

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

:

IN RE MARSH & MCLENNAN COMPANIES, INC. : CIVIL ACTION
SECURITIES LITIGATION : NO: 04-CV-08144 (CM)

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**JOINT DECLARATION OF STANLEY D. BERNSTEIN AND KEITH M. FLEISCHMAN
IN SUPPORT OF MOTION FOR FINAL APPROVAL OF SETTLEMENT, PLAN OF
ALLOCATION, CLASS CERTIFICATION, AND PETITION FOR AN AWARD OF
ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES AND AN AWARD OF
EXPENSES TO LEAD PLAINTIFFS**

Stanley D. Bernstein and Keith M. Fleischman, admitted to practice law in the State of New York and this Court, do hereby declare under the penalties of perjury that:

1. Stanley D. Bernstein is a member of the firm Bernstein Liebhard LLP (“Bernstein Liebhard”) and Keith M. Fleischman is a member of the firm Grant & Eisenhofer, P.A. (“G&E”), Co-Lead Counsel for the Class (“Co-Lead Counsel”). We are responsible for the prosecution of this securities fraud class action against Defendants Marsh & McLennan Companies, Inc. (“MMC”), Marsh Inc. (“Marsh”), Jeffrey W. Greenberg, and Roger E. Egan (collectively “Defendants”).

2. The Second Amended Consolidated Class Action Complaint (the “Complaint” or the “Amended Complaint”) alleges that Defendants’ representations to the investing public about a critical source of MMC’s and Marsh’s revenues – contingent commissions – were false and misleading because: (1) Marsh provided no “services” to insurers in exchange for these payments other than the mere production of business; (2) the contingent commissions were improper kickbacks, the size of which was the driving factor behind Marsh’s decisions about which carriers were permitted to submit bids and what information carriers were given to bid effectively; and

(3) Marsh's communications protocol deliberately prevented the disclosure of accurate information concerning contingent commissions to curious clients.

3. We are pleased to submit, for final judicial approval, the proposed settlement of the Action for \$400,000,000 cash as set forth in the Stipulation of Settlement, dated November 10, 2009 ("Settlement" and "Stipulation of Settlement," respectively).

4. We make this joint declaration ("Joint Declaration") in support of (i) Co-Lead Plaintiffs' Motion for Final Approval of Settlement as set forth in the Stipulation of Settlement; (ii) the proposed Plan of Allocation of Net Settlement Fund (the "Plan of Allocation"); (iii) Co-Lead Counsel's application for an award of attorneys' fees of 13.5% of the Net Settlement Fund and approval of reimbursement of reasonable costs and expenses incurred of \$7,848,411.84 ; and (iv) an award to Co-Lead Plaintiffs in the total amount of \$214,657.14 as reimbursement of expenses incurred in successfully representing the Class. The Notice that was mailed to all of the potential members of the Class provided that such requests would be made. Indeed, the Notice that was mailed provided that Co-Lead Counsel would apply for reasonable costs and expenses of up to \$13 million, and Co-Lead Counsel are in fact only applying for \$7,848,411.84. Similarly, the Notice provided that Co-Lead Plaintiffs would seek up to \$160,000 each as reimbursement of expenses incurred in successfully representing the Class and are in fact applying for only \$70,000 (Ohio Plaintiffs) and \$144,657.14 (New Jersey Plaintiffs).

I. INTRODUCTION

5. This litigation was extremely hard-fought and complex, factually and legally.. The process ultimately producing this Settlement was long and difficult, involving, among other things, the efforts of a very experienced and well-regarded independent mediator – retired Judge Daniel Weinstein ("Judge Weinstein") – who recommended the Settlement at \$400 million. Co-Lead

Counsel believe that the Settlement is a significant result for Class members¹ and the best result achievable under the circumstances of this litigation. At \$400 million, the Settlement is one of the top 25 recoveries for shareholders in lawsuits of this nature in American history.

6. In recommending the Settlement, Co-Lead Counsel carefully analyzed the risks of establishing liability and damages at trial and of preserving a verdict through an inevitable appeal. Plaintiffs believed strongly in the strength of their factual allegations and legal theories. However, Plaintiffs were simultaneously acutely aware that a factfinder or appellate court could potentially agree with Defendants' attacks on those allegations and theories. Throughout the litigation, Defendants maintained that many, if not all, of the allegations in the Complaint should be dismissed because Plaintiffs had not asserted cognizable claims. Defendants vigorously argued that Plaintiffs could not prove liability, loss causation, damages, or that the Class was even appropriate for certification.

7. After carefully considering the strengths and weaknesses of Plaintiffs' case against Defendants, in light of the high costs, inherent difficulties, and substantial risks of prosecuting the case through trial and appeals, Co-Lead Plaintiffs agreed to the Settlement, concluding that it is fair, reasonable and adequate to the Class.

8. The Class's reaction to the Settlement confirms our conviction that the Settlement is fair, reasonable and adequate. Pursuant to the Preliminary Approval Order, the deadline for submitting a request for exclusion from the Settlement and for submitting an objection to the terms

¹ "Class" means "all Persons that purchased or otherwise acquired MMC securities between October 14, 1999 and October 13, 2004, inclusive, and that claim to have suffered losses as a result of such purchase or acquisition, except not included in the Class are: (1) MMC and Marsh and the officers, directors, employees, affiliates, parents, subsidiaries, representatives, predecessors and assigns of each of them; (2) the Individual Defendants and the immediate families, employees, affiliates, representatives, heirs, predecessors, successors and assigns of each of them and any entity in which either of them has a controlling interest; and (3) those Persons that would otherwise be Members of the Class but that submit valid and timely requests for exclusion in accordance with the Court's Preliminary Approval Order."

of the Settlement and/or the request for reimbursement of fees and expenses passed on December 14, 2009. More than 12,317 Notices had been mailed to potential members of the Class by November 13, 2009.² Considering the number of Notices disseminated and that thousands of investors hold the relevant Settlement Class securities, the filing of only one objection to the Settlement and/or fee expense requests and only twenty requests for exclusion constitutes powerful endorsement of the fairness, reasonableness and adequacy of the Settlement, Plan of Allocation (“POA”), and fee and expense reimbursement requests.

9. Co-Lead Counsel, in close consultation with their damages consultant, developed the proposed POA, which is discussed in and attached to the Notice. *See* Notice at pages 11-17. The POA provides that the Settlement amount will be distributed to Authorized Claimants who submit a timely and valid Proof of Claim Form under the procedures set out in the Settlement Agreement. Based on the estimated number of damaged shares determined by Co-Lead Plaintiffs’ damages consultant, and assuming all owners of the affected shares elect to participate, the average recovery is \$0.93 per share of MMC common stock, before deduction of Court-awarded attorneys’ fees and expenses and an award to Lead Plaintiffs for their work. Class Members may recover more or less than this amount and may even recover nothing depending on, among other factors, when their shares were purchased or sold, the number of Class Members who timely file claims, and the allocation of the Settlement Fund.

² As set forth in the Affidavit of Charlene Young Regarding: (A) Distribution of the Settlement Notice and Proof of Claim Forms; (B) Publication of the Summary Notice; and (C) Report on Exclusion Requests Received, of Rust Consulting, Inc., the settlement and claims administrator (the “Administrator”) in the Action (the “Young Affidavit” or “Young Aff.”), of the total 596,517 Notice Packets that were mailed to potential Class members, 12,317 were mailed on November 13, 2009 as called for in the Court’s Preliminary Approval Order. For reasons discussed in the Young Aff., as of the date of Ms. Young’s affidavit, the additional Notice Packets were mailed to potential settlement class members. Young Aff. ¶ 10. In addition, a Summary Notice was published in the national edition of *The Wall Street Journal*, on November 17, 2009, and a copy of the Notice was transmitted over *Business Wire*, on November 16, 2009. Young Aff. ¶ 6.

10. As fully set forth in Co-Lead Plaintiffs' *Memorandum of Law in Support of Co-Lead Plaintiffs' Motion for Final Approval of Settlement, Plan of Allocation, and Class Certification* (the "Settlement Memorandum"), the proposed Settlement and POA, measured by all the criteria for approval of class action settlements, satisfy the relevant legal standards and should be approved by the Court as fair, reasonable and adequate.

11. Co-Lead Counsel respectfully submit that the request for approval of attorneys' fees in the amount of 13.5% of the Settlement Fund and reimbursement of approximately \$7.8 million in litigation expenses is fair and reasonable and fully deserves approval. As fully explained in the *Memorandum of Law in Support of Co-Lead Plaintiffs' Application for an Award of Attorneys' Fees, Reimbursement of Expenses for Co-Lead Counsel, and an Award of Expenses to Co-Lead Plaintiffs* (the "Fee Memorandum"), Co-Lead Counsel have collectively incurred a lodestar of approximately \$119.6 million. This figure represents over 309,537 hours devoted to the prosecution of the Action, including the near full-time work of a large team of attorneys and paralegals for many years. All of this work was done on a contingent basis without any compensation. Approval of the fee request based upon this lodestar would constitute a *negative* multiplier of .44.

12. Co-Lead Counsel also respectfully petition for the payment of reasonable class representative awards in accordance with the PSLRA for the institutional investors that have served as Lead Plaintiffs, proposed Class Representatives and proposed Settlement Class Representatives on behalf of the Class in this litigation (the "PSLRA Award Request").

13. In view of the foregoing, and as discussed in detail below, we respectfully submit that: (1) the Settlement is not only significant but is the best result achievable, particularly given the difficulties of prosecuting the Action to trial, and is fair, reasonable and adequate and thus, worthy

of final approval by the Court; (2) the Court should approve the POA; (3) Co-Lead Counsel's application for an award of attorneys' fees and reimbursement of expenses should be approved; and (4) the PSLRA Award Request should be granted.

II. FACTUAL BACKGROUND OF THE LITIGATION

14. Throughout the Class Period, MMC (mainly through its subsidiary Marsh) was the world's largest insurance broker. MMC represented itself to the world as an honest, ethical company, whose primary goal was to protect the interests of its clients and shareholders. The Complaint alleges that these and similar material misrepresentations about MMC and Marsh's client-focused business practices artificially inflated the price of MMC stock during the Class Period and that, unbeknownst to investors (and Marsh's clients), MMC's Class Period financial success depended on a massive and multi-tiered fraud built upon practices that were unethical, violative of clients' best interests, and, in some instances, illegal.

15. The Complaint alleges that Defendants' scheme aimed to protect and increase at all costs a crucial, all-profit revenue stream called "contingent commissions." "Contingent commissions," as used herein, refer to payments Marsh received directly from insurance carriers as the *quid pro quo* for placing business with those carriers. These back-end payments were in addition to the standard fees and/or commissions that Marsh received from clients for helping them purchase insurance. At one point during the Class Period, contingent commission payments accounted for almost 50% of Marsh's net operating income.

16. A key component of Defendants' scheme was the illegal and improper steering of client business to particular insurance carriers in order to maximize contingent commission payments from those carriers. Clearly, if clients and investors knew that instead of using its promised best efforts, in the clients' best interests, to market their clients' insurance programs,

Marsh was in fact knowingly subordinating its clients' interests to Marsh's own financial gain, the scheme (and MMC's stock price) would have crumbled. Accordingly, Plaintiffs alleged that another crucial element of Defendants' scheme was their concealment of the true nature and amount of these payments from both clients and investors.

17. As a result, the Complaint alleges Defendants lied to the public, misrepresenting that: (1) contingent commission payments played no role in Marsh's recommendations to its clients about which carriers to choose for insurance coverage; (2) contingent commissions were paid in exchange for "services" provided by Marsh to the insurance carriers; and (3) Marsh fully disclosed contingent commissions to its clients.

18. The Complaint further alleges that the truth was quite different in that: (1) contingent commission payments were the prime determinant in Marsh's decisions about which carriers were permitted to submit bids and what information carriers were given to bid effectively; (2) Marsh provided no "services" to insurers in exchange for these payments, which were simply kickbacks paid in exchange for the improper steering of clients; and (3) Marsh created a protocol to withhold and obscure accurate information concerning contingent commissions from clients demanding such information.

19. The Complaint further alleges that the individual defendants and other senior and managerial executives were well aware of the scheme outlined above and personally engaged in efforts to steer business and conceal information.

20. The Complaint further alleges that, when the scheme ultimately was revealed in late 2004, following a suit brought by the New York Attorney General ("NYAG"), and the truth about Defendants' misstatements began to come out, MMC's stock price collapsed and investors suffered significant damages.

21. Throughout the Litigation, Defendants argued, among other things, that: (a) its contingent commission practices were legal; (b) the market was fully aware of its contingent commission practices (“truth on the market”); and (c) the stock drop resulted from the market understanding that MMC was now on the radar screen of an overzealous prosecutor (the “Spitzer effect”) and MMC’s decision to suspend the collection of contingent commissions and not the result of corrective disclosures.

III. PROCEDURAL HISTORY

22. The Action was commenced on or about October 15, 2004 by the filing of a complaint alleging violations of the federal securities laws in the United States District Court for the Southern District of New York captioned *The Kendall Trust, by and through Richard J. Slater, et al. v. Marsh & McLennan Companies, Inc.*, et al., Civil Action No. 04-CV-8144.

23. Additional complaints were filed thereafter in the United States District Court for the Southern District of New York: *Frederic Ian Fischbein, et al. v. Marsh & McLennan Companies, Inc., et al.*, Civil Action No. 04-CV-8179; *Michael Feder, et al. v. Marsh & McLennan Companies, Inc., et al.*, Civil Action No. 04-CV-8225; *Arnold Spitz, et al. v. Marsh & McLennan Companies, Inc., et al.*, Civil Action No. 04-CV-8923; and *Anne E. Flynn, et al. v. Marsh & McLennan Companies, Inc., et al.*, Civil Action No. 04-CV-9300 (the “Additional Actions”).

A. Case Consolidation

24. By order dated January 26, 2005, the Honorable Shirley Wohl Kram ordered that the Additional Actions be consolidated with and into the Action (the “Consolidation Order”).

25. On November 10, 2005, another action was filed in the United States District Court for the Central District of California. By order dated January 18, 2006, the action was transferred to the United States District Court for the Southern District of New York pursuant to 28 U.S.C.

§ 1404(a). Upon transfer, this action was captioned *Merne Young v. Marsh & McLennan Companies, Inc., et al.*, Civil Action No. 06-CV-01016. By operation of the Consolidation Order, on April 19, 2006, *Young* was consolidated with and into the Action.

26. In the Consolidation Order, Judge Kram appointed Lead Plaintiffs as Lead Plaintiffs and Grant & Eisenhofer P.A. and Bernstein Liebhard LLP as Co-Lead Counsel for the Class.

27. The Lead Plaintiffs filed a Consolidated Class Action Complaint on April 20, 2005 (the “Consolidated Complaint”). The Consolidated Complaint superseded all prior complaints filed in the Action and alleged claims on behalf of all investors who purchased or otherwise acquired MMC securities between October 14, 1999 and October 13, 2004 under sections 10(b), 18 and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), sections 11 and 15 of the Securities Act of 1933 (the “Securities Act”) and state and common law.

B. Amendments of the Complaint/Motion to Dismiss

28. In eight separate filings, Defendants moved to dismiss the Consolidated Complaint. On July 19, 2006, the Court sustained Lead Plaintiffs’ Section 10(b) claims against MMC, Marsh, Greenberg and Egan, and Lead Plaintiffs’ Section 11 claims against MMC. *In re Marsh & McLennan Cos., Sec. Litig.*, 501 F. Supp. 2d 484 (S.D.N.Y. 2006) (“*Marsh I*”). The Court’s July 2006 Order on Defendants’ motions to dismiss found three general categories of statements to be actionable: “(1) disclosures regarding the nature of services provided in exchange for contingent commissions; (2) statements regarding the criteria brokers consider when placing insurance business for the Company’s clients; and (3) disclosures that Marsh’s clients were fully apprised of contingent commissions.” *Id.*

29. The Lead Plaintiffs filed the Amended Complaint on October 13, 2006. The Amended Complaint asserted claims under sections 10 and 20(a) of the Exchange Act against all Defendants and under section 11 of the Securities Act against MMC.

30. On December 12, 2006, Defendants answered the Amended Complaint. Defendants denied all allegations of liability, asserted affirmative defenses, and demanded judgment on the merits dismissing the Amended Complaint.

C. Class Certification Proceedings

31. On September 29, 2008, Lead Plaintiffs moved to certify the Action as a class action and to certify the Lead Plaintiffs as class representatives. Defendants filed their memoranda of law in opposition to class certification on November 13, 2008. Lead Plaintiffs filed their reply memorandum of law on January 9, 2009. Defendants filed sur-reply memoranda of law on February 13, 2009.

32. Prior to preliminarily approving the Settlement, the Court had not decided the class certification motion.

33. Defendants vigorously contested class certification arguing, *inter alia*, that the predominance of individual issues prohibited class certification, the alleged misstatements were not material, and that Lead Plaintiffs were not entitled to a presumption of fraud-on-the-market. Both parties submitted expert submissions on these issues, including rebuttal submissions.

34. The possibility that the Court might have either modified the class definition and class period (and thus substantially lowered the total amount of available damages) or, in the extreme, refused to certify a class, was among the factors Lead Plaintiffs considered in making the determination that the Settlement was in the best interests of the Class.

IV. MERITS DISCOVERY

A. Co-Lead Plaintiffs' Discovery Requests

35. After the Court had ruled on Defendants' motions to dismiss, the PSLRA discovery stay was lifted and discovery proceeded. Demonstrating the enormous discovery effort, the parties propounded numerous written discovery requests upon each, culminating in the production of tens of millions of documents and over 100 depositions.

36. The parties engaged in several months of discussions and negotiations regarding the timing, manner, and terms of document production. Co-Lead Counsel also served subpoenas, including requests for documents, on approximately 100 non-parties. Co-Lead Counsel reviewed and analyzed subpoena responses, and engaged in lengthy discussions and negotiations regarding objections to the subpoenas, as well as the time, manner, and terms of subpoenaed document production.

B. Coordination of Discovery & Negotiation of Protective Order

37. On March 6, 2007, Co-Lead Counsel met with counsel for Defendants in an extensive conference to formulate a discovery and litigation plan. Thereafter, Co-Lead Counsel conferred with counsel in the related ERISA litigation (the "ERISA Litigation") to develop a coordinated deposition schedule. After extensive negotiations between and among the plaintiffs and defendants in each action, Co-Lead Counsel and counsel in the ERISA Litigation formulated a plan for coordinating the notice, timing, and procedures of the depositions of fact witnesses consistent with the scope and complexity of their respective cases. The parties in this Action then agreed to a proposed scheduling order, reflecting their own negotiations and including an addendum setting forth the agreement between Co-Lead Plaintiffs and the plaintiffs in the ERISA Litigation to coordinate depositions, as well as a protective order to govern discovery in this Action.

C. Case Management Efforts

38. The outstanding \$400 million Settlement is in part a reflection of Co-Lead Counsel's creation, implementation, and operation of a thorough, efficient, and sophisticated process by which Co-Lead Counsel systematically and expeditiously reviewed and analyzed a vast universe of documents – totaling over 36 million pages – to build a case against Defendants. The exceedingly broad scope of discovery in this case and the extraordinary extent of electronic information maintained by Defendants and third parties required that special steps be carefully considered and taken.

39. Over the course of approximately two and one-half years, Co-Lead Counsel methodically reviewed the millions of pages of documents for evidence, assembling them into an intricate mosaic depicting Defendants' scheme to defraud. This painstakingly pieced together evidence was compelling enough to exact a \$400 million settlement from Defendants, despite their adamant denial of any liability.

40. Co-Lead Counsel also retained Dubin Consulting, Inc. ("Dubin"). Dubin is an experienced, highly regarded jury and trial consultant. Dubin also has well-established expertise in defining case themes and reflecting them powerfully and clearly in video and other graphic media, based on a case's key documents and evidence, to persuade factfinders and judges of a particular point or position. Co-Lead Counsel consulted frequently with Dubin as key documents and evidence were uncovered, for advice about how best to develop such evidence further consistent with Lead Plaintiffs' theories and case themes, and about how best to use such evidence in settlement negotiations and court proceedings.

1. Sophisticated Document Database

41. To efficiently manage the voluminous document production, Co-Lead Counsel consulted with numerous electronic discovery providers and consultants.

42. Co-Lead Counsel provided their staff of attorneys with an expansive, state of the art computer network and software platform that included a sophisticated data entry and document search and retrieval system. All reviewing attorneys had access to a dedicated server containing electronic versions of the documents organized into easily accessible databases. This innovative electronic solution for document management and review permitted the efficient prosecution of the Action.

43. Encore Discovery Solutions (“Encore”), a sophisticated provider of innovative electronic and paper discovery solutions, ran the system. For optimal efficiency, Encore also consolidated the numerous databases, organizing them into a small number of databases readily accessible to reviewing attorneys. Given the system’s complexity, daily troubleshooting was required. As a result, reviewing attorneys consulted with Encore almost daily. Senior attorneys conducted a weekly call with Encore to address various issues.

2. The Documents

44. Defendants and third parties produced over 36 million pages of documents for Co-Lead Plaintiffs to review – a vast and complex job, to say the least. The types of documents Co-Lead Counsel had to review, categorize and analyze ran a very wide gamut. They included, among others: (i) correspondences, including avalanches of internal and external emails as well as voluminous letters and memoranda; (ii) board materials; (iii) Contingent Commission Agreements; (iv) Client Service Agreements; (v) Broking Plans; (vi) MMC financial statements; (vii) internal MMC and Marsh budgets, financial reports, business plans, and forecasts, and MMC audit work papers; (viii) internal reports and presentation materials concerning business strategy; (ix) organizational charts; and (x) sundry other written materials.

45. Various issues arose concerning the format and scope of the production of Electronically Stored Information (“ESI”). Resolving these issues required numerous telephonic and in-person conferences and letter exchanges between the parties. These technical issues were so numerous and complicated that, on two occasions, ESI experts accompanied Co-Lead Counsel to lengthy meetings with Defendants to facilitate productive discussions about future document productions.

46. Electronic Discovery experts advised Co-Lead Counsel on various issues such as “metadata” and the best document format for review. Co-Lead Counsel spent a great deal of time devising a suggested guideline of metadata files for inclusion in Defendants’ productions. This metadata would assist Plaintiffs in understanding the origination, authorship, dissemination and chain of custody of Defendants’ documents.

47. When discovery began, Co-Lead Counsel ran into significant obstacles to conducting efficient electronic document searches. For example, the Optical Character Recognition (“OCR”) attached to certain documents produced was of poor quality, impeding Plaintiffs’ ability to search Defendants’ productions.

48. Moreover, Defendants had produced limited metadata. What metadata Defendants produced was inconsistent from document to document and was missing significant information. For example, of the roughly 3.5 million documents produced in Defendants’ fourth wave of production, only 2 million contained the “author” metadata field, and only 1.9 million contained “recipient” metadata fields.

49. To make use of documents produced as TIFF images only, Co-Lead Counsel had to hire a third party vendor to analyze, organize, and convert images into the searchable OCR format.

3. Staffing and Training

50. On any given day during the height of discovery, Co-Lead Counsel had over 40 attorneys devoted full time to the document search and review project. Co-Lead Counsel also employed numerous document clerks and other support personnel to work on this project. The attorneys and support personnel managed and supervised the day-to-day document review, including: receiving documents, sending them to Encore for loading onto the server, printing hard copies, reviewing, coding, and analyzing the documents, and coordinating these functions with the higher-level deposition and case preparation team. Senior lawyers also responded to protocol and substantive questions raised by the reviewing attorneys, handled staffing and logistical issues, addressed other technical matters related to the electronic productions, and acted as liaison between the review operation and attorneys involved in managing and litigating the case.

51. Another team of senior lawyers negotiated regularly throughout the course of discovery with Defendants and third parties to ensure the timely and efficient production of all relevant documents. To do this, Co-Lead Counsel persisted in requests for supplemental productions, negotiated with counsel regarding privilege issues and other matters relating to the scope of the productions, and worked to resolve technical issues as they arose. As the document review progressed, the requests for additional documents became more and more specifically targeted to fill identified informational gaps.

52. Every attorney assigned to the document review project attended a multi-day training session presented by Co-Lead Counsel and Encore. The training included a thorough introduction to and understanding of the Class's claims, the underlying facts, the anticipated defenses, and the relevant legal issues. This tutorial also introduced the reviewing attorneys to the variety of practices allegedly used to artificially inflate MMC's revenues. Throughout the course of discovery,

additional training and brainstorming sessions took place regularly to discuss new issues, new evidence, and how best to refine and enhance the litigation strategy based on the steady stream of new developments.

53. To further educate the review team, each attorney was given a 52-page “Litigation Manual” that described the factual background and legal claims, summarized the history and posture of the litigation, identified the relevant MMC and Marsh directors, officers, and other employees, defined terminology the reviewers would encounter, and described numerous transactions to analyze and the types of documents for which to search. More specific objectives of the instruction included an understanding of key concepts and alleged departures from the applicable standards; ways to identify and recognize “red flags;” and types of documents that might reveal suspect transactions. For example, the attorneys were instructed on how to identify and comprehend: (1) contingent commission agreements, Placement Service Agreements (“PSAs”), Market Services Agreements (“MSAs”), and their key terms; (2) instances of steering and bid-rigging; (3) Defendants’ attempts to conceal PSR information from clients and the investing public; (4) methods for identifying the amount of contingent commissions earned on a client’s insurance placement; and (5) the types of documents that would prove that MMC provided no “services” in exchange for contingent commissions.

4. The Review Process

54. To review the documents and assimilate them into preparation for depositions, mediation presentations, anticipated summary judgment motions, and eventual trial, Co-Lead Counsel began by carefully designing a detailed protocol for reviewing, coding, and culling documents. The protocol involved a coordinated network of attorney teams responsible for comprehensively analyzing the documents and synthesizing them into a complete picture of

Defendants' conduct and the contingent commission revenues they improperly generated. This plan directed several simultaneous, parallel functions that funneled information to the lead case management team. Encore assisted in each of these functions.

55. The Encore databases were organized by production. The system consisted of over 20 databases, each containing documents from separate productions, including MMC and its supplemental productions, the NYAG, defendants Greenberg and Egan, and almost one hundred third parties.

56. Once all of the documents were loaded and organized, Co-Lead Counsel began a multi-phase review.

57. In Phase I, attorneys "smart-searched" the databases by topic to gain an overview of whether Marsh had in fact produced documents responsive to all of the document requests. Well-trained attorneys conducted these searches using keywords and creative search syntax related to the case's issues. After collecting the materials, the attorneys reviewed and analyzed the materials and drafted a summary/overview memo of their respective topics detailing, among other things, the types of documents we had and whether any of these materials related to any of the issues.

58. In Phase II, Encore, under the supervision of Co-Lead Counsel, created certain witness files, which included all documents containing the witness's name and all documents that Plaintiffs knew came from that witness's files. Some of these files contained as many as 150,000 pages. For certain key witnesses, such as the named defendants, all documents in that witness's folder were reviewed. Many of these reviews took months and required the painstaking reviewing of handwritten notes that could not be searched electronically. Attorneys would then draft a witness memo giving senior attorneys an overview of the witness's duties and activities, and the documents discovered for that witness.

59. Co-Lead Counsel then created 10-20 “concepts” concerning issues in the case (e.g., services provided in exchange for contingent commissions, steering and bid-rigging, and PSA disclosures). Attorneys were then assigned a concept and made responsible for smart-searching through the entire database to find all documents pertaining to that concept. Senior lawyers familiar with the documents played substantial roles in creating and/or reviewing the specific searches for each concept. An attorney (either the initial reviewer or a more senior attorney) was then responsible for reviewing the “hot” concept documents and drafting a concept memo discussing the evidence discovered. These concept searches were constantly updated to address new developments.

60. As documents were smart-searched among the various databases, they were also issue-coded within numerous folders categorized by topic. Within each topic folder were classification tags, allowing documents to be classified according to their particular relevance. Also included in the topic folders was a “Witness” folder, consisting of approximately 75 potential deposition witness sub-folders labeled by witness names. This process proved invaluable, as it helped Co-Lead Counsel make the crucially important decisions about which witnesses to depose on which issues. As discussed below, this process also led to the discovery of hot documents central to the depositions. Those depositions, in turn, underscored the strengths of Plaintiffs’ case at the mediation sessions that produced the Settlement, and would have been vitally useful for summary judgment and trial.

5. Assimilation of Documents Into Case Preparation

61. As the documents were sorted, case development and deposition preparation commenced on a different track. Co-Lead Counsel assigned attorney teams to specific issues and/or witnesses.

62. As hot and relevant documents were pulled, the case management team studied the documents and met with the various research teams to discuss the significance of such documents and how to build upon them.

63. Co-Lead Counsel retained various experts to assist in reviewing and analyzing certain documents to determine how they could be used at depositions to develop evidence to further support Plaintiffs' claims. Such experts participated in many of the conferences between the research attorneys and the attorneys preparing for depositions and developing the case. These conferences usually led to additional, follow-up document research and a more thorough analysis of MMC and Marsh's alleged improper and unethical business practices.

64. Senior attorneys used this information in several ways to prosecute the claims of the Class. One purpose was to prepare for the 110 depositions taken and defended over the course of merits and expert discovery. As discussed in more detail below, the evidence discovered was also extremely valuable for mediation (including Dubin's development of persuasive demonstratives for mediation), responding to certain challenges raised by Defendants at class certification, and in preparing for summary judgment and trial.

D. Motion Practice

65. Defendants initially refused to produce anything other than what was produced to the NYAG in the course of the NYAG's investigation. The parties spent months negotiating and litigating additional productions. Plaintiffs ultimately obtained millions of additional pages of documents that yielded key evidence supporting the allegations in the Complaint.

66. Given the sweeping scope, high intensity and contentious nature of some of the discovery, the Court appointed Special Master Peter L. Parcher (the "Special Master") to hear and rule on disputed discovery issues.

67. Discovery disputes inevitably arose regarding the breadth, form, and source of the requested discovery. Some of these disputes were resolvable through negotiation among the parties. However, in many other instances, motion practice ensued, requiring extensive briefing, often by multiple parties with diverse and conflicting views, and oral argument before the Special Master.

68. Co-Lead Plaintiffs brought 20 such motions to the Special Master. Defendants brought five. The Special Master issued 20 opinions. These disputes, which included hearings before the Special Master, involved, for example, disclosures concerning: confidential witnesses; whether certain documents were relevant and should be produced; whether certain documents were privileged and should not have to be produced; and whether certain written discovery responses satisfied the requirements of the Federal Rules of Civil Procedure. Several of these disputes were appealed to the district court.

E. Depositions

69. As discussed above, Co-Lead Counsel conferred and negotiated extensively with Defendants' counsel to formulate a discovery and litigation plan. Co-Lead Plaintiffs did the same thing with lawyers for the lead plaintiffs in the ERISA litigation to develop a coordinated schedule for depositions.

70. Co-Lead Counsel took and defended 110 depositions. These spanned 137 days of testimony and several depositions required 1 ½ - 3 days. The deponents included: (i) MMC and Marsh directors and senior executives, including senior finance and legal officers; (ii) Marsh managing directors and senior brokers; (iii) senior managers and executives of insurance carriers; and (iv) Marsh clients.

71. Each deposition required days of intense preparation, including numerous document review and analysis sessions with reviewing attorneys, drafting of annotated outlines with potential

exhibits, and multiple meetings and conference calls between Co-Lead Counsel to discuss deposition goals and strategies.

72. Following each deposition, the transcript was thoroughly digested, with the relevant testimony broken down by each issue in the case. Such digests played a critical role in preparing for upcoming depositions and mediation, and in particular, for Dubin's use in developing key graphics of the deposition testimony for use in mediation. These digests would have been a key resource for Co-Lead Counsel in briefing summary judgment and preparing for trial.

VI. EXPERT DISCOVERY

73. The parties conducted thorough expert witness work. As discussed above, Co-Lead Plaintiffs and Defendants each retained an expert to address Co-Lead Plaintiffs' Motion for Class Certification. Each side filed detailed initial and rebuttal class certification expert witness submissions.

74. As discovery continued, Co-Lead Plaintiffs retained six experts to address liability, damages and causation issues: (i) Tom Baker, a professor at the University of Pennsylvania School of Law and the Insurance and Risk Management Department of the Wharton School of Business, to opine on issues relating to PSAs and Marsh's improper business practices; (ii) Gregg A. Jarrell, Ph.D., Professor of Economics and Finance at the University of Rochester William E. Simon Graduate School of Business Administration, to opine on issues relating to materiality, causation, and per share damages; (iii) Robert N. Hughes, an industry expert with nearly 50 years of experience as an insurance professional, to opine on industry standards, best practices, and Marsh's improper business practices; (iv) Frank C. Torchio, CFA, President of Forensic Economics, Inc., to opine on damages; (v) D. Paul Regan, CPA, CFF, CFE), to opine on issues concerning the materiality of PSR to MMC and Marsh and the misleading nature of Marsh's ACF; and (vi) Einer

Elhauge, the Petrie Professor of Law at Harvard University, to rebut the analyses and conclusions of defense expert Scott E. Harrington. Defendants retained two experts: (i) Scott E. Harrington, the Alan B. Miller Professor in Health Care Management and Insurance and Risk Management at The Wharton School, University of Pennsylvania, to opine on issues concerning the role of contingent commissions in insurance transactions and the relationship between premium volume, premium growth, and contingent commissions for insurers doing business with Marsh during 2001-2003; and (ii) Kenneth Lehn, the Samuel A. McCullough Professor of Finance in the Joseph M. Katz School of Business at the University of Pittsburgh, to opine on issues concerning causation. The parties exchanged lengthy, detailed initial reports from all of the experts, as well as rebuttal reports from four experts.

75. Co-Lead Counsel conducted numerous in-person meetings and telephonic conferences with their experts, including multiple sessions to discuss their highly complex reports and to prepare for depositions.

76. By the time the parties had agreed in principle to settle, Co-Lead Plaintiffs and Defendants had already deposed one of the other side's expert witnesses, Harrington and Elhauge, respectively. Each side was already preparing its other expert witnesses for depositions, which were set to continue the same week the parties reached their agreement in principle to settle.

VII. MEDIATION AND SETTLEMENT NEGOTIATIONS

77. This Settlement is the product of over 18 months of negotiations between Lead Plaintiffs and Defendants. Since April 7, 2008, the parties have engaged in countless informal negotiations, telephonically and in person, in formal negotiations through mediation sessions with Judge Weinstein, and in a final round of settlement discussions with the assistance of the Court.

These negotiations were arm's length, sophisticated and intense, and support the Court's finding that the Settlement is fair, reasonable and adequate.

78. The first formal mediation session was held on April 7, 2008 in Napa, California, with Judge Weinstein. With the help of Dubin, Plaintiffs made an extensive presentation to Defendants and numerous representatives of Defendants' insurers. Defendants presented some rebuttal points to the presentation. The parties proceeded to separate discussions with Judge Weinstein. After several hours, the session concluded. Neither party put forward a formal offer or demand.

79. After the first mediation session, Judge Weinstein suggested the potential utility of a neutral expert to assist him in evaluating damages issues. Shortly thereafter, Judge Weinstein engaged Chad Coffman of Winnemac Consulting as that neutral expert.

80. Scheduled for May 19-20, 2009, a second mediation session was postponed while the parties provided information to Chad Coffman concerning their respective positions on loss causation and damages.

81. Although informal negotiations continued, the next formal mediation session was not held until February 4, 2009. That session took place at the JAMS conference center in New York City. Scheduled to last two days, the session adjourned at the end of a single day. The parties had concluded they were simply too far apart for further negotiations to be fruitful.

82. The parties reconvened for a final mediation session on October 14, 2009. In addition to the mediator and the parties' counsel, MMC's General Counsel, MMC's Chief Financial Officer, representatives of the attorneys general from both Ohio and New Jersey and Chad Coffman also attended the mediation.

83. At the end of the day on October 14, 2009, the parties had made some progress. Plaintiffs made a demand that Defendants quickly rejected. However, a constructive dialogue had begun. The parties agreed to reconvene the session the following morning.

84. On October 15, 2009, it became clear that while each side was moving incrementally closer to the other's settlement position, they would not reach agreement without the mediator making a proposal. The session ended on October 15, 2009, with all sides understanding that Judge Weinstein would consult with Chad Coffman and put forward a formal mediator's proposal for settlement.

85. Judge Weinstein made that mediator's proposal on October 19, 2009. He gave the parties a deadline of October 23, 2009 before which to accept or reject the proposal. That deadline was then extended several times in order to give the parties additional time to consider whether the proposal was in the best interests of their clients and, in the case of Lead Plaintiffs, the Class.

86. Under the direction of Judge Weinstein, between October 15 and October 29, the parties continued the negotiation process with Judge Weinstein having numerous meetings and phone conversations in an attempt to bridge the gaps and position the litigation for resolution.

87. Judge Weinstein also instructed the parties to begin preparing settlement documents to permit full and rapid documentation of any settlement that might be reached.

88. Ultimately, the last deadline for acceptance or rejection of the mediator's proposal came and went without all parties having responded to Judge Weinstein's recommended settlement. Having been informed of this impasse, the Court called the parties in to inquire as to the status of negotiations and, if possible, to assist the parties in reaching a resolution. The Court ordered all parties to appear before the Court on November 6, 2009.

89. On November 6, 2009, the parties (including MMC's General Counsel and additional representatives from the offices of the attorneys general of Ohio and New Jersey who had full settlement authority) appeared before the Court in White Plains, New York. With the assistance of Judge McMahon, the parties moved one step closer to resolving the Litigation, but did not yet have a definitive agreement. Late that afternoon, the Court ordered all parties to appear before the Court in New York City on November 9, 2009, to continue the settlement discussions. The parties worked over the weekend, consulting with their counsel to further the settlement process.

90. When the parties appeared in Court on November 9, 2009, they reported to the Court that they had reached a settlement in principle (the "Settlement"). The Court then ordered the parties to present the signed settlement documents (the "Settlement Stipulation") to the Court on November 10, 2009.

91. Counsel for the parties worked through the rest of the day, into the night, and during the early morning hours on November 10, 2009 and presented the Court with a fully executed Settlement Stipulation on the morning of November 10, 2009.

VIII. TERMS OF THE SETTLEMENT

92. In full and complete settlement of the claims that have or could have been asserted against the Defendants in this action relating to transactions in MMC Securities, and subject to the terms and conditions of the Settlement Stipulation, the Settlement provides for the payment of \$400 million for the benefit of Lead Plaintiffs and the Class into a settlement fund (the "Settlement Fund"). The Stipulation allows counsel for Lead Plaintiffs to request an attorneys' fee award of up to 13.5% of the Net Settlement Fund, reimbursement of expenses, including expert witness fees, not to exceed \$13 million, and for Lead Plaintiffs to request reimbursement of costs and expenses

investigating and prosecuting this litigation and representing the Class, in an amount not to exceed \$320,000.

93. The Settlement Fund, less all taxes, approved costs, fees and expenses will be distributed on a *pro rata* basis, as described in the POA below, to members of the Class who submit timely and valid Proofs of Claim. Class Members have until February 22, 2010 to submit proofs of claim to the Court-appointed claims administrator, Rust Consulting, Inc. (“Rust”).

94. Upon the Court’s approval of the Settlement, the Lead Plaintiffs and members of the Class will release Defendants and related parties from all claims that relate to transactions in MMC securities during the Class Period and: (i) that have been asserted in this Action by Lead Plaintiffs or the Class Members against any of the Released Parties, (ii) that have been or could have been asserted in any forum by any of the Releasing Parties against any of the Released Parties which arise out of, relate in any way to, or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Amended Complaint, or (iii) that have been or could have been asserted in this Action or any forum by any of the Releasing Parties against any of the Released Parties, which arise out of or relate in any way to the defense or settlement of this Action.

IX. THE NOTICE PROGRAM

95. Pursuant to the Preliminary Approval Order, Lead Plaintiffs provided Notice of the Settlement to Class members in several ways.

96. Rust, the Court-appointed claims agent, in conjunction with counsel for Lead Plaintiffs, and in coordination with Defendants, caused the preliminarily-approved form of Notice to be mailed by first class mail, postage prepaid, to all reasonably identifiable Class members and

their nominees. A copy of the Notice packet, as mailed, is attached as an exhibit to the Declaration of Charlene Young.

97. Rust also caused a copy of the Summary Notice to be published in the national edition of *The Wall Street Journal*. A copy of the Summary Notice, as published, is attached as an exhibit to the Declaration of Charlene Young.

98. Rust also caused a copy of the Notice to be transmitted over *Business Wire*. A copy of the Notice, as published on *Business Wire*, is also attached as an exhibit to the Declaration of Charlene Young.

99. Lead Plaintiffs, in conjunction with Rust and in consultation with Defendants, established the web site www.MMCSecuritiesLitigation.com, on which was published the Notice, a Proof of Claim form, various Court documents, and other additional information. Additional information concerning that web site, including the number of hits the website has received since it became operational, is included in the Declaration of Charlene Young.

100. The Notice described the terms of the Settlement, explained the claims and defenses in the lawsuit, provided instruction for Class members about how to exclude themselves from the Settlement or to object to any part of the Settlement, provided detailed information about the final Settlement approval hearing, and provided contact information for the claims agent and Lead Plaintiffs' counsel, among other things.

101. Designed to provide notice to Class members, the Notice has in fact resulted in Class members receiving notice. For example, Rust has fielded 659 calls concerning the Settlement.

102. Co-Lead Counsel has received more than 50 inquiries concerning the Settlement.

X. THE PLAN OF ALLOCATION

103. Pursuant to the POA, the Court-appointed claims administrator, Rust, will calculate the claim for each authorized claimant based on the information supplied in each claimant's Proof of Claim. The POA is the product of Co-Lead Counsel's investigation, discovery, and consultation with damages experts. The POA is based on the relative damages suffered by two groups of Class members, namely (1) holders of common stock and (2) holders of MMC notes and publicly traded options.

104. Based on Lead Plaintiffs' consultant's estimate of damages for each class of MMC securities, and Co-Lead Counsel's assessment of the relative strength of their claims, Co-Lead Counsel allocated the Net Settlement Fund as follows: 95% for MMC common stock; and 5% for MMC notes and publicly traded options.

105. A Recognized Loss will be calculated for each purchase or acquisition of MMC securities listed in the claim form that occurred during the Class Period and for which adequate documentation is provided. The Recognized Loss will differ based upon the type of security at issue and upon the artificial inflation that Lead Plaintiffs' consultant calculated for various dates when the securities were purchased and sold. The specifics of those calculations are set forth in the POA.

106. The POA has a reasonable and rational economic and legal basis, is fair and equitable to Class members, and should be approved by the Court.

XI. A NUMBER OF FACTORS SUPPORT APPROVAL OF THE SETTLEMENT

A. The Settlement Was Fairly and Aggressively Negotiated by Counsel

107. This Settlement results from arm's-length negotiations. As further discussed in paragraphs 77 through 91 above, in the declarations of the representatives of the Ohio Plaintiffs and the New Jersey Plaintiffs, in Judge Weinstein's declaration, and as the Court itself is aware, highly experienced counsel aggressively negotiated the Settlement. Each side independently bargained for the best possible outcome for its clients.

B. The Complexity, Expense, and Likely Duration of the Litigation

108. Securities class actions are inherently complex. This case was no exception. This litigation involved legally challenging and, in some cases, novel, issues of securities law. It also involved numerous issues specific to the insurance and insurance brokerage businesses, and required a full understanding of the historical practice of contingent commissions and Marsh's version of such payments. These industry-specific issues were numerous and complex enough that Lead Plaintiffs hired two separate industry experts, at significant expense, to assist Co-Lead Counsel in understanding, developing and presenting these issues.

109. As complex as this litigation was in the pre-trial stages, as outlined above, it would have been extremely complicated to bring to trial, with uncertain results for Lead Plaintiffs and the Class. According to this Court, the most optimistic estimate had trial beginning in early 2011. The Class would not receive any recovery, assuming success, until at least 2013.

110. Absent the Settlement, Lead Plaintiffs would have expended significant additional resources and costs on behalf of the Class to prosecute their claims through trial and the inevitable appeals of any judgments.

111. As the Court stated at the preliminary approval hearing "we were looking ahead to a substantial amount of litigation . . . And if the verdict went against Marsh, it was a certainty that this

case was going to be appealed, that the appeal process was going to take up another year at the very least.”

112. In contrast, the Settlement provides definite and substantial recompense to the Class now, rather than a long-delayed and manifestly uncertain outcome at trial and through appeals.

C. The Reaction of the Class to the Settlement

i. Exclusion Requests

113. Despite the number of Notices mailed on November 13, 2009, only 20 requests for exclusion had been made as of December 16, 2009.

ii. Settlement Objections

114. As set forth above, ¶¶ 8 and in the Young Affidavit, in accordance with the procedures for mailing and publication established by the Court in the Preliminary Approval Order, Co-Lead Counsel and the Administrator undertook an extensive program to ensure that the Notice was widely disseminated to potential members of the Settlement Class. In this regard, on or by November 13, 2009, the Administrator mailed a total of 12,317 copies of the Notice of the Settlement and Proof of Claim form (the “Notice”) to potential Class Members. In addition, the Summary Notice was published in the national edition of The Wall Street Journal and caused a copy of the Notice to be transmitted over the Business Wire.

115. By the December 14, 2009 deadline to object, only 4 individuals submitted timely, written objections. After the deadline expired, 3 additional individuals submitted objections. Of the 7 objections, 6 provided absolutely no proof to establish that they are members of the Class – contrary to the clear instructions in the Notice. Thus, of the 7 objections received, only 1 complied with the Court’s Preliminary Approval Order in terms of timing and form, and as a result, the other 6 are not eligible to object. In any event, these 7 objections represent a mere .0568% of the Notice

(in the initial wave) mailed to Class Members. That less than .1% of the Class Members that were sent Notice objected to the Settlement and/or Fee Request is a great testament to the Settlement Class's opinion that the Settlement and Fee Request are fair, reasonable, and adequate. In contrast, although the deadline is two months away, more than 544 Class Members have filed Proof of Claim Forms with the Administrator.

116. As explained in Lead Plaintiffs' Memorandum of Law in Response to Objections, the objections are without merit and should be rejected.

117. The size of the Settlement Class in comparison to the relatively infinitesimal number of objections by members of the Settlement Class supports the approval of the Settlement and Fee Request.

D. The Stage of the Proceedings and the Amount of Discovery Completed

118. As discussed above, at the time of the Settlement, the parties had just completed merits discovery and were beginning expert depositions. The advanced stage of the litigation and extensive discovery and preparation for trial put the parties' counsel in a position to evaluate the fairness of the proposed settlement. These extensive efforts convinced Co-Lead Counsel that the Settlement was fair and in the best interest of the Class.

E. Risks of Establishing Liability and Damages

119. Lead Plaintiffs believe their claims are valid. But, as discussed above, Lead Plaintiffs recognize the risk that they might ultimately have failed to establish Defendants' liability and/or the Class' entitlement to damages.

120. Prior to Settlement a risk existed that the Court might not have certified a Class, or would have certified a substantially shorter Class Period.

121. On the merits, as discussed above, the parties disagreed on both liability and damages issues, including: (a) whether the prices of MMC securities were artificially inflated during the Class Period; (b) if MMC securities' prices were artificially inflated during the Class Period, the amount of such artificial inflation; (c) the extent to which the various matters that Lead Plaintiffs allege were materially false or misleading influenced (if at all) the trading price of MMC securities at various times during the Class Period; (d) whether the statements allegedly made or facts allegedly omitted in violation of law were false, material or otherwise actionable under the federal securities laws; and (e) whether the Defendants made the alleged misrepresentations or omissions knowing that they were false or misleading or in reckless disregard of whether they were false or misleading.

122. While Lead Plaintiffs believe that they could prove substantial damages at trial, they remain cognizant of the fact that persuading a jury of the Class' entitlement to damages, in an amount obtained in the Settlement, was speculative. Plaintiffs' trial success would have hinged in large part on whether or not the jury believed its experts over Defendants' experts. As the Court explained at the preliminary approval hearing, "if there is anything in this world that is uncertain when one takes one of these cases to trial in a classic battle of the experts over damages, it is what the jury is going to come up with as a number . . ."

123. If Lead Plaintiffs did not prevail or substantially prevail on any one of the issues outlined in the preceding three paragraphs, after trial the Class could have received nothing, or substantially less than the Settlement provides.

F. The Ability of Defendants to Withstand a Greater Judgment

124. Current national economic woes weighed heavily in Lead Plaintiffs' decision that the Settlement was the best result it could obtain. In mediation, Defendants outlined several compelling

reasons why the Company would not be able to pay more than the Settlement amount. The Court itself commented at the preliminary approval hearing that Marsh's financial condition has been adversely affected by "what has happened in the economy in the last year."

125. MMC's stock has not recovered since the alleged wrongdoing cited in the Complaint became public in 2004. In October 2004 the value of MMC stock dropped from \$46.01 per share to \$24.10 during the five days following the announcement of the NYAG's lawsuit. Five years later, MMC stock is currently trading even lower, at approximately \$22 per share.

126. Lead Plaintiffs had concerns that the Defendants might not be able to pay an award higher than the Settlement, even if Lead Plaintiffs won at trial. This economic uncertainty, therefore, also supports approval of the Settlement.

G. The Range of Reasonableness of the Settlement Fund Against a Possible Recovery in Light of All the Attendant Risks of Litigation

127. The Settlement is well within the range of reasonableness in light of the best possible recovery and all the attendant risks of litigation. A \$400 million recovery for claims not certain of success, in the face of a vigorously contested and still-undecided motion for class certification, and where the Company has credibly stated in an historically difficult economic climate that it cannot pay a single cent more than the Settlement, is by any measure an excellent result.

XII CO-LEAD COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES SHOULD BE GRANTED

128. In the more than five years that this litigation has been pending, Co-Lead Counsel has not been paid any fees whatsoever. All the while they have advanced or incurred millions of dollars in expenses without reimbursement. As compensation for their efforts and the substantial risk they undertook and bore for five years, Co-Lead Counsel request that this Court approve an

award of attorneys' fees in the amount of 13.5% of the Settlement Fund and reimbursement of out-of-pocket and incurred litigation expenses of approximately \$7.8 million. Given five years of intense and aggressive litigation by Co-Lead Counsel, the effort they made, the hours they worked, and the excellent result for the Class, such approval is warranted. The award is supported by Co-Lead Plaintiffs, as set forth in the accompanying declarations of Carol Jacobson (Assistant Attorney General from the State of New Jersey) and Dennis Smith (Assistant Attorney General from the State of Ohio), Julie Becker (PERS), William Neville (STRS), and James Barnes (BWC).

129. As set forth in the accompanying Fee Memorandum, consideration of the relevant factors supports Plaintiffs' Counsel's applications for an award of attorneys' fees and payment of reasonable costs and expenses.

A. Co-Lead Counsel's Time, Labor and Lodestar Are Reasonable

130. Co-Lead Counsel devoted more than 300,000 hours to prosecute this litigation as described above, resulting in a lodestar of approximately \$119.6 million. Additional time will certainly be incurred in connection with the approval, administration, and distribution of the Settlement. Summaries of the hours, lodestar and expenses of Co-Lead Counsel are submitted as exhibits to the Fleischman and Bernstein declarations. These hours were compiled from contemporaneous time records maintained by each attorney, paralegal and professional affiliated with Plaintiffs' Counsel in this litigation.

131. The litigation was conducted by Co-Lead Counsel in a coordinated and well-organized fashion to ensure maximum efficiency. Once Co-Lead Counsel was appointed by the Court, all work assignments were assigned to minimize unnecessary and/or duplicative work.

132. The hours expended by Co-Lead Counsel in prosecuting this case are plainly reasonable given the magnitude and complexity of the litigation and the case's advanced stage when the parties finally settled. All of merits discovery, and a substantial portion of expert discovery, had

been completed, including the production, review and analysis of more than 36 million pages of documents and the taking and/or defending of 110 depositions. In addition, as stated above, numerous procedural and substantive motions were fully briefed, argued and decided. Plaintiffs' motion for class certification was also fully briefed.

133. To arrive at the lodestar, the hours expended are multiplied by each attorney's respective hourly rate. The hourly rate to be applied in calculating the lodestar is that which is normally charged in the community where the attorney practices. The affidavits in the Compendium include a description of the background and experience of Co-Lead Counsel's attorneys who worked on the Action. These descriptions provide ample support for the hourly rates charged in this case. Attached to the declarations of Keith Fleischman and Stanley Bernstein are summaries of the lodestar and expenses incurred by Co-Lead Counsel.

134. Given the approximately five years over which Co-Lead Counsel has zealously prosecuted this litigation, as well as the considerable skill, experience and resources that produced the Settlement, the total amount of hours billed by Co-Lead Counsel is amply justified.

B. The Magnitude and Complexity of the Litigation Support the Requested Fee

135. Every part of the Action reflects its enormous magnitude, complexity and difficulty. Complex, fact-intensive pleadings were prepared and filed, and multiple motions to dismiss were filed, opposed, and defeated. As described above, Co-Lead Counsel reviewed more than 36 million pages in electronic and paper discovery produced by both Defendants and over 100 subpoenaed third parties. Co-Lead Counsel took and defended over 100 depositions. Co-Lead Counsel pursued class certification and engaged in attendant factual and expert discovery, which included reports and testimony from multiple experts concerning complex damage and loss causation theories and analyses relating to the alleged scheme and the dissipation of the inflation caused by such activities.

136. In sum, as described in the Fee Memorandum, the issues in this Action were complex by their very nature. Co-Lead Counsel have effectively and efficiently litigated this complex action from its inception through discovery and pre-trial practice. In addition to being factually complex, the case involved complex and unsettled legal questions of class certification, loss causation and economic damages.

C. The Risks of the Litigation Support the Requested Fee

137. As stated above, the Action is one of the largest and most complex securities fraud case ever litigated. Inherent in cases so large and complex is enormous risk.

138. In addition, the changes to the standard for class certification in the Second Circuit as a result of *Miles v. Merrill Lynch & Co.*, 471 F.3d 24 (2d Cir. 2006), and developments in loss causation doctrine (*see, e.g., Dura Pharms., Inc. v. Broudo*, 544 U.S. 336 (2005)), during the course of the litigation substantially increased Co-Lead Counsel's risks.

139. Co-Lead Counsel undertook the Action, vigorously prosecuted it and incurred the costs on a wholly contingent fee basis, bearing the full risk of receiving no recovery at all. Co-Lead Counsel knew they could possibly litigate the case for years, expend hundreds of thousands of attorney hours, and tens of millions of dollars in expenses, and then lose at summary judgment or trial. Co-Lead Counsel, in fact, litigated this Action for more than five years, through numerous motions to dismiss, complete merits discovery, a substantial portion of expert discovery, and fully briefed class certification. Their efforts demonstrate their commitment to obtaining valuable and meaningful relief for the Class.

D. The Quality of Co-Lead Counsel's Representation of the Class Supports the Requested Fee

140. The Settlement amount, in light of: the case's legal and factual uncertainties; the above-described enormous effort by Co-Lead Counsel in investigating their claims, filing their

complaints, analyzing, briefing and defeating motions to dismiss, analyzing and briefing class certification, obtaining, organizing, reviewing and using over 36 million pages of documents, taking and defending over 100 depositions; the work of highly experienced and aggressive defense counsel from numerous firms, and the current dismal economic climate with Defendants' ability to pay a serious question, are testament to the quality of Co-Lead Counsel's work and their entitlement to the requested fees and expenses.

141. During the course of this Action, many and significant legal and factual disagreements arose between counsel for Plaintiffs and Defendants. Nevertheless, in the face of this formidable opposition, Co-Lead Counsel was able to develop and litigate the Action and negotiate the favorable terms reflected in the Settlement.

142. The quality of opposing counsel is also important in evaluating the quality of services rendered by Co-Lead Counsel. Defendants were represented by three elite, nationally recognized defense firms, all of whom vigorously defended their clients. The ability of Co-Lead Counsel to obtain a very favorable Settlement for the Class in the face of such formidable legal opposition further evidences the superior quality of their work. This Court should find that the professional skill of the representation in this case is beyond question and supports approval of the requested award.

E. The Fee Request is Fair and Reasonable in Relation to the Settlement Amount

143. As explained in the Fee Memorandum, Co-Lead Counsel have collectively incurred a lodestar of nearly \$119.6 million, representing more than three hundred thousand hours devoted to the prosecution of the Action, including the near full-time attention of a large team of attorneys, paralegals and other staff for many years, working on a contingent basis without any compensation. The requested fee, if awarded, would constitute a negative multiplier to lodestar of 0.44, and thus,

will be at a substantial discount to the accrued lodestar and is dramatically lower than most multipliers in common fund cases.³

144. As further explained in the Fee Memorandum, when compared with fee requests in securities class action settlements ranging from \$100 - \$600 million, Co-Lead Counsel's requested fee of 13.5% of the \$400 million Settlement Fund is not just consistent with, but rather, is at the low end of, fees awarded in similar securities class action settlements of comparable value.

145. Accordingly, the fee request is justified here.

F. Public Policy Considerations Support the Requested Fee

146. The federal securities laws are remedial in nature. To effectuate their statutory purpose of protecting investors and consumers, these laws are construed to encourage private lawsuits. Co-Lead Counsel have vindicated those statutory goals here. Despite the risks, a sizeable recovery has been obtained for shareholders harmed by the alleged wrongdoing of the Defendants.

147. Co-Lead Counsel's willingness to assume the substantial risks inherent in this litigation resulted in a substantial benefit to the Class. As such, Co-Lead Counsel respectfully seek an award by the Court of the fees and expenses requested.

G. A "Cross-Check" of Co-Lead Counsel's Lodestar Demonstrates the Reasonableness of the Requested Fee

148. Without any assurance of obtaining any compensation for their efforts, Co-Lead Counsel expended not only substantial time litigating this case, but also substantial resources, including out-of-pocket and accrued expenditures. For this additional reason, Co-Lead Counsel's fee request, representing a negative multiplier to lodestar of 0.44, is justified and entirely

³ Generally, lodestar is calculated and then a multiplier is awarded to account for the risks associated with taking on the litigation. Multipliers of 3, 4 or even more are sometimes awarded. Here, by contrast, after five years of intense litigation, we are only seeking @@@ percent of the lodestar reported by Co-Lead Counsel (*i.e.*, a negative multiplier).

appropriate under a lodestar analysis. As set forth in the Fee Memorandum, the fee request of 13.5% is more than reasonable when cross-checked against the substantial negative multiplier obtained using the lodestar method.

H. The Expenses Incurred by Co-Lead Counsel Were Reasonable and Necessary to the Effective Prosecution of the Action

149. Co-Lead Counsel also request approval of reimbursement of their litigation expenses incurred or accrued in litigating this action. The amount of out-of-pocket expenses, by category, incurred by Co-Lead Counsel in this Action for which reimbursement is being sought is summarized in exhibits to the declarations of Keith Fleischman and Stanley Bernstein to the Compendium. The total expenses for which reimbursement is sought is \$7,848,411.84.

150. The largest categories of expenses relate to electronic discovery, retention of Dubin, retaining a battery of liability and damages experts and deposition expenses. As discussed above, given the complexity of the Action as well as the massive quantities of ESI produced, these expenses were both completely necessary and eminently reasonable. Co-Lead Plaintiffs reviewed these expenses on an ongoing basis during the litigation. In addition, Co-Lead Counsel have carefully reviewed the expenses for which reimbursement is sought and determined that the requested expenses were necessary litigation expenses, reasonably incurred, reasonably related to the interests of the Class, and adequately documented.

151. Accordingly, we respectfully request that the Court grant Co-Lead Counsel's request for reimbursement of expenses.

XII CO-LEAD PLAINTIFFS' PSLRA EXPENSE REIMBURSEMENT APPLICATION SHOULD BE GRANTED

152. The Ohio Plaintiffs and the New Jersey Plaintiffs have been actively involved in this Action from its very inception.

153. Pursuant to the PSLRA, the Ohio Plaintiffs request reimbursement of \$70,000 and the New Jersey Plaintiffs request \$144,657.14. This will compensate them for their reasonable costs and expenses incurred in managing this litigation and representing the Class.

154. Co-Lead Plaintiffs have been fully committed to pursuing their claims against the Defendants for five years. These large institutions have actively and effectively fulfilled their obligations as representatives of the Class. They complied with all the demands made on them during the litigation and settlement of this Action, and provided invaluable assistance to Co-Lead Counsel. In devoting substantial effort to the commencement of, oversight of, and participation in, this Action on behalf of the Class, Co-Lead Plaintiffs: (i) reviewed and approved the complaints and other pleadings filed in this Action; (ii) had extensive and regular telephonic and email communications with Co-Lead Counsel, as well as in person meetings, regarding strategy for and developments in the Action; (iii) reviewed, commented on and authorized Co-Lead Plaintiffs' submissions to the Court and the Special Master, including Co-Lead Plaintiffs' motion for class certification; (iv) oversaw and assisted their own personnel in responding to discovery requests, including requests for production of documents and interrogatories; (v) reviewed and approved responses and objections to discovery requests drafted by Co-Lead Counsel; (vi) reviewed and approved the retention of experts and consultants; (vii) fully participated in all mediation sessions held in New York; and (viii) fully participated in all settlement discussions on behalf of the Class.

155. These are precisely the types of activities Courts have found to support reimbursement to class representatives.

156. Therefore, Co-Lead Counsel request that the Court award the Ohio Plaintiffs \$70,000 and the New Jersey Plaintiffs \$144,657.14 as compensation for their reasonable costs and expenses incurred in representing the Class.


XIII CONCLUSION


157. Co-Lead Counsel submit that, based on an understanding of the facts and circumstances of this Action, the applicable legal principles, the procedural posture of this case and the risks of continued litigation, the Settlement and POA are an extremely favorable result for the Class and should be approved by this Court.

158. Co-Lead Counsel additionally request that this Court approve their application for an award of attorneys' fees in the amount of 13.5% of the Settlement Fund and reimbursement of litigation expenses in the amount of \$7,848,411.84.

159. Finally, Co-Lead Counsel respectfully request that the Court approve the PSLRA Award Application.

The foregoing is true and correct to the best of my knowledge, information and belief.
Executed under the penalties of perjury on this 17th day of December, 2009 in New York, New
York.


Stanley D. Bernstein 12/18/09


Keith M. Fleischman