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

LAWRENCE E. JAFFE PENSION PLAN, on behalf of itself and all others similarly situated,	)	
Plaintiffs,	)	
v.	)	No. 02 C 5893
HOUSEHOLD INTERNATIONAL, INC., et al.,	)	Chicago, Illinois
	)	October 20, 2016
Defendants.	)	10:30 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JORGE L. ALONSO

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THE CLERK: 02 C 5893, Jaffe v. Household International.

THE COURT: All right, let's have all the attorneys identify themselves, starting with the plaintiff.

10:38:14 MR. DOWD: Good morning, Your Honor. Michael Dowd. I have my partners Spence Burkholz, Maureen Mueller, Dan Drosman, and Luke Brooks with me.

MR. STOLL: Good morning, Your Honor. Ryan Stoll on behalf of Household.

10:38:28 MR. SOFFER: Good morning, Your Honor. Gil Soffer on behalf of William Aldinger. I'm also standing in for David Rosenbloom on behalf of Gary Gilmer.

MR. LEONARD: Good morning --

MR. DAVIS: Good morning, Your Honor. John Davis on

10:38:42 behalf of class member Kevin McDonald.

MR. LEONARD: Good morning, Your Honor. Tim Leonard on behalf of David Schoenholz.

THE COURT: Okay. So everyone who wants to be here is here. We are set for final approval. And we have three

10:39:04 motions pending. And let's deal with Mr. Davis' motion on behalf of the objector Kevin McDonald. That is the only objector that we are aware of at this point?

MR. DOWD: Yes, Your Honor.

THE COURT: All right. And the first motion is the

10:39:21 motion seeking leave to file a surreply, correct, Mr. Davis?

MR. DAVIS: Yes, Your Honor. I would actually characterize it more like a reply because my client filed his objection, then a response was filed to that. So it's -- it's my second paper. It's not a third paper as you would normally
10:39:47 have with a surreply. So I think it's more akin to a reply. And it simply responds to some of the issues that were raised in plaintiffs' papers. I think they filed about 48 pages in response to the objection. And I wanted to provide the Court with as much briefing as possible prior to this hearing so we
10:40:08 could best use our time here today. I think by acknowledging and accepting that brief, it will greatly streamline the process here today. Counsel have had a few days to take a look at it and I'm sure prepare their response to it.

THE COURT: Three days?

10:40:26 MR. DAVIS: Yes, Your Honor. I -- it was filed on Monday. And I -- I tried to get it to the Court as quickly as I could. I was working with a very short window of time here, and we did the best we could and tried to get it out as quickly as possible.

10:40:42 THE COURT: All right. Mr. Dowd, over objection, sir, the motion is going to be granted seeking leave to file it. Mr. Davis says that it is a reply. To the extent that it is a reply, I've considered it. To the extent that it's something other than a reply, I will not consider some of the
10:41:02 arguments made. So the motion is granted.

But I will disregard any arguments that McDonald could have made in his primary brief but made for the first time in his surreply. A couple of examples: In the footnote, footnote No. 9 on page 9 to the surreply, McDonald argues that 10:41:27 Professor Silver's declaration is inadmissible under Federal Rule of Evidence 702 because he didn't offer anything more than a lawyer could offer. I disagree. But, in any event, McDonald waived that argument by not making that argument in his primary brief. McDonald did have Silver's supplemental 10:41:48 brief. By supplemental, I mean it wasn't Silver's first report which dated back to 2013, but McDonald had that report prior to filing his primary brief but didn't argue it. So that argument is waived. Likewise, he didn't raise the argument that lead plaintiff, International Union of Operating 10:42:11 Engineers, isn't a true institutional investor. That argument will also be disregarded.

So I won't specifically address all of the arguments that are raised because some are without merit and contrary to Seventh Circuit case law. But I did review it and am 10:42:35 considering it.

And along these lines, I'm also disregarding plaintiffs' and McDonald's discussions regarding Mr. Davis being a professional objector and whether class counsel made personal or ad hominem attacks. So that aspect of the 10:42:56 briefing from each side is not part of my analysis. And I

will ask the attorneys to tailor their arguments today accordingly. Okay.

MR. DAVIS: Thank you very much, Your Honor. Just one point of clarification. The evidentiary objection was to Professor Silver's final declaration that was submitted after we filed the objection, not to any prior declaration.

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THE COURT: Mr. Dowd?

MR. DOWD: Your Honor, I think to the extent that there's a 702 argument, Professor Silver, in all of his reports, has clearly addressed the issues with respect to the market rate.

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To the extent he talks about the law, he's talking about the law just to provide the framework in the Seventh Circuit and so that there's a basis for why this report is necessary. So I think it should still be overruled.

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THE COURT: All right. As I stated, in any case, I disagree with counsel's objection and argument along those lines.

Okay. So let's hear argument, starting with the plaintiff. Everyone is ready to proceed?

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MR. DOWD: Yes, Your Honor.

THE COURT: Let's hear argument, starting with the plaintiff, brief argument. I have considered all of the filings. And let's break the argument into the two pending motions. Let's first hear from the plaintiff regarding the

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motion for final approval of class action settlement and the plan for allocation of the settlement proceeds. I don't believe there's any objection regarding the allocation plan. Let's hear that. Then we'll hear from the other parties. And
10:44:49 then I will invite the plaintiff to address the motion for award of attorneys' fees and expenses.

MR. DOWD: Thank you, Your Honor.

As to the approval of the settlement, Your Honor, the standard is, is the settlement fair, reasonable, and adequate.
10:45:06 That's the test.

I think, Your Honor, just to start out, this is a stunning settlement. It's the largest settlement in the history of the Seventh Circuit in a securities class action case. It's the largest settlement ever post trial in a PSLRA
10:45:19 case. And it's the seventh largest settlement ever in a securities case.

We worked on this case for 14 years. It was settled based on a mediator's proposal, which was not accepted until the morning of the second trial. It's supported by the lead
10:45:38 plaintiffs that have a loss in the case. And I think that there is no question that the settlement should be approved.

I think the first factor, Your Honor, is the strength of the plaintiffs' case versus the settlement amount. And I think, Your Honor -- we recovered $1.575 billion. It's
10:45:56 75 percent of the damages under the leakage model. It's

252 percent of the damages under the traditional specific disclosure model that's been used in virtually every securities case in history.

I could stop right there. The fact that you recover 252 percent of the normal damages in a securities case should be the only thing this Court needs to consider to determine that this factor clearly favors plaintiffs and that this settlement is a spectacular one.

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In the typical case, settlements, according to some of the data that's cited in the briefs, plaintiffs recover somewhere between 2 and 6 percent of specific disclosure damages. And for that reason, I think in many of the cases that we see, plaintiffs' counsel has to try to justify their settlement. We don't have to do that here. It's 252 percent of what we would have recovered under a normal damages model; 75 percent under the leakage model that we'll talk about more today.

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At the time of the settlement, Your Honor, we still had issues that had to be resolved -- there's no question about it -- when we talk about the strength of our case.

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We had established that the statements were false. We had established that the defendants acted with scienter at our first trial. And, Your Honor, but what still was left was loss causation and damages. And as the Court knows, we cited cases in our briefs that say when you have experts arguing

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about damages, it's a crapshoot in front of a jury. You don't know which expert the jury is going to find most compelling. And that's certainly true here. And it mattered here, Your Honor. Just under the leakage model versus the specific disclosure model, you had a difference of 2.1 billion versus 624 million in damages. The defendants said the damages were zero or, in the best case for plaintiffs, $290 million. And, again, you have to consider those numbers in the context of the recovery of $1.575 billion.

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Would we have prevailed on loss causation and damages? I like to think we would, Your Honor. I mean, I believed it when I stood here and we were getting ready to try the case. But I don't know. Juries do strange things, Your Honor. The risk of the jury finding in favor of the leakage model was real.

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I mean, I think Your Honor may recall at one of the status conferences or at the pretrial conference, Mr. Stoll made a compelling argument about July 17th, 2002. He talked about how, on that day, the only news that came out that affected Household's stock price in a negative manner was about Cap One, Capital One, having problems with its regulators; and it had nothing to do with Household. Household that day announced another record quarter of results. Those were their only announcements. And they specifically told analysts, this Cap One thing has nothing to

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do with us; we dealt with these issues already.

If the jury had believed defendants just about that one day, those $3 in damages, the entire leakage model was gone. All they had to do was show one day where the leakage
10:49:02 model didn't work, and it was done. And it just shows the real risk of the leakage model. Would the jurors have found specific disclosure or leakage or defendants' model? It could have been any one of those. But, Your Honor, if they had found the specific disclosure, the traditional method, we got
10:49:21 them 252 percent of their damages.

Your Honor, I think that there were other issues when we talk about the strength of the plaintiffs' case. We still had a lot more to go in this case. You know, there would have been an appeal to the Seventh Circuit if there was a finding
10:49:36 on the leakage model. I'm sure there would have been a writ to the Supreme Court. No question in my mind.

And, Your Honor, I think that -- you know, if you look at just this summer, Judge Sweet in the Southern District of New York in the Bear Stearns case issued a ruling with
10:49:55 respect to the leakage model. Essentially the defendants made a similar attack to the one that defendants made in our case. They even used the same expert, Professor Ferrell. And Judge Sweet said, I'm not going to let the leakage model go to the jury because it's not a peer -- peer-reviewed or generally
10:50:14 accepted; and he said, frankly, I think it would eliminate the

loss causation requirement entirely. That's what Judge Sweet found just this summer. There's no reason to think that we wouldn't have faced similar challenges, both in this court in post-trial motions if we had won on the leakage model, in the
10:50:31 Seventh Circuit and, again, in the United States Supreme Court.

I think, Your Honor, that just based on the amount of the settlement of 252 percent of your normal damages versus the strength of our case, this clearly -- this factor clearly
10:50:44 supports the settlement being approved.

In terms of the complexity, the length, and expense of further litigation, which is the second factor, that also supports approval of this settlement. If the jury had found our way on the leakage model, again, there would have been
10:51:02 post-trial briefings, Seventh Circuit, possibly the Supreme Court.

I also think, Your Honor, that one thing that we forget about when we talk about the complexity, length, and expense of further litigation, there were still 22,000 claims
10:51:15 that had to be resolved in the district court. I mean, we stopped Special Master Stenger, but that whole process would have gone on. We would have been fighting tooth and nail over those claims in the district court first; first before the special master, then before this Court.

10:51:31 And, finally, Your Honor, with respect to those

claims, there were about 175 claims where people answered "yes," and Judge Guzman said those people were entitled to a trial. We had already done discovery with respect to those class members. Defendants sent discovery to all of them; I think actually to 181 class members that answered "yes." But Judge Guzman said that those -- those people, there may have had to be mini trials with respect to their reliance issues.

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So putting aside just the inevitable post-trial briefing from the second trial, the appeals, you also had the entire claims process that had to be finished with respect to 22,000 claims, including the mini trials for people who answered "yes."

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The third factor, Your Honor, is the reaction of the class. And I think, Your Honor, there's -- there's over 33,000 class members. And there's one of them here objecting. One. I think that the reaction of the class has been outstanding. I mean, this, Your Honor, is an incredibly unusual case. Class members knew about this case since 2011. They followed it with interest. First you had -- in 2011, every single class member had to fill in the claim form and answer the reliance question. That was a lot different from a normal case. You had to go out and talk to your investment advisor to answer that question.

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In addition, the defendants served discovery on about a hundred class members between January of 2011 and May

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of 2011. I think they took 12 depositions of class members and third-party filing organizations that filed claims. And so all of those class members knew about this case. They knew about their potential recovery. They knew that their
10:53:22 potential recovery was massive because we had won a trial. And so class members really did know a lot about this case.

In addition, Your Honor, you have huge claims in this case. There's over 300 class members who have an allowed loss of over a million dollars. You -- we have had, because of the
10:53:40 way this case went -- I mean, you have to remember, Your Honor, after the claims deadline, Judge Guzman told us that we could send a one-page supplemental form to class members who had a claim worth over $250,000. And it had to be returned, I think it was September 11th, 2011. Those 700 class members,
10:54:01 about -- and there were about 700 of them -- they each had to dig up somebody that could answer the reliance question at their organizations. We worked extensively with third-party filing organizations. And we called class members with those claims directly on the phone, to the extent they could be
10:54:18 identified, to try to get them to respond.

So people were far more aware of this case, the process -- the progress of this case, and their potential recovery than they ever would have been. Those 700 people got forms saying your recovery is in excess of $250,000 back in
10:54:38 the summer of 2011. And they stayed on top of it, in addition

to the class members that were served with written discovery or were deposed in 2011.

Since that time, Your Honor, because of the reliance question that class members had to answer -- and you recall, originally it was our view at the time that Judge Guzman excused performance by class members with claims south of $250,000 who had filed through a third party, either a bank or a broker or a claims filing service. Later Judge Guzman told us that we had to go back and get each of those class members to answer the reliance question as well.

As a result of this process, Your Honor, and defendants' objections, which were lodged in 2012 to over 30,000 claims, we had contacts -- thousands and thousands of contacts with class members, from institutional investors to tiny investors that had very small losses. All of these people knew about this case, knew what the stakes were; and, yet, none of them are here. There's one objector, who claims through Vanguard, who we did speak to several times. That's it.

And so I think in this case, the reaction of the class is absolutely stunning. There's no other way to put it, Your Honor. And that also favors approval of the settlement.

The fourth factor is the opinion of counsel about the case. You know, we support it, Your Honor. There's no question in our mind that this is a fabulous settlement. It

is a fabulous settlement for the class. And it was also, you know, approved by a mediator. Judge Phillips has extensive experience. He was a federal district court judge. And subsequent to that, he's been doing mediations for, I think, 10:56:24 almost 20 years. I mean, he said in his declaration, I think, that he settles billions of dollars in cases per year. And he said this settlement was fair, reasonable, and adequate. And he explained certainly how arm's length the negotiations were, all of which are factors that clearly demonstrate this 10:56:43 settlement should be approved.

Finally, Your Honor, the stage of the proceedings and the amount of discovery is the final factor that the Court should consider. And I think, you know, the purpose of that factor, Your Honor, is to ensure that plaintiffs and their 10:57:01 counsel know enough to make an informed decision about settling the case. I mean, it really even shouldn't be a question here. It's not even a factor we should have to consider. I mean, 40 motions on discovery, 70 depositions, summary judgment, motions in limine, Dauberts, a trial, an 10:57:21 appeal to the Seventh Circuit, prepping for a second trial, more Dauberts, more in limines.

I can't say that the people at this table knew more about this case than any lawyer has ever known about a case. But I can say that we knew as much about this case as any 10:57:39 lawyer has ever known about a case. And so I think that

certainly favors approval of the settlement.

I'll also address, Your Honor, just the plan of allocation. There are no objections to it, nor could there be. The plan of allocation -- in probably the only time I can think of -- the plan of allocation was determined by the jury verdict and then Judge Guzman's interpretation of how claims should be calculated. And so I think for that reason, Your Honor, the plan of allocation in this case should absolutely be approved. And I suspect that's why there are no objections to it.

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And I'll save -- if the Court wants me to respond to the objection now, I'm happy to. Or I can wait until the Court hears from Mr. Davis if you intend to.

THE COURT: You can respond to Mr. Davis now based upon the filings.

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MR. DOWD: That's fine, Your Honor. So I'll respond just to his objection to the settlement. First, I can't tell if it's been abandoned. There's no reference to it in his supplemental reply or whatever that document is called, so perhaps it's been abandoned. I'm not sure.

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I think that there are basically two objections to the settlement. The first is that the notice is somehow misleading. Your Honor, I went back through the notice trying to figure out in what way it could possibly be misleading. And I just don't simply think it was. I think it was actually

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excellent. I mean, to the extent that there's a claim that we misled people about what was coming up at their second trial, we specifically cited the Glickenhaus opinion. And we said the Seventh Circuit said it's been remanded for trial on three
10:59:15 issues; and those issues were loss causation, damages, and whether defendants made the statements. That's what we told people. This is what the retrial is about.

Secondly, we told people that we had reached a stipulation with the defendants that resolved the issue about
10:59:32 making statements, so that they knew that wasn't a concern. I don't think that we could have been more precise about the Seventh Circuit.

We also explained to the class that there were risks going forward and disagreements between the parties. We said
10:59:46 defendants contest liability. They still do, Your Honor. They don't think there's loss causation in this case, and they don't think there's damages. And without those two, there's not a securities law violation. It's that simple. They don't lose on 10b if they win on loss causation and damages. And so
11:00:03 that was true.

But, more importantly, we laid out, I think, seven different factors that all related to loss causation and damages in the notice. And I think that, Your Honor, it's -- the notice couldn't be clearer about what we had to prove at
11:00:18 trial, what had happened at the first trial.

And beyond that, Your Honor, you know, the case law says you read a notice as a whole. You don't pick out one sentence and say, oh, that sentence is misleading. I mean, I think there's the Mars Steel case that we cite in our brief for that proposition. And, certainly, here, if you read the notice as a whole, there's nothing misleading about it.

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Secondly, the defendant claims that the damages -- or the objector claims the damages must be higher and cites basically to the judgment for 1.4 billion and says, well, there were like 20,000 claims left; they must have been worth billions more. And that's just not true, Your Honor. I mean, in this case, there were lists submitted to the special master that laid out the claim amounts. I can tell the Court that the first 10,902 claims that made it into the judgment, many of them were larger claims. There's a reason for that. The reason is that those class members, the largest class members, had to answer the reliance question in the summer of 2011. Therefore, if they answered "no" to the reliance question and there were no other objections to their claims, their claim went through and made it into the judgment.

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So the people who were north of $250,000 in terms of allowed loss -- and when I say north of $250,000 -- I mean, Magellan has a claim for something like 90 million. The Government Investment Corporation of Singapore has a claim for about 70 or $80 million. I mean, they were significantly

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north, and they were all in the judgment. The biggest claims were in that judgment or many of the largest claims.

The remaining claims were worth about $600 million. Yeah, there were 22,000 of them. There were more than were in the judgment, but they were only worth 600 million bucks. And, Your Honor, it's not like I'm making it up. It's in the lists that went to the special master. I mean, I saw Mr. Rakoczy and Ms. McDevitt in the back of the courtroom who worked on these lists with me for Skadden, you know, trying to sort out the objections. I mean, they're here. They know the number was 600 million that we were still fighting about. And so, Your Honor, I think that, you know, based on that, the objector can speculate all he wants; but there's no need to speculate. I can tell you what the numbers are. And there was nothing misleading about this.

Thank you.

THE COURT: Thank you.

Mr. Stoll.

MR. STOLL: Yes. May it please the Court. Ryan Stoll on behalf of Household.

Your Honor, just as a minor issue for record purposes, I just wanted to alert the Court that Mr. Dowd's percentage arguments about recovery don't take into account prejudgment interest, which obviously was a very substantial factor here and was a meaningful impact on the settlement

determination by the defendants.

That having been said, under any measure, this is an appropriate settlement to conclude this 14 years of litigation and should undoubtedly be approved by the Court.

11:03:17 The only outstanding issue, as the Court has already recognized from the array of papers that you've received, is the issue about the allocation attributable to attorneys' fees and expenses. And that's a matter entirely within the Court's discretion. The settlement otherwise should be approved.

11:03:32 THE COURT: Thank you, Mr. Stoll.

Mr. Davis, whenever you're ready.

MR. DAVIS: Thank you, Your Honor. May it please the Court.

As the Court just heard, the percentages do not

11:03:49 include prejudgment interest. They also do not include attorneys' fees. We made an argument about that in the objection with regard to fee-shifting. We think that the attorneys' fees should be considered when the Court is looking at these percentages.

11:04:04 But, further, class counsel says that the proposed settlement provides class members with 75 percent to 252 percent of their damages as calculated by the various damages models. Now, I looked at those numbers and I thought, wow, that's a lot; that's incredible; how can that be?

11:04:21 Well, I think there's a little bit of mathematical

manipulation going on. In reality, if you look at the class members' actual losses -- my client, for example, I think lost about $1,700. And we now know that it looks like he's going to get back about 29 percent of that, maybe, depending on what
11:04:46 the attorneys' fees end up being.

But more importantly, with regard to notice, my client has been following this very closely. In fact, he's in the courtroom here today. And he was unable to figure out what exactly was going on, despite intently watching this case
11:05:09 over the last 14 years. He sent in all the forms. He answered all the questions that he was asked. And ultimately he wrote a letter to Robbins Geller. He called Robbins Geller. They told him that he had a duplicate claim. He said, what do you mean I have a duplicate claim. They said,
11:05:29 well, you have to call Vanguard. He called Vanguard. Vanguard said we can't tell you anything. He called Robbins Geller. So the idea that all of these calls were made and everybody knew exactly what was going on I don't think is the case. Certainly it wasn't the case with regard to
11:05:44 Mr. McDonald.

And, you know, Mr. Dowd said, well, we called 700 people who had damages in excess of $250,000. Well, that's great. But what about everybody else? And Mr. McDonald wanted me to relay to the Court that it's -- we need to keep
11:06:05 in mind the human damages that occurred here. I mean, it's

easy to get wrapped up in a billion and a half dollars and all these institutional investors and why aren't they here. And, by the way, we addressed that in our supplemental brief, why likely the institutional investors aren't in here objecting.

11:06:25 But I think it's important to keep in mind that this -- this settlement affects many more people than the institutional investors. There are employees like my client who lost their jobs. There are people who lost their lives. My client's boss, I think, committed suicide over this thing. So it's not

11:06:49 something that should be taken lightly and we should keep that in mind. And so just because the institutional investors may have been on top of things and may have known what was going on, that doesn't mean that all -- that mom and pop and the former employees of Household and all the small investors

11:07:05 knew, or if they knew understood, exactly what was going on here. So I think the Court needs to carefully consider what was in the notice and how the notice was disseminated.

And that -- and we'll get to this when we talk about the attorneys' fees, but, you know, when you're looking at an

11:07:32 individual investor who is recovering $500 on a $1,700 loss, I think when you put that next to an attorneys' fee that may be five times the lodestar, it really shocks the conscience. But I'll address that later.

With regard to the fairness of the settlement and the

11:07:54 litigation risk and this number -- this range that was given

of 75 percent to 252 percent, I would say that the recovery is probably at near the bottom of that range despite arguments by class counsel and Professor Silver, you know, that -- I understand Mr. Dowd's comments with regards to the leakage model and the risk associated therewith. And, sure, there are always risks in litigation like this. No question. The case has gone on for a long time. A lot of work has been done. There are substantial risks.

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But I believe the defendants even conceded that Professor Fischel, who the plaintiffs retained, is the, quote, gold standard for experts; and he's advocating the leakage model. I think it's very likely that the leakage model would have been accepted.

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And we have to consider that this already went to a jury. I think it was a six-week trial. And they decided that there was 2.5 -- or 2.4, rather, billion dollars of damages and liability here. So now that we're back, it -- it's such a disparity, I mean, to go from 2.4 billion down to 1.575 billion. It's something that needs careful consideration. And we need to make sure that the settlement is, in fact, fair and that we're not compromising class member claims just so we can finally resolve the case and the attorneys can get their money.

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I think the most important thing is that we get it right, we make sure that the most money possible goes back to

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the class members. Sure, the attorneys should get compensated for the work that they did. But the Court needs to keep in mind that the people that were really harmed here are the investors, and they should be appropriately compensated.

11:10:07 Thank you.

THE COURT: Thank you, Mr. Davis.

Does anybody else want to be heard on the motion for approval of class action settlement and the plan of allocation?

11:10:19 All right, Mr. Dowd, regarding the motion for attorneys' fees. That is document 2222.

MR. DOWD: Your Honor, if I could just have a moment?

THE COURT: Sure.

(Brief pause.)

11:11:00 MR. DOWD: First of all, Your Honor, I'll just respond to some of those comments before I get going on the rest of the fee argument.

There's no mathematical manipulation here. I don't know where somebody came up with 29 percent, but it's just 11:11:14 flat-out wrong. I mean, we had Ms. Ferguson at Gilardi run our damages models, both of Fischel's models, against the claims that were eligible for recovery in this case. And it's 75 to 252 percent. That's what the numbers are.

To the extent a class member couldn't figure it out, 11:11:33 perhaps they should have looked at the dedicated website that

we have had up for literally six years now so that class members could look at every single pleading in this case. That would have been one place to start.

And it looked to me like in his filing when Mr. McDonald contacted our firm by e-mail, he got his e-mail back from our firm explaining to him what was going on.

I can't help it if Vanguard, who runs the TRIP plan, which has a $37 million claim, isn't as responsive to Mr. McDonald. That's between him and his 401(k) company. Not me. I could tell him that his claim was rejected as a duplicate, but it was covered by Vanguard and he should reach out to them, which is exactly correct.

I also want to say that we didn't say we called all 700 people that had claims over $250,000. We called third-party filing services. We called some individual class members with claims that large. We reached out to almost everyone who had a claim but some through the party that had actually filed their claim. So I just wanted to make sure that's clear.

I'm not sure who lost their jobs at Household because of this case. I know this: The CEO and CFO didn't. This was not Enron, Your Honor. It was not WorldCom. And I'll address that later.

To the extent that Professor Fischel was the gold standard, this Court said we couldn't put that in at the

retrial, Mr. Kavaler's comment, so it wasn't coming in at the second trial.

And as to the risk of the leakage model, Your Honor, you know, there's one thing that isn't in the record anywhere here. When the verdict came back finding the defendants liable for the false statements in this case in 2009, the next thing that happened is Judge Guzman read out whether the jury had accepted the leakage model or the specific disclosure model. The jury found the leakage model. It meant that the damages were three times higher than they would have been under the specific disclosure model. And when that was read, Ken Robin, the former general counsel of Household, who was sitting at defense counsel's table, fist pumped; fist pumped, Your Honor. Damages were three times larger. Why? Because they were so certain that the leakage model would be reversed on appeal. They were happy that the leakage model got chosen. So there was real risk.

At any rate, Your Honor, I'll go back to my argument. It was just that I wanted to respond to some of those things that truly troubled me.

I will talk about, you know, market rates and the legal issues. But, first, I just wanted to talk generally.

What we did here was -- it was unprecedented, Your Honor. Frankly, I think what we did in this case was amazing. We took a run-of-the-mill securities case that if you looked

at all these statistics that people cite should have settled for about 50 million bucks. Maybe a hundred million bucks if you went all the way to summary judgment. And we turned it into the seventh largest securities recovery ever. It was a
11:14:47 run-of-the-mill case. We didn't turn it into a $1.575 billion recovery because of the size of the damages. The damages, if any other firm had done this case, would have been about $624 million for the claims that are participating. We turned it into this because of our ingenuity, our creativity, our
11:15:09 ability to try cases and, frankly, more than anything, our commitment. That's what resulted in this recovery.

We poured time and money into this case, Your Honor. Poured time and money in. For 14 years, Your Honor, we fought like animals for this class. I mean, I can't say it any other
11:15:30 way. We spent $34 million, almost all of it cash -- almost all of it -- out of our own pockets to fund this case. We looked; we can't find another case where one firm shelled out $34 million, probably 32 of it in cash, for a class. Can't find it. No one has ever committed those kind of resources.
11:15:54 It's unprecedented, Your Honor.

We tried this case against Cahill Gordon. They're one of the biggest firms in New York. They've been around forever. When Cahill lost, post trial they brought in Skadden Arps here in Chicago; Mr. Stoll, Mr. Rakoczy, Ms. McDevitt.
11:16:12 And then we fought with Skadden over the claims process. We

fought with Skadden over post-trial briefing. We fought with Skadden like dogs, again.

After that, Your Honor, the case went up on appeal. Did any of the lawyers from Cahill or Skadden do the case? And they're very good, Your Honor, very good lawyers. No. They brought in probably the most successful appellate advocate in the country, Mr. Clement, to argue their appeal for them. He used to be the Solicitor General of the United States. That's who came in and appeared for them from the Bancroft law firm in front of the Seventh Circuit.

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And when it came back down for retrial, Your Honor, they weren't just happy with just having Skadden, even though they are fine lawyers and they had Mr. Fitzgerald added to the team. He used to be the U.S. Attorney in this courthouse. And before that he tried one of the World Trade Center bombing cases. That wasn't enough. They brought in Williams & Connolly and Mr. Farina, who is really an expert on damages as well.

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You know, Your Honor, when people interview at my law firms for jobs, law students, people like that, I tell them, you know what, this job, we play the best lawyers in the country every day. That's who's on the other side of our cases. You're playing the '61 Yankees every time you litigate a case. And where are you playing the '61 Yankees? If we sue Microsoft, we sue them in Seattle. If we sue Ford, we sue

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them in Detroit. If we sue JPMorgan, we sue them in New York. So you're playing the '61 Yankees in Yankee Stadium every day, Your Honor. And we did it here. There's no question about it. It's not just Skadden, Cahill, Williams & Connolly, the 11:18:01 Bancroft firm. There were other firms that represented defendants in this case. And we took on every one of them, Your Honor, in this case.

The risks and pressures that we faced in this case were enormous. You know, the land mines in this case, Your 11:18:16 Honor, were everywhere. I mean, Judge Guzman once said something to us -- to Mr. Kavaler, the defense attorney, and he said something like: I understand, Mr. Kavaler; the plaintiffs can lose a hundred ways and they can win only one. And that's the God's honest truth, Your Honor. That's what we 11:18:33 faced in this case. Constant land mines.

I think, Your Honor, just posting the bond in this case, having to pay those fees, it was remarkable for a plaintiffs' firm to have come up with $13 million in cash. Your Honor, that comes out of our pockets, the people at this 11:18:54 table. I mean, that's who pays that money. It comes out of our firm because we felt we had to do it to protect the class. We got advice from bankruptcy counsel. No one has ever done something like that. I think Professor Silver said in his 30 years of studying class action lawsuits, he never saw 11:19:13 anything like it.

I think, Your Honor, we stand here today, after 14 years, 14 years after Mr. Brooks appeared at the lead plaintiff hearing; and we're here. There's one person that says we shouldn't get 24.68 percent, that that's just too much. And, you know what, Your Honor, that's based on hindsight. That's based at looking at the amount of the recovery that we got through our commitment, our hard work, our ingenuity, and our creativity. But, Your Honor, under the law in this Circuit, not only should we get it, we're entitled to get it in this case.

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And I'll talk now just about the factors.

The Seventh Circuit is consistent, Your Honor, that in deciding a common fund fee -- and that's clearly the case here -- the market rate is the test. You look at the market price for legal services in light of the risk of non-payment and the market rate of compensation in the market at the time. There's a number of issues that play into the market rate: The risk of non-payment a firm agrees to bear, the quality of its performance, the amount of work necessary to resolve the litigation, and the stakes of the case.

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So what is the market rate? I think, first, Your Honor, the market rate dictates that contingency-case attorneys get paid on a percentage of the recovery. There's no plaintiffs' firms that do it any other way. There's no plaintiffs' firm that says, oh, I want to enter into a fee

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agreement as a lodestar-based award. Doesn't happen. And we supported that with evidence from Professor Silver. It's a percentage.

And the percentage is favored by the Seventh Circuit. I understand this Court has discretion. Almost every case that's come out of the Seventh Circuit in a securities case probably in the last two decades has been decided on a percentage. Silverman v. Motorola was decided on a percentage, you know, in the last couple of years. There's just no question it's a percentage. And I know this Court has awarded fees in securities cases based on the percentage. It dominates -- the percentage method -- in plaintiffs' contingency cases, and that should be what the Court uses here.

So what is the percentage? I think, Your Honor, you know, we presented evidence from the real world. I mean, that's what we're supposed to do. And the fee agreement, first of all, here was with IUOE, and it was to basically lock us in to something below 25 to 33 percent or whatever, unfettered, we could have sought. And it basically had lower rates for the bottom levels and gave us an increasing scale if we were able to drive up the recovery. And so I think that's the first thing the Court should look at, is the fee agreement in this case.

But, secondly, Your Honor, you know, we presented

reports from Professor Silver, who has studied class action cases for years and years. He says: Plaintiffs' PI cases, 25 to 40 percent; mass actions, 33 to 40 percent, and higher if there's a trial in many cases; sophisticated business clients, IP people pay 33 percent. He cites the Research In Motion case.

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He cites a Schwartz study that says in IP cases one-third is the typical fee and through appeal it's higher. He cited the Tanox case, where there was a graduated increasing fee percentage that went up from 25 to 40 percent up to 200 million, and then 25 percent on everything above that. He cited an example of a case called ETSI about Burlington Northern; again, it was one-third, plus the client paid the expenses. Same thing, there was a Susman Godfrey case cited where they got 30 percent. Synthroid, there were 22 percent fee agreements with clients after the money was on the table. I mean, think of that, Your Honor.

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In addition, in his supplemental report, Professor Silver, in Table 5, he cites 64 cases where the recovery was greater than a hundred million and the awards were greater than or equal to 25 percent. All higher than what we're seeking here.

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In addition, he pointed to the cases that were, you know, sort of most similar to ours, like Allapattah, that went to trial. They got 31.3 percent, and I think that was about a

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billion dollars; and the class members signed contracts for a third.

He cites San Allen, a 420 million settlement, seven years, a bench trial, 32.7 percent. The Urethane case that also went to trial, Your Honor, 835 million, and the award was $33 million. Why? Because the case went to trial.

Also, Your Honor, there are other cases that the professor cites.

The bottom line is the evidence that's before this Court is that 24.68 percent is consistent with, if not below, the market rate for cases of this type.

So the objector comes back and, you know, points to Enron and WorldCom and UnitedHealth. Well, I worked on all of them, Your Honor -- all of them -- in one shape or form.

In Enron -- you know, we were talking about it. When people ask me what do you do for a living, I say to them I work on class action securities cases. And they say, like, what does that mean? And I say, you know, like Enron. That's how big Enron was, Your Honor. It was possibly the greatest financial scandal in American history up until that time. The stock went from 90 bucks to under a dollar. There was a bankruptcy. The CEO and CFO were fired. There were indictments. Executives went to jail, Your Honor. 20 law firms sought to be lead counsel in that case. Everybody wanted that case. Everybody. So this isn't Enron. And that

explains the fee percentage and fee agreement in Enron.

WorldCom, Your Honor, same thing. At the time, it was the largest accounting fraud in history. There was a bankruptcy. The stock went from 60 bucks to under a dollar. There was the SEC and DOJ investigations. There were indictments. Four officers of WorldCom went to jail, Your Honor. And there were 13 law firms sought lead counsel because everybody in the plaintiffs' bar wanted that case. And that wasn't even enough. There were over 80 institutional investors that opted out and filed their own cases because they thought -- and it was true for our clients, correctly -- that they could recover more in an individual action than in a class case. So that shows that institutional investors are aware. And it also shows that the fee agreement in WorldCom had nothing to do with this case where everybody wanted the case.

UnitedHealth was a massive backdating case. There were eight firms that moved for lead plaintiff -- lead counsel just in the derivative case against UnitedHealth, which people thought was the more lucrative one. Five more in the securities case. And there was a benefit of a large internal investigation in that case.

Here, Your Honor, we just don't have that. I mean, when this Household case was filed, there was a restatement announced where the stock went up. This wasn't WorldCom.

This wasn't Enron. This wasn't UnitedHealth. It was a small restatement, and the stock went up. Talk about problems with loss causation and damages. And so people could point and say, well, gee, but then the Attorney General settled with them about predatory lending in October of that year after this case was filed. That's true. Stock went up that day, too, when that settlement was announced. Try talking about loss causation problems in that case.

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So I think, Your Honor, that explains why it was a case where only three people moved for lead. Two of them withdrew, one of them, I believe, before the papers were even filed.

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So, at any rate, in this case, it's clear that the percentage and the evidence in the market supports 24.68 percent, if not more.

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THE COURT: Mr. Dowd, what's the significance of the companion cases that the objector raises in talking about the lack of interest from other firms?

MR. DOWD: I think, Your Honor, there were seven complaints filed. It has no significance. People file a case. Then they have to decide whether they really want it. Only three people moved for lead. I think people filed a case just in the hopes that they'll be first filed and someone will pick them up that wants to move for lead counsel. It's really a meaningless, meaningless concept. There were three that

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moved for lead counsel.

And I think you have to look at the case, Your Honor. WorldCom, Enron -- I mean, everybody was talking about it. I was talking to cab drivers about those cases in New York. I
11:28:11 was talking to my relatives about those cases. I mean, they were front page in the New York Post. In every newspaper in this country, they were front-page scandals. Everyone in the plaintiffs' bar was stumbling over themselves to get those cases. In this case, no. No. A restatement where the stock
11:28:27 goes up? Nobody cared about that.

There are other market factors, Your Honor. The risk of non-payment. And at first you start out with just the general principle that securities cases are notoriously risky. I think we cited statistics that 50 percent of them are
11:28:45 dismissed. That's just in your typical case, they're risky. And in this case, again, Your Honor, you have to look at the risk. And to me, you have to look at it in terms of just different stages where we faced risk. Real risk, not imaginary risk, not what might happen some day in this case.

11:29:02 I mean, we went through the motion to dismiss, and we lost part of the case. Then the defendants filed a second motion to dismiss on Dura, on loss causation, saying that we couldn't meet the Dura test. Then the defendants filed a motion to dismiss based on Foss, the resurrection of claims
11:29:19 under Sarbanes-Oxley. We lost two years of the class period

because of that.

We then went through class cert. And ultimately we stipulated. And thank God we did because they could never back out of it. That was part of the deal.

11:29:34 We went through a summary judgment filing. We went through Daubert motions, Your Honor, where there was serious risk at the first trial. I mean, not just to loss causation and damages, but to our other experts, as well, who were critically important.

11:29:47 I mean, we talk about loss causation and damages. Professor Ghiglieri, who talked about predatory lending, I think she was on the witness stand for 11 hours in this case. We had 46 hours allotted to us. I mean, she was the witness that was on the witness stand the most. I mean, I remember, 11:30:00 Your Honor, Mr. Drosman was putting her on the stand; and he kept saying, it's taking too long, it's taking too long, because he knew he was eating into our 46-hour clock. And I kept telling him, Dan, don't worry about it; you just do what you've got to do; she's an important witness. And as soon as 11:30:17 he would leave the room, I would turn to Mr. Burkholz, Mr. Brooks, and Ms. Mueller and say he's killing us; he's using all our time with that witness.

But I have to say, Your Honor, there was risks that she wouldn't even be allowed to testify about predatory 11:30:30 lending. I think, Your Honor, there were motions in limine to

exclude all the evidence about their predatory lending and consumer fraud. I mean, that was a key component to this case. And they tried to throw out almost all of it.

Then we sat there at a jury trial, Your Honor. You want to talk about risk. I mean, people can talk about risk in the abstract. You know, they're not the ones that are sitting up until 2:00 in the morning working on their opening statement thinking I hope this goes okay or staring at jurors and thinking, oh, my God, all I need is one -- I mean, Your Honor has been there. I know you've tried cases. I mean, that feeling when there's a billion dollars on the line, it's horrifying. And I've sat there next to people that I defended in criminal cases where they were going to jail and it was just as horrifying. This was maybe even more so, Your Honor, trying a case. So I can't even quantify that kind of risk that we felt at jury trial.

And then to hear a bunch of, you know, findings for the defendants from 1999 until March of 2001. Your heart is just falling, Your Honor, as you listen to those. I mean, that's the kind of risk.

Post-trial motions. The Janus case comes down. Like we needed that. More risk to us. Reliance. I mean, no one had ever dealt with post-trial reliance before. I mean, people have probably had lead plaintiffs talk about reliance. Here the defendants were going to challenge reliance as to

every class member. I mean, I remember Judge Guzman -- I think in his order about it in November 2010 -- said something like, there's little guidance on this because none of these cases ever go to trial. And it was true. We were in
11:32:16 uncharted waters. The Court was in uncharted waters. The defendants were in uncharted waters. The risk was palpable that you would lose claims, all sorts of claims.

I think then, Your Honor, you know, we had the appeal. I mean, you talk about risks. Going up to the
11:32:32 Seventh Circuit on the leakage model. Going up against Paul Clement. And then to sit there for 15 months waiting every day, turning on your computer, afraid to look at it to see what it was going to say. And when it finally did come down, I made Mr. Burkholz read it first and tell me what it said
11:32:51 because I didn't want to read it myself. I mean, that's risk, Your Honor. That's the risk of non-payment.

On remand we faced the risk of the admissibility of the leakage model. We were in front of a new Court that was not familiar with the case. I don't understand the Seventh
11:33:06 Circuit rule in that regard, but that's a whole other story. But we faced this Court's rulings on admissibility. And thank God you went our way on admissibility of the leakage model, but we didn't know how that risk was going to turn out.

The defendants brought in three new experts after the
11:33:26 appeal was decided. I mean, it's incredible, Your Honor, just

the new risk you face. I mean, just think about Brad Cornell, who has been testifying on -- as a damages expert for years and years and years. I mean, I've taken his deposition probably three times. And I think, Your Honor, he was going to sit on the witness stand in this courtroom and say, I invented the concept of leakage in my paper; in fact, it's my paper that Professor Fischel relies on; and you know what? He can't use it the way he did.

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I mean, I don't know a lot about jurors, but I used to sit there and worry sometimes that if the guy who came up with the leakage model says the plaintiff shouldn't be able to use it, a jury may understand something like that. Did I think we'd win? Yeah. I was going to have Mr. Drosman cross-examine Mr. Cornell -- or Professor Cornell. And I had all the faith in the world that he'd do as well as anyone in the country because I've seen him cross-examine witnesses. But could I count on it? No. That's all risk.

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I talked about the costs award, Your Honor. I mean, you know, the funny thing is, at the time we made that decision to make the defendants' post that supersedeas bond, we understood that this Court in all likelihood would make us pay those costs back. I mean, we fought it in this court. But we understood that. And worse, we weren't sure how much the bond was going to cost them. I mean, it ended up being 13 million. At the time, Mr. Burkholz and I thought it could be

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as much as 25 or 26 million because we weren't sure what the defendants were going to have to pay for it. I mean, that's what we were thinking leading up to that decision.

But we hired bankruptcy counsel. I mean, we're not bankruptcy lawyers. I don't know the first thing about bankruptcy court. And so we hired Irell & Manella and Seltzer Caplan, and we got opinions from them. And they told us, yeah, if they put it in some escrow account, there's no guarantee that if they throw that subsidiary, HSBC North America or HSBC Finance -- if they throw them into bankruptcy, that trustee is going to put a claim in on that money and he may well beat it. That's what we were told.

Did I want to tell my partners, hey, we might get hit for, like, I don't know, somewhere between 15 and 25 million bucks; but if we don't pony up that money, the class isn't protected?

I mean, we've been telling Judge Guzman we were worried about HSBC throwing that entity into bankruptcy since, I think, 2011, Your Honor, when we moved for entry of judgment. We were always worried about that.

And so did we want to tell that to our partners? No. But we looked at it and we said, we've got to protect the class. We have to protect them, even if it's going to cost us a ton of money. I don't think anybody has ever made a decision like that. And then to read in a brief that I was,

like, wasting money, wasting the class's money -- it's outrageous, Your Honor, when I read that. And I'm sorry if I sound angry about that. But it's incredible.

I mean, we even tried to lay off some of that risk on insurers. They basically laughed at us. We tried for months to see if somebody would insure us against paying the 13 million back. Good luck with that one, let me tell you. Nobody wanted to help us with that. And, again, as Professor Silver said, in 30 years he had never seen anything like it.

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The next sort of factor that the Seventh Circuit says this Court should consider is the quality of the performance. And I think, Your Honor, you know, our work in this case, it was unparalleled. I think that's the only way to describe it. We did Exhibit C to the fee brief of all the cases that settled for more than $500 million and the percentage of the recovery. Nobody is even close. I mean, it's that great. All you've got to do is look to the Merck case from last year. I think it's the only other one that had a billion-dollar recovery in, like, two -- in the last two or three years. They got 8 percent of the damages, and that was according to the mediator who mediated the case.

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And so I think that our best demonstration of the quality of our performance was pushing that leakage model. Your Honor, I had never heard of leakage model. I had never heard of leakage and I had been doing these cases for years

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and years and years before 2008. And to their credit, with Professor Fischel, Mr. Brooks, Mr. Burkholz pushed that leakage model. And that leakage model changed the ball game for us. It made it a $2 billion case instead of a $600 million case at the end of the day. And if you read that Bear Stearns case by Judge Sweet, who is a very fair judge, saying it's not peer-reviewed, it's not generally accepted, and it vitiates the loss causation requirement, I mean, it just shows how risky it was to push it. But if we hadn't, if we hadn't, the recovery in this case would have been astronomically lower. And I don't think anybody else would have.

I think, Your Honor, the other issue is the Phase II proceedings. I talked about that. No guidance. Just our interactions with class members. I didn't just talk to people with claims over $250,000. I talked to hundreds and hundreds of class members. It became a running joke after a while at our office, Your Honor, because I'd be talking to somebody about their claim and while I was talking to them about it, I'd pull it up on the database I had on my computer and find out that they had a claim for, like, $135 and I had been on the phone with them for 20 minutes explaining loss causation and the presumption of reliance. And Mr. Burkholz used to tell me, maybe that's not the best use of your time. And I'd think, but they're clients.

I mean, I never had one like this where random class members would just call you directly and you'd say, yeah, I tried the case; you're talking to the right guy. I'm not saying I talked to everybody who called our firm. I couldn't have. I couldn't have. We had other people that do that as well. But I talked to hundreds of them.

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And I talked to ex-Household employees. And I protected them, Your Honor. And there's no question about that. You know, I talked to a ton of ex-Household employees. I got e-mails from more that I responded to. I have one ex-Household employee who was saying prayers for us when we went forward with this case on the retrial. I mean, I've talked to her probably three or four times. I think she's got a claim worth a couple hundred bucks.

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So to say I didn't care about Household employees -- you know, Your Honor, the special master would have thrown every Household ex-employee out of this case, all their claims out. He would have thrown out the Vanguard TRIP plan that Mr. McDonald claims under. But for us, Mr. McDonald wouldn't be a class member.

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Would it have been expedient for me to say we should cut those people out? Would it have been in my interest to say we should cut those people out? Yeah, some would say it would. But we didn't, Your Honor. You know why we didn't? Because it wasn't the right thing to do. Because we had been

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telling those people for years, since 2012 when defendants objected to their claims, that we would fight for them. And so we kept fighting for them, and we included them in the settlement because there was no final ruling and we had objected to it.

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And so to say that we didn't care about Household class members is preposterous -- to not care about Household employees. We did.

The next factor, Your Honor, is the amount of the work. The amount of the work in this case -- you know, we spent 130,000 hours. We have a list at pages 21 to 22 of our brief. The Burkholz' declaration is, like, 150 pages long detailing what we did. I will not go through that with the Court unless the Court really wants me to.

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Again, I can't put into words what we just did just on the Phase II. Never mind trial and everything else.

But, Your Honor, the fourth factor -- and I'll pass on that one -- the stakes of the litigation. You know, it was huge. The Allapattah court that awarded 31.3 percent of the fees in a billion dollar case, they said it was an all-or-nothing case. And that's what this was, Your Honor -- an all-or-nothing case for us.

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The stakes of the litigation for the class and for counsel -- and our interests were aligned like that (indicating) in this case -- those stakes were incredible. I

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mean, I can't even begin to describe it, Your Honor. The defendants were an immovable object in this case in terms of settlement. And we were an irresistible force. It's that simple. And those two collided again and again and again in this case. The stakes were off the charts. Not to mention the time we would have wasted, the 34 million in -- almost all of it cash out of our pockets.

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The lodestar, Your Honor. I know the Court asked for a lodestar analysis. As I said earlier, no one in the market does it. No one, you know, seeks a fee based on lodestar. The Seventh Circuit clearly endorses percentage as well. And I think, Your Honor, if you look at the Williams case -- it's cited in our fee reply, Williams v. Rohm & Haas -- that says that it's not an issue of Seventh Circuit required methodology. This Court doesn't even have to look at the lodestar according to the Seventh Circuit, so I would argue it's irrelevant.

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And we were very happy to learn when we followed up on Williams v. Rohm & Haas and saw it cited in an Eastern District of Wisconsin opinion after that. The multiplier in that case was 5.85, Your Honor, and that was approved by the Seventh Circuit. And so, so much for the two times ceiling. The two times ceiling doesn't exist.

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And more importantly, Your Honor, when you look at our lodestar, we shouldn't be punished because we were

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efficient. I mean, it says that in Synthroid, in Synthroid II I believe. It said don't use class counsel's efficiency to reduce their percentage. That's why we created that chart that's Exhibit D, I think, to our first fee brief that talks about the lodestars. Your Honor, it was a very entertaining chart to create for me because lodestars always troubled me. I know we're efficient as a firm. There's no doubt in my mind. But to look up the Merck case that never went to trial and see that their lodestar was 205 million to our 70. To see that Tyco, their lodestar was 172 million in a case that didn't go to trial. I mean, it just shows lodestar is what people make it, Your Honor.

What matters is the results. And that's what it says in the Seventh Circuit case law. The client only cares about the outcome. And that's what they should care about here. If you look at that chart, Your Honor, we added about $5 million a year in lodestar on average. There were firms that added up to $31 million a year to their lodestar. 31 million. I think that was Tyco. It just shows that we were incredibly efficient, especially in a case that went this far.

Your Honor, as to some other issues that were raised, I'd like to address at least the declining-scale concept. You know, there's been a suggestion by the objector that the declining scale, you know, should be applied here. And, Your Honor, I looked back at this declining scale stuff. And

there's a reasoning behind it. And the reasoning is that in most instances, the size of the class, not counsel's skill, results in a huge recovery; and that it's just as much work to get a hundred million as 200 million. Well, Your Honor, that's just not true here. It wasn't the size of the class. It was counsel's skill that resulted in this recovery. Our skill, Your Honor.

I had a chart made that I wanted to share with the Court. Can I hand it up?

11:45:33 THE COURT: Please.

(Tendered.)

MR. DOWD: Your Honor, that's a chart. And it shows the $1.575 billion, the settlement versus the specific disclosure model. The specific disclosure model, as I said earlier, that's what every single plaintiffs' firm would have used in this case but us. I think going forward, there may be other plaintiffs' firms that try to use the leakage model. But this is what everybody uses.

The damages were $624 million. Prejudgment interest on that amount through October 20th, through today, would be $518 million based on the percentages that Judge Guzman awarded. That's a total of $1.1 billion. So if you had used the normal damages model that is used in every case, every case -- every case I've ever done other than this one -- you're looking at a total recovery for the specific disclosure

damages and full prejudgment interest of $1.14 billion. The class members are getting another $432 million on top of that. That, Your Honor, shows that it was our skill. That this is not a declining percentage case. This is a case where we
11:47:00 drove it, Your Honor. We drove it, class counsel, lead counsel in this case.

And beyond that, Your Honor, the other reason that the declining percentage isn't applicable, we went to trial. All the market evidence says you go to trial as a plaintiffs'
11:47:17 attorney, you get a bump up. And if you go through appeal, sometimes they say you get another bump up. So this isn't a declining percentage case. I mean, the courts in Allapattah and Urethane, they basically laughed at that. I mean, they said no. That may work when you have some settlement, you
11:47:35 know, possibly percents on the dollar in a case short of trial. That may make sense because you didn't really do anything to drive that result.

Between this (indicating), using the leakage model instead of specific disclosure, and the fact that we went to
11:47:52 trial, there shouldn't ever be a declining scale in this case. If anything, it should be an increasing scale because the IUOE agreement demonstrated it worked. They incentivized us and we delivered. We delivered like nobody else has, Your Honor.

Any other remarks I have I guess I'll wait until
11:48:12 Mr. Davis speaks, if that's all right with the Court.

THE COURT: Sure.

MR. DOWD: Thank you, Your Honor.

THE COURT: Mr. Stoll.

MR. STOLL: Yes, Your Honor.

11:48:21 Just as an initial aside, as Mr. Dowd noted, we weren't counsel at the first trial, so I can't comment on his earlier comments regarding clients' counsel at that trial.

Your Honor, as you well know, this is an issue entirely within your discretion when it comes to the

11:48:38 allocation of fees and expenses under the settlement. We're confident the Court will exercise its discretion in accordance with the guiding factors.

My only comment would be, under no circumstances should that issue affect ultimate approval of the settlement,

11:48:54 which is entirely appropriate in this case.

And then unless you had any questions of me, Your Honor, that's all I had on that.

THE COURT: No, no questions.

MR. STOLL: Thank you.

11:49:03 THE COURT: Thank you, Mr. Stoll.

Mr. Davis.

MR. DAVIS: Thank you, Your Honor. Very briefly.

Should the Court approve this settlement as fair, adequate, and reasonable, we absolutely believe that

11:49:22 plaintiffs' counsel should get paid. We acknowledge it was a

long case. They did a lot of work. I'm sure it was stressful. There was risk involved. But considering all that, the Court has to figure out what a fair fee is going to be.

11:49:39 We've provided the Court plenty of data concerning the market rate. I think the Court has all the information it needs with regard to market rate and percentages and the results that have been achieved in similar cases. The Court has the lodestar. And certainly the Court is well capable of 11:49:57 determining what a fair fee is going to be here.

We believe that if the Court is considering a percentage, it should be somewhere between 5 and 18 percent, certainly not close to 25 percent. The data that I've seen suggests that the fee should probably be nearer to the -- the 11:50:23 lower range, maybe in the 5 to 10 percent area like we saw in Enron. Mr. Dowd says, well, this case wasn't Enron and it wasn't WorldCom and those were bigger cases. If they were bigger cases, they required more work. Well, if there was more work done in those cases, I don't see how one could argue 11:50:48 that a higher percentage is justified here if those were bigger cases and more strenuous cases. Certainly the percentage would be higher, not lower. In those cases -- or at least in Enron, I believe, the percentage was 8 to 10 percent, not 25 percent. So here you have class counsel 11:51:11 asking for what we believe to be about twice what a reasonable

fee would be.

But I'm not going to reiterate everything that we put in the brief already. The Court has considered all of that and can certainly exercise its discretion in determining a fair fee.

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I would like to talk about costs, particularly the supersedeas bond. The Court has heard a lot of discussion on that. My understanding is that the plaintiffs opted for the supersedeas bond to be posted. The defendant offered to pay that money into escrow. And plaintiffs now say, well, we had to do that because we consulted bankruptcy counsel and they told us that that's what we needed to do. And if counsel is now relying on the advice of bankruptcy counsel, I think it would be appropriate for the Court to request those legal opinions so the Court could satisfy itself that that was, in fact, necessary; that the supersedeas bond was the right decision and that that premium was necessarily incurred in light of the fact that they simply could have had the defendant put the money into escrow.

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Finally, Mr. Dowd made some comment about he wasn't sure if objections had been abandoned. Mr. McDonald has not abandoned any objection. Mr. McDonald is here seeking substantial justice. He took the time to come up from Texas to be here today. He's interested in this case not only for himself but on behalf of all of his former employees and the

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other class members. He wants to ensure that justice is done here and that the class gets the best result possible.

Again, certainly the attorneys are entitled to a reasonable fee. But the key word is "reasonable," and I'm confident that the Court will make a fair decision in that regard.

Thank you very much.

MR. DOWD: Your Honor, just briefly.

I mean, the thought that I'd pay $13 million I didn't have to pay if I didn't think I was protecting the class is preposterous.

And I think now -- first the objector said 5 percent, then 5 to 10, and today he just said 5 to 18. That's the problem with not using the market. We've been consistent. 24.68. That's what it should be.

And, finally, he said that Mr. McDonald is here. I'm just curious in duty of candor that counsel talked about: Is there any relationship between Mr. McDonald and Mr. Davis? I note that Mr. Davis has, you know, some sort of relationship with a Sarah McDonald, who I believe has been an objector in his cases in the past. I was just curious. And the Court may want to inquire about that.

THE COURT: All right. Does anybody else want to be heard regarding the pending motion, the motion for an award of attorneys' fees and expenses and reasonable costs and expenses

for the lead plaintiffs?

(No response.)

THE COURT: All right. No one else does.

All right, Mr. Davis, anything else, sir?

11:54:34 MR. DAVIS: No. Thank you, Your Honor.

THE COURT: All right, the parties settled this litigation on the eve of trial in June of this year for defendants' cash payment of $1.575 billion to be distributed to eligible class members. On June 24th of this year, the 11:54:58 Court entered an order preliminarily approving the settlement and the form and content of the notice to the class. The firm of Gilardi & Company served as claims administrator and has submitted evidence of its activities to provide notice. Just one class member has objected. That is Mr. Kevin McDonald, 11:55:25 who is present here, a former employee of Household and a shareholder. He is here and represented by Mr. Davis, who has had an opportunity to be heard.

Pursuant to Wong v. Accretive Health and Federal Rule of Civil Procedure 23(e)(2), a district court may approve 11:55:47 class action settlement if it finds it to be fair, adequate, and reasonable. The Court's role is akin to that of a fiduciary, according to Synfuel, Synfuel Techs. In order to evaluate the fairness of a settlement, the Court must consider the strength of plaintiffs' case compared to the amount of 11:56:07 defendants' settlement offer, an assessment of the likely

complexity, length and expense of the litigation, an evaluation of the amount of opposition to settlement among affected parties, the opinion of competent counsel, and the stage of the proceedings and the amount of discovery completed at the time of settlement. The most important factor relative to fairness is the strength of the plaintiffs' case on the merits balanced against the amount offered in the settlement.

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Plaintiffs have attempted to quantify the value of continued litigation by providing estimates of the amounts of damages the class would expect to recover under the possible damages models if plaintiffs were to prevail at the second trial. In 2011, Gilardi valued the valid claims in this case at 2.2 -- $2,225,885- -- 84- -- I'm sorry -- $2.225 billion.

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Class counsel envisions three damages scenarios where plaintiffs -- were plaintiffs to prevail at trial: 290 million had the jury adopted Dr. Ferrell's analysis; 624 million had the jury adopted Professor Fischel's specific disclosure model; and roughly 2.1 billion had the jury adopted Professor Fischel's quantification/leakage model. Thus, plaintiffs calculate that the 1.575 billion settlement represents between 75 percent and more than 250 percent of the damages suffered by the class, depending on the damages model that was used. The Court is persuaded that this calculation is correct.

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Mr. McDonald raises a perfunctory objection to

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plaintiffs' estimate. He objects that this estimate cannot be true and that it is misleading, but he fails to develop this conclusory argument other than to note that because the original verdict corresponded to only 10,902 class members when tens of thousands of claims were still being processed, the actual liability exposure must be several times the original judgment. But as plaintiffs point out, and they've argued today, the outstanding claims were not several times the value of the claims comprising the original judgment; they were a fraction, and the plaintiff does not present any real analysis other than conjecture.

Plaintiffs do not provide the Court with probabilities of the possible outcomes here. But they do point out the significant hurdles they faced that enable the Court to estimate their chances of prevailing at the second trial to be at best 50/50, more likely closer to 25/75. Plaintiffs faced steep uphill battles in persuading a second jury to find loss causation as well as to adopt either of their damages model, let alone the leakage model. The issues involved in the case are complex and not easily understood by laypeople. Moreover, any verdict in favor of plaintiffs would almost certainly have been appealed and that the appeal would have again featured a challenge to plaintiffs' damages model, which is what gave rise to the first reversal after the first trial.

These figures persuade the Court that the value of the settlement is more than reasonable in light of the value of further litigation and, accordingly, that the first and most important factor in the Court's analysis weighs strongly in favor of approving the settlement.

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An assessment of the likely complexity, length, and expense of the litigation also weighs heavily in favor of approving the settlement. As the plaintiffs describe in their briefs, securities fraud litigation is usually complex, long, and fraught with uncertainty. This case is a standout even in that crowd. This case has been pending for 14 years and a great deal more protracted and costly litigation would have ensued if a second trial and probable second appeal from that verdict had occurred. The legal issues were and are extremely complex, given the undeveloped state of the law, what Mr. Dowd referred to as uncharted waters. In contrast, if the Court approves the settlement, the class members will realize a -- an immediate or relatively immediately -- immediate and significant benefit.

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I believe that this is a logical point at which to address the "stage of proceedings and the amount of discovery completed at the time of settlement" factor. The settlement here occurred well after merits and expert discovery was completed, the case was tried once and the judgment reversed, and additional expert discovery was taken in contemplation of

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the second trial. I will not list all of the activities of plaintiffs' counsel. Those are described by Mr. -- in Mr. Burkholz's declaration in great detail, and Mr. Dowd has referred to some of that work in his argument today. The
12:01:44 Court is satisfied that plaintiffs' counsel was well positioned, with ample information to enable them to evaluate the case and adequacy of the settlement proposal.

There is virtually no opposition to this settlement among the affected parties. We have a single objector among
12:02:01 33,871 class members with accepted claims. That is unusual in a large case like this. I would have expected at least a few more objectors. Mr. McDonald's allowed loss under the plan of allocation is $1,734. Plaintiffs point out that in contrast, none of the 1,700-plus claimants with an allowed loss in
12:02:28 excess of $100,000 have objected, nor have any institutional investors, who have fiduciary duties to protect their beneficiaries.

And Mr. Dowd's argument today is well received regarding the amount of interaction between the plaintiffs'
12:02:52 counsel/lead firm and the class in this case and the amount of length -- the length of time during which that intense and unusual communication took place going back to 2011.

Next I will address Mr. McDonald's second objection to the settlement, which is that the notice inflates the risk
12:03:11 presented by further proceedings, in that, it states that

defendants have denied and continue to deny plaintiffs' claims, any wrongdoing, and liability. In the objector's view, the notice is misleading or confusing because it ignores the Seventh Circuit's holding that the defendants could not
12:03:30 relitigate whether 17 statements were false and -- or material. I reject the argument. The notice to the class accurately stated that the Court of Appeals reversed the judgment and remanded for a new trial on three issues, and it identified those issues. Because there were still significant
12:03:48 issues plaintiff had to prove on remand, including whether the individual defendants made the statements and whether they caused loss, defendants' denials of wrongdoing and liability were not misleading.

Returning to the principal analysis, the final factor
12:04:05 the Court must address is the opinion of competent counsel. Lead counsel, who have a great deal of experience in complex case -- complex class actions and specifically securities fraud class actions, state that they believe that the settlement is in the best interests of the class.

12:04:24 Plaintiffs have also submitted the declaration of retired Judge Layn Phillips, who spent many years presiding over the parties' mediation and states that there was a good-faith arm's-length negotiation, with no collusion, and that he believes that the settlement is well-reasoned and
12:04:41 sound -- and sound resolution of highly uncertain litigation.

Regarding the plan of allocation of the settlement proceedings, which is set forth in the notice for the class, I find that the plan is fair and reasonable as well. Each class member with a valid claim will receive a portion of the settlement fund, on an equitable basis.

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Every factor in the Court's analysis of this settlement strongly favors approval. For all the reasons I have discussed, the settlement agreement and plan of allocution -- or allocation are fair, reasonable, and adequate; and the Court grants plaintiffs' motion for final approval.

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Regarding plaintiffs' motion for award of attorneys' fees and expenses and reasonable costs and expenses for the lead plaintiffs, under Rule 23(h), the Court may award reasonable attorneys' fees and non-taxable costs in a class action that are authorized by law or by the parties' agreement. As part of the settlement, the parties agreed that fees and expenses are an entirely separate consideration from approval of the settlement.

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I will discuss the fees first. In determining reasonable fees, the Court is tasked with balancing the competing goals of fairly compensating class counsel for their services on the class's behalf with protecting the interests of class members.

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The Seventh Circuit instructed us in Synthroid I that

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when deciding on appropriate fees in common fund cases, we must do our best to award counsel the market price for legal services in light of the risk of non-payment and the normal rate of compensation in the market at the time. According to 12:06:31 Synthroid I, the market rate depends on the risk of non-payment a firm agrees to bear, the quality of its performance, the amount of work necessary to resolve the case, and the stakes involved. Under Seventh Circuit case law, the district court should look to actual privately negotiated fee 12:06:53 contracts in similar negotiations and empirical data on awards in other cases.

Class counsel seeks fees in the amount of 24.68 percent of the settlement amount of 1.575 billion, which translates to $338,710,000. They contend that this 12:07:18 percentage-of-recovery method has been consistently applied in this Circuit in common fund cases and that the Private Securities Litigation Reform Act prescribes this method. They also argue that the best indicator of the market rate here is the fee agreement that lead counsel entered into with one of 12:07:39 the lead plaintiffs, that is, the International Union of Operating Engineers Local 132, in the spring of 2005. That's three years into the litigation. That agreement provides for a sliding-scale increasing-percentage fee based on the recovery: 19 percent on the first 50 million recovered; 12:08:01 23 percent on the next 100 million recovered; and 25 percent

of all recovery amounts above 150 million.

Plaintiffs contend that these negotiated percentage fees and fee structure are appropriate and consistent with percentage fee -- with percentage fees negotiated ex ante in the private market and approved by the courts. They further contend that the extremely risky nature of this case and the undeveloped state of securities law support their requested award. They also cite the quality of class counsel's performance, the massive amount of work necessary to achieve the extremely favorable result for the class, and the high stakes of the litigation.

In support of their motion, plaintiffs filed, among other things, three reports by Professor Silver, a civil procedure professor who has studied class action fees and specifically fees in securities fraud class actions.

Mr. McDonald raises a number of objections to the requested fee award. First, he argues that the fee award class counsel seek is grossly excessive under Seventh Circuit case law and primarily cites Florin v. Nationsbank, a 1995 decision in which the court stated in an explanatory parenthetical that although the benchmark in common fund cases is 20 to 30 percent, fee awards usually fall in the 13 to 20 percent range for funds of 51 to 75 million and the 6 to 10 percent range for funds of 75 to 200 million.

Mr. McDonald further cites the Seventh Circuit's

observation in Silverman v. Motorola, a 2013 decision, that 27.5 -- that a 27.5 percent fee award in a $200 million case was at the outer limit of reasonableness.

Mr. McDonald also relies heavily on secondary sources that recommend smaller percentages of recovery in megafund cases, as well as cases from outside this Circuit, such as WorldCom, in which the fee award percentage was in the single digits.

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Mr. McDonald also takes issue with class counsel's contention that the lack of competition for lead counsel role here distinguishes this case from other high-profile cases and suggests that members of the securities law bar saw this case as too risky. He notes that seven separate cases were filed and later consolidated. He also says that the Glickenhaus Group claimed the largest losses and that is why their attorneys ended up being the last firm standing for appointment as lead counsel.

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The Court is not persuaded by Mr. McDonald's arguments. It is true that in Silverman, the Court of Appeals stated that an award of 27 percent of a $200 million fund was exceptionally high; but that Court then stated that it did not necessarily follow that the award would be legally excessive if there was a high risk of non-payment. The Court explained that the greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic

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counsel. It further observed that defendants prevail outright in many securities suits. Defendants have provided a list, in fact, of 20 security cases that were lost at summary judgment, at trial, post trial, or on appeal.

12:11:49 The outcome here was highly unpredictable; and plaintiffs' risk of walking away with nothing was very high, even considering the limited nature of the issues at the second trial. As the Court has discussed, because of the pivotal issues that were still in play, loss causation and 12:12:05 damages, the defendants might well have prevailed at retrial. The use of the leakage model, in particular, was innovative and yet risky. Furthermore, Professor Silver notes that at 14 years old, this case is the fifth longest-lived securities fraud class action of all time. Lead counsel spent more than 12:12:28 $34 million in out-of-pocket expenses in getting to the retrial, including more than 13 million to reimburse the defendants for appellate costs.

So the requested fee award here may be exceptionally high strictly by the numbers, but it is warranted by the 12:12:45 exceptional risk that was involved in this case. The requested award actually does not appear to be exceptionally high when one considers the decisions that appear in Professor Silver's table, Table No. 1, which lists megafund class actions involving a recovery of at least 100 million and a fee 12:13:04 award of at least 25 percent. There are 64 such cases, so the

requested award here is by no means unprecedented.

Class counsel performed a very high-quality legal work in the context of a thorny case in which the state of the law has been and is in flux. They achieved an exceptionally 12:13:32 significant recovery for the class. And the Court agrees with Professor Silver that it was, in fact, a spectacular result for the class. This result was in no way assured at any point, but especially in the early days of the litigation when the fee agreement with IUOE was negotiated.

12:13:54 Mr. McDonald's observations that seven suits were initially filed and then consolidated does not change the fact that there was no competition for the role of lead counsel here, which, under Silverman, also weighs in favor of the requested fee award. Plaintiffs have submitted a chart that 12:14:10 lists the number of firms who sought the lead counsel role in the cases with the top ten or eleven security class action settlements. In only three of those cases were the number of firms in the single digits, and there was competition in every one of them.

12:14:28 I will now discuss the fee agreement between lead counsel and IUOE. It was not entered into at the absolute outset of the case, as I mentioned, but early enough and at such a precarious spot in the litigation for plaintiffs that it approximates an ex ante deal; and I will treat it that way. 12:14:55 It is a highly reliable indicator of the appropriate market

rate for counsel's services.

Mr. McDonald criticizes its structure, in that, the fee award percentage increases with an increased recovery. And he cites the Court of Appeals' concern in Silverman with awards that are structured in any way other than a rate that declines as the recovery increases. The Court said in that decision that there may be some marginal costs of bumping a recovery up by $100 million, but as percentage of the incremental recovery -- but as the percentage of the incremental recovery, these costs are generally bound to be low because in security litigations damages often can be calculated mechanically from movements in stock prices.

The Court believes that this general observation, however, does not pertain to this case, where, as plaintiffs point out, there was a pitched battle at the first trial, on appeal, and as to the upcoming second trial about loss causation and the appropriate quantification of inflation. At each stage, plaintiffs had to make significant efforts to develop their models and establish damages. It was an extremely complicated proposition and far from mechanical.

The Court is also mindful of the Seventh Circuit's admonition in Synthroid II that although the market rate as a percentage of recovery likely falls as the stakes increase, whether it exceeds 10 percent for recoveries above 100 million must be answered by reference to arrangements that satisfy

willing buyers and sellers rather than the compensation that a judge thinks appropriate as a matter of first principles, as well as its observation in Synthroid I that systems with declining marginal percentages are not necessarily always best since they create declining marginal returns to legal work and ensure that at some point attorneys' opportunity cost will exceed the benefit of pushing for a larger recovery, even where extra work could benefit the plaintiffs.

Furthermore, in Table 4, Professor Silver has submitted evidence of nine securities class actions in which sophisticated institutional investor clients agreed ex ante to pay their lawyers on a percentage scale that rises with the recovery. The structure of the agreement here, as well as the percentage the parties agreed upon, is consistent with those cases and, thus, again, far from unprecedented.

Finally, I will briefly discuss the lodestar issue. Mr. McDonald's objections blur into an extended discussion of the $70 million lodestar and the 5.4 percentage multiplier. But Mr. McDonald overstates the importance of lodestar here. The analysis is wholly separate from that of a percentage of the recovery, which this Court is using as the most appropriate method of determining the reasonable attorneys' fees here. Although the Court specifically asked class counsel to include information about the lodestar in their briefs on fees, it declines to engage in a lodestar cross-

check after reviewing all of the submissions.

The Seventh Circuit held in Williams v. Rohm & Haas that although district courts may use the lodestar as a cross-check, they are not obligated to do so and observed that it has never ordered a district court to ensure that a lodestar result mimics that of the percentage approach.

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This Court believes that a lodestar cross-check would be counterproductive and misleading under the facts of this case, not to mention an inaccurate representation of the market rate, given that we have an actual fee agreement here. Because the outcome here is so excellent in the face of a consistently vigorous defense and because the lodestar cross-check is not a required methodology, this Court will not engage in such an analysis and will not require more from plaintiffs on this issue.

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A few more observations regarding Mr. McDonald's objections. He does not deny that the fee agreement between counsel and IUOE was negotiated when the risk of loss still existed, nor does he question the negotiations that led to it. His objections only selectively rely on Seventh Circuit case law, especially Silverman.

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The secondary sources Mr. McDonald cites do not account for the fact that the Seventh Circuit has expressly stated that there is no cap on fee recoveries in megafund cases, nor do they appear to reconcile their observations with

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the Seventh Circuit's market-based approach. Mr. McDonald also does not properly acknowledge that the Court of Appeals puts heavy emphasis on the fact that no institutional investors protested the fee request in Silverman.

12:20:00 His arguments regarding a fee-shifting regimen are also without merit. He fails to submit any data that contradicts Professor Silver's data. The Court agrees with plaintiffs that Mr. McDonald's observations or objections about the fee in this case amount to Monday-morning

12:20:19 quarterbacking that do not comport with the Seventh Circuit's market-based approach.

The Court concludes that in this case, the fee agreement class counsel -- the fee agreement that class counsel entered into with IUOE is the best evidence of the

12:20:37 market price for legal services. The requested award under the parties' agreement is very high, but not unprecedented in size or structure, and the Court will not substitute its own ex post judgment for an arrangement that satisfies a willing buyer and a willing seller.

12:20:56 This case was highly unusual in many ways: The stakes were huge, the complexity of the issues and legal theory -- legal theories abounded, the sheer length of the case, the quantity of the work, the high quality of that work, and the extremely high risk undertaken by class counsel are

12:21:15 all unusual. In light of all of these considerations, the

Court grants plaintiffs' request for a fee award of 24.68 percent of the settlement amount.

This leaves issues regarding the expenses. Plaintiffs request an award of 34.3 million in expenses. Mr. McDonald does not object to any of the requested expenses. The breakdown of the requested expenses as to Robbins Geller are contained in Mr. Dowd's declaration and exhibits to his declaration.

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I begin with the premise that this is, again, an unusual case. The requested expenses include 13.2 million in appellate costs that lead counsel paid on behalf of the class. Professor Silver states that it is an unprecedented cost in any reported class action. The amount is undoubtedly properly awarded in this case.

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The other categories of requested expenses that the Court finds reasonable are filing, witness and other fees; class action notices; special master fees; telephone, fax, postage, and delivery costs; court hearing and deposition transcripts and public documents; mediation fees; expert, consultant, and moot court fees; investigator fees; the fees of other legal counsel who advised on discrete issues; photocopying; online research; and publication/subscription costs incurred with respect to cross-examining certain witnesses.

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There are three categories of -- there are three

12:23:00

categories that I have problems with, however; and those are transportation, meals, and hotels, for which Robbins Geller requests $1,194,944.35; second, database management and hosting, for which Robbins Geller requests $310,968.70; and
12:23:37 $11,922.50, which represents, according to Mr. Dowd, half of the costs incurred by Household in responding to plaintiffs' interrogatories No. 40, 41, 42(a) and (b).

As to the first category, plaintiff explains on page 3 and 4 of his declaration that the firm incurred
12:24:00 substantial travel costs, including substantial costs to rent apartments in Chicago, as well as office space for staff who were temporarily relocated here; and that he made various judgmental reductions. He does not explain what the nature or amount of these reductions were. He also does not describe
12:24:22 any of the particulars regarding, for instance, the quality of the accommodations, the class of the travel, or typical costs of meals. In Exhibit D of his declaration, Mr. Dowd lists the individual instances of travel but does not provide the corresponding cost. Travel, meals, and hotel were a
12:24:43 significant expense; and given the vagueness of the filing, I am unable to evaluate whether they are reasonable such that the class should bear all of these costs.

The second category of expenses with respect to which plaintiffs have filed -- or have failed to demonstrate
12:24:59 reasonableness is database management and hosting, which the

firm did in-house. Mr. Dowd explains that the requested amount is a discounted market rate estimate of what the hosting services used -- using in this action have cost the class if performed by an outside vendor, based on review by the firm of what vendors charge for these services. This presentation is vague; and it seems to me that this database expense is more in the vein of overhead, not in out-of-pocket costs.

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Finally, Mr. Dowd fails to explain further the nature of the $11,922 that plaintiffs were ordered to pay by Judge Nan Nolan, money it was ordered to pay to Household. Without further information, I cannot determine if those are costs counsel should bear versus the class.

So, Mr. Dowd, with that in mind, do plaintiffs wish to submit supplemental information in support of those three categories?

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MR. DOWD: I certainly won't as to the database management or the 11,000, Your Honor.

As to the meals and travel, I think I probably should submit something supplemental to the Court.

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THE COURT: Okay. How much time do you need then?

MR. DOWD: Seven days, Your Honor.

THE COURT: So within seven days, counsel is to submit supplemental materials regarding that first category, the category of transportation, meals, and hotels regarding

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the request for 1 -- approximately $1.2 million, within one week.

Lead plaintiffs have also submitted declarations in support of their requests for awards of expenses.

12:27:18 First, Glickenhaus & Company, which requests $34,192, submits the declaration of James Glickenhaus, a partner. His declaration and attached exhibit adequately describe the company's expenses on this action, with the exception of a vague $7,500 entry for ten hours of time spent with Soicher, S-o-i-c-h-e-r, going over the case. Minus that item, the 12:27:44 Court will award Glickenhaus its expenses as reasonable.

Next, IUOE, which requests $13,147.24, submits the declaration of Charles Parker, its business manager. His declaration describes generally that plaintiff's activities in 12:28:14 the case. Exhibit 1 to his declaration simply lists 10,800 for fund counsel's fees, at a rate of $150 an hour for 72 hours, with no indication of the work counsel did. It also includes 36 hours of work performed by the late Tommy Plymale, P-l-y-m-a-l-e, plaintiff's previous business manager, but does 12:28:44 not say what he did.

Third, PACE, which requests $15,287.07, submits the declaration of Maria Wieck, an administrative officer. Her declaration describes only generally PACE's activities in the case. Exhibit A to her declaration simply lists $10,066.45 12:29:09 for fund counsel's fees and expenses, with no indication of

the work done or hours spent, and lists the hourly rates of fund employees with the hours they spent but fails to indicate those employees' roles or job titles or what tasks they performed.

12:29:27 So the Court will not award PACE or IUOE any expenses, unless they would like to file supplemental declarations. The Court recognizes that these lead plaintiffs do incur some expenses related to the litigation, but it needs more information to evaluate the reasonableness of those

12:29:45 expenses. And any supplemental information there need not be provided or set out in a legal-type billing record. It does -- but it does need more detail regarding who performed what related to the case.

And do we have representatives here from IUOE or

12:30:14 PACE?

MR. DOWD: They're not here, Your Honor, but I can speak to that. I would -- if I could have the same seven days to go back to them. I know that, for example, Mr. Plymale had his deposition taken in the case. Mr. Rakoczy took it. I was

12:30:28 there. So that's some of the time. He spent a lot of time getting ready with me and talking on the phone.

THE COURT: Okay.

MR. DOWD: So I think they probably would want to do that.

12:30:34 THE COURT: So that supplemental information must be

filed within seven days of today also.

Anything else today?

MR. DOWD: No, Your Honor.

MR. STOLL: No, Your Honor.

12:30:49 MR. DAVIS: No, Your Honor.

THE COURT: All right. I'm going to set a court date about two weeks from today for the entry of final judgment. And I will ask the plaintiff to prepare a final revised judgment order, along with the supplemental information on

12:31:14 expenses. And I'll ask you to prepare that, Mr. Dowd, and submit that to the proposed order box.

MR. DOWD: Yes, Your Honor.

THE COURT: And the courtroom deputy had to leave. Let's see if we can figure out a date.

(Brief pause.)

THE COURT: November 3rd. And let's try 10:30.

MR. DOWD: And that's to -- should we appear, Your Honor, or just to submit the judgment?

THE COURT: Just to submit. Just to submit. The

12:31:56 parties do not have to appear. The case will be up on that date. If there's any question, I will reach out to counsel.

MR. DOWD: I just wanted to say thank you, first, for your time on the case. Thanks to Ms. LaBella, who had to keep yelling at me to slow down. And thanks to Judge Guzman as

12:32:16 well, who gave us a fair shot.

THE COURT: Thank you.

All right. Anything else, Mr. Stoll?

MR. STOLL: No, Your Honor. Thank you.

THE COURT: Thank you.

12:32:22 MR. DAVIS: Thank you, Your Honor.

THE COURT: Thank you.

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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Nancy C. LaBella *October 27, 2016*
Official Court Reporter