UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re LEHMAN BROTHERS SECURITIES AND ERISA LITIGATION This Document Applies To: *In re Lehman Brothers Equity/Debt Securities Litigation*, 08-CV-5523-LAK	Case No. 09-MD-2017 (LAK) ECF CASE

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

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ABBREVIATION	DEFINED TERM
"ACERA"	Alameda County Employees' Retirement Association
"Action"	*In re Lehman Brothers Equity/Debt Securities Litigation*, 08 Civ. 5523 (LAK)
"Bankruptcy Court"	The United States Bankruptcy Court for the Southern District of New York
"Bernstein Litowitz"	Bernstein Litowitz Berger & Grossmann LLP
"Claim Form" or "Proof of Claim Form"	Form that claimants must complete and submit in order to be potentially eligible to share in the distribution of the proceeds of the Settlements
"Complaint"	Third Amended Class Action Complaint
"Defendants"	The Settling Defendants and the non-settling defendants, E&Y and UBSFS, collectively
"Director Defendants"	Michael L. Ainslie, John F. Akers, Roger S. Berlind, Thomas H. Cruikshank, Marsha Johnson Evans, Sir Christopher Gent, Roland A. Hernandez, Henry Kaufman, and John D. Macomber
"D&O Defendants"	Former Lehman officers Richard S. Fuld, Jr., Christopher M. O'Meara, Joseph M. Gregory, Erin Callan, and Ian Lowitt; and former Lehman directors Michael L. Ainslie, John F. Akers, Roger S. Berlind, Thomas H. Cruikshank, Marsha Johnson Evans, Sir Christopher Gent, Roland A. Hernandez, Henry Kaufman, and John D. Macomber
"D&O Notice"	Notice of Pendency of Class Action and Proposed Settlement with the Director and Officer Defendants, Settlement Fairness Hearing and Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses
"D&O Plan"	Plan of Allocation for the D&O Net Settlement Fund, attached as Appendix C to the D&O Notice
"D&O Settlement"	The proposed settlement with the Lehman directors and officers for $90 million on behalf of the D&O Settlement Class
"D&O Settlement Amount"	$90 million
"D&O Settlement Class"	All persons and entities who (1) purchased or acquired Lehman securities identified in Appendix A to the D&O Stipulation pursuant or traceable to the Shelf Registration Statement and who were damaged thereby, (2) purchased or acquired any Lehman Structured Notes identified in Appendix B to the D&O Stipulation pursuant or traceable to the Shelf Registration Statement and who were damaged thereby, or (3) purchased or acquired Lehman common stock, call options, and/or sold put options between June 12, 2007 and September 15, 2008, through

ABBREVIATION	DEFINED TERM
	and inclusive, and who were damaged thereby. Excluded from the D&O Settlement Class are (i) Defendants, (ii) Lehman, (iii) the executive officers and directors of each Defendant or Lehman, (iv) any entity in which Defendants or Lehman have or had a controlling interest, (v) members of Defendants' immediate families, and (vi) the legal representatives, heirs, successors or assigns of any such excluded party. Also excluded from the D&O Settlement Class are any persons or entities who exclude themselves by filing a timely request for exclusion in accordance with the requirements set forth in the D&O Notice.
"D&O Stipulation"	Stipulation of Settlement and Release dated October 14, 2011, between Lead Plaintiffs and the D&O Defendants
"E&Y"	Ernst & Young LLP, a non-settling defendant
"Eligible UW Security or Securities"	One or more of the following: 1. February 5, 2008 Offering of 7.95% Non-Cumulative Perpetual Preferred Stock, Series J (CUSIP 52520W317) 2. July 19, 2007 Offering of 6% Notes Due 2012 (CUSIP 52517P4C2) 3. July 19, 2007 Offering of 6.50% Subordinated Notes Due 2017 (CUSIP 524908R36) 4. July 19, 2007 Offering of 6.875% Subordinated Notes Due 2037 (CUSIP 524908R44) 5. September 26, 2007 Offering of 6.2% Notes Due 2014 (CUSIP 52517P5X5) 6. September 26, 2007 Offering of 7% Notes Due 2027 (CUSIP 52517P5Y3) 7. December 21, 2007 Offering of 6.75% Subordinated Notes Due 2017 (CUSIP 5249087M6) 8. January 22, 2008 Offering of 5.625% Notes Due 2013 (CUSIP 5252M0BZ9) 9. February 5, 2008 Offering of Lehman Notes, Series D (CUSIP 52519FFE6) 10. April 24, 2008 Offering of 6.875% Notes Due 2018 (CUSIP 5252M0FD4) 11. April 29, 2008 Offering of Lehman Notes, Series D (CUSIP 52519FFM8) 12. May 9, 2008 Offering of 7.50% Subordinated Notes Due 2038 (CUSIP 5249087N4)
"*Equity/Debt* Action" or "*Equity/Debt*"	*In re Lehman Brothers Equity/Debt Securities Litigation*, 08 Civ. 5523 (LAK)

ABBREVIATION	DEFINED TERM
"ERISA Action"	*In re Lehman Brothers ERISA Litigation*, 08 Civ. 5598 (LAK)
"Examiner"	Anton R. Valukas, Esq., the court-appointed examiner in Lehman's Chapter 11 bankruptcy proceedings, *In re Lehman Brothers Holdings Inc.*, 08-13555 (JMP) (Bankr. S.D.N.Y.)
"Examiner's Report"	Report of Anton R. Valukas, Examiner, dated March 11, 2010
"Exchange Act"	Securities Exchange Act of 1934
"Executive Committee Chair"	Max W. Berger of Bernstein Litowitz
"Fee and Expense Application"	Lead Counsel's application for an award of attorneys' fees and reimbursement of litigation expenses on behalf of all Plaintiffs' Counsel
"Fee Memorandum"	The Memorandum of Law in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses
"First Group of Settling Underwriter Defendants"	A.G. Edwards & Sons, Inc. ("A.G. Edwards"); ABN AMRO Inc. ("ABN Amro"); ANZ Securities, Inc. ("ANZ"); Banc of America Securities LLC ("BOA"); BBVA Securities Inc. ("BBVA"); BNP Paribas; BNY Mellon Capital Markets, LLC ("BNY"); Caja de Ahorros y Monte de Piedad de Madrid ("Caja Madrid"); Calyon Securities (USA) Inc. (n/k/a Crédit Agricole Corporate and Investment Bank) ("Calyon"); CIBC World Markets Corp. ("CIBC"); Citigroup Global Markets Inc. ("CGMI"); Commerzbank Capital Markets Corp. ("Commerzbank"); Daiwa Capital Markets Europe Limited (f/k/a Daiwa Securities SMBC Europe Limited) ("Daiwa"); DnB NOR Markets Inc. (the trade name of which is DnB NOR Markets) ("DnB NOR"); DZ Financial Markets LLC ("DZ Financial"); Edward D. Jones & Co., L.P. ("E.D. Jones"); Fidelity Capital Markets Services (a division of National Financial Services LLC) ("Fidelity Capital Markets"); Fortis Securities LLC ("Fortis"); BMO Capital Markets Corp. (f/k/a Harris Nesbitt Corp.) ("Harris Nesbitt"); HSBC Securities (USA) Inc. ("HSBC"); ING Financial Markets LLC ("ING"); Loop Capital Markets, LLC ("Loop Capital"); Mellon Financial Markets, LLC (n/k/a BNY Mellon Capital Markets, LLC) ("Mellon"); Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch"); Mizuho Securities USA Inc. ("Mizuho"); Morgan Stanley & Co. Inc. ("Morgan Stanley"); nabCapital Securities, LLC (n/k/a nabSecurities, LLC) ("nabCapital"); National Australia Bank Ltd. ("NAB"); Natixis Bleichroeder Inc.

ABBREVIATION	DEFINED TERM
	(n/k/a Natixis Securities Americas LLC) ("Natixis"); Raymond James & Associates, Inc. ("Raymond James"); RBC Capital Markets, LLC (f/k/a RBC Dain Rauscher Inc.) ("RBC Capital"); RBS Greenwich Capital (n/k/a RBS Securities Inc.) ("RBS Greenwich"); Santander Investment Securities Inc. ("Santander"); Scotia Capital (USA) Inc. ("Scotia"); SG Americas Securities LLC ("SG Americas"); Sovereign Securities Corporation, LLC ("Sovereign"); SunTrust Robinson Humphrey, Inc. ("SunTrust"); TD Securities (USA) LLC ("TD Securities"); UBS Securities LLC ("UBS Securities"); Utendahl Capital Partners, L.P. ("Utendahl"); Wachovia Capital Finance ("Wachovia Capital"); Wachovia Securities, LLC n/k/a Wells Fargo Securities, LLC ("Wachovia Securities"); and Wells Fargo Securities, LLC ("Wells Fargo")
"First Underwriter Stipulation" or "First UW Stipulation"	Stipulation of Settlement and Release dated December 2, 2011, between Lead Plaintiffs and the First Group of Settling Underwriter Defendants
"GCG"	The Garden City Group, Inc., the Court-approved claims administrator for the Settlements
"Girard Gibbs"	Girard Gibbs LLP (f/k/a Girard, Gibbs & De Bartolomeo, LLP)
"GGRF"	Government of Guam Retirement Fund
"Joint Declaration"	Joint Declaration of David Stickney and David Kessler in Support of (A) Lead Plaintiffs' Motion for Final Approval of Class Action Settlements with D&O Defendants and Settling Underwriter Defendants and Approval of Plans of Allocation and (B) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses
"Kessler Topaz"	Kessler Topaz Meltzer & Check, LLP
"Lead Counsel"	Bernstein Litowitz and Kessler Topaz
"Lead Plaintiffs"	ACERA, GGRF, NILGOSC, Lothian, and Operating Engineers
"Lehman" or "Company"	Lehman Brothers Holdings Inc.
"Lothian"	The City of Edinburgh Council as Administering Authority of the Lothian Pension Fund
"MBS Action"	*In re Lehman Brothers Mortgage-Backed Securities Litigation*, 08 Civ. 6762 (LAK)
"NILGOSC"	Northern Ireland Local Governmental Officers' Superannuation Committee
"Notice Orders"	Pretrial Order Nos. 27 & 28, collectively
"Notice Packet"	The D&O Notice, UW Notice, Claim Form and a cover letter, sent to potential members of the Settlement Classes

ABBREVIATION	DEFINED TERM
"Notices"	The D&O Notice and UW Notice
"Officer Defendants"	Richard S. Fuld, Jr., Christopher M. O'Meara, Joseph M. Gregory, Erin Callan, and Ian Lowitt
"Operating Engineers"	Operating Engineers Local 3 Trust Fund
"Plaintiffs' Counsel"	Lead Counsel; Girard Gibbs; Grant & Eisenhofer P.A.; Kirby McInerney LLP; Labaton Sucharow LLP; Law Offices of Bernard M. Gross, P.C.; Law Offices of James V. Bashian, P.C.; Lowenstein Sandler PC; Murray Frank LLP; Pomerantz Haudek Grossman & Gross LLP; Saxena White P.A.; Spector Roseman Kodroff & Willis, P.C.; and Zwerling, Schachter & Zwerling, LLP
"Plaintiffs' Executive Committee" or "Executive Committee"	Bernstein Litowitz; Kessler Topaz; Gainey & McKenna LLP; Wolf Haldenstein Adler Freeman & Herz LLP; and Girard Gibbs LLP
"PPN"	The Lehman/UBS Structured Products that purported to offer full or partial principal protection
"Pretrial Order No. 27"	The Court's December 15, 2011 Order Concerning Proposed Settlement With The Director And Officer Defendants
"Pretrial Order No. 28"	The Court's December 15, 2011 Order Concerning Proposed Settlement With The Settling Underwriter Defendants
"PSLRA"	The Private Securities Litigation Reform Act of 1995
"Repo 105"	A repurchase agreement (*i.e.*, a "repo") that Lehman accounted for as a sale instead of a financing, which removed the assets from Lehman's balance sheet. In a second step, Lehman used the cash obtained in exchange for the assets to pay down other liabilities. The Repo 105 transactions reduced the size of Lehman's balance sheet and reduced its net leverage ratio. The transactions were called Repo 105 because Lehman provided 5% overcollateralization. Repo 105 and Repo 108 are referred to collectively as "Repo 105."
"Repo 108"	Similar to Repo 105 transactions, except Lehman provided 8% overcollateralization instead of 5%
"SEC"	Securities and Exchange Commission
"Second Group of Settling Underwriter Defendants"	Cabrera Capital Markets LLC ("Cabrera"); Charles Schwab & Co., Inc. ("Charles Schwab"); HVB Capital Markets, Inc. ("HVB"); Incapital LLC ("Incapital"); MRB Securities Corp., as general partner of M.R. Beal & Company (M.R. Beal & Company, together with its owners and partners) ("MRB Securities"); Muriel Siebert & Co., Inc. and Siebert Capital Markets ("Muriel

ABBREVIATION	DEFINED TERM
	Siebert"); and Williams Capital Group, L.P. ("Williams")
"Second Underwriter Stipulation" or "Second UW Stipulation"	Stipulation of Settlement and Release dated December 9, 2011, between Lead Plaintiffs and the Second Group of Settling Underwriter Defendants
"Securities Act"	Securities Act of 1933
"Settlement Amounts"	The D&O Settlement Amount and the Underwriter Settlement Amount
"Settlement Classes"	The D&O Settlement Class and the Underwriter Settlement Class
"Settlement Class Period"	The period between June 12, 2007 and September 15, 2008, through and inclusive
"Settlement Class Representatives"	The proposed Settlement Class Representatives for the D&O Settlement Class are Lead Plaintiffs and additional named plaintiffs Brockton Contributory Retirement System; Inter-Local Pension Fund of the Graphic Communications Conference of the International Brotherhood of Teamsters; Police and Fire Retirement System of the City of Detroit; American European Insurance Company; Belmont Holdings Corp.; Marsha Kosseff; Stacey Oyler; Montgomery County Retirement Board; Fred Telling; Stuart Bregman; Irwin and Phyllis Ingwer; Carla LaGrassa; Teamsters Allied Benefit Funds; Francisco Perez; Island Medical Group PC Retirement Trust f/b/o Irwin Ingwer; Robert Feinerman; John Buzanowski; Steven Ratnow; Ann Lee; Sydney Ratnow; Michael Karfunkel; Mohan Ananda; Fred Mandell; Roy Wiegert; Lawrence Rose; Ronald Profili; Grace Wang; Stephen Gott; Juan Tolosa; Neel Duncan; Nick Fotinos; Arthur Simons; Richard Barrett; Shea-Edwards Limited Partnership; Miriam Wolf; Harry Pickle (trustee of Charles Brooks); Barbara Moskowitz; Rick Fleischman; Karim Kano; David Kotz; Ed Davis; and Joe Rottman. The proposed Settlement Class Representatives for the UW Settlement Class are Lead Plaintiffs ACERA and GGRF, and additional named plaintiffs Brockton Contributory Retirement System; Inter-Local Pension Fund of the Graphic Communications Conference of the International Brotherhood of Teamsters; Police and Fire Retirement System of the City of Detroit; American European Insurance Company; Belmont Holdings Corp.; Marsha Kosseff; Montgomery County Retirement Board; Teamsters Allied Benefit Funds; John Buzanowski; and Ann Lee.

ABBREVIATION	DEFINED TERM
"Settlement Fairness Hearing"	The hearing scheduled for April 12, 2012 at 4:00 p.m. at which the Court will consider, among other things, whether the Settlements and the Plans of Allocation are fair, reasonable and adequate
"Settlement Memorandum"	The Memorandum of Law in Support of Lead Plaintiffs' Motion for Final Approval of Class Action Settlements with D&O Defendants and Settling Underwriter Defendants and Approval of Proposed Plans of Allocation
"Settlements"	The D&O Settlement ($90,000,000), the First Underwriter Settlement ($417,000,000), and the Second Underwriter Settlement ($9,218,000), collectively
"Settling Defendants"	The D&O Defendants and Settling Underwriter Defendants, collectively
"Settling Underwriter Defendants"	The First Group of Settling Underwriter Defendants and Second Group of Settling Underwriter Defendants, collectively
"Stipulations"	The D&O Stipulation, the First Underwriter Stipulation and the Second Underwriter Stipulation, collectively
"Summary Notice"	Summary Notice of Pendency of Class Action and Proposed Settlements with the Director and Officer Defendants and Settling Underwriter Defendants, Settlement Fairness Hearing, and Motion for Attorneys' Fees and Reimbursement of Litigation Expenses
"UBSFS"	UBS Financial Services, Inc., a non-settling defendant
"Underwriter Defendants"	The non-Lehman underwriters of Lehman securities named as defendants in the Action
"Underwriter Settlement"	The proposed settlement with the Settling Underwriter Defendants for $426,218,000 on behalf of the Underwriter Settlement Class
"Underwriter Settlement Class" or "UW Settlement Class"	All persons and entities who purchased or otherwise acquired Lehman securities identified in Appendix A to the First UW Stipulation pursuant or traceable to the Shelf Registration Statement and Offering Materials incorporated by reference in the Shelf Registration Statement and who were damaged thereby. The UW Settlement Class includes registered mutual funds, managed accounts, or entities with nonproprietary assets managed by any of the Released Underwriter Parties including, but not limited to, the entities listed on Exhibit C attached to the First UW Stipulation, who purchased or otherwise acquired Lehman Securities (each, a "Managed Entity"). Excluded from the UW Settlement Class are (i) Defendants, (ii) the officers and directors of each Defendant, (iii) any entity (other than a Managed Entity) in which a Defendant owns, or during the period July 19,

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	2007 to September 15, 2008 (the "Underwriter Settlement Class Period") owned, a majority interest; (iv) members of Defendants' immediate families and the legal representatives, heirs, successors or assigns of any such excluded party; and (v) Lehman. Also excluded from the UW Settlement Class are any persons or entities who exclude themselves by filing a timely request for exclusion in accordance with the requirements set forth in the UW Notice.
"Underwriter Settlement Class Period"	July 19, 2007 through September 15, 2008, inclusive
"Underwriter Stipulations"	The First Underwriter Stipulation and the Second Underwriter Stipulation, collectively
"UW Notice"	Notice of Pendency of Class Action and Proposed Settlement with the Settling Underwriter Defendants, Settlement Fairness Hearing and Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses
"UW Plan"	Plan of Allocation for the Underwriter Net Settlement Fund, attached as Appendix B to the UW Notice
"UW Settlement Amount"	$426,218,000

Court-appointed Lead Counsel, Bernstein Litowitz Berger & Grossmann LLP ("Bernstein Litowitz") and Kessler Topaz Meltzer & Check, LLP ("Kessler Topaz") (the firms together, "Lead Counsel"), respectfully submit this memorandum in support of their motion, pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, for an award of attorneys' fees in the amounts of 16% of the D&O Settlement Amount and 16% of the Underwriter Settlement Amount.[1] Lead Counsel also seek reimbursement of $1,619,669.27 in litigation expenses that were reasonably and necessarily incurred by Plaintiffs' Counsel in prosecuting and resolving the Action against the D&O Defendants and the Settling Underwriter Defendants (together, the "Settling Defendants"), to be paid in *pro rata* amounts from the two separate Settlement Amounts.[2]

PRELIMINARY STATEMENT

Lead Counsel have successfully recovered $516,218,000 in cash for the Settlement Classes – comprised of $90,000,000 from the D&O Defendants (the "D&O Settlement Amount") and $426,218,000 from the Settling Underwriter Defendants (the "Underwriter Settlement Amount"), while continuing to maintain claims against non-settling defendants - Ernst & Young LLP ("E&Y") and UBS Financial Services, Inc. ("UBSFS"). The litigation involved enormous risk, presented complex factual and strategic challenges, and entailed nearly four years of hard-

[1] Lead Plaintiffs are simultaneously submitting the Joint Declaration of David Stickney and David Kessler in Support of (A) Lead Plaintiffs' Motion for Final Approval of Proposed Class Action Settlements with D&O Defendants and Settling Underwriter Defendants and Approval of Plans of Allocation, and (B) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Joint Declaration" or "Joint Decl."). The Joint Declaration is an integral part of this submission and, for the sake of brevity, Lead Plaintiffs respectfully refer the Court to that document for a detailed description of, among other things: the history of the Action; the negotiations leading to the Settlements; the value of the Settlements to the Settlement Classes, as compared to the risks and uncertainties of continued litigation; the terms of the proposed Plans of Allocation; and a description of the services Lead Counsel provided for the benefit of the Settlement Classes.

[2] Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Joint Declaration and the "Table of Abbreviations" set forth above.

fought litigation in order to recover over $516 million on behalf of the Settlement Classes. Such recovery, in the absence of any possible payment from now-bankrupt Lehman, required substantial skill and the extensive efforts and commitment of resources from Plaintiffs' Counsel.

For the reasons detailed below and in the accompanying Joint Declaration, each of the proposed Settlements represents an outstanding result for the respective Settlement Classes. On behalf of the Underwriter Settlement Class, Lead Counsel have achieved a settlement representing approximately 13% of the absolute, maximum statutory Section 11(e) damages that could have been recovered against the Underwriter Defendants before considering "negative causation" and additional defenses to liability and damages. Likewise, Lead Counsel maximized the recovery for the D&O Settlement Class in the face of myriad defenses to liability and constraints on the ability of Lehman's former officers, the Officer Defendants, to pay a substantial judgment. Joint Decl. ¶¶4-5. Lead Counsel obtained this $90 million recovery when, to date, no government agency, including the Department of Justice or the SEC, has filed any claim or charge (much less obtained recovery) against any of the Settling Defendants for violations of federal or state securities laws arising out of the events at issue in this Action.

For their extensive efforts on behalf of the Settlement Classes (as summarized below and in the accompanying Joint Declaration), Lead Counsel, on behalf of Plaintiffs' Counsel, request a 16% fee award to be paid out of the D&O Settlement Amount (*i.e.*, $14.4 million) and a 16% fee award to be paid out of the Underwriter Settlement Amount (*i.e.*, $68,194,880). The request is amply supported by each of the relevant factors set forth in *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43 (2d Cir. 2000), and falls well within the range of fees that have been approved in other securities class actions of this size by courts in this District and around the country. Similarly, when performing a "lodestar-crosscheck," the requested fee award results in a

multiplier of 2.18, which is also well within the range of multipliers awarded in many other securities class action settlements of a similar size.

The recoveries obtained for the Settlement Classes would not have been possible without the substantial efforts of Lead Counsel and Plaintiffs' Counsel, who vigorously prosecuted the claims on a purely contingent basis against highly-skilled defense counsel from multiple defense firms. In the face of this formidable opposition, Lead Counsel overcame risks that threatened any recovery, achieving outstanding recoveries for the benefit of the Settlement Classes. Without the skill, effective advocacy and diligent efforts exhibited by Plaintiffs' Counsel in achieving the Settlements, this Action would have continued against the Settling Defendants, risking the ability of the Settlement Classes to collect the valuable benefit secured by the present Settlements, and creating a substantial possibility that the Settlement Classes would obtain less than the respective Settlements, or even no recovery at all, after a trial against the Settling Defendants and the inevitable post-trial motions and appeals.

Lead Plaintiffs, each of which is a sophisticated institutional investor, have reviewed and fully support Lead Counsel's Fee and Expense Application as fair and reasonable. *See* the declarations submitted on behalf of each of the Lead Plaintiffs, attached as Exhibits 4A through 4E to the Joint Decl. In addition, pursuant to the Court's Notice Orders dated December 15, 2011 (ECF Nos. 306 and 307), 818,402 copies of the detailed Notices have been mailed to potential members of the Settlement Classes as well as thousands of nominees as of March 6, 2012, and the Summary Notice was published in the national edition of *The Wall Street Journal* and *Investor's Business Daily* on January 30, 2012.[3] The Notices advised recipients that Lead

[3] *See* Affidavit of Stephen J. Cirami Regarding (A) Mailing of the Notices and Proof of Claim; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date, attached as Exhibit 2 to the Joint Declaration (the "Cirami Aff."), at ¶¶11-12.

Counsel would seek an award of attorneys' fees in an amount not to exceed 17.5% of the Settlement Amounts and reimbursement of their litigation expenses, not to exceed $2.5 million. Joint Decl. ¶92. Although the March 22, 2012 deadline for objecting to the requested attorneys' fees and expenses has not yet passed, to date not a single objection to the amount of attorneys' fees and expenses set forth in the Notices has been received. *Id.* ¶129.[4]

For the reasons set forth below, Lead Counsel respectfully request that the Court approve their application for an award of attorneys' fees and reimbursement of litigation expenses.

ARGUMENT

I. THE REQUESTED FEE IS FAIR AND REASONABLE AND SHOULD BE APPROVED

A. Plaintiffs' Counsel Are Entitled To An Award Of Attorneys' Fees From The Common Fund

The Supreme Court has long recognized that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, 100 S. Ct. 745, 749 (1980); *see also Goldberger*, 209 F.3d at 47; *Savoie v. Merchs. Bank*, 166 F.3d 456, 460 (2d Cir. 1999). In addition to providing just compensation, awards of attorneys' fees from a common fund "serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons" and, as a result, help to discourage future alleged misconduct of a similar nature.[5] Indeed, the Supreme Court has repeatedly emphasized that

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[4] Should any objections be received after the date of this submission, Lead Counsel will address them in a reply brief, which will be filed with the Court on or before April 5, 2012.

[5] *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 585 (S.D.N.Y. 2008); *see also In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695, 2007 WL 4115808, at *2 (S.D.N.Y. Nov. 7, 2007) (same); *In re Giant Interactive Grp., Inc. Sec. Litig.*, No. 07 Civ. 10588 (PAE), 2011 WL 5244707, at *10 (S.D.N.Y. Nov. 2, 2011) (an award of appropriate attorneys' fees should "provid[e] lawyers with sufficient incentive to bring common fund cases that serve the public interest" and "attract well-qualified plaintiffs' counsel

private securities actions, such as the instant Action, are "an essential supplement to criminal prosecutions and civil enforcement actions" brought by the SEC.[6]

B. The Court Should Award A Reasonable Percentage Of The Common Fund

Lead Counsel respectfully submit that this Court should award a fee based on a percentage of the common funds obtained for the Settlement Classes. While Lead Counsel's requested fee is also reasonable when cross-checked with Plaintiffs' Counsel's lodestar, *see* § I.D.1(b) below, the Second Circuit has expressly approved the "percentage-of-the-fund" method for awards of fees in common fund cases and has recognized that "the lodestar method proved vexing" and had resulted in "an inevitable waste of judicial resources." *Goldberger*, 209 F.3d at 48-49; *see also Savoie*, 166 F.3d at 460 (the "percentage-of-the-fund method has been deemed a solution to certain problems that may arise when the lodestar method is used in common fund cases"); *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (stating that the percentage method "directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation" and noting that the "trend in this Circuit is toward the percentage method." (citation omitted)).[7]

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who are able to take a case to trial, and who defendants understand are able and willing to do so" (citations omitted)).

[6] *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313, 127 S. Ct. 2499, 2504 (2007); *accord Bateman Eichler, Hill Richards, Inc., v. Berner*, 472 U.S. 299, 310, 105 S. Ct. 2622, 2628 (1985) (private securities actions provide "'a most effective weapon in the enforcement' of the securities laws and are 'a necessary supplemental to [SEC] action.'" (quoting *JI Case Co. v. Borak*, 377 U.S. 426, 432, 84 S. Ct. 1555, 1560 (1964))).

[7] All Courts of Appeal to consider the matter have approved of the percentage method, with two circuits requiring its use in common fund cases. *See In re Thirteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 305-07 (1st Cir. 1995); *In re AT&T Corp., Sec. Litig.*, 455 F.3d 160, 164 (3rd Cir. 2006); *Union Assets Mgmt. Holding A.G. v. Dell, Inc.*, Nos. 08-51163, 10-50688, 2012 WL 375249, at *6 (5th Cir. Feb. 7, 2012); *Rawlings v. Prudential-Bache Props. Inc.*, 9 F.3d 513, 515-17 (6th Cir. 1993); *Harman v. Lyphomed, Inc.*, 945 F.2d 969, 975 (7th Cir. 1991); *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *Gottlieb v. Barry*, 43 F.3d 474, 487 (10th Cir. 1994); *Camden I Condo. Ass'n v. Dunkle*, 946 F.2d 768,

The text of the PSLRA itself also supports awarding attorneys' fees in securities cases using the percentage method, as it provides that "[t]otal attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a *reasonable percentage* of the amount" recovered for the class. 15 U.S.C. § 78u-4(a)(6) (emphasis added); 15 U.S.C. § 77z-1(a)(6) (emphasis added). Several courts have concluded that, in using this language, Congress expressed a preference for the percentage method when determining attorneys' fee in securities class actions. *See, e.g., Telik*, 576 F. Supp. 2d at 586; *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 355 (S.D.N.Y. 2005); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 370 (S.D.N.Y. 2002).

C. The Requested Fee Is Well Within The Range Of What Courts Have Found To Be Fair And Reasonable Under The Percentage Method

Lead Counsel's fee request is endorsed by all five Lead Plaintiffs, and at 16% of the respective Settlement Amounts, it is well within the range of percentage fees awarded within the Southern District of New York and elsewhere within the Second Circuit, including in other securities class actions where plaintiffs' counsel have secured recoveries for investors in the multi-hundred million dollar range. *See, e.g.*, *In re Adelphia Commc'ns Corp. Sec. & Derivative Litig.*, No. 03 MDL 1529 LMM, 2006 WL 3378705, at *3 (S.D.N.Y. Nov. 16, 2006), *aff'd*, 272 Fed. Appx. 9 (2d Cir. 2008) (awarding 21.4% fee on recovery of $455 million); *Ohio Pub. Emp. Ret. Sys. v. Freddie Mac*, No. 03 Civ. 4261, 2006 U.S. Dist. LEXIS 98380, at *4 (S.D.N.Y. Oct. 26, 2006) (awarding 20% fee on recovery of $410 million); *In re Oxford Health Plans, Inc., Sec.*

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774 (11th Cir. 1991); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1269-71 (D.C. Cir. 1993). The Eleventh and District of Columbia Circuits require the use of the percentage method in common fund cases. *See Camden*, 946 F.2d at 774; *Swedish Hosp.*, 1 F.3d at 1271. The Supreme Court has also indicated that attorneys' fees in common fund cases should be generally based on a percentage of the fund. *See Blum v. Stenson*, 465 U.S. 886, 900 n.16, 104 S. Ct. 1541, 1550 n.16 (1984) ("under the 'common fund doctrine,' … a reasonable fee is based on a percentage of the fund bestowed to the class").

Litig., MDL No. 1222, 2003 U.S. Dist. LEXIS 26795, at *13 (S.D.N.Y. June 12, 2003) (awarding 28% fee on recovery of $300 million); *In re Comverse Tech., Inc. Sec. Litig.*, No. 06 Civ. 1825, 2010 WL 2653354, at *4 (E.D.N.Y. June 24, 2010) (awarding 25% on recovery of $225 million); *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 469 (S.D.N.Y. 2004) (awarding 18.7% fee on recovery of $205 million);[8] *In re: Satyam Computer Servs. Ltd. Sec. Litig.*, No. 09-MD-2027-BSJ, slip op. at 2 (S.D.N.Y. Sept. 13, 2011) (awarding 17% fee on combined recovery of $150.5 million); *In re Deutsche Telekom AG Sec. Litig.*, No. 00 Civ. 9475 (NRB), 2005 U.S. Dist. LEXIS 45798, at *12-13 (S.D.N.Y. June 9, 2005) (awarding 28% fee on recovery of $120 million).

Attached to the Joint Declaration as Exhibit 8 is a table listing approved fees from all 83 securities class action cases that have settled for amounts between $100 million and $1 billion since the passage of the PSLRA in 1995, that Lead Counsel have identified through extensive research. The following chart uses the information from Exhibit 8 to present various ranges of settlement amounts in securities class actions, the average (mean) fee awarded in each range, and the number of settlements included within each range:

[8] Subsequent settlements in the *Global Crossing* securities litigation resulted in a total aggregate settlement amount of $408 million from which total attorneys' fees of 17.8% were awarded. *See In re Global Crossing Sec. Litig.*, No. 02 Civ. 910 (GEL), 2005 WL 1668532, at *5 (S.D.N.Y. July 12, 2005); Dkt. No. 619 (Aug. 8, 2005); Dkt. No. 680 (Mar. 2, 2006); Dkt. No. 722 (Oct. 30, 2006); and Dkt. No. 773 (Oct. 1, 2007).

Settlement Range	Average (Mean) Fee Award	Number of Cases
$100m - $1b	18.38%	83
$200m - $900m	16.27%	38
$300m - $800m	16.03%	25
$400m - $700m	15.33%	16
$500m - $600m	21.60%	4

The information in this chart demonstrates that, in addition to being independently supported based upon the facts and circumstances of this case, the requested fee of 16% falls squarely within the range of fee awards granted in other significant securities class action recoveries.

D. The Requested Fee Is Strongly Supported By The *Goldberger* Factors

In *Goldberger*, the Second Circuit set forth the following criteria for courts in this Circuit to consider when analyzing fee applications in a common fund case: (1) the magnitude and complexities of the action; (2) the litigation risks involved; (3) the quality of class counsel's representation; (4) the size of the requested fee in relation to the recoveries obtained; (5) the time and labor expended by class counsel; and (6) public policy considerations. 209 F.3d at 50.

Consideration of the foregoing *Goldberger* factors further demonstrates the reasonableness of Lead Counsel's present fee request.

1. The Time And Labor Expended By Plaintiffs' Counsel Support The Requested Fee

a) The Labor Dedicated By Plaintiffs' Counsel Supports The Fee Request

The recoveries obtained for the Settlement Classes would not have been possible without the efforts of Lead Counsel, who devoted nearly four years to prosecuting this Action on a purely contingent basis. As detailed in the Joint Declaration, Lead Counsel and Plaintiffs' Counsel have expended a tremendous amount of effort and resources in investigating, filing, prosecuting, and resolving this Action against the Settling Defendants. Among other things, Lead Counsel and Plaintiffs' Counsel:

- identified potential claims available to purchasers of Lehman securities, including common stock, preferred stock, notes and exchange-traded call options (Joint Decl. ¶12);
- conducted a substantial factual investigation, including contacts with and interviews of hundreds of prospective witnesses with relevant knowledge concerning the claims asserted and a comprehensive review of publicly available information regarding Lehman (pre- and post-bankruptcy) and the events and circumstances at issue in the Action (Joint Decl. ¶¶12-13, 16);
- reviewed all of the offering materials for each of the senior unsecured and subordinated notes at issue in the Action and for the preferred stock for actionable misstatements and omissions (Joint Decl. ¶12);
- retained and consulted extensively with several experts and consultants, including experts and consultants in the fields of economics, finance, valuation, accounting principles, forensic economics, accounting and financial analysis, auditing and reporting standards (Joint Decl. ¶¶16, 52-53);
- retained and worked with experienced and well-regarded bankruptcy counsel to protect the interest of Lead Plaintiffs and the putative classes in the Lehman bankruptcy proceedings, and to assist in the review of filings made in the Bankruptcy Court (Joint Decl. ¶¶16, 41-42);
- met with and provided assistance to the Examiner in connection with the Examiner's investigation into Lehman's bankruptcy (Joint Decl. ¶30);
- thoroughly reviewed the Examiner's Report and its supporting documentation, including myriad internal Lehman documents that were produced to the Examiner by Lehman, E&Y and others (Joint Decl. ¶33);
- drafted three detailed consolidated complaints (Joint Decl. ¶¶17, 22-23, 34);

- researched and prepared comprehensive briefs in opposition to two rounds of motions to dismiss filed by separate groups of defendants (Joint Decl. ¶¶26-27, 37), and prepared for and presented oral argument on the motions to dismiss the Second Amended Consolidated Class Action Complaint (*Id.* ¶29);
- established and maintained a comprehensive litigation website to provide information, including submissions to the Court and Court rulings, to class members, the parties to the Action and other interested non-parties (Joint Decl. ¶¶49-51);
- successfully negotiated the D&O Settlement, under the auspices of Judge Daniel Weinstein (Ret.) of JAMS ("Judge Weinstein"), from limited, wasting insurance proceeds, including multiple telephonic and in-person mediation sessions and a formal review of the Officer Defendants' liquid net worth – and which culminated in the negotiation, drafting and execution (on October 14, 2011) of the D&O Stipulation and related documents (Joint Decl. ¶¶56-61);
- reviewed and analyzed approximately 10 million pages of internal Lehman and underwriter documents to confirm that the terms of the Underwriter Settlement were fair, reasonable and adequate (Joint Decl. ¶48);
- worked diligently to maintain order and coordination among the many Lehman-related cases that were transferred to this Court's docket; prepared nine separate confidential periodic reports regarding the status of the three consolidated class actions (this Action, the MBS Action, and the ERISA Action) in accordance with Pretrial Order No. 1 (Joint Decl. ¶43);
- successfully negotiated settlements with two sets of settling underwriter defendants, which culminated in the negotiation, drafting and execution (on December 2, 2011 and December 9, 2011) of the Underwriter Stipulations and related documents (Joint Decl. ¶¶73-76); and
- worked closely with Lead Plaintiffs' damages consultant to develop proposed plans for allocating the D&O and Underwriter Settlement Amounts to the respective Settlement Classes (Joint Decl. ¶53).[9]

The significant amount of time and effort devoted to this Action by Lead Counsel and the other Plaintiffs' Counsel, together with Lead Counsel's efficient and effective management of the litigation, confirm that the fee request here is reasonable.

[9] A more fulsome description of the efforts of Plaintiffs' Counsel is set forth in the Joint Declaration. The Joint Declaration also includes as exhibits the separate fee and expense declarations submitted by Plaintiffs' Counsel, which contain details concerning the amount of time expended and expenses incurred by each firm in prosecuting the Action.

b) Application Of A Lodestar Cross-Check Supports Lead Counsel's Fee Request

The fee requested by Lead Counsel is not only fair and reasonable under the percentage approach, but a lodestar cross-check confirms the reasonableness of the fee. The Second Circuit permits courts to utilize a lodestar cross-check to ensure the reasonableness of a fee awarded under the percentage-of-the-fund method. *See Goldberger*, 209 F.3d at 50. The "lodestar" is calculated by multiplying the number of hours expended on the litigation by each particular attorney or paraprofessional by the timekeeper's current hourly rate, and then totaling the amounts to arrive at a "lodestar" for all timekeepers.[10] In cases of this nature, fees representing multipliers above the lodestar are typically and properly awarded to reflect the contingency fee risk and other relevant factors. *See, e.g.*, *In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, No. 02 Civ. 3400, 2010 WL 4537550, at *26 (S.D.N.Y. Nov. 8, 2010) ("Under the lodestar method, a positive multiplier is typically applied to the lodestar in recognition of the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors."); *Comverse*, 2010 WL 2653354, at *5 ("Where . . . counsel has litigated a complex case under a contingency fee arrangement, they are entitled to a fee in excess of the lodestar."); *In re Cardinal Health Inc. Sec. Litig*., 528 F. Supp. 2d 752, 761 (S.D. Ohio 2007) ("the Court rewards [] lead counsel that takes on more risk, demonstrates superior quality, or achieves a greater settlement with a larger lodestar multiplier").

[10] Both the Supreme Court and courts in this Circuit have long approved the use of current hourly rates to calculate the base lodestar figure as a means of compensating for the delay in receiving payment that is inherent in class actions, inflationary losses, and the loss of access to legal and monetary capital that could otherwise have been employed had class counsel been paid on a current basis during the pendency of the litigation. *See In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig*., 724 F. Supp. 160, 163 (S.D.N.Y. 1989); *Veeco*, 2007 WL 4115808, at *9; *Missouri v. Jenkins*, 491 U.S. 274, 284, 109 S. Ct. 2463, 2469 (1989).

Lead Counsel prosecuted this Action on an entirely contingent basis, fully committing their resources to effectively prosecute the matter, and litigating the Action for nearly four years without compensation or any guarantee of success.[11] Below, Lead Counsel's lodestar is presented by certain phases in the litigation, together with a summary description of the tasks performed during each such phase:

> **Phase 1 -** The commencement of the Action, investigation and prosecution before Lehman's bankruptcy (commencement of the Action through and including September 14, 2008);
>
> **Phase 2 -** Further investigation; preparing the Amended Complaint; consolidation of related actions and the leadership structure; working with bankruptcy counsel to monitor proceedings and safeguard the interests of the Settlement Classes (September 15, 2008 through and including January 8, 2009);
>
> **Phase 3 -** Additional investigation and cooperation with the Examiner; preparing the Second Amended Complaint; opposing Defendants' Motions to Dismiss, including legal research and oral argument; continuing to analyze bankruptcy proceedings and work with experts (January 9, 2009 through and including March 11, 2010);
>
> **Phase 4 -** Additional investigation; preparing mediation statements, damage analyses and demands, preparation for and attendance at initial rounds of mediation; analysis of the Examiner's Report and supporting material; preparing the Third Amended Complaint; opposing Defendants' Motions to Dismiss and analysis of order on motions to dismiss (March 12, 2010 through and including July 27, 2011); and
>
> **Phase 5 -** Pursuit of discovery and case management schedule; subsequent rounds of mediation; negotiating the Settlements; obtaining assurance on the liquid net worth of Lehman's former officers; confirmatory discovery for the Underwriter Settlement; preparation of plans of allocations; securing the recoveries; and finalizing the Settlements and related settlement papers (July 28, 2011 through and including February 15, 2012).

Lead Counsel's time and lodestar for each phase is reflected in the following chart:

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[11] The lodestar does not include the time incurred by Lead Counsel that was solely related to their ongoing litigation against the non-settling defendants or the time incurred in presenting their present Fee and Expense Application to the Court, including the drafting of this memorandum.

Phase	Hours	Lodestar
1	5,314	$2,148,750
2	4,340	$1,938,998
3	6,985	$3,187,534
4	6,422	$3,181,308
5	41,725	$16,081,605

Moreover, Plaintiffs' Counsel other than Lead Counsel collectively devoted over 27,000 additional hours to performing work at the direction of Lead Counsel, for an aggregate lodestar for all Plaintiffs' Counsel of $37,819,510. *See* Joint Decl., Ex. 7. In accordance with paragraph 3.4 of Pretrial Order No. 1, Plaintiffs' Counsel submit only time for actions undertaken on behalf of any plaintiff at the direction or with the permission of the Chair of the Executive Committee or the Executive Committee.[12] Joint Decl. ¶113.

Lead Counsel believe that the extensive work and lodestar further support the requested fee. *See infra* § I.D.1(b). Based on a 16% fee from the D&O Settlement Amount (*i.e.*, $14.4 million) and a 16% fee from the Underwriter Settlement Amount (*i.e.*, $68,194,880), Plaintiffs' Counsel's total lodestar yields a cross-check multiplier of 2.18.[13] Like the requested fee award,

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[12] Firms serving as Plaintiffs' Counsel for named plaintiffs, other than Lead Plaintiffs, incurred additional time from inception of the Action through the date of Pretrial Order No. 1; and such time is not included in the lodestar calculation for this application.

[13] *See* Joint Decl. ¶113. Moreover, it should be emphasized that the lodestar cross-check is exactly that – a cross-check that is not intended to supplant the percentage-based method. For example, as the court expressly noted in *In re Rite Aid Securities Litigation*, 146 F. Supp. 2d 706, 736 n.44 (E.D. Pa. 2001), if higher multipliers are not allowed in cases involving large dollar recoveries, then the lodestar approach

the 2.18 lodestar multiplier here also falls well within the range of multipliers awarded in other complex cases, including other securities class actions. Simply stated, in complex contingent litigation, lodestar multipliers well in excess of the 2.18 being sought here are commonly awarded in this Circuit. *See Wal-Mart*, 396 F.3d at 123 (upholding multiplier of 3.5 as reasonable on appeal); *Cornwell v. Credit Suisse Grp.*, No. 08 Civ. 03758 (VM), slip op. at 4 (S.D.N.Y. July 18, 2011) (awarding fee representing a multiplier of 4.7); *Comverse*, 2010 WL 2653354, at *5 (awarding fee representing a 2.8 multiplier); *Telik*, 576 F. Supp. 2d at 590 ("In contingent litigation, lodestar multipliers of over 4 are routinely awarded by courts, including this Court."); *In re Bisys Sec. Litig.*, No. 04 Civ. 3840 (JSR), 2007 WL 2049726, at *3 (S.D.N.Y. July 16, 2007) (awarding fee representing 2.99 multiplier and finding that the multiplier "falls well within the parameters set in this district and elsewhere"); *Maley*, 186 F. Supp. 2d at 369 (awarding fee equal to a 4.65 multiplier as "well within the range awarded by courts in this Circuit and courts throughout the country"); *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 489 (S.D.N.Y. 1998) (awarding 3.97 multiplier, and finding fee awards of 3 to 4.5 to be "common").

Thus, for all of the foregoing reasons, the resulting multiplier falls well within the range of multipliers approved by this Circuit in similar complex class actions and further supports approval of Lead Counsel's requested fee.

2. The Action's Magnitude And Complexity Support The Requested Fee

Courts have long recognized that securities class actions are notoriously complex and difficult to prove. *See*, *e.g.*, *Fogarazzo v. Lehman Bros., Inc.*, No. 03 Civ. 5194 (SAS), 2011 WL

"begins to dominate and supersede the percentage of the recovery formula," eroding the many advantages of the percentage-of-the fund method.

671745, at *3 (S.D.N.Y. Feb. 23, 2011) ("securities actions are highly complex"); *Flag Telecom*, 2010 WL 4537550, at *27 (courts have long recognized that securities class litigation is "notably difficult and notoriously uncertain" (citation omitted)). Not only was this Action made more complicated by Lehman's historic bankruptcy, but the Action involved more than one hundred securities offerings and more than 60 different Defendants and raised myriad novel and complex issues described in the Joint Declaration and summarized below. All of these factors support the requested fee.

If the Settlements (which required extensive negotiations, including multiple mediation sessions with the assistance of an experience mediator) had not been reached, continued litigation of the Action against the Settling Defendants would likely have involved, at a minimum: voluminous, prolonged, and expensive discovery, including expert discovery that would have been critical to the case; a contested class certification motion; contested motions for summary judgment; a complex trial that would certainly have required substantial factual and expert testimony; and lengthy appeals of a variety of issues. In short, given the sheer magnitude of this Action and that it was especially complex (even when compared with other securities class actions), the requested fee is fair and reasonable and warrants approval by the Court.

a) The Risks Of The Litigation Support The Requested Fee

While Lead Plaintiffs and Lead Counsel believe that the claims asserted against the Settling Defendants have merit, they also recognize that they faced, and absent the Settlements would continue to face, considerable risks in prosecuting this Action against the Settling Defendants. *Telik*, 576 F. Supp. 2d at 592 ("Courts have repeatedly recognized that 'the risk of the litigation' is a pivotal factor in assessing the appropriate attorneys' fees to award to plaintiffs' counsel in class actions" (citations omitted)). In this respect, from the outset of the case, which was filed months before Lehman had filed for bankruptcy, Defendants blamed the economy as a

whole, and in particular market disruptions in the financial sector, for falling security prices. As a result, it was clear from the inception of this case that causation was going to play a central role in any potential recovery or successful trial.

Further, after commencement of the Action, Lehman filed for bankruptcy, eliminating a viable source of recovery and increasing exponentially the complexity and risk of the litigation. Likewise, after Lead Counsel had investigated and prosecuted the case for almost two years, the Examiner issued his report into potential causes of action that might be brought by the Lehman estate itself. The purpose of the examination, however, was not to identify violations of the federal securities laws in order to assist Lehman investors. After issuance of the Examiner's Report, Defendants attempted to use his findings to contend that the Examiner had actually exonerated certain of them from wrongdoing in this Action. Joint Decl. ¶35. Still other defendants contended that, because the Examiner's Report identified a new theory of wrongdoing (Repo 105) that was not revealed until almost a year and a half after Lehman's bankruptcy filing, the Repo 105 transactions and related alleged misstatements and omissions could not possibly have caused the losses in the Action. *Id.* ¶35. It bears repeating that, even following publication of the Examiner's Report, government regulators still have not commenced any claims against any of the Settling Defendants.

Thus, after the issuance of the Examiner's Report, substantial risks continued to pervade the litigation, including loss causation arguments, ability-to-pay arguments, due diligence defenses and claimed reliance on E&Y. Moreover, substantial funding risk existed and continued to exist even after the parties reached agreements to settle the Action. For example, the D&O Settlement was conditioned on the Bankruptcy Court entering a comfort order approving the use of insurance proceeds to fund the settlement, but the request drew an objection

from parties in a related matter to the use of the proceeds for this purpose. *Id.* ¶61. The financial crisis also had a material impact on the ability to pay of certain of the Settling Underwriter Defendants. Thus, the risk existed that certain Underwriter Defendants would not be able to fund in accordance with the terms they had previously agreed to, as evidenced by the request by a Settling Underwriter Defendant for an extension to place funds into escrow. *See id.* ¶5 n.2.

b) Risks Of Establishing Liability And Damages

(1) Risks Of Establishing Liability And Damages With Respect To The D&O Defendants

As set forth in the Joint Declaration and the Settlement Memorandum, Lead Plaintiffs faced significant risks in establishing the D&O Defendants' liability. Among other things, the D&O Defendants contended that their due diligence and expert-reliance defenses precluded liability with respect to the Securities Act claims in this Action. Causation and damages issues also posed risks to the ultimate success of Lead Plaintiffs' claims.

With regard to their due diligence defense, the D&O Defendants argued that Lehman's public filings and the Examiner's Report demonstrated that the Director Defendants conducted a "reasonable investigation" and had a "reasonable ground to believe" that the Offering Materials were true and void of any materially misleading statements or omissions. 15 U.S.C. § 77k(b)(3)(A).

Similarly, the D&O Defendants relied upon the findings in the Examiner's Report[14] to argue that they "had no reasonable ground to believe and did not believe" that the statements in the expertized portion of the registration statement were untrue or contained material omissions. 15 U.S.C. § 77k(b)(3)(C). According to the D&O Defendants, Lehman's public auditor, E&Y,

[14] *See, e.g.*, Examiner's Report at 56, 195, 945.

knew about the Repo 105 transactions, issued an unqualified audit opinion certifying that financial statements included in Lehman's 2007 Form 10-K were prepared in accordance with Generally Accepted Accounting Principles ("GAAP") and fairly presented Lehman's financial condition in all material respects, and stated that it was not aware of any material modifications that should be made to Lehman's quarterly reports for them to conform with GAAP requirements. Joint Decl. ¶72(a).

With respect to proving causation and damages, the D&O Defendants contended that various defenses would substantially reduce or eliminate altogether the amount of damages for which they were liable. Under Section 11(e) of the Securities Act, damages may be reduced or eliminated if a defendant proves that a portion or all of the statutory damages are attributable to causes other than the alleged misstatements or omissions. Throughout the litigation, the D&O Defendants asserted – and were expected to continue to assert through summary judgment and trial – that causes other than the alleged untrue statements and omissions were to blame for the decline in value of Lehman's securities. While Lead Plaintiffs have strong responses to these causation defenses, Lead Counsel appreciate that a jury could have sided with Defendants if the case proceeded to trial. Joint Decl. ¶72; *see, e.g.*, *In re Indep. Energy Holdings PLC Sec. Litig.*, No. 00 Civ. 6689 (SAS), 2003 WL 22244676, at *3 (S.D.N.Y. Sept. 29, 2003) (noting difficulty of proving damages in securities actions); *Veeco*, 2007 WL 4115809, at *10 ("The jury's verdict with respect to damages would depend on its reaction to the complex testimony of experts, a reaction which at best is uncertain.").

Moreover, as detailed throughout the Joint Declaration and the Settlement Memorandum, there was a substantial, tangible risk of obtaining less (or even nothing at all) for the D&O Settlement Class had a settlement not been reached. At the time the D&O Settlement was

reached, Lehman was no longer a viable defendant due to its bankruptcy filing, and only limited, wasting insurance proceeds were available to fund a future judgment against the D&O Defendants. *See, e.g.*, *Global Crossing*, 225 F.R.D. at 460 ("The main settlement funds available to the individuals are the insurance proceeds, which [] would be largely consumed by defense costs if this litigation were to continue."). The available insurance policies covering this Action were already depleted significantly by the time Lead Plaintiffs reached agreement with the D&O Defendants. Joint Decl. ¶¶58-59.

Lead Counsel retained a highly-respected neutral, Judge John S. Martin, Jr. (Ret.) of Martin & Obermaier, LLC, to perform a confidential review of the Officer Defendants' combined liquid. Joint Decl. ¶70. After a detailed review, Judge Martin determined that the Officer Defendants' combined liquid net worth was substantially less than $100 million, thereby assuring Lead Counsel that recovering $90 million from insurance now, which would otherwise be depleted by defense and settlement costs in related actions, was the best option to maximize the recovery for the D&O Settlement Class considering factors such as the certainty and timing of the recovery, the time-value of money, and the ability to collect a future judgment in the event of success (*id.* ¶71). *See In re Am. Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 427-28 (S.D.N.Y. 2001) ("to the extent that the Individual Defendants had the ability to contribute to any judgment obtained, such contribution likely would be insufficient to wholly satisfy such judgment").

(2) Risks Of Establishing Liability And Damages With Respect To The Underwriter Defendants

Lead Plaintiffs also faced significant risks to establishing the Underwriter Defendants' liability. Throughout the Action, the Underwriter Defendants vigorously asserted that there were no material misstatements or actionable omissions in the offering documents. Even assuming

that Lead Plaintiffs established the existence of an untrue statement or material omission in the offering documents, the Underwriter Defendants asserted due diligence defenses with respect to the twelve offerings by Lehman between June 2007 and May 2008. In this regard, the Underwriter Defendants relied on Lehman's position as the senior underwriter and the audit opinions and quarterly review reports of E&Y. Joint Decl. ¶86.

Moreover, as noted above, damages under Section 11(e) of the Securities Act may be reduced or eliminated if a defendant proves that a portion or all of the statutory damages are attributable to causes other than the misstatements or omissions. The Underwriter Defendants also asserted that the value of Lehman's securities declined for reasons other than the alleged untrue statements and omissions. Additionally, according to 15 U.S.C. § 77k (e), "In no event shall any underwriter . . . be liable in any suit or as a consequence of suits authorized under [Section 11(a)] for damages in excess of the total price at which the securities underwritten by him and distributed to the public were offered to the public." Accordingly, the Underwriter Defendants contended throughout that any liability would be limited to the amounts that each underwrote. Joint Decl. ¶84.

In sum, the only certainty regarding damages with respect to both the D&O and Underwriter Defendants was that the cause of the losses would be vigorously contested, and the risk of recovering nothing was very real even if Lead Plaintiffs were otherwise successful in establishing liability.

c) General Litigation Risks And The Fully Contingent Nature Of Plaintiffs' Counsel's Retention

In evaluating the contingent litigation risk, the Third Circuit Task Force on Selection of Class Counsel has specifically recognized that:

> It is plaintiffs' counsel who work to obtain whatever recovery any member of the class who has not opted out of the litigation will receive. The fact that there will

> be no payment if there is no settlement or trial victory means that there is greater risk for plaintiffs' counsel in these class action cases than in cases in which an hourly rate or flat fee is guaranteed. The *quid pro quo* for the risk, and for the delay in receiving any compensation in the best of circumstances, is some kind of risk premium if the case is successful.

Report, 74 Temp. L. Rev. 689, 691–92 (Winter 2001) (footnote omitted); *see also Flag Telecom*, 2010 WL 4537550, at *27 ("Courts in the Second Circuit have recognized that the risk associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee award."); *In re Warner Commc'ns Sec. Litig*., 618 F. Supp. 735, 747-49 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 35 (2d Cir. 1986) (citing cases).

The risk of no recovery in complex cases of this type is real, and it is heightened when plaintiffs' counsel press to achieve the very best result for those they represent. Lead Counsel know from experience that despite the most vigorous and skillful efforts, a firm's success in contingent litigation such as this is never assured, and there are many class actions in which plaintiffs' counsel expended tens of thousands of hours and received *nothing* for their efforts. *See, e.g.*, Joint Decl. ¶122.

Unlike counsel for Defendants, who are paid substantial hourly rates and reimbursed for their expenses on a regular basis, Plaintiffs' Counsel have not been compensated for any of their time (over 91,000 hours) with a lodestar value of over $37.8 million, or reimbursed for any of the more than $1.6 million in litigation expenses incurred over the nearly four years that have passed since the Action was commenced. Plaintiffs' Counsel also faced the risk that they might not be compensated at all for their time had they been unsuccessful in this Action. There is simply no truth to the argument that a large fee is guaranteed by simply commencing a securities class action. Because the fee to be awarded in this matter is entirely contingent, the only certainties from the outset were that there would be no fee without a successful result, and that a successful result, if any, could be achieved only after lengthy and difficult litigation. Accordingly, Lead

Counsel respectfully submit that the fully contingent nature of their retention in this high-risk action weighs strongly in favor of the requested fee and should be given serious consideration by the Court.

d) The Quality Of Plaintiffs' Counsel's Representation Supports The Requested Fee

The quality of representation is another important factor that supports the reasonableness of the requested fee. Lead Counsel are highly experienced in prosecuting securities class actions, and they worked diligently and efficiently to prosecute the Action against the Settling Defendants. Lead Counsel respectfully submit that their efforts in the litigation, together with their experience and track record in complex securities class action litigation (as set forth in their respective firm resumes (*see* Exhibits 7A-4 and 7B-3 to the Joint Declaration)), provided the necessary leverage to negotiate the outstanding recoveries obtained for the Settlement Classes. *See Teachers' Ret. Sys. v. A.C.L.N., Ltd.*, No. 01-CV-11814 (MP), 2004 WL 1087261, at *6 (S.D.N.Y. May 14, 2004) (the skill and prior experience of counsel in the field is relevant to determining fair compensation). Both Bernstein Litowitz and Kessler Topaz are consistently ranked among the top plaintiffs' firms in the country. Further, each firm has taken complex securities fraud class action cases to trial and each is among the few firms to have done so. The additional firms comprising Plaintiffs' Counsel also have substantial expertise in prosecuting complex litigation.[15]

The quality of the work performed by Lead Counsel in obtaining the Settlements should also be evaluated in light of the quality of opposing counsel. *See, e.g.*, *In re Marsh ERISA Litig.*,

[15] In order to ease the burden on the Court (and the environment), Lead Counsel have requested that the additional Plaintiffs' Counsel exclude their firm biography from their individual firm declarations and instead make them available upon request of the Court.

265 F.R.D. 128, 148 (S.D.N.Y. 2010) ("The high quality of defense counsel opposing Plaintiffs' efforts further proves the caliber of representation that was necessary to achieve the Settlement"); *Adelphia*, 2006 WL 3378705, at *3 ("The fact that the settlements were obtained from defendants represented by 'formidable opposing counsel from some of the best defense firms in the country' also evidences the high quality of lead counsel's work" (citation omitted)). Here, the Settling Defendants were represented by some of the country's most prestigious law firms and experienced securities litigators, all of whom spared no effort or expense in the defense of their clients. Joint Decl. ¶116. That Lead Counsel were able to negotiate the Settlements in the face of such formidable (and well-financed) opposition is a testament to the skill and dedication that Lead Counsel exhibited throughout every phase of this litigation.

3. The Fee Request Is Fair And Reasonable In Relation To The Settlement Amounts

Courts have interpreted this factor as requiring review of the fee requested in terms of the percentage it represents of the total recovery. "When determining whether a fee request is reasonable in relation to a settlement amount, 'the court compares the fee application to fees awarded in similar securities class-action settlements of comparable value.'" *Comverse*, 2010 WL 2653354, at *3 (citation omitted). As discussed in detail above, *see supra* § I.C., the requested 16% fee falls well within the "range of reasonableness" based on fees awarded by courts across the nation in other large securities cases settling for amounts in various ranges.

4. Public Policy Considerations Support The Requested Fee

Courts in the Second Circuit have held that "[p]ublic policy concerns favor the award of reasonable attorneys' fees in class action securities litigation." *Flag Telecom*, 2010 WL 4537550, at *29 (citation omitted). Public policy supports granting attorneys' fees that are sufficient to encourage plaintiffs' counsel to bring securities class actions that supplement the

efforts of the SEC and other governmental agencies and help deter future wrongdoing. *See Maley*, 186 F. Supp. 2d at 373 ("In considering an award of attorney's fees, the public policy of vigorously enforcing the federal securities laws must be considered.").

Here, the Settlements were achieved despite the absence of any filed charges or claims (much less convictions or civil recoveries) by the Department of Justice, the SEC or any other governmental agency for violations of any federal or state securities laws against any of the Settling Defendants arising out of the events at issue in this Action. Thus, Lead Counsel's willingness to assume the risks of this litigation resulted in the *only* recovery for the Settlement Classes from the Settling Defendants. Joint Decl. ¶126. *See In re Priceline.com, Inc. Sec. Litig.*, No. 00 Civ. 1884 (AVC), 2007 U.S. Dist. LEXIS 52538, at *17 (D. Conn. July 20, 2007) ("the award of the percentage requested here will encourage enforcement of the securities laws and support attorneys' decisions to take these types of cases on a contingent fee basis"). Thus, public policy favors granting Lead Counsel's request for fees and expenses here.

5. The Approval Of Lead Plaintiffs And The Reaction Of The Settlement Classes To Date Support The Requested Fee

Each of the five Lead Plaintiffs was involved in, and informed about, the prosecution of the Action against the Settling Defendants, and each has approved the fee request. *See* Declarations submitted on behalf of each of the Lead Plaintiffs attached as Exhibits 4A through 4E to the Joint Declaration. In enacting the PSLRA, Congress sought to encourage institutional investors to play an active role in prosecuting cases under the securities laws, *see In re Lernout & Hauspie Sec. Litig.*, 138 F. Supp. 2d 39, 43 (D. Mass. 2001) (citing H.R. Conf. Rep. No. 104–369 at 32, 1995 WL 709276 (1995) ("H.R. Conf. Rep.")), and indicated its belief that increasing the role of such sophisticated investors would "ultimately benefit shareholders and assist courts by improving the quality of representation in securities class actions." H.R. Conf. Rep. at 28.

Each of the five Lead Plaintiffs here is precisely the kind of large and sophisticated institutional investor that Congress wanted to supervise this type of litigation, especially as each has had direct involvement in the litigation from its commencement, including in the negotiations leading to each of the Settlements. Accordingly, Lead Plaintiffs' unanimous endorsement of Lead Counsel's fee request with respect to both the D&O Settlement Amount and the Underwriter Settlement Amount further supports approval of the requested fee. *See, e.g., Veeco*, 2007 WL 4115808, at *8 ("public policy considerations support the award in this case because the Lead Plaintiff . . . – a large public pension fund – conscientiously supervised the work of lead counsel and has approved the fee request"); *In re Lucent Techs., Inc. Sec. Litig.*, 327 F. Supp. 2d 426, 442 (D.N.J. 2004) ("[s]ignificantly, the Lead Plaintiffs, both of whom are institutional investors with great financial stakes in the outcome of the litigation, have reviewed and approved Lead Counsel's fees and expenses request" (approving attorneys' fee of 17% of $517 million recovery).

The reaction of the Settlement Classes to date also supports the requested fee. As noted above, as of March 6, 2012, the claims administrator has mailed over 800,000 copies of the Notices to potential members of the Settlement Classes, informing them, *inter alia*, that Lead Counsel intended to apply to the Court for an award of attorneys' fees not to exceed 17.5% from both the D&O Settlement Amount and the Underwriter Settlement Amount, plus expenses not to exceed $2.5 million (to be paid *pro rata* from the Settlement Amounts). While the time to object to Lead Counsel's fee request does not expire until March 22, 2012, to date, not a single objection to the amount of attorneys' fees and expenses set forth in the Notices has been received. Should any objections be received following this submission, Lead Counsel will address them in their reply papers.

II. PLAINTIFFS' COUNSEL'S EXPENSES ARE REASONABLE AND WERE NECESSARILY INCURRED TO ACHIEVE THE SETTLEMENTS

Lead Counsel also request reimbursement of litigation expenses that were reasonably and necessarily incurred by Plaintiffs' Counsel in their prosecution of the Action against the Settling Defendants. *See* Joint Decl. ¶¶131-39. "It is well accepted that counsel who create a common fund are entitled to the reimbursement of expenses that they advance to a class." *FLAG Telecom*, 2010 WL 4537550, at *30; *see also In re China Sunergy Sec. Litig.,* No. 07 Civ. 7895 (DAB), 2011 WL 1899715, at *6 (S.D.N.Y. May 13, 2011) (in a class action, attorneys may be compensated "for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they were 'incidental and necessary to the representation'" (citation omitted)).

As detailed in the Joint Declaration, Plaintiffs' Counsel incurred a total of $1,619,669.27 in litigation expenses on behalf of the Settlement Classes from the inception of the Action through February 29, 2012. Joint Decl. ¶131; *see also* individual declarations submitted on behalf of each additional Plaintiffs' Counsel firm attached to the Joint Declaration as Exhibits 7A through 7N. For the Court's convenience, a chart reflecting all expenses by category for which reimbursement is sought is attached to the Joint Declaration as Exhibit 9.

Reimbursement of these expenses is fair and reasonable. The expenses for which Lead Counsel seek reimbursement are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour.[16] These expenses include, among others, the costs of experts and consultants, online legal and factual research, developing and maintaining the electronic discovery platform that counsel used to search, review and analyze documents

[16] *See Global Crossing*, 225 F.R.D. at 468 ("The expenses incurred – which include investigative and expert witnesses, filing fees, service of process, travel, legal research and document production and review – are the type for which 'the paying, arms' length market' reimburses attorneys [and] [f]or this reason, they are properly chargeable to the Settlement fund." (citation omitted)).

produced from the Lehman estate, the Underwriter Defendants, and others during the course of the Action and confirmatory discovery, court fees, travel expenses, copying costs, facsimile charges, court reporting services, postage and delivery expenses, and Judge Weinstein's mediation fees. Joint Decl. ¶¶134-39.[17] The forgoing expense items are billed separately, and such charges are not duplicated in the respective firms' billing rates.

The Notices advised that Lead Counsel would be seeking reimbursement of litigation expenses in an amount not to exceed $2.5 million, to be paid *pro rata* from the D&O Settlement Amount and the Underwriter Settlement Amount. To date, no objections have been received regarding the maximum expense figure set forth in the Notices. In sum, Lead Counsel respectfully submit that the expenses sought here ($1,619,669.27) were all reasonably and necessarily incurred, are of the type customarily reimbursed in securities cases, and should be approved.

CONCLUSION

For the foregoing reasons, Lead Counsel respectfully request that the Court grant their request for attorneys' fees equal to 16% of the D&O Settlement Amount and 16% of the Underwriter Settlement Amount. Further, Lead Counsel respectfully request that the Court grant reimbursement of litigation expenses in the amount of $1,619,669.27.

Dated: March 8, 2012

Respectfully submitted,

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

/s/ David R. Stickney

[17] Lead Counsel maintained strict control over the litigation expenses. Indeed, many of the litigation expenses were paid out of a litigation fund created by Lead Counsel and maintained by Bernstein Litowitz (the "Litigation Fund"). A schedule setting forth the contributions to the Litigation Fund and the payments from the Litigation Fund by category is attached as Exhibit 7A-3 to the Joint Declaration.

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Co-Lead Counsel for Lead Plaintiffs and the Settlement Classes

Addendum Of Unpublished Authorities

Ohio Public Emps. Ret. Sys. v. Freddie Mac,
No. 03 Civ. 4261, 2006 U.S. Dist. LEXIS 98380 (S.D.N.Y. Oct. 26, 2006)

In re Oxford Health Plans, Inc., Sec. Litig.,
MDL No. 1222, 2003 U.S. Dist. LEXIS 26795 (S.D.N.Y. June 12, 2003)

In re Satyam Computer Servs. Ltd. Sec. Litig.,
No. 09-MDL-2027-BSJ, slip op. (S.D.N.Y. Sept. 13, 2011)

In re Deutsche Telekom AG Sec. Litig.,
No. 00 Civ. 9475 (NRB), 2005 U.S. Dist. LEXIS 45798 (S.D.N.Y. June 9, 2005)

Cornwell v. Credit Suisse Grp.,
No. 08 Civ. 03758 (VM), slip op. (S.D.N.Y. July 18, 2011)

In re Priceline.com, Inc. Sec. Litig.,
No. 00 Civ. 1884 (AVC), 2007 U.S. Dist. LEXIS 52538 (D. Conn. July 20, 2007)

Cited
As of: Mar 08, 2012

OHIO PUBLIC EMPLOYEES RETIREMENT SYSTEM and STATE TEACHERS RETIREMENT SYSTEM OF OHIO, on Behalf of Themselves and all Others Similarly Situated, Plaintiffs, v. FREDDIE MAC a.k.a. FEDERAL HOME LOAN MORTGAGE CORPORATION, LELAND C. BRENDSEL, VAUGHN A. CLARKE, DAVID W. GLENN, and GREGORY J. PARSEGHIAN, Defendants.

MDL-1584,Lead Case No. 03-CV-4261 (JES) (Securities Class Action)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

2006 U.S. Dist. LEXIS 98380

October 26, 2006, Decided
October 27, 2006, Filed

COUNSEL: [*1] For The Ohio Public Employees Retirement System, State Teachers Retirement System of Ohio, Lead Plaintiffs: Daniel Lawrence Berger, Darnley D. Stewart, Jeffrey N. Leibell, Max Wallace Berger, Wendy K. Erdley, LEAD ATTORNEYS, Bernstein, Litowitz, Berger & Grossmann, L.L.P., New York, NY; James R. Cummins, Melanie S. Corwin, Stanley M. Chesley, LEAD ATTORNEYS, Waite, Schneider, Bayless & Chesley Co., L.P.A., Cincinnati, OH; Jonathan M. Plasse, LEAD ATTORNEY, Labaton Sucharow, LLP, New York, NY; Joseph J. Braun, Richard S. Wayne, Thomas P. Glass, LEAD ATTORNEYS, Strauss & Troy, Cincinnati, OH; Michael R. Barrett, LEAD ATTORNEY, Barrett & Weber, L.P.A., Cincinnati, OH.

For Roger Sprigle, on behalf of themselves and all others similary situated, Jon Gross, on behalf of themselves and all others similarly situated, Tamar Zaks, on behalf of themselves and all others similarly situated, Plaintiffs: Joseph Harry Weiss, LEAD ATTORNEY, Weiss & Lurie, New York, NY.

For Federal Home Loan Mortgage Corporation, Defendant: C. William Phillips, LEAD ATTORNEY, Covington & Burling LLP(NYC), New York, NY.

For David Glenn, Defendant: Alexander R. Sussman, LEAD ATTORNEY, Fried, Frank, Harris, Shriver & Jacobson, [*2] New York, NY.

For Leland C. Brendsel, Defendant: Kenneth Earl Aldous, Jr, LEAD ATTORNEY, Proskauer Rose LLP (New York), New York, NY.

For Vaughn Clarke, Defendant: Melinda Marie Sarafa, LEAD ATTORNEY, Zuckerman, Spaeder, Goldstein, Taylor & Kolker, LLP (NYC), New York, NY.

For Gregory Parseghian, Defendant: Brian M. Lutz,

LEAD ATTORNEY, Gibson, Dunn & Crutcher LLP (NYC), New York, NY; John C. Millian, Robert C. Blume, LEAD ATTORNEYS, Gibson, Dunn & Crutcher, L.L.P., Washington, DC; Joshua D. Hess,, LEAD ATTORNEY, Gibson, Dunn & Crutcher, LLP (DC), Washington, DC; Juliet M. Hanna, LEAD ATTORNEY, Gibson, Dunn & Crutcher LLP, Denver, CO.

For West Virginia Investment Management Board and Central States, Southeast and Southwest Areas Pension Fund, Movant: Melvyn I. Weiss, Peter Edward Seidman, Steven G. Schulman, LEAD ATTORNEYS, Milberg LLP (NYC), New York, NY; Tor Gronborg, LEAD ATTORNEY, Coughlin Stoia, Geller, Rudman & Robbins, LLP(SANDIEGO), San Diego, CA; William S. Lerach, LEAD ATTORNEY, Keker & Van Nest, San Francisco, CA.

For Activest Investmentgesellschaft mbH, Erste Sparinvest Kapitalanlagegesellschaft m.b.H., Ontario Teachers' Pension Plan Board, Jacksonville Police & Fire Pension [*3] Fund, Movants: Douglas M. McKeige, Eitan Misulovin, Max Wallace Berger, LEAD ATTORNEYS, Bernstein Litowitz Berger & Grossmann L.L.P., New York, NY.

For Lori Roberts, Movant: Gerald D. Wells, III, LEAD ATTORNEY, PRO HAC VICE, Schiffrin Barroway Topaz & Kessler, L.L.P., Radnor, PA.

JUDGES: JOHN E. SPRIZZO, United States District Judge.

OPINION BY: JOHN E. SPRIZZO

OPINION

ORDER AND JUDGMENT GRANTING APPLICATION OF LEAD COUNSEL AND CO-LEAD COUNSEL FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

A hearing having been held before this Court to consider, *inter alia*, the fairness and reasonableness to Class Members of the Application of Lead Counsel and Co-Lead Counsel for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Application"), and the Court having considered all Declarations submitted in support thereof and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested by Lead Counsel and Co-Lead Counsel;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

l. The Application of Lead Counsel and Co-Lead Counsel for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses is fair and reasonable to the members of the Class, and therefore, [*4] is GRANTED in its entirety.

2. The Court hereby awards 20% of the Settlement Fund (including interest earned from the date of deposit of the Settlement Fund to the date of disbursement) to be paid from the Settlement Fund to Lead Counsel and Co-Lead Counsel as attorneys' fees, which amount shall be allocated by Lead Counsel and Co-Lead Counsel between and among Lead Counsel, Co-Lead Counsel and the other Plaintiffs' Counsel identified in the Application based on Lead Counsel's and Co-Lead Counsel's determination of the relative contributions of the firms to the prosecution of the litigation and the Settlement.

3. The Court hereby directs that the sum of $ 5,456128.23 may be distributed to Lead Counsel and Co-Lead Counsel from the Settlement Fund, as reimbursement of litigation expenses.

4. The finality of the Judgment entered with respect to the Settlement between Lead Plaintiffs and the Defendants shall not be affected in any manner by this Judgment or any appeal from this Judgment.

5. Notice of the hearing and a description of the fee and expense reimbursement request, substantially in the form approved by the Court, was mailed to all purchasers of Freddie Mac common stock during the [*5] Class Period reasonably identifiable, except those persons and entities excluded from the definition of the Class, as shown by the records of Freddie Mac and as further identified through the mailing of the Notice of Pendency and Proposed Settlement of Securities Class Action and Hearing on Proposed Securities Settlement and Attorneys' Fee and Expense Application and Right to Share in Net Settlement Fund in Securities Action, which was mailed on August 9, 2006, in accordance with the preliminary approval order entered by the Court on July 26, 2006 ("Preliminary Approval Order"), at the respective addresses set forth in such records. In addition,

the summary notice of the hearing, substantially in the form approved by the Court, was published in *The Wall Street Journal* on August 17, 2006, in accordance with the Preliminary Approval Order. Accordingly, the notice described herein provided the best notice practicable to the Class under the circumstances. Said notice provided due and adequate notice of these proceedings and the matters set forth therein, including the fee and expense reimbursement request, to all persons entitled to such notice, and said notice fully satisfied the requirements [*6] of *Rule 23 of the Federal Rules of Civil Procedure*, Section 21D(a)(7) of the Securities Exchange Act of 1934, *15 U.S.C. § 78u-4(a)(7)*, as amended, including by the Private Securities Litigation Reform Act of 1995, and the requirements of due process.

6. There is not just reason for delay in the entry of this Order and immediate entry of this Order by the Clerk of the Court is expressly directed pursuant to *Rule 54(b) of the Federal Rules of Civil Procedure*.

SO ORDERED:

Dated: New York, New York

October 26, 2006

/s/ John E. Sprizzo

JOHN E. SPRIZZO

United States District Judge

Positive
As of: Mar 08, 2012

IN RE OXFORD HEALTH PLANS, INC. SECURITIES LITIGATION; THIS DOCUMENT APPLIES TO ALL CLASS ACTIONS

MDL Dkt. No. 1222 (CLB)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, WHITE PLAINS DIVISION

2003 U.S. Dist. LEXIS 26795

June 12, 2003, Decided
June 12, 2003, Filed

PRIOR HISTORY: *In re Oxford Health Plans Inc., Sec. Litig., 244 F. Supp. 2d 247, 2003 U.S. Dist. LEXIS 2234 (S.D.N.Y., 2003)*

CASE SUMMARY:

PROCEDURAL POSTURE: A hearing was held to determine whether the settlement agreement in a securities class action should be approved, whether judgment should be entered dismissing the complaint on the merits and with prejudice in favor of defendant and as against all persons or entities who were members of the class who had not requested exclusion, whether to approve the plan of allocation, and whether and in what amount to award plaintiffs' counsel fees.

OVERVIEW: The court found that the prerequisites for a class action under *Fed. R. Civ. P. 23(a)* and *(b)(3)* had been satisfied, and it certified the action as a class action. Further, the court found that the settlement was approved as fair, reasonable, and adequate, and the parties were directed to consummate the settlement with defendant in accordance with the terms and provisions of the stipulation. The complaint, which the court found was filed on a good faith basis in accordance with the Private Securities Litigation Reform Act and *Fed. R. Civ. P. 11* based upon all publicly available information, was dismissed with prejudice and without costs. Moreover, the court found that the plan of allocation was approved as fair and reasonable, and plaintiffs' counsel were awarded 28 percent of the settlement fund in fees, and $ 1,594,107.73 in reimbursement of expenses.

OUTCOME: The settlement and plan of allocation were approved and the complaint was dismissed. Plaintiffs' counsel were awarded 28 percent of the settlement fund in fees and $ 1,594,107.73 in reimbursement of expenses. Exclusive jurisdiction was retained over the parties and the class members for all matters relating to the action.

COUNSEL: [*1] For Metro Services, Inc., Plaintiff: Richard B. Dannenberg, Lowey Dannenberg Bemporad & Sellinger, P.C., White Plains, NY; Robert M.

Roseman, Spector, Roseman & Kodroff, P.C., Philadelphia, PA; Stanley D Bernstein, Bernstein Liebhard & Lifshitz, LLP, New York, NY.

For Anthony P. Uzzo, for the Anthony P. Uzzo Defined Benefit Keogh Plan and as Trustee of the A. Uzzo & Co. Pension Trust of Purchase, New York, Anthony Siniscalchi, Blaise Fredella, Plaintiffs: Richard B. Dannenberg, Spector, Roseman & Kodroff, P.C., Philadelphia, PA.

For Worldco, LLC, Gateway Capital Partners, LP, Lawrence Group Partners, LP, PTJP Partners, LP, Murray Berman, Marko Jerovsek, Julian Hill, Ellen Loring, Benjamin A. Corteza, Geoffrey M. Gyrisco, Dr. Robert J. Rosenkranz, Plaintiffs: Jill Rosell, Lowey Dannenberg Bemporad & Selinger, White Plains, NY.

For North River Trading Company, LLC, John Turner, Plaintiffs: Mark C. Gardy, Abbey, Gardy & Squitieri, L.L.P., New York, NY.

For Edna Roth, Derivatively on behalf of Oxford Health Plans, Inc. a Delaware Corporation, Plaintiff: Karen L. Morris, Morris and Morris, Wilmington, DE.

For Arthur Plevy, Derivatively on behalf of Oxford Health [*2] Plans, Inc., Plaintiff: Glen DeValerio, Berman Devalerio & Pease, Boston, Ma.

For Judith Mosson, Plaintiff: Paul Oliva Paradis, Pomerantz Levy Haudek Block & Grossman, New York, NY.

For Clark Boyd, Jane Boyd, Dane Field, Derivatively and on behalf of Oxford Health Plans, Inc., Plaintiffs: Joseph Harry Weiss, Weiss & Yourman, New York, NY.

For Angeles Glick, Derivatively on behalf of Oxford Health Plans, Inc., Plaintiff: Marc I. Gross, Pomerantz, Levy, Haukek, Block & Grossman, New York, NY.

For Howard Vogel Retirement Plan, Plaintiff: Bruce D. Bernstein, Milberg Weiss et al., New York, NY; Deborah Clark Weintraub, Janine Lee Pollack, Patricia M. Hynes, Milberg Weiss Bershad Hynes & Lerach LLP, New York, NY.

For Cheryl Fisher, William Steiner, Plaintiffs: Robert I. Harwood, Wechsler Harwood LLP, New York, NY.

For Public Employees Retirement Association of Colorado, Plaintiff: Denise T. DiPersio, Jay W. Eisenhofer, Stuart M. Grant, Grant & Eisenhofer, P.A., Wilmington, DE.

For PBHG Growth II Portfolio, PBHG Large Cap Growth Portfolio, PBHG Select 20 Portfolio, PBHG Large Cap Growth Fund, PBHG Large Cap 20 Fund, Plaintiffs: Martin D. Chitwood, Chitwood [*3] & Harley, Atlanta, GA.

For Paul J. Silvester, as Treasurer of the State of Connecticut and as Trustee of the State of Connecticut Retirement Plans and Trust Funds, Plaintiff: William J. Prensky, Office of the Attorney General, Hartford, Ct.

For Mead Ann Krim, on behalf of herself and all others similarly situated, Plaintiff: Laura M. Perrone, The Law Firm of Harvey Greenfield, New York, NY.

For Oxford Health Plans, Inc., Defendant: Philip L. Graham, Jr., Sullivan & Cromwell, New York, NY.

For Stephen F. Wiggins, Andrew B. Cassidy, Defendants: Peter J. Beshar, Gibson, Dunn & Crutcher LLP, New York, NY.

For Robert B. Milligan, Jr., Defendant: Maureen C. Shay, Latham & Watkins, New York, NY.

For KPMG Peat Marwick LLP, Defendant: Kelly Marie Hnatt, Willkie Farr & Gallagher LLP, New York, NY; Richard L. Klein, Willkie Farr & Gallagher, New York, NY.

For Reliance Insurance CO., Movant: Diane L. Van Epps, Duane, Morris & Heckscher LLP, Briarcliff Manor, NY.

JUDGES: HONORABLE CHARLES L. BRIEANT, UNITED STATES DISTRICT JUDGE.

OPINION BY: HONORABLE CHARLES L. BRIEANT

OPINION

ORDER AND FINAL JUDGMENT WITH RESPECT TO KPMG LLP

On the 11th day of June, 2003, a hearing [*4] having been held before this Court to determine: (1) whether the terms and conditions of the Stipulation and Agreements

of Settlement dated April 14, 2003 (the "Stipulation") are fair, reasonable and adequate for the settlement of all claims asserted by the Class against KPMG in the Complaint now pending in this Court under the above caption, including the release of KPMG and the KPMG Released Parties from all KPMG Settled Claims, and should be approved; (2) whether judgment should be entered dismissing the Complaint on the merits and with prejudice in favor of KPMG and as against all persons or entities who are members of the Class herein who have not requested exclusion therefrom; (3) whether to approve the Plan of Allocation as a fair and reasonable method to allocate the settlement proceeds among the members of the Class; and (4) whether and in what amount to award Plaintiffs' Counsel fees and reimbursement of expenses. The Court having considered all matters submitted to it at the hearing and otherwise; and it appearing that a notice of the hearing substantially in the form approved by the Court was mailed to all persons or entities reasonably identifiable, who purchased the common [*5] stock of Oxford Health Plans, Inc. ("Oxford"), or purchased Oxford call options or sold Oxford put options, during the period from November 6, 1996 through and including December 9, 1997 (the "Class Period"), and who were damaged thereby, except those persons or entities excluded from the definition of the Class or who previously excluded themselves from the Class, and that a summary notice of the hearing substantially in the form approved by the Court was published in the national edition of *The Wall Street Journal* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested; and all capitalized terms used herein having the meanings as set forth and defined in the Stipulation.

The Court having made its Finding of Fact and Conclusion of Law (see transept)

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Court has jurisdiction over the subject matter of the Action, the plaintiffs, all Class Members, and KPMG.

2. The Court finds that the prerequisites for a class action under *Rules 23 (a)* and *(b)(3)* of the Federal Rules of Civil Procedure have been satisfied [*6] in that: (a) the number of Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of the Class Representatives are typical of the claims of the Class they seek to represent; (d) the Class Representatives have and will fairly and adequately represent the interests of the Class; (e) the questions of law and fact common to the members of the Class predominate over any questions affecting only individual members of the Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

3. Pursuant to *Rule 23 of the Federal Rules of Civil Procedure*, this Court hereby finally certifies this action as a class action on behalf of all persons or entities who purchased the common stock of Oxford, or purchased Oxford call options or sold Oxford put options, during the period from November 6, 1996 through and including December 9, 1997, and who were damaged thereby (the "Class"), and a sub-class consisting of all persons or entities who purchased Oxford common stock contemporaneously with sales [*7] of such stock by Individual Defendants Stephen F. Wiggins, William M. Sullivan, Andrew B. Cassidy, Brendan R. Shanahan, Benjamin H. Safirstein, Robert M. Smoler, Robert M. Milligan, David Finkel, Jeffery H. Boyd and Thomas A. Travers during the Class Period, and who were damaged thereby (the "20A Sub-Class"). Excluded from the Class are Oxford, the Individual Defendants and KPMG LLP ("KPMG") (collectively, the "Defendants"), the officers and directors of the Company, members of the immediate families of the Individual Defendants and each of their legal representatives, heirs, successors, or assigns, and any entity in which any defendant has or had a controlling interest. Also excluded from the Class are the persons and/or entities who previously excluded themselves from the Class as listed on Exhibit A annexed hereto.

4. Notice of the pendency of this Action as a class action and of the proposed Settlement was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the Class of the pendency of the action as a class action and of the terms and conditions of the proposed Settlement met the requirements of *Rule 23 of the Federal Rules* [*8] *of Civil Procedure*, Section 21D(a)(7) of the Securities Exchange Act of 1934, *15 U.S.C. 78u-4(a)(7)* as amended by the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), due process, and any other applicable

law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

5. The Settlement with KPMG is approved as fair, reasonable and adequate, and the parties are directed to consummate the Settlement with KPMG in accordance with the terms and provisions of the Stipulation.

6. The Complaint, which the Court finds was filed on a good faith basis in accordance with the PSLRA and *Rule 11 of the Federal Rules of Civil Procedure* based upon all publicly available information, is hereby dismissed with prejudice and without costs as against KPMG.

7. Members of the Class who have not previously and timely excluded themselves therefrom and the successors and assigns of any of them are hereby permanently barred and enjoined from instituting, commencing or prosecuting any and all claims, rights, demands, suits, matters, issues, [*9] causes of action, or liabilities whatsoever, whether known or unknown, against KPMG and/or the KPMG Released Parties whether under federal, state, local, statutory or common law or any other law, rule or regulation, in connection with, based upon, arising out of, or relating in any way to any allegations, claims, transactions, facts, matters or occurrences, representations or omissions involved, set forth, referred to or that could have been asserted in the Action relating to the purchase of Oxford common stock and/or purchase of Oxford call options and/or sale of Oxford put options during the Class Period, including, but not limited to claims in connection with, based upon, arising out of, or relating to the Settlement (but excluding any claims to enforce the terms of the Settlement) (the "KPMG Settled Claims") against KPMG and its present and former partners, principals, employees, predecessors, successors, affiliates, officers, attorneys, agents, insurers and assigns (the "KPMG Released Parties"). The KPMG Settled Claims are hereby compromised, settled, released, discharged and dismissed as against the KPMG Released Parties on the merits and with prejudice by virtue of the proceedings [*10] herein and this Order and Final Judgment.

8. KPMG and its successors and assigns, are hereby permanently barred and enjoined from instituting, commencing or prosecuting, either directly or in any other capacity, any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known claims and unknown claims, that have been or could have been asserted in the Action or any forum by the Defendants or any of them or the successors and assigns of any of them against any of the Plaintiffs, Class Members or their attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of the Action except claims relating to the enforcement of the settlement of the Action (the "Settled Defendants' Claims"). The Settled Defendants' Claims of all of the KPMG Released Parties are hereby compromised, settled, released, discharged and dismissed on the merits and with prejudice by virtue of the proceedings herein and this Order and Final Judgment.

9. Pursuant to the PSLRA and *15 U.S.C. § 78u-4(f)(7)*, the KPMG Released Parties [*11] are hereby discharged from all claims for contribution by any person or entity, including without limitation the Oxford Released Parties, whether arising under state, federal or common law, based upon, arising out of, relating to, or in connection with the KPMG Settled Claims of the Class or any Class Member. Accordingly, to the full extent provided by the PSLRA, the Court hereby (i) bars any action by any person, including, but not limited to, the Oxford Defendants, for contribution against KPMG arising out of the Action, and (ii) bars any action by KPMG against any person, including, but not limited to, the Oxford Defendants, for contribution arising out of the Action.

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

(a) offered or received against KPMG as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by KPMG with respect to the truth of any fact alleged by plaintiffs or the validity of any claim that had been or could have been asserted in the Action [*12] or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of KPMG;

(b) offered or received against KPMG as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any

statement or written document approved or made by KPMG, or against the plaintiffs and the Class as evidence of any infirmity in the claims of plaintiffs and the Class;

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

(d) construed against KPMG or the plaintiffs and the Class as an admission or concession that the consideration [*13] to be given hereunder represents the amount which could be or would have been recovered after trial; or

(e) construed as or received in evidence as an admission, concession or presumption against plaintiffs or the Class or any of them that any of their claims are without merit or that damages recoverable under the Complaint would not have exceeded the KPMG Settlement Amount.

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

12. The Court finds that all parties and their counsel have complied with each requirement of *Rule 11 of the Federal Rules of Civil Procedure* as to all proceedings herein.

13. Plaintiffs' Counsel are hereby awarded 28% of the Gross KPMG Settlement Fund in fees, which the Court finds to be fair and reasonable, and $ 1,594,107.73 in reimbursement of expenses, which expenses shall be paid to Plaintiffs' Lead Counsel from the Gross KPMG Settlement Fund with interest from the date such Gross KPMG Settlement Fund was funded to the date of payment at the same net rate that [*14] the Gross KPMG Settlement Fund earns. The award of attorneys' fees shall be allocated among Plaintiffs' Counsel in a fashion which, in the opinion of Plaintiffs' Lead Counsel, fairly compensates Plaintiffs' Counsel for their respective contributions in the prosecution of the Action.

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

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

16. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is expressly directed pursuant to *Rule 54(b) of the Federal Rules of Civil Procedure*.Dated: White Plains, New York

June 12, 2003

HONORABLE CHARLES L. BRIEANT

UNITED STATES [*15] DISTRICT JUDGE

SCHEDULE A

PERSONS / ENTITIES EXCLUDED FROM THE CLASS

LAST NAME	FIRST NAME	ADDRESS 1	ADDRESS 2
Adinaro	Peter	3384 Forestwood Dr.	
Allegheny		525 William Penn Place	Suite 3631
Co. Ret Bo			

Amos	Bobby	2209 Thistle Circle	
Anello	Santo & Lillian	351 Boscombe Ave	
Batten	Hugh	159 Avenida Majorca	Unit A
Baumgartner	Janet E.	350 Sharon Park Dr.	Apt. 1-24
Beattie	Sue Ann	12822 Dornoch Ct. SE	
Brown	Lola H.	3306 S Linden Ave.	
Bryant	Christopher	164 Oakwood Ave.	
Buckles	Ray	539 Monceau Dr.	
Buckles	Gail	539 Monceau Dr.	
Caruthers	Byron C. & Helen M.	2608 Kidd Dr.	
Castens	Bert	1228 Almondwood Dr.	
Costello	John & Margaret	840 Strang Drive	
	Libretto		
Cummins	Joanne	1803 Melissa	
Ehrman	Sam & Jacob	104-20 Queens Blvd.	Apt. 16M
Franz	Lois	16327 Crescent Dr SW	
Freier	Jerri	815 Millwood Ave.	
Gaines	William	122 Woodcrest Dr.	
Gallozzi	Ennio	621 N Saint Asaph St.	Apt. 310

Gallozzi	Margaret	621 N Saint Asaph St.	Apt. 310
Garrett	Gerald	9426 SE 52nd St.	
Gay	Charles	33 Southgate Circle	
Godowski	Robert T.	746 Hamilton Ave.	
Halim	Angelica	940 N Foothill Rd.	
Harris	Richard	33351 Fargo	
Harshman	Ronald	2120 Los Rios Blvd	
Hubbard	Vincent & Helen	10 Tomoka Pl	
Jung	Cheryl Ann	247 West 15th St.	Apt. 2B
Kessler	Jay	33 Paige Ln.	
King	Shirley A.	231 W Horizon Ridge	Apt. 723
Korde	Abhay A. & Varsha A.	1250 Mill Shyre Way	
Kotsiris, Jr.	John	PO Box 87	
Lakier	Andrew	Derstine & Cannon Aves	PO Box 854
Lemmo	Ernest & Santa	314 Tompkins Ave.	
Lerch	Archie	185 Gebhardt Rd.	
Mattoli	John	5560 Bayview Drive	
Meyers	Jamie & Penni	27 Wolfpit Road	

Miller	Marilyn	7230 Maplewood Dr.	
Molineaux	Diana B.	3001 Veazey Terr. NW	Apt. # 116
Nance	David & Carolyn M.	1347 Lake Valley Dr.	
Nicola	Daniel J.	122 Bala Avenue	
Pasich	Dean	88 Pukoo Street	# 609
Popescu	Valentin	3001 Veazey Terr. NW	Apt. # 116
Puryear	Joe	949 Knoll Park Lane	
Raymon	Jonathan	P.O. Box 76	
Reid, Jr.	John F.	70 Thistle Patch Way	
Reuter	Eleanor	117 B Heritage Village	
Rice	Edna	1915 Lohman's Crossing	
Ricker	Ann	703 W Washington St.	
Sally	Marilyn	345 Oakwood Ave	
Santoro	Dorothy	2701 Byron Drive	
Sinclair	David N.	22366 Claibourne Ln	
Soud	Wayne K.	1135 Queensgate Dr. SE	
Straus	Philippa B.	3004 Brookwood Rd.	
Tarrant	Margaret	100 Colfax Avenue	Apt. 7Y

Van Fossan	Mary Dougherty	Unknown	
Vidal, MD	Jose H.	2693 La Casita Avenue	
Voisine	Reed A. & Marilyn G.	43 Anthony Drive	
Whiteford	Audrey	PO Box 50487	
Whitney	David	1401 Maharis Rd.	
Wiener	Benjamin & Shirley	2 Fountain Lane	Apt. 1G

[*16]

PERSONS / ENTITIES EXCLUDED FROM THE CLASS			
LAST NAME	CITY	STATE	ZIP
Adinaro	Suwanee	GA	30024
Allegheny	Pittsburgh	PA	15259
Co. Ret Bo			
Amos	Kearney	MO	64060
Anello	Staten Island	NY	10309
Batten	Laguna Hills	CA	92653
Baumgartner	Menlo Park	CA	94025
Beattie	Ft Myers	FL	33912
Brown	Springfield	MO	65804
Bryant	Bayport	NY	11705

Buckles	St. Louis	MO	63135
Buckles	St. Louis	MO	63135
Caruthers	Arlington	TX	76013
Castens	New Port Richey	FL	34655
Costello	Wantaugh	NY	11793
Cummins	Longview	TX	75605
Ehrman	Forest Hills	NY	11375
Franz	Vashon	WA	98070
Freier	Roseville	MN	55113
Gaines	Cartersville	GA	30120
Gallozzi	Alexandria	VA	22314
Gallozzi	Alexandria	VA	22314
Garrett	Mercer Island	WA	98040
Gay	Massapequa Pk	NY	11762
Godowski	Watertown	CT	06795
Halim	Beverly Hills	CA	90210
Harris	Livonia	MI	48152
Harshman	Plano	TX	75074
Hubbard	Summerfield	FL	34491

Jung	New York	NY	10011
Kessler	Moriches	NY	11955
King	Henderson	NV	89012
Korde	Lawrenceville	GA	30043
Kotsiris, Jr.	Vineland	NJ	08362
Lakier	Lansdale	PA	19446
Lemmo	Mamaroneck	NY	10543
Lerch	Penfield	NY	14526
Mattoli	Fort Lauderdale	FL	33308
Meyers	Southbury	CT	06488
Miller	Indianapolis	IN	46227
Molineaux	Washington	DC	20008
Nance	Fenton	MI	48430
Nicola	Bala Cynwyd	PA	19004
Pasich	Honolulu	HI	96814
Popescu	Washington	DC	20008
Puryear	Fallbrook	CA	92028
Raymon	Crompond	NY	10517

Reid, Jr.	Hingham	MA	02043
Reuter	Southbury	CT	06488
Rice	Lakeway	TX	78734
Ricker	Urbana	IL	61801
Sally	Bayport	NY	11705
Santoro	Las Vegas	NV	89134
Sinclair	Saugus	CA	91350
Soud	Smyrna	GA	30082
Straus	Birmingham	AL	35223
Tarrant	Staten Island	NY	10306
Van Fossan	Trappe	MD	21673
Vidal, MD	Las Vegas	NV	89120
Voisine	Bristol	CT	06010
Whiteford	Phoenix	AZ	85076
Whitney	Virginia Beach	VA	23455
Wiener	Scarsdale	NY	10583

[*17]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: SATYAM COMPUTER SERVICES LTD. SECURITIES LITIGATION	No.: 09-MD-2027-BSJ

ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

This matter came on for hearing on September 8, 2011 (the "Settlement Hearing") on the motion of Lead Counsel to determine, among other things, whether and in what amount to award Lead Counsel in the above-captioned consolidated securities class action (the "Action") fees and reimbursement of expenses.

The Court having considered all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that notices of the Settlement Hearing substantially in the form approved by the Court were mailed to all Class Members who or which could be identified with reasonable effort, except those persons or entities excluded from the definition of the Class, and that summary notices of the hearing substantially in the form approved by the Court were published in *The Wall Street Journal*, *Investor's Business Daily* and *The Financial Times* and transmitted over *Business Wire* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order Awarding Attorneys' Fees and Expenses incorporates by reference the definitions in the Stipulations and Agreements of Settlement (the "Settlement Stipulations") and all

terms used herein shall, with respect to the respective Settlement Stipulations, have the same meanings as set forth in the applicable Settlement Stipulations.[1]

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

3. Notice of Lead Counsel's application for attorneys' fees and reimbursement of expenses was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the Class of the motion for attorneys' fees and expenses constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice of the motion and satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995 (15 U.S.C. § 78u-4, et seq.) (the "PSLRA"), and all other applicable law and rules.

4. Lead Counsel are hereby awarded attorneys' fees in the amount of 17% of the total Settlement Funds, as well as 17% of any additional Settlement Funds recovered by Satyam from the PwC Entities, net of any taxes withheld from the Initial Escrow Accounts and ultimately paid pursuant to Indian tax law, and $1,027,076.94 in reimbursement of litigation expenses advanced or incurred by Lead Counsel collectively while prosecuting this Action (which expenses shall be paid from the Settlement Funds) with interest on such fees and expenses at the same rate as earned by the Settlement Funds from the dates the Settlement Funds were funded to the date of payment, which sums the Court finds to be fair and reasonable. The foregoing award of Attorneys' Fees and

[1] The Settlement Stipulations are: the Stipulation and Agreement of Settlement with Defendant Satyam Computer Services Ltd., dated February 16, 2011 (the "Satyam Stipulation") and the Stipulation and Agreement of Settlement between Lead Plaintiffs and the PwC Entities, dated April 27, 2011 (the "PwC Entities Stipulation") entered into by and among Lead Plaintiffs and the Settling Defendants (together, the "Settlement Stipulations").

Expenses shall be payable immediately in accordance with the terms set forth in ¶¶ 19 and 16, respectively of the Satyam Stipulation and the PwC Entities Stipulation. The award of attorneys' fees shall be allocated among Plaintiffs' Counsel in a manner which, in the opinion of Lead Counsel, fairly compensates Plaintiffs' Counsel for their respective contributions in the prosecution and settlement of the Action.

5. Also in accordance with the terms set forth in ¶¶ 20 and 17, respectively of the Satyam Stipulation and the PwC Entities Stipulation, Lead Counsel who seek to be paid their share of the attorney fee and expense award prior to the Effective Date shall be jointly and severally obligated to make appropriate refunds or repayments of attorneys' fees and expenses and any interest thereon paid to Lead Counsel to the Settlement Funds or to the Settling Defendants who contributed the Settlement Funds in direct proportion to their contributions to the Settlement Funds, as applicable, plus accrued interest at the same net rate as is earned by the Settlement Funds, if the Settlements are terminated pursuant to the terms of the Stipulations or if, as a result of any appeal or further proceedings on remand, or successful collateral attack, the award of attorneys' fees and/or litigation expenses is reduced or reversed by final non-appealable court order.

6. Class Representative the Public Employees' Retirement System of Mississippi is awarded $14,400 as reimbursement for its costs and expenses directly relating to its services in representing the Class.

7. Class Representative Mineworkers' Pension Scheme is awarded $98,711 as reimbursement for its costs and expenses directly relating to its services in representing the Class.

8. Class Representative SKAGEN AS is awarded $59,000 as reimbursement for its costs and expenses directly relating to its services in representing the Class.

9. Class Representative Sampension KP Livsforsikring A/S is awarded $21,000 as reimbursement for its costs and expenses directly relating to its services in representing the Class.

10. Subclass Representative Brian F. Adams is awarded $2,000 as reimbursement for his costs and expenses directly relating to his services in representing the Class and Subclass.

11. A litigation fund in the amount of $1,000,000 from the Satyam Settlement Fund shall be established to fund the continued prosecution of the Action against the Non-Settling Defendants.

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

(a) The Settlements have created a total settlement amount of $150.5 million in cash that is already on deposit and has been earning interest, and that numerous Class Members who submit acceptable Proofs of Claim will benefit from the Settlements created by the efforts of Lead Counsel;

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

(c) To date, over 208,000 copies of the Notices were disseminated to putative Class Members stating that Lead Counsel were moving for attorneys' fees not to exceed 17% of proposed Settlements and reimbursement of expenses incurred in connection with the prosecution of this Action. Only one objection to the terms of the Settlement and the fees and expenses requested by Lead Counsel contained in the Notice was received, although it was untimely and not filed with the Court as required by the Preliminary Approval Orders. The objector has not proven that he is a member of the Class, nor does he have standing; even if he did, his objection has been considered and overruled;

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

(e) The Action involves complex factual and legal issues and, in the absence of settlement, would involve lengthy proceedings with uncertain resolution of the complex factual and legal issues;

(f) Had the Settlements not been achieved, there would remain a significant risk that Lead Plaintiffs and the other members of the Class may have recovered less or nothing from the Settling Defendants; and

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

13. Any appeal or any challenge affecting this Court's approval regarding any attorneys' fees and expense application shall in no way disturb or affect the finality of the Judgments entered with respect to the Settlements.

14. Continuing jurisdiction is hereby retained over the parties and the Class Members for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Settlement Stipulations and this Order, including any further application for fees and expenses incurred in connection with administering and distributing the settlement proceeds to the members of the Class.

15. In the event that any of the Settlements are terminated or do not become Final or the Effective Date does not occur in accordance with the terms of the applicable Settlement Stipulation(s), this Order, except for ¶ 5 above, shall be rendered null and void to the extent provided by the applicable Settlement Stipulation(s) and shall be vacated in accordance with the terms of the applicable Settlement Stipulation(s).

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

Dated: New York, New York
September 13, 2011

Honorable Barbara S. Jones
UNITED STATES DISTRICT JUDGE

Analysis
As of: Mar 08, 2012

IN RE: DEUTSCHE TELEKOM AG SECURITIES LITIGATION

Civil Action No. 00-CV-9475 (NRB)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

2005 U.S. Dist. LEXIS 45798

June 9, 2005, Decided
June 14, 2005, Filed

SUBSEQUENT HISTORY: Related proceeding at *In re Winkler, 2005 U.S. Dist. LEXIS 46937 (S.D.N.Y., Nov. 21, 2005)*

PRIOR HISTORY: *In re Deutsche Telekom AG Sec. Litig., 229 F. Supp. 2d 277, 2002 U.S. Dist. LEXIS 20843 (S.D.N.Y., 2002)*

COUNSEL: [*1] For Aaron & Ruth Jungreis Foundation. On Behalf of Itself and All Others Similarly Situated, Plaintiff: Conor R. Crowley, LEAD ATTORNEY, Labaton Sucharow, LLP, New York, NY; Duvall Foundry, LEAD ATTORNEY, Finkelstein, Thompson & Loughram, Washington, DC; Jack Gerald Fruchter, LEAD ATTORNEY, Fruchter & Twersky, New York, NY; Steven G. Schulman, LEAD ATTORNEY, Milberg Weiss Bershad & Schulman LLP (NYC), New York, NY; Samuel Howard Rudman, Coughlin, Stoia, Geller, Rudman & Robbins, LLP(LIs), Melville, NY.

For Allan Kramer, Plaintiff: Conor R. Crowley, LEAD ATTORNEY, Labaton Sucharow, LLP, New York, NY; Duvall Foundry, LEAD ATTORNEY, Finkelstein, Thompson & Loughram, Washington, DC; Mel E. Lifshitz, LEAD ATTORNEY, Bernstein, Liebhard & Lifshitz, New York, NY; Robert Alan Wallner, LEAD ATTORNEY, Milberg Weiss Bershad & Schulman LLP (NYC), New York, NY.

For Bruce Holber, Plaintiff: Conor R. Crowley, LEAD ATTORNEY, Labaton Sucharow, LLP, New York, NY; Duvall Foundry, LEAD ATTORNEY, Finkelstein, Thompson & Loughram, Washington, DC; Mel E. Lifshitz, LEAD ATTORNEY, Bernstein, Liebhard & Lifshitz, New York, NY; Robert Alan Wallner, LEAD ATTORNEY, Milberg Weiss Bershad & Schulman LLP (NYC), New [*2] York, NY.

For Ronald Offner, Consolidated Plaintiff: Samuel Howard Rudman, Coughlin, Stoia, Geller, Rudman & Robbins, LLP(LIs), Melville, NY; Steven G. Schulman, LEAD ATTORNEY, Milberg Weiss Bershad & Schulman LLP (NYC), New York, NY.

For Hans Lahmann, Consolidated Plaintiff: Joseph Harry Weiss, LEAD ATTORNEY, Weiss & Lurie, New York, NY; Mel E. Lifshitz, LEAD ATTORNEY, Bernstein,

Liebhard & Lifshitz, New York, NY.

For Horizon International, LLC, Consolidated Plaintiff: Mel E. Lifshitz, LEAD ATTORNEY, Bernstein, Liebhard & Lifshitz, New York, NY; Joseph Harry Weiss, LEAD ATTORNEY, Weiss & Lurie, New York, NY.

For Michael Feibelman, Consolidated Plaintiff: Samuel Howard Rudman, Coughlin, Stoia, Geller, Rudman & Robbins, LLP(LIs), Melville, NY; Steven G. Schulman, LEAD ATTORNEY, Milberg Weiss Bershad & Schulman LLP (NYC), New York, NY; Joseph Harry Weiss, LEAD ATTORNEY, Weiss & Lurie, New York, NY.

For Sara W. Resh, Consolidated Plaintiff: Brian Philip Murray, LEAD ATTORNEY, Murray, Frank & Sailer, LLP, New York, NY; Jacqueline Sailer, LEAD ATTORNEY, Murray, Frank & Sailer, LLP, New York, NY.

For Marlene Sackheim, Consolidated Plaintiff: Samuel Howard Rudman, Coughlin, Stoia, Geller, Rudman [*3] & Robbins, LLP(LIs), Melville, NY; Steven G. Schulman, LEAD ATTORNEY, Milberg Weiss Bershad & Schulman LLP (NYC), New York, NY.

For Deutsche Telekom AG, Defendant: Robert H Baron, LEAD ATTORNEY, Boies, Schiller & Flexner, LLP, Albany, NY.

For Kreditanstalt Fur Wiederaufbrau, Defendant: Michael J. Chepiga, LEAD ATTORNEY, Leader & Berkon, LLP, New York, NY.

For Deutsche Bank, Defendant: Sheldon Raab, LEAD ATTORNEY, Fried Frank Harris Shriver & Jacobson, New York, NY.

For Alex Brown, Defendant: Sheldon Raab, LEAD ATTORNEY, Fried Frank Harris Shriver & Jacobson, New York, NY.

For Goldman Sachs & Co., Defendant: Sheldon Raab, LEAD ATTORNEY, Fried Frank Harris Shriver & Jacobson, New York, NY.

For Ron Sommer, Defendant: Robert H Baron, LEAD ATTORNEY, Boies, Schiller & Flexner, LLP, Albany, NY.

For Deutsche Banc, Defendant: Sheldon Raab, LEAD ATTORNEY, Fried Frank Harris Shriver & Jacobson, New York, NY.

JUDGES: Honorable Naomi R. Buchwald, UNITED STATES DISTRICT JUDGE.

OPINION BY: Naomi R. Buchwald

OPINION

ORDER AND FINAL JUDGMENT

On the 4th day of June, 2005, a hearing having been held before this Court to determine: (1) whether the terms and conditions of the Stipulation and Agreement of Settlement dated January 28, 2005 [*4] (the "Stipulation"), including the release of the Defendants and the Released Parties, are fair, reasonable and adequate for the settlement of all claims asserted by the Class against the Defendants in the Complaint now pending in this Court under the above caption and should be approved; (2) whether judgment should be entered dismissing the Complaint on the merits and with prejudice in favor of the Defendants and as against all persons or entities who are members of the Class herein; (3) whether to approve the Plan of Allocation as a fair and reasonable method to allocate the settlement proceeds among the members of the Class; and (4) whether and in what amount to award Plaintiffs' Counsel fees and reimbursement of expenses. The Court having considered all matters submitted to it at the hearing and otherwise; and it appearing that a notice of the settlement and hearing substantially in the form approved by the Court was mailed to all persons or entities reasonably identifiable, who purchased ordinary shares of stock in the form of American Depository Shares of Deutsche Telekom AG during the period from June 19, 2000 to and including February 21, 2001 (the "Class Period"), as shown [*5] by the records of Deutsche Telekom's transfer agent and the records compiled by the Claims Administrator in connection with its previous mailing of a Notice of Pendency of Class Action, at the respective addresses set forth in such records, except those persons or entities excluded from the definition of the Class or who previously excluded themselves from the Class, and that a summary notice of the hearing substantially in the form approved by the Court was published in the national editions of The Wall Street Journal and The New York

Times pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested; and all capitalized terms used herein having the meanings as set forth and defined in the Stipulation.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

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

2. The Court, having previously found that this Action meets the requirements of *Rule 23(a)* and *23(b)(3) of the Federal Rules of Civil Procedure* for certification as a class action, and having previously [*6] directed notice of the pendency of this Action as a class action be given to the members of the Class and such notice having been given, now finds again and finally confirms that the prerequisites for class action under *Federal Rules of Civil Procedure 23 (a)* and *(b)(3)* have been satisfied in that: (a) the number of Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of the Class Representatives are typical of the claims of the Class they seek to represent; (d) the Class Representatives have and will fairly and adequately represent the interests of the Class; (e) the questions of law and fact common to the members of the Class predominate over any questions affecting only individual members of the Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

3. Pursuant to *Rule 23 of the Federal Rules of Civil Procedure* this Court hereby finally certifies this action as a class action on behalf of all persons who purchased ordinary shares of stock in the form of American Depository Shares ("ADSs") of Deutsche Telekom [*7] AG ("Deutsche Telekom") during the period from June 19, 2000 to and including February 21, 2001. Excluded from the Class are the defendants and the underwriters of the Offering and all officers, affiliates and immediate family members of such entities, including their heirs, legal representatives, successors, predecessors in interest and assigns. Also excluded from the Class are the persons and/or entities who previously excluded themselves from the Class by filing a request for exclusion in response to the Notice of Pendency, as listed on Exhibit 1 annexed hereto.

4. Notice of the proposed Settlement of this Action was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the Class of the settlement of the action as a class action and of the terms and conditions of the proposed Settlement met the requirements of *Rule 23 of the Federal Rules of Civil Procedure*, *Section 21D(a)(7)* of the Securities Exchange Act of 1934, *15 U.S.C. 78u-4(a)(7)* as amended by the Private Securities Litigation Reform Act of 1995, due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due [*8] and sufficient notice to all persons and entities entitled thereto.

5. The Settlement is approved as fair, reasonable and adequate, and the Class Members and the parties are directed to consummate the Settlement in accordance with the terms and provisions of the Stipulation.

6. The Complaint is hereby dismissed with prejudice and without costs, except as provided in the Stipulation, as against the Defendants.

7. Members of the Class and the successors and assigns of any of them, are hereby permanently barred and enjoined from instituting, commencing or prosecuting any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation (whether foreign or domestic), including both known claims and Unknown Claims, accrued claims and not accrued claims, foreseen claims and unforeseen claims, matured claims and not matured claims, class or individual in nature, that have been or could have been asserted from the beginning of time to the end of time in any forum by the Class Members or any of them against any of the Released Parties which arise out of or relate in any way to the allegations, [*9] transactions, facts, matters or occurrences, representations or omissions involved, set forth, referred to in this Action or that could have been asserted relating to the purchase, transfer or acquisition of ordinary shares of stock in the form of American Depository Shares ("ADSs") of Deutsche Telekom AG ("Deutsche Telekom") during the Class Period, except claims relating to the enforcement of the settlement of the Action (the "Settled Claims") against any and all of the Defendants, their past or present subsidiaries, parents, successors and predecessors, and

their respective officers, Management Board members, Supervisory Board members, directors, agents, employees, affiliates, attorneys, advisors, insurers, auditors, stockholders, heirs, executors, trusts, assigns, and underwriters (including the Underwriters) (the "Released Parties"). The Settled Claims are hereby compromised, settled, released, discharged and dismissed as against the Released Parties on the merits and with prejudice by virtue of the proceedings herein and this Order and Final Judgment.

8. The Defendants and the successors and assigns of any of them, are hereby permanently barred and enjoined from instituting, [*10] commencing or prosecuting any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known claims and Unknown Claims, that have been or could have been asserted in the Action or any forum by the Defendants, the Underwriters or any of them or the successors and assigns of any of them against any of the Lead Plaintiffs, Class Members or their attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of the Action (except for claims to enforce the Settlement) (the "Settled Defendants' Claims"). The Settled Defendants' Claims of all the Released Parties are hereby compromised, settled, released, discharged and dismissed on the merits and with prejudice by virtue of the proceedings herein and this Order and Final Judgment.

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

(a) offered or received against the Defendants as evidence of or construed [*11] as or deemed to be evidence of any presumption, concession, or admission by any of the Defendants with respect to the truth of any fact alleged by any of the plaintiffs or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of the Defendants;

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

(c) offered or received against the Defendants as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the Defendants, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; provided, however, that if this Stipulation is approved by the Court, Defendants may refer to it [*12] to effectuate the liability protection granted them hereunder;

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

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

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

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

12. Plaintiffs' Counsel are hereby awarded 28% of the Gross Settlement Fund in fees, which sum the Court finds to be fair and reasonable, and $ 1,444,565.23 in reimbursement of expenses, which expenses shall be paid to [*13] Plaintiffs' Co-Lead Counsel from the Settlement Fund with interest from the date such Settlement Fund was funded to the date of payment at the same net rate that the Settlement Fund earns. The award of attorneys' fees shall be allocated among Plaintiffs' Counsel in a fashion which, in the opinion of Plaintiffs' Co-Lead Counsel, fairly compensates Plaintiffs' Counsel for their respective contributions in the prosecution of the Action.

13. Lead Plaintiff Allan Kramer is hereby awarded $ 15,000. and Lead Plaintiff Bruce Holberg is hereby awarded $ 15,000., which amounts shall be paid from the Gross Settlement Fund. Such awards are for reimbursement of these Lead Plaintiffs' reasonable costs and expenses (including lost wages) directly related to their representation of the Class.

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

(a) the settlement has created a fund of $ 120,000,000 in cash that is already on deposit, plus interest thereon and that numerous Class Members who submit acceptable Proofs of Claim will benefit from the Settlement created by Plaintiffs' Counsel;

(b) [*14] Over 100,000 copies of the Notice were disseminated to putative Class Members. Such Notice disclosed that Plaintiffs' Counsel were moving for attorneys' fees in the amount not greater than 28% of the Gross Settlement Fund and for reimbursement of expenses in an amount not greater than $ 1.5 million. No objections by putative class members were filed against the terms of the proposed Settlement or the ceiling on the fees and expenses requested by Plaintiffs' Counsel contained in the Notice;

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

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

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

(f) Plaintiffs' Counsel have devoted over 20,000 hours, with a lodestar value of over $ 8,470,000, to achieve the Settlement.

15. Exclusive [*15] jurisdiction is hereby retained over the parties and the Class Members for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Stipulation and this Order and Final Judgment, and including any application for fees and expenses incurred in connection with administering and distributing the settlement proceeds to the members of the Class.

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

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

Dated: New York, New York

June 9, 2005

/s/ Naomi Reice Buchwald

Honorable Naomi R. Buchwald

UNITED STATES DISTRICT JUDGE

EXHIBIT 1

List of Persons and Entities Excluded from the Class in the In re Deutsche Telekom AG Securities Litigation, Civil Action No. 00-CV-9475 (SHS)

The following persons and entities, and only the following persons and entities, have properly excluded themselves from the Class:

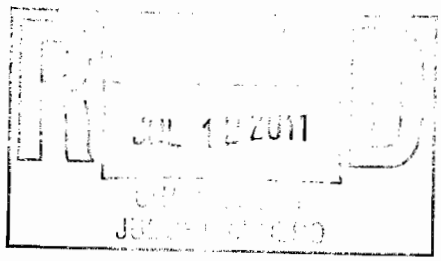
IN RESPONSE TO THE NOTICE OF PENDENCY (timely, by Plaintiffs' Submission Pursuant to the Court's Order dated March 25, 2003 (filed July 8, 2003))	
Joseph Citardi	Eugene H. Dunn
534 Stanwich Road	12939 Camino Ramillette
Greenwich, Connecticut 06831-3129	San Diego, California 92128-1538

James M. Fowler TTEE	Mary Regina Freeland
James M. Fowler Trust	5219 Clairmont Mesa Blvd.
1941 Skycrest Dr., Apt. 2	San Diego, California 92117-2206
Walnut Creek, California 94595	
Heil Associates	Kary Daniel Kielhofer and Judith W. Kielhofer
Heil Associates A Partnership	36699 Palmdale Street
(William R. Heil Sr.)	Rancho Mirage, California 92270-2200
236 Buddington Road	
Shelton, Connecticut 06484-5311	
Marianne Lent	Rainer Link
1730 Halford Ave., Apt. 142	Dresdener Strasse 38
Santa Clara, California 95051	D-65232 Tannusstein
	Germany
Mary K. O'Connell	Nils Paellmann
9312 So. Montgomery Drive	305 Second Avenue, Apt. 344
Orland Park, Illinois 60462	New York, New York 10003

IN RESPONSE TO THE NOTICE OF PENDENCY (timely, by Plaintiffs' Submission Pursuant to the Court's Order dated March 25, 2003 (filed July 8, 2003))	
Diana L. Purcell, Executor for John R. Purcell (Deceased)	Geary Rummler, TTEE and Margaret Rummler TTEE
11720 Birch Glen Court	Geary & Margaret Rummer Rev Trust 9-26-94/Brandes Global
San Diego, California 92131-2304	3780 E. Sumo Quinto
	Tucson, Arizona 85718-6067
Charles M. Simmons	Robert L. Stauffer, IRA
1120 Shady Oaks Lane	2332 Autumn Run
Fort Worth, Texas 76107-3558	Wooster, Ohio 44691
Robert L. Stauffer & Elizabeth Stauffer Jt. Ten.	Andres C. Tapia
2332 Autumn Run	40 Windsor Ter., Dept. J2
Wooster, Ohio 44691	White Plains, New York 10601
Katherine Whild	
99 Deerbrook Farm	
North Yarmouth, Maine 04097	

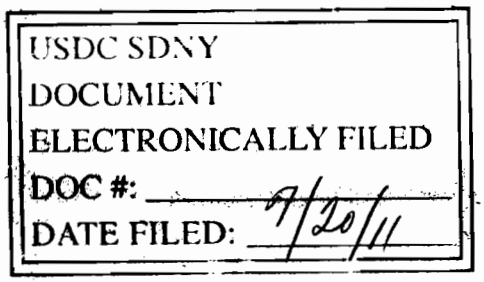
IN RESPONSE TO THE NOTICE OF PENDENCY (untimely, stipulated and agreed to by Court Order filed February 25, 2004)	
Josef Higa, TTEE U/A DTD 03/30/1998	Robert B. Pease
659 Kerryton Place Circle	326 Dewey Avenue
Ballwin, Missouri 63021	Pittsburgh, Pennsylvania
James D. Coyer	Ivan W. Sellers
10374 Wateridge Circle # 334	2001 Harrisburg Pike Apt. B-224
San Diego, California 92121	Lancaster, Pennsylvania 17601-2641
Robert L. Stauffer & Elisabeth Stauffer, Goldman, Sachs & Co. Joint Account	Joseph Webb, TTEE Joseph J. Webb 1996 CRT
IRA Account	11719 Point Overlook Place
2332 Autumn Run	Strongsville, Ohio 44136-4525
Wooster, Ohio 44691	
Belinda Zanfardino	
3160 Mahaffey Lane	
Paris, Texas 75460	

Harrero, 5



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KEVIN CORNWELL, Individually and On Behalf of All Others Similarly Situated, Plaintiff, vs. CREDIT SUISSE GROUP, et al., Defendants.	Civil Action No. 08-cv-03758(VM) **(Consolidated)** CLASS ACTION ORDER AWARDING ATTORNEYS' FEES AND EXPENSES



THIS MATTER having come before the Court on July 18, 2011, on the motion of Lead Plaintiffs' counsel for an award of attorneys' fees and expenses incurred in the Action; the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of the Action to be fair, reasonable, and adequate and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Settlement Agreement dated March 7, 2011.

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

3. Counsel for the Lead Plaintiffs are entitled to a fee paid out of the common fund created for the benefit of the Settlement Class. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478-79 (1980). In class action suits where a fund is recovered and fees are awarded therefrom by the court, the Supreme Court has indicated that computing fees as a percentage of the common fund recovered is the proper approach. *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984). The Second Circuit recognizes the propriety of the percentage-of-the-fund method when awarding fees. *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005).

4. Lead Plaintiffs' counsel have moved for an award of attorneys' fees of 27.5% of the Settlement Fund, plus interest.

5. This Court adopts the percentage-of-recovery method of awarding fees in this case, and concludes that the percentage of the benefit is the proper method for awarding attorneys' fees in this case.

6. The Court hereby awards attorneys' fees of 27.5% of the Settlement Fund, plus interest at the same rate as earned on the Settlement Fund. The Court finds the fee award to be fair and reasonable. The Court further finds that a fee award of 27.5% of the Settlement Fund is consistent with awards made in similar cases.

7. Said fees shall be allocated among plaintiffs' counsel by Co-Lead Counsel in manner which, in their good faith judgment, reflects each counsel's contribution to the institution, prosecution and resolution of the Action.

8. The Court hereby awards expenses in an aggregate amount of $285,072.62, plus interest.

9. In making this award of attorneys' fees and expenses to be paid from the Settlement Fund, the Court has considered each of the applicable factors set fort in *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000). In evaluating the *Goldberger* factors, the Court finds that:

(a) Counsel for Lead Plaintiffs expended considerable effort and resources over the course of the Action researching, investigating and prosecuting Lead Plaintiffs' claims. Lead Plaintiffs' counsel have represented that they have reviewed tens of thousands of pages of documents, interviewed witnesses and opposed legally and factually complex motions to dismiss. The parties also engaged in settlement negotiations that lasted several months. The services provided by Lead Plaintiffs' counsel were efficient and highly successful, resulting in an outstanding recovery for the Settlement Class without the substantial expense, risk and delay of continued litigation. Such efficiency and effectiveness supports the requested fee percentage.

(b) Cases brought under the federal securities laws are notably difficult and notoriously uncertain. *In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, No. MDL 1500, 2006 U.S. Dist. LEXIS 17588, at *31 (S.D.N.Y. Apr. 6, 2006). "[S]ecurities actions have become more

difficult from a plaintiff's perspective in the wake of the PSLRA." *In re Ikon Office Solutions, Inc., Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000). Despite the novelty and difficulty of the issues raised, and the procedural posture of the case, Lead Plaintiffs' counsel secured an excellent result for the Settlement Class.

(c) The recovery obtained and the backgrounds of the lawyers involved in the lawsuit are the best evidence that the quality of Lead Plaintiffs' counsel's representation of the Settlement Class supports the requested fee. Lead Plaintiffs' counsel demonstrated that notwithstanding the barriers erected by the PSLRA, they would develop evidence to support a convincing case. Based upon Lead Plaintiffs' counsel's diligent efforts on behalf of the Settlement Class, as well as their skill and reputations, Lead Plaintiffs' counsel were able to negotiate a very favorable result for the Settlement Class. Lead Plaintiffs' counsel are among the most experienced and skilled practitioners in the securities litigation field, and have unparalleled experience and capabilities as preeminent class action specialists. Their efforts in efficiently bringing the Action to a successful conclusion against the Defendants are the best indicator of the experience and ability of the attorneys involved. In addition, Defendants were represented by highly experienced lawyers from a prominent firm. The standing of opposing counsel should be weighed in determining the fee, because such standing reflects the challenge faced by plaintiffs' attorneys. The ability of Lead Plaintiffs' counsel to obtain such a favorable settlement for the Settlement Class in the face of such formidable opposition confirms the superior quality of their representation and the reasonableness of the fee request.

(d) The requested fee of 27.5% of the settlement is within the range normally awarded in cases of this nature.

(e) Public policy supports the requested fee, because the private attorney general role is "'vital to the continued enforcement and effectiveness of the Securities Acts.'" *Taft v. Ackermans*, No. 02 Civ. 7951(PKL), 2007 U.S. Dist. LEXIS 9144, at *33 (S.D.N.Y. Jan. 31, 2007) (citation omitted).

(f) Lead Plaintiffs' counsel's total lodestar is $4,049,631.50. A 27.5% fee represents a multiplier of 4.7. Given the public policy and judicial economy interests that support the expeditious settlement of cases, *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 373 (S.D.N.Y. 2002), the requested fee is reasonable.

10. The awarded attorneys' fees and expenses, and interest earned thereon, shall be paid to Co-Lead Counsel from the Settlement Fund immediately after the date this Order is executed subject to the terms, conditions, and obligations of the Settlement Agreement and in particular ¶6.2 thereof, which terms, conditions, and obligations are incorporated herein.

IT IS SO ORDERED.

Dated: New York, NY
18 July, 2011

THE HONORABLE VICTOR MARRERO
UNITED STATES DISTRICT JUDGE

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CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2011, I submitted the foregoing to orders_and judgments@nysd.uscourts.gov and e-mailed to the e-mail addresses denoted on the Court's Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 11, 2011.

s/ Ellen Gusikoff Stewart
ELLEN GUSIKOFF STEWART

ROBBINS GELLER RUDMAN
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100 Penn Square East, Suite 450
Juniper and Market Streets
Philadelphia, PA 19107

Positive
As of: Mar 08, 2012

IN RE: PRICELINE.COM, INC. SECURITIES LITIGATION; This document relates to: ALL ACTIONS

MASTER FILE NO. 3:00-CV-1884(AVC)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

2007 U.S. Dist. LEXIS 52538*; *68 Fed. R. Serv. 3d (Callaghan) 273*; *Fed. Sec. L. Rep. (CCH) P94,433

July 19, 2007, Decided
July 20, 2007, Filed

SUBSEQUENT HISTORY: Motion denied by, Motion granted by *In re Priceline.Com, Inc. Sec. Litig, 2007 U.S. Dist. LEXIS 97445 (D. Conn., Nov. 29, 2007)*

PRIOR HISTORY: *In re Priceline.com, Inc., Sec. Litig., 2007 U.S. Dist. LEXIS 5962 (D. Conn., Jan. 26, 2007)*

COUNSEL: For Jay S. Walker, Defendant: Shawna Ballard, LEAD ATTORNEY, Bruce Bennett, LEAD ATTORNEY, Jeanne E. Irving, LEAD ATTORNEY, Hennigan, Bennett & Dorman LLP, Los Angeles, CA; Thomas D. Goldberg, LEAD ATTORNEY, Day Pitney LLP-Stmfd-CT, Stamford, CT.

For Howard Gunty Profit Sharing Plan, Consol Plaintiff: Aaron Brody, LEAD ATTORNEY, Jules Brody, LEAD ATTORNEY, Stull, Stull, & Brody, New York, NY.

For Priceline.Com Inc, Daniel H. Schulman, Richard S. Braddock, Consol Defendants, Defendants, N.J. Nichols, Defendant:Evan R. Chesler, LEAD ATTORNEY, Cravath, Swaine & Moore, New York, NY.

For Priceline.com, Inc, Daniel H. Schulman, Jay S. Walker, Richard S. Braddock, Defendants, Consol Defendants, N.J. Nichols, priceline.com Inc.; N.J. Nicholas; Daniel H. Schulman; and Richard S. Braddock, Defendants: Joseph L. Clasen, LEAD ATTORNEY, Robinson & Cole, Stamford, CT.

For Leisinger Pension Fund, Joseph Wilenkin, Lliana Llieva, Marilyn D. Egel, Mark Weiss, Lead Plaintiffs, Plaintiffs, John S. Anderson, Lance B. Orr, R. Warren Ross, Sharon Tsai, Movants: Erin Green Comite, LEAD ATTORNEY, Scott & Scott, Colchester, CT.

For Hyancinth S. Anish, Consol Plaintiff: Michael D. Donovan, LEAD ATTORNEY, Donovan Searles, Philadelphia, PA.

For Joseph Wilenkin, Lliana Llieva, Marilyn D. Egel, Mark Weiss, Lead Plaintiffs, Plaintiffs: Eben F. Duval, LEAD ATTORNEY, Johnson & Perkinson, South Burlington, VT.

For Deloitte & Touche, Defendant: Thomas J. Finn,

LEAD ATTORNEY, Eric Watt Wiechmann, LEAD ATTORNEY, McCarter & English-Htfd, Hartford, CT; William R. Maguire, LEAD ATTORNEY, Hughes, Hubbard & Reed, New York, NY.

For Jay S. Walker, Defendant, Consol Defendant, Walker Digital LLC, Movant: Terence J. Gallagher, III., LEAD ATTORNEY, Day Pitney LLP-Stmfd-CT, Stamford, CT.

For Muhammed Zia, Consol Plaintiff: Eliot B. Gersten, LEAD ATTORNEY, Gersten & Clifford, Hartford, CT.

For Monica R. Mazzo, Consol Plaintiff: Deborah R. Gross, LEAD ATTORNEY, Law Offices of Bernard M. Gross, PC, Philadelphia, PA.

For Deloitte & Touche, N.J. Nichols, Priceline.com, Inc, Daniel H. Schulman, Jay S. Walker, Richard S. Braddock, Defendants: James G. Hein, Jr., LEAD ATTORNEY, Cravath, Swaine & Moore, New York, NY.

For Jay S. Walker , Defendant, Consol Defendant: J. Michael Hennigan, LEAD ATTORNEY, Hennigan, Bennett & Dorman LLP, Los Angeles, CA.

For Leisinger Pension Fund, Joseph Wilenkin, Lliana Llieva, Marilyn D. Egel, Mark Weiss, Lead Plaintiffs, Plaintiffs: Mark V. Jackowski, LEAD ATTORNEY, Scott & Scott-CT, Colchester, CT; Geoffrey M. Johnson, LEAD ATTORNEY, Scott & Scott, LLC-OH, Chagrin Falls, OH; Beth A. Kaswan, LEAD ATTORNEY, Scott & Scott-NY, New York, NY.

For Randall Twardy, Plaintiff: Dennis J. Johnson, LEAD ATTORNEY, Jacob B. Perkinson, LEAD ATTORNEY, Johnson & Perkinson, South Burlington, VT.

For Priceline.com, Inc, Daniel H. Schulman, Richard S. Braddock, N.J. Nichols, Defendants, Priceline.Com Inc, Consol Defendant: Kevin J. Kehoe, Jr., LEAD ATTORNEY, Cravath, Swaine & Moore, New York, NY.

For Deloitte & Touche, priceline.com Inc.; N.J. Nicholas; Daniel H. Schulman; and Richard S. Braddock, Defendants, N.J. Nichols, Priceline.com, Inc, Daniel H. Schulman, Jay S. Walker, Richard S. Braddock, Defendants, Consol Defendants: William J. Kelleher, III., LEAD ATTORNEY, Robinson & Cole - Stmfd, CT, Stamford, CT.

For Howard Gunty Profit Sharing Plan, Hyancinth S. Anish, Jack A. Caswell, Jerry Krim, Monica R. Mazzo, Scott Lyon, Thomas Atkin, Consol Plaintiffs, Leisinger Pension Fund, Joseph Wilenkin, Lliana Llieva, Marilyn D. Egel, Mark Weiss, Plaintiffs: Nancy A. Kulesa, Schatz Nobel Izard PC-Htfd, Hartford, CT.

For Leisinger Pension Fund, Joseph Wilenkin, Lliana Llieva, Marilyn D. Egel, Mark Weiss, Amerindo Investment Advisors, Inc, Plaintiffs, Jim M. Ayach, Michael Cerelli, Sarah Sontag, Consol Plaintiffs: James E. Miller, LEAD ATTORNEY, Sheperd Finkelman Miller & Shah-Chester, Chester, CT.

For Leisinger Pension Fund, Joseph Wilenkin, Lliana Llieva, Mark Weiss, Amerindo Investment Advisors, Inc, Marilyn D. Egel, Plaintiffs: Jeffrey S. Nobel, LEAD ATTORNEY, Andrew M. Schatz, LEAD ATTORNEY, Schatz Nobel Izard PC-Htfd, Hartford, CT.

For N.J. Nichols, Priceline.com, Inc, Daniel H. Schulman, Jay S. Walker, Richard S. Braddock, Defendants: John F.X. Peloso, Jr., LEAD ATTORNEY, Robinson & Cole, Stamford, CT.

For N.J. Nichols, Priceline.Com Inc, Daniel H. Schulman, Richard S. Braddock, Defendants: Alexander D. Pencu, LEAD ATTORNEY, Robinson & Cole - Stmfd, CT, Stamford, CT; Robert K. Simonds, LEAD ATTORNEY, Cravath, Swaine & Moore, New York, NY.

For Randall Twardy, Plaintiff, Anthony Mazzo, Bryan Koster, Jay Jaskolski, Jeremy Licht, Mark Fialkov, Mathis Weingarten, Michael Karas, Natalie Berdakina, Peter Makhlouf, Rajiv Bazag, Ramin Farzam, Samuel Mayer, Sherman Breier, Todd Haskell, Monica R. Mazzo, Consol Plaintiffs: J. Daniel Sagarin, LEAD ATTORNEY, Hurwitz Sagarin Slossberg & Knuff LLC, Milford, CT.

For Leisinger Pension Fund, Joseph Wilenkin, Lliana Llieva, Marilyn D. Egel, Mark Weiss, Amerindo Investment Advisors, Inc, Lead Plaintiffs, Plaintiffs, John S. Anderson, Lance B. Orr, R. Warren Ross, Sharon Tsai, Movants: David Randell Scott, LEAD ATTORNEY, Scott & Scott-CT, Colchester, CT.

For Priceline.Com Inc, Daniel H. Schulman, Richard S. Braddock, Consol Defendants, Priceline.com, Inc, Daniel H. Schulman, Richard S. Braddock, N.J. Nichols,

Defendants: Daniel Slifkin, LEAD ATTORNEY, Cravath, Swaine & Moore, New York, NY.

For Jeremy Licht, Consol Plaintiff, Randall Twardy, Plaintiff: David A. Slossberg, LEAD ATTORNEY, Hurwitz Sagarin Slossberg & Knuff LLC, Milford, CT.

For N.J. Nichols, Priceline.com, Inc, Daniel H. Schulman, Jay S. Walker, Richard S. Braddock, Defendants: Melissa Sullivan, LEAD ATTORNEY, Robinson & Cole, Stamford, CT.

For Johnny Kwan, Consol Plaintiff: Joseph H. Weiss, LEAD ATTORNEY, Weiss & Yourman, New York, NY.

JUDGES: [*1] Alfred V. Covello, United States District Judge.

OPINION BY: Alfred V. Covello

OPINION

RULING ON MOTIONS FOR APPROVAL OF CLASS ACTION SETTLEMENT AND ATTORNEYS' FEES AND EXPENSES

This is an action for damages brought on behalf of a class of all persons and entities who purchased or acquired Priceline.com securities during the class period of January 27, 2000 through October 4, 2000, and were damaged thereby. [1] It is brought pursuant to sections 10(b), *15 U.S.C. § 78j(b)*, and 20(a), *15 U.S.C. § 78t*, of the Securities and Exchange Act of 1934, as amended by the Private Securities Litigation Reform Act of 1995 ("PSLRA"), *15 U.S.C. §§ 78a-78mm*, and *Rule 10b-5*, *17 C.F.R. § 240.10b-5*. The complaint alleges that the defendants made certain misleading statements with respect to the profitability of Priceline.com and WebHouse Club, causing the plaintiff class to suffer losses on their investments in Priceline.com securities. On May 4, 2007, the plaintiffs reached a settlement with the defendants Priceline.com, Jay Walker, Dan Schulman, Richard Braddock and N.J. Nichols. On July 2, 2007, the court held a hearing to address the fairness of the proposed settlement in accordance with *Federal Rule of Civil Procedure 23(e)*. [*2] [2] For the following reasons, the court hereby approves the parties proposed settlement and the plaintiffs' requested attorneys' fees and expenses.

1 Excluded from the class are the following: (1) the settling defendants; (2) the officers and directors of Priceline.com, at all relevant times; (3) members of the settling defendants' immediate families and their legal representatives, heirs, successors or assigns; (4) any entity in which the settling defendants have or at any time had a controlling interest; and (5) Deloitte & Touche LLP, or any of Deloitte's partners, officers and directors.

2 *Federal Rule of Civil Procedure 23(e)* provides, in relevant part, that "the court may approve a settlement . . . that would bind class members only after a hearing and on finding that the settlement . . . is fair, reasonable, and adequate." *Fed.R.Civ.P. 23(e)(1)(C)*.

FACTS

Examination of the complaint and the papers filed in connection with the parties' proposed settlement and the arguments made during the July 2, 2007, hearing reveal the following facts:

On October 2, 2000, the plaintiffs filed the complaint in this case, alleging that the defendants made certain misleading statements with respect to [*3] the profitability of Priceline.com and WebHouse Club, causing the plaintiff class to suffer losses on their investments in Priceline.com securities. On November 29, 2000, the court consolidated nine of the within cases. On September 12, 2001, the court consolidated the remaining 21 cases under the above-titled case number. On September 12, 2001, the court appointed lead plaintiff for the putative class.

On October 29, 2001, the plaintiff filed a consolidated amended complaint. On February 28, 2002, the defendant, Deloitte and Touche ("Deloitte"), and the defendants Priceline, Walker, Schulman, Braddock and Nichols ("Priceline Defendants"), filed motions to dismiss the consolidated amended complaint. On October 7, 2004, the court, the honorable Dominic J. Squatrito, granted in part and denied in part the defendants motions to dismiss and dismissed a portion of the allegations against the Priceline defendants and all of the allegations against Deloitte. On January 7, 2005, the plaintiffs filed a motion to certify the class. On April 4, 2006, the court certified the plaintiff class to include all persons and entities who purchased or acquired Priceline.com securities during the class period [*4] of January 27,

2000 through October 4, 2000, and were damaged thereby. During the pendency of this case, the parties filed numerous discovery motions and have produced and reviewed 5.29 million pages of WebHouse and Priceline documents.

On May 4, 2007, the plaintiffs reached agreement with defendants Priceline.com, Walker, Schulman, Braddock and Nichols for a cash settlement of $80 million. On July 2, 2007, the court held a hearing to address the fairness of the proposed settlement in accordance with *Federal Rule of Civil Procedure 23(e)*.

STANDARD

Federal Rule of Civil Procedure 23(e) provides as follows:

> (A) The court must approve any settlement . . . of the claims, issues, or defenses of a certified class.
>
> (B) The court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise.
>
> (C) The court may approve a settlement . . . that would bind class members only after a hearing and on finding that the settlement . . . is fair, reasonable, and adequate.

Fed.R.Civ.P. 23(e)(1). The second circuit has recognized that "[t]he standard for the adequacy of a settlement notice in a class action under either the *Due Process Clause* [*5] or the Federal Rules is measured by reasonableness." *Wal-Mart Stores, Inc. V. Visa U.S.A., Inc., 396 F.3d 96, 113 (2d Cir. 2005)*. The court further stated that "[t]here are no rigid rules to determine whether a settlement notice to the class satisfies constitutional or *rule 23(e)* requirements: the settlement notice must 'fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings.'" *Id. at 114* (citing *Weinberger v. Kendrick, 698 F.2d 61, 70 (2d Cir. 1982)* (internal quotation marks and brackets omitted)).

The second circuit has further recognized that "[a] court may approve a class action settlement if it is fair, reasonable and adequate and not a product of collusion." *Wal-Mart Stores, Inc. V. Visa U.S.A., Inc., 396 F.3d 96, 113 (2d Cir. 2005)*. "A court determines a settlement's fairness by looking at both the settlement's terms and the negotiating process leading to settlement." Id. (citing *D'Amato v. Deutsche Bank, 236 F.3d 78, 85 (2d Cir. 2001))*. Further, the court has recognized a strong policy in favor of class action settlements and also that a "'presumption of fairness, [*6] adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery.'" *Id. at 116-17* (quoting *Manual for Complex Litigation, Third,* § 30.42 (1995)).

DISCUSSION

I. Adequacy of Notice to the Class

Federal Rule of Civil Procedure 23(e)(1)(B) requires that the court "direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise." *Fed. R. Civ. P. 23(e)(1)(B)*. In addition, *Federal Rule of Civil Procedure 23(c)(2)(B)* requires that the court "direct to class members the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must concisely and clearly state in plain, easily understood language:

> * the nature of the action
>
> * the definition of the class certified,
>
> * the class claims, issues, or defenses,
>
> * that a class member may enter an appearance through counsel if the member so desires,
>
> * that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded, and
>
> * the binding [*7] effect of a class judgment on class members under *Rule 23(c)(3)*."

Fed. R. Civ. P. 23(c)(2).

In this case, the claims administrator, Strategic Claims Services ("Strategic Claims"), mailed individual notices, by first-class mail, to all class members at their last known-addresses. Strategic Claims mailed a total of 88,893 packets of individual notice materials. In addition, the notice of this settlement was published in the *Wall Street Journal* and *USA Today*. Further, a press release announced the settlement over the PR newswire for national distribution and the notice of settlement and settlement agreement are currently posted on the claims administrator's website. Finally, Priceline described the settlement in its 2007 first quarter Form 10-Q, which it filed on May 10, 2007.

The court concludes that notice to the class in this case was adequate in form and content to satisfy the requirements of the federal rules and due process. The notice was sufficient for class members to understand the proposed settlement and their options.

II. Fairness of the Settlement

The federal rules next require the court to determine whether "the settlement . . . is fair, reasonable, and adequate." *Fed.R.Civ.P. 23(e)(1)(C).* [*8] The second circuit has stated that courts should consider the following factors when determining whether a particular settlement is fair: "(1) the complexity, expense and likely duration of the litigation . . .; (2) the reaction of the class to the settlement . . .; (3) the stage of the proceedings and the amount of discovery completed . . .; (4) the risks of establishing liability . . .; (5) the risks of establishing damages . . .; (6) the risks of maintaining the class action through the trial . . .; (7) the ability of the defendants to withstand a greater judgment . . .; (8) the range of reasonableness of the settlement fund in light of the best possible recovery . . .; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation . . . ." *City of Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974).* Further, the second circuit has recognized that a "'presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery.'" *Wal-Mart Stores, Inc. V. Visa U.S.A., Inc., 396 F.3d 96, 116-17 (2d Cir. 2005)* [*9] (quoting *Manual for Complex Litigation, Third,* § 30.42 (1995)).

In this case, the parties met in four mediation sessions before reaching agreement. The honorable Nicholas H. Politan, retired U.S. district judge, and Robert A. Meyer, esq., conducted the negotiations between the parties. The settlement in this case was ably negotiated at arms' length with the impartial participation of Judge Politan and attorney Meyer and is, therefore, entitled to a presumption of fairness and adequacy. Further, the above-referenced factors militate in favor of approving the parties' proposed settlement. This is a complex case involving many complex accounting issues and violations of the securities laws. While two entities have raised issues with respect to the amount of class counsels' fee, the reaction of the class to the terms of the proposed settlement could not be more favorable. Not one member of the class has objected to the settlement. With respect to the stage of the proceedings, the parties have been litigating this case for almost seven years. During that time, they have completed review of several millions of pages of documents and assembled and utilized teams of investigators and experts [*10] to analyze and quantify their claims. Consequently, the parties are certainly in a position to understand and gauge the strengths and weaknesses of their case and to determine an adequate settlement. See *In re AOL Time Warner, Inc. Sec. & ERISA Litig., 2006 U.S. Dist. LEXIS 17588, 2006 WL 903236 *10 (S.D.N.Y. April 6, 2006).* With respect to the risks of establishing liability, absent the within settlement, the plaintiffs would face motions for summary judgment and complex and fact-intensive analysis of accounting and fraud issues. The plaintiffs would also face significant obstacles in proving damages in this case with respect to differences between the stock's purchase price and the stock's "true" value. The determination of damages would depend upon the jury's reaction to and interpretation of conflicting expert opinions on the issue. Such a determination would be difficult to predict with any certainty. With respect to the risks of maintaining the class action through trial, although the court has certified the class in this case, the prospects of decertification certainly exist in light of the defendants' vigorous opposition to the plaintiffs' motions for certification and the defendants' defeat of one of the plaintiffs' [*11] motions for appointment of a lead plaintiff as a class representative. With respect to the defendants' ability to withstand a greater judgment, the plaintiffs' memorandum states that class counsel relied on this factor in deciding to settle this case. On its 2007 Form 10-Q, Priceline reported that $ 30 million of the $ 80 million dollar settlement amount is being funded

through its insurance policies. In addition, the form states that Priceline's current liabilities exceed its current assets and that it reported an operating loss of $ 31.7 million for its most recent quarter. Finally, the range of reasonableness of the settlement in light of the best possible recovery and litigation risks weighs in favor of approving the parties settlement. Given the procedural history of this case, the previously discussed risks of proceeding to trial and the defendants' financial circumstances, the court concludes that the settlement here represents a fair, adequate and reasonable result for the class.

As part of the fairness determination, the court must determine whether the settlement's proposed allocation of the proceeds is fair and reasonable. "[T]he adequacy of an allocation plan turns on whether [*12] counsel has properly apprised itself of the merits of all claims, and whether the proposed settlement is fair and reasonable in light of that information." *In re Paine Webber Partnerships Litigation, 171 F.R.D. 104, 133 (S.D.N.Y. 1997)*, aff'd, *117 F.3d 721 (2d Cir. 1997)*. In this case, the settlement provides for distribution of the net settlement funds on a pro rata basis and involves a formula based upon liability and damages. The settlement agreement seeks to reimburse class members for the excess amount they paid for Priceline stock because of the artificial inflation of the stock by reason of the defendants' misrepresentations. The court notes that not one class member has objected to the proposed plan of allocation. Upon careful review of the settlement agreement's allocation of the settlement fund, the court concludes that it is fair and has a "reasonable rational basis" in light of the circumstances of this case. See *Maley v. Del Global Techs. Corp., 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002)*.

III. Attorneys' Fees

Lead plaintiffs' counsel have also filed a motion for an award of attorneys fees in the amount of 30% of the $80 million dollar settlement and for reimbursement of litigation [*13] expenses. For the foregoing reasons, the motion is granted.

The plaintiffs argue that 30% of the settlement fund is a fair and reasonable fee in this case. The New York State Teachers' Retirement System ("NYSTRS") has filed an opposition to the requested fee and argues that the facts of this case do not support a fee award in that amount. In addition, the Pennsylvania Public Schools Employees' Retirement System ("PPSERS") has filed an objection to the proposed attorneys' fee request.

The second circuit has recognized that "where an attorney succeeds in creating a common fund from which members of a class are compensated for a common injury inflicted on the class. . . . the attorneys whose efforts created the fund are entitled to a reasonable fee-set by the court-to be taken from the fund. *Goldberger v. Integrated Resources, Inc., 209 F.3d 43, 47 (2d Cir. 2000)* (citations omitted). The second circuit has recognized two methods for calculating a reasonable fee. "The first is the loadstar, under which the district court scrutinizes the fee petition to ascertain the number of hours reasonably billed to the class and then multiplies that figure by an appropriate hourly rate. Once that initial [*14] computation has been made, the district court may, in its discretion, increase the loadstar by a multiplier based on 'other less objective factors,' such as the risk of litigation and the performance of the attorneys." Id. (Citation omitted) (internal quotation marks omitted in original). Under the second method, "the court sets some percentage of the recovery as a fee." Id. The second circuit has recognized that regardless of the method used, "the fees awarded in common fund cases may not exceed what is 'reasonable' under the circumstances." Id. The second circuit has stated that whether using the loadstar or percentage methods, "the district courts should continue to be guided by the traditional criteria in determining a reasonable common fund fee, including: '(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of litigation . . .; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.'" *Id. at 50* (quoting *In re Union Carbide Corp. Consumer Products Business Securities, 724 F. Supp 160, 163 (S.D.N.Y. 1989))*.

In this case, counsel have expended 31,768 hours [*15] at rates of between $ 50 and $ 770 per hour for a total of 12.1 million in fees. Counsel in this case state that they have investigated publicly available materials, reviewed millions of pages of documents, consulted with experts, conducted ongoing research and drafted court documents for an extensive motions practice, formulated litigation strategy, prepared for and participated in multiple mediation sessions, and negotiated and administered the within settlement. The magnitude and complexity of this case are apparent from the more than six years of contentious discovery, intricate issues regarding proof of liability and loss and complex

accounting issues. With respect to the risk of litigation, the plaintiffs developed their own theory of liability and damages, as there was not a government prosecution in this case. Proving the elements of this case would be a necessary and formidable task. Further, litigation brought issues of collectibility against these defendants, a risk that the class would not be certified, and risks associated with taking a case on a contingent fee basis. The quality of representation here is demonstrated, in part, by the result achieved for the class. Further, [*16] it has been this court's experience, throughout the ongoing litigation of this matter, that counsel have conducted themselves with the utmost professionalism and respect for the court and the judicial process. The relation of the requested fee to the settlement weighs in favor of the requested 30% fee award. The effort by counsel in this case, the result obtained and similar awards in comparable cases in this circuit, all weigh in favor of the requested fee. See e.g., *Gwozdzinnsky v. Sandler Assocs., 159 F.3d 1346 (2d Cir. 1998)* (summary order) (affirming district court's award of 25% of the common fund); *Strougo ex rel. Brazilian Equity Fund, Inc. v. Bassini, 258 F. Supp. 2d 254, 262 (S.D.N.Y. 2003)* (granting attorneys fees in amount of 33 and 1/3% of the settlement fund); *Maley v. Del Global Technologies Corp., 186 F. Supp. 2d 358, 370 (S.D.N.Y. 2002)* (granting attorneys' fees in amount of 33 and 1/3% of the settlement fund); *In re RJR Nabisco Sec. Litig., No. 88 Civ. 7905, 1992 U.S. Dist. LEXIS 12702, 1992 WL 210138 (S.D.N.Y. Aug. 24, 1992)* (recognizing that the courts increasingly use the percentage of the fund method over the loadstar method in attorneys' fee award).

Finally, public policy considerations also support the [*17] requested fee. The award of the percentage requested here will encourage enforcement of the securities laws and support attorneys' decisions to take these types of cases on a contingent fee basis. The fee fairly compensates competent counsel in a complex securities case and helps to perpetuate the availability of skilled counsel for future cases of this nature.

A cross check of the loadstar in this case also demonstrates the reasonableness of the requested percentage. The percentage requested equals a 1.98 multiplier of the $ 12.1 million dollar loadstar amount. Taking into consideration all of the aforementioned factors, the risks associated with contingent fee litigation, and the quality of representation here and the results obtained, this multiplier is reasonable in light of the circumstances of this case. See *In re Lloyd's Am. Trust Fund Litig., 2002 U.S. Dist. LEXIS 22663, 2002 WL 31663577 *26-28 (S.D.N.Y. 26, 2002)* (recognizing that courts typically apply a multiplier to the loadstar amount to recognize the risks of litigation and a contingent fee). The court, therefore, orders a fee award equal to 30% of the settlement amount plus accrued interest to the date of the award. The amount of the fee [*18] award shall be allocated among the plaintiffs' counsel in a fashion which fairly compensates counsel for their respective contributions in litigating this case.

Class plaintiffs' counsel also request an award for reimbursement of their litigation expenses advanced to prosecute this case, in the amount of $ 1,394,422.57. Counsel have submitted thorough records of their requested expenses. Absent any objection thereto and after careful review of the expenses at issue, the court grants the plaintiffs' request. The plaintiffs' counsel shall be reimbursed for the full amount of the expenses they have advanced in this matter.

IV. Opt Out Provision

The notice to the class of the proposed settlement gave class members the option to opt out of the settlement. On June 4, 2007, class member Barbara A. Res filed a request to opt out of the settlement in accordance with the procedures set forth in the notice of settlement. Her request is granted and she will not be part of the within settlement. In addition, Arnold J. Hoffman filed a request to opt out with respect to several trusts. That request is addressed in a separate order filed simultaneously herewith.

CONCLUSION

For the foregoing reasons, the [*19] plaintiffs' motion for final approval of the proposed class action settlement (document no. 462) and the motion for award of attorneys' fees and reimbursement of expenses (document no. 463) are **GRANTED**.

It is so ordered this 19th day of July, 2007, at Hartford, Connecticut.

/s/

Alfred V. Covello,

United States District Judge