head of the Firm's Antitrust Practice Group. He received Bachelor of Arts and Master of Arts degrees from the University of Notre Dame in 1983 and 1986, respectively. He received a Juris Doctor degree, *cum laude*, from St. John's University School of Law in 1990. At St. John's, he was the Articles Editor of the ST. JOHN'S LAW REVIEW. Mr. Murray co-wrote: *Jurisdição Estrangeira Tem Papel Relevante Na De Fiesa De Investidores Brasileiros*, ESPAÇA JURÍDICO BOVESPA (August 2008); *The Proportionate Trading Model: Real Science or Junk Science?*, 52 CLEVELAND ST. L. REV. 391 (2004-05); *The Accident of Efficiency: Foreign Exchanges, American Depository Receipts, and Space Arbitrage*, 51 BUFFALO L. REV. 383 (2003); *You Shouldn't Be Required To Plead More Than You Have To Prove*, 53 BAYLOR L. REV. 783 (2001); *He Lies, You Die: Criminal Trials, Truth, Perjury, and Fairness*, 27 NEW ENGLAND J. ON CIVIL AND CRIMINAL CONFINEMENT 1 (2001); *Subject Matter Jurisdiction Under the Federal Securities Laws: The State of Affairs After Itoba*, 20 MARYLAND J. OF INT'L L. AND TRADE 235 (1996); *Determining Excessive Trading in Option Accounts: A Synthetic Valuation Approach*, 23 U. DAYTON L. REV. 316 (1997); *Loss Causation Pleading Standard*, NEW YORK LAW JOURNAL (Feb. 25, 2005); *The PSLRA 'Automatic Stay' of Discovery*, NEW YORK LAW JOURNAL (March 3, 2003); and *Inherent Risk In Securities Cases In The Second Circuit*, NEW YORK LAW JOURNAL (Aug. 26, 2004). He also authored *Protecting The Rights of International Clients in U.S. Securities Class Action Litigation*, INTERNATIONAL LITIGATION NEWS (Sept. 2007); *Lifting the PSLRA "Automatic Stay" of Discovery*, 80 N. DAK. L. REV. 405 (2004); *Aftermarket Purchaser Standing Under § 11 of the Securities Act of 1933*, 73 ST. JOHN'S L. REV. 633 (1999); *Recent Rulings Allow Section 11 Suits By Aftermarket Securities Purchasers*, NEW YORK LAW JOURNAL (Sept. 24, 1998); and *Comment, Weissmann v. Freeman: The Second Circuit Errs in its Analysis of Derivative Copy-rights by Joint Authors*, 63 ST. JOHN'S L. REV. 771 (1989).

Mr. Murray was on the trial team that prosecuted a securities fraud case under Section 10(b) of the Securities Exchange Act of 1934 against Microdyne Corporation in the Eastern District of Virginia and he was also on the trial team that presented a claim under

Section 14 of the Securities Exchange Act of 1934 against Artek Systems Corporation and Dynatach Group which settled midway through the trial.

Mr. Murray's major cases include *In re Horsehead Holding Corp. Sec. Litig.*, No. 16-cv-292, 2018 WL 4838234 (D. Del. Oct. 4, 2018) (recommending denial of motion to dismiss securities fraud claims where company's generic cautionary statements failed to adequately warn of known problems); *In re Deutsche Bank Sec. Litig.*, --- F.R.D. ---, 2018 WL 4771525 (S.D.N.Y. Oct. 2, 2018) (granting class certification for Securities Act claims and rejecting defendants' argument that class representatives' trading profits made them atypical class members); *Robb v. Fitbit Inc.*, 216 F. Supp. 3d 1017 (N.D. Cal. 2016) (denying motion to dismiss securities fraud claims where confidential witness statements sufficiently established scienter); *In re Eagle Bldg. Tech. Sec. Litig.*, 221 F.R.D. 582 (S.D. Fla. 2004), 319 F. Supp. 2d 1318 (S.D. Fla. 2004) (complaint against auditor sustained due to magnitude and nature of fraud; no allegations of a "tip-off" were necessary); *In re Turkcell Iletisim A.S. Sec. Litig.*, 209 F.R.D. 353 (S.D.N.Y. 2002) (defining standards by which investment advisors have standing to sue); *In re Turkcell Iletisim A.S. Sec. Litig.*, 202 F. Supp. 2d 8 (S.D.N.Y. 2001) (liability found for false statements in prospectus concerning churn rates); *Feiner v. SS&C Tech., Inc.*, 11 F. Supp. 2d 204 (D. Conn. 1998) (qualified independent underwriters held liable for pricing of offering); *Malone v. Microdyne Corp.*, 26 F.3d 471 (4th Cir. 1994) (reversal of directed verdict for defendants); and *Adair v. Bristol Tech. Systems, Inc.*, 179 F.R.D. 126 (S.D.N.Y. 1998) (aftermarket purchasers have standing under section 11 of the Securities Act of 1933). Mr. Murray also prevailed on an issue of first impression in the Superior Court of Massachusetts, in *Cambridge Biotech Corp. v. Deloitte and Touche LLP*, in which the court applied the doctrine of continuous representation for statute of limitations purposes to accountants for the first time in Massachusetts. 6 Mass. L. Rptr. 367 (Mass. Super. Jan. 28, 1997). In addition, in *Adair v. Microfield Graphics, Inc.* (D. Or.), Mr. Murray settled the case for 47% of estimated damages. In the *Qiao Xing Universal Telephone* case, claimants received 120% of their recognized losses.

Among his current cases, Mr. Murray represents a class of investors in a securities litigation involving preferred shares of Deutsche Bank and is lead counsel in a securities class action against Horsehead Holdings, Inc. in the District of Delaware.

Mr. Murray served as a Trustee of the Incorporated Village of Garden City (2000-2002); Commissioner of Police for Garden City (2000-2001); Co-Chairman, Derivative Suits Subcommittee, American Bar Association Class Action and Derivative Suits Committee, (2007-2010); Member, Sports Law Committee, Association of the Bar for the City of New York, 1994-1997; Member, Litigation Committee, Association of the Bar for the City of New York, 2003-2007; Member, New York State Bar Association Committee on Federal Constitution and Legislation, 2005-2008; Member, Federal Bar Council, Second Circuit Committee, 2007-present.

Mr. Murray has been a panelist at CLEs sponsored by the Federal Bar Council and the Institute for Law and Economic Policy, at the German-American Lawyers Association Annual Meeting in Frankfurt, Germany, and is a frequent lecturer before institutional investors in Europe and South America on the topic of class actions.

NATALIE S. PANG is a partner in the firm's Los Angeles office. Ms. Pang has advocated on behalf of thousands of consumers during her career. Ms. Pang has extensive experience in case management and all facets of litigation: from a case's inception through the discovery process--including taking and defending depositions and preparing witnesses for depositions and trial--mediation and settlement negotiations, pretrial motion work, trial and post-trial motion work.

Prior to joining the firm, Ms. Pang lead the mass torts department of her last firm, where she managed the cases of over two thousand individual clients. There, Ms. Pang worked on a wide variety of complex state and federal matters which included cases involving pharmaceutical drugs, medical devices, auto defects, toxic torts, false advertising, and uninhabitable conditions. Ms. Pang was also trial counsel in the notable case, *Celestino Acosta et al. v. City of Long Beach et al.* (BC591412) which was brought on behalf of residents of a mobile home park built on a former trash dump and resulted in a \$39.5 million verdict after an eleven-week jury trial in Los Angeles Superior Court.

Ms. Pang received her J.D. from Loyola Law School. While in law school, Ms. Pang received a Top 10 Brief Award as a Scott Moot Court competitor, was chosen to be a member of the Scott Moot Court Honor's Board, and competed as a member of the National Moot Court Team. Ms. Pang was also a Staffer and subsequently an Editor for Loyola's Entertainment Law Review as well as a Loyola Writing Tutor. During law school, Ms. Pang served as an extern for: the Hon. Rolf Treu (Los Angeles Superior Court), the Los Angeles City Attorney's Office, and the Federal Public Defender's Office. Ms. Pang obtained her undergraduate degree from the University of Southern California and worked in the healthcare industry prior to pursuing her career in law.

ROBERT V. PRONGAY is a partner in the Firm's Los Angeles office where he focuses on the investigation, initiation, and prosecution of complex securities cases on behalf of institutional and individual investors. Mr. Prongay's practice concentrates on actions to recover investment losses resulting from violations of the federal securities laws and various actions to vindicate shareholder rights in response to corporate and fiduciary misconduct.

Mr. Prongay has extensive experience litigating complex cases in state and federal courts nationwide. Since joining the Firm, Mr. Prongay has successfully recovered millions of dollars for investors victimized by securities fraud and has negotiated the implementation of significant corporate governance reforms aimed at preventing the recurrence of corporate wrongdoing.

Mr. Prongay was recently recognized as one of thirty lawyers included in the Daily Journal's list of Top Plaintiffs Lawyers in California for 2017. Several of Mr. Prongay's cases have received national and regional press coverage. Mr. Prongay has been interviewed by journalists and writers for national and industry publications, ranging from *The Wall Street Journal* to the *Los Angeles Daily Journal*. Mr. Prongay has appeared as a guest on Bloomberg Television where he was interviewed about the securities litigation stemming from the high-profile initial public offering of Facebook, Inc.

Mr. Prongay received his Bachelor of Arts degree in Economics from the University of Southern California and his Juris Doctor degree from Seton Hall University School of Law. Mr. Prongay is also an alumnus of the Lawrenceville School.

DANIELLA QUITT, a partner in the firm's New York office, graduated from Fordham University School of Law in 1988, is a member of the Bar of the State of New York, and is also admitted to the United States District Courts for the Southern and Eastern Districts of New York, the United States Court of Appeals for the Second, Fifth, and Ninth Circuits, and the United States Supreme Court.

Ms. Quitt has extensive experience in successfully litigating complex class actions from inception to trial and has played a significant role in numerous actions wherein substantial benefits were conferred upon plaintiff shareholders, such as *In re Safety-Kleen Corp. Stockholders Litigation*, (D.S.C.) (settlement fund of \$44.5 million); *In re Laidlaw Stockholders Litigation*, (D.S.C.) (settlement fund of \$24 million); *In re UNUMProvident Corp. Securities Litigation*, (D. Me.) (settlement fund of \$45 million); *In re Harnischfeger Industries* (E.D. Wisc.) (settlement fund of \$10.1 million); *In re Oxford Health Plans, Inc. Derivative Litigation*, (S.D.N.Y.) (settlement benefit of \$13.7 million and corporate therapeutics); *In re JWP Inc. Securities Litigation*, (S.D.N.Y.) (settlement fund of \$37 million); *In re Home Shopping Network, Inc., Derivative Litigation*, (S.D. Fla.) (settlement benefit in excess of \$20 million); *In re Graham-Field Health Products, Inc. Securities Litigation*, (S.D.N.Y.) (settlement fund of \$5.65 million); *Benjamin v. Carusona*, (E.D.N.Y.) (prosecuted action on behalf of minority shareholders which resulted in a change of control from majority-controlled management at Gurney's Inn Resort & Spa Ltd.); *In re Rexel Shareholder Litigation*, (Sup. Ct. N.Y. County) (settlement benefit in excess of \$38 million); and *Croyden Assoc. v. Tesoro Petroleum Corp., et al.*, (Del. Ch.) (settlement benefit of \$19.2 million).

In connection with the settlement of *Alessi v. Beracha*, (Del. Ch.), a class action brought on behalf of the former minority shareholders of Earthgrains, Chancellor Chandler commented: "I give credit where credit is due, Ms. Quitt. You did a good job and got a good result, and you should be proud of it."

Ms. Quitt has focused her practice on shareholder rights, securities class actions, and ERISA class actions but also handles general commercial and consumer litigation. Ms. Quitt serves as a member of the S.D.N.Y. ADR Panel and has been consistently selected as a New York Metro Super Lawyer.

JONATHAN M. ROTTER leads the Firm's intellectual property litigation practice and has extensive experience in class action litigation, including in the fields of data privacy, digital content, securities, consumer protection, and antitrust. His cases often involve technical and scientific issues, and he excels at the critical skill of understanding and organizing complex subject matter in a way helpful to judges, juries, and ultimately, the firm's clients. Since joining the firm, he has played a key role in cases recovering over \$100 million. He handles cases on contingency, partial contingency, and hourly bases, and works collaboratively with other lawyers and law firms across the country.

Before joining the firm, Mr. Rotter served for three years as the first Patent Pilot Program Law Clerk at the United States District Court for the Central District of California, both in Los Angeles and Orange County. There, he assisted the Honorable S. James Otero, Andrew J. Guilford, George H. Wu, John A. Kronstadt, and Beverly Reid O'Connell with hundreds of patent cases in every major field of technology, from complaint to post-trial motions, advised on case management strategy, and organized and provided judicial education. Mr. Rotter also served as a law clerk for the Honorable Milan D. Smith, Jr. on the United States Court of Appeals for the Ninth Circuit, working on the full range of matters handled by the Circuit.

Before his service to the courts, Mr. Rotter practiced at an international law firm, where he argued appeals at the Federal Circuit, Ninth Circuit, and California Court of Appeal, tried cases, argued motions, and managed all aspects of complex litigation. He also served as a volunteer criminal prosecutor for the Los Angeles City Attorney's Office.

Mr. Rotter graduated with honors from Harvard Law School in 2004. He served as an editor of the *Harvard Journal of Law & Technology*, was a Fellow in Law and Economics at the John M. Olin Center for Law, Economics, and Business at Harvard Law School, and a Fellow in Justice, Welfare, and Economics at the Harvard University Weatherhead Center For International Affairs. He graduated with honors from the University of California, San Diego in 2000 with a B.S. in molecular biology and a B.A. in music.

Mr. Rotter serves on the Merit Selection Panel for Magistrate Judges in the Central District of California, and served on the Model Patent Jury Instructions and Model Patent Local Rules subcommittees of the American Intellectual Property Law Association. He has written extensively on intellectual property issues, and has been honored for his work with legal service organizations. He is admitted to practice in California and before the United States Courts of Appeals for the First, Second, Ninth and Federal Circuits, the United States District Courts for the Northern, Central, and Southern Districts of California, and the United States Patent & Trademark Office.

KEVIN F. RUF graduated from the University of California at Berkeley with a Bachelor of Arts in Economics and earned his Juris Doctor degree from the University of Michigan. He was an associate at the Los Angeles firm Manatt Phelps and Phillips from 1988 until 1992, where he specialized in commercial litigation. In 1993, he joined the firm Corbin & Fitzgerald (with future federal district court Judge Michael Fitzgerald) specializing in white collar criminal defense work.

Kevin joined the Glancy firm in 2001 and works on a diverse range of trial and appellate cases; he is also head of the firm's Labor practice. Kevin has successfully argued a number of important appeals, including in the 9th Circuit Court of Appeals. He has twice argued cases before the California Supreme Court – winning both.

In *Smith v. L'Oreal* (2006), after Kevin's winning arguments, the California Supreme Court established a fundamental right of all California workers to immediate payment of all earnings at the conclusion of their employment.

Kevin gave the winning oral argument in one of the most talked about and wide-reaching California Supreme Court cases of recent memory: *Lee v. Dynamex* (2018). The Dynamex decision altered 30 years of California law and established a new definition of employment that brings more workers within the protections of California's Labor Code. The California legislature was so impressed with the Dynamex result that promulgated AB5, a statute to formalize this new definition of employment and expand its reach.

Kevin won the prestigious California Lawyer of the Year (CLAY) award in 2019 for his work on the *Dynamex* case.

In 2021, Kevin was named by California's legal paper of record, the Daily Journal, as one of 18 California "Lawyers of the Decade."

Kevin has been named three times as one of the Daily Journal's "Top 75 Employment Lawyers."

Since 2014, Kevin has been an elected member of the Ojai Unified School District Board of Trustees. Kevin was also a Main Company Member of the world-famous Groundlings improv and sketch comedy troupe – where "everyone else got famous."

BENJAMIN I. SACHS-MICHAELS, a partner in the firm's New York office, graduated from Benjamin N. Cardozo School of Law in 2011. His practice focuses on shareholder derivative litigation and class actions on behalf of shareholders and consumers.

While in law school, Mr. Sachs-Michaels served as a judicial intern to Senior United States District Judge Thomas J. McAvoy in the United States District Court for the Northern District of New York and was a member of the Cardozo Journal of Conflict Resolution.

Mr. Sachs-Michaels is a member of the Bar of the State of New York. He is also admitted to the United States District Courts for the Southern and Eastern Districts of New York and the United States Court of Appeals for the Second Circuit.

CASEY E. SADLER is a native of New York, New York. After graduating from the University of Southern California, Gould School of Law, Mr. Sadler joined the Firm in 2010. While attending law school, Mr. Sadler externed for the Enforcement Division of the Securities and Exchange Commission, spent a summer working for P.H. Parekh & Co. – one of the leading appellate law firms in New Delhi, India – and was a member of USC's Hale Moot Court Honors Program.

Mr. Sadler's practice focuses on securities and consumer litigation. A partner in the Firm's Los Angeles office, Mr. Sadler is admitted to the State Bar of California and the United States District Courts for the Northern, Southern, and Central Districts of California.

EX KANO S. SAMS II earned his Bachelor of Arts degree in Political Science from the University of California Los Angeles. Mr. Sams earned his Juris Doctor degree from the University of California Los Angeles School of Law, where he served as a member of the *UCLA Law Review*. After law school, Mr. Sams practiced class action civil rights litigation

on behalf of plaintiffs. Subsequently, Mr. Sams was a partner at Coughlin Stoia Geller Rudman & Robbins LLP (currently Robbins Geller Rudman & Dowd LLP), where his practice focused on securities and consumer class actions on behalf of investors and consumers.

During his career, Mr. Sams has served as lead counsel in dozens of securities class actions and complex-litigation cases, and has worked on cases at all levels of the state and federal court systems throughout the United States. Mr. Sams was one of the counsel for respondents in *Cyan, Inc. v. Beaver Cty. Employees Ret. Fund*, 138 S. Ct. 1061 (2018), in which the United States Supreme Court ruled unanimously in favor of respondents, holding that: (1) the Securities Litigation Uniform Standards Act of 1998 ("SLUSA") does not strip state courts of jurisdiction over class actions alleging violations of only the Securities Act of 1933; and (2) SLUSA does not empower defendants to remove such actions from state to federal court. Mr. Sams also participated in a successful appeal before a Fifth Circuit panel that included former United States Supreme Court Justice Sandra Day O'Connor sitting by designation, in which the court unanimously vacated the lower court's denial of class certification, reversed the lower court's grant of summary judgment, and issued an important decision on the issue of loss causation in securities litigation: *Alaska Electrical Pension Fund v. Flowserve Corp.*, 572 F.3d 221 (5th Cir. 2009). The case settled for \$55 million.

Mr. Sams has also obtained other significant results. Notable examples include: *Beezley v. Fenix Parts, Inc.*, No. 1:17-CV-7896, 2018 WL 3454490 (N.D. Ill. July 13, 2018) (denying motion to dismiss); *In re Flowers Foods, Inc. Sec. Litig.*, No. 7:16-CV-222 (WLS), 2018 WL 1558558 (M.D. Ga. Mar. 23, 2018) (largely denying motion to dismiss; case settled for \$21 million); *In re King Digital Entm't plc S'holder Litig.*, No. CGC-15-544770 (San Francisco Superior Court) (case settled for \$18.5 million); *In re Castlight Health, Inc. S'holder Litig.*, Lead Case No. CIV533203 (California Superior Court, County of San Mateo) (case settled for \$9.5 million); *Wiley v. Envivio, Inc.*, Master File No. CIV517185 (California Superior Court, County of San Mateo) (case settled for \$8.5 million); *In re CafePress Inc. S'holder Litig.*, Master File No. CIV522744 (California Superior Court, County of San Mateo) (case settled for \$8 million); *Estate of Gardner v. Continental Casualty Co.*, No. 3:13-cv-1918 (JBA), 2016 WL 806823 (D. Conn. Mar. 1, 2016) (granting class certification); *Forbush v. Goodale*, No. 33538/2011, 2013 WL 582255 (N.Y. Sup. Feb. 4, 2013) (denying motions to dismiss); *Curry v. Hansen Med., Inc.*, No. C 09-5094 CW, 2012 WL 3242447 (N.D. Cal. Aug. 10, 2012) (upholding complaint; case settled for \$8.5 million); *Wilkof v. Caraco Pharm. Labs., Ltd.*, 280 F.R.D. 332 (E.D. Mich. 2012) (granting class certification); *Puskala v. Koss Corp.*, 799 F. Supp. 2d 941 (E.D. Wis. 2011) (upholding complaint); *Mishkin v. Zynex Inc.*, Civil Action No. 09-cv-00780-REB-KLM, 2011 WL 1158715 (D. Colo. Mar. 30, 2011) (denying motion to dismiss); and *Tsirekidze v. Syntax-Brilliant Corp.*, No. CV-07-02204-PHX-FJM, 2009 WL 2151838 (D. Ariz. July 17, 2009) (granting class certification; case settled for \$10 million).

Additionally, Mr. Sams has successfully represented consumers in class action litigation. Mr. Sams worked on nationwide litigation and a trial against major tobacco companies, and in statewide tobacco litigation that resulted in a \$12.5 billion recovery for California cities and counties in a landmark settlement. He also was a principal attorney in a

consumer class action against one of the largest banks in the country that resulted in a substantial recovery and a change in the company's business practices. Mr. Sams also participated in settlement negotiations on behalf of environmental organizations along with the United States Department of Justice and the Ohio Attorney General's Office that resulted in a consent decree requiring a company to perform remediation measures to address the effects of air and water pollution. Additionally, Mr. Sams has been an author or co-author of several articles in major legal publications, including "9th Circuit Decision Clarifies Securities Fraud Loss Causation Rule" published in the February 8, 2018 issue of the *Daily Journal*, and "Market Efficiency in the World of High-Frequency Trading" published in the December 26, 2017 issue of the *Daily Journal*.

LEANNE HEINE SOLISH is a partner in GPM's Los Angeles office. Her practice focuses on complex securities litigation.

Ms. Solish has extensive experience litigating complex cases in federal courts nationwide. Since joining GPM in 2012, Ms. Solish has helped secure several large class action settlements for injured investors, including: *The City of Farmington Hills Employees Retirement System v. Wells Fargo Bank*, Case No. 10-4372--DWF/JJG (D. Minn.) (\$62.5 million settlement on behalf of participants in Wells Fargo's securities lending program. The settlement was reached on the eve of trial and ranked among the largest recoveries achieved in a securities lending class action stemming from the 2008 financial crisis.); *Mild v. PPG Industries, Inc. et al.*, Case No. 2:18-cv-04231 (C.D. Cal.) (\$25 million settlement); *In re Penn West Petroleum Ltd. Securities Litigation*, Case No. 1:14-cv-06046-JGK (S.D.N.Y.) (\$19 million settlement for the U.S. shareholder class as part of a \$39 million global settlement); *In re ITT Educational Services, Inc. Securities Litigation (Indiana)*, Case No. 1:14-cv-01599-TWP-DML (\$12.5375 million settlement); *In re Doral Financial Corporation Securities Litigation*, Case No. 3:14-cv-01393-GAG (D.P.R.) (\$7 million settlement); *Larson v. Insys Therapeutics Incorporated, et al.*, Lead Case No. 14-cv-01043-PHX-GMS (D. Ariz.) (\$6.125 million settlement); *In re Unilife Corporation Securities Litigation*, Case No. 1:16-cv-03976-RA (\$4.4 million settlement); and *In re K12 Inc. Securities Litigation*, Case No. 4:16-cv-04069-PJH (N.D. Cal.) (\$3.5 million settlement).

Super Lawyers Magazine has selected Ms. Solish as a "Rising Star" in the area of Securities Litigation for the past four consecutive years, 2016 through 2019.

Ms. Solish graduated *summa cum laude* with a B.S.M. in Accounting and Finance from Tulane University, where she was a member of the Beta Alpha Psi honors accounting organization and was inducted into the Beta Gamma Sigma Business Honors Society. Ms. Solish subsequently earned her J.D. from the University of Texas School of Law.

Ms. Solish is admitted to the State Bar of California, the Ninth Circuit Court of Appeals, and the United States District Courts for the Central, Northern, and Southern Districts of California. Ms. Solish is also a Registered Certified Public Accountant in Illinois.

GARTH A. SPENCER's work focuses on securities litigation on behalf of investors, as well as whistleblower, consumer and antitrust matters for plaintiffs. He has substantially

contributed to a number of GPM's successful cases, including *Robb v. Fitbit Inc.* (N.D. Cal.) (\$33 million settlement). Mr. Spencer joined the firm's New York office in 2016, and transferred to Los Angeles in 2020. Prior to joining GPM, he worked in the tax group of a transactional law firm, and pursued tax whistleblower matters as a sole practitioner.

DAVID J. STONE has a broad background in complex commercial litigation, with particular focus on litigating corporate fiduciary claims, securities, and contract matters. Mr. Stone maintains a versatile practice in state and federal courts, representing clients in a wide-range of matters, including corporate derivative actions, securities class actions, litigating claims arising from master limited partnership "drop down" transactions, litigating consumer class actions (including data breach claims) litigating complex debt instruments, fraudulent conveyance actions, and appeals. Mr. Stone also has developed a specialized practice in litigation on behalf of post-bankruptcy confirmation trusts, including investigating and prosecuting D&O claims and general commercial litigation. In addition, Mr. Stone counsels clients on general business matters, including contract negotiation and corporate organization.

Mr. Stone graduated from Boston University School of Law in 1994 and was the Law Review Editor. He earned his B.A. at Tufts University in 1988, graduating *cum laude*. Following law school, Mr. Stone served as a clerk to the Honorable Joseph Tauro, then Chief Judge of the U.S. District Court for the District of Massachusetts. Prior to joining GPM, Mr. Stone practiced at international law firms Cravath, Swaine & Moore LLP, Morrison & Foerster LLP, and Greenberg Traurig LLP.

Mr. Stone is a member of the bar in New York and California, and is admitted to practice before the United States District Courts for the Southern and Eastern Districts of New York, the Northern, Southern, and Central Districts of California, and the Court of Appeals for the Second and Third Circuits.

RAY D. SULENTIC is a partner in the firm's San Diego office where he litigates complex securities fraud, data privacy, and consumer fraud class actions. He also represents individuals in connection with the firm's SEC, CFTC, and qui tam whistleblower practice areas.

Before joining GPM, Mr. Sulentic worked extensively with financial markets as an institutional investor. His investment experience includes serving as a special situations (merger arbitrage) analyst at UBS O'Connor LLC, a multi-billion-dollar hedge fund in Chicago; and as a sell-side equity and commodity analyst for Bear Stearns & Co. Inc. in New York. While at Bear Stearns, Mr. Sulentic's investment analysis was featured in *Barron's*.

Following his career on Wall Street, Mr. Sulentic practiced law at DLA Piper LLP in San Diego, where he worked on securities litigation and corporate governance matters, and represented public companies facing investigations or inquiries by the SEC.

Since joining GPM, Mr. Sulentic has helped his clients successfully obtain significant settlements, including in complex accounting and securities fraud matters.

Mr. Sulentic's relevant legal experience includes:

- Represented lead plaintiffs in *In re Eros International PLC Securities Litigation*, 2:19-cv-14125-JMV-JSA (D.N.J.), a securities class action alleging violations of the Securities Exchange Act of 1934 (\$25 million settlement).
- Represented lead plaintiffs in *Shen v. Exela Technologies Inc. et al.*, 3:20-cv-00691 (N.D. Tex.), a securities class action alleging violations of the Securities Exchange Act of 1934 (\$5 million settlement).
- Represented lead plaintiffs in *In re Tintri Securities Litigation*, Case No. 17-civ-04321, San Mateo Superior Court, a securities class action alleging violations of Securities Act of 1933. The parties have reached an agreement to settle the case for \$7.0 million, subject to final court approval.
- Represented lead plaintiff in *Ivan Baron v. HyreCar Inc. et al.*, 2:21-cv-06918-FWS-JC (C.D. Cal), a securities class action alleging violations of the Securities Exchange Act of 1934. Plaintiffs in HyreCar defeated Defendants' motion to dismiss. The case is currently pending.
- Represented plaintiff in *Valenzuela v. Hacopian Design & Development Group LLC et al.*, Case No. 37-2022-101113-CU-BT-CTL, San Diego Superior Court (Valenzuela*) a fraud, conversion, and RICO case. In Valenzuela, Mr. Sulentic argued and won many motions including a motion for summary judgment in his client's favor on one cause of action; a motion denying one defendant leave to amend her answer; a motion deeming his client's requests for admission admitted; and discovery sanctions against two defendants. Following a bench trial against one defendant, and a default judgment prove up hearing against two other defendants, the court in Valenzuela awarded Mr. Sulentic's client a combined judgment of over \$440,000, most of which was comprised of punitive damages on compensatory damages of just over \$24,000.

**Valenzuela* was a pro bono matter not litigated by GPM, but by Mr. Sulentic in his individual capacity.

KARA M. WOLKE is a partner in the firm's Los Angeles office. Ms. Wolke specializes in complex litigation, including the prosecution of securities fraud, derivative, consumer, and wage and hour class actions. She also has extensive experience in appellate advocacy in both State and Federal Circuit Courts of Appeals.

With over fifteen years of experience in financial class action litigation, Ms. Wolke has helped to recover hundreds of millions of dollars for injured investors, consumers, and employees. Notable cases include: *Christine Asia Co. Ltd., et al. v. Jack Yun Ma, et al.*, Case No. 15-md-02631 (S.D.N.Y.) (\$250 million securities class action settlement); *Farmington Hills Employees' Retirement System v. Wells Fargo Bank*, Case No. 10-4372 (D. Minn.) (\$62.5 million settlement on behalf of participants in Wells Fargo's securities lending program. The settlement was reached on the eve of trial and ranked among the

largest recoveries achieved in a securities lending class action stemming from the 2008 financial crisis.); *Schleicher, et al. v. Wendt, et al.* (Conseco), Case No. 02-cv-1332 (S.D. Ind.) (\$41.5 million securities class action settlement); *Lapin v. Goldman Sachs*, Case No. 03-850 (S.D.N.Y.) (\$29 million securities class action settlement); *In Re: Mannkind Corporation Securities Litigation*, Case No. 11-929 (C.D. Cal) (approximately \$22 million settlement – \$16 million in cash plus stock); *Jenson v. First Trust Corp.*, Case No. 05-3124 (C.D. Cal.) (\$8.5 million settlement of action alleging breach of fiduciary duty and breach of contract against trust company on behalf of a class of elderly investors); and *Pappas v. Naked Juice Co.*, Case No. 11-08276 (C.D. Cal.) (\$9 million settlement in consumer class action alleging misleading labeling of juice products as “All Natural”).

Ms. Wolke has been named a Super Lawyers “Rising Star,” and her work on behalf of investors has earned her recognition as a LawDragon Leading Plaintiff Financial Lawyer for 2019 and 2020.

With a background in intellectual property, Ms. Wolke was a part of the team of lawyers who successfully challenged the claim of copyright ownership to the song “Happy Birthday to You” on behalf of artists and filmmakers who had been forced to pay hefty licensing fees to publicly sing the world’s most famous song. In the resolution of that action, the defendant music publishing company funded a settlement of \$14 million and, significantly, agreed to relinquish the song to the public domain. Previously, Ms. Wolke penned an article regarding the failure of U.S. Copyright Law to provide an important public performance right in sound recordings, 7 Vand. J. Ent. L. & Prac. 411, which was nationally recognized and received an award by the American Bar Association and the Grammy® Foundation.

Committed to the provision of legal services to the poor, disadvantaged, and other vulnerable or disenfranchised individuals and groups, Ms. Wolke also oversees the Firm’s *pro bono practice*. Ms. Wolke currently serves as a volunteer attorney for KIND (Kids In Need of Defense), representing unaccompanied immigrant and refugee children in custody and deportation proceedings, and helping them to secure legal permanent residency status in the U.S.

Ms. Wolke graduated *summa cum laude* with a Bachelor of Science in Economics from The Ohio State University in 2001. She subsequently earned her J.D. (with honors) from Ohio State, where she was active in Moot Court and received the Dean’s Award for Excellence during each of her three years.

Ms. Wolke is admitted to the State Bar of California, the Ninth Circuit Court of Appeals, as well as the United States District Courts for the Northern, Southern, and Central Districts of California. She lives with her husband and two sons in Los Angeles.

OF COUNSEL

PETER A. BINKOW has prosecuted lawsuits on behalf of consumers and investors in state and federal courts throughout the United States. He served as Lead or Co-Lead Counsel in many class action cases, including: *In re Mercury Interactive Securities*

Litigation (\$117.5 million recovery); *The City of Farmington Hills Retirement System v Wells Fargo* (\$62.5 million recovery); *Schleicher v Wendt* (Conseco Securities litigation - \$41.5 million recovery); *Lapin v Goldman Sachs* (\$29 million recovery); *In re Heritage Bond Litigation* (\$28 million recovery); *In re National Techteam Securities Litigation* (\$11 million recovery for investors); *In re Lason Inc. Securities Litigation* (\$12.68 million recovery), *In re ESC Medical Systems, Ltd. Securities Litigation* (\$17 million recovery); and many others. In *Schleicher v Wendt*, Mr. Binkow successfully argued the seminal Seventh Circuit case on class certification, in an opinion authored by Chief Judge Frank Easterbrook. He has argued and/or prepared appeals before the Ninth Circuit, Seventh Circuit, Sixth Circuit and Second Circuit Courts of Appeals.

Mr. Binkow joined the Firm in 1994. He was born on August 16, 1965 in Detroit, Michigan. Mr. Binkow obtained a Bachelor of Arts degree from the University of Michigan in 1988 and a Juris Doctor degree from the University of Southern California in 1994.

MARK S. GREENSTONE specializes in consumer, financial fraud and employment-related class actions. Possessing significant law and motion and trial experience, Mr. Greenstone has represented clients in multi-million dollar disputes in California state and federal courts, as well as the Court of Federal Claims in Washington, D.C.

Mr. Greenstone received his training as an associate at Sheppard, Mullin, Richter & Hampton LLP where he specialized in complex business litigation relating to investment management, government contracts and real estate. Upon leaving Sheppard Mullin, Mr. Greenstone founded an internet-based company offering retail items on multiple platforms nationwide. He thereafter returned to law bringing a combination of business and legal skills to his practice.

Mr. Greenstone graduated Order of the Coif from the UCLA School of Law. He also received his undergraduate degree in Political Science from UCLA, where he graduated Magna Cum Laude and was inducted into the Phi Beta Kappa honor society.

Mr. Greenstone is a member of the Consumer Attorneys Association of Los Angeles, the Santa Monica Bar Association and the Beverly Hills Bar Association. He is admitted to practice in state and federal courts throughout California.

ROBERT I. HARWOOD, Of Counsel to the firm, graduated from William and Mary Law School in 1971, and has specialized in securities law and securities litigation since beginning his career in 1972 at the Enforcement Division of the New York Stock Exchange. Mr. Harwood was a founding member of Harwood Feffer LLP. He has prosecuted numerous securities, class, derivative, and ERISA actions. He is a member of the Trial Lawyers' Section of the New York State Bar Association and has served as a guest lecturer at trial advocacy programs sponsored by the Practising Law Institute. In a statewide survey of his legal peers published by Super Lawyers Magazine, Mr. Harwood has been consistently selected as a "New York Metro Super Lawyer." Super Lawyers are the top five percent of attorneys in New York, as chosen by their peers and through the independent research. He is also a Member of the Board of Directors of the MFY Legal Services Inc., which provides free legal representation in civil matters to the poor and the

mentally ill in New York City. Since 1999, Mr. Harwood has also served as a Village Justice for the Village of Dobbs Ferry, New York.

Commenting on Mr. Harwood's abilities, in *In re Royal Dutch/Shell Transport ERISA Litigation*, (D.N.J.), Judge Bissell stated:

the Court knows the attorneys in the firms involved in this matter and they are highly experienced and highly skilled in matters of this kind. Moreover, in this case it showed. Those efforts were vigorous, imaginative and prompt in reaching the settlement of this matter with a minimal amount of discovery.... So both skill and efficiency were brought to the table here by counsel, no doubt about that.

Likewise, Judge Hurley stated in connection with *In re Olsten Corporation Securities Litigation*, No. 97 CV-5056 (E.D.N.Y. Aug. 31, 2001), wherein a settlement fund of \$24.1 million was created: "The quality of representation here I think has been excellent." Mr. Harwood was lead attorney in *Meritt v. Eckerd*, No. 86 Civ. 1222 (E.D.N.Y. May 30, 1986), where then Chief Judge Weinstein observed that counsel conducted the litigation with "speed and skill" resulting in a settlement having a value "in the order of \$20 Million Dollars." Mr. Harwood prosecuted the *Hoeniger v. Aylsworth* class action litigation in the United States District Court for the Western District of Texas (No. SA-86-CA-939), which resulted in a settlement fund of \$18 million and received favorable comment in the August 14, 1989 edition of *The Wall Street Journal* ("*Prospector Fund Finds Golden Touch in Class Action Suit*" p. 18, col. 1). Mr. Harwood served as co-lead counsel in *In Re Interco Incorporated Shareholders Litigation*, Consolidated C.A. No. 10111 (Delaware Chancery Court) (May 25, 1990), resulting in a settlement of \$18.5 million, where V.C. Berger found, "This is a case that has an extensive record that establishes it was very hard fought. There were intense efforts made by plaintiffs' attorneys and those efforts bore very significant fruit in the face of serious questions as to ultimate success on the merits."

Mr. Harwood served as lead counsel in *Morse v. McWhorter* (Columbia/HCA Healthcare Securities Litigation), (M.D. Tenn.), in which a settlement fund of \$49.5 million was created for the benefit of the Class, as well as *In re Bank One Securities Litigation*, (N.D. Ill.), which resulted in the creation of a \$45 million settlement fund. Mr. Harwood also served as co-lead counsel in *In re Safety-Kleen Corp. Stockholders Litigation*, (D.S.C.), which resulted in a settlement fund of \$44.5 million; *In re Laidlaw Stockholders Litigation*, (D.S.C.), which resulted in a settlement fund of \$24 million; *In re AIG ERISA Litigation*, (S.D.N.Y.), which resulted in a settlement fund of \$24.2 million; *In re JWP Inc. Securities Litigation*, (S.D.N.Y.), which resulted in a \$37 million settlement fund; *In re Oxford Health Plans, Inc. Derivative Litigation*, (S.D.N.Y.), which resulted in a settlement benefit of \$13.7 million and corporate therapeutics; and *In re UNUMProvident Corp. Securities Litigation*, (D. Me.), which resulted in the creation of settlement fund of \$45 million. Mr. Harwood has also been one of the lead attorneys in litigating claims in *In re FedEx Ground Package Inc. Employment Practices Litigation*, No. 3:05-MD-527 (MDL 1700), a multi-district litigation concerning employment classification of pickup and delivery drivers which resulted in a \$242,000,000 settlement.

ERIKA SHAPIRO has extensive experience in a broad range of litigation matters. Until 2019, Ms. Shapiro's work primarily focused on complex antitrust cases involving pharmaceutical companies, and through this work, she helped successfully defend pharmaceutical companies against antitrust and unfair competition allegations, with a particular concentration on the Hatch-Waxman Act, product hopping, and reverse payment settlement allegations. As of 2019, Ms. Shapiro has represented clients in a vast array of litigation, including commercial real estate matters, with a particular focus on the global COVID-19 pandemic's impact on commercial real estate, bankruptcy matters, commercial litigation involving breach of contract, tort, trademark infringement, and trusts and estates law with a focus on will contests. Ms. Shapiro has further managed multiple cases defending physicians and hospitals against allegations of malpractice.

Ms. Shapiro is committed to the academic community, and is the Founder and CEO of Study Songs, an app aimed at helping students study for the multistate bar exam through melodies contained in over 80 original songs and through pop-up definitions of over 1200 legal terms and concepts.

Ms. Shapiro's publications include: *Third Circuit Holds, "Give Peace a Chance": The De Beers Litigation and the Potential Power of Settlement*, Jack E. Pace, III, Erika L. Shapiro, 27-SPG Antitrust 48 (2013).

Ms. Shapiro graduated from Washington University in St. Louis with a Bachelor of Arts degree. She received her Juris Doctor degree from Georgetown University Law Center. She also earned a Master's degree in Economic Global Law from Sciences-Po Universite.

SENIOR COUNSEL

CHRISTOPHER FALLON focuses on securities, consumer, and anti-trust litigation. Prior to joining the firm, Mr. Fallon was a contract attorney with O'Melveny & Myers LLP working on anti-trust and business litigation disputes. He is a Certified E-Discovery Specialist through the Association of Certified E-Discovery Specialists (ACEDS).

Mr. Fallon earned his J.D. and a Certificate in Dispute Resolution from Pepperdine Law School in 2004. While attending law school, Christopher worked at the Pepperdine Special Education Advocacy Clinic and interned with the Rhode Island Office of the Attorney General. Prior to attending law school, he graduated from Boston College with a Bachelor of Arts in Economics and a minor in Irish Studies, then served as Deputy Campaign Finance Director on a U.S. Senate campaign.

PAVITHRA RAJESH is Senior Counsel in the firm's Los Angeles office. She specializes in fact discovery, including pre-litigation investigation, and develops legal theories in securities, derivative, and privacy-related matters.

Ms. Rajesh has unique writing experience from her judicial externship for the Patent Pilot Program in the United States District Court for the Central District of California, where she worked closely with the Clerk and judges in the program on patent cases. Drawing from

this experience, Ms. Rajesh is passionate about expanding the firm's Intellectual Property practice, and she engages with experts to understand complex technology in a wide range of patents, including network security and videogame electronics.

Ms. Rajesh graduated from University of California, Santa Barbara with a Bachelor of Science degree in Mathematics and a Bachelor of Arts degree in Psychology. She received her Juris Doctor degree from UCLA School of Law. While in law school, Ms. Rajesh was an Associate Editor for the UCLA Law Review.

CHRISTOPHER M. THOMS is Senior Discovery Counsel in Glancy, Prongay & Murray's Los Angeles office. His practice includes large-scale electronic discovery encompassing all stages of litigation, securities and anti-trust litigation. He manages attorneys in fact-finding for depositions, expert discovery, and trial preparation.

Prior to joining Glancy, Prongay & Murray, Christopher worked as a staff attorney at O'Melveny & Meyers LLP where he managed eDiscovery issues in complex class actions and multi-district litigations. Chris also worked as a contract attorney for various law firms in Los Angeles.

MELISSA WRIGHT is Senior Counsel in the firm's Los Angeles office. Ms. Wright specializes in complex litigation, including the prosecution of securities fraud and consumer class actions. She has particular expertise in all aspects of the discovery phase of litigation, including drafting and responding to discovery requests, negotiating protocols for the production of Electronically Stored Information (ESI) and all facets of ESI discovery, and assisting in deposition preparation. She has managed multiple document production and review projects, including the development of ESI search terms, overseeing numerous attorneys reviewing large document productions, drafting meet and confer correspondence and motions to compel where necessary, and coordinating the analysis of information procured during the discovery phase for utilization in substantive motions or settlement negotiations.

Ms. Wright received her J.D. from the UC Davis School of Law in 2012, where she was a board member of Tax Law Society and externed for the California Board of Equalization's Tax Appeals Assistance Program focusing on consumer use tax issues. Ms. Wright also graduated from NYU School of Law, where she received her LL.M. in Taxation in 2013.

ASSOCIATES

REBECCA DAWSON specializes in complex civil litigation, class action securities litigation, and anti-trust litigation.

Ms. Dawson previously worked at a highly respected plaintiff-side class action firm specializing in mass torts and anti-trust litigation where she managed a wide variety of complex state and federal matters including false advertising, environmental torts and product liability claims.

Ms. Dawson has also held two prestigious clerkships. She was a clerking intern for the Chief Justice of the Court of International Trade during law school. After law school, she clerked at the New York Supreme Court where she handled hundreds of complex commercial and civil litigation decisions. Ms. Dawson also participated in the Securities and Exchange Commission Honors program in the Office of the Investors Advocate. Prior to law school, she worked for the Brooklyn Bar Association. Ms. Dawson also has a background in financial data analysis.

Ms. Dawson earned her J.D. from City University of New York School of Law, where she was a Moot Court Competition Problem Author. She earned her B.A. from Bard College at Simon's Rock, where she majored in Political Science with a minor in Economics.

CHRIS DEL VALLE is an experienced attorney who has been a valuable member of the Glancy Prongay & Murray LLP team since 2017. During his time at the firm, he has worked on a range of complex securities fraud cases, including *In re Akorn, Inc. Securities Litigation*, Case No. 15-CV-01944, (N.D. Ill.); *In re Yahoo! Inc. Securities Litigation*, Case No. 17-CV-00373-LHK (N.D. Cal.); *In re Endurance International Group Holdings*, Case No. 1:15-cv-11775-GAO; *In re LSB Industries, Inc. Securities Litigation*, Case No. 1:15-cv-07614-RA-GWG; *In re Alibaba Group Holding Limited Securities Litigation*, Case No. 1:15-md-02631 (CM); *In re Community Health Systems Inc*, Case No.: 3:19-cv-00461.

One of Chris' most notable recent cases was *Hartpence v. Kinetic Concepts, Inc.*, No. 19-55823 (9th Cir. 2022), alleging violations of the False Claims Act (FCA). Chris was part of the legal team that successfully represented a whistleblower in obtaining 9th Circuit reversal of the lower court's order granting summary judgment. This victory established Chris as a leading attorney in the field of FCA litigation.

With highly technical expertise in electronic discovery, Chris manages all facets of the firm's e-discovery needs, including crafting advanced search algorithms, predictive coding, and technology-assisted review. Chris also has a wealth of experience in deposition preparation, expert discovery, and preparing for summary judgment and trial.

Chris' experience prior to joining GPM includes trial and discovery preparation for complex corporate securities fraud litigation, patent prosecution, oral arguments, injunction hearings, trial work, mediations, drafting and negotiating contracts, depositions, and client intake.

He received a Bachelor of Arts degree from S.U.N.Y. Buffalo, majoring in English Literature/Journalism, and a Juris Doctor from California Western School of Law in San Diego. Chris is a proud native of Buffalo, New York, and a passionate fan of the Buffalo Bills, hosting a weekly podcast entitled *The Bills Dudes*. In addition to his legal work, Chris enjoys traveling, playing basketball, archery and is on a quest to locate the most flavorful tequila and mezcal ever produced in Mexico. With his experience in securities litigation and a strong educational background, Chris Del Valle is a valuable member of the GPM team.

HOLLY HEATH specializes in managing all aspects of discovery and trial preparation in securities and consumer fraud class actions. Since joining the firm in 2017, Ms. Heath has participated in cases that have led to over \$100 million in recoveries for consumers and investors.

Ms. Heath started her career at a boutique business law firm in Century City that targeted trademark infringement. After that, Ms. Heath worked as a contract attorney for several New York firms including Gibson Dunn and Sullivan & Cromwell. Ms. Heath has handled various complex litigation matters such as patent infringement, anti-trust, and banking regulations.

While in law school, Ms. Heath advocated for children's rights at Children's Legal Services and served as a student attorney for Greater Boston Legal Services.

THOMAS J. KENNEDY works out of the New York office, where he focuses on securities, antitrust, mass torts, and consumer litigation. He received a Juris Doctor degree from St. John's University School of Law in 1995. At St. John's, he was a member of the ST. JOHN'S JOURNAL OF LEGAL COMMENTARY. Mr. Kennedy graduated from Miami University in 1992 with a Bachelor of Science degree in Accounting and has passed the CPA exam. Mr. Kennedy was previously associated with the law firm Murray Frank LLP.

JACOB M. SHOOSTER, an Associate in the firm's New York Midtown 5th Avenue office, graduated from Fordham University School of Law in 2023. Mr. Shooster's practice focuses on shareholder litigation.

Mr. Shooster graduated from the University of Michigan with a Bachelor of Arts degree in Philosophy. He graduated from Fordham University School of Law with a Concentration in Business and Financial Law. While in law school, Mr. Shooster supported the Public Corruption Bureau of the Queens County District Attorney's Office as well as the school's Federal Tax Litigation Clinic where he represented indigent U.S. taxpayers in controversies in federal and state courts. Additionally, he was awarded the cum laude Murray award for public service.

Mr. Shooster is pending admission to the State Bar of New York.

CHASE STERN concentrates his practice on complex commercial litigation, with a particular emphasis on securities fraud and consumer protection class actions, as well as shareholder derivative matters. For nearly a decade, Mr. Stern's practice has been largely dedicated to representing individual and corporate entity plaintiffs in complex commercial and class action litigation in state and federal courts throughout the country. Mr. Stern's work and experience over the course of his career have proven instrumental in vindicating his clients' rights and helping recover tens of millions of dollars on their behalf. His work and experience have also led to his recent recognition as a Super Lawyers® Rising Star for 2022 – 2023.

Mr. Stern holds a B.S. in Finance and Entrepreneurship & Emerging Enterprises from Syracuse University and a J.D. from California Western School of Law, graduating from both institutions with honors.

ROBERT YAN is an associate specializing in international cases involving foreign language documents and foreign clients. He has expertise in all aspects of pre-trial litigation, including document productions, deposition preparation, deposition outlines, witness preparation, compilation of privilege logs, and translation of documents into English. He has served as team lead for various document review projects, conducted QC on large document populations, and worked with lead counsel to meet production deadlines.

Robert is a native speaker of Mandarin Chinese and fluent in Japanese. Robert has volunteered his services in the Los Angeles area including at the Elder Law Clinic and monthly APABA Pro Bono Legal Help Clinic. In his free time, Robert likes to play tennis and dodgeball and watches Jeopardy every day with his wife.

EXHIBIT 5

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

TIM DOYLE, Individually and On Behalf of
All Others Similarly Situated, *et al.*,

Plaintiffs,

v.

REATA PHARMACEUTICALS, INC., *et al.*,

Defendants.

Case No. 4:21-cv-00987-ALM
LEAD

CLASS ACTION

Judge Amos L. Mazzant, III

**DECLARATION OF BRUCE WILLIAM STECKLER, ESQ. IN SUPPORT OF LEAD
COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND
REIMBURSEMENT OF LITIGATION EXPENSES FILED ON BEHALF OF
STECKLER WAYNE & LOVE PLLC**

I, Bruce William Steckler, declare as follows, pursuant to 28 U.S.C. § 1746:

1. I am a member of the law firm of Steckler Wayne & Love PLLC (“Steckler”),¹ Court-appointed Local Liaison Counsel in the above-captioned action (the “Action”). *See* ECF No. 34. I submit this declaration in support of Lead Counsel’s application for an award of attorneys’ fees in connection with services rendered in the Action, as well as for reimbursement of litigation expenses incurred in connection with the Action. I have personal knowledge of the facts set forth herein based on my active supervision of, and participation in, the prosecution and settlement of the claims asserted in the Action and, if called upon, could and would testify thereto.

2. Steckler, among other things: (a) assisted in the preparation of filings; (b) reviewed draft filings for compliance with local and Court rules and protocol; and (c) ensured compliance with local and Court rules and protocol in all other respects. In addition, Steckler reviewed all filing to ensure compliance with the Local Rules and applicable federal procedural and substantive laws.

3. The schedule attached hereto as Exhibit A is a detailed summary indicating the amount of time spent by attorneys and professional support staff employees of my firm who, from inception of the Action through the time of the execution of this Declaration, billed ten or more hours to the Action, and the lodestar calculation for those individuals based on my firm’s current billing rates.² The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm.

¹ Unless otherwise defined, all capitalized terms herein have the same meanings as set forth in the Stipulation and Agreement of Settlement dated October 30, 2023. *See* ECF No. 74-2.

² All of the individuals listed on Exhibit A hereto are current employees of Steckler. As such, Exhibit A reflects their current billing rates.

4. I am the partner who oversaw my firm's activities with respect to the Action and I reviewed these daily time records in connection with the preparation of this Declaration. The purpose of this review was to confirm both the accuracy of the records as well as the necessity for, and reasonableness of, the time committed to the litigation. As a result of this review, I made reductions to certain of my firm's time entries such that the time included in Exhibit A reflects that exercise of billing judgment. Based on this review and the adjustments made, I believe that the time of Steckler's attorneys and staff reflected in Exhibit A was reasonable and necessary for the effective and efficient prosecution and resolution of the Action. No time expended on the application for fees and reimbursement of expenses has been included.

5. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are consistent with the rates approved by courts in other securities or shareholder litigation when conducting a lodestar cross-check.

6. The total number of hours reflected in Exhibit A is 145 hours. The total lodestar reflected in Exhibit A is \$70,105.00 consisting of attorneys' and support staff's time.

7. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

8. As detailed in Exhibit B, attached hereto, my firm is seeking reimbursement of a total of \$667.69 in expenses incurred in connection with the prosecution of this Action.

9. The litigation expenses incurred in the Action are reflected in the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred. The expenses reflected in

Exhibit B are the expenses actually incurred by my firm in connection with the prosecution of this Action.

10. Attached hereto as Exhibit C is a brief biography of Steckler, including the attorneys who were involved in the Action.

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

Executed on February 9, 2024, in Dallas County, Texas.

/s/ Bruce W. Steckler

Bruce William Steckler

EXHIBIT A

Doyle v. Reata Pharmaceuticals, Inc., et al.,
Case No. 4:21-cv-00987

Steckler Wayne & Love PLLC

**LODESTAR REPORT
 FROM INCEPTION THROUGH FEBRUARY 1, 2024**

TIMEKEEPER/CASE	STATUS	HOURS	RATE	LODESTAR
ATTORNEYS:				
Bruce William Steckler	Partner	18	\$950.00	\$17,100.00
Austin Smith	Partner	57	\$715.00	\$40,755.00
TOTAL ATTORNEY:		75		\$57,855.00
PROFESSIONAL STAFF				
Jamie Baciak	Paralegal	70	\$175.00	\$12,250.00
TOTAL PROFESSIONAL STAFF:		70		\$12,250.00
TOTAL LODESTAR		145		\$70,105.00

EXHIBIT B

Doyle v. Reata Pharmaceuticals, Inc., et al.,
Case No. 4:21-cv-00987

Steckler Wayne & Love PLLC

EXPENSE REPORT

FROM INCEPTION THROUGH FEBRUARY 1, 2024

ITEM	AMOUNT
Court Filing Fees	\$402.00
Postage / mailing fees	\$85.07
Printing / photocopying fees	\$180.62
GRAND TOTAL	\$667.69

EXHIBIT C
Steckler Wayne & Love PLLC
FIRM RESUME



STECKLER WAYNE & LOVE

STECKLER WAYNE & LOVE PLLC (“SWL”), with offices in Dallas, Henderson, and Sherman, Texas, specializes in complex commercial litigation, class actions, construction defects, catastrophic personal injury claims, mass actions, employment litigation, and consumer cases across the country. The firm handles national cases that present cutting edge issues and its attorneys have extensive trial and arbitration experience in a variety of cases, including securities fraud and *qui tam* actions under the False Claims Act. The attorneys at SWCL understand how to litigate difficult and large cases in an efficient and cost-effective manner, and they have used these skills to obtain outstanding results for their clients. SWCL attorneys are recognized in their field for excellence and integrity, and are committed to seeking justice for their clients. Its lawyers are admitted in various state and federal jurisdictions across the United States, including in Texas, New York, Pennsylvania, California, Louisiana, Missouri, Oklahoma, and Illinois. The firm’s lawyers collectively have more than a century of experience handling complex litigation.

BRUCE W. STECKLER has been appointed to leadership positions in multiple significant complex litigations throughout the United States, including:

- *In re Fresenius Granuflo/Naturalyte Dialysate Products Liability Litigation*, MDL 2428 (District of Massachusetts);
- *In re Ford Fusion and C-Max Fuel Economy Litigation*, No. 13-MD2450 (S.D.N.Y.);
- *In re Bank Overdraft Fee Litigation*, MDL 2036 (S.D. Fla.);
- *In re Chinese Drywall Litigation*, MDL 2047 (E.D. La.);
- *In re Easy Saver Rewards Litigation* (S.D. Ca.);
- *In re Silicosis Litigation*, Texas State MDL Cause No. 200470000/GN002797 (State District Court Houston, Texas)
- *In re Electronic Data Systems Class Action Litigation*, Cause No. 366-01078-2008 (366th Judicial District Court, Collin County, Texas);
- *City of St. Clair Shores Police and Fire Retirement System, Individually and on Behalf of All Others Similarly Situated v. Affiliated Computer Services, Inc., et al.*, Cause No. CC-09-07377-C (County Court at Law No. 3, Dallas County, Texas);
- *Hansen-Mitchell, et al. v. Welspun USA Inc., et al.*, Case No. 19-L-0391, in the Circuit Court for the 20th Judicial Circuit, County of St. Clair, State of Illinois;
- *In re Inclusive Access Course Materials Antitrust Litigation*, MDL 2946;
- *In re Toyota Hybrid Brake Litigation*, Consolidated Case No.: 4:20-cv-00127 (E.D. TX); and
- *Juliet Murphy, et al. vs. Toyota Motor Corporation, et al.*, Civil Action No. 4:21-cv-00178 (E.D. TX).

A full and complete copy of Mr. Steckler individual professional resume is attached.

BRADEN M. WAYNE leads SWL's corporate counsel section, where he serves as outside counsel to various private equity firms, their portfolio companies, and independent businesses. Having operated multiple healthcare and retail start-ups, Braden is an attorney who understands the nuances of business transactions and business litigation. This deep, operational experience forms the bedrock of Braden's practice today. His holistic approach leads clients to call on Braden for everything from bet-the-company litigation to debt and equity financing, real estate transactions, mergers & acquisitions, and strategic and operational advice. Braden has been consistently selected by D Magazine as one of Dallas' Best Lawyers under 40 (2018, 2019, 2020, 2021), by Super Lawyers as a Rising Star (2019, 2020, 2021), and by Best Lawyers as "One to Watch" (2021).

Braden sits on the advisory board for various clients, and serves as Chief Legal Counsel for Jarvis Analytics, a leading dental analytics software provider. Prior to joining Steckler Wayne & Love PLLC, Braden served as co-chair of the corporate law section at a regional firm headquartered in Dallas, and as General Counsel for one of the largest diamond and jewelry retailers and wholesalers in the country. He is also a prolific speaker and writer on issues of corporate structures and its intersection with litigation.

Braden graduated magna cum laude from the University of Richmond in Richmond, Virginia, and cum laude from the Southern Methodist University Dedman School of Law, where he was a Dean's Scholar. He is licensed in Texas and is admitted or has been admitted for limited purposes in many federal courts across the country, including the United States District Courts for the Northern, Eastern, Southern, and Western Districts of Texas; United States District Court for the Middle District of Florida; United States District Court for the District of Arizona; United States District Court for the Middle District of Tennessee; and the National Arbitration Forum.

Braden is often asked to serve as local or liaison class counsel in federal securities fraud cases, including:

- *Bodin v. SAExploration Holdings, Inc., et al.*, No. 4:19-cv-03089 (pending in the United States District Court for the Southern District of Texas)
- *White v. Just Energy Group, Inc., et al.*, No. 4:20-cv-590 (pending in the United States District Court for the Southern District of Texas)
- *Bremer v. SolarWinds Corporation, et al.*, No. 1:21-cv-2 (pending in the United States District Court for the Western District of Texas)
- *Bettiol v. Energy Transfer LP, LE GP, LLC*, No. 3:19-cv-02890 (pending in the United States District Court for the Southern District of Texas)

States District Court for the Northern District of Texas)

- *Torres v. Berry Corporation et al.*, No. 3:20-cv-03464 (pending in the United States

District Court for the Northern District of Texas)

GREGORY P. LOVE delivers effective and aggressive representation for his clients. He has a reputation and history of successful trial and/or litigation is focused primarily on complex business, patent and personal injury cases. Greg has litigated and tried cases in both federal and state courts in and out of Texas, as well as the International Trade Commission.

Greg graduated from Baylor University, where he was a recipient of the Rex Houston Scholarship and the Scott, Douglas, Luton & McConico Evidence Award. He is licensed to practice in the state of Texas, and is admitted or has been admitted for limited purposes in many federal courts across the country, including the U.S. Court of Appeals Federal Circuit, U.S. Courts of Appeals 5th Circuit, U.S. Court of Appeals 9th Circuit, U.S. District Court for the Eastern District of Arkansas, U.S. District Court for the Eastern District of Michigan, U.S. District Court of the Eastern District of Texas, U.S. District Court of the Northern District of Texas, U.S. District Court of the Southern District of Texas, U.S. District Court of the Western District of Arkansas, U.S. District Court of the Western District of Oklahoma, U.S. District Court of the Western District of Tennessee, the U.S. International Trade Commission, and the U.S. Supreme Court.

MICHAEL R. STEINMARK is a tenacious, creative, and skilled litigator, for which he has been recognized in Thomson Reuters' Texas Super Lawyers / Rising Stars consistently since 2010. Michael's dual experience handling cases in state and federal trial and appellate courts and arbitration across the nation, as well as in corporate and intellectual property transactions, informs his development and execution of successful legal strategies for individual clients and companies large and small. Joining Steckler Wayne & Love, PLLC, after 15 years with a highly respected Dallas-based regional firm, Michael has significant experience handling all phases of litigation, from case intake through discovery, motion practice, mediation, trial, and appeal, in a broad range of catastrophic personal injury and wrongful death, employment, commercial, consumer, financial services, and intellectual property disputes.

Michael is an honors graduate of Vanderbilt University in Nashville, Tennessee and the Southern Methodist University Dedman School of Law where he served as Associate Managing Editor of the International Law Review Association. Michael maintains a perfect 10/10 rating on Avvo and is a nine-time recipient of the Super Lawyers Rising Stars Award (2011, 2012-2019).

AUSTIN P. SMITH is a partner at SWL and focuses his practice on litigation and dispute resolution. Austin has experience in handling a wide variety of matters in state and

federal court, involving complex commercial and business disputes, fraud, personal injury, and criminal matters including white collar crime. Austin spent the first part of his legal career with the trial department of Thompson & Knight LLP, one of the oldest and most respected law firms in Texas. From 2017 to 2018, Austin was honored to serve as a law clerk to the Honorable Judge Amos L. Mazzant in the United States District Court for the Eastern District of Texas. In 2020, Austin was selected by Best Lawyers as “One to Watch”.

HON. PAUL D. STICKNEY (RET.) served 20 years as a United States Magistrate Judge for the United States District Court for the Northern District of Texas, from 1998 to 2018. During private practice and with the Federal Public Defender Judge Stickney tried to a jury more than 150 felony criminal cases, as well as civil cases. During his tenure on the bench, Judge Stickney presided over jury trials, court hearings on motions, discovery disputes, search and arrest warrants. Judge Stickney conducted hundreds of guilty plea arraignments, bond hearings and initial appearances over his 20 years on the bench.

Judge Stickney has mediated hundreds of disputed cases during his tenure on the bench. He has attended mediation-training sessions by the Federal Judicial Center honing his skills. Judge Stickney has the ability to exact fairness thereby gaining the trust of all parties in a dispute. He can fuse the personal with the professional to reach an end goal – acceptable to all parties. Judge Stickney began his law career in 1981 when he co-founded the Breit & Stickney Law Office in Sioux Falls, South Dakota. He helped run this firm until 1990, when he became the First Assistant Federal Public Defender for the Northern District of Texas. He held that post eight years, until his appointment to the bench in 1998.

PAIGE FOSTER is an associate focusing her practice on corporate counsel and business transactions. She enjoys tackling each matter with a spirit of curiosity and a drive to achieve each company’s ongoing business concerns with a deliberate approach. Paige joined Steckler Wayne & Love PLLC as an associate in 2021. Paige has a depth of experience representing high net worth individuals and their companies in transactional matters ranging from entity formation and asset protection to estate planning and family limited partnerships.

In law school, Paige was the Executive Managing Editor of the Estate Planning & Community Property Law Journal. In March 2018, she presented her comment entitled *Exonerated but Still Confined: Slayer Rules Present Extra Obstacles to Criminally Exonerated Individuals* at the Estate Planning CLE Conference at Texas Tech. She also received the Top Comment Award that year. During her third year of law school, she advocated for low-income taxpayers in the Tax Clinic and learned how to counsel clients and negotiate settlements with the IRS in all phases of tax controversy. Her interests in psychology, mental health, and art intersected when she served as a chair for the law school’s Student Wellness Advisory Committee, an organization aimed at providing mental health education, resources, and creative outlets to law students.

KAITLYN COKER joined Steckler Wayne & Love in 2023 as an associate who practices commercial and mass-tort litigation. She represents businesses and business owners that need strategic, creative solutions, both in the courtroom and out. Mrs. Coker primarily handles cases involving allegations of breach of contract, breach of fiduciary duty, securities, and fraud. Although she mostly practices on the trial-court routinely handles appellate cases as well.

Kaitlyn is licensed to practice in the State of Texas, Northern District of Texas, Eastern District of Texas, and the United States Court of Appeals for the Fifth Circuit. Mrs. Coker is a double-bear graduate of Baylor University, having obtained her Bachelor of Business Administration in Economics in 2017 and Juris Doctor from the Baylor University School of Law in 2020.

JACK BEASLEY is an associate focusing on corporate counsel and real estate matters. Jack has over five years of real estate experience and has worked on a variety of commercial transactions for several clients with national footprints, handling matters ranging from acquisition and development to leasing and disposition. Jack employs a holistic approach to each transaction and finds that a healthy dose of both forethought and curiosity plays a crucial role in producing positive results and mitigating risk.

Prior to joining Steckler Wayne & Love in 2023, Jack graduated from Texas A&M University School of Law in 2021. In law school, Jack was an Articles Editor for the Texas A&M Law Review, a Class Representative for the Class of 2021, and a bar-certified law clinic student with the Community Development and Entrepreneurship Clinic. Jack also worked as a research and teaching assistant on a variety of projects covering fair housing, tenant empowerment, access to justice, and groundwater law.



BRUCE W. STECKLER, MANAGING PARTNER



Bruce W. Steckler founded Steckler Wayne & Love PLLC after two decades of successfully litigating a variety of commercial, securities, mass tort, products liability, consumer, personal injury, and first party insurance cases. He envisioned a law firm where attorneys and employees garnered the trust and full confidence of clients. Today, he has formed a practice which provides unparalleled client service and personal attention to the needs and objectives of its clients.

He was a partner at three Dallas-based firms and, most recently, was a shareholder and the head of the General Litigation Section of one of the largest plaintiff firms in the United States. He is known as an aggressive advocate willing to take innovative approaches to achieve success for his clients. His legal acumen has won him recognition by D Magazine's "Best Lawyers" in 2007 through 2023, D Magazine's "Best Lawyers under 40" feature in 2002 through 2006, and Thompson Reuters as a "Texas Super Lawyer" in 2004 through 2023. He was just recently designated a D Magazine "Best Lawyer Legend" for being consistently recognized as a top lawyer for over 15 years. Mr. Steckler enjoys an "AV Preeminent" rating by Martindale-Hubbell Law Directory, its highest peer rating. He was selected for the Plaintiff's Hot List in 2011 by the National Law Journal. He was named a finalist for Public Justice Trial Lawyer of the Year 2012, an honor that is awarded to the attorneys who "made the greatest contribution to the public interest within the past year by trying or settling a precedent-setting or socially significant case." He has also been named one of the "Top 100 Trial Lawyers" by the National Trial Lawyers from 2013 through 2023, was named a "2015 Top Rated Lawyer in Insurance Law" by American Lawyer Media and Martindale-Hubbell Law Directory, selected to join the American Institute of



Trial Lawyers Litigator of the Year and named as one of the Top 100 Trial Lawyers in America in 2015-2023. Bruce was recognized in 2020 for receiving one of the Top 10 Settlements in Illinois for his \$36,000,000.00 settlement in Hansen-Mitchell, et al. v Welspun USA, Inc. et al. Most recently, he was again recognized in the 27th edition of The Best Lawyers in America and his firm named one of the Best Law Firms in Texas by U.S. News & World Report.

In law school, Mr. Steckler was the Leading Articles Editor of the Journal of Air Law & Commerce, a recipient of the Journal's scholarship, a member of the SMU Law Review Association, and a board member of the law school's Moot Court program. He was appointed by the State Bar of Texas to serve as a member of the State Bar of Texas Grievance Committee and currently serves as an Emeritus member of the Board of Directors of the Dallas Trial Lawyers Association. He received a Certificate of Appreciation in 1996 from the Dallas Bar Association for his pro bono work in the community. He has authored numerous papers on civil litigation and trial practice and has spoken at several seminars on various civil litigation topics before attorneys, professionals, and the insurance industry. Bruce is a member of the Public Justice Foundation, American Association of Justice, Dallas Trial Lawyers Association, and has been admitted to the Million Dollar Advocate Group.

Mr. Steckler has been appointed by both federal and state court judges to lead some of the most significant cases in the United States. His cases, including his \$21-million-dollar trial verdict, have been featured on NBC Nightly News, CBS News, ABC News, CNN, Univision, and Fox News, as well as the *Dallas Morning News* and *New York Post*. He was appointed by the Honorable Eldon Fallon in the United States District Court for the Eastern District of Louisiana to serve on the Plaintiffs' Steering Committee for the Chinese Drywall MDL and served as a member of the Plaintiffs' Executive Committee for Bank Overdraft Litigation appointed by the Honorable Lawrence King in the United States District Court for the Southern District of Florida. He was co-lead counsel in the case against JP Morgan Chase



in In Re Checking Account Overdraft Litigation. Most recently, Mr. Steckler was honored to be appointed by the Honorable Judge Cote in the Southern District of New York to serve as co-lead counsel in In re Inclusive Access Course Materials Antitrust Litigation MDL 2946. He was also recently selected to serve as liaison counsel in In re Toyota Hybrid Brake Litigation Consolidated Case No.: 4:20-cv-00127 in the United States District Court for Eastern District of Texas by the Honorable Judge Mazzant and co-lead counsel in Murphy v. Toyota Motor Corp. Consolidated Case No.: 4:21-cv-00178 in the United States District Court for Eastern District of Texas by the Honorable Judge Mazzant. The Honorable Judge Douglas P. Woodlock appointed Mr. Steckler to serve as a member of Plaintiffs' Steering committee for MDL 2428: In Re: Fresenius Granuflo/Naturalyte Dialysate Products Liability Litigation in the United States District Court for Massachusetts. He also was appointed by the Honorable Judge Kenneth M. Karas in United States District Court for the Southern District of New York to serve on the Plaintiffs' Steering Committee for the In re: Ford Fusion and C-Max Fuel Economy Litigation. He was appointed lead counsel by the Honorable Judge Anthony Battaglia in the In Re: Easysaver Rewards Litigation in the Southern District of California. He serves as liaison counsel and lead counsel in In Re: Texas State Silica Products Liability Litigation. He was also appointed lead counsel in the following Texas State cases: In re: Electronic Data Systems Class Action Litigation, Cause No. 366-01078-2008 (366th Judicial District Court of Collin County, Texas), City of St. Clair Shores Police and Fire Retirement System, Individually and on Behalf of All Others Similarly Situated v. Affiliated Computer Services, Inc., et al; Cause No. CC-09-07377-C (County Court at Law No. 3 Dallas County, Texas), and In re Silicosis Litigation, Texas State MDL Cause No. 200470000/GN002797 (State District Court Houston, Texas).

Most recently, Mr. Steckler has handled two of the largest data-breach privacy cases in North Texas in Kosta v. Dickey's Barbeque Restaurants, Inc. et al Consolidated Case No. 3:20-cv-3424-K, where he was selected by the Honorable Judge Ed Kinkeade as liaison counsel, and in In re: Tenet Healthcare Corporation data Breach Litigation where he was



selected co-lead counsel by the Honorable Judge Bridgett Whitmore of the 193rd Judicial District Court of Dallas County, Texas. In addition, he is currently lead counsel in two ongoing data breach privacy cases pending in the Western District of Texas.

He is a member of the State Bars of Texas, Louisiana, New York, Pennsylvania and Missouri, U.S. District Courts – Northern District of Texas, Eastern District of Texas and Southern District of Texas, Eastern District of Louisiana and Western District of Louisiana, United States Court of Appeals for the Fifth Circuit, Eighth Circuit, and Ninth Circuit, and the Federal Court of Claims in Washington, D.C.

REPRESENTATIVE EXPERIENCE

Commercial Litigation

Bruce W. Steckler was part of Plaintiffs' Executive Committee for Bank Overdraft Litigation MDL (In Re: Checking Account Overdraft Litigation; MDL No. 2036), appointed by the Honorable James Lawrence King of the United States District Court for the Southern District of Florida, that held some of the country's largest banks accountable for a practice which charged consumers unfair fees when they over drafted their checking accounts. This litigation resulted in significant settlements, with JPMorgan Chase paying out \$110 million and Bank of America paying out \$410 million. Mr. Steckler was co-lead counsel in the case against JP Morgan Chase. His work in these cases allowed him to be nominated for the 2012 Trial Lawyer of the Year Award by the Public Justice Foundation.

Bruce has also represented all types of businesses from major Fortune 500 companies to local businesses in discrete commercial disputes, including investment litigation, breach of contract, disputes arising from the sale of a business, partnership disputes, director and officer liability, disputes arising from the sale of a business, breach of fiduciary duty, tortious interference with a business relationship, and disputes involving alleged breaches of the Uniform Commercial Code, including failure to provide goods and services. Some of his more high-profile commercial cases have been featured in *D Magazine*, *Texas Law Book*, *The Dallas Morning News*, *Sports Illustrated*, *Bloomberg* and *Fortune*, among others. Most importantly, Bruce is interested in ensuring that his clients' needs and objectives are met by being thoroughly prepared, providing sound legal judgment, recognizing the client's objectives, and being willing and able to aggressively litigate a case to verdict without wasting the client's time and resources. In several cases, Bruce has not hesitated to handle commercial disputes on a contingency fee basis.



Pharmaceutical/ Products Liability Litigation

Bruce W. Steckler was appointed to Plaintiff's Steering Committee for the In Re Fresenius Granuflo/ Naturalyte Dialysate products liability litigation and the In Re Ford Fusion and C-Max Fuel Economy litigation. These cases are currently ongoing. In addition, Bruce Steckler serves as lead Texas Counsel for the defense of product liability litigation for a large dietary supplement manufacturer. He has successfully prosecuted and defended products liability cases ranging from dangerous pharmaceuticals to advising corporate general counsels on defending frivolous claims.

Chinese Drywall Litigation

Bruce W. Steckler was appointed to the Plaintiffs' Steering Committee for the Chinese Drywall MDL (In Re: Chinese-Manufactured Drywall Products Liability Litigation, MDL No. 2047) by the Honorable Eldon E. Fallon of the United States District Court for the Eastern District of Louisiana that obtained a ground-breaking settlement with KNAUF Plasterboard Tianjin, a prominent Chinese drywall manufacturer, as well as three major suppliers and some of the largest insurance companies in the United States. The total value of the settlement is estimated to be over \$1.1 billion. This settlement helped thousands of homeowners whose properties were affected by defective drywall, which was linked to adverse health effects and metal corrosion after only three years from the inception of the litigation. It is one of the first settlements in the United States by consumers against a Chinese manufacturer.

Securities/Anti-Trust Litigation

Bruce W. Steckler has worked on several notable securities cases in Texas. He was appointed as lead local counsel in two shareholder class actions in In Re: Electronic Data Systems Class Action Litigation; Cause No. 366-01078-2008, filed in the 366th Judicial District Court of Collin County, Texas, regarding the sale of Electronic Data Systems (EDS) to Hewlett-Packard. This suit resulted in better prices for EDS shareholders. Bruce W. Steckler was also lead local counsel in City of St. Clair Shores Police and Fire Retirement System, Individually and on Behalf of All Others Similarly Situated v. Affiliated Computer Services, Inc., et al; Cause No. CC-09-07377-C, filed in County Court at Law No. 3 for Dallas County, Texas and, in concert with another firm, obtained \$69 Million for ACS public shareholders. Bruce W. Steckler also has worked on anti-trust litigation and most recently, in connection with another firm, represented the Port of Galveston and the Port of New Orleans in In Re Marine Fender's Antitrust Litigation; Cause No. 2:10-cv-02319-VBF-RC; filed in the United States District Court for the Southern District of California, which resulted in a settlement with many of the Defendants. He also represented individuals in the In Re: Musical Instruments and Equipment



Antitrust Litigation; Cause No. 3:10-cv-00103-LAB-POR, filed in the United States District Court for the Southern District of California.

Consumer Protection Cases

Bruce W. Steckler was appointed co-lead counsel in In Re EasySaver Rewards Marketing and Sales Practices Litigation, MDL No. 2161, and obtained a proposed \$38 million settlement with a company that runs several retailing websites including Proflowers.com. The case claimed that consumers who made purchases through the sites were charged membership fees without their knowledge or consent. He also served as lead co-counsel and obtained a potential settlement in Cox, et al. v. Clarus Marketing Group, LLC and Provide Commerce, Inc., Cause No.11-cv-02711-H, in the United States District Court for the Southern District of California, regarding an online shipping scam.

Occupational and Personal Injury Cases

Bruce W. Steckler has litigated cases in Louisiana against major corporations on behalf of individuals injured by occupational noise-induced hearing loss. During his career, he has aggressively represented individuals harmed by noise in various industries in Louisiana. This work has helped shape the law in Louisiana and, as a result, he has reached historic settlements with over eight major national corporations in Louisiana representing a variety of industries. Bruce W. Steckler serves as liaison counsel and co-lead counsel in In Re: Texas State Silica Products Liability Litigation, Master Docket 2004-70000, where he has represented individuals injured by silica exposure. He has handled several silica cases over the course of his career. Most notably, he represented a sandblaster who developed silicosis and scleroderma from silica exposure obtaining a settlement of over \$2 million. Bruce W. Steckler has handled, tried and settled numerous medical malpractices, trucking and personal injury cases during his career. In many instances, he achieved several million-dollar settlements in personal injury cases for which he was recognized by Million Dollar Advocate Forum.

First-Party Insurance Cases

Bruce W. Steckler has been retained by businesses, homeowners, cities, country clubs and school districts in claims against their insurance carriers for bad faith and failure to adequately adjust claims following natural disasters. These representations have provided the firm with insight into the insurance industry and its practices and provided much needed recoveries, so that his clients are not victimized twice. Some representative clients in these insurance actions include The City of Pasadena, Texas; LaPorte Independent School District; and Barber's Hill Independent School District in their Hurricane Ike claims where Mr. Steckler was able to obtain significant recoveries for these entities.



AUSTIN P. SMITH
PARTNER

Austin Smith is a partner in the firm's Dallas and Sherman offices with extensive trial, oral argument, and deposition experience. From 2017 to 2018, Austin was honored to serve as a law clerk to the Honorable Judge Amos L. Mazzant in the United States District Court for the Eastern District of Texas. Since completing his clerkship with Judge Mazzant, Austin has been retained on numerous commercial and patent litigation matters before the Honorable Judge Mazzant.

Austin currently manages the firm's Sherman office where he specializes in complex commercial litigation and intellectual property litigation in federal courts. Austin represents clients on both sides of the "v" and because of his prior experience, Austin is able to provide unique insight into any commercial or intellectual property litigation matter. Austin also has unbridled access to a premier war room space located one block from the Sherman Courthouse that provides convenient space for preparing for trial or any hearings before Judge Mazzant and Magistrate Judge Aileen Goldman Durrett in the United States District Court for the Eastern District of Texas-Sherman division.

Austin has been consistently selected by D Magazine as one of Dallas' "Best Lawyers Under 40", by Super Lawyers as a "Rising Star", by Best Lawyers as "One to Watch", and The National Trial Lawyers - Top 40 Under 40 Civil Plaintiff attorneys in Texas.

BAR AND COURT ADMISSIONS

Texas – 11/04/2016

United States District Courts for the Northern District of Texas

United States District Courts for the Southern District of Texas

United States District Courts for the Eastern District of Texas

United States District Courts for the Western District of Texas



EDUCATION

Texas Tech University School of Law (JD, magna cum laude), 2016

University of Kansas (BS), 2011

PROFESSIONAL ASSOCIATIONS

State Bar of Texas

Dallas Bar Association

Dallas Young Lawyers Association

Dallas Trial Lawyers Association

William “Mac” Taylor Inn of Court

Paul Brown Inn of Court

RECOGNITIONS

BestLawyers “One to Watch”, 2020-2023

Texas Super Lawyers “Rising Star”, 2021-2023

D Magazine “Best Lawyers Under 40”, 2022-2023

The National Trial Lawyers “Best 40 Under 40”, 2023-2024

NOTABLE CASES

Hall v. Witron Integrated Logistics, Inc. et al, No. 4:21-cv-00477-ALM (E.D. Tex. 2023) (Sherman Division): Austin represented the plaintiff in this catastrophic product defect case. After extensive discovery, the parties entered into a confidential settlement agreement prior to trial.

Rojas v. Martin, No. CC-19-05509-E (Dallas County, Texas 2022): Austin represented the plaintiff in a medical malpractice case and obtained a \$21 million verdict, which was largest medical malpractice courtroom win in the State of Texas in 2022.

EXHIBIT 6

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS**

TIM DOYLE, Individually and on Behalf of
All Others Similarly Situated, *et al.*,

Plaintiffs,

v.

REATA PHARMACEUTICALS, INC., *et al.*,

Defendants.

Case No. 4:21-cv-00987-ALM
LEAD

CLASS ACTION

**DECLARATION OF JED D. MELNICK IN SUPPORT OF
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

I, Jed D. Melnick, declare as follows:

1. I was selected by Lead Plaintiff¹ and Defendants and assigned by the Court (*see* ECF No. 67) to serve as the Mediator in the above-captioned action (the “Action”). I make this declaration based on personal knowledge and am competent to testify to the matters set forth herein. The Parties have consented to my submission of this declaration regarding the negotiations which led to the proposed Settlement.

2. As discussed below, I believe that the Settlement in this Action for the total amount of \$45 million in cash – after a rigorous mediation process – represents a well-reasoned and sound resolution of the complicated and uncertain claims. The Court will make determinations as to the “fairness” of the Settlement under applicable legal standards. From a mediator’s perspective, however, I recommend the proposed Settlement as reasonable, arm’s length, and consistent with the risks and potential rewards of the claims asserted in the Action.

¹ Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated October 30, 2023. *See* ECF No. 74-2.

3. As a mediator associated with JAMS, I have mediated over 1,000 disputes, including complex securities class actions and shareholder derivative actions, published articles on mediation, founded a nationally ranked dispute resolution journal, and taught young mediators. In 2023, I was included on the Chambers USA “National Mediators” list, and I have twice been selected by the National Law Journal as an ADR Champion.

4. As detailed below, I oversaw two rounds of settlement negotiations in this Action. The first mediation session, in April 2023, culminated in the Reata Defendants’ agreement to produce non-public communications between Reata and the FDA, with the goal of moving the Parties closer to an agreeable settlement figure. The second mediation session, in July 2023, attempted to resolve the claims between the Parties. Shortly after the second mediation session, the Parties reached a global agreement to settle the claims on behalf of the Settlement Class for \$45 million.

5. Both mediation sessions included a thorough exchange of the Parties’ views and arguments in support of their respective positions. The Parties also exchanged voluminous written submissions prior to each session and participated in several telephonic and Zoom conferences with me during the course of the negotiation process.

The April 2023 Mediation Session

6. In advance of the April 2023 mediation, Lead Plaintiff and the Reata Defendants exchanged and submitted confidential mediation statements. The mediation statements contained the Parties’ respective views on liability and damages.

7. On April 25, 2023, the Parties and their counsel participated in a mediation session that proceeded before me with both in-person and remote attendees. The participants included: (i) Lead Counsel, Kirby McInerney LLP (“Kirby McInerney”); (ii) additional Plaintiffs’ Counsel,

Glancy, Prongay & Murray LLP; (iii) Lead Plaintiff's representative; (iv) Counsel for the Reata Defendants, Davis Polk & Wardwell LLP ("Davis Polk"); (v) Defendants' representatives (including Reata's Chief Legal Officer, Chief Executive Officer, and Chief Innovation Officer); and (vi) representatives from Defendants' liability insurance carriers. During the session, the Parties made presentations to me, and we discussed the merits of the case, including liability and damages. Settlement numbers were discussed, but the session ended without agreement.

8. Although the first mediation session ended without a settlement agreement, counsel for the Reata Defendants proposed to produce non-public communications between Reata and the FDA, with the goal of bringing the Parties closer to a global resolution. Over the next few months, the Reata Defendants provided Lead Counsel with multiple sets of document productions, which were reviewed by Lead Plaintiff and Lead Counsel in advance of the second mediation session.

The July 2023 Conferences and Mediation Session

9. On July 11, 2023, the Reata Defendants submitted a supplemental written mediation statement, which set forth their views on liability in light of their recent document productions. On July 17, 2023, I conducted a telephone call with Lead Counsel to discuss the Reata Defendants' written submission. I also conferred directly with counsel for the Reata Defendants via email on July 22 and 23, 2023.

10. On July 18, 2023, Lead Plaintiff submitted its supplemental written mediation statement, which discussed Lead Plaintiff's views on liability in light of the Reata Defendants' document productions. The following day, I held a Zoom session with Lead Counsel and counsel for the Reata Defendants, during which they further discussed their respective arguments and positions on liability and damages.

11. On July 24, 2023, I conducted a second, formal mediation session between the Parties, who attended both in-person and by videoconference. Participants in the mediation included Kirby McInerney, Lead Plaintiff's representative, Davis Polk, Defendants' representatives (including Reata's Chief Executive Officer), and representatives from Defendants' insurance carriers. The Parties spent the entirety of the day in vigorous settlement negotiations, but ultimately were unsuccessful in negotiating a mutually acceptable settlement.

12. Thereafter, following additional settlement discussions with my oversight, I issued a mediator's recommendation that Lead Plaintiff and Defendants agree to settle the Action for \$45 million with respect to the Settlement Class (the "Settlement"). The Parties agreed to my mediator's recommendation.

13. The proposed Settlement is the result of extended good-faith, arm's length negotiations between the Parties. As stated above, the Parties exchanged multiple, voluminous written submissions, participated in two hybrid mediation sessions before me on April 25, 2023 and July 24, 2023, and also participated in multiple phone and Zoom conferences with me in July 2023. During those conferences and mediation sessions, both sides made presentations addressing key issues in the case and advanced aggressive positions on behalf of their clients. While I am bound by confidentiality regarding the content of the discussions at the mediation, I can say that the agreements and positions asserted by all involved were plainly the result of detailed analysis and hard work by competent counsel who are highly experienced in the field of securities litigation. Over the course of the negotiations, I encouraged each side to take a hard look at the merits and value of the claims and defenses in the Action. While the negotiations were professional, they were also highly adversarial. While ultimately a decision for the Court, based on my understanding of

the issues and risks in the Action, it is my opinion that the \$45 million Settlement for the benefit of the Settlement Class is fair, reasonable, and adequate under all of the circumstances.

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

Executed this 22 day of January, 2024.

Jed D. Melnick

Jed D. Melnick

EXHIBIT 7

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

Doyle, et al. v. Reata Pharmaceuticals, Inc., et al.

No. 4:21-cv-00987

DECLARATION OF BRIAN T. FITZPATRICK

I. Background and Qualifications

1. I am the Milton R. Underwood Chair in Free Enterprise and Professor of Law at Vanderbilt University in Nashville, Tennessee. I joined the Vanderbilt law faculty in 2007, after serving as the John M. Olin Fellow at New York University School of Law in 2005 and 2006. I graduated from the University of Notre Dame in 1997 and Harvard Law School in 2000. After law school, I served as a law clerk to The Honorable Diarmuid O'Scannlain on the United States Court of Appeals for the Ninth Circuit and to The Honorable Antonin Scalia on the United States Supreme Court. I also practiced law for several years in Washington, D.C., at Sidley Austin LLP. My C.V. is attached as Exhibit 1. I speak only for myself and not for Vanderbilt. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

2. My teaching and research at Vanderbilt have focused on class action litigation. I teach Civil Procedure, Federal Courts, and Complex Litigation courses. In addition, I have published a number of articles on class action litigation in such journals as the University of Pennsylvania Law Review, the Journal of Empirical Legal Studies, the Vanderbilt Law Review, the Fordham Law Review, the NYU Journal of Law & Business, and the University of Arizona Law Review. My work has been cited by numerous courts, scholars, and media outlets such as The New York Times, USA Today, and The Wall Street Journal. I have also been invited to speak

at symposia and other events about class action litigation, such as the ABA National Institutes on Class Actions in 2011, 2015, 2016, 2017, 2019, and 2023; and the ABA Annual Meeting in 2012. Since 2010, I have served on the Executive Committee of the Litigation Practice Group of the Federalist Society for Law & Public Policy Studies. In 2015, I was elected to the membership of the American Law Institute. In 2021, I became the co-editor of THE CAMBRIDGE HANDBOOK OF CLASS ACTIONS: AN INTERNATIONAL SURVEY (with Randall Thomas).

3. In 2010, I published an article in the Journal of Empirical Legal Studies entitled *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical L. Stud. 811 (2010) (hereinafter “Empirical Study”). This article is still what I believe to be the most comprehensive examination of federal class action settlements and attorneys’ fees that has ever been published. Unlike other studies of class actions, which have been confined to one subject matter or have been based on samples of cases that were not intended to be representative of the whole (such as settlements approved in published opinions), my study attempted to examine *every* class action settlement approved by a federal court over a two-year period (2006-2007). *See id.* at 812-13. As such, not only is my study an unbiased sample of settlements, but the number of settlements included in my study is also several times the number of settlements per year that has been identified in any other empirical study of class action settlements: over this two-year period, I found 688 settlements, including 43 from the Fifth Circuit alone. *See id.* at 817. I presented the findings of my study at the Conference on Empirical Legal Studies at the University of Southern California School of Law in 2009, at the Meeting of the Midwestern Law and Economics Association at the University of Notre Dame in 2009, and before the faculties of many law schools

in 2009 and 2010. Since then, this study has been relied upon regularly by a number of courts, scholars, and testifying experts.¹ This study is attached as Exhibit 2.

¹ See, e.g., *In re Stericycle Sec. Litig.*, 35 F.4th 555, 561 (7th Cir. 2022) (relying on article to assess fees); *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) (same); *In re Ranbaxy Generic Drug Application Antitrust Litig.*, 630 F. Supp. 3d 241, 248 (D. Mass. 2022) (same); *de la Cruz v. Manhattan Parking Group*, No. 20 Civ. 0977, 2022 WL 3155399, at *4 (S.D.N.Y., Aug. 8, 2022) (same); *Kukorinis v. Walmart*, No. 19 Civ. 20592, 2021 WL 8892812, at *4 (S.D. Fla., Sep. 21, 2021) (same); *Kuhn v. Mayo Clinic Jacksonville*, 530 F. Supp. 3d 1102, 1120-21 (M.D. Fla. 2021) (same); *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11-MD-2262, 2020 WL 6891417, at *3 (S.D.N.Y. Nov. 24, 2020) (same); *Shah v. Zimmer Biomet Holdings, Inc.*, No. 16 Civ. 0815, 2020 WL 5627171, at *10 (N.D. Ind. Sept. 18, 2020) (same); *In re GSE Bonds Antitrust Litig.*, No. 19 Civ. 1704, 2020 WL 3250593, at *5 n.3 (S.D.N.Y. June 16, 2020) (same); *In re Wells Fargo & Co. S'holder Derivative Litig.*, 445 F. Supp. 3d 508, 526 (N.D. Cal. 2020) (same); *Arkansas Teacher Ret. Sys. v. State St. Bank & Trust Co.*, 512 F. Supp. 3d 196, 214-15 (D. Mass. 2020), *appeal dismissed sub nom. Arkansas Tch. Ret. Sys. v. State St. Corp.*, No. 20 Civ. 1365, 2020 WL 5793216 (1st Cir. Sept. 3, 2020) (same); *In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 17-MD-2800, 2020 WL 256132, at *34 (N.D. Ga. Mar. 17, 2020) (same); *In re Transpacific Passenger Air Transp. Antitrust Litig.*, No. 07 Civ. 5634, 2019 WL 6327363, at *4-5 (N.D. Cal. Nov. 26, 2019) (same); *Espinal v. Victor's Cafe 52nd St., Inc.*, No. 16 Civ. 8057, 2019 WL 5425475, at *2 (S.D.N.Y. Oct. 23, 2019) (same); *James v. China Grill Mgmt., Inc.*, No. 18 Civ. 0455, 2019 WL 1915298, at *2 (S.D.N.Y. Apr. 30, 2019) (same); *Grice v. Pepsi Beverages Co.*, 363 F. Supp. 3d 401, 407 (S.D.N.Y. 2019) (same); *Alaska Elec. Pension Fund v. Bank of Am. Corp.*, No. 14 Civ. 7126, 2018 WL 6250657, at *2 (S.D.N.Y. Nov. 29, 2018) (same); *Rodman v. Safeway Inc.*, No. 11 Civ. 03003, 2018 WL 4030558, at *5 (N.D. Cal. Aug. 23, 2018) (same); *Little v. Washington Metro. Area Transit Auth.*, 313 F. Supp. 3d 27, 38 (D.D.C. 2018) (same); *Hillson v. Kelly Servs. Inc.*, No. 15 Civ. 10803, 2017 WL 3446596, at *4 (E.D. Mich. Aug. 11, 2017) (same); *Good v. W. Virginia-Am. Water Co.*, No. 14 Civ. 1374, 2017 WL 2884535, at *23, *27 (S.D.W. Va. July 6, 2017) (same); *McGreevy v. Life Alert Emergency Response, Inc.*, 258 F. Supp. 3d 380, 385 (S.D.N.Y. 2017) (same); *Brown v. Rita's Water Ice Franchise Co. LLC*, No. 242 F. Supp. 3d 356, 370 (E.D. Pa. 2017) (same); *In re Credit Default Swaps Antitrust Litig.*, No. 13-MD-2476, 2016 WL 2731524, at *17 (S.D.N.Y. Apr. 26, 2016) (same); *Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 236 (N.D. Ill. 2016); *Ramah Navajo Chapter v. Jewell*, 167 F. Supp. 3d 1217, 1238, 1246-47 (D.N.M. 2016); *In re: Cathode Ray Tube (Crt) Antitrust Litig.*, No. 07 Civ. 5944, 2016 WL 721680, at *42 (N.D. Cal. Jan. 28, 2016) (same); *In re Pool Products Distribution Mkt. Antitrust Litig.*, No. MDL 2328, 2015 WL 4528880, at *19-20 (E.D. La. July 27, 2015) (same); *Craftwood Lumber Co. v. Interline Brands, Inc.*, No. 11 Civ. 4462, 2015 WL 2147679, at *2-4 (N.D. Ill. May 6, 2015) (same); *Craftwood Lumber Co. v. Interline Brands, Inc.*, No. 11 Civ. 4462, 2015 WL 1399367, at *3-5 (N.D. Ill. Mar. 23, 2015) (same); *In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 797 (N.D. Ill. 2015) (same); *In re Neurontin Marketing and Sales Practices Litig.*, 58 F.Supp.3d 167, 171-72 (D. Mass. 2014) (same); *Tennille v. W. Union Co.*, No. 09 Civ. 0938, 2014 WL 5394624, at *4 (D. Colo. Oct. 15, 2014) (same); *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 349-51 (S.D.N.Y. 2014) (same); *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litig.*, 991 F. Supp. 2d 437, 444-46 & n.8 (E.D.N.Y. 2014) (same); *In re Fed. Nat'l Mortg. Association Sec., Derivative, and "ERISA" Litig.*, 4 F. Supp. 3d 94, 111-12 (D.D.C. 2013) (same); *In re Vioxx Prod. Liab. Litig.*, No. 11 Civ. 1546, 2013 WL 5295707, at *3-4 (E.D. La. Sep. 18, 2013) (same); *In re Black Farmers Discrimination Litig.*, 953 F. Supp. 2d 82, 98-99 (D.D.C. 2013) (same); *In re Se. Milk Antitrust Litig.*, No. 07 Civ. 0208, 2013 WL 2155387, at *2 (E.D. Tenn., May 17, 2013) (same); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1081 (S.D. Tex. 2012) (same); *Pavlik v. FDIC*, No. 10 Civ. 816, 2011 WL 5184445, at *4 (N.D. Ill. Nov. 1, 2011) (same); *In re Black Farmers Discrimination Litig.*, 856 F. Supp. 2d 1, 40 (D.D.C. 2011) (same); *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1033 (N.D. Ill. 2011) (same); *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 359 (E.D.N.Y. 2010) (same).

4. In addition to my empirical works, I have published many law-and-economics papers on the incentives of attorneys and others in class action litigation. *See, e.g., A Fiduciary Judge's Guide to Awarding Fees in Class Actions*, 89 Fordham L. Rev. 1151 (2021) (hereinafter “Fiduciary Judge”); Brian T. Fitzpatrick, *Do Class Action Lawyers Make Too Little*, 158 U. Pa. L. Rev. 2043 (2010) (hereinafter “Class Action Lawyers”); Brian T. Fitzpatrick, *The End of Objector Blackmail?*, 62 Vand. L. Rev. 1623 (2009). Much of this work was discussed in a book I published with the University of Chicago Press entitled *THE CONSERVATIVE CASE FOR CLASS ACTIONS* (2019). The thesis of the book is that the so-called “private attorney general” is superior to the public attorney general in the enforcement of the rules that free markets need in order to operate effectively and that courts should provide proper incentives to encourage such private attorney general behavior. This work, too, has been relied upon by courts and scholars.²

5. I have been asked by class counsel to opine on whether the attorneys’ fees they have requested here are reasonable in light of the empirical studies and research on economic incentives in class action litigation. In order to formulate my opinion, I reviewed a number of documents provided to me by class counsel; I have attached a list of these documents in Exhibit 3. As I explain, based on my study of settlements across the country and in the Fifth Circuit in particular, I believe the request here is reasonable in light of the empirical and economic research on class actions.

² *See, e.g., Briseno v. Henderson*, 998 F.3d 1014, 1025, 1029 (9th Cir. 2021); *Muransky v. Godiva Chocolatier, Inc.*, 979 F.3d 917, 960 (11th Cir. 2020) (Jordan, J., dissenting); *In re Johnson & Johnson Aerosol Sunscreen Mktg., Sales Pracs. & Prod. Liab. Litig.*, 21-MD-3015, 2023 WL 2284684, at *5 n.5 (S.D. Fla. Feb. 28, 2023); *Neese et al. v. Becerra*, 342 F.R.D. 399, 406 n.1 (N.D. Tex. 2022); *Tershakovec v. Ford Motor Co.*, 546 F. Supp. 3d 1348, 1365 (S.D. Fla. 2021); *Vita Nuova, Inc. v. Azar*, 19 Civ. 0532, 2020 WL 8271942, at *3 n.5 (N.D. Tex. Dec. 2, 2020).

II. Case Background

6. This lawsuit was filed by investors in December 2021 against Reata Pharmaceuticals, Inc. (“Reata”), as well as its officers, directors, and underwriters, for alleged securities fraud concerning a clinical trial of one of Reata’s drugs. While the defendants’ motion to dismiss was pending, the parties engaged in settlement negotiations, during which defendants agreed to produce discovery. Following the production and review of that discovery, the parties reached a class-wide settlement. The court preliminarily approved the settlement and certified the class on November 27, 2023. The parties are now seeking final approval and class counsel have requested a fee award.

7. The class includes, with minor exceptions, all “persons or entities who purchased or otherwise acquired the publicly traded common stock of Reata between November 14, 2016 and December 8, 2021” Settlement Agreement ¶ 1(zz). Under the settlement, the defendants will cause a payment of \$45 million in cash to be paid to the class, to be distributed, after the deduction of settlement administration costs, attorneys’ fees, and expenses, *pro rata* based on the relative artificial price inflation in each class members’ shares; none of it can revert back to the defendants. *See id.* at ¶¶ 1(yy), 8, 20. In exchange, the class will release the defendants from, among other things, the claims asserted in the operative complaint and any related claims that could have been asserted therein. *See id.* at ¶ 1(uu).

8. Class counsel are now moving for an award of fees of 30% of the \$45 million settlement fund. As I explain below, it is my opinion that the request is reasonable in light of the empirical studies and research on economic incentives in class action litigation.

III. Assessment of the Reasonableness of the Request for Attorneys' Fees

9. When a class action reaches settlement or judgment and no fee shifting statute is triggered and the defendant has not agreed to pay class counsel's fees, class counsel is paid by the class members themselves pursuant to the common law of unjust enrichment. This is sometimes called the "common fund" or "common benefit" doctrine. It requires the court to decide how much of their class action proceeds it is fair to ask class members to pay to class counsel.

10. At one time, courts that awarded fees in common fund class action cases did so using the familiar "lodestar" approach. *See* Fitzpatrick, *Class Action Lawyers*, *supra*, at 2051. Under this approach, courts awarded class counsel a fee equal to the number of hours they worked on the case (to the extent the hours were reasonable), multiplied by a reasonable hourly rate as well as by a discretionary multiplier that courts often based on the risk of non-recovery and other factors. *See id.* Over time, however, the lodestar approach fell out of favor in common fund class actions. It did so largely for two reasons. First, courts came to dislike the lodestar method because it was difficult to calculate the lodestar; courts had to review voluminous time records and the like. Second—and more importantly—courts came to dislike the lodestar method because it did not align the interests of class counsel with the interests of the class; class counsel's recovery did not depend on how much the class recovered, but, rather, on how many hours could be spent on the case. *See id.* at 2051-52. According to my empirical study, the lodestar method is now used to award fees in only a small percentage of class action cases, usually those involving fee-shifting statutes or those where the relief is entirely or almost entirely injunctive in nature. *See* Fitzpatrick, *Empirical Study*, *supra*, at 832. The other large-scale academic study of class action fees, authored over time by Geoff Miller and the late Ted Eisenberg, agrees with my findings. *See* Theodore Eisenberg et al., *Attorneys' Fees in Class Action Settlements: 2009-2013*, 92 N.Y.U. L. Rev. 937,

945 (2017) (“Eisenberg-Miller 2017”) (finding lodestar method used less than 7% of the time since 2009); Theodore Eisenberg & Geoffrey P. Miller, *Attorneys’ Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. Empirical L. Stud. 248, 267 (2010) (“Eisenberg-Miller 2010”) (finding lodestar method used only 13.6% of the time before 2002 and less than 10% of the time thereafter and before 2009).

11. The more common method of calculating attorneys’ fees today is known as the “percentage” method. Under this approach, courts select a percentage of the settlement fund that they believe is fair to class counsel, multiply the settlement amount by that percentage, and then award class counsel the resulting product. The percentage approach has become the preferred method for awarding fees to class counsel in common fund cases precisely because it corrects the deficiencies of the lodestar method: it is less cumbersome to calculate, and, more importantly, it aligns the interests of class counsel with the interests of the class because the more the class recovers, the more class counsel recovers. *See* Fitzpatrick, *Class Action Lawyers*, *supra*, at 2052. These same reasons also drive private parties that hire lawyers on contingency—including sophisticated corporations—to use the percentage method over the lodestar method. *See, e.g.*, David L. Schwartz, *The Rise of Contingent Fee Representation in Patent Litigation*, 64 Ala. L. Rev. 335, 360 (2012); Herbert M. Kritzer, RISKS, REPUTATIONS, AND REWARDS 39-40 (1998).

12. In the Fifth Circuit, courts have discretion to use either the lodestar method or the percentage method in awarding attorneys’ fees in common fund class actions. *See Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 644 (5th Cir. 2012) (“We join the majority of circuits in allowing our district courts the flexibility to choose between the percentage and lodestar methods in common fund cases”). But the Private Securities Litigation Reform Act (“PSLRA”) puts a thumb on the scale in favor of the percentage method in securities fraud cases

like this one. *See id.* at 643 (“Part of the reason behind the near-universal adoption of the percentage method in securities cases is that the PSLRA contemplates such a calculation. It states that ‘[t]otal attorneys’ fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class.’” (quoting 15 U.S.C. § 78u-4(a)(6))). In light of the well-recognized disadvantages of the lodestar method and the well-recognized advantages of the percentage method, it is my opinion that the percentage method should be used whenever the value of the settlement or judgment can be reliably calculated; the lodestar method should be used only where the value cannot be reliably calculated and the percentage method is therefore not feasible or when the method is required by law, such as by a fee-shifting statute. This is not just my view, but the view of other leading class action scholars. *See Principles of the Law of Aggregate Litigation* § 3.13 (2010) (cmt. b) (“Although many courts in common-fund cases permit use of either a percentage-of-the-fund approach or a lodestar . . . most courts and commentators now believe that the percentage method is superior.”). Because this settlement consists of all cash, in my opinion, the percentage method should be used here. I will therefore proceed under that method.

13. Under the percentage method, courts usually examine a number of factors. *See Fitzpatrick, Empirical Study, supra*, at 832. In the Fifth Circuit, courts consider the factors from *Johnson v. Georgia Highway Express*, 488 F.2d 714 (5th Cir. 1974): (1) the time and labor required; (2) the novelty and difficulty of the issues; (3) the skill required to perform the legal service adequately; (4) the preclusion of other employment by the attorney because he accepted this case; (5) the customary fee for similar work in the community; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10)

the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. In my opinion, the fee requested here is reasonable because it is supported by all these factors.

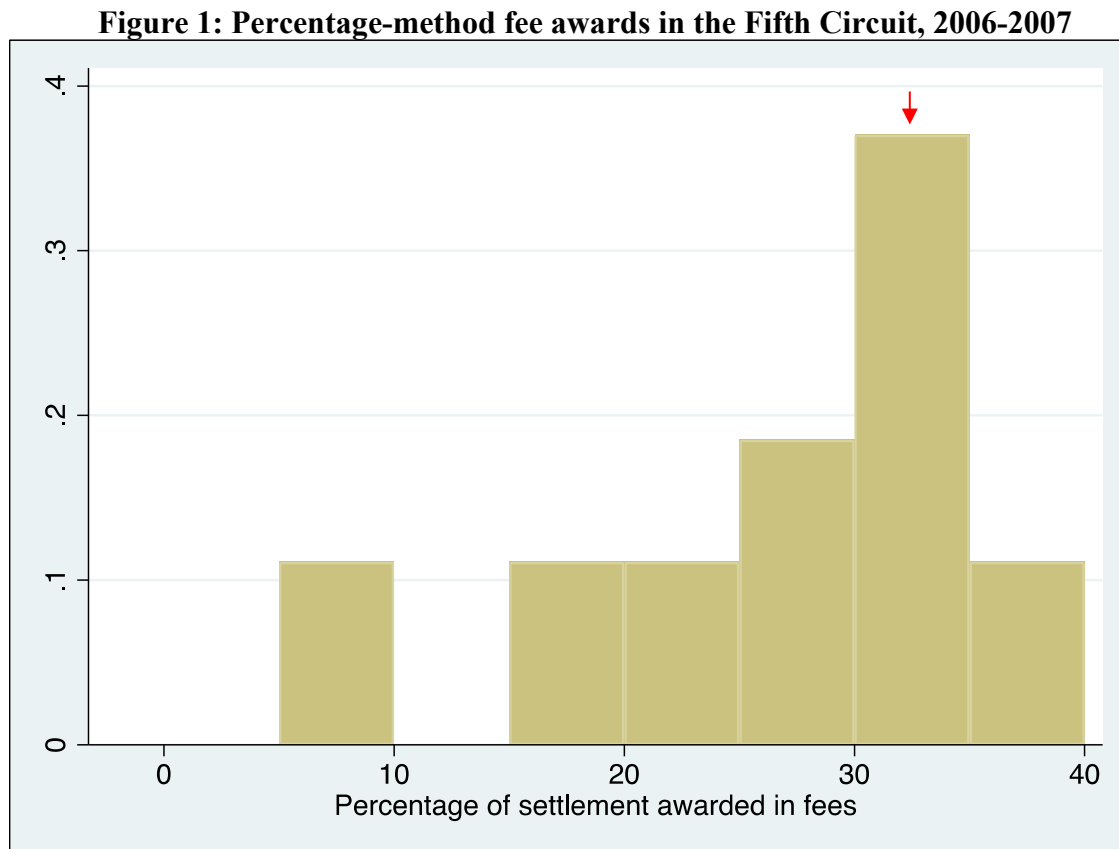
14. Consider first the factors: “(5) the customary fee for similar work in the community” and “(12) awards in similar cases.” It is well known that clients usually agree to pay contingency fee lawyers 33.3% or even higher if they recover something for them. *See Fitzpatrick, A Fiduciary Judge, supra*, at 1159-63. This is true even among sophisticated clients like corporations that hire contingency fee lawyers to litigate patent infringement cases for them. *See id.* at 1160-62; *see also Schwartz, supra*, at 360 (finding that corporations either agree to flat rates of, on average, 38.6% or graduated rates that start, on average, at 28% and accelerate, on average, to 40.2%). Sophisticated clients choose this number rather than try to bargain down their lawyers because they know it incentivizes their lawyers to work harder for them, thereby saving them from the need to look over their lawyers’ shoulders all the time. *See Fitzpatrick, A Fiduciary Judge, supra*, at 1162-63. It is therefore unsurprising that, according to class counsel, the representative plaintiff here who specified a percentage in their *ex ante* fee agreement with class counsel specified 33%. Some courts, including courts within the Fifth Circuit, take the view that federal law requires courts in securities fraud cases to grant deference to such *ex ante* fee agreements. *See, e.g., In re Cendant Corp. Litig.*, 264 F.3d 201, 282 (3d Cir. 2001) (“[U]nder the PSLRA, courts should accord a presumption of reasonableness to any fee request submitted pursuant to a retainer agreement that was entered into between a properly-selected lead plaintiff and a properly-selected lead counsel.”); *In re Bank of New York Mellon Corp. Forex Transactions Litig.*, 148 F. Supp. 3d 303, 306-09 (S.D.N.Y. 2015) (examining the *Cendant* presumption); *In re Dell, Inc.*, No. 06 Civ. 726, 2010 WL 2371834, at *14 (W.D. Tex. June 11, 2010) (amount of attorneys’ fees specified in a retainer

agreement “entered into by a properly-selected, sophisticated Lead Plaintiff and properly-selected Lead Counsel” is “entitled to a presumption of reasonableness”); *Schwartz v. TXU Corp.*, No. 02 Civ. 2243, 2005 WL 3148350, at *26 (N.D. Tex. Nov. 8, 2005) (lead counsel’s fee application, made pursuant to a fee schedule negotiated with lead plaintiff, is “presumptively reasonable” and “precisely the type of bargaining that the PSLRA anticipated and to which a court reasonably may give substantial deference”). In my opinion, this deference is wise. After all, when setting fees in class actions, courts are trying to discern what absent class members would have agreed to had they been present to hire class counsel themselves. Large-stakes class members who actually hired class counsel are excellent sources of information about what other class members would have done. *See In re Synthroid II*, 325 F.3d 974, 976 (7th Cir. 2003) (Easterbrook, J.) (using fee contracts from large-stakes class members who “hired law firms to conduct this litigation” as evidence of what absent class members would have agreed to *ex ante*).

15. However, most courts focus mainly on what percentages other courts have awarded in past class actions. Thus, that will be my focus as well. According to my empirical study, the most common fee percentages awarded in the Fifth Circuit were 25%, 30%, and 33%, with the average and median at 26.4% and 29%, respectively. *See Fitzpatrick, Empirical Study, supra*, at 836 (tbl. 6). The request here would therefore be above the average but almost exactly equal to the median. Statistically, the median is the very definition of “typical,” whereas the average can be affected by outliers; in this case, the average is dragged down by so-called “megafund” settlements—those above \$100 million—where courts tend award lower percentages. *See id.* at 838, 842-44. Thus, in my opinion, my study supports class counsel’s fee request.

16. How this fee request compares to other cases can be seen graphically in Figure 1, below, which shows the distribution of all Fifth Circuit percentage-method fee awards in my study.

In particular, the figure shows what fraction of settlements (y-axis) had fee awards within each five-point range of fee percentages (x-axis); each bar includes the number on its left edge and excludes the number on its right edge. I added an arrow to depict the bar that includes the fee request here. As the figure shows, the fee request here falls within *by far* the most common range of percentages awarded in this Circuit.



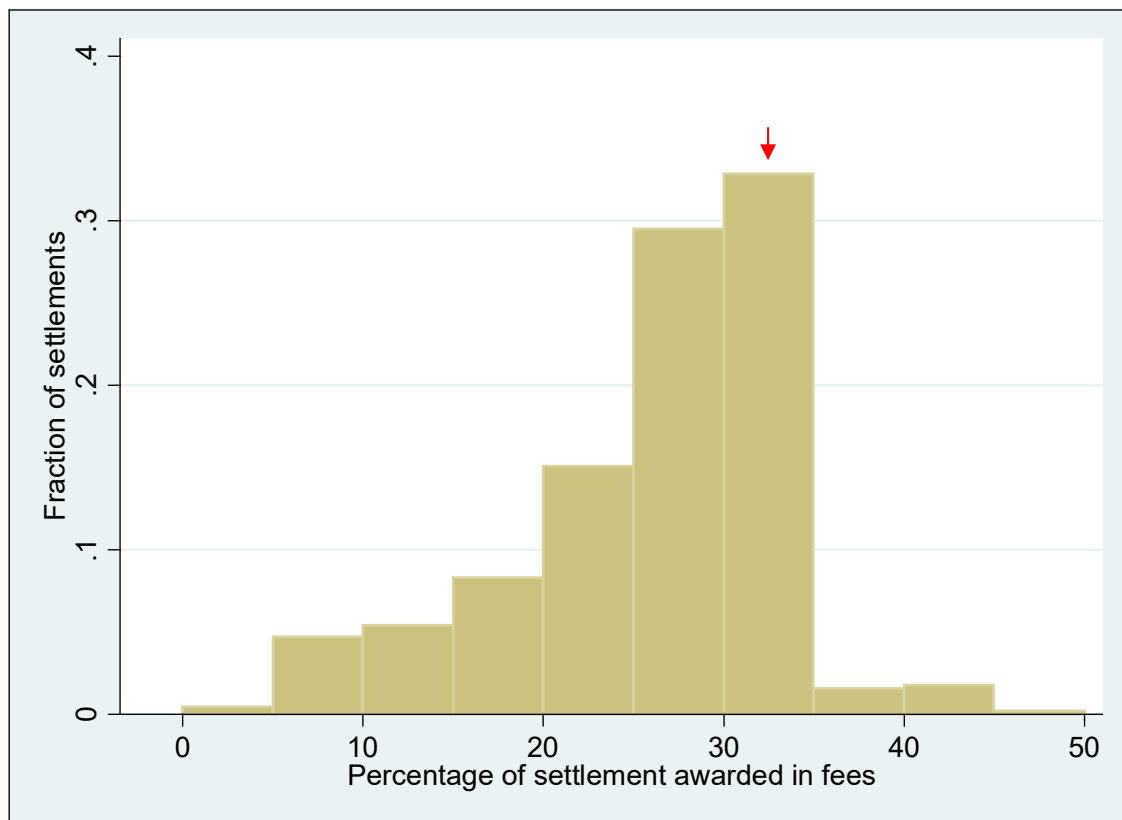
17. In light of Figure 1 and the 29% median I found in the Fifth Circuit, it is not surprising that there are many examples of courts in this Circuit awarding fee percentages as high or even higher than that requested by class counsel. *See, e.g., Burford v. Cargill, Inc.*, No. 05 Civ. 0283, 2012 WL 5471985, at *5 (W.D. La. Nov. 8, 2012) (awarding 1/3 of \$27.5 million settlement and noting that an award of one-third “is reasonable and typical” in the Fifth Circuit); *Al’s Pals Pet Care v. Woodforest Nat’l Bank, NA*, No. 17 Civ. 3852, 2019 WL 387409, at *4 (S.D. Tex. Jan.

30, 2019) (a fee of one-third “is an oft-awarded percentage in common fund class action settlements in this Circuit”); *Kemp v. Unum Life Ins. Co. of Am.*, No. 14 Civ. 0944, 2015 WL 8526689, at *9 (E.D. La. Dec. 11, 2015) (a one-third fee “falls within the range of awards granted by courts within the Fifth Circuit and is a reasonable benchmark”); *Marcus v. J.C. Penney Co., Inc.*, No. 13 Civ. 0736, 2017 WL 6590976, at *6 (E.D. Tex. Dec. 18, 2017), *report and recommendation adopted*, 2018 WL 307024 (E.D. Tex. Jan. 4, 2018) (it is “not unusual” for fees “to range between 25% to 30% of the fund or more”); *Marcus v. J.C. Penney Co., Inc., et al.*, No. 13 Civ. 0736, 2018 WL 11275437, at *1 (E.D. Tex. Jan. 5, 2018) (awarding 30% of \$97.5 million settlement); *Erica P. John Fund, Inc. v. Halliburton Co.*, No. 02 Civ. 1152, 2018 WL 1942227, at *9 n.8 & *12 (N.D. Tex. Apr. 25, 2018) (collecting securities cases awarding 30-36% of settlement fund and awarding 33⅓% of \$100 million settlement as “reasonable and fair” and “not ... an unusually large or high fee”); *City of Omaha Police & Fire Ret. Sys. v. LHC Grp.*, No. 12 Civ. 1609, 2015 WL 965696, at *4 (W.D. La. Mar. 3, 2015) (a 33⅓% fee “is common in this geographic area” and “has been approved in other common fund cases”); *Jenkins v. Trustmark Nat’l Bank*, 300 F.R.D. 291, 307 (S.D. Miss. 2014). (“it is not unusual for district courts in the Fifth Circuit to award percentage of approximately one third.”); *Klein v. O’Neal, Inc.*, 705 F. Supp. 2d 632 (N.D. Tex. 2010) (awarding 30% of \$110 million settlement); *Singh v. 21Vianet Grp., Inc.*, No. 14 Civ. 0894, 2018 WL 6427721, at *2 (E.D. Tex. Dec. 7, 2018) (awarding 33.3% of \$100 million settlement); *Williams v. Go Frac, LLC*, No. 15 Civ. 0199, 2017 WL 3699350, at *2-3 (E.D. Tex. Apr. 26, 2017) (awarding 35% of settlement as “fair and reasonable”); *Wolfe v. Anchor Drilling Fluids USA Inc.*, No. 15 Civ. 1344, 2015 WL 12778393, at *3 (S.D. Tex. Dec. 7, 2015) (awarding 40% of maximum settlement amount); *In re EZCORP, Inc. Sec. Litig.*, No. 15 Civ. 0608, 2019 WL 6649017, at *1 (W.D. Tex. Dec. 6, 2019) (awarding 33% of settlement); *In re Vioxx Prod.*

Liab. Litig., 2013 WL 5295707, at *4-5 (awarding 33% of settlement); *Vassallo v. Goodman Networks, Inc.*, No. 15 Civ. 97, 2016 WL 6037847, at *4, *6 (E.D. Tex. Oct. 14, 2016) (awarding 39.78% of settlement); *Fairway Med. Ctr., L.L.C. v. McGowan Enterprises, Inc.*, No. 16 Civ. 3782, 2018 WL 1479222, at *2 (E.D. La. Mar. 27, 2018) (awarding one-third of settlement); *Parmelee v. Santander Consumer USA Holdings Inc.*, No. 16 Civ. 00783, 2019 WL 2352837, at *2 (N.D. Tex. June 3, 2019) (awarding 1/3 of settlement); *Miller v. Global Geophysical Services Inc., et al.*, No. 14 Civ. 00708, 2016 WL 11645372 (S.D. Tex. Jan. 14, 2016) (awarding 1/3 of settlement); *Frost v. Oil States Energy Servs.*, No. 15 Civ. 1100, 2015 WL 12780763, at *2 (S.D. Tex. Nov. 19, 2015) (awarding 1/3 of settlement); *Campton v. Ignite Rest. Grp., Inc.*, No. 12 Civ. 2196, 2015 WL 12766537, at *3 (S.D. Tex. June 5, 2015) (awarding 1/3 of settlement); *Barrera v. Nat'l Crane Corp.*, No. 10 Civ. 0196, 2012 WL 242828, at *5 (W.D. Tex. Jan. 25, 2012) (awarding 1/3 of settlement).

18. It should be noted that the numbers in my study are largely consistent with the other large-scale academic empirical studies of class action fees. *See Eisenberg-Miller 2017, supra*, at 951 (finding average and median of 23% and 24% in the Fifth Circuit after 2009); *Eisenberg-Miller 2010, supra*, at 260 (finding average and median of 24% and 23% in the Fifth Circuit before 2009). It is true the fee-percentage numbers in the Eisenberg-Miller studies are often slightly lower than in my study, but there are two reasons for that. First, their sample size tended to be smaller than mine and therefore more susceptible to outliers. For example, their 2017 study had only twelve 5th Circuit data points, less than half as many as my study did. Second, and relatedly, their methodology led them to oversample larger settlements, and, as I noted above, courts tend to award lower percentages in the largest settlements. *See Fitzpatrick, Empirical Study, supra*, at 829. In my opinion, their numbers therefore do not undermine class counsel's fee request.

19. The numbers support class counsel's fee request if we look at nationwide data as well. According to my empirical study, the most common fee percentages were again 25%, 30%, and 33%, with a mean and median of 25.4% and 25%, respectively. *See Fitzpatrick, Empirical Study*, at 833-34, 838. Again, this can again be seen graphically: in Figure 2, below, I show the distribution of all percentage-method fee awards in my study along with an arrow again depicting this fee request. And, again, the fee request here falls within the most populous range. Again, the other large-scale studies of class action fees have found much the same, including a nationwide median of 29% in the most recent years. *See Eisenberg-Miller 2017, supra*, at 951 (finding mean and median of 27% and 29% nationwide since 2009); *Eisenberg-Miller 2010, supra*, at 260 (finding mean and median of 24% and 25% nationwide before 2009). Thus, no matter how you slice it, the fee request here is quite typical, even if it may be slightly above average. In short, these factors support the fee request.

Figure 2: Percentage-method fee awards among all federal courts, 2006-2007

20. Consider next the factors that assess the results obtained by class counsel in light of the strength of the cases and the risks class counsel faced: “(8) the amount involved and the results obtained,” “(2) the novelty and difficulty of the issues,” “(3) the skill required to perform the legal service adequately,” and “(10) the undesirability of the case.” Courts examine these factors in order to incentivize class counsel to squeeze the greatest value for the class from their cases; the better class counsel did, the better class counsel should be compensated. Class counsel did well here. Over the last ten years, the median securities fraud class action has recovered between 1.5% and 2.5% of investor losses depending on the year. *See, e.g., Recent Trends in Securities Class Action Litigation: 2023 Full-Year Review*, at p. 26 (fig. 22), available at <https://www.nera.com/content/nera/us/en/insights/publications/2024/recent-trends-in-securities-class-action-litigation--2023-full-y.html>. Yet, class counsel here recovered roughly double that.

Indeed, within the same damages band—cases with between \$1 billion and \$4.99 billion of investor losses—class counsel more than tripled the typical recovery. *See id.* at 25 (reporting a median recovery of only 1.3% of investor losses). It is true that this case raised Section 11 claims and class actions that allege these claims tend to do better than others because scienter and loss causation need not be proved to recover. On the other hand, the Section 10b-5 claims faced above average risks due to potential truncation of the class period and perhaps no recovery at all due to what was learned in discovery regarding the interaction between the defendants and the FDA. In my opinion, the recovery-to-risk trade off here is better than the typical securities class action and more than justifies a merely typical, if slightly above average fee request.

21. Consider next “(1) the time and labor required.” There are two ways that courts might consider this factor: qualitatively or quantitatively. The qualitative approach assesses what class counsel did during the years of litigation; *i.e.*, whether class counsel have dug deeply enough into a case to know what it is worth as opposed to selling out the class for a quick fee award. *See, e.g., Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 456 (10th Cir. 1988) (“in awarding attorneys’ fees in a common fund case, the ‘time and labor involved’ factor need not be evaluated using the lodestar formulation . . .”). The quantitative approach is to calculate class counsel’s lodestar and to “crosscheck” the fee percentage requested against the lodestar to ensure that the ensuing multiplier does not confer upon class counsel some sort of “windfall.” *See, e.g., In re Cendant*, 264 F.3d at 285.

22. There is nothing in Fifth Circuit case law that requires the quantitative approach. Moreover, only a minority of courts nationwide use the quantitative approach. *See Fitzpatrick, Empirical Study, supra*, at 833 (finding that only 49% of courts consider lodestar when awarding fees with the percentage method); *Eisenberg-Miller 2017, supra*, at 945 (finding percent method

with lodestar crosscheck used 38% of the time versus 54% for percent method without lodestar crosscheck); *Eisenberg-Miller 2010, supra*, at 269 (tbl. 11) (showing that, in the Fifth Circuit, the percent method with a lodestar crosscheck is used 36% of the time versus 40% for the percent method without lodestar crosscheck).³

23. In my opinion, the qualitative approach is better because the quantitative approach reintroduces all the bad incentives of the lodestar method that the percentage method was supposed to correct in the first place. See Fitzpatrick, *A Fiduciary Judge, supra*, at 1157-58, 1167. Consider the following examples. Suppose a class action lawyer worked on a case for one year and accrued a lodestar of \$3 million. If the lawyer believed that a court would award it a fee of 30% or two times his lodestar, whichever was lesser, then he would be completely indifferent between accepting a settlement offer at this point of \$20 million and \$200 million; either way, the lawyer would earn \$6 million. Needless to say, the incentive to be indifferent as to the size of the settlement is good neither for the class, which is interested in maximizing its compensation, nor for society, which is interested in fully deterring misconduct. Suppose instead the lawyer had been offered \$40 million after one year of work. If the lawyer again believed the court would not award a fee of 30% unless it was no more than two times his lodestar, then the lawyer would want to delay accepting the settlement until he could generate another \$3 million in lodestar and thereby reap the maximum fee. Again, this is good neither for the class nor for society, both of which have interests in compensating and deterring in the most timely and efficient manner.

24. In my opinion, there is little doubt that the qualitative approach supports the fee request here. In particular, both class counsel and the Court have more than enough information

³ Eisenberg and Miller do not report Circuit-by-Circuit numbers in their 2017 study.

to assess whether the settlement is a good one: discovery was extensive and the class's damages models are complete. Thus, in my opinion, this factor, too, supports the fee request.

25. Nonetheless, if the court here wishes to employ a lodestar cross-check, it would confirm that class counsel would not reap some sort of “windfall” if their fee request were granted. Class counsel's lodestar has thus far summed to over \$6 million. If the fee request is granted, class counsel would therefore receive a multiplier of 2.24. Although this is slightly above average,⁴ it is well within the range of multipliers awarded in prior cases in the Fifth Circuit and elsewhere. In my empirical study, when courts performed the lodestar crosscheck, the multipliers ranged from .07 to 10.3. *See* Fitzpatrick, Empirical Study, *supra*, at 834; *see also, e.g., Celeste Neely*, No. 21 Civ. 0307, 2022 WL 17736350, at *14 (E.D. Tex. Dec. 16, 2022) (“When a lodestar cross-check is applied to a class-action fee award in a common fund case, courts frequently use a multiplier ranging from one to four...”); *Klein*, 705 F. Supp. 2d at 681 (finding 30% fee request, which equated to a 2.5 multiplier, reasonable); *Evans on behalf of United Dev. Funding IV v. Greenlaw*, No. 16 Civ. 0635, 2019 WL 7879735, at *3-4 (N.D. Tex. Feb. 27, 2019) (awarding 3.06 multiplier); *City of Omaha*, 2015 WL 965696, at *10 (“[m]ultipliers ranging from one to four frequently are awarded in common fund cases” and “[a] large common fund award may warrant an even larger multiplier”); *OneBeacon Ins. Co. v. T. Wade Welch & Assocs.*, No. 11 Civ. 3061, 2015 WL 5021954, at *13-14 (S.D. Tex. Aug. 24, 2015) (awarding 3.0 multiplier); *Burford*, 2012 WL 5471985, at *6 n.1 (multipliers “of 1 to 4” are “typically approved by courts within this circuit”); *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 586 F. Supp. 2d 732, 751 & n.20

⁴ *See* Fitzpatrick, Empirical Study, *supra*, at 834 (finding mean and median of 1.65 and 1.34, respectively); *see also* Eisenberg-Miller 2017, *supra*, at 965 (finding mean of 1.48 for cases after 2009); Eisenberg-Miller 2010, *supra*, at 273 (finding mean multiplier of 1.81 for cases before 2009). It should be noted that in both of the Eisenberg-Miller studies (I did not break down multipliers by Circuit), the average multiplier was higher in the Fifth Circuit than it was nationwide. Eisenberg-Miller 2017, *supra*, at 965 (finding mean of 1.75 for cases after 2009); Eisenberg-Miller 2010, *supra*, at 272 (finding mean multiplier of 2.07 for cases before 2009).

(S.D. Tex. 2008) (awarding 5.2 multiplier and stating that “[m]ultiples from one to four are frequently awarded in common fund cases”); *In re Enron Corp. Securities*, 586 F. Supp. 2d at 752 (noting that “the Ninth Circuit performed a survey of multipliers and found ‘a range of 0.6-19.6, with most (20 of 24, or 83%) from 1.0 to 4.0 and a bare majority (13 of 24, or 54%) in the 1.5-3.0 range’”); *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 333 (W.D. Tex. 2007) (noting that the average range of multipliers is 1.0 to 4.5 and “multipliers on large and complicated class actions have ranged from at least 2.26 to 4.5”); *Turner v. Murphy Oil USA, Inc.*, 472 F. Supp. 2d 830, 869 (E.D. La. 2007) (“a lodestar multiplier range of 2.5 to 3.5 would be appropriate and reasonable in this case.”); *In re Waste Mgmt., Inc.*, No. 99 Civ. 2183, 2002 WL 35644013, at *29 (S.D. Tex. May 10, 2002) (5.3 multiplier “is supported by case law and is within the range of multipliers approved in other class actions”); *Di Giacomo v. Plains All Am. Pipeline*, No. 99 Civ. 4137, 2001 WL 34633373, at *11 (S.D. Tex. Dec. 19, 2001) (approving 5.3 multiplier); *In re Combustion*, 968 F. Supp. 1116, 1133, 1141 (W.D. La. 1997) (characterizing 2.99 multiplier as “conservative” and noting that multipliers of “one to four frequently are awarded in common fund cases”); *Garza v. Sporting Goods Properties, Inc.*, No. 93 Civ. 0108, 1996 WL 56247, at *33 (W.D. Tex. Feb. 6, 1996) (awarding 4 multiplier and recognizing that “[t]he range of multipliers in large and complicated class actions have ranged from 2.26 to 4.5”); *In re Shell Oil Refinery*, 155 F.R.D. 552, 573 (E.D. La. 1993) (applying multipliers of 3 to 3.5). Thus, in my opinion, there is nothing out of the ordinary about the multiplier that would result here.

26. Moreover, there is nothing to suggest that this multiplier would result in a “windfall.” In order to properly incentivize lawyers to take cases on contingency, the lawyers must receive fee awards when they are successful that make up for the risk that they might not have been successful. In particular, the lawyer must receive fees that result in a multiplier at least

equal to the inverse of the probability the lawyer will eventually recover something. Anything short of that fails to incentivize lawyers to take cases on contingency and pushes them to take cases where they can bill by the hour instead. See William J. Lynk, *The Courts and the Plaintiff's Bar: Awarding the Attorney's Fee in Class-Action Litigation*, 23 J. Legal Stud. 185, 209 & n.18 (1994) (“[T]he multiplier must be [divided by] p^* , the probability of winning an efficiently prosecuted case”). Thus, for example, if the probability of a recovery was only 50% at the outset of the case, the lawyer would have to receive a multiplier if successful of at least 2.0 ($1/.5$). In my opinion, the risks involved in this case were more than sufficient to justify the multiplier that would result. As I noted above, this case had above average risks, but, even in the typical securities fraud case, surviving a motion to dismiss is almost a 2-to-1 losing proposition. See *Recent Trends*, *supra*, at 15 (“60% of motions were granted (with or without prejudice) while 40% were denied either in part or in full”). Multiply that risk by the risk of losing on summary judgment, the risk of losing at trial, the risk of losing on post-trial motions, and the risk of losing on appeal, and it is not difficult to conclude that the multiplier here would be no windfall.

27. Consider finally the remaining factors: “(4) the preclusion of other employment by the attorney because he accepted this case,” “(6) whether the fee is fixed or contingent,” “(7) time limitations imposed by the client or the circumstances,” “(9) the experience, reputation, and ability of the attorneys,” and “(11) the nature and length of the professional relationship with the client.” Because I was not privy to the attorney-client relationships in this litigation, I cannot speak in great detail about these factors. I can say, however, that the lawyers who worked on this case include some of the finest and best-regarded securities fraud lawyers in the United States. As such, as far as I can assess, these factors, too, support the request.

28. For all these reasons, it is my opinion that the fee request here is reasonable in light of empirical analyses and research on economic incentives in class action litigation.

29. My compensation for this declaration was a flat fee and was in no way dependent on the outcome of class counsel's fee petition.

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

Executed on February 22, 2024, in Nashville, Tennessee.

A handwritten signature in black ink, appearing to read "Brian T. Fitzpatrick", written over a horizontal line.

Brian T. Fitzpatrick

EXHIBIT 1

BRIAN T. FITZPATRICK

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ACADEMIC APPOINTMENTS

VANDERBILT UNIVERSITY LAW SCHOOL, *Milton R. Underwood Chair in Free Enterprise*, 2020 to present

- *FedEx Research Professor*, 2014-2015
- *Professor of Law*, 2012 to present
- *Associate Professor*, 2010-2012; *Assistant Professor*, 2007-2010
- Classes: Civil Procedure, Complex Litigation, Federal Courts
- Hall-Hartman Outstanding Professor Award, 2008-2009
- Vanderbilt's Association of American Law Schools Teacher of the Year, 2009

HARVARD LAW SCHOOL, *Visiting Professor*, Fall 2018

- Classes: Civil Procedure, Litigation Finance

FORDHAM LAW SCHOOL, *Visiting Professor*, Fall 2010

- Classes: Civil Procedure

EDUCATION

HARVARD LAW SCHOOL, J.D., *magna cum laude*, 2000

- Fay Diploma (for graduating first in the class)
- Sears Prize, 1999 (for highest grades in the second year)
- *Harvard Law Review*, Articles Committee, 1999-2000; Editor, 1998-1999
- *Harvard Journal of Law & Public Policy*, Senior Editor, 1999-2000; Editor, 1998-1999
- Research Assistant, David Shapiro, 1999; Steven Shavell, 1999

UNIVERSITY OF NOTRE DAME, B.S., Chemical Engineering, *summa cum laude*, 1997

- First runner-up to Valedictorian (GPA: 3.97/4.0)
- Steiner Prize, 1997 (for overall achievement in the College of Engineering)

CLERKSHIPS

HON. ANTONIN SCALIA, Supreme Court of the United States, 2001-2002

HON. DIARMUID O'SCANNLAIN, U.S. Court of Appeals for the Ninth Circuit, 2000-2001

EXPERIENCE

NEW YORK UNIVERSITY SCHOOL OF LAW, Feb. 2006 to June 2007

John M. Olin Fellow

HON. JOHN CORNYN, United States Senate, July 2005 to Jan. 2006
Special Counsel for Supreme Court Nominations

SIDLEY AUSTIN LLP, Washington, DC, 2002 to 2005
Litigation Associate

BOOKS

THE CAMBRIDGE HANDBOOK OF CLASS ACTIONS: AN INTERNATIONAL SURVEY (Cambridge University Press 2021) (ed., with Randall Thomas)

THE CONSERVATIVE CASE FOR CLASS ACTIONS (University of Chicago Press 2019) (winner of the Pound Institute's 2022 Civil Justice Scholarship Award)

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Entrapment of the Little Guy: Resisting the Erosion of Investor, Employee and Consumer Protections, Institute for Law and Economic Policy, San Diego, CA (Jan. 27, 2023)

A New Source of Data for Non-Securities Class Actions, William & Mary Law School, Williamsburg, VA (Nov. 10, 2022)

Can Courts Avoid Politicization in a Polarized America?, American Bar Association Annual Meeting, Chicago, IL (Aug. 5, 2022) (panelist)

A New Source of Data for Non-Securities Class Actions, Seventh Annual Civil Procedure Workshop, Cardozo Law School, New York, NY (May 20, 2022)

Resolution Issues in Class Actions and Mass Torts, Miami Law Class Action & Complex Litigation Forum, University of Miami School of Law, Miami, FL (Mar. 11, 2022) (panelist)

Developments in Discovery Reform, George Mason Law & Economics Center Fifteenth Annual Judicial Symposium on Civil Justice Issues, Charleston, SC (Nov. 16, 2021) (panelist)

Locality Litigation and Public Entity Incentives to File Lawsuits: Public Interest, Politics, Public Finance or Financial Gain?, George Mason Law & Economics Center Symposium on Novel Liability Theories and the Incentives Driving Them, Nashville, TN (Oct. 25, 2021) (panelist)

A Fiduciary Judge's Guide to Awarding Fees in Class Actions, University of California Hastings College of the Law, San Francisco, CA (Nov. 3, 2020)

A Fiduciary Judge's Guide to Awarding Fees in Class Actions, The Judicial Role in Professional Regulation, Stein Colloquium, Fordham Law School, New York, NY (Oct. 9, 2020)

Objector Blackmail Update: What Have the 2018 Amendments Done?, Institute for Law and Economic Policy, Fordham Law School, New York, NY (Feb. 28, 2020)

Keynote Debate: The Conservative Case for Class Actions, Miami Law Class Action & Complex Litigation Forum, University of Miami School of Law, Miami, FL (Jan. 24, 2020)

The Future of Class Actions, National Consumer Law Center Class Action Symposium, Boston, MA (Nov. 16, 2019) (panelist)

The Conservative Case for Class Actions, Center for Civil Justice, NYU Law School, New York, NY (Nov.11, 2019)

Deregulation and Private Enforcement, Class Actions, Mass Torts, and MDLs: The Next 50 Years, Pound Institute Academic Symposium, Lewis & Clark Law School, Portland, OR (Nov. 2, 2019)

Class Actions and Accountability in Finance, Investors and the Rule of Law Conference, Institute for Investor Protection, Loyola University Chicago Law School, Chicago, IL (Oct. 25, 2019) (panelist)

Incentivizing Lawyers as Teams, University of Texas at Austin Law School, Austin, TX (Oct. 22, 2019)

“Dueling Pianos”: A Debate on the Continuing Need for Class Actions, Twenty Third Annual National Institute on Class Actions, American Bar Association, Nashville, TN (Oct. 18, 2019) (panelist)

A Debate on the Utility of Class Actions, Contemporary Issues in Complex Litigation Conference, Northwestern Law School, Chicago, IL (Oct.16, 2019) (panelist)

Litigation Funding, Forty Seventh Annual Meeting, Intellectual Property Owners Association, Washington, DC (Sep. 26, 2019) (panelist)

The Indian Securities Fraud Class Action: Is Class Arbitration the Answer?, International Class Actions Conference, Vanderbilt Law School, Nashville, TN (Aug. 24, 2019)

A New Source of Class Action Data, Corporate Accountability Conference, Institute for Law and Economic Policy, San Juan, Puerto Rico (April 12, 2019)

The Indian Securities Fraud Class Action: Is Class Arbitration the Answer?, Ninth Annual Emerging Markets Finance Conference, Mumbai, India (Dec. 14, 2018)

MDL: Uniform Rules v. Best Practices, Miami Law Class Action & Complex Litigation Forum, University of Miami Law School, Miami, FL (Dec. 7, 2018) (panelist)

Third Party Finance of Attorneys in Traditional and Complex Litigation, George Washington Law School, Washington, D.C. (Nov. 2, 2018) (panelist)

MDL at 50 - The 50th Anniversary of Multidistrict Litigation, New York University Law School, New York, New York (Oct. 10, 2018) (panelist)

The Discovery Tax, Law & Economics Seminar, Harvard Law School, Cambridge, Massachusetts (Sep. 11, 2018)

Empirical Research on Class Actions, Civil Justice Research Initiative, University of California at Berkeley, Berkeley, California (Apr. 9, 2018)

A Political Future for Class Actions in the United States?, The Future of Class Actions Symposium, University of Auckland Law School, Auckland, New Zealand (Mar. 15, 2018)

The Indian Class Actions: How Effective Will They Be?, Eighth Annual Emerging Markets Finance Conference, Mumbai, India (Dec. 19, 2017)

Hot Topics in Class Action and MDL Litigation, University of Miami School of Law, Miami, Florida (Dec. 8, 2017) (panelist)

Critical Issues in Complex Litigation, Contemporary Issues in Complex Litigation, Northwestern Law School (Nov. 29, 2017) (panelist)

The Conservative Case for Class Actions, Consumer Class Action Symposium, National Consumer Law Center, Washington, DC (Nov. 19, 2017)

The Conservative Case for Class Actions—A Monumental Debate, ABA National Institute on Class Actions, Washington, DC (Oct. 26, 2017) (panelist)

One-Way Fee Shifting after Summary Judgment, 2017 Meeting of the Midwestern Law and Economics Association, Marquette Law School, Milwaukee, WI (Oct. 20, 2017)

The Conservative Case for Class Actions, Pepperdine Law School Malibu, CA (Oct. 17, 2017)

One-Way Fee Shifting after Summary Judgment, Vanderbilt Law Review Symposium on The Future of Discovery, Vanderbilt Law School, Nashville, TN (Oct. 13, 2017)

The Constitution Revision Commission and Florida's Judiciary, 2017 Annual Florida Bar Convention, Boca Raton, FL (June 22, 2017)

Class Actions After Spokeo v. Robins: Supreme Court Jurisprudence, Article III Standing, and Practical Implications for the Bench and Practitioners, Northern District of California Judicial Conference, Napa, CA (Apr. 29, 2017) (panelist)

The Ironic History of Rule 23, Conference on Secrecy, Institute for Law & Economic Policy, Naples, FL (Apr. 21, 2017)

Justice Scalia and Class Actions: A Loving Critique, University of Notre Dame Law School, South Bend, Indiana (Feb. 3, 2017)

Should Third-Party Litigation Financing Be Permitted in Class Actions?, Fifty Years of Class Actions—A Global Perspective, Tel Aviv University, Tel Aviv, Israel (Jan. 4, 2017)

Hot Topics in Class Action and MDL Litigation, University of Miami School of Law, Miami, Florida (Dec. 2, 2016) (panelist)

The Ideological Consequences of Judicial Selection, William J. Brennan Lecture, Oklahoma City University School of Law, Oklahoma, City, Oklahoma (Nov. 10, 2016)

After Fifty Years, What's Class Action's Future, ABA National Institute on Class Actions, Las Vegas, Nevada (Oct. 20, 2016) (panelist)

Where Will Justice Scalia Rank Among the Most Influential Justices, State University of New York at Stony Brook, Long Island, New York (Sep. 17, 2016)

The Ironic History of Rule 23, University of Washington Law School, Seattle, WA (July 14, 2016)

A Respected Judiciary—Balancing Independence and Accountability, 2016 Annual Florida Bar Convention, Orlando, FL (June 16, 2016) (panelist)

What Will and Should Happen to Affirmative Action After Fisher v. Texas, American Association of Law Schools Annual Meeting, New York, NY (January 7, 2016) (panelist)

Litigation Funding: The Basics and Beyond, NYU Center on Civil Justice, NYU Law School, New York, NY (Nov. 20, 2015) (panelist)

Do Class Actions Offer Meaningful Compensation to Class Members, or Do They Simply Rip Off Consumers Twice?, ABA National Institute on Class Actions, New Orleans, LA (Oct. 22, 2015) (panelist)

Arbitration and the End of Class Actions?, Quinnipiac-Yale Dispute Resolution Workshop, Yale Law School, New Haven, CT (Sep. 8, 2015) (panelist)

The Next Steps for Discovery Reform: Requester Pays, Lawyers for Civil Justice Membership Meeting, Washington, DC (May 5, 2015)

Private Attorney General: Good or Bad?, 17th Annual Federalist Society Faculty Conference, Washington, DC (Jan. 3, 2015)

Liberty, Judicial Independence, and Judicial Power, Liberty Fund Conference, Santa Fe, NM (Nov. 13-16, 2014) (participant)

The Economics of Objecting for All the Right Reasons, 14th Annual Consumer Class Action Symposium, Tampa, FL (Nov. 9, 2014)

Compensation in Consumer Class Actions: Data and Reform, Conference on The Future of Class Action Litigation: A View from the Consumer Class, NYU Law School, New York, NY (Nov. 7, 2014)

The Future of Federal Class Actions: Can the Promise of Rule 23 Still Be Achieved?, Northern District of California Judicial Conference, Napa, CA (Apr. 13, 2014) (panelist)

The End of Class Actions?, Conference on Business Litigation and Regulatory Agency Review in the Era of Roberts Court, Institute for Law & Economic Policy, Boca Raton, FL (Apr. 4, 2014)

Should Third-Party Litigation Financing Come to Class Actions?, University of Missouri School of Law, Columbia, MO (Mar. 7, 2014)

Should Third-Party Litigation Financing Come to Class Actions?, George Mason Law School, Arlington, VA (Mar. 6, 2014)

Should Third-Party Litigation Financing Come to Class Actions?, Roundtable for Third-Party Funding Scholars, Washington & Lee University School of Law, Lexington, VA (Nov. 7-8, 2013)

Is the Future of Affirmative Action Race Neutral?, Conference on A Nation of Widening Opportunities: The Civil Rights Act at 50, University of Michigan Law School, Ann Arbor, MI (Oct. 11, 2013)

The Mass Tort Bankruptcy: A Pre-History, The Public Life of the Private Law: A Conference in Honor of Richard A. Nagareda, Vanderbilt Law School, Nashville, TN (Sep. 28, 2013) (panelist)

Rights & Obligations in Alternative Litigation Financing and Fee Awards in Securities Class Actions, Conference on the Economics of Aggregate Litigation, Institute for Law & Economic Policy, Naples, FL (Apr. 12, 2013) (panelist)

The End of Class Actions?, Symposium on Class Action Reform, University of Michigan Law School, Ann Arbor, MI (Mar. 16, 2013)

Toward a More Lawyer-Centric Class Action?, Symposium on Lawyering for Groups, Stein Center for Law & Ethics, Fordham Law School, New York, NY (Nov. 30, 2012)

The Problem: AT & T as It Is Unfolding, Conference on *AT & T Mobility v. Concepcion*, Cardozo Law School, New York, NY (Apr. 26, 2012) (panelist)

Standing under the Statements and Accounts Clause, Conference on Representation without Accountability, Fordham Law School Corporate Law Center, New York, NY (Jan. 23, 2012)

The End of Class Actions?, Washington University Law School, St. Louis, MO (Dec. 9, 2011)

Book Preview Roundtable: Accelerating Democracy: Matching Social Governance to Technological Change, Searle Center on Law, Regulation, and Economic Growth, Northwestern University School of Law, Chicago, IL (Sep. 15-16, 2011) (participant)

Is Summary Judgment Unconstitutional? Some Thoughts About Originalism, Stanford Law School, Palo Alto, CA (Mar. 3, 2011)

The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure, Northwestern Law School, Chicago, IL (Feb. 25, 2011)

The New Politics of Iowa Judicial Retention Elections: Examining the 2010 Campaign and Vote, University of Iowa Law School, Iowa City, IA (Feb. 3, 2011) (panelist)

The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure, Washington University Law School, St. Louis, MO (Oct. 1, 2010)

Twombly and Iqbal Reconsidered, Symposium on Business Law and Regulation in the Roberts Court, Case Western Reserve Law School, Cleveland, OH (Sep. 17, 2010)

Do Class Action Lawyers Make Too Little?, Institute for Law & Economic Policy, Providenciales, Turks & Caicos (Apr. 23, 2010)

Originalism and Summary Judgment, Georgetown Law School, Washington, DC (Apr. 5, 2010)

Theorizing Fee Awards in Class Action Litigation, Washington University Law School, St. Louis, MO (Dec. 11, 2009)

An Empirical Study of Class Action Settlements and their Fee Awards, 2009 Conference on Empirical Legal Studies, University of Southern California Law School, Los Angeles, CA (Nov. 20, 2009)

Originalism and Summary Judgment, Symposium on Originalism and the Jury, Ohio State Law School, Columbus, OH (Nov. 17, 2009)

An Empirical Study of Class Action Settlements and their Fee Awards, 2009 Meeting of the Midwestern Law and Economics Association, University of Notre Dame Law School, South Bend, IN (Oct. 10, 2009)

The End of Objector Blackmail?, Stanford-Yale Junior Faculty Forum, Stanford Law School, Palo Alto, CA (May 29, 2009)

An Empirical Study of Class Action Settlements and their Fee Awards, University of Minnesota School of Law, Minneapolis, MN (Mar. 12, 2009)

The Politics of Merit Selection, Symposium on State Judicial Selection and Retention Systems, University of Missouri Law School, Columbia, MO (Feb. 27, 2009)

The End of Objector Blackmail?, Searle Center Research Symposium on the Empirical Studies of Civil Liability, Northwestern University School of Law, Chicago, IL (Oct. 9, 2008)

Alternatives To Affirmative Action After The Michigan Civil Rights Initiative, University of Michigan School of Law, Ann Arbor, MI (Apr. 3, 2007) (panelist)

OTHER PUBLICATIONS

Racial Preferences Won't Go Easily, WALL ST. J. (June 1, 2023)

Memo to Mitch: Repeal the Republican Tax Increase, THE HILL (July 17, 2020)

The Right Way to End Qualified Immunity, THE HILL (June 25, 2020)

I Still Remember, 133 HARV. L. REV. 2458 (2020)

Proposed Reforms to Texas Judicial Selection, 24 TEX. R. L. & POL. 307 (2020)

The Conservative Case for Class Actions?, NATIONAL REVIEW (Nov. 13, 2019)

9th Circuit Split: What's the math say?, DAILY JOURNAL (Mar. 21, 2017)

Former clerk on Justice Antonin Scalia and his impact on the Supreme Court, THE CONVERSATION (Feb. 24, 2016)

Lessons from Tennessee Supreme Court Retention Election, THE TENNESSEAN (Aug. 20, 2014)

Public Needs Voice in Judicial Process, THE TENNESSEAN (June 28, 2013)

Did the Supreme Court Just Kill the Class Action?, THE QUARTERLY JOURNAL (April 2012)

Let General Assembly Confirm Judicial Selections, CHATTANOOGA TIMES FREE PRESS (Feb. 19, 2012)

“Tennessee Plan” Needs Revisions, THE TENNESSEAN (Feb. 3, 2012)

How Does Your State Select Its Judges?, INSIDE ALEC 9 (March 2011) (with Stephen Ware)

On the Merits of Merit Selection, THE ADVOCATE 67 (Winter 2010)

Supreme Court Case Could End Class Action Suits, SAN FRANCISCO CHRONICLE (Nov. 7, 2010)

Kagan is an Intellect Capable of Serving Court, THE TENNESSEAN (Jun. 13, 2010)

Confirmation “Kabuki” Does No Justice, POLITICO (July 20, 2009)

Selection by Governor may be Best Judicial Option, THE TENNESSEAN (Apr. 27, 2009)

Verdict on Tennessee Plan May Require a Jury, THE MEMPHIS COMMERCIAL APPEAL (Apr. 16, 2008)

Tennessee’s Plan to Appoint Judges Takes Power Away from the Public, THE TENNESSEAN (Mar. 14, 2008)

Process of Picking Judges Broken, CHATTANOOGA TIMES FREE PRESS (Feb. 27, 2008)

Disorder in the Court, LOS ANGELES TIMES (Jul. 11, 2007)

Scalia’s Mistake, NATIONAL LAW JOURNAL (Apr. 24, 2006)

GM Backs Its Bottom Line, DETROIT FREE PRESS (Mar. 19, 2003)

Good for GM, Bad for Racial Fairness, LOS ANGELES TIMES (Mar. 18, 2003)

10 Percent Fraud, WASHINGTON TIMES (Nov. 15, 2002)

OTHER PRESENTATIONS

Abstention, Tennessee Attorney General's Office Continuing Legal Education, Nashville, TN (Apr. 13, 2022)

Does the Way We Choose our Judges Affect Case Outcomes?, American Legislative Exchange Council 2018 Annual Meeting, New Orleans, Louisiana (August 10, 2018) (panelist)

Oversight of the Structure of the Federal Courts, Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts, United States Senate, Washington, D.C. (July 31, 2018)

Where Will Justice Scalia Rank Among the Most Influential Justices, The Leo Bearman, Sr. American Inn of Court, Memphis, TN (Mar. 21, 2017)

Bringing Justice Closer to the People: Examining Ideas for Restructuring the 9th Circuit, Subcommittee on Courts, Intellectual Property, and the Internet, United States House of Representatives, Washington, D.C. (Mar. 16, 2017)

Supreme Court Review 2016: Current Issues and Cases Update, Nashville Bar Association, Nashville, TN (Sep. 15, 2016) (panelist)

A Respected Judiciary—Balancing Independence and Accountability, Florida Bar Annual Convention, Orlando, FL (June 16, 2016) (panelist)

Future Amendments in the Pipeline: Rule 23, Tennessee Bar Association, Nashville, TN (Dec. 2, 2015)

The New Business of Law: Attorney Outsourcing, Legal Service Companies, and Commercial Litigation Funding, Tennessee Bar Association, Nashville, TN (Nov. 12, 2014)

Hedge Funds + Lawsuits = A Good Idea?, Vanderbilt University Alumni Association, Washington, DC (Sep. 3, 2014)

Judicial Selection in Historical and National Perspective, Committee on the Judiciary, Kansas Senate (Jan. 16, 2013)

The Practice that Never Sleeps: What's Happened to, and What's Next for, Class Actions, ABA Annual Meeting, Chicago, IL (Aug. 3, 2012) (panelist)

Life as a Supreme Court Law Clerk and Views on the Health Care Debate, Exchange Club, Nashville, TN (Apr. 3, 2012)

The Tennessee Judicial Selection Process—Shaping Our Future, Tennessee Bar Association Leadership Law Retreat, Dickson, TN (Feb. 3, 2012) (panelist)

Reexamining the Class Action Practice, ABA National Institute on Class Actions, New York, NY (Oct. 14, 2011) (panelist)

Judicial Selection in Kansas, Committee on the Judiciary, Kansas House of Representatives (Feb. 16, 2011)

Judicial Selection and the Tennessee Constitution, Civil Practice and Procedure Subcommittee, Tennessee House of Representatives (Mar. 24, 2009)

What Would Happen if the Judicial Selection and Evaluation Commissions Sunset?, Civil Practice and Procedure Subcommittee, Tennessee House of Representatives (Feb. 24, 2009)

Judicial Selection in Tennessee, Chattanooga Bar Association, Chattanooga, TN (Feb. 27, 2008) (panelist)

Ethical Implications of Tennessee's Judicial Selection Process, Tennessee Bar Association, Nashville, TN (Dec. 12, 2007)

PROFESSIONAL ASSOCIATIONS

Member, American Law Institute
Referee, Journal of Legal Studies
Referee, Journal of Law, Economics and Organization
Referee, Journal of Empirical Legal Studies
Referee, Supreme Court Economic Review
Reviewer, Aspen Publishing
Reviewer, Cambridge University Press
Reviewer, University Press of Kansas
Reviewer, Palgrave Macmillan
Reviewer, Oxford University Press
Reviewer, Routledge
Member, American Bar Association
Member, Tennessee Advisory Committee to the U.S. Commission on Civil Rights, 2009-2015
Board of Directors, Tennessee Stonewall Bar Association, 2012-2022
American Swiss Foundation Young Leaders' Conference, 2012
Bar Admission, District of Columbia & California (inactive)

COMMUNITY ACTIVITIES

Board of Directors, Beacon Center, 2018-present; Board of Directors, Nashville Ballet, 2011-2017 & 2019-2022; Nashville Talking Library for the Blind, 2008-2009

EXHIBIT 2



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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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¹See, e.g., Robert W. Wood, *Defining Employees and Independent Contractors*, *Bus. L. Today* 45, 48 (May–June 2008).

²See 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

³See, 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).

⁴See, e.g., Samuel Issacharoff & Geoffrey Miller, Will Aggregate Litigation Come to Europe?, 62 Vand. L. Rev. 179 (2009).

⁵See, 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).

⁶Empirical 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).

⁷See 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.

⁸Of course, I cannot be certain that I found every one of the class actions that settled in federal court over this period. Nonetheless, I am confident that if I did not find some, the number I did not find is small and would not contribute meaningfully to the data reported in this article.

In Section IV, I perform an analysis of the fees judges awarded to class action lawyers in the 2006–2007 settlements. All told, judges awarded nearly \$5 billion over this two-year period in fees and expenses to class action lawyers, or about 15 percent of the total amount of the settlements. Most federal judges chose to award fees by using the highly discretionary percentage-of-the-settlement method and, unsurprisingly, the fees awarded according to this method varied over a broad range, with a mean and median around 25 percent. Using regression analysis, I confirm prior studies and find that fee percentages are strongly and inversely associated with the size of the settlement. Further, I find that the age of the case is positively associated with fee percentages but that the percentages were not associated with whether the class action was certified as a settlement class. There also appeared to be some variation in fee percentages depending on the subject matter of the litigation and the geographic circuit in which the district court was located. Fee percentages in securities cases were lower than the percentages in some but not all other areas, and district courts in some circuits—the Ninth and the Second (in securities cases)—awarded lower fee percentages than courts in many other circuits. Finally, the regression analysis did not confirm the realist hypothesis: there was no association between fee percentage and the political beliefs of the judge in any regression.

II. PRIOR EMPIRICAL STUDIES OF CLASS ACTION SETTLEMENTS

There are many existing empirical studies of federal securities class action settlements.⁹ Studies of securities settlements have been plentiful because for-profit organizations maintain lists of all federal securities class action settlements for the benefit of institutional investors that are entitled to file claims in these settlements.¹⁰ Using these data, studies have shown that since 2005, for example, there have been roughly 100 securities class action settlements in federal court each year, and these settlements have involved between \$7 billion and \$17 billion per year.¹¹ Scholars have used these data to analyze many different aspects of these settlements, including the factors that are associated with the percentage of

⁹See, 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].

¹⁰See, e.g., RiskMetrics Group, available at <<http://www.riskmetrics.com/scas>>.

¹¹See 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

¹²See, 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.

¹³See, 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.

¹⁴See, 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.

¹⁵See Theodore Eisenberg & Geoffrey Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 J. Empirical Legal Stud. 27 (2004).

¹⁶See 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].

¹⁷See 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).

¹⁸See 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* website²⁶—and (3) a list from the Administrative Office of Courts of all district court cases

²⁰See Eisenberg & Miller, *supra* note 15, at 61–62.

²¹See Eisenberg & Miller II, *supra* note 16, at 278.

²²See Eisenberg & Miller, *supra* note 15, at 34.

²³*Id.* at 47, 51.

²⁴*Id.* at 61–62.

²⁵The 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)).

²⁶See <<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

²⁷I 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.

²⁸See 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.

²⁹A 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.

³⁰See, 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

Subject Matter	Number of Settlements	
	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.

³¹See *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).

³²See, 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 court³⁴) 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

³³See, e.g., Samuel Issacharoff, *Private Claims, Aggregate Rights*, 2008 Sup. Ct. Rev. 183, 208.

³⁴See Eisenberg & Miller II, *supra* note 16, at 257.

³⁵*Id.* at 262.

³⁶*Id.*

³⁷See 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).

³⁸See *Amchem Prods., Inc v Windsor*, 521 U.S. 591, 620 (1997).

³⁹See Redish, *supra* note 368, at 557–59.

⁴⁰521 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

<i>Subject Matter</i>	<i>Average</i>	<i>Median</i>	<i>Minimum</i>	<i>Maximum</i>
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.

⁴¹See Eisenberg & Miller II, *supra* note 16, at 266.

⁴²The 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

⁴³See Eisenberg & Miller, *supra* note 15, at 59–60.

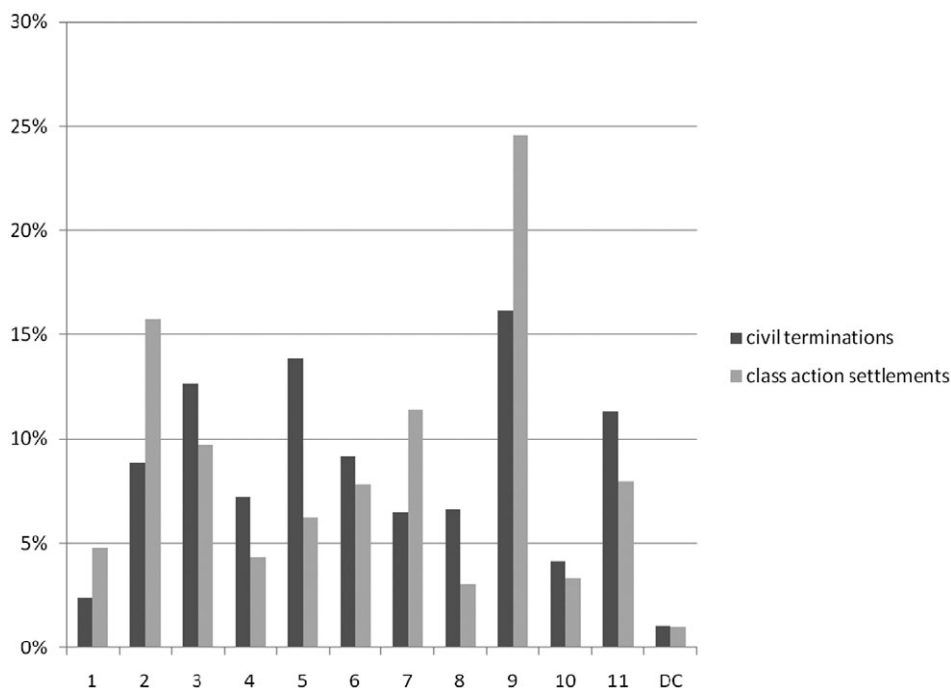
⁴⁴See *Clemmons v. Rent-a-Center W., Inc.*, No. 05-6307 (D. Or. Jan. 20, 2006).

⁴⁵See *Allapattah Servs. Inc. v. Exxon Corp.*, No. 91-0986 (S.D. Fla. Apr. 7, 2006).

⁴⁶See Eisenberg & Miller II, *supra* note 16, at 260.

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Figure 1: The percentage of 2006–2007 district court civil terminations and class action settlements in each federal circuit.



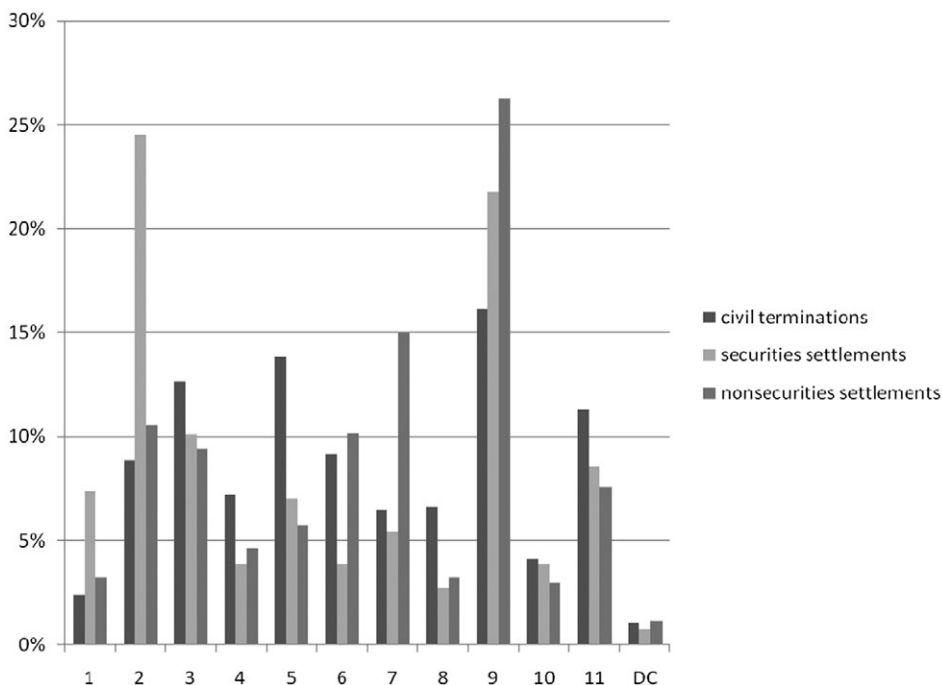
SOURCES: PACER, Statistical Tables for the Federal Judiciary 2006 & 2007 (available at <http://www.uscourts.gov/stats/index.html>).

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-

⁴⁷See 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

⁴⁸See 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

<i>Subject Matter</i>	<i>Cash</i>	<i>In-Kind Relief</i>	<i>Injunctive or Declaratory Relief</i>
Securities (<i>n</i> = 257)	100%	0%	2%
Labor and employment (<i>n</i> = 94)	95%	6%	29%
Consumer (<i>n</i> = 87)	74%	30%	37%
Employee benefits (<i>n</i> = 61)	90%	0%	34%
Civil rights (<i>n</i> = 61)	49%	2%	75%
Debt collection (<i>n</i> = 42)	98%	0%	12%
Antitrust (<i>n</i> = 30)	97%	13%	7%
Commercial (<i>n</i> = 13)	92%	0%	62%
Other (<i>n</i> = 43)	77%	7%	33%
All (<i>n</i> = 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.

⁴⁹See Fed. R. Civ. P. 23(b).

⁵⁰These coupon settlements have become very controversial in recent years, and Congress discouraged them in the Class Action Fairness Act of 2005 by tying attorney fees to the value of coupons that were ultimately redeemed by class members as opposed to the value of coupons offered class members. See 28 U.S.C. § 1712.

expected in light of the focus on consumer cases in the debate over the anti-coupon provision in the Class Action Fairness Act of 2005,⁵¹ consumer cases had the greatest percentage of settlements providing for in-kind relief (30 percent). Civil rights cases had the greatest percentage of settlements providing for injunctive or declaratory relief (75 percent), though almost half the civil rights cases also provided some cash relief (49 percent). The securities settlements were quite distinctive from the settlements in other areas in their singular focus on cash relief: every single securities settlement provided cash to the class and almost none provided in-kind, injunctive, or declaratory relief. This is but one example of how the focus on securities settlements in the prior empirical scholarship can lead to a distorted picture of class action litigation.

H. Settlement Money

Although securities settlements did not comprise the majority of federal class action settlements in 2006 and 2007, they did comprise the majority of the money—indeed, the *vast majority* of the money—involved in class action settlements. In Table 4, I report the total amount of ascertainable value involved in the 2006 and 2007 settlements. This amount

Table 4: The Total Amount of Money Involved in Federal Class Action Settlements in 2006 and 2007

Subject Matter	Total Ascertainable Monetary Value in Settlements (and Percentage of Overall Annual Total)			
	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.

⁵¹See, 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 determinate⁵² 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

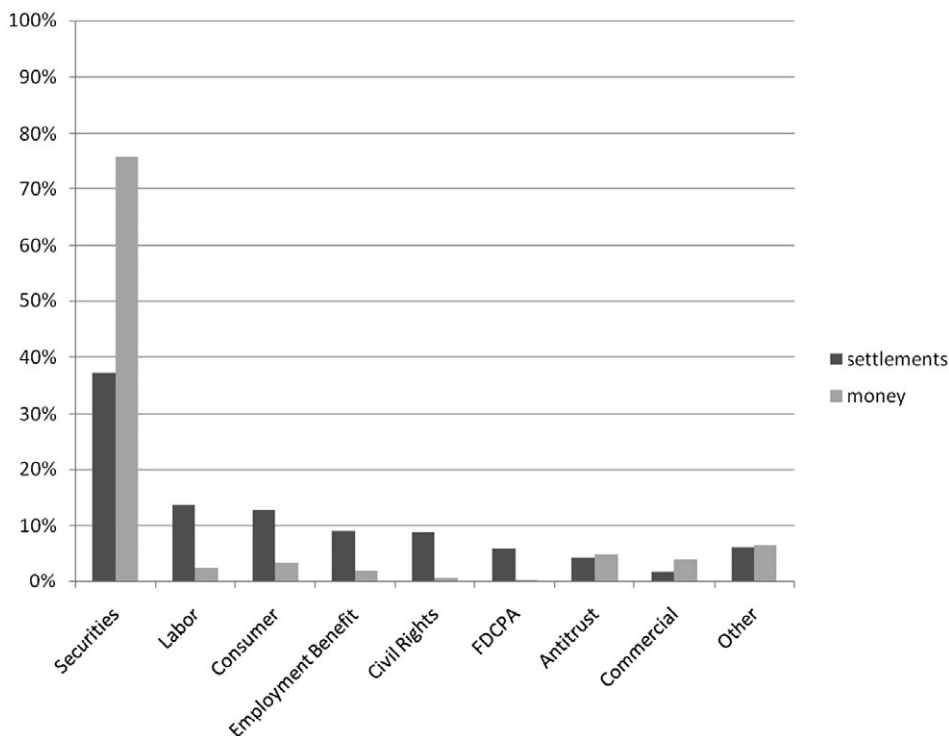
⁵²For example, I excluded awards of a fixed amount of money to each class member who eventually filed a valid claim (as opposed to settlements that awarded a pro rata amount of a fixed settlement to each class member) if the total amount of money set aside to pay the claims was not set forth in the settlement documents.

⁵³In 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.

⁵⁴See Hensler et al., *supra* note 7, at 427–30.

⁵⁵See *In re Enron Corp. Secs. Litig.*, MDL 1446 (S.D. Tex. May 24, 2006) (\$6,600,000,000); *In re Tyco Int'l Ltd. Multidistrict Litig.*, MDL 02-1335 (D.N.H. Dec. 19, 2007) (\$3,200,000,000); *In re AOL Time Warner, Inc. Secs. & "ERISA" Litig.*, MDL 1500 (S.D.N.Y. Apr. 6, 2006) (\$2,500,000,000); *In re Diet Drugs Prods. Liab. Litig.*, MDL 1203 (E.D. Pa. May 24, 2006) (\$1,275,000,000); *In re Nortel Networks Corp. Secs. Litig. (Nortel I)*, No. 01-1855 (S.D.N.Y. Dec. 26, 2006) (\$1,142,780,000); *In re Royal Ahold N.V. Secs. & ERISA Litig.*, 03-1539 (D. Md. Jun. 16, 2006)

Figure 3: The percentage of 2006–2007 federal class action settlements and settlement money from each subject area.



SOURCES: Westlaw, PACER, district court clerks' offices.

billion accounted for almost \$18 billion of the \$33 billion that changed hands over the two-year period. That is, a mere 1 percent of the settlements comprised over 50 percent of the value involved in federal class action settlements in 2006 and 2007. To give some sense of the distribution of settlement size in the 2006–2007 data set, Table 5 sets forth the number of settlements with an ascertainable value beyond fee, expense, and class-representative incentive awards (605 out of the 688 settlements). Nearly two-thirds of all settlements fell below \$10 million.

Given the disproportionate influence exerted by securities settlements on the total amount of money involved in class actions, it is unsurprising that the average securities settlement involved more money than the average settlement in most of the other subject areas. These numbers are provided in Table 6, which includes, again, only the settlements

(\$1,100,000,000); Allapattah Servs. Inc. v. Exxon Corp., No. 91-0986 (S.D. Fla. Apr. 7, 2006) (\$1,075,000,000); In re Nortel Networks Corp. Secs. Litig. (Nortel II), No. 05-1659 (S.D.N.Y. Dec. 26, 2006) (\$1,074,270,000).

Table 5: The Distribution by Size of 2006–2007 Federal Class Action Settlements with Ascertainable Value

<i>Settlement Size (in Millions)</i>	<i>Number of Settlements</i>
[\$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

<i>Subject Matter</i>	<i>Average</i>	<i>Median</i>
Securities (<i>n</i> = 257)	\$96.4	\$8.0
Labor and employment (<i>n</i> = 88)	\$9.2	\$1.8
Consumer (<i>n</i> = 65)	\$18.8	\$2.9
Employee benefits (<i>n</i> = 52)	\$13.9	\$5.3
Civil rights (<i>n</i> = 34)	\$9.7	\$2.5
Debt collection (<i>n</i> = 40)	\$0.37	\$0.088
Antitrust (<i>n</i> = 29)	\$60.0	\$22.0
Commercial (<i>n</i> = 12)	\$111.7	\$7.1
Other (<i>n</i> = 28)	\$76.6	\$6.2
All (<i>N</i> = 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

⁵⁶See *Allapattah Servs. Inc. v. Exxon Corp.*, No. 91-0986 (S.D. Fla. Apr. 7, 2006) (approving \$1,075,000,000 settlement).

⁵⁷See Eisenberg & Miller, *supra* note 15, at 47.

⁵⁸See Eisenberg & Miller II, *supra* note 16, at 262.

⁵⁹There were eight class action settlements during 2006 and 2007 of more than \$1 billion. See note 55 *supra*.

⁶⁰Some 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.

⁶¹See 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).

⁶²See, e.g., Brian T. Fitzpatrick, *Do Class Action Lawyers Make Too Little?* 158 *U. Pa. L. Rev.* 2043, 2043–44 (2010).

⁶³In 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.

⁶⁴See, 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

<i>Subject Matter</i>	<i>Total Fees and Expenses Awarded in Settlements (and as Percentage of Total Settlement Amounts) in Each Subject Area</i>	
	<i>2006 (n = 292)</i>	<i>2007 (n = 363)</i>
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

⁶⁵Indeed, 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).

⁶⁶See 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

⁶⁷Fed. R. Civ. P. 23(h).

⁶⁸The 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.

⁶⁹See Eisenberg & Miller, *supra* note 15, at 31.

⁷⁰*Id.* at 31–32.

⁷¹These 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.

⁷²See Eisenberg & Miller II, *supra* note 16, at 267.

that use the percentage-of-the-settlement method usually rely on a multifactor test⁷³ 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

⁷³The 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).

⁷⁴See *Eisenberg & Miller*, *supra* note 15, at 32.

⁷⁵See *Staton v. Boeing Co.*, 327 F.3d 938, 968 (9th Cir. 2003).

⁷⁶See, e.g., *In re Cendant Corp. Litig.*, 264 F.3d 201, 282 (3d Cir. 2001).

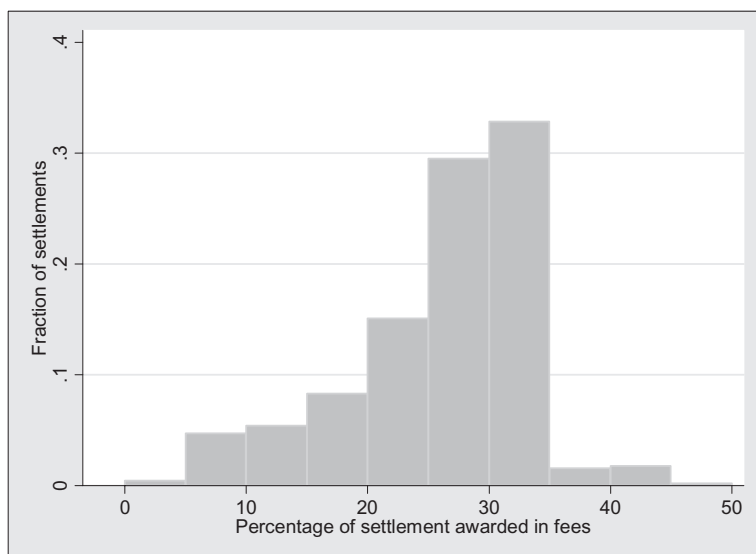
⁷⁷*Camden I Condo. Ass’n*, 946 F.2d at 774.

⁷⁸*Camden I Condo. Ass’n*, 946 F.2d at 774 (alterations in original and internal quotation marks omitted).

⁷⁹See *Eisenberg & Miller II*, *supra* note 16, at 259.

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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

⁸⁰It 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.

⁸¹See Eisenberg & Miller II, *supra* note 16, at 262.

Table 8: Fee Awards in 2006–2007 Federal Class Action Settlements Using the Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

Subject Matter	Percentage of Settlement Awarded as Fees	
	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

<i>Circuit</i>	<i>Percentage of Settlement Awarded as Fees</i>	
	<i>Mean</i>	<i>Median</i>
First (<i>n</i> = 27)	27.0	25.0
Second (<i>n</i> = 72)	23.8	24.5
Third (<i>n</i> = 50)	25.4	29.3
Fourth (<i>n</i> = 19)	25.2	28.0
Fifth (<i>n</i> = 27)	26.4	29.0
Sixth (<i>n</i> = 25)	26.1	28.0
Seventh (<i>n</i> = 39)	27.4	29.0
Eighth (<i>n</i> = 15)	26.1	30.0
Ninth (<i>n</i> = 111)	23.9	25.0
Tenth (<i>n</i> = 18)	25.3	25.5
Eleventh (<i>n</i> = 35)	28.1	30.0
DC (<i>n</i> = 6)	26.9	26.0

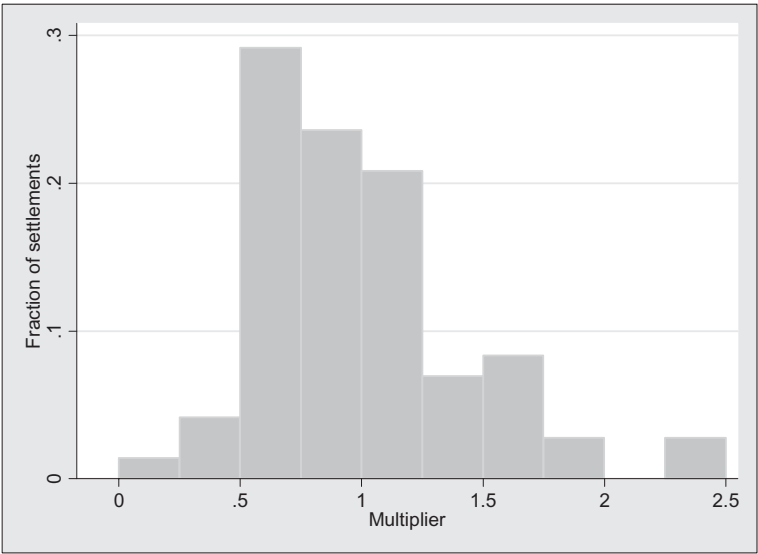
SOURCES: Westlaw, PACER, district court clerks’ offices.

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.

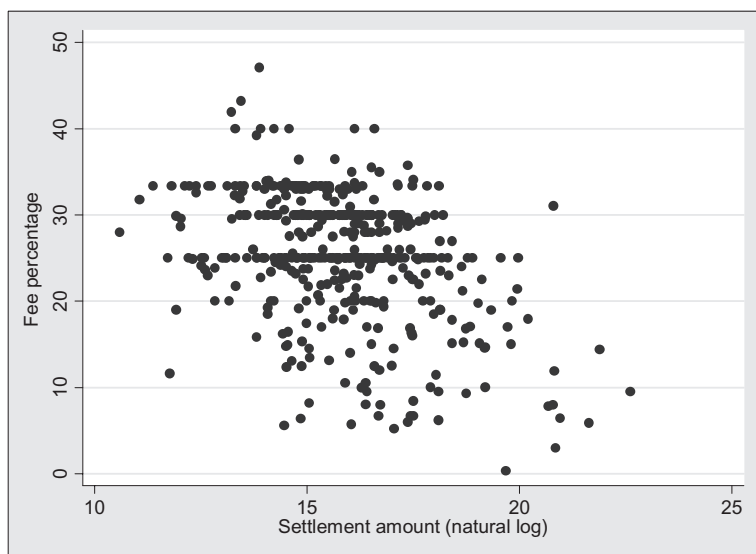
are awarding a significant portion of all the annual compensation received by contingency-fee lawyers in the United States. Moreover, contingency fees are arguably the engine that drives much of the noncriminal regulation in the United States; unlike many other nations, we regulate largely through the 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.

⁸²See, e.g., Samuel Issacharoff, *Regulating after the Fact*, 56 DePaul L. Rev. 375, 377 (2007).

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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.

⁸³See 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

<i>Settlement Size (in Millions)</i>	<i>Mean</i>	<i>Median</i>	<i>SD</i>
[\$0 to \$0.75] (<i>n</i> = 45)	28.8%	29.6%	6.1%
(\$0.75 to \$1.75] (<i>n</i> = 44)	28.7%	30.0%	6.2%
(\$1.75 to \$2.85] (<i>n</i> = 45)	26.5%	29.3%	7.9%
(\$2.85 to \$4.45] (<i>n</i> = 45)	26.0%	27.5%	6.3%
(\$4.45 to \$7.0] (<i>n</i> = 44)	27.4%	29.7%	5.1%
(\$7.0 to \$10.0] (<i>n</i> = 43)	26.4%	28.0%	6.6%
(\$10.0 to \$15.2] (<i>n</i> = 45)	24.8%	25.0%	6.4%
(\$15.2 to \$30.0] (<i>n</i> = 46)	24.4%	25.0%	7.5%
(\$30.0 to \$72.5] (<i>n</i> = 42)	22.3%	24.9%	8.4%
(\$72.5 to \$6,600] (<i>n</i> = 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

<i>Settlement Size (in Millions)</i>	<i>Mean</i>	<i>Median</i>	<i>SD</i>
(\$72.5 to \$100] (<i>n</i> = 12)	23.7%	24.3%	5.3%
(\$100 to \$250] (<i>n</i> = 14)	17.9%	16.9%	5.2%
(\$250 to \$500] (<i>n</i> = 8)	17.8%	19.5%	7.9%
(\$500 to \$1,000] (<i>n</i> = 2)	12.9%	12.9%	7.2%
(\$1,000 to \$6,600] (<i>n</i> = 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

⁸⁴See generally C.K. Rowland & Robert A. Carp, *Politics and Judgment in Federal District Courts* (1996). See also Max M. Schanzbach & Emerson H. Tiller, *Reviewing the Sentencing Guidelines: Judicial Politics, Empirical Evidence, and Reform*, 75 U. Chi. L. Rev. 715, 724–25 (2008).

⁸⁵See 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).

⁸⁶Professors 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

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.

⁸⁷Prior 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).

⁸⁸Although 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.

⁸⁹See Fitzpatrick, *supra* note 85, at 1640.

⁹⁰See 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

<i>Independent Variable</i>	<i>Regression Coefficients (and Robust t Statistics)</i>				
	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>
Settlement amount (natural log)	–1.77 (–5.43)**	–1.76 (–8.52)**	–1.76 (–7.16)**	–1.41 (–4.00)**	–1.78 (–8.67)**
Age of case (natural log days)	1.66 (2.31)**	1.99 (2.71)**	1.13 (1.21)	1.72 (1.47)	2.00 (2.69)**
Judge’s political affiliation (1 = Democrat)	–0.630 (–0.83)	–0.345 (–0.49)	0.657 (0.76)	–1.43 (–1.20)	–0.232 (–0.34)
Settlement class		0.150 (0.19)	0.873 (0.84)	–1.62 (–1.00)	0.124 (0.15)
1st Circuit		3.30 (2.74)**	4.41 (3.32)**	0.031 (0.01)	0.579 (0.51)
2d Circuit		0.513 (0.44)	–0.813 (–0.61)	2.93 (1.14)	–2.23 (–1.98)**
3d Circuit		2.25 (1.99)**	4.00 (3.85)**	–1.11 (–0.50)	—
4th Circuit		2.34 (1.22)	0.544 (0.19)	3.81 (1.35)	—
5th Circuit		2.98 (1.90)*	1.09 (0.65)	6.11 (1.97)**	0.230 (0.15)
6th Circuit		2.91 (2.28)**	0.838 (0.57)	4.41 (2.15)**	—
7th Circuit		2.55 (2.23)**	3.22 (2.36)**	2.90 (1.46)	–0.227 (–0.20)
8th Circuit		2.12 (0.97)	–0.759 (–0.24)	3.73 (1.19)	–0.586 (–0.28)
9th Circuit		—	—	—	–2.73 (–3.44)**
10th Circuit		1.45 (0.94)	–0.254 (–0.13)	3.16 (1.29)	—
11th Circuit		4.05 (3.44)**	3.85 (3.07)**	4.14 (1.88)*	—
DC Circuit		2.76 (1.10)	2.60 (0.80)	2.41 (0.64)	—
Securities case		—			—
Labor and employment case		2.93 (3.00)**		—	2.85 (2.94)**
Consumer case		–1.65 (–0.88)		–4.39 (–2.20)**	–1.62 (–0.88)
Employee benefits case		–0.306 (–0.23)		–4.23 (–2.55)**	–0.325 (–0.26)
Civil rights case		1.85 (0.99)		–2.05 (–0.97)	1.76 (0.95)
Debt collection case		–4.93 (–1.71)*		–7.93 (–2.49)**	–5.04 (–1.75)*
Antitrust case		3.06 (2.11)**		0.937 (0.47)	2.78 (1.98)**

Table 12 Continued

Independent Variable	Regression Coefficients (and Robust t Statistics)				
	1	2	3	4	5
Commercial case		−0.028 (−0.01)		−2.65 (−0.73)	0.178 (0.05)
Other case		−0.340 (−0.17)		−3.73 (−1.65)	−0.221 (−0.11)
Constant	42.1 (7.29)**	37.2 (6.08)**	43.0 (6.72)**	38.2 (4.14)**	40.1 (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

⁹¹See, e.g., Ahmed E. Taha, Data and Selection Bias: A Case Study, 75 UMKC L. Rev. 171, 179 (2006).

⁹²Id. at 178–79.

⁹³See, 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

⁹⁴See Eisenberg & Miller, *supra* note 15, at 61.

⁹⁵See Eisenberg & Miller II, *supra* note 16, at 266.

⁹⁶This 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

⁹⁷See 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.

⁹⁸The Ninth Circuit's differences persisted.

⁹⁹See Eisenberg & Miller II, *supra* note 16, at 260.

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political affiliation of the judge who made the award. Finally, there appeared to be some variation in fee percentages depending on subject matter of the litigation and the geographic circuit in which the district court was located. Fee percentages in securities cases were lower than the percentages in some but not all of the other litigation areas, and district courts in the Ninth Circuit and in the Second Circuit (in securities cases) awarded lower fee percentages than district courts in several other circuits. The lower awards in the Ninth Circuit may be attributable to the fact that it is the only circuit that has adopted a presumptive fee percentage of 25 percent.

EXHIBIT 3

Documents reviewed:

- Consolidated Amended Class Action Complaint for Violations of the Federal Securities Laws (document 37, filed 6/21/22)
- Defendants' Joint Motion to Dismiss the Consolidated Amended Complaint (document 59, filed 9/7/22)
- Lead Plaintiffs' Memorandum of Law in Opposition to Defendants' Joint Motion to Dismiss the Consolidated Amended Complaint (document 60, filed 11/23/22)
- Reply Memorandum of Law in Further Support of Defendants' Joint Motion to Dismiss the Consolidated Amended Complaint (document 65, filed 1/9/23)
- Lead Plaintiff's Unopposed Motion for an Order Preliminarily Approving the Proposed Class Action Settlement and Authorizing Dissemination of Notice to the Settlement Class and Memorandum of Law in Support Thereof (document 74, filed 11/3/23)
- Stipulation and Agreement of Settlement (document 74-2, filed 11/3/23)
- Order Preliminarily Approving Settlement and Providing for Notice (document 76, filed 11/27/23)

EXHIBIT 8



RECENT TRENDS IN SECURITIES CLASS ACTION LITIGATION: **2023 FULL-YEAR REVIEW**

By Edward Flores and Svetlana Starykh¹

FOREWORD

I am excited to share NERA's "Recent Trends in Securities Class Action Litigation: 2023 Full-Year Review" with you. This year's edition builds on work carried out over more than three decades by many of NERA's securities and finance experts. 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 in securities litigations. On behalf of NERA's securities and finance experts, I thank you for taking the time to review this year's report and hope you find it informative.

DAVID TABAK, PhD

Senior Managing Director



INTRODUCTION

There were 228 new federal securities class action suits filed in 2023, ending a four-year decline in filings seen from 2019 to 2022. The increase in filings was mainly driven by an increase in the number of suits alleging Rule 10b-5 violations. Fueled by turmoil in the banking industry, filings in the finance sector more than doubled in 2023, comprising 18% of new filings. The number of filings related to the environment quadrupled in 2023 compared to 2022.

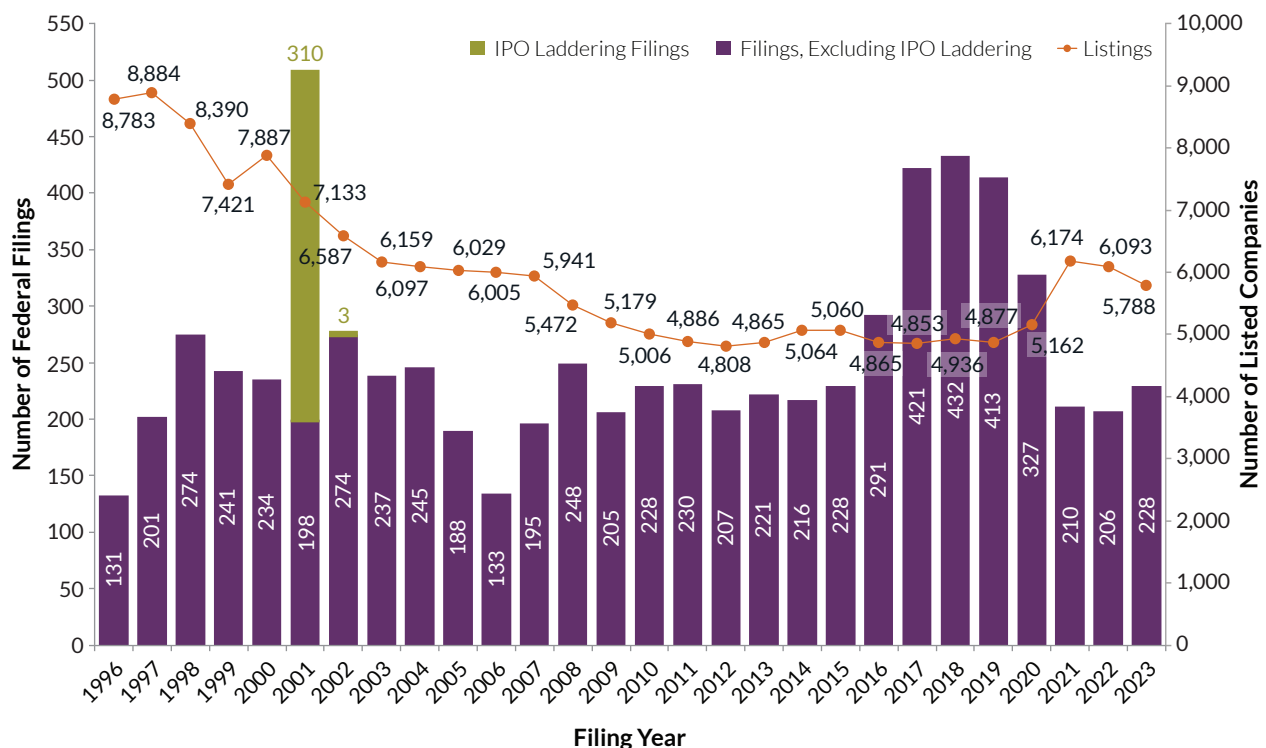
For the sixth consecutive year, there was a decline in the number of resolutions. There were 190 cases resolved in 2023, consisting of 90 settlements and 100 dismissals, marking the lowest recorded level of resolutions in the last 10 years. More than half of the decline in resolutions was driven by a decrease in the number of settled cases with Rule 10b-5, Section 11, and/or Section 12 claims.

Aggregate settlements totaled \$3.9 billion in 2023, with the top 10 settlements of the year accounting for over 66% of this amount. Aggregate plaintiffs' attorneys' fees and expenses totaled \$972 million, accounting for 24.9% of the 2023 aggregate settlement value. The average settlement value increased by 17% in 2023 to \$46 million, though this was largely driven by the presence of a \$1 billion settlement. The median settlement value for 2023 was \$14 million, a nominal 7% increase from the inflation-adjusted median settlement value in 2022.

TRENDS IN FILINGS

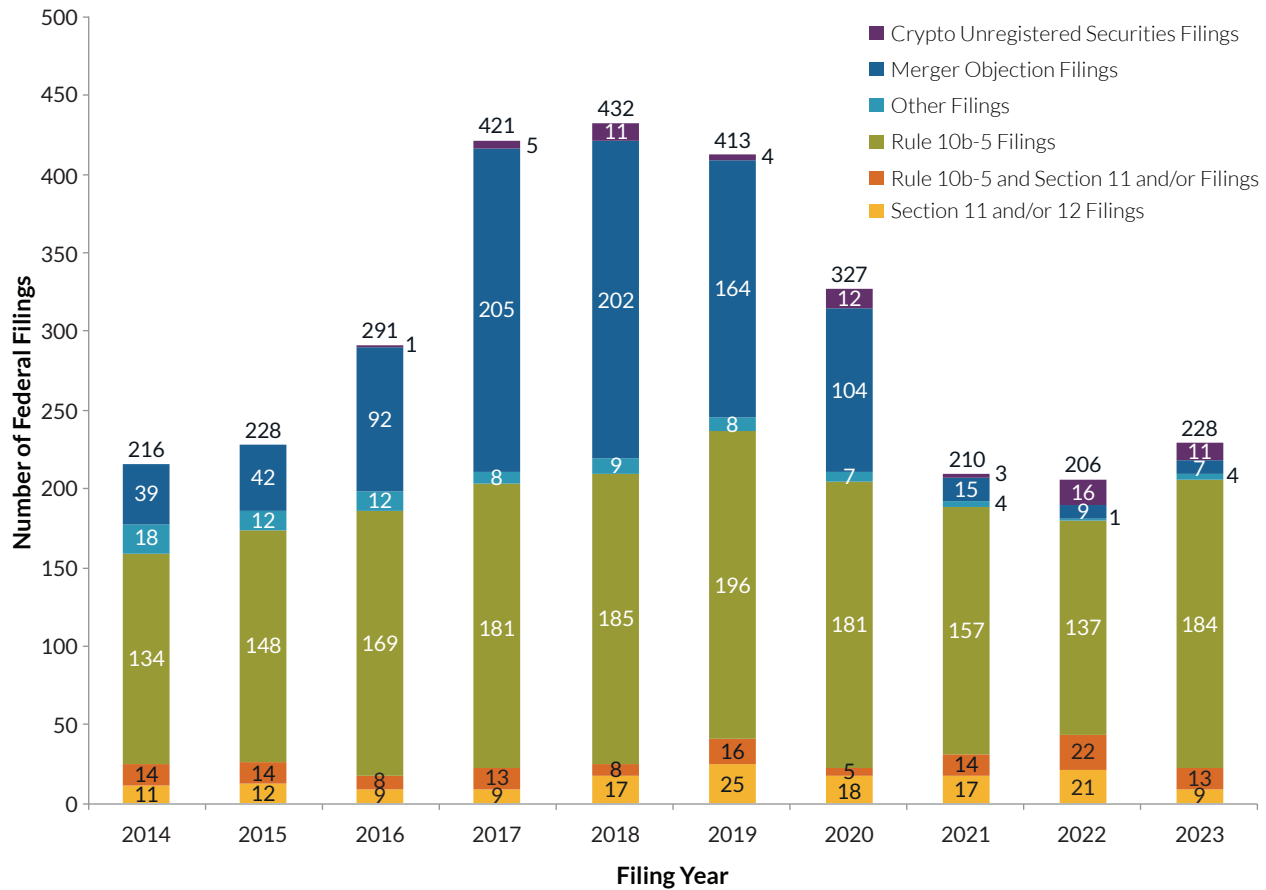
From 2019 to 2022, there was a decline in the number of federal filings. In 2023, there were 228 new cases filed, an increase from the 206 cases filed in 2022 (see Figure 1).² Standard cases, which contain alleged violations of Rule 10b-5, Section 11, and/or Section 12, accounted for most new filings with 206.³ In particular, filings involving only Rule 10-5 claims increased by 34% from 137 in 2022 to 184 in 2023. On the other hand, there were only seven merger-objection suits filed in 2023, marking a 10-year low. There was also a decline in filings involving crypto unregistered securities, dropping to 11 in 2023 from the 16 observed in 2022.⁴ See Figure 2.

Figure 1. **Federal Filings and Number of Companies Listed in the United States**
January 1996–December 2023



Note: Listed companies include those listed on the NYSE and Nasdaq. Listings data obtained from World Federation of Exchanges (WFE). The 2023 listings data are as of October 2023.

Figure 2. **Federal Filings by Type**
January 2014–December 2023

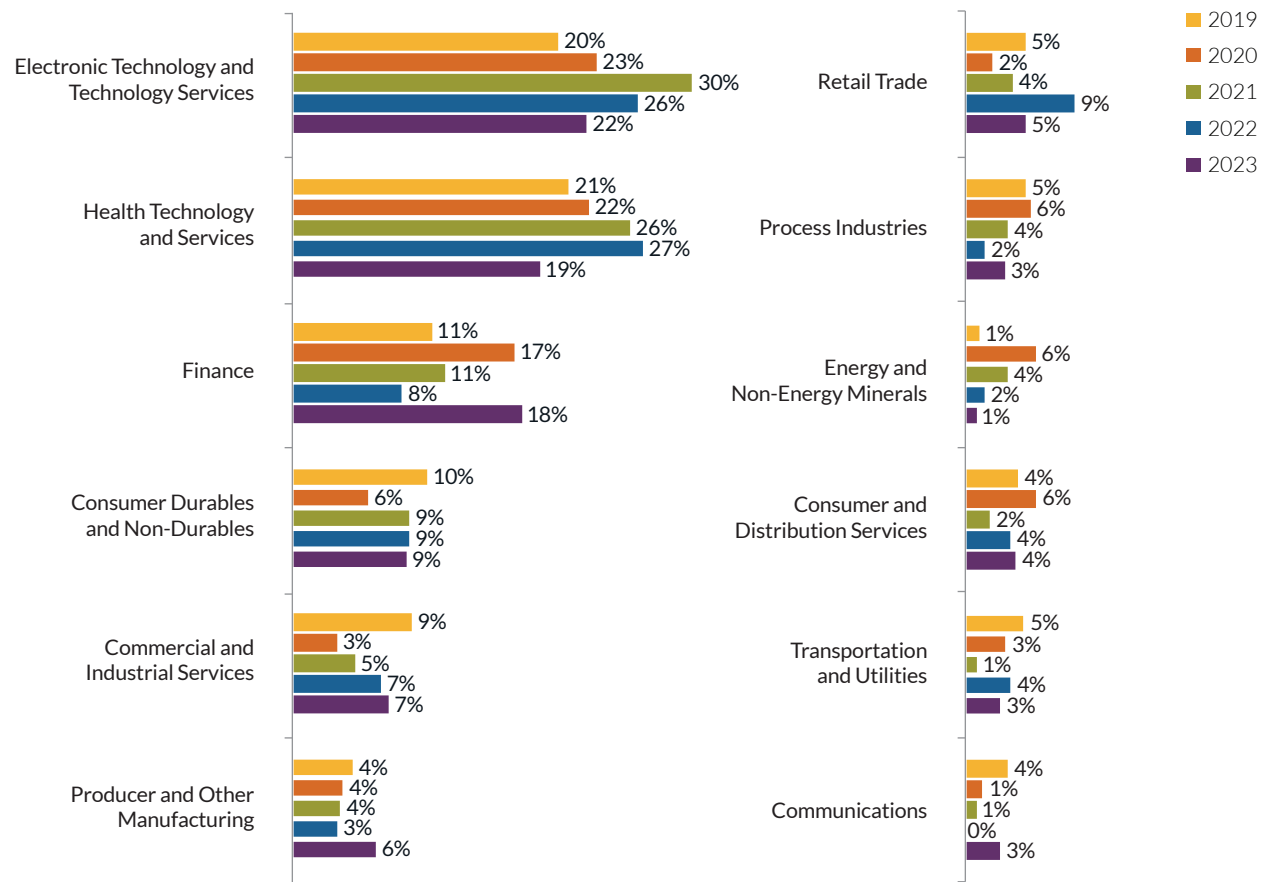


Excluding merger-objection and crypto unregistered securities cases, the electronic technology and technology services sector accounted for 22% of new filings, the largest proportion of any sector. After hitting a five-year low in 2022, there was a resurgence in filings in the finance sector in 2023, accounting for 18% of new filings. This is more than double the percentage in 2022 and was partly due to the banking crisis in early 2023. On the other hand, the percentage of suits in the health technology and services sector declined from 27% in 2022 to 19% in 2023, partially driven by a decline in COVID-19-related suits. See Figure 3.

Figure 3. Percentage of Federal Filings by Sector and Year

Excludes Merger Objections and Crypto Unregistered Securities

January 2019–December 2023

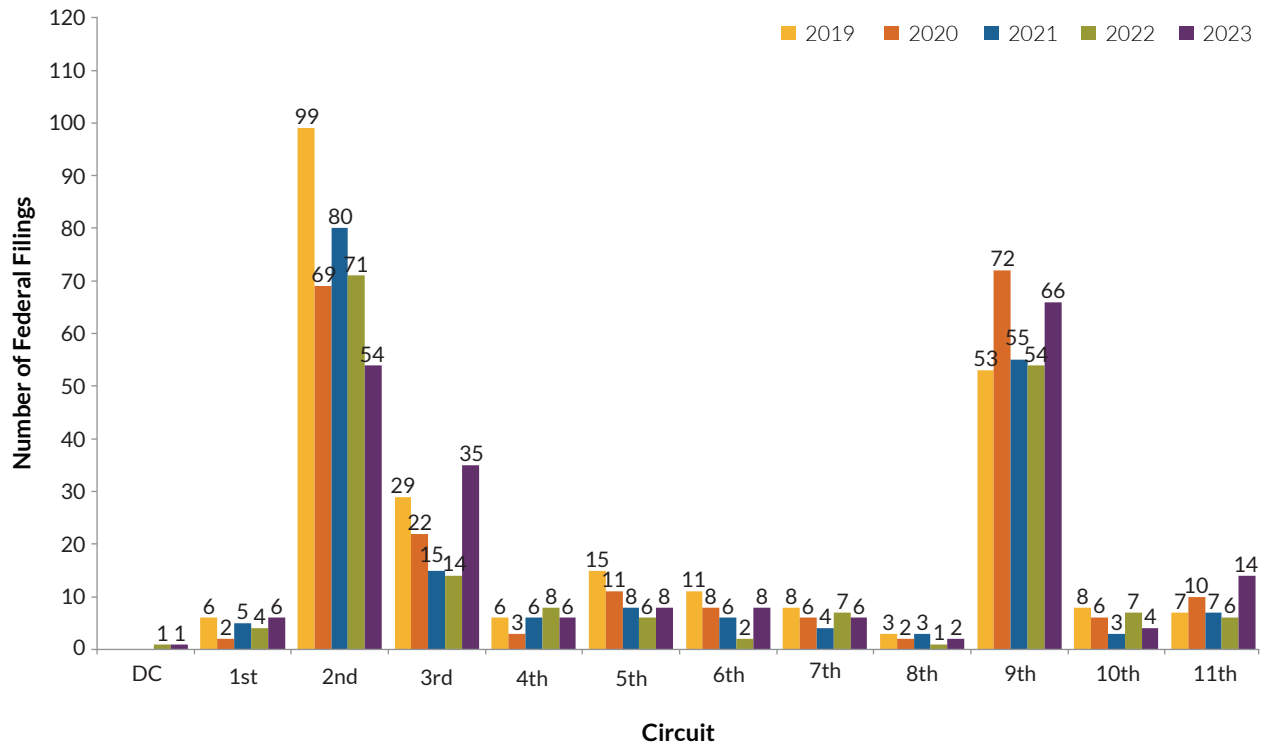


Note: This analysis is based on the FactSet Research Systems, Inc. economic sector classification. Some of the FactSet economic sectors are combined for presentation.

The Second, Third, and Ninth Circuits continue to be the jurisdictions with the most cases filed, together accounting for 155 of the 210 non-merger-objections, non-crypto unregistered securities filings. The Ninth Circuit witnessed 66 new filings, marking a 22% increase from 2022. The number of filings in the Second Circuit declined by 24% to 54, marking a five-year low. The Third Circuit accounted for 35 filings, more than double the number of cases in 2022. Elsewhere, there were 14 cases filed in the Eleventh Circuit, marking a five-year high. See Figure 4.

Figure 4. **Federal Filings by Circuit and Year**

Excludes Merger Objections and Crypto Unregistered Securities
January 2019–December 2023



Among filings of standard cases, 31% included an allegation related to missed earnings guidance and 29% included an allegation related to misled future performance.⁵ Meanwhile, the percentage of standard cases containing an allegation related to merger-integration issues declined by one-third to 11%, partially driven by a decline in SPAC-related filings. See Figure 5.

Figure 5. **Allegations**

Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, and/or Section 12
January 2019–December 2023



FILINGS AGAINST FOREIGN COMPANIES

Historically, foreign companies with securities listed on US exchanges have been targeted with securities class action suits at a higher rate than their proportion of US listings, though this trend has reversed over the past two years.⁶ In 2023, 18.9% of filings of standard cases were against foreign companies, compared to 24.1% of US listings represented by foreign companies. See Figure 6.

In 2023, there were 39 standard suits filed against foreign companies, a slight increase from 2022 (see Figure 7). Suits against companies in Asia accounted for 19 filings, while another 14 filings were against European companies. Nearly 36% of cases involving foreign companies had an allegation related to regulatory issues, compared to 23% for US companies. See Figure 8.

Figure 6. **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 2014–December 2023

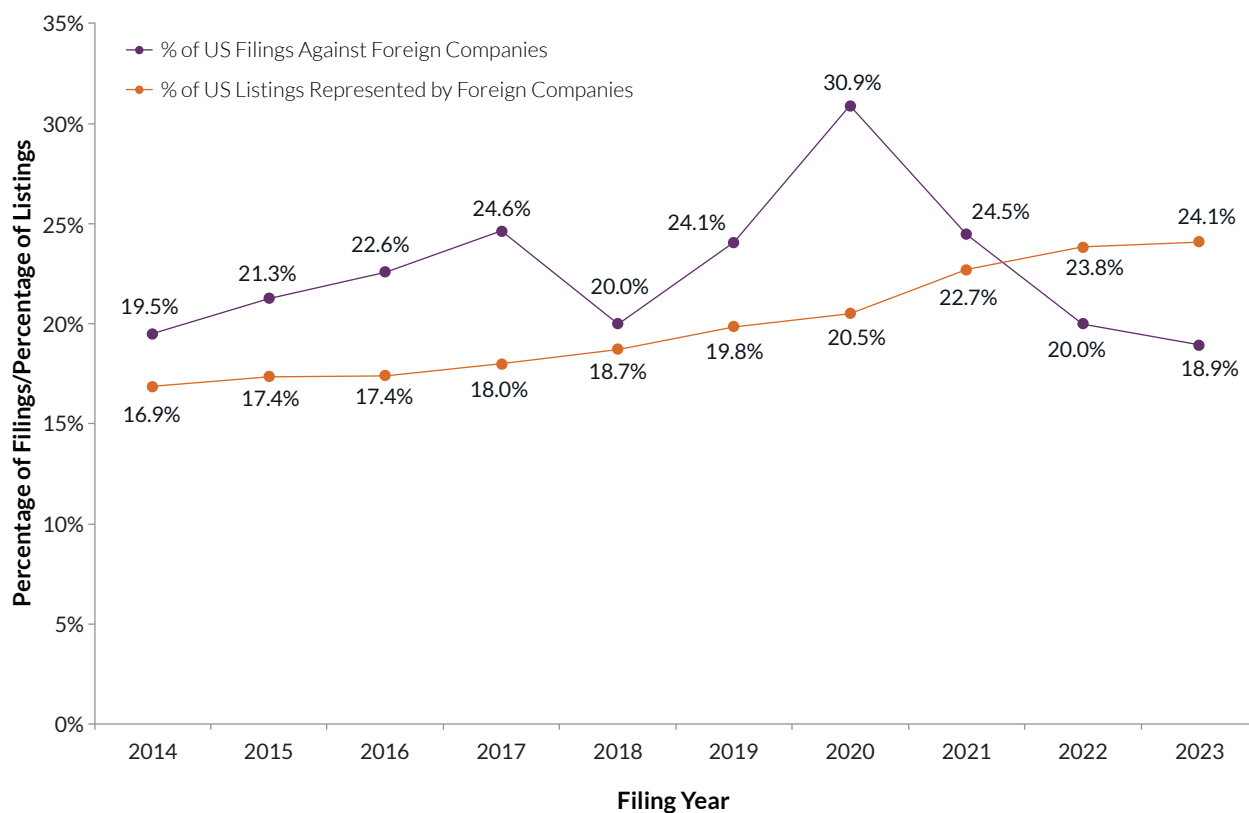
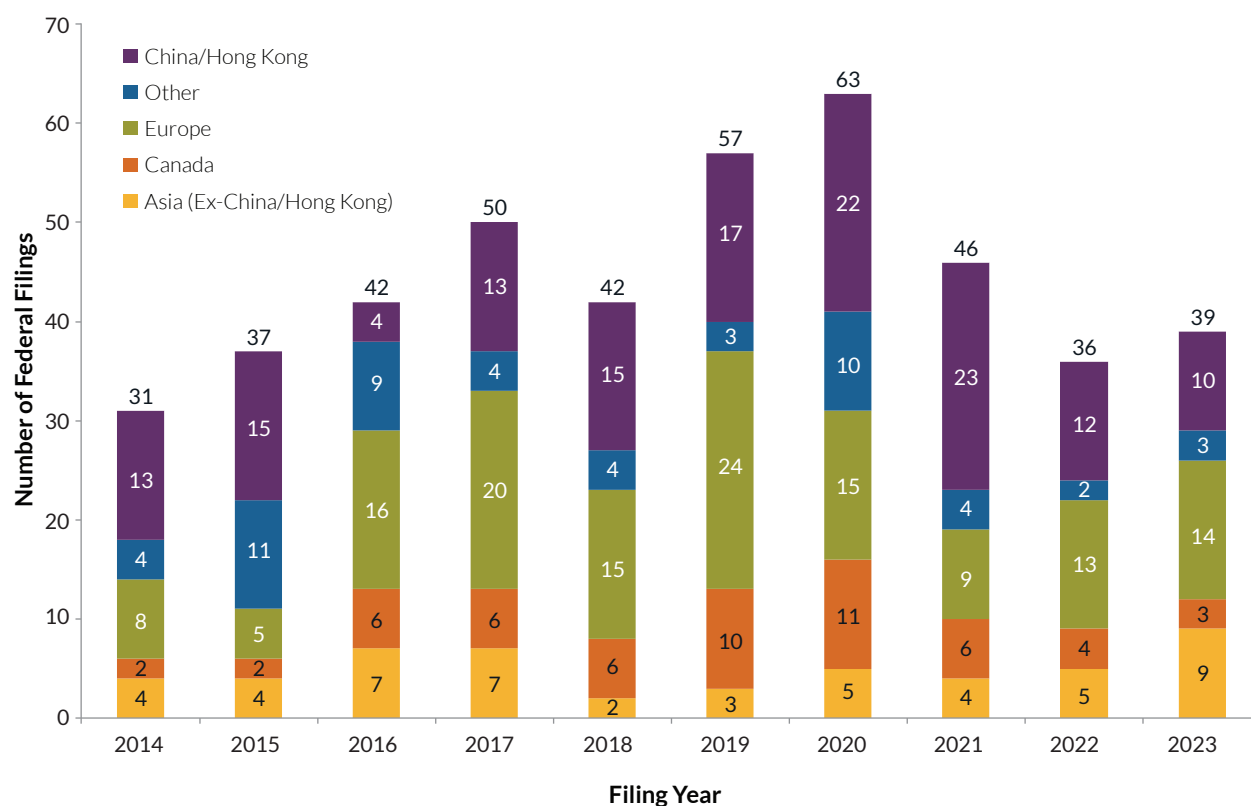


Figure 7. **Filings Against Foreign Companies**

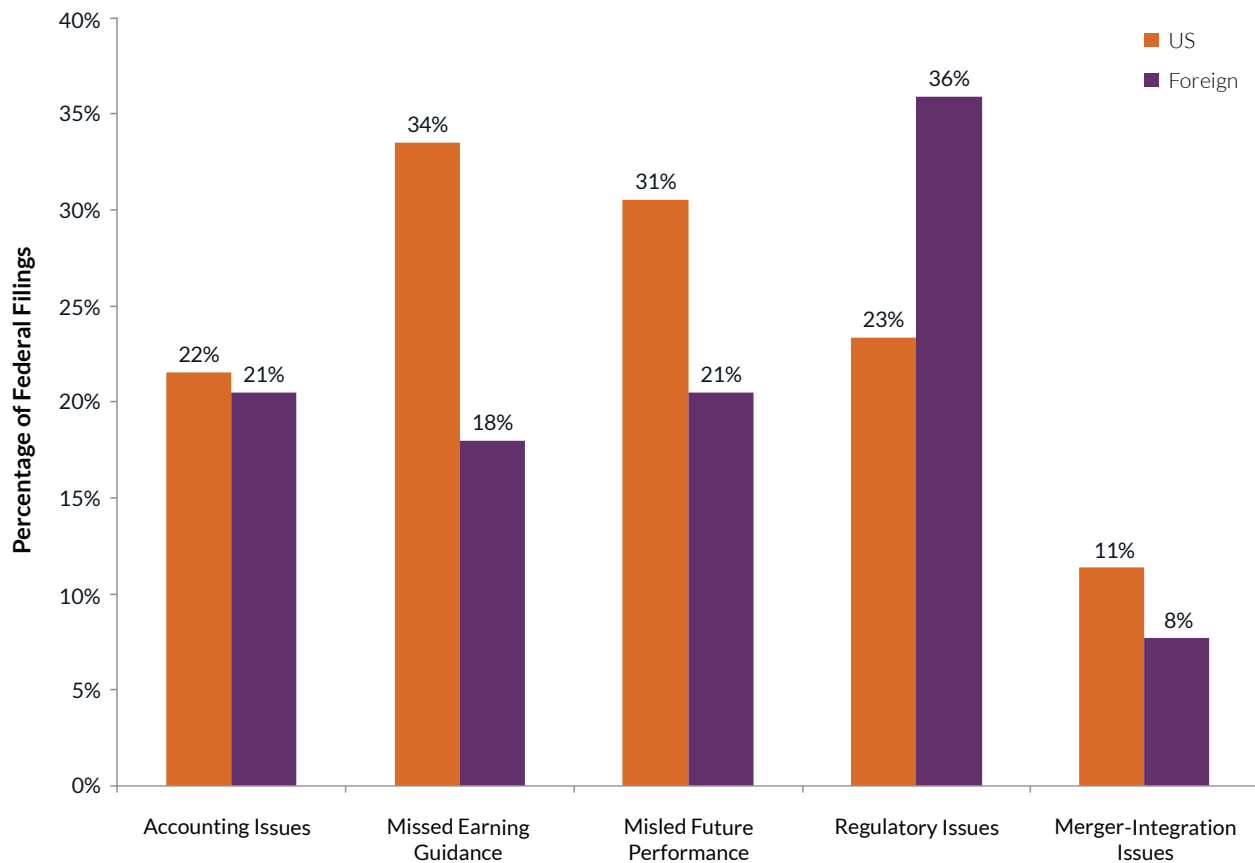
Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, or Section 12 by Region
January 2014–December 2023



Note: Foreign issuer status determined based on location of principal executive offices.

Figure 8. **Allegations by US and Foreign Companies**

Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, and/or Section 12
January 2023–December 2023



EVENT-DRIVEN AND OTHER SPECIAL CASES

In this section, we summarize trends in filings in potential development areas that we have identified for securities class actions over the past five years (see Figures 9 and 10). Due to the small number of cases in some categories, the findings summarized here may be driven by one or two cases.

Crypto Cases

Since 2020, there have been at least 10 crypto-related federal filings each year, comprised of cases involving unregistered securities and shareholder suits involving companies operating in or adjacent to the cryptocurrency sector. In 2023, there were 16 crypto-related federal filings, a 28% decline from the 26 filings observed in 2022.

Figure 9. **Number of Crypto Federal Filings**
January 2016–December 2023



2023 Banking Turmoil

The first securities class action suit alleging problems in the banking industry was filed on 7 December 2022 against bank holding company Silvergate Capital Corporation, which provided a banking platform through its subsidiary, Silvergate Bank.⁷ Silvergate Bank's voluntary liquidation on 8 March 2023 started a rapid chain of bank failures that intensified during the spring, which saw the collapse of Silicon Valley Bank, Signature Bank, and First Republic Bank,⁸ and continued through 3 November 2023, when Citizens Bank of Sac City was closed by the Iowa Division of Banking.⁹ Between December 2022 and October 2023, there were 12 securities class action suits filed against banking institutions. Of those, 11 cases were filed in 2023, representing nearly 30% of all filings in the finance sector. Four of the 11 cases were filed against Credit Suisse Group AG, after Credit Suisse, the second-largest bank in Switzerland, collapsed in March 2023 and was bought by rival UBS Group AG.

Environment

In recent years, there has been an increased focus by governments and regulators on issues related to the environment, fossil fuel emissions, quality of drinking water, and climate change. During the past five years, there have been 20 environment-related securities class action suits filed. Eight of these cases were filed in 2023, quadruple the number from the two cases filed in 2022. Among the cases filed in 2023 include a suit against Hawaiian Electric Industries, Inc. in connection with wildfires in Hawaii, two cases related to train derailments with severe environmental consequences against Norfolk Southern Corporation, and three cases involving telecommunication companies AT&T, Verizon Communications, and Lumen Technologies for ownership of thousands of miles of lead-covered cables.

Cannabis

In 2019, there were 13 securities class action suits filed against defendants in the cannabis industry. The number of filings has declined in subsequent years, with only one suit filed per year in each of 2022 and 2023.

Money Laundering

In each of 2019 and 2020, three cases were filed with claims related to money laundering. In 2021, there were no such cases filed, while in 2022 and 2023, only one such suit was filed in each year.

Cybersecurity and Customer Privacy Breach

Since 2019, there have been at least three securities class action suits filed each year related to a cybersecurity and/or customer privacy breach. While there were seven such filings in 2021, there were only three filings in 2023.

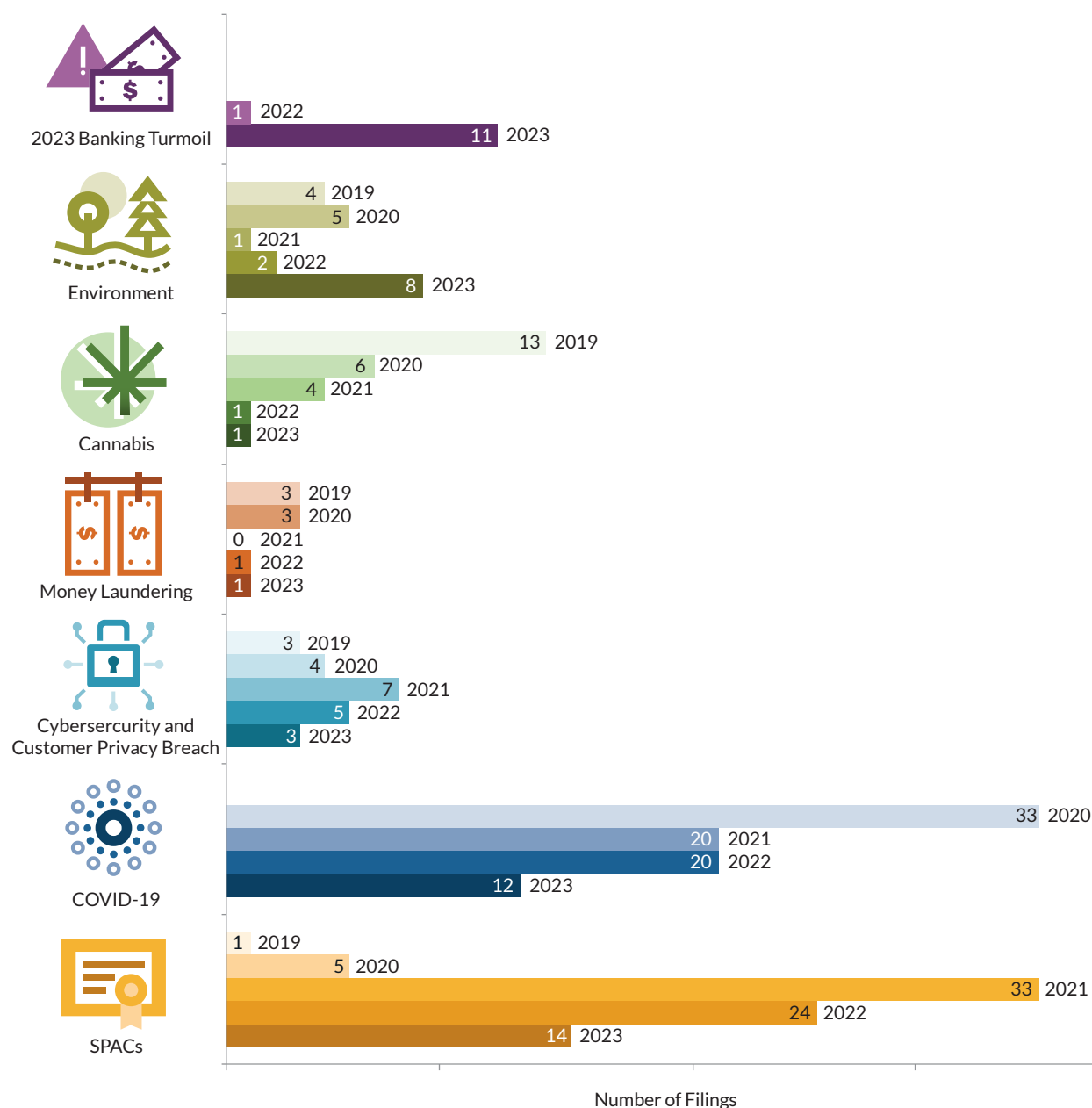
COVID-19

Since March 2020, there have been 85 securities class actions filed with claims related to the COVID-19 pandemic. Of these, 33 cases were filed in 2020. In 2021 and 2022, the number of suits declined to 20 each year, while in 2023, there were only 12 such filings.

SPAC

Filings related to special purpose acquisition companies (SPACs) peaked in 2021 with 31 securities class action suits filed that year. Since then, new federal filings related to SPACs have declined each year to 24 in 2022 and 14 in 2023.

Figure 10. Event-Driven and Other Special Cases by Filing Year
January 2019–December 2023



TRENDS IN RESOLUTIONS

In 2023, the number of resolved cases declined by 15% to 190 from 223 in 2022, continuing a six-year decline in resolutions seen since 2018 and marking the lowest recorded level of resolutions in the last 10 years. Of these resolved cases, 90 were settlements and 100 were dismissals.¹⁰ While resolutions declined across all categories of cases, more than half of this decline was due to

a reduction in the number of settled standard cases, which had a record-setting year in 2022. The number of merger-objection cases resolved declined to nine in 2023, consistent with the reduced number of filings of such cases in recent years. See Figure 11.

Since 2015, more cases filed have been dismissed than settled. This is consistent with historical trends, which indicate that dismissals tend to occur earlier in the litigation cycle and settlements occur later (see Figure 12). For cases filed in 2023, 5% of cases have been dismissed while 95% remain pending as of December 2023.

For cases filed and resolved over the past 20 years, over two-thirds were resolved within three years of the filing of the first complaint, while 16% of cases take longer than four years to resolve (see Figure 13). The median time to resolution is 2.1 years.

Figure 11. **Number of Resolved Cases: Dismissed or Settled**
January 2014–December 2023

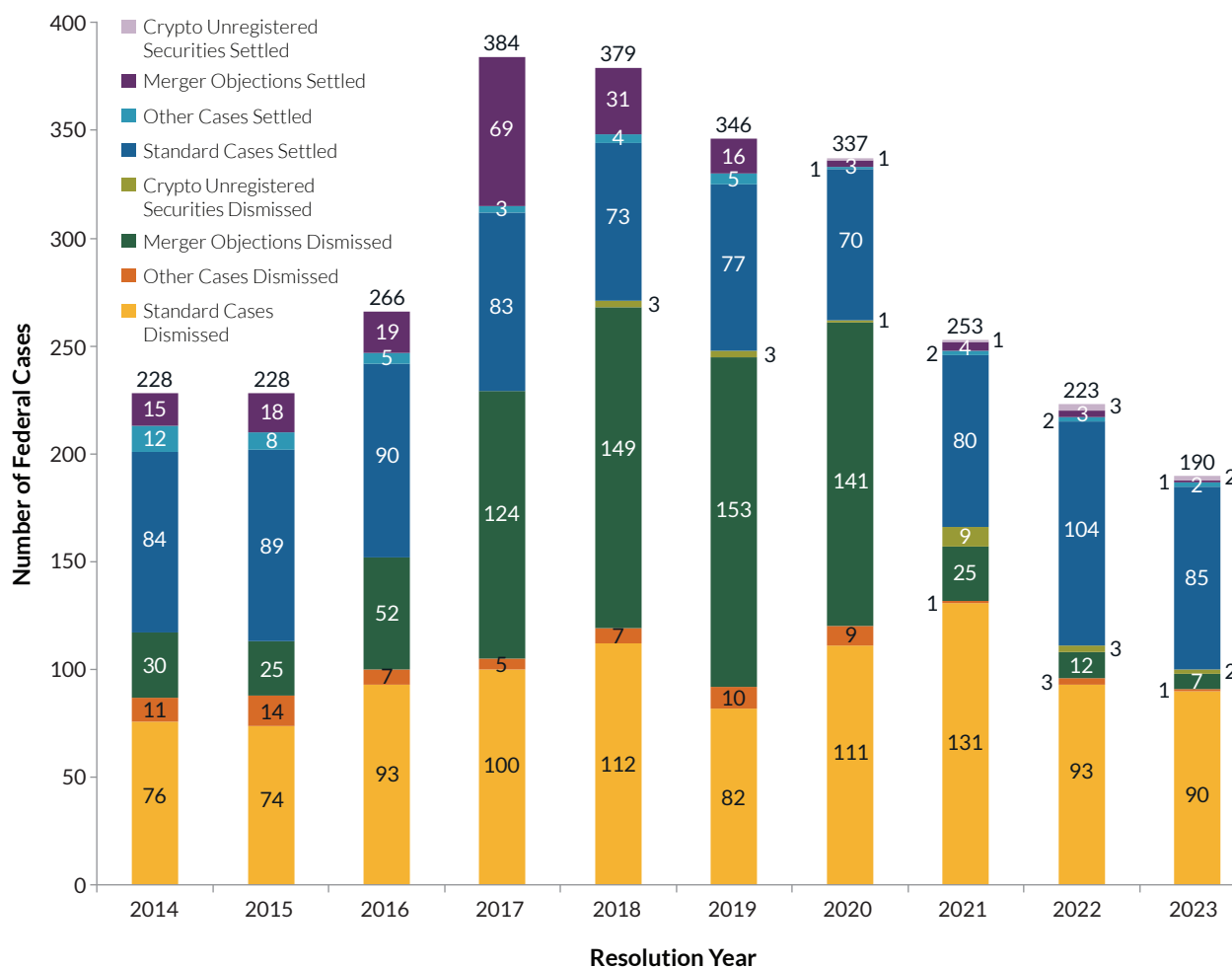
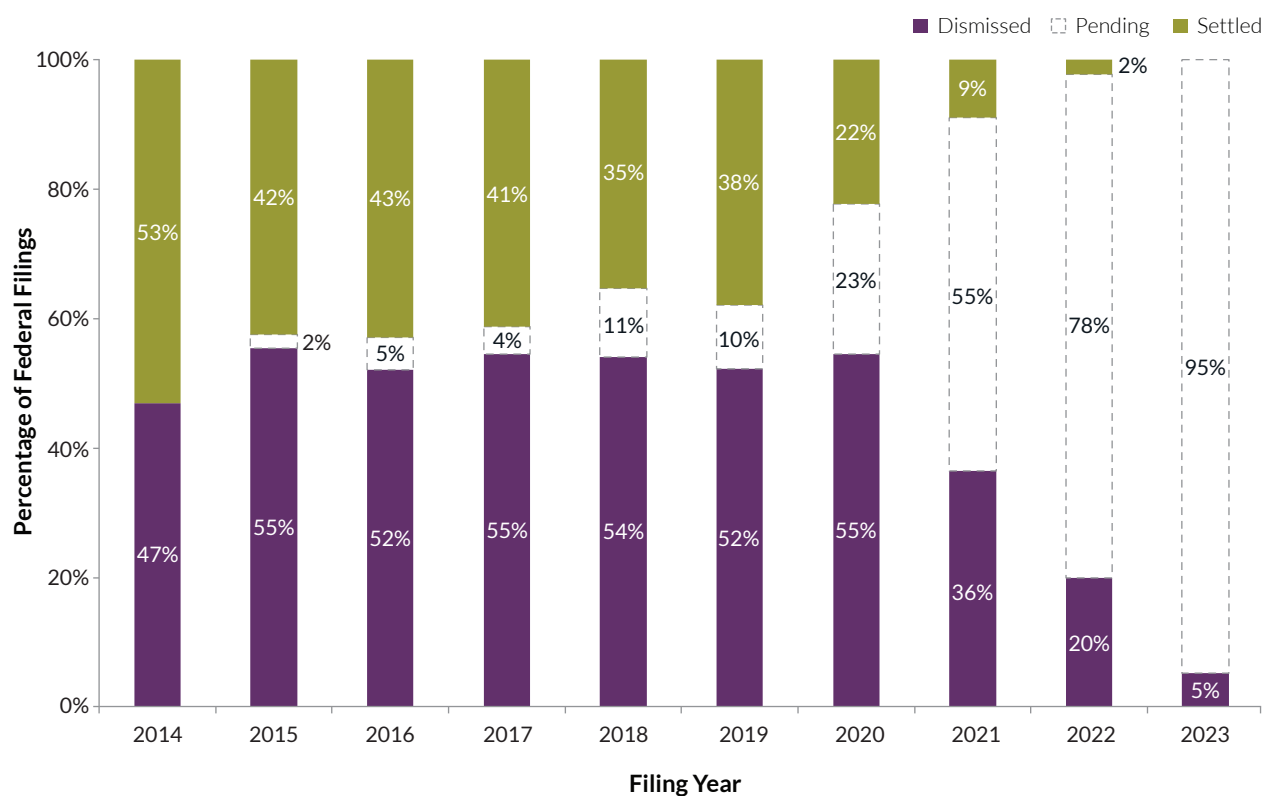


Figure 12. **Status of Cases as Percentage of Federal Filings by Filing Year**
 Excludes Merger Objections, Crypto Unregistered Securities, and Verdicts
 January 2014–December 2023



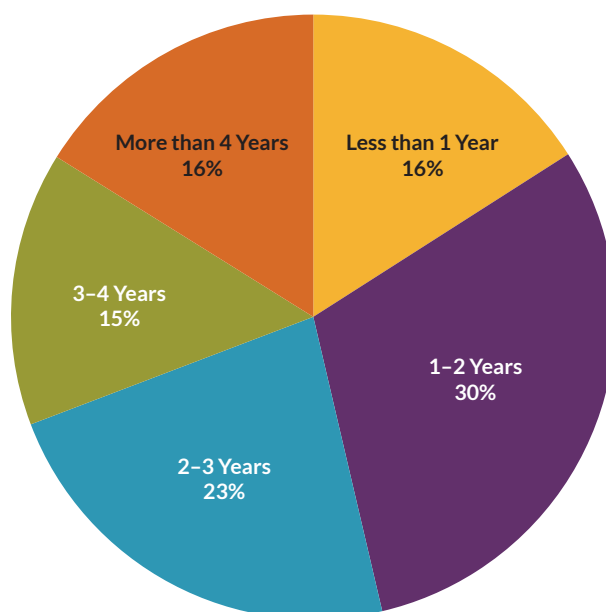
Note: Dismissals may include dismissals without prejudice and dismissals under appeal. Component values may not add to 100% due to rounding.

The number of resolved cases decreased by 15% to 190 from 223 in 2022, continuing a six-year decline in resolutions seen since 2018 and marking the lowest recorded level of resolutions in the last 10 years.

Figure 13. **Time from First Complaint Filing to Resolution**

Excluding Merger Objections and Crypto Unregistered Securities

Cases Filed January 2004–December 2019 and Resolved January 2004–December 2023



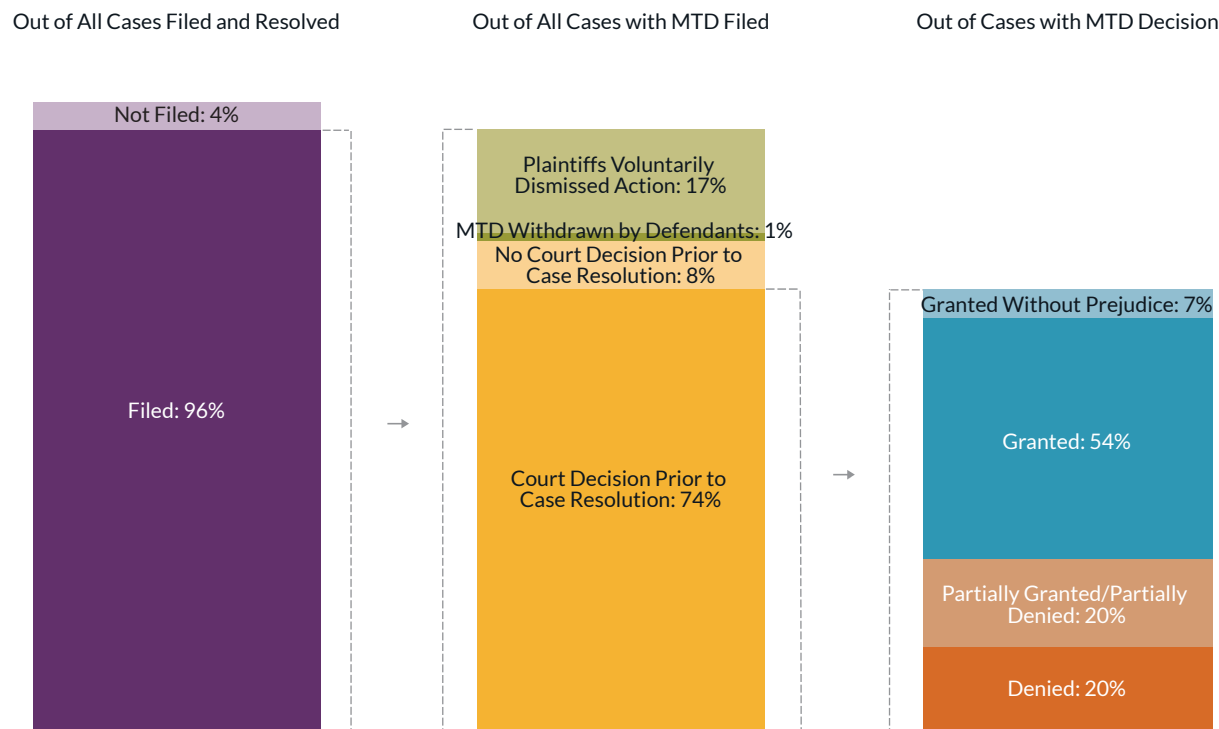
ANALYSIS OF MOTIONS

NERA's federal securities class action database tracks filing and resolution activity as well as decisions on motions to dismiss, motions for class certification, and the status of any motion as of the resolution date. For this analysis, we include securities class actions that were filed and resolved over the 2014–2023 period 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.

Motion to Dismiss

A motion to dismiss was filed in 96% of the securities class action suits filed and resolved. A decision was reached in 74% of these cases, while 17% were voluntarily dismissed by plaintiffs, 8% settled before a court decision was reached, and 1% of motions were withdrawn by defendants. Among the cases in which a decision was reached, 60% of motions were granted (with or without prejudice) while 40% were denied either in part or in full. See Figure 14.

Figure 14. **Filing and Resolutions of Motions to Dismiss**
Cases Filed and Resolved January 2014–December 2023



Motion for Class Certification

A motion for class certification was filed in only 18% of the securities class action suits filed and resolved, as most cases are either dismissed or settled before the class certification stage is reached. A decision was reached in 60% of the cases in which a motion for class certification was filed, while nearly all remaining 40% of cases were resolved with a settlement. Among the cases in which a decision was reached, the motion for class certification was granted (with or without prejudice) in 86% of cases. See Figure 15.

Approximately 64% of decisions on motions for class certification occur within three years of the filing of the first complaint, with nearly all decisions occurring within five years (see Figure 16). The median time is about 2.7 years.

Figure 15. **Filing and Resolutions of Motions for Class Certification**
Cases Filed and Resolved January 2014–December 2023

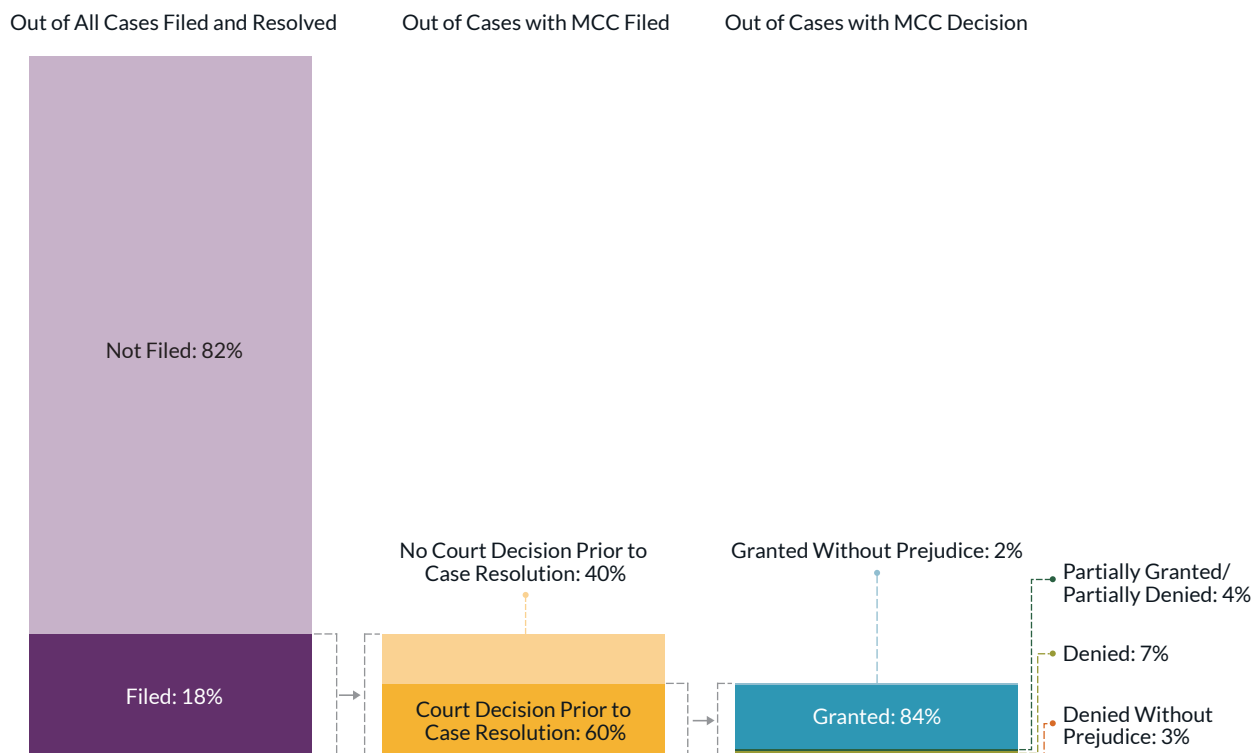
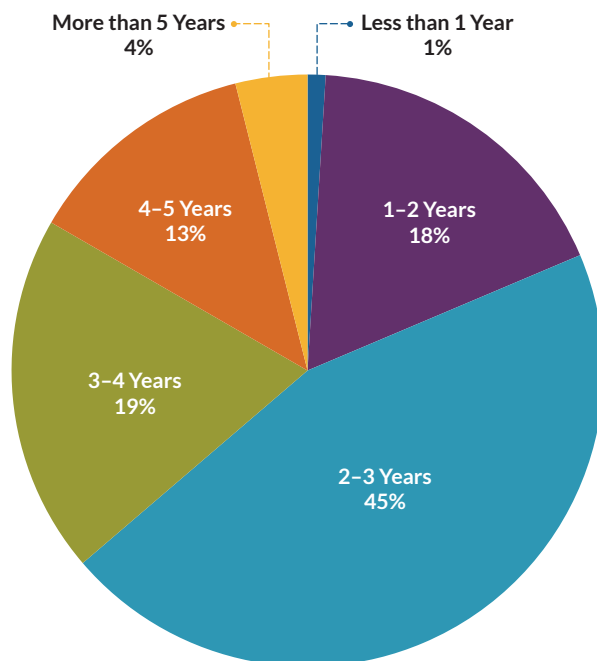


Figure 16. **Time from First Complaint Filing to Class Certification Decision**
Cases Filed and Resolved January 2014–December 2023

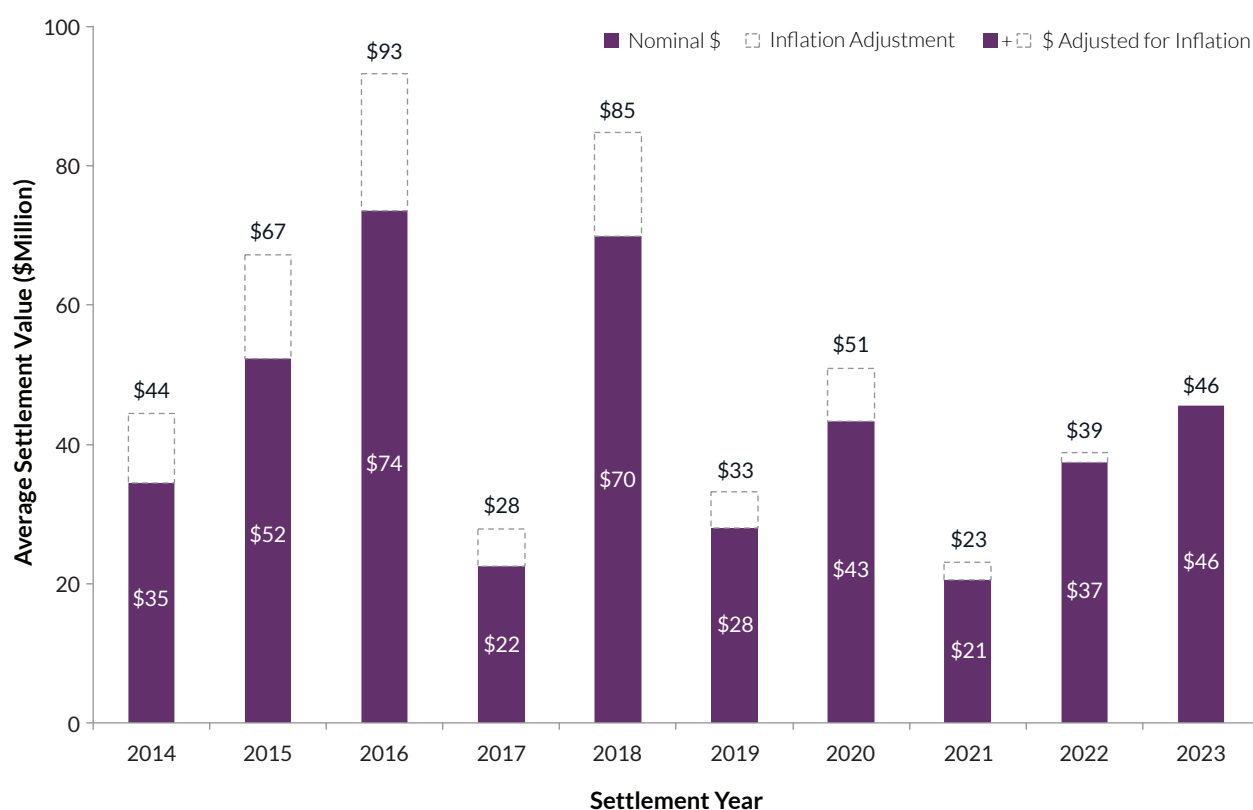


TRENDS IN SETTLEMENT VALUES¹¹

Aggregate settlements for 2023 totaled \$3.9 billion, which marks a slight decline from the inflation-adjusted total of \$4.2 billion from 2022.¹² In 2023, the average settlement value was approximately \$46 million, a 17% increase over the 2022 inflation-adjusted average settlement value of \$39 million and the second consecutive year that this value has increased (see Figure 17). The increase in the average settlement value is largely driven by a \$1 billion settlement by Wells Fargo & Company.¹³

Figure 17. **Average Settlement Value**

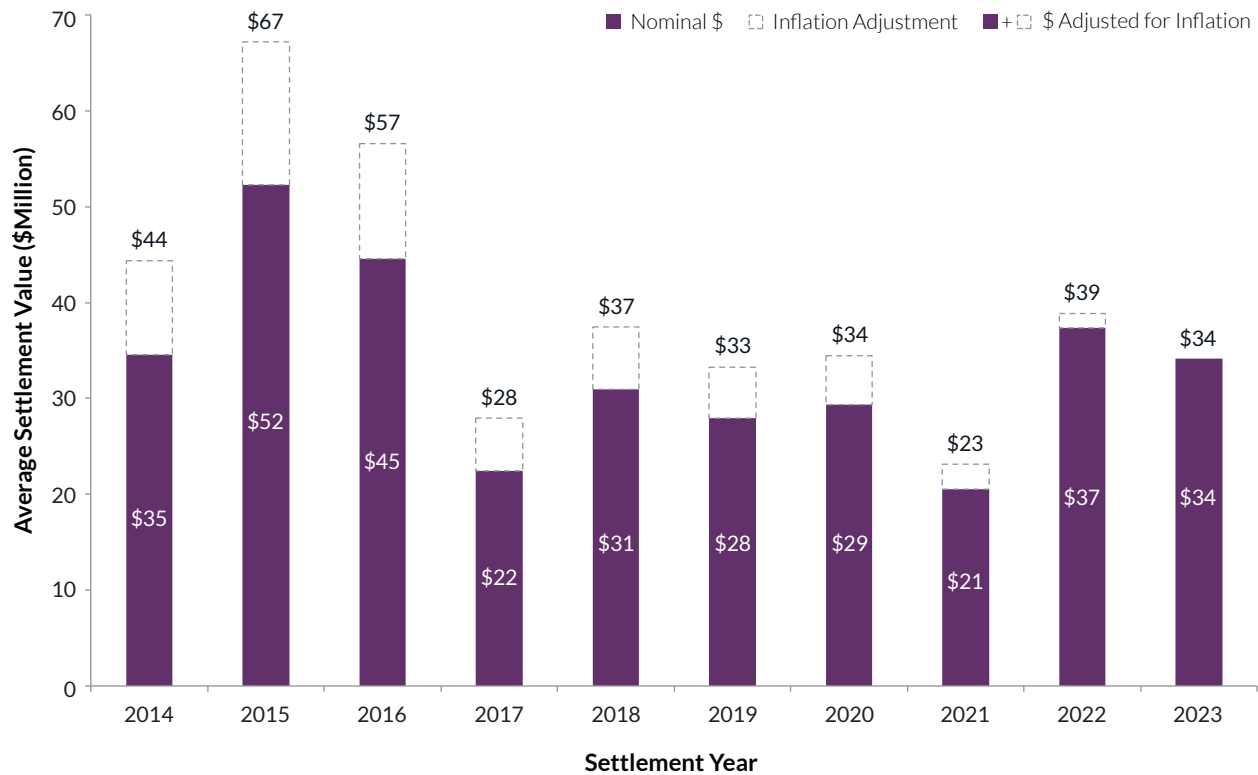
Excludes Merger Objections, Crypto Unregistered Securities, and Settlements for \$0 to the Class
January 2014–December 2023



When excluding settlements of \$1 billion or higher, the average settlement value was \$34 million, a decrease of 12% from the \$39 million inflation-adjusted amount in 2022 (see Figure 18). The median settlement value was \$14.4 million, which is a slight increase from the \$13.5 million inflation-adjusted value seen in 2022 (see Figure 19). Aside from a decrease in the percentage of settlements between \$10 and \$19.9 million and a roughly similar increase in the percentage of settlements between \$20 to \$49.9 million in 2023, the distribution of settlement values in 2023 looks similar to that of 2022 (see Figure 20).

Figure 18. **Average Settlement Value**

Excludes Settlements of \$1 Billion or Higher, Merger Objections, Crypto Unregistered Securities,
and Settlements for \$0 to the Class
January 2014–December 2023



When excluding settlements of \$1 billion or higher, the average settlement value was \$34 million in 2023, a decrease of 12% from the \$39 million inflation-adjusted amount in 2022.

Figure 19. **Median Settlement Value**

Excludes Settlements of \$1 Billion or Higher, Merger Objections, Crypto Unregistered Securities,
and Settlements for \$0 to the Class
January 2014–December 2023

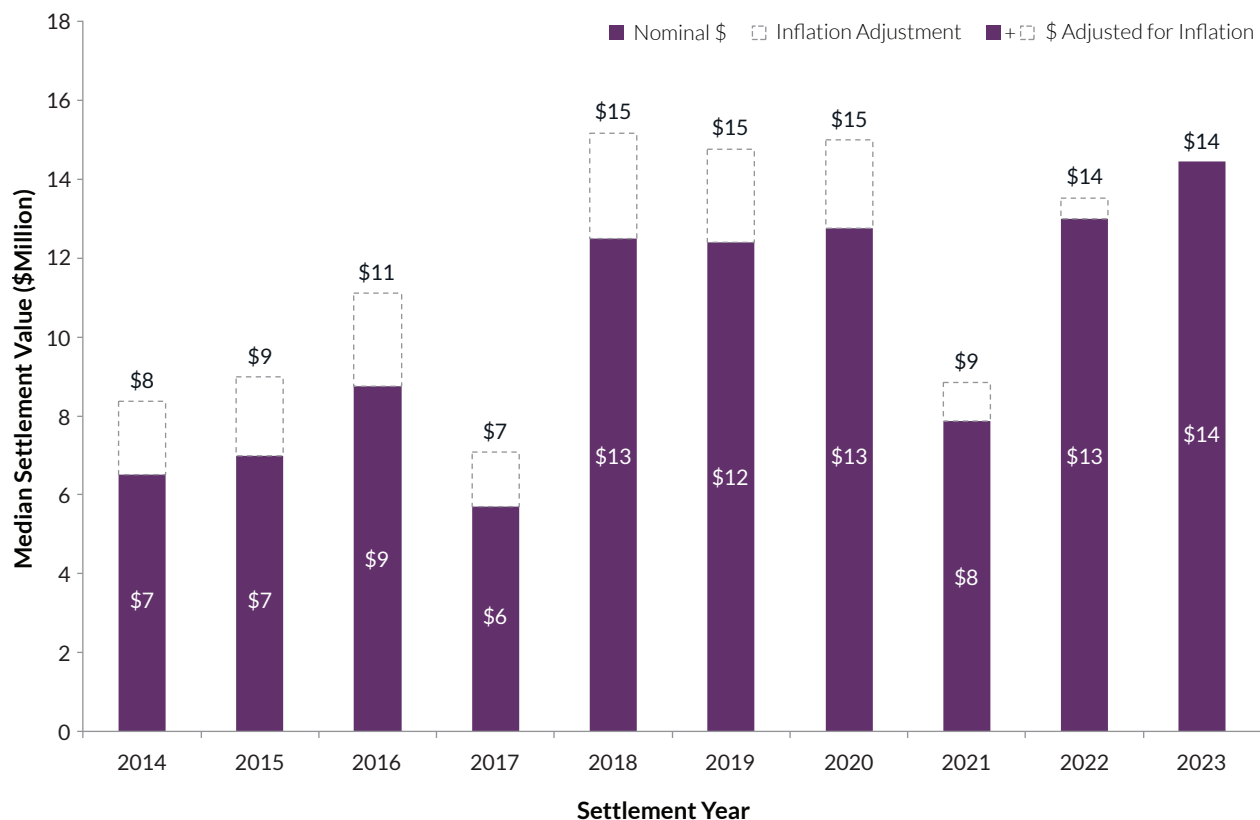
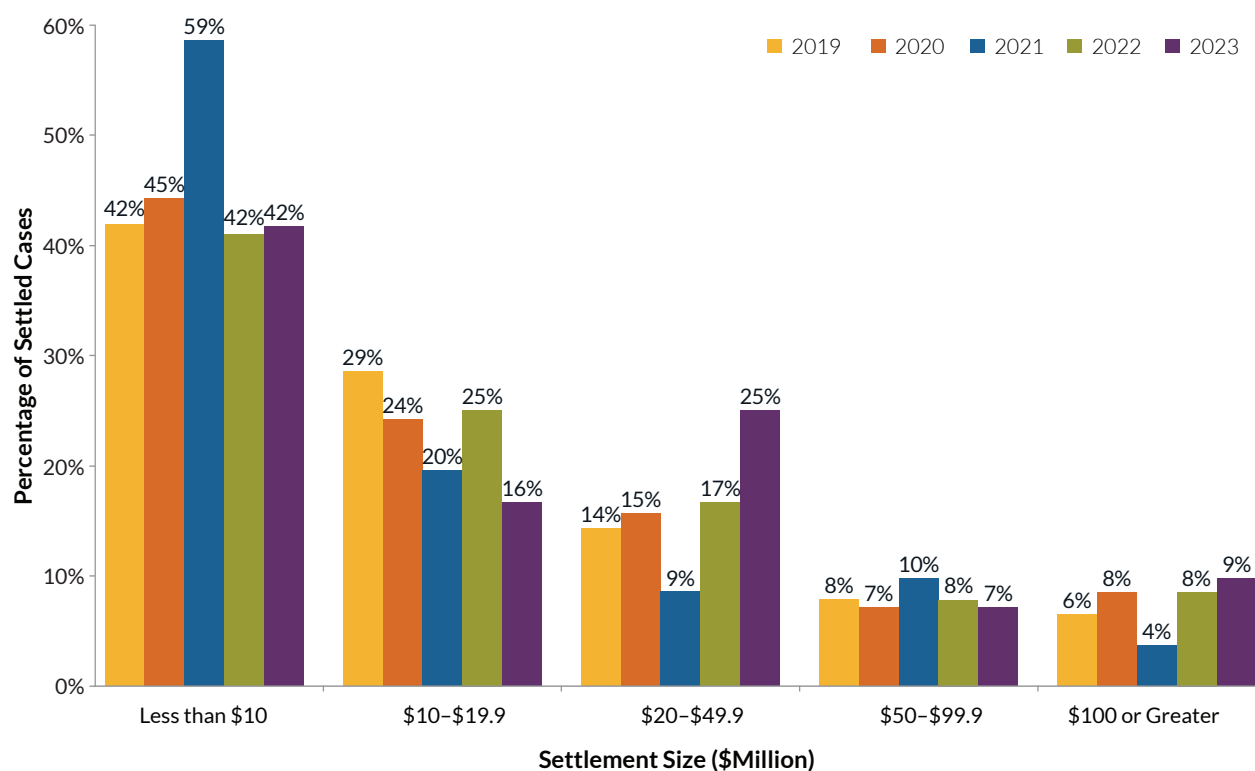


Figure 20. **Distribution of Settlement Values**

Excludes Merger Objections, Crypto Unregistered Securities, and Settlements for \$0 to the Class
January 2019–December 2023



Aggregate settlements for 2023 totaled \$3.9 billion, which marks a slight drop relative to the inflation-adjusted total of \$4.2 billion from 2022.

TOP SETTLEMENTS

The 10 largest settlements in 2023 ranged from \$90 million to \$1 billion and together accounted for over 66% of the \$3.9 billion aggregate settlement amount reached in 2023. Wells Fargo & Company appears twice on this list, taking the top spot in a \$1 billion settlement in a case involving misrepresentations regarding its progress in overhauling its internal controls¹⁴ as well as the third-highest spot in a \$300 million settlement in a matter involving allegations of misconduct in its auto insurance practices.¹⁵ The Second, Seventh, and Ninth circuits accounted for nine of the top 10 settlements.

Table 1. **Top 10 2023 Securities Class Action Settlements**

Rank	Defendant	Filing Date	Settlement Date	Total Settlement Value (\$Million)	Plaintiffs' Attorneys' Fees and Expenses Value (\$Million)	Circuit	Economic Sector
1	Wells Fargo & Company (2020) (S.D.N.Y.)	11 Jun 2020	8 Sep 2023	\$1,000.0	\$181.1	2nd	Finance
2	The Kraft Heinz Company (N.D. Ill.)	24 Feb 2019	12 Sep 2023	\$450.0	\$92.7	7th	Consumer Non-Durables
3	Wells Fargo & Company (2018)	14 Feb 2019	17 Aug 2023	\$300.0	\$77.0	9th	Finance
4	Exelon Corporation (2019)	16 Dec 2019	7 Sep 2023	\$173.0	\$45.3	7th	Utilities
5	McKesson Corporation	25 Oct 2018	2 Jun 2023	\$141.0	\$36.3	9th	Distribution Services
6	Alexion Pharmaceuticals, Inc. (D. Conn.)	17 Nov 2016	20 Dec 2023	\$125.0	\$32.8	2nd	Health Technology
7	Cardinal Health, Inc. (2019)	1 Aug 2019	11 Sep 2023	\$109.0	\$33.4	6th	Distribution Services
8	Micro Focus International plc (S.D.N.Y.) (SEC 11)	28 Mar 2018	27 Jul 2023	\$107.5	\$36.7	2nd	Technology Services
9	Grupo Televisa S.A.B.	5 Mar 2018	8 Aug 2023	\$95.0	\$29.6	2nd	Communications
10	The Allstate Corporation	10 Nov 2016	19 Dec 2023	\$90.0	\$27.1	7th	Finance
Total				\$2,590.0	\$591.9		

Table 2 lists the 10 largest federal securities class action settlements through 31 December 2023. Since the Valeant Pharmaceuticals partial settlement of \$1.2 billion in 2020, this list has remained unchanged, with settlements ranging from \$1.1 to \$7.2 billion.

Table 2. Top 10 Federal Securities Class Action Settlements (As of 31 December 2023)

Rank	Defendant	Filing Date	Settlement Year(s)	Total Settlement Value (\$Million)	Financial Institutions Value (\$Million)	Accounting Firms Value (\$Million)	Plaintiffs' Attorney's Fees and Expenses Value (\$Million)	Circuit	Economic Sector
1	ENRON Corp.	22 Oct 2001	2003–2010	\$7,242	\$6,903	\$73	\$798	5th	Industrial Services
2	WorldCom, Inc.	30 Apr 2002	2004–2005	\$6,196	\$6,004	\$103	\$530	2nd	Communications
3	Cendant Corp.	16 Apr 1998	2000	\$3,692	\$342	\$467	\$324	3rd	Finance
4	Tyco International, Ltd.	23 Aug 2002	2007	\$3,200	No codefendant	\$225	\$493	1st	Producer Manufacturing
5	Petroleo Brasileiro S.A.-Petrobras	8 Dec 2014	2018	\$3,000	\$0	\$50	\$205	2nd	Energy Minerals
6	AOL Time Warner Inc.	18 July 2002	2006	\$2,650	No codefendant	\$100	\$151	2nd	Consumer Services
7	Bank of America Corp.	21 Jan 2009	2013	\$2,425	No codefendant	No codefendant	\$177	2nd	Finance
8	Household International, Inc.	19 Aug 2002	2006–2016	\$1,577	Dismissed	Dismissed	\$427	7th	Finance
9	Valeant Pharmaceuticals International, Inc.*	22 Oct 2015	2020	\$1,210	\$0	\$0	\$160	3rd	Health Technology
10	Nortel Networks	2 Mar 2001	2006	\$1,143	No codefendant	\$0	\$94	2nd	Electronic Technology
Total				\$32,334	\$13,249	\$1,017	\$3,358		

* Denotes a partial settlement, which is included here due to its sizeable amount. Note that this case is not included in any of our resolution or settlement statistics.

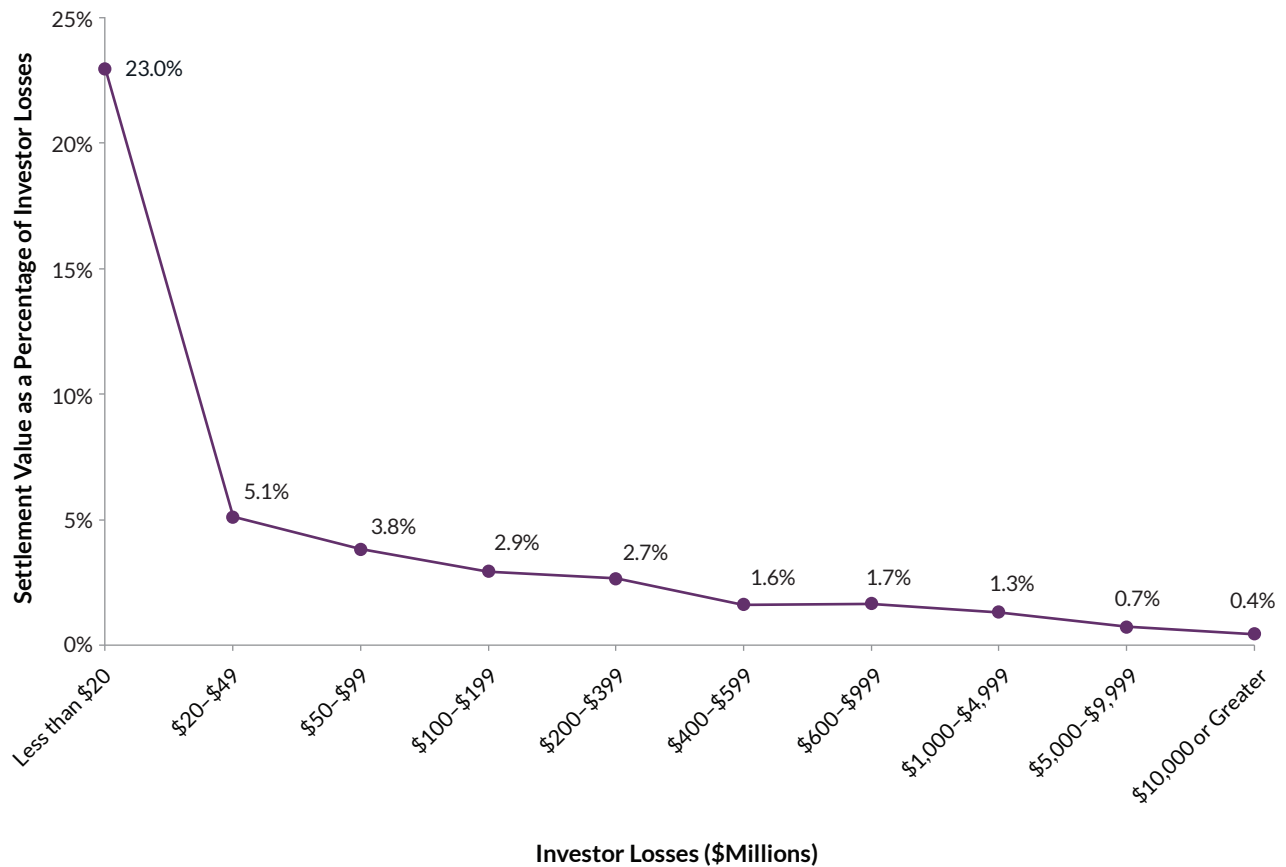
NERA-DEFINED INVESTOR LOSSES

To estimate the potential aggregate loss to investors as a result of investing in the defendant's stock during the alleged class period, NERA has developed a proprietary variable, NERA-Defined Investor Losses, using publicly available data. The NERA-Defined Investor Loss 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 to be the most powerful predictor of settlement amount.¹⁶

A statistical review reveals that while settlement values and NERA-Defined Investor Losses are highly correlated, the relationship is not linear. The ratio is higher for cases with lower NERA-Defined Investor Losses than for cases with higher Investor Losses. For instance, in cases with less than \$20 million in Investor Losses, the median settlement value comprises 23% of Investor Losses, while in cases with more than \$50 million in Investor Losses, the median settlement value is less than 4% of Investor Losses. See Figure 21.

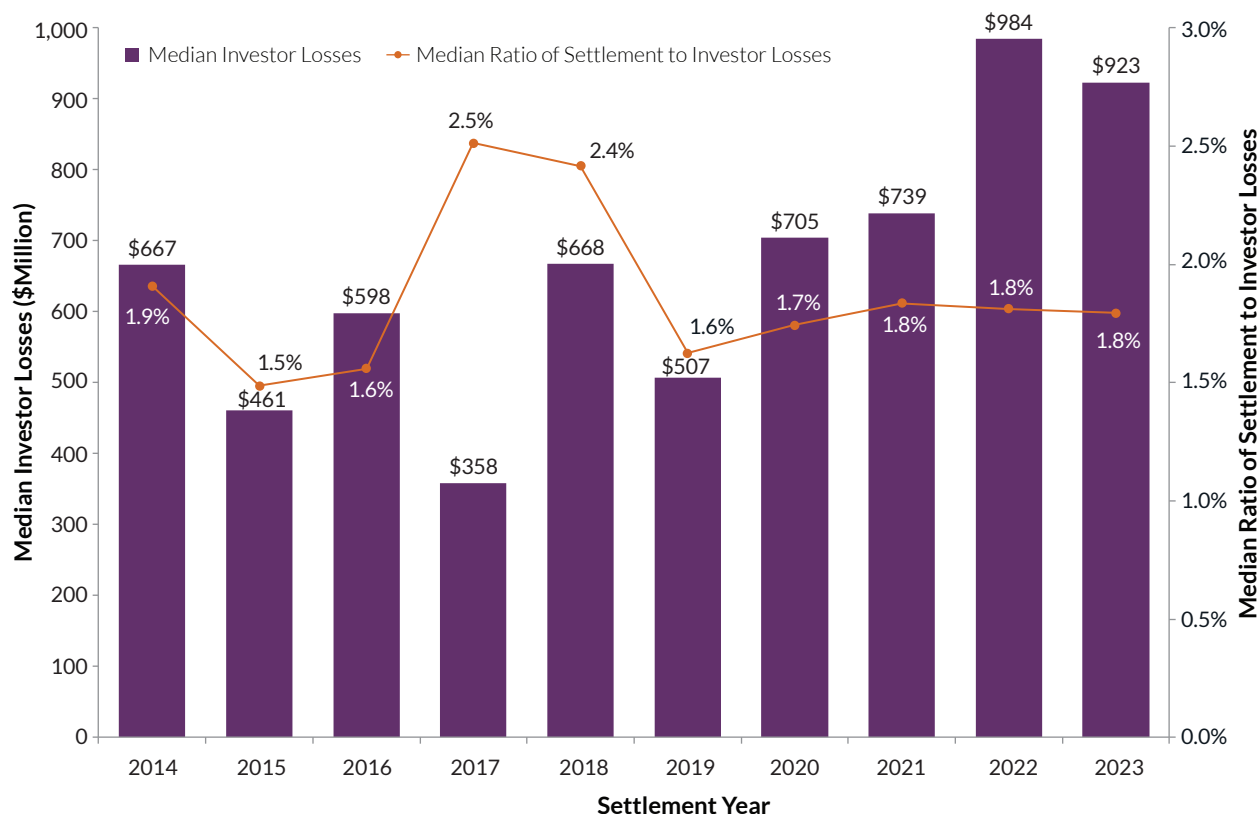
Since 2014, annual median Investor Losses have ranged from a low of \$358 million to a high of \$984 million. For cases settled in 2023, the median Investor Losses were \$923 million, a 6% decline from 2022 and the second highest recorded value during the 2014–2023 period. Since 2021, the median ratio of settlement amount to Investor Losses has remained stable at 1.8%. See Figure 22.

Figure 21. **Median Settlement Value as a Percentage of NERA-Defined Investor Losses**
 By Level of Investor Losses
 Cases Settled January 2014–December 2023



The median Investor Losses were \$923 million, a 6% decline relative to 2022 and the second highest recorded value during the 2014–2023 period.

Figure 22. Median NERA-Defined Investor Losses and Median Ratio of Settlement to Investor Losses by Settlement Year
January 2014–December 2023

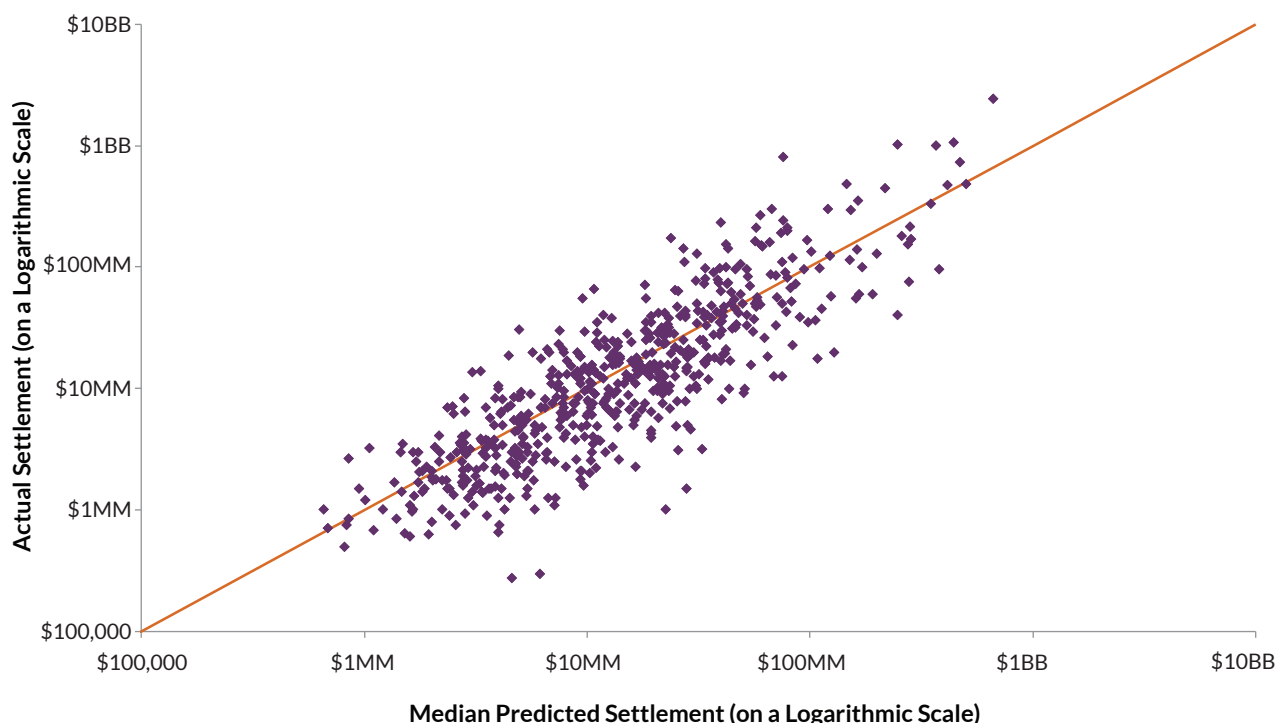


NERA has identified the following key factors as driving settlement amounts:

- NERA-Defined Investor Losses;
- 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 (e.g., whether the company has already been sanctioned by a government 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 named lead plaintiff (see Figure 23).

Among cases settled between January 2012 and December 2023, these factors in NERA's statistical model can explain over 70% of the variation observed in actual settlements.

Figure 23. **Predicted vs. Actual Settlements**
Investor Losses Using S&P 500 Index
Cases Settled January 2012–December 2023



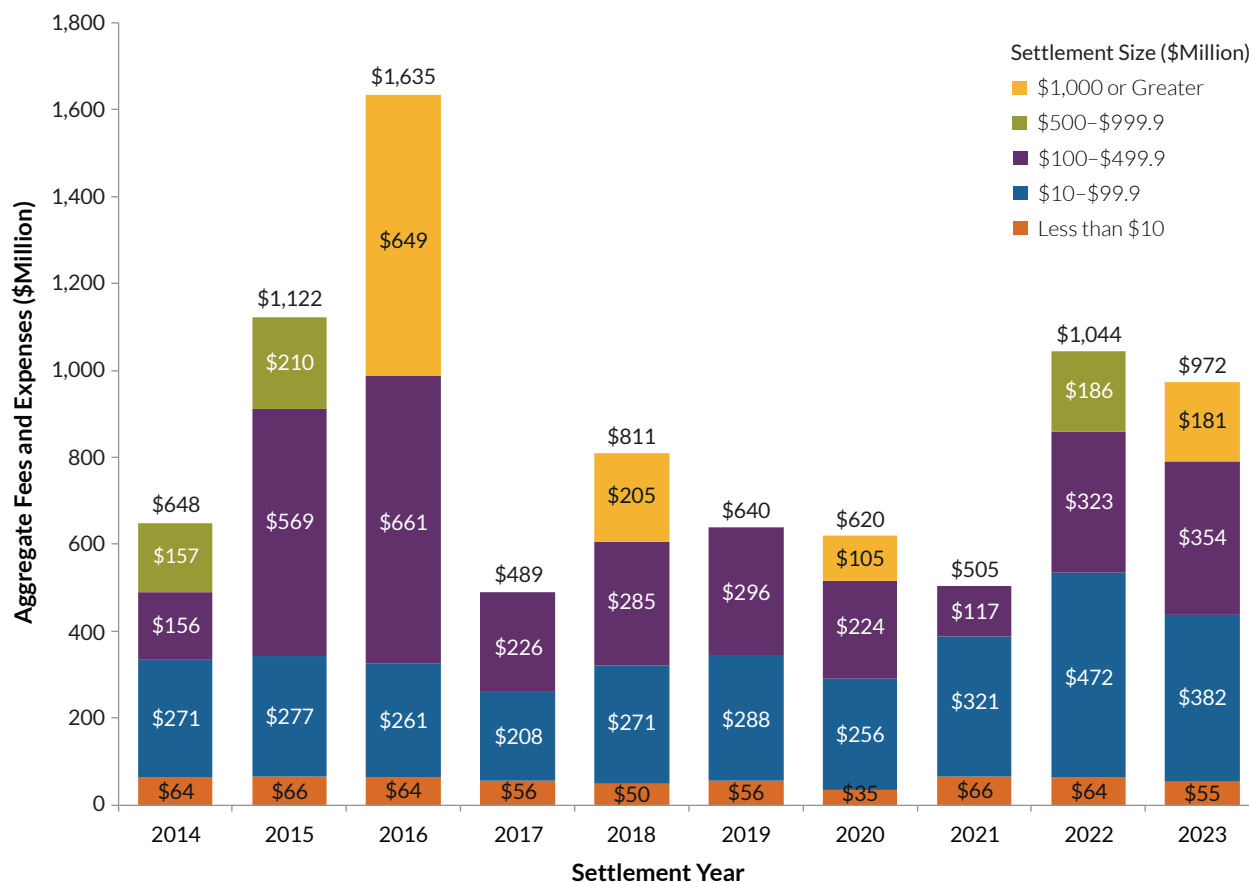
TRENDS IN PLAINTIFFS' ATTORNEYS' FEES AND EXPENSES

Over the past 10 years, annual aggregate plaintiffs' attorneys' fees and expenses have ranged from a low of \$489 million in 2017 to a high of \$1.6 billion in 2016. In 2023, aggregate plaintiffs' attorneys' fees and expenses totaled \$972 million, a slight decline from the \$1.0 billion seen in 2022 (see Figure 24). Plaintiffs' attorneys' fees and expenses comprised roughly 24.9% of the \$3.9 billion aggregate settlement value in 2023.

A historical analysis of plaintiffs' attorneys' fees and expenses for cases that have settled since the passage of the PSLRA in 1996 reveals that fees and expenses as a percentage of the settlement amount decline as the settlement size increases. For instance, for cases settled during the 2014–2023 period, median percent fees and expenses ranged from 36.1% in settlements of \$5 million or lower to 18.6% in settlements of \$1 billion or higher.

In the past 10 years, median percent attorneys' fees have increased for settlements under \$5 million and for settlements over \$500 million relative to the 1996–2013 period. This increase is more pronounced for settlements of \$1 billion or higher, although this is partly due to this category having only five cases in the post-2013 period (see Figure 25).

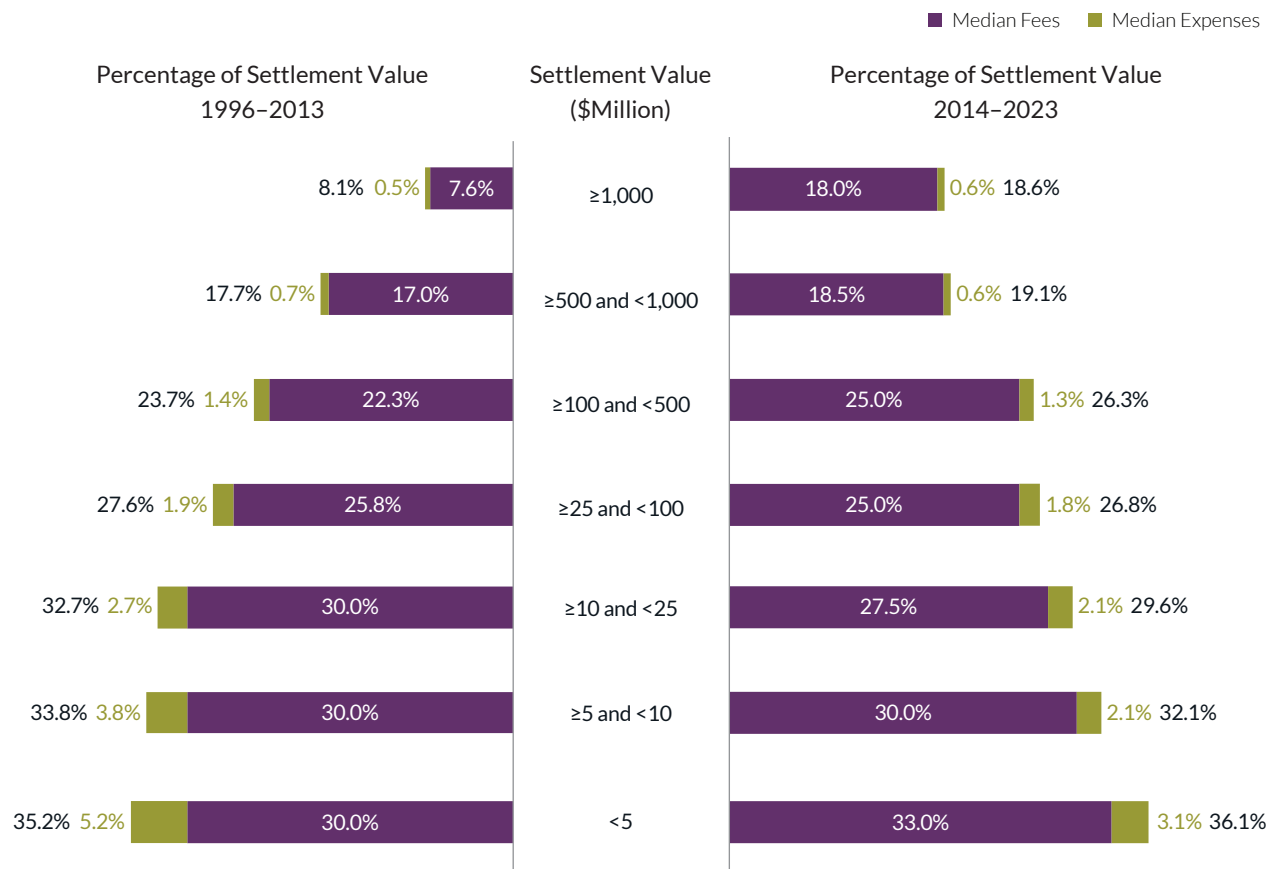
Figure 24. **Aggregate Plaintiffs' Attorneys' Fees and Expenses by Settlement Size**
January 2014–December 2023



Plaintiffs' attorneys' fees and expenses comprised roughly 24.9% of the \$3.9 billion aggregate settlement value in 2023.

Figure 25. Median of Plaintiffs' Attorneys' Fees and Expenses by Size of Settlement

Excludes Merger Objections, Crypto Unregistered Securities, and Settlements for \$0 to the Class



Note: Component values may not add to total value due to rounding.

CONCLUSION

In 2023, federal filings increased by 11% from 206 in 2022 to 228 in 2023, ending a four-year period of annual declines in filings from 2019 to 2022. Of the 228 cases filed in 2023, 206 were standard cases with alleged violations of Rule 10b-5, Section 11, and/or Section 12, and 18.9% of standard cases were against foreign companies. Filings against companies in the information technology and technology services, health technology and services, and the finance sectors accounted for 59% of non-merger objections, non-crypto unregistered securities filings.

The number of resolved cases declined by 15% from 223 in 2022 to 190 in 2023. There were 90 settlements and 100 dismissals, marking the lowest level of both settlements and dismissals in the last 10 years. Excluding the presence of settlements of \$1 billion or higher, the average settlement value for 2023 was \$34 million and the median settlement value was \$14 million. Aggregate settlements totaled \$3.9 billion in 2023, with aggregate plaintiffs' attorneys' fees and expenses accounting for \$972 million, or 24.9%, of the 2023 aggregate settlement value. Over the last 10 years, the median plaintiffs' attorneys' fees and expenses as a percentage of settlement value has ranged from 18.6% for settlements of \$1 billion or higher to 36.1% for settlements of \$5 million or lower.

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 Planchich, Janeen McIntosh, and others. The authors thank Dr. David Tabak and Benjamin Seggerson for helpful comments on this edition. We thank Vlad Lee, Daniel Klotz, and other of NERA's securities and finance researchers 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 NERA tracks securities class actions 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. 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 similar but may, in certain circumstances, lead observers to draw a different conclusion about short-term trends in filings. Data for this report were collected from multiple sources, including Institutional Shareholder Services, Dow Jones Factiva, Bloomberg Finance, FactSet Research Systems, Nasdaq, Intercontinental Exchange, US Securities and Exchange Commission (SEC) filings, complaints, case dockets, and public press reports. IPO laddering cases are presented only in Figure 1.
- 3 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 have often been referred to as "standard" cases. In the analyses of this report, standard cases involve registered securities and do not include cases involving crypto unregistered securities, which will be considered as a separate category.
- 4 In this study, crypto cases consist of two mutually exclusive subgroups: (1) crypto shareholder class actions, which include a class of investors in common stock, American depositary receipts/ American depositary shares (ADR/ADS), and/or other registered securities, along with crypto- or digital-currency-related allegations; and (2) crypto unregistered securities class actions, which do not have class investors in any registered securities that are traded on major exchanges (New York Stock Exchange, Nasdaq). We include crypto shareholder class actions in all our analyses that include standard cases. Crypto unregistered securities class actions are excluded from some analyses, which is noted in the titles of our figures.
- 5 Most securities class action complaints include multiple allegations. For this analysis, all allegations from the complaint are included and thus the total number of allegations exceeds the total number of filings.
- 6 In our analysis, a company is defined as a foreign company based on the location of its principal executive office.
- 7 Class Action Complaint for Violations of the Federal Securities Laws, *In re Silvergate Capital Corporation Securities Litigation*, 7 December 2023.
- 8 Madeleine Ngo, "A Timeline of How the Banking Crisis Has Unfolded," *The New York Times*, 1 May 2023, available at <https://www.nytimes.com/2023/05/01/business/banking-crisis-failure-timeline.html>.
- 9 "Iowa Trust & Savings Bank, Emmetsburg, Iowa, Assumes All of the Deposits of Citizens Bank, Sac City, Iowa," FDIC Press Release, 3 November 2023, available at <https://www.fdic.gov/news/press-releases/2023/pr23091.html>.
- 10 "Dismissed" is used here as shorthand for all class actions 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 ultimately unsuccessful motion for class certification.
- 11 Unless otherwise noted, the analyses in this section exclude the 2020 partial settlement involving Valeant Pharmaceuticals.
- 12 For our analysis, NERA includes settlements that have had the first settlement-approval hearing. We do not include partial settlements or tentative settlements that have been announced by plaintiffs and/or defendants. As a result, although we include the 2020 Valeant Pharmaceuticals partial settlement in Table 2 due to its settlement size, this case is not included in any of our resolution, settlement, or attorney fee statistics.
- 13 While annual average settlement values can be a helpful statistic, these values may be affected by one or a few very high settlement amounts. Unlike averages, the median settlement value is unaffected by these very high outlier settlement amounts. To understand what more typical cases look like, we 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, we limit our data to non-merger-objection and non-crypto unregistered securities cases with settlements of more than \$0 to the class.
- 14 Jon Hill and Jessica Corso, "Wells Fargo Inks \$1B Deal to End Investors' Compliance Suit," *Law360.com*, 16 May 2023, available at <https://www.law360.com/articles/1677976/>.
- 15 Lauren Berg, "Wells Fargo Investors Ink \$300M Deal in Auto Insurance Suit," *Law360.com*, 7 February 2023, available at <https://www.law360.com/articles/1573911/>.
- 16 NERA-Defined Investor Losses is only calculable for cases involving allegations of damages to common stock based on one or more corrective disclosures moving the stock price to its alleged true value. As a result, we have not calculated this metric for cases such as merger objections.

RELATED EXPERTS



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The opinions expressed herein do not necessarily represent the views of NERA or any other NERA consultant.

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EXHIBIT 9



CORNERSTONE RESEARCH

Economic and Financial Consulting and Expert Testimony

Securities Class Action Settlements

2022 Review and Analysis

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Analyses in this report are based on 2,116 securities class actions filed after passage of the Private Securities Litigation Reform Act of 1995 (Reform Act) and settled from 1996 through year-end 2022. See page 16 for a detailed description of the research sample. For purposes of this report and related research, a settlement refers to a negotiated agreement between the parties to a securities class action that is publicly announced to potential class members by means of a settlement notice.

2022 Highlights

In 2022, the number of settled cases reached its highest level in 15 years, increasing 21% relative to 2021. The median settlement amount, median “simplified tiered damages,” and median total assets of the defendant issuer also rose dramatically.¹

- In 2022, the number of securities class action settlements increased to 105 with a total settlement value of over \$3.8 billion, compared to 87 settlements in 2021 with a total value of \$1.9 billion. (page 3)
- The median settlement amount of \$13.0 million represents an increase of 46% from 2021, while the average settlement amount (\$36.2 million) increased by 63%. (page 4)
- The \$3.8 billion total settlement dollars were 97% higher than the prior year. (page 3)
- There were eight mega settlements (equal to or greater than \$100 million), ranging from \$100 million to \$809.5 million. (page 3)
- The increase in the proportion of “midsize” settlement amounts (\$10 million to \$50 million) was accompanied by a decrease in the proportion of cases that settled for less than \$10 million. (page 4)
- Median “simplified tiered damages” increased more than 125% and reached a record high.² (page 5)
- Median “disclosure dollar losses”³ grew by more than 160%, also reaching an all-time high. (page 5)
- Compared to defendant firms involved in cases that settled in 2021, defendant firms involved in 2022 settlements were 97% larger, as measured by median total assets. (page 5)
- The historically low rate of settled cases involving a corresponding action by the U.S. Securities and Exchange Commission (SEC) observed in 2021 persisted in 2022, remaining below 9%. (page 11)

Figure 1: Settlement Statistics

(Dollars in millions)

	2017–2021	2021	2022
Number of Settlements	395	87	105
Total Amount	\$16,714.3	\$1,932.4	\$3,805.5
Minimum	\$0.3	\$0.7	\$0.7
Median	\$10.2	\$8.9	\$13.0
Average	\$42.3	\$22.2	\$36.2
Maximum	\$3,496.8	\$202.5	\$809.5

Note: Settlement dollars are adjusted for inflation; 2022 dollar equivalent figures are presented.

Author Commentary

Findings

The year 2022 was a record year for settlement activity. The number of securities class action settlements in 2022 increased sharply from 2021 and reached levels not observed since 2007. This sharp increase was accompanied by dramatic growth in case settlement amounts, “simplified tiered damages” (our rough proxy for potential shareholder losses), and the size of issuer defendant firms.

The historically high number of settlements in 2022 can be explained by the elevated number of case filings in 2018–2020, when over 70% of these settled cases were filed.

The median settlement amount is the highest since 2018. This was likely driven by the record-high level of “simplified tiered damages,” an estimate of potential shareholder losses that our research finds is the single most important factor in explaining settlement amounts.

The all-time-high median “simplified tiered damages” reflects a number of factors such as larger issuer defendants (measured by the company’s total assets) and larger disclosure dollar losses (a measure of the change in the issuer defendant’s market capitalization following the class-ending alleged corrective disclosure). Institutional investors are more likely to serve as lead plaintiffs in larger cases, i.e., cases with relatively high “simplified tiered damages.” Consistent with this observation, institutional investor involvement as lead plaintiffs for 2022 settled cases was higher than the prior year and the 2017–2021 average. Larger cases also tend to take longer to settle, and accordingly, we observe an increase in the median time to settlement in 2022 relative to prior years.

2022 was an interesting year as settlement activity reached historically high levels across several dimensions, including the number and size of settlements, and a record-high for our proxy for potential shareholder losses.

Dr. Laarni T. Bulan
Principal, Cornerstone Research

In contrast to the historic highs, settlements in relation to our proxy for potential shareholder losses declined sharply. In particular, both the median and average settlement as a percentage of “simplified tiered damages” in 2022 fell to their lowest levels among post-Reform Act years. These low levels are consistent with a low presence in 2022 of factors often associated with higher settlement amounts, such as the presence of an SEC action, criminal charges, or accounting irregularities.⁴

Securities class action settlements in 2022 involved substantially larger cases with larger issuer defendant firms. Overall, these cases took longer to resolve and reached more advanced litigation stages before settlement than in prior years.

Dr. Laura E. Simmons
Senior Advisor, Cornerstone Research

Looking Ahead

In light of the reduced level in the number of securities class action case filings in 2021–2022, we may begin to see a slowdown or flattening out in settlement activity in the upcoming years,⁵ absent a decrease in dismissal rates.

Given that SEC enforcement actions have tended to increase subsequent to when a new SEC Chair is sworn in (which last occurred in 2021), we may also begin to see a reversal in the frequency of corresponding SEC actions among settled cases in the near term. For additional details, see Cornerstone Research’s *SEC Enforcement Activity: Public Company and Subsidiaries—FY 2022 Update*.

As discussed in Cornerstone Research’s *Securities Class Action Filings—2022 Year in Review*, certain issues have emerged as focus areas in securities class actions. In particular, 26% of all core federal filings in 2020–2022 were related to special purpose acquisition company (SPAC), COVID-19, or cryptocurrency matters. While very few of these types of cases have settled to date, we expect increased settlement activity for these cases in the future.

—Laarni T. Bulan and Laura E. Simmons

Total Settlement Dollars

As has been observed in prior years, the presence or absence of just a few very large settlements can have a substantial effect on total settlement dollars for a given year.

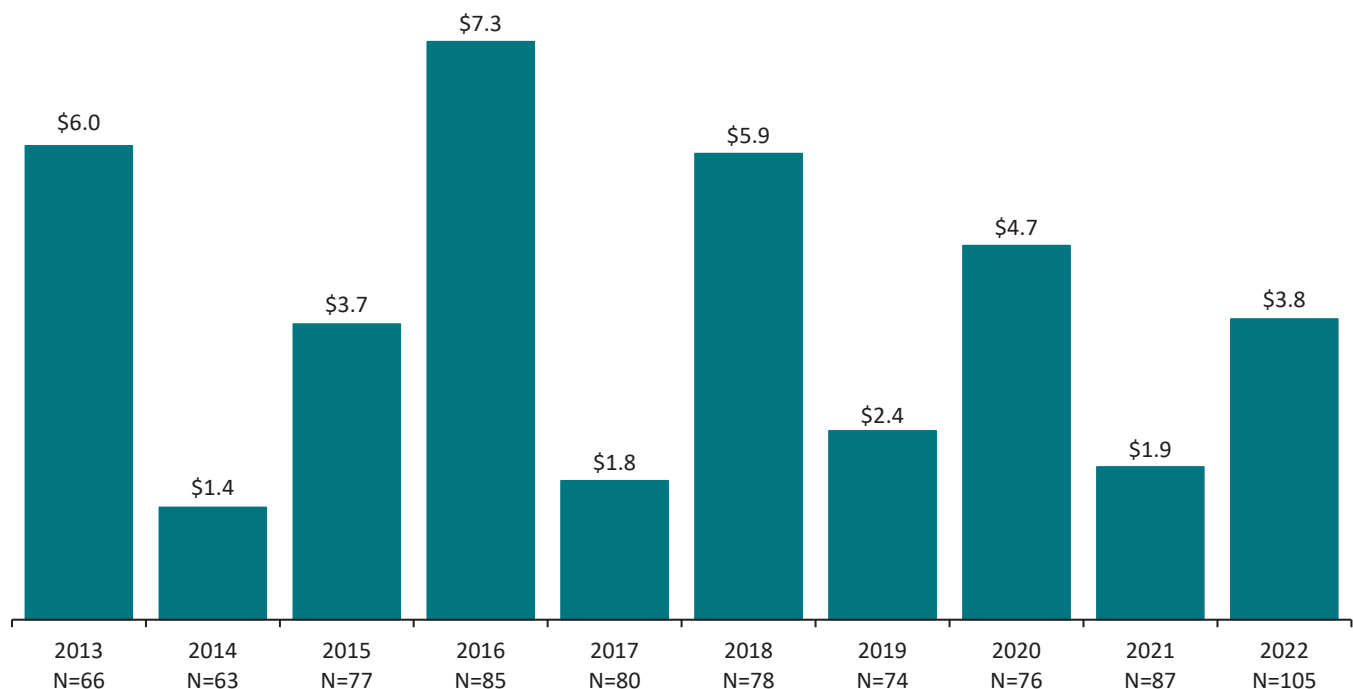
- The number of settlements in 2022 (105 cases) continued the upward trend since 2019 and represented a 38% increase from the prior nine-year average (76 cases).
- An increase in the number of mega settlements (i.e., settlements equal to or greater than \$100 million) contributed to total settlement dollars nearly doubling in 2022 compared to the prior year.

- There were eight mega settlements in 2022, ranging from \$100 million to \$809.5 million. Eight such settlements is the highest number since 2016.
- A decline in the proportion of very small settlements further contributed to the growth in total settlement dollars. Only 23% of settlements in 2022 were for less than \$5 million, compared to 33% of cases settled in the prior nine years.

The number of settlements in 2022 was the highest number since 2007.

Figure 2: Total Settlement Dollars
2013–2022

(Dollars in billions)



Note: Settlement dollars are adjusted for inflation; 2022 dollar equivalent figures are presented. “N” refers to the number of cases.

Settlement Size

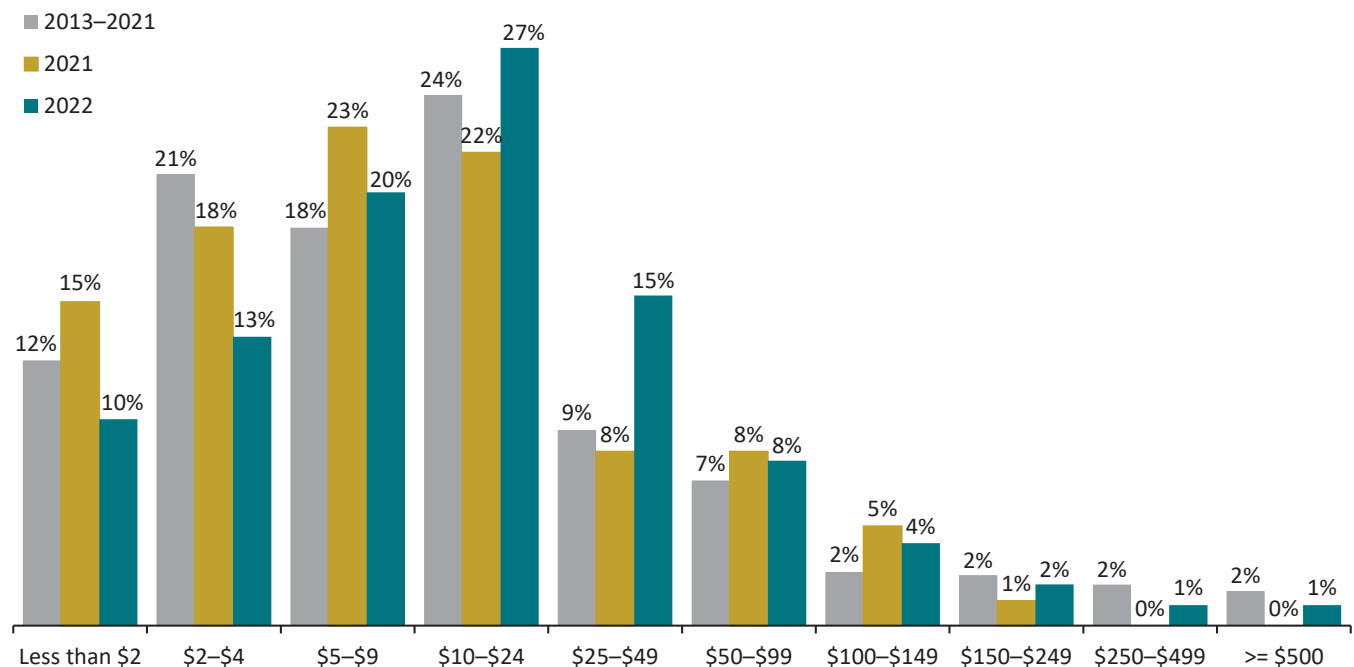
- The median settlement amount in 2022 was \$13.0 million, a 46% increase from 2021 and a 34% increase from the prior nine-year median. Median values provide the midpoint in a series of observations and are less affected than averages by outlier data.
- The average settlement amount in 2022 was \$36.2 million, a 63% increase from 2021. (See [Appendix 1](#) for an analysis of settlements by percentiles.)
- In 2022, 42% of cases settled for between \$10 million and \$50 million, compared to only 30% in 2021 and 34% in 2013–2021.

The median settlement amount in 2022 was the highest since 2018.

- The increase in the proportion of these “midsize” settlement amounts (\$10 million to \$50 million) was accompanied by a decrease in the proportion of cases that settled for less than \$10 million—43% in 2022 compared to 56% in 2021 and 51% in the prior nine years.

Figure 3: Distribution of Settlements
2013–2022

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2022 dollar equivalent figures are presented.

Type of Claim

Rule 10b-5 Claims and “Simplified Tiered Damages”

“Simplified tiered damages” uses simplifying assumptions to estimate per-share damages and trading behavior for cases involving Rule 10b-5 claims. It provides a measure of potential shareholder losses that allows for consistency across a large volume of cases, thus enabling the identification and analysis of potential trends.⁶

Cornerstone Research’s analysis finds this measure to be the most important factor in estimating settlement amounts.⁷ However, this measure is not intended to represent actual economic losses borne by shareholders. Determining any such losses for a given case requires more in-depth economic analysis.

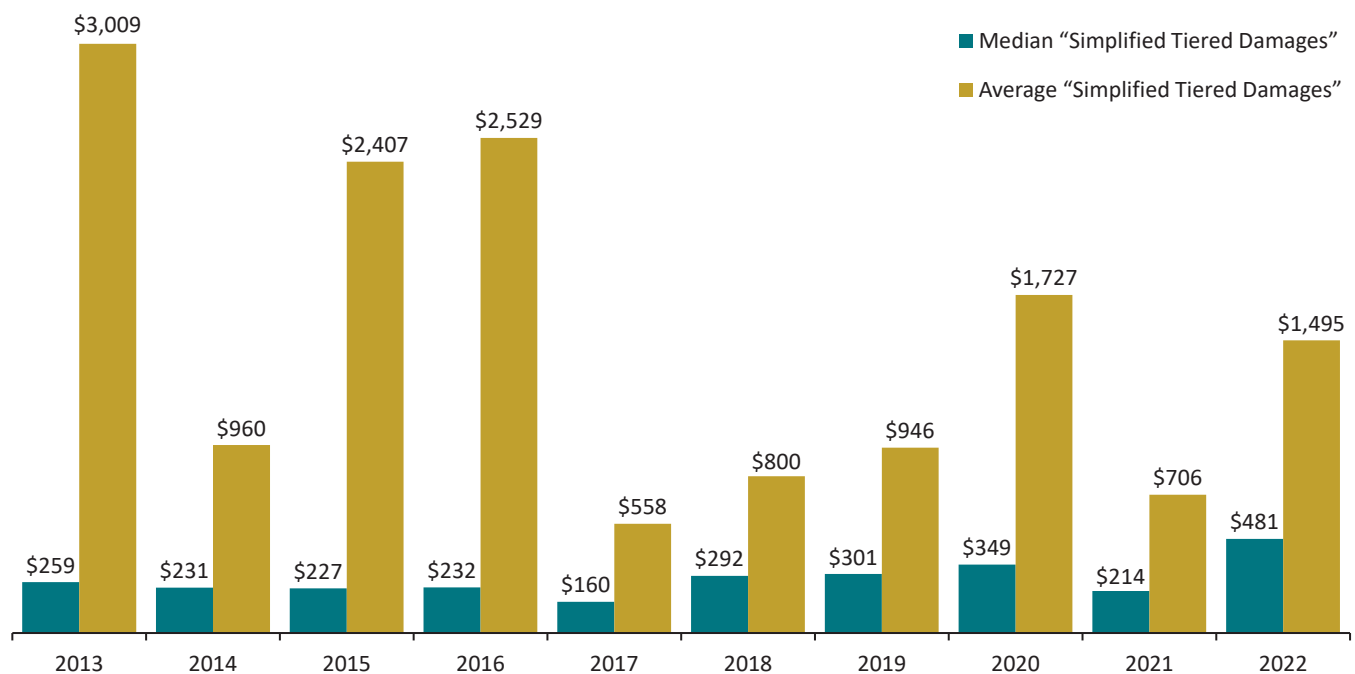
- Similar to settlement amounts, the median “simplified tiered damages” in 2022 increased 125% compared to 2021 and was over 100% higher than the median of settled cases for the prior nine years.

- In 2022, nearly half of settlements with Rule 10b-5 claims involved “simplified tiered damages” over \$500 million, an all-time high.
- Higher “simplified tiered damages” are typically associated with larger issuer defendants. Consistent with this, the median total assets of issuer defendants in 2022 settled cases was 97% higher than the median total assets for 2021 settled cases.
- Higher “simplified tiered damages” are also generally associated with larger disclosure dollar losses. In 2022, the median DDL grew by more than 160% compared to 2021, reaching an all-time high.

Median “simplified tiered damages” reached an all-time high in 2022.

Figure 4: Median and Average “Simplified Tiered Damages” in Rule 10b-5 Cases 2013–2022

(Dollars in millions)

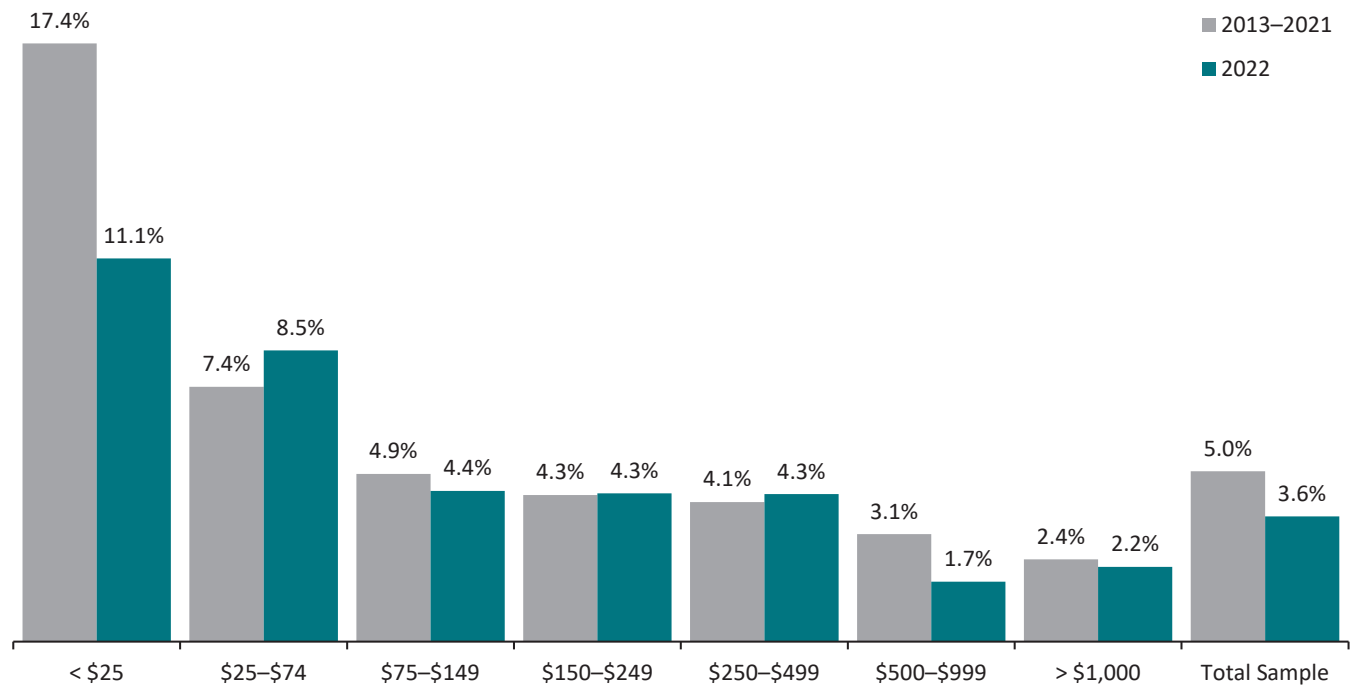


Note: “Simplified tiered damages” are adjusted for inflation based on class period end dates for common stock only; 2022 dollar equivalent figures are presented. Damages are estimated for cases alleging a claim under Rule 10b-5 (whether alone or in addition to other claims).

- Only 4% of settlements in 2022 had “simplified tiered damages” less than \$25 million, the lowest observed to date.
- Cases with smaller “simplified tiered damages” are more likely to be associated with issuers that had been delisted from a major exchange and/or declared bankruptcy prior to settlement. In 2022, the percentage of such issuers for settled cases was at an all-time low (11%).
- The 2022 median and average settlement as a percentage of “simplified tiered damages” of 3.6% and 5.4%, respectively, are all-time lows. (See [Appendix 5](#) for additional information on median and average settlements as a percentage of “simplified tiered damages.”)

Figure 5: Median Settlement as a Percentage of “Simplified Tiered Damages” by Damages Ranges in Rule 10b-5 Cases 2013–2022

(Dollars in millions)



Note: Damages are estimated for cases alleging a claim under Rule 10b-5 (whether alone or in addition to other claims).

'33 Act Claims and "Simplified Statutory Damages"

For Securities Act of 1933 ('33 Act) claim cases—those involving only Section 11 and/or Section 12(a)(2) claims—potential shareholder losses are estimated using a model in which the statutory loss is the difference between the statutory purchase price and the statutory sales price, referred to here as "simplified statutory damages." Only the offered shares are assumed to be eligible for damages.⁸

- In 2022, there were nine settlements for cases with only '33 Act claims, in line with the average from 2017 to 2020 and well below the historically high number of 16 settlements observed in 2021.

- The median settlement as a percentage of simplified statutory damages in 2022 and 2021 were 4.7% and 4.4%, respectively—the lowest levels since 2002. (See [Appendix 6](#) for additional information on median and average settlements as a percentage of "simplified statutory damages.")
- The average settlement amount for cases with only '33 Act claims was \$7.3 million in 2022, compared to \$14.9 million during 2013-2021.

In 2022, the median settlement amount for cases with only '33 Act claims was \$7.0 million, the lowest since 2013.

Figure 6: Settlements by Nature of Claims
2013–2022

(Dollars in millions)

	Number of Settlements	Median Settlement	Median "Simplified Statutory Damages"	Median Settlement as a Percentage of "Simplified Statutory Damages"
Section 11 and/or Section 12(a)(2) Only	82	\$9.2	\$145.2	8.7%

	Number of Settlements	Median Settlement	Median "Simplified Tiered Damages"	Median Settlement as a Percentage of "Simplified Tiered Damages"
Both Rule 10b-5 and Section 11 and/or Section 12(a)(2)	123	\$15.4	\$355.7	6.3%
Rule 10b-5 Only	581	\$9.0	\$250.1	4.5%

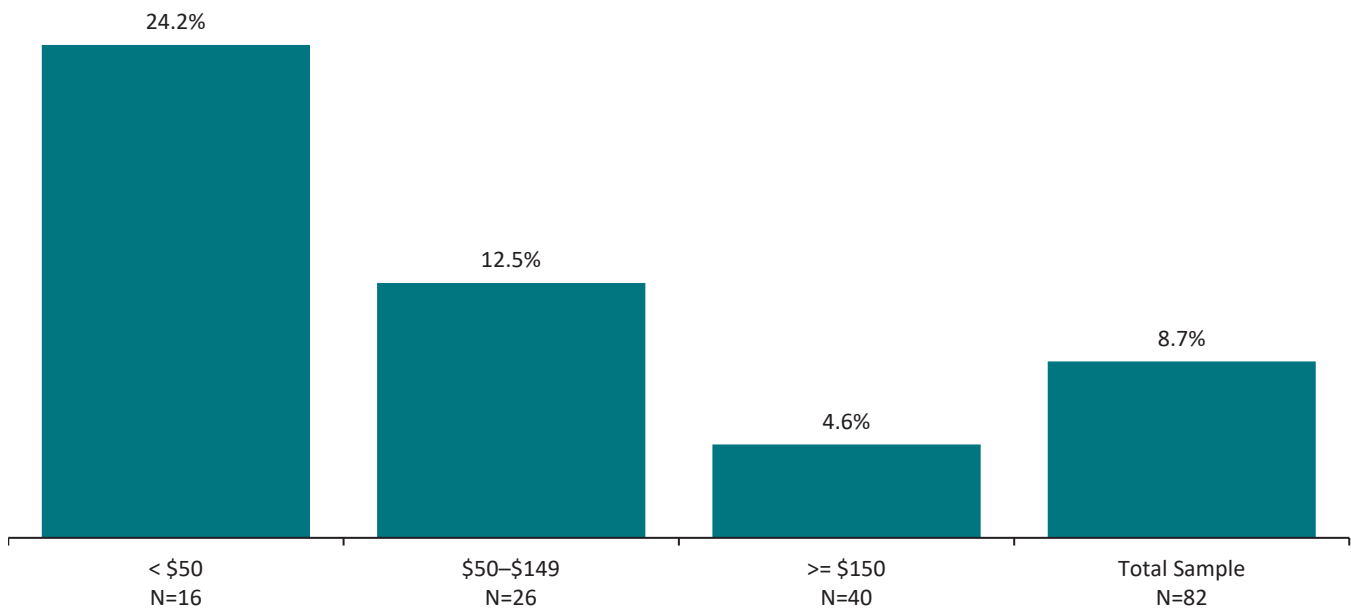
Note: Settlement dollars and damages are adjusted for inflation; 2022 dollar equivalent figures are presented.

- Settlements as a percentage of the simplified proxies for potential shareholder losses used in this report are typically smaller for cases that have larger estimated damages. As with cases with Rule 10b-5 claims, this finding holds for cases with only '33 Act claims.
- In the past decade, over 85% of the settled '33 Act claim cases involved an underwriter (or underwriters) as a named codefendant.
- Over 80% of '33 Act claim cases that settled in 2013–2022 involved an initial public offering (IPO).

Consistent with the lower median settlement amount among '33 Act claim cases, the median “simplified statutory damages” in 2022 declined by 61% from the median in 2021 and was the lowest since 2016.

Figure 7: Median Settlement as a Percentage of “Simplified Statutory Damages” by Damages Ranges in '33 Act Claim Cases 2013–2022

(Dollars in millions)



Jurisdictions of Settlements of '33 Act Claim Cases

	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
State Court	1	0	2	4	5	4	4	7	6	6
Federal Court	7	2	2	6	3	4	5	1	10	3

Note: “N” refers to the number of cases. This analysis excludes cases alleging Rule 10b-5 claims..

Analysis of Settlement Characteristics

GAAP Violations

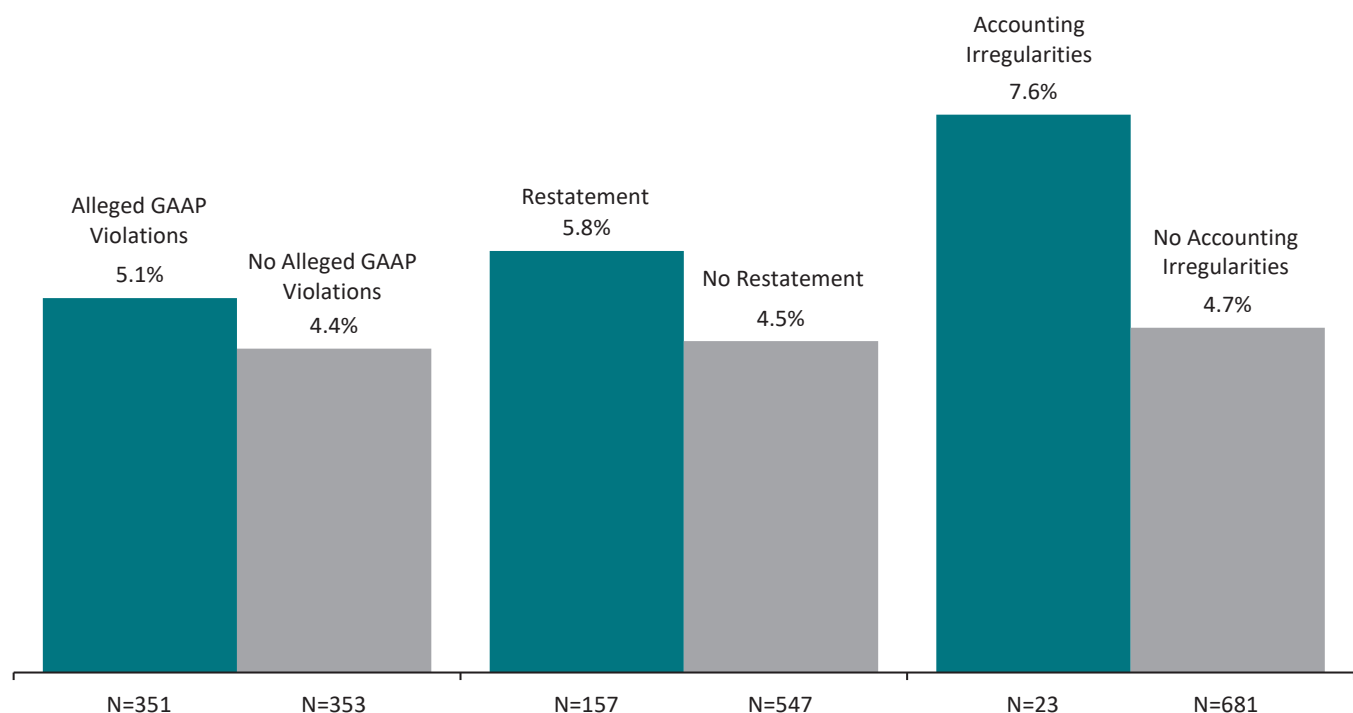
This analysis examines allegations of GAAP violations in settlements of securities class actions involving Rule 10b-5 claims, including two sub-categories of GAAP violations—financial statement restatements and accounting irregularities.⁹ For further details regarding settlements of accounting cases, see Cornerstone Research’s annual report on *Accounting Class Action Filings and Settlements*.¹⁰

- For the first time since 2017, the median settlement amount for cases involving GAAP allegations was larger than that for non-GAAP cases. Notably, in 2022 the median settlement amount for GAAP cases was more than double that of non-GAAP cases.
- As noted in prior years, settlements as a percentage of “simplified tiered damages” for cases involving GAAP allegations are typically higher than for non-GAAP cases. This result has continued despite a relatively low number of cases involving a financial restatement. For example, only 11% of settlements in 2022 involved a restatement of financial statements.

- Auditor codefendants were involved in only 3% of settled cases, consistent with 2021 but substantially lower than the average from 2013 to 2021.
- The infrequency of cases alleging accounting irregularities continued in 2022 at less than 2% of settled cases.

The proportion of settled cases in 2022 with Rule 10b-5 claims alleging GAAP violations remained at a historically low level.

Figure 8: Median Settlement as a Percentage of “Simplified Tiered Damages” and Allegations of GAAP Violations 2013–2022



Note: “N” refers to the number of cases. This analysis is limited to cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

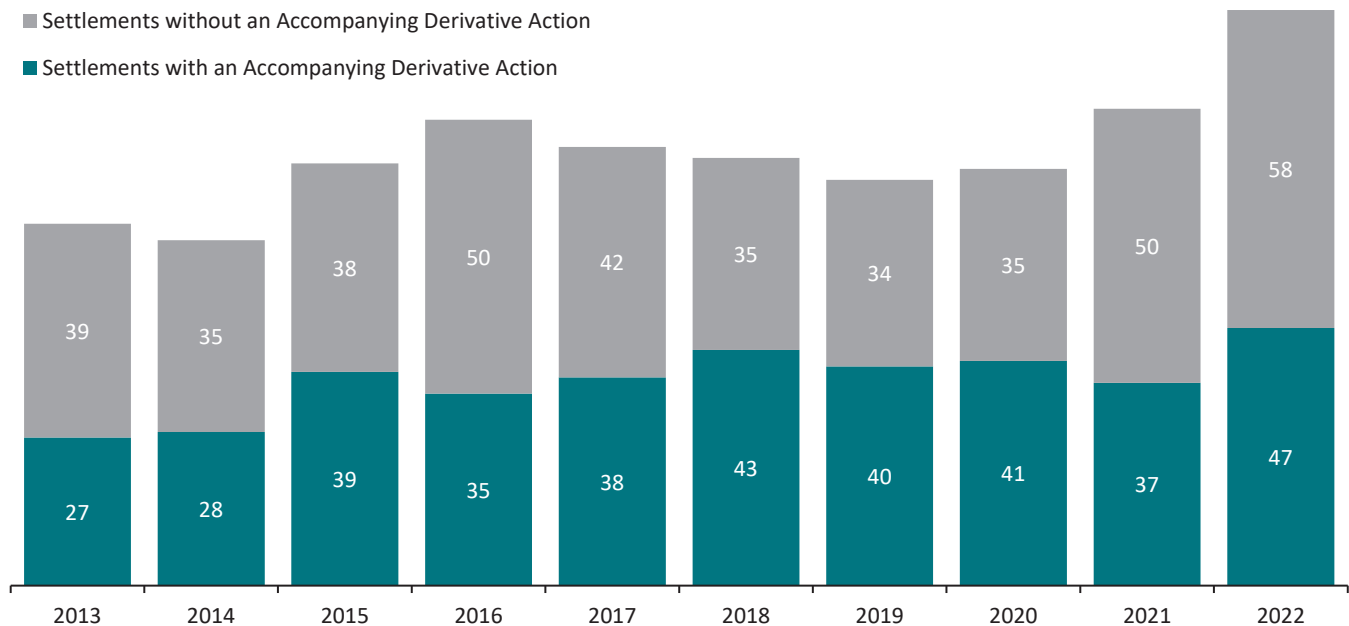
Derivative Actions

- Securities class actions often involve accompanying (or parallel) derivative actions with similar claims, and such cases have historically settled for higher amounts than securities class actions without corresponding derivative matters.¹¹
- In 2022, the median settlement amount for cases with an accompanying derivative action was approximately 28% higher than for cases without (\$14.1 million versus \$11.0 million, respectively).
- For cases settled during 2018–2022, 38% of parallel derivative suits were filed in Delaware. California and New York were the next most common venues for such actions, representing 22% and 15% of such settlements, respectively.

Although the proportion of cases involving accompanying derivative actions in 2022 was higher compared to 2021, it was below the average for 2018–2021.

- It is commonly understood that most parallel derivative suits do not settle for monetary amounts (other than plaintiffs’ attorney fees). However, the likelihood of a monetary settlement among parallel derivative actions is higher when the securities class action settlement is large, as shown in Cornerstone Research’s *Parallel Derivative Action Settlement Outcomes*.¹²

Figure 9: Frequency of Derivative Actions
 2013–2022

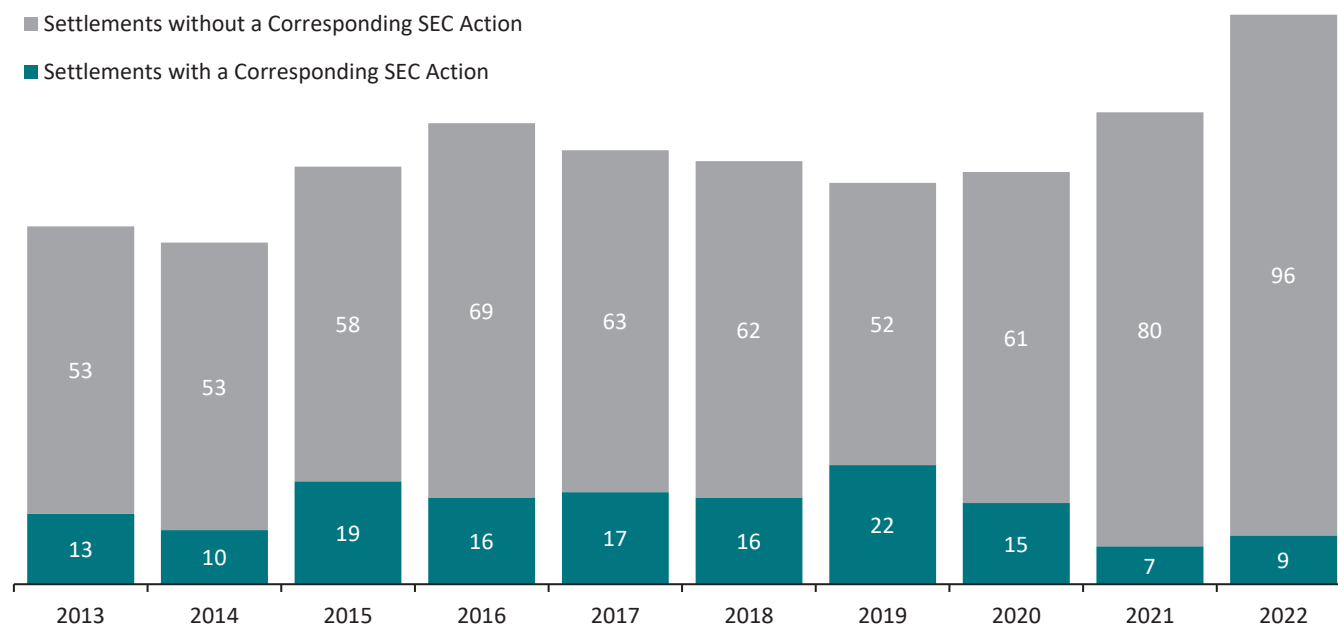


Corresponding SEC Actions

- Historically, cases with an accompanying SEC action have typically been associated with substantially higher settlement amounts.¹³ However, this pattern did not hold in 2022.
- The median settlement amount in 2022 for cases that involved a corresponding SEC action was less than 5% higher than the median for cases without such an action. In contrast, in 2021, the median settlement amount for cases with an accompanying SEC action was more than double that for cases without such an action.
- Both “simplified tiered damages” and DDL were lower in 2022 for cases with a corresponding SEC action when compared to those without, at 72% and 83% lower, respectively.
- Settled cases in 2022 with a corresponding SEC action were nearly 10% quicker to reach settlement, on average, compared to cases without such an action. In contrast, in 2021, cases with corresponding SEC actions took over 20% longer to reach a settlement than cases without corresponding SEC actions.
- The number of settled cases in 2022 involving either a corresponding SEC action or criminal charge remained below 13%, compared to an average of 24% for the years 2013–2021.

Settled cases involving SEC actions in 2022 were considerably smaller than cases without accompanying SEC actions.

Figure 10: Frequency of SEC Actions
2013–2022



Institutional Investors

As discussed in prior reports, increasing institutional participation as lead plaintiffs in securities litigation was a focus of the Reform Act.¹⁴ Indeed, in years following passage of the Reform Act, institutional investor involvement as lead plaintiffs did increase, particularly in larger cases, that is, cases with higher “simplified tiered damages.”

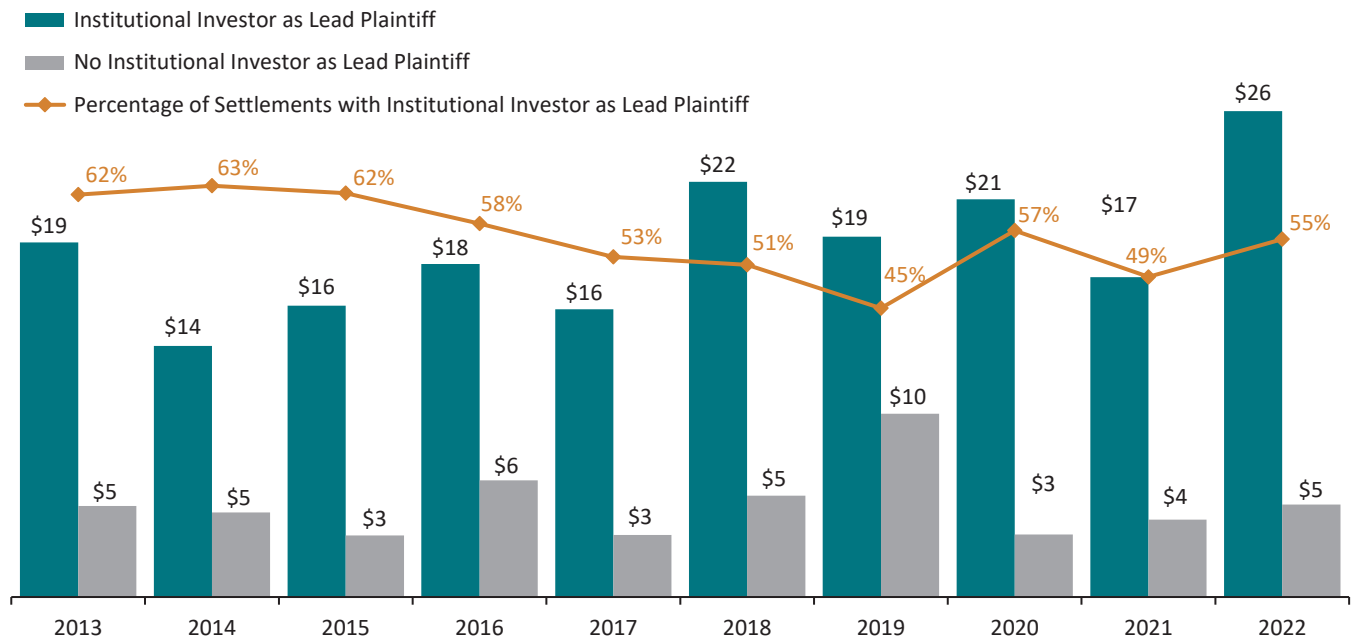
- In 2022, for cases involving an institutional investor as lead plaintiff, median “simplified tiered damages” and median total assets were five times and eight times higher, respectively, than the median values for cases without an institutional investor as a lead plaintiff.
- Since passage of the Reform Act, public pension plans have been the most frequent type of institutional lead plaintiff.

- In 2022, a public pension plan served as lead plaintiff in two-thirds of cases with an institutional lead plaintiff. Moreover, in six of the seven mega settlement cases in 2022 involving an institutional lead plaintiff, the institutional investor was a public pension plan.
- Institutional participation as lead plaintiff continues to be associated with particular plaintiff counsel. For example, an institutional investor served as a lead plaintiff in 2022 in over 85% of settled cases in which Robbins Geller Rudman & Dowd LLP and/or Bernstein Litowitz Berger & Grossmann LLP served as lead plaintiff counsel. In contrast, institutional investors served as lead plaintiffs in 21% of cases in which The Rosen Law Firm, Pomerantz LLP, or Glancy Prongay & Murray LLP served as lead plaintiff counsel.

Of the eight mega settlement cases in 2022, seven included an institutional lead plaintiff.

Figure 11: Median Settlement Amounts and Institutional Investors 2013–2022

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2022 dollar equivalent figures are presented.

Time to Settlement and Case Complexity

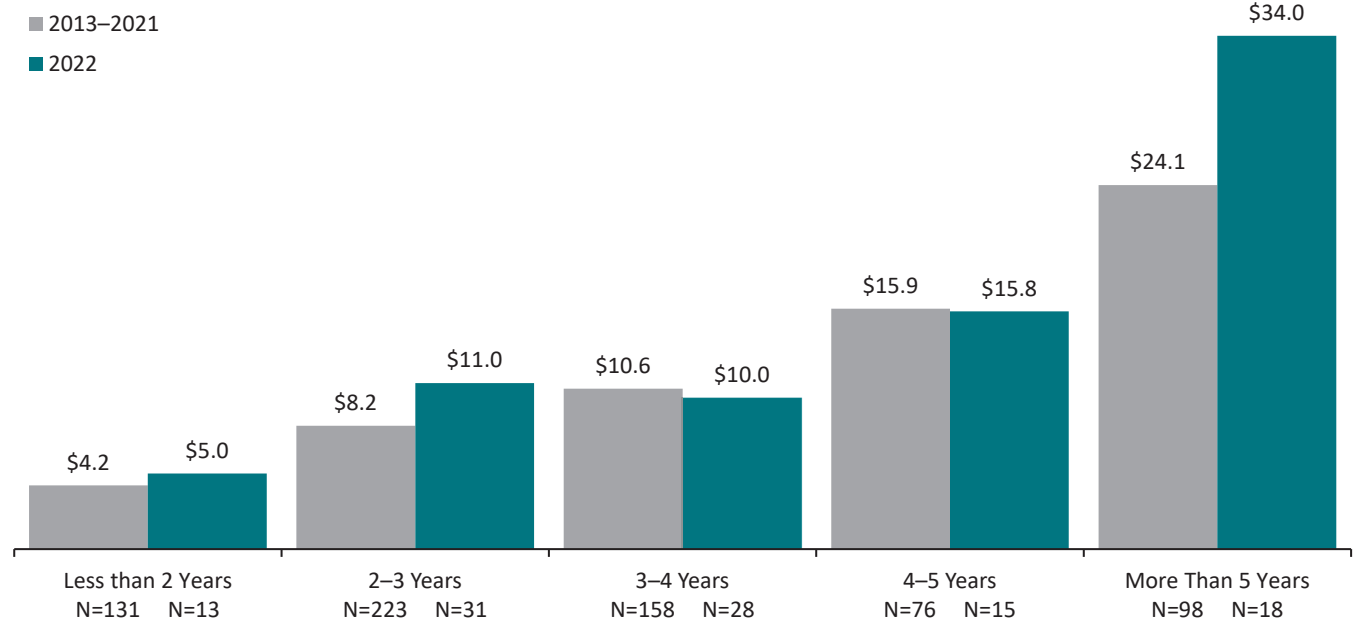
- Overall, the median time from filing to settlement hearing date in 2022 was longer—3.2 years for 2022 settlements, compared to 2.9 years for 2013–2021 settlements.
- Cases involving an institutional lead plaintiff continued to take longer to settle. In particular, settlements in 2022 with institutional lead plaintiffs took 33% longer to settle than cases not involving an institutional lead plaintiff.

Only 42% of cases in 2022 reached a settlement hearing date within three years of filing, the lowest percentage in the prior nine years.

- Larger cases (as measured by higher “simplified tiered damages”) often take longer to resolve. Consistent with this, in 2022, the median time to settlement for cases that settled for at least \$100 million was over 5.5 years—an all-time high for such cases.

Figure 12: Median Settlement by Duration from Filing Date to Settlement Hearing Date 2013–2022

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2022 dollar equivalent figures are presented. “N” refers to the number of cases.

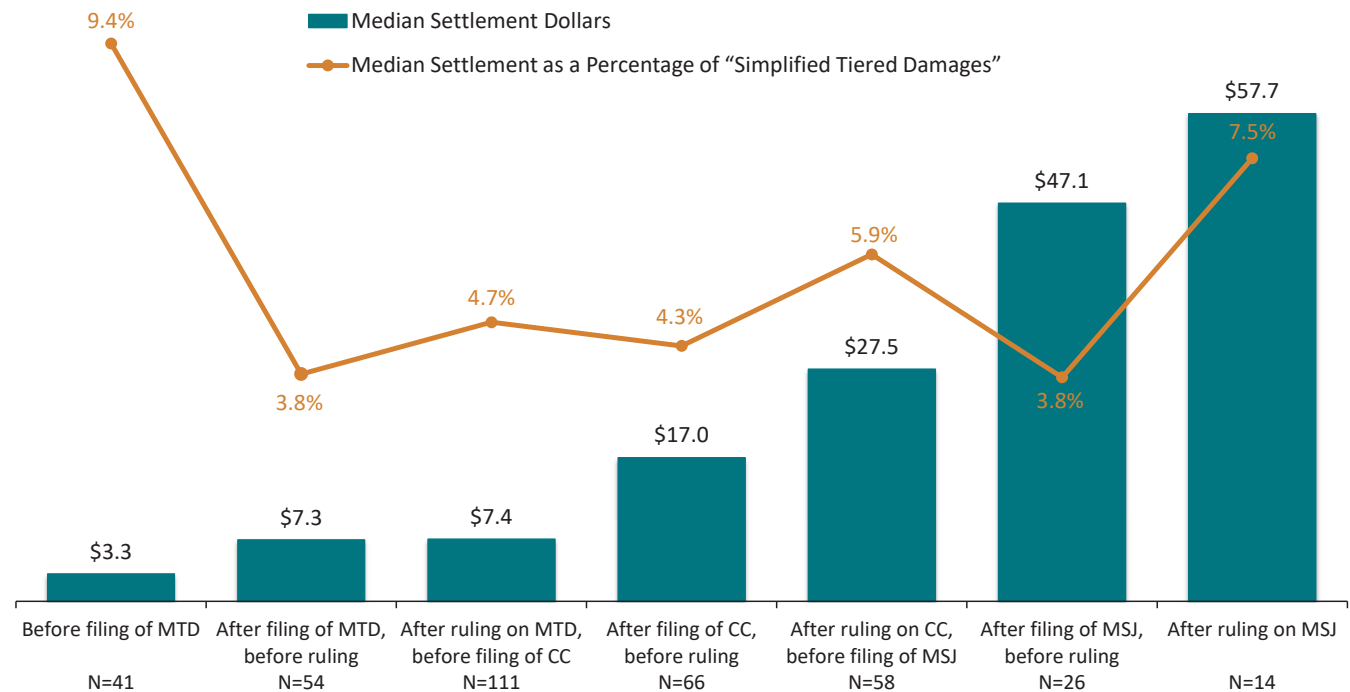
Case Stage at the Time of Settlement

In collaboration with Stanford Securities Litigation Analytics (SSLA),¹⁵ this report analyzes settlements in relation to the stage in the litigation process at the time of settlement.

- Cases settling at later stages continue to be larger in terms of total assets and “simplified tiered damages.”
- In particular, the median issuer defendant total assets for 2022 cases that settled after the ruling on a motion for class certification was over four times the median for cases that settled prior to such a motion being ruled on.
- In 2022, cases where a motion for class certification was filed were nearly three times as likely to have either Robbins Geller Rudman & Dowd LLP and/or Bernstein Litowitz Berger & Grossmann LLP as lead plaintiff counsel than The Rosen Law Firm, Pomerantz LLP, or Glancy Prongay & Murray LLP.
- Cases settling at later stages often included an institutional investor lead plaintiff. For example, in 2022, an institutional investor served as lead plaintiff 69% of the time for cases that settled after the filing of a motion for class certification (slightly higher than the percentage over the prior four years), compared to 44% for cases that settled prior to the filing of a motion for class certification (38% in the prior four years)
- Overall, compared to settlements in 2021, a larger proportion of cases in 2022 did not reach settlement until after a motion for class certification was filed. In addition, 14% of 2022 settled cases were resolved after a summary judgment motion, compared to less than 9% for 2018–2021 settlements.

Figure 13: Median Settlement Dollars and Resolution Stage at Time of Settlement 2018–2022

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2022 dollar equivalent figures are presented. “N” refers to the number of cases. MTD refers to “motion to dismiss,” CC refers to “class certification,” and MSJ refers to “motion for summary judgment.” This analysis is limited to cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

Cornerstone Research's Settlement Analysis

This research applies regression analysis to examine the relations between settlement outcomes and certain securities case characteristics. Regression analysis is employed to better understand the factors that are important for estimating what cases might settle for, given the characteristics of a particular securities class action.

Determinants of Settlement Outcomes

Based on the research sample of cases that settled from January 2006 through December 2022, important determinants of settlement amounts include the following:

- “Simplified tiered damages”
- Maximum Dollar Loss (MDL)—the dollar-value change in the defendant firm’s market capitalization from its class period peak to the trading day immediately following the end of the class period.
- Most recently reported total assets of the issuer defendant firm
- Number of entries on the lead case docket
- Whether there were accounting allegations
- Whether there was a corresponding SEC action against the issuer, other defendants, or related parties
- Whether there were criminal charges against the issuer, other defendants, or related parties with similar allegations to those included in the underlying class action complaint
- Whether there was an accompanying derivative action

- Whether Section 11 and/or Section 12(a) claims were alleged in addition to Rule 10b-5 claims
- Whether the issuer defendant was distressed
- Whether an institution was a lead plaintiff
- Whether securities other than common stock/ADR/ADS, were included in the alleged class

Cornerstone Research analyses show that settlements were higher when “simplified tiered damages,” MDL, issuer defendant asset size, or the number of docket entries was larger, or when Section 11 and/or Section 12(a) claims were alleged in addition to Rule 10b-5 claims.

Settlements were also higher in cases involving accounting allegations, a corresponding SEC action, criminal charges, an accompanying derivative action, an institution involved as lead plaintiff, or securities in addition to common stock included in the alleged class.

Settlements were lower if the issuer was distressed.

More than 75% of the variation in settlement amounts can be explained by the factors discussed above.

Research Sample

- The database compiled for this report is limited to cases alleging Rule 10b-5, Section 11, and/or Section 12(a)(2) claims brought by purchasers of a corporation's common stock. The sample contains only cases alleging fraudulent inflation in the price of a corporation's common stock.
- Cases with alleged classes of only bondholders, preferred stockholders, etc., cases alleging fraudulent depression in price, and mergers and acquisitions cases are excluded. These criteria are imposed to ensure data availability and to provide a relatively homogeneous set of cases in terms of the nature of the allegations.
- The current sample includes 2,116 securities class actions filed after passage of the Reform Act (1995) and settled from 1996 through 2022. These settlements are identified based on a review of case activity collected by Securities Class Action Services LLC (SCAS).¹⁶
- The designated settlement year, for purposes of this report, corresponds to the year in which the hearing to approve the settlement was held.¹⁷ Cases involving multiple settlements are reflected in the year of the most recent partial settlement, provided certain conditions are met.¹⁸

Data Sources

In addition to SCAS, data sources include Dow Jones Factiva, Bloomberg, the Center for Research in Security Prices (CRSP) at University of Chicago Booth School of Business, Standard & Poor's Compustat, Refinitiv Eikon, court filings and dockets, SEC registrant filings, SEC litigation releases and administrative proceedings, LexisNexis, Stanford Securities Litigation Analytics (SSLA), Securities Class Action Clearinghouse (SCAC), and public press.

Endnotes

- ¹ Reported dollar figures and corresponding comparisons are adjusted for inflation; 2022 dollar equivalent figures are analyzed.
- ² “Simplified tiered damages” are calculated for cases that settled in 2006 or later, following the U.S. Supreme Court’s 2005 landmark decision in *Dura Pharmaceuticals Inc. v. Broudo*, 544 U.S. 336. “Simplified tiered damages” is based on the stock-price drops on alleged corrective disclosure dates as described in the settlement plan of allocation.
- ³ Disclosure Dollar Loss or DDL is the dollar-value change in the defendant firm’s market capitalization between the end of the class period and the trading day immediately following the end of the class period.
- ⁴ Accounting irregularities reflect those cases in which the defendant has reported the occurrence of accounting irregularities (intentional misstatements or omissions) in its financial statements.
- ⁵ *Securities Class Action Filings—2022 Year in Review*, Cornerstone Research (2023).
- ⁶ The “simplified tiered damages” approach used for purposes of this settlement research does not examine the mix of information associated with the specific dates listed in the plan of allocation, but simply applies the stock price movements on those dates to an estimate of the “true value” of the stock during the alleged class period (or “value line”). This proxy for damages utilizes an estimate of the number of shares damaged based on reported trading volume and the number of shares outstanding. Specifically, reported trading volume is adjusted using volume reduction assumptions based on the exchange on which the issuer defendant’s common stock is listed. No adjustments are made to the underlying float for institutional holdings, insider trades, or short-selling activity during the alleged class period. Because of these and other simplifying assumptions, the damages measures used in settlement outcome modeling may differ substantially from damages estimates developed in conjunction with case-specific economic analysis.
- ⁷ Laarni T. Bulan, Ellen M. Ryan, and Laura E. Simmons, *Estimating Damages in Settlement Outcome Modeling*, Cornerstone Research (2017).
- ⁸ The statutory purchase price is the lesser of the security offering price or the security purchase price. Prior to the first complaint filing date, the statutory sales price is the price at which the security was sold. After the first complaint filing date, the statutory sales price is the greater of the security sales price or the security price on the first complaint filing date. Similar to “simplified tiered damages,” the estimation of “simplified statutory damages” makes no adjustments to the underlying float for institutional holdings, insider trades, or short-selling activity.
- ⁹ The two sub-categories of accounting issues analyzed in Figure 8 of this report are (1) restatements—cases involving a restatement (or announcement of a restatement) of financial statements; and (2) accounting irregularities.
- ¹⁰ *Accounting Class Action Filings and Settlements—2022 Review and Analysis*, Cornerstone Research (2023), forthcoming in spring 2023.
- ¹¹ To be considered an accompanying or parallel derivative action, the derivative action must have underlying allegations that are similar or related to the underlying allegations of the securities class action and either be active or settling at the same time as the securities class action.
- ¹² *Parallel Derivative Action Settlement Outcomes*, Cornerstone Research (2022).
- ¹³ As noted previously, it could be that the merits in such cases are stronger, or simply that the presence of a corresponding SEC action provides plaintiffs with increased leverage when negotiating a settlement. For purposes of this research, an SEC action is evidenced by the presence of a litigation release or an administrative proceeding posted on www.sec.gov involving the issuer defendant or other named defendants with allegations similar to those in the underlying class action complaint.
- ¹⁴ See, for example, *Securities Class Action Settlements—2006 Review and Analysis*, Cornerstone Research (2007) and Michael A. Perino, “Have Institutional Fiduciaries Improved Securities Class Actions? A Review of the Empirical Literature on the PSLRA’s Lead Plaintiff Provision,” St. John’s Legal Studies Research Paper No. 12-0021 (2013).
- ¹⁵ Stanford Securities Litigation Analytics (SSLA) tracks and collects data on private shareholder securities litigation and public enforcements brought by the SEC and the U.S. Department of Justice. The SSLA dataset includes all traditional class actions, SEC actions, and DOJ criminal actions filed since 2000. Available on a subscription basis at <https://sla.law.stanford.edu/>.
- ¹⁶ Available on a subscription basis. For further details see <https://www.issgovernance.com/securities-class-action-services/>.
- ¹⁷ Movements of partial settlements between years can cause differences in amounts reported for prior years from those presented in earlier reports.
- ¹⁸ This categorization is based on the timing of the settlement hearing date. If a new partial settlement equals or exceeds 50% of the then-current settlement fund amount, the entirety of the settlement amount is re-categorized to reflect the settlement hearing date of the most recent partial settlement. If a subsequent partial settlement is less than 50% of the then-current total, the partial settlement is added to the total settlement amount and the settlement hearing date is left unchanged.

Appendices

Appendix 1: Settlement Percentiles

(Dollars in millions)

Year	Average	10th	25th	Median	75th	90th
2013	\$90.8	\$2.4	\$3.8	\$8.2	\$27.9	\$103.6
2014	\$22.5	\$2.1	\$3.5	\$7.4	\$16.3	\$61.8
2015	\$48.6	\$1.6	\$2.7	\$8.0	\$20.1	\$116.1
2016	\$86.1	\$2.3	\$5.1	\$10.4	\$40.2	\$178.0
2017	\$22.0	\$1.8	\$3.1	\$6.3	\$18.2	\$42.3
2018	\$75.6	\$1.8	\$4.2	\$13.1	\$28.8	\$57.3
2019	\$32.3	\$1.7	\$6.4	\$12.6	\$22.9	\$57.2
2020	\$62.3	\$1.6	\$3.6	\$11.1	\$22.9	\$60.3
2021	\$22.2	\$1.9	\$3.4	\$8.9	\$19.3	\$63.3
2022	\$36.2	\$2.0	\$5.0	\$13.0	\$33.0	\$71.8

Note: Settlement dollars are adjusted for inflation; 2022 dollar equivalent figures are presented.

Appendix 2: Settlements by Select Industry Sectors

2013–2022

(Dollars in millions)

Industry	Number of Settlements	Median Settlement	Median “Simplified Tiered Damages”	Median Settlement as a Percentage of “Simplified Tiered Damages”
Financial	92	\$14.8	\$293.3	5.0%
Healthcare	20	\$14.2	\$189.4	6.4%
Pharmaceuticals	119	\$7.6	\$237.6	3.8%
Retail	50	\$13.2	\$294.2	4.8%
Technology	103	\$9.3	\$315.9	4.6%
Telecommunication	26	\$10.5	\$311.0	4.4%

Note: Settlement dollars and “simplified tiered damages” are adjusted for inflation; 2022 dollar equivalent figures are presented. “Simplified tiered damages” are calculated only for cases involving Rule 10b-5 claims (whether alone or in addition to other claims).

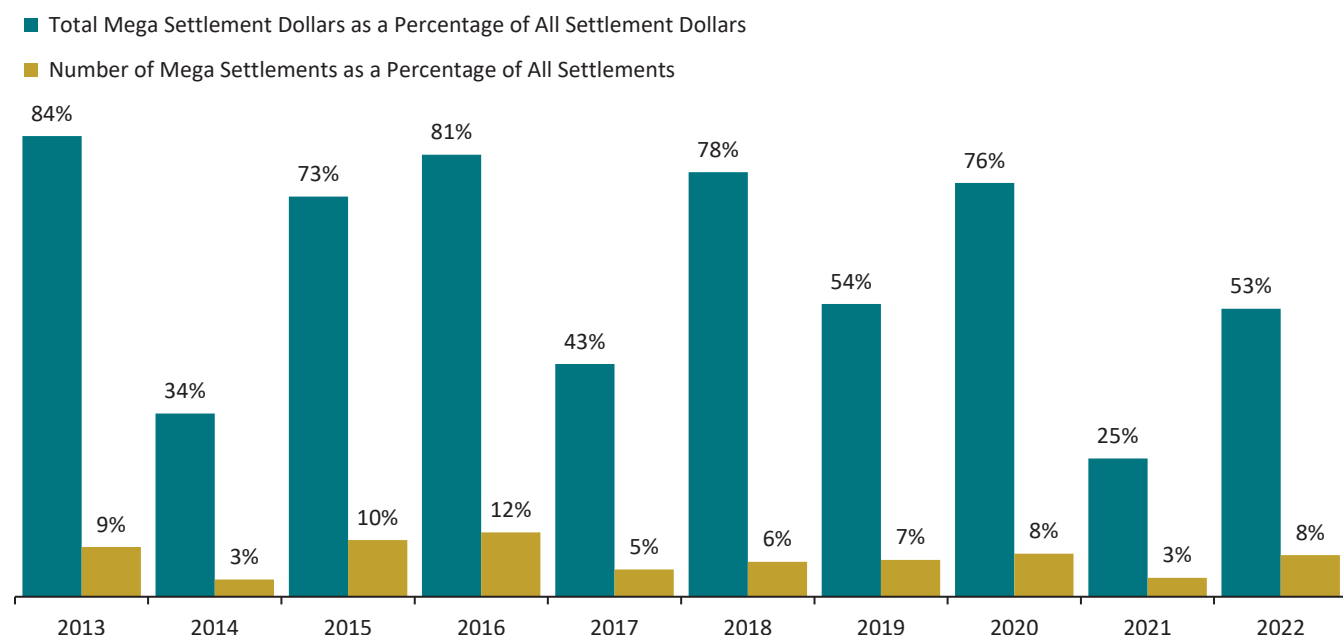
Appendix 3: Settlements by Federal Circuit Court 2013–2022

(Dollars in millions)

Circuit	Number of Settlements	Median Settlement	Median Settlement as a Percentage of “Simplified Tiered Damages”
First	21	\$12.4	3.0%
Second	202	\$9.0	5.0%
Third	81	\$7.5	4.9%
Fourth	26	\$22.9	3.8%
Fifth	38	\$10.7	4.9%
Sixth	32	\$13.5	7.4%
Seventh	37	\$15.5	3.6%
Eighth	14	\$46.4	5.1%
Ninth	191	\$7.6	4.6%
Tenth	17	\$10.2	5.8%
Eleventh	37	\$11.9	4.9%
DC	5	\$33.7	2.4%

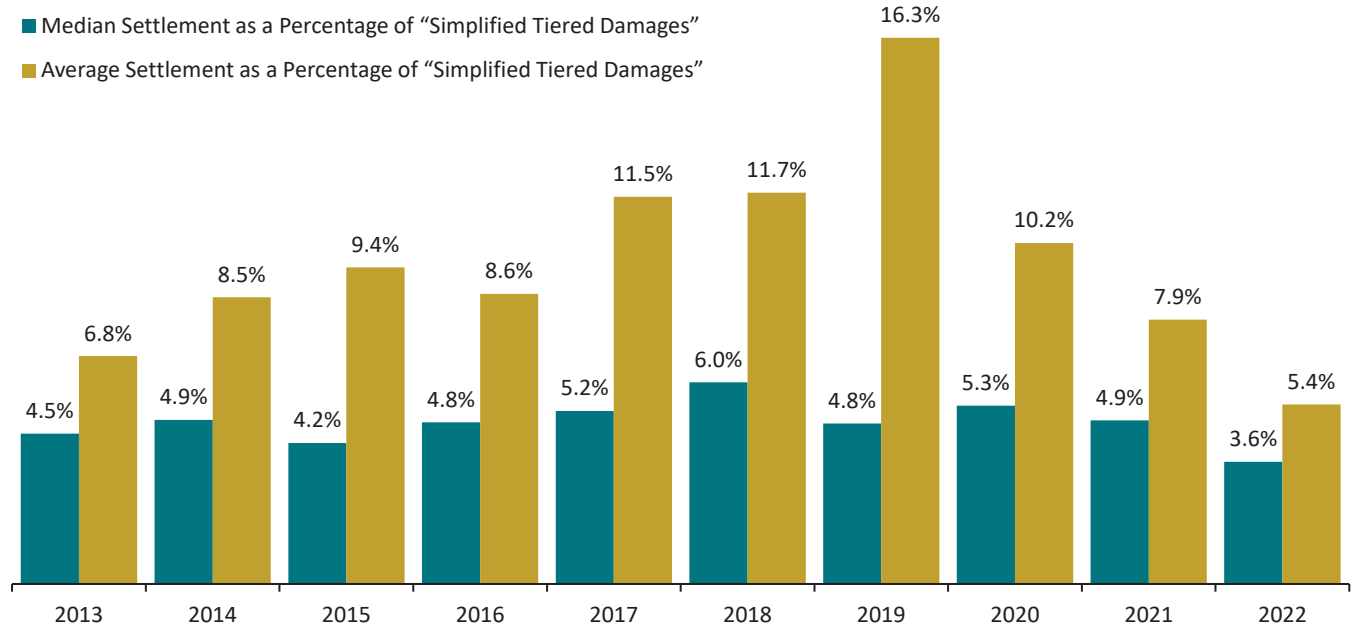
Note: Settlement dollars are adjusted for inflation; 2022 dollar equivalent figures are presented. Settlements as a percentage of “simplified tiered damages” are calculated only for cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

Appendix 4: Mega Settlements 2013–2022



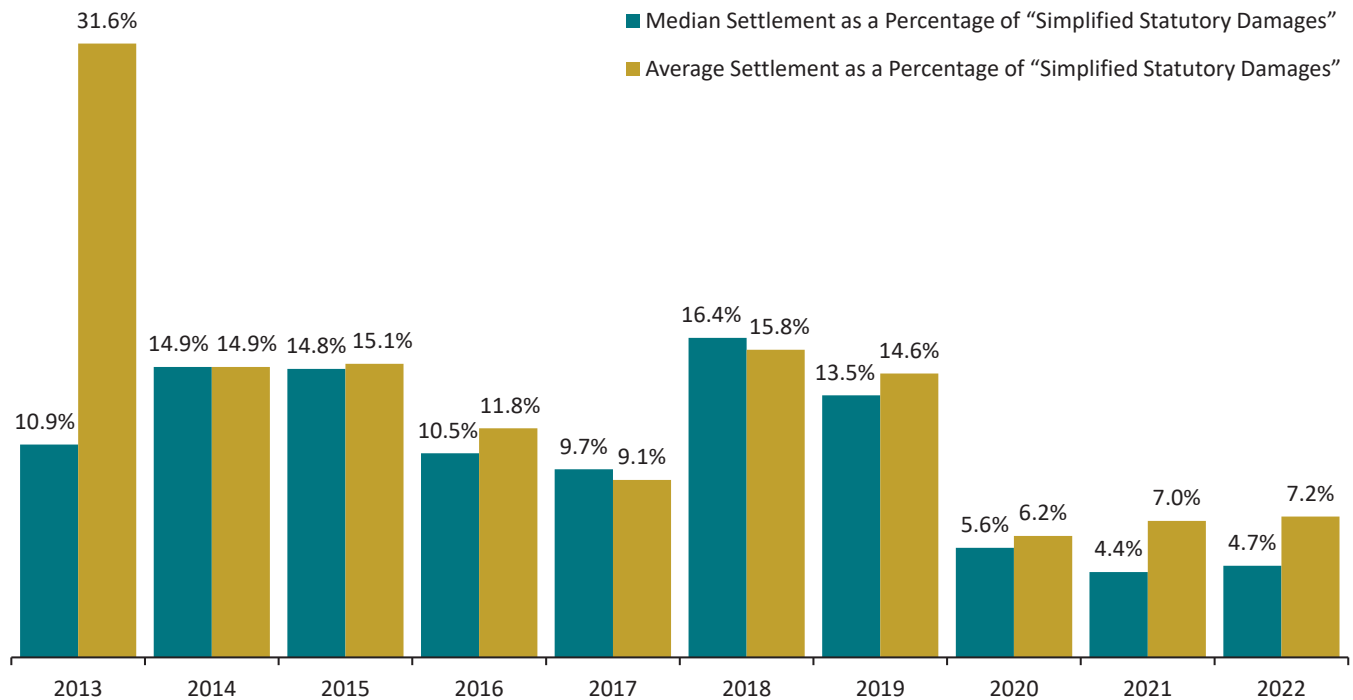
Note: Mega settlements are defined as total settlement funds equal to or greater than \$100 million.

Appendix 5: Median and Average Settlements as a Percentage of “Simplified Tiered Damages”
 2013–2022



Note: “Simplified tiered damages” are calculated only for cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

Appendix 6: Median and Average Settlements as a Percentage of “Simplified Statutory Damages”
 2013–2022

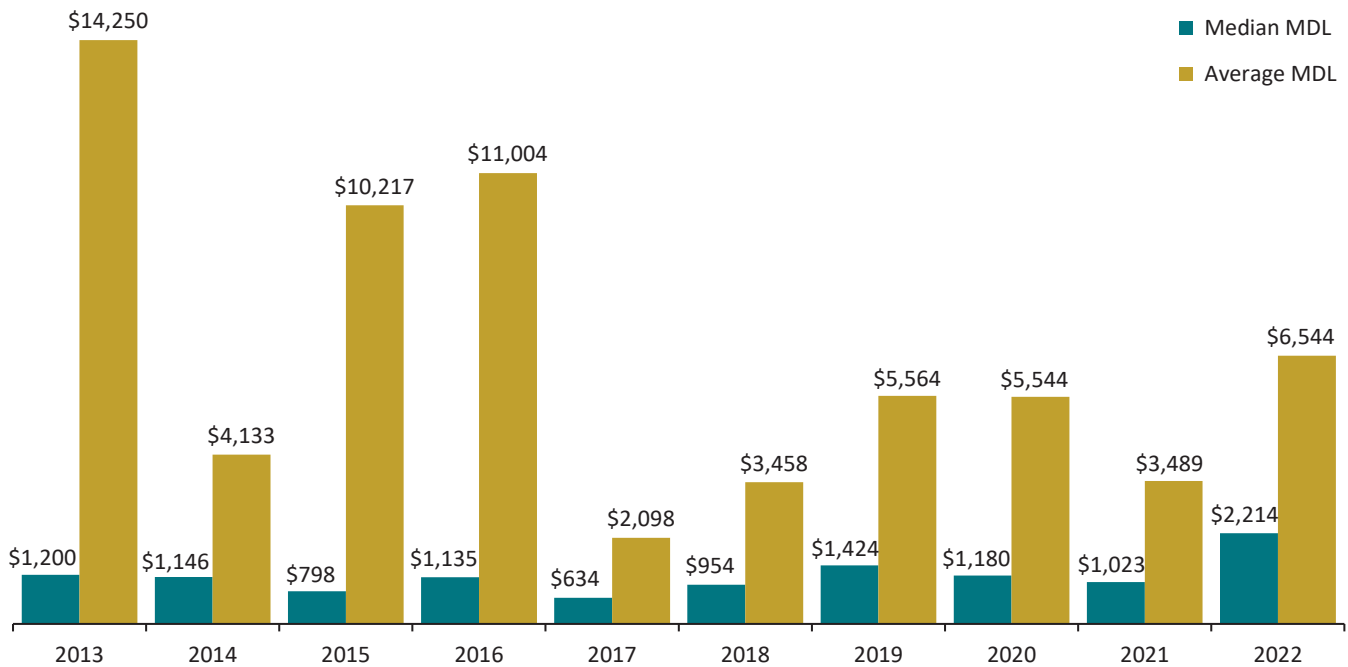


Note: “Simplified statutory damages” are calculated only for cases alleging Section 11 (‘33 Act) claims and no Rule 10b-5 claims.

Appendix 7: Median and Average Maximum Dollar Loss (MDL)

2013–2022

(Dollars in millions)

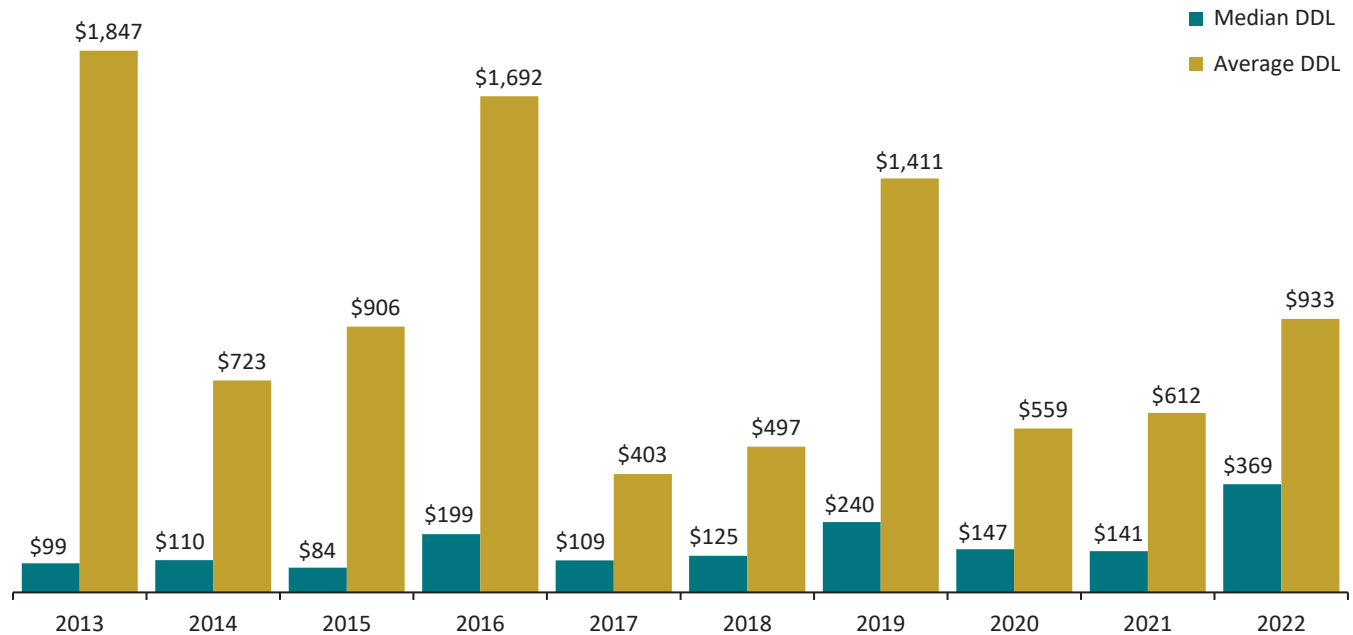


Note: MDL is adjusted for inflation based on class period end dates; 2022 dollar equivalents are presented. MDL is the dollar value change in the defendant firm's market capitalization from the trading day with the highest market capitalization during the class period to the trading day immediately following the end of the class period. This analysis excludes cases alleging '33 Act claims only.

Appendix 8: Median and Average Disclosure Dollar Loss (DDL)

2013–2022

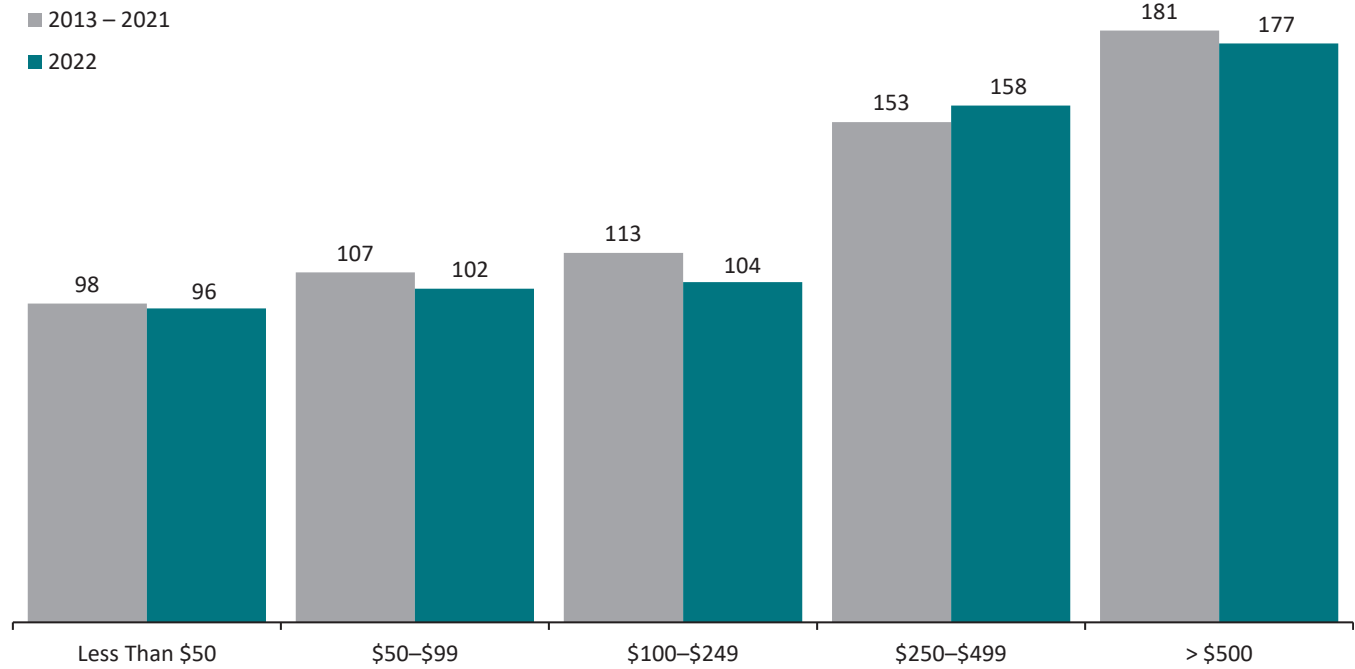
(Dollars in millions)



Note: DDL is adjusted for inflation based on class period end dates; 2022 dollar equivalents are presented. DDL is the dollar-value change in the defendant firm's market capitalization between the end of the class period and the trading day immediately following the end of the class period. This analysis excludes cases alleging '33 Act claims only.

Appendix 9: Median Docket Entries by “Simplified Tiered Damages” Range
 2013–2022

(Dollars in millions)



Note: “Simplified tiered damages” are calculated only for cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

About the Authors

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Laarni Bulan is a principal in Cornerstone Research's Boston office, where she specializes in finance. Her work has focused on securities and other complex litigation addressing class certification, damages, and loss causation issues, firm valuation, and corporate governance, executive compensation, and risk management issues. She has also consulted on cases related to insider trading, market manipulation and trading behavior, financial institutions and the credit crisis, derivatives, foreign exchange, and securities clearing and settlement.

Dr. Bulan has published notable academic articles in peer-reviewed journals. Her research covers topics in dividend policy, capital structure, executive compensation, corporate governance, and real options. Prior to joining Cornerstone Research, Dr. Bulan had a joint appointment at Brandeis University as an assistant professor of finance in its International Business School and in the economics department.

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Laura Simmons is a senior advisor with Cornerstone Research. She has more than 25 years of experience in economic consulting. Dr. Simmons has focused on damages and liability issues in securities class actions, as well as litigation involving the Employee Retirement Income Security Act (ERISA). She has also managed cases involving financial accounting, valuation, and corporate governance issues. She has served as a testifying expert in litigation involving accounting analyses, securities case damages, ERISA matters, and research on securities lawsuits.

Dr. Simmons's research on pre- and post-Reform Act securities litigation settlements has been published in a number of reports and is frequently cited in the public press and legal journals. She has spoken at various conferences and appeared as a guest on CNBC addressing the topic of securities case settlements. She has also published in academic journals, including research focusing on the intersection of accounting and litigation. Dr. Simmons was previously an accounting faculty member at the Mason School of Business at the College of William & Mary. From 1986 to 1991, she was an accountant with Price Waterhouse.

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EXHIBIT 10

Hourly Billing Rates Submitted by Lead Counsel in Connection with Recent Securities Class Action Settlements						
Case Name	Law Firm	Partner Hourly Rates	Of Counsel / Counsel Hourly Rates	Associate Hourly Rates	Analyst Hourly Rates [1]	Paralegal Hourly Rates
<i>City of Sunrise Firefighters' Pension Fund v. Oracle Corp.</i> , 18 Civ. 4844 (N.D. Cal. Dec. 8, 2022) (ECF No. 141-4)	Bernstein Litowitz Berger & Grossmann LLP	\$850-\$1,100		\$425-\$575	\$325-\$600	\$335-\$375
<i>City of Atlanta Police Officers' Pension Plan v. Celsius Holdings Inc.</i> , 22 Civ. 80418 (S.D. Fla. Jan. 10, 2024) (ECF No. 122-2)	Grant & Eisenhofer P.A.	\$1,100-\$1,500		\$500-\$650		\$365-\$375
<i>Nayani v. LifeStance Health Group, Inc.</i> , 22 Civ. 6833 (S.D.N.Y. Dec. 20, 2023) (ECF No. 92-3)	Robbins Geller Rudman & Dowd LLP	\$760-\$1,375	\$960-\$1,200	\$175-\$440	\$315-\$355	\$350-\$395
<i>Darish v. Northern Dynasty Minerals Ltd.</i> , 20 Civ. 5917 (E.D.N.Y. Nov. 9, 2023) (ECF No. 72-2)	Pomerantz LLP	\$875-\$1,250		\$500-\$550		\$110-\$365
<i>In re 3D Systems Securities Litig.</i> , 21 Civ. 01920 (E.D.N.Y. Oct. 17, 2023) (ECF No. 70)	The Rosen Law Firm	\$875-\$1,075	\$800	\$550-\$625		
<i>Oregon Laborers Employers Pension Trust Fund v. Maxar Technologies</i> , 19 Civ. 0124 (D. Colo. Oct. 2, 2023) (ECF No. 201-1)	Robbins Geller Rudman & Dowd LLP	\$760-\$1,250	\$960-\$1,080	\$465-\$535	\$315-\$450	\$275-\$395
<i>Solomon v. Sprint Corp.</i> , 19 Civ. 5272 (S.D.N.Y. July 14, 2023) (ECF No. 95-2)	Pomerantz LLP	\$870-\$1,250		\$425-\$650		\$120-\$365
<i>In re Pareteum Sec. Litig.</i> , 19 Civ. 9767 (S.D.N.Y. March 24, 2023) (ECF No. 283)	Kahn Swick & Foti, LLC	\$895-\$1,200	\$725-\$850	\$475-\$725		
<i>In re Lyft, Inc. Securities Litig.</i> , 19 Civ. 2690 (N.D. Cal. Feb. 13, 2023) (ECF No. 314-9)	Block & Leviton LLP	\$900-\$1,200		\$375-\$605		\$250-\$300
<i>Vrakas v. U.S. Steel Corp.</i> , 17 Civ. 0579 (W.D. Penn. Feb. 6, 2023) (ECF No. 346-7)	Levi & Korsinsky LLP	\$765-\$1,050	\$425-\$850	\$425-\$850		\$325
<i>Tollen v. Geron Corp.</i> , 20 Civ. 0547 (N.D. Cal. Feb. 2, 2023) (ECF No. 262-18)	Kaplan Fox & Kilsheimer LLP	\$955-\$1,300	\$250-\$1000	\$485-\$815	\$380	\$225-\$380
<i>Hayden v. Portola Pharmaceuticals, Inc.</i> , 20 Civ. 0367 (N.D. Cal. Jan. 26, 2023) (ECF No. 248-1)	Berman Tobacco	\$900-\$1,065	\$830-\$890	\$400-\$585	\$585-\$595	\$280-\$410
<i>In re Peabody Energy Corp. Sec. Litig.</i> , 20 Civ. 8024 (S.D.N.Y. Jan. 3, 2023) (ECF No. 84-3)	Labaton Sucharow LLP	\$875-\$1,300	\$625-\$850	\$450-\$575	\$165-\$575	\$365-\$390
<i>Azar v. Grubhub Inc.</i> , 19 Civ. 7665 (N.D. Ill. Dec. 8, 2022) (ECF No. 111-2)	Robbins Geller Rudman & Dowd LLP	\$675-\$1,350	\$955	\$375-\$650	\$290-\$430	\$350-\$375
<i>In re: Changyou.com Ltd. Sec. Litig.</i> , 21 Civ. 7858 (S.D.N.Y. Dec. 22, 2022) (ECF No. 63-4)	Labaton Sucharow LLP	\$875-\$1,150	\$600-\$850	\$450-\$475	\$355-\$575	\$375-\$390
<i>Azar v. Yelp, Inc.</i> , 18 Civ. 0400 (N.D. Cal. Dec. 15, 2022) (ECF No. 204-3)	Glancy Prongay & Murray	\$850-\$1,075	\$525-\$795	\$650	\$350	\$325
<i>In re Vaxart, Inc. Sec. Litig.</i> , 20 Civ. 5949 (N.D. Cal. Dec. 8, 2022) (ECF No. 256-2)	Hagens Berman Sobol Shapiro LLP	\$675-\$1,200		\$500-\$550	\$300	\$300-\$350
<i>Rodriguez v. CPI Aerostructures, Inc.</i> , 20 Civ. 0982 (E.D.N.Y. Aug. 5, 2022) (ECF No. 64-5)	Robbins Geller Rudman & Dowd LLP	\$675-\$1,350	\$925-\$1,090	\$630	\$290-\$430	\$350-\$375

1. Different types of analysts include Research Analyst, Financial Analysts, Senior Portfolio Analyst., and Investigators. Analysts are categorized as professional support staff. This categories excludes non-paralegal litigation support such as document clerks and client relations staff.

Hourly Billing Rates Submitted by Defense Side Law Firms as Debtors' Counsel in Connection with Recent Bankruptcy Cases					
Case Name	Law Firm	Partner Hourly Rates	Of Counsel / Counsel Hourly Rates	Associate Hourly Rates	Paralegal /Paraprofessional Hourly Rates
<i>In re: Vesttoo Ltd.</i> , No. 23 Bk. 11160 (Bankr. D. Del. Feb. 6, 2024) (ECF No. 639)	DLA Piper LLP	\$1,380-\$1,800		\$730-\$1,050	\$360-\$500
<i>In re: Yellow Corp.</i> , No. 23 Bk. 11069 (Bankr. D. Del. Feb. 6, 2024) (ECF No. 2083)	Kirkland & Ellis LLP	\$1,375-\$2,045	\$1,585	\$715-\$1,455	\$315-\$1,455
<i>In re: Purdue Pharma L.P.</i> , No. 19 Bk. 23649 (Bankr. S.D.N.Y. Feb. 2, 2024) (ECF No. 6149)	Davis Polk & Wardwell LLP	\$2,155	\$1,615	\$645-\$1,465	\$420-\$675
<i>In re: Genesis Global Holdco, LLC.</i> , No. 23 Bk. 10063 (Bankr. S.D.N.Y. Feb. 1, 2024) (ECF No. 1222)	Cleary Gottlieb Steen & Hamilton LLP	\$1,505-\$2,135	\$1,280-\$1,485	\$505-\$1,180	\$370-\$780
<i>In re: SAS AB</i> , No. 22 Bk. 10925 (Bankr. S.D.N.Y. Jan. 31, 2024) (ECF No. 1882)	Weil, Gotschal & Manges LLP	\$1,450-\$2,095	\$1,375-\$1,540	\$770-\$1,315	\$295-\$530
<i>In re: Inversiones Latin America Power Ltda.</i> , No. 23 Bk. 11891 (Bankr. S.D.N.Y. Jan. 31, 2024) (ECF No. 110)	Greenberg Taurig, LLP	\$1,165-\$1,645	\$895-\$1,1645	\$615-\$900	\$495-\$650
<i>In re: Audacy, Inc.</i> , No. 24 Bk. 90004 (Bankr. S.D. Tex. Jan. 26, 2024) (ECF No. 183)	Latham & Watkins LLP	\$1,495-\$2,455	\$1,430-\$1,860	\$760-\$1,505	\$320-\$1,130
<i>In re: Hartman SPE, LLC</i> , No. 23 Bk. 11452 (D. Del. Jan. 23, 2024) (ECF No. 507-2)	Katten Muchin Rosenman LLP	\$1,010-\$1,060		\$795-\$925	\$415
<i>In re: ONH AFC CS Investors LLC</i> , No. 23 Bk. 10931 (D. Del. Jan. 22, 2024) (ECF No. 234)	Baker Hostetler LLP	\$570-\$1,030		\$360-\$530	\$310-\$390
<i>In re: Instant Brands Acquisition Holdings Inc.</i> , No. 23 Bk. 90716 (S.D. Tex. Jan. 16, 2024) (ECF No. 938)	Davis Polk & Wardwell LLP	\$1,975-\$2,155	\$1,615	\$645-\$1,465	\$420-\$875
<i>In re: Akumin Inc.</i> , No. 23 Bk. 90827 (S.D. Tex. Jan. 13, 2024) (ECF No. 315)	Jackson Walker LLP	\$815-\$1,150		\$545-\$745	\$240-\$275
<i>In re: FTX Trading Ltd.</i> , No. 22 Bk. 11068 (D. Del. Dec. 22, 2023) (ECF No. 5119)	Quinn Emanuel Urquhart & Sullivan LLP	\$1,354.50-\$2,025	\$1,296	\$792-\$1,413	\$157.5-\$544.50
<i>In re: Mercy Hospital, Iowa City, Iowa</i> , No. 23 Bk. 0623 (Bankr. N.D. Iowa Dec. 15, 2023) (ECF No. 574)	McDermott Will & Emery LLP	\$1,300-\$1,850		\$725-\$1,190	\$270-\$545
<i>In re: Lucky Bucks, LLC</i> , No. 23 Bk. 10758 (D. Del. Nov. 14, 2023) (ECF No. 309)	Milbank LLP	\$1,495-\$2,045	\$1,425	\$750-\$1,300	\$320-\$810
<i>In re: Nova Wildcat Shur-Line Holdings, Inc.</i> , No. 23 Bk. 10114 (Bankr. D. Del. Oct. 27, 2023) (ECF No. 561)	Reed Smith LLP	\$720-\$1,215	\$630-\$697.50	\$513-\$742.50	\$157.5-\$540
<i>In re: LTL Management LLC</i> , No. 23 Bk. 12825 (D.N.J. Sept. 7, 2023) (ECF No. 1327)	Jones Day	\$562.5-\$1,800	\$925-\$1,275	\$325-\$925	\$212.50-\$650
<i>In re: MatlinPatterson Global Opportunity Partners II L.P.</i> , No. 21 Bk. 11255 (Bankr. S.D.N.Y. July 17, 2023, ECF No. 970)	Simpson Thacher Bartlett LLP	\$1,320-\$2,180	\$1,320-\$1,565	\$490-\$1,420	\$220-\$660
<i>In re: American Virtual Cloud Technologies, Inc.</i> , No. 23 Bk. 10020 (D. Del. June 29, 2023) (ECF No. 357)	Cole Schotz P.C.	\$625-\$1,200		\$375-\$400	\$355-\$360
<i>In re: Armstrong Flooring, Inc.</i> , No. 22 Bk. 10426 (Bankr. D. Del. May 17, 2023) (ECF No. 1403)	Skadden, Arps, Slate, Meagher & Flom LLP	\$1,960	\$1,565-\$1,665	\$860-\$1,390	\$540-\$625
<i>In re: Pareteum Corp.</i> , No. 22 Bk. 10615 (Bankr. S.D.N.Y. Nov. 11, 2022) (ECF No. 419)	Sidley Austin LLP (Submitted as Unsecured Creditors' Counsel)	\$1,350-\$1,425	\$1,225	\$895-\$1,100	\$295-\$525