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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re ENRON CORP. SECURITIES LITIGATION	)	Civil Action No. H-01-3624 **(Consolidated)**
This document relates to: MARK NEWBY, et al., individually and On behalf of all others similarly situated, Plaintiffs, v. ENRON CORP., et al., Defendants.	)	CLASS ACTION
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al., individually and on behalf Of all others similarly situated, Plaintiffs, v. KENNETH LAY, et al., Defendants.	)	

NOTICE OF OBJECTION TO PLAINTIFFS' COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEY'S FEES AND NOTICE OF INTENT TO APPEAR

Class Members and Eligible Claimants George S. Bishop and Jill R. Bishop, of 8 Trafalgar Square, Abilene, Texas, 79605, and Class Members Lon Wilkins and Betty Wilkens of 3474 Beldeer, St. Charles, MO, 63303, hereby give notice of their objection to Plaintiffs' Counsel's requested attorney's fees of 9.522% of the settlement fund in this case, and also give notice of their intent to appear at the hearing scheduled for February 29, 2008 through their undersigned counsel.

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Goerge S. Bishop purchased 200 shares of Enron on November 1, 2001 at the price of $12.60/share. *Exhibit A*. He retains those shares for a total loss. Jill R. Bishop purchased 100 shares of Enron on April 6, 2000 at the price of $67.06/share and sold 100 shares on October 31, 2001 at the price of $13.19/share. *Exhibit B*. Betty Wilkens acquired 10,713 shares of Enron in October 1998 at the basis price of $52.50. The Wilkens still hold 13,000 shares of Enron which are virtually worthless. *Exhibit C*.

I. The Requested Attorneys' Fees Are Excessive And In Violation Of Clear Fifth Circuit Precedent.

"A district court is not bound by an agreement of the parties with regard to fees… The court must scrutinize the agreed-to fees … and not merely ratify a pre-arranged compact." *Strong v. BellSouth Telecommunications, Inc.,* 137 F.3d 844, 849 (5th Cir. 1998); *Zucker v. Occidental Petroleum Corp.*, 192 F.3d 1323, 1328-29 (9th Cir. 1999)(court's duty to scrutinize fee agreement exists independently of any objection). A court "is not bound by the agreement of the parties as to the amount of attorney's fees" and must not merely "ratify a pre-arranged compact." *Piambino v. Bailey*, 610 F.2d 1306, 1328 (5th Cir. 1980). This principle extends to fees that are agreed to or pre-negotiated by the lead plaintiff. *Wal-Mart Stores Inc. v. Visa USA Inc.*, 396 F.3d 96, 123 (2d Cir. 2005); *In re Chiron Corp. Securities Litig.*, 2007 U.S. Dist LEXIS 91140 at *31 (ND CA November 30, 2007)(when lead plaintiff agrees to excessive fee, plaintiff fails to maximize net recovery of absent class members).[1]

Plaintiffs' Counsel's request for almost $700 million in attorney's fees on a $7.2 billion recovery is the largest mega-fee ever requested in the largest megafund settlement in the history of securities litigation. Judge John Gleeson of the Eastern District of New

[1] A copy of this recently decided case is attached hereto as *Exhibit D*.

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York characterized a similar fee request in a $3 billion settlement as "absurd." *In re Visa Check/MasterMoney Antitrust Litig.*, 297 F. Supp. 2d 503, 522 (EDNY 2003)("Lead Counsel's request to be paid almost 10 times their hourly rate is absurd."), *affirmed Wal-Mart Stores Inc. v. Visa USA Inc.*, 396 F.3d 96 (2d Cir. 2005). The court in that case ultimately awarded class counsel a 6.5% fee, which represented a 3.5 lodestar multiplier. The Court of Appeals made clear that the district court was not required to defer to the fee agreement between lead plaintiffs and class counsel, which exceeded the amount requested. 396 F.3d at 123 ("we cannot say that the district court abused its discretion merely because it chose not to heed the terms of an agreement purportedly reached between lead plaintiffs and their counsel when settlement payments to approximately five million absent class members are at stake.").[2]

The result reached in *In re Visa Check, supra*, is even more appropriate here, since the Fifth Circuit continues to adhere to the lodestar multiplier method of calculating fee awards in class actions, unlike the Second Circuit, which has expressed a preference for the percentage method. This Circuit prohibits the use of a percentage of the fund methodology of calculating a fee in a common fund case. *Longden v. Sunderman*, 979 F. 2d 1095, 1100 n.9 (5th Cir. 1992) ("Although the prevailing trend in other circuits and district courts has been towards awarding fees and expenses in common fund cases based on percentage amounts, the Fifth Circuit has yet to adopt this method."). In light of the fact that this Circuit follows the lodestar method, the fee agreement between the Regents

[2] Incidentally, Professor John C. Coffee, Jr. filed a declaration in *Visa Check* opining that the settlement there was an extraordinary result too, and that a multiplier of 10 was appropriate. The district court disregarded that declaration and refused to award a windfall fee at the expense of absent class members. Undeterrred, Professor Coffee keeps on finding each new settlement more extraordinary than the last, and has apparently found no upper limit on fees that he deems reasonable. Thankfully, federal law is not so irrationally exuberant.

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of the University of California and Lerach Coughlin appears to be irrelevant at best and collusive at worst. The Lead Plaintiff should have negotiated a fee agreement with their counsel that makes sense in the district where their counsel intended to file suit. The 9.522% fee that the Regents agreed to is impermissible in this Circuit. Instead, if Lead Plaintiff wished to fulfill its fiduciary duty to the class to limit class counsel's fee to a reasonable amount, it should perhaps have negotiated a cap on class counsel's lodestar multiplier. The fee it did negotiate with class counsel, if awarded, would result in an absurd and abusive fee of more than ten times class counsel's already high hourly rates. *See In re Chiron Corp. Securities Litig.*, 2007 U.S. Dist LEXIS 91140 (ND CA November 30, 2007)(denying approval to settlement because Milberg Weiss requested fees "eight to ten times typical hourly attorney fees").

For the same reasons as the court gave in *In re Visa Check*, as well as to comply with well-established Fifth Circuit precedent, this Court should award class counsel a fee that represents no more than a 3.5 multiplier of class counsel's properly documented lodestar calculated at reasonable rates.

A. This Circuit Awards Attorney's Fees By The Lodestar Method.

Class counsel misleadingly states that "there has been no Fifth Circuit decision that would preclude this Court from employing the percentage of the fund approach endorsed in Blum…" *Fee Memorandum* at p. 46. In fact, the Fifth Circuit has affirmed that this Circuit follows only the lodestar fee approach several times in the recent past. *See Strong v. Bellsouth Telecomms., Inc.*, 137 F.3d 844, 852 (5th Cir. 1998) and *Longden v. Sunderman*, 979 F. 2d 1095, 1099-1100 (5th Cir. 1992) (confirming that Fifth Circuit has yet to adopt percentage method). Class counsel can only cite to several unappealed district court decisions in which judges took upon themselves to depart from clear Fifth

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Circuit precedent, *see, e.g., Shaw v. Toshiba Am. Info. Sys.*, 91 F. Supp. 2d 942 (E.D. Tex. 2000), but even class counsel concedes that the Fifth Circuit's guidance is "uncertain" at best. Fee Memo at p. 5.

Objectors contend that the guidance of the Fifth Circuit has been consistent and definitive. The fact that the Fifth Circuit has not been given an opportunity to weigh in on a series of cases in which district courts have advocated for a different approach does not indicate tacit approval. The Fifth Circuit has consistently affirmed every chance it has had that this Circuit follows the lodestar method and not the percentage of the fund method when awarding attorney's fees. *See, e.g., Longden, supra*, 979 F.2d at 1100 n9. This remains true to this day.

Therefore, most of class counsel's Application For Award of Attorneys' Fees & Reimbursement of Expenses is irrelevant in this District. To the extent that class counsel attempts to make the case that its requested fee is reasonable under the lodestar method or the *Johnson* factors, however, class counsel falls far short of sustaining its burden of proof on the reasonableness of its lodestar or the reasonableness of both its *nominal* and *actual* lodestar multiplier request.

B. The Number of Hours Claimed by Class Counsel is Inflated By Contract Attorney, Of Counsel Attorney, Forensic Accountant, Economic Analyst, Investigator, Paralegal and Document Clerk Time More Properly Treated as Expenses, as Well as Time Spent Pursuing Unsuccessful Litigation.

"The fee applicant bears the burden of proving that the number of hours and the hourly rate for which compensation is requested is reasonable." *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983); *accord Baker v. Wash. Mut. Fin. Grp. LLC*, 2007 U.S. Dist. LEXIS 11973 (S.D. Miss. February 20, 2007). Class counsel claims a total of 280,000 hours at an average hourly rate of $456, for a total claimed lodestar of $127 million.

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When hours spent by contract attorneys, fraudulently misrepresented "of counsel" attorneys, experts and paralegals is segregated out or adjusted, however, that total drops to approximately $94 million.

Class counsel has done nothing more than claim a lump sum of hours, without segregating the hours by task, time period or otherwise. This Court, and the objectors, are thus unable to conduct the kind of review required under Fifth Circuit caselaw. A court should exclude from consideration hours which are not reasonably expended, duplicative or excessive. *Watkins v. Fordice*, 7 F.3d 453, 457 (5th Cir. 1993). A court must eliminate or reduce hours when supporting documentation of the hours claimed is "vague or incomplete." *See Louisiana Power & Light Co. v. Kellstrom*, 50 F.3d 319, 327 (5th Cir. 1995).

> Litigants take their chances when submitting … fee applications [that] provide little information from which to determine the reasonableness of the hours expended on tasks vaguely referred to as 'pleadings,' 'documents,' or 'correspondence' without stating what was done with greater precision.

Id. at 327. When a party submits a fee application without proper documentation, the court may reduce the award to a reasonable amount. *No Barriers, Inc. v. Brinker Chili's Texas, Inc.*, 262 F.3d 496, 500-501 (5th Cir. 2001).

It is axiomatic that time spent pursuing unsuccessful claims should be excluded when considering the amount of a reasonable fee. *Hensley v. Eckerhart*, 461 U.S. 424, 439 (1983). Class counsel detail at length the efforts they made to reverse the Fifth Circuit decision in *Regents of the Univ. of Cal. v. Credit Suisse First Boston*, 482 F.3d 372 (5th Cir. 2007), and to influence the outcome of the *Stoneridge* appeal to the United States Supreme Court, at pp. 39-41 of their Fee Memorandum. Unfortunately, those efforts have proved unsuccessful. *See Stoneridge Investment Partners LLC v. Scientific-*

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Atlanta, Inc., 552 U.S. ___ (2008), Slip Op. issued January 15, 2008, and *Exhibit E* (describing denial of *certiorari* in *Regents v. Merrill Lynch*). Class counsel's efforts in these appeals had nothing to do with the current settlements, came several years after the settlements were reached, and produced nothing of value to the settlement class. Therefore, class counsel should not be reimbursed for its unsuccessful efforts against non-settling defendants out of the funds contributed by the settling defendants.

Class counsel's failure to submit detailed time records has made it impossible for this Court to determine how much of class counsel's claimed lodestar was spent pursuing unsuccessful litigation. Therefore, this Court should require additional documentation of class counsel's claimed hours, and should exclude from class counsel's lodestar all of the time it spent pursuing Merrill Lynch and other non-settling defendants after the current settlements were reached, as well as all time spent trying to influence the outcome of the unrelated *Stoneridge* case.

1. Contract Attorneys Should Be Treated as an Expense and Reimbursed at their Actual Cost to Class Counsel.

Examination of Exhibit #1 of Attachment #1 to the Affidavit of Helen J. Hodges (attached hereto as *Exhibit F*) reveals that no less than $18,109,738 of class counsel's claimed lodestar was generated by contract attorneys. Contract attorneys are typically paid between $25 to $45 per hour by their employers, which in turn bill client law firms at the rate of approximately $50 per hour per attorney. *See Exhibit G*. The hourly rates asserted by class counsel for contract attorneys in *Exhibit F*, which range from $195 to $500 per hour, have no relationship to the amount class counsel paid for the attorneys' services, ***or to the contract attorneys' market rates***. There is no reason to expect that a client on the open market would pay contract attorneys more than the firms that hire them

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do – namely, $25 to $45 per hour. Indeed, if they could command hourly rates of $195 to $500 per hour on the open market, contract attorneys would be economically irrational to agree to concede up to 95% of their market value to the firms that give them a place to sit and sift through documents. Furthermore, placement firms like Special Counsel would not agree to sell their attorneys to firms at rates of $50/hour when the market rate of those attorneys is $195 to $500 per hour.

Moreover, Coughlin Stoia bore no additional expenses beyond the hourly rates of the contract attorneys. Presumably, most of the contract attorneys listed in *Exhibit F* worked in the specially-constituted, case-specific Houston litigation center, the expenses of which class counsel is claiming as an expense against the settlement fund, and, therefore, Coughlin Stoia did not incur any uncompensated expenses or overhead related to those attorneys, in contrast to regular associates who work in one of the firm's regular offices. The contract attorneys received no continuing legal education, mentoring, or any other investment by the firm in their professional development. Therefore, Coughlin Stoia should be permitted to bill the class, its clients, only for the actual cost of the contract attorneys, which is in fact their market rate. Contract attorneys' time should be excluded from class counsel's lodestar. Expenses are not subjected to a multiplier.

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2. Coughlin Stoia Misrepresent Attorneys as "Of Counsel" When They Are In Fact Practicing Law Independently.

Unfortunately, class counsel has engaged in active misrepresentation to this Court in its lodestar filings. Of the six attorneys identified as "of counsel" in *Exhibit F*, four are not listed on Coughlin Stoia's website, and three are apparently maintaining independent law practices in other cities.

Couglin Stoia's website, www.csgrr.com, identifies each attorney who works for the firm alphabetically, including "of counsel" attorneys who actually have an "of counsel" relationship with the firm. For example, Byron S. Georgiou and Albert Meyerhoff, two attorneys identified as "of counsel" on *Exhibit F*, are actually listed on Coughlin Stoia's website as "of counsel." The four other attorneys listed as "of counsel" on *Exhibit F*, Roger M. Adelman, James Baskin, John Pierce and Sol Schreiber, are not listed as "of counsel" on Coughlin Stoia's website. With respect to at least three of them, it is plain to see why.

James D. Baskin maintains his own law firm known as The Baskin Law Firm in Austin, Texas. As recently as September 2007, he made political donations to Hillary Rodham Clinton in the name of his firm, the Baskin Law Firm. *See Exhibit H.*

Roger M. Adelman maintains his own practice in Washington DC known as The Law Offices of Roger M. Adelman. *See Exhibit I.* As far as one can tell based on available objective evidence, he has no formal association with Coughlin Stoia, nor has he abandoned his DC practice.

Sol Schreiber's smiling face beams out of the website of Milberg Weiss as recently as January 14, 2008. *See Exhibit J.* Perhaps Coughlin Stoia forgot that it parted

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ways with this indicted law firm in 2004, with the result that Sol Schreiber is now of counsel to Milberg Weiss, not to Coughlin Stoia.

There are too many John Pierces listed on Martindale Hubbel to determine which one is the person claimed by Coughlin Stoia. In any event, no John Pierce is listed as "of counsel" or of any other status on Coughlin Stoia's website.

If any of these solo practitioners has performed services that contributed to the creation of the settlement fund, they should have submitted affidavits in support of their fee request, just like Joseph A. McDermott, Jonathan Cuneo, and the other independent firms and attorneys who are seeking reimbursement of fees did. It is wholly inappropriate for Coughlin Stoia to try to claim these attorneys' hours as its own, and to include them on its lodestar exhibit as "of counsel" when that is demonstrably contrary to the facts.

The total amount of lodestar claimed by these fraudulently characterized attorneys is $6.4 million. This sum should be excluded from class counsel's lodestar until and unless these counsel submit truthful affidavits justifying and legitimizing the charges.

3. Forensic Accountants, Economic Analysts, Investigators and Document Clerks Are Properly and Routinely Treated as Expenses in Securities Litigation.

Class counsel's attempted inflation of its lodestar knows no limits. Class counsel has attempted to include no less than $6,168,358 of expenses generated by forensic accountants, economic analysts, investigators and document clerks in its claimed lodestar! These items are clearly expenses related to expert and/or administrative services, and are therefore not properly included in class counsel's lodestar.

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4. Paralegals Should Be Billed At Reasonable Laffey Rates.

Paralegals may be billed as part of a lodestar calculation, but their rates should be in line with rates charged in the local legal market, as well as consistent with the Laffey Matrix, *see* discussion of *Chiron, infra*. Here, class counsel billed its paralegals at rates of between $160-$270/hour. The maximum rate permitted for paralegals in *Chiron* was $130/hour, based upon the Laffey Matrix. Recalculating paralegal time at the reasonable rate of $130/hour yields a total reasonable paralegal lodestar of $2,891,187. Therefore, $2,526,527 should be deducted from class counsel's claimed lodestar to account for excessive paralegal rates.

5. Class Counsel's Actual Lodestar Is No More Than $94 Million.

The total of all the above amounts that should be deducted from Coughlin Stoia's lodestar is $33,204,798, *see Exhibit K*, which reduces class counsel's lodestar to approximately $94 million, even before hours related to post-settlement litigation against non-settling defendants is subtracted out and hourly rates are adjusted for geography and reasonableness.

C. Class Counsel's Lodestar is Inflated By Excessive Claimed Hourly Rates out of Line with Rates Charged in this District.

Class counsel has also failed to sustain its burden of demonstrating what a reasonable hourly rate is for attorneys of their firm-size, specialty and background in this District.

> A reasonable hourly rate for an attorney's fee award is the prevailing market rate for attorneys of comparable experience in cases of similar complexity. Satisfactory evidence of the requested rate "should include declarations or evidence of rates actually billed and paid by plaintiff's counsel; rates charged by attorneys in similar lawsuits; and the relative skill of the attorney involved."

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White v. Imperial Adjustment Corp., 2005 U.S. Dist. LEXIS 13382 at *15 (E.D. La. June 28, 2005)(*quoting Henderson v. Eaton*, 2002 U.S. Dist. LEXIS 20840 at *5 (E.D. La. Oct. 25, 2002)). The relevant legal market is the community where the district court sits. *Tollett v. City of Kemah*, 285 F.3d 357, 368 (5th Cir. 2002).

Class counsel has failed to provide any evidence of what the prevailing market rate is for attorneys of their experience within the Southeast Texas legal community. In a similar case, faced with a lack of evidence about what reasonable hourly rates would be for attorneys based in New York City and Los Angeles, Judge Vaugh Walker referred to the Laffey matrix in determining what rates are reasonable for attorneys of various levels of experience. *See In re Chiron Corp. Securities Litig.*, 2007 U.S. Dist LEXIS 91140 at *18-19 ("A widely recognized compilation of attorney and paralegal rate data is the so-called Laffey matrix [which is] especially useful when the work to be evaluated consists of that by a mix of senior, junior and mid-level attorneys, as well as paralegals.")

Using the 2007 version of the Laffey matrix, Judge Walker determined that the maximum hourly rate that could be reasonably charged by a partner with 20 or more years experience is $462 in New York and $460 in Los Angeles. *Id.* at *20. The maximum hourly rate for attorneys with 11-19 years experience is $409 in New York and $407 in Los Angeles, and for attorneys with 8-10 years $330 and $329, respectively. Most relevant for this case, attorneys with between 1-3 years experience, like most contract attorneys and junior associates who performed much of the discovery work in this case, were permitted to bill at no more than $225/hour. Paralegals were limited to $130/hour. *Id.*

Coughlin Stoia's rates are far above the rates indicated by the Laffey matrix. Their average hourly rate for partners is $630; for associates, $437; for of counsel and

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special counsel, $643; and for contract attorneys, an astounding $346. Such rates are far out of line with the Laffey matrix, and simply cannot be justified. The *average rate* billed by class counsel in this case for lawyers of all levels of experience plus paralegals is $456, close to the maximum for partners with 20 or more years of experience calculated according to the Laffey matrix. It is clear that most, let alone all, of the work in this case was not performed by senior partners.[3] Therefore, there is ample evidence that the hourly rates used to calculate class counsel's claimed lodestar are significantly inflated over what another district court found to be reasonable for Milberg Weiss a little over two months ago.

Even if the hourly rates charged by partners in this case are not reduced to conform to the Laffey matrix, on the assumption that their brinksmanship and strategy in negotiations played a large part in bringing about the large settlement, the rates for associates, and certainly for contract attorneys and paralegals, should at a minimum be reduced to conform to those set forth in *In re Chiron Corp.*

In recent years, several district courts within the Fifth Circuit's jurisdiction have had occasion to perform an exhaustive study of reasonable hourly rates in this geographic region for purposes of making a lodestar attorney's fee award to class counsel in a settled class action. In each of those cases, courts have determined that a maximum reasonable hourly rate for experienced partners is around $225 per hour. *White, supra*, 2005 U.S. Dist LEXIS 13382 at *25 (determining $225 rate for New Orleans market); *Baker, supra*, 2007 U.S. Dist. LEXIS 11973 at *42 (determining $225 rate for "senior attorneys" in

[3] Coughlin Stoia lists rates for several associates and contract attorneys that are substantially higher than the rates for certain partners. While three partners bill at rates of less than $400/hour, fourteen associates and four contract attorneys are billed at rates of $400/hour or above.

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Southern District of Mississippi); *Speaks v. Kruse*, 2006 U.S. Dist. LEXIS 84595 at *12 (E.D. La. Nov. 20, 2006) (determining rate of $260 for attorney practicing since 1977).

The *White* case is particularly compelling, because the district court there undertook an extensive survey of hourly rates awarded within the Eastern District of Louisiana between 1999 and 2004, finding a range of between $150/hour and $250/hour, with a clear majority of the cases settling on $225/hour as the reasonable hourly rate for senior attorneys in that district. *White* at **22-25. The court noted that

> some of the most skilled and experienced attorneys practicing in this district … might charge hourly rates of $375 to $400. However, most of those attorneys customarily charge their highest rates only for trial work. Lower rates may, and indeed should, be charged for routine work requiring less extraordinary skill and experience. This case did not proceed to trial. Based on the undersigned's familiarity with the range of customary billing rates in this legal community… the requested hourly rate of $500 is surely not in line with the prevailing market rate in the New Orleans legal community for attorneys with skill and experience similar to plaintiff's counsel.

Id. at *24-25.

While class counsel here should not be limited to the $225/hour found to be the average in Fifth Circuit jurisprudence, or even the $400 charged by the most skilled and experienced New Orleans attorneys, class counsel should not be permitted to bill its associates at rates that are in excess of those charged by partners in the largest Houston firms. Rates customarily charged by attorneys in the district where the action is pending is one of the factors required to be considered when calculating a lodestar in this district.

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The wide disparity between those rates and the rates claimed by class counsel require a downward adjustment to class counsel's rates.[4]

D. The Actual Lodestar Multiplier Sought is Likely Higher than 10.

Class counsel claims that the fee it requests results in a lodestar multiplier of 5.4. When unsuccessful hours, as well as hours billed by contract attorneys, fraudulently represented attorneys, document clerks, accountants, analysts and investigators are subtracted out of class counsel's lodestar, and the lodestar is calculated at reasonable hourly rates consistent with rates charged by local attorneys and the Laffey matrix, the resulting lodestar will likely not exceed $70 million. This would make the requested lodestar multiplier close to or higher than 10, a level of multiplier that has been universally rejected by federal courts. *See, e.g., In re Visa Check* and *In re Chiron, supra.* Even the 5.4 multiplier requested by class counsel is excessive, and has never been applied by a court that was calculating a fee based upon the lodestar-multiplier method. Indeed, the Seventh Circuit has expressed skepticism about multipliers in excess of 2 when awarding fees under the lodestar approach. *Cook v. Niedert*, 142 F.3d 1004, 1013 (7th Cir. 1998)("[w]e have speculated that a multiplier of 2 may be a sensible ceiling").

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[4] While higher rates are sometimes allowed for out-of-state counsel who are based in cities with higher costs of living, *see In re Chiron, supra*, 2007 U.S. Dist. LEXIS 91140 at *20 (adjusting Laffey rates for cost of living data), class counsel concede that they opened a litigation center in Houston where most of the discovery work was performed. Fee Memo at p. 12. Therefore, there is no reason to depart from customary rates in this district for class counsel's work, at least for those attorneys based in the Houston office, since class counsel were able to take advantage of Houston's reduced cost of living and overhead costs for those attorneys and tasks.

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Class counsel should be awarded a fee of no more than 3.5 times their reasonable lodestar. Based upon the projection of a reasonable lodestar of $70 million, class counsel should be permitted to take no more than $245 million of the class' settlement monies as fees. Even were the lodestar to be calculated without consideration of unsuccessful time and reasonable attorney rates, the Objectors have demonstrated that class counsel's lodestar must be reduced to $94 million to appropriately account for items properly treated as expenses and to bill paralegals at a reasonable rate. Therefore, even at this generous figure, class counsel should receive no more than $329 million of the class' funds in fees.

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CONCLUSION

WHEREFORE, Class members and objectors Bishop and Wilkens pray that this Court DENY approval to class counsel's motion for a fee award of 9.522% of the settlement fund, and award class counsel an attorney's fee of no more than 3.5 times their reasonable lodestar determined after a proper evidentiary hearing, and in any event no more than $329 million.

Respectfully submitted,
George S. Bishop, Jill R. Bishop,
Lon Wilkens and Betty Wilkens,

By their attorneys,

John J. Pentz, Esq.
Class Action Fairness Group
2 Clock Tower Place, Suite 260G
Maynard, MA 01754
Phone: (978) 461-1548
Fax: (707) 276-2925
Clasaxn@earthlink.net

J. Scott Kessinger, Esq.
7304 Michigan Ave.
St. Louis, MO 63111
(314) 369-5115
Fax: (314) 754-8370
jskess@charter.net

Jonathan E. Fortman, Esq.
910 S. Florissant Road
St. Louis, MO 63135
(314) 522-2312
Fax: (314) 524-1519
fortmanlaw@sbcglobal.net

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 29, 2008 the foregoing document was served by overnight Federal Express upon the following counsel:

Patrick J. Coughlin
Keith F. Park
Helen J. Hodges
COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
655 West Broadway, Suite 1900
San Diego, CA 92101

John J. Pentz

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FIRST ALLIED SECURITIES INC.
525 B Street / 17th Fl. • San Diego, CA 92101
(619) 702-9600 • Member NASD, SIPC

CLEARANCE AGENT:
BEAR, STEARNS SECURITIES CORP.
ONE METROTECH CENTER NORTH
BROOKLYN, NEW YORK 11201-3859
(212) 272-1000

Account Number	A.E. No.	Social Security or Tax ID Number
651-95765-1-3	T21	[redacted]

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Trade Date	Settlement Date	Reference Number
11/01/01	11/06/01	293561106000

Security Symbol	Cusip No.	M	C
ENE	32248C	6	1

-646

GEORGE S BISHOP SEP IRA
BEAR STEARNS SEC CORP CUST *
401 CYPRESS - SUITE 210
ABILENE TX 79601-5145

WE ARE PLEASED TO CONFIRM THE FOLLOWING TRANSACTION - YOU BOUGHT 200

QUANTITY	200
PRICE	12.60000
PRINCIPAL	2,520.00
COMMISSION	83.91
NET AMOUNT	2,603.91

ENRON CORP
SEE NOTE T ON BACK
SOLICITED

PLEASE ADDRESS ALL COMMUNICATIONS TO THE FIRM AND NOT TO INDIVIDUALS AND KINDLY MENTION YOUR ACCOUNT NUMBER.
SATISFACTORY PROOF OF OWNERSHIP IS REQUIRED ON SALE OF BEARER SECURITIES

X
B-03

THIS IS NOT AN INVOICE.
PAYMENT FOR SECURITIES PURCHASED AND DELIVERY OF SECURITIES SOLD MUST BE DEPOSITED NO LATER THAN THE SETTLEMENT DATE AS INDICATED ABOVE.

GEORGE S BISHOP SEP IRA
BEAR STEARNS SEC CORP CUST *
401 CYPRESS - SUITE 210
ABILENE TX 79601-5145

Account Number	A.E. No.	Settlement Date
651-95765-1-3	T21	11/06/01
Net Amount		
2,603.91		

ALL DEPOSITS/PAYMENTS SHOULD INCLUDE YOUR ACCOUNT NUMBER AND BE FORWARDED TO:

BEAR, STEARNS SECURITIES CORP.
1999 AVENUE OF THE STARS
SUITE 3200
LOS ANGELES, CA 90067

01 BE34-SP 015256

EX. B

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FIRST
ALLIED
SECURITIES
INC.
525 B Street / 17th Fl. • San Diego, CA. 92101
(619) 702-9600 - Member NASD, SIPC

CLEARANCE AGENT:
BEAR, STEARNS SECURITIES CORP.
ONE METROTECH CENTER NORTH
BROOKLYN, NEW YORK 11201-3859
(212) 272-1000

Account Number	A.E. No.	Social Security or ID Number
651-14968-1-9	T21	[redacted]

Trade Date	Settlement Date	Cusip Number
04/06/00	04/11/00	293561106000

027

Security/ Symbol	Trade No.	M	C
ENE	25576C	6	1

646

JILL BISHOP
8 TRAFALGAR SQUARE
ABILENE TX 79605-5017

WE ARE PLEASED TO CONFIRM THE FOLLOWING TRANSACTION - YOU BOUGHT 100

QUANTITY	100
PRICE	67 1/16
PRINCIPAL	6,706.25
COMMISSION	116.85
SERVICE CHG	4.75
NET AMOUNT	6,827.85

ENRON CORP
SEE NOTE T ON BACK
SOLICITED

PLEASE ADDRESS ALL COMMUNICATIONS TO THE FIRM AND NOT TO INDIVIDUALS AND KINDLY MENTION YOUR ACCOUNT NUMBER.
SATISFACTORY PROOF OF OWNERSHIP IS REQUIRED ON SALE OF BEARER SECURITIES

B-03

THIS IS NOT AN INVOICE.
PAYMENT FOR SECURITIES PURCHASED AND DELIVERY OF SECURITIES SOLD MUST BE DEPOSITED NO LATER THAN THE SETTLEMENT DATE AS INDICATED ABOVE.

JILL BISHOP
8 TRAFALGAR SQUARE
ABILENE TX 79605-5017

Account Number	A.E. No.	Settlement Date
651-14968-1-9	T21	04/11/00

Net Amount
6,827.85

ALL DEPOSITS/PAYMENTS SHOULD INCLUDE YOUR ACCOUNT NUMBER AND BE FORWARDED TO:

BANK OF AMERICA
C/O BEAR STEARNS
FILE #53878
LOS ANGELES, CA. 90074-3878

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FIRST
ALLIED
SECURITIES
INC.
525 B Street / 17th Fl. • San Diego, CA. 92101
(619) 702-6600 • Member NASD, SIPC

CLEARANCE AGENT:
BEAR, STEARNS SECURITIES CORP.
ONE METROTECH CENTER NORTH
BROOKLYN, NEW YORK 11201-3859
(212) 272-1000

Account Number	A.E. No.	Social Security or ID Number
651-14968-1-9	T21	[redacted]

Trade Date	Settlement Date	Cusip Number
10/31/01	11/05/01	293561106000

027

Security/ Symbol	Trade No.	M	C
ENE	31663C	6	1

646

JILL BISHOP
8 TRAFALGAR SQUARE
ABILENE TX 79605-5017

WE ARE PLEASED TO CONFIRM THE FOLLOWING TRANSACTION - YOU SOLD 100

QUANTITY	100
PRICE	13.19000
PRINCIPAL	1,319.00
COMMISSION	65.00
SERVICE CHG	4.75
S.E.C. FEE	.05
NET AMOUNT	1,249.20

ENRON CORP
SEE NOTE T ON BACK
UNSOLICITED

PLEASE ADDRESS ALL COMMUNICATIONS TO THE FIRM AND NOT TO INDIVIDUALS AND KINDLY MENTION YOUR ACCOUNT NUMBER.
SATISFACTORY PROOF OF OWNERSHIP IS REQUIRED ON SALE OF BEARER SECURITIES

S-07

THIS IS NOT AN INVOICE.
PAYMENT FOR SECURITIES PURCHASED AND DELIVERY OF SECURITIES SOLD MUST BE DEPOSITED NO LATER THAN THE SETTLEMENT DATE AS INDICATED ABOVE.

JILL BISHOP
8 TRAFALGAR SQUARE
ABILENE TX 79605-5017

Account Number	A.E. No.	Settlement Date
651-14968-1-9	T21	11/05/01
Net Amount		
1,249.20		

ALL DEPOSITS/PAYMENTS SHOULD INCLUDE YOUR ACCOUNT NUMBER AND BE FORWARDED TO:

BEAR, STEARNS SECURITIES CORP.
1999 AVENUE OF THE STARS
SUITE 3200
LOS ANGELES, CA 90067

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ENRON-NEWBY, MDL

U.S. District Court
SOUTHERN DISTRICT OF TEXAS (Houston)
CIVIL DOCKET FOR CASE #: 4:05-cv-03310

Wilkens et al v. Merrill Lynch & Co Inc et al
Assigned to: Judge Melinda Harmon
Related Case Case: 4:01-cv-03624
Case in other court: ED Missouri, 4:05cv00529
Cause: 28:1332 Diversity-Breach of Fiduciary Duty

Date Filed: 09/14/2005
Jury Demand: None
Nature of Suit: 370 Fraud or Truth-In-Lending
Jurisdiction: Diversity

Plaintiff

Lon Wilkens represented by **Jonathan E Fortman**
910 S Florissant Road
St Louis, MO 63135
314-522-2312
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Betty Wilkens represented by **Jonathan E Fortman**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Merrill Lynch & Co Inc represented by **Edwin L Noel**
Armstrong Teasdale LLP
One Metropolitan Sq
Ste 2600
St Louis, MO 63102-2740
314-621-5070
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jacqueline Ulin Levey
Armstrong Teasdale LLP
One Metropolitan Square
Ste 2600
St Louis, MO 63102-2740
314-621-5070

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Lisa M Wood
Attorney at Law
211 N Broadway
Ste 2600
St Louis, MO 63102-2740
314-621-5070

Defendant

Merrill Lynch Capital Services Inc represented by **Edwin L Noel**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jacqueline Ulin Levey
(See above for address)

Lisa M Wood
(See above for address)

Defendant

William J Lacy represented by **Edwin L Noel**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jacqueline Ulin Levey
(See above for address)

Lisa M Wood
(See above for address)

Date Filed	#	Docket Text
03/08/2005		SUMMONS Returned Executed filed by Lon Wilkens, Betty Wilkens. William J. Lacy served on 3/8/2005. (SAJ,) (Entered: 04/07/2005)(kmurphy,) (Entered: 09/21/2005)
04/04/2005	1	NOTICE OF REMOVAL by William J. Lacy, Merrill Lynch & Co., Inc., Merrill Lynch Capital Services, Inc. from Circuit Court of St. Louis County, case number 05CC-0948, Filing fee $ 250 jury Demand, with state court pleadings attached, filed by William J. Lacy, Merrill Lynch & Co., Inc., Merrill Lynch Capital Services, Inc. (Attachments: # 1 Exhibit A- Affidavit# 2 Exhibit B- Second Amended Claim file in State Court# 3 Exhibit C- State Court Pleadings# 4 Civil Cover Sheet # 5 Original Filing Form)(SAJ,) (Entered:

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		04/06/2005)(kmurphy,) (Entered: 09/21/2005)
04/04/2005	2	DISCLOSURE OF CORPORATION INTERESTS CERTIFICATE by Defendant Merrill Lynch & Co., Inc. (SAJ,) (Entered: 04/06/2005)(kmurphy,) (Entered: 09/21/2005)
04/04/2005	3	DISCLOSURE OF CORPORATION INTERESTS CERTIFICATE by Defendant Merrill Lynch Capital Services, Inc.. (SAJ,) (Entered: 04/06/2005)(kmurphy,) (Entered: 09/21/2005)
04/04/2005	4	NOTICE OF FILING NOTICE OF REMOVAL filed by Defendants William J. Lacy, Merrill Lynch & Co., Inc., Merrill Lynch Capital Services, Inc. Sent To: Attorneys of Record (SAJ,) (Entered: 04/06/2005)(kmurphy,) (Entered: 09/21/2005)
04/04/2005	5	NOTICE OF FILING NOTICE OF REMOVAL filed by Defendants William J. Lacy, Merrill Lynch & Co., Inc., Merrill Lynch Capital Services, Inc. Sent To: Circuit Court of St. Louis County Executed by State Court Clerk (SAJ,) (Entered: 04/06/2005)(kmurphy,) (Entered: 09/21/2005)
04/04/2005		Receipt # S2005-005501 in the amount of $250.00 for CIVIL FILING FEE, CIVIL FILING FEE-2ND 1/2 on behalf of ARMSTRONG TEASDALE SCHLAFLY & DAVIS. (CSW,) (Entered: 04/06/2005)(kmurphy,) (Entered: 09/21/2005)
04/08/2005	6	MOTION to Stay Proceedings by Defendants William J. Lacy, Merrill Lynch & Co., Inc., Merrill Lynch Capital Services, Inc.. (Noel, Edwin) (Entered: 04/08/2005)(kmurphy,) (Entered: 09/21/2005)
04/08/2005	7	MEMORANDUM in support re: 6 MOTION to Stay Proceedings filed by Defendants William J. Lacy, Merrill Lynch & Co., Inc., Merrill Lynch Capital Services, Inc.. (Attachments: # 1 Continuation)(Noel, Edwin) (Entered: 04/08/2005)(kmurphy,) (Entered: 09/21/2005)
04/08/2005	9	MEMORANDUM in Opposition re: 6 MOTION to Stay Stay Proceedings filed by Plaintiffs Lon Wilkens, Betty Wilkens. (Fortman, Jonathan) (Entered: 04/13/2005)(kmurphy,) (Entered: 09/21/2005)
04/11/2005	8	Joint MOTION for Extension of: Time by Defendants William J. Lacy, Merrill Lynch & Co., Inc., Merrill Lynch Capital Services, Inc.. (Noel, Edwin) (Entered: 04/11/2005)(kmurphy,) (Entered: 09/21/2005)
04/11/2005		Docket Text ORDER re 8 Joint MOTION for Extension of: Time filed by Merrill Lynch & Co., Inc.,, Merrill Lynch Capital Services, Inc.,, William J. Lacy, ; ORDERED GRANTED. Signed by Judge Catherine D. Perry on 4/11/05. (CDP,) (Entered: 04/11/2005)(kmurphy,) (Entered: 09/21/2005)
04/19/2005	10	Reply to Response to 6 MOTION to Stay Proceedings filed by Plaintiffs Lon Wilkens, Betty Wilkens. (Fortman, Jonathan) (Entered: 04/13/2005)(kmurphy,) (Entered: 09/21/2005)
04/28/2005	11	MEMORANDUM AND ORDER: IT IS HEREBY ORDERED that defendants'

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		motion to stay proceedings doc 6 is granted. IT IS FURTHER ORDERED that this case is stayed pending a final determination by the Judicial Panel on Multidistrict Litigation on defendants' motion to transfer this action to the Southern District of Texas for coordinated or consolidated pretrial proceedings under 28 U.S.C. section 1407. Signed by Judge Catherine D. Perry on 04/28/05. (BDC) (Entered: 04/28/2005).(kmurphy,) (Entered: 09/21/2005)
06/20/2005	12	MDL Notice of Hearing Session - See Order for details. (MCB) (Entered: 06/21/2005)(kmurphy,) (Entered: 09/21/2005)
08/15/2005	13	TRANSFER ORDER regarding MDL -1446 -- In re Enron Corp. Securities, Derivative & "ERISA" Litigation. Signed by Clerk of the Panel, by Mecca S. Carter, Deputy Clerk on August 11, 2005. (MCB) (Entered: 08/15/2005) (kmurphy,) (Entered: 09/21/2005)
09/01/2005	14	ORDER OF MDL TRANSFER (with letter from Deputy Clerk with Transfer Instructions) to: United States District Court, Southern District of Texas and is icluded in MDL 1446 In Re: Enron Corporation Securities Litigation. Signed by Wm. Terrell Hodges, Chairman... and Judges of the Judicial Panel on Multidistrict Litigation. (BDC) (Entered: 09/01/2005)(kmurphy,) (Entered: 09/21/2005)
09/07/2005	15	Transfer Letter from USDC E/MO to USDC Southern Tx, Houston Division. Sent with certified copies of the docket sheet and certified copies of all docket entries.(BDC) (Entered: 09/07/2005)(kmurphy,) (Entered: 09/21/2005)
09/14/2005		Case transferred in from District of USDC Eastern District of Missouri. Case Number 4:05cv529. Documents numbered 1-15, certified copy of transfer order, certified docket sheet, and transfer letter received to be included in MDL 1446 Enron.(kmurphy,) (Entered: 09/21/2005)
10/05/2005	16	ORDER of Coordination into Newby et al vs Enron Corporation CA H 01-3624, MDL 1446 Enron Securities Derivative & ERISA Litigation.(Signed by Judge Melinda Harmon) Parties notified.(kmurphy,) (Entered: 10/06/2005)

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Transaction Receipt			
01/23/2008 10:31:39			
PACER Login:	sk0923	**Client Code:**	
Description:	Docket Report	**Search Criteria:**	4:05-cv-03310
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Citation: **2007 us dist lexis 91140**

*2007 U.S. Dist. LEXIS 91140, **

IN RE CHIRON CORPORATION SECURITIES LITIGATION

No C-04-4293 VRW

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

2007 U.S. Dist. LEXIS 91140

November 30, 2007, Filed

CORE TERMS: settlement, class action, lead counsel, multiplier, class representative, class members, lodestar, paralegal, matrix, plant, attorney fees, magic number, fee award, notice, shareholder, adequacy, vaccine, manufacturing, proposed settlement, common fund, cross-check, appointment, indictment, discovery, hourly rates, consolidated, reasonableness, certification, differential, locality

COUNSEL: **[*1]** For Richard Gregory, On Behalf of Himself and All Others Similarly Situated, Plaintiff: Patrick J. Coughlin, LEAD ATTORNEY, Darren Jay Robbins, Coughlin Stoia Geller Rudman & Robbins LLP, San Diego, CA; William S. Lerach, Lerach Coughlin Stoia Geller Rudman & Robbins LLP, San Diego, CA; Reed R. Kathrein, Hagens Berman Sobol Shapiro LLP, San Francisco, CA.

For International Union of Operating Engineers Local No. 825 Pension Fund, Plaintiff: Elaine S. Kusel,George A. Bauer, III, Peter E. Seidman, LEAD ATTORNEYS, Milberg Weiss & Bershad LLP, New York, NY; Jeff S. Westerman, LEAD ATTORNEY, Milberg Weiss LLP, Los Angeles, CA; Melvyn I. Weiss, LEAD ATTORNEY, Milberg Wiss & Bershad LLP, New York, NY; Elizabeth Pei Lin, Milberg Weiss & Bershad LLP, Los Angeles, CA; Vincent M. Giblin, Kroll Heinemen Gliblin, LLC, Iselin, NJ.

For Chiron Corporation, Defendant: James Elliot Lyons, LEAD ATTORNEY, Skadden, Arps, Slate, Meagher & Flom LLP, San Francisco, CA; Amy S. Park, Skadden, Arps, Slate, Meagher & Flom, Palo Alto, CA; Stacie Fatka Beckerman, SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP, Palo Alto, CA.

For Howard H. Pien, John A. Lambert, David V. Smith, Defendants: Amy S. Park, Skadden, Arps, Slate, **[*2]** Meagher & Flom, Palo Alto, CA; James Elliot Lyons, Skadden, Arps, Slate, Meagher & Flom LLP, San Francisco, CA.

For Novartis Vaccines and Diagnostics, Inc., Defendant: James Elliot Lyons, LEAD ATTORNEY, Skadden, Arps, Slate, Meagher & Flom LLP, San Francisco, CA; Amy S. Park, Skadden, Arps, Slate, Meagher & Flom, Palo Alto, CA; Rachelle Silverberg, Wachtell, Lipton, Rosen & Katz, New York, NY.

For Pipefitters, Locals 522 & 633 Pension Trust Fund, Movant: Reed R. Kathrein, Hagens Berman Sobol Shapiro LLP, San Francisco, CA.

JUDGES: VAUGHN R WALKER, United States District Chief Judge.

OPINION BY: VAUGHN R WALKER

OPINION

ORDER

"[A] bad settlement is almost always better than a good trial," In re Warner Communications Securities Litigation, 618 F Supp 735, 740 (SDNY 1985) (Keenan, J), affirmed 798 F2d 35 (2d Cir 1986). But a good epigram could, in this case at least, make for a bad result.

Four features of the class action settlement at bar make the point and lead the court to deny preliminary approval of the settlement: (1) the settlement proposes to pay class counsel fees that, for the amount of time

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worked, are eight to ten times typical hourly attorney fees; (2) the proposed notice omits a material term of the settlement; **[*3]** (3) facts in the record or subject to judicial notice raise question whether lead plaintiff can "fairly and adequately protect the interests of the class"; and (4) a web of relationships on both sides of this case, and in particular that between defendants' counsel and one of class counsel's former partners, raises concerns about the adequacy of the disclosures in the proposed class notice and even a concern about the possibility of an appearance of impropriety.

The case stems from the highly publicized events surrounding the United States influenza ("flu") vaccine shortage in 2004. Plaintiffs seek recovery for violations of sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 on behalf of a class of purchasers of Chiron Corporation stock between July 23, 2003 through October 5, 2004, inclusive, on grounds that defendants misrepresented and failed to disclose adverse facts concerning Chiron's ability to produce the Fluvirin influenza virus vaccine for the United States market.

Twelve different law firms appeared on behalf of the various plaintiffs in the six cases that form this litigation. [1] Of the various plaintiffs in these actions, only two appear to have **[*4]** sought to serve as lead plaintiff and appoint lead counsel pursuant to 15 USC § 78u-4(a)(3): (1) International Union of Operating Engineers Local No 825 Pension Fund sought to appoint Milberg Weiss Bershad & Shulman, LLP (counsel originally filing the Nach case) and (2) Pipefitters Locals 522 and 633 Pension Trust Fund sought to appoint Lerach Coughlin Stoia Geller Rudman & Robbins, LLP (counsel originally filing the Gregory case). Five months prior to the commencement of this litigation, the Lerach firm split from Milberg Weiss. On February 4, 2005, counsel in Jaroslawicz sought to dismiss that action. Then, on February 24, 2005, Pipefitters Locals 522 and 633 Pension Trust Fund withdrew its application to serve as lead plaintiff, leaving only the Local 825 fund's application, which was granted on March 23, 2005. The appointment of the lead plaintiff and its selection of Milberg Weiss as lead counsel were thus made without open competition and Gregory, although initiated by the Lerach firm, became the lead case, presumably because it was the first filed action.

FOOTNOTES

1 Gregory v Chiron Corp, 04-4293; Nach v Chiron Corp, 04-4346; Kramer v Chiron Corp, 04-4416; Jaroslawicz v Bryson, 04-4474; **[*5]** Judith Fisher v Chiron Corp, 04-5137; and Jerome Fisher v Chiron Corp, 05-0246.

The amended consolidated complaint, Doc # 50, followed on April 14, 2005. About five weeks or so after the amended consolidated complaint, on May 26, 2005, Chiron and the individual defendants separately filed motions to dismiss the complaint. Doc ## 57, 60. The motions to dismiss were heard on June 29, 2005. At the hearing, the court expressed concern about the clarity of the factual theory plaintiff had alleged in the consolidated amended complaint. See Doc # 82, Hrg Tr, June 29, 2005, at 63-64. After some discussion, plaintiffs' counsel agreed to file either a supplemental brief explaining the allegations of the existing pleading or alternatively a further amended consolidated complaint. See Doc # 82, Hrg Tr, June 29, 2005, at 67-72. On July 29, plaintiff filed a supplemental brief, Doc # 84, to which defendants responded on August 19, 2005. Doc # 90.

While the motions were pending the parties entered into settlement discussions and executed a settlement understanding on June 6, 2006. Doc # 103, P19 at 5-6. In the meantime, in February 2006, the SEC informed Chiron that it was terminating its investigation **[*6]** of Chiron with respect to potential violations of federal securities laws. Doc # 103, P22. In addition, although investigations of Chiron had been announced by the United States Attorney's Office for the Southern District of New York and the United States House of Representatives, Energy and Commerce Committee, Subcommittee on Oversight and Investigations, neither entity took any action against Chiron. Doc # 103, P22.

On April 19, 2006, Chiron's shareholders approved a merger with Novartis AG. Doc # 103, P23. Novartis owned 42% of Chiron prior to executing the merger agreement. Doc # 103, P23. As a result of the merger, Chiron became an indirect wholly owned subsidiary of Novartis, and Chiron's common stock ceased trading on NASDAQ. Doc # 103, P23.

As a result of the provisions of 15 USC § 78u-4(b)(3)(B) and the early settlement discussions conducted by counsel, it appears that little, if any, discovery was conducted into the merits of plaintiffs' allegations. The litigation thus appears to have proceeded almost directly from pleading to settlement with no ruling on the pleading or merits discovery. The final terms of the stipulated settlement were not agreed to until March 29, 2007. **[*7]** The proposed settlement provides that defendants will pay $ 30 million in cash plus an amount equivalent to interest at the thirty-day Treasury Bill rate from June 6, 2006 to the date of payment. Doc # 100, P4. The settlement amount will be paid into a common fund to be distributed to class members. Doc # 100, PP9-11.

I

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A

The allegations of the amended consolidated complaint, briefly summarized here, concern defendants' statements and alleged misstatements about Fluvirin, an injectable flu vaccine whose distribution in the United States is licensed by the Food and Drug Administration (FDA), following FDA bi-annual inspections and subject to "good manufacturing practices" (GMP) regulations. Because the manufacturing facility involved in this case was located in Liverpool, England (the "Liverpool plant"), it was also subject to oversight by the Medicines and Healthcare Products Regulatory Agency (MHRA), the British counterpart to the FDA. Doc # 50, PP49, 50.

Until January 2000, the Liverpool plant was owned and operated by Medeva Pharma Ltd. An FDA inspection of the Liverpool plant in July 1999 uncovered unusually high levels of bacteria and other microorganisms known as "bioburden" in batches **[*8]** of Fluvirin, as well as other evidence of failure to comply with GMP and other requirements. This prompted a warning letter from the FDA threatening to suspend or revoke Medeva's license if adequate corrective measures were not taken. Id PP54, 55. The Liverpool plant then became something of a hot potato, acquired by Celltech Chiroscience in January 2000 only to be resold to England-based PowderJect Pharmaceuticals in October 2000. Doc # 50, PP56, 58.

On March 9, 2001, FDA inspectors visited the Liverpool plant and once again found the production of Fluvirin to be deficient in several respects. At the conclusion of the inspection, the FDA issued a Form FDA 483 noting "significant objectionable conditions." Doc # 50, P58. In June 2003, the FDA conducted another inspection of the Liverpool plant. Once again, inspectors discovered pervasive quality-control problems and symptoms thereof, including (1) "potentially lethal bacteria" after "ultrafiltration" and "sterile filtration," points in the process by which all bacteria should have been eliminated, (2) poor sanitation practices, including improper maintenance of "curtains" separating sterile areas from non-sterile areas and (3) a susceptibility **[*9]** to contamination in the aseptic connections between tanks of vaccine in the "formulation area" of the plant. Doc # 50, PP72-73. As in 2001, the FDA inspectors issued a Form FDA 483 and, according to the CAC, although the inspectors initially recommended that official enforcement action be taken due to the "pervasiveness and severity" of the GMP deficiencies at the Liverpool plant, this recommendation was later downgraded to a request that PowderJect take voluntary corrective action. Doc # 50, PP78-79.

Enter Chiron. On July 8, 2003, Chiron acquired PowderJect (and the Liverpool plant) for $ 878 million, giving Chiron immediate access to the lucrative flu vaccine market in the United States. Doc # 50, PP43, 45. In 2003, Chiron realized $ 219 million in revenues from the sale of 40 million Fluvirin doses worldwide.

In October 2003, Chiron began publicly forecasting that (1) it would top its 2003 Fluvirin production by manufacturing approximately 50 million Fluvirin doses for the 2004-2005 flu season and (2) its 2004 pro forma earnings per share (EPS) would be in the range of $ 1.80-$ 1.90. CAC PP119-141. With some minor alterations, these representations continued well into 2004.

On August **[*10]** 26, 2004, Chiron announced that it would delay shipments of Fluvirin pending additional testing, after internal tests identified a small number of lots with sterility problems. Doc # 100, Ex A-1 at 7. Chiron announced that the additional testing would delay the Fluvirin shipment until early October and would prevent the company from recognizing revenue from Fluvirin in the third quarter of 2004. Doc # 119 at 7. Following the announcement, Chiron's stock price declined from $ 47.49 per share on August 26, 2004 to $ 43.41 per share on August 27, 2004. Doc # 119 at 7.

On October 5, 2004 Chiron issued a press release announcing that the MHRA

> has asserted that Chiron's manufacturing process does not comply with UK Good Manufacturing Practices regulations and has suspended [Chiron's] Liverpool facility license to manufacture influenza vaccine for three months. * * * As a result of the license suspension, Chiron does not expect to record any sales of Fluvirin for the 2004-2005 season. Chiron disaffirms its previous full-year 2004 pro-forma earnings guidance of $ 1.80-$ 1.90 per share (a range of $ 1.50-$ 1.60 per share on a GAAP basis), including its August 2004 guidance of being in the low **[*11]** end of this range.

Doc # 50, P142.

In essence, MHRA concluded that the manufacturing process at the Liverpool plant did not conform to accepted manufacturing practices and had consequently produced a notable number of contaminated Fluvirin doses. MHRA's Inspection Action Group concluded that it would simply be too risky to allow Chiron to release potentially contaminated vaccines and thus MHRA suspended Chiron's license. Following the announcement, Chiron's trading stock price dropped from $ 45.42/share to close at $ 37.98/share, a one-day drop of 16.3%. Doc # 50, P142. A week later, this litigation commenced.

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Plaintiffs contend that Chiron's projections regarding its (1) expectation to ship approximately 50 million Fluvirin doses worldwide and (2) 2004 pro-forma EPS of $ 1.80-$ 1.90 were false and misleading when made because Chiron omitted material information known to it at the time of the statements, regarding manufacturing deficiencies at the Liverpool plant. Based on these allegations, plaintiffs sought relief against Chiron, Pien (former Chiron CEO), Smith (former Chiron CFO) and Lambert (former President of Chiron Vaccines).

B

Federal Rule of Civil Procedure 23(e) requires court **[*12]** approval for the settlement of any class action. In order to be approved, a settlement must be "fundamentally fair, adequate and reasonable." Torrisi v Tucson Elec Power Co, 8 F3d 1370, 1375 (9th Cir 1993) (quoting Class Plaintiffs v Seattle, 955 F2d 1268, 1276 (9th Cir 1992), cert denied, 506 U.S. 953, 113 S. Ct. 408, 121 L. Ed. 2d 333 (1992)), cert denied, 512 U.S. 1220, 114 S. Ct. 2707, 129 L. Ed. 2d 834 (1994). At least four features of this settlement appear to fail that test and indeed suggest that the settlement was negotiated under questionable circumstances. A discussion of these features follows.

II

A

Class counsel seek $ 7,500,000 (25% of the settlement fund) in fees. Doc # 102 at 16-24.

"Attorneys' fees provisions included in proposed class action settlement agreements are, like every other aspect of such agreements, subject to the determination whether the settlement is 'fundamentally fair, adequate, and reasonable.'" Staton v. Boeing Co., 327 F.3d 938, 963 (9th Cir 2003), quoting FRCP 23(e). The court is obligated to conduct an independent inquiry into the reasonableness of any attorney fee provisions of a class action settlement even in the face of an agreement between the parties regarding the payment and amount of attorney fees and costs.

Common **[*13]** fund cases create a situation in which normal reliance on the adversary process to police the appropriateness of a fee award is unavailing. Report of the Third Circuit Task Force, Court Awarded Attorney Fees (Task Force Report), 108 FRD 237, 251 (3rd Cir 1985). The prospect of a sizeable attorney fee award can drive a wedge between the class and class counsel, the former interested in the largest settlement obtainable for the class and the latter in the largest fee award obtainable. Unsurprisingly, a class action defendant has little or no incentive to contest the amount allocated to attorney fees in a proposed settlement, provided the total amount of the settlement is acceptable. "Since the defendant is interested only in the total size of its liability, so long as the settlement is accepted, it will often be indifferent as to the division of the fund between the plaintiffs' recovery and the attorneys' fees." Task Force Report at 266.

"[T]o **[*14]** avoid abdicating its responsibility to review the agreement for the protection of the class, the Ninth Circuit requires that a district court must carefully assess the reasonableness of a fee amount spelled out in a class action settlement agreement." Staton, 327 F3d at 963 (citing Piambino v Bailey, 610 F2d 1306, 1328 (5th Cir 1980); Strong v BellSouth Telecomms, 137 F3d 844, 848-50 (5th Cir 1998); Jones v Amalgamated Warbasse Houses, Inc, 721 F2d 881, 884 (2nd Cir 1983)). This obligation is especially strong if the fee award appears high.

> [If] the amount of fees [a defendant] agreed to pay in the settlement agreement [is] distinctly higher than the fees class counsel could have been awarded by the district court using the lodestar method, the court would almost surely [have] to find the fees unreasonable. Absent some unusual explanation, a defendant would not agree in a class action settlement to pay out of its own pocket fees measurably higher than it could conceivably have to pay were the fee amount litigated, unless there was some non-fee benefit the defendant received thereby.

Staton, 327 F3d at 966.

This settlement illustrates that looking only at the percentage of the common fund **[*15]** sought as fees is insufficient. The Ninth Circuit has noted that a fee of "25 percent has been a proper benchmark figure, which [the district court] can then adjust upward or downward to fit the individual circumstances" of the case. Paul, Johnson, Altom & Hunt v Graulty, 886 F2d 268, 273 (9th Cir 1989). The "individual circumstances" warranting this adjustment have been described in a variety of ways, most of them highly subjective and not very illuminating. See the twelve criteria outlined in Kerr v Screen Extras Guild, 526 F2d 67, 70 (9th Cir 1975); Johnson v Georgia Highway Express, Inc, 488 F2d 714, 717-19 (5th Cir 1974). If "[r]easonableness is the goal, and mechanical or formulaic application * * * where it yields an unreasonable result, can be an abuse of discretion," Florida ex rel. Butterworth v. Exxon Corp. (In re Petroleum Prods. Antitrust Litig.), 109 F.3d 602, 607 (9th Cir 1997), a percentage-only test here would strain the limits of discretion. For although a 25 percent fee seems to fall in line with other class action fee awards, see Theodore Eisenberg and Geoffrey P Miller,

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Attorneys Fees in Class Action Settlements: An Empirical Study, 1 J Empirical Legal Stud 27 (2004), an assessment of the percentage of the **[*16]** common fund claimed by class counsel does not tell the full story. As Judge Sneed noted, "[l]odestar calculations may be required under circumstances in which a percentage recovery would be either too small or too large in light of the hours devoted to the case." Six (6) Mexican Workers v Arizona Citrus Growers, 904 F2d 1301, 1312 (9th Cir 1990) (concurring).

The circumstances at bar demonstrate vividly the wisdom of Judge Sneed's observation and why the court "rejects reliance solely on a comparison of the percentage fee requested here with other percentage awards or with a so-called benchmark percentage." In re HPL Technologies, Inc Sec Litig, 366 F Supp 2d 912, 914 (ND Cal 2005); See also Vaughn R Walker & Ben Horwich, The Ethical Imperative of a Lodestar Cross-Check: Judicial Misgivings about "Reasonable Percentage" Fees in Common Fund Cases, 18 Georgetown J Legal Ethics 1453 (2005). A lodestar cross-check poses serious doubt about the reasonableness of the present fee request. After submission of the proposed settlement, and only as a result of the court's request, class counsel conducted a lodestar cross-check, that is a submission of the hours worked on the case by various attorneys **[*17]** and paralegals multiplied by their "respective billing rates." Doc # 121, Ex 1 (Decl Jeff S Westerman). This produced a lodestar fee claim of $ 1,126,338.50. See Doc # 121, Exs 1-4. But included in this claim was $ 227,209.25 for so-called "professional support staff," including investigators, library service, economic analysts and others. While at least some of these costs may be attorney/paralegal overhead, attorney and paralegal overhead costs are compensated through the attorney and paralegal hourly charges. Costs such as those included in class counsel's "support staff" costs are more properly treated as reimbursable expenses.

The vice of including "support staff" costs in a claim for attorney fees is quite simple. The latter are subject to the possibility of a multiplier whereas the reimbursable expenses are not. To the extent that an out-of-pocket expense is characterized as compensation for attorney effort, and multiplied, the class is overcharged to the extent of any multiplier the court chooses to award. Looking then only at class counsel's claim for attorney fees, class counsel's attorney/paralegal lodestar amounts to $ 899,129.25 and a 25 percent fee, $ 7,500,000 here, results **[*18]** in an implied multiplier of 8.34.

But even this understates the magnitude of class counsel's fee request. Just as a fee claim can be padded by including under its rubric what are more properly reimbursable expenses, the multiplier itself can be understated by use of overly generous attorney/paralegal hourly rates. While the court is not unaware of published reports of eye-popping hourly attorney rates (See Nathan Koppel, Lawyers Gear Up Grand New Fees, Wall St J, B1 (Aug 22, 2007)), anecdotal evidence of this kind is plainly unreliable for purposes of court ordered fee awards. In their submission in response to the court's request for lodestar data, class counsel submitted "sample billing rates" obtained from a website that collects rates for attorney fee requests filed in bankruptcy courts, Doc # 127 Exs 5-6, and some sample rates for attorneys of various years of experience. Doc # 127, Ex 7. Counsel failed to make a case that these rates were truly representative and, still less, systematically compiled. And differences in hourly rates can make a big difference in the multiplier.

A widely recognized compilation of attorney and paralegal rate data is the so-called Laffey matrix, so **[*19]** named because of the case that generated the index. In Laffey v Northwest Airlines, Inc, 572 F Supp 354 (DDC 1983), aff'd in part, rev'd in part on other grounds, 241 U.S. App. D.C. 11, 746 F2d 4 (DC Cir 1984), the court employed a variety of hourly billing rates to account for the various attorneys' different levels of experience. The Laffey matrix has been regularly prepared and updated by the Civil Division of the United States Attorney's Office for the District of Columbia and used in fee shifting cases, among others. [2] The Laffey matrix is especially useful when the work to be evaluated consists of that by a mix of senior, junior and mid-level attorneys, as well as paralegals.

FOOTNOTES

2 http://www.usdoj.gov/usao/dc/Divisions/Civil_Division/Laffey_Matrix 7.html, visited October 1, 2007.

Under the 2007 Laffey matrix, attorneys bill at the following rates according to experience:

Experience	Rate Per Hour
20+ Years	$ 440
11-19 Years	$ 390
8-10 Years	$ 315
4-7 Years	$ 255
1-3 Years	$ 215
Paralegals & Law Clerks	$ 125

These figures are, however, tailored for the District of Columbia, which has a lower cost of living than New York and Los Angeles (the cities in which class counsel operates). Accordingly, some adjustment appears appropriate

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[*20] here. To make the adjustment, the court will use the federal locality pay differentials based on federally compiled cost of living data. See http://www.opm.gov/oca/07tables/indexGS.asp; In re HPL, 366 F Supp 2d at 921 (adjusting locality pay differentials based on the geographical region in which lead counsel's firm operated). A review of the pay tables shows the Washington-Baltimore area has a +18.59% locality pay differential; the New York area has a +24.57% locality pay differential; and the Los Angeles area has a +24.03% locality pay differential. Adjusting the Laffey matrix figures accordingly will yield appropriate rates for the respective geographical regions: +5% for New York and +4.6% for Los Angeles.

Applying these adjustments the court obtains the following rates:

Experience	New York Rate Per Hour (+5% Adjustment)	Los Angeles Rate Per Hour (+4.6% Adjustment)
20+ Years	462.00	460.24
11-19 Years	409.50	407.94
8-10 Years	330.75	329.49
4-7 Years	267.75	266.73
1-3 Years	225.75	224.89
Paralegals & Law Clerks	131.25	130.75

The following table reflects the court's adjusted lodestar calculations for attorneys and paralegals working on the case:

Attorney/ Paralegal	Location	Years Experience	2007 Laffey Rate	Total Hours	Total Lodestar
Bauer, G	NY	27	462.00	91.25	$ 42,157.50
Bershad, D	NY	42	462.00	1.25	$ 577.50
Graziano, S	NY	15	409.50	7.5	$ 3,071.25
Kartapoulos, A	NY	25	462.00	177.25	$ 81,889.5
Kusel, E	NY	12	409.50	72.25	$ 29,586.38
Rogers, K	LA	11	407.94	6.5	$ 2,651.61
Schulman, S	NY	26	462.00	2.75	$ 1,270.50
Seidman, P	NY	12	409.50	66.75	$ 27,334.13
Weiss, M	NY	47	462.00	31.4	$ 14,506.80
Westerman, J	NY	27	460.24	211.75	$ 97,455.84
Andrejkovis, P	NY	11	409.50	1.00	$ 409.50
Furukawa, M	LA	3	224.89	20.00	$ 4,497.80
Lin, E	LA	13	407.94	755.25	$ 308,096.69
Lipton, A	NY	6	267.75	0.25	$ 66.94
Long, B	DE	9	313.43	0.75	$ 235.07
McCulloch, K	LA	12	407.94	24.3	$ 9,912.94
Mills, J	NY	4	267.75	2.5	$ 669.38
Quinn, MJ	NY	15	409.50	0.25	$ 102.38
Rado, A	NY	7	267.75	75.5	$ 20,215.13
Chowdhury, I	LA	9	329.49	9.25	$ 3047.78
Kroll, A	NJ	33	200.00	4.6	$ 920.00
Giblin, V	NJ	11	175.00	30.5	$ 5,337.50
Finnell, L	NJ	3	135.00	0.1	$ 13.50
Glancy, L	LA	19	407.94	0.75	$ 305.96
Goldberg, M	LA	11	407.94	12.0	$ 4,895.28
MacDiarmid, D	LA	4	266.73	1.2	$ 320.08
Murray, B	NY	17	409.50	8.0	$ 3,276.00
Belfi, E	NY	11	409.50	8.5	$ 3,480.75
Donders, L	NY	5	267.75	1.0	$ 267.75
Hinton, C	NY	4	267.75	0.5	$ 133.88
Patton, A	NY	4	267.75	1.6	$ 428.40
Summer Clerks	NY	-	131.25	6.25	$ 820.31
Paralegals (LA)		-	130.75	11.2	$ 1,464.40
Paralegals		-	131.25	370.35	$ 48,608.44

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(NY)					
Paralegals		-	70.00	3.0	$ 210.00
(NJ)					
			Totals		
				2017.25	$ 718,236.81

This **[*21]** table reflects the following: only categories covered by the Laffey matrix are included; consolidated paralegal work is based on geographical region; New York rates are used for lead counsel summer clerks and paralegals; requested rates below Laffey matrix rates are unadjusted; and Mr Long's billing rate reflects a downward adjustment for Delaware.

The court now turns to the lodestar cross-check, which entails evaluation of the multiplier implied by lead counsel's requested fee (25% percent of a $ 30 million settlement, or $ 7.5 million) and lead counsel's lodestar fee (computed above as $ 718,236.81). The lodestar calculation under the Laffey methodology results in a multiplier of 10.44.

Either the 8.34 or the 10.44 multiplier far exceeds the multipliers the court has, in its experience, encountered and observed in other common fund securities class actions. In almost every scenario, the multiplier is greater than one and often in the order of two to four. See, e g, Van Vraken v. Atlantic Richfield Co., 901 F. Supp. 294, 298 (ND Cal 1995) ("Multipliers in the 3-4 range are common in lodestar awards for lengthy and complex class action litigation."); Behrens v Wometco Enterprises, Inc, 118 FRD 534, 549 (SD Fla 1988) **[*22]** ("[The] range of lodestar multiples in large complicated class actions [varies from] a low of 2.26 to a high of 4.5."). These judicial observations are borne out in a more systematic study of common fund class action fee awards compiled a few years ago. Beverly C Moore, et al, 24 Class Action Reports, no 2 (March-April 2003). This study included 877 securities class actions, 391 of which reported multiplier data. Of these 391 cases, 353 involved class recoveries of $ 50 million or less. The multipliers observed in these cases charted against the amounts of recovery are displayed in the following chart:

[SEE Multiplier v Class Recovery $ 50 Million or LessIN ORIGINAL]

Linear and non-linear regressions show the multiplier in these cases to fall in the range of 0.5 to 3.0. This chart shows that negative multipliers - those below 1.0 - are more common than the court previously perceived. See Doc # 190 in 03-5138 VRW (In re Portal Software, Inc Sec Litig). This chart also shows that courts make some effort to provide incentives for greater recovery. For purposes of this case, however, this study demonstrates that, as compared to other common fund securities class action, the multiplier implied **[*23]** by class counsel's fee request is patently unreasonable.

Note further that the difference between class counsel's claimed lodestar and the lodestar produced using the Laffey matrix is $ 180,892.44. Hence, although the claimed hourly rates of some attorneys in class counsel's firm are substantially more than Laffey rates (e g, class counsel's most senior lawyer's claimed hourly rate of $ 925 versus an adjusted Laffey rate for an attorney of 20+ years of experience of $ 462), the Laffey matrix generates a total fee over all attorneys that is approximately 80 percent of class counsel's claimed rates. As class counsel's claimed rates undoubtedly include some amount to compensate for the risk of non-collection - class counsel work on a contingency basis, after all -while the Laffey rates are fees actually paid, the Laffey matrix cannot be criticized as representing bargain basement attorney fees. But relatively small differences in rates can be blown out of proportion by the multiplier. For example, class counsel's most senior lawyer billed 31.4 hours to the litigation, which at his claimed hourly rate represents 3.2 percent of class counsel's lodestar. On the assumption that this lawyer's **[*24]** work contributed that percentage of the value of class counsel's services, a 25 percent fee award would compensate this lawyer's work at over $ 7,715 per hour.

The court harbors no doubt that a multiplier of some kind should apply in this litigation for any recovery obtained by class counsel. The action was prosecuted on a contingency basis. Class counsel confronted a risk of non-recovery. But that risk puts an outer limit on the multiplier, e g, a 50 percent chance of recovery implies a multiplier of 2, a 25 percent chance of recovery implies a multiplier of 4 and so on. The multipliers sought here imply a chance of recovery of 1 out of 8 or 1 out of 10. To be sure, able class action lawyers do not need to show that they lose 7 out of every 8 cases to justify an eight multiplier. Careful case selection cuts down these odds and should not be penalized. But class counsel's efforts should not be rewarded with undue lavishness. The point is simply this: class counsel need to justify both the application of a multiplier and its level as much as they need to show that their hourly rates are in line with competitive norms. Class counsel here have failed to do so.

The court recognizes that **[*25]** the Seventh Circuit takes a somewhat different approach than the Ninth Circuit to assessing the reasonableness of class counsel fees. The former circuit takes a somewhat more prospective or ex ante approach. See In re Synthroid Mktg Litig, 264 F3d 712 (7th Cir 2001); where attorney fees are not determined up front in a case (and they usually are not), the Seventh Circuit instructs that the

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district court "undertake an analysis of the terms to which the private plaintiffs and their attorneys would have contracted at the outset of the litigation when the risk of loss still existed." Sutton v Bernard, 504 F.3d 688, 2007 WL 2963940 (7th Cir 2007).

Because a prospective fee negotiation occurs without the plaintiffs and the attorneys knowing what the recovery will be, if any, and how much of the attorney's time and expense will be needed to produce a recovery, the Seventh Circuit's approach is likely to take the form of a percentage approach. But this by no means suggests that a lodestar cross-check is inappropriate or unnecessary. Indeed, a lodestar cross-check is extremely useful in that context, because a reasonable percentage fee is not necessarily a flat or straight percentage. A prudent **[*26]** plaintiff negotiating in advance of litigation with contingent fee counsel should take account of the economies of scale inherent in large recoveries and require that counsel share those economies by demanding a sliding scale percentage. A lodestar cross-check can, therefore, assist a court attempting to find the reasonable percentage no less than the court attempting to find reasonable hourly compensation.

B

Paragraph 28(b) of the Stipulation and Agreement of Settlement, Doc # 100, permits defendants to terminate the settlement "in the event that valid and timely requests for exclusion are received which exceed the amount set forth in the Memorandum of Understanding dated June 6, 2006." Doc # 100, P28(b). At the August 2, 2007 hearing, counsel provided the court with a copy of a "supplemental agreement" showing the number of shares of Chiron common stock that- if held by opt-outs- would trigger defendants' right to terminate the settlement. Counsel requested leave to file the supplemental agreement under seal and to issue a class notice that excluded any reference to the said number of shares, which they referred to as "the magic number."

Counsel for both sides argue that the purpose **[*27]** of keeping the "magic number" from class members is to ensure that class members decide whether to request exclusion based on the merits of the settlement, not their ability to leverage themselves into a better deal. Defendants' counsel put it this way: "[L]et's say a group of shareholders were to get together and decide 'Let's try and collect as many people as we can to try and opt out just to see if we can leverage a better position and get a better deal.'" See Hrg Tr, Aug 2, 2007, at 16. But counsel failed to explain how the number is separate from the settlement and its merits. The memorandum of understanding between counsel and the merits of the settlement agreement are not so easily distinguished because class counsel represents the class or, at any rate, are supposed to do so. Moreover, the "magic number" necessarily speaks to defendants' views of the settlement as that is the only explanation for defendants' reservation of termination rights. Specifically, the "magic number" provides defendants with an opportunity to determine the potential number of claims that may remain unresolved before proceeding with the settlement. The number may also suggest defendants' belief that **[*28]** if enough people opt out, defense counsel should have a chance to defend the case more vigorously.

There's another aspect of not disclosing the "magic number" that the court finds troubling. Class counsel's comments in support of non-disclosure hinted at the problem: "[T]here's generally been a concern that a shareholder with the magic number [of shares] or near the magic number, if such a shareholder exists, could try to use that as leverage for personal gain as opposed to a benefit for the class." See Hrg Tr, Aug 2, 2007, at 18-19. The point class counsel seemed to be making although obviously not putting it in those terms is that the interests of the class are not entirely congruent. A shareholder with the "magic number" of shares might well have interests different from other shareholders. It is by no means unheard of in corporate affairs that the number of shares matters. Assuming arguendo some incongruity in the interests of the class based on how close to the magic number a class member's shares come, the court is hard-pressed to discern why that shareholder should not be told that he has the leverage to skuttle the settlement. In sum, the number reflects the parties' bargained-for **[*29]** expectations and, as a consequence, is part and parcel of the merits of the settlement.

Frustrating the settlement is exactly what class members are entitled to do, if they think the settlement is not fair. The class' "frustration rights" should not themselves be frustrated. Counsel's fears of the extortion value to the class in disclosing the "magic number" may well be unfounded. Counsel offered the court no reason to believe that these events were real possibilities. Moreover, if they are real possibilities, this likely says something about the merits of the settlement. If enough class members find it desirable to torpedo the settlement or force its renegotiation, the settlement is likely not in the best interests of the class.

Keeping the class in the dark about the "magic number" hints at something darker still. "The danger of collusive settlements * * * makes it imperative that the district judge conduct a careful inquiry into the fairness of a settlement to the class members." Mars Steel Corp v Continental Illinois Nat Bank and Trust Co of Chicago, 834 F2d 677, 681-82 (7th Cir 1987) (Posner). And the court should be party to nothing that fails fully to inform the class of the settlement **[*30]** terms.

C

The third aspect of this settlement that leads the court to suspect that its approval may not be in the best interests of the class is the questionable adequacy of lead plaintiff and purported class representative, Local

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825. "Fair and adequate" representation requires that the class representative be both willing and able to monitor closely the conduct of class counsel during settlement negotiations. The great risk of settlements such as the one currently before the court is that the settlement terms will serve more the interests of class counsel than the needs of class members. This risk arises because "[s]hareholders with well-diversified portfolios or small holdings lack the incentive and information to police settlements-the cost of policing typically outweigh any pro rata benefits to the shareholder." Bell Atlantic Corp v Bolger, 2 F3d 1304, 1309 (3d Cir 1993).

Christine Medich, the Administrator of Local 825, submitted a declaration in support of the motion for preliminary settlement approval. Doc # 104. Therein, Ms Medich states that she has been "intimately involved with this litigation since its filing." Doc # 104, P4. Ms Medich states that she was "personally involved **[*31]** with the settlement negotiations" and "was present at all face to face negotiations which took place in this matter, and in several break-out sessions." Doc # 104, P5. Ms Medich also approved of a fee range of 25 to 40 percent at the time of retention of counsel and states that she endorses counsel's current 25 percent fee request. Doc # 104, P7. In light of the above discussion on the excessiveness of a 25 percent fee award, it does not appear that Ms Medich has made an effort to maximize the net recovery of absent class members. Nor does it appear that Ms Medich negotiated a fee agreement in a way that reflects the market value of lawyer services. Rather, lead plaintiff's involvement seems to have been confined to an endorsement of lead counsel's proposed fee.

Ms Medich also states that:

> In addition to this action, [Local 825] has served as Lead Plaintiff in other securities litigations, including In re Diebold Sec Litig, No 05-2873 (ND Ohio), filed December 13, 2005, In re Freescale Semiconductor, Inc Shareholder Lawsuit (Travis County, Texas), filed October 13, 2006, and Operating Engineers Local 825 Pension Fund v Aeroflex, Inc, No 07-004181 (Sup Ct Nassau County, 2007).

Doc # 104 **[*32]** P3. The court's research shows that lead counsel here is also lead counsel in all three of these cases.

The court's research also uncovered seven other federal securities/stockholder class actions in which the International Union of Operating Engineers is listed as a plaintiff: Garber, et al v Pharmacia Corp, et al, No 03-1519 (DNJ), City of Roseville et al v Micron Technology, Inc et al, No 06-0085 (D Idaho), Faverman et al v Doral Financial Corp et al, No 05-4026 (SDNY), Shankar v Boston Scientific Corporation et al, No 05-11934 (D Mass), In Re: Doral Financial Corp Securities Litigation, No 05-1706 (SDNY), Citizens for Consume, et al v Abbott Laboratories, et al, No 01-12257 (D Mass), Weiss v Friedman, Billings, Ramsey Group, Inc et al, No 05-4617 (SDNY), Nugent, et al v AFC Enterprises, Inc, et al, No 03-0817 (ND Ga).

Local 825 is listed as a plaintiff, though not lead plaintiff, in both Faverman et al v Doral Financial Corp et al, No 05-4026 (SDNY) and In Re: Doral Financial Corp Securities Litigation, No 05-1706 (SDNY). Milberg Weiss, lead counsel herein is also listed as counsel in Nos 01-12257, 03-817 and 05-4617. Lerach Coughlin Stoia Geller Rudman & Robbins, LLP, which broke **[*33]** off from Milberg Weiss only five months before this litigation began, is listed as counsel in Nos 03-817, 05-1706, 05-4617, 05-11934 and 06-0085. For reasons that will become clear below, the court also notes that Skadden Arps Slate Meagher & Flom, defendants' counsel here, is listed as counsel for certain defendants in Nos 01-12257 and 05-1706.

Class counsel's use of "serial plaintiffs" raises the specter of credibility problems and conflicts of interest, among other issues. See In re Enron Corp Sec Litig, 206 FRD 427, 455 (SD Tex 2002) ("[S]imultaneous participation in securities class actions or applications for appointment as lead plaintiff could result in institutional investor having fewer resources available and being less able to police counsel's conduct * * *"). The potential for these problems exists in any situation in which a class representative is engaged on many fronts. The problem is further magnified by any extraordinary distractions of lead counsel's attention. Given this, the court lacks sufficient assurances of Local 825's independence from class counsel. See Berger v Compaq Computer Corp, 257 F3d 475, 481 (5th Cir 2001) (PSLRA mandates that "class representatives, **[*34]** and not lawyers, must direct and control the litigation.")

These issues are sufficiently serious to give the court pause regarding Local 825's ability fairly and adequately to represent the interests of the class, as required by FRCP 23(a). The court recognizes that Local 825 was already appointed lead counsel under the PSLRA's "most adequate plaintiff" provision, which states:

> Rebuttable presumption
>
> (I) In general
>
> Subject to subclause (II), for purposes of clause (i), the court shall adopt a presumption that the most adequate plaintiff in any private action arising under this chapter is the person or group of

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persons that--

(aa) has either filed the complaint or made a motion in response to a notice under subparagraph (A)(i);

(bb) in the determination of the court, has the largest financial interest in the relief sought by the class; and

(cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

(II) Rebuttal evidence

The presumption described in subclause (I) may be rebutted only upon proof by a member of the purported plaintiff class that the presumptively most adequate plaintiff--

(aa) will not fairly and adequately protect the interests of the class; or

(bb) **[*35]** is subject to unique defenses that render such plaintiff incapable of adequately representing the class.

15 USCA § 78u-49(a)(3)(iii).

But as discussed above, selection of lead plaintiff was made without open competition. More importantly, the inquiry here is not whether Local 825 can be appointed lead plaintiff. Rather, the inquiry is whether a settlement class can be certified under FRCP 23.

> The appointment of lead plaintiffs occurring as it does in advance of class discovery, is not a final ruling on their appropriateness as Class Representatives. See In re Party City Sec Litig, 189 FRD 91, 111 n.21 (DNJ 1999). The proposed class and Class Representatives are to be reviewed according to the standards of Rule 23, without any deference to the earlier determinations made in the appointment of Lead Plaintiffs. 15 USC § 78u-4(a)(3)(B)(iii)(I)(cc).

In re Oxford Health Plans, Inc, 191 FRD 369, 373 (SDNY 2000).

> Reading the PSLRA in accordance with its plain meaning, the Court concludes that being a Lead Plaintiff under the PSLRA is not the same as being a Class Representative under Rule 23 F.R.Civ.P., although the statute provides that a Lead Plaintiff must "otherwise satisfy the requirements **[*36]** of Rule 23." Obviously there will be actions brought under the PSLRA by multiple plaintiffs which do not qualify for class action treatment under Rule 23, perhaps for lack of numerosity or for some other reason. Congress is deemed to have understood this and must have intended that the function of lead plaintiff under the PSLRA be different from class representative under Rule 23. There is no requirement found in the plain meaning of the statute that a Lead Plaintiff accept designation of class representative under Rule 23, and the statute does not provide for any specific action by the Court should it turn out after a Lead Plaintiff has been appointed; that Lead Plaintiff should on further examination fail to meet all of the requirements of Rule 23, * * *

191 FRD at 378-79. See also James Wm Moore, 5 Moore's Federal Practice § 23.25[6] (3d ed 2000) ("[T]he provisions of the [PSLRA] do not replace the ordinary requirements of Rule 23."); House Conference Report No 104-369, 104th Congress, reprinted in 1995 USCCAN 730, 733 ("The provisions of the bill relating to the appointment of lead plaintiff are not intended to affect current law with regard to challenges to the adequacy of the **[*37]** class representative or typicality of the claims among the class."); Hevesi v Citigroup, Inc, 366 F3d 70, 83 (2d Cir 2003) ("[T]here is no reason to believe that the PSLRA altered the preexisting standard by which class representatives are evaluated under Rule 23.").

In assessing the adequacy of a proposed class representative, the court must "feel certain that the class representative will discharge his fiduciary obligations by fairly and adequately protecting the interests of the class." Burkhalter Travel Agency v MacFarms Int'l, Inc, 141 FRD 144, 154 (ND Cal 1991) (quoting Koenig v Benson, 117 FRD 330, 333-34 (EDNY 1987). See also Crawford v. Honig, 37 F.3d 485, 487 (9th Cir 1994) ("Adequate representation depends on the qualifications of counsel for the representatives, an absence of antagonism, a sharing of interests between representatives and absentees, and the unlikelihood that the suit is collusive.") See also Foe v Cuomo, 892 F2d 196, 198 (2d Cir 1989) (The court's obligation to evaluate the adequacy of the class representative and counsel continues throughout the litigation.) As discussed above, the court has reason to doubt that Local 825 has met its fiduciary obligations. **[*38]** Local 825 and its international are involved in a number of class actions with class counsel, Local 825 has failed to negotiate a fee arrangement able to pass even the most forgiving test of reasonableness and Local 825 has sought, along with defendants, to omit from the notice to the class a term of settlement that would appear material to decision-making of at least

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some class members, if not all.

Approving the settlement under these circumstances would be inconsistent with the interests of absent class members and the class action process itself. That process presupposes that a single representative can stand in for, and monitor the litigation on behalf of, numerous others. This duty is not to be assumed lightly given that the settlement will extinguish the rights of absent class members, often without their knowledge.

D

Finally, and with some hesitancy, the court finds it necessary to address criminal charges pending against lead counsel. The events surrounding these charges and related charges against others have been widely publicized and are well-known to counsel on both sides of this case. These charges are also probably well-known to a large segment of the investing public and **[*39]** thus the class herein. That widespread knowledge, however, does not eliminate the need to consider the effect of the charges here.

Without dwelling on details, lead counsel and several lawyers who worked on this case have been indicted on a variety of criminal charges alleging that lead counsel and certain of its attorneys engaged in the illegal payment of kickbacks to class action plaintiffs. See CR 05-00587 (CD Cal). Lead counsel and its most senior lawyer have pleaded not guilty while at least two lawyers who worked on this case and a former partner in lead counsel have pled guilty to these charges. Because these admitted and denied charges relate to payments to individuals who served, or caused a relative or associate to serve, as a named plaintiff in class actions, the allegations in the criminal proceedings go to the very heart of the fiduciary duties owed to absent class members by a lead plaintiff and lead counsel in a class action. The conflict that creates this fiduciary duty is well-known and especially acute when a class action settlement is presented to a court for approval. In that situation, the court is displaced from its typical role of parsing opposing positions presented **[*40]** by adversaries, each incentivized to point up problems in the other's respective requests. Instead the parties hand the court a single, purportedly complete resolution and appear for oral "argument" pen-in-hand, or more aptly pen-outstretched. Input from absent class members or third parties is rare, and fully informed input even rarer, if not impossible. As the court has previously noted in reference to class actions,

> [o]rdinarily the named plaintiffs are nominees, indeed pawns, of the lawyer, and ordinarily the unnamed class members have individually too little stake to spend time monitoring the lawyer-and their only coordination is through him. The danger of collusive settlements * * * makes it imperative that the district judge conduct a careful inquiry into the fairness of a settlement to the class members before allowing it to go into effect and extinguish, by the operation of res judicata, the claims of class members who do not opt out of the settlement.

In re California Micro Devices Securities Litigation, 168 FRD 257, 261 (ND Cal 1996) (quoting Mars Steel Corp v Continental Illinois National Bank & Trust, 834 F2d 677, 681-82 (7th Cir 1987) (Posner)); see also Greenfield v. Villager Indus., 483 F.2d 824, 832 n.9 (3d Cir 1973) **[*41]** ("Experience teaches that it is counsel for the class representative and not the named parties, who direct and manage these actions. Every experienced federal judge knows that any statement[ ] to the contrary is sheer sophistry."); Saylor v Lindsley, 456 F2d 896, 900 (2d Cir 1972) (Friendly) ("There can be no blinking at the fact that the interests of the plaintiff in a stockholder's derivative suit and of his attorney are by no means congruent").

Where approval for settlement and certification are sought simultaneously, as is the case here, district courts must be "even more scrupulous than usual" in examining the fairness of the proposed settlement. In re Warfarin Sodium Antitrust Litig, 391 F3d 516, 534 (3d Cir 2004); see also Hanlon v Chrysler Corp, 150 F3d 1011, 1026 (9th Cir 1998) ("The dangers of collusion between class counsel and the defendant, as well as the need for additional protections when the settlement is not negotiated by a court designated class representative, weigh in favor of a more probing inquiry than may normally be required under Rule 23(e).") As the Manual for Complex Litigation notes, the nature of the settlement certification process can "sometimes make **[*42]** meaningful judicial review more difficult and more important." Manual for Complex Litigation Fourth (2004) at § 21.612. A case settled early, "without sufficient discovery or testing in an adversarial context, may be next to impossible to assess in terms of the strengths and weaknesses of the parties' claims and defenses, the appropriate definition of the class, and the adequacy of the proposed settlement." In re Lupron Marketing and Sales Practices Litigation, 345 F Supp 2d 135, 137 (D Mass 2004) (citing Manual at § 21.612.)

> When a district court, as here, certifies for class action settlement only, the moment of certification requires "heightene[d] attention," * * * to the justifications for binding the class members. This is so because certification of a mandatory settlement class, however provisional technically, effectively concludes the proceeding save for the final fairness hearing. And, as we held in Amchem, a fairness hearing under Rule 23(e) is no substitute for rigorous adherence to those provisions of the Rule "designed to protect absentees," *ibid.*, among them subdivision (b)(1)(B).

Ortiz v Fibreboard Corp, 527 US 815, 849, 119 S. Ct. 2295, 144 L. Ed. 2d 715 (1999) (quoting Amchem

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Products, Inc v Windsor, 521 US 591, 117 S. Ct. 2231, 138 L. Ed. 2d 689 (1997)). **[*43]** "The district court's decision must be supported by sufficient findings to be afforded 'the traditional deference given to such a determination.'" Molski v Gleich, 318 F3d 937, 946-47 (9th Cir 2003) (quoting Local Joint Executive Bd Trust Fund v Las Vegas Sands, Inc, 244 F3d 1152, 1161 (9th Cir 2001), cert denied, 534 U.S. 973, 122 S. Ct. 395, 151 L. Ed. 2d 299 (2001)).

It is against this tableau common to all class action settlement proposals that the criminal charges against lead counsel pose a concern here, because the kickback arrangements alleged criminally are that lead counsel gave the paid plaintiffs a greater interest in maximizing the amount of attorney fees awarded to lead counsel than in maximizing the net recovery to absent class members. The indictment further alleges that lead counsel attorneys engaged in various fraudulent and deceptive acts, practices and devices to conceal these kickbacks.

As noted above, Pipefitters Local 522 and 633 Pension Trust Fund sought to appoint Lerach Coughlin, counsel originally filing Gregory, as lead counsel in this action. Doc # 16. Local 522 and 633 Pension Trust Fund later withdrew its motion for appointment of lead plaintiff and lead counsel deferring to Local 825 and **[*44]** lead counsel here. Doc # 42.

Lerach Coughlin has been represented during the pendency of this litigation by Skadden Arps Slate Meagher & Flom ("Skaden Arps"). Gabe Friedman, Prosecutors Prepare to File Plea Deal for Lerach, San Francisco Daily Journal, Sept 19, 2007, at 1. Skadden Arps also represents defendants in this action. By accepting representation of Lerach Coughlin in criminal investigations, the court is troubled whether Skadden Arps is able to probe the adequacy of lead plaintiff and/or lead counsel lest a rigorous challenge uncover problems that might be traced back to Lerach Coughlin. The automatic discovery stay during the pendency of the motion to dismiss, 15 USC § 78u-4(a)(3)(B), appears to have been in effect during the entire pendency of this litigation. It would seem, therefore, that class counsel, lead plaintiff, lead counsel's former attorneys now in Lerach Coughlin (since re-named Coughlin Stoia), defendants and defendants' counsel - but not the class -had an interest in avoiding discovery into the adequacy of lead plaintiff. These circumstances make more stark the extraordinarily high compensation that the proposed settlement would reward class counsel, the effort **[*45]** to avoid disclosure of the "magic number" and the involvement in numerous securities class actions of lead plaintiff. In light of the foregoing, the proposed class notice reference to the criminal charges against class counsel, relegated to a footnote buried on page 13, seems wholly inadequate:

> On May 18, 2006 in the United States District Court for the Central District of California (Los Angeles), Milberg Weiss Bershad & Shulman LLP and two of its partners were named as defendants in an indictment. The indictment alleges that, in certain cases which are identified in the indictment, portions of attorneys' fees awarded to the firm were improperly shared with certain plaintiffs. The law firm has pled not guilty. The indictment does not refer to this action, and makes no allegations of any impropriety in the conduct of this action.

Doc # 119 at 13, n.3. The relationships woven amongst the firms involved here and in other securities class actions brought by the International Union of Operating Engineers warrant fuller class notice.

Court supervision of class actions has over time created a rich jurisprudence which contains several per se rules whether a given class representative adequately **[*46]** represents the class. One of the most fundamental of these rules is that an attorney may not serve both as class representative and as class counsel. See, e g, Susman v Lincoln American Corp, 561 F2d 86, 90-92 (7th Cir 1977). When class counsel are not effectively monitored by the class representative, the result is indistinguishable from the situation in which an attorney serves as both class counsel and class representative. Lead counsel's history of using "serial plaintiffs" and Local 825's willingness to place the proposed settlement before the court, together suggest that lead counsel has effectively made itself the class representative and has assumed control of this action.

Lest there be any misunderstanding, the court does not express an opinion on the merits of the pending unresolved criminal charges. As stated by Judge Rosenbaum of the District of Minnesota in disqualifying class counsel to serve as lead counsel at the outset of another matter:

> The step the Court takes in this Order does no violence to the presumption of innocence. That presumption, which inheres in the criminal process, is a rule which protects every defendant criminally charged under our Constitution. That **[*47]** presumption remains inviolate. To the contrary, however, a Grand Jury's indictment means that it found probable cause to believe a criminal act has taken place. It is this determination which must be of concern to the Court as it labors to protect [the plaintiffs].

In re Medtronic, Inc Implantable Defibrillator Product Liability Litigation, 434 F Supp 2d 729, 732 (D Minn 2006).

The court is aware that the case at bar and Local 825 are not implicated in the criminal proceedings. But given the temporal proximity of this settlement and the criminal proceedings against lead counsel, whether the

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charges bear on this case is a determination best left to the class following full disclosure.

> The Court's duty to the [plaintiffs] is focused here. That duty requires the Court to question whether, other things being equal, and assuming full knowledge, the [plaintiffs] would select as their counsel an attorney whose law firm had been indicted for violating its duties to the court and to its clients. Amongst many highly competent lawyers, the Court suggests few would select an indicted, as opposed to an unindicted, law firm. This is the point at which the Court must, and does, exercise its supervisory **[*48]** authority.

In re Medtronic, Inc, 434 F Supp 2d at 731-32.

III

The court's "supervisory authority" and the expanded role of the court in the class action context compel this order. FRCP 23 assigns to the courts both broad responsibility and broad power to monitor the conduct of class actions to ensure their essential fairness. See especially FRCP 23(a), (e). As mentioned above, the adversarial process has ended and plaintiffs' counsel and defense counsel appear arm-in-arm asking that the claims of absent class members be preemptively barred. "But judges in our system are geared to adversary proceedings. If we are asked to do nonadversary things, we need different procedures." In re Continental Illinois Securities Litigation, 962 F2d 566, 573 (7th Cir 1992) (Posner).

The court must apprise itself of all the facts necessary to determine if the settlement is fair and reasonable. The court cannot make such finding here and hence cannot approve the settlement. See Molski v Gleich, 318 F3d 937, 955 (9th Cir 2003) (reversing certification of settlement class due to appearance of inadequate representation and collusion as well as inadequacy of class notice); Staton, supra, 327 F3d 938 (reversing **[*49]** district court's settlement approval based on considerations relating to award of attorney fees). The judiciary is not a "rubber stamp" for settlements that do no reflect the merits of the case. Boyd v Bechtel Corp, 485 F Supp 610, 617 (ND Cal 1979).

Although the court's role in reviewing a proposed settlement is critical, it is also a limited one. The court does not have the ability to "'delete, modify or substitute certain provisions.' The settlement must stand or fall in its entirety." Hanlon v Chrysler Corp, 150 F3d 1011, 1026 (9th Cir 1998), citing Officers for Justice v Civil Serv Comm'n of San Francisco, 688 F2d 615, 628, 630 (9th Cir 1982).

Accordingly, based on the concerns discussed above, the court DENIES lead plaintiff's motion for preliminary settlement approval. The parties shall appear for a case management conference on December 20, 2007 at 3:30pm.

IT IS SO ORDERED.

/s/ Vaughn R Walker

VAUGHN R WALKER

United States District Chief Judge

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Date/Time: Friday, January 25, 2008 - 11:13 AM EST

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- Positive treatment is indicated
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Enron Investors Suing Banks Spurned by Top U.S. Court (Update2)

By Greg Stohr

Jan. 22 (Bloomberg) -- The U.S. Supreme Court rejected an appeal by Enron Corp. investors, refusing to resurrect a $40 billion suit against Merrill Lynch & Co. and other banks that lent money to the now-defunct energy trader.

The justices made no comment in turning away the appeal today, acting a week after putting new limits on shareholder suits against a company's banks and business partners. The Enron investors challenged a lower court ruling that barred them from joining together in a class-action suit against Merrill Lynch, Credit Suisse Group, Barclays Plc and other banks.

The rebuff likely means an investor group led by the University of California regents won't add to the $7.3 billion they collected in settlements with other Enron banks. More broadly, the Supreme Court sent a new signal about its skepticism toward shareholder suits, refusing even to order a lower court to reconsider the Enron case in light of last week's ruling.

The investors sought to distinguish their suit from the one rejected by the high court last week, saying the Enron case came ``in the context of fraud perpetrated by financial professionals engaged in fraudulent dealings in our securities markets.''

Last week's 5-3 Supreme Court ruling, Stoneridge v. Scientific-Atlanta, involved a suit by Charter Communications Inc. investors against two of the cable company's suppliers. The majority said the alleged wrongdoing in that case ``took place in the marketplace for goods and services, not in the investment sphere.''

No Exception

The court's rejection of the Enron investor appeal came without any published dissent. The rebuff ``further confirms that there is no financial services exception'' to the Stoneridge ruling, said Stephen Shapiro, who successfully represented the suppliers in last week's case.

The lead lawyer for the Enron investors, Patrick Coughlin of Coughlin Stoia Geller Rudman & Robbins, said the group will try to revive its case by shifting the focus to analyst reports issued by the banks, rather than their role in setting up the mechanisms used to deceive investors.

``I'm disappointed, but we'll go back to the district court now,'' Coughlin said.

That legal theory isn't likely to succeed, according to James Cox, a Duke University securities law professor who has been supportive of the investor claims. The investors will have to show that the analyst reports, and not some other factors, caused them to lose money. The Supreme Court in 2005 made it harder for investors to make that showing.

`Insurmountable' Hurdles

The investors will face ``significant if not insurmountable loss-causation issues,'' Cox said.

Cox said the rejection of the Enron appeal ``just shows you how out of step the Stoneridge holding is with investor protection.''

Justice Anthony Kennedy, who wrote the Stoneridge decision, didn't take part in the court's

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consideration of the Enron case. Although Kennedy gave no explanation, his son, Gregory Kennedy, works as an investment banker at Credit Suisse in New York.

Credit Suisse spokeswoman Victoria Harmon said the company is ``pleased with the decision of the court.''

Houston-based Enron was the world's largest energy-trading company, with a market value of as much as $68 billion, before it collapsed in December 2001. The bankruptcy, the second-largest in U.S. history, wiped out more than 5,000 jobs and at least $1 billion in retirement funds.

Investor Accusations

Enron's investors accused the company's banks of helping late Chairman Kenneth Lay and ex-Chief Executive Officer Jeffrey Skilling disguise debt as loans, finance sham energy trades and use off-the-books partnerships to hide losses and inflate revenue.

Investors settled claims against JPMorgan Chase & Co. for $2.2 billion, Citigroup Inc. for $2 billion and Canadian Imperial Bank of Commerce for $2.4 billion.

The group's lead lawyer had been Bill Lerach, who in October pleaded guilty to secretly paying clients of his former firm, Milberg Weiss, to participate in shareholder lawsuits. Coughlin, Lerach's former partner, has since taken over the lead role.

In barring the suit from going forward as a class action, the 5th U.S. Circuit Court of Appeals in New Orleans said it couldn't presume that shareholders, when making investment decisions, relied on the alleged wrongdoing by the banks.

Shareholder Reliance

Last week's Supreme Court decision used somewhat similar reasoning, though not in the class action context. The court said the Charter shareholders didn't show they relied on the alleged deception by suppliers Motorola Inc. and Scientific-Atlanta Inc.

Kennedy said federal securities-fraud law ``does not reach all commercial transactions that are fraudulent and affect the price of a security in some attenuated way.''

``Having read Stoneridge, I can't imagine that the court would have anything to criticize in the 5th Circuit case in terms of its understanding of the law,'' said Georgetown University securities-law professor Donald Langevoort.

New York-based Merrill and the other banks in the Enron case urged the Supreme Court simply to reject the appeal, rather than send the case back to the lower court. The Stoneridge case ``involved facts extraordinarily similar to the facts that are present here,'' the banks argued.

The case is Regents of the University of California v. Merrill Lynch, 06-1341.

To contact the reporter on this story: Greg Stohr in Washington at **gstohr@bloomberg.net** .

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Ex. F

ENRON

COUGHLIN STOIA GELLER RUDMAN & ROBBINS LLP
Time from Inception through December 15, 2007

Name	Title	Hours	Rate	Lodestar
Bandman, Randi D.	(P)	116.50	600	69,900.00
Box, Anne L.	(P)	7,867.00	600	4,720,200.00
Bull, Joy A.	(P)	164.00	600	98,400.00
Burkholz, Spencer A.	(P)	1,732.50	600	1,039,500.00
Ciccarelli, Michelle	(P)	1,545.00	535	826,575.00
Collins, Chris	(P)	63.00	515	32,445.00
Coughlin, Patrick J.	(P)	1,610.00	725	1,167,250.00
Daley, Joseph D.	(P)	270.00	510	137,700.00
Daniels, Patrick W.	(P)	1,381.50	505	697,657.50
Dowd, Michael	(P)	27.75	700	19,425.00
Doyle, William J.	(P)	167.25	505	84,461.25
Drosman, Daniel S.	(P)	89.75	535	48,016.25
Egler, Thomas E.	(P)	13.50	515	6,952.50
Hodges, Helen J.	(P)	11,218.25	600	6,730,950.00
Howes, G. Paul	(P)	14,920.25	650	9,698,162.50
Isaacson, Eric	(P)	1,770.75	650	1,150,987.50
Jaconette, James	(P)	14,433.01	515	7,433,000.15
Karam, Frank	(P)	895.75	465	416,523.75
Lerach, William S.	(P)	8,513.60	900	7,662,240.00
Park, Keith F.	(P)	3,325.00	675	2,244,375.00
Rice, John J.	(P)	56.00	600	33,600.00
Robbins, Darren J.	(P)	1,037.00	650	674,050.00
Rudman, Samuel H.	(P)	107.50	395	42,462.50
Saxena, Maya	(P)	24.75	360	8,910.00
Seidman, Peter	(P)	360.75	335	120,851.25
Steinmeyer, Randall H.	(P)	117.75	510	60,052.50
Stoia, John J.	(P)	136.25	725	98,781.25
Svetcov, Sandy	(P)	656.00	700	459,200.00
Walton, David C.	(P)	841.75	600	505,050.00
Weaver, Lesley	(P)	52.50	505	26,512.50
Abel, Lawrence A.	(A)	197.00	500	98,500.00
Acevedo, Elizabeth A.	(A)	17.00	295	5,015.00

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Name	Title	Hours	Rate	Lodestar
Alpert, Matthew	(A)	168.25	325	54,681.25
Ames, Regina M.	(A)	6,172.50	385	2,376,412.50
Beige, Stephanie	(A)	516.50	265	136,872.50
Bernay, Alexandra	(A)	10,781.50	460	4,959,490.00
Blasy, Mary K.	(A)	153.75	460	70,725.00
Bowman, Elisabeth A.	(A)	156.00	500	78,000.00
Burnside, Fred B.	(A)	178.75	245	43,793.75
Dailey, Shannon M.	(A)	115.00	335	38,525.00
Glynn, Thomas E.	(A)	126.25	295	37,243.75
Gmitro, Jennifer	(A)	200.75	290	58,217.50
Hail, James R.	(A)	10,903.75	505	5,506,393.75
Hennick, Tami	(A)	80.50	420	33,810.00
Henssler, Robert	(A)	10,624.85	445	4,728,058.25
Kaplan, Stacey	(A)	215.25	325	69,956.25
Largent, Laurie L.	(A)	49.00	600	29,400.00
Lindell, Nathan R.	(A)	168.75	290	48,937.50
Lowther, John A.	(A)	10,183.25	485	4,938,876.25
Mallison, Stan S.	(A)	340.25	335	113,983.75
Minahan, Ted	(A)	68.50	295	20,207.50
Mueller, Maureen	(A)	35.50	275	9,762.50
Niehaus, Eric I.	(A)	198.50	325	64,512.50
Nwanna, Udoka	(A)	23.50	295	6,932.50
Oliver, James	(A)	69.00	445	30,705.00
Olts, Lucas F.	(A)	61.00	270	16,470.00
O'Reardon, Thomas	(A)	85.75	290	24,867.50
Rado, Andrei	(A)	15.50	290	4,495.00
Rosemond, G. Erick	(A)	21.75	265	5,763.75
Rosenfeld, David A.	(A)	98.00	265	25,970.00
Royce, Christina	(A)	101.50	275	27,912.50
Shinnefield, Jessica T.	(A)	142.95	360	51,462.00
Siben, Matthew P.	(A)	7,784.00	460	3,580,640.00
Smith, Trig	(A)	459.00	460	211,140.00
Splan, Katherine C.	(A)	6,123.20	270	1,653,264.00
Suriel, Christie	(A)	37.00	420	15,540.00
Swick, Michael A.	(A)	42.50	295	12,537.50
Thorpe, David	(A)	93.75	445	41,718.75
Williams, Andrea N.	(A)	240.50	385	92,592.50
Adelman, Roger M.	(OC)	1,724.30	700	1,207,010.00
Baskin, James	(OC)	4,906.75	625	3,066,718.75
Georgiou, Byron S.	(OC)	1,483.75	650	964,437.50

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Name	Title	Hours	Rate	Lodestar
Meyerhoff, Albert	(OC)	304.00	525	159,600.00
Pierce, John	(OC)	3,316.65	650	2,155,822.50
Schrieber, Sol	(OC)	50.00	575	28,750.00
Alexander, Susan K.	(SC)	64.25	550	35,337.50
Byrd, Kristin	(CA)	1,937.75	275	532,881.25
Dawson, Dee	(CA)	1,920.75	400	768,300.00
Edmiston, Laura	(CA)	2,901.25	275	797,843.75
Ekelof, Charlotta	(CA)	2,749.75	275	756,181.25
Essa, Farzeen	(CA)	86.50	280	24,220.00
Fuller, Krista	(CA)	2,819.25	275	775,293.75
Greer, John	(CA)	3,094.00	275	850,850.00
Hardaway, Jerrilyn	(CA)	12,316.75	425	5,234,618.75
Hays, Shawn	(CA)	6,109.75	500	3,054,875.00
Hobbs, Allen	(CA)	2,072.50	300	621,750.00
Hurst, Lamonika	(CA)	2,426.00	295	715,670.00
Ibironke, Caroline	(CA)	2,350.75	275	646,456.25
Karnavas, Stephanie	(CA)	2,388.25	275	656,768.75
Lewis, M. Colby	(CA)	2,952.75	275	812,006.25
Mandlekar, Rajesh A.	(CA)	2,603.25	400	1,041,300.00
Mitchell, Jennifer	(CA)	422.25	235	99,228.75
Stephens, Jennifer K.	(CA)	459.75	195	89,651.25
Triplett, Sara	(CA)	2,661.25	275	731,843.75
Forensic Accountant		7,147.50	125 - 450	2,955,863.75
Economic Analyst		3,531.75	240 - 315	1,011,807.50
Investigator		1,977.00	200 - 360	581,500.00
Law Clerk		620.50	165 - 260	140,273.75
Summer Associate		254.00	220 - 260	59,530.00
Paralegal, I, II & III		22,239.90	160 - 270	5,417,714.25
Document Clerk		8,346.20	165 - 210	1,619,368.25
Total		248,803.91		113,251,049.40

(P) Partner
(A) Associate
(OC) Of Counsel
(SC) Special Counsel
(CA) Contract Attorney

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The Life of a Contract Attorney in Temp Town, Washington D.C.

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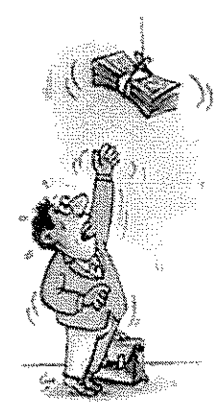
How Much Do Contract Attorneys Make In Terms Of Wage Rate?

January 13th, 2008



The answer to this question is the same answer that every law school graduate and trained attorney should be prepared to quip for any question they are asked - “it all depends”.

Of course, whether contract attorneys are currently being paid fairly as a whole is another issue entirely. For the purposes of this piece, I’m just making a market observation. Although contract attorneys generally get paid the market rate for their geographical location, there are a variety of other factors that determine whether the offer rate exceeds or fails to reach the generally accepted standard:

1. **Geographical Location** - Probably the biggest factor that determines the appropriate market wage rate and compensation for contract attorneys is where the project will be located. Big cities generally get the bulk of the labor intensive contract attorney work, thus they also tend to offer the highest wage rates and most perks.

   New York City and Washington D.C. both currently have the highest rates at $35 an hour with time and a half for overtime. New York City probably flirts in the neighborhood range of $38-40. Any parity with D.C. rates is probably due to oversupply caused by the abundance of city law schools that seem to graduate more and more lawyers every year. Certainly the lack of work due to the current

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economic recession is causing the job market to noticeably slow down. Disturbingly, many NYC agencies have been taking advantage of the slump by slashing rates, an ominous trend that is frustrating many contract attorneys.

Los Angeles also offers comparable rates, although the city isn't exactly overflowing with projects, and the lack of steady gigs always seems to put downward pressure on rates. The smaller doc review cities of Chicago, Philadelphia, and Boston get the lower end of the wage scale at around $28-$30 an hour plus time and a half for overtime. That's likely due to the fact that contract project are not as abundant in those metropolitan areas. See this unofficial but handy wage and salary chart for more info.

2. **Job Description and Role** - Most contract attorneys that perform straight document review get the standard rate for their geographical area. However for mega projects, individuals may sometimes be brought on board to serve as team leaders or quality control reviewers. They are not always guaranteed or given a higher rate, but when they are, the rate is usually a few dollars extra at around $37 an hour for D.C.

   Specialized projects that require foreign language knowledge and review skills on the other hand pay substantially more. More common languages like Spanish and French generally pay around $40 an hour. Slightly more obscure languages like Norwegian, Finnish, or Russian pay around $45-50. The premium, most difficult to staff projects involve the Asian languages such as Chinese, Japanese, or Korean. Asian language projects can fetch anywhere from $50 to 65 an hour with time and a half for overtime. If you are an attorney that can translate Asian language documents, I encourage you to price gouge your local staffing agency up to $70+ if you can. They will bend over backwards for you and more because your skills are a rarity and in extreme demand.

3. **Bar Status** - Interestingly, even though the DC Bar has already opined that being barred in D.C. is a prerequisite to performing contract attorney work in the state, many D.C. agencies still continue to staff projects using non-D.C. barred J.D.'s. However, many agencies do express high preference for those with the proper D.C. license and most will refuse to pay the standard contract attorney rate without it. Expect to be either rejected outright for project submission if you don't have your D.C. bar certification or be offered only a paralegal's wage of about $25 an hour.

4. **Experience** - Fortunately or unfortunately depending on how you look at it, contract attorney work consisting of mainly document review does not require substantial legal experience. However, for those of you with more years of document review management experience, you may have more opportunities to be assigned to the privilege review and quality control team. Keep in mind that although it's sometimes negotiable, usually you aren't offered any extra compensation for the higher level work. That's probably why some people avoid second level or

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privilege review work.

5. **Length Of Project** - Longer duration projects tend to pay slightly less than those that have shorter duration, at least initially when agencies are fielding candidate offers. The rationale is that - what you lose in wage rate you gain in longevity. From my experience, most people tend to glaze over the duration aspect and prefer to lock onto projects that offer short sprints of high billable hour opportunities. It's just something I've observed and is not necessarily a consistent occurrence.

6. **Size Of Staffing Agency** - Due to their greater bargaining position, bigger staffing agencies are less generous about negotiating with contract attorneys over their wage rates and more willing to withhold benefits and posture. Small potato agencies have little choice but to negotiate sometimes. They can't compete on brand recognition so they have to offer greater incentives to entice contract attorneys - thus they usually pay more. For a project that a large agency like Ajilon may pay the standard $35 an hour for, a smaller agency may be willing to shell out $36-$38 an hour. Go with the smaller agencies if you can, although it is true, the number of projects they have to offer simply isn't as high as the big boys.

7. **Market Supply and Demand** - When the market's booming, contract attorneys rake it in. Unfortunately the boom has past and we are currently in a bust period as evidenced by all the recent law firm layoffs. The market is pretty bad right now. There are projects out there but most are for shorter durations and offering less hours. Also, expect to wait longer than usual to come across an offer. Without consecutive, multiple, and simultaneous demands for contract attorneys, wage rates will stagnate in the interim. However, when the market eventually picks up again in the near future and law firm business returns, demand pressure should drive wage rates up. That's my hope. It's happened in the past before and it should happen again.

8. **Specific Law Firm Managing the Project** - Certain law firms are well known for running generous projects - Skadden, Arps, Slate, Meagher & Flom for one. They seem to have a reputation for providing projects that offer full meals, transportation reimbursement, and extended working opportunities for their contract attorneys. They also have a propensity to offer slightly higher wage rates for team leader type positions. Of course, it's not always this way for every project they manage, but it's just an interesting tidbit to keep in mind when you hear about projects.

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TEMPORARY ATTORNEY SALARY CHART

Last Updated: 5/02/07 **Legend: Market Leader | Market Follower | Below Market**

New York- **$41.80 FLAT/$35.82 + OT**
Philadelphia- **$34.08 FLAT/$29.21 + OT**
Washington D.C.- **$39.22 FLAT/$33.61 + OT**

Law Firm	Agency	Location	Hours	Hourly Rate	Allowance
Willkie Farr	Strategic	New York	Unknown	$40-44 +OT	Unknown
Willkie Farr	Hire Counsel	New York	50 hrs./ strict breaks	$40 FLAT	Dinner after 7:30/Car
Willkie Farr	Update	DC	60 hr. minimum	$40 + OT	$20 food
Fried Frank	Update	New York	M-F (10-8pm) Sat or Sun (10-6pm)	$35 + OT	Unknown
Milberg Weiss	Yorkson	New York	40-60 hrs. flex	$35 + OT	Unknown
Morrison Foerster	Unknown	San Francisco	Unknown	$40 + OT	Unknown
Morrison Foerster	Unknown	Los Angeles	Unlimited Flex	$50 + OT	Lunch/Dinner
Shook Hardy	Kelly Services	Kansas City	M-F (8-5 or 9-6pm)	$20-22 + OT	None
Gibson Dunn	Legal Source	DC	8:30-6:30 STRICT	$30 FLAT	Nothing
Winston Strawn	Legal Source/AG	DC	Unlimited Flex	$30 + OT	Group Meal/No Car
Winston Strawn	Landmark	San Francisco	40-60 hrs. per week	$40 + OT	Unknown
Kirkland Ellis	Legal Source/AG	DC	Limited O.T.	$29+ OT	Group Meal
Sullivan Cromwell	Legal Source/AG	DC	Strict 9-7	$30 + OT	None
Sullivan Cromwell	Strategic/De Novo	New York	Strict hrs. no flex	$35 + OT	Dinner/Car
Weil Gotshal	Update	New York	Must work past 7pm	$35 FLAT	$7.50 Dinner

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Huron Consulting Unknown Florida/Carolinas Unknown $20
+ OT None

Wright Robbinson Bizport Richmond Unknown
$28 + OT None

BDO Seidman Strategic New York Unknown $35
+ OT (admitted) None $29

-32 + OT (JD's)

Steptoe Johnson Legal Placements Rockville, MD 40 hrs., limited O.T $35
+ OT Unknown

Howrey Caleb/Palmer/SC Falls Church, VA 40-55 strict hrs. per week $35 +
OT Unknown
LP/Lex./Hudson (M-F, 8-8pm only)

Covington LP/Clutch
DC Unknown $35 + OT Unknown

O'Melveny Myers Unknown Los Angeles 50-70 hrs. per week
$40 + OT Lunch/Dinner

Quinn Emmanuel EP Dine New York flexible/work from home $30 +
OT Dinner/Car

"Anita" Project Update New York Set
hours $38/40 +OT Dinner/Car

Latham & Watkins Compliance New York Unknown
$35 + OT None/holiday OT

Boies Schiller EP Dine/SC New York Unknown
$30 FLAT None/ $5 an hr.bonus

Skadden Arps Lex./HireCounsel New York Mandatory 72 hrs. $43
+ OT Dinner/Car

Skadden Arps Hudson DC open(7-10pm) 60 min. flex
$35 + OT $25 Dinner/Car

Unknown Counsel on Call Nashville frequent shut-downs
$32.50 FLAT None

Unknown Special Counsel Nashville Unknown
$35 FLAT None

Hunton Williams De Novo New York Unknown
$50 + OT Unknown

DLA Piper Update New York
Unknown $40 FLAT Unknown

Cleary Gottlieb Update/Hud./Lex. New York flex- M-F(8-9pm)/S(8-6pm) $35 +
OT $15 food/taxi (past 8)

Cleary Gottlieb Update/Hud./Lex. DC talking prohibited $35
FLAT None

Jones Day Staffwise/Clutch DC Unlimited flex.
$42 + OT Dinner/Car

Barrack Rodos Unknown Philadelphia
Unknown $30-35 FLAT None

Schiffrin Barroway Unknown Philadelphia Unknown $25-
28 FLAT None

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Dechert Unknown Philadelphia Hours vary widely $30-
35 + OT None

Pepper Hamilton Various Agencies Philadelphia Unknown $28-38
+ OT None

Morgan Lewis Update/Hud./Staffwise Philadelphia frequent shut downs/firings $28-32 +
OT Dinner/Car

Greenberg Taurig Unknown New York Unlimited
$35 + OT None

Wilmer Hale Update Boston Minimal
O.T . Unknown Unknown

Ropes Gray Update Boston Minimal
O.T. Unknown Unknown

Unknown Lumen Legal Cleveland 30/40 hrs. per
week $21-24 + OT None

McCarter Update Newark 9:00-5:30 variable O.T.
$25 + OT None

Barasso Many Agencies Westfield No O.T., mandatory lunch $25
Flat None

Quinn Emanuel Lexolution New York
Unknown $40 Flat Dinner/Car

Quinn Emanuel Direct Hire New York
Unknown $55 + OT Dinner/Car

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EX. H

Lawyer Profile: James D. Baskin

James D. Baskin
Austin, Texas
(Travis & Williamson Cos.)

Experience & Credentials

Peer Review Rating	AV Rated.	What's this?
ISLN	909208415	

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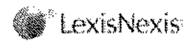

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Baskin, James D Austin , TX 78746 Baskin Law Firm/Attorney	**EDWARDS, JOHN** (D) President JOHN EDWARDS FOR PRESIDENT	**$2,100** primary	01/30/07	
BASKIN, JAMES AUSTIN, TX 78746 BASKIN LAW FIRM/ATTORNEY	DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE (D)	**$250** primary	10/26/06	
BASKIN, JAMES AUSTIN, TX 78746 BASKIN LAW FIRM/ATTORNEY	DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE (D)	**$250** primary	10/24/06	
Baskin, James Austin, TX 78746 The Baskin Law Firm/Attorney	**DOGGETT, LLOYD A MR.** (D) House (TX 25) DOGGETT FOR US CONGRESS	**$1,000**	09/11/06	
Baskin, James Austin, TX 78746 The Baskin Law Firm/Attorney	**DOGGETT, LLOYD A MR.** (D) House (TX 25) DOGGETT FOR US CONGRESS	**$1,000** primary	06/27/05	
BASKIN, JAMES D AUSTIN, TX 78746 THE BASKIN LAW FIRM	**KNOWLES, TONY** (D) Senate - AK TONY KNOWLES FOR US SENATE	**$1,000** primary	07/19/04	
Baskin, James D Mr. Austin, TX 78746 The Baskin Law Firm/Attorney	**MITAKIDES, LOUELLA JANE** (D) House (OH 03) MITAKIDES FOR CONGRESS	**$250** general	06/29/04	
BASKIN, JAMES D III AUSTIN, TX 78746 ATTORNEY	**BRYANT, WINSTON** (D) Senate - AR COMMITTEE TO ELECT WINSTON BRYANT US SENATE	**$250** primary	12/21/95	

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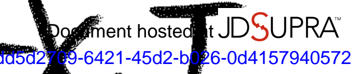
2008 DELEGATE COUNT as of 01/14/08

REPUBLICANS (1,191 needed to win)		
Mitt Romney	30	42%
Mike Huckabee	21	30%
John McCain	10	11%
Fred Thompson	6	9%
Ron Paul	2	3%
Rudy Giuliani	1	2%
Duncan Hunter	1	2%
DEMOCRATS (2,025 needed to win)		
Hillary Clinton	183	55%
Barack Obama	78	23%
John Edwards	52	16%
Bill Richardson	19	6%
Dennis Kucinich	1	0%
Mike Gravel	0	0%

count includes pledged superdelegates source: CNN.com

US WAR SHEET

	Iraq	Afghanistan	
Days	1,762	2,290	
GIs Killed in Action	3,183	276	DoD
Non-Hostile GI Deaths	729	132	DoD
GIs Severely Wounded	12,918	1,126	DoD
Current Troop	160,000	27,000	Brookings



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The Law Offices of Roger M. Adelman

Civil & Criminal Trial, White Collar Crime, Professional & Medical Malpractice, Complex Litigation

1100 Connecticut Avenue, N.W., Suite 730
Washington, District of Columbia 20036
Telephone: 202-822-0600
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The Law Offices of Roger M. Adelman

Civil & Criminal Trial, White Collar Crime, Professional & Medical Malpractice, Complex Litigation

Roger M. Adelman
Member
Email: radelman@erols.com

Practice Areas: Criminal Defense; White Collar Crimes; Class Actions; Complex Litigation; Civil Trials; Business Fraud; Medical Malpractice; Professional Malpractice.

Admitted: 1967, District of Columbia; 1969, Pennsylvania; U.S. Court of Appeals, District of Columbia Circuit and U.S. Supreme Court

Law School: University of Pennsylvania, LL.B., 1966

College: Dartmouth College, A.B., 1963

Member: District of Columbia Bar; Pennsylvania and American (Member, Sections on: Litigation; Criminal Justice) Bar Associations; Cosmos Club; Lawyers' Club of Washington.

Biography: Recipient, Charles Fahy Distinguished Adjunct Professor Award, 1989. Adjunct Professor, Evidence, Trial Practice, Criminal Law, Georgetown University Law Center, Washington, D.C., 1975-1998. Faculty Member, Federal Judicial Center education programs for federal judges and taught in the Trial Advocacy Program, Harvard Law School. Frequent lecturer, trial practice, litigation and evidence before professional, academic, and law enforcement audiences. Assistant U.S. Attorney, Washington, D.C., 1969-1987. Partner, Kirkpatrick & Lockhart, Washington, D.C., 1988-1997. Senior Deputy Independent Counsel, Washington, D.C., 1996. Co-Founder, Master of the Bench, Counselor, President (2005-2006), William B. Bryant American Inn of Court. Fellow, American College of Trial Lawyers.

Born: Norristown, Pennsylvania, June 25, 1941

ISLN: 909536525

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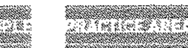

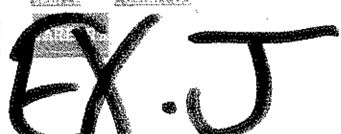

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Human Rights Litigation
Mass Tort / Environmental Litigation
Securities Litigation

From 1971 through 1978, Mr. Schreiber was a United States Magistrate Judge in the United States District Court for the Southern District of New York where he conducted more than 1,500 criminal and 3,500 civil pretrial hearings and settled approximately 1,000 civil cases. In addition to trying numerous civil and criminal cases, Mr. Schreiber supervised pretrial practice in derivative, class and complex actions in the admiralty, antitrust, aviation, securities, directors' and officers' and product liability fields, including Berkey v. Kodak, Litton v. ATT, the Penn Central Commercial Paper litigation, the New York Times and Readers' Digest gender discrimination, the Argo Merchant-Nantucket stranding, and the Tenerife 747 collision cases.

From November 1978 to January 1982, when he joined Milberg Weiss, Mr. Schreiber served as the President and Chief Executive Officer of a unit of the Federation of Jewish Philanthropies of New York which provided centralized legal, risk management and insurance services for the Federation's hospitals, homes for the aged, and health, education and community service agencies. He was Trial Counsel from 1955 through 1971 and Resident Counsel from 1966 through 1971 of the Brooklyn office of Liberty Mutual Insurance Co.

Mr. Schreiber has been a participant in numerous special project committees for the American Bar Association and the Second Circuit. From 1960 to present, Mr. Schreiber has been the Planning and Program Chairman of more than 125 national programs the ALI-ABA and PLI Continuing Professional Education national courses of study on evidence, civil practice and employment discrimination litigation in federal and state courts. He has been a frequent lecturer at professional programs and workshops on federal and state court civil procedure, federal and state court trial evidence and federal criminal practice and procedure. Mr. Schreiber was Reporter, ABA Advocacy Task Force (1970-1971), which led to the formation of the National Institute for Trial Advocacy.

From 1972 to 1987, he served as an Adjunct Professor at Fordham Law School teaching courses in trial advocacy, product liability, mass torts and insurance disputes. He has been editor for more than 40 CLE course handbooks and major publications on civil practice and litigation, including ALI-ABA's three-volume Civil Practice Guide, Litigation in Federal and State Courts (8th ed. 1998). Mr. Schreiber is a Member, Board of Editors, Moore's Federal Practice (2d ed.).

Presently, Mr. Schreiber is Court-Appointed Special Master in Marcos Human Rights Litigation. He was Special Master in the Pan American Lockerbie cases, the Agent Orange Litigation (March 1982-January 1984), and a series of other complex federal civil cases.

Mr. Schreiber was Judicial Member, Anglo American Exchange on Civil Procedure (March 1974), and Hearing Officer, N.Y. State Master Energy Plan (fall 1979). He is the recipient of the Francis Rawle

Profile

Title: Of Counsel

Location: New York

Telephone: 212.946.9317

Fax: 212.273.4405

Email: sschreiber@milbergweiss.com

Admitted: New York, 1955

Education: B.A., City University of New York, 1952 *cum laude*
LL.B., Yale University, 1955

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Award for outstanding achievements in post-admission legal education (ALI-ABA, July 1985) and the Presidential Award, Legal Aid Society (November 1984). Mr. Schreiber is also the Founder and Co-Chair of the Ovarian Cancer Research Fund, Inc.

Mr. Schreiber is admitted to the bar of the State of New York, to the United States District Courts for the Southern and Eastern Districts of New York and to the Second Circuit Court of Appeals. He is a member of the American Bar Association, the New York State Bar Association, the Association of the Bar of the City of New York and the American Law Institute.

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AMOUNTS TO BE DEDUCTED FROM COUGHLIN STOIA LODESTAR

DESCRIPTION	AMOUNT	TOTAL
Contract Attorneys	$18,109,739	
Forensic Accountant	$2,955,864	
Economic Analyst	$1,011,808	
Investigator	$581,500	
Paralegals (Amount Claimed, $5,417,714, less $2,891,187, 22,239.9 hrs @ $130/hr)	$2,526,527	
Document Clerk	$1,619,368	
Of Counsel not affiliated with CS	$6,458,301	
TOTAL	**$33,263,107**	