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Co-Lead Counsel for Lead Plaintiffs and the Settlement Class

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE MERCK & CO., INC. SECURITIES, DERIVATIVE & "ERISA" LITIGATION	MDL No. 1658 (SRC) Civil Action No. 05-1151 (SRC) (CLW) Civil Action No. 05-2367 (SRC) (CLW)
THIS DOCUMENT RELATES TO: THE CONSOLIDATED SECURITIES ACTION	**NOTICE OF CO-LEAD COUNSEL'S MOTION FOR AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

TO: All Persons on ECF service list

PLEASE TAKE NOTICE that, on June 28, 2016 at 10:00 a.m., Co-Lead Counsel, on behalf of all Plaintiffs' Counsel, shall move before the Hon. Stanley R. Chesler, U.S.D.J., at the United States Post Office and Courthouse Building, Newark, New Jersey 07101, pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, for entry of an Order awarding attorneys' fees and reimbursement of litigation expenses.

The undersigned intend to rely upon the annexed Memorandum of Law and the Joint Declaration of Co-Lead Counsel in Support of: (A) Lead Plaintiffs' Motion for Final Approval of Settlement and Approval of Plan of Allocation; and (B) Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses, with annexed exhibits. A proposed Order granting the requested relief will be submitted with Co-Lead Counsel's reply papers after the deadline for objecting to the motion has passed.

Dated: April 29, 2016

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Liaison Counsel for Lead Plaintiffs and the Settlement Class

By: /s/ James E. Cecchi
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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE MERCK & CO., INC. SECURITIES, DERIVATIVE & "ERISA" LITIGATION	MDL No. 1658 (SRC) Civil Action No. 05-1151 (SRC) Civil Action No. 05-2367 (SRC)
THIS DOCUMENT RELATES TO: THE CONSOLIDATED SECURITIES ACTION	

MEMORANDUM OF LAW IN SUPPORT OF CO-LEAD COUNSEL'S MOTION FOR AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

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Co-Lead Counsel for Lead Plaintiffs and the Settlement Class

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Court-appointed Co-Lead Counsel, Bernstein Litowitz Berger & Grossmann LLP ("BLB&G"), Milberg LLP ("Milberg"), Brower Piven, A Professional Corporation and Stull, Stull & Brody (collectively, "Co-Lead Counsel"),[1] have achieved a Settlement providing for a combined recovery of $1.062 billion (including funds for attorneys' fees and expenses), plus interest earned thereon, for the benefit of the Settlement Class. Co-Lead Counsel respectfully request that the Court grant their motion for an award of attorneys' fees to plaintiffs' counsel in the amount of 20% of the Settlement Funds, or $212.4 million, plus interest, and grant Co-Lead Counsel's motion for reimbursement of $9,473,356.02 in litigation expenses that plaintiffs' counsel reasonably and necessarily incurred in prosecuting and resolving the Action.

PRELIMINARY STATEMENT

The settlement of the Action for a combined $1.062 billion in cash is an outstanding result for the Settlement Class, particularly when juxtaposed against the significant procedural and substantive hurdles that Lead Plaintiffs would have had to overcome in order to prevail in this complex litigation. If approved by the Court, the Settlement would rank among the fifteen largest securities class action settlements since the passage of the PSLRA and would be: (i) the second largest securities settlement within the Third Circuit; and (ii) the largest securities class action settlement ever against a pharmaceutical company.[2] This exceptional result did not come easily

[1] Capitalized terms used herein and not otherwise defined have the meanings ascribed to them in the February 8, 2016 Stipulation and Agreement of Settlement (the "Stipulation") (ECF 949-2).

[2] *See* Instutional S'holder Servs., Sec. Class Action Servs.: Top 100 for 2H 2015 (2016), attached as Exhibit 1 to the Joint Declaration of Salvatore J. Graziano, Matthew A. Kupillas, David A. P. Brower and Mark Levine, dated April 29, 2016 ("Joint Decl." or "Joint Declaration"). The Court is respectfully referred to the Joint Declaration for a detailed description of: the history of the Action; the nature of the claims asserted; Co-Lead Counsel's extensive prosecutorial efforts; the negotiations leading to the Settlement; and the value of the Settlement to the Settlement Class, as compared to the risks and uncertainties of continued litigation. Exhibits referenced herein that are annexed to the Joint Declaration are cited as "Joint Decl., Exh. __-__." The first numerical reference is to the entire exhibit attached to the Joint Declaration and the second reference is to an

or quickly. Rather, it is the product of Lead Plaintiffs' and Co-Lead Counsel's hard work and perseverance over the course of ***more than twelve years***. The initial complaint was filed on November 6, 2003, and an agreement in principle to settle the Action was not reached until December 17, 2015, less than three months before the March 1, 2016 trial date. Getting to this stage of the litigation required an immense commitment of time – plaintiffs' counsel collectively report spending more than 448,502 hours on this litigation, generating a lodestar of more than $205,611,776[3] – and almost $9.5 million in out-of-pocket costs, all on a fully contingent basis. There are very few law firms or groups of law firms that are capable or willing to risk non-payment of such large sums, and those that are must be adequately compensated for this risk to assure that they will undertake similar cases in the future.

Moreover, this Action was fraught with litigation risk. Indeed, the Court need look no further than its own decision dismissing the case on statute of limitations grounds more than nine years ago to see that the risks were extremely high, and that they were present from the outset and continued up to the date of settlement. Equally indicative of the risks inherent in this case, and its unique nature, is the fact that the Supreme Court even chose to hear it. This is the only $1 billion-plus securities fraud settlement that has involved a Supreme Court review. The Supreme Court only "accepts 100-150 of the more than 7,000 cases that it is asked to review each year" and usually only does so "if the case could have national significance, might harmonize conflicting decisions in the federal Circuit courts, and/or could have precedential value."[4] If this case lacked national

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exhibit within an exhibit, if applicable. All references to "¶ _" are to paragraphs in the Joint Declaration.

[3] The totals reported in plaintiffs' counsel's fee and expense application with respect to reported lodestar, hours worked, and expenses incurred include time and expenses reported by all plaintiffs' firms. Co-Lead Counsel reserve the right to challenge the relative contributions of all plaintiffs' counsel in allocating any fee awarded by the Court.

[4] http://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-

significance or were a "slam-dunk," the Supreme Court would not have heard it, and had Co-Lead Counsel not prevailed on their appeal in a 2-1 decision before the Third Circuit Court of Appeals in 2008, and then before the Supreme Court in 2010, the Action would have been over and the Class would have recovered nothing.

It is also important to recognize that the already numerous risks inherent in proving the elements of a securities fraud claim were greatly magnified in this case due to the complexity of the underlying subject matter of the litigation (*i.e.*, the cardiovascular ("CV") risk of Vioxx). In order to effectively prosecute the Action, Plaintiffs' Counsel needed to gain a thorough understanding of, among other things, clinical testing, biostatistics, cardiology, epidemiology, pharmacology, rheumatology, FDA regulations, gastroenterology, and pharmaceutical marketing and labeling. Without an expert knowledge of these and other disciplines, including those relevant to proving securities fraud loss causation and damages, Plaintiffs' Counsel would not have been able to effectively engage in this litigation, efficiently review more than ***35.8 million*** pages of documents produced by Defendants and third parties, participate in ***fifty-nine (59)*** depositions of expert and fact witnesses, respond to Defendants' contention interrogatories, or otherwise contest the complicated factual and legal issues at the heart of this Action. Thus, Co-Lead Counsel knew from the outset that, in addition to its high litigation risk, this would be an extremely costly and complicated expert- and document-intensive litigation against a well-financed corporate defendant, represented by some of the best defense counsel in the country. These facts greatly heightened the risk of loss.

Despite these risks, and many others, Co-Lead Counsel never wavered in their commitment to their clients, the class or the case. Their hard work and dedication should form the basis for the

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outreach/activity-resources/supreme-1 (last visited April 10, 2016).

fee award, and Co-Lead Counsel respectfully submit that an award of 20% of the Settlement Funds properly reflects the many significant risks faced by Plaintiffs' Counsel, the extraordinary procedural path of this case, the more than twelve years of effort, and the excellent results achieved in a hard fought and difficult litigation. The requested award is well within the range awarded in other comparable actions, and it equates to a very modest lodestar multiplier of only 1.03 based on the total reported lodestar, of which 93% was generated by Co-Lead Counsel. The extremely low multiplier is a strong indication that this case was hard fought and the requested fee is fair and reasonable. Co-Lead Counsel further submit that the costs and expenses they incurred are reasonable, were necessary to the successful prosecution of the Action, and should be approved.

ARGUMENT

I. PLAINTIFFS' COUNSEL ARE ENTITLED TO COMPENSATION FROM THE COMMON FUND

It is well established that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 205 (3d Cir. 2005) (a "long line" of cases holds that "attorneys 'whose efforts create, discover, increase, or preserve a [common] fund' . . . are entitled to compensation."). The "heart of this [doctrine] is a concern for fairness and unjust enrichment; the law will not reward those who reap the substantial benefits of litigation without participating in its costs." *Polonski v. Trump Taj Mahal Assocs.*, 137 F.3d 139, 145 (3d Cir. 1998).[5]

[5] Common fund fee awards also serve to encourage skilled counsel to represent classes of persons who otherwise may not be able to secure representation in complex litigation, as well as to discourage future misconduct of a similar nature. *See Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 198 (3d Cir. 2000) (goal of percentage fee awards is to "ensur[e] that competent counsel continue to be willing to undertake risky, complex, and novel litigation"); *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 750-51 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 35 (2d Cir. 1986) ("Fair awards . . . encourage and support other prosecutions, and thereby forward the cause of securities

Here, Co-Lead Counsel's efforts have resulted in the creation of a combined $1.062 billion common fund. Plaintiffs' Counsel are entitled to a share of that fund because, through their efforts, Settlement Class Members obtained access to the Court, and those who file timely and valid claims will be eligible to receive a distribution from the common fund. Awarding reasonable attorneys' fees from the common fund will properly compensate counsel for bringing and successfully pursuing these claims. It will also encourage private enforcement of the securities laws by providing an incentive for counsel to bring securities fraud cases where, like here, the United States Securities and Exchange Commission ("SEC") did not file suit against Merck.

II. THE COURT SHOULD AWARD A REASONABLE PERCENTAGE OF THE COMMON FUND

Co-Lead Counsel respectfully submit that the Court should award a fee based on a percentage of the common fund obtained for the Settlement Class, and utilize a lodestar cross-check to confirm that the fee is reasonable. In the Third Circuit, the percentage-of-recovery method is "generally favored" in cases involving a settlement that creates a common fund. *See Sullivan v. DB Investments*, 667 F.3d 273, 330 (3d Cir. 2011) (favoring percentage of recovery method "because it allows courts to award fees from the [common] fund 'in a manner that rewards counsel for success and penalizes it for failure.'"); *In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005). The percentage-of-recovery method is almost universally preferred in common fund cases because it most closely aligns the interests of counsel and the class. *Rite Aid*, 396 F.3d at 300.[6] The Third

law enforcement and compliance."). Indeed, the Supreme Court has emphasized that "meritorious private actions to enforce federal antifraud securities laws are an essential supplement to criminal prosecutions and civil enforcement actions." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007).

[6] The Supreme Court has specifically endorsed the percentage method, stating that "under the 'common fund doctrine' . . . a reasonable fee is based on a percentage of the fund bestowed on the

Circuit also recommends that the percentage award be "cross-checked" against the lodestar method to ensure its reasonableness. *Sullivan*, 667 F.3d at 330.

III. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE UNDER EITHER THE PERCENTAGE-OF-RECOVERY OR THE LODESTAR METHOD

A. The Requested Attorneys' Fees Are Reasonable Under The Percentage-Of-Recovery Method

The requested fee of 20% of the Settlement Funds is reasonable under the percentage-of-recovery method. While there is no absolute rule, the Third Circuit has observed that fee awards generally range from 19% to 45% of the settlement fund. *In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 822 (3d Cir. 1995); *see also In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D 166, 194 (E.D. Pa. 2000) ("Percentages awarded have varied considerably, but most fees appear to fall in the range of nineteen to forty-five percent"); *cf. Louisiana Mun. v. Sealed Air Corp.*, 2009 WL 4730185, at *8 (D.N.J. 2009) (noting that "[c]ourts within the Third Circuit often award fees of 25% to 33 1/3% of the recovery").

The requested fee of 20% of the Settlement Funds is also well within the range of awards regularly approved in securities class actions and other complex common fund cases that involved so-called "mega-fund" recoveries of over $100 million. *See In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587 (E.D. Pa. 2005), 146 F. Supp. 2d 706, 736 (E.D. Pa. 2001) (awarding 25% of combined $320 million settlement); *In re DaimlerChrysler AG Sec. Litig.*, No. 00-0993 (KAJ), slip op. at 1 (D. Del. Feb. 5, 2004) (awarding 22.5% of $300 million settlement) (Exh. 1)[7]; *Sullivan*, 667 F.3d at 333 (affirming award of 25% of $295 million settlement); *In re Bristol-Myers Squibb*

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class." *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984). The PSLRA also requires that "[t]otal attorneys' fees and expenses awarded . . . not exceed a ***reasonable percentage*** of the amount of any damages and prejudgment interest actually paid to the class," thus supporting the use of the percentage method. PSLRA, 15 U.S.C. §78u-4(a)(6) (emphasis added).

[7] All unreported decisions cited herein are attached hereto as exhibits.

Sec. Litig., 2007 WL 2153284, at *1 (3d Cir. July 27, 2007) (affirming award of 19.77% of $185 million settlement, which equaled the lodestar); *In re Tricor Direct Purchaser Antitrust Litig.*, No. 05-340-SLR, Dkt. No. 543 (D. Del. 2009) (33 1/3% fee from $250 million settlement fund) (Exh. 2); *Automotive Refinishing Paint*, 2008 WL 63269, at *1 (32.6% attorneys' fee from settlements totaling $105.75 million); *In re Lucent Tech., Inc. Sec. Litig.*, 327 F. Supp. 2d 426, 441-43 (D.N.J. 2004) (awarding 17% of $517 million settlement, finding fee was "considerably less than the percentages awarded in nearly every comparable case" and collecting cases and stating "where cases involving comparable risks . . . have settled for more than $100 million, courts have typically awarded fees in the range of 25% to 30%); *In re Linerboard Antitrust Litig.*, 2004 WL 1221350 (E.D. Pa. 2004) (awarding 30% of $203 million recovery); *In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 748-52 (E.D. Pa. 2013) (awarding 33 1/3% fee from $150 million fund); *Ikon*, 194 F.R.D. 166 (awarding 30% of $111 million settlement); *In re AT&T* 455 F.3d 160 (3d Cir. 2006) (affirming fee award of 21.25% of $100 million settlement).

An examination of mega-fund fee decisions in other courts further supports an award of 20% of the Settlement Funds here. *See Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1189 (S.D. Fla. 2006) (awarding 31.33% of $1.060 billion); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (awarding 29% of $596 million); *In re Adelphia Commc'ns Corp. Sec. & Deriv. Litig.*, 2006 WL 3378705, at *3 (S.D.N.Y. Nov. 16, 2006), *aff'd*, 272 Fed. Appx. (2d Cir. 2008) (awarding 21.4% of $455 million); *In re Cardinal Health, Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 767 (S.D. Ohio 2007) (awarding 18% of $600 million, equating to a 6 multiplier); *In re Credit Default Swaps Antitrust Litig.*, No. 13MD2476 DLC, ECF No. 170 (S.D.N.Y. April 18, 2016) (awarding approximately 13.61% (or $253,758,000) of $1,864,650,000 settlement fund in case pending less than 2 and ½ years, equating to a 6.36 multiplier) (Exh. 3); *In*

re BankAmerica Corp. Sec. Litig., 228 F. Supp. 2d 1061, 1066 (E.D. Mo. 2002) (awarding 18% of $490 million); *In re Vitamins Antitrust Litig.*, 2001 WL 34312839, at *10, *14 (D.D.C. July 16, 2001) (awarding 34% of $359 million); *In re Checking Account Overdraft Litig*., 2011 WL 5873389, at *22 (S.D. Fla. Nov. 22, 2011) (awarding 30% of $410 million); *Ohio Pub. Employees Ret. Sys. v. Freddie Mac.*, 2006 U.S. Dist. LEXIS 98380, at *4 (S.D.N.Y. Oct. 26, 2006) (awarding 20% of $410 million); *Silverman v. Motorola, Inc.*, 2012 WL 1597388, at *4 (N.D. Il.. May 7, 2012), *aff'd* 739 F.3d 956 (7th Cir. 2013) (awarding 27.5% on $200 million).[8]

Moreover, the fee agreement with Lead Plaintiff Miss. PERS – a sophisticated institutional investor – would allow for an attorneys' fee percentage of up to 20% of the recovery at this stage of the litigation (and a lower percentage if the action settled at an earlier stage). As the Third Circuit has recognized, an institutional lead plaintiff's choice of the fee percentage is entitled to a "presumption of reasonableness." *In re Cendant Corp. Litig.*, 264 F.3d 201, 282-83 (3d Cir. 2001); *see also In re Viropharma Inc. Sec. Litig*., 2016 WL 312108, at *16 (E.D. Pa. Jan. 25, 2016).

Finally, as the Third Circuit stated in affirming this Court's fee award in *Sullivan*, "'there is no rule that a district court must apply a declining percentage reduction in every settlement involving a sizable fund.'" 667 F.3d at 331 n.64 (quoting *Rite Aid*, 396 F.3d at 303). Rather, "'the fact-intensive *Prudential/Gunter* analysis' must trump all other considerations." *Id*. Applying this approach, the Third Circuit has approved significant fee awards where "class counsel's efforts

[8] *See also Maine Ret. Sys. v. Countrywide Fin. Corp.*, 2013 WL 6577020, at *19 (C.D. Cal. Dec. 5, 2013 (17% on $500 million); *In re Southeastern Milk Antitrust Litig*., 2013 WL 2155387, *8 (E.D. Tenn. May 17, 2013) (33 1/3% on settlements totaling $158.6 million); *In re Titanium Dioxide Antitrust Litig*., 2013 WL 6577029, at *1 (D. Md. Dec. 13, 2013) (33 1/3% on $163.5 million); *In re Plasma-Derivative Protein Therapies Antitrust Litig.*, 1:09-cv-07666, Dkt. Nos. 693, 697, 697-1 and 701 (N.D. Ill. 2014) (33 1/3% on settlements totaling $128 million) (Exh. 4); *Standard Iron Works v. Arcelormittal,et al.*, No. 08-cv-5214, Dkt. No. 539 (N.D. Ill. 2014) (33% fee on $163.9 million) (Exh. 5); *In re Lease Oil Antitrust Litigation (No. II)*, 186 F.R.D. 403 (S.D. Tex. 1999) (25% on $190 million).

played a significant role in augmenting and obtaining an immense fund." *Id*. The factors the Third Circuit has "recognized as supporting a higher award" are whether the case presents "complex and/or novel legal issues, extensive discovery, acrimonious litigation, and tens of thousands of hours spent on the case by class counsel." *Sullivan*, 667 F.3d at 333; *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 741 (3d Cir. 2001). Each of these factors was present in this litigation. This was also not a case where the "recovery is merely a factor of the size of the class and has no direct relationship to the efforts of counsel" or where "much of the settlement apparently resulted from the work of [governmental entities]." *Sullivan*, 667 F.3d at 331, n.64. The recovery is the result of a herculean effort on the part of Plaintiffs' Counsel, and the SEC never pursued the claims at issue here. The requested fee is, therefore, fair and reasonable.

B. The Reasonableness Of The Requested Attorneys' Fees Is Confirmed By A Lodestar Cross-Check

The Third Circuit recommends that district courts use counsel's lodestar as a "cross-check" to determine whether the fee that would be awarded under the percentage approach is reasonable. *See Sullivan*, 667 F.3d at 330; *AT&T*, 455 F.3d at 164.[9] "The lodestar cross-check serves the purpose of alerting the trial judge that when the multiplier is too great, the court should reconsider its calculation under the percentage-of-recovery method." *Rite Aid*, 396 F.3d at 306. "Conversely, where the ratio of the [percentage-of-recovery] to the lodestar is relatively low, the cross-check can confirm the reasonableness of the potential award under the [percentage] method." *In re Schering-Plough Corp. ENHANCE Sec. Litig.*, 2013 WL 5505744, at *33 (D.N.J. Oct. 1, 2013).

[9] Under the full "lodestar method," a court multiplies the number of hours each timekeeper spent on the case by the hourly rate, then adjusts that lodestar figure by applying a multiplier to reflect such factors as the risk and contingent nature of the litigation, the result obtained and the quality of the attorneys' work. The multiplier is intended to "account for the contingent nature or risk involved in a particular case and the quality" of the work. *Rite Aid*, 396 F.3d at 305-06.

In conducting this analysis, "[i]t is appropriate for the court to consider the multipliers utilized in comparable cases." *Meijer, Inc. v. 3M*, 2006 WL 2382718, at *23 (E.D. Pa. Aug. 14, 2006); *Rite-Aid*, 396 F.3d at 307 n.17. Given the length of this litigation, which included appeals to the Third Circuit and Supreme Court, and the amount of work that was necessary to achieve the Settlement, the lodestar cross-check is particularly relevant here.

Here, plaintiffs' counsel collectively reported an aggregate of more than 448,502 hours on the prosecution and resolution of this Action.[10] ¶ 267. Plaintiffs' counsel's reported lodestar – which is derived by multiplying their hours spent on the litigation by each firm's current[11] hourly rates for attorneys, paralegals and other professional support staff – is $205,611,776.90.[12] *Id.* Accordingly, the requested 20% fee, which equates to $212.4 million, represents a modest multiplier of approximately 1.03, of which 93% was generated by Co-Lead Counsel. Essentially, plaintiffs' counsel's combined reported lodestar results in a request for straight time. ¶268.

This multiplier is at the very low end of the range of multipliers frequently awarded

[10] These hours do not include any time spent on preparing the papers in support of final approval of the Settlement, which, if included, would have further lowered the multiplier.

[11] The hourly rates of Co-Lead Counsel, who did the vast majority of the work in this case, are comparable to rates this Court has approved in other complex cases. *In re Mercedes-Benz Tele Aid Contract Litig.*, 2011 WL 4020862, at *7 (D.N.J. Sept. 9, 2011) (approving rates in 2011 of $500-$855 for partners and $265-$560 for associates); *In re Merck & Co. Vytorin ERISA Litig.*, 2010 WL 547613 (D.N.J. Feb. 9, 2010) (approving rates in 2010 of between $250 and $835 per hour).

[12] Attached to the Joint Declaration are summary descriptions of the time reported by each firm seeking an award. Joint Decl., Exh. 3A-3S. Plaintiffs note that lodestar "cross-checking" is "not a full-blown lodestar inquiry" and need not entail "mathematical precision" or "bean counting." *AT&T*, 455 F.3d at 169, n.6 (quoting *Rite-Aid,* 396 F.3d at 306). For cross-check purposes in a common fund case, "[t]he district courts may rely on summaries submitted by the attorneys and need not review actual billing records." *Rite-Aid*, 396 F.3d at 306-07. Counsel have provided detailed time records to the Special Master, The Honorable Layn R. Phillips, pursuant to his Order, and they are available for the Court's *in camera* review upon request. *See Gunter*, 223 F.3d at 200.

throughout the Third Circuit and is additional evidence that the requested attorneys' fee is reasonable. Lodestar multipliers as high as four are often approved in common fund cases. *See In re Prudential Co. Am. Sales Practice Litig.*, 148 F.3d at 341(3d. Cir. 1998); *Schering-Plough*, 2013 WL 5505744, at *34 ("lodestar multipliers well above 1.3 and up to four are often used in common fund cases"); *see also AT&T*, 455 F.3d at 172 (approving a 1.28 multiplier and noting the Third Circuit's prior "approv[al] of a lodestar multiplier of 2.99 in . . . a case [that] 'was neither legally nor factually complex.'"); *Lucent*, 327 F. Supp. 2d at 443 (2.13 multiplier in $517 million settlement); *Rite Aid*, 146 F. Supp. 2d at 736 and 362 F. Supp. 2d at 589 (multiplier of between 4.5 and 8.5 on 2001 settlement and multiplier of 6.96 on 2005 settlement); *DaimlerChrysler*, No. 00-0993 (4.2 multiplier) (Exh. 1); *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 135 (D.N.J. 2002) (4.3 multiplier); *Ikon*, 194 F.R.D. at 195 (2.7 multiplier, noting it was "well within the range of those awarded in similar cases"); *In re Schering-Plough Corp. ENHANCE ERISA Litig.*, 2012 WL 1964451, at *8 (D.N.J. May 31, 2012) (1.6 multiplier). In fact, as reflected by the chart below, the 1.03 multiplier here is among the lowest multipliers in all other mega-fund securities fraud recoveries:

Case Name – Post-PSLRA Settlements $1 Billion and Higher	**Settlement Amount (in Millions)**	**Multiplier**
In re Am. Int'l Grp., Inc. Sec. Litig., 2010 WL 5060697, at *3 (S.D.N.Y. Dec. 2, 2010); 2012 WL 345509, at *5 (S.D.N.Y. Feb. 2, 2012); 2013 WL 1499412, at *7 (S.D.N.Y. Apr. 11, 2013); and slip op. at 2 (S.D.N.Y. Sept. 11, 2013), ECF No. 712 (Exh. 6)	$1,009.5	1.0
In re Bank of Am. Corp. Sec., Deriv. & ERISA Litig., No. 09-MDL-2058 (PKC), slip op. at 2, 4 (S.D.N.Y. Apr. 8, 2013), ECF No. 862 (Exh. 7)	$2,425	1.8
In re Nortel Networks Corp. Sec. Litig., No. 01-CV-1855 (RMB), slip op. at 10, 12 (S.D.N.Y. Jan. 29, 2007), ECF No. 194 (Exh. 8), *aff'd*, 539 F.3d 129, 134 (2d Cir. 2008)	$1,142	2.04

In re McKesson HBOC, Inc. Sec. Litig., No. 99-CV-20743, slip op. at 1 (N.D. Cal. Feb. 24, 2006), ECF No. 1444; slip op. at 1 (N.D. Cal. Apr. 13, 2007), ECF No. 1560; slip op. at 1 (N.D. Cal. Jan. 18, 2008), ECF No. 1727; & slip op. at 3 (N.D. Cal. Feb. 8, 2013), ECF No. 1800 (Exh. 9)	$1,052	2.1
In re Royal Ahold N.V. Sec. & ERISA Litig., 461 F. Supp. 2d 383, 387 (D. Md. 2006)	$1,100	2.57
In re Tyco Int'l, Ltd. Multidistrict Litig., 535 F. Supp. 2d 249, 265-71 (D.N.H. 2007)	$3,200	2.7
In re AOL Time Warner, Inc. Sec. & ERISA Litig., 2006 WL 3057232, at *28 (S.D.N.Y. Oct. 25, 2006)	$2,500	3.69
In re WorldCom, Inc. Sec. Litig., 2004 WL 2591402, at *20-*21 (S.D.N.Y. 2004) and 388 F. Supp. 2d 319, 354 (S.D.N.Y. 2005).	$6,133	4.0
In re Cendant Corp. Litig., 243 F. Supp. 2d 166, 174 (D.N.J. 2003)	$3,318	4.2
In re Nortel Networks Corp. Sec. Litig., No. 05-MD-1659 (LAP), slip op. at 10, 12 (S.D.N.Y. Dec. 26, 2006), ECF No. 77 (Exh. 10)	$1,043	4.77
In re Enron Corp. Sec., Deriv. & ERISA Litig., 586 F. Supp. 2d 732, 779 (S.D. Tex. 2008)	$7,227	5.2

IV. OTHER FACTORS CONSIDERED BY COURTS IN THE THIRD CIRCUIT CONFIRM THAT THE REQUESTED FEE IS FAIR AND REASONABLE

The Third Circuit has set forth the following criteria for consideration when assessing the reasonableness of a request for attorneys' fees in a common fund case:

> (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the Class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) the awards in similar cases.

Gunter, 223 F.3d at 195, n.1 If relevant, the court may also weigh: (1) "the value of benefits accruing to class members attributable to the efforts of class counsel as opposed to the efforts of other groups, such as government agencies conducting investigations"; (2) "the percentage fee that would have been negotiated had the case been subject to a private [non-class] contingent fee agreement at the time counsel was retained"; and (3) any "innovative terms of settlement." *AT&T*, 455 F.3d at 165 (quoting *Prudential*, 148 F. 3d at 338-40). These factors "'need not be applied in a formulaic way' because each case is different, 'and in certain cases, one factor may outweigh the

rest.'" *Id.* (quoting *Rite-Aid*, 396 F.3d at 301). "What is important is that the district court evaluate what class counsel actually did and how it benefitted the class." *Id.* at 165-66. Each of the relevant factors weighs in favor of the requested fee.

A. The Size Of The Fund Created And The Number Of Persons Benefitted

"The first *Gunter* factor analyzes the size of the fund created and the number of persons benefitted." *Hall v. AT & T Mobility LLC*, 2010 WL 4053547, at *16 (D.N.J. Oct. 13, 2010). In application, many courts consider this the primary factor to be considered in assessing the propriety of an attorneys' fee award. *See In re Schering-Plough Corp. Sec. Litig.*, 2009 WL 5218066, at *6 (D.N.J. Dec. 31, 2009) (finding this factor "[m]ost important"); *see also Hensley v Eckerhart*, 461 U.S. 424, 436 (1983) (same). Here, there can be little doubt that the $1.062 billion Settlement, which will benefit tens of thousands of investors (given the number of Settlement Notices mailed), is an outstanding result that strongly supports the requested attorneys' fee. As discussed, if approved, the Settlement would place among the largest securities class action settlements in history, which clearly weighs in favor or approval. *See* Exh. 1.

B. The Presence Or Absence Of Substantial Objections

With respect to the second *Gunter* factor, "the Court evaluates the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel." *In re Merck & Co., Inc. Vytorin ERISA Litig.*, 2010 WL 547613, at *10 (D.N.J. Feb. 9, 2010). The absence, or minimal number, of objections to a fee request has been deemed significant evidence that the requested fee is fair.[13] As explained in the Joint Declaration, ¶ 247, the Claims

[13] *See Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115, 119 (3d Cir. 1990) (even when 10% of the class objected, the response of the class as a whole "strongly favor[ed] [the] settlement"); *In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491, 515 (W.D. Pa. 2003) ("the absence of substantial objections by other class members to the fee application supports the reasonableness of Lead Counsel's request").

Administrator has to date mailed 1,907,361 Settlement Notices to potential Class Members. Joint Decl., Exh. 2 ¶10. The Court-ordered deadline for objections to any aspect of the Settlement or request for attorneys' fees and expenses is May 14, 2016. To date, only two objections to the fee and expense application have been received. ¶ 280. At the time of Co-Lead Counsel's filing of their reply papers, which are due May 24, 2016, counsel will report on the Settlement Class's reaction to the Fee and Expense Application.

C. Counsel Were Skilled And Efficient

The skill and efficiency of counsel is "measured by the quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel." *Hall*, 2010 WL 4053547, at *19. Courts have found that "[t]he single clearest factor reflecting the quality of class counsels' services to the class are the results obtained." *AremisSoft*, 210 F.R.D. at 132; *In re Safety Components Sec. Litig.*, 166 F. Supp. 2d 72, 97 (D.N.J. 2001) (considering "excellent result under skill and expertise factor" under this analysis).

The quality of the work that has been presented to the Court speaks for itself. Among other things, Co-Lead Counsel successfully opposed Defendants' multiple rounds of motions to dismiss, motion for judgment on the pleadings, and motions for summary judgment, and successfully litigated their class certification motion. *See Rowe v. E.I. DuPont de Nemours & Co.*, 2011 WL 3837106, at *19 (D.N.J. Aug. 26, 2011) (given "many opportunities to observe counsel's performance," the Court found counsel to be "highly competent."). Co-Lead Counsel also: (i) won their appeal to the Third Circuit Court of Appeals; (ii) prevailed before the U.S. Supreme Court, where they retained and worked with a respected Supreme Court specialist; (iii) engaged in extensive fact, class and expert discovery, which included taking or defending fifty-nine (59)

depositions largely condensed into the 2013 calendar year, including fourteen (14) expert depositions; reviewing more than thirty-five (35) million pages of documents and responding to extensive contention interrogatories by preparing 543-page responses that cited more than 1,350 documents; and (iv) engaged in substantial trial preparation, including the submission of a 2,170-page Joint Pretrial Order and conducting a multi-day mock trial session. As a result of these efforts, Co-Lead Counsel were able to obtain a large recovery for the Settlement Class on the eve of trial. *See In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 121 (D.N.J. 2012) ("substantial settlement sum" further evidences counsel's competence).

In addition to their legal skills, Co-Lead Counsel were required to know or learn the science behind the drugs at issue, applicable FDA regulations, and complex biostatistical principles that were necessary to understand Merck's Vioxx trial results and analyses, and the alleged falsity of Defendants' statements. Co-Lead Counsel's mastery of these complex and esoteric subjects to the degree necessary to depose world-renowned experts in these fields, and ability to stay abreast of numerous critical securities law developments (including cases on evolving Supreme Court standards), is strong evidence of their litigation skills and effective representation. *See Rowe*, 2011 WL 3837106, at *20 ("Effective and efficient representation of the class required specialized understanding of on-going scientific, regulatory, political/legislative and legal developments").

Co-Lead Counsel also had every incentive to be as efficient as possible given that a recovery was by no means certain. Among other things, Co-Lead Counsel developed and followed a plan to efficiently coordinate the analysis of evidence. For example, to effectively organize, review and analyze the more than 35 million pages of documents produced by Defendants and third parties, Co-Lead Counsel stored the documents in a shared electronic document depository. The depository enabled all Plaintiffs' Counsel to code the documents and search them through

standardized categorizations and "Boolean"-type word searches. The Internet-accessible database thus allowed attorneys, under the direction and supervision of Co-Lead Counsel, to review documents and coordinate discovery.

The review was likewise structured to limit overall cost, with the bulk of the initial review being conducted by more junior attorneys, and all aspects of the review being supervised by senior attorneys, to eliminate inefficiencies and ensure high-quality work product. This supervision included the drafting of a detailed document review manual, multiple in-person training sessions with senior attorneys and experts, and other discussions regarding key issues. The training sessions were supplemented by regular teleconferences, and, prior to those calls, documents coded as "hot" by junior attorneys were analyzed by senior attorneys, and then discussed as a group during the calls. Samplings of documents were also reviewed by more experienced attorneys to provide quality control. By working primarily electronically, and by adhering to a well thought out discovery plan, Co-Lead Counsel eliminated inefficiencies, and saved significant amounts of time and money.

With respect to "the skill, experience and expertise" of counsel, as set forth in the firm resumes submitted herewith (*see* Joint Decl., Exhs. 3A – 3D), and as the Court repeatedly observed over the course of this litigation, Co-Lead Counsel are among the most experienced and skilled firms in the securities litigation field, with a long and successful track record in securities cases throughout the country. *See id.*; *Schering-Plough ERISA Litig.*, 2012 WL 1964451, at *6 (the skill and efficiency of attorneys with substantial experience in class action litigation favored award of attorneys' fees); *In re Genta Sec. Litig.*, 2008 WL 2229843, at *10 (D.N.J. May 28, 2008) ("the attorneys' expertise in securities litigation favors approving the requested award for attorneys'

fees").[14]

"The quality of opposing counsel is also important in evaluating the quality of plaintiffs' counsel's work." *Hall*, 2010 WL 4053547, at *19. Co-Lead Counsel were opposed in this litigation by some of the nation's most elite law firms. Indeed, the skill, experience and resources of Cravath Swaine & Moore, LLP; Paul, Weiss, Rifkind, Wharton & Garrison LLP; Hughes Hubbard & Reed LLP; and Schulte Roth & Zabel LLP, are well known. *See, e.g., In re Lucent Techs., Inc. Sec. Litig.*, 327 F. Supp. 2d 426, 437 (D.N.J. 2004) ("the Cravath firm . . . is one of the premier law firms in the world, with a well-rooted reputation for exceptional legal services"); *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 358 (S.D.N.Y. 2005) (stating defense counsel, including Paul, Weiss, were "formidable opposing counsel" and "some of the best defense firms in the country").

Defense counsel zealously represented the interests of their clients and were prepared to litigate this case through trial and appeals. In the face of this experienced, well-financed, determined opposition, who aggressively disputed the issues in this case, Co-Lead Counsel were nonetheless able to achieve an outstanding result. The fact that Co-Lead Counsel achieved this Settlement "in the face of formidable legal opposition further evidences the quality of their work." *In re Corel Corp. Inc. Sec. Litig.*, 293 F. Supp. 2d 484, 496 (E.D. Pa. 2003). Accordingly, this factor weighs heavily in favor of the reasonableness of the fee request.

D. The Complexity And Duration Of The Litigation Support The Fee Request

The fourth *Gunter* factor is "the complexity and duration of the litigation." *Gunter*, 223

[14] Similarly, as set forth in the other firms' declarations and/or attached resumes, Plaintiffs' other counsel are experienced and skilled firms in the securities litigation field, or firms that specialize in other types of complex litigation with long track records of success in their chosen fields. *See* Joint Decl., Exhs. 3E – 3S.

F.3d at 195 n.1. This and many other courts have repeatedly recognized that "securities class actions are inherently complex." *Louisiana Mun. Police Emps. Ret. Sys. v. Sealed Air Corp.*, 2009 WL 4730185, at *8 (D.N.J. Dec. 4, 2009); *In re Merrill Lynch & Co. Research Reports Sec. Litig.:* 246 F.R.D. 156, 172 (S.D.N.Y. 2007) ("Securities class litigation 'is notably difficult and notoriously uncertain.'"). The complexity of this case was compounded by the length of the class period, the numerous clinical trials at issue here, the medical and scientific knowledge necessary to understand them, as well as the statistical analyses that Co-Lead Counsel were required to understand and present to the Court to effectively prosecute Lead Plaintiffs' claims. With respect to duration, this litigation has been pending for more than 12 years, and is the longest-running securities fraud case that resulted in a settlement of over $1 billion. This factor thus strongly supports Co-Lead Counsel's fee application. *See Schering-Plough ERISA*, 2012 WL 1964451, at *7 (awarding fees of 33-1/3% of settlement and finding: "this is a significantly complex litigation that has been ongoing for four years," which "weighs in favor" of the award); *Merck ERISA*, 2010 WL 547613, at *10 ("inherently complex [suit] . . . ongoing for more than two years" warranted 33-1/3% fee award).

E. The Risk Of Non-Payment Supports The Fee Request

The fifth *Gunter* factor – the risk of non-payment – is particularly significant here. *See AremisSoft*, 210 F.R.D. at 134 ("The risk of non-payment in complex cases, such as this, is very real and is heightened when Plaintiffs' Counsel press to achieve the very best result."); *Pet Food Prods.*, 2008 WL 4937632, at *22, *aff'd in part, vacated in part on other grounds*, 629 F.3d 333 (3d Cir. 2010) ("Courts have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees"). In applying this factor, "[t]he risks plaintiffs' counsel faced must be assessed as they existed in the morning of the action, not in light of the settlement ultimately achieved at the end of the day." *In re Xcel Energy, Inc., Sec., Deriv.*

& "ERISA" Litig., 364 F. Supp. 2d 980, 994 (D. Minn. 2005).

From the outset, Co-Lead Counsel understood they were embarking on a complex, expensive, and likely lengthy litigation with no guarantee of ever being compensated for the substantial investment of time and money the case would require. In undertaking that responsibility, counsel were obligated to ensure that sufficient resources were dedicated to the prosecution of the Action, and that funds were available to compensate staff and to cover the considerable costs that a case such as this requires. With an average lag time of several years for cases of this type to conclude, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis, as defense counsel were. Indeed, Plaintiffs' Counsel received no compensation during more than 12 years of litigation and advanced or incurred almost $9.5 million in expenses in prosecuting this Action for the benefit of the Settlement Class. ¶ 281.

While all litigation entails some risks, here, there was a very real possibility that Lead Plaintiffs would recover nothing, as evidenced by the Court's initial dismissal of the Action. *Xcel Energy*, 364 F. Supp. 2d at 1003 ("The court needs to look no further than its own order dismissing the . . . litigation to assess the risks involved."). Even if they succeeded in obtaining a recovery for the class, Plaintiffs' Counsel bore the risk that they would not be fully compensated for their time and efforts. Furthermore, even after having prevailed at the Third Circuit and Supreme Court, and taking the case to the eve of trial, substantial risks remained. There were significant obstacles to establishing scienter, material falsity, loss causation and damages, all of which are required elements of Plaintiffs' claims. *See Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 341 (2005); Joint Decl. ¶¶ 210-243.

(1) The Risks To Establishing Defendants' Scienter

In order to prove scienter, Lead Plaintiffs would need to demonstrate that Defendants subjectively disbelieved or lacked a reasonable basis for the Naproxen Hypothesis and other

allegedly false claims that Vioxx was safe. Lead Plaintiffs also needed to establish that Defendants knew or recklessly disregarded that Defendants' Vioxx CV safety data, used by Defendants to support their allegedly false statements, lacked statistical power. This would be no easy task. *See In re Viropharma Inc. Sec. Litig.*, 2016 WL 312108, at *12 (E.D. Pa. Jan. 25, 2016) ("Since stockholders normally have little more than circumstantial and accretive evidence to establish the requisite scienter, proving scienter is an uncertain and difficult necessity for plaintiffs.").

Although Lead Plaintiffs uncovered significant evidence during discovery that they contend showed Defendants' scienter, including in documents reviewed and during the depositions of numerous witnesses, Defendants presented many facts and counter-arguments in opposition. For example, Lead Plaintiffs faced a serious risk that the jury might be swayed by testimony of Merck's outside consultants, Drs. FitzGerald, Oates, and Patrono, regarding the Defendants' state of mind, which could paint them in a favorable light and support Defendants' contention that they did not act with scienter. While Co-Lead Counsel had drafted a motion *in limine* to preclude such testimony, there was no guarantee the motion would be granted. Merck executives (including Defendants Scolnick and Reicin) also asserted they and their family members personally took Vioxx during the Class Period, which might have persuaded jurors that Defendants did not believe Vioxx was unsafe.

Proving scienter would also entail significant expert testimony. For instance, the testimony of Lead Plaintiffs' expert in biostatistics, Dean Madigan, was crucial to establishing Defendants' scienter with respect to the alleged false and misleading statements, including Defendants' statements that Merck's data showed "no difference" in CV risk between Vioxx and non-Naproxen comparators, while Defendants' expert opined to the contrary. The jury would be asked to determine which interpretation is more fully supported by the evidence. As a result, Lead Plaintiffs

would need to explain, to a lay jury, numerous esoteric concepts such as confidence intervals, Bayesian analysis, intention-to-treat analysis, and subgroup analyses, as well as concepts of epidemiology and pharmacology, necessary to understand the case. Success was not a foregone conclusion. *See In re Bear Stearns Cos., Inc. Sec., Deriv., & ERISA Litig.*, 909 F. Supp. 2d 259, 267 (S.D.N.Y. 2012) ("When the success of a party's case turns on winning a so-called 'battle of experts,' victory is by no means assured.").

Moreover, no Defendant ever admitted wrongdoing. Defendants vigorously disputed that they acted with scienter in their various motions to dismiss and motions for summary judgment, and they would continue to vigorously dispute these issues at trial. In addition, the Individual Defendants would likely testify at trial that they truly believed Vioxx was safe and provided significant benefits to patients. Lead Plaintiffs also faced risk in proving that Dr. Scolnick's highly-suspicious trading in Merck stock demonstrated his scienter. The SEC never pursued a case against Dr. Scolnick for his stock trades and Plaintiffs would be asking jurors to rule on allegations that Scolnick disputed, offering numerous personal reasons for the sales.

Another obstacle for Lead Plaintiffs was the fact that the FDA scrutinized underlying Vioxx CV safety data, yet repeatedly approved the drug for sale. At trial, Defendants would continue to assert that the FDA's independent review and approval of Vioxx as safe and effective demonstrates that Defendants lacked scienter and did not make false statements. Merck would likely assert that the Company exceeded the clinical testing required by FDA rules and regulations when testing Vioxx, including the number of study patients, and the jury might place significant reliance on the FDA's approval of Vioxx. FDA approval thus represented a substantial hurdle to Lead Plaintiffs' success at trial. *See AT&T*, 455 F.3d at 170 ("the difficulty of proving actual knowledge under §10(b) of the Securities Exchange Act . . . weigh[s] in favor of approval of the

fee request.").

(2) The Risks To Establishing Materiality

Throughout the litigation, Defendants asserted, and planned to present to the jury, a "truth-on-the-market" defense. *See Connecticut Ret. Plans & Trust Funds v. Amgen Inc.*, 660 F.3d 1170, 1177 (9th Cir. 2011), *aff'd*, 133 S. Ct. 1184 (2013) ("the truth-on-the-market defense is a method of refuting an alleged misrepresentation's materiality"); *In re Bell Atl. Corp. Sec. Litig.*, 1997 WL 205709, at *24 (E.D. Pa. Apr. 17, 1997), *aff'd sub nom,*142 F.3d 427 (3d Cir. 1998) ("This doctrine recognizes that . . . a defendant's misrepresentations or omission of material information is not material . . . if accurate information has been made available to the market by other sources."). Specifically, Defendants argued that significant information about Vioxx's CV risk was in the public domain during the Class Period, and that Defendants could not be held liable for simply being part of a public "scientific debate" over Vioxx's CV risk.

In support of this argument, Defendants would continue to point to discussions in securities analyst reports, medical journals and media outlets, which questioned the CV safety profile of Vioxx. While Lead Plaintiffs believed they developed strong counter-arguments to Defendants' truth-on-the-market defense, materiality is a jury question and there was a real risk that the jury could conclude the market was aware of the CV risks posed by Vioxx and find that the alleged misrepresentations and omissions were not material. *See Shapiro v. UJB Fin. Corp.*, 964 F.2d 272, 280 n.11 (3d Cir. 1992) ("[T]he delicate assessments of the inferences a reasonable shareholder would draw from a given set of facts are peculiarly for the trier of fact.").

(3) The Risks To Proving Falsity

Defendants have always maintained, and would likely present evidence at trial purporting to show, that when the VIGOR results were disclosed, the Naproxen Hypothesis was a reasonable explanation for those results and was believed by Merck. Defendants would also likely continue

to argue that post-Class Period research shows that all NSAIDs have CV risk, with the exception of Naproxen, and that this renders Naproxen an outlier among these drugs, which, according to Defendants would further support the reasonableness of the Naproxen Hypothesis. Defendants would also rely on testimony of Merck employees to claim they actually believed the Naproxen Hypothesis during the Class Period, and that Vioxx could be on the market today.

(4) The Risks To Establishing Loss Causation And Damages

Even if Lead Plaintiffs were able to establish liability, they still needed to ***prove*** loss causation and damages. *See Dura*, 544 U.S. at 345-46 (plaintiffs bear the burden of proving that "the defendant's misrepresentations 'caused the loss for which the plaintiff seeks to recover'"). This was far from a *fait accompli*. Indeed, the Court already dismissed at the motion to dismiss stage Plaintiffs' claims that they suffered damages as a result of the November 1, 2004 publication by *The Wall Street Journal* of damaging, internal Merck documents (and the corresponding sharp decline in Merck's stock price) because that disclosure did "not correlate to the fraud alleged." 2012 WL 3444199, at *34 (D.N.J. Aug. 8, 2011). It was thus entirely possible that other findings at trial could further reduce the Class's recoverable damages.

Indeed, Defendants would likely continue to challenge Plaintiffs' damages resulting from the alleged September 30, 2004 corrective disclosure. That day, when Merck withdrew Vioxx from the market, the price of Merck stock fell by more than $12 per share (almost 27%). Defendants have argued that Vioxx's withdrawal resulted from the discovery of entirely new information – the newly unblinded APPROVe results – rather than the correction of fraud, and that Lead Plaintiffs' damages expert, Dr. David Tabak of NERA, failed to demonstrate what portions of the stock price decline were linked to Defendants' fraud. *See* ECF No. 850-7 (Expert Report of Christopher M. James, Ph.D. at ¶¶ 75-77). While Lead Plaintiffs had strong arguments supporting Dr. Tabak's conclusions, Defendants made clear they would continue to challenge his findings.

¶¶ 154-156, 200, 232. Had any of Defendants' arguments been accepted in whole or in part, that could have eliminated or significantly limited Plaintiffs' recovery. *See Cendant*, 264 F.3d at 239 ("[E]stablishing damages at trial would lead to a 'battle of experts' with each side presenting its figures to the jury and with no guarantee whom the jury would believe.").

Finally, it was not a given that Dr. Tabak would present his full damages analysis at trial. On August 28, 2015, Defendants moved to preclude Dr. Tabak's opinions based on his use of assumptions such as the commercial viability, and FDA labeling, of Vioxx that purportedly did not "fit" the case. ECF No. 820. Lead Plaintiffs opposed that motion on September 18, 2015, but the Court had not ruled on it by the time the Parties reached the Settlement. If Defendants had prevailed on the motion, Lead Plaintiffs could have lost their ability to use Dr. Tabak's damages model, which could have ended the case or damages may have been limited to just a portion of what Plaintiffs' alleged total damages included. *See Bricklayers & Trowel Trades Int'l Pension Fund v. Credit Suisse Sec. (USA) LLC*, 752 F.3d 82, 97 (1st Cir. 2014) ("[W]e *affirm* the district court's exclusion of the shareholders' expert testimony [on loss causation] and consequently *affirm* its award of summary judgment to CSFB."; *In re Omnicom Grp., Inc. Sec. Litig.*, 541 F. Supp. 2d 546, 554 (S.D.N.Y. 2008), *aff'd*, 597 F.3d 501 (2d Cir. 2010) (finding "no way for a juror to determine whether the alleged fraud caused Plaintiff's loss" without expert testimony); *In re Pfizer Inc. Sec. Litig.*, 2016 WL 1426211 (2d Cir. Apr. 12, 2016) (overturning district court's granting of summary judgment for defendants after precluding testimony from plaintiffs' loss causation and damages expert on the eve of trial).

(5) Additional Risks

Even if Lead Plaintiffs prevailed at trial on liability and damages, no judgment would have been secure until after the rulings on the inevitable post-judgment motions and appeals became final – a process that would take years. Despite the most vigorous and skillful efforts, a firm's

success in contingent litigation is never assured, and there are many class actions in which plaintiffs' counsel expended tens of thousands of hours and received nothing for their efforts. *See In re BankAtlantic Bancorp, Inc. Sec. Litig.*, 2011 WL 1585605 (S.D. Fla. Apr. 25, 2011) (granting judgment as a matter of law for defendants after jury verdict for plaintiffs).[15]

Even the most promising cases can be eviscerated by a sudden change in the law. *See In re Alstom S.A. Sec. Litig.*, 741 F. Supp. 2d. 469 (S.D.N.Y. 2010) (after completion of extensive foreign discovery, 95% of plaintiffs' damages were eliminated by Supreme Court reversal of 40 years of circuit precedents in *Morrison v. Nat'l Bank of Austl.*, 561 U.S. 247 (2010)). This was a major risk during this litigation, as the U.S. Supreme Court issued numerous major decisions impacting the scope of securities fraud liability, and any of those decisions might have resulted in the dismissal of Lead Plaintiffs' claims. *See* ¶¶ 181-193 (discussing these risks).

In sum, the risks were substantial, and present at every step of the litigation. This factor thus strongly supports the requested fee award. *See In re Merck & Co., Inc. Vytorin ERISA Litig.*, 2010 WL 547613, at *11 (D.N.J. Feb. 9, 2010) (finding "[t]he risk of little to no recovery weighs in favor of an award of attorneys' fees" in contingent litigation); *Esslinger v. HSBC Bank Nevada, N.A.*, 2012 WL 5866074, at *13 (E.D. Pa. Nov. 20, 2012) ("This [risk of non-payment] factor allows courts to award higher attorneys' fees for riskier litigations").

F. The Amount Of Time Devoted To The Case By Counsel

Plaintiffs' counsel collectively reported more than 448,502 hours devoted to the

[15] *See also Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408 (7th Cir. 2015), *reh'g denied* (July 1, 2015) (reversing jury verdict awarding investors $2.46 billion and ordering new trial on certain issues); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning securities fraud class action jury verdict for plaintiffs in case filed in 1973 and tried in 1988 on the basis of 1994 Supreme Court opinion); *Backman v. Polaroid Corp.*, 910 F.2d 10 (1st Cir. 1990) (after 11 years of litigation, and following a jury verdict for plaintiffs and an affirmance by a First Circuit panel, plaintiffs' claims were dismissed by an *en banc* decision).

prosecution of the Action. The resulting "lodestar" is more than $205,611,776.[16] *See* Joint Decl., Exh. 3 (Summary Lodestar and Expense Table) and Exhs. 3A-3S. Co-Lead Counsel's efforts included, but were not limited to: (i) conducting a thorough investigation into the class's claims; (ii) drafting detailed consolidated class action complaints; (iii) successfully appealing the District Court's initial dismissal of the Action to the U.S. Court of Appeals for the Third Circuit; (iv) withstanding Defendants' appeal of that decision to the U.S. Supreme Court and achieving a unanimous 9-0 victory at the Supreme Court; (v) successfully opposing, in most part, Defendants' subsequent motions to dismiss the complaint; (vi) successfully moving for class certification; (vii) engaging in an extensive and diligent discovery effort, including participating in fifty-nine (59) depositions, reviewing and analyzing more than 35.8 million pages of documents, and preparing responses to Defendants' contention interrogatories; (viii) consulting with a number of experts on important aspects of the case and working with them to prepare expert reports; (ix) successfully opposing Defendants' motions for summary judgment; (x) completing virtually all pre-trial preparations, including the filing of *Daubert* motions and oppositions, as well as filing a comprehensive joint Pretrial Order; and (xi) participating in numerous settlement conferences, mediation sessions and settlement discussions with the Court, the Court-appointed mediator and defense counsel, which resulted in the Settlement. Lead Plaintiffs also engaged in a multi-day mock trial session, which provided them with extensive insight into the risks they faced at trial. ¶ 149. In light of the immense and time consuming effort put forth by counsel, Co-Lead Counsel

[16] Current hourly rates were used, as permitted by Supreme Court precedent, to help compensate for inflation and the loss of use of funds, an especially important consideration here given that Plaintiffs' Counsel have been litigating this case for more than 12 years without any payment whatsoever for their efforts. *See Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989); *Rent-Way*, 305 F. Supp. 2d at 517 n.10; *Ikon*, 194 F.R.D. at 195. For attorneys no longer with the submitting firm, the lawyer's rate in the last year of service has been used.

respectfully submit that this *Gunter* factor weighs heavily in favor of the requested attorneys' fee.

G. Awards In Similar Cases Support The Fee Request

The *Gunter* analysis asks the Court to consider "awards in similar cases." *Gunter*, 223 F.3d at 195 n. 1. As discussed in detail in Section III above, the requested 20% fee is well within the range of fee awards that courts in the Third Circuit and around the country have approved in comparable mega-fund cases and the lodestar multiplier resulting from the requested fee is at the very low end of the range of multipliers that have commonly been awarded.

H. The Lack Of SEC Enforcement Supports The Requested Fee

The Third Circuit has advised district courts to examine whether class counsel benefited from a governmental investigation or enforcement actions concerning the alleged wrongdoing, because this can indicate whether or not counsel should be given full credit for obtaining the value of the settlement fund for the class. *See Prudential*, 148 F.3d at 338. Here, Merck reported in its 2004-2009 Forms 10-K that it was the subject of a formal SEC investigation into its public disclosures concerning Vioxx, which ultimately did not result in the SEC bringing a lawsuit or administrative proceeding against Merck. The SEC has also never asserted or pursued claims against Dr. Scolnick for his insider sales of Merck stock, whereas Lead Plaintiffs did. Notably, Defendants indicated on their exhibit list that they intended to submit evidence to the jury of the SEC's decision ***not*** to prosecute Merck for violating the securities laws. Accordingly, although Plaintiffs would have moved to preclude that evidence, the SEC's non-prosecution of Defendants potentially added to Plaintiffs' risks to proving their claims, as a jury could have been persuaded that the lack of SEC charges or convictions meant no fraud was committed.

I. The Requested Fee Is Significantly Lower Than Contingent Fee Arrangements Negotiated In Non-Class Litigation

The Third Circuit has suggested that the requested fee be compared to the percentage that "would have been negotiated had the case been subject to a private [non-class] contingent fee agreement." *AT&T*, 455 F.3d at 165 (citing *Prudential*, 148 F.3d at 340). The *Prudential* court noted that this factor may be less helpful in analyzing large settlements (*Prudential*, 148 F.3d at 340), but case law demonstrates that the 20% range is well below what is agreed upon in most private contingent fee agreements. *See Blum*, 465 U.S. at 904 ("In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers."). *In re Remeron End-Payor Antitrust Litig.*, 2005 WL 2230314, at *31 (finding 23.6% below the "general standard").[17]

J. Any Innovative Terms In The Settlement

The Settlement does not contain any innovative terms; it provides a cash recovery in return for releases, which "neither weighs in favor nor detracts from a decision to award attorneys' fees." *In re Processed Egg Prods. Antitrust Litig.*, 2012 WL 5467530, at *6 (E.D. Pa. Nov. 9, 2012).

V. CO-LEAD COUNSEL'S LITIGATION EXPENSES SHOULD BE REIMBURSED

An attorney who has created a common fund for the benefit of the class is entitled to reimbursement of reasonable litigation expenses from that fund. *See Ikon*, 194 F.R.D. at 192. To be reimbursable, the expenses must be "adequately documented and reasonably and appropriately

[17] *See also Hall*, 2010 WL 4053547, at *21 ("Attorneys regularly contract for contingent fees between 30% and 40% with their clients in non-class commercial litigation."); *In re Remeron Direct Purchaser Antitrust Litig.*, 2005 WL 3008808, at *16 (D.N.J. Nov. 9, 2005) ("Attorneys regularly contract for contingent fees between 30% and 40% with their clients in non-class, commercial litigation."); *In re Orthopedic Bone Screws Prod. Liab. Litig.*, 2000 WL 1622741, at *7 (E.D. Pa. Oct. 23, 2000) (noting that "plaintiffs' counsel in private contingency fee cases regularly negotiate agreements providing for thirty to forty percent of any recovery").

incurred in the prosecution of the class action." *See In re Safety Components.*, 166 F. Supp. 2d 72, 108 (D.N.J. 2001).

Here, Plaintiffs' counsel expended $9,473,356.02 in out-of-pocket costs, which are divided into categories and itemized in the declarations submitted by each individual firm. *See* Joint Decl., Exhs. 3A-3S and Exh. 4 (chart compiling and categorizing all expenses). Many of the expenses were paid out of the litigation fund financed by Co-Lead Counsel.[18] Joint Decl., Exh. 3A-3. These expenses are well-documented, based on the books and records maintained by each firm, and reflect the costs of prosecuting this litigation. They include, among other things, fees for experts; costs associated with creating and maintaining an electronic document database; online legal research costs; travel and lodging expenses; mediation fees; copying; mail; telephone; and deposition transcripts. Reimbursement of similar expenses is routinely permitted. *See In re Remeron*, 2005 WL 2230314, at *32 (approving reimbursement of "costs expended for purposes of prosecuting this litigation, including substantial fees for experts; substantial costs associated with creating and maintaining an electronic document database; travel and lodging expenses; copying costs; and the costs of deposition transcripts").[19] Additionally, the Settlement Notice advised potential Settlement Class Members that Co-Lead Counsel would seek reimbursement of expenses not to exceed $19 million. Joint Decl., Exh., 2-A. The expenses sought are well below this "cap" and should be awarded.

[18] A description of the payments from the litigation funds by category is set forth in Joint Decl., Exh. 3A-3.

[19] *See also Oh v. AT & T Corp.*, 225 F.R.D. 142, 154 (D.N.J.2004) (finding the following expenses to be reasonable: "(1) travel and lodging, (2) local meetings and transportation, (3) depositions, (4) photocopies, (5) messengers and express services, (6) telephone and fax, (7) Lexis/Westlaw legal research, (8) filing, (10) postage, (11) the cost of hiring a mediator, and (12) NJ Client Protection Fund relating to *pro hac vice*").

CONCLUSION

For the foregoing reasons, Co-Lead Counsel respectfully request that the Court grant their fee and expense application.

Dated: April 29, 2016

Respectfully submitted,

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#975788

Exhibit 1

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE DAIMLERCHRYSLER AG SECURITIES LITIGATION	)	Master File No. 00-0993 (KAJ)

ORDER AWARDING LEAD PLAINTIFFS' COUNSELS' ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

THIS MATTER having come before the Court on December 5, 2003, on the application of Lead Plaintiffs' Counsel for an award of attorneys' fees and reimbursement of expenses incurred in the above-captioned action; the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of this action to be fair, reasonable and adequate and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation of Settlement dated September 29, 2003 (the "Stipulation").

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

3. The Court hereby awards Lead Plaintiffs' Counsel reimbursement of $2,908,451.15 million in litigation expenses, plus one-half the cost of the Special Master in participating in and preparing a report on the settlement. The Court also awards Lead Plaintiffs' Counsel attorneys' fees in the amount of $66,845,600, which is 22.5% of the Settlement Funds

(less expenses), together with the interest earned thereon for the same period and at the same rate as that earned on the Settlement Fund until paid. Said fees and expenses shall be allocated among plaintiffs' counsel by Lead Counsel in a manner which, in Lead Counsel's good faith judgment, reflects each such counsel's contribution to the institution, prosecution and resolution of the Litigation. The Court finds that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method.

4. The awarded attorneys' fees and expenses shall be paid to Lead Counsel subject to the terms, conditions and obligations of the Stipulation and in particular ¶¶ 22-24 thereof, which terms, conditions and obligations are incorporated herein.

IT IS SO ORDERED.

DATED: Feb. 5, 2004

THE HONORABLE KENT A. JORDAN
UNITED STATES DISTRICT JUDGE

(311966)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE DAIMLERCHRYSLER AG SECURITIES LITIGATION	Master File No. 00-0993 (JJF)

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' COUNSELS' APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

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Dated: November 14, 2003

inflation and the loss of use of funds. *See Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989); *New York State Ass'n for Retarded Children, Inc. v. Carey*, 711 F.2d 1136, 1153 (2d Cir. 1983). The lead Counsel Declarations include a description of the background and experience of the attorneys who worked on this case, which provide support for the hourly rates charged in the prosecution of the Class's claims.

C. THE LODESTAR MULTIPLIER

"Calculation of the lodestar, however, is simply the beginning of the analysis." *Warner*, 618 F. Supp. at 747. In the second step of the lodestar analysis, the court adjusts the lodestar to take into account, among other things, the result achieved, the quality of representation, the complexity and magnitude of the litigation, and public policy considerations. *See Cendant PRIDES Litig.*, 243 F.3d at 742 n.26; *Prudential*, 148 F.3d at 341; *Fine Paper*, 751 F.2d at 583; *Seidman v. Am. Mobile Sys.*, 965 F. Supp. 612, 623 (E.D. Pa. 1997). The court then applies the appropriate multiplier to the lodestar number to account for these additional factors.

D. PERFORMING THE LODESTAR CROSS-CHECK

To perform the lodestar cross-check, the court should compare the requested percentage fee to the lodestar multiplier required to reach that fee, and then determine whether the resulting fee would be so unreasonable as to warrant a downward adjustment. The cumulative hours expended by all Plaintiffs' counsel here total 42,000 hours, and their cumulative lodestar in this action totals $15.865 million. Thus, the requested fee of 22.5% of the $300 million common fund, after deducting the expenses we request, after deducting the expenses we request, equals a lodestar multiplier of 4.21.

This multiplier falls comfortably within the range of implied multipliers that have been found to be reasonable for cross-check purposes in other class actions from federal and state courts located in this circuit and is fully justified in this case. *See, e.g., Rite Aid*, 269 F. Supp. 2d at 611 (awarding fee equal to multiplier of 4.07 and recognizing that "multipliers in this range are fairly common"); *Rite Aid*, 146 F. Supp. 2d at 736 n.44 (awarding fee equal to multiplier of up to 8.5); *Weiss v. Mercedes-Benz of N. Am., Inc.*, 899 F. Supp. 1297, 1304 (D.N.J. 1995) (awarding fee equal to multiplier of 9.3),

Exhibit 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE TRICOR DIRECT PURCHASER ANTITRUST LITIGATION	CASE NO. 05-340 (SLR) (consolidated)
THIS DOCUMENT RELATES TO: *Louisiana Wholesale Drug. Co., Inc. (05-340)* *Rochester Drug Co-Operative, Inc. (05-351)* *Meijer, Inc., et al. (05-358)*	

[PROPOSED] ORDER AND FINAL JUDGMENT APPROVING SETTLEMENT, AWARDING ATTORNEYS' FEES AND EXPENSES, AWARDING REPRESENTATIVE PLAINTIFF INCENTIVE AWARDS, APPROVING PLAN OF ALLOCATION, AND ORDERING DISMISSAL AS TO ALL DEFENDANTS

The Court, having considered (a) the Direct Purchaser Class's Motion for Final Settlement Approval; (b) the Brief in Support of the Direct Purchaser Class's Motion for Final Settlement Approval; (c) the Plan Of Allocation For Direct Purchaser Class; (d) the Declaration Of Jeffrey J. Leitzinger, Ph.D. Regarding Classwide Damages and the Proposed Plan Of Allocation ("Leitzinger Declaration"); (d) the Direct Purchaser Class's Motion for an Award Of Attorneys' Fees, Reimbursement of Expenses and Incentive Awards to the Class Representatives; (e) the Brief in Support of the Direct Purchaser Class's Motion For An Award Of Attorneys' Fees, Reimbursement of Expenses and Incentive Awards To The Class Representatives; (f) the Affidavit of Lead Counsel Barry S. Taus, Esq.; (g) the Corrected Supplemental Affidavit of Lead Counsel Barry S. Taus, Esq.; and (h) the Affidavit of Adam M. Steinfeld dated March 9, 2009; and having held a

hearing on April 23, 2009; and having considered all of the submissions and arguments with respect thereto; pursuant to Rules 23 and 54 of the Federal Rules of Civil Procedure, and in accordance with the terms of the settlement agreement between Direct Purchaser Class Plaintiffs ("Plaintiffs") and Abbott Laboratories ("Abbott") and Fournier Industrie et Santé and Laboratories Fournier S.A. (together, "Fournier") (collectively, "Defendants") dated January 6, 2009 (the "Settlement Agreement"), it is hereby

ORDERED, ADJUDGED and DECREED that:

1. This Order and Final Judgment incorporates by reference the definitions in the Settlement Agreement, and all terms used herein shall have the same meanings set forth in the Settlement Agreement. As set forth in the Preliminary Approval Order (D.I. No. 529), dated January 8, 2009, the previously certified Class is defined as follows:

> The Direct Purchaser Class includes all persons or entities in the United States who purchased TRICOR® in any form directly from Abbott Laboratories ("Abbott"), Fournier Industrie et Sante, or Laboratories Fournier S.A. ("Fournier") (Abbott and Fournier collectively are "Defendants") at any time during the period April 9, 2002 through August 18, 2008. Excluded from the Class are Defendants and their officers, directors, management, employees, subsidiaries, or affiliates, all federal governmental entities, and the following entities that opted out of the Class: Ahold a/k/a American Sales Corp., Albertson's Inc., CVS Pharmacy, Inc., CVS Corporation, Eckerd Corporation, Maxi Drug, Inc. d/b/a Brooks Pharmacy, Hy-Vee, Inc., Kroger Co., Rite Aid Corporation, Rite Aid Hdqtrs. Corp., Safeway, Inc., Walgreen Co., State of Oregon (all government entities), State of Washington (all government entities), Maryland State Employee and Retiree Health and Welfare Benefits Program and the Maryland Pharmacy Program, Connecticut Department of Social Services, State of New York (all government entities), State of Texas Heath and Human Services Commission, Commonwealth of Massachusetts Executive Office of Health and Human Services Office of Medicaid (MassHealth), Pennsylvania Department of Public Works and Department of Aging, and Overman & Stevenson Pharmacists.

2. The Court has jurisdiction over these actions and over each of the parties and over all members of the Class.

3. As required by this Court in the Preliminary Approval Order, notice of the proposed Settlement was mailed by first-class mail to all members of the Class. Such notice to members of the Class is hereby determined to be fully in compliance with requirements of Fed. R. Civ. P. 23(e) and due process of law and is found to be the best notice practicable under the circumstances and to constitute due and sufficient notice to all entities entitled thereto.

4. Due and adequate notice of the proceedings having been given to the Class and a full opportunity having been offered to the Class to participate in the fairness hearing, it is hereby determined that all Class members are bound by this Final Order and Judgment.

5. The Settlement of this Direct Purchaser Class Action was not the product of collusion between Plaintiffs and Defendants or their respective counsel, but rather was the result of *bona fide* and arm's-length negotiations conducted in good faith between Class Counsel[1] and Defendants' counsel.

6. The Court has held a hearing to consider the fairness, reasonableness and adequacy of the proposed Settlement, and has been advised that there have been no objections to the Settlement from any members of the Class, and also that several members of the Class have explicitly indicated their support for the Settlement and Class Counsel's requested attorneys' fees.

7. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court

[1] The Court appointed Garwin Gerstein & Fisher, L.L.P., as Lead Counsel and as a member of the Executive Committee, along with the firms of Berger & Montague, P.C., Odom & Des Roches, L.L.P., The Smith Foote Law Firm (formerly Percy, Smith & Foote), and Cohen, Milstein, Hausfeld & Toll (which is now known as Cohen Milstein Sellers & Toll). Kaplan, Fox & Kilsheimer, L.L.P., was substituted for Cohen Milstein midway through the litigation. Additional class counsel that actively participated in the case include Heim Payne & Chorush, L.L.P. (formerly Conley, Rose & Tayon), Vanek, Vickers & Masini, L.L.P., and Delaware counsel Rosenthal, Monhait & Goddess, P.A.

hereby approves the Settlement, and finds that the Settlement is, in all respects, fair, reasonable and adequate to Class members. Accordingly, the Settlement shall be consummated in accordance with the terms and provisions of the Settlement Agreement. The Settlement is fair, reasonable and adequate in light of the factors set forth in *Girsh v. Jepson*, 521 F.2d 153 (3d Cir 1975), as follows:

(a) this case was highly complex, expensive and time consuming, and would have continued to be so if the case had not settled;

(b) there were no objections to the Settlement by Class members, and several Class members expressed affirmative support for the Settlement;

(c) because the case settled after the parties had completed discovery and commenced trial, Class Counsel had a full appreciation of the strengths and weaknesses of their case before negotiating the Settlement;

(d) Class Counsel and the Class would have faced numerous and substantial risks in establishing both liability and damages if they had decided to continue to litigate rather than settle;

(e) the Settlement amount is well within the range of reasonableness in light of the best possible recovery and the risks the parties would have faced if the case had continued to verdicts as to both liability and damages; and,

(f) the Settlement also satisfies the additional factors set forth in *In re Prudential Ins. Co. of America Sales Practices Litigation*, 148 F.3d 283 (3d. Cir 1998), *cert. denied,* 525 U.S. 1114 (1999).

8. The Court approves the Plan of Allocation of the Settlement proceeds (net of attorneys' fees, reimbursed expenses and incentive awards) as proposed by Class

Counsel in the Plan of Allocation (the "Plan") (attached hereto as Ex. A), and supported by the Leitzinger Declaration. The Plan, which had previously been summarized in the Notice of Proposed Settlement, proposes to distribute the net Settlement proceeds *pro rata* based on Class member purchases of Tricor, and does so fairly and efficiently. It directs Epiq Systems, Inc., the firm retained by Class Counsel as the claims administrator, to distribute the net Settlement proceeds in the manner provided in the Plan.

9. All claims in the above-captioned action against Defendants are hereby dismissed with prejudice, and without costs.

10. In accordance with the Settlement Agreement, upon the Settlement's becoming final in accordance with its terms:

(a) Defendants and their past, present and future parents, subsidiaries, divisions, affiliates, stockholders, officers, directors, insurers, general or limited partners, employees, agents, attorneys and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing) (the "Released Parties") are and shall be released and forever discharged from all manner of claims, demands, actions, suits, causes of action, damages, and liabilities, of any nature whatsoever (whether such claims, demands, actions, suits, causes of action, damages, or liabilities arise or are incurred before, during or after the date hereof), including costs, expenses, penalties and attorneys' fees, known or unknown, suspected or unsuspected, in law or equity, that Plaintiffs or any member or members of the Class who has (have) not timely excluded itself (themselves) from the Class (including any past, present or future officers, directors, insurers, general or limited partners, divisions, stockholders, agents,

attorneys, employees, legal representatives, trustees, parents, associates, affiliates, subsidiaries, partners, heirs, executors, administrators, purchasers, predecessors, successors and assigns, acting in their capacity as such), whether or not they object to the Settlement and whether or not they make a claim upon or participate in the Settlement Fund, ever had, now has, or hereafter can, shall or may have, directly, representatively, derivatively or in any other capacity, to the extent arising out of or relating to any conduct:

(1) alleged in the Actions,

(2) alleged in any other complaint filed in any action currently consolidated or coordinated, or subject to a pending request for consolidation or coordination with the Actions, or

(3) relating to any alleged change in formulation or withdrawal of TRICOR 200 or TRICOR160 or any conduct relating to the change to TRICOR 160 or the change to TRICOR 145, or any generic equivalents of TRICOR 200 or TRICOR 160 (reference to any formulation of TRICOR or any generic equivalent shall in each instance include any associated lower doses),

provided only that such conduct occurred or allegedly occurred prior to the date hereof, except as expressly provided for in paragraph 12 of the Settlement Agreement (the "Released Claims"). Plaintiffs and each member of the Class shall not sue or otherwise seek to establish or impose liability against any Released Party based, in whole or in part, on any of the Released Claims.

(b) In addition, the Court finds that each class member has expressly

waived and released, upon the Settlement Agreement becoming final, any and all provisions, rights, benefits conferred by §1542 of the California Civil Code, which reads:

> **Section 1542. General Release--Claims Extinguished. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

or by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable or equivalent to §1542 of the California Civil Code. Each Class member may hereafter discover facts other than or different from those which he, she or it knows or believes to be true with respect to the claims which are the subject matter of this Paragraph 10, but each Class member hereby expressly waives and fully, finally and forever settles and releases, upon the Settlement Agreement's becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that would otherwise fall within the definition of Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. For the avoidance of doubt, the Court finds that each Class member has expressly waived and fully, finally and forever settled and released any and all claims it may have against any Released Party under §17200, *et seq.*, of the California Business and Professions Code or any similar, comparable or equivalent provision of the law of any other state or territory of the United States or other jurisdiction, which claims are hereby expressly incorporated into the definition of Released Claims.

11. Class Counsel have moved for an award of attorneys' fees and reimbursement of expenses. Pursuant to Rules 23(h)(3) and 54(d) of the Federal Rules of

Civil Procedure, and pursuant to the factors for assessing the reasonableness of a class action fee request as set forth in *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000), this Court makes the following findings of fact and conclusions of law:

(a) the Settlement confers a monetary benefit on the Class that is substantial, both in absolute terms and when assessed in light of the risks of establishing liability and damages in this case;

(b) there were no objections by Class members to the requested fee award of one-third of the Settlement Fund, and in fact, numerous Class members, with purchases of Tricor during the relevant period in excess of 70% of the aggregate Class purchases, have affirmatively expressed their support for and/or lack of objection to the requested fee;

(c) Class Counsel have effectively and efficiently prosecuted this difficult and complex action on behalf of the members of the Class for over three and one-half years, with no guarantee they would be compensated;

(d) Class Counsel undertook numerous and significant risks of nonpayment in connection with the prosecution of this action;

(e) Class Counsel have reasonably expended tens of thousands of hours, and incurred millions of dollars in out of pocket expenses, in prosecuting this action, with no guarantee of recovery;

(f) fee awards similar to the fee requested by Class Counsel here have been awarded in similar cases, including numerous Hatch-Waxman antitrust class actions similarly alleging impeded entry of generic drugs;

(g) the Settlement achieved for the benefit of the Class was obtained as a direct result of Class Counsel's skillful advocacy;

(h) the Settlement was reached following negotiations held in good-faith and in the absence of collusion;

(i) the "percentage-of-the-fund" method is the proper method for calculating attorneys' fees in common fund class actions in this Circuit (*see, e.g., In re Rite Aid Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005));

(j) Class members were advised in the Notice of Proposed Settlement of Class Action, which notice was approved by this Court, that Class Counsel intended to move for an award of attorneys' fees in an amount up to 33-1/3% of the gross Settlement Fund (including the interest accrued thereon), plus reimbursement of reasonable costs and expenses incurred in the prosecution of this action;

(k) Class Counsel did, in fact, move for an award of attorneys' fees in the amount of 33-1/3% of the gross Settlement Fund (including the interest accrued thereon), plus reimbursement of reasonable costs and expenses incurred in the prosecution of this action, which motion has been on the docket and publicly available since March 9, 2009;

(l) As detailed in Class Counsel's affidavits, a one-third fee award would equate to a lodestar multiplier of approximately 3.93. An examination of recently approved multipliers in other Hatch-Waxman class actions similarly alleging impeded generic competition reveals that the multiplier requested here is well within the acceptable range;

(m) in light of the factors and findings described above, the requested

33-1/3% fee award is within the applicable range of reasonable percentage fund awards.

Accordingly, Class Counsel are hereby awarded attorneys' fees in the amount of $83,333,333.33 from the Settlement Fund, plus one-third of the interest earned on the Settlement proceeds from January 27, 2009 (the date of funding of the Settlement Fund) to the date of payment, at the same net interest rate earned by the Settlement Fund. The Court finds this award to be fair and reasonable.

Further, Class Counsel are hereby awarded $3,590,415.82 out of the Settlement Fund to reimburse them for the expenses they incurred in the prosecution of this lawsuit, which expenses the Court finds to be fair, and reasonably incurred to achieve the benefits to the Class obtained in the Settlement to the Class.

The awarded fees and expenses shall be paid to Class Counsel from the Settlement Fund in accordance with the terms of the Settlement Agreement. Lead Counsel shall allocate the fees and expenses among all of the Class Counsel.

12. Neither this Final Order and Judgment, the Settlement Agreement, nor any and all negotiations, documents and discussions associated with it shall be deemed or construed to be an admission or evidence of any violation of any statute or law, of any liability or wrongdoing by Defendants, or of the truth of any of the claims or allegations contained in any complaint or any other pleading or document, and evidence thereof shall not be discoverable, admissible or otherwise used directly or indirectly, in any way by or against Plaintiffs or Defendants, whether in this Direct Purchaser Class Action or in any other action or proceeding.

13. Without affecting the finality of this judgment, the Court retains exclusive jurisdiction over the Settlement, and the Settlement Agreement, including the

administration and consummation of the Settlement Agreement, the Plan of Allocation, and in order to determine any issues relating to attorneys' fees and expenses and any distribution to members of the Class. In addition, without affecting the finality of this judgment, Defendants and each member of the Class hereby irrevocably submit to the exclusive jurisdiction of the Court for any suit, action, proceeding or dispute arising out of or relating to the Settlement Agreement or the applicability of the Settlement Agreement, including, without limitation any suit, action, proceeding or dispute relating to the release provisions herein, except that this submission to the Court's jurisdiction shall not prohibit (a) the assertion of the forum in which a claim is brought that the release included in the Settlement Agreement is a defense, in whole or in part, to such claim or, (b) in the event that such a defense is asserted in that forum, the determination of its merits in that forum.

14. The three Class Representatives are each hereby awarded $50,000 out of the Settlement Fund, for representing the Class, which amount is in addition to whatever monies these plaintiffs will receive from the Settlement Fund pursuant to the Plan of Allocation. The Court finds these awards to be fair and reasonable.

15. In the event the Settlement does not become final in accordance with paragraph 5 of the Settlement Agreement, this Order and Final Judgment shall be rendered null and void as provided by the Settlement Agreement, shall be vacated, and all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Settlement Agreement.

16. The Court hereby directs that this judgment be entered by the clerk forthwith pursuant to Federal Rule of Civil Procedure 54(b). The direction of the entry of

final judgment pursuant to Rule 54(b) is appropriate and proper because this judgment fully and finally adjudicates the claims of the Plaintiffs and the Class against all Defendants in this action, allows consummation of the Settlement, and will expedite the distribution of the Settlement proceeds to the Class members.

SO ORDERED this the 23d day of April, 2009.

Hon. Sue L. Robinson
U.S. District Court for the District of Delaware

Exhibit 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE CREDIT DEFAULT SWAPS ANTITRUST LITIGATION	:	CORRECTED OPINION & ORDER*
	:	13md2476 (DLC)

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* This Opinion changes the number of bids received by LACERA and corrects a typo.

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DENISE COTE, District Judge:

This Opinion addresses the fairness of an almost $2 billion settlement (the "Settlement") reached in antitrust class action litigation arising from the purchase and sale of credit default

swaps ("CDS").[1] Plaintiffs bring this antitrust action individually and on behalf of all persons who, during the period from January 1, 2008 through September 25, 2015 (the "Class Period"), bought CDS from, or sold CDS to, certain banks in the United States (the "Class"). The defendants are those banks (the "Dealer Defendants"),[2] as well as the International Swaps and Derivatives Association ("ISDA"), and both Markit Group Holdings Limited and its subsidiary Markit Group Ltd. (collectively, "Markit").

In less than two years following the appointment of lead counsel, the Class achieved a remarkable settlement. The Settlement will make a common fund of $1,864,650,000 available to Class members (the "Settlement Fund"), and require ISDA to take steps designed to increase transparency and competition in the CDS market. This Settlement was approved at the Fairness Hearing held on April 15, 2016. This Opinion further describes the basis for that approval, the rejection of the limited objections made to the Plan of Distribution that will govern the

[1] The abbreviation "CDS" refers both to the singular, "credit default swap," and to the plural, "credit default swaps."

[2] Dealer Defendants are Bank of America Corp., Bank of America, N.A., Barclays Bank PLC, BNP Paribas, Citigroup Inc., Citibank, N.A., Citigroup Global Markets Inc., Credit Suisse AG, Deutsche Bank AG, Goldman, Sachs & Co., HSBC Bank plc, HSBC Bank USA, N.A., JPMorgan Chase & Co., JPMorgan Chase Bank, N.A., Morgan Stanley & Co. LLC, Royal Bank of Scotland PLC, Royal Bank of Scotland N.V., UBS AG, and UBS Securities LLC.

distribution of the Settlement Fund, the award of attorneys' fees and expenses, the rejection of the request for incentive awards for Class representatives, and the standard that may be applied to any request by class counsel for a bond pending an appeal by an objector.

BACKGROUND

The allegations in this litigation are described in detail in the Court's September 4, 2014 Opinion granting in part the defendants' motions to dismiss. See In re Credit Default Swaps Antitrust Litig., No. 13md2476 (DLC), 2014 WL 4379112 (S.D.N.Y. Sept. 4, 2014). In brief, a CDS is a derivative whose value depends on the value of an underlying debt instrument. Id. at *1. The buyer of the CDS purchases the seller's promise to pay on the occasion of a "credit event," such as a default on the debt instrument by a third party known as the "reference entity." Id. Market makers -- also referred to as "dealers" -- sell CDS to buyers, buy CDS from sellers, and hold CDS inventory until a match emerges. Id. A dealer offers a "bid" price at which the dealer will purchase and an "ask" price at which the dealer will sell. Id. By keeping their bid lower than their ask, dealers can capture the difference, known as the "bid/ask spread." Id.

The complaint alleges that, in and around 2008 to 2009, the defendants conspired to suppress price transparency and

competition in the trading market for CDS and boycott the exchange trading of CDS, thereby maintaining supracompetitive bid/ask spreads. Among other things, the complaint alleges that the defendants conspired to block "CMDX," a proposed CDS electronic exchange platform that the Chicago Mercantile Exchange and Citadel Investment Group partnered to launch in the fall of 2008. Id. at *4-5.

The first complaint in this litigation was filed on May 3, 2013 in the Northern District of Illinois, and other related actions were filed in this district and elsewhere soon after. On October 22, the U.S. Judicial Panel on Multidistrict Litigation transferred all related class actions to this district. At a conference on December 5, 2013, the Court appointed Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel") as Lead Counsel. Shortly thereafter, Pearson, Simon & Warshaw, LLP ("Pearson Simon") was appointed Co-Lead Counsel (collectively, "Class Counsel"), and Salix Capital U.S., Inc. ("Salix") and the Los Angeles County Employee Retirement Association ("LACERA") were appointed Lead Plaintiffs for the Class. Plaintiffs filed the operative complaint on April 14, 2014, which brought claims under Sections 1 and 2 of the Sherman Antitrust Act ("Sherman Act"), 15 U.S.C. §§ 1-2, and under state unjust enrichment law.

At the time this case was filed, both the U.S. Department of Justice ("DOJ") and the European Commission ("EC") were conducting ongoing investigations of the defendants for collusion regarding the CDS market. The DOJ investigation is reported to have closed sometime in 2013; the EC investigation closed at least as to the Dealer Defendants in December 2015, just months after the Settlement was reached.

I. Discovery and Mediation

On September 4, 2014, the Court dismissed the complaint's claims under Section 2 of the Sherman Act, but allowed its other claims to proceed. Id. at *18. The parties proceeded to discovery immediately thereafter.

Class Counsel worked with lightning speed. Class Counsel obtained over fifty million pages of documents from the defendants and millions more from third parties. They developed and utilized research tools that allowed them to quickly locate critical documents, prepare a draft narrative of key events, and identify key witnesses. By July 29, 2015, they had taken twenty-seven of the forty-six depositions noticed by that date. During the initial discovery period, Class Counsel also obtained data for millions of CDS transactions from the Depository Trust & Clearing Corporation ("DTCC") and engaged experts to analyze this data and build a model capable of calculating damages for Class members.

In December 2014, and in parallel with ongoing discovery, the parties engaged the services of a renowned mediator, Daniel Weinstein. Under his supervision, the parties began mediation sessions on January 22, 2015. The mediator worked with the parties for nine months and invested over 400 hours of his own time in the mediation. Plaintiffs presented a detailed mediation brief and PowerPoint presentation on liability at the first mediation session and a preliminary damages model at the March 31 mediation session. At the urging of the mediator, plaintiffs produced a copy of their damages model, as well as the dataset used to calculate damages, to the defendants. The defendants presented a detailed critique of the plaintiffs' damages model during a June 8 mediation session.

Plaintiffs reached agreements in principle with all defendants to settle the case by mid-August, just prior to the August 31 deadline for the motion for class certification. Plaintiffs filed their motion for preliminary approval of the Settlement on October 16. The Court preliminarily approved the Settlement on October 29.

II. Terms of the Settlements

The separate Settlement agreements executed by each Dealer Defendant and Markit are virtually identical, except for the amount of money each has agreed to pay into the Settlement Fund. The total amount to be paid into that fund is $1,864,650,000.

ISDA has also agreed to injunctive relief to bring greater transparency and competition to the CDS market. Among other things, ISDA agreed to create a new independent Licensing Sub-Committee consisting of equal buy- and sell-side members, and to make meetings of that Sub-Committee open to the public.

The Class agreed to the following release (the "Release"):

> The Class Plaintiffs and all Settlement Class Members shall release and shall be deemed to have released all Released Claims against all the Released Parties. . . . "Released Claims" means any and all manner of claims . . . (i) occurring prior to June 30, 2014, that are alleged or that could have been alleged in the Action relating in any way to any CDS Transactions or Potential CDS Transactions; . . . and (ii) occurring prior to the Preliminary Approval Order, relating in any way to the litigation or settlement of this Action, including, without limitation, relating in any way to any settlement discussions, the negotiation of, and agreement to, this Agreement by the Defendants, or any terms or effect of this Agreement (other than claims to enforce the Agreement).

(Emphasis added.) The agreements define "CDS Transactions" as

> (i) any purchase, sale, trade, assignment, novation, unwind, termination, or other exercise of rights or options with respect to any CDS, whether executed over-the-counter ("OTC") or via inter-dealer brokers, a centralized clearinghouse, a central limit order book ("CLOB"), an exchange, a swap execution facility (SEF), or any other platform or trading facility; or (ii) any decision to withhold a bid or offer on, or to decline to purchase, sell, trade, assign, novate, unwind, terminate or otherwise exercise any rights or options with respect to any CDS.

The agreements define "Potential CDS Transactions" as "any CDS Transaction for which an offer or quote was obtained or sought,

regardless of whether such transaction was actually entered into or executed with the party from which such offer was obtained or sought."

Excluded from the Release are claims by Class members not "domiciled or located in the United States at the relevant time"; claims based on transactions that "were not in or would not have been in United States commerce"; and claims based on transactions that "are or would have been subject only to foreign law."

III. Plan of Distribution

Because there have been four objections to the allocation of the Settlement Fund among Class members pursuant to the Plan of Distribution, the construction and structure of that Plan must be described in some detail. The Plan rests on the work Class Counsel performed with its experts to prepare a damages model.

A. Plan of Distribution Datasets

Class Counsel collected data on CDS transactions occurring from January 2008 to September 2015 in each of the major categories of CDS transactions: single-name, index, tranche index, structured credit, and CDS options. The data spans thousands of CDS contracts and millions of CDS transactions, with corresponding data on the bid/ask spreads quoted in these instruments each day or virtually every day. Class Counsel

created its dataset by combining data from two sources: the DTCC's Trade Information Warehouse, which is a global repository for data concerning executed CDS transactions, and a Markit database that provides quote data.

DTCC provided over 159 million transaction records spanning nearly eight years, capturing over 90 percent of all CDS transactions. These include data on 3,500 distinct reference entities. For each transaction record, the DTCC data provides details about the transaction, including the trade date, the contract expiration date, and the key characteristics of the traded products.

While the DTCC data captures payment information, it does not capture the bid and ask prices quoted by the dealer pursuant to which the transaction was executed. To infer the bid/ask spreads incurred on a given CDS transaction, Class Counsel obtained data from Markit, which is a leading source of such data. Markit gathers information on the bid/ask spreads quoted by dealers during the course of a trading day by parsing electronic messages conveyed by dealers to market participants and extracting the relevant quote information from the messages. The Markit database produced in this litigation contained almost 3.2 billion records of bid/ask spreads.

B. The Mechanics of the Plan

The Plan determines the amount to be paid on each Class member's claim through three main steps: (1) identifying qualifying Covered Transactions; (2) estimating the amount of bid/ask spread inflation resulting from the Dealer Defendants' alleged conduct with respect to each Covered Transaction; and (3) calculating each claimant's recovery based on its pro rata share of the available Settlement Funds in relation to the recoveries to which all claimants who have submitted a valid claim are entitled.

Class Counsel and their consulting experts, led by Dr. Sanjay Unni of the Berkeley Research Group,[3] used the DTCC dataset to identify Covered Transactions using the criteria specified in the Settlement agreements. The total notional volume of Covered Transactions from the DTCC dataset is approximately $69 trillion.

Under the Plan, the bid/ask spread paid on a given Covered Transaction is determined as the average spread quoted for the CDS contract actually involved in the transaction on the day of the transaction. Bid/ask spreads for a CDS can fluctuate during the day. While, in principle, the spread charged on a transaction should be measured as the spread prevailing at the

[3] The Court commends Dr. Unni and his team for his submissions to the Court in support of the Settlement, which have been detailed and clear.

time of the transaction's execution, the DTCC data only provides the day that a given transaction occurred, not the time within the day. As such, Class Counsel chose to associate each CDS transaction with the average daily bid/ask spread prevailing for that CDS on the day the transaction occurred.

In order to determine that average bid/ask spread, Class Counsel used the Markit dataset to identify the bid/ask spreads for the associated CDS during each hour of the date of the transaction.[4] Class Counsel took the "inside spread," which was the smallest or tightest spread, during each trading hour to calculate an average spread for each day.[5] Accordingly, the Plan measures the applicable bid/ask spread for an instrument on a given day as the average of the tightest bid/ask spreads prevailing in each hour of trading for that instrument. The average bid/ask spread is then reduced by half, as each CDS transaction is a buy or a sell transaction that only incurs half of the cost of the spread.

For one type of linked transaction, the Plan makes a further adjustment. This linked transaction is an "index roll." In March and September each year, index CDS are updated to

[4] The Markit data captured bid/ask quotes provided by the Dealer Defendants, which are time-stamped. The plaintiffs' expert took steps to ensure that only high-quality Markit quotes were used.

[5] Plaintiffs used the inside spread because it was likely to have attracted the greatest trading volumes at any point in time.

reflect changes in the credit conditions of their constituent instruments. The updated index is assigned a new series number. When this happens, investors may "roll" over their exposure from the old position to the new series, thereby updating their risk exposure in the market segment covered by that index CDS. These investors do this through a two-legged transaction: selling one index series and buying the subsequent index series. Based on industry custom, the Plan exempts one leg of the roll from its spread calculations. To apply this adjustment conservatively, the Plan identifies the rolls as occurring when the trade and termination happen on the same day in different series of the same index.

Next, the Plan applies a spread compression percentage (the "Compression Rate") to reflect how the spread that historically prevailed in the CDS market would have tightened but for the defendants' actions. Based upon a review of empirical evidence on spread compression experienced in other markets, Class Counsel applied a Compression Rate of 20%.

IV. Notice to Class Members

Because of their access to trading records, Class Counsel were able to identify and reach most potential Class members. On January 11, 2016, Class Counsel mailed notice packets to each of 13,923 identified Class members. While some of the mailings were returned as undeliverable, reasonable efforts were made to

locate every identified Class member, including identifying alternative mailing addresses. Ultimately, notice was successfully mailed to all but 548 of the Class members. In addition, given its magnitude, the Settlement received widespread publicity. See, e.g., Katy Burne, Big Banks Agree to Settle Swaps Lawsuit, Wall St. J. (Sept. 12, 2015); Jesse Druker, Wall Street Banks to Settle CDS Lawsuit for $1.87 Billion, Bloomberg (Sept. 11, 2015). The Summary Notice was also published on January 11 in several important business publications.

The Garden City Group (the "Claims Administrator") launched a website for the Settlement which posted the Settlement agreements, notices, court documents, and other information relevant to the Settlement. On January 11, a description of the Plan of Distribution was also posted on the website for Class members to review. Since January 28, each Class member has been able to log into a "Claimant Portal" on the Settlement website to review the Covered Transactions identified by Class Counsel as applicable to that Class member. Each Class member can review how the Plan of Distribution applies to each of its identified transactions. It may also challenge the accuracy of the information regarding posted Covered Transactions and submit additional transactions to the Claims Administrator for consideration as Covered Transactions.

Since going live, close to 10,000 distinct visitors have visited the website. In addition, the Claims Administrator received, as of April 15, approximately 700 claims. The last date for submission of claims is May 27, 2016.

Against this backdrop, only twenty-one requests for exclusion were timely submitted by February 29.[6] Five entities are responsible for these twenty-one requests.[7]

There are effectively four objectors who submitted timely objections by February 29.[8] The objectors are MF Global Capital

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[6] These 21 requests were submitted by: (1) Fairfax (Barbados) International Corporation; (2) Itau BBA International plc; (3) Itau Unibanco SA Nassau Branch; (4) NexPoint Credit Strategies Fund (Highland Credit Strategies Fund); (5) Highland CDO Opportunity Master Fund, L.P.; (6) Highland Multi-Strategy Credit Fund, L.P. (Highland Credit opportunities CDO LP); (7) Highland Credit Strategies Master Fund, L.P.; (8) Highland Special Opportunities Holding Company; (9) Granite Bay Long/Short Credit Master Fund, L.P.; (10) Tunstall Opportunities Master Fund, L.P.; (11) Highland Crusader Offshore Partners, L.P.; (12) Highland Long Short Equity Fund; (13) Highland Offshore Partners, L.P.; (14) Brigade Credit Fund II LTD; (15) Brigade Opportunistic Credit LBG Fund LTD; (16) Brigade Energy Opportunities Fund LP; (17) Brigade Structured Credit Fund LTD; (18) Tasman Fund LP; (19) Brigade Distressed Value Master Fund LTD; (20) Brigade Leveraged Capital Structures Fund LTD; and (21) Banco Safra SA - Cayman Islands Branch.

[7] Fairfax, Itau, Brigade, Highland, and Banco Safra appear to be the five groups opting out of the Settlement.

[8] A fifth potential objector, FFI Fund Ltd. and related entities, provided notice on February 29 that it was working with Class Counsel to gather the information necessary to determine whether it would be making an objection to the Plan of Distribution. On April 14, it wrote that it no longer intended to appear at the Fairness Hearing, but wished to preserve a right to object if any of the other objectors' suggested modifications to the Plan

LLC ("MF Global"); Silver Point Capital, L.P. ("Silver Point");[9] Saba Capital Management ("Saba"); and Anchorage MTR Offshore Master Fund, L.P. ("Anchorage").[10] Class Counsel have allowed the objectors to speak with their experts, and have had their experts conduct complex analyses of the damages dataset to analyze and respond to the objectors' critiques and proposals.

V. Fairness Hearing

The Fairness Hearing was held on April 15, 2016. Class Counsel and Michael Herrera, Senior Staff Counsel for LACERA, appeared at the hearing, as well as counsel for all defendants. Also present was counsel for a non-objecting Class member, BlueMountain Capital Management LLC.[11] Of the objectors, only MF Global, Saba, and Silver Point were represented by counsel at

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of Distribution were adopted, since such modifications could materially affect its interests.

[9] Silver Point's objection is also brought on behalf of the following related entities: Silver Point Capital Fund, L.P., Silver Point Capital Offshore Master Fund, L.P., and Silver Point Capital Offshore, Ltd.

[10] Anchorage's objection is also brought on behalf of the following related entities: Anchorage Capital Master Offshore Ltd., Anchorage Crossover Credit Offshore Master Fund, Ltd., Anchorage Short Credit Offshore Master Fund, Ltd., Anchorage Quantitative Credit Offshore Master Fund, L.P., and Anchorage Short Credit Offshore Master Fund II, L.P.

[11] The press has identified two Class members, BlueMountain Capital Management LLC and Blue Crest Capital Management LLC, as among the biggest beneficiaries of the Settlement Fund. Katy Burne, Swaps Payout is a Windfall for Funds, Wall St. J. (Jan. 10, 2016).

the Fairness Hearing.[12] The objectors were given an opportunity to be heard, but only Silver Point's counsel spoke.

DISCUSSION

I. Judicial Approval of Class Action Settlement

Pursuant to Rule 23(e), Fed. R. Civ. P., any settlement of a class action must be approved by the court. In determining whether to approve a class action settlement, the district court must "carefully scrutinize the settlement to ensure its fairness, adequacy and reasonableness, and that it was not a product of collusion." D'Amato v. Deutsche Bank, 236 F.3d 78, 85 (2d Cir. 2001) (citation omitted). In doing so, the court must "eschew any rubber stamp approval" yet simultaneously "stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case." City of Detroit v. Grinnell Corp., 495 F.2d 448, 462 (2d Cir. 1974).

In making its determination, a district court should "review the negotiating process leading up to the settlement for procedural fairness." Charron v. Wiener, 731 F.3d 241, 247 (2d Cir. 2013). A court should assess whether the settlement resulted from "an arm's-length, good faith negotiation between experienced and skilled litigators," id., and whether plaintiffs' counsel engaged in discovery "necessary to the

[12] MF Global and Saba are currently represented by the same counsel.

effective representation of the class's interests." D'Amato, 236 F.3d at 85.

The court must also evaluate the substantive fairness of a settlement by considering the nine factors set forth in Detroit v. Grinnell Corp.:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Charron, 731 F.3d at 247 (citation omitted).

Finally, the determination should recognize that there is a "strong judicial policy in favor of settlements, particularly in the class action context." Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d 96, 116 (2d Cir. 2005) (citation omitted). Similarly, "[t]he compromise of complex litigation is encouraged by the courts and favored by public policy." Id. at 117 (citation omitted).

A. Procedural Fairness

This Settlement was achieved after intense, lengthy negotiations among well-represented adversaries who were assisted by an able mediator. The existence and size of this

Settlement is attributable in no small measure to the skill of Class Counsel and the litigation strategy it employed. Discovery was extensive and swiftly conducted. The opposing parties were able to assess quickly, in detail, and with care, the strength of the plaintiffs' theories of liability and damages.

The mediator has praised the work of Class Counsel as "one of the finest examples of efficient and effective lawyering by plaintiffs' counsel that" he has ever witnessed. In making this judgment, he took note of the complexity and size of the litigation, and the speed with which Class Counsel achieved a result of this magnitude. He also reports that the settlement negotiations were "conducted at arm's-length by sophisticated, knowledgeable, and fully-informed counsel who consulted directly with senior client representatives throughout the process."

B. Substantive Fairness

In addition, consideration of the Grinnell factors strongly favors approval of the Settlement.

1. Complexity, Expense, and Likely Duration of the Litigation

This is highly complex litigation. Antitrust cases are often challenging to investigate and litigate, and this litigation is no exception. It has also been extremely expensive to litigate. The Settlement was preceded by a period

of intensive fact discovery, involving the production and examination of many millions of pages of documents. Twenty-seven depositions were conducted and more had been scheduled to occur. Only five months remained in the fact discovery period. The litigation, had it not been resolved through settlement, would have been very expensive to complete and may very well have required a trial of the plaintiffs' claims.

2. The Reaction of the Settlement Class

The Class has received effective and sufficient notice of the Settlement and the reaction of the Class has been overwhelmingly positive. While the reaction of a class to a settlement is always important, it is an especially telling here since the Class is composed of sophisticated parties who participate in buy-side trading of CDS. Out of almost 14,000 Class members, only twenty-one requests for exclusion were timely submitted. Only four objections have been pursued. This very low number of objections and requests for exclusion supports a finding that the Settlement is fair. See Grinnell, 495 F.2d at 462.

3. Stage of the Proceedings and Amount of Discovery

As noted above, the Settlement was achieved in the midst of the period assigned for fact discovery. The parties reached an agreement in principle on the eve of the date on which the plaintiffs' motion for class certification was due.

4. Risk Regarding Liability, Damages, and Class Certification Through Trial

The risk of establishing liability is somewhat difficult to assess in this case since the Settlement occurred before the filing of summary judgment motions or trial, and in the absence of the filing of any government charges arising from the alleged misconduct. The defendants intended to argue that they had not conspired with each other to violate our antitrust laws, that the CMDX would not have been a viable exchange platform, and that the plaintiffs' theory of damages was seriously flawed, among other things. Moreover, both the DOJ and EC investigations were closed without the filing of any charges against the Dealer Defendants. On the other hand, the size of the Settlement suggests that the plaintiffs' analysis of the document production and development of evidence through depositions of the defendants' witnesses held promise for the plaintiffs' success at trial and placed the defendants at risk of a substantial adverse verdict. Given the commonality of issues in the plaintiffs' theory of its case, it is likely that a class would have been certified and, if certified, maintained through the conclusion of the litigation.

The issues related to damages would have been hotly contested at each stage of the proceedings. Causation and the

methodology for establishing damages would have been litigated extensively.

5. Ability of Defendants to Withstand Greater Judgment and the Range of Reasonableness of the Settlement Fund and Recovery

The defendants are generally large financial institutions and have the ability to withstand a greater judgment than the amount they each contributed to the Settlement. Nevertheless, the Settlement Fund, at nearly $1.9 billion, is a very substantial amount.

In fact, no one disputes that the Settlement is reasonable, both in light of the best possible recovery and in light of all the attendant risks of litigation. The mediator has praised the Settlement as "exceptional." In his opinion, the Settlement is not just fair and adequate, but "exceedingly favorable" to the Class, reflecting a recovery "well beyond" what he expected could be achieved.

To place the mediator's assessment in context, the plaintiffs' preliminary damages estimate forecast damages at roughly $8 to $12 billion. The recovery here, therefore, reflects 15 to 23% of the amount which plaintiffs may have sought at trial. Class Counsel estimate that over 1,300 Class members will each receive payments from the Settlement Fund exceeding $100,000, and over 230 of these will each receive more than $1,000,000. Given this significant recovery for the Class,

it is unsurprising that no Class member has objected to the amount or fairness of the Settlement.

II. Objections by Class Members

Four sets of objection have been brought by Class members. The objections address the Plan of Distribution and the terms of the Release. None of the objections requires an alteration of the Plan or the Release.

A. Plan of Distribution

A district court "has broad supervisory powers with respect to the . . . allocation of settlement funds." In re Holocaust Victim Assets Litig., 424 F.3d 132, 146 (2d Cir. 2005) (citation omitted). The plan of allocation must "meet the standards by which the settlement [is] scrutinized -- namely, it must be fair and adequate." Hart v. RCI Hosp. Holdings, Inc., No. 09cv3043 (PAE), 2015 WL 5577713, at *12 (S.D.N.Y. Sept. 22, 2015) (quoting In re WorldCom, Inc. Sec. Litig., 388 F. Supp. 2d 319, 344 (S.D.N.Y. 2005)). A plan "need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel." Id. (quoting In re WorldCom, Inc., 388 F. Supp. 2d at 344). A principal goal of a plan of distribution must be the equitable and timely distribution of a settlement fund without burdening the process in a way that will unduly waste the fund.

"[I]n the case of a large class action the apportionment of a settlement can never be tailored to the rights of each plaintiff with mathematical precision." In re PaineWebber Ltd. P'ships Litig., 171 F.R.D. 104, 133 (S.D.N.Y.), aff'd In re PaineWebber Inc. Ltd. P'ships Litig., 117 F.3d 721 (2d Cir. 1997). The challenge of precisely apportioning damages to victims is often magnified in antitrust cases, as "damage issues in [antitrust] cases are rarely susceptible of the kind of concrete, detailed proof of injury which is available in other contexts." J. Truett Payne Co., Inc. v. Chrysler Motors Corp., 451 U.S. 557, 565 (1981) (citation omitted)); see also In re Elec. Books Antitrust Litig., No. 11md2293 (DLC), 2014 WL 1282293, at *16 (S.D.N.Y. Mar. 28, 2014).

This sophisticated Class is in an excellent position to swiftly and competently assess whether the Plan, and the model upon which it is based, achieves a fair distribution of this very sizeable Settlement Fund. It has spoken. No Class member has objected that the Settlement Fund is inadequate. Many have already filed claims. Very few have opted out. Only four sets of objections to the Plan have been filed. This record is an overwhelming endorsement of the Plan and the fairness with which it will measure each member's entitlement to a distribution.

The Notice required any objections to the Settlement to be filed by February 29, 2106. Four sets of Class members objected

to different elements of the Plan of Distribution. None of their objections provide a basis to alter the conclusion that the Plan is fair and entitled to adoption. Taken together, the four objectors make essentially three different types of arguments about the Plan. They complain that categories of linked or packaged trades are being over-compensated, that certain categories of investors will receive a disproportionate amount of the Settlement Fund, and that the 20% Compression Rate should not apply after December 31, 2012, when certain reforms in the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (the "Dodd-Frank Act"), that affect the CDS market took effect.

1. Overcompensation of Packaged Trades

MF Global, Silver Point, Saba, and Anchorage each contend that certain transactions were conducted as linked trades and enjoyed a zero or de minimis bid/ask spread on one leg of the trade. They object that, because the Plan does not treat the transactions as linked, it overcompensates Class members who engaged in the packaged trades.

MF Global lists types of packaged trades[13] and proposes a methodology for more fairly calculating the spread for six types

[13] MF Global identifies packaged trades as including index arbitrage and reverse arbitrage trades; correlation/tranche trading and associated index/single-name delta hedging; convexity/curve trading; single-name rolls; single-name

of packaged transactions. It describes these proposals as "non-controversial" adjustments. Silver Point contends that the full bid/ask spread is not charged on both legs of an index arbitrage. Saba contends that a "significant" number of trades undertaken by the Class were index arbitrage packages or correlation trade packages, and that the Dealer Defendants "significantly" mark down the spreads for such trades. It suggests that "off market trades" be included in any compilation of such trades and that additional information be obtained from the Dealer Defendants regarding these trades. Anchorage explains that a spread was generally paid on only one leg of a multi-leg CDS index related trade. It suggests three sets of adjustments.

As described above, the Plan identifies a type of linked trade -- index rolls -- and makes adjustments for that category of linked trade through the application of an objective, conservative test. The request to make adjustments to the Plan to identify more linked trades must be rejected.

As a practical matter, it is almost impossible to identify linked trades. To be a true package, linked trades have to be executed simultaneously. Only with simultaneous execution will the investor avoid the risk that the market will move against it

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Payer/Receiver CDS Options and associated single-name CDS hedges; and index Payer/Receiver CDS Options and associated index CDS hedges.

in the interval between the trades. But, the data currently available to the Class does not permit the identification of simultaneous trades. The DTCC data does not identify the time of day when a CDS transaction occurs, only the trade date. No objector has identified a feasible way, much less a quick and inexpensive one, to obtain data for all CDS trades that identifies the precise time of the trades.

Beyond that problem, CDS are complex instruments and they are associated with many different complex trading strategies. Linkage of trades and arbitrage of a portfolio's investments can occur in many different ways, through the combination of many different instruments.[14] Therefore, any attempt to construct a process to identify truly linked trades will necessarily be under-inclusive, and will almost certainly be over-inclusive as well.

Each of the potentially packaged trades identified by the objectors presents its own unique hurdles. One example will suffice. The packaged trades on which the objectors focus most intently is the index arbitrage. In an index arbitrage, an investor makes offsetting buys and sells of an index CDS and of its constituent single-name CDS. But, it is highly unlikely

[14] Indeed, linkage occurs not just with linked trades within the CDS space, but also by linking trades in the CDS space with trades in other markets.

that an investor could execute an arbitrage of an index CDS with offsetting purchases or sales of all the index's constituents through a single dealer. As Dr. Unni explains, if a dealer's quotes for the index CDS are misaligned with the dealer's quotes for the many single-name CDS that form the constituents of the underlying index, and the investor seeks to execute simultaneous offsetting transactions with both the index and its constituents through this dealer, the dealer has an opportunity to move its quotes to tighten the spread or eliminate the arbitrage.[15] Thus, the likelihood is that any investor who actually wishes to engage in an index arbitrage will try to execute the arbitrage through multiple dealers in order to mask its strategy. But, such a multi-dealer arbitrage strategy presents its own separate challenges, including how to calculate any appropriate discounted spread. The need to combine trades conducted through multiple dealers also makes it exceedingly difficult to apply an objective, neutral standard to identify a true arbitrage even when, as a theoretical matter, an opportunity for a reduced

[15] It is not surprising therefore that Dr. Unni was unable to locate trades occurring through same-day trading and the same dealer that might have been intended to put in place an index arbitrage. Using these parameters and looking at a few of the most-liquid standard index CDS, Dr. Unni was only able to locate offsetting buys and sells of an index and a few of its scores of constituents. For instance, for one index with 125 constituents, he reports that the most common potentially offsetting trade involved only one constituent, and the maximum number of constituents traded on the same day was twenty-one of the 125 constituents.

spread might have existed. Because such a multi-dealer arbitrage is complex and risky, it is also likely to be rare. Indeed, once an arbitrage is fragmented in this way, there is a real question as to whether it even qualifies as a packaged trade.

The objectors' varying proposals for identifying this type of packaged trade underscore this very problem. They use different tests to identify the packages to which the Plan should apply some yet-to-be-determined discounted spread. Saba opines that an index arbitrage should be identified as one in which there was the simultaneous trade of the index and all of the single-name entities making up that index. Anchorage asserts that the index arbitrage should be identified as one in which an index was traded on the same day as at least 75% of its constituents. MF Global contends that the index arbitrage should be identified as one in which the index was traded on the same day as at least 60% of its constituents.[16] These competing and contradictory proposals themselves reflect the absence of any reliable, conservative, and fair standard for identifying an

[16] In an April 12 submission, MF Global alters its proposal to suggest that the index arbitrage trades can occur as far apart as two days of each other. This suggestion vividly illustrates the arbitrariness, uncertainty, and unfairness inherent in MF Global's suggested alteration of the Plan to identify index arbitrage trades and adjust their spreads.

index arbitrage for purposes of distributing the Settlement Fund fairly to all members of the Class.

In anticipation of the April 15, 2016 Fairness Hearing, Class Counsel submitted its motion for final approval of the Settlement on April 1. This April 1 submission fully addressed each of the objections and explained in convincing fashion why the Plan should not be altered to account for more packaged trades. Then, in the days immediately preceding the Fairness Hearing, the objectors made additional submissions that included entirely new objections. To the extent that the objectors presented new objections in their April submissions, those objections are untimely and must be rejected on that basis alone.[17] In any event, none of the eve-of-Hearing objections, whether new or renewed, provides a ground for altering the Plan.

On April 12, MF Global made a submission that added several new objections.[18] That submission was supported by a declaration

[17] The new objections largely relate to alleged packaged trades and the contention that some of the Class members may be overcompensated because they may have engaged in such trades with a discounted bid/ask spread. For the reasons explained in Dr. Unni's April 14 submission, these untimely objections are no more meritorious than the timely objections.

[18] Among MF Global's new objections are the following. MF Global contends that the Plan has undercounted the volume of index rolls and should apply a larger discount to such rolls. It makes this objection even though it does not take issue with the test the Plan uses to identify the index rolls. MF Global also suggests using dates from the DTCC data for Upfront Fee Payment

from a CDS trader adding personal observations based on his experience in the industry, but no analysis, study, or citation to research that would provide a basis to reject the detailed analysis presented by Class Counsel and its experts.

The MF Global submission also reflects a fundamental misunderstanding of the goal of any plan of distribution. A plan of distribution is not defective simply because it does not account for every individual trading strategy that may exist in a marketplace. As described above, a plan must fairly distribute the settlement funds across the entire class. No one denies that there are a variety of trading strategies that were used by many CDS market participants that are not accounted for in the Plan. But, unless there is reliable and fair way to both identify linked trades and adjust the spread associated with those trades, then that trading strategy should not and cannot be a component of a plan of distribution that seeks to treat all class members fairly. It is telling in this regard that none of the objectors has demonstrated that any unfairness will accrue to any specific group of investors if the Plan does not incorporate recognition of and adjustments for the particular kinds of linked trades on which they focus attention, much less that adoption of any of their proposals (assuming it were

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Date and Trade Settlement Date instead of the Trade Date field utilized by the Plan.

feasible to adopt any of them) would improve the fairness of the distribution to that group or to the Class generally. Finally, there has been no demonstration that the various idiosyncratic trading strategies discussed by the objectors account for any material portion of CDS trading.[19]

Silver Point also made a supplemental submission on April 12. While its timely objection made only a brief reference to the need to discount the spread for index arbitrage trading, its April 12 submission not only elaborates on that objection but also makes many new objections in a broad-based attack on the Plan.[20] The Silver Point presentation does not come to grips with the detailed explanations of the Plan provided by Class Counsel and its experts. Nor does it provide any proposal for adjustments to the Plan that would make it more complete, reliable, or fair.

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[19] The trader upon which MF Global relies in its April 12 submission acknowledges that the "total number of packaged trades relative to all covered trades in the database may be small." He argues nonetheless those trades could result in a material misallocation of the Settlement Fund.

[20] The April 12 Silver Point submission is accompanied by declarations from a Silver Point investment analyst and a former Citigroup fixed income credit trader. Among the new Silver Point objections are that the Plan applies round tenor spreads to non-round tenor CDS. A tenor is the duration of coverage in which a CDS is active and Silver Point admits that most CDS trades are done on round-tenor positions. Silver Point also objects that single-name rolls are not accounted for in the Plan, and that the Plan must be undercounting the number of index rolls and that their spread should be further reduced.

At the Fairness Hearing, Silver Point chose to make two points in oral argument. It asserted first that the DTCC dataset was populated with incorrect Trade Dates. Silver Point believes that a large number of Trade Date errors that it recently identified are associated with its assigning its rights in a CDS to another trader, although it did not believe that the errors affected the identification of its Covered Transactions or the calculation of its damages. It speculated that such error might overcompensate others in the Class by failing to identify a large number of index rolls. Second, Silver Point chose to emphasize that the Plan should use a wider spread for non-round tenors than the more liquid and therefore cheaper round tenors. Silver Point acknowledges that little or no data exists to identify the appropriate spread for non-round tenors and it has not offered a feasible way to do so. Neither of these points were made in any timely objection.

Since Silver Point had not provided Class Counsel with any data about incorrect Trade Dates, the Court invited Silver Point to do so. Silver Point submitted data to Class Counsel on April 18 and a suggestion that its experts evaluate using a Novation Date instead of the Trade Date. As explained in his April 22 submission, Dr. Unni determined that the transactions challenged by Silver Point consist almost entirely of assignments. Under the Plan, index rolls do not include assignment transactions.

Even if the methodology for identifying index rolls were expanded to include assignment transactions as suggested by Silver Point, the pro rata share of the Settlement Fund attributable to each Class member would remain largely unchanged. Indeed, Silver Point's own spread inflation would decrease slightly. Silver Point's suggestions during the Fairness Hearing do not provide a reason to find that the Plan should be altered.

Saba made an additional submission on April 13. It acknowledges that Class Counsel provided Saba with the data from the model that was used to calculate Saba's potential recovery, but adds two new suggestions for altering the model in an effort to identify more packaged trades.[21] These new suggestions would require a massive reworking of the entire Plan, would substantially delay any distribution, would cause an uproar from other Class members, and reflect a flawed understanding of the DTCC data.

Anchorage filed a brief letter on April 14 maintaining its objection to the Plan, but not addressing any of the analysis of

[21] Saba now asserts that "many trades" are done on assignment, and therefore the entire model should be reworked using the DTCC data field reflecting Transferee Name. It also suggests that the model should have used the DTCC data field for Payment Date instead of the Trade Date to obtain "an indication" of which trades are components of an arbitrage.

that objection in the April 1 filings by Class Counsel.[22] For the reasons explained in this Opinion, at the Fairness Hearing, and in Class Counsel's submissions, its single remaining objection does not require any change to the Plan.

There is one new request by an objector that deserves discussion, even though it is untimely. Silver Point now requests that it be given access to the entire database and an opportunity to work to try to improve the Plan. It has pointed to no legal authority to support this request. In January, Silver Point was given detailed information showing how the Plan's model applied to 6,400 of Silver Point's own transactions. It has not shown that additional access to its competitors' trading data is necessary for it to understand how the Plan works, how the Plan's implementation will impact it, or how the Plan's design might be improved.

There are several reasons to deny Silver Point's April 12 request. Given the access it has already had to the plaintiffs' experts and to the mechanics underlying the Plan, there is no reason to find that either more time or more data will permit Silver Point to develop for the first time a meritorious suggestion for improving the Plan. Moreover, giving Silver Point the access it requests risks substantial injury to other

[22] In this letter, Anchorage withdrew its objection to the omission of some of its CDS transactions from the list of Covered Transactions.

Class members if its competitors' data is used improperly. Finally, Silver Point's request would substantially delay the distribution of the Settlement Funds to the Class.

In sum, Class Counsel were responsive to each of the issues raised by the objectors and to questions posed by all Class members. Class Counsel spoke with the objectors frequently and let the objectors speak directly to the expert consultants retained by the Class. Class counsel also, at considerable expense, asked their experts to perform analyses of the dataset to respond to the objectors' proposals. None of that work, which is reported in detail in Dr. Unni's submissions of April 1, 14, and 22, suggests that there is a reliable way to correctly identify any of the proposed packaged trades to which one or more of the objectors contends a discounted spread should be applied, or that it would materially improve the fairness of the distribution to do so. As significantly, the objectors have not presented a model that would improve the Plan. Nor have they provided a reliable basis to find that the use of the Plan's current model treats any particular Class member or group of Class members unfairly.

2. Overcompensation of Categories of Class Members

MF Global and Silver Point complain that the Plan treats all transactions and therefore all traders equally when, in fact, the defendants treated categories of traders differently.

While these two objectors contend that the Dealer Defendants offered certain classes of traders tighter spreads, they disagree as to whom the Dealer Defendants discriminated against.

MF Global contends that the Dealer Defendants "generally" treated Class members differently depending on whether they viewed the account as a "fast" money versus a "real" money account. According to MF Global, the Dealer Defendants offered wider bid/ask spreads to potential competitors, and active or speculative traders (that is, "fast" money), but tighter spreads to the remaining 75% of the Class members ("real" money). MF Global opines that "real" money accounts enjoyed an approximately 25% lower bid/ask spread "on average" and that this is correctly captured by the Plan's calculation of a trading day's average spread, which is built upon the narrowest observed spread each hour. It suggests that those Class members who can demonstrate that they were only offered the opportunity to trade with the Dealer Defendants "at consistently" wider bid/ask spreads "should be able to recover damages based on applying the bid/ask spread inflation to the actual spreads at which they entered into [a] Covered Transaction."

In contrast, Silver Point believes that the Dealer Defendants offered discounted bid/ask spreads to their "most active" clients, and discriminated against smaller traders. It does not make any proposal for how to identify the disadvantaged

or advantaged group or for the size and system of applying any adjustment.

The objectors have not shown that adjustments should be made based on the identity of the buyer. As reflected in empirical studies, bid/ask spreads in the CDS market are driven by the nature of the particular instrument being traded and market conditions more generally. Specifically, it is driven by the types of product (e.g., whether an index or single-name CDS), the terms of the CDS contract at issue, the company or companies to which the product applies, and market conditions more generally. The Plan is so specific to each CDS contract and the prevailing spread for that product that the model properly accounts for each of the major forces that should be taken into account here.

It is noteworthy that in discussing discrimination against classes of traders, the objectors disagree as to who precisely was advantaged and disadvantaged in their negotiations with the Dealer Defendants. In addition, they have not pointed to empirical research supporting their premise that a buyer's identity had any effect on the spreads. Nor have they presented any fair and efficient process for identifying which traders belong within an advantaged or disadvantaged class. Despite these limitations, Class Counsel took the objection seriously. Dr. Unni did an analysis of some of MF Global's and Silver

Point's most heavily traded CDS products during 2010 and 2011 and found no unfavorable bias against them or evidence of systematic bias in the market. These objections, which these two objectors have now essentially abandoned, provide no ground for rejecting or revising the Plan.

3. Uniform Compression Rate After Dodd-Frank Reforms

In its April 12 submission, Silver Point argues for the first time that the Plan's 20% Compression Rate should not be applied across the entire Class period. Silver Point argues that reforms in the Dodd-Frank Act led to greater transparency and dissemination of information in the CDS market. These reforms went into effect on December 31, 2012, and Silver Point contends that some unidentified but different compression rate should be applied after that date. Silver Point and Class Counsel presented oral argument on this issue at the Fairness Hearing.[23]

This objection does not require a change to the Plan of Distribution. As Class Counsel argued during the Fairness Hearing, the CDS spreads themselves are the most effective barometer of market efficiency. To the extent that spreads tightened generally after the implementation of the Dodd-Frank Act, then the 20% Compression Rate will be applied to that

[23] An Order of April 14 advised the parties that the Court wished for this issue to be addressed at the Fairness Hearing.

narrower set of spreads. Because the CDS market is so complex, with the multiple factors described above affecting the movement of bid/ask spreads, any attempt to tinker with the Compression Rate is an exercise in pure speculation. Applying different Compression Rates to two different periods would ultimately be arbitrary and less data-driven than the Plan's approach.

B. The Scope of the Release

Silver Point and MF Global both make objections related to the scope of the Release. MF Global argues that its claims arising from the defendants' efforts to prevent MF Global from launching its own clearing and market-making business may be barred by the scope of the Release. Silver Point objects to the release of any claims against the defendants "based on post-September 2015 trades."

Parties may "reach broad settlement agreements encompassing claims not presented in the complaint in order to achieve comprehensive settlement of class actions, particularly when a defendant's ability to limit his future liability is an important factor in his willingness to settle." In re Literary Works in Elec. Databases Copyright Litig., 654 F.3d 242, 247-48 (2d Cir. 2011). Accordingly, "class action releases may include claims not presented and even those which could not have been presented as long as the released conduct arises out of the 'identical factual predicate' as the settled conduct." In re

Am. Exp. Fin. Advisors Sec. Litig., 672 F.3d 113, 135 (2d Cir. 2011). The determination of whether a claim pleaded in a separate lawsuit is predicated on sufficiently similar facts as the class action claim to be barred by a class action settlement release "is inherently an individualized, fact-specific one." In re WorldCom, Inc., 388 F. Supp. 2d at 342 n.36.

The scope of a release is also limited by the adequacy of representation doctrine. "[A]dequate representation of a particular claim is determined by the alignment of interests of class members, not proof of vigorous pursuit of that claim." Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d 96, 113 (2d Cir. 2005). Because a settlement may bar future claims, "it is essential . . . that there be adequate notice of the effect of the release and compensation for released claims." In re WorldCom, Inc. Sec. Litig., No. 02cv3288 (DLC), 2004 WL 2591402, at *12 (S.D.N.Y. Nov. 12, 2004).

The Court has examined the Release with care. It is precise, reasonable, and appropriate to the circumstances of this case. Class members were given adequate notice of the terms of the Release on January 11, 2016, and were in a position to make an informed decision to opt out by February 29 if they were unhappy with the breadth or effect of the Release on any lawsuit they were contemplating.

Beyond these observations, it is premature to rule on whether any claim that might be brought in the future by some party would or would not be barred by the terms of the Release. If another lawsuit is brought and an application is made to this Court to enforce the Release, the application will be considered at that time.

C. Appealability of Claims Administrator Determinations

Several of the objectors had initially objected that the Settlement website failed to include some of their Covered Transactions. There is a process in place for Class members to bring additional trades to the attention of the Claims Administrator. Silver Point had complained that it has no appeal right should the Claims Administrator reject their proposed CDS transactions. Through an Order issued on April 18, it is now clear that any Class member has a right to appeal an adverse determination of the Claims Administrator to this Court. This includes a determination of the Claims Administrator regarding additional Covered Transactions.

III. Attorneys' Fees, Costs, and Incentive Awards

Class Counsel also sought approval for an award of $253,758,000 in attorneys' fees, $10,181,190.76 in expenses, and incentive awards of $200,000 and $193,700 for Class representatives LACERA and Salix, respectively. No Class member objected to those applications.

A. Attorneys' Fees

"Attorneys whose work created a common fund for the benefit of a group of plaintiffs" may receive "reasonable" attorneys' fees from the fund. Victor v. Argent Classic Convertible Arbitrage Fund L.P., 623 F.3d 82, 86 (2d Cir. 2010). Courts "may award attorneys' fees in common fund cases under either the 'lodestar' method or the 'percentage of the fund' method," although "the trend in this Circuit is toward the percentage method." McDaniel v. Cty. of Schenectady, 595 F.3d 411, 417 (2d Cir. 2010) (citation omitted). The six Goldberger factors "are applicable to the court's reasonableness determination whether a percentage-of-fund or lodestar approach is used." Id. at 423. They are:

> (1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation . . . ; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.

In re World Trade Ctr. Disaster Site Litig., 754 F.3d 114, 126 (2d Cir. 2014) (quoting Goldberger v. Integrated Resources, Inc., 209 F.3d 43, 50 (2d Cir. 2000)).

Under the Private Securities Litigation Reform Act, there is a well-recognized rebuttable "presumption of correctness" given to the terms of an ex ante fee agreement between class counsel and lead plaintiff. See Flanagan, Lieberman, Hoffman &

Swaim v. Ohio Pub. Employees Ret. Sys., 814 F.3d 652, 659 (2d Cir. 2016); see also In re Cendant Corp. Litig., 264 F.3d 201, 282 (3d Cir. 2001). But, the district court "must be mindful that it must act as a guardian of the rights of absent class members in assessing whether a presumption of correctness has been properly refuted and then, if indeed it has, determining on its own the appropriate fee allocation." Flanagan, 814 F.3d at 659 (citation omitted). There is no reason not to apply such a rebuttable presumption to the examination of an ex ante fee arrangement in a common fund antitrust case, at least where it has been negotiated with a sophisticated benefits fund with fiduciary obligations to its members and where that fund has a sizable stake in the litigation.

The requested attorneys' fees are calculated directly from the retainer agreement that Lead Plaintiff LACERA and Pearson Simon, its original counsel, negotiated in advance of LACERA joining this litigation. LACERA, with investment assets of over $48 billion, is one of the largest county retirement systems in the United States. At the Fairness Hearing, LACERA's Senior Staff Counsel, who was responsible for negotiating this agreement, obtaining board approval of it, and supervising the litigation, explained the process for arriving at the agreement. In response to LACERA's request for representation proposals, it received six to seven separate bids from counsel. LACERA

evaluated those bids, considering both their terms and the quality of counsel. It then selected and negotiated a fee agreement with Pearson Simon. The agreement was reviewed and approved by LACERA's board.

The retainer agreement between LACERA and Pearson Simon provides for the following fee structure in the event the litigation is settled during the discovery period.[24]

Portion of Settlement	Percentage Applied to that Portion
$0 - $200 million	18%
>$200 - $400 million	17%
>$400 - $600 million	15%
>$600 - $800 million	13%
>$800 million	12%

The fee requested by Class Counsel is derived from this agreement. LACERA fully supports the fees requested by Class Counsel, and as noted, no Class member has objected.

The $253,758,000 in attorneys' fees which Class Counsel has sought is approximately 13.61% of the monetary value of the Settlement Fund. The loadstar calculation submitted by Class Counsel totals over $41 million as of April 1, reflecting over

[24] There are three other columns in the grid with different fee percentages. One column applies to the period before discovery, and the other two apply to periods after discovery.

93,000 hours of work by Class Counsel. This amount is equivalent to a loadstar multiple of just over 6.

While LACERA does not have the largest stake in the Settlement Fund, it has a very substantial one.[25] This substantial stake gave LACERA a strong incentive to negotiate the retainer agreement with care when selecting counsel, as well as a strong incentive to examine the Settlement and the performance of Class Counsel with care.

The Goldberger factors weigh in favor of approval of Class Counsel's fee request. Although the requested fee is enormous, as just described, Class Counsel poured enormous resources into the litigation of this action, all on a contingency basis. It invested over 93,000 hours of time in this litigation, most of it over less than one year. The magnitude and complexity of this case have already been described, as has the risk of litigation. The quality of work performed on behalf of the Class by its counsel has been superb, as evidenced by Class Counsel's efficient and aggressive discovery work, the lack of objections to the large fee request,[26] and the highly favorable

[25] At the time Pearson Simon applied to be appointed Class Counsel, LACERA reported that it had purchased and sold over $2.8 billion of CDS between January 1, 2008, and the filing of its initial complaint on October 28, 2013.

[26] The Notice informed Class members that Class Counsel's fees would not "exceed fourteen percent of the Settlement Fund's total value," which it has not.

outcome achieved for the Class in record-setting time. This success was obtained against a backdrop of government investigations that produced no charges against the Dealer Defendants.

The fee grid which LACERA negotiated with its counsel is generous.[27] But, there is no reason to doubt that LACERA negotiated the best fee structure that it could given the difficulties it anticipated facing in this litigation and its desire to have excellent representation if it were to pursue a complex antitrust claim against many of the largest financial institutions in the nation. Indeed, the 13.61% in fees requested by Class Counsel is consistent with fees awarded in other large antitrust cases. See Brian T. Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Awards, 7 J. Empirical Legal Stud. 811, 831 tbl. 7, 839 tbl. 11 (2010). In this context, then, the requested fee is reasonable in comparison to the size of the recovery for the Class.

Finally, there are significant public policy considerations that weigh in favor of approval. It is important to encourage top-tier litigators to pursue challenging antitrust cases such

[27] Compare the less generous litigation fee grid negotiated in the WorldCom, Inc. securities litigation, which resulted in an even larger recovery for its class and a larger fee award to class counsel. In re WorldCom, Inc., 388 F. Supp. 2d at 353-60; see also Retainer Agreement, WorldCom Sec. Litig., http://www.worldcomlitigation.com/courtdox/retainer.pdf (July 30, 2003), at 2.

as this one. Our antitrust laws address issues that go to the heart of our economy. Our economic health, and indeed our stability as a nation, depend upon adherence to the rule of law and our citizenry's trust in the fairness and transparency of our marketplace. See F.T.C. v. Phoebe Putney Health Sys., Inc., 133 S. Ct. 1003, 1010 (2013) (noting the "fundamental national values of free enterprise and economic competition that are embodied in the federal antitrust laws").

B. Costs and Expenses

Class Counsel also sought reimbursement for over $10 million in expenses incurred. Most of these expenses were incurred in connection with retention of experts. The expert work was essential to the litigation and invaluable to the Class. There were no objections to this application and it was approved.

C. Incentive Fees

Class Counsel also sought an incentive award of $200,000 and $193,700 for Class representatives LACERA and Salix, respectively. The Salix incentive award request is brought on behalf of three individuals who have contributed significantly to Class Counsel's efforts in this litigation.[28] These requests have been denied.

[28] Salix is an assignee of the claims of the FrontPoint Funds, which wound down its business in roughly 2009.

While class representatives should be compensated for out of pocket expenses and lost wages, incentive payments should not ordinarily be given. They "raise grave problems of collusion." Reed v. Continental Guest Servs. Corp., No. 10cv5642 (DLC), 2011 WL 1311886, at *4 (S.D.N.Y. Apr. 4, 2011). After all, representative plaintiffs "undertake to represent not only themselves, but all members of the class, in a fiduciary capacity, and are obligated to do so fairly and adequately, and with due regard for the rights of those class members not present to negotiate for themselves." Id. (citation omitted). When the settlement provides for incentive awards to the named plaintiffs not shared by the other class members, "a serious question arises as to whether the interests of the class have been relegated to the back seat." Id. (citation omitted). While there is no basis to find that Class representatives here have been tempted to receive high incentive awards in exchange for accepting suboptimal settlements for absent Class members, such an award would nonetheless inappropriately reward the representative Class members over absent ones.

IV. Rule 7 Bond Request

Class Counsel has stated that it will likely request that the Court require any objector who files an appeal from this Settlement to post a bond under Rule 7, Fed. R. App. P. Should such a request be made, the parties will be given an opportunity

to address the following standard and the appropriateness of any bond.

Rule 7 provides that "the district court may require an appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs on appeal." A Rule 7 bond is prospective in its focus and "relates to the potential expenses of litigating an appeal." Adsani v. Miller, 139 F.3d 67, 70 n.2 (2d Cir. 1998) (citation omitted). The term "costs" in Rule 7 refers to "all costs properly awardable under the relevant substantive statute or other authority. In other words, all costs properly awardable in an action are to be considered within the scope of [the] Rule." Id. at 72 (citation omitted). The Adsani court explicitly rejected a definition of costs that would limit it to those costs enumerated in Rule 39, Fed. R. App. P. Id. at 74-75.

As explained in In re Gen. Elec. Co. Sec. Litig., 998 F. Supp. 2d 145 (S.D.N.Y. 2014), Rule 38 of the Federal Rules of Appellate Procedure allows the Court of Appeals to award damages to appellees who are confronted with frivolous appeals. Id. at 151. An appeal is frivolous for the purpose of Rule 38 when it is "totally lacking in merit, framed with no relevant supporting law, conclusory in nature, and utterly unsupported by the evidence." Id. at 153 (citation omitted). Accordingly, "when an objector lodges a frivolous appeal to a class action

settlement, a district court may impose a Rule 7 Bond in the amount of the additional administrative expenses that are reasonably anticipated from the pendency of the appeal." Id. A Rule 7 bond may also include attorneys' fees where the district court concludes that the court of appeals might award attorneys' fees as costs under Fed. R. App. P. 38 because the appeal is frivolous.[29] Sckolnick v. Harlow, 820 F.2d 13, 15 (1st Cir. 1987); see also In re 60 E. 80th St. Equities, Inc., 218 F.3d 109, 118-19 (2d Cir. 2000) ("Rule 38 sanctions may include the granting of reasonable attorneys' fees to the party forced to defend the frivolous appeal.").

In setting the Rule 7 Bond, "a district court must not create an impermissible barrier to appeal." In re Gen. Elec. Co. Sec. Litig., 998 F. Supp. 2d at 151. As such, there are

> at least three factors that are relevant in assessing whether a Rule 7 Bond should be imposed. They are: (1) the appellant's financial ability to post the bond; (2) whether the appeal is frivolous; and (3) whether the appellant has engaged in any bad faith or vexatious conduct. Of these, the first two are of the greatest importance.

Id. at 153 (citing Adsani, 139 F.3d at 76-79). As the Court of Appeals explained in Adsani, the "purpose of Rule 7 appears to

[29] Since the Clayton Act provides for recovery of a reasonable attorneys' fee only against a losing defendant, 15 U.S.C. § 15(a), the Rule 7 bond in an antitrust action may include Clayton Act fees only where the appeal is filed by a losing defendant. See Azizian v. Federated Dep't Stores, Inc., 499 F.3d 950, 955-58 (9th Cir. 2007); Blessing v. Sirius XM Radio Inc., 2011 WL 5873383, at *1 (S.D.N.Y. Nov. 22, 2011).

be to protect the rights of appellees brought into appeals courts." Adsani, 139 F.3d at 75. In setting the amount of a Rule 7 Bond, a district court may "prejudge[ ]" the case's chances on appeal. Id. at 79. It is neither "bizarre [n]or anomalous for the amount of the bond to track the amount the appellee stands to have reimbursed." Id. at 75.

CONCLUSION

For the reasons stated herein and during the Fairness Hearing, Class Counsel's petition for approval of the Settlement and Plan of Distribution was granted, with the Court retaining jurisdiction to hear any disputes arising from the claims administration process. Class Counsel's application for attorneys' fees and expenses for the Settlement was also granted. Class Counsel's application for incentive awards for Class representatives LACERA and Salix was denied.

SO ORDERED:

Dated: New York, New York
April 26, 2016

DENISE COTE
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE CREDIT DEFAULT SWAPS ANTITRUST LITIGATION This Document Relates To: All Actions	13 Md. 2476 (DLC)

MEMORANDUM OF LAW IN SUPPORT OF CLASS COUNSEL'S MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND INCENTIVE AWARDS FOR CLASS REPRESENTATIVES

encourage early settlement by not penalizing efficient counsel, thus ensuring that competent counsel continue to be willing to undertake risky, complex, and novel litigation.").

Accordingly, the public policy factor weighs heavily in favor of Class Counsel's requested fee.

D. The Lodestar Cross-Check Supports The Requested Fee

The lodestar fee calculation method has "fallen out of favor particularly because it encourages bill-padding and discourages early settlements." *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 353 (S.D.N.Y. 2014). At most, the lodestar method should be used as a cross-check to ensure the award here is not an "unwarranted windfall." *Goldberger*, 209 F.3d at 49-50. There is no windfall here.

Class Counsel collectively billed nearly 92,000 hours to this matter. At customary rates, and applying the rates in existence at the time the work was undertaken, these hours translate into approximately $39,878,772 in total lodestar as of January 1, 2016.[19] Class Counsel's request for $253,758,000 in attorneys' fees for plaintiffs' counsel thus represents a total multiplier of approximately 6.36.[20]

[19] "[W]here used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court." *Goldberger*, 209 F.3d at 50.

[20] Class Counsel have reviewed the time records submitted by Associated Counsel. As a conservative measure, Class Counsel have determined that each firm (Entwistle & Cappucci and Labaton Sucharow) incurred approximately $400,000 in lodestar. Given the limited scope of those firms' work, Class Counsel have not included this lodestar in the numbers reported above, for cross-check purposes. If that time was included, the total lodestar would be $40,678,772.50 and the multiplier would be 6.24. Associated Counsel's fees will be paid out of the total fees awarded by the Court in proportion to their respective contribution to the case, in the judgment of Class Counsel.

Exhibit 4

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: PLASMA-DERIVATIVE PROTEIN THERAPIES ANTITRUST LITIGATION This Document Relates To All Actions	Case No. 09 C 7666 MDL No. 2109 Judge Joan B. Gottschall Magistrate Judge Arlander Keys

~~[PROPOSED]~~ ORDER GRANTING CLASS PLAINTIFFS' MOTION FOR INTERIM AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

The Court, having considered Class Plaintiffs' Motion for Award of Attorneys' Fees and Reimbursement of Expenses (the "Motion"), and the memorandum and declarations in support thereof, and after a duly noticed hearing, hereby finds that:

1. The Motion seeks an award of attorneys' fees of 33 1/3% of the $64,000,000 Settlement Fund created by the settlement payments from CSL Limited, CSL Behring LLC, CSL Plasma Inc. (collectively, "CSL") and the Plasma Protein Therapeutics Association ("PPTA") (collectively with CSL, "Settling Defendants"). Class Counsel Richard A. Koffman and Charles E. Tompkins, of Cohen Milstein Sellers & Toll PLLC and Williams Montgomery & John Ltd., respectively, also seek an order awarding reimbursement of $4,095,879.19 in expenses incurred in connection with the prosecution of this action.

2. The amount of attorneys' fees requested is fair and reasonable under the "percentage-of-the-fund" method. This is confirmed by a lodestar "cross-check," which reveals a negative multiplier, based upon 92,281.66 hours of work and a collective lodestar of $37,033,138.22.

3. The attorneys' fees requested were entirely contingent upon success. Class Counsel risked time and effort, and advanced significant costs and expenses with no ultimate

guarantee of compensation. The award of 33 1/3% is warranted for reasons set out in Class Counsel's moving papers.

4. Given the risks involved in this case, the effort put forth by Plaintiffs' Counsel, the level of sophistication of the work done, and the extraordinary results achieved for the Class, an award of 33 1/3% is justified.

5. The expenses sought, as detailed in the Joint Declaration attached to Plaintiffs' brief, were incurred in connection with the prosecution of the litigation for the benefit of the Class, and were reasonable and necessary.

6. Therefore, upon consideration of the Motion and accompanying declarations, and based upon all matters of record including the pleadings and papers filed in this action and oral argument given at the hearing on this matter, the Court hereby finds the following: (1) the attorneys' fees requested are reasonable and proper; and (2) the expenses requested were necessary, reasonable and proper.

7. IT IS HEREBY ORDERED AND DECREED:

(a) Class Counsel are awarded attorneys' fees for distribution to Plaintiffs' Counsel in the amount of $21,333,333 equal to 33 1/3% of the $64,000,000 added to the Settlement Fund. Class Counsel may be paid 33 1/3% of $64,000,000 immediately upon entry of this Order.

(b) Plaintiffs' Counsel are awarded $4,095,879.19 in reimbursement of expenses incurred in connection with the prosecution of this action.

(c) The attorneys' fees and reimbursement of expenses shall be paid from the Settlement Fund.

(d) The attorneys' fees and expenses shall be allocated amongst Plaintiffs' Counsel by Class Counsel Richard A. Koffman and Charles E. Tompkins in a manner which, in Class Counsel's good-faith judgment, accurately reflects each of such Plaintiffs' Counsel's contributions to the establishment, prosecution, and resolution of this litigation.

IT IS SO ORDERED this 12 day of December, 2014

Honorable Joan B. Gottschall
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: PLASMA-DERIVATIVE PROTEIN THERAPIES ANTITRUST LITIGATION This Document Relates To All Actions	Case No. 09 C 7666 MDL No. 2109 Judge Joan B. Gottschall Magistrate Judge Arlander Keys

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR A FINAL AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND APPROVAL OF INCENTIVE AWARDS FOR CLASS REPRESENTATIVES

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Plaintiffs' Liaison Counsel

This case involves allegations that the two largest manufacturers of life-sustaining biologic therapies conspired to restrict the supply and increase the prices of those therapies in violation of the antitrust laws. Following a lengthy pre-filing investigation, Class Counsel and their legal team have engaged in nearly five years of intensive litigation, during which they have: successfully filed a detailed Consolidated Amended Complaint; defeated two motions to dismiss; engaged in extensive discovery-related motion practice; reviewed more than 11 million pages of documents; taken and defended more than sixty depositions on three separate continents; retained and consulted two preeminent economists (and defended their depositions); submitted several hundred pages of briefing and other materials in support of Plaintiff's motion for class certification; and engaged in protracted, arm's length settlement negotiations with all three Defendants. All of these efforts have now come to fruition, as Class Counsel have reached a Settlement with the final remaining defendant, Baxter, for $64 million. This brings the total relief to the Class to $128 million. As explained more fully in the simultaneously filed Motion for Final Approval of the Baxter Settlement, this is a truly excellent result for the Class.

Class Counsel – Richard A. Koffman and Charles E. Tompkins, and their respective law firms[1] – hereby submit this memorandum in support of their Motion for a Final Award of Attorneys' Fees and Reimbursement of Litigation Expenses pursuant to Rule 23(h) of the Federal Rules of Civil Procedure. As compensation for their considerable work on behalf of the

[1] Class Counsel have been ably assisted throughout by a team of experienced attorneys from many of the nation's top plaintiffs' firms, including Liaison Counsel from Freeborn & Peters LLP.

Class, Class Counsel seek an award of one-third of the Settlement fund, $21,333,333.33.[2] Counsel respectfully submit that this fee is eminently fair and reasonable given that Plaintiffs' counsel have invested over 94,000 professional hours, valued at more than $37.75 million, and invested $5 million in out-of-pocket expenses, all without any guarantee of payment or reimbursement. This extraordinary investment apparently mirrors Defendants': Baxter stated in open Court that it had engaged one hundred contract attorneys to work on this matter[3] and CSL publicly acknowledged that it had spent more than $20 million in legal fees related to this suit, and expected to spend $20 million more if the case were litigated to conclusion. Applying simple mathematics and logic to these facts, the three Defendants' total legal fees to date are likely in excess of $50 million.

Counsel also asks that the Court approve an incentive award of $50,000 for each of the Class Representatives in this matter. The Class Representatives have collectively spent thousands of hours prosecuting this matter on behalf of the Class, and their efforts have been critical to the successful result achieved for the Class. The Class Representatives devoted significant resources to the case despite the fact that each of the Class Representatives'

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[2] Attached as Exhibit 1 is the Joint Declaration of Richard A. Koffman and Charles E. Tompkins in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation and Class Counsel's Motion for an Award of Attorneys' Fees, Reimbursement of Litigation Expenses, and Approval of Incentive Awards for Class Representatives (the "Joint Declaration" or "Joint Decl."), which contains a description of the history of the litigation, the claims asserted, the investigation and discovery undertaken, the negotiation and substance of the Settlement, and the substantial risks and uncertainties presented by and overcome in this litigation.

Class Counsel will submit shortly the detailed declarations and time entries for each Firm requesting attorneys' fees in this case for the Court's review *in camera*.

[3] Tr. of Hearing held on Feb. 15, 2012 at 6, ECF No. 456.

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF LIVE, Ver 6,1
Eastern Division

In Re: Plasma−Derivative Protein Therapies Antitrust Litigation, et al.

Plaintiff,

v.

Case No.: 1:09−cv−07666
Honorable Joan B. Gottschall

CSL Limited, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Wednesday, April 16, 2014:

MINUTE entry before the Honorable Joan B. Gottschall: Motion hearing held. Plaintiff's Unopposed Motion for Final Approval of Class Settlement with Baxter [696] and Motion for Final Award of Attorneys' Fees, Reimbursement of Expenses, and Approval of Incentive Awards for Class Representatives [697] are granted. Judgment is entered dismissing with prejudice from this action Defendants Baxter International, Inc. and Baxter Healthcare Corporation. Enter Order and Judgment. Civil case terminated. This order relates to all member cases associated with MDL 2109. MDL 2109 terminated. Mailed notice(ef,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at ***www.ilnd.uscourts.gov***.

Exhibit 5

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

STANDARD IRON WORKS, on behalf of itself and all others similarly situated,

Plaintiffs,

v.

ARCELORMITTAL; ARCELORMITTAL USA, INC.; UNITED STATES STEEL CORPORATION; NUCOR CORPORATION; GERDAU AMERISTEEL CORPORATION; STEEL DYNAMICS, INC.; AK STEEL HOLDING CORPORATION; SSAB SWEDISH STEEL CORPORATION; COMMERCIAL METALS, INC.,

Defendants.

Case No. 08 C 5214

Judge James B. Zagel

ORDER AWARDING ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES TO CLASS COUNSEL FROM THE COMMON SETTLEMENT FUNDS, AND APPROVING PLAN OF ALLOCATION AND DISTRIBUTION

The Court, having considered Class Counsel's Motion for Award of Attorneys' Fees and Reimbursement of Litigation Expenses and the Memorandum of Law and exhibits in support thereof (Dkt. No. 519); having held hearings on October 17, 2014 and October 21, 2014 concerning final settlement approval, attorneys' fees and other related issues; and having considered all of the submissions and arguments with respect thereto, pursuant to Rules 23 and 54 of the Federal Rules of Civil Procedure it is hereby ORDERED, ADJUDGED AND DECREED that Class Counsel's Motion for Attorneys' Fees and Reimbursement of Litigation Expenses is GRANTED as follows:

1. Settlement Class Counsel have moved for attorneys' fees and reimbursement of litigation expenses out of the total common settlement funds in this litigation. As a result of the Settlements with ArcelorMittal and U. S. Steel, and prior settlements with Defendants Commercial Metals, AK Steel, and Gerdau Ameristeel, Class Counsel has secured a total common fund recovery of $163.9 million for the benefit of the Settlement Class.

2. After two appropriate notices to the Settlement Class of their intention to seek up to one-third of the total common settlement fund as attorneys' fees and to seek reimbursement of litigation expenses, and after a third notice to the Class providing a third opportunity to object to Class Counsel's motion for attorneys' fees after that motion was filed, and upon consideration of the motion and all related submissions and argument, and the response of the Settlement Class thereto; now therefore pursuant to Rules 23(h) and 54(d) of the Federal Rules of Civil Procedure, this Court awards Settlement Class Counsel 33% of the total Settlement Fund (*i.e.*, 33% of the sum of all five settlements obtained to date) as a fair and reasonable attorneys' fee.

3. The Court finds that a 33% fee comports with the prevailing market rate for legal services of similar quality in similar cases. The Court rests this conclusion on, *inter alia*, data provided by Class Counsel concerning market rates; the Court's consideration of fee awards in similar complex litigation, including many recent antitrust class actions in which 33% fees were awarded for similar work; the nature and complexity of this particular litigation; the substantial risks of non-recovery borne by Class Counsel in prosecuting this matter on a purely contingent basis while advancing all litigation costs; the amount and quality of Class Counsel's work; and the results obtained on behalf of the Class.

4. Class Counsel initiated and developed this case with no assistance from any prior government investigation or prosecution, and handled the matter effectively and without

compensation through more than six years of hard-fought litigation. The issues were risky and difficult, and Class Counsel's ultimate success in recovering $163.9 million for the Class—payable promptly in cash—supports the requested fee award.

5. A lodestar "cross check" further supports a 33% fee award. Class Counsel devoted more than $27.7 million in professional time at current billing rates (or approximately $23.6 million at historical rates) to litigating this case. The work involved, *inter alia,* extensive pre-complaint investigation; motion to dismiss and case management briefing; litigating numerous discovery issues with all eight Defendants; reviewing over 3.5 million pages of documents produced in class certification discovery; collecting, reviewing and producing documents from the five class representatives; preparing for and taking the depositions of defendants' expert and lay witnesses; preparing for and defending the depositions of the class representatives; preparing for and conducting a 3-day class certification hearing and numerous other hearings, arguments and conferences over the past six years; preparing thousands of pages of class certification, *Daubert* and expert submissions; and much more. All of this work led directly to the creation of the common Settlement Fund.

6. The Court finds that Class Counsel performed their work reasonably and efficiently, that their billing rates are appropriate and consistent with market rates for attorneys of similar skill doing similar work, and that the lodestar totals are reasonable.

7. Based on current billing rates, the requested lodestar "multiplier" is approximately 1.97, which the Court finds is well within the range of reasonable multipliers awarded in similar contingent cases. The requested multiplier is further supported by the fact that Class Counsel bore all the risk of litigating this complex case (including millions of dollars in litigation expenses) with no guarantee of reimbursement. Having shouldered these risks, and

having achieved outstanding results for the Class, Class Counsel have earned their requested multiplier.

8. The reaction of the Class supports the requested fee award. The Settlement Class in this case includes approximately 5,300 direct purchasers, many of which are sophisticated business entities. The absence of objections indicates that the fee is fair and reasonable and consistent with prevailing market rates.

9. The Court directs that Co-Lead Counsel allocate the fee award among co-counsel in a reasonable manner consistent with Co-Lead Counsel's assessment of each firm's contribution to the prosecution of the case.

10. Class Counsel also requests reimbursement for $406,850.08 in expenses they have advanced in the prosecution of this lawsuit. The Court grants that request and finds the expenses to be fair and reasonably incurred to achieve the benefits to the Settlement Class obtained in the Settlement, as well as the continued litigation of this Action against non-settling Defendants.

11. After deducting Court-approved attorneys' fees and expenses (including the previously approved costs of notice and settlement administration), the balance of the common settlement funds shall be distributed to Class members in accordance with Plaintiffs' proposed Plan of Allocation and Distribution, attached hereto as Exhibit 1. The Court finds that the Plan of Allocation and Distribution is fair, reasonable and adequate, and the Court therefore approves the proposed Plan of Allocation and Distribution as submitted. After final approval of the Settlements and entry of this order awarding attorneys' fees and expenses, the claims administrator (Garden City Group) will mail pre-printed claim forms to all Class members identified as direct purchasers in Defendants' transaction data. The pre-printed claim forms shall be in a format substantially similar to the proposed claim form contained in Exhibit 1. Class members will be asked to verify the accuracy of certain purchase information on the pre-printed claim forms and return those forms to the

claims administrator, and they will be given an opportunity to submit additional or corrective information if they wish. Following expiration of the deadline for the return of claim forms, and after consideration of any supplemental information submitted by Class members, the claims administrator will calculate each claiming Class member's *pro rata* share of the Settlement Funds, net of then-due and estimated future settlement administration costs. Class Counsel will supervise the claims process, and Class Counsel will file a motion to update the Court on the claims process and to request approval of the final schedule of distributions prior to any checks being mailed to the Class.

WHEREFORE the Court grants an attorneys' fee award of 33% of the total common settlement funds (*i.e.*, 33% of $163.9 million, or a total fee of $54,087,000), authorizes Co-Lead Counsel to allocate the fee award among co-counsel at Co-Lead Counsel's discretion, awards Class Counsel reimbursement of their requested "out of pocket" litigation costs and expenses from the Settlement funds in the amount of $406,850.08 (in addition to the reimbursement of $5,064,908.97 in litigation expenses approved in connection with the earlier Settlements), and approves the proposed Plan of Allocation and Distribution for the Settlement funds.

SO ORDERED this the 22nd day of October, 2014.

Honorable James B. Zagel
United States District Judge

EXHIBIT 1

CLASS COUNSEL'S PROPOSED PLAN OF ALLOCATION AND DISTRIBUTION FOR THE *STEEL ANTITRUST* SETTLEMENT FUNDS RECOVERED FROM DEFENDANTS ARCELORMITTAL, U.S. STEEL, GERDAU, COMMERCIAL METALS, AND AK STEEL

1. Distribution and Submission of Personalized Claim Forms

After final approval of the Settlements and entry of an order awarding attorneys' fees and expenses, The Garden City Group, Inc. ("Garden City Group"), the claims administrator approved by the Court, will prepare and mail proof of claim forms, substantially in the form attached as Appendix A to this Plan, to all members of the Class. The mailing list was derived from the Defendants' transactional databases, as synthesized by Plaintiffs' expert consultants and Garden City Group. Garden City Group and Co-Lead Counsel have updated the mailing list in the course of administering earlier notice programs in this matter, and will further update it as necessary.

The proof of claim form explains that members of the certified Settlement Class ("Class Members") will be entitled to a distribution from the Settlement Funds, and identifies Class Members as those who purchased Steel Products (defined in the form) directly from a Defendant (defined in the form) in the United States and its territories at any time from April 1, 2005 through December 31, 2007, except for Defendants, governmental entities, and purchasers who timely elected to exclude themselves from the Class.

The proof of claim form further explains that Class Members will be entitled to a *pro rata* distribution of the Net Settlement Funds. Net Settlement Funds are the monies deposited into escrow pursuant to the approved Settlement agreements, plus all accrued interest on those accounts, minus all attorneys' fees and expenses awarded by the Court, minus reasonable anticipated fees and costs associated with settlement administration, and minus anticipated tax payments and tax preparation fees associated with the Escrow Accounts.

The claim form states that Class Members' recovery will be a function of their purchase volume (in dollars) of eligible Steel Products from all of the Defendants during the Class Period. Using data obtained from sales records provided by the Defendants, Garden City Group will prepare a personalized claim form for each Class Member that includes the dollar value of the Class Member's purchases of eligible Steel Products during the Class Period.

Class Members will be advised that they must submit a claim form to be eligible to receive a distribution from the Settlement funds. Class Members will have two options for doing so. First, they can simply sign and return their claim form if they accept the pre-printed tabulation of qualifying purchases. Alternatively, they can return the claim form along with backup data supporting a different estimated dollar value of eligible purchases.

Using the pre-printed claim form will save most Class Members substantial time and effort they might otherwise have to devote to tracking down, compiling and submitting documentation in support of their claim, and will reduce the time necessary for reviewing and processing claims and hence advance the date of ultimate distribution of funds. If Class Members believe the pre-printed purchase data is inaccurate, however, they will have the option of submitting their own purchase data so long as it is supported by adequate proof.

To make a claim and receive a distribution from the Net Settlement Funds, a Class Member must return a properly completed claim form to Garden City Group postmarked no later than forty-five (45) days from the date of the initial claim form mailing to the Class Member.

2. Processing and Review of Claims

Garden City Group will review and process all submitted claims, under the supervision and guidance of Class Counsel. Garden City Group first will determine whether a claim form is timely, properly completed, and signed.

If Garden City Group determines that it needs further information or documentation to properly process a claim, the claimant will be notified in writing. The notification will explain how the claimant can cure the deficiency and provide a reasonable deadline (generally twenty (20) days from the mailing date of the deficiency notification) for submitting a curing response. If a claimant fails to correct the deficiency within the time specified, the claim may be rejected in whole or in part.

Garden City Group will classify all claims as either "Eligible" or "Ineligible." "Eligible Claims" will be further classified as: (i) claims recommended for approval as filed; (ii) claims recommended for approval but with modification; or (iii) late claims recommended for acceptance because they would have been Eligible Claims if filed on time and their acceptance will not substantially delay claims administration. Garden City Group will classify as "Ineligible Claims" those claims that it recommends for rejection and will identify the basis.

Class Counsel will review the list of Eligible and Ineligible Claims and may accept, reject, or modify the Class Administrator's decisions.

3. Calculation of Class Member *Pro Rata* Shares and Distribution Amounts

Once Class Counsel and Garden City Group determine which claims are recommended for approval (as submitted or as modified), Garden City Group will calculate each claimant's *pro rata* share of the settlements. Each claimant's share will be in proportion to the total amount of approved purchases of Steel Products, calculated as a fraction—the numerator being the sum of that claimant's eligible purchases in dollars, and the denominator being the sum of all approved claimants' eligible purchases in dollars. Garden City Group will multiply the resulting fraction

for each claimant by the dollar amount of the monies to be distributed from the Net Settlement Funds to obtain the dollar value of each claimant's distribution payment.[1]

4. Submission of a Recommended Schedule of Distribution

After Garden City Group calculates each claimant's *pro rata* share and estimated distribution from the Net Settlement Funds, Class Counsel will file a motion with the Court to approve the final plan of distribution and will provide the Court a report on (i) the status of the claims process, (ii) the proposed distribution amounts for individual Class Members (the "Schedule of Distribution"), and (iii) any outstanding disputes on which the Court's guidance is sought.

5. Payment to the Claimants

After entry of the Court's order approving a Schedule of Distribution (whether as presented or as modified by the Court), the Escrow Agent for the Settlement Funds will release the Net Settlement Funds to Garden City Group, which will deposit them into a single Distribution Account. Garden City Group will then issue a check payable to each claimant in an amount corresponding to its *pro rata* share of the funds, as approved by the Court, and will use reasonable efforts to locate any claimants whose checks are returned as undeliverable.

All settlement checks issued by Garden City Group will bear an expiration date. Garden City Group will use reasonable efforts to encourage claimants to cash checks before they expire and may reissue checks to claimants whose checks have expired. Garden City Group will void expired checks that are not cleared within a commercially reasonable period of time (generally

[1] For Class Members who opted out of one or more, but not all, of the Settlements, their *pro rata* share will be adjusted downward by the percentage share of the Settlement Funds contributed by Defendants from whose Settlements the Class Member opted out, and the amount by which such Class Members' distribution amount is reduced will be reallocated across the rest of the Class.

90 or 120 days). The monies represented by voided checks that are not reissued shall revert to the Distribution Account, at which time Class Counsel will provide a status report to the Court on the status of the distribution, the amount of any unclaimed funds, and a recommendation on what to do with such funds.

6. Payment of Garden City Group's Invoices

Garden City Group will submit monthly invoices to Class Counsel detailing the work performed and the expenses incurred in the prior month in the course of administering the Settlements. Class Counsel will review such invoices, seek clarification or modification as needed, and submit invoices for reasonable and necessary fees and expenses to the Escrow Agents with a written request that the invoices be paid from the appropriate Escrow Account(s). Class Counsel will update the Court on these expenses in the aforementioned status report, and Class Counsel will submit any additional status reports that the Court may request.

APPENDIX A

To Class Counsel's Proposed Plan Of Allocation And Distribution For The *Steel Antitrust* Settlement Funds Recovered from Defendants ArcelorMittal, U.S. Steel, Gerdau, Commercial Metals, and AK Steel:

Proposed Proof of Claim Form

Steel Antitrust Litigation c/o
GCG
P.O. Box 9349
Dublin, OH 43017-4249

IMPORTANT COURT-ORDERED DOCUMENT

For Official Use Only

01

<<BARCODE>>

Claimant ID #(<Claimant_ID)) - (<Sequence))
(<Name_1))
(<Address_1))
(<City)), (<State)) (<Zip5)) (<Zip4))

IN RE: STEEL ANTITRUST LITIGATION
United States District Court for the Northern District of Illinois
Civil No. 08-cv-5214

PROOF OF CLAIM FORM – ARCELORMITTAL, U.S. STEEL, GERDAU, COMMERCIAL METALS, AK STEEL SETTLEMENTS

Important Notice: If you are a Settlement Class Member, you can submit a claim without collecting any documentation from your files.

To receive your share of the Settlement funds, you must send a completed, signed, and certified proof of claim to the Claims Administrator, postmarked on or before --------, -----, to the following address:

Steel Antitrust Litigation
c/o GCG
P.O. Box 9349
Dublin, OH 43017-4249

You are only entitled to a distribution if you are a member of the Settlement Class. You are a member of the Settlement Class if you purchased Steel Products (as defined below) directly from a defendant (defined below) at any time from April 1, 2005 through December 31, 2007 in the United States. Excluded from the Class are any defendants, their employees, and their respective parents, subsidiaries and affiliates; all who timely elected to exclude themselves from the Class; and all governmental entities.

"Steel Products" are defined as products derived from raw carbon steel and sold directly by any of the Defendants or their subsidiaries or controlled affiliates in the United States, including all carbon steel slabs, plates, sheet and coil products, galvanized and other coated sheet products; billets, blooms, rebar, merchant bar, beams and other structural shapes; and all other steel products derived from raw carbon steel and sold by Defendants except as specifically excluded below.

"Steel Products" specifically **exclude** the following product categories: stainless steel; grain-oriented electrical steel; tin mill products; clad plate (i.e., nickel, stainless or copper clad plate); steel pipe and other tubular products; "special bar quality" products; wire rod and other wire products; grinding balls; fabricated rebar products; fabricated steel joist, decking, fence posts and other fabricated building products; welded steel blanks; and steel products purchased under toll processing agreements.

The term **"Purchased"** includes all transactions for which pricing was negotiated during the period April 1, 2005 through December 31, 2007 **and** delivery was received during that period. Qualifying purchases also include Steel Product transactions for which a sales contract was negotiated before April 1, 2005 but (i) delivery was received between April 1, 2005-December 31, 2007 **and** (ii) the actual transaction price under the contract was adjusted (or indexed) based on market pricing that prevailed during the period April 1, 2005-December 31, 2007.

"Defendants" are: ArcelorMittal S.A. and ArcelorMittal USA LLC (collectively "ArcelorMittal"), United States Steel Corporation ("U.S. Steel"), Nucor Corporation ("Nucor"), AK Steel Holding Corporation ("AK Steel"), Gerdau Ameristeel Corporation ("Gerdau"), Steel Dynamics, Inc. ("Steel Dynamics"), Commercial Metals Company ("CMC"), and SSAB Swedish Steel Corporation ("SSAB").

If you are *not* a Class Member, *e.g.*, because you did not purchase Steel Products directly from a Defendant during the period April 1, 2005-December 31, 2007, or because you previously excluded yourself from the Settlement Class, you are not entitled to a distribution and should *not* submit this Proof of Claim form.

This Proof of Claim, even if prepared by a third party, must be completed, signed and certified by the Class Member. The Claims Administrator is authorized to request from persons or entities submitting proofs of claim any documentation necessary to verify information appearing in the Proof of Claim and to prevent claim duplication. Failure to provide requested information may constitute grounds for rejection of the Proof of Claim.

PART 1: CLAIMANT IDENTIFICATION

(Please type or neatly print all information – use blue or black ink)

Class Member Name and Address:

[PRE-PRINTED CLAIMANT NAME]
ADDRESS
CITY, STATE ZIP

If necessary, use the following box to correct your name and address information:

Federal Employer Tax ID Number (FEIN)

Person to contact if there are questions regarding this claim:

Daytime phone number:

Email address:

Any other names by which you have been known, including FEIN, during the period April 1, 2005-December 31, 2007:

PART 2: CLAIMANTS' PURCHASE DATA

As described in the Plan of Allocation, which is available at the Steel Settlement website, www.steelantitrustsettlement.com, each Class Member's claim is based on the amounts each Class Member paid for purchases of qualifying Steel Products during the period April 1, 2005-December 31, 2007. The Net Settlement Funds will be distributed to Class Members on a *pro rata* basis, with Class Members' purchases of Steel Products from all of the Defendants serving as the basis for the calculation.

To submit a claim based on Defendants' purchase data, which is summarized in the table below, all you have to do is complete Part 4 below, and return the claim form. In other words, if you accept the purchase figures in the box immediately below, there is no need to complete Part 3 of this claim form and no need to search your own records or produce any backup to receive your share of the Settlement Funds.

Defendant-Supplier	Direct Purchase Amount
ArcelorMittal	
U.S. Steel	
Nucor	
AK Steel	
Gerdau	
Steel Dynamics	
CMC	
SSAB	
Total	

The totals above were obtained directly from the Defendants' sales records and summarize your total payments for Steel Products during the period April 1, 2005-December 31, 2007. If you accept this estimate, you can simply skip Part 3 below and proceed to Part 4, and your share of the Steel Settlement Fund will be calculated based on this amount.

Please Note: If you appeared in Defendants' records under other names or at different locations, you and related entities and locations may receive multiple but non-duplicative Proof of Claim forms, each with a unique Claimant ID Number (located in the address block on the first page).

PART 3: CLAIMANTS' CORRECTED PURCHASE DATA

(To be completed ONLY if you disagree with, and do not wish to accept, the totals presented in Part 2)

If you disagree with the pre-printed information contained in Part 2, please enter the corrected purchase totals in the table below and attach documentation in support of the revised total. **You MUST attach documentation in support of any corrected amounts.**

Defendant-Supplier	Direct Purchase Amount
ArcelorMittal	
U.S. Steel	
Nucor	
AK Steel	
Gerdau	
Steel Dynamics	
CMC	
SSAB	
Total	

To support any corrected purchase amounts, you **must** provide proof to support the corrected amount and identify the Defendant-supplier, product names and types, dates of purchase, and net purchase amounts (in U.S. dollars). Electronic transaction summaries or similar records are preferred. Only purchases made directly from one of the Defendants qualify. Purchases through an intermediary such as a service center, wholesaler or distributor **do not qualify**.

If you received and are correcting multiple Proof of Claim forms, please provide supporting documentation for all of them.

PART 4: SUBMISSION TO JURISDICTION OF THE COURT AND VERIFICATION

By signing below, you are submitting to the jurisdiction of the United States District Court for the Northern District of Illinois with respect to the claim you are making as a Class Member.

By signing below, you are verifying that you are the proper recipient of the funds sought and that you have not assigned or transferred (or purported to assign or transfer) any of the claims in this matter. You are further verifying that the information provided in this Proof of Claim is accurate and complete.

Name and Capacity/Title:

Signature:

Date:

The completed Proof of Claim and the information it contains will be treated as confidential and will be used solely for purposes of administering the settlement.

Exhibit 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE AMERICAN INTERNATIONAL GROUP, INC. SECURITIES LITIGATION	ECF CASE
This Document Relates To: All Actions	Master File No. 04 Civ. 8141 (DAB) (AJP)

ORDER APPROVING LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES AND LEAD PLAINTIFF'S REQUEST FOR REIMBURSEMENT OF EXPENSES IN CONNECTION WITH GENERAL REINSURANCE SETTLEMENT

THIS MATTER having come before the Court on September 10, 2013, on the Motion of Labaton Sucharow LLP and Hahn Loeser & Parks LLP ("Lead Counsel"), for an award of attorneys' fees and reimbursement of expenses and Lead Plaintiff's request for reimbursement of expenses in connection with the settlement entered into with Defendant General Reinsurance Corporation ("Gen Re" and, together with former Gen Re CEO Ronald E. Ferguson and former Gen Re executives Richard Napier and John B. Houldsworth, the "Gen Re Defendants"), and the Court, having considered all papers filed and proceedings conducted herein and otherwise being fully informed in the premises and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. All capitalized terms not otherwise defined herein have the same meaning as that defined in the Agreement of Compromise and Settlement (the "Agreement"), dated February 24,

2009, previously submitted to the Court. This Court has jurisdiction over the subject matter of this application and all matters relating thereto.

2. Pursuant to and in compliance with Rules 23 and 54 of the Federal Rules of Civil Procedure, the Court hereby finds and concludes that due and adequate notice was directed to persons and entities who are Settlement Class Members, advising them of the request for attorneys' fees and expenses, and of their right to object thereto, and a full and fair opportunity was accorded to persons and entities who are Settlement Class Members to be heard with respect to the motion.

3. Lead Counsel is entitled to a fee paid out of the common fund created for the benefit of the Settlement Class. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478-79 (1980).

4. The Court hereby awards attorneys' fees of $6.5 million to Lead Counsel to be paid from the Cash Settlement Account. Said fees shall be allocated among plaintiffs' counsel by Lead Counsel in a manner in which they believe reflects each counsel's contribution to the prosecution and resolution of the claims against the Gen Re Defendants.

5. The Court hereby awards Lead Counsel expenses of $525,000 to be paid from the Cash Settlement Account.

6. The Court has also considered Lead Plaintiff's request for reimbursement of reasonable costs and expenses directly relating to the representation of the Settlement Class, pursuant to the Private Securities Litigation Reform Act ("PSLRA"), 15 U.S.C. §78u-4 (a)(4). The Court hereby awards the Ohio Public Employees Retirement System expenses of $2,483 and the State Teachers Retirement System of Ohio expenses of $2,402, both of which may be paid upon entry of this Order.

7. The awarded attorneys' fees and expenses shall be paid from the Cash Settlement Account immediately after this Order is entered subject to the terms, conditions, and obligations of the Agreement, which terms, conditions, and obligations are incorporated herein.

8. The Court retains continuing and exclusive jurisdiction over the Settlement, the administration and distribution of the Settlement and the attorneys' fee award and its payment.

IT IS SO ORDERED.

DATED: September 11, 2013

Deborah A. Batts

The Honorable Deborah A. Batts
United States District Court for the
Southern District of New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE AMERICAN INTERNATIONAL GROUP, INC. SECURITIES LITIGATION	ECF CASE
	Master File No. 04 Civ. 8141 (DC) (AJP)
This Document Relates To: All Actions	Oral Argument Requested

MEMORANDUM OF LAW IN SUPPORT OF CO-LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES AND LEAD PLAINTIFF'S REQUEST FOR REIMBURSEMENT OF EXPENSES

"Under the lodestar method of fee computation, a multiplier is typically applied to the lodestar." *Global Crossing*, 225 F.R.D. at 468. "The multiplier represents the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors." *Id.* (citing *Goldberger*, 209 F.3d at 47; *Savoie*, 166 F.3d at 460).

1. <u>Counsel's Lodestar Multiplier Is Very Low</u>

The total lodestar of Counsel here related to prosecuting the claims against PwC is $10,735,768. Dubbs Decl. Exs. 18-A; 20-A. This represents 30,856.10 hours spent by attorneys, paralegals, investigators and professional analysts furthering the prosecution of the PwC claims. Counsel compiled the hours from contemporaneous time records maintained by each individual who participated in the prosecution of the Action. *Id*.

Here, Counsel's lodestar of $10,735,768 represents a "multiplier" of only 0.54. This lodestar multiplier is ***very*** low. In *In re Nortel Networks Corp. Securities Litigation*, 539 F.3d 129, 134 (2d Cir. 2008) the Second Circuit recently ruled that a $34 million fee, representing a 2.04 multiplier was "*toward the lower end of reasonable fee awards*." (emphasis added.) Likewise, in *Bisys*, 2007 WL 2049726, at *3, the court found that the reasonableness of the 30% fee on the $65 million settlement was confirmed by the multiplier of 2.99, noting that "[s]uch a multiplier falls well within the parameters set in this district and elsewhere."

In short, the reasonableness of the requested attorneys' fee is readily confirmed by the lodestar "cross-check." Co-Lead Counsel submits that the requested fee should be awarded.

II. COUNSEL SHOULD BE REIMBURSED FOR THEIR OUT-OF-POCKET EXPENSES REASONABLY INCURRED IN CONNECTION WITH THIS ACTION

In addition to a reasonable attorneys' fee, Co-Lead Counsel respectfully seek reimbursement in the amount of $4,878,836.07 for out-of-pocket expenses reasonably incurred in connection with prosecuting the PwC claims. Co-Lead Counsel have submitted declarations attesting to the accuracy of

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hourly rates in their respective legal communities for cases of this sort. Such rates necessarily reflect the reputation, experience, care, and success records of counsel.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE AMERICAN INTERNATIONAL GROUP, INC. SECURITIES LITIGATION	ECF CASE
	Master File No. 04 Civ. 8141 (DAB) (AJP)
This Document Relates To: All Actions	Oral Argument Requested

MEMORANDUM OF LAW IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES AND LEAD PLAINTIFF'S REQUEST FOR REIMBURSEMENT OF EXPENSES

is only seeking their lodestar, the lodestar multiplier is by definition, one. This modest request contrasts sharply with the practice in other class actions." Coffee Decl. ¶¶ 33-34.

1. Plaintiffs' Counsel's Lodestar Multiplier Is Very Low

The total lodestar of Plaintiffs' Counsel related to prosecuting the claims against AIG is nearly $96.76 million. Dubbs Decl. Ex. 20. This represents 259,926.5 hours spent by attorneys, paralegals, investigators and professional analysts furthering the prosecution of the AIG claims. Dubbs Decl. Exs. 10-A to 17-A; 20. Plaintiffs' Counsel compiled the hours from contemporaneous time records maintained by each individual who participated in the prosecution of the Action. *Id.*

Plaintiffs' Counsel's lodestar of $96.76 million actually represents a ***negative*** "multiplier" of 0.98, which is ***very*** low. In *In re Nortel Networks Corp. Securities Litigation*, the Second Circuit recently ruled that a $34 million fee, representing a 2.04 multiplier was "***toward the lower end of reasonable fee awards***." 539 F.3d 129, 134 (2d Cir. 2008) (emphasis added). Likewise, in *Bisys*, the court found that the reasonableness of the 30% fee on the $65 million settlement was confirmed by the multiplier of 2.99, noting that "[s]uch a multiplier falls well within the parameters set in this district and elsewhere." 2007 WL 2049726, at *3.

In complex contingent litigation, lodestar multiples between 2 and 5 are commonly awarded. *See, e.g.*, *Wal-Mart*, 396 F.3d at 123 (upholding a multiplier of 3.5 as reasonable on appeal); *Cornwell v. Credit Suisse Group*, No. 08-cv-03758, slip op. (S.D.N.Y. July 18, 2011) (Marrero, J.) (awarding 27.5% fee on $70 million settlement, representing a multiplier of 4.7) (Dubbs Decl. Ex. 21); *Comverse*, 2010 WL 2653354, at *5 (awarding 2.78 times lodestar, and noting that "[w]here . . . counsel has litigated a complex case under a contingency fee arrangement, they are entitled to a fee in excess of the lodestar"); *In re EVCI Career Colls. Holding Corp. Sec. Litig.*, No. 05-cv-10240, 2007 WL 2230177, at *17 (S.D.N.Y. July 27, 2007) (McMahon, J.) (lodestar multiplier of 2.48 was "found to be reasonable

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE AMERICAN INTERNATIONAL GROUP, INC. SECURITIES LITIGATION	ECF CASE
	Master File No. 04 Civ. 8141 (DAB) (AJP)
This Document Relates To: All Actions	Oral Argument Requested

MEMORANDUM OF LAW IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES AND LEAD PLAINTIFF'S REQUEST FOR REIMBURSEMENT OF EXPENSES

1. The Time and Labor Expended by Plaintiffs' Counsel

As detailed in the declarations submitted by Lead Counsel and other Plaintiffs' Counsel who contributed to the prosecution of the Action, Exs. 15 to 22, Plaintiffs' Counsel have devoted substantial time and effort to the prosecution of the claims against the Starr Defendants in this Action and to the settlement of the claims on terms very favorable to the Settlement Class. Since the initiation of the Action, Lead Counsel has tirelessly pursued the claims against the Starr Defendants, reaching the Settlement after nearly five years of litigation that included:

- Fully-briefed motion practice, on two separate occasions, to determine the lead plaintiff;
- Motions to dismiss filed by 23 Defendants (including five separate motions by the Starr Defendants), all of which (except one unrelated to the Starr Defendants) the Court denied in April and May 2006;
- Fact and expert discovery related to class certification, followed by a contested motion for class certification involving four days of legal argument and hearings (the Settlement was reached before the hearings were completed);
- The review and analysis of more than 53.3 million pages of documents by Defendants and non-parties, including nearly 835,000 pages of documents produced by the Starr Defendants; and
- more than 50 depositions of fact and expert witnesses (approximately 45 additional depositions were taken after reaching the proposed Settlement, including those of Starr Defendants Greenberg, Smith and Castelli)

Plaintiffs' Counsel collectively devoted 26,228 hours to prosecution of the claims against the Starr Defendants, resulting in a combined "lodestar" amount of $10,170,340 at Counsel's regular and current billing rates. *See* Ex. 23 (Summary Lodestar and Expense Table), 15-A through 22-A. As explained by the Second Circuit in *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2d Cir. 1998), "current rates, rather than historical rates, should be applied in order to compensate for the delay in payment." *See also In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695, 2007 WL 4115808, at *9

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE AMERICAN INTERNATIONAL GROUP, INC. SECURITIES LITIGATION	ECF CASE Master File No. 04 Civ. 8141 (DAB) (AJP)
This Document Relates To: All Actions	Oral Argument Requested

MEMORANDUM OF LAW IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES AND LEAD PLAINTIFF'S REQUEST FOR REIMBURSEMENT OF EXPENSES

As discussed in detail below, application of these criteria here shows that Lead Counsel's fee request is clearly reasonable and warranted.

1. The Time and Labor Expended by Plaintiffs' Counsel

Since the initiation of the Action, Lead Counsel has tirelessly pursued the claims against the Gen Re Defendants over nearly eight years of litigation that has included:

- Motions to dismiss and for judgment on the pleadings filed by the Gen Re Defendants;
- Fact and expert discovery related to class certification, followed by a contested motion for class certification;
- The review and analysis of more than 46 million pages of documents by Defendants and non-parties prior to the Settlement, and an additional 7 million pages after the settlement, including approximately 9 million pages directly relating to the Gen Re Defendants or the Gen Re Transaction; and
- 47 depositions of fact and expert witnesses prior to the Settlement (and 50 additional depositions after reaching the proposed Settlement);
- Review and analysis the all of the trial exhibits and the voluminous trial testimony from the five-week federal criminal trial of Gen Re Defendant Ferguson in *U.S. v. Ferguson*; and
- An appeal to the Second Circuit.

¶¶ 42-72.

As detailed in the declarations submitted by Lead Counsel and other Plaintiffs' Counsel who contributed to the prosecution of the Action, Exs. 9 to 16, Plaintiffs' Counsel have devoted substantial time and effort to the prosecution of the claims against the Gen Re Defendants in this Action and to the settlement of the claims on terms very favorable to the Settlement Class. Plaintiffs' Counsel collectively devoted 9,005.14 hours to prosecution of the claims against the Gen Re Defendants, resulting in a combined "lodestar" amount of $4,129,905.02 at Counsel's regular and

current billing rates. *See* Ex. 18 (Summary Lodestar and Expense Table). As explained by the Second Circuit in *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2d Cir. 1998), "current rates, rather than historical rates, should be applied in order to compensate for the delay in payment." *See also In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115808, at *9 (S.D.N.Y. Nov. 7, 2007) (McMahon, J.) (reasoning that "use of current rates to calculate the lodestar figure has been repeatedly endorsed by courts as a means of accounting for the delay in payment inherent in class actions and for inflation"). If the Court approves the Settlement, Lead Counsel will also devote additional hours to the settlement administration and distribution process, without any additional compensation.

With respect to billing rates, Lead Counsel submits that the rates billed, averaging $415.70 per hour for attorneys, and $245.00 for all professionals,[5] are comparable to those of peer plaintiffs' and defense-side law firms litigating matters of similar magnitude in this District. Exs. 9 to 16. Sample defense firm billing rates, gathered by Labaton Sucharow from bankruptcy court filings between 2007 and 2012, in many cases exceeded these rates. Ex. 17.

It is customary and appropriate to apply an attorney's normal hourly billing rate, so long as that rate conforms to the billing rate charged by others with similar experience in the community where the counsel practices (*i.e.*, the "market rate"). *See Blum v. Stenson*, 465 U.S. 886, 895 (1984); *see also Luciano v. Olsten Corp.*, 109 F.3d 111, 115 (2d Cir. 1997) ("The 'lodestar' figure should be 'in line with those [rates] prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.'") (quoting *Blum*, 465 U.S. at 896 n.11).

With respect to the hours worked, Lead Counsel submits that the substantial time devoted to litigating the claims against the Gen Re Defendants reflects the tremendous effort needed to prosecute those claims and to bring them to a favorable resolution. There are a number of core

[5] The hourly billing rates of Plaintiffs' Counsel ranged from $410 to $975 for partners, $550 to $775 for Of Counsels, and $250 to $665 for associates. *See* Exs. 9 to 16.

Exhibit 7

Cooter, P.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE BANK OF AMERICA CORP. SECURITIES, DERIVATIVE, AND EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA) LITIGATION	Master File No. 09 MDL 2058 (PKC) ECF CASE
THIS DOCUMENT RELATES TO: Consolidated Securities Action	

ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

This matter came on for hearing on April 5, 2013 (the "Settlement Hearing") on Co-Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses. The Court having considered all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that notice of the Settlement Hearing substantially in the form approved by the Court was mailed to all Class Members who or which could be identified with reasonable effort, except those persons or entities excluded from the definition of the Class, and that a summary notice of the hearing substantially in the form approved by the Court was published in *The Wall Street Journal, The New York Times* and the *Financial Times*, and was transmitted over the *PR Newswire* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and Litigation Expenses requested.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated November 30, 2012 (ECF No. 767-1) (the "Stipulation") and all terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation.

2. The Court has jurisdiction to enter this Order and over the subject matter of the Action and all parties to the Action, including all Class Members.

3. Notice of Co-Lead Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the Class of the motion for attorneys' fees and expenses satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Private Securities Litigation Reform Act of 1995 (15 U.S.C. §§ 77z-1(a)(7), 78u-4(a)(7)), due process, and all other applicable law and rules, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

4. Co-Lead Counsel are hereby awarded attorneys' fees in the amount of $152,414,235.89, plus interest on such amount at the same rate as earned by the Settlement Fund from the date the Settlement Fund was funded to the date of payment, which sum the Court finds to be fair and reasonable, and $8,069,985.04 in reimbursement of Litigation Expenses, which fees and expenses shall be paid to Co-Lead Counsel from the Settlement Fund. Co-Lead Counsel shall allocate the attorneys' fees awarded amongst themselves in a manner which they, in good faith, believe reflects the contributions of Co-Lead Counsel to the institution, prosecution and settlement of the Action. Co-Lead Counsel shall not share any portion of the fees and expenses awarded to them with any other law firm, or with any person not associated with Co-Lead Counsel's law firms, absent an order from the Court.

5. Lead Plaintiff the State Teachers Retirement System of Ohio is hereby awarded $34,375.00 from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Class.

6. Lead Plaintiff the Ohio Public Employees Retirement System is hereby awarded $19,263.66 from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Class.

7. Lead Plaintiff the Teacher Retirement System of Texas is hereby awarded $14,065.00 from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Class.

8. Lead Plaintiff Stichting Pensioenfonds Zorg en Welzijn, represented by PGGM Vermogensbeheer B.V. is hereby awarded $259,610.98 from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Class.

9. Lead Plaintiff Fjärde AP-Fonden is hereby awarded $125,688.40 from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Class.

10. In making this award of attorneys' fees and reimbursement of expenses to be paid from the Settlement Fund, the Court has considered and found that:

(a) The Settlement has created a fund of $2,425,000,000 in cash that has been funded into escrow accounts pursuant to the terms of the Stipulation, and that numerous Class Members who submit acceptable Claim Forms will benefit from the Settlement that occurred because of the efforts of Co-Lead Counsel;

(b) The fee sought by Co-Lead Counsel has been reviewed and approved as fair and reasonable by the Court-appointed Lead Plaintiffs, sophisticated institutional investors that were actively involved in the prosecution and resolution of the Action;

(c) Copies of the Settlement Notice were mailed to over 3.3 million potential Class Members or their nominees stating that Co-Lead Counsel would apply for attorneys' fees

in an amount of 6.56% of the Settlement Fund and reimbursement of Litigation Expenses in an amount not to exceed $17.5 million. There were ten objections to the requested award of attorneys' fees or Litigation Expenses. The Court has considered each of the objections and found them to be without merit;

(d) Co-Lead Counsel have conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

(e) The Action involves complex factual and legal issues and was actively prosecuted for over three-and-a-half years;

(f) Had Co-Lead Counsel not achieved the Settlement there would remain a significant risk that Lead Plaintiffs and the other members of the Class may have recovered less or nothing from the Defendants;

(g) Co-Lead Counsel devoted over 185,000 hours, with a lodestar value of approximately $84.9 million, to achieve the Settlement; and

(h) The amount of attorneys' fees awarded and expenses to be reimbursed from the Settlement Fund are fair and reasonable and consistent with awards in similar cases.

11. Any appeal or any challenge affecting this Court's approval regarding any attorneys' fees and expense application shall in no way disturb or affect the finality of the Judgment.

12. Exclusive jurisdiction is hereby retained over the parties and the Class Members for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Stipulation and this Order.

13. In the event that the Settlement is terminated or the Effective Date of the Settlement otherwise fails to occur, this Order shall be rendered null and void to the extent provided by the Stipulation.

14. There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

SO ORDERED this 8th day of April, 2013.

The Honorable P. Kevin Castel
United States District Judge

#715661

Exhibit 8

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re NORTEL NETWORKS CORP. SECURITIES LITIGATION	:	Civil Action No. 01-CV-1855 (RMB)
This Document Relates To: ALL ACTIONS.	:	CLASS ACTION

ORDER AND FINAL JUDGMENT

On the 26th day of October, 2006, a hearing having been held before this Court to determine: (1) whether the terms and conditions of the Stipulation and Agreement of Settlement dated June 20, 2006 (the "Stipulation") are fair, reasonable and adequate for the settlement of all claims asserted by the U.S. Global Class against the Defendants in the Complaint now pending in this Court under the above caption, including the release of the Defendants and the Released Parties, and should be approved; (2) whether judgment should be entered dismissing the Complaint on the merits and with prejudice in favor of the Defendants and as against all persons or entities who are members of the U.S. Global Class herein who have not requested exclusion therefrom; (3) whether to approve the Plan of Allocation as a fair and reasonable method to allocate the settlement proceeds among the members of the U.S. Global Class; and (4) whether and in what amount to award Lead Plaintiff's Counsel fees and reimbursement of expenses.

The Court having considered all matters submitted to it at the hearing and otherwise; and it appearing that a notice of the hearing substantially in the form approved by the Court (including French language versions sent to addresses in Quebec, Canada) was mailed to all persons or entities reasonably identifiable, who purchased common stock of Nortel Networks

Corporation ("Nortel"), or call options on Nortel common stock, or wrote (sold) put options on Nortel common stock during the period between October 24, 2000 through February 15, 2001, inclusive (the "Class Period"), except those persons or entities excluded from the definition of the U.S. Global Class or who previously excluded themselves from the U.S. Global Class, as shown by the records of Nortel's transfer agent, and the records compiled by the Claims Administrator in connection with its previous mailing of the Notice of Pendency, at the respective addresses set forth in such records, as set forth in the Affidavit of Neil L. Zola Regarding the Mailing of the Nortel I Settlement Notice and Proof of Claim Form, dated September 1, 2006 (the "Zola Affidavit"), and that a summary notice of the hearing substantially in the form approved by the Court was published pursuant to the Notice Plan as set forth in the Declaration of Jeanne C. Finegan, APR, dated October 18, 2006. The Court having reviewed and considered the responses and objections submitted by Class Members as filed herein in the Affidavit of David A. Isaac Regarding Exclusion Requests and Objections Received for Nortel I, dated October 3, 2006, the Supplemental Affidavit of David A. Isaac Relating to Late Exclusion Requests and Late Objections, dated October 23, 2006, the Affidavit of Randi Alarcon Collotta Relating to Additional Responses and Objections Filed dated October 25, 2006, the Supplemental Affidavit Randi Alarcon Collotta Relating to Additional Exclusions and Objections Filed dated November 1, 2006, the Supplemental Affidavit Relating to Additional Late Exclusions and Objection (Fourth GCG Report of Exclusions and Objections) of Randi Alarcon Collotta dated December 4, 2006, and the Supplemental Affidavit Relating to Additional Late Exclusions (Fifth GCG Report) of Randi Alarcon Collotta dated December 18, 2006 (attaching as Exhibit B a list of all exclusion requests postmarked on or before October 26, 2006), and the Court having considered and determined the fairness and reasonableness of the

award of attorneys' fees and expenses requested by Lead Plaintiff's Counsel; and all capitalized terms used herein having the meanings as set forth and defined in the Stipulation.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Court has jurisdiction over the subject matter of the Action, the Lead Plaintiff, all U.S. Global Class Members, and the Defendants.

2. The Court finds that the prerequisites for a class action under (United States) Federal Rules of Civil Procedure 23(a) and (b)(3) have been satisfied in that: (a) the number of U.S. Global Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the U.S. Global Class; (c) the claims of the U.S. Global Class Representatives are typical of the claims of the U.S. Global Class they seek to represent; (d) the Class Representatives have and will fairly and adequately represent the interests of the U.S. Global Class; (e) the questions of law and fact common to the members of the U.S. Global Class predominate over any questions affecting only individual members of the U.S. Global Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

3. Pursuant to Rule 23 of the (United States) Federal Rules of Civil Procedure this Court hereby finally certifies this action as a class action on behalf of all persons and entities who purchased Nortel common stock, or purchased call options on Nortel common stock, or wrote (sold) put options on Nortel common stock (collectively, "Nortel Securities") during the period between October 24, 2000 through February 15, 2001, inclusive, and who suffered damages thereby, including, but not limited to, those persons or entities who traded in Nortel Securities on the New York Stock Exchange and/or the Toronto Stock Exchange. Excluded from the U.S. Global Class are Defendants, members of any of the Individual Defendants'

immediate families, any entity in which any Defendant has a controlling interest or is a parent or subsidiary of or is controlled by the Company, and the officers, directors, affiliates, legal representatives, heirs, predecessors, successors or assigns of any of the Defendants. Also excluded from the U.S. Global Class for this Action are the persons and/or entities who, in connection with the Notice of Pendency, previously excluded themselves as listed on Exhibit 1 annexed hereto, and those who in response to the Settlement Notice have now requested exclusion from the U.S. Global Class by filing a request for exclusion postmarked on or before October 26, 2006 as listed Exhibit 2 annexed hereto.

4. Notice of the pendency of this Action as a class action and of the proposed Settlement was given to all U.S. Global Class Members who could be identified with reasonable effort. The form and method of notifying the U.S. Global Class of the pendency of the action as a class action and of the terms and conditions of the proposed Settlement met the requirements of Rule 23 of the (United States) Federal Rules of Civil Procedure, Section 21D(a)(7) of the (United States) Securities Exchange Act of 1934, 15 U.S.C. 78u-4(a)(7), as amended, including by the (United States) Private Securities Litigation Reform Act of 1995 (the "PSLRA") , Rule 23.1 of the Local Rules of the Southern and Eastern Districts of New York, due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

5. The Settlement is approved as fair, reasonable and adequate. Subject to the terms and provisions of the Stipulation and the conditions therein being satisfied, the parties are directed to consummate the Settlement.

6. The Gross Settlement Shares are to be issued solely in exchange for bona fide outstanding claims. All parties to whom it is proposed to issue such securities have had the right to appear at the hearing on the fairness of the Settlement and adequate notice has been given to all such parties. The Court recognizes and acknowledges that one consequence of its approval of the Settlement at the Settlement Fairness Hearing is that, pursuant to Section 3(a)(10) of the (United States) Securities Act of 1933, as amended, 15 U.S.C. § 77c(a)(1), the Gross Settlement Shares may be distributed to Class Members (and to Plaintiffs' Counsel as may be awarded by the respective Courts for attorneys' fees) without registration and compliance with the prospectus delivery requirements of the U.S. securities laws as the Gross Settlement Shares will be exempt from registration under the (United States) Securities Act of 1933, 15 U.S.C. § 77c(a)(1), as amended, pursuant to Section 3(a)(10) thereunder. The Court also acknowledges that Nortel will rely on such 3(a)(10) exemption (and Nortel will not register the Gross Settlement Shares under the (United States) Securities Act of 1933) based on this Court's approval of the fairness of the Settlement.

7. The Complaint, which the Court finds was filed on a good faith basis in accordance with the Private Securities Litigation Reform Act and Rule 11 of the (United States) Federal Rules of Civil Procedure based upon all publicly available information, is hereby dismissed in its entirety with prejudice and without costs, except as provided in the Stipulation, as against the Defendants.

8. Lead Plaintiff and each U.S. Global Class Member who has not validly opted out, whether or not such U.S. Global Class Member executes and delivers a Proof of Claim, on behalf of themselves, their heirs, executors, administrators, successors and assigns, are hereby permanently barred and enjoined from instituting, commencing or prosecuting any and all

claims, debts, demands, rights or causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, provincial, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, whether class or individual in nature, including both known claims and Unknown Claims, (i) that have been asserted in this Action by the U.S. Global Class Members or any of them against any of the Released Parties, or (ii) that could have been asserted in any forum by the U.S. Global Class Members or any of them against any of the Released Parties which arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Complaint and which relate to the purchase of Nortel common stock or call options on Nortel common stock or the sale of put options on Nortel common stock during the Class Period, or (iii) any oppression or other claims under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended, that arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions during the Class Period, set forth or referred to in the Nortel I Actions, (the "Settled Claims"), against any and all of the Defendants, their past or present subsidiaries, parents, principals, affiliates, general or limited partners or partnerships, successors and predecessors, heirs, assigns, officers, directors, agents, employees, attorneys, advisors, investment advisors, investment bankers, underwriters, insurers, co-insurers, re-insurers, attorneys, accountants, auditors, consultants, administrators, executors, trustees, personal representatives, immediate family members and any person, firm, trust, partnership, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any of the

Defendants, and the legal representatives, heirs, executors, administrators, trustees, successors in interest or assigns of the Defendants (the "Released Parties"); *provided, however*, that "Settled Claims" does not mean or include (a) claims, if any, against the Released Parties arising under the (United States) Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et seq.* ("ERISA") which are not common to all U.S. Global Class Members and which are the subject of an action pending before the Judicial Panel on Multidistrict Litigation, denominated *In re Nortel Networks Securities and "ERISA" Litigation*, MDL Docket No. 1537; (b) the action in *Rohac, et al. v. Nortel Networks Corporation, et al.*, Court File No. 04-CV-3268 (Ont. Sup. Ct. J.); and (c) the application brought in *Indiana Electrical Workers Pension Trust Fund IBEW and Laborers Local 100 and 397 Pension Fund v. Nortel Networks Corporation*, Ontario Superior Court of Justice, Court File No. 49059, for leave pursuant to the Canada Business Corporations Act to commence a representative action in the name of and on behalf of Nortel against certain of the Released Parties (the "Derivative Application"). Each U.S. Global Class Member who has not validly opted out has fully, finally, and forever released, relinquished, and discharged all Settled Claims against the Released Parties and each such U.S. Global Class Member is bound by this judgment, including without limitations, the release of claims as set forth in the Stipulation. The Settled Claims are hereby compromised, settled, released, discharged and dismissed as against the Released Parties on the merits and with prejudice by virtue of the proceedings herein and this Order and Final Judgment.

9. Defendants Nortel, Clarence Chandran and John Roth, and the successors and assigns of any of them, are hereby permanently barred and enjoined from instituting, commencing or prosecuting any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, provincial, local, statutory or common law or any

other law, rule or regulation, including both known claims and unknown claims, that have been or could have been asserted in the Action or any forum by the Defendants or any of them or the successors and assigns of any of them against any of the Lead Plaintiff, U.S. Global Class Members or their attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of the Action (except for claims to enforce the Settlement, confidentiality obligations or in respect of the Derivative Application) (the "Settled Defendants' Claims"). The Settled Defendants' Claims of all the Released Parties are hereby compromised, settled, released, discharged and dismissed on the merits and with prejudice by virtue of the proceedings herein and this Order and Final Judgment. In the event that any of the Released Parties asserts against the Lead Plaintiff, any U.S. Global Class Member or their respective counsel, any claim that is a Settled Defendants' Claim, then Lead Plaintiff, such U.S. Global Class Member or counsel shall be entitled to use and assert such factual matters included within the Settled Claims only against such Released Party in defense of such claim but not for the purposes of asserting any claim against any Released Party.

10. Pursuant to the PSLRA, the Released Parties are hereby discharged from all claims for contribution by any person or entity other than by Released Parties, whether arising under state, provincial, federal or common law, based upon, arising out of, relating to, or in connection with the Settled Claims of the U.S. Global Class or any U.S. Global Class Member. Accordingly, to the full extent provided by the PSLRA, the Court hereby bars all claims for contribution: (a) against the Released Parties by any person or entity other than the Released Parties; and (b) by the Released Parties against any person or entity other than the Released Parties.

11. Neither this Order and Final Judgment, the Stipulation, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any of the documents or statements referred to therein shall be:

(a) offered or received against the Defendants as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any of the Defendants with respect to the truth of any fact alleged by any of the plaintiffs or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of the Defendants;

(b) offered or received against the Defendants as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any Defendant;

(c) offered or received against the Defendants as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the Defendants, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; provided, however, that Defendants may refer to it to effectuate the liability protection granted them hereunder;

(d) construed against the Defendants as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; or

(e) construed as or received in evidence as an admission, concession or presumption against Lead Plaintiff or any of the U.S. Global Class Members that any of their claims are without merit, or that any defenses asserted by the Defendants have any merit, or that damages recoverable under the Complaint would not have exceeded the Gross Settlement Fund.

12. The Plan of Allocation is approved as fair and reasonable, and Plaintiff's Counsel and the Claims Administrator are directed to administer the Stipulation in accordance with its terms and provisions.

13. The Court finds that all parties and their counsel have complied with each requirement of Rule 11 of the (United States) Federal Rules of Civil Procedure as to all proceedings herein.

As more fully explained in Exhibit A hereto,

14. Lead Plaintiff's Counsel in this Action are hereby awarded attorneys' fees in the amount of 3 % of the Gross Cash Settlement Fund (net of litigation expenses awarded in the next sentence), and 3 % of the Gross Settlement Shares, which amounts the Court finds to be fair and reasonable. Lead Plaintiff's Counsel are hereby awarded $ 3,750,041.27 in reimbursement of expenses, which expenses shall be paid to Plaintiff's Lead Counsel from the Gross Cash Settlement Fund with interest from the date such Gross Cash Settlement Fund was funded to the date of payment at the same net rate that the Gross Cash Settlement Fund earns. The award of attorneys' fees shall be allocated among plaintiffs' counsel in a fashion which, in the opinion of Plaintiff's Lead Counsel, fairly compensates such counsel for their respective contributions in the prosecution and settlement of the Action.

RMB

15. The fees and expenses of plaintiffs' counsel in the Canadian Actions, as determined by the Canadian Courts shall be paid from the Gross Settlement Fund.

16. In making this award of attorneys' fees and reimbursement of expenses to be paid from the Gross Settlement Fund, the Court has considered and found that:

(a) the Settlement has created a cash fund of $438,667,428 that is already on deposit earning interest, and will also provide for the benefit of the Class 314,333,875 (pre-consolidation) shares of Nortel common stock, as may be adjusted in accordance with paragraph 4(d) of the Stipulation;

(b) The Settlement will entitle the Class to receive one-quarter of any actual gross recovery by Nortel in the existing litigation by Nortel against Frank Dunn, Douglas Beatty and Michael Gollogly (including the value of any monetary benefit that Nortel might receive from the defendants by way of forgiveness or cancellation of any monetary debt owed by Nortel to such defendants), excluding attorneys' fees and expenses awarded by the court, if any;

(c) Nortel has agreed to adopt the corporate governance enhancements described in Appendix A to Tab 1 to Exhibit A of the Stipulation;

(d) As set forth in the Zola Affidavit and the Supplemental Isaac Affidavit, over 1,452,000 copies of the Notice were disseminated to putative Class Members indicating that Lead Plaintiff's Counsel were moving for attorneys' fees in the amount of up to 10% of the Gross Settlement Fund less litigation expenses awarded by the Court, and for reimbursement of expenses in an amount of approximately $5 million, and as shown in the Affidavits of David A. Isaac and Randi Alarcon Collotta, a total of only forty-three (43) objections were filed concerning the terms of the proposed Settlement or the ceiling on the fees and expenses requested by Lead Plaintiff's Counsel contained in the Notice;

(e) Lead Plaintiff's Counsel have conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

(f) The action involves complex factual and legal issues and was actively prosecuted over six years and, in the absence of a settlement, would involve further lengthy proceedings with uncertain resolution of the complex factual and legal issues;

(g) Had Lead Plaintiff's Counsel not achieved the Settlement there would remain a significant risk that Lead Plaintiff and the Class may have recovered less or nothing from the Defendants;

(h) Lead Plaintiff's Counsel have devoted over 47,800 hours, with a lodestar value in excess of $16,655,000, to achieve the Settlement; and

(i) The amount of attorneys' fees awarded and expenses reimbursed from the Settlement Fund are fair and reasonable and consistent with awards in similar cases.

17. Any appeal or any challenge affecting the approval of (a) the Plan of Allocation submitted by Lead Plaintiff's Counsel and/or (b) this Court's approval regarding any attorneys' fees and expense application shall in no way disturb or affect the finality of the other provisions of this Final Judgment.

18. Jurisdiction is hereby retained over the parties and the U.S. Global Class Members for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Stipulation and this Order and Final Judgment, and including any application for fees and expenses incurred in connection with administering and distributing the settlement proceeds to the members of the U.S. Global Class.

19. In the event that the Settlement does not become Final in accordance with the terms of the Stipulation, or is terminated pursuant to ¶ 27 of the Stipulation, this judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and in such event all orders entered and released by and in accordance with the Stipulation.

20. Without further order of the Court, the parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

21. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the (United States) Federal Rules of Civil Procedure.

Dated: New York, New York
1/29/07, ~~2006~~

RMB

RICHARD M. BERMAN
UNITED STATES DISTRICT JUDGE

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re NORTEL NETWORKS CORP. SECURITIES LITIGATION	**EXHIBIT A** **ATTORNEYS' FEES**

I. Introduction

Lead Plaintiff's Counsel seeks attorneys' fees in the amount of 8.5% of the $438,667,428 Gross Cash Settlement Fund, 8.5% of the 314,333,875 Gross Settlement Shares, plus $3,750,041.27 in expenses, which would total approximately $101 million in fees and expenses and which is proposed to be shared among nine law firms ("Fee Application").[1] (See Memorandum of Law in Support of Plaintiffs' Counsel's Application For an Award of Attorneys' Fees and Reimbursement of Expenses ("Pl. Mem."), dated September 5, 2006, at 1-2.) Lead Plaintiff's Counsel also claims a lodestar of $16,655,970.60 based upon 47,846.07 hours worked (including lawyers and paralegals) (see Compendium of Affidavits, dated September 5, 2006); and seeks a lodestar "multiplier" of 5.8 (Pl. Mem. at 15) which is to say fees totaling 5.8 times the number of hours actually worked. Lead Plaintiff argues that the Fee Application should be granted because, among other reasons: (1) the "fee requested in this case, 8.5% of the proposed Settlement, is at the lower end of, or below, the range of fees awarded by courts under the percentage method in cases involving very large recoveries" (Pl. Mem. at 3); (2) "[s]ignificantly higher percentage fees have been awarded in numerous cases that were far less risky, were not as intensely litigated and did not get past the class certification stage" (Pl. Mem. at 3); and (3) "OPTrust … the fiduciary representative of the Nortel I Class, has stated its belief that such fee is fair and reasonable to the Nortel I Class and Plaintiff Counsel and should be approved by the Court." (Pl. Mem. at 4.)

Ten objections were filed in opposition to Lead Plaintiff's Counsel's Fee Application, one of

[1] See Order Approving Lead Counsel, dated February 4, 2002, at 1 ("[T]he Court hereby … affirms its choice of (lead) counsel, Milberg Weiss, as sole lead Plaintiff's counsel….").

which, Rinis Travel Service, offers detailed and substantive grounds for its opposition. Rinis argues that "[t]he overall size of the fee is grossly excessive … and … is much more than should be justified in this settlement." (See Objections and Notice of Intent to Appear at the Fairness Hearing, dated September 19, 2006, at 2.) **The Court, for the reasons set forth below, finds that an award of $101 million in legal fees and expenses is excessive.**

II. Legal Standard

A party seeking attorneys' fees bears the "burden of 'establishing entitlement to an award . . . .'" Savoie v. Merchants Bank, 166 F.3d 456, 463 (2d Cir. 1999) (citation omitted).

Attorneys who create a "common fund" are entitled to "a reasonable fee--set by the court--to be taken from the fund." Goldberger v. Integrated Resources, Inc., 209 F.3d 43, 47 (2d Cir. 2000). Under the lodestar method, "the district court scrutinizes the fee petition to ascertain the number of hours reasonably billed to the class and then multiplies that figure by an appropriate hourly rate." Id. The lodestar may be increased "by applying a multiplier based on 'other less objective factors,' such as the risk of the litigation and the performance of the attorneys." Id. (citations omitted). Under the percentage method of awarding legal fees, the "court sets some percentage of the recovery as a fee," but "look[s] to the same 'less objective' factors that are used to determine the multiplier for the lodestar." Id.; Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d 96, 123 (2d Cir. 2005).

"[N]o matter which method is chosen, district courts should continue to be guided by the traditional criteria in determining a reasonable common fund fee, including: '(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation . . . ; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.'" Goldberger, 209 F.3d at 50 (citation omitted).

III. Analysis

Employing the percentage method of fixing Plaintiff's attorney compensation (while relying

upon the lodestar method as a "cross-check"), the Court finds, for the reasons that follow, that 3% of the Gross Cash Settlement Fund and 3% of the Gross Settlement Shares is fair and reasonable fee under Goldberger and related cases. This would result in legal fees of approximately $34 million (using a 2.05 multiplier of the lodestar). This result serves the dual purposes of encouraging counsel to bring appropriate cases and not granting fee awards that are excessive. See Goldberger, 209 F.3d at 53.

The first Goldberger factor relates to "the time and labor expended by counsel." Because the Court is awarding fees on a percentage basis, the Court need not "exhaustively scrutinize" counsel's hourly submissions. Goldberger, 209 F.3d at 49-50. But, in fact, the Court has reviewed counsel's hourly submissions and concluded that they appear accurate.

As to the second and third Goldberger factors -- i.e., "the magnitude and complexities of the litigation" and the risk of pursuing the case on a contingency basis -- the Court finds that the complexity and risks faced by Plaintiffs in this case are not significantly different or greater than those faced by plaintiffs in other large securities litigations and are certainly fairly compensated at 2.04 times the hours actually expended. See, e.g., In re Bristol-Myers Squibb Secs. Litig., 361 F.Supp.2d 229, 234 (S.D.N.Y. 2005). Plaintiffs identified the following (not altogether atypical) complexities, among others: (i) Plaintiffs would have to prove that Nortel's forward guidance and accounting were materially false and misleading; (ii) "the difficulties and complexities of issues relating to proof of loss causation and damages were very real"; and (iii) Nortel might not be able financially to survive two liability and damage judgments resulting from Nortel I and Nortel II. (See Plaintiff's Memorandum of Law In Support of Final Approval, dated September 5, 2006, at 9, 15.)

As to the fourth Goldberger factor – i.e. "quality of the representation" – the Court notes that Plaintiff's counsel Milberg, Weiss, Bershad, & Schulman ("Milberg Weiss") is qualified and

experienced in these matters.[2] Counsel's primary work in this matter, apart from discovery, was successfully defending against a defense motion to dismiss, filed in or about April 2002, (see Decision and Order, dated January 6, 2003), and obtaining class certification in September 2003. (See Decision and Order, dated September 8, 2003.)

With respect to the fifth Goldberger factor - i.e., "the requested fee in relation to the settlement" - the Court finds that a 3% fee is reasonable under the circumstances of this case and is consistent with fees granted in other securities cases. See, e.g., In re Bristol-Myers Squibb Securities Litigation, 361 F.Supp.2d 229, 237 (S.D.N.Y. 2005) (approving a lodestar multiplier of 2.29); In re WorldCom, Inc. Securities Litigation, No. 02 Civ. 3288, 2004 WL 2591402 (S.D.N.Y. Nov. 12, 2004) (approving lodestar multiplier of 2.46); Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d 96, 123 (2d Cir. 2005) (approving lodestar multiplier of 3.5)

As to the sixth Goldberger factor – "public policy considerations" – a fee award of 3% or two times the value of hours actually worked (by nine law firms) both encourages lead plaintiff's counsel to pursue securities litigations and helps ensure against the specter of excessive fees of individual firms or multiple firms in the aggregate. See Klein v. Salvi, 02 Civ.1862, 2004 WL 596109, at *10-11 (S.D.N.Y. March 30, 2004); see also In re Dreyfus Aggressive Growth Mut. Fund Litigation, 98 CV 4318, 2001 WL 709262, at *7 (S.D.N.Y. June 22, 2001). This result balances the "overarching concern for moderation" (with respect to attorneys' fees) with the public policy encouraging the enforcement of the securities laws. See Goldberger, 209 F.3d at 53.

The reasonableness of the award proposed by the Court is confirmed by a lodestar analysis "cross-check." Goldberger, 209 F.3d at 50. Based upon a lodestar of $16,655,970.60, a 3% fee award

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[2] It should also be noted that on or about May 18, 2006, an Indictment was filed in the United States District Court for the Central District of California against Milberg Weiss and two of its partners, David Bershad and Steven Schulman. Following a hearing held by this Court on June 15, 2006, Milberg Weiss (voluntarily) substituted Sanford P. Dumain, a partner in the firm, for Mr. Bershad, who had been principal counsel in this action. (See Transcript, dated June 15, 2006, at 21.)

reflects a multiplier of approximately 2.05. See, e.g., In re Bristol-Myers Squibb Securities Litigation, 361 F.Supp.2d 229, 230, 237 (S.D.N.Y. 2005) (approving a lodestar multiplier of 2.29, resulting in an award of 4% of a $300 million settlement fund); In re WorldCom, Inc. Securities Litigation, No. 02 Civ. 3288, 2004 WL 2591402 (S.D.N.Y. Nov. 12, 2004) (approving lodestar multiplier of 2.46, resulting in a 5.5% award of a $2.6 billion settlement fund); Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d 96, 106, 123 (2d Cir. 2005) (approving lodestar multiplier of 3.5, resulting in an award of 6.5% of $3 billion settlement fund).

The Court also finds that Lead Plaintiff's Counsel's request for the reimbursement of expenses in the amount of $3,750,041.27 is reasonable. See In re Ashanti Goldfields, No. 00 Civ. 717, 2005 WL 3050284, at *5 (E.D.N.Y. Nov. 15, 2005) ("Counsel is entitled to reimbursement from the common fund for reasonable litigation expenses."). The requested fees consist of, among other things, payment of experts and consultants ($2,616,636.61), photocopying and reproduction ($537,961.01), legal research ($49,810.10), and transportation and lodging ($311,476.43). (See Compendium of Affidavits, dated September 5, 2006, at Ex. A.)

* * *

Exhibit 9

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re McKESSON HBOC, INC. SECURITIES LITIGATION	Master File No. 99-CV-20743 RMW (PVT) And Related Cases CLASS ACTION
This Document Relates To: ALL ACTIONS.	Date: January 27, 2006 Time: 9:00 a.m. Place: Courtroom 6, Fourth Floor Judge: The Honorable Ronald M. Whyte

[~~PROPOSED~~] ORDER AWARDING ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

THIS MATTER having come before the Court on January 27, 2006, on the motion of Lead Plaintiff for an award of attorneys' fees and reimbursement of expenses;

And it appearing that a notice of the hearing, substantially in the form approved by the Court, containing a description of the fee request was mailed to all potential Settlement Class Members reasonably identifiable, as shown by the records of McKesson and HBOC, at the respective addresses set forth in such records;

And it appearing that a summary notice of the hearing substantially in the form approved by the Court was published in *The Wall Street Journal* and over the *PRNewswire* pursuant to the specifications of the Court;

And the Court, having considered all papers filed and proceedings conducted herein, and otherwise having determined the fairness and reasonableness of the fee request;

And, it appearing that the fee request is supported by Lead Plaintiff and is fully supported by documents and declarations showing their fairness and reasonableness to the Settlement Class;

IT IS HEREBY ORDERED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation of Settlement dated February 11, 2005 (the "Stipulation").

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

3. The Motion with respect to the fee request sought in connection with the Settlement is hereby GRANTED.

4. The Court hereby awards Lead Counsel attorneys' fees of $74.8 million (7.79% of the $960 million Settlement Amount) payable to Lead Counsel. The Court also awards Lead Counsel reimbursement of litigation expenses in the amount of $5,254,408.18. The Court also awards Lead Plaintiff reimbursement of its expenses in the amount of $4,689.47. The Court awards interest on the attorneys' fees payable to Lead Counsel from the $960 million Settlement

Amount and the litigation expenses awarded herein calculated for the same time period and at the same rate as that earned on the Settlement Amount.

5. The Court finds that an award of attorneys' fees of 7.79% of the Settlement Amount is fair and reasonable and below the Ninth Circuit's "benchmark" fee under the "percentage-of-recovery" method. The Court finds that the fee award is fair and reasonable in light of the following factors: the results achieved; the risks and uncertainties of the litigation; the skill and quality of work by Lead Counsel; Lead Counsel has received no compensation for its investigation and litigation of the claims against McKesson and HBOC and any fee award has always been at risk and completely contingent on the result achieved; the institutional Lead Plaintiff negotiated and supports the fee and expense request before the Court; and the reaction of the Settlement Class.

6. The Court further finds that the request for reimbursement of expenses is reasonable in light of Lead Counsel's prosecution of this action against McKesson and HBOC on behalf of the Settlement Class.

7. There is no just reason for delay in the entry of this Order Granting Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Expenses, and immediate entry of this Order by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

DATED: 2/24, 2006

Ronald M. Whyte
THE HONORABLE RONALD M. WHYTE
United States District Court Judge

Submitted by:

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re McKESSON HBOC, INC. SECURITIES LITIGATION	Master File No. 99-CV-20743 RMW (PVT) And Related Cases CLASS ACTION
This Document Relates To: ALL ACTIONS.	Date: April 13, 2007 Time: 9:00 a.m. Place: Courtroom 6, Fourth Floor Judge: The Honorable Ronald M. Whyte

[PROPOSED] ORDER AWARDING ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES IN CONNECTION WITH THE SETTLEMENT WITH ARTHUR ANDERSEN LLP

Lead Counsel's Application For An Award Of Attorneys' Fees And Reimbursement Of Expenses Related To The Settlement With Arthur Andersen LLP ("Fee and Expense Request") duly came before the Court for hearing on April 13, 2007, pursuant to the Court's Order preliminarily approving of the Settlement with Arthur Andersen LLP ("Andersen"). The Court has considered the Fee and Expense Request and all supporting and other related materials, including the matters presented at the April 13, 2007 hearing. Due and adequate notice having been given to the Settlement Class as required in said preliminary approval Order, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the proceedings and good cause appearing therefor,

IT IS HEREBY ORDERED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation And Agreement Of Settlement Between Lead Plaintiff And Defendant Arthur Andersen LLP dated December 19, 2006 (the "Stipulation").

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

3. The Fee and Expense Request sought in connection with the Andersen Settlement is hereby GRANTED.

4. The Court hereby awards Lead Counsel attorneys' fees of $4,495,000 (6.2% of the $72.5 million Settlement Amount) payable to Lead Counsel. The Court also awards Lead Counsel reimbursement of litigation expenses in the amount of $1,615,338.55. The Court also awards Lead Plaintiff reimbursement of its expenses in the amount of $3,571.11. The Court awards interest on the attorneys' fees payable to Lead Counsel from the $72.5 million Settlement Amount and the litigation expenses awarded herein calculated for the same time period and at the same rate as that earned on the Settlement Amount.

5. The Court finds that an award of attorneys' fees of 6.2% of the Settlement Amount is fair and reasonable and below the Ninth Circuit's "benchmark" fee under the "percentage-of-recovery" method. The Court finds that the fee award is fair and reasonable in

light of the following factors, among others: the results achieved; the risks and uncertainties of the litigation; the skill and quality of work by Lead Counsel; Lead Counsel has received no compensation for its investigation and litigation of the claims against Andersen and any fee award has always been at risk and completely contingent on the result achieved; the institutional Lead Plaintiff negotiated and supports the Fee and Expense Request before the Court; and the reaction of the Settlement Class.

6. The Court further finds that the request for reimbursement of expenses is reasonable in light of Lead Counsel's prosecution of this action against Andersen on behalf of the Settlement Class.

7. There is no just reason for delay in the entry of this Order, and immediate entry of this Order by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

DATED: 4/13, 2007

Ronald M. Whyte
THE HONORABLE RONALD M. WHYTE
United States District Court Judge

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re McKESSON HBOC, INC. SECURITIES LITIGATION	Master File No. 99-CV-20743 RMW (PVT) And Related Cases CLASS ACTION
This Document Relates To: ALL ACTIONS.	Date: January 18, 2008 Time: 9:00 a.m. Place: Courtroom 6, Fourth Floor Judge: The Honorable Ronald M. Whyte

[PROPOSED] ORDER AWARDING ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES IN CONNECTION WITH THE SETTLEMENT WITH BEAR STEARNS & CO. INC.

Lead Counsel's Application For An Award Of Attorneys' Fees And Reimbursement Of Expenses Related To The Settlement With Bear, Stearns & Co. Inc. ("Fee and Expense Request") duly came before the Court for hearing on January 18, 2008, pursuant to the Court's Order preliminarily approving of the Settlement with Bear, Stearns & Co. Inc. and McKesson Corporation ("Bear Stearns Settlement"). The Court has considered the Fee and Expense Request and all supporting and other related materials, including the matters presented at the January 18, 2008 hearing. Due and adequate notice having been given to the Settlement Class as required in said preliminary approval Order, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the proceedings and good cause appearing therefor,

IT IS HEREBY ORDERED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation And Agreement Of Settlement Between Lead Plaintiff; Bear, Stearns & Co. Inc.; And McKesson Corporation dated September 24, 2007 (the "Stipulation").

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

3. The Fee and Expense Request sought in connection with the Bear Stearns Settlement is hereby GRANTED.

4. The Court hereby awards Lead Counsel attorneys' fees of $400,000 (4% of the $10 million Settlement Amount) payable to Lead Counsel. The Court also awards Lead Counsel reimbursement of litigation expenses in the amount of $633,555.78. The Court also awards Lead Plaintiff reimbursement of its expenses in the amount of $2,104.87. The Court awards interest on the attorneys' fees payable to Lead Counsel from the $10 million Settlement Amount and the expenses awarded herein calculated for the same time period and at the same rate as that earned on the Settlement Amount.

5. The Court finds that an award of attorneys' fees of 4% of the Settlement Amount is fair and reasonable and below the Ninth Circuit's "benchmark" fee under the "percentage-of-

recovery" method. The Court finds that the fee award is fair and reasonable in light of the following factors, among others: the results achieved; the risks and uncertainties of the litigation; the skill and quality of work by Lead Counsel; and any fee award has always been at risk and completely contingent on the result achieved; the institutional Lead Plaintiff negotiated and supports the Fee and Expense Request before the Court; and the reaction of the Settlement Class.

6. The Court further finds that the request for reimbursement of expenses is reasonable in light of Lead Counsel's prosecution of this action against Bear Stearns on behalf of the Settlement Class.

7. There is no just reason for delay in the entry of this Order, and immediate entry of this Order by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

DATED: 1/18, 2008

Ronald M. Whyte
THE HONORABLE RONALD M. WHYTE
United States District Court Judge

Submitted by:

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E-FILED - 2/8/13

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re McKESSON HBOC, INC. SECURITIES LITIGATION	Master File No. 99-CV-20743 RMW (PVT) And Related Cases CLASS ACTION
This Document Relates To: ALL ACTIONS.	

[] ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

This matter came on for hearing on February 8, 2013 (the "Settlement Hearing") on Lead Counsel's motion for an award of attorneys' fees and reimbursement of expenses in connection with the Settlement of Contingent Payment Claim with Arthur Andersen LLP. The Court having considered all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that the Notice of the Settlement Hearing substantially in the form approved by the Court was published on the website maintained for the case, as well as Lead Counsel's firm websites, and

the Summary Notice of the Settlement Hearing substantially in the form approved by the Court was transmitted over the *PR Newswire* pursuant to the specifications of the Court and was mailed to all McKesson Class Members who had submitted valid Claim Forms in the action and who had cashed their most recent distribution checks; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Agreement Between Lead Plaintiff and Arthur Andersen LLP Concerning Contingent Payment Claim, dated November 6, 2012 (the "Agreement") and the Stipulation and Agreement of Settlement between Lead Plaintiff and Andersen dated December 19, 2006 (the "McKesson Stipulation of Settlement") and all terms not otherwise defined herein shall have the same meanings as set forth in the Agreement or the McKesson Stipulation of Settlement.

2. The Court has jurisdiction to enter this Order and over the subject matter of the Litigation and all parties to the Litigation, including all members of the McKesson Class (the "Class").

3. Notice of Lead Counsel's application for attorneys' fees and reimbursement of expenses was posted on www.mckessonhbocsettlement.com and Lead Counsel's websites, www.blbglaw.com and www.barrack.com; transmitted over the *PR Newswire*; and mailed to all McKesson Class Members who had submitted valid Claim Forms in the action and who had cashed their most recent prior distribution and, thus, are currently eligible to receive additional distributions. The form and method of notifying the Class of the application for attorneys' fees and expenses satisfied the requirements of Rule 23(h) of the Federal Rules of Civil Procedure,

due process, and all other applicable law and rules, and constituted due and sufficient notice to all persons and entities entitled thereto.

4. Lead Counsel is hereby awarded attorneys' fees in the amount of $134,930.00, which sum the Court finds to be fair and reasonable, and $37,885.46 in reimbursement of expenses, which fees and expenses shall be paid to Lead Counsel from the McKesson Settlement Amount.

5. In making this award of attorneys' fees and reimbursement of expenses to be paid from the McKesson Settlement Amount, the Court has considered and found that:

(a) The $9.5 million cash Settlement will provide a substantial benefit to members of the Class;

(b) The fee sought by Lead Counsel has been reviewed and approved as fair and reasonable by the Court-appointed Lead Plaintiff, a sophisticated institutional investor that was substantially involved in all aspects of the Litigation;

(c) Copies of the Summary Notice were mailed to all McKesson Class Members who had submitted valid Claim Forms in the action and who had cashed their most recent prior distribution stating that Lead Counsel would apply for attorneys' fees in an amount of $134,930 and reimbursement of expenses in an amount not to exceed $40,000, and there are no objections to the requested award of attorneys' fees or expenses;

(d) Lead Counsel has conducted the Litigation and achieved the Settlement with skill, perseverance and diligent advocacy; and

(e) The amount of attorneys' fees awarded and expenses to be reimbursed from the McKesson Settlement Amount are fair and reasonable.

6. Any appeal or any challenge affecting this Court's approval regarding any attorneys' fees and expense application shall in no way disturb or affect the finality of the Judgment.

7. Exclusive jurisdiction is hereby retained over the parties and the McKesson Class Members for all matters relating to this Litigation, including the administration, interpretation, effectuation or enforcement of the Agreement and this Order.

8. In the event that the Settlement is terminated or the Effective Date of the Settlement otherwise fails to occur, this Order shall be rendered null and void to the extent provided by the Agreement.

9. There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

Dated: 2/8, 2013

RONALD M. WHYTE
United States District Judge

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re McKESSON HBOC, INC. SECURITIES LITIGATION	Master File No. 99-CV-20743 RMW (PVT) And Related Cases CLASS ACTION
This Document Relates To: ALL ACTIONS.	Date: January 27, 2006 Time: 9:00 a.m. Place: Courtroom 6, Fourth Floor Judge: The Honorable Ronald M. Whyte

NOTICE OF MOTION, MOTION, AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF LEAD COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

expense reimbursement provisions limiting the amount counsel can seek reimbursement for in this Action. These limits include, among others, maximum daily hotel and meal charges.

The fee requested by Lead Counsel in this case is in accordance with the fee grid negotiated with NYSCRF. Moreover, Lead Counsel's 7.79% fee request is expressly supported by NYSCRF, after a careful review and evaluation of all the circumstances. *See* Lebowitz Decl., Ex. 1 at ¶¶13, 15. The views and support of an institutional lead plaintiff, such as NYSCRF, should be given substantial weight, given the PSLRA's preference for institutional plaintiffs' participation in securities litigation. *See In re dj Orthopedics, Inc. Sec. Litig., Case No. 02-CV-2238-K (RBB),* 2004 U.S. Dist. LEXIS 11457, at *6.

7. The Reaction Of The Settlement Class Confirms That The Requested Fee Is Reasonable

The Settlement notice that was mailed to over 297,000 potential Settlement Class Members advised them that counsel would apply for a fee award of no more than 7.8% of the Settlement Fund, plus expenses not to exceed $6 million and that Settlement Class Members could object to the fee and expense application. ***Not a single objection to the fee request has been filed or served***, a clear testament to the achievements of Lead Counsel in this action. *See* Joint Decl. ¶108. *See also* Simmons Aff., Ex. 2 at ¶11. The lack of any objections is itself evidence that the requested fee is fair. *See, e.g., In re Heritage Bond Litig.,* 2005 U.S. Dist. LEXIS 13555, at *34-*35 (C.D. Cal. June 10, 2005); *Ressler v. Jacobson*, 149 F.R.D. 651, 656 (M.D. Fla. 1992) (noting the lack of objections is "strong evidence of the propriety and acceptability" of fee request).

D. Using Counsel's Lodestar As A Crosscheck Confirms The Reasonableness Of The Requested Fee

Although Lead Counsel makes this application on a percentage-of-recovery basis, it is noteworthy that using the lodestar approach as a cross-check on the reasonableness of the requested fee demonstrates that a fee amounting to approximately 7.79% is eminently fair. *See Vizcaino*, 290 F.3d at 1050 ("[W]hile the primary basis of the fee award remains the percentage method, the lodestar may provide a useful perspective on the reasonableness of a given percentage award.")

Here, the reported lodestar of Lead Counsel and other assisting law firms is over $31.1 million. *See* Joint Decl. ¶114. Thus, Lead Counsel's request for an award of $74.8 million represents only a 2.4 multiplier. *Id.* at ¶113. Moreover, pursuant to the agreement with Lead Plaintiff, hourly rates were capped at rates used in 2004. Joint Decl. ¶111. Lead Plaintiff received periodic reports showing detailed time records of the firms, which were carefully reviewed and analyzed. *See* Lebowitz Decl., Ex. 1 at ¶9.

In *Vizcaino*, the Ninth Circuit, in approving a multiplier of 3.65, noted that "'courts have routinely enhanced the lodestar to reflect the risk of non-payment in common fund cases.'" 290 F.3d at 1051 (quoting *WPPSS*, 19 F.3d at 1300). In cases applying the lodestar method to award fees "'multipliers of between 3 and 4.5 have been common.'" *Rabin v. Concord Assets Group, Inc.*, [1991-1992 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶96,471, at 92,081 (S.D.N.Y. Dec. 19, 1991) (multiplier of 4.4) (citation omitted); *Rievman v. Burlington N. R.R. Co.*, 118 F.R.D. 29, 35 (S.D.N.Y. 1987); s*ee also Keith v. Volpe*, 501 F. Supp. 403, 414 (C.D. Cal. 1980) (multiplier of 3.5); *Brewer v. S. Union Co.*, 607 F. Supp. 1511 (D. Colo. 1984) (multipliers of 3 and 3.5); *Mun. Auth. of Bloomsburg v. Commonwealth of Pa.*, 527 F. Supp. 982, 999-1000 (M.D. Pa. 1981) (4.5 multiplier); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706 (E.D. Pa. 2001) (multipliers at 4.5-8.5); *In re Ikon Office Solutions, Inc. Sec. Litig.*, [2001 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶91,322 (E.D. Pa. Jan. 4, 2001) (multiplier at 3.6); *In re Nat'l Health Labs. Sec. Litig.*, Nos. 92-1949 and 93-1694 (S.D. Cal. Aug. 15, 1995) (multiplier at 2.3).

The requested 2.4 multiplier is squarely within the range awarded in similar cases and is otherwise appropriate in this case. The lodestar cross-check, therefore, confirms the reasonableness of the requested fee award.

III. LEAD COUNSEL'S EXPENSES ARE REASONABLE AND WERE NECESSARILY INCURRED TO ACHIEVE THE BENEFIT OBTAINED FOR THE SETTLEMENT CLASS

Lead Counsel are seeking reimbursement of expenses for themselves and the firms assisting them in litigation in the amount of $5,254,408.18. This is well within the $6 million maximum that the Notice stated that Lead Counsel might seek. Notably, ***there have been no objections by members of the Settlement Class to this request***. Joint Decl. ¶122.

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re McKESSON HBOC, INC. SECURITIES LITIGATION	Master File No. 99-CV-20743 RMW (PVT) And Related Cases CLASS ACTION
This Document Relates To: ALL ACTIONS.	Date: April 13, 2007 Time: 9:00 a.m. Place: Courtroom 6, Fourth Floor Judge: The Honorable Ronald M. Whyte

NOTICE OF MOTION, MOTION AND MEMORANDUM OF LAW IN SUPPORT OF LEAD COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES RELATED TO THE SETTLEMENT WITH ARTHUR ANDERSEN LLP

In *Vizcaino,* the Ninth Circuit, in approving a multiplier of 3.65, noted that "'courts have routinely enhanced the lodestar to reflect the risk of non-payment in common fund cases.'" 290 F.3d at 1051 (quoting *WPPSS,* 19 F.3d at 1300). In cases applying the lodestar method to award fees "'multipliers of between 3 and 4.5 have been common.'" *Rabin v. Concord Assets Group, Inc.,* [1991-1992 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶96,471, at 92,081 (S.D.N.Y. Dec. 19, 1991) (multiplier of 4.4) (citation omitted); *see Keith v. Volpe,* 501 F. Supp. 403, 414 (C.D. Cal. 1980) (multiplier of 3.5); *In re Rite Aid Corp. Sec. Litig.,* 146 F. Supp. 2d 706 (E.D. Pa. 2001) (multipliers of 4.5-8.5); *In re Nat'l Health Labs. Sec. Litig.,* Nos. 92-1949 and 93-1694 (S.D. Cal. Aug. 15, 1995) (multiplier of 2.3); *see also WorldCom,* 338 F. Supp. 2d 319 (multiplier of 2.46); *In re Lucent Tech. Sec. Litig.*, 327 F. Supp. 2d 426 (D.N.J. 2004) (multiplier of 2.13); *Kurzweil v. Philip Morris Cos.*, Nos. 94 civ. 2373, 94 civ. 2546, 1999 U.S. Dist. LEXIS 18378, at *7-*8 (S.D.N.Y. Nov. 24, 1999) (recognizing that multipliers of between 3 and 4.5 are common in federal securities cases); .

Here, the reported lodestar of Lead Counsel, which does not include the lodestar submitted in connection with the McKesson Settlement, is approximately $4 million. *See* Joint Decl., at ¶81. Thus, Lead Counsel's request for an award of $4,495,000 represents a multiplier of only 1.1. *Id,* at ¶80. Lead Plaintiff received periodic reports showing detailed time records of the firms, which were carefully reviewed and analyzed. *See* Peaslee Decl., at ¶¶7-12.

The requested 1.1 multiplier here is even ***less*** than the 2.4 multiplier represented by the fee awarded by this Court in connection with the McKesson Settlement, is squarely within the range awarded in similar cases, and is otherwise appropriate in this case. The lodestar cross-check, therefore, confirms the reasonableness of the requested fee award.

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re McKESSON HBOC, INC. SECURITIES LITIGATION	Master File No. 99-CV-20743 RMW (PVT) And Related Cases
	CLASS ACTION
This Document Relates To: ALL ACTIONS.	Date: January 18, 2007 Time: 9:00 a.m. Place: Courtroom 6, Fourth Floor Judge: The Honorable Ronald M. Whyte

NOTICE OF MOTION, MOTION AND MEMORANDUM OF LAW IN SUPPORT OF LEAD COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES RELATED TO THE SETTLEMENT WITH BEAR, STEARNS & CO. INC.

(C.D. Cal. 1980) (multiplier of 3.5); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706 (E.D. Pa. 2001) (multipliers of 4.5-8.5); *see also WorldCom*, 388 F. Supp. 2d 319 (multiplier of 2.46); *In re Lucent Tech. Sec. Litig.*, 327 F. Supp. 2d 426 (D.N.J. 2004) (multiplier of 2.13); *Kurzweil v. Philip Morris Cos.*, Nos. 94 civ. 2373, 94 civ. 2546, 1999 U.S. Dist. LEXIS 18378, at *7-*8 (S.D.N.Y. Nov. 24, 1999) (recognizing that multipliers of between 3 and 4.5 are common in federal securities cases); .

Here, the reported lodestar of Lead Counsel, for work not included in the lodestar submitted for purposes of the cross-check in connection with the McKesson Settlement or the Andersen Settlement, is over $3.24 million. *See* Joint Decl. ¶93. Thus, Lead Counsel's request for an award of $400,000 represents a multiplier of only .12. Joint Decl. ¶92.

The requested .12 multiplier here is considerably ***less*** than the 2.4 multiplier represented by the fee awarded by this Court in connection with the McKesson Settlement and the 1.1 multiplier awarded in connection with the Andersen Settlement, is at the low end of the range awarded in similar cases, and is otherwise appropriate in this case. The lodestar cross-check, therefore, confirms the reasonableness of the requested fee award.

IV. LEAD COUNSEL'S EXPENSES ARE REASONABLE AND WERE NECESSARILY INCURRED TO ACHIEVE THE BENEFIT OBTAINED FOR THE SETTLEMENT CLASS

Lead Counsel are seeking reimbursement of expenses in the amount of $633,555.78. This is well within the $1.3 million maximum that the Notice stated that Lead Counsel would seek. Notably, ***there have been no objections to this request.*** *See* Joint Decl. ¶99.

The appropriate analysis to apply in deciding whether expenses are compensable in a common fund case of this type is whether the particular costs are of the type typically billed by attorneys to paying clients in the marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) ("Harris may recover as part of the award of attorney's fees those out-of-pocket expenses that 'would normally be charged to a fee paying client.'") (citations omitted); *see also Bratcher v. Bray-Doyle Indep. Sch. Dist. No. 42*, 8 F.3d 722, 725-26 (10th Cir. 1993) (expenses reimbursable if they would normally be billed to client); *Abrams v. Lightolier, Inc.*, 50 F.3d 1204, 1225 (3d Cir. 1995) (expenses recoverable if customary to bill clients for them); *Miltland*

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C

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re McKESSON HBOC, INC. SECURITIES LITIGATION	Master File No.: 99-CV-20743 RMW-(PVT) And Related Cases
This Document Relates To: ALL ACTIONS.	CLASS ACTION
	LEAD PLAINTIFF'S NOTICE OF MOTION, MOTION AND MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR FINAL APPROVAL OF SETTLEMENT WITH ARTHUR ANDERSEN LLP OF CONTINGENT PAYMENT CLAIM, AND IN SUPPORT OF LEAD COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES
	DATE: February 8, 2013 TIME: 9:00 AM CTRM: 6, 4th Floor JUDGE: Honorable Ronald M. Whyte

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BY FAX

percentage-of-recovery approach in awarding attorneys' fees and this approach has become the prevailing method of awarding fees in common fund cases, *see, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002). Indeed, the previous orders awarding fees in this Litigation adopted the percentage method. *See* Docket Nos. 1444, 1560, 1727.

Here, Lead Counsel respectfully submit, the fee requested is clearly reasonable under all factors and tests normally employed by courts within the Ninth Circuit. First, in comparison to the 25% "benchmark" established in this Circuit, *see, e.g., In re Daou Sys., Sec. Litig.*, No. 98-CV-1537-L, 2008 U.S. Dist. LEXIS 56320, at *4 (S.D. Cal. July 24, 2008); *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 273 (9th Cir. 1989); *Vizcaino*, 290 F.3d at 1048-50, Lead Counsel here seek a fee of only 1.42% of the Settlement Amount. Second, the fee being sought represents just a 1.16 multiple of Lead Counsel's time devoted to the due diligence, negotiation and presentation of the Settlement to this Court. Thus, while a lodestar "cross-check" is not required in this Circuit, *see Vizcaino*, 290 F.3d at 1050 n. 5, the 1.16 multiple amply supports the reasonableness of the requested fee.[7] Specifically, since commencing the extended process in October 2011 of investigating and analyzing Andersen's financial status, negotiating a settlement of the Contingent Payment Claim, and working towards achieving the Settlement's finality and approval, Lead Counsel spent 184.25 hours on this project, incurring a lodestar of $116,125.00 as of December 31, 2012. Joint Decl. ¶ 10. Lead Counsel's fee request

[7] A lodestar calculation is performed by multiplying the number of hours reasonably expended in the litigation by the reasonable hourly rates of the attorneys. *Penn. v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546, 564 (1986). The lodestar is then adjusted by using a "multiplier" that is based on the same factors considered by the court in determining what level of a percentage based fee is appropriate, with the risk and result being the primary factors. *Staton v. Boeing Co.*, 327 F.3d 938, 968 (9th Cir. 2003). Here, since some of the work was done both for the benefit of the *WorldCom* and *McKesson* classes, Lead Counsel's time and lodestars were allocated to the two cases in the same percentage of their respective Contingent Payment Claims, providing a further efficiency of efforts by Lead Counsel for the benefit of each of the classes.

of 1.42% of the $9.5 million common fund thus results, after a lodestar cross-check, in a multiplier of 1.16. *Id.*

When considering fee requests calculated using the lodestar method, courts frequently award significant multipliers. *See, e.g., Vizcaino*, 290 F.3d at 1050-51 & n.6 (upholding a fee award which reflected a lodestar multiplier of 3.65 and noting that multipliers typically range from 1.0 to 4.0); *see also Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 123 (2d Cir. 2005) (approving 3.5 multiplier and citing case noting that "multipliers of between 3 and 4.5 have become common"); *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 341 (3d Cir. 1998) ("[m]ultiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied" (internal quotation omitted)). Thus, the lodestar multiple is well within the range normally upheld in this and other Circuits.

And third, Lead Plaintiff supports Lead Counsel's fee request after considering both the percentage requested and the lodestar multiplier it represents. Joint Decl. ¶ 12.[8]

In addition to seeking an award of attorneys' fees, Lead Counsel also seek Court approval of their request for $37,885.46 for unreimbursed costs and expenses incurred by them. The Notice and Summary Notice stated that Lead Counsel would apply for reimbursement of expenses in an amount not to exceed $40,000.00. The expenses incurred by Lead Counsel include the proportional cost of Lead Counsel's valuation expert, CDG, as well as other unreimbursed costs incurred in the Litigation such as expenses for on-line legal research, out-of-town travel, photocopying, postage/express mail, and telephone/facsimile costs. *See* Joint Decl. ¶ 11 and Exhibit C thereto.

[8] In considering the 1.42% fee request for the Settlement that Lead Plaintiff reached with Andersen in the *WorldCom* case, Judge Cote found the fee request to be fair and reasonable to the *WorldCom* class, and awarded the fee sought by Lead Counsel with the Lead Plaintiff's approval. *See* Joint Decl. Exhibit B.

Exhibit 10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re NORTEL NETWORKS CORP. SECURITIES LITIGATION	:	Civil Action No. 05-MD-1659 (LAP)
	:	CLASS ACTION
This Document Relates To:	:	
ALL ACTIONS.	:	

ORDER AND FINAL JUDGMENT

On the 26th day of October, 2006, a hearing having been held before this Court to determine: (1) whether the terms and conditions of the Stipulation and Agreement of Settlement dated June 20, 2006 (the "Stipulation") are fair, reasonable and adequate for the settlement of all claims asserted by the U.S. Global Class against the Defendants in the Complaint now pending in this Court under the above caption, including the release of the Defendants and the Released Parties, and should be approved; (2) whether judgment should be entered dismissing the Complaint on the merits and with prejudice in favor of the Defendants and as against all persons or entities who are members of the U.S. Global Class herein who have not requested exclusion therefrom; (3) whether to approve the Plan of Allocation as a fair and reasonable method to allocate the settlement proceeds among the members of the U.S. Global Class; and (4) whether and in what amount to award Lead Plaintiffs' Counsel fees and reimbursement of expenses. The Court having considered all matters submitted to it at the hearing and otherwise; and it appearing that a notice of the hearing substantially in the form approved by the Court (including French language versions sent to addresses in Quebec, Canada) was mailed to all persons or entities

reasonably identifiable, who purchased common stock of Nortel Networks Corporation ("Nortel"), or call options on Nortel common stock, or wrote (sold) put options on Nortel common stock during the period between April 24, 2003 through April 27, 2004, inclusive (the "Class Period"), except those persons or entities excluded from the definition of the U.S. Global Class, as shown by the records of Nortel's transfer agent, at the respective addresses set forth in such records, as set forth in the Affidavit of Neil L. Zola Regarding the Mailing of the Nortel II Notice and Proof of Claim Form, dated September 1, 2006, and in the Supplemental Affidavit of David A. Isaac Relating to Late Exclusions and Late Objections, dated October 23, 2006 (the "Supplemental Isaac Affidavit"), and that a summary notice of the hearing substantially in the form approved by the Court was published pursuant to the Notice Plan, as set forth in the Declaration of Jeanne C. Finegan, APR, dated October 18, 2006, and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested by Lead Plaintiffs' Counsel; and all capitalized terms used herein having the meanings as set forth and defined in the Stipulation.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Court has jurisdiction over the subject matter of the Action, the Lead Plaintiffs, all U.S. Global Class Members, and the Defendants.

2. The Court finds that the prerequisites for a class action under (United States) Federal Rules of Civil Procedure 23(a) and (b)(3) have been satisfied in that: (a) the number of U.S. Global Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the U.S. Global Class; (c) the claims of the U.S. Global Class Representatives are typical of the claims of the U.S. Global Class they seek to represent; (d) the Class Representatives have and will fairly and adequately represent the

interests of the U.S. Global Class; (e) the questions of law and fact common to the members of the U.S. Global Class predominate over any questions affecting only individual members of the U.S. Global Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

3. Pursuant to Rule 23 of the (United States) Federal Rules of Civil Procedure this Court hereby finally certifies this action as a class action on behalf of all persons and entities who purchased Nortel common stock, or purchased call options on Nortel common stock, or wrote (sold) put options on Nortel common stock (collectively, "Nortel Securities") during the period between April 24, 2003 through April 27, 2004, inclusive, and who suffered damages thereby, including, but not limited to, those persons or entities who traded in Nortel Securities on the New York Stock Exchange and/or the Toronto Stock Exchange. Excluded from the U.S. Global Class are (i) the Defendants; (ii) James Kinney (Finance Chief for Nortel's Wireless Networks Division, Richardson, Texas), Ken Taylor (Vice President for Nortel's Enterprise Networks Division, Raleigh, North Carolina), Craig Johnson (Finance Director for Nortel's Wireline Networks Division, Richardson, Texas), Doug Hamilton (Finance Director for Nortel's Optical Networks Group, Montreal, Quebec), Michael Gasnier (Vice President of Finance for Europe), Robert Ferguson (Vice President of Finance for China), and William Bowrey (Controller for Asia); (iii) members of the immediate family of each of the Defendants and/or any of the individuals referenced above; (iv) any entity in which any Defendant and/or any of the individuals referenced above has a controlling interest; (v) any parent, subsidiary or affiliate of Nortel; (vi) any person who was an officer or director or Nortel or any of its subsidiaries or affiliates during the Class Period; and (vii) the legal representatives, heirs, predecessors, successors or assigns of any of the excluded persons or entities. Also excluded from the U.S.

Global Class for this Action are the persons and/or entities who have requested exclusion from the U.S. Global Class by filing a request for exclusion on or before October 26, 2006, as listed on Exhibit C to the Supplemental Affidavit Relating to Additional Late Exclusions and Objections (Third GCG Report), sworn to by Randi Alarcon Collotta on December 18, 2006.

4. Notice of the pendency of this Action as a class action and of the proposed Settlement was given to all U.S. Global Class Members who could be identified with reasonable effort. The form and method of notifying the U.S. Global Class of the pendency of the action as a class action and of the terms and conditions of the proposed Settlement met the requirements of Rule 23 of the (United States) Federal Rules of Civil Procedure, Section 21D(a)(7) of the (United States) Securities Exchange Act of 1934, 15 U.S.C. 78u-4(a)(7), as amended, including by the (United States) Private Securities Litigation Reform Act of 1995 (the "PSLRA"), Rule 23.1 of the Local Rules of the Southern and Eastern Districts of New York, due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

5. The Settlement is approved as fair, reasonable and adequate. Subject to the terms and provisions of the Stipulation and the conditions therein being satisfied, the parties are directed to consummate the Settlement.

6. The Gross Settlement Shares are to be issued solely in exchange for bona fide outstanding claims. All parties to whom it is proposed to issue such securities have had the right to appear at the hearing on the fairness of the Settlement and adequate notice has been given to all such parties. The Court recognizes and acknowledges that one consequence of its approval of the Settlement at the Settlement Fairness Hearing is that, pursuant to Section 3(a)(10) of the

(United States) Securities Act of 1933, as amended, 15 U.S.C. § 77c(a)(1), the Gross Settlement Shares may be distributed to Class Members (and to Plaintiffs' Counsel as may be awarded by the respective Courts for attorneys' fees) without registration and compliance with the prospectus delivery requirements of the U.S. securities laws as the Gross Settlement Shares will be exempt from registration under the (United States) Securities Act of 1933. 15 U.S.C. § 77c(a)(1), as amended, pursuant to Section 3(a)(10) thereunder. The Court also acknowledges that Nortel will rely on such 3(a)(10) exemption (and Nortel will not register the Gross Settlement Shares under the (United States) Securities Act of 1933) based on this Court's approval of the fairness of the Settlement.

7. The Complaint, which the Court finds was filed on a good faith basis in accordance with the Private Securities Litigation Reform Act and Rule 11 of the (United States) Federal Rules of Civil Procedure based upon all publicly available information, is hereby dismissed in its entirety with prejudice and without costs, except as provided in the Stipulation, as against the Defendants.

8. Lead Plaintiffs and each U.S. Global Class Member who has not validly opted out, whether or not such U.S. Global Class Member executes and delivers a Proof of Claim, on behalf of themselves, their heirs, executors, administrators, successors and assigns, are hereby permanently barred and enjoined from instituting, commencing or prosecuting any and all claims, debts, demands, rights or causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, provincial, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured,

whether class or individual in nature, including both known claims and Unknown Claims, (i) that have been asserted in this Action by the U.S. Global Class Members or any of them against any of the Released Parties, or (ii) that could have been asserted in any forum by the U.S. Global Class Members or any of them against any of the Released Parties which arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Complaint and which relate to the purchase of Nortel common stock or call options on Nortel common stock or the sale of put options on Nortel common stock during the Class Period, or (iii) any oppression or other claims under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended, that arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions during the Class Period, set forth or referred to in the Nortel II Actions, (the "Settled Claims"), against any and all of the Defendants, their past or present subsidiaries, parents, principals, affiliates, general or limited partners or partnerships, successors and predecessors, heirs, assigns, officers, directors, agents, employees, attorneys, advisors, investment advisors, investment bankers, underwriters, insurers, co-insurers, re-insurers, attorneys, accountants, auditors, consultants, administrators, executors, trustees, personal representatives, immediate family members and any person, firm, trust, partnership, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any of the Defendants, and the legal representatives, heirs, executors, administrators, trustees, successors in interest or assigns of the Defendants (the "Released Parties"); *provided, however*, that "Settled Claims" does not mean or include (a) claims, if any, against the Released Parties arising under the (United States) Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et seq.* ("ERISA") which are not common to all U.S. Global Class Members and which are

the subject of an action pending before the Judicial Panel on Multidistrict Litigation, denominated *In re Nortel Networks Securities and "ERISA" Litigation*, MDL Docket No. 1537; (b) the action in *Rohac, et al. v. Nortel Networks Corporation, et al.*, Court File No. 04-CV-3268 (Ont. Sup. Ct. J.); and (c) the application brought in *Indiana Electrical Workers Pension Trust Fund IBEW and Laborers Local 100 and 397 Pension Fund v. Nortel Networks Corporation*, Ontario Superior Court of Justice, Court File No. 49059, for leave pursuant to the Canada Business Corporations Act to commence a representative action in the name of and on behalf of Nortel against certain of the Released Parties (the "Derivative Application"). Each U.S. Global Class Member who has not validly opted out has fully, finally, and forever released, relinquished, and discharged all Settled Claims against the Released Parties and each such U.S. Global Class Member is bound by this judgment, including without limitations, the release of claims as set forth in the Stipulation. The Settled Claims are hereby compromised, settled, released, discharged and dismissed as against the Released Parties on the merits and with prejudice by virtue of the proceedings herein and this Order and Final Judgment.

9. Defendants Nortel, John Edward Cleghorn, Robert Ellis Brown, Robert Alexander Ingram, Guylaine Saucier, and Sherwood Hubbard Smith, Jr., and the successors and assigns of any of them, are hereby permanently barred and enjoined from instituting, commencing or prosecuting any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, provincial, local, statutory or common law or any other law, rule or regulation, including both known claims and unknown claims, that have been or could have been asserted in the Action or any forum by the Defendants or any of them or the successors and assigns of any of them against any of the Lead Plaintiffs, U.S. Global Class Members or their attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of the Action

(except for claims to enforce the Settlement, confidentiality obligations or in respect of the Derivative Application) (the "Settled Defendants' Claims"). The Settled Defendants' Claims of all the Released Parties are hereby compromised, settled, released, discharged and dismissed on the merits and with prejudice by virtue of the proceedings herein and this Order and Final Judgment. In the event that any of the Released Parties asserts against the Lead Plaintiff, any U.S. Global Class Member or their respective counsel, any claim that is a Settled Defendants' Claim, then Lead Plaintiff, such U.S. Global Class Member or counsel shall be entitled to use and assert such factual matters included within the Settled Claims only against such Released Party in defense of such claim but not for the purposes of asserting any claim against any Released Party.

10. Pursuant to the PSLRA, the Released Parties are hereby discharged from all claims for contribution by any person or entity other than by Released Parties, whether arising under state, provincial, federal or common law, based upon, arising out of, relating to, or in connection with the Settled Claims of the U.S. Global Class or any U.S. Global Class Member. Accordingly, to the full extent provided by the PSLRA, the Court hereby bars all claims for contribution: (a) against the Released Parties by any person or entity other than the Released Parties; and (b) by the Released Parties against any person or entity other than the Released Parties.

11. Neither this Order and Final Judgment, the Stipulation, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any of the documents or statements referred to therein shall be:

(a) offered or received against the Defendants as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any of the Defendants with respect to the truth of any fact alleged by any of the plaintiffs or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of the Defendants;

(b) offered or received against the Defendants as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any Defendant;

(c) offered or received against the Defendants as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the Defendants, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; provided, however, that Defendants may refer to it to effectuate the liability protection granted them hereunder;

(d) construed against the Defendants as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; or

(e) construed as or received in evidence as an admission, concession or presumption against Lead Plaintiffs or any of the U.S. Global Class Members that any of their claims are without merit, or that any defenses asserted by the Defendants have any merit, or that damages recoverable under the Complaint would not have exceeded the Gross Settlement Fund.

12. The Plan of Allocation is approved as fair and reasonable, and Plaintiffs' Counsel and the Claims Administrator are directed to administer the Stipulation in accordance with its terms and provisions.

13. The Court finds that all parties and their counsel have complied with each requirement of Rule 11 of the (United States) Federal Rules of Civil Procedure as to all proceedings herein.

14. Lead Plaintiffs' Counsel in this Action are hereby awarded attorneys' fees in the amount of 8.0 % of the Gross Cash Settlement Fund (net of litigation expenses awarded in the next sentence), and 8.0 % of the Gross Settlement Shares, which amounts the Court finds to be fair and reasonable. Lead Plaintiffs' Counsel are hereby awarded $3,020,416.60 in reimbursement of expenses, which expenses shall be paid to Plaintiffs' Lead Counsel from the Gross Cash Settlement Fund with interest from the date such Gross Cash Settlement Fund was funded to the date of payment at the same net rate that the Gross Cash Settlement Fund earns. The award of attorneys' fees shall be allocated among plaintiffs' counsel in a fashion which, in the opinion of Plaintiffs' Lead Counsel, fairly compensates such counsel for their respective contributions in the prosecution and settlement of the Action.

15. The fees and expenses of plaintiffs' counsel in the Canadian Actions, as determined by the Canadian Courts shall be paid from the Gross Settlement Fund.

16. Lead Plaintiff Ontario Teachers' Pension Plan Board is hereby awarded $20,000.00, and the Department of the Treasury of the State of New Jersey and its Division of Investment is hereby awarded $ 17,000.00 . Such awards are for

reimbursement of their reasonable costs and expenses (including lost wages) directly related to its representation of the U.S. Global Class.

17. In making this award of attorneys' fees and reimbursement of expenses to be paid from the Gross Settlement Fund, the Court has considered and found that:

(a) the Settlement has created a cash fund of $370,157,428 that is already on deposit earning interest, and will also provide for the benefit of the Class 314,333,875 shares of Nortel common stock as may be adjusted in accordance with paragraph 4(d) of the Stipulation;

(b) The Settlement will entitle the Class to receive one-quarter of any actual gross recovery by Nortel in the existing litigation by Nortel against Frank Dunn, Douglas Beatty and Michael Gollogly (including the value of any monetary benefit that Nortel might receive from the defendants by way of forgiveness or cancellation of any monetary debt owed by Nortel to such defendants), excluding attorneys' fees and expenses awarded by the court, if any;

(c) Nortel has agreed to adopt the corporate governance enhancements described in Appendix A to Tab 1 to Exhibit A of the Stipulation;

(d) As set forth in the Supplemental Isaac Affidavit, over 1,015,000 copies of the Notice were disseminated to putative Class Members indicating that Lead Plaintiffs' Counsel were moving for attorneys' fees in the amount of up to 10% of the Gross Settlement Fund less litigation expenses awarded by the Court, and for reimbursement of expenses in an amount of approximately $4.3 million, and twenty-eight (28) objections were filed against the terms of the proposed Settlement or the ceiling on the fees and expenses requested by Lead Plaintiffs' Counsel contained in the Notice;

(e) Lead Plaintiffs' Counsel have conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

(f) The action involves complex factual and legal issues and was actively prosecuted over 2 years and, in the absence of a settlement, would involve further lengthy proceedings with uncertain resolution of the complex factual and legal issues;

(g) Had Lead Plaintiffs' Counsel not achieved the Settlement there would remain a significant risk that Lead Plaintiffs and the Class may have recovered less or nothing from the Defendants;

(h) Lead Plaintiffs' Counsel have devoted over 58,700 hours, with a lodestar value of approximately $17.43 million, to achieve the Settlement; and

(i) The amount of attorneys' fees awarded and expenses reimbursed from the Settlement Fund are fair and reasonable and consistent with awards in similar cases.

18. Any appeal or any challenge affecting the approval of (a) the Plan of Allocation submitted by Lead Plaintiffs' Counsel and/or (b) this Court's approval regarding any attorneys' fees and expense application shall in no way disturb or affect the finality of the other provisions of this Final Judgment.

19. Jurisdiction is hereby retained over the parties and the U.S. Global Class Members for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Stipulation and this Order and Final Judgment, and including any application for fees and expenses incurred in connection with administering and distributing the settlement proceeds to the members of the U.S. Global Class.

20. In the event that the Settlement does not become Final in accordance with the terms of the Stipulation, or is terminated pursuant to ¶ 27 of the Stipulation, this judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and in such event all orders entered and released by and in accordance with the Stipulation.

21. Without further order of the Court, the parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

22. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the (United States) Federal Rules of Civil Procedure.

Dated: New York, New York
December 26, 2006

Loretta A. Preska

LORETTA A. PRESKA
UNITED STATES DISTRICT JUDGE