

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

In re BOSTON SCIENTIFIC
CORPORATION SECURITIES
LITIGATION

Master File No. 1:20-cv-12225-ADB

**DECLARATION OF SALVATORE J. GRAZIANO IN SUPPORT OF
(I) LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND PLAN OF ALLOCATION, AND (II) LEAD COUNSEL'S
MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES**

TABLE OF CONTENTS

TABLE OF EXHIBITS iii

I. INTRODUCTION 1

II. PROSECUTION OF THE ACTION 6

A. Background 6

B. Appointment of Lead Plaintiff and Lead Counsel, Lead Counsel’s Extensive Investigation and Filing of the Operative Complaint, and the Court’s Motion to Dismiss Decision..... 7

1. The Appointment of Lead Plaintiff, Lead Counsel, and Liaison Counsel 7

2. The Investigation and Filing of the Complaint 7

C. Defendants’ Motion to Dismiss 10

D. Discovery 13

1. The Pursuit of Extensive Document and Written Discovery from Defendants and Third Parties..... 15

2. Lead Plaintiff’s Review of Defendants’ and Third Parties’ Documents and Other Materials 20

3. Defendants’ Written Discovery Requests to Lead Plaintiff..... 24

4. Analysis of Document Discovery and Preparation of Deposition Plan 25

5. Expert Discovery 26

E. Class Certification and Modification of the Scheduling Order 28

F. Mediation and Settlement 30

III. RISKS OF CONTINUED LITIGATION..... 33

A. General Risks in Prosecuting Securities Class Actions 34

B. Specific Risks Concerning this Action 36

1. Risks Associated with Proving Falsity and Materiality 38

2. Risks Associated with Proving Scienter 39

3.	Risks Associated with Proving Loss Causation and Damages	42
4.	Risks After Trial	43
C.	The Settlement Amount Compared to the Likely Maximum Damages that Could Be Proved at Trial	45
IV.	LEAD PLAINTIFF’S COMPLIANCE WITH THE COURT’S PRELIMINARY APPROVAL ORDER REQUIRING ISSUANCE OF NOTICE.....	46
V.	ALLOCATION OF THE PROCEEDS OF THE SETTLEMENT.....	48
VI.	THE FEE AND EXPENSE APPLICATION	51
A.	The Fee Application.....	52
1.	Lead Plaintiff Has Authorized and Support the Fee Application	52
2.	The Time and Labor of Plaintiffs’ Counsel	53
3.	The Skill and Experience of Plaintiffs’ Counsel.....	55
4.	Standing and Caliber of Defendants’ Counsel.....	55
5.	The Risks of Litigation and the Need to Ensure the Availability of Competent Counsel in High-Risk Contingent Cases	56
6.	The Reaction of the Settlement Class to the Fee Application	57
B.	The Litigation Expense Application	58
VII.	CONCLUSION.....	62

TABLE OF EXHIBITS

Exhibit 1	Declaration of Jochen Riechwald, Assistant General Counsel of Union Asset Management Holding AG, in Support of (I) Lead Plaintiff’s Motion for Final Approval of Settlement and Plan of Allocation; and (II) Lead Counsel’s Motion for Attorneys’ Fees and Litigation Expenses
Exhibit 2	CORNERSTONE RESEARCH, SECURITIES CLASS ACTION FILINGS: 2023 YEAR IN REVIEW (2024)
Exhibit 3	CORNERSTONE RESEARCH, SECURITIES CLASS ACTION SETTLEMENTS: 2023 REVIEW AND ANALYSIS (2024)
Exhibit 4	Declaration of Luiggy Segura Regarding: (A) Mailing of the Notice and Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date
Exhibit 5	Summary of Plaintiffs’ Counsel’s Lodestar and Expenses
Exhibit 5A	Declaration of Salvatore J. Graziano on Behalf of Bernstein Litowitz Berger & Grossmann LLP in Support of Lead Counsel’s Motion for Attorneys’ Fees and Litigation Expenses
Exhibit 5B	Declaration of T. Christopher Donnelly on Behalf of Donnelly, Conroy & Gelhaar, LLP in Support of Lead Counsel’s Motion for Attorneys’ Fees and Litigation Expenses
Exhibit 6	Breakdown of Plaintiffs’ Counsel’s Expenses by Category
Exhibit 7	Compendium of Unpublished Opinions and Authority
Exhibit 8	<i>SEB Inv. Mgmt. v. Symantec Corp.</i> , 2021 WL 1540996 (N.D. Cal. Apr. 20, 2021)

I, SALVATORE J. GRAZIANO, declare as follows:

1. I am an attorney admitted *pro hac vice* to this Court. I am a partner in the law firm of Bernstein Litowitz Berger & Grossmann LLP (“BLB&G” or “Lead Counsel”). BLB&G was appointed Lead Counsel for Lead Plaintiff Union Asset Management Holding AG (“Lead Plaintiff” or “Union”) and Class Counsel for the Settlement Class in the above-captioned Action (the “Action”). I submit this declaration in support of Lead Plaintiff’s Motion for Final Approval of Settlement and Plan of Allocation (the “Settlement Motion”), and Lead Counsel’s Motion for Attorneys’ Fees and Litigation Expenses (the “Fee Motion”). I have personal knowledge of the matters set forth herein based on my active participation in the prosecution and settlement of this action and could and would testify competently thereto.¹

I. INTRODUCTION

2. The proposed Settlement before the Court provides for the resolution of all claims in the Action in exchange for a cash payment of \$38.5 million, plus interest, for the benefit of the Settlement Class. The Settlement Amount has been paid into an escrow account and is earning interest. As detailed below, the Settlement provides a significant benefit to the Settlement Class by conferring a substantial, certain, and immediate recovery while avoiding the risks of continued litigation, including the risk that the Settlement Class could recover nothing or less than the Settlement Amount after years of additional litigation, appeals, and delay.

¹ All capitalized terms that are not otherwise defined herein shall have the meanings provided in the Stipulation and Agreement of Settlement dated December 14, 2023 (ECF No. 152-1) (the “Stipulation”), which was entered into by and among (i) Lead Plaintiff, on behalf of itself and the Settlement Class, and (ii) defendant Boston Scientific Corporation (“Boston Scientific”) and defendants Michael F. Mahoney, Daniel J. Brennan, Shawn McCarthy, Ian Meredith, Joseph M. Fitzgerald, Kevin Ballinger, and Susan Vissers Lisa (collectively, the “Individual Defendants” and, with Boston Scientific, “Defendants”).

3. The proposed Settlement is the result of extensive efforts by Lead Plaintiff and Lead Counsel, which included, among other things:

- (i) conducting an extensive investigation into the alleged fraud, including interviews of over 140 former employees of Boston Scientific, and a thorough review of all publicly available information about Boston Scientific, including Boston Scientific's filings with the U.S. Securities and Exchange Commission ("SEC"), analyst reports, conference call transcripts, and news articles;
- (ii) drafting a detailed consolidated complaint based on Lead Counsel's detailed factual investigation and consultation with device and industry, insider trading, and damages experts;
- (iii) opposing Defendants' motion to dismiss the Complaint, which was accompanied by more than 1,500 pages of exhibits, through detailed briefing and two hours of oral argument;
- (iv) negotiating a case schedule, joint discovery plan, and ESI protocol, and preparing and responding to extensive discovery requests, including requests for the production of documents, interrogatories, and requests for admission and serving document subpoenas on four non-parties;
- (v) reviewing and analyzing over 224,000 pages of documents obtained from Defendants and third parties, preparing numerous memoranda, chronologies, and other work product concerning the relevant evidence to support the claims alleged, and developing a deposition plan and preparing for depositions of fact witnesses;
- (vi) drafting and filing Lead Plaintiff's motion for class certification, including consulting with financial economics experts who prepared a report concerning the efficient market for Boston Scientific common stock, defending the deposition of a representative of Lead Plaintiff, drafting and filing Lead Plaintiff's reply brief in further support of class certification, and arguing Lead Plaintiff's motion for class certification;
- (vii) working extensively with experts in the areas of financial economics (including loss causation, damages, and market efficiency); insider trading; the cardiac medical device industry; transcatheter aortic valve replacement ("TAVR") procedures and products; and medical device regulations and manufacturer practices and obligations concerning their interactions with device regulators;

- (viii) participating in two mediation sessions with James E. McGuire, an experienced mediator, which included the exchange of detailed mediation statements; and
- (ix) drafting and negotiating a Term Sheet, the Stipulation setting out the terms of the Settlement, and related documentation.

4. As a result of these efforts, Lead Plaintiff and Lead Counsel were well informed of the strengths and weaknesses of the claims and defenses in the Action at the time they achieved the proposed Settlement. Indeed, the \$38.5 million settlement represents between 18.5% to 22% of investors' maximum potentially recoverable damages under Lead Plaintiff's expert's analysis (depending on whether class members' gains on sale of pre-Class Period holdings are offset against their losses). Defendants have vigorously denied that they made any false or misleading statements and omissions regarding the Lotus Edge device described in the pleadings, and have asserted that those statements could not have been actionable because the Company did not decide to recall the Lotus Edge until after the statements at issue in the Action. Moreover, the SEC investigated the precise allegations here, but subsequently dropped the investigation without taking any enforcement action. In light of the substantial recovery and the significant continuing risks of litigation, Lead Plaintiff and Lead Counsel believe that the proposed \$38.5 million Settlement here is an excellent result for the Settlement Class.

5. The Settlement was achieved only after arm's-length negotiations between the Parties, including two mediation sessions with James E. McGuire, an experienced mediator. As described further below, the mediation process involved significant disputed issues and hard-fought, arm's-length negotiations. In advance of each mediation session, Lead Plaintiff submitted a detailed mediation statement to Boston Scientific and Mr. McGuire, including supporting exhibits compiled from documents produced in the course of discovery. No agreement was

reached at either session. In fact, the Parties only reached an agreement in principle to settle the Action for \$38.5 million following the conclusion of the second mediation session.

6. In addition, Lead Plaintiff Union is a sophisticated institutional investor that actively participated in the Action and closely supervised the work of Lead Counsel, and Union's representatives were actively involved in overseeing the litigation and settlement negotiations. *See* Declaration of Jochen Riechwald, Assistant General Counsel of Union Asset Management Holding AG ("Riechwald Decl."), attached hereto as Exhibit 1, at ¶¶ 2-7. Lead Plaintiff fully endorses the approval of the Settlement. *Id.* ¶ 8. Union's close attention to and oversight of this action, as well as its approval of the Settlement, support the reasonableness of the Settlement. In enacting the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), Congress expressly intended to give control over securities class actions to sophisticated investors and noted that increasing the role of institutional investors in class actions would ultimately benefit shareholders and assist courts by improving the quality of representation in this type of case. H.R. Conf. Rep. No. 104-369, at *34 (1995), reprinted in 1995 U.S.C.C.A.N. 730, 733.

7. Lead Plaintiff and Lead Counsel believe that the Settlement is in the best interests of the Settlement Class. Due to their substantial efforts, Lead Plaintiff and Lead Counsel are well-informed of the strengths and weaknesses of the claims and defenses in the Action, and they believe that the Settlement represents an excellent outcome for the Settlement Class.

8. As discussed in further detail below, the proposed Plan of Allocation, which was developed with the assistance of Lead Plaintiff's damages expert, provides for the equitable distribution of the Net Settlement Fund to Settlement Class Members who submit Claim Forms that are approved for payment by the Court. The proposed Plan of Allocation provides for

distribution to eligible claimants on a *pro rata* basis, fairly based on losses attributable to the wrongdoing alleged in the Complaint.

9. Lead Counsel worked diligently and efficiently to achieve the proposed Settlement in the face of significant risk. Lead Counsel prosecuted this case on a fully contingent basis and advanced all litigation-related expenses, and thus bore substantial risk of an unfavorable result. For its efforts in achieving the Settlement, Lead Counsel is applying for an award of attorneys' fees for all Plaintiffs' Counsel² in the amount of 20% of the Settlement Fund. The requested fee has been endorsed by Lead Plaintiff and is reasonable and well within the range of fees that courts in this Circuit and elsewhere have awarded in securities class actions and other complex class actions with comparable recoveries on a percentage basis. Moreover, the requested fee is *less* than Plaintiffs' Counsel's total lodestar (i.e., the value of Counsel's work based on the amount of hours worked and Counsel's hourly rates as described herein). Specifically, the 20% fee sought here amounts to just 90% of Plaintiffs' Counsel's lodestar—or, in other words, a “negative” 0.9 multiplier of the lodestar, which is below the range of multipliers typically awarded in class actions like this one with significant contingency risks.

10. Lead Counsel's Fee and Expense Application also seeks payment of Litigation Expenses incurred by Plaintiffs' Counsel in connection with the institution, prosecution, and settlement of the Action, and payments to Lead Plaintiff for its costs and expenses directly related to their representation of the Settlement Class, as authorized by the PSLRA.

11. For all of the reasons discussed in this Declaration and in the accompanying motions and declarations, including the quality of the result obtained and the numerous significant

² Plaintiffs' Counsel are Lead Counsel BLB&G and Liaison Counsel Donnelly, Conroy & Gelhaar, LLP.

litigation risks discussed fully below, Lead Plaintiff and Lead Counsel respectfully submit that the Settlement and the Plan of Allocation are “fair, reasonable, and adequate” in all respects, and that the Court should approve them under Federal Rule of Civil Procedure 23(e). For similar reasons, and for the additional reasons discussed below, we respectfully submit that Lead Counsel’s Fee and Expense Application is also fair and reasonable and should be approved.

II. PROSECUTION OF THE ACTION

A. Background

12. Lead Plaintiff alleges that, from September 16, 2020 through November 16, 2020, inclusive (the “Class Period”), Defendants made materially false and misleading statements concerning Boston Scientific’s Lotus Edge medical device, a transcatheter aortic valve replacement (“TAVR”) device used to treat patients with heart disease.

13. Lead Plaintiff alleges that the price of Boston Scientific common stock was artificially inflated as a result of Defendants’ allegedly false and misleading statements, and that the price of the stock declined when the truth was finally revealed on November 17, 2020, when Boston Scientific announced (before the opening of the market) that it was recalling the Lotus Edge device and discontinuing the platform. *See* Complaint (ECF No. 44), at ¶¶ 181, 192. As a result of this disclosure, Boston Scientific’s stock price declined by \$3.00 per share, or approximately 8%, from a closing price of \$38.03 on November 16, 2020, to a closing price of \$35.03 per share on November 17, 2020 on the second-largest single-day trading volume in almost five years. *Id.* ¶ 192.

B. Appointment of Lead Plaintiff and Lead Counsel, Lead Counsel’s Extensive Investigation and Filing of the Operative Complaint, and the Court’s Motion to Dismiss Decision

1. The Appointment of Lead Plaintiff, Lead Counsel, and Liaison Counsel

14. In December 2020, a class action alleging violations of the federal securities laws against Boston Scientific and certain of its officers was filed in the United States District Court for the District of Massachusetts (the “Court”). *See Errichiello v. Boston Scientific Corporation*, Case No. 1:20-cv-12225-DPW (D. Mass.). A related action was filed in the United States District Court for the Eastern District of New York and later transferred to the Court. *See Jevons v. Boston Scientific Corporation*, Case No. 1:21-cv-10033-NMG (E.D.N.Y.).

15. On February 2, 2021, Union moved for appointment as lead plaintiff in the Action pursuant to the PSLRA and for appointment of its selected counsel as lead counsel and liaison counsel. ECF Nos. 16, 18, 24. Three other persons or entities filed competing motions for appointment as lead plaintiff the same day. ECF Nos. 17, 19-23, 25.

16. On March 30, 2021, the Honorable Douglas P. Woodlock consolidated the actions and ordered that all future filings in the consolidated action be made in Case No. 1:20-cv-12225, under the caption *In re Boston Scientific Corporation Securities Litigation*. ECF No. 31. The Court also appointed Union as Lead Plaintiff and approved BLB&G as Lead Counsel and Donnelly, Conroy & Gelhaar, LLP as Liaison Counsel. *Id.*

2. The Investigation and Filing of the Complaint

17. Lead Counsel undertook an extensive investigation into the alleged fraud and potential claims that could be asserted by Lead Plaintiff in the Action. This investigation began prior to the Court’s appointment of Lead Plaintiff and continued through preparation of the Complaint. The investigation included a careful review and analysis of: (i) Boston Scientific’s public filings with the SEC; (ii) Boston Scientific press releases and other public statements;

(iii) transcripts of Boston Scientific investor conference calls; (iv) research reports by financial analysts and news reports concerning Boston Scientific; (v) other publicly available sources; (vi) consultations with relevant experts and consultants; and (vii) communications with and review of documents from former employees of Boston Scientific and other sources.

18. In connection with its investigation, Lead Counsel and its in-house investigators located former employees of Boston Scientific who might have relevant information pertaining to the claims asserted in the Action. This included contacting over 700 former Boston Scientific employees who were believed to have potentially relevant information. Lead Counsel and/or its in-house investigators spoke to 142 of these individuals. Lead Counsel ultimately included detailed information received from nine of these former Boston Scientific employees in the Complaint concerning the Lotus Edge's poor sales, patient safety issues, high cost, and extensive training required to use the device.

19. In connection with the preparation of the Complaint, Lead Counsel consulted with Dr. Eric Horlick of the Toronto General Hospital, who is an adult interventional cardiologist with substantial experience conducting TAVR procedures. Lead Counsel consulted with Dr. Horlick about, among other things, physician experience, clinical, regulatory, and other data related to medical devices used in TAVR procedures.

20. Lead Counsel also consulted with Daniel J. Taylor, Ph.D., Arthur Andersen Associate Professor at the Wharton School, University of Pennsylvania, who has extensive experience in corporate disclosures and insider trading. Lead Counsel consulted with Professor Taylor about, among other things, executive compensation, insider trading, and the use of Rule 10b5-1 plans at Boston Scientific.

21. Lead Counsel further consulted with Global Economics Group, LLC, a firm that specializes in the application of economics, finance, statistics, and valuation principles to questions that arise in a variety of context, including securities class actions. Lead Counsel consulted with Global Economics Group, LLC about, among other things, the impact of Defendants' alleged misstatements on the market price of Boston Scientific's common stock and the damages suffered by Boston Scientific shareholders.

22. On June 4, 2021, Lead Plaintiff filed and served its 135-page Amended Consolidated Complaint for Violations of the Federal Securities Laws (the "Complaint"). The Complaint asserted claims against all Defendants under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder, and against the Individual Defendants under Section 20(a) of the Exchange Act. ECF No. 44. Among other things, the Complaint alleged that Defendants made materially false and misleading statements about Boston Scientific's Lotus Edge medical device, including about the Lotus Edge's ability to drive revenues and the safety of the device. Specifically, Lead Plaintiff alleged that Defendant Mahoney told investors on September 16, 2020 that the device remained an "important growth driver" for Boston Scientific—when, in truth, he knew the Company had already concluded that it would shut down the business due to the extraordinary costs of manufacturing and selling the product. *See* Complaint ¶ 160. Lead Plaintiff also alleged that Defendant Mahoney then told investors on October 28, 2020 that pursuing the Lotus Edge together with another heart valve (the "Acurate" valve) was strategically sound and that "the two-valve strategy makes sense"—when, in truth, the Company had already decided to terminate Lotus. *Id.* ¶ 320. The Complaint further alleged that the price of Boston Scientific's common stock was artificially inflated as a result of Defendants' allegedly false and misleading statements and declined when the truth was revealed

at the end of the Class Period when the Company announced that it was recalling the Lotus Edge device and discontinuing the platform.

C. Defendants' Motion to Dismiss

23. On July 19, 2021, Defendants filed their 35-page motion to dismiss the Complaint, together with an accompanying declaration attaching 50 exhibits totaling more than 1,500 pages of material. ECF Nos. 53-60. In their motion, Defendants attacked all parts of the Complaint as inadequate to plead securities fraud. In particular, Defendants argued that:

- Lead Plaintiff failed to allege an actionable misstatement or omission, including because Lead Plaintiff failed to allege with particularity that the decision to shut the Lotus Edge down was made earlier than November 2020 or that any Defendant intentionally delayed announcing the shutdown to avoid certain charges and mislead investors;
- many of the alleged misstatements, including statements concerning the Lotus Edge's business prospects, were non-actionable corporate optimism, opinion, forward-looking, or financial result statements;
- Defendants had no affirmative duty to disclose additional information about the Lotus Edge's sales, safety, ease of use, or manufacturability;
- the former employees that Lead Plaintiff relied on to establish falsity and scienter were only low-level, non-management employees who would not have known about Defendants' knowledge or states of mind, and in any event their allegations were insufficient because they, among other things, lacked specificity and described adverse patient outcomes that were reported to the FDA (the reports of which were publicly available);
- Lead Plaintiff's other scienter allegations failed, including because the Complaint only alleged access to information due to Defendants' positions within the Company, not Defendants' review of it, and because the vast majority of Defendants' stock sales were executed pursuant to Rule 10b5-1 trading plans; and
- the Section 20(a) claims should be dismissed for failure to plead an underlying violation.

24. On August 30, 2021, Lead Plaintiff filed its opposition to Defendants' motion. ECF No. 61. In summary, Lead Plaintiff's opposition argued that:

- the Complaint sufficiently alleged that Defendants made materially false and misleading statements, including because the Lotus launch was experiencing poor results, the device was too complex, “clinically unsafe,” and jeopardized patient safety, and Defendants planned to shut down the Lotus Edge;
- Defendants’ statements concerning Lotus Edge’s business prospects were not non-actionable puffery, protected opinions, or protected by the safe harbor, and Defendants’ financial results statements were actionable;
- the Complaint adequately alleged Defendants’ scienter, including through Defendants’ admissions that the Company had made the decision to exit the Lotus Edge months before the recall, Defendants’ denials and responses to analyst questions, Defendants’ personal involvement and access to internal data showing the Lotus Edge’s poor sales, the execution of Rule 10b5-1 trading plans after Boston Scientific determined that the Lotus Edge would be discontinued, Defendants’ motivation to delay disclosure of the Lotus Edge’s failure due to its debt load, and Defendants’ resignations;
- the Complaint’s allegations of scienter—including Defendants’ admissions about poor Lotus Edge sales, their knowledge that the Lotus Edge was complex and unsafe, and their knowledge that the Lotus Edge was not commercially viable—were corroborated by the accounts of former employees who were involved in selling the Lotus Edge, analyzing sales numbers, manufacturing the product, attending Lotus Edge procedures and meetings with the Defendants, and developing its replacement; and
- the Complaint pleaded Section 20(a) control person claims as to all of the Individual Defendants.

25. On September 20, 2021, Defendants filed a reply in further support of their motion to dismiss, together with a supporting declaration. ECF Nos. 63-64. Defendants’ reply reiterated the arguments made in their motion to dismiss and responded to the arguments in Lead Plaintiff’s opposition brief.

26. On November 29, 2021, the Court held an approximately two-hour oral argument on Defendants’ motion to dismiss. ECF No. 68.

27. Following oral argument, on December 23, 2021, Lead Plaintiff submitted a supplemental letter brief highlighting a recent First Circuit Court of Appeals decision bearing upon

the arguments raised in Defendants' motion to dismiss. ECF No. 70. On December 27, 2021, Defendants filed a responsive submission. ECF No. 71.

28. On January 3, 2022, Defendants submitted a notice informing the Court that the U.S. Securities and Exchange Commission ("SEC") concluded its investigation into whether the Company violated any federal securities laws with respect to its discontinuation of its Lotus Edge product, and that the SEC did not intend to recommend an enforcement action against the Company. ECF No. 72. By way of background, a month after the Company's decision to recall the Lotus Edge, the Boston Regional Office of the SEC initiated an investigation into Boston Scientific's Lotus Edge disclosures, submitting an information request for documents and information related to the statements at issue in this action and Boston Scientific's decision to recall and discontinue Lotus. Complaint ¶ 22. Two months later, the SEC issued a second request for documents and information. *Id.* On January 4, 2022, Lead Plaintiff filed a submission in response to Defendants' notice. ECF No. 73.

29. On December 20, 2022, the Court entered its Order denying, in part, and granting, in part, Defendants' motion to dismiss the Complaint. ECF No. 74. The Court denied the motion with respect to the Section 10(b) claim against Defendants Boston Scientific and Mahoney and as to the Section 20(a) claim, and granted the motion with respect to Lead Plaintiff's Section 10(b) claim against Defendants Fitzgerald, Brennan, McCarthy, Ballinger, Meredith, and Lisa. In particular, the Court held the Complaint sufficiently alleged that Defendant Mahoney's misrepresentations in September and October 2020 were materially false and misleading in violation of Section 10(b) of the Exchange Act. The Court held that Defendant Mahoney's positive statements about Lotus could be found to be materially false and misleading because, at the time they were made, "Defendants were in the process of critically evaluating the Lotus platform" and

“Boston Scientific’s leadership had either already decided the Lotus platform was unsalvageable or was on the cusp of doing so in a matter of weeks.” *In re Bos. Sci. Corp. Sec. Litig.*, 646 F. Supp. 3d 249, 283 (D. Mass. 2022). The Court also sustained the allegations related to Defendant Mahoney’s scienter because, even though he may not have been a “party to the decision to terminate the Lotus platform,” he was likely “privy to, or at least aware of, discussions surrounding Lotus during this time period.” *Id.* at 289.

30. As a result of the Court’s dismissal of all but two of the dozens of misstatements initially alleged in the Complaint in its decision on Defendants’ motion to dismiss, the operative class period in the Action was shortened from the 21-month period alleged in the Complaint to the period from September 16, 2020 through November 16, 2020, inclusive (the “Class Period”).

31. On January 20, 2023, Defendants filed their answer to the Complaint. ECF No. 81. Defendants strongly denied all allegations against them, as well as any liability to Lead Plaintiff and the class, and asserted 24 affirmative defenses, including (among other things) that (i) Defendants did not misrepresent any alleged fact or omit any alleged fact that Defendants were under a duty to disclose; (ii) even if such misrepresentations and were made, they were not material to the investment decisions of a reasonable investor; and (iii) there was no loss causation or damages.

D. Discovery

32. Following the Court’s decision on the motion to dismiss, the Parties immediately began to negotiate several matters set forth in their Joint Statement pursuant to Rules 16(b) and 26(f) of the Federal Rules of Civil Procedure and Local Rule 16, which was filed on January 20, 2023. ECF No. 80. As reflected in the Joint Statement, the Parties had significant disputes as to several key issues, including the deadlines to be set in this case for discovery and pre-trial motions. Lead Plaintiff’s proposed schedule provided approximately 12 months for fact and expert

discovery, while Defendants' proposed schedule provided approximately 12 months for fact and expert discovery as well as dispositive motion practice. The Parties also disagreed on whether the discovery event limitations set forth in Local Rule 26.1(c) should apply. Lead Plaintiff proposed 25 interrogatories, five separate sets of requests for production, 100 requests for admission, and 20 depositions per side, while Defendants believed that the discovery limitations set forth in Local Rule 26.1(c) should apply. In support of their positions, Defendants argued that the Court's December 20, 2022 decision on Defendants' motion to dismiss substantially narrowed the scope of the case, noting that the Court "held actionable only *two* of the sixty-three statements that Plaintiff alleged to be false and misleading in its amended complaint." ECF No. 80 at 2.

33. On January 23, 2023, the Court held a conference during which the Parties presented argument on their positions concerning the disputed pretrial matters set forth in the Joint Statement. At the conference, the Court accepted Defendants' proposed deadlines for class certification briefing, written discovery requests, the completion of fact discovery, and expert disclosures. The Court further ordered the Parties to file a joint status report by April 14, 2023 and scheduled another status conference for April 18, 2023. *See* ECF No. 82.

34. At around the same time, the Parties began negotiating a protocol for the production of electronically stored information ("ESI") and a protective order governing the treatment of documents and other information produced in discovery. The Parties submitted the ESI protocol and protective order to the Court on February 28, 2023 (ECF No. 85), which the Court entered on March 7, 2023 (ECF Nos. 86-88).

1. The Pursuit of Extensive Document and Written Discovery from Defendants and Third Parties

35. As provided in the schedule approved by the Court at the initial discovery conference on January 23, 2023, the Parties began pursuing fact discovery immediately after the Court decided Defendants' motion to dismiss.

36. On January 17, 2023, the Parties exchanged their Initial Disclosures pursuant to Rules 26 and 23 of the Federal Rules of Civil Procedure. Due in part to Lead Plaintiff's extensive investigation into the claims alleged in the Complaint, at the very outset of discovery, Lead Plaintiff was able to identify 33 current and former Boston Scientific employees who Lead Plaintiff believed were likely to have discoverable information concerning the allegations in the Complaint. By contrast, Defendants did not identify any witnesses beyond the named Defendants, thus requiring Lead Plaintiff to conduct extensive additional discovery to identify relevant individuals and documents.

37. On January 27, 2023, Lead Plaintiff served its first requests for the production of documents on Defendants. Lead Plaintiff requested that Defendants produce documents concerning, among other things, the Lotus Edge recall, including the decision to recall the Lotus Edge; the commercial launch and performance of the Lotus Edge; and the manufacturing of the Lotus Edge. After determining that it needed certain documents from prior to the Class Period to effectively litigate the case, Lead Plaintiff sought documents from a time period of approximately 17 months, extending from November 1, 2019 through March 30, 2021. On the same day, Lead Plaintiff also served its first set of interrogatories on Defendants. Lead Plaintiff's initial interrogatories focused on identifying additional custodians, including individuals involved in (i) the decision to recall the Lotus Edge, (ii) forecasting or analyzing of the Lotus Edge's commercial viability, investigating adverse event reports, and (iii) overseeing or managing the

commercial launch of the Lotus Edge. Lead Plaintiff's interrogatories also requested all custodial locations of documents and communications responsive to Lead Plaintiff's first set of requests for production of documents, including email, messaging, chat, shared drives, and other electronic storage locations. Likewise, Lead Plaintiff's interrogatories requested all "noncustodial" locations of electronic or hard-copy materials that may contain responsive documents.

38. On February 27, 2023, Defendants served their responses and objections to Lead Plaintiff's first requests for production. Defendants also served responses and objections to Lead Plaintiff's first set of interrogatories, largely refusing to provide answers to them.

39. In the months that followed, Lead Counsel engaged in numerous meet-and-confers and extensive negotiations with Defendants' counsel over the scope and adequacy of Defendants' discovery responses, including relating to search terms to be used, custodians whose documents should be searched, the types of documents that should be searched, the applicable timeframe, and other parameters.

40. In connection with these and other discovery negotiations, the Parties had several significant discovery disputes. At a high level, Lead Plaintiff sought several categories of documents, including, among other things, documents related to patient safety issues, adverse events, physician training and proctoring, and employee, doctor, or patient complaints concerning the Lotus Edge; Defendants' compensation and trading in Boston Scientific stock; and controls and procedures applicable to Boston Scientific's disclosure of the recall, while Defendants aggressively sought to limit production of documents and materials, arguing (among other things) that discovery should focus on when Defendant Mahoney became aware that a decision had been reached to terminate the Lotus platform. In particular, Defendants refused to produce documents concerning patient safety and adverse events involving the Lotus Edge, arguing (among other

things) that the Court had found Lead Plaintiff's allegations relating to those issues insufficient, and that those issues were outside the scope of the case. *See In re Bos. Sci. Corp. Sec. Litig.*, 646 F. Supp. 3d at 279-81. Defendants also sought to limit their production of documents and materials to a time period extending to two and a half months prior to Defendant Mahoney's first statement. In addition to these overarching differences in position, the Parties contested numerous specific details bearing on the scope of discovery, such as the appropriate sets of custodians and search criteria to apply in identifying potentially relevant documents. Further, Defendants refused to search and produce personal emails and text messages. The Parties' disputes concerning the scope of document discovery were discussed in four meet-and-confers and in eleven letters from January through April 2023.

41. While the Parties were able to reach agreement on certain issues, including the production of documents concerning patient safety issues and adverse events involving the Lotus Edge, they were forced to bring several others to the Court. Months into discovery, the Parties continued to dispute the appropriate time period for Defendants' productions and whether the collection, searching, and review of personal emails and text messages should be included in Defendants' custodial review. The Parties also disagreed on a modification of the Court's schedule for discovery and pre-trial motions previously entered on January 23, 2023. *See* ECF No. 82. At that point, Defendants had only made one production of documents on March 31, 2023, which consisted of documents Defendants had already produced to the SEC as part of the SEC's investigation into Boston Scientific's Lotus Edge disclosures. Importantly, Defendants had refused to produce these documents throughout February 2023, despite Lead Plaintiff's request for them to do so. Accordingly, Lead Plaintiff proposed a modest extension of the schedule to account for a new document completion deadline of May 31, 2023, while maintaining all of the remaining

deadlines under the same “intervals” that were approved by the Court in its January 23, 2023 scheduling order. The Parties were unable to reach agreement on these issues, and they set forth these disputes in the joint status report filed by the parties on April 14, 2023, in advance of the April 18, 2023 scheduling conference. ECF No. 89.

42. On April 14, 2023, Lead Plaintiff served its second set of interrogatories on Defendants. These sought detailed information concerning (among other things) the Company’s policies and controls applicable to complaints received for the Lotus Edge, the Company’s policies and controls applicable to corrective actions taken with respect to any Class III medical device, and the Company’s process for post-market surveillance of the Lotus Edge, as well as the bases of Defendants’ affirmative defenses. Defendants served responses and objections to Lead Plaintiff’s second set of interrogatories on June 2, 2023.

43. In addition to serving two sets of interrogatories, on April 14, 2023, Lead Plaintiff served its first set of requests for admission on Defendants. Lead Plaintiff’s requests for admission focused on, among other things, the performance and profitability of the Lotus Edge, the adverse events associated with the Lotus Edge’s product design and patient safety risks, and Defendant Mahoney’s stock sales, as well as arguments Lead Plaintiff anticipated making in its motion for class certification. On June 2, 2023, Defendants responded and objected to those requests for admission.

44. Lead Plaintiff carefully reviewed Defendants’ responses to the interrogatories and requests for admission to tailor Lead Plaintiff’s discovery efforts, shape and inform Lead Plaintiff’s factual and expert analyses, and refine Lead Plaintiff’s arguments in support of the motion for class certification.

45. On April 18, 2023, the Court held a conference by Zoom, during which the Parties presented argument on their positions concerning the disputed pretrial matters set forth in the Joint Status Report. The Court declined to adjust the January 23, 2023 scheduling order and stated that the Court would not entertain any motion practice or other initiatives related to the discovery schedule and its scope prior to June 14, 2023. ECF No. 90. After the conference, the Parties continued to work diligently and in good faith to complete fact discovery and resolve all outstanding discovery disputes.

46. Ultimately, as described above, after weeks of negotiations, numerous meet-and-confers, and, in certain instances, bringing discovery issues to the Court, Lead Plaintiff succeeded in obtaining a large volume of documentary evidence from Defendants. Notably, Lead Plaintiff obtained agreements from Defendants to produce personal emails and text messages following the April 18, 2023 conference. This was a significant victory for Lead Plaintiff and a direct result of Lead Plaintiff's diligence in discovery.

47. As Lead Counsel continued to receive and review documents from Defendants, Lead Counsel identified several third parties who it determined likely had relevant information. Thus, in addition to seeking discovery from Defendants, Lead Plaintiff served subpoenas on four third parties. These third parties included former Boston Scientific employees and regulatory agencies, including the U.S. Food and Drug Administration, and these documents proved important to Lead Plaintiff's prosecution of the action. For example, documents from Boston Scientific's regulator helped bolster evidence supporting Lead Plaintiff's falsity arguments, and text messages obtained from former employees helped bolster evidence supporting Lead Plaintiff's scienter arguments.

48. In total, Defendants and third parties together produced over 224,000 pages of documents to Lead Plaintiff. As Lead Counsel received documents, it reviewed and analyzed those documents through regular team meetings, running targeted searches aimed at locating the most relevant documents, analyzing the document trail on several key issues, and creating timelines of events and memoranda concerning key themes germane to the case. The magnitude and complexity of the documents was substantial, and included, among other things, emails, text messages, presentations, regulatory documentation, internal financial analyses, and board materials.

2. Lead Plaintiff’s Review of Defendants’ and Third Parties’ Documents and Other Materials

49. As part of its discovery efforts, Lead Counsel assembled a team of ten staff attorneys. This team included many lawyers who have worked with Lead Counsel for years and have substantial experience on other significant class actions. Their biographies, along with those of all lawyers who worked on this case, are attached hereto in Exhibit 5A-3. As explained below, this team was integral in helping Lead Counsel review and analyze the documentary record, assist expert witnesses, and compile the strongest evidentiary support for Lead Plaintiff’s claims.

50. Throughout this process, Lead Counsel ensured that the review and analysis of documents was conducted efficiently. Lead Counsel eschewed a “linear” review, whereby Lead Plaintiff’s review team would attempt to review each and every document Defendants and third parties produced. Instead, Lead Plaintiff constructed a highly focused process by creating searches to identify documents likely to be related to key themes that were relevant to specific claims at issue in the case. Lead Plaintiff developed this process by closely reviewing notes from its pre-Complaint investigation and numerous other materials, such as information provided by Defendants in their interrogatory responses and during the course of meet-and-confers and

information provided by Lead Plaintiff's experts. Lead Plaintiff further continuously updated the search protocols as it discovered more information throughout the course of discovery. Thus, Lead Plaintiff took significant steps to ensure that its review of materials produced in this litigation was highly focused and efficient and would not waste time or other resources.

51. As part of this process, Lead Counsel reviewed, analyzed, and categorized the documents in the case's electronic database. Before beginning, Lead Counsel developed a review protocol, issue "tags," and guidelines for identifying "hot" documents, as well as a written manual with guidelines for the review and "coding" of documents. Using these tools, Lead Counsel tasked its attorneys with reviewing documents, with the documents most likely to be "hot" put into prioritized batches for review. Lead Counsel's review and analysis of those documents included substantive analytical determinations as to the importance and relevance of each document—including whether each document was "hot," "highly relevant," "relevant," or "irrelevant." For important case documents, attorneys documented their substantive analysis of the documents' relevance and import by making notations on the document review system, explaining what portions of the documents were important, how they related to the issues in the case, and why the attorney believed that information to be significant. Attorneys also "tagged" the specific issues that were involved in each document, such as product design, patient safety, the profitability of the Lotus Edge, and the two-valve strategy.

52. Throughout its review, Lead Counsel also analyzed the adequacy and scope of the document productions by Defendants and third parties. For example, attorneys reviewed privilege redactions and entries in Defendants' privilege logs to assess whether Defendants redacted or withheld potentially non-privileged information. Lead Counsel also reviewed the productions to determine whether they substantively tracked what had been agreed to be produced in response to

document requests. Where Lead Counsel identified deficiencies in a document production, Lead Counsel challenged Defendants or the producing party to set forth the basis for privilege or otherwise address and correct the deficiency.

53. In addition to regular communications that occurred throughout the review process, attorneys who primarily focused on the document review participated in weekly meetings with the full litigation team. In advance of these meetings, “hot” documents and documents that raised questions for discussion that had recently been reviewed and analyzed were compiled and circulated to the broader team. At the meetings, Lead Counsel discussed those documents, including the reasons they were identified as “hot,” attorneys asked questions and discussed similar documents that had been reviewed, and the team generated ideas for research projects and work product following up on open issues. These efforts ensured that the entire litigation team learned of and understood the documentary evidence being developed, provided an opportunity for Lead Counsel to further refine its legal and factual theories, focused the document-review team on developing other supporting evidence, and enabled Lead Counsel to ensure that documents were reviewed consistently. Lead Counsel also often conducted follow-up research and drafted analyses concerning topics of interest that arose at these meetings. In total, Lead Counsel’s team research concerned dozens of discrete issues, including in-depth analyses concerning, among other things, the evolution of the Lotus Edge business, the timing of Boston Scientific executives’ decision to shut down the Lotus program, and patient injuries and deaths associated with a repeating adverse event.

54. In addition, Lead Counsel’s document review efforts supported Lead Plaintiff’s efforts to resolve a number of the Parties’ discovery disputes. As just one example, on July 21, 2023, Defendants informed Lead Plaintiff that they sought to claw back portions of certain

documents that Defendants claimed were privileged. Pursuant to the Parties' stipulated protective order, Lead Counsel reviewed the designated redactions to the documents and, upon review, disagreed with Defendants' privilege assertions for two documents. On August 21, 2023, Lead Plaintiff requested the Court's direction for resolving this discovery dispute concerning Defendants' privilege assertions, and on August 22, 2023, the dispute was referred to Magistrate Judge Jennifer C. Boal. ECF No. 132. That same day, Defendants filed a responsive submission, and Magistrate Judge Boal ordered Defendants to file a motion for protective order in connection with the privilege dispute no later than September 1, 2023 and further ordered that Lead Plaintiff's response would be due within 14 days of the date on which Defendants filed the motion. ECF Nos. 133-34. On September 1, 2023, Defendants filed a motion for protective order concerning the two documents. ECF Nos. 136-38. After the Parties jointly requested a one-week extension for Lead Plaintiff to file its response to the motion, which the Court granted on September 18, 2023 (ECF Nos. 142-44), on September 22, 2023, Defendants withdrew their pending motion for a protective order (ECF No. 145).

55. Further, Lead Counsel prepared chronologies of events, and maintained a central repository of key documents organized by issue, which it continually updated and refined as the team's knowledge of issues expanded. This step enabled attorneys to quickly and efficiently access critical documents necessary to prepare for depositions.

56. At the outset of Lead Counsel's document review efforts, Lead Counsel determined that it would be most efficient to utilize in-house litigation support resources at BLB&G, which provided a far more cost-effective document review platform and algorithm-based "technology-assisted review" ("TAR") (also known as "predictive coding") than those provided by third-party vendors. The TAR software enabled Lead Counsel to further streamline the review by "learning"

the coding of documents as they were reviewed and applying that information to subsequently prioritize further review. While Lead Counsel could not rely on this algorithm to identify all of the necessary documents to prosecute this Action, it did use the algorithm to further streamline its review and to prioritize the review of documents most likely to be relevant to the claims at issue in the case.

3. Defendants' Written Discovery Requests to Lead Plaintiff

57. Defendants served their first set of document requests to Lead Plaintiff, comprising 28 document requests, on January 17, 2023. Lead Plaintiff responded and objected to those requests on February 16, 2023. In connection with Defendants' document requests, Lead Plaintiff engaged in extensive meet-and-confers and exchanged correspondence with Defendants to discuss the scope of Lead Plaintiff's responsive document production.

58. Despite significant disagreements on the scope of Lead Plaintiff's responsive document production, Lead Plaintiff immediately began gathering potentially relevant and responsive materials in order to meet the March 31, 2023 deadline for the substantial completion of document production. While negotiating the scope of Lead Plaintiff's document production with Defendants, Lead Counsel worked with Union to gather these potentially relevant and responsive materials and conducted a robust collection. Lead Counsel then reviewed those documents carefully, including translating certain German-language documents into English. Because Union is an asset manager based in Germany, a significant portion of Union's potentially relevant and responsive materials were in German. Accordingly, several members of the team of staff attorneys assembled for this case possess German language expertise. After this review, Lead Counsel subsequently produced the relevant, responsive, nonprivileged documents in Lead Plaintiff's possession.

59. Lead Plaintiff made its first production of documents to Defendants on March 31, 2023, its second production on May 5, 2023, its third production on May 8, 2023, its fourth production on May 12, 2023, its fifth production on May 25, 2023, and its sixth production on June 27, 2023. In total, Lead Plaintiff produced over 16,800 pages of documents to Defendants.

60. Simultaneously, Defendants served their first set of interrogatories to Lead Plaintiff on January 17, 2023. Lead Plaintiff responded and objected to those interrogatories on February 16, 2023. On April 14, 2023, Defendants served their second set of interrogatories to Lead Plaintiff. Lead Plaintiff responded and objected to those interrogatories on June 2, 2023. The Parties met and conferred over the scope of Lead Plaintiff's interrogatory responses throughout discovery. As a result of these negotiations, Lead Plaintiff served amended responses to Defendants' first set of interrogatories on March 28, 2023.

4. Analysis of Document Discovery and Preparation of Deposition Plan

61. The Parties reached a settlement in principle shortly before Lead Plaintiff was scheduled to take its first fact depositions. Up to that point, however, Lead Plaintiff had prepared extensively for depositions in the case. Indeed, Lead Plaintiff had prepared a full deposition program, including an order of deponents and schedule, had secured dates for certain depositions, and were in the process of negotiating dates for others with Defendants. To build an efficient and effective deposition program, Lead Counsel constructed "key players" lists compiled from various sources, including: (i) its investigation in connection with the Complaint; (ii) document searches, including analyses of hot documents; and (iii) Defendants' interrogatory responses.

62. Once deponents were identified, effectively preparing for depositions required that Lead Counsel devote substantial time, effort, and resources.

63. One of Lead Counsel's most significant projects in preparation for the depositions—both in terms of time and effort as well as substantive importance—was the

preparation of detailed “deposition kits.” These kits typically consisted of dozens of documents with an index summary. The kits also included a detailed memorandum analyzing those documents and the witness’s background, likely areas of knowledge, and role in the events at issue in the case. In addition, as noted above, the attorney team prepared analyses and chronologies concerning several key issues in the case, which were used to prepare for the depositions of each witness who was involved with that issue.

64. Lead Counsel prepared deposition kits for numerous fact witnesses. Preparing deposition kits required a comprehensive, deep dive into each witness’s associated materials, including their: (i) custodial documents, i.e., documents the deponent drafted, received, or maintained in their files; (ii) role in the events at issue, including with respect to information in relevant documents they may not have personally reviewed; (iii) prior relevant testimony or interviews; and (iv) information gleaned from public searches. The preparation of each kit required the analysis of myriad documents in the particular context of each witness, as well as the exercise of professional judgment in narrowing down which documents to present to that deponent. As the kits were prepared and refined, the attorneys preparing to take the depositions worked closely with the attorneys tasked with creating the relevant kits.

5. Expert Discovery

65. Lead Plaintiff also undertook extensive work with experts in connection with its prosecution of the case. Lead Counsel worked with its experts closely throughout each step of expert discovery to analyze the strengths and weaknesses of the case. This process involved careful analysis of the documents produced by Defendants and third parties, as well as critical and strategic thinking about how best to use the evidence gathered throughout discovery to survive summary judgment and prove Lead Plaintiff’s claims at trial.

66. As described above, in connection with investigating the claims asserted in the Complaint, Lead Counsel consulted with Dr. Eric Horlick, Daniel J. Taylor, Ph.D., and Global Economics Group, LLC. Specifically, Dr. Horlick provided expertise on medical devices used in TAVR procedures, including physician experience, clinical, regulatory, and other data; Professor Taylor consulted on executive compensation, insider trading, and the use of Rule 10b5-1 plans at Boston Scientific; and Global Economics Group, LLC provided analysis on class-wide damages suffered by Boston Scientific shareholders.

67. Soon after discovery commenced, Lead Plaintiff retained Peter A. Crosby, a medical device consultant with more than 40 years of industry experience and the former Chief Executive Officer of six medical device companies in four different countries. Mr. Crosby provided Lead Plaintiff with background information concerning the management of Class III medical device product recalls, the metrics used to track medical device market success, and the training requirements and proctoring of surgeons for complex implantable medical devices. Mr. Crosby was in the process of putting together an expert report concerning Boston Scientific's management of the Lotus Edge recall at the time the Parties reached an agreement to settle the case in principle.

68. Lead Plaintiff also retained Lori A. Carr, a regulatory compliance consultant to medical device companies and a former FDA investigator with more than 30 years of experience on both sides of the regulatory fence, specializing in medical device reviews. Ms. Carr provided Lead Plaintiff with background information concerning the regulations that cover Class III medical devices, including how Class III medical devices are approved and recalled. Ms. Carr was in the process of providing Lead Plaintiff with her assessment of Boston Scientific's compliance with

applicable regulations for the approval and recall of the Lotus Edge at the time the Parties reached an agreement to settle the case in principle.

69. Lead Plaintiff also worked closely with Chad W. Coffman, CFA, a financial economist and experienced testifying expert, to analyze class certification and damages issues, as discussed in more detail below.

E. Class Certification and Modification of the Scheduling Order

70. On April 21, 2023, Lead Plaintiff filed its motion for class certification and appointment of class representative and class counsel, requesting that the Court certify a class comprising all persons and entities who purchased or otherwise acquired Boston Scientific common stock during the period from September 16, 2020 through November 16, 2020, inclusive, and were damaged thereby. ECF Nos. 91-93. Lead Plaintiff's motion was supported by the expert report of Chad W. Coffman, CFA, who opined that the market for Boston Scientific common stock was efficient throughout the Class Period, and that damages for class members could be calculated through a common methodology. ECF No. 93-2.

71. In connection with their opposition to Lead Plaintiff's class certification motion, Defendants deposed one representative from Lead Plaintiff: Jochen Riechwald, Union's Assistant General Counsel. Defendants did not depose Mr. Coffman. Lead Counsel reviewed Union's documents, prepared Mr. Riechwald for his deposition, and defended the deposition, which occurred in New York City on May 16, 2023.

72. On May 26, 2023, Defendants opposed Lead Plaintiff's motion for class certification. ECF Nos. 109-110. Defendants argued that Union was subject to unique defenses and thus failed to meet the typical and adequacy requirements of Rule 23(a) of the Federal Rules of Civil Procedure. Among other things, Defendants argued that they had rebutted the *Basic* presumption of reliance because Union continued to purchase Boston Scientific stock after the

alleged corrective disclosure, and therefore Union did not rely on the alleged misrepresentations concerning the Lotus Edge in making its purchases. Defendants also argued that Lead Plaintiff was subject to unique defenses due to Union's involvement in this litigation. Finally, Defendants argued that Lead Plaintiff provided no evidence that it suffered losses during the Class Period.

73. Lead Plaintiff responded to Defendants' arguments in its reply in further support of its class certification motion, which was filed on June 23, 2023. ECF Nos. 119-20. Lead Plaintiff argued that Union was a typical and adequate plaintiff, Union's post-Class Period purchases and involvement in this litigation raised no unique defenses, and Union provided accurate, unrebutted evidence of its Class Period losses. Lead Plaintiff supported this last argument with a declaration by Mr. Coffman, which calculated Union's Class Period losses based on the trading and holding information contained in Union's certification and charts setting forth calculations of Union's losses that had been submitted with Union's motion for appointment as lead plaintiff on February 2, 2021. *See* ECF No. 120-1.

74. After briefing on Lead Plaintiff's class certification motion was completed, on June 28, 2023, this case was reassigned to the Honorable Allison D. Burroughs. ECF No. 123.

75. At around the same time, the Parties began discussions to modify the remaining deadlines in the discovery and pre-trial motions schedule adopted by the Court on January 23, 2023. While the Parties continued to work diligently and in good faith to complete fact discovery and resolve all outstanding discovery disputes and had begun the process of scheduling fact depositions, the Parties anticipated the need for an additional two months to complete document production, resolve any remaining discovery disputes, and take fact depositions. On July 27, 2023, the Parties filed a joint stipulation and proposed order modifying the deadlines for completion of document productions, fact discovery, expert discovery, and dispositive motions. ECF No. 126.

76. On July 27, 2023, the Court held an approximately one-hour oral argument during which the Court addressed the Parties' proposed modifications to the remaining deadlines in the discovery and pre-trial motions schedule and Lead Plaintiff's class certification motion. The Court entered the Parties' proposed schedule and took Lead Plaintiff's class certification motion under advisement. ECF Nos. 127-28.

77. On December 18, 2023, following Lead Plaintiff's filing of its motion for preliminary approval of the Settlement on December 15, the Court denied Lead Plaintiff's motion for class certification as moot. ECF No. 154.

F. Mediation and Settlement

78. In early 2023—with fact discovery underway, and class certification briefing on the horizon—the Parties agreed to try to resolve this case through private mediation. The Parties retained James E. McGuire, Esq., a highly experienced mediator with JAMS, Inc., to act as mediator for the Action.

79. After retaining Mr. McGuire, the Parties scheduled a full-day mediation session on March 27, 2023. Union's representatives, Dr. Carsten Fischer, Mr. Jochen Riechwald, and Ms. Julia Luther, communicated with Lead Counsel and were updated on the progress of the Parties' negotiations throughout the mediation process.

80. In advance of this mediation session, the Parties exchanged detailed mediation submissions concerning the liability and damages issues in the case, and submitted those mediation statements to Mr. McGuire together with numerous exhibits. Through this briefing, and during the first mediation session, which was held by Zoom, it was clear that the disagreements between the Parties were many, and the Parties remained extremely far apart. The counsel engaged in extensive discussions at the March 27, 2023 mediation session, but no agreement was reached at that mediation session.

81. Following the completion of class certification briefing and oral argument on the motion for class certification, and in advance of the beginning of fact depositions, the Parties recognized that there was an opportunity to re-engage about a potential resolution to the case. The Parties agreed to engage in a second full-day session before the Mediator on September 8, 2023. In advance of the mediation session, Lead Plaintiff submitted a detailed supplemental mediation statement to Boston Scientific and Mr. McGuire, and included supporting exhibits compiled from documents produced in the course of discovery.

82. The participants in the September 8, 2023 mediation session, which was held in person in Boston, included, as in the first session, (i) attorneys from BLB&G; (ii) attorneys from counsel for Defendants, Skadden, Arps, Slate, Meagher & Flom LLP; (iii) attorneys for Defendants' insurance carriers; and (iv) in-house counsel from Boston Scientific. At the September 8, 2023 mediation session, the Parties again engaged in robust negotiations regarding their clients' positions in the litigation. These negotiations were extremely hard fought, and no agreement was reached during the formal mediation session that day. In fact, it was only during further settlement discussions that continued into the evening following the conclusion of the formal mediation session, and only after further discussions that continued through the next day, that the Parties reached an agreement in principle to settle the Action for \$38.5 million.

83. The Parties' agreement in principle was memorialized in a term sheet executed on October 23, 2023 (the "Term Sheet"). The Term Sheet set forth, among other things, the Parties' agreement to settle and release all claims against Defendants in the Action in return for a cash payment of \$38,500,000 for the benefit of the Settlement Class, subject to certain terms and conditions and the execution of a customary "long form" stipulation and agreement of settlement and related papers.

84. Following the execution of the Term Sheet, the Parties negotiated the final terms of the Settlement and drafted the Stipulation and Agreement of Settlement and related settlement papers. On December 14, 2023, the Parties executed the Stipulation, which embodies the final and binding agreement to settle the Action. *See* ECF No. 152-1. On December 15, 2023, Lead Plaintiff submitted the Parties' Stipulation to the Court as part of its motion for preliminary approval of the Settlement. ECF Nos. 152-153.

85. On December 27, 2023, the Court entered its Order Preliminarily Approving Settlement and Authorizing Dissemination of Notice of Settlement (ECF No. 155) ("Preliminary Approval Order"), which, among other things: (1) preliminarily approved the Settlement; (2) approved the form of Notice, Summary Notice, and Claim Form, and authorized notice of the Settlement to be given to potential Settlement Class Members through mailing of the Notice and Claim Form, posting the Notice and Claim Form on a Settlement website, and publication of the Summary Notice in *The Wall Street Journal* and over the *PR Newswire*; (3) established procedures and deadlines by which Settlement Class Members could participate in the Settlement, request exclusion from the Settlement Class, or object to the Settlement, the proposed Plan of Allocation, and/or the fee and expense application; and (4) set a schedule for the filing of opening papers and reply papers in support of the proposed Settlement, Plan of Allocation, and the Fee and Expense Application. The Preliminary Approval Order also scheduled the Settlement Hearing for April 23, 2024 at 9:00 a.m. to determine, among other things, whether the Settlement should be finally approved.

III. RISKS OF CONTINUED LITIGATION

86. The Settlement provides an immediate and certain benefit to the Settlement Class in the form of a \$38.5 million cash payment. Lead Plaintiff and Lead Counsel believe that the proposed Settlement is an excellent result for the Settlement Class.

87. As explained below, Lead Plaintiff faced significant risks with respect to proving liability and recovering full damages in this case. To prevail in this case, Lead Plaintiff had the burden to convince a unanimous jury by a preponderance of the evidence of each of the elements of its claims, including that (i) Defendants made misstatements; (ii) the misstatements were material; (iii) the misstatements were made with scienter (i.e., knowingly or with deliberate recklessness); (iv) investors relied upon the misstatements; and (v) Defendants' fraud caused investors' losses.

88. Moreover, absent a settlement, Lead Plaintiff would still need to prevail at several additional stages of the litigation, including defeating Defendants' opposition to Lead Plaintiff's motion for class certification, Defendants' anticipated motion for summary judgment, at trial, and on appeal. At each of these stages, Lead Plaintiff would have faced significant risks related to establishing liability and full damages, including, among other things, overcoming Defendants' falsity, scienter, and loss causation challenges. Even after any trial, Lead Plaintiff would have faced post-trial motions, including a potential motion for judgment as a matter of law, as well as further appeals that might have prevented Lead Plaintiff from successfully obtaining a recovery for the Settlement Class.

89. The Settlement Amount—\$38.5 million in cash, plus interest—represents a significant recovery for the Settlement Class. As discussed below, it also represents a significant portion of the recoverable damages in the Action as determined by Lead Plaintiff's damages

expert—particularly after considering Defendants’ substantial arguments with respect to liability and damages. These arguments created a significant risk that, after years of protracted litigation, Lead Plaintiff and the Settlement Class would have achieved no recovery at all, or a smaller recovery than the Settlement Amount.

A. General Risks in Prosecuting Securities Class Actions

90. In recent years, securities class actions have become riskier and more difficult to prove given changes in the law, including numerous United States Supreme Court decisions. For example, data from Cornerstone Research show that, in each year from 2014 and 2020, approximately half of all securities class actions filed were dismissed. See CORNERSTONE RESEARCH, SECURITIES CLASS ACTION FILINGS: 2023 YEAR IN REVIEW (2024), attached hereto as Exhibit 2, at 19.

91. Even when they have survived motions to dismiss, securities class actions can be defeated either at the class certification stage, in connection with *Daubert* motions, or at summary judgment. For example, class certification has been denied in numerous cases in recent years. *See, e.g., In re Finisar Corp. Sec. Litig.*, 2017 WL 6026244 (N.D. Cal. Dec. 5, 2017), *reconsideration denied*, 2018 WL 3472334 (N.D. Cal. Jan. 18, 2018), *and leave to appeal denied, Oklahoma Firefighters Pension & Ret. Sys. v. Finisar Corp.*, 2018 WL 3472714 (9th Cir. July 13, 2018); *Gordon v. Sonar Cap. Mgmt. LLC*, 92 F. Supp. 3d 193 (S.D.N.Y. Mar. 19, 2015); *Sicav v. James Jun Wang*, 2015 WL 268855 (S.D.N.Y. Jan. 21, 2015); *IBEW Local 90 Pension Fund v. Deutsche Bank AG*, 2013 WL 5815472 (S.D.N.Y. Oct. 29, 2013); *George v. China Auto. Sys., Inc.*, 2013 WL 3357170 (S.D.N.Y. July 3, 2013); *Colman v. Theranos, Inc.*, 325 F.R.D. 629, 651 (N.D. Cal. 2018); *Smyth v. China Agritech, Inc.*, 2013 WL 12136605 (C.D. Cal. Sept. 26, 2013); *In re STEC Inc. Sec. Litig.*, 2012 WL 6965372 (C.D. Cal. Mar. 7, 2012).

92. Multiple securities class actions also recently have been dismissed at the summary judgment stage, including in an action against the same corporate defendant, Boston Scientific, and particularly in cases involving alleged misconduct by drug and device manufacturers. *See In re Bos. Sci. Corp. Sec. Litig.*, 708 F. Supp. 2d 110, 113 (D. Mass. 2010), *aff'd sub nom. Miss. Pub. Emps.' Ret. Sys. v. Bos. Sci. Corp.*, 649 F.3d 5 (1st Cir. 2011); *see also, e.g., In re Mylan N.V. Sec. Litig.*, 2023 WL 2711552 (S.D.N.Y. Mar. 30, 2023) (granting summary judgment after approximately six years of litigation); *In re Allergan PLC Sec. Litig.*, 2022 WL 17584155 (S.D.N.Y. Dec. 12, 2022) (granting summary judgment after approximately four years of litigation); *Murphy v. Precision Castparts Corp.*, 2021 WL 2080016, at *6 (D. Or. May 24, 2021) (granting summary judgment after approximately five years of litigation); *In re Retek Inc. Sec. Litig.*, 621 F. Supp. 2d 690 (D. Minn. 2009) (granting summary judgment on loss causation grounds after seven years of litigation); *In re Barclays Bank PLC Sec. Litig.*, 2017 WL 4082305 (S.D.N.Y. September 13, 2017) (summary judgment granted after eight years of litigation); *In re Omnicom Grp., Inc. Sec. Litig.*, 541 F. Supp. 2d 546, 554-55 (S.D.N.Y. 2008), *aff'd*, 597 F.3d 501 (2d Cir. 2010) (summary judgment granted after six years of litigation); *see also In re Xerox Corp. Sec. Litig.*, 935 F. Supp. 2d 448 (D. Conn. 2013), *aff'd*, 766 F.3d 172 (2d Cir. 2014); *Fosbre v. Las Vegas Sands Corp.*, 2017 WL 55878 (D. Nev. Jan. 3, 2017), *aff'd sub nom., Pompano Beach Police & Firefighters' Ret. Sys. v. Las Vegas Sands Corp.*, 732 F. App'x 543 (9th Cir. 2018); *Perrin v. Sw. Water Co.*, 2014 WL 10979865 (C.D. Cal. July 2, 2014); *In re Novatel Wireless Sec. Litig.*, 830 F. Supp. 2d 996, 1015 (S.D. Cal. 2011); *In re Oracle Corp. Sec. Litig.*, 2009 WL 1709050 (N.D. Cal. June 19, 2009), *aff'd*, 627 F.3d 376 (9th Cir. 2010); *In re REMEC Inc. Sec. Litig.*, 702 F. Supp. 2d 1202 (S.D. Cal. 2010). Even cases that have survived summary judgment have been dismissed prior to trial in connection with *Daubert* motions. *See, e.g., Bricklayers and Trowel*

Trades Int'l Pension Fund v. Credit Suisse First Boston, 853 F. Supp. 2d 181 (D. Mass. 2012), *aff'd*, 752 F.3d 82 (1st Cir. 2014) (granting summary judgment *sua sponte* in favor of defendants after finding that plaintiffs' expert was unreliable).

93. Even when securities class action plaintiffs are successful in certifying a class, prevailing at summary judgment, and overcoming *Daubert* motions, there remain significant risks that a jury will not find the defendants liable or award expected damages. *See, e.g., In re Tesla Inc., Sec. Litig.*, 2023 WL 4032010 (N.D. Cal. June 14, 2023) (jury verdict for defense delivered in securities class action involving Elon Musk's tweets about taking Tesla private even though that court had already found the tweets were false and Musk acted recklessly in issuing them, and the same conduct had resulted in SEC charges and a settlement). Further, post-trial motions, based on a complete record, also present substantial risks. For example, in *In re BankAtlantic Bancorp, Inc. Securities Litigation*, a jury rendered a verdict in plaintiffs' favor on liability in 2010. 2011 WL 1585605, at *6 (S.D. Fla. Apr. 25, 2011). In 2011, the district court granted defendants' motion for judgment as a matter of law and entered judgment in favor of the defendants on all claims. *Id.* at *38. In 2012, the Eleventh Circuit affirmed the district court's ruling, finding that there was insufficient evidence to support a finding of loss causation. *See Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713, 725 (11th Cir. 2012).

94. In sum, securities class actions face serious risks of dismissal and non-recovery at all stages of the litigation.

B. Specific Risks Concerning this Action

95. While Lead Plaintiff believes that its claims have merit, Lead Plaintiff faced substantial risks that Defendants would succeed in eliminating all or part of the case in connection with summary judgment, pre-trial motions, at trial, or on post-trial appeal.

96. From a “big picture” perspective, such risks were heightened here because this case lacked certain obvious badges of fraud that can provide significant tailwinds for Lead Plaintiff’s discovery efforts and overall case. In particular, the SEC decided not to recommend an enforcement action against Boston Scientific after examining the same alleged misstatements and conduct at issue in this case, even though the SEC could have asserted claims that did not require it to prove scienter. Thus, with the SEC not recommending an enforcement action against Boston Scientific, Lead Plaintiff faced an uphill battle in successfully prosecuting securities fraud class claims in this context. In the face of this challenge, Lead Plaintiff and Lead Counsel committed significant resources to this case and achieved success. As set forth in more detail below, Lead Plaintiff faced substantial challenges to proving liability for its claims and to proving significant damages.

97. Although Lead Counsel respectfully submits that, by the time of the mediation, ample discovery had been taken to allow all parties to reasonably assess the fairness of the proposed Settlement, they were also aware that deposition discovery of Defendants still remained to be completed absent the Settlement. In addition, formal expert discovery on hotly contested liability issues had not yet begun, and the Parties faced the further risks and expense of complex summary judgment motions and trial. Accordingly, although both sides were able to present information that supported their respective claims and defenses, there was clearly substantial risk as to how the further testimony of fact and expert witnesses would ultimately play out. In light of these risks, the significant, immediate benefit of the \$38.5 million Settlement is a particularly strong result for the Settlement Class. *See In re StockerYale, Inc. Sec. Litig.*, 2007 WL 4589772, at *3 (D.N.H. Dec. 18, 2007) (fact that “various defenses could result in no liability and zero recovery for the class” favors approval of the settlement).

1. Risks Associated with Proving Falsity and Materiality

98. The alleged false and misleading statements remaining in this case were Defendant Mahoney's September 16, 2020 statement that the Lotus Edge was and "will continue to be an important growth driver," and his October 28, 2020 statement that the Company's two-valve strategy "makes sense." In their motion to dismiss and in their opposition to Lead Plaintiff's class certification motion, Defendants argued that these statements were neither false nor material to investors. While these two misstatements were sustained at the motion to dismiss stage, Defendants would have remained free to relitigate any of their arguments at summary judgment or trial, where the applicable standards would likely have been more challenging for Lead Plaintiff.

99. To begin, Defendants likely would have argued that Defendant Mahoney's statements that the Lotus Edge would continue to be a "growth driver" and part of the Company's two-valve strategy were either true, or that he reasonably believed them at the time he made them. Defendants likely would have also argued that Boston Scientific had devoted significant resources to the Lotus Edge before and after the commercial launch of the product in the United States, and that the Company's decision to shut down the Lotus Edge platform occurred well after Defendant Mahoney's statements. In support of these contentions, Defendants likely would have pointed to certain internal documents showing that the final decision to recall the Lotus Edge was made after Defendant Mahoney's statements, internal documents reflecting the efforts the Company made to ensure the success of the Lotus Edge launch and to address the challenges the product faced during the launch, as well as documents reflecting that senior executives only learned of certain problems with the device (and the Company's inability to adequately address them) just prior to the recall decision.

100. Further, Defendants likely would have argued that Mahoney's challenged statements were not material, and were statements of opinion and forward-looking statements

about the Lotus Edge, and thus were not actionable as a matter of law. *See, e.g., In re Tesla Inc., Sec. Litig.*, 2023 WL 4032010, at *7-8 (N.D. Cal. June 14, 2023) (sustaining jury verdict for defendants on materiality grounds even though falsity had been established, noting that “substantial evidence at trial supported the conclusion that the Tweets were not material”). That defense was particularly significant in this case, as Defendants would be able to argue at summary judgment and at trial that Defendant Mahoney’s positive statements about the Lotus Edge were inherently vague “soft” statements that did not lend themselves to objective verification. *See, e.g., In re Bos. Sci. Corp. Sec. Litig.*, 646 F. Supp. 3d. at 283 (describing sustained statements as actionable opinions that were “adequately alleged to have been materially misleading when viewed in the light most favorable to Plaintiff”).

101. While Lead Plaintiff believes it had significant arguments supported by discovery to make in response, there was a significant risk that the Court or a factfinder could have credited them at either summary judgment or trial. In sum, there was a significant risk that Lead Plaintiff would not be able to establish the material falsity of both challenged statements at trial, and that one or both statements could be dismissed. Had that happened, recovery for Lead Plaintiff and the Settlement Class would have either been severely reduced or eliminated entirely.

2. Risks Associated with Proving Scienter

102. Even if Lead Plaintiff had been able to establish falsity and materiality, it would have faced significant risk in establishing Defendant Mahoney’s scienter.

103. As an initial matter, the Court sustained Lead Plaintiff’s scienter allegations as to Defendant Mahoney based on the temporal proximity between Defendant Mahoney’s September 16, 2020 and October 28, 2020 statements and the November 17, 2020 announcement of the Lotus Edge recall. *See generally In re Bos. Sci. Corp. Sec. Litig.*, 646 F. Supp. 3d at 282. If, as discussed above, Defendants had been able to show that the decision to recall the Lotus Edge took place after

Defendant Mahoney’s last statement, that would have severely limited Lead Plaintiff’s scienter arguments as well as their falsity arguments. Defendants likely would have further argued Boston Scientific had taken various corrective measures to address Lotus Edge adverse events and otherwise address its performance, that certain problems with the Lotus Edge (and the Company’s inability to adequately address them) only became known to senior executives just prior to the recall decision, and that Defendant Mahoney therefore had a reasonable basis to expect that the product could be successful and “made sense” when the statements were made. As the Court noted in the motion to dismiss decision, Defendant Fitzgerald publicly stated that it took “about 12 months after full launch [in the fall of 2019] to fully evaluate” the Lotus Edge and reach a decision about the platform—crediting Defendants’ argument about the timing of the recall decision and that Company executives could not be found liable for securities fraud simply for taking time to “evaluate” a product’s potential. *Id.*

104. Specifically, in another securities case against Boston Scientific, *In re Boston Scientific Corp. Sec. Litig.*, 708 F. Supp. 2d 110 (D. Mass. 2010), the court dismissed investors’ claims following discovery because the court determined no reasonable jury could conclude that “[d]efendants were aware of a significant prospect for recalls until shortly before those recalls were undertaken” in light of evidence of the seemingly positive impact of several “corrective and preventive actions” the company had taken prior to the recall. *Id.* at 126. Here, Defendants likely would have argued Boston Scientific took similar corrective measures and other steps to address Lotus Edge’s performance, giving Defendants confidence in the Lotus Edge’s prospects that reflect “a reasonable effort in light of developing information to address, rather than ignore, risks inherent in the launch of a product” like the Lotus Edge. *Id.* at 128.

105. In addition, Defendants likely would have argued that Defendant Mahoney's stock sales were made pursuant to a Rule 10b5-1 stock trading plan and were not suspicious in timing under relevant case law, and thus did not provide any motive that would support a finding of scienter.

106. Had Lead Plaintiff failed to create a triable issue regarding scienter at summary judgment, or failed to prevail on establishing scienter at trial, the Settlement Class would not be able to recovery anything in this Action.

107. There is also the risk that an intervening change in the law can result in the dismissal of a case after significant effort has been expended. The Supreme Court has heard several securities cases in recent years, often announcing holdings that dramatically changed the law in the midst of long-running cases—including after trial. *See Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund*, 575 U.S. 175 (2015); *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258 (2014); *Comcast Corp. v Behrend*, 569 U.S. 27 (2013); *Janus Cap. Grp., Inc. v. First Derivative Traders*, 564 U.S. 135 (2011); *Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247 (2010) ("*Morrison*"). As a result, many cases have been lost after thousands of hours have been invested in briefing and discovery. For example, in *In re Vivendi Universal, S.A. Securities Litigation*, after a verdict for class plaintiffs, the district court granted judgment for defendants following a change in the law announced in *Morrison*, dismissing claims that had been proven at trial for the vast majority of the class. 765 F. Supp. 2d 512, 524, 533 (S.D.N.Y. 2011). Changes in law at the Circuit level has similarly upended pending cases; for example, in *Murphy v. Precision Castparts Corp.*, the court reconsidered its denial of summary judgment and granted it for defendants based explicitly on an intervening Ninth Circuit decision. 2021 WL 2080016, at *6.

3. Risks Associated with Proving Loss Causation and Damages

108. Even if Lead Plaintiff had successfully established Defendants' material misrepresentations and scienter, it would still have faced meaningful challenges in establishing loss causation and damages in this Action.

109. While Defendants did not challenge Lead Plaintiff's loss causation allegations at the motion to dismiss or class certification stages, Defendants could have argued at a later stage in the case that not all of the decline in the price of Boston Scientific common stock following the November 17, 2020 recall announcement was recoverable as damages. To advance this argument, Defendants could have introduced expert testimony about the level of artificial inflation in the stock that could be attributed to the two sustained misrepresentations, and that could have played out in a difficult-to-predict "battle of the experts" at summary judgment or trial. If accepted, this argument would have reduced damages very substantially, or eliminated them entirely.

110. Defendants could have further argued that any damages resulting from the price decline triggered by the announcement of the Lotus Edge recall must be significantly discounted because the fact of the Lotus Edge's poor performance was generally known to the market before the alleged corrective disclosure. If accepted, this argument would have reduced damages very substantially.

111. Along similar lines, Defendants could have also argued that the nature of the alleged misstatements here were too generic to support price impact (as required for class certification) or that the announcement of the Lotus recall did not sufficiently "correct" any false impression created by the alleged false statements (as required for loss causation). Indeed, at the motion to dismiss stage, the Court dismissed one of two alleged corrective disclosures, reasoning that the first alleged corrective disclosure—the announcement that Lotus Edge failed to obtain FDA approval for an expanded indication—did not "relate to the same subject matter as the alleged

misrepresentation” and failed to demonstrate “a causal connection between the loss and the actionable misstatements.” *In re Bos. Sci. Corp. Sec. Litig.*, 646 F. Supp. 3d at 291-92 (emphasis in original). In addition, following the parties’ briefing on the motion for class certification, the Second Circuit issued its decision in *Arkansas Teacher Retirement System v. Goldman Sachs Group, Inc.*, decertifying the previously certified class on the ground that Goldman’s allegedly false statements were too “generic” to support price impact, and there was an “insufficient link between the corrective disclosures and the alleged misrepresentations.” 77 F.4th 74, 96-105 (2d Cir. 2023). Here, Defendants could have relied on the Court’s ruling on the motion to dismiss and the *Goldman* decision to argue that Defendant Mahoney’s statements about Lotus being a “growth driver” and a strategy that “made sense” were too generic, and the subsequent announcement of the Lotus Edge recall insufficiently “corrective” of those generic statements, to support price impact or loss causation—arguments that, if accepted, could have eliminated any recovery whatsoever.

4. Risks After Trial

112. Even if Lead Plaintiff overcame all the above risks and prevailed at trial, Defendants would have appealed any judgment in Lead Plaintiff’s and the class’s favor. Such an appeal could have taken years, and could have been successful. For example, in *Glickenhau & Co. v. Household Int’l Inc.*, 787 F.3d 408 (7th Cir. 2015), a securities fraud class action alleging a massive predatory lending scheme, the plaintiffs won a trial verdict. Defendants appealed, challenging loss causation, as well as a jury instruction about who legally “made” a statement for liability purposes. Defendants prevailed, and the Seventh Circuit set aside the judgment that plaintiffs had won.

113. Moreover, even if a judgment in Lead Plaintiff’s favor was affirmed on appeal, Defendants could then have challenged the reliance and damages of each class member, including

Lead Plaintiff, in an extended series of individual proceedings. That process could have taken multiple additional years, and could have severely reduced any recovery to the class as Defendants “picked off” class members. For example, in *In re Vivendi Universal SA Securities Litigation*, the district court acknowledged that in any post-trial proceedings, “Vivendi is entitled to rebut the presumption of reliance on an individual basis,” and that “any attempt to rebut the presumption of reliance on such grounds would call for separate inquiries into the individual circumstances of particular class members.” 765 F. Supp. 2d 520, 583-584 (S.D.N.Y. 2011), *aff’d*, 838 F.3d 223 (2d Cir. 2016). Over the course of several years, Vivendi indeed successfully challenged several class members’ damages in individual proceedings.

114. In addition, as noted above, the risk of an intervening change in the law is particularly relevant here.

115. Thus, even if Lead Plaintiff and the class prevailed at trial, the subsequent processes of an appeal, challenges to individual class members, and intervening changes in the law could have severely reduced or even eliminated any recovery—and, at minimum, could have added several years of further delay.

116. The Settlement eliminates these significant litigation risks and provides a substantial and certain recovery for the Settlement Class. *See Christine Asia Co., Ltd. v. Yun Ma*, 2019 WL 5257534, at *13 (S.D.N.Y. Oct. 16, 2019) (“The Parties developed and would have presented competing evidence on these issues, including competing expert evidence. While Lead Plaintiff proceeded as though it had the better arguments, the risk remained that Defendants could have defeated loss causation, or significantly diminished damages[.]”).

C. The Settlement Amount Compared to the Likely Maximum Damages that Could Be Proved at Trial

117. The Settlement Amount—\$38.5 million in cash, plus interest—represents a significant recovery for the Settlement Class. The Settlement is more than two and half times the size of the median securities class-action settlement in the First Circuit from 2014 to 2023 (\$14.1 million). *See* CORNERSTONE RESEARCH, SECURITIES CLASS ACTION SETTLEMENTS: 2023 REVIEW AND ANALYSIS (2024), attached hereto as Exhibit 3, at 20.

118. The \$38.5 million Settlement is also a very favorable result when it is considered in relation to the maximum amount of damages that could be reasonably established at trial, in the event that Lead Plaintiff prevailed on class certification and liability issues, including falsity and scienter, at summary judgment. Assuming Lead Plaintiff prevailed on all class certification and liability issues, its damages expert had determined that that *maximum* reasonably recoverable damages at trial would be approximately \$176 million to \$207 million (depending on whether class members' gains on their sales of shares purchased before the Class Period are offset against their losses on shares purchased during the Class Period).

119. Importantly, this estimated range assumes Lead Plaintiff's complete success in establishing Defendants' liability on the remaining claims, and that the trier of fact would reject Defendants' loss causation and damages arguments. Thus, the \$38.5 million Settlement represents 18.5% to 22% of the maximum recoverable damages, which is many multiples above the median percentage recovery seen in comparable cases. *See, e.g., Medoff v. CVS Caremark Corp.*, 2016 WL 632238, at *6 (D.R.I. Feb. 17, 2016) (approving settlement recovering 5.33% of maximum damages and noting that it was "well above the median percentage of settlement recoveries in comparable securities class action cases"); *In re Merrill Lynch & Co. Inc. Research Reports Sec. Litig.*, 2007 WL 313474, at *10 (S.D.N.Y. Feb. 1, 2007) (settlement representing 6.25% of

estimated maximum damages was at the “higher end of the range of reasonableness of recovery in class action securities litigations”).

120. Given the meaningful litigation risks, and the immediacy and amount of the \$38,500,000 recovery for the Settlement Class, Lead Plaintiff and Lead Counsel believe that the Settlement is an excellent result; fair, reasonable, and adequate; and in the best interest of the Settlement Class.

IV. LEAD PLAINTIFF’S COMPLIANCE WITH THE COURT’S PRELIMINARY APPROVAL ORDER REQUIRING ISSUANCE OF NOTICE

121. The Court’s Preliminary Approval Order directed that the Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for Attorneys’ Fees and Litigation Expenses (the “Notice”) and Proof of Claim and Release Form (“Claim Form”) be disseminated to the Settlement Class. The Preliminary Approval Order also set an April 2, 2022 deadline for Settlement Class Members to submit objections to the Settlement, the Plan of Allocation, and/or the Fee and Expense Application or to request exclusion from the Settlement Class, and set a final approval hearing date of April 23, 2024.

122. Pursuant to the Preliminary Approval Order, Lead Counsel instructed JND Legal Administration (“JND”), the Court-approved Claims Administrator, to begin disseminating copies of the Notice and the Claim Form by mail and to publish the Summary Notice. The Notice contains, among other things, a description of the Action, the Settlement, the proposed Plan of Allocation, and Settlement Class Members’ rights to participate in the Settlement, object to the Settlement, the Plan of Allocation and/or the Fee and Expense Application, or exclude themselves from the Settlement Class. The Notice also informs Settlement Class Members of Lead Counsel’s intent to apply for an award of attorneys’ fees in an amount not to exceed 20% of the Settlement Fund, and for Litigation Expenses in an amount not to exceed \$700,000. To disseminate the

Notice, JND obtained information from Boston Scientific and from banks, brokers, and other nominees regarding the names and addresses of potential Settlement Class Members. *See* Declaration of Luiggy Segura Regarding: (A) Mailing of the Notice and Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date (“Segura Decl.”), attached hereto as Exhibit 4, at ¶¶ 3-9.

123. JND began mailing copies of the Notice and Claim Form (together, the “Notice Packet”) to potential Settlement Class Members and nominee owners on January 19, 2024. *See* Segura Decl. ¶¶ 3-6. As of March 15, 2024, JND had disseminated a total of 126,685 Notice Packets to potential Settlement Class Members and nominees. *Id.* ¶ 9.

124. On February 6, 2024, in accordance with the Preliminary Approval Order, JND caused the Summary Notice to be published in *The Wall Street Journal* and to be transmitted over the *PR Newswire*. *Id.* ¶ 10.

125. Lead Counsel also caused JND to establish a dedicated settlement website, www.BostonScientificSecuritiesLitigation.com, to provide potential Settlement Class Members with information concerning the Settlement and access to copies of the Notice and Claim Form, as well as the Stipulation, Preliminary Approval Order, and Amended Complaint. *See* Segura Decl. ¶ 11. That website became operational on January 19, 2024. *Id.* Lead Counsel also made copies of the Notice and Claim Form and other documents available on its own website, www.blbglaw.com.

126. As set forth above, the deadline for Settlement Class Members to file objections to the Settlement, Plan of Allocation, and/or Fee and Expense Application, or to request exclusion from the Settlement Class is April 2, 2024. To date, just three requests for exclusion have been received. *See* Segura Decl. ¶ 13. In addition, no objections to the Settlement, Plan of Allocation,

or Lead Counsel's Fee and Expense Application have been received. Lead Counsel will file reply papers on or before April 16, 2024 that will address all requests for exclusion and any objections that may be received.

V. ALLOCATION OF THE PROCEEDS OF THE SETTLEMENT

127. Pursuant to the Preliminary Approval Order, and as set forth in the Notice, all Settlement Class Members who want to be eligible to participate in the distribution of the Net Settlement Fund must submit a valid Claim Form with all required information postmarked (if mailed) or submitted online no later than May 28, 2024. As set forth in the Notice, the Net Settlement Fund will be distributed among Settlement Class Members who submit eligible claims according to the plan of allocation approved by the Court.

128. Lead Counsel consulted with Lead Plaintiff's damages expert in developing the proposed plan of allocation for the Net Settlement Fund (the "Plan of Allocation"). Lead Counsel believes that the Plan of Allocation provides a fair and reasonable method to equitably allocate the Net Settlement Fund among Settlement Class Members who suffered losses as result of the conduct alleged in the Action.

129. The Plan of Allocation is set forth at pages 17 to 21 of the Notice. *See Segura Decl., Ex. A* at pp. 17-21. As described in the Notice, the objective of the Plan of Allocation is to distribute the Settlement proceeds equitably among those Settlement Class Members who suffered economic losses as a proximate result of the alleged wrongdoing. The calculations under the Plan of Allocation are intended as a method to weigh the claims of Settlement Class Members against one another for the purposes of making an equitable allocation of the Net Settlement Fund. *See Notice* ¶ 77.

130. In developing the Plan of Allocation, Lead Plaintiff's damages expert calculated the estimated amount of artificial inflation in the per-share price of Boston Scientific common stock which allegedly was proximately caused by Defendants' alleged materially false and misleading statements and omissions during the Class Period. *See* Notice ¶ 78. In calculating the estimated artificial inflation allegedly caused by those misrepresentations and omissions, Lead Plaintiff's damages expert considered the price change in Boston Scientific common stock in reaction to the public disclosure on November 17, 2020 that allegedly corrected the alleged misrepresentations and omissions, adjusting for price changes attributable to market or industry factors that day. *Id.* Based on these calculations, there was a total of \$2.77 in estimated artificial inflation per share in the Boston Scientific common stock price that was removed on November 17, 2020. *Id.*

131. In order to have recoverable damages in connection with purchases or acquisitions of Boston Scientific common stock during the Class Period, the disclosure of the alleged misrepresentations or omissions must be the cause of the decline in the price of the Boston Scientific common stock. In this case, Lead Plaintiff alleges that Defendants made false statements and omitted material facts during the Class Period (September 16, 2020 through November 16, 2020), which had the effect of artificially inflating the prices of Boston Scientific common stock, and that the artificial inflation was removed from the price of Boston Scientific common stock as the result of the alleged corrective disclosure that occurred before the opening of trading on November 17, 2020. Thus, in order to be eligible under the Plan of Allocation, shares of Boston Scientific common stock must have been purchased or otherwise acquired during the Class Period and held through the end of the Class Period. *See* Notice ¶¶ 79, 82.A.

132. Recognized Loss Amounts are calculated under the Plan of Allocation for each purchase or acquisition of Boston Scientific common stock during the Class Period that is listed on a Claimant's Claim Form and for which adequate documentation is provided. For shares purchased during the Class Period and sold during the Class Period, the Recognized Loss Amount is zero, because, as discussed above, those shares were not damaged by the alleged fraud. *See* Notice ¶ 82.A. For shares purchased during the Class Period and sold during the 90-day period after the Class Period, Recognized Loss Amounts are calculated as *the least of*: (a) the amount of alleged artificial inflation in Boston Scientific common stock (\$2.77 per share), (b) the difference between the purchase price and the sale price; or (c) the difference between the purchase price and the average closing price of Boston Scientific from November 17, 2020 and the date of sale. *See* Notice ¶ 82.B. For shares purchased during the Class Period and held until the end of 90-day period after the Class Period (February 12, 2021) or longer, the Recognized Loss Amount is the lesser of: (a) the amount of alleged artificial inflation in Boston Scientific common stock (\$2.77) per share, or (b) the difference between the purchase price and the average closing price of Boston Scientific during the 90-day period (\$35.63 per share). *See* Notice ¶ 82.C.

133. The sum of a Claimant's Recognized Loss Amounts for all of his, her, or its purchases of Boston Scientific common stock during the Class Period is the Claimant's "Recognized Claim." Notice ¶ 83. The Net Settlement Fund will be allocated to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Claims. Notice ¶¶ 90-91. If an Authorized Claimant's *pro rata* distribution amount calculates to less than ten dollars, no payment will be made to that Authorized Claimant. *Id.* ¶ 92. Those funds will be included in the distribution to the Authorized Claimants whose payments exceed the ten-dollar minimum.

134. One hundred percent of the Net Settlement Fund will be distributed to Authorized Claimants. If any funds remain after the initial *pro rata* distribution, as a result of uncashed or returned checks or other reasons, subsequent cost-effective distributions to Authorized Claimants will be conducted. Notice ¶ 93. Only when the residual amount left for re-distribution to Settlement Class Members is so small that a further re-distribution would not be cost effective (for example, where the administrative costs of conducting the additional distribution would largely subsume the funds available), will those funds be donated to one or more non-sectarian, not-for-profit, 501(c)(3) organizations to be selected by Lead Counsel and approved by the Court. *See id.*

135. In sum, the Plan of Allocation was designed to fairly and rationally allocate the proceeds of the Net Settlement Fund among Settlement Class Members based on damages they suffered on purchases of Boston Scientific common stock that were attributable to the misconduct alleged in the Action. Accordingly, Lead Counsel respectfully submits that the Plan of Allocation is fair and reasonable and should be approved by the Court. To date, no objections to the proposed Plan of Allocation have been received.

VI. THE FEE AND EXPENSE APPLICATION

136. In addition to seeking final approval of the Settlement and Plan of Allocation, Lead Counsel is applying to the Court, on behalf of Plaintiffs' Counsel, for an award of attorneys' fees of 20% of the Settlement Fund, plus interest earned at the same rate as the Settlement Fund (the "Fee Application"). Lead Counsel also requests payment for litigation expenses incurred by Plaintiffs' Counsel in connection with the prosecution and settlement of the Action in the amount of \$391,399.98. Lead Counsel further requests reimbursement to Lead Plaintiff of \$74,250 in costs and expenses that Lead Plaintiff incurred directly related to its representation of the Settlement Class, as permitted by the PSLRA, 15 U.S.C. § 78u-4(a)(4). The requested attorneys' fees,

litigation expenses, and PSLRA award are to be paid from the Settlement Fund. The legal authorities supporting the requested fee and expenses are discussed in Lead Counsel's Fee Memorandum. The primary factual bases for the requested fee and expenses are summarized below.

A. The Fee Application

137. Lead Counsel is applying for a fee award to be paid from the Settlement Fund on a percentage basis. As set forth in the accompanying Fee Memorandum, the percentage method is the appropriate method of fee recovery because it aligns the lawyers' interest in being paid a fair fee with the interest of the Lead Plaintiff and the Settlement Class in achieving the maximum recovery in the shortest amount of time required under the circumstances and taking into account the litigation risks faced in a class action. Use of the percentage method has been recognized as appropriate by the First Circuit in comparable cases.

138. Based on the quality of the result achieved, the extent and quality of the work performed by Lead Counsel and Liaison Counsel, the significant risks of the litigation, and the fully contingent nature of the representation, Lead Counsel respectfully submits that the requested fee award is reasonable and should be approved. As discussed in the Fee Memorandum, a 20% fee award is fair and reasonable for attorneys' fees in common fund cases such as this and is well within the range of percentages awarded in securities class actions in this Circuit with comparable settlements.

1. Lead Plaintiff Has Authorized and Support the Fee Application

139. Lead Plaintiff is a sophisticated institutional investor that closely supervised and monitored the prosecution and settlement of the Action. *See* Riechwald Decl. (Ex. 1), at ¶¶ 2-7. Lead Plaintiff fully supports Lead Counsel's requested fee of 20% of the Settlement Fund. Lead Plaintiff negotiated and approved that fee, subject to Court approval, pursuant to a retention

agreement providing for different levels of percentage fees based on the state of litigation at which settlement was reached. That retention agreement was entered into in January 2021, at the outset of the Action. Following the agreement to settle the Action, Lead Plaintiff carefully evaluated the Fee Application and believes that it is fair and reasonable in light of the result obtained for the Settlement Class, the substantial risks in the litigation, and the work performed by Plaintiffs' Counsel. *See* Riechwald Decl. ¶ 9. Lead Plaintiff's endorsement of Lead Counsel's fee request further demonstrates its reasonableness and should be given weight in the Court's consideration of the fee award.

2. The Time and Labor of Plaintiffs' Counsel

140. The time and labor expended by Plaintiffs' Counsel in pursuing this Action and achieving the Settlement support the reasonableness of the requested fee. Attached as Exhibits 5A and 5B are my declaration on behalf of BLB&G and the declaration of T. Christopher Donnelly on behalf of Liaison Counsel Donnelly, Conroy & Gelhaar, LLP in support of the motion for attorneys' fees and litigation expenses ("Fee and Expense Declarations"). The Fee and Expense Declarations indicate the amount of time spent by each attorney and the professional support staff employed by each firm on the Action from its inception through December 14, 2023 (the date the Stipulation was signed), and the lodestar calculations based on their 2023 hourly rates. The Fee and Expense Declarations also include schedules of expenses incurred by each firm, delineated by category. These Declarations were prepared from contemporaneous daily time records and expense records regularly maintained and prepared by the respective firms, which are available at the request of the Court.

141. As set forth in the Fee and Expense Declarations, Plaintiffs' Counsel have collectively expended 17,064.1 hours in the prosecution of this Action, with a total lodestar of \$8,550,922.50. The requested fee of 20% of the Settlement Fund is \$7,700,000, plus interest.

Accordingly, the requested fee is slightly less than Plaintiffs' Counsel's lodestar. Specifically, the fee sought amounts to just 90% of Plaintiffs' Counsel's lodestar—or, in other words, a “negative” 0.9 multiplier of the lodestar. As discussed in the Fee Memorandum, the fact the fee sought is below counsel's lodestar strongly supports the reasonableness of the requested fees. Indeed, in comparable securities class actions and in other class actions, a *positive* multiplier of counsel's lodestar is typically awarded to recognize the significant contingency risks in such cases.

142. As described above in greater detail, the work that Plaintiffs' Counsel performed in this Action included: (i) conducting an extensive investigation into the claims asserted, including through a detailed review of public documents and interviews with over 140 witnesses believed to potentially have information about the claims at issue in the Action; (ii) researching and drafting a detailed consolidated Complaint based on this investigation; (iii) fully briefing and arguing Lead Plaintiff's opposition to Defendants' motion to dismiss the Complaint; (iv) conducting extensive fact discovery, which included preparing and responding to requests for the production of documents, interrogatories, and requests for admission; serving document subpoenas on four non-parties; and obtaining and reviewing over 224,000 pages of documents obtained from Defendants and third parties; (v) filing and fully briefing Lead Plaintiff's motion for class certification, which included an accompanying expert report from Lead Plaintiff's financial economics expert on the efficiency of the market for Boston Scientific common stock and the calculation of damages on a class-wide basis; (vi) defending the deposition of a representative of Lead Plaintiff in connection with class certification; (vii) consulting extensively throughout the litigation with a variety of experts and consultants, including experts in the medical device industry and regulation and experts in market efficiency, loss causation, and damages; and (viii) engaging in extensive arm's-

length settlement negotiations to achieve the Settlement, including two mediation sessions with Mr. McGuire of JAMS.

143. As detailed above, throughout this case, Plaintiffs' Counsel devoted substantial time to the prosecution of the Action. I maintained control of and monitored the work performed by other lawyers at BLB&G. While I personally devoted substantial time to this case, other experienced attorneys at my firm were involved throughout the litigation. More junior attorneys and paralegals also worked on matters appropriate to their skill and experience level. Throughout the litigation, Plaintiffs' Counsel maintained an appropriate level of staffing that avoided unnecessary duplication of effort and ensured the efficient prosecution of this litigation.

3. The Skill and Experience of Plaintiffs' Counsel

144. The skill and expertise of Lead Counsel and the other Plaintiffs' Counsel also support the requested fee. As demonstrated by the firm resume attached as Exhibit 5A-3 hereto, Lead Counsel is among the most experienced and skilled law firms in the securities litigation field, with a long and successful track record representing investors in such cases. BLB&G is consistently ranked among the top plaintiffs' firms in the country. Further, BLB&G has taken complex cases such as this to trial, and it is among the few firms with experience doing so on behalf of plaintiffs in securities class actions. Liaison Counsel Donnelly, Conroy & Gelhaar, LLP is also high skilled and extremely knowledgeable counsel. I believe Plaintiffs' Counsel's skill and their willingness and ability to prosecute the claims vigorously through trial, if necessary, added valuable leverage in the settlement negotiations.

4. Standing and Caliber of Defendants' Counsel

145. The quality of the work performed by Plaintiffs' Counsel in attaining the Settlement should also be evaluated in light of the quality of its opposition. Defendants were represented by attorneys from Skadden, Arps, Slate, Meagher & Flom LLP—a highly experienced and highly

skilled law firm that zealously represented its clients. In the face of this skillful and well-financed opposition, Lead Counsel was nonetheless able to develop a case that was sufficiently strong to persuade Defendants to settle the case on terms that will significantly benefit the Settlement Class.

5. The Risks of Litigation and the Need to Ensure the Availability of Competent Counsel in High-Risk Contingent Cases

146. The prosecution of these claims was undertaken entirely on a contingent-fee basis, and the considerable risks assumed by Plaintiffs' Counsel in bringing this Action to a successful conclusion are described above. Those risks are relevant to the Court's evaluation of an award of attorneys' fees. Here, the risks assumed by Plaintiffs' Counsel, and the time and expenses incurred without any payment, were extensive.

147. From the outset, Plaintiffs' Counsel understood that they were embarking on a complex, expensive, lengthy, and hard-fought litigation with no guarantee of ever being compensated for the substantial investment of time and the outlay of money that vigorous prosecution of the case would require. In undertaking that responsibility, Lead Counsel was obligated to ensure that sufficient resources (in terms of attorney and support staff time) were dedicated to the litigation, and that Lead Counsel would further advance all of the costs necessary to pursue the case vigorously on a fully contingent basis, including funds to compensate vendors and consultants and to cover the considerable out-of-pocket costs that a case such as this typically demands. Because complex securities litigation generally proceeds for several years before reaching a conclusion, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis. Indeed, Plaintiffs' Counsel have received no compensation during the three-year duration of this Action and no reimbursement of out-of-pocket expenses, yet they have devoted more than 17,000 hours and incurred more than \$390,000 in expenses in prosecuting this Action for the benefit of Boston Scientific investors.

148. Plaintiffs' Counsel also bore the risk that no recovery would be achieved. As discussed above, from the outset this case presented a number of significant risks and uncertainties.

149. As noted above, the Settlement was reached only after Lead Counsel had overcome Defendants' motion to dismiss, conducted substantial fact discovery, and fully briefed and argued Lead Plaintiff's class certification motion. However, had the Settlement not been reached when it was and this litigation continued, Lead Counsel would have been required to complete fact and discovery (including taking depositions of the Individual Defendants and several other Boston Scientific officers); conduct substantial expert discovery; oppose Defendants' motions for summary judgment; and prepare and take the case to trial. Moreover, even if the jury returned a favorable verdict after trial, it is likely that any verdict would be the subject of post-trial motions and appeals.

150. Lead Counsel's persistent efforts in the face of significant risks and uncertainties have resulted in a significant and certain recovery for the Settlement Class. In light of this recovery and Plaintiffs' Counsel's investment of time and resources over the course of the litigation, Lead Counsel believes the requested attorneys' fee is fair and reasonable and should be approved.

6. The Reaction of the Settlement Class to the Fee Application

151. As noted above, as of March 15, 2024, over 126,000 Notice Packets had been sent to potential Settlement Class Members advising them that Lead Counsel would apply for attorneys' fees in an amount not to exceed 20% of the Settlement Fund. *See Segura Decl.* ¶ 9 and Ex. A (Notice ¶¶ 5, 57). In addition, the Court-approved Summary Notice has been published in *The Wall Street Journal* and transmitted over the *PR Newswire*. *See Segura Decl.* ¶ 10. To date, no objections to the request for attorneys' fees have been received.

152. In sum, Lead Counsel accepted this case on a contingency basis, committed significant resources to it, and prosecuted it without any compensation or guarantee of success.

Based on the favorable result obtained, the quality of the work performed, the risks of the Action, and the contingent nature of the representation, Lead Counsel respectfully submits that the requested fee is fair and reasonable.

B. The Litigation Expense Application

153. Lead Counsel also seeks payment from the Settlement Fund of \$391,399.98 for litigation expenses reasonably incurred by Plaintiffs' Counsel in connection with the prosecution and resolution of the Action (the "Expense Application").

154. From the outset of the Action, Plaintiffs' Counsel have been aware that they might not recover any of their expenses (if the litigation was unsuccessful), and, further, if there were to be reimbursement of expenses, it would not occur until the Action was successfully resolved, often a period lasting several years. Plaintiffs' Counsel also understood that, even assuming that the case was ultimately successful, reimbursement of expenses would not necessarily compensate them for the lost use of funds advanced by them to prosecute the Action. Consequently, Plaintiffs' Counsel were motivated to, and did, take significant steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the case.

155. As set forth in the Fee and Expense Declarations included in Exhibit 5, Plaintiffs' Counsel have incurred a total of \$391,399.98 in unreimbursed litigation expenses in connection with the prosecution of the Action. The expenses are summarized in Exhibit 6, which identifies each category of expense, *e.g.*, expert fees, mediation fees, on-line legal and factual research, document management costs, telephone, and travel costs, and the amount incurred for each category. These expenses are reflected on the books and records maintained by Plaintiffs' Counsel, which are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred. These expenses are recorded separately by Plaintiffs' Counsel and are not duplicated by the firms' hourly rates.

156. Of the total amount of expenses, \$233,938.74, or approximately 60%, was expended for the retention of experts. As discussed above, Lead Counsel consulted with industry experts and financial economics experts during its investigation and the preparation of the Complaint and during the course of discovery. These experts' advice was instrumental in Lead Counsel's appraisal of the claims and in helping achieve the favorable result.

157. The cost of on-line factual research was \$53,936.28 and the cost for on-line legal research was \$47,254.82, which together account for approximately 26% of the total expenses.

158. Lead Plaintiff's share of the mediation costs paid to JAMS for the services of Mr. McGuire were \$14,906.61 or 4% of the total expenses.

159. Another significant cost was the expense of document management and litigation support, which included the costs of creating and maintaining the database containing the documents produced in the Action and producing Lead Plaintiff's documents. These document management costs in total came to \$19,089.81, or approximately 5% of the total expenses.

160. The other expenses for which Plaintiffs' Counsel seek payment are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, court fees, travel costs, service of process costs telephone charges, postage, and delivery expenses.

161. In addition, Lead Plaintiff Union seeks reimbursement of \$74,250 for the reasonable costs and expenses that it incurred directly in connection with its representation of the Settlement Class, based on the substantial time dedicated to the Action by its employees. Such payments are expressly authorized and anticipated by the PSLRA, as more fully discussed in the Fee Memorandum at 19-20.

162. The Notice informed potential Settlement Class Members that Lead Counsel would be seeking reimbursement of Litigation Expenses in an amount not to exceed \$700,000, which might include a PLSRA award for Lead Plaintiff. Notice ¶¶ 5, 57. The total amount requested, \$465,649.98, which includes \$391,399.98 for Plaintiffs' Counsel's litigation expenses and \$74,250 for Lead Plaintiff's requested PSLRA award, is well below the \$700,000 that Settlement Class Members were advised could be sought. To date, no objection has been raised as to the maximum amount of expenses set forth in the Notice.

163. The expenses incurred by Plaintiffs' Counsel and Lead Plaintiff were reasonable and necessary to represent the Settlement Class and achieve the Settlement. Accordingly, Lead Counsel respectfully submits that the application for payment of Litigation Expenses from the Settlement Fund should be approved.

164. Attached hereto as Exhibit 7 is a compendium of true and correct copies of the following unpublished opinions and authority cited in the Fee Memorandum:

- Ex. 7A: *Machado v. Endurance Int'l Grp. Holdings, Inc.*, Case No. 1:15-cv-11775-GAO, slip op. (D. Mass. Sept. 13, 2019), ECF No. 98
- Ex. 7B *Gerneth v. Chiasma, Inc.*, No. 1:16-cv-11082-DJC, slip op. (D. Mass. June 27, 2019), ECF No. 225
- Ex. 7C *Godinez v. Alere Inc.*, No. 1:16-cv-10766-PBS, slip op. (D. Mass. June 6, 2019), ECF No. 283
- Ex. 7D *In re CVS Corp. Sec. Litig.*, No. 01-11464 (JLT), slip op. (D. Mass. Sept. 7, 2005), ECF No. 195
- Ex. 7E Edward Flores & Svetlana Starykh, RECENT TRENDS IN SECURITIES CLASS ACTION LITIGATION: 2023 FULL YEAR REVIEW (NERA Economic Consulting, Jan. 23, 2024)
- Ex. 7F *Levy v. Gutierrez*, Civil No. 14-cv-443-JL, slip op. (D.N.H. Aug. 27, 2020), ECF No. 266

- Ex. 7G *In re Endo Int'l, plc*, Case No. 22-22549 (JLG), Fourth Interim Fee Application of Skadden, Arps, Slate, Meagher & Flom LLP (Bankr. S.D.N.Y. Feb. 14, 2024), ECF No. 3672 (excerpts)
- Ex. 7H *Ahearn v. Credit Suisse First Boston LLC*, No. 03-CV-10956 (JLT), slip op. (D. Mass. June 7, 2006), ECF No. 82
- Ex. 7I *In re Kraft Heinz Sec. Litig.*, Case No. 1:19-cv-01339, slip op. (N.D. Ill. Sept. 19, 2023), ECF. No. 493
- Ex. 7J *In re Oracle Corp. Sec. Litig.*, Case No. 5:18-cv-04844-BLF, slip op. (N.D. Cal. Jan. 13, 2023), ECF. No. 147

165. As BLB&G previously submitted to the Court at the time that Lead Plaintiff filed its motion for class certification (ECF Nos. 93, 93-4) and when Lead Plaintiff filed its motion for preliminary approval of the Settlement (ECF Nos. 152-3, 153), attached hereto as Exhibit 8 is a true and correct copy of an order issued by the United States District Court for the Northern District of California in April 2021 in an unrelated action where BLB&G served as lead counsel for a different lead plaintiff, SEB Investment Management, and as class counsel for a certified class. *See SEB Inv. Mgmt. v. Symantec Corp.*, 2021 WL 1540996 (N.D. Cal. Apr. 20, 2021). As reflected in the order, counsel for a lead plaintiff movant (that was not appointed) raised questions about BLB&G's hiring of a former employee of the lead plaintiff in that case. Following discovery and extensive briefing, the court found that the evidence did not establish a *quid pro quo*, and allowed BLB&G to continue as class counsel. *See id.* at *1-2. The *Symantec* action was subsequently resolved with a \$70 million settlement for the benefit of the class, and the settlement was approved by the court, with Judge Alsup commenting on the record that counsel "did a good job, so thank you for that." *See SEB Inv. Mgmt. AB v. Symantec Corp.*, No. 3:18-cv-2902-WHA, ECF No. 425 at 18 (N.D. Cal. Feb. 10, 2022). The court nevertheless ordered BLB&G to bring the order to the attention of any court in which BLB&G seeks appointment as class counsel. *See id.* at *2. Accordingly, because BLB&G seeks appointment as class counsel for the Settlement Class in

connection with final approval of the Settlement, BLB&G is again bringing the Order to the Court's attention.

VII. CONCLUSION

166. For all the reasons set forth above, Lead Plaintiff respectfully submits that the Settlement and the Plan of Allocation should be approved as fair, reasonable, and adequate. Lead Counsel further submits that the requested fee in the amount of 20% of the Settlement Fund should be approved as fair and reasonable, and the request for payment of total Litigation Expenses in the amount of \$465,649.98, should also be approved.

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

Dated: March 19, 2024

Respectfully submitted,

/s/ Salvatore J. Graziano

Salvatore J. Graziano

Exhibit 1

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

In re BOSTON SCIENTIFIC
CORPORATION SECURITIES
LITIGATION

Master File No. 1:20-cv-12225-ADB

**DECLARATION OF JOCHEN RIECHWALD,
ASSISTANT GENERAL COUNSEL OF UNION ASSET MANAGEMENT HOLDING
AG, IN SUPPORT OF (I) LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF
SETTLEMENT AND PLAN OF ALLOCATION; AND (II) LEAD COUNSEL'S
MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES**

I, JOCHEN RIECHWALD, declare as follows:

1. I am the Assistant General Counsel of Union Asset Management Holding AG (“Union AG”), the Court-appointed Lead Plaintiff in the above-captioned action (the “Action”).¹ I submit this declaration in support of: (a) Lead Plaintiff’s motion for final approval of the proposed settlement of the Action for \$38.5 million in cash (the “Settlement”) and approval of the proposed Plan of Allocation; (b) Lead Counsel’s motion for attorneys’ fees and litigation expenses; and (c) Union AG’s request to recover its reasonable costs and expenses incurred in connection with the prosecution of this litigation. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

I. Background

A. Union AG

2. Union AG is the parent holding company of the Union Investment Group. The Union Investment Group, based in Frankfurt-am-Main, Germany, was founded in 1956, and is one of Germany’s leading asset managers for retail and institutional clients with €433 billion in assets under management as of September 30, 2023.

3. On March 30, 2021, the Court issued an Order appointing Union AG as the Lead Plaintiff in the Action pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”), and approving Union AG’s selection of Bernstein Litowitz Berger & Grossmann LLP (“Bernstein Litowitz”) as Lead Counsel in the Action.

4. Union AG has monitored the prosecution and settlement of this Action through the active and continuous involvement of myself, as well as Dr. Carsten Fischer, Union AG’s General

¹ Unless otherwise indicated, capitalized terms shall have their meaning as defined in the Stipulation and Agreement of Settlement, dated December 14, 2023 (ECF No. 152-1) (the “Stipulation”).

Counsel and Julia Luther, Union AG's Senior Legal Counsel. We have had regular communications with Bernstein Litowitz concerning the prosecution and settlement of this case. We have communicated with Bernstein Litowitz throughout the litigation, including in connection with each material event in the case and when important decisions needed to be made. When necessary, we briefed other representatives of Union AG on the status of the Action.

5. Based on its active participation in the prosecution of this Action, Union AG has been able to capably oversee the prosecution of this case as well as the ultimate settlement of the Action. Union AG was able to directly observe the substantial efforts undertaken by Lead Counsel to obtain a favorable proposed recovery for the Settlement Class, notwithstanding the meaningful and multiple risks Lead Plaintiff and the Settlement Class faced in this litigation.

6. Union AG, consistent with its strong interest in the outcome of this litigation and the exercise of its fiduciary duties to the Settlement Class, worked diligently to ensure that the recovery in this Action was maximized to the greatest extent possible in light of the risks and circumstances of the case.

**B. Union AG's Extensive Participation
in the Prosecution and Settlement of this Action**

7. Throughout the litigation, Union AG engaged in frequent discussions with Bernstein Litowitz concerning case developments and strategy, and received frequent status reports from Bernstein Litowitz. Among other things, in its role as a Lead Plaintiff, Union AG has:

- a. Analyzed the merits of the potential case prior to seeking appointment as Lead Plaintiff in this Action, including evaluating: (i) the potential alleged wrongdoing of and securities claims against Boston Scientific and the other Defendants; and (ii) the critical legal and procedural issues involved in prosecuting the Action;

b. Reviewed and commented on pleadings filed in the Action, including the Amended Consolidated Complaint for Violations of the Federal Securities Laws (the “Complaint”);

c. Submitted declarations in support of the motion for appointment as lead plaintiff and motion for class certification;

d. Reviewed and commented on briefs filed in the Action, including the opposition to Defendants’ motion to dismiss the Complaint and papers in support of Lead Plaintiff’s motion to certify the class;

e. Searched for and collected documents for production in response to Defendants’ requests and consulted with Bernstein Litowitz regarding the same;

f. Consulted with Bernstein Litowitz regarding counsel’s review and assessment of the document discovery obtained from Defendants;

g. I travelled to New York along with Julia Luther, to prepare for my deposition, and then sat for my deposition on May 16, 2023 in New York City;

h. Consulted with Lead Counsel throughout the mediation process and settlement negotiations that ultimately led to the agreement in principle to settle the Action; and

i. Evaluated and approved the proposal that the Action be settled for \$38.5 million in cash.

II. Union AG Strongly Endorses Approval of the Settlement and the Plan of Allocation

8. Based on Union AG’s oversight of the prosecution and negotiations for the proposed settlement of this Action, Union AG strongly endorses the Settlement and believes it provides a favorable recovery for the Settlement Class, especially when measured against the substantial risks

of establishing liability and damages. Union AG also endorses the proposed Plan of Allocation, and believes that it represents a fair and reasonable method for valuing claims submitted by Settlement Class Members, and for distributing the Net Settlement Fund to Settlement Class Members who submit valid and timely proof of claim forms.

**III. Union AG Supports Lead Counsel's
Motion for Attorneys' Fees and Litigation Expenses**

9. Union AG also supports Lead Counsel's requested fee of 20% of the Settlement Fund. Union AG takes seriously its role as Lead Plaintiff to ensure that the attorneys' fees are fair in light of the result achieved for the Settlement Class and reasonably compensate counsel for the work involved and the substantial risks they undertook in litigating the Action. Union AG negotiated and approved that fee, subject to Court approval, pursuant to a retention agreement providing for different levels of percentage fees based on the state of litigation at which settlement was reached. The retention agreement was entered into in January 2021, at the outset of the Action. Following the agreement to settle the Action, Union AG has again reviewed the proposed fee and believes the requested fee is fair and reasonable in light of the outstanding result obtained for the Settlement Class, the excellent work performed by Lead Counsel, and the risks undertaken by counsel.

10. Union AG further believes that Lead Counsel's litigation expenses are reasonable and represent costs and expenses necessary for the prosecution and resolution of this securities class action. As a result, Union AG has approved the request for payment of expenses submitted by Lead Counsel.

11. Based on the foregoing, and consistent with its obligation to the Settlement Class to obtain the best result at the most efficient cost, Union AG supports Lead Counsel's motion for attorneys' fees and expenses.

IV. Union AG's Request for Reimbursement of Costs and Expenses

12. Union AG understands that reimbursement of a lead plaintiff's reasonable costs and expenses is authorized under the PSLRA. For this reason, in connection with Lead Counsel's request for payment of Litigation Expenses, Union AG seeks reimbursement for the time that its employees dedicated to the representation of the Settlement Class in the Action.

13. One of my responsibilities as Assistant General Counsel of Union AG is to monitor outside litigation matters, including Union AG's activities in securities class actions where (as here) it has been appointed lead plaintiff. In addition to me, the following lawyers at Union AG also participated in the prosecution and settlement of this Action: Dr. Carsten Fischer (General Counsel) and Julia Luther (Senior Legal Counsel). The work that we performed is summarized in ¶ 7 above. In addition, Thomas Nelius and Thomas Keitzer, who are members of Union's Information Technology department, assisted Union in gathering documents and electronically stored information in response to Defendants' requests for documents.

14. The time that I and other Union AG employees devoted to the representation of the Settlement Class in this Action was time that we otherwise would have expected to spend on other work for Union AG and, thus, represented a cost to Union AG. Union AG seeks reimbursement in the amount of \$74,250 for the time of the following personnel, as set forth in the chart below:

Personnel	Hours	Hourly Rate	Total
Dr. Carsten Fischer, General Counsel	22	\$500	\$11,000
Jochen Riechwald, Assistant General Counsel	75	\$425	\$31,875
Julia Luther, Senior Legal Counsel	75	\$325	\$24,375
Thomas Nelius, IT Department	25	\$200	\$5,000
Thomas Keitzer, IT Department	10	\$200	\$2,000
TOTAL	207		\$74,250

15. While Union AG devoted a significant amount of time to this Action, its request for reimbursement of costs, as set forth in the table above, is based on a conservative estimate of the number of hours we spent on this litigation. The hourly rates used for purposes of this request are based on comparable rates for lawyers or other professionals of similar experience working in the Frankfurt, Germany market. For example, prior to joining Union, Dr. Fischer was a lawyer at Dechert, where his hourly rate was €590. Similarly, I was a lawyer at Willkie Farr & Gallagher prior to joining Union, where my last hourly rate was €420; and, prior to joining Union, Ms. Luther was a lawyer at Bird & Bird, where her hourly rate was €300.

V. Conclusion

16. In conclusion, Union AG was closely involved with the prosecution and settlement of this Action, strongly endorses the proposed Settlement as fair, reasonable, and adequate, and believes that it represents a highly favorable recovery for the Settlement Class in light of the risks of continued litigation. We have reviewed and endorse the proposed Plan of Allocation as fair and reasonable for the Settlement Class. Union AG further respectfully requests that the Court approve Lead Counsel's motion for attorneys' fees and litigation expenses. And finally, Union AG requests reimbursement for its costs and expenses under the PSLRA as set forth above.

I declare under penalty of perjury under the laws of the United State of America that the foregoing is true and correct to the best of my knowledge, information, and belief, this 14th day of March, 2024.



JOCHEN RIECHWALD

Exhibit 2



CORNERSTONE RESEARCH

Economic and Financial Consulting and Expert Testimony

Securities Class Action Filings

2023 Year in Review

Table of Contents

Executive Summary	1
Key Trends in Federal and State Filings	2
Featured: Annual Rank of Filing Intensity	3
Combined Federal and State Filing Activity	4
Summary of Core Federal Trend Filings	5
Status of Core Federal Filings by Trend Category	6
Summary of Federal Cryptocurrency-Related Filings	9
Federal SPAC Filing Allegations	10
Market Capitalization Losses for Federal and State Filings	11
Mega Filings	14
Classification of Federal Complaints	15
U.S. Exchange-Listed Companies	16
Heat Maps: S&P 500 Securities Litigation™ for Federal Core Filings	17
Status of Core Federal Securities Class Action Filings	19
1933 Act Filings in State Courts	20
Dollar Loss on Offered Shares™ (DLOS Index™) in Federal Section 11–Only and State 1933 Act Filings	21
Type of Security Issuance Underlying Federal Section 11 and State 1933 Act Filings	22
IPO Activity and Federal Section 11 and State 1933 Act Filings	23
Lag between IPO and Federal Section 11 and State 1933 Act Filings	24
Non-U.S. Core Federal Filings	25
Industry Comparison of Core Filings	26
Core Federal Filings by Circuit	27
Status of Core Federal Filings by Plaintiff Counsel	28
Filings Referencing Short-Seller Reports by Plaintiff Counsel	29
New Developments	30
Glossary	31
Additional Notes to Figures	33
Appendices	35
Research Sample	41

Table of Figures

Figure 1: Federal and State Class Action Filings Summary	1
Figure 2: Annual Rank of Measurements of Federal and State Filing Intensity	3
Figure 3: Federal Filings and State 1933 Act Filings by Venue	4
Figure 4: Summary of Trend Filings—Core Federal Filings	5
Figure 5: Status of Core Federal Cryptocurrency-Related Filings	6
Figure 6: Status of Core Federal SPAC Filings	7
Figure 7: Status of Core Federal COVID-19-Related Filings	8
Figure 8: Summary of Cryptocurrency-Related Filings—Core Federal Filings	9
Figure 9: Federal SPAC Filing Allegations	10
Figure 10: Disclosure Dollar Loss Index® (DDL Index®)	11
Figure 11: Median Disclosure Dollar Loss	12
Figure 12: Maximum Dollar Loss Index® (MDL Index®)	13
Figure 13: Mega Filings	14
Figure 14: Allegations Box Score—Core Federal Filings	15
Figure 15: Percentage of U.S. Exchange-Listed Companies Subject to Federal or State Filings	16
Figure 16: Heat Maps of S&P 500 Securities Litigation™ Percentage of Companies Subject to Core Federal Filings	17
Figure 17: Heat Maps of S&P 500 Securities Litigation™ Percentage of Market Capitalization Subject to Core Federal Filings	18
Figure 18: Status of Filings by Year—Core Federal Filings	19
Figure 19: State 1933 Act Filings by State	20
Figure 20: Dollar Loss on Offered Shares™ (DLOS Index™) for Federal Section 11–Only and State 1933 Act Filings	21
Figure 21: Federal Section 11 and State 1933 Act Class Action Filings by Type of Security Issuance	22
Figure 22: Number of IPOs on Major U.S. Exchanges and Number of Filings of Federal Section 11 and State 1933 Act Claims	23
Figure 23: Lag between IPO and Federal Section 11 and State 1933 Act Filings	24
Figure 24: Annual Number of Class Action Filings by Location of Headquarters—Core Federal Filings	25
Figure 25: Filings by Industry—Core Filings	26
Figure 26: Filings by Circuit—Core Federal Filings	27
Figure 27: Status by Plaintiff Law Firm of Record—Core Federal Filings	28
Figure 28: Core Federal Filings Referencing Short-Seller Reports by Plaintiff Counsel	29
Appendix 1: Basic Filings Metrics	35
Appendix 2A: S&P 500 Securities Litigation—Percentage of S&P 500 Companies Subject to Core Federal Filings	36
Appendix 2B: S&P 500 Securities Litigation—Percentage of Market Capitalization of S&P 500 Companies Subject to Core Federal Filings	36

Appendix 3: M&A Federal Filings Overview	37
Appendix 4: Status by Year—Core Federal Filings	37
Appendix 5: Filings by Industry—Core Filings	38
Appendix 6: Filings by Circuit—Core Federal Filings	39
Appendix 7: Filings by Exchange Listing—Core Federal Filings	39
Appendix 8: Cryptocurrency-Related Filings by Cryptocurrency Classification—Core Federal Filings	40

Executive Summary

Overall filing volume increased slightly in 2023 to 215 filings from 208 in 2022. The number of “core” filings—those excluding M&A filings—also increased slightly. The size of core filings when measured by Maximum Dollar Loss (MDL) rose 27%, but when measured by Disclosure Dollar Loss (DDL) fell 46%.¹

The number of 1933 Act filings in state courts plummeted in 2023, falling to the lowest level since 2014. The combined number of federal Section 11 and state 1933 Act filings decreased 62% from 50 filings in 2022 to 19 filings in 2023. The number of special purpose acquisition company (SPAC), COVID-19-related, and cryptocurrency-related filings fell in 2023, and the 2023 Banking Turbulence trend category emerged.²

Number and Size of Filings

- Plaintiffs filed 215 **new securities class action filings** (filings) in 2023, despite a large decline in **federal Section 11** and state filings with **claims under the Securities Act of 1933** (1933 Act). (page 4)
- The **DDL Index** fell by nearly half from \$618 billion in 2022 to \$335 billion in 2023, returning to 2019–2021 levels. The **MDL Index** increased to \$3.2 trillion, the second-highest amount on record. (pages 11, 13, and 14)

- Both the total number of initial public offerings (**IPOs**) and filings with 1933 Act claims fell in 2023, declining to their lowest points in the past 14 and 10 years, respectively. (pages 4 and 23)

While the number of core filings increased slightly in 2023, DDL dropped by 46% and MDL rose by 27%.

Figure 1: Federal and State Class Action Filings Summary

(Dollars in 2023 billions)

	Annual (1997–2022)			2022	2023
	Average	Maximum	Minimum		
Class Action Filings	227	427	120	208	215
Core Filings	192	267	120	201	209
Disclosure Dollar Loss (DDL)	\$226	\$618	\$72	\$618	\$335
Maximum Dollar Loss (MDL)	\$1,083	\$3,480	\$278	\$2,531	\$3,209

Note: This figure presents data on a combined federal and state filings basis. Filings in federal courts may have parallel lawsuits filed in state courts. When parallel lawsuits are filed in different years, only the earlier filing is reflected in the figure above. Filings against the same company brought in different states without a filing brought in federal court are counted as unique state filings. As a result, this figure’s filing counts may not match those in Figures 4–9, 14, 16–21, 24, and 26–28, or Appendices 2–4 and 6–9. See Additional Notes to Figures for Counts and Totals Methodology.

¹ Reported MDL, DDL, and Dollar Loss on Offered Shares (DLOS) numbers are inflation-adjusted to 2023 dollars and will not match prior reports.

² 2023 Banking Turbulence filings include allegations related to a series of bank failures that occurred in rapid succession, beginning with Silvergate Bank on March 8, 2023. The initial complaint against Silvergate Capital Corporation, parent company of Silvergate Bank, was filed on December 7, 2022; the amended complaint was filed on May 11, 2023.

Key Trends in Federal and State Filings

In 2023, MDL was the second highest on record while DDL decreased by 46%. The combined number of federal Section 11 and state 1933 Act filings fell to the lowest level in the last 10 years. The share of core federal filings related to SPACs, COVID-19, and cryptocurrency fell to less than 20% in 2023, and the 2023 Banking Turbulence trend category emerged.

Section 11 and M&A Filings

- The number of class action filings increased slightly despite a large decline in **federal Section 11 and state 1933 Act filings**. (page 4)
- The number of state court-only filings (two) was the lowest number since 2014. (page 4)
- Core federal filings without Section 11 allegations increased 26% to 190 in 2023 from 151 in 2022, while federal **M&A filings** (six) remained low. (page 4)

Mega Filings

- There were 44 **mega MDL filings** in 2023 with a **total mega MDL** of \$2.9 trillion, a 30% increase from \$2.2 trillion in 2022 and the second-highest value on record. (page 14)
- There were 16 **mega DDL filings** in 2023, down from 18 in 2022. **Total mega DDL** decreased 60% from \$529 billion to \$211 billion, nearly returning to 2021 levels. (page 14)

Core SPAC Filings

- **Core SPAC filings** fell by 39%, from 28 in 2022 to 17 in 2023—about half of the peak of 33 filings in 2021. (page 5)
- From 2019 to 2022, 35% of **core SPAC filings** were resolved, just over half of the **resolution rate** for all other core federal filings. (page 7)

Cryptocurrency-Related Filings

- **Cryptocurrency-related filings** fell by 39% from the peak in 2022. Eleven of the 14 cryptocurrency-related filings in 2023 were filed in 2023 H1. (page 5)
- Filings involving **allegations against an exchange** accounted for seven of the 14 (50%) total cryptocurrency-related filings in 2023. (page 9)

Trend Filings

- Nine securities class actions related to the **2023 Banking Turbulence** were filed (one in 2022 H2 and eight in 2023), representing a new emerging trend category. (page 5)
- **COVID-19-related filings** fell by 50% from the peak of 20 filings in 2022 to 10 filings in 2023, the lowest yearly total since the pandemic began in 2020. (page 5)

By Industry

- Total DDL in the **Communications sector** decreased eightfold from the record high in 2022. (page 26)
- The number of filings in the **Financial sector** more than doubled relative to that in 2022, accounting for 12% of filings in 2023, driven in part by the turbulence in the banking industry in early 2023. (page 26)

By Circuit

- Core federal filings in the **Second Circuit** declined for the second consecutive year, falling to 50 in 2023, below the 1997–2022 annual average of 56. (page 27)
- The **Ninth Circuit** made up 32% of all core federal filings in 2023, while accounting for 56% of total federal MDL. (page 27)

U.S. Issuers

- The percentage of **U.S. exchange-listed companies** subject to filings increased slightly to 3.3%, but is still the second lowest since 2012 and below the 1997–2022 annual average of 3.9%. Similarly, the percentage of these companies subject to core filings in 2023 decreased to its second-lowest point in the last 10 years (3.2%). (page 16)
- The likelihood of an **S&P 500 company** being the subject of a core federal filing nearly doubled year-over-year to 7.1%. (pages 17–18)

Featured: Annual Rank of Filing Intensity

- In 2023, total DDL fell by 46% from the record high in 2022.
- The MDL Index reached \$3.2 trillion in 2023, the second-highest amount on record, increasing by 27% from 2022.
- The number of 1933 Act filings in state and federal courts plummeted to the lowest number since 2013, decreasing 62% relative to the number in 2022.
- The number of M&A filings decreased 14% to the lowest level on record.
- The rate of filings against U.S. exchange-listed companies remained consistently low in 2023.
- The percentage of S&P 500 companies subject to a core filing almost doubled from 3.8% in 2022 to 7.1% in 2023, reaching a level not seen since 2019.

While the number of core filings in 2023 increased slightly relative to that in 2022, DDL dropped by 46% and MDL rose by 27%.

Figure 2: Annual Rank of Measurements of Federal and State Filing Intensity

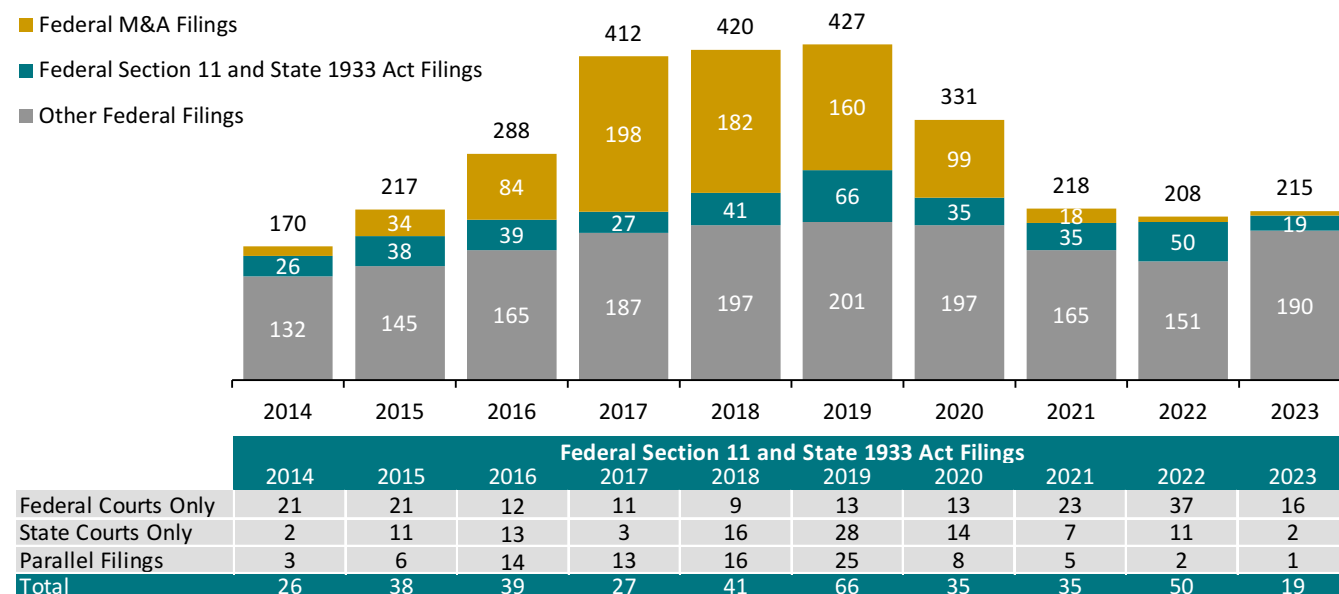
	2021	2022	2023
Number of Total Filings	10 th	15 th	13 th
Core Filings	14 th	13 th	10 th
M&A Filings	9 th	13 th	15 th
Size of Core Filings			
Disclosure Dollar Loss	10 th	1 st	7 th
Maximum Dollar Loss	12 th	4 th	2 nd
Percentage of U.S. Exchange-Listed Companies Sued			
Total Filings	7 th	15 th	12 th
Core Filings	6 th	16 th	11 th
Percentage of S&P 500 Companies Subject to Core Federal Filings	21 st	16 th	6 th

Note: This figure presents combined federal and state data in the rankings in all categories beginning in 2010, except the Percentage of S&P 500 Companies Subject to Core Federal Filings, which excludes state data. Filings in federal courts may have parallel lawsuits filed in state courts. When parallel lawsuits are filed in different years, only the earlier filing is reflected in the figure above. Filings against the same company brought in different states without a filing brought in federal court are counted as unique state filings. As a result, the filing counts determining the rankings in this figure may not match those in Figures 4–9, 14, 16–21, 24, and 26–28, or Appendices 2–4 and 6–9. Rankings cover 1997 through 2022 with the exceptions of M&A filings, which have been tracked as a separate category since 2009, and analysis of the litigation likelihood of S&P 500 companies, which began in 2001. M&A filings are securities class actions filed in federal courts that have Section 14 claims, but no Rule 10b-5, Section 11, or Section 12(a) claims, and involve merger and acquisition transactions. Core filings are all state 1933 Act class actions and all federal securities class actions excluding those defined as M&A filings.

Combined Federal and State Filing Activity

- Plaintiffs filed 215 new securities class actions in federal and state courts in 2023, slightly more than in 2022 (208 filings).
 - The combined number of federal Section 11 and state 1933 Act filings decreased 62% from 50 filings in 2022 to 19 filings in 2023.
- The number of filings increased slightly despite a large decline in federal Section 11 and state 1933 Act filings.*
- In 2023, core federal filings without Section 11 allegations, including Section 10(b)-only filings, increased 26% to 190 from 151 in 2022. This increase more than compensated for the large decline in Section 11 filings.
 - The number of state court-only filings dropped from 11 in 2022 to two in 2023, an 82% decrease.
 - Federal court-only filings made up 84% of federal Section 11 and state 1933 Act filings in 2023, the highest share in the last 10 years. This share has continued to increase from 66% in 2021 and 74% in 2022.
 - Federal M&A filing activity remained low (six filings).

Figure 3: Federal Filings and State 1933 Act Filings by Venue 2014–2023



Source: Cornerstone Research and Stanford Law School Securities Class Action Clearinghouse; Bloomberg Law; Institutional Shareholder Services' Securities Class Action Services (ISS' SCAS)

Note: This figure presents combined federal and state data. Filings in federal courts may have parallel lawsuits filed in state courts. When parallel lawsuits are filed in different years, only the earlier filing is reflected in the figure above. Filings against the same company brought in different states without a filing brought in federal court are counted as unique state filings. As a result, this figure's filing counts may not match those in Figures 4–9, 14, 16–21, 24, and 26–28, or Appendices 2–4 and 6–9. See Additional Notes to Figures for more detailed information and Counts and Totals Methodology.

Summary of Core Federal Trend Filings

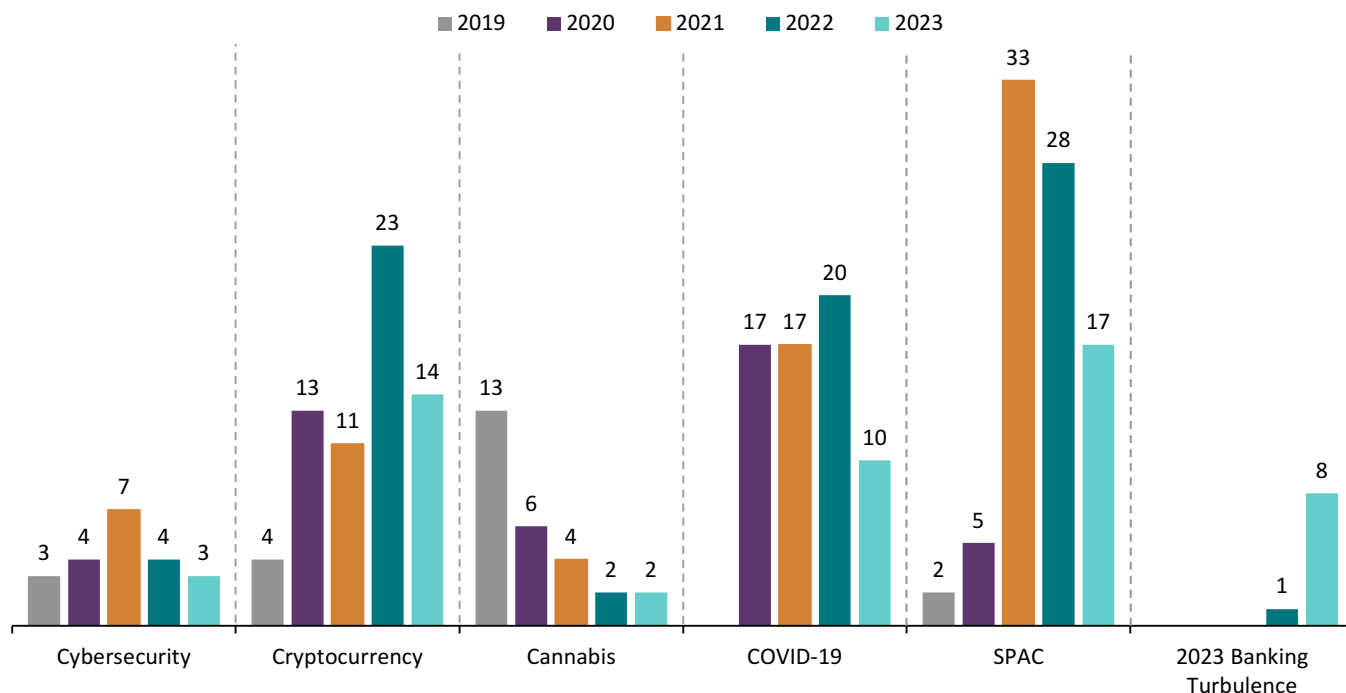
This figure highlights recent trend categories that have appeared in core federal filing activity. See the Glossary for the definition of a trend category.

- The number of filings in the top three trend categories—SPAC (17 filings), cryptocurrency (14 filings), and COVID-19 (10 filings)—comprised less than 20% of core federal filings in 2023, down from 35% in 2022.
- Core SPAC filings fell by 39%, from 28 in 2022 to 17 in 2023—about half of the peak of 33 filings in 2021.
- Cryptocurrency-related filings fell by 39% from the peak in 2022 to a level in line with 2020 and 2021. Eleven of the 14 cryptocurrency-related filings in 2023 were filed in 2023 H1.
- COVID-19-related filings fell by 50% from the peak of 20 filings in 2022 to 10 filings in 2023, the lowest yearly total since the pandemic began in 2020.

The number of filings related to SPACs, COVID-19, and cryptocurrency fell in 2023, and the 2023 Banking Turbulence trend category emerged.

- There were three cybersecurity-related filings in 2023, down from four in 2022.
- There were only two cannabis-related filings in 2023, the same number as in 2022, and far below the peak of 13 filings in 2019.
- Nine securities class actions related to the 2023 Banking Turbulence were filed (one in 2022 H2 and eight in 2023), representing a new emerging trend category.³ More than 50% of 2023 Banking Turbulence trend category filings were either mega MDL or mega DDL filings.

Figure 4: Summary of Trend Filings—Core Federal Filings 2019–2023



Note: All trend categories only count core federal filings. As such, this figure excludes M&A SPAC filings. There were five, two, one, one, and one of such filings in 2019, 2020, 2021, 2022, and 2023, respectively. As a result, this figure's filing counts may not match Figure 9. Some filings may be included in more than one trend category. See Additional Notes to Figures for trend category definitions, more detailed information, and Counts and Totals Methodology.

³ 2023 Banking Turbulence filings include allegations related to a series of bank failures that occurred in rapid succession, beginning with Silvergate Bank on March 8, 2023. The initial complaint against Silvergate Capital Corporation, parent company of Silvergate Bank, was filed on December 7, 2022; the amended complaint was filed on May 11, 2023.

Status of Core Federal Filings by Trend Category

This analysis compares filing groups to determine whether filing outcomes of core federal cryptocurrency-related, SPAC, and COVID-19-related trend category filings differ from outcomes of other types of core federal filings.

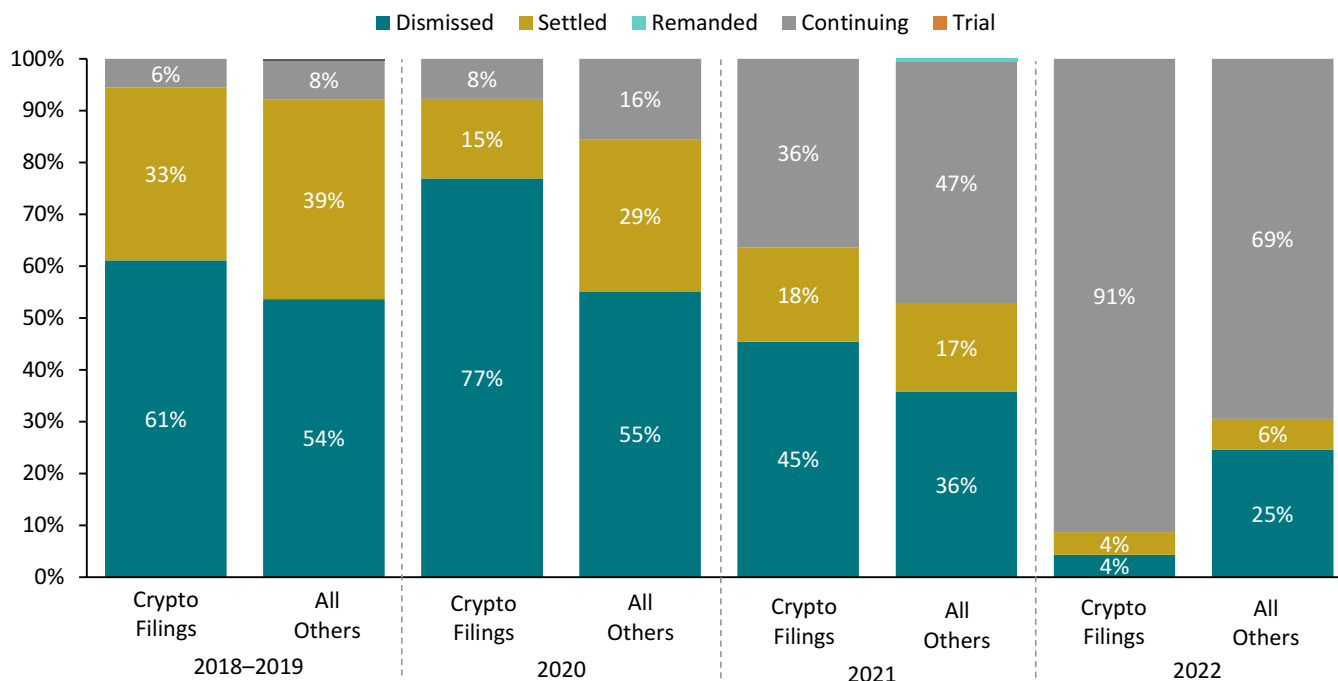
The figure below compares the outcomes as of 2023 of cryptocurrency-related filings that were filed in 2018–2022 to the outcomes of all other core federal filings in the same period. As each cohort ages, a larger percentage of filings are resolved—whether through dismissal, settlement, remand, or by trial.

- The settlement and dismissal rates for other core federal and cryptocurrency-related filings were similar for filings from 2018 to 2019.

In contrast to earlier years, cryptocurrency-related filings in 2022 were resolved at a much lower rate than other core federal filings.

- Filings related to cryptocurrency in 2020 and 2021 had a higher dismissal rate than other core federal filings.
- The dismissal rate of other core federal filings brought in 2022 was about six times the dismissal rate of cryptocurrency-related filings brought in 2022.
- In April 2020, two law firms filed 11 similar cryptocurrency-related securities class actions. Of these 11 filings, nine were dismissed, one was settled, and one is ongoing.

Figure 5: Status of Core Federal Cryptocurrency-Related Filings 2018–2022



Note: Percentages may not sum to 100% due to rounding. Because a high percentage of lawsuits in 2023 are ongoing, this figure excludes the 2023 cohort.

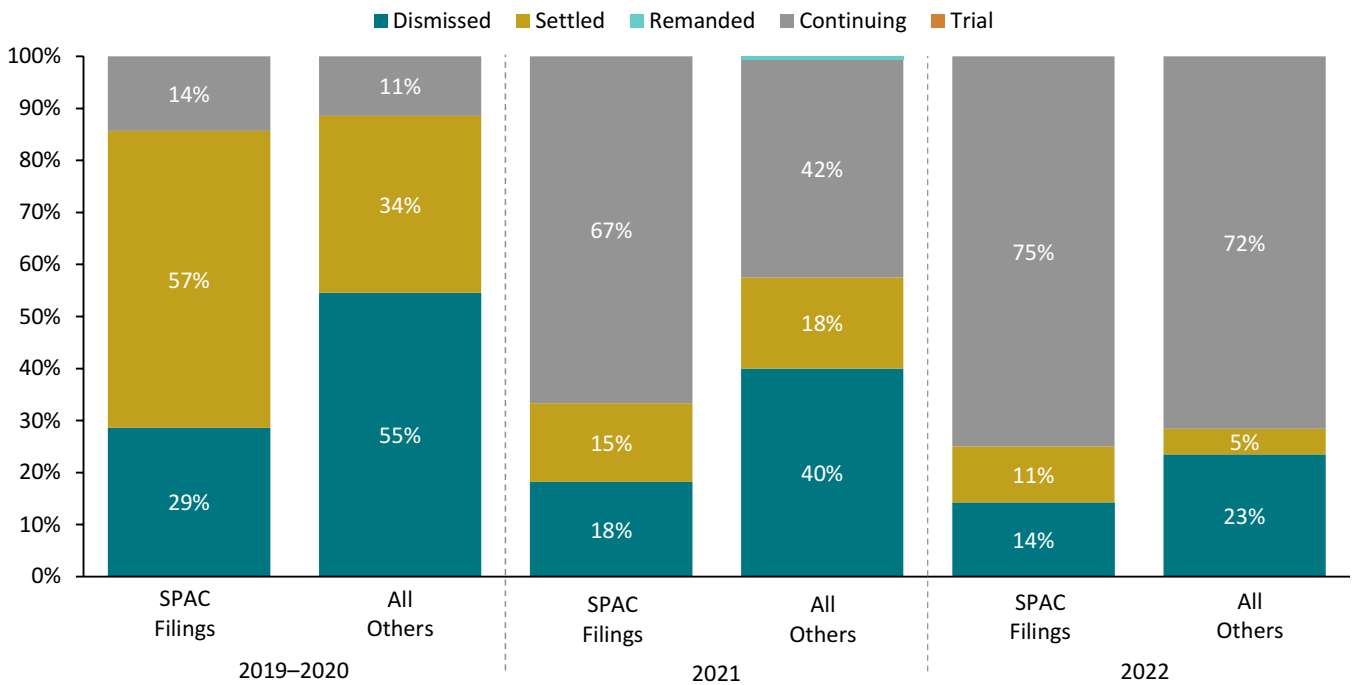
This figure compares the outcomes of core federal SPAC filings to the outcomes of all other core federal filings from 2019 to 2022.

- More than half of SPAC filings from 2019 to 2020 (four filings) were settled, compared to just over a third of all other core federal filings from 2019 to 2020.
- The dismissal rate for filings in the 2021 SPAC cohort was less than half the dismissal rate of all other core federal filings in the 2021 cohort.

From 2019 to 2022, 35% of SPAC filings were resolved, just over half of the resolution rate for all other core federal filings.

- While filings in the 2022 SPAC cohort and all other core federal filings from 2022 were resolved at a similar rate, filings in the 2022 SPAC cohort were dismissed at a lower rate but settled at a higher rate.

Figure 6: Status of Core Federal SPAC Filings 2019–2022



Note: Percentages may not sum to 100% due to rounding. This figure excludes M&A SPAC filings. There were five, two, one, one, and one of such filings in 2019, 2020, 2021, 2022, and 2023, respectively. Because of the low volume of lawsuits in 2019 and 2020 (seven total), these two years have been combined. Because a high percentage of lawsuits in 2023 are ongoing, this figure excludes the 2023 cohort.

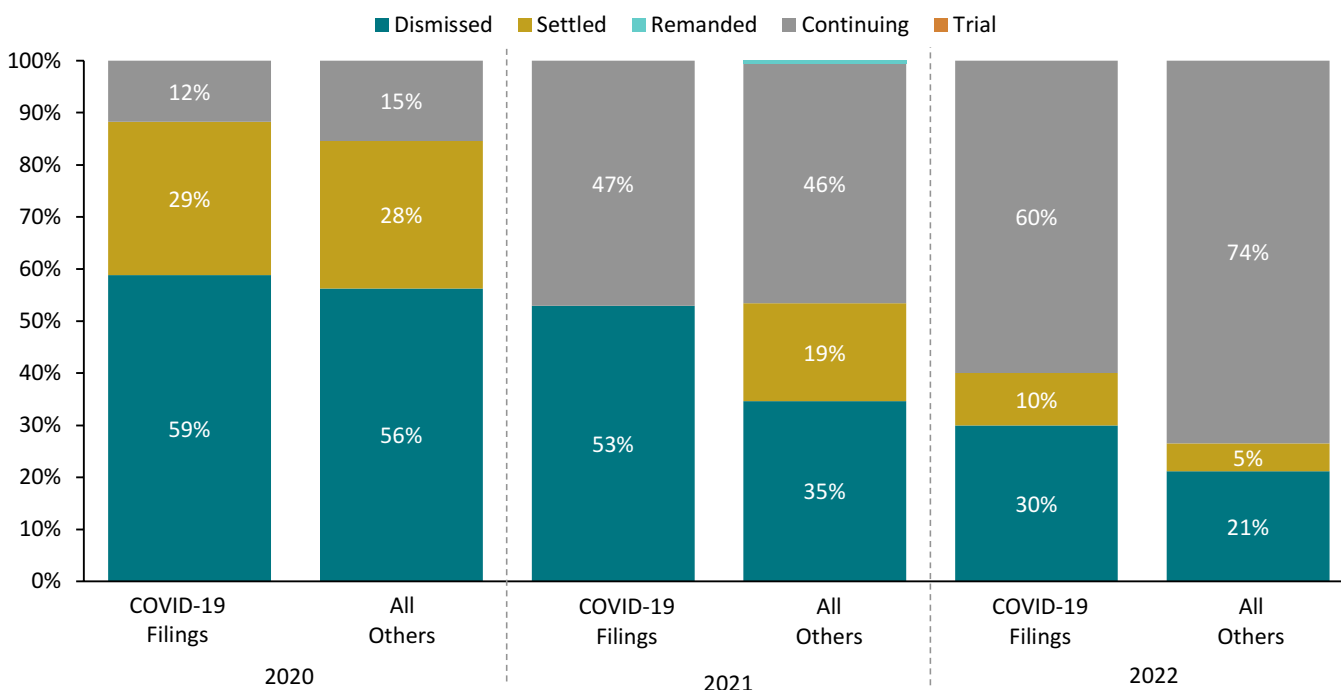
This figure compares the outcomes of core federal COVID-19-related filings to the outcomes of all other core federal filings from 2020 to 2022.

- No COVID-19-related filings in the 2021 cohort have settled as of the end of 2023, compared to 19% of all other core federal filings in the 2021 cohort.
- The resolution rates of COVID-19-related and all other core federal filings from 2020 and 2021 were nearly the same. This differs from the 2022 cohort, where COVID-19-related filings were resolved at a higher rate than all other filings.

- Early outcomes for the 2022 COVID-19-related filing cohort indicate a higher dismissal rate than for all other core federal filings.

On average, COVID-19-related filings had higher dismissal rates and lower settlement rates than all other core federal filings.

Figure 7: Status of Core Federal COVID-19-Related Filings 2020–2022



Note: Percentages may not sum to 100% due to rounding. Because a high percentage of lawsuits in 2023 are ongoing, this figure excludes the 2023 cohort.

Summary of Federal Cryptocurrency-Related Filings

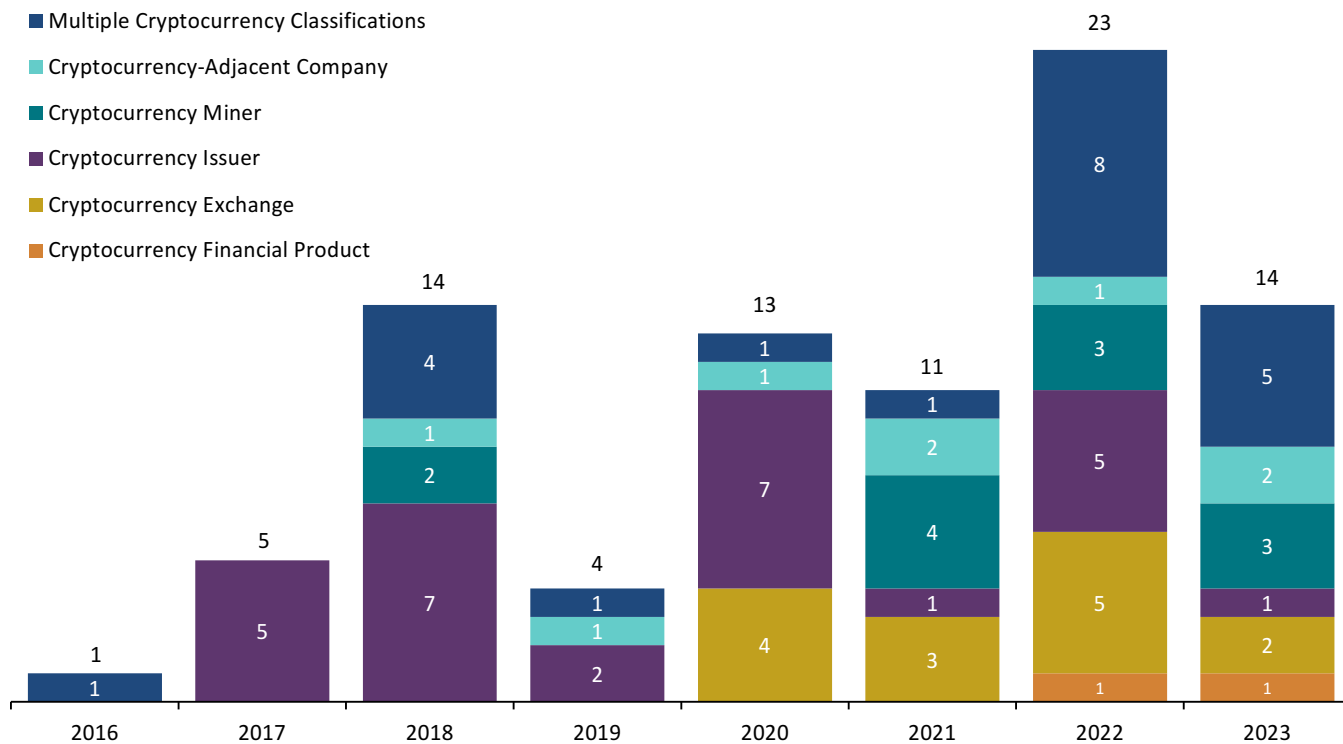
This figure categorizes cryptocurrency-related filings since 2016. See Additional Notes to Figures for definitions and Appendix 8 for a detailed breakdown of total filings. See also Cornerstone Research’s latest report on [SEC Cryptocurrency Enforcement—2023 Update](#).

- Filings involving allegations against cryptocurrency exchanges—including all five filings with multiple cryptocurrency classifications—accounted for seven of the 14 (50%) total cryptocurrency-related filings in 2023. This is up from the 2022 share of 43% and up substantially from the 2016–2022 average of 30%.
- From 2016 to 2019, only 8% of cryptocurrency-related filings included allegations against cryptocurrency exchanges. From 2020 to 2023, 43% of cryptocurrency-related filings had allegations against an exchange.

Cryptocurrency-related filings in 2023 declined substantially due to relatively few cryptocurrency-related filings in 2023 H2.

- From 2016 to 2020, 73% of cryptocurrency-related filings included allegations against cryptocurrency issuers. Following 2020, this figure dropped sharply to 31% of cryptocurrency-related filings.
- When accounting for filings with multiple cryptocurrency classifications, the number of filings in each category in 2023 was less than or equal to the number of filings in the same category in 2022. See Appendix 8.

Figure 8: Summary of Cryptocurrency-Related Filings—Core Federal Filings 2016–2023



Note: Filings with multiple classifications include allegations relating to two or more of the cryptocurrency classifications; therefore, total counts by category discussed may not match counts shown in the figure (see Appendix 8). See Additional Notes to Figures for Counts and Totals Methodology and cryptocurrency filing classifications.

Federal SPAC Filing Allegations

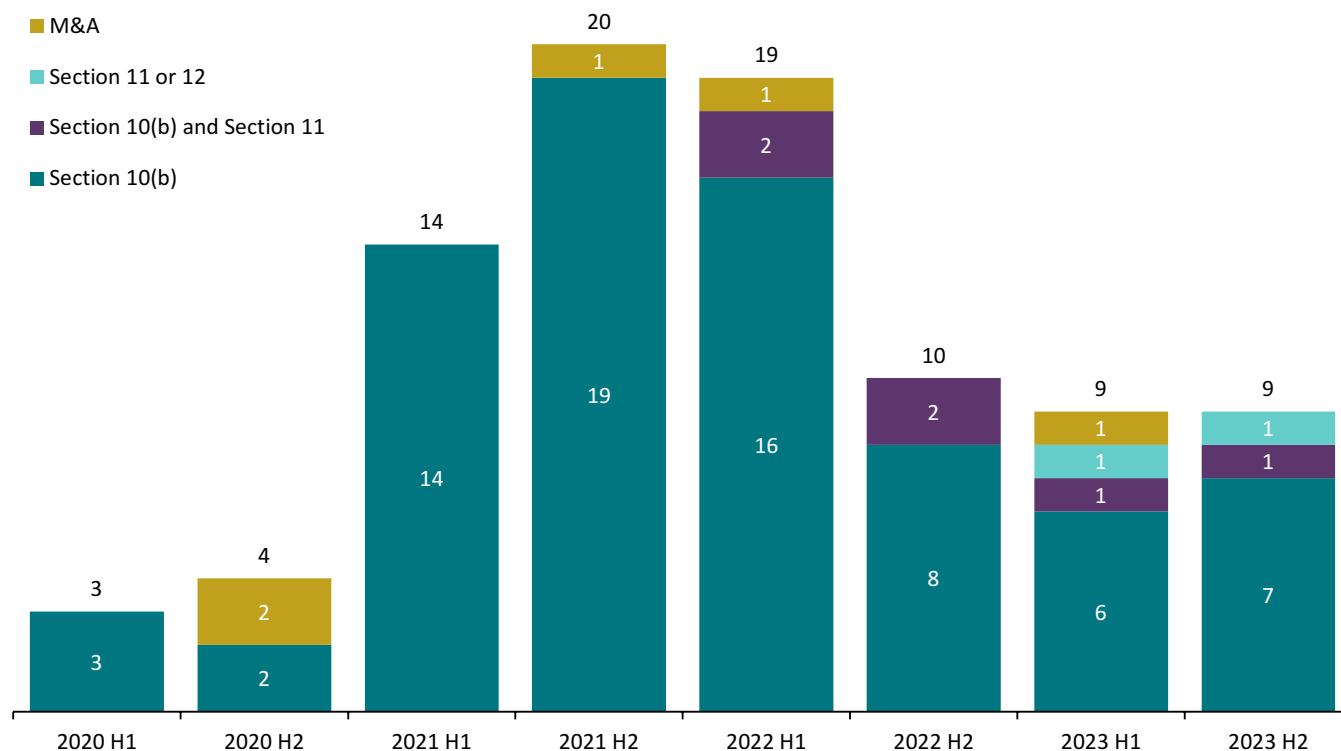
The figure below illustrates how the types of allegations in filings against current and former SPACs have changed over time. Allegations are based on first identified complaints.

The first Section 11–only SPAC filing and the first Section 12(a)–only SPAC filing occurred in 2023.

- For the fourth consecutive semiannual period, in 2023 H2 there was at least one filing with both Section 10(b) and Section 11 allegations. There were no such filings in 2020 or 2021.

- After a large decline in 2022 H2, the number of federal SPAC filings has plateaued over the past three semiannual periods.
- Since 2020, The Rosen Law Firm P.A., Pomerantz LLP, and Glancy Prongay & Murray LLP accounted for 72% of first identified core federal SPAC filings, compared to 58% of all first identified core federal filings.
- Three of the 17 core federal SPAC filings (18%) in 2023 alleged that short-seller reports caused stock price drops.

Figure 9: Federal SPAC Filing Allegations
2020 H1–2023 H2



Source: Cornerstone Research and Stanford Law School Securities Class Action Clearinghouse; *SPAC Insider*

Note: This figure includes both core and M&A SPAC filings. As a result, total filing counts may not match Figure 4. SPAC filings concern companies that went public for the express purpose of acquiring an existing company in the future. These include current and former SPACs. See Additional Notes to Figures for Counts and Totals Methodology. One filing in 2021 included both Section 10(b) and M&A allegations. This filing is characterized as Section 10(b) rather than M&A.

Market Capitalization Losses for Federal and State Filings

Disclosure Dollar Loss Index® (DDL Index®)

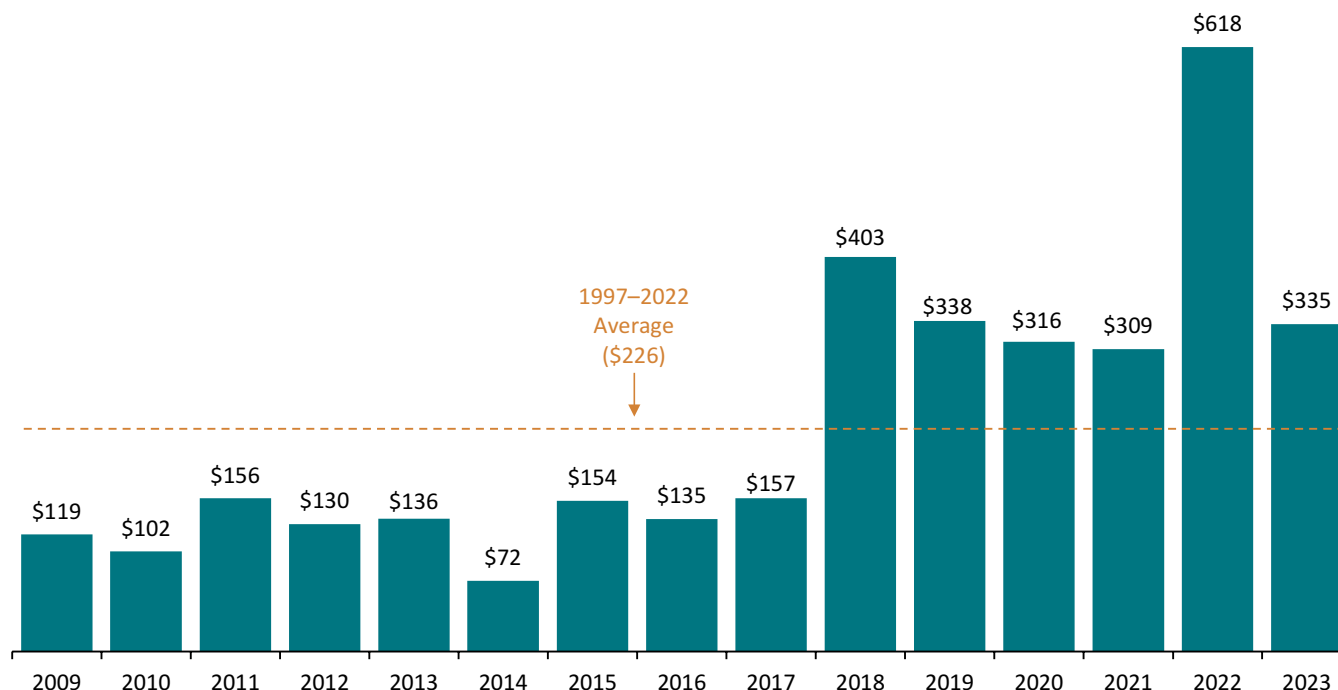
This index measures the aggregate annual DDL for all federal and state filings. DDL is the dollar-value change in the defendant firm’s market capitalization between the trading day immediately preceding the end of the class period and the trading day immediately following the end of the class period. DDL is inflation-adjusted to 2023 dollars. See the Glossary for additional discussion on market capitalization losses and DDL.

- Overall, the DDL Index has increased substantially since 2017. The average DDL Index from 2009 to 2017 was \$129 billion, compared to \$386 billion from 2018 to 2023.
- In 2023 the DDL Index decreased by 46% relative to that in 2022, despite the median DDL increasing by 28% (see Figure 11). This divergence is driven by a decrease in DDL from mega filings (filings with a DDL of at least \$5 billion) from \$529 billion in 2022 to \$211 billion in 2023 (see Figure 13). See Appendix 1 for DDL totals, averages, and medians from 1997 to 2023.

The DDL Index fell by almost half from 2022 to 2023, returning to 2019–2021 levels.

Figure 10: Disclosure Dollar Loss Index® (DDL Index®) 2009–2023

(Dollars in 2023 billions)



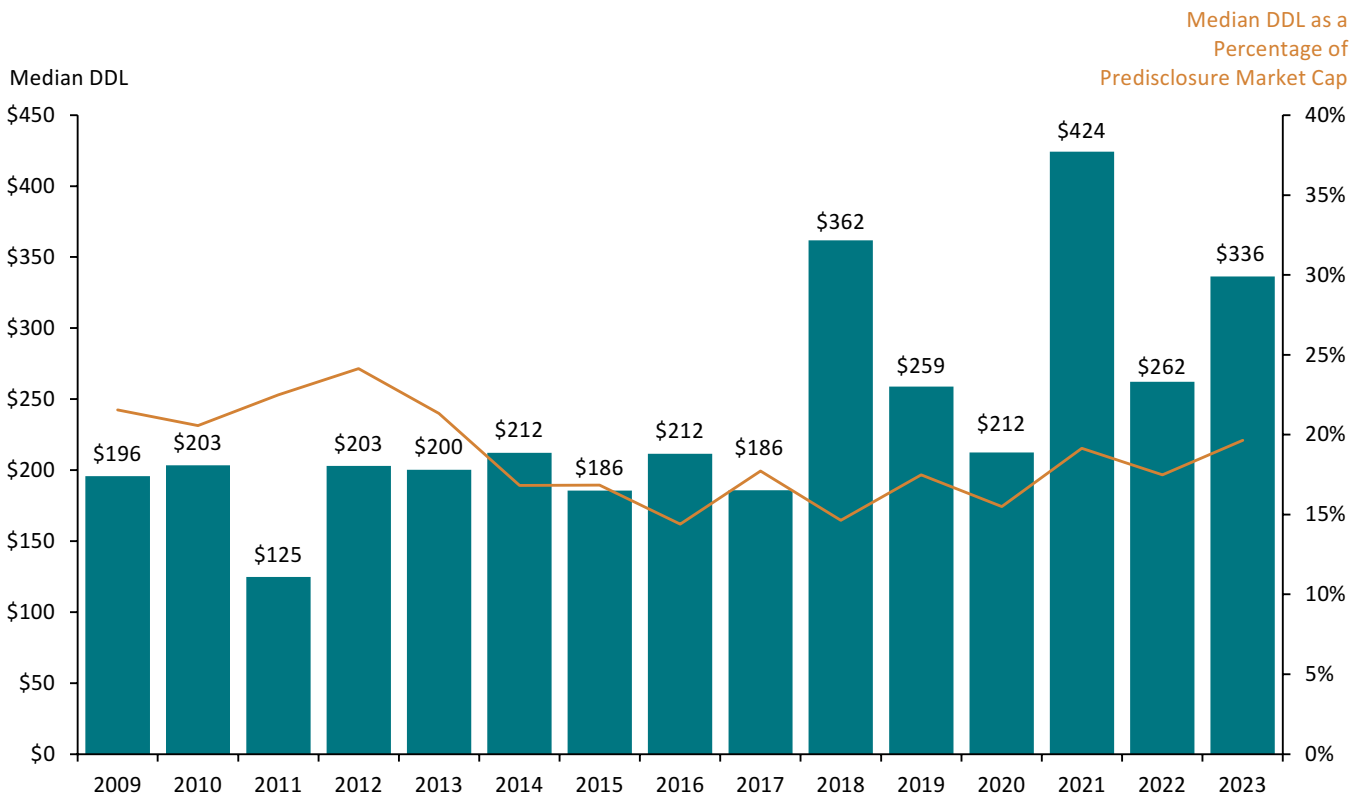
Note: This figure begins including DDL associated with state 1933 Act filings in 2010. As a result, this figure’s DDL Index will not match those in Appendices 6–7, which summarize federal filings. DDL associated with parallel class actions is only counted once. There are core filings for which data are not available to estimate DDL accurately; these filings are excluded from DDL analysis. The numbers shown in this figure have been inflation-adjusted to 2023 dollars and will not match prior reports. See Additional Notes to Figures for Counts and Totals Methodology.

- As shown by the gold line in the figure below, since 2014, the typical (i.e., median) percentage stock price drop at the end of the class period has oscillated between about 15% and 20% of the predisclosure market capitalization. That measure was 20% in 2023, the highest percentage since 2013.
- In 2023, for the largest issuers—those with market capitalization above \$10 billion—median DDL as a percentage of predisclosure market capitalization was below 10%, half the median of all issuers.

Median DDL in 2023 grew by 28% from its 2022 measure and is the third-highest median DDL in the past 15 years.

Figure 11: Median Disclosure Dollar Loss 2009–2023

(Dollars in 2023 millions)



Note: This figure begins including DDL associated with state 1933 Act filings in 2010. As a result, this figure’s DDL Index will not match those in Appendices 6–7, which summarize federal filings. DDL associated with parallel class actions is only counted once in this figure. There are core filings for which data are not available to estimate DDL accurately; these filings are excluded from DDL analysis. The numbers shown in this figure have been inflation-adjusted to 2023 dollars and will not match prior reports. See Additional Notes to Figures for Counts and Totals Methodology.

Maximum Dollar Loss Index® (MDL Index®)

This index measures the aggregate annual MDL for all federal and state core filings. MDL is the dollar-value change in the defendant firm’s market capitalization from the trading day with the highest market capitalization during the class period to the trading day immediately following the end of the class period. MDL is inflation-adjusted to 2023 dollars. See the Glossary for additional discussion on market capitalization losses and MDL.

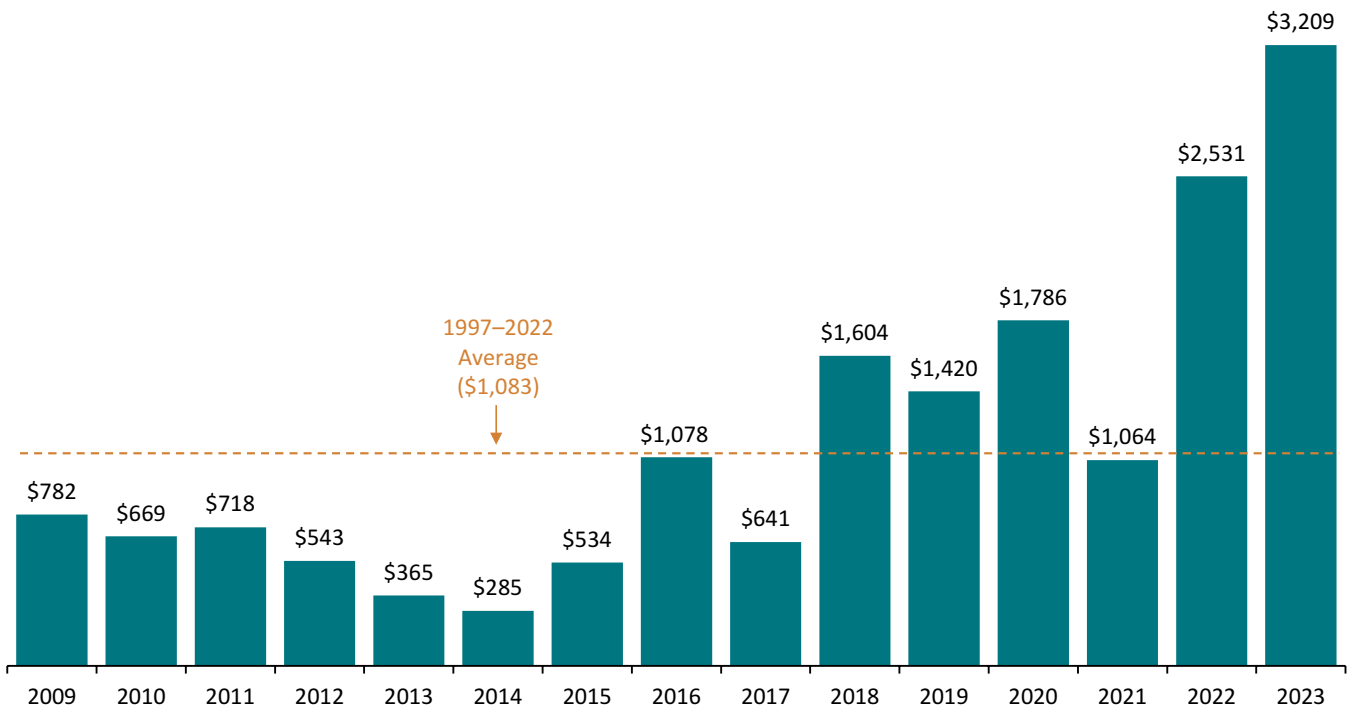
- The MDL Index reached \$3.2 trillion in 2023, the second-highest amount on record, increasing by 27% from 2022. See Appendix 1 for MDL totals, averages, and medians from 1997 to 2023.
- The substantial divergence between MDL and DDL in 2023 is due to the difference in methodology; DDL captures the market capitalization losses at the end of the class period, whereas MDL captures the market capitalization difference between the highest point during the class period and the end of the class period.

- There were 44 mega MDL filings (filings with an MDL of at least \$10 billion) in 2023, more than twice as many as the 1997–2022 annual average. See Figure 13.
- The 44 mega MDL filings accounted for \$2.9 trillion, or 90% of total MDL in 2023. See Figure 13.
- This was the fourth year that the MDL Index surpassed \$2 trillion (after adjusting for inflation) and was the sixth consecutive year the MDL Index exceeded \$1 trillion. See Appendix 1.

The MDL Index increased to \$3.2 trillion, the second-highest amount on record.

Figure 12: Maximum Dollar Loss Index® (MDL Index®) 2009–2023

(Dollars in 2023 billions)



Note: This figure begins including MDL associated with state 1933 Act filings in 2010. As a result, this figure’s MDL Index will not match those in Appendices 6–7, which summarize federal filings. MDL associated with parallel class actions is only counted once in this figure. There are core filings for which data are not available to estimate MDL accurately; these filings are excluded from MDL analysis. The numbers shown in this figure have been inflation-adjusted to 2023 dollars and will not match prior reports. See Additional Notes to Figures for Counts and Totals Methodology.

Mega Filings

Mega DDL filings have a DDL of at least \$5 billion. Mega MDL filings have an MDL of at least \$10 billion. MDL and DDL are inflation-adjusted to 2023 dollars.

- There were 44 mega MDL filings in 2023 with a total mega MDL of \$2.9 trillion, a 30% increase from \$2.2 trillion in 2022 and 241% above the 1997–2022 annual average.
- In 2023, the number and total index value of mega MDL filings, as well as the percentage of total MDL represented by mega filings, were second only to those from the 2002 tech crash.
- There were 16 mega DDL filings in 2023, decreasing from 18 in 2022. Total mega DDL decreased 60% from \$529 billion to \$211 billion, nearly returning to the 2021 level.
- In 2023, the percentage of total DDL represented by mega filings fell to the 1997–2022 annual average.

- Mega filings against companies in the Communications sector (Telecommunications, Internet, and Media) made up 18% of mega MDL filings and 37% of total MDL in 2023.
- Just over half of the core filings in the Communications sector (19 federal and two state) in 2023 were mega DDL or mega MDL filings (10 federal and one state).
- Filings against Technology companies (Software and Computers) made up 44% of mega DDL filings and 20% of mega MDL filings, but only 24% of total mega DDL and 14% of total mega MDL.

The count and total index value of mega MDL filings in 2023 were the second highest on record.

Figure 13: Mega Filings

	Average 1997–2022	2021	2022	2023
Mega Disclosure Dollar Loss (DDL) Filings				
Mega DDL Filings	9	13	18	16
DDL (\$ Billions)	\$143	\$187	\$529	\$211
Percentage of Total DDL	63%	61%	86%	63%
Mega Maximum Dollar Loss (MDL) Filings				
Mega MDL Filings	21	27	38	44
MDL (\$ Billions)	\$848	\$777	\$2,235	\$2,894
Percentage of Total MDL	78%	73%	88%	90%

Note: This figure begins including DDL and MDL associated with state 1933 Act filings in 2010. As a result, this figure's DDL and MDL Index will not match those in Appendices 6–8, which summarize federal filings. DDL associated with parallel class actions is only counted once in this figure. There are filings for which data are not available to estimate DDL and MDL accurately; these filings are excluded from DDL and MDL analysis at counts. Mega DDL filings have a disclosure dollar loss of at least \$5 billion. Mega MDL filings have a maximum dollar loss of at least \$10 billion. The numbers shown in this figure have been inflation-adjusted to 2023 dollars and will not match prior reports. Sectors are based on the Bloomberg Industry Classification System. See Additional Notes to Figures for Counts and Totals Methodology.

Classification of Federal Complaints

- The share of core federal filings with Section 11 claims fell from a five-year high of 21% in 2022 to a five-year low of 8% in 2023.
- The share of core federal filings with Section 12(a) claims fell from 14% in 2022 to 10% in 2023.
- Core federal filings with allegations of internal control weaknesses increased from 13% in 2022 to 17% in 2023, returning to pre-2021 levels.
- The share of core federal filings with underwriter defendant allegations fell sharply from 13% in 2022 to 4% in 2023.

The share of core federal filings with Rule 10b-5 claims rose to the highest level in more than five years.

- Of core federal filings in 2023, 94% contained a Rule 10b-5 claim (up from 83% in 2022).
- Core federal filings with allegations of trading by company insiders in 2023 remained at the lowest level (2%) in the last five years.

Figure 14: Allegations Box Score—Core Federal Filings

	Percentage of Filings				
	2019	2020	2021	2022	2023
Allegations in Core Federal Filings					
Rule 10b-5 Claims	87%	85%	91%	83%	94%
Section 11 Claims	16%	10%	14%	21%	8%
Section 12(a) Claims	7%	11%	6%	14%	10%
Misrepresentations in Financial Documents	98%	90%	90%	89%	90%
False Forward-Looking Statements	47%	43%	43%	39%	46%
Trading by Company Insiders	5%	4%	6%	2%	2%
Accounting Violations	23%	27%	22%	24%	23%
Announced Restatements	8%	5%	3%	9%	10%
Internal Control Weaknesses	18%	18%	9%	13%	17%
Announced Internal Control Weaknesses	10%	7%	4%	8%	11%
Underwriter Defendant	11%	9%	10%	13%	4%
Auditor Defendant	0%	0%	0%	1%	2%

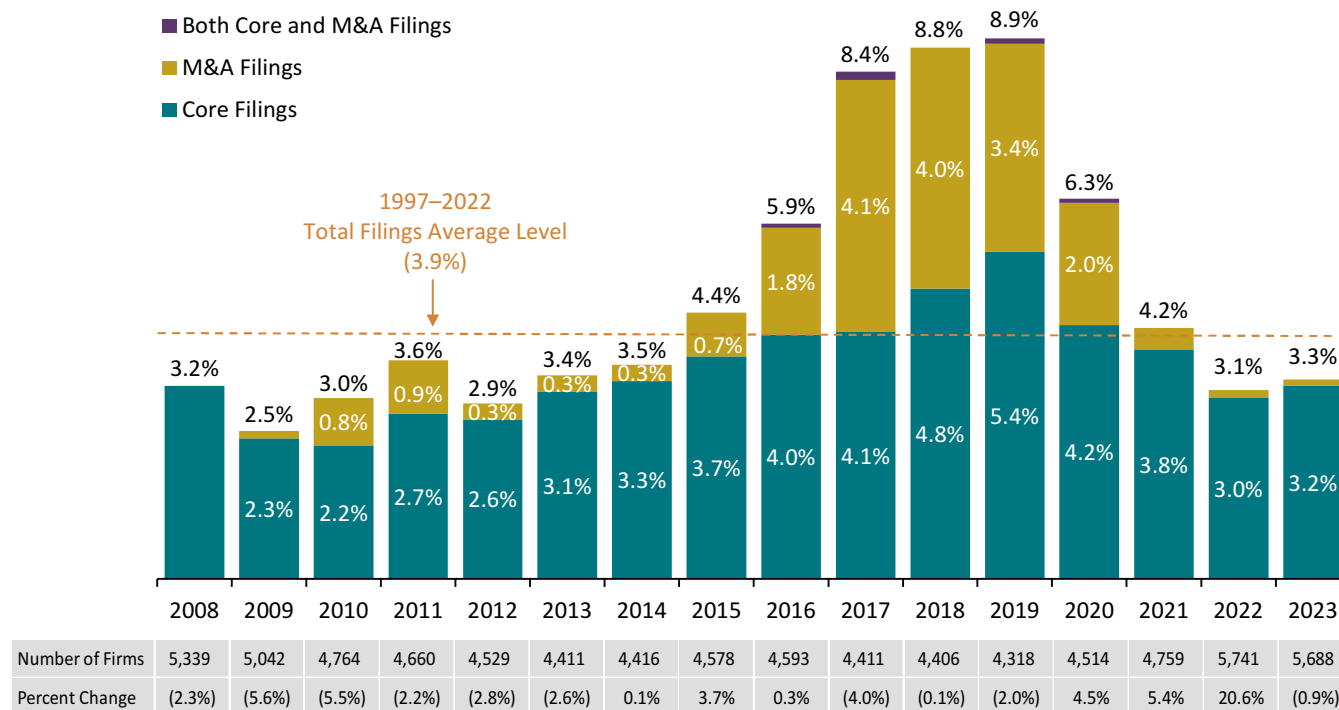
Note: Core federal filings are all federal securities class actions excluding those defined as M&A filings. Allegations reflect those made in the first identified complaint (FIC). The percentages do not sum to 100% because complaints may include multiple allegations. In each of 2019 and 2020, there was one filing with allegations against an auditor defendant. This analysis only considers federal filings. It does not present combined federal and state data, and lawsuits are not identified as parallel. This is different from other figures in this report that account for filings in federal courts that also have parallel lawsuits identified in state courts. In those analyses, when parallel lawsuits are filed in different years, only the earlier filing is reflected in the analysis. As a result, this figure's filing counts may not match Figures 1–3, 10–13, 15, and 22, or Appendices 1 and 5. See Additional Notes to Figures for more detailed information.

U.S. Exchange-Listed Companies

The percentage of companies subject to a filing is calculated as the unique number of companies listed on the NYSE or Nasdaq subject to federal or state securities fraud class actions in a given year divided by the unique number of companies listed on the NYSE or Nasdaq at the start of the same year.

- The percentage of U.S. exchange-listed companies subject to filings increased slightly from 3.1% in 2022 to 3.3% in 2023, the second-lowest percentage since 2012 and below the 1997–2022 annual average of 3.9%. Similarly, the percentage of companies subject to core filings increased slightly from 3.0% in 2022 to 3.2% in 2023.
 - The percentage of U.S. exchange-listed companies subject to M&A filings remained at 0.1%.
- The likelihood of core filings targeting U.S. exchange-listed companies in 2023 increased slightly from 2022 but is still the second lowest in the last 10 years.*
- In 2023, the volume of federal filings against Nasdaq-listed firms increased by 12%, but total DDL for these filings decreased by 69%. Total federal filings and DDL against NYSE-listed firms increased by 12% and 46%, respectively, in 2023. See Appendix 7.
 - Between the beginning of 2022 and the beginning of 2023, the overall number of U.S. exchange-listed companies decreased by 0.9%.

Figure 15: Percentage of U.S. Exchange-Listed Companies Subject to Federal or State Filings 2008–2023



Source: Cornerstone Research and Stanford Law School Securities Class Action Clearinghouse; Center for Research in Security Prices (CRSP)

Note: This figure presents combined federal and state data. Filings in federal courts may have parallel lawsuits filed in state courts. All federal filings are counted only once. When parallel lawsuits are filed in different years, only the earlier filing is reflected in the figure above. Filings against the same company brought in different states without a filing brought in federal court are counted as unique state filings. The figure begins including issuers facing suits in state 1933 Act filings in 2010. See Additional Notes to Figures for more detailed information and Counts and Totals Methodology.

Heat Maps: S&P 500 Securities Litigation™ for Federal Core Filings

The Heat Maps analysis illustrates federal court securities class action activity by industry sector for companies in the S&P 500 index. Starting with the composition of the S&P 500 at the beginning of each year, the Heat Maps examine each sector by:

- (1) The percentage of these companies subject to new securities class actions in federal court during each calendar year.
 - (2) The percentage of the total market capitalization of these companies subject to new securities class actions in federal court during each calendar year.
- Of the companies in the S&P 500 at the beginning of 2023, approximately one in 14 (7.1%) was subject to a core federal filing, which is above the 2001–2022 annual average. See Appendix 2A for the percentage of filings by sector from 2001 to 2023.

The likelihood of an S&P 500 company being the subject of a core federal filing nearly doubled year-over-year to 7.1%.

- In 2023, the likelihood of a core federal filing against a company in the Communication Services/Telecommunications/Information Technology sector increased to 11.6%, the highest likelihood since 2018.
- The percentage of Health Care companies subject to a core federal filing increased to 10.9%.
- The percentage of Consumer Staples companies subject to a core federal filing increased to 10.5% in 2023, over twice the 2001–2022 annual average.
- The likelihood of a core federal filing against all sectors excluding the Utilities sector increased in 2023.

Figure 16: Heat Maps of S&P 500 Securities Litigation™ Percentage of Companies Subject to Core Federal Filings

	Average 2001–2022	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Consumer Discretionary	5.0%	8.4%	1.2%	0.0%	3.6%	8.5%	10.0%	3.1%	8.1%	0.0%	3.3%	3.8%
Consumer Staples	3.7%	0.0%	0.0%	5.0%	2.6%	2.7%	11.8%	12.1%	3.1%	6.3%	0.0%	10.5%
Energy/Materials	1.7%	0.0%	1.3%	0.0%	4.5%	3.3%	1.8%	3.7%	1.9%	5.7%	0.0%	1.9%
Financials/Real Estate	6.8%	0.0%	1.2%	1.2%	6.9%	3.3%	7.0%	2.0%	5.3%	0.0%	2.1%	4.8%
Health Care	8.4%	5.7%	0.0%	1.9%	17.9%	8.3%	16.1%	12.9%	6.3%	0.0%	7.8%	10.9%
Industrials	3.9%	0.0%	4.7%	0.0%	6.1%	8.7%	8.8%	10.1%	2.7%	1.4%	4.2%	7.7%
Communication Services/ Telecommunications/ Information Technology	6.2%	9.1%	0.0%	4.2%	6.8%	8.5%	12.7%	10.0%	2.0%	5.1%	6.0%	11.6%
Utilities	5.0%	0.0%	0.0%	3.4%	3.4%	7.1%	7.1%	6.9%	7.1%	0.0%	3.6%	3.3%
All S&P 500 Companies	5.3%	3.4%	1.2%	1.6%	6.6%	6.4%	9.4%	7.2%	4.4%	2.2%	3.8%	7.1%

0%
0–5%
5–15%
15–25%
25%+

Note:

1. The figure is based on the composition of the S&P 500 as of the last trading day of the previous year. Sectors are based on the Global Industry Classification Standard (GICS), which differ from those in the Bloomberg Industry Classification System used in Figure 13 and Figure 25.
2. Percentage of Companies Subject to Core Federal Filings equals the number of companies subject to new securities class action filings in federal courts in each sector divided by the total number of companies in that sector.
3. In August 2016, GICS added a new industry sector, Real Estate. This analysis begins using the Real Estate industry sector in 2017. In 2018, the Telecommunication Services sector was incorporated into a new sector, Communication Services. With this name change, all companies previously classified as Telecommunication Services and some companies classified as Consumer Discretionary (such as Netflix, Comcast, and CBS) and Information Technology (such as Alphabet and Meta) were reclassified into the Communication Services sector.
4. This analysis only considers federal filings. It does not present combined federal and state data, and lawsuits are not identified as parallel. This is different from other figures in this report that account for filings in federal courts that also have parallel lawsuits identified in state courts. In those analyses, when parallel lawsuits are filed in different years, only the earlier filing is reflected in the analysis. As a result, this figure's filing counts may not match Figures 1–3, 10–13, 15, and 22, or Appendices 1 and 5.

- The percentage of total market capitalization of S&P 500 companies subject to core federal filings rose from 8.4% in 2022 to 10.1% in 2023. See Appendix 2B for market capitalization percentage by sector from 2001 to 2023.
- The percentage of market capitalization exposure for the Communication Services/Telecommunication/Information Technology sector increased sharply, from 4.0% in 2022 to 17.3% in 2023, a more than fourfold increase.
- The percentage of market capitalization exposure for the Utilities sector rose from 7.2% in 2022 to 16.0% in 2023, a more than twofold increase and well above the 2001–2022 annual average.
- The percentage of market capitalization exposure in the Health Care sector fell from 12.3% in 2022 to 8.1% in 2023.
- The percentage of market capitalization exposure in the Consumer Discretionary sector dropped to 13.1% in 2023 from an over 20-year high of 30.3% in 2022, but remained above the 2001–2022 annual average.
- The percentage of market capitalization exposure in the Financials/Real Estate sector in 2023 was well below the 2001–2022 annual average, despite the banking turmoil in the early part of 2023.

At 17.3%, the Communication Services/Telecommunications/Information Technology sector had the highest percentage of market capitalization exposure.

Figure 17: Heat Maps of S&P 500 Securities Litigation™ Percentage of Market Capitalization Subject to Core Federal Filings

	Average 2001–2022	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Consumer Discretionary	7.2%	4.4%	2.5%	0.0%	2.8%	8.2%	4.7%	0.5%	2.2%	0.0%	30.3%	13.1%
Consumer Staples	4.8%	0.0%	0.0%	1.9%	1.0%	6.7%	15.2%	9.1%	1.8%	17.7%	0.0%	7.4%
Energy/Materials	2.9%	0.0%	0.2%	0.0%	19.8%	2.3%	1.4%	1.2%	0.4%	12.0%	0.0%	0.6%
Financials/Real Estate	12.5%	0.0%	0.3%	3.0%	11.9%	1.5%	12.5%	2.2%	16.9%	0.0%	4.7%	2.0%
Health Care	10.6%	4.4%	0.0%	3.1%	13.2%	2.7%	26.3%	6.6%	4.7%	0.0%	12.3%	8.1%
Industrials	8.0%	0.0%	1.7%	0.0%	8.7%	22.3%	19.4%	21.6%	4.9%	0.5%	6.1%	8.3%
Communication Services/ Telecommunications/ Information Technology	7.9%	16.6%	0.0%	7.0%	12.3%	4.4%	19.4%	18.0%	1.6%	8.2%	4.0%	17.3%
Utilities	5.8%	0.0%	0.0%	3.7%	4.4%	9.6%	6.5%	7.9%	6.6%	0.0%	7.2%	16.0%
All S&P 500 Companies	8.1%	4.7%	0.6%	2.8%	10.0%	6.1%	14.9%	10.0%	4.3%	5.1%	8.4%	10.1%

0% 0–5% 5–15% 15–25% 25%+

Note:

1. The figure is based on the composition of the S&P 500 as of the last trading day of the previous year. Sectors are based on the Global Industry Classification Standard (GICS), which differ from those in the Bloomberg Industry Classification System used in Figure 13 and Figure 25.
2. Percentage of Market Capitalization Subject to Core Federal Filings equals the market capitalization of companies subject to new securities class action filings in federal courts in each sector divided by the total market capitalization of companies in that sector.
3. In August 2016, GICS added a new industry sector, Real Estate. This analysis begins using the Real Estate industry sector in 2017. In 2018, the Telecommunication Services sector was incorporated into a new sector, Communication Services. With this name change, all companies previously classified as Telecommunication Services and some companies classified as Consumer Discretionary (such as Netflix, Comcast, and CBS) and Information Technology (such as Alphabet and Meta) were reclassified into the Communication Services sector.
4. This analysis only considers federal filings. It does not present combined federal and state data, and lawsuits are not identified as parallel. This is different from other figures in this report that account for filings in federal courts that also have parallel lawsuits identified in state courts. In those analyses, when parallel lawsuits are filed in different years, only the earlier filing is reflected in the analysis. As a result, this figure's filing counts may not match Figures 1–3, 10–13, 15, and 22, or Appendices 1 and 5.

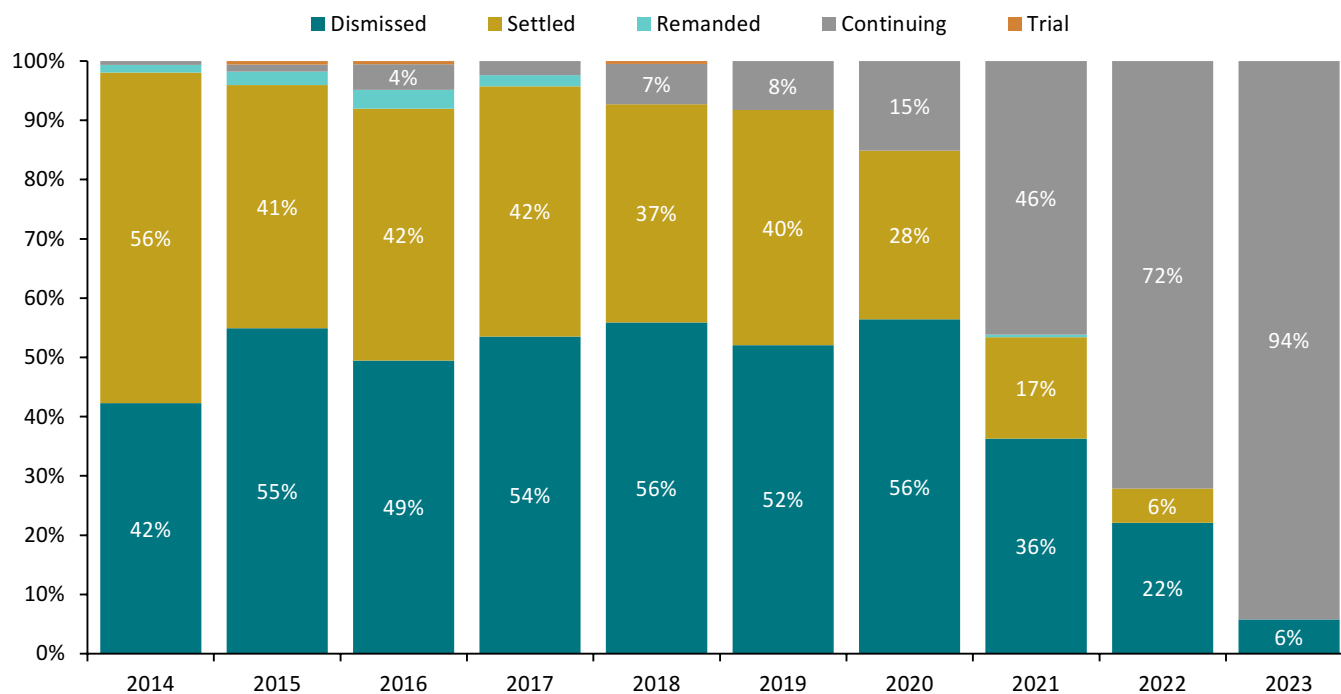
Status of Core Federal Securities Class Action Filings

This analysis compares filing groups to determine whether filing outcomes have changed over time. As each cohort ages, a larger percentage of filings are resolved—whether through dismissal, settlement, remand, or by trial. In the first few years after filing, a larger proportion of core federal lawsuits are dismissed rather than settled, but in later years, more are resolved through settlement than dismissal.

- From 1997 to 2023, 46% of core federal filings were settled, 43% were dismissed, 0.5% were remanded, and 10% are continuing. During this time, only 0.4% of core federal filings (or 21 lawsuits) reached trial.
- More recent cohorts have too many ongoing filings to determine their ultimate resolution rates. For example, of filings that are ongoing, 83% were filed between 2021 and 2023, while 17% were filed before 2021.
- As shown in Appendix 3, contrary to trends in core federal filings, M&A filings from 2013 to 2022 were largely resolved through dismissal, with 93% of filings dismissed and 6% settled.

In 2023, one securities class action lawsuit filed in 2018 went to trial.

Figure 18: Status of Filings by Year—Core Federal Filings 2014–2023



Note: Percentages may not sum to 100% due to rounding. This analysis only considers federal filings. It does not present combined federal and state data, and lawsuits are not identified as parallel. This is different from Figures 1–3, 10–13, 15, and 22, and Appendices 1 and 5, which account for filings in federal courts that also have parallel lawsuits identified in state courts. In those analyses, when parallel lawsuits are filed in different years, only the earlier filing is reflected in the analysis.

1933 Act Filings in State Courts

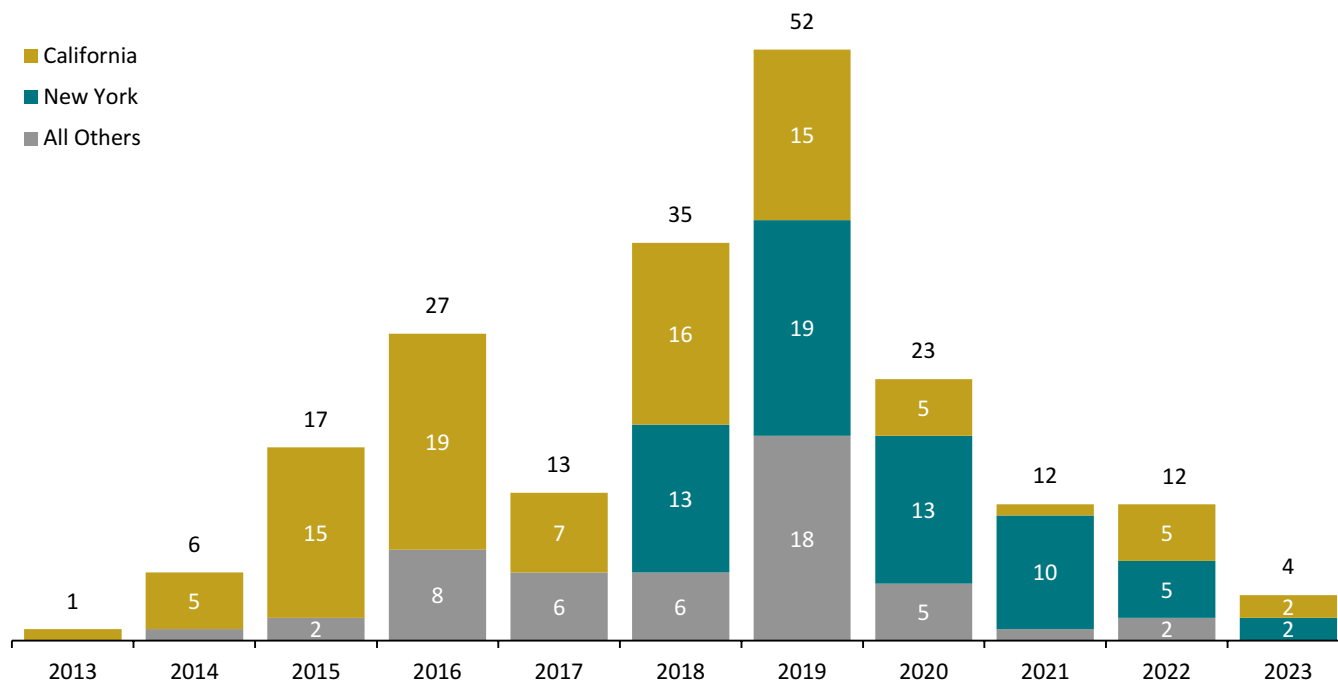
The following data include 1933 Act filings in California, New York, and other state courts. Filings from prior years are added retrospectively when identified. These filings may include Section 11, Section 12, and Section 15 claims, but do not include Section 10(b) claims.

- There were four state 1933 Act filings in 2023, down 67% from 2022. Of these filings, two were in California, and two were in New York. There were no 1933 Act filings in other state courts.

State 1933 Act filing activity plummeted in 2023, falling to the lowest level since 2013.

- In line with the *Sciabacucchi* decision in 2020, which enforced forum selection clauses that require 1933 Act claims to be brought in federal courts, the number of 1933 Act filings in state courts in 2023 was much lower than the number of 1933 Act filings in state courts prior to 2020.
- The period between the *Cyan* and *Sciabacucchi* decisions (March 2018–March 2019) changed the availability of state courts as a forum for 1933 Act claims. In *Cyan*, the U.S. Supreme Court confirmed that state and federal courts have concurrent jurisdiction over 1933 Act claims. In *Sciabacucchi*, the Delaware Supreme Court upheld forum-selection provisions in corporate charters mandating that 1933 Act claims only be brought in federal court. Since then, many state courts have followed *Sciabacucchi*.

Figure 19: State 1933 Act Filings by State 2013–2023



Source: Cornerstone Research and Stanford Law School Securities Class Action Clearinghouse; Bloomberg Law; ISS' SCAS

Note: This analysis counts all filings in state courts. It does not present data on a combined federal and state basis, nor does it identify or account for lawsuits that have parallel filings in both state and federal courts. As a result, totals in this analysis may not match Figures 3, 22, or 23. See Additional Notes to Figures for more detailed information and for Counts and Totals Methodology.

Dollar Loss on Offered Shares™ (DLOS Index™) in Federal Section 11–Only and State 1933 Act Filings

This analysis calculates the loss of market value of class members’ shares offered in securities issuances that are subject to 1933 Act claims. It is calculated as the shares offered at issuance (e.g., in an IPO, a seasoned equity offering (SEO), or a corporate merger or spinoff) acquired by class members multiplied by the difference between the offering price of the shares and their price on the filing date of the first identified complaint.

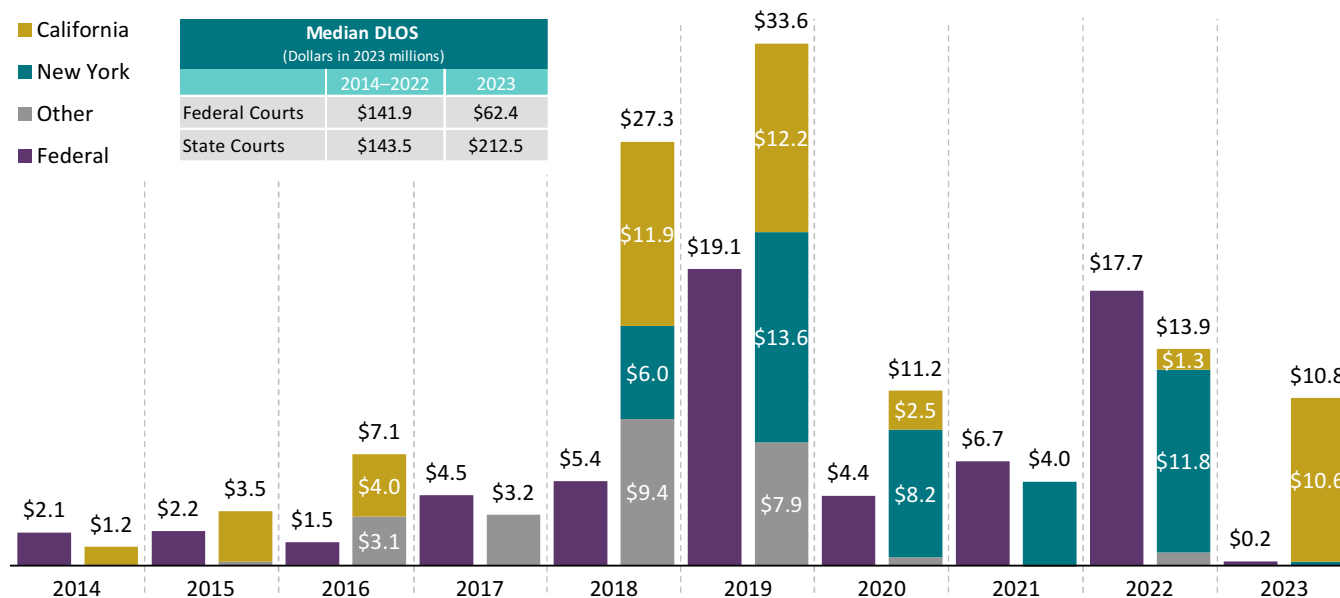
This alternative measure of losses has been calculated for federal filings involving only Section 11 claims (i.e., no Section 10(b) claims) and 1933 Act filings in state courts. This measure, Dollar Loss on Offered Shares (DLOS), aims to capture, more precisely than MDL, the dollar loss associated with the specific shares at issue as alleged in a complaint.

- From 2022 to 2023, total DLOS decreased sharply for federal Section 11 filings, alongside a steep decrease in the number of federal Section 11 filings.
- The 2023 federal median DLOS was less than half of the 2014–2022 median, while the 2023 state median DLOS was 48% greater than the 2014–2022 median.

In 2023, DLOS from federal Section 11 filings fell to \$0.2 billion from \$17.7 billion in 2022.

Figure 20: Dollar Loss on Offered Shares™ (DLOS Index™) for Federal Section 11–Only and State 1933 Act Filings 2014–2023

(Dollars in 2023 billions)



Source: Cornerstone Research and Stanford Law School Securities Class Action Clearinghouse; Bloomberg Law; ISS’ SCAS; CRSP; SEC EDGAR

Note: This figure does not identify or account for parallel filings. Counts and totals in each period are based on the date of each filing, rather than the earliest of the parallel state and federal filing dates. As a result, this figure differs in counts and totals from other figures that rely on parallel filing identification. The numbers shown in this figure have been inflation-adjusted to 2023 dollars and will not match prior reports. See Additional Notes to Figures for more detailed information and for Counts and Totals Methodology.

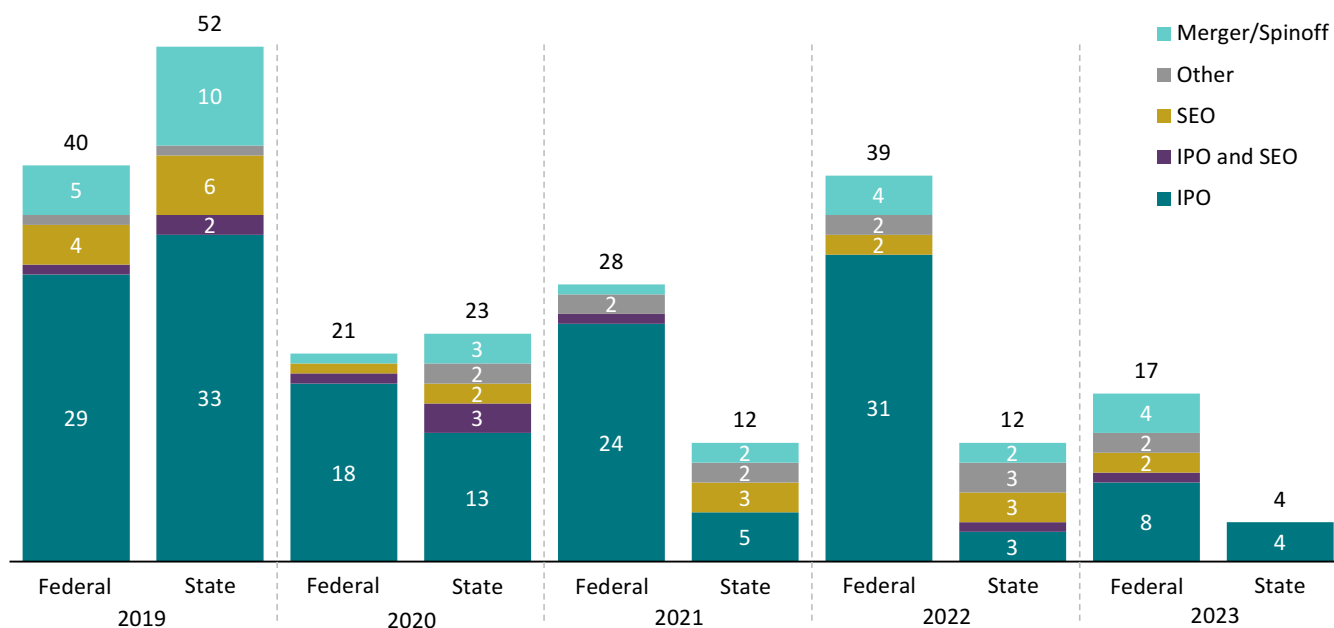
Type of Security Issuance Underlying Federal Section 11 and State 1933 Act Filings

The figure below illustrates Section 11 claims in federal courts and 1933 Act claims in state courts based on the type of security issuance underlying the lawsuit.

In 2023, state court filings dropped from 12 to four and were only related to IPOs.

- Following an increase in 2022, the number of federal Section 11 filings in 2023 dropped to the lowest total since 2013.
- In 2023, IPOs accounted for 47% of Section 11 filings in federal courts.
- In 2021 and 2022, 1933 Act filings in state courts were relatively evenly distributed across all issuance types. In 2023, all state court filings were related to IPOs.
- Federal Section 11 filings related to mergers or spinoffs and SEOs stayed at the same levels as in 2022, while filings related to IPOs in federal courts decreased to eight in 2023, down 74% relative to the number in 2022.

Figure 21: Federal Section 11 and State 1933 Act Class Action Filings by Type of Security Issuance 2019–2023



Source: Cornerstone Research and Stanford Law School Securities Class Action Clearinghouse; Bloomberg Law; ISS' SCAS

Note: This figure does not identify or account for parallel filings. Counts and totals in each period are based on the date of each filing, rather than the earliest of the parallel state and federal filing dates. As a result, this figure differs in counts and totals from other figures that rely on parallel filing identification. See Additional Notes to Figures for more detailed information and for Counts and Totals Methodology.

IPO Activity and Federal Section 11 and State 1933 Act Filings

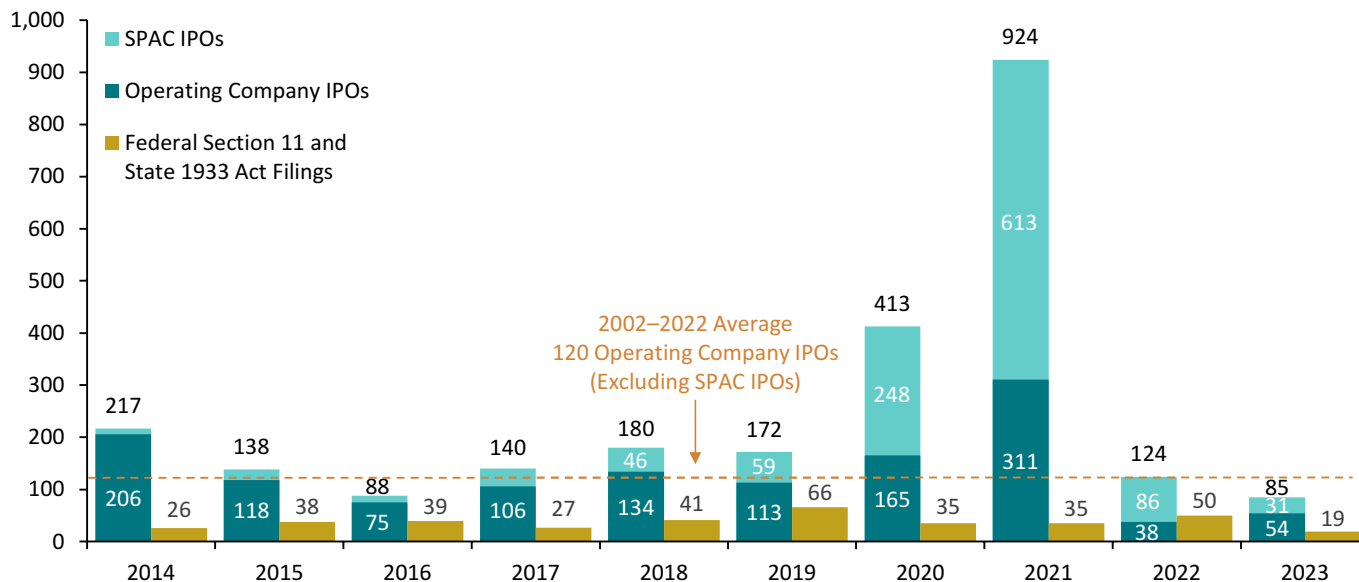
This figure compares IPO activity (operating company IPOs and SPAC IPOs) with counts of federal Section 11 and state 1933 Act filings.

- Although historically SPACs have represented only a small portion of IPOs, SPACs took on an increasingly large share of IPO activity from 2020 to 2022. In 2022, however, the number of SPAC IPOs declined sharply, dropping 86% relative to that in 2021.

Both the total number of IPOs and filings with federal Section 11 and state 1933 Act claims fell in 2023, declining to their lowest points in the past 14 and 10 years, respectively.

- The number of SPAC IPOs continued to decline in 2023, dropping 64% compared to 2022.
- Operating company IPOs increased 42% in 2023, after a sharp drop in 2022. The 54 operating company IPOs in 2023 are less than half of the average annual number of operating company IPOs from 2002 to 2022.
- In 2023, there were more operating company IPOs than SPAC IPOs for the first time since 2019.
- Generally, heavier IPO activity appears to be correlated with increased levels of federal Section 11 and state 1933 Act filings in the ensuing year. This general trend continued in 2023 as federal Section 11 and state 1933 Act filings decreased following a drop in IPO activity from 2021 to 2022.

Figure 22: Number of IPOs on Major U.S. Exchanges and Number of Filings of Federal Section 11 and State 1933 Act Claims 2014–2023



Source: Cornerstone Research and Stanford Law School Securities Class Action Clearinghouse; Jay R. Ritter, “Initial Public Offerings: Updated Statistics,” University of Florida, January 19, 2024

Note: Operating company IPOs exclude the following offerings: those with an offer price of below \$5.00, ADRs, unit offers, closed-end funds, REITs, natural resource limited partnerships, small best-efforts offers, banks and S&Ls, and stocks not included in the CRSP database (CRSP includes Amex, NYSE, and Nasdaq stocks). SPAC IPOs include unit and non-unit SPAC IPOs, as defined by Professor Ritter. This figure presents combined federal and state data. Filings in federal courts may have parallel lawsuits filed in state courts. When parallel lawsuits are filed in different years, only the earlier filing is reflected in the figure above. Filings against the same company brought in different states without a filing brought in federal court are counted as unique state filings. As a result, this figure’s filing counts may not match those in Figures 4–9, 14, 16–21, 24, and 26–28, or Appendices 2–4 and 6–9. The federal Section 11 lawsuits displayed may include Rule 10b-5 claims, but state 1933 Act filings do not.

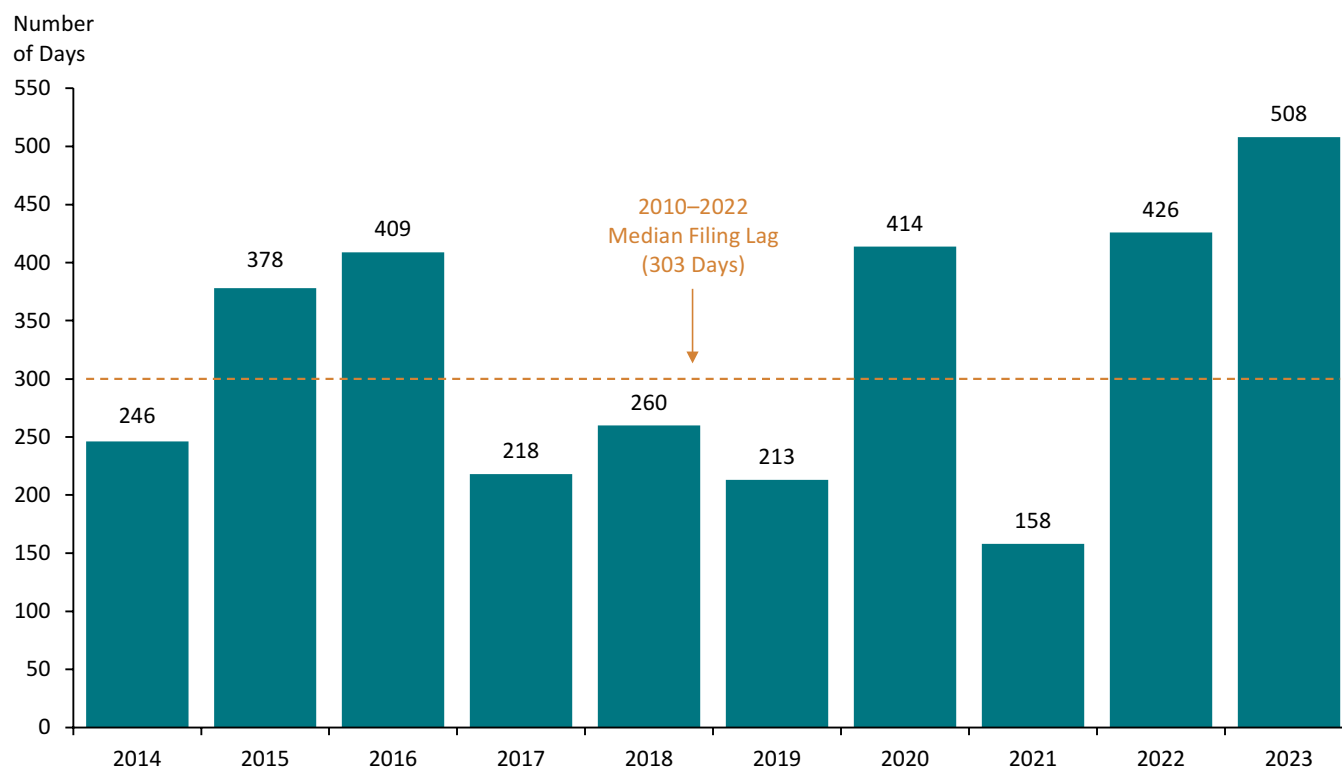
Lag between IPO and Federal Section 11 and State 1933 Act Filings

This analysis reviews the number of days between the IPO of a company and the filing date of a federal Section 11 or state 1933 Act securities class action.

- The IPO filing lag has varied substantially since 2010, but is fairly centered around the 2010–2022 median filing lag of 303 days.
- The IPO filing lag rose to 508 days in 2023 from 426 days in 2022, a 19% increase. The IPO filing lag has increased since 2021.
- The 2023 IPO filing lag was at its highest level since at least 2010.

Between 2010 and 2022, the median filing lag for an IPO subject to a federal Section 11 or state 1933 Act claim was roughly 10 months.

Figure 23: Lag between IPO and Federal Section 11 and State 1933 Act Filings 2014–2023



Note: These data only consider IPOs with a subsequent federal Section 11 or state 1933 Act class action complaint. Only complaints that exclusively referred to an IPO were considered. Federal filings that also include Rule 10b-5 allegations are not considered. Years in the figure refer to the year in which the complaint was filed. This figure presents combined federal and state data. Filings in federal courts may have parallel lawsuits filed in state courts. When parallel lawsuits are filed in different years, only the earlier filing is reflected in the figure above. Filings against the same company brought in different states without a filing brought in federal court are counted as unique state filings.

Non-U.S. Core Federal Filings

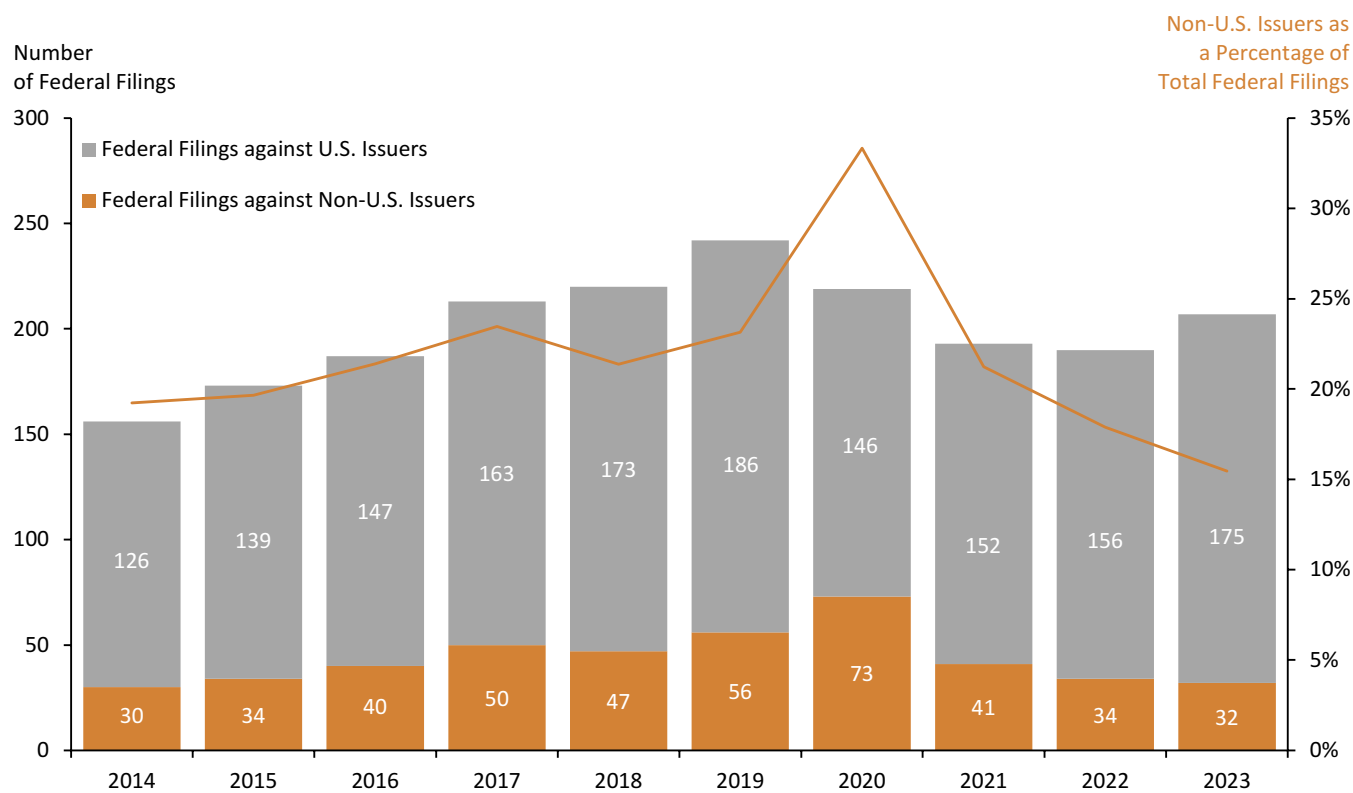
This index tracks the number of core federal filings against foreign issuers (i.e., companies headquartered outside the United States) relative to total core federal filings.

- The number of federal filings against non-U.S. issuers continued to decline since the recent high in 2020, falling to 32, well below the 2014–2022 annual average of 45.
- The number of federal filings against U.S. issuers increased from 156 in 2022 to 175 in 2023, above the 2014–2022 annual average of 154.

- As a percentage of total core federal filings, the number of core federal filings against non-U.S. issuers continued to decline to 15% from a recent high of 33% in 2020, below the 2014–2022 annual average of 22%.

The number of core federal filings against non-U.S. issuers as a percentage of total core federal filings continued to decline from the recent high in 2020.

Figure 24: Annual Number of Class Action Filings by Location of Headquarters—Core Federal Filings 2014–2023



Note: This analysis only considers federal filings. It does not present M&A lawsuits or combined federal and state data, and filings are not identified as parallel. This is different from other figures in this report that account for filings in federal courts that also have parallel lawsuits identified in state courts. In those analyses, when parallel lawsuits are filed in different years, only the earlier filing is reflected in the analysis. As a result, this figure's filing counts may not match Figures 1–3, 10–13, 15, and 22, or Appendices 1 and 5. See Additional Notes to Figures for Counts and Totals Methodology.

Industry Comparison of Core Filings

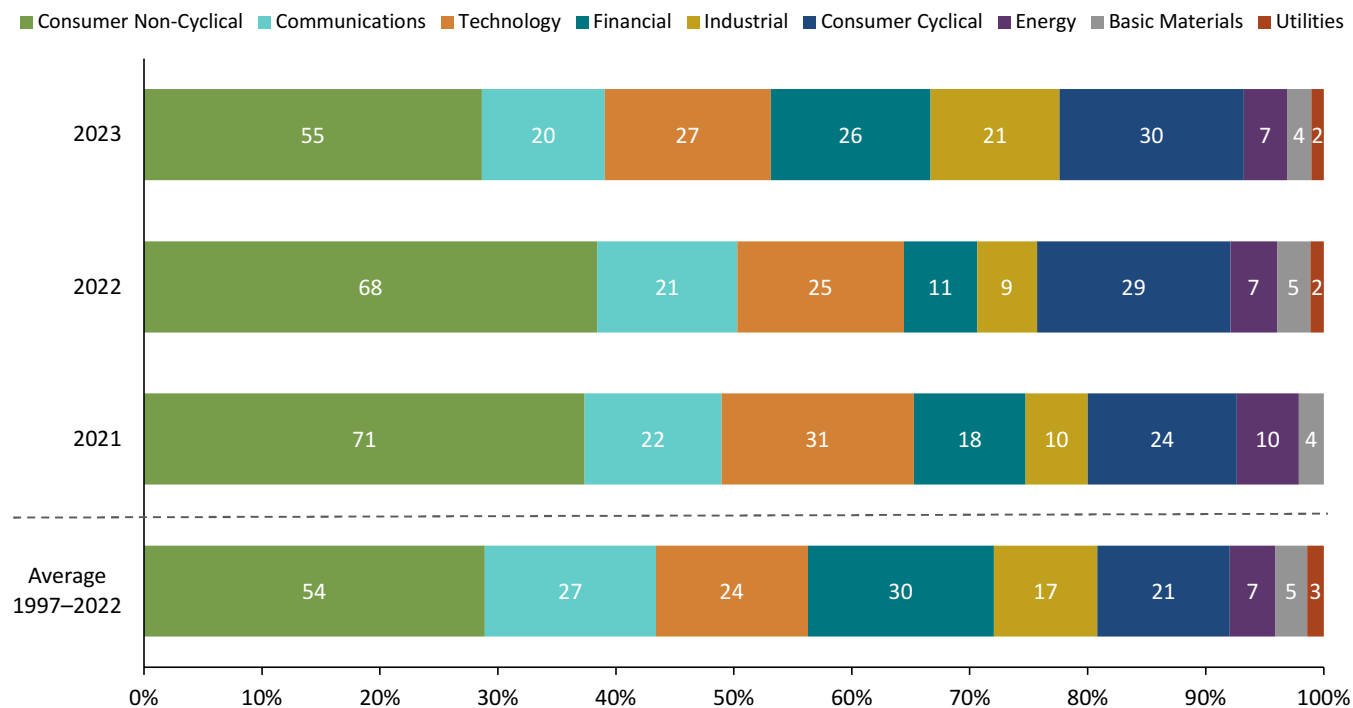
This analysis of core federal and state filings encompasses both smaller companies and large capitalization companies, such as those included in the S&P 500.

- The number of filings in the Financial sector more than doubled relative to that in 2022, accounting for 12% of filings in 2023, driven in part by the turbulence in the banking industry in early 2023.
- In 2023, filings in the Technology sector accounted for 28% of total DDL, and this sector’s DDL was more than twice the 1997–2022 annual average DDL. See Appendix 5.
- The Consumer Non-Cyclical sector remained the sector with the most filings (55 filings), just above the 1997–2022 annual average of 54 filings.

- The number of Industrial sector filings in 2023 (21 filings) more than doubled relative to that in 2022, above the annual average of 17 filings from 1997 to 2022.
- MDL from Communications sector filings in 2023 comprised 37% of total MDL, while filings in the Communications sector only accounted for 10% of core federal and state filings in 2023. See Appendix 5.

Total DDL in the Communications sector decreased eightfold from the record high in 2022.

Figure 25: Filings by Industry—Core Filings



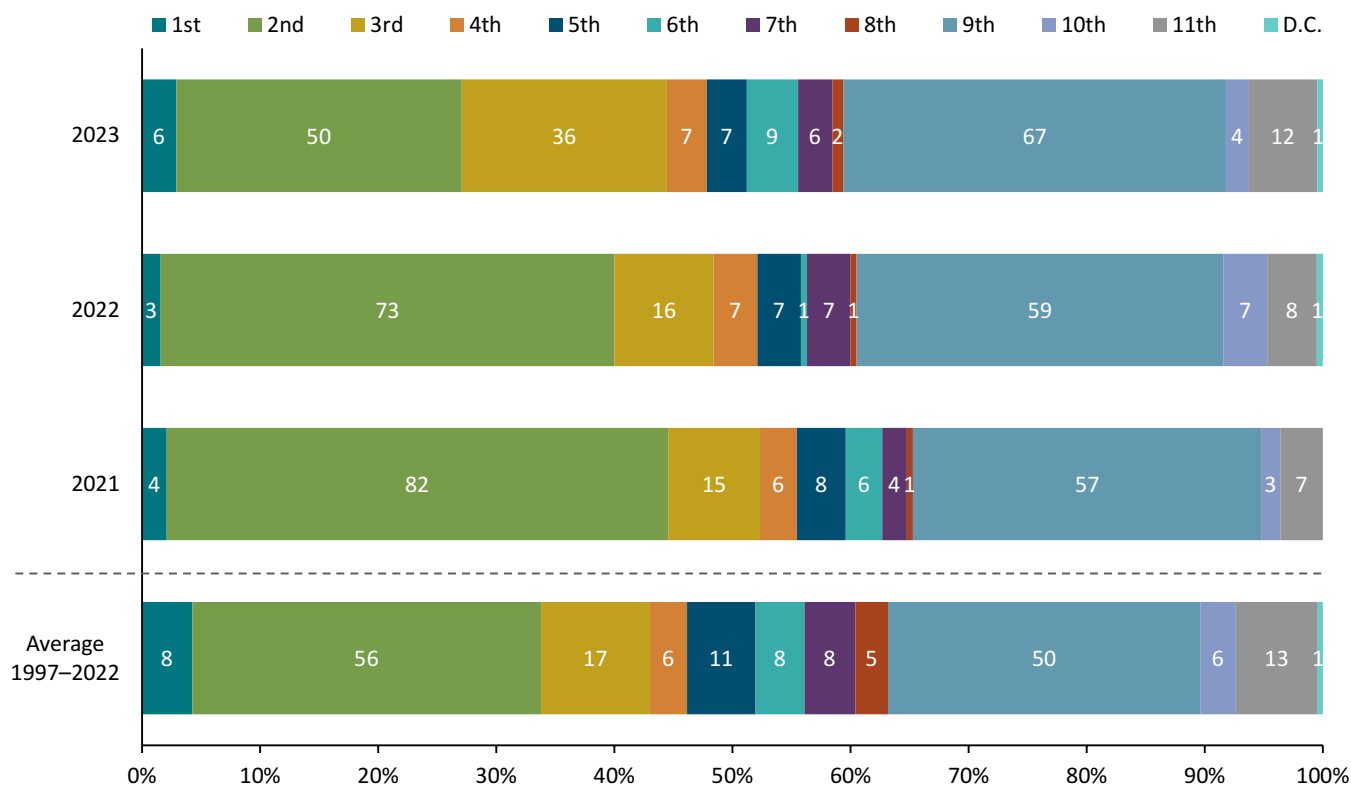
Note: Filings with missing sector information or infrequently used sectors may be excluded. As a result, numbers in this chart may not match other total counts listed in this report. This figure presents combined core and federal state data. It does not present M&A lawsuits. Filings in federal courts may have parallel lawsuits filed in state courts. When parallel lawsuits are filed in different years, only the earlier filing is reflected in the figure above. Filings against the same company brought in different states without a filing brought in federal court are counted as unique state filings. As a result, this figure’s filing counts may not match those in Figures 4–9, 14, 16–21, 24, and 26–28, or Appendices 2–4 and 6–9. Sectors are based on the Bloomberg Industry Classification System. See Additional Notes to Figures for Counts and Totals Methodology.

Core Federal Filings by Circuit

- Core federal filings in the Second Circuit declined for the second consecutive year, falling to 50 in 2023, below the 1997–2022 annual average of 56.
- Core federal filings in the Sixth Circuit increased to nine in 2023, above the 1997–2022 annual average of eight and up from only one in 2022.
- Core federal filings in the Third Circuit more than doubled in 2023, reaching 36 filings, the most on record.
- In 2023, total MDL in the Ninth Circuit rose to \$1.8 trillion, more than five times the 1997–2022 annual average and 68% greater than the 1997–2022 annual average for all circuits. However, total DDL in the Ninth Circuit dropped by 74% to \$111 billion in 2023, but remained well above the 1997–2022 annual average. See Appendix 6.

While the Ninth Circuit comprised 32% of all core federal filings in 2023, it accounted for 56% of total federal MDL.

Figure 26: Filings by Circuit—Core Federal Filings



Note: This analysis only considers federal filings. It does not present M&A lawsuits or combined federal and state data, and lawsuits are not identified as parallel. This is different from other figures in this report that account for filings in federal courts that also have parallel lawsuits identified in state courts. In those analyses, when parallel lawsuits are filed in different years, only the earlier filing is reflected in the analysis. As a result, this figure’s filing counts may not match Figures 1–3, 10–13, 15, and 22, or Appendices 1 and 5. Similarly, MDL and DDL figures discussed on this page will not match Figures 1–3, 10–13, and 25, or Appendices 1 and 5. See Additional Notes to Figures for Counts and Totals Methodology.

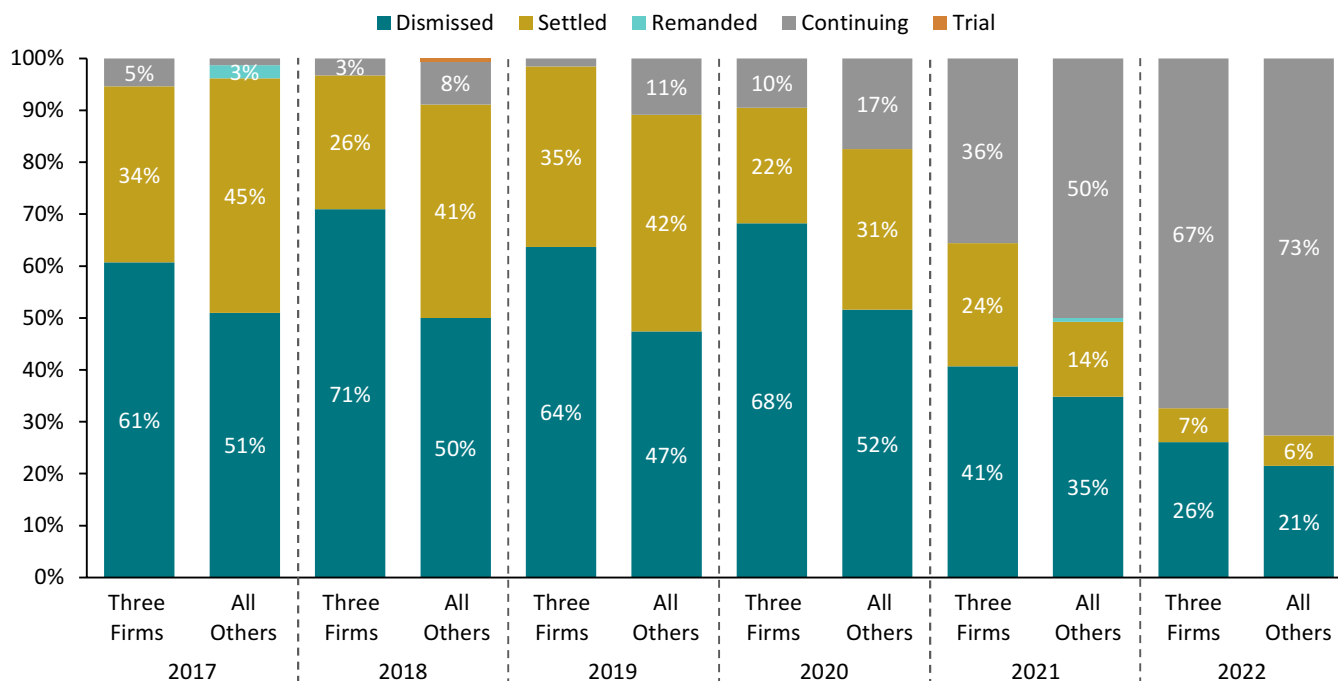
Status of Core Federal Filings by Plaintiff Counsel

Three law firms—The Rosen Law Firm P.A., Pomerantz LLP, and Glancy Prongay & Murray LLP—have been responsible for 59% of first identified core securities class action complaints in federal courts from 2017 to 2022. The figure below examines litigation outcomes for core federal filings for which these three firms were listed as counsel of record. These outcomes are compared with filings for which other plaintiff law firms are the counsel of record.

- From 2017 through 2022, these three firms have had 57% of their core federal operative complaint class actions dismissed, compared to 44% for all other plaintiff firms. A larger set of filings and more careful consideration of other factors such as circuit, court, industry, type of allegation, and other factors would be necessary to determine if differences between these two groups are statistically significant.
- Prior analysis of these three firms by Michael Klausner, Professor of Law at Stanford Law School, and Jason Hegland, Executive Director of Stanford Securities Litigation Analytics, indicated these firms had higher dismissal rates between 2006 and 2015 as well. See “Guest Post: Deeper Trends in Securities Class Actions 2006–2015,” The D&O Diary, June 23, 2016.

Complaints filed by three plaintiff law firms have been dismissed more frequently than those filed by other law firms for all years analyzed.

Figure 27: Status by Plaintiff Law Firm of Record—Core Federal Filings 2017–2022



Note: The analysis relies on the counsel of record. Of core federal filings in 2022, 4% do not have counsel of record assigned yet; these filings are excluded from this analysis. Percentages may not sum to 100% due to rounding. This analysis only considers federal filings. It does not present combined federal and state data, and lawsuits are not identified as parallel. This is different from Figures 1–3, 10–13, 15, and 22, and Appendices 1 and 5, which account for filings in federal courts that also have parallel lawsuits identified in state courts. In those analyses, when parallel lawsuits are filed in different years, only the earlier filing is reflected in the analysis. See Additional Notes to Figures for Counts and Totals Methodology.

Filings Referencing Short-Seller Reports by Plaintiff Counsel

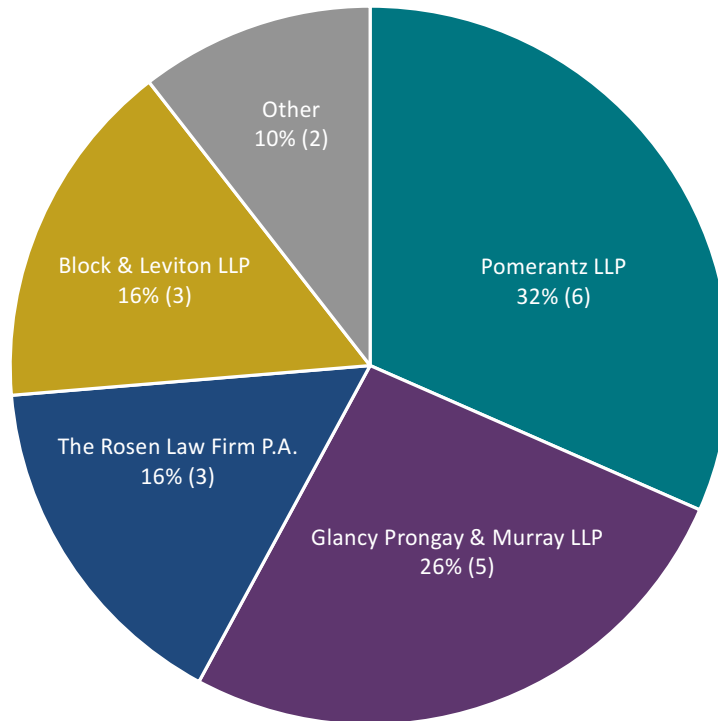
This analysis examines which plaintiff law firms reference reports by short sellers most frequently.

- In 2023, 19 core federal first identified complaints, or about 9%, alleged stock price drops related to reports published by short sellers, a decline of 17% relative to the number in 2022.
- Of these 19 core federal filings, 14 (74%) were made by three plaintiff law firms—The Rosen Law Firm P.A., Pomerantz LLP, and Glancy Prongay & Murray LLP. These firms’ share of core federal filings referencing short-seller reports greatly exceeded their share of all core federal filings (54%) in 2023.

- Of the five filings referencing short sellers made by other law firms, Block & Leviton LLP filed three.

In 2023, three plaintiff law firms—The Rosen Law Firm P.A., Pomerantz LLP, and Glancy Prongay & Murray LLP—filed 74% of the core federal filings that referenced reports published by short sellers.

Figure 28: Core Federal Filings Referencing Short-Seller Reports by Plaintiff Counsel 2023



Source: Cornerstone Research and Stanford Law School Securities Class Action Clearinghouse

Note: Only short-seller reports mentioned in the first identified complaint are included in this analysis. Filings that contained at least one of the four plaintiff law firms were included in the relevant category; otherwise, they were included in “Other.” Four of the filings made by The Rosen Law Firm P.A., Pomerantz LLP, Glancy Prongay & Murray LLP, and Block & Leviton LLP also included an additional law firm. This analysis only considers federal filings. It does not present combined federal and state data, and lawsuits are not identified as parallel. This is different from other figures in this report that account for filings in federal courts that also have parallel lawsuits identified in state courts. In those analyses, when parallel lawsuits are filed in different years, only the earlier filing is reflected in the analysis. As a result, this figure’s filing counts may not match Figures 1–3, 10–13, 15, and 22, or Appendices 1 and 5. See Additional Notes to Figures for Counts and Totals Methodology.

New Developments

Class Decertified in *Arkansas Teacher Retirement System v. Goldman Sachs Group*

On August 10, 2023, the Second Circuit Court of Appeals reversed the district court’s decision to grant class certification in *Arkansas Teacher Retirement System v. Goldman Sachs Group*, and ordered that the class be decertified.¹

In a prior ruling in this matter, the U.S. Supreme Court held that the “inference [] that the back-end price drop equals front-end inflation [] starts to break down when there is a mismatch between the contents of the misrepresentation and the corrective disclosure.” In particular, the Court ruled that “when the earlier misrepresentation is generic (e.g., ‘we have faith in our business model’) and the later corrective disclosure is specific (e.g., ‘our fourth quarter earnings did not meet expectations’), . . . it is less likely that the specific disclosure actually corrected the general misrepresentation, which means that there is less reason to infer front-end price inflation—that is, price impact—from the back-end drop.”²

The Second Circuit held that “there is an insufficient link between the corrective disclosures and the alleged misrepresentations. Defendants have demonstrated, by a preponderance of the evidence, that the misrepresentations did not impact Goldman’s stock price, and, by doing so, rebutted *Basic*’s presumption of reliance.”³

Following the Second Circuit’s decision to decertify the class, the district court entered the voluntary dismissal of the action.⁴

Whether Failure to Disclose Under Item 303 May Support a Claim Under Section 10(b)

On January 16, 2024, the U.S. Supreme Court in *Macquarie Infrastructure Corp. v. Moab Partners LP* heard oral argument in a case that may determine whether a failure to make a disclosure required under Item 303 of Securities Exchange Commission Regulation S-K (Item 303) can support a claim of securities fraud under Section 10(b), even absent an otherwise misleading statement.⁵ (*continued in next column*)

In *Macquarie*, investors accused the company of failing to warn them that a forthcoming ban on high-sulfur fuels could damage the company.⁶

A decision by the Court could resolve a circuit split regarding whether failing to disclose trends or uncertainties that could harm a company under Item 303 can be the basis for Section 10(b) liability. A decision is expected later this year.

Class Certification Denied in *In re: January 2021 Short Squeeze Trading Litigation*

In *In re: January 2021 Short Squeeze Trading Litigation*, the U.S. District Court for the Southern District of Florida declined to certify a class of investors who alleged that they were harmed when Robinhood, a trading platform, engaged in market manipulation when it suspended purchases of a number of “meme stocks.”⁷

In seeking class certification, Plaintiffs argued that the stocks at issue generally traded in efficient markets over a time period before Robinhood put the purchase restrictions in place.⁸ In denying the motion for class certification, the Court explained: “Plaintiffs ask the Court to accept an extraordinary interpretation of *Basic*: that the presumption may apply if a market was generally efficient prior to any alleged manipulation, even if it was unquestionably inefficient when a plaintiff traded. This is nonsense.”⁹ The Court consequently concluded that Plaintiffs “failed to show that common issues predominate because they have not offered a method of proving reliance class wide or otherwise assured the Court that individualized issues of reliance will not predominate.”¹⁰ Plaintiffs have asked the Court for permission to file a renewed motion for class certification.

1. *Arkansas Teacher Retirement System v. Goldman Sachs Group*, 77 F.4th 74, 81 (2d Cir. 2023).

2. *Goldman Sachs Group, Inc. v. Arkansas Teacher Retirement System*, 141 S. Ct. 1951, 1961 (2021).

3. *Arkansas Teacher Retirement System v. Goldman Sachs Group*, 77 F.4th 74, 105 (2d Cir. 2023).

4. Stipulation of Voluntary Dismissal with Prejudice, *In Re Goldman Sachs Group, Inc. Securities Litigation*, Case No. 1:10-cv-03461 (S.D.N.Y., Nov. 17, 2023).

5. “High Court Signals Narrow Ruling against Shareholder Suits,” Law360, January 16, 2024.

6. *Macquarie Infrastructure Corp. v. Moab Partners LP*, Case No. 22-1165.

7. *In re: January 2021 Short Squeeze Trading Litigation*, Case No. 1:21-md-02989, slip op. at 1–2 (S.D. Fla. Nov. 13, 2023).

8. *Ibid.*, slip op. at 60.

9. *Ibid.*, slip op. at 61.

10. *Ibid.*, slip op. at 72.

Glossary

Annual Number of Class Action Filings by Location of Headquarters (formerly known as the Class Action Filings Non-U.S. Index) tracks the number of core federal filings against non-U.S. issuers (companies headquartered outside the United States) relative to total core federal filings.

Class Action Filings Index® (CAF Index®) tracks the number of federal securities class action filings.

Core filings are all state 1933 Act class actions and all federal securities class actions, excluding those defined as M&A filings.

Cyan refers to *Cyan Inc. v. Beaver County Employees Retirement Fund*. In this March 2018 opinion, the U.S. Supreme Court ruled that 1933 Act claims may be brought to state venues and are not removable to federal court.

De-SPAC Transaction refers to the transaction by which a SPAC acquires and merges with a previously private company, which assumes the SPAC's exchange listing.

Disclosure Dollar Loss Index® (DDL Index®) measures the aggregate DDL for all federal and state filings over a period of time. DDL is the dollar-value change in the defendant firm's market capitalization between the trading day immediately preceding the end of the class period and the trading day immediately following the end of the class period. DDL should not be considered an indicator of liability or measure of potential damages. Instead, it estimates the impact of all information revealed at the end of the class period, including information unrelated to the litigation. Reported DDL is inflation-adjusted to 2023 dollars (from the year of the end of the alleged class period for filings with Section 10(b) claims and the filing year for all other lawsuits) using the Consumer Price Index for All Urban Consumers (CPI-U).

Dollar Loss on Offered Shares Index™ (DLOS Index™) measures the aggregate DLOS for federal filings with only Section 11 claims and for state 1933 Act filings. DLOS is the change in the dollar-value of shares acquired by members of the putative class. It is the difference in the price of offered shares (i.e., from the date the registration statement becomes effective through the filing date of the first identified complaint multiplied by the shares offered). DLOS should not be considered an indicator of liability or measure of potential damages. *(continued in next column)*

Instead, it estimates the impact of all information revealed between the date of the registration statement and the complaint filing date, including information unrelated to the litigation. Reported DLOS is inflation-adjusted to 2023 dollars from the filing year using the Consumer Price Index for All Urban Consumers (CPI-U).

Filing lag is the number of days between the end of a class period and the filing date of the securities class action.

First identified complaint is the first complaint filed of one or more securities class action complaints with the same underlying allegations against the same defendant or set of defendants. When there is no federal complaint and multiple state complaints are filed, they are treated as separate filings.

Market capitalization losses measure changes to market values of the companies subject to class action filings. This report tracks market capitalization losses for defendant firms during and at the end of class periods. They are calculated for publicly traded common equity securities, closed-ended mutual funds, and exchange-traded funds where data are available. Declines in market capitalization may be driven by market, industry, and/or firm-specific factors. To the extent that the observed losses reflect factors unrelated to the allegations in class action complaints, indices based on class period losses would not be representative of potential defendant exposure in class actions. This is especially relevant in the post-*Dura* securities litigation environment. In April 2005, the U.S. Supreme Court ruled that plaintiffs in a securities class action are required to establish a causal connection between alleged wrongdoing and subsequent shareholder losses. This report tracks market capitalization losses at the end of each class period using DDL, and market capitalization losses during each class period using MDL.

Maximum Dollar Loss Index® (MDL Index®) measures the aggregate MDL for all federal and state filings over a period of time. MDL is the dollar-value change in the defendant firm's market capitalization from the trading day with the highest market capitalization during the class period to the trading day immediately following the end of the class period. MDL should not be considered an indicator of liability or measure of potential damages. Instead, it estimates the impact of all information revealed during or at the end of the class period, including information unrelated to the litigation. *(continued on next page)*

Maximum Dollar Loss Index® (MDL Index®), *continued*

Reported MDL is inflation-adjusted to 2023 dollars (from the year of the end of the alleged class period for filings with Section 10(b) claims and the filing year for all other lawsuits) using the Consumer Price Index for All Urban Consumers (CPI-U).

Merger and acquisition (M&A) filings are securities class actions filed in federal courts that have Section 14 claims, but no Section 10(b), Section 11, or Section 12(a) claims, and involve merger and acquisition transactions.

Trend categories are categories of related securities class actions filed in federal courts. Current trend categories include SPAC, Cannabis, COVID-19, Cryptocurrency, Cybersecurity or Data Breach, and 2023 Banking Turbulence.

Sciabacucchi refers to *Salzberg v. Sciabacucchi*. On March 18, 2020, the Delaware Supreme Court held that forum-selection provisions in corporate charters requiring that some class action securities claims under the 1933 Act be adjudicated in federal courts are enforceable.

Securities Class Action Clearinghouse is an authoritative source of data and analysis on the financial and economic characteristics of federal securities fraud class action litigation, cosponsored by Cornerstone Research and Stanford Law School.

State 1933 Act filing is a class action filed in a state court that asserts claims under Section 11 and/or Section 12 of the Securities Act of 1933. These filings may also have Section 15 claims, but do not have Section 10(b) claims.

Additional Notes to Figures

Counts and Totals Methodology

1. A parallel filing is a filing in federal court that has a related filing in state court.
2. For a state court filing to be considered parallel it must be filed against the same defendant, concern the same security, and contain similar allegations to the federal filing.
3. Any additional filing against the same defendant brought in a different state without an additional federal court filing is counted as a unique state filing.
4. When parallel lawsuits are filed in different years or semiannual periods, only the earliest filing is reflected in filing counts and totals.
5. Parallel filings are only used in figures that show combined counts or totals across federal and state courts.
6. Figures that separately present state and federal counts or totals do not identify parallel filings. Therefore, counts and totals in each period are based on the date of each filing, rather than the earliest of the parallel state and federal filing dates. As a result, these figures differ in counts and totals from other figures that rely on parallel filing identification.
7. Figures that only present state counts or totals similarly do not identify parallel filings. Therefore, counts and totals in each period are only based on the dates of state filings. As a result, these figures differ in counts and totals from other figures that rely on parallel filing identification.
8. Figures that only present federal counts or totals similarly do not identify parallel filings. Therefore, counts and totals in each period are only based on the dates of federal filings. As a result, these figures differ in counts and totals from other figures that rely on parallel filing identification.

Figure 3: Federal Filings and State 1933 Act Filings by Venue

1. The federal Section 11 data displayed may contain Section 10(b) claims, but state 1933 Act filings do not.
2. Beginning in 2018, California state filings may contain either Section 11 or Section 12 claims. Of the 16 filings in California in 2018, six filings contained Section 12 claims without also containing Section 11 claims. Since 2018, there have been two such filings.

Figure 4: Summary of Trend Filings—Core Federal Filings

Definitions of Trend Categories:

Cybersecurity-related filings are those in which allegations relate to data breaches or security vulnerabilities.

Cryptocurrency-related filings include blockchain or cryptocurrency companies that engaged in the sale or exchange of tokens (commonly initial coin offerings) or non-fungible tokens (NFTs), cryptocurrency mining, cryptocurrency derivatives, or that designed blockchain-focused software.

Cannabis-related filings include companies financing, farming, distributing, or selling cannabis and cannabidiol products.

COVID-19-related filings include allegations related to companies negatively impacted by the pandemic or looking to address demand for products as a result of the pandemic.

SPAC filings concern companies that went public for the express purpose of acquiring an existing company in the future. These include current and former SPACs.

2023 Banking Turbulence filings include allegations related to a series of bank failures that occurred in rapid succession, beginning with Silvergate Bank on March 8, 2023.

(continued in next column)

In 2023, one filing against a SPAC also had cryptocurrency-related allegations and one filing had both 2023 Banking Turbulence allegations and cryptocurrency-related allegations. In 2022, two filings against SPACs also had cryptocurrency-related allegations. One filing against a SPAC also had COVID-19-related allegations and one filing involving the 2023 Banking Turbulence trend category also had cryptocurrency-related allegations. In 2021, one filing had both cryptocurrency-related allegations and cybersecurity allegations. One filing against a cannabis company also had COVID-19-related allegations. In 2020, one filing against a SPAC also had cryptocurrency-related allegations. In 2018, one filing had cryptocurrency-related allegations and involved a company in the cannabis industry.

Figure 8: Summary of Cryptocurrency-Related Filings—Core Federal Filings

Definitions of Cryptocurrency Filing Classifications:

Cryptocurrency Financial Product filings include allegations related to a financial product comprised of cryptocurrencies.

Cryptocurrency Exchange filings include allegations related to the creation or operation of an exchange that allows for the transfer and/or sale of cryptocurrencies or tokens.

Cryptocurrency Issuer filings include allegations related to the creation or issuance of a cryptocurrency or an NFT.

Cryptocurrency Miner filings include allegations against a company that operates a cryptocurrency mining service or provides the resources for cryptocurrency mining.

Cryptocurrency-Adjacent filings include allegations against a company that does not issue, mine, offer cryptocurrency financial products, or offer exchange services for cryptocurrency, but is still involved in the cryptocurrency industry. Examples include companies selling mining rigs and chips, companies attempting to enter the cryptocurrency space, and companies partnering with cryptocurrency companies to provide services.

Filings with **Multiple Classifications** include allegations relating to two or more of the above cryptocurrency classifications.

In 2023, all five filings with multiple classifications included allegations against an exchange. Two of these filings only had allegations relating to a cryptocurrency financial product and against an exchange; two only had allegations against an exchange and an issuer; and one had allegations relating to a cryptocurrency financial product, against an exchange, and against an issuer. In 2022, filings with multiple classifications included one filing against an issuer and an exchange; three filings relating to a cryptocurrency financial product and against an exchange; two filings relating to a cryptocurrency financial product and against an issuer; one filing against an issuer and a cryptocurrency-adjacent company; and one filing relating to a cryptocurrency financial product, against an issuer, and against an exchange. In 2021, filings with multiple classifications included one filing against an exchange and a cryptocurrency-adjacent company. In 2020, filings with multiple classifications included one filing against an issuer and an exchange. In 2019, filings with multiple classifications included one filing against an issuer and a miner. In 2018, filings with multiple classifications included two filings against an issuer and an exchange; one filing against an issuer and a miner; and one filing against a miner and a cryptocurrency-adjacent company. In 2016, filings with multiple classifications included one filing relating to a cryptocurrency financial product, against an issuer, and against a miner.

Figure 14: Allegations Box Score—Core Federal Filings

Definitions:

Misrepresentations in financial documents are allegations made in the first identified complaint (FIC) that financial documents included misrepresentations. Financial documents include, but are not limited to, those filed with the U.S. Securities and Exchange Commission (SEC) (e.g., Form 10-Ks and registration statements) and press releases announcing financial results.

Accounting violations are allegations made in the FIC of U.S. GAAP violations or violations of other reporting standards such as IFRS. In some lawsuits, plaintiff(s) may not have expressly referenced violations of U.S. GAAP or other reporting standards; however, the allegations, if true, would represent violations of U.S. GAAP or other reporting standards.

Announced restatements are alleged when the FIC includes accounting violations and refers to an announcement during or subsequent to the class period that the company will restate, may restate, or has unreliable financial statements.

Internal control weaknesses are allegations made in the FIC of internal control weaknesses over financial reporting.

Announced internal control weaknesses are alleged when the FIC includes internal control weaknesses and refers to an announcement during or subsequent to the class period that the company has internal control weaknesses over financial reporting.

Figure 15: Percentage of U.S. Exchange-Listed Companies Subject to Federal or State Filings

1. Percentages are calculated by dividing the count of issuers listed on the NYSE or Nasdaq subject to filings by the number of companies listed on the NYSE or Nasdaq as of the beginning of the year. Percentages may not sum due to rounding.
2. Core Filings and M&A Filings do not include instances in which a company has been subject to both a core and M&A filing in the same year. These are reported separately in the category labeled Both Core and M&A Filings. Since 2009 there have been 22 instances in which a company has been subject to both core and M&A filings in the same year. In 2017, 0.14% of U.S. exchange-listed companies were subject to both a core and M&A filing in the same year. In 2009, 2010, 2013, 2015, 2016, 2019, 2020, and 2021, less than 0.1% of U.S. exchange-listed companies were subject to both a core and M&A filing in the same year. In all other years since 2009 there were no companies subject to both core and M&A filings in the same year.
3. Listed companies were identified by taking the count of listed securities at the beginning of each year and accounting for cross-listed companies or companies with more than one security traded on a given exchange. Securities were counted if they were classified as common stock or American depository receipts (ADRs) and listed on the NYSE or Nasdaq.
4. This figure presents combined federal and state data. Filings in federal courts may have parallel lawsuits filed in state courts. When parallel lawsuits are filed in different years, only the earlier filing is reflected in Figure 12. Filings against the same company brought in different states without a filing brought in federal court are counted as unique state filings. The figure begins including issuers facing suits in state 1933 Act filings in 2010.

Figure 19: State 1933 Act Filings by State

1. All Others contains filings in Alabama, Arizona, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Massachusetts, Michigan, Nevada, New Hampshire, New Jersey, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Washington, West Virginia, and Wisconsin.
2. Beginning in 2018, California state filings may contain either Section 11 or Section 12 claims. Of the 16 filings in California in 2018, six filings contained Section 12 claims without also containing Section 11 claims. Since 2018, there have been two such filings.
3. This analysis compares all Section 11 filings in federal courts with all 1933 Act filings in state courts. It does not present data on a combined federal and state basis, nor does it identify or account for lawsuits that have parallel filings in both state and federal courts. The numbers shown in this figure have been inflation-adjusted to 2023 dollars and will not match prior reports.

Figure 20: Dollar Loss on Offered Shares™ (DLOS Index™) for Federal Section 11—Only and State 1933 Act Filings

1. Federal filings included in this analysis must contain a Section 11 claim and may contain a Section 12 claim, but do not contain Section 10(b) claims. Beginning in 2018, California state filings may contain either Section 11 or Section 12 claims. Of the 16 filings in California in 2018, six filings contained Section 12 claims without also containing Section 11 claims. Since 2018, there have been two such filings.
2. Starting with Cornerstone Research's *Securities Class Action Filings—2021 Year in Review*, the DLOS methodology has been changed from using the difference between the offering price of the shares and their closing price on the day of the first identified complaint's first alleged corrective disclosure (if none were mentioned, instead the price the day after the complaint filing day was used instead), to using the difference between the offering price of the shares and their closing price on the filing date of the first identified complaint.

Figure 21: Federal Section 11 and State 1933 Act Class Action Filings by Type of Security Issuance

1. The federal Section 11 data displayed may contain Section 10(b) claims, but state 1933 Act filings do not.
2. Beginning in 2018, California state filings may contain either Section 11 or Section 12 claims. Of the 16 filings in California in 2018, six filings contained Section 12 claims without also containing Section 11 claims. Since 2018, there have been two such filings.
3. There was one federal court filing in 2019 related to both a merger-related issuance and an SEO. This analysis categorizes this filing as relating to a merger-related issuance to avoid double-counting. Similarly, there was an SEO and other state filing in 2021 marked as SEO, a merger-related and other federal filing in 2022 marked as merger-related, and an IPO/SEO and other state filing in 2022 marked as IPO/SEO, all for the same reason.

Appendices

Appendix 1: Basic Filings Metrics

Year	Class		Disclosure Dollar Loss			Maximum Dollar Loss			U.S. Exchange-Listed Firms: Core Filings		
	Action Filings	Core Filings	DDL Total (\$ Billions)	Average (\$ Millions)	Median (\$ Millions)	MDL Total (\$ Billions)	Average (\$ Millions)	Median (\$ Millions)	Number of Listed Firms Sued	Percentage of Listed Firms Sued	
1997	174	174	\$80	\$519	\$109	\$278	\$1,808	\$770	8,113	165	2.0%
1998	242	242	\$150	\$684	\$114	\$419	\$1,907	\$549	8,190	225	2.7%
1999	209	209	\$257	\$1,395	\$186	\$667	\$3,625	\$691	7,771	197	2.5%
2000	216	216	\$426	\$2,217	\$211	\$1,348	\$7,022	\$1,240	7,418	205	2.8%
2001	180	180	\$344	\$2,112	\$159	\$2,583	\$15,844	\$1,328	7,197	168	2.3%
2002	224	224	\$341	\$1,678	\$232	\$3,480	\$17,141	\$2,532	6,474	204	3.2%
2003	192	192	\$129	\$754	\$167	\$962	\$5,625	\$797	5,999	181	3.0%
2004	228	228	\$234	\$1,198	\$174	\$1,189	\$6,098	\$815	5,643	210	3.7%
2005	182	182	\$146	\$935	\$242	\$574	\$3,681	\$774	5,593	168	3.0%
2006	120	120	\$79	\$756	\$165	\$451	\$4,334	\$624	5,525	114	2.1%
2007	177	177	\$234	\$1,500	\$229	\$1,039	\$6,658	\$1,051	5,467	158	2.9%
2008	224	224	\$314	\$2,154	\$304	\$1,162	\$7,956	\$1,525	5,339	170	3.2%
2009	164	157	\$119	\$1,182	\$196	\$782	\$7,740	\$1,513	5,042	118	2.3%
2010	174	135	\$102	\$973	\$203	\$669	\$6,371	\$836	4,764	107	2.2%
2011	189	146	\$156	\$1,159	\$125	\$718	\$5,316	\$614	4,660	127	2.7%
2012	154	142	\$130	\$1,017	\$203	\$543	\$4,210	\$863	4,529	119	2.6%
2013	165	152	\$136	\$983	\$200	\$365	\$2,642	\$700	4,411	137	3.1%
2014	170	158	\$72	\$488	\$212	\$285	\$1,923	\$680	4,416	144	3.3%
2015	217	183	\$154	\$864	\$186	\$534	\$2,998	\$659	4,578	169	3.7%
2016	288	204	\$135	\$705	\$212	\$1,078	\$5,617	\$1,327	4,593	188	4.1%
2017	412	214	\$157	\$799	\$186	\$641	\$3,269	\$827	4,411	186	4.2%
2018	420	238	\$403	\$1,928	\$362	\$1,604	\$7,673	\$1,300	4,406	211	4.8%
2019	427	267	\$338	\$1,424	\$259	\$1,420	\$5,992	\$1,204	4,318	237	5.5%
2020	331	232	\$316	\$1,567	\$212	\$1,786	\$8,840	\$1,185	4,514	192	4.3%
2021	218	200	\$309	\$1,755	\$424	\$1,064	\$6,043	\$1,596	4,759	181	3.8%
2022	208	201	\$618	\$3,720	\$262	\$2,531	\$15,246	\$2,224	5,741	172	3.0%
2023	215	209	\$335	\$1,838	\$336	\$3,209	\$17,634	\$2,275	5,688	181	3.2%
Average 1997–2022	227	192	\$226	\$1,326	\$213	\$1,083	\$6,368	\$1,085	5,539	172	3.2%

Note: This figure presents combined federal and state data. Filings in federal courts may have parallel lawsuits filed in state courts. When parallel lawsuits are filed in different years, only the earlier filing is reflected in the figure above. Filings against the same company brought in different states without a filing brought in federal court are counted as unique state filings. State 1933 Act filings in state courts are included in the data beginning in 2010. As a result, this figure's filing counts may not match those in Figures 4–9, 14, 16–21, 24, and 26–28, or Appendices 2–4 and 6–9. Average and median numbers are calculated only for filings with MDL and DDL data. There are core filings for which data are not available to estimate MDL and DDL accurately; these filings are excluded from MDL and DDL analysis. The number and percentage of U.S. exchange-listed firms sued are based on core filings and include companies that were subject to both an M&A filing and a core filing in the same year. This differs from Figure , which separately categorizes companies with both an M&A filing and a core filing in the same year. The numbers shown in this figure have been inflation-adjusted to 2023 dollars and will not match prior reports.

Appendix 2A: S&P 500 Securities Litigation—Percentage of S&P 500 Companies Subject to Core Federal Filings

Year	Consumer Discretionary	Consumer Staples	Energy/ Materials	Financials/ Real Estate	Health Care	Industrials	Telecomm./ Comm./IT	Utilities	All S&P 500 Companies
2001	2.4%	8.3%	0.0%	1.4%	7.1%	0.0%	18.0%	7.9%	5.6%
2002	10.2%	2.9%	3.1%	16.7%	15.2%	6.0%	11.0%	40.5%	12.0%
2003	4.6%	2.9%	1.7%	8.6%	10.4%	3.0%	5.6%	2.8%	5.2%
2004	3.4%	2.7%	1.8%	19.3%	10.6%	8.5%	3.2%	5.7%	7.2%
2005	10.3%	8.6%	1.7%	7.3%	10.7%	1.8%	6.7%	3.0%	6.6%
2006	4.4%	2.8%	0.0%	2.4%	6.9%	0.0%	8.1%	0.0%	3.6%
2007	5.7%	0.0%	0.0%	10.3%	12.7%	5.8%	2.3%	3.1%	5.4%
2008	4.5%	2.6%	0.0%	31.2%	13.7%	3.6%	2.5%	3.2%	9.2%
2009	3.8%	4.9%	1.5%	9.5%	3.7%	6.9%	1.2%	0.0%	4.2%
2010	5.1%	0.0%	4.3%	10.3%	13.5%	0.0%	2.4%	0.0%	4.8%
2011	3.8%	2.4%	0.0%	1.2%	2.0%	1.7%	7.1%	0.0%	2.6%
2012	4.9%	2.4%	2.7%	3.7%	1.9%	1.6%	3.8%	0.0%	3.0%
2013	8.4%	0.0%	0.0%	0.0%	5.7%	0.0%	9.1%	0.0%	3.4%
2014	1.2%	0.0%	1.3%	1.2%	0.0%	4.7%	0.0%	0.0%	1.2%
2015	0.0%	5.0%	0.0%	1.2%	1.9%	0.0%	4.2%	3.4%	1.6%
2016	3.6%	2.6%	4.5%	6.9%	17.9%	6.1%	6.8%	3.4%	6.6%
2017	8.5%	2.7%	3.3%	3.3%	8.3%	8.7%	8.5%	7.1%	6.4%
2018	10.0%	11.8%	1.8%	7.0%	16.1%	8.8%	12.7%	7.1%	9.4%
2019	3.1%	12.1%	3.7%	2.0%	12.9%	10.1%	10.0%	6.9%	7.2%
2020	8.1%	3.1%	1.9%	5.3%	6.3%	2.7%	2.0%	7.1%	4.4%
2021	0.0%	6.3%	5.7%	0.0%	0.0%	1.4%	5.1%	0.0%	2.2%
2022	3.3%	0.0%	0.0%	2.1%	7.8%	4.2%	6.0%	3.6%	3.8%
2023	3.8%	10.5%	1.9%	4.8%	10.9%	7.7%	11.6%	3.3%	7.1%
Average									
2001–2022	5.0%	3.7%	1.7%	6.8%	8.4%	3.9%	6.2%	5.0%	5.3%

Appendix 2B: S&P 500 Securities Litigation—Percentage of Market Capitalization of S&P 500 Companies Subject to Core Federal Filings

Year	Consumer Discretionary	Consumer Staples	Energy/ Materials	Financials/ Real Estate	Health Care	Industrials	Telecomm./ Comm./IT	Utilities	All S&P 500 Companies
2001	1.3%	6.3%	0.0%	0.8%	5.4%	0.0%	32.6%	17.4%	10.9%
2002	24.7%	0.3%	1.2%	29.2%	35.2%	13.3%	9.1%	51.0%	18.8%
2003	2.0%	2.3%	0.4%	19.9%	16.3%	4.6%	1.7%	4.3%	8.0%
2004	7.9%	0.1%	29.7%	46.1%	24.1%	8.8%	1.2%	4.8%	17.7%
2005	5.7%	11.4%	1.6%	22.2%	10.1%	5.6%	10.3%	5.6%	10.7%
2006	8.9%	0.8%	0.0%	8.2%	18.1%	0.0%	8.3%	0.0%	6.7%
2007	4.4%	0.0%	0.0%	18.1%	22.5%	2.2%	3.4%	5.5%	8.2%
2008	7.2%	2.6%	0.0%	55.0%	20.0%	26.4%	1.4%	4.0%	16.2%
2009	1.9%	3.9%	0.8%	30.7%	1.7%	23.2%	0.3%	0.0%	7.6%
2010	4.9%	0.0%	5.2%	31.1%	32.7%	0.0%	5.9%	0.0%	11.1%
2011	4.6%	0.8%	0.0%	6.9%	0.7%	2.1%	13.4%	0.0%	5.0%
2012	1.6%	14.0%	0.9%	11.0%	0.8%	1.2%	2.2%	0.0%	4.3%
2013	4.4%	0.0%	0.0%	0.0%	4.4%	0.0%	16.6%	0.0%	4.7%
2014	2.5%	0.0%	0.2%	0.3%	0.0%	1.7%	0.0%	0.0%	0.6%
2015	0.0%	1.9%	0.0%	3.0%	3.1%	0.0%	7.0%	3.7%	2.8%
2016	2.8%	1.0%	19.8%	11.9%	13.2%	8.7%	12.3%	4.4%	10.0%
2017	8.2%	6.7%	2.3%	1.5%	2.7%	22.3%	4.4%	9.6%	6.1%
2018	4.7%	15.2%	1.4%	12.5%	26.3%	19.4%	19.4%	6.5%	14.9%
2019	0.5%	9.1%	1.2%	2.2%	6.6%	21.6%	18.0%	7.9%	10.0%
2020	2.2%	1.8%	0.4%	16.9%	4.7%	4.9%	1.6%	6.6%	4.3%
2021	0.0%	17.7%	12.0%	0.0%	0.0%	0.5%	8.2%	0.0%	5.1%
2022	30.3%	0.0%	0.0%	4.7%	12.3%	6.1%	4.0%	7.2%	8.4%
2023	13.1%	7.4%	0.6%	2.0%	8.1%	8.3%	17.3%	16.0%	10.1%
Average									
2001–2022	7.2%	4.8%	2.9%	12.5%	10.6%	8.0%	7.9%	5.8%	8.1%

Note: Average figures are calculated as the sum of the market capitalization subject to core filings in a given sector from 2001 to 2022 divided by the sum of market capitalization in that sector from 2001 to 2022.

Appendix 3: M&A Federal Filings Overview

Year	M&A Filings	M&A Case Status					Case Status of All Other Federal Filings				
		Dismissed	Settled	Remanded	Continuing	Trial	Dismissed	Settled	Remanded	Continuing	Trial
2013	13	7	6	0	0	0	86	65	1	0	0
2014	12	9	3	0	0	0	66	87	2	1	0
2015	34	27	7	0	0	0	95	71	4	2	1
2016	84	70	14	0	0	0	92	79	6	8	1
2017	198	190	7	1	0	0	114	90	4	5	0
2018	182	176	5	0	1	0	123	81	0	15	1
2019	160	156	2	0	2	0	126	96	0	20	0
2020	99	98	0	0	1	0	123	62	0	33	0
2021	18	14	1	0	3	0	70	33	1	89	0
2022	7	3	1	0	3	0	42	11	0	137	0
2023	6	1	0	0	5	0	12	0	0	195	0
Average (2013–2022)	81	75	5	0	1	0	94	68	2	31	0

Note: The Securities Class Action Clearinghouse began tracking M&A filings as a separate category in 2009. Case status is as of January 10, 2024. Filings are grouped by complaint filing year, not the year of the most recent change in case status. This analysis only considers federal filings. It does not present combined federal and state data, and lawsuits are not identified as parallel. This is different from other figures in this report that account for filings in federal courts that also have parallel lawsuits identified in state courts. In those analyses, when parallel lawsuits are filed in different years, only the earlier filing is reflected in the analysis. As a result, this figure’s filing counts may not match Figures 1–3, 10–13, 15, and 22, or Appendices 1 and 5.

Appendix 4: Status by Year—Core Federal Filings

Filing Year	In the First Year			In the Second Year			In the Third Year		
	Settled	Dismissed	Total Resolved within One Year	Settled	Dismissed	Total Resolved within Two Years	Settled	Dismissed	Total Resolved within Three Years
1997	0.6%	7.5%	8.0%	14.9%	8.6%	31.6%	17.8%	4.0%	53.4%
1998	0.8%	7.4%	8.3%	16.1%	12.8%	37.2%	15.7%	7.9%	60.7%
1999	0.5%	6.7%	7.2%	11.0%	12.0%	30.1%	18.2%	9.1%	57.4%
2000	1.9%	4.2%	6.0%	11.6%	13.0%	30.6%	15.7%	10.6%	57.4%
2001	1.7%	6.7%	8.3%	11.7%	10.6%	30.6%	18.3%	5.0%	53.9%
2002	0.9%	5.8%	7.1%	6.7%	9.4%	23.2%	14.7%	11.6%	49.6%
2003	1.0%	7.8%	8.9%	7.8%	13.5%	30.2%	14.1%	14.6%	58.9%
2004	0.0%	10.5%	10.5%	9.6%	16.2%	36.4%	12.3%	9.6%	58.3%
2005	0.5%	11.5%	12.1%	6.6%	19.8%	38.5%	18.1%	8.8%	65.4%
2006	0.8%	9.2%	10.0%	8.3%	17.5%	35.8%	16.7%	7.5%	60.0%
2007	0.6%	7.3%	7.9%	7.9%	18.1%	33.9%	19.2%	11.9%	65.0%
2008	0.0%	13.0%	13.9%	4.9%	20.2%	39.0%	10.3%	10.3%	59.6%
2009	0.0%	9.6%	9.6%	6.4%	22.9%	38.9%	8.3%	9.6%	56.7%
2010	1.5%	11.0%	13.2%	8.8%	20.6%	42.6%	5.9%	13.2%	61.8%
2011	0.0%	12.4%	13.1%	4.1%	18.6%	35.9%	22.1%	11.7%	69.7%
2012	0.7%	12.9%	15.1%	4.3%	25.9%	45.3%	18.0%	6.5%	69.8%
2013	0.0%	19.1%	19.7%	10.5%	25.0%	55.3%	14.5%	5.3%	75.0%
2014	0.6%	10.9%	12.8%	9.6%	21.8%	44.2%	18.6%	7.7%	70.5%
2015	0.0%	17.3%	19.7%	6.9%	23.7%	50.3%	11.0%	8.7%	69.9%
2016	0.0%	14.4%	16.0%	8.0%	22.5%	47.1%	11.2%	7.5%	66.8%
2017	0.0%	18.3%	19.7%	5.2%	22.5%	47.9%	11.3%	7.5%	66.7%
2018	0.0%	13.2%	13.2%	6.8%	22.7%	42.7%	9.1%	11.8%	63.6%
2019	0.0%	14.5%	14.5%	6.2%	24.8%	45.5%	15.3%	7.4%	68.2%
2020	0.5%	17.4%	17.9%	5.0%	24.3%	47.2%	12.4%	10.6%	70.2%
2021	0.0%	13.5%	14.0%	5.7%	16.6%	36.3%	11.4%	6.2%	53.9%
2022	0.5%	12.1%	12.6%	5.3%	10.0%	27.9%	-	-	-
2023	0.0%	5.8%	5.8%	-	-	-	-	-	-

Note: Percentages may not sum due to rounding. Percentages below the dashed lines indicate cohorts for which data are not complete. Status is reported as of the last significant docket update as determined by the Cornerstone Research and Stanford Law School Securities Class Action Clearinghouse and is up to date as of the end of 2023. This analysis only considers federal filings. It does not present combined federal and state data, and lawsuits are not identified as parallel. This is different from other figures in this report that account for filings in federal courts that also have parallel lawsuits identified in state courts. In those analyses, when parallel lawsuits are filed in different years, only the earlier filing is reflected in the analysis. As a result, this figure’s filing counts may not match Figures 1–3, 10–13, 15, and 22, or Appendices 1 and 5.

Appendix 5: Filings by Industry—Core Filings

(Dollars in 2023 billions)

Industry	Class Action Filings				Disclosure Dollar Loss				Maximum Dollar Loss			
	Average 1997–2022	2021	2022	2023	Average 1997–2022	2021	2022	2023	Average 1997–2022	2021	2022	2023
Financial	30	18	11	26	\$29	\$7	\$29	\$39	\$186	\$37	\$194	\$207
Consumer Non-Cyclical	54	71	68	55	\$64	\$72	\$134	\$70	\$247	\$231	\$661	\$345
Industrial	17	10	9	21	\$19	\$6	\$4	\$24	\$68	\$12	\$37	\$104
Technology	24	31	25	27	\$35	\$47	\$36	\$93	\$145	\$116	\$253	\$475
Consumer Cyclical	21	24	29	30	\$16	\$50	\$23	\$57	\$91	\$152	\$235	\$804
Communications	27	22	21	20	\$52	\$108	\$386	\$42	\$272	\$308	\$1,105	\$1,191
Energy	7	10	7	7	\$6	\$15	\$3	\$5	\$39	\$199	\$39	\$32
Basic Materials	5	4	5	4	\$3	\$3	\$2	\$2	\$19	\$8	\$6	\$12
Utilities	3	0	2	2	\$2	\$0	\$0	\$2	\$15	\$0	\$2	\$40
Unknown/Unclassified	4	10	24	17	\$0	\$0	\$0	\$0	\$1	\$0	\$0	\$0
Total	192	200	201	209	\$226	\$309	\$618	\$335	\$1,083	\$1,064	\$2,531	\$3,209

Note: Figures may not sum due to rounding. Filings with missing sector information or infrequently used sectors may be excluded. As a result, numbers in this chart may not match other total counts listed in the report. This figure presents combined core federal and state data. It does not present M&A lawsuits. Filings in federal courts may have parallel lawsuits filed in state courts. When parallel lawsuits are filed in different years, only the earlier filing is reflected in the figure above. Filings against the same company brought in different states without a filing brought in federal court are counted as unique state filings. The numbers shown in this figure have been inflation-adjusted to 2023 dollars and will not match prior reports. As a result, this figure’s filing counts, DDL, and MDL may not match 4–9, 14, 16–21, 24, and 26–28, or Appendices 2–4 and 6–9.

Appendix 6: Filings by Circuit—Core Federal Filings

(Dollars in 2023 billions)

Circuit	Class Action Filings				Disclosure Dollar Loss				Maximum Dollar Loss			
	Average 1997–2022	2021	2022	2023	Average 1997–2022	2021	2022	2023	Average 1997–2022	2021	2022	2023
1st	8	4	3	6	\$10	\$2	\$2	\$5	\$30	\$5	\$34	\$20
2nd	56	82	73	50	\$67	\$122	\$75	\$100	\$363	\$418	\$383	\$486
3rd	17	15	16	36	\$28	\$16	\$54	\$32	\$111	\$61	\$309	\$384
4th	6	6	7	7	\$4	\$6	\$3	\$6	\$19	\$20	\$19	\$17
5th	11	8	7	7	\$10	\$13	\$1	\$2	\$60	\$178	\$23	\$48
6th	8	6	1	9	\$10	\$2	\$1	\$10	\$39	\$9	\$7	\$122
7th	8	4	7	6	\$11	\$1	\$27	\$8	\$46	\$2	\$113	\$40
8th	5	1	1	2	\$4	\$0	\$9	\$29	\$19	\$2	\$51	\$64
9th	50	57	59	67	\$69	\$127	\$420	\$111	\$331	\$307	\$1,473	\$1,803
10th	6	3	7	4	\$4	\$1	\$6	\$6	\$19	\$3	\$36	\$24
11th	13	7	8	12	\$7	\$7	\$1	\$8	\$33	\$18	\$7	\$142
D.C.	1	0	1	1	\$1	\$0	\$1	\$15	\$4	\$0	\$1	\$51
Total	188	193	190	207	\$224	\$296	\$599	\$332	\$1,073	\$1,021	\$2,455	\$3,201

Note: Figures may not sum due to rounding. The numbers shown in this figure have been inflation-adjusted to 2023 dollars and will not match prior reports. This analysis only considers core federal filings. It does not present M&A lawsuits or combined federal and state data, and lawsuits are not identified as parallel. This is different from other figures in this report that account for filings in federal courts that also have parallel lawsuits identified in state courts. In those analyses, when parallel lawsuits are filed in different years, only the earlier filing is reflected in the analysis. As a result, this figure’s filing counts, DDL, and MDL may not match Figures 1–3, 10–13, 15, and 22, or Appendices 1 and 5.

Appendix 7: Filings by Exchange Listing—Core Federal Filings

	Average (1997–2022)		2022		2023	
	NYSE/Amex	Nasdaq	NYSE	Nasdaq	NYSE	Nasdaq
Class Action Filings	91	115	74	98	83	110
<i>Core Filings</i>	76	96	71	94	78	109
Disclosure Dollar Loss						
DDL Total (\$ Billions)	\$133	\$90	\$126	\$473	\$184	\$148
Average (\$ Millions)	\$1,943	\$946	\$1,940	\$5,202	\$2,454	\$1,440
Median (\$ Millions)	\$417	\$165	\$333	\$203	\$646	\$203
Maximum Dollar Loss						
MDL Total (\$ Billions)	\$661	\$406	\$816	\$1,630	\$1,272	\$1,929
Average (\$ Millions)	\$9,467	\$4,259	\$12,551	\$17,913	\$16,956	\$18,727
Median (\$ Millions)	\$2,118	\$783	\$3,030	\$1,941	\$4,961	\$1,444

Note: Average and median numbers are calculated only for filings with MDL and DDL data. NYSE/Amex was renamed NYSE MKT in May 2012. The numbers shown in this figure have been inflation-adjusted to 2023 dollars and will not match prior reports. This analysis only considers core federal filings. It does not present M&A lawsuits or combined federal and state data, and lawsuits are not identified as parallel. This is different from other figures in this report that account for filings in federal courts that also have parallel lawsuits identified in state courts. In those analyses, when parallel lawsuits are filed in different years, only the earlier filing is reflected in the analysis. As a result, this figure’s filing counts, DDL, and MDL may not match Figures 1–3, 10–13, 15, and 22, or Appendices 1 and 5.

Appendix 8: Cryptocurrency-Related Filings by Cryptocurrency Classification—Core Federal Filings

Cryptocurrency Classification Box Score—Core Federal Filings								
	2016	2017	2018	2019	2020	2021	2022	2023
Cryptocurrency-Adjacent Company	0	0	2	1	1	3	2	2
Cryptocurrency Exchange	0	0	2	0	5	4	10	7
Cryptocurrency Financial Product	1	0	0	0	0	0	7	4
Cryptocurrency Issuer	1	5	10	3	8	1	10	4
Cryptocurrency Miner	1	0	4	1	0	4	3	3
Multiple Cryptocurrency Classifications	1	0	4	1	1	1	8	5
Total Cryptocurrency-Related Filings	1	5	14	4	13	11	23	14

Note: Filings with multiple classifications include allegations relating to two or more of the cryptocurrency classifications; therefore, total counts by category may not match counts shown in Figure 8. This analysis only considers core federal filings. It does not present M&A lawsuits or combined federal and state data, and lawsuits are not identified as parallel. This is different from other figures in this report that account for filings in federal courts that also have parallel lawsuits identified in state courts. In those analyses, when parallel lawsuits are filed in different years, only the earlier filing is reflected in the analysis.

Research Sample

- The Securities Class Action Clearinghouse, cosponsored by Cornerstone Research and Stanford Law School, has identified 6,525 federal securities class action filings between January 1, 1996, and December 31, 2023 (securities.stanford.edu). The analysis in this report is based on data identified by Stanford as of January 10, 2024.
- The sample used in this report includes federal filings that typically allege violations of Sections 11 or 12 of the Securities Act of 1933, or Sections 10(b) or 14(a) of the Securities Exchange Act of 1934.
- The sample is referred to as the “classic filings” sample and excludes IPO allocation, analyst, and mutual fund filings (313, 68, and 25 filings, respectively).
- Multiple filings related to the same allegations against the same defendant(s) are consolidated in the database through a unique record indexed to the first identified complaint.
- In addition to federal filings, class actions filed in state courts since January 1, 2010, alleging violations of the Securities Act of 1933 are also separately tracked.
- An additional 219 state class action filings in state courts, from January 1, 2010, to December 31, 2023, have also been identified.

The views expressed herein do not necessarily represent the views of Cornerstone Research.

The authors request that you reference Cornerstone Research and the Stanford Law School Securities Class Action Clearinghouse in any reprint of the information or figures included in this report.

Please direct any questions to:

Alexander Aganin

650.853.1660

aaganin@cornerstone.com

Cornerstone Research

Cornerstone Research provides economic and financial consulting and expert testimony in all phases of complex disputes and regulatory investigations. The firm works with an extensive network of prominent academics and industry practitioners to identify the best-qualified expert for each assignment. Cornerstone Research has earned a reputation for consistently high quality and effectiveness by delivering rigorous, state-of-the-art analysis since 1989. The firm has over 900 staff in nine offices across the United States and Europe.

www.cornerstone.com



Exhibit 3



CORNERSTONE RESEARCH

Economic and Financial Consulting and Expert Testimony

Securities Class Action Settlements

2023 Review and Analysis

Table of Contents

2023 Highlights	1
Author Commentary	2
Total Settlement Dollars	3
Settlement Size	4
Type of Claim	5
Rule 10b-5 Claims and “Simplified Tiered Damages”	5
Plaintiff-Estimated Damages	7
’33 Act Claims and “Simplified Statutory Damages”	8
Analysis of Settlement Characteristics	10
GAAP Violations	10
Derivative Actions	11
Corresponding SEC Actions	12
Institutional Investors	13
Time to Settlement and Case Complexity	14
Case Stage at the Time of Settlement	15
Cornerstone Research’s Settlement Analysis	16
Research Sample	17
Data Sources	17
Endnotes	18
Appendices	19
About the Authors	24

Figures and Appendices

Figure 1: Settlement Statistics	1
Figure 2: Total Settlement Dollars	3
Figure 3: Distribution of Settlements	4
Figure 4: Median and Average “Simplified Tiered Damages” in Rule 10b-5 Cases	5
Figure 5: Median Settlement as a Percentage of “Simplified Tiered Damages” by Damages Ranges in Rule 10b-5 Cases	6
Figure 6: Settlements by Nature of Claims	8
Figure 7: Median Settlement as a Percentage of “Simplified Statutory Damages” by Damages Ranges in ‘33 Act Claim Cases	9
Figure 8: Median Settlement as a Percentage of “Simplified Tiered Damages” and Allegations of GAAP Violations	10
Figure 9: Frequency of Derivative Actions	11
Figure 10: Frequency of SEC Actions	12
Figure 11: Median Settlement Amounts and Institutional Investors	13
Figure 12: Median Settlement by Duration from Filing Date to Settlement Hearing Date	14
Figure 13: Median Settlement Dollars and Resolution Stage at Time of Settlement	15
Appendix 1: Settlement Percentiles	19
Appendix 2: Settlements by Select Industry Sectors	19
Appendix 3: Settlements by Federal Circuit Court	20
Appendix 4: Mega Settlements	20
Appendix 5: Median and Average Settlements as a Percentage of “Simplified Tiered Damages”	21
Appendix 6: Median and Average Settlements as a Percentage of “Simplified Statutory Damages”	21
Appendix 7: Median and Average Maximum Dollar Loss (MDL)	22
Appendix 8: Median and Average Disclosure Dollar Loss (DDL)	22
Appendix 9: Median Docket Entries by “Simplified Tiered Damages” Range	23

Analyses in this report are based on nearly 2,200 securities class actions filed after passage of the Private Securities Litigation Reform Act of 1995 (Reform Act) and settled from 1996 through year-end 2023. See page 17 for a detailed description of the research sample. For purposes of this report and related research, a settlement refers to a negotiated agreement between the parties to a securities class action that is publicly announced to potential class members by means of a settlement notice.

2023 Highlights

In 2023, while the number of settled securities class actions declined 21% relative to the 15-year high in 2022, the median settlement amount, median “simplified tiered damages,” and median total assets of issuer defendants all remained at historically elevated levels.¹

- There were 83 securities class action settlements in 2023 with a total settlement value of approximately \$3.9 billion, compared to 105 settlements in 2022 with a total settlement value of approximately \$4.0 billion. (page 3)
- The median settlement amount of \$15 million is the highest level since 2010 and represents an increase of 11% from 2022, while the average settlement amount (\$47.3 million) increased by 25% over 2022. (page 4)
- There were nine mega settlements (equal to or greater than \$100 million), with a total settlement value of \$2.5 billion. (page 3)
- In 2023, 34% of cases settled for more than \$25 million, the highest percentage since 2012. (page 4)
- Median “simplified tiered damages” declined 16% from the record high in 2022, but remained at elevated levels compared to the prior nine years.² (page 5)
- Issuer defendant firms involved in cases that settled in 2023 were 19% larger than defendant firms in 2022 settlements as measured by median total assets, which reached its highest level since 1996. (page 5)
- The median duration from the case filing to the settlement hearing date of 3.7 years in 2023 was unusually high. Since the Reform Act’s passage, the time to settle reached this level in only one other year (2006). (page 14)

Figure 1: Settlement Statistics

(Dollars in millions)

	2018–2022	2022	2023
Number of Settlements	420	105	83
Total Amount	\$19,545.7	\$3,974.7	\$3,927.3
Minimum	\$0.4	\$0.7	\$0.8
Median	\$11.7	\$13.5	\$15.0
Average	\$46.5	\$37.9	\$47.3
Maximum	\$3,640.9	\$842.9	\$1,000.0

Note: Settlement dollars are adjusted for inflation; 2023 dollar equivalent figures are presented.

Author Commentary

Insights and Findings

Continuing an increase observed in 2022, the size of settled cases in 2023 (measured by the median settlement amount) reached the highest level in over a decade. This occurred despite a decline in median “simplified tiered damages,” a measure of potential shareholder losses that our research finds to be the single most important factor in explaining individual settlement amounts.

The size of the issuer defendant firms involved in cases settled in 2023 (measured by median total assets) also increased. Indeed, median total assets for defendants in 2023 settlements reached an all-time high among post-Reform Act settlements and was 19% higher than in 2022. Issuer defendant assets serve, in part, as a proxy for resources available to fund a settlement and are highly correlated with settlement amounts. Thus, the increase in defendant assets likely contributed to the growth in settlement amounts in 2023.

One factor causing the increase in asset size of defendant firms in cases settled in 2023 may be that, overall, these firms were more mature than in prior years. Specifically, the median age as a publicly traded firm was 16 years, compared to the median age of 11 years for cases settled from 2014 to 2022. In addition, the percentage of cases settled in 2023 that involved firms in the financial sector (over 15%) was higher than the prior nine-year average. Firms in the financial sector involved in securities class action settlements have consistently reported higher total assets than other issuer firm defendants.

In 2023, cases took longer to settle. They also reached more advanced stages prior to resolution, including a smaller proportion of cases settled before a ruling on class certification compared to prior years. Since longer periods to reach settlement are also correlated with higher settlement amounts, this increase is consistent with the higher overall median settlement value.

Securities class actions settled in 2023 continued to take longer to resolve—disruptions associated with the COVID-19 pandemic may have contributed to this increase.

*Dr. Laarni T. Bulan
Principal, Cornerstone Research*

Longer times to reach a settlement and more advanced litigation stages are also typically correlated with greater case activity, as measured by the number of entries on the court dockets. Surprisingly, the median number of docket entries increased only slightly compared to 2022. This, and the fact that over 80% of cases settled in 2023 had been filed by the end of 2020, suggests that the lengthened time to settlement can potentially be explained by delays related to the COVID-19 pandemic.

The size of issuer defendants in 2023 settlements surpassed even the previous record in 2022, in part due to an increase in the number of financial sector defendants to the highest level in the last decade.

*Dr. Laura E. Simmons
Senior Advisor, Cornerstone Research*

Looking Ahead

While we do not necessarily expect new record highs in settlement dollars in the upcoming years, it is possible that settlement amounts will remain at relatively high levels, based on recent trends in securities class action filings, including elevated levels of Disclosure Dollar Loss and Maximum Dollar Loss. (See Cornerstone Research’s [Securities Class Action Filings—2023 Year in Review](#).)

Further, the most recent emergence of case filings related to the 2023 bank failures, combined with a relatively high proportion in the last few years of settled cases involving financial firms, may result in a continued rise in the asset size of issuer defendants involved in settlements. This may also contribute to high settlement amounts.

Additionally, considering the levels of filing activity in recent years, we do not anticipate dramatic increases in the number of cases settled in the upcoming years.

—Laarni T. Bulan and Laura E. Simmons

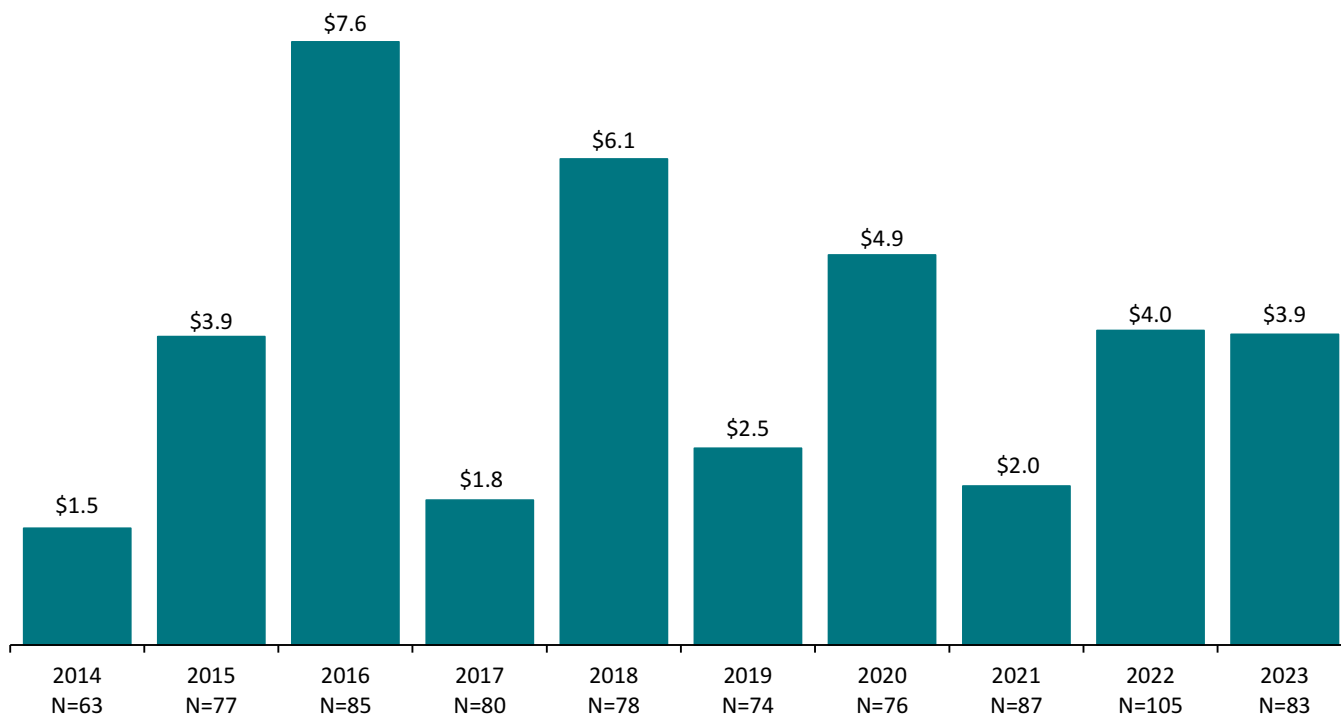
Total Settlement Dollars

- While the number of settlements in 2023 declined by more than 20% from 2022, 2023 total settlement dollars were roughly the same as in 2022.
- The nine mega settlements in 2023—the highest number since 2016—ranged from \$102.5 million to \$1 billion. (See Appendix 4 for an analysis of mega settlements.)
- Cases involving institutional investors as lead plaintiffs represented 86% of total settlement dollars in 2023, in line with the percentage in 2022.

Mega settlements accounted for nearly two-thirds of 2023 total settlement dollars, up from 52% in 2022.

**Figure 2: Total Settlement Dollars
2014–2023**

(Dollars in billions)



Note: Settlement dollars are adjusted for inflation; 2023 dollar equivalent figures are presented. “N” refers to the number of cases.

Settlement Size

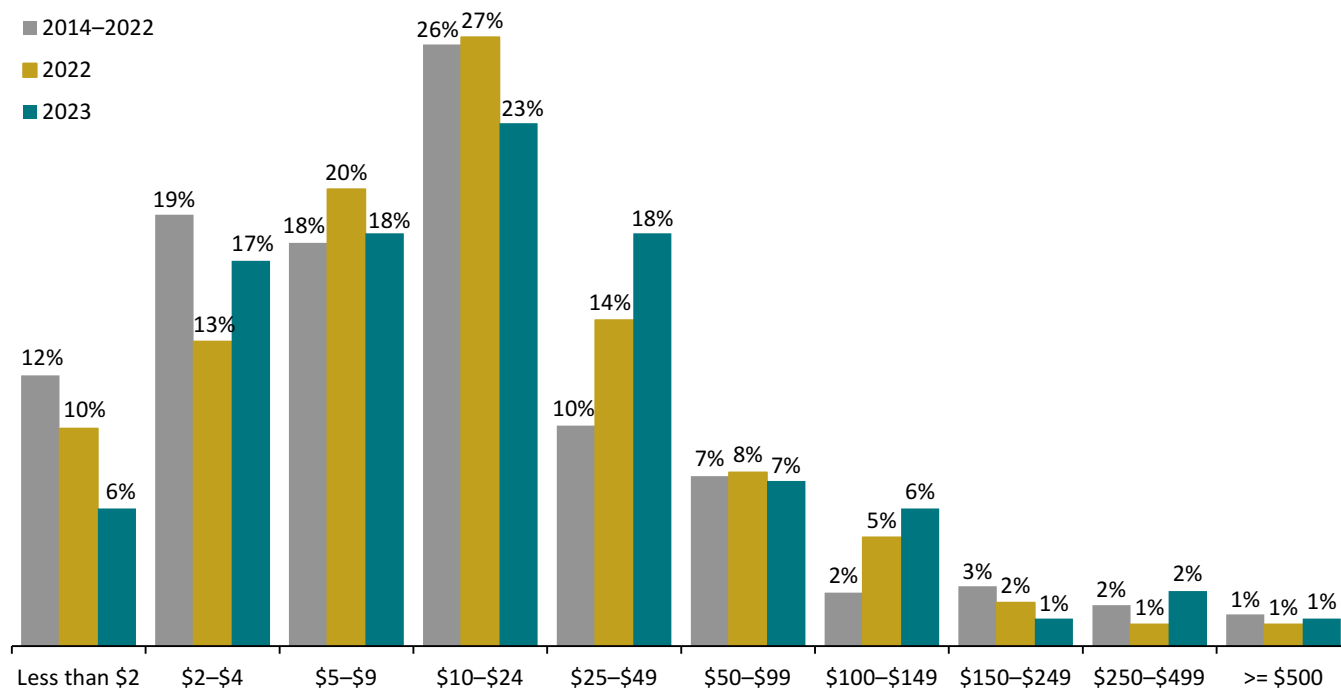
- The median settlement amount in 2023 was \$15 million, an 11% increase from 2022 and 44% higher than the 2014–2022 median (\$10.4 million). Median values provide the midpoint in a series of observations and are less affected than averages by outlier data.
- The average settlement amount in 2023 was \$47.3 million, a 25% increase from 2022. (See Appendix 1 for an analysis of settlements by percentiles.)
- In 2023, 6% of cases settled for less than \$2 million, the lowest percentage since 2013.

The median settlement amount in 2023 reached the highest level since 2010.

- The percentage of settlement amounts greater than \$25 million (34%) was the highest since 2012, driven in part by the continued increase in settlement amounts in the \$25 million to \$50 million range.
- Issuers that have been delisted from a major exchange and/or declared bankruptcy prior to settlement are generally associated with lower settlement amounts. The number of such issuers declined from 10% in 2022 to a new all-time low of 7% in 2023, contributing to the higher overall median settlement amount in 2023.³

Figure 3: Distribution of Settlements
2014–2023

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2023 dollar equivalent figures are presented. Percentages may not sum to 100% due to rounding.

Type of Claim

Rule 10b-5 Claims and “Simplified Tiered Damages”

“Simplified tiered damages” uses simplifying assumptions to estimate per-share damages and trading behavior for cases involving Rule 10b-5 claims. It provides a measure of potential shareholder losses that allows for consistency across a large volume of cases, thus enabling the identification and analysis of potential trends.⁴

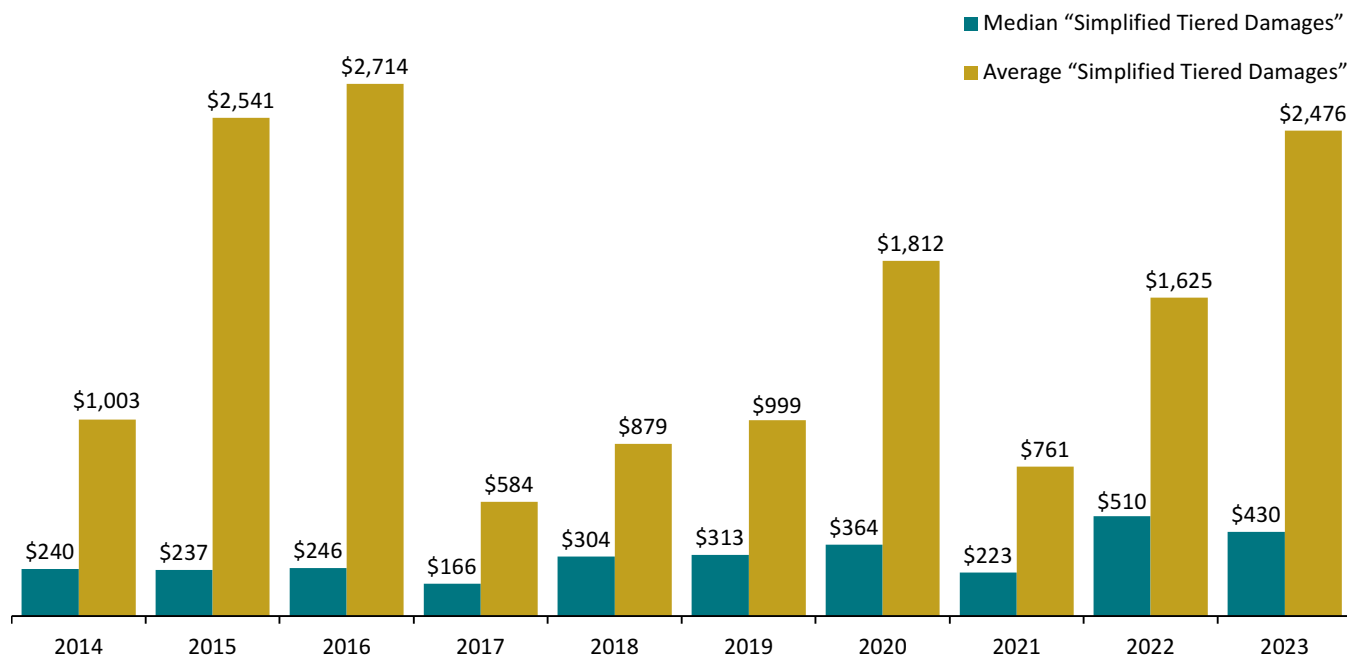
Cornerstone Research’s analysis finds this measure to be the most important factor in estimating settlement amounts.⁵ However, this measure is not intended to represent actual economic losses borne by shareholders. Determining any such losses for a given case requires more in-depth economic analysis.

Median “simplified tiered damages” remained at elevated levels in 2023.

- In 2023, the average “simplified tiered damages” was nearly six times as large as the median, the largest difference since 2016. This difference was primarily driven by seven cases with “simplified tiered damages” exceeding \$5 billion.
- Higher “simplified tiered damages” are typically associated with larger issuer defendants. Consistent with the elevated levels of “simplified tiered damages,” the median total assets of issuer defendants among settled cases in 2023 was \$3.1 billion—154% higher than the prior nine-year median and higher than any other post-Reform Act year.
- Higher “simplified tiered damages” are also generally associated with larger Maximum Dollar Loss (MDL).⁶ In 2023, the median MDL fell only slightly from the historical high in 2022. (See Appendix 7 for additional information on median and average MDL.)

Figure 4: Median and Average “Simplified Tiered Damages” in Rule 10b-5 Cases 2014–2023

(Dollars in millions)

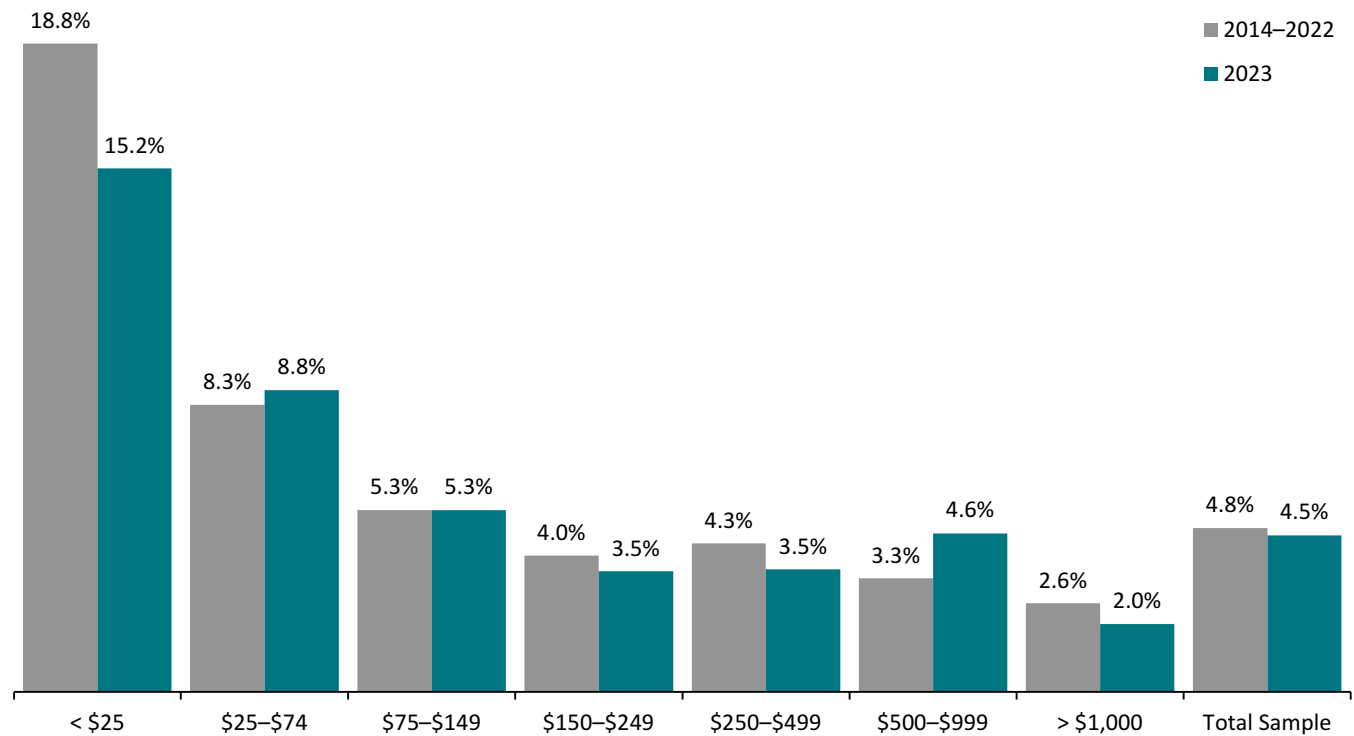


Note: “Simplified tiered damages” are adjusted for inflation based on class period end dates and are estimated for common stock only; 2023 dollar equivalent figures are presented. Damages are estimated for cases alleging a claim under Rule 10b-5 (whether alone or in addition to other claims).

- Larger cases, as measured by “simplified tiered damages,” typically settle for a smaller percentage of damages.
- In 2023, the overall median settlement as a percentage of “simplified tiered damages” of 4.5% increased 27% from 2022, but was in-line with the prior nine-year average percentage. (See Appendix 5 for additional information on median and average settlement as a percentage of “simplified tiered damages.”)
- The median settlement as a percentage of “simplified tiered damages” of 4.6% for cases with “simplified tiered damages” from \$500 million to \$1 billion reached a five-year high in 2023.

Figure 5: Median Settlement as a Percentage of “Simplified Tiered Damages” by Damages Ranges in Rule 10b-5 Cases 2014–2023

(Dollars in millions)



Note: Damages are estimated for cases alleging a claim under Rule 10b-5 (whether alone or in addition to other claims).

Plaintiff-Estimated Damages

In their motions for settlement approval, plaintiffs typically report an estimate of aggregate damages (“plaintiff-estimated damages”).⁷

As explained in Cornerstone Research’s *Approved Claims Rates in Securities Class Actions* (2020), “plaintiff-estimated damages” are often represented as plaintiffs’ “best-case scenario” or the “maximum potential recovery” calculated by plaintiffs. However, the authors highlight a “selection bias” present in these data due to potential plaintiff counsel incentives to report “the lower end of the range of estimated total aggregate damages” to be able “to demonstrate to the court a high settlement amount relative to potential recovery.” To the extent such incentives exist, their impact may vary across cases. Detailed information on plaintiffs’ methodology to determine the reported amount is not disclosed. Hence, it is not possible to determine from the settlement documents the degree to which the methodologies employed are consistent across cases.

With the significant caveats above, “plaintiff-estimated damages” represent an additional measure of potential shareholder losses that may be used alongside “simplified tiered damages” in conjunction with settlement analyses.

'33 Act Claims and "Simplified Statutory Damages"

For Securities Act of 1933 ('33 Act) claim cases—those involving only Section 11 and/or Section 12(a)(2) claims—potential shareholder losses are estimated using a model in which the statutory loss is the difference between the statutory purchase price and the statutory sales price, referred to here as "simplified statutory damages."⁸

- There were 10 settlements for cases with only '33 Act claims in 2023, with the majority of those cases filed in federal court (7) as opposed to state court (3).⁹
- In 2023, the percentage of cases with an underwriter defendant was 70%, down from the prior nine-year average of 88%.

- The median length of time from case filing to settlement hearing date for '33 Act claim cases was greater than four years—the longest observed duration in any post-Reform Act year for this type of case.

In 2023, the median settlement amount for cases with only '33 Act claims was \$13.5 million, an 85% increase from 2022.

Figure 6: Settlements by Nature of Claims
 2014–2023

(Dollars in millions)

	Number of Settlements	Median Settlement	Median "Simplified Statutory Damages"	Median Settlement as a Percentage of "Simplified Statutory Damages"
Section 11 and/or Section 12(a)(2) Only	84	\$9.9	\$158.1	7.5%

	Number of Settlements	Median Settlement	Median "Simplified Tiered Damages"	Median Settlement as a Percentage of "Simplified Tiered Damages"
Both Rule 10b-5 and Section 11 and/or Section 12(a)(2)	123	\$14.7	\$307.4	6.6%
Rule 10b-5 Only	596	\$10.3	\$291.7	4.5%

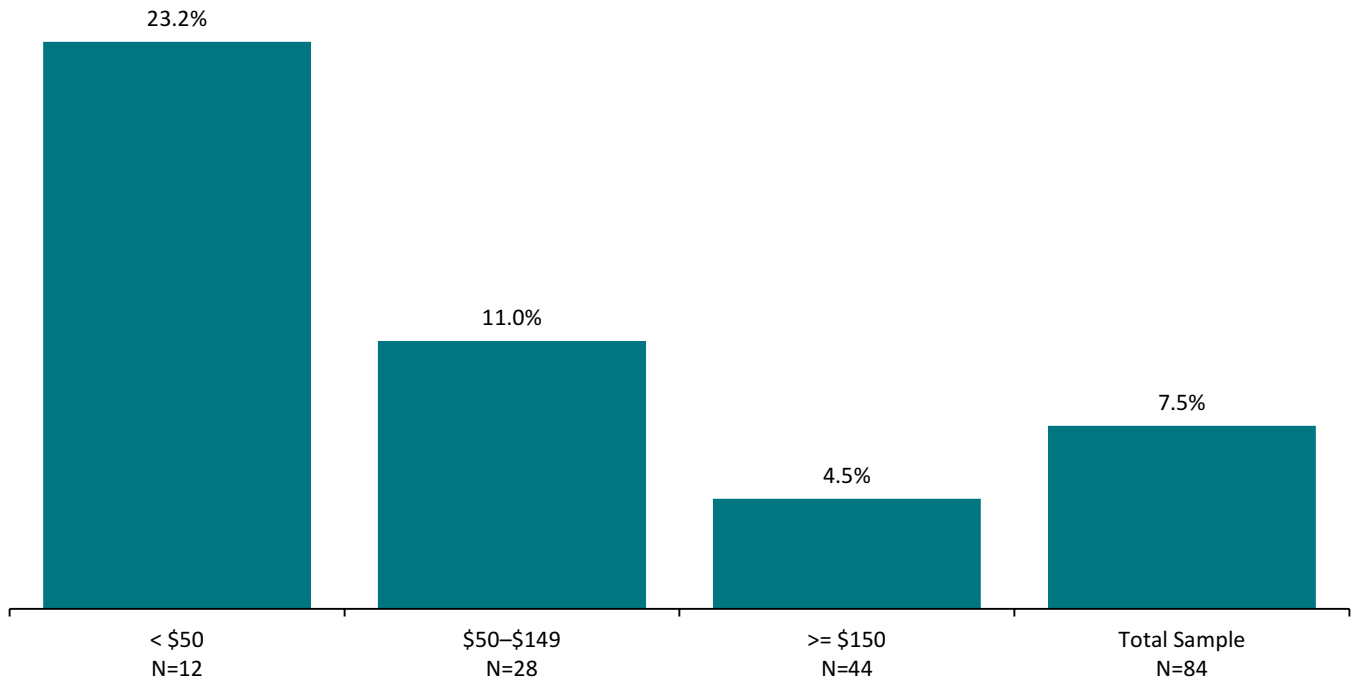
Note: Settlement dollars and damages are adjusted for inflation; 2023 dollar equivalent figures are presented.

- Over 2014–2023, the median size of issuer defendants (measured by total assets) was 40% smaller for cases with only '33 Act claims relative to those that also included Rule 10b-5 claims.
- The smaller size of issuer defendants in cases with only '33 Act claims is consistent with most of these cases involving initial public offerings (IPOs). From 2014 through 2023, 80% of all cases with only '33 Act claims have involved IPOs.
- In 2023, however, the median total assets for settled cases with only '33 Act claims (\$2.5 billion) was over four times as large as the median total assets for such cases in 2014–2022 (\$580 million).

The median “simplified statutory damages” in 2023 increased by 115% from the 2022 median and represents the third highest since 1996.

Figure 7: Median Settlement as a Percentage of “Simplified Statutory Damages” by Damages Ranges in '33 Act Claim Cases 2014–2023

(Dollars in millions)



Jurisdictions of Settlements of '33 Act Claim Cases

	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
State Court	0	2	4	5	4	4	7	6	6	3
Federal Court	2	2	6	3	4	5	1	10	3	7

Note: “N” refers to the number of cases. This analysis excludes cases alleging Rule 10b-5 claims.

Analysis of Settlement Characteristics

GAAP Violations

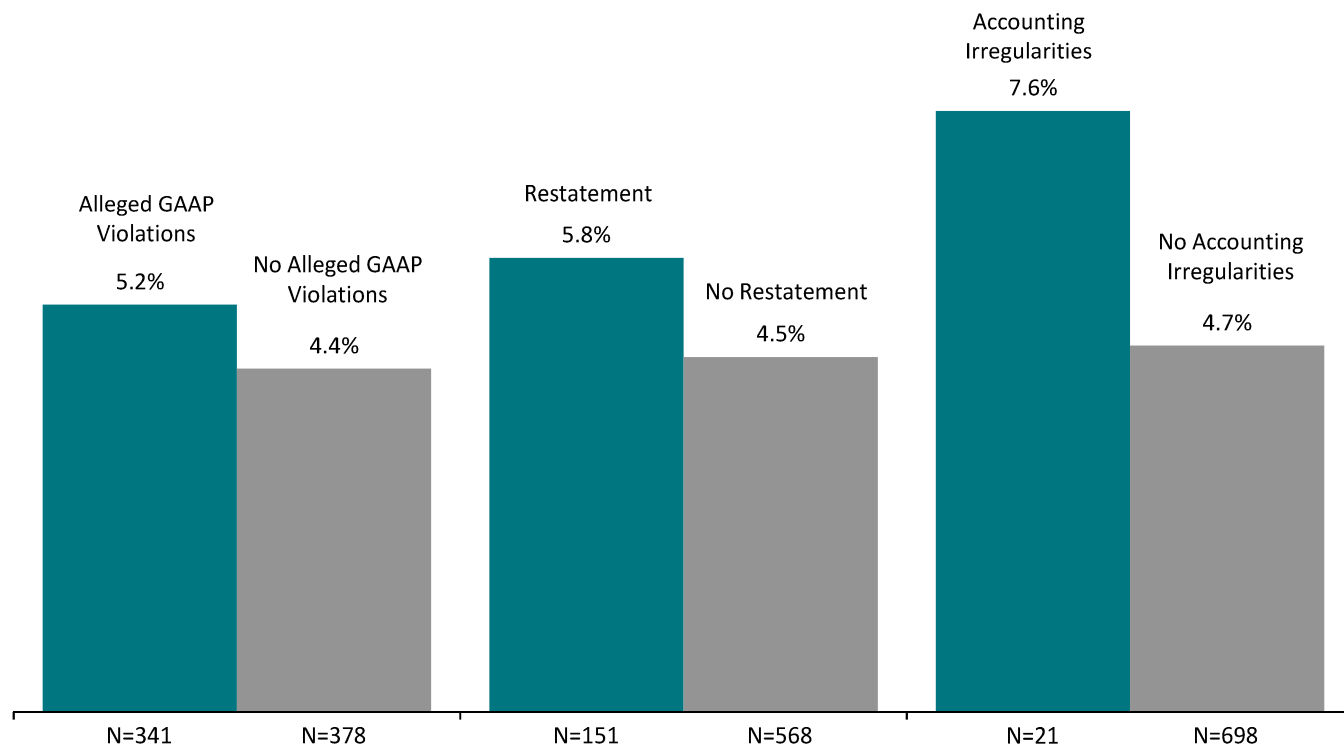
This analysis examines allegations of GAAP violations in settlements of securities class actions involving Rule 10b-5 claims, including two sub-categories of GAAP violations—financial statement restatements and accounting irregularities.¹⁰ For further details regarding settlements of accounting cases, see Cornerstone Research’s annual report on *Accounting Class Action Filings and Settlements*.¹¹

- The percentage of settled cases in 2023 alleging GAAP violations (37%) remained well below the prior nine-year average (49%).
- Contributing to the low number of GAAP cases settled in 2023 were continued low levels of cases involving financial statement restatements and accounting irregularities. In particular, 14% of settled cases in 2023 involved a restatement of financial statements, compared to 22% for the prior nine years. Only 1% of settled cases in 2023 involved accounting irregularities.

- Auditor codefendants were involved in only 2% of settled cases, consistent with the past few years but substantially lower than the average from 2014 to 2022.

In 2023, the median settlement as a percentage of “simplified tiered damages” for cases with alleged GAAP violations increased nearly 25% from 2022.

Figure 8: Median Settlement as a Percentage of “Simplified Tiered Damages” and Allegations of GAAP Violations 2014–2023



Note: “N” refers to the number of cases. This analysis is limited to cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

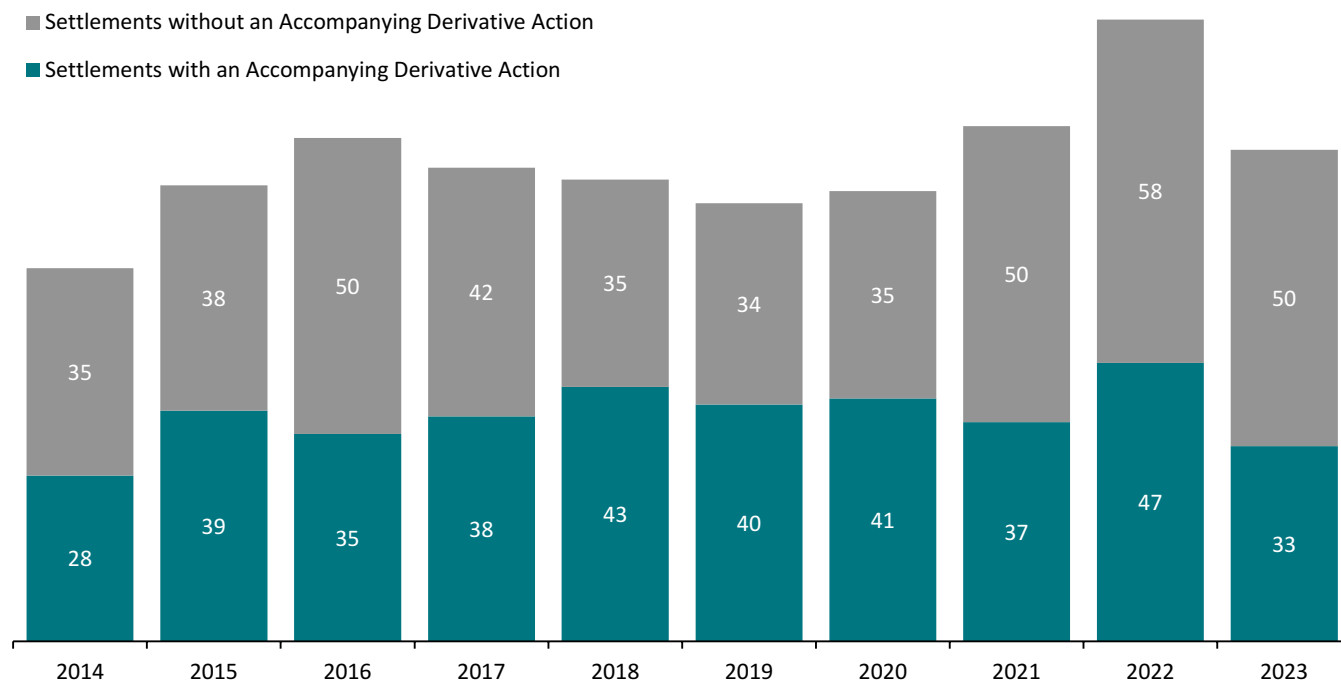
Derivative Actions

- Securities class actions often involve accompanying (or parallel) derivative actions with similar claims, and such cases have historically settled for higher amounts than securities class actions without accompanying derivative matters.¹²
- The percentage of cases involving accompanying derivative actions in 2023 (40%) was the lowest since 2011, in part driven by a reduction in the number of cases filed in Delaware (13) compared to the prior four-year average (17).
- For cases settled during 2019–2023, 40% of parallel derivative suits were filed in Delaware. California and New York were the next most common venues, representing 19% and 17% of such settlements, respectively.

In 2023, the median settlement amount for cases with an accompanying derivative action was \$21 million, over 40% higher than in 2022.

- It is commonly understood that most parallel derivative actions do not settle for monetary amounts (other than plaintiffs’ attorney fees). However, the likelihood of a monetary settlement among parallel derivative actions is higher when the securities class action settlement is large, as shown in Cornerstone Research’s *Parallel Derivative Action Settlement Outcomes*.¹³

Figure 9: Frequency of Derivative Actions 2014–2023

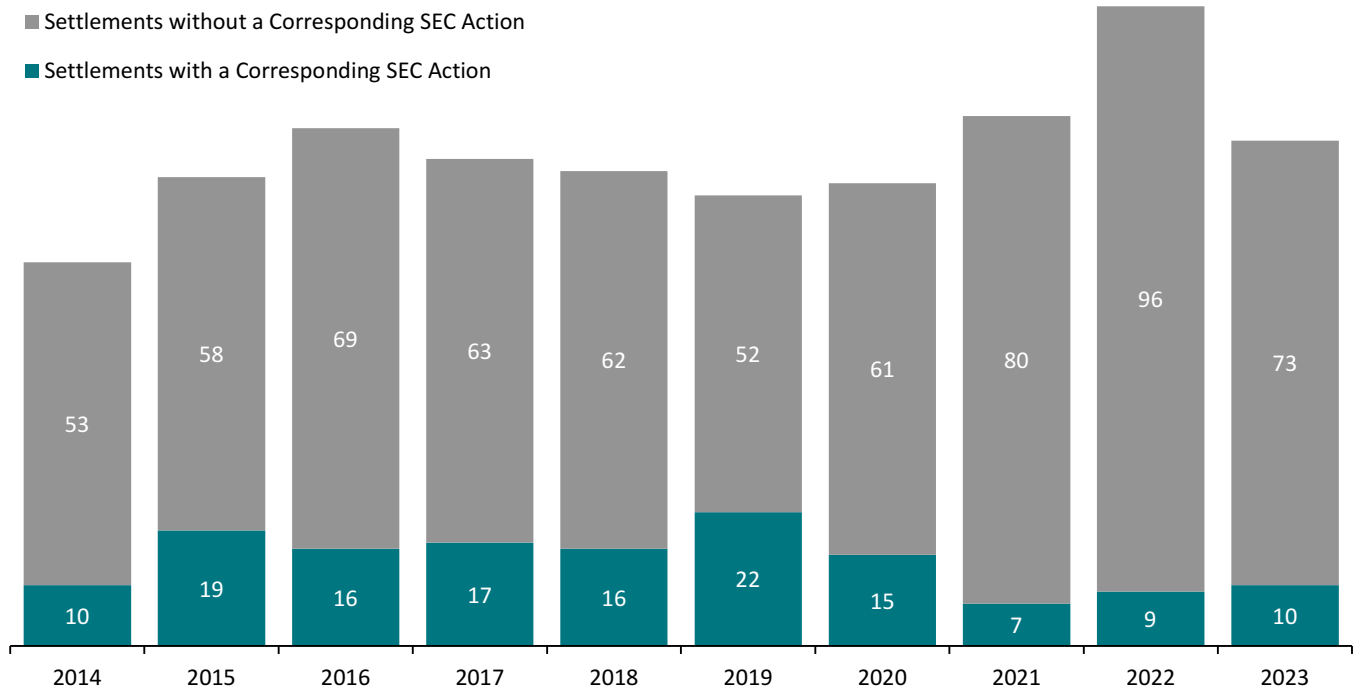


Corresponding SEC Actions

- The percentage of settled cases in 2023 involving a corresponding SEC action was 12%. This represents a slight rebound from 2021 and 2022, when this percentage was less than 10%, but is still well below the prior nine-year average of 19%.
- Historically, cases with a corresponding SEC action have typically been associated with substantially higher settlement amounts.¹⁴ However, this pattern did not hold in 2023 when, for the third time in the past 10 years, the median settlement amount for cases with a corresponding SEC action was less than that for cases without such an action.
- Among 2023 settled cases that involved a corresponding SEC action, 70% also had an institutional investor as a lead plaintiff, up from 33% in 2022.

Over the past 10 years, nearly 75% of settled cases involving SEC actions also involved a restatement of financial statements or alleged GAAP violations.

Figure 10: Frequency of SEC Actions
 2014–2023



Institutional Investors

As discussed in prior reports, increasing institutional investor participation as lead plaintiff in securities litigation was a focus of the Reform Act.¹⁵ Indeed, in years following passage of the Reform Act, institutional investor involvement as lead plaintiffs did increase, particularly in cases with higher “simplified tiered damages.”

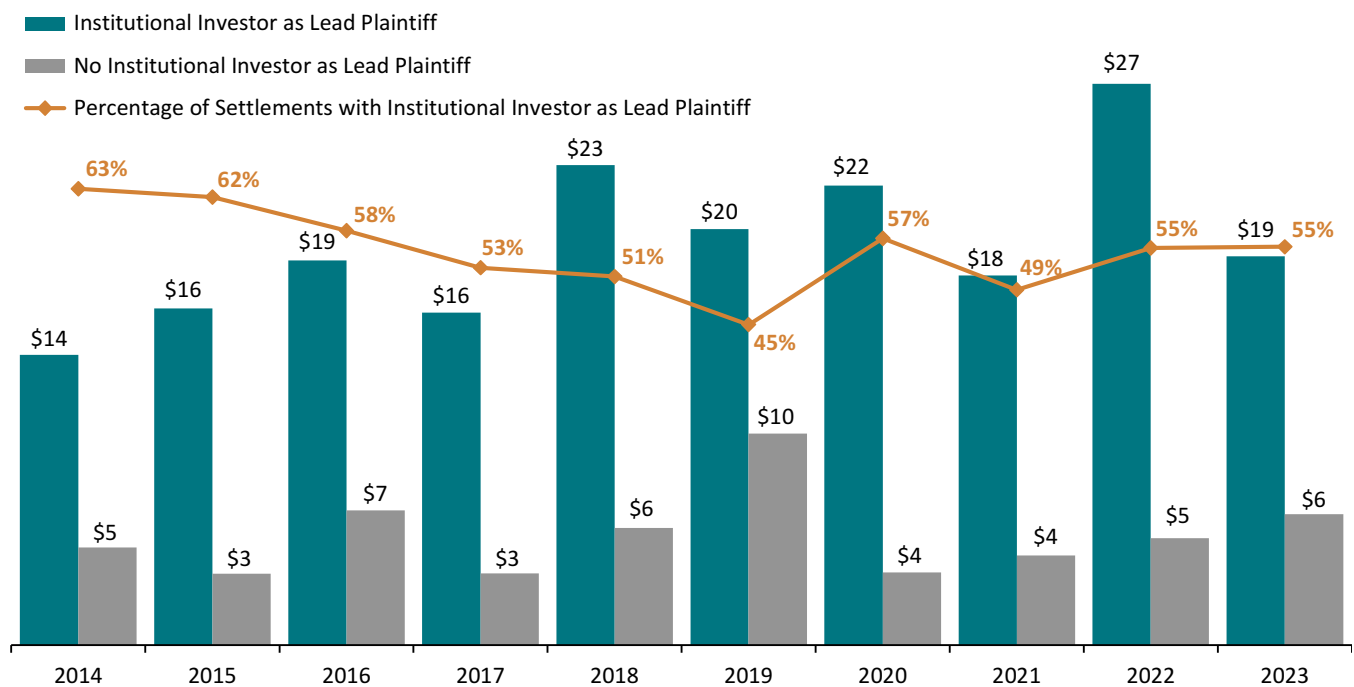
- In 2023, for cases involving an institutional investor as lead plaintiff, median “simplified tiered damages” and median total assets were two times and nine times higher, respectively, than the median values for cases without an institutional investor as a lead plaintiff.

- In 2023, a public pension plan served as lead plaintiff in nearly two-thirds of cases with an institutional lead plaintiff.
- Institutional investor participation as lead plaintiff continues to be associated with particular plaintiff counsel. For example, in 2023 an institutional investor served as a lead plaintiff in over 88% of settled cases in which Robbins Geller Rudman & Dowd LLP (“Robbins Geller”) and/or Bernstein Litowitz Berger & Grossmann LLP (“Bernstein Litowitz”) served as lead or co-lead plaintiff counsel. In contrast, institutional investors served as lead plaintiff in 21% of cases in which The Rosen Law Firm, Pomerantz LLP, or Glancy Prongay & Murray LLP served as lead or co-lead plaintiff counsel.

All nine mega settlements in 2023 included an institutional investor as lead plaintiff.

Figure 11: Median Settlement Amounts and Institutional Investors 2014–2023

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2023 dollar equivalent figures are presented.

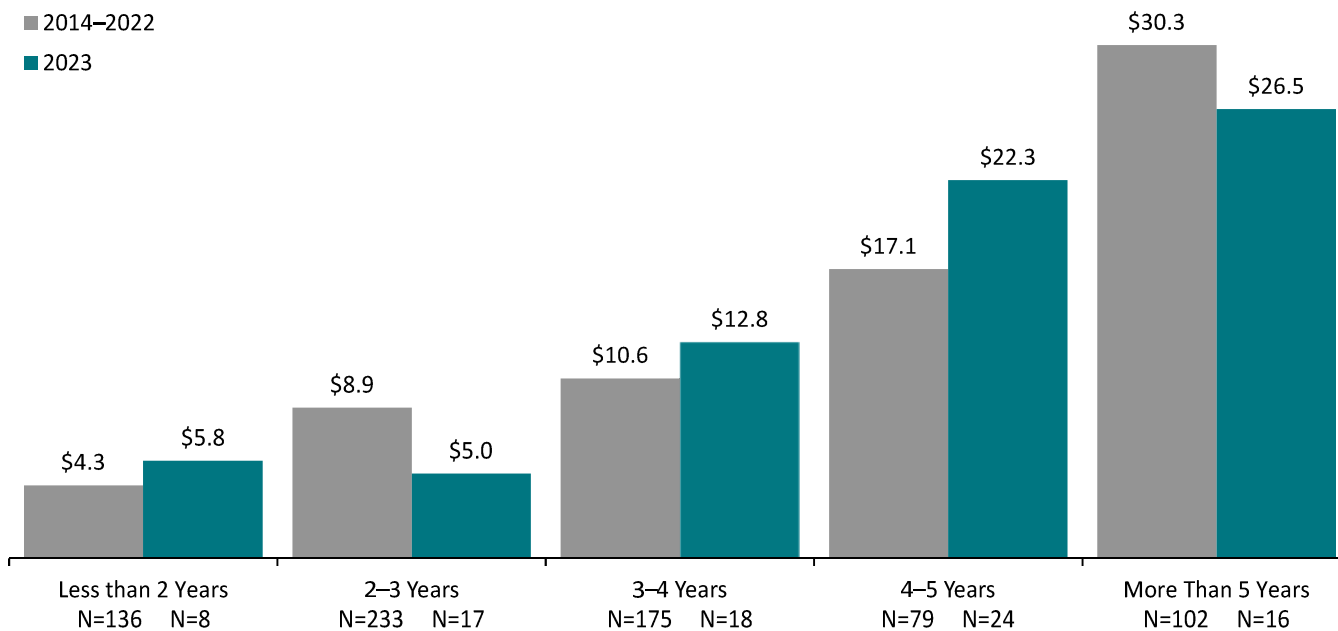
Time to Settlement and Case Complexity

- Overall, less than one-third of cases settled in 2023 settled within three years of filing.
- Cases involving an institutional lead plaintiff continued to take longer to settle. In particular, cases settled in 2023 with an institutional lead plaintiff had a median time to settle of over 4.2 years compared to 3.4 years for cases without an institutional lead plaintiff.
- In 2023, the median time to settle for cases with GAAP allegations was almost a year longer than the median for cases without GAAP allegations.
- Historically, cases with The Rosen Law Firm, Pomerantz LLP, or Glancy Prongay & Murray LLP as lead or co-lead plaintiff counsel settled within three years of case filing. However, cases settled in 2023 with these firms acting as plaintiff counsel collectively took 3.9 years to settlement, a level reached in only one other year (2009). These three law firms were lead or co-lead plaintiff counsel in approximately 30% of cases in 2023.
- The presence of Robbins Geller as lead or co-lead plaintiff counsel is associated with a longer duration between filing and settlement. Cases settled in 2023 with Robbins Geller acting as lead or co-lead plaintiff counsel (28% of settled cases) had a median time to settle of 4.1 years compared to 3.5 years for cases in which the law firm was not involved.¹⁶
- The number of docket entries can be viewed as a proxy for the time and effort expended by plaintiff counsel and/or case complexity. Median docket entries in 2023 (142) increased only slightly from 2022 (138).

The median time from filing to settlement hearing date in 2023 (3.7 years) was up nearly 17% from 2022.

Figure 12: Median Settlement by Duration from Filing Date to Settlement Hearing Date 2014–2023

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2023 dollar equivalent figures are presented. “N” refers to the number of cases.

Case Stage at the Time of Settlement

Using data obtained through collaboration with Stanford Securities Litigation Analytics (SSLA), this report analyzes settlements in relation to the stage in the litigation process at the time of settlement.

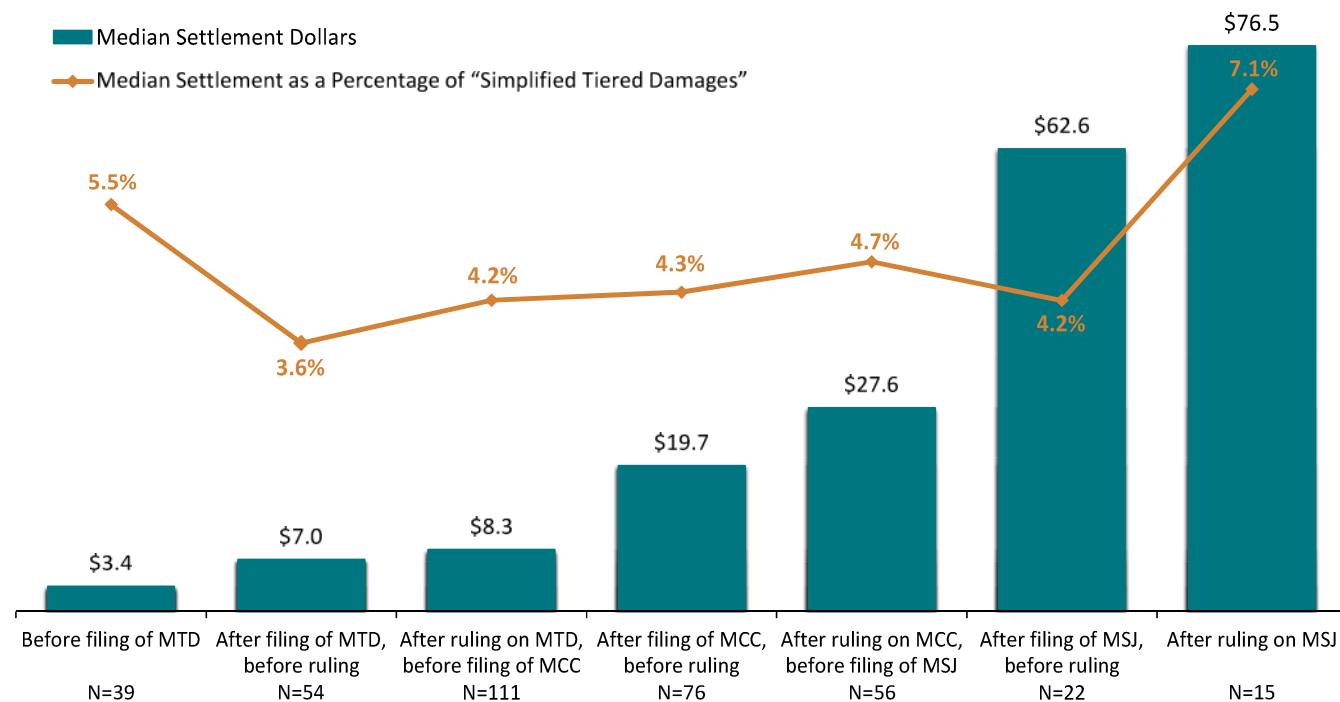
- Cases settling at later stages continue to be larger in terms of total assets and “simplified tiered damages.”
- For example, both median total assets and median “simplified tiered damages” for cases that settled in 2023 after the ruling on a motion for class certification were over two times the respective medians for cases that settled in 2023 prior to such a motion being ruled on.
- In the five-year period from 2019 through 2023, over 90% of cases settled prior to the filing of a motion for summary judgment.

- In 2023, cases settling at later stages continued to include an institutional lead plaintiff at a higher percentage. Specifically, 68% of cases that settled after the filing of a motion for class certification involved an institutional lead plaintiff compared to 41% of cases that settled prior to the filing of such a motion.

In 2023, the percentage of cases settling prior to the filing of a motion to dismiss continued to decline—from 14% of cases in 2019 to 7% of cases in 2023.

Figure 13: Median Settlement Dollars and Resolution Stage at Time of Settlement 2019–2023

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2023 dollar equivalent figures are presented. “N” refers to the number of cases. MTD refers to “motion to dismiss,” MCC refers to “motion for class certification,” and MSJ refers to “motion for summary judgment.” This analysis is limited to cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

Cornerstone Research's Settlement Analysis

This research applies regression analysis to examine the relations between settlement outcomes and certain securities case characteristics. Regression analysis is employed to better understand the factors that are important for estimating what cases might settle for, given the characteristics of a particular securities class action.

Determinants of Settlement Outcomes

Based on the research sample of cases that settled from January 2006 through December 2023, important determinants of settlement amounts include the following:

- “Simplified tiered damages”
- Maximum Dollar Loss (MDL)—the dollar-value change in the defendant issuer’s market capitalization from its class period peak to the first trading day without inflation
- The most recently reported total assets prior to the settlement hearing date for the defendant issuer
- Number of entries on the lead case docket
- Whether there were accounting allegations
- Whether there was an SEC action with allegations similar to those included in the underlying class action complaint, as evidenced by a litigation release or an administrative proceeding against the issuer, officers, directors, or other defendants
- Whether there were criminal charges against the issuer, officers, directors, or other defendants with allegations similar to those included in the underlying class action complaint
- Whether there was a derivative action with allegations similar to those included in the underlying class action complaint

- Whether, in addition to Rule 10b-5 claims, Section 11 claims were alleged and were still active prior to settlement
- Whether the issuer has been delisted from a major exchange and/or has declared bankruptcy (i.e., whether the issuer was “distressed”)
- Whether an institutional investor acted as lead plaintiff
- Whether securities other than common stock/ADR/ADS were included in the alleged class

Cornerstone Research analyses show that settlements were higher when “simplified tiered damages,” MDL, issuer defendant asset size, or the number of docket entries was larger, or when Section 11 claims were alleged in addition to Rule 10b-5 claims.

Settlements were also higher in cases involving accounting allegations, a corresponding SEC action, criminal charges, an accompanying derivative action, an institutional investor lead plaintiff, or securities in addition to common stock included in the alleged class.

Settlements were lower if the issuer was distressed.

More than 75% of the variation in settlement amounts can be explained by the factors discussed above.

Research Sample

- The database compiled for this report is limited to cases alleging Rule 10b-5, Section 11, and/or Section 12(a)(2) claims brought by purchasers of a corporation's common stock. The sample contains only cases alleging fraudulent inflation in the price of a corporation's common stock.
- Cases with alleged classes of only bondholders, preferred stockholders, etc., cases alleging fraudulent depression in price, and mergers and acquisitions cases are excluded. These criteria are imposed to ensure data availability and to provide a relatively homogeneous set of cases in terms of the nature of the allegations.
- The current sample includes nearly 2,200 securities class actions filed after passage of the Reform Act (1995) and settled from 1996 through 2023. These settlements are identified based on a review of case activity collected by Securities Class Action Services LLC (SCAS).¹⁷
- The designated settlement year, for purposes of this report, corresponds to the year in which the hearing to approve the settlement was held.¹⁸ Cases involving multiple settlements are reflected in the year of the most recent partial settlement, provided certain conditions are met.¹⁹

Data Sources

In addition to SCAS, data sources include Dow Jones Factiva, Bloomberg, the Center for Research in Security Prices (CRSP) at University of Chicago Booth School of Business, Standard & Poor's Compustat, Refinitiv Eikon, court filings and dockets, SEC registrant filings, SEC litigation releases and administrative proceedings, LexisNexis, Stanford Securities Litigation Analytics (SSLA), Securities Class Action Clearinghouse (SCAC), and public press.

Endnotes

- ¹ Reported dollar figures and corresponding comparisons are adjusted for inflation; 2023 dollar equivalent figures are presented in this report.
- ² “Simplified tiered damages” are calculated for cases that settled in 2006 or later, following the U.S. Supreme Court’s 2005 landmark decision in *Dura Pharmaceuticals Inc. v. Broudo*, 544 U.S. 336. “Simplified tiered damages” is based on the stock-price declines associated with the alleged corrective disclosure dates that are described in the settlement plan of allocation.
- ³ Comparison to “all-time” refers to the inception of Cornerstone Research’s database of post–Reform Act settlements beginning in 1996.
- ⁴ The “simplified tiered damages” approach used for purposes of this settlement research does not examine the mix of information associated with the specific dates listed in the plan of allocation, but simply applies the stock price movements on those dates to an estimate of the “true value” of the stock during the alleged class period (or “value line”). This proxy for damages utilizes an estimate of the number of shares damaged based on reported trading volume and the number of shares outstanding. Specifically, reported trading volume is adjusted using volume reduction assumptions based on the exchange on which the issuer defendant’s common stock is listed. No adjustments are made to the underlying float for institutional holdings, insider trades, or short-selling activity during the alleged class period. Because of these and other simplifying assumptions, the damages measures used in settlement benchmarking may differ substantially from damages estimates developed in conjunction with case-specific economic analysis.
- ⁵ Laarni T. Bulan, Ellen M. Ryan, and Laura E. Simmons, *Estimating Damages in Settlement Outcome Modeling*, Cornerstone Research (2017).
- ⁶ MDL is the dollar-value change in the defendant issuer’s market capitalization from its class period peak to the first trading day without inflation.
- ⁷ Catherine J. Galley, Nicholas D. Yavorsky, Filipe Lacerda, and Chady Gemayel, *Approved Claims Rates in Securities Class Actions: Evidence from 2015–2018 Rule 10b-5 Settlements*, Cornerstone Research (2020). Data on “plaintiff-estimated damages” is made available to Cornerstone Research through collaboration with Stanford Securities Litigation Analytics (SSLA). SSLA tracks and collects data on private shareholder securities litigation and public enforcements brought by the SEC and the U.S. Department of Justice (DOJ). The SSLA dataset includes all traditional class actions, SEC actions, and DOJ criminal actions filed since 2000. Available on a subscription basis at <https://sla.law.stanford.edu/>.
- ⁸ The statutory purchase price is the lesser of the security offering price or the security purchase price. Prior to the first complaint filing date, the statutory sales price is the price at which the security was sold. After the first complaint filing date, the statutory sales price is the greater of the security sales price or the “value” of the security on the first complaint filing date. For purposes of “simplified statutory damages,” the “value” of the security on the first complaint filing date is assumed to be the security’s closing price on this date. Similar to “simplified tiered damages,” the estimation of “simplified statutory damages” makes no adjustments to the underlying float for institutional holdings, insider trades, or short-selling activity.
- ⁹ As noted in prior reports, the March 2018 U.S. Supreme Court decision in *Cyan Inc. v. Beaver County Employees Retirement Fund (Cyan)* held that ‘33 Act claim securities class actions could be brought in state court. While ‘33 Act claim cases had often been brought in state courts before *Cyan*, filing rates in state courts increased substantially following this ruling. This trend reversed, however, following the March 2020 Delaware Supreme Court decision in *Salzberg v. Sciabacucchi* upholding the validity of federal forum-selection provisions in corporate charters. See, for example, *Securities Class Action Filings—2021 Year in Review*, Cornerstone Research (2022).
- ¹⁰ The two sub-categories of accounting issues analyzed in Figure 8 of this report are (1) restatements—cases involving a restatement (or announcement of a restatement) of financial statements, and (2) accounting irregularities.
- ¹¹ *Accounting Class Action Filings and Settlements—2023 Review and Analysis*, Cornerstone Research, forthcoming in spring 2024.
- ¹² To be considered an accompanying (or parallel) derivative action, the derivative action must have underlying allegations that are similar or related to the underlying allegations of the securities class action and either be active or settling at the same time as the securities class action.
- ¹³ *Parallel Derivative Action Settlement Outcomes*, Cornerstone Research (2022).
- ¹⁴ As noted in prior reports, it could be that the merits in such cases are stronger, or simply that the presence of a corresponding SEC action provides plaintiffs with increased leverage when negotiating a settlement. For purposes of this research, an SEC action is evidenced by the presence of a litigation release or an administrative proceeding posted on www.sec.gov involving the issuer defendant or other named defendants with allegations similar to those in the underlying class action complaint.
- ¹⁵ See, for example, *Securities Class Action Settlements—2006 Review and Analysis*, Cornerstone Research (2007); Michael A. Perino, “Have Institutional Fiduciaries Improved Securities Class Actions? A Review of the Empirical Literature on the PSLRA’s Lead Plaintiff Provision,” St. John’s Legal Studies Research Paper No. 12-0021 (2013).
- ¹⁶ Although Robbins Geller is associated with a longer duration to settlement, its presence as lead or co-lead plaintiff counsel is not associated with significantly higher settlements as a percentage of “simplified tiered damages.”
- ¹⁷ Available on a subscription basis. For further details see <https://www.issgovernance.com/securities-class-action-services/>.
- ¹⁸ Movements of partial settlements between years can cause differences in amounts reported for prior years from those presented in earlier reports.
- ¹⁹ This categorization is based on the timing of the settlement hearing date. If a new partial settlement equals or exceeds 50% of the then-current settlement fund amount, the entirety of the settlement amount is re-categorized to reflect the settlement hearing date of the most recent partial settlement. If a subsequent partial settlement is less than 50% of the then-current total, the partial settlement is added to the total settlement amount and the settlement hearing date is left unchanged.

Appendices

Appendix 1: Settlement Percentiles

(Dollars in millions)

Year	Average	10th	25th	Median	75th	90th
2014	\$23.5	\$2.2	\$3.7	\$7.7	\$17.0	\$64.4
2015	\$50.6	\$1.7	\$2.8	\$8.4	\$20.9	\$120.9
2016	\$89.6	\$2.4	\$5.3	\$10.9	\$41.9	\$185.4
2017	\$22.9	\$1.9	\$3.2	\$6.5	\$19.0	\$44.0
2018	\$78.7	\$1.8	\$4.4	\$13.7	\$30.0	\$59.6
2019	\$33.6	\$1.7	\$6.7	\$13.1	\$23.8	\$59.6
2020	\$64.9	\$1.6	\$3.8	\$11.5	\$23.8	\$62.8
2021	\$23.1	\$1.9	\$3.5	\$9.3	\$20.1	\$65.9
2022	\$37.9	\$2.1	\$5.2	\$13.5	\$36.4	\$74.8
2023	\$47.3	\$3.0	\$5.0	\$15.0	\$33.3	\$101.0

Note: Settlement dollars are adjusted for inflation; 2023 dollar equivalent figures are presented.

Appendix 2: Settlements by Select Industry Sectors

2014–2023

(Dollars in millions)

Industry	Number of Settlements	Median Settlement	Median “Simplified Tiered Damages”	Median Settlement as a Percentage of “Simplified Tiered Damages”
Financial	91	\$17.8	\$313.3	5.3%
Technology	106	\$9.4	\$318.2	4.3%
Pharmaceuticals	122	\$8.5	\$242.5	3.9%
Telecommunication	28	\$11.4	\$381.0	4.4%
Retail	51	\$15.2	\$350.4	4.6%
Healthcare	21	\$10.1	\$240.4	6.0%

Note: Settlement dollars and “simplified tiered damages” are adjusted for inflation; 2023 dollar equivalent figures are presented. “Simplified tiered damages” are calculated only for cases involving Rule 10b-5 claims (whether alone or in addition to other claims).

Appendix 3: Settlements by Federal Circuit Court 2014–2023

(Dollars in millions)

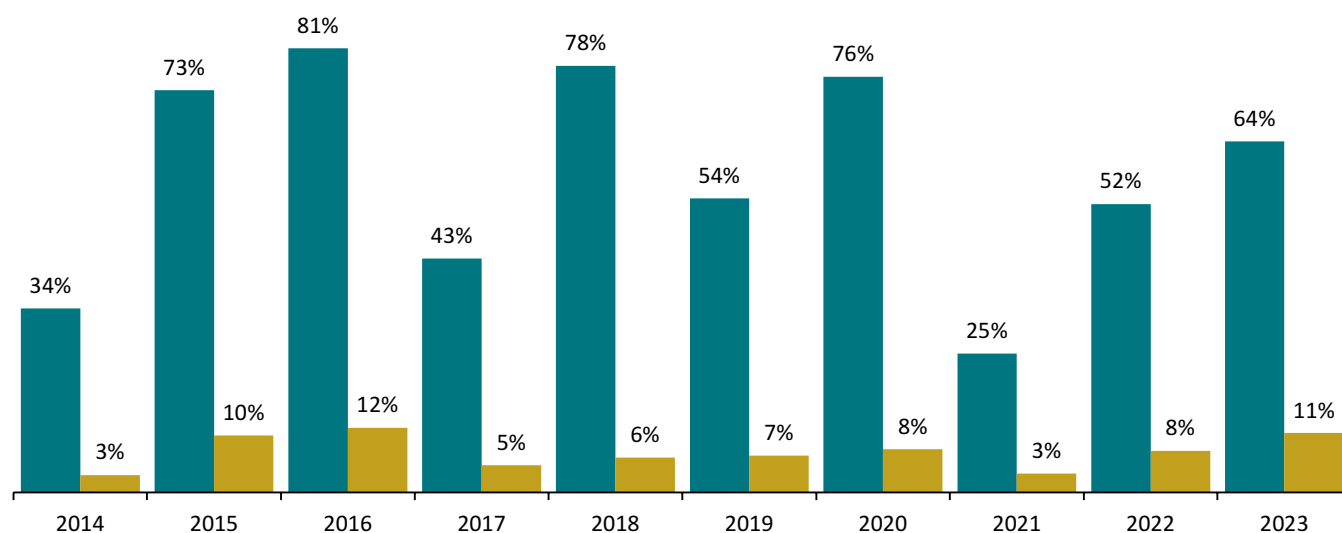
Circuit	Number of Settlements	Median Settlement	Median Settlement as a Percentage of “Simplified Tiered Damages”
First	20	\$14.1	2.8%
Second	212	\$8.9	4.9%
Third	85	\$7.3	4.9%
Fourth	23	\$24.5	3.9%
Fifth	38	\$11.7	4.7%
Sixth	35	\$15.8	6.7%
Seventh	40	\$18.0	3.7%
Eighth	14	\$48.3	4.6%
Ninth	190	\$9.0	4.4%
Tenth	19	\$12.4	5.3%
Eleventh	36	\$13.7	4.7%
DC	4	\$27.9	2.2%

Note: Settlement dollars are adjusted for inflation; 2023 dollar equivalent figures are presented. Settlements as a percentage of “simplified tiered damages” are calculated only for cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

Appendix 4: Mega Settlements 2014–2023

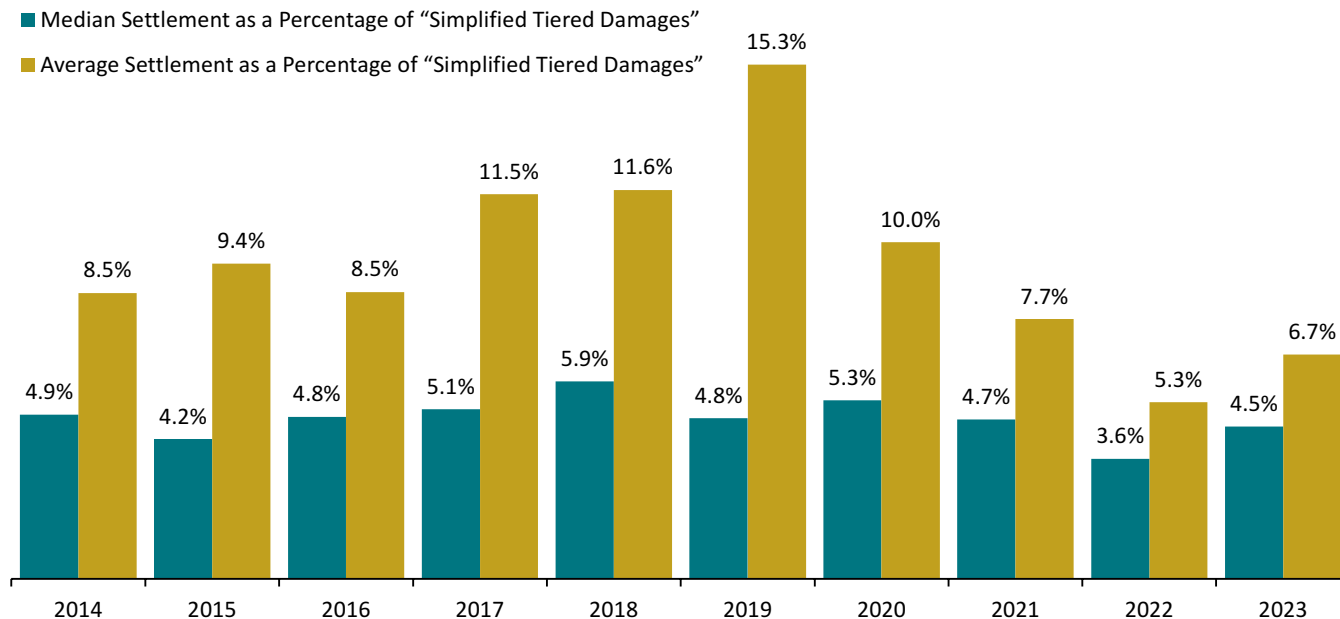
■ Total Mega Settlement Dollars as a Percentage of All Settlement Dollars

■ Number of Mega Settlements as a Percentage of All Settlements



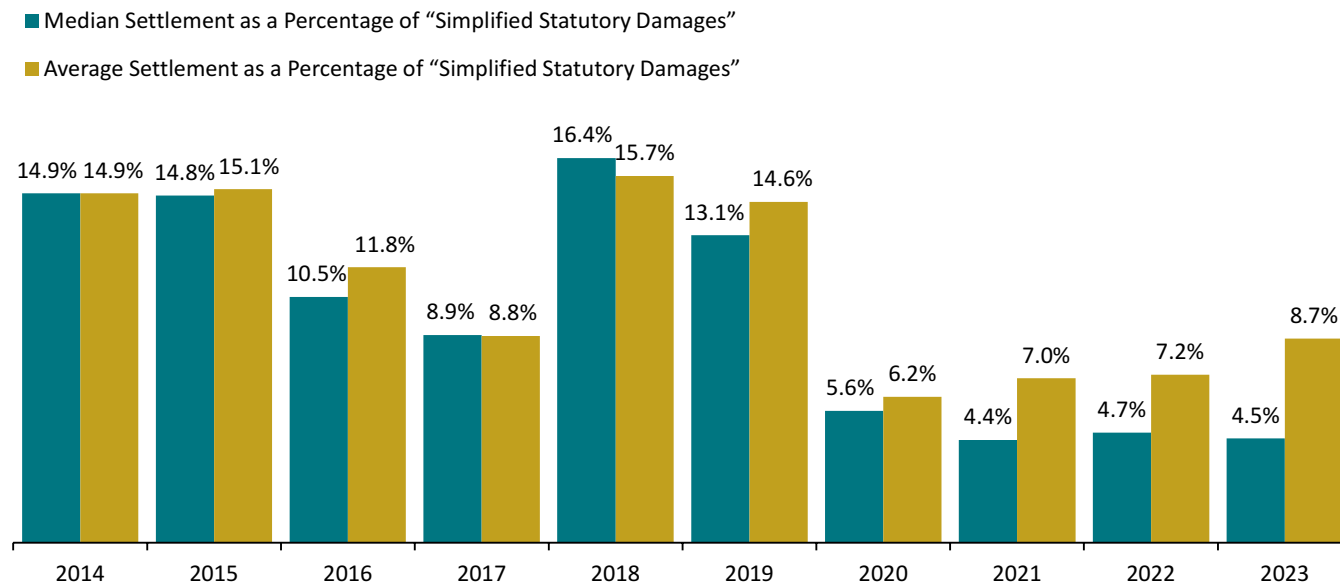
Note: Mega settlements are defined as total settlement funds equal to or greater than \$100 million.

Appendix 5: Median and Average Settlements as a Percentage of “Simplified Tiered Damages”
2014–2023



Note: “Simplified tiered damages” are calculated only for cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

Appendix 6: Median and Average Settlements as a Percentage of “Simplified Statutory Damages”
2014–2023

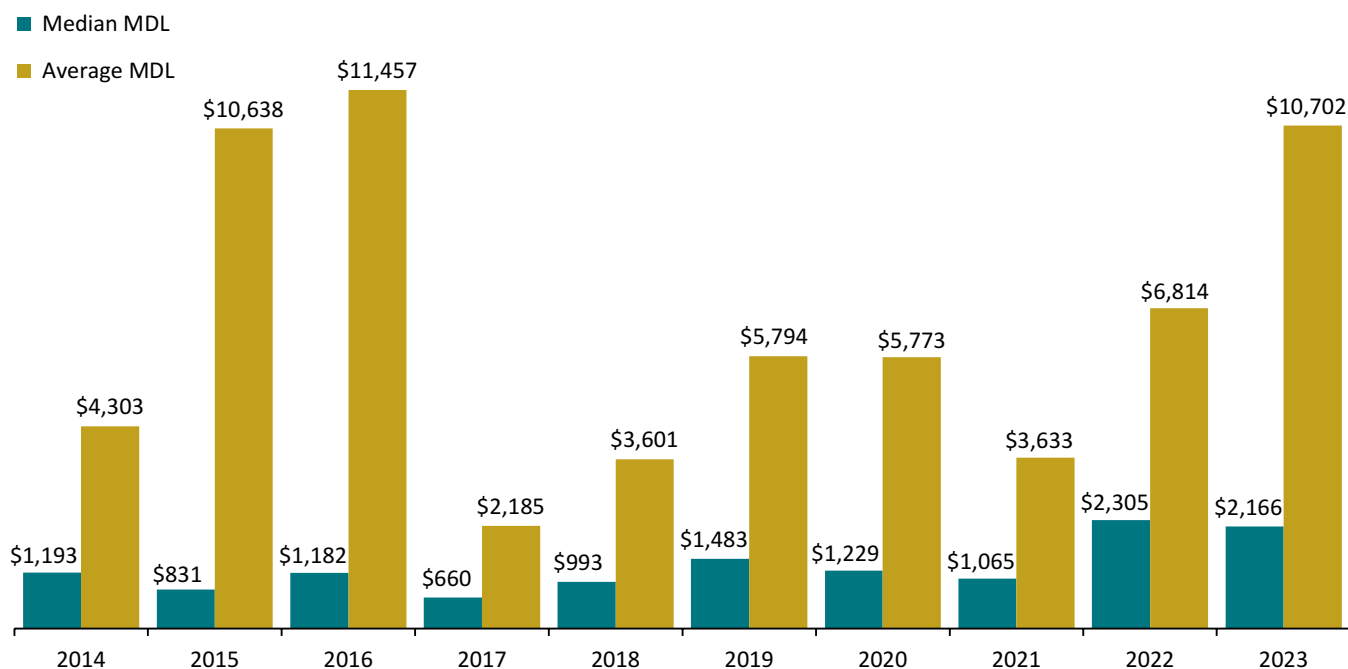


Note: “Simplified statutory damages” are calculated only for cases alleging Section 11 (’33 Act) claims and no Rule 10b-5 claims.

Appendix 7: Median and Average Maximum Dollar Loss (MDL)

2014–2023

(Dollars in millions)

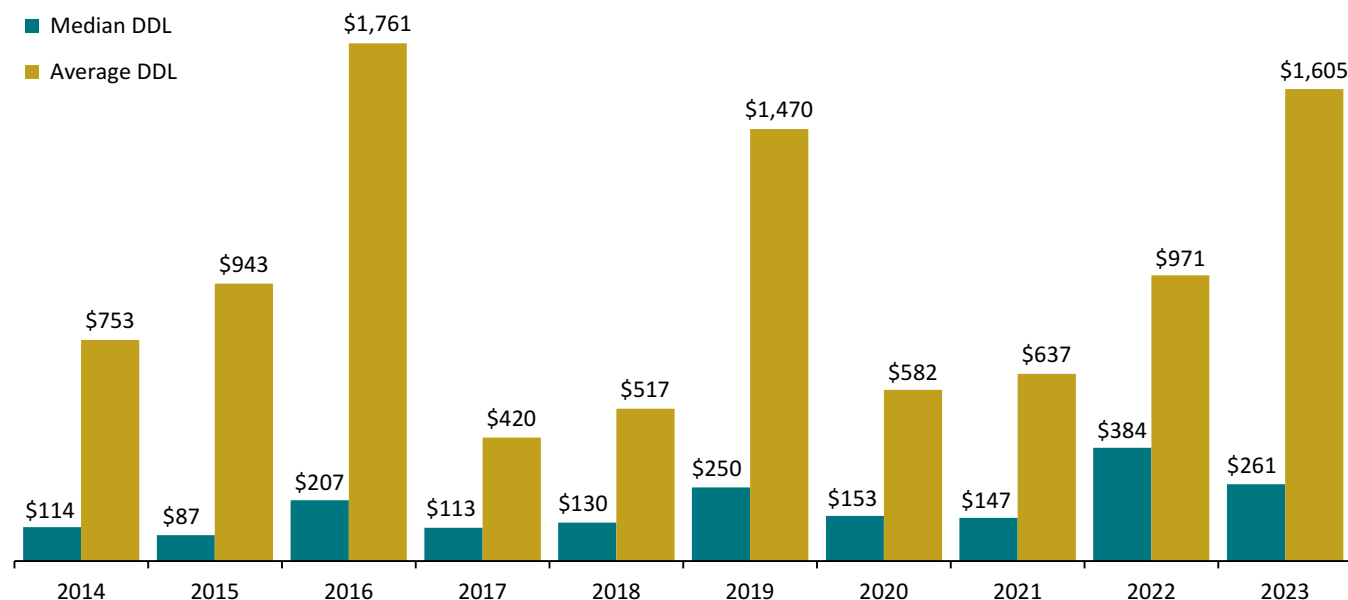


Note: MDL is adjusted for inflation based on class period end dates; 2023 dollar equivalents are presented. MDL is the dollar-value change in the defendant issuer's market capitalization from its class period peak to the first trading day without inflation. This analysis excludes cases alleging '33 Act claims only.

Appendix 8: Median and Average Disclosure Dollar Loss (DDL)

2014–2023

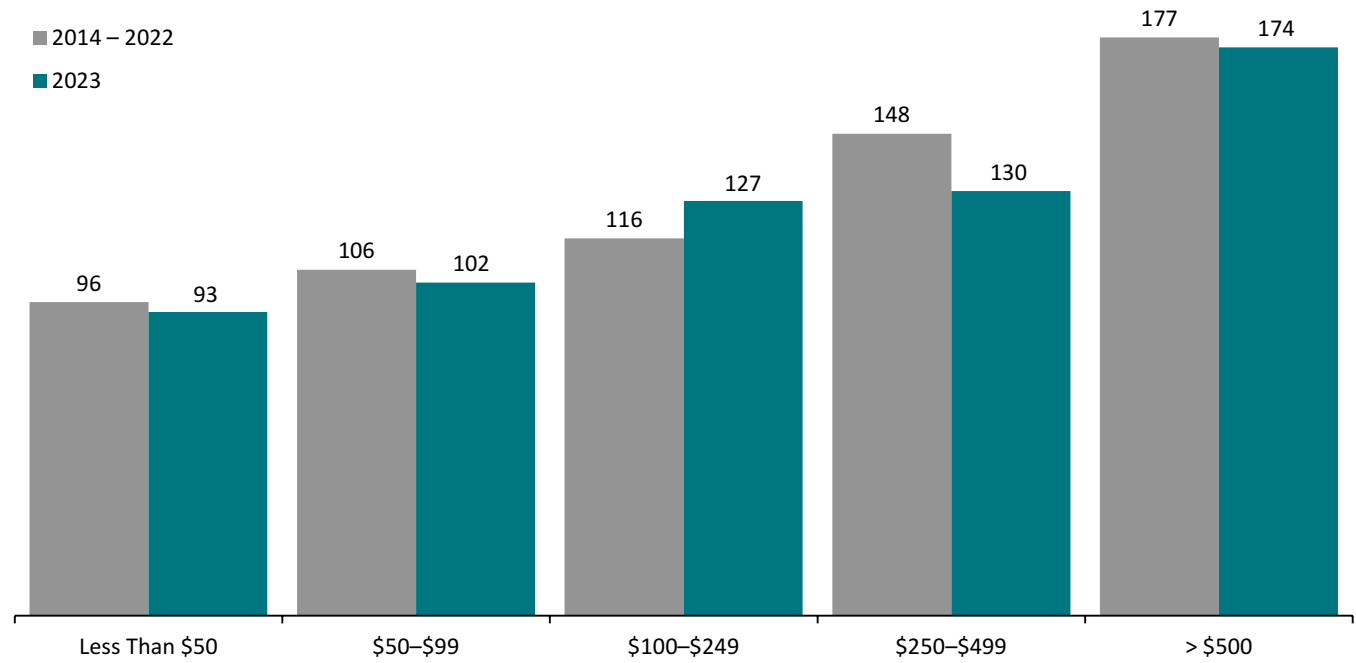
(Dollars in millions)



Note: DDL is adjusted for inflation based on class period end dates; 2023 dollar equivalents are presented. DDL is the dollar-value change in the defendant firm's market capitalization between the end of the class period to the first trading day without inflation. This analysis excludes cases alleging '33 Act claims only.

Appendix 9: Median Docket Entries by “Simplified Tiered Damages” Range
2014–2023

(Dollars in millions)



Note: “Simplified tiered damages” are calculated only for cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

About the Authors

Laarni T. Bulan

Ph.D., Columbia University; M.Phil., Columbia University; B.S., University of the Philippines

Laarni Bulan is a principal in Cornerstone Research's Boston office, where she specializes in finance. Her work has focused on securities and other complex litigation addressing class certification, damages, and loss causation issues; mergers and acquisitions (M&A) and firm valuation; and corporate governance, executive compensation, and risk management issues. She has also consulted on cases related to insider trading, market manipulation and trading behavior, financial institutions and the credit crisis, derivatives, foreign exchange, and securities clearing and settlement.

Dr. Bulan has published notable academic articles in peer-reviewed journals. Her research covers topics in dividend policy, capital structure, executive compensation, corporate governance, and real options. Prior to joining Cornerstone Research, Dr. Bulan had a joint appointment at Brandeis University as an assistant professor of finance in its International Business School and in the economics department.

Laura E. Simmons

Ph.D., University of North Carolina at Chapel Hill; M.B.A., University of Houston; B.B.A., University of Texas at Austin

Laura Simmons is a senior advisor with Cornerstone Research. She has more than 25 years of experience in economic consulting. Dr. Simmons has focused on damages and liability issues in securities class actions, as well as litigation involving the Employee Retirement Income Security Act (ERISA). She has also managed cases involving financial accounting, valuation, and corporate governance issues. She has served as a testifying expert in litigation involving accounting analyses, securities case damages, ERISA matters, and research on securities lawsuits.

Dr. Simmons's research on pre- and post-Reform Act securities litigation settlements has been published in a number of reports and is frequently cited in the public press and legal journals. She has spoken at various conferences and appeared as a guest on CNBC addressing the topic of securities case settlements. She has also published in academic journals, including research focusing on the intersection of accounting and litigation. Dr. Simmons was previously an accounting faculty member at the Mason School of Business at the College of William & Mary. From 1986 to 1991, she was an accountant with Price Waterhouse.

The authors gratefully acknowledge the research efforts and significant contributions of their colleagues at Cornerstone Research in the writing and preparation of this annual update. The views expressed herein do not necessarily represent the views of Cornerstone Research.

The authors request that you reference Cornerstone Research in any reprint of the information or figures included in this report.

Please direct any questions and requests for additional information to the settlement database administrator at settlementdatabase@cornerstone.com.

Cornerstone Research

Cornerstone Research provides economic and financial consulting and expert testimony in all phases of complex disputes and regulatory investigations. The firm works with an extensive network of prominent academics and industry practitioners to identify the best-qualified expert for each assignment. Cornerstone Research has earned a reputation for consistently high quality and effectiveness by delivering rigorous, state-of-the-art analysis since 1989. The firm has over 900 staff in nine offices across the United States and Europe.

www.cornerstone.com



Exhibit 4

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

In re BOSTON SCIENTIFIC
CORPORATION SECURITIES
LITIGATION

Master File No. 1:20-cv-12225-ADB

**DECLARATION OF LUIGGY SEGURA REGARDING:
(A) MAILING OF THE NOTICE AND CLAIM FORM;
(B) PUBLICATION OF THE SUMMARY NOTICE; AND
(C) REPORT ON REQUESTS FOR EXCLUSION RECEIVED TO DATE**

I, LUIGGY SEGURA, declare as follows:

1. I am the Vice President of Securities Operations at JND Legal Administration (“JND”). Pursuant to the Court’s December 27, 2023 Order Preliminarily Approving Settlement and Authorizing Dissemination of Notice of Settlement (ECF No. 155) (the “Preliminary Approval Order”), JND was appointed to supervise and administer the notice procedure as well as the processing of claims in connection with the Settlement of the above-captioned action (the “Action”).¹ I am over 21 years of age and am not a party to the Action. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

DISSEMINATION OF THE NOTICE PACKET

2. Pursuant to the Preliminary Approval Order, JND was responsible for mailing the Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for Attorneys’ Fees and Litigation Expenses (the “Notice”) and the Proof of Claim and Release Form (the “Claim Form”) (collectively, the Notice and Claim Form are referred to as

¹ Unless otherwise defined herein, all capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement, dated December 14, 2023 (Doc. 152-1) (the “Stipulation”).

the “Notice Packet”) to potential Settlement Class Members. A copy of the Notice Packet is attached hereto as Exhibit A.

3. On January 11, 2024, JND received from Lead Counsel an Excel spreadsheet, which Lead Counsel had received from Defendants’ Counsel, containing a total of 24 unique names and addresses of persons or entities who were identified as record holders of Boston Scientific common stock during the Class Period. On January 19, 2024, JND caused the Notice Packet to be sent by first-class mail to these 24 potential Settlement Class Members.

4. JND also researched filings with the U.S. Securities and Exchange Commission (SEC) on Form 13-F to identify additional institutions or entities who may have held Boston Scientific common stock during the Class Period. Based on this research, JND located 1,428 mailing records, which were added to the list of potential Settlement Class Members. On January 19, 2024, JND caused Notice Packets to be sent by first-class mail to these 1,428 potential Settlement Class Members.

5. As in most securities class actions, a large majority of potential Settlement Class Members are beneficial purchasers whose securities are held in “street name,” i.e., the securities are purchased by brokerage firms, banks, institutions, or other third-party nominees (“Nominees”) in the name of the Nominee, on behalf of the beneficial purchasers. JND maintains a proprietary database with the names and addresses of the most common Nominees (“Nominees Database”). At the time of the initial mailing, JND’s Nominee Database contained 4,080 records.² On January 19, 2024, JND caused Notice Packets to be sent by first-class mail to the 4,080 mailing records contained in its Nominee Database.

² JND’s Nominee Database is updated from time to time as new Nominees are identified, and others merge or cease to exist.

6. In total, 5,532 Notice Packets were mailed to potential Settlement Class Members and nominees by first-class mail on January 19, 2024.

7. The Notice itself and a cover letter that accompanied the Notice Packet mailed to Nominees (as well as an email mailed to Nominees) directed those who purchased Boston Scientific common stock during the Class Period for the beneficial interest of persons or organizations other than themselves to, within seven (7) calendar days of receipt of the Notice, either (i) request from the Claims Administrator sufficient copies of the Notice Packet to forward to all such beneficial owners and within seven (7) calendar days of receipt of those Notice Packets forward them to all such beneficial owners; or (ii) provide a list of the names and addresses of all such beneficial owners to JND (who would then mail copies of the Notice Packet to those beneficial owners). *See* Notice at ¶ 73.

8. JND monitored the responses received from brokers and other Nominees and followed up by email and, if necessary, phone calls to ensure that Nominees provided timely responses to JND's mailing. As of March 15, 2024, JND has mailed an additional 30,866 Notice Packets to potential Settlement Class Members whose names and addresses were received from individuals or brokerage firms, banks, institutions, and other Nominees requesting that Notice Packets be mailed to such persons and entities. JND has also mailed another 90,287 Notice Packets in bulk to Nominees who requested Notice Packets to forward to their customers. All such requests have been, and will continue to be, complied with and addressed in a timely manner.

9. As of March 15, 2024, a total of 126,685 Notice Packets have been mailed to potential Settlement Class Members and nominees. In addition, JND has re-mailed 551 Notice Packets to persons whose original mailings were returned by the U.S. Postal Service ("USPS")

and for whom updated addresses were provided to JND by the USPS or were obtained through other means.

PUBLICATION OF THE SUMMARY NOTICE

10. In accordance with Paragraph 7(d) of the Preliminary Approval Order, JND caused the Summary Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for Attorneys' Fees and Litigation Expenses (the "Summary Notice") to be published in *The Wall Street Journal* and transmitted over the *PR Newswire* on February 6, 2024. Copies of proof of publication of the Summary Notice in *The Wall Street Journal* and over *PR Newswire* are attached hereto as Exhibits B and C, respectively. The Summary Notice released via *PR Newswire* has been available online since its publication on February 6, 2024.³

WEBSITE

11. On January 18, 2024, JND established a website ("Settlement Website") dedicated to the Settlement, www.BostonScientificSecuritiesLitigation.com. JND continues to maintain the Settlement Website to inform class members about the Settlement and provide answers to frequently asked questions. The web address was set forth in the Notice Packet and in the Summary Notice. The Settlement Website includes information regarding the Action and the proposed Settlement, including the exclusion, objection, and claim filing deadlines, and details about the Court's Settlement Hearing. Copies of the Notice and Claim Form, as well as the Stipulation, Preliminary Approval Order, and Complaint are posted on the Settlement Website and are available for downloading. The Settlement Website became operational on January 18, 2024,

³ See <https://www.prnewswire.com/news-releases/bernstein-litowitz-berger--grossmann-llp-announces-notice-of-pendency-and-proposed-settlement-of-class-action-involving-persons-who-purchased-or-otherwise-acquired-common-stock-of-boston-scientific-corporation-from-september-16--302031951.html>

and is accessible 24 hours a day, 7 days a week. JND will update the Settlement Website as necessary through the administration of the Settlement.

TELEPHONE HELPLINE

12. On January 19, 2024, JND established a case-specific, toll-free telephone helpline, 1-877-595-0084, with an interactive voice response system and live operators, to accommodate potential Settlement Class Members with questions about the Action and the Settlement. The automated attendant answers the calls and presents callers with a series of choices to respond to basic questions. Callers requiring further help have the option to be transferred to a live operator during business hours. JND continues to maintain the telephone helpline and will update the interactive voice response system as necessary through the administration of the Settlement.

REPORT ON REQUESTS FOR EXCLUSION RECEIVED TO DATE

13. The Notice informs potential Settlement Class Members that requests for exclusion from the Settlement Class are to be sent by First Class Mail to EXCLUSIONS, *Boston Scientific Securities Litigation*, c/o JND Legal Administration, P.O. Box 91477, Seattle, Washington 98111, such that they are received no later than April 2, 2024. The Notice also sets forth the information that must be included in each request for exclusion. JND has monitored and will continue to monitor all mail delivered to the above address. As of March 15, 2024, JND has received three (3) requests for exclusion. JND will submit a supplemental declaration after the April 2, 2024 deadline for requesting exclusion that will address all requests for exclusion received.

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

Executed this 18th day of March 2024, at New Hyde Park, New York.



LUIGGY SEGURA

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In re BOSTON SCIENTIFIC
CORPORATION SECURITIES
LITIGATION

Master File No. 1:20-cv-12225-ADB

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

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

NOTICE OF PENDENCY OF CLASS ACTION: Please be advised that your rights may be affected by the above-captioned securities class action (the “Action”) pending in the United States District Court for the District of Massachusetts (the “Court”), if you purchased or otherwise acquired the common stock of Boston Scientific Corporation (“Boston Scientific”) during the period from September 16, 2020 through November 16, 2020, inclusive (the “Class Period”), and were damaged thereby.¹

NOTICE OF SETTLEMENT: Please also be advised that the Court-appointed Lead Plaintiff, Union Asset Management Holding AG (“Lead Plaintiff”), on behalf of itself and the Settlement Class (as defined in ¶ 27 below), has reached a proposed settlement of the Action for **\$38,500,000** in cash that, if approved, will resolve all claims in the Action (the “Settlement”).

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

If you have any questions about this Notice, the proposed Settlement, or your eligibility to participate in the Settlement, please DO NOT contact the Court, the Office of the Clerk of the Court, Boston Scientific, any other Defendants in the Action, or their counsel. All questions should be directed to Lead Counsel or the Claims Administrator (see ¶ 74 below).

1. **Description of the Action and the Settlement Class:** This Notice relates to a proposed Settlement of claims in a pending securities class action brought by investors alleging that Boston Scientific and certain of its executives, Michael F. Mahoney, Daniel J. Brennan, Shawn McCarthy, Ian Meredith, Joseph M. Fitzgerald, Kevin Ballinger, and Susan Vissers Lisa (collectively, the “Individual Defendants”) violated the federal securities laws by making false and misleading statements regarding Boston Scientific’s Lotus Edge medical device. A more detailed description of the Action is set forth in

¹ All capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated December 14, 2023 (the “Stipulation”), which is available at BostonScientificSecuritiesLitigation.com.

paragraphs 11-26 below. If the Court approves the proposed Settlement, the Action will be dismissed and members of the Settlement Class (defined in paragraph 27 below) will settle and release all Released Plaintiffs' Claims (defined in paragraph 38 below).

2. **Statement of the Settlement Class's Recovery:** Subject to Court approval, Lead Plaintiff, on behalf of itself and the Settlement Class, has agreed to settle the Action in exchange for a settlement payment of \$38,500,000 in cash (the "Settlement Amount") to be deposited into an escrow account. The Net Settlement Fund (*i.e.*, the Settlement Amount plus any and all interest earned thereon (the "Settlement Fund") less (a) any Taxes, (b) any Notice and Administration Costs, (c) any Litigation Expenses awarded by the Court, (d) any attorneys' fees awarded by the Court; and (e) any other costs or fees approved by the Court) will be distributed in accordance with a plan of allocation that is approved by the Court, which will determine how the Net Settlement Fund shall be allocated among members of the Settlement Class. The proposed plan of allocation (the "Plan of Allocation") is attached hereto as Appendix A.

3. **Estimate of Average Amount of Recovery Per Share:** Based on Lead Plaintiff's damages expert's estimate of the number of shares of Boston Scientific common stock purchased during the Class Period that may have been affected by the conduct alleged in the Action and assuming that all Settlement Class Members elect to participate in the Settlement, the estimated average recovery (before the deduction of any Court-approved fees, expenses and costs as described herein) is \$0.43 per eligible share. Settlement Class Members should note, however, that the foregoing average recovery per share is only an estimate. Some Settlement Class Members may recover more or less than this estimated amount depending on, among other factors, when and at what prices they purchased or sold their Boston Scientific common stock, and the total number and value of valid Claim Forms submitted. Distributions to Settlement Class Members will be made based on the Plan of Allocation set forth in Appendix A or such other plan of allocation as may be ordered by the Court.

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

5. **Attorneys' Fees and Expenses Sought:** Plaintiffs' Counsel, which have been prosecuting the Action on a wholly contingent basis, have not received any payment of attorneys' fees for their representation of the Settlement Class and have advanced the funds to pay expenses necessarily incurred to prosecute this Action. Court-appointed Lead Counsel, Bernstein Litowitz Berger & Grossmann LLP, will apply to the Court for an award of attorneys' fees for all Plaintiffs' Counsel in an amount not to exceed 20% of the Settlement Fund. In addition, Lead Counsel will apply for payment of Litigation Expenses incurred in connection with the institution, prosecution, and resolution of the Action, in an amount not to exceed \$700,000, which may include an application for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiff directly related to its representation of the Settlement Class, pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"). Any fees and expenses awarded by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses. The estimated average cost per affected share of Boston Scientific common stock, if the Court approves Lead Counsel's fee and expense application, is \$0.09 per share.

6. **Identification of Attorneys' Representatives:** Lead Plaintiff and the Settlement Class are represented by Salvatore J. Graziano, Lauren A. Ormsbee, and Michael D. Blatchley of Bernstein Litowitz Berger & Grossmann LLP, 1251 Avenue of the Americas, 44th Floor, New York, NY 10020, (800) 380-8496, settlements@blbglaw.com.

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

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:	
SUBMIT A CLAIM FORM POSTMARKED OR SUBMITTED ONLINE NO LATER THAN MAY 28, 2024.	This is the only way to be eligible to receive a payment from the Settlement Fund. If you are a Settlement Class Member and you remain in the Settlement Class, you will be bound by the Settlement as approved by the Court and you will give up any Released Plaintiffs' Claims (defined in ¶ 38 below) that you have against Defendants and the other Defendants' Releasees (defined in ¶ 39 below), so it is in your interest to submit a Claim Form.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION SO THAT IT IS RECEIVED NO LATER THAN APRIL 2, 2024.	If you exclude yourself from the Settlement Class, you will not be eligible to receive any payment from the Settlement Fund. This is the only option that allows you ever to be part of any other lawsuit against any of the Defendants or the other Defendants' Releasees concerning the Released Plaintiffs' Claims.
OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS RECEIVED NO LATER THAN APRIL 2, 2024.	If you do not like the proposed Settlement, the proposed Plan of Allocation, or the request for attorneys' fees and Litigation Expenses, you may write to the Court and explain why you do not like them. You cannot object to the Settlement, the Plan of Allocation, or the fee and expense request unless you are a Settlement Class Member and do not exclude yourself from the Settlement Class.
GO TO A HEARING ON APRIL 23, 2024 AT 9:00 A.M., AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS RECEIVED NO LATER THAN APRIL 2, 2024.	Filing a written objection and notice of intention to appear by April 2, 2024 allows you to speak in Court, at the discretion of the Court, about the fairness of the proposed Settlement, the Plan of Allocation, and/or the request for attorneys' fees and Litigation Expenses. If you submit a written objection, you may (but you do not have to) attend the hearing and, at the discretion of the Court, speak to the Court about your objection.
DO NOTHING.	If you are a member of the Settlement Class and you do not submit a valid Claim Form, you will not be eligible to receive any payment from the Settlement Fund. You will, however, remain a member of the Settlement Class, which means that you give up your right to sue about the claims that are resolved by the Settlement and you will be bound by any judgments or orders entered by the Court in the Action.

These rights and options—and the deadlines to exercise them—are further explained in this Notice. Please Note: the date and time of the Settlement Hearing—currently scheduled for April 23, 2024 at 9:00 a.m. Eastern Time—is subject to change without further notice to the Settlement Class. It is also within the Court’s discretion to hold the hearing in person, by videoconference, or telephonically. If you plan to attend the hearing, you should check the Settlement website, BostonScientificSecuritiesLitigation.com, or with Lead Counsel as set forth above to confirm that no change to the date and/or time of the hearing has been made.

WHAT THIS NOTICE CONTAINS

Why Did I Get This Notice? Page 4

What Is This Case About? Page 5

How Do I Know If I Am Affected By The Settlement?
 Who Is Included In The Settlement Class?..... Page 7

What Are Lead Plaintiff’s Reasons For The Settlement?..... Page 7

What Might Happen If There Were No Settlement? Page 8

How Are Settlement Class Members Affected By The Action
 And The Settlement?..... Page 8

How Do I Participate In The Settlement? What Do I Need To Do?..... Page 10

How Much Will My Payment Be?..... Page 11

What Payment Are The Attorneys For The Settlement Class Seeking?
 How Will The Lawyers Be Paid? Page 12

What If I Do Not Want To Be A Member Of The Settlement Class?
 How Do I Exclude Myself? Page 12

When And Where Will The Court Decide Whether To Approve The Settlement?
 Do I Have To Come To The Hearing? May I Speak At The Hearing If I
 Don’t Like The Settlement?..... Page 13

What If I Bought Shares On Someone Else’s Behalf? Page 15

Can I See The Court File? Whom Should I Contact If I Have Questions? Page 16

Appendix A: Plan of Allocation of the Net Settlement Fund Page 17

WHY DID I GET THIS NOTICE?

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

9. The purpose of this Notice is to inform you of the existence of this case, that it is a class action, how you might be affected, and how to exclude yourself from the Settlement Class if you wish to do so. It is also being sent to inform you of the terms of the proposed Settlement, and of a hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement, the proposed Plan of Allocation, and the motion by Lead Counsel for attorneys' fees and Litigation Expenses (the "Settlement Hearing"). See ¶¶ 63-64 below for details about the Settlement Hearing, including the date and location of the hearing.

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

WHAT IS THIS CASE ABOUT?

11. Boston Scientific is a developer, manufacturer, and marketer of medical devices. Boston Scientific's common stock trades on the New York Stock Exchange under the ticker symbol "BSX." This Action involves allegations that, during the Class Period (from September 16, 2020 through November 16, 2020), Boston Scientific and certain of its executives (the Individual Defendants) made material misrepresentations and omissions about Boston Scientific's Lotus Edge device, a medical device used to treat a form of heart disease called aortic stenosis. Lead Plaintiff alleges that these misrepresentations and omissions caused the price of Boston Scientific's common stock to be inflated during the Class Period, and that the price declined when the truth was disclosed on November 17, 2020.

12. In December 2020, a class action alleging violations of the federal securities laws against Boston Scientific and certain of its officers was filed in the United States District Court for the District of Massachusetts (the "Court"). A related action was filed in the United States District Court for the Eastern District of New York and later transferred to the Court.

13. On March 30, 2021, the Honorable Douglas P. Woodlock consolidated the actions and ordered that all future filings in the consolidated action be made in Case No. 1:20-cv-12225, under the caption *In re Boston Scientific Corporation Securities Litigation*. The Court also appointed Union Asset Management Holding AG as Lead Plaintiff for the Action under the PSLRA and approved Bernstein Litowitz Berger & Grossmann LLP as Lead Counsel.

14. On June 4, 2021, Lead Plaintiff filed and served the Amended Consolidated Complaint for Violations of the Federal Securities Laws (the "Complaint") asserting claims against all Defendants under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder, and against the Individual Defendants under Section 20(a) of the Exchange Act. Among other things, the Complaint alleged that Defendants made materially false and misleading statements about Boston Scientific's Lotus Edge medical device, including about the Lotus Edge's ability to drive revenues and the safety of the device. The Complaint further alleged that the price of Boston Scientific's common stock was artificially inflated as a result of Defendants' allegedly false and misleading statements and declined when the truth was revealed.

15. On July 19, 2021, Defendants filed a motion to dismiss the Complaint. On August 30, 2021, Lead Plaintiff filed its memorandum of law in opposition to the motion to dismiss, and, on September 20, 2021, Defendants filed their reply papers.

16. On December 20, 2022, the Court entered an Order denying, in part, and granting, in part, Defendants' motion to dismiss the Complaint.

17. On January 20, 2023, Defendants filed their Answer to the Complaint. Among other things, Defendants' Answer denied Lead Plaintiff's allegations of wrongdoing and asserted various defenses to the claims pled against them.

18. Discovery in the Action commenced in January 2023. Defendants produced more than 50,000 documents, totaling more than 224,000 pages, to Lead Plaintiff. In addition, third parties produced additional documents to Lead Plaintiff. The Parties also met and conferred and exchanged numerous letters concerning disputed discovery issues over several months, and Lead Plaintiff noticed depositions to take place in October and November of 2023.

19. The Parties began exploring the possibility of a settlement in early 2023. The Parties agreed to engage in private mediation and retained James McGuire to act as mediator in the Action (the "Mediator"). On March 27, 2023, counsel for the Parties participated in a full-day mediation session before the Mediator. In advance of that session, the Parties exchanged and submitted detailed mediation statements to the Mediator. The session ended without any agreement being reached.

20. On April 21, 2023, Lead Plaintiff filed its motion for class certification and appointment of class representative and class counsel, which was accompanied by a report from Lead Plaintiff's expert on market efficiency and common damages methodologies. Defendants filed their opposition to the motion on May 26, 2023, and Lead Plaintiff filed a reply in further support of the motion on June 23, 2023.

21. On June 28, 2023, the case was reassigned to the Honorable Allison D. Burroughs.

22. On July 27, 2023, the Court held a hearing in which it heard oral argument on the motion for class certification and approved the Parties' stipulation modifying the schedule for completion of discovery and deadlines for filing dispositive motions.

23. After the July 27, 2023 hearing, the Parties renewed their settlement discussions, and agreed to engage in a second full-day session before the Mediator on September 8, 2023. Lead Plaintiff again submitted a detailed mediation statement to Boston Scientific and the Mediator, and included supporting exhibits produced in the course of discovery. Following the mediation session, the Parties reached an agreement in principle to settle the Action.

24. The Parties executed a term sheet on October 23, 2023 (the "Term Sheet"). The Term Sheet set forth, among other things, the Parties' agreement to settle and release all claims against Defendants in the Action in return for a cash payment of \$38,500,000 for the benefit of the Settlement Class, subject to certain terms and conditions and the execution of a customary "long form" stipulation and agreement of settlement and related papers.

25. On December 14, 2023, the Parties entered into a Stipulation and Agreement of Settlement (the "Stipulation"), which sets forth the terms and conditions of the Settlement. The Stipulation can be viewed at BostonScientificSecuritiesLitigation.com.

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

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

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

all persons or entities who purchased or otherwise acquired Boston Scientific common stock during the period from September 16, 2020 through November 16, 2020, inclusive, and were damaged thereby.

Excluded from the Settlement Class are: (i) Defendants; (ii) Immediate Family Members of any Individual Defendant; (iii) any person who was an Officer or director of Boston Scientific during the Class Period and any of their Immediate Family Members; (iv) any parent, subsidiary, or affiliate of Boston Scientific; (v) any firm, trust, corporation, or other entity in which any Defendant or any other excluded person or entity has, or had during the Class Period, a controlling interest; and (vi) the legal representatives, agents, affiliates, heirs, successors-in-interest, or assigns of any such excluded persons or entities. Also excluded from the Settlement Class are any persons or entities who or which exclude themselves by submitting a request for exclusion that is accepted by the Court in accordance with the requirements set forth in this Notice. *See* “What If I Do Not Want To Be A Member Of The Settlement Class? How Do I Exclude Myself?,” on page 12 below.

Please Note: Receipt of this Notice does not mean that you are a Settlement Class Member or that you will be entitled to receive proceeds from the Settlement.

If you are a Settlement Class Member and you wish to be eligible to participate in the distribution of proceeds from the Settlement, you are required to submit the Claim Form that is being distributed with this Notice and the required supporting documentation as set forth therein postmarked (or submitted online) no later than May 28, 2024.

WHAT ARE LEAD PLAINTIFF’S REASONS FOR THE SETTLEMENT?

28. Lead Plaintiff and Lead Counsel believe that the claims asserted against Defendants have merit. They recognize, however, the very substantial risks they would face in establishing liability and damages. To defeat summary judgment and prevail at trial, Lead Plaintiff would have been required to prove not only that Defendants’ statements about the Lotus Edge device were materially false, but that the Individual Defendants knew that their statements were false when made or were reckless in making the statements, and that the alleged corrective disclosures caused the decline in the price of Boston Scientific’s stock.

29. Defendants vigorously argued that their statements at issue about the Lotus Edge device were not false and misleading. The statements at issue in the case following the Court’s motion to dismiss decision were Boston Scientific’s CEO’s September 16, 2020 statement that Lotus was a “key growth driver” for the Company and his October 28, 2020 statement that the Company’s strategy to pursue the Lotus Edge along with another aortic valve device “makes sense.” Defendants contend that these

statements were true when made and that Defendants had no intent to mislead investors, and that the Company's decision to terminate the Lotus Edge product was not made until after those statements were made. Lead Plaintiff would also face risks in establishing that the alleged misstatements caused damages to the Settlement Class, and in proving the amount of damages.

30. Further, in order to obtain recovery for the Settlement Class, Lead Plaintiff would have to prevail at several stages—on the pending motion for class certification, at summary judgment, and at trial – and, even if it prevailed on those, on the appeals that were likely to follow. Thus, there were significant risks attendant to the continued prosecution of the Action, and there was no guarantee that further litigation would have resulted in a higher recovery, or any recovery at all.

31. In light of these risks, the amount of the Settlement and the immediacy of recovery to the Settlement Class, Lead Plaintiff and Lead Counsel believe that the proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class. Lead Plaintiff and Lead Counsel believe that the Settlement provides a substantial benefit to the Settlement Class, namely \$38,500,000 in cash (less the various deductions described in this Notice), as compared to the risk that the claims in the Action would produce a smaller, or no recovery after summary judgment, trial, and appeals, possibly years in the future.

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

WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?

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

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

34. As a Settlement Class Member, you are represented by Lead Plaintiff and Lead Counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file a notice of appearance on your behalf and must serve copies of his or her appearance on the attorneys listed in the section entitled, "When And Where Will The Court Decide Whether To Approve The Settlement?," on page 13 below.

35. If you are a Settlement Class Member and do not wish to remain a Settlement Class Member, you may exclude yourself from the Settlement Class by following the instructions in the section entitled, "What If I Do Not Want To Be A Member Of The Settlement Class? How Do I Exclude Myself?," on page 12 below.

36. If you are a Settlement Class Member and you wish to object to the Settlement, the Plan of Allocation, or Lead Counsel's application for attorneys' fees and Litigation Expenses, and if you do not exclude yourself from the Settlement Class, you may present your objections by following the instructions in the section entitled, "When And Where Will The Court Decide Whether To Approve The Settlement?," on page 13 below.

37. If you are a Settlement Class Member and you do not exclude yourself from the Settlement Class, you will be bound by any orders issued by the Court. If the Settlement is approved, the Court will enter a judgment (the "Judgment"). The Judgment will dismiss with prejudice the claims against Defendants and will provide that, upon the Effective Date of the Settlement, Lead Plaintiff and each of the other Settlement Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns, in their capacities as such, will have fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiffs' Claim (as defined in ¶ 38 below) against Defendants and the other Defendants' Releasees (as defined in ¶ 39 below), and shall forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs' Claims against any of the Defendants' Releasees.

38. "Released Plaintiffs' Claims" means any and all claims and causes of action of every nature and description, including known claims and Unknown Claims (defined in ¶ 40), contingent or absolute, mature or not mature, discoverable or undiscoverable, liquidated or unliquidated, accrued or not accrued, including those that are concealed or hidden, regardless of legal or equitable theory and whether arising under federal, state, common, or foreign law, that (i) Lead Plaintiff or any other member of the Settlement Class asserted in the Complaint or could have asserted in any other forum that 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 (ii) relate to the purchase or acquisition of Boston Scientific common stock during the Class Period. Released Plaintiffs' Claims do not cover, include, or release: (i) any claims that have been or could be asserted in any ERISA or shareholder derivative action, including without limitation the claims asserted in *Nachbaur v. Mahoney et al.*, Case No. 1:23-cv-10750 (D. Mass.), or any cases consolidated into that action; (ii) any claims by any governmental entity that arise out of any governmental investigation of Defendants relating to the conduct alleged in the Action; or (iii) any claims relating to the enforcement of the Settlement.

39. "Defendants' Releasees" means Defendants and their current and former parents, affiliates, subsidiaries, officers, directors, agents, successors, predecessors, assigns, assignees, partnerships, partners, trustees, trusts, employees, Immediate Family Members, insurers, reinsurers, accountants, and attorneys.

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

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

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

41. The Judgment will also provide that, upon the Effective Date of the Settlement, Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns, in their capacities as such, will have fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Defendants' Claim (as defined in ¶ 42 below) against Lead Plaintiff and the other Plaintiffs' Releasees (as defined in ¶ 43 below), and shall forever be barred and enjoined from prosecuting any or all of the Released Defendants' Claims against any of the Plaintiffs' Releasees.

42. "Released Defendants' Claims" means any and all claims and causes of action of every nature and description, whether arising under federal, state, common, or foreign law, including known claims and Unknown Claims (defined in ¶ 40), whether arising under federal, state, common, or foreign law, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims against Defendants in the Action. This release does not cover, include, or release (i) claims relating to the enforcement of the Stipulation or the Settlement; or (ii) any claims against any person or entity who or which submits a request for exclusion that is accepted by the Court.

43. "Plaintiffs' Releasees" means Lead Plaintiff, all other plaintiffs in the Action, and all other Settlement Class Members, and their respective current and former parents, affiliates, subsidiaries, officers, directors, agents, successors, predecessors, assigns, assignees, partnerships, partners, trustees, trusts, employees, Immediate Family Members, insurers, reinsurers, accountants, and attorneys.

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

44. To be eligible for a payment from the Settlement, you must be a member of the Settlement Class and you must timely complete and return the Claim Form with adequate supporting documentation ***postmarked (if mailed), or submitted online at BostonScientificSecuritiesLitigation.com no later than May 28, 2024.*** A Claim Form is included with this Notice, or you may obtain one from the website maintained by the Claims Administrator for the Settlement, BostonScientificSecuritiesLitigation.com. You may also request that a Claim Form be mailed to you by calling the Claims Administrator toll-free at 1-877-595-0084 or by emailing the Claims Administrator at info@BostonScientificSecuritiesLitigation.com. **Please retain all records of your ownership of and transactions in Boston Scientific common stock, as they will be needed to document your Claim.** The Parties and Claims Administrator do not have information about your transactions in Boston Scientific common stock.

45. If you request exclusion from the Settlement Class or do not submit a timely and valid Claim Form, you will not be eligible to share in the Net Settlement Fund.

HOW MUCH WILL MY PAYMENT BE?

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

47. Pursuant to the Settlement, Defendants have agreed to cause \$38,500,000 in cash (the “Settlement Amount”) to be paid into an escrow account. The Settlement Amount plus any interest earned thereon is referred to as the “Settlement Fund.” If the Settlement is approved by the Court and the Effective Date occurs, the “Net Settlement Fund” (that is, the Settlement Fund less (a) all federal, state and/or local taxes on any income earned by the Settlement Fund and the reasonable costs incurred in connection with determining the amount of and paying taxes owed by the Settlement Fund (including reasonable expenses of tax attorneys and accountants); (b) the costs and expenses incurred in connection with providing notice to Settlement Class Members and administering the Settlement on behalf of Settlement Class Members; (c) any attorneys’ fees and Litigation Expenses awarded by the Court; and (d) any other costs or fees approved by the Court) will be distributed to Settlement Class Members who submit valid Claim Forms, in accordance with the proposed Plan of Allocation or such other plan of allocation as the Court may approve.

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

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

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

51. Unless the Court otherwise orders, any Settlement Class Member who fails to submit a Claim Form postmarked (or submitted online) on or before May 28, 2024 shall be fully and forever barred from receiving payments pursuant to the Settlement but will in all other respects remain a Settlement Class Member and be subject to the provisions of the Stipulation, including the terms of any Judgment entered and the releases given. This means that each Settlement Class Member releases the Released Plaintiffs’ Claims (as defined in ¶ 38 above) against the Defendants’ Releasees (as defined in ¶ 39 above) and will be enjoined and prohibited from filing, prosecuting, or pursuing any of the Released Plaintiffs’ Claims against any of the Defendants’ Releasees whether or not such Settlement Class Member submits a Claim Form.

52. Participants in and beneficiaries of a Boston Scientific employee benefit plan covered by ERISA (“Boston Scientific ERISA Plan”) should NOT include any information relating to their transactions in Boston Scientific common stock held through the Boston Scientific ERISA Plan in any Claim Form that they may submit in this Action. They should include ONLY those shares or notes that they purchased outside of the Plan. Claims based on any Boston Scientific ERISA Plan’s purchases of Boston Scientific common stock during the Class Period may be made by the plan’s trustees.

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

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

55. Only Settlement Class Members or persons authorized to submit a claim on their behalf will be eligible to share in the distribution of the Net Settlement Fund. Persons and entities that are excluded from the Settlement Class by definition or that exclude themselves from the Settlement Class pursuant to request will not be eligible to receive a distribution from the Net Settlement Fund and should not submit Claim Forms. The only security that is included in the Settlement is Boston Scientific common stock.

56. Appendix A to this Notice sets forth the Plan of Allocation for allocating the Net Settlement Fund among Authorized Claimants, as proposed by Lead Plaintiff. At the Settlement Hearing, Lead Plaintiff will request that the Court approve the Plan of Allocation. The Court may modify the Plan of Allocation, or approve a different plan of allocation, without further notice to the Settlement Class.

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

57. Plaintiffs' Counsel have not received any payment for their services in pursuing claims against the Defendants on behalf of the Settlement Class, nor have Plaintiffs' Counsel been reimbursed for their out-of-pocket expenses. Before final approval of the Settlement, Lead Counsel will apply to the Court for an award of attorneys' fees for all Plaintiffs' Counsel in an amount not to exceed 20% of the Settlement Fund. At the same time, Lead Counsel also intends to apply for payment of Litigation Expenses in an amount not to exceed \$700,000, which may include an application for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiff directly related to its representation of the Settlement Class, pursuant to the PSLRA. The Court will determine the amount of any award of attorneys' fees or Litigation Expenses. Such sums as may be approved by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses.

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

58. Each Settlement Class Member will be bound by all determinations and judgments in this lawsuit, whether favorable or unfavorable, unless such person or entity mails or delivers a written Request for Exclusion from the Settlement Class, addressed to *Boston Scientific Securities Litigation, EXCLUSIONS*, c/o JND Legal Administration, P.O. Box 91477, Seattle, WA 98111. The Request for Exclusion must be **received no later than April 2, 2024**. You will not be able to exclude yourself from the Settlement Class after that date. Each Request for Exclusion must (i) state the name, address, and telephone number of the person or entity requesting exclusion, and in the case of entities, the name and telephone number of the appropriate contact person; (ii) state that such person or entity "requests exclusion from the Settlement Class in *In re Boston Scientific Corporation Securities Litigation*, Master File No. 1:20-cv-12225-ADB"; (iii) state the number of shares of Boston Scientific common stock that the person or entity requesting exclusion (A) owned as of the opening of trading on September 16, 2020 and (B) purchased/acquired and/or sold from September 16, 2020, through February 12, 2021, inclusive,

as well as the date, number of shares, and prices of each such purchase/acquisition and sale; and (iv) be signed by the person or entity requesting exclusion or an authorized representative. A Request for Exclusion shall not be effective unless it provides all the information called for in this paragraph and is received within the time stated above, or is otherwise accepted by the Court

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

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

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

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

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

63. **Please Note:** The date and time of the Settlement Hearing may change without further written notice to the Settlement Class. The Court may decide to conduct the Settlement Hearing by video or telephonic conference, or otherwise allow Settlement Class Members to appear at the hearing by phone, without further written notice to the Settlement Class. **In order to determine whether the date and time of the Settlement Hearing have changed, or whether Settlement Class Members must or may participate by phone or video, it is important that you monitor the Court's docket and the Settlement website, BostonScientificSecuritiesLitigation.com, before making any plans to attend the Settlement Hearing. Any updates regarding the Settlement Hearing, including any changes to the date or time of the hearing or updates regarding in-person or remote appearances at the hearing, will be posted to the Settlement website, BostonScientificSecuritiesLitigation.com. If the Court requires or allows Settlement Class Members to participate in the Settlement Hearing by telephone or video conference, the information for accessing the telephone or video conference will be posted to the Settlement website, BostonScientificSecuritiesLitigation.com.**

64. The Settlement Hearing will be held on **April 23, 2024 at 9:00 a.m.**, before the Honorable Allison D. Burroughs, either in person at the United States District Court for the District of Massachusetts, Courtroom 17 on the Fifth Floor of the John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Boston, MA 02210, or by telephone or videoconference (in the discretion of the Court). At the Settlement Hearing, the Court will consider: (a) whether the proposed Settlement is fair, reasonable, and adequate to the Settlement Class, and should be finally approved; (b) whether a Judgment substantially in the form attached as Exhibit B to the Stipulation should be entered dismissing the Action with prejudice against Defendants; (c) whether the Settlement Class should be certified for purposes of the Settlement; (d) whether the proposed Plan of Allocation for the proceeds of the

Settlement is fair and reasonable and should be approved; (e) whether the motion by Lead Counsel for attorneys' fees and Litigation Expenses should be approved; and (f) other matters that may properly be brought before the Court in connection with the Settlement. The Court reserves the right to approve the Settlement, the Plan of Allocation, Lead Counsel's motion for an award of attorneys' fees and Litigation Expenses, and/or any other matter related to the Settlement at or after the Settlement Hearing without further notice to the members of the Settlement Class.

65. Any Settlement Class Member that does not request exclusion may object to the Settlement, the proposed Plan of Allocation, or Lead Counsel's motion for an award of attorneys' fees and Litigation Expenses. Objections must be in writing. You must file any written objection, together with copies of all other papers and briefs supporting the objection, electronically with the Court or by letter mailed to the Clerk's Office at the United States District Court for the District of Massachusetts, at the address set forth below **on or before April 2, 2024**. You must also serve the papers on Lead Counsel and on Defendants' Counsel at the addresses set forth below so that the papers are *received on or before April 2, 2024*.

<u>Clerk's Office</u>	<u>Lead Counsel</u>	<u>Defendants' Counsel</u>
United States District Court District of Massachusetts Clerk of the Court U.S. Courthouse 1 Courthouse Way Boston, MA 02210	Bernstein Litowitz Berger & Grossmann LLP Salvatore J. Graziano Lauren A. Ormsbee Michael D. Blatchley 1251 Avenue of the Americas, 44th Floor New York, NY 10020	Skadden, Arps, Slate, Meagher & Flom LLP James R. Carroll Alisha Q. Nanda 500 Boylston Street Boston, MA 02116

66. Any objection must include (a) the name of this proceeding, *In re Boston Scientific Corporation Securities Litigation*, Master File No. 1:20-cv-12225-ADB; (b) the objector's full name, current address, and telephone number; (c) the objector's signature; (d) a statement providing the specific reasons for the objection, including a detailed statement of the specific legal and factual basis for each and every objection and whether the objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class; and (e) documents sufficient to prove membership in the Settlement Class, including documents showing the number of shares of Boston Scientific common stock that the objecting Settlement Class Member purchased/acquired and/or sold from September 16, 2020 through November 16, 2020, inclusive, as well as the date, number of shares, and prices of each such purchase/acquisition and sale. The documentation establishing membership in the Settlement Class must consist of copies of brokerage confirmation slips or monthly brokerage account statements, or an authorized statement from the objector's broker containing the transactional and holding information found in a broker confirmation slip or account statement.

67. You may not object to the Settlement, the Plan of Allocation, or Lead Counsel's motion for attorneys' fees and Litigation Expenses if you exclude yourself from the Settlement Class or if you are not a member of the Settlement Class.

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

69. If you wish to be heard orally at the hearing in opposition to the approval of the Settlement, the Plan of Allocation, or Lead Counsel’s motion for an award of attorneys’ fees and Litigation Expenses, and if you timely file and serve a written objection as described above, you must also file a notice of appearance with the Clerk’s Office so that it is **received on or before April 2, 2024**. Such persons may be heard orally at the discretion of the Court.

70. You are not required to hire an attorney to represent you in making written objections or in appearing at the Settlement Hearing. However, if you decide to hire an attorney, it will be at your own expense, and that attorney must file a notice of appearance with the Court so that the notice is **received on or before April 2, 2024**.

71. The Settlement Hearing may be adjourned by the Court without further written notice to the Settlement Class, other than a posting of the adjournment on the case website, BostonScientificSecuritiesLitigation.com. If you plan to attend the Settlement Hearing, you should confirm the date and time with Lead Counsel.

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

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

73. If you purchased Boston Scientific common stock from September 16, 2020 through November 16, 2020, inclusive, for the beneficial interest of persons or organizations other than yourself, you must either (a) within seven (7) calendar days of receipt of this Notice, request from the Claims Administrator sufficient copies of the Notice and Claim Form (the “Notice Packet”) to forward to all such beneficial owners and within seven (7) calendar days of receipt of those Notice Packets forward them to all such beneficial owners; or (b) within seven (7) calendar days of receipt of this Notice, provide a list of the names and addresses of all such beneficial owners to *Boston Scientific Securities Litigation*, c/o JND Legal Administration, P.O. Box 91477, Seattle, WA 98111. If you choose the second option, the Claims Administrator will send a copy of the Notice and the Claim Form to the beneficial owners. Upon full compliance with these directions, such nominees may seek payment of their reasonable expenses actually incurred, by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Copies of this Notice and the Claim Form may also be obtained from the website maintained by the Claims Administrator, BostonScientificSecuritiesLitigation.com, or by calling the Claims Administrator toll-free at 1-877-595-0084.

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

74. This Notice contains only a summary of the terms of the proposed Settlement. For more detailed information about the matters involved in this Action, you are referred to the papers on file in the Action, including the Stipulation, which may be reviewed by accessing the Court docket in this case through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States

District Court for the District of Massachusetts, John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Boston, MA 02210. Additionally, copies of the Stipulation and any related orders entered by the Court will be posted on the website maintained by the Claims Administrator, BostonScientificSecuritiesLitigation.com.

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

Boston Scientific Securities Litigation
c/o JND Legal Administration
P.O. Box 91477
Seattle, WA 98111
877-595-0084
BostonScientificSecuritiesLitigation.com

and/or

Salvatore J. Graziano
Lauren A. Ormsbee
Michael D. Blatchley
BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP
1251 Avenue of the Americas, 44th Floor
New York, NY 10020
800-380-8496
settlements@blbglaw.com

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

Dated: January 26, 2024

By Order of the Court
United States District Court
District of Massachusetts

Appendix A

PLAN OF ALLOCATION OF THE NET SETTLEMENT FUND

75. As discussed above, the Settlement provides \$38,500,000 in cash for the benefit of the Settlement Class. The Settlement Amount and any interest it earns constitute the “Settlement Fund.” The Settlement Fund, after deduction of Court-approved attorneys’ fees and Litigation Expenses, Notice and Administration Costs, Taxes, and any other fees or expenses approved by the Court, is the “Net Settlement Fund.” If the Settlement is approved by the Court, the Net Settlement Fund will be distributed to eligible Authorized Claimants, i.e., members of the Settlement Class who timely submit valid Claim Forms that are accepted for payment by the Court, in accordance with a plan of allocation to be adopted by the Court. Settlement Class Members who do not timely submit valid Claim Forms will not share in the Net Settlement Fund, but will otherwise be bound by the Settlement.

76. The Plan of Allocation (the “Plan”) set forth herein is the plan that is being proposed to the Court for approval by Lead Plaintiff after consultation with its damages expert. The Court may approve the Plan with or without modification, or approve another plan of allocation, without further notice to the Settlement Class. Any Orders regarding a modification to the Plan will be posted to BostonScientificSecuritiesLitigation.com. Defendants have had, and will have, no involvement or responsibility for the terms or application of the Plan.

77. The objective of the Plan of Allocation is to distribute the Settlement proceeds equitably among those Settlement Class Members who suffered economic losses as a proximate result of the alleged wrongdoing. The Plan of Allocation is not a formal damage analysis, and the calculations made in accordance with the Plan of Allocation are not intended to be estimates of, or indicative of, the amounts that Settlement Class Members might have been able to recover after a trial. Nor are the calculations in accordance with the Plan of Allocation intended to be estimates of the amounts that will be paid to Authorized Claimants under the Settlement. The computations under the Plan of Allocation are only a method to weigh, in a fair and equitable manner, the claims of Authorized Claimants against one another for the purpose of making *pro rata* allocations of the Net Settlement Fund.

78. The Plan of Allocation was developed in consultation with Lead Plaintiff’s damages expert. In developing the Plan of Allocation, Lead Plaintiff’s damages expert calculated the estimated amount of alleged artificial inflation in the per-share prices of Boston Scientific common stock that was allegedly proximately caused by Defendants’ alleged materially false and misleading statements and omissions. In calculating the estimated artificial inflation allegedly caused by those misrepresentations and omissions, Lead Plaintiff’s damages expert considered the price change in Boston Scientific common stock in reaction to the public disclosure on November 17, 2020 that allegedly corrected the alleged misrepresentations and omissions, adjusting for price changes attributable to market or industry factors that day. Based on these calculations, there was a total of \$2.77 in estimated artificial inflation per share in the Boston Scientific common stock price that was removed on November 17, 2020. Defendants disagree with Lead Plaintiffs’ damages expert, for among other reasons, they do not believe that any harm was caused by the statements challenged in the Action.

79. In order to have recoverable damages under the federal securities laws in connection with purchases and/or acquisitions of Boston Scientific common stock during the Class Period, disclosure of the alleged misrepresentations or omissions must be the cause of the decline in the price of the Boston Scientific common stock. Lead Plaintiff alleges that Defendants made false statements and

omitted material facts during the period from September 16, 2020 through and including the close of trading on November 16, 2020, which had the effect of artificially inflating the prices of Boston Scientific common stock, and that the artificial inflation was removed from the price of Boston Scientific common stock as the result of the alleged corrective disclosure that occurred on November 17, 2020, before the opening of trading.²

80. In order to have a “Recognized Claim Amount” under the Plan of Allocation, shares of Boston Scientific common stock must have been purchased or otherwise acquired during the Class Period and held through at least the end of the Class Period (when the corrective disclosure occurred).

CALCULATION OF RECOGNIZED CLAIM AMOUNT

81. Based on the formulas stated below, a “Recognized Loss Amount” will be calculated for each purchase or acquisition of Boston Scientific common stock during the Class Period that is listed on the Claim Form and for which adequate documentation is provided. If a Recognized Loss Amount calculates to a negative number or zero under the formula below, that Recognized Loss Amount will be zero.

82. For each share of Boston Scientific common stock purchased or otherwise acquired during period from September 16, 2020 through November 16, 2020, inclusive, and:

- A. Sold prior to the close of trading on November 16, 2020, the Recognized Loss Amount per share is zero.
- B. Sold from November 17, 2020 through and including the close of trading February 12, 2021, the Recognized Loss Amount will be *the least of*: (i) \$2.77 per share, (ii) the purchase price *minus* the sale price, or (iii) the purchase price *minus* the average closing price between November 17, 2020 and the date of sale as stated in Table A at the end of this Notice; and
- C. Held as of the close of trading on February 12, 2021, the Recognized Loss Amount will be *the lesser of*: (i) \$2.77, or (ii) the purchase price *minus* \$35.63, the average closing price for Boston Scientific common stock between November 17, 2020 and February 12, 2021 (the last entry on Table A at the end of this Notice).³

² Any transactions in Boston Scientific common stock executed outside of regular trading hours for the U.S. financial markets shall be deemed to have occurred during the next regular trading session.

³ Under Section 21(D)(e)(1) of the Exchange Act, “in any private action arising under this Act in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market.” Consistent with the requirements of the statute, Recognized Loss Amounts are reduced to an appropriate extent by taking into account the closing prices of Boston Scientific common stock during the 90-day look-back period. The mean (average) closing price for Boston Scientific common stock during this 90-day look-back period was \$35.63.

ADDITIONAL PROVISIONS

83. **Calculation of Claimant's "Recognized Claim":** A Claimant's "Recognized Claim" will be the sum of his, her, or its Recognized Loss Amounts as calculated under ¶ 82 above.

84. **FIFO Matching:** If a Claimant made more than one purchase/acquisition or sale of Boston Scientific common stock during the Class Period, all purchases/acquisitions and sales will be matched on a First In, First Out ("FIFO") basis. Class Period sales will be matched first against any holdings at the beginning of the Class Period and then against purchases/acquisitions in chronological order, beginning with the earliest purchase/acquisition made during the Class Period.

85. **Purchase/Sale Prices:** For the purposes of calculations in ¶ 82 above, "purchase/acquisition price" means the actual price paid, excluding any fees, commissions, and taxes, and "sale price" means the actual amount received, not deducting any fees, commissions, and taxes.

86. **"Purchase/Acquisition/Sale" Dates:** Purchases or acquisitions and sales of Boston Scientific common stock will be deemed to have occurred on the "contract" or "trade" date as opposed to the "settlement" or "payment" date. The receipt or grant by gift, inheritance, or operation of law of Boston Scientific common stock during the Class Period will not be deemed a purchase, acquisition, or sale of Boston Scientific common stock for the calculation of a Claimant's Recognized Loss Amount, nor will the receipt or grant be deemed an assignment of any claim relating to the purchase/acquisition/sale of Boston Scientific common stock unless (i) the donor or decedent purchased or otherwise acquired or sold such Boston Scientific common stock during the Class Period; (ii) the instrument of gift or assignment specifically provides that it is intended to transfer such rights; and (iii) no Claim was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to shares of such shares of Boston Scientific common stock.

87. **Short Sales:** The date of covering a "short sale" is deemed to be the date of purchase or acquisition of the Boston Scientific common stock. The date of a "short sale" is deemed to be the date of sale of the Boston Scientific common stock. In accordance with the Plan of Allocation, however, the Recognized Loss Amount on "short sales" and the purchases covering "short sales" is zero.

88. In the event that a Claimant has an opening short position in Boston Scientific common stock, the earliest purchases or acquisitions of Boston Scientific common stock during the Class Period will be matched against such opening short position, and not be entitled to a recovery, until that short position is fully covered.

89. **Common Stock Purchased/Sold Through the Exercise of Options:** Option contracts are not securities eligible to participate in the Settlement. With respect to Boston Scientific common stock purchased or sold through the exercise of an option, the purchase/sale date of the security is the exercise date of the option and the purchase/sale price is the exercise price of the option.

90. **Determination of Distribution Amount:** If the sum total of Recognized Claims of all Authorized Claimants who are entitled to receive payment out of the Net Settlement Fund is greater than the Net Settlement Fund, each Authorized Claimant will receive his, her, or its *pro rata* share of the Net Settlement Fund. The *pro rata* share will be the Authorized Claimant's Recognized Claim divided by the total of Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund.

91. If the Net Settlement Fund exceeds the sum total amount of the Recognized Claims of all Authorized Claimants entitled to receive payment out of the Net Settlement Fund, the excess amount in the Net Settlement Fund will be distributed pro rata to all Authorized Claimants entitled to receive payment.

92. If an Authorized Claimant's Distribution Amount calculates to less than \$10.00, no distribution will be made to that Authorized Claimant. Those funds will be included in the distribution to Authorized Claimants whose Distribution Amount is \$10.00 or more.

93. After the initial distribution of the Net Settlement Fund, the Claims Administrator will make reasonable and diligent efforts to have Authorized Claimants cash their distribution checks. To the extent any monies remain in the Net Settlement Fund seven (7) months after the initial distribution, if Lead Counsel, in consultation with the Claims Administrator, determines that it is cost-effective to do so, the Claims Administrator will conduct a re-distribution of the funds remaining after payment of any unpaid fees and expenses incurred in administering the Settlement, including for such re-distribution, to Authorized Claimants who have cashed their initial distributions and who would receive at least \$10.00 from such re-distribution. Additional re-distributions to Authorized Claimants who have cashed their prior checks may occur thereafter if Lead Counsel, in consultation with the Claims Administrator, determines that additional re-distributions, after the deduction of any additional fees and expenses incurred in administering the Settlement, including for such re-distributions, would be cost-effective. At such time as it is determined that the re-distribution of funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance will be contributed to one or more non-sectarian, not-for-profit, 501(c)(3) organizations to be selected by Lead Counsel and approved by the Court.

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

TABLE A

**90-Day Look-Back Table for Boston Scientific Common Stock
(Closing Price and Average Closing Price: November 17, 2020 – February 12, 2021)**

Date	Closing Price	Average Closing Price Between November 17, 2020 and Date Shown	Date	Closing Price	Average Closing Price Between November 17, 2020 and Date Shown
11/17/2020	\$35.03	\$35.03	12/31/2020	\$35.95	\$34.35
11/18/2020	\$34.26	\$34.65	1/4/2021	\$35.27	\$34.38
11/19/2020	\$34.21	\$34.50	1/5/2021	\$36.24	\$34.43
11/20/2020	\$33.70	\$34.30	1/6/2021	\$36.76	\$34.50
11/23/2020	\$33.33	\$34.11	1/7/2021	\$36.56	\$34.56
11/24/2020	\$33.79	\$34.05	1/8/2021	\$36.75	\$34.62
11/25/2020	\$33.55	\$33.98	1/11/2021	\$36.44	\$34.67
11/27/2020	\$33.60	\$33.93	1/12/2021	\$35.33	\$34.69
11/30/2020	\$33.15	\$33.85	1/13/2021	\$36.06	\$34.72
12/1/2020	\$33.65	\$33.83	1/14/2021	\$36.16	\$34.76
12/2/2020	\$34.15	\$33.86	1/15/2021	\$36.33	\$34.80
12/3/2020	\$33.81	\$33.85	1/19/2021	\$36.27	\$34.83
12/4/2020	\$34.41	\$33.90	1/20/2021	\$36.66	\$34.87
12/7/2020	\$34.25	\$33.92	1/21/2021	\$37.52	\$34.93
12/8/2020	\$33.97	\$33.92	1/22/2021	\$37.03	\$34.98
12/9/2020	\$34.13	\$33.94	1/25/2021	\$36.78	\$35.02
12/10/2020	\$34.00	\$33.94	1/26/2021	\$36.64	\$35.05
12/11/2020	\$33.60	\$33.92	1/27/2021	\$35.82	\$35.07
12/14/2020	\$33.45	\$33.90	1/28/2021	\$36.34	\$35.10
12/15/2020	\$34.67	\$33.94	1/29/2021	\$35.44	\$35.10
12/16/2020	\$35.13	\$33.99	2/1/2021	\$35.95	\$35.12
12/17/2020	\$35.39	\$34.06	2/2/2021	\$36.64	\$35.15
12/18/2020	\$35.45	\$34.12	2/3/2021	\$37.45	\$35.19
12/21/2020	\$34.82	\$34.15	2/4/2021	\$38.76	\$35.26
12/22/2020	\$34.36	\$34.15	2/5/2021	\$38.96	\$35.33
12/23/2020	\$34.37	\$34.16	2/8/2021	\$39.57	\$35.40
12/24/2020	\$34.59	\$34.18	2/9/2021	\$39.25	\$35.47
12/28/2020	\$34.92	\$34.21	2/10/2021	\$38.85	\$35.53
12/29/2020	\$35.50	\$34.25	2/11/2021	\$38.87	\$35.58
12/30/2020	\$35.55	\$34.29	2/12/2021	\$38.39	\$35.63

PROOF OF CLAIM AND RELEASE FORM

In re Boston Scientific Corporation Securities Litigation

Toll-Free Number: (877) 595-0084

Email: info@BostonScientificSecuritiesLitigation.com

Website: BostonScientificSecuritiesLitigation.com

To be eligible to receive a share of the Net Settlement Fund in connection with the Settlement of this Action, you must complete and sign this Proof of Claim and Release Form ("Claim Form") and mail it by first-class mail to the address below, or submit it online at BostonScientificSecuritiesLitigation.com, with supporting documentation, **postmarked (if mailed) or received no later than May 28, 2024.**

Mail to: ***Boston Scientific Securities Litigation***
c/o JND Legal Administration
P.O. Box 91477
Seattle, WA 98111

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

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

CONTENTS

02	PART I.	CLAIMANT IDENTIFICATION
03	PART II.	GENERAL INSTRUCTIONS
06	PART III.	SCHEDULE OF TRANSACTIONS IN BOSTON SCIENTIFIC CORPORATION COMMON STOCK (NYSE: BSX, CUSIP: 101137107)
07	PART VI.	RELEASE OF CLAIMS AND SIGNATURE

PART I – CLAIMANT IDENTIFICATION

The Claims Administrator will use this information for all communications regarding this Claim Form. If this information changes, you MUST notify the Claims Administrator in writing at the address above. Complete names of all persons and entities must be provided.

Beneficial Owner's First Name	MI	Beneficial Owner's Last Name
<input style="width: 95%;" type="text"/>	<input style="width: 30px; height: 20px;" type="text"/>	<input style="width: 95%;" type="text"/>

Joint Beneficial Owner's First Name (if applicable)	MI	Joint Beneficial Owner's Last Name (if applicable)
<input style="width: 95%;" type="text"/>	<input style="width: 30px; height: 20px;" type="text"/>	<input style="width: 95%;" type="text"/>

If this claim is submitted for an IRA, and if you would like any check that you MAY be eligible to receive made payable to the IRA, please include "IRA" in the "Last Name" box above (e.g., Jones IRA).

Entity Name (if the Beneficial Owner is not an individual)

Name of Representative, if applicable (executor, administrator, trustee, c/o, etc.), if different from Beneficial Owner

Street Address

Address (Second line, if needed)

City	State/Province	Zip Code
<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>

Foreign Postal Code (if applicable)	Foreign Country (if applicable)
<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>

Telephone Number (Day)	Telephone Number (Evening)
<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>

Last 4 digits of Social Security Number or Taxpayer Identification Number

--	--	--	--

Account Number

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

Type of Beneficial Owner:

Specify one of the following:

- | | | | | |
|--|--------------------------------------|--|------------------------------|--------------------------------------|
| <input type="checkbox"/> Individual(s) | <input type="checkbox"/> Corporation | <input type="checkbox"/> UGMA Custodian | <input type="checkbox"/> IRA | <input type="checkbox"/> Partnership |
| <input type="checkbox"/> Estate | <input type="checkbox"/> Trust | <input type="checkbox"/> Other (describe): _____ | | |

PART II – GENERAL INSTRUCTIONS

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

2. By submitting this Claim Form, you will be making a request to share in the proceeds of the Settlement described in the Notice. If you are not a Settlement Class Member (see the definition of the Settlement Class on page 7 of the Notice), or if you, or someone acting on your behalf, submitted a request for exclusion from the Settlement Class, do not submit a Claim Form. **You may not, directly or indirectly, participate in the Settlement if you are not a Settlement Class Member.** Thus, if you are excluded from the Settlement Class, any Claim Form that you submit, or that may be submitted on your behalf, will not be accepted.

3. **Submission of this Claim Form does not guarantee that you will share in the proceeds of the Settlement. The distribution of the Net Settlement Fund will be governed by the Plan of Allocation set forth in the Notice or by such other plan of allocation as the Court approves.**

4. On the Schedule of Transactions in Part III of this Claim Form, provide all of the requested information with respect to your holdings, purchases, acquisitions, and sales of Boston Scientific common stock (including free transfers and deliveries), whether such transactions resulted in a profit or a loss. **Failure to report all transaction and holding information during the requested time period may result in the rejection of your claim.**

5. **Please Note:** Only purchases or acquisitions of Boston Scientific common stock from September 16, 2020 through November 16, 2020 are eligible under the Settlement and the proposed Plan of Allocation set forth in the Notice. However, under the "90-day look-back period" (described in the Plan of Allocation), sales of Boston Scientific common stock during the period from November 17, 2020 through the close of trading on February 12, 2021 will be used for purposes of calculating Recognized Loss Amounts under the Plan of Allocation. Therefore, in order for the Claims Administrator to be able to balance your claim, the requested purchase information during this period must also be provided.

6. You are required to submit genuine and sufficient documentation for all of your transactions in and holdings of Boston Scientific common stock set forth in the Schedule of Transactions in Part III. Documentation may consist of copies of brokerage confirmation slips or monthly brokerage account statements, or an authorized statement from your broker containing the transactional and holding information found in a broker confirmation slip or account statement. The Parties and the Claims Administrator do not independently have information about your investments in Boston Scientific common stock. **IF SUCH DOCUMENTS ARE NOT IN YOUR POSSESSION, PLEASE OBTAIN COPIES OF THE DOCUMENTS OR EQUIVALENT DOCUMENTS FROM YOUR BROKER. FAILURE TO SUPPLY THIS DOCUMENTATION MAY RESULT IN THE REJECTION OF YOUR CLAIM. DO NOT SEND ORIGINAL DOCUMENTS.**

7. **Please keep a copy of all documents that you send to the Claims Administrator. Also, do not highlight any portion of the Claim Form or any supporting documents.**

8. Use Part I of this Claim Form entitled “CLAIMANT IDENTIFICATION” to identify the beneficial owner(s) of Boston Scientific common stock. The complete name(s) of the beneficial owner(s) must be entered. If you held the Boston Scientific common stock in your own name, you were the beneficial owner as well as the record owner. If, however, your shares of Boston Scientific common stock were registered in the name of a third party, such as a nominee or brokerage firm, you were the beneficial owner of these shares, but the third party was the record owner. The beneficial owner, not the record owner, must sign this Claim Form to be eligible to participate in the Settlement. If there were joint beneficial owners each must sign this Claim Form and their names must appear as “Claimants” in Part I of this Claim Form.

9. **One Claim should be submitted for each separate legal entity or separately managed account.** Separate Claim Forms should be submitted for each separate legal entity (e.g., an individual should not combine his or her IRA transactions with transactions made solely in the individual’s name). Generally, a single Claim Form should be submitted on behalf of one legal entity including all holdings and transactions made by that entity on one Claim Form. However, if a single person or legal entity had multiple accounts that were separately managed, separate Claims may be submitted for each such account. The Claims Administrator reserves the right to request information on all the holdings and transactions in Boston Scientific common stock made on behalf of a single beneficial owner.

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

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

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

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

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

13. Payments to eligible Authorized Claimants will be made only if the Court approves the Settlement, after any appeals are resolved, and after the completion of all claims processing.

14. **PLEASE NOTE:** As set forth in the Plan of Allocation, each Authorized Claimant shall receive his, her, or its *pro rata* share of the Net Settlement Fund. If the prorated payment to any Authorized Claimant calculates to less than \$10.00, it will not be included in the calculation, and no distribution will be made to that Authorized Claimant.

15. If you have questions concerning the Claim Form, or need additional copies of the Claim Form or the Notice, you may contact the Claims Administrator, JND Legal Administration, at the above address, by email at info@BostonScientificSecuritiesLitigation.com, or by toll-free phone at (877) 595-0084, or you can

visit the website, BostonScientificSecuritiesLitigation.com, where copies of the Claim Form and Notice are available for downloading.

16. NOTICE REGARDING ELECTRONIC FILES: Certain claimants with large numbers of transactions may request, or may be requested, to submit information regarding their transactions in electronic files. To obtain the **mandatory** electronic filing requirements and file layout, you may visit the settlement website at BostonScientificSecuritiesLitigation.com or you may email the Claims Administrator's electronic filing department at BSCSecurities@JNDLA.com. **Any file not in accordance with the required electronic filing format will be subject to rejection.** The **complete** name of the beneficial owner of the securities must be entered where called for (see ¶ 8 above). No electronic files will be considered to have been submitted unless the Claims Administrator issues an email confirming receipt of your submission. **Do not assume that your file has been received until you receive that email. If you do not receive such an email within 10 days of your submission, you should contact the electronic filing department at BSCSecurities@JNDLA.com to inquire about your file and confirm it was received.**

IMPORTANT: PLEASE NOTE

YOUR CLAIM IS NOT DEEMED FILED UNTIL YOU RECEIVE AN ACKNOWLEDGEMENT POSTCARD. THE CLAIMS ADMINISTRATOR WILL ACKNOWLEDGE RECEIPT OF YOUR CLAIM FORM BY MAIL, WITHIN 60 DAYS. IF YOU DO NOT RECEIVE AN ACKNOWLEDGEMENT POSTCARD WITHIN 60 DAYS, CALL THE CLAIMS ADMINISTRATOR TOLL FREE AT (877) 595-0084.

PART III – SCHEDULE OF TRANSACTIONS IN BOSTON SCIENTIFIC COMMON STOCK

The only eligible security is the common stock of Boston Scientific Corporation (“Boston Scientific”) (Ticker: NYSE: BSX, CUSIP: 101137107). Do not include information regarding any other securities. Please include proper documentation with your Claim Form as described in detail in Part II – General Instructions, ¶ 6, above.

1. HOLDINGS AS OF SEPTEMBER 16, 2020 – State the total number of shares of Boston Scientific common stock held as of the opening of trading on September 16, 2020. (Must be documented.) If none, write “zero” or “0.”				Confirm Proof of Position Enclosed <input type="checkbox"/>
<div style="border: 1px solid black; width: 200px; height: 20px; margin: 0 auto;"></div>				
2. PURCHASES/ACQUISITIONS FROM SEPTEMBER 16, 2020 THROUGH NOVEMBER 16, 2020 – Separately list each and every purchase or acquisition (including free receipts) of Boston Scientific common stock from September 16, 2020 through the close of trading on November 16, 2020. (Must be documented.)				
Date of Purchase/ Acquisition (List Chronologically) (Month/Day/Year)	Number of Shares Purchased/Acquired	Purchase/ Acquisition Price Per Share	Total Purchase/ Acquisition Price (excluding any taxes, commissions, and fees)	Confirm Proof of Purchase Enclosed
/ /		\$	\$	<input type="checkbox"/>
/ /		\$	\$	<input type="checkbox"/>
/ /		\$	\$	<input type="checkbox"/>
/ /		\$	\$	<input type="checkbox"/>
3. PURCHASES/ACQUISITIONS NOVEMBER 17, 2020 THROUGH FEBRUARY 12, 2021 – State the total number of shares of Boston Scientific common stock purchased or acquired (including free receipts) from November 17, 2020 through the close of trading on February 12, 2021. If none, write “zero” or “0.”				
<div style="border: 1px solid black; width: 200px; height: 20px; margin: 0 auto;"></div>				
4. SALES FROM SEPTEMBER 16, 2020, THROUGH FEBRUARY 12, 2021 – Separately list each and every sale or disposition (including free deliveries) of Boston Scientific common stock from September 16, 2020, through the close of trading on February 12, 2021. (Must be documented.)				IF NONE, CHECK HERE <input type="checkbox"/>
Date of Sale (List Chronologically) (Month/Day/Year)	Number of Shares Sold	Sale Price Per Share	Total Sale Price (not deducting any taxes, commissions, and fees)	Confirm Proof of Sales Enclosed
/ /		\$	\$	<input type="checkbox"/>
/ /		\$	\$	<input type="checkbox"/>
/ /		\$	\$	<input type="checkbox"/>
/ /		\$	\$	<input type="checkbox"/>
5. HOLDINGS AS OF FEBRUARY 12, 2021 – State the total number of shares of Boston Scientific common stock held as of the close of trading on February 12, 2021. (Must be documented.) If none, write “zero” or “0.”				Confirm Proof of Position Enclosed <input type="checkbox"/>
<div style="border: 1px solid black; width: 200px; height: 20px; margin: 0 auto;"></div>				

<input type="checkbox"/>	IF YOU REQUIRE ADDITIONAL SPACE FOR THE SCHEDULE ABOVE, ATTACH EXTRA SCHEDULES IN THE SAME FORMAT. PRINT THE BENEFICIAL OWNER’S FULL NAME AND LAST FOUR DIGITS OF SOCIAL SECURITY/TAXPAYER IDENTIFICATION NUMBER ON EACH ADDITIONAL PAGE. IF YOU DO ATTACH EXTRA SCHEDULES, CHECK THIS BOX.
--------------------------	--

PART IV – RELEASE OF CLAIMS AND SIGNATURE

YOU MUST ALSO READ THE RELEASE AND CERTIFICATION BELOW AND SIGN ON PAGE 8 OF THIS CLAIM FORM.

I (we) hereby acknowledge that, pursuant to the terms set forth in the Stipulation, without further action by anyone, upon the Effective Date of the Settlement, I (we), on behalf of myself (ourselves) and my (our) (the claimant(s)') heirs, executors, administrators, predecessors, successors, and assigns, in their capacities as such, shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiffs' Claim against Defendants and the other Defendants' Releasees, and shall forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs' Claims against any of the Defendants' Releasees.

CERTIFICATION

By signing and submitting this Claim Form, the claimant(s) or the person(s) who represent(s) the claimant(s) agree(s) to the release above and certifies (certify) as follows:

1. that I (we) have read and understand the contents of the Notice and this Claim Form, including the releases provided for in the Settlement and the terms of the Plan of Allocation;
2. that the claimant(s) is a (are) Settlement Class Member(s), as defined in the Notice, and is (are) not excluded by definition from the Settlement Class as set forth in the Notice;
3. that the claimant(s) did **not** submit a request for exclusion from the Settlement Class;
4. that I (we) own(ed) the Boston Scientific common stock identified in the Claim Form and have not assigned the claim against any of the Defendants or any of the other Defendants' Releasees to another, or that, in signing and submitting this Claim Form, I (we) have the authority to act on behalf of the owner(s) thereof;
5. that the claimant(s) has (have) not submitted any other claim covering the same purchases of Boston Scientific common stock and knows (know) of no other person having done so on the claimant's (claimants') behalf;
6. that the claimant(s) submit(s) to the jurisdiction of the Court with respect to claimant's (claimants') claim and for purposes of enforcing the releases set forth herein;
7. that I (we) agree to furnish such additional information with respect to this Claim Form as Lead Counsel, the Claims Administrator, or the Court may require;
8. that the claimant(s) waive(s) the right to trial by jury, to the extent it exists, and agree(s) to the determination by the Court of the validity or amount of this Claim, and waive(s) any right of appeal or review with respect to such determination;

9. that I (we) acknowledge that the claimant(s) will be bound by and subject to the terms of any judgment(s) that may be entered in the Action; and

10. that the claimant(s) is (are) NOT subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code because (i) the claimant(s) is (are) exempt from backup withholding or (ii) the claimant(s) has (have) not been notified by the IRS that he, she, or it is subject to backup withholding as a result of a failure to report all interest or dividends or (iii) the IRS has notified the claimant(s) that he, she, or it is no longer subject to backup withholding. **If the IRS has notified the claimant(s) that he, she, it, or they is (are) subject to backup withholding, please strike out the language in the preceding sentence indicating that the claim is not subject to backup withholding in the certification above.**

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

Signature of Claimant

Date

Print claimant name here

Signature of joint claimant, if any

Date

Print joint claimant name here

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

Signature of person signing on behalf of claimant

Date

Print name of person signing on behalf of claimant here

Capacity of person signing on behalf of claimant, if other than an individual, e.g., executor, president, trustee, custodian, etc. (Must provide evidence of authority to act on behalf of claimant – see ¶ 10 on page 4 of this Claim Form.)

REMINDER CHECKLIST



1. Sign the above release and certification. If this Claim Form is being made on behalf of joint claimants, then both must sign.



2. Attach only **copies** of acceptable supporting documentation as these documents will not be returned to you.



3. Do not highlight any portion of the Claim Form or any supporting documents.



4. Keep copies of the completed Claim Form and documentation for your own records.



5. The Claims Administrator will acknowledge receipt of your Claim Form by mail, within 60 days. Your claim is not deemed filed until you receive an acknowledgement postcard. **If you do not receive an acknowledgement postcard within 60 days, please call the Claims Administrator toll free at (877) 595-0084.**

6. If your address changes in the future, or if this Claim Form was sent to an old or incorrect address, you must send the Claims Administrator written notification of your new address. If you change your name, inform the Claims Administrator.



7. If you have any questions or concerns regarding your claim, contact the Claims Administrator at the address below, by email at info@BostonScientificSecuritiesLitigation.com, or by toll-free phone at (877) 595-0084, or you may visit BostonScientificSecuritiesLitigation.com. DO NOT call Boston Scientific or its counsel with questions regarding your claim.

THIS CLAIM FORM MUST BE MAILED TO THE CLAIMS ADMINISTRATOR BY FIRST-CLASS MAIL OR SUBMITTED ONLINE AT BostonScientificSecuritiesLitigation.com, **POSTMARKED (OR RECEIVED) NO LATER THAN MAY 28, 2024**. IF MAILED, THE CLAIM FORM SHOULD BE ADDRESSED AS FOLLOWS:

Boston Scientific Securities Litigation
c/o JND Legal Administration
P.O. Box 91477
Seattle, WA 98111

A Claim Form received by the Claims Administrator shall be deemed to have been submitted when posted, if a postmark date on or before **May 28, 2024**, is indicated on the envelope and it is mailed First Class, and addressed in accordance with the above instructions. In all other cases, a Claim Form shall be deemed to have been submitted when actually received by the Claims Administrator.

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

EXHIBIT B

TECHNOLOGY

WSJ.com/Tech



Yandex's market value is down \$20 billion from a peak before the war. A Yandex delivery robot.

Yandex Owner Leaves Russia

By GEORGI KANTCHEV

Yandex, the tech company often referred to as Russia's Google, has agreed to sell its Russian assets to a group of local investors for \$5.2 billion, the largest corporate exit from the country since Moscow's invasion of Ukraine almost two years ago. The company, which is listed on Nasdaq and based in the Netherlands, said Monday it was selling about 95% of its assets, including its search engine, the biggest in Russia. It will retain some of its assets outside of Russia, including autonomous-driving, cloud-computing and artificial-intelligence businesses, and plans to rebrand under a new name. The deal is a potent marker of Russia's increasing isolation from the West, and the diminished status of its once globally expanding tech sector. Yandex had built a presence in Europe, the Middle East and the U.S., where its suitcase-

size rovers delivered pizzas on college campuses. Monday's announcement caps months of uncertainty for Yandex, which has been looking at options to restructure its ownership and governance for more than a year. While trading in Yandex's Nasdaq-listed shares has been suspended since the invasion, its stock has plummeted in Moscow. The company's market capitalization stands at about \$10 billion today, down from a peak of around \$30 billion before the war. The group buying the Yandex assets is led by local investors and includes a fund linked to Russian oil giant Lukoil, as well as several entrepreneurs. Lukoil said in a statement Monday that it would hold 10% of the new Russian company. Apart from the search engine, Yandex's Russian assets include a popular ride-hailing application, an e-commerce platform and an Alexa-style virtual assistant

called Alice. Yandex's divorce mirrors the wholesale reorientation of the Russian economy away from the West, which has left the country, once a hot spot for Western investors, looking increasingly inward. Russia and Europe have severed most of their oil-and-gas links, which once powered European homes and factories. Western brands from McDonald's to Renault have left the country, Russia, meanwhile, has increasingly pivoted to Asia, increasing its trade with China and India. The Kremlin welcomed news of the Yandex sale Monday, with spokesman Dmitry Peskov describing the tech company as one of Russia's national champions and saying it was important that it remains in the country. Anton Gorelkin, deputy head of the State Duma committee on information policy, said that Yandex could now continue to operate without any Western

influence. "The successful case of Yandex will be an example for everyone else: It's time to stop working with an eye to the West, your future is here, in your homeland," Gorelkin wrote in a post on Telegram. John Boynton, chairman of Yandex's parent company, said the business had faced "exceptional challenges" since the start of the war and that the sale was the best possible solution for shareholders. The deal would allow shareholders to "recover some value" from the company's Russian assets while unlocking new growth potential for its international businesses, he said. Since the start of the war in Ukraine, the Kremlin has taken steps to make it difficult for Western companies to exit from the Russian market, including a lengthy approval process, currency controls and exit taxes. The Kremlin has said there would be no "free exit" for foreign companies. The Yandex sale price reflects a mandatory discount of at least 50%, which Russia requires from exiting companies registered in countries that Moscow considers unfriendly, including the Netherlands. The sale took about a year and a half to negotiate with the Kremlin because of complexities of ownership and Yandex's sprawling global presence. One challenge was finding buyers who aren't subject to sanctions, and who are acceptable to the board and international regulators. Yandex came under pressure after the outbreak of the war and founder Arkady Volozh was hit by European Union sanctions in June 2022, including for Yandex's alleged support of Russian propaganda. Volozh, who lives in Israel, has challenged the sanctions in European courts and condemned the war in August last year.

Email Marketing Is Targeted

Continued from page B1 by diverting more of their messages to spam folders but now will give senders more information about those rates—and why they might be going up—to help prevent that from happening, they said. A practically ancient metric in the grand scheme of digital communications, email is still adored by marketers. Brands often see better results from email marketing than any other online form, partly because it is one of the few digital environments where consumers choose to let brands in (and kick them out again) and partly because they can tailor their messages to the receiver, said Kate Nowrouzi, vice president of deliverability and product strategy at communications-software provider Sinch. A 2021 report from Gartner found email to be the best-performing channel for technology marketers, beating newer channels including social media, search-engine optimization and digital-display advertising. Google and Apple's recent moves to spend the way advertisers track and target online consumers have pushed more companies to invest in direct lines of communication with people. Sending an email is one of the cheapest such avenues, Nowrouzi said. Consumers are understandably less enthusiastic. The sheer amount of messages they receive a day has meant reaching "inbox zero" has become an unachievable dream for many. Flushing an email is one of the cheapest such avenues, Nowrouzi said. Consumers are understandably less enthusiastic. The sheer amount of messages they receive a day has meant reaching "inbox zero" has become an unachievable dream for many. Flushing an email is one of the cheapest such avenues, Nowrouzi said.

Consumers are understandably less enthusiastic. The sheer amount of messages they receive a day has meant reaching "inbox zero" has become an unachievable dream for many. Flushing an email is one of the cheapest such avenues, Nowrouzi said. Consumers are understandably less enthusiastic. The sheer amount of messages they receive a day has meant reaching "inbox zero" has become an unachievable dream for many. Flushing an email is one of the cheapest such avenues, Nowrouzi said.

Consumers are understandably less enthusiastic. The sheer amount of messages they receive a day has meant reaching "inbox zero" has become an unachievable dream for many. Flushing an email is one of the cheapest such avenues, Nowrouzi said. Consumers are understandably less enthusiastic. The sheer amount of messages they receive a day has meant reaching "inbox zero" has become an unachievable dream for many. Flushing an email is one of the cheapest such avenues, Nowrouzi said.

Consumers are understandably less enthusiastic. The sheer amount of messages they receive a day has meant reaching "inbox zero" has become an unachievable dream for many. Flushing an email is one of the cheapest such avenues, Nowrouzi said. Consumers are understandably less enthusiastic. The sheer amount of messages they receive a day has meant reaching "inbox zero" has become an unachievable dream for many. Flushing an email is one of the cheapest such avenues, Nowrouzi said.

Consumers are understandably less enthusiastic. The sheer amount of messages they receive a day has meant reaching "inbox zero" has become an unachievable dream for many. Flushing an email is one of the cheapest such avenues, Nowrouzi said. Consumers are understandably less enthusiastic. The sheer amount of messages they receive a day has meant reaching "inbox zero" has become an unachievable dream for many. Flushing an email is one of the cheapest such avenues, Nowrouzi said.

Consumers are understandably less enthusiastic. The sheer amount of messages they receive a day has meant reaching "inbox zero" has become an unachievable dream for many. Flushing an email is one of the cheapest such avenues, Nowrouzi said. Consumers are understandably less enthusiastic. The sheer amount of messages they receive a day has meant reaching "inbox zero" has become an unachievable dream for many. Flushing an email is one of the cheapest such avenues, Nowrouzi said.

Consumers are understandably less enthusiastic. The sheer amount of messages they receive a day has meant reaching "inbox zero" has become an unachievable dream for many. Flushing an email is one of the cheapest such avenues, Nowrouzi said. Consumers are understandably less enthusiastic. The sheer amount of messages they receive a day has meant reaching "inbox zero" has become an unachievable dream for many. Flushing an email is one of the cheapest such avenues, Nowrouzi said.

—Mauro Orru contributed to this article.

ADVERTISEMENT

The Marketplace

To advertise: 800-366-3975 or WSJ.com/classifieds

LEGAL NOTICE
UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS
In re BOSTON SCIENTIFIC CORPORATION SECURITIES LITIGATION
Master File No. 1:20-cv-12225-ADB
SUMMARY NOTICE OF (I) PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT; (II) SETTLEMENT HEARING; AND (III) MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES
TO: all persons who purchased or otherwise acquired the common stock of Boston Scientific Corporation ("Boston Scientific") during the period from September 16, 2020 through November 16, 2020, inclusive (the "Class Period"), and were damaged thereby:
PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS WILL BE AFFECTED BY A CLASS ACTION LAWSUIT PENDING IN THIS COURT.
YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the District of Massachusetts (the "Court"), that the above-captioned securities class action (the "Action") is pending in this Court.
YOU ARE ALSO NOTIFIED that Lead Plaintiff Union Asset Management Holding AG, on behalf of itself and the Settlement Class, has reached a proposed settlement of the Action for \$8,600,000 in cash (the "Settlement"). If approved, the Settlement will resolve all claims in the Action.
The Action involves allegations that Boston Scientific and certain of its senior officers violated federal securities laws. Lead Plaintiff alleges, among other things, that Boston Scientific and certain of its executives made material misrepresentations and omissions about Boston Scientific's Lotus Edge medical device during the period from September 16, 2020 through November 16, 2020, in violation of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), and that the executive defendants controlled, directed, or induced the misstatements were made, in violation of Section 20(a) of the Exchange Act. Defendants deny all allegations in the Action and deny any violations of the federal securities laws. Issues and defenses at issue in the Action include: (i) whether Defendants made materially false statements or omissions; (ii) whether Defendants made the statements with the required state of mind; (iii) whether the alleged misstatements caused class members' losses; and (iv) the amount of damages, if any.
A hearing will be held on April 23, 2024 at 9:00 a.m. before the Honorable Allison D. Burroughs of the United States District Court for the District of Massachusetts, either in person in Courtroom 17 on the Fifth Floor of the John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Boston, MA 02210, or by telephone or videoconference (in the discretion of the Court), to determine: (i) whether the proposed Settlement should be approved as fair, reasonable, and adequate; (ii) whether, for purposes of the proposed Settlement only, the Action should be certified as a class action on behalf of the Settlement Class; Lead Plaintiff should be certified as Class Representative for the Settlement Class; and Lead Counsel should be appointed as Class Counsel for the Settlement Class; (iii) whether the Action should be dismissed with prejudice against Defendants, and the Releases specified and described

PUBLIC NOTICES
EVOLVE TRANSITION INFRASTRUCTURE PARTNERS LP
Notice of Election to Purchase
COMMON WEALTH REPRESENTATIVE LIMITED INTERESTS OF EVOLVE TRANSITION INFRASTRUCTURE PARTNERS LP
January 8, 2024
Notice is made to the Third Amended Restated Agreement of Limited Partnership, dated as of August 2, 2020, as amended (the "Partnership Agreement"), of Evolve Transition Infrastructure Partners LP, a Delaware limited liability partnership (the "LP"), that the LP is offering to sell to the LP's limited partners (the "LPs") all of the LP's common units (the "Common Units") that are not currently held by the LP's limited partners (the "LPs") and are not currently held by the LP's limited partners (the "LPs").

THE WALL STREET JOURNAL
THE MARKETING PAGE
ADVERTISE TODAY
(800) 366-3975
For more information visit wsj.com/classifieds

BUSINESS OPPORTUNITIES
ANGEL INVESTORS
14,899 square foot, redwood, new, Rite Aid building in Clawson, Michigan on a well-treed lot at the edge of the Clawson Shopping Center.
RESIDENTIAL REAL ESTATE
NOW IS THE TIME TO START YOUR OWN BUSINESS!
Be a Big Baffer!
EMERGENCY STERILE FIRST AID SUPPLY FOR SALE
Aval for Big Game!
Ultra Luxury Vegas Condo on 30th floor, 3 BR, 3 BA, w/ all top views Professional Chef 24/7 included. Minutes from Strip, Walking distance to Everything High Security, Outdoor Pool-App heated infinity Pool, 6pm-6am all week long! \$90K for 4 nights starting Feb 8.

EXHIBIT C

Bernstein Litowitz Berger & Grossmann LLP Announces Notice of Pendency and Proposed Settlement of Class Action Involving Persons who Purchased or Otherwise Acquired Common Stock of Boston Scientific Corporation from September 16, 2020 through November 16, 2020, Inclusive

NEWS PROVIDED BY
JND Legal Administration →
06 Feb, 2024, 09:06 ET

SEATTLE, Feb. 6, 2024 /PRNewswire/ --

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

In re BOSTON SCIENTIFIC
CORPORATION SECURITIES
LITIGATION

Master File No. 1:20-cv-12225-ADB

**SUMMARY NOTICE OF (I) PENDENCY OF CLASS ACTION
AND PROPOSED SETTLEMENT; (II) SETTLEMENT HEARING; AND
(III) MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES**

TO: All persons who purchased or otherwise acquired the common stock of Boston Scientific Corporation ("Boston Scientific") during the period from September 16, 2020 through November 16, 2020, inclusive (the "Class Period"), and were damaged thereby:

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

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the District of Massachusetts (the "Court"), that the above-captioned securities class action (the "Action") is pending in the Court.

YOU ARE ALSO NOTIFIED that Lead Plaintiff Union Asset Management Holding AG, on behalf of itself and the Settlement Class, has reached a proposed settlement of the Action for **\$38,500,000** in cash (the "Settlement"). If approved, the Settlement will resolve all claims in the Action.

Certain persons and entities are excluded from the Settlement Class by definition, as set forth in the full Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for Attorneys' Fees and Litigation Expenses (the "Notice"), available at **BostonScientificSecuritiesLitigation.com**.

The Action involves allegations that Boston Scientific and certain of its senior officers violated federal securities laws. Lead Plaintiff alleges, among other things, that Boston Scientific and certain of its executives made material misrepresentations and omissions about Boston Scientific's Lotus Edge medical device during the period from September 16, 2020 through November 16, 2020, in violation of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), and that the executive defendants controlled Boston Scientific when the misstatements were made, in violation of Section 20(a) of the Exchange Act. Defendants deny all allegations in the Action and deny any violations of the federal securities laws. Issues and defenses at issue in the Action included (i) whether Defendants made materially false statements or omissions; (ii) whether Defendants made the statements with the required state of mind; (iii) whether the alleged misstatements caused class members' losses; and (iv) the amount of damages, if any.

A hearing will be held on **April 23, 2024 at 9:00 a.m.**, before the Honorable Allison D. Burroughs of the United States District Court for the District of Massachusetts, either in person in Courtroom 17 on the Fifth Floor of the John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Boston, MA ☞

02210, or by telephone or videoconference (in the discretion of the Court), to determine: (i) whether the proposed Settlement should be approved as fair, reasonable, and adequate; (ii) whether, for purposes of the proposed Settlement only, the Action should be certified as a class action on behalf of the Settlement Class, Lead Plaintiff should be certified as Class Representative for the Settlement Class, and Lead Counsel should be appointed as Class Counsel for the Settlement Class; (iii) whether the Action should be dismissed with prejudice against Defendants, and the Releases specified and described in the Stipulation and Agreement of Settlement dated December 14, 2023 (and in the Notice) should be granted; (iv) whether the proposed Plan of Allocation should be approved as fair and reasonable; and (v) whether Lead Counsel's application for an award of attorneys' fees and expenses should be approved.

If you are a member of the Settlement Class, your rights will be affected by the pending Action and the Settlement, and you may be entitled to share in the Net Settlement Fund. If you have not yet received the Notice and Claim Form, you may obtain copies of these documents by contacting the Claims Administrator at: *Boston Scientific Securities Litigation, c/o JND Legal Administration, P.O. Box 91477, Seattle, WA 98111, 877-595-0084, info@BostonScientificSecuritiesLitigation.com*. Copies of the Notice and Claim Form can also be downloaded from the Settlement website, BostonScientificSecuritiesLitigation.com.

If you are a member of the Settlement Class, in order to be eligible to receive a payment from the Settlement, you must submit a Claim Form **postmarked (if mailed) or online by no later than May 28, 2024**. If you are a Settlement Class Member and do not submit a proper Claim Form, you will not be eligible to receive a payment from the Settlement, but you will nevertheless be bound by any judgments or orders entered by the Court in the Action.

If you are a member of the Settlement Class and wish to exclude yourself from the Settlement Class, you must submit a request for exclusion such that it is **received no later than April 2, 2024**, in accordance with the instructions set forth in the Notice. If you properly exclude yourself from the Settlement Class, you will not be bound by any judgments or orders entered by the Court in the Action and you will not be eligible to receive a payment from the Settlement.

Any objections to the proposed Settlement, the proposed Plan of Allocation, or Lead Counsel's motion for attorneys' fees and expenses must be filed with the Court and delivered to Lead Counsel and Defendants' Counsel such that they are **received no later than April 2, 2024**, in accordance with the instructions set forth in the Notice.

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

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

Boston Scientific Securities Litigation

c/o JND Legal Administration

P.O. Box 91477

Seattle, WA 98111

1-877-595-0084

info@BostonScientificSecuritiesLitigation.com

BostonScientificSecuritiesLitigation.com

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

Salvatore J. Graziano

Lauren A. Ormsbee

Michael D. Blatchley

Bernstein Litowitz Berger & Grossmann LLP

1251 Avenue of the Americas, 44th Floor

New York, NY 10020

1-800-380-8496

settlements@blbglaw.com

By Order of the Court

SOURCE JND Legal Administration

Sign up for Top Stories & curated News

delivered to your inbox

Enter Your Email

Select Country



SUBMIT

By signing up you agree to receive content from us.

Our newsletters contain tracking pixels to help us deliver unique content based on each subscriber's engagement and interests. For more information on how we will use your data to ensure we send you relevant content please visit our PRN Consumer Newsletter Privacy Notice. You can withdraw your consent at any time in the footer of every email you'll receive.



Exhibit 5

EXHIBIT 5

In re Boston Scientific Corp. Securities Litigation
Master File No. 1:20-cv-12225-ADB (D. Mass.)

**SUMMARY OF PLAINTIFFS' COUNSEL'S
LODESTAR AND EXPENSES**

Exhibit	FIRM	HOURS	LODESTAR	EXPENSES
5A	Bernstein Litowitz Berger & Grossmann LLP	16,945.00	\$8,451,687.50	\$390,847.98
5B	Donnelly, Conroy & Gelhaar, LLP	119.10	\$99,235.00	\$552.00
	TOTAL:	17,064.10	\$8,550,922.50	\$391,399.98

Exhibit 5A

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

In re BOSTON SCIENTIFIC
CORPORATION SECURITIES
LITIGATION

Master File No. 1:20-cv-12225-ADB

**DECLARATION OF SALVATORE J. GRAZIANO ON BEHALF OF BERNSTEIN
LITOWITZ BERGER & GROSSMANN LLP IN SUPPORT OF LEAD COUNSEL'S
MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES**

I, Salvatore J. Graziano, hereby declare under penalty of perjury as follows:

1. I am a Partner in the law firm of Bernstein Litowitz Berger & Grossmann LLP (“BLB&G”). I submit this Declaration in support of Lead Counsel’s motion for an award of attorneys’ fees in connection with services rendered by Plaintiffs’ Counsel in the above-captioned securities class action (“Action”), as well as for payment of Litigation Expenses incurred by my firm in connection with the Action.¹ Unless otherwise stated, I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

2. My firm, as Lead Counsel for Lead Plaintiff and the Settlement Class, was involved in all aspects of the prosecution and resolution of the Action, as set forth in my Declaration in Support of (I) Lead Plaintiff’s Motion for Final Approval of Class Action Settlement and Plan of Allocation, and (II) Lead Counsel’s Motion for Attorneys’ Fees and Litigation Expenses.

3. The schedule attached hereto as Exhibit 1 is a detailed summary of the amount of time spent by each BLB&G attorney and professional support staff employee who devoted ten (10) or more hours to the Action from its inception through and including December 14, 2023, and the lodestar calculation for those individuals based on their hourly rates in 2023. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the hourly rates for such personnel in their final year of employment with my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by BLB&G. All time expended in preparing this application for fees and expenses has been excluded.

¹ All capitalized terms that are not otherwise defined herein shall have the meanings set forth in the Stipulation and Agreement of Settlement dated December 14, 2023 (ECF No. 152-1).

4. The number of hours expended by BLB&G in the Action, from inception through December 14, 2023, as reflected in Exhibit 1, is 16,945.00. The lodestar for my firm, as reflected in Exhibit 1, is \$8,451,687.50.

5. The hourly rates for the BLB&G attorneys and professional support staff employees included in Exhibit 1 are their standard rates and are the same as, or comparable to, the rates submitted by my firm and accepted by courts for lodestar cross-checks in other class action fee applications. *See, e.g., In re BioMarin Pharm. Inc. Sec. Litig.*, Case No. 20-cv-06719-WHO (N.D. Cal. Nov. 14, 2023), ECF No. 155 (approving fee based on lodestar cross-check using BLB&G's 2023 rates); *In re Kraft Heinz Sec. Litig.*, Case No. 1:19-cv-01339 (N.D. Ill. Sept. 19, 2023), ECF No. 493 (same); *In re Wells Fargo & Co. Sec. Litig.*, No. 1:20-cv-04494-JLR-SN (S.D.N.Y. Sept. 8, 2023), ECF No. 206 (same), *In re Synchrony Fin. Sec. Litig.*, 2023 WL 4992933, at *11 (D. Conn. Aug. 4, 2023) (same); *In re SolarWinds Corp. Sec. Litig.*, Case No. 1:21-cv00138-RP (W.D. Tex. July 28, 2023), ECF No. 111 (same); *Pub. Empls' Ret. Sys. of Miss. v. Mohawk Indus., Inc.*, Civ. A. No. 4:20-cv-00005-VMC (N.D. Ga. May 31, 2023), ECF No. 138 (same), ECF No. 138; *Nykredit Portefølje Administration A/S v. ProPetro Holding Corp.*, No. MO:19-CV-217-DC (W.D. Tex. May 11, 2023), ECF No. 178 (same); *see also Godinez v. Alere, Inc.*, No. 1:16-cv-10766-PBS, slip op. at 1 (D. Mass. June 6, 2019), ECF No. 283 (approving fee based on lodestar cross-check using BLB&G's 2019 rates in lodestar cross-check); *Levy v. Gutierrez*, Civil No. 14-cv-443-JL, slip op. at 28-29 (D.N.H. Aug. 27, 2020), ECF No. 266 (approving fee using BLB&G's 2018 rates in lodestar cross-check).

6. My firm's rates are set based on periodic analysis of rates used by firms performing comparable work and that have been approved by courts. Different timekeepers within the same employment category (*e.g.*, Partners, Associates, Paralegals, etc.) may have different rates based on a variety of factors, including years of practice, years at the firm, year in the current position

(*e.g.*, years as a Partner), relevant experience, relative expertise, and the rates of similarly experienced peers at our firm or other firms.

7. BLB&G reviewed its time and expense records to prepare this Declaration. The purpose of this review was to confirm both the accuracy of the time entries and expenses and the necessity for, and reasonableness of, the time and expenses committed to the litigation. I believe that the time reflected in the firm's lodestar calculation and the expenses for which payment is sought as stated in this Declaration are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation.

8. As set forth in Exhibit 2 hereto, BLB&G is seeking payment for \$390,847.98 in expenses incurred in connection with the prosecution and resolution of the Action. Expense items are reported separately and are not duplicated in my firm's hourly rates. The following is additional information regarding certain of these expenses:

a. **Experts & Consultants** (\$233,938.74). Lead Plaintiff retained and consulted with several highly qualified experts in the areas of medical device production and regulation, executive compensation, and financial economics (including damages, loss causation, and market efficiency) to assist in the prosecution of this Action.

1) **Dr. Eric Horlick** (\$28,176.49). In connection with the preparation of the Complaint, Lead Counsel consulted with Dr. Eric Horlick of the Toronto General Hospital, who is an adult interventional cardiologist with substantial experience conducting transcatheter aortic valve replacement ("TAVR") procedures. Lead Counsel consulted with Dr. Horlick about, among other things, the Lotus Edge, and physician experience, clinical, regulatory, and other data related to medical devices used in TAVR procedures.

2) **Daniel J. Taylor** (\$16,770.00). In connection with the preparation of the Complaint, Lead Counsel also consulted with Daniel J. Taylor, Ph.D., Arthur Andersen Associate Professor at the Wharton School, University of Pennsylvania, who has extensive experience in corporate disclosures and insider trading. Lead Counsel consulted with Professor Taylor about, among other things, executive compensation, insider trading, and the Rule 10b5-1 plans used by Boston Scientific executives.

3) **Peter A. Crosby** (\$37,840.00). After discovery commenced, Lead Plaintiff retained Peter A. Crosby, a medical device consultant with more than 40 years of industry experience and the former Chief Executive Officer of six medical device companies in four different countries. Mr. Crosby provided Lead Plaintiff with background information concerning the management of Class III medical device product recalls, the metrics used to track medical device market success, and the training requirements and proctoring of surgeons for complex implantable medical devices. Mr. Crosby was in the process of putting together an expert report concerning Boston Scientific's management of the Lotus Edge recall at the time the Parties reached an agreement to settle the case in principle.

4) **Lori A. Carr** (\$10,585.00). Lead Plaintiff also retained Lori A. Carr, a regulatory compliance consultant to medical device companies and a former FDA investigator with more than 30 years of experience in regulation of medical devices. Ms. Carr provided Lead Plaintiff with background information concerning the regulations that cover Class III medical devices, including how Class III medical devices are approved and recalled. Ms. Carr was in the process of providing Lead Plaintiff with her assessment of Boston Scientific's compliance with applicable

regulations for the approval and recall of the Lotus Edge at the time the Parties reached an agreement to settle the case in principle.

5) **Global Economics Group, LLC** (\$138,558.75). Lead Plaintiff also worked closely with Chad W. Coffman, CFA and his team at Global Economics Group, LLC. In connection with preparing the Complaint, Lead Counsel consulted with Global Economics Group about the impact of Defendants' alleged misstatements on the market price of Boston Scientific's common stock and the damages suffered by Boston Scientific shareholders. Subsequently in the litigation, Lead Plaintiff consulted with Mr. Coffman concerning market efficiency and damages issues. Mr. Coffman prepared an expert report submitted with Lead Plaintiff's motion for class certification, which opined that the market for Boston Scientific common stock was efficient throughout the Class Period, and that damages for class members could be calculated through a common methodology. Mr. Coffman and his team also prepared damages analyses that Lead Plaintiff used in connection with the mediation efforts and assisted in the preparation of the proposed Plan of Allocation. Mr. Coffman and his team were in the process of putting together an expert report concerning damages suffered by the proposed Class at the time the Parties reached an agreement to settle the case in principle

6) **FTI Consulting** (\$2,008.50). Lead Plaintiff also retained a graphics consulting firm to assist in the preparation of a demonstrative exhibit for the oral argument on Lead Plaintiff's motion for class certification.

b. **Online Factual Research** (\$53,936.28) and **Online Legal Research** (\$47,254.82). The charges reflected are for out-of-pocket payments to vendors such as Westlaw, Lexis/Nexis, Bureau of National Affairs, Court Alert, and PACER for research

done in connection with this litigation. These resources were used to obtain access to court filings, to conduct legal research and cite-checking of briefs, and to obtain factual information regarding the claims asserted and to locate potential witnesses through access to various financial databases and other factual databases. These expenses represent the actual expenses incurred by BLB&G for use of these services in connection with this litigation. There are no administrative charges included in these figures. Online research is billed to each case based on actual usage at a charge set by the vendor. When BLB&G utilizes online services provided by a vendor with a flat-rate contract, access to the service is by a billing code entered for the specific case being litigated. At the end of each billing period, BLB&G's costs for such services are allocated to specific cases based on the percentage of use in connection with that specific case in the billing period.

c. **Document Management & Litigation Support** (\$19,089.87). This category of costs includes \$9,520.23 for the services of an outside document management vendor that prepared and produced Lead Plaintiff's document production, as well as \$9,569.64 for costs incurred by BLB&G associated with establishing and maintaining the internal document database that was used by Lead Counsel to process and review the substantial volume of documents produced by Defendants and non-parties in this Action. BLB&G charges a rate of \$4 per gigabyte of data per month and \$17 per user to recover the costs associated with maintaining its document database management system, which includes the costs to BLB&G of necessary software licenses and hardware. BLB&G has conducted a review of market rates charged for the similar services performed by third-party document management vendors and found that its rate was at least 80% below the market rates charged by these vendors, resulting in a savings to the class.

d. **Mediation** (\$14,906.61). This represents Lead Plaintiff's share of fees paid to JAMS for the services of the mediator, James McGuire. Mr. McGuire conducted two formal mediation sessions in March 2023 and September 2023.

e. **Out-of-Town Travel** (\$11,623.99). BLB&G seeks reimbursement of \$11,623.99 in costs incurred in connection with travel in connection with the Action, which includes costs for attorneys at BLB&G to travel to multiple Court hearings and a mediation session in Boston. Airfare is at coach rates, hotel charges per night are capped at \$350; and travel meals are capped at \$20 per person for breakfast, \$25 per person for lunch, and \$50 per person for dinner.

f. **Working Meals** (\$1,285.26). Out of office working meals are capped at \$25 per person for lunch and \$50 per person for dinner; and in-office working meals are capped at \$25 per person for lunch and \$40 per person for dinner.

9. The expenses incurred by BLB&G in the Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred. I believe these expenses were reasonable and expended for the benefit of the Settlement Class in the Action.

10. With respect to the standing of my firm, attached hereto as Exhibit 3 is a firm résumé, which includes information about my firm and biographical information concerning the firm's attorneys.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on March 19, 2024.

/s/ Salvatore J. Graziano
Salvatore J. Graziano

EXHIBIT 1

In re Boston Scientific Corp. Securities Litigation
Master File No. 1:20-cv-12225-ADB (D. Mass.)

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP**TIME REPORT**

From Inception Through December 14, 2023

NAME	HOURS	HOURLY RATE	LODESTAR
Partners			
Michael D. Blatchley	890.50	\$975	868,237.50
Scott Foglietta	83.00	\$900	74,700.00
Salvatore J. Graziano	256.25	\$1,250	320,312.50
Avi Josefson	18.75	\$1,150	21,562.50
Mark Lebovitch	10.50	\$1,150	12,075.00
Lauren A. Ormsbee	266.50	\$975	259,837.50
Gerald Silk	72.00	1,250	90,000.00
Senior Counsel			
David L. Duncan	44.50	\$825	36,712.50
Associates			
Girolamo Brunetto	392.00	\$650	254,800.00
James Fee	353.00	\$550	194,150.00
Aasiya Glover	187.25	\$650	121,712.50
Alex Payne	968.00	\$600	580,800.00
Emily Tu	578.00	\$475	274,550.00
Summer Associate			
Gabriel Cohen	37.00	\$300	11,100.00

Staff Attorneys			
Chris Clarkin	999.00	\$425	424,575.00
Jonathan Cohen	1,084.00	\$400	433,600.00
George Doumas	478.50	\$425	203,362.50
Sascha Goergen	1,240.00	\$425	527,000.00
Steffanie Keim	1,400.75	\$425	595,318.75
Ryan McCurdy	714.50	\$450	321,525.00
Yeruchem Neiman	1,541.00	\$425	654,925.00
Kirstin Peterson	857.50	\$425	364,437.50
Palwasha Raqib	1,018.75	\$400	407,500.00
Latysa Saunders	469.00	\$425	199,325.00
Director of Investor Services			
Adam Weinschel	97.00	600	58,200.00
Financial Analysts			
Milana Babic	94.00	\$425	39,950.00
Rachel Graf	42.00	\$400	16,800.00
Tanjila Sultana	101.75	\$475	48,331.25
Investigators			
John Deming	472.00	\$425	200,600.00
Jacob Foster	80.00	\$325	26,000.00
Joelle Sfeir	15.00	\$475	7,125.00
Andrew Thompson	607.00	\$425	257,975.00
Litigation Support			
Paul Charlotin	14.50	\$400	5,800.00
Roberto Santamarina	21.25	\$450	9,562.50
Julio Velazquez	196.75	\$400	78,700.00
Case Managers & Paralegals			
Cindy Bomzer-Stein	277.00	\$325	90,025.00
Khristine De Leon	23.25	\$375	8,718.75
Annemarie Eames	13.50	\$325	4,387.50
Jeffrie Hausman	224.00	\$375	84,000.00
Janielle Lattimore	62.25	\$400	24,900.00

Matthew Mahady	21.00	\$375	7,875.00
Matthew Molloy	102.00	\$325	33,150.00
Toby Saviano	228.50	\$375	85,687.50
Virgilio Soler	240.75	\$375	90,281.25
Gary Weston	11.25	400	4,500.00
Managing Clerk			
Mahiri Buffong	40.00	425	17,000.00
TOTALS:	16,945.00		\$8,451,687.50

EXHIBIT 2

In re Boston Scientific Corp. Securities Litigation
 Master File No. 1:20-cv-12225-ADB (D. Mass.)

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP**EXPENSE REPORT**

CATEGORY	AMOUNT
Court Fees	\$378.00
Service of Process	\$530.00
On-Line Legal Research	\$53,936.28
On-Line Factual Research	\$47,254.82
Document Management/Litigation Support	\$19,089.87
Telephones	\$59.25
Postage & Express Mail	\$292.54
Hand Delivery Charges	\$171.50
Local Transportation	\$1,816.68
Out of Town Travel*	\$11,623.99
Working Meals	\$1,285.26
Court Reporters & Transcripts	\$5,564.44
Experts & Consultants	\$233,938.74
Mediation Fees	\$14,906.61
TOTAL EXPENSES:	\$390,847.98

EXHIBIT 3

In re Boston Scientific Corp. Securities Litigation
Master File No. 1:20-cv-12225-ADB (D. Mass.)

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

FIRM RESUME



Bernstein Litowitz Berger & Grossmann LLP
Attorneys at Law

Firm Resume

Table of Contents

Firm Overview	3
More Top Securities Recoveries	3
Giving Shareholders a Voice and Changing Business Practices for the Better	4
Practice Areas.....	5
Securities Fraud Litigation	5
Corporate Governance and Shareholder Rights	5
Distressed Debt and Bankruptcy	6
Commercial Litigation	6
Alternative Dispute Resolution	6
Feedback from The Courts	7
Significant Recoveries	8
Securities Class Actions.....	8
Corporate Governance and Shareholders’ Rights	16
Clients and Fees	20
In The Public Interest	21
Bernstein Litowitz Berger & Grossmann Public Interest Law Fellows	21
Firm Sponsorship of Her Justice.....	21
Firm Sponsorship of City Year New York	21
Max W. Berger Pre-Law Program	21
Our Attorneys.....	22
Partners.....	22
Senior Counsel	31
Associates	33
Senior Staff Attorneys.....	36
Staff Attorneys	36

Since our founding in 1983, Bernstein Litowitz Berger & Grossmann LLP has obtained many of the largest monetary recoveries in history—over \$37 billion on behalf of investors. Unique among our peers, the firm has obtained the largest settlements ever agreed to by public companies related to securities fraud, including four of the ten largest in history. Working with our clients, we have also used the litigation process to achieve precedent-setting reforms which have increased market transparency, held wrongdoers accountable and improved corporate business practices in groundbreaking ways.

Firm Overview

Bernstein Litowitz Berger & Grossmann LLP (BLB&G), a national law firm with offices located in New York, California, Delaware, Louisiana, and Illinois, prosecutes class and private actions on behalf of individual and institutional clients. The firm's litigation practice areas include securities class and direct actions in federal and state courts; corporate governance and shareholder rights litigation, including claims for breach of fiduciary duty and proxy violations; mergers and acquisitions and transactional litigation; alternative dispute resolution; and distressed debt and bankruptcy. We also handle, on behalf of major institutional clients and lenders, more general complex commercial litigation involving allegations of breach of contract, accountants' liability, breach of fiduciary duty, fraud, and negligence.

We are the nation's leading firm representing institutional investors in securities fraud class action litigation. The firm's institutional client base includes U.S. public pension funds the New York State Common Retirement Fund; the California Public Employees' Retirement System (CalPERS); the Los Angeles County Employees Retirement Association (LACERA); the Chicago Municipal, Police and Labor Retirement Systems; the Teacher Retirement System of Texas; the Arkansas Teacher Retirement System; the Florida State Board of Administration; the Public Employees' Retirement System of Mississippi; the New York State Teachers' Retirement System; the Ohio Public Employees Retirement System; the State Teachers Retirement System of Ohio; the Oregon Public Employees Retirement System; the Virginia Retirement System; the Louisiana School, State, Teachers and Municipal Police Retirement Systems; the Public School Teachers' Pension and Retirement Fund of Chicago; the New Jersey Division of Investment of the Department of the Treasury; TIAA-CREF and other private institutions; as well as numerous other public and Taft-Hartley pension entities. Our European client base includes APG; Aegon AM; ATP; Blue Sky Group; Hermes IM; Robeco; SEB; Handelsbanken; Nykredit; PGB; and PGGM, among others.

More Top Securities Recoveries

Since its founding in 1983, BLB&G has prosecuted some of the most complex cases in history and has obtained over \$37 billion on behalf of investors. Unique among its peers, the firm has negotiated and obtained many of the largest securities class action recoveries in history, including:

- *In re WorldCom, Inc. Securities Litigation – \$6.19 billion recovery*
- *In re Cendant Corporation Securities Litigation – \$3.3 billion recovery*

- *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation* – \$2.43 billion recovery
- *In re Nortel Networks Corporation Securities Litigation (Nortel II)* – \$1.07 billion recovery
- *In re Merck & Co., Inc. Securities Litigation* – \$1.06 billion recovery
- *In re McKesson HBOC, Inc. Securities Litigation* – \$1.05 billion recovery

Based on our record of success, BLB&G has been at the top of the rankings by ISS Securities Class Action Services (ISS-SCAS), a leading industry research publication that provides independent and objective third-party analysis and statistics on securities-litigation law firms, since its inception. In its most recent report, [*Top 100 U.S. Class Action Settlements of All-Time*](#), ISS-SCAS once again ranked BLB&G as the top firm in the field for the eleventh year in a row. BLB&G has served as lead or co-lead counsel in 37 of the ISS-SCAS's top 100 U.S. securities-fraud settlements—more than twice as many as any other firm—and recovered over \$26 billion for investors in those cases, nearly \$10 billion more than any other plaintiffs' securities firm.

Giving Shareholders a Voice and Changing Business Practices for the Better

BLB&G was among the first law firms ever to obtain meaningful corporate governance reforms through litigation. In courts throughout the country, we prosecute shareholder class and derivative actions, asserting claims for breach of fiduciary duty and proxy violations wherever the conduct of corporate officers and/or directors, or M&A transactions, seek to deprive shareholders of fair value, undermine shareholder voting rights, or allow management to profit at the expense of shareholders.

We have prosecuted seminal cases establishing precedent which has increased market transparency, held wrongdoers accountable, addressed issues in the boardroom and executive suite, challenged unfair deals, and improved corporate business practices in ground-breaking ways.

From setting new standards of director independence, to restructuring board practices in the wake of persistent illegal conduct; from challenging the improper use of defensive measures and deal protections for management's benefit, to confronting stock options backdating abuses and other self-dealing by executives; we have confronted a variety of questionable, unethical and proliferating corporate practices. Seeking to reform faulty management structures and address breaches of fiduciary duty by corporate officers and directors, we have obtained unprecedented victories on behalf of shareholders seeking to improve governance and protect the shareholder franchise.

Practice Areas

Securities Fraud Litigation

Securities fraud litigation is the cornerstone of the firm's litigation practice. Since its founding, the firm has had the distinction of having tried and prosecuted many of the most high-profile securities fraud class actions in history, recovering billions of dollars and obtaining unprecedented corporate governance reforms on behalf of our clients. BLB&G continues to play a leading role in major securities litigation pending in federal and state courts, and the firm remains one of the nation's leaders in representing institutional investors in securities fraud class litigation.

The firm also pursues direct actions in securities fraud cases when appropriate. By selectively opting out of certain securities class actions, we seek to resolve our clients' claims efficiently and for substantial multiples of what they might otherwise recover from related class action settlements.

Our attorneys have extensive experience in the laws that regulate the securities markets and in the disclosure requirements of corporations that issue publicly traded securities. Many also have accounting backgrounds. The group has access to state-of-the-art, online financial wire services and databases, which enable it to instantaneously investigate any potential securities fraud action involving a public company's debt and equity securities. Biographies for our attorneys can be accessed on the firm's website by clicking [here](#).

Corporate Governance and Shareholder Rights

Our Corporate Governance and Shareholder Rights attorneys prosecute derivative actions, claims for breach of fiduciary duty, and proxy violations on behalf of individual and institutional investors in state and federal courts throughout the country. We have prosecuted actions challenging numerous highly publicized corporate transactions which violated fair process, fair price, and the applicability of the business judgment rule, and have also addressed issues of corporate waste, shareholder voting rights claims, and executive compensation.

Our attorneys have prosecuted numerous cases regarding the improper "backdating" of executive stock options which resulted in windfall undisclosed compensation to executives at the direct expense of shareholders—and returned hundreds of millions of dollars to company coffers. We also represent institutional clients in lawsuits seeking to enforce fiduciary obligations in connection with Mergers & Acquisitions and "Going Private" transactions that deprive shareholders of fair value when participants buy companies from their public shareholders "on the cheap." Although enough shareholders accept the consideration offered for the transaction to close, many sophisticated investors correctly recognize and ultimately enjoy the increased returns to be obtained by pursuing appraisal rights and demanding that courts assign a "true value" to the shares taken private in these transactions.

Our attorneys are well versed in changing SEC rules and regulations on corporate governance issues and have a comprehensive understanding of a wide variety of corporate law transactions and both substantive and courtroom expertise in the specific legal areas involved. As a result of the firm's high-profile and widely recognized capabilities, our attorneys are increasingly in demand with institutional investors who are exercising a more assertive voice with corporate boards regarding corporate governance issues and the boards' accountability to shareholders.

Distressed Debt and Bankruptcy

BLB&G has obtained billions of dollars through litigation on behalf of bondholders and creditors of distressed and bankrupt companies, as well as through third-party litigation brought by bankruptcy trustees and creditors' committees against auditors, appraisers, lawyers, officers and directors, and other defendants who may have contributed to client losses. As counsel, we advise institutions and individuals nationwide in developing strategies and tactics to recover assets presumed lost as a result of bankruptcy. Our record in this practice area is characterized by extensive trial experience in addition to successful settlements.

Commercial Litigation

BLB&G provides contingency fee representation in complex business litigation and has obtained substantial recoveries on behalf of investors, corporations, bankruptcy trustees, creditor committees, and other business entities. We have faced down the most powerful and well-funded law firms and defendants in the country—and consistently prevailed. For example, on behalf of the bankruptcy trustee, the firm prosecuted *BFA Liquidation Trust v. Arthur Andersen*, arising from the largest non-profit bankruptcy in U.S. history. After two years of litigation and a week-long trial, the firm obtained a \$217 million recovery from Andersen for the Trust. Combined with other recoveries, the total amounted to more than 70 percent of the Trust's losses.

Having obtained huge recoveries with nominal out-of-pocket expenses and fees of less than 20 percent, we have repeatedly demonstrated that valuable claims are best prosecuted by a first-rate litigation firm on a contingent basis at negotiated percentages. Legal representation need not compound the risk and high cost inherent in today's complex and competitive business environment. We are paid only if we (and our clients) win. The result: the highest quality legal representation at a fair price.

Alternative Dispute Resolution

BLB&G offers clients an accomplished team and a creative venue in which to resolve conflicts outside of the litigation process. We have experience in U.S. and international disputes and our attorneys have led complex business-to-business arbitrations and mediations domestically and abroad representing clients before all the major arbitration tribunals, including the American Arbitration Association, FINRA, JAMS, International Chamber of Commerce, and the London Court of International Arbitration.

Our lawyers have successfully arbitrated cases that range from complex business-to-business disputes to individuals' grievances with employers. It is our experience that in some cases, a well-executed arbitration process can resolve disputes faster, with limited appeals and with a higher level of confidentiality than public litigation.

In the wake of the credit crisis, for example, we successfully represented numerous former executives of a major financial institution in arbitrations relating to claims for compensation. We have also assisted clients with disputes involving failure to honor compensation commitments, disputes over the purchase of securities, businesses seeking compensation for uncompleted contracts, and unfulfilled financing commitments.

Feedback from The Courts

Throughout the firm's history, many courts have recognized the professional excellence and diligence of the firm and its members. A few examples are set forth below.

In re WorldCom, Inc. Securities Litigation

- The Honorable Denise Cote of the United States District Court for the Southern District of New York

"I have the utmost confidence in plaintiffs' counsel...they have been doing a superb job...The Class is extraordinarily well represented in this litigation."

"The magnitude of this settlement is attributable in significant part to Lead Counsel's advocacy and energy...The quality of the representation given by Lead Counsel...has been superb...and is unsurpassed in this Court's experience with plaintiffs' counsel in securities litigation."

"Lead Counsel has been energetic and creative...Its negotiations with the Citigroup Defendants have resulted in a settlement of historic proportions."

* * *

In re Clarent Corporation Securities Litigation

- The Honorable Charles R. Breyer of the United States District Court for the Northern District of California

"It was the best tried case I've witnessed in my years on the bench...."

"[A]n extraordinarily civilized way of presenting the issues to you [the jury]...We've all been treated to great civility and the highest professional ethics in the presentation of the case..."

"These trial lawyers are some of the best I've ever seen."

* * *

Landry's Restaurants, Inc. Shareholder Litigation

- Vice Chancellor J. Travis Laster of the Delaware Court of Chancery

"I do want to make a comment again about the excellent efforts...put into this case...This case, I think, shows precisely the type of benefits that you can achieve for stockholders and how representative litigation can be a very important part of our corporate governance system...you hold up this case as an example of what to do."

* * *

McCall V. Scott (Columbia/HCA Derivative Litigation)

- The Honorable Thomas A. Higgins of the United States District Court for the Middle District of Tennessee

"Counsel's excellent qualifications and reputations are well documented in the record, and they have litigated this complex case adeptly and tenaciously throughout the six years it has been pending. They assumed an enormous risk and have shown great patience by taking this case on a contingent basis, and despite an early setback they have persevered and brought about not only a large cash settlement but sweeping corporate reforms that may be invaluable to the beneficiaries."

Significant Recoveries

BLB&G is counsel in many diverse nationwide class and individual actions and has obtained many of the largest and most significant recoveries in history. The firm has successfully identified, investigated, and prosecuted many of the most significant securities and shareholder actions in history, recovering billions of dollars on behalf of defrauded investors and obtaining groundbreaking corporate-governance reforms. These resolutions include six recoveries of over \$1 billion, more than any other firm in our field. Examples of cases with our most significant recoveries include:

Securities Class Actions

Case: *In re WorldCom, Inc. Securities Litigation*

Court: United States District Court for the Southern District of New York

Highlights: \$6.19 billion securities fraud class action recovery—the second largest in history; unprecedented recoveries from Director Defendants.

Case Summary: Investors suffered massive losses in the wake of the financial fraud and subsequent bankruptcy of former telecom giant WorldCom, Inc. This litigation alleged that WorldCom and others disseminated false and misleading statements to the investing public regarding its earnings and financial condition in violation of the federal securities and other laws. It further alleged a nefarious relationship between Citigroup subsidiary Salomon Smith Barney and WorldCom, carried out primarily by Salomon employees involved in providing investment banking services to WorldCom, and by WorldCom's former CEO and CFO. As Court-appointed Co-Lead Counsel representing Lead Plaintiff the New York State Common Retirement Fund, we obtained unprecedented settlements totaling more than \$6 billion from the Investment Bank Defendants who underwrote WorldCom bonds, including a \$2.575 billion cash settlement to settle all claims against the Citigroup Defendants. On the eve of trial, the 13 remaining "Underwriter Defendants," including J.P. Morgan Chase, Deutsche Bank and Bank of America, agreed to pay settlements totaling nearly \$3.5 billion to resolve all claims against them. Additionally, the day before trial was scheduled to begin, all of the former WorldCom Director Defendants agreed to pay over \$60 million to settle the claims against them. An unprecedented first for outside directors, \$24.75 million of that amount came out of the pockets of the individuals—20% of their collective net worth. *The Wall Street Journal*, in its coverage, profiled the settlement as having "shaken Wall Street, the audit profession and corporate boardrooms." After four weeks of trial, Arthur Andersen, WorldCom's former auditor, settled for \$65 million. Subsequent settlements were reached with the former executives of WorldCom, and then with Andersen, bringing the total obtained for the Class to over \$6.19 billion.

- Case:** *In re Cendant Corporation Securities Litigation*
- Court:** United States District Court for the District of New Jersey
- Highlights:** \$3.3 billion securities fraud class action recovery – the third largest in history; significant corporate governance reforms obtained.
- Summary:** The firm was Co-Lead Counsel in this class action against Cendant Corporation, its officers and directors and Ernst & Young (E&Y), its auditors, for their role in disseminating materially false and misleading financial statements concerning the company’s revenues, earnings and expenses for its 1997 fiscal year. As a result of company-wide accounting irregularities, Cendant restated its financial results for its 1995, 1996, and 1997 fiscal years and all fiscal quarters therein. Cendant agreed to settle the action for \$2.8 billion and to adopt some of the most extensive corporate governance changes in history. E&Y settled for \$335 million. These settlements remain the largest sums ever recovered from a public company and a public accounting firm through securities class action litigation. BLB&G represented Lead Plaintiffs CalPERS (the California Public Employees’ Retirement System), the New York State Common Retirement Fund and the New York City Pension Funds, the three largest public pension funds in America, in this action.
- Case:** *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation*
- Court:** United States District Court for the Southern District of New York
- Highlights:** \$2.425 billion in cash; significant corporate governance reforms to resolve all claims. This recovery is by far the largest shareholder recovery related to the subprime meltdown and credit crisis; the single largest securities class action settlement ever resolving a Section 14(a) claim—the federal securities provision designed to protect investors against misstatements in connection with a proxy solicitation; the largest ever funded by a single corporate defendant for violations of the federal securities laws; the single largest settlement of a securities class action in which there was neither a financial restatement involved nor a criminal conviction related to the alleged misconduct; and one of the 10 largest securities class action recoveries in history.
- Summary:** The firm represented Co-Lead Plaintiffs the State Teachers Retirement System of Ohio, the Ohio Public Employees Retirement System, and the Teacher Retirement System of Texas in this securities class action filed on behalf of shareholders of Bank of America Corporation (BAC) arising from BAC’s 2009 acquisition of Merrill Lynch & Co., Inc. The action alleges that BAC, Merrill Lynch, and certain of the companies’ current and former officers and directors violated the federal securities laws by making a series of materially false statements and omissions in connection with the acquisition. These violations included the alleged failure to disclose information regarding billions of dollars of losses which Merrill had suffered before the BAC shareholder vote on the proposed acquisition, as well as an undisclosed agreement allowing Merrill to pay billions in bonuses before the acquisition closed despite these losses. Not privy to these material facts, BAC shareholders voted to approve the acquisition.

- Case:** *In re Nortel Networks Corporation Securities Litigation (Nortel II)*
- Court:** United States District Court for the Southern District of New York
- Highlights:** Over \$1.07 billion in cash and common stock recovered for the class.
- Summary:** This securities fraud class action charged Nortel Networks Corporation and certain of its officers and directors with violations of the Securities Exchange Act of 1934, alleging that the Defendants knowingly or recklessly made false and misleading statements with respect to Nortel's financial results during the relevant period. BLB&G clients the Ontario Teachers' Pension Plan Board and the Treasury of the State of New Jersey and its Division of Investment were appointed as Co-Lead Plaintiffs for the Class in one of two related actions (Nortel II), and BLB&G was appointed Lead Counsel for the Class. In a historic settlement, Nortel agreed to pay \$2.4 billion in cash and Nortel common stock to resolve both matters. Nortel later announced that its insurers had agreed to pay \$228.5 million toward the settlement, bringing the total amount of the global settlement to approximately \$2.7 billion, and the total amount of the Nortel II settlement to over \$1.07 billion.
-
- Case:** *In re Merck & Co., Inc. Securities Litigation*
- Court:** United States District Court, District of New Jersey
- Highlights:** \$1.06 billion recovery for the class.
- Summary:** This case arises out of misrepresentations and omissions concerning life-threatening risks posed by the "blockbuster" COX-2 painkiller Vioxx, which Merck withdrew from the market in 2004. In January 2016, BLB&G achieved a \$1.062 billion settlement on the eve of trial after more than 12 years of hard-fought litigation that included a successful decision at the United States Supreme Court. This settlement is the second-largest recovery ever obtained in the Third Circuit, one of the top 11 securities recoveries of all time, and the largest securities recovery ever achieved against a pharmaceutical company. BLB&G represented Lead Plaintiff the Public Employees' Retirement System of Mississippi.
-
- Case:** *In re McKesson HBOC, Inc. Securities Litigation*
- Court:** United States District Court for the Northern District of California
- Highlights:** \$1.05 billion recovery for the class.
- Summary:** This securities fraud litigation was filed on behalf of purchasers of HBOC, McKesson, and McKesson HBOC securities, alleging that Defendants misled the investing public concerning HBOC's and McKesson HBOC's financial results. On behalf of Lead Plaintiff the New York State Common Retirement Fund, BLB&G obtained a \$960 million settlement from the company; \$72.5 million in cash from Arthur Andersen; and, on the eve of trial, a \$10 million settlement from Bear Stearns & Co. Inc., with total recoveries reaching more than \$1 billion.

Case: *HealthSouth Corporation Bondholder Litigation*

Court: United States District Court for the Northern District of Alabama

Highlights: \$804.5 million in total recoveries.

Summary: In this litigation, BLB&G was the appointed Co-Lead Counsel for the bond holder class, representing Lead Plaintiff the Retirement Systems of Alabama. This action arose from allegations that Birmingham, Alabama based HealthSouth Corporation overstated its earnings at the direction of its founder and former CEO Richard Scrushy. Subsequent revelations disclosed that the overstatement actually exceeded over \$2.4 billion, virtually wiping out all of HealthSouth's reported profits for the prior five years. A total recovery of \$804.5 million was obtained in this litigation through a series of settlements, including an approximately \$445 million settlement for shareholders and bondholders, a \$100 million in cash settlement from UBS AG, UBS Warburg LLC, and individual UBS Defendants, and \$33.5 million in cash from the company's auditor. The total settlement for injured HealthSouth bond purchasers exceeded \$230 million, recouping over a third of bond purchaser damages.

Case: *In re Washington Public Power Supply System Litigation*

Court: United States District Court for the District of Arizona

Highlights: Over \$750 million—the largest securities fraud settlement ever achieved at the time.

Summary: BLB&G was appointed Chair of the Executive Committee responsible for litigating on behalf of the class in this action. The case was litigated for over seven years, and involved an estimated 200 million pages of documents produced in discovery; the depositions of 285 fact witnesses and 34 expert witnesses; more than 25,000 introduced exhibits; six published district court opinions; seven appeals or attempted appeals to the Ninth Circuit; and a three-month jury trial, which resulted in a settlement of over \$750 million—then the largest securities fraud settlement ever achieved.

Case: *In re Lehman Brothers Equity/Debt Securities Litigation*

Court: United States District Court for the Southern District of New York

Highlights: \$735 million in total recoveries.

Summary: Representing the Government of Guam Retirement Fund, BLB&G successfully prosecuted this securities class action arising from Lehman Brothers Holdings Inc.'s issuance of billions of dollars in offerings of debt and equity securities that were sold using offering materials that contained untrue statements and missing material information.

After four years of intense litigation, Lead Plaintiffs achieved a total of \$735 million in recoveries consisting of: a \$426 million settlement with underwriters of Lehman securities offerings; a \$90 million settlement with former Lehman directors and officers; a \$99 million settlement that resolves claims against Ernst & Young, Lehman's former auditor (considered one of the top 10 auditor settlements ever achieved); and a \$120 million settlement that resolves claims against UBS Financial

Services, Inc. This recovery is truly remarkable not only because of the difficulty in recovering assets when the issuer defendant is bankrupt, but also because no financial results were restated, and the auditors never disavowed the statements.

Case: *In re Citigroup, Inc. Bond Action Litigation*

Court: United States District Court for the Southern District of New York

Highlights: \$730 million cash recovery; second largest recovery in a litigation arising from the financial crisis.

Summary: In the years prior to the collapse of the subprime mortgage market, Citigroup issued 48 offerings of preferred stock and bonds. This securities fraud class action was filed on behalf of purchasers of Citigroup bonds and preferred stock alleging that these offerings contained material misrepresentations and omissions regarding Citigroup's exposure to billions of dollars in mortgage-related assets, the loss reserves for its portfolio of high-risk residential mortgage loans, and the credit quality of the risky assets it held in off-balance sheet entities known as "structured investment vehicles." After protracted litigation lasting four years, we obtained a \$730 million cash recovery—the second largest securities class action recovery in a litigation arising from the financial crisis, and the second largest recovery ever in a securities class action brought on behalf of purchasers of debt securities. As Lead Bond Counsel for the Class, BLB&G represented Lead Bond Plaintiffs Minneapolis Firefighters' Relief Association, Louisiana Municipal Police Employees' Retirement System, and Louisiana Sheriffs' Pension and Relief Fund.

Case: *In re Schering-Plough Corporation/Enhance Securities Litigation; In re Merck & Co., Inc. Vytarin/Zetia Securities Litigation*

Court: United States District Court for the District of New Jersey

Highlights: \$688 million in combined settlements (Schering-Plough settled for \$473 million; Merck settled for \$215 million) in this coordinated securities fraud litigations filed on behalf of investors in Merck and Schering-Plough.

Summary: After nearly five years of intense litigation, just days before trial, BLB&G resolved the two actions against Merck and Schering-Plough, which stemmed from claims that Merck and Schering artificially inflated their market value by concealing material information and making false and misleading statements regarding their blockbuster anti-cholesterol drugs Zetia and Vytarin. Specifically, we alleged that the companies knew that their "ENHANCE" clinical trial of Vytarin (a combination of Zetia and a generic) demonstrated that Vytarin was no more effective than the cheaper generic at reducing artery thickness. The companies nonetheless championed the "benefits" of their drugs, attracting billions of dollars of capital. When public pressure to release the results of the ENHANCE trial became too great, the companies reluctantly announced these negative results, which we alleged led to sharp declines in the value of the companies' securities, resulting in significant losses to investors. The combined \$688 million in settlements (Schering-Plough settled for \$473 million; Merck settled for \$215 million) is the second largest securities recovery ever in the Third Circuit, among the top 25

settlements of all time, and among the ten largest recoveries ever in a case where there was no financial restatement. BLB&G represented Lead Plaintiffs Arkansas Teacher Retirement System, the Public Employees' Retirement System of Mississippi, and the Louisiana Municipal Police Employees' Retirement System.

Case: *In re Lucent Technologies, Inc. Securities Litigation*

Court: United States District Court for the District of New Jersey

Highlights: \$667 million in total recoveries; the appointment of BLB&G as Co-Lead Counsel is especially noteworthy as it marked the first time since the 1995 passage of the Private Securities Litigation Reform Act that a court reopened the lead plaintiff or lead counsel selection process to account for changed circumstances, new issues, and possible conflicts between new and old allegations.

Summary: BLB&G served as Co-Lead Counsel in this securities class action, representing Lead Plaintiffs the Parnassus Fund, Teamsters Locals 175 & 505 D&P Pension Trust, Anchorage Police and Fire Retirement System, and the Louisiana School Employees' Retirement System. The complaint accused Lucent of making false and misleading statements to the investing public concerning its publicly reported financial results and failing to disclose the serious problems in its optical networking business. When the truth was disclosed, Lucent admitted that it had improperly recognized revenue of nearly \$679 million in fiscal 2000. The settlement obtained in this case is valued at approximately \$667 million, and is composed of cash, stock, and warrants.

Case: *In re Wachovia Preferred Securities and Bond/Notes Litigation*

Court: United States District Court for the Southern District of New York

Highlights: \$627 million recovery—among the largest securities class action recoveries in history; third-largest recovery obtained in an action arising from the subprime mortgage crisis.

Summary: This securities class action was filed on behalf of investors in certain Wachovia bonds and preferred securities against Wachovia Corp., certain former officers and directors, various underwriters, and its auditor, KPMG LLP. The case alleged that Wachovia provided offering materials that misrepresented and omitted material facts concerning the nature and quality of Wachovia's multibillion-dollar option-ARM (adjustable-rate mortgage) "Pick-A-Pay" mortgage loan portfolio, and that Wachovia's loan loss reserves were materially inadequate. According to the Complaint, these undisclosed problems threatened the viability of the financial institution, requiring it to be "bailed out" during the financial crisis before it was acquired by Wells Fargo. The combined \$627 million recovery obtained in the action is among the 20 largest securities class action recoveries in history, the largest settlement ever in a class action case asserting only claims under the Securities Act of 1933, and one of a handful of securities class action recoveries obtained where there were no parallel civil or criminal actions brought by government authorities. The firm represented Co-Lead Plaintiffs Orange County Employees Retirement System and Louisiana Sheriffs' Pension and Relief Fund in this action.

Case: *Bear Stearns Mortgage Pass-Through Litigation*

Court: United States District Court for the Southern District of New York

Highlights: \$500 million recovery—the largest recovery ever on behalf of purchasers of residential mortgage-backed securities.

Summary: BLB&G served as Co-Lead Counsel in this securities action, representing Lead Plaintiffs the Public Employees’ Retirement System of Mississippi. The case alleged that Bear Stearns & Company, Inc. sold mortgage pass-through certificates using false and misleading offering documents. The offering documents contained false and misleading statements related to, among other things, (1) the underwriting guidelines used to originate the mortgage loans underlying the certificates; and (2) the accuracy of the appraisals for the properties underlying the certificates. After six years of hard-fought litigation and extensive arm’s-length negotiations, the \$500 million recovery is the largest settlement in a U.S. class action against a bank that packaged and sold mortgage securities at the center of the 2008 financial crisis.

Case: *Gary Hefler et al. v. Wells Fargo & Company et al.*

Court: United States District Court for the Northern District of California

Highlights: \$480 million recovery—the fourth largest securities settlement ever achieved in the Ninth Circuit and the 32nd largest securities settlement ever in the United States.

Summary: BLB&G served as Lead Counsel for the Court-appointed Lead Plaintiff Union Asset Management Holding, AG in this action, which alleged that Wells Fargo and certain current and former officers and directors of Wells Fargo made a series of materially false statements and omissions in connection with Wells Fargo’s secret creation of fake or unauthorized client accounts in order to hit performance-based compensation goals. After years of presenting a business driven by legitimate growth prospects, U.S. regulators revealed in September 2016 that Wells Fargo employees were secretly opening millions of potentially unauthorized accounts for existing Wells Fargo customers. The Complaint alleged that these accounts were opened in order to hit performance targets and inflate the “cross-sell” metrics that investors used to measure Wells Fargo’s financial health and anticipated growth. When the market learned the truth about Wells Fargo’s violation of its customers’ trust and failure to disclose reliable information to its investors, the price of Wells Fargo’s stock dropped, causing substantial investor losses.

Case: *Ohio Public Employees Retirement System v. Freddie Mac*

Court: United States District Court for the Southern District of Ohio

Highlights: \$410 million settlement.

Summary: This securities fraud class action was filed on behalf of the Ohio Public Employees Retirement System and the State Teachers Retirement System of Ohio alleging that Federal Home Loan Mortgage Corporation (Freddie Mac) and certain of its current and former officers issued false and misleading

statements in connection with the company's previously reported financial results. Specifically, the Complaint alleged that the Defendants misrepresented the company's operations and financial results by having engaged in numerous improper transactions and accounting machinations that violated fundamental GAAP precepts in order to artificially smooth the company's earnings and to hide earnings volatility. In connection with these improprieties, Freddie Mac restated more than \$5 billion in earnings. A settlement of \$410 million was reached in the case just as deposition discovery had begun and document review was complete.

Case: *In re Refco, Inc. Securities Litigation*

Court: United States District Court for the Southern District of New York

Highlights: Over \$407 million in total recoveries.

Summary: The lawsuit arises from the revelation that Refco, a once prominent brokerage, had for years secreted hundreds of millions of dollars of uncollectible receivables with a related entity controlled by Phillip Bennett, the company's Chairman and Chief Executive Officer. This revelation caused the stunning collapse of the company a mere two months after its initial public offering of common stock. As a result, Refco filed one of the largest bankruptcies in U.S. history. Settlements have been obtained from multiple company and individual defendants, resulting in a total recovery for the class of over \$407 million. BLB&G represented Co-Lead Plaintiff RH Capital Associates LLC.

Case: *In re Allergan, Inc. Proxy Violation Securities Litigation*

Court: United States District Court for the Central District of California

Highlights: Litigation recovered over \$250 million for investors while challenging an unprecedented insider trading scheme by billionaire hedge fund manager Bill Ackman.

Summary: As alleged in groundbreaking litigation, billionaire hedge fund manager Bill Ackman and his Pershing Square Capital Management fund secretly acquired a near 10% stake in pharmaceutical concern Allergan, Inc. as part of an unprecedented insider trading scheme by Ackman and Valeant Pharmaceuticals International, Inc. What Ackman knew—but investors did not—was that in the ensuing weeks, Valeant would be launching a hostile bid to acquire Allergan shares at a far higher price. Ackman enjoyed a massive instantaneous profit upon public news of the proposed acquisition, and the scheme worked for both parties as he kicked back hundreds of millions of his insider-trading proceeds to Valeant after Allergan agreed to be bought by a rival bidder. After a ferocious three-year legal battle over this attempt to circumvent the spirit of the U.S. securities laws, BLB&G obtained a \$250 million settlement for Allergan investors, and created precedent to prevent similar such schemes in the future. The Plaintiffs in this action were the State Teachers Retirement System of Ohio, the Iowa Public Employees Retirement System, and Patrick T. Johnson.

Corporate Governance and Shareholders' Rights

Case: *City of Monroe Employees' Retirement System, Derivatively on Behalf of Twenty-First Century Fox, Inc. v. Rupert Murdoch, et al.*

Court: Delaware Court of Chancery

Highlights: Landmark derivative litigation established unprecedented, independent Board-level council to ensure employees are protected from workplace harassment while recouping \$90 million for the company's coffers.

Summary: Before the birth of the #metoo movement, BLB&G led the prosecution of an unprecedented shareholder derivative litigation against Fox News parent 21st Century Fox, Inc. arising from the systemic sexual and workplace harassment at the embattled network. After nearly 18 months of litigation, discovery and negotiation related to the shocking misconduct and the Board's extensive alleged governance failures, the parties unveil a landmark settlement with two key components: 1) the first ever Board-level watchdog of its kind—the "Fox News Workplace Professionalism and Inclusion Council" of experts (WPIC)—majority independent of the Murdochs, the Company and Board; and 2) one of the largest financial recoveries—\$90 million—ever obtained in a pure corporate board oversight dispute. The WPIC serves as a model for public companies in all industries. The firm represented 21st Century Fox shareholder the City of Monroe (Michigan) Employees' Retirement System.

Case: *In re McKesson Corporation Derivative Litigation*

Court: United States District Court, Northern District of California, Oakland Division and Delaware Chancery Court

Highlights: Litigation recovered \$175 million and achieved substantial corporate governance reforms.

Summary: BLB&G represented the Police & Fire Retirement System City of Detroit and Amalgamated Bank in this derivative class action arising from the company's role in permitting and exacerbating America's ongoing opioid crisis. The complaint, initially filed in Delaware Chancery Court, alleged that defendants breached their fiduciary duties by failing to adequately oversee McKesson's compliance with provisions of the Controlled Substances Act and a series of settlements with the Drug Enforcement Administration intended to regulate the distribution and misuse of controlled substances such as opioids. Even after paying fines and settlements in the hundreds of millions of dollars, McKesson was sued in the National Opioid Multidistrict Litigation. In May 2018, our clients joined a substantially similar action being litigated in California federal court. Acting as co-lead counsel, BLB&G played a major role in litigating the case, opposing a motion to stay the action by a special litigation committee, and engaging in extensive pretrial discovery. Ultimately, \$175 million was recovered for the benefit of McKesson's shareholders in a settlement that also created substantial corporate-governance reforms to prevent a recurrence of McKesson's inadequate legal compliance efforts.

- Case:** *UnitedHealth Group, Inc. Shareholder Derivative Litigation*
- Court:** United States District Court for the District of Minnesota
- Highlights:** Litigation recovered over \$920 million in ill-gotten compensation directly from former officers for their roles in illegally backdating stock options, while the company agreed to far-reaching reforms aimed at curbing future executive compensation abuses.
- Summary:** This shareholder derivative action filed against certain current and former executive officers and members of the Board of Directors of UnitedHealth Group, Inc. alleged that the Defendants obtained, approved and/or acquiesced in the issuance of stock options to senior executives that were unlawfully backdated to provide the recipients with windfall compensation at the direct expense of UnitedHealth and its shareholders. The firm recovered over \$920 million in ill-gotten compensation directly from the former officer Defendants—the largest derivative recovery in history. As feature coverage in *The New York Times* indicated, “investors everywhere should applaud [the UnitedHealth settlement]....[T]he recovery sets a standard of behavior for other companies and boards when performance pay is later shown to have been based on ephemeral earnings.” The Plaintiffs in this action were the St. Paul Teachers’ Retirement Fund Association, the Public Employees’ Retirement System of Mississippi, the Jacksonville Police & Fire Pension Fund, the Louisiana Sheriffs’ Pension & Relief Fund, the Louisiana Municipal Police Employees’ Retirement System and Fire & Police Pension Association of Colorado.
- Case:** *Caremark Merger Litigation*
- Court:** Delaware Court of Chancery – New Castle County
- Highlights:** Landmark Court ruling ordered Caremark’s board to disclose previously withheld information, enjoined a shareholder vote on the CVS merger offer, and granted statutory appraisal rights to Caremark shareholders. The litigation ultimately forced CVS to raise its offer by \$7.50 per share, equal to more than \$3.3 billion in additional consideration to Caremark shareholders.
- Summary:** Commenced on behalf of the Louisiana Municipal Police Employees’ Retirement System and other shareholders of Caremark RX, Inc., this shareholder class action accused the company’s directors of violating their fiduciary duties by approving and endorsing a proposed merger with CVS Corporation, all the while refusing to fairly consider an alternative transaction proposed by another bidder. In a landmark decision, the Court ordered the Defendants to disclose material information that had previously been withheld, enjoined the shareholder vote on the CVS transaction until the additional disclosures occurred, and granted statutory appraisal rights to Caremark’s shareholders—forcing CVS to increase the consideration offered to shareholders by \$7.50 per share in cash (over \$3 billion in total).

Case: *In re Pfizer Inc. Shareholder Derivative Litigation*

Court: United States District Court for the Southern District of New York

Highlights: Landmark settlement in which Defendants agreed to create a new Regulatory and Compliance Committee of the Pfizer Board to be supported by a dedicated \$75 million fund.

Summary: In the wake of Pfizer's agreement to pay \$2.3 billion as part of a settlement with the U.S. Department of Justice to resolve civil and criminal charges relating to the illegal marketing of at least 13 of the company's most important drugs (the largest such fine ever imposed), this shareholder derivative action was filed against Pfizer's senior management and Board alleging they breached their fiduciary duties to Pfizer by, among other things, allowing unlawful promotion of drugs to continue after receiving numerous "red flags" that Pfizer's improper drug marketing was systemic and widespread. The suit was brought by Court-appointed Lead Plaintiffs Louisiana Sheriffs' Pension and Relief Fund and Skandia Life Insurance Company, Ltd. In an unprecedented settlement reached by the parties, the Defendants agreed to create a new Regulatory and Compliance Committee of the Pfizer Board of Directors (the "Regulatory Committee") to oversee and monitor Pfizer's compliance and drug marketing practices and to review the compensation policies for Pfizer's drug sales related employees.

Case: *Miller et al. v. IAC/InterActiveCorp et al.*

Court: Delaware Court of Chancery

Highlights: This litigation shut down efforts by controlling shareholders to obtain "dynastic control" of the company through improper stock class issuances, setting valuable precedent and sending a strong message to boards and management in all sectors that such moves will not go unchallenged.

Summary: BLB&G obtained this landmark victory for shareholder rights against IAC/InterActiveCorp and its controlling shareholder and chairman, Barry Diller. For decades, activist corporate founders and controllers sought ways to entrench their position atop the corporate hierarchy by granting themselves and other insiders "supervoting rights." Diller laid out a proposal to introduce a new class of non-voting stock to entrench "dynastic control" of IAC within the Diller family. BLB&G litigation on behalf of IAC shareholders ended in capitulation with the Defendants effectively conceding the case by abandoning the proposal. This became a critical corporate governance precedent, given the trend of public companies to introduce "low" and "no-vote" share classes, which diminish shareholder rights, insulate management from accountability, and can distort managerial incentives by providing controllers voting power out of line with their actual economic interests in public companies.

Case: *In re News Corp. Shareholder Derivative Litigation*

Court: Delaware Court of Chancery – Kent County

Highlights: An unprecedented settlement in which News Corp. recouped \$139 million and enacted significant corporate governance reforms that combat self-dealing in the boardroom.

Summary: Following News Corp.'s 2011 acquisition of a company owned by News Corp. Chairman and CEO Rupert Murdoch's daughter, and the phone-hacking scandal within its British newspaper division, we filed a derivative litigation on behalf of the company because of institutional shareholder concern with the conduct of News Corp.'s management. We ultimately obtained an unprecedented settlement in which News Corp. recouped \$139 million for the company coffers, and agreed to enact corporate governance enhancements to strengthen its compliance structure, the independence and functioning of its board, and the compensation and clawback policies for management.

Clients and Fees

We are firm believers in the contingency fee as a socially useful, productive and satisfying basis of compensation for legal services, particularly in litigation. Wherever appropriate, even with our corporate clients, we encourage retentions in which our fee is contingent on the outcome of the litigation. This way, it is not the number of hours worked that will determine our fee, but rather the result achieved for our client. The firm generally negotiates with our clients a contingent fee schedule specific to each litigation, and all fee proposals are approved by the client prior to commencing litigation, and ultimately by the Court.

Our clients include many large and well-known financial and lending institutions and pension funds, as well as privately held companies that are attracted to our firm because of our reputation, expertise, and fee structure. Most of the firm's clients are referred by other clients, law firms and lawyers, bankers, investors, and accountants. A considerable number of clients have been referred to the firm by former adversaries. We have always maintained a high level of independence and discretion in the cases we decide to prosecute. As a result, the level of personal satisfaction and commitment to our work is high.

In The Public Interest

Bernstein Litowitz Berger & Grossmann LLP is guided by two principles: excellence in legal work and a belief that the law should serve a socially useful and dynamic purpose. Attorneys at the firm are active in academic, community and pro bono activities, and regularly participate as speakers and contributors to professional organizations. In addition, the firm endows a public interest law fellowship and sponsors an academic scholarship at Columbia Law School. Highlights of our community contributions include the following:

Bernstein Litowitz Berger & Grossmann Public Interest Law Fellows

BLB&G is committed to fighting discrimination and effecting positive social change. In support of this commitment, the firm donates funds to Columbia Law School to create the Bernstein Litowitz Berger & Grossmann Public Interest Law Fellowship. This fund at Columbia Law School provides Fellows with 100% of the funding needed to make payments on their law school tuition loans so long as such graduates remain in the public interest law field. The BLB&G Fellows are able to begin their careers free of any school debt if they make a long-term commitment to public interest law.

Firm Sponsorship of Her Justice

BLB&G is a sponsor of Her Justice, a not-for-profit organization in New York City dedicated to providing *pro bono* legal representation to indigent women, principally vulnerable women, in connection with the myriad legal problems they face. The organization trains and supports the efforts of New York lawyers who provide *pro bono* counsel to these women. Several members and associates of the firm volunteer their time to help women who need divorces from abusive spouses, or representation on issues such as child support, custody, and visitation. To read more about Her Justice, visit the organization's website at <http://www.herjustice.org/>.

Firm Sponsorship of City Year New York

BLB&G is also an active supporter of City Year New York, a division of AmeriCorps. The program was founded in 1988 as a means of encouraging young people to devote time to public service and unites a diverse group of volunteers for a demanding year of full-time community service, leadership development and civic engagement. Through their service, corps members experience a rite of passage that can inspire a lifetime of citizenship and build a stronger democracy.

Max W. Berger Pre-Law Program

In order to encourage outstanding minority undergraduates to pursue a meaningful career in the legal profession, the Max W. Berger Pre-Law Program was established at Baruch College. Providing workshops, seminars, counseling and mentoring to Baruch students, the program facilitates and guides them through the law school research and application process, as well as placing them in appropriate internships and other pre-law working environments.

Our Attorneys

BLB&G employs a dedicated team of attorneys, including partners, counsel, associates, and senior staff attorneys. Biographies for each of our attorneys can be found on our website by clicking [here](#). On a case-by-case basis, we also make use of a pool of staff attorneys to supplement our litigation teams. The BLB&G team also includes investigators, financial analysts, paralegals, electronic-discovery specialists, information-technology professionals, and administrative staff. Biographies for our investigative team are available on our website by clicking [here](#), and biographies for the leaders of our administrative departments are viewable [here](#).

Partners

Max Berger, Founding Partner, has grown BLB&G from a partnership of four lawyers in 1983 into what the *Financial Times* described as “[one of the most powerful securities class action law firms in the United States](#)” by prosecuting seminal cases which have increased market transparency, held wrongdoers accountable, and improved corporate business practices in groundbreaking ways.

Described by sources quoted in leading industry publication *Chambers USA* as “the smartest, most strategic plaintiffs’ lawyer [they have] ever encountered,” Max has litigated many of the firm’s most high-profile and significant cases and secured some of the largest recoveries ever achieved in securities fraud lawsuits, negotiating seven of the largest securities fraud settlements in history, each in excess of a billion dollars: *Cendant* (\$3.3 billion), *Citigroup-WorldCom* (\$2.575 billion), *Bank of America/Merrill Lynch* (\$2.4 billion), *JPMorgan Chase-WorldCom* (\$2 billion), *Nortel* (\$1.07 billion), *Merck* (\$1.06 billion), and *McKesson* (\$1.05 billion). Max’s prosecution of the *WorldCom* litigation, which resulted in unprecedented monetary contributions from WorldCom’s outside directors (nearly \$25 million out of their own pockets on top of their insurance coverage) “shook Wall Street, the audit profession and corporate boardrooms.” (*The Wall Street Journal*)

Max’s cases have resulted in sweeping corporate governance overhauls, including the creation of an independent task force to oversee and monitor diversity practices (*Texaco* discrimination litigation), establishing an industry-accepted definition of director independence, increasing a board’s power and responsibility to oversee internal controls and financial reporting (*Columbia/HCA*), and creating a Healthcare Law Regulatory Committee with dedicated funding to improve the standard for regulatory compliance oversight by a public company board of directors (*Pfizer*). His cases have yielded results which have served as models for public companies going forward.

Most recently, before the #metoo movement came alive, on behalf of an institutional investor client, Max handled the prosecution of an unprecedented shareholder derivative litigation against Fox News parent 21st Century Fox, Inc. arising from the systemic sexual and workplace harassment at the embattled network. After nearly 18 months of litigation, discovery, and negotiation related to the shocking misconduct and the Board’s extensive alleged governance failures, the parties unveiled a landmark settlement with two key components: 1) the first ever Board-level watchdog of its kind—the “Fox News Workplace Professionalism and Inclusion Council” of experts (WPIC)—majority independent of the Murdochs, the Company and Board; and 2) one of the largest financial recoveries—\$90 million—ever obtained in a pure corporate board oversight dispute. The WPIC is expected to serve as a model for public companies in all industries.

Max's work has garnered him extensive media attention, and he has been the subject of feature articles in a variety of major media publications. *The New York Times* highlighted his remarkable track record in an October 2012 profile entitled "[Investors' Billion-Dollar Fraud Fighter](#)," which also discussed his role in the *Bank of America/Merrill Lynch Merger* litigation. In 2011, Max was twice profiled by *The American Lawyer* for his role in negotiating a \$627 million recovery on behalf of investors in the *In re Wachovia Corp. Securities Litigation*, and a \$516 million recovery in *In re Lehman Brothers Equity/Debt Securities Litigation*. For his outstanding efforts on behalf of WorldCom investors, he was featured in articles in *BusinessWeek* and *The American Lawyer*, and *The National Law Journal* profiled Max (one of only eleven attorneys selected nationwide) in its annual 2005 "Winning Attorneys" section. He was subsequently featured in a 2006 *New York Times* article, "A Class-Action Shuffle," which assessed the evolving landscape of the securities litigation arena.

One of the "100 Most Influential Lawyers in America"

Widely recognized as the "Dean" of the U.S. plaintiff securities bar for his remarkable career and his professional excellence, Max has a distinguished and unparalleled list of honors to his name.

- He was selected as one of the "100 Most Influential Lawyers in America" by *The National Law Journal* for being "front and center" in holding Wall Street banks accountable and obtaining over \$5 billion in cases arising from the subprime meltdown, and for his work as a "master negotiator" in obtaining numerous multi-billion dollar recoveries for investors.
- Described as a "standard-bearer" for the profession in a career spanning nearly 50 years, he is the recipient of *Chambers USA's* award for Outstanding Contribution to the Legal Profession. In presenting this prestigious honor, *Chambers* recognized Max's "numerous headline-grabbing successes," as well as his unique stature among colleagues—"warmly lauded by his peers, who are nevertheless loath to find him on the other side of the table." Max has been recognized as a litigation "star" and leading lawyer in his field by *Chambers* since its inception.
- *Benchmark Litigation* recently inducted him into its exclusive "Hall of Fame" and named him a 2021 "Litigation Star" in recognition of his career achievements and impact on the field of securities litigation.
- Upon its tenth anniversary, *Lawdragon* named Max a "Lawdragon Legend" for his accomplishments. He was recently inducted into *Lawdragon's* "Hall of Fame." He is regularly included in the publication's "500 Leading Lawyers in America" and "100 Securities Litigators You Need to Know" lists.
- *Law360* published a special feature discussing his life and career as a "Titan of the Plaintiffs Bar," named him one of only six litigators selected nationally as a "Legal MVP," and selected him as one of "10 Legal Superstars" nationally for his work in securities litigation.
- Max has been regularly named a "leading lawyer" in the *Legal 500 US Guide* where he was also named to their "Hall of Fame" list, as well as *The Best Lawyers in America®* guide.
- Max was honored for his outstanding contribution to the public interest by Trial Lawyers for Public Justice, which named him a "Trial Lawyer of the Year" Finalist in 1997 for his work in *Roberts, et al. v. Texaco*, the celebrated race discrimination case, on behalf of Texaco's African-American employees.

Max has lectured extensively for many professional organizations, and is the author and co-author of numerous articles on developments in the securities laws and their implications for public policy. He was chosen, along with

several of his BLB&G partners, to author the first chapter—“Plaintiffs’ Perspective”—of Lexis/Nexis’s seminal industry guide *Litigating Securities Class Actions*. An esteemed voice on all sides of the legal and financial markets, in 2008 the SEC and Treasury called on Max to provide guidance on regulatory changes being considered as the accounting profession was experiencing tectonic shifts shortly before the financial crisis.

Max also serves the academic community in numerous capacities. A long-time member of the Board of Trustees of Baruch College, he served as the President of the Baruch College Fund from 2015-2019 and now serves as its Chairman. In May 2006, he was presented with the Distinguished Alumnus Award for his contributions to Baruch College, and in 2019, was awarded an honorary Doctor of Laws degree at Baruch’s commencement, the highest honor Baruch College confers upon an individual for non-academic achievement. The award recognized his decades-long dedication to the mission and vision of the College, and in bestowing it, Baruch's President described Max as “[one of the most influential individuals in the history of Baruch College](#).” Max established the [Max Berger Pre-Law Program at Baruch College](#) in 2007.

A member of the Dean's Council to Columbia Law School as well as the Columbia Law School Public Interest/Public Service Council, Max has taught Profession of Law, an ethics course at Columbia Law School, and serves on the Advisory Board of Columbia Law School’s Center on Corporate Governance. In February 2011, Max received Columbia Law School's most prestigious and highest honor, “The Medal for Excellence.” This award is presented annually to Columbia Law School alumni who exemplify the qualities of character, intellect, and social and professional responsibility that the Law School seeks to instill in its students. As a recipient of this award, Max was [profiled](#) in the Fall 2011 issue of *Columbia Law School Magazine*. Max is a member of the American Law Institute and an Advisor to its Restatement Third: Economic Torts project. Max [recently endowed the Max Berger '71 Public Interest/Public Service Fellows Program at Columbia Law School](#). The program provides support for law students interested in pursuing careers in public service. Max and his wife, Dale, previously endowed the [Dale and Max Berger Public Interest Law Fellowship at Columbia Law School](#) and, under Max’s leadership, BLB&G also created the Bernstein Litowitz Berger & Grossmann Public Interest Law Fellowship at Columbia.

Among numerous charitable and volunteer works, Max is a significant and long-time contributor to Her Justice, a non-profit organization in New York City dedicated to providing *pro bono* legal representation to indigent women, principally survivors of intimate partner violence, in connection with the many legal problems they face. In recognition of their personal support of the organization, Max and his wife, Dale Berger, were awarded the “Above and Beyond Commitment to Justice Award” by Her Justice in 2021 for being steadfast advocates for women living in poverty in New York City. In addition to his personal support of Her Justice, Max has ensured BLB&G's long-time involvement with the organization. Max is also an active supporter of City Year New York, a division of AmeriCorps, dedicated to encouraging young people to devote time to public service. In July 2005, he was named City Year New York’s “Idealist of the Year,” for his commitment to, service for, and work in the community. A celebrated photographer, Max has held two successful photography shows that raised hundreds of thousands of dollars for City Year and Her Justice.

Education: Columbia Law School, 1971, J.D., Editor of the *Columbia Survey of Human Rights Law*; Baruch College-City University of New York, 1968, B.B.A., Accounting

Bar Admissions: New York; United States District Court for the Eastern District of New York; United States District Court for the Southern District of New York; United States Court of Appeals for the Second Circuit; United States

Court of Appeals for the Third Circuit; United States Court of Appeals for the Sixth Circuit; Supreme Court of the United States

Michael Blatchley's practice focuses on securities fraud litigation. He is currently a member of the firm's case development and client advisory group, in which he, along with a team of attorneys, financial analysts, forensic accountants, and investigators, counsels the firm's clients on their legal claims.

Michael has also served as a member of the litigation teams responsible for prosecuting a number of the firm's cases. For example, Michael was a key member of the team that recovered \$150 million for investors in *In re JPMorgan Chase & Co. Securities Litigation*, a securities fraud class action arising out of misrepresentations and omissions concerning JPMorgan's Chief Investment Office, the company's risk management systems, and the trading activities of the so-called "London Whale." He was also a member of the litigation team in *In re Medtronic, Inc. Securities Litigation*, an action arising out of allegations that Medtronic promoted the Infuse bone graft for dangerous "off-label" uses, which resulted in an \$85 million recovery for investors. In addition, Michael prosecuted a number of cases related to the financial crisis, including several actions arising out of wrongdoing related to the issuance of residential mortgage-backed securities and other complex financial products.

Michael was a member of the team that achieved a \$250 million recovery for investors in *In re Allergan, Inc. Proxy Violation Securities Litigation*, a precedent-setting case alleging unlawful insider trading by hedge fund billionaire Bill Ackman. Most recently, he played a key role on the BLB&G team that recovered nearly \$2 billion for 35 institutions that invested in the Allianz Structured Alpha Funds.

Among other accolades, Michael has been repeatedly named to *Benchmark Litigation's* "Under 40 Hot List," selected as a leading plaintiff financial lawyer by *Lawdragon*, and recognized as a "Super Lawyer" by Thomson Reuters. He frequently presents to public pension fund professionals and trustees concerning legal issues impacting their funds, has authored numerous articles addressing investor rights, including, for example, a chapter in the Practising Law Institute's *2017 Financial Services Mediation Answer Book*, and is a regular speaker at institutional investor conferences. While attending Brooklyn Law School, Michael held a judicial internship position for the Honorable David G. Trager, United States District Judge for the Eastern District of New York. In addition, he worked as an intern at The Legal Aid Society's Harlem Community Law Office, as well as at Brooklyn Law School's Second Look and Workers' Rights Clinics, and provided legal assistance to victims of Hurricane Katrina in New Orleans, Louisiana.

Education: Brooklyn Law School, J.D., *cum laude*, Edward V. Sparer Public Interest Law Fellowship; William Payson Richardson Memorial Prize; Richard Elliott Blyn Memorial Prize; Editor for the *Brooklyn Law Review*; Moot Court Honor Society; University of Wisconsin, B.A.

Bar Admissions: New York; New Jersey; United States District Court for the Southern District of New York; United States District Court for the District of New Jersey; United States District Court for the Western District of Wisconsin; United States Court of Appeals for the Ninth Circuit

Scott Foglietta prosecutes securities fraud, corporate governance, and shareholder rights litigation on behalf of the firm's institutional investor clients. As a member of the case development and client advisory group—the firm's case

development and client advisory group—Scott advises Taft-Hartley pension funds, public pension funds, and other institutional investors on potential legal claims.

Scott was an integral member of the team that advised the firm's clients in numerous matters including in securities class actions against Wells Fargo, which resulted in a \$480 million recovery; against Salix, which resulted in a \$210 million recovery; and against Equifax, which resulted in a \$149 million recovery. Scott was also key part of the teams that evaluated and developed novel case theories or claims in numerous cases, such as Willis Towers Watson, which arose from misrepresentations made in a proxy statement in connection with the merger between Willis Group and Towers Watson and was recently resolved for \$75 million (pending court approval), and the ongoing securities class action against Perrigo arising from misrepresentations made in connection with a tender offer for shares trading in both the United States and Israel. Scott was also a member of the team that secured our clients' appointments as lead plaintiffs in the ongoing securities class actions against Boeing, Kraft Heinz, and Luckin Coffee, among others.

Scott was a member of the litigation teams representing investors in securities class actions against FleetCor Technologies, which resulted in a \$50 million recovery, and Lumber Liquidators, which achieved a recovery of \$45 million. He is currently part of the team advising one of the firm's institutional investor clients in a shareholder derivative action against the board of directors of FirstEnergy Corp. arising from the company's role in an egregious public corruption scandal. For his accomplishments, Scott was recently named a 2022 "Rising Star" by *Law360*, has been regularly named a New York "Rising Star" in the area of securities litigation by Thomson Reuters *Super Lawyers* and in 2021 was chosen as a "Rising Star of the Plaintiffs Bar" by *The National Law Journal* and chosen by *Benchmark Litigation* for its "40 & Under Hot List."

Before joining the firm, Scott represented institutional and individual clients in a wide variety of complex litigation matters, including securities class actions, commercial litigation, and ERISA litigation. Prior to law school, Scott earned his M.B.A. in finance from Clark University and worked as a capital markets analyst for a boutique investment banking firm.

Education: Brooklyn Law School, 2010, J.D.; Clark University, Graduate School of Management, 2007, M.B.A., Finance; Clark University, 2006, B.A., *cum laude*, Management

Bar Admissions: New York; New Jersey; United States District Court for the Southern District of New York; United States District Court for the Eastern District of New York; United States District Court for the District of New Jersey

Sal Graziano is widely recognized as one of the top securities litigators in the country. He has served as lead trial counsel in a wide variety of major securities fraud class actions, recovering billions of dollars on behalf of institutional investors and hedge fund clients.

Over the course of his distinguished career, Sal has successfully litigated many high-profile cases, including: *Merck & Co., Inc. (Vioxx) Sec. Litig.* (D.N.J.); *In re Schering-Plough Corp./ENHANCE Sec. Litig.* (D.N.J.); *New York State Teachers' Retirement System v. General Motors Co.* (E.D. Mich.); *In re MF Global Holdings Limited Sec. Litig.* (S.D.N.Y.); *In re Raytheon Sec. Litig.* (D. Mass.); *In re Refco Sec. Litig.* (S.D.N.Y.); *In re MicroStrategy, Inc. Sec. Litig.* (E.D. Va.); *In re Bristol Myers Squibb Co. Sec. Litig.* (S.D.N.Y.); and *In re New Century Sec. Litig.* (C.D. Cal.).

Industry observers, peers and adversaries routinely honor Sal for his accomplishments. He is one of the "Top 100 Trial Lawyers" in the nation and a "Litigation Star" according to *Benchmark Litigation*, which credits him for

performing "top quality work." *Chambers USA* continuously ranks Sal as a top litigator, quoting market sources who describe him as "wonderfully talented...a smart, aggressive lawyer who works hard for his clients," and "the go-to for the biggest cases." Sal is also ranked as a top litigator by *Legal 500*, which quotes market sources who praise him as a "highly effective litigator." Heralded multiple times as one of a handful of Securities Litigation and Class Action "MVPs" in the nation by *Law360*, he has also been named a "Litigation Trailblazer" by *The National Law Journal*. Sal is also one of *Lawdragon's* "500 Leading Lawyers in America," named as a leading mass tort and plaintiff class action litigator by *Best Lawyers*[®], and is one of Thomson Reuters' *Super Lawyers*.

A highly esteemed voice on investor rights, regulatory and market issues, in 2008 he was called upon by the Securities and Exchange Commission's Advisory Committee on Improvements to Financial Reporting to give testimony as to the state of the industry and potential impacts of proposed regulatory changes being considered. He is the author and co-author of numerous articles on developments in the securities laws, and was chosen, along with several of his BLB&G partners, to author the first chapter - "Plaintiffs' Perspective" - of Lexis/Nexis's seminal industry guide *Litigating Securities Class Actions*.

A member of the firm's Executive Committee, Sal has previously served as the President of the National Association of Shareholder & Consumer Attorneys, and has served as a member of the Financial Reporting Committee and the Securities Regulation Committee of the Association of the Bar of the City of New York. He regularly speaks on securities fraud litigation and shareholder rights, and has guest lectured at Columbia Law School on the topic.

Prior to entering private practice, Sal served as an Assistant District Attorney in the Manhattan District Attorney's Office.

Education: New York University School of Law, 1991, J.D., *cum laude*; New York University - The College of Arts and Science, 1988, B.A., *cum laude*, Psychology

Bar Admissions: New York; United States District Court for the Southern District of New York; United States District Court for the Eastern District of New York; United States District Court for the Eastern District of Michigan; United States Court of Appeals for the First Circuit; United States Court of Appeals for the Second Circuit; United States Court of Appeals for the Third Circuit; United States Court of Appeals for the Fourth Circuit; United States Court of Appeals for the Sixth Circuit; United States Court of Appeals for the Ninth Circuit; United States Court of Appeals for the Eleventh Circuit

Avi Josefson is one of the senior partners managing the firm's case development and client advisory group, and leads a team of attorneys, financial analysts and investigators that analyze potential securities claims. Avi counsels institutional clients in the U.S., Europe, and Israel.

With more than 20 years of experience in securities litigation, Avi participated in many of the firm's significant representations. Avi led the BLB&G team that recovered nearly \$2 billion for 35 institutions that invested in the Allianz Structured Alpha Funds. He previously prosecuted *In re SCOR Holding (Switzerland) AG Securities Litigation*, which recovered more than \$143 million for investors and utilized a novel settlement process in both New York and Amsterdam. He was also a member of the team that litigated the *In re OM Group, Inc. Securities Litigation*, which resulted in a settlement of \$92.4 million. Avi has presented argument in several federal and state courts, including the Delaware Supreme Court.

Recognized as both a "Leading Plaintiff Financial Lawyer" and as one of "500 Leading Lawyers in America" by *Lawdragon* and by *The National Law Journal* as a "Plaintiffs' Lawyers Trailblazer," Avi is experienced in all aspects of the firm's representation of institutional investors. He represented shareholders in the litigation arising from the proposed acquisitions of Ceridian Corporation and Anheuser-Busch and, as leader of the firm's subprime litigation team, he prosecuted securities fraud actions arising from the collapse of subprime mortgage lender American Home Mortgage and the actions against Lehman Brothers, Citigroup and Merrill Lynch, arising from those banks' multi-billion dollar loss from mortgage-backed investments. Avi has also represented U.S. and European institutions in actions against Deutsche Bank and Morgan Stanley arising from their sale of mortgage-backed securities.

Avi practices in the firm's Chicago and New York offices.

Education: Northwestern University School of Law, 2000, J.D., Dean's List, Awarded the Justice Stevens Public Interest Fellowship (1999); Public Interest Law Initiative Fellowship (2000); Brandeis University, 1997, B.A., *cum laude*

Bar Admissions: Illinois; New York; United States District Court for the Southern District of New York; United States District Court for the Northern District of Illinois

Mark Lebovitch [Former Partner] co-led the firm's corporate governance litigation practice, focusing on the startup and conclusion stages of the practice's derivative suits and transactional litigation. Working with his institutional investor clients, he fought to hold management accountable, pursuing meaningful and novel challenges to alleged corporate governance-related misconduct and anti-shareholder practices. A seasoned litigator, Mark also prosecuted securities fraud class actions and was a senior or lead member of the trial teams on some of the most high-profile securities fraud class actions and corporate governance litigations in history. His cases regularly resulted in key legal precedents while helping recoup billions of dollars for investors and improving corporate governance practices.

Mark led numerous of the firm's cases involving special purpose acquisition companies ("SPACs"), including claims in Delaware's Court of Chancery, such as *In re MultiPlan Stockholders' Litigation*, as well as a series of novel federal actions involving alleged violations of the Investment Company Act by a number of SPACs.

Mark was part of the trial team that successfully invalidated a novel "anti-activism" poison pill in *In re The Williams Companies Stockholder Litigation*, and recovered \$110 million for investors while eliminating side benefits in connection with the prosecution and settlement of Delaware litigation arising from the merger of GCI Liberty, Inc. Mark argued numerous cases to the Delaware Supreme Court, most recently in fending off an interlocutory appeal intended to derail investor claims in *In re Straight Path Stockholders Litigation*.

Previously, Mark led the *Allergan Proxy Violation Litigation*, alleging an unprecedented insider trading scheme. After a ferocious three-year legal battle over an alleged attempt to circumvent the spirit of the U.S. securities laws, defendants accepted a \$250 million settlement for Allergan investors. In 2017, before the birth of the #metoo movement, he led the prosecution of a novel and socially-important shareholder derivative litigation against Fox News parent 21st Century Fox, Inc. arising from the systemic sexual and workplace harassment at the embattled network. The case resulted in one of the largest financial recoveries—\$90 million—ever obtained in a pure corporate board oversight dispute; and the creation of an independent council of experts—named the "Fox News Workplace Professionalism and Inclusion Council"—which has served as a model for public companies in all industries.

Mark prosecuted *In re Freeport-McMoRan Derivative Litigation*, which resulted in a \$154 million recovery structured as a special dividend that would be distributed to shareholders—a first-of-its-kind result—to rectify the Freeport-McMoRan Board’s decision to significantly overpay for a firm controlled by the company’s CEO. He also served as lead counsel in the derivative case against News Corp. concerning its high-profile hacking scandal, which resulted in a \$139 million recovery and corporate governance reforms that strengthened the company’s compliance structure, the independence of its board, and the company’s pay practices.

For these and other several other recent prosecutions, the *New York Law Journal* bestowed Mark with its most prestigious honor, naming him the 2019 “Attorney of the Year” at the New York Legal Awards. Among other industry leading recognitions, he has been named a “Leading Lawyer” by *Lawdragon* and a “Litigation Star” by *Benchmark Litigation*. He is also recognized as a top litigator by *Chambers USA* for what quoted sources describe as his “very smart” approach, along with his “particular strength in corporate governance litigation, focusing on shareholder derivative suits” and for being “absolutely fearless” and providing “great advocacy for his clients.” Mark has been named a Fellow at the American College of Governance Counsel, an invite-only membership that is extended to lawyers who have practiced law for a minimum of 15 years, while devoting at least 10 of those practice years focused on the field of governance.

* Not admitted to practice in Delaware.

Education: Binghamton University – State University of New York, 1996, B.A., *cum laude*; New York University School of Law, 1999, J.D., *cum laude*.

Bar Admissions: New York; United States District Court for the Southern and Eastern Districts of New York; United States District Court for the District of Colorado; United States Court of Appeals for the Second Circuit; United States Court of Appeals for the Ninth Circuit.

Lauren Ormsbee practices out of BLB&G's New York office, focusing on complex commercial and securities litigation. Representing institutional and private investors in a variety of class and direct actions involving securities fraud and other fiduciary violations, she has successfully prosecuted multiple major litigations obtaining hundreds of millions of dollars in recoveries on behalf of the firm’s clients. Recognized as one of “The Top 50 Attorneys of New York” by Attorney Intel and as a “500 Leading Plaintiff Financial Lawyer” by *Lawdragon*, Lauren has been an integral part of trial teams in numerous major actions, including: *In re HealthSouth Bondholder Litigation*, which obtained \$230 million for the HealthSouth bondholder Class; *In re Wilmington Trust Securities Litigation*, in which a \$210 million recovery was obtained for Wilmington Trust investors; *In re SCANA Corporation Securities Litigation*, which resulted in a recover of \$192.5 million for investors in a case arising from allegations of false and misleading statements regarding the construction of two nuclear reactors in South Carolina; *In re Allergan Generic Drug Pricing Securities Litigation*, in which \$130 million was recovered for investors based on allegations the company colluded with competitors to dramatically increase the prices of at least six generic drugs; *In re New Century Securities Litigation*, which resulted in \$125 million for its investors after the mortgage originator became one of the first casualties of the subprime crisis; *In re State Street Corporation Securities Litigation*, which obtained \$60 million in the wake of a series of alleged misrepresentations about the company’s own internal portfolio; *Levy v. GT Advanced Technologies Inc.*, which resulted in a \$36.7 million recovery for GTAT investors; *In re Ambac Financial Group Securities Litigation*, which obtained \$33 million from the now-bankrupt insurer; *In re Altisource Portfolio Solutions, S.A. Securities Litigation*,

which obtained \$32 million from the mortgage loan servicer; In re Goldman Sachs Mortgage Pass-Through Litigation, which obtained \$26.6 million for the benefit of the class of RMBS purchasers; and Barron v. Union Bancaire Privée, which recovered \$8.9 million on behalf of the class of investors harmed by investments with Bernard Madoff, among others. A graduate of the University of Pennsylvania Law School, where she was an editor of the Law Review, following law school Lauren served as a law clerk for the Honorable Colleen McMahon of the Southern District of New York. Prior to joining the firm in 2007, she was a litigation associate at Paul, Weiss, Rifkind, Wharton & Garrison LLP, where she had extensive experience in securities litigation and complex commercial litigation.

Education: University of Pennsylvania Law School, 2000, J.D., cum laude, Research Editor, University of Pennsylvania Law Review; Duke University, 1996, B.A., History

Bar Admissions: New York; United States District Court for the Southern District of New York; United States District Court for the Eastern District of New York; United States Court of Appeals for the Second Circuit; United States Court of Appeals for the Third Circuit

Jerry Silk's practice focuses on representing institutional investors on matters involving federal and state securities laws, accountants' liability, and the fiduciary duties of corporate officials, as well as general commercial and corporate litigation. He also advises creditors on their rights with respect to pursuing affirmative claims against officers and directors, as well as professionals both inside and outside the bankruptcy context.

Jerry is a member of the firm's Executive Committee. He also oversees the firm's case development and client advisory group, in which he, along with a group of attorneys, financial analysts and investigators, counsels institutional clients on potential legal claims. In December 2014, Jerry was recognized by *The National Law Journal* in its inaugural list of "Litigation Trailblazers & Pioneers" — one of several lawyers in the country who have changed the practice of litigation through the use of innovative legal strategies — in no small part for the critical role he has played in helping the firm's investor clients recover billions of dollars in litigation arising from the financial crisis, among other matters.

In addition, *Lawdragon* magazine, which has named Jerry one of the "100 Securities Litigators You Need to Know," one of the "500 Leading Lawyers in America," and one of America's top 500 "Rising Stars" in the legal profession, also profiled him as part of its "Lawyer Limelight" special series, discussing subprime litigation, his passion for plaintiffs' work and the trends he expects to see in the market. Recognized as one of an elite group of notable practitioners, *Chambers USA* continuously ranks Jerry nationally "for his expertise in a range of cases on the plaintiff side." He is also named as a "Litigation Star" by *Benchmark*, is recommended by the *Legal 500 USA* guide in the field of plaintiffs' securities litigation, and has been selected by Thomson Reuters as a *Super Lawyer* every year since 2006.

In the wake of the financial crisis, he advised the firm's institutional investor clients on their rights with respect to claims involving transactions in residential mortgage-backed securities (RMBS) and collateralized debt obligations (CDOs). His work representing Cambridge Place Investment Management Inc. on claims under Massachusetts state law against numerous investment banks arising from the purchase of billions of dollars of RMBS was featured in a 2010 *New York Times* article by Gretchen Morgenson titled, "[Mortgage Investors Turn to State Courts for Relief.](#)"

Jerry also represented the New York State Teachers' Retirement System in a securities litigation against the General Motors Company arising from a series of misrepresentations concerning the quality, safety, and reliability of the Company's cars, which resulted in a \$300 million settlement. He was also a member of the litigation team responsible

for the successful prosecution of *In re Cendant Corporation Securities Litigation* in the District of New Jersey, which was resolved for \$3.2 billion. In addition, he is actively involved in the firm's prosecution of highly successful M&A litigation, representing shareholders in widely publicized lawsuits, including the litigation arising from the proposed acquisition of Caremark Rx, Inc. by CVS Corporation — which led to an increase of approximately \$3.5 billion in the consideration offered to shareholders.

A graduate of the Wharton School of Business, University of Pennsylvania and Brooklyn Law School, in 1995-96, Jerry served as a law clerk to the Hon. Steven M. Gold, U.S.M.J., in the United States District Court for the Eastern District of New York.

Jerry lectures to institutional investors at conferences throughout the country, and has written or substantially contributed to several articles on developments in securities and corporate law, including his most recent article, "[SEC Statement On Emerging Markets Is A Stunning Failure](#)," which was published by *Law360* on April 27, 2020. He has authored numerous additional articles, including: "Improving Multi-Jurisdictional, Merger-Related Litigation," American Bar Association (February 2011); "The Compensation Game," *Lawdragon*, (Fall 2006); "Institutional Investors as Lead Plaintiffs: Is There A New And Changing Landscape?," *75 St. John's Law Review* 31 (Winter 2001); "The Duty To Supervise, Poser, Broker-Dealer Law and Regulation," 3rd Ed. 2000, Chapter 15; "Derivative Litigation In New York after *Marx v. Akers*," *New York Business Law Journal*, Vol. 1, No. 1 (Fall 1997).

He has also been a commentator for the business media on television and in print. Among other outlets, he has appeared on NBC's *Today*, and CNBC's *Power Lunch*, *Morning Call*, and *Squawkbox* programs, as well as being featured in *The New York Times*, *Financial Times*, *Bloomberg*, *The National Law Journal*, and the *New York Law Journal*.

Education: Brooklyn Law School, 1995, J.D., *cum laude*; Wharton School of the University of Pennsylvania, 1991, B.S., Economics

Bar Admissions: New York; United States District Court for the Southern District of New York; United States District Court for the Eastern District of New York; United States Court of Appeals for the Second Circuit

Senior Counsel

David Duncan's practice concentrates on the settlement of class actions and other complex litigation and the administration of class action settlements.

Prior to joining BLB&G, David worked as a litigation associate at Debevoise & Plimpton, where he represented clients in a wide variety of commercial litigation, including contract disputes, antitrust and products liability litigation, and in international arbitration. In addition, he has represented criminal defendants on appeal in New York State courts and has successfully litigated on behalf of victims of torture and political persecution from Sudan, Côte d'Ivoire and Serbia in seeking asylum in the United States.

While in law school, David served as an editor of the *Harvard Law Review*. After law school, he clerked for Judge Amalya L. Kearse of the U.S. Court of Appeals for the Second Circuit.

Education: Harvard Law School, 1997, J.D., *magna cum laude*; Harvard College, 1993, A.B., *magna cum laude*, Social Studies

Bar Admissions: New York; Connecticut; United States District Court for the Southern District of New York

Catherine Van Kampen's law practice concentrates on class action settlement administration. She manages the firm's qualified settlement funds and claims administration for settlements achieved by the firm. Catherine is responsible for initiating and managing the claims administration process and working with the Court-appointed claims administrators and investment banks for the benefit of the Classes represented by the firm. Catherine works closely with the firm's partners to apply for Court approval in various jurisdictions throughout the United States for the disbursement of settlement funds. She regularly interfaces with institutional and retail investors to explain the claims administration process and to assist them with filing their claims.

Catherine also has extensive experience in complex litigation and litigation management, having served as a team leader and overseen attorney teams in many of the firm's most high-profile cases during the 2008 Financial Crisis. Catherine has worked on more than two dozen high-value cases. Fluent in Dutch, she has served as the lead investigator and led discovery efforts in actions involving international corporations and financial institutions headquartered in Belgium and the Netherlands. She is certified in E-Discovery and Healthcare Compliance.

Prior to joining BLB&G, Catherine focused on complex litigation initiated by institutional investors and the Federal Government. She has worked on litigation and investigations related to regulatory enforcement actions, corporate governance, and compliance matters as well as conducted extensive discovery in English and Dutch in cross-border litigation.

Since attending law school, Catherine has been deeply committed to public and pro bono service to underserved communities. Through her volunteer work, Catherine has been a champion of social change and justice, particularly for immigrant and refugee women and children. As a member of the New York City Bar Association's United Nations Committee and African Affairs Committee, she spearheaded organizing the highly successful and widely-praised International Law Conference on the Status of Women, Pro Bono Engagement Fair, EPIQ Women Awards and Huntington Her Hero Awards, featuring the Under Secretary and Special Representative to the Secretary General of the United Nations for the Prevention of Violence Against Women, and other prominent, progressive women's advocates from the New York Legal Community. In recognition of her work, Catherine was appointed Co-Chair of the United Nations Committee and a Member of the Council for International Affairs in September of 2021.

A committed humanitarian, Catherine was honored as the 2018 Ambassador Medalist at the New Jersey Governor's Jefferson Awards for Outstanding Public Service for her international humanitarian and pro bono work with refugees. The Jefferson Awards, issued by the Jefferson Awards Foundation that was founded by Jacqueline Kennedy Onassis, are awarded by state governors and are considered America's highest honor for public service bestowed by the United States Senate. Catherine was also honored in Princeton, New Jersey, by her high school alma mater, Stuart Country Day School, in its 2018 Distinguished Alumnae Gallery for her humanitarian and pro bono efforts on behalf of Yezidi and Christian women and children afflicted by war in Iraq and Syria. In 2020, Catherine was accepted as a *SHESOURCE* legal expert advocating for the needs of immigrant and refugee women by the Women's Media Center, founded by Gloria Steinem, Jane Fonda, and Robin Morgan. In 2021, Catherine was appointed a Global Goals Ambassador for Clean Water and Sanitation by the United Nations Association of the USA, the sister organization of the United Nations Foundation USA founded by Eleanor Roosevelt. She is a recipient of several honors recognizing her pro bono work and commitment to social issues, including an invitation to attend the 2020 Tory Burch Foundation

Embrace Ambition Summit and an appointment to the Advisory Board of the National Center for Girls' Leadership in Princeton, New Jersey, in 2021.

Catherine is an active member of the American Bar Association, New York Bar Association, New York City Bar Association, New Jersey Bar Association, and the National Association of Women Lawyers. In 2020, Catherine was appointed to the New York State Bar Association's President's Leadership Development Committee. In 2021, Catherine was appointed to the New Jersey State Bar Association's Class Actions, International Law and Organizations, and Special Civil Part Committees. In 2022, Catherine was appointed as Co-chair of the American Bar Association's International Law Section — Women's Interest Network. As part of her pro bono legal work, she serves on two Boards of international NGOs serving refugees and internally displaced persons in the Middle East and Africa and rescuing exploited and trafficked women and girls. Closer to home, Catherine serves as an advisor to minority business owners in the New York City area on legal issues impacting their businesses.

Catherine clerked for the Honorable Mary M. McVeigh in the Superior Court of New Jersey where she was trained as a court-certified mediator. While in law school she interned at the Center for Social Justice's Immigration Law Clinic at Seton Hall University School of Law. Catherine is a Graduate of the American Inns of Court.

Education: Seton Hall University School of Law, 1998, J.D., Indiana University, 1988, B.A., Political Science

Bar Admissions: New York; New Jersey

John Mills' practice focuses on negotiating, documenting, and obtaining court approval of the firm's securities, merger, and derivative settlements.

Over the past decade, John was actively involved in finalizing the following settlements, among others: *In re Wachovia Preferred Sec. and Bond/Notes Litig.* (S.D.N.Y.) (\$627 million settlement); *In re Wilmington Trust Sec. Litig.* (D. Del.) (\$210 million settlement); *In re Freeport-McMoRan Copper & Gold Inc. Derivative Litig.* (Del. Ch.) (\$153.75 million settlement); *Medina, et al. v. Clovis Oncology, Inc., et al.* (D. Colo.) (\$142 million settlement); *In re News Corp. S'holder Litig.* (Del. Ch.) (\$139 million recovery and corporate governance enhancements); *In re Mut. Funds Invest. Litig. (MFS, Invesco, and Pilgrim Baxter Sub-Tracks)* (D. Md.) (\$127.036 million total recovery); *Fresno County Employees' Ret. Ass'n, et al. v. comScore, Inc., et al.* (S.D.N.Y.) (\$110 million settlement); *In re El Paso Corp. S'holder Litig.* (Del. Ch.) (\$110 million settlement); *In re Starz Stockholder Litig.* (Del. Ch.) (\$92.5 million settlement); *The Dep't of the Treasury of the State of New Jersey and its Div. of Invest. v. Cliffs Natural Res. Inc., et al.* (N.D. Ohio) (\$85 million settlement).

Associates

Jimmy Brunetto practices out of the firm's New York office, prosecuting securities fraud, corporate governance, and shareholder rights litigation on behalf of the firm's institutional investor clients. He is a member of the firm's case development and client advisory group, in which he, as part of a team of attorneys, financial analysts, and investigators, counsels public pension funds and other institutional investors on potential legal claims.

Prior to joining the firm, Jimmy investigated and prosecuted securities fraud with the New York State Office of the Attorney General's Investor Protection Bureau, where he worked on a number of high-profile matters. While in law

school, Jimmy was honored as a John Marshall Harlan Scholar and served as a Staff Editor for the *New York Law School Law Review*.

Education: New York Law School, 2011, J.D., cum laude, John Marshall Harlan Scholar; Staff Editor, New York Law School Law Review; University of Florida, 2007, B.A., cum laude, Political Science; University of Florida, 2007, B.S.B.A., Finance

Bar Admissions: New York

James M. Fee [Former Associate] practiced out of the New York office where he worked on complex commercial and securities litigation matters on behalf of the firm's institutional investor clients.

Before joining the firm, James served as an associate at Cadwalader, Wickersham & Taft, where he represented clients in securities class actions, business disputes, bankruptcy matters, and corporate governance litigation.

While attending Boston College Law School, James served as the Executive Articles Editor for the *Boston College International & Comparative Law Review*. Prior to law school, James served as a financial services legislative aide in the United States Senate.

Education: Boston College Law School, J.D., 2015, Executive Articles Editor, *Boston College International & Comparative Law Review*. University of Pennsylvania, B.A., 2010.

Bar Admissions: New York, Massachusetts, US District Court for the Southern District of New York; US District Court for the District of Massachusetts, US Court of Appeals for the Second Circuit

Aasiya Glover practices out of the firm's New York office and prosecutes securities fraud, corporate governance, and shareholder rights litigation on behalf of the firm's institutional investor clients. Prior to joining BLB&G, Aasiya worked as a litigation associate at one of the nation's premier law firms, concentrating on complex civil litigation and international arbitration with a specific focus on securities litigation, consumer class actions, investor-state disputes, and contract disputes. While there, Aasiya served as a Rapporteur for the ICCA-ASIL Task Force on Damages, which created the first and only publicly available web app on damages in international arbitration (DIA). Aasiya also had an active pro bono practice, representing clients in capital, immigration, asylum, transgender rights, and civil rights cases. Aasiya received her J.D. from the University of Chicago, during which time she also interned for the Council on American-Islamic Relations. She has also earned an MPhil in English: Criticism and Culture from the University of Cambridge, and a B.A. with Highest Distinction from Indiana University, where she double-majored in English and Speechwriting. Prior to law school, Aasiya served as a Corps Member in City Year Chicago.

Education: University of Chicago Law School, 2015, J.D. University of Cambridge, 2011, MPhil, English: Criticism and Culture; Indiana University, 2010, B.A., Highest Distinction, English, Speechwriting

Bar Admissions: New York; United States District Court for the Southern District of New York; United States District Court for the Eastern District of New York; United States Court of Appeals for the Second Circuit; United States Court of Appeals for the Third Circuit

Alex Payne [Former Associate] practiced out of the firm's New York Office in the securities litigation group.

Previously, he was a Litigation & Dispute Resolution associate at Mayer Brown's New York office where he represented financial institutions and corporations in complex commercial and securities litigations, shareholder derivative and fiduciary duty litigations, and governmental investigations.

Alex graduated from the Fordham University School of Law in 2015. While in law school, Alex was a member of the *Fordham Law Review* and served as a Judicial Intern for the Honorable Loretta A. Preska, while she was Chief Judge of the United States District Court for the Southern District of New York (S.D.N.Y.). He also interned for the Investor Protection Bureau of the New York State Office of the Attorney General where he gained experience investigating and prosecuting securities fraud.

In recognition of his academic excellence, he was a recipient of the Henrietta Metcalf Contract Prize for excellence in the study of Contracts and the Fordham University School of Law Legal Writing Award.

Prior to entering the legal profession, Alex worked in the field of education policy analysis for the Graduate School of Education and Human Development at The George Washington University in Washington, D.C.

Education: The George Washington University, B.A., 2006, *magna cum laude*; Fordham University School of Law, 2015, J.D., *cum laude*, *Fordham Law Review*; Henrietta Metcalf Contract Prize for Excellence in the Study of Contracts; Fordham University School of Law Legal Writing Award

Bar Admissions: New York; United States District Court for the Southern District of New York; United States District Court for the Eastern District of New York; United States Court of Appeals for the Ninth Circuit.

Emily Tu practices out of the firm's New York office and prosecutes securities fraud, corporate governance, and shareholder rights litigation on behalf of the firm's institutional investor clients. Prior to her role at BLB&G, Emily worked as a Litigation Associate at Cahill Gordon & Reindel LLP, where she focused on securities, antitrust, and commercial litigation. She also maintained an active pro bono practice, including representation of indigent clients in domestic violence and federal criminal prosecution cases. Emily received her J.D. from Columbia Law School, where she served as Senior Editor of the *Columbia Law Review* and led the U-Visa Project. During this time, she also interned for various public interest and public service organizations, including the New Jersey Institute for Social Justice, the Legal Aid Society's Special Litigation & Law Reform Unit, and the New York City Law Department's Affirmative Litigation Division. Emily graduated summa cum laude from Princeton University with a B.A. in Comparative Literature.

Education: Columbia Law School, 2019, J.D. Princeton University, 2016, B.A., summa cum laude, Comparative Literature

Bar Admissions: New York; United States District Court for the Southern District of New York

Senior Staff Attorneys

Ryan McCurdy is a senior staff attorney in the Los Angeles office, where he assists with securities fraud class actions. Since joining the firm, Ryan has worked on several matters, including Impinj, Merit Medical Systems, Allianz, Symantec, Valeant Pharmaceuticals, and EQT. Prior to joining the firm, Ryan worked with a small aircraft products liability boutique, a large firm in mortgagebacked securities, and with a major eDiscovery vendor. Ryan received his J.D. from UCLA, School of Law and he received his B.A. in political science from Emory University.

Education: University of California, Los Angeles, 2003, J.D. Emory University, 1999, B.A., Political Science

Bar Admissions: California

Staff Attorneys

Christopher Clarkin has worked on numerous matters at BLB&G, including *In re Signet Jewelers Limited Securities Litigation*; *In re SunEdison, Inc. Securities Litigation*; *Hefler et al. v. Wells Fargo & Company et al.*; *Fresno County Employees' Retirement Association v. comScore, Inc.*; *In re Wilmington Trust Securities Litigation*; *In re Salix Pharmaceuticals, Ltd. Securities Litigation*; *West Palm Beach Police Pension Fund v. DFC Global Corp.*; *In re NII Holdings, Inc. Securities Litigation*; *In re Facebook, Inc. IPO Securities and Derivative Litigation*; *In re Bank of New York Mellon Corp. Forex Transactions Litigation*; *SMART Technologies, Inc. Shareholder Litigation*; *In re Citigroup Inc. Bond Litigation*; and *In re Pfizer Inc. Shareholder Derivative Litigation*.

Prior to joining the firm in 2010, Chris worked as a contract attorney on several large-scale litigations.

Education: Trinity College, B.A., 2000. New York Law School, J.D., 2006.

Bar Admissions: New York; Connecticut.

Jonathan Cohen joined the BLB&G Staff Attorney team in August 2022 and worked on *In re EQT Corporation Securities Litigation*.

Prior to joining the firm, Jonathan worked as an e-discovery contract attorney for several law firms. Previously, Jonathan was in private practice focused on civil litigation.

Education: Long Island University, B.A., 1987; University of Washington Law School, J.D., 1991.

Bar Admissions: New York.

George Doumas has worked on numerous matters at BLB&G, including *City of Sunrise General Employees' Retirement Plan v. FleetCor Technologies, Inc., et al.*; *In re SCANA Corporation Securities Litigation*; *St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc.*; *Hefler et al. v. Wells Fargo & Company et al.*; *In re NII Holdings, Inc. Securities Litigation*; *General Motors Securities Litigation*; *In re Bank of New York Mellon Corp. Forex Transactions*

Litigation; JPMorgan Mortgage Pass-Through Litigation; In re Citigroup Inc. Bond Litigation; In re Huron Consulting Group, Inc. Securities Litigation; and In re Bristol-Myers Squibb Co. Securities Litigation.

Prior to joining the firm in 2008, George was a contract attorney for several law firms, where he worked on investigations relating to subprime mortgages and collateralized debt obligations, and other complex litigation. George began his career representing clients in civil and bankruptcy matters.

Education: St. John's University, B.S., Accounting, 1994. Southern New England School of Law, J.D., 1997.

Bar Admissions: Maryland; Massachusetts.

Sascha Goergen joined the BLB&G German review team in Nov 2021.

Prior to joining the firm, Sascha worked as a contract attorney in various industries including shareholder litigations and securities fraud class action suits. Previously, Sascha was an Associate Attorney with Heimeshoff Riese Linnkamp in Germany.

Education: Ruhr-University of Bochum School of Law, Bochum, Germany, (J.D. equivalent), 1998; Fordham University School of Law, LL.M 2008

Bar Admissions: New York.

Steffanie Keim [Former Staff Attorney] worked on numerous matters at BLB&G, including *In re McKesson Corporation Derivative Litigation; In re SunEdison, Inc. Securities Litigation; Hefler et al. v. Wells Fargo & Company et al.; In re Volkswagen AG Securities Litigation; 3-Sigma Value Financial Opportunities LP et al. v. Jones et al. ("CertusHoldings, Inc."); In re Allergan, Inc. Proxy Violation Securities Litigation; and In re Altisource Portfolio Solutions, S.A. Securities Litigation.*

Prior to joining the firm in 2016, Steffanie was a senior associate at Ernst & Linder LLC and corporate associate at Dewey & LeBoeuf LLP.

Education: Ruprecht-Karls-University of Heidelberg Law School, First Juristic Examination, Germany, (J.D. equivalent), 1999. Fordham University School of Law, LL.M., *cum laude*, 2007.

Bar Admissions: New York; Germany.

Yeruchem Neiman joined the BLB&G Staff Attorney team in April 2022.

Prior to joining the firm, Yeruchem ("Jerry") was a staff attorney with various law firms working on financial class actions, oil and gas, pharmaceutical and biotech litigations including foreign language reviews in German, Dutch and the Nordic languages. Previously, Jerry was a financial analyst with B&W Equities and UBS Paine Webber.

Education: Brooklyn College of CUNY, NY, B.A. (Pre-Med & Economics), 2000. Fordham University School of Law, J.D., 2009.

Bar Admissions: New York, New Jersey.

Kirstin Peterson has worked on numerous matters at BLB&G, including *Cambridge Retirement System v. Amneal Pharmaceuticals Inc.*; *Lehigh County Employees' Retirement System v. Novo Nordisk A/S et al.*; *In re Equifax Inc. Securities Litigation*; and *In re Merck & Co., Inc. Securities Litigation (VIOXX-related)*.

Prior to joining the firm in 2011, Kirstin was an associate at Davis Polk & Wardell, Richards & O'Neil, LLP and Wollmuth Maher & Deutsch, LLP.

Education: Northwestern University, B.A., 1985; Phi Beta Kappa. Yale University, M.A., 1989. Northwestern University Medical School, M.D., 1990. Harvard Law School, J.D., *cum laude*, 1993.

Bar Admissions: New York.

Palwasha Raqib joined the BLB&G Staff Attorney team in May 2022.

Prior to joining the firm, Palwasha was a Staff Attorney at Milbank, Tweed, Hadley & McCoy and Quinn Emanuel Urquhart & Sullivan working on commercial litigation matters. Previously, Palwasha was an e-discovery attorney with Sullivan and Cromwell working on intellectual property matters.

Education: Wheaton College, B.A., 2000. Seton Hall University School of Law, J.D., 2006.

Bar Admissions: New York.

Latysha M. Saunders has worked on several matters at BLB&G, including *In re Allianz Global Investors U.S. LLC Alpha Series Litigation*.

Prior to joining the firm, Latysha worked as an E-discovery contract attorney with several law firms including Epstein Becker & Green and Sullivan & Cromwell. Previously, Latysha was an Assistant District Attorney with the Gwinnett County District Attorney's Office involved in felony prosecutions.

Education: Rider University, B.A., 2001; Rutgers University School of Law-Newark, J.D., 2004.

Bar Admissions: Georgia.

Exhibit 5B

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

In re BOSTON SCIENTIFIC
CORPORATION SECURITIES
LITIGATION

Master File No. 1:20-cv-12225-ADB

**DECLARATION OF T. CHRISTOPHER DONNELLY ON BEHALF OF
DONNELLY, CONROY & GELHAAR, LLP IN SUPPORT OF LEAD COUNSEL'S
MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES**

I, T. Christopher Donnelly, hereby declare under penalty of perjury as follows:

1. I am a partner in the law firm of Donnelly, Conroy & Gelhaar, LLP (“DCG”). I submit this declaration in support of Lead Counsel’s motion for an award of attorneys’ fees in connection with services rendered by Plaintiffs’ Counsel in the above-captioned securities class action (“Action”), as well as for payment of Litigation Expenses incurred by my firm in connection with the Action.¹ Unless otherwise stated, I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

2. DCG acted as Liaison Counsel for Lead Plaintiff and the Settlement Class in this Action. In that capacity, we worked with Lead Counsel on all aspects of the litigation, including preparing for and participating in court conferences, reviewing pleadings, briefs, and communications with the Court, advising Lead Counsel on local practice, procedures, and requirements, and serving as the principal contact between Lead Plaintiff and the Court.

3. Attached as Exhibit 1 is a detailed summary showing the amount of time spent by each attorney at DCG who devoted ten (10) or more hours to the Action from its inception through and including December 14, 2023, and the lodestar calculation for those individuals based on their hourly rates in 2023. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by DCG. All time expended in preparing this application for fees and expenses has been excluded.

4. The number of hours expended by DCG in the Action, from inception through December 14, 2023, as reflected in Exhibit 1, is 119.1. The lodestar for DCG, as reflected in Exhibit 1, is \$99,235.00.

¹ All capitalized terms that are not otherwise defined herein shall have the meanings set forth in the Stipulation and Agreement of Settlement dated December 14, 2023 (ECF No. 152-1).

5. I believe that the number of hours expended and the services performed by the attorneys at DCG were reasonable and necessary for the effective and efficient prosecution and resolution of the Action.

6. The hourly rates for the personnel list in Exhibit 1 are rates charged in 2023 for the services of these professionals in complex, high-stakes cases similar to this Action. DCG's hourly rates are based on a combination of the particular attorney's years of experience and title and the nature and complexity of the matter, as well as market rates for practitioners in the field. The rates on Exhibit 1 are, in my experience, reasonable for this type of work in Boston, Massachusetts.

7. As shown in Exhibit 2 to this Declaration, DCG seeks payment for \$552.00 in expenses incurred related to prosecuting and resolving the Action. Expense items are reported separately and are not duplicated in DCG's hourly rates. There are no administrative charges included in these figures.

8. The expenses incurred by DCG in the Action are reflected in expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred. I believe these expenses were reasonable and necessary and expended for the benefit of the Settlement Class in the Action.

9. With respect to the standing of DCG, attached as Exhibit 3 is a firm résumé (available at www.dcglaw.com), which includes information about DCG and the firm's attorneys who worked on this matter.

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

Executed on March 15, 2024.

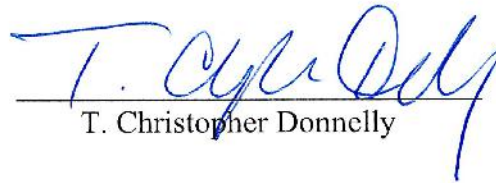

T. Christopher Donnelly

EXHIBIT 1

In re Boston Scientific Corp. Securities Litigation
Master File No. 1:20-cv-12225-ADB (D. Mass.)

DONNELLY, CONROY & GELHAAR, LLP

TIME REPORT

From Inception Through December 14, 2023

NAME	HOURS	HOURLY RATE	LODESTAR
Partners			
T. Christopher Donnelly	44.4	\$850	\$37,740
Peter E. Gelhaar	54.7	\$850	\$46,495
Peter K. Levitt	20.0	\$750	\$15,000
TOTALS:	119.1		\$99,235

EXHIBIT 2

In re Boston Scientific Corp. Securities Litigation
Master File No. 1:20-cv-12225-ADB (D. Mass.)

DONNELLY, CONROY & GELHAAR, LLP

EXPENSE REPORT

CATEGORY	AMOUNT
Court Fees (pro hac vice admission fee)	\$400.00
Postage & Express Mail	\$42.83
Local Transportation (taxis)	\$109.17
TOTAL EXPENSES:	\$552.00

EXHIBIT 3

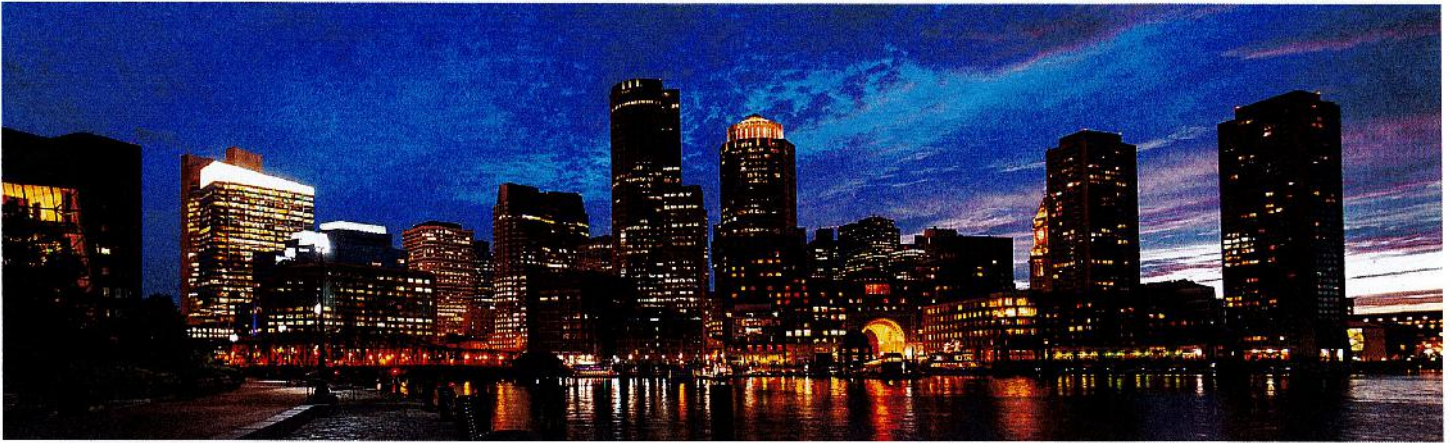
In re Boston Scientific Corp. Securities Litigation
Master File No. 1:20-cv-12225-ADB (D. Mass.)

DONNELLY, CONROY & GELHAAR, LLP

FIRM RESUME



DONNELLY, CONROY & GELHAAR, LLP



White Collar / Investigations
SEC Enforcement Defense
Business Litigation

One of Boston's leading litigation boutiques, we defend individuals and companies facing high-stakes challenges to liberty, reputation or financial position. We take on your burden and bring practical strategy, common sense business thinking and trusted judgment to defending your interests in criminal and civil matters.

260 Franklin Street
Suite 1600
Boston, MA 02110
T 617.720.2880
F 617.720.3554
E info@dcglaw.com

[Firm](#)
[Careers](#)
[Directions](#)
[Contact](#)

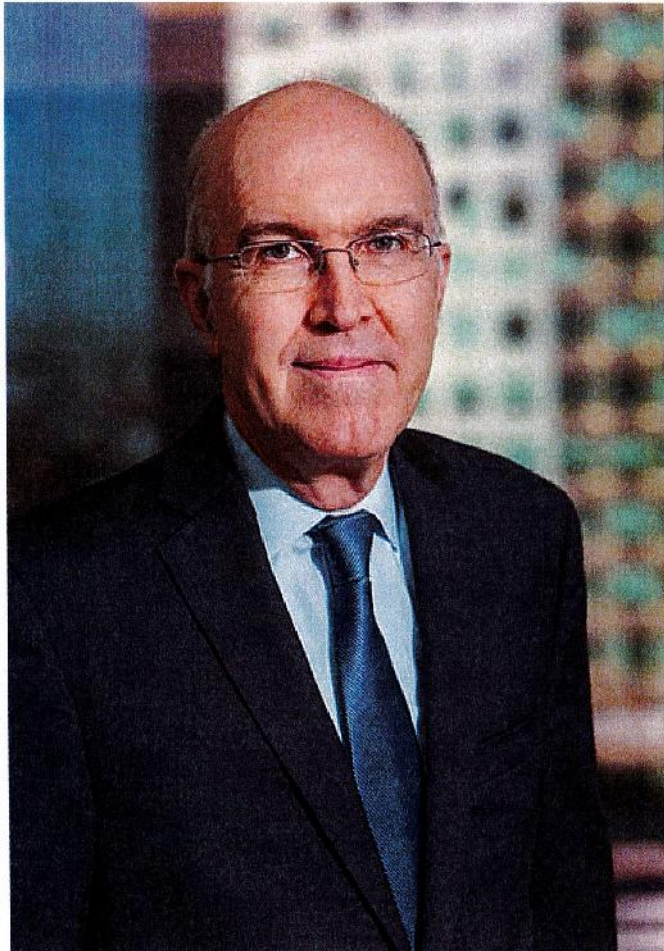


© Copyright 2024, Donnelly, Conroy & Gelhaar, LLP.
All rights reserved.
[Disclaimer](#)



DONNELLY, CONROY & GELHAAR, LLP

T. Christopher Donnelly



T 617.720.2880 x117

E tcd@dcglaw.com

[biography \(pdf\)](#)

[vcard](#)

BIOGRAPHY

EXPERIENCE

Over more than four decades, Christopher Donnelly has earned respect as an effective advocate for businesses and individuals wrestling with complex, high stakes disputes. Chris offers the depth and preparedness of an experienced trial lawyer, combined with

practical and common-sense business thinking earned resolving hundreds of disputes inside and outside the courtroom.

Chris handles disputes spanning a diverse range of issues faced by businesses and individuals—claims involving intellectual property, breach of contract, mergers and acquisitions, corporate control and governance, breach of fiduciary duty, employment, defamation, professional malpractice, and virtually every other commercial controversy. At stake in all of these cases are substantial financial and reputational rewards and risks. In each matter, understanding the client’s goals and then developing a sensible practical plan to accomplish those aims are top priorities.

Chris is a highly experienced trial lawyer with substantial capability navigating a courtroom, having tried dozens of commercial cases spanning hundreds of trial days. He has also successfully ended countless proceedings through summary judgment or other dispositive motions. Equally valued by clients is his success in arbitration and mediation proceedings, delivering positive outcomes without the disruption, expense and time associated with protracted litigation or taking a case to trial.

Chris is a Fellow of the Litigation Counsel of America, the trial lawyer honorary society composed of less than one-half of one percent of American lawyers. He is recognized in the 2023 edition of Best Lawyers in America for his work in Commercial Litigation, Intellectual Property Litigation, Arbitration and Corporate Governance Law. Chambers USA recognized Chris as a leading Massachusetts Commercial Litigation Practitioner. In addition, Chris is selected annually by his peers as a New England and Massachusetts Super Lawyer in Business Litigation.

Merger & Acquisition Disputes

- + Obtained a winning jury verdict in a groundbreaking post-acquisition dispute involving implied reasonable efforts obligation.
- + Won multimillion dollar arbitration award of post-closing milestone payments and attorneys’ fees.

Professional Liability Litigation

- + Successfully defended a national accounting firm at a five week trial against \$25

million claims arising from allegations involving performance of audit engagement and loan loss reserves.

- Prosecuted and defended legal malpractice cases, some involving millions of dollars.
- Represented clients in claims alleging breach of duties by trustees and other fiduciaries.

Intellectual Property Litigation

- Successfully represented a biotechnology company in “bet the company” multi-forum lawsuits against a competitor company and major university in which we vindicated at trial our client's rights to its valuable inventions.
- Protected a musician’s rights to one of the most famous names in early rock ‘n roll through victory in federal circuit court.
- In a ground-breaking theft-of-idea case, won a complete victory following a two-week trial for a national magazine publisher.
- Won summary judgment dismissal of contributory copyright infringement and vicarious liability claims against a trade show producer.
- Handled a range of patent infringement cases covering a variety of inventions and issues.

Corporate Governance & Shareholder Disputes

- Handled disputes among shareholders and directors of private, closely held companies with revenues ranging from several million to hundreds of millions of dollars.
- Won favorable jury verdict in dispute among owners of large closely held business.
- Represented officers and directors of public companies against allegations of breach of duties.
- Advised majority and minority shareholders regarding litigation avoidance.

Employment Litigation

- Won dismissal after trial of age discrimination claims.
- Summary judgment dismissal of defamation claims in several cases.

- Successfully litigated countless claims involving non-competition and non-disclosure claims.

Appellate Litigation

- Secured affirmance of trial court order denying national accounting firm's effort to compel arbitration of client claim.
- Secured affirmance of dismissed contract claims.

RELATED PRACTICES

Complex Business Litigation
Merger & Acquisition Disputes
Intellectual Property Litigation
Employment Litigation
Appellate Litigation
Arbitration & Mediation
Corporate Governance &
Shareholder Disputes

EDUCATION

JD, with Honors, University of Michigan Law School, 1980
SB, Massachusetts Institute of Technology 1977

CLERKSHIP

Hon. Lawrence W. Pierce, United States Court of Appeals for the Second Circuit and
United States District Court for the Southern District of New York

BAR ADMISSIONS

Massachusetts
United States Supreme Court
United States Courts of Appeals for the First, Second, Ninth and Federal Circuits

260 Franklin Street
Suite 1600
Boston, MA 02110
T 617.720.2880
F 617.720.3554
E info@dcglaw.com

[Firm](#)
[Careers](#)
[Directions](#)
[Contact](#)



© Copyright 2024, Donnelly, Conroy & Gelhaar, LLP.
All rights reserved.
[Disclaimer](#)



DONNELLY, CONROY & GELHAAR, LLP

Peter E. Gelhaar



T 617.720.2880 x113

E peg@dcglaw.com

[biography \(pdf\)](#)

[vcard](#)

BIOGRAPHY EXPERIENCE

As a former federal prosecutor, Peter Gelhaar brings a rare combination of experience, reputation and relationships to bear in defending individuals, companies and other entities facing white collar criminal, SEC or other government enforcement

investigations or charges and high stakes civil litigation.

Peter's defense of his clients begins with his understanding of how to assess and overcome the allegations brought against them. He understands that cases are usually won on the facts. Tapping decades of experience, Peter investigates the facts thoroughly and forms effective arguments to persuade prosecutors to decline to pursue their cases.

Peter defends a wide range of businesses whose activities intersect with regulatory scrutiny involving securities enforcement, health care, financial services, and government procurement. He also represents individuals in investigations and proceedings before professional disciplinary boards.

Peter's success defending white collar criminal and securities enforcement investigations is tied to his tenure as an Assistant U.S. Attorney for the District of Massachusetts. As a Federal prosecutor, he served in the Criminal Division as a member of the Major Crimes and Public Corruption Units, and in the Civil Division as Deputy Chief and Chief of Affirmative Civil Enforcement. Having specialized in the prosecution of cases involving financial fraud, government contracting fraud, and health care fraud, he has an insider's view of how best to defend against these cases.

Over the years, Peter has earned a reputation for working collaboratively and respectfully with all parties involved with bringing and defending cases. As a result, he has been appointed to serve on critical oversight boards including the Massachusetts Judicial Nominating Commission which plays a key role in selecting judges in the Commonwealth, and the Massachusetts Board of Registration in Medicine which oversees the medical profession. Peter also served as New England Regional Co-Chair of the American Bar Association's White Collar Crime Subcommittee. He is a frequent panelist in programs educating lawyers on criminal white collar and securities enforcement topics.

Peter is recognized as a Massachusetts leader in white collar crime and government investigations by Chambers USA which notes his "deep strategic sense." Chambers has observed that Peter "maintains a broad white-collar criminal litigation and investigations practice" with an "inordinate level of expertise in healthcare fraud matters... [and a] practical approach that doesn't involve reinventing the wheel." He has also been named a Massachusetts Super Lawyer and recognized by The Best Lawyers in America® for many consecutive years in a peer-driven selection process.

Peter serves as a Corporator for the Perkins School for the Blind, and serves as a Board member for Dress For Success Boston and the Narrow River Preservation Association.

White Collar Defense & Government Investigations

- Obtained the dismissal at trial of bank fraud and bank bribery charges against the president and director of a large metropolitan Boston bank.
- Obtained a not guilty verdict against an individual accused of defrauding a federal agency.
- Successfully defended numerous targets of grand jury investigations addressing allegations of health care fraud.
- Exonerated numerous individuals accused of committing fraud against Federal and State taxing authorities.
- Successfully represented individuals involved in investigations concerning alleged violations of the Foreign Corrupt Practices Act.
- Successfully represented a defense contractor executive in an allegation of fraudulent pricing of work, creating false records and lying to auditors.
- Represented executives outside the United States in an investigation of patient injury allegedly tied to a medical device.

SEC Enforcement Defense

- Successfully represented numerous individuals accused by the Securities and Exchange Commission of committing investor fraud, insider trading, accounting fraud violations, the market-timing of mutual funds, and the back-dating of stock options.
- Successfully defended investment advisors in investigations conducted by Federal prosecutors and securities regulators into fraudulent investment practices.
- Represented an investment advisor in an SEC investigation related to promotional materials.

RELATED PRACTICES

White Collar Defense & Government Investigations

SEC Enforcement Defense

Corporate Governance & Shareholder Disputes

EDUCATION

JD, *cum laude*, Boston College Law School, 1982, *Boston College Law Review*

BA, *cum laude*, University of Vermont, 1978, Phi Beta Kappa

CLERKSHIP

Massachusetts Superior Court

BAR ADMISSIONS

Massachusetts

United States District Court (D. Mass.)

United States Court of Appeals (1st Cir.)

260 Franklin Street

Suite 1600

Boston, MA 02110

T 617.720.2880

F 617.720.3554

E info@dcglaw.com

Firm

Careers

Directions

Contact



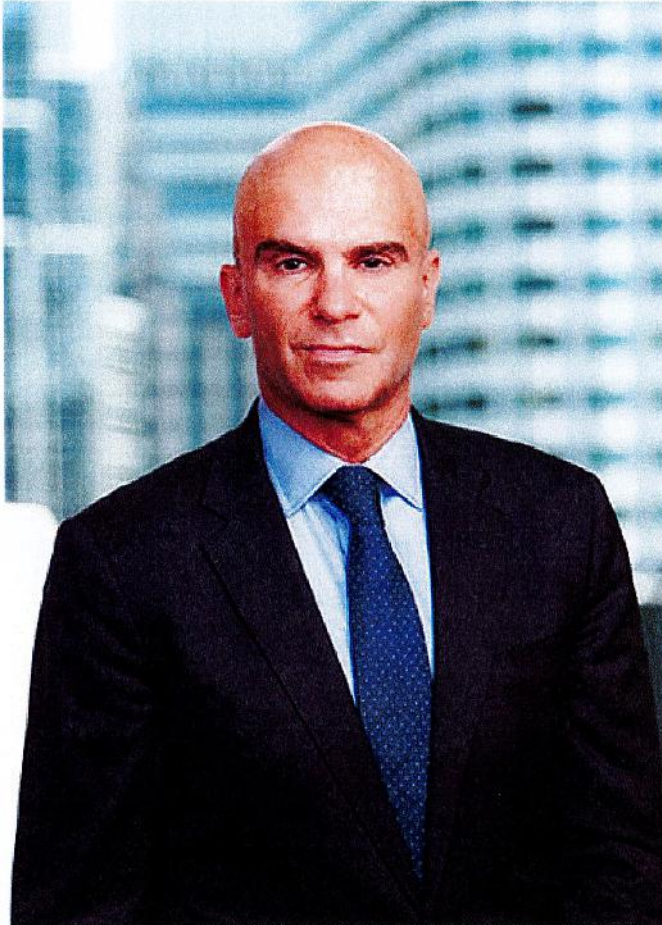
© Copyright 2024, Donnelly, Conroy & Gelhaar, LLP.
All rights reserved.

Disclaimer



DONNELLY, CONROY & GELHAAR, LLP

Peter K. Levitt



T 617.720.2880 x140

E pk1@dcglaw.com

[biography \(pdf\)](#)

[vcard](#)

BIOGRAPHY

EXPERIENCE

Peter Levitt is an experienced trial lawyer who focuses his practice on representing entities and individuals in white collar criminal defense, internal investigations, regulatory enforcement defense, and Title IX and university discipline matters. Before joining DCG, Peter served for 17 years as an Assistant U.S. Attorney for the

District of Massachusetts. At the U.S. Attorney's Office, Peter served in the Health Care Fraud Unit, Drug Task Force, and as Chief of the Organized Crime and Gang Unit. Peter's work as a prosecutor included leading numerous successful investigations and prosecutions covering a broad spectrum of crimes, including health care fraud, financial fraud, money laundering, RICO, and tax evasion, as well as drug trafficking, murder, and murder for hire.

Prior to serving as a federal prosecutor, Peter worked at a large Boston law firm, and served as a Law Clerk for the Honorable Chief Judge Juan R. Torruella of the United States Court of Appeals for the First Circuit, and as a Law Clerk for the Honorable Nathaniel M. Gorton of the United States District Court for the District of Massachusetts.

Peter serves on the Board of Trustees of The Epiphany School and previously served on the Board of Trustees of Buckingham Browne & Nichols School.

Peter is honored as a Massachusetts Super Lawyer.

White Collar Defense & Government Investigations

- Defended numerous individuals in federal and state health care fraud investigations.
- Represented individuals in federal investigations involving wire fraud, mail fraud, tax evasion, and other federal crimes.
- Conducted numerous internal investigations for entities subject to federal, state, and local regulatory oversight.

SEC Enforcement Defense

- Represented individuals in Securities and Exchange Commission investigations relating to insider trading, fraud, and other securities related matters.

Disciplinary Investigations

- Represented individuals in connection with disciplinary proceedings at university graduate and undergraduate level.

RELATED PRACTICES

White Collar Defense & Government Investigations
SEC Enforcement Defense

EDUCATION

JD, *summa cum laude*, Boston University School of Law, 1993
AB, Bowdoin College, 1988

BAR ADMISSIONS

Massachusetts
United States District Court (D.Mass)
United States Court of Appeals (1st Cir.)

260 Franklin Street
Suite 1600
Boston, MA 02110
T 617.720.2880
F 617.720.3554
E info@dcglaw.com

Firm
Careers
Directions
Contact



© Copyright 2024, Donnelly, Conroy & Gelhaar, LLP.
All rights reserved.
Disclaimer

Exhibit 6

EXHIBIT 6

In re Boston Scientific Corp. Securities Litigation
Master File No. 1:20-cv-12225-ADB (D. Mass.)

**BREAKDOWN OF PLAINTIFFS' COUNSEL'S
EXPENSES BY CATEGORY**

CATEGORY	AMOUNT
Court Fees	\$778.00
Service of Process	\$530.00
Online Factual Research	\$53,936.28
Online Legal Research	\$47,254.82
Document Management & Litigation Support	\$19,089.87
Telephone	\$59.25
Postage & Express Mail	\$335.37
Hand Delivery	\$171.50
Local Transportation	\$1,925.85
Out-of-Town Travel	\$11,623.99
Working Meals	\$1,285.26
Experts & Consultants	\$233,938.74
Court Reporting & Transcripts	\$5,564.44
Mediation	\$14,906.61
TOTAL:	\$391,399.98

Exhibit 7

Exhibit 7A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CHRISTOPHER MACHADO, and MICHAEL
RUBIN, Individually and on Behalf of All Others
Similarly Situated,

Plaintiff,

v.

ENDURANCE INTERNATIONAL GROUP
HOLDINGS, INC., HARI RAVICHANDRAN,
and TIVANKA ELLAWALA,

Defendants.

Case No. 1:15-cv-11775-GAO

**ORDER AWARDING ATTORNEYS' FEES
AND REIMBURSEMENT OF LITIGATION EXPENSES**

This matter came on for hearing on September 13, 2019 (the "Settlement Hearing") on 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 Settlement Class Members who or which could be identified with reasonable effort, and that a summary notice of the hearing substantially in the form approved by the Court was published in *Investor's Business Daily* 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 July 6, 2018 (ECF No. 77-1) (the “Stipulation”) and all capitalized 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 Settlement Class Members.

3. Notice of Lead Counsel’s motion for an award of attorneys’ fees and reimbursement of Litigation Expenses was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of the motion for an award of 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. Plaintiffs’ Counsel are hereby awarded attorneys’ fees in the amount of 33 1/3 % of the Settlement Fund and \$155,370.34 in reimbursement of Plaintiffs’ Counsel’s litigation expenses (which fees and expenses shall be paid from the Settlement Fund), which sums the Court finds to be fair and reasonable. Lead Counsel shall allocate the attorneys’ fees awarded amongst Plaintiffs’ Counsel in a manner which it, in good faith, believes reflects the contributions of such counsel to the institution, prosecution and settlement of the Action. 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 \$18,650,000 million in cash that has been funded into escrow pursuant to the terms of the Stipulation, and that numerous Settlement Class Members who submit acceptable Claim Forms will benefit from the Settlement that occurred because of the efforts of Lead Counsel;

(b) Copies of the Postcard Notice were mailed to over 30,000 potential Settlement Class Members and nominees stating that Lead Counsel would apply for attorneys' fees in an amount not exceed 33 1/3% of the Settlement Fund and reimbursement of Litigation Expenses in an amount not to exceed \$225,000. There were no objections to the requested attorneys' fees and expenses;

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

(d) The Action raised a number of complex issues;

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

(f) Plaintiff's Counsel devoted 7,433.15 hours, with a lodestar value of approximately \$3,508,288.75 to achieve the Settlement;

(g) 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; and

6. Lead Plaintiff Christopher Machado is hereby awarded \$ 5,000 from the Settlement Fund as reimbursement for his reasonable costs and expenses directly related to his representation of the Settlement Class.

7. Named Plaintiff Michael Rubin is hereby awarded \$ 2,000 from the Settlement Fund as reimbursement for his reasonable costs and expenses directly related to his representation of the Settlement Class.

8. 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.

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

10. 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.

11. 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: September 13, 2019

/s/ George A. O'Toole, Jr.
HON. GEORGE A. O'TOOLE
UNITED STATES DISTRICT JUDGE

Exhibit 7B

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOHN J. GERNETH, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

CHIASMA, INC., et al.,

Defendants.

) No. 1:16-cv-11082-DJC

) CLASS ACTION

) ~~PROPOSED~~ ORDER AWARDING
) ATTORNEYS' FEES AND EXPENSES AND
) AWARD TO LEAD PLAINTIFF
) PURSUANT TO 15 U.S.C. §77z-1(a)(4)

This matter having come before the Court on June 27, 2019, on Lead Counsel's motion for an award of attorneys' fees and expenses ("Fee Motion"), the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of this class action (the "Litigation") to be fair, reasonable and adequate, and otherwise being fully informed in the premises and good cause appearing therefor;

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 ("Stipulation" or "Settlement") filed with the Court. *See* ECF No. 197.
2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all Members of the Class who have not timely and validly requested exclusion.
3. Notice of Lead Counsel's Fee Motion was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the Class of the Fee Motion met the requirements of Rules 23 and 54 of the Federal Rules of Civil Procedure, 15 U.S.C. §77z-1(a)(7), the Securities Act of 1933, as amended by the Private Securities Litigation Reform Act of 1995, 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.
4. The Court hereby awards Lead Counsel attorneys' fees of 30% of the \$18,750,000 Settlement Amount, plus expenses in the amount of \$133,501.54, together with the interest earned on such amounts for the same time period and at the same rate as that earned by the Settlement Fund. The Court finds that the amount of fees awarded is appropriate, fair, and reasonable under the "percentage-of-recovery" method.

5. The fees and expenses shall be allocated among Lead Plaintiff's Counsel in a manner which, in Lead Counsel's good-faith judgment, reflects the contributions of such counsel to the prosecution and settlement of the Litigation.

6. The awarded attorneys' fees and expenses shall be paid immediately to Lead Counsel subject to the terms, conditions, and obligations of the Stipulation.

7. In making the award to Lead Counsel of attorneys' fees and litigation expenses to be paid from the recovery, the Court has considered and found that:

(a) The Settlement has created a common fund of \$18,750,000 in cash and that numerous Class Members who submit acceptable Proofs of Claim will benefit from the Settlement created by the efforts of Lead Counsel;

(b) The requested attorneys' fees and payment of litigation expenses have been approved as fair and reasonable by the Lead Plaintiff;

(c) Notice was disseminated to Class Members stating that Lead Counsel would be moving for attorneys' fees not to exceed 30% of the Settlement Amount and payment of litigation expenses in an amount not to exceed \$250,000, plus interest earned on both amounts;

(d) Lead Counsel have expended substantial time and effort pursuing the Litigation on behalf of the Class;

(e) Lead Counsel pursued the Litigation on a contingent basis, having received no compensation during the Litigation, and any fee award has been contingent on the result achieved;

(f) The Litigation involves complex factual and legal issues and, in the absence of the Settlement, would involve lengthy proceedings whose resolution would be uncertain;

(g) Lead Counsel conducted the Litigation and achieved the Settlement with skillful and diligent advocacy;

(h) Public policy concerns favor the award of reasonable attorneys' fees in securities class action litigation;

(i) The amount of attorneys' fees awarded is fair and reasonable and consistent with awards in similar cases within the First Circuit; and

(j) Lead Plaintiff's Counsel devoted 6,237 hours, with a lodestar value of \$3,785,640.00 to achieve the Settlement.


8. Any appeal or any challenge affecting this Court's approval regarding any attorneys' fee and expense application shall in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

9. Pursuant to 15 U.S.C. §77z-1(a)(4), the Court awards \$10,000.00 to Lead Plaintiff Laurent Sberro in connection with his representation of the Class.

10. In the event that the Settlement is terminated or does not become Final or the Effective Date does not occur in accordance with the terms of the Stipulation, this Order shall be rendered null and void to the extent provided by the Stipulation and shall be vacated in accordance with the Stipulation.

IT IS SO ORDERED.

DATED: June 27, 2019



THE HONORABLE DENISE J. CASPER
UNITED STATES DISTRICT JUDGE

Exhibit 7C

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JUDITH GODINEZ, Individually and on
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

ALERE INC., *et al.*,

Defendants.

Civil Action No. 1:16-cv-10766-PBS

~~[PROPOSED]~~ ORDER AWARDING ATTORNEYS' FEES AND EXPENSES AND
APPROVING COMPENSATORY PAYMENT TO LEAD PLAINTIFFS

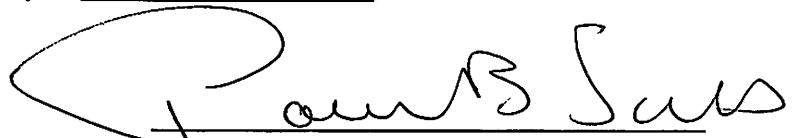
Lead Counsel's Motion for Award of Attorneys' Fees Lead Counsel's Motion for an Award of Attorneys' Fees, Reimbursement of Litigation Expenses and Compensatory Award for Lead Plaintiffs (ECF No. 273) is GRANTED as follows:

1. The Court hereby awards Class Counsel 28% of the Settlement Fund (\$5,600,000) in attorneys' fees. The Court also awards Class Counsel reimbursement of \$792,081.56 of expenses in the aggregate. These awards are to be allocated in the sole discretion of Class Counsel.

2. The Court hereby awards Class Plaintiffs OFI and Glazer reimbursement of \$30,000 each for the time and expenses they incurred in prosecuting this action.

2. The attorneys' fees and expenses approved by the Court herein shall be payable from the Settlement Fund to Class Counsel within seven (7) days after entry of this Order, notwithstanding the existence of any potential appeal or collateral attack on this Order or the on the Court's Judgment Approving Class Action Settlement. The reimbursement awards approved by the Court herein shall be payable from the Settlement Fund to the respective Class Plaintiffs within seven (7) days after the Effective Date.

SO ORDERED this 6 day of June, 2019.

A handwritten signature in black ink, appearing to read "Patti B Saris". The signature is written in a cursive style with a large, looping initial "P".

Patti B. Saris
Chief United States District Judge

Exhibit 7D

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____	X	
	:	
IN RE CVS CORPORATION SECURITIES	:	C.A. No. 01-11464 (JLT)
LITIGATION	:	
	:	
_____	X	

ORDER AND FINAL JUDGMENT

This matter came before the Court for hearing pursuant to an Order dated June 8, 2005 (the "Preliminary Approval Order"), on the application of the parties for approval of the settlement provided for in the Stipulation and Agreement of Compromise, Settlement and Release of Securities Action dated June 6, 2005 (the "Securities Stipulation"); and

Due and adequate notice having been given to members of the Class (as defined below), as required in the Preliminary Approval Order, and following such notice, a hearing having been held before this Court on September 7, 2005 (the "Settlement Hearing") to determine the matters contemplated herein; and

The Court having considered all papers and filings had herein and otherwise being fully informed of the premises and good cause appearing therefore; and

All capitalized terms herein having the same meanings defined in the Securities Stipulation.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Court has jurisdiction over the subject matter of the Securities Action, Lead Plaintiff, all members of the Class and the Defendants.

2. For the reasons set forth in the Court's Order dated October 16, 2003, the Court finds that the prerequisites for a class action under Federal Rules of Civil Procedure 23 (a) and (b)(3) have been satisfied in that: (a) the number of members of the Class are so numerous that joinder of all members in the Class is impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of the Class Representative are typical of the claims of the Class it seeks to represent; (d) the Class Representative has and will fairly and adequately represent the interests of the Class; (e) the questions of law and fact common to the members of the Class predominate over any questions affecting only individual members of the 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 Federal Rules of Civil Procedure, the Court hereby finally certifies this action as a class action on behalf of a plaintiff class (the "Class") consisting of all persons or entities who purchased the common stock of CVS Corporation ("CVS") between February 6, 2001 and October 30, 2001, inclusive, and who were allegedly damaged thereby. Excluded from the Class are the Defendants, all of the officers, directors and partners thereof, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which any of the foregoing have or had a controlling interest. Also excluded from the Class are the persons and/or entities who previously excluded themselves from the Class by filing a request for exclusion in response to the Notice of Pendency, as listed on Exhibit 1 annexed hereto.

4. The Notice of the Proposed Settlement of Class Action, Motion For Attorneys' Fees, and Settlement Fairness Hearing, which was previously approved by the Court, was given to all members of the Class who could be identified with reasonable effort. The Court finds that the form of notice specified in the Court's Preliminary Approval Order has been given. The form and method of notice as so provided constituted the best notice practicable under the circumstances, satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. 78u-4(a)(7) as amended, and due process, and constituted due and sufficient notice to all persons and entities entitled thereto.

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby approves the settlement set forth in the Securities Stipulation (the "Settlement") and finds that the Settlement is, in all respects, fair, reasonable and adequate to members of the Class. The parties are authorized and directed to consummate the Settlement in accordance with the terms and provisions of the Securities Stipulation.

6. Except as to any individual claim of those persons who have validly and timely requested exclusion from the Class, the Court hereby dismisses the Securities Action with prejudice and without costs (except as otherwise provided in the Securities Stipulation) as to any and all Settled Claims, including Unknown Claims, that were or could have been asserted in the Securities Action by or on behalf of Lead Plaintiff and the Class Members.

7. All Class Members and the successors and assigns of any of them, are hereby permanently barred and enjoined from instituting, commencing or prosecuting

any and all claims, whether known or unknown (including Unknown Claims), and whether arising under federal, state, or any other law, against the Released Parties, which have been, or could have been, asserted in the Securities Action or in any court or forum, relating to or arising from the acts, facts, transactions and circumstances that were alleged in the Complaint and which relate to or arise from the purchase or sale of CVS common stock during the Class Period (the “Settled Claims”). The “Released Parties” are any of the Defendants, and any of the families, heirs, executors, trustees, personal representatives, estates or administrators, attorneys, counselors, insurers, financial or investment advisors of any such Defendant who is a natural person, and the affiliates, partners, subsidiaries, predecessors, successors or assigns, past or present officers, directors, associates, controlling persons, representatives, employees, attorneys, counselors, insurers, financial or investment advisors, dealer managers, consultants, accountants, investment bankers, commercial bankers, engineers, advisors or agents of CVS, all in their capacities as such. 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.

“Settled Claims” do not include any claims against the Released Parties arising under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.* (“ERISA”) that are the subject of another class action pending in the United States District Court, District of Massachusetts, Fescina v. CVS Corp., et al., Civil Action No. 04-12309-JLT, other than claims that the price of CVS common stock purchased on the open market during the Class Period was artificially inflated as alleged in the Complaint.

8. Upon the Effective Date, Lead Plaintiff and all Class Members shall be deemed to have covenanted not to sue any of the Released Parties in any individual, class or other representative capacity with respect any Settled Claim.

9. The Defendants, the successors and assigns of any of them, and, to the extent of their authority to act on behalf of the Released Parties, the Released Parties, are hereby permanently barred and enjoined from instituting, commencing or prosecuting all claims, whether known or unknown (including Unknown Claims), and whether arising under federal, state, or any other law, which have been, or could have been, asserted in the Securities Action or in any court or forum, by the Defendants or any of them or the successors and assigns of any of them against any of the Plaintiffs, Class Members or their attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of the Securities Action (except for claims to enforce the Securities Stipulation or the Settlement) (the "Settled Defendants' Claims"). The Settled Defendants' Claims 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.

10. This Order and Final Judgment, the Securities Stipulation and its exhibits, the terms and provisions thereof, and any of the negotiations or proceedings connected with them, and any of the documents or statements referred to therein shall not be:

(a) offered or received against any of the Defendants or other Released Parties as evidence of or a presumption, concession, or admission by any Defendant or other Released Party of 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 Securities Action or in any

litigation, or the deficiency of any defense that has been or could have been asserted in the Securities Action or in any litigation, or of any liability, negligence, fault, or wrongdoing on the part of any of the Defendants or other Released Parties;

(b) offered or received against any of the Defendants or other Released Parties 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 or Released Party;

(c) offered or received against any of the Defendants or other Released Parties 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 or Released Parties, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Securities Stipulation; provided, however, that the Defendants and the Released Parties may refer to it to effectuate the liability protection granted them hereunder;

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

(e) construed as or received in evidence as an admission, concession or presumption against plaintiffs or any of the 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 Settlement Fund.

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

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

13. Plaintiffs' Counsel are hereby awarded 25% of the Settlement Fund in attorneys' fees, which sum the Court finds to be fair and reasonable, and \$ 2,472,092.30 in reimbursement of expenses, which amounts shall be paid to Lead Plaintiff's Co-Lead Counsel from the Settlement Fund with interest from the date such Settlement Fund was funded to the date of payment at the same net rate that the Settlement Fund earns. The award of attorneys' fees shall be allocated among Plaintiffs' Counsel in the Securities Action in a fashion which, in the opinion of Lead Plaintiff's Co-Lead Counsel, fairly compensates Plaintiffs' Counsel for their respective contributions in the prosecution of the Securities Action. Attorneys' fees and expenses awarded by the court in the Derivative Action to derivative plaintiff's counsel in the amount up to \$750,000 shall be payable from the award to Lead Plaintiff's Co-Lead Counsel in the Securities Action.

14. 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 \$110 million in cash (which is already on deposit), plus interest thereon, and that numerous Class Members who submit

acceptable Proofs of Claim will benefit from the Settlement created by Lead Plaintiff's Co-Lead Counsel;

(b) Over 320,000 copies of the Settlement Notice were disseminated to putative Class Members indicating that Plaintiffs' Counsel were moving for attorneys' fees from the Settlement Fund in an amount of up to twenty-five percent (25%) of the Settlement Fund and for reimbursement of their expenses in the approximate amount of \$2,700,000 and two (2) objections were filed against the terms of the proposed Settlement or the ceiling on the fees and expenses requested by Plaintiffs' Counsel contained in the Notice;

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

(d) The Securities Action involves complex factual and legal issues and was actively prosecuted over almost four years and, in the absence of a settlement, would involve further lengthy proceedings with uncertain resolution of the complex factual and legal issues;

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

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

15. Without affecting the finality of this Judgment in any way, the Court hereby retains jurisdiction over (a) implementation of the Settlement and any award or distribution from the Settlement Fund; (b) disposition of the Settlement Fund; (c) any application for fees and expenses incurred in connection with administering and distributing the settlement proceeds to the members of the Class; and (d) over the parties and Class Members for all matters relating to this Securities Action, including the administration, interpretation, effectuation or enforcement of the Securities Stipulation and this Order and Final Judgment.

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

17. 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 Federal Rules of Civil Procedure.

SO ORDERED this 27th day of September, 2005.



U.S.D.J.

Exhibit 1

MSGF
MSGF228CVS SECURITIES LITIGATION TIMELY EXCLUSION
CVS SECURITIES LITIGATION REPSPage 1 of 24
19-May-05 2:38 PM

<u>Nme IdNo</u>	<u>Name/Address</u>	
2046866	LINDA L AALTO TTEE MARY KOHR-AALTO REV LIV TRUST FBO MARY KOHR-AALTO 4/29/99 7512 SPRINGRIDGE RD BAINBRIDGE ISLAND, WA 98110-3644	Tax ID: 999999999 Account Number:
12602	MEGAN ACHESON 5312 RUE ST DENIS MONTREAL QC H2J 2M3 CA	Tax ID: 999999999 Account Number:
12598	CHARLES K ADAMS 500 N HILLCREST FORT BRANCH, IN 47648	Tax ID: 999999999 Account Number:
12579	SHARON AFTON 10771 TALL PINE LANE ALLENDALE, MI 49401	Tax ID: 999999999 Account Number:
12567	MICHAEL D ALLEN 23872 CALLE HOGAR MISSION VIEJO, CA 92691	Tax ID: 999999999 Account Number:
12584	LUIS A ANDRADE P.O. BOX 17 07 8738 QUITO ECUADOR EC	Tax ID: 999999999 Account Number:
12559	SEBASTIAN ARENA MARA ARENA EXECUTOR 125 GREENWOOD ROAD PITTSBURGH, PA 15238-2017	Tax ID: 999999999 Account Number:
2001690	CHARLOTTE HOBBS BARNES 6150 DEANNA DR SYKESVILLE, MD 21784-8653	Tax ID: 999999999 Account Number:

Count 208

MSGF
MSGF228CVS SECURITIES LITIGATION TIMELY EXCLUSION
CVS SECURITIES LITIGATION REPSPage 2 of 24
19-May-05 2:38 PM

<u>Nme IdNo</u>	<u>Name/Address</u>	
11904	JAMES F BENNETT 1035 JANET AVE YPSILANTI, MI 48198	Tax ID: 999999999 Account Number:
11915	H LAMAR BIFFLE AND CAROL BIFFLE 60 STOKES DRIVE STOCKBRIDGE, GA 30281	Tax ID: 999999999 Account Number:
12604	JENNY LOU BLACKWELL 7915 JACKSTONE HOUSTON, TX 77049	Tax ID: 999999999 Account Number:
11935	MICHAEL K BLOOM C/O CVS PHARMACY ONE CVS DRIVE PO BOX E WOONSOCKET, RI 02895	Tax ID: 999999999 Account Number:
2156	CHRISTOPHER A BOS 713 PEACH TREE LN MILFORD, MI 48381	Tax ID: 999999999 Account Number:
11921	CAROL BOSARGE 4008 NW 23 CIRCLE GAINESVILLE, FL 32605	Tax ID: 999999999 Account Number:
11906	BARBARA BOWMAN 6645 S APACHE DR LITTLETON, CO 80120	Tax ID: 999999999 Account Number:
11925	EDMUND C BRAAK 2853 DEVEREAUX WAY SALT LAKE CITY, UT 84109	Tax ID: 999999999 Account Number:
12550	KERRIE BRADY P.O. BOX 671 NEW MILFORD, CT 06776	Tax ID: 999999999 Account Number:

Count 208

MSGF
MSGF228CVS SECURITIES LITIGATION TIMELY EXCLUSION
CVS SECURITIES LITIGATION REPSPage 3 of 24
19-May-05 2:38 PM

<u>Nme IdNo</u>	<u>Name/Address</u>	
12641	WILLIAM L BROWN PO BOX 75 13384 TUNICA TRACE WEYANOKE, LA 70787	Tax ID: 999999999 Account Number:
12603	JANE MCMULLEN BROWNE 1521 DAIRY RD CHARLOTTESVILLE, VA 22903-1303	Tax ID: 999999999 Account Number:
1009834	KEVIN DEAN BUSH & MICHELLE SUZETTE BUSH 1349 S RIDGE LAKE CIR LONGWOOD, FL 32750	Tax ID: 999999999 Account Number:
11940	VIRGINIA H BUTLER 2 HALLMARK DRIVE WALLINGFORD, CT 08492	Tax ID: 999999999 Account Number:
12544	ALLEN B BYERLEY & JANICE BYERLEY 4508 COUNTRY CLUB VIEW BAYTOWN, TX 77521	Tax ID: 999999999 Account Number:
2033549	ROBERT W BYERS & ELLEN D BYERS 1522 BISMARCK LANE BRENTWOOD, CA 94513-6903	Tax ID: 999999999 Account Number:
2067642	CARL J CALICO 3525 CORINNE AVE CHALMETTE, LA 70043-2601	Tax ID: 999999999 Account Number:
12592	LEE CARDWELL PO BOX 3073 CORDOVA, TN 38088-3073	Tax ID: 999999999 Account Number:

Count 208

MSGF
MSGF228CVS SECURITIES LITIGATION TIMELY EXCLUSION
CVS SECURITIES LITIGATION REPSPage 4 of 24
19-May-05 2:38 PM

<u>Nme IdNo</u>	<u>Name/Address</u>	
2028737	DIONYSIA M CASTELINO TTEE DIONYSIA M CASTELINO REV LIV TRUST U/A/D 07/15/93 IDS BALANCED 7600 HOLIDAY DRIVE EAST INDIANAPOLIS, IN 46260-3615	Tax ID: 999999999 Account Number:
12583	MARJORIE H CATLIN TTEE 5300 W 96TH STREET #D5 INDIANAPOLIS, IN 46268	Tax ID: 999999999 Account Number:
12561	ALEXANDRA CHAFFERS 45 SOUNDVIEW DRIVE PORT WASHINGTON, NY 11050	Tax ID: 999999999 Account Number:
12591	WILLIAM B CHARTER & MARGUERITE F CHARTER 4026 MAXANNE DR NW KENNESAW, GA 30144	Tax ID: 999999999 Account Number:
11896	MR HARVEY T CHRISTENSEN & RUTH LARAIN CHRISTENSEN - TTEES CHRISTENSEN FAMILY TRUST U/A DTD 01/23/96 8020 EAST KEATS AVE #323 MESA, AZ 85208	Tax ID: 999999999 Account Number:
2035686	BILLIE B COKER CGM IRA CUSTODIAN 604 WEST QUITMAN IUKA, MS 38852-1431	Tax ID: 999999999 Account Number:
11536	KENNETH L COLVIN 9794 FERRY ROAD WAYNESVILLE, OH 48068	Tax ID: 999999999 Account Number:
12582	EILEEN H COMBS 8613 BOONE HALL CT KNOXVILLE, TN 37923	Tax ID: 999999999 Account Number:

Count 208

MSGF
MSGF228CVS SECURITIES LITIGATION TIMELY EXCLUSION
CVS SECURITIES LITIGATION REPSPage 5 of 24
19-May-05 2:38 PM

<u>Nme IdNo</u>	<u>Name/Address</u>	
11543	ELEANOR CONKLIN TTEES FBO GEORGE & ELEANOR CONKLIN TF 1353 CASSULOT COURT PALM HARBOR, FL 34684-2442	Tax ID: 999999999 Account Number:
11936	DIANNE M CONLAN 10 KAY STREET CUMBERLAND, RI 02864	Tax ID: 999999999 Account Number:
11545	HOWARD S CONNER 3440 WHITE MOUNTAIN COURT RENO, NV 89511	Tax ID: 999999999 Account Number:
1199	DEBRA CONSTANTINE 29 SMITH COURT WEST NEWTON, MA 02465-1411	Tax ID: 999999999 Account Number:
11548	HEATHER CORKERY & ROBERT CORKERY 35 ROYAL CREST DRIVE DOUGLAS, MA 01516	Tax ID: 999999999 Account Number:
11927	ELLEN-VIRGINIA D COYNE 10100 CYPRESS CORE DRIVE #101 FT MYERS, FL 33908	Tax ID: 999999999 Account Number:
12542	WINNIFRED S CROWDUS 604 ROYAL OAK INGRAM, TX 78025-3559	Tax ID: 999999999 Account Number:
12600	NIKKI CURENTON 10464 CLARION RIVER DR LAS VEGAS, NV 89135	Tax ID: 999999999 Account Number:
2007539	ALICE C DALLAM & DAVID L DALLAM 1625 CONOWINGO RD RISING SUN, MD 21911-1433	Tax ID: 999999999 Account Number:

Count 208

MSGF
MSGF228CVS SECURITIES LITIGATION TIMELY EXCLUSION
CVS SECURITIES LITIGATION REPSPage 6 of 24
19-May-05 2:38 PM

<u>Nme IdNo</u>	<u>Name/Address</u>	
12578	DAN WESLEY INGLIS FAMILY TRUST SHIRLEY ANN INGLIS TTEE 4701 WOOD SPRINGS CT ARLINGTON, TX 76017	Tax ID: 999999999 Account Number:
1018364	NOELIA DAVILA 45 OHIO NEW BRAUNFELS, TX 78130-8105	Tax ID: 999999999 Account Number:
115	DOROTHY A DAVIS TOD HELEN R DICK SUBJECT TO STA TOD RULES 4636 POINT LOMA AVE SAN DIEGO, CA 92107	Tax ID: 999999999 Account Number:
11546	SUE N ROWEN EXECUTOR FBO ESTATE OF FRANCES E DAVIS 33075 WOODLEIGH ROAD PEPPER PIKE, OH 44124	Tax ID: 999999999 Account Number:
838	MARY C DAY 228 EAGLE BLUFF DR OAKWOOD, IL 61858-6210	Tax ID: 999999999 Account Number:
12531	MANUEL F DE LA TORRIENTE 1450 MADRUGA AVENUE # 311 CORAL GABLES, FL 33146	Tax ID: 999999999 Account Number:
12574	RICHARD DELGROSSO 336 EDMUNTON DRIVE L-12 N BABYLON, NY 15203	Tax ID: 999999999 Account Number:
12589	ROBERT DELGROSSO 23 BEACH RD PORT JEFFERSON, NY 11777	Tax ID: 999999999 Account Number:
11916	VICKI K DENT 25637 HANOVER STREET DEARBORN HTS, MI 48125	Tax ID: 999999999 Account Number:

Count 208

MSGF
MSGF228CVS SECURITIES LITIGATION TIMELY EXCLUSION
CVS SECURITIES LITIGATION REPSPage 7 of 24
19-May-05 2:38 PM

<u>Nme IdNo</u>	<u>Name/Address</u>	
11897	OPHELIA DENTON 3006 LUARA LN LITHIA SPRINGS, GA 30122	Tax ID: 999999999 Account Number:
12594	GEORGE DEO & JACQUELINE DEO 107 CHURCH RD MILFORD, NJ 08848	Tax ID: 999999999 Account Number:
12540	RUTH S DEWALD TTEE 9405 ASTON GARDENS CT #103 PARKLAND, FL 33076	Tax ID: 999999999 Account Number:
2061974	MARY DURANTE 340 WEST 57TH ST APT 21 NEW YORK, NY 10019-3706	Tax ID: 999999999 Account Number:
12596	DOROTHY DURRSCHMIDT 815 E GOLDENROD ST PHOENIX, AZ 85408	Tax ID: 999999999 Account Number:
12577	DOT S EASTERLING P.O. BOX 13052 JECKYLL ISLAND, GA 31527	Tax ID: 999999999 Account Number:
3838	ELIZABETH V ELLIOTT 4627A OXFORD ST LYNCHBURG, VA 24502-5103	Tax ID: 999999999 Account Number:
11922	RUTH A EMERY 1718 LAKECREST DRIVE PORT ARTHUR, TX 77642	Tax ID: 999999999 Account Number:
3885	LISA A EPPERSON 512 HICKORY STICK CR BLOOMINGTON, IN 47401-4691	Tax ID: 999999999 Account Number:

Count 208

MSGF
MSGF228**CVS SECURITIES LITIGATION TIMELY EXCLUSION**
CVS SECURITIES LITIGATION REPSPage 8 of 24
19-May-05 2:38 PM

<u>Nme IdNo</u>	<u>Name/Address</u>	
12546	M J FAHLGREN KARRIKER TTEE RONALD W FAHLGREN RESIDUAL TRUST U/A DTD 11/3/94 PAS/RORE 46 MAGNOLIA LANE CROSSVILLE, TN 38555	Tax ID: 999999999 Account Number:
11911	MICHAEL J FEALY 1800 COUNTRY ROAD 310 BEEVILLE, TX 78102-8277	Tax ID: 999999999 Account Number:
11903	BARBARA FESTOFF 18 NO CAMBRIDGE AVE VENTNOR, NJ 08406	Tax ID: 999999999 Account Number:
1003817	MIGUEL A NAZARIO FRANCO & ANA BRICENO DE NAZARIO CALLE GARITA D-17 PASEO SAN JUAN URB. LOS PASEOS SAN JUAN, PR 00926	Tax ID: 999999999 Account Number:
4318	NOELIA R FREITAS 9940 NOB HILL CT #3 SUNRISE, FL 33351	Tax ID: 999999999 Account Number:
11910	BRUCE E GALBRAITH 206 LAKEWOOD DRIVE TULLAHOMA, TN 37388	Tax ID: 999999999 Account Number:
12532	MANUEL GANI 7 INDEPENDENCE BROCTON, MA 02467	Tax ID: 999999999 Account Number:
2068014	HELEN D GAUNT 1222 CHIPPENHAM DR BATON ROUGE, LA 70808-5623	Tax ID: 999999999 Account Number:

Count 208

MSGF
MSGF228CVS SECURITIES LITIGATION TIMELY EXCLUSION
CVS SECURITIES LITIGATION REPSPage 9 of 24
19-May-05 2:38 PM

<u>Nme IdNo</u>	<u>Name/Address</u>	
4494	RAYMOND H GAUTHIER & PAULINE C GAUTHIER JTEN 221 PALM DRIVE LABELLE, FL 33935-9435	Tax ID: 999999999 Account Number:
12595	MARY M GEFELL 45 SEAFORD DRIVE ROCHESTER, NY 14617	Tax ID: 999999999 Account Number:
4549	CYNTHIA A GERWIG 856 COUNTY RD 801 ASHLAND, OH 44805-9575	Tax ID: 999999999 Account Number:
11905	AUDREY A GLICK 1408 KENDON DR ST LOUIS, MO 63131	Tax ID: 999999999 Account Number:
11946	WILLIS B GLOVER XX, NY 11747	Tax ID: 999999999 Account Number:
11537	RUSSELL GOLDBAUM 7807 ROCKFORD ROAD BOYNTON BEACH, FL 33437	Tax ID: 999999999 Account Number:
1010879	JACK GOLDIN & FLORENCE S GOLDIN PO BOX 2909 GULFPORT, MS 39505	Tax ID: 999999999 Account Number:
11923	SUSAN H GOODIS 408 ALPINE VILLAGE DRIVE MONROEVILLE, PA 15146	Tax ID: 999999999 Account Number:
1016768	LAURIE L GORMAN-VASQUEZ LAURIE GORMAN VASQUEZ TRUST 5435 PARKFORD CIRCLE GRANITE BAY, CA 95746	Tax ID: 999999999 Account Number:

Count 208

MSGF
MSGF228CVS SECURITIES LITIGATION TIMELY EXCLUSION
CVS SECURITIES LITIGATION REPSPage 10 of 24
19-May-05 2:38 PM

<u>Nme IdNo</u>	<u>Name/Address</u>	
11529	IRWIN GOTBAUM IRA DTD 10/18/00 2104 N RIVERSIDE DR POMPANO BEACH, FL 33062	Tax ID: 999999999 Account Number:
11924	JACK B GRUBB 823 HARMONY LN MANDEVILLE, LA 70471-8912	Tax ID: 999999999 Account Number:
12642	WALTER C GUSTAFON & MELBA E GUSTAFSON 3812 W 57TH ST EDINA, MN 55410	Tax ID: 999999999 Account Number:
12555	AUDREY HALL UNKNOWN UNKNOWN, NY 11111	Tax ID: 999999999 Account Number:
2069107	HELENA HAMMER 1419 SW BRIDLEWOOD DR DALLAS, OR 97338-2325	Tax ID: 999999999 Account Number:
12601	DAVID M HAMPTON AND/OR CATHERINE D HAMPTON 114 WEST N STREET BENICIA, CA 94510	Tax ID: 999999999 Account Number:
11920	WILLIAM A HARRIS & FRANCELLA S HARRIS 319 LUCK AVENUE ZANESVILLE, OH 43701-4217	Tax ID: 999999999 Account Number:
12575	HELEN LEE HAYES P.O. BOX 2506 BORREGO SPRINGS, CA 92004-2506	Tax ID: 999999999 Account Number:
5331	JANET S HEWGLEY 460 COUNTY RD 603 ATHENS, TN 37303	Tax ID: 999999999 Account Number:

Count 208

MSGF
MSGF228CVS SECURITIES LITIGATION TIMELY EXCLUSION
CVS SECURITIES LITIGATION REPSPage 11 of 24
19-May-05 2:38 PM

<u>Nme IdNo</u>	<u>Name/Address</u>	Tax ID:	Account Number:
11894	MITCHELL K HOBISH, PH D 350 LOCKABOUT LANE PO BOX 632 MANHATTAN, MT 59741	999999999	
12581	BARBARA G HOCHSTEDLER SHANNONDALE OF MARYVILLE 804 SHANNONDALE WAY # 322 MARYVILLE, TN 37803-5970	999999999	
11929	D PAULINE HOEL 1015 IBIS ROAD JACKSONVILLE, FL 32216	999999999	
2025084	WALTER HOFF 1431 GARMON FERRY ROAD ATLANTA, GA 30327-3839	999999999	
204	RONALD C HOPPING & LIBBY A HOPPING JT TEN 39 GILLANDER AVE AUBURN, ME 04210-4507	999999999	
11898	HOPE M HRYSENKO 2453 BRAZILIA DR #61 CLEARWATER, FL 33763	999999999	
5552	JOHANNA M HUBER & HERBERT J HUBER JT TEN 65 SUNBRIAR DR WEST SENECA, NY 14224-3418	999999999	
5556	LISA A HUBERT 50 CHESTNUT ST HELLERTOWN, PA 18055	999999999	
5557	E RAYMOND HUCK 1141 GOODMAN ST PITTSBURGH, PA 15218-1116	999999999	

Count 208

MSGF
MSGF228CVS SECURITIES LITIGATION TIMELY EXCLUSION
CVS SECURITIES LITIGATION REPSPage 12 of 24
19-May-05 2:38 PM

<u>Nme IdNo</u>	<u>Name/Address</u>	
5584	JEANNENE H ALLEN 8750 HARBOR CIRCLE TERRELL, NC 28682-9743	Tax ID: 999999999 Account Number:
11534	HILARY JACOBSON 2848 TORREY PINES ROAD LA JOLLA, CA 92037	Tax ID: 999999999 Account Number:
12557	ELIZABETH M JAMESON 19 RIDGE LANE MILL VALLEY, CA 94941	Tax ID: 999999999 Account Number:
11530	BETTY M JENSEN TTEE FBO JENSEN FAMILY TRUST UA DTD 10/27/94 13844 N SUTHERLAND WASH WAY TUCSON, AZ 85737-4718	Tax ID: 999999999 Account Number:
11533	DONALD W JOHNSON & PATRICIA B JOHNSON 6873 AUCKLAND DRIVE AUSTIN, TX 78749	Tax ID: 999999999 Account Number:
2068151	BRIAN KEBIS 2508 PEARTREE LANE SPARKS, NV 89434	Tax ID: 999999999 Account Number:
2078573	BETTY KELLER IRA 6853 CAROLYNCREST DR DALLAS, TX 75214	Tax ID: 999999999 Account Number:
243	PIERRETTE KELLY 124 RIVERSIDE DR WRENTHAM, MA 02093	Tax ID: 999999999 Account Number:
11934	RAYMOND J KISSEL 5500 W ST JOSEPH ROAD EVANSVILLE, IN 47720	Tax ID: 999999999 Account Number:

Count 208

MSGF
MSGF228CVS SECURITIES LITIGATION TIMELY EXCLUSION
CVS SECURITIES LITIGATION REPSPage 13 of 24
19-May-05 2:38 PM

<u>Nme IdNo</u>	<u>Name/Address</u>	
2047397	MICHAEL F KLICH 1754 N OAKWOOD RD OSHKOSH, WI 54904-8447	Tax ID: 999999999 Account Number:
11933	ELZIABETH A KOPPERUD 78 32ND AVE N FARGO, ND 58102	Tax ID: 999999999 Account Number:
12537	IRIS KRUG 576 AUGUSTA BLVD NAPLES, FL 34113	Tax ID: 999999999 Account Number:
2062549	CHARLOTTE KUKLA 241 ASHFORD AVE DOBBS FERRY, NY 10522-1908	Tax ID: 999999999 Account Number:
12572	ARTHUR KUNZ P.O.BOX 468 FRANKSTON VIC 3199 AUSTRALIA AU	Tax ID: 999999999 Account Number:
11939	DENNIS C KURTZ 3210 HILLSIDE DRIVE HIGHLAND VILLAGE, TX 75077	Tax ID: 999999999 Account Number:
11547	JOANNA LANE 18655 W BERNARDO DRIVE APT #379 SAN DIEGO, CA 92127-3019	Tax ID: 999999999 Account Number:
12538	DAVID A LATACKI 80 PLAZA DRIVE ROCHESTER, NY 14617	Tax ID: 999999999 Account Number:
12558	KATHRYN LATOUREETE 11 REYNOLDS ROAD WEBSTER, NY 14580	Tax ID: 999999999 Account Number:

Count 208

MSGF
MSGF228CVS SECURITIES LITIGATION TIMELY EXCLUSION
CVS SECURITIES LITIGATION REPSPage 14 of 24
19-May-05 2:38 PM

<u>Nme IdNo</u>	<u>Name/Address</u>	Tax ID:	Account Number:
11908	ALVIN D S LAU TTEE FBO ALVIN DA LAU REV LIVING TRUS DTD 11/18/92 45-316 LEHUULLA ST KANEEOHE, HI 96744-2323	999999999	
12566	WILLIAM S LEACH JR. UNKNOWN UNKNOWN, NY 11111	999999999	
12552	WILLIAM R LEE JR & KENT W LEE 8676 MEMPHIS ARLINGTON ROAD MEMPHIS, TN 38133	999999999	
11531	BERNICE S LEITNER 11277 OLA AVENUE BOYNTON BEACH, FL 33437	999999999	
2038418	LAUREL LEE LEMARIE TTEE FBO SEP EST OF LAUREL L LEMARIE PO BOX 1031 RANCHO SANTA FE, CA 92067-1031	999999999	
11901	M KENT LEMARIE PO BOX 1031 RANCHO SANTA FE, CA 92067-1031	999999999	
12548	CECILE A LEMIEUX 9 CAMP STREET CUMBERLAND, RI 02684	999999999	
11943	LMWW CUSTODIAN FBO RONALD P LIVINGSTON SEP IRA 2804 TAMARACK TRAIL APOPKA, FL 32703-4938	999999999	

Count 208

MSGF
MSGF228CVS SECURITIES LITIGATION TIMELY EXCLUSION
CVS SECURITIES LITIGATION REPSPage 15 of 24
19-May-05 2:38 PM

<u>Nme IdNo</u>	<u>Name/Address</u>	
11892	MERCELENA V LLOYD 43 HARDING DRIVE SEARCY, AR 72143-5704	Tax ID: 999999999 Account Number:
1003908	BERTRAND LOY 2 SETTLEMENT WAY ACTON, MA 01720	Tax ID: 999999999 Account Number:
12560	CLIFFORD MASTERSON 4386 LAKE P.O. BOX 122 BRIDGMAN, MI 49106	Tax ID: 999999999 Account Number:
11941	ARLINGTON BLISS MC CRUMB TTEE THE MC CRUMB REVOCABLE TRUST UAD 8/8/91 22 BATTERY STREET # 800 SAN FRANCISCO, CA 09411	Tax ID: 999999999 Account Number:
7371	J L MCCLAIN 16040 HIGHWAY 80 MINDEN, LA 71055	Tax ID: 999999999 Account Number:
11918	VERDA MCMULLEN 20127 N HORSE TRAIL DRIVE SURPRISE, AZ 85374-4611	Tax ID: 999999999 Account Number:
11528	EDWARD D MILLS 2093 IMPERIAL CIRCLE NAPLES, FL 34110	Tax ID: 999999999 Account Number:
11930	ANTHONY J MONER 1510 IMPERIAL GOLF COURSE BLVD # 114 NAPLES, FL 34110	Tax ID: 999999999 Account Number:
11913	FRANCINE MOSKOVITZ 930 INEZ WAY SACRAMENTO, CA 95822	Tax ID: 999999999 Account Number:

MSGF
MSGF228CVS SECURITIES LITIGATION TIMELY EXCLUSION
CVS SECURITIES LITIGATION REPSPage 16 of 24
19-May-05 2:38 PM

<u>Nme IdNo</u>	<u>Name/Address</u>	
7961	HELEN M MOUNT 43050 BLALOCK RD NEW LONDON, NC 28127	Tax ID: 999999999 Account Number:
11932	ROBERT MURELL 488 ALLEYPAN RIVES, TN 38253	Tax ID: 999999999 Account Number:
1012345	WALTER P NAAB 3982 NORTHWOODS TRAIL WAUTOMA, WI 54982	Tax ID: 999999999 Account Number:
2080272	SUSAN NEAVILLE & ROBERT HALL TTEES FBO MARY ELIZABETH HALL TRUST 104 SEA GARDEN CT SAINT AUGUSTINE, FL 32807	Tax ID: 999999999 Account Number:
12539	BERNADETTE NENTWICK 21218 E GLEN HAVEN CIRCLE NORTHVILLE, MI 48167-2468	Tax ID: 999999999 Account Number:
2058454	JAMES P OBRIEN 5009 MARILAKE CIR KETTERING, OH 45429-5416	Tax ID: 999999999 Account Number:
11902	EARL F OCONNOR 7434 S SHERMAN DR INDIANAPOLIS, IN 46237	Tax ID: 999999999 Account Number:
8291	ARSHAG OHANIAN & ALICE OHANIAN JT TEN 12 BURNHAM RD WENHAM, MA 01984-1907	Tax ID: 999999999 Account Number:
11914	BARBARA ANN OLSEN 1252 TILMAN ROAD CHARLOTTESVILLE, VA 22901	Tax ID: 999999999 Account Number:

MSGF
MSGF228CVS SECURITIES LITIGATION TIMELY EXCLUSION
CVS SECURITIES LITIGATION REPSPage 17 of 24
19-May-05 2:38 PM

<u>Name</u>	<u>IdNo</u>	<u>Name/Address</u>	Tax ID:
	12536	WARREN J OLSON 704 S JACKSON STREET FAIRBURY, IL 61739	999999999 Account Number:
	2002870	MARY PANARO 3025 SE MORNINGSIDE BLVD PORT SAINT LUCIE, FL 34952-5905	999999999 Account Number:
	12543	MONIE C PARKER 194 W JOLIET ROAD VALPARASIO, IN 46385-5942	999999999 Account Number:
	12593	JOSEPH PATRICK 5471 VICKSBURG DR INDIANAPOLIS, IN 46254	999999999 Account Number:
	11544	LOUIS PELZEL JR DIANA PELZEL 123 TYLER TERRACE SAN ANGELO, TX 76905-8207	999999999 Account Number:
	8881	SHIRLEY M PRESCOTT 8941 ETIWANDA AVE NORTHRIDGE, CA 91325-2710	999999999 Account Number:
	12576	RUTH R QUINTANILLA 90 BIG BEAR PLACE NW ISSAQUAH, WA 98027	999999999 Account Number:
	12590	MUHAMMAD USMAN QURESHI & MUHAMMAD FARHAN QURESHI & ANIS FATIMA 8907 SHASTA SPRINGS DR HOUSTON, TX 77034	999999999 Account Number:
	12585	DAWN RACZHOWSKI 509 ANN ELANE FAIRLESS HILLS, PA 19030	999999999 Account Number:

MSGF
MSGF228CVS SECURITIES LITIGATION TIMELY EXCLUSION
CVS SECURITIES LITIGATION REPSPage 18 of 24
19-May-05 2:38 PM

<u>Nme IdNo</u>	<u>Name/Address</u>	
11895	ALFRED J RAYMOND & DOLORES RAYMOND 133 COLE ST SEEKONK, MA 02771	Tax ID: 999999999 Account Number:
11541	JOSEF M REESE 553 FRANKLIN WAY WEST CHESTER, PA 19380	Tax ID: 999999999 Account Number:
11539	NORA L RESCH 4325 AEGEAN DRIVE APT 124B TAMPA, FL 33611-2405	Tax ID: 999999999 Account Number:
11909	STEVEN RICHARDS 11392 SEMINOLE REDFORD, MI 48239	Tax ID: 999999999 Account Number:
9193	GENE A RICHMOND JR 3012 SANSOM CT MILTON, WV 25541-1033	Tax ID: 999999999 Account Number:
11945	EDNA E RIPMAN XX, NY 11747	Tax ID: 999999999 Account Number:
12535	ROCHARD ROBINSON 3927 DUNN STREET GORVES, TX 77619	Tax ID: 999999999 Account Number:
11899	SHEILA H ROGERS 13520 VICTORY BLVD #9 VAN NUYS, CA 91401	Tax ID: 999999999 Account Number:
12565	ANN M RUDOLPH 311 INVERNESS CLOSE WESTMINSTER, MD 21158	Tax ID: 999999999 Account Number:

Count 208

MSGF **CVS SECURITIES LITIGATION TIMELY EXCLUSION** Page 19 of 24
 MSGF228 **CVS SECURITIES LITIGATION REPS** 19-May-05 2:38 PM

<u>Nme IdNo</u>	<u>Name/Address</u>	
1025009	JAMES RYAN & ANGELA RYAN 1142 VIA BOLZANO SANTA BARBARA, CA 93111-1054	Tax ID: 999999999 Account Number:
12553	LAWRENCE W RYAN 1550 N MAIN STREET LOT 107 MANSFIELD, TX 76069	Tax ID: 999999999 Account Number:
2050491	HILARY R SCHERMER OR FBO MARILYN S TESSMER TRUST 169-F TREASURE WAY SAN ANTONIO, TX 78209-2107	Tax ID: 999999999 Account Number:
2052136	DOROTHY SCHLAGEL 950 70TH ST SE DE GRAFF, MN 56271-9066	Tax ID: 999999999 Account Number:
2049558	JON K SCHMUKE & JOANN E SCHMUKE JTWROS 861 KEIFER TRAILS DR BALLWIN, MO 63021-6079	Tax ID: 999999999 Account Number:
1027851	ALEXIS M SCHOENTHAL C/O A G EDWARDS & SONS INC ROLLOVER IRA ACCOUNT PAS/RITTENHOUSE 4225 ABBEYDALE DRIVE CHARLOTTE, NC 28205-4607	Tax ID: 999999999 Account Number:
11944	EVELYN SHILLING XX, NY 11747	Tax ID: 999999999 Account Number:
9990	TERRY A SHORT 9 WHIPPLE AVENUE WARWICK, RI 02889-4725	Tax ID: 999999999 Account Number:

MSGF
MSGF228CVS SECURITIES LITIGATION TIMELY EXCLUSION
CVS SECURITIES LITIGATION REPSPage 20 of 24
19-May-05 2:38 PM

<u>Nme IdNo</u>	<u>Name/Address</u>	
10027	EDWIN A SILVER & ELAINE B SILVER JT TEN 11003 LOMBARDY RD SILVER SPRING, MD 20901-1638	Tax ID: 999999999 Account Number:
11907	EUGENE M SINISI 4214 CROWNWOOD DRIVE SEABROOK, TX 77586-4108	Tax ID: 999999999 Account Number:
11938	ROGER D SKINNER 1020 COVINGTON ROAD LOS ALTOS, CA 94024-5003	Tax ID: 999999999 Account Number:
2018812	MURRAY J SMIDT 5518 LINCOLN RD MARTINSVILLE, IN 46151-9136	Tax ID: 999999999 Account Number:
2074825	EDWARD J SMITH & DOROTHY M SMITH 3421 CLEARWELL ST AMARILLO, TX 79109-4122	Tax ID: 999999999 Account Number:
1020816	WILLIAM A SMITH 1100 HEMLOCK BORGER, TX 79007-5716	Tax ID: 999999999 Account Number:
11926	J.M. SMYKLA P.O. BOX 516 CONWAY, NH 03818-0516	Tax ID: 999999999 Account Number:
12547	LEA SOLOMON 17518 HIDDEN FOREST CIRCLE SPRING, TX 77379-8926	Tax ID: 999999999 Account Number:
2071380	EDWARD L SOULE (DECEASED) ROMANO M SOULE EXECUTOR PO BOX 54099 REDONDO, WA 98054-0099	Tax ID: 999999999 Account Number:

Count 208

MSGF
MSGF228CVS SECURITIES LITIGATION TIMELY EXCLUSION
CVS SECURITIES LITIGATION REPSPage 21 of 24
19-May-05 2:38 PM

<u>Nme IdNo</u>	<u>Name/Address</u>	
12534	LISA SPENCER 3037 MASTERS POINT DR CASTLE ROCK, CO 80104	Tax ID: 999999999 Account Number:
12545	KAREN STEIB 3903 DORAL DRIVE TAMPA, FL 33634	Tax ID: 999999999 Account Number:
11532	RICHARD J STORTI & KIA D STORTI 1 LACROIX DRIVE WEST WARWICK, RI 02893	Tax ID: 999999999 Account Number:
2017559	MALVERNE N SULLIVAN 585 LINDEN AVE ELMHURST, IL 60126-4028	Tax ID: 999999999 Account Number:
11542	JOAN C SUMMERHAYS 50 SMITH ROAD DENVER, NJ 07834	Tax ID: 999999999 Account Number:
12533	THERESA M TALBOTT RR4 BOX 4169 STROUDSBURG, PA 18360	Tax ID: 162420579 Account Number:
1000139	ROBERT A TAMPLIN 959 ABERDEEN CT CONCORD, NC 28027-6451	Tax ID: 999999999 Account Number:
11928	SHIRLEY TARTER 810 W TOBAY LODI, CA 95240	Tax ID: 999999999 Account Number:
11919	MARLON R TAYLOR 3741 E 48TH STREET TULSA, OK 74135	Tax ID: 999999999 Account Number:

Count 208

MSGF
MSGF228CVS SECURITIES LITIGATION TIMELY EXCLUSION
CVS SECURITIES LITIGATION REPSPage 22 of 24
19-May-05 2:38 PM

<u>Nme IdNo</u>	<u>Name/Address</u>	Tax ID:	Account Number:
11535	HARRY THOMSEN 3492 HILL CIRCLE COLORADO SPRINGS, CO 80904	999999999	
12597	JUNE TOST 1080 PINE DRIVE ENUMCLAW, WA 98022	999999999	
2077042	PAUL R TOTTEN A/C 87000760 LARGE CAP CORE 425 BEECH PARK DR GREENWOOD, IN 46142-4055	999999999	
11008	BETTY J TRICKLER 305 FIELDSTONE DR LA PORTE, IN 46350-6654	999999999	
12586	PAUL TUCKER 30 ELKTON COURT LAFAYETTE, IN 47905	999999999	
12599	JENNIE F TUMINO PO BOX 675 MILLBROOK, NY 12545	999999999	
11540	LOUISE B TYRER 549 LAKESHORE DRIVE #7 INCLINE VILLAGE, NV 89451	999999999	
1004689	JOHN E UHL 7 ANVIL DR CUMBERLAND, RI 02864	999999999	
2054641	CHESTER IVAN UTLEY (FINANCIAL COUNSELORS IRA) 3832 W 134TH PL HAWTHORNE, CA 90250-6106	999999999	

MSGF
MSGF228CVS SECURITIES LITIGATION TIMELY EXCLUSION
CVS SECURITIES LITIGATION REPSPage 23 of 24
19-May-05 2:38 PM

<u>Nme IdNo</u>	<u>Name/Address</u>	
11900	LOIS VANKERHOVEN R9252 CTY HWY J SCHOFIELD, WI 54476-9701	Tax ID: 999999999 Account Number:
2052604	BEVERLY VASSALLO 6967 PAMPAS WAY FAIR OAKS, CA 95628-3258	Tax ID: 999999999 Account Number:
12570	VERA M WACHOWSKI 9957 LIVE OAK COURT AFFTON, MO 63123	Tax ID: 999999999 Account Number:
12549	WASHMON FAMILY PARTNERSHIP LTD 2 ATTN: DOROTHY B WASHMON 2101 TREASRE HILLS BLVD SITE 527 HARLINGER, TX 78550	Tax ID: 999999999 Account Number:
12580	NANCY ELAINE WATKINS 246 KIDARE DR PEARLAND, TX 77581	Tax ID: 999999999 Account Number:
12541	WILLIAM H WEAKLEY & CLAIRE L WEAKLEY JTWROS 15618 OLDRIDGE DRIVE HOUSTON, TX 77084	Tax ID: 999999999 Account Number:
11538	JASON E WEBB 133 FORD DRIVE NORTH SYRACUSE, NY 13212-2107	Tax ID: 999999999 Account Number:
1030936	JOHN R WEBB & JACQUELYN H WEBB JTWROS P O BOX 364 FOUNTAIN CITY, IN 47341-0364	Tax ID: 999999999 Account Number:

MSGF
MSGF228CVS SECURITIES LITIGATION TIMELY EXCLUSION
CVS SECURITIES LITIGATION REPSPage 24 of 24
19-May-05 2:38 PM

<u>Nme IdNo</u>	<u>Name/Address</u>	
12569	HIPPOLYTE WEINUM 1025 LINCOLN ROAD WEST HEMPSTEAD, NY 11552	Tax ID: 999999999 Account Number:
1010725	ANN RUDD WELTNER & DOUGLAS G WELTNER 7777 FERNVALE RD FAIRVIEW, TN 37062	Tax ID: 999999999 Account Number:
12571	ROBERT B WERDE 1034 SANDE STREET NEENAH, WI 54956	Tax ID: 999999999 Account Number:
12530	BERNITA B WHITE 4453 BLACHLEYVILLE RD WOOSTER, OH 44691	Tax ID: 999999999 Account Number:
2026161	DR. JOE T. WILLS, MD SMITH BARNEY PROTOTYPE PS PLAN INVESCO NAM FLEX ACCOUNT DR. JOE T. WILLS TTEE 1707 MATTOX CREEK DRIVE THOMSON, GA 30824-7647	Tax ID: 999999999 Account Number:
3334	FRANCES ANDREWS WINESETTE PO BOX 54 BETHEL, NC 27812-0054	Tax ID: 999999999 Account Number:
1030782	BILLY H WINTERS P O BOX 656 HAMPTON, GA 30228-0656	Tax ID: 999999999 Account Number:
12568	JAMES H WRIGHT & SHERRY L WRIGHT 14924 SEVEN LEAGUE ROAD TYLER, TX 75703	Tax ID: 999999999 Account Number:

Exhibit 7E



RECENT TRENDS IN SECURITIES CLASS ACTION LITIGATION: 2023 FULL-YEAR REVIEW

By Edward Flores and Svetlana Starykh¹

FOREWORD

I am excited to share NERA's "Recent Trends in Securities Class Action Litigation: 2023 Full-Year Review" with you. This year's edition builds on work carried out over more than three decades by many of NERA's securities and finance experts. Although space does not permit us to present all the analyses the authors have undertaken while working on this year's edition or to provide details on the statistical analysis of settlement amounts, we hope you will contact us if you want to learn more about our research or our work in securities litigations. On behalf of NERA's securities and finance experts, I thank you for taking the time to review this year's report and hope you find it informative.

DAVID TABAK, PhD

Senior Managing Director



INTRODUCTION

There were 228 new federal securities class action suits filed in 2023, ending a four-year decline in filings seen from 2019 to 2022. The increase in filings was mainly driven by an increase in the number of suits alleging Rule 10b-5 violations. Fueled by turmoil in the banking industry, filings in the finance sector more than doubled in 2023, comprising 18% of new filings. The number of filings related to the environment quadrupled in 2023 compared to 2022.

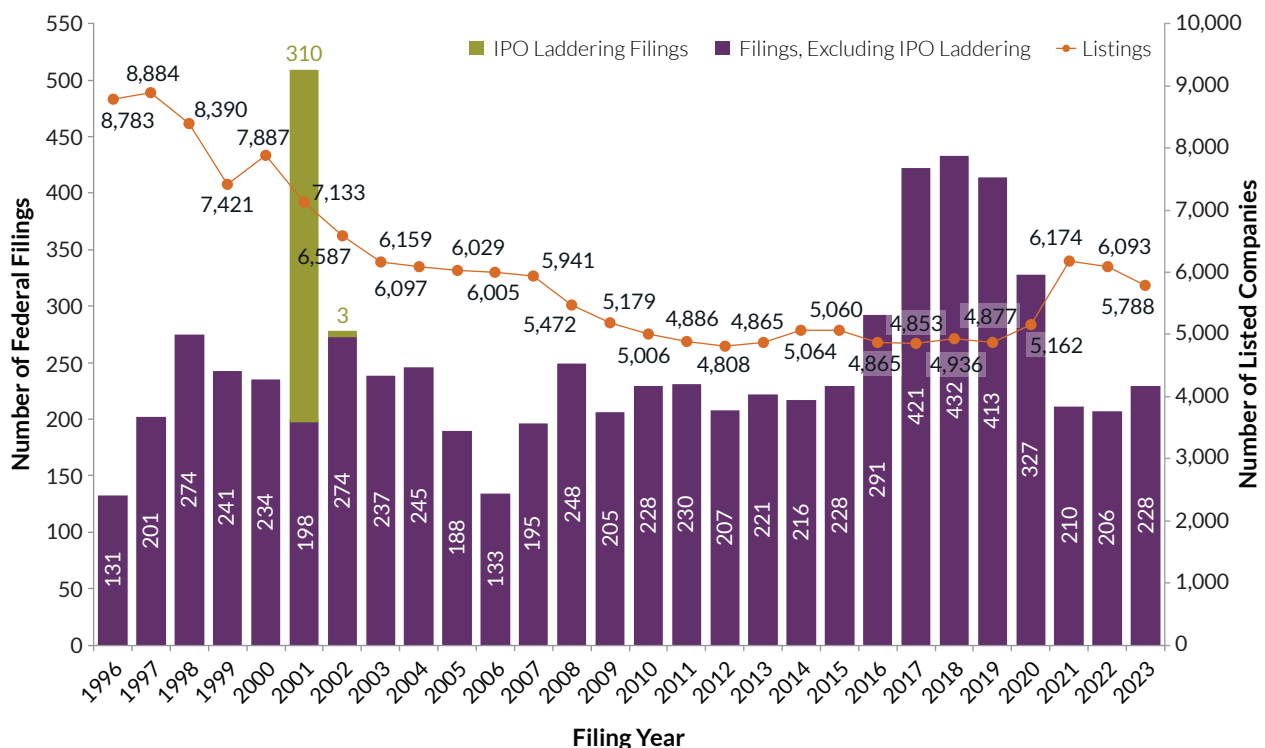
For the sixth consecutive year, there was a decline in the number of resolutions. There were 190 cases resolved in 2023, consisting of 90 settlements and 100 dismissals, marking the lowest recorded level of resolutions in the last 10 years. More than half of the decline in resolutions was driven by a decrease in the number of settled cases with Rule 10b-5, Section 11, and/or Section 12 claims.

Aggregate settlements totaled \$3.9 billion in 2023, with the top 10 settlements of the year accounting for over 66% of this amount. Aggregate plaintiffs' attorneys' fees and expenses totaled \$972 million, accounting for 24.9% of the 2023 aggregate settlement value. The average settlement value increased by 17% in 2023 to \$46 million, though this was largely driven by the presence of a \$1 billion settlement. The median settlement value for 2023 was \$14 million, a nominal 7% increase from the inflation-adjusted median settlement value in 2022.

TRENDS IN FILINGS

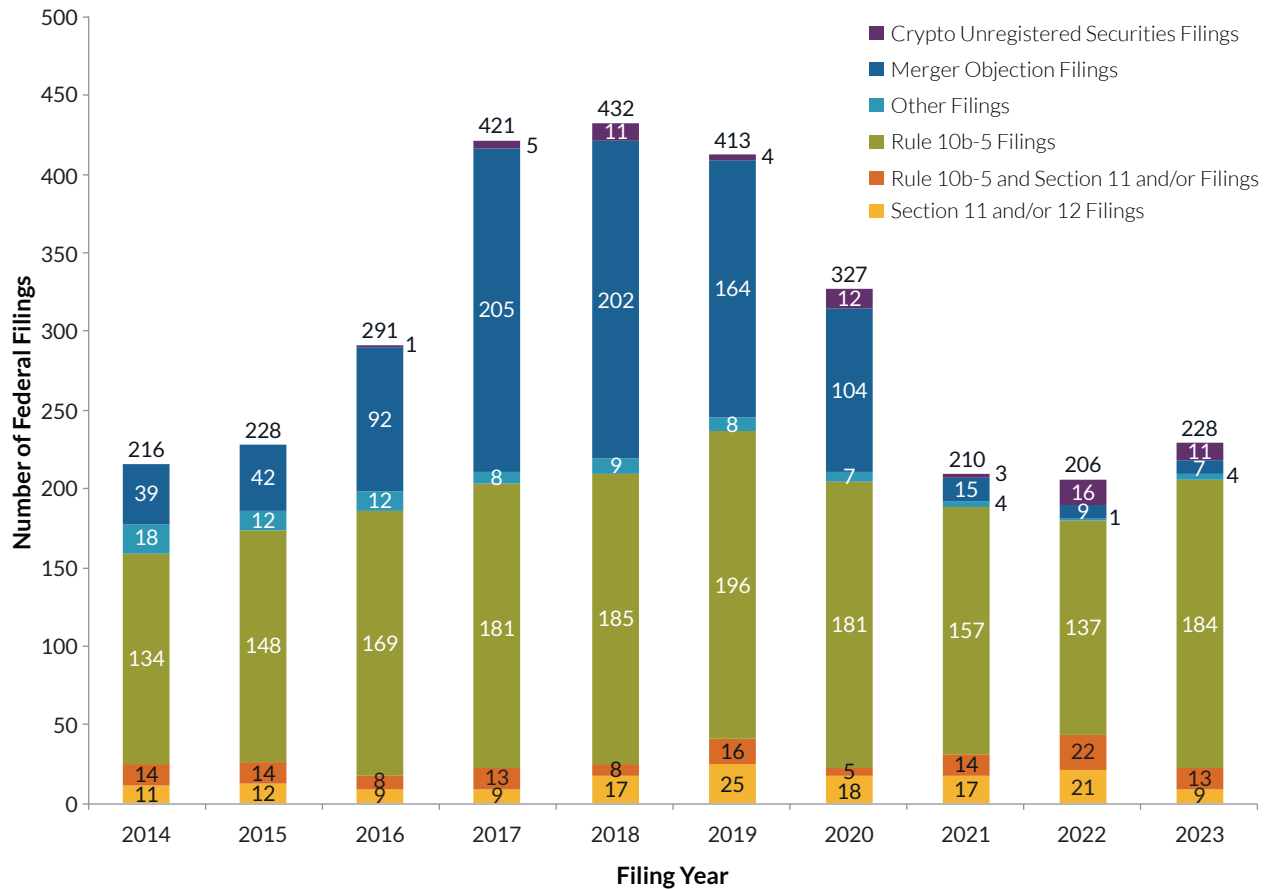
From 2019 to 2022, there was a decline in the number of federal filings. In 2023, there were 228 new cases filed, an increase from the 206 cases filed in 2022 (see Figure 1).² Standard cases, which contain alleged violations of Rule 10b-5, Section 11, and/or Section 12, accounted for most new filings with 206.³ In particular, filings involving only Rule 10-5 claims increased by 34% from 137 in 2022 to 184 in 2023. On the other hand, there were only seven merger-objection suits filed in 2023, marking a 10-year low. There was also a decline in filings involving crypto unregistered securities, dropping to 11 in 2023 from the 16 observed in 2022.⁴ See Figure 2.

Figure 1. Federal Filings and Number of Companies Listed in the United States
January 1996–December 2023



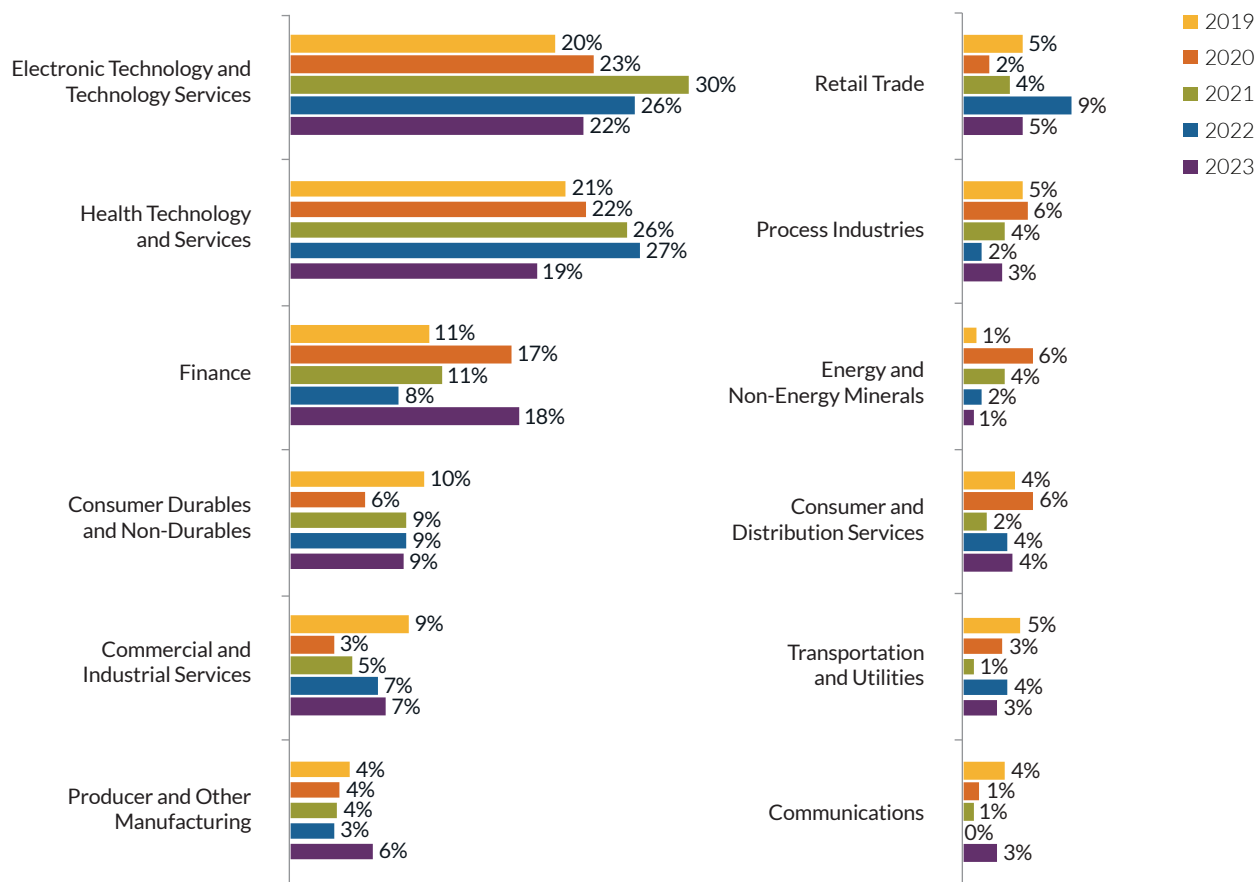
Note: Listed companies include those listed on the NYSE and Nasdaq. Listings data obtained from World Federation of Exchanges (WFE). The 2023 listings data are as of October 2023.

Figure 2. Federal Filings by Type
January 2014–December 2023



Excluding merger-objection and crypto unregistered securities cases, the electronic technology and technology services sector accounted for 22% of new filings, the largest proportion of any sector. After hitting a five-year low in 2022, there was a resurgence in filings in the finance sector in 2023, accounting for 18% of new filings. This is more than double the percentage in 2022 and was partly due to the banking crisis in early 2023. On the other hand, the percentage of suits in the health technology and services sector declined from 27% in 2022 to 19% in 2023, partially driven by a decline in COVID-19-related suits. See Figure 3.

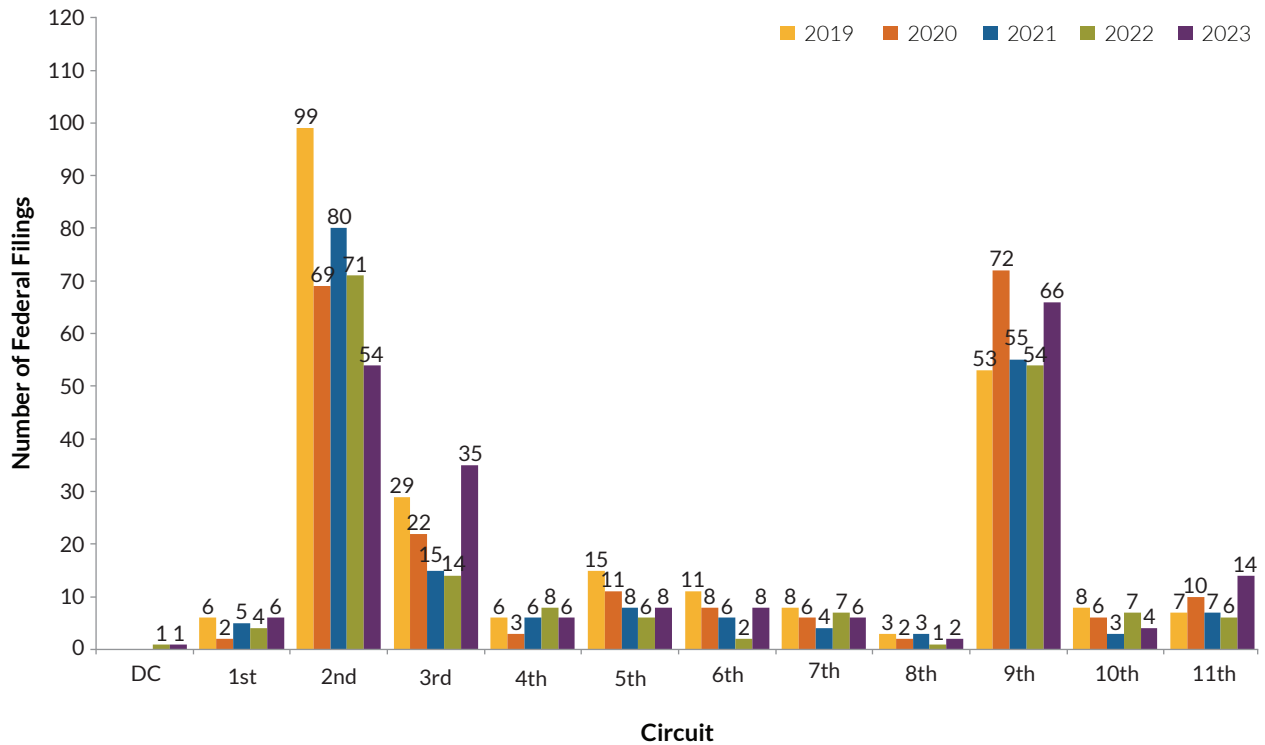
Figure 3. **Percentage of Federal Filings by Sector and Year**
 Excludes Merger Objections and Crypto Unregistered Securities
 January 2019–December 2023



Note: This analysis is based on the FactSet Research Systems, Inc. economic sector classification. Some of the FactSet economic sectors are combined for presentation.

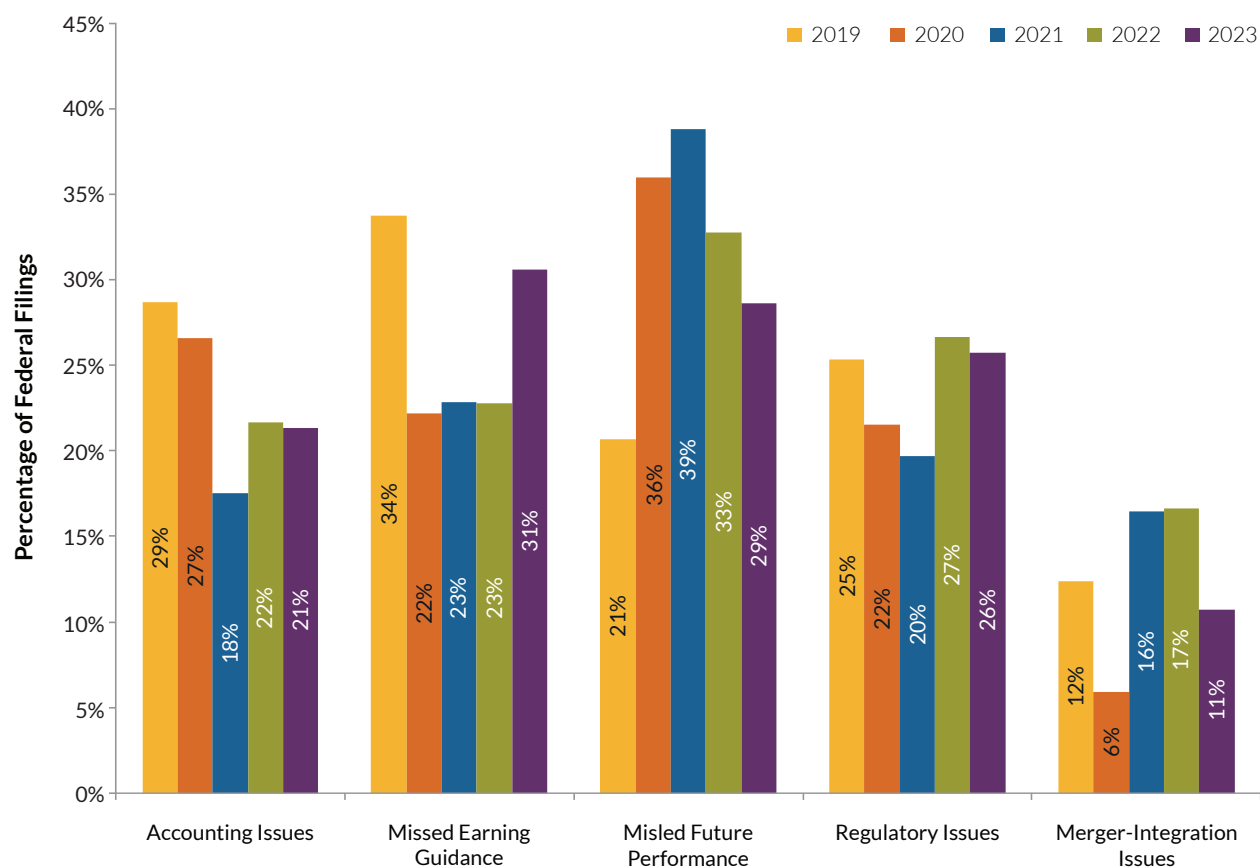
The Second, Third, and Ninth Circuits continue to be the jurisdictions with the most cases filed, together accounting for 155 of the 210 non-merger-objections, non-crypto unregistered securities filings. The Ninth Circuit witnessed 66 new filings, marking a 22% increase from 2022. The number of filings in the Second Circuit declined by 24% to 54, marking a five-year low. The Third Circuit accounted for 35 filings, more than double the number of cases in 2022. Elsewhere, there were 14 cases filed in the Eleventh Circuit, marking a five-year high. See Figure 4.

Figure 4. **Federal Filings by Circuit and Year**
 Excludes Merger Objections and Crypto Unregistered Securities
 January 2019–December 2023



Among filings of standard cases, 31% included an allegation related to missed earnings guidance and 29% included an allegation related to misled future performance.⁵ Meanwhile, the percentage of standard cases containing an allegation related to merger-integration issues declined by one-third to 11%, partially driven by a decline in SPAC-related filings. See Figure 5.

Figure 5. **Allegations**
Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, and/or Section 12
January 2019–December 2023



FILINGS AGAINST FOREIGN COMPANIES

Historically, foreign companies with securities listed on US exchanges have been targeted with securities class action suits at a higher rate than their proportion of US listings, though this trend has reversed over the past two years.⁶ In 2023, 18.9% of filings of standard cases were against foreign companies, compared to 24.1% of US listings represented by foreign companies. See Figure 6.

In 2023, there were 39 standard suits filed against foreign companies, a slight increase from 2022 (see Figure 7). Suits against companies in Asia accounted for 19 filings, while another 14 filings were against European companies. Nearly 36% of cases involving foreign companies had an allegation related to regulatory issues, compared to 23% for US companies. See Figure 8.

Figure 6. Foreign Companies: Share of Filings and Share of Companies Listed on US Exchanges
 Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, and/or Section 12
 January 2014–December 2023

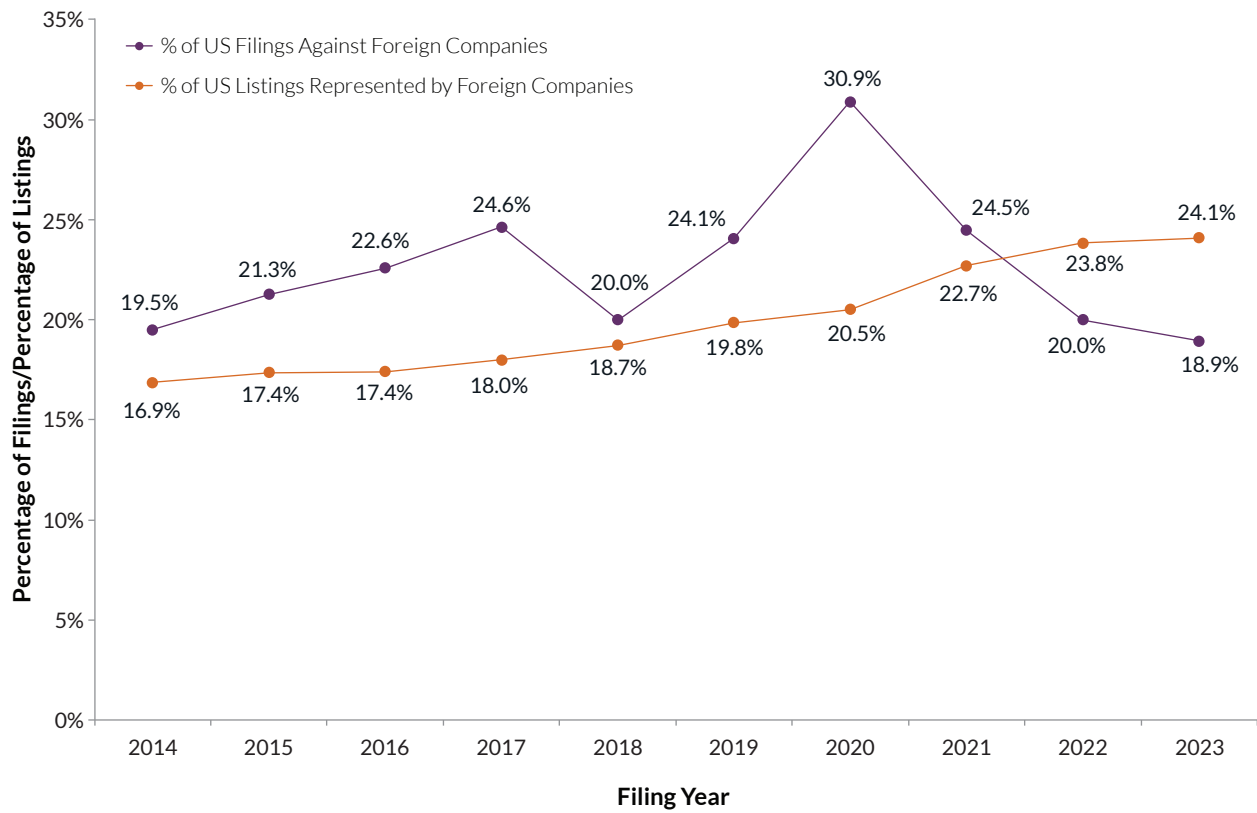
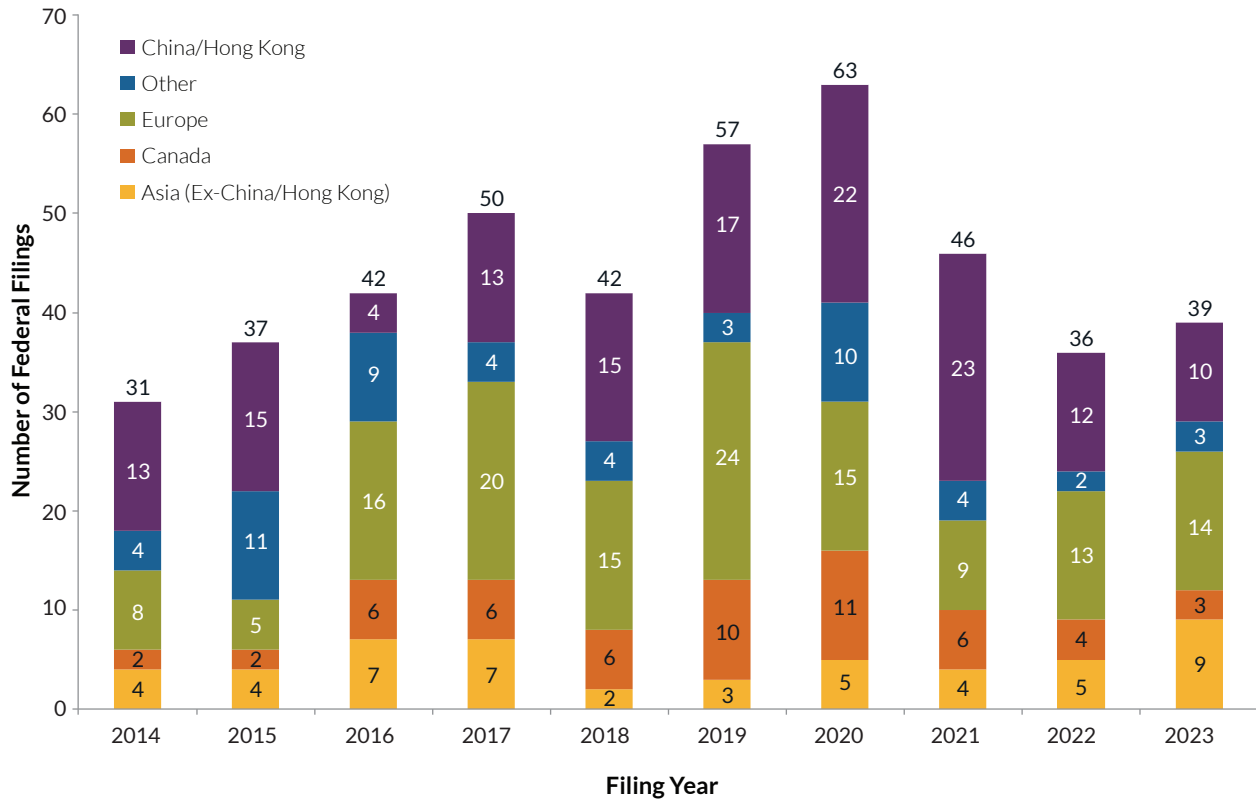


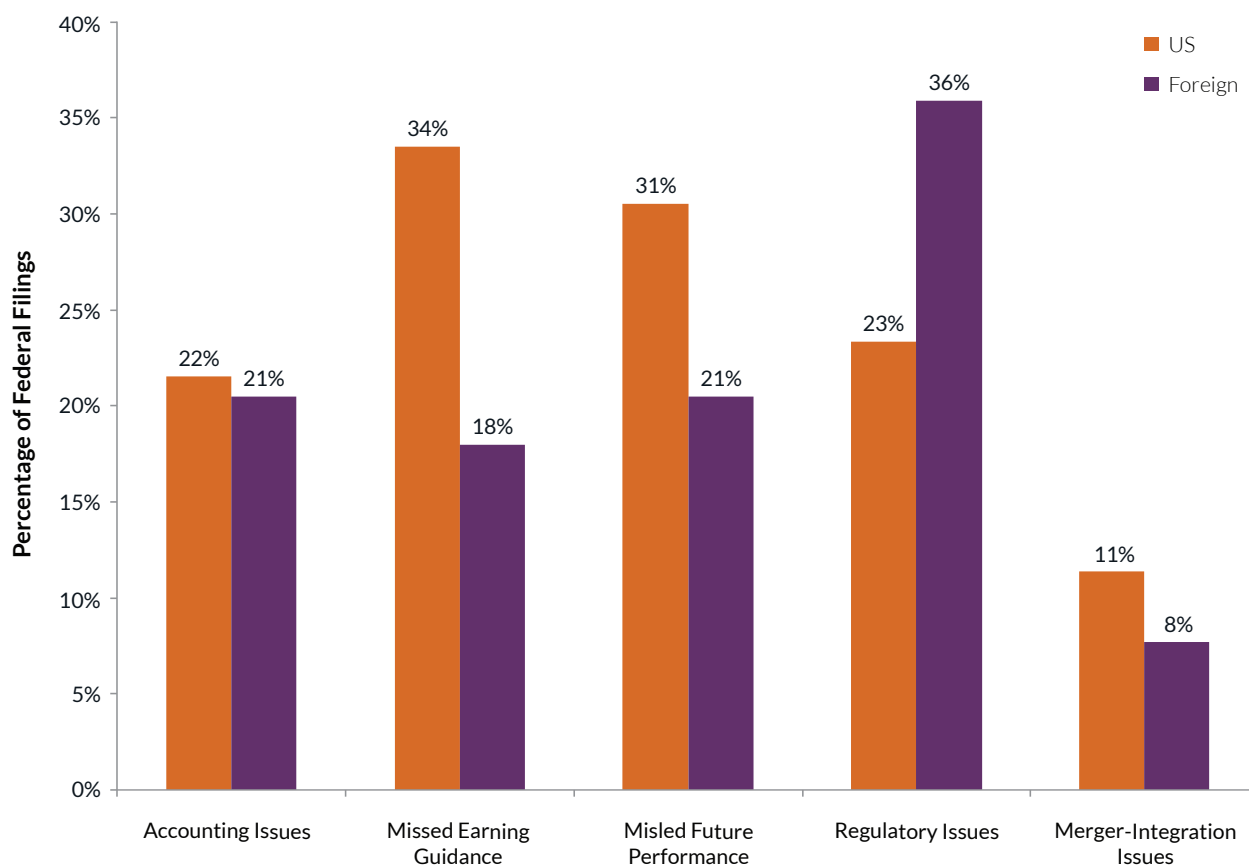
Figure 7. **Filings Against Foreign Companies**

Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, or Section 12 by Region
 January 2014–December 2023



Note: Foreign issuer status determined based on location of principal executive offices.

Figure 8. **Allegations by US and Foreign Companies**
Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, and/or Section 12
January 2023–December 2023



EVENT-DRIVEN AND OTHER SPECIAL CASES

In this section, we summarize trends in filings in potential development areas that we have identified for securities class actions over the past five years (see Figures 9 and 10). Due to the small number of cases in some categories, the findings summarized here may be driven by one or two cases.

Crypto Cases

Since 2020, there have been at least 10 crypto-related federal filings each year, comprised of cases involving unregistered securities and shareholder suits involving companies operating in or adjacent to the cryptocurrency sector. In 2023, there were 16 crypto-related federal filings, a 28% decline from the 26 filings observed in 2022.

Figure 9. **Number of Crypto Federal Filings**
January 2016–December 2023



2023 Banking Turmoil

The first securities class action suit alleging problems in the banking industry was filed on 7 December 2022 against bank holding company Silvergate Capital Corporation, which provided a banking platform through its subsidiary, Silvergate Bank.⁷ Silvergate Bank's voluntary liquidation on 8 March 2023 started a rapid chain of bank failures that intensified during the spring, which saw the collapse of Silicon Valley Bank, Signature Bank, and First Republic Bank,⁸ and continued through 3 November 2023, when Citizens Bank of Sac City was closed by the Iowa Division of Banking.⁹ Between December 2022 and October 2023, there were 12 securities class action suits filed against banking institutions. Of those, 11 cases were filed in 2023, representing nearly 30% of all filings in the finance sector. Four of the 11 cases were filed against Credit Suisse Group AG, after Credit Suisse, the second-largest bank in Switzerland, collapsed in March 2023 and was bought by rival UBS Group AG.

Environment

In recent years, there has been an increased focus by governments and regulators on issues related to the environment, fossil fuel emissions, quality of drinking water, and climate change. During the past five years, there have been 20 environment-related securities class action suits filed. Eight of these cases were filed in 2023, quadruple the number from the two cases filed in 2022. Among the cases filed in 2023 include a suit against Hawaiian Electric Industries, Inc. in connection with wildfires in Hawaii, two cases related to train derailments with severe environmental consequences against Norfolk Southern Corporation, and three cases involving telecommunication companies AT&T, Verizon Communications, and Lumen Technologies for ownership of thousands of miles of lead-covered cables.

Cannabis

In 2019, there were 13 securities class action suits filed against defendants in the cannabis industry. The number of filings has declined in subsequent years, with only one suit filed per year in each of 2022 and 2023.

Money Laundering

In each of 2019 and 2020, three cases were filed with claims related to money laundering. In 2021, there were no such cases filed, while in 2022 and 2023, only one such suit was filed in each year.

Cybersecurity and Customer Privacy Breach

Since 2019, there have been at least three securities class action suits filed each year related to a cybersecurity and/or customer privacy breach. While there were seven such filings in 2021, there were only three filings in 2023.

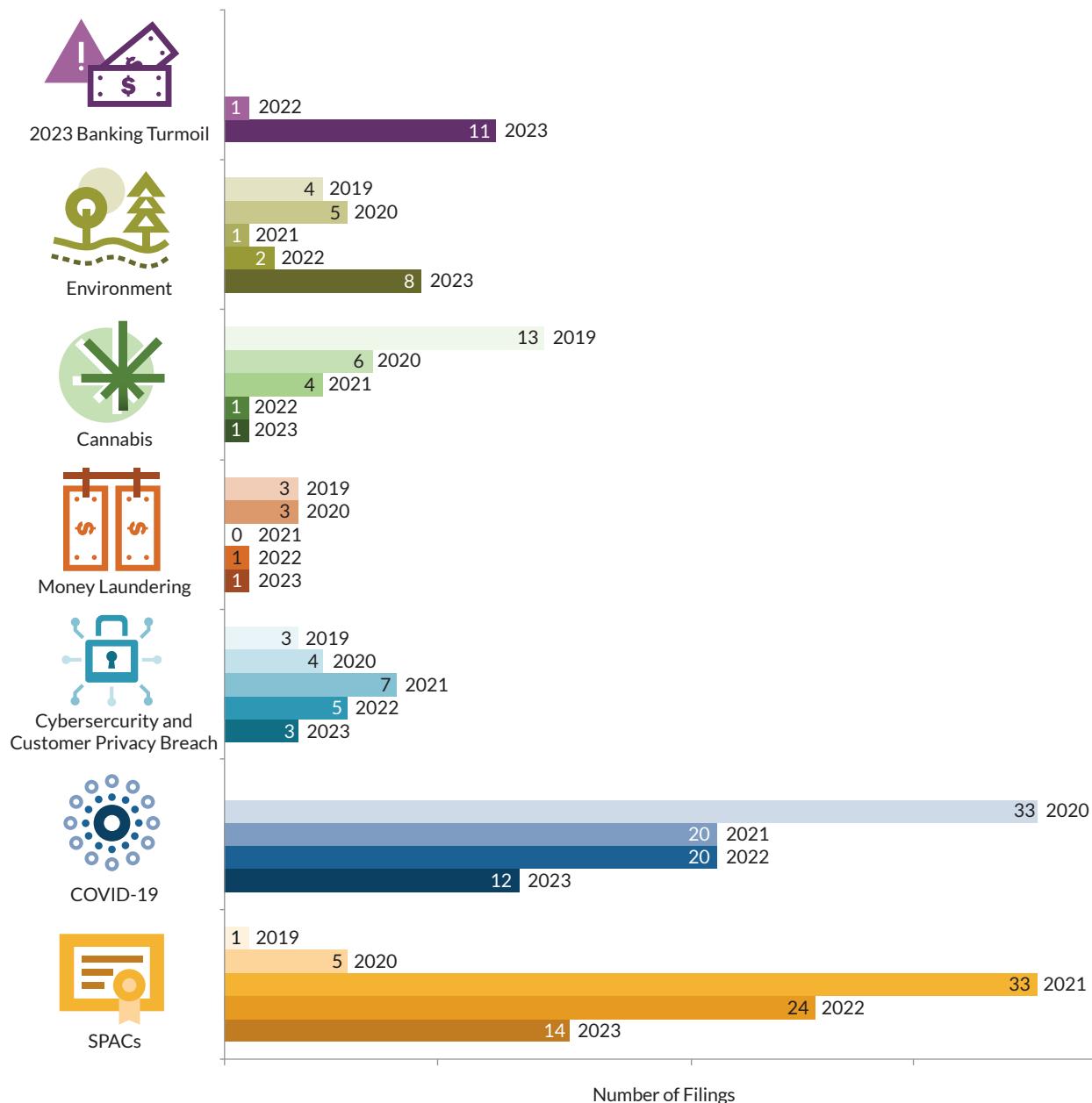
COVID-19

Since March 2020, there have been 85 securities class actions filed with claims related to the COVID-19 pandemic. Of these, 33 cases were filed in 2020. In 2021 and 2022, the number of suits declined to 20 each year, while in 2023, there were only 12 such filings.

SPAC

Filings related to special purpose acquisition companies (SPACs) peaked in 2021 with 31 securities class action suits filed that year. Since then, new federal filings related to SPACs have declined each year to 24 in 2022 and 14 in 2023.

Figure 10. Event-Driven and Other Special Cases by Filing Year
January 2019–December 2023



TRENDS IN RESOLUTIONS

In 2023, the number of resolved cases declined by 15% to 190 from 223 in 2022, continuing a six-year decline in resolutions seen since 2018 and marking the lowest recorded level of resolutions in the last 10 years. Of these resolved cases, 90 were settlements and 100 were dismissals.¹⁰ While resolutions declined across all categories of cases, more than half of this decline was due to

a reduction in the number of settled standard cases, which had a record-setting year in 2022. The number of merger-objection cases resolved declined to nine in 2023, consistent with the reduced number of filings of such cases in recent years. See Figure 11.

Since 2015, more cases filed have been dismissed than settled. This is consistent with historical trends, which indicate that dismissals tend to occur earlier in the litigation cycle and settlements occur later (see Figure 12). For cases filed in 2023, 5% of cases have been dismissed while 95% remain pending as of December 2023.

For cases filed and resolved over the past 20 years, over two-thirds were resolved within three years of the filing of the first complaint, while 16% of cases take longer than four years to resolve (see Figure 13). The median time to resolution is 2.1 years.

Figure 11. **Number of Resolved Cases: Dismissed or Settled**
January 2014–December 2023

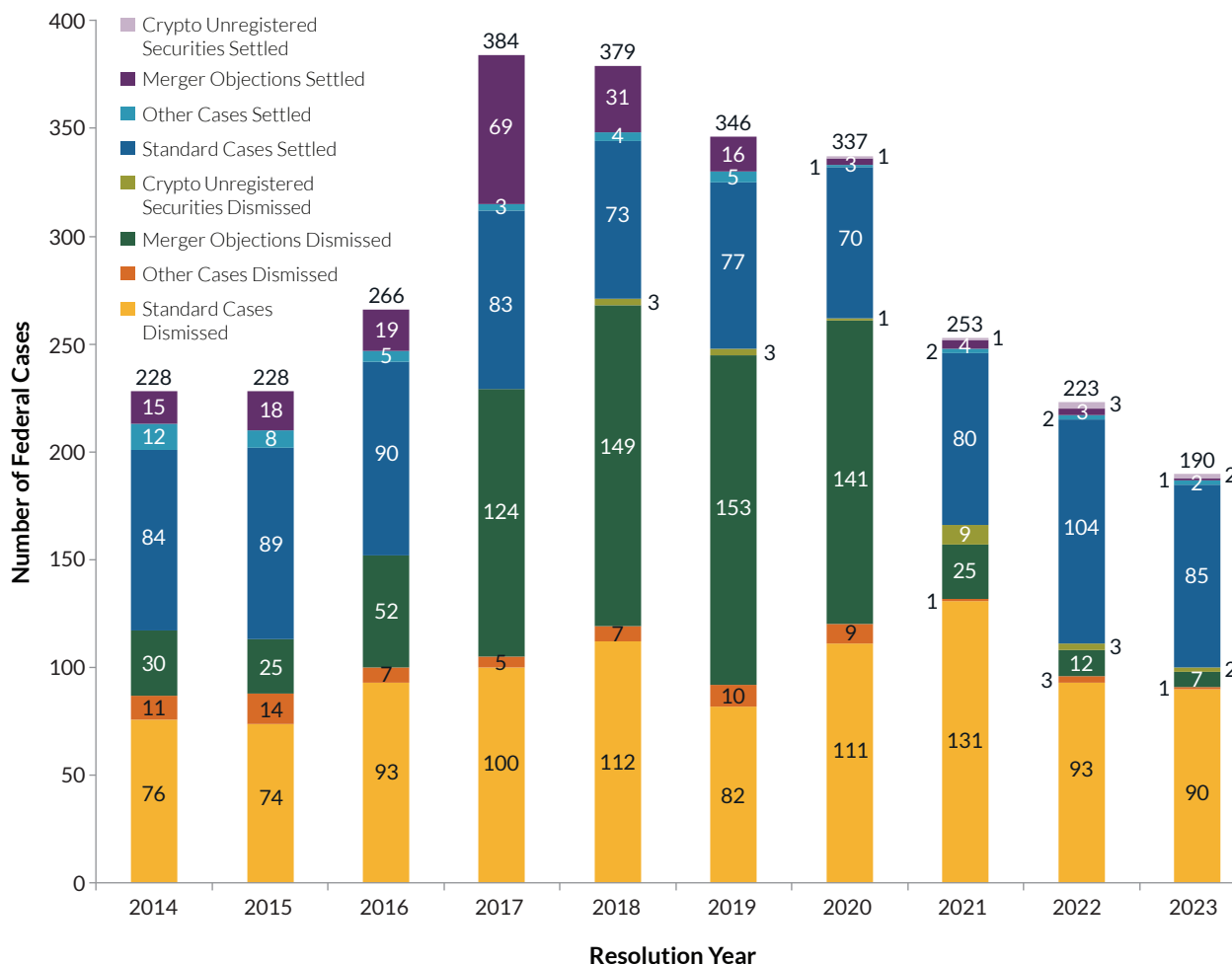
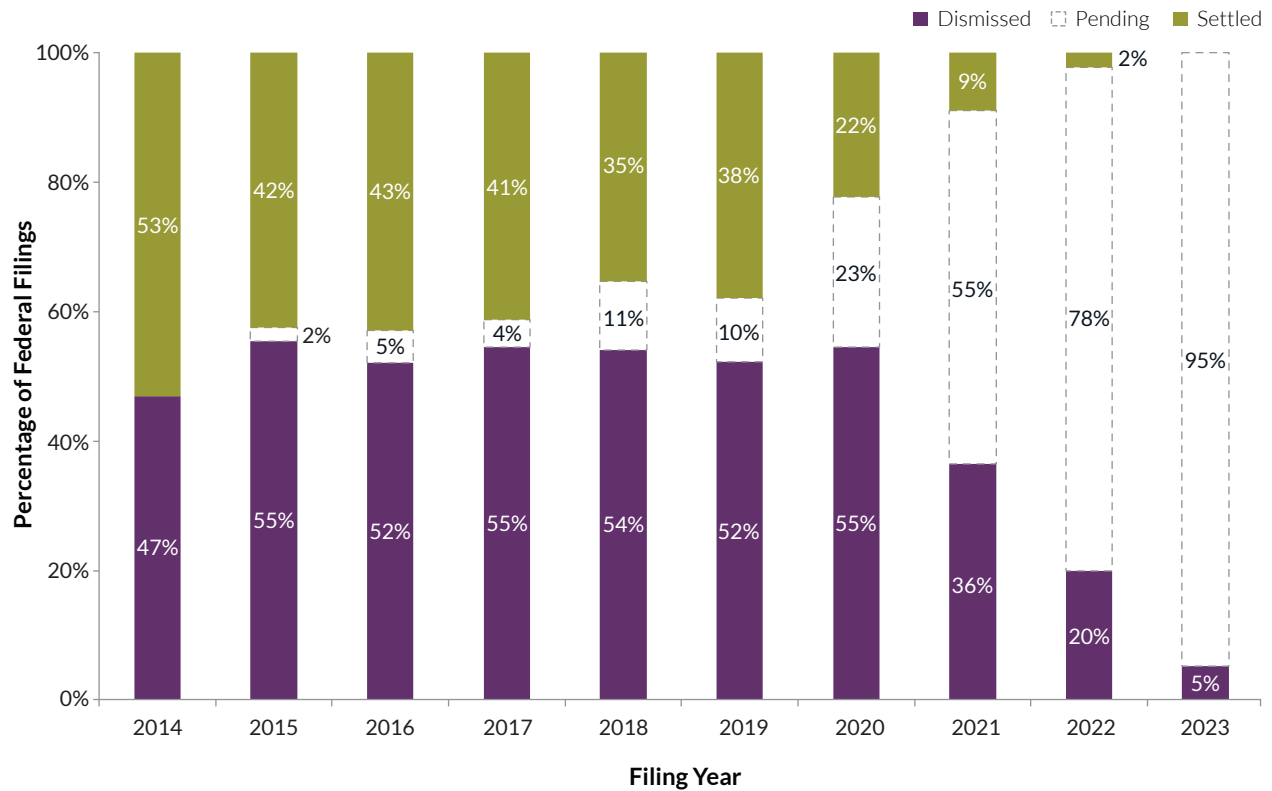


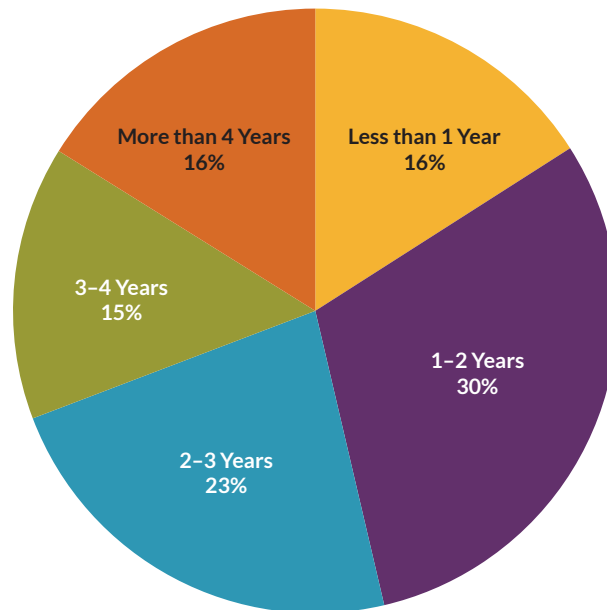
Figure 12. **Status of Cases as Percentage of Federal Filings by Filing Year**
 Excludes Merger Objections, Crypto Unregistered Securities, and Verdicts
 January 2014–December 2023



Note: Dismissals may include dismissals without prejudice and dismissals under appeal. Component values may not add to 100% due to rounding.

The number of resolved cases decreased by 15% to 190 from 223 in 2022, continuing a six-year decline in resolutions seen since 2018 and marking the lowest recorded level of resolutions in the last 10 years.

Figure 13. **Time from First Complaint Filing to Resolution**
 Excluding Merger Objections and Crypto Unregistered Securities
 Cases Filed January 2004–December 2019 and Resolved January 2004–December 2023



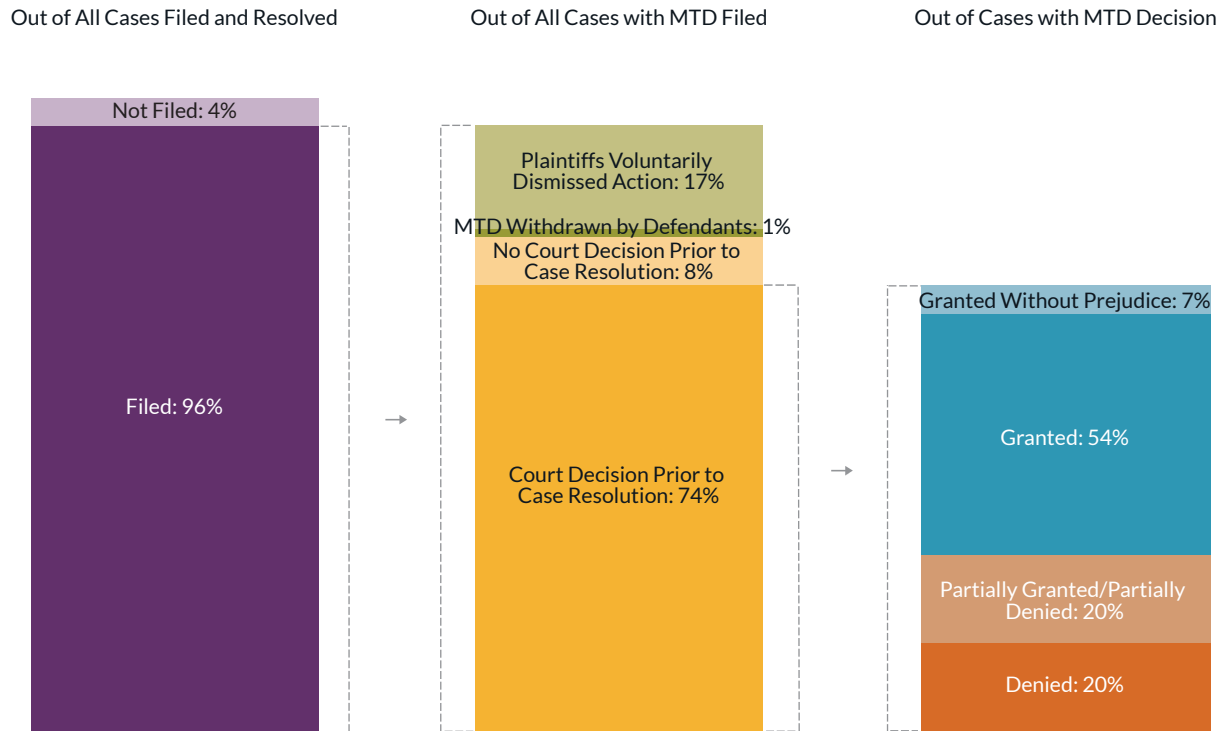
ANALYSIS OF MOTIONS

NERA's federal securities class action database tracks filing and resolution activity as well as decisions on motions to dismiss, motions for class certification, and the status of any motion as of the resolution date. For this analysis, we include securities class actions that were filed and resolved over the 2014–2023 period in which purchasers of common stock are part of the class and in which a violation of Rule 10b-5, Section 11, and/or Section 12 is alleged.

Motion to Dismiss

A motion to dismiss was filed in 96% of the securities class action suits filed and resolved. A decision was reached in 74% of these cases, while 17% were voluntarily dismissed by plaintiffs, 8% settled before a court decision was reached, and 1% of motions were withdrawn by defendants. Among the cases in which a decision was reached, 60% of motions were granted (with or without prejudice) while 40% were denied either in part or in full. See Figure 14.

Figure 14. Filing and Resolutions of Motions to Dismiss
 Cases Filed and Resolved January 2014–December 2023



Motion for Class Certification

A motion for class certification was filed in only 18% of the securities class action suits filed and resolved, as most cases are either dismissed or settled before the class certification stage is reached. A decision was reached in 60% of the cases in which a motion for class certification was filed, while nearly all remaining 40% of cases were resolved with a settlement. Among the cases in which a decision was reached, the motion for class certification was granted (with or without prejudice) in 86% of cases. See Figure 15.

Approximately 64% of decisions on motions for class certification occur within three years of the filing of the first complaint, with nearly all decisions occurring within five years (see Figure 16). The median time is about 2.7 years.

Figure 15. Filing and Resolutions of Motions for Class Certification
Cases Filed and Resolved January 2014–December 2023

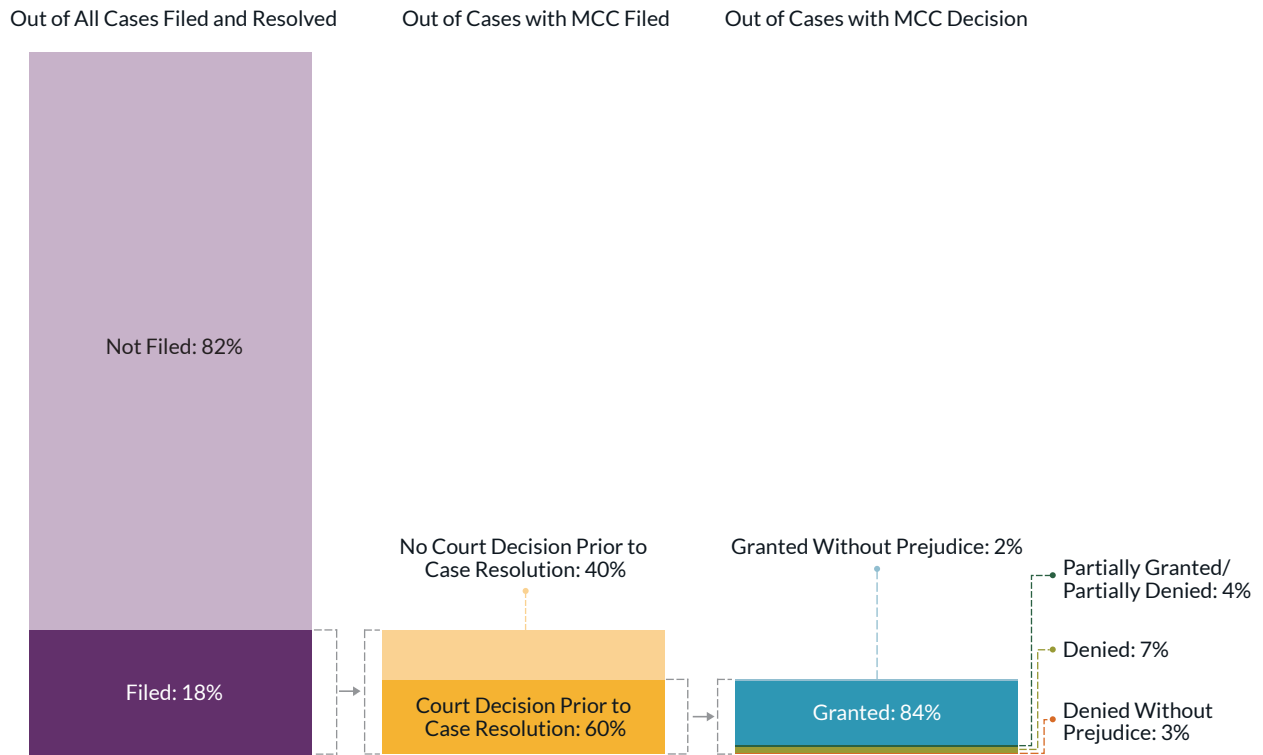
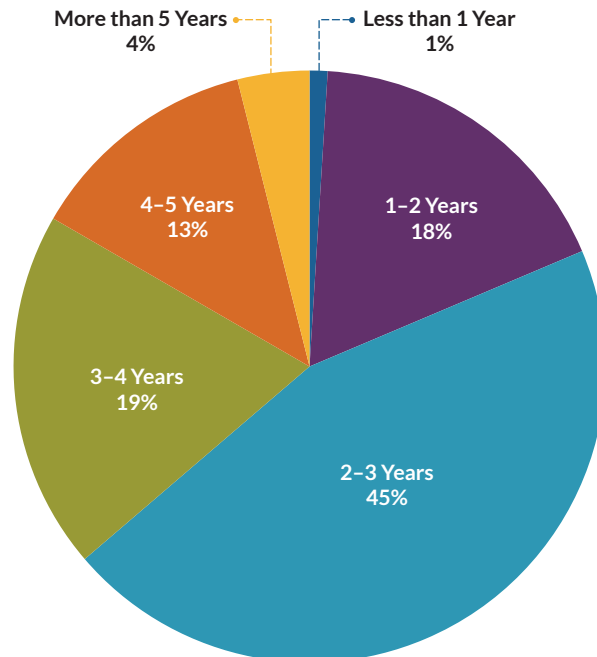


Figure 16. Time from First Complaint Filing to Class Certification Decision
Cases Filed and Resolved January 2014–December 2023

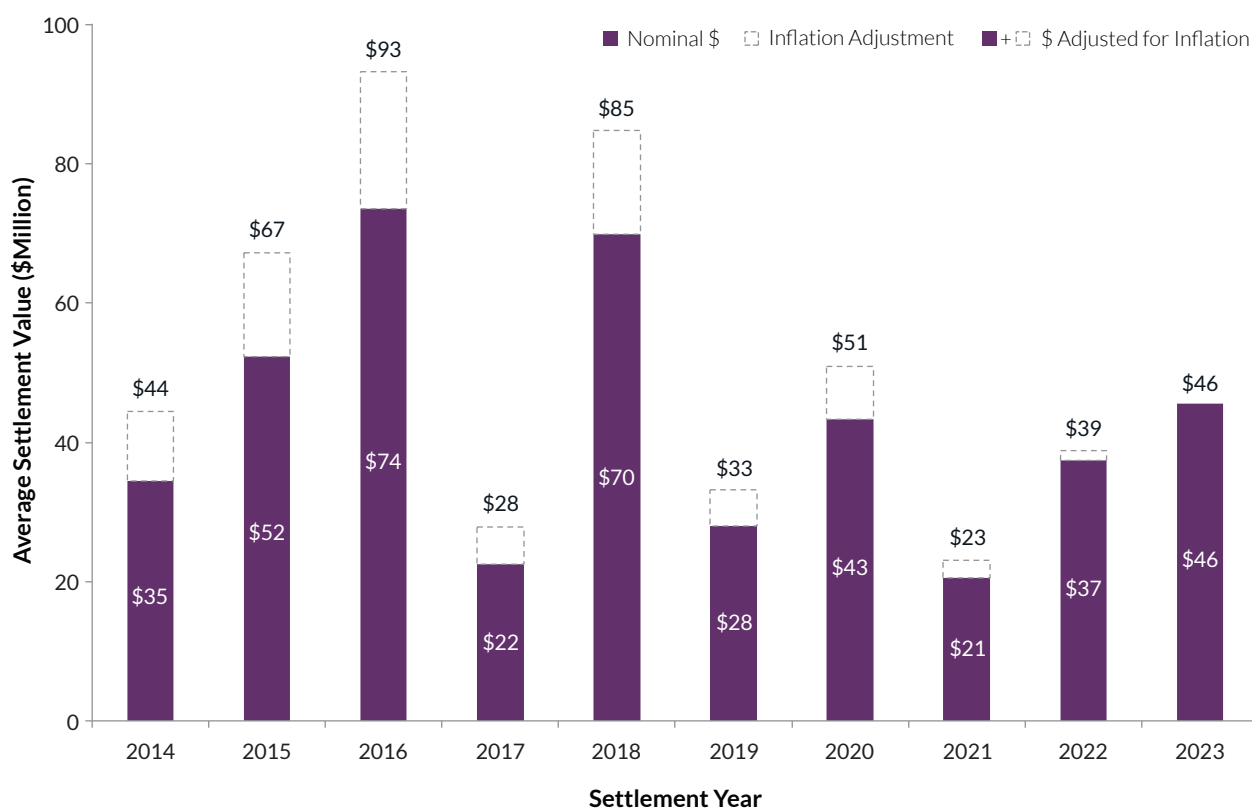


TRENDS IN SETTLEMENT VALUES¹¹

Aggregate settlements for 2023 totaled \$3.9 billion, which marks a slight decline from the inflation-adjusted total of \$4.2 billion from 2022.¹² In 2023, the average settlement value was approximately \$46 million, a 17% increase over the 2022 inflation-adjusted average settlement value of \$39 million and the second consecutive year that this value has increased (see Figure 17). The increase in the average settlement value is largely driven by a \$1 billion settlement by Wells Fargo & Company.¹³

Figure 17. **Average Settlement Value**

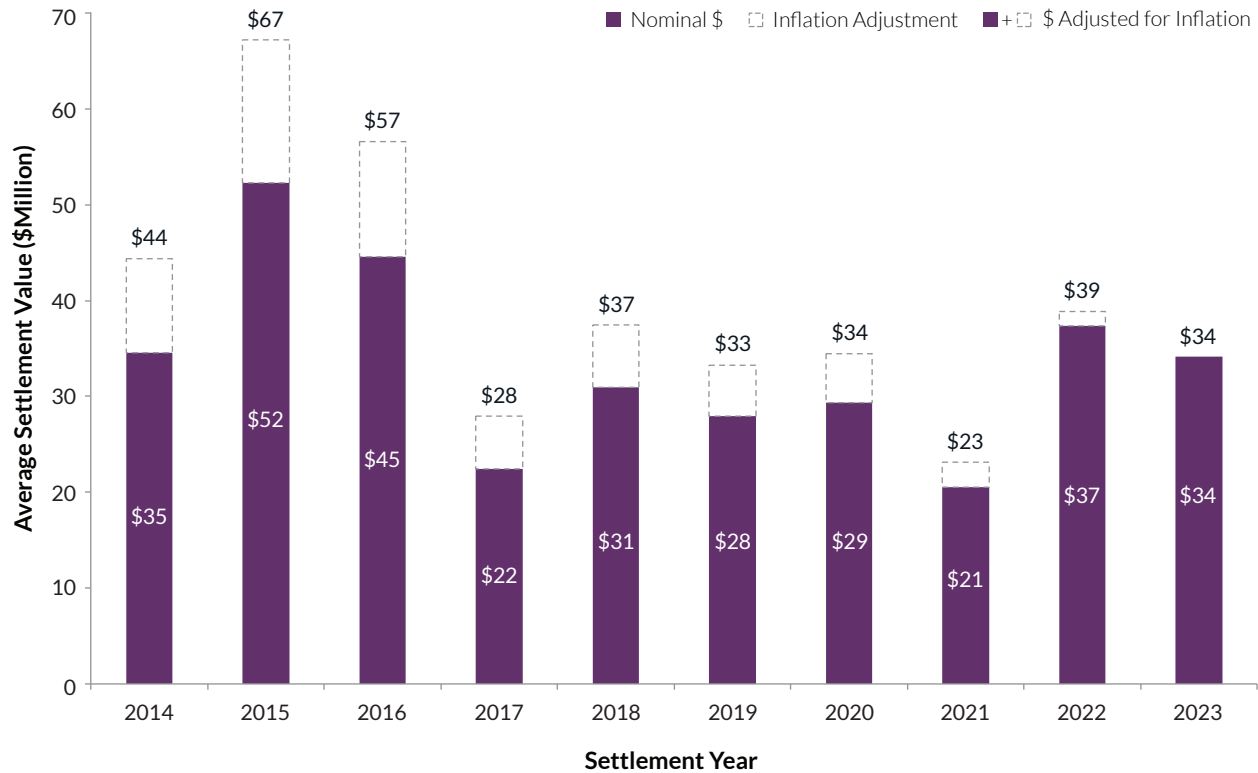
Excludes Merger Objections, Crypto Unregistered Securities, and Settlements for \$0 to the Class
January 2014–December 2023



When excluding settlements of \$1 billion or higher, the average settlement value was \$34 million, a decrease of 12% from the \$39 million inflation-adjusted amount in 2022 (see Figure 18). The median settlement value was \$14.4 million, which is a slight increase from the \$13.5 million inflation-adjusted value seen in 2022 (see Figure 19). Aside from a decrease in the percentage of settlements between \$10 and \$19.9 million and a roughly similar increase in the percentage of settlements between \$20 to \$49.9 million in 2023, the distribution of settlement values in 2023 looks similar to that of 2022 (see Figure 20).

Figure 18. **Average Settlement Value**

Excludes Settlements of \$1 Billion or Higher, Merger Objections, Crypto Unregistered Securities, and Settlements for \$0 to the Class
January 2014–December 2023



When excluding settlements of \$1 billion or higher, the average settlement value was \$34 million in 2023, a decrease of 12% from the \$39 million inflation-adjusted amount in 2022.

Figure 19. **Median Settlement Value**

Excludes Settlements of \$1 Billion or Higher, Merger Objections, Crypto Unregistered Securities, and Settlements for \$0 to the Class
January 2014–December 2023

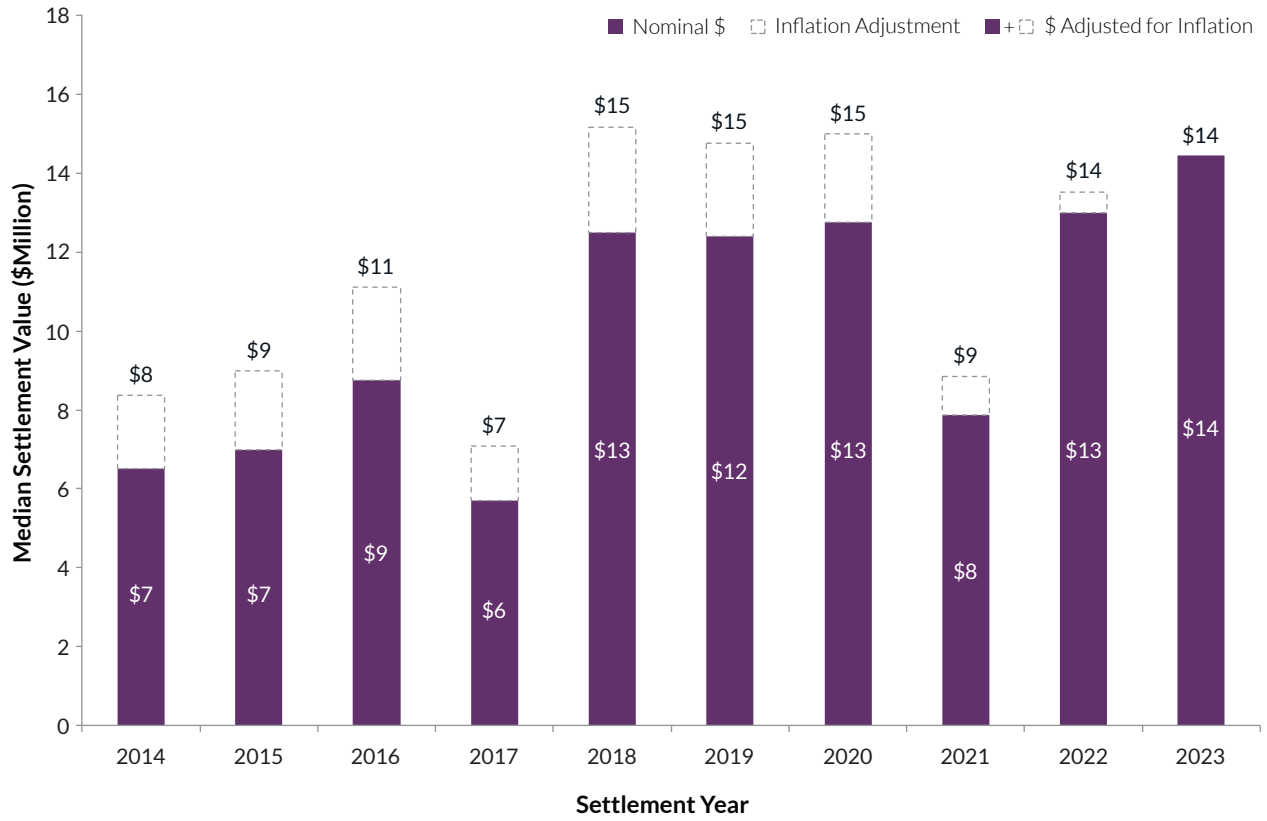
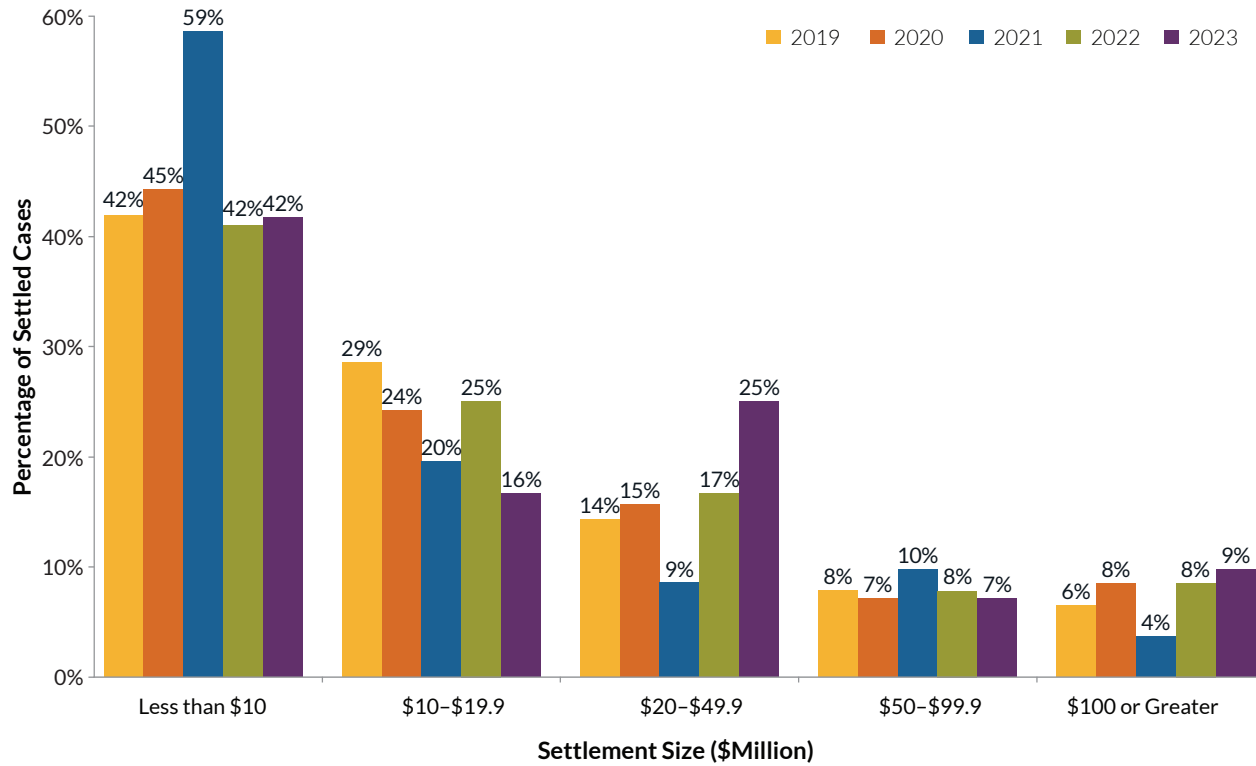


Figure 20. **Distribution of Settlement Values**

Excludes Merger Objections, Crypto Unregistered Securities, and Settlements for \$0 to the Class
January 2019–December 2023



Aggregate settlements for 2023 totaled \$3.9 billion, which marks a slight drop relative to the inflation-adjusted total of \$4.2 billion from 2022.

TOP SETTLEMENTS

The 10 largest settlements in 2023 ranged from \$90 million to \$1 billion and together accounted for over 66% of the \$3.9 billion aggregate settlement amount reached in 2023. Wells Fargo & Company appears twice on this list, taking the top spot in a \$1 billion settlement in a case involving misrepresentations regarding its progress in overhauling its internal controls¹⁴ as well as the third-highest spot in a \$300 million settlement in a matter involving allegations of misconduct in its auto insurance practices.¹⁵ The Second, Seventh, and Ninth circuits accounted for nine of the top 10 settlements.

Table 1. **Top 10 2023 Securities Class Action Settlements**

Rank	Defendant	Filing Date	Settlement Date	Total Settlement Value (\$Million)	Plaintiffs' Attorneys' Fees and Expenses Value (\$Million)	Circuit	Economic Sector
1	Wells Fargo & Company (2020) (S.D.N.Y.)	11 Jun 2020	8 Sep 2023	\$1,000.0	\$181.1	2nd	Finance
2	The Kraft Heinz Company (N.D. Ill.)	24 Feb 2019	12 Sep 2023	\$450.0	\$92.7	7th	Consumer Non-Durables
3	Wells Fargo & Company (2018)	14 Feb 2019	17 Aug 2023	\$300.0	\$77.0	9th	Finance
4	Exelon Corporation (2019)	16 Dec 2019	7 Sep 2023	\$173.0	\$45.3	7th	Utilities
5	McKesson Corporation	25 Oct 2018	2 Jun 2023	\$141.0	\$36.3	9th	Distribution Services
6	Alexion Pharmaceuticals, Inc. (D. Conn.)	17 Nov 2016	20 Dec 2023	\$125.0	\$32.8	2nd	Health Technology
7	Cardinal Health, Inc. (2019)	1 Aug 2019	11 Sep 2023	\$109.0	\$33.4	6th	Distribution Services
8	Micro Focus International plc (S.D.N.Y.) (SEC 11)	28 Mar 2018	27 Jul 2023	\$107.5	\$36.7	2nd	Technology Services
9	Grupo Televisa S.A.B.	5 Mar 2018	8 Aug 2023	\$95.0	\$29.6	2nd	Communications
10	The Allstate Corporation	10 Nov 2016	19 Dec 2023	\$90.0	\$27.1	7th	Finance
Total				\$2,590.0	\$591.9		

Table 2 lists the 10 largest federal securities class action settlements through 31 December 2023. Since the Valeant Pharmaceuticals partial settlement of \$1.2 billion in 2020, this list has remained unchanged, with settlements ranging from \$1.1 to \$7.2 billion.

Table 2. Top 10 Federal Securities Class Action Settlements (As of 31 December 2023)

Rank	Defendant	Filing Date	Settlement Year(s)	Total Settlement Value (\$Million)	Financial Institutions Value (\$Million)	Accounting Firms Value (\$Million)	Plaintiffs' Attorney's Fees and Expenses Value (\$Million)	Circuit	Economic Sector
1	ENRON Corp.	22 Oct 2001	2003–2010	\$7,242	\$6,903	\$73	\$798	5th	Industrial Services
2	WorldCom, Inc.	30 Apr 2002	2004–2005	\$6,196	\$6,004	\$103	\$530	2nd	Communications
3	Cendant Corp.	16 Apr 1998	2000	\$3,692	\$342	\$467	\$324	3rd	Finance
4	Tyco International, Ltd.	23 Aug 2002	2007	\$3,200	No codefendant	\$225	\$493	1st	Producer Manufacturing
5	Petroleo Brasileiro S.A.-Petrobras	8 Dec 2014	2018	\$3,000	\$0	\$50	\$205	2nd	Energy Minerals
6	AOL Time Warner Inc.	18 July 2002	2006	\$2,650	No codefendant	\$100	\$151	2nd	Consumer Services
7	Bank of America Corp.	21 Jan 2009	2013	\$2,425	No codefendant	No codefendant	\$177	2nd	Finance
8	Household International, Inc.	19 Aug 2002	2006–2016	\$1,577	Dismissed	Dismissed	\$427	7th	Finance
9	Valeant Pharmaceuticals International, Inc.*	22 Oct 2015	2020	\$1,210	\$0	\$0	\$160	3rd	Health Technology
10	Nortel Networks	2 Mar 2001	2006	\$1,143	No codefendant	\$0	\$94	2nd	Electronic Technology
Total				\$32,334	\$13,249	\$1,017	\$3,358		

* Denotes a partial settlement, which is included here due to its sizeable amount. Note that this case is not included in any of our resolution or settlement statistics.

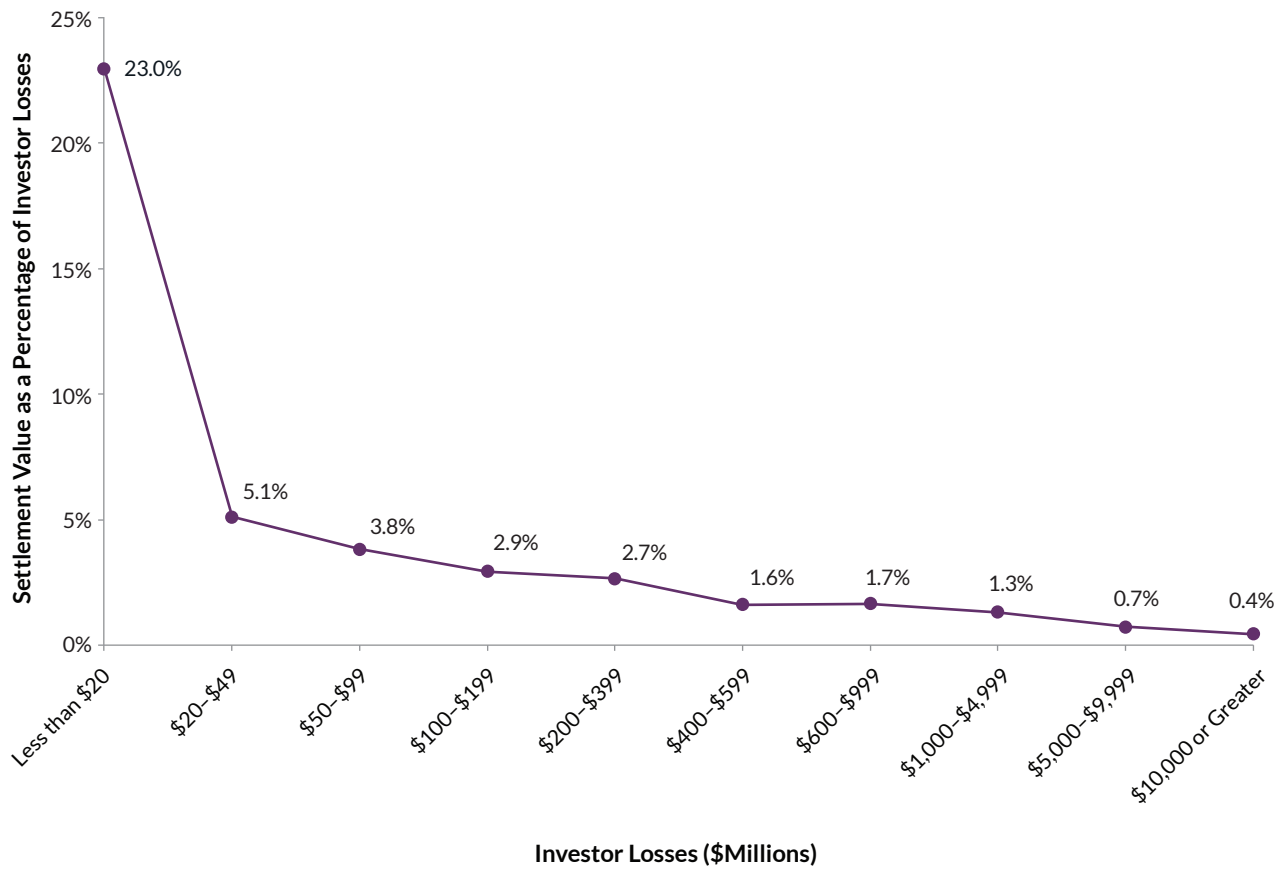
NERA-DEFINED INVESTOR LOSSES

To estimate the potential aggregate loss to investors as a result of investing in the defendant's stock during the alleged class period, NERA has developed a proprietary variable, NERA-Defined Investor Losses, using publicly available data. The NERA-Defined Investor Loss measure is constructed assuming investors had invested in stocks during the class period whose performance was comparable to that of the S&P 500 Index. Over the years, NERA has reviewed and examined more than 2,000 settlements and found, of the variables analyzed, this proprietary variable to be the most powerful predictor of settlement amount.¹⁶

A statistical review reveals that while settlement values and NERA-Defined Investor Losses are highly correlated, the relationship is not linear. The ratio is higher for cases with lower NERA-Defined Investor Losses than for cases with higher Investor Losses. For instance, in cases with less than \$20 million in Investor Losses, the median settlement value comprises 23% of Investor Losses, while in cases with more than \$50 million in Investor Losses, the median settlement value is less than 4% of Investor Losses. See Figure 21.

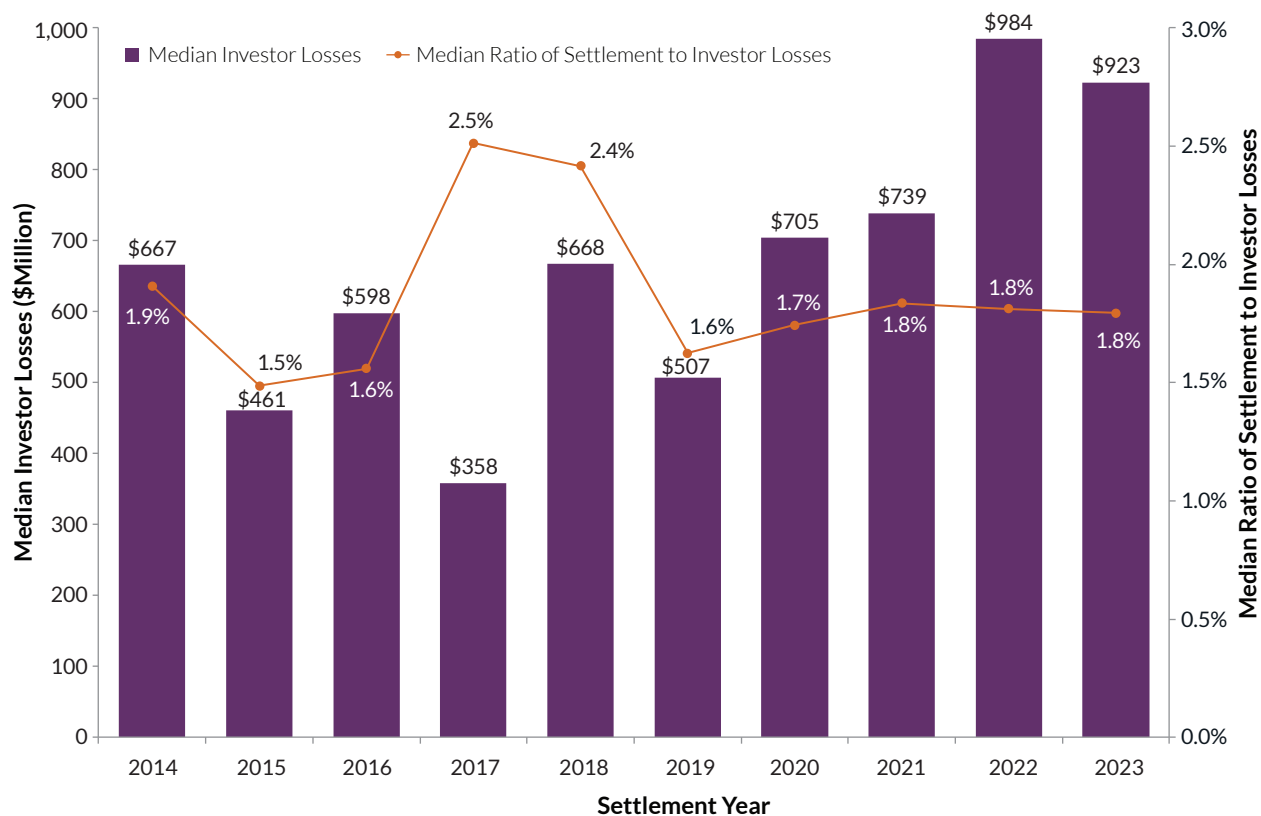
Since 2014, annual median Investor Losses have ranged from a low of \$358 million to a high of \$984 million. For cases settled in 2023, the median Investor Losses were \$923 million, a 6% decline from 2022 and the second highest recorded value during the 2014–2023 period. Since 2021, the median ratio of settlement amount to Investor Losses has remained stable at 1.8%. See Figure 22.

Figure 21. Median Settlement Value as a Percentage of NERA-Defined Investor Losses
 By Level of Investor Losses
 Cases Settled January 2014–December 2023



The median Investor Losses were \$923 million, a 6% decline relative to 2022 and the second highest recorded value during the 2014–2023 period.

Figure 22. Median NERA-Defined Investor Losses and Median Ratio of Settlement to Investor Losses by Settlement Year
January 2014–December 2023

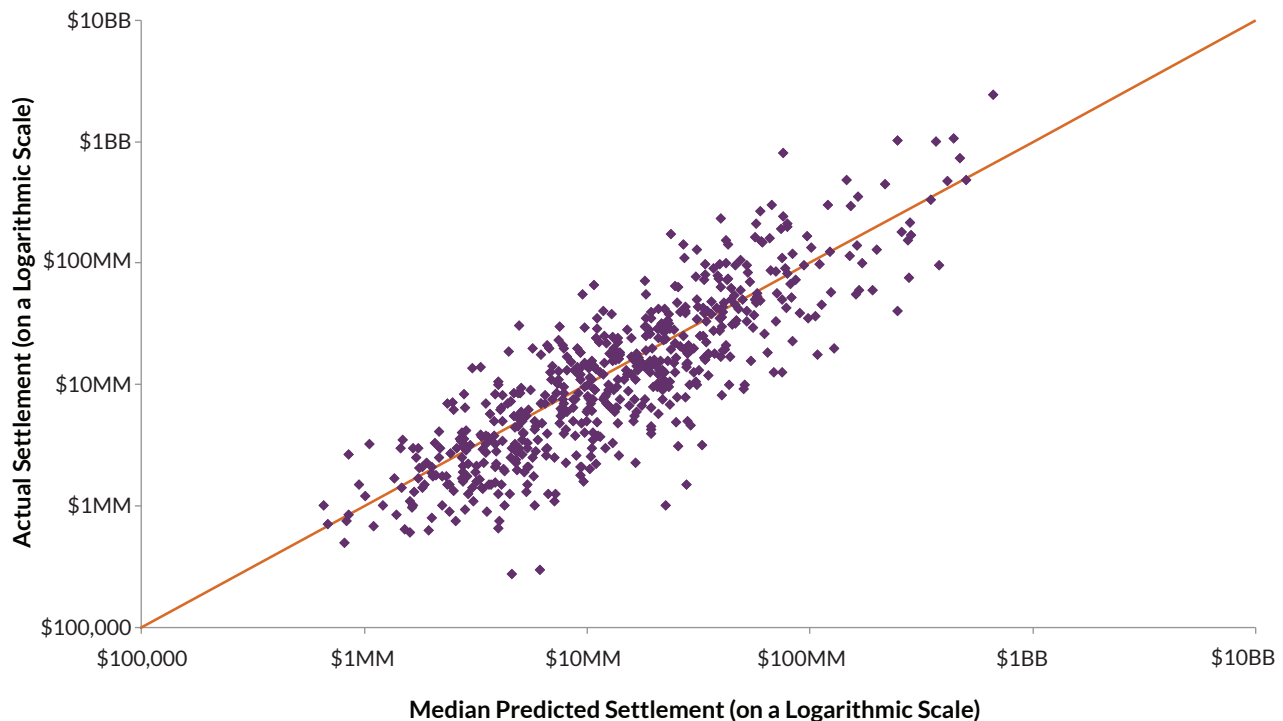


NERA has identified the following key factors as driving settlement amounts:

- NERA-Defined Investor Losses;
- The market capitalization of the issuer immediately after the end of the class period;
- The types of securities (in addition to common stock) alleged to have been affected by the fraud;
- Variables that serve as a proxy for the merit of plaintiffs' allegations (e.g., whether the company has already been sanctioned by a government or regulatory agency or paid a fine in connection with the allegations);
- The stage of litigation at the time of settlement; and
- Whether an institution or public pension fund is named lead plaintiff (see Figure 23).

Among cases settled between January 2012 and December 2023, these factors in NERA's statistical model can explain over 70% of the variation observed in actual settlements.

Figure 23. **Predicted vs. Actual Settlements**
 Investor Losses Using S&P 500 Index
 Cases Settled January 2012–December 2023



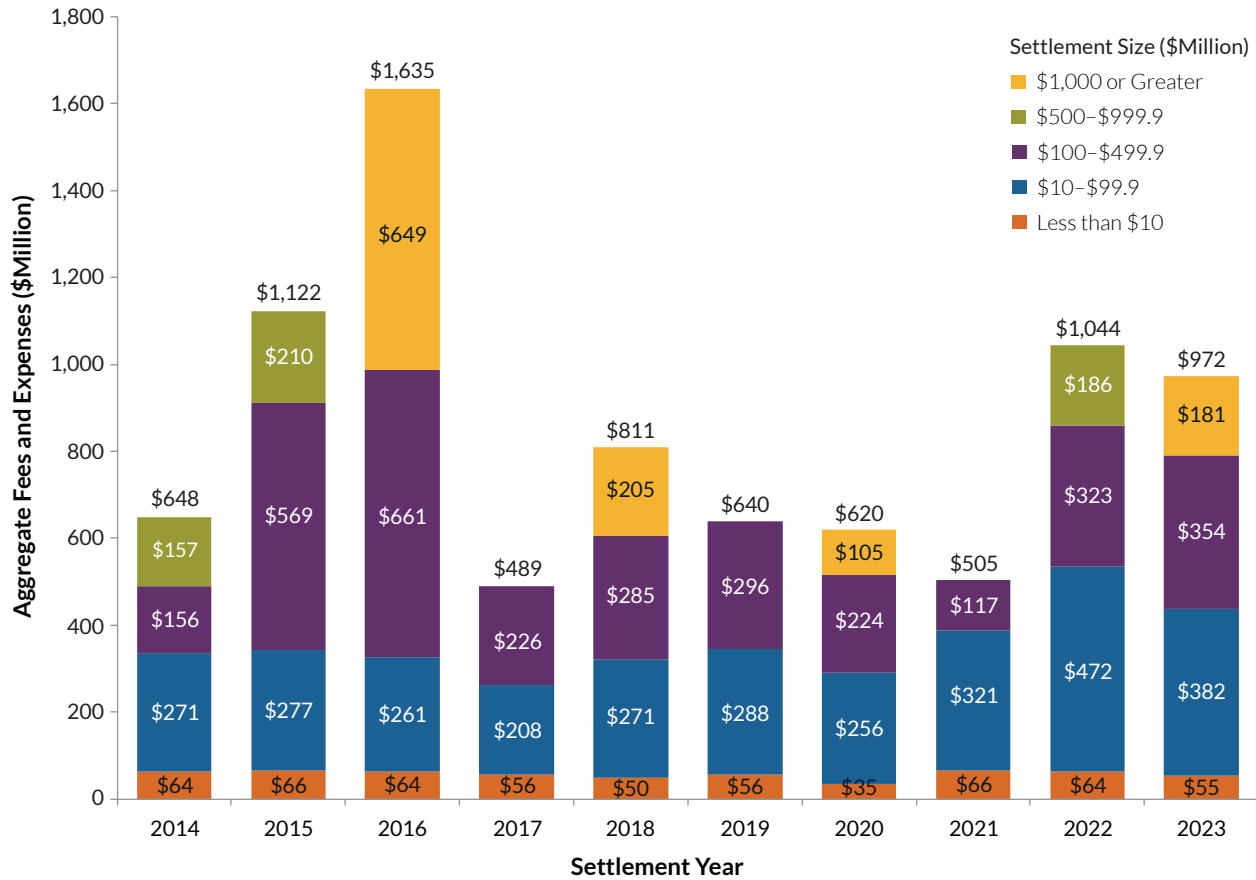
TRENDS IN PLAINTIFFS' ATTORNEYS' FEES AND EXPENSES

Over the past 10 years, annual aggregate plaintiffs' attorneys' fees and expenses have ranged from a low of \$489 million in 2017 to a high of \$1.6 billion in 2016. In 2023, aggregate plaintiffs' attorneys' fees and expenses totaled \$972 million, a slight decline from the \$1.0 billion seen in 2022 (see Figure 24). Plaintiffs' attorneys' fees and expenses comprised roughly 24.9% of the \$3.9 billion aggregate settlement value in 2023.

A historical analysis of plaintiffs' attorneys' fees and expenses for cases that have settled since the passage of the PSLRA in 1996 reveals that fees and expenses as a percentage of the settlement amount decline as the settlement size increases. For instance, for cases settled during the 2014–2023 period, median percent fees and expenses ranged from 36.1% in settlements of \$5 million or lower to 18.6% in settlements of \$1 billion or higher.

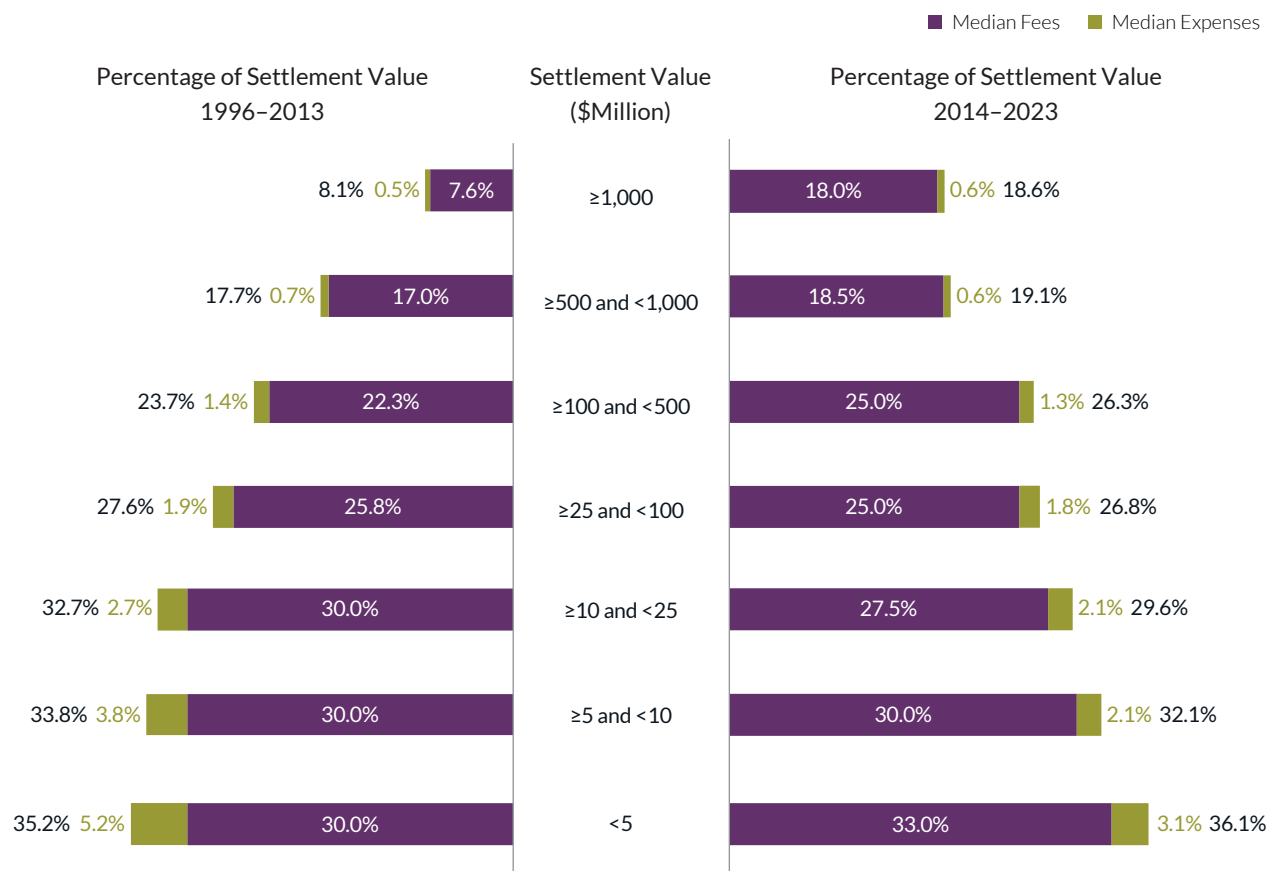
In the past 10 years, median percent attorneys' fees have increased for settlements under \$5 million and for settlements over \$500 million relative to the 1996–2013 period. This increase is more pronounced for settlements of \$1 billion or higher, although this is partly due to this category having only five cases in the post-2013 period (see Figure 25).

Figure 24. **Aggregate Plaintiffs’ Attorneys’ Fees and Expenses by Settlement Size**
January 2014–December 2023



Plaintiffs’ attorneys’ fees and expenses comprised roughly 24.9% of the \$3.9 billion aggregate settlement value in 2023.

Figure 25. Median of Plaintiffs' Attorneys' Fees and Expenses by Size of Settlement
Excludes Merger Objections, Crypto Unregistered Securities, and Settlements for \$0 to the Class



Note: Component values may not add to total value due to rounding.

CONCLUSION

In 2023, federal filings increased by 11% from 206 in 2022 to 228 in 2023, ending a four-year period of annual declines in filings from 2019 to 2022. Of the 228 cases filed in 2023, 206 were standard cases with alleged violations of Rule 10b-5, Section 11, and/or Section 12, and 18.9% of standard cases were against foreign companies. Filings against companies in the information technology and technology services, health technology and services, and the finance sectors accounted for 59% of non-merger objections, non-crypto unregistered securities filings.

The number of resolved cases declined by 15% from 223 in 2022 to 190 in 2023. There were 90 settlements and 100 dismissals, marking the lowest level of both settlements and dismissals in the last 10 years. Excluding the presence of settlements of \$1 billion or higher, the average settlement value for 2023 was \$34 million and the median settlement value was \$14 million. Aggregate settlements totaled \$3.9 billion in 2023, with aggregate plaintiffs' attorneys' fees and expenses accounting for \$972 million, or 24.9%, of the 2023 aggregate settlement value. Over the last 10 years, the median plaintiffs' attorneys' fees and expenses as a percentage of settlement value has ranged from 18.6% for settlements of \$1 billion or higher to 36.1% for settlements of \$5 million or lower.

NOTES

- 1 This edition of NERA's report on "Recent Trends in Securities Class Action Litigation" expands on previous work by our colleagues Lucy P. Allen, Dr. Vinita Juneja, Dr. Denise Neumann Martin, Dr. Jordan Milev, Robert Patton, Dr. Stephanie Plancich, Janeen McIntosh, and others. The authors thank Dr. David Tabak and Benjamin Seggerson for helpful comments on this edition. We thank Vlad Lee, Daniel Klotz, and other of NERA's securities and finance researchers for their valuable assistance. These individuals receive credit for improving this report; any errors and omissions are those of the authors. NERA's proprietary securities class action database and all analyses reflected in this report are limited to federal case filings and resolutions.
- 2 NERA tracks securities class actions that have been filed in federal courts. Most of these cases allege violations of federal securities laws; others allege violations of common law, including breach of fiduciary duty, as with some merger-objection cases; still others are filed in federal court under foreign or state law. If multiple actions are filed against the same defendant, are related to the same allegations, and are in the same circuit, we treat them as a single filing. The first two actions filed in different circuits are treated as separate filings. If cases filed in different circuits are consolidated, we revise our count to reflect the consolidation. Therefore, case counts for a particular year may change over time. Different assumptions for consolidating filings would probably lead to counts that are similar but may, in certain circumstances, lead observers to draw a different conclusion about short-term trends in filings. Data for this report were collected from multiple sources, including Institutional Shareholder Services, Dow Jones Factiva, Bloomberg Finance, FactSet Research Systems, Nasdaq, Intercontinental Exchange, US Securities and Exchange Commission (SEC) filings, complaints, case dockets, and public press reports. IPO laddering cases are presented only in Figure 1.
- 3 Federal securities class actions that allege violations of Rule 10b-5, Section 11, and/or Section 12 have historically dominated federal securities class action dockets and have often been referred to as "standard" cases. In the analyses of this report, standard cases involve registered securities and do not include cases involving crypto unregistered securities, which will be considered as a separate category.
- 4 In this study, crypto cases consist of two mutually exclusive subgroups: (1) crypto shareholder class actions, which include a class of investors in common stock, American depository receipts/American depository shares (ADR/ADS), and/or other registered securities, along with crypto- or digital-currency-related allegations; and (2) crypto unregistered securities class actions, which do not have class investors in any registered securities that are traded on major exchanges (New York Stock Exchange, Nasdaq). We include crypto shareholder class actions in all our analyses that include standard cases. Crypto unregistered securities class actions are excluded from some analyses, which is noted in the titles of our figures.
- 5 Most securities class action complaints include multiple allegations. For this analysis, all allegations from the complaint are included and thus the total number of allegations exceeds the total number of filings.
- 6 In our analysis, a company is defined as a foreign company based on the location of its principal executive office.
- 7 Class Action Complaint for Violations of the Federal Securities Laws, *In re Silvergate Capital Corporation Securities Litigation*, 7 December 2023.
- 8 Madeleine Ngo, "A Timeline of How the Banking Crisis Has Unfolded," *The New York Times*, 1 May 2023, available at <https://www.nytimes.com/2023/05/01/business/banking-crisis-failure-timeline.html>.
- 9 "Iowa Trust & Savings Bank, Emmetsburg, Iowa, Assumes All of the Deposits of Citizens Bank, Sac City, Iowa," FDIC Press Release, 3 November 2023, available at <https://www.fdic.gov/news/press-releases/2023/pr23091.html>.
- 10 "Dismissed" is used here as shorthand for all class actions resolved without settlement; it includes cases in which a motion to dismiss was granted (and not appealed or appealed unsuccessfully), voluntary dismissals, cases terminated by a successful motion for summary judgment, or an ultimately unsuccessful motion for class certification.
- 11 Unless otherwise noted, the analyses in this section exclude the 2020 partial settlement involving Valeant Pharmaceuticals.
- 12 For our analysis, NERA includes settlements that have had the first settlement-approval hearing. We do not include partial settlements or tentative settlements that have been announced by plaintiffs and/or defendants. As a result, although we include the 2020 Valeant Pharmaceuticals partial settlement in Table 2 due to its settlement size, this case is not included in any of our resolution, settlement, or attorney fee statistics.
- 13 While annual average settlement values can be a helpful statistic, these values may be affected by one or a few very high settlement amounts. Unlike averages, the median settlement value is unaffected by these very high outlier settlement amounts. To understand what more typical cases look like, we analyze the average and median settlement values for cases with a settlement amount under \$1 billion, thus excluding these outlier settlement amounts. For the analysis of settlement values, we limit our data to non-merger-objection and non-crypto unregistered securities cases with settlements of more than \$0 to the class.
- 14 Jon Hill and Jessica Corso, "Wells Fargo Inks \$1B Deal to End Investors' Compliance Suit," *Law360.com*, 16 May 2023, available at <https://www.law360.com/articles/1677976/>.
- 15 Lauren Berg, "Wells Fargo Investors Ink \$300M Deal in Auto Insurance Suit," *Law360.com*, 7 February 2023, available at <https://www.law360.com/articles/1573911/>.
- 16 NERA-Defined Investor Losses is only calculable for cases involving allegations of damages to common stock based on one or more corrective disclosures moving the stock price to its alleged true value. As a result, we have not calculated this metric for cases such as merger objections.

RELATED EXPERTS



Edward Flores
Senior Consultant
New York City: +1 212 345 2955
edward.flores@nera.com



Svetlana Starykh
Associate Director, Securities Class Actions Database
New York City: +1 914 448 4123
svetlana.starykh@nera.com



The opinions expressed herein do not necessarily represent the views of NERA or any other NERA consultant.

ABOUT NERA

Since 1961, NERA has provided unparalleled guidance on the most important market, legal, and regulatory questions of the day. Our work has shaped industries and policy around the world. Our field-leading experts and deep experience allows us to provide rigorous analysis, reliable expert testimony, and data-powered policy recommendations for the world's leading law firms and corporations as well as regulators and governments. Our experience, integrity, and economic ingenuity mean you can depend on us in the face of your biggest economic and financial challenges.



www.nera.com

Exhibit 7F

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Adam S. Levy, et al.

v.

Civil No. 14-cv-443-JL

Thomas Gutierrez, et al.

**MEMORANDUM ORDER GRANTING FINAL APPROVAL OF APPLE
SETTLEMENT AND CLASS COUNSEL'S MOTION FOR ATTORNEYS' FEES**

This securities law class action concerns allegedly untrue or misleading statements made to investors about an agreement to manufacture sapphire for the screen of the Apple iPhone. On March 3, 2020, this court preliminarily approved a Stipulation and Agreement between court-appointed class representatives Douglas Kurz and Palisade Strategic Master Fund (Cayman) and the last remaining defendant, Apple Inc. (“Apple Settlement”), which resolves all claims against Apple in exchange for a \$3.5 million cash payment (“Apple Settlement Fund”).¹ On May 11, 2020, Kurz and Palisade moved for final approval of the Apple Settlement.² In filing that motion, lead counsel for the class, Bernstein Litowitz Berger & Grossman LLP, also moved for an order awarding plaintiffs’ counsel their attorneys’ fees and the reimbursement of expenses for litigating this case.³

This court has subject matter jurisdiction under [28 U.S.C. § 1331](#) (federal questions) and [§ 1332\(d\)](#) (class actions). After conducting a fairness hearing on these motions and independently assessing the plaintiffs’ requests for relief, the court grants final approval of the Apple Settlement, but denies in part the requests for fees and costs.

¹ Doc. no. [252-1](#).

² Doc. no. [256](#).

³ Doc. no. [257](#).

I. Background

The court has provided a more thorough accounting of the factual allegations underlying this class action in prior orders, including its order granting in part and denying in part the defendants' motions to dismiss and its order granting class certification.⁴ The following draws from those prior accounts, restating the facts most pertinent to the current motions, and also recounts the pertinent procedural history.

A. Commencement of this action

In October 2014, investors of the New Hampshire-based manufacturer GT Advanced Technologies Inc. ("GTAT") began filing putative securities class action complaints against GTAT's officers, its securities underwriters, and Apple, for allegedly untrue or misleading statements made about GTAT's ability to produce sapphire materials exclusively for Apple. Three days before plaintiffs began filing complaints, GTAT filed for Chapter 11 bankruptcy, which prevented it from being named as a defendant.⁵ Although Apple did not make any of the alleged false statements to investors, the class plaintiffs alleged that Apple, through its relationship with GTAT, exerted control over GTAT's officers, making it statutorily liable as a "control person."

In early 2015, the court consolidated the resulting litigations into one proceeding, appointed Kurz as lead plaintiff for the putative class, and approved Bernstein Litowitz as lead counsel for the putative class.⁶ In July 2015, Kurz filed and served a consolidated class action complaint asserting violations of the Securities Act of 1933 ("Securities

⁴ See doc. nos. [150](#) and [245](#).

⁵ In March 2016, GTAT emerged from bankruptcy as a restructured entity. As part of GTAT's bankruptcy plan, the bankruptcy court deemed all claims against GTAT prior to March 2016, including claims arising in this action, to be satisfied, discharged, and released in full.

⁶ Consolidation Order (doc. no. [72](#)); Order Granting Mot. for Appointment of Lead Plaintiff, Approval of Selection of Lead Counsel, and Consolidation of All Related Actions (doc. no. [77](#)).

Act”), the Securities Exchange Act of 1934 (“Exchange Act”), and SEC Rule 10b-5, see 17 C.F.R. § 240.10b-5.

In October 2015, Apple and the other defendants filed multiple motions to dismiss the consolidated complaint.⁷ Before the court issued an order on these motions, Kurz, Palisade, and former-named plaintiff Highmark Ltd. reached a settlement in principle with the underwriter defendants agreeing to resolve all class claims against the underwriter defendants with prejudice in exchange for a \$9.7 million cash payment. (These parties did not file their memorandum of understanding with the court.)

In May 2017, the court entered an order granting in part and denying in part the individual defendants and Apple’s motions to dismiss and denying the underwriter defendants’ motion to dismiss. Following this order, the then-putative class plaintiffs retained seven claims: (1) untrue statement claims against the individual defendants under Section 10(b) of the Exchange Act; (2) control person claims against the individual defendants under Section 20(a) of the Exchange Act; (3) a control person claim against Apple under Section 20(a) of the Exchange Act; (4) false registration statement claims against the individual and underwriter defendants under Section 11 of the Securities Act; (5) false registration statement claims against the underwriter defendants under Section 12(a)(2) of the Securities Act; (6) control person claims against the individual defendants under Section 15 of the Securities Act; and (7) a control person claim against Apple under Section 15 of the Securities Act.

B. Settlements with the individual and underwriter defendants

In August 2017, Kurz, Palisade, Highmark, and the underwriter defendants finalized their settlement in principle in a Stipulation and Agreement, which they filed

⁷ Doc. no. 87.

with the court.⁸ Then, in October 2017, lead counsel for the then-putative class, counsel for the individual defendants, and counsel for Apple participated in a full day mediation session before retired U.S. District Judge Layn R. Phillips. As a result of this arm's-length mediation session, Kurz and the individual defendants reached an agreement in principle to settle all claims against the individual defendants for \$27 million in cash. In January 2018, these parties (which excluded Apple) entered into a Stipulation and Agreement of Settlement setting forth the final terms and conditions of the individual-defendant settlement.⁹ The court preliminarily approved both the individual- and underwriter-defendant settlements in February 2018,¹⁰ and entered final judgments approving both the individual- and underwriter-defendant settlements in July 2018.¹¹

C. Discovery

In March 2018, the class plaintiffs and Apple commenced fact discovery on class and merits issues, which included extensive productions and reviews of documents, as well as the taking of multiple fact and expert witness depositions.¹² The class representatives represent that: the plaintiffs' class "sought, received, and reviewed" over 400,000 documents from Apple and GTAT (a non-party), totaling over 2.3 million pages; produced over 20,000 documents, totaling nearly 200,000 pages in response to Apple's discovery requests; and, with Apple, collectively deposed more than 20 fact witnesses,

⁸ Doc. no. [158](#) (filed in September 2017, after the parties conducted due diligence discovery).

⁹ Doc. no. [176](#).

¹⁰ Doc. no. [179](#).

¹¹ Doc. nos. [193-94](#).

¹² See also Ormsbee Decl. (doc. no. [258-5](#)) ¶¶ 47-62 (thoroughly recounting the parties' discovery efforts and disputes).

including current and former employees of GTAT and Apple involved with the sapphire manufacturing project.¹³ The parties substantially completed discovery in April 2019.

D. Class certification

In September 2018, Kurz, as lead plaintiff, and Palisade, as a Securities Act plaintiff, together moved for certification of the proposed Apple Class, appointment of themselves as class representatives, and approval of Bernstein Litowitz as counsel for the certified class. Apple opposed the motion with an objection, to which the plaintiffs replied, and surreply. The court held oral argument on the motion in July 2019, after the parties completed their briefing. In September 2019, the court granted the motion, and thus certified the Apple class under [Fed. R. Civ. P. 23\(b\)\(3\)](#), appointed Kurz and Palisade as class representatives, and appointed Bernstein Litowitz as class counsel.¹⁴

E. Settlement negotiation

The same month, Apple moved for summary judgment and filed two memoranda challenging GTAT's control person and primary liability theories under federal securities laws.¹⁵ Apple also filed a related motion to exclude the opinions of the class plaintiffs' damages expert.¹⁶ Opposition to these motions were due on November 25, 2019.

Before this response deadline, however, the class representatives reached an agreement with Apple under which they would settle all claims in this action against

¹³ Pls. Mot. for Preliminary Approval of Apple Settlement (doc. no. [252](#)) at 6; see also Ormsbee Decl. ¶¶ 9-11.

¹⁴ Doc. no. [245](#).

¹⁵ Doc. no. [243](#).

¹⁶ Doc. no. [244](#).

Apple in exchange for a cash payment of \$3.5 million.¹⁷ This proposed settlement would be in addition to the two prior settlements approved by the court for \$27 million and \$9.7 million, resulting in an aggregate cash recovery of \$40.2 million for the plaintiff class. Class counsel maintains that if the court approves the Apple Settlement, the combined settlements in this case “will result in the third-largest securities class action recovery in the history of the District of New Hampshire.”¹⁸

F. Preliminary approval and notice provided to class members

In March 2020, the court preliminarily approved the class plaintiffs and Apple’s stipulation and agreement resolving this case and approved the plaintiffs’ notice to the class. Thereafter, class counsel supervised the provision of notice to potential class members, informing them of the proposed settlement terms and class counsel’s intent to apply for an award of attorneys’ fees not to exceed 20% of the Apple Settlement Fund, as well as reimbursement of expenses not to exceed \$800,000. The notice also apprised potential class members of their right to object to the proposed Apple Settlement and the request for fees and expenses, as well as their right to request exclusion from the class and thus the prejudicial effects of the Apple Settlement and related judgments.

As outlined in the preliminary approval order, the court-approved claims administrator, Epiq, mailed more than 212,000 copies of the Apple Settlement Notice to all potential class members who were identifiable with reasonable effort, including class members identified during the process and distribution of the earlier class settlements in

¹⁷ Doc. no. 247. On November 22, the class representatives and Apple filed a joint notice of settlement and motion to stay summary judgment schedule, pending the filing of their stipulation and agreement in January 2020. *Id.*

¹⁸ Pls. Mot. for Final Approval of Apple Settlement Mem. (doc. no. 256-1) at 2.

this action.¹⁹ A summary settlement notice, which informed readers of the proposed settlement and how to obtain copies of the full settlement notice, was also published in Investor's Business Daily and over the PR Newswire.²⁰ Downloadable versions of the full settlement notice, as well as other important documents for the litigation, were posted on this litigation's website: www.gtatsecuritieslitigation.com.²¹

Under the court's preliminary approval order, persons intending to object to the proposed settlement or opt out of the class were required to do so by May 25, 2020. To date, Epiq has received only nine requests for exclusion from individual investors who collectively purchased approximately .003% of the estimated affected GTAT shares during the class period.²² Additionally, class counsel represents that no late objections or requests for exclusions have been filed.

G. Reaction of the Class

The court received one objection to the proposed settlement with Apple from Mr. John Huddleston, an individual class member who purchased 17.4652 shares of GTAT common stock during the Class Period.²³ Huddleston contends that Apple should "recompense all stock holders who lost money when GTAAT became Apple company" by paying GTAT investors shares of Apple stock equal in amount to their shares of GTAT stock "with no consideration of the GTAT price per share at the time . . . just shares for

¹⁹ In March 2018, Epiq established a case-specific, toll-free telephone helpline, 1-866-562-8790, to accommodate potential Class Members with questions about this action and the earlier settlements. On March 31, 2020, Epiq updated the helpline to include information regarding the Apple Settlement. Firenze Decl. (doc. no. [258-3](#)) ¶ 9.

²⁰ Firenze Decl. ¶ 8.

²¹ Id. ¶ 10.

²² Supp. Firenze Decl. (doc. no. [264-2](#)) ¶ 5.

²³ See Apr. 21, 2020 Ltr. Obj. from John Huddleston (doc. no. [255](#)).

shares”²⁴ No individual or institutional class members expressed any objection to class counsel’s motion for attorneys’ fees and reimbursement of litigation expenses.

H. Fairness Hearing

On June 15, 2020, the court held a fairness hearing on the class plaintiffs’ motion for final approval of the class action settlement and class counsel’s motion for attorneys’ fees. This hearing was conducted via the court’s online video conferencing platform due to health and safety restrictions imposed on in-person hearings by the COVID-19 pandemic. Class counsel and counsel for Apple virtually appeared, as did several non-participating class members and interested parties.

II. Applicable legal standard

Under [Federal Rule of Civil Procedure 23\(e\)](#), “[t]he claims, issues, or defenses of a certified class . . . may be settled, voluntarily dismissed, or compromised only with the court’s approval.” Before granting such approval, the parties and the court must comply with the following procedures.

First, “[t]he parties must provide the court with information sufficient to enable it to determine whether to give notice of the proposal to the class.” [Id. 23\(e\)\(1\)\(A\)](#). If the parties show that “the court will likely be able to approve the proposal,” then “[t]he court must direct notice in a manner to all class members would be bound by the proposal.” [Id. \(e\)\(1\)\(B\)](#).

“If the proposal would bind class members, the court may approve [a proposed settlement] only after a hearing and only on finding,” in its sound discretion, that the proposed settlement “is fair, reasonable, and adequate.” [Id. 23\(e\)\(2\)](#); see also [City P’Ship Co. v. Atlantic Acquisition Ltd. P’Ship](#), 100 F.3d 1041, 1043 (1st Cir. 1996) (noting that

²⁴ [Id.](#)

this determination is within the sound discretion of the trial court). “Any class member may object to the proposal if it requires court approval under this subdivision (e). The objection must state whether it applies only to the objector, to a specific subset of the class, or to the entire class, and also state with specificity the grounds for the objection.” [Id.](#) 23(e)(5).

“In a certified class action,” like the case here, “the court may award reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement.” [Id.](#) 23(h). The following procedures apply:

- (1) A claim for an award must be made by motion under [Rule 54\(d\)\(2\)](#), subject to the provisions of this subdivision (h), at a time the court sets. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.
- (2) A class member, or a party from whom payment is sought, may object to the motion.
- (3) The court may hold a hearing and must find the facts and state its legal conclusions under [Rule 52\(a\)](#).

[Id.](#)

III. Analysis

This Order incorporates by reference the definitions in the January 10, 2020 Apple Settlement. All capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Apple Settlement.

A. Final Settlement Approval

The class plaintiffs seek final approval of the proposed Apple Settlement, which, if approved, will resolve all outstanding claims in this case with prejudice. [Federal Rule of Civil Procedure 23\(e\)](#) requires judicial approval for any compromise or settlement of

class action claims. [Fed. R. Civ. P. 23\(e\)](#). A court may approve a proposed class action settlement only after finding that the proposed settlement is “fair, reasonable, and adequate” and that the plaintiffs have complied with all applicable notice requirements. See [id.](#) [23\(e\)\(2\)](#). The court considers each requirement in turn.

1. Adequacy of the settlement

“The First Circuit [Court of Appeals] has not established a fixed test for evaluating the fairness of a settlement.” [New England Carpenters Health Benefits Fund v. First Databank, Inc.](#), 602 F. Supp. 2d 277, 280 (D. Mass. 2009) (Saris, J.); see also [In re Tyco Int’l, Ltd. Multidistrict Litig.](#), 535 F. Supp. 2d 249 (D.N.H. 2007) (Barbadoro, J.) (noting that the court’s review “relies on neither a fixed checklist of factors nor any specific litmus test). Many courts in the First Circuit look to the Second Circuit Court of Appeal’s [Grinnell](#) factors in conducting a fairness analysis:

(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 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.

[First Databank](#), 602 F. Supp. 2d at 280-81 (quoting [City of Detroit v. Grinnell Corp.](#), 495 F.2d 448, 463 (2d Cir. 1974)); [In re StockerYale, Inc. Sec. Litig.](#), No. 1:05-cv-177, 2007 WL 4589772, at *3 (D.N.H. Dec. 18, 2007) (McAullife, J.) (same); [In re Relafen Antitrust Litig.](#), 231 F.R.D. 52, 72 (D. Mass. 2005) (Young, C.J.) (same).

Other courts in this Circuit have considered smaller, modified versions of the [Grinnell](#) factors. In [Tyco](#), for example, Judge Barbadoro found that a more concise list of factors—specifically, “(1) risk, complexity, expense and duration of the case;

(2) comparison of the proposed settlement with the likely result of continued litigation; (3) reaction of the class to the settlement; (4) stage of the litigation and the amount of discovery completed; and (5) quality of counsel and conduct during litigation and settlement negotiations”—“best fit[] the facts of the case.” [535 F. Supp. 2d at 259-60](#). See also [In re Compact Disc Minimum Advertised Price Antitrust Litig.](#), 216 F.R.D. 197, 203 (D. Me. 2003) (Hornby, J.) (using a similar list of factors).

In 2018, the Supreme Court amended [Rule 23](#) to include a separate, but somewhat overlapping list of criteria for courts to consider, including whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and
 - (iv) any agreement required to be identified under [Rule 23\(e\)\(3\)](#); and
- (D) the proposal treats class members equitably relative to each other.

[Fed. R. Civ. P. 23\(e\)\(2\)\(A\)-\(D\)](#). The advisory committee notes indicate that the goal of the 2018 amendment was “not to displace any factor” developed by any circuit, “but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal.”

The court, in its discretion, finds the list of considerations in the Federal Rules suitable. As such, it focuses on those four considerations in addition to a more concise list of the [Grinnell](#) factors that best fits this case.

Adequacy of representation

In determining whether to approve a class action settlement, the court should consider whether “the class representatives and class counsel have adequately represented the class.” [Fed. R. Civ. P. 23\(e\)\(2\)\(A\)](#); see also [Tyco](#), 535 F. Supp. 2d at 259-60 (assessing quality of counsel). As noted by the court in its order granting class certification, class representatives Kurz and Palisade have actively participated in this litigation and share the common goal of all class members of maximizing recovery.²⁵ Class counsel, in turn, is qualified and well-versed in prosecuting and resolving complex securities litigation, including the prior settlements reached in this case. As such, the court repeats its previous class certification finding that the class representatives and class counsel have adequately represented, and will continue to adequately represent, the Apple class.

Arm’s-length negotiation

[Rule 23](#) calls on the court to consider the procedural fairness of the settlement, that is, whether the settlement “was negotiated at arm’s length.” [Fed. R. Civ. P. 23\(e\)\(2\)\(B\)](#). Courts have found “the absence of any indicia of collusion” to be an “important indic[um] of the propriety of settlement negotiations.” See [Weinberger v. Kendrick](#), 698 F.2d 61, 74 (2d Cir. 1982). Relatedly, courts applying the [Grinnell](#) factors, or a modified version thereof, have also considered counsel’s understanding of the strengths and weaknesses of the case in negotiating the settlement amount.

²⁵ Order Granting Motion to Certify (doc. no. [245](#)) at 42.

Here, the parties reached a settlement after extensive discovery and motion practice, including full briefing on class certification and partial briefing on a motion for summary judgment against the class. Class counsel represents that it has conducted “an extensive investigation into the alleged fraud by, among other things, reviewing the voluminous public record (including relevant SEC filings, earnings announcements and press releases, transcripts of analyst conference calls, investor presentations, and news articles), and conducting interviews with multiple potential witnesses (including 132 former GTAT employees).”²⁶ After reaching a settlement with the GTAT-individual and underwriter defendants, class counsel (and Apple) engaged in extensive discovery, consisting of the production and review of millions of pages of documents, the taking or defending of 28 fact, class, and expert depositions, and the preparation of several expert reports. At this advanced stage, the parties “have most of the crucial facts in their possession, making them well-positioned to understand the merits of their case[s]” and negotiate a fair and reasonable settlement that accounts for the risks of further litigation. [Tyco](#), 535 F. Supp. 2d at 261.

Additionally, the court finds no indicia of collusion between the parties. In October 2017, class counsel and counsel for Apple and the individual defendants participated in a full-day mediation before retired U.S. District Court Judge Layn R. Phillips. While the plaintiffs were able to reach an agreement with the individual defendants, they did not achieve a settlement with Apple, thus launching an additional two years of vigorous pre-trial litigation. Class counsel represents that they began exploring the possibility of settlement in September 2019—after the close of discovery and in the same month this court certified the Apple class and Apple moved for summary

²⁶ Pls. Mot. for Final Approval of Apple Settlement Mem. (doc. no. [256-1](#)) at 9.

judgment. See [Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.](#), 396 F.3d 96, 116 (2d Cir. 2005) (a class action settlement is entitled to a “presumption of fairness, adequacy, and reasonableness” when “reached in arms’ length negotiations between experienced, capable counsel after meaningful discovery”) (citation omitted). The parties reached an agreement at least two months later, in November 2019, on the eve of the class plaintiffs’ deadline to oppose Apple’s motion for summary judgment. See [Bussie v. Allmerica Fin. Corp.](#), 50 F. Supp. 2d 59, 77 (D. Mass. 1999) (Gorton, J.) (“settlement negotiations . . . conducted at arms’ length over several months . . . support ‘a strong initial presumption’ of the Settlement’s substantive fairness” (internal citation omitted)). Had the parties not agreed on the proposed settlement, they likely would have fully briefed the motion for summary judgment and (assuming the plaintiffs’ case survived) begun preparation for a civil jury trial. The court thus finds that the proposed settlement is the result of arm’s-length negotiations.

Adequacy of relief

Under [Rule 23](#), the court should also consider whether “the relief provided for the class is adequate, taking into account” among other factors, “the costs, risks, and delay of trial and appeal.”²⁷ [Fed. R. Civ. P. 23\(e\)\(2\)\(C\)](#). In doing so, this court also considers many of the [Grinnell](#) and modified-[Grinnell](#) factors, including the complexity, expense,

²⁷ [Rule 23\(e\)\(2\)\(C\)](#) provides three other factors for considering the adequacy of the relief. The second and fourth factors—the effectiveness of proposed distribution methods and whether the agreement restricts further opt-outs—are neutral factors in this case. See [Order Preliminarily Approving the Apple Settlement](#) (doc. no. 254) (approving the plaintiffs’ distribution plan); [Hefler v. Wells Fargo & Co.](#), No. CV-02-1510, 2018 WL 6619983, at *7 (N.D. Cal. Dec. 18, 2018) (finding that side agreements setting forth conditions for termination, like the Supplemental Agreement between the class plaintiffs and Apple, have no negative impact on the fairness of a settlement). And for the third factor—the terms of any proposed award of attorney’s fees—the court finds below that class counsel’s request for fees is reasonable. See [Part III.B, infra](#), at 22.

and duration of the case and a comparison of the proposed settlement with the likely result of continued litigation. See Tyco, 535 F. Supp. 2d at 259-60. It finds the relief adequate.

From the outset, the class plaintiffs’ “control-theory” claims against Apple presented several risks in terms of proving their case. Securities litigation presents an ever-changing legal environment, as evidenced by multiple recent Supreme Court decisions in the area, creating risk and uncertainty for plaintiffs. See, e.g., Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund, 575 U.S. 175 (2015); Halliburton Co. v. Erica P. John Fund, Inc., 573 U.S. 258 (2014). Few securities cases in the First Circuit have resulted in substantial trial verdicts for plaintiffs. See Backman v. Polaroid Corp., 910 F.2d 10, 13 (1st Cir. 1990) (en banc) (reversing a jury verdict of \$40 million after eight years of litigation). And even fewer federal courts, if any, have sustained control person claims against companies, like Apple, who are unrelated to the securities issuer at the core of a complaint.

In order to prove the control person theory asserted against Apple, class representatives would have to establish at least three things: First, they would have to establish the primary liability of the individual GTAT defendants—specifically that they knowingly or recklessly made statements to investors and in securities registration statements that were materially false. See, e.g., ACA Fin. Guar. Corp. v. Advest, Inc., 512 F.3d 46, 58 (1st Cir. 2008) (discussing elements of a primary violation of Section 10(b) of the Exchange Act); Aldridge v. A.T. Cross Corp., 284 F.3d 72, 85 (1st Cir. 2002) (articulating three-part test). Second, they would need to establish loss causation and damages with respect to one or both of the “corrective disclosures” that allegedly revealed the truth regarding the alleged fraud. See Bricklayers & Trowel Trades Int’l

Pension Fund v. Credit Suisse First Bos., 853 F. Supp. 2d 181, 193 (D. Mass. 2012) (Gorton, J.). Finally, if the class plaintiffs established both primary liability and loss causation and damages, they would still need to prove that Apple exercised sufficient control over GTAT to be found liable for GTAT's misrepresentations, and that in doing so, Apple did not act in good faith. See Aldridge, 284 F.3d at 85.

As noted in the motion for final approval and supporting affidavits, the class representatives faced difficult challenges from Apple on all three of these fronts.²⁸ For example, on the issue of primary liability, Apple contends that GTAT and the individual defendants fully disclosed the risks of the Apple-GTAT venture, that the allegedly false and misleading statements were not false when made, and that at the time the venture was formed, GTAT's directors genuinely believed that GTAT could fulfill the terms of the GTAT-Apple Agreement.²⁹ If the court at summary judgment or a jury at trial embraced any of these defenses, the class plaintiffs would receive no damages award whatsoever.

Similar challenges would arise in establishing loss causation and damages throughout the Class Period. In its motion for summary judgment, Apple credibly argues that a rational factfinder likely would not conclude that GTAT and Apple intended for their agreement to fail from day one, and would likely find that GTAT's bankruptcy filing was a manifestation of known risks about GTAT's performance rather than a corrective disclosure of a concealed fact.³⁰ If the jury, when faced with conflicting expert testimony about GTAT's performance and disclosures, chose to embrace a more conservative estimation of loss causation and damages, the jury could have awarded damages less than the amounts agreed to in the combined settlements in this case. Apple has raised further

²⁸ See Pls. Mot for Final Approval of Apple Settlement Mem. (doc. no. [256-1](#)) at 13-18.

²⁹ See Apple Mot. for Summ. J. Mem. re: Primary Liability (doc. no. [243-1](#)) at 2-3.

³⁰ See [id.](#) at 11-16.

defenses as to their actual control, which if believed, could have resulted in only a small apportionment, if any, of the proportionate liability for the alleged securities law violations.³¹

In addition, continued litigation would impose substantial costs and delay of recovery that might not be justifiable given the risks identified by the class plaintiffs. While fact and expert discovery is complete in this action, class plaintiffs would still have to fully oppose summary judgment, engage in substantial pre-trial practice including Daubert motions and motions in limine, convince a jury, and also litigate any post-trial motions for relief or appeals to the First Circuit Court of Appeals, all before recovering a possible judgment against Apple. At each of these stages, the class representatives would have faced significant risks related to proving their case. The cost and length of this process, when combined with the uncertainty of any result, thus weighs in favor of approving the Apple Settlement.

Equitable treatment of class members

[Rule 23\(e\)\(2\)\(D\)](#) requires that the proposed Apple Settlement “treats class members equitably relative to each other.” The proposed settlement satisfies this criterium.

Under the terms of the Apple Settlement, eligible members of the Apple Class that previously submitted or now submit claims approved for payment will receive a pro rata share of the Apple Settlement based on their transactions in GTAT Securities during the Class Period. Claims of the Apple Class will be calculated in the same manner as under the allocation plan approved by the court for members of the Individual Defendant Settlement Class.³² And the class representatives will receive the same level of pro rata

³¹ See Apple Mot. for Summ. J. Mem. re: Control Liability (doc. no. [243-2](#)) at 1-3.

³² See doc. no. [191](#), at ¶ 9(a).

recovery based on their Recognized Claims before factoring in their requested reimbursements for reasonable expenses, which the court grants below.³³

Reaction of the class to the settlement

In addition to the [Rule 23\(e\)\(2\)](#) factors, the court also considers the reaction of the class as an important factor in evaluating the fairness and adequacy of the proposed Apple Settlement. *See, e.g., Hill v. State St. Corp., No. 09-cv-12146, 2015 WL 127728, at *8 (D. Mass. Jan. 8, 2015)* (O’Toole, J.) (finding that the “favorable reaction of class to settlement, albeit not dispositive, constitutes strong evidence of fairness of proposed settlement and supports judicial approval” (internal citation omitted)); [Tyco, 535 F. Supp. 2d at 259-60](#).

As discussed below, class counsel and the independent claims administrator have employed a sweeping direct-mail, print-and-audio-media, and digital-notice program, which was the “best notice” practicable under the circumstances. *See* Part 2, *infra*, at 19. To date, the court has been made aware of only one objection to the Apple Settlement and nine requests for exclusion from individual investors.

In April 2020, Objector John Huddleston submitted a handwritten objection to the fairness of the Apple Settlement. In his view of the case, “Apple did not want to risk investing in the R&D” for sapphire materials “so they used investor’s money, then just dumped the GTAT (shell) company at stock holders[’] expence (sic).”³⁴ He further asks “[i]f this is what happen (sic), and it is true, why not insist that Apple recompense all stock holders who lost money when GTAT became Apple company” by paying GTAT investors shares of Apple stock equal in amount to their shares of GTAT stock “with no

³³ *See* Part III.B.3, *infra*, at 30.

³⁴ Doc. no. 255.

consideration of the GTAT price per share at the time . . . just shares for shares”³⁵

Huddleston did not appear at the fairness hearing. Class counsel has orally represented that Huddleston relayed he would not be attending and had nothing further to add.

Huddleston’s objection is overruled for two reasons. First, Huddleston’s request for shares, by its plain terms, assumes that certain underlying facts, which have not been proven at this stage of the litigation, are in fact true. Additionally, the court cannot force Apple to agree to settlement terms other than the one proposed by the parties. The court thus finds that the class’s reaction to the Apple Settlement supports the proposed negotiated resolution.

2. *Notice of settlement*

Under [Rule 23](#), “the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable means,” for any class certified under [Rule 23\(b\)\(3\)](#). [Fed. R. Civ. P. 23\(c\)\(2\)\(B\)](#). “The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (viii) the binding effect of a class judgment on members under [Rule 23\(c\)\(3\)](#).” [Id.](#)

In addition to [Rule 23](#), Due Process similarly requires that notice be sent in a manner “reasonably calculated to reach potential class members.” [Tyco](#), 535 F. Supp. 2d at 249; see also [Eisen v. Carlisle & Jacquelin](#), 417 U.S. 156, 174 (1974); [Compact Disc](#),

³⁵ [Id.](#)

216 F.R.D. at 203. The Private Securities Litigation Reform Act (“PSLRA”) separately requires that in private securities litigation, the notice of settlement state the amount of the settlement proposed to be distributed, the potential outcome of the case had the plaintiff prevailed, the amount of any attorneys’ fees or costs sought, contact information for plaintiffs’ counsel, and a brief explanation of the reasons for settlement. 15 U.S.C. § 78u-4(a)(7).

Here, class counsel and the third-party claims administrator employed an effective notice program involving direct mail, publications in relevant financial media, and the establishment of a class litigation website that provided potential class members with information concerning the Apple settlement.³⁶ The court-approved Apple Settlement Notice includes all the information required by Rule 23(c)(2)(B) and the PLSRA. And the plaintiffs have regularly updated the website with downloadable copies of important case documents, including the Apple Settlement Notice, the Apple Settlement, the court’s order preliminarily approving the Apple settlement, and the court-approved plans of allocation and claim forms previously mailed in connection with the earlier settlements in this case.³⁷

This combination of individual mailing, supplemented by publication in widely-circulated media and on a litigation website, tracks closely with the notice programs previously approved by this court in this case, and compares favorably with programs employed in other securities litigations. See, e.g., In re Advanced Battery Techs., Inc.

³⁶ In its Order Preliminarily Approving the Apple Settlement, the court found that these procedures for distribution and publication of notice and the form of such notice constituted the best notice practicable under the circumstances. See doc. no. 254.

³⁷ The court also observes that class counsel continued to monitor the phone numbers listed in the class notice after the outbreak of COVID-19 by forwarding these numbers to their personal cellular devices, to the extent they could no longer work in the office due to the pandemic.

Sec. Litig., 298 F.R.D. 171, 182-83 (S.D.N.Y. 2014) (approving a notice program for a relatively small settlement administered through post-card mailings, publication over PR Newswire and in Investor’s Business Daily); Schwartz v. TXU Corp., No. 3:02-cv-2243-K, 2005 WL 3148350, at *10-11 (N.D. Tex. Nov. 8, 2005) (finding that notice by first-class mail to all members identifiable by reasonable effort, supplemented by publication on settlement website and in a national newspaper “more than satisfie[d]” notice requirements); In re Cabletron Sys., Inc. Sec. Litig., 239 F.R.D. 30, 35-36 (D.N.H. 2006) (approving a notice program that distributed notice packets to individual investors and nominees, published a summary notice in one national newspaper, and provided a toll-free telephone hotline). The notice program thus met or exceeded all relevant notice requirements.

B. Attorneys’ fees and litigation expenses

Class counsel also seek an award of attorneys’ fees in the amount of 20% of the \$3.5 million Apple Settlement Fund, \$700,000 in total, as well as \$596,646.05 in reimbursements for litigation expenses. They also ask that the court approve a \$6,937.50 incentive payment from the Apple Settlement Fund to Kurz to reimburse his reasonable costs and expenses directly related to his representation of the Apple Class, and a \$24,713.75 incentive payment to Palisade for similarly incurred costs and expenses. As discussed herein, the court grants counsel’s request for reasonable attorneys’ fees and grants in part and denies in part its request for reimbursed costs and expenses.

1. Notice

“In a certified class action,” notice of a motion for attorneys’ fees and nontaxable costs by class counsel “must be . . . directed to class members in a reasonable manner.”

Fed. R. Civ. P. 23(h)(1). As discussed above,³⁸ the court finds that the notice of the Apple Settlement, which included class counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses, was sent to all class members who could be identified with reasonable effort. It also finds that the form and method of notifying the Apple Class of the motion for an award of attorneys' fees and expenses (1) satisfied the requirements of [Rule 23 of the Federal Rules of Civil Procedure](#), the United States Constitution (including the Due Process Clause), the PSLRA, as amended, and all other applicable law and rules, (2) constituted the best notice practicable under the circumstances, and (3) constituted due and sufficient notice to all persons and entities entitled thereto.

2. *Reasonableness of requested fees*

"[A] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client" may be "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 [In re Thirteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig.](#), 56 F.3d 295, 305 (1st Cir. 1995); [Tyco](#), 535 F. Supp. 2d at 265. In assessing the reasonableness of fees awarded from a common fund, courts may employ either a percentage-of-the-fund ("POF") method or a "lodestar" method.³⁹ See [Thirteen Appeals](#), 56 F.3d at 307. The court finds that the requested POF fee is reasonable when cross-checked with the lodestar approach. See [Tyco](#) 535 F. Supp. 2d at 265.

³⁸ See Part III.A.2 *supra*.

³⁹ The lodestar ordinarily is calculated by multiplying the number of hours reasonably incurred by the reasonable hourly rate for the services rendered. [Gisbrecht v. Barnhart](#), 535 U.S. 789, 802 (2002). "Using a lodestar cross-check ensures that the fees are also reasonable in light of the actual amount of work performed." [Tyco](#), 535 F. Supp. 2d at 265 (citing [Vizcaino v. Microsoft Corp.](#), 290 F.3d 1043, 1050 (9th Cir. 2002)).

Both the Supreme Court and the Court of Appeals have approved of the POF method in common fund cases, noting that, as the prevailing method, it “offers significant structural advantages in common fund cases, including ease of administration, efficiency, and a close approximation of the marketplace.” [Id.](#) at 308; [see also Blum v. Stenson](#), 465 U.S. 886, 900 n.16 (1984). District courts in the First Circuit have “extremely broad” latitude to determine an appropriate fee award under the POF method. [Id.](#) at 309.

“Unlike the Second and Third Circuits, the First Circuit [Court of Appeals] does not require courts to examine a fixed laundry list of factors.” [Tyco](#), 535 F. Supp. 2d at 256-66 (citing [Thirteen Appeals](#), 56 F.3d at 307–09; [In re Rite Aid Corp. Sec. Litig.](#), 396 F.3d 294, 305–06 (3d Cir.2005); [Goldberger v. Integrated Res., Inc.](#), 209 F.3d 43, 47 (2d Cir. 2000)). As such, the court “draw[s] loosely” on the factors employed by other circuits that are most relevant here, including: “fee awards in similar cases, the complexity, duration, and risk involved in the litigation, . . . the reaction of the class, and public policy considerations,” if any. [See Tyco](#), 535 F. Supp. 2d at 266 (original numeration omitted).

Comparison to similar cases

Class counsel contends that “a review of attorneys’ fees awarded in securities class actions with comparably sized settlements in the District of New Hampshire strongly supports the reasonableness of the 20% fee request.” In [Braun v. GT Solar Int’l, Inc.](#), for example, this court awarded attorneys’ fees in the amount of 25% of a \$10.5 million settlement.⁴⁰ Similarly, in [Sloman v. Presstek, Inc.](#), the court awarded 30% of a \$1.25 million settlement as attorneys’ fees.⁴¹ [See also StockerYale](#), 2007 WL 4589772, at *6-7

⁴⁰ [See](#) Order and Final Judgment (doc. no. 139), No. 1:08-cv-312-JL, at *3 (D.N.H. Sept. 27, 2011).

⁴¹ Judgment (doc. no. 139), No. 06-cv-377-JL, at *7 (D.N.H. July 20, 2009).

(awarding 33% of \$3.4 million settlement); [In re Cabletron Sys., Inc. Sec. Litig.](#), 239 F.R.D. 30, 45 (D.N.H. 2006) (Smith, J., by designation) (awarding 21.5% of \$10.5 million settlement).

The court also observes that in 2018, it approved counsel’s free request for 22% of the \$36.7 million aggregate amount reached under the then-putative class plaintiffs’ settlements with the GTAT individual defendant and underwriter defendants.⁴² The court approved such a fee request towards the beginning of fact discovery and well-before the parties litigated the motion for class certification. When compared with the POF awards in these similar cases, class counsel’s current request for a fee of 20% “does not stand out as unusual.” [Tyco](#), 535 F. Supp. 2d at 268.

Complexity, duration, and risk

The parties to this litigation litigated a considerably complex case, for which counsel assumed substantial risk in pursuing. To succeed in their claims against Apple, class plaintiffs would have to prove the primary liability of the individual defendants, who have already settled, and the fact that Apple “controlled” these defendants’ actions. In sustaining the class plaintiffs’ control person claims at the [Rule 12\(b\)](#) stage, the court found the plaintiffs allegations against Apple were “thin” and “barely sufficient” to withstand Apple’s motion to dismiss.⁴³ Additionally, in Apple’s motion for summary judgment, it asserted multiple defenses against the merits of the class plaintiffs’ case, which presented additional difficulties for proving the merits of the class plaintiffs’ claims.⁴⁴

⁴² See Order awarding attorneys’ fees (doc. no. 196) (awarding nearly \$8 million in total fees).

⁴³ Doc. no. 150 at 74.

⁴⁴ [See](#) Apple Mot. for Summ. J. Memos. (doc. nos. 243-1 & 243-2).

Plaintiffs' counsel conducted the litigation and achieved the Apple Settlement with skill, perseverance, and diligent advocacy. In connection with the prosecution and settlement of the claims against Apple, class counsel, among other things:

- successfully moved for certification of the Apple Class;⁴⁵
- obtained, reviewed, and analyzed nearly half a million documents totaling over two million pages produced in discovery by Apple and multiple non-parties subpoenaed by class counsel, including GTAT;⁴⁶
- conducted, defended, or actively participated in 28 fact, class, and expert depositions, including depositions of the Lead Plaintiff and three employees of the Securities Act Plaintiff, numerous Apple executives, former GTAT employees, directors, and executives, and expert witnesses;⁴⁷ and
- negotiated, at arms-length, the final terms of the Apple Settlement with Apple's Counsel and filed the related Settlement documents.⁴⁸

As discussed in greater detail both above and in the class plaintiffs' filings, the class plaintiffs' case faced substantial risks with respect to liability, loss causation and damages. While class counsel maintains that it had sufficient responses and evidence to rebut each of Apple's arguments, it also faced many uncertainties regarding the outcome of the case. Had counsel not achieved the Apple Settlement, there would remain a significant risk that the Apple Class may have recovered less than the \$3.5 million proposed settlement or worse, nothing, from Apple in this Action. Counsel's extensive litigation in the face of these risks, coupled with its assumption of a contingency fee providing no guarantee of compensation, support the reasonableness of the requested fee. See [CVS](#), 2016 WL 632238, at *9 ("Where, as here, lead counsel undertook this action

⁴⁵ Decl. ¶¶ 4, 37-47.

⁴⁶ Decl. ¶¶ 4, 9-10, 54-56.

⁴⁷ Decl. ¶¶ 4, 11, 40, 42, 57-58.

⁴⁸ Ormsbee Decl. (doc. no. 258) ¶ 70-71.

on a contingency basis and faced a significant risk of non-payment, this factor weighs more heavily in favor of rewarding litigation counsel.”); see also [In re OCA, Inc. Sec. & Derivative Litig.](#), No. 05-2165, 2009 WL 512081, at *22 (E.D. La. Mar. 2, 2009) (where counsel faced challenges in establishing scienter and loss causation and in proving liability and damages at trial, “the risk plaintiffs’ counsel undertook in litigating this case on a contingency basis must be considered in its award of attorneys’ fees, and thus an upward adjustment is warranted”); [Maley v. Del Glob. Techs. Corp.](#), 186 F. Supp. 2d 358, 372 (S.D.N.Y. 2002) (“Class counsel undertook a substantial risk of absolute non-payment in prosecuting this action, for which they should be adequately compensated.” (internal quotation marks and citation omitted)).

Reaction of the class to date

According to class counsel, the claims administrator has disseminated over 200,000 copies of the Apple Settlement Notice to potential class members informing them, among other things, of class counsel’s intention to apply for an award of attorneys’ fees not to exceed 20% of the Apple Settlement Fund and reimbursement of up to \$800,000 in litigation expenses.⁴⁹ Copies of class counsel’s motion for attorneys’ fees and supporting documents are also available on the class litigation website. Class counsel reports that it has received only nine requests for exclusion from the class.

The court accepts that the fee sought by class counsel has been reviewed and approved as reasonable by the court-appointed class representatives, who have overseen the prosecution and resolution of the claims asserted against in the Action against Apple, on behalf of the Apple Class. Moreover, it finds that to date, neither class counsel nor the court have received objections to the amount of fees and expenses requested. The lack of

⁴⁹ Ormsbee Decl. re: Fees (doc. no. 258-5) ¶¶119, 129.

objections from class members to date weighs in favor of approving the requested award. See [Roberts v. TJX Cos., Inc.](#), No. 13-cv-13142, 2016 WL 8677312, at *11 (D. Mass. Sept. 30, 2016) (Burroughs, J.); [CVS](#), 2016 WL 632238, at *9; [Tyco](#), 535 F. Supp. 2d at 261. The absence of objections by institutional investors further bolsters the case for approving the fee request. See [In re Rite Aid Corp. Sec. Litig.](#), 396 F.3d 294, 305 (3d Cir. 2005) (“Moreover, . . . a significant number of investors in the class were ‘sophisticated’ institutional investors that had considerable financial incentive to object had they believed the requested fees were excessive. The District Court did not abuse its discretion in finding the absence of substantial objections by class members to the fee requests weighed in favor of approving the fee request.”).

Public policy considerations

The Supreme Court has emphasized that private securities actions such as this provide “‘a most effective weapon in the enforcement’ of the securities laws and are ‘a necessary supplement to [SEC] action.’” [Bateman](#), 472 U.S. at 310 (citation omitted); see also [Medoff v. CVS Caremark Corp.](#), No. 09-cv-554-JNL, 2016 WL 632238, at *9 (D.R.I. Feb. 17, 2016) (“[P]ublic policy supports rewarding counsel for prosecuting securities class actions, especially where counsel’s dogged efforts—undertaken on a wholly contingent basis—result in satisfactory resolution for the class.” (citing [Tyco](#), 535 F. Supp. 2d at 270)); [In re Flag Telecom Holdings, Ltd. Sec. Litig.](#), No. 02-cv-3400 CM PED, 2010 WL 4537550, at *29 (S.D.N.Y. Nov. 8, 2010) (if the “important public policy [of enforcing the securities laws] is to be carried out, the courts should award fees which will adequately compensate Class Counsel for the value of their efforts, taking into account the enormous risks they undertook”). Accordingly, the court finds that granting

class counsel's application for fees and expenses furthers public policies favoring private enforcement of federal securities laws.

Lodestar cross-check

Class counsel's fee request also appears reasonable when cross-checked under the lodestar approach. "The lodestar approach (reasonable hours spent times reasonable hourly rates, subject to a multiplier or discount for special circumstances, plus reasonable disbursements) can be a check or validation of the appropriateness of the percentage-of-funds fee, but is not required." [New England Carpenters](#), 2009 WL 2408560, at *1 (citation omitted); accord [Thirteen Appeals](#), 56 F.3d at 307.

Several circuit courts have encouraged district judges to use the lodestar method as a cross-check on proposed POF awards.⁵⁰ See, e.g., [Rite Aid](#), 396 F.3d at 305; [Vizcaino](#), 290 F.3d at 1043; [Goldberger](#), 209 F.3d at 43. "When the lodestar is used in this way, the focus is not on the 'necessity and reasonableness of every hour' of the lodestar, but on the broader question of whether the fee award appropriately reflects the degree of time and effort expended by the attorneys." [Tyco](#), 535 F. Supp. 2d at 270 (citing [Thirteen Appeals](#), 56 F.3d at 307). Such a results-oriented focus "lessens the possibility of collateral disputes [regarding time records] that might transform the fee proceeding into a second major litigation." [Thirteen Appeals](#), 56 F.3d at 307.

Here, class counsel represents that it has spent a total of 7,574.60 hours of attorney and other professional support time prosecuting and resolving the claims asserted against

⁵⁰ See also MANUAL FOR COMPLEX LITIGATION (FOURTH) § 14.122, at 193 (2004) ("[T]he lodestar is . . . useful as a cross-check on the percentage method by estimating the number of hours spent on the litigation and the hourly rate, using affidavits and other information provided by the fee applicant. The total lodestar estimate is then divided into the proposed fee calculated under the percentage method. The resulting figure represents the lodestar multiplier to compare to multipliers in other cases.").

Apple from May 19, 2018—the date the court last approved fees in this case—through and including April 30, 2020.⁵¹ They further contend that, based on counsel’s 2018 hourly rates (approved by the court in connection with the 2018 fee award), their collective lodestar for their present motion for fees is \$4,035,034.25⁵²—an amount greatly exceeding the value of class counsel’s \$700,000 POF request. In light of class counsel’s detailed submissions, the courts familiarity with the work this case required, and the court’s prior findings for the 2018 Fee Award, the court finds that hours and hourly rates asserted in class counsel’s fee application are reasonable.

Taking the lodestar amount as an accurate indication of the work reasonably necessary to produce the Apple Settlement, the resulting lodestar multiplier of 0.17 reflects that counsel have assumed a very significant discount on the value of their time.⁵³ This “negative” multiplier is significantly below multipliers commonly awarded in securities class actions and comparable litigations. See, e.g., [In re Comverse Tech., Inc. Sec. Litig.](#), No. 06-CV-1825 (NGG), 2010 WL 2653354, at *5 (E.D.N.Y. June 24, 2010) (awarding fee representing a 2.78 multiplier and noting that, “[w]here, as here, counsel has litigated a complex case under a contingency fee arrangement, they are entitled to a fee in excess of the lodestar”) (citation omitted); [New England Carpenters](#), 2009 WL 2408560, at *2 (awarding 8.3 multiplier); [Tyco](#), 535 F. Supp. 2d at 271 (awarding 2.7 multiplier). The fact the multiplier is negative, that is, below 1, also shows the requested POF fee is reasonable. See, e.g., [In re Bear Stearns Cos. Sec., Deriv., & ERISA Litig.](#),

⁵¹ See Ormsbee Decl. re: Fees (doc. no. 258-5) ¶ 110.

⁵² Id. (Bernstein Litowitz, counsel for Kurz); Savett Decl. (doc. no. 258-6) (Berger Montague PC, counsel for Palisade); Eber Decl. (doc. no. 258-7) (Orr & Reno, as local counsel); Summary of Lodestar and Expenses (doc. no. 258-4).

⁵³ The 0.17 lodestar multiple results from dividing the \$700,000 POF request by the \$4,035,034.25 in total lodestar fees.

909 F. Supp. 2d 259, 271 (S.D.N.Y. 2012) (approving fee with negative multiplier and noting that the negative multiplier was a “strong indication of the reasonableness of the [requested] fee”); [FLAG Telecom](#), 2010 WL 4537550, at *26 (“Lead Counsel’s request for a percentage fee representing a significant discount from their lodestar provides additional support for the reasonableness of the fee request.”).

3. *Expenses*

Class counsel has also requested reimbursement of \$596,646.05 in expenses. “[D]istrict courts enjoy wide latitude in shaping the contours of such awards.” [In re Fid./Micron Sec. Litig.](#), 167 F.3d 735, 736–37 (1st Cir. 1999) (citing [Thirteen Appeals](#), 56 F.3d at 309). “Such awards are permissible in ‘common fund’ cases—but the district court, called upon to make awards of fees and/or expenses in such a case, functions as a quasi-fiduciary to safeguard the corpus of the fund for the benefit of the plaintiff class.” [Id.](#) (internal citation omitted). “Consequently, a reviewing court has the right, if not the obligation, to view skeptically efforts by attorneys to charge substantial expenses to that account.” [Id.](#)

In the exhibits to its fee and expense request, class counsel has provided detailed breakdowns of their expenses, including summary tables, breaking the expenses down by category. According to the tables, it seeks reimbursement for legal research, travel and lodging, printing, court reporting, experts, online document hosting, and certain other miscellaneous expenses. No class members have objected to the expense request. Given the legitimate needs arising from the size and complexity of this case, these expense requests are generally reasonable. [See Fid./Micron](#), 167 F.3d at 737 (“[L]awyers whose efforts succeed in creating a common fund for the benefit of a class are entitled not only to reasonable fees, but also to recover from the fund . . . expenses, reasonable in amount,

that were necessary to bring the action to a climax.”); [Latorraca v. Centennial Techs. Inc.](#), 834 F. Supp. 2d 25, 28 (D. Mass. 2011) (Gorton, J.) (“In addition to attorneys’ fees, lawyers who recover a common fund for a class are entitled to reimbursement of out-of-pocket expenses incurred during the litigation.” (citation omitted)).

The court expresses reservation, however, at the amount of expenses requested in light of the size of the Apple Settlement Fund and class counsel’s request for fees. Counsel’s request for reimbursement of nearly \$600,000 in expenses approaches the pre-interest value of its \$700,000 request for attorneys’ fees. When combined, these requests—totaling nearly \$1.3 million—comprise over 37% of the \$3.5 million in funds obtained from Apple for the benefit of members of the Apple Class.⁵⁴ Thus, while class counsel’s request for reimbursement, at first glance, appears reasonable given the number of depositions taken and the expert issues at play, the court finds that the request, when viewed in context of this case, “promises to yield an unreasonable,” or at the very least, an inequitable result and must be “trimmed back.” [Fid./Micron](#), 167 F.3d at 737.

For these reasons, the court, in its discretion, approves a capped reimbursement of \$400,000 from the Apple Settlement Fund for class counsel’s litigation expenses. This reduced reward, when combined with awarded attorneys’ fees, totals \$1.1 million or nearly 31.5% of the Apple Settlement Fund—a division the court finds more equitably treats the interests of the Apple Class. Additionally, the capped reimbursement award is reasonable when viewed in combination with the total settlements and fee awards

⁵⁴ The court also observes that as part of the prior settlements reached with the individual and underwriter defendants, it awarded class counsel attorneys’ fees in the amount of 22% of the aggregate \$40.2 million settlement fund, and only \$227,402.76 in reimbursement of litigation expenses from the settlement funds.

achieved in this litigation—by this court’s math, \$43.7 million and \$10.17 million respectively.

Finally, the court finds that the requests for reimbursements for class representatives Kurz and Palisade’s costs and expenses directly related to their representation of the Apple Class is reasonable and thus, approves the reimbursements in the amounts requested by class counsel’s motion.

IV. Conclusion

For the above-stated reasons, the court:

- overrules the sole objection to the proposed Apple Settlement;
- approves the Apple Settlement (consisting of the terms and conditions of the Stipulation and Agreement dated January 10, 2020) and the plan of allocation;
- approves an award of attorneys’ fees in the amount of 20% of the Apple Settlement Fund, plus \$400,000 in reimbursement of litigation expenses;
- approves incentive awards in the amounts of \$6,937.50 and \$24,713.75 from the Apple Settlement Fund to class representatives Kurz and Palisade, respectively;
- grants the motion for final approval of the Apple Settlement;⁵⁵ and
- grants in part and denies in part class counsel’s motion for fees and costs.⁵⁶

The court shall retain exclusive jurisdiction over the Settling Parties and the “Class Members,” as defined in the Apple Settlement, for all matters relating to this Action, including the administration, interpretation, effectuation, or enforcement of the Apple Settlement and this Order.

⁵⁵ Doc. no. 256.

⁵⁶ Doc. no. 257.

Class counsel shall allocate the attorneys' fees awarded amongst Plaintiffs' Counsel in a manner which it, in good faith, believes reflects their respective contributions to the initiation, prosecution, and settlement of the claims asserted in the Action against Apple.

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

A separate judgment as against Apple shall follow.

SO ORDERED.



Joseph N. Laplante
United States District Judge

Dated: August 27, 2020

cc: Counsel of record

Exhibit 7G

Hearing Date: April 18, 2024 at 11:00 a.m. (Prevailing Eastern Time)
Objection Deadline: April 11, 2024 at 4:00 p.m. (Prevailing Eastern Time)

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Paul D. Leake
Lisa Laukitis
Shana A. Elberg
Evan A. Hill
One Manhattan West
New York, New York 10001
Telephone: (212) 735-3000
Fax: (212) 735-2000

Counsel for Debtors and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

**ENDO INTERNATIONAL plc, et al.,

Debtors.¹**

Chapter 11

**Case No. 22-22549 (JLG)

(Jointly Administered)**

**FOURTH INTERIM FEE APPLICATION OF
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP FOR
COMPENSATION FOR SERVICES RENDERED AND REIMBURSEMENT
OF EXPENSES AS COUNSEL TO THE DEBTORS FOR THE PERIOD
FROM SEPTEMBER 1, 2023 THROUGH AND INCLUDING DECEMBER 31, 2023**

General Information

Name of Applicant: Skadden, Arps, Slate, Meagher & Flom LLP
Authorized to Provide Services to: Endo International plc, et al.

¹ The last four digits of Debtor Endo International plc's tax identification number are 3755. Due to the large number of debtors in these chapter 11 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at <https://restructuring.ra.kroll.com/Endo>. The location of the Debtors' service address for purposes of these chapter 11 cases is: 1400 Atwater Drive, Malvern, PA 19355.

Expenses Sought in this Application Already Sought Pursuant to Monthly Fee Applications but Not Yet Allowed:	\$6,369.87
Blended Rate in this Application for All Attorneys:	\$1,283.24
Blended Rate in this Application for All Timekeepers:	\$1,247.90
Number of Professionals and Paraprofessionals Included in this Application:	128
Number of Professionals and Paraprofessionals Who Billed Fewer than 15 Hours to these Cases:	66 ⁵

(cont'd from previous page)

⁵ This number does not include partners and counsel who billed fewer than one hour and associates and paraprofessionals who billed fewer than three hours in any given month. Skadden voluntarily reduced its requested fees by writing off time for such professionals in advance of filing the applicable monthly fee statements.

Increase in Rates:

None during the Application Period. Effective September 1, 2023, Skadden implemented firm-wide step increases to reflect class on class progression and promotions of certain Skadden professionals. These increases constituted annual “step increases,” as defined in section B.2.d of the U.S. Trustee Guidelines (defined below), determined by Skadden in the ordinary course regarding attorneys and other billers throughout the firm due to advancing seniority and promotion. Pursuant to the U.S. Trustee Guidelines, such “step increases” do not constitute “rate increases.”

On January 1, 2024, after the Application Period, Skadden implemented firm-wide rate increases applicable generally to clients in both bankruptcy and non-bankruptcy matters. Pursuant to Skadden’s retention order [Docket No. 319], Skadden provided advance notice of these increases to the Debtors, the United States Trustee, the official committee of unsecured creditors, the official committee of opioid claimants, and any party that had requested notice pursuant to Bankruptcy Rule 2002 [Docket No. 990].

**PRIOR FEE STATEMENTS OF
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP**

Date Filed	Docket Number	Period Covered	Fees Requested ⁶	Expenses Requested	Fees Authorized	Expenses Authorized
11/1/2022	547	8/16/22 – 8/31/22*	\$2,578,051.27 (80% of \$3,222,564.09)	\$164,395.29	\$2,578,051.27 (80% of \$3,222,564.09)	\$164,395.29
		9/1/22 – 9/30/22*	\$4,807,091.952 (80% of \$6,008,864.90)	\$96,662.95	\$4,807,091.952 (80% of \$6,008,864.90)	\$96,662.95
11/30/2022	794	10/1/22 – 10/31/22*	\$4,978,106.75 (80% of \$6,222,633.44)	\$74,598.90	\$4,978,106.75 (80% of \$6,222,633.44)	\$74,598.90
12/30/2022	1115	11/1/22 – 11/30/22*	\$5,889,231.85 (80% of \$7,362,231.85)	\$77,935.22	\$5,889,231.85 (80% of \$7,362,231.85)	\$77,935.22
1/30/2023	1270	12/1/22 – 12/31/22*	\$3401,912.31 (80% of \$4,252,390.39)	\$41,256.83	\$3401,912.31 (80% of \$4,252,390.39)	\$41,256.83
2/28/2023	1413	1/1/23 – 1/31/23**	\$5,095,219.22 (80% of \$6,369,024.02)	\$136,194.50	\$5,095,219.22 (80% of \$6,369,024.02)	\$136,194.50
3/31/2023	1762	2/1/23 – 2/28/23**	\$4,465,042.66 (80% of \$5,581,303.33)	\$17,117.08	\$4,465,042.66 (80% of \$5,581,303.33)	\$17,117.08
4/30/2023	1850	3/1/23 – 3/31/23**	\$4,676,649.85 (80% of \$5,845,812.31)	\$22,155.70	\$4,676,649.85 (80% of \$5,845,812.31)	\$22,155.70
5/31/2023	2137	4/1/23 – 4/30/23**	\$2,884,236.99 (80% of \$3,605,296.24)	\$3,734.55	\$2,884,236.99 (80% of \$3,605,296.24)	\$3,734.55
6/30/23	2364	5/1/23- 5/31/23***	\$3,866,305.76 (80% of \$4,832,882.20)	\$10,346.50	\$3,866,305.76 (80% of \$4,832,882.20)	\$10,346.50

⁶ Pursuant to informal discussions with David Klauder, the court appointed Fee Examiner (as defined below), (1) Skadden agreed to voluntarily reduce its fees sought in connection with the First Interim Application in the amount of \$112,388.10 and its expenses sought in the amount of \$12,914.66, aggregating a total reduction of fees and expenses in the amount of \$125,302.76; (2) Skadden agreed to voluntarily reduce its fees sought in connection with the Second Interim Application in the amount of \$54,000; and (3) Skadden agreed to voluntarily reduce its fees sought in connection with the Third Interim Application in the amount of \$53,000 and its expenses in the amount of \$500, aggregating a total reduction of fees and expenses in the amount of \$53,500.

Date Filed	Docket Number	Period Covered	Fees Requested ⁶	Expenses Requested	Fees Authorized	Expenses Authorized
7/30/23	2553	6/1/23-6/30/23***	\$3,821,734.25 (80% of \$4,777,167.81)	\$18,516.79	\$3,821,734.25 (80% of \$4,777,167.81)	\$18,516.79
8/30/23	2750	7/1/23-7/31/23***	\$4,980,928.05 (80% of \$6,226,160.06)	\$59,287.61	\$4,980,928.05 (80% of \$6,226,160.06)	\$59,287.61
9/29/23	2987	8/1/23-8/31/23***	\$3,906,526.77 (80% of \$4,883,158.46)	\$59,847.90	\$3,906,526.77 (80% of \$4,883,158.46)	\$59,847.90
10/30/23	3080	9/1/23-9/30/23	\$3,242,126.94 (80% of \$4,052,658.67)	\$1,104.74	\$3,242,126.94 (80% of \$4,052,658.67)	\$1,104.74
11/30/23	3295	10/1/23-10/31/23	\$3,857,654.80 (80% of \$4,822,068.50)	\$1,023.40	\$3,857,654.80 (80% of \$4,822,068.50)	\$1,023.40
12/29/23	3489	11/1/23-11/30/23	\$4,147,171.55 (80% of \$5,183,964.44)	\$3,648.93	\$4,147,171.55 (80% of \$5,183,964.44)	\$3,648.93
1/30/24	3595	12/1/23-12/31/23	\$3,844,707.90 (80% of \$4,805,884.87)	\$592.80	\$3,844,707.90 (80% of \$4,805,884.87)	\$592.80

* Skadden previously filed its first interim fee application (the “First Interim Application”) pertaining to these monthly fee periods (the “First Interim Application Period”) [Docket No. 1337], which has been approved [Docket No. 1868], subject to continued 10% holdbacks.

** Skadden previously filed its second interim fee application (the “Second Interim Application”) pertaining to these monthly fee periods (the “Second Interim Application Period”) [Docket No. 2224], which has been approved [Docket No. 2992], subject to continued 10% holdbacks.

*** Skadden previously filed its third interim fee application (the “Third Interim Fee Application”) pertaining to these monthly fee periods (the “Third Interim Application Period”) [Docket No. 3031], which has been approved [Docket No. 3370], subject to continued 10% holdbacks.

**TIME SUMMARY TO FOURTH INTERIM FEE APPLICATION OF
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
SEPTEMBER 1, 2023 – DECEMBER 31, 2023**

Project Category	Total Hours	Total Fees
Asset Dispositions (PSA)	261.4	\$306,639.00
Asset Dispositions (RSA/363 Process)	196.7	\$225,289.35
Automatic Stay (Relief Actions)	0.5	\$776.25
Business Operations / Strategic Planning	494.9	\$752,630.40
Case Administration	128.8	\$98,919.90
Claims Admin. (General)	181.2	\$212,740.20
Creditor Meetings / Statutory Committees	20.9	\$33,737.85
Disclosure Statement / Voting Issues	748.9	\$745,809.75
Employee Matters (General)	198.3	\$258,031.80
Executory Contracts (Personalty)	223.3	\$269,014.95
Financing (DIP and Emergence)	106.9	\$119,184.75
Foreign/Cross-Border	2,399.9	\$3,003,405.30
Future Claims Representative	5.8	\$7,782.75
General Corporate Advice	365.1	\$501,899.40
Government Affairs	4.4	\$5,158.80
Insurance	80.6	\$106,649.55
Intellectual Property	26.8	\$21,628.80
Leases (Real Property)	1.9	\$2,103.30
Liquidation / Feasibility	35.7	\$46,498.95
Litigation (General)	434.2	\$609,633.45
Litigation (Opioid)	280.5	\$305,863.98
Litigation (Opioid) – Canada	13.2	\$14,060.25
Mediation	3,907.7	\$5,007,705.30
NY Attorney General Assurance of Discontinuance	15.4	\$7,507.50
Post Emergence Finance	147.7	\$202,697.10
Preliminary Injunction	0.8	\$1,375.20
Regulatory and SEC Matters	269.6	\$360,737.55
Reorganization Plan / Plan Sponsors	3,239.4 ⁷	\$4,131,049.50
Retention / Fee Matters (SASM&F)	486.7	\$450,797.85
Retention / Fee Matters / Objections (Other)	63.9	\$49,432.50

⁷ In Skadden’s monthly fee statement covering the period from November 1, 2023 through November 30, 2023 [Docket No. 3489], hours billed to this matter were inadvertently listed as 1588.1 hours, rather than 1584.0 hours. This error did not impact any other figures in such fee statement (including total hours or any rates described therein) and it has been corrected in this Application as necessary.

Project Category	Total Hours	Total Fees
Tax Matters	430.2	\$590,937.30
TLC Adversary Proceeding	342.6	\$411,669.45
Vendor Matters	3.1	\$3,208.50
TOTAL	15,117.0	\$18,864,576.48

**SUMMARY OF SERVICES RENDERED BY PROFESSIONAL BY
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
SEPTEMBER 1, 2023 – DECEMBER 31, 2023**

<u>NAME</u>	<u>YEAR OF ADMISSION</u>	<u>RATE</u>	<u>HOURS</u>	<u>AMOUNT</u>
<u>PARTNER</u>				
John Adebisi	1993	\$1,764.00	1.5	\$2,646.00
Faiz Ahmad	2002	\$1,764.00	1.6	\$2,822.40
Richard T. Bernardo	1988	\$1,470.00***	50.9	\$74,823.00
		\$1,764.00	0.1	\$176.40
Abby Davis	2013	\$1,674.00	176.7	\$295,795.80
Frederic Depoortere	1998	\$1,764.00	1.2	\$2,116.80
Shana A. Elberg	2002	\$1,764.00	683.6	\$1,205,870.40
Bruce Goldner	1993	\$1,764.00	2.7	\$4,762.80
Edward E. Gonzalez	1980	\$1,976.00	1.9	\$3,753.45
Evan A. Hill	2012	\$1,294.00***	0.8	\$1,035.01
		\$1,553.00	781.9	\$1,213,899.75
Albert L. Hogan III	1997	\$1,764.00	11.5	\$20,286.00
Lisa Laukitis	2000	\$1,470.00***	0.3	\$441.00
		\$1,764.00	467.5	\$824,670.00
Paul Leake	1989	\$1,845.00	670.8	\$1,237,626.00
Danielle Li	2006	\$1,674.00	28.4	\$47,541.60
Maxim Mayer-Cesiano	2006	\$1,674.00***	24.8	\$41,515.20
		\$1,764.00	53.8	\$94,903.20
James A. McDonald	1999	\$1,764.00	1.4	\$2,469.60
Steven Messina	1998	\$1,764.00	1.8	\$3,175.20
Peter Newman	2005	\$1,764.00	57.5	\$101,430.00
Nina R. Rose	2006	\$1,395.00	1.8	\$2,511.00
Erica Schohn	2004	\$1,764.00	9.7	\$17,110.80
David E. Schwartz	1994	\$1,845.00	8.2	\$15,129.00
Nicole Stephansen	2009	\$1,674.00	219.6	\$367,610.40
Royce L. Tidwell	2007	\$1,764.00	2.4	\$4,233.60
Brandon Van Dyke	2003	\$1,845.00	89.5	\$165,127.50
Clive Wells	1991	\$1,764.00	5.0	\$8,820.00
B. Chase Wink	2008	\$1,764.00	188.2	\$331,984.80
Geoffrey M. Wyatt	2005	\$1,470.00***	21.4	\$31,458.00
		\$1,764.00	13.6	\$23,990.40
Michael J. Zeidel	1996	\$1,845.00	29.0	\$53,505.00
TOTAL PARTNER			3,609.10	\$6,203,240.11

<u>NAME</u>	<u>YEAR OF ADMISSION</u>	<u>RATE</u>	<u>HOURS</u>	<u>AMOUNT</u>
<u>OF COUNSEL</u>				
Andrew J. Brady	1996	\$1,553.00	16.5	\$25,616.25
TOTAL OF COUNSEL			16.5	\$25,616.25
<u>COUNSEL</u>				
F. Joseph Ciani-Dausch	2008	\$1,409.00	0.3	\$422.55
James D. Falconer	2014	\$1,409.00	578.8	\$815,239.80
Thomas E. Fox	1984	\$1,174.00	7.2	\$8,451.03
Nicole L. Grimm	1999	\$1,409.00	187.6	\$264,234.60
Milli Kanani Hansen	2012	\$1,174.00	36.5	\$42,841.95
Wentian Huang	2012	\$1,409.00	44.5	\$62,678.25
Jason M. Liberi	2003	\$1,409.00	262.4	\$369,590.40
Peter Luneau	2004	\$1,499.00	61.7	\$92,457.45
Patricia A. McNulty	1986	\$1,174.00	90.3	\$105,989.84
Rui Qi	2015	\$1,409.00	3.5	\$4,929.75
Michael A. Wiseman	2015	\$1,409.00	51.4	\$72,396.90
TOTAL COUNSEL			1,324.2	\$1,839,232.52
<u>REGIONAL COUNSEL</u>				
Damian R. Babic	2016	\$1,319.00	1.5	\$1,977.75
Inara V. Blagopoluchnaya	2005	\$1,319.00	32.5	\$42,851.25
TOTAL REGIONAL COUNSEL			34.0	\$44,829.00
<u>ASSOCIATE/LAW CLERK/TRAINEE SOLICITOR</u>				
Zeinab Bakillah	2021	\$1,035.00	11.7	\$12,109.50
John J. Battaglia	1996	\$1,251.00	3.6	\$4,503.60
Douglas A. Bresnick	2021	\$1,035.00	140.9	\$145,831.50
Jamie S. Brumberger	2021	\$1,107.00	770.9	\$853,386.30
Vincent J. Cannizzaro III	2014	\$1,251.00	3.3	\$4,128.30
Robin L. Caskey	2019	\$1,107.00	14.4	\$15,940.80
Ambra Casonato	2003	\$774.00	12.6	\$9,752.40
Sydney Cogswell	2022	\$918.00	5.7	\$5,232.60
Jackie Dakin	2019	\$1,107.00	23.5	\$26,014.50
Matthew S. DeLuca	2020	\$1,107.00	151.0	\$167,157.00
Graham Dench	2009	\$1,251.00	18.4	\$23,018.40
Liz Downing	2012	\$1,251.00	723.8	\$905,473.80
Anna E. Drootin	2023	\$774.00	66.8	\$51,703.20
Guodong Fu	2023	\$774.00	8.9	\$6,888.60

<u>NAME</u>	<u>YEAR OF ADMISSION</u>	<u>RATE</u>	<u>HOURS</u>	<u>AMOUNT</u>
David Gross*	*	\$563.00	161.2	\$90,675.00
Nicholas S. Hagen	2019	\$1,148.00	397.4	\$456,016.50
Brianna N. Henderson	2019	\$1,148.00	73.1	\$83,882.25
Angeline J. Hwang	2018	\$1,193.00	794.4	\$947,322.00
Emily E. Jensen*	*	\$469.00	13.6	\$6,375.01
Anthony Joseph	2018	\$1,107.00***	1.4	\$1,549.80
		\$1,148.00	189.7	\$217,680.75
Daniel C. Kennedy	2020	\$1,107.00	547.7	\$606,303.90
Jason N. Kestecher	2015	\$1,251.00	531.3	\$664,656.30
Robert J. Kiernan*	*	\$563.00	32.0	\$18,000.00
Jaclyn F. Kleban	2021	\$1,035.00	545.1	\$564,178.50
Parker Kolodka	2021	\$1,035.00	22.2	\$22,977.00
Harry P. Koulos	2015	\$1,251.00	2.4	\$3,002.40
Rosemary Laflam	2019	\$1,148.00	40.5	\$46,473.75
Arista Lai**	**	\$423.00	10.9	\$4,610.70
Justin Lau	2018	\$1,193.00	3.3	\$3,935.25
Eva Lee	2013	\$941.00	3.0	\$2,821.50
Jacob G. Lefkowitz	2016	\$1,251.00	73.6	\$92,073.60
Jason Lese	2023	\$774.00	79.1	\$61,223.40
Julia N. Lim	2019	\$1,148.00	7.0	\$8,032.50
Teresa Lotufo	2018	\$918.00	183.0	\$167,994.00
Rose Ma*	*	\$563.00	197.1	\$110,868.75
Rebekah J. Mott	2012	\$1,251.00	9.9	\$12,384.90
Olivia Moul**	**	\$486.00	3.0	\$1,458.00
Kelly J. Nabaglo	2021	\$1,035.00	17.0	\$17,595.00
Yelena L. Nersesyan	2011	\$1,251.00	14.3	\$17,889.30
Simon M. Parmeter	2018	\$1,035.00	325.5	\$336,892.50
Nick Peiffer*	*	\$563.00	12.7	\$7,143.75
Zizi Petkova	2017	\$1,251.00	105.0	\$131,355.00
Raphaella Ricciardi	2015	\$1,193.00	233.0	\$277,852.50
Emily D. Safko	2018	\$1,193.00	14.1	\$16,814.25
Benjamin Salzer	2018	\$1,193.00	5.2	\$6,201.00
Joshua Shainess	2015	\$1,251.00	3.5	\$4,378.50
Catrina A. Shea	2019	\$1,193.00	325.8	\$388,516.50
Eric H. Silverstein	2023	\$774.00	164.4	\$127,245.60
Elizabeth A. Simon	2014	\$1,043.00***	8.2	\$8,548.50
		\$1,251.00	0.9	\$1,125.90
Luke Sperduto	2019	\$1,148.00	415.7	\$477,015.75
Bram A. Strohlic	2015	\$1,043.00***	12.5	\$13,031.25

<u>NAME</u>	<u>YEAR OF ADMISSION</u>	<u>RATE</u>	<u>HOURS</u>	<u>AMOUNT</u>
		\$1,251.00	594.6	\$743,844.60
Evan L. Wadler*	*	\$563.00	6.2	\$3,487.50
Mason E. Walther	2023	\$774.00****	92.3	\$71,440.20
		\$563.00	100.3	\$56,418.75
Chambliss Williams	2019	\$1,148.00	657.3	\$754,251.75
Clark L. Xue	2016	\$1,251.00	413.0	\$516,663.00
Furong Yang	2019	\$1,148.00	11.0	\$12,622.50
TOTAL ASSOCIATE/LAW CLERK/TRAINEE SOLICITOR			9,409.9	\$10,415,969.86
<u>STAFF ATTORNEY/STAFF LAW CLERK</u>				
Brian Baggetta	2005	\$488.00****	15.4	\$7,507.50
		\$585.00	0.4	\$234.00
TOTAL STAFF ATTORNEY/STAFF LAW CLERK			15.8	\$7,741.50
<u>INTERNATIONAL VISITING ATTORNEY</u>				
Neta Brenner	2020	\$653.00	72.6	\$47,371.50
TOTAL INTERNATIONAL VISITING ATTORNEY			72.6	\$47,371.50
<u>CLIENT SPECIALIST</u>				
Sarah Efroymsen	N/A	\$566.00	32.5	\$18,403.25
Robert Hochberg	N/A	\$480.00****	7.2	\$3,456.00
		\$576.00	2.3	\$1,324.80
TOTAL CLIENT SPECIALIST			42.0	\$23,184.05
<u>PARAPROFESSIONALS</u>				
Scarlett Bach	N/A	\$378.00	173.7	\$65,658.60
Andrea T. Bates	N/A	\$486.00	269.0	\$130,734.00
Emily Furfaro	N/A	\$270.00	6.4	\$1,728.00
Sage Geyer	N/A	\$270.00	4.9	\$1,323.00
Christopher M. Heaney	N/A	\$486.00	7.2	\$3,499.20
John Kim	N/A	\$423.00	13.4	\$5,668.20
Wendy K. LaManna	N/A	\$486.00	19.4	\$9,428.40
Maximilian M. Rief	N/A	\$486.00	3.4	\$1,652.40
Stella Chan	N/A	\$419.00	8.5	\$3,557.25
Damion Fallon	N/A	\$419.00	8.2	\$3,431.70
David B. Gautschy	N/A	\$419.00	6.2	\$2,594.70
Eric R. Gilde	N/A	\$419.00	4.7	\$1,966.95
Matthew L. Hostetler	N/A	\$419.00	4.7	\$1,966.95
Teresa A. Kelsey	N/A	\$419.00	3.5	\$1,464.75

<u>NAME</u>	<u>YEAR OF ADMISSION</u>	<u>RATE</u>	<u>HOURS</u>	<u>AMOUNT</u>
Ann Link	N/A	\$419.00	4.3	\$1,799.55
Wandy Liu	N/A	\$244.00	10.5	\$2,559.39
Aaron Matteson	N/A	\$419.00	7.3	\$3,055.05
Shauna Miles	N/A	\$419.00	3.1	\$1,297.35
John J. O'Connor, Jr.	N/A	\$419.00	3.4	\$1,422.90
Nancy Peters	N/A	\$419.00	3.3	\$1,381.05
Kyle Schaefer	N/A	\$419.00	3.3	\$1,381.05
Jessica H. Sherwood-Noguchi	N/A	\$419.00	3.0	\$1,255.50
Michaline M. Siera	N/A	\$311.00	6.5	\$2,018.25
Mark P. Sullivan	N/A	\$419.00	4.0	\$1,674.00
Brian Wallace	N/A	\$486.00	4.0	\$1,944.00
Jess Watkins	N/A	\$419.00	4.0	\$1,674.00
Paul Zablocki	N/A	\$419.00	3.0	\$1,255.50
TOTAL PARAPROFESSIONALS			592.9	\$257,391.69
GRAND TOTAL			15,117.0	\$18,864,576.48

- * Law clerks are law school graduates who are not presently admitted to practice.
- ** Trainee Solicitors are law school graduates who are not presently admitted to practice working in Skadden's London office.
- *** Rate reduced by 25% due to time billed to matter 44 - Litigation (Opioid) or matter 47 - Litigation (Opioid) - Canada.
- **** Increased rate due to admission to the Bar.

Exhibit 7H

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBERT AHEARN and ALMAR SALES
COMPANY, Individually and On Behalf
of All Others Similarly Situated,

Plaintiff,

v.

CREDIT SUISSE FIRST BOSTON LLC,

Defendant.

No. 03-CV-10956 (JLT)

FINAL JUDGMENT

WHEREAS, the parties to the above-described action (the "Action") entered into a Settlement Agreement dated as of March 13, 2006 (the "Settlement"); and

WHEREAS, on March 14, 2006 the Court entered an Order of Preliminary Approval which, *inter alia*: (i) preliminarily approved the Settlement; (ii) confirmed the Action has been certified as a class action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure; (iii) approved the forms of notice of the Settlement to the Class Members; (iv) directed that appropriate notice of the Settlement be given to the Class; and (v) set a hearing date for final approval of the Settlement; and

WHEREAS, notice of the Settlement was mailed to Class Members and the Summary Notice of the Settlement was published in the national edition of The Wall Street Journal, as attested to in the Affidavit of the Claims Administrator filed herein; and

WHEREAS, on June 7, 2006, a hearing was held on whether the Settlement was fair, reasonable, adequate, and in the best interests of the Class ("Settlement Hearing"); and

WHEREAS, based on the foregoing, having heard the statements of counsel for the parties and of such persons as chose to appear at the Settlement Hearing, having considered all of the pleadings and proceedings in the Action, and being otherwise fully advised,

IT IS HEREBY ORDERED that:

1. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including Class Members.

2. The form, content, and method of dissemination of the notice given to the Class, including both published notice and individual notice to all Class Members who could be identified through reasonable effort, was adequate and reasonable, and constituted the best notice practicable under the circumstances.

3. The notice, as given, complied with the requirements of 15 U.S.C. § 78u-4(a)(7) and of Rule 23 of the Federal Rules of Civil Procedure, satisfied the requirements of due process, and constituted due and sufficient notice of the matters set forth therein.

4. The Plan of Distribution described in the notice to Class Members is fair and reasonable and it is hereby approved.

5. The Representative Plaintiffs have fairly and adequately represented the interests of the Class Members in connection with the Settlement.

6. The Representative Plaintiffs and the Class Members, and all and each of them, are hereby bound by the terms of the Settlement set forth in the Settlement Agreement.

7. The provisions of the Settlement Agreement, including definitions of the terms used therein, are hereby incorporated by reference as though fully set forth herein.

8. All parties and counsel appearing herein have complied with their obligations under Rule 11(b) of the Federal Rules of Civil Procedure.

9. This action is certified as a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, as previously determined by this Court in its Order dated August 17, 2005. The Class consists of all persons or entities who during the period from January 5, 2001 through April 5, 2001, inclusive ("Class Period"), purchased common stock of Winstar Communications, Inc. ("Winstar"), and were damaged thereby. Excluded from the Class are Credit Suisse First Boston, LLC ("CSFB" or "Defendant"); any parent, subsidiary, affiliate, officer or director of the Defendant; any former officer or director of Winstar; any entity in which any of the above has a controlling interest; and the legal representatives, heirs, successors, predecessors in interest, affiliates, or assigns of any of the above (the "Class").

10. There have been no requests for exclusion from the class.

11. The Settlement set forth in the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Class, and it shall be consummated in accordance with the terms and provisions of the Settlement Agreement.

12. Judgment shall be, and hereby is, entered dismissing the Action with prejudice and without taxation of costs in favor of or against any party except as provided in the Settlement Agreement.

13. The Representative Plaintiffs and all Class Members are hereby conclusively deemed to have released the Defendant, and its past and present parents, subsidiaries, and affiliated corporations and entities, the predecessors and successors in interest of any of them, and all of their respective past and present officers, directors, employees, agents

and assigns (the "Released Parties"), from any and all Settled Claims (the "Settled Claims"). As defined in the Settlement Agreement, "Settled Claims" means any and all claims, actions, causes of action, demands, suits, rights or liabilities, whether arising out of state or federal law, including Unknown Claims, of any Class Members, which exist or may exist against the Released Parties, by reason of any matter, event, cause or thing of any nature whatsoever arising out of, relating to, or in any way connected with: (a) the purchase, acquisition, sale, holding or disposition of any Winstar Securities during the Class Period; or (b) any of the facts, circumstances, transactions, events, occurrences, acts, omissions, or failures to act that have been alleged or could have been alleged by any Lead Plaintiff or other Class Member.

14. The Representative Plaintiffs and all Class Members are hereby barred and permanently enjoined from instituting, asserting or prosecuting, either directly, representatively, derivatively or in any other capacity, any and all Settled Claims which they or any of them had, have or may have against the Released Parties.

15. The Court appoints the law firms of Shapiro Haber & Urmy LLP and Berger & Montague as Class Counsel for purposes of administration of the Settlement.

16. The Plan of Distribution of the Settlement Fund as described in the notice to Class Members is hereby approved, subject to modification by further order of this Court. Any order or proceedings relating to the Plan of Distribution or amendments thereto shall not operate to terminate or cancel the Settlement Agreement or affect the finality of this Order approving the Settlement Agreement.

17. The Court hereby decrees that neither the Settlement Agreement nor this Final Judgment nor the fact of the Settlement is an admission or concession by the

Defendant of any liability or wrongdoing. This Final Judgment is not a finding of the validity or invalidity of any of the claims asserted or defenses raised in the Action. Neither the Settlement Agreement nor this Final Judgment nor the fact of Settlement nor the settlement proceedings nor the settlement negotiations nor any related documents shall be offered or received in evidence as an admission, concession, presumption or inference against the Defendant in any proceeding, other than such proceedings as may be necessary to consummate or enforce the Settlement Agreement.

18. The parties to the Settlement Agreement, their agents, employees, and attorneys, and the Claims Administrator and the Escrow Agent, shall not be liable for anything done or omitted in connection with these proceedings, the entry of this Final Judgment, or the administration of the payments to Authorized Claimants as provided in the Settlement Agreement and this Order, except for their own willful misconduct. No Class Member shall have any claim against Lead Plaintiff or Lead Counsel based on distributions made substantially in accordance with the Distribution Plan and orders of the Court. No Class Member shall have any further rights or recourse against the Defendant for any matter related to the Plan of Allocation, distributions thereunder, or the claims process generally.

19. Class Counsel are awarded attorneys' fees in the amount of \$ 2,640,000.00 and reimbursement of expenses, including experts' fees and expenses, in the amount of \$ 339,440, such amounts to be paid from out of the Settlement Fund. Representative Plaintiff Robert Ahearn is awarded the sum of \$ 25,000 and Representative Plaintiff Almar Sales Company is awarded the sum of \$ 10,000, as reasonable

costs and expenses directly relating to the representation of the Class as provided in 15 U.S.C. § 78u-4(a)(4), such amounts to be paid from out of the Settlement Fund.

20. Such Fees and Expenses shall be payable from the Settlement Fund within seven (7) business days after entry of this Order (subject to the repayment provisions of the Settlement Agreement), notwithstanding the existence of any potential appeal or collateral attack on this Order.

21. The Court hereby retains and reserves jurisdiction over implementation of this Settlement and any distribution to Authorized Claimants under the terms and conditions of the Settlement Agreement and pursuant to further orders of this Court.

22. There being no just reason for delay, the Clerk of Court is hereby directed to enter final judgment forthwith pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. 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 the Defendants in this Action, it allows consummation of the Settlement, and it will expedite the distribution of the Settlement proceeds to the Class Members.

Dated: June 7, 2006

Honorable Joseph L. Tauro
United States District Judge

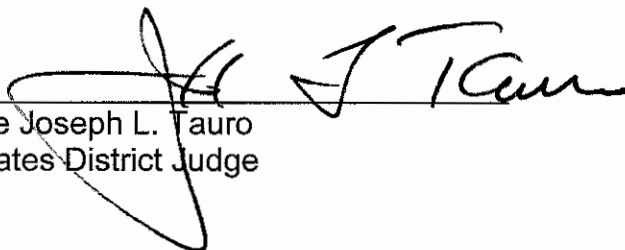
A handwritten signature in black ink, appearing to read "J. Tauro", is written over a horizontal line. The signature is stylized and somewhat cursive.

Exhibit 7I

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

IN RE KRAFT HEINZ SECURITIES
LITIGATION

Case No. 1:19-cv-01339

Honorable Jorge L. Alonso

**ORDER AWARDING ATTORNEYS' FEES
AND LITIGATION EXPENSES**

This matter is before the Court on Lead Counsel's motion for an award of attorneys' fees and Litigation Expenses. The Court having considered all matters submitted to it; and it appearing that notice substantially in the form approved by the Court, which advised of Lead Counsel's request for an award of attorneys' fees and Litigation Expenses, was mailed to all Settlement Class Members who or which could be identified with reasonable effort, and that a summary notice substantially in the form approved by the Court was published in *The Wall Street Journal* and transmitted over *PR Newswire* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the 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 as of May 2, 2023 (ECF No. 475-3) ("Stipulation"), and all capitalized 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 Settlement Class Members.

3. Notice of Lead Counsel's motion for an award of attorneys' fees and Litigation Expenses was given to all Settlement Class Members who or which could be identified with reasonable effort. The form and method of notifying the Settlement Class of the motion for an award of attorneys' fees and Litigation Expenses satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4, as amended, 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. Plaintiffs' Counsel are hereby awarded attorneys' fees in the amount of 20% of the Settlement Fund and \$2,656,091.93 in payment of Plaintiffs' Counsel's litigation expenses (which fees and expenses shall be paid from the Settlement Fund), which sums the Court finds to be fair and reasonable. Lead Counsel shall allocate the attorneys' fees awarded among Plaintiffs' Counsel in a manner which they, in good faith, believe reflects the contributions of such counsel to the institution, prosecution, and settlement of the Action.

5. In making this award of attorneys' fees and payment of expenses from the Settlement Fund, the Court has considered and found that:

A. The Settlement has created a fund of \$450,000,000 in cash that has been funded into escrow pursuant to the terms of the Stipulation, and that numerous Settlement Class Members who submit acceptable Claim Forms will benefit from the Settlement that occurred because of the efforts of Plaintiffs' Counsel;

B. The fee sought has been reviewed and approved as reasonable by Plaintiffs, sophisticated investors that actively supervised the Action;

C. Over 1.6 million Postcard Notices and 5,600 Notice Packets (i.e., the Notice and Claim Form) were mailed to potential Settlement Class Members and Nominees stating that Lead Counsel would apply for an award of attorneys' fees in the amount of 20% of the Settlement Fund and for payment of Litigation Expenses in an amount not to exceed \$3,200,000, and only two objections to the requested attorneys' fees have been received, which the Court has consider and rejected;

D. Plaintiffs' Counsel conducted the litigation and achieved the Settlement with skill, perseverance, and diligent advocacy;

E. The Action raised a number of complex issues;

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

G. Plaintiffs' Counsel devoted over 112,000 hours, with a lodestar value of \$52,985,816.50, to achieve the Settlement; and

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

6. Plaintiffs are hereby awarded reimbursement for their reasonable costs and expenses directly related to their representation of the Settlement Class in the following amounts:

(i) \$12,780.00 to Sjunde AP-Fonden; (ii) \$73,950.00 to Union Asset Management Holding AG; and (iii) \$27,610.00 to Booker Enterprises Pty Ltd.

7. 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.

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 Stipulation.

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.

SO ORDERED this 19th day of September, 2023.

A handwritten signature in black ink, consisting of a large, loopy initial 'J' followed by a smaller 'L' and a period, all enclosed within a large, horizontal oval stroke.

The Honorable Jorge L. Alonso
United States District Judge

Exhibit 7J

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN JOSE DIVISION

4 *In re Oracle Corporation Securities*
5 *Litigation*

CLASS ACTION

Case No. 5:18-cv-04844-BLF

6 ~~PROPOSED~~ ORDER
7 AWARDING ATTORNEYS' FEES
8 AND LITIGATION EXPENSES

9 Dept.: Courtroom 3, 5th Floor
10 Judge: Honorable Beth Labson Freeman

Hearing Date:
11 January 12, 2023 at 9:00 a.m.

12 This matter came on for hearing on January 12, 2023 (the "Settlement Hearing") on Lead
13 Counsel's motion for an award of attorneys' fees and payment of Litigation Expenses. The Court
14 having considered all matters submitted to it at the Settlement Hearing and otherwise; and it appearing
15 that notice of the Settlement Hearing substantially in the form approved by the Court was mailed to all
16 Class Members who or which could be identified with reasonable effort, and that a summary notice of
17 the hearing substantially in the form approved by the Court was published in *The Wall Street Journal*
18 and was transmitted over the *PR Newswire* pursuant to the specifications of the Court; and the Court
19 having considered and determined the fairness and reasonableness of the award of attorneys' fees and
20 Litigation Expenses requested,

21 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

22 1. This Order incorporates by reference the definitions in the Stipulation and Agreement
23 of Settlement dated June 23, 2022 (ECF No. 128-1) (the "Stipulation") and all terms not otherwise
24 defined herein shall have the same meanings as set forth in the Stipulation.

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

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

8 4. Lead Counsel is hereby awarded attorneys’ fees in the amount of 20% of the Settlement
9 Fund (including interest earned at the same rate as the Settlement Fund). Lead Counsel is also hereby
10 awarded \$795,465.17 for payment of its litigation expenses. These attorneys’ fees and expenses shall
11 be paid from the Settlement Fund and the Court finds these sums to be fair and reasonable. The Court
12 overrules the objection to the motion for attorneys’ fees and expenses submitted by Scott Noyes.

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

15 a. The Settlement has created a fund of \$17,500,000 in cash that has been funded
16 into escrow pursuant to the terms of the Stipulation, and that numerous Class Members who
17 submit acceptable Claim Forms will benefit from the Settlement that occurred because of the
18 efforts of Lead Counsel;

19 b. The fee sought is based on a retainer agreement entered into by Lead Counsel
20 and Lead Plaintiff at the outset of the litigation and the requested fee has been again reviewed
21 and approved as reasonable by Lead Plaintiff, a sophisticated institutional investor that actively
22 supervised the Action, at the conclusion of the Action;

23 c. Copies of the Notice were mailed to over 979,000 potential Class Members and
24 nominees stating that Lead Counsel would apply for attorneys’ fees in an amount not exceed
25 20% of the Settlement Fund and payment of Litigation Expenses in an amount not to exceed
26 \$900,000 and only one objection to the requested award of attorneys’ fees or Litigation
27 Expenses was submitted (which the Court finds to lack merit and overrules);

1 d. Lead Counsel conducted the litigation and achieved the Settlement with skill,
2 perseverance and diligent advocacy;

3 e. The Action raised a number of complex issues;

4 f. Had Lead Counsel not achieved the Settlement there would remain a significant
5 risk that Lead Plaintiff and the other members of the Class may have recovered less or nothing
6 from Defendants;

7 g. Lead Counsel devoted over 17,900 hours, with a lodestar value of approximately
8 \$9.1 million, to achieve the Settlement; and

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

11 6. Lead Plaintiff Union Asset Management Holding AG is hereby awarded \$64,750 from
12 the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its
13 representation of the Class.

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

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

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

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

24 SO ORDERED this 13 day of January, 2023.

25 

26 _____
27 The Honorable Beth Labson Freeman
28 United States District Judge

Exhibit 8

Seb Investment Management AB v. Symantec Corporation, Slip Copy (2021)

2021 WL 1540996

Only the Westlaw citation is currently available.
United States District Court, N.D. California.

SEB INVESTMENT MANAGEMENT AB,
individually and on behalf of all others
similarly situated, Plaintiff,

v.

SYMANTEC CORPORATION and
Gregory S. Clark, Defendants.

No. C 18-02902 WHA

|
Signed 04/20/2021

ORDER RE CONFLICT DISPUTE

WILLIAM ALSUP, United States District Judge

*1 This order resolves a pending question concerning the conduct of class counsel and lead plaintiff and an allegation that they engaged in play to pay, which means, “you hire me as counsel, and I’ll make it up to you down the road.” Such arrangements are adverse to the interests of the class because class counsel should be selected as the best lawyer for the class.

In this case, SEB Investment Management AB won the role of lead plaintiff. At the lead plaintiff selection hearing, SEB introduced Mr. Hans Ek as the staff member at SEB who would oversee the case if SEB won the job. SEB showcased his experience and abilities. The order appointing SEB said the following about him: “SEB identified Hans Ek, SEB’s Deputy Chief Executive Officer, as being the individual in charge of managing its litigation responsibilities. In addition, SEB’s in-house legal counsel will be advising Mr. Ek and assisting with overseeing the litigation” (Dkt. No. 88).

After SEB won the job, an order required Mr. Ek to interview law firms for the job of class counsel. SEB interviewed several firms but ultimately selected Bernstein, Litowitz, Berger & Grossmann, LLP (BLBG),

its existing counsel, even though BLBG asked for a richer fee proposal than others. The Court deferred to lead plaintiff’s judgment and appointed BLBG (*ibid.*).

Twenty-five months went by. Litigation churned forward. Then another law firm, Robbins, Geller, Rudman & Dowd, LLP, on behalf of a class member (Norfolk County Council as Administering Authority of the Norfolk Pension Fund) reported to the Court that Mr. Ek had left SEB and was now working for BLBG.

Upon inquiry by the Court, BLBG confirmed this.

Discovery was allowed into the problem and several hearings were held. After careful consideration of all the evidence and argument, the Court remains unable to determine whether the move of Mr. Ek to BLBG was coincidental versus culpable. It’s possible that there was a *quid pro quo* of sorts but, if so, it’s not clear in the evidence.

What is crystal clear is that BLBG held Mr. Ek out as the professional who would guide the class through the litigation and direct counsel. Also crystal clear is that BLBG and Mr. Ek failed to tell the Court that he had gone over to the counsel side, meaning had left SEB and joined BLBG. On his way out of SEB, he lateraled his case responsibilities to a colleague, another fact not disclosed to the Court.

The PLSRA established the statutory office of lead plaintiff, usually intended to be an institutional investor, for the very specific purpose of converting securities litigation from “lawyer driven” to “investor driven” wherein the lead plaintiff actually manages the case for the class, the lawyer no longer being in charge. When, as here, the very man or woman presented to the Court as the one who will carry out the PSLRA mandate winds up as an employee of the lawyer, one can easily ask whether a fundamental goal of the Act has been compromised.

Separate from this is the pay to play problem. If a law firm winks and nods and says, “Hire me as your class counsel and we’ll return the favor down the road,” then the class suffers because class counsel should instead be selected on the merits of who will best represent the class. The lead plaintiff owes a fiduciary duty to the class to select the best lawyer for the class, not to treat the selection as a tradeoff of favors.

*2 BLBG and SEB surely knew all these ramifications and knew how the undersigned judge felt about these issues. The appearance alone raises eyebrows, arched

Seb Investment Management AB v. Symantec Corporation, Slip Copy (2021)

eyebrows. BLBG should have avoided this spectacle. So should have SEB and so should have Mr. Ek. This is true even though discovery could not establish a clear-cut *quid pro quo*.

It's worth observing that while no clear-cut evidence of a *quid pro quo* emerged, discovery did show that BLBG's initial explanation to the Court proved misleading. At our hearing on January 21, 2021, Class Counsel Salvatore J. Graziano told the Court,

[F]irst and foremost, we never thought or raised the possibility of Mr. Ek joining our firm when he was at SEB. That was back in 2018. He had no intention of leaving. We never thought would he leave. He publicly left a year later, December 1 of 2019

(Tr. at 4-5). After that hearing, the Court permitted discovery. Mr. Ek testified at his deposition that he "was employed by SEB until the last day of March" in 2020 (Ek. Dep. at 51). Moreover, BLBG had sent Mr. Ek a recruitment email on December 19, 2019, while SEB still employed him. In it, a BLBG attorney (on this case) said, "I know you said that you wanted to transition your work at SEB towards the end of the year before thinking about next steps. Now that we are almost at the end of the year, please know that I would love to continue to work with you" but "of course, I don't know what your plans are or if you have given your next steps any thought yet" (van Kwawegen Dep. at 55). In his brief summarizing Mr. Ek's testimony (and other discovery), Attorney Graziano walked back his January 21 representation, conceding, "BLB&G raised for the first time the prospect of working with Mr. Ek in late December [2019]," but said it was

"irrelevant" (Dkt. No. 284-3 at 3). Attorney Graziano's brief continued, "[T]he sworn testimony on this issue confirms there was no "active recruitment" prior to February 2020" (*ibid.*). This shifting-sands set of explanations is concerning. But, still, it does not prove any *quid pro quo*.

We are too far into the case to replace SEB or BLBG, at least on this record. Instead, the Court believes these circumstances should be brought to the attention of the class and a new opportunity given to opt out. Counsel shall meet and confer on a form of notice and a timeline for distribution and opt-out. BLBG shall pay for the costs of notice, distribution, and opt-out. Please submit this within seven calendar days.

In addition, in future cases, both SEB in seeking appointment as a lead plaintiff and BLBG in seeking appointment as class counsel shall bring this order to the attention of the assigned judge and the decision-maker for the lead plaintiff who is to select counsel. This disclosure requirement shall last for three years from the date of this order.

IT IS SO ORDERED.

All Citations

Slip Copy, 2021 WL 1540996