

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

IN RE MAMMOTH ENERGY
SERVICES, INC. SECURITIES
LITIGATION

Case No. CIV-19-522-J

CLASS ACTION

**DECLARATION OF JEFFREY C. BLOCK IN SUPPORT OF LEAD
PLAINTIFF'S MOTION FOR: (1) FINAL APPROVAL OF THE SETTLEMENT
AND PLAN OF ALLOCATION OF SETTLEMENT PROCEEDS; (2) AWARD OF
ATTORNEYS' FEES AND REIMBURSEMENT OF CLASS EXPENSES; AND
(3) AWARD OF CONTRIBUTION AWARD TO LEAD PLAINTIFF**

I, Jeffrey C. Block, Esq., pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am admitted to practice law before all of the courts of the Commonwealth of Massachusetts and I am admitted *pro hac vice* in this Action. I am the founding partner of the law firm Block & Leviton LLP (“Lead Counsel”), counsel of record for Lead Plaintiffs Daniel Furia, Vincent Furia, and Sharon Furia (“Lead Plaintiffs”), and Lead Counsel for the Class. I respectfully submit this declaration in support of Lead Plaintiff’s motions, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for: (a) final approval of the settlement of this action, which provides for a cash payment of \$11,000,000 (the “Settlement”), (b) the Plan of Allocation for the net proceeds of the settlement; (c) Lead Counsel’s application for attorneys’ fees and expenses; and (d) a contribution award to the Lead Plaintiff.¹

2. I have personally participated in, overseen, and monitored the prosecution of this Action, and have otherwise been kept informed of developments in this Litigation by attorneys working with me and under my supervision. Thus, if called upon, I can testify to the matters set forth herein.

I. PRELIMINARY STATEMENT

3. After eighteen months of hard-fought litigation and vigorous arm’s-length negotiations with the assistance of a distinguished private mediator, the Hon. Michael Burrage, Esq., of Whitten Burrage LLP, Lead Plaintiff has achieved a substantial and

¹ Unless otherwise indicated, capitalized terms shall have the meaning ascribed to them in the Stipulation and Agreement of Settlement (the “Settlement Agreement”) attached to Lead Plaintiff’s Unopposed Motion for Preliminary Approval of Settlement and Approval of Notice to the Settlement Class as Exhibit 1. ECF No. 130-1.

valuable Settlement of this Action, which this Court preliminarily approved on May 4, 2021 in its Order Preliminarily Approving Settlement and Providing For Notice (“Preliminary Approval Order”). ECF No. 132.

4. This case has been vigorously litigated from the outset. The Settlement was achieved only after Lead Counsel, among other things: (i) conducted a comprehensive investigation into the allegedly wrongful acts; (ii) drafted two detailed consolidated complaints, including the operative 112-page Second Amended Complaint for Violations of the Federal Securities Laws (the “SAC”), based on the investigation; (iii) engaged in voluminous briefing related to Defendants’ motions to dismiss the Amended Complaint (“FAC”) and SAC; (iv) engaged in thorough mediation efforts, which included the exchange of comprehensive mediation statements, an initial targeted review of nearly 90,000 internal Mammoth documents produced by Mammoth as part of mediation, and a full-day mediation session before the Honorable Michael Burrage, Esq., of Whitten Burrage LLP; (v) thoroughly reviewed the nearly 90,000 internal Mammoth documents (including emails, internal accounting and billing summaries, invoices, and contracts) following the end of the discovery stay; (vi) prepared a draft Third Amended Complaint based on review of those documents; and (vii) engaged in drawn out negotiations regarding the terms of the proposed Settlement. The efforts that were required to complete these tasks were extensive and represented immense risk given the contingency-based nature of Lead Counsel’s representation.

5. Further, the Court’s Order on Defendants’ Motions to Dismiss significantly curtailed the size of the class by cutting the Class Period from 19.5 months to slightly less

than 3 months, which in turn reduced the available recoverable damages from \$90.7 million to just \$14.9 million. Although Lead Plaintiffs were prepared to move for leave to file a third amended complaint that sought to restore much of the original Class Period, there was a risk that the Court would deny leave to amend or grant in whole or in part the inevitable motion to dismiss that would follow.

6. In deciding to settle, Lead Plaintiffs and Lead Counsel took into consideration the significant risks associated with filing a third amended complaint, briefing a motion to dismiss, certifying a class, and establishing liability, as well as the duration and complexity of these anticipated proceedings. The Settlement was achieved despite vigorous opposition by Defendants who would have continued to raise serious arguments concerning, among other things, the actionability of allegedly false and misleading statements and the extent of any damages and injury to members of the Settlement Class. Although Lead Plaintiff and Lead Counsel were confident in the strength of the anticipated third amended complaint, there remained significant uncertainty in the outcome of the case. Accordingly, in the absence of a settlement, there was a very real risk that the Settlement Class could have recovered nothing or an amount significantly less than the negotiated Settlement.

7. Further evidence that the Settlement represents an excellent result for the Settlement Class is the fact that, as of the filing of this Declaration, to date, no Settlement Class Members have contacted Lead Counsel to object to the Settlement or to opt out of the Settlement Class.

8. The proposed Plan of Allocation was developed with the assistance of Lead Plaintiffs' damages expert and provides for the fair and equitable distribution of the Net Settlement Fund to Settlement Class Members. The Plan of Allocation will ensure that each Authorized Claimant will receive his, her, or its *pro rata* share of the Net Settlement Funds. Specifically, an Authorized Claimant's *pro rata* share shall be the Authorized Claimant's Recognized Claim divided by the total of Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. Because the Plan of Allocation does not provide preferential treatment to any Settlement Class member, segment of the Settlement Class, or to Lead Plaintiff, each Authorized Claimant will be treated fairly and equally. Again, no objections to date to the Plan of Allocation have been filed.

9. For the reasons set forth below, Lead Counsel believes that final approval of the Settlement and Plan of Allocation should be granted.

II. SUMMARY OF LEAD PLAINTIFF'S CLAIMS

10. The fundamental allegation in this case is that Mammoth's wholly-owned subsidiary, Cobra Acquisitions, LLC ("Cobra"), bribed Federal Emergency Management Agency ("FEMA") officials to steer over \$1.8 billion in business to Cobra/Mammoth to re-build Puerto Rico's power grid in the aftermath of Hurricane Maria. The contracts were with the Puerto Rico Electric Power Authority ("PREPA"), whose ability to meet its payment obligations under the contracts was dependent on obtaining funding from FEMA because PREPA was in bankruptcy.

11. Plaintiffs alleged that this scheme to procure the PREPA contracts violated the contracts' conflict of interest provision, jeopardizing Cobra/Mammoth's ability to be

paid and retain payments already received. Keith Ellison, the President of Cobra, carried out the scheme, and Arty Straehla, Mammoth's CEO, knew about the scheme from its infancy. Mark Layton, Mammoth's CFO, eventually learned about the scheme.

12. Notwithstanding Ellison, Straehla, and Layton's knowledge of the bribery scheme and the related risk of nonpayment, the three of them publicly hyped the PREPA contracts and assured analysts and investors that the contracts were entirely above board and the Company expected to be paid in full.

III. PROCEDURAL HISTORY AND CLAIMS

13. On June 7, 2019, Plaintiff Thomas Scuderi initiated this Action by filing a Class Action Complaint for Violations of the Federal Securities Laws in the Western District of Oklahoma, styled *Scuderi v. Mammoth Energy Services, Inc., et al.*, Case No. 5:19-cv-00522-SLP. ECF No. 1. The Action was assigned to United States District Judge Scott L. Palk.

14. On June 19, 2019, Plaintiff Justas Normantas filed a related action captioned *Normantas v. Mammoth Energy Services, Inc., et al.*, Case No. 5:19-cv-00560-SLP.

15. On August 6, 2019, Plaintiff Sarasota General Employees Defined Benefit Pension Plan filed a related action captioned *Sarasota General Employees Defined Benefit Pension Plan v. Mammoth Energy Services, Inc., et al.*, Case No. 5:19-cv-00720-SLP.

16. By Order dated September 13, 2019, Judge Palk consolidated the three cases into *In re Mammoth Energy Services, Inc.*, No. 5:19-cv-522-SLP, appointed Daniel Furia, Vincent Furia, and Sharon Furia Lead Plaintiff, and approved Lead Plaintiffs' selection of Block & Leviton LLP as Lead Counsel. Judge Palk deferred ruling on appointment of

Jones, Gotcher & Bogan, P.C. as local counsel pending submission of information demonstrating the firm's qualifications. ECF No. 41.

17. By Order Dated September 25, 2019, Judge Palk appointed Jones, Gotcher & Bogan, P.C. as Local Counsel. ECF No. 45.

18. On November 12, 2019, Lead Plaintiffs filed the FAC, asserting claims against all Defendants under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder, and against Defendants Arty Straehla, Mark Layton, and Keith Ellison under Section 20(a) of the Exchange Act. ECF No. 55.

19. By Order dated January 6, 2020, the Clerk of Court, at the direction of Judge Palk, reassigned the case to United States District Judge Bernard M. Jones. ECF No. 71.

20. On January 10, 2020, Defendants Mammoth, Straehla, and Layton filed a motion to dismiss the claims alleged against them in the FAC. ECF No. 76.

21. On February 24, 2020, Lead Plaintiffs filed their papers in opposition, as well as a motion for leave to file the SAC. ECF Nos. 88, 87. Defendants did not oppose the motion, and, on March 9, 2020, Judge Jones granted Lead Plaintiffs' motion for leave to file the SAC. ECF No. 92.

22. On March 9, 2020, Plaintiffs filed the SAC, asserting claims against all Defendants under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder, and against Defendants Straehla, Layton, and Ellison under Section 20(a) of the Exchange Act. ECF No. 93.

23. On March 30, 2020, Defendants Mammoth, Straehla, and Layton filed a motion to dismiss the claims alleged against them in the SAC, and Defendant Ellison filed a separate motion to dismiss the claims alleged against him in the SAC. ECF Nos. 104, 105.

24. On September 29, 2020, while Defendants' motions to dismiss were pending, Lead Counsel and Defendants' Counsel participated in a full-day mediation session before the Honorable Michael Burrage, Esq. of Whitten Burrage LLP. In advance of that session, the Parties prepared and exchanged detailed mediation statements. Additionally, Mammoth provided Lead Plaintiffs with considerable discovery under certain restrictive conditions, which limited use of the documents to mediation unless and until the PSLRA stay of discovery was lifted. This discovery consisted of nearly 90,000 documents. Due to the short window of only several days between when Defendants' produced the documents and the scheduled mediation session, Lead Counsel was limited to conducting a targeted, cursory review of the documents. The mediation session ended without any agreement being reached.

25. The parties continued to discuss grounds for resolving the case following the conclusion of the mediation session.

26. On January 26, 2021, the Court issued an Order granting Defendant Ellison's motion to dismiss and granting in part and denying in part the motion to dismiss filed by Defendants Mammoth, Straehla, and Layton. ECF No. 123. The Order sustained claims against Mammoth, Straehla, and Layton based on statements and omissions made on or

after March 15, 2019, dismissed all other claims, and (implicitly) lifted the the PSLRA's stay of discovery.

27. With the stay of discovery lifted, Lead Counsel began thoroughly reviewing the nearly 90,000 documents produced for mediation. Lead Counsel began drafting a third amended complaint, based on review of those documents, with additional allegations that Lead Plaintiffs believe would have allowed the Court to reinstate claims related to Defendants' earlier false and misleading statements.

28. Counsel for Lead Plaintiff and for Defendants Mammoth, Straehla, and Layton continued to hold numerous discussions over resolution of the case following the Court's January 26, 2021 Order. To accommodate those discussions, Defendants twice moved the Court for an extension of the deadline to answer Lead Plaintiffs' SAC. Those discussions ultimately resulted in an agreement, on March 12, 2021, to settle and release all claims arising out of, based upon, or related to their purchase or acquisition of Mammoth common stock during the Class Period and the allegations, representations, or omissions set forth in the SAC in return for a cash payment by or on behalf of Defendants of \$11,000,000 for the benefit of the Settlement Class, subject to certain terms and conditions and the execution of an agreement of settlement and related papers.

29. At the time of the agreement to settle, Lead Counsel had reviewed nearly 90,000 documents produced by Defendants and was prepared to file a third amended complaint, based on the review of those documents, which would have included additional allegations that Plaintiffs believe would have allowed the Court to reinstate claims against Defendants related to earlier alleged false and misleading statements. Based upon their

investigation, prosecution and mediation of the case, Lead Plaintiffs and Lead Counsel have concluded that the terms and conditions set forth in the Settlement Agreement are fair, reasonable and adequate to Lead Plaintiffs and the other members of the Settlement Class, and in their best interests.

IV. SUMMARY OF THE SETTLEMENT

30. The Settlement consists of \$11,000,000 in cash, plus interest. The “Settlement Class” is defined in the Settlement Agreement as all persons and entities that purchased or otherwise acquired Mammoth Energy Services, Inc. common stock between October 19, 2017 and June 5, 2019, inclusive, and were damaged thereby. Excluded from the Settlement Class are (i) Defendants; (ii) the officers and directors of the Company during the Settlement Class Period (the “Excluded Officers and Directors”); (iii) members of the Immediate Families of the Individual Defendants and of the Excluded Officers and Directors; (iv) any entity in which any Defendant, any Excluded Officer or Director, or any of their respective Immediate Family members had during the Settlement Class Period and/or has a controlling interest; and (v) the legal representatives, heirs, successors or assigns of any excluded person or entity, in their respective capacity as such. For avoidance of doubt, Wexford Capital LP and its affiliates and Gulfport Energy Corporation and its affiliates are Excluded from the Settlement Class. Also excluded from the Settlement Class are the persons and entities who or which timely and validly seek exclusion from the Settlement Class or whose request for exclusion is accepted by the Court.

V. LEAD PLAINTIFF'S COMPLIANCE WITH THE PRELIMINARY APPROVAL ORDER

31. Pursuant to the Court's Preliminary Approval Order, Lead Counsel, through the Claims Administrator, implemented a comprehensive notice program whereby a detailed Notice was mailed to members of the Class, which directed potential Settlement Class Members to the Claims Administrator's website, which contains information regarding the Settlement, the same detailed Notice mailed to Class members, and a Claim Form, along with instructions on how to submit a Claim Form or objection or request exclusion from the Settlement. As of August 12, 2021, Notice was mailed to 18,842 potential Class Members. *See* Declaration of Markham Sherwood of Angeion Group Regarding: (A) Mailing of Notice and Proof of Claim and Release; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion and Objections Received, dated August 12, 2021, ¶8 ("Sherwood Decl.") (attached hereto as Exhibit 1). Pursuant to the Court's Preliminary Approval Order, Summary Notice was also published on the internet over the *PR Newswire* and in *Investor's Business Daily* on June 7, 2021. *See id.* ¶9. Furthermore, the Claims Administrator established a toll-free phone line and dedicated email address to provide information and to answer potential Settlement Class Members' questions. *See id.* ¶¶11-12.

32. The Notice described, *inter alia*, the claims asserted in the Action, the contentions of the Parties, the course of the litigation, the terms of the Settlement, the maximum amounts that would be sought in attorneys' fees and expenses, the Plan of Allocation, the right to object to the Settlement, and the right to seek to be excluded from

the Settlement Class. The Notice also provided instructions to securities brokers and other nominee holders for forwarding the Notice to those persons for whom the nominees held shares in street name. Additionally, the Notice identified the deadlines for objecting, seeking exclusion, and submitting claims, and advised potential Settlement Class Members of the scheduled Settlement Hearing before this Court.

33. As set forth in the Preliminary Approval Order, the deadline for Class Members to object to the Settlement, the Plan of Allocation, or to the application for attorneys' fees and expenses – or to exclude themselves from the Class – is August 30, 2021. While these deadlines have not yet passed, to date, not a single Class Member has objected to, or requested exclusion from, the Settlement. *Id.* ¶¶14-15 Should any objections or requests for exclusion be received, Lead Plaintiffs will address them in their reply papers, which are due September 14, 2021.

VI. RISKS OF CONTINUED LITIGATION

34. Lead Plaintiffs believes that they developed substantial evidence during discovery that supports their claims. Lead Plaintiffs also realized, however, that continued litigation would have been costly, risky, and drawn out. Lead Plaintiffs and Lead Counsel carefully considered these risks during the period leading up to the Settlement and throughout the settlement discussions with Defendants and the mediator.

35. In agreeing to settle, Lead Plaintiffs and Lead Counsel weighed, among other things, the substantial and immediate cash benefit to Settlement Class Members against: (i) the uncertainties associated with trying complex securities cases; (ii) the Court's Order regarding Defendants' motions to dismiss the SAC; (iii) the difficulties and challenges in

filing a third amended complaint and defending it against a motion to dismiss; (iv) the difficulties and challenges involved in establishing loss causation for all damages caused to the Settlement Class; (v) the difficulties and challenges involved in certifying a class; (vi) the fact that, even if Lead Plaintiff prevailed at summary judgment and trial, any monetary recovery could have been substantially less than the Settlement Amount; and (vii) the inevitable delays that would follow even a favorable final judgment, including appeals.

36. Although Lead Plaintiffs succeeded in defeating Defendants' motions to dismiss in part, the Court's Order severely curtailed the Class Period alleged in the SAC. As a result, Lead Plaintiffs would have had to successfully file and defend a third amended complaint to restore the Class Period and damages alleged.

37. Then Lead Plaintiffs faced the challenges of certifying the Class and defending against Defendants' inevitable motions for summary judgment.

38. After that, Lead Plaintiffs faced the burden of demonstrating liability and damages at trial (and on any subsequent appeal) in the face of reasonable arguments Defendants would likely make concerning the disaggregation of damages resulting from causes other than the alleged securities fraud. If Defendants had been successful at any of these stages, the amount of any potential recovery would have been sharply limited, or even foreclosed altogether.

39. Lead Plaintiff and Class Counsel recognize the significant risk, time, and expense involved in prosecuting the claims against Defendants through class certification,

completion of fact and expert discovery, summary judgment, trial, and subsequent appeals, as well as the inherent difficulties and delays complex litigation like this entails.

40. In summary, there were multiple procedural hurdles, as well as significant merit-based risks involved in proceeding with the litigation, each of which was carefully considered by Lead Counsel and Lead Plaintiffs in making the determination to settle with Defendants on the agreed terms.

41. Having considered the strengths and weaknesses of the claims, and evaluating the aforementioned risks of continued litigation, it is the informed judgment of Lead Counsel, based upon all proceedings to date and their extensive experience in litigating class actions under the federal securities laws, that the Settlement of this matter before this Court and the Plan of Allocation are fair, reasonable, adequate, and in the best interests of the Class.

VII. THE PROPOSED PLAN OF ALLOCATION

42. The Plan of Allocation is designed to equitably distribute the Net Settlement proceeds among Settlement Class Members. Under the Plan of Allocation, each Authorized Claimant will receive his, her, or its *pro rata* share of the Net Settlement Fund. Specifically, an Authorized Claimant's *pro rata* share shall be the Authorized Claimant's Recognized Claim divided by the total of Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. The Plan of Allocation does not provide preferential treatment to any Settlement Class Member, segment of the Settlement Class, or to Lead Plaintiff and is thus fair, reasonable, and adequate.

VIII. LEAD COUNSEL'S APPLICATION FOR ATTORNEYS' FEES IS REASONABLE

A. A Reasonable Percentage of the Fund Recovered Is the Appropriate Method to Use in Awarding Attorneys' Fees in Common Fund Cases

43. For their significant and effective efforts on behalf of the Settlement Class, Lead Counsel are applying for compensation from the Settlement Fund on a percentage basis. Courts have recognized that the percentage method is the appropriate method of fee recovery because, among other things, it aligns the lawyers' interest in being paid a fair fee with the interest of the Class in achieving the maximum recovery.

B. Consideration of Relevant Factors Justify an Award of 30% Fee in This Case

44. The Notice provides that Lead Plaintiffs' Counsel would apply for a fee award in an amount up to 30% of the Settlement Fund and that Lead Counsel would request reimbursement of Plaintiffs' Counsel's costs and expenses in an amount not to exceed \$150,000, which may include an application for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiffs directly related to his representation of the Settlement Class. Lead Counsel submit that such an award is reasonable and appropriate under the circumstances. Numerous factors are present here that justify this Court's award of this fee.

1. The Settlement Benefit Achieved

45. Courts have consistently recognized that the result achieved is a major factor to be considered in making a fee award. Here, the \$11 million Settlement is a superb result, particularly where the operative class period would result in only \$14.9 million in recoverable damages. Based on the sustained class period, this settlement represents almost

75% of total recoverable damages Plus, when considered in view of the substantial risks and obstacles to recovery if the Action was to be litigated to trial and likely through post-trial motions and appeals, the result achieves an excellent recovery for the class.

46. Lead Plaintiffs, however, would have attempted to amend the SAC to expand the class period back to begin on October 20, 2017. If Lead Plaintiffs were successful in doing so—and there was no assurance that the Court would permit another amendment or that the new allegations would not be dismissed again—and if a class were certified, if Defendants’ likely summary judgment motion were denied, and if, after a jury trial, the Court and jury accepted Lead Plaintiffs’ damages theory (including proof of loss causation, which was hotly contested at mediation)—*i.e.*, Lead Plaintiffs’ ***best case scenario***—the total maximum damages would be approximately \$90.7 million. Thus, the settlement amount represents 12.1% of the total ***maximum*** damages ***potentially*** available in this action.

47. By comparison, the median recovery in securities class actions in 2020 was approximately 1.7% of estimated damages. *See* Janeen McIntosh and Svetlana Starykh, Recent Trends in Securities Class Action Litigation: 2020 Full-Year Review, NERA (Jan. 25, 2021), at 20, Fig. 16. (attached hereto as Exhibit 5). Moreover, had Defendants prevailed on any motion(s) for class certification or at summary judgment—or had the Court or a jury later accepted Defendants’ loss causation and disaggregation arguments—recoverable damages would have been substantially diminished or completely eliminated. The \$11 million settlement far exceeds comparable securities class action settlement and,

therefore, is a very strong recovery considering the best possible recovery for the Settlement Class.

48. This favorable Settlement was obtained through investigative efforts, contentious motions practice, extensive review of documents produced in mediation, and vigorous, and arm's-length settlement negotiations with the assistance of a respected and skilled mediator. Nor is there any evidence that the Settlement was tainted by fraud. As a result of this Settlement, hundreds, if not thousands, of Class Members will benefit and receive compensation for their losses and avoid the real, and substantial risk of no recovery in the absence of settlement.

2. The Risk of Contingent Class Action Litigation

49. This Declaration and the memoranda in support of the Settlement and the fee request described the substantial risks of the litigation. Those same difficulties also constituted risks that Lead Counsel might never be paid for their efforts. Indeed, courts in this Circuit have consistently recognized the risk of non-payment as an important factor in determining a fee award. There are numerous cases where class counsel in contingent fee cases such as this, after expenditures of thousands of hours and significant out-of-pocket expenditures, have received no compensation whatsoever. Lead Counsel knows from experience that despite the most vigorous and competent of efforts, attorneys' success in contingent litigation such as this is never assured.

50. Moreover, courts have repeatedly recognized that it is in the public interest to have experienced and able counsel for the private enforcement of the federal securities laws and regulations pertaining to the duties of officers and directors of public companies.

Vigorous private enforcement of the federal securities laws can only occur if private plaintiffs take an active role in protecting the interests of shareholders.

51. Because the fee to be awarded in this matter is entirely contingent, the only certainty from the outset was that there would be no fee without a successful result and that such a result would be realized only after a lengthy and difficult effort. As discussed in greater detail above, this case was fraught with significant risks concerning liability and damages. Lead Plaintiffs' success was by no means assured. Defendants disputed whether Lead Plaintiffs could even establish liability and would have inevitably raised substantial arguments concerning loss causation and damages.

52. Indeed, were this Settlement not achieved, and even if Lead Plaintiffs prevailed at class certification, on summary judgment, and at trial, Lead Plaintiffs and Lead Counsel faced potentially years of costly and risky litigation against Defendants, with ultimate success far from certain and the prospect of no recovery a substantial possibility. It is also possible that a jury could have found no liability or no damages. Lead Counsel therefore believe that based upon the substantial risk factors present that an award of attorneys' fees of 30% of the Settlement Fund is reasonable.

3. The Diligent Prosecution of This Case

53. The requested fee is also warranted in light of the extensive efforts on the part of Lead Counsel, as outlined above, required to produce this result.

54. Lead and Liaison Counsel spent approximately 2,667 hours of time on this case, including: (i) conducting a comprehensive investigation into the allegedly wrongful acts, which included, among other things, a review and analysis of Mammoth's filings with

the SEC, public reports and news articles concerning Mammoth, documents filed in the case of *United States of America v. Ahsha Nateef Tribble, Donald Keith Ellison and Jovanda R. Patterson*, Crim. No. 19-541 (D.P.R.) and transcripts of Mammoth's investor calls, and consultation with accounting, damages and market efficiency experts; (ii) drafting the FAC and the operative SAC, based on the investigation; (iii) engaging in voluminous briefing related to Defendants' motions to dismiss the SAC; (iv) drafting extensive mediation statements; (v) participating in protracted mediation efforts, including a full-day mediation session before the Honorable Michael Burrage, Esq., of Whitten Burrage LLP; extensively reviewing nearly 90,000 internal Mammoth documents (including emails, internal accounting and billing summaries, invoices, and contracts) produced by Mammoth as part of mediation; (vi) preparing a draft Third Amended Complaint, based on review of those documents; and (vii) engaging in negotiations regarding the terms of the proposed Settlement.. *See* Declaration of Jeffrey C. Block in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses Filed on Behalf of Block & Leviton LLP ("B&L Decl.") ¶3 (attached hereto as Exhibit 2); Declaration of C. Michael Copeland in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses Filed on Behalf of Jones, Gotcher & Bogan, P.C. ("JG&B Decl.") ¶4 (attached hereto as Exhibit 3). Plaintiff's Counsel's resulting lodestar is \$1,497,317.50. The requested fee results in a multiplier of 2.2, a figure demonstrating that Class Counsel vigorously and efficiently fought to achieve the result on behalf of the Class.

4. The Complexity of This Action's Factual and Legal Questions

55. Numerous courts have recognized that risk, as well as the novelty and difficulty of the issues presented, are important factors in determining a fee award. There is no question that from its outset, this Action presented a number of sharply-contested issues of both fact and law and that Lead Plaintiffs faced formidable defenses to liability and damages. The substantial risks and uncertainties made it far from certain that any recovery, let alone \$11 million, would ultimately be obtained.

56. From the outset, this Action was an especially difficult and highly uncertain securities case, with no assurance whatsoever that the Action would survive Defendants' attacks on the pleadings, motion for class certification, motions for summary judgment, trial, and appeal. Indeed, Defendants' motions to dismiss the SAC obtained dismissal of all claims based on Defendants' statements made prior to March 15, 2019, leaving a class period of only three months. Defendants' inevitable arguments regarding loss causation and damages posed a significant threat that the total recoverable damages (regardless of the actionable class period) would be significantly reduced. Additionally, very difficult issues of proof remained at summary judgment and trial as to key elements of the claims for securities laws violations. Continued litigation would have involved substantial briefing, extensive and costly expert involvement, third party discovery involving federal and Puerto Rican government agencies, and the taking of numerous depositions. The costs and risks associated with litigating this Action to a verdict, not to mention the inevitable appeals, would have been high, and the process would require hundreds of hours of this

Court's time and resources. This Action would easily require an additional 2-3 years before a recovery, if any, was obtained for the Class.

5. Plaintiffs' Counsel's Work and Experience

57. As evidenced by its firm resume, Block & Leviton has significant experience litigating federal securities fraud class actions throughout the country. *See* B&L Decl. Ex. A. Liaison Counsel's firm resume demonstrates that Jones, Gotcher & Bogan, P.C. is also highly experienced. *See* JG&B Decl. Ex. A.

58. The record in this case, along with the matters described in this Declaration, demonstrate the enormous effort and expense that went into successfully resolving this Action. Lead Counsel's declarations outline the amount of time spent by each attorney and paralegal employed by Plaintiffs' Counsel and Liaison Counsel, and the lodestar calculation based on current billing rates, demonstrating that a 30% fee is reasonable for the extraordinary efforts expended to achieve the result in this case.

6. Standing and Caliber of Opposing Counsel

59. The quality of work performed by Lead Counsel in attaining the Settlement should also be evaluated in light of the quality of the opposition. Defendants Mammoth, Straehla, and Layton were represented by Quinn Emanuel Urquhart & Sullivan, LLP and Defendant Ellison was represented by Norton Rose Fulbright, both firms with a national reputation for the tenacious litigation of class actions and other complex civil matters. Lead Counsel was able to develop a case that was sufficiently strong to persuade Defendants to settle the case on terms that were highly favorable to the Class.

IX. PAYMENT OF THE REQUESTED EXPENSES AND COSTS IS FAIR AND REASONABLE

60. Plaintiffs' Counsel are also moving for payment of \$64,238.99 in litigation expenses reasonably and actually incurred in connection with commencing and prosecuting the claims against Defendants, as outlined in the accompanying declarations. Plaintiffs' Counsel advanced all of the litigation expenses. *See* B&L Decl. ¶4; JG&B Decl. ¶6.

61. From the beginning of the case, Plaintiffs' Counsel were aware that they might never recover any of their expenses, and, at the very least, would not recover anything until the Action was successfully resolved. Plaintiffs' Counsel also understood that, even assuming the case was ultimately successful, reimbursement for expenses would not compensate them for the lost use of funds advanced by them to prosecute this Action. Thus, Plaintiffs' Counsel were motivated to, and did, take steps to assure that only necessary expenses were incurred for the vigorous and efficient prosecution of the case.

62. In view of the complex nature of the Action, the litigation expenses incurred were reasonable and necessary to pursue the interests of the Class. Accordingly, Lead Counsel respectfully submit that the request for expenses be granted.

X. THE REQUESTED PAYMENT FOR LEAD PLAINTIFFS IS FAIR AND REASONABLE

63. Lead Plaintiffs Daniel Furia, Vincent Furia, and Sharon Furia seek modest reimbursement for the time they have expended on behalf of the Class. *See* Declaration of Daniel Furia in Support of: (I) Lead Plaintiffs' motion for Final Approval of Class Action Settlement and Plan of Allocation and Certification of Settlement Class for Settlement Purposes Only; and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and

Reimbursement of Litigation Expenses (“Furia Decl.”) (attached hereto as Exhibit 4). Reimbursement of a class representative’s reasonable costs and expenses is authorized under the PSLRA, 15 U.S.C. § 78u-4(a)(4), and Lead Counsel believe, based on their knowledge of Lead Plaintiffs’ activity in this case, that the requested amount of \$5,000 each, totaling \$15,000, is reasonable and should be approved by the Court. Throughout this litigation, the Furia Family received regular status reports from Block & Leviton on case developments and participated in regular discussions concerning the prosecution of the Action, the strengths of and risks to the claims, and potential settlement. *Id.* ¶¶5-7. In particular, throughout the course of this Action, the Furia Family fulfilled their duties as Lead Plaintiffs by: (a) regularly communicating with attorneys at Block & Leviton regarding the posture and progress of the case; (b) reviewing pleadings, briefs, and court orders filed in the Action and discussing them with counsel; (c) consulting with his attorneys regarding the settlement negotiations; and (d) evaluating and approving the proposed Settlement. *Id.* ¶6.

64. Moreover, the Notice stated that Lead Counsel would request reimbursement of litigation costs and expenses in an amount not to exceed \$150,000, which may include an application for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiff directly related to his representation of the Class. To date, there have been no objections to such a request. Thus, Lead Counsel believes that an award of \$5,000 to each member of the Furia Family for the time and effort they have expended on behalf of the Class would be fair and reasonable.

XI. CONCLUSION

65. For all of the foregoing reasons, Lead Counsel respectfully requests that the Court: (1) approve the Settlement and Plan of Allocation; (2) approve the application for an award of attorneys' fees of 30% of the Settlement Fund, plus \$64,238.99 in expenses that were incurred in connection with the litigation; and (3) award \$5,000 to each Lead Plaintiff to compensate them for the time they spent on this litigation on behalf of the Class.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on this 13th day of August, 2021, at Boston, Massachusetts.

By: s/ Jeffrey C. Block
Jeffrey C. Block, *pro hac vice*
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Boston, MA 02110
Telephone: (617) 398-5600
Facsimile: (617) 507-6020
jeff@blockleviton.com

Lead Counsel for the Class

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served upon its filing via this Court's CM/ECF system on this 13th day of August, 2021 to all counsel of record.

By: s/ Jeffrey C. Block
Jeffrey C. Block

Exhibit 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

IN RE MAMMOTH ENERGY
SERVICES, INC. SECURITIES
LITIGATION

Case No.: CIV-19-522-J

**DECLARATION OF JEFFREY C. BLOCK IN SUPPORT OF LEAD COUNSEL'S
MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT
OF LITIGATION EXPENSES FILED ON BEHALF OF BLOCK & LEVITON
LLP**

I, Jeffrey C. Block, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am admitted to practice law before all courts of New York and Massachusetts. I am managing partner of the law firm Block & Leviton LLP, Lead Counsel for Lead Plaintiffs Daniel, Vincent, and Sharon Furia ("Lead Plaintiffs"), and for the Class in the above-captioned action. I respectfully submit this declaration in support of Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses.

2. I have personally participated in, overseen, and monitored the prosecution of this Action, and have otherwise been kept informed of developments in this Action by attorneys working with me and under my supervision. Thus, if called upon, I can testify to the matters set forth herein.

3. Attorneys and Professional Support Staff at my firm billed the following aggregate hours to this matter as of the date of filing, with fees applied at the firm's current billing rates:

Biller	Hourly Rate	Hours	Lodestar
Block, Jeff (P)	\$1,025	286.3	\$293,457.50
Street, Whitney (P)	\$900	87.3	\$78,570.00
Walker, Jacob (P)	\$750	300.6	\$225,450.00
Byrne, Mark (A)	\$425	89.3	\$37,952.50
Gaines, Michael (A)	\$510	294.0	\$149,940.00
Gray, Jeffrey (A)	\$425	731.0	\$310,675.00
Silver, Nate (A)	\$520	653.5	\$339,820.00
Murphy, Rachel (PL)	\$275	15.5	\$4,262.50
Total			\$1,440,127.50

P = Partner; A = Associate; PL = Paralegal

4. Block & Leviton LLP seeks payment of the following expenses and charges directly related to the prosecution of this Action (which have been summarized in categories):

Category of Expenses	Total Expenditure
eDiscovery Hosting/Processing Fees	\$23,522.40
Expert Fees	\$31,143.75
Travel & Meals	\$1,735.66
Mediation Fees	\$2,755.83
Printing, Mailing and Shipping	\$436.62
Legal Research Fees	\$3,823.02
Court Costs and Fees, Service of Process	\$408.00
Total Expenses	\$63,825.28

5. Attached as Exhibit A is a true and correct copy of Block & Leviton LLP's firm resume.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 13th day of August 2021, at Boston, Massachusetts.

Respectfully submitted,

/s/ Jeffrey C. Block

EXHIBIT A

BLOCK & LEVITON LLP



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8 W. Mozart Dr. | Wilmington, DE 19807



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www.blockleviton.com

Firm Resume

BLOCK & LEVITON LLP

FIGHT FOR A LEVEL PLAYING FIELD.

Block & Leviton believes investors, pensioners, consumers and employees deserve an advocate who will take a stand to protect their rights. We value our role not only in recovering our clients' immediate losses, but in protecting their long-term interests by helping to shape corporate policy. We genuinely enjoy our work, which each day offers an opportunity to tackle novel problems and unique challenges in a continuously evolving economy. We concur with Aristotle's observation that pleasure in the job puts perfection in the work. We believe this is reflected in our track record, which includes our ability to take a case to trial and win, as well as our appointment as lead or co-lead counsel in many dozens of high profile securities litigation matters, including:

In re BP Securities Litig., Case No. 4:10-MD-02185 (S.D. Tex.) (settled for \$175 million), In re Google Class C Shareholder Litig., Case No. 7469-CS (Del. Ch.) (settled for \$522 million), Snap Inc. Securities Cases, Case No. JCCP 4960 (Cal. Superior Ct.) (\$32.8 million settlement preliminarily approved), In re Tezos Securities Litig., Case No. 3:17-cv-07095 (N.D.Cal.) (\$25 million preliminarily approved), Plains Exploration & Prod. Co. Stockholder Litig., Case No. 8090-VCN (Del. Ch.) (\$400 million), In re Pilgrim's Pride Corporation Derivate Litigation, case no. 2018-0058-JTL (Del. Ch.) (\$42.5 million settlement) and In re Swisher Hygiene, Inc. Securities and Derivative Litig., Case No. 3:12-md-2384 (N.D.Cal.) (recovering 30% of the class's recoverable damages).

The Firm has also been appointed to represent, and succeeded in obtaining substantial recoveries on behalf of, class members in the areas of consumer protection, antitrust, and ERISA. See In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litig., Case No. 3:15-md- 02672 (N.D. Cal.) (settlement valued at approximately \$15 billion), In re Thalomid & Revlimid Antitrust Litig., Case No. 14-cv-6997 (D.N.J.) (\$34 million settlement preliminarily approved), and Pfeifer v. Wawa, Case No. 2:16-cv-00497 (E.D. Pa.) (\$25 million settlement in ESOP litigation).

Our attorneys have successfully recovered billions for our clients and class members and have done so even under adverse conditions, including successfully litigating against bankrupt and foreign-based corporations.

DEFY CONVENTION.

Instrumental to our philosophy is the willingness to embrace new ways of seeing, and solving, our clients' problems. For example, we challenged Google Inc.'s plan to issue a new class of non-voting stock that threatened to diminish the value of minority investors' holdings in the company. With trial set to begin in less than two days, Block & Leviton brokered a settlement with Google Inc. and its directors that provided for a forwardlooking payment ladder (valued at up to \$7.5 billion) to protect minority investors against future diminution in their stock value. As a result of the payment ladder, shareholders ultimately recovered \$522 million in cash and stock in May 2015. Appreciation of the fact that each of our clients has a unique viewpoint allows us to tailor our advice and representation accordingly to achieve superior results, and to do so with maximum efficiency.

SURROUND YOURSELF WITH THE BEST.

The Firm credits its success to its entire team of extremely talented, dedicated attorneys, the majority of whom have significant litigation experience. An in-depth curriculum vitae highlighting each attorney's areas of expertise, unique experience, recognition in the field and education credentials follows.

**JEFFREY C. BLOCK**

Partner

✉ jeff@blockleviton.com**EDUCATION**

- Brooklyn Law School, J.D., cum laude 1986
- State University of New York, B.A., Political Science, cum laude 1983

BAR ADMISSIONS

- New York
- Massachusetts

COURT ADMISSIONS

- United States Supreme Court
- First, Second, Third, Ninth, and Eleventh Circuit Courts of Appeal
- D. Mass.
- S.D.N.Y. and E.D.N.Y.

PUBLICATIONS | SPEAKING EVENTS

- ALI-ABA Conference for Insurance and Financial Services Industry Litigation, July 2009, Lecturer and Panelist
- Damages in Securities Litigation, sponsored by Law Seminars International at the Harvard Club, Panelist
- Litigation to Remedy Meltdown Damages: What Can Be Gained?, Harvard Law School's Capital Matters Conference, Speaker
- Guest commentator on NBC
- International Strategies Recoveries for Foreign Investments, Post Morrison, San Francisco Bar Association, Panel Moderator

Jeffrey Block is a co-founding partner of Block & Leviton. With a career spanning thirty years, Jeff is recognized as one of the nation's preeminent class action attorneys and is recognized as a "Super Lawyer" by Massachusetts Super Lawyers. Jeff was one of the lead attorneys representing the Ohio Public Employees Retirement System in *In re BP Sec. Litig.*, No. 4:10-MD-02185 (S.D. Tex.), charging that BP misled investors as to the amount of oil leaking from the Macondo well after the explosion aboard the Deepwater Horizon oil rig in the Gulf of Mexico in 2010. Jeff, on behalf of the plaintiffs, successfully argued against defendants' motions to dismiss, in favor of class certification, in opposition to summary judgment, and helped secure a settlement of \$175 million for the class, which represents more than 60% of the class' actual losses. Jeff also represented the Brockton Retirement System in an action challenging Google's attempt to split its stock into voting and non-voting shares. See *In re Google, Inc. Class C S'holder Litig.*, Case No. 7469-CS (Del. Ch. Ct.). Two days before the start of trial, the action settled for significant corporate governance changes and a payment ladder valued up to \$7.5 billion, which was designed to protect shareholders against any diminution in the value of their shares during the first year of trading. Because of the payment ladder, shareholders ultimately recovered \$522 million in cash and stock in May 2015.

Jeff also oversaw the Firm's litigation efforts in *In re McKesson Corporation Derivative Litigation* (N.D. Cal.), in which the McKesson Board agreed to re-pay to the company \$175 million and agreed to significant corporate governance reforms to ensure that McKesson would comply with Federal law regarding the sales and distribution of dangerous drugs, including opioids. Jeff also spearheaded the Firm's litigation involving the offering of unregistered cryptocurrency by the Tezos Foundation. Defendants' agreed to pay \$25 million to resolve the case, the first settlement of a cryptocurrency case by a private plaintiff in the country. *In re Tezos Securities Litigation* (N.D. Cal.) Finally, Jeff played a key role in helping to secure \$175 million in the aggregate to resolve claims that Snap, Inc. misled its investors in connection with its public offering of securities. *Snap, Inc. Securities Cases* (Sup. Ct. Cal.).

In addition, Jeff represents some of the country's largest institutional investors, including the Massachusetts Pension Reserves Investment Management Board (PRIM), the Ohio Public Employees Retirement System, the Ohio State Teachers Retirement System, the Washington State Investment Board, the New Mexico Educational Retirement Board, the New Mexico Public Employees Retirement System, and the New Mexico State Investment Council.

Some of the major class actions that Jeff has either led, or played a significant role in, include: *In re First Executive Corp. Securities Litig.*, 89-cv-7135 (C.D. Cal.) (settled for \$100 million); *In re Xerox Corp. Sec. Litig.*, 3:00-cv-01621 (D. Conn.) (settled for \$750 million); *In re Bristol Myers Squibb Sec. Litig.*, 02-cv-2251 (S.D.N.Y.) (settled for \$300 million); *In re Lernout & Hauspie Sec. Litig.*, 1:00-cv-11589 (D. Mass.) (settled for \$180 million); *In re Symbol Technologies Sec. Litig.*, 2:02-cv-1383 (E.D.N.Y.) (settled for \$127 million); *In re Prison Realty*

Corp. Sec. Litig., 3:99-cv-0452 (M.D. Tenn.) (settled for over \$100 million); *In re Philip Services Corp. Sec. Litig.*, 98-cv-835 (S.D.N.Y.) (settled for \$79.75 million); *In re American Home Mortgage Sec. Litig.*, 07-MD-1898 (E.D.N.Y.) (settled for \$50.5 million); *In re Force Protection Sec. Litig.*, 2:08-cv-845 (D.S.C.) (\$24 million settlement); *In re Swisher Hygiene, Inc., Securities and Derivative Litig.*, 3:12-md-2384 GCM (W.D.N.C.) (\$5.5 million settlement).

Jeff has a proven record of overcoming significant challenges to obtain substantial recoveries on behalf of his clients. For example, in the Philip Services securities litigation, Jeff persuaded the United States Court of Appeals for the Second Circuit to reverse the District Court's dismissal of the action on the grounds of forum non conveniens. *See Dirienzo v. Philip Services Corp.*, 294 F.3d 21 (2d. Cir. 2002).

Upon reversal, Jeff led the team of attorneys in taking more than 40 depositions and, upon the eve of trial, the action settled for \$79.50 million, among the largest recoveries ever in a securities action from a Canadian accounting firm. Jeff's skills were discussed in great lengths by the court, specifically noting that counsel:

“

“pursued this fact-intensive and legally complex litigation vigorously over a nine-year period, rejected offers of settlement for amounts inferior to the amounts upon which the parties ultimately agreed, and assumed significant risks of non-recovery. Co-Lead Counsel had to overcome the disclaimers and uncertainties of insurance coverage, and vigorous advocacy of extremely able and deeply-staffed defense counsel. ... And **they did their work efficiently, with minimal duplication, and maximum effectiveness.**

“

I was careful to choose attorneys who have great ability [and] great reputation... And I think you've undertaken the representation of these people, you've done an excellent job, you've reached a settlement that I think is fair and in their benefit.

Honorable C. Weston Houck

In re Force Protection Sec. Litig., 2:08-cv-845 CWH (D.S.C.)
(\$24 million settlement)

In re Philip Servs. Corp. Sec. Litig., 2007 U.S. Dist. LEXIS 101427, 13-14 (S.D.N.Y. Mar. 27, 2007) (Honorable Alvin K. Hellerstein). Similarly, in *Lernout & Hauspie Sec. Litig.*, Jeff was the lead attorney in securing over \$180 million for defrauded investors. The action involved an accounting fraud of a company headquartered in both the United States and Belgium.

Recently, Jeff led a team of litigators, private investigators and a forensic accountant through a complex accounting fraud case. Jeff settled the case on terms extremely beneficial to the class, as recognized by the court. *See In re Swisher Hygiene, Inc., Securities and Derivative Litig.*, 3:12-md-2384 GCM (W.D.N.C.).



JASON M. LEVITON

Partner

✉ jason@blockleviton.com

EDUCATION

- Georgetown University Law Center, LL.M., Securities and Financial Regulations - Dean's Award (1 of 6)
- Gonzaga University School of Law, J.D., *cum laude*, Moot Court Council, International Law Review
- Gonzaga University, B.A., Philosophy and Political Science

BAR ADMISSIONS

- Massachusetts
- District of Columbia
- Washington (voluntarily inactive)
- Florida (voluntarily inactive)

COURT ADMISSIONS

- First Circuit Court of Appeals
- D. Mass.
- D. D.C.
- W.D. Wash.

PUBLICATIONS | SPEAKING EVENTS

- Guest on Rights Radio
- Law360 Securities Law Editorial Advisory Board
- SEC Litigation Release No. 18638, primary author
- Contributor, *After the Ball is Over: Investor Remedies in the Wake of the Dot-Com Crash and Recent Scandals*, Nebraska Law Review, 2005
- Speaker at Georgetown University Law Center on prosecution of securities class action lawsuits
- Presenter at Business Law Symposium entitled *Shareholder Rights: An Idea Whose Time has Come*, November 2013
- Presenter at National Conference on Public Employee Retirement Systems

Jason is a co-founding partner of Block & Leviton and focuses his practice on investor protection and shareholder rights matters. He serves as Co-Chair of the Firm's New Case Investigation and Monitoring Team and Chair of the Merger and Acquisition/Deal Litigation Team.

Since 2011, Jason was named either a "Super Lawyer" or "Rising Star" by Massachusetts Super Lawyers, an honor given to only 3% and 5% of all lawyers, respectively. Jason also has a Martindale-Hubbell AV Preeminent Rating, the highest rating possible. In 2014, Jason was named as a Top 100 Trial Lawyer by the National Trial Lawyer Association.

Jason has focused his practice on claims alleging breaches of fiduciary duty against officers and directors of publicly traded companies. Indeed, in just the last few years alone, his litigation efforts have led to hundreds of millions of dollars being returned to aggrieved stockholders. More specifically, Jason served as lead or co-lead counsel in the following breach of fiduciary duty actions: *In re Plains Exploration & Production Co. Stockholder Litig.*, Case No. 8090-VCN (Del. Ch.) (litigation led to an increase of approximately \$400 million to the original merger amount); *In re Pilgrim's Pride Corp. Derivative Litig.*, Case No. 2018-0058-VCL (Del. Ch.) (\$42.5 million settlement); *In re Handy & Harman, Ltd., S'holders Litig.*, Case No. 2017-0882-TMR (Del. Ch.) (settled for \$30 million, making it one of the largest sell-side premiums ever achieved for stockholders through Delaware litigation); *In re Onyx Pharmaceuticals Inc. Shareholder Litigation*, Case No. CIV523789 (Cal. Sup. Ct) (settled for \$30 million; at the time, the largest M&A class action in California state court history); and *In re Rentrak Shareholders Litig.*, Case No. 15CV27429 (Ore. Sup.) (\$19 million settlement and with the related action, \$23.75 million; the largest Oregon M&A settlement); *Garfield v. Blackrock Mortgage Ventures, LLC (In re PennyMac Financial Services, Inc.)*, Case No. 2018-0917-KSJM (Del. Ch.) (settlement of \$6.85 million reached, pending court approval).

He has also litigated numerous actions pursuant to the federal securities laws, including, but not limited to: *In re BP plc Securities Litigation*, Case No. MDL 2185 (S.D.Tex) (settlement of \$175 million); *Rubin v. MF Global, LTD., et al.*, Case No. 08-cv- 02233 (S.D.N.Y.) (\$90 million settlement); *In re VeriSign Securities Litigation*, Case No. C-02-2270 (N.D. Cal.) (\$78 million settlement); *Welmon v. Chicago Bridge & Iron*, Case No. 06-cv-01283 (S.D.N.Y.) (settlement of \$10.5 million; in approving the settlement, the court noted: "Plaintiffs' counsel have conducted the litigation and achieved the settlement with skill, perseverance and diligent advocacy.");

Ong v. Sears Roebuck & Co., Case No. 03 C 4142 (N.D. Ill.) (\$15.5 million settlement); and In re Swisher Hygiene, Inc., Securities and Derivative Litig., Case No. 3:12-md-2384 GCM (W.D.N.C.) (\$5.5 million settlement; in approving the settlement, the court held:

“
The settlement is – gosh. . . the fact that it’s occurring within the context of a securities case, which is very difficult for plaintiffs to win, is extremely impressive to me. . . [T]his is a matter which has been fairly litigated by people.

Honorable Graham C. Mullen,

In re Swisher Hygiene, Inc., Securities and Derivative Litig., 3:12-md-2384 GCM (W.D.N.C.) (\$5.5 million settlement)

Jason has considerable experience litigating consumer class action cases involving deceptive business practices as well. For example, Jason, as co-lead counsel, successfully recovered 100% of the class’s alleged damages stemming from the overcharging of scooped coffee beans at Starbucks stores throughout the country. See *In re Starbucks Consumer Litig.*, Case No. 2:11-cv-01985-MJP (W.D. Wa.); *Keenholtz v. GateHouse Media, LLC, et al.*, Case No. 17-184-A (Mass. Sup.) (settlement involved complete relief to punitive class members and significant corporate governance measures); *MabVax Therapeutics Holdings, Inc. v. Sichenzia Ross Ference LLP, et al.*, Case No. 3:18-cv-02494-WQH-MSB (S.D. Cal.) (representing a formerly-public company in its malpractice action against its former law firm).

In addition to his class action experiences, Jason has litigated other forms of complex litigation. For instance, he worked with a former State of New York Attorney General in the defense of an attorney accused of insider trading, which included a criminal referral to the United States Department of Justice. Similarly, Jason represented a former employee whistleblower before the S.E.C. where, in one instance, he successfully argued that his clients should receive the maximum whistleblower award of 30% pursuant to the Dodd-Frank Act, which equated to nearly \$1 million. He also represented the same whistleblower in a retaliation claim against his old employer, a large, multinational financial institution. See *John Doe v. Oppenheimer Asset Management, Inc., et al.*, Case No. 1:14-cv-00779-LAP (S.D.N.Y.). Finally, he was also heavily involved in the representation of four detainees being held at the Guantánamo Bay Naval Station in Cuba.

After receiving his law degree from Gonzaga University School of Law, with honors, Jason attended the Georgetown University Law Center and received a Master of Laws (LL.M.) in Securities and Financial Regulation (Dean’s Award, 1 of 6). During that time, he was the inaugural LL.M. student selected for an externship with the S.E.C., Enforcement Division. Jason is now a member of the Association of Securities and Exchange Commission Alumni.

Jason is currently litigating a number of investor suits against large corporations, including: Charter Communications; Facebook; Surgery Partners; PennyMac; John Hancock; Fidelity; GE; Putnam; and Craft Brew Alliance, among others.



WHITNEY E. STREET

Partner

✉ whitney@blockleviton.com

EDUCATION

- University of Virginia School of Law, J.D.
- University of Virginia, B.A., Economics and Literature

BAR ADMISSIONS

- California
- New York
- Massachusetts
- Texas

COURT ADMISSIONS

- All California Federal Courts
- S.D.N.Y. and E.D.N.Y.
- D. Mass.

PROFESSIONAL ACTIVITIES

- Co-Founder and former Co-Chair of the American Association for Justice Antitrust Litigation Group (2014-2016)
- Law360 Competition Law Editorial Advisory Board Member (2014-2018)
- American Bar Association Member
- Contributor, Complex Litigation E-Discovery Forum

Block & Leviton Partner Whitney Street has over seventeen years of complex litigation experience and significant expertise in securities and antitrust class action litigation. Whitney represented the Brockton Retirement System and the class in an action challenging Google's attempt to split its stock into voting and non-voting shares in *In re Google, Inc. Class C S'holder Litig.*, case no. 7469-CS (Del. Ch. Ct.). Two days before the start of trial, the action settled for significant corporate governance changes and a payment ladder valued up to \$7.5 billion, which was designed to protect shareholders against any diminution in the value of their shares during the first year of trading. As a result of the payment ladder, shareholders ultimately recovered \$522 million in cash and stock in May 2015. Whitney was also a key member of the litigation team representing the Ohio Pension Funds *In re: BP Sec. Litig.*, No. 4:10-MD-02185 (S.D. Tex.). The case was litigated for over six years, through an interlocutory appeal to the Fifth Circuit and a decision on summary judgment, and ultimately resulted in a \$175 million recovery for the class.

In addition, Whitney served as co-lead counsel in *In re Thalomid & Revlimid Antitrust Litig.*, 14-cv-6997 (D.N.J.) (\$34 million settlement preliminarily approved) and in *In re Domestic Drywall Antitrust Litig.*, 13-md-02437 (E.D. Pa.) (\$17 million settlement). Whitney was also appointed to the Plaintiffs' Steering Committee in *In re Liquid Aluminum Sulfate Antitrust Litig.*, 16-md-02687 (D.N.J.) (settlements totaling over \$110 million) and in *In re Packaged Seafood Antitrust Litig.*, 15-md-02670 (S.D. Cal.) (litigation pending). Whitney is currently litigating a number of class action cases in federal courts around the country, including *In re Lyft Securities Litig.*, case no. 4:19-cv-02690-HSG (N.D.Cal.), *In re Mammoth Energy Services, Inc. Securities Litig.*, case no. 19-cv-00522 (W.D. Okla.), *In re Broiler Chicken Antitrust Litig.*, 16-cv-08637 (N.D. Ill.), and in *In re Pork Antitrust Litig.*, 18-cv-01776 (D. Minn.).

Prior to joining Block & Leviton, Whitney was an integral part of the litigation teams in the following class actions: *Air Cargo Shipping Services Antitrust Litigation*, 06-md-1775 (E.D.N.Y.) (settlements totaling more than \$270.0 million); *In re Ethylene Propylene Diene Monomer (EPDM) Antitrust Litigation*, 3:03-md-1542 (D. Conn.) (partial settlements totaling \$87.0 million); *In re Methyl Methacrylate (MMA) Antitrust Litigation*, 06-md-01768 (E.D. Pa.) (settled for \$15.0 million); and *In re Hydrogen Peroxide Antitrust Litigation*, 05-civ-666 (E.D. Pa.) (partial settlements of more than \$4.0 million).

PUBLICATIONS | SPEAKING EVENTS

- Panelist, Healthcare & Pharma Regulation through Antitrust Legislation, American Bar Association (April 2019).
- Panelist, Big Data & Storylines, Complex Litigation E-Discovery Forum (September 2016).
- Moderator, Introduction to the Use of Regression Analysis in Antitrust Class Action Litigation, American Association for Justice Webinar (August 2016).
- Co-Author, What Lies Ahead in High Stakes Pay-For-Delay Antitrust Litigation, American Association of Justice Business Torts Newsletter (May 2015).
- Author, Technology Assisted Review: The Disclosure of Training Sets and Related Transparency Issues, Georgetown Law Advanced eDiscovery Institute (Fall 2014).
- Faculty, Georgetown University Law Advanced eDiscovery Institute (November 2014).
- Co-Author, Decision Re-Affirms Critical Role of Shareholders, Benefits and Pensions Monitor (October 2014).
- Panelist, American Association for Justice Class Certification Seminar (2013).

Whitney received her training at prominent litigation firms in New York and Boston where she represented clients in antitrust and securities class actions. She began her career at Pillsbury Winthrop Shaw Pittman, one of the largest law firms in California.

R. JOSEPH BARTON*Partner* joe@blockleviton.com**EDUCATION**

- College of William & Mary, Marshall-Wythe Law School, J.D. Order of the Coif
- College of William & Mary, B.A., History and Minor in Classical Studies

BAR ADMISSIONS

- California
- District of Columbia

COURT ADMISSIONS

- First, Second, Third, Fourth, Fifth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuit Courts of Appeal
- All California Federal Courts
- D. Colorado
- D.D.C.
- N. D. Illinois
- D. Maryland
- E. D. Michigan
- D. Nebraska
- D. North Dakota
- N. D. Texas and W.D. Texas
- E. D. Wisconsin and W.D. Wisconsin

R. Joseph Barton is the Chair of the Firm's Employee Benefits Group and the Firm's Veterans/Servicemember Rights Group at the Firm. Joe has significant experience handling a diverse array of complex and class litigation. Joe has a Martindale-Hubbell AV Preeminent Rating, has been selected every year since 2013 as a Washington, D.C. Super Lawyer, has a 10.0 rating from Avvo, and is listed in the Marquis' Who's Who in American Law.

Notable ERISA Cases

Since 2001, Joe has handled a wide variety of employee benefit (i.e. ERISA) cases. He has been trial counsel in four ERISA cases. He was lead trial counsel in a case challenging a complex transaction involving the Trachte ESOP and the Alliance ESOP on behalf of a class of employees of Trachte, *Chesemore v. Alliance Holdings, Inc.*, No. 3:09-cv-00413 (W.D. Wis.). In that case, Joe obtained a favorable trial decision on liability and remedies of \$17.2 million (plus prejudgment interest) for the Class which was affirmed by the Seventh Circuit. In *Severstal Wheeling Inc. Ret. Comm. v. WPN Corporation*, No. 10-cv-954 (S.D.N.Y.), Joe was lead trial counsel representing the fiduciaries of two pension plans suing their former investment manager for improper investments and obtained a judgment for plaintiffs of over \$15 million which was affirmed by the Second Circuit.

Mr. Barton was Co-Lead Class Counsel in *Ahrens. v. UCB Pension Plan* (N.D. Ga.) representing participants challenging the calculation of their benefits in a defined benefit plan. He also obtained a class settlement of \$5.5 million which was 60% of claimed benefits.

Joe is among a handful of lawyers who regularly represent participants in litigation involving ESOPs holding privately held stock. In addition to the Alliance/Trachte ESOP litigation, Joe has litigated and successfully settled a number of private ESOP cases, including the Azon Corporation ESOP, the Jeld-Wen ESOP, the Tharaldson Motels, Inc. ESOP and the Wawa ESOP.

Joe has also been involved in a number of cases involving breaches of fiduciary duty and self-dealing, including improperly investing 401k plan assets in artificially inflated stock of publicly traded companies and in improper and risky investments such as hedge funds or private equity. He litigated one of the earliest cases challenging the prudence of investing in the pension and 401k plans sponsored by New York Life Insurance Company.

Joe has also litigated cases involving the failure to properly pay benefits. In *Slipchenko v. Brunel*, No. 4-11-cv- 01465 (S.D. Tex.), Joe obtained a settlement in a COBRA class action which resulted in the largest per classmember recovery in any reported COBRA class action. In *Simpson v. Fireman's Fund Insurance Company* (N.D. Cal.), Joe represented a class of employees alleging that FFIC's policy of terminating persons on disability violated the discrimination provisions of ERISA, and obtained a settlement restoring their right to benefits for a period of years and also reimbursement of past expenses.

PROFESSIONAL ACTIVITIES

- Co-Chair of the Civil Procedure Subcommittee for the ABA Employee Benefits Committee (2012 to Present)
- Current member AAJ Publications Committee (2013-Present)
- Current member, Advisory Board, Employee Benefits Law360 (2019 to Present)
- Former Co-Chair of the American Association of Justice (AAJ) Class Action Litigation Group (2014 to 2016).
- Former Chair of Employment Rights Section of the AAJ (2013 to 2014)

PUBLICATIONS & SPEAKING ENGAGEMENTS

- Author, "Navigating the Unfriendly Skies of ERISA Reimbursement," Trial Magazine (2014)
- Author, "Determining the Meaning of 'Direct Evidence' in Discrimination Cases Within the Eleventh Circuit: Why Judge Tjoflat was (W) right," 77 Fla.B.J. 42 (2003)
- Author, "Drowning in A Sea of Contract: Application of the Economic Loss Rule to Fraud and Negligent Misrepresentation Claims," 41 Wm. & Mary L. Rev. 1789 (2000)
- Author, "Utilizing Statistics and Bellweather Plaintiff Trials: What do the Constitution and the Federal Rules of Civil Procedure, Permit?" 8 Wm. & Mary Bill Rts. J. 199 (1999).
- Speaker on ERISA, USERRA, Class Actions or Civil Procedure at numerous ABA conferences (including the ABA Employee Benefits Committee, the ABA Joint Committee on Employee Benefits, and ABA Labor & Employment Section) and conferences by the American Conference Institute, Defined Contribution Institutional Investments Association (DCIIA), National Employment Lawyers Association ("NELA"), the American Association of Justice ("AAJ") and others. For a full list, see <https://www.linkedin.com/in/r-joseph-barton-6ba0273/>.

Notable Cases Involving Veterans & Service members

In cases involving the rights of veterans and service members, Joe is proud to have achieved results which one court described as **"outstanding, worthy of being emulated by class representatives and counsel in other comparable litigation."** In that case, *Tuten v. United Airlines*, No. 12-cv-1561-WJM-MEH (D. Col.), he was lead counsel for a class of United Airlines Pilots alleging USERRA violations in connection with their pension contributions. The case was settled for an amount that provided the Class with 100% of their actual damages. Also, in *Allman v. American Airlines* (D. Mass.) Joe was Lead Class Counsel in an action alleging USERRA and ERISA violations where American Airlines pilots who took leave to serve in the United States Armed Forces did not receive the full amount of pension contributions they were entitled to receive during their period of military leave; the settlement was for 100 percent of actual damages.

In *Bush v. Liberty Life Assurance Co.*, Joe was lead class counsel on behalf of a class participants whose long-term disability benefits were insured by Liberty Life. The case alleged that those benefits should not have been reduced by the amount of benefits provided through the Department of Veterans Affairs. As part of the settlement, Liberty Life agreed to return 60% of the monies imposed as offsets and to cease imposing such reductions/offsets unless and until the state departments of insurance had approved them.

In *Martin, et al. v. Washington State Patrol, et al.* (Sup. Ct. Wash.) Joe was Co-Lead Class Counsel on behalf of Washington State Troopers alleging that the Washington State Patrol failed to provide military veterans with veteran's preference when such veterans applied to become state troopers or applied for a promotion.

Notable Other Cases

Joe has been significantly involved in litigating antitrust cases. In *In re Mercedes-Benz Antitrust Litigation* (D.N.J.), a class action alleging price-fixing of new Mercedes-Benz vehicles in the New York Region, Joe briefed, argued and obtained summary judgment on an issue of first impression that established that lessee-plaintiffs had standing to sue as direct purchasers under the federal antitrust laws. That case later settled for \$17.5 million. Joe was a part of the team that engaged in intensive trial preparations in *In re High Fructose Corn Syrup Antitrust Litigation* (C.D. Ill.), a class action alleging price-fixing by the manufacturers of high fructose corn syrup, which settled for more than \$500 million shortly before trial.

In a case alleging securities fraud, Joe represented limited partners of Lipper Convertibles, a defunct hedge fund, in an arbitration against the fund's former general partners, and in litigation against the outside auditor in federal district court. He has also litigated securities fraud cases involving publicly traded companies.

Pro Bono Cases

Joe considers pro bono representation an important part of his practice and has represented clients in actions concerning their employer's failure to pay wages and/or overtime. In one such case, the Judge in D.C. Superior Court described his work: **"everything done on behalf of the Plaintiff has been professional, timely and thorough."**

Clerkship

After graduating law school, Joe served as a judicial law clerk to the Honorable Lenore C. Nesbitt, United States District Judge for Southern District of Florida (2000-2001).

NATHAN COOK*Partner* nathan@blockleviton.com**EDUCATION**

- University of Virginia School of Law, J.D.
- University of Virginia, B.A., *with distinction*, Economics and History (Jefferson Scholar and Echols Scholar)

BAR ADMISSIONS

- New York
- Delaware

COURT ADMISSIONS

- U.S. District Court for the District of Delaware
- U.S. District Court for the Southern District of New York

PUBLICATIONS | SPEAKING EVENTS

- Led roundtable discussion on “D&O Fiduciary Duties during Insolvency” sponsored by the Institutional Investor Educational Foundation (October 2019)
- Litigation panelist for the Delaware State Bar Association’s conference “Hot Topics in Delaware Corporate Law: Updates that Transactional Lawyers and Litigators Need to Know – A View from the Bench and Bar” (May 2019)
- Co-hosted presentation on “Recent Developments in Delaware Case Law and Changes to the Delaware General Corporation Law” sponsored by the Council of Institutional Investors (June 2018)
- Panelist for the Securities Litigation Panel at the Perrin Class Action Litigation Conference (May 2017)

Nathan is the managing partner of Block & Leviton’s Delaware office and focuses his practice on trial and appellate litigation relating to Delaware corporations and alternative entities. Nathan has experience with a broad range of complex Delaware corporate law matters, including fiduciary duties, appraisal, hostile takeovers, and inspection of corporate books and records. He has had a leading role in multiple trials before the Delaware Court of Chancery, presented argument before the Delaware Supreme Court, and obtained recoveries of hundreds of millions of dollars. Nathan’s experience also includes expedited corporate arbitration and significant corporate advisory work for boards of directors, special committees, and corporate officers.

In 2019 and 2020, Lawdragon listed Nathan in its Lawdragon 500 Leading Plaintiff Financial Lawyers guide, which showcases the best of the U.S. plaintiff bar who specialize in representing investors and businesses harmed by corporate misconduct.

After receiving his law degree from the University of Virginia School of Law, Nathan clerked for Vice Chancellor John W. Noble of the Delaware Court of Chancery. After his clerkship, Mr. Cook joined Abrams & Laster (now known as Abrams & Bayliss, after J. Travis Laster joined the Court of Chancery) and worked on a wide range of high-stakes, bet-the-company corporate advisory and litigation matters. Prior to joining Block & Leviton, Mr. Cook was a director at one of the preeminent securities and corporate governance class-action firms in the nation and worked on behalf of numerous institutional investors.

Nathan focuses his practice on claims alleging breaches of fiduciary duty against directors and officers of publicly-traded companies. In the last few years alone, Nathan’s litigation efforts have led to recoveries of hundreds of millions of dollars: In re Dole Food Co. Stockholder Litigation and In re Dole Food Co. Appraisal Litigation, C.A. Nos. 8703-VCL, 9079-VCL (Del. Ch.) (co-lead counsel in stockholder class action and appraisal litigation relating to a take-private merger by a controlling stockholder that resulted in a damages award of \$148 million, plus interest, following a nine-day trial in the Delaware Court of Chancery); In re Clear Channel Outdoor Holdings, Inc. Derivative Litigation, C.A. No. 7315-CS (Del. Ch.) (co-lead counsel in a stockholder derivative lawsuit relating to an alleged unfair cash-sweep lending arrangement imposed on a publicly-traded subsidiary by its parent entity, resulting in a settlement that returned \$200 million to Clear Channel Outdoor Holdings stockholders); In re News Corporation Shareholder Derivative Litigation, C.A. No. 6316-VCN (Del. Ch.) (stockholder derivative lawsuit alleging corporate overpayment and failure to investigate and remedy cover-up of illegal activity associated with phone-hacking, resulting in a settlement of \$139 million); In re Delphi Financial Group Shareholder Litigation, C.A. No. 7144-VCG (Del. Ch.) (stockholder class action relating to

- Panelist for the “M&A and Advising the Board” panel at the Delaware Law Issues Update Conference sponsored by the John L. Weinberg Center and the Society of Corporate Secretaries & Governance Professionals (November 2015)
- Panelist for the “Section 220 Litigation” panel at the Practising Law Institute’s seminar “Delaware Law Developments 2015: What All Business Lawyers Need to Know” (June 2015)
- Co-author with Adam Levitt, Delaware Supreme Court Okays One-Way Fee-Shifting Bylaws, AAJ (Summer 2014)
- Co-author with A. Thompson Bayliss and Adam Schulman, Frequently Asked Questions, Answers and More Questions about the Business Strategy Immunity, PLI (2011)
- Co-author with J. Travis Laster, The Delaware Supreme Court Weighs in on Fiduciary Duties to Creditors, Insights (June 2007)

PROFESSIONAL ORGANIZATIONS / AWARDS

- Delaware Corporation Law Council’s Sub-Committee on Common Law Trusts
- Richard S. Rodney Inn of Court (Executive Committee member)
- Delaware State Bar Association
- Delaware Trial Lawyers Association
- Volunteer for the Delaware Office of the Child Advocate
- Volunteer for the Delaware Volunteer Legal Services protection from abuse program
- Listed in 2019 and 2020 in the Lawdragon 500 Leading Plaintiff Financial Lawyers
- Listed in 2019 in The National Trial Lawyers: Top 40 under 40

allegations that founder, CEO and Chairman improperly diverted merger consideration to himself, resulting in a \$49 million settlement); Indiana Electrical Workers Pension Trust Fund IBEW v. Wal-Mart Stores, Inc., C.A. No. 7779-CB (Del. Ch.) (stockholder books and records lawsuit that resulted in a landmark Delaware Supreme Court ruling recognizing the “Garner doctrine” as Delaware law); and Lillis v. AT&T and AT&T Wireless, Nos. 459, 2007 and 490, 2007 (Del.) (successful action on behalf of former directors and executive offices of MediaOne to recover the value of out-of-the-money stock options, which were cancelled in the AT&T-Cingular Wireless merger).

In addition to the matters described above, Nathan served as lead counsel in multiple complex appraisal actions before the Delaware Court of Chancery that were confidentially settled. Nathan served as co-lead counsel for the trial of the largest appraisal matter in Delaware Court of Chancery history, representing petitioners seeking judicial appraisal on their nearly \$900 million equity stake in the respondent corporation.

Nathan also has broad experience enforcing investors’ rights to inspect internal corporate books and records. In addition to the landmark Wal-Mart Stores action referenced above, Nathan has served as lead and co-lead counsel in multiple books and records actions before the Delaware courts. In UnitedHealth Group Inc. v. Amalgamated Bank, No. 162, 2018 (Del.), Nathan served as lead trial and appellate counsel, which included the presentation of successful oral argument before the Delaware Supreme Court.

In addition, Nathan has experience serving as corporate advisory and litigation counsel in hostile takeover matters. Nathan’s hostile takeover work includes serving as lead counsel before the Court of Chancery in a stockholder’s successful bid to oust and replace the longtime incumbent board of directors of a corporation. Nathan also served as co-lead counsel in expedited arbitration of a merger earn-out dispute.

Nathan has also served as counsel to boards of directors, special committees, corporate officers and alternative entities, providing extensive corporate advisory services and legal opinions on a variety of transactional matters relating to Delaware law, including advising in connection with mergers, tender offers, reorganizations and other fundamental strategic transactions; corporate charters and bylaws; stockholder rights plans (i.e., poison pills); and dividends and distributions.

Nathan devotes a portion of his time to pro bono work for the Delaware Office of the Child Advocate and Delaware Volunteer Legal Services protection from abuse program.

Nathan’s current cases involve multiple other companies, including Charter Communications and Facebook.



JOEL FLEMING

Partner

✉ joel@blockleviton.com

EDUCATION

- Harvard Law School, J.D., *cum laude*
- Wilfrid Laurier University, B.A., Political Science with high distinction

BAR ADMISSIONS

- California
- Massachusetts

COURT ADMISSIONS

- First and Ninth Circuit Courts of Appeal
- N.D. Cal., C.D. Cal., and S.D. Cal.
- D. Mass.

PUBLICATIONS

- Co-author, Decision Re-Affirms Critical Role of Shareholders, Benefits and Pensions Monitor (October 2014)
- Co-author, Meltdowns crank up muni-bond litigation, Daily Journal (September 18, 2013)
- Co-author, SEC takes hard line on 'cyber incidents', Daily Journal (April 5, 2013)
- Co-author, Lower Courts Interpret The Supreme Court's Decision In Janus Capital Group, Inc. v. First Derivative Traders, Financial Fraud Law Report 4:5 (May 2012)

PROFESSIONAL ACTIVITIES

- Visiting Lecturer, Tufts University: Experimental College (2013-2015)

Block & Leviton Partner Joel Fleming has significant experience in stockholder litigation. Since graduating with honors from the Harvard Law School, Joel has spent his entire career practicing stockholder litigation. In 2019, Law360 named Joel as one of the top six securities litigators in the country under the age of 40.

Since joining Block & Leviton in 2014, Joel has played a lead role in cases that have recovered over \$100 million for investors in actions in which the firm was lead or co-lead counsel. Those cases include:

- *In re Pilgrim's Pride Corporation Derivative Litigation* (Del. Ch.) (\$42.5 million settlement of derivative litigation arising from conflicted, related-party transaction with controlling stockholder);
- *In re Handy & Harman Corporation Stockholders Litigation* (Del. Ch.) (\$30 million settlement of class action arising from sale of Handy & Harman to its controlling stockholder; recovery was a 33% premium to deal price; a near-record for merger litigation in Delaware);
- *In re Rentrak Corporation Shareholders Litigation* (Ore. Sup. Ct.) (\$19.5 million settlement of litigation arising from all-stock merger between Rentrak Corporation and comScore, Inc.; largest settlement of merger litigation in Oregon state court history); and
- *In re Tangoe, Inc. Stockholders Litigation* (Del. Ch.) (\$12.5 million settlement of litigation arising from sale of Tangoe, Inc. to affiliates of Marlin Equity Partners in take-private transaction).

Joel also played a key role in several other actions where Block & Leviton was able to achieve significant settlements, including

- *In re McKesson Corporation Derivative Litigation* (N.D. Cal.) (Block & Leviton was one of five firms that played a leading role in this action, which resulted in a \$175 million derivative settlement of litigation arising from the McKesson Board's alleged oversight failures relating to opioid distribution; one of the five largest derivative settlements of all time);
- *Snap, Inc. Securities Cases* (Sup. Ct. Cal.) (Block & Leviton was co-lead counsel in this action which resulted in a \$32.8 million settlement of claims arising from alleged misstatements made in connection with Snap's IPO) (final approval pending); and
- *In re Tezos Securities Litigation* (N.D. Cal.) (Block & Leviton was co-lead counsel in this action which resulted in a \$25 million settlement of claims arising from the alleged unregistered sale of securities in connection with an initial coin offering of cryptocurrency) (final approval pending).

Prior to joining the firm, Joel was a member of the Securities Litigation and Enforcement group at Wilmer Cutler Pickering Hale and Dorr—a large defense firm headquartered in Boston and Washington, D.C. While at WilmerHale, he served as a member of the trial team in *AATI v. Skyworks*, the first-ever arbitration to go to trial before the Delaware Chancery Court, in a case involving a merger-related dispute between two companies in the high technology industry. Joel represented both companies in a subsequent shareholder class action that ended with the dismissal with prejudice of all counts.



JACOB WALKER

Partner

✉ jake@blockleviton.com

EDUCATION

- University of Michigan Law School, J.D., *cum laude*
- Babson College, B.S., Business Administration

BAR ADMISSIONS

- Massachusetts
- California

COURT ADMISSIONS

- Supreme Court
- First and Ninth Circuit Courts of Appeal
- D. Mass.
- N.D. Cal. and C.D. Cal.

PROFESSIONAL CERTIFICATIONS

- Certified Information Privacy Professional (CIPP/US)

PUBLICATIONS

- Co-author, PLI's Securities Litigation treatise – chapters on loss causation and securities trials

Jake Walker is a partner who focuses primarily on federal securities litigation throughout the country. He has been named a “Rising Star” in securities litigation since 2016 by Super Lawyers.

Among other cases, Jake is actively litigating cases on behalf of investors against *Immunomedics, Inc.* (D. N.J.) related to the company's misrepresentations about FDA inspections of its drug manufacturing facilities; *Lyft, Inc.* (N.D. Cal.) arising out of the company's 2019 initial public offering; *Mammoth Energy Services, Inc.* (W.D. Okla.) arising from the indictment of the CEO of the company's most significant division over bribery in Puerto Rico following Hurricane Maria; *Mattel* (C.D. Cal.) related to the company's restatement of financial results; *Synchronoss Technologies* (D. N.J.) related to the company's sale of a profitable business division; and *Trevena* (E.D. Pa.) related to the Company's public statements concerning their interactions with the FDA. Jake is also instrumental in the appeal to the First Circuit on behalf of investors in *Keryx Biopharmaceuticals* (1st Cir.) arising from the company's misstatements concerning a key supplier.

In the past year, Jake has led litigation teams that recovered \$32.8 million from Snap, Inc. in litigation arising from its initial public offering (Cal. Sup. Ct.) and \$25 million from the Tezos Foundation (N.D. Cal.), in litigation arising from the cryptocurrency's initial coin offering. Both cases are awaiting preliminary approval. Jake has also obtained recoveries on behalf of investors in *EZCORP, Inc.* (W.D. Tex.), *Amicus Therapeutics* (D. N.J.), *Atossa Therapeutics* (W.D. Wash.), *Onyx Pharmaceuticals* (Cal. Sup. Ct.), and *Globalscape, Inc.* (W.D. Tex.), among others.

In addition to his securities litigation work, Jake also assisted the firm in its work on the \$14.7 billion settlement in the Volkswagen Diesel engine multi-district litigation, and has also led consumer litigation, including obtaining 100% recovery of damages for Massachusetts subscribers to newspapers published by Gatehouse Media, who were overcharged by the company.

Prior to joining Block & Leviton in 2015, Jake was an associate at two of the country's top defense firms: Gibson Dunn in Palo Alto and Skadden, Arps in Boston. There, he represented boards of directors, corporate acquisition targets, and acquirers in litigation related to mergers and acquisitions. Jake represented defendants in litigation related to the \$5.3 billion private equity acquisition of Del Monte Foods Company in state and federal courts in California and in the Delaware Court of Chancery, as well as in litigation related to Intel's \$7.7 billion acquisition of McAfee Inc. in the Superior Court of California, Santa Clara County. He has also represented numerous third parties, including various

investment banks, in M&A litigation in California and Delaware courts.

While Jake's ten-year career has centered on securities and corporate governance litigation, Jake also has significant experience representing several large technology companies, including in the defense of consumer class actions related to privacy and technology issues. He is a Certified Information Privacy Professional and has a deep understanding of technology and privacy issues. Jake has also represented companies in antitrust class actions and investigations, stockholder derivative actions, securities class actions, and in investigations before the F.T.C. and the Massachusetts Attorney General's Office.

Jake graduated from Babson College with a B.S. degree in Business Administration in 2001 and received his law degree, with honors, from the University of Michigan in 2010.

VINCENT CHENG*Senior Associate* vincent@blockleviton.com**EDUCATION**

- University of California Berkeley School of Law, J.D.
- University of California, Berkeley, B.A., Philosophy and Mathematics

BAR ADMISSIONS

- California

COURT ADMISSIONS

- N.D. Cal., E.D. Cal., and C.D. Cal.
- N.D. Ill.

PUBLICATIONS

- Author, "A Jigsaw of Worker Classifications," Trial Magazine (September 2018)
- Author, "National Railroad Passenger Corporation v. Morgan: A Problematic Formulation of the Continuing Violation Theory," California Law Review (October 2003)

Vincent Cheng is an associate at the firm and a member of the Employee Benefits Group and Veterans/Servicemember Rights Group. Since graduating from law school, Vincent has focused his work on advocating for the rights of employees and retirees and of veterans and servicemembers. Prior to joining Block & Leviton in January 2017, he had over 8 years of experience in litigating a variety of lawsuits on behalf of employees.

Vincent has litigated cases brought under the Employee Retirement Income Security Act (ERISA) involving breach of fiduciary duty and benefit denial claims and cases brought under the Uniformed Services Employment and Reemployment Rights Act (USERRA) involving veterans' employment rights and benefits. He has also litigated employment cases involving unpaid overtime wages under the Fair Labor Standards Act (FLSA) and the California Labor Code and race and gender discrimination under Title VII and the California Fair Employment and Housing Act (FEHA).

Notable Employee Benefits Cases

- *Foster v. Adams Associates, Inc.*, No. 18-cv-02723 (N.D. Cal.): represents a class of participants in an ESOP alleging that the directors and shareholders of Adams engaged in prohibited transactions and fiduciary breaches in connection with the October 2012 sale of Adams to the ESOP.
- *Hurtado v. Rainbow Disposal Co., Inc. ESOP Committee*, No. 8:17-cv-01605 (C.D. Cal.): represents a class of employees alleging that the October 2014 sale of Rainbow to the ESOP was not for adequate consideration and included various prohibited transactions and fiduciary breaches.
- *Carlson v. Northrop Grumman Severance Plan*, No. 13-cv-02635 (N.D. Ill.): represented a class of employees who were laid off from Northrop Grumman alleging they were improperly denied cash severance under the severance plan.
- *Aguilar v. Melkonian Enterprises, Inc.*, No. 05-cv-00032 (E.D. Cal.): represented a class of participants in two pension plans alleging that the fiduciaries failed to prudently invest the plan assets; obtained a settlement that provided for recovery of more than 85% of the losses to the plans.
- *Simpson v. Fireman's Fund Insurance Company*, No. C 05-000225 (N.D. Cal.): represented disabled employee-participants alleging that FFIC terminated them in violation of ERISA § 510 to prevent them from continuing to receive medical benefits; obtained a settlement that provided for restoration of their right to benefits for a period of years and reimbursement of past medical expenses.
- *Paulsen v. CNF Inc.*, No. C 03-3960 (N.D. Cal.): represented a group of employees alleging that the fiduciaries breached their duties under ERISA in connection with the spinoff of a division of CNF, and that the CNF pension plan's actuary breached its duty of care under state law in valuing the plan liabilities to be transferred at spinoff and certifying post spinoff that the new plan was adequately funded.

- *Hurlic v. Southern California Gas Company*, No. 05-5027 (C.D. Cal.): represented a putative class of participants alleging that the pension benefit accrual formula under SCGC's cash balance defined benefit plan violated ERISA's prohibition against age discrimination and ERISA's anti-backloading rules.

Notable Cases Involving Veterans and Servicemembers Rights

- *Anderson v. City and County of San Francisco*, No. 20-cv-01149 (N.D. Cal.): represents a putative class of employees alleging that the City's policies and practices governing military leave impose burdensome procedures not required by law and fail to provide servicemembers with certain benefits and proper reemployment in violation of USERRA, the California Military and Veterans Code ("MVC"), and the City's Annual Salary Ordinances.
- *Clarkson v. Alaska Airlines, Inc.*, No. 19-cv-00005 (E.D. Wash.): represents putative classes of servicemembers alleging that Alaska Airlines and Horizon Air violated USERRA by subjecting employees who took military leave to Horizon's "virtual credit" policy and by failing to provide paid short-term military leave when providing paid leave for other comparable short-term leave.
- *Nelson v. Ditech Financial, LLC*, No. 17-cv-05582 (W.D. Wash.), represents servicemember alleging Ditech violated the Servicemembers Civil Relief Act ("the SCRA") by refusing to apply the statutory 6% interest rate cap to mortgage loans incurred by servicemembers and their spouses.
- *Allman v. American Airlines, Inc. Pilot Retirement Benefit Program Variable Income Plan*, No. 14-cv-10138 (D. Mass.), obtained settlement of 100% actual damages on behalf of a class of pilots alleging that American Airlines allegedly violated USERRA and ERISA by making deficient pension contributions when pilots took military leave.
- *Bush v. Liberty Life Assurance Company of Boston*, No. 14-cv-01507 (N.D. Cal.), obtained settlement whereby Liberty Life agreed to return 60% of reduced long-term disability benefits to veteran-claimants and further agreed not to reduce future benefits absent state approval of revised policy language.
- *Munoz v. InGenesis STGi Partners, LLC*, No. 14-cv-1547 (S.D. Cal.), a USERRA discrimination and failure-to-reemploy case that settled for full amount of the plaintiff's lost pay and benefits plus interest and a sizable amount of liquidated damages.

Notable Employment Cases

- *Walkinshaw v. CommonSpirit Health*, No. 19-cv-03012 (D. Neb.): represents a putative class of employees who have worked as hourly-rate medical nurses alleging that the defendants violated the Fair Labor Standards Act ("the FLSA"), the Nebraska Wage and Hour Act ("the NWHA"), and the Nebraska Wage Payment and Collection Act ("the NWPCA"), by paying employees less than overtime and minimum wages for work performed while they were "on call."
- *Gutierrez v. Schmid Insulation Contractors, Inc.*, No. 07-cv-5852 (C.D. Cal.), a wage-and-hour class action alleging that the defendants failed to pay for travel time from offices to construction sites, provide meal and rest breaks, and pay overtime to a group of Spanish-speaking, immigrant workers.
- *Wynne v. McCormick & Schmick's Seafood Restaurants, Inc.*, 06-cv-03153 (N.D. Cal.), a Title VII and FEHA class action alleging race discrimination in hiring and job assignments, which resulted in a consent decree through settlement that provided for significant injunctive relief to promote equal employment opportunity.



STEPHEN TETI

Senior Associate

✉ steti@blockleviton.com

EDUCATION

- Quinnipiac University School of Law, J.D., *magna cum laude*
- Fairfield University, B.A., Political Science and French, *cum laude*

BAR ADMISSIONS

- Massachusetts
- Connecticut

COURT ADMISSIONS

- Ninth Circuit Court of Appeals
- D. Mass.
- D. Conn.
- D. Colo.
- S.D.N.Y.
- W.D.N.Y.

Stephen Teti is a senior associate at Block & Leviton LLP, and with nearly a decade of experience litigating complex securities fraud, antitrust, and consumer class actions, he serves as a lead case investigator at the Firm.

Steve has recovered tens of millions of dollars in securities fraud class actions for shareholders. Steve's securities successes include *City of Birmingham Ret. & Relief Sys. v. MetLife, Inc.*, Case No. CV-2012-902101 (Ala. Cir. Ct.) (\$9.75 million settlement); *Rosenberg v. Cliffs Natural Resources, Inc.*, No. 2014 CV 828140 (Ohio Ct. Com. Pleas) (\$10 million settlement); and *Niitsoo v. Alpha Natural Resources, Inc.*, No. AD-303-2014 (Pa. Ct. Com. Pleas) (\$3.6 million settlement).

Steve has also represented banks and financial institutions in high-profile data security breach class actions nationwide. Representative matters include *In re Home Depot Inc. Customer Data Security Breach Litig.*, 14-md-2583 (N.D. Ga.) (\$27.25 million settlement; served on Plaintiffs' Coordination & Discovery Committee); *In re Target Corp. Customer Data Security Breach Litig.*, 14-md-2522 (D. Minn.) (\$59 million settlement); and *WinSouth Credit Union v. Mapco Express, Inc.*, No. 14-cv-1573 (M.D. Tenn.) (largest dollar-per-card settlement obtained on behalf of financial institutions involving data breach of credit and debit card information).

Steve's antitrust matters include *In re Thalomid & Revlimid Antitrust Litig.*, No. 14-cv-6997 (D.N.J.) (\$34 million settlement preliminarily approved), a class action alleging that the defendant's extensive anticompetitive conduct excluded generic alternatives for Thalomid and Revlimid, two drugs used to treat rare but deadly conditions, from entering the market, causing end payors to incur millions of dollars in overcharges. Steve is also a member of the team representing direct purchasers in *In re Broiler Chicken Antitrust Litig.*, No. 16-cv-8637 (N.D. Ill.), a class action alleging that broiler chicken producers engaged in a price fixing conspiracy. Steve is also a member of the team representing direct purchasers in *In re Pork Antitrust Litig.*, No. 18-cv-1776 (D. Minn.), a class action alleging that pork producers engaged in a price fixing conspiracy.

Steve joined Block & Leviton after practicing securities, derivative, and consumer class litigation for six years at a nationally-recognized plaintiffs' law firm in Connecticut. He previously clerked for the judges of the Connecticut Superior Court. During law school, Steve served as Publications Editor of the Quinnipiac Law Review, a judicial extern to the Honorable Stefan R. Underhill in the United States District Court for the District of Connecticut, an intern for the State of Connecticut Office of the Attorney General, and as a legislative extern to the Judiciary Committee of the Connecticut General Assembly.

Additional Notable Cases

- Obtained a significant decision for consumers in *Friedman v. Maspeth Fed. Loan & Savings Ass'n*, 30 F. Supp. 3d 183 (E.D.N.Y. 2014). In a case before the Honorable Jack B. Weinstein, raising “issues of first impression on the reach of the Real Estate Settlement Procedures Act,” Steve defeated a motion to dismiss, and later obtained a settlement that reimbursed consumers for 100% of their losses in the case which involved wrongful imposition of late charges on timely received mortgage payments;
- Lead associate in several successful appeals, including *Cottrell v. Duke*, 737 F. 3d 1238 (8th Cir. 2013); *Westmoreland Cty. Emp. Ret. Sys. v. Parkinson*, 737 F.3d 719 (7th Cir. 2013); and *Chavez v. Nestlé USA, Inc.*, 511 Fed. Appx. 606 (9th Cir. 2013);
- Achieved several favorable decisions regarding the improper removal of class actions under the Securities Act of 1933, including *Niitsoo v. Alpha Natural Resources, Inc.*, 902 F. Supp. 2d 797 (S.D. W. Va. 2012); *Rosenberg v. Cliffs Natural Resources, Inc.*, 2015 WL 1534033 (N.D. Ohio Mar. 25, 2015); and *Rajasekaran v. CytRx Corp.*, 2014 WL 4330787 (C.D. Cal. Aug. 21, 2014).



NATE SILVER

Associate

✉ nate@blockleviton.com

EDUCATION

- Boston College Law School, J.D. '15, *magna cum laude*
- Suffolk University, B.A., History '11, *magna cum laude*

BAR ADMISSIONS

- Massachusetts
- New York

COURT ADMISSIONS

- First Circuit Court of Appeals
- D. Mass

PUBLICATIONS

- Contributing author to Massachusetts Evidence: A Courtroom Reference (MCLE)

Nate Silver is an associate in Block & Leviton's securities litigation practice.

Nate is a member of the teams actively litigating on behalf of investors against *Immunomedics, Inc.* (D. N.J.) related to the Company's misrepresentations about FDA inspections of its drug manufacturing facilities; *Lyft, Inc.* (N.D. Cal.) arising out of its initial public offering; *Mammoth Energy Services, Inc.* (W.D. Okla.) arising from the indictment of the CEO of the Company's most significant division over bribery in Puerto Rico following Hurricane Maria; *Synchronoss Technologies* (D. N.J.) related to the Company's sale of a profitable business division; and *Trevena, Inc.* (E.D. Pa.) related to the Company's public statements concerning their interactions with the FDA.

Recently, Nate was a member of the litigation teams that recovered \$32.8 million from Snap, Inc. in litigation arising from its initial public offering (Cal. Sup. Ct.) and \$25 million from the Tezos Foundation (N.D. Cal.), in litigation arising from the cryptocurrency's initial coin offering. Nate was also a member of the litigation teams that obtained recoveries on behalf of shareholders in *EZCORP, Inc.* (W.D. Tex.) and *Globalscape, Inc.* (W.D. Tex.).

Prior to joining Block & Leviton in 2018, Nate was an associate at one of Massachusetts' premier criminal defense firms – J. W. Carney, Jr. & Associates – where he represented defendants in criminal trials and appeals in state and federal court. There, Nate gained valuable litigation and trial experience as the lead associate on a broad range of matters, including securities fraud, visa fraud, murder, and drug distribution cases.

Nate also represented indigent individuals accused of crimes in state court as a member of Middlesex Defense Attorneys, Inc., a non-profit organization that administers criminal defense services to those who cannot afford legal services.

While attending law school, Nate served as a senior editor for the Boston College Law Review, interned at the New England Innocence Project, and was a summer associate at Day Pitney LLP.

COLIN M. DOWNES

Associate

 colin@blockleviton.com

EDUCATION

- University of Virginia School of Law, J.D
- University of Massachusetts, B.A.,
Philosophy

BAR ADMISSIONS

- District of Columbia
- New York

COURT ADMISSIONS

- D. D.C.
- S.D.N.Y
- First Circuit Court of Appeals

PUBLICATIONS

- *Appointing Chapter 11 Trustees in Reorganizations of Religious Institutions*, 101 Va. L. Rev. 2225 (2015)

Colin M. Downes is an associate with the firm who focuses his practice on defending the rights and benefits of workers and retirees. His experience includes cases brought under the Employee Retirement Income Security Act (ERISA) involving employee stock ownership plans, excessive 401k and 403b fees, pension plan underfunding, and the ERISA obligations of religiously affiliated nonprofits. He has also provided pro bono representation to indigent clients in contested asylum and child custody matters.

Prior to joining the firm, Colin practiced as an associate with Groom Law Group (an employer-side employment benefits boutique) and with the international law firm Clifford Chance. Colin served on the editorial board of the Virginia Law Review while in law school.



AMANDA R. CRAWFORD

Associate

✉ amanda@blockleviton.com

EDUCATION

- University of North Carolina School of Law, J.D.
- Eugene Gressman and Daniel H. Pollitt Oral Advocacy Award for Best Overall Argument
- Certificate of Merit for highest grade in Legal Research, Reasoning, Writing, and Advocacy
- California State University, Fullerton, Criminal Justice, *cum laude*

BAR ADMISSIONS

- Massachusetts

COURT ADMISSIONS

- D. Mass

Amanda Crawford is an associate in Block & Leviton LLP's shareholder litigation practice.

Amanda is proficient in all stages of litigation. She has experience conducting pre-suit investigation of state and federal law violations, drafting initial pleadings, performing legal research and analyses, preparing for depositions, drafting case-dispositive motions, and participating in mediation. Amanda has also overseen large-scale discovery efforts, including developing case-specific strategies in complex, multi-million document cases.

She was a member of the litigation team in *In re Handy & Harman, Ltd. Stockholders Litigation*, a securities class action that obtained a \$30 million settlement—a 33% premium to the deal price and one of the largest sell-side premiums achieved for stockholders in Delaware. She was also part of the litigation team that secured a \$12.5 million recovery for investors in *In re Tangoe, Inc. Stockholders Litigation*. Most recently, she was on the team of attorneys who obtained a \$42.5 million recovery in *In re Pilgrim's Pride Corporation Derivative Litigation*.

Before joining Block & Leviton, Amanda gained practical corporate work experience in finance and employment law. During law school, she served as Executive Editor of the North Carolina Journal of International Law, Co-chair of the Craven Moot Court Board, a research assistant to the Assistant Dean of the Writing and Learning Resources at UNC School of Law, a law clerk at TIAA, and a summer associate at Mayer Brown LLP.



LAUREN GODLES MILGROOM

Associate

✉ lauren@blockleviton.com

EDUCATION

- Harvard Law School, J.D., *cum laude*
- Tufts University, B.A., *summa cum laude*

BAR ADMISSIONS

- Massachusetts

Lauren is an associate in Block & Leviton's shareholder litigation practice.

Before joining Block & Leviton, Lauren served as a judicial law clerk for the Honorable Denise Casper on the United States District Court of Massachusetts. Immediately prior to her clerkship, she was a litigation associate at Foley Hoag in Boston, where she primarily worked on *Doe v. Trump*, a federal challenge to the transgender military ban. In law school, Lauren served as the President of the Harvard Mediation Program and Executive Editor of the Harvard Latino Law Review. She was also a national competitor with the Harvard Mock Trial Association.



JEFFREY GRAY

Associate

✉ jgray@blockleviton.com

EDUCATION

- Suffolk University Law School, J.D.
- Sawyer Business School, Suffolk University, M.B.A.
- Connecticut College, B.A., Economics

BAR ADMISSIONS

- Massachusetts

Jeff Gray joined Block & Leviton LLP as an Associate in 2016. His practice focuses on complex securities and antitrust litigation. Jeff is currently a member of the litigation team representing a putative class of Charter Communications shareholders, challenging an unfair share issuance to Charter's controlling shareholders, in connection with Charter's purchase of Time Warner Cable and Bright House Networks. See *Sciabacucchi v. Liberty Broadband Corporation*, No. CV 11418-VCG, 2017 WL 2352152, at *3 (Del. Ch. May 31, 2017). Jeff is a member of the litigation team in *Karth v. Keryx Biopharmaceuticals, Inc., et al.* (D. Mass.), a federal securities class action involving misrepresentations about the risks of relying on a single contract manufacturer.

Jeff is a member of the litigation team representing the City of Providence in an antitrust class action against Celgene Corp. for unlawfully excluding generic competition for vital cancer treatment drugs. See *In re Thalomid & Revlimid Antitrust Litig.*, 14-cv-6997 (D.N.J.) (\$34 million settlement preliminarily approved).

Jeff was a member of the litigation team that represented shareholders in *In re McKesson Corporation Derivative Litigation*, 4:17-cv-01850-CW (N.D.Cal.) (settled for \$175M, plus significant corporate governance reforms). Jeff was a member of the litigation team in *In re Pilgrim's Pride Corporation Derivative Litigation*, Consol. C.A. No. 2018-0058-JTL (Del. Ch.), a derivative action challenging a conflicted transaction between Pilgrim's Pride and its majority stockholder, JBS (settled for \$42.5M).

Earlier in his career, Jeff was a management consultant at a financial services firm in the Boston area and, prior to that, was a project manager in commercial lending at FleetBoston Financial. While in law school, he completed internships with MFS and with The Nature Conservancy and was a law clerk at CT Corporation System.

DAVID DORFMAN

Associate

 david@blockleviton.com

David Dorfman is an associate at Block & Leviton, focusing his practice on securities litigation.

Prior to joining Block & Leviton, David worked as an equity research analyst for a leading investment bank covering the consumer sector. Earlier in his career, he was an associate at one of the country's top securities law firms, specializing in corporate finance and investment management.

EDUCATION

- Harvard Law School, J.D.
- New York University, M.B.A

BAR ADMISSIONS

- New York

*Not admitted in Massachusetts. Practicing under the supervision of firm principals.

MICHAEL GAINES

Associate

 michael@blockleviton.com

EDUCATION

- Tulane University School of Law, J.D., magna cum laude
- Wesleyan University, B.A., History

BAR ADMISSIONS

- Massachusetts

PUBLICATIONS

- Adrift at Sea in Search of the Proper Scope of the Penhallow Rule: D'Amico Dry Ltd. v. Primera Maritime (Hellas) Ltd., 39 Tul. Mar. L.J. 749 (2015)

Michael Gaines is an associate in Block & Leviton's securities litigation practice.

Before joining Block & Leviton, Michael served as a judicial law clerk for the Honorable Louis Guirola, Jr. (2018-2020) and the Honorable John C. Gargiulo (2016-2018), both in the United States District Court for the Southern District of Mississippi. During law school, Michael was elected Senior Managing Editor of the Tulane Maritime Law Journal, served as Invitational Brief Grading Chair of the Mood Court Board, and served as a Senior Fellow for the international LLM student Legal Research and Writing course. He was also a summer associate at Proskauer Rose LLP.



MAE OBERSTE

Associate

 mae@blockleviton.com

EDUCATION

- Seattle University School of Law (J.D., *summa cum laude*)
- Syntra Antwerpen & Vlaams-Brabant (B.A.)
- University of Missouri (B.S., *magna cum laude*)

BAR ADMISSIONS

- Delaware
- Washington State

COURT ADMISSIONS

- United States District Court for the District of Delaware

DISTINCTIONS

- Research and Technical Editor, *Seattle University Law Review*
- Lead Associate Editor, *American Indian Law Journal*

MEMBERSHIPS AND AFFILIATIONS

- American Bar Association
- Richard S. Rodney Inn of Court

Mae is an associate in Block & Leviton's Wilmington, Delaware office. Her practice focuses on the representation of stockholders in corporate governance and breach of fiduciary duty matters.

After receiving her law degree, Mae served as a judicial clerk for then-Vice Chancellor Tamika R. Montgomery-Reeves of the Delaware Court of Chancery (now Justice Montgomery-Reeves of the Delaware Supreme Court). From her clerkship experience, she gained invaluable insights into the Court's perspective on both the legal and practical aspects of litigation.

Mae also gained significant experience with two of Delaware's premier defense firms—Young Conaway Stargatt & Taylor, LLP and Wilson Sonsini Goodrich & Rosati. During those experiences, she represented numerous Fortune 500 companies, financial services companies, and multinational conglomerates. She was also an essential part of numerous litigations, including *In re WeWork Litigation* and derivative litigation involving DISH Network Corporation.

Mae graduated *summa cum laude* from the Seattle University School of Law, where she served as an editor for the *Seattle University Law Review*. During law school, Mae immersed herself in Delaware corporate law by leading a course comparing Delaware corporate law to that of Washington and other states.

Contact Us

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www.blockleviton.com

Exhibit 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

IN RE MAMMOTH ENERGY
SERVICES, INC. SECURITIES
LITIGATION

Case No.: CIV-19-522-J

**DECLARATION OF C. MICHAEL COPELAND IN SUPPORT OF LEAD
COUNSEL’S MOTION FOR AN AWARD OF ATTORNEYS’ FEES AND
REIMBURSEMENT OF LITIGATION EXPENSES FILED ON BEHALF OF
JONES, GOTCHER & BOGAN, P.C.**

I, C. Michael Copeland, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am admitted to practice law before all courts of Oklahoma. I am a partner of the law firm Jones, Gotcher & Bogan, P.C., Local Counsel for Lead Plaintiffs Daniel, Vincent, and Sharon Furia (“Lead Plaintiffs”), and for the Class in the above-captioned action (“Lawsuit”). I respectfully submit this declaration in support of Lead Counsel’s Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses.

2. Attached as Exhibit “A” is a true and correct copy of Jones, Gotcher & Bogan, P.C.’s firm resume.

3. I have personally participated in, overseen, and monitored the prosecution of this Action, and have otherwise been kept informed of developments in this Action by attorneys working with me and under my supervision. Thus, if called upon, I can testify to the matters set forth herein.

4. Attorneys and Professional Support Staff at my firm billed the following aggregate hours to this matter as of the date of filing, with fees applied at the firm’s current billing rates:

Biller	Hourly Rate	Hours	Lodestar
Copeland, C. Michael (P)	\$500	101.20	\$50,600
Brown, Jack L. (P)	\$335	4	\$1,340
Colvin, Patrick (P)	\$350	12.50	\$4,375
Smith, Morgan T. (A)	\$250	3.5	875
Total		121.20	\$57,190

P = Partner; A = Associate.

5. The attorney listed above kept daily time records, and all time so recorded can be produced if requested by this Court.

6. Local Counsel for Lead Plaintiffs seeks payment of the following expenses and charges directly related to the prosecution of this Action (which have been summarized in categories):

Category of Expenses	Total Expenditure
Filing Fees	\$150.00
eDiscovery Hosting/Processing Fees	-
Expert Fees	-
Meals	-
Mediation Fees	-
Printing, Mailing and Shipping	\$219.20
Legal Research Fees	\$44.51
Service of Process Fees	-
Travel	-
Total Expenses	\$413.71

7. The hours expended by Local Counsel for Lead Plaintiffs were reasonable and necessary in accordance with the standards in the legal community for similar work under similar circumstances.

8. The hourly rates utilized by Local Counsel for Lead Plaintiffs are reasonable for services of a similar nature under the facts and circumstances of the Lawsuit.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 12th day of August 2021, at Phoenix, Arizona.

Respectfully submitted,

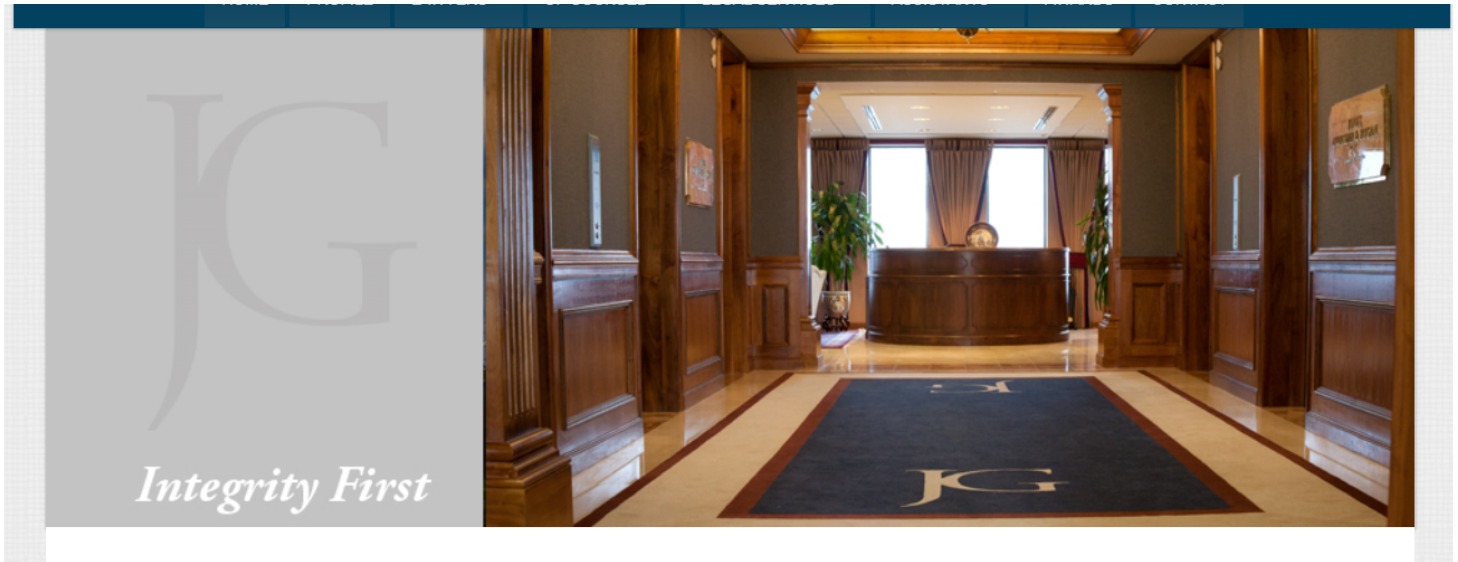
/s/ C. Michael Copeland
C. Michael Copeland

JONES GOTCHER

Attorneys and Counselors



INTEGRITY FIRST.



From the time we opened our doors, the partners at Jones Gotcher have insisted on practicing law with integrity. More than fifty years later, we still insist on high standards.

A mid-sized Tulsa firm, we're large enough to accept any assignment – but never at the expense of personal attention. We treat our clients with the same respect that we have for the law.

Jones Gotcher, a 30-person firm, bears the distinct honor of being listed in the Bar Register of Preeminent Lawyers and has fostered three State Bar Presidents, five Tulsa County Bar Association Presidents, and an American Bar Association Board of Governors member.

Firm Philosophy.

Our partners, associates and paralegals feel strongly that practicing law is a privilege. We view our profession as a lifelong commitment to serving others – and that our clients deserve only our most steadfast attention.

Recruitment: Lawyers join the firm after participating in a recruiting process which stresses integrity, academic distinction, leadership and a demonstrated ability to interact socially.

Continuing Education: The firm believes that the law is a profession, and, as such, a lifelong educational process. All lawyers participate in a continuing training and development program which includes attendance yearly at nationally recognized continuing education programs. Annually, several of the firm's shareholders and associates speak at statewide continuing education programs.

Community: Jones Gotcher recognizes that involvement in professional associations in the community is an important aspect of professionalism. That involvement allows the development of valuable relationships which aid in advising and representing clients toward desired results, in addition to giving to and benefitting the community. Our attorneys know that service isn't just reserved for clients – it's also for our city.

As you view the attorneys' biographical articles, you will see the extensive involvement by Jones Gotcher's shareholders and associates in professional associations. Further, you will see that the members of the firm have been particularly active in professional, academic and civic affairs.

Professional Involvement: Over the years, Jones Gotcher has produced three State Bar Association Presidents, five Tulsa County Bar Association Presidents and Governors of the American Bar Association. Many firm members and past members have served numerous years as:

- Lawyer-elected members of the Oklahoma Judicial Nominating Commission
- First lawyer-chairman of the Commission
- Elected fellowships in the American College of Trial Lawyers, American College of Real Estate Lawyers and the American College of Probate Counsel
- Masters, barristers or pupils in the prestigious American Inns of Court
- National Director of the American Judicature Society
- Directors and leaders of civic organizations such as the Tulsa Philharmonic, Hillcrest Hospital, the Tulsa Ballet, Tulsa Zoo Friends, Tulsa Boys Home, Salvation Army, Downtown Tulsa Unlimited, Philbrook Masters Society ... and others

The Client's Money: We believe our clients are best served by our maintaining a balance of agility and depth. We are committed to assigning the appropriate number of lawyers to staff to effectively handle any case. At the same time, we're equally committed to giving our clients our undivided attention. Jones Gotcher encourages the use of certified legal assistants (paralegals), when appropriate, as a cost-effective way to address a client's needs. Paralegals are trained, experienced members of the firm's professional staff who work under the direct supervision of a lawyer. By using their skills in document review, routine governmental filings, witness interviews and certain document preparation, the client receives quality service at a rate substantially less than that charged by a lawyer.

Lastly, we are pleased to assure our clients that their banking, debit or credit card information is secure when transacting business with Jones Gotcher.

Office Mechanics: Our support staff is equipped with state-of-the-art electronic equipment to speed document preparation and reduce overall time spent in transactional and briefing work. Our support staff has combined experience of more than 200 years in the field of legal support. Jones Gotcher provides overall resources necessary to give excellent legal representation to its clients on both a situational and a day-to-day basis. Whether it be planning, drafting documents, licensing, negotiating or litigating, Jones Gotcher's interdisciplinary approach is designed for clients to have all their legal needs served by one firm.



FOCUS.

While Jones Gotcher maintains a general practice law firm, we believe that our emphasis in numerous practice areas has established diversity - not dilution.

Areas Of Practice.

Banking and Financial

Bankruptcy

Business Law

Construction

Corporate Law

Education

Employment Law

Energy

Environmental

Family Law

Governmental

Insurance Defense

Litigation

All Types of Complex Litigation Class Action

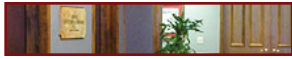
Real Estate

Trademark and Copyright

Trusts and Estates



*Each lawyer at Jones Gotcher
is dedicated to professionalism,
integrity, and service.*



RESULTS.

As a brief example of the wide array of matters handled by Jones Gotcher, consider the following results:

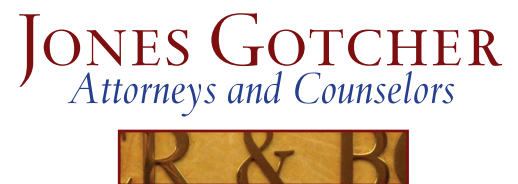
Business, Banking & Real Estate Transactions

- Handled all legal matters in development of \$25 million premier Tulsa shopping center.
- Represented Native American tribe in acquisition of controlling interest of publicly traded company.
- Represented buyers and sellers in numerous corporate mergers and acquisitions.
- Represented investment group in its \$13 million acquisition of premier commercial property.
- In one year alone, handled securitization of commercial loans in excess of \$50 million.
- Represented various local companies in the acquisition, merger and sale of businesses in excess of \$10 million in one year.
- Negotiate and handle over \$50 million of sales contracts each year for national and international manufacturing and engineering companies.

Litigation & Arbitration

- Served as lead counsel for Major League Baseball Players' Association in landmark litigation involving copyright infringement issues. See *Cardtoons v. MLPBA*
- Successfully defeated class action effort in major airline labor litigation.
- Successfully arbitrated for our lessee-client disputes arising from a patent and technology license wherein licensor sought damages in excess of \$14 million.
- Successfully arbitrated a construction dispute for our owner-client concerning foundation defects which required remedial expenditures in excess of \$1.5 million, recovering an award for the full amount of remedial expense.
- Successfully defended to jury verdict products liability claims against client in the business of renting and selling construction equipment wherein plaintiffs sought damages in excess of \$1 million.

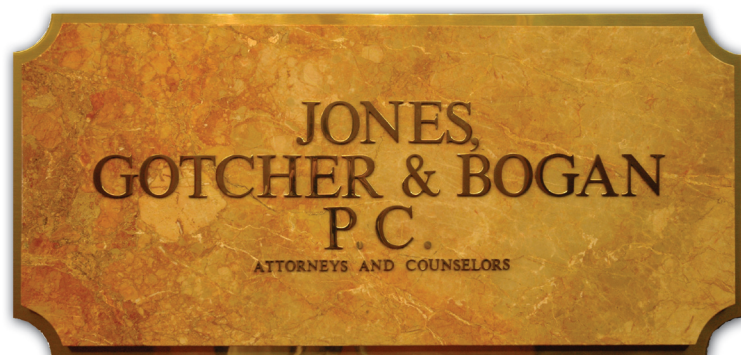




RESULTS.

- Successfully defended (dismissal affirmed on appeal) class action claims seeking damages in excess of \$50 million against insurance company client for alleged fraud in sale of group life insurance plan.
- Successfully defended (claims dismissed under settlement agreement requiring no payment by client) securities fraud claims seeking indemnity against claims in excess of \$75 million from investment advisor client.
- Represented public utility in \$50 million suit over defects in construction of coal fired power plant.
- Achieved numerous defense verdicts / directed verdicts in EEOC cases.
- Successfully prosecuted multi-million dollar commercial arbitration case on behalf of higher education institution against architects, contractors, and inspectors involving defective construction of campus facility.
- Successfully defended \$100 million antitrust claim against major media network.
- Representation of major real estate brokerage firms in Oklahoma, Texas and New Mexico in professional negligence cases.
- Successfully defended numerous multi-million dollar commercial arbitration cases.
- Conducted international discovery in federal court litigation involving \$55 million land and building acquisition.

Jones Gotcher combines its philosophies of Integrity, Personal Attention and Service to achieve Results for the firm's clientele.



Jack L. Brown

Jack has been practicing law for over twenty-five years. Mr. Brown's practice areas are litigation, including complex and class action litigation, transactional law, estate planning and disputed estates.

He has long been active in the Tulsa County Bar Association, having served as a board member for 12 years. The association awarded him for Outstanding Service to the Bar in 1989 and as Tulsa's Outstanding Young Lawyer in 1990. He served on the Board of Governors for the American Bar Association from 1993-1996, and since then has remained active in numerous positions. He served on the Board of Governors of the Oklahoma Bar Association from 2008 – 2010 and served as Chair of the ABA's Judicial Division. He is also an Oklahoma Fellow of the American Bar Foundation.

Mr. Brown has held leadership positions in numerous community organizations. He is a two-time President of Legal Aid Services of Oklahoma, serves on the board of the Oklahoma Bar Foundation, and is a former chairman of the Tulsa Metropolitan Utility Authority.

He is a member of all Oklahoma Federal District Courts, the Tenth Circuit U.S. Court of Appeals and the U.S. Supreme Court. Mr. Brown received his bachelor's degree from the University of Oklahoma and his law degree from the University of Tulsa.

John W. Cannon

John is a shareholder and director to Jones Gotcher, has been practicing law for almost twenty years. He received his Bachelor's Degree in Finance from Oral Roberts University, magna cum laude, in 1989, and his Law Degree from the University of Tulsa, with Honors, in 1993.

He was admitted to practice law in 1993 and was admitted as a member of the U.S. District Courts for the Northern, Western and Eastern Districts and Bankruptcy Districts of Oklahoma, including the Tenth Circuit U.S. Court of Appeals. Mr. Cannon is also licensed to practice in the state of New Mexico.

Mr. Cannon has also practiced in various arbitration and mediation forums domestically and internationally through the American Arbitration Association and the International Centre for Dispute Resolution.

Mr. Cannon's practice centers on the area of corporate law with an emphasis in corporate compliance, real estate, complex commercial litigation and arbitration, bankruptcy and reorganization, mergers and acquisitions, employment, environmental, international commerce, antitrust, and wills, trusts and probate. Mr. Cannon is an AV-rated lawyer by Martindale-Hubbell, the highest rating offered by that organization, based upon evaluation of attorney peers and judges. Mr. Cannon was recently named one of Tulsa's Top Lawyers in the Tulsa People magazine for 2011.

Mr. Cannon is also a licensed real estate broker with the Oklahoma Real Estate Commission. He has participated and held various leadership positions in community organizations and is a current member of the Oklahoma Bar Association, Tulsa County Bar Association, American Bar Association and the American Bankruptcy Institute. He has served as past Chairman for various years of the Corporate Counsel Section of the Tulsa County Bar Association and the Bixby Chamber of Commerce. He has also served as Adjunct Professor to the University of Tulsa College of Law teaching the Uniform Commercial Code, Agency Partnership and Legal Ethics courses. Mr. Cannon also frequents as a speaker for the National Business Institute on topics covering business entities, bankruptcy and real estate.

Patrick G. Colvin

Mr. Colvin joined Jones, Gotcher & Bogan as a law clerk in May 2012, as an associate attorney in September 2013 and was promoted to shareholder of the Firm in September 2018.

Mr. Colvin received a Bachelor of Arts in Biology *summa cum laude* from the University of St. Thomas and a Juris Doctor *with Highest Honors* from the University of Oklahoma. During his tenure at the University of Oklahoma, Mr. Colvin attended the University of Oxford, Brasenose College, United Kingdom and was named a member of the Order of the Coif.

Mr. Colvin is admitted to the United States District Courts for the Northern, Eastern, and Western Districts of Oklahoma as well as the United States Court of Appeals for the Tenth Circuit. Since 2016, Mr. Colvin has been selected as a Super Lawyer – Rising Stars.

C. Michael Copeland

Michael has been with the firm since being admitted to the Oklahoma Bar in 1988, and was named a partner in 1995. Mr. Copeland concentrates in a number of practice areas, including complex and class action litigation, commercial and general civil litigation, securities litigation, construction, products liability, and intellectual property matters.

He received a Bachelor's Degree of Business Administration in Finance in 1985 and a Law Degree with Honors from the University of Oklahoma School of Law in 1988 where he was also a member of the Oklahoma Law Review. Mr. Copeland is a member of the U.S. District Courts for the Northern, Western and Eastern Districts of Oklahoma, the Tenth Circuit U.S. Court of Appeals and the U.S. Supreme Court. He is also a member of the American Bar Association, Oklahoma Bar Association and Tulsa County Bar Association.

Mr. Copeland is an AV rated lawyer by Martindale-Hubbell, the organization's highest rating. He has tried cases in many county district courts and all federal courts within Oklahoma. Mr. Copeland has tried cases ranging from commercial disputes to complex products liability defense. Mr. Copeland also has represented clients in arbitration proceedings before the American Arbitration Association including construction matters, patent license matters and other commercial disputes. Additionally, Mr. Copeland has represented clients in merger and acquisition transactions including representation of the seller to a publicly held corporation as well as buyers and sellers in private transactions.

Maren Minnaert Lively

Maren Minnaert Lively has extensive experience in the areas of family law, probate and estate planning, guardianships, general litigation, and appellate work. Originally from South Dakota, Ms. Lively earned her law degree from Georgetown University Law Center in Washington, DC. While in law school, Ms. Lively clerked for the United States Department of Justice and served as the Senior Articles and Notes Editor for The Georgetown Journal of Gender and the Law. Prior to law school, Ms. Lively obtained her Bachelor of Science degree in economics and political science from Oklahoma State University, where she graduated with highest honors and was named a 2001 Top Ten University Graduate, Top Female Graduate from the College of Arts and Sciences, and a Truman Scholar National Finalist.

Throughout her legal career, Ms. Lively has been actively involved in the Oklahoma Bar Association and has served two terms on the Board of Directors for the Tulsa County Bar Association. She has been published in the Oklahoma Bar Journal and has served as an adjunct professor at University of Tulsa College of Law, where she taught family law. Maren is peer-review rated “AV Preeminent” by Martindale-Hubbell, the organization’s highest rating, and has been named as one of Oklahoma SuperLawyers Rising Stars for several years running. She also has been named an Oklahoma SuperLawyer. Recently, Ms. Lively was named to the Top 10 under 40 by the National Academy of Family Law Attorneys, and for several years was recognized as America's Most Honored Professionals - Top 1%.

Ms. Lively has been licensed to practice law by the Oklahoma Supreme Court since 2014. She is also admitted to practice before the U.S. Supreme Court and the U.S. District Courts for the Northern and Eastern Districts of Oklahoma. Ms. Lively represents clients in Tulsa County and in all surrounding areas, including Creek, Osage, Rogers, and Wagoner Counties.

Thomas L. Vogt

Mr. Vogt has practiced law with Jones Gotcher since 1984 and was named a partner in 1989. His law practice includes real estate and commercial transactions, business and real estate litigation, labor and employment practices, construction law and education law. Mr. Vogt's experience in litigation disputes provides him with insights on how to best structure and document transactions to either avoid litigation or to put his clients in a winning position. Over the years, he has represented a variety of clients including Tulsa Community College, Arena Football League, Grand River Dam Authority, Copperhead Pipeline and Construction, The Salvation Army, Sinclair Tulsa Refinery, Metro Builders Supply, Glover Chevrolet and a number of commercial real estate property owners, developers and lenders.

In 2006, Mr. Vogt was named to the Tulsa Business Journal's legal "dream team" of thirty Tulsa attorneys recommended in an anonymous survey of their peers, judges and Tulsa executives. In 2008, Mr. Vogt was elected by his peers as an Oklahoma Super Lawyer, a privilege limited to only five percent of all lawyers in Oklahoma. Mr. Vogt has also been named to Best Lawyers in America and has twice been honored as the Lawyer of the Year in the area of Litigation – Real Estate. Recently, Mr. Vogt was included in America's Top 100 Attorneys.

Mr. Vogt is admitted to the Federal District Courts for the Northern, Eastern, and Western Districts of Oklahoma. He is also admitted to, and has argued several cases before, the Tenth Circuit U.S. Court of Appeals. Mr. Vogt is a member of the National Association of College and University Attorneys, the American Bar Association, Oklahoma Bar Association and Tulsa County Bar Association.

A graduate of the University of Oklahoma, Mr. Vogt received a Bachelor of Business Administration, with Distinction, in 1981. Mr. Vogt received his Juris Doctor with Highest Honors from the University of Oklahoma in 1984 and was named a member of the Order of the Coif. He also attended the University of Oxford, Queens College, in 1982 as part of his law school curriculum.

Active in the Tulsa community, Mr. Vogt has been on the board of directors of the Tulsa Boys Home since 1994 and served on its Executive Committee for more than eight years. He has also served on the boards of Tulsa Zoo Friends and Foundation for Tulsa Schools, and on the long-range planning committee for Union Public Schools.

James E. Weger

Mr. Weger has been practicing law since 1982 with Jones Gotcher. He attended the University of Oklahoma, where he received his bachelor's degree in 1979 and his law degree in 1982. He also attended the University of Oxford, Queens College, in 1980 as part of his law school curriculum. He has served as president and managing partner of Jones Gotcher since 1994.

Mr. Weger's current legal practice centers on complex commercial litigation in state and federal courts across the country. He has represented numerous companies in all areas of commercial litigation, including commercial real estate, EEOC defense, trademark infringement, environmental, securities, antitrust, and defense of professionals in E&O claims. He also represents clients in the areas of radio and television, banking, public educational institutions, residential and commercial construction/development, real estate brokerage companies, insurance companies, and several companies involved in high-tech development.

He has been licensed by the Oklahoma Supreme Court since 1982. He is a member of the U.S. District Courts for the Northern, Western, and Eastern Districts of Oklahoma, the Tenth Circuit U.S. Court of Appeals and the U.S. Supreme Court. Mr. Weger is an AV-Rated lawyer by Martindale-Hubbell, which is the highest rating offered by that organization. He also serves as an Adjunct Settlement Judge for the United States District Court for the Northern District of Oklahoma since 1995.

Mr. Weger has held leadership positions for various community charitable organizations, including the Tulsa Metro Chamber of Commerce, Theatre Arts, Philbrook Museum of Art, Tulsa Opera, United Way, the Center for Physically Limited, and President of the Summit Club.

Exhibit 4

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

IN RE MAMMOTH ENERGY
SERVICES, INC. SECURITIES
LITIGATION

Case No. CIV-19-522-J

CLASS ACTION

**DECLARATION OF DANIEL FURIA IN SUPPORT OF: (I) LEAD PLAINTIFFS’
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN
OF ALLOCATION AND CERTIFICATION OF SETTLEMENT CLASS FOR
SETTLEMENT PURPOSES ONLY; AND (II) LEAD COUNSEL’S MOTION FOR AN
AWARD OF ATTORNEYS’ FEES AND REIMBURSEMENT OF LITIGATION
EXPENSES**

I, Daniel Furia, hereby declare as follows:

1. I am one of the Court-appointed Lead Plaintiffs in the above-captioned securities class action (the “Action”) along with Sharon Furia and Vincent Furia (the “Furia Family”).¹ I respectfully submit this declaration in support of (i) Lead Plaintiffs’ motion for final approval of class action settlement and plan of allocation and certification of the settlement class for settlement purposes only; and (ii) Lead Counsel’s motion for an award of attorneys’ fees and reimbursement of Litigation Expenses, including approval of the Furia Family’s request to recover the reasonable costs and expenses we incurred in connection with our representation of the Settlement Class in the prosecution of this Action.

¹ Unless otherwise defined, all capitalized terms herein have the meanings set forth in the Stipulation. ECF No. 130-1.

2. I am aware of and understand the requirements and responsibilities of a representative plaintiff in a securities class action, including those set forth in the Private Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. §§ 78u-4; 77z-1. I have personal knowledge of the matters set forth in this declaration, as I have been directly involved in monitoring and overseeing the prosecution of the Action, as well as the negotiations leading to the Settlement, and I could and would testify competently to these matters.

I. THE FURIA FAMILY’S OVERSIGHT OF THE LITIGATION

3. The initial complaint in this Action was filed on June 7, 2019. ECF No. 1. Two related actions were subsequently filed on June 19, 2019, and August 6, 2019. By Order dated January 23, 2019, Judge Palk ordered that the three cases be consolidated into *In re Mammoth Energy Services, Inc.*, Case No. 5:19-cv-522-SLP. ECF No. 41.

4. The Furia Family moved for Lead Plaintiff on August 6, 2019 (ECF No. 22), and the Court appointed the Furia Family as Lead Plaintiffs on September 13, 2019. ECF No. 41.

5. In fulfillment of our responsibilities on behalf of all class members in this Action, I have worked closely with Block & Leviton LLP regarding all aspects of the litigation and resolution of this case.

6. Throughout the litigation, I received periodic status reports from Block & Leviton (most regularly from Jacob Walker) on case developments and participated in regular discussions concerning the prosecution of the Action, the strengths and risks to the claims, and potential settlement. In particular, throughout the course of this Action, I: (a) reviewed the relevant documents; (b) stayed apprised of developments in the case and made myself available to Lead Counsel; (c) provided Lead Counsel with extensive information and materials regarding my

investments in Mammoth; (d) conferred with Lead Counsel throughout the litigation and settlement process; and (f) evaluated and approved the proposed Settlement.

II. APPROVAL OF THE SETTLEMENT

7. Through my active participation, we were kept informed of the progress of the settlement negotiations in this litigation. Both before and after the mediation process presided over by former Federal District Judge Michael Burrage, I conferred with my attorneys regarding the Parties' respective positions.

8. Based on my involvement throughout the prosecution and resolution of the claims asserted in the Action and the advice of my counsel, I believe that the Settlement provides an excellent recovery for the Settlement Class, particularly in light of the risks of continued litigation. Thus, I believe that the proposed Settlement is fair, reasonable, and adequate to the Settlement Class and I strongly endorse approval of the Settlement by the Court.

9. I believe that the request for an award of attorneys' fees in the amount of 30% of the Settlement Fund is fair and reasonable in light of the work performed by counsel on behalf of the Settlement Class. I have evaluated this fee request by considering the work performed, the recovery obtained for the Settlement Class, and the risks of the Action, and have authorized this fee request for the Court's ultimate determination.


10. I further believe that the Litigation Expenses being requested for reimbursement to counsel are reasonable, and represent costs and expenses necessary for the prosecution and resolution of the claims in the Action. Based on the foregoing, and consistent with my obligation to the Settlement Class to obtain the best result at the most efficient cost, I fully support the motion for an award of attorneys' fees and reimbursement of Litigation Expenses.

11. Along with Sharon and Vincent Furia, I devoted significant time to the representation of the Settlement Class in this Action, which was time that I otherwise would have spent working or engaged on other activities and, thus, represented a cost to me. I devoted at least 25 hours in the litigation-related activities described above.

I declare under penalties of perjury of the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed on 08 / 12 / 2021 at Clifton, New Jersey.

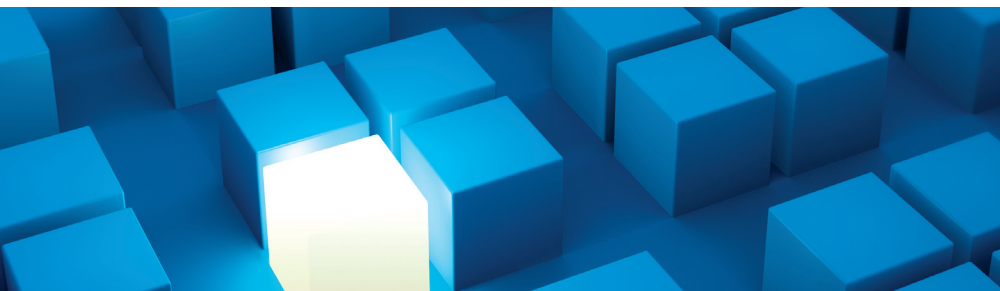
Respectfully submitted,

A handwritten signature in black ink that reads "Daniel D. Furia". The signature is written in a cursive, flowing style.

Daniel D. Furia

Exhibit 5

25 January 2021



Recent Trends in Securities Class Action Litigation: 2020 Full-Year Review

COVID-19-Related Filings Accounted for 10% of Total Filings

Filings Declined, Driven Primarily by Fewer Merger Objections Filed

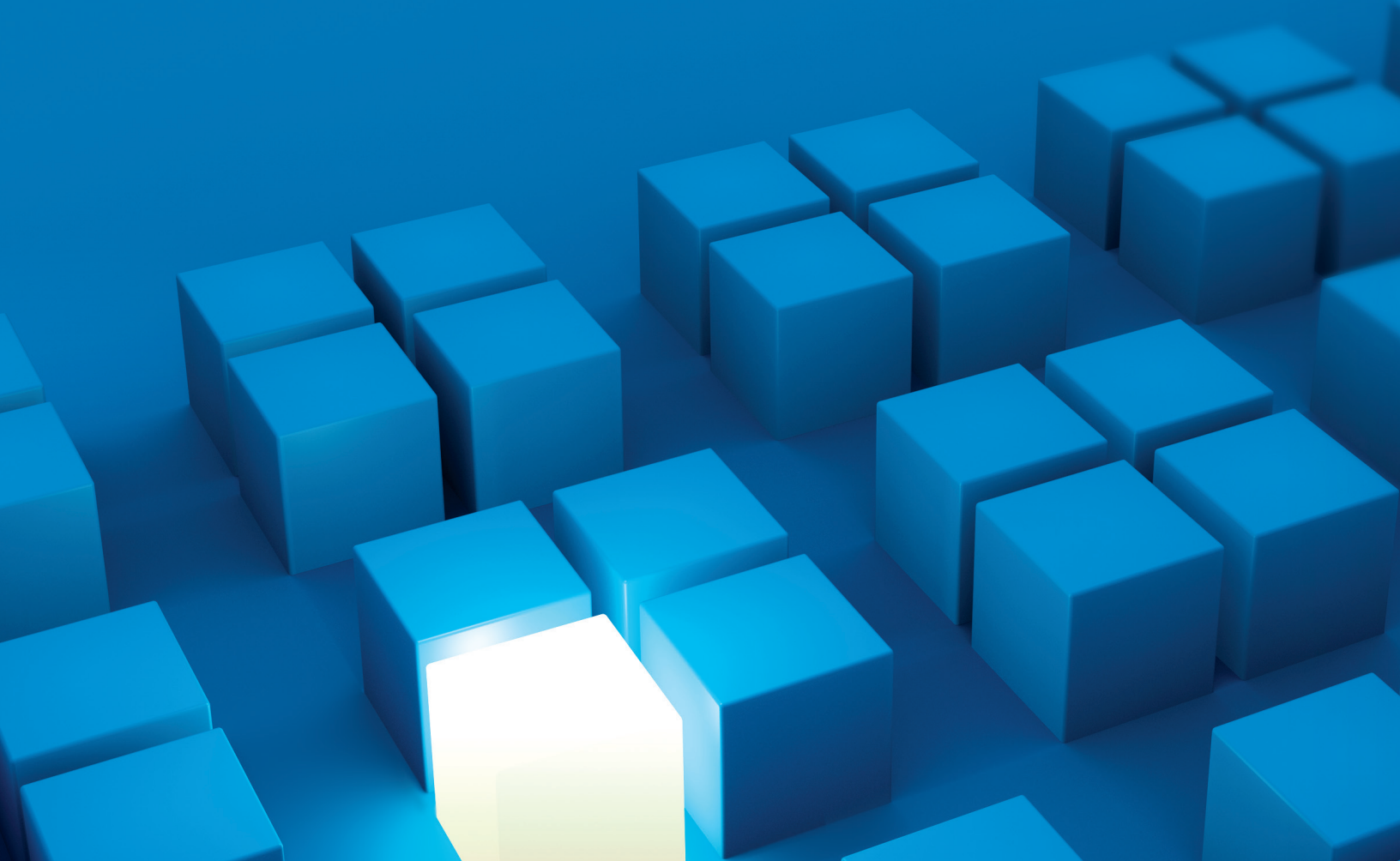
Even After Excluding “Mega” Settlements, Recent Settlement Values Remained High

By Janeen McIntosh and Svetlana Starykh

Foreword

I am excited to share NERA's Recent Trends in Securities Class Action Litigation: 2020 Full-Year Review. This year's edition builds on work carried out over many years by members of NERA's Securities and Finance Practice. In this year's report, we continue our analyses of trends in filings and resolutions and present information on new developments, including case filings related to COVID-19. Although space does not permit us to present all the analyses the authors have undertaken while working (remotely!) on this year's edition, we hope you will contact us if you want to learn more about our work in and related to securities litigation. On behalf of NERA's Securities and Finance Practice, I thank you for taking the time to review our work and hope you find it informative.

Dr. David Tabak
Managing Director

A handwritten signature in white ink, appearing to read 'D. Tabak', is positioned above a decorative graphic of blue cubes.

Recent Trends in Securities Class Action Litigation: 2020 Full-Year Review

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Even After Excluding “Mega” Settlements, Recent Settlement Values Remained High

By Janeen McIntosh and Svetlana Starykh¹

25 January 2021

Introduction and Summary

There were 326 federal securities class actions filed in 2020, a decline of 22% from 2019.² Despite this decline, filings for 2020 remained higher than pre-2017 levels, with the exception of 2001, when numerous IPO ladder cases were filed. In addition to a decline in the aggregate number of new cases filed, there was also a decline within each of the five types of cases we consider, though the decline within each category of cases was not consistent in magnitude. As a result, the percentage of new filings that were Rule 10b-5, Section 11, and/or Section 12 cases increased to 64% in 2020. As in 2019, in 2020, the electronic technology and technology services sector had the most securities class action filings. Of cases filed in 2020, 23% were filed against defendants in this sector, followed closely by defendants in the health technology and services sector, which accounted for 22% of new filings. For the first time in the five years ending December 2020, claims related to accounting issues, regulatory issues, or missed earnings guidance were not the most common allegation included in federal securities class action complaints. Instead, for cases filed in 2020, 35% of complaints included an allegation related to misled future performance. The Second, Third, and Ninth Circuits continue to represent a significant proportion of new cases filed in 2020, accounting for more than three-fourths of filings.

The emergence of the COVID-19 pandemic has led to associated filings. Since March 2020, when the first such lawsuit was filed, there have been 33 cases filed with COVID-19-related claims included in the complaint through December 2020. Nearly 25% of these COVID-19 case filings were against defendants in the health technology and health services sector—the highest for any sector—and 21% were filed against defendants in the finance sector.

In 2020, 320 cases were resolved, marking a slight increase from the total number of cases resolved in 2019, but remaining below the number of cases resolved in 2017 and 2018. Despite 2020 aggregate resolutions falling within the historical range for 2011–2019, both the number of cases settled and the number of cases dismissed reached 10-year record levels—settled cases reaching a record low and dismissed cases reaching a record high.

The average settlement value in 2020 was \$44 million, more than a 50% increase over the 2019 average of \$28 million but still below the 2018 value. Limiting to settlements under \$1 billion, the 2020 average settlement value was \$30 million, which is lower than the overall average of \$44

million after excluding the American Realty Capital Properties settlement of \$1.025 billion. Excluding the American Realty Capital Properties settlement, the median annual settlement value for 2020 was \$13 million, the highest recorded median value in the last 10 years.

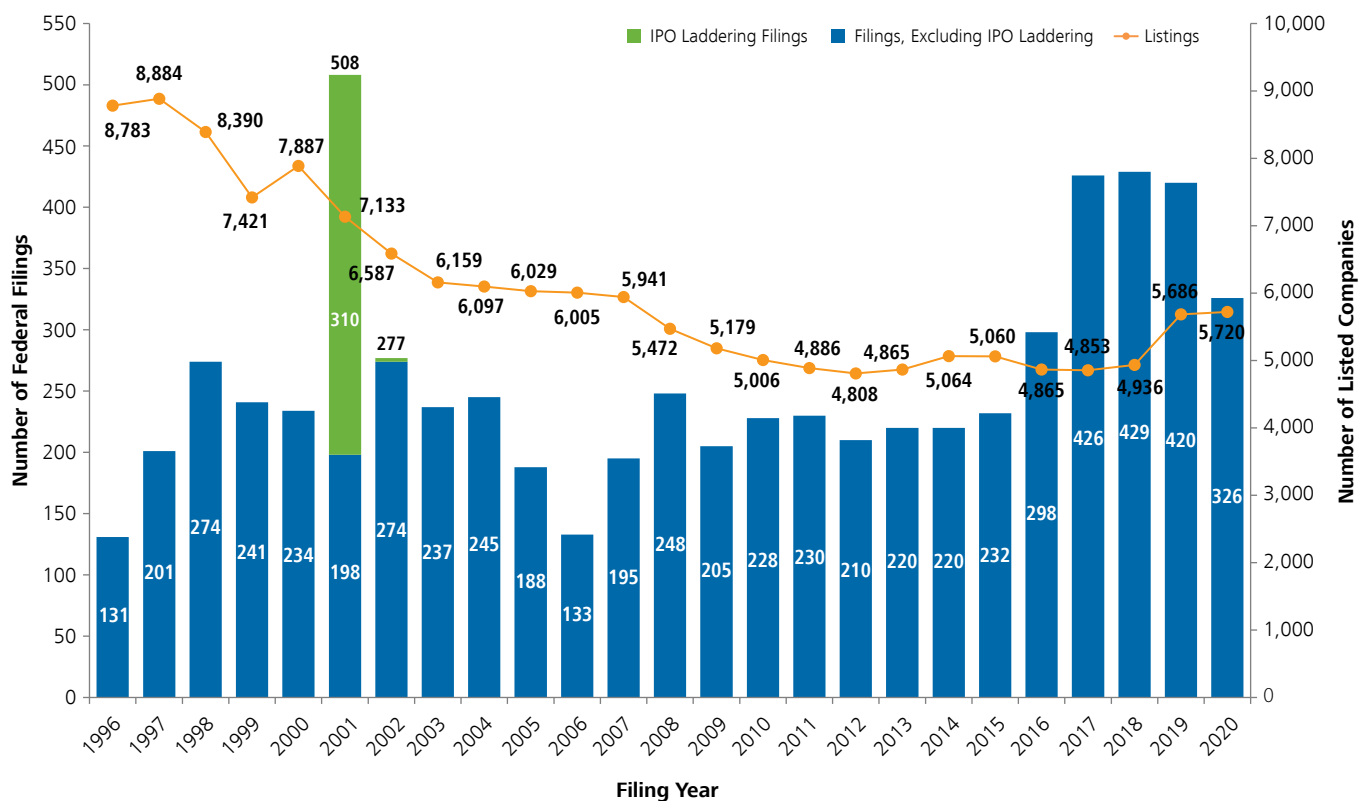
Trends in Filings

Trend in Federal Cases Filed

For the first time since 2016, annual new securities class action filings declined to less than 400 cases.³ Between 2015 and 2017, new filings grew significantly, by approximately 80%, and remained stable with between 420 and 430 annual filings from 2017 to 2019. There were 326 new case filed in 2020, which, despite the decline, is still higher than the average of 223 observed in the 2010–2015 period. Whether this decline in new filings is the end of the general higher level of filings observed in recent years or a short-term byproduct of the implications of the COVID-19 pandemic is yet to be determined. See Figure 1.

As of October 2020, there were 5,720 companies listed on the NYSE and Nasdaq exchanges.⁴ The increase in the number of listed companies in 2020 is a continuation of a general growth trend since 2017. As a result of the decline in the number of new filings and the growth in the number of listed companies in 2020, the ratio of new filings to listed companies declined to 5.7%, the lowest ratio in the last five years. However, this ratio remains higher than the ratios in the first 20 years following the implementation of the PSLRA in 1995.

Figure 1. **Federal Filings and Number of Companies Listed in the United States**
January 1996–December 2020

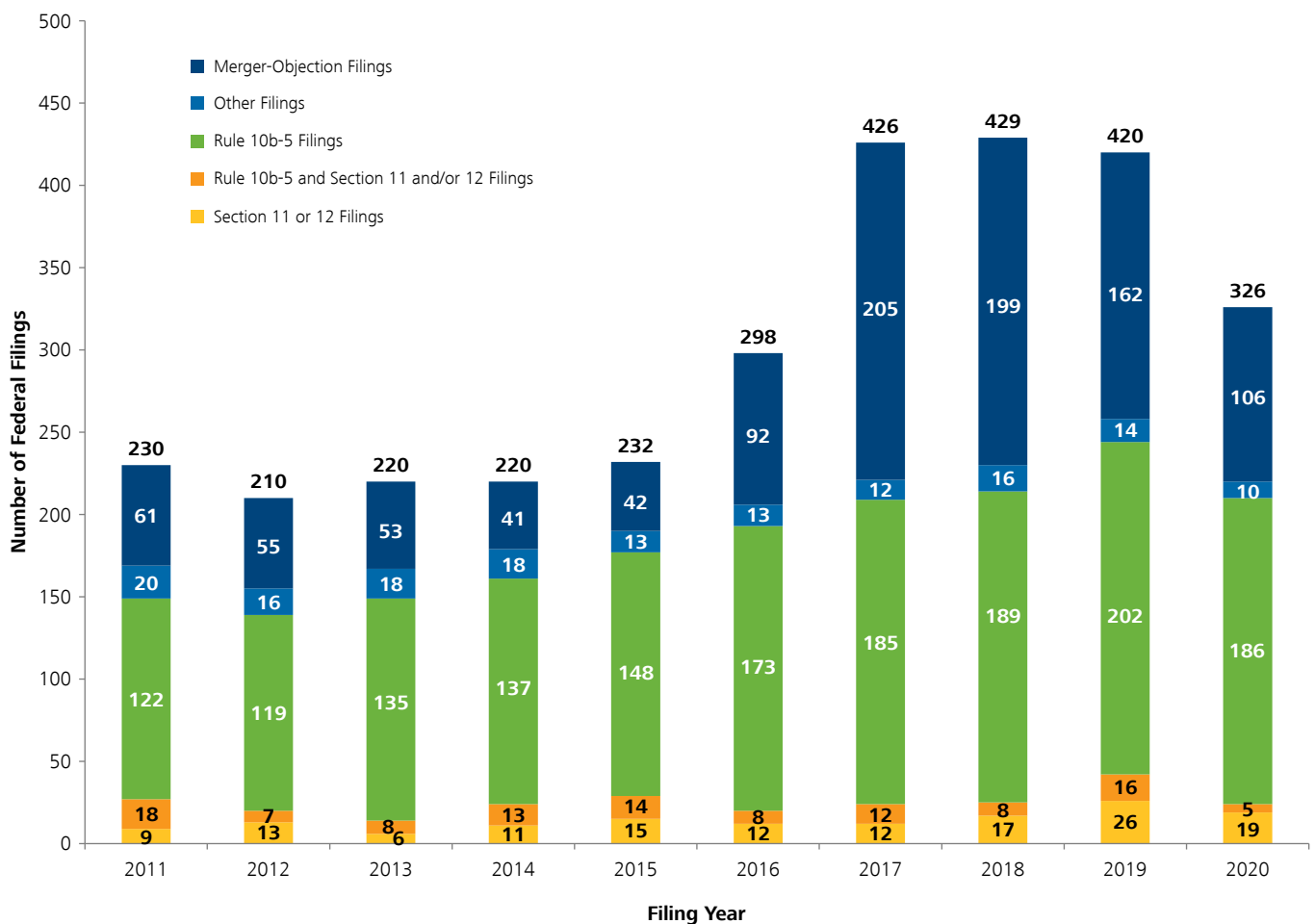


Note: Listed companies include those listed on the NYSE and Nasdaq. Listings data obtained from World Federation of Exchanges (WFE). The 2020 listings data is as of October 2020.

Federal Filings by Type

The decline in federal cases differed by type of case with the largest percentage decline observed among the Rule 10b-5 and Section 11 or Section 12 category of cases. Despite differences in the magnitude of change over the past 12 months, collectively and within each individual category, federal filings of securities class action (SCA) suits decreased. New filings of Rule 10b-5 and Section 11 or Section 12 cases in 2020 declined by more than 65% when compared to 2019. Filings of merger objections, other securities class action cases, and Section 11/Section 12 cases each declined by between 25% and 35%, while Rule 10b-5 cases declined by less than 10%. As a result of the relatively low level of decline in Rule 10b-5 cases, the proportion of new filings that were Rule 10b-5, Section 11, and/or Section 12 cases (standard cases) increased from 58% of new filings in 2019 to 64% of new filings in 2020. See Figure 2.

Figure 2. **Federal Filings by Type**
January 2011–December 2020



Federal Filings by Sector

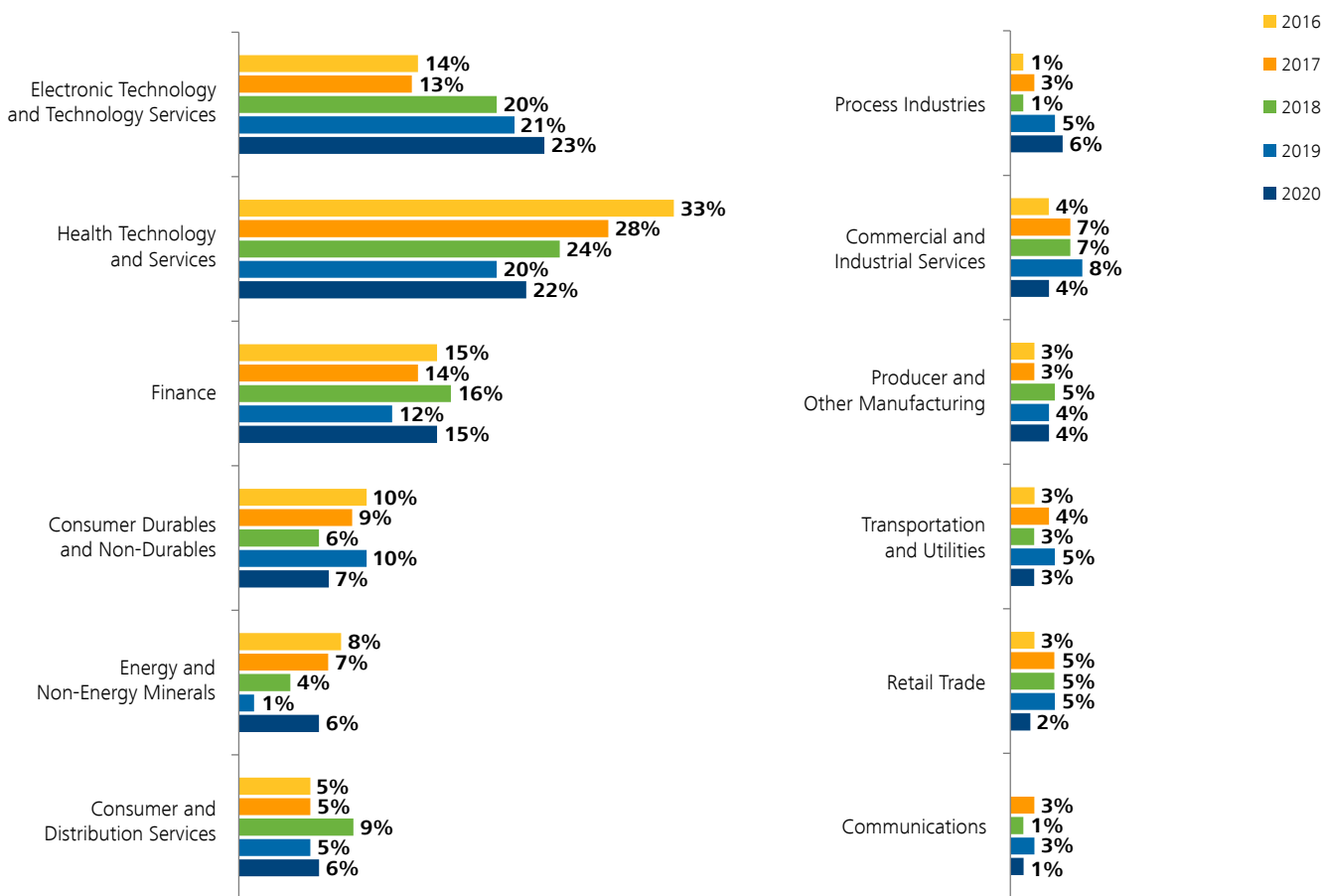
Over the 2015–2018 period, the largest proportion of SCA suits filed were against defendants in the health technology and services sector. Because of a gradual downward trend in the proportion of cases filed against companies of this sector between 2016 and 2019, and an accompanying growth in the proportion of cases filed against defendants in the electronic technology and technology services sector, in 2020, the electronic technology and technology services sector represented the largest proportion of new cases filed. In 2020, 23% of filings were against defendants in this sector, followed closely by defendants in the health technology and services sector, which accounted for 22% of new filings.

The finance sector observed an increase in the proportion of cases filed against defendants in this sector, from 12% in 2019 to 15% in 2020, while defendants in the consumer durables and non-durables sector observed a decline from 10% to 7%. The energy and non-energy minerals, consumer and distribution services, and process industries sectors each accounted for at least 5% of cases filed in 2020. See Figure 3.

Figure 3. **Percentage of Federal Filings by Sector and Year**

Excludes Merger Objections

January 2016–December 2020



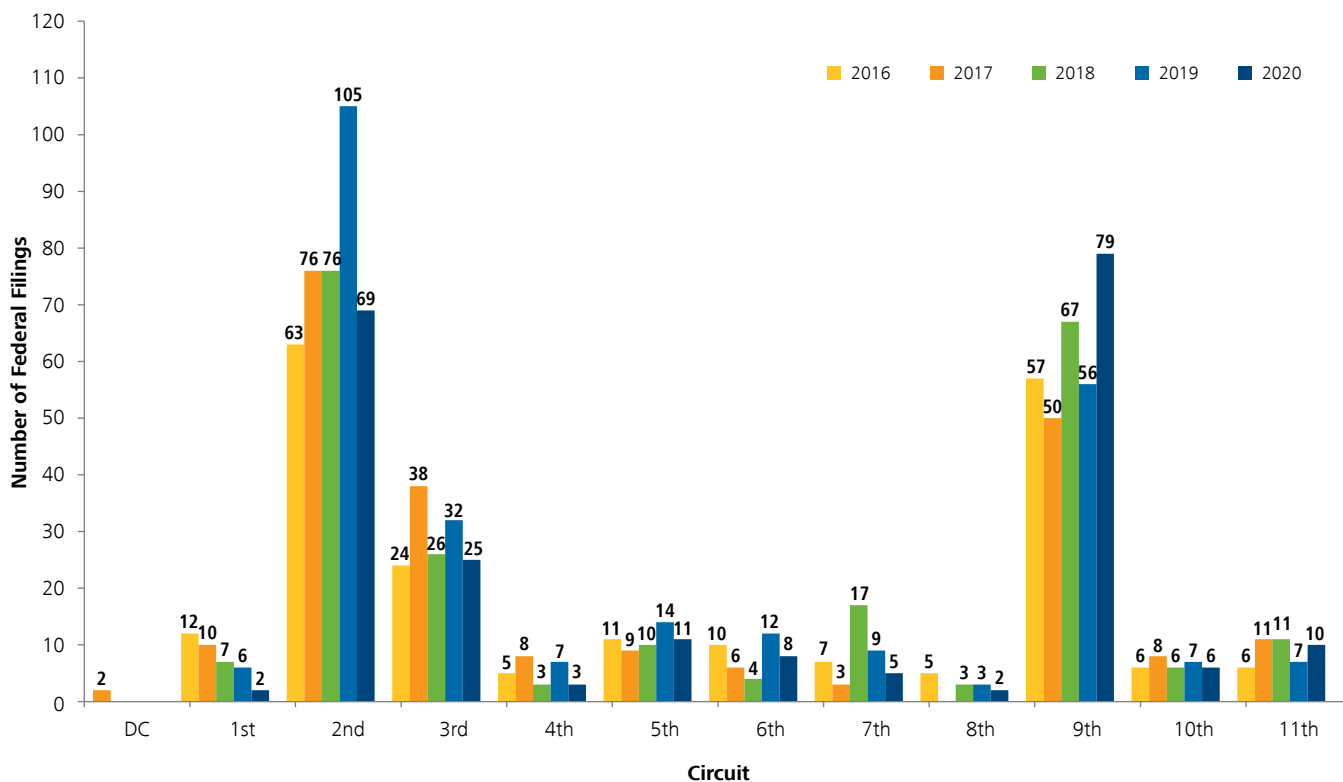
Note: This analysis is based on the FactSet Research Systems, Inc. economic sector classification. Some of the FactSet economic sectors are combined for presentation.

Federal Filings by Circuit

Historically, the Second Circuit—which includes Connecticut, New York, and Vermont—has received the highest number of cases filed. In 2019, we observed a spike in new non-merger-objection filings in the Second Circuit, a pattern that did not persist in 2020. Over the last 12 months, only 69 new cases were filed in the Second Circuit, the lowest level of new cases since 2017. The Third and Ninth Circuits continue to be high-activity jurisdictions for SCA cases, with 25 and 79 cases filed in 2020 in these circuits, respectively. While the number of cases filed in the Second and Third Circuits declined, the Ninth Circuit observed a 41% increase in filings. Taken together, these trends resulted in the Ninth Circuit accounting for the highest proportion of new filings for the first time in the last five years. Combined, the Second, Third, and Ninth Circuits continue to account for a significant proportion of new cases filed, increasing slightly to 79% of all the new non-merger-objection cases filed in 2020. See Figure 4.

Figure 4. **Federal Filings by Circuit and Year**

Excludes Merger Objections
January 2016–December 2020

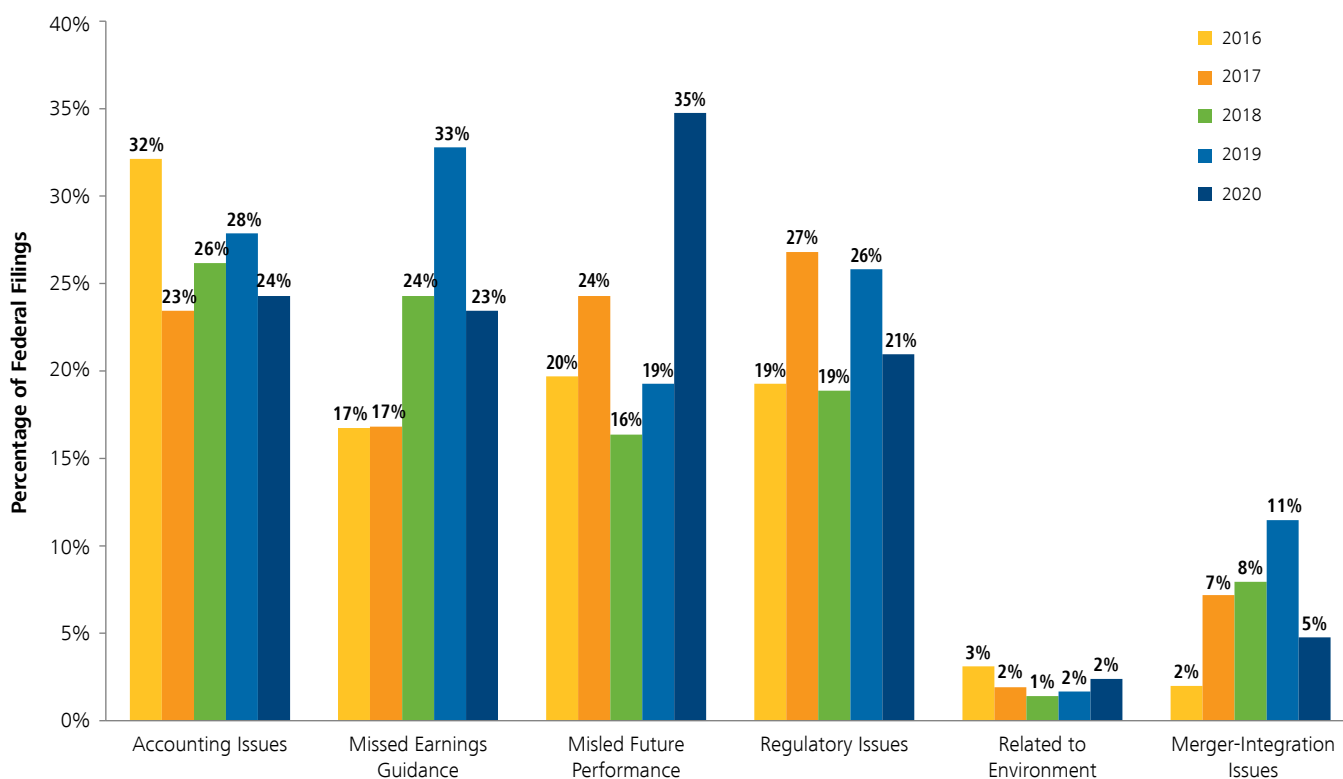


Allegations

Over the past three years, there has been year-to-year variation in the most frequently occurring allegation in shareholder class action suits filed.⁵ In 2018, the most common allegation included in complaints was related to accounting issues, with 26% of cases including such a claim. This pattern is consistent with the distributions observed in recent years; claims related to accounting issues remain one of the most common and frequent allegations included in complaints. In 2019, we observed a spike in cases involving allegations of missed earnings guidance, with over 30% of cases involving a related claim. However, the proportion of cases alleging claims related to missed earnings guidance decreased to 23% in 2020. For cases filed in 2020, there emerged a new common allegation; 35% of the complaints included a claim related to misled future performance. This is the first time in the last five years that this allegation has been included in more complaints than those alleging accounting issues, missed earnings guidance, or regulatory issues. Although there was an upward trend in the frequency of cases involving allegations related to merger integration issues between 2016 and 2019, this pattern did not continue in 2020, with this category falling to only 5% of cases from 11% in 2019. See Figure 5.

Figure 5. **Allegations**

Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, and/or Section 12
January 2016–December 2020

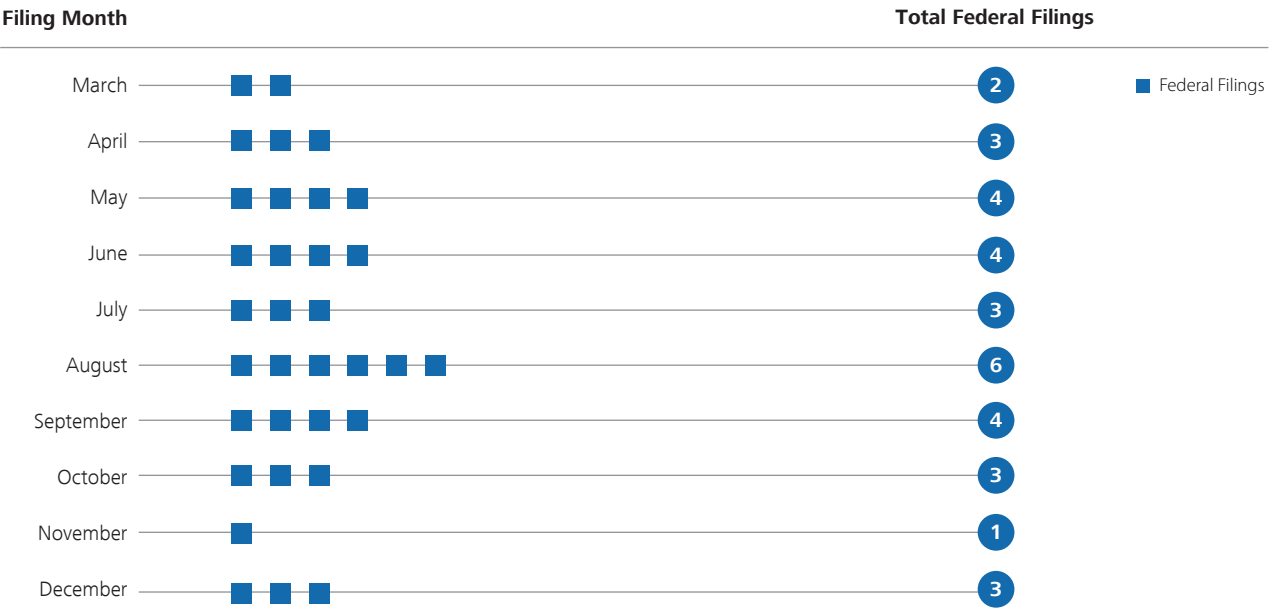


Recent Developments in Federal Filings⁶

COVID-19

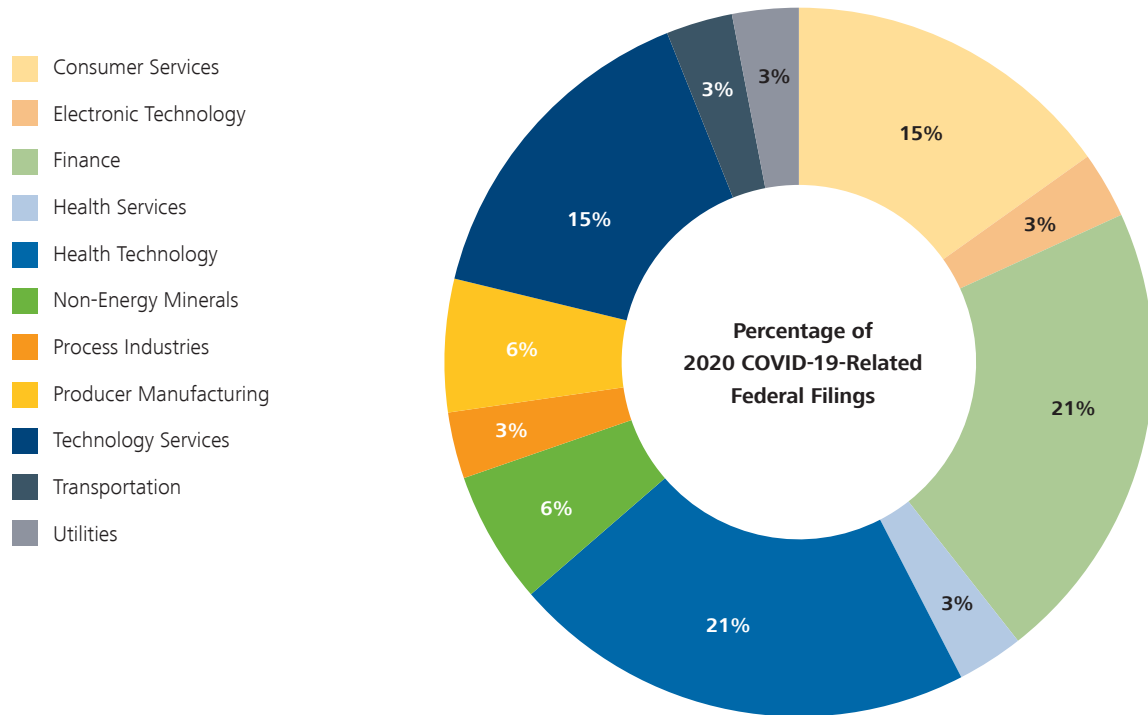
In March of 2020, the COVID-19 pandemic changed the way individuals work, the way they live, and how companies operate. The pandemic’s impact on filings has not yet been fully determined and it will likely take time to evaluate if it was the underlying driver of the lower level of cases filed in 2020. On the other hand, the pandemic brought about a new category of event-driven cases, with the first such case filed in March. Since then, there have been 33 cases filed with claims related to COVID-19 included in the complaint. See Figure 6.

Figure 6. **Number of 2020 COVID-19-Related Federal Filings by Month**
March 2020–December 2020



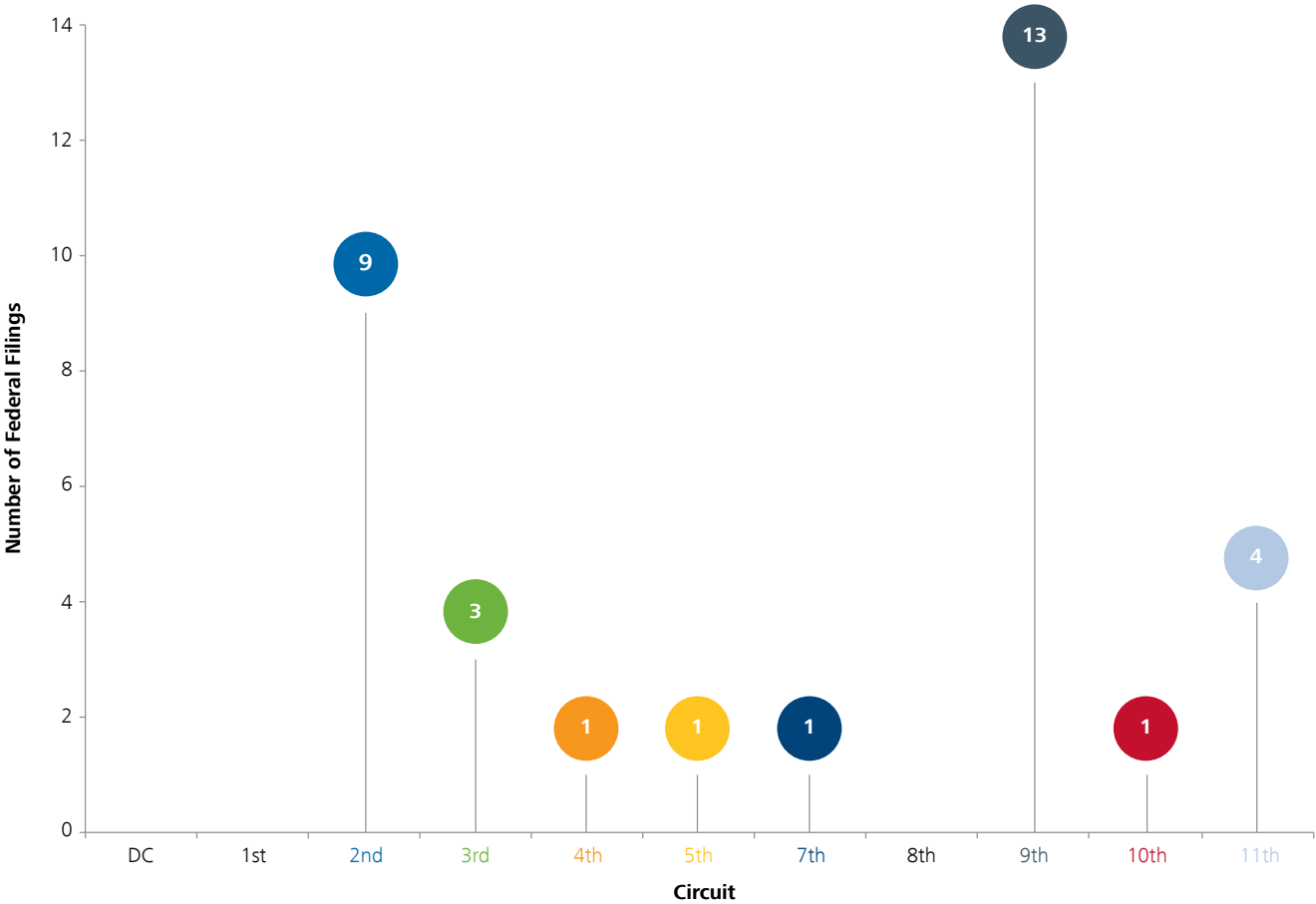
The distribution of these COVID-19-related cases across sectors reveals a pattern similar to the distribution across total cases filed in 2020. The proportion of filings against defendants in the combined health technology and health services sectors was 24%. Approximately 21% of the COVID-19 cases were filed against defendants in the finance sector and the consumer services and technology services sectors each accounted for approximately 15% of cases. See Figure 7.

Figure 7. **Percentage of 2020 COVID-19-Related Federal Filings by Sector**
March 2020–December 2020



Unlike for the universe of total filings, the top three circuits for most COVID-19 filings were the Ninth, Second, and Eleventh Circuits. Over one-third of the COVID-19-related cases filed were presented in the Ninth Circuit, followed closely by the Second Circuit. See Figure 8.

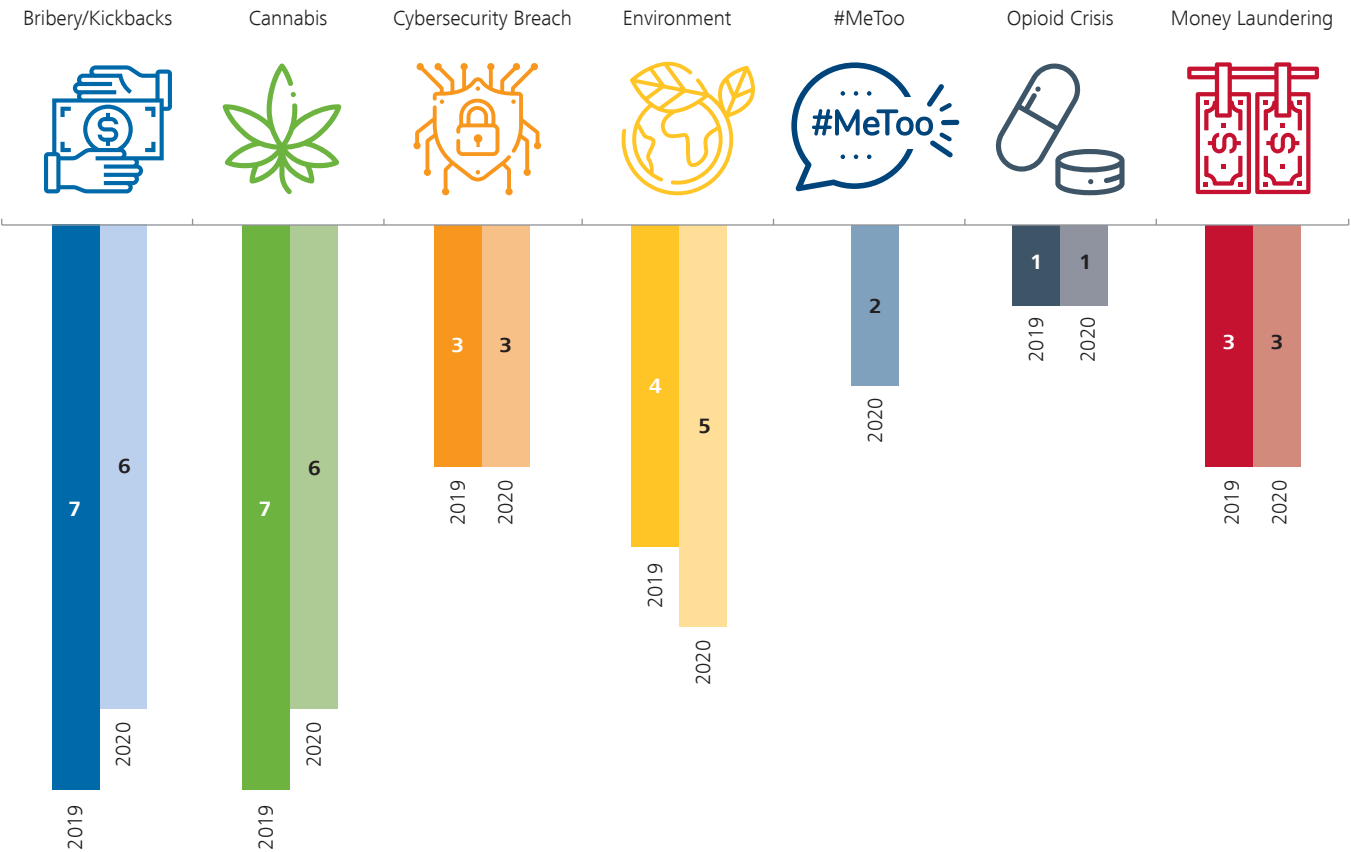
Figure 8. **Number of 2020 COVID-19-Related Federal Filings by Circuit**



The claims alleged in the complaints for these COVID-19-related filings varied. For example, within the NERA database, we identified three cases filed against defendants in the cruise line industry—namely, Norwegian Cruise Line Holdings, Carnival Corporation, and Royal Caribbean Cruises. The complaint filed against Norwegian Cruise Line Holdings alleges the company made false and/or misleading statements and/or failed to disclose that it was providing customers with false statements about COVID-19 to entice them to purchase cruises. The Carnival Corporation lawsuit alleged that the company’s misstatements concealed the increasing presence of COVID-19 on the company’s ships. In the complaint against Royal Caribbean Cruises, plaintiffs allege there was a failure to disclose material facts related to the company’s decrease in bookings outside of China.

In addition to tracking COVID-19-related filings, we have also monitored federal securities class action filings in a number of recent development areas. See Figure 9 for a summary of filings in these areas for 2019 and 2020.

Figure 9. **Event-Driven and Other Special Cases by Filing Year**
January 2019–December 2020



Bribery/Kickbacks

Securities class action suits related to claims of bribery have remained fairly stable over the 2019–2020 period, with six such cases filed in 2019 and five filed in 2020. Of the 11 cases filed in the last two years, all remain pending as of December 2020. These cases span a range of sectors, with the electronic technology and technology services sector accounting for the highest proportion. In addition, cases filed with claims related to kickbacks are still being brought to the courts, with one case filed in both 2019 and 2020. Both of these cases include claims related to regulatory issues.

Cannabis

In last year’s report, we identified filings against companies in the cannabis industry as a development area. In 2020, filings within this industry have continued with six new cases. The allegations included in these recent complaints were related to accounting issues, misled future performance, and missed earnings guidance. The majority of cases continue to be presented in the Second Circuit and all defendants but one are in the process industries sector.

Cybersecurity Breach Cases

In 2020, like 2019, there were three new filings related to a cybersecurity breach. The Ninth Circuit continues to be a common venue for these cases. Among the six cases filed between 2019 and 2020, four have included allegations related to missed earnings guidance or misleading future performance, with only one case alleging regulatory issues.

Environment-Related

Similar to bribery-related cases, filings pertaining to environment-related claims have continued to be presented at a steady pace, with five cases filed in 2020 and four cases filed in 2019. Four of the nine cases recently filed include allegations related to regulatory issues and five were filed in the Second and Ninth Circuits.

#MeToo

Following the surge of #MeToo cases filed in 2018, only two such cases have been filed in the last year. Both cases were filed in the second half of 2020.

Opioid Crisis

Only two cases related to the opioid crisis have been filed since 2018, both of which were filed in the Third Circuit and include allegations related to accounting and regulatory issues.

Money Laundering

Cases with claims of money laundering also continue to be filed, with three such cases filed in both 2019 and 2020. All six of these cases included an allegation related to regulatory issues.

Trend in Resolutions

Number of Cases Settled or Dismissed

Following a decline in the total number of cases resolved in 2019, resolutions rose in 2020, returning to a level relatively in line with 2017 and 2018. In 2020, 247 cases were resolved in favor of the defendant and 73 cases were settled, for a total of 320 resolutions for the year. This represents an increase of approximately 4% in resolved suits over the 309 cases resolved in 2019.

Despite the aggregate increase in resolutions, the trend observed in dismissals and settlements differed. While there was a decline of 25% in the number of settled cases, there was an increase in the number of dismissed cases.⁷ The number of cases settled in 2020 is the lowest recorded number of settled cases in the most recent 10-year period and is more than 40% lower than the average number of settled cases (122) observed between 2016 and 2018. At this time, there is insufficient evidence to determine whether this lower number of settlements is connected to COVID-19-related factors. The increase in the number of dismissed cases was sufficient to not only offset the decrease in settlements but also to increase the overall number of resolved cases. The number of cases dismissed in 2020 also set a new 10-year record with approximately 6% more cases dismissed than in 2018, the second highest year in the period.

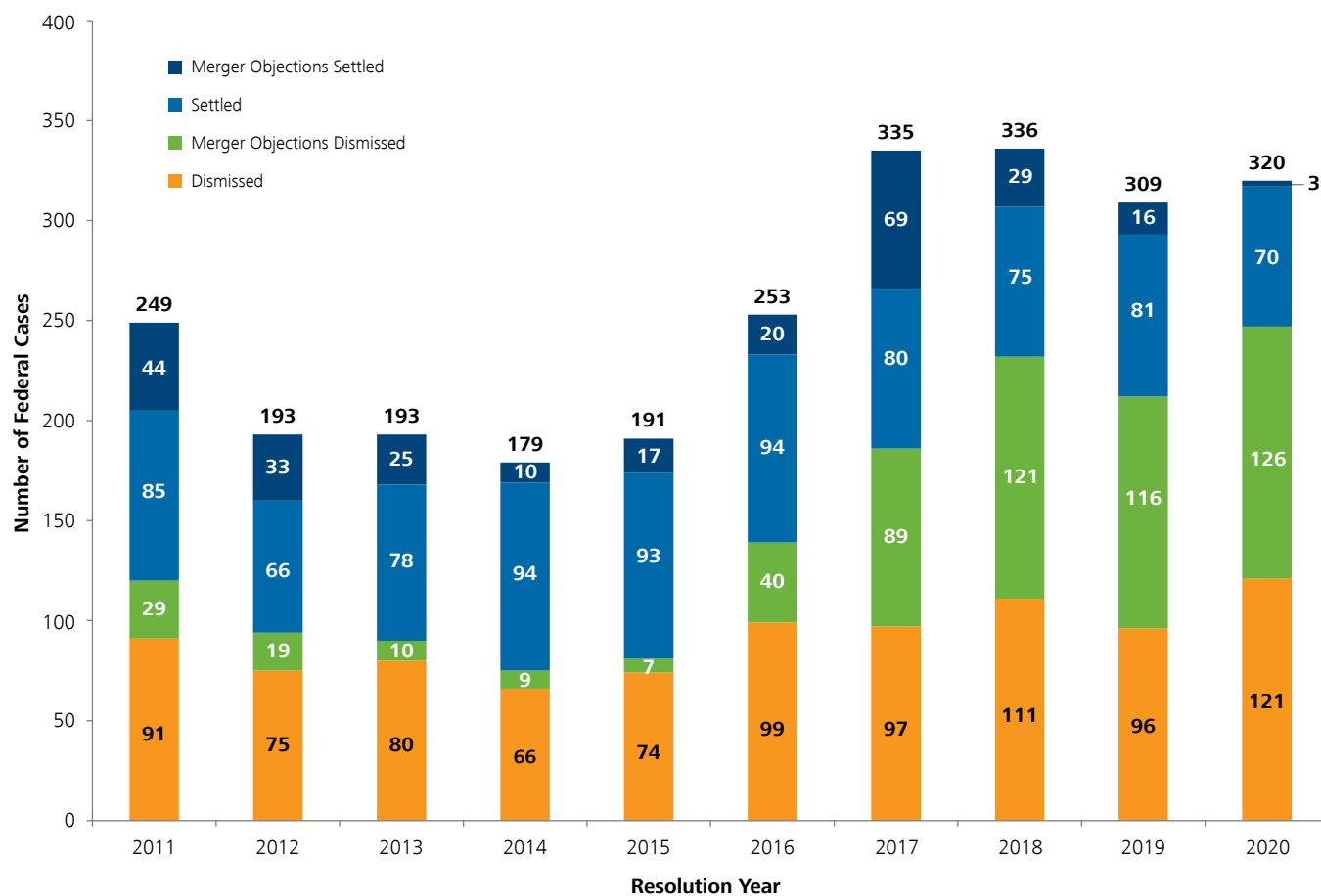
Starting in 2015, there has been a gradual decline in the proportion of cases that were closed due to settling. Of the cases resolved in 2014, 58% were settled. In each subsequent year, this proportion has declined, falling to 44% for cases resolved in 2017. For cases resolved in 2020, the

proportion of resolved cases that were settled is the lowest in recent history, with less than 25% of the cases settling. It is not surprising the proportion declined to a new low given the decrease in the number of cases settled combined with the increase in dismissals that occurred in 2020. See Figure 10.

Although 2020 was a record-setting low year for total settled cases, the magnitude of the decrease in settled cases differed for standard cases and merger-objection cases. Settled non-merger-objection cases decreased by less than 15%, falling to 70 cases, though still within the historical 10-year range. On the other hand, settled merger-objection cases declined by more than 80% to merely three cases, which is substantially lower than the number of such cases settled in any single year in the last 10 years.

There was a 26% increase in dismissals of standard cases and a 9% increase in dismissals of merger-objection cases. For non-merger-objection and for merger-objection cases, the increase in dismissals was enough to establish 2020 as the year with the highest number of dismissals within each category in recent years.

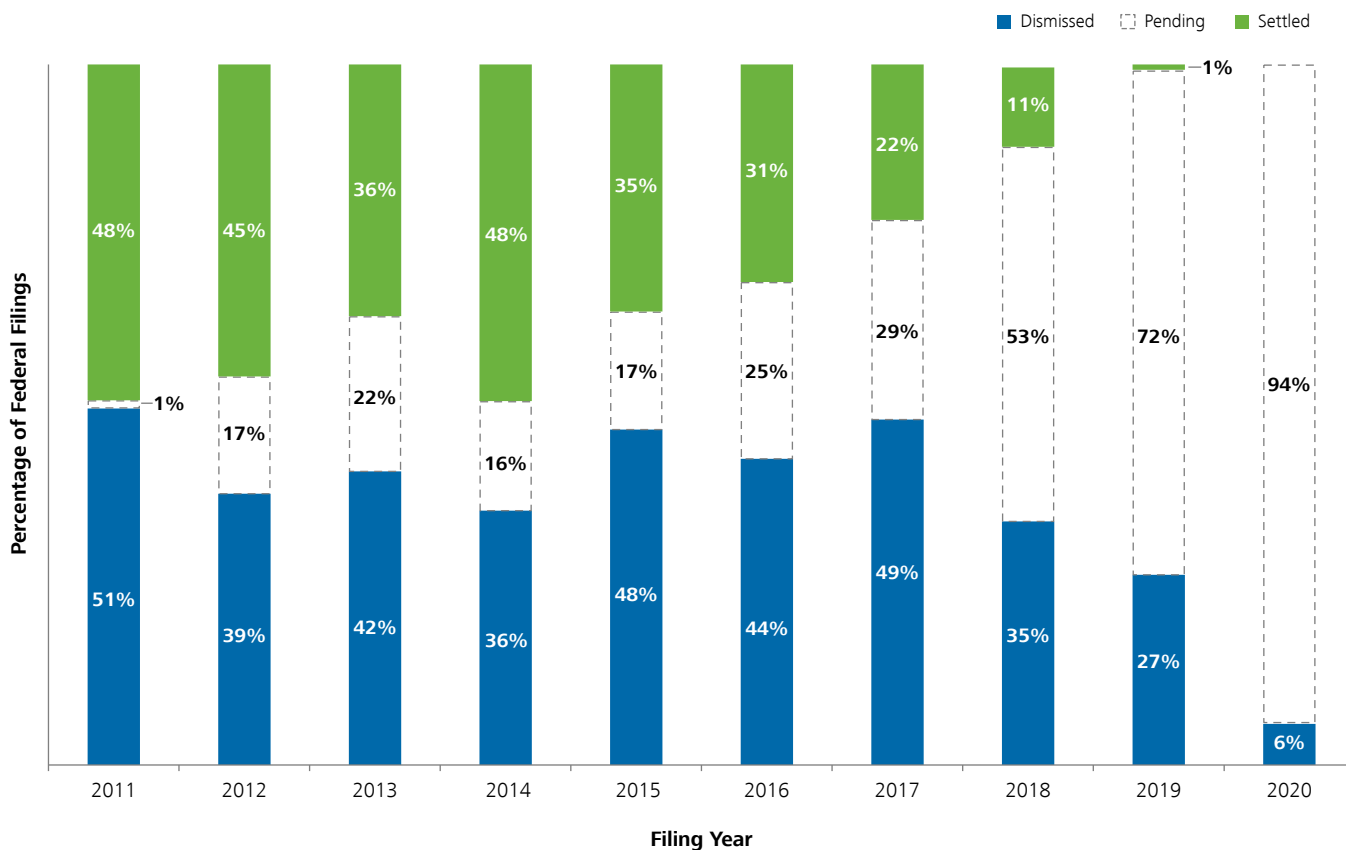
Figure 10. **Number of Resolved Cases: Dismissed or Settled**
January 2011–December 2020



Case Status by Filing Year

A review of the current status of securities class action suits filed after 2014 reveals that within each filing year a greater proportion of cases have been dismissed than have been settled. For cases filed between 2015 and 2017, dismissal rates range from 44% to 49% each year while settlement rates range from 22% to 35%. The difference in current case outcome is even more stark for cases filed in 2018 and 2019. Of the cases filed in 2018, as of December 2020, 35% were resolved in favor of the defendant, 11% were settled, and 53% remained pending. For cases filed in 2019, only 1% were resolved for positive payment, while 27% were dismissed, and 72% were still unresolved. However, the current resolution distribution of cases may not necessarily be an indication of the final outcome for all resolved cases as historical evidence indicates that a larger proportion of the pending cases will result in a positive settlement because settlements typically occur in the latter phases of litigation, whereas motions for summary judgment or dismissal typically occur in the earlier stages. See Figure 11.

Figure 11. **Status of Cases as Percentage of Federal Filings by Filing Year**
Excludes Merger Objections and Verdicts
January 2011–December 2020

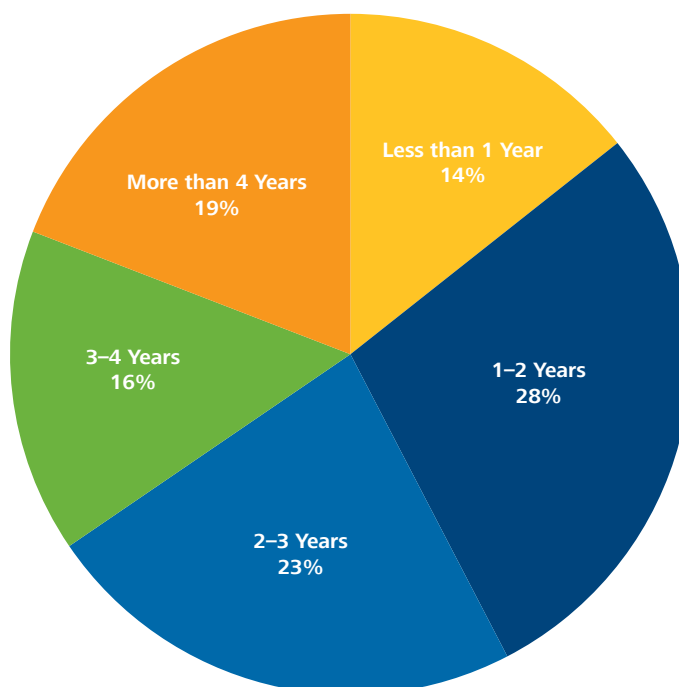


Note: Dismissals may include dismissals without prejudice and dismissals under appeal.

Time From First Complaint Filing to Resolution

A review of the cases filed between 1 January 2002 and 31 December 2016 reveals that a significant proportion of cases are resolved in under four years.⁸ Looking at the time from the filing of the first complaint through the resolution of the case, whether a dismissal or a settlement, shows that more than 80% of suits are resolved within four years, and 65% within the first three years. The most common resolution periods in the data are between one and two years (28% of cases) and between two and three years (23% of cases). Within the first year of filing, 14% of cases are resolved. See Figure 12.

Figure 12. **Time from First Complaint Filing to Resolution**
Cases Filed January 2002–December 2020 and Resolved January 2002–December 2020



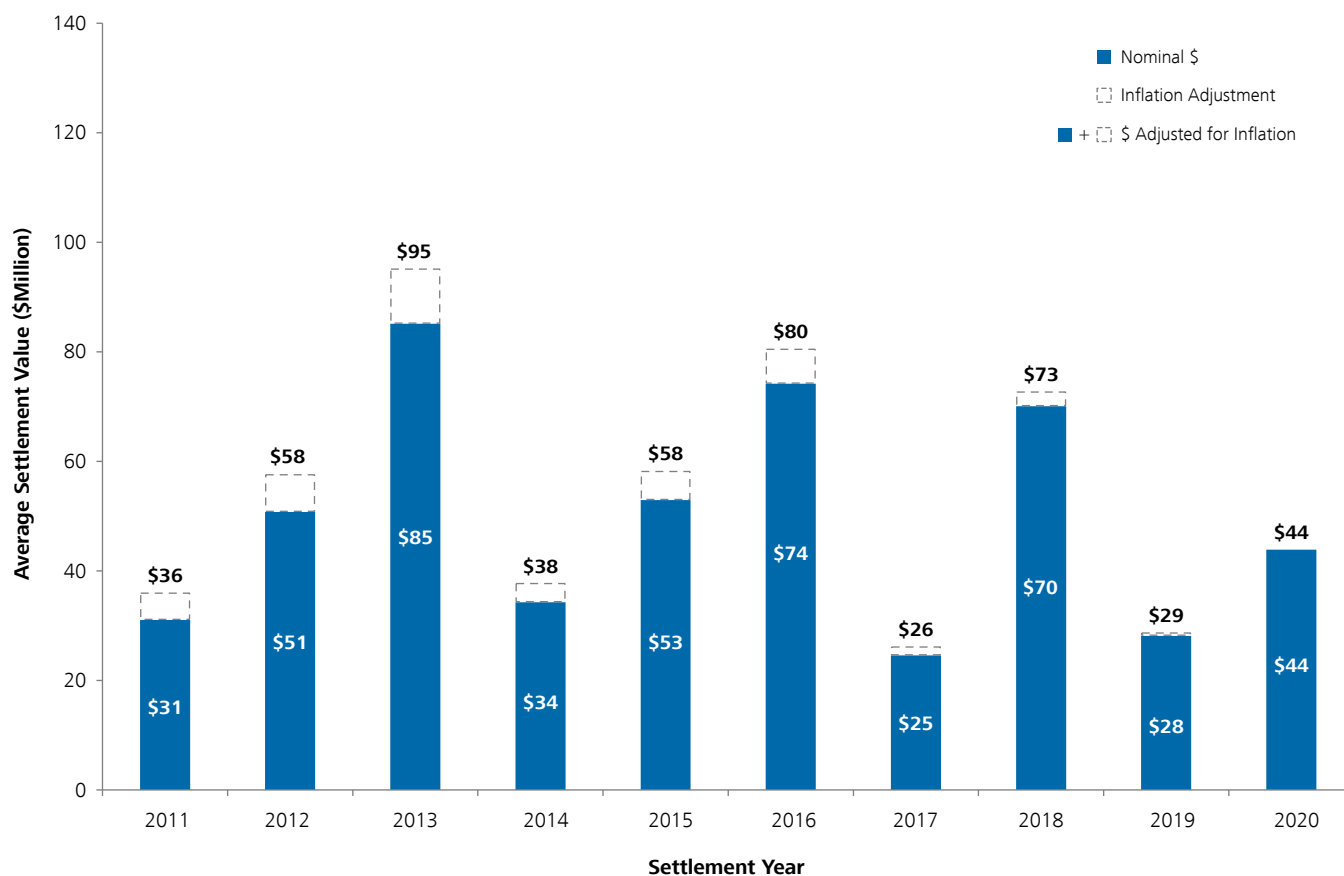
Trend in Settlement Values

Average and Median Settlement Value

To analyze recent trends in settlement values, we calculate and evaluate settlements using multiple alternative measures.⁹ First, we evaluate trends by reviewing the annual average settlement value for non-merger-objection cases with positive settlement values. Given that these average settlement values may be impacted by a few high “outlier” settlements, we also review the median settlement value and average settlement for cases under \$1 billion, again on an annual basis.

The average settlement value in 2020 was \$44 million for non-merger objection cases with settlements of more than \$0 to the class. This is a more than 50% increase over the 2019 inflation-adjusted average of \$29 million but still below the 2018 inflation-adjusted average of \$73 million. Historically, the average settlement value has shown year-to-year variation partly due to the presence or absence of one or two “outlier” settlements. Between 2011 and 2020, the annual inflation-adjusted average settlement value has ranged from a low of \$26 million in 2017 to a high of \$95 million in 2013. As such, the 2020 average is well within the range observed within the last 10 years. See Figure 13.

Figure 13. **Average Settlement Value**
Excludes Merger Objections and Settlements for \$0 to the Class
January 2011–December 2020

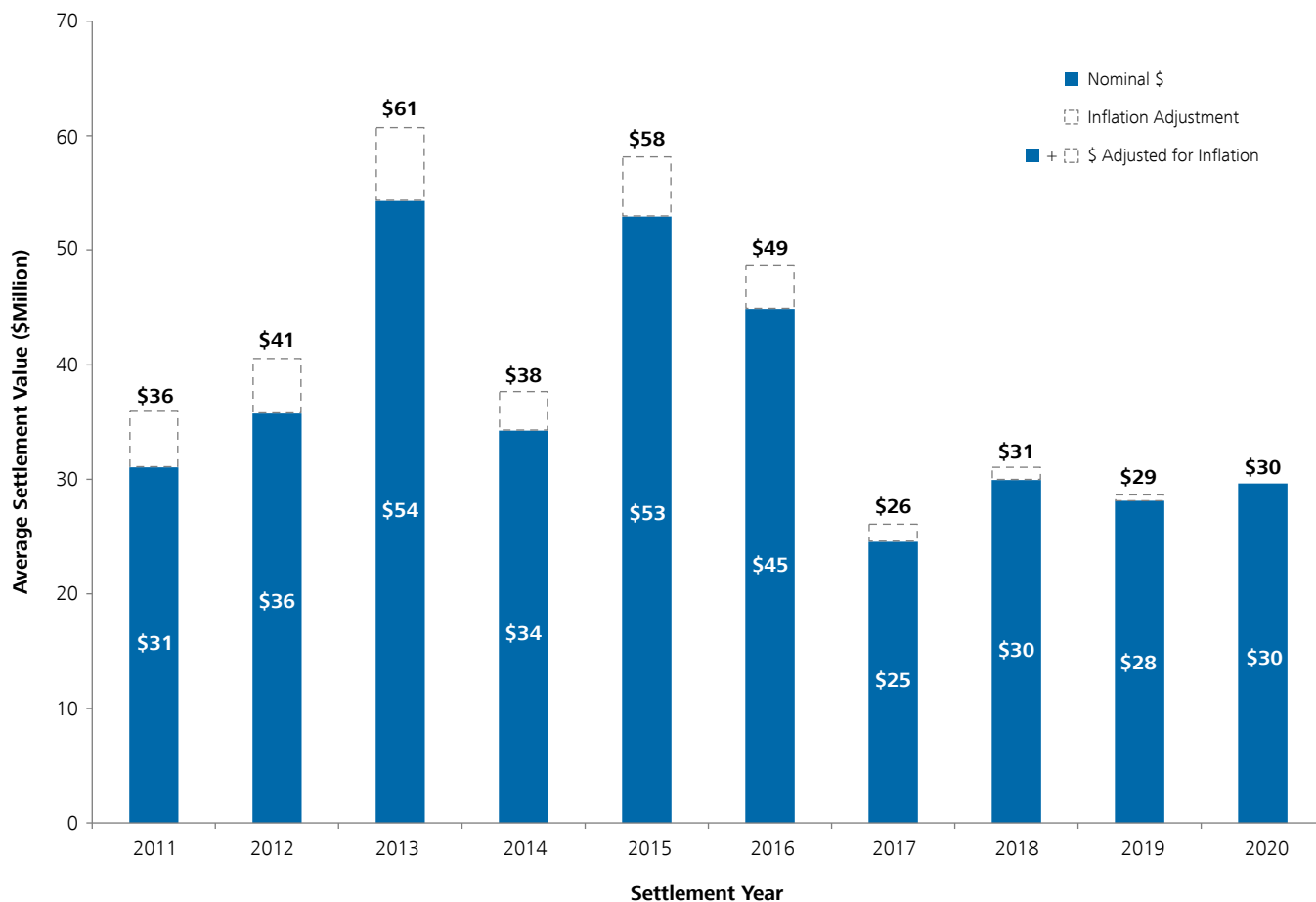


The second measure of trends in settlement values evaluated is the annual average settlement excluding merger objections, settlements for \$0 to the class, and individual cases with settlements of \$1 billion or greater. Given the infrequency of cases with settlements of \$1 billion or greater and the impact these “outlier” settlements can have on the annual averages, this second measure seeks to evaluate the general trend in settlements absent these cases. For example, for 2020 settlements, this measure evaluates the settlement values excluding the American Realty Capital Properties

settlement of \$1.025 billion. Figure 14 illustrates that once these cases are removed, the annual average settlement values have been stable in recent years, ranging from \$26 million to \$31 million within the last four years. Though the 2020 average settlement value of \$30 million is 3% higher than the 2019 average, it is still substantially lower than the average values for cases settled for under \$1 billion in 2015 and 2016, which are \$58 million and \$49 million respectively.

Figure 14. **Average Settlement Value**

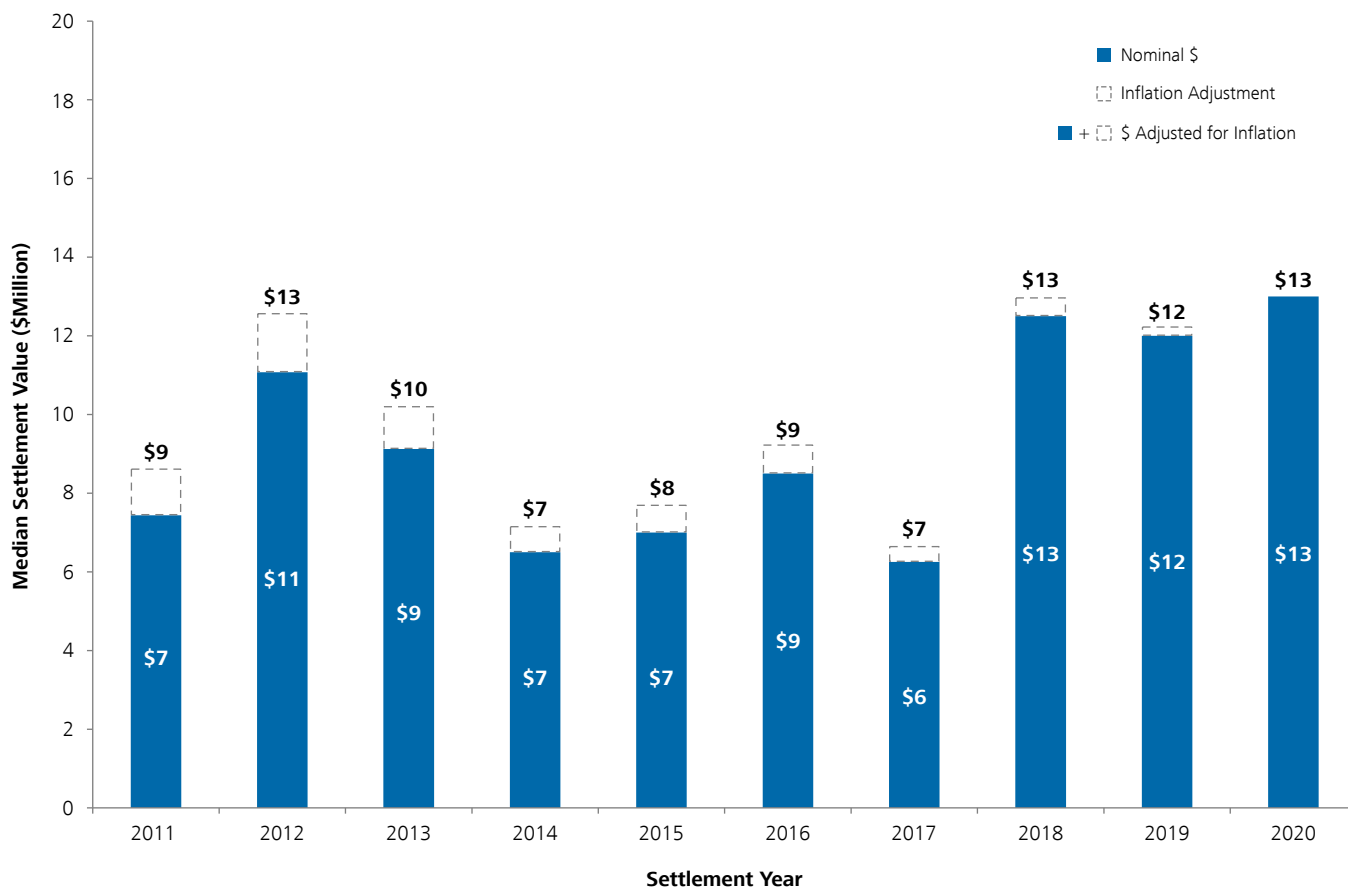
Excludes Settlements over \$1 Billion, Merger Objections, and Settlements for \$0 to the Class
January 2011–December 2020



The median annual settlement value for 2020 was \$13 million, the highest recorded median value in the last 10 years (the median settlement value for cases settled in 2018 was also \$13 million). Though the median settlement value for 2020 is less than 10% higher than the inflation-adjusted median in 2019, the 2020 value is nearly twice the inflation-adjusted median settlement value for cases settled in 2017. The general increasing trend in annual median settlement values indicates an upward shift in individual settlement values. In other words, a higher proportion of cases has settled for higher values in the last three years when compared to settlements that occurred in 2017 or before. See Figure 15.

Figure 15. **Median Settlement Value**

Excludes Settlements over \$1 Billion, Merger Objections, and Settlements for \$0 to the Class
January 2011–December 2020



An evaluation of the change in the distribution of settlement values over the past five years further supports this notion. There has been a downward trend in the proportion of cases with individual settlements less than \$10 million and a corresponding increase in the proportion of cases found in the higher settlement ranges. More specifically, in 2017, 61% of cases resolving for positive payment had settlement values of less than \$10 million compared to 44% of 2020 cases settled within this category. Similarly, 24% of 2017 settled cases had settlement values between \$10 million and \$50 million while 40% of the 2020 settled cases had individual settlements within this range. This pattern of a greater proportion of settled cases within the \$10–\$50 million range in the last three years aligns with the higher annual median settlement values observed in these years.

Top Settlements for 2020

Table 1 summarizes the 10 largest securities class action settlements in 2020. Between 1 January 2020 and 31 December 2020, there was one “mega” settlement—an individual case with a settlement for \$1 billion or greater—for a suit against American Realty Capital Properties. This case involved allegations related to accounting issues, including claims that the defendants made materially false and misleading statements. All 10 of the top settlements were reached between January and July of 2020 and accounted for 75% of the total settlements reached in 2020.

The economic sectors of defendants associated with the top 10 settlements varied, with the commercial services and utilities sectors having the highest frequency, with two cases in each category. Eight of the top 10 settlements were cases filed in the Second, Ninth, and Eleventh Circuits. The average and most frequent length of time between first complaint filing and settlement for the top 10 settlements in 2020 was five years and three years, respectively.

Table 1. **Top 10 2020 Securities Class Action Settlements**

Rank	Defendant	Filing Date	Settlement Date	Total Settlement Value (\$Million)	Plaintiffs’ Attorneys’ Fees and Expenses (\$Million)	Circuit	Economic Sector
1	American Realty Capital Properties Inc.*	30 Oct 14	22 Jan 20	\$1,025.0	\$105.2	2nd	Finance
2	First Solar, Inc.	15 Mar 12	30 Jun 20	\$350.0	\$72.5	9th	Electronic Technology
3	Signet Jewelers Limited	25 Aug 16	21 Jul 20	\$240.0	\$63.1	2nd	Retail Trade
4	SCANA Corporation	27 Sep 17	17 Jun 20	\$192.5	\$28.2	4th	Utilities
5	Equifax Inc.	8 Sep 17	26 Jun 20	\$149.0	\$30.8	11th	Consumer Services
6	SunEdison, Inc.	4 Apr 16	25 Feb 20	\$139.6	\$29.7	2nd	Utilities
7	SeaWorld Entertainment, Inc.	9 Sep 14	22 Jul 20	\$65.0	\$16.4	9th	Consumer Services
8	Community Health Systems, Inc.	9 May 11	19 Jun 20	\$53.0	\$6.3	6th	Health Services
9	HD Supply Holdings, Inc.	10 Jul 17	21 Jul 20	\$50.0	\$15.3	11th	Distribution Services
10	FleetCor Technologies, Inc.	14 Jun 17	14 Apr 20	\$50.0	\$13.0	11th	Commercial Services
Total				\$2,314.1	\$380.4		

*Note: Now called VEREIT, Inc.

Despite the presence of one “mega” settlement for \$1.025 billion in 2020, the top 10 settlements since the passage of PLSRA remains unchanged. This list last changed in 2018 due to the Petrobras settlement of \$3 billion and includes settlements ranging from \$1.1 billion to \$7.2 billion. See Table 2.

Unlike the 2020 top 10 settlements, the all-time top 10 settlements are more concentrated in specific circuits, with six of the 10 cases in the Second Circuit. The most common economic sector of defendants associated with the top settlements was finance. While there are a few common economic sectors in the top 2020 and all-time lists, some of the economic sectors represented in the 2020 top 10 list are not included in the all-time list, such as utilities and commercial services.

Table 2. **Top 10 Federal Securities Class Action Settlements**

As of 31 December 2020

Rank	Defendant	Filing Date	Settlement Year(s)	Codefendant Settlements				Circuit	Economic Sector
				Total Settlement Value (\$Million)	Financial Institutions Value (\$Million)	Accounting Firm Value (\$Million)	Plaintiffs' Attorneys' Fees and Expenses (\$Million)		
1	ENRON Corp.	22 Oct 01	2003–2010	\$7,242	\$6,903	\$73	\$798	5th	Industrial Services
2	WorldCom, Inc.	30 Apr 02	2004–2005	\$6,196	\$6,004	\$103	\$530	2nd	Communications
3	Cendant Corp.	16 Apr 98	2000	\$3,692	\$342	\$467	\$324	3rd	Finance
4	Tyco International, Ltd.	23 Aug 02	2007	\$3,200	No codefendant	\$225	\$493	1st	Producer Mfg.
5	Petroleo Brasileiro S.A. - Petrobras	8 Dec 14	2018	\$3,000	\$0	\$50	\$205	2nd	Energy Minerals
6	AOL Time Warner Inc.	18 Jul 02	2006	\$2,650	No codefendant	\$100	\$151	2nd	Consumer Services
7	Bank of America Corp.	21 Jan 09	2013	\$2,425	No codefendant	No codefendant	\$177	2nd	Finance
8	Household International, Inc.	19 Aug 02	2006–2016	\$1,577	Dismissed	Dismissed	\$427	7th	Finance
9	Nortel Networks	2 Mar 01	2006	\$1,143	No codefendant	\$0	\$94	2nd	Electronic Technology
10	Royal Ahold, NV	25 Feb 03	2006	\$1,100	\$0	\$0	\$170	2nd	Retail Trade
Total				\$32,224	\$13,249	\$1,017	\$3,368		

NERA-Defined Investor Losses

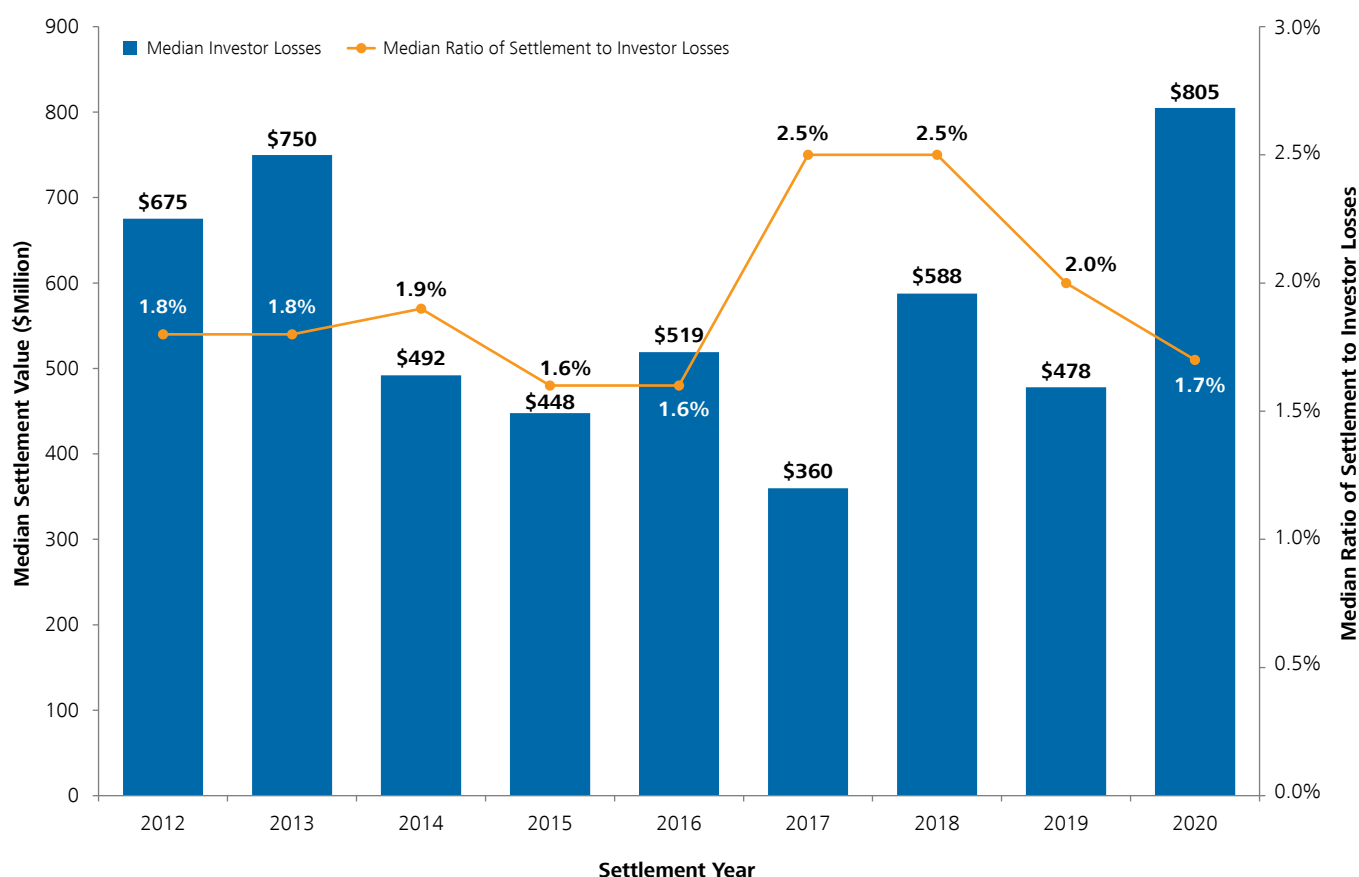
As a proxy to measure the aggregate loss to investors from the purchase of a defendant's stock during the alleged class period, NERA relies on its own proprietary variable, NERA-Defined Investor Losses.¹⁰ This measure of the aggregate amount lost by investors is estimated using publicly available data and is calculated assuming an investor had alternatively purchased stocks that performed similarly to the S&P 500 index during the class period. NERA has reviewed and examined more than 1,000 settlements and found that this proprietary variable is the most powerful predictor of settlement amount. Although losses are highly correlated with settlement values, we have found that settlements do not increase one for one with losses but rather at a slower rate.

For cases settled between 2012 and 2020, the ratio of settlement to Investor Losses is higher for cases with lower settlement values than for cases with higher settlement values. In other words, smaller cases (measured based on the computed Investor Losses) commonly settle for a larger fraction of the estimated Investor Losses than larger cases, though the decline is not linear. In fact, the most dramatic decline occurs between cases with Investor Losses of less than \$20 million and cases with Investor Losses of between \$20 million and \$50 million. More specifically, the median ratio of settlement value to NERA-defined Investor Losses was 24.5% for cases with Investor Losses below \$20 million and 5.2% for cases with Investor Losses between \$20 million and \$50 million. For cases with Investor Losses between \$1 billion and \$5 billion, the median ratio was 1.2%, and falls below 1% for cases with Investor Losses of \$5 billion and higher.

Median Investor Losses and Median Ratio of Actual Settlements to Investor Losses

Following a spike in the median Investor Losses in 2013, the median Investor Losses showed only minor year-to-year fluctuations through 2019. In 2020, the median Investor Losses rose dramatically, reaching a record-setting high of \$805 million. This median is nearly 70% higher than the median value for 2019 of \$478 million and 7% higher than the 2013 median value of \$750 million. For all years between 2017 and 2019, the median ratio of settlement to Investor Losses was above 2%, a higher ratio than was observed in any of the prior five years. Despite the increase in settlement values in 2020, the increase in Investor Losses led to a decline in the median ratio of settlement to Investor Losses. For 2020, the median ratio of settlement to Investor Losses was 1.7%, one of the lowest ratios observed in the last nine years. See Figure 16.

Figure 16. **Median NERA-Defined Investor Losses and Median Ratio of Settlement to Investor Losses by Settlement Year**
January 2012–December 2020



Predicted Settlement Model

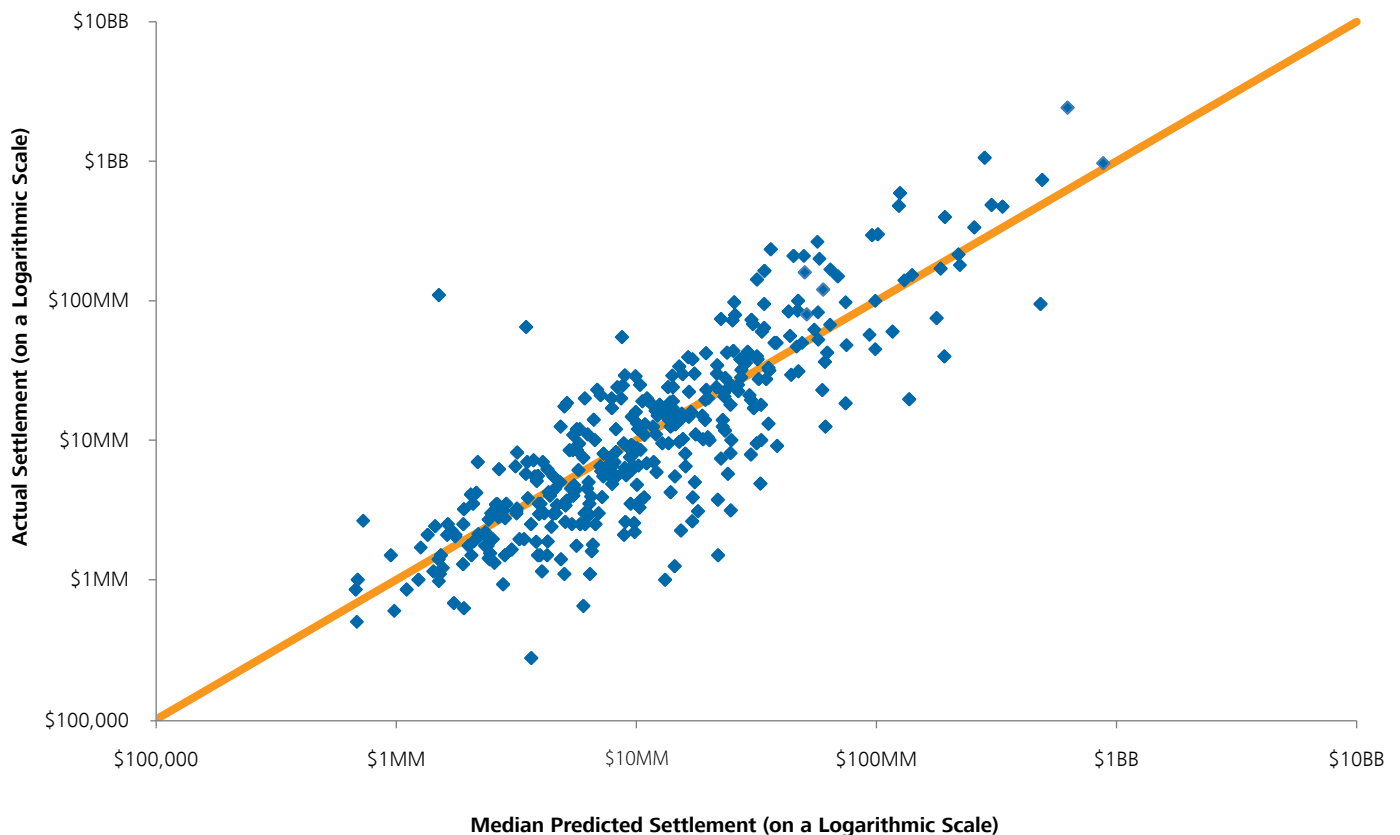
In addition to Investor Losses, NERA identified several other key factors that drive settlement amounts. These factors, when combined with Investor Losses, account for a substantial fraction of the variation observed in actual settlements in our database.

Using the measure of Investor Losses as discussed above in the predicted model, some of the factors that influence settlement values are:

- NERA-Defined Investor Losses (a proxy for the size of the case);
- The market capitalization of the issuer immediately after the end of the class period;
- The types of securities, in addition to common stock, alleged to have been affected by the fraud;
- Variables that serve as a proxy for the merit of plaintiffs' allegations (such as whether the company has already been sanctioned by a governmental or regulatory agency or paid a fine in connection with the allegations);
- The stage of the litigation at the time of settlement; and
- Whether an institution or public pension fund is lead or named plaintiff.

These factors account for a substantial amount of the variation in settlement amounts for the sample of cases in our model with a settlement date between December 2011 and June 2020. In addition, as evidenced in Figure 17, there is significant correlation between the median predicted settlement and actual settlement values for the more than 375 cases in our current model.

Figure 17. **Predicted vs. Actual Settlements**
Investor Losses Using S&P 500 Index



Trends in Plaintiffs' Attorneys' Fees and Expenses

In addition to tracking settlements to plaintiffs, NERA's SCA database also tracks the compensation to plaintiffs' attorneys working on these suits.¹¹ Plaintiffs' attorneys are commonly compensated for their work related to a lawsuit, specifically in fees, as part of a settlement, if one is reached. This compensation is often determined as a fixed percentage of the settlement amount. Additionally, plaintiffs' attorneys also typically receive reimbursement out of the settlement for any out-of-pocket costs incurred in relation to work performed in connection with the case.

Over the 10-year period ending 31 December 2020, the annual aggregate amount of plaintiffs' attorneys' fees and expenses has varied significantly, ranging from a low of \$467 million in 2017 to a high of \$1,552 million in 2016. In 2020, the aggregate plaintiffs' attorneys' fees and expenses was \$613 million, an approximate 6% increase over the 2019 amount but still below the 2018 amount of \$1,202 million. This increase in 2020 was driven by the presence of the American Realty Capital Properties settlement, which accounted for \$105 million of the aggregate fees and expenses for the year. Given that plaintiffs' attorneys' compensation is a function of settlement amount, the presence of "mega" settlements—settlements of \$1 billion or higher—will result in higher aggregate fees and expenses than settlements for lower values. Although there was an increase in 2020 in the aggregate fees and expenses associated with settlements of \$1 billion or higher, there was a decrease in the aggregate fees and expenses related to settlements under \$500 million. The increase in the higher settlement range was sufficient to more than offset the decrease in the lower settlement ranges, resulting in an overall increase in aggregate fees and expenses for settlements in 2020. See Figure 18.

Figure 18. **Aggregate Plaintiffs' Attorneys' Fees and Expenses by Settlement Size**
January 2011–December 2020

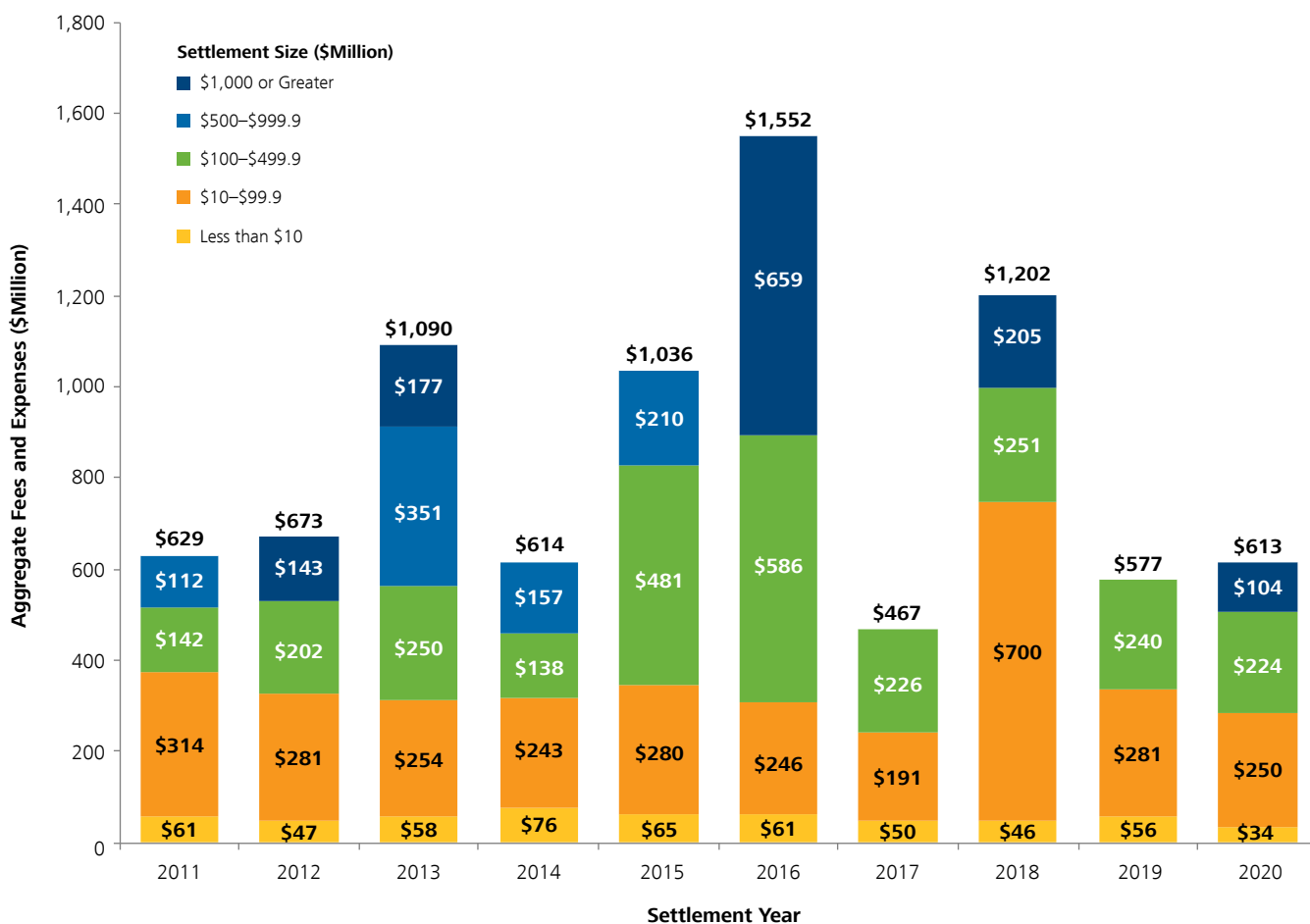
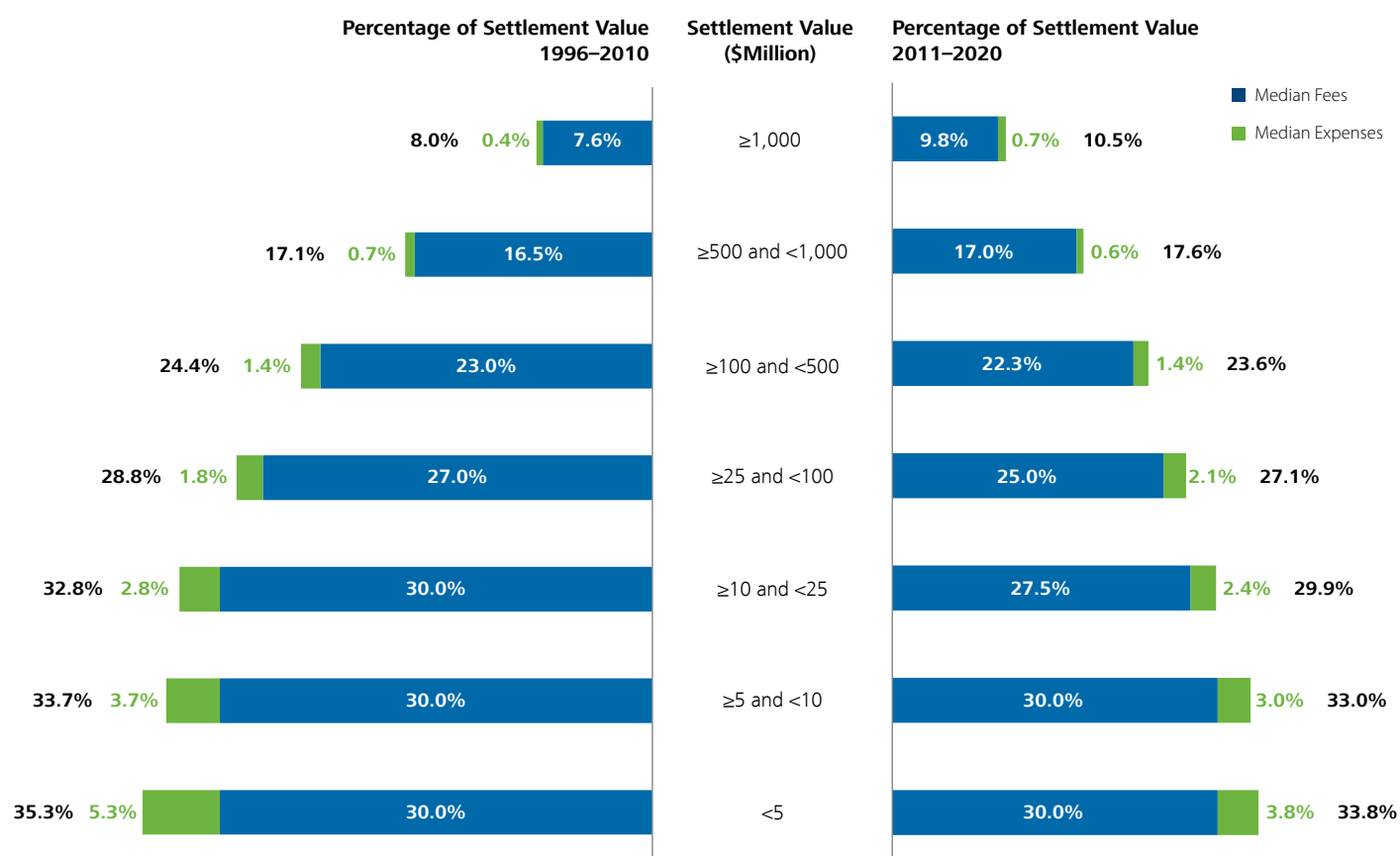


Figure 19 examines the median of plaintiffs' attorneys' fees and expenses as a percentage of settlement value for cases settled between 1996 and 2010 and between 2011 and 2020. As indicated in the chart, plaintiffs' attorneys' fees and expenses represent a declining percentage of settlement value as settlement size increases. This pattern is consistent in settlements reached in the last 10 years and settlements reached between 1996 and 2010. More specifically, for settlements of \$5 million and less, attorneys' fees and expenses represent 35% and 34% of the settlement amount for the 1996–2010 and 2011–2020 periods, respectively. In both periods, median plaintiffs' attorneys' fees and expenses as a percentage of settlement size is approximately 24% for settlements between \$100 million and \$500 million. As settlement size increases to \$1 billion or greater, the percentage associated with attorneys' fees and expenses falls to 11% for settlements in the 2011–2020 period and 8% for settlements reached during the 1996–2010 period.

Figure 19. **Median of Plaintiffs' Attorneys' Fees and Expenses by Size of Settlement**
Excludes Merger Objections and Settlements for \$0 to the Class



Conclusion

In 2020, there was a decline in total federal filings, resulting from a decrease within each of the five types of case categories we examine. Of these newly filed cases, the percentage that were Rule 10b-5, Section 11, and/or Section 12 increased to 64%, one of the highest proportions in recent years. The electronic technology and technology services sector represented the largest proportion of 2020 new securities class action filings and misled future performance was the most common allegation included in complaints. The Second, Third, and Ninth Circuits continue to account for a substantial proportion of new cases filed, representing more than 75% of the 2020 filings.

Since our 2019 report, the COVID-19 pandemic developed, impacting business operations, performance, revenue, and outlook. In March, the first securities class action lawsuit related to COVID-19 was filed, and another 32 COVID-19-related suits were filed through 31 December 2020. At this time, the pandemic's impact on securities class action litigation has not yet been fully determined and it will likely take months before it is fully revealed.

Between 1 January 2020 and 31 December 2020, 320 cases were resolved, a slight increase from the total number of cases resolved in 2019. Although this number of resolutions is well within the historical range for 2011–2019, the number of settled cases hit a record low while the number of dismissed cases reached a record high for the 10-year period.

For the non-merger-objection cases settled for positive values in 2020, the average settlement value was \$44 million. This average value was more than 50% higher than the 2019 average of \$28 million. Excluding settlements of \$1 billion and higher, the 2020 average settlement value was \$30 million, which is within \$1 million of the average values in 2018 and 2019. The median annual settlement value for 2020 was \$13 million, tying with 2018 for the highest recorded median value in the last 10 years.

Notes

- 1 This edition of NERA's report on Recent Trends in Securities Class Action Litigation expands on previous work by our colleagues Lucy P. Allen, Dr. Vinita Juneja, Dr. Denise Neumann Martin, Dr. Jordan Milev, Robert Patton, Dr. Stephanie Plancich, and others. The authors thank Dr. David Tabak for helpful comments on this edition. We thank Zhenyu Wang and other researchers in NERA's Securities and Finance Practice for their valuable assistance. These individuals receive credit for improving this report; any errors and omissions are those of the authors. NERA'S proprietary securities class action database and all analyses reflected in this report are limited to federal case filings and resolutions.
- 2 Data for this report were collected from multiple sources, including Institutional Shareholder Services, complaints, case dockets, Dow Jones Factiva, Bloomberg Finance, FactSet Research Systems, Nasdaq, Intercontinental Exchange, US Securities and Exchange Commission (SEC) filings, and public press reports.
- 3 NERA tracks class actions involving securities that have been filed in federal courts. Most of these cases allege violations of federal securities laws; others allege violations of common law, including breach of fiduciary duty, as with some merger-objection cases; still others are filed in federal court under foreign or state law. If multiple actions are filed against the same defendant, are related to the same allegations, and are in the same circuit, we treat them as a single filing. However, the first two actions filed in different circuits are treated as separate filings. If cases filed in different circuits are consolidated, we revise our count to reflect the consolidation. Therefore, case counts for a particular year may change over time. Different assumptions for consolidating filings would probably lead to counts that are directionally similar but may, in certain circumstances, lead observers to draw a different conclusion about short-term trends in filings.
- 4 Due to a recent revision to the methodology used to gather data on the number of listed companies on the NYSE and Nasdaq, the historical counts may differ from the counts presented in prior reports.
- 5 Most securities class actions complaints include multiple allegations. For this analysis, all allegations from the complaint are included, and as such, the total number of allegations exceeds the total number of filings.
- 6 It is important to note that due to the small number of cases in some of these categories, the findings summarized here may be driven by one or two cases.
- 7 Here the word "dismissed" is used as shorthand for all cases resolved without settlement; it includes cases where a motion to dismiss was granted (and not appealed or appealed unsuccessfully), voluntary dismissals, cases terminated by a successful motion for summary judgment, or an unsuccessful motion for class certification.
- 8 Analyses in this section exclude IPO laddering cases and merger-objection cases.
- 9 Unless otherwise noted, tentative settlements (those yet to receive court approval) and partial settlements (those covering some but not all non-dismissed defendants) are not included in our settlement statistics. We define "settlement year" as the year of the first court hearing related to the fairness of the entire settlement or the last partial settlement. Analyses in this section exclude merger-objection cases and cases that settle with no cash payment to the class. All charts and statistics reporting inflation-adjusted values are estimated as of November 2020.
- 10 NERA-Defined Investor Losses is only calculable for cases involving allegations of damages to common stock over a defined class period. As such, we have not calculated this metric for cases such as merger objections.
- 11 Analyses in this section exclude merger-objection cases and cases that settle with no cash payment to the class.

About NERA

NERA Economic Consulting (www.nera.com) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For over half a century, NERA's economists have been creating strategies, studies, reports, expert testimony, and policy recommendations for government authorities and the world's leading law firms and corporations. We bring academic rigor, objectivity, and real-world industry experience to bear on issues arising from competition, regulation, public policy, strategy, finance, and litigation.

NERA's clients value our ability to apply and communicate state-of-the-art approaches clearly and convincingly, our commitment to deliver unbiased findings, and our reputation for quality and independence. Our clients rely on the integrity and skills of our unparalleled team of economists and other experts backed by the resources and reliability of one of the world's largest economic consultancies. With its main office in New York City, NERA serves clients from more than 25 offices across North America, Europe, and Asia Pacific.

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