

Exhibit 1

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION**

IN RE: YAHOO! INC. CUSTOMER DATA
SECURITY BREACH LITIGATION

) No. 16-md-02752-LHK

) **DECLARATION OF PROFESSOR**
) **GEOFFREY PARSONS MILLER IN**
) **SUPPORT OF PLAINTIFFS' MOTION**
) **FOR ATTORNEYS' FEES AND**
) **EXPENSES**
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_____)

I, Geoffrey P. Miller, declare as follows:

1. I have been retained to provide an opinion about the reasonableness of counsel's request for an award of attorneys' fees in this action. If called as a witness, I could and would competently testify to the matters stated herein.

Background And Qualifications

2. As set forth in my resume attached hereto as Appendix 2, I am the Stuyvesant Comfort Professor of Law at NYU Law School, where I serve as co-faculty director of the Center on Civil Justice and Senior Faculty Fellow of the Program on Corporate Compliance and Enforcement. I am a founder, past president and current Senior Fellow of the Society for Empirical Legal Studies, a scholarly organization devoted to statistical methods in law. I am a member of the American Law Institute, the Reporter on the ALI's Principles of the Law, Compliance, Risk Management and Enforcement, and a 2011 inductee in the American Academy of Arts and Sciences.

3. For nearly thirty years, I have been involved in the area of class actions and complex litigation as a teacher, scholar, attorney, consultant, and expert witness.

4. I am presently teaching or have taught classes covering the issue of attorneys' fees, including Civil Procedure, Complex Litigation, Corporations, Professional Responsibility, and Securities Regulation. I have lectured on attorneys' fees issues in continuing legal education seminars and participated in academic conferences and meetings devoted to these issues. I was a member of the advisory committee for the American Law Institute's Principles of the Law Project on Aggregate Litigation, which, among other topics, addressed questions of attorneys' fees in class actions and related types of cases.

5. I have frequently consulted with attorneys to assist with issues pertaining to awards of attorneys' fees. I have been qualified as an expert and testified in cases in state and federal courts across the United States, including testimony on the topic of attorneys' fees.

6. I have published widely cited studies of attorneys' fees in class action cases. These include the following:

- Theodore Eisenberg, Geoffrey Miller, and Roy Germano, *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. Law Review 937 (2017).

- Theodore Eisenberg and Geoffrey Miller, *Attorneys' Fees and Expenses in Class Action Settlements: 1993-2008*, 7 Journal of Empirical Legal Studies 248 (2010).

- Theodore Eisenberg, Geoffrey Miller, and Michael Perino, *A New Look at Judicial Impact: Attorneys' Fees in Securities Class Actions after Goldberger v. Integrated Resources, Inc.*, 29 Washington University Journal of Law & Policy 5-35 (2009).

- Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 Journal of Empirical Legal Studies 51 (2004).

7. My research articles on class action cases, especially in the area of attorneys' fees, have been cited as authority by many state and federal courts across the United States. A list of cases citing to my research is provided as Appendix 3.

Summary Of Opinion

8. For the reasons stated below, it is my opinion that counsel's fee request is reasonable when judged in light of the facts and circumstances of this case and compared to fees awarded in similar cases.

Materials Consulted

9. In preparing this opinion, I have reviewed pleadings and other documents in this case, including, but not limited to, the materials listed in Appendix 1. I have discussed this matter with counsel and investigated appropriate case law and secondary authorities.

The Litigation

10. This litigation arises out of data breaches and data security intrusions occurring between 2012 and 2016 at defendants Yahoo! Inc. and Aabaco Small Business, LLC (collectively, "Yahoo" or "Defendant"). Several lawsuits were filed against Yahoo in 2016 following the disclosure of certain of these events. In December 2016, the Judicial Panel on Multidistrict Litigation transferred the actions to this Court for the purpose of consolidated pretrial proceedings. Other later-filed cases were also consolidated in this Court. In February 2017, this Court appointed John Yanchunis as lead counsel and creating a Plaintiffs' Executive Committee consisting of Gayle Blatt, Stuart Davidson, Karen Hanson Riebel, and Ariana J. Tadler.

11. Meanwhile, parallel actions filed in state court were assigned to a coordination trial judge for coordinated pretrial proceedings in Orange County Superior Court (the "JCCP Case"). On May 25, 2017, Yahoo moved to stay the JCCP proceeding. After briefing and oral argument

on the issue, JCCP Class Counsel filed a Consolidated Complaint alleging state law causes of action. The JCCP Court denied Yahoo's motion to stay on June 23, 2017 and later sustained in part and overruled in part Yahoo's demurrer. It allowed claims to proceed under the Unfair Competition Law ("UCL") and California Customer Records Act, as well as claims for negligence, breach of contract, and invasion of privacy under the California Constitution.

12. The Consolidated Complaint filed in this Court on set forth statutory claims under California's Unfair Competition Law, Consumer Legal Remedies Act, Data Breach Notification Law, UCL and Online Privacy Protection Act, federal claims under the Stored Communications Act, and state common law claims for breach of contract, breach of implied contracts, breach of the implied covenant of good faith and fair dealing, fraudulent inducement or negligent misrepresentation, negligence, and claims for declaratory relief. Proposed representative plaintiffs included persons from the United States, Israel, Australia, Venezuela and Spain, as well as a party who asserted claims on a behalf of a putative class of small business users.

13. Yahoo filed a motion to dismiss under Rules 12(b)(1) and 12(b)(6). On August 30, 2017, this Court entered its Order granting in part and denying in part the motion to dismiss. On December 15, 2017, Plaintiffs filed an amended consolidated class action complaint re-pleading certain matters, as permitted by the Court, and adding additional claims. Defendant responded with a second motion to dismiss, arguing that Plaintiffs failed to cure the pleading defects in the consolidated complaint and that additional claims set forth in the revised complaint were deficient. On March 9, 2018, this Court entered its order granting in part and denying in part the second motion to dismiss.

14. The parties engaged in extensive discovery, facilitated by intensely negotiated and ultimately stipulated discovery orders and extensive negotiations on agreed-on search terms for

computer searches. Yahoo produced, and plaintiffs' counsel reviewed, more than 9 million pages of documents. Plaintiffs' counsel deposed numerous Yahoo officers and corporate representatives, and prepared to take the depositions of former CEO Marissa Mayer and former General Counsel Ronald Bell. Class representatives had their devices forensically imaged, were deposed, and produced documents and answers to interrogatories. Yahoo also took four depositions of plaintiffs' expert witnesses. As this Court requested, the lawyers in the state and federal proceedings coordinated with one another with respect to the taking of depositions.

15. Plaintiffs' moved for class certification on July 13, 2018., supported by, among other things, four experts on issues of cybersecurity, conjoint analysis, and damages models. Settlement negotiations commenced in the late summer of 2018. The parties engaged in two day-long in-person mediation sessions on August 14 and September 7, 2018, facilitated by three mediators from JAMS. During the second mediation session, the parties were able to agree on the general framework of a settlement.

16. On October 22, 2018, Plaintiffs moved for preliminary approval of the proposed settlement and permission to send notice to the classes. On January 28, 2019, the Court denied the motion.

17. The parties thereafter continued to engage in settlement negotiations, addressing the issues identified by the Court. These negotiations resulted in the agreement now before the Court ("Settlement Agreement"). On April 8, 2019, Plaintiffs filed a new motion for preliminary approval of the revised settlement and permission to send notice to the Class. On July 20, 2019, the Court granted approval of the Motion for Preliminary Approval.

The Settlement

18. The Settlement Agreement provides, subject to this Court’s approval, that Yahoo will create a \$117,500,000 common fund for the benefit of the class (“Settlement Fund”), consisting of actual, non-reversionary, and easily quantifiable cash outlays. The Settlement Fund will cover (a) the costs of notice and settlement administration (capped at \$6 million), (b) costs of two years of credit monitoring services (capped at \$24 million), (c) at least \$55 million in compensation for out-of-pocket costs, alternative compensation for class members who already have credit monitoring, paid user costs, and small business user costs; (d) service awards to class representatives, and (e) attorneys’ fees not to exceed \$30 million and costs and expenses not to exceed \$2.5 million.

19. In addition to this cash component, Yahoo undertakes to implement detailed business practice changes designed to enhance the protection of personally identifying consumer information. The implementation of these changes will be evaluated annually by a third-party assessor who will report to class counsel regarding Yahoo’s compliance with the settlement terms.

20. The parties have also agreed to wrap into this action the state court claims in the JCCP Case. Counsel in that action also have agreed to seek fees, costs, expenses, and service awards for their named plaintiffs within the context of this agreement and before this Court, and to receive their fees from the overall fee awarded by this Court. I am informed by Class Counsel that JCCP Counsel are seeking fees for 7,180.4 hours in this matter, for a lodestar total of \$2,906,661. Class Counsel have also advised that the billing protocols applicable to MDL Counsel have also been applied to JCCP Counsel—for example capped hourly rates based on years of experience and document review capped at \$240 per hour. I have not personally audited or reviewed the JCCP Counsel’s lodestar statement. I understand, however, that the Hon. Thierry

Patrick Colaw (Ret.)—the former presiding coordination judge in the JCCP Yahoo Data Breach case—has done so.

Opinion

21. I am aware that the Court’s responsibility is to determine a reasonable counsel fee and that the role of an expert witness is necessarily limited. However, I hope that the opinions expressed below can be of assistance to the Court by providing an analysis of fee awards in similar cases grounded in statistical data, as well as my evaluation of counsel’s fee request drawn from nearly thirty years of involvement in class action litigation. Keeping that role in mind, I have no difficulty in concluding that the \$30 million fee requested by counsel (collectively for this action and the JCCP action) is within the range of reason identified by cases in this Circuit.

The Ninth Circuit’s Approach to Class Action Fee Awards

22. Federal courts in the Ninth Circuit have discretion to apply either of two methodologies when assessing a reasonable fee in a settled class action: (a) the percentage method, which evaluates the fee as a percentage of the common fund obtained on behalf of the class; or (b) the lodestar method, which calculates a “lodestar” equal to counsel’s reasonable hours times reasonable hourly rate, and then adjusts that figure by a “multiplier” in order to account for other factors, most importantly the risk assumed by counsel in taking on the litigation. *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). The percentage method is modeled on the contingent fee in ordinary litigation; the lodestar method draws on the traditional hourly fee approach.

23. The Ninth Circuit has established a “benchmark” of 25% as a presumptively reasonable percentage fee in common fund class action cases. *In re Bluetooth, supra*, 654 F.3d at 942; *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990).

This benchmark is presumptive, in that courts are free to deviate upwards or downwards depending on the facts and circumstances of a given case.

24. Although either method may be employed, courts in this Circuit commonly cross-check one method against the other. See *In Re Anthem, Inc. Data Breach Litigation*, 2018 WL 3960068 (N.D. Cal. Aug. 17, 2018) (using lodestar method to cross-check the reasonableness of the percentage methodology as applied).

25. Regardless of the methodology employed, the relevant considerations are the same. The Ninth Circuit has identified the following factors as potentially relevant to the fee determination: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-1050 (9th Cir. 2002). The following analysis evaluates counsel's fee request in light of each of the foregoing factors. In considering the fifth factor – awards in similar cases – I will analyze the fee using the percentage methodology and then cross-check the results of that analysis against the lodestar methodology.

Results Achieved

26. This settlement achieves real and substantial benefit for class members. As noted above, these include a \$117.5 million cash common fund plus detailed business practice changes designed to improve the security of customer information.

27. The benefits of this settlement can be compared with results in other large data breach cases. The \$117.5 million cash component of the settlement was, at the time, the largest ever achieved in a data breach case – surpassed only by the later settlement in *In re: Equifax Inc.*

Customer Data Security Breach Litigation, MDL No. 2800 (N.D. Ga. Jan. 13, 2020). The following chart compares the benefits achieved in five of the largest recent data breach cases:

Table 1: Comparative Analysis of Large Data Breach Cases

	Home Depot ¹	Target ²	Equifax ³	Anthem ⁴	Yahoo!
Total Cash Value	\$28.4 million	\$23.3 million	\$380.5 million	\$115 million	\$117.5 million
Credit protection	18 months of identity protection services	None	10 years of credit monitoring 7 years of identity protection service	2 additional years of credit monitoring	2 years of credit monitoring, paid out of settlement fund
Business practice changes	Yes	Yes	Yes	Yes	Yes
Class size	~ 52 million	~ 110 million	~ 147 million	~ 79 million	~ 194 million
Total fee award	\$8.03 million	\$6.75 million	\$77.5 million	\$31.05 million	\$30 million (requested)
Percentage fee award	28.2%	28.9%	25%	27%	25.5% (requested)

28. This chart should be employed with caution, for several reasons. It captures only the most salient features of the settlements and omits other features, and it does not take account of the unique features of each case (for example, several of the cases were bound up with other lawsuits; and Equifax's role as one of the nation's largest consumer credit reporting agencies affected the possible sensitivity of the data involved). Subject to these caveats, however, the chart reveals that the present settlement compares favorably with results in similar cases.

Risk of the Litigation

¹ *In re The Home Depot, Inc., Customer Data Security Breach Litigation*, 2016 WL 6902351 (N.D. Ga. 2016).

² *In re Target Corporation Customer Data Security Breach Litigation*, 2017 WL 2178306 (D. Minn. 2017).

³ *In re: Equifax Inc. Customer Data Security Breach Litigation*, MDL Docket No. 2800 (N.D. Ga. 2020) (Final Order and Judgment).

⁴ *In re Anthem, Inc. Data Breach Litigation*, 327 F.R.D. 299 (N.D. Cal. 2018); *In re Anthem, Inc. Data Breach Litigation*, 15-MD-02617-LHK, 2018 WL 3960068 (N.D. Cal. Aug. 17, 2018).

29. Although the Yahoo! breaches were highly publicized, counsel faced significant challenges to obtaining a recovery. Standing was an issue for some plaintiffs and claims, as was proof that Defendant's existing data security measures were inadequate. This Court rejected several of plaintiffs' theories in its orders on Defendant's first and second motions to dismiss; and the claims that survived would need to withstand an anticipated motion for summary judgment and then succeed at trial. Plaintiffs' counsel proposed several cutting-edge theories for proving damages, but it was by no means certain that those theories would hold up. Class certification was also in question, given that class members included both small businesses and consumers, encompassed parties who alleged different types of harm, and involved plaintiffs alleging claims on behalf of customers located in different countries (only claims of Israel-based customers survived to the settlement stage).

Skill Required and Quality of the Work

30. Based on my prior knowledge as well as my review of firm and individual resumes, I consider the leadership team to be superbly qualified. The Executive Committee includes attorneys with enormous experience in data breach litigation (Lead Counsel John Yanchunis, for example, also played an important role in the recent *Equifax* case). Pretrial briefings, deposition practice, and other matters of substance were uniformly excellent. The Executive Committee also faced the challenges of coordinating deposition practice with counsel in the JCCP Case and organizing the federal litigation in order to ensure that matters were handled without unnecessary duplication and that nothing fell between the cracks. My examination of the case files indicates that these efforts were remarkably successful. Overall, I am impressed by the high quality of counsel's work product and the obvious professionalism they displayed throughout this litigation.

The Contingent Nature of the Fee and the Financial Burden Carried by the Plaintiffs

31. Like almost all large class actions, counsel worked on an entirely contingent basis, with repayment for time and expenses to come, if at all, only as a result of a settlement or litigated judgment. The financial burden carried by the plaintiffs' counsel is especially significant in a case such as the present action, where MDL Counsel have expended nearly 33,000 hours of time and incurred opportunity costs, as measured by capped hourly rates, in excess of \$16 million, and JCCP Counsel have expended over 7,000 hours and incurred opportunity costs, as measured by capped hourly rates, of close to \$3 million.

Awards in Similar Cases

32. My analysis of awards in similar cases draws on an extensive body of empirical research on class action attorneys' fees. The use of such research is by now a well-accepted – indeed, nearly ubiquitous – feature of class action adjudication. *See, e.g., In re Heartland Payments Systems, Inc. Customer Data Security Breach Litigation*, 851 F.Supp.2d 1040, 1080-1081 (S.D. Tex. 2012) (Rosenthal, J.) (“[Judges] increasingly consider empirical studies analyzing class-action-settlement fee awards to set the appropriate percentage benchmark or to test the reasonableness of a given benchmark. . . . Using these studies alleviates the concern that the number selected is arbitrary.”); *Rodman v. Safeway, Inc.*, No. 11-CV-03003-JST, 2018 WL 4030558, at *5 (N.D. Cal. 2018) (Tigar, J.) (empirical studies are an “important additional data point in the determination of an appropriate award”). I will begin with an analysis of an appropriate fee under the percentage methodology and then cross-check that fee against a lodestar analysis.

Percent of the Recovery

33. As noted above, the Ninth Circuit has identified 25% of the class recovery as a reasonable benchmark fee in class action cases. The requested fee of 25.5% of the cash component of the class recovery is clearly within the range of reason when judged against this benchmark.

34. The requested fee is also reasonable when judged against percentage fees awarded in other large data breach cases. Fees in the cases summarized in Table 1 were all at or above the 25% benchmark: *Home Depot* (28.2%); *Target* (28.9%), *Equifax* (25%), and *Anthem* (27%). The requested 25.5% fee is clearly in line with these prior cases.

35. Empirical evidence shows that courts in the Ninth Circuit adhere closely to the 25% benchmark, although with a slight tendency to adjust the fee upward. A recent study of 458 reported class action settlements from state and federal courts around the country during the five years from 2009 to 2013 examined 144 cases from the Ninth Circuit and found that mean fees were 26% and median fees were 25%, almost precisely tracking the benchmark guidance. Theodore Eisenberg, Geoffrey Miller and Roy Germano, *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. Law Review 937, 951 & Table 3 (2017). Of 53 cases from the Northern District of California, mean fees were 26% and median fees were 25%, again tracking the benchmark. *Id.* at 950 & Table 2. Counsel's 25.5% fee request in the present case is clearly reasonable when judged against these data.

36. Comparable percentage fees are observed in cases around the country. The Eisenberg-Miller-Germano study found that for all reported class action fee awards between 2009 and 2013, the mean fee percentage award was 27% and the median was 29%. Professor Fitzpatrick's study of every federal class action settlement from 2006 and 2007 reports similar results. For all 444 cases in his data set, mean fees were 25.7% of the class recovery and median

fees were 25.0%. For 39 consumer cases, mean fees were 23.5% and median fees were 24.6%. Brian Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 Journal of Empirical Legal Studies 811, 835 & Table 8. The 25.5% fee requested in this case is in line with the mean and median figures reported in these statistical studies.

37. Like other researchers, Eisenberg, Miller, and Germano report that average percentage fees tend to decline with class recovery. In a prior study, Eisenberg and Miller analyzed fee awards in 69 settlements ranging from \$69.6 to \$175.5 million and found that the median percentage was 19.9% and the mean percentage was 19.4%, with a standard deviation of 8.4%. Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: 1993–2008*, 7 J. Empirical Legal Stud. 248, 265 tbl.7 (2010). More recent research finds that average fees are higher in cases of this dimension. For cases in the highest decile of class recovery (>\$67.5 million), Eisenberg, Miller, and Germano find that the mean fee was 22.3%. *Id.* at 948 & Figure 5. In preparing this report, I used the Eisenberg-Miller-Germano data to more specifically examine fees in the range between \$75 million and \$150 million. For 19 cases in the nation as a whole, the mean fee in this range was 24.9% and the median fee was 25%. For cases in the Ninth Circuit, the mean fee in this range was 24.3% and the median was 24.6%. This study indicates that the requested 25.5% fee is comparable to awards in cases of similar dimension.

38. When assessing the fee requested in the present case, it is appropriate to take account of the extra relief achieved in this settlement that is not included in the denominator of counsel's ratio. Defendant commits, as part of this settlement, to undertake specific, significant business practice changes in order to enhance customer data security going forward. It stands to reason that this additional component of value can be taken into account when determining a reasonable fee, even if it is not sufficiently quantified to be explicitly included in the calculation.

See, e.g. Vizcaino, 290 F.3d at 1049 (“Incidental or nonmonetary benefits conferred by the litigation are a relevant circumstance”) (citing cases); *George v. Acad. Mortg. Corp.*, 2019 WL 1324023, at *14 (N.D. Ga. Mar. 20, 2019) (“Although the monetary benefit of the Settlement Fund alone justifies Class Counsel’s attorney’s fees, the Court also considers the value of the non-monetary relief that Plaintiffs achieved for the Class Members by prosecuting this action and achieving settlement through Class Counsel’s efforts”); *Poertner v. Gillette Co.*, 618 F. App’x 624, 628-29 (11th Cir. 2015) (per curiam), *cert. denied sub nom. Frank v. Poertner*, — U.S. —, 136 S. Ct. 1453 (2016) (courts may consider the non-monetary relief provided to the class as “part of the settlement pie”).

39. Accordingly, it is my opinion that counsel’s fee request is reasonable when compared with percentage fees awarded in the Ninth Circuit, in the Northern District of California, and in courts across the country.

Lodestar cross-check

40. Counsel’s requested fee is also reasonable under the “lodestar” methodology. This approach involves a four-step analysis: (a) determining counsel’s reasonable hours, (b) assessing counsel’s reasonable hourly rates, (c) calculating the lodestar amount (reasonable hours times reasonable hourly rates), and (d) applying an appropriate “multiplier” or adjustment factor to the lodestar so calculated. I will conduct my analysis in that order.

41. At my request, MDL Counsel provided me with a spreadsheet containing information on time and hours for all attorneys in the federal case. This data was provided following a thorough vetting of the time and expenses undertaken by counsel in the federal case, which I am informed included the omission of material amounts of time deemed duplicative or unnecessary. I employ two strategies to assess the hours reported there. The first is to analyze the

general characteristics of the case with a view to gaining an overall understanding of whether the matter was efficiently litigated; the second is to undertake a sampling approach by performing a more detailed review of timesheets pertaining to three depositions.

42. The following figure displays the 32,867 total attorney hours expended on the case since its inception, by month, broken down by the following categories of work: case assessment, discovery, fact investigation and development, settlement, depositions, document production and review, pre-trial pleadings and motions, and other⁵:

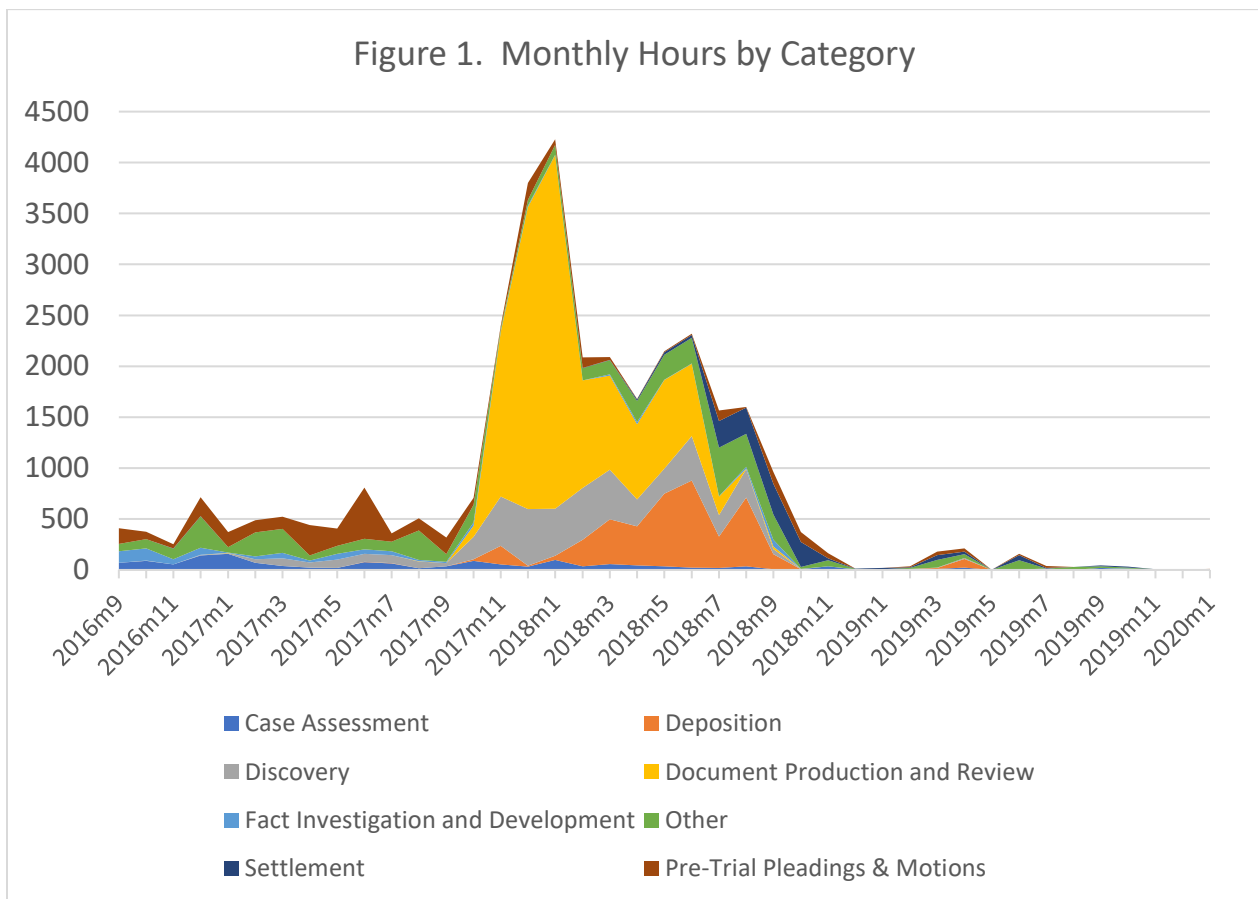
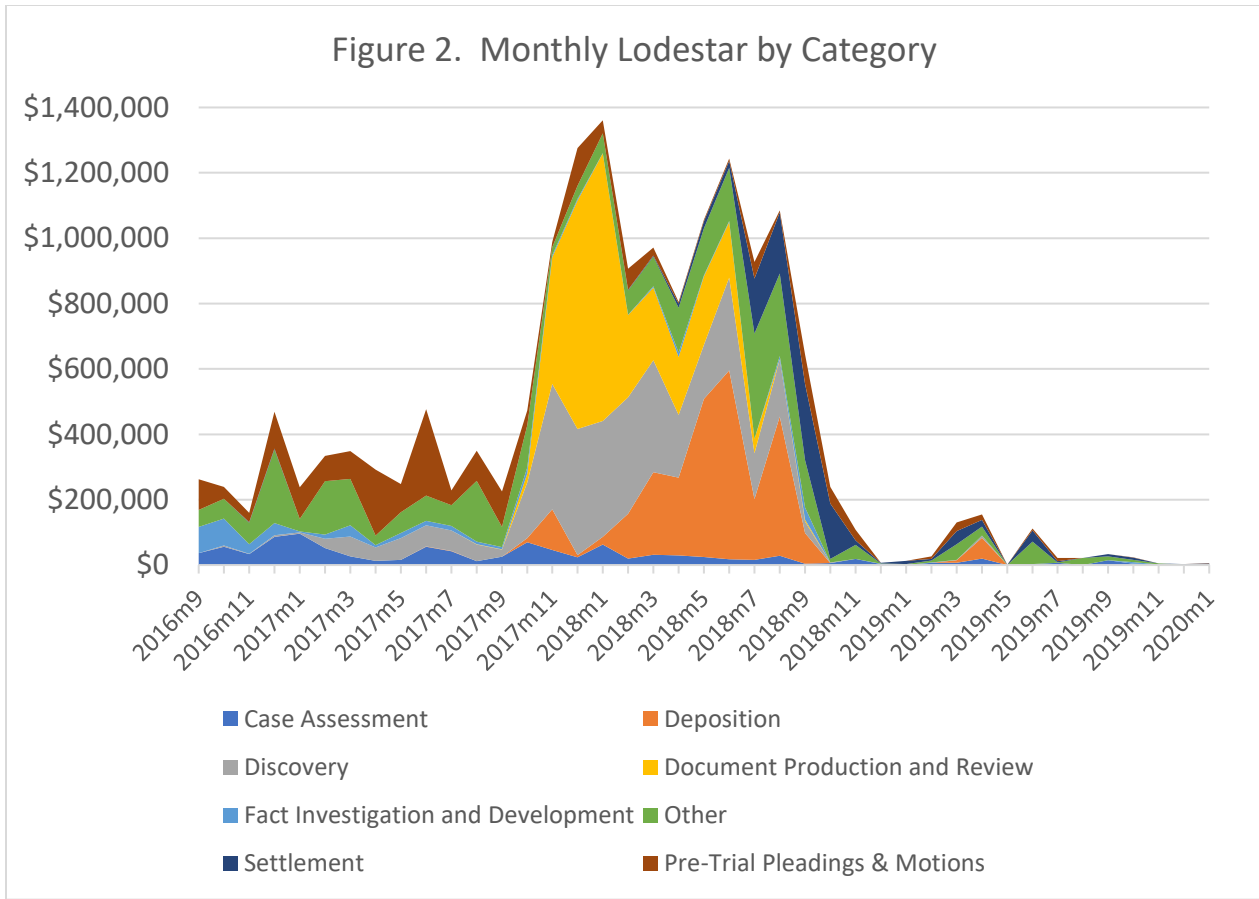


Figure 1 provides a moving image of how hours were expended over time. In the early months of this litigation, counsel expended time on case assessment, as would be expected in the initial phase

⁵ “Other” included client/class member communications, analysis/strategy, experts/consultants, court mandated conferences, dispositive motions, class action certification & notice, and trial preparation.

of a lawsuit. Also prominent in the early stages of the litigation, as would be expected, is time spent on pre-trial hearings and motions. The chart reveals spikes in this category that correspond to the filing of the first amended complaint (December 2016), the preparation of plaintiffs' opposition to Defendant's first motion to dismiss (June 2017), the filing of the first amended consolidated class action complaint (December 2017), and plaintiffs' opposition to Defendant's second motion to dismiss (January-February 2018). Beginning in October 2017, the major time category shifts to document preparation and review as counsel reviewed the millions of pages submitted by the Defendant in response to counsel's discovery requests. Time spent on "discovery" (involving more complex tasks than routine document review) also spikes during this period. Deposition practice becomes significant between January and September 2018, the period in which class counsel conducted most of the major depositions. The chart reflects significant time devoted to settlement between July and November 2018. The case became relatively inactive in November 2018, reflecting the settlement agreed to in September 2018, and remained inactive until after this Court's January 28, 2018 order rejecting the first settlement agreement. The subsequent spike of work beginning in February 2019 reflects the parties' renewed efforts to negotiate a settlement responsive to this Court's concerns – efforts that resulted in the settlement now before the Court, agreed to by the parties in April 2019. Overall, the pattern of time expenditures reflected in Figure 1 appears appropriate given the nature of the tasks facing counsel as the case progressed.

43. Figure 2 shows lodestar expenditure since the inception of the case, by month. This varies from Figure 1 because the mix of work between junior and senior attorneys changed as the case progressed.



Notable in this figure, as compared with Figure 1, is the greater prominence of deposition practice – reflecting a relatively high ratio of senior attorney work – and the reduced prominence of document review, which was conducted by attorneys billing at lower hourly rates.

44. Also of interest is the allocation of counsel time across categories of activities. Figure 3 presents a pie chart displaying the principal components of counsel’s time for the case as a whole; Figure 4 displays the principal components of the lodestar for the case as a whole.

Figure 3. Total Hours by Category

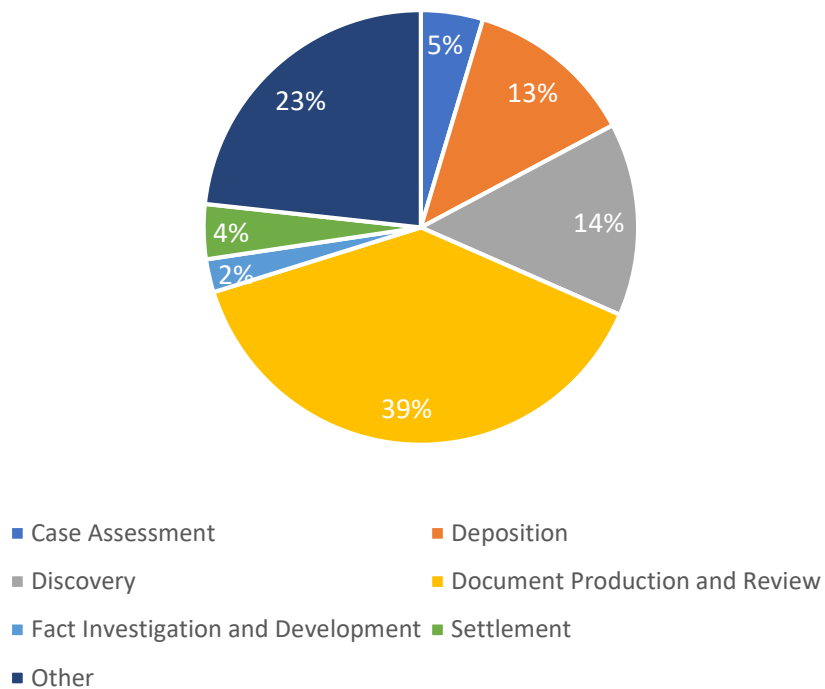
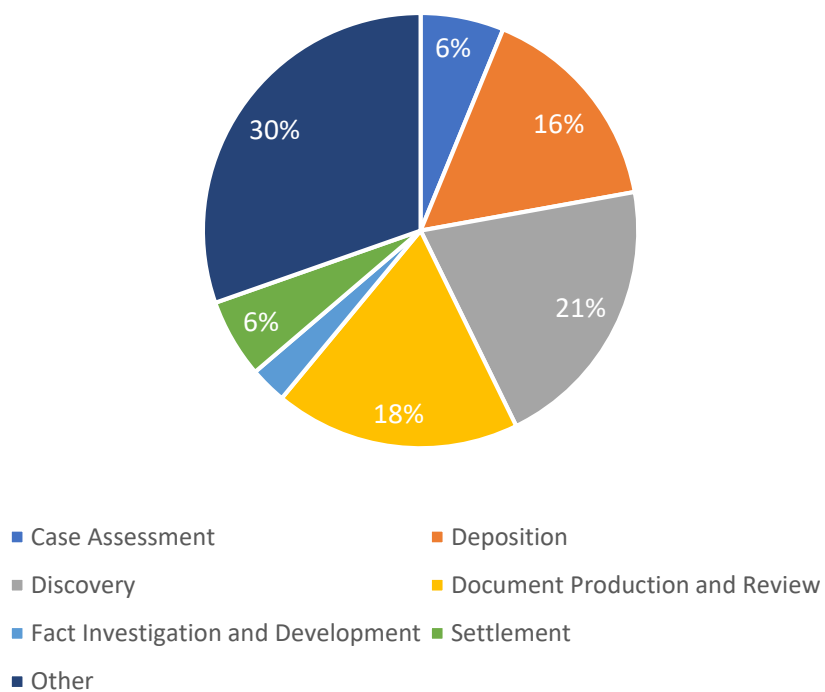
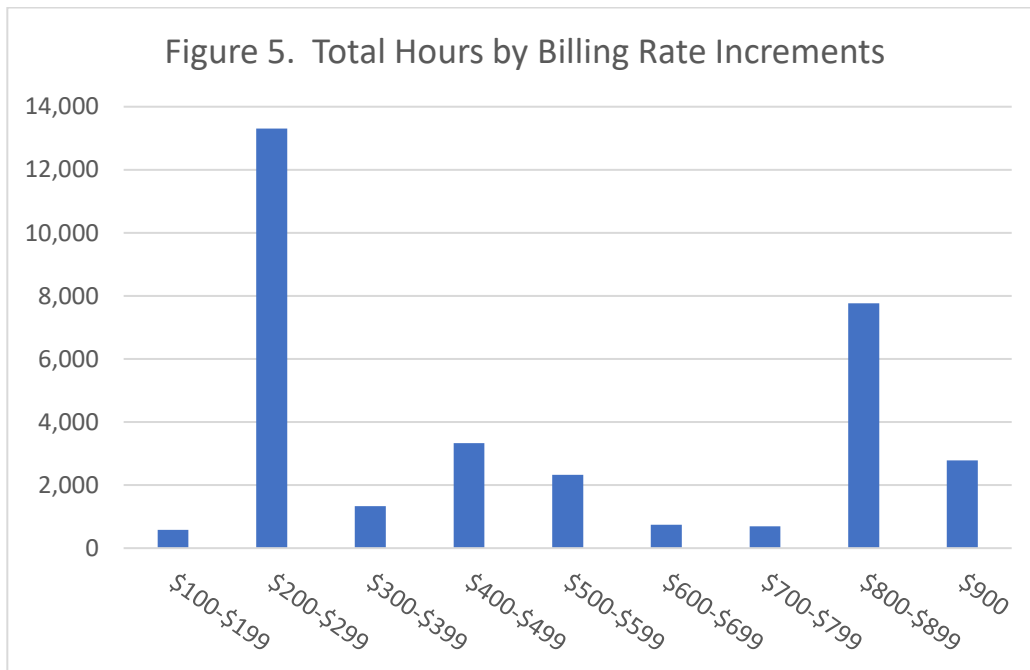


Figure 4. Total Lodestar by Category



The category “case assessment” is something of a grab-bag, reflecting efforts to evaluate the case that did not fall cleanly into other categories; it represents a higher percentage of lodestar than of hours because more senior attorney time was involved in this process. The fact that only 18% of total lodestar was attributable to document production and review reflects counsel’s practice of assigning routine and less challenging work to attorneys with less experience and lower billing rates. These allocations appear appropriate for a case of this dimension.

45. The efficient conduct of litigation requires a sensible allocation of work across levels of experience and seniority. I evaluated this factor by separating the legal team by hourly rates and examining their respective hours. Figure 5 shows total hours by attorneys broken down by \$100/hour increments in billing rates:



Illustrated in this chart is a substantial commitment of time by senior attorneys, who delegated more routine tasks to lower-billing attorneys but who, appropriately, performed the important strategic work themselves.

46. To gain a better sense of how attorney efforts were allocated across tasks, I divided the legal team into two groups: senior attorneys, defined as persons billing at \$650/hour or higher, and junior attorneys, defined as persons billing below \$650/hour.⁶ I then calculated the respective time and lodestar ratios of junior to senior attorneys for the following tasks: case assessment, fact investigation and development, client/class member communications, analysis/strategy, experts and consultants, non-binding ADR, pre-trial pleadings and motions, dispositive motions, class certification and notice, discovery, document production and review, depositions, settlement, and other (including everything not already mentioned). The ratios are shown in Table 2:

Table 2a. Ratio of Hours for Various Tasks, by Seniority

	Junior Attorneys	Senior Attorneys
Case Assessment	42.1%	57.9%
Deposition	55.0%	45.0%
Discovery	28.6%	71.4%
Document Production and Review	100.0%	0.0%
Fact Investigation	66.2%	33.8%
Other	39.0%	61.0%
Settlement	30.7%	69.3%
Pretrial Pleadings and Motions	53.1%	46.9%
Client/Class Member Communications	49.3%	50.7%
Analysis/Strategy	32.6%	67.4%
Experts and Consultants	22.5%	77.5%
Dispositive Motions	86.2%	13.8%
Non-binding ADR	31.7%	68.3%
Class Certification and Notice	71.5%	28.5%

Table 2b. Ratio of Lodestar for Various Tasks, by Seniority

	Junior Attorneys	Senior Attorneys
Case Assessment	25.3%	74.7%
Deposition	40.5%	59.5%

⁶ Regardless of years of practice for the attorney performing it, all time for document review was capped at \$240 per hour. Hence, some of the attorney time in the “Junior” category may have been performed by seasoned attorneys.

Discovery	16.6%	83.4%
Document Production and Review	100.0%	0.0%
Fact Investigation	49.0%	51.0%
Other	22.3%	77.7%
Settlement	18.1%	81.9%
Pretrial Pleadings and Motions	37.7%	62.3%
Client/Class Member Communications	32.1%	67.9%
Analysis/Strategy	20.3%	79.7%
Experts and Consultants	12.8%	87.2%
Dispositive Motions	78.7%	21.3%
Non-binding ADR	16.7%	83.3%
Class Certification and Notice	58.4%	41.6%

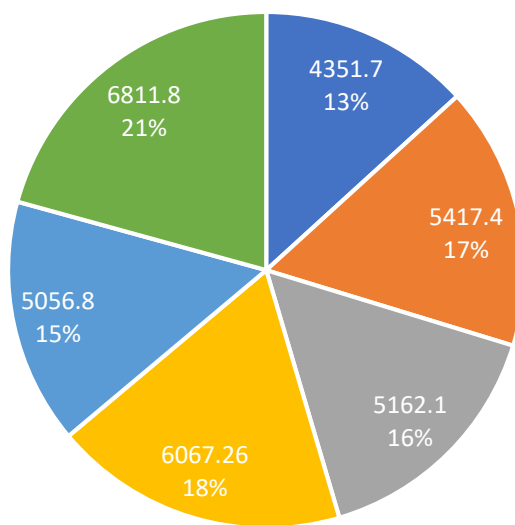
Notable in this chart is the fact that all document production and review work was conducted by junior attorneys, subject to oversight by senior attorneys coded under the category of “discovery.”

The highest ratios of senior to junior work were in tasks that naturally call for a higher level of experience and judgment: analysis and strategy, settlement (including efforts to settle through alternative dispute resolution), experts and consultants, and high-level management of discovery. Junior attorneys performed research on dispositive motions, conducted much of the factual investigation, and performed basic work on class certification and notice. Again, the allocation of work between junior and senior attorneys appears appropriate given the facts and circumstances of this case and the nature of the tasks involved.

47. I also examined the allocation of work among firms. Figure 6 is a pie chart showing total hours, broken down by the firms in the Executive Committee and all others; Figure 7 is a similar pie chart for total lodestar fees.⁷

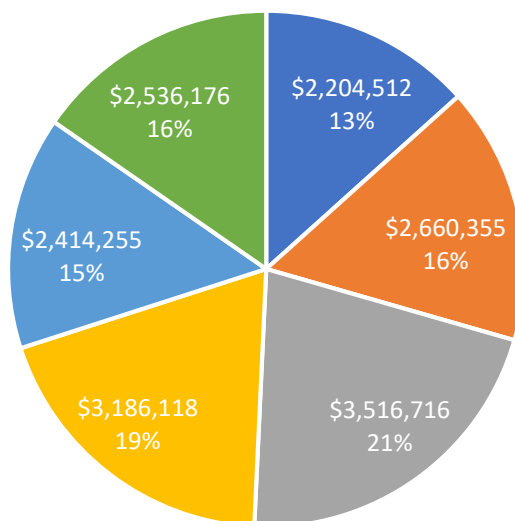
⁷ Time and lodestar for Tadler Law – an offshoot of Milberg Phillips Grossman LLP that was formed during the pendency of the litigation – are included in the numbers for the Milberg firm.

Figure 6. Hours by Firm



■ Casey Gerry ■ Lockridge ■ Milberg
 ■ Morgan & Morgan ■ Robins Geller ■ All Other Firms

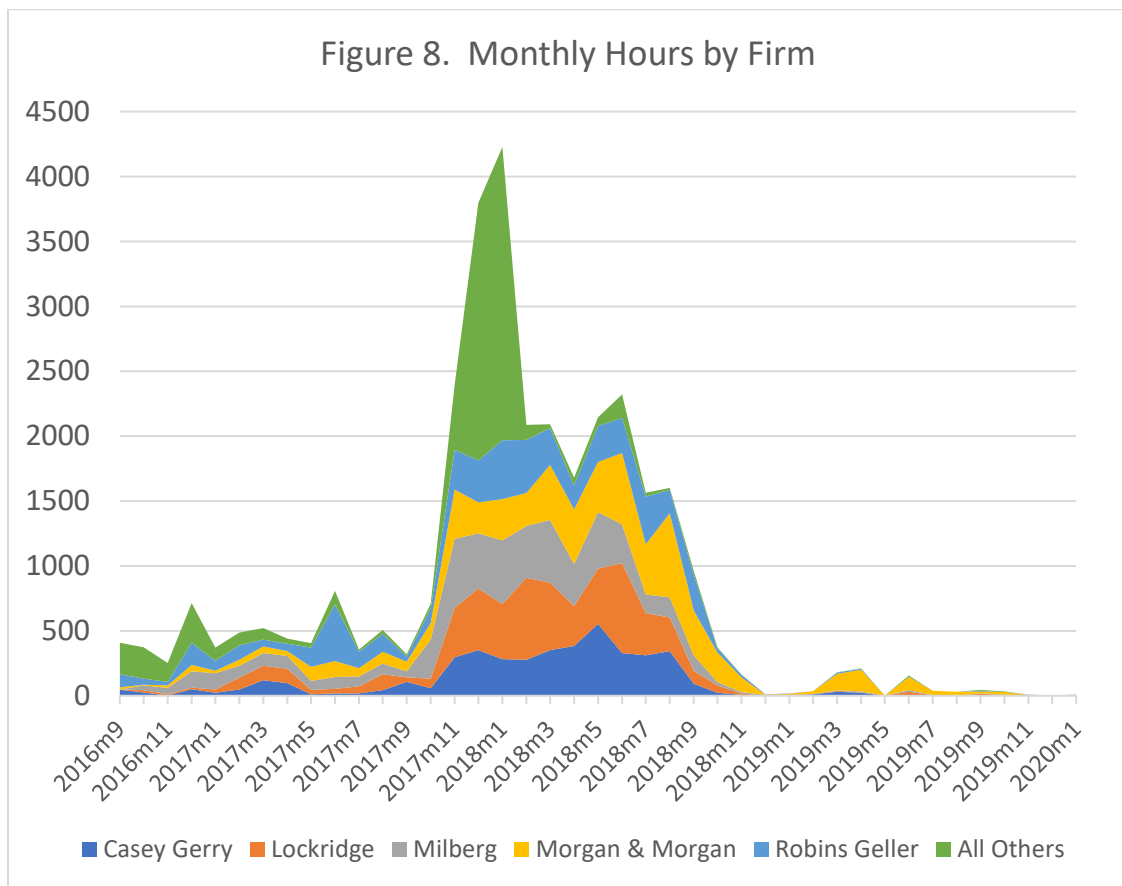
Figure 7. Lodestar by Firm



■ Casey Gerry ■ Lockridge ■ Milberg
 ■ Morgan & Morgan ■ Robins Geller ■ All Other Firms

These figures reflect an equitable distribution of work among lead counsel and the other firms on the Executive Committee, plus a smaller distribution of work (in the early stages of the litigation) to other lawyers.

48. Figure 8, set forth below, shows total time for Executive Committee and other firms, by month.



This figure shows a significant use of attorneys not affiliated with the Executive Committee during the period of intensive document review. Notably, the time expended by these firms drops off precipitously in February 2018 as a result of counsel’s compliance with this Court’s February 1,

2018 Efficiency Order, which required attorneys not members of the Executive Committee to secure authorization from the Court before conducting further work.⁸

49. Taken as a whole, the foregoing data, in my opinion, is consistent with what one would expect of attorney hours and lodestar in a large-scale, data-intensive consumer class action.

50. I supplemented this case-wide analysis with a sampling approach in which I examined three matters in greater detail: the depositions of Ramses Martinez, Justin Somaini, and Christopher P. Rohlf. I personally selected these matters for in-depth review, and the following analysis reflects my independent assessment of the reasonableness of the work performed. In performing this work, I encountered an initial difficulty that the time entries bearing of these work streams were occasionally mixed in with other tasks – as would be natural for lawyers who work on multiple matters in a case on a given day, and who may record their overall time without specifically breaking out the portions devoted to the separate matters. I dealt with this issue by including all of the time reported by counsel, but noting that the result is an overstatement of hours because of the presence of extraneous work mixed in with certain time entries. It was also necessary to make a judgment call about when data review should be considered to be part of the deposition work stream rather than general compilation of information about the case. The following analysis should be considered with these caveats in mind.

51. Class counsel deposed Ramses Martinez on May 14 and 15, 2018. Mr. Martinez was an Incident Response Team Leader and also served briefly as Yahoo's Interim Chief Information Security Officer. He was a valuable witness, both because of his direct managerial involvement in the company's data security operations and also because he worked at Yahoo! during the entire time in which the breaches occurred. I judged that the period of work on the

⁸ This Court granted such authorization on two occasions. ECF No. 233, 241.

Martinez deposition ran from April 13-May 15, 2018. Two lawyers from the plaintiffs' team were present, each affiliated with Milberg LLP: Henry Kelston, the attorney principally responsible, and Matthew Kupillas. Representing the witness were two attorneys from Orrick Herrington & Sutcliffe LLP; present on behalf of the company was an attorney from the Miami firm of Hunton Andrews Kurth. Daniel Robinson appeared for the JCCP plaintiffs. Class counsel spent a total of 317.9 hours on the matter, including 190.2 hours for senior attorneys (billing at \$650/hour or higher) and 127.7 hours for junior attorneys (billing at less than \$650/hour). Tasks for senior attorneys included analyzing documents, preparing deposition strategy and outlines, consulting with other attorneys regarding strategic and scheduling issues, travel, and conducting the deposition. Tasks billed at lower rates included review of documents, digesting the deposition and downloading transcripts. Given the centrality of Mr. Martinez's knowledge to key issues in the case, the technical nature of the issues involved, and the fact that depositions tend to be demanding on senior attorney time, and keeping in mind that the time entries sometimes included extraneous matters, it is my opinion that class counsel's expenditure of time on this deposition was within the range of reason.

52. Class counsel deposed Justin Somaini on May 29, 2018. Mr. Somaini was a key witness because he served as Yahoo's Chief Information Security Officer between 2011 and 2013, a period which encompassed several of events complained of in this lawsuit. I judged that the period of work on the Somaini deposition ran from March 15-June 13, 2018 (post-deposition time entries were for matters such as review and analysis of the transcript). Two lawyers from Milberg LLP were present on behalf of the class: Matthew Kupillas, the lawyer with principal responsibility for the deposition, and Henry Kelston. Representing the witness was an attorney from the San Francisco firm Farella Braun & Martel, LLP; Wesley Polischuk represented the JCCP plaintiffs.

Yahoo was represented by an attorney from Hunton Andrews Kurth. Class counsel spent a total of 261.5 hours on the matter, including 214.7 hours for senior attorneys (billing at \$650/hour or higher) and 46.8 hours for junior attorneys (billing at less than \$650/hour). Tasks for senior attorneys included drafting deposition questions, scheduling, strategy conference calls, review of documents, travel for the deposition, conduct of the deposition, and review of the deposition transcript. Tasks for junior attorneys included document analysis, assisting senior attorneys in deposition preparation, and work on scheduling. In my opinion, given the importance of Mr. Somaini's knowledge of the events that occurred during his tenure as Yahoo's CISO and the technical nature of the issues involved, class counsel's expenditure of time on this deposition was within the range of reason.

53. Class counsel deposed Christopher P. Rohlf on June 26, 2018. Mr. Rohlf was, essentially, a professional hacker working a legitimate business – his job was to test Yahoo's information security readiness by attempting to break into its systems. For that reason, he was in a position to provide important context and information about the adequacy of Yahoo's information security protections. I judged the period of work on this matter to run from May 22, 2018 to June 26, 2018. Representing the class at the deposition were two attorneys from the Milberg firm: Henry Kelston, the attorney with principal responsibility, and Matthew Kupillas. The witness was represented by two attorneys from the New Jersey firm, Giordano Halleran & Cimsla. An attorney from the Miami firm Hunton Andrews Kurth LLP, appeared for Yahoo!; and Daniel Robinson appeared on behalf of plaintiffs in the JCCP action. Class counsel spent a total of 252 hours on the matter, including 196.2 hours for senior attorneys (billing at \$650/hour or higher) and 55.8 hours for junior attorneys (billing at less than \$650/hour). Tasks for senior attorneys included drafting deposition questions, consulting about strategy, preparing a deposition

outline, reviewing background documents, travel, and taking the deposition. Tasks for junior attorneys included reviewing documents for deposition prep, building spreadsheets, preparing exhibits, and scheduling. In my judgment Mr. Rohlf, while important, was not as central to the case as either Mr. Martinez or Mr. Somaini. Nevertheless, the hours incurred and the presence of two attorneys for the class appear to be within the range of reason in light of the technical nature of the topic and the number and nature of exhibits reviewed.

54. These detailed evaluations of three depositions do not, of course, establish that counsel's time was reasonable in depositions I did not review or in matters not having to do with depositions. Nevertheless, the fact that counsel's hours appear to be reasonable in the matters I did review provides a basis for enhanced confidence that the case was efficiently litigated in other respects.

55. Accordingly, it is my opinion that counsel's reported hours for work performed to date are within the range of reason and consistent with what would be expected in a case of similar dimension and complexity.

56. The next step is to evaluate the reasonableness of counsel's hourly rates. I have reviewed the rates reported for professionals involved in this matter. Although I did not examine every time sheet entry, my review revealed rates ranging from several hundred dollars an hour for junior attorneys to rates for senior attorneys of \$850 to \$900/hour. Of the members of the Plaintiffs' Executive Committee, Gayle M. Blatt and Lead Counsel John Yanchunis billed at \$900/hour; Karen Riebel, Stuart A. Davidson, and Ariana J. Tadler billed at \$850/hour.

57. Given the magnitude and complexity of this case, a relevant comparison to these billing rates is the rates charged by attorneys in other large-scale, complex matters. A study in the *ABA Journal* published in 2016 found that billing rates of senior partners at the large New York

firms now “nudg[e] \$1,500 per hour.”⁹ This article reports that public filings in Chapter 11 bankruptcy cases showed top rates of \$1,475 at Proskauer Rose, \$1,450 at Ropes & Gray, \$1,445 at Kirkland & Ellis, and \$1,425 at both Akin Gump Strauss Hauer & Feld and Skadden Arps Slate Meagher & Flom. An article in the *Wall Street Journal* noted in 2016 that “in some of the largest chapter 11 cases filed last year . . . some law firms have increased their maximum partner rates to approach \$1,500 per hour. Many senior partners routinely billed between \$1,200 and \$1,400 an hour last year.”¹⁰ A review of recent bankruptcy filings confirms that rates over \$1,000/hour are now common. A recent filing in the Bankruptcy Court for the District of Delaware reports on billing rates for attorneys at Simpson Thacher & Bartlett LLP: John J. Creed (\$1,535/hour); Matthew P Einbinder (\$1,425/hour); Elisha D. Graff (\$1,480/hour); William T. Russell Jr., (\$1,535/hour); Michael H. Torkin (\$1,535/hour); Katherine A. McLendon (\$1,220/hour); Nicholas Baker (\$1,990/hour); and James L. Cross (\$1,190/hour). *In re Arsenal Energy Holdings LLC*, No. 19-10226 (BLS) (Bankr. D. Del. 2019). A partner at White & Case admitted to practice in 1992 billed at \$1,025 per hour in 2015.¹¹ At Morrison & Foerster, a partner admitted to practice in 2001 billed at \$1,075 per hour; another attorney admitted in 1996 charged \$1,125 per hour in 2017.¹² A partner at O’Melveny & Myers admitted to practice in 1982 billed at \$1,175 per hour in 2016; another partner admitted in 1991 billed \$1,075 per hour.¹³ Based on these comparisons, I have no

⁹ See Neil, Martha, “Top Partner Billing Rates at BigLaw Firms Approach \$1,500 Per Hour.” ABA Journal. 8 Feb. 2016, available at http://www.abajournal.com/news/article/top_partner_billing_rates_at_biglaw_firms_nudge_1500_per_hour.

¹⁰ Palank, Jacqueline, “Bankruptcy Provides Window Into Law Firm Billing Practices.” Wall Street Journal. 16 Feb. 2016, available at <https://blogs.wsj.com/bankruptcy/2016/02/08/bankruptcy-provides-window-into-law-firm-billing-practices/>.

¹¹ See *In re Revel AC, Inc. et al.*, No. 14-22654, Attorneys Fee Application Cover Sheet, Dkt. No. 1971 (Bankr. D.N.J. Aug. 13, 2015).

¹² See *In re 21st Century Oncology Holdings, Inc., et al.*, No. 17-22770, First Interim Application of Morrison & Foerster LLP as Counsel, Dkt. No. 679 (Bankr. S.D.N.Y. Nov. 14, 2017).

¹³ See *In re Colt Holding Co. LLC, et al.*, No. 15-11296, Sixth Monthly and Final Application of O’Melveny & Myers LLP, Dkt. No. 957 (Bankr. D. Del. Feb. 29, 2016).

difficulty in concluding that the hourly rates charged by senior attorneys in the present case were within the range of reason.

58. At the lower end, it is my understanding that contract and staff attorneys were billed at \$240/hour or below, consistently with the guidelines set forth by this Court in the *Anthem* case, and that all attorneys performing document review functions—whether contract attorneys or not—had their rates capped at a maximum \$240/hour for document review tasks.

59. Based on these data, as well as my own experience in class action attorneys' fee cases, it is my opinion that counsel's reported hourly rates are reasonable and in line with rates charged in similar cases.

60. Accordingly, I conclude that counsel's reported lodestar for work performed to date in the federal case is within the range of reason and in line with cases of similar dimension and complexity.

61. The foregoing analysis considers only work done by counsel in the federal case up through January 15, 2020. Two other items may appropriately be included in the overall lodestar calculation. First, counsel will need to incur additional time on post-approval work. In *Equifax*, where the Court granted the fee request in full, counsel estimated that an additional 10,000 hours of attorney time would be required for post-settlement work.¹⁴ In the present case, I estimate that future counsel time will be substantially less, both because the *Equifax* settlement involved a longer period of credit monitoring (ten years) and because the settlement in that case became controversial as a result of public misperceptions about the amount of class benefits. Although forthcoming work in the present case will be less demanding than in *Equifax*, it will not be

¹⁴ Supplemental Declaration from Class Counsel, submitted as Exhibit 1 to Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards to the Class Representatives, *In re: Equifax Customer Data Security Breach Litigation*, No. 17-md-2800-TWT (N.D. Ga.) (Doc. No. 858-1, filed Oct. 29, 2019).

insubstantial. Counsel has already incurred additional time in preparing and finalizing the Motion for Final Approval. Following passage of the objection deadline, counsel will respond to the objections, will likely need to deal with disputed claims, handle class member inquiries and complaints, litigate possible appeals from objectors, and address a variety of other matters. Counsel estimates that they will incur 1,500 hours of future work, a figure that appears reasonable under the circumstances. I believe it appropriate to apply the blended hourly rate for the case as a whole (\$502/hour) to this anticipated work, yielding an addition to the lodestar of \$753,862.

62. Second, as this court is aware, counsel in the JCCP Case will seek compensation for their work as part of the federal settlement. Their lodestar, accordingly, may appropriately be added here. Although I have not undertaken an in-depth review of state counsel's billing records, I am informed that their lodestar is \$2,906,661 and that contract and staff attorneys, and all document review, were billed at no more than \$240/hour, consistently with this Court's guidance in *Anthem*.

63. All told therefore, I take the lodestar in the present case as equal to \$20,178,653: federal lodestar to date of \$16,518,130, plus anticipated federal lodestar of \$753,862, plus JCCP lodestar of \$2,906,661.

64. The final step is to determine an appropriate multiplier – an adjustment factor to the lodestar fee that takes account of the particular features of the case, most importantly the risk assumed by class counsel. Assuming the reasonableness of the total lodestar, as estimated above, Counsel's requested multiplier is equal to the requested fee (\$30,000,000) divided by the collective lodestar (\$20,178,653), or 1.49.

65. The Eisenberg.Miller-Germano paper discussed above presents statistical evidence on multipliers. Of 248 cases where the multiplier could be ascertained, the mean for the country

as a whole was 1.48; the mean for 97 cases in the Ninth Circuit was 1.26. Eisenberg, Miller, and Germano, at 965 & Table 12. These numbers, however, significantly understate the multiplier that would be expected in the present case, for the simple reason that lodestar multipliers increase with class recoveries. Eisenberg, Miller and Germano report that for 35 cases with recoveries in excess of \$67.5 million, the average multiplier was 2.72 – significantly above the multiplier of 1.49 requested in this case. *Id.* at 967 and Table 13. The same conclusion follows from a 2010 paper by Eisenberg and Miller. For cases with class recoveries of more than \$175.5 million, the mean multiplier was 3.18 – again, far in excess of the multiplier requested in this case. Theodore Eisenberg and Geoffrey Miller, *Attorneys' Fees and Expenses in Class Action Settlements: 1993-2008*, 7 *Journal of Empirical Legal Studies* 248, 274 and Table 15 (2010). In preparing this report, I examined the Eisenberg-Miller-Germano data in order to evaluate lodestar multipliers for class recoveries between \$75 million and \$150 million. For the 16 cases in this range, the mean multiplier was 2.62 and the median was 1.70; for 3 cases in the Ninth Circuit the mean multiplier was 1.96 and the median was 1.74. Counsel's requested multiplier of 1.49 is well within the range that one would expect of a case of this size and complexity.¹⁵

66. I am aware that this Court, in the *Anthem* case, awarded a multiplier of approximately 1 – that is, the Court awarded a fee close to counsel's lodestar. However, each case must be assessed on its own facts and circumstances. In *Anthem*, counsel committed in advance not to seek a multiplier in excess of 1.75 and in fact did not request any uptick beyond the lodestar amount. Importantly, this Court engaged in a lodestar analysis in *Anthem* as a cross-check on the fee determined under the percentage approach. In *Anthem*, the percentage fee deemed reasonable

¹⁵ The multiplier would still be reasonable if either or both of the two additional items – JCCP fees and post-settlement fees – were excluded. If future lodestar were excluded but JCCP fees were included, the multiplier would be 1.54; if JCCP fees were excluded but future lodestar were included, the multiplier would be 1.73; if future lodestar and JCCP fees were both excluded, the multiplier would be 1.81.

by the Court – 27% – generated a lodestar multiplier of 1. In the present case, counsel’s reasonable percentage fee of 25.5% generates a lodestar multiplier of 1.49. Given that the percentage fee is reasonable, a lodestar multiplier of 1.49 – itself well below the multiplier that would be expected in a case of this dimension – supports the reasonableness of counsel’s fee request.

Conclusion

67. In light of the foregoing, it is my opinion that the requested fee award is reasonable when judged in light of the results achieved, the risk of litigation, the skill required and the quality of work, the contingent nature of the fee and the financial burden carried by the plaintiffs, and awards in similar cases, judged either by the percentage method or under the lodestar methodology.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct. Executed this 31st day of January, 2020, at New York, New York.

Respectfully submitted,



Geoffrey P. Miller
January 31, 2020

Appendix 1: Materials Reviewed

- Consolidated Class Action Complaint
- Defendants' Notice of Motion and Motion to Dismiss and Memorandum of Points and Authorities in Support Thereof
- Defendants' Request for Judicial Notice in support of Defendants' Motion to Dismiss Consolidated Class Action Complaint
- Plaintiffs' Opposition to Defendants' Notice of Motion and Motion to Dismiss
- Plaintiffs' Response to Defendants' Request for Judicial Notice
- Defendants' Reply in Support of Defendants' Motion to Dismiss
- Defendants' Reply in Support of Request for Judicial Notice
- Order Granting in Part and Denying in Part Motion to Dismiss
- Order re: Recent Yahoo Data Breach Disclosure
- First Amended Consolidated Class Action Complaint
- Defendants' Notice of Motion and Motion to Dismiss First Amended Consolidated Class Action Complaint and Memorandum of Points and Authorities in Support Thereof
- Defendants' Second Request for Judicial Notice in support of Defendants' Motion to Dismiss First Amended Consolidated Class Action Complaint
- Plaintiffs' Opposition to Defendants' Motion to Dismiss First Amended Consolidated Class Action Complaint
- Defendants' Reply in Support of Motion to Dismiss First Amended Class Action Complaint
- Order Granting in Part and Denying in Part Motion to Dismiss First Amended Class Action Complaint
- Defendant's Answer to First Amended Class Action Complaint
- Plaintiffs' Notice of Motion and Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Class Certification
- Defendants' Opposition to Plaintiffs' Motion for Class Certification
- Defendants' Notice of Motion and Motion to Exclude the Declarations and Testimonies of Plaintiffs' Experts James Van Dyke & Gary M. Parilis and Memorandum of Points and Authorities
- Defendants' Notice of Motion and Motion to Exclude the Declaration and Testimony of Plaintiffs' Damages Expert Ian Ratner and Memorandum of Points and Authorities
- Defendants' Notice of Motion and Motion to Exclude the Declaration and Testimony of Plaintiffs' Expert Mary Frantz and Memorandum of Points and Authorities
- Plaintiffs' Notice of Motion and Motion for Preliminary Approval of Class Action Settlement
- Order Requiring Supplemental Information
- Order re: Additional Supplemental Information
- Joint Administrative Motion to File Documents under Seal in Connection With Joint Response to Order Requiring Supplementation
- Order Denying Motion for Preliminary Approval of Class Action Settlement
- Joint Response to Order Requiring Supplementation
- Amended Order Denying Motion for Preliminary Approval of Class Action Settlement
- Plaintiffs' Notice of Motion and Motion to Certify Class
- Declaration of John Yanchunis In Support of Plaintiffs' Settlement
- Amended Settlement Agreement and Release
- List of Federal Actions

- Redacted Agreement on Business Practice Changes
- Proposed Order Granting Motion to Notice Class
- Declaration of Jeanne C. Finegan, APR Concerning Proposed Notice to Settlement Class Members
- Long Form Notice
- Short Form Notice
- Publication Notice
- Claim Form for Out-of-Pocket Costs
- Claim Form for Credit Monitoring Services or Alternative Cash Payment
- Claim Form for Paid Users
- Claim Form for Small Business Users
- Claim Form for Residents of Israel
- Proposed Order Granting Motion for Final Approval and Judgment of Class Action Settlement
- Declaration of Daniel S. Robinson in Support of Plaintiffs' Motion to Notice Class
- Order re: Efficiency Protocols
- Order Granting Motion for Preliminary Approval
- Counsel's lodestar spreadsheet
- Docket sheet
- Deposition of Justin Somaini
- Deposition of Ramses Martinez
- Deposition of Christopher P. Rohlf
- Deposition of Robert Lord

Appendix 2: Resume

GEOFFREY P. MILLER

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New York, New York 10012
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(212) 995-4659 (fax)
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Work Experience

New York University Law School (1995-present)

Stuyvesant P. Comfort Professor of Law

Co-Director, Program in Corporate Compliance and Enforcement (2014-2017)

Senior Faculty Fellow, Program in Corporate Compliance and Enforcement
(2017-present)

Faculty Co-Director, Center on Civil Justice at NYU Law School (2015-present)

Faculty Director, NYU Center for Financial Institutions (1994-present)

Co-Director, NYU Center for Law, Economics and Organization (2006-2012)

Chair, Academic Personnel Committee (1999-2000; 2004-2006)

Chair, Promotions and Tenure Committee (2007-2009; 2018-2019)

University of Chicago Law School (1983-1995)

Kirkland & Ellis Professor (1989-1995)

Editor, Journal of Legal Studies (1989-1995)

Director, Program in Law and Economics (1994-1995)

Director, Legal Theory Workshop (1989-1993)

Associate Dean (1987-1989)

Professor of Law (1987-1989)

Assistant Professor of Law (1983-1987)

Distinguished Visiting Professor, Vanderbilt Law School, 2014

Visiting Professor, University of Frankfurt, Summer 2013

Faculty Member, Study Center Gerzensee, Switzerland, Spring 2012, Summer 2016

Visiting Lecturer, University of Genoa Department of Law, 2011

Visiting Lecturer, Collegio Carlo Alberto (Moncalieri, Italy), 2011, 2013

Visiting Scholar, European University Institute, Florence, Italy, Fall/Winter 2010

Visiting Chair on Private Actors and Globalisation, Hague Institute for the Internationalisation of
Law, Fall/Winter 2010

Robert B. and Candace J. Haas Visiting Professor of Law, Harvard Law School,
Fall 2009

Max Schmidheiny Guest Professor, University of St. Gallen, Switzerland
Summer 2009

Faculty Member, NYU-NUS in Singapore, 2009, 2011, 2013

Fresco Endowed Professor of Law, University of Genoa, Italy, Summer 2008,
Spring 2009, Summer 2010

Visiting Scholar, University of Minnesota Law School, Spring 2008

Visiting Lecturer, University of Bolzano, Italy, Summer 2007

Commerzbank Visiting Professor, Institute for Law & Finance, University of Frankfurt, Germany, Summer 2004, Summer 2005, Summer 2010
Visiting Professor, Columbia Law School, Fall 2001
Visiting Professor, University of Sydney, Australia, Summer 2002; Summer 2006; Spring 2009
Zaeslin Visiting Professor, University of Basel, Switzerland, Summers 2001-2019
Visiting Scholar, CentER for Economic Research, Tilburg, Holland, Summer 1996
John M. Olin Visiting Scholar, Cornell University Law School, Summer 1992, Spring 1996; Winter 1997, Summer 2005, Spring 2008, Spring 2009, Spring 2010
Visiting Scholar, Bank of Japan, Spring 1995
Visiting Professor, New York University Law School, Fall 1994
Consultant, Federal Reserve Bank of Chicago, 1992-1994
Visiting Scholar, New York University Law School, Fall 1993
Simpson Grierson Butler White Visiting Professor, University of Auckland, New Zealand, Summer 1993

Associate, Ennis, Friedman, Bersoff & Ewing
Washington, D.C. (1982-83)

Attorney Adviser, Office of Legal Counsel
U.S. Department of Justice (1980-82)

Clerk, Hon. Byron R. White
Supreme Court of the United States (1979-80)

Clerk, Hon. Carl McGowan
U.S. Court of Appeals, District of Columbia (1978-79)

Scholarly and Law Reform Activities

Member, American Law Institute (elected 2015)

American Law Institute, Reporter, Principles of the Law, Compliance, Enforcement, and Risk Management for Corporations, Nonprofits, and Other Organizations (2014-present)

Fellow, American Academy of Arts and Sciences (elected 2011)

Society for Empirical Legal Studies
Fellow (2014-present)
Co-Founder and Co-President (2006-2007)
Board Member (2006-2014)

Corporate Service

Member of the Board of Directors, State Farm Bank (2010-present) – board and committee service for midsize bank with \$16 billion in assets. Audit Committee Chair (2015-present)

Education

Columbia Law School, J.D. (1978)
Editor-in-Chief, Columbia Law Review (1977-78)
Princeton University, A.B. *magna cum laude* (1973)

Publications

Books

The Economics of Securities Law I (editor) (Edward Elgar 2016)

The Economics of Securities Law II (editor) (Edward Elgar 2016)

The Economics of Financial Law I (editor) (Edward Elgar 2016)

The Economics of Financial Law II (editor) (Edward Elgar 2016)

Banking Law and Regulation, Little, Brown & Co. 1992 (with Jonathan R. Macey); Second Edition, Aspen Law & Business 1997 (with Jonathan R. Macey), Third Edition, Aspen Law & Business 2001 (with Jonathan R. Macey and Richard Scott Carnell); Fourth Edition, Aspen Law & Business 2008 (with Richard Scott Carnell and Jonathan R. Macey), under title “The Law of Banking and Financial Institutions); Fifth Edition (with Richard Scott Carnell and Jonathan R. Macey), under title “The Law of Financial Institutions, Wolters Kluwer Law & Business (2013) [translated into Chinese, The Commercial Press, 2016]; Sixth Edition, under title “The Law of Financial Institutions,” Wolters Kluwer Law & Business (2017)

Banking Law and Regulation: Statutory and Case Supplement (Little, Brown & Co. 1992; Second Edition, Aspen Law & Business, 1997) (with Jonathan R. Macey), Third Edition, Aspen Law & Business, 2000) (with Jonathan R. Macey and Richard Scott Carnell); Fourth Edition, Aspen Law & Business 2008 (with Richard Scott Carnell and Jonathan Macey)

Banking Law and Regulation: Teacher’s Manual (1992; Second Edition 1997; Third Edition 2001, Fourth Edition 2008) (with Jonathan R. Macey and Richard Scott Carnell)

The Law of Governance, Risk Management and Compliance (Wolters Kluwer Law and Business 2014); Second Edition 2017.

The Law of Governance, Risk Management and Compliance Teachers Manual (Wolters Kluwer Law and Business, 2014; Second Edition 2017.

The Governance of International Banking (co-authored with Fabrizio Cafaggi, with Tiago Andreotti, Maciej Borowicz, Agnieszka Janczuk, Eugenia Macchiavello and Paolo Saguato) (Edward Elgar 2013)

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The Origins of the Necessary and Proper Clause (with Gary Lawson, Robert Natelson, and Guy Seidman) (Cambridge University Press 2010)

The Economics of Ancient Law (editor) (Edward Elgar 2010)

Bank Mergers and Acquisitions (editor, with Yakov Amihud) (Kluwer Academic Publishers 1998)

La Banca Central en América Latina: Aspectos Económicos y Jurídicos [Central Banks in Latin America and Their New Legal Structure] (in Spanish) (editor, with Ernesto Aguirre and Roberto Junguito Bonnet) (Tercer Mundo: Bogotá 1997)

Costly Policies: State Regulation and Antitrust Exemption in Insurance Markets (AEI Press 1993) (with Jonathan R. Macey)

Articles

Civil Procedure

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Trust, Risk, and Moral Hazard in Financial Markets (University of Genoa, Fresco Chair Lectures in Law and Finance, June 2010)

A Simple Theory of Takeover Regulation in the United States and Europe; Intellectual Hazard (Commerzbank Lectures, University of Frankfurt, May 2010)

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Catastrophic Financial Failures: Enron, HIH and More (Ross Parsons Lecture, Sydney, Australia, 2002)

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Banking in the Theory of Finance; The Simple Economics of Litigation and Settlement; The Economic Structure of Corporation Law (University of Auckland, New Zealand, 1993)

Journal Referee Reports

American Law and Economics Review

Journal of Legal Studies
Journal of Law, Economics and Organization
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Conferences Organized

Law and Banking Conference 2019 (Paris), 2018 (New York), 2017 (Bad Homburg, co-sponsored with University of Frankfurt); 2016 (New York); 2015 (Zurich); 2014 (New York); 2013 (Zurich); 2012 (New York); 2011 (Florence)

Achieving and Responsible Enterprise: Principles of Effective Compliance and Enforcement (May 8, 2015)

Global Economic Policy Forum, New York 2013 (keynote speakers included Federal Reserve Bank of New York President William Dudley and former Governor of the Bank of England Baron King of Lothbury); New York 2008 (keynote speaker was Jean-Claude Trichet, Chairman of the European Central Bank); 2007 (keynote speaker was Ben Bernanke, Chairman of the Board of Governors of the Federal Reserve)

The Good Bank Debate (New York 2013) (co-sponsored with Mazars)

Judicial Dialogue on Mass Litigation, Florence Italy, October 15-16, 2010 (co-organizer of conference co-sponsored by NYU Law School, the American Law Institute, and the European University Institute)

Finlawmetrics 2010: Central Banking, Regulation & Supervision after the Financial Crisis (co-sponsor and member of steering committee)

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NYU Global Economic Policy Forum 2009: The Future of Regulation and Capital Markets (November 5, 2009) (co-organized with Professor Alan Rechtschaffen and with the NYU Law School Alumni Association)

Third Annual Conference on Empirical Legal Studies (Cornell University, Ithaca, New York, Fall 2008) (co-organizer)

Second Annual Conference on Empirical Legal Studies (New York, New York, November 10-11, 2007). Major conference (425 participants) exploring all aspects of the empirical study of law. Co-organized with Jennifer Arlen, Bernard Black, Theodore Eisenberg and Michael Heise.

First Annual Conference on Empirical Legal Studies (Austin, Texas, October 2006). Major conference exploring all aspects of the empirical study of law. Co-organized with Jennifer Arlen, Bernard Black, Theodore Eisenberg and Michael Heise.

Conference on Legal Aspects of the International Activities of Central Banks, Lima Peru, October 1997. This conference, co-sponsored by the central bank of Peru, brought together leaders in the legal and economic issues facing central banks in the management of their external reserves.

Conference on the Governance of Institutional Investors (New York, New York, February 14, 1997). This conference, sponsored by the NYU Stern School of Business Salomon Center in association with the New York University Law School Center for the Study of Central Banks,

brought together top executives, attorneys, scholars and others interested in the management and organization, both economic and legal, of the nation's large institutional investors, including its mutual fund industry.

Conference on Bank Mergers and Acquisitions (New York, New York, October 11, 1996). This conference, sponsored by the NYU Stern School of Business Salomon Center in association with the New York University Law School's Center for the Study of Central Banks, brought together leading academics, lawyers, and investment bankers to discuss some of the broader implications of bank mergers and acquisitions. Co-organizer of this conference was Professor Yakov Amihud of the Stern School's Finance Department.

Conference in Central Banks in Latin America (Bogota, Colombia, February, 1996). This conference, co-sponsored by the central bank of Colombia with technical assistance from the Legal Affairs Department of the International Monetary Fund, brought together leaders of Latin American central banks, the international financial community, and scholars from a variety of disciplines, to discuss issues related to the independence of central banks and economic development.

Conference on Central Banks in Asia (Shanghai, China, October, 1995). This conference, co-sponsored with KPMG-Peat Marwick, brought together leaders from commercial banks, investment banks, and industrial firms, as well as central bankers, to discuss Asian central banks to address issues such as the proposed law granting a degree of independence to the central bank of China.

Conference on Ancient Law (Berkeley, California, March 1995). This conference, organized with Professors James Lindgren of Chicago-Kent Law School and Laurent Mayali of the University of California at Berkeley Law School, brought together important figures from a variety of disciplines interested in Ancient Law.

Conference on Central Banks in Eastern Europe and the Newly Independent States (Chicago, Illinois, April 1994). This conference brought together the Prime Minister of Estonia, three present or former Ministers of Finance of Eastern European states (including Boris Fyoderov, former Finance Minister of the Russian Republic), the heads of the central banks of eleven nations in Eastern Europe and the Newly Independent States, together with a wide variety of highly-placed officials from these countries and from the west, to discuss issues related to the independence of central banks and economic development.

Professional Memberships and Positions

New York State Bar
District of Columbia Bar
American Bar Association
American Law Institute (1988-1996; 2017-present)
Member, Paolo Baffi Centre Scientific Advisory Board, Milan, Italy (2008- 2016)
Member, International Academic Council, University of St. Gallen,
Switzerland (2004-2016)
Chairman, Section on Business Associations, American Association of Law
Schools (1995)
Member of the Board of Directors, American Law and Economics Association
(1995-1998)
Member of the Foreign Advisory Committee, Latin American Law and
Economics Association (1995-2000)
Member of the Foreign Advisory Board, Universidad Torcuato Di Tella School of Law,
Buenos Aires, Argentina (1992-1999)

Member of the Editorial Board, Supreme Court Economic Review
Member of the Advisory Board, University of Hong Kong Faculty of Law Asian Institute
of International Financial Law (2001-present)

Courses

Governance, Risk and Compliance (Study Center Gerzensee, Switzerland 2016)
Law and Business of Bitcoin and Block Chain (2015; 2017; 2019) (with David Yermack)
Compliance and Risk Management for Attorneys (2014, 2015, 2017)
Legal Profession (1985-93; 1996-98; 2003-2007; 2013; 2019)
The Crisis of 2008 (2009, 2010)
Reading Class: Restructuring Finance (2009); Cutting Issues in Finance (2014-2015);
Reading Class: Law and Politics in Shakespeare (2015-2016; 2019)
Property (1986-87)
Corporations (1985-88; 1991-93; 1997-2000; 2005; 2008; 2012; 2014; 2016)
Seminar on Separation of Powers (1985, 1987)
Civil Procedure (1983-84; 2004-2005; 2011; 2013; 2016; 2018-2019)
Federal Regulation of Banking (1983, 1989-93; 1995-97; 2003, 2006-2010; 2012; 2015)
Law and Business of Banking (2012; with Gerald Rosenfeld)
Land Development (1984-85)
Securities Law (1990-91)
Workshop in Legal Theory (1989-91)
Seminar on Financial Institutions (1992-93 (with Merton Miller) (1996-97)
Ethics in Class Action Practice (Continuing Legal Education Seminar 2002-2005)
Law and Economics (University of Basel, Switzerland 2005, 2007-2014)
Advanced Seminar on Law and Economics (University of Genoa, Italy 2008)
Banking and the Financial Crisis (University of Genoa, Italy 2009)
Trust, Risk, and Moral Hazard in Financial Markets (University of Genoa, Italy, 2010)
International Banking (University of Sydney, Australia, 2002, 2006)
Introduction to Banking Law (University of Basel, Switzerland 2001, 2002, 2003, 2004, 2009,
2010; 2011; 2012; 2013; 2014; 2015; 2016; 2017; 2018)
Banking in the Theory of Finance (University of Frankfurt, Germany 2004, 2005)
Banking Regulation in Crisis (University of Frankfurt, Germany, 2010)
Banking: Law and Economics Issues after the Financial Crisis (Study Center Gerzensee, 2012)

Expert Witness Testimony (past five years)

Dyer v. Wells Fargo Bank, N.A., Case No. C-13 2858, Northern District of California
(2014) (declaration on fees)

U.S. Foodservice Inc. Pricing Litigation, Case No. 3:07-md-1894, District of Connecticut
(2014) (declaration on fees)

Kacsuta v. Lenovo (United States) Inc., Case No. SACV 13-00316-CJC, Central District
of California (2014) (declaration on fees)

De Leon v. Bank of America, Case No. 6:09-cv-1251-Orl-JA KRS, Middle District of
Florida (2014) (declaration on fees)

Chieftain Royalty Co. v. SM Energy Co., Case No. DIV-011-177-D (Western District of
Oklahoma 2015) (declaration on settlement and fees; declaration on remand)

In re General Motors LLC Ignition Switch Litigation, No. 14-MD-2543 (Southern District of New York 2016) (declaration on motion to dismiss lead counsel)

In re General Motors LLC Ignition Switch Litigation, No. 14-MD-2543 (Southern District of New York 2016) (declaration on confidentiality of case files)

In re Life Partners Holdings, Inc. No. 15-40289-RFN (Northern District of Texas 2016) (declaration on fees)

Rhea v. Apache Corporation, Case No. 6:14-cv-00433-FHS (Eastern District of Oklahoma 2016) (declaration on class certification)

Hooker v. Sirius XM Radio, Inc., No. 4:13-cv-00003 (Eastern District of Virginia 2016) (declaration on fees and fairness of the settlement)

Axiom Investment Advisors, LLC v. Barclays Bank PLC, Case No. 15-cv-9323-LGS (Southern District of New York 2017) (declaration on fees)

Marcus v. JC Penney Company, Inc., Civil Action No. 6:13-cv-00736-RWS-KNM (Eastern District of Texas 2017) (declaration on fees)

Thomas v. Wells Fargo Bank, Case No. 15-cv-03194 (Central District of California 2017) (declaration on fees)

United States of America ex rel. Trakhter v. Provider Services, Inc., (Southern District of Ohio 2017) (declaration on fees)

White v. Experian Information Services, Inc. Case No. 05-CV-1070 2017) (declaration on fairness of settlement and fees)

In Re: Takata Airbag Products Liability Litigation, Case No. 1:15-md-02599-FAM (Southern District of Florida 2017) (declaration on fees)

Rierdon v. XTO Energy, Inc., No 6:16-cv-00087-KEW (Eastern District of Oklahoma 2017) (declaration and testimony on fees)

In Re Cnova N.V. Securities Litigation, No. 16 CV 444-LTS (Southern District of New York 2017) (declaration on fees)

In Re: Syngenta Corn Litigation, MDL No. 2591 (District of Kansas 2018) (expert reports on fees)

Linneman v. Vita-Mix Corporation, No. 1:15-Cv-748 (Southern District of Ohio 2018) (declaration and deposition on fees)

Cockerell Oil Properties v. Unit Petroleum Co., No. 6:16-CV-00135-KEW (Eastern District of Oklahoma 2019) (declaration on fees)

Chieftain Oil Company v. Marathon Oil Company, No. CIV-17-334-SPS (Eastern District of Oklahoma 2019) (declaration on fees)

Christine Asia Co., Ltd. v. Ma, No.: 1:15-md-02631 (Southern District of New York 2019) (Alibaba) (declaration on fees)

Witchko v. Schorsch, No.: 1:15-cv-06043-AKH (Southern District of New York 2019)
(declaration on fees)

In re: Equifax, Inc. Customer Data Security Breach Litigation, No.: 1:17-md-2800-TWT
(Northern District of Georgia 2019) (declaration on fees)

Other Activities

Fellow, Society for Empirical Legal Studies (2015-present)

Member, Board of Directors, American Law and Economics Association (1996-1999)

Member, Board of Advisors, The Independent Review (1996-present)

Member, Board of Advisors, Asian Institute of International Financial Law (2001-present)

Member, Editorial Advisory Board, Supreme Court Economic Review (1995-2001)

Member, Editorial Advisory Board, The Brookings-Wharton Papers on Financial Policy (1997-present)

President, Section on Financial Institutions and Consumer Financial Services, American Association of Law Schools (1999)

President, Section on Business Associations, American Association of Law Schools (1995)

Member, Board of Contributors, American Bar Association Preview of Supreme Court Cases (1985-1993)

Consultant, Administrative Conference of the United States (1988-89; 1991-1992)

Board of Directors and Volunteer Listener, D.C. Hotline (1980-83)

Awards

1992 Paul M. Bator Award for Excellence in Teaching, Scholarship and Public Service, from the Federalist Society for Law and Public Policy Studies

Podell Distinguished Teaching Award (NYU Law School 2016)

Languages

Reading knowledge of Spanish, French, and Italian.

Blog Posts

Whistleblowing in the Wind, Compliance and Enforcement (June 29, 2016)

Banking's Cultural Revolution, Compliance and Enforcement (June 8, 2016)

Breach of Contract \neq Fraud, Compliance and Enforcement (May 25, 2016)

Judges are not Potted Plants, Compliance and Enforcement (May 18, 2016)

Compliance Goes to School, Compliance and Enforcement (May 12, 2016)

CFPB Issues Proposed Consumer Arbitration Rule, Compliance and Enforcement (May 5, 2016)

FSOC Socked, Compliance and Enforcement (April 28, 2016)

Compliance and Risk Management: Area for Legal Teaching and Scholarship?, Harvard Law School Forum on Corporate Governance and Financial Regulation (May 22, 2014)

Shorter Works

Defusing The Banks' Financial Time Bomb: Without Tough Reforms, Writes Robert Pozen, We'll Probably Face An Ugly Repeat of Recent History (Business Week, March 11, 2010)

Why Interstate Banking is in the National Interest, Testimony Before the Subcommittee on Financial Institutions Supervision, Regulation and Deposit Insurance of the House Committee on Banking, Housing and Urban Affairs (September 29, 1993)

Challenging the Concept of the Common Law as a Closed System, Columbia Law School Report, Autumn, 1993 (with Norman Silber)

The Insurance Industry's Antitrust Exemption: A Longstanding Tradition Faces its Greatest Challenge, 1992-93 ABA Preview of Supreme Court Cases 198 (1993)

Shootout at the Escheat Corral, 1992-93 ABA Preview of Supreme Court Cases (1993)

Choices and Chances for Consumers, Legal Times, Oct. 12, 1992, at 29-30.

Impeachment Procedures: An Unexplored Territory in the Separation of Powers, 1992-93 ABA Preview of Supreme Court Cases 39 (1992)

An (Ex)changing of the Guard, 21 Journal of Legal Studies iii (1992)

Revisiting the Contingency Factor in Fee-Shifting Awards, 1991-92 ABA Preview of Supreme Court Cases 327 (1992)

The Foreign Sovereign Immunities Act and the Market for Public International Debt, 1991-92 ABA Preview of Supreme Court Cases 307 (1992)

Return of the Tenth Amendment?: Federal Control and State Autonomy over Low Level Radioactive Wastes, 1991-92 ABA Preview of Supreme Court Cases 284 (1992)

What are the Limits on Congressional Power to Influence Pending Cases?, 1991-92 ABA Preview of Supreme Court Cases 158 (1991)

RICO Standing for Securities Fraud: Does the Purchaser-Seller Rule of Rule 10b-5 Apply?, 1991-92 ABA Preview of Supreme Court Cases 155 (1991)

Banking and Investment: Introduction to UPA Index and Microfiche Collection (University Publications of America 1991)

Source of Strength in the Court: Can Bank Holding Companies be Required to Support Failing Subsidiary Banks?, 1991-92 ABA Preview of Supreme Court Cases 42 (1991)

Source of Strength: A Source of Trouble, Legal Times, September 30, 1991 (Special Supplement, pp. 22-25)

The Once and Future American Banking Industry, The American Enterprise (with Jonathan R. Macey)(1991)

The Former Stockholder as Plaintiff in Short-Swing Trading Cases, 1990-91 ABA Preview of Supreme Court Cases (1991)

Disposing of Demand Excuse in Derivative Litigation, 1990-91 ABA Preview of Supreme Court Cases (1991)

Up in the Air: Can Congress Require States to Appoint Members of Congress to State Agencies?, 1990-91 ABA Preview of Supreme Court Cases 294 (1991)

The Statute of Limitations under Rule 10b-5, 1990-91 ABA Preview of Supreme Court Cases (1991)

Tort Claims Against Federal Banking Agencies: New Hope For Shareholders and Officers of Failed Depository Institutions?, 1990-91 ABA Preview of Supreme Court Cases 94 (1991)

Punitive Damages Redux: If the Eighth Amendment Doesn't Apply, What About the Due Process Clause?, 1990-91 ABA Preview of Supreme Court Cases 47 (1990)

Quandaries of Causation: Proxy Solicitation in Freeze-Out Mergers, 1990-91 ABA Preview of Supreme Court Cases 57 (1990)

Racial Statesmanship, Legal Times S31 (July 23, 1990)

Eurodollars, Sovereign Risk, and the Liability of U.S. Banks for Deposits in Foreign Branches, 1989-90 ABA Preview of Supreme Court Cases 281 (1990)

When is a Note a Note?, 1989-90 ABA Preview of Supreme Court Cases 18 (1990)

Interstate Banking and the Commerce Clause, 1989-90 ABA Preview of Supreme Court Cases 168 (1990)

Federal Courts, Municipalities, and the Contempt Power, 1989-90 ABA Preview of Supreme Court Cases 37 (1989)

Shoe Could Still Drop on Issue of Punitive Damages, National Law Journal (August 21, 1989)

Punitive Damages and the Constitution, 1988-89 ABA Preview of Supreme Court Cases 391 (1989)

States, Bankruptcy and the Eleventh Amendment, 1988-89 ABA Preview of Supreme Court Cases 412 (1989)

Stockholders, Arbitration, and the Securities Act of 1933, 1988-89 ABA Preview of Supreme Court Cases 383 (1989)

Appropriations Riders, Nondisclosure Agreements, and the Separation of Powers, 1988-89 ABA Preview of Supreme Court Cases 375 (1989)

Judicial Appointments and the ABA: Business as Usual or Brand New World?, 1988-89 ABA Preview of Supreme Court Cases 379 (1989)

S & L Receiverships, State Law, and the Federal Courts, 1988-89 ABA Preview of Supreme Court Cases 255 (1989)

The Non-delegation Doctrine in Taxation: A Different Constitutional Calculus?, 1988-89 ABA Preview of Supreme Court Cases 261 (1989)

Bankruptcy, Tax Liens, and Post-Petition Interest, 1988-89 ABA Preview of Supreme Court Cases (1989)

Federal Courts, State Taxes: A Vexing Dilemma For the Enforcement of Civil Rights in a Federal System, 1989-90 ABA Preview of Supreme Court Cases 95 (1988)

Separation of Powers and the Sentencing Commission, 1988-89 ABA Preview of Supreme Court Cases 23 (1988)

Administering the Savings and Loan Crisis: New Problems for the FSLIC, 1988-89 ABA Preview of Supreme Court Cases (1988)

Federal Procurement and the Separation of Powers, 1988-89 ABA Preview of Supreme Court Cases 26 (1988)

Thinking About a Career in Law, 1988-89 Talbot's Student Planning Book 32 (1988)

Carl McGowan: A Great Judge Remembered, 56 George Washington Law Review 697 (1988)

Separation of Powers: The Independent Counsel Case Tests the Limits, 1987-88 ABA Preview of Supreme Court Cases 390 (1988)

Decisionmaking in Collegial Bodies, Judicature, April/May 1988

The FDIC, Bank Officers and the Due Process Clause, 1987-88 ABA Preview of Supreme Court Cases 326 (1988)

Farm Foreclosures in Bankruptcy, 1987-88 ABA Preview of Supreme Court Cases 199 (1988)

Equal Access to Justice and Government Litigation, 1987-88 ABA Preview of Supreme Court Cases 160 (1988)

The Time Value of Money in Bankruptcy Cases, 1987-88 ABA Preview of Supreme Court Cases 116 (1987)

Getting the Fee First? Attorneys and the SSI Program 1987-88 ABA Preview of Supreme Court Cases 118 (1987)

The Farmer and the FDIC, 1987-88 ABA Preview of Supreme Court Cases 48 (1987)

Testing the Limits of Securities Fraud: Financial Gossip in the Court, 1987-88 ABA Preview of Supreme Court Cases 26 (1987)

Checks and Balances in the Twenty-First Century, 33 University of Chicago Law School Record 7 (1987)

Separation of Powers May Become Focus Over NSC, Legal Times, Dec. 15, 1986, at 15

If a Bank is a Broker, is a Brokerage a Branch? 1986-87 ABA Preview of Supreme Court Cases 65 (1986)

Attorney's Fees in the Supreme Court, American Bar Association Journal 40 (November, 1986)

The Contingency Factor in Attorney's Fees Reconsidered, 1986-87 ABA Preview of Supreme Court Cases 20 (1986)

Restitution and Bankruptcy in a Federal System, 1986-87 ABA Preview of Supreme Court Cases (1986)

Don't Limit Contingent Fees, Chicago Tribune, June 11, 1986

The Budget and the Separation of Powers: Gramm-Rudman in the Court, 1985-86 ABA Previews of Supreme Court Cases 359 (1986)

Keeping Attorneys' Fees in Proportion, 1985-86 ABA Preview of Supreme Court Cases 325 (1986)

Must the Federal Government Pay Interest on Attorneys' Fees Awards?, 1985-86 ABA Preview of Supreme Court Cases 241 (1986)

The Contingency Factor in Attorneys' Fees Awards, 1985-86 ABA Preview of Supreme Court Cases 243 (1986)

The FCC as Cop: Forcing State Public Service Commissions to Obey Federal Agency Orders, 1985-86 ABA Preview of Supreme Court Cases 191 (1986)

Preemption, Public Utilities, and Power Over Telephone Rate-Setting, 1985-86 ABA Preview of Supreme Court Cases 187 (1986)

A Bank is a Bank is a Bank -- or is it?, 1985-86 ABA Preview of Supreme Court Cases 67 (1985)

Settlement Offers Conditioned on Waiver of Attorneys' Fees: A Legal and Ethical Dilemma Confronts the Court, 1985-86 ABA Preview of Supreme Court Cases 55 (1985)

Bankruptcy and the Environment: The Case of Hazardous Wastes, 1985-86 ABA Preview of Supreme Court Cases 25 (1985)

A Different Approach to Interstate Banking, American Banker (August 8, 1985)

The SEC as Censor: Is Banning an Investment Advice Newsletter a Prior Restraint of the Press?, 1984-85 ABA Preview of Supreme Court Cases 243 (1985)

Enforcing Federal Rights in State Courts, 1984-85 ABA Preview of Supreme Court Cases 277 (1985)

Interstate Banking and the Constitution, 1984-85 ABA Preview of Supreme Court Cases 364 (1985)

The "Sale of Business" Doctrine in the Supreme Court, 1984-85 ABA Preview of Supreme Court Cases 344 (1985)

Sale of Business Revisited: Does the Doctrine Apply to Partial Sales of Corporate Control, 1984-85 ABA Preview of Supreme Court Cases 347 (1985)

Six Cases Shape Business Law, American Bar Association Journal 124 (Jan. 1985)

Offers of Settlement in Civil Rights Cases Pose Attorneys' Fees Question, 1984-85 ABA Preview of Supreme Court Cases 105 (1984)

Using Bankruptcy to Avoid Liability for Cleaning up Toxic Wastes, 1984-85 ABA Preview of Supreme Court Cases 36 (1984)

A Judicial Footnote Cemented the New Deal, Wall Street Journal, September 13, 1984

May Bank Holding Companies Provide Discount Brokerage Savings?, 1984-85 ABA Preview of Supreme Court Cases 575 (1984)

Blum v. Stenson: Fundamental Questions About Attorneys' Fees Awards to Public Interest Lawyers, 1984-85 ABA Preview of Supreme Court Cases 301 (1984)

Myths on the Midway, 30 Chicago Law School Record 13 (1984)

Smith v. Robinson: Another Step Towards Solving the Attorneys' Fees Puzzle? 1983-84 ABA Preview of Supreme Court Cases 437 (1984)

Securities Industry Association v. Board of Governors: Can Banks Distribute Commercial Paper? 1983-84 ABA Preview of Supreme Court Cases 425 (1984)

The "7-Eleven" Case: Arbitration v. Litigation in a Federal System, 1983-84 ABA Preview of Supreme Court Cases 161 (1983)

The Bildisco Case: Reconciling Federal Bankruptcy and Labor Policies, 1983-84 ABA Preview of Supreme Court Cases 169 (1983)

The "Daily Income Fund" Case: What Role Should a Mutual Fund's Board of Directors Play in Disputes over Investment Advisor Fees, 1983-84 ABA Preview of Supreme Court Cases 107 (1983)

Pulliam v. Allen: Should State Judges who Act Unconstitutionally Pay the Plaintiff's Attorneys' Fees?, 1983-84 ABA Preview of Supreme Court Cases 115 (1983)

"Shortsighted" Bill Proposes D.C. Court Divestiture, Legal Time of Washington, August 16, 1982

The Tax Bill May Be Unconstitutional, Baltimore Sun, August 16, 1982 (with Donald N. Bersoff)

Appendix 3: Cases Citing to Geoffrey Miller's Research on Class Action Litigation

- *In re Equifax Inc. Customer Data Security Breach Litigation*, 2020 WL 256132 (N.D. Georgia 2020)
- *In Re: The Home Depot, Inc., Customer Data Security Breach Litigation*, 2020 WL 415923 (N.D. Georgia 2020)
- *In re Chinese-Manufactured Drywall Products Liability Litigation*, 2020 WL 128589 (E.D. Louisiana 2020)
- *Flores v. Zorbalas*, 2019 WL 7142886 (Minnesota Court of Appeals 2019)
- *In re Transpacific Passenger Air Transportation Antitrust Litigation*, 2019 WL 6327363 (N.D. California 2019) (referring to Eisenberg-Miller-Germano paper as a “seminal study”)
- *Espinal v. Victor's Café 52nd Street, Inc.*, 2019 WL 5425475 (S.D. New York 2019)
- *Christine Asia Co., Ltd. v. Yun Ma*, 2019 WL 5257534 (S.D. New York 2019)
- *Tussey v. ABB, Inc.*, 2019 WL 3859763 (W.D. Missouri 2019)
- *In re Yahoo! Inc. Customer Data Security Breach Litigation*, 2019 WL 387322 (N.D. California 2019) (referring to Eisenberg and Miller's study of class action attorneys' fees as a “leading study”)
- *Grice v. Pepsi Beverages Co.*, 363 F.Supp.3d 401 (S.D.N.Y. 2019) (“[c]ourts often look to empirical evidence of attorney's fees awarded in similar cases as a starting point for the baseline reasonable fee inquiry”)
- *Hale v. State Farm Mutual Automobile Insurance Company*, 2018 WL 6606079 (S.D. Illinois 2018)
- *Cabot East Broward 2 LLC v. Cabot*, 2018 WL 5905415 (S.D. Florida 2018)
- *In re Vioxx Products Liability Litigation*, 2018 WL 4613941 (E.D. Louisiana 2019)
- *Rodman v. Safeway Inc.*, 2018 WL 4030558 (N.D. California 2018)
- *Welsh v. Navy Federal Credit Union*, 2018 WL 7283639 (W.D. Texas 2018)
- *In re Anthem, Inc. Data Breach Litigation*, 2018 WL 3960068 (N.D. California 2018) (“leading study”)
- *Carrel v. MedPro Group, Inc.*, 2018 WL 3617258 (N.D. Indiana 2018)
- *Rudman v. CHC Group Ltd.*, 2018 WL 3594828 (S.D.N.Y. 2018)
- *In re Akorn, Inc. Securities Litigation*, 2018 WL 2688877 (N.D. Illinois 2018)
- *Leung v. XPO Logistics, Inc.*, 326 F.R.D. 185 (N.D. Illinois 2018)
- *Xiao Ling Chen v. XpresSpa at Terminal 4 JFK LLC*, 2018 WL 1633027 (E.D.N.Y. 2018)
- *In re: National Collegiate Athletic Association Athletic Grant-In-Aid Cap Antitrust Litigation*, No. 4:14-cv-02758-CW, 2017 WL 6040065 (N.D. Ca. 2017)
- *In re Sears, Roebuck and Co. Front-Loading Washer Products Liability Litig.*, --- F.3d ---, 2017 WL 3470400 (7th Cir. 2017)
- *Good v. West Virginia-American Water Co.*, 2017 WL 2884535 (S.D. W.Va. 2017);
- *Chieftain Royalty Company v. Enervest Energy Institutional Fund XIII-A*, 861 F.3d 1182 (10th Cir. 2017)

- *Nitsch v. DreamWorks Animation SKG Inc.*, 2017 WL 2423161 (N.D. Ca. 2017)
- *McGreevy v. Life Alert Emergency Response, Inc.*, --- F.Supp.3d ---, 2017 WL 1534452 (S.D.N.Y. 2017)
- *Seijas v. Republic of Argentina*, 2017 WL 1511352 (S.D.N.Y. 2017)
- *Brown v. Rita's Water Ice Franchise Company LLC*, --- F.Supp.3d ----2017 WL 1021025 (E.D. Pa. 2017);
- *Thomas v. FTS USA, LLC*, 2017 WL 1148283 (E.D. Va. 2017);
- *Briggs v. PNC Financial Services Group, Inc.*, 2016 WL 7018566 (N.D. Ill. 2016);
- *Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215 (N.D. Ill. 2016);
- *In re TRS Recovery Services, Inc. and Telecheck Services, Inc., Fair Debt Collection Practices Act (FDCPA) Litigation*, 2016 WL 543137 (D. Me. 2016);
- *In re Urethane Antitrust Litigation*, 2016 WL 406-156 (D. Kan., July 29, 2016);
- *Laffitte v. Robert Half Intern., Inc.* 1 Cal.5th 480 376 P.3d 672 (Cal. 2016);
- *In re Polyurethane Foam Antitrust Litigation*, -- F.Supp.3d ---- 2015 WL 7348208 (N.D. Oh. 2015);
- *In re: Cathode Ray Tube (CRT) Antitrust Litigation*, 2016 WL 721680 (N.D. Ca. 2016);
- *In re High-Tech Employee Antitrust Litigation*, 2015 WL 5158730 (N.D. Ca. 2015);
- *Palmer v. Dynamic Recovery Solutions, LLC*, 2016 WL 2348704 (M.D. Fla. 2016);
- *In re: Sears, Roebuck and Co. Front-Loading Washer Products Liability Litigation*, 2016 WL 4765679 (N.D. Ill. 2016);
- *In re Pool Products Distribution Market Antitrust Litigation*, 2015 WL 4528880 (E.D. La. 2015);
- *Abbott v. Lockheed Martin Corp.*, 2015 WL 4398475 (S.D. Ill. 2015);
- *Craftwood Lumber Company v. Interline Brands, Inc.*, 2015 WL 2147679 (N.D. Ill. 2015);
- *In re IndyMac Mortgage-Backed Securities Litigation*, 94 F.Supp.3d 517 (S.D.N.Y. 2015);
- *Wilkins v. HSBC Bank Nevada, N.A.*, 2015 WL 890566 (N.D. Ill. 2015);
- *In re Capital One Telephone Consumer Protection Act Litigation*, 80 F.Supp.3d 781 (N.D. Ill. 2015);
- *In re Dairy Farmers of America, Inc.*, 80 F.Supp.3d 838 (N.D. Ill. 2015);
- *In re Colgate-Palmolive Co. ERISA Litigation*, 36 F.Supp.3d 344 (S.D.N.Y. 2014);
- *Haggart v. United States*, 116 Fed. Cl. 131 (Ct. Fed. Claims 2014);
- *Richardson v. L'Oreal USA, Inc.*, --- F.Supp.2d ----, 2013 WL 5941486 (D.D.C. 2013);
- *Swift v. Direct Buy, Inc.*, 2013 WL 5770633 (N.D. Ind. 2013);
- *Singleton v. Domino's Pizza, LLC*, --- F.Supp.2d ----, 2013 WL 5506027 (D.Md. 2013);
- *In re Schering-Plough Corp. Enhance Securities Litigation*, 2013 WL 5505744 (D.N.J. 2013);
- *In re Vioux Products Liability Litigation*, 2013 WL 5295707 (E.D. La. 2013);
- *Evans v. TIN, Inc.*, 2013 WL 4501061 (E.D.La. 2013);
- *Silverman v. Motorola Solutions, Inc.*, --- Fed.Appx. ----, 2013 WL 4082893 (7th Cir. 2013);

- *City of Pontiac General Employees' Retirement System v. Lockheed Martin Corp.*, --- F.Supp.2d ---, 2013 WL 3796658 (S.D.N.Y. 2013);
- *Gortat v. Capala Bros.*, --- F.Supp.2d ----, 2013 WL 2566622 (E.D.N.Y. 2013);
- *In re Southeastern Milk Antitrust Litigation*, 2013 WL 2155387 (E.D. Tenn. 2013);
- *Strawn v. Farmers Ins. Co. of Oregon*, 353 Or. 210, 297 P.3d 439 (Or. 2013);
- *Heekin v. Anthem, Inc.*, 2012 WL 5878032 (S.D. Ind. 2012);
- *Espenscheid v. DirectSat USA, LLC*, 688 F.3d 872, 877 (7th Cir. 2012);
- *In re Trans Union Corp. Privacy Litig.*, 629 F.3d 741, 744 (7th Cir. 2011);
- *Allapattah Servs., Inc. v. Exxon Corp.*, 362 F.3d 739, 760 (11th Cir. 2004) (Judges Tjoflat and Birch, dissenting from denial of en banc review);
- *Strawn v. Farmers Ins. Co. of Oregon*, 353 Or. 210, 297 P.3d 439 (2013);
- *In re Amaranth Natural Gas Commodities Litig.*, No. 07-6377, 2012 U.S. Dist. LEXIS 82599, at *7 n.12 (S.D.N.Y. June 11, 2012);
- *Board of Trustees of AFTRA Ret. Fund v. JPMorgan Chase Bank, N.A.*, No. 09-686, 2012 U.S. Dist. LEXIS 79418, at *5 n.12 (S.D.N.Y. June 7, 2012);
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- *Silverman v. Motorola, Inc.*, No. 07-4507, 2012 U.S. Dist. LEXIS 63477, at *15 (N.D. Ill. May 7, 2012);
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