UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

IN RE: DEERE & COMPANY REPAIR SERVICES ANTITRUST LITIGATION	MDL No. 3030 Case No.: 3:22-cv-50188 Hon. Iain D. Johnston

DECLARATION OF PROFESSOR WILLIAM B. RUBENSTEIN
IN SUPPORT OF PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES

1. I am the Bruce Bromley Professor of Law at Harvard Law School and have been recognized as a leading national expert on class action law and practice. Class Counsel[1] seek a fee of $37 million. They have retained me to provide my expert opinion as to the reasonableness of this request. After setting forth my qualifications to serve as an expert (Part I, *infra*), I supply the Court with both quantitative and qualitative data and explain how this information provides support for the conclusion that Class Counsel's request is reasonable.

2. The Seventh Circuit has encouraged courts to consider what a fee negotiation might have generated as a market approach to fees at the outset of the action, when the risks were palpable and the outcome unknown. In my opinion, a savvy client bargaining with counsel to pursue this

[1] "Pursuant to Rules 23(c)(1)(B) and 23(g), the Court appoints the following law firms as Settlement Class Counsel: Wexler Boley & Elgersma LLP, Gustafson Gluek PLLC, and Cotchett, Pitre & McCarthy, LLP." Order Preliminarily Approving Settlement with Defendant Deere & Co., Certifying the Proposed Settlement Class, Approving the Plan to Notify the Settlement Class, and Providing Related Relief at 4, *In re Deere & Co. Repair Servs. Antitrust Litig.*, No. 3:22-cv-50188 (N.D. Ill. May 18, 2026), ECF No. 341 [hereinafter "Preliminary Approval Order"].

action at the time would have negotiated for one of two fee structures – the first employing a percentage approach, the second a lodestar approach[2] – each of which supports the request here:

- ***The percentage approach.*** Contingent fee contracts typically provide that counsel will pursue a case at its own costs and, in return for making that investment, share in the proceeds of the action. The lawyers' share is set as a percentage of the value generated for the client and the normal percentage for such contracts is roughly a third of the recovery (plus expenses) in tort cases, and about 28% (plus expenses) in class action cases in this Circuit. Here, Class Counsel seek far less than 28% of the value their expert places upon the relief secured for the class, rendering the request fully within the normal range. The only hitch here is that the value Class Counsel created is a combination of monetary and non-monetary relief, with their $37 million request constituting 36.55% of the (current value of the) monetary relief. Viewed from the *ex ante* bargaining perspective, however, such an outcome is not problematic. I say that because it is unlikely that at the outset of the case, with the parties anticipating monetary and non-monetary relief, they would have bargained to limit the fee to a percentage of the monetary relief alone. Such a bargain would create no incentive for counsel to pursue the non-monetary relief. Where, as here, the plaintiffs' expert assigns significant value to the nonmonetary relief, the client would want to incentivize counsel to pursue it – and paying a larger than normal share of the monetary relief alone would be the obvious method to generate that incentive. The percentage approach accordingly supports the award. As courts in this situation regularly do, the Court can reach that conclusion without getting into the intricacies of valuing the non-monetary relief (1) by considering that relief a "relevant circumstance" in assessing the $37 million request and/or (2) by reviewing the fee request using a lodestar approach.

- ***The lodestar approach***. The important non-monetary relief Class Counsel secured in this matter brings into focus a different fee approach that might have emerged from *ex ante* negotiations. Specifically, if a client sought to hire a lawyer to pursue ***only*** non-monetary relief on a contingent basis, the parties might set the fee based on the market value of counsel's time (hours x rates, or lodestar), with an upward adjustment over the normal hourly rate to account for the risk of non-payment.[3] The parties could of course set the fee as a percentage of the non-monetary relief achieved, with the client paying that amount out of pocket at the conclusion of the matter. But valuing non-monetary relief can often be complex and time-consuming, whereas market-based hourly rates

[2] These are, of course, the two methods courts in this Circuit regularly employ, often without undertaking the market analysis. *See* William B. Rubenstein, 5 *Newberg and Rubenstein on Class Actions*, § 15:102 (6th ed. 2022).

[3] Richard A. Posner, *Economic Analysis of Law* 534, 567 (4th ed. 1992) ("A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans.").

> are well established and a multiplier easily applied. The law accordingly signals courts that using a lodestar approach in these circumstances can be advantageously efficient. Here, Class Counsel submit a lodestar totaling approximately $32.88 million, meaning that their $37 million fee request encompasses a positive multiplier of 1.125. That is a bargain for the class: empirical data show that the average lodestar multiplier is 1.5-2 in all cases but rises to 3.2 in the largest fund cases, placing the multiplier sought here well below either norm. Yet the risks Class Counsel shouldered here, and the results they achieved for the class, are well above the norm. Most notably, this "right to repair" case revives a band of aftermarket cases long thought to have ended with a Supreme Court decision more than 30 years ago; recent efforts to revive the category have been notoriously ineffective in the courts – indeed, even the Federal Trade Commission did not pursue this case until *after* Class Counsel had pioneered the effort. Class Counsel not only took this risk, they took it against one of the largest corporations in the United States, armed with counsel from the largest law firms in the world. Class Counsel, three relatively small law firms, invested nearly $40 million of their own time and money pursuing the class's claims without any promise that the investment would pay off. Yet it did: Class Counsel secured a monetary fund that (with interest) is now more than $101 million and which, they report,[4] yields 100% of the class members 26-53% of the value of their damages, in cash. They also secured non-monetary relief reducing Deere's control over the repair market for its products, directly benefiting class members by allowing them to repair Deere equipment without the need for Deere authorized dealers.[5]

3. Class Counsel's fee request can be deceiving given the relatively high percentage of the monetary fund that it – and the related cost reimbursement – constitute. But a careful review of the whole context reveals precisely the opposite situation, showing that Class Counsel's request is essentially equivalent to its lodestar, meaning that the class has reaped the benefit of Counsel's well-above-the-norm services at a well-below-the-norm price.

[4] Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Approval of Settlement with Defendant Deere & Co., Certification of the Proposed Settlement Class, and Related Relief at 12, *In re Deere & Co. Repair Servs. Antitrust Litig.*, No. 3:22-cv-50188 (N.D. Ill. Apr. 6, 2026), ECF No. 333-1 [hereinafter "Preliminary Approval Motion"].

[5] *Id.* at 11.

I.
BACKGROUND AND QUALIFICATIONS[6]

4. I am the Bruce Bromley Professor of Law at Harvard Law School. I graduated from Yale College, *magna cum laude*, in 1982 and from Harvard Law School, *magna cum laude*, in 1986. I clerked for the Hon. Stanley Sporkin in the U.S. District Court for the District of Columbia following my graduation from law school. Before joining the Harvard faculty as a tenured professor in 2007, I was a law professor at the UCLA School of Law for a decade, and an adjunct faculty member at Harvard, Stanford, and Yale Law Schools while a litigator in private practice during the preceding decade. I am admitted to practice law in the Commonwealth of Massachusetts, the State of California, the Commonwealth of Pennsylvania (inactive), the District of Columbia (inactive), the U.S. Supreme Court, six U.S. Courts of Appeals, and four U.S. District Courts.

5. My principal area of scholarship is complex civil litigation, with a special emphasis on class action law. I am the author, co-author, or editor of five books and more than a dozen scholarly articles, as well as many shorter publications (a fuller bibliography appears in my appended c.v.). Much of this work concerns various aspects of class action law. Since 2008, I have been the sole author of the leading national treatise on class action law, *Newberg on Class Actions*. Between 2008 and 2017, I rewrote the entire multi-volume treatise from scratch as its Fifth Edition and, subsequently, produced the treatise's Sixth Edition – now entitled, *Newberg and Rubenstein on Class Actions* – which was published in 2022. My work has been excerpted in casebooks on complex litigation, as noted on my c.v.

[6] My full c.v. is attached as Exhibit A.

6. My expertise in complex litigation has been recognized by judges, scholars, and lawyers in private practice throughout the country for whom I regularly provide consulting advice and educational training programs. Between 2010 and 2023, the Judicial Panel on Multidistrict Litigation (JPML) annually invited me to give a presentation on the current state of class action law at its MDL Transferee Judges Conference. The Federal Judicial Center invited me to participate as a panelist (on the topic of class action settlement approval) at its March 2018 judicial workshop celebrating the 50th anniversary of the JPML, *Managing Multidistrict and Other Complex Litigation Workshop*. The Ninth Circuit invited me to moderate a panel on class action law at the 2015 Ninth Circuit/Federal Judicial Center Mid-Winter Workshop. The American Law Institute selected me to serve as an Adviser on a Restatement-like project developing the *Principles of the Law of Aggregate Litigation*. In 2007, I was the co-chair of the Class Action Subcommittee of the Mass Torts Committee of the ABA's Litigation Section. I am on the Advisory Board of the publication *Class Action Law Monitor*. I have often presented continuing legal education programs on class action law at law firms and conferences.

7. My teaching focuses on procedure and complex litigation. I regularly teach the basic civil procedure course to first-year law students, and I have taught a variety of advanced courses on complex litigation, professional responsibility concerns in aggregate litigation, remedies, and federal litigation. I have received honors for my teaching, including: the Albert M. Sacks-Paul A. Freund Award for Teaching Excellence, as the best teacher at Harvard Law School during the 2011–2012 school year; the Rutter Award for Excellence in Teaching, as the best teacher at UCLA School of Law during the 2001–2002 school year; and the John Bingham Hurlbut Award for Excellence in Teaching, as the best teacher at Stanford Law School during the 1996–1997 school year.

8. My academic work on class action law follows a significant career as a litigator. For nearly eight years, I worked as a staff attorney and project director at the national office of the American Civil Liberties Union (ACLU) in New York City. In those capacities, I litigated dozens of cases on behalf of plaintiffs pursuing civil rights matters in state and federal courts throughout the United States. I also oversaw and coordinated hundreds of additional cases being litigated by ACLU affiliates and cooperating attorneys in courts around the country. I therefore have personally initiated and pursued complex litigation, including class actions.

9. I have been retained as an expert witness in more than 120 cases and as an expert consultant in another 40 or so cases. These cases have been in state and federal courts throughout the United States, most have been complex class action cases, and many have been MDL proceedings. I have been retained to testify as an expert witness on issues ranging from the propriety of class certification, to the reasonableness of settlements and fees, to the preclusive effect of class action judgments. I have been retained by counsel for plaintiffs, for defendants, and for objectors.

10. Courts have also appointed me to serve in a variety of capacities in complex matters:

- In 2015, the United States Court of Appeals for the Second Circuit appointed me to argue for affirmance of a district court order that significantly reduced class counsel's fee request in a large, complex securities class action, a task I completed successfully when the Circuit summarily affirmed the decision on appeal.[7]

- In 2017, the United States District Court for the Eastern District of Pennsylvania appointed me to serve as an expert witness on certain attorney's fees issues in the National Football League (NFL) Players' Concussion Injury Litigation (MDL 2323). In my final report to the Court, I recommended, *inter alia*, that the Court

[7] *See In re IndyMac Mortg.-Backed Sec. Litig.*, 94 F. Supp. 3d 517 (S.D.N.Y. 2015), *aff'd sub nom. DeValerio v. Olinski*, 673 F. App'x 87 (2d Cir. 2016).

should cap individual retainer agreements at 22%, a recommendation that the Court adopted.[8]

- In 2018, the United States District Court for the Northern District of Ohio appointed me to serve as an expert consultant to the Court on complex class certification and common benefit fees issues in the National Prescription Opiate Litigation (MDL 2804).

- The United States District Courts for the Southern District of New York and the Eastern District of Pennsylvania have both appointed me to serve as a mediator to resolve complex matters in class action cases.

11. One of the functions I can provide as an expert witness is to present empirical evidence of class action practices from other cases. As part of my scholarly work on class action law, I have created and maintain a database containing data on over 1,000 class action lawsuits. Specifically, my research assistants coded the data from case reports appearing in the journal, *Class Action Attorney Fee Digest* (CAAFD). CAAFD was published monthly from January 2007 to September 2011 for a total of 57 issues and reported on 1,187 unique court-approved state and federal class actions. For each case, a CAAFD case abstract describes the awarding court and judge, the subject matter of the dispute, the settlement/judgment benefits, the attorney fee and expense awards (both as requested by plaintiff's counsel and as approved by the court), the case filing and attorney fee award dates, any named plaintiff awards, and miscellaneous data on case and settlement/judgment administration. In creating the database from the CAAFD reports, my research team cross-checked the accuracy of a subset of federal reports against source documents from PACER; we found only one error – an understatement of the settlement benefit value by 2% – in 726 data fields, or fewer than 0.15% of fields. I am therefore confident about the accuracy of

[8] *In re Nat'l Football League Players' Concussion Inj. Litig.*, No. 2:12-md-02323-AB, 2018 WL 1658808, at *1 (E.D. Pa. Apr. 5, 2018) ("I adopt the conclusions of Professor Rubenstein and order that IRPAs' fees be capped at 22% plus reasonable costs.").

the data in my database and use it regularly as a source for my scholarship and expert witness work.

12. Courts have often relied on my expert witness testimony.[9]

13. I have been retained in this case to provide an opinion concerning the issues set forth in the first paragraph above. I am being compensated for providing this expert opinion. I was paid a flat fee in advance of rendering my opinion, so my compensation is in no way contingent upon the content of my opinion.

14. In analyzing these issues, I have discussed the case with the counsel who retained me. I have also reviewed documents from this litigation and the related cases, a list of which is

[9] *See, e.g.*, *In re Genetically Modified Rice Litig.*, 764 F.3d 864, 872 (8th Cir. 2014); *In re Zetia (Ezetimibe) Antitrust Litig.*, No. 2:18-MD-2836, 2022 WL 18108387, at *7 (E.D. Va. Nov. 8, 2022); *Reed v. Light & Wonder, Inc.*, No. 18-CV-565-RSL, 2022 WL 3348217, at *1–2 (W.D. Wash. Aug. 12, 2022); *City of Westland Police & Fire Ret. Sys. v. MetLife, Inc*., No. 12-CV-0256 (LAK), 2021 WL 2453972, at *2–3 (S.D.N.Y. June 15, 2021); *In re Facebook Biometric Info. Priv. Litig*., No. 15-CV-03747-JD, 2021 WL 757025, at *10–12 (N.D. Cal. Feb. 26, 2021); *Kater v. Churchill Downs Inc*., No. 15-CV-00612-RSL, 2021 WL 511203, at *1–2 (W.D. Wash. Feb. 11, 2021); *Wilson v. Playtika Ltd*., No. 18-CV-5277-RSL, 2021 WL 512230, at *1–2 (W.D. Wash. Feb. 11, 2021); *Wilson v. Huuuge, Inc*., No. 18-CV-5276-RSL, 2021 WL 512229, at *1–2 (W.D. Wash. Feb. 11, 2021); *Amador v. Baca*, No. 2:10-CV-01649-SVW-JEM, 2020 WL 5628938, at *13 (C.D. Cal. Aug. 11, 2020); *Hale v. State Farm Mut. Auto. Ins. Co*., No. 12-0660-DRH, 2018 WL 6606079, at *10, 14 (S.D. Ill. Dec. 16, 2018); *Krakauer v. Dish Network, L.L.C*., No. 1:14-CV-333, 2018 WL 6305785, at *5 (M.D.N.C. Dec. 3, 2018); *In re Nat'l Football League Players' Concussion Injury Litig.*, No. 2:12-md-02323-AB, 2018 WL 1658808, at *2–4 (E.D. Pa. Apr. 5, 2018); *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2017 WL 3175924, at *3 (N.D. Cal. July 21, 2017); *Aranda v. Caribbean Cruise Line, Inc.*, No. 1:12-cv-04069, 2017 WL 1369741, at *5 (N.D. Ill. Apr. 10, 2017), *aff'd sub nom. Birchmeier v. Caribbean Cruise Line, Inc.*, 896 F.3d 792 (7th Cir. 2018); *In re High-Tech Employee Antitrust Litig.*, No. 11-CV-02509-LHK, 2015 WL 5158730, at *9–10 (N.D. Cal. Sept. 2, 2015); *Asghari v. Volkswagen Grp. of Am., Inc.*, No. 13-CV-02529 MMM, 2015 WL 12732462, at *44 (C.D. Cal. May 29, 2015); *In re Syngenta AG MIR 162 Corn Litig.*, No. 14-md-2591-JWL, 2015 WL 2165341, at *5 (D. Kan. May 8, 2015); *Parkinson v. Hyundai Motor Am.*, 796 F. Supp. 2d 1160, 1172 (C.D. Cal. 2010); *Commonwealth Care All. v. Astrazeneca Pharm. L.P.*, No. CIV.A. 05-0269 BLS 2, 2013 WL 6268236, at *2 (Mass. Super. Aug. 5, 2013).

attached as Exhibit B, and I have reviewed the case law and scholarship relevant to the issues herein.

15. Counsel responsible for creating a common fund are entitled to a fee from the fund according to the common fund doctrine. Rule 23 requires that the fee be "reasonable."[10] Courts differ in the methods that they employ to hit that mark, with most circuits utilizing a percentage method with a lodestar cross-check.[11] Uniquely, the Seventh Circuit encourages courts to consider a market approach to the fee request, specifically to "estimate the terms of the contract that private plaintiffs would have negotiated with their lawyers, had bargaining occurred at the outset of the case (that is, when the risk of loss still existed)."[12] The Seventh Circuit has further held that in applying the market method, "both the lodestar approach and the percentage approach may be appropriate . . . depending on the circumstances" such that "the decision whether to use a percentage method or a lodestar method remains in the discretion of the district court."[13] Thus, as I report in my Treatise, many courts in the Circuit simply apply a percentage or lodestar approach without necessarily undertaking the market analysis.[14]

16. The following sections consider Class Counsel's requested fee in these terms, first considering the percentage sought (Part II, *infra*) and then assessing the lodestar multiplier (Part III, *infra*).

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[10] Fed. R. Civ. P. 23(h) ("In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement.").

[11] 5 *Newberg and Rubenstein on Class Actions*, *supra* note 2, § 15:67.

[12] *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001). For a discussion, *see* 5 *Newberg and Rubenstein on Class Actions*, *supra* note 2, § 15:79.

[13] *Americana Art China Co., Inc. v. Foxfire Printing & Packaging, Inc.*, 743 F.3d 243, 247 (7th Cir. 2014) (quoting *Florin v. Nationsbank of Georgia, N.A.*, 34 F.3d 560, 566 (7th Cir. 1994) and stating that "*Florin* is still good law").

[14] 5 *Newberg and Rubenstein on Class Actions*, *supra* note 2, § 15:102.

II.
EVIDENCE SUPPORTING THE REASONABLENESS OF THE PERCENTAGE APPROACH

17. Class Counsel seek a fee of $37 million. This amount is 36.55% of $101,241,761.55, which Class Counsel report is the current value of the class's $99 million monetary fund with interest accumulated and administrative fees and expenses deducted;[15] but it is a far smaller percentage when the value that the plaintiffs' expert attaches to the non-monetary relief is added to the denominator.

18. This Circuit's market approach to fees encourages courts to consider the fee structure that would have been employed had a sophisticated client bargained with the contingent fee lawyer at the outset of the lawsuit.[16]

19. The most common fee structure in contingent fee cases is that a client contracts to pay counsel a percentage of the funds recovered for the clients or class.[17] This structure in turn presents two sets of questions: What percentage? And percentage of what?

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[15] The Seventh Circuit directs that the requested fee percentage be analyzed net of the costs of administering the settlement. *See Redman v. RadioShack Corp*., 768 F.3d 622, 630 (7th Cir. 2014) ("[A]dministrative costs should not have been included in calculating the division of the spoils between class counsel and class members.").

[16] *In re Synthroid Marketing Litigation* ("*Synthroid I*"), 264 F.3d 712, 718, 736 (7th Cir. 2001) (directing district courts to "estimate the terms of the contract that private plaintiffs would have negotiated with their lawyers, had bargaining occurred at the outset of the case (that is, when the risk of loss still existed)").

[17] Class Counsel's actual contingent fee agreements with the named plaintiffs herein are exemplary in referencing fees in percentage terms. Class Counsel provided me with seven relevant agreements, which I then reviewed. Several, for example, set fees at 40% (plus costs) in individual matters, and one advises the client that in class action cases, counsel "typically" seek "a fee equal to 1/3 of the recovery plus costs," Class Action Retainer Agreement between Williams McCarthy LLP; Foote, Mielke, Chavez & Neil LLC & Wexler Boley & Elgersma LLP and Plum Ridge Farms Ltd. (Feb. 4, 2022). While they are exemplary of individual contingent fee contracts in employing a percentage approach (with the one even referencing that class action practice does this as well), the agreements shed no light on the particular issues before the Court in this fee-setting process. Indeed, for a variety of good reasons, courts generally "place[] little weight" on contingent fee

What percentage?

20. The former question is easily addressed. The rule of thumb for contingent fee contracts historically has been that counsel get a third of the recovery (33.33%) and likely 40% or more if the case proceeds to trial.[18]

21. Most of the empirical data on contingent fee contracts supports these assumptions:

- A study focusing on *ex ante* agreements in the tort contingent fee market showed that "on the order of 60% of the cases employed the standard one-third contingency fee";[19] for those that use variable percentages, the range without a trial is 20–43%; with a trial, 25–50%; and with an appeal, 33–50%.[20]

- A study focusing on *ex ante* agreements in patent cases showed that in 10 cases with flat fee arrangements, the average fee was 38.6%, while in another 32 cases using arrangements that raised the fee as the case progressed, the average starting point was 28% at filing, rising to 40.2% if the case progressed through appeal;[21]

- A study reviewing fees in 33 pharmaceutical antitrust cases (which the author assumed utilized *ex ante* agreements negotiated by sophisticated corporate plaintiffs) showed that the average fee was 32.9%.[22]

- A study focusing on *ex ante* agreements negotiated between a Lead Plaintiff and a Lead Counsel in securities cases pursued under the Private Securities Litigation Reform Act of 1995 (PSLRA) showed that the Lead Plaintiff negotiated, on average, a 17.9% fee.[23]

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contracts with named plaintiffs. 5 *Newberg and Rubenstein on Class Actions*, *supra* note 2, § 15:74 (quoting *In re Trans Union Corp. Priv. Litig.*, 629 F.3d 741, 744 (7th Cir. 2011)).

[18] *Cf. Pearson v. NBTY, Inc.*, 772 F.3d 778, 782 (7th Cir. 2014) (suggesting the presumption should "be that attorneys' fees awarded to class counsel should not exceed a third or at most a half of the total amount of money going to class members and their counsel").

[19] Herbert M. Kritzer, *Seven Dogged Myths Concerning Contingency Fees*, 80 Wash. U. L. Q. 739, 759 (2002).

[20] *Id.* at 758 tbl. 6.

[21] David L. Schwartz, *The Rise of Contingent Fee Representation in Patent Litigation*, 64:2 Ala. L. Rev. 335, 360 (2012).

[22] Brian T. Fitzpatrick, *A Fiduciary Judge's Guide to Awarding Fees in Class Actions*, 89 Fordham L. Rev. 1151, 1161 (2021) [hereinafter "Fitzpatrick I"].

[23] Lynn A. Baker, Michael A. Perino, and Charles Silver, *Is the Price Right? An Empirical Study of Fee-Setting in Securities Class Actions*, 115 Col. L. Rev. 1371, 1394-95 (2015).

The average across the four studies (of 33.33%, 38.6%, 32.9%, and 17.9%) is 31%. Three of the studies provide strong support for the conclusion that *ex ante* bargaining tends to yield a fee in the 33% range. The securities study shows a lower negotiated fee, but that number requires more context: Lead Plaintiffs appear to negotiate *ex ante* fee agreements infrequently (only 18.1% of fee requests referenced such an agreement),[24] suggesting these data might reflect particular types of outlier cases, not a general average. And, indeed, empirical data show that the average fee award in all securities class actions to be far closer to the numbers in the other studies.[25]

22. Fee awards in this Circuit provide empirical support for the conclusion that class action lawyers generally recover 25-30%. These awards are pertinent because, one assumes, each was based on a court's conclusion that the award mimicked the market. Table 1 presents findings from four empirical studies of fees in class action cases; the average of the four studies is 28.26%. The study with the largest number of data points (my own database) shows that the average fee in class action cases in the Seventh Circuit is 31.64%.

[24] *Id.* at 1389, tbl.2.

[25] *Id.* at 1414-1415 (reporting that fee awards in federal districts with low volumes of class action cases average 29.1%, while in districts with high volumes, they average 26.0%; in the presence of *ex ante* agreements, the average fee in all districts is 23.4%, when public pension funds are the lead plaintiffs, 24.6%").

TABLE 1
EMPIRICAL DATA ON PERCENTAGE AWARDS IN THE SEVENTH CIRCUIT

	YEARS STUDIED	NUMBER OF CASES	AVERAGE PERCENTAGE
Rubenstein & Krishna[26]	2006–2011	79	31.64%
Eisenberg, Miller & Germano[27]	2009–2013	14	28%
Fitzpatrick[28]	2006–2007	39	27.4%
Eisenberg & Miller[29]	1993–2008	42	26%

23. These data points support the conclusion that an award to Class Counsel constituting 36.55% of the monetary relief alone would be above average – though, as discussed in Part III, *infra*, there is significant support in the record for such an award in the circumstances of this case.

24. However, this case has a special circumstance: Class Counsel secured both monetary and non-monetary relief. That fact accordingly poses a "Percentage of what?" question, namely, should counsel's fee be calculated as a percentage only of the monetary relief or as a percentage of the monetary and non-monetary relief combined?

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[26] 5 *Newberg and Rubenstein on Class Actions*, *supra* note 2, § 15:89 (citing William B. Rubenstein et al., *Class Action Fee Awards 2006–2011: An Empirical Study*).

[27] Theodore Eisenberg, Geoffrey Miller & Roy Germano, *Attorneys' Fees in Class Actions: 2009–2013*, 92 N.Y.U. L. Rev. 937, 951 tbl. 3 (2017) [hereinafter "Eisenberg & Miller III"].

[28] Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical Legal Stud. 811, 836 tbl. 9 (2010) [hereinafter "Fitzpatrick II"].

[29] Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: 1993–2008*, 7 J. Empirical Legal Stud. 248, 260 tbl. 4 (2010) [hereinafter "Eisenberg & Miller II"].

Percentage of what?

25. As noted above, in this Circuit, one starting point for addressing that question is what savvy parties negotiating *ex ante* would have set forth in a fee arrangement at that time. I am not aware of any direct evidence on this point – none of the very few empirical studies of *ex ante* fee arrangements address it. Yet from an economic perspective, several premises seem clear:

- *First*, a client desiring non-monetary relief must be willing to pay counsel to achieve it. This means that it is highly unlikely, in this mixed relief setting, the parties would negotiate *ex ante* for counsel to receive a percentage calculated against the value of the monetary relief alone. Such an arrangement would give counsel precisely zero incentive to seek the non-monetary relief – and that is precisely the amount of non-monetary relief the client would likely receive.

- *Second*, for the client to pay counsel for the non-monetary relief, two options present themselves: pay for the non-monetary relief out of the monetary relief, even if the total fee constitutes a higher than normal amount of the monetary relief alone ***or*** pay a regular percentage of the monetary relief for that recovery and pay out of pocket (some sort of lodestar-plus-multiplier-based fee) for the non-monetary relief.

- *Third,* clients might prefer the former option as it seems to pose the least risk to them: they are not on the hook for anything out of pocket but instead incentivize counsel to secure valuable non-monetary relief for them by paying them a percentage of the combined value, even if that percentage constitutes a higher-than-normal amount of the monetary fund alone.

- *Fourth,* the fee negotiation would then likely set a normal range fee percentage – say 30% in a class suit – but specify that it encompasses 30% of the value of both the monetary and non-monetary.

26. The inherent logic of this approach finds support in the case law. Specifically, courts – including courts in this Circuit – have held that in proper circumstances a percentage fee can be calculated as a percentage of the combined value of monetary and non-monetary relief. The case law on mixed recoveries authorizes the inclusion of the non-monetary relief as part of the fee calculation so long as that non-monetary relief is more than speculative in nature, redounds to the

benefit of the class members themselves (not just future class members), and is supported by evidence of its actual value.[30]

27. Were the Court to go through the process of applying this approach here, and warrant inclusion of even a minimum value that the plaintiffs' expert attaches to the non-monetary relief, once that relief is added to the monetary fund, the fee request drops well below 36.55%. Most mathematically obvious, if the non-monetary relief is valued at only about $100 million (well below plaintiffs' expert's valuation), the total relief doubles and the percentage award is cut in half, to around 18%. Indeed, even if the Court were to assume the parties negotiated for a declining percentage approach[31]– which this Circuit does not mandate[32] – applying a normal declining

[30] *Staton v. Boeing Co*., 327 F.3d 938, 972 (9th Cir. 2003) (authorizing inclusion of non-monetary relief in fee calculation if the court is able to "(1) sufficiently identify the class of beneficiaries; (2) accurately trace the benefits; and (3) shift the fee to those benefiting with some exactitude") (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472, 479 (1980) ("[T]he criteria are satisfied when each member of a certified class has an undisputed and mathematically ascertainable claim to part of a lump-sum judgment recovered on his behalf.")); *see also Pearson v. NBTY, Inc*., 772 F.3d 778, 786 (7th Cir. 2014) (affirming district court's refusal to value injunctive relief when assessing attorneys' fees in part because "future purchasers are not members of the class, defined as it is as consumers who have purchased Rexall's glucosamine pills"); *Synfuel Techs., Inc. v. DHL Express (USA), Inc*., 463 F.3d 646, 654 (7th Cir. 2006) (considering theory but declining to add plaintiff's valuation of injunctive relief to settlement value for fairness evaluation in part because "[i]t is future customers who are not plaintiffs in this suit who will reap most of the benefit from these changes").

[31] Some courts utilize reduced percentages as settlement sizes increase. Courts refer to this as a "sliding scale," *see* 5 *Newberg and Rubenstein on Class Actions*, *supra* note 2, § 15:80, or "mega-fund," *id.* § 15:81, approach.

[32] The Seventh Circuit has occasionally suggested such an approach, *e.g., In re Continental Illinois Sec. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992), as amended on denial of reh'g, (May 22, 1992) (stating that "[In large commercial litigation with prospects of multimillion dollar recoveries the percentage [award] frequently is tapered . . ."), and occasionally applied it, *In re Synthroid Mktg. Litig*. ("*Synthroid II*"), 325 F.3d 974, 980 (7th Cir. 2003); *see also Silverman v. Motorola Sols., Inc.,* 739 F.3d 956, 959 (7th Cir. 2013) (confirming approach), but primarily in the context of explaining what a market might do. Otherwise, the Seventh Circuit has rejected the mega-fund approach as being untethered from the market. Accordingly, as the Circuit has recently held, considering evidence of the use of sliding scales in *ex ante* fee contracts may be helpful, *In re Broiler Chicken Antitrust Litig*., 80 F.4th 797, 803–04 (7th Cir. 2023) ("[I]t was error to suggest

framework justifies Class Counsel's $37 million request with only $67.6 million ascribed to the non-monetary relief, again well below the bottom amount of their expert's valuation.[33]

28. Looking at the total value of the settlement significantly reduces the percentage award, but it also involves the Court in reviewing the details of the non-monetary relief valuation. A seminal Ninth Circuit case on point suggested two efficient alternatives, writing that a court may:

> [1] consider the value of the injunctive relief obtained as a "relevant circumstance" in determining what percentage of the common fund class counsel should receive as attorneys' fees, rather than [counting it] as part of the fund itself [or] [2] where obtaining injunctive relief likely accounted for a significant part of the fees expended, courts can use the common fund version of the lodestar method either to set the fee award or as a cross-check to assist in the determination of how the "relevant circumstance" of the injunctive relief should affect a percentage award.[34]

In my opinion, the Court can most easily assess the reasonableness of the proposed $37 million request in these ways.

29. In sum, this section has shown that [1] parties often bargain *ex ante* for a percentage approach to fees; [2] when they do, the average percentage they agree upon is 31%, and when courts in this Circuit reverse engineer that calculation in class action fee decisions, they pay counsel an average of roughly 28%; [3] a client retaining an attorney to secure both monetary and non-monetary relief would logically, *ex ante*, permit counsel to recover a percentage of the value of the total relief, even if that value was a higher than normal percentage of the monetary relief

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that this court has cast doubt on the consideration of declining fee scale bids in all cases."), but "the appropriateness of a declining fee scale award structure may depend on the particulars of the case." *Id.* at 803.

[33] I set forth this calculation in Exhibit C.

[34] *Staton v. Boeing Co*., 327 F.3d 938, 974 (9th Cir. 2003). The Court explained that the "common fund version" of the lodestar method does not require a bar on risk multipliers, as is more the case in fee-shifting cases. *Id*. at n.24 (citing, *inter alia, Florin v. Nationsbank of Georgia, N.A.,* 34 F.3d 560, 565 (7th Cir. 1994) (holding that "risk multipliers remain available in common fund cases")).

alone, such as the request here; [4] courts have approved this approach when certain specific criteria define the non-monetary relief; [5] but more generally, courts may acknowledge the non-monetary relief as a "relevant circumstance" in assessing the percentage request and/or simply cross-check the approach by reviewing counsel's lodestar.

III.
EVIDENCE SUPPORTING THE REASONABLENESS OF THE LODESTAR PLUS MULTIPLIER APPROACH

30. The Seventh Circuit authorizes the use of the lodestar method,[35] and indeed has suggested it might be the preferred method in the presence of complicated valuation questions.[36]

31. In common fund cases, the lodestar approach encompasses both paying counsel their "lodestar" (hours times hourly rates) ***and*** paying them a positive fee "multiplier" or "enhancement" to account for the contingent nature of the representation. If the contingent fee attorney were paid at only her hourly rate, she would have no incentive to invest her time and money in a client's case – she would take the far less risky path of representing clients who could presently pay her on an hourly basis, as most corporate counsel are paid. The California Supreme Court summarized this point by quoting two commentators:

> A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the

[35] *Americana Art China Co. v. Foxfire Printing & Packaging, Inc*., 743 F.3d 243, 247 (7th Cir. 2014) ("We therefore restate the law of this circuit that in common fund cases, the decision whether to use a percentage method or a lodestar method remains in the discretion of the district court.") (quoting *Florin v. Nationsbank of Georgia, N.A*., 34 F.3d 560, 566 (7th Cir. 1994)).

[36] *Americana Art China Co*. 743 F.3d at 248 (explaining that use of the lodestar method enabled the court to avoid having to decide whether a percentage award should be set as a percentage of the amount *made available* to the class as opposed to a percentage of the amount *claimed* by the class members).

> lawyer) is much higher than that of conventional loans.[37] A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.[38]

32. Given the contingent nature of a case, a client seeking to engage counsel and pay them on a lodestar basis – perhaps because the goal of the litigation was purely non-monetary relief, not a monetary fund from which a fee could be extracted – would necessarily pay an enhancement. An *ex ante* fee negotiation would set the enhancement to account for the risk of the case.

33. The negotiation would be informed by the wealth of data on multipliers in common fund cases. That data is robust because even when courts utilize a percentage approach, they often "cross-check" the percentage award they are considering against counsel's lodestar. The difference between the percentage request and the lodestar is, again, the multiplier. I have explained that, in assessing the reasonableness of proposed multipliers, "courts [often] look at multipliers in similar common fund cases and/or empirical evidence about normal multipliers more generally" and that "[c]ourts in most circuits look at multiple factors – particularly the risk of non-recovery, the quality of counsel's work, and the result achieved – to determine the reasonableness

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[37] *Ketchum v. Moses*, 17 P.3d 735, 742 (Cal. 2001) (quoting Richard A. Posner, *Economic Analysis of Law* 534, 567 (4th ed. 1992)).

[38] *Id.* (quoting John Leubsdorf, *The Contingency Factor in Attorney Fee Awards*, 90 Yale L.J. 473, 480 (1981)); *see also* Herbert M. Kritzer & Jayanth K. Krishnan, *Lawyers Seeking Clients, Clients Seeking Lawyers: Sources of Contingency Fee Cases and Their Implications for Case Handling*, 21 Law & Pol'y 347, 348 (1999) ("[A] lawyer representing a client on a contingency basis provides services beyond those that are solely legal. Often it is the additional services – for example, banking services (advancing costs) and insurance services (absorbing losses when they occur) – that make it possible for the client to hire the lawyer.") (footnote omitted).

of the resulting multiplier."[39] The succeeding sections apply these quantitative and qualitative approaches to the facts of this case.

A. Quantitative Analysis

34. Class Counsel report a total lodestar of $32,882,347.40,[40] which means that their $37 million fee request is approximately 1.125 times higher than the lodestar.

35. As the lodestar cross-check has long been a part of class action fee jurisprudence, there is significant empirical evidence showing that the average percentage fee award embodies a positive lodestar multiplier. In the five studies with pertinent data, set forth in Table 2, below, the average lodestar multiplier ranged from 1.42 to 3.89.

[39] *See* 5 *Newberg and Rubenstein on Class Actions*, *supra* note 2, § 15:87 (cleaned up).

[40] I was not tasked with, nor did I, audit the hours and rates that appear in Class Counsel's lodestar. I accordingly take no position on the reasonableness of the lodestar. If the Court finds the lodestar reasonable, the data I provide support the conclusion that the positive enhancement (or multiplier) of that lodestar embodied in Class Counsel's fee request is well below average for a case of this magnitude.

TABLE 2
EMPIRICAL DATA ON LODESTAR MULTIPLIERS IN COMMON FUND CASES

	YEARS STUDIED	NUMBER OF CASES	AVERAGE MULTIPLIER
Rubenstein & Krishna[41]	2006–2011	790	1.42
Eisenberg, Miller & Germano[42]	2009–2013	294	1.48
Fitzpatrick[43]	2006–2007	204	1.65
Eisenberg & Miller[44]	1993–2008	368	1.81
Logan, Moore & Moshman[45]	1973–2003	1,120	3.89

36. The average of these 5 data points is 2.05, without the highest data point the average is 1.59.

37. All of the empirical studies with pertinent data[46] also show that multipliers tend to rise as the size of the class's fund increases.[47] Thus, in Table 3 below, I present the data on the average lodestar multiplier in cases with common funds comparable to the size of the relief that

[41] 5 *Newberg and Rubenstein on Class Actions*, *supra* note 2, § 15:89 (citing William B. Rubenstein et al., *Class Action Fee Awards 2006–2011: An Empirical Study*).

[42] Eisenberg & Miller III, *supra* note 27, at 965 tbl. 12.

[43] Fitzpatrick II, *supra* note 28, at 833–34. This average encompasses cases using both a percentage method with a lodestar cross-check and pure lodestar cases.

[44] Eisenberg & Miller II, *supra* note 29, at 272 tbl. 14. This multiplier dataset excludes cases with a multiplier of 1, but appears to include cases with multipliers both below and above 1.

[45] *See* Stuart J. Logan, Beverly C. Moore & Jack Moshman, *Attorney Fee Awards in Common Fund Class Actions*, 24 Class Action Rep. 167, 167 (2003) [hereinafter "Logan, Moore & Moshman"]. This multiplier dataset appears to include cases that utilized a percentage-of-the-fund method for calculating fees (without a lodestar cross-check), as well as those using a lodestar method and mixed methods. *Id.* at 169 (table headings).

[46] Professor Fitzpatrick's study, cited in Table 2, does not sort multiplier data by fund size.

[47] *See also In re Facebook Biometric Info. Priv. Litig.*, No. 21-15553, 2022 WL 822923, at *1 (9th Cir. Mar. 17, 2022) (noting that "[l]odestar multipliers tend to increase as the size of the class's fund increases").

the plaintiffs' expert assigns to the class's recovery.[48] The average multiplier in these larger-fund cases across the four studies is 3.20, without the highest data point the average is 2.76

TABLE 3
EMPIRICAL DATA ON MULTIPLIERS IN LARGER COMMON FUND CASES

	DEFINITION OF TRANCHE	CASES IN TRANCHE	AVERAGE MULTIPLIER
Eisenberg, Miller & Germano[49]	>$67.5 million	35	2.72
Eisenberg & Miller[50]	>$175.5 million	40	3.18
Rubenstein & Krishna[51]	>$44.6 million	89	2.39
Logan, Moore & Moshman[52]	>$100 million	64	4.50

38. The 1-level multiplier sought here is accordingly below the norm for all cases and significantly below the norm for cases of this magnitude. Put simply, quantitative comparisons provide strong empirical support for the conclusion that the class members are getting a good deal. That conclusion is buttressed by a more qualitative review of the risks counsel took and the results they achieved for the class.

B. Qualitative Analysis

39. As noted above,[53] most courts evaluate the reasonableness of a proposed multiplier by considering the risks that inhered in the case and the results counsel achieved for the class.

[48] In each of the four studies cited, the authors investigated scaling impacts by splitting their data into 10 or 11 tranches with escalating common fund sizes. Table 3 reports the results of the tranche with the highest settlement sizes in that study's dataset.

[49] *See* Eisenberg & Miller III, *supra* note 27, at 967 tbl. 13.

[50] *See* Eisenberg & Miller II, *supra* note 29, at 274 tbl. 15.

[51] *See* 5 *Newberg and Rubenstein on Class Actions*, *supra* note 2, § 15:89 (citing William B. Rubenstein et al., *Class Action Fee Awards 2006–2011: An Empirical Study*).

[52] *See* Logan, Moore & Moshman, *supra* note 45, at 167.

[53] *See* note 39, *supra.*

Notwithstanding the Seventh Circuit's emphasis on the former element (the risks that applied *ex ante*), the Circuit has held that this emphasis does not preclude consideration of counsel's performance.[54] Accordingly these are the same factors courts in this Circuit utilize to scrutinize fee requests.[55] In the following paragraphs, I address the risks and results here.

Class Counsel Shouldered Significant Risks

40. Nine independent factors demonstrated the riskiness of this case from its inception:[56]

- ***Non-piggyback case***. Many class actions follow on the heels of government enforcement actions, such as securities class actions that follow SEC enforcement actions or antitrust cases that follow Department of Justice actions. Class counsel have a lower risk in such cases as their investigative costs may be lower; as they may be able to employ non-mutual offensive issue preclusion to establish liability without

[54] *Americana Art China Co. v. Foxfire Printing & Packaging, Inc*., 743 F.3d 243, 247 (7th Cir. 2014) ("Attorneys and clients negotiating fee schedules *ex ante* often, and in some practice contexts almost exclusively, consider the litigation's ultimate degree of success. That is how a contingency fee works. To our knowledge, we have never forbidden district courts from considering the outcome when engaging in a simulated *ex ante* analysis. We have certainly discouraged district courts from relying *solely* on the degree of success in determining fee awards, but not from considering it at all.") (citation omitted); *In re Synthroid Mktg. Litig*., 264 F.3d 712, 721 (7th Cir. 2001) ("The market rate for legal fees depends in part on the risk of nonpayment a firm agrees to bear, in part on the quality of its performance, in part on the amount of work necessary to resolve the litigation, and in part on the stakes of the case.").

[55] *See In re Broiler Chicken Antitrust Litig.,* 80 F.4th 797, 800 (7th Cir. 2023) (noting, without objection, that the trial court's fee decision relied in part on "the risk of nonpayment at the outset of the case and class counsel's performance"); *Lee v. S. W. Commc'ns, Inc*., No. 3:24-CV-00157-RLY-CSW, 2025 WL 5090509, at *3 (S.D. Ind. Dec. 10, 2025) ("The award of a reasonable fee is also informed by a number of unweighted factors, including: (1) the actual agreements between the parties, as well as fee agreements reached by sophisticated entities in the market for legal services; (2) the risk of nonpayment at the outset of the case; (3) the caliber of Class Counsel's performance; and (4) information from other cases, including fees awarded in comparable cases.") (citing *In re Synthroid Mktg. Litig*., 264 F.3d 712, 719 (7th Cir. 2001)).

[56] The point of this analysis is not to look at Class Counsel's risks *ex post*, with hindsight bias, but rather to demonstrate the strength of the achievement compared to the risks *ex ante*. My analysis accordingly considers the risk at inception of this class action in October 2022. *See* Consolidated Class Action Complaint, *In re Deere & Co. Repair Servs. Antitrust Litig.*, No. 3:22-cv-50188 (N.D. Ill. Oct. 24, 2022), ECF No. 85 [hereinafter "Complaint"].

litigation;[57] and/or as the defendant has a natural incentive to settle with the government, thereby easing the road to settlement with the class. Not this case: although the Federal Trade Commission (FTC) and multiple state attorneys' general filed suit against Deere for the antitrust violations at issue in this case, these government agencies did not file suit until years after Class Counsel,[58] and did not reach a settlement agreement with Deere until Class Counsel had already done so.[59] It was Class Counsel who detected, investigated, theorized, and executed this entire class action from scratch. Indeed, it might be fair to surmise that the government agencies found the case so risky that they waited *until* these private counsel pioneered the litigation to take the leap themselves.

- ***Novelty***. Many class actions are pursued by lawyers who specialize in particular areas (securities, antitrust, consumer, etc.) and can economize their practices and lower their risks by repeating efforts from one case to the next. This is not that case. This type of aftermarket case had largely been dormant for decades following the Supreme Court's 1992 *Kodak* decision,[60] with the Federal Trade Commission acknowledging within the past decade that repair restriction cases were not an enforcement priority.[61] A recent upsurge in the cases by regulators and class action lawyers was so novel that a leading corporate defense firm published a white paper on the trend, noting that it comes after a "nearly 30-year lull" and constitutes a "dramatic shift in practice."[62] Yet efforts to revive these cases have largely been unsuccessful: the Seventh Circuit affirmed dismissal of a similar case against Harley Davidson,[63] even though it came on the heels of an FTC enforcement action;[64] and a case against Tesla was dismissed, re-pleaded so

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[57] *See, e.g.*, *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322 (1979).

[58] *Compare* Complaint, *supra* note 56, *with* Complaint, *Federal Trade Commission v. Deere & Co.*, No. 3:25-cv-50017 (N.D. Ill. Jan. 15, 2025), ECF No. 1.

[59] *Compare* Preliminary Approval Motion, *supra* note 4, *with* Joint Motion for Entry of Stipulated Order for Permanent Injunction and Other Relief, *Federal Trade Commission v. Deere & Co.*, No. 3:25-cv-50017 (N.D. Ill. July 8, 2026), ECF No. 260.

[60] *Eastman Kodak Co. v. Image Technical Servs., Inc*., 504 U.S. 451 (1992).

[61] Federal Trade Commission, Policy Statement of the Federal Trade Commission on Repair Restrictions Imposed by Manufacturers and Sellers at 1 (July 21, 2021), https://www.ftc.gov/system/files/documents/public_statements/1592330/p194400repairrestrictionspolicystatement.pdf. [hereinafter "FTC Policy"].

[62] Latham & Watkins, *5 Key Numbers: US Antitrust Insights for Manufacturers About Right-to-Repair Enforcement* (March 23, 2023), https://www.lw.com/admin/upload/SiteAttachments/5-Key-Numbers-US-Antitrust-Insights-for-Manufacturers-About-Right-to-Repair-Enforcement.pdf.

[63] *In re Harley-Davidson Aftermarket Parts Mktg., Sales Pracs. & Antitrust Litig*., 151 F.4th 922 (7th Cir. 2025)

[64] *Id.* at 928.

as to survive a motion to dismiss,[65] only to be voluntarily dismissed by the plaintiffs a year later, apparently based on the presence of a forced arbitration clause. Moreover, here, the novel case preceded, rather than succeeded, a government enforcement action, as noted above.

- ***Complexity***. All class action cases are typically more complex than the average contingent fee case – that is why the field is known as "complex litigation." But this case's complexity is higher than average: as just noted, the novelty of application of the law in this area is complicated by prior Supreme Court precedent and application of that law to the particular factual setting of the defendant's practices is nuanced and complicated. Perhaps the best evidence of the case's complexity is the fact that this Court's ruling denying Deere's motion to dismiss runs to 52 Federal Supplement pages.[66]

- ***Uncertain liability***. Many class actions pursue obvious instances of wrongdoing publicized in the media, such as the BP oil spill case or the Volkswagen emissions case. These cases embody less risk because settlement is almost a given. This case is the opposite: it does not follow on a high-profile exposé of the defendant's actions and the defendant has no particular incentive to settle, as in such high profile matters.

- ***High stakes***. Given the case concerns Deere's control of the aftermarket for its own products, the stakes of the litigation are enormous for the company. That is reflected in the $100 million settlement and significant non-monetary relief to which the company agreed. Given the importance of the case to the company, Deere surely defended it with special interest and vigor.

- ***High expense.*** Class Counsel report a lodestar of approximately $33 million and expenses totaling $4,743,801.26. This means that Class Counsel have loaned the class members nearly $38 million of their money and time – and they risked losing every penny of it on the outcome of this case.

- ***Well-funded defendant***. Deere is one of the largest companies in the United States. It identifies itself as the "#1 World Leader in Agriculture, Forestry, and Roadbuilding Equipment."[67] Fortune Magazine lists it as #64 in its list of the 100 largest U.S. companies by total revenue.[68] Deere has a market capitalization of over $182 billion and reported annual revenue of $44.67 billion in 2025.[69] While Class Counsel were

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[65] *Lambrix v. Tesla, Inc*., 737 F. Supp. 3d 822 (N.D. Cal. 2024).

[66] *In re Deere & Co. Repair Serv. Antitrust Litig*., 703 F. Supp. 3d 862 (N.D. Ill. 2023).

[67] *Our Company – Explore John Deere*, John Deere, https://www.deere.com/en-us/our-company/explore-john-deere (last visited Oct. 19, 2026)

[68] *Id.*

[69] *Deere & Company*, Yahoo Finance, https://finance.yahoo.com/quote/DE/financials/ (last visited Sept. 3, 2026).

funding this case themselves, with millions of dollars of their own time and money, they were up against a defendant with almost unlimited resources.

- ***Powerful defense firm***. The defendant exerted its financial strength by retaining high-priced counsel. Specifically, Deere retained Jones Day as the firm primarily responsible for its defense.[70] Jones Day is the 15th largest law firm in the United States by total revenue[71] and is ranked as the 26th most prestigious law firm in the United States.[72] It employs over 2,500 attorneys in 40 offices across dozens of countries.[73] To put these firms' sizes in perspective: Jones Day has roughly 200 *summer associates*,[74] while Class Counsel's law firms have roughly 75 *lawyers* in total.[75] Class Counsel's risk was surely increased significantly by the skill, depth, resources, and tenacity of the defense firms against which they litigated.

- ***Opportunity costs***. It is fair to conclude that Class Counsel's extraordinary devotion of time and resources for half a decade to this case prevented them from pursuing simpler, less risky, actions, many of which would have had a higher expectation of settlement and hence ease of recovery of a contingent fee, possibly a well-multiplied one.

41. These nine bullet points provide strong support for the conclusion that Class Counsel took large risks in litigating this case from inception to settlement. Similar to an investor

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[70] Latham & Watkins, the second largest firm in the nation, also appeared for Deere in the matter, further amplifying the risks Class Counsel faced. *See The 2026 Am Law 100: Ranked by Gross Revenue*, Law.com (Apr. 14, 2026), https://www.law.com/americanlawyer/2026/04/14/the-2026-am-law-100-ranked-by-gross-revenue/.

[71] *The 2026 Am Law 100: Ranked by Gross Revenue*, Law.com (Apr. 14, 2026), https://www.law.com/americanlawyer/2026/04/14/the-2026-am-law-100-ranked-by-gross-revenue/.

[72] *Vault Law 100*, Vault, https://vault.com/best-companies-to-work-for/law/top-100-law-firms-rankings (last visited Sept. 3, 2026).

[73] *Jones Day LLP*, Vault, https://vault.com/company-profiles/law/jones-day (last visited Sept. 3, 2026).

[74] *Jones Day LLP*, Vault, https://vault.com/company-profiles/law/jones-day (last visited Sept. 3, 2026) (reporting 189 summer associates for 2026).

[75] *Our Firm – Our Professionals*, Wexler, Boley, & Elgersma LLP, https://wbe-llp.com/our-firm/our-professionals/ (last visited Sept. 3, 2026) (including biographies for 10 attorneys); *Team – Our Attorneys*, Gustafson Gluek PLLC, https://gustafsongluek.com/team (last visited Sept. 3, 2026) (including biographies for 23 attorneys); Cotchett Pitre & McCarthy LLP, https://www.cpmlegal.com/ (last visited Sept. 3, 2026) (reporting that the firm employs 45+ attorneys).

that takes large risks, these attorneys are entitled to a return on their commitment, so long as the risks they took paid off for their clients. I will now turn to that analysis.

Class Counsel Achieved Excellent Results for the Class

42. At least seven components of this case's outcome speak to the results Class Counsel obtained in this matter:

- ***Significant monetary fund***. The monetary fund created by the settlement – $99 million and growing daily with interest – is a significant sum. My own database has fund information on 1,017 settlements; when those settlement funds are adjusted to 2026 dollars, only 78 are larger than this, placing this settlement in the top 8% – counting only the monetary relief alone.[76]

- ***Significant non-monetary relief.*** In addition to the $100 million monetary fund, Class Counsel secured non-monetary relief for the class that its expert values at $293.9-$648.0 million.[77] To address Deere's control over the repair market for its products, Deere agreed to provide farmers and independent repair providers with repair and diagnostic capabilities that will enable them to avoid relying solely on Deere authorized dealers.[78] Deere also agreed to provide farmers and independent providers with any new repair and diagnostic products that it distributes to more than 50% of its own certified dealers, ensuring that farmers and independent providers have the opportunity to continue making repairs to Deere equipment for the next 10 years.[79] These commitments by Deere add significant value to the settlement obtained on behalf of the class.

- ***Class members will receive a significant percentage of their estimated recoverable damages***. Not only does this settlement provide cash payments to class members, Class Counsel report that the settlement amounts to 26-53% of the joint-and-several damages model.[80] Even the low end of this estimate is a strong return for a class action settlement. While antitrust cases enable treble damages, they do so only after a jury verdict in plaintiff's favor, and only if the award withstands post-trial motions and appeals. To put this return in broader perspective, the weighted average settlement as a percentage of estimated damages across 71

[76] Without adjusting for inflation, only 49 settlements in my dataset are larger than $100 million, putting this settlement in the top 5%.

[77] Expert Declaration of Dr. Russell L. Lamb ¶ 51, *In re Deere & Co. Repair Serv. Antitrust Litig.*, No. 3:22-cv-50188 (Oct. 30, 2026).

[78] Preliminary Approval Motion, *supra* note 4, at 11.

[79] *Id.*

[80] *Id.* at 12.

antitrust class actions settled between 1990 and 2014 for which disinterested economic experts estimated damages was 19.45%.[81]

- ***Cash relief***. Class actions sometimes end in settlements that return class members little direct compensation, occasionally nothing more concrete than coupons or recoveries going exclusively to third party *cy pres* recipients.[82] The *Manual for Complex Litigation* therefore warns federal judges overseeing class action settlements to be on the lookout for settlements "granting class members illusory nonmonetary benefits, such as discount coupons for more of defendants' product . . . ."[83] The settlement secured in this case will deliver, *inter alia*, cash compensation directly to class members, a form of recovery that speaks highly of the case's outcome.

- ***100% of class eligible for relief***. Class action settlements can be deceiving if they release the claims of all the class members, but not all are entitled to relief. That problem is not present here: the settlement agreement's distribution plan requires that the "Net Settlement Fund shall be allocated to Eligible Claimants *pro rata*."[84] An "eligible claimant" is any class member that has submitted a valid claim form accepted by the Settlement Administrator.[85] Every class member is therefore entitled to relief through a straightforward claims submission process.

- ***No hint of collusion***. A critical concern in class action suits is that the class's agents might be tempted to sell out the class by agreeing to a low recovery in return for a high fee. The *Manual for Complex Litigation* therefore warns federal judges overseeing class action settlements that "[a]ctive judicial oversight of the settlement process" is necessary to "prevent collusion between counsel for the class and defendant" and to "minimize the potential for unfair settlements."[86] Here, there is no evidence of Counsel selling out the class's interest – the case has been adversarial since its inception, encompassing years of hard-fought litigation including extensive negotiations and eventual settlement. The parties engaged in

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[81] John M. Connor and Robert H. Lande, *Not Treble Damages: Cartel Recoveries Are Mostly Less Than Single Damages*, 100 Iowa L. Rev. 1997, 2010 n.50 (2015).

[82] *See* 4 *Newberg and Rubenstein on Class Actions*, *supra* note 2, §§ 12:7–13 (on nonpecuniary damages).

[83] *Manual for Complex Litigation (Fourth)* § 21.61 (2004).

[84] Proposed Plan of Allocation ¶ 13, *In re Deere & Co. Repair Servs. Antitrust Litig.*, No. 3:22-cv-50188 (N.D. Ill. Apr. 6, 2026), ECF No. 333-5.

[85] *Id.* ¶ 7.

[86] *Manual for Complex Litigation (Fourth)* § 22.923 (2004).

two months of mediation before Judge Layn R. Phillips, Judge Sean Coffey, and Niki Mendoza from October to December 2025.[87]

- ***Public interest.*** While all class action settlements assist in the government's enforcement of the law,[88] this settlement provides an important and unique public service. Through their persistent and protracted efforts, Class Counsel have helped establish legal limits in a complicated and developing field – the use of technology in industrial farm equipment repairs – where no government enforcer had waded until after Class Counsel brought this case. Indeed, the FTC's follow-on action provides strong empirical support for the conclusion that this case provided a uniquely valuable public service.

43. These nine risks and seven results are evidence that Class Counsel, three small law firms, took significant risks in investing substantial capital and labor in adversarial litigation without the promise of an easy return on that investment. Class Counsel shouldered that risk superbly, prevailing at each critical juncture and generating an excellent return for the class. This contextual review provides strong support for the conclusion that Class Counsel's remarkably small lodestar enhancement is eminently reasonable.

44. The Seventh Circuit has noted that a "multiplier is determined by dividing 1 by the probability of success,"[89] meaning that a multiplier of 2 stands for the proposition that the probability of success *ex ante* was 50% (1/.5) while a multiplier of 10 translates into a 10% chance of success ex ante (1/.1). Class Counsel's multiplier here (1.125) is so small, it suggests that they had an 89% of achieving the outcome they secured for the class. But of course, based on all of the

[87] Joint Declaration in Support of Plaintiffs' Motion for Preliminary Approval of Settlement with Defendant Deere & Co., Certification of the Proposed Settlement Class, and Related Relief ¶ 21, *In re Deere & Co. Repair Servs. Antitrust Litig.*, No. 3:22-cv-50188 (N.D. Ill. Apr. 6, 2026), ECF No. 333-2.

[88] *See Deposit Guar. Nat. Bank v. Roper*, 445 U.S. 326, 339 (1980) ("The aggregation of individual claims in the context of a classwide suit is an evolutionary response to the existence of injuries unremedied by the regulatory action of government.").

[89] *Florin v. Nationsbank of Georgia, N.A.*, 60 F.3d 1245, 1247 n.3 (7th Cir. 1995) ("A risk multiplier of 1.01 equates to a finding that the class counsel had better than a 99% chance of recovering its fees. The multiplier is determined by dividing 1 by the probability of success.").

risks outlined above, their odds were much longer than that and the small enhancement they seek is therefore a remarkable bargain for the class.

* * *

45. I have testified that:

- *Ex ante* negotiations for contingent fee contracts typically employ a ***percentage method***, usually awarding counsel roughly 31% of the value of the class's recovery, just as courts in this Circuit typically award Class Counsel 28% in class action matters. In the presence of likely non-monetary relief, that negotiation would have authorized recovery (in the 30% range) of the value of both the monetary and non-monetary relief, even if that constituted a larger than normal amount of the monetary relief; here, Class Counsel seek a far smaller than 30% share of the total value their expert assigns to the monetary and non-monetary relief combined.

- A ***lodestar approach*** to reviewing Class Counsel's fee further demonstrates its reasonableness: while class action lawyers *typically* get 1.5 times their lodestar and, in cases of this magnitude, 3.2 times their lodestar, here Class Counsel seek only 1.125 times their lodestar, a bargain for the class.

These analyses provide strong support by which the Court could conclude that the requested fee is, as Rule 23 requires it be, reasonable.



October 29, 2026 William B. Rubenstein

EXHIBIT A

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PROFESSOR WILLIAM B. RUBENSTEIN

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ACADEMIC EMPLOYMENT

HARVARD LAW SCHOOL, CAMBRIDGE MA

Bruce Bromley Professor of Law	2018-present
Sidley Austin Professor of Law	2011-2018
Professor of Law	2007-2011
Bruce Bromley Visiting Professor of Law	2006-2007
Visiting Professor of Law	2003-2004, 2005-2006
Lecturer in Law	1990-1996

Courses: Civil Procedure; Class Action Law; Remedies; Legal Profession
Awards: 2012 Albert M. Sacks-Paul A. Freund Award for Teaching Excellence
Membership: American Law Institute; American Bar Foundation Fellow

UCLA SCHOOL OF LAW, LOS ANGELES CA

Professor of Law	2002-2007
Acting Professor of Law	1997-2002

Courses: Civil Procedure; Complex Litigation; Remedies
Awards: 2002 Rutter Award for Excellence in Teaching
Top 20 California Lawyers Under 40, *Calif. Law Business* (2000)

STANFORD LAW SCHOOL, STANFORD CA

Acting Associate Professor of Law	1995-1997

Courses: Civil Procedure; Federal Litigation
Awards: 1997 John Bingham Hurlbut Award for Excellence in Teaching

YALE LAW SCHOOL, NEW HAVEN CT

Lecturer in Law	1994, 1995

BENJAMIN N. CARDOZO SCHOOL OF LAW, NEW YORK NY

Visiting Professor	Summer 2005

LITIGATION-RELATED EMPLOYMENT

AMERICAN CIVIL LIBERTIES UNION, NATIONAL OFFICE, NEW YORK NY

Project Director and Staff Counsel 1987-1995

-Litigated impact cases in federal and state courts throughout the United States.
-Supervised a staff of attorneys at the national office, oversaw work of ACLU attorneys around the country and coordinated work with private cooperating counsel nationwide.
-Significant experience in complex litigation practice and procedural issues; appellate litigation; litigation coordination, planning and oversight.

HON. STANLEY SPORKIN, U.S. DISTRICT COURT, WASHINGTON DC

Law Clerk 1986-87

PUBLIC CITIZEN LITIGATION GROUP, WASHINGTON DC

Intern Summer 1985

EDUCATION

HARVARD LAW SCHOOL, CAMBRIDGE MA
J.D., 1986, *magna cum laude*

YALE COLLEGE, NEW HAVEN CT
B.A., 1982, *magna cum laude*
Editor-in-Chief, YALE DAILY NEWS

SELECTED COMPLEX LITIGATION EXPERIENCE

Professional Service and Highlighted Activities

◊ *Author,* NEWBERG AND RUBENSTEIN ON CLASS ACTIONS (6th ed. 2022); NEWBERG ON CLASS ACTIONS (sole author since 2008, sole author of entirely re-written Fifth Edition (2011-2019))

◊ *Speaker,* Judicial Panel on Multidistrict Litigation, Multidistrict Litigation (MDL) Transferee Judges Conference, Palm Beach, Florida (provided presentation to MDL judges on recent developments in class action law and related topics (2010, 2011, 2013, 2014, 2015, 2016, 2017, 2018, 2019)

◊ *Panelist,* Federal Judicial Center, *Managing Multidistrict Litigation and Other Complex Litigation Workshop* (for federal judges) (March 15, 2018)

◊ *Amicus curiae,* authored *amicus* brief in United States Supreme Court on proper approach to standing in class action lawsuits (*Labcorp, v. Davis*, Case No. 24-304 (2025))

◊ *Amicus curiae,* authored *amicus* brief on proper approach to incentive awards in class action lawsuits in conjunction with motion for rehearing *en banc* in the United States Court of Appeals for the Eleventh Circuit (*Johnson v. NPAS Sols., LLC*, 975 F.3d 1244 (11th Cir. 2020))

◊ *Amicus curiae,* authored *amicus* brief in United States Supreme Court on proper approach to *cy pres* award in class action lawsuits (*Frank v. Gaos*, 139 S. Ct. 1041 (2019))

◊ *Amicus curiae,* authored *amicus* brief in California Supreme Court on proper approach to attorney's fees in common fund cases (*Laffitte v. Robert Half Int'l Inc*., 376 P.3d 672, 687 (Cal. 2016) (noting reliance on *amicus* brief))

◊ *Amicus curiae,* authored *amicus* brief in the United States Supreme Court filed on behalf of civil procedure and complex litigation law professors concerning the importance of the class action lawsuit (*AT&T Mobility v. Concepcion,* No. 09-893, 131 S. Ct. 1740 (2011))

◊ *Adviser,* American Law Institute, *Project on the Principles of the Law of Aggregate Litigation*, Philadelphia, Pennsylvania

◊ *Co-Chair,* ABA Litigation Section, Mass Torts Committee, Class Action Sub-Committee, 2007

◊ *Planning Committee,* American Bar Association, Annual National Institute on Class Actions

Conference, 2006, 2007

◊ *"Expert's Corner*" (Monthly Column)*, Class Action Attorney Fee Digest,* 2007-2011

Judicial Appointments

◊ *Co-Mediator.* Appointed by the United States District Court for the Eastern District of Pennsylvania to help mediate a complex attorney's fees issue (*In re National Football League Players' Concussion Injury Litigation*, Civil Action No. 2:12-md-02323 (E.D. Pa. June-September 2022))

◊ *Meditator.* Appointed by the United States District Court for the Southern District of New York to mediate a set of complex issues in civil rights class action (*Grottano v. City of New York*, Civil Action No. 15-cv-9242 (RMB) (May 2020-January 2021))

◊ *Expert consultant.* Appointed by the United States District Court for the Northern District of Ohio, and Special Master, as an expert consultant on class certification and attorney's fees issues in complex multidistrict litigation (*National Prescription Opiate Litigation,* MDL 2804, Civil Action No. 1:17-md-2804 (N.D. Ohio Aug. 13, 2018; June 29, 2019; March 10, 2020))

◊ *Expert witness.* Appointed by the United States District Court for the Eastern District of Pennsylvania as an expert witness on attorney's fees in complex litigation, with result that the Court adopted recommendations (*In re National Football League Players' Concussion Injury Litigation*, 2018 WL 1658808 (E.D. Pa. April 5, 2018))

◊ *Appellate counsel.* Appointed by the United States Court of Appeals for the Second Circuit to argue for affirmance of district court fee decision in complex securities class action, with result that the Court summarily affirmed the decision below (*In re Indymac Mortgage-Backed Securities Litigation*, 94 F.Supp.3d 517 (S.D.N.Y. 2015), *aff'd sub. nom*., *DeValerio v. Olinski*, 673 F. App'x 87, 90 (2d Cir. 2016))

Expert Witness

◊ Submitted expert witness declaration concerning reasonableness of attorney's fees request (*In re National Prescription Opiate Litigation (Third Party Payor Actions),* Case No. 1:17-md-02804-DAP (N.D. Ohio 2026))

◊ Submitted expert witness declaration concerning reasonableness of attorney's fee request (*In re DiDi Global Inc. Securities Litigation,* Case No. 1:21-cv-05807-LAK (S.D.N.Y. 2026))

◊ Submitted expert witness declaration concerning reasonableness of attorney's fee request (*Bartz v. Anthropic PBC,* Case No. 3:24-cv-05417-WHA (N.D. Cal. 2026))

◊ Submitted expert witness declaration on relevance of ethics allegations to class counsel's adequacy to represent class (*Corzo v. Brown*, Case No. 1:22-cv-00125 (N.D. Ill. 2025))

◊ Retained as an expert witness concerning reasonableness of attorney's fee request (*In re Automotive Parts Antitrust Litigation*, Case No. 2:12-md-02311 (E.D. Mich. 2025))

◊ Submitted expert witness declaration concerning reasonableness of attorney's fee request (*In re Zoom Securities Litigation,* Case No. 3:20-cv-02353-JD (N.D. Cal. 2025))

◊ Submitted expert witness declaration concerning reasonableness of attorney's fee request (*Loop, LLC v. CDK Global, LLC,* Case No. 3:24-cv-00571-jdp (W.D. Wisc. 2025))

◊ Submitted expert witness declaration on ethics concerns arising out of Plaintiffs' Steering Committee member in one piece of MDL representing opt-out plaintiffs in another (*In re: Blue Cross Blue Shield Antitrust Litigation,* MDL 2406, Case No. 2:13-cv-20000-RDP (N.D. Ala. 2025))

◊ Submitted expert witness declaration and scheduled to testify at trial concerning valuation of class action settlement (*In the Matter of the Petition for the Allocation of Aggregate Settlement Amount Between the Individual Settlement and the Class Settlement of the Maui Fire Cases,* Case No. S.P. No. 2CSP-24-0000049 (Hawai'i Cir. Ct., Second Circuit, 2024-2025))

◊ Submitted two expert witness declarations concerning reasonableness of proposed settlement in nationwide insurance class action, in light of competing litigation (*Glover v. Connecticut General Life Insurance Co., et al.,* Civil Action No. 3:16-cv-00827-MPS (D. Conn. 2024))

◊ Submitted expert witness declaration concerning ethics of class counsel and other objections to proposed complex class action settlement (*In re National Prescription Opiate Litigation (Third Party Payor Actions),* Case No. 1:17-md-02804-DAP (N.D. Ohio 2024))

◊ Submitted expert witness declaration and deposed as to class certification requirements (*Gateway Royalty LLC v. EAP Ohio LLC,* Case No. 5:20-cv-02813 (N.D. Ohio 2024))

◊ Submitted expert witness declaration on history and equity of proposed allocation system in complex class action settlement (*In re National Prescription Opiate Litigation (Third Party Payor Actions),* Case No. 1:17-md-02804-DAP (N.D. Ohio 2024))

◊ Submitted expert witness declaration concerning reasonableness of attorney's fee request (*Drazen v. GoDaddy.com,* Civil Action No. 1:19-cv-00563-KD-B (S.D. Ala. 2024))

◊ Retained as an expert witness concerning reasonableness of attorney's fee request (*In re Apple Inc. Securities Litigation*, Case No. 4:19-cv-02033-YGR (N.D. Cal. 2024))

◊ Submitted expert witness declaration concerning reasonableness of attorney's fee request (*Brown v. Google LLC,* Civil Action No. 4:20-cv-03664 (N.D. Cal. 2024))

◊ Submitted expert witness declaration concerning proper approach to – and reasonableness of – attorney's fee request (*Parris v. Meta Platforms, Inc.,* Case No. 2023LA000672 (Illinois Circuit Court, DuPage Cty., 2024))

◊ Submitted expert witness declaration concerning proper approach to – and reasonableness of – attorney's fee request (*Barr v. SelectBlinds LLC,* Civil Action No. 2:22-cv-08326-SPG-PD (C.D. Cal. 2023))

◊ Submitted expert witness declaration on history and equity of proposed allocation system in complex

class action settlement (*In re McKinsey & Co. Inc. National Prescription Opiate Consultant Litigation,* Case No. 3:21-md-02996-CRB (N.D. Cal. 2023))

◊ Submitted expert witness declaration concerning reasonableness of proposed hourly rates used in lodestar cross-check submission (*In re National Veterans Legal Services Program, et al. v. United States,* Case No. 1:16-CV-00745-PLF (D. D.C. 2023))

◊ Submitted expert witness declarations concerning reasonableness of – and proper approach to – attorney's fees in context of issue class action judgment (*James, et al., v. PacifiCorp, et al.,* Civil Action No. 20CV33885 (Oregon Circuit Court, Multnomah Cty. 2023))

◊ Retained as an expert witness concerning reasonableness of attorney's fee request (*In re Wells Fargo & Company Securities Litigation*, Case No. 1:20-cv-04494-GHW (S.D.N.Y. 2023))

◊ Submitted expert witness declaration concerning reasonableness of attorney's fee request (*In re Facebook, Inc. Consumer Privacy User Profile Litigation,* Civil Action No. 3:18-cv-02843-VC (N.D. Cal. 2023))

◊ Submitted expert witness declaration concerning constitutionality of proposed procedures for resolving aggregate claims within a bankruptcy proceeding (*In re PG&E Corporation and Pacific Gas and Electric Company,* Bankruptcy Case No. 19-30088 (N.D. Cal. Bankrpt. 2023))

◊ Submitted expert witness declaration concerning reasonableness of attorney's fee request (*Health Republic Insurance Company v. United States,* Civil Action No. 1:16-cv-0259C (Ct. Fed. Cl. 2023))

◊ Submitted expert witness declaration concerning reasonableness of attorney's fee request (*Benson, et al. v. DoubleDown Interactive, LLC, et al.,* Civil Action No. 2:18-cv-00525 (W.D. Wash. 2023))

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fees request (*In re Twitter Inc. Securities Litigation,* Case No. 4:16-cv-05314 (N.D. Cal. October 13, 2022))

◊ Submitted expert witness declaration concerning reasonableness of attorney's fee request (*Ferrando v. Zynga Inc.,* Civil Action No. 2:22-cv-00214 (W.D. Wash. 2022))

◊ Retained as an expert witness concerning fee structures in complex mass/class litigation (*In re Upstream Addicks and Barker (Texas) Flood-Control Reservoirs,* Sub-Master Docket No. 17-9001L, (Ct. of Federal Claims, 2022-)

◊ Submitted an expert witness declaration concerning reasonableness of proposed settlement in nationwide securities class action, in light of competing litigation (*In re Lyft, Inc. Securities Litigation,* Case No. 4:19-cv-02690 (N.D. Cal. August 19, 2022))

◊ Submitted an expert witness declaration concerning reasonableness of common benefit attorney's fee request (*In re: Zetia (Ezetimibe) Antitrust Litigation*, MDL No. 2836, 2:18-md-2836 (E.D. Va. July 12, 2022))

◊ Submitted expert witness declaration concerning reasonableness of attorney's fee request (*Reed v. Scientific Games Corp.,* Civil Action No. 2:18-cv-00565 (W.D. Wash. 2022))

◊ Submitted an expert witness declaration concerning reasonableness of proposed settlement in nationwide securities class action, in light of competing litigation (*In re Micro Focus International PLC Securities Litigation,* Master File No. 1:18-cv-06763 (S.D.N.Y., May 4, 2022))

◊ Submitted expert witness declaration concerning reasonableness of attorney's fee request (*Americredit Financial Services, Inc., d/b/a/ GM Financial v. Bell,* No. 15SL-AC24506-01 (Twenty-First Judicial Circuit Court, St. Louis County, Missouri, March 13, 2022))

◊ Submitted an expert witness declaration concerning reasonableness of common benefit attorney's fee request (*In re: Marjory Stoneman Douglas High School Shooting FTCA Litigation*, Case No. 0:18-cv-62758 (S.D. Fla. February 7, 2022))

◊ Expert witness declaration concerning expected claiming rates in class action submitted to court (*In re: Tiktok, Inc., Consumer Privacy Litigation*, No. 1:20-cv-04699 (N.D. Ill. Jan. 24, 2022))

◊ Submitted expert witness declaration concerning reasonableness of attorney's fee request (*City of Westland Police & Fire Ret. Sys. v. MetLife, Inc.*, No. 12-CV-0256 (LAK), 2021 WL 2453972 (S.D.N.Y. June 15, 2021))

◊ Submitted expert witness declaration concerning reasonableness of attorney's fee request (*Kater v. Churchill Downs,* Civil Action No. 2:15-cv-00612 (W.D. Wash. 2020))

◊ Submitted expert witness declaration concerning reasonableness of attorney's fee request (*Wilson v. Playtika, LTD,* Civil Action No. 3:18-cv-05277 (W.D. Wash. 2020))

◊ Submitted expert witness declaration concerning reasonableness of attorney's fee request (*Wilson v. Huuuge,* Civil Action No. 3:18-cv-005276 (W.D. Wash. 2020))

◊ Submitted expert witness declarations and testified at fairness hearing concerning (1) reasonableness of attorney's fee request and (2) empirical data confirming robustness of class claims rate (*In re Facebook Biometric Information Privacy Litigation,* Civil Action No. 3:15-cv-03747-JD (N.D. Cal. (2020))

◊ Retained as an expert witness on issues regarding the Lead Plaintiff/Lead Counsel provisions of the Private Securities Litigation Reform Act of 1995 (PSLRA) (*In re Apple Inc. Securities Litigation.,* Civil Action No. 4:19-cv-02033-YGR (N.D. Cal. (2020))

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*Amador v. Baca*, Civil Action No. 2:10-cv-01649 (C.D. Cal. February 9, 2020))

◊ Submitted an expert witness declaration concerning reasonableness of class action settlement (*In re: Columbia Gas Cases*, Civil Action No. 1877CV01343G (Mass. Super. Ct., Essex County, February 6, 2020))

◊ Submitted an expert witness declaration, and reply declaration, concerning reasonableness of attorney's fee request (*Hartman v. Pompeo*, Civil Action No. 1:77-cv-02019 (D.D.C. October 10, 2019; February 28, 2020))

◊ Submitted an expert witness declaration concerning reasonableness of common benefit attorney's fee request (*In re: Generic Pharmaceuticals Pricing Antitrust Litigation*, MDL No. 2724, 16-MD-2724 (E.D. Pa. May 15, 2019))

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fee request, relied upon by court in awarding fees (*Hale v. State Farm Mut. Auto. Ins. Co*., 2018 WL 6606079 (S.D. Ill. Dec. 16, 2018))

◊ Submitted expert witness affidavit and testified at fairness hearing concerning second phase fee issues in common fund class action (*Tuttle v. New Hampshire Med. Malpractice Joint Underwriting Assoc.,* Case No. 217-2010-CV-00294 (New Hampshire Superior Court, Merrimack County (2018))

◊ Submitted expert witness report – and rebutted opposing expert – concerning class certification issues for proposed class action within a bankruptcy proceeding (*In re Think Finance,* Case No. 17-33964 (N.D. Tex. Bankrpt. 2018))

◊ Submitted expert witness declaration concerning specific fee issues raised by Court at fairness hearing and second declaration in response to report of Special Master (*In re Anthem, Inc. Data Breach Litigation,* Case No. 15-MD-02617-LHK (N.D. Cal. 2018))

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fee request following plaintiffs' verdict at trial in consumer class action (*Krakauer v. Dish Network, L.L.C.,* Civil Action No. 1:14-cv-00333 (M.D.N.C. 2018))

◊ Submitted three expert witness declarations and deposed by/testified in front of Special Master in investigation concerning attorney's fee issues (*Arkansas Teacher Ret. Sys. v. State St. Bank & Trust Co.*, Civ. Action No. 1:11-cv-10230 (D. Mass. 2017-18))

◊ Retained as an expert witness on issues regarding the preclusive effect of a class action judgment on later cases (*Sanchez v. Allianz Life Insurance Co. of N. Amer.,* Case No. BC594715 (California Superior Court, Los Angeles County (2018))

◊ Retained as an expert witness and submitted report explaining meaning of the denial of a motion to dismiss in American procedure to foreign tribunals (*In re Qualcomm Antitrust Matter,* declaration submitted to tribunals in Korea and Taiwan (2017))

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fee request in 3.0-liter settlement, referenced by court in awarding fees (*In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation,* 2017 WL 3175924 (N.D. Cal. July 21, 2017))

◊ Retained as an expert witness concerning impracticability of joinder in antitrust class action (*In re Celebrex (Celecoxib) Antitrust Litigation,* Civ. Action No. 2-14-cv-00361 (E.D. Va. (2017))

◊ Submitted an expert witness declaration and deposed concerning impracticability of joinder in antitrust class action (*In re Modafinil Antitrust Litigation,* Civ. Action No. 2-06-cv-01797 (E.D. Pa. (2017))

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fee request in 2.0-liter

settlement (*In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation,* 2017 WL 1047834 (N.D. Cal., March 17, 2017))

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fee request, referenced by court in awarding fees (*Aranda v. Caribbean Cruise Line, Inc.,* 2017 WL 1368741 (N.D. Ill., April 10, 2017))

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*McKinney v. United States Postal Service*, Civil Action No. 1:11-cv-00631 (D.D.C. (2016))

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*Johnson v. Caremark RX, LLC,* Case No. 01-CV-2003-6630, Alabama Circuit Court, Jefferson County (2016))

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fee request in sealed fee mediation (2016)

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*Geancopoulos v. Philip Morris USA Inc.,* Civil Action No. 98-6002-BLS1 (Mass. Superior Court, Suffolk County))

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fee request in sealed fee mediation (2016)

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*Gates v. United Healthcare Insurance Company,* Case No. 11 Civ. 3487 (S.D.N.Y. 2015))

◊ Retained as an expert trial witness on class action procedures and deposed prior to trial in matter that settled before trial (*Johnson v. Caremark RX, LLC,* Case No. 01-CV-2003-6630, Alabama Circuit Court, Jefferson County (2016))

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fee request, referenced by court in awarding fees (*In re High-Tech Employee Antitrust Litig*., 2015 WL 5158730 (N.D. Cal. Sept. 2, 2015))

◊ Retained as an expert witness concerning adequacy of putative class representatives in securities class action (*Medoff v. CVS Caremark Corp.,* Case No. 1:09-cv-00554 (D.R.I. (2015))

◊ Submitted an expert witness declaration concerning reasonableness of proposed class action settlement, settlement class certification, attorney's fees, and incentive awards (*Fitzgerald Farms, LLC v. Chespeake Operating, L.L.C.,* Case No. CJ-2010-38, Dist. Ct., Beaver County, Oklahoma (2015))

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fee request, referenced by court in awarding fees (*Asghari v. Volkswagen Grp. of Am., Inc*., 2015 WL 12732462 (C.D. Cal. May 29, 2015))

◊ Submitted an expert witness declaration concerning propriety of severing individual cases from class action and resulting statute of repose ramifications (*In re: American International Group, Inc. 2008 Securities Litigation,* 08-CV-4772-LTS-DCF (S.D.N.Y. (2015))

◊ Retained by Fortune Global 100 Corporation as an expert witness on fee matter that settled before testimony (2015)

◊ Submitted an expert witness declaration and testified at Special Master proceeding concerning reasonableness of attorney's fee allocation in sealed fee mediation (2014-2015)

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*In re: Hyundai and Kia Fuel Economy Litigation,* MDL 13-02424 (C.D. Cal. (2014))

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*Ammari Electronics v. Pacific Bell Directory*, Case No. RG0522096, California Superior Court, Alameda County (2014))

◊ Submitted an expert witness declaration and deposed concerning plaintiff class action practices under the Private Securities Litigation Reform Act of 1995 (PSLRA), as related to statute of limitations question (*Federal Home Loan Bank of San Francisco v. Deutsche Bank Securities, Inc.,* Case No. CGC-10-497839, California Superior Court, San Francisco County (2014))

◊ Submitted an expert witness declaration and deposed concerning plaintiff class action practices under the Private Securities Litigation Reform Act of 1995 (PSLRA), as related to statute of limitations question (*Federal Home Loan Bank of San Francisco v. Credit Suisse Securities (USA) LLC,* Case No. CGC-10-497840, California Superior Court, San Francisco County (2014))

◊ Retained as expert witness on proper level of common benefit fee in MDL (*In re Neurontin Marketing and Sales Practice Litigation,* Civil Action No. 04-10981, MDL 1629 (D. Mass. (2014))

◊ Submitted an expert witness declaration concerning Rule 23(g) selection of competing counsel, referenced by court in deciding issue (*White v. Experian Information Solutions, Inc.,* 993 F. Supp. 2d 1154 (C.D. Cal. (2014))

◊ Submitted an expert witness declaration concerning proper approach to attorney's fees under California law in a statutory fee-shifting case (*Perrin v. Nabors Well Services Co.,* Case No. 1220037974, Judicial Arbitration and Mediation Services (JAMS) (2013))

◊ Submitted an expert witness declaration concerning fairness and adequacy of proposed nationwide class action settlement (*Verdejo v. Vanguard Piping Systems,* Case No. BC448383, California Superior Court, Los Angeles County (2013))

◊ Retained as an expert witness regarding fairness, adequacy, and reasonableness of proposed nationwide consumer class action settlement (*Herke v. Merck,* No. 2:09-cv-07218, MDL Docket No. 1657 (*In re Vioxx Products Liability Litigation*) (E. D. La. (2013))

◊ Retained as an expert witness concerning ascertainability requirement for class certification and related issues (*Henderson v. Acxiom Risk Mitigation, Inc.,* Case No. 3:12-cv-00589-REP (E.D. Va. (2013))

◊ Submitted an expert witness declaration concerning reasonableness of class action settlement and

performing analysis of Anet expected value@ of settlement benefits, relied on by court in approving settlement (*In re Navistar Diesel Engine Products Liab. Litig.*, 2013 WL 10545508 (N.D. Ill. July 3, 2013))

◊ Submitted an expert witness declaration concerning reasonableness of class action settlement and attorney's fee request (*Commonwealth Care All. v. Astrazeneca Pharm. L.P.*, 2013 WL 6268236 (Mass. Super. Aug. 5, 2013))

◊ Submitted an expert witness declaration concerning propriety of preliminary settlement approval in nationwide consumer class action settlement (*Anaya v. Quicktrim, LLC,* Case No. CIVVS 120177, California Superior Court, San Bernardino County (2012))

◊ Submitted expert witness affidavit concerning fee issues in common fund class action (*Tuttle v. New Hampshire Med. Malpractice Joint Underwriting Assoc.,* Case No. 217-2010-CV-00294, New Hampshire Superior Court, Merrimack County (2012))

◊ Submitted expert witness declaration and deposed concerning class certification issues in nationwide fraud class action, relied upon by the court in affirming class certification order (*CVS Caremark Corp. v. Lauriello,* 175 So. 3d 596, 609-10 (Ala. 2014))

◊ Submitted expert witness declaration in securities class action concerning value of proxy disclosures achieved through settlement and appropriate level for fee award (*Rational Strategies Fund v. Jhung,* Case No. BC 460783, California Superior Court, Los Angeles County (2012))

◊ Submitted an expert witness report and deposed concerning legal malpractice in the defense of a class action lawsuit (*KB Home v. K&L Gates, LLP,* Case No. BC484090, California Superior Court, Los Angeles County (2011))

◊ Retained as expert witness on choice of law issues implicated by proposed nationwide class certification (*Simon v. Metropolitan Property and Cas. Co.,* Case No. CIV-2008-1008-W (W.D. Ok. (2011))

◊ Retained, deposed, and testified in court as expert witness in fee-related dispute (*Blue, et al. v. Hill*,Case No. 3:10-CV-02269-O-BK (N.D. Tex. (2011))

◊ Retained as an expert witness in fee-related dispute (*Furth v. Furth*, Case No. C11-00071-DMR (N.D. Cal. (2011))

◊ Submitted expert witness declaration concerning interim fee application in complex environmental class action (*DeLeo v. Bouchard Transportation,* Civil Action No. PLCV2004-01166-B, Massachusetts Superior Court (2010))

◊ Retained as an expert witness on common benefit fee issues in MDL proceeding in federal court (*In re Vioxx Products Liability Litigation*, MDL Docket No. 1657 (E.D. La. (2010))

◊ Submitted expert witness declaration concerning fee application in securities case, referenced by court in awarding fee (*In re AMICAS, Inc. Shareholder Litigation,* 27 Mass. L. Rptr. 568 (Mass. Sup. Ct. (2010))

◊ Submitted an expert witness declaration concerning fee entitlement and enhancement in non-common fund class action settlement, relied upon by the court in awarding fees (*Parkinson v. Hyundai Motor America*, 796 F.Supp.2d 1160, 1172-74 (C.D. Cal. 2010))

◊ Submitted an expert witness declaration concerning class action fee allocation among attorneys (*Salvas v. Wal-Mart*, Civil Action No. 01-03645, Massachusetts Superior Court (2010))

◊ Submitted an expert witness declaration concerning settlement approval and fee application in wage and hour class action settlement (*Salvas v. Wal-Mart*, Civil Action No. 01-03645, Massachusetts Superior Court (2010))

◊ Submitted an expert witness declaration concerning objectors' entitlement to attorney's fees (*Rodriguez v. West Publishing Corp.,* Case No. CV-05-3222 (C.D. Cal. (2010))

◊ Submitted an expert witness declaration concerning fairness of settlement provisions and processes, relied upon by the Ninth Circuit in reversing district court's approval of class action settlement (*Radcliffe v. Experian Inform. Solutions Inc.*, 715 F.3d 1157, 1166 (9th Cir. 2013))

◊ Submitted an expert witness declaration concerning attorney's fees in class action fee dispute, relied upon by the court in deciding fee issue (*Ellis v. Toshiba America Information Systems, Inc.*, 218 Cal. App. 4th 853, 871, 160 Cal. Rptr. 3d 557, 573 (2d Dist. 2013))

◊ Submitted an expert witness declaration concerning common benefit fee in MDL proceeding in federal court (*In re Genetically Modified Rice Litigation*, MDL Docket No. 1811 (E.D. Mo. (2009))

◊ Submitted an expert witness declaration concerning settlement approval and fee application in national MDL class action proceeding (*In re Wal-Mart Wage and Hour Employment Practices Litigation*, MDL Docket No.1735 (D. Nev. (2009))

◊ Submitted an expert witness declaration concerning fee application in national MDL class action proceeding, referenced by court in awarding fees (*In re Dept. of Veterans Affairs (VA) Data Theft Litigation*, 653 F. Supp.2d 58 (D.D.C. (2009))

◊ Submitted an expert witness declaration concerning common benefit fee in mass tort MDL proceeding in federal court (*In re Kugel Mesh Products Liability Litigation*, MDL Docket No. 1842 (D. R.I. (2009))

◊ Submitted an expert witness declaration and supplemental declaration concerning common benefit fee in consolidated mass tort proceedings in state court (*In re All Kugel Mesh Individual Cases*, Master Docket No. PC-2008-9999, Superior Court, State of Rhode Island (2009))

◊ Submitted an expert witness declaration concerning fee application in wage and hour class action (*Warner v. Experian Information Solutions, Inc.*, Case No. BC362599, California Superior Court, Los Angeles County (2009))

◊ Submitted an expert witness declaration concerning process for selecting lead counsel in complex MDL antitrust class action (*In re Rail Freight Fuel Surcharge Antitrust Litigation*, MDL Docket No. 1869 (D. D.C. (2008))

◊ Retained, deposed, and testified in court as expert witness on procedural issues in complex class action (*Hoffman v. American Express*, Case No. 2001-022881, California Superior Court, Alameda County (2008))

◊ Submitted an expert witness declaration concerning fee application in wage and hour class action (*Salsgiver v. Yahoo! Inc.*, Case No. BC367430, California Superior Court, Los Angeles County (2008))

◊ Submitted an expert witness declaration concerning fee application in wage and hour class action (*Voight v. Cisco Systems, Inc.*, Case No. 106CV075705, California Superior Court, Santa Clara County (2008))

◊ Retained and deposed as expert witness on fee issues in attorney fee dispute (*Stock v. Hafif,* Case No. KC034700, California Superior Court, Los Angeles County (2008))

◊ Submitted an expert witness declaration concerning fee application in consumer class action (*Nicholas v. Progressive Direct*, Civil Action No. 06-141-DLB (E.D. Ky. (2008))

◊ Submitted expert witness declaration concerning procedural aspects of national class action arbitration (*Johnson v. Gruma Corp.,* JAMS Arbitration No. 1220026252 (2007))

◊ Submitted expert witness declaration concerning fee application in securities case (*Drulias v. ADE Corp.,* Civil Action No. 06-11033 PBS (D. Mass. (2007))

◊ Submitted expert witness declaration concerning use of expert witness on complex litigation matters in criminal trial (*U.S. v. Gallion, et al*., No. 07-39 (E. D. Ky. (2007))

◊ Retained as expert witness on fees matters (*Heger v. Attorneys' Title Guaranty Fund, Inc.,* No. 03-L-398, Illinois Circuit Court, Lake County, IL (2007))

◊ Retained as expert witness on certification in statewide insurance class action (*Wagner v. Travelers Property Casualty of America*, No. 06CV338, Colorado District Court, Boulder County, CO (2007))

◊ Testified as expert witness concerning fee application in common fund shareholder derivative case (*In Re Tenet Health Care Corporate Derivative Litigation*, Case No. 01098905, California Superior Court, Santa Barbara Cty, CA (2006))

◊ Submitted expert witness declaration concerning fee application in common fund shareholder derivative case (*In Re Tenet Health Care Corp. Corporate Derivative Litigation*, Case No. CV-03-11 RSWL (C.D. Cal. (2006))

◊ Retained as expert witness as to certification of class action (*Canova v. Imperial Irrigation District*, Case No. L-01273, California Superior Court, Imperial Cty, CA (2005))

◊ Retained as expert witness as to certification of nationwide class action (*Enriquez v. Edward D. Jones & Co.,* Missouri Circuit Court, St. Louis, MO (2005))

◊ Submitted expert witness declaration on procedural aspects of international contract litigation filed in

court in Korea (*Estate of Wakefield v. Bishop Han & Jooan Methodist Church* (2002))

◊ Submitted expert witness declaration as to contested factual matters in case involving access to a public forum (*Cimarron Alliance Foundation v. The City of Oklahoma City,* Case No. Civ. 2001-1827-C (W.D. Ok. (2002))

◊ Submitted expert witness declaration concerning reasonableness of class certification, settlement, and fees (*Baird v. Thomson Elec. Co.*, Case No. 00-L-000761, Cir. Ct., Mad. Cty, IL (2001))

Expert Consultant

◊ Retained as a consulting expert in Rule 23(f) and merits appeal of class decertification (*In re: Apple iPhone Antitrust Litigation,* Case No. 25-7122 (Ninth Circuit, 2025-2026)

◊ Provided expert consulting services to the ACLU's Immigrants' Rights Project on class action issues arising out of deportation of Venezuelan migrants to El Salvador (*A. A. R. P. v. Trump*, 145 S. Ct. 1364 (2025); *Trump v. J. G. G.*, 145 S. Ct. 1003 (2025))

◊ Retained as a consulting expert in series of direct and class action cases challenging artificial intelligence (AI) generators (2024)

◊ Retained as a consulting expert in class action (*In re: East Palestine Train Derailment,* Case No. 4:23-CV-00242-BYP (N.D. Ohio 2024))

◊ Retained as a consulting expert in complex MDL/class action (*In re: Aqueous Film-Forming Foams Products Liability Litigation,* Case No. 2:18-md-2873-RMG (D. S.C. 2023-2024))

◊ Retained as an expert in confidential matter pending in international arbitration forum concerning litigation financing issues in complex litigation (2022-2023)

◊ Retained as an expert in matter pending in several federal courts concerning attorney's fees in class action setting (2022-2023)

◊ Provided expert consulting services to Planned Parenthood Federation of America and the American Civil Liberties Union Foundation concerning complex class certification, notice, and other procedural issues arising out of Texas's law banning abortion (*Whole Woman's Health v. Austin Reeve Jackson,* Civil Action No. 1:21-cv-00616 (W.D. Tex. 2021))

◊ Retained as an expert witness on class action issues in complex mass tort MDL (*In re Roundup Products Liability Litigation,* Civil Action No. 3:16-md-02741-VC (N.D. Cal. (2020))

◊ Provided expert consulting services to Harvard Law School Predatory Lending and Consumer Protection Clinic concerning complex class action issues in bankruptcy (*In re: ITT Educational Services Inc.,* Case No. 16-07207-JMC-7A (Bank. S.D. Ind. 2020))

◊ Provided expert consulting services to law firm concerning complex federal procedural and bankruptcy issues (*Homaidan v. Navient Solutions, LLC*, Adv. Proc. No. 17-1085 (Bank. E.D.N.Y 2020))

◊ Provided expert consulting services to the ACLU on multi-district litigation issues arising out of various challenges to President Trump's travel ban and related policies (*In re American Civil Liberties Union Freedom of Information Act Requests Regarding Executive Order 13769*, Case Pending No. 28, Judicial Panel on Multidistrict Litigation (2017); *Darweesh v. Trump*, Case No. 1:17-cv-00480-CBA-LB (E.D.N.Y. (2017))

◊ Provided expert consulting services to law firm regarding billing practices and fee allocation issues in nationwide class action (2016)

◊ Provided expert consulting services to law firm regarding fee allocation issues in nationwide class action (2016)

◊ Provided expert consulting services to the ACLU of Southern California on class action and procedural issues arising out of challenges to municipality's treatment of homeless persons with disabilities (*Glover v. City of Laguna Beach*, Case No. 8:15-cv-01332-AG-DFM (C.D. Cal. (2016))

◊ Retained as an expert consultant on class certification issues (*In re: Facebook, Inc., IPO Securities and Derivative Litigation*, No. 1:12-md-2389 (S.D.N.Y. 2015))

◊ Provided expert consulting services to lead class counsel on class certification issues in nationwide class action (2015)

◊ Retained by a Fortune 100 Company as an expert consultant on class certification issues

◊ Retained as an expert consultant on class action and procedure related issues (*Lange et al v. WPX Energy Rocky Mountain LLC*, Case No. 2:13-cv-00074-ABJ (D. Wy. (2013))

◊ Retained as an expert consultant on class action and procedure related issues (*Flo & Eddie, Inc., v. Sirius XM Radio, Inc.*, Case No. CV 13-5693 (C.D. Cal. (2013))

◊ Served as an expert consultant on substantive and procedural issues in challenge to legality of credit card late and over-time fees (*In Re Late Fee and Over-Limit Fee Litigation*, 528 F.Supp.2d 953 (N.D. Cal. 2007), *aff'd*, 741 F.3d 1022 (9th Cir. 2014))

◊ Retained as an expert on Class Action Fairness Act (CAFA) removal issues and successfully briefed and argued remand motion based on local controversy exception (*Trevino, et al. v. Cummins, et al.*, No. 2:13-cv-00192-JAK-MRW (C. D. Cal. (2013))

◊ Retained as an expert consultant on class action related issues by consortium of business groups (*In re Oil Spill by the Oil Rig Deepwater Horizon in the Gulf of Mexico on April 20, 2010*, MDL No. 2179 (E.D. La. (2012))

◊ Provided presentation on class certification issues in nationwide medical monitoring classes (*In re: National Football League Players' Concussion Injury Litigation,* MDL No. 2323, Case No. 2:12-md-

02323-AB (E.D. Pa. (2012))

◊ Retained as an expert consultant on class action related issues in mutli-state MDL consumer class action (*In re Sony Corp. SXRD Rear Projection Television Marketing, Sales Practices & Prod. Liability Litig.*, MDL No. 2102 (S.D. N.Y. (2009))

◊ Retained as an expert consultant on class action certification, manageability, and related issues in mutli-state MDL consumer class action (*In re Teflon Prod. Liability Litig.*, MDL No. 1733 (S.D. Iowa (2008))

◊ Retained as an expert consultant/co-counsel on certification, manageability, and related issues in nationwide anti-trust class action (*Brantley v. NBC Universal*, No.- CV07-06101 (C.D. Cal. (2008))

◊ Retained as an expert consultant on class action issues in complex multi-jurisdictional construction dispute (*Antenucci, et al., v. Washington Assoc. Residential Partner, LLP, et al.,* Civil No. 8-04194 (E.D. Pa. (2008))

◊ Retained as an expert consultant on complex litigation issues in multi-jurisdictional class action litigation (*McGreevey v. Montana Power Company*, No. 08-35137, U.S. Court of Appeals for the Ninth Circuit (2008))

◊ Retained as an expert consultant on class action and attorney fee issues in nationwide consumer class action (*Figueroa v. Sharper Image*, 517 F.Supp.2d 1292 (S.D. Fla. 2007))

◊ Retained as an expert consultant on attorney's fees issue in complex class action case (*Natural Gas Anti-Trust Cases Coordinated Proceedings*, D049206, California Court of Appeals, Fourth District (2007))

◊ Retained as an expert consultant on remedies and procedural matters in complex class action (*Sunscreen Cases*, JCCP No. 4352, California Superior Court, Los Angeles County (2006))

◊ Retained as an expert consultant on complex preclusion questions in petition for review to California Supreme Court (*Mooney v. Caspari,* Supreme Court of California (2006))

◊ Retained as an expert consultant on attorney fee issues in complex common fund case (*In Re DietDrugs (Phen/Fen) Products Liability Litigation* (E. D. Pa. (2006))

◊ Retained as an expert consultant on procedural matters in series of complex construction lien cases (*In re Venetian Lien Litigation*, Supreme Court of the State of Nevada (2005-2006))

◊ Served as an expert consultant on class certification issues in countywide class action (*Beauchamp v. Los Angeles Cty. Metropolitan Transp. Authority*, (C.D. Cal. 2004))

◊ Served as an expert consultant on class certification issues in state-wide class action (*Williams v. State of California*, Case No. 312-236, Cal. Superior Court, San Francisco)

◊ Served as an exert consultant on procedural aspects of complex welfare litigation (*Allen v. Anderson*, 199 F.3d 1331 (9th Cir. 1999))

Ethics Opinions

◊ Retained to provided expert opinion on issues of professional ethics in complex litigation matter (*In re Professional Responsibility Inquiries* (2017))

◊ Provided expert opinion on issues of professional ethics in complex litigation matter (*In re Professional Responsibility Inquiries* (2013))

◊ Provided expert opinion on issues of professional ethics in complex litigation matter (*In re Professional Responsibility Inquiries* (2011))

◊ Provided expert opinion on issues of professional ethics in implicated by nationwide class action practice (*In re Professional Responsibility Inquiries* (2010))

◊ Provided expert opinion on issues of professional ethics implicated by complex litigation matter (*In re Professional Responsibility Inquiries* (2010))

◊ Provided expert opinion on issues of professional ethics in complex litigation matter (*In re Professional Responsibility Inquiries* (2007))

Publications on Class Actions & Procedure

◊ NEWBERG AND RUBENSTEIN ON CLASS ACTIONS (6th ed. 2022 and updates through 2024); NEWBERG ON CLASS ACTIONS (sole author since 2008, sole author of entirely re-written Fifth Edition (2011-2019)

◊ *Beyond Windfall: Case Specific vs. Systemic Approaches to Class Action Attorney's Fees,* Harvard Law School Faculty Work in Progress

◊ *De-constitutionalizing Personal Jurisdiction: A Separation of Powers Approach,* Harvard Public Law Working Paper No. 20-34, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3715068.

◊ *The Negotiation Class: A Cooperative Approach to Class Actions Involving Large Stakeholders,* 99 TEXAS L. REV.73 (2020) (with Francis E. McGovern)

◊ *Profit for Costs*, 63 DEPAUL L. REV. 587 (2014) (with Morris A. Ratner)

◊ *Procedure and Society: An Essay for Steve Yeazell,* 61 U.C.L.A. REV. DISC. 136 (2013)

◊ *Supreme Court Round-Up – Part II*, 5 CLASS ACTION ATTORNEY FEE DIGEST 331 (September 2011)

◊ *Supreme Court Round-Up – Part I*, 5 CLASS ACTION ATTORNEY FEE DIGEST 263 (July-August 2011)

◊ *Class Action Fee Award* Procedures, 5 CLASS ACTION ATTORNEY FEE DIGEST 3 (January 2011)

◊ *Benefits of Class Action Lawsuits*, 4 CLASS ACTION ATTORNEY FEE DIGEST 423 (November 2010)

◊ *Contingent Fees for Representing the Government: Developments in California Law*, 4 CLASS ACTION ATTORNEY FEE DIGEST 335 (September 2010)

◊ *Supreme Court Roundup*, 4 CLASS ACTION ATTORNEY FEE DIGEST 251 (July 2010)

◊ *SCOTUS Okays Performance Enhancements in Federal Fee Shifting Cases – At Least In Principle,* 4 CLASS ACTION ATTORNEY FEE DIGEST 135 (April 2010)

◊ *The Puzzling Persistence of the "Mega-Fund" Concept*, 4 CLASS ACTION ATTORNEY FEE DIGEST 39 (February 2010)

◊ *2009: Class Action Fee Awards Go Out With A Bang, Not A Whimper*, 3 CLASS ACTION ATTORNEY FEE DIGEST 483 (December 2009)

◊ *Privatizing Government Litigation: Do Campaign Contributors Have An Inside Track?*, 3 CLASS ACTION ATTORNEY FEE DIGEST 407 (October 2009)

◊ *Supreme Court Preview*, 3 CLASS ACTION ATTORNEY FEE DIGEST 307 (August 2009)

◊ *Supreme Court Roundup*, 3 CLASS ACTION ATTORNEY FEE DIGEST 259 (July 2009)

◊ *What We Now Know About How Lead Plaintiffs Select Lead Counsel (And Hence Who Gets Attorney's Fees!) in Securities Cases*, 3 CLASS ACTION ATTORNEY FEE DIGEST 219 (June 2009)

◊ *Beware Of Ex Ante Incentive Award Agreements*, 3 CLASS ACTION ATTORNEY FEE DIGEST 175 (May 2009)

◊ *On What a "Common Benefit Fee" Is, Is Not, and Should Be*, 3 CLASS ACTION ATTORNEY FEE DIGEST 87 (March 2009)

◊ *2009: Emerging Issues in Class Action Fee Awards*, 3 CLASS ACTION ATTORNEY FEE DIGEST 3 (January 2009)

◊ *2008: The Year in Class Action Fee Awards*, 2 CLASS ACTION ATTORNEY FEE DIGEST 465 (December 2008)

◊ *The Largest Fee Award – Ever!*, 2 CLASS ACTION ATTORNEY FEE DIGEST 337 (September 2008)

◊ *Why Are Fee Reductions Always 50%?: On The Imprecision of Sanctions for Imprecise Fee Submissions*, 2 CLASS ACTION ATTORNEY FEE DIGEST 295 (August 2008)

◊ *Supreme Court Round-Up,* 2 CLASS ACTION ATTORNEY FEE DIGEST 257 (July 2008)

◊ *Fee-Shifting For Wrongful Removals: A Developing Trend?,* 2 CLASS ACTION ATTORNEY FEE DIGEST 177 (May 2008)

◊ *You Cut, I Choose: (Two Recent Decisions About) Allocating Fees Among Class Counsel,* 2 CLASS

ACTION ATTORNEY FEE DIGEST 137 (April 2008)

◊ *Why The Percentage Method?,* 2 CLASS ACTION ATTORNEY FEE DIGEST 93 (March 2008)

◊ *Reasonable Rates: Time To Reload The (*Laffey*) Matrix,* 2 CLASS ACTION ATTORNEY FEE DIGEST 47 (February 2008)

◊ *The "Lodestar Percentage" A New Concept For Fee Decisions?,* 2 CLASS ACTION ATTORNEY FEE DIGEST 3 (January 2008)

◊ *Class Action Practice Today: An Overview, in* ABA SECTION OF LITIGATION, CLASS ACTIONS TODAY 4 (2008)

◊ *Shedding Light on Outcomes in Class Actions*, *in* CONFIDENTIALITY, TRANSPARENCY, AND THE U.S. CIVIL JUSTICE SYSTEM 20-59 (Joseph W. Doherty, Robert T. Reville, and Laura Zakaras eds. 2008) (with Nicholas M. Pace)

◊ *Finality in Class Action Litigation: Lessons From Habeas,* 82 N.Y.U. L. REV. 791 (2007)

◊ *The American Law Institute's New Approach to Class Action Objectors' Attorney's Fees,* 1 CLASS ACTION ATTORNEY FEE DIGEST 347 (November 2007)

◊ *The American Law Institute's New Approach to Class Action Attorney's Fees,* 1 CLASS ACTION ATTORNEY FEE DIGEST 307 (October 2007)

◊ *"The Lawyers Got More Than The Class Did!": Is It Necessarily Problematic When Attorneys Fees Exceed Class Compensation?,* 1 CLASS ACTION ATTORNEY FEE DIGEST 233 (August 2007)

◊ *Supreme Court Round-Up,* 1 CLASS ACTION ATTORNEY FEE DIGEST 201 (July 2007)

◊ *On The Difference Between Winning and Getting Fees,* 1 CLASS ACTION ATTORNEY FEE DIGEST 163 (June 2007)

◊ *Divvying Up The Pot: Who Divides Aggregate Fee Awards, How, and How Publicly?,* 1 CLASS ACTION ATTORNEY FEE DIGEST 127 (May 2007)

◊ *On Plaintiff Incentive Payments,* 1 CLASS ACTION ATTORNEY FEE DIGEST 95 (April 2007)

◊ *Percentage of What?,* 1 CLASS ACTION ATTORNEY FEE DIGEST 63 (March 2007)

◊ *Lodestar v. Percentage: The Partial Success Wrinkle,* 1 CLASS ACTION ATTORNEY FEE DIGEST 31 (February 2007) (with Alan Hirsch)

◊ *The Fairness Hearing: Adversarial and Regulatory Approaches*, 53 U.C.L.A. L. REV. 1435 (2006) (excerpted in THE LAW OF CLASS ACTIONS AND OTHER AGGREGATE LITIGATION 447-449 (Richard A. Nagareda ed., 2009))

◊ *Why Enable Litigation? A Positive Externalities Theory of the Small Claims Class Action*, 74 U.M.K.C. L. REV. 709 (2006)

◊ *What a "Private Attorney General" Is – And Why It Matters*, 57 VAND. L. REV. 2129(2004) (excerpted in COMPLEX LITIGATION 63-72 (Kevin R. Johnson, Catherine A. Rogers & John Valery White eds., 2009)).

◊ *The Concept of Equality in Civil Procedure*, 23 CARDOZO L. REV. 1865 (2002) (selected for the Stanford/Yale Junior Faculty Forum, June 2001)

◊ *A Transactional Model of Adjudication*, 89 GEORGETOWN L.J. 371 (2000)

◊ *The Myth of Superiority*, 16 CONSTITUTIONAL COMMENTARY 599 (1999)

◊ *Divided We Litigate: Addressing Disputes Among Clients and Lawyers in Civil Rights Campaigns*, 106 YALE L. J. 1623 (1997) *(*excerpted in COMPLEX LITIGATION 120-123 (1998))

Selected Presentations

◊ *Beyond Windfall: Case Specific vs. Systemic Approaches to Class Action Attorney's Fees,* Harvard Law School Seminar in Law & Economics (Professors Louis Kaplow and Steven Shavell), March 31, 2026

◊ *Beyond Windfall: Case Specific vs. Systemic Approaches to Class Action Attorney's Fees,* Harvard Law School Faculty Workshop, October 30, 2025

◊ *One Class, Many Champions: Shifting Conceptions of Representation in Aggregate Litigation*, Bruce Bromley Professor of Law Chair Talk, Harvard Law School, April 8, 2025

◊ *Opioid Litigation: What's New and What Does it Mean for Future Litigation?,* RAND Institute for Civil Justice and RAND Kenneth R. Feinberg Center for Catastrophic Risk Management and Compensation, RAND Corporation, October 22, 2020

◊ *The Opioid Crisis: Where Do We Go From Here?"* Clifford Symposium 2020, DePaul University College of Law, Chicago, Illinois, May 28-29, 2020)

◊ *Class Action Law Update,* MDL Transferee Judges Conference, Palm Beach, Florida, October 30, 2019

◊ *Class Action Law Update,* MDL Transferee Judges Conference, Palm Beach, Florida, October 31, 2018

◊ *Attorneys' Fees Issues,* MDL Transferee Judges Conference, Palm Beach, Florida, October 30, 2018

◊ *Panelist,* Federal Judicial Center, Managing Multidistrict Litigation and Other Complex Litigation Workshop (for federal judges) (March 15, 2018)

◊ *Class Action Update,* MDL Transferee Judges Conference, Palm Beach, Florida, November 1, 2017

◊ *Class Action Update,* MDL Transferee Judges Conference, Palm Beach, Florida, November 2, 2016

◊ *Judicial Power and its Limits in Multidistrict Litigation,* American Law Institute, Young Scholars Medal Conference, *The Future of Aggregate Litigation*, New York University School of Law, New York, New York, April 12, 2016

◊ *Class Action Update & Attorneys' Fees Issues Checklist,* MDL Transferee Judges Conference, Palm Beach, Florida, October 28, 2015

◊ *Class Action Law,* 2015 Ninth Circuit/Federal Judicial Center Mid-Winter Workshop, Tucson, Arizona, January 26, 2015

◊ *Recent Developments in Class Action Law,* MDL Transferee Judges Conference, Palm Beach, Florida, October 29, 2014

◊ *Recent Developments in Class Action Law,* MDL Transferee Judges Conference, Palm Beach, Florida, October 29, 2013

◊ *Class Action Remedies,* ABA 2013 National Institute on Class Actions, Boston, Massachusetts, October 23, 2013

◊ *The Public Life of the Private Law: The Logic and Experience of Mass Litigation – Conference in Honor of Richard Nagareda,* Vanderbilt Law School, Nashville, Tennessee, September 27-28, 2013

◊ *Brave New World: The Changing Face of Litigation and Law Firm Finance*, Clifford Symposium 2013, DePaul University College of Law, Chicago, Illinois, April 18-19, 2013

◊ *Twenty-First Century Litigation: Pathologies and Possibilities: A Symposium in Honor of Stephen Yeazell,* UCLA Law Review, UCLA School of Law, Los Angeles, California, January 24-25, 2013

◊ *Litigation's Mirror: The Procedural Consequences of Social Relationships,* Sidley Austin Professor of Law Chair Talk, Harvard Law School, Cambridge, Massachusetts, October 17, 2012

◊ *Alternative Litigation Funding (ALF) in the Class Action Context – Some Initial Thoughts*, Alternative Litigation Funding: A Roundtable Discussion Among Experts, George Washington University Law School, Washington, D.C., May 2, 2012

◊ *The Operation of Preclusion in Multidistrict Litigation (MDL) Cases*, Brooklyn Law School Faculty Workshop, Brooklyn, New York, April 2, 2012

◊ *The Operation of Preclusion in Multidistrict Litigation (MDL) Cases*, Loyola Law School Faculty Workshop, Los Angeles, California, February 2, 2012

◊ *Recent Developments in Class Action Law and Impact on MDL Cases,* MDL Transferee Judges Conference, Palm Beach, Florida, November 2, 2011

◊ *Recent Developments in Class Action Law,* MDL Transferee Judges Conference, Palm Beach, Florida, October 26, 2010

◊ *A General Theory of the Class Suit*, University of Houston Law Center Colloquium, Houston, Texas, February 3, 2010

◊ *Unpacking The "Rigorous Analysis" Standard,* ALI-ABA 12th Annual National Institute on Class Actions, New York, New York, November 7, 2008

◊ *The Public Role in Private Law Enforcement: Visions from CAFA*, University of California (Boalt Hall) School of Law Civil Justice Workshop, Berkeley, California, February 28, 2008

◊ *The Public Role in Private Law Enforcement: Visions from CAFA*, University of Pennsylvania Law Review Symposium, Philadelphia, Pennsylvania, Dec. 1, 2007

◊ *Current CAFA Consequences: Has Class Action Practice Changed?,* ALI-ABA 11th Annual National Institute on Class Actions, Chicago, Illinois, October 17, 2007

◊ *Using Law Professors as Expert Witnesses in Class Action Lawsuits,* ALI-ABA 10th Annual National Institute on Class Actions, San Diego, California, October 6, 2006

◊ *Three Models for Transnational Class Actions*, Globalization of Class Action Panel, International Law Association 2006 Conference, Toronto, Canada, June 6, 2006

◊ *Why Create Litigation?: A Positive Externalities Theory of the Small Claims Class Action*, UMKC Law Review Symposium, Kansas City, Missouri, April 7, 2006

◊ *Marks, Bonds, and Labels: Three New Proposals for Private Oversight of Class Action Settlements*, UCLA Law Review Symposium, Los Angeles, California, January 26, 2006

◊ Class Action Fairness Act, Arnold & Porter, Los Angeles, California, December 6, 2005

◊ ALI-ABA 9th Annual National Institute on Class Actions, Chicago, Illinois, September 23, 2005

◊ Class Action Fairness Act, UCLA Alumni Assoc., Los Angeles, California, September 9, 2005

◊ Class Action Fairness Act, Thelen Reid & Priest, Los Angeles, California, May 12, 2005

◊ Class Action Fairness Act, Sidley Austin, Los Angeles, California, May 10, 2005

◊ Class Action Fairness Act, Munger, Tolles & Olson, Los Angeles, California, April 28, 2005

◊ Class Action Fairness Act, Akin Gump Strauss Hauer Feld, Century City, CA, April 20, 2005

SELECTED OTHER LITIGATION EXPERIENCE

United States Supreme Court

◊ Served as *amicus curiae* and co-authored *amicus* brief (with Professor Arthur Miller) on proper

approach to standing in class action lawsuits (*Labcorp, v. Davis*, No. 24-304, October Term 2024)

◊ Served as *amicus curiae* and authored *amicus* brief on proper approach to *cy pres* award in class action lawsuits (*Frank v. Gaos*, No. 17-961, October Term 2018)

◊ Co-counsel on petition for writ of *certiorari* concerning application of the voluntary cessation doctrine to government defendants (*Rosebrock v. Hoffman*, 135 S. Ct.1893 (2015))

◊ Authored *amicus* brief filed on behalf of civil procedure and complex litigation law professors concerning the importance of the class action lawsuit (*AT&T Mobility v. Concepcion,* No. 09-893, 131 S. Ct. 1740 (2011)

◊ Co-counsel in constitutional challenge to display of Christian cross on federal land in California's Mojave preserve (*Salazar v. Buono*, 130 S. Ct. 1803 (2010))

◊ Co-authored *amicus* brief filed on behalf of constitutional law professors arguing against constitutionality of Texas criminal law (*Lawrence v. Texas*, 539 U.S. 558 (2003))

◊ Co-authored *amicus* brief on scope of *Miranda* (*Illinois v. Perkins*, 496 U.S. 292 (1990))

Attorney's Fees

◊ Appointed by the United States District Court for the Eastern District of Pennsylvania as an expert witness on attorney's fees in complex litigation, with result that the Court adopted recommendations (*In re National Football League Players' Concussion Injury Litigation*, 2018 WL 1658808 (E.D.Pa. April 5, 2018))

◊ Appointed by the United States District Court for the Northern District of Ohio as an expert consultant on common benefit attorney's fees issues in complex multidistrict litigation, with result that the Court adopted recommendations (*In re: Nat'l Prescription Opiate Litig*., No. 1:17-MD-2804, 2020 WL 8675733 (N.D. Ohio June 3, 2020))

◊ Appointed by the United States Court of Appeals for the Second Circuit to argue for affirmance of district court fee decision in complex securities class action, with result that the Court summarily affirmed the decision below (*In re Indymac Mortgage-Backed Securities Litigation*, 94 F.Supp.3d 517 (S.D.N.Y. 2015), *aff'd sub. nom*., *DeValerio v. Olinski*, 673 F. App'x 87, 90 (2d Cir. 2016)).

◊ Co-counsel in appeal of common benefit fees decision arising out of mass tort MDL (*In re Roundup Prod. Liab. Litig.,* Civil Action No. 21-16228, 2022 WL 16646693 (9th Cir, 2022))

◊ Served as *amicus curiae* and co-authored *amicus* brief on proper approach to attorney's fees in common fund cases (*Laffitte v. Robert Half Int'l Inc*., 1 Cal. 5th 480, 504, 376 P.3d 672, 687 (2016))

Consumer Class Action

◊ Co-counsel in challenge to antenna-related design defect in Apple's iPhone4 (*Dydyk v. Apple Inc.,* 5:10-cv-02897-HRL, U.S. Dist. Court, N.D. Cal.) (complaint filed June 30, 2010)

◊ Co-class counsel in $8.5 million nationwide class action settlement challenging privacy concerns raised by Google's Buzz social networking program (*In re Google Buzz Privacy Litigation,* 5:10-cv-00672-JW, U.S. Dist. Court, N.D. Cal.) (amended final judgment June 2, 2011)

Disability

◊ Co-counsel in successful ADA challenge ($500,000 jury verdict) to the denial of health care in emergency room (*Howe v. Hull*, 874 F. Supp. 779, 873 F. Supp 72 (N.D. Ohio 1994))

Employment

◊ Co-counsel in challenges to scope of family benefit programs (*Ross v. Denver Dept. of Health*, 883 P.2d 516 (Colo. App. 1994)); *(Phillips v. Wisc. Personnel Com'n*, 482 N.W.2d 121 (Wisc. 1992))

Equal Protection

◊ Co-counsel in (state court phases of) successful challenge to constitutionality of a Colorado ballot initiative, Amendment 2 (*Evans v. Romer*, 882 P.2d 1335 (Colo. 1994))

◊ Co-counsel (and *amici*) in challenges to rules barring military service by gay people (*Able v. United States*, 44 F.3d 128 (2d Cir. 1995); *Steffan v. Perry*, 41 F.3d 677 (D.C. Cir. 1994) (*en banc*))

◊ Co-counsel in challenge to the constitutionality of the Attorney General of Georgia' firing of staff attorney (*Shahar v. Bowers*, 120 F.3d 211 (11th Cir. 1997))

Fair Housing

◊ Co-counsel in successful Fair Housing Act case on behalf of group home (*Hogar Agua y Vida En el Desierto v. Suarez-Medina*, 36 F.3d 177 (1st Cir. 1994))

Family Law

◊ Co-counsel in challenge to constitutionality of Florida law limiting adoption (*Cox v. Florida Dept. of Health and Rehab. Srvcs.*, 656 So.2d 902 (Fla. 1995))

◊ Co-authored *amicus* brief in successful challenge to Hawaii ban on same-sex marriages (*Baehr v. Lewin*, 852 P.2d 44 (Haw. 1993))

First Amendment

◊ Co-counsel in successful challenge to constitutionality of Alabama law barring state funding foruniversity student groups (*GLBA v. Sessions*, 930 F.Supp. 1492 (M.D. Ala. 1996))

◊ Co-counsel in successful challenge to content restrictions on grants for AIDS education materials (*Gay Men's Health Crisis v. Sullivan*, 792 F.Supp. 278 (S.D.N.Y. 1992))

Landlord/Tenant

◊ Lead counsel in successful challenge to rent control regulation (*Braschi v. Stahl Associates Co.*, 544 N.E.2d 49 (N.Y. 1989))

Police

◊ Co-counsel in case challenging DEA brutality (*Anderson v. Branen*, 27 F.3d 29 (2d Cir. 1994))

Prison Conditions

◊ Co-counsel in appeal of class certification denial in damages case arising out of conditions in St. Louis City Jail (*Cody v. City of St. Louis,* 103 F.4th 523, 526 (8th Cir. 2024))

Racial Equality

◊ Co-authored *amicus* brief for constitutional law professors challenging constitutionality of Proposition 209 *(Coalition for Economic Equity v. Wilson*, 110 F.3d 1431 (9th Cir. 1997))

SELECTED OTHER PUBLICATIONS

Editorials

◊ *Follow the Leaders*, NEW YORK TIMES, March 15, 2005
◊ *Play It Straight*, NEW YORK TIMES, October 16, 2004
◊ *Hiding Behind the Constitution*, NEW YORK TIMES, March 20, 2004
◊ *Toward More Perfect Unions,* NEW YORK TIMES, November 20, 2003 (with Brad Sears)
◊ *Don't Ask, Don't Tell, Don't Believe It*, NEW YORK TIMES, July 20, 1993
◊ *AIDS: Illness and Injustice*, WASH. POST, July 26, 1992 (with Nan D. Hunter)

BAR ADMISSIONS

◊ Massachusetts (2008)
◊ California (2004)
◊ District of Columbia (1987) (inactive)
◊ Pennsylvania (1986) (inactive)
◊ U.S. Supreme Court (1993)
◊ U.S. Court of Appeals for the First Circuit (2010)
◊ U.S. Court of Appeals for the Second Circuit (2015)
◊ U.S. Court of Appeals for the Fifth Circuit (1989)
◊ U.S. Court of Appeals for the Ninth Circuit (2004)
◊ U.S. Court of Appeals for the Eleventh Circuit (1993)
◊ U.S. Court of Appeals for the D.C. Circuit (1993)
◊ U.S. District Courts for the Central District of California (2004)
◊ U.S. District Court for the District of the District of Columbia (1989)
◊ U.S. District Court for the District of Massachusetts (2010)
◊ U.S. District Court for the Northern District of California (2010)

EXHIBIT B

In re Deere & Co. Repair Servs. Antitrust Litig.
Case No. 3:22-cv-50188
United States District Court for the Northern District of Illinois

EXPERT REPORT OF PROFESSOR WILLIAM B. RUBENSTEIN

EXHIBIT B
List of Documents Reviewed by Professor Rubenstein
(other than case law and scholarship on the relevant issues)

A. *In re Deere & Co. Repair Servs. Antitrust Litig.*, No. 3:22-cv-50188 (N.D. Ill.)

1. Transfer Order, ECF No. 1.
2. Status Update re: Proposed Leadership Structure, ECF No. 39.
3. Application of Rex A. Sharp of Sharp Law, LLP as Lead and/or Co-Lead Class Counsel, ECF No. 42.
4. Deloach and Perry Plaintiffs' Status Report on Leadership, ECF No. 45.
5. Plaintiff Colvin Farms Status Report on Leadership, ECF No. 46.
6. Status Update re: Proposed Leadership Structure, ECF No. 66.
7. Minute Entry, ECF No. 73.
8. Consolidated Class Action Complaint, ECF No. 85.
9. Defendant Deere & Company's Answer and Affirmative Defenses to Plaintiffs' Consolidated Class Action Complaint, ECF No. 103.
10. Defendant Deere & Company's Memorandum in Support of Its Motion for Judgment on the Pleadings, ECF No. 105.
11. Plaintiffs' Memorandum in Opposition to Defendant Deere & Company's Motion for Judgment on the Pleadings, ECF No. 110.
12. Statement of Interest of the United States, ECF No. 120.
13. Defendant Deere & Company's Reply in Support of Its Motion for Judgment on the Pleadings, ECF No. 123.
14. Defendant Deere & Company's Response to the Statement of Interest of the United States, ECF No. 124.
15. Plaintiffs' Motion to Compel Defendant Deere & Company's Production of Documents Responsive to Requests for Production Nos. 8, 36, and 49, ECF No. 133.
16. Plaintiffs' Memorandum of Law in Support of Motion to Compel Defendant Deere & Company's Production of Documents Responsive to Requests for Production Nos. 8, 36, and 49, ECF No. 134.
17. Defendant Deere & Company's Opposition to Plaintiffs' Motion to Compel Discovery, ECF No. 137.
18. Plaintiffs' Reply in Support of Motion to Compel Defendant Deere & Company's Production of Documents Responsive to Requests for Production Nos. 8, 36, and 49, ECF No. 138.
19. Memorandum Opinion and Order, ECF No. 159.
20. Deere & Company's Position Statement Regarding Application of the Common Interest Privilege, ECF No. 200.
21. Plaintiffs' Summary of Common Interest Law Issue, ECF No. 201.
22. Statement of Non-Parties CNH Industrial America LLC, Agco Corporation and Kubota Tractor Corporation Relating to Protection of Materials Produced During FTC Investigation, ECF No. 208.

23. Joint Status Report, ECF No. 209.
24. Non-Party OEMs Response to Joint Status Report, ECF No. 210.
25. Order Regarding Common Interest Applicability, ECF No. 217.
26. Consent Statement of Non-Party OEMs (CNH Industrial America LLC, Agco Corporation and Kubota Tractor Corporation), Plaintiff Federal Trade Commission, MDL Plaintiffs and Defendant Deere & Company, ECF No. 244.
27. MDL Plaintiffs' Motion to Compel Defendant Deere & Company's Production of Documents Responsive to MDL Plaintiffs' Request for Production No. 64, ECF No. 264.
28. Memorandum Opinion and Order, ECF No. 265.
29. Deere's Memorandum in Opposition to Motion to Compel Production of Documents Responsive to Government Plaintiffs' Request for Production No. 13 and MDL Plaintiffs' Request for Production No. 64, ECF No. 273.
30. Government Plaintiffs' and MDL Plaintiffs' Reply Memorandum of Law in Further Support of Their Motions to Compel Defendant Deere & Company's Production of Documents Responsive to Government Plaintiffs' Request for Production No. 13 and MDL Plaintiffs' Request for Production No. 64, ECF No. 282.
31. Memorandum Opinion and Order, ECF No. 288.
32. Memorandum Opinion and Order, ECF No. 292.
33. Motion of Agco Corporation for Reconsideration and Stay, ECF No. 293.
34. Response of MDL Plaintiffs to Agco Corporation's Motion for Reconsideration and Stay, ECF No. 298.
35. Order, ECF No. 305.
36. Opinion and Order, ECF No. 316.
37. Order Regarding Stay of Proceedings, ECF No. 320.
38. Memorandum of Lawin Support of Plaintiffs' Motion for Preliminary Approval of Settlement with Defendant Deere & Co., Certification of the Proposed Settlement Class, and Related Relief, ECF No. 333-1.
39. Joint Declaration in Support of Plaintiffs' Motion for Preliminary Approval of Settlement with Defendant Deere & Co., Certification of the Proposed Settlement Class, and Related Relief, ECF No. 333-2.
40. Exhibit A to Joint Declaration in Support of Plaintiffs' Motion for Preliminary Approval of Settlement with Defendant Deere & Co., Certification of the Proposed Settlement Class, and Related Relief, ECF No. 333-3.
41. Exhibit B to Joint Declaration in Support of Plaintiffs' Motion for Preliminary Approval of Settlement with Defendant Deere & Co., Certification of the Proposed Settlement Class, and Related Relief, ECF No. 333-4.
42. Exhibit C to Joint Declaration in Support of Plaintiffs' Motion for Preliminary Approval of Settlement with Defendant Deere & Co., Certification of the Proposed Settlement Class, and Related Relief, ECF No. 333-5.
43. Exhibit D to Joint Declaration in Support of Plaintiffs' Motion for Preliminary Approval of Settlement with Defendant Deere & Co., Certification of the Proposed Settlement Class, and Related Relief, ECF No. 333-6.
44. Supplemental Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Approval of Settlement with Defendant Deere & Co. and Approval of Plan to Notify the Settlement Class, ECF No. 337.
45. Supplemental Joint Declaration in Support of Plaintiffs' Supplemental Motion for Preliminary Approval of Settlement with Defendant Deere & Co. and Approval of Plan to Notify the

Settlement Class, ECF No. 337-1.

46. Exhibit 1 to Supplemental Joint Declaration in Support of Plaintiffs' Supplemental Motion for Preliminary Approval of Settlement with Defendant Deere & Co. and Approval of Plan to Notify the Settlement Class, ECF No. 337-2.
47. Exhibit A to Supplemental Joint Declaration in Support of Plaintiffs' Supplemental Motion for Preliminary Approval of Settlement with Defendant Deere & Co. and Approval of Plan to Notify the Settlement Class, ECF No. 337-3.
48. Exhibit B to Supplemental Joint Declaration in Support of Plaintiffs' Supplemental Motion for Preliminary Approval of Settlement with Defendant Deere & Co. and Approval of Plan to Notify the Settlement Class, ECF No. 337-4.
49. Exhibit C to Supplemental Joint Declaration in Support of Plaintiffs' Supplemental Motion for Preliminary Approval of Settlement with Defendant Deere & Co. and Approval of Plan to Notify the Settlement Class, ECF No. 337-5.
50. Exhibit D to Supplemental Joint Declaration in Support of Plaintiffs' Supplemental Motion for Preliminary Approval of Settlement with Defendant Deere & Co. and Approval of Plan to Notify the Settlement Class, ECF No. 337-6.
51. Exhibit E to Supplemental Joint Declaration in Support of Plaintiffs' Supplemental Motion for Preliminary Approval of Settlement with Defendant Deere & Co. and Approval of Plan to Notify the Settlement Class, ECF No. 337-7.
52. Exhibit F to Supplemental Joint Declaration in Support of Plaintiffs' Supplemental Motion for Preliminary Approval of Settlement with Defendant Deere & Co. and Approval of Plan to Notify the Settlement Class, ECF No. 337-8.
53. [Proposed] Amended Plan of Allocation, ECF No. 337-9.
54. Order Preliminarily Approving Settlement with Defendant Deere & Co., Certifying the Proposed Settlement Class, Approving the Plan to Notify the Settlement Class, and Providing Related Relief, ECF No. 341.
55. Objection to Final Approval of Proposed Settlement by Named Plaintiff Wilson Farms Land and Cattle Co., ECF No. 348.
56. Declaration of Jared Wilson in Support of Objection to Final Approval of Proposed Settlement by Named Plaintiff Wilson Farms Land and Cattle Co., ECF No. 348-1.
57. Exhibit A to Declaration of Jared Wilson in Support of Objection to Final Approval of Proposed Settlement by Named Plaintiff Wilson Farms Land and Cattle Co., ECF No. 348-2.
58. Exhibit B to Declaration of Jared Wilson in Support of Objection to Final Approval of Proposed Settlement by Named Plaintiff Wilson Farms Land and Cattle Co., ECF No. 348-3.
59. Exhibit C to Declaration of Jared Wilson in Support of Objection to Final Approval of Proposed Settlement by Named Plaintiff Wilson Farms Land and Cattle Co., ECF No. 348-4.
60. Declaration of Jared Wilson in Support of Objection to Final Approval of Proposed Settlement by Named Plaintiff Wilson Farms Land and Cattle Co., ECF No. 348-5.
61. Joint Position Paper, ECF No. 355.
62. Plaintiffs' Unopposed Motion to Amend the May 18, 2026 Order Preliminarily Approving the Settlement with Defendant Deere & Co., Certifying the Proposed Settlement Class, Approving the Plan to Notify the Settlement Class, and Providing Related Relief, ECF No. 356.
63. Joint Declaration in Support of Plaintiffs' Motion to Amend the May 18, 2026 Order Preliminarily Approving the Settlement with Defendant Deere & Co., Certifying the Proposed Settlement Class, Approving the Plan to Notify the Settlement Class, and Providing Related Relief, ECF No. 356-1.
64. Exhibit 1 to Joint Declaration in Support of Plaintiffs' Motion to Amend the May 18, 2026

Order Preliminarily Approving the Settlement with Defendant Deere & Co., Certifying the Proposed Settlement Class, Approving the Plan to Notify the Settlement Class, and Providing Related Relief, ECF No. 356-2.

65. Named Plaintiff Wilson Farms Land and Cattle Co. LLC's Motion to Set a Briefing Schedule on Settling Plaintiffs' Motion to Amend/Correct the Court's May 18, 2026 Order Preliminarily Approving the Proposed Settlement with Defendant Deere & Company, ECF No. 359.
66. Plaintiffs' Response to Wilson Farms Land & Cattle Co. LLC's Motion to Set a Briefing Schedule on Settling Plaintiffs' Motion to Amend the Court's May 18, 2026 Order Preliminarily Approving the Proposed Settlement with Defendant Deere & Company, ECF No. 360.
67. Plaintiff Wilson Farms Land and Cattle Co.'s Motion to Extend Its Time to File a Position Paper Pursuant to the Court's July 9, 2026 Order Until the Next Business Day, ECF No. 362.
68. Amended Order Preliminarily Approving Settlement with Defendant Deere & Co., Certifying the Proposed Settlement Class, Approving the Plan to Notify the Settlement Class, and Providing Related Relief, ECF No. 367.

B. *Federal Trade Commission v. Deere & Company,* No. 3:25-cv-50017 (N.D. Ill.)

1. Complaint, ECF No. 1.
2. Joint Motion for Entry of Stipulated Order for Permanent Injunction and Other Relief, ECF No. 260.
3. Stipulated Order for Permanent Injunction and Other Relief, ECF No. 260-1.

C. *Christy Webber & Co. v. Deere & Co.*, No. 1:26-cv-05637 (N.D. Ill.)

1. Class Action Complaint, ECF No. 1.
2. Civil Cover Sheet, ECF No. 1-1.

D. *Retainer Agreements with Named Plaintiffs*

1. Blake Johnson Retainer Agreement
2. Colvin Farms LLC Retainer Agreement
3. Eagle Lake Farms Partnership Retainer Agreement
4. Hapka Farms Inc. Retainer Agreement
5. Wilson Farms Land & Cattle Co. LLC Retainer Agreement
6. Michael England Retainer Agreement
7. Plum Ridge Farms Ltd. Retainer Agreement

EXHIBIT C

In re Deere & Co. Repair Servs. Antitrust Litig.
Case No. 3:22-cv-50188
United States District Court for the Northern District of Illinois

EXPERT REPORT OF PROFESSOR WILLIAM B. RUBENSTEIN

EXHIBIT C
Application of Sliding Scale Approach

The basis for my calculation of an *ex ante* sliding scale approach to a fee agreement is the leading Circuit case on point, *In re Synthroid Mktg. Litig*., 325 F.3d 974, 980 (7th Cir. 2003). In this case, the court awarded class counsel 30% for the first $10 million; 25% for the next $10 million; 22% of the succeeding $26 million; and 15% for everything above that.[1]

To apply this approach here, I began by adjusting the fee brackets used in the 2003 *In re Synthroid* decision to account for inflation in the market for legal services in the succeeding 23 years. I made that adjustment using the Producer Price Index from the Bureau of Labor Statistics for Offices of Lawyers.[2]

After adjusting for inflation, the hypothetical ex ante fee arranged based on *In re Synthroid* is as follows: 30% for the first $27,020,766.77; 25% for the next $27,020,766.77; 22% for the succeeding $70,253,993.61; and 15% for everything after that. Based on this hypothetical fee arrangement, the common fund would need to total $168.8 million to warrant Class Counsel's requested $37 million fee. As roughly $101.2 million of that is already in the monetary fund, the non-monetary relief would need to be valued at only $67.6 million, which is significantly below the low end of Dr. Lamb's valuation. Table A below shows the amount in attorneys' fees

[1] *In re Synthroid Mktg. Litig*., 325 F.3d 974, 980 (7th Cir. 2003).

[2] This price database can be accessed here: https://www.bls.gov/ppi/databases/. To specifically access the PPI-OL, first click on "One Screen" in the "Industry Data" row below "PPI Databases." Then select "541110 Offices of lawyers" as the industry and "541110541110 Offices of lawyers" as the product.

attributable to each tranche of the hypothetical common fund according to the inflation adjusted method described in *In re Synthroid*.

TABLE A
SIZE OF COMMON FUND REQUIRED TO REACH REQUESTED FEE AMOUNT UNDER SLIDING SCALE FEE APPROACH

	Fund Tranche Size	**Fee Percentage**	**Fee Amount**
Tranche 1	$27,020,766.77	30%	$8,106,230.03
Tranche 2	$27,020,766.77	25%	$6,755,191.69
Tranche 3	$70,253,993.61	22%	$15,455,878.59
Tranche 4	$44,551,331.20	15%	$6,682,699.68
Total	**$168,846,858.36**		**$37,000,000.00**