UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN, On Behalf of Itself and All Others Similarly Situated, Plaintiff, vs. HOUSEHOLD INTERNATIONAL, INC., et al., Defendants.	Lead Case No. 02-C-5893 (Consolidated) CLASS ACTION Honorable Jorge L. Alonso

PLAINTIFFS' MOTION AND MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND REASONABLE COSTS AND EXPENSES FOR LEAD PLAINTIFFS

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I. INTRODUCTION

After 14 years of hard fought litigation, Lead Counsel obtained a cash settlement of $1,575,000,000 ("Settlement Amount") on behalf of the Class. The recovery is between 75% and 252% of recoverable damages depending on the damages model. It is the seventh largest securities class action settlement ever, the largest securities class action settlement following a trial, and the largest recovery as a percentage of damages for any securities class action settlement of $500 million or more. By any metric, it is an incredible result.

The Settlement would not have been obtained without counsel's skill, dogged pursuit, and refusal to accept a far lower settlement during this lengthy Litigation. Counsel expended extraordinary resources – approximately $71 million of time and more than $34 million in expenses – without any assurance that this time or money would be recovered. Given the unprecedented Settlement Amount and percentage of recovery, and in light of the very significant risks from inception to Settlement, the result ranks as the most successful securities class action of all time.

As compensation for their efforts in achieving this record-setting result, Lead Counsel request that the Court award a percentage fee of 24.68% of the Settlement Amount. The fee request is consistent with Seventh Circuit authority holding that attorney fees in securities class actions should be based on the "market rate" that prevails between willing buyers and willing sellers of legal services at the beginning stages of a case. *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956-57 (7th Cir. 2013) (citing cases). The best indicator of the market rate is the fee agreement negotiated in this case with Lead Counsel. That agreement was negotiated early on when the outcome was uncertain. It is consistent with "similar bargains" (*In re Synthroid Mktg. Litig.*, 264 F.3d 712, 719 (7th Cir. 2001) ("*Synthroid I*")), including fees agreed to by sophisticated parties in other complex litigation. *See* Report of Professor Charles Silver on Attorneys' Fees, dated December 20, 2013 (Dkt. No. 1966) ("Silver Report") at 13-34; Supplemental Report of Professor Charles Silver on Attorneys' Fees at 7-23 ("Silver Supp. Report").

The Court of Appeals has consistently held that the "market rate for legal fees depends in part on the risk of nonpayment a firm agrees to bear, in part on the quality of its performance, in part

on the amount of work necessary to resolve the litigation, and in part on the stakes of the case." *Synthroid I*, 264 F.3d at 721. The risks in this case, including the very real possibility of losing a $100 million investment, were manifold and persisted from the day it was filed to the day it settled.

Although Plaintiffs ultimately proved that defendants committed securities fraud at trial, that result was anything but a foregone conclusion. Defendants hotly contested liability before and during the trial, arguing and presenting evidence that, among other things, there was no evidence of falsity, materiality or scienter for any statement, the market was well aware of the practices Plaintiffs claimed were fraudulent, there was no evidence of widespread predatory lending, that "re-aging" was an accepted business practice that benefitted Household's customers and shareholders, and that the restatement was nothing more than a difference of opinion between two sets of auditors. In fact, defendants succeeded in knocking out many of the alleged false statements before the first trial even began, and the jury ultimately rejected others.

Loss causation also was a significant issue fraught with risk at every stage of the case – had Plaintiffs failed to prove that element at any stage, the case would have ended with no recovery for the Class and a complete loss of time and expenses for Lead Counsel. The case presented difficult loss causation problems for Plaintiffs even under a traditional approach to damages quantification, *i.e.*, the Specific Disclosure Model.[1] While Plaintiffs employed a traditional Specific Disclosure Model, they also developed (with the assistance of their expert) a Leakage Model to account for the continuous leakage of truth about the fraud into the market. This approach was innovative – but risky – since no appellate court had ever accepted the use of a leakage model at trial. *Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408, 422 (7th Cir. 2015) ("To our knowledge, no court has either upheld or rejected the use of a leakage model in circumstances similar to this case – probably because these cases rarely make it to trial."). Lead Counsel's development and use of the novel Leakage Model as a viable damages approach, and defense of that model in the Seventh Circuit,

[1] For example, Plaintiffs filed the case in August 2002 after Household announced a restatement, but Household's stock price actually went ***up*** on that announcement. Similarly, Household's stock price also increased on the last day of the amended Class Period when Household's settlement with the multi-state Attorneys General was announced. Both of these facts provided defendants with strong ammunition to contest loss causation.

increased the potential damages from approximately $624 million to approximately $2.1 billion – a huge benefit to the Class. And, lest it be forgotten, defendants not only sought a new trial on appeal – they sought entry of judgment in their favor.

Defendants partially prevailed on appeal, and the case was remanded for a second trial on the *Janus* issue[2] and the elements of loss causation and damages. On remand, this Court ordered Plaintiffs to reimburse defendants for their appellate costs. Demonstrating their resolve and commitment, Lead Counsel refused to fold and instead paid the $13.28 million out-of-pocket and prepared the case for a second trial. Thereafter, defendants hired three new experts to opine that Plaintiffs' novel Leakage Model was legally deficient and that there was no economic evidence of loss causation or damages. Once again Plaintiffs faced the prospect of losing the Leakage Model,[3] a jury verdict of minimal or no damages, or a verdict awarding damages based on the Specific Disclosures Model (as opposed to the Leakage Model). Despite these risks, Lead Counsel pressed on and its unwavering dedication to the Class paid off – at 7:54 a.m., approximately one hour before jury selection was set to begin, and approximately 14 years after the case was filed – defendants entered into a term sheet to settle the action for $1.575 billion.

The quality of Lead Counsel's representation, their efforts on behalf of the Class, and the high stakes of the case further support the market rate and requested fee award. *See Synthroid I*, 264 F.3d at 721. Lead Counsel prosecuted the case vigorously and skillfully against nine of the country's most prominent law firms for 14 years. Lead Counsel spent more than seven years in bringing the case to a Verdict. Following the Verdict, Lead Counsel spent another seven years litigating various Phase II claims issues before the Special Master on behalf of thousands of class members, obtaining the Judgment, litigating in the Court of Appeals, and preparing the case for a

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[2] In *Janus Capital Group, Inc. v. First Derivative Traders*, 564 U.S. 135 (2011), the Supreme Court narrowly construed what it means to "make" a false statement in violation of Rule 10b-5, two years after Judge Guzmán instructed the jury in this case.

[3] This risk was very real, as reflected in the recent decision in *In re Bear Stearns Cos., Sec. Deriv. & ERISA Litig.*, No. 08-MDL-1963 (RWS), 2016 WL 4098385, at *8-*11 (S.D.N.Y. July 25, 2016), where the court agreed with the opinions of the same expert defendants used in this case, Professor Alan Ferrell, and excluded the leakage model opinion of Plaintiff's expert.

second trial. Declaration of Spencer A. Burkholz in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Motion for Approval of Attorneys' Fees and Expenses and Award of Expenses to Lead Plaintiffs ("Burkholz Decl."), ¶5. During that 14-year span, and to this day, Lead Counsel have not received a single dollar of compensation for their work – the Litigation was prosecuted entirely on a contingent fee basis. Ultimately, Lead Counsel invested – and risked – approximately $70 million in time and more than $34 million in expenses on behalf of the Class. And, despite the stakes and risk, Lead Counsel refused to settle the case at multiples far lower than the ultimate Settlement Amount. Rather than entering into a discounted settlement, Lead Counsel – with Lead Plaintiffs' blessing – risked everything again and again.

It is against this background that each of the sophisticated institutional investors who served as Lead Plaintiffs and suffered compensable damages respectfully requests that Lead Counsel be awarded attorneys' fees equal to 24.68% of the Settlement Amount pursuant to the fee agreement. *See* Declaration of James Glickenhaus in Support of Motion for Award of Attorneys' Fees and Expenses and Reimbursement to the Class Representatives Pursuant to 15 U.S.C. §78u-4(a)(4) ("Glickenhaus Decl."); Declaration of Charles A. Parker in Support of Motion for Final Approval of Class Action Settlement and Award of Attorneys' Fees and Expenses Pursuant to 15 U.S.C. §78u-4(a)(4) ("Parker Decl."), filed herewith.

As set forth in more detail below, Plaintiffs' counsel's litigation expenses of $34.3 million should also be awarded in full as they were reasonably and necessarily incurred in the prosecution of the Litigation. Finally, the Lead Plaintiffs should be awarded their reasonable expenses pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), which encourages institutional investors to participate in securities class actions.

II. ARGUMENT

A. The Court Should Award Attorneys' Fees Using the Percentage-of-the-Fund Method

The Supreme Court has consistently held that where a common fund has been created for the benefit of a class as a result of counsel's efforts, counsel fees should be based on a percentage of the

fund. *See, e.g.*, *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478-79 (1980); *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) ("under the 'common fund doctrine,' . . . a reasonable fee is based on a percentage of the fund bestowed on the class"). Likewise, the Seventh Circuit has held that when a case results in the creation of a common fund for the benefit of the plaintiff class, "the district court [is] required to determine a reasonable attorneys' fee for Counsel to be paid out of the common fund." *Sutton v. Bernard*, 504 F.3d 688, 692 (7th Cir. 2007). The PSLRA also supports awarding attorneys' fees in securities cases using the percentage method, as it provides that "[t]otal attorneys' fees and expenses awarded by the court to counsel for the Plaintiff class shall not exceed a reasonable ***percentage*** of the amount of any damages and prejudgment interest actually paid to the class." 15 U.S.C. §78u-4(a)(6).[4]

The Seventh Circuit has recognized the advantages of applying the percentage-of-the-recovery method, including its relative objectivity and ease of administration. *See In re Continental Illinois Secs. Litig.*, 962 F.2d 566, 572-73 (7th Cir. 1992). Courts in this Circuit have consistently applied the percentage method.[5] The percentage-of-the-fund method is also consistent with, and is intended to mirror, the private marketplace for negotiated contingent fee arrangements, the touchstone for the determination of fees in this Circuit. *See, e.g.*, *Kirchoff v. Flynn*, 786 F.2d 320, 324 (7th Cir. 1986) ("When the 'prevailing' method of compensating lawyers for 'similar services' is the contingent fee, then the contingent fee ***is*** the 'market rate.'") (emphasis in original).

B. The Appropriate Fee Percentage in the Seventh Circuit Is Dictated by the Market Price for Legal Services

In determining the appropriate fee percentage in common fund cases, the Seventh Circuit has consistently held that "courts must do their best to award counsel the market price for legal

[4] Citations and footnotes are omitted and emphasis is added unless otherwise noted.

[5] *See Motorola*, 739 F.3d at 956-58 (affirming award of 27.5% of settlement fund); *Taubenfeld v. Aon Corp.*, 415 F.3d 597-99 (7th Cir. 2005) (affirming award of 30% of the settlement fund); *Kohen v. Pacific Investment Mgmt. Co.*, No. 05-CV-04681 (N.D. Ill. May 2, 2011) (Guzmán, J.) (20% legal fee on $118 million settlement based on agreement between class counsel and Plaintiff *ex ante*); *In re Lithotripsy Antitrust Lit.*, No. 98 C 8394 (N.D. Ill. June 9, 2000) (Guzmán, J.) (33.3% legal fee awarded); *Bristol Cty. Ret. Sys. v. Allscripts Healthcare Solutions, Inc.*, No. 1:12-cv-03297 (N.D. Ill. July 22, 2015) (Alonso, J.) (Dkt. No. 130) (33% legal fee awarded).

services," that "depends in part on the risk of nonpayment a firm agrees to bear, in part on the quality of its performance, in part on the amount of work necessary to resolve the litigation, and in part on the stakes of the case." *Synthroid 1*, 264 F.3d at 718, 721 (citing Seventh Circuit cases and overturning and remanding the district court's award limiting attorneys' fees to 10% of the common fund in a $132 million recovery); *see also In re Synthroid Mktg. Litig.*, 325 F.3d 974-75 (7th Cir. 2003) ("*Synthroid II*") ("[a] court must give counsel the market rate for legal services"). *See also Motorola*, 739 F.3d at 957 (upholding 27.5% fee award in $200 million settlement and holding, "attorneys' fees in class actions should approximate the market rate that prevails between willing buyers and willing sellers of legal services"); *Sutton*, 504 F.3d at 693 ("[W]e have consistently directed district courts to 'do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time.'"). The market rate standard is strictly applied, and the Seventh Circuit has reversed a number of district courts for deviating downward from the market rate. *See Sutton*, 504 F.3d at 692-93 (overturning district court's rejection of 28% fee in favor of a 15% fee) (citing *Synthroid I*); *Synthroid II*, 325 F.3d at 978 (vacating district court fee award of 15.45% and noting that other class counsel in same case with different claims and liability already established privately negotiated 22% fee agreement with sophisticated parties).

1. The Market Rate for Legal Services Here Is Best Reflected by the Fee Agreement Negotiated Early on Between Lead Counsel and the Lead Plaintiff

a. The Fee Agreement Was Negotiated at Arms' Length, Early in the Proceedings with a Sophisticated Institutional Client

The Seventh Circuit has made clear that the "market rate" is "as we have been at pains to stress, [what] the lawyer . . . would have gotten in the way of a fee in an arms' length negotiation, had one been feasible." *Continental*, 962 F.2d at 572. Not only was an arms' length negotiation feasible here, it actually took place. Lead Counsel and Lead Plaintiff IUOE entered into a fee agreement at an early stage of the Litigation. That fee agreement – negotiated *ex ante* – is the best

evidence of the market rate for Lead Counsel's services. Accordingly, this Court does not have to speculate about the appropriate fee percentage to award *post hoc*.

Lead Plaintiff IUOE negotiated the fee agreement with Lead Counsel in April 2005. *See* Plymale Decl., Ex. A (Dkt. No. 1968-1). At that time, the ultimate outcome of the case was highly uncertain: the Court had granted certain portions of defendants' three motions to dismiss; discovery had just commenced; defendants were preparing to file a second round of motions to dismiss the entire case, arguing that Plaintiffs had failed to properly allege loss causation based on the more stringent loss causation principles set forth in the then-recent Supreme Court ruling in *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336 (2005); defendants were also set to file a motion based on the statute of limitations, which would ultimately wipe out the first two years of the Class Period, based on the Seventh Circuit's intervening decision, *Foss v. Bear, Stearns & Co.*, 394 F.3d 540 (7th Cir. 2005); and Plaintiffs faced all the risks of summary judgment, trial, and appeal. Burkholz Decl., ¶¶323-330.

The fee grid here was designed to incentivize Lead Counsel to maximize the recovery for the Class. The agreement provides for a sliding scale fee based on the recovery – 19% on the first $50 million recovered; 23% of the next $100 million recovered; and 25% of all recovery amounts in excess of $150 million. *See* Plymale Decl., Ex. A. At the time the fee agreement was reached, it was well below the customary fee award of 30%-33% in this District and below the 25%-40% customarily agreed to by sophisticated parties in class and private actions. *See* Silver Supp. Report, ¶4. "Because the IUOE bargained for a fee at the low end of the scale, the reasonableness of its decision is beyond cavil." *Id*. The incentives built into the agreement worked – Lead Counsel achieved a record-breaking recovery. Indeed, at the time the fee agreement was negotiated, there were only three securities class settlements in the Seventh Circuit with recoveries that exceeded $100 million (*Waste Management* ($220 million); *Bank One Corp.* ($120 million) and *Conseco* ($120 million)). Securities Class Action Services, ISS, The SCAS Top 100 Settlements Report for 1H 2013, at 3-4 (July 1, 2013).

Importantly, both Lead Plaintiffs with valid claims continue to believe that the negotiated fee is appropriate, fair and reasonable. *See* Glickenhaus Decl., ¶4; Parker Decl., ¶¶5, 7. Glickenhaus & Co. and IUOE have independently assessed the issue of attorneys' fees and, based on the risks incurred, the quality of the work performed and the results obtained, believe that a 24.68% fee is reasonable and should be approved by the Court. Glickenhaus Decl., ¶¶4, 8; Parker Decl., ¶¶5, 7.

Moreover, this fee agreement does not stand alone. During this time frame, similar fee agreements were regularly negotiated by other sophisticated parties in class actions. *See, e.g.*, Silver Supp. Report at 2, 7-19, 22-24; Silver Report at 13-34. Of course, the agreements vary in terms of the applicable fee percentage based on the unique facts, circumstances, and risks involved in each case. Silver Supp. Report, ¶41. These agreements further confirm that the fee agreement negotiated with Lead Counsel here is a fair approximation of the market rate for legal services in this case. *See Synthroid I*, 264 F.3d at 719 ("similar bargains" are relevant to assessing market rate).

b. The Requested Fee Negotiated by Lead Counsel Is Consistent with Percentage Fees Negotiated Ex Ante in the Private Market for Legal Services

As Professor Silver notes at the outset of his initial report:

> [T]he Seventh Circuit . . . has repeatedly held that lawyers representing Plaintiff classes are to be compensated at market rates, meaning rates that "willing buyers and willing sellers of legal services" would have agreed to at the start of litigation. Fees paid by real clients whose own money is on the line provide the best evidence of market rates.

Silver Report at 2. In *Continental*, the Seventh Circuit stated that "testimony or statistics concerning the fee arrangements in commercial litigation" involving large companies or investors would assist the court in determining the "market rate." *See Continental*, 962 F.2d at 572-73; *see also Motorola*, 739 F.3d at 958; *Synthroid I*, 264 F.3d at 719. Professor Silver has provided the Court with extensive information regarding fees negotiated in private cases at the outset of representation. Silver Report at 3, 13-34; Silver Supp. Report at 13-19, 22-23. Based on his survey, Professor Silver concludes that, whether in "mass" actions, conventional personal injury cases, or complex, high-dollar private business disputes, plaintiffs negotiate percentage fees consistent with or higher than

the percentage sought here, even when the potential recovery approaches the result obtained here. Silver Report at 2-3, 15-30; Silver Supp. Report, ¶39.

For instance, in a strikingly similar situation, the court in *Allapattah Servs. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1243 (S.D. Fla. 2006), awarded a 31.33% fee in a $1.06 billion settlement. In *Allapattah*, class counsel represented 11,000 Exxon dealers in a class action case that went on for 15 years. The class representatives negotiated agreements with class counsel that provided for a fee award of one-third of any recovery. *Id*. at 1209. At the first trial, the jury was deadlocked and unable to reach a verdict. *Id.* at 1194. Plaintiffs won the second trial. *Id.* The verdict was upheld on appeal and, just like this case, the parties engaged in a hotly contested claims administration process over a period of years. As in this case, the claims were litigated before a Special Master and damages were provided only to those class members that filed timely claims after Exxon's objections were overruled. The case was eventually settled for $1.075 billion, and the court awarded attorneys' fees of 31.33%, or $320 million, based on counsel's request and the class representatives' negotiated fee agreement.

The court explained that, like this case, it "was an 'all or nothing' case for the [p]laintiffs," at trial and that "the most appropriate way to establish a bench mark is by reference to the market rate for a contingent fee in private commercial cases tried to judgment and reviewed on appeal." *Id*. at 1203 (citing *Synthroid I*, 264 F.3d at 718). The court also noted that, because there were no reported cases similar to that one, and in a typical case class counsel often settles early for pennies on the dollar, decisions involving fee awards in class action settlements should not control. *Id*. at 1210. Noting that many large class action settlements awarded fees in excess of 25%, the *Allapattah* court found that the "more appropriate measure of a reasonable percentage is the market rate for a contingent fee in commercial cases." *Id*. at 1211 (citing Professor Silver's report in *Allapattah*; *Synthroid I*, 264 F.3d at 718). In fact, in analyzing the market rate, the *Allapattah* court noted that the requested fee of 31.3% was within the range, if not below, the market rate for private contingency fee agreements in commercial cases, which is usually 33.3%, and up to 40% or higher if litigated through a trial and appeal. *Allapattah*, 454 F. Supp. 2d at 1212. As Professor Silver notes,

"[t]he fee requested in this case is much smaller, reflecting the fact that Lead Plaintiff IUOE negotiated better terms than the class members in *Allapattah Services*, most or all of whom signed contracts obligating them to pay their lawyers one-third of their recoveries." Silver Supp. Report, ¶24.

Similarly, plaintiffs' counsel in *In re Urethane Antitrust Litigation*, MDL No. 1616, 2016 WL 4060156 (D. Kan. July 29, 2016) litigated for over a decade, including a trial, before reaching a settlement. In *Urethane*, the plaintiff class alleged that urethane manufacturers conspired to fix prices in a case filed in 2004. During the litigation, plaintiffs settled their claims with all manufacturers, except Dow Chemical Company, for $139 million. After a four-week jury trial, plaintiffs obtained a verdict for $400 million. Ultimately, the trial court entered a judgment in plaintiffs' favor for $1,060,847,117, which reflected setoffs for the pretrial settlements with other defendants and treble damages against Dow. Dow appealed from the judgment, but lost. Dow petitioned for a writ of certiorari. While the petition was pending, plaintiffs settled with Dow for $835 million.

In *Urethane*, plaintiffs' counsel requested a fee award of one-third of the settlement fund. Two sets of objectors emerged, who together made purchases that comprised a significant percentage of the class' compensable purchases. The trial court overruled the objections and awarded plaintiffs' counsel a fee of 33.33% of the settlement amount. The *Urethane* court analyzed the request under the *Johnson* factors and noted the incredible recovery, the uncertain outcome, the advancement of time and expenses and the quality of opposing counsel as factors supporting the fee. More importantly for the test in this Circuit, the *Urethane* court wrote:

> The Court agrees with counsel that a one-third fee is customary in contingent-fee cases, and indeed that figure is often higher for complex cases or cases that proceed to trial.

2016 WL 4060156, at *5.[6]

[6] It is worth nothing that plaintiffs' counsel in *Urethane* settled the case with all but one defendant pretrial for $139 million, thereby reducing counsel's financial risk of proceeding to trial. In effect, plaintiffs' counsel was playing with house money at the trial. In *Household*, Lead Counsel's risk was "all or nothing" both at the first trial, on appeal, and at the upcoming second trial.

In fact, fee awards of 25%-33% or more are common in large complex class actions that have settled prior to trial. *See* Silver Supp. Report, ¶19 (identifying 64 settlements over $100 million with fee awards of 25% or higher). Lead Counsel's attorneys' fees request is also within the range of percentage awards made in this District and Circuit in cases far less remarkable than this one.[7]

c. The Fee Agreement's Increasing Fee Percentage Is Appropriate and Consistent with the Market Rate

While some courts have applied declining rate percentages to large settlements, others have applied increasing fee percentages, or simply a flat rate. For instance, the *Allapattah* court overruled an objection asserting that the amount of the fee should decline as the recovery amount increases, because a declining fee percentage fails to align the interests of class counsel and the class. 454 F. Supp. 2d at 1213. The declining sliding scale approach creates "the perverse incentive for Class Counsel to settle too early for too little," with the Court noting that plaintiffs' counsel "'would have had little incentive to hold out for nine long years for the $1.2 billion recovery,'" and "'if such a formula were mandated, defendants would quickly come to understand that plaintiffs' counsel lacked an incentive to maximize the recovery (at least beyond some threshold) and they could exploit this lack of incentive'" which happens "regularly given that the typical class action settles for less than 3 cents on the dollar." *Id*. at 1213 & n.22. Conversely, as Professor Silver and other scholars have concluded "[r]ising scales . . . incentivize lawyers to hold out for higher dollar amounts, which are harder to obtain." Silver Supp. Report, ¶39.

In *Urethane*, the court also rejected an argument that the fee percentage should decline as the recovery increases. *Urethane*, 2016 WL 4060156, at *6. The court agreed "with those courts who

[7] *See Motorola*, 739 F.3d at 958 (27.5% of settlement fund); *Aon Corp.*, 415 F.3d at 598-99 (30% of settlement fund); *Greater Pa. Carpenters Pension Fund v. Whitehall Jewellers, Inc., et al.*, No. 04 C 1107, slip op. (N.D. Ill. July 24, 2006) (30% of settlement fund); *Weiner v. The Quaker Oats Co., et al.*, No. 98 C 3123 (RP), slip op. (N.D. Ill. Sept. 14, 2001) (33%); *In re Nanophase Techs. Corp. Sec. Litig.*, No. 98 C 3450, slip op. (N.D. Ill. Mar. 27, 2001) (33%); *In re Spyglass, Inc. Sec. Litig.*, No. 99 C 0512, slip op. (N.D. Ill. May 23, 2000) (33%); *In re First Merchs. Acceptance Corp. Sec. Litig.*, No. 97 C 2715, slip op. (N.D. Ill. Apr. 21, 2000) (33%); *In re Caremark Int'l Inc. Sec. Litig.*, No. 94 C 4751, slip op. (N.D. Ill. Dec. 15, 1997) (33%); *In re Nuveen Fund Litig.*, No. 94 C 360, slip op. (N.D. Ill. June 3, 1997) (33%); *In re Soybean Futures Litig.*, No. 89 C 7009, slip op. (N.D. Ill. Nov. 27, 1996) (33%); *Liebhard, et al. v. Square D Co., et al.*, No. 91 C 1103, slip op. (N.D. Ill. June 15, 1993) (33%); *First Interstate Bank of Nev., N.A. v. Nat'l Republic Bank of Chicago, et al.*, No. 80 C 6410, slip op. (N.D. Ill. Feb. 12, 1988) (39%).

have noted that such a diminishing scale can fail to provide the proper incentive for counsel." *Id*. The court noted with approval *Allapattah*'s finding that while a declining scale approach "may have validity when there is a large settlement short of a full trial," it is inapplicable in cases that went to trial. *Id*. The *Urethane* court concluded that:

> [C]lass counsel achieved extraordinary success in a very long litigation. Thus, use of a declining-scale approach is not appropriate here, and the Court will award fees based on the unique circumstances of the case.

Id.

Likewise, in *In re Apollo Group Secs. Litig.*, No. CV-04-2147, 2012 WL 1378677, at *7 (D. Ariz. Apr. 20, 2012) the court approved class counsel's 33% fee request following the parties' $145 million settlement of the case after the $280 million verdict was overturned by directed verdict and reinstated on appeal. In reaching the decision, the court acknowledged that "securities class actions rarely proceed to trial," and held that "[a]n ***upward departure*** from the 25% benchmark" for fees in the 9th Circuit was appropriate because the result was exceptional and "it was extremely risky for Class Counsel to pursue this case through seven years of litigation." *Id*. The same analysis plainly supports Lead Counsel's request for 24.68% here.

In his report, Professor Silver notes several examples of cases with an increasing sliding scale. *See* Silver Report at 26, 32-34; Silver Supp. Report at 22-23. In *Tanox, Inc. v. Akin Gump, et al.*, 105 S.W.3d 244 (Tex. App. 2003), for example, a sophisticated client with an enormous intellectual property claim agreed to pay his attorneys an upward scale of contingent percentages. "Under the fee agreement, Tanox agreed to pay the Lawyers a contingency fee pursuant to a sliding scale: 25% of the first $32 million recovered by Tanox, 33⅓% of recovery from $32 million to $60 million, 40% of recovery from $60 million to $200 million, and 25% of recovery over $200 million." *Id*. at 248-49. *See* Silver Supp. Report at 26. The facts of this case warrant approval of the upward sliding fee structure negotiated with counsel, which has a top marginal rate (25%) that

is well below the customary commercial contingency fee rate of 33%-40% in cases that are litigated through trial and appeal.[8] *See* Silver Report at 23-30; Silver Supp. Report, ¶¶4, 19, 29.

In *Motorola*, the Seventh Circuit affirmed the approval of a flat fee percentage of 27.5% in a $200 million settlement of a securities class action. In light of "the risk of walking away empty-handed," the court rejected an objection that the 27.5% fee awarded by the District Court was legally excessive. However, in doing so, the Seventh Circuit questioned whether evidence existed of suits seeking more than $100 million in which solvent clients agreed *ex ante* to pay their lawyers a flat portion of all recoveries as opposed to a rate that declines as the recovery increases. *Motorola*, 739 F.3d at 958-59.[9]

Such evidence does exist. For example, in addition to the 31.3% fee approved in *Allapattah*, and the 25%-40% fee scale in *Akin Gump*, the plaintiffs in *ETSI Pipeline Project v. Burlington N., Inc.*, No. B-84-979-CA, 1989 U.S. Dist. LEXIS 18796 (E.D. Tex. June 5, 1989), a complex antitrust case, negotiated a 33% flat contingent fee and agreed to reimburse their counsel for all out-of-pocket expenses. After the plaintiffs obtained a $1 billion verdict at trial and after five years of litigation, the case subsequently settled for $635 million, and the court adopted the fee agreement and awarded plaintiffs' counsel a fee of 33% – approximately $212 million. *See* Silver Report at 27-28 (citing Declaration of Harry Reasoner, ¶4) (submitted in *In re Wash. Pub. Power Supply Sys. Sec. Litig.*,

[8] Although the percentage scale negotiated with Lead Counsel is based on the recovery amount, the stage of this Litigation also supports an increasing fee scale. As the Seventh Circuit noted in *Synthroid I*, "[s]ystems where fees rise based on the stage of litigation . . . are the norm for contingent-fee contracts in tort suits." *Synthroid I*, 264 F.3d at 722.

[9] The rationale posited by Judge Easterbrook in *Motorola* – that the fee percentage should decline at a certain point because establishing damages is a "mechanical" function – certainly is not present in this case. 739 F.3d at 959. In fact, there was a pitched battle at every stage over loss causation and the appropriate quantification of inflation – at the first trial, on appeal, and at the upcoming second trial. The risks at each stage of failing to prove loss causation and the higher inflation amounts under the Leakage Model were real and significant efforts were required at each stage to refute every new argument raised by defendants' counsel and their experts. In *Synthroid II*, although the Seventh Circuit remanded the case with instructions to implement a fee structure which utilized a downward sliding scale approach (30% of the first $10 million, 25% of the next $10 million, 22% of any amount between $20-$46 million, and 15% of everything else), it also held in *Synthroid I*, that "[t]his is not to say that systems with declining marginal percentages are always best," since "[t]hey also create declining marginal returns to legal work, ensuring that at some point attorneys' opportunity cost will exceed the benefits of pushing for a larger recovery, even though extra work could benefit the client." *Synthroid I*, 264 F.3d at 721.

MDL No. 551 (D. Ariz. Nov. 30, 1990)). In another case involving Research In Motion Ltd., the plaintiff negotiated a 33% flat fee agreement to prosecute a complex patent dispute. When the case settled for $612.5 million, the law firm received more than $200 million in fees. Silver Report at 24 (citing Yuki Noguchi, *D.C. Law Firm's Big BlackBerry Payday; Case Fees of More than $200 Million Are Said to Exceed Its 2004 Revenue*, Washington Post, Mar. 18, 2006, at D03).

Even in *Synthroid II*, sophisticated plaintiffs with tens of millions of dollars at stake agreed to pay a flat 22% to their lawyers even though a settlement was already on the table when the lawyers were hired. *Synthroid II*, 325 F.3d at 978. Other sophisticated plaintiffs have negotiated fee agreements in other large class actions that provide for fees of 25%-30%. *See* Silver Report at 13-34; Silver Supp. Report at 7-23. These cases demonstrate that even in large cases, agreements with both increasing fee percentages, or a flat rate percentage, are acceptable.

d. Fees Paid in Large, Complex Civil Cases Also Reflect the Market Rate

Although the legal fees paid to law firms defending complex securities class actions such as this case are not publicly known, bankruptcy rules require disclosure of payments from the debtor's estate to lawyers. The reasonableness of the requested fee is even more apparent when compared to payment of legal fees to law firms working on large, complex bankruptcy cases. In such cases, law firms are paid their hourly rate for their time each year without the substantial risk of nonpayment years down the road. In the recent Lehman Brothers bankruptcy, the law firm of Weil, Gotshal & Manges LLP, received payment of at least $421 million for their work on a periodic basis over four years despite the fact that there was no risk of non-payment. *In re Lehman Bros. Holdings, Inc., et al.*, No. 08-13555, Order (Bankr. S.D.N.Y. Dec. 6, 2012) (Dkt. No. 32607). In the *Madoff* litigation, the law firm (Baker Hostetler) working for the trustee has been paid at least $483 million on an ongoing basis over four years for its work despite the fact that there was no risk of non-payment. *Sec. Inv. Protection Corp. v. Bernard L. Madoff Inv. Sec. LLC*, No. 08-1789, Order (Bankr. S.D.N.Y. Dec. 17, 2013) (Dkt. No. 5605). These cases provide further evidence that the requested fee of $388 million (24.68% of the Settlement Amount), earned over 14 years, is reasonable, particularly considering the real and substantial risk of non-payment.

2. The Risks Involved in Securities Class Actions Generally, the Risks of This Case in Particular, and the Contingent Nature of the Litigation All Support a 24.68% Fee Award

As noted by the Seventh Circuit in *Synthroid I*, "[t]he market rate for legal fees depends in part on the risk of nonpayment a firm agrees to bear." 264 F.3d at 721. "Contingent fees compensate lawyers for the risk of nonpayment. The greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel." *Motorola*, 739 F.3d at 958. Indeed, "[p]recedent is replete with situations in which attorneys representing a class have devoted substantial resources in terms of time and advanced costs yet have lost the case despite their advocacy." *In re Xcel Energy, Inc.*, 364 F. Supp. 2d 980, 994 (D. Minn. 2005).

Securities class actions by nature are extremely risky. In fact, according to NERA, somewhere over 50% of all modern day securities litigations filed are dismissed. Starykh, et al., *Recent Trends in Securities Class Action Litigation: 2015 Full-Year Review* at 22, Figure 20 (NERA Economic Consulting Jan. 25, 2016) ("NERA Full-Year 2015").[10] As Lead Counsel is all too aware, even complex cases that make it beyond the motion to dismiss stage face significant risk at summary judgment and trial. *See* Ex. A (Selected Securities Cases Lost at Summary Judgment, Trial, Post-Trial or on Appeal). Likewise, there are numerous appellate decisions affirming summary judgment and directed verdicts for defendants in securities class actions. Further, plaintiffs in securities cases who proceed to trial may not prevail or may find a favorable verdict overturned on appeal. *See* Ex. A (Selected Securities Cases Lost at Summary Judgment, Trial, Post-Trial or on Appeal).

As Professor Silver opines, the risks of this case were greater than any other securities class action:

> I cannot imagine better evidence of the riskiness of litigation than the Court has before it in this case, one of the few class actions ever to be tried and one of only three that I know of in which the trial concerned more than a billion dollars in liability.

[10] For example, in 2001, the most recent year for which all filed cases have now been resolved, 32% of the cases were dismissed. The risk of losing appears to have increased substantially since 2001. For cases filed in 2004, a year in which 96% of the cases have now been resolved, the dismissal rate was 43%. The results for 2009-2011 show dismissal rates of over 50% with approximately 90% of cases resolved. NERA Full-Year 2015, at 22, Figure 20. *See also* Silver Report at 45-46.

> In my 2013 Report, I explained that only a law firm like RGRD could have tried this to a successful conclusion. The costs and risks would have been too great for smaller, less accomplished firms to bear. I can now add that RGRD is one of only a handful of law firms in the world that could have taken the gamble involving the supersedeas bond, lost it, and kept prosecuting the case zealously for the Class. Clearly, the Lead Plaintiffs were right to hire RGRD and to do so on the terms to which they agreed. Had they chosen a different firm, the case might have settled before trial much more cheaply or been lost altogether. Had they insisted on lower fee percentages, the costs might have discouraged RGRD from staying the course. In fact, the Lead Plaintiffs made good decisions that worked out incredibly well for the Class. It would be worse than wrong to second-guess those decisions at the end of the case.

Silver Supp. Report, ¶¶50-51.

Despite their ultimate success here, Lead Counsel assumed significant risk at every stage of the Litigation. This was an exceedingly difficult case. Unlike *Enron*, *WorldCom* and other well-known frauds, few plaintiffs' firms sought to be appointed lead counsel in this case. Only three law firms applied for that role and the other two ultimately withdrew before Robbins Geller was appointed. This lack of competition distinguishes this litigation from other high-profile cases.[11] In *Motorola*, like this case, only one law firm was willing to serve as Lead Counsel. As Judge Easterbrook observed: "[L]ack of competition not only implies a higher fee but also suggests that most members of the securities bar saw this litigation as too risky for their practices." *Motorola*, 739 F.3d at 958.

This case was initially filed after Household announced that it was restating its previously-issued financial statements. However, the case was fraught with risk because Household's stock price increased on the date of the disclosure; this would continue to be a thorny loss causation issue throughout the case. Thereafter, Lead Counsel amended the complaint and extended the Class Period to October 11, 2002, adding claims related to Household's predatory lending and "re-aging" practices. These practices became the core elements of the fraud claims and accounted for the overwhelming amount of the damages found at trial. However, even the amendment to add those

[11] In other cases, which resulted in top ten settlements, multiple institutions and law firms fought for leadership of the case. For example, in *WorldCom*, 13 law firms sought to represent the Class; in *McKesson HBOC*, 20 plaintiffs' firms sought to be appointed as lead counsel; other cases in the top ten also saw most of the class action securities bar throwing their hats in the ring. *See, e.g.*, *Cendant* (19 firms); *AOL Time Warner* (14 firms); *Enron* (20 firms). *See* Ex. B (Number of Firms Seeking Lead Counsel Role in Cases With Top Settlements).

claims came with risk – the October 11 announcement of the settlement with the Attorneys General also resulted in a stock price increase – adding another potential loss causation problem. It also bears mentioning that the SEC investigated Household's accounting practices, but simply entered into a no-fault Consent Decree related to Household's "re-aging" practices. Suffice it to say, the SEC's decision did not help the Class.

The risks were real that defendants would successfully defend this case at the motion to dismiss or summary judgment stage, during pre-trial *Daubert* proceedings, at trial, or during post-trial proceedings. For example, the first two years of the Class Period were dismissed as time-barred in 2005 after the Seventh Circuit issued its decision in *Foss*, *supra*. Later, at the first trial, the jury returned a verdict in favor of defendants for all claims on behalf of purchasers of Household stock from July 30, 1999 through March 22, 2001. And there was always a risk that the first jury would find in favor of defendants for the entire Class Period, or that the jury would adopt damages based on the Specific Disclosures Model, which had a much lower inflation per share than the Leakage Model.

That risk was still present when, following the first jury verdict, the Judgment was vacated by the Seventh Circuit, and Plaintiffs faced a new trial on the issues of loss causation and damages. In fact, the Seventh Circuit's decision was simply one manifestation of the risk faced by Plaintiffs. The entire case was placed in jeopardy based on a finding that Professor Daniel Fischel did not explain to the jury all of his reasons for concluding that the Leakage Model accounted for firm-specific non-fraud factors. Although the Seventh Circuit noted that defendants had no evidence of such factors, and despite the fact that Federal Rule of Evidence 705 and Seventh Circuit precedent allow an expert to "state an opinion – and give the reasons for it – without first testifying to the underlying facts or data," the Court of Appeals found Professor Fischel's unchallenged testimony was too conclusory, and reversed. *Glickenhaus*, 787 F.3d at 422.

At the re-trial, there was a risk the jury would agree with defendants' experts and find either no damages, or adopt defendants' expert's alternative analysis of damages ($291 million).[12] Burkholz Decl., ¶330. Even if the jury found loss causation but chose to measure damages based on Plaintiffs' alternative Specific Disclosures Model, the damages would have been reduced to $624 million, almost $1 billion less than the Settlement Amount. Even if they succeeded in obtaining a recovery for the Class, Lead Counsel bore the risk that they would not be fully compensated for their time and effort.

Lawyers who specialize in contingent fee matters operate in a legal environment fraught with risk and uncertainty. In particular, the legal principles governing securities litigation are constantly evolving. Over the course of the 14 years of this case, the U.S. Supreme Court issued a number of rulings concerning the securities laws that had the potential to negatively impact the value of the case. Two of the decisions had a direct impact on the Litigation: (i) loss causation (*Dura*); and (ii) who can be held liable as a maker of a false statement (*Janus*). Both decisions caused problems for the Class. The *Janus* decision was issued post-verdict and resulted in the reversal of certain jury findings, demonstrating once again the risks that exist even after a case is tried and won. The decision in *Dura* was issued a month before the fee agreement was executed between Lead Plaintiff and Lead Counsel, and directly led to additional scrutiny of loss causation issues that persisted until the case was settled.[13]

The enormous risks of securities litigation generally, this case in particular, and the contingent nature of Lead Counsel's representation here support a 24.68% fee award. *See, e.g.*,

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[12] One of Professor Ferrell's calculations, when extrapolated, would yield damages of $291 million for the list of valid claims. Declaration of Mishka Ferguson Regarding Settlement Notice Dissemination, Publication, Objections Received to Date, and Analysis of Calculated Claim Damages ("Ferguson Decl."), ¶20. However, Ferrell's primary opinion was that there were no damages.

[13] The risk that intervening law may scuttle a case after substantial investment by Class Counsel is also evident from *Vivendi*, another securities case filed in 2002. Like *Household*, *Vivendi* was tried to a plaintiffs' verdict, but the vast majority of the claims were wiped out post-verdict following the Supreme Court's decision in *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247 (2010), holding that Section 10(b) does not apply extraterritorially, upsetting four decades of legal precedent in the Second Circuit. *Morrison* came down seven years after *Vivendi* started, five months after the jury's verdict, and long after class counsel had expended tens of millions of dollars in time and expenses.

Sutton, 504 F.3d at 694 ("Because the district court failed to provide for the risk of loss, the possibility exists that Counsel, whose only source of a fee was a contingent one, was undercompensated.").

3. The Quality of Robbins Geller's Performance Supports the Requested Fee

In determining the applicable market rate, the Seventh Circuit has held that the trial court should consider the "quality of its performance" by plaintiffs' counsel. *Synthroid I*, 264 F.3d at 721. Whether viewed *ex ante*, at the time the fee agreement was negotiated, or *ex post*, following the incredible result achieved by Lead Counsel, the "quality of its performance" supports the fee requested.

The quality of legal services provided by Robbins Geller was unparalleled. As Professor Silver notes, "[t]rials of securities fraud class actions are rare; plaintiff wins are rarer still; and jury verdicts exceeding $280 million don't exist." Silver Report at 7. In short "[t]he set of comparable securities fraud class actions is empty." *Id*. The $1.575 billion Settlement Amount is not only massive in nominal terms, it stands alone by a substantial multiple as the largest recovery as a percentage of damages in a securities class action. The recovery for Class Members is ***252%*** of damages under the traditional damages model used in securities cases, and approximately 75% of damages under the Leakage Model. Ferguson Decl., ¶¶18-19. There has never been a PSLRA case of this magnitude that has yielded such a result. No other case even comes close in terms of a percentage recovery of damages. *See* Exhibit C (Settlements of $500 Million or More – Percentage of Recovery). For example, in *Merck*, which was approved in 2016, the case settled for $1.06 billion, but the class only recovered 8% of their damages (and counsel was awarded a 20% fee in a case that never went to trial). *See In re Merck & Co., Inc. Secs., Deriv. & "ERISA" Litig.*, No. 2:05-cv-01151-SRC-CLW (D.N.J. June 28, 2016) (Dkt. No. 896 at 10-12). The quality of Lead Counsel's services cannot be questioned.

Moreover, Robbins Geller is a nationally recognized leader in complex securities litigation class actions. *See* Silver Report at 47-48. The Firm has a track record of trying cases, or settling

cases on the eve of trial after moving teams of lawyers, forensic accountants, and support personnel around the country. Burkholz Decl., ¶314. Clients retain Robbins Geller to benefit from its experience and resources in order to obtain the largest recovery possible for the Class. Thus, the fee agreement in this case reflects the market rate concept: you get what you pay for. As Judge Easterbrook wrote in *Synthroid I*, 264 F.3d at 720:

> Quality varies among lawyers, and awards net of fees could rise with the level of fees if a higher payment attracts the best counsel. We never see private clients auctioning off their legal work to the lowest bidder.

The quality of opposing counsel should also be considered in evaluating the work performed by Lead Counsel. *Urethane*, 2016 WL 4060156, at *5. Just as Lead Plaintiffs chose the cream of the plaintiffs' crop to represent them, so too did defendants. Undoubtedly eschewing lower-priced alternatives, defendants chose nationally known and highly capable law firms, including:

- Wachtell, Lipton, Rosen & Katz;
- Milbank, Tweed, Hadley & McCloy;
- Cahill Gordon & Reindel LLP;
- Skadden, Arps, Slate, Meagher & Flom, led by the former United States Attorney for the Northern District of Illinois, Patrick Fitzgerald;
- Former U.S. Solicitor General Paul Clement of the Bancroft firm;
- Williams & Connolly;
- Katten Muchin Rosenman LLP;
- McDermott Will & Emery LLP; and
- Jackson Walker LLP

These firms spared no effort or expense on behalf of defendants in their zealous defense of the Litigation. Plaintiffs' ability to obtain a favorable result for the Class while litigating against these powerful defense firms and their well-financed clients further evidences the quality of Lead Counsel's work and weighs in favor of the Court granting the request sought here.

4. The Amount of Work Necessary to Achieve the Result Supports the Requested Fee

The "amount of work necessary to resolve the litigation" is also a factor bearing on the "market rate" for fees. *Synthroid I*, 264 F.3d at 721. This case required a massive amount of work to achieve the result ultimately obtained. In fact, Lead Counsel devoted over 130,000 hours of work

by its attorneys and supporting paraprofessionals, and invested over $34 million in expenses associated with the factual investigation, discovery, motion practice, trial, appeal, re-trial preparation, and assisting Class Members with perfecting their claims against defendants' challenges. Declaration of Michael J. Dowd Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Dowd Decl."), ¶¶4-5, filed herewith. As set forth in more detail in the Burkholz Declaration, Lead Counsel's efforts were substantial to say the least. Burkholz Decl., ¶¶11-17, 22-26, 27-34, 39-44, 55-152, 169-174, 177-196, 197-203, 215-233, 240-247.

As discussed in more detail in the Burkholz Declaration, the Settlement occurred after all merits and expert discovery had been completed, after a six-week jury trial on the merits and after additional expert discovery was taken in advance of the retrial. Settlement was achieved only after Lead Counsel, *inter alia*: (1) filed a detailed, 154-page Consolidated Complaint; (2) opposed multiple rounds of defendants' motions to dismiss the Consolidated Complaint; (3) vigorously fought to obtain critical documentary and testimonial evidence during discovery, including filing over 40 motions to compel, multiple requests for reconsideration and multiple objections to the Magistrate Judge's rulings; (4) deposed or defended more than 70 percipient, expert and third-party witnesses; (5) retained three highly-qualified expert witnesses, who submitted detailed expert reports and rebuttal reports; (6) opposed defendants' summary judgment motion; (7) prepared the Pretrial Order for the 2009 trial and its voluminous supporting exhibits, including filing 10 motions *in limine* and *Daubert* motions and opposing defendants' seven motions *in limine* and *Daubert* motions, including defendants' 105-page "omnibus" motion to exclude 14 separate categories of evidence; (8) extensively prepared this case for trial and attended the 8-day Pretrial Conference in 2009; (9) moved a team of approximately 20 Robbins Geller attorneys, paralegals, forensic accountants and support staff from California to Chicago, Illinois for the pretrial hearings and the 26-day trial in 2009; (10) elicited testimony from 22 witnesses and introduced over 200 exhibits into evidence at trial; (11) obtained a jury verdict in favor of Plaintiffs; (12) completed Phase II discovery and successfully opposed defendants' presumption of reliance briefing; (13) worked with the Court-

appointed claims administrator Gilardi to monitor claims administration; (14) responded to defendants' objections to over 30,000 claims, drafted correspondence related to various claims issues at the request of the Special Master, and worked with defense counsel to resolve certain of their objections; (15) worked extensively with absent Class Members, third-party claims filers, brokers and custodial banks to protect and perfect Class Members' claims; (16) successfully opposed defendants' post-trial motions; (17) obtained a judgment; (18) vigorously opposed defendants' appeal to the Seventh Circuit Court of Appeals, successfully convincing the Court of Appeals to reject the vast majority of defendants' arguments on appeal; (19) engaged in remand proceedings, including expert discovery of defendants' three new loss causation and damages experts; (20) defeated defendants' efforts to exclude Plaintiffs' loss causation and damages expert, Professor Fischel; (21) extensively prepared this case for the retrial, including preparing the Pretrial Order, filing offensive *Daubert* motions and motions *in limine* – successfully excluding one of defendants' experts – and opposing defendants' motions *in limine*; (22) attended the four-day Pretrial Conference; and (23) moved a team of approximately 14 Robbins Geller attorneys, a forensic accountant and support staff from California to Chicago, Illinois for the pretrial proceedings and retrial. Very few, if any, securities fraud class actions have been litigated as long and as deep as this one and none have achieved a result this good.

Lead Counsel committed incredible resources for over 14 years to obtain this outstanding result. Few law firms could have, or would have, devoted the tremendous amount of time and financial resources to litigate this case through trial, appeal, and up to the morning of a second trial, as opposed to simply taking a significantly lower amount earlier to settle the action. Had Plaintiffs lost at any stage, the loss of time, money and effort by Lead Counsel would have been enormous.[14] *See* Dowd Decl., ¶¶4-5.

[14] For example, on November 5, 2015, this Court ordered Plaintiffs to pay $13,281,282 in appellate costs to defendants. Rather than appeal the decision, Lead Counsel paid the entire sum to defendants within weeks – reflecting Robbins Geller's commitment to the Class and willingness to absorb a huge financial hit to make sure defendants understood that there would be no quarter asked for or given. Frankly, it was a moment when the Firm made certain that defendants understood that Robbins Geller would end the case either with its shield or on it. Lead Counsel's commitment to the Class is remarkable: "In the thirty years that I have studied class actions, I have never seen anything that compares to this. What law firm would willingly take a gamble that,

This factor strongly supports the requested fee.

5. The Stakes of the Litigation Favor a 24.68% Fee Award

The "stakes" of the Litigation is another factor in assessing the market rate. *Synthroid I*, 264 F.3d at 721. As set forth herein, in high stakes litigation, private parties regularly agree to fee percentages of 25%-33% and even higher if a case is tried, to compensate Plaintiffs' counsel for the financial risks involved in taking on the litigation. Silver Report at 23-30; Silver Supp. Report, ¶¶4, 19, 29. As this Litigation advanced through discovery, trial, Phase II, appeal, and up to the eve of a second trial, the stakes only increased. Not only would Lead Counsel have not received any compensation if they lost at trial, they would have been forced to write off approximately $70 million worth of attorney and support staff time, as well as over $34 million in expenses that Lead Counsel had invested in this case over more than 14 years. Like class counsel in the *Allapattah* case, it was an "all or nothing case" with a very significant possibility of no recovery.

C. The Fee Requested Is Also Reasonable Under the Lodestar Method

Courts in the Seventh Circuit have consistently endorsed the percentage method for determining fees. *See In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1040 (N.D. Ill. 2011); *see also* note 7, *supra*. "The lodestar approach creates the . . . incentive to run up the billable hours." *Synthroid I*, 264 F.3d at 721; *Will v. Gen. Dynamics Corp.*, No. 06-CV-698, 2010 WL 4818174, at *3 (S.D. Ill. Nov. 22, 2010) ("The use of a lodestar cross-check in a common fund case is unnecessary, arbitrary, and potentially counterproductive.") (citing cases). However, this Court specifically requested information regarding Plaintiffs' counsel's lodestar. As demonstrated below, the requested fee is likewise reasonable under the lodestar method.

Plaintiffs' counsel's lodestar is approximately $70 million. In addition, Lead Counsel incurred expenses in excess of $34 million, an incredible commitment of almost entirely out-of-pocket expenditures. Indeed, Lead Counsel was unable to find any other case in which one law firm

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if lost, would require it to write a check for more than $13 million? Yet, RGRD did just that." Silver Supp. Report, ¶50.

risked even half as much on behalf of a class.[15] And, certainly, no other class counsel ever had to cut a check for $13.28 million to pay appellate costs in under 30 days. *Id*. Therefore, it is appropriate to define Plaintiffs' lodestar – *i.e.*, the measure of its risk – as a combined $104 million in time and expenses.

The time Lead Counsel devoted to this case was substantial by any measure. Nevertheless, Lead Counsel was able to prosecute the case far more efficiently than counsel in other securities cases, which settled at earlier stages and for a lower percentage recovery. For example, the lodestar in *Merck* ($1 billion settlement) – a case that took 12 years but did not include a trial – was $205 million. *See Merck*, No. 2:05-cv-01151-SRC-CLW (Dkt. No. 896 at 11). Likewise, the lodestar in *Tyco* ($3.2 billion settlement) was $172 million for a five-year case that never made it past summary judgment. *See In re Tyco Int'l, Ltd.*, 535 F. Supp. 2d 249, 261, 268 (D.N.H. 2007). If this case had been led by less-efficient attorneys, handling years of pretrial litigation, a six-week jury trial, appeal, and preparation for a second jury trial over 14 years, the lodestar easily could have been more than $200 million. *See also In re Comverse Tech. Inc. Sec. Litig.*, No. 06-CV-1825, 2010 WL 2653354, at *2 (E.D.N.Y. June 24, 2010) (noting that the lodestar method "'creates an incentive for attorneys to bill as many hours as possible, to do unnecessary work, and for those reasons can also create a disincentive to early settlement'").

Merck and *Tyco* are hardly outliers in terms of massive lodestars generated in other securities cases that settled far short of trial and lasted far less than 14 years. *See* Exhibit D (Lodestar Comparison). In light of the ***exceptional*** results obtained for Plaintiffs throughout the Litigation and particularly at settlement, Lead Counsel should be rewarded for the record-setting result achieved, not punished because they resisted the urge to "bill as many hours as possible." *Comverse*, 2010 WL 2653354, at *2. As Judge Easterbrook wrote, "[t]he client cares about the outcome alone" and class counsel's efficiency should not be used "to reduce class counsel's percentage of the fund that their work produced." *See Synthroid II*, 325 F.3d at 979-80. *See also Schulte v. Fifth Third Bank*, 805 F.

[15] The expenses in *Enron* also exceeded $30 million, but due to a handful of early settlements in that case, plaintiffs' counsel (also Robbins Geller) was able to recover expenses with interim awards during the prosecution of the case.

Supp. 2d 560, 598 n.27 (N.D. Ill. 2011) (same). In fact, the comparison between this case and the cases in the attached chart (Ex. D) demonstrates why the lodestar method is disfavored. Any firm can run up lodestar to achieve a large fee. But Robbins Geller has stood alone for 14 years, taking a case to trial and beyond, fronted $34 million in expenses and recovered 75%-252% of damages. The percentage method and the fee agreement herein incentivized counsel to win and win big – not to throw bodies at document discovery to increase its lodestar.

If Lead Counsel's request is approved, the requested fee award would reflect a 3.7 multiple of the lodestar (5.4 if expenses are excluded from the lodestar), which is well within the range of fees approved by other courts in large settlements and appropriate here in light of the result.[16] *In re Credit Default Swaps Antitrust Litig.*, No. 1:13-md-02476-DLC (S.D.N.Y. Apr. 26, 2016) (Dkt. No. 560 at 49-50) (multiplier of 6 in $1.9 billion settlement); *In re Cardinal Health, Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 767 (S.D. Ohio 2007) (5.9 multiplier in $600 million settlement); *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587, 589 (E.D. Pa. 2005) (multiplier of 6.96 in $320 million settlement); *In re Doral Financial Corp. Secs. Litig.*, No. 1:05-md-01706-RO (S.D.N.Y. July 17, 2007) (Dkt. No. 107 at 5) (multiplier of 10.26 in $130 million settlement); *Fort Worth Emps.' Ret. Fund v. J.P. Morgan Chase & Co, et al.*, No. 1:09-cv-03701-JPO-JCF (S.D.N.Y.) (Dkt. No. 379 at 2, Dkt No. 368 at 14) (4.6 multiplier in $388 million settlement).[17] If the Court approves the requested

[16] Courts have long approved the use of current hourly rates to calculate the base lodestar figure as a means of compensating for the delay in receiving payment that is inherent in class actions, inflationary losses, and the loss of access to legal and monetary capital that could otherwise have been employed had class counsel been paid on a current basis during the pendency of the litigation. *See In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.*, 724 F. Supp. 160, 163 (S.D.N.Y. 1989); *In re Veeco Instruments Litig.*, No. 05-MD-1965, 2007 WL 4115808, at *9 (S.D.N.Y. Nov. 7, 2007); *Missouri v. Jenkins*, 491 U.S. 274, 284 (1989); *Mathur v. Bd. of Trustees of S. Illinois U.*, 317 F.3d 738, 744-45 (7th Cir. 2003) (approving fee petition based on counsel's current rates and stating that the Seventh Circuit has allowed district courts to use current rates when calculating the lodestar amount as that method "provides 'an adjustment for delay in payment'"); *Franks v. Mkm Oil, Inc.*, 10 CV 00013, 2016 WL 861182, at *3 (N.D. Ill. Mar. 7, 2016) (noting that "[t]he use of current billing rates has been endorsed by the Supreme Court as 'an appropriate adjustment for delay in payment,'" and that "in cases that have been ongoing for several years, courts have indicated that a current rate model promotes efficiency").

[17] *See also Nieman v. Duke Energy Corp.*, No. 12-456, 2015 U.S. Dist. LEXIS 148260, at *3-*5 (W.D.N.C. Nov. 2, 2015) (awarding multiplier of 6.4); *Beckman v. KeyBank N.A.*, 293 F.R.D. 467, 481-82 (S.D.N.Y. 2013) ("Courts regularly award lodestar multipliers of up to eight times the lodestar, and in some case, even higher multipliers."); *City of Providence v. Aeropostale, Inc.*, No. 11 Civ. 7132 (CM), 2014 WL 1883494, at *13 (S.D.N.Y. May 9, 2014) (noting that "lodestar multiples of over 4 are awarded by this Court"); *Maley v.*

fee and expenses, Class Members will still recover between 55% and 185% of damages under Plaintiffs' two damage models, and a 396% recovery under defendants' damage model – far in excess of any recovery in the other top 27 securities class action settlements.

III. LEAD COUNSEL'S EXPENSES ARE REASONABLE AND WERE NECESSARY TO ACHIEVE THE BENEFIT OBTAINED

Lead Counsel also request an award of their litigation expenses in connection with the prosecution of the Litigation. Lead Counsel have submitted a separate declaration herewith attesting to the amount and accuracy of their expenses. Dowd Decl., ¶¶5-6; *See also Synthroid I*, 264 F.3d at 722 (should counsel submit sufficiently detailed expense reports and records, "a federal court should not require more" for purposes of determining the reasonableness of the request for reimbursement). Plaintiffs' counsel's litigation expenses total $34.3 million. An empirical study of the cost and expense of class actions finds that 4% of the relief obtained for a class is the average request for expenses. *See* Theodore Eisenburg and Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 Journal of Empirical Legal Studies, 27, 70 (2004). Here, 4% of the $1.575 billion Settlement Amount equates to $63 million. Under this benchmark, Lead Counsel's request for expenses (2% of the Settlement Amount) is very reasonable. *See, e.g.*, *AT&T Mobility*, 792 F. Supp. 2d at 1040-41 (finding that a fee request of 2.5% of maximum recovery reasonable in light of the Eisenburg and Miller study).

This case was also not an average case, as a significant component of Lead Counsel's expenses was for experts. Lead Counsel identified and retained leading experts in the field of loss

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Dale Global Techs. Corp., 186 F. Supp. 2d 358, 371 (S.D.N.Y. 2002) (describing as "modest" a "fair and reasonable" 4.65 multiple); *In re RJR Nabisco, Inc. Sec. Litig.*, No. 88 Civ. 7905 (MBM), 1992 WL 210138, at *6-*8 (S.D.N.Y. Aug. 24, 1992) (awarding multiplier of 6). *See also Steiner v. Am. B'casting Co.*, 248 Fed. App'x 780, 783 (9th Cir. 2007) (multiplier of 6.85 "falls well within the range of multipliers that courts have allowed"); *New England Carpenters Health Benefits Fund v. First Databank, Inc.*, Civil Action No. 05-11148-PBS, 2009 WL 2408560, at *2 (D. Mass. Aug. 3, 2009) (multiplier of 8.3); *Rite Aid*, 362 F. Supp. 2d at 589 (multiplier of 6.96); *Yuzary v. HSBC Bank USA, N.A.*, No. 12 Civ. 3693 (PGG), 2013 WL 5492998, at *11 (S.D.N.Y. Oct. 2, 2013) ("While this [lodestar multiplier of 7.6] is near the higher end of the range of multipliers that courts have allowed, this should not result in penalizing Plaintiffs' counsel . . . particular[ly] where, as here, the settlement amount is substantial.").

causation and damages, accounting and predatory lending.[18] In particular, Plaintiffs' loss causation and damages expert – Professor Fischel – issued six reports, sat for two depositions, testified at trial, responded to issues raised by defendants' four experts in the part of the case that was subject to the most scrutiny on appeal and at the time of Settlement, and was prepared to testify at trial a second time. The experts and consultants worked closely with Lead Counsel throughout the Litigation and were instrumental in assisting Lead Counsel to achieve the result obtained for the Class. Dowd Decl., ¶6(g)-(h). The expenses also include the $13.2 million in appellate costs paid by Lead Counsel on behalf of the Class, an unprecedented cost in any reported class action. Silver Report, ¶¶48-51.

IV. THE CLASS REPRESENTATIVES ARE ENTITLED TO AN AWARD OF REASONABLE COSTS AND EXPENSES

Pursuant to the PSLRA, the Court has discretion to award "reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of a class." 15. U.S.C. §78u-4(a)(4). Class Representatives Glickenhaus & Co., IUOE and PACE request reimbursement of $34,192, $13,197.24 and $15,287.07, respectively. *See* Glickenhaus Decl.; Parker Decl.; Wieck Decl. Each Lead Plaintiff devoted substantial time to the oversight of, and participation in, the Litigation, including reviewing pleadings, preparing for depositions, complying with defendants' discovery requests, consulting with Lead Counsel regarding strategy and settlement discussions. *Id*. The amounts requested will only reimburse the Plaintiffs for their expenses (including lost wages) directly relating to their representation of the Class. Not only are such awards appropriate under the PSLRA, they are also recognized as appropriate within the Seventh Circuit. *AT&T Mobility*, 792 F. Supp. 2d at 1041 (citing *Continental*, 962 F.2d at 571).

[18] Further information regarding these experts, consultants, and investigators is contained in the Dowd Declaration and the Burkholz Declaration.

V. CONCLUSION

For all the foregoing reasons, Lead Counsel respectfully request that the Court approve Lead Counsel's application for attorneys' fees and expenses, as well as the expenses sought by the Lead Plaintiffs pursuant to the PSLRA.

DATED: August 29, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2016, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses for counsel of record denoted on the attached Service List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 29, 2016.

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INDEX OF EXHIBITS TO PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND REASONABLE COSTS AND EXPENSES FOR LEAD PLAINTIFFS

EXHIBIT A

Selected Securities Cases Lost at Summary Judgment, Trial, Post-Trial or on Appeal

1. *Air Prods. & Chems., Inc. v. Airgas, Inc.*, 16 A.3d 48 (Del. Ch. 2011) (in a case where a Robbins Geller attorney represented stockholders in a week-long trial in October 2010, the court ruled in favor of the defendants, denied the shareholder plaintiffs' request for relief, and dismissed the case with prejudice).

2. *BankAtlantic Bancorp Sec. Litig.*, No. 07-61542, 2011 WL 1585605 (S.D. Fla. Apr. 25, 2011) (granting defendants' motion for judgment as a matter of law after jury rendered a plaintiffs' verdict).

3. *In re American Mutual Funds Fee Litig.*, No. 04-CV-05593, 448 Fed. App'x 716 (9th Cir. 2011) (defense verdict affirmed on appeal).

4. *In re Homestore Inc. Sec. Litig.*, No. 01-CV-11115 (C.D. Cal. 2011) (plaintiff verdict but no recovery).

5. *In re Vivendi Universal, S.A., Sec. Litig.*, Case No. 02-Civ-5571 (S.D.N.Y. 2011) (jury verdict for per share damages – class greatly narrowed by court).

6. *In re Oracle Corp. Sec. Litig.*, No. C 01-988 SI, 2009 WL 1709050 (N.D. Cal. June 19, 2009), *aff'd*, 627 F.3d 376 (9th Cir. 2010) (Robbins Geller expended tens of millions of dollars in attorney time and expenses only to see the case dismissed at summary judgment).

7. *In re Apollo Group Inc. Sec. Litig.*, No. 04-CV-02147 (D. Ariz. 2008) ($280 million jury verdict for plaintiffs after two months of trial. Verdict overturned by Judge, post-trial, but reinstated by Ninth Circuit in June 2010, and the case settled in November 2011 for $145 million).

8. *Elloway v. Pate*, 238 S.W.3d 882, 889 (Tex. App. 2007) (the trial court entered a take nothing judgment, which the Court of Appeals of Texas affirmed, after Robbins Geller attorneys completed a three-week jury trial in the Texas District Court of Harris County).

9. *In re JDS Uniphase Corp. Sec. Litig.*, No. 02-CV-1486 (N.D. Cal. 2007) (defense verdict).

10. *In re Clarent Corp.*, No. 01-CV-3361 (N.D. Cal. 2005) (plaintiff verdict for nominal damages – settled for $6.9 million).

11. *Miller v. Thane International*, No. 02-CV-01156 (C.D. Cal. 2005) (defense verdict affirmed on appeal).

12. *Claghorn v. Edsaco Ltd.*, No. 3:98 CV 3039 (N.D. Cal. 2002) (plaintiff verdict for $170 million – $165 million in punitive damages – settled for $10 million).

13. *In re Real Estate Associates Limited Partnerships*, No. 98-7035 (C.D. Cal. 2002) (tried to a $185 million jury verdict reduced by trial court to $120 million, later settled for $83 million).

14. *Koppel v. 4987 Corp.*, 96-CV-7570 (2nd Cir. 2002) (defense verdict).

15. *In re Health Management Sec. Litig.*, No. 96-CV-0889 (E.D.N.Y. 1999) (defense verdict).

16. *Robbins v. Koger Props.*, 116 F.3d 1441 (11th Cir. 1997) (plaintiffs won a securities class action jury verdict only to see it vacated on appeal).

17. *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning verdict in favor of plaintiffs as a result of a 1994 Supreme Court opinion after a case was filed in 1973 and tried in 1988).

18. *In re Apple Computer Sec. Litig.*, No. C-84-20148 (N.D. Cal. May 28, 1991) (after a current Robbins Geller attorney obtained a verdict, the district court granted defendants judgment notwithstanding the verdict).

19. *Backman v. Polaroid Corp.*, 910 F.2d 10 (1st Cir. 1990) (en banc) (reversing plaintiffs' verdict for securities fraud and ordering entry of judgment for defendants after 11 years of litigation).

20. *Ward v. Succession of Freeman*, 854 F.2d 780 (5th Cir. 1988) (reversing plaintiffs' verdict for securities fraud).

EXHIBIT B

Number of Firms Seeking Lead Counsel Role in Cases With Top Settlements

Case	Settlement Amount	Number of Firms Seeking Lead Counsel Role
Enron Corp. (S.D. Tex. 2010)	$7,227,390,000	20
WorldCom, Inc. (S.D.N.Y. 2012)	$6,133,000,000 ($4,852,000,000 for bonds; $1,281,000,000 for stocks)	13
In re Cendant Corp. Sec. Litig. (D.N.J. 2000)	$3,319,350,000	19
Tyco International Ltd. (D.N.H. 2007)	$3,200,000,000	5
AOL Time Warner, Inc. (S.D.N.Y. 2006)	$2,500,000,000	14
Bank of America Corp. (S.D.N.Y. 2013)	$2,425,000,000	6
Nortel Networks Corp. I (S.D.N.Y. 2006)	$1,142,775,308	2
Nortel Networks Corp. II (S.D.N.Y. 2006)	$1,074,265,298	13
Royal Ahold NV (D. Md. 2006)	$1,100,000,000	10
In re Merck (D.N.J. 2016)	$1,062,000,000	10
McKesson HBOC Inc. (N.D. Cal. 2006)	$1,052,000,000	20

EXHIBIT C

Settlements of $500 Million or More – Percentage of Recovery

	Case	Settlement Amount	Recovery as % of Maximum Estimated Damages
1.	*Enron Corp.* (S.D. Tex. 2010)	$7,242,090,000	23%
2.	*WorldCom, Inc.* (S.D.N.Y. 2012)	$6,194,100,714	45.8% (bonds only) 4.5% (stock)
3.	*Cendant Corp.* (D.N.J. 2000)	$3,319,350,000	37%
4.	*Tyco International Ltd.* (D.N.H. 2007)	$3,200,000,000	27%
5.	*AOL Time Warner, Inc.* (S.D.N.Y. 2006)	$2,500,000,000	Not available
6.	*Bank of America Corp.* (S.D.N.Y. 2013)	$2,425,000,000	16%
7.	***Household Int'l* (N.D. Ill. 2016)**	**$1,575,000,000**	**75-252%**
8.	*Nortel Networks Corp. I* (S.D.N.Y. 2006)	$1,142,775,308	11.4%
9.	*Royal Ahold NV* (D. Md. 2006)	$1,100,000,000	Not available
10.	*Nortel Networks Corp. II* (S.D.N.Y. 2006)	$1,074,265,298	28%
11.	*Merck* (D.N.J. 2016)	$1,062,000,000	8%
12.	*McKesson HBOC Inc.* (N.D. Cal. 2006)	$1,052,000,000	Not available
13.	*American International Group, Inc.* (S.D.N.Y. 2013)	$1,009,500,000	17%
14.	*American International Group, Inc.* (S.D.N.Y. 2015)	$970,500,000	Not available
15.	*UnitedHealth Group* (D. Minn. 2009)	$925,500,000	23%
16.	*HealthSouth Corp.* (N.D. Ala. 2010)	$804,500,000	20%
17.	*Xerox Corp.* (D. Conn. 2009)	$750,000,000	Not available
18.	*Lehman Bros. Holdings, Inc.* (S.D.N.Y. 2014)	$735,218,000	D&O settlement ($90M): unknown; Underwriter settlement ($426.218M): 13%; Structured Products settlement ($120M): 15%; EY settlement ($99M): unknown
19.	*Citigroup Bonds* (S.D.N.Y. 2013)	$730,000,000	24% (bonds)
20.	*Lucent Technologies, Inc.* (D.N.J. 2003)	$667,000,000	Not available
21.	*Wachovia Preferred Securities and Bond/Notes* (S.D.N.Y. 2011)	$627,000,000	30.6%
22.	*Countrywide Financial Corp.* (C.D. Cal. 2011)	$624,000,000	22.0%
23.	*Cardinal Health, Inc.* (S.D. Ohio 2007)	$600,000,000	20.0%
24.	*Citigroup, Inc.* (S.D.N.Y. 2013)	$590,000,000	9.4%
25.	*IPO Secs. Litig.* (S.D.N.Y. 2012)	$585,999,996	2.0%
26.	*Countrywide Fin. Corp.* (C.D. Cal. 2013)	$500,000,000	2.5% and lower of face amount (bonds)
27.	*Bear Stearns Mortgage Pass-Through Certificates* (S.D.N.Y. 2015)	$500,000,000	1.89% of face amount (bonds)

EXHIBIT D

Lodestar Comparison

Case (Settlement Amount)	Lodestar	Out of Pocket Expenses	Stage of Litigation	Length of Litigation	Lodestar on an Annualized Basis
Household Int'l. **(N.D. Ill. 2016) ($1,575,000,000)**	**$71,421,553**	**$34,308,180**	***See* Burkholz Declaration.**	**14 years**	**$5,101,539 per year**
Merck (D.N.J. 2016) ($1,062,000,000)	$205,611,776	$9,473,356	Motion practice; appellate practice; class certification; document review; 31 fact depositions; class-related depositions; expert reports; 14 expert depositions; summary judgment, *Daubert* and motions *in limine* briefing; pretrial order filed.	12.4 years	$16,581,595 per year
Tyco Int'l., Ltd. (D.N.H. 2007) ($3,200,000,000)	$172,000,000	$28,938,412.74 (3 Co-Lead Counsel firms)	Motion practice; document review; class certification; participated in over 220 depositions.	5.4 years	$31,851,852 per year
American International Group, Inc. (S.D.N.Y. 2013) ($1,009,500,000)	$121,796,013	$14,652,544	Motion practice; class certification briefing and hearing; 47 pre-settlement depositions, 50 post-settlement depositions.	9 years	$13,532,890 per year
Marsh & McLennan Companies, Inc. (S.D.N.Y. 2009) ($400,000,000)	$119,556,484	$7,848,411	Motion practice; document review; took or defended 110 depositions; took 1 expert deposition; defended 1 expert deposition.	5.2 years	$22,991,632 per year
Lehman Brothers Holdings, Inc. (S.D.N.Y. 2014) ($735,218,000)	$100,224,595	$6,348,590	Motion practice; document review; took or defended approximately 80 depositions; class certification granted in one action.	5.5 years	$18,222,654 per year
Xerox Corp. (D. Conn. 2009) ($750,000,000)	$93,824,230	$2,707,930	Motion practice; document review; class certification motion filed; took 7 depositions.	8.8 years	$10,661,844 per year
Citigroup Bonds (S.D.N.Y. 2013) ($730,000,000)	$87,229,248	$7,286,868	Motion practice; document review; took or defended 76 depositions.	4.8 years	$18,172,760 per year

Case (Settlement Amount)	Lodestar	Out of Pocket Expenses	Stage of Litigation	Length of Litigation	Lodestar on an Annualized Basis
Bank of America/Merrill Lynch Merger (S.D.N.Y. 2013) ($2,425,000,000)	$84,900,000	$8,069,985	Motion practice; document review; participation in 61 depositions; briefing summary judgment; briefing motions *in limine* and *Daubert* motions.	3.5 years	$24,257,143 per year
American International Group, Inc. (S.D.N.Y. 2015) ($970,500,000)	$77,487,172	$4,352,327	Motion practice; 45 fact witness depositions, 19 class-related depositions; class certification briefing and hearing.	6.8 years	$11,395,172 per year
Countrywide Financial Corp. (C.D. Cal. 2011) ($624,000,000)	$69,190,643	$8,080,517	Motion practice; document review; participated in 81 depositions; class certification granted.	3.2 years	$21,622,076 per year
Bear Stearns Mortgage Pass-Through Certificates (S.D.N.Y. 2015) ($500,000,000)	$52,319,720	$1,381,612	Motion practice; document review.	6.5 years	$8,049,188 per year
Citigroup, Inc. (S.D.N.Y. 2013) ($590,000,000)	$51,438,451	$2,842,841	Motion practice; document review; approximately 50 deposition taken or defended; class certification motion filed.	4.9 years	$10,497,643 per year
Royal Ahold (D. Md. 2006) ($1,100,000,000)	$50,858,606	$3,267,758	Motion practice; class certification briefed; served subpoenas; reviewed documents; defended Lead Plaintiff depositions; took no depositions.	3.3 years	$15,411,699 per year
Bernard L. Madoff Investment Securities LLC/Income Plus Investment Fund (S.D.N.Y. 2013) ($219,857,694)	$49,571,208	$1,213,292	Motion practice; document review; 3 class representatives deposed; class certification.	4.3 years	$11,528,188 per year
AOL Time Warner, Inc. (S.D.N.Y. 2006) ($2,500,000,000)	$46,861,731	$3,417,238	Motion practice; pre-merits summary judgment briefing on loss causation; no motion for class certification filed before settlement; no depositions.	3.5 years	$13,389,066 per year