UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBERT FORD, et al., Plaintiffs, v. TAKEDA PHARMACEUTICALS U.S.A., INC., et al., Defendants.	No. 1:21-cv-10090-WGY

PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND CASE CONTRIBUTIONS AWARDS FOR NAMED PLAINTIFFS

Pursuant to Rules 23(h) and 54(d)(2), Plaintiffs move that the Court approve a fee award of $7,333,333.33 and a cost award of $62,158.69 to Class Counsel, Schlichter Bogard & Denton, LLP, as well as case contribution awards of $15,000 each to Named Plaintiffs and Class Representatives Robert Ford and Phillip Schwartz.

As detailed in Plaintiffs' memorandum in support of this motion, in pursuing this case, Class Counsel bore tremendous risk, which ultimately benefitted the Class. In the face of this risk, Class Counsel, leveraging its hard-earned reputation as the foremost attorneys in 401(k) excessive fee litigation, achieved an exceptional result for the Class by efficiently obtaining a substantial monetary fund and substantial affirmative relief that will greatly benefit the Class for years to come. The requested percentage of the settlement fund is comparable to attorney's fees awards in similar cases. Accordingly, based on all the relevant factors, and for the reasons stated in Plaintiffs' memorandum, the Court should grant this motion in all respects.

Dated: January 20, 2023

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on January 20, 2023.

/s/ Jerome J. Schlichter

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MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND CASE CONTRIBUTIONS AWARDS FOR NAMED PLAINTIFFS

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Class Counsel worked diligently in litigating this matter to reach an excellent result on behalf of the Settlement Class. The $22 million settlement fund is substantial monetary compensation for Takeda's employees and retirees. The affirmative relief, which adds substantial additional value beyond the $22 million settlement fund, will benefit the class members by ensuring that they will receive ongoing valuable benefits and have a closely monitored 401(k) plan for years to come. In achieving this result, Class Counsel leveraged its pioneering and unequaled experience in 401(k) fee litigation while taking on the immense risk of losing this case outright, litigating for over two years without any compensation or guarantee of payment. Class Counsel's commitment was the same as in every case it brings: to take the case as far as needed, including through appeals, and to invest whatever expenses were required, carrying those expenses for as long as necessary.

This settlement was reached because of Class Counsel's hard-earned and acknowledged reputation as the pioneering law firm in 401(k) excessive fee litigation—a field Class Counsel *created*—along with its diligent work in this case. Class Counsel spent one year and nine months investigating the 401(k) industry, developing a deep understanding of industry practices, and identifying practices in some plans resulting in excessive fees and conflicts of interest, before filing any cases. Class Counsel took to trial the first two 401(k) excessive fee cases that have been tried in United States history, the first of which, *Tussey v. ABB, Inc.*,746 F.3d 327, 339 (8th Cir. 2014) *cert denied*, 574 U.S. 991 (2014), resulted in a landmark favorable judgment for plaintiffs. That case had two unsuccessful appeals followed by remandments and took over 12 years. It entailed over 27,000 attorney hours and very substantial expenses. Declaration of Jerry Schlichter ("Schlichter Decl.") ¶ 37.

In the second—*Tibble v. Edison Int'l*, 729 F.3d 1110 (9th Cir. 2013), *cert. granted*, 573

U.S. 991 (2014)—the United States Supreme Court granted a writ of certiorari at Class Counsel's request, accepting its first ever 401(k) excessive fee case in its history. In a unanimous 9-0 holding, the Supreme Court ruled in favor of Class Counsel's clients, the *Tibble* plaintiffs, holding that there is an ongoing duty of 401(k) plan fiduciaries in all 401(k) plans to monitor investments and remove imprudent funds.

Under the "common fund" doctrine, an attorney who succeeds in creating a fund for the benefit of the class is entitled to an award of reasonable attorney's fees and his expenses from the fund as a whole and prior to the distribution of the balance to the Class. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 77 (D. Mass. 2005) (Young, C.J.); *Tracey v. Mass. Inst. of Tech.*, No. 16-11620, ECF NO. 317, at 1 (D. Mass., May 29, 2020) (Gorton, J.); *Gordan v. Mass. Mut. Life Ins. Co.*, No. 13-30184, 2016 U.S. Dist. LEXIS 195935, at *4 (D. Mass. Nov. 3, 2016) (Ponsor, J.); *Hill v. State St. Corp.*, No. 09-12146, 2014 U.S. Dist. LEXIS 179702, at *42–44 (D. Mass. Nov. 26, 2014) (Dein, J.); *In re Lupron Mktg. & Sales Practices Litig.*, No. 01-10861, 2005 U.S. Dist. LEXIS 17456, at *9 (D. Mass. Aug. 17, 2005) (Stearns, J.). "Moreover, courts in this district have recognized that an award from a common fund is appropriate in an ERISA class action." *Gordan*, 2016 U.S. Dist. LEXIS 195935, at *6.

In this case, an award of a one-third fee, calculated based on the monetary relief alone, is an appropriate and reasonable award considering Class Counsel's success in securing a very substantial recovery for the class by leveraging its well-documented, pioneering role in this area of litigation. An award of one-third is also consistent with fee orders from numerous other federal courts, including in this district, that have witnessed, first-hand, Class Counsel's substantial efforts and skill, and the staggering demonstrated risk Class Counsel assumes in

bringing such unique cases. Moreover, a one-third fee is the amount agreed to by each of the named Plaintiffs. Schlichter Decl. ¶ 33.

However, the class will receive much more. The non-monetary relief, which Defendants will implement as part of the settlement, was insisted upon by Class Counsel, and provides substantial additional economic value to all class members for years to come. That relief compels the Committee to ensure it is fulfilling its duties by meeting sufficiently often and receiving annual training. It also compels the retention of an independent consultant, the consideration of important factors in administering the Plan, and a competitive evaluation of the Plan recordkeeping and administrative services. Doc. 95-1 § 10. Courts consider the value of affirmative relief that supplements the monetary recovery in determining a fee award. *See Gordan*, 2016 U.S. Dist. LEXIS 195935, at *6–7; *see also Beesley v. Int'l Paper Co.*, No. 06-703, 2014 U.S. Dist. LEXIS 12037, at *5–6 (S.D. Ill. Jan. 31, 2014) Thus, the requested fee represents less than one-third of the settlement's *total* value. Moreover, Class Counsel has taken on the risk of the settlement's disapproval, the cost of ongoing monitoring of Plaintiffs' 401(k) plan for three years in the future, and the risk and cost of any enforcement action needed for the next three years, which it will bring without cost to the class if needed.[1]

Accordingly, the Court should award Class Counsel a fee of $7,333,333.33 (one-third of the monetary recovery only). The Court should also award reimbursement of costs and expenses Class Counsel incurred in litigating this matter in the amount of $62,158.69, and a case contribution award to each named Plaintiff of $15,000 for their service in this case.

I. Background and Procedural History

Although this litigation formally began on January 19, 2021, with the filing of Plaintiffs'

[1] Class Counsel has no reason to believe that Defendant will not comply with the settlement's terms, but the risk is being borne by Class Counsel.

Complaint, Class Counsel's investigation of this matter commenced in 2020. In investigating this matter, Class Counsel's experience in litigating many fiduciary breach cases over the last decade-plus was a valuable benefit to the class as Class Counsel analyzed the fiduciary structure, selection of investment options, and administration of the Takeda Pharmaceuticals U.S.A., Inc. Savings & Retirement Plan ("Plan"). In addition to this unmatched experience and detailed investigation, Class Counsel spent months reviewing publicly filed documents, personally meeting with Class Members, researching and reviewing participant communications provided by Class Members, and researching the Plan's management structure. In advance of filing this lawsuit, Class Counsel, with the assistance of their clients, reviewed a variety of key documents related to the Plan's operation. The resulting Complaint focused on the imprudent inclusion of the Northern Trust Focus Funds, target-date collective trust investment options. Doc. 1.

The parties conducted a mediation with a nationally recognized mediator in the fall of 2021 but did not reach a settlement. Plaintiffs subsequently moved for leave to file a Second Amended Complaint ("SAC"), Doc. 39, which motion the Court granted on January 24, 2022, Doc. 49. The SAC added detail to the share class count. *See* Doc. 53 ¶¶ 89–103. Consequently, Defendants' motion to dismiss the FAC was denied as moot. Doc. 51. Defendants filed their answer and defenses to the SAC on March 7, 2022. Doc. 58. The parties held a second all-day mediation on September 13, 2022, in front of the Hon. Morton Denlow. The parties reached a settlement in principle at that mediation. The settlement included both the $22 million payment as well as nonmonetary relief involving plan improvements going forward. The parties informed the Court of their tentative agreement, and the Court directed the parties to file a motion for preliminary approval of the settlement by November 14, 2022. Doc. 94. Plaintiffs filed an unopposed motion for preliminary approval of the class settlement on November 14, 2022, Doc.

95, and moved to certify the settlement class and appoint Schlichter Bogard & Denton as class counsel. Doc. 98. On November 21, 2022, both motions were granted. Docs. 101–02. On January 4, 2023, the Court denied as moot the motion to strike the jury demand, Doc. 104, and set a fairness hearing for March 23, 2023. Doc. 103.

II. The Terms of the Proposed Settlement

After substantial investigation and effort, the settlement Class Counsel obtained confers substantial monetary relief and far-reaching affirmative relief for the Class. In addition to the $22 million settlement fund, Class Counsel successfully secured affirmative relief altering the Plan's management. Under the settlement's affirmative relief terms, for a three-year period from the Settlement Effective Date (the "Settlement Period"), the Defendants have agreed to substantial affirmative relief. Doc. 95-1 § 10. Moreover, Class Counsel will monitor compliance by Defendant with the settlement's terms, using the information required to be provided to Class Counsel by the settlement's terms. If there is non-compliance, Class Counsel has the right to bring an enforcement action within the three-year period to enforce the nonmonetary terms. Class Counsel has committed to monitor compliance and to bring such an action, if needed, at no cost to the class. Class Counsel has also committed to bear risk by agreeing to pay *half* of the settlement's costs if it is not approved. Doc. 95-1 § 11.4. In addition, an Independent Fiduciary must determine that the Settlement meets the requirements of Prohibited Transaction Class Exemption ("PTE") 2003-39 and that it and the attorneys' fees and costs are fair and reasonable. *Id.* § 3.1.

III. Argument

Given the common fund created through Class Counsel's efforts, Class Counsel is entitled to a reasonable fee award from this fund. An award of one-third of *just the monetary*

portion of the recovery is reasonable and is the fee that has been approved for Class Counsel's work in such cases by federal courts across the country. The nonmonetary changes to the Plan going forward provide important additional value for years to come. Further, the reasonableness of the fee request is confirmed by the open-ended commitment of time and money Class Counsel made at the outset of this case to take it as far as needed, as Class Counsel has made to this excessive fee litigation in every case, together with the very substantial risk of losing taken on by Class Counsel.

An example of the open-ended commitment and staggering risk can be seen in *Tussey v. ABB*. That case required a one-month trial, two appeals and two remandments, massive expenses for experts, travel, depositions and document review, and over 27,000 attorney hours spanning more than twelve years of litigation. Those advanced expenses were carried by Class Counsel, as in every case, and at risk of loss for that entire period. Only after twelve and a half years did the parties reach a settlement on March 28, 2019 *Tussey v. ABB, Inc.*, No. 06-4305, Doc. 859-001 (W.D. Mo. Mar. 28, 2019). It is a matter of record that in *Tussey*, the two defendants' legal fees alone exceeded $42 million just through trial, not including millions more in expert fees alone. *Tussey v. ABB, Inc.*, No. 06-4305, 2019 U.S. Dist. LEXIS 138880, at *11 (W.D. Mo. Aug. 16, 2019). Because that was followed by nine more years of litigation after the trial, the fees charged by defendants' counsel were far more.

Starting in 2006, when no other firm in the country had ever brought a 401(k) excessive fee claim, Class Counsel pioneered and, against massive opposition, pursued these new and untested legal theories. Numerous cases have been dismissed, and some of those dismissals have been upheld on appeal. *See, e.g., Hecker v. Deere & Co.*, 556 F.3d 575 (7th Cir. 2009); *Renfro v. Unisys Corp.*, 671 F.3d 314 (3d Cir. 2011); *Loomis v. Exelon Corp.*, 658 F.3d 667 (7th Cir.

2011); *see also Divane v. Northwestern Univ.*, 953 F.3d 980, 994 (7th Cir. 2020), *vacated and remanded*, 142 S. Ct. 737 (2022) (affirming dismissal in early 403(b) excessive fees case; the case is currently pending on remand). A later case lost at trial, meaning complete non-payment for Class Counsel after taking on extremely high costs. *See Sacerdote v. N.Y. Univ.*, 328 F. Supp. 3d 273, 317 (S.D.N.Y. 2018), *aff'd in part, vacated and remanded in part*, 9 F.4th 95 (2d Cir. 2021). After prosecuting the first full trials on excessive 401(k) fees, Class Counsel relentlessly pushed other cases to the brink of trial against formidable opponents with significant defense war chests to obtain substantial settlements and broad non-monetary relief for class members throughout the country. Class Counsel is the only law firm to have litigated ERISA fee cases heard by the Supreme Court, doing so twice and winning unanimous judgments in both. For these reasons, as explained in detail below, Class Counsel's fee request is reasonable.

A. The Court should award one-third of the settlement amount as Plaintiffs' attorneys' fees.

As noted by courts in this Circuit, in calculating attorneys' fees, the percentage-of-fund approach is the preferred approach. *In re Thirteen Appeals Arising out of the San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 307 (1st Cir. 1995); *Gordan*, 2016 U.S. Dist. LEXIS 195935, at *4–5; *In re Puerto Rican Cabotage Antitrust Litig.*, 815 F. Supp. 2d 448, 458 (D.P.R. 2011); *In re Cabletron Sys. Sec. Litig.*, 239 F.R.D. 30, 37 (D.N.H. 2006); *In re Compact Disc Minimum Advertised Price Antitrust Litig.*, 292 F. Supp. 2d 184, 189–90 (D. Me. 2003). In determining the reasonableness of class counsel's fee award in a common fund case, this Court may consider the following factors: (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections relative to the size of the settlement class; (3) the skill and efficiency of Class Counsel; (4) the complexity and duration of the litigation; (5) the financial risks of nonpayment taken on by Class Counsel; (6) the amount of

time devoted to the case by Class Counsel; and (7) the awards in similar cases. *In re Relafen*, 231 F.R.D. at 79–81. In applying these factors to this case, Class Counsel demonstrates below that the requested award is fair, reasonable, and warranted.

Although not one of the factors courts typically consider, Plaintiffs also note that they entered into contingency fee agreements with each of the named plaintiffs for one-third of any monetary recovery plus reimbursement of expenses. Schlichter Dec. ¶ 33. This is in line with typical contingency fees where a case is brought "on behalf of an individual." *Stevens v. SEI Invs. Co.*, No. 18-4205, 2020 U.S. Dist. LEXIS 35471, at *36 (E.D. Pa. Feb. 26, 2020). Were this circuit, like other circuits, *see id.*, to consider whether the fee is "commensurate with customary percentages in private contingency fee agreements," that factor would "support[] approval." *Id.* Regardless, as the negotiated fee is reasonable and commensurate with private agreements, the Court should approve Class Counsel's bargain with named plaintiffs.

1. Class Counsel obtained substantial relief benefiting tens of thousands of class members.

The $22 million in monetary compensation alone is an outstanding result for the Class in this complex and risky area of litigation. Moreover, the settlement provides for current participants to receive tax-deferred distributions in the form of direct deposits to their existing accounts, Doc. 95-1 ¶ 6.4, and it gives former participants the right to direct their distribution from the common fund into a tax-deferred vehicle, such as an IRA. *Id.* ¶¶ 6.6–6.7. The Investment Company Institute estimates the benefit of tax deferral for 20 years is an additional 18.6%,[2] meaning the actual value to the class of just the monetary portion of the settlement is $26,092,000.

[2] Peter Brady, *Marginal Tax Rates and the Benefits of Tax Deferral*, INVESTMENT COMPANY INSTITUTE (Sept. 17, 2013), available at http://www.ici.org/viewpoints/view_13_marginal_tax_and_deferral).

In addition to the monetary value of the settlement, this Court also should consider the additional value added by the affirmative or injunctive relief obtained. *Beesley*, 2014 U.S. Dist. LEXIS 12037, at *5–6 ("A court must also consider the substantial affirmative relief when evaluating the overall benefit to the class. . . . [T]his Court acknowledges the importance of taking the affirmative relief into account, in addition to the monetary relief, so as to encourage attorneys to obtain effective affirmative relief." (citing Manual for Complex Litigation (Fourth) § 21.71, at 337 (2004); *see Gordan*, 2016 U.S. Dist. LEXIS 195935, at *6–7 (considering non-monetary relief to conclude "Class Counsel's requested fee represents much less than one-third of the *total* value of the settlement"); *Bezdek v. Vibram USA Inc.*, 79 F. Supp. 3d 324, 346–47 (D. Mass. 2015) (Woodlock, J.) ("Injunctive relief has been recognized as a meaningful component of a settlement agreement.") (internal citations omitted).[3] In this case, the affirmative relief obtained by Class Counsel is powerful and will enable the class members to build their retirement assets in the future. This substantial relief is not temporary or fleeting. Rather, it will go into effect after final approval and continue to protect class members for years to come.

2. Class Counsel's unparalleled skill in 401(k) fiduciary breach class actions led to an efficient conclusion to this case.

Prior to 2006, no entity—neither the Department of Labor nor any private firm—had ever brought a case alleging excessive fees in a 401(k) plan. *See Spano v. Boeing Co.*, No. 06-743, 2016 U.S. Dist. LEXIS 161078, at *7 (S.D. Ill. Mar. 31, 2016). After receiving inquiries about the opaque nature of 401(k) plan investments and administration, Class Counsel conceived, investigated, and ultimately pioneered excessive fee litigation in 401(k) plans, and since that

[3] *See also Clark v. Experian Info. Sols., Inc.*, Nos. 00-1217, 00-1218, 00-1219, 2004 U.S. Dist. LEXIS 32063, at *54 (D. S.C. Apr. 20, 2004) (recognizing that benefits to class members included "significant monetary and non-monetary value"). *Cf. Blanchard v. Bergeron*, 489 U.S. 87, 95 (1989) (cautioning against an "undesirable emphasis" on monetary "damages" that might "short-change efforts to seek effective injunctive or declaratory relief").

time has achieved success for over 15 years in cases involving claims of excessive fees.[4] With that experience, Class Counsel has seen that, even in instances of the most blatant fiduciary breaches, establishing liability is by no means certain. In multiple early 401(k) cases brought by Class Counsel, defendants obtained outright dismissals.[5]

Withstanding these early losses, and persevering despite withering opposition, Class Counsel tried the first ever 401k fee case (*Tussey v. ABB*, *supra*) and then obtained settlements in several 401(k) fee cases. Federal judges in these other fiduciary breach cases settled by Class Counsel have commented on Class Counsel's efforts and success in pursuing these claims and obtaining tremendous settlements in this newly created and complex area of the law. In approving fees of one-third of the monetary recovery in a similar case, United States District Judge Michael Ponsor of this District commended this firm's "extraordinary resourcefulness, skill, efficiency and determination," crediting the "exceptional result in th[e] case" is "Class Counsel's unique expertise and outstanding effort." *Gordan*, 2016 U.S. Dist. LEXIS 195935, at *7–8. Numerous other District Courts have echoed these sentiments pertaining to Class Counsel.

In *Nolte v. Cigna Corp.*, No. 07-2046, 2013 U.S. Dist. LEXIS 184622 at *8 (C.D. Ill. Oct. 15, 2013), United States District Judge Harold A. Baker, awarding a one-third fee, described Class Counsel as the "preeminent firm in 401(k) fee litigation" and noted that it has "invested . . . massive resources and persevered in the face of the enormous risks of representing employees and retirees in this area." What's more, the firm "act[ed] as a private attorney general, risking breathtaking amounts of time and money while overcoming many obstacles for the benefit of

[4] Gretchen Morgenson, *A Lone Ranger of the 401(k)s*, NEW YORK TIMES (Mar. 29, 2014), available at http://www.nytimes.com/2014/03/30/business/a-lone-ranger-of-the-401-k-s.html?_r=0; Floyd Norris, *What a 401(k) Plan Really Owes Employees*, NEW YORK TIMES (Oct.16, 2014), available at https://www.nytimes.com/2014/10/17/business/what-a-401-k-plan-really-owes-employees.html.

[5] Further, proving a breach is just part of the challenge. Given the stakes, issues of causation and the proper measure of damages are hotly contested and result in protracted litigation. *See Tussey*, 746 F.3d at 339.

employees and retirees." *Nolte*, 2013 U.S. Dist. LEXIS 184622 at *9. In *Sweda v. Univ. of Pennsylvania*, No. 16-4329, 2021 U.S. Dist. LEXIS 121336, at *10 (E.D. Pa. June 28, 2021), U.S. District Judge Gene E.K. Pratter, appointing the firm class counsel, wrote that the firm's work "has been acknowledged as leading to fee reductions in the industry that total almost $2.8 billion in annual savings for American workers and retirees." *Id.* (cleaned up). Numerous other cases have noted this impact as well. *See, e.g.*, *Kelly v. Johns Hopkins Univ*, No. 16-2835, 2020 U.S. Dist. LEXIS 14772, at *12 (D. Md. Jan. 28, 2020); *Spano*, 2016 U.S. Dist. LEXIS 161078, at *9; *Beesley*, *supra*, 2014 U.S. Dist. LEXIS 12037, at *10.

3. The legal and factual issues in this case were difficult, complex, and novel.

Complex, hotly contested, and protracted litigation is the hallmark of diligently litigating ERISA 401(k) fiduciary breach class actions. Indeed, prosecuting these actions requires a willingness on the part of counsel to risk enormous amounts of time and money. That Class Counsel not only pioneered this litigation but was virtually alone in handling ERISA fiduciary breach cases of this sort for years further weighs in favor of the requested award. Since Class Counsel pioneered this field of litigation, the Supreme Court has twice stepped in to set forth the law (both in cases Class Counsel litigated). First, in *Tibble*, the Court held that plan fiduciaries have an ongoing duty to monitor investments and remove imprudent funds. 575 U.S. at 530. Second, in *Hughes v. Northwestern Univ.,* 142 S. Ct. 737 (2022), it held that the presence of prudent options in a plan is not enough; plan sponsors must monitor each fund and remove every imprudent option. 142 S. Ct. at 741. The Supreme Court does not typically wade into the mundane. That it has twice granted certiorari in Class Counsel's cases (each time ultimately siding unanimously with the firm) is itself indicative of the complexity and difficulty of the subject matter, and it certainly illustrates their novelty.

In awarding Class Counsel one-third of the monetary portion of the settlement in a

similar 401(k) fee case, U.S. District Judge Joe Billy McDade observed that this litigation is "not only dependent on the statute but also on various regulations that implement ERISA," and thus is "relatively unique with limited case authority in support." *Martin v. Caterpillar, Inc.*, No. 07-1009, 2010 U.S. Dist. LEXIS 82350, at *7 (C.D. Ill. Aug. 12, 2010). As in the *Martin* case, the settlement in this case "represents a significant boon to class members in light of the complexity of this litigation, the potential for protracted litigation, and the strength of the available defenses recognized in *Hecker*." *Id.*

4. Class Counsel incurred the significant risk of loss and resulting nonpayment.

These cases involve risk and perseverance against heavy opposition. Defendants asserted substantial and potentially case-ending defenses to all of Plaintiffs' claims. The first two iterations of the complaint were met with motions to dismiss. The Court indicated at the motion to dismiss hearing that Defendants' arguments were strong, the claims just "*squeak[ed] by*," Doc. 41 at 16:5–13 (emphasis added), and a motion for summary judgment would get the case "into the weeds[.]" *Id*. at 16:12–13. There was a substantial risk of extended litigation followed by loss and non-payment. Defendants also had moved to strike Plaintiffs' jury demand, a motion that, if granted, might have substantially impacted the value of the case.

5. Class Counsel expended significant time and resources.

To date, Class Counsel has spent over 3,400 hours of attorney time and over 195 hours of legal assistant time litigating this case. A breakdown of these hours, by attorney experience, is attached. *See* Declaration of Heather Lea ("Lea Decl.") at ¶ 5. This time was spent investigating the Plan, building the case, meeting with named plaintiffs, consulting with experts, briefing dispositive motions, amending the complaint to avoid dismissal, preparing for and attending mediations, and answering motions that could have significantly impacted the value of the case.

Additional time will be spent working with the settlement administrator, working with the independent fiduciary, who will review all aspects of the case, addressing notice issues, and responding to and explaining to class members with questions about the settlement terms. Significant time will be spent handling class member inquiries and communicating and resolving issues with the settlement administrator. Moreover, additional monitoring time will be spent over the future three-year enforcement period. If there is a dispute regarding Defendants' compliance with the terms of the settlement, Class Counsel reasonably expects its additional time to bring an enforcement action (which it would do without compensation) to total over 1,000 hours. Class Counsel will continue to carry substantial risk. In particular, Class Counsel has voluntarily undertaken the risk of paying *half* of the settlement's costs incurred, including the notice, if the settlement fails *for any reason*. Doc. 95-1 § 11.4.

6. Fee awards in similar cases support Class Counsel's requested attorney fee award here.

In ERISA class action settlements in this District, courts have awarded the plaintiffs' attorneys a one-third fee. *E.g.*, *Gordan*, 2016 U.S. Dist. LEXIS 195935, at *11; *Glass Dimensions, Inc. v. State Street Bank & Tr. Co.*, No. 10-10588, Doc. 408 (D. Mass. May 12, 2014) (Saylor, J.) (approving a one-third fee from a $10 million recovery on behalf of class members); *Bilewicz v. FMR LLC*, No. 13-10636, 2014 U.S. Dist. LEXIS 183213 at *18–19 (D. Mass. Oct. 16, 2014) (approving a one-third fee from a $12 million recovery on behalf of 55,862 class members). In numerous other ERISA excessive fee cases factually similar to this case, federal courts consistently have awarded Class Counsel a fee of one-third the settlement fund.[6] Lea Decl. ¶22. These cases perfectly fit the "fee awards in similar cases" analysis. These cases

[6] As stated above, each of the named Plaintiffs in this case agreed to a one-third contingency fee with Class Counsel. Schlichter Decl. ¶ 33. Contingency fee arrangements are consistent with this area of practice. *Id*. ¶¶ 32-33.

involved similar, and in some instances nearly identical, claims of excessive fees and fiduciary breaches in 401(k) and 403(b) plans. All were handled by Class Counsel. A one-third fee is not merely permissible in this case; it is demonstrably appropriate.

B. A lodestar cross-check confirms the fee is appropriate.

1. The lodestar multiplier is appropriate to compensate Class Counsel for its efforts and the risk it undertook.

As noted above, in awarding fees in a common fund case, the First Circuit prefers the percentage-of-fund approach. As noted by the First Circuit, the percentage-of-fund approach offers distinctive advantages including: (1) it is less burdensome to administer; (2) it reduces the possibility of collateral disputes; (3) it enhances the efficiency throughout the litigation; (4) it is less taxing on judicial resources; and (5) it better approximates the workings of the marketplace. *In re Thirteen Appeals*, 56 F.3d 295 at 307. The other approach in determining fees, the lodestar approach, multiplies the reasonable hours spent in litigating the case by the reasonable hourly rates of the attorneys who worked on the case. *Id.* at 305. The rates must be in line with attorneys with commensurate skill and experience. *See In re Prudential Ins. Co. of Am. SGLI/VGLI Contract Litig.*, No. 11-02208, 2014 U.S. Dist. LEXIS 170100, at *23 (D. Mass. Dec. 9, 2014) (Ponsor, J.). A multiplier of the lodestar rate is used to reflect the results and to compensate for risk. *In re Volkswagen & Audi Warranty Extension Litig.*, 89 F. Supp. 3d 155, 165 (D. Mass. 2015) (Young, J.) (multipliers are an accepted means of enhancing a lodestar to appropriately reflect, for example, the scale of the results achieved by the prevailing counsel or the risks counsel took in pursuing contingent fees).

Because trial courts in the First Circuit generally favor the percentage-of-fund method for awarding fees in common fund cases, a lodestar calculation is not required. *In re Thirteen Appeals*, 56 F.3d at 307. A lodestar analysis may nevertheless be performed as simply a cross-

check to ensure that the percentage award is fair and reasonable. *In re Volkswagen*, 89 F. Supp. 3d at 163. As demonstrated below, a lodestar cross-check demonstrates that Class Counsel's requested fee is appropriate.

Because 401(k) excessive fee litigation is uncommonly complex and specialized, the hourly rate market for this type of work is a national rate.[7] *Kelly*, 2020 U.S. Dist. LEXIS 14772, at *18 ("As courts have repeatedly recognized, complex ERISA class action litigation, such as this, involves a national market, particularly given that no attorney or law firm ever filed an excessive fee ERISA case before Class Counsel."). Indeed, national rates were used by all the courts which did lodestar checks in each of the cases cited in the chart in the preceding section.

Class Counsel has had its rates approved repeatedly by federal courts across the country. Most recently, the Eastern District of Pennsylvania approved Schlichter Bogard & Denton's attorneys' fees of one-third of the settlement proceeds in an ERISA excessive fee class action, relying, in part, on 2020 hourly rates used in a lodestar cross-check. *Sweda v. Univ. of Pennsylvania.*, No. 16-4329, 2021 U.S. Dist. LEXIS 239990, at *19-20 (E.D. Pa. Dec. 14, 2021). That lodestar calculation, based on 2020 rates, used the following rates: for attorneys with at least 25 years of experience, $1,133.30 per hour; for attorneys with 15-24 years of experience, $962.24 per hour; for attorneys with 5-14 years of experience, $694.95 per hour; for attorneys with 0-4 years of experience, $523.89 per hour; and for paralegals and law clerks, $352.82 per hour. *Id*.

Class Counsel has brought forward those 2020 rates to 2023 using percentage increases identified by national expert Sanford Rosen. The national 2023 rates have gone significantly up from the year 2020. *See* Declaration of Sanford Rosen ¶¶ 31-35, 73. Based on Class Counsel's

[7] It is important to note, however, that Class Counsel works solely on a contingent fee basis.

previously approved rates, together with appropriate percentage increases over the last three years, Plaintiffs request the following rates for their lodestar calculation: for attorneys with at least 25 years of experience, $1,370 per hour; for attorneys with 15-24 years of experience, $1,165 per hour; for attorneys with 5-14 years of experience, $840 per hour; for attorneys with 0-4 years of experience, $635 per hour; and for paralegals and law clerks, $425 per hour.

The requested rates here are not only in line with Class Counsel's recent fee awards; they are below the rates of highly skilled attorneys nationwide. It has become commonplace for leading attorneys to charge a much higher rate than the highest rate here—as much as $1,500–$1,875 per hour[8]—and rates for attorneys in specialized fields have reached $2,000 or more per hour.[9] Litigating an ERISA 401(k) breach of fiduciary duty claim involves managing a case with sparse yet rapidly evolving law, extremely complex facts, and analysis of a vast array of documents. It requires deep knowledge of 401(k) industry practices, as demonstrated by the fact that Class Counsel spent a year and nine months investigating the industry before filing any claim. *See Lalonde v. Textron, Inc.*, 369 F.3d 1 at 6 (1st Cir. 2004) (noting the sparse jurisprudence relating to ERISA breach of fiduciary duty claims). It also requires a depth of understanding of retirement industry practices and the ability to locate and engage with experts in investment management, fiduciary practices, recordkeeping, finance, and criteria for benchmarking investment performance. Thus, ERISA litigation is one such field for which the top attorneys command top rates. Class Counsel is the acknowledged preeminent firm in this field, brought this type of action before anyone else did, had the first ever trial of such a case, had the only two Supreme Court cases in the field (both unanimous successes), has developed

[8] Debra Cassens Weiss, *BigLaw Partner's Hourly Billing Rate of Nearly $2,500 Draws Objection from Bankruptcy Trustee*, ABA JOURNAL (May 25, 2022), available at https://www.abajournal.com/news/article/biglaw-partners-hourly-billing-rate-of-nearly-2500-draws-objection-from-bankruptcy-trustee

[9] *Id.*

the leading case precedents in the field, and has had the best results for its clients. These rates are therefore reasonable given the specialized area of law, Class Counsel's creation and development of the field of 401(k) excessive fee litigation, and its skill, reputation, and expertise.

Class Counsel has spent 3,433 hours of attorney time, along with 195 hours of legal assistant time, litigating this case. This sum does not include local counsel's fees for its involvement and time in the case, which will come out of the fee awarded by the court and paid to local counsel. This sum also does not include the substantial additional time that will be spent with the many tasks before the final approval hearing, the final hearing itself, the settlement monitoring time over the three-year enforcement period, or the risk of time that will be spent if Class Counsel must bring an enforcement action. A breakdown of these hours by attorney experience is attached. *See* Lea Decl. ¶ 5. At these rates, the lodestar is 2.41.

In cases where risk is immense and the likelihood of receiving little or no recovery is a distinct possibility, a court may apply a multiplier to compensate the attorneys for the risk of nonpayment. *Hill*, 2014 U.S. Dist. LEXIS 179702, at *46 ("Many cases recognize that the risk [of non-payment] assumed by an attorney is perhaps the foremost factor in determining an appropriate fee award." (quoting *In re Lupron Mktg. & Sales Pracs. Litig.*, 2005 U.S. Dist. LEXIS 17456 at *15 (Stearns, J.). Here, Class Counsel endured an enormous risk of loss resulting in non-payment, not only considering the novel nature of this case, but also considering the dismissals in other cases and the statements made by the Court in relation to Defendants' motion to dismiss.

Class Counsel's requested fee of $7,333,333.33 is less than 2.5 times the lodestar. Given the complexity of this case, this multiplier is eminently reasonable and within the parameters of those approved by other courts. *See, e.g.*, *New Eng. Carpenters Health Benefits Fund v. First*

Databank, No. 05-11148, 2009 U.S. Dist. LEXIS 68419, at *8 (D. Mass. Aug. 3, 2009) (Saris, J.) (awarding a fee representing a multiplier of approximately 8.3 times the lodestar); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 371 (S.D.N.Y. 2002) (multiplier of 4.65); *see also In re Rite Aid Corp. Secs. Litig.*, 146 F. Supp. 2d 706, 736 n.44 (E.D. Pa. 2001) (concluding that, under the cross-check approach, a lodestar multiplier in the range of 4.5 to 8.5 was "unquestionably reasonable"); *In re RJR Nabisco Sec. Litig.*, No. 88-905, 1992 U.S. Dist. LEXIS 12702, at *16, *22 (S.D.N.Y. 1992) (multiplier of 6).

2. Class Counsel should not have its fee reduced because of its efficiency and reputation.

Although this case settled relatively earlier than some of Class Counsel's 401(k) fee cases, Class Counsel should not be penalized for its pioneering work and track record, both of which played a powerful role in achieving the early settlement. Indeed, the lodestar method has been criticized for placing too heavy an emphasis on the amount of time spent, which incentivizes attorneys to "pad" their hours rather than achieving efficient results for the class. *See Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 122 (2d Cir. 2005) (lodestar method "create[s] an unanticipated disincentive to early settlements, tempt[s] lawyers to run up their hours, and compel[s] district courts to engage in a gimlet-eyed review of line-item fee audits") (alterations in original) (citations and internal quotations omitted). In this case, Class Counsel's diligent efforts and formidable reputation, based on past cases, as tenacious litigators with a track record of 401(k) fee cases which have been taken as far as they can be taken, resulted in a tremendous settlement. The class benefits from this speedy resolution.

The class will receive compensation and will be able to invest the settlement funds immediately, rather than waiting the better part of a decade as other classes in similar 401(k) excessive fee cases have had to do. In *Spano*, for example, the class waited nine years to see any

recovery. *Spano*, 2016 U.S. Dist. LEXIS 161078, at *7 (settlement came after Class Counsel litigated for nine years). In *Tussey*, *supra*, after two appeals, the class received its money over 12 years after the litigation began. Likewise, in *Tibble*, *supra*, it took about 12 years for the class to receive its money. *See* 525 U.S. at 525 (case brought in 2007); *Tibble v. Edison Int'l*, 789 F. App'x 586 (9th Cir. 2020) (concluding final appeal). *Hughes*, meanwhile, is still ongoing. Filed in 2016 (as *Divane v. Northwestern Univ.*), the case has been to the Seventh Circuit and the Supreme Court and is now pending on remand in the Seventh Circuit. *See* 142 S. Ct. at 740. Reaching the settlement now (as opposed to six or nine or twelve years later) gives the Class tax deferred compensation for past losses now, along with the earnings that compensation will provide to build their retirement assets. The valuable affirmative relief will go into effect now, as opposed to years from now, allowing the class to achieve years of savings and an improved plan before they would have occurred after a successful trial, if that trial had been successful.

C. The Court should also award reimbursement of Class Counsel's costs.

"Lawyers who recover a common fund for a class are entitled to reimbursement of litigation expenses that were reasonably and necessarily incurred in connection with the litigation." *Hill*, 2014 U.S. Dist. LEXIS 179702, at *53 (citing *In re Fidelity/Micron Sec. Litig.*, 167 F.3d 735, 737 (1st Cir. 1999); *Latorraca v. Centennial Techs. Inc.*, 834 F. Supp. 2d 25, 28 (D. Mass. 2011) (Gorton, J.). Class Counsel has kept costs here to a minimum. The Court should award reimbursement of the $62,158.69 in costs and expenses.

D. The Court should award each named Plaintiff case contribution awards.

In their discretion, courts typically award special compensation to the class representatives in recognition of the time and effort they have invested for the benefit of the class. *See, e.g.*, *In re Relafen*, 231 F.R.D. at 82. In this case, Class Counsel requests a contribution award in the amount of $15,000 for each named plaintiff. "A substantial incentive

award is appropriate in [a] complex ERISA case given the benefits accruing to the entire class in part resulting from [named plaintiff's] efforts." *Savani v. URS Prof'l Solutions LLC*, 121 F. Supp. 3d 564, 577 (D. S.C. 2015) By requesting and obtaining critical documents regarding the Plan, working with Class Counsel in developing the case, and committing to the case for the duration, they aided Class Counsel's investigation and ability to prepare a detailed complaint as well as knowing that the case would have named plaintiffs no matter its length. Moreover, they took great personal and, as illustrated in *Hecker*, financial risk in having a judgment against them for Defendants' costs. *See Hecker*, 556 F.3d at 591 (affirming cost award of $54,396.57 against plaintiffs); *see also Beesley*, 2014 U.S. Dist. LEXIS 12037, at *13–14 (risks of acting as named plaintiff in ERISA action include alienation from employers or peers). Thus, a case contribution award of $15,000 for each named plaintiff is reasonable and fair.

IV. Conclusion

For the foregoing reasons, the Court should: (a) award Class Counsel attorney fees in the amount of $7,333,333.33; (b) award Class Counsel reimbursement of reasonable costs and expenses in the amount of $62,158.69; and (c) award each named Plaintiff $15,000 as a case contribution award for their assistance in prosecuting this case.

Dated: January 20, 2023

Respectfully submitted,

/s/ Jerome J. Schlichter
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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on January 20, 2023.

/s/ Jerome J. Schlichter

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBERT FORD, et al., Plaintiffs, v. TAKEDA PHARMACEUTICALS U.S.A., INC., et al., Defendants.	No. 1:21-cv-10090-WGY

DECLARATION OF JEROME J. SCHLICHTER

I, Jerome J. Schlichter, under penalty of perjury pursuant to 28 U.S.C. §1746, declare as follows:

1. I am the founding partner of the law firm of Schlichter Bogard & Denton LLP, counsel for Plaintiffs. This declaration is submitted in support of Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and Case Contribution Awards for Named Plaintiffs. I am familiar with the facts set forth below and able to testify to them.

2. I received my Bachelor's degree in Business Administration from the University of Illinois in 1969, with honors, and was a James Scholar. I received my Juris Doctorate from the University of California at Los Angeles (UCLA) Law School in 1972, where I was an Associate Editor of the UCLA Law Review. I am licensed to practice law in the states of Illinois, Missouri, and California and am admitted to practice before the Supreme Court of the United States, the Second, Third, Fourth, Fifth, Seventh, Eighth and Ninth Circuit Courts of Appeal and numerous U.S. District Courts. I have also been an Adjunct Professor teaching trials at Washington University School of Law, and have been repeatedly selected by my peers for the list of The Best Lawyers in America.

3. Through over 45 years of practice, I have handled, on behalf of plaintiffs, substantial personal injury cases, civil rights class actions, mass torts claims, and fiduciary breach litigation under the Employee Retirement Income Security Act (ERISA). In 2014, I was ranked number 4 in a list of the 100 most influential people nationally in the 401(k) industry in the industry publication 401(k) Wire. Examples of class action cases I have successfully handled include: *Brown v. Terminal Railroad Association*, a race discrimination case in the Southern District of Illinois on behalf of all African-American and Hispanic employees at a railroad; *Mister v. Illinois Central Gulf Railroad*, 832 F.2d 1427 (7th Cir. 1987), a failure-to-hire class action brought on behalf of hundreds of African-American applicants from East St. Louis, Illinois at a major railroad which was tried to conclusion, successfully appealed to the Seventh Circuit Court of Appeals, and finally concluded with more than $10 million for the class after 12-and-a-half years of litigation; *Wilfong v. Rent-A-Center*, No. 00-680, 2002 U.S. Dist. LEXIS 28016 (S.D. Ill. 2002), a nationwide gender discrimination in employment case on behalf of women, which was successfully settled for $47 million and substantial affirmative relief to the class of thousands, after I defeated the defendant's attempt to conduct a reverse auction.

4. My firm has been named Class Counsel in numerous cases involving claims of fiduciary breaches in large retirement plans. *See, e.g.*, *Wachala v. Astellas US LLC*, No. 20-3882, 2022 U.S. Dist. LEXIS 24052 (N.D. Ill. Feb. 10, 2022), *Lauderdale v. NFP Ret., Inc.*, No. 21-301, 2022 U.S. Dist. LEXIS 95857 (C.D. Cal. Feb. 16, 2022); *Sweda v. Univ. of Pa.*, No. 16-4329, 2021 U.S. Dist. LEXIS 121336 (E.D. Pa. June 28, 2021); *Pledger v. Reliance Trust Co.*, No. 15-04444, 2020 U.S. Dist. LEXIS 25548, at *4 (reaffirming appointment); *Munro v. Univ. of S. Calif.*, No. 16-6191, 2019 U.S. Dist. LEXIS 226682 (C.D. Cal. Dec. 20, 2019); *Vellali v. Yale Univ.*, 333 F.R.D. 10 (D. Conn. 2019); *Kelly v. The Johns Hopkins Univ.*, No. 16-2835, Doc. 87

(D. Md. Aug. 16, 2019); *Bell v. Pension Comm. of ATH Holding Co., LLC*, No. 15-2062, 2019 U.S. Dist. LEXIS 11369 (S.D. Ind. Jan. 24, 2019); *Cunningham v. Cornell Univ.*, No. 16-6525, 2019 U.S. Dist. LEXIS 10357 (S.D. N.Y. Jan. 22, 2019); *Cassell v. Vanderbilt Univ.*, No. 16-2086, 2018 U.S. Dist. LEXIS 181850 (M.D. Tenn. Oct. 23, 2018); *Cates v. Trs. of Columbia Univ.*, No. 16-6524, Doc. 218 (S.D. N.Y. Nov. 15, 2018); *Henderson v. Emory Univ.*, No. 16-2920, 2018 U.S. Dist. LEXIS 180349 (N.D. Ga. Sept. 13, 2018); *Tracey v. MIT*, No. 16-11620, 2018 U.S. Dist. LEXIS 179945 (D. Mass. Oct. 19, 2018); *Ramsey v. Philips N. Am.*, No. 18-1099, Doc. 19 (S.D. Ill. June 12, 2018); *Sacerdote v. N.Y. Univ.*, No. 16-6284, 2018 U.S. Dist. LEXIS 23540 (S.D. N.Y. Feb. 13, 2018); *Clark v. Duke Univ.*, No. 16-1044, 2018 U.S. Dist. LEXIS 62532 (M.D. N.C. Apr. 13, 2018); *Ramos v. BannerHealth*, 325 F.R.D. 382 (D. Colo. 2018); *Troudt v. Oracle Corp.*, 325 F.R.D. 373 (D. Colo. 2018); *Pledger v. Reliance Tr. Co.*, 325 F.R.D. 373 (N.D. Ga. 2017); *Marshall v. Northrop Grumman Corp.*, No. 16-6794, 2017 U.S. Dist. LEXIS 222531 (C.D. Cal. Nov. 2, 2017); *Sims v. BB&T Corp.*, No. 15-732, 2017 U.S. Dist. LEXIS 137738 (M.D. N.C. Aug. 28, 2017); *Gordan v. Mass. Mutual Life Ins. Co.*, No. 13-30184, Doc. 112 (D. Mass. June 22, 2016); *Kruger v. Novant Health*, No. 14-208, Doc. 53 (M.D. N.C. May 17, 2016); *Kreuger v. Ameriprise Fin., Inc.*, 304 F.R.D. 559, 574 (D. Minn. 2014); *Abbott v. Lockheed Martin*, No. 06-701, Doc. 403 (S.D. Ill. Aug. 1, 2014); *Beesley v. Int'l Paper Co.*, No. 06-703, Doc. 542 (S.D. Ill. Oct. 10, 2013); *Nolte v. Cigna Corp.*, No. 07-2046, 2013 U.S. Dist. LEXIS 101165, at *6–7 (C.D. Ill. July 3, 2013); *Will v. Gen. Dynamics*, No. 06-698, 2010 U.S. Dist. LEXIS 95630, at *5–6 (S.D. Ill. Aug. 9, 2010); *Martin v. Caterpillar Inc.*, No. 07-1009, Doc. 173 (C.D. Ill. April 21, 2010); *George v. Kraft Foods Global Inc.*, 251 F.R.D. 338 (N.D. Ill. 2008); *Taylor v. United Techs. Corp.*, No. 06-1494, 2008 U.S. Dist. LEXIS 43655 (D. Conn. June 3, 2008); *Kanawi v. Bechtel Corp.*, 254 F.R.D. 102 (N.D. Cal. 2008); *Tussey v. ABB,*

Inc., No. 06-4305, 2007 U.S. Dist. LEXIS 88668 (W.D. Mo. Dec. 3, 2007); *Loomis v. Exelon Corp.*, No. 06-4900, 2007 U.S. Dist. LEXIS 46893 (N.D. Ill. June 26, 2007).

5. My work in plaintiffs' class action cases has been noted by federal judges. U.S. District Judge James Foreman, in the *Mister* case, *supra*, speaking of my efforts, stated: "This Court is unaware of any comparable achievement of public good by a private lawyer in the face of such obstacles and enormous demand of resources and finance." Order on Attorney's Fees, *Mister v. Illinois Cent. Gulf R.R.*, No. 81-3006 (S.D. Ill. 1993). District Judge David R. Herndon wrote, regarding my handling of the *Wilfong* class action *supra*:

> Class counsel has appeared in this court and has been known to this Court for approximately 20 years. This Court finds that Mr. Schlichter's experience, reputation and ability are of the highest caliber. Mr. Schlichter is known well to the District Court Judge and this Court agrees with Judge Foreman's review of Mr. Schlichter's experience, reputation and ability.

Order on Attorney's Fees, *Wilfong v. Rent-A-Center*, No. 00-680, Doc. 223 (S.D. Ill. 2002).

6. Judge Herndon also noted in *Wilfong* that I "performed the role of a 'private attorney general' contemplated under the common fund doctrine, a role viewed with great favor in this Court" and described my action as "an example of advocacy at its highest and noblest purpose." *Id.*

7. Turning specifically to my work on retirement accounts, federal judges have noted my and my firm's pioneering in this space, our tenacity, the results we have obtained both for clients and in changing the retirement fund industry, and the resulting savings experienced by workers and retirees. In approving fees of one-third of the monetary recovery in a similar case, United States District Judge Michael Ponsor of this District commended this firm's "extraordinary resourcefulness, skill, efficiency and determination," crediting the "exceptional result in th[e]

case" is "Class Counsel's unique expertise and outstanding effort." *Gordan*, 2016 U.S. Dist. LEXIS 195935, at *7–8.

8. In *Cates v. Trs. of Columbia University*, U.S. District Judge George B. Daniels recognized and repeated several accolades my firm had received from other judges:

> Class Counsel is not only highly experienced in handing ERISA class actions involving 401(k) and 403(b) plans, but "pioneer[ed] . . . the field of retirement plan litigation." Class Counsel is the "preeminent firm" in excessive fee litigation, having "achieved unparalleled results on behalf of its clients" in the face of "enormous risks." Class Counsel are "experts in ERISA litigation," and "highly experienced." The firm also obtained a significant victory in the Supreme Court, which in 2015 unanimously held that an ERISA fiduciary has a continuing duty to monitor plan investments and remove imprudent ones. Courts across the country have recognized the reputation, skill, and determination of Class Counsel in pursuing relief on behalf of retirement plan participants. Recently, Judge Blackburn of the District of Colorado wrote that Class Counsel "have shown their ability by achieving the excellent result obtained for the class" and "admirably served as private attorneys general in this instance, fulfilling one of the purposes of ERISA."
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> *Cates v. Trs. of Columbia Univ.*, No. 16-06524, 2021 U.S. Dist. LEXIS 200890, at *13–14 (S.D. N.Y. Oct. 18, 2021) (internal citations omitted).

9. In *Sweda v. University of Pennsylvania*, No. 16-4329, 2021 U.S. Dist. LEXIS 121336, at *10 (E.D. Pa. June 28, 2021), U.S. District Judge Gene E.K. Pratter, appointing the firm class counsel, wrote that the firm's work "has been acknowledged as leading to fee reductions in the industry that total almost $2.8 billion in annual savings for American workers and retirees." *Id.* (cleaned up). Numerous other cases have noted this impact as well. *See, e.g.*, *Kelly v. Johns Hopkins Univ.*, No. 16-2835, 2020 U.S. Dist. LEXIS 14772, at *12 (D. Md. Jan. 28, 2020); *Spano v. Boeing Co.*, No. 06-743, 2016 U.S. Dist. LEXIS 161078, at *9 (S.D. Ill. Mar. 31, 2016); *Beesley v. Int'l Paper Co.*, No. 06-703, 2014 U.S. Dist. LEXIS 12037, at *10 (S.D. Ill. Jan. 31, 2014) (noting savings approaching "$2.8 billion in annual savings for American workers and retirees").

10. U.S. District Judge Andre Birotte, Jr. has also praised the firm and its work:

> Schlichter, Bogard & Denton is exceptionally skilled having achieved unparalleled success in actually pioneering complex ERISA 401(k) excessive fee litigation, such as this case and *Grabek*. The Court agrees with other district courts that Schlichter, Bogard & Denton are attorneys of the highest caliber. This Court agrees that, in creating the field of 401(k) excessive fee litigation, when neither the Department of Labor or any private law firm had ever filed such a case, Schlichter Bogard & Denton functioned as a private attorney general. The firm handled the first ever trial of such [a] case. It also successfully petitioned the United States Supreme Court to hear its first ERISA fiduciary breach case regarding excessive fees in 401(k) plans, and obtained a unanimous 9-0 decision holding than an ERISA fiduciary has a continuing duty to monitor plan investments and remove imprudent ones.

Marshall v. Northrop Grumman Corp., 2020 U.S. Dist. LEXIS 177056, at *11–12 (C.D. Cal. Sept. 18, 2020) (internal citations and quotation marks omitted).

11. My firm received similar praise from U.S. District Judge George L. Russell, III:

> Schlichter Bogard & Denton . . . pioneered excessive fee litigation involving 401(k) plans. As has been repeatedly recognized, Schlichter Bogard & Denton's work on behalf of participants in large 401(k) and 403(b) plans has significantly improved these plans, brought to light fiduciary misconduct that has detrimentally impacted the retirement savings of American workers, and dramatically brought down fees in defined contribution plans.

Kelly v. Johns Hopkins Univ., No. 16-2835, 2020 U.S. Dist. LEXIS 14772, at *4 (D. Md. Jan. 28, 2020).

12. U.S. District Judge Tanya Walton Pratt said of the firm:

> For over a decade, Class Counsel, in pioneering a new area of the law, have continuously demonstrated an unwavering and zealous commitment to represent American employees and retirees seeking to recover losses incurred due to alleged retirement plan mismanagement. Jerome Schlichter and Schlichter Bogard & Denton actually created the field of 401(k) excessive fee litigation which did not exist before. Before Jerome Schlichter and the firm of Schlichter Bogard & Denton filed a series of cases in 2006 regarding excessive fees in 401(k) plans, there had never been a case brought for excessive fees in a 401(k) plan by any lawyer in the United States. Class Counsel is firmly established as the "pioneer and the leader in the field of retirement Plan litigation."

Bell v. Pension Comm. of ATH Holding Co. LLC, No. 15-02062, 2019 U.S. Dist. LEXIS 150302, at *3–4 (S.D. Ind. Sept. 4, 2019) (internal citations omitted).

13. United States District Judge Nancy Rosenstengel emphasized the firm's impact on the Department of Labor and the retirement industry:

> The law firm Schlichter Bogard & Denton has significantly improved 401(k) plans across the country by bringing cases such as this one, which have "educated plan administrators, the Department of Labor, the courts and retirement plan participants about the importance of monitoring recordkeeping fees. The fee reduction attributed to Schlichter Bogard & Denton's fee litigation and the Department of Labor's fee disclosure regulations approach $2.8 billion in annual savings for American workers and retirees. Schlichter Bogard & Denton has left an indelible mark on the 401(k) industry by bringing comprehensive changes to fiduciary practices in order to ensure that employees and retirees have the opportunity to save for retirement through prudently administered retirement programs."

Ramsey v. Philips N. Am. LLC, No. 28-1099, 2018 U.S. Dist. LEXIS 226672, at *9–10 (S.D. Ill. Oct. 18, 2018).

14. Judge Rosenstengel, considering the settlement in *Spano v. Boeing Co.*, also commented that "Schlichter, Bogard & Denton added great value to the Class throughout the litigation through the persistence and skill of their attorneys." No. 06-743, 2016 U.S. Dist. LEXIS 161078, at *9 (S.D. Ill. Mar. 31, 2016).

15. In *Beesley v. International Paper*, an ERISA excessive fee case similar to this one, Judge Herndon observed:

> Litigating this case against formidable defendants and their sophisticated attorneys required Class Counsel to demonstrate extraordinary skill and determination. Schlichter, Bogard & Denton and lead attorney Jerome Schlichter's diligence and perseverance, while risking vast amounts of time and money, reflect the finest attributes of a private attorney general.

Beesley v. Int'l Paper Co., No. 06-703, 2014 U.S. Dist. LEXIS 12037 at 8 (S.D. Ill. Jan. 31, 2014). Similarly, in *Abbott v. Lockheed Martin*, Chief Judge Reagan observed that "[t]he law

firm Schlichter, Bogard & Denton has had a humongous impact over the entire 401(k) industry, which has benefitted employees and retirees throughout the country by bringing sweeping changes to fiduciary practices." *Abbott v. Lockheed Martin Corp.*, 2015 U.S. Dist. LEXIS 93206, at *9 (S.D. Ill. July 17, 2015).

16. United States District Judge Nanette Laughrey, of the Western District of Missouri, emphasized the significant contribution that Plaintiffs' attorneys have made to ERISA litigation, including educating the Department of Labor and federal courts about the importance of monitoring fees in retirement plans:

> Of special importance is the significant, national contribution made by the Plaintiffs whose litigation clarified ERISA standards in the context of investment fees. The litigation educated plan administrators, the Department of Labor, the courts and retirement plan participants about the importance of monitoring recordkeeping fees and separating a fiduciary's corporate interest from its fiduciary obligations.

Tussey v. ABB, Inc., No. 06-4305, 2015 U.S. Dist. LEXIS 164818 at 7–8 (W.D. Mo. Dec. 9, 2015).

17. U.S. District Judge Harold Baker, in *Nolte v. Cigna*, commented that Schlichter Bogard & Denton is the "preeminent firm in 401(k) fee litigation" and has "persevered in the face of the enormous risks of representing employees and retirees in this area." *Nolte v. Cigna Corp.*, No. 07-2046, 2013 U.S. Dist. LEXIS 184622, at *8 (C.D. Ill. Oct. 15, 2013). Moreover, the firm "act[ed] as a private attorney general, risking breathtaking amounts of time and money while overcoming many obstacles for the benefit of employees and retirees." 2013 U.S. Dist. LEXIS 184622. Judge Baker also observed:

> Class Counsel's enforcement of ERISA's fiduciary obligation has contributed to rapid reductions in the level of 401(k) recordkeeping fees paid across the country. The law firm Schlichter, Bogard & Denton is the leader in 401(k) fee litigation. One independent investment advisory company, NEPC, has found the 401(k) recordkeeping fees have dropped $38 per account per year since Class counsel filed their first 401(k) fee cases in 2006. They attribute the fee reductions to

> improved fee disclosure requirements from the Department of Labor and attention brought by 401(k) fee litigation. The Department of Labor reports an estimated 73 million accounts in the United States. *Accordingly, the fee reduction attributed to Schlichter, Bogard & Denton's fee litigation and the Department of Labor's fee disclosure regulations approach $2.8 billion in annual savings for American workers and retirees.*
>
> *Id*. at 5–6.

18. In *Will v. General Dynamics*, another ERISA excessive fee case, Judge Patrick Murphy, U.S. District Judge for the Southern District of Illinois, found that the litigating the case and achieving a successful result for the class "required Class Counsel to be of the highest caliber and committed to the interests of the participants and beneficiaries of the General Dynamics 401(k) Plans." *Will v. Gen. Dynamics Corp.*, No. 06-698, 2010 U.S. Dist. LEXIS 123349, at *9 (S.D. Ill. Nov. 22, 2010). Judge Murphy also praised our work as "an exceptional example of a private attorney general risking large sums of money and investing many thousands of hours for the benefit of employees and retirees." *Id.* at *8.

19. I have also spoken on ERISA litigation breach of fiduciary duty claims at national ERISA seminars as well as other national bar seminars.

20. In the decades of my private practice, I have never been disciplined with respect to any aspect of the practice of law.

21. Since 2005, my firm and I have been investigating, preparing, and handling, on behalf of plan participants, numerous cases against fiduciaries of large 401(k) plans alleging fiduciary breaches including excessive fees, conflicts of interests and prohibited transactions under ERISA. My firm has filed these cases in numerous judicial districts throughout the United States, including districts within the First, Second, Third, Fourth, Seventh, Eighth, Ninth, Tenth and Eleventh Circuits.

22. Very few law firms nationally have brought such cases, one of which was the first full trial of such a case, resulting in a judgment for the plaintiffs that was affirmed in part by the Eighth Circuit. *Tussey v. ABB, Inc.*, No. 06-4305, 2012 U.S. Dist. LEXIS 45240 (W.D. Mo. Mar. 31, 2012), *aff'd in part, rev'd in part*, 746 F.3d 327 (8th Cir. 2014). As Judge Laughrey noted in that case, "[i]t is well established that complex ERISA litigation involves a national standard and special expertise. Plaintiffs' attorneys are clearly experts in ERISA litigation." *Tussey v. ABB, Inc.*, No. 06-4305, 2012 U.S. Dist. LEXIS 157428, at *9–10 (W.D. Mo. Nov. 2, 2012), *rev'd on other grounds*, 746 F.3d 327 (8th Cir. 2014) (citations omitted).

23. In the second 401(k) excessive fee trial, *Tibble v. Edison Int'l*, the United States Supreme Court granted our petition for writ of certiorari in the first and only ERISA 401(k) excessive fee case taken by the Supreme Court. In a 9-0 unanimous decision, the Supreme Court vacated the Ninth Circuit's affirmance of the summary judgment order and held that an ERISA fiduciary has a continuing duty to monitor plan investments and remove imprudent ones regardless of when they were added. *Tibble v. Edison Int'l*, 575 U.S. 523 (2015). This was a landmark decision in ERISA litigation. Sitting en banc, ten judges of the Ninth Circuit on remand then unanimously vacated a Ninth Circuit panel decision and remanded to the district court to determine whether the defendants violated their continuing duty to monitor the 401(k) plan's investments, stating that "cost-conscious management is fundamental to prudence in the investment function." *Tibble v. Edison Int'l*, 843 F.3d 1187, 1197–98 (9th Cir. 2016) (citation omitted). Following remand, in August 2017, the plaintiffs obtained a judgment of $13.4 million in plan losses and investment opportunity. *Tibble*, No. 07-5359, 2017 U.S. Dist. LEXIS 130806 (C.D. Cal. Aug. 16, 2017); *Tibble*, ECF Nos. 570, 572.

24. Several of the 401(k) cases my office filed were dismissed and the dismissals upheld by Courts of Appeals. *Loomis v. Exelon Corp.,* 658 F.3d 667 (7th Cir. 2011); *Renfro v. Unisys Corp.*, 671 F.3d 314 (3d Cir. 2011); *Hecker v. Deere & Co.*, 556 F.3d 575 (7th Cir. 2009). Others had summary judgment granted against the plaintiffs in whole or in part. *Kanawi v. Bechtel Corp.*, 590 F. Supp. 2d 1213 (N.D. Cal. 2008); *Taylor v. United Techs. Corp.*, No. 06-1494, 2009 U.S. Dist. LEXIS 19059 (D. Conn. Mar. 3, 2009), *aff'd*, 354 F. App'x 525 (2d Cir. 2009); *George v. Kraft Foods Global, Inc.*, 684 F. Supp. 2d 992 (N.D. Ill. 2010), *rev'd in part*, 641 F.3d 786 (7th Cir. 2011); *Tibble v. Edison Int'l*, 639 F. Supp. 2d 1074 (C.D. Cal. 2009), *aff'd*, 729 F.3d 1110 (9th Cir. 2013), *vacated*, 575 U.S. 523, (2015), *aff'd on remand*, 820 F.3d 1041 (9th Cir. 2016).

25. The non-profit equivalent of the 401(k) is a 403(b) plan. After close to a decade of handling excessive 401(k) fee cases, my firm and I began investigating similar claims for excessive fees and imprudent investments involving large 403(b) plans sponsored by private universities, another new, ground-breaking area of law that no other firm had then brought. This investigation was extensive, lasting well over one year prior to the filing of a 403(b) university plan lawsuit. My firm and I thoroughly researched legal and factual issues concerning 403(b) plans in general, and well as conducting specific analyses pertaining to each 403(b) plan under investigation. We also were assisted by experienced industry professionals knowledgeable about prudent fiduciary practices governing 403(b) plans, the market rate for 403(b) plan services, and other issues pertaining to the administration of 403(b) plans.

26. The firm's work in the 403(b) space again brought it to the Supreme Court, this time in *Hughes v. Northwestern Univ.*, 142 S. Ct. 737 (2022). For the second time, the Supreme Court agreed with Class Counsel, and did so unanimously, holding that the inclusion of prudent options

in a plan does not offset the inclusion of imprudent options, and that a plan sponsor must monitor each fund in a plan and remove those that are imprudent. *Id.* The case is currently pending on remand in the Seventh Circuit. No law firm has anything like this record in both 401(k) and 403(b) litigation.

27. Prior to the filing this lawsuit, my firm spent months researching the Takeda Pharmaceuticals U.S.A. Savings & Retirement Plan, investigating claims, and consulting with experts in the field of 401(k) administration and investment management. On January 19, 2021, we filed this action. The complaint contains detailed allegations laying out a variety of fiduciary breaches and prohibited transactions.

28. In this case, after investigating and filing this case, my firm has spent substantial time litigating the case, including developing the evidence, analyzing over 8,000 documents, consulting with experts, initiating and responding to discovery and pleadings, conducting two separate mediations with a national mediator, and will spend in the future significant time without additional compensation both before and after final approval and before the end of the three-year settlement period. This will include many actions to work with the Settlement Administrator, with the Independent Fiduciary, and with opposing counsel, answering many questions from plan participants, and preparing for and attending the final approval hearing. The work will not stop at that point, however, because my firm will also be monitoring compliance with the settlement's nonmonetary relief for three years after final approval.

29. The Settlement Agreement provides—as part of its comprehensive affirmative relief—that Class Counsel will continue to monitor and enforce the terms of the agreement. Class Counsel will not request an additional fee award for its future services related to this

settlement. Further, Class Counsel will take no fee if it becomes necessary for us to bring further proceedings to enforce compliance with the settlement's terms.

30. The parties engaged in nearly two years of intense and hard-fought litigation and extended settlement negotiations before finally agreeing to the proposed settlement.

31. In my experience, obtaining valuable affirmative relief is crucial in settling a 401(k) fee case. In this case, the affirmative relief is significant and powerful, and, over time, may outweigh the substantial monetary value of the settlement. It is my opinion that the nonmonetary relief will continue to benefit the class for years after the three-year monitoring period.

32. As a practical matter, litigants such as Robert Ford and Phillip Schwartz could not afford to pursue litigation against well-funded fiduciaries of a multi-billion-dollar plan sponsored by a large employer such as Takeda Pharmaceuticals in federal court on any basis other than a contingent fee. I know of no law firm in the United States, of the very few firms which would even consider handling such a case as this, that would handle any ERISA class action with an expectation of anything but a percentage of the common fund created.

33. The contingency fee agreements entered into between my firm and Plaintiffs in this case provide for our fee to be one-third of any recovery plus expenses. The plaintiffs in other ERISA fiduciary breach cases brought by my firm have also signed similar agreements calling for a one-third contingency fee plus expenses.

34. These kinds of cases involve tremendous risk, require finding and obtaining opinions from expensive and unconflicted consulting and testifying experts in finance, investment management, fiduciary practices, recordkeeping, and related fields, and are extremely hard fought and well-defended.

35. These cases bear a substantial risk that all the time spent and the expenses incurred for experts, document discovery, depositions taken and defended, travel, trial preparation, and ultimately trial will be uncompensated by defeat, either on dispositive motions, *Daubert* motions, or at trial. In fact, that is what has happened in numerous cases we have brought. *See, e.g., Hecker v. Deere & Co.*, 556 F.3d 575 (7th Cir. 2009); *Renfro v. Unisys Corp.*, 671 F.3d 314 (3d Cir. 2011); *Loomis v. Exelon Corp.*, 658 F.3d 667 (7th Cir. 2011); *see also Divane v. Northwestern Univ.*, 953 F.3d 980, 994 (7th Cir. 2020), *vacated and remanded*, 142 S. Ct. 737 (2022) (affirming dismissal in early 403(b) excessive fees case; the case is currently pending on remand). A later (403(b)) case lost at trial, meaning complete non-payment for Class Counsel after taking on extremely high costs. *See Sacerdote v. N.Y. Univ.*, 328 F. Supp. 3d 273, 317 (S.D.N.Y. 2018), *aff'd in part, vacated and remanded in part*, 9 F.4th 95 (2d Cir. 2021).

36. Before we filed 401(k) excessive fee cases, no firm was willing to bring such a case, and I know of no other firm that has made the financial and attorney commitment to such cases to this date.

37. A law firm that brings a putative class action such as this must be prepared to finance the case through a trial and appeals, all at substantial expense. For example, in *Tussey v. ABB*, supra, seven experts testified at trial, and the two defendant groups therein had 15 or more lawyers present in the courtroom throughout the month-long trial. In addition, all parties, including plaintiffs, had a technology team present throughout. Our firm expended over $2,000,000 in expenses by the conclusion of the trial therein, and carried them until recovery 12 years after litigation began, and after over 27,000 attorney hours spent.

38. Based on my experience, the market for experienced and competent lawyers willing to pursue 401(k) ERISA Fee Litigation is a national market, and the rate of 33 1/3% of any

recovery, plus costs, is necessary to bring such cases. This is the rate that a qualified and experienced attorney would negotiate at the beginning of the litigation and the rate found reasonable in similar 401(k) and 403(b) ERISA fee cases in numerous federal district courts, including:

- *Gordan v. Mass. Mut. Life Ins. Co.*, No. 13-30184, 2016 U.S. Dist. LEXIS 195935, at *11 (D. Mass. Nov. 3, 2016);
- *Sweda v. Univ. of Pa.*, No. 16-4329, 2021 U.S. Dist. LEXIS 239990, at *20 (E.D. Pa. Dec. 14, 2021);
- *Cates v. Trs. of Columbia Univ.*, No. 16-06524, 2021 U.S. Dist. LEXIS 200890, at *6 (S.D.N.Y. Oct. 18, 2021);
- *Pledger v. Reliance Tr. Co.*, No. 15-4444, 2021 U.S. Dist. LEXIS 105868, at *34–35 (N.D. Ga. Mar. 8, 2021);
- *Henderson v. Emory Univ.*, No. 16-2920, 2020 U.S. Dist. LEXIS 218676, at *3–4 (N.D. Ga. Nov. 4, 2020);
- *Marshall v. Northrop Grumman*, No. 16-6794, 2020 U.S. Dist. LEXIS 177056, at *4 (C.D. Cal. Sept. 18, 2020);
- *Troudt v. Oracle Corp.*, No. 16-00175, Doc. 236, at 6 (D. Col. July 10, 2020);
- *Kelly v. Johns Hopkins Univ.*, No.16-2835, 2020 U.S. Dist. LEXIS 14772, at *5, *7 (D. Md. Jan. 20, 2020);
- *Cassell v. Vanderbilt Univ.*, No. 16-2086, Doc. 174, at 2 (M.D. Tenn. Oct. 22, 2019);
- *Bell v. Pension Comm. of ATH Holding Co. LLC*, No. 15-02062, 2019 U.S. Dist. LEXIS 150302, at *18–19 (S.D. Ind. Sep. 4, 2019);

- *Tussey v. ABB, Inc.*, No. 06-4305, 2019 U.S. Dist. LEXIS 138880, at *7, *8 (W.D. Mo. Aug. 16, 2019);
- *Sims v. BB&T Corp.*, No. 15-732, 2019 U.S. Dist. LEXIS 75839, at *19 (M.D.N.C. May 6, 2019);
- *Clark v. Duke*, No. 16-1044, 2019 U.S. Dist. LEXIS 105696, at *9, *14 (M.D.N.C. June 24, 2019);
- *Ramsey v. Philips N. Am. LLC*, No. 18-1099, 2018 U.S. Dist. LEXIS 226672, at *13–14 (S.D. Ill. Oct. 15, 2018);
- *Waldbuesser v. Northrop Grumman Corp.*, No. 06-6213, 2017 U.S. Dist. LEXIS 223293, at *8 (C.D. Cal. Oct. 24, 2017);
- *Kruger v. Novant Health, Inc.*, No. 14-208, 2016 U.S. Dist. LEXIS 193107, at *4, *6 (M.D.N.C. Sept. 29, 2016);
- *Spano v. Boeing Co.*, No. 06-743, 2016 U.S. Dist. LEXIS 161078, at *7 (S.D. Ill. March 31, 2016);
- *Abbott v. Lockheed Martin Corp.*, No. 06-701, 2015 U.S. Dist. LEXIS 93206, at *7 (S.D. Ill. July 17, 2015);
- *Krueger v. Ameriprise Fin. Inc.*, No. 11-2781, 2015 U.S. Dist. LEXIS 91385, at *8–9 (D. Minn. July 13, 2015);
- *Beesley v. Int'l Paper Co.*, No. 06-703, 2014 U.S. Dist. LEXIS 12037, at *7 (S.D. Ill. Jan. 31, 2014);
- *Nolte v. Cigna Corp.*, No. 07-2046, 2013 U.S. Dist. LEXIS 184622, at *3–4 (C.D. Ill Oct. 15, 2013);

- *George v. Kraft Foods Global*, Nos. 07-1713, 08-3799, 2012 U.S. Dist. LEXIS 166816, at *4–5 (N.D. Ill. June 26, 2012);
- *Will v. General Dynamics*, No. 06-698, 2010 U.S. Dist. LEXIS 123349, at *7–8 (S.D. Ill. Nov. 22, 2010); and
- *Martin v. Caterpillar, Inc.*, No. 07-1009, 2010 U.S. Dist. LEXIS 145111, at *9–11 (C.D. Ill. Sept. 9, 2010).

39. Schlichter Bogard & Denton does not bill clients on an hourly basis. However, in December 2021, based on the national market for complex ERISA fiduciary breach litigation, Judge Pratter of the Eastern District of Pennsylvania approved Schlichter Bogard & Denton's attorneys' fees of one-third of the settlement proceeds in an ERISA excessive fee class action, relying in part on 2020 hourly rates used in a lodestar cross-check of up to $1133 per hour, depending on years of attorney experience. *Sweda v. Univ. of Pa*., No. 16-4329, 2021 U.S. Dist. LEXIS 239990, at *19-20 (E.D. Pa. Dec. 14, 2021) (approving requested fee based in part on lodestar cross check); *see Sweda v. Univ. of Pa.*, ECF No. 107-01 (memorandum in support requesting rates of $1133.30 for attorneys with at least 25 years of experience; $962.24 for attorneys with 15–24 years of experience; $694.95 for attorneys with 5–14 years of experience; $523.89 for attorneys with up to 4 years of experience; $352.82 for paralegals and law clerks).

40. Plaintiffs have engaged Sanford Rosen, an expert in attorney billing rates, to offer an opinion regarding reasonable percentage increases from 2020 to 2023. *See generally* Declaration of Sanford Rosen. Based on Class Counsel's previously approved rates and these percentage increases. Based on Mr. Rosen's declaration and his vast experience with national rates, it is clear that rates have increased since the last lodestar comparative check in the *Sweda*, case above. Thus, Plaintiffs request the following rates within the range documented by Mr. Rosen

and the increased national rates in the last two years for any lodestar cross check calculation: for attorneys with at least 25 years of experience, $1,370 per hour; for attorneys with 15-24 years of experience, $1,165 per hour; for attorneys with 5-14 years of experience, $840 per hour; for attorneys with 0-4 years of experience, $635 per hour; and for paralegals and law clerks, $425 per hour.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 20, 2023, in St. Louis, Missouri.

/s/ Jerome J. Schlichter
Jerome J. Schlichter

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBERT FORD, et al., Plaintiffs, v. TAKEDA PHARMACEUTICALS U.S.A., INC., et al., Defendants.	No. 1:21-cv-10090-WGY

DECLARATION OF HEATHER LEA

1. I am a partner at the law firm of Schlichter Bogard & Denton, LLP. I am one of the attorneys representing Plaintiffs in this matter. This declaration is submitted in support of Plaintiffs' Motion For Attorneys' Fees, Reimbursement Of Expenses, And Case Contributions Awards For Named Plaintiffs.

2. I have been involved in all aspects of this litigation. I am familiar with the facts set forth below and able to testify to them based on my personal knowledge or review of the records and files maintained by this firm in the regular course of its representation of Plaintiffs in this case.

3. I am licensed to practice in the States of Missouri and Illinois. I am admitted to practice in the United States Supreme Court and numerous district courts across the country. I received my undergraduate degree from Rhodes College in 1994 and my Juris Doctorate from Washington University in 2000, where I served as the Editor-in-Chief of the Journal of Law and Policy and graduated Order of the Coif. After law school, I served as a law clerk for a Federal District Court Judge in the Central District of Illinois. Since 2005, I have been employed as an attorney at SBD, Class Counsel in this matter. I have been actively engaged in complex class

actions for over 20 years. For most of that time, I have been dedicated to fiduciary litigation concerning defined contribution plans.

4. As set forth in the Memorandum in Support of Plaintiffs' Motion, the Eastern District of Pennsylvania recently approved Schlichter Bogard & Denton's attorneys' fees of one-third of the settlement proceeds in an ERISA excessive fee class action, relying in part on 2020 hourly rates used in a lodestar cross-check. *Sweda v. Univ. of Pa.*, No. 16-4329, 2021 U.S. Dist. LEXIS 239990, at *19-20 (E.D. Pa. Dec. 14, 2021). These hourly rates are as follows: for attorneys with at least 25 years of experience, $1,133.30 per hour; for attorneys with 15-24 years of experience, $962.24 per hour; for attorneys with 5-14 years of experience, $694.95 per hour; for attorneys with 0-4 years of experience, $523.89 per hour; and for paralegals and law clerks, $352.82 per hour.

5. To calculate the lodestar in this case, Schlichter Bogard & Denton brought forward those 2020 rates to 2023 using percentage increases identified by Sanford Rosen as appropriate. *See generally* Declaration of Sanford Rosen. Class Counsel applied these rates to the number of hours incurred by attorneys and non-attorneys during the above-captioned action. This calculation is shown in the following table and represents a lodestar multiplier of 2.41[1]:

[1] The settlement provides for current participants to receive tax-deferred distributions in the form of direct deposits to their existing accounts, Doc. 95-1 ¶ 6.4, and gives former participants the right to direct their distribution from the common fund into a tax-deferred vehicle, such as an IRA. *Id.* ¶¶ 6.6–6.7. The Investment Company Institute estimates the benefit of tax deferral for 20 years is an additional 18.6%, so the actual value to the class of just the monetary portion of the settlement is $26,092,000. *See* Peter Brady, *Marginal Tax Rates and the Benefits of Tax Deferral*, INVESTMENT COMPANY INSTITUTE (Sept. 17, 2013), available at http://www.ici.org/viewpoints/view_13_marginal_tax_and_deferral.

	Hours	2023 Rate	Total
25 Years +	747.90	$ 1,370.00	$ 1,024,623.00
15-24 Years	294.40	$ 1,165.00	$ 342,976.00
5-14 Years	373.10	$ 840.00	$ 313,404.00
0-4 Years	2,018.30	$ 635.00	$ 1,281,620.50
Attorney Total	3,433.70		$ 2,962,623.50
Paralegal	195.20	$ 425.00	$ 82,960.00
Staff Total	195.20	$ 425.00	$ 82,960.00
Total	3,628.90		$ 3,045,583.50

6. Investigation and Preparation of Complaint: In 2020, Schlichter Bogard & Denton began their investigation of the claims at issue in this lawsuit. The attorneys conducted in-depth investigative analysis and research of publicly available documents, including summary plan descriptions, participant statements, prospectuses, and the Takeda Pharmaceuticals U.S.A., Inc. Savings & Retirement Plan 5500s filed with the Department of Labor, among other sources.

7. Involvement of Named Plaintiffs: Class Counsel's investigation included meetings with Plan participants, which occurred both via Zoom and on the phone. These meetings provided valuable insight and additional understanding of the Plan's operation and administration, as well as fee and performance disclosures concerning the Plan's investments and expenses. Each Named Plaintiff provided Class Counsel with critical documents prior to preparing the Complaint. It has been my experience that participants are hesitant to bring these large, complex suits against their employer for fear of alienation. Named Plaintiffs also stayed apprised of the proceedings at each stage of the case, including document discovery, sitting for depositions, and multiple mediations.

8. Complaints and Motions to Dismiss: On January 19, 2021, Plaintiffs filed their complaint in the above-captioned matter. Doc. 1. On March 15, 2021, Defendants moved to

dismiss the Complaint. Doc. 17. After analyzing the arguments made in that motion and conducting further investigation regarding the Plan, Plaintiffs filed a First Amended Complaint ("FAC") as of right pursuant to Federal Rule of Civil Procedure 15(a) on April 18, 2021. Doc. 22. The amended complaint substituted lead plaintiffs and added a new count, alleging that the Plan used more expensive share classes when less expensive classes were available. *Id.* at 1, ¶¶ 117-21. On June 4, 2021, Defendants moved to dismiss the FAC. Doc. 26. Plaintiffs' attorneys spent extensive time responding to their arguments, which included conducting research and analysis of relevant authority. Plaintiffs opposed the motion on July 2, 2021, Doc. 32, and the Court held a hearing on the motion on July 21, 2021. *See* Doc. 41. At the hearing, the Court verbally granted leave to amend based on Defendants' arguments. Doc. 41 at 15:21-16:4. After an unsuccessful mediation in the fall of 2021, Plaintiffs moved for leave to file a Second Amended Complaint ("SAC"), Doc. 39, which motion the Court granted on January 24, 2022, Doc. 49. The SAC added detail to the share class count. Doc. 53 ¶¶ 89-103. Defendants filed their answer and defenses to the SAC on March 7, 2022. Doc. 58.

9. Discovery: On March 14 and March 18, 2022, the parties exchanged proposed schedules and discussed their disputes on these matters. *See* Doc. 60. On March 30, 2022, the Court entered a case management order. Doc. 62. Following extensive discussions regarding electronically stored information (ESI) and search terms, the parties moved for entry of a protective order and ESI stipulation on April 1, 2022, which the Court granted. Docs. 64-67. On August 16, 2022, the parties jointly moved for a three-month extension of the remaining case management deadlines, Doc. 87, which motion the Court granted on August 24, 2022. Doc. 89.

10. On March 21, 2022, Defendants issued discovery requests to each of the Named Plaintiffs. Schlichter Bogard & Denton engaged in extensive discussions with their clients. The

attorneys reviewed and analyzed all materials provided by their clients and prepared responsive documents for production.

11. While Plaintiffs' motion for leave to file a Second Amended Complaint was under advisement, Plaintiffs prepared and served their initial requests for production and interrogatories directed to Defendants on November 12, 2021. Throughout the course of discovery, Class Counsel diligently reviewed and analyzed over 8,000 documents produced by Defendants in six separate productions in response to those requests. A detailed review and analysis of the document production was crucial for Plaintiffs to prove their claims. Without a firm understanding of the core materials to support their claims, including a significant email production with attachments, Plaintiffs would have been unable to successfully prosecute this action.

12. To support those efforts, Schlichter Bogard & Denton developed a document review and analysis protocol for systematically and methodically evaluating the document production. It was incumbent on Plaintiffs' attorneys to review each and every document produced in this litigation. The ongoing review and analysis of the document production was aided by numerous internal discussions and meetings to ensure a proper and efficient evaluation process, as well as to inform their litigation strategy. This produced many documents that helped to build the case presented.

13. Plaintiffs also issued three subpoenas to third parties to identify further relevant documents to support their case.

14. Apart from the ongoing tasks related to the document production, Class Counsel defended depositions of both Named Plaintiffs.

15. Throughout all stages of the case, including discovery, the attorneys at Schlichter Bogard & Denton met internally, both in large and small groups, to thoroughly discuss the legal theories at issue, the development of the case, and other issues that arose during the litigation. Those internal meetings were critical to obtaining a successful recovery on behalf of the Class.

16. Motion to Strike Jury Demand: On May 27, 2022, Defendants moved to strike Plaintiffs' jury demand. Doc. 70. Plaintiffs filed an opposition on June 10, 2022, Doc. 72, and Defendants replied on June 24, 2022. Doc. 77.

17. Motion for Class Certification: Plaintiffs filed their motion for class certification on June 30, 2022. Doc. 78. The briefing, accompanied by declarations from both Named Plaintiffs, was extensive and took significant time to prepare. *See* Docs. 79-83. Defendants filed their opposition on August 19, 2022, Doc. 88, and Plaintiffs filed a reply on August 26, 2022. Doc. 91. The Court set a hearing on Plaintiffs' class certification motion for October 13, 2022. Doc. 93.

18. Second Mediation and Settlement: After their unsuccessful mediation in the fall of 2021, the parties held a second mediation on September 13, 2022, in front of the Hon. Morton Denlow. The parties reached a settlement in principle at that mediation. The parties informed the Court of their tentative agreement, and the Court cancelled the hearing scheduled for October 13, 2022, and ordered the parties to file a motion for preliminary approval of the settlement by November 14, 2022. Doc. 94. Plaintiffs filed an unopposed motion for preliminary approval of the class settlement on November 14, 2022, Doc. 95, and moved to certify the settlement class and appoint Schlichter Bogard & Denton as class counsel. Doc. 98. On November 21, 2022, both motions were granted. Docs. 101–02. On January 4, 2023, the Court denied as moot the motion to strike the jury demand, Doc. 104, and set a fairness hearing for March 23, 2023. Doc. 103.

19. Prior to seeking preliminary approval of the class action settlement, Class Counsel was engaged in the preparation of numerous supporting settlement documents, including the class action notices, claim forms, their motion and memorandum in support of preliminary approval, and related proposed orders. They also prepared requests for proposals sent to settlement administrators and independent fiduciaries, who were necessary parties to facilitate the settlement.

20. Based on experience in other cases, I anticipate Class Counsel will spend an additional 100–150 hours before the settlement and final hearing are concluded, and then substantial hours administering the settlement over the upcoming years.

21. The description of the time and effort that Class Counsel expended during this litigation illustrates the determination that these attorneys displayed through all aspects of this litigation. The attorney and non-attorney hours were reasonably and efficiently expended to obtain a successful recovery on behalf of the Class. Without committing the necessary resources to diligently pursue Plaintiffs' claims and utilizing the national expertise Class Counsel have developed in creating this area of litigation, a favorable recovery that benefits tens of thousands of Class members would not have been possible.

22. In complex ERISA class actions such as this one, a one-third contingency fee is routinely awarded in cases handled by Class Counsel. Below is a table of cases handled by Class Counsel in which a one-third fee was awarded:

Case	Fee %
Gordan v. Mass. Mut. Life Ins. Co., No. 13-30184, 2016 U.S. Dist. LEXIS 195935 (D. Mass. Nov. 3, 2016)	33.33%
Sweda v. Univ. of Pa., No. 16-4329, 2021 U.S. Dist. LEXIS 239990 (E.D. Pa. Dec. 14, 2021)	33.33%
Cates v. Trs. of Columbia Univ., No. 16-06524, 2021 U.S. Dist. LEXIS 200890 (S.D. N.Y. Oct. 18, 2021)	33.33%

Case	Fee %
Pledger v. Reliance Tr. Co., No. 15-4444, 2021 U.S. Dist. LEXIS 105868 (N.D. Ga. Mar. 8, 2021)	33.33%
Henderson, et al. v. Emory University, et al., No. 16-2920, 2020 U.S. Dist. LEXIS 218676 (N.D. Ga. Nov. 4, 2020)	33.33%
Troudt v. Oracle Corp, No. 16-00175, ECF No. 236 (D. Col. July 10, 2020)	33.33%
Kelly v. Johns Hopkins Univ., No. 16-2835, 2020 U.S. Dist. LEXIS 14772 (D. Md. Jan. 28, 2020)	33.33%
Cassell v. Vanderbilt Univ., No. 16-2086, 2019 U.S. Dist. LEXIS 242062 (M.D. Tenn. Oct. 22, 2019)	33.33%
Tussey v. ABB, Inc., No. 06-4305, 2019 U.S. Dist. LEXIS 138880 (W.D. Mo. August 16, 2019)	33.33%
Sims v. BB&T Corp., No. 15-1705, 2019 U.S. Dist. LEXIS 75839 (M.D.N.C. May 6, 2019)	33.33%
Clark v. Duke, No. 16-1044, 2019 U.S. Dist. LEXIS 105696 (M.D.N.C. June 24, 2019)	33.33%
Ramsey v. Phillips N.A., No. 18-1099, 2018 U.S. Dist. LEXIS 226672 (S.D. Ill. Oct. 15, 2018)	33.33%
In re Northrop Grumman Corp. ERISA Litig., No. 06-6213, 2017 U.S. Dist. LEXIS 223293 (C.D. Cal. Oct. 24, 2017)	33.33%
Kruger v. Novant Health, Inc., No. 14-208, 2016 U.S. Dist. LEXIS 193107 (M.D.N.C. Sept. 29, 2016)	33.33%
Spano v. Boeing Co., No. 06-743, 2016 U.S. Dist. LEXIS 161078 (S.D. Ill. Mar. 31, 2016)	33.33%
Abbott v Lockheed Martin Corp., No. 06-701, 2015 U.S. Dist. LEXIS 93206 (S.D. Ill. July 17, 2015)	33.33%
Krueger v. Ameriprise Fin., Inc., No. 11-2781, 2015 U.S. Dist. LEXIS 91385 (D. Minn. July 13, 2015)	33.33%
Beesley v. Int'l Paper Co., No. 06-703, 2014 U.S. Dist. LEXIS 12037 (S.D. Ill. Jan. 31, 2014)	33.33%
Nolte v. Cigna Corp., No. 07-2046, 2013 U.S. Dist. LEXIS 184622 (C.D. Ill. Oct. 15, 2013)	33.33%
Will v. Gen. Dynamics Corp., No. 06-698, 2010 U.S. Dist. LEXIS 123349 (S.D. Ill. Nov. 22, 2010)	33.33%
Martin v. Caterpillar Inc., No. 07-1009, 2010 U.S. Dist. LEXIS 145111 (C.D. Ill. Sept. 10, 2010)	33.33%

23. I have examined the records, and we have incurred case expenses totaling $60,158.69 as of January 17, 2023. Based on my and the firm's experience, we anticipate an additional $2,000 in expenses related to the final settlement hearing, which is reflected in the following chart:

Depositions	$ 4,264.47
Experts and Consultants	$25,614.05
Filing Fees, Hearing Transcripts, Subpoena Services and Related Costs	$ 537.45
Mediation and Settlement Expenses	$19,263.57
Copies and Postage	$ 674.66
ESI and Data Storage	$ 5,660.40
Travel, Lodging, and Parking	$ 6,144.09
Total Expenses	$62,158.69

24. The Class Representatives, who are both former employees of Takeda, were not promised in this case a "bonus" for their participation and were not asked to keep records for time spent devoted to this case. The Class Representatives have no hourly rate for time spent on this case and they were not promised any payment for their services by Class Counsel.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on January 20, 2023, in St. Louis, Missouri.

/s/ Heather Lea
Heather Lea

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBERT FORD, et al., Plaintiffs, v. TAKEDA PHARMACEUTICALS U.S.A., INC., et al., Defendants.	No. 1:21-cv-10090-WGY

DECLARATION OF SANFORD JAY ROSEN

I, Sanford Jay Rosen, hereby declare as follows:

1. I am an attorney at law, admitted to practice in California, the Supreme Court of the United States, multiple United States Courts of Appeals, and several District Courts around the country. A complete recitation of my experience and background is included in my firm biography attached hereto as **Exhibit 1**. *See* https://rbgg.com/attorneys/partners/sanford-jay-rosen/.

2. I have been retained by Plaintiffs' counsel to express my expert opinion concerning certain points in support of Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and Case Contribution Awards for Named Plaintiffs, and to the reasonableness of Plaintiffs' requested hourly rates. The materials I considered in forming my opinions are set forth in **Exhibit 2**. My review of these materials, as well as my knowledge over the years about Schlichter Bogard & Denton, have informed me of Plaintiffs' attorneys, including their backgrounds, reputations, the quality of their work, and the results they achieve for their clients that are recited in this declaration. The case-specific materials similarly have informed me about the facts of this case.

3. As of 2023, I am compensated at the rate of $1,475 per hour. This is my firm-approved and customary 2023 hourly rate that I charge and am paid as an expert and an attorney

and claim in attorneys' fees applications. My opinions and compensation are not dependent on my opinions or the outcome in this matter.

GENERAL BACKGROUND

4. Briefly summarized, my background is as follows: I am a 1962 graduate of Yale Law School and have been a licensed attorney since that year. After working as a federal judicial clerk, I was a law professor from 1963 to 1971, with my principal courses being constitutional law, labor law, and civil rights/civil liberties law. I was the Assistant Legal Director of the American Civil Liberties Union (ACLU) National Office from 1971 to 1973, and I was the Legal Director of the Mexican American Legal Defense and Educational Fund (MALDEF) from 1973 to 1975. Since 1976, I have been in private practice as senior partner, managing partner, or sole principal of a small law firm. I am now one of two Founding Partners of Rosen, Bien & Galvin, LLP, a 27-lawyer litigation firm in San Francisco.

5. My practice, while a full-time law professor, then as a ranking ACLU and MALDEF lawyer, and finally as a private attorney, has always included numerous civil rights and class action matters, and in private practice has included consumer, commercial and other matters. My practice and that of my firm is and has been national in scope, and emphasizes complex litigation in numerous fields of the law. I have tried numerous cases to juries, bench, special masters, and arbitrators in jurisdictions around the country, including: San Francisco, California; Denver, Colorado; Arlington, Virginia; New York, New York; Baltimore, Maryland; Cleveland, Ohio; Honolulu and Kauai, Hawaii, and Saipan (the Commonwealth of the Northern Mariana Islands). In private practice, I have represented both plaintiffs and defendants in numerous employment cases, including individuals and groups of individuals in discrimination, wrongful termination and sexual harassment cases. I also represent high and middle ranking executives in the private sector in relation to their employment contracts, both entering and exiting from major companies. I am also a highly experienced appellate lawyer, having argued five times in the Supreme Court of the United States, and at least thirty times in the United States

Courts of Appeals. I have briefed many more appeals. I am also active as an arbitrator, mediator, and early neutral evaluator, and have served as a settlement judge *pro tem* and a special master.

LITIGATION BACKGROUND

6. My experience includes handling labor-intensive, complex, class-action and multi-party litigation. On the plaintiffs' side in private practice, I represented a large class of end users of certain anti-hypertensive drugs against several international pharmacy companies. This case, *Center for Elders Independence, et al. v. Biovail Corporation, et al.,* No. CV 03320 (San Joaquin Superior Court), was settled. I also successfully concluded a settlement and prosecuted attorneys' fee claims in an unfair competition case against State Farm Insurance Co., *Waul v. State Farm Insurance Co.,* No. CGC 02-412248 (San Francisco Superior Ct. 2006). I represented a large consumer class in several cases challenging non-sufficient funds charges imposed by numerous California banks. All these cases culminated in successful settlements, including substantial attorneys' fees. *See, e.g., Rebney v. Wells Fargo Bank,* 232 Cal.App.3d 1344 (1991). I also successfully represented the majority of an opt-in class of former PanAm pilots (a role similar to interveners), resulting—after 30 days of jury trial—in the largest ADEA settlement (nearly $20 million) to that date. *EEOC v. Pan American World Airways, Inc.,* 796 F.2d 314 (9th Cir. 1986).

7. My firm is and has been highly successful lead class counsel in numerous cases alleging constitutional and ADA claims against the State of California's governor and prison authorities. For example, we are lead counsel in what is now styled *Coleman v. Newsom*, *et al.* (2:90-cv-00520-KJM-DB) and were lead co-counsel in the consolidated case, which includes *Coleman*, decided by the Supreme Court of the United States affirming a prison population reduction order entered by a statutory three judge district court. *Brown v. Plata*, 563 U.S. 493 (2011). The Coleman case remains active as to implementation of court orders both in the district court and in the U.S. Court of Appeals for the Ninth Circuit. I was a lead counsel and attorneys' fees' counsel in two of our prison conditions class actions which had lengthy trials and required decades of litigation and post-trial oversight. My firm continues to be lead or co-lead in prison

and jail conditions cases in California, and has been in other states, such as Nebraska. *See Sabata v. Nebraska Department of Correctional Services,* No. 17-3107 (D. Neb. 2017).

8. My firm is often lead or co-lead in disability rights cases and wage and hour cases in addition to those identified above. *See, e.g.*, *Quinby v. ULTA Salon, Cosmetics & Fragrance, Inc.*, No. 15-4099, Doc. 54 (N.D. Cal., Jan. 18, 2017) (granting final approval order of class action settlement, including attorneys' fees in a misclassification wage and hour case); *Stiner et al., v. Brookdale Senior Living, Inc. et al.*, 354 F.Supp.3d 1046 (N.D. Cal. 2019) (denying motion to dismiss, holding the ADA applies to assisted living facilities); 383 F.Supp.3d 949 (N.D. Cal. 2019) (denying motion for certification of interlocutory appeal).

9. The firm is co-counsel in a number of cases around the country representing participants in the Salvation Army adult rehabilitation centers and adult rehabilitation programs, who perform labor in support of the organization as a condition of their enrollment, in several lawsuits alleging that The Salvation Army violated federal law and many states' laws when it failed to pay minimum wage to these workers. The firm filed the first of these cases in San Francisco Superior Court. *Spilman et al. v. The Salvation Army,* Case No. CGC-21-591364. Subsequently on March 9, 2022, we filed *Clancy v. The Salvation Army*, Case No. 1:22-cv-00979-LMM, U.S. District Court, N.D. Illinois; *Alvear v. The Salvation Army, Case* No. 1:22-cv-01250, U.S. District Court, N. D. Georgia; and *Geiser v. The Salvation Army*, Case No. 1:22-cv-01968, U.S. District Court, S.D. New York

10. The firm and I also frequently represent plaintiffs in complex collective and representative actions. For example, I have represented multiple plaintiffs in labor-intensive consolidated actions, most notably the victims of the May 4, 1970, National Guard Shootings at Kent State University. *See, e.g.*, *Krause v. Rhodes,* 570 F.2d 563 (6th Cir. 1977); *Krause v. Rhodes,* 671 F.2d 212 (6th Cir. 1982).

11. As a mediator or early neutral evaluator, I have facilitated resolution of class actions.

12. I also have handled a number of ERISA matters. Following settlement of *Pan American World Airways, Inc.,* discussed above, I sued PanAm on behalf of a number of the pilots due to PanAm's underfunding of their pension plan. That suit was settled with PanAm and the Pension Benefit Guaranty Corporation. In addition, I have been a mediator or Early Neutral Evaluator for the United States District Court for the Northern District of California in resolving ERISA claims. I have also been an arbitrator selected from the Federal Mediation and Conciliation panel and the American Arbitration Association panel tasked to resolve claims under ERISA. On occasion, I have counseled business clients in ERISA-related matters.

13. In addition, my firm represented the Retired Employees Association of Orange County in *Retired Employees Assn. of Orange County, Inc. v. County of Orange,* 52 Cal. 4th 1171, 134 Cal. Rptr. 3d 779, 266 P.3d 287 (2011); *remanded by* 663 F.3d 1292 (9th Cir. 2011). We also litigated on behalf of retired firefighters and police officers in Los Angeles to challenge a health benefit rollback. *Los Angeles Retired Fire and Police Association v. City of Los Angeles*, No. B140201, Superior Court of Los Angeles (filed Nov. 1, 2012). We prevailed in the trial court to restore the benefits. Although the court of appeals reversed and ruled in favor of the city, the city was forced to concede that the retirees had a vested right to the health benefit. *Fry v. City of Los Angeles*, 245 Cal. App. 4th 539 (2016).

14. On the defendants' side, my firm and I have represented the State of California's Public Utility Commission in a number of employment discrimination matters, including an age discrimination class action and the Ninth Circuit appeal in another age discrimination case. *Crommie v. State of California, Public Utilities Comm'n,* 840 F. Supp. 719 (N.D. Cal. 1994), *aff'd sub nom Mangold v. California Public Utilities Comm'n,* 67 F.3d 1470 (9th Cir. 1995). I also was involved in the PUC's successful defense of a case alleging anti-Semitism in employment in the United States District Court for the Northern District of California. My firm and I also represented the County of Contra Costa in a major sexual harassment-whistle blower case, which settled after I completed plaintiff's 13-day deposition and before plaintiff took any depositions. I have also represented employers in other wrongful termination matters.

15. I have represented numerous public entities and officials in various litigation and pre-litigation matters ranging from contract to employment law matters. These include the Dominican Republic; the Public Utilities Commission of the State of California; the General Counsel of the California Agricultural Relations Board; the East Bay Regional Park District; the County of Contra Costa, CA; the Ravenswood City Elementary School District; and the Human Rights Commission of the City and County of San Francisco. I have also been retained on occasion by Bay Area Rapid Transit (BART) to represent supervisory personnel in labor-management matters.

16. My firm and I presently represent and have long represented Prison Legal News ("PLN") and its affiliated companies in numerous cases in California, Arizona, and Nevada to secure their rights, and those of other publishers whose publications have been banned or censored by prison and jail authorities. My firm has a long history in this line of cases.

17. The first of these cases is *Prison Legal News v. Schwarzenegger* (*sub nom. Prison Legal News v. Newsom*), No. C 07-02058 CW (N.D. Cal. 2007) in which a pre-litigation settlement was negotiated in 2006. In this case, the court upheld the district court's award of attorneys' fees for my 2008 rate. *See Prison Legal News v. Schwarzenegger*, No. C 07-02058 CW, 2008 WL 11411620 (N.D. Cal. Dec. 5, 2008), *aff'd in part, vacated in part, remanded*, 608 F.3d 446 (9th Cir. 2010). I was counsel of record for PLN and several other publisher, distributor, and reporter organizations on an *amicus curiae* brief in *Beard v. Banks*, 548 U.S. 521 (2006). The Supreme Court framed the issue before it as whether "a Pennsylvania prison policy that 'denies newspapers, magazines, and photographs' to a group of dangerous and recalcitrant inmates 'violate[s] the First Amendment.'" Applying *Turner v. Safley*, 482 U.S. 78 (1987), and *Overton v. Bazzetta*, 539 U.S. 126 (2003), the Court reversed the Third Circuit and held that Pennsylvania's policy did not violate the First Amendment, with Justices Stevens and Ginsburg dissenting.

18. Relevant to this declaration, the most recent court order approving my firm's rates was in *Andrews v. Equinox Holdings, Inc.*, Case No. 20-cv-00485-SK, 2021 WL 5275822 (N.D.

Cal. Nov. 9, 2021). My client in that case had been terminated by Equinox due to his age. Shortly before trial was to commence, after several years of investigation by the Equal Employment Opportunities Commission and of active litigation, my client accepted a Rule 68 Offer of Judgment that included reasonably attorneys' fees and costs according to proof. In *Andrews,* the court approved my firm's 2021 billing rates for attorneys and paralegals, including my rate of $1,250 per hour. *Id.*

ATTORNEYS' FEE LITIGATION BACKGROUND

19. I am highly familiar with billing rates for law firms that have a sophisticated practice involving large, complex class-action cases. My law firm and I have handled several fee disputes and claims on behalf of the firm and many other firms as well as many co-counsels arising in such cases. My law firm has many clients who pay their fees at our hourly rates, in addition to our common fund, statutory fee shifting and contingency fee clients. We have also handled numerous appeals of attorney fee issues.

20. I have been responsible for briefing, presenting documentation, and conducting evidentiary proceedings and oral argument in scores of attorneys' fees matters in trial courts, and I have briefed and argued numerous fees appeals. In addition to presenting my own firm's attorneys' fees claims, I regularly represent other lawyers, law firms and civil rights organizations in attorneys' fees matters, including many major law firms. I have also served as a mediator in resolving cases that have included substantial attorneys' fees components, and I have decided attorneys' fees issues as an arbitrator.

21. My experience in attorneys' fees litigation includes extensive negotiation, legal research and pleadings, evidentiary hearings, and appellate work in both state and federal court and in arbitration and special master proceedings. I have been responsible for briefing and conducting oral argument in state and federal appellate courts in more than ten attorneys' fees matters, including, among others, *Gates v. Deukmejian,* 987 F.2d 1392 (9th Cir. 1993); *Gates v. Rowland,* 39 F.3d 1439 (9th Cir. 1994); *Gates v. Gomez,* 60 F.3d 525 (9th Cir. 1995); *Gates v. Shinn,* Nos. 95-15402-15403 (unpublished Memorandum dated April 8, 1996); *Holland v.*

Roeser, 37 F.3d 501 (9th Cir. 1994); *Rebney v. Wells Fargo Bank,* 232 Cal.App.3d 1344 (1991); *Davis v. California Department of Corrections,* No. A076411 (First District, Oct. 31, 1997). I was also special fees counsel in *Finkelstein v. Bergna,* 805 F. Supp. 1235 (N.D. Cal. 1992).

22. My firm won several significant additional attorneys' fees cases including: *National Federation of the Blind v. Uber Technologies, Inc.* No. 14-04086, Doc. 203 (N.D. Cal. Nov. 8, 2019); *Cole v. County of Santa Clara*, No. 16-06594 (N.D. Cal. Mar. 21, 2019); *L.H. v. Brown,* 848 F.Supp.2d 1141 (E.D. Ca. 2011); *Armstrong v. Brown,* 805 F.Supp.2d 918 (N.D. Cal. 2011); *L.H. v. Schwarzenegger,* 645 F.Supp.2d 888 (E.D. Cal. 2009); *Prison Legal News v. Schwarzenegger,* 561 F.Supp.2d 1095 (N.D. Cal. 2008); *Prison Legal News v. Schwarzenegger,* 608 F.3d 446 (9th Cir. 2010); *Armstrong v. Davis,* 318 F.3d 965 (9th Cir. 2003); *Greene v. Dillingham Construction Company,* 101 Cal.App.4th 418 (2002); *Lucas v. White,* 63 F. Supp. 2d 1047 (N.D. Cal. 1999). In several of these cases I was lead fees counsel.

23. Recently, my firm and I were retained and entered our appearances as attorneys' fees counsel in a recently settled False Claims Act case. *United States of America ex rel. Gwen Thrower v. Academy Mortgage Corporation*, U.S. District Court N.D. California, Case No. 16-CV-02120-EMC.

24. I was counsel of record on an *amicus curiae* brief in *Perdue v. Kenny A.,* 559 U.S. 542 (2010), in which the Supreme Court held that in appropriate cases, attorneys for civil rights plaintiffs are entitled to enhancement of their fees for quality of representation and results. I was also counsel of record on an *amicus curiae* brief filed in the Supreme Court of the United States in *City of Burlington v. Dague,* 505 U.S. 557 (1992) on behalf of the ACLU, the NAACP Legal Defense Fund, MALDEF, and numerous other pro bono organizations and private law firms. I was lead counsel on an *amicus curiae* brief in the California Supreme Court in *County of Santa Clara v. Superior Court (Atlantic Richfield),* 50 Cal.4th 35 (2010) on behalf of a number of leading legal ethics professors. The case involved the question whether public entities can retain private contingent fee lawyers in public nuisance cases.

25. I have published numerous articles and lectured frequently in Practicing Law Institute (PLI), California's Continuing Education of the Bar (CEB), ATLA and State Bar of California Labor Section programs and elsewhere on the subject of statutory attorneys' fees, as well as on the subject of the establishing and financing of plaintiffs' civil rights practices. In the Spring of 2012, the California Education of the Bar (CEB) published its practice guide, "Employment Damages and Remedies," which includes a chapter written by myself and senior counsel Michael Freedman on "Attorney Fees and Costs." We have updated that chapter, most recently for publication this year.

26. Federal and state courts frequently have recognized me, including at least one California Court of Appeal, several United States District Courts in California, Ohio, and Colorado and several California Superior Courts, as an expert on attorneys' fees matters. Several times, I have testified through depositions as an attorneys' fees expert. I have testified in court three times: once in a bench trial in the United States District Court in Colorado, once before a Los Angeles Superior Court jury, and once at a bench trial in Alameda County Superior Court as an expert on attorneys' fees subjects, including reasonable rates, billing practices and expenditures of time.

27. I have been retained as an expert on attorneys' fees matters both by proponents and opponents of fees claims. For example, on the plaintiffs' side, I testified by declarations in support of class counsel's attorneys' fees in a wage and hour case against Apple that had been litigated for more than seven years, including a jury trial. *Felczer, et al. v. Apple Inc.,* Case No. 37-2011-00102593-CU-OE-CTL (San Diego CA Superior Court). I also testified by declaration before the EEOC in *Goel v. Robert Wilke Secretary, Dep't of Veterans' Affairs*, EEOC Case No. 560-2017-00302X.

28. On the defendants' side, I was retained as an expert in a real estate dispute resulting in a decision of the United States District Court for the Northern District of California in *Stonebrae, L.P. v. Toll Bros.*, No. 08-0221, 2011 WL 1334444, at *8 (N.D. Cal. Apr. 7, 2011), *aff'd,* 521 F. App'x 592 (9th Cir. 2013). I was retained as an expert in *Post Properties, LP*

v. Post Street Renaissance Partners, No. 12-640048 (S.F. CA Superior Court), and testified by way of a declaration opposing a fee claim in that wrongful detainer case. I was retained and testified at deposition as an expert in support of a fee claim as damages in a tort of another case in Santa Clara CA Superior Court, *Gagnard v. Campi Properties Inc.,* No. 10-167727. I was retained to testify at a jury trial on behalf of defendants in San Francisco Superior Court as an expert on *quantum meruit* fees for defendant in a legal malpractice matter arising from a law firm's False Claims Act representation. *Packard, Packard & Johnson v. Hinshaw and Culbertson,* No. 16-55441 (San Francisco CA Superior Court). After my deposition, the case settled before trial.

29. Continuously since 1976, I have been a senior partner, managing partner or sole principal of a small law firm. In these capacities, I have been setting billing rates and practices for more than 40 years. I also frequently employ other law firms to work for my clients and thereby become familiar with their rates and practices.

30. I constantly familiarize myself with the rates charged and the billing and work practices of lawyers throughout the nation in a number of additional ways: (1) from my own involvement in attorneys' fees litigation and expert consultations and testimony; (2) by discussing attorneys' fees, billing, and work practices with other attorneys; (3) by representing other attorneys seeking fees; (4) by obtaining declarations from other attorneys regarding market rates, attorneys' fees, billing and work practices; (5) by discovering the rates charged by opposing parties' counsel; (6) by reviewing surveys, legal newspapers, reported decisions, and treatises regarding prevailing attorneys' rates, fees, billing and work practices; (7) by reviewing attorneys' fees applications and awards in cases throughout the nation, as well as published and unpublished decisions and orders throughout the nation; (8) by reviewing rates charged by, and billing and work practices of, other firms that my firm has retained or associated with; and (9) by conducting research in my preparation for testimony as an expert.

RECENT AND EXPECTED INCREASES IN BILLING RATES

31. Based on my above-referenced familiarity and experience with trends in attorney fee rates and annual increases, it is particularly important to note the recent percentage increases in attorney fee rates.

32. In 2019 and 2020, percentage increases in fee rates remained relatively constant at 3.3% and 3.5%.[1]

33. During the pandemic however, reported increases from the top 100 law firms in the country reported an increase of 5.6% for 2021 and 5.9% in 2022.[2]

34. Despite these increases and the slow but evolving resolution of the pandemic, rising inflation proved to be a "challenge for law firm billing rates."[3] In particular, and despite the above-referenced relative increases, the billing rates did not keep pace with the rising inflation.[4]

35. Accordingly, reputable authorities and those I personally consider reliable in this area are reporting an expected increase in rates for 2023 up to 8%.[5]

SCHLICHTER, BOGARD AND DENTON PIONEERED THE FIELD OF NATIONAL ERISA 401(K) LITIGATION

36. I am familiar with the work, results, and reputation of Schlichter Bogard & Denton. I know that it has a national ERISA practice, involving highly complex class-actions filed across the country in federal district courts including California, Colorado, Connecticut,

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[1] See 2021 CounselLink's ELM Trends Report, available at https://counsellink.com/trends/.

[2] 2022 Report on the State of the Legal Market, Thomson Reuters Institute, Thomason Reuters 20222 (noting "Am Law 100 law firms leading with a rate surge of 5.6%) attached here as **Exhibit 3**; https://www.law.com/americanlawyer/2022/11/22/raising-billing-rates-in-2023-becomes-a-singular-focus-for-law-firms-405-113467/ (noting average billing rate increase of 5.9% for 2022) attached here as **Exhibit 4**.

[3] https://www.law.com/americanlawyer/2022/10/12/billing-rate-increases-have-significantly-slowed-even-as-inflation-took-off/#:~:text=Law%20firm%20billing%20rates%20have,challenges%20for%20law%20firm%20profits attached here as **Exhibit 5**.

[4] *Id*.

[5] https://www.law.com/americanlawyer/2022/11/22/raising-billing-rates-in-2023-becomes-a-singular-focus-for-law-firms-405-113467. See **Exhibit 4**.

Georgia, Indiana, Illinois, Maryland, Massachusetts, Minnesota, Missouri, New York, North Carolina, Pennsylvania, Tennessee, Texas and Wisconsin.

37. The excessive fee cases brought by the firm beginning in 2006 are unlike any complex ERISA class-action ever brought at the time. This law firm is acknowledged as the pioneering law firm in the area. *Abbott v. Lockheed Martin Corp*., No. 06-701, 2015 WL 4398475, at *1 (S.D. Ill. July 17, 2015). Neither the Department of Labor nor any private law firm in the United States brought an excessive-fee class action involving a 401(k) in the 30-plus years of ERISA. *Spano v. Boeing Co.*, No. 06-743, 2016 WL 3791123, at *3 (S.D. Ill. Mar. 31, 2016). Numerous federal district courts have cited the staggering or "enormous risks of representing employees and retirees in this area." *Nolte v. Cigna Corp.,* No. 07-2046, 2013 WL 12242015, at *2 (C.D. Ill. Oct. 15, 2013); *Will v. General Dynamics Corp*., No. 06-698, 2010 WL 4818174, at *3 (S.D. Ill. Nov. 22, 2010).

38. Schlichter Bogard & Denton's expertise in this area has been recognized by numerous federal courts. For example, Judge Harold Baker in the Central District of Illinois noted that the firm is "the preeminent firm in 401(k) fee litigation" and that its work has "led to dramatic changes in the 401(k) industry, which have benefitted employees and retirees throughout the country by bringing sweeping changes to fiduciary practices." *Nolte*, 2013 WL 12242015, at *3. In fact, "the fee reduction attributed to Schlichter, Bogard and Denton's fee litigation and the Department of Labor's fee disclosure regulations approach $2.8 billion in annual savings for American workers and retirees." *Id.* at *2.

39. Judge Susan R. Nelson in the District of Minnesota recognized that "litigating the complex issues in [the] case required the attorneys to exercise extraordinary skill and determination. In fact, another judge in this Circuit has noted that [Schlichter Bogard & Denton] are 'experts in ERISA litigation.'" *Krueger v. Ameriprise Fin., Inc*., No. 11-2781, 2015 WL 4246879, at *2 (D. Minn. July 13, 2015) (quoting *Tussey v. ABB, Inc*., No. 06-4305, 2012 WL 5386033, at *3 (W.D. Mo. Nov. 2, 2012). Judge Nanette Laughrey recognized the firm's "significant, national contribution" in "clarif[ying] ERISA standards in the context of investment

fees." *Tussey,* 2015 WL 8485265, at *2. In fact, "[t]he litigation educated plan administrators, the Department of Labor, the courts and retirement plan participants about the importance of monitoring recordkeeping fees and separating a fiduciary's corporate interest from its fiduciary obligations." *Id*.

40. Moreover, Judge G. Patrick Murphy in the Southern District of Illinois recognized that "Schlichter, Bogard & Denton's work throughout this litigation illustrates an exceptional example of a private attorney general risking large sums of money and investing many thousands of hours for the benefit of employees and retirees" and "[l]itigating the case required Class Counsel to be of the highest caliber and committed to the interests of the participants and beneficiaries of the General Dynamics 401(k) Plans." *Will*, 2010 WL 4818174 at *3. Judge David R. Herndon similarly noted that the firm "[l]itigat[ed] this case against formidable defendants and their sophisticated attorneys," which "required Class Counsel to demonstrate extraordinary skill and determination." *Beesley v. Int'l Paper Co*., No. 06-703, 2014 WL 375432, at *2 (S.D. Ill. Jan. 31, 2014).

41. In another 401(k) excessive fee case in the District of Massachusetts, Judge Michael A. Ponsor stated that "Class Counsel has demonstrated extraordinary resourcefulness, skill, efficiency and determination" and the "exceptional result in [the] case is the direct result of Class Counsel's unique expertise and outstanding effort." *Gordan v. Mass. Mut. Life Ins. Co.*, No. 13-CV-30184-MAP, 2016 U.S. Dist. LEXIS 195935, at *7-8 (D. Mass. Nov. 3, 2016). The *Gordan* case is analogous to the case here in that Schlichter Bogard & Denton was able to leverage its experience to procure a relatively early yet highly valuable settlement for plan participants. *Id*. at *8-11 (approving requested fee with a 3.66 multiplier via a lodestar crosscheck).

42. In addressing the efforts of Class Counsel, Chief Judge Osteen of the Middle District of North Carolina noted as follows:

> Class Counsel's efforts have not only resulted in a significant monetary award to the class but have also brought improvement to the manner in which the Plans are

> operated and managed which will result in participants and retirees receiving significant savings in the coming four years.

Kruger v. Novant Health, Inc., No. 1:14CV208, 2016 U.S. Dist. LEXIS 193107, at *8 (M.D.N.C. Sep. 29, 2016).

43. Class Counsel's experience and resources expended in those matters contributed to efficiently litigating and resolving this case. *See Ramsey v. Phillips N. Am. LLC*, No. 18-1099, Doc. 27 at 6–7 (N.D. Ill. Oct. 15, 2018) ("This Court believes that the early settlement in this case was reached due to Schlichter Bogard & Denton's established reputation").

44. On June 24, 2019, U.S. District Judge Catherine Eagles "recognized the experience, reputation, and ability" of Plaintiffs' counsel and found that the firm "demonstrated diligence, skill, and determination in this matter and, more generally, in an area of law in which few attorneys and law firms are willing or capable of practicing." *Clark v. Duke Univ.*, No. 16-1044, 2019 WL 2579201, at *3 (M.D. N.C. June 24, 2019). In another ERISA class action, Judge Eagles recognized the "skill and determination" of Class Counsel and noted that "[i]t is unsurprising that only a few firms might invest the considerable resources to ERISA class actions such as this, which require considerable resources and hold uncertain potential for recovery." *Sims v. BB&T Corp.,* No. 15-732, 2019 WL 1993519, at *3 (M.D. N.C. May 6, 2019).

45. On January 28, 2020, U.S. District Judge George L. Russell, III, stated that "Schlichter, Bogard & Denton are Class Counsel of the highest caliber." *Kelly v. Johns Hopkins Univ.*, No. 16-2835, 2020 WL 434473, *4 (D. Md. Jan. 28, 2020).

46. On March 8, 2021, U.S. District Judge Mark H. Cohen observed that "Class Counsel are highly experienced and recognized experts in ERISA litigation. . . . Class Counsel's unique experience representing plaintiffs like Class Members in this case supports Plaintiffs' fee request." *Pledger v. Reliance Tr. Co.*, No. 1:15-CV-4444-MHC, 2021 U.S. Dist. LEXIS 105868, at *21 (N.D. Ga. Mar. 8, 2021).

47. Judge George B. Daniels recognized and repeated the firm's accolades in approving Schlichter Bogard and Denton's fee request:

> Class Counsel is not only highly experienced in handing ERISA class actions involving 401(k) and 403(b) plans, but "pioneer[ed] . . . the field of retirement plan litigation." Class Counsel is the "preeminent firm" in excessive fee litigation, having "achieved unparalleled results on behalf of its clients" in the face of "enormous risks." Class Counsel are "experts in ERISA litigation," and "highly experienced." The firm also obtained a significant victory in the Supreme Court, which in 2015 unanimously held that an ERISA fiduciary has a continuing duty to monitor plan investments and remove imprudent ones. Courts across the country have recognized the reputation, skill, and determination of Class Counsel in pursuing relief on behalf of retirement plan participants. Recently, Judge Blackburn of the District of Colorado wrote that Class Counsel "have shown their ability by achieving the excellent result obtained for the class" and "admirably served as private attorneys general in this instance, fulfilling one of the purposes of ERISA."

Cates v. Trs. of Columbia Univ., No. 16-06524, 2021 U.S. Dist. LEXIS 200890, at *13–14 (S.D.N.Y. Oct. 18, 2021) (internal citations omitted).

48. In my experience, this is a remarkable record of federal judges around the country praising a law firm for its stellar work and results in protecting the rights of employees and retirees in 401(k) plans. I have rarely seen or heard of such a consistent pattern of such accolades.

49. Schlichter Bogard & Denton's work also has been featured in the New York Times, Wall Street Journal, Reuters, and Bloomberg, among other media outlets. *See, e.g.*, Anne Tergesen, *The Lawyer on a Quest to Lower Your 401(k) Fees,* Wall St. J. (June 9, 2017);[6] Anne Tergesen, *401(k) Fees, Already Low, Are Heading Lower*, Wall St. J. (May 15, 2016);[7] Gretchen Morgenson, *A Lone Ranger of the 401(k)'s*, N.Y. Times (Mar. 29, 2014);[8] Floyd Norris, *What a 401(k) Plan Really Owes Employees*, N.Y. Times (Oct. 16, 2014);[9] Sara Randazzo, *Plaintiffs'*

[6] Available at https://www.wsj.com/articles/the-lawyer-on-a-quest-to-lower-your-401-k-fees-1497000607 ("Companies now are so worried about suits alleging mismanagement of these retirement plans that 401(k) industry consultants have coined a term for the threat: 'getting Schlichterized.'").

[7] Available at http://www.wsj.com/articles/401-k-fees-already-low-are-heading-lower-1463304601.

[8] Available at http://www.nytimes.com/2014/03/30/business/a-lone-ranger-of-the-401-k-s.html?_r=0.

[9] Available at http://www.nytimes.com/2014/10/17/business/what-a-401-k-plan-really-owes-employees.html?_r=0.

Lawyer Takes on Retirement Plans, Wall St. J. (Aug. 25, 2015);[10] Jess Bravin and Liz Moyer, *High-Court Ruling Adds Protections for Investors in 401(k) Plans*, Wall St. J. (May 18, 2015);[11] Mark Miller, *Are 401(k) Fees Too High? The High Court May Have an Opinion*, Reuters (May 1, 2014);[12] Greg Stohr, *401(k) Fees at Issue as Court Takes Edison Worker Appeal*, Bloomberg (Oct. 2, 2014).[13]

50. Based on my personal experience and review of court filings by Schlichter Bogard & Denton in this and many other cases, including Appellate and Supreme Court filings, Schlichter Bogard & Denton has displayed extraordinary skill in litigating complex ERISA issues. Not only is Schlichter Bogard & Denton the first firm to ever bring 401(k) excessive fee cases and literally created the space, but no other firm has obtained the results for plan participants and beneficiaries after overcoming tremendous obstacles and facing the enormous risk of non-payment in hard-fought litigation.

51. Cases of this caliber with these types of well-funded defendants require specialized knowledge and the ability to fund what amounts to an opposition to a blank-check defense. For example, I am aware that in the first full trial of a 401(k) excessive fee case under ERISA—*Tussey v. ABB, Inc.*—defendants had paid *over $42.5 million* in attorneys' fees as of January 2010. The case was litigated for nearly *another decade*, including two appeals, two remands, a petition for writ of certiorari, and further proceedings in the district court, before finally settling in April 2019, resulting in much more in defendants' attorneys' fees being paid.

52. In ERISA cases brought by Schlichter Bogard & Denton, plan sponsor defendants retain some of the largest and most well-known law firms in the nation. These law firms have significant resources that make prosecution of these cases extraordinarily difficult. A sample of opposing counsel in these types of cases are listed below:

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[10] Available at http://blogs.wsj.com/law/2015/08/25/plaintiffs-lawyer-takes-on-retirement-plans/.

[11] Available at http://www.wsj.com/articles/high-court-ruling-adds-protections-for-investors-in-401-k-plans-1431974139.

[12] Available at http://www.reuters.com/article/us-column-miller-401fees-idUSBREA400J220140501.

[13] Available at http://www.bloomberg.com/news/articles/2014-10-02/401-k-fees-at-issue-as-court-takes-edison-worker-appeal.

Case	Opposing Counsel
Tibble v. Edison, 575 U.S. 523 (2015)	O'Melveny[14]
Kelly v. Johns Hopkins Univ., No. 16-2835, 2020 WL 434473 (D. Md. Jan. 20, 2020)	Morgan Lewis
Ramos v. Banner Health, No. 15-2556, 2018 WL 4700707 (D. Colo. Aug. 8, 2018)	McDermott Will & Emery
Tussey v. ABB, Inc., No. 06-4305, 2019 WL 3859763 (W.D. Mo. August 16, 2019)	Bryan Cave
Munro v. Univ. of S. Cal., No. 16-6191, 2016 WL 11185428 (C.D. Cal. Dec. 2, 2016)	Gibson Dunn
Clark v. Duke, No. 16-1044, 2019 WL 2579201 (M.D. N.C. June 24, 2019)	Morgan Lewis
In re Northrop Grumman Corp. ERISA Litig., No. 06-6213, 2017 WL 9614818 (C.D. Cal. Oct. 24, 2017)	Mayer Brown
Gordan v. Mass. Mut. Life Ins. Co., No. 13-30184, 2016 WL 11272044 (D. Mass. Nov. 3, 2016)	Goodwin Proctor
Spano v. Boeing Co., No. 06-743, 2016 WL 3791123 (S.D. Ill. Mar. 31, 2016)	O'Melveny
Krueger v. Ameriprise Fin., Inc., No. 11-2781, 2015 WL 4246879 (D. Minn. July 13, 2015)	O'Melveny
Hughes v. Northwestern Univ., No. 16-8157, 2018 WL 2388118 (N.D. Ill. May 25, 2018)[15]	Willkie Farr & Gallagher
Martin v. Caterpillar Inc., No. 07-1009, 2010 WL 11614985 (C.D. Ill. Sept. 10, 2010)	Seyfarth Shaw
Sacerdote v. New York Univ., No. 16-6284, 2018 WL 840364 (S.D.N.Y. Feb. 13, 2018)	DLA Piper
Pledger v. Reliance Tr. Co., No. 1:15-CV-4444-MHC, 2021 WL 2253497 (N.D. Ga. Mar. 8, 2021)	O'Melveny Alston & Bird

53. Complex cases, such as this case, typically last numerous years and involve many discovery battles, intense motion practice and multiple experts that often involve some of the nation's foremost experts in the field. If tried, an appeal is almost certain. This type of litigation is risky and extremely costly. I am aware of no firm, including my own firm, that has filed a 401(k) excessive fee case prior to those brought by Schlichter Bogard & Denton, nor any that have committed the resources the firm has to this litigation. It is therefore not surprising that

[14] The case resulted in the Supreme Court of the United States unanimously ruling in Plaintiffs' favor. O'Melveny is counsel for Defendants in this case.

[15] Like *Tibble*, *Hughes* also resulted in the Supreme Court unanimously ruling in Plaintiffs' favor.

Schlichter Bogard & Denton stands alone in this niche, given the complexities of the issues and the risks it incurs.

54. As another example of Schlichter Bogard & Denton displaying their tremendous skill and determination in securing a significant recovery for plan participants is their extraordinary work in the landmark *Tibble v. Edison* case, which was filed in 2007. Upon petition by the plaintiffs, the United States Supreme Court granted the plaintiffs' Writ of Certiorari and—in a 9-0 unanimous decision—vacated the Ninth Circuit's affirmance of the summary judgment order and held that an ERISA fiduciary has a continuing duty to monitor plan investments and remove imprudent ones regardless of whether they were added to the 401(k) plan prior to the statutory period. *Tibble v. Edison Int'l*, 135 S.Ct. 1823 (2015). On remand from the Supreme Court, the Ninth Circuit *en banc* vacated the Court's summary judgment ruling that Plaintiffs' claims as to retail share mutual funds added prior to the statutory period were barred and remanded to the Court to determine on an open record whether Defendants violated their continuing duty to monitor Plan investments. *Tibble v. Edison Int'l*, 843 F.3d 1187, 1199 (9th Cir. 2016). Following remand, in August 2017, the district court held that the defendants were liable for breaching their duty to monitor plan investments and awarded over $13.1 million in plan losses and investment opportunity. *Tibble,* No. 07-5359, 2017 WL 3523737 (C.D. Cal. Aug. 16, 2017); *Tibble,* Docs. 413, 570. This was a landmark, precedent-setting case, the significance of which cannot be overstated. It was the first and only ERISA 401(k) excessive fee case taken by the Supreme Court. Schlichter Bogard & Denton persevered for over ten years through multiple appeals to dramatically increase the recovery for the Plan from $370,372 to *over $13.1 million*.

55. Class Counsel just last year brought to the Supreme Court its second-ever ERISA excessive fees case as well, this time in a 403(b) plan. Again, the U.S. Solicitor General wrote an amicus brief in support of Class Counsel's position, along with the AARP, the National Pension Rights Center, and other nonprofits. Again, mutual fund industry groups and the Chamber of

Commerce filed amicus briefs opposing the plaintiffs. For the second time, the Supreme Court agreed with Class Counsel, and did so unanimously, holding that the inclusion of prudent options in a plan does not offset the inclusion of imprudent options, and that a plan sponsor must monitor each fund in a plan and remove those that are imprudent. *Hughes v. Northwestern Univ.*, 142 S. Ct. 737 (2022).

SCHLICHTER BOGARD & DENTON OBTAINED A SUBSTANTIAL RECOVERY FOR THE *TAKEDA* CLASS AFTER SUBSTANTIAL INVESTIGATION AND LITIGATION

56. Schlichter Bogard & Denton devoted significant time and resources investigating potential claims in 401(k) related matters for years. This knowledge and expertise significantly aided its efforts in this case. During the course of their pre-filing investigation, it is my personal knowledge and understanding that they analyzed hundreds of publicly filed documents with the Department of Labor, regulatory filings, fund offering statements, and a variety of other resources to support their claims.

57. Following these extensive efforts, on January 19, 2021, Plaintiffs filed their original complaint in the United District Court for the District of Massachusetts, alleging that Defendants breached their fiduciary duties under ERISA relating to the management, operation, and administration of the Takeda Pharmaceuticals U.S.A., Inc. Savings and Retirement Plan ("Plan"), causing tens of millions of dollars in losses to Plan participants' retirement savings.

58. On March 15, 2021, Defendants filed a motion to dismiss Plaintiffs' complaint. On April 19, 2021, Plaintiffs filed an amended complaint, which Defendants moved to dismiss on June 4, 2021. The Court held a hearing on Defendants' motion to dismiss the amended complaint on July 21, 2021, and permitted Plaintiffs leave to file a motion for leave to file a second amended complaint. The next day, the Court ordered the parties to mediate. The parties held that mediation in the fall of 2021 but did not reach a settlement. Plaintiffs subsequently moved for leave to file a second amended complaint, which motion the Court granted on January 24, 2022, denying Defendants' motion to dismiss the first amended complaint as moot.

59. On January 24, 2022, Plaintiffs filed a second amended complaint that is the operative complaint and that sets forth Plaintiffs' claims. Defendants answered the second amended complaint on March 7, 2022.

60. Defendants moved to strike Plaintiffs' jury demand on May 27, 2022, and Plaintiffs moved for class certification on June 30, 2022.

61. Defendants produced over 8,000 documents, including Plan-related materials, fee and performance data related to the Plan's investments, fiduciary committee minutes and supporting materials, e-mail communications, and other documents. The parties also agreed to exchange electronically stored information after negotiating key custodians and search terms.

62. The parties conducted two mediations. After an unsuccessful mediation in the fall of 2021, the parties held a second mediation on September 13, 2022, in front of the Hon. Morton Denlow. The parties reached a settlement in principle at that mediation.

63. Under the terms of the settlement, Defendants agreed to pay $22 million. They also agreed to very important non-monetary terms that include but are not limited to: (1) providing regular fiduciary training; (2) retaining an independent investment consultant to provide ongoing assistance in reviewing the Plan's investment options; (3) considering the cost of different share classes available for particular investment options; and (4) conducting a request for information for recordkeeping and administrative services. These provide valuable non-monetary relief with real value for the future.

64. Courts also consider the value of non-monetary relief when evaluating the overall benefit to the class. *In re Home Depot Inc*., 931 F.3d 1065, 1093-4 (11th Cir. 2019) (crediting counsel in the settlement for relief that was "'substantially motivated by the pendency of this litigation.'"). "Considering the non-monetary benefits and relief created by counsel's efforts is important because it encourages attorneys to obtain meaningful affirmative relief." *Kruger*, 2016 U.S. Dist. LEXIS 193107, at *8; *see also Poertner v. Gillette Co.*, 618 Fed. Appx. 624, 630 (11th

Cir. 2015) ("flawed" approach to exclude nonmonetary benefit in calculating attorneys' fee percentage).

65. The results obtained by Schlichter Bogard & Denton demonstrate their extraordinary skill in complex class action litigation and unusual ability to bring cases like the instant one to valuable settlements rapidly following appropriate due diligence, investigation and discovery.

66. This litigation involved attorneys from Morgan Lewis, a nationally recognized defense firm. In my experience, large defense firms that are retained by out-of-town clients bill national rates. Therefore, in my experience, a firm like Morgan Lewis would have charged Takeda Morgan Lewis's Washington D.C. rates, where its lead partner in this case is located.

THE FEE REQUESTED BY PLAINTIFFS IS EMINENTLY REASONABLE, CONSISTENT WITH THE MARKET RATES FOR NATIONAL FIRMS IN COMPLEX LITIGATION PROVIDING NOTHING FOR THE FUTURE WORK ON THE CASE

67. I understand that Plaintiffs' counsel is seeking one-third of the gross settlement amount (or $7,333,333.33) in attorneys' fees to compensate them for their efforts in securing the valuable settlement and for the enormous risk of non-payment inherent in complex ERISA 401(k) fiduciary breach class actions, such as this one.

68. In my experience, the percentage-of-recovery method for calculating attorneys' fees in common fund cases is the preferred and adopted approach for determining reasonable attorneys' fees. This is true for ERISA common fund cases. In addition, a one-third fee is consistent with the market rate in complex ERISA 401(k) class actions.

69. In making their attorneys' fees request, I believe that Schlichter Bogard & Denton is complying with directives of the First Circuit concerning attorneys' fees claims and awards in common fund class action cases. The First Circuit prefers the percentage-of-fund approach over the lodestar approach. *In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 307 (1st Cir. 1995) (enumerating advantages of percentage-of-fund

approach). Where the court awards a percentage of a common fund as attorneys' fees, it may use the lodestar method as a cross-check on the reasonableness of the fees. *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 79 (D. Mass. 2005).

70. In applying a lodestar check, Schlichter Bogard & Denton has requested the following hourly rates: $1,370 for attorneys with at least 25 years of experience; $1,165 for attorneys with 15–24 years of experience; $840 for attorneys with 5–14 years of experience; $635 for attorneys with 0–4 years of experience; and $425 for paralegals and law clerks. In making my fee claims, like Schlichter Bogard & Denton and consistent with *Missouri v. Jenkins*, 491 U.S. 274, 284 (1989), my firm and I and those we represent in making fees claims, request and are awarded our current billing rates as a means of compensating for delay in payment or loss of interest. These rates are well within the range of reasonable rates for this year, based on my analysis of national rates and the increases from earlier years.

71. Schlichter Bogard & Denton's prior rates from earlier years have been approved by multiple courts. Most recently, the Eastern District of Pennsylvania approved Schlichter Bogard & Denton's attorneys' fees of one-third of the settlement proceeds in an ERISA excessive fee class action, relying in part on 2020 hourly rates used in a lodestar cross-check. *Sweda v. Univ. of Pa.*, No. 16-4329, 2021 U.S. Dist. LEXIS 239990, at *19-20 (E.D. Pa. Dec. 14, 2021). That lodestar calculation used the following rates: for attorneys with at least 25 years of experience, $1,133.30 per hour; for attorneys with 15-24 years of experience, $962.24 per hour; for attorneys with 5-14 years of experience, $694.95 per hour; for attorneys with 0-4 years of experience, $523.89 per hour; and for paralegals and law clerks, $352.82 per hour. *Id*.

72. Prior to that, numerous courts have approved Schlichter Bogard & Denton's requested fees rates involving complex claims of fiduciary breaches in defined contribution plans from its most experienced attorneys to its junior lawyers and paralegals. *See Cates v. Trs. of Columbia Univ.*, No. 16-06524, 2021 U.S. Dist. LEXIS 200890 (S.D.N.Y. Oct. 18, 2021)*; Pledger v. Reliance Tr. Co.*, No. 1:15-CV-4444-MHC, 2021 U.S. Dist. LEXIS 105868 (N.D. Ga. Mar. 8, 2021); *Margaret E. Kelly et. al v. The Johns Hopkins University*, No. 16-2835, Doc. 94

(D. Md. Jan. 28, 2020) (approving above-listed hourly rates for Schlichter Bogard & Denton); *see also Cassell v. Vanderbilt University*, No. 16-2086, Doc. 174 (M.D. Tenn. Oct. 22, 2019); *Bell v. Pension Comm. of ATH Holding Co., LLC,* No. 15-02062, 2019 WL 4193376, at *5 (S.D. Ind. Sept. 4, 2019); *Clark v. Duke Univ*., No. 16-1044, 2019 WL 2579201, at *4 (M.D.N.C. June 24, 2019); *Sims v. BB&T Corp*., No. 15-732, 2019 WL 1993519, at *3 (M.D.N.C. May 6, 2019).

73. The requested rates herein represent an approximate 6.5% annual increase from years 2021 through the present using the fees rates that were approved in *Sweda*. As noted above, this increase is entirely appropriate based on the pandemic and prior industry rates that were acknowledged to be insufficient to keep pace with inflation.[16] Moreover, based on recent surveys and studies, this increase is conservative with other top firms reporting 2022 increases on average of 12.3%.[17]

74. I am familiar with the rates charged by attorneys nationally in major, national markets, including New York, Washington, D.C., Chicago, Los Angeles, and San Francisco. The requested hourly rates are well within the rates charged by attorneys of equivalent experience, skill, and expertise for comparable services.

75. For this type of complex class action litigation, a national rate for attorneys' fees applies, and the firms which defend this and similar cases are national firms. Because of the unique nature of Schlichter Bogard & Denton's practice, the fact that few if any other firms are bringing innovative 401(k) lawsuits like the case at bar, the outstanding quality of the firm's work, and the result it achieves for its clients, the firm and its attorneys should be compensated at the rates of the top of the national legal market.

76. Not only are these requested fees entirely reasonable, but they are also on par with reported fees by national law firms almost *seven years ago*. For instance, the Wall Street Journal reported that "senior partners routinely charge between $1,200 and $1,300 an hour, with top rates

[16] *See* above ¶¶ 31-34.

[17] "As Billing Rates Skyrocket, Historic Fee Leaders Find Company at $2,000 Per Hour," The American Lawyer, Jul. 28, 2022. See attached as **Exhibit 6**.

at several large law firms exceeding $1,400." Sara Randazzo and Jacqueline Palank, *Legal Fees Cross New Mark: $1,500 an Hour,* Wall St. J. (Feb. 9, 2016).[18] According to multiple sources, prominent partners at some large firms more recently bill rates up to $2,000 per hour.[19]

77. As recently as October of 2022, it was reported that national law firms such as Willkie Farr & Gallagher – the firm Schlichter Bogard & Denton defeated in the Supreme Court last year in *Hughes v. Northwestern*, *supra* - requested up to $2,050 for its top-billing partners.[20] Similarly, Kirkland & Ellis requested $1,995 for its top-billing partners.[21]

78. For instance, as of December 2022, Hogan Lovells US LLP requested $2,465 per hour for a partner with 23 years of experience, $995 per hour for a seventh-year associate, and $685 per hour for a third-year associate. *See* **Exhibit 7** at 3-4. That same month, Quinn Emanuel Urquhart & Sullivan, LLP requested $2,130 per hour for a partner with 25 years of experience, $1,350 for an attorney with 13 years of experience, and $1,165 per hour for a fifth-year associate. *See* **Exhibit 8** at 28. In April 2021, a federal court approved a request from Paul, Weiss, Rifkind, Wharton & Garrison LLP for $1,440 per hour for a partner with 13 years of experience, $980 per

[18] Available at https://www.wsj.com/articles/legal-fees-reach-new-pinnacle-1-500-an-hour-1454960708; *see also, e.g.*, See, e.g., Martha Neil, Top Partner Billing Rates at BigLaw Firms Approach $1,500 Per Hour, ABA JOURNAL (Feb. 8, 2016), http://www.abajournal.com/ news/article/top_partner_billing_rates_at_biglaw_firms_nudge_1500_per_hour (2016 American Bar Association report relying on public filings in Chapter 11 bankruptcy cases noted billing rates as high as $1,475 at Proskauer Rose; $1,450 at Ropes & Gray; and $1,425 at both Akin Gump Strauss Hauer & Feld and Skadden Arps Slate Meagher & Flom); Final Application of Gibson, Dunn & Crutcher LLP as General Bankruptcy and Restructuring Co-Counsel for Debtors and Debtors-in Possession for Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred for the Final Period Mar. 12, 2015–Nov. 19, 2015 at 4, *In re SRC Liquidation, LLC*, No. 15-10541-BLS (Bankr. D. Del.) (Dkt. No. 1404) (filed Dec. 15, 2015) (2015 fee application of Gibson Dunn revealing rates for partners in bankruptcy case as high as $1,475).

[19] *See, e.g.*, Mike Scarcella and Marcia Coyle, What New Supreme Court Cases Reveal Acount Big Law Billing Rates, Law360 (Aug. 27, 2019), https://www.law.com/201912019/08/27/what-new-supreme-court-cases-reveal-about-big-law-billing-rates/(discussing rates ranging from $900 to $1,745 per hour); Aebra Coe, What Do the Highest-Paid Lawyers Make an Hour?, Law360 (May 11, 2016), https://www.law360.com/legalindustry/articles/794929/what-dothe-highest-paid-lawyers-make-an-hour- (noting that research conducted by the BTI Consulting Group revealed that rates "reached $2,000 per hour" in 2016, up from the previous high of $1,600 per hour in 2015); Karen Sloan, $1,000 Per Hour Isn't Rare Anymore, NAT'L L.J. (Jan. 13, 2014), https://www.law.com/national lawjournal/almID/1202637587261/NLJ-Billing-Survey%3A-%241%2C000-PerHour-Isn%27t-Rare-Anymore/ (noting that "four-figure hourly rates for in-demand partners at the most prestigious firms don't raise eyebrows—and a few top earners are closing in on $2,000 an hour").

[20] "*Willkie Tops $2,000/Hour…"*, The American Lawyer, Oct. 12, 2022.

[21] Id.

hour for a fifth-year associate, and $685 per hour for an associate who had not yet been admitted to the bar. *See* **Exhibits 9 and 10**.

79. In my experience, the hourly rates set forth above are those charged where full payment is expected promptly upon the rendition of the billing and without consideration of factors other than hours and rates. If any substantial part of the payment were to be contingent or deferred for any substantial period of time, for example, the fee arrangement would be adjusted accordingly to compensate the attorneys for those factors.

80. The expense, deferred payment and risk of public interest common fund class action litigation has not diminished over the years; to the contrary, these cases are in many ways more difficult than ever. As a result, the few who are willing to do so can only continue if their fee awards reflect true market value.

81. Schlichter Bogard & Denton's 2023 requested rate represents an average annual increase of 6.5% from the last time its fees were approved as reasonable, based on 2-year-old rates. Indeed, as noted above, this increase is conservative. *See* **Exhibit 6.**

A LODESTAR CROSS-CHECK CONFIRMS THE REASONABLENESS OF THE REQUESTED FEE

82. Class Counsel requests that the Court award attorneys' fees of $7,333,333.33, which represents a 2.41 lodestar multiplier at this time, with many more hours to be spent. Multipliers are commonly awarded in common fund cases for both risk and delay. Here, nothing is included for the firm's work going forward.

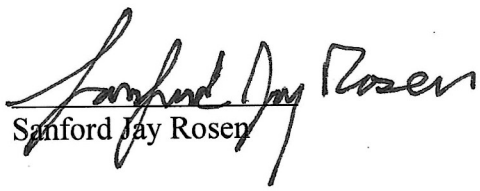
83. In my opinion, a fee of one-third of the common fund attorneys' fee that Schlichter Bogard & Denton seeks is entirely appropriate, given the risk of litigation and outlay of funds, and especially the outstanding monetary and plan reform results achieved by the settlement and the firm's exceptional skill. *Cf. Perdue v. Kenny A*, 559 U.S. 542 (2010) (plaintiffs' statutory attorneys' fees may be enhanced for extraordinary quality of representation and results).

84. This case also was litigated with great efficiency over a relatively brief period, and Class Counsel should not have its fee reduced because of its efficiency and reputation. *Cf. Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 122 (2d Cir. 2005) (lodestar method "create[s] an unanticipated disincentive to early settlements, tempt[s] lawyers to run up their hours, and compel[s] district courts to engage in a gimlet-eyed review of line-item fee audits") (alterations in original) (citations and internal quotations omitted); *see also Ramsey*, No. 18-1099, Doc. 27 at 6–7 (N.D. Ill. Oct. 15, 2018) ("This Court believes that the early settlement in this case was reached due to Schlichter Bogard & Denton's established reputation"); *Buccellato v. AT&T Operations, Inc.*, No. C10-00463-LHK, 2011 WL 3348055 at *2 (N.D. Cal. June 30, 2011) (awarding 4.3 multiplier in common fund FLSA case based in part on "requisite legal skill and experience necessary, the excellent and quick results obtained … [and] the contingent nature of the fee and risk of no payment"). Indeed, multiple courts in this circuit have granted one-third fees. *See, e.g., Gordan v. Mass. Mut. Life Ins. Co.*, No. 13-30184, 2016 U.S. Dist. LEXIS 195935 (D. Mass. Nov. 3, 2016) (approving Schlichter Bogard & Denton's requested rate that represented a 3.66 lodestar multiplier).

85. Based on the above and my experience, the rates proposed by Plaintiffs are reasonable. Not only are these rates consistent with a national rate commensurate with the type of unique, ground-breaking litigation brought by Schlichter Bogard & Denton, these rates are lower than firms defending these cases and appropriately aligned with the rates sought by plaintiffs' firms in complex class action litigation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 17, 2023 at San Francisco, California.



Sanford Jay Rosen

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PRESENT:

Founding Partner in a firm of twenty-seven lawyers specializing in complex litigation.

LAW PRACTICE:

My experience includes a wide variety of civil work for plaintiffs and defendants, including class actions and criminal defense work. I have secured many judgments and settlements of over a million dollars.

I have presented oral argument in the U.S. Supreme Court in five cases, in the U.S. Courts of Appeals for nine of the Circuits more than 30 occasions (more than half of which have been in the Ninth Circuit), and before the California Supreme Court and Courts of Appeal more than 10 times. I have briefed many more appeals for parties and for *amici curiae*.

I have tried numerous civil cases to jury and bench in federal district courts in California, Colorado, New York, Ohio and Virginia, and in California state courts; misdemeanors in Maryland state courts; and arbitrations and special proceedings in California, Hawaii and the Commonwealth of the Northern Mariana Islands.

I also represent parties in employment contract negotiations and work as a testifying expert witness. I am also work as an arbitrator, mediator, early neutral evaluator and have been a special master.

BAR ADMISSIONS:

1. Connecticut (August 14, 1962), District of Columbia (November 30, 1973) (inactive), California (December 18, 1974)
2. Supreme Court of the United States (March 1, 1966)
3. U.S.C.A.'s for all of the Circuits, except the First and Eleventh Circuits
4. U.S.D.C.'s: N.D. Cal., E.D. Cal., C.D. Cal., N. D. Ohio, D. Md., D. Conn., S.D.N.Y.

BAR ASSOCIATIONS (PARTIAL LIST):

1. California State Bar
2. Bar Association of San Francisco
3. District of Columbia Bar Association
4. American Bar Association
5. American Association for Justice
6. Consumer Lawyers of California

EDUCATION:

Cornell University, A.B., 1959; Yale Law School, L.L.B., 1962.

BIOGRAPHICAL LISTING AND RATINGS:

1. Martindale Hubbell; A-V rating
2. Northern California Super Lawyers (general civil litigation)(since 2004)
3. *The Best Lawyers in America*, in Appellate Practice (since 2013)
4. Lawdragon 500 Leading Plaintiff Employment Lawyers (since 2018)

HONORS:

1. Council on Legal Education Opportunity (CLEO) Edge Founders Award 2018
2. CLEO Diversity Pioneer Honoree, 2008
3. NAACP LDF Cooperating Attorney Honoree, 1995
4. Prisoner's Union's Free Person Honoree, 1993
5. Legal Services Honoree, MALDEF, 1987
6. Bouton Law Lecturer, Princeton University, 1971

PAST LEGAL EMPLOYMENT:

1. Principal, Rosen & Associates, 1990.
2. Partner, Rosen & Phillips, 1986 to 1989.
3. Principal, Law Offices of Sanford Jay Rosen, 1982 to 1985.
4. Partner, Rosen, Remcho & Henderson (after 1980, Rosen & Remcho), 1976 to 1982.
5. Legal Director, MALDEF, 1973 to 1975.
6. Assistant Legal Director, ACLU (National Office), 1971 to 1973; Special counsel, May through August 1970 and 1975 to 1983 (Kent State Litigation Project).
7. University of Texas at Austin, Visiting Professor of Law, 1970 to 1971.
8. Associate Director, Council on Legal Education Opportunity, 1969 to 1970.
9. School of Law, University of Maryland, 1963 to 1971:
   (a) Assistant Professor, 1963 to 1966;
   (b) Associate Professor, 1966 to 1969 (tenured);
   (c) Professor, 1969 to 1971 (tenured).
10. Law Clerk, Chief Judge Simon E. Sobeloff, U.S.C.A. for the 4th Circuit, 1962 to 1963.

ALTERNATIVE DISPUTE RESOLUTION ACTIVITIES:

1. American Arbitration Association National Employment, Labor, Employee Benefits and Commercial Dispute Resolution Panels.
2. Labor Management Relations Arbitrator, since 1965:
   (a) American Arbitration Association;
   (b) in the past on other specific panels and the Federal Mediation and Conciliation Service for more than 40 years.
3. Early Neutral Evaluator, U.S.D.C., N.D. Cal., since 1987.
4. Mediator, U.S.D.C., N.D. Cal., since 1993.
5. Acting Monitor, U.S.D.C., N.D. Cal., *San Francisco Firefighters Case*, 1989.
6. Mediator, Cal. Court of Appeal, 1st Dist., 2004-2013.
7. Pro Tem Judge, Superior Court, City and County of San Francisco, 1990-2018.
8. *Ad hoc* Admin. Law Officer, California's Agricultural Labor Relations Board, 1975-80.
9. Member Dalkon Shield damages arbitration panel for Northern California, 1991 to 1993.

GOVERNMENT BOARDS:

1. Member, Baltimore, MD Community Relations Commission, 1966 to 1969.
2. Member, State of Maryland's Patuxent Institution Board of Review (a prison parole board), the Patuxent's Advisory Board and its Board of Governors, 1967 to 1969.
3. Member, Mayor of Baltimore's Committee on Administration of Criminal Justice Under Emergency Conditions, 1968.
4. Member, National Advisory Committee [of the U.S. HEW] project to draft a uniform Child Abuse and Neglect Law, 1974 to 1975.

SELECTED ADDITIONAL PROFESSIONAL ACTIVITIES:

1. Attorney Delegate from the U.S. D.C. N.D. Cal. to the 9th Circuit Judicial Conference, 1996 to 1998.
2. Permanent Member, Fourth Circuit Judicial Conference, since 1967 now *emeritus*.
3. Member, ABA Litigation Section's Committee to Study Rule 11, 1986 to 1989.
4. Co-chairperson and/or Faculty Member, Practicing Law (PLI) Institute programs on Civil Litigation, Federal Civil Rights Litigation, and/or Attorneys' Fees, 1976 to 1989; Faculty in other federal practice and attorneys' fees programs--most recently in 2004.
5. Faculty, California's Continuing Education of the Bar (CEB), Federal Litigation Program, 1986; Fundamentals of Civil Litigation Before Trial, 1988; (Chair) Litigating Civil Rights Cases in Federal and State Court, 1989, 1992, 1995 and 1996.
6. Faculty, Georgetown University Law Center's CLE § 1983 Civil Rights Litigation Program, 1993.
7. Faculty, ATLA's Civil Rights Section Civil Rights CLE Program, 1992 and 1993 (Moderator), 1996, 1998; Employment Rights Section CLE Program Faculty, 1999; Civil Rights Section and Minority Caucus CLE, 2003.
8. Treasurer, Exec. Committee and Chair of Education Committee of ATLA's Civil Rights Section, 1992 to 1993; 1993 to 1994; Civil Rights Newsletter Editor, 1994 to 1999; Member, Constitutional Litigation Committee, 1996.
9. Faculty, California Employment Lawyers Association CLE Program, 1999.
10. Faculty, Los Angeles Consumer Lawyers CLE Program, 2001.
11. Faculty, California State Bar Labor Section CLE, 2002.
12. Faculty, Lorman CLE on Police Misconduct and Institutional Reform in California, 2005.

PUBLICATIONS:

1. *Fair Representation, Contract Breach and Fiduciary Obligations*, 15 HASTINGS L.J. 391 (1964).
2. *The Individual Worker in Grievance Arbitration*, 24 MD. L. REV. 233 (1964).
3. *The Law and Racial Discrimination in Employment*, 53 CAL. L. REV. 279 (1965); *revised and reprinted in* EMPLOYMENT, RACE AND POVERTY (Ross & Hill eds., Harcourt, Brace and World 1966); CORPORATE COUNSEL'S ANNUAL 1966 (Matthew Bender & Co. 1966).
4. Review of *Marshall, The Negro and Organized Labor*, 75 Yale L.J. 682 (1966).
5. *Division of Authority Under Title VII of the Civil Rights Act of 1964: A Preliminary Study in Federal-State and Interagency Relations*, 34 GEO. WASH. L. REV. 846 (1966).

6. *Contemporary Winds and Currents in Criminal Law, With Special Reference to Constitutional Criminal Procedure*, 27 MD. L. REV. 103 (1967), *revised and reprinted in* SOURCEBOOK FOR PROSECUTORS (PLI 1969).
7. Review of *Sovern, Legal Restraints on Racial Discrimination in Employment*, 81 HARV. L. REV. 276 (1967).
8. *Preemption and Exemption Under the National Labor Relations Act: Myths, Long Standing Questions and Recent Developments*, 21 N.Y.U. ANN. CONF. ON LAB. 243 (1969).
9. *Civil Disobedience and Other Such Techniques: Law Making Through Law Breaking*, 37 GEO. WASH. L. REV. 435 (1969).
10. Co-author of Comment on *Powell v. McCormack*, 17 U.C.L.A. L. REV. 58 (1969).
11. *Equalizing Access to Legal Education: Special Programs for Law Students Not Admissible by Ordinary Criteria*, 1970 TOLEDO L. REV. 321 (1970).
12. *The Greening of the Scranton Commission: Campus Unrest and Change in America*, 71 COLUM. L. REV. 1120 (1971); 57 AAUP BUL. 506 (Dec. 1971).
13. Co-author of *Your Rights Before the Grand Jury*, ACLU Pamphlet (Feb. 1972).
14. Co-author of *Your Right to Government Information*, ACLU Pamphlet (Feb. 1973).
15. Review of several books on Treason, 51 TEX. L. REV. 817 (1973).
16. *Judge Sobeloff's Public School Race Segregation Decisions*, 34 MD. L. REV. 498 (1974)
17. Co-author of *State and Local Regulation of Religious Solicitation of Funds: A Constitutional Perspective*, 446 ANNALS 166 (Nov. 1979).
18. *The Legal Battle: Finishing Unfinished Business, in* KENT STATE/MAY 4: ECHOES THROUGH A DECADE (Scott L. Bills ed.,1982).
19. *Seeking Environmental Justice For Minorities and Poor People* (with Tom Nolan), TRIAL MAGAZINE, Dec. 1994.
20. *Defeating Efforts to Delay Section 1983 cases*, TRIAL MAGAZINE, Aug. 1999.
21. *Acknowledging a Military Wrong*, TRIAL MAGAZINE, Apr. 2001.
22. *A Strike Against Qualified Immunity*, co-authored with Geri Lyn Green, THE RECORDER, October 1, 2010
23. *Attorneys' Fees, Costs and Interest* (with Michael Freedman), in CALIFORNIA EDUCATION OF THE BAR (CEB) EMPLOYMENT LAW PRACTICE GUIDE (Spring 2012).
24. *Seeking Justice in Their Memory – Victims of the Kent State Shootings*, THE RECORDER, May 4, 2012
25. *Online Bickel symposium: How I spent my summer of 1961*, SCOTUSblog (Aug. 17, 2012, 12:56 P.M.), *available at* http://www.scotusblog.com/2012/08/online-bickel-symposium-how-i-spent-mysummer-of-1961/.
26. *Same Sex Marriage: The Time Has Come*, The Recorder, June 28, 2013
27. *The Rights of Transgender Prisoners*, Daily Journal, June 17, 2015
28. *SF Jail Housing Policy a Big Step*, Daily Journal, Sept. 21, 2015
29. *Toward a More Perfect Union: Restoring Felons Who Have Served Their Time to Full Citizenship*, co-authored with Jeffrey Bornstein, Daily Journal, May 10, 2016
30. *Have You Actually Read the Directive on Use of Restrooms by Transgender Students?*, Daily Journal, May 19, 2016
31. *Anti-discrimination laws in jeopardy across the board*, , Sept. 25, 2017
32. *NIFLA v Becerra: folly, fallout and follow-up*, Daily Journal, July 3, 2018

33. New Justices and shifting public opinion make Title VII cases hard to predict, Daily Journal, May 7, 2019
34. The increasing positioning and politicizing of federal courts, Daily Journal, Feb. 23, 2020
35. *Column on overturned conviction is wrong on the facts and the law*, Daily Journal, March 3, 2020
36. "The Kent State Shootings After Nearly 50 Years," in *The Cost of Freedom*, edited by Susan Ehrenich, Kent State University Press, 2020
37. *Bostock Opinions Rewrite the Likely Future of the US Supreme Court*, Daily Journal, June 22, 2020
38. *Take Qualified Immunity Out of the Equation, Daily Journal*, May 4, 2021
39. *Case pits LBGTQ access to public accommodations against vendors' First Amendment rights*, Daily Journal, March 9, 2022 (with Thomas Nolan)
40. Numerous articles in the *Huffington Post*, available at https://www.huffingtonpost.com/sanford-jay-rosen. or https://rbgg.com/attorneys/partners/sanford-jay-rosen/
41. Additional reviews and essays in the Boston College Industrial and Labor Relations Review; the Brooklyn, California Western, George Washington, Maryland (2) and Pennsylvania Law Reviews; The Journal of Legal Education; The Law Library Journal; The Maryland Law Forum (2); The Cornell Industrial and Labor Relations Review; The Baltimore Sun (2); Patterns of Prejudice (2); Civil Liberties (4); and the Kent Left Studies/Left Review.
42. Numerous print and outline articles on federal and state civil practice and procedure subjects, on attorneys' fees, and on employment and civil rights litigation, commencing 1976, up to the present, for the Practicing Law Institute, California's CEB, ATLA (now AAJ), the Georgetown Law Center, the California State Bar Employment Section and other CLE provider organizations.
43. With annual updates, "Attorney Fees, Costs and Remedies," Co-Author with Michael Freedman of Chapter in *Employment Damages and Remedies,* California Continuing Education of the Bar, since 2012
44. Public lectures at Princeton University, the University of Texas (Austin), Kent State University and Emerson College; panel and other presentations at the Yale Law School.
45. Testimony to congressional committees.
46. Author and editor of comprehensive set of materials to guide appointed counsel for indigent prisoners in cases filed under 42 U.S.C. § 1983 for the U.S.D.C., N.D. Cal. (1988; 2nd ed. 1990; 3rd ed. 1992; and 4th ed. (for both the N.D and the E.D.) 1996).

SELECTED CASES:

U.S. Supreme Court: My first Supreme Court argument was in *Whitehill v. Elkins*, 389 U.S. 54 (1967), in which the Supreme Court declared most of Maryland's loyal-security statute unconstitutional, overruling its previous decision sustaining that law. The four other cases I briefed and argued in the Supreme Court of the United States are: *Connell v. Higginbotham*, 403 U.S. 207 (1971) (in which the Court recognized due process rights of non-tenured public employees); *Socialist Labor Party v. Gilligan*, 406 U.S. 583 (1972) (which the Court dismissed as unripe); *Communist Party of Indiana v. Whitcomb*, 414 U.S. 441 (1974) (in which for the first time the Court applied full blown First Amendment standards to declare unconstitutional a civil

disability as opposed to a criminal sanction); and *Collins v. City of Harker Heights*, 503 U.S. 115 (1992) (in which the Court significantly clarified the elements and liability standards for many 42 U.S.C. § 1983 claims and for municipal liability in § 1983 actions). I also have prepared petitions, briefs and motions in numerous other Supreme Court cases.

Other Appeals: Among the other appeals in which I have been lead counsel and won are: (1) *Landmark Screens, LLC v. Morgan, Lewis & Bockius, LLP*, 676 F.3d 1354 (Fed. Cir. 2012), reversing district court orders to hold that equitable tolling extends time to file an actual fraud claim and damages not cut off as a matter of law upon granting of a reissue patent; (2) *Prison Legal News v. Schwarzenegger*, 608 F.3d 446 (9th Cir. 2010), affirming the power of a federal district court to order monitoring to ensure publisher's First Amendment rights to send books and magazines into state institutions; (3) *Mayfield v. Woodford*, 270 F.3rd 915 (9th Cir. 2001) (*en banc*). I have been representing Demetrie Mayfield for more than 30 years. Starting in the mid-1980's, I was appointed to represent Mr. Mayfield in his appeal to the California Supreme Court and in his *state habeas* corpus evidentiary hearing. We were unsuccessful in the California Supreme Court, and other attorneys were appointed to represent Mr. Mayfield in the federal courts. We submitted an *amicus curiae* brief in the Ninth Circuit supporting reversal of Demetrie Mayfield's conviction and death sentence. My colleagues and I developed most of the record on basis of which the Ninth Circuit then vacated his death sentence and sent the case back to the California state courts for retrial as to penalty. Subsequently Mr. Mayfield was sentenced to life without the possibility of parole. In 2018 I submitted a clemency application for Mr. Mayfield to California Governor Jerry Brown. He granted that application on December 24, 2018, making Mr. Mayfield eligible for possible parole; (4) *Davis v. California Department of Corrections* (Oct. 31, 1997, Cal. Ct. App. A076411), upholding in unpublished opinion multimillion dollar fee award under the Unruh Act, including a 1.25 multiplier; (5) *Holland v. Roeser*, 37 F.3d 501 (9th Cir. 1994), holding that Rule 68 Offers of Judgment do not cut off fees for making a subsequent fee application unless the offer is unambiguous on the issue (I prepared only the successful Petition for Rehearing/Suggestion of Rehearing *en Banc* that caused the panel to reverse itself); (6) four appeals (one unreported) in *Gates v. Deukmejian*, including 987 F.2d 1392 (9th Cir. 1993), 39 F.3d 1439 (9th Cir. 1994) and 60 F.3d 525 (9th Cir. 1995), a prison conditions case; (7) *Rebney v. Wells Fargo Bank*, 232 Cal. App. 3d 1344 (1991), a consumer class action attorney fee matter; (8) *Lucas Valley Home Owners Ass'n v. County of Marin*, 233 Cal. App. 3d 130 (1991), involving the validity under zoning law and constitutional law of a conditional use permit issued to a synagogue, the real-party-in-interest Chabad of Marin; (9) eight appeals in *Toussaint v. Gomez*, including 926 F.2d 800 (9th Cir. 1990), 826 F.2d 901 (9th Cir. 1987) and 801 F.2d 1080 (9th Cir. 1986), a prison conditions case; (10) two appeals in *EEOC v. Pan American World Airways, Inc*., 796 F.2d 314 (9th Cir. 1986) and 897 F.2d 1499 (9th Cir. 1990), concerning two appeals -- one involving the appeal ability of a decision rejecting on grounds of inadequacy a settlement sponsored by the EEOC that my clients opposed, and the other affirming adoption of the nearly $20 million settlement of this federal Age Discrimination in Employment case that I crafted after a two-month long jury trial; (11) *People v. Mroczko*, 35 Cal.3d 86 (1984), in which the California Supreme Court unanimously reversed my client's capital conviction for murder in a decision establishing the rule in California that each indigent criminal defendant presumptively must be represented by his own appointed attorney; (12) several appeals arising out of the May 4, 1970 shooting of students at Kent State University, including 671 F.2d 212 (6th Cir. 1982) and 570 F.2d 563 (6th Cir. 1977), the civil rights-

wrongful death and bodily injury cases I successfully appealed, retried and settled; (13) *Familias Unidas v. Briscoe*, 544 F.2d 182 (5th Cir. 1976), an appeal overturning discovery sanctions and the First Amendment in a case involving a Texas statute that required disclosure of a civil rights organization's membership list; (14) *Marin City Council v. Marin County Redevelopment Agency*, 416 F. Supp. 707 (N.D. Cal. 1976), involving a complex case where the court rejected a claim that HUD and a developer (my client) had provided insufficient federally assisted low-cost housing in a Marin County housing development. The decision was affirmed by the Ninth Circuit in an unpublished opinion; (15) *Evergreen v. Foundation Films, Inc. v. Davis*, where I succeeded before the Ninth Circuit on an expedited appeal involving the motion picture rights to Dee Brown's BURY MY HEART AT WOUNDED KNEE; (16) *Vinyl Products Inc. v. Armstrong Asphalt*, in which the California Court of Appeal reversed a JNOV in a negligence and breach of warranty case in an unpublished decision; (17) *United States v. Hawthorne*, 370 F.2d 330 (4th Cir. 1966), which constitutional narrowed the scope of the 1961 Federal Criminal Travel Act on constitutional grounds. I also participated in the briefing of many other cases including *Weeks v. Baker & McKenzie*, 63 Cal. App. 4th 1128 (1998) (sexual harassment case); *Greene v. Dillingham Construction NA*, 101 Cal. App. 4th 418 (2002) (attorneys' fees appeal); and *Gober v. Ralphs Grocery Company*, 128 Cal. App. 4th 648 (2005), 137 Cal. App. 4th 204 (2006), and No. D050962 (Cal. App. 4th Dist., Sept. 30, 2008) (unpublished) (punitive damages and attorneys' fees in sexual harassment case).

Three-Judge District Court: I won summary judgment motions for plaintiffs before three-judge district courts in the District of Columbia. *Williams v. Blount*, 314 F. Supp. 1356 (D.D.C. 1970), declaring censorship of Williams' newspaper violated procedural due process of law. *Hiss v. Hampton*, 338 F. Supp. 1141 (D.D.C. 1972), declaring the "Hiss Act," which denied Alger Hiss and others their U.S. government service annuities, an unconstitutional *ex post facto* law.

Amicus Curiae Briefs: I was Counsel of Record on *amicus curiae* briefs in *Hollingsworth v. Perry*, 570 U.S. 693 (2013), challenging California Proposition 8's ban of same-sex marriages, and in *United States v. Windsor*, 570 U.S. 744 (2013), challenging the federal "Defense of Marriage Act." I was lead counsel in numerous U.S. Supreme Court cases to vindicate the women's right to choose and those of LGBTQ and disabled people-- *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016), *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 584 U.S. — (2018), *NIFLA v. Becerra*, 585 U.S. — (2018), *Bostock v. Clayton County, Georgia*, No. 17-168; *Altitude Express, Inc. v. Zarda*, No. 17-1623 and *R.G. & G.R. Harris Funeral Homes, Inc. v. E.E.O.C.*, 590 U. S. — (2020), *Fulton v. City of Philadelphia*, No. 19-123 and 303 Creative LLC v. Elenis, U.S. Supreme C21-476. I was also Counsel of Record on *amicus curiae* briefs in *Perdue v. Kenny A*, 559 U.S. __, 130 S. Ct. 1662 (2010), in which the Supreme Court held that civil rights plaintiffs' attorneys fees can be enhanced for quality of representation and results, *City of Burlington v. Dague*, 505 U.S. 557 (1992), urging the Court to permit enhancements of fee awards above the "loadstar" amount in appropriate cases pursuant to environmental fee shifting statutes, and in *Beard v. Banks,* 548 U.S. 521 (2006) in support of a First Amendment challenge to a Pennsylvania prison policy that denied certain prisoners access to any newspapers, magazines, and photographs. I was Lead counsel on an *amicus curiae* brief in the California Supreme Court in *County of Santa Clara v. Superior Court (Atlantic Richfield*), 50 Cal.4th 35 (2010), in which the Court held that public entities can retain private contingent fee lawyers in public nuisance cases. I was lead counsel on an *amicus curiae* brief in *Ibrahim v.*

Department of Homeland Security, 669 F.3d 983 (9th Cir. 2012), in which the court held that plaintiff could challenge her inclusion on watch and no fly lists, and on *amici curiae* briefs in support of California SB 1172, which prohibits sexual reorientation "therapy" to minors in *Welch v. Brown*, and *Pickup v. Brown*,728 F.3d 1042 (9th Cir. 2013), and in support of New Jersey's law in *King v. New Jersey*, 767 F.3d 216 (3d Cir. 2014).

Representative Additional Trial Work Matters: I have taken to judgment and settled numerous police and prison misconduct civil rights cases. For example, in 2014 and 2015, I settled two cases in the U.S. D. C for the District of Hawaii against the Corrections Corporation of America and the State of Hawaii arising out of the killings of two Hawaii inmates in a CCA prison in Arizona. The terms of the settlements are confidential. (*Estate of Nunuha v. State of Hawaii* and *Estate of Medina v. State of Hawaii*). I tried for two months and then settled a prison conditions case securing an agreement requiring California to improve medical and mental health care, treatment of HIV prisoners, and conditions of confinement for certain California prisoners. See *Gates v. Deukmejian*, 987 F.2d 1392 (9th Cir. 1993), *Gates v. Rowland,* 39 F.3d 1439 (9th Cir. 1994), and Gates v. Gomez, 60 F.3d 525 (9th Cir. 1995). After a two-month trial, I secured a permanent injunction ending deplorable prison conditions in California's prison segregation units. See, e.g., *Toussaint v. McCarthy*, 926 F.2d 800 (9th Cir. 1990), 826 F.2d 901 (9th Cir. 1987), and 801 F.2d 1080 (9th Cir. 1986). I brought to re-trial and then successfully settled the Kent State Civil Damages cases in the United States District Court for the Northern District of Ohio. See *Krause v. Rhodes*. Earlier I had tried to a plaintiff's judgment several students' challenge to sweep searches of the Kent State campus following the May 4, 1970 shootings. Similarly, I have tried and settled numerous high value employment cases. In *Andrews v. Equinox Holdings, Inc.,* No. 20-CV-00485-SK, 2021 WL 5275822 (N.D. Cal. Nov. 9, 2021), on the verge of trial I settled an age discrimination case for a recovery of just under $2,000,000 for damages and attorneys' fees. In 2000, I tried *Yarborough v. PeopleSoft* to a jury in Alameda Superior Court, representing a woman who had been discharged by her employer for discriminatory reasons, securing a judgment of $5.45 million. In *EEOC v. Pan American World Airways, Inc.,* I represented a large group of former Pan Am pilots in a two month jury trial of their age discrimination claims and secured a $20 million dollar settlement. The settlement, which the Ninth Circuit affirmed, was the largest ADEA settlement to date. *See EEOC v. Pan Am. World Airways, Inc*., 796 F.2d 314 (9th Cir. 1986), and 897 F.2d 1499 (9th Cir. 1990). In *Stewart v. County of Sonoma*, I represented a female sheriff's deputy in her successful sexual case before a jury in the U.S. District Court for the N.D. CA. In *Sergeants for a Fair Lieutenants' Exam vs. City and County of San Francisco* tried in San Francisco Superior Court a challenge to the San Francisco Police Department's promotional exam on behalf of approximately 100 police officers, securing relief for many of my clients as well as attorney's fees. In addition to successfully prosecuting dozens of attorney's fees claims, I have also tried several attorney's fees matters. Most recently, in 1999-2000 in *Rotbart v. Feliciano*, I tried to a Special Master in Saipan and then to an arbitrator in Hawaii and secured my client's multi-million-dollar *quantum meruit* attorney's fee for his representation of an heir of DHL founder Larry Hillblom.

MATERIALS CONSIDERED

In addition to the materials identified in this declaration, I also considered the following:

Ford, et al. v. Takeda Pharmaceuticals U.S.S., Inc., et al. case documents:

- Second Amended Complaint
- Settlement Agreement
- Memorandum in Support of Unopposed Motion for Preliminary Approval of Class Settlement
- Case Docket Sheet

Representative Schlichter, Bogard and Denton case filings:

- *Bell, et al. v. Ath Holding Company, LLC, et al.,* No. 15-2602 (S.D. Ind.)
  - Memorandum in Opposition of Defendants' Motion to Dismiss
  - Memorandum in Support of Plaintiffs' Motion for Class Cert
  - Order on Motion to Dismiss
  - Reply in Support of Plaintiffs' Motion for Class Certification

- *Cates, et al. v. The Trustees of Columbia University in the City of New York, et al.,* No. 16-06524 (S.D.N.Y.)
  - Order granting Motion for Attorneys' Fees and Costs
  - Memorandum in Support of Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and Case Contribution Awards

- *Gordan, et al. v. Massachusetts Mutual Life Insurance Co., et al.,* No. 13-30184 (D. Mass.)
  - Order granting Motion for Attorneys' Fees and Costs
  - Memorandum in Support of Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and Case Contribution Awards

- *In re Northrop Grumman Corporation ERISA Litigation,* No. 06-6213 (C.D. Cal.)
  - Memorandum in Support of Motion for Class Certification
  - Order Granting Joint Stipulation re Class Cert Hearing

- *Jennifer Sweda, et al. v. University of Pennsylvania, et al.,* No. 17-3244 (E. D. Pa.)
  - Order granting Motion for Attorneys' Fees and Costs
  - Memorandum in Support of Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and Case Contribution Awards

- *Krueger, et al. v. Ameriprise Financial, Inc., et al.*, No. 11-2781 (D. Minn.)
  - Memorandum in Support of Motion to Certify Class Action
  - Order on Class Certification
  - Order on Motion to Dismiss Granted in Part Denied in Part
  - Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Dismiss
  - Reply in Support of Class Certification

- *Kruger, et al. v. Novant Health, Inc., et al.,* No. 14-208 (M.D. N.C.)
  - Opposition to Motion to Dismiss
  - Order Denying Defendants' Motion to Dismiss
  - Order Granting Motion for Attorneys' Fees
  - Declaration of Jerome Schlichter in Support of Motion for Class Certification
  - Declaration of Karen Ferguson in Support of Motion for Attorneys' Fees
  - Declaration of Thomas Theado in Support of Motion for Attorneys' Fees

- *Pledger, et al. v. Reliance Trust Company, et al.,* No. 15-04444 (N.D. Ga.)
  - Order granting Motion for Attorneys' Fees and Costs
  - Memorandum in Support of Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and Case Contribution Awards

- *Ramos*, *et al. v. Banner Health, et al.,* No. 15-02556 (D. Colo.)
  - Amended Complaint
  - Plaintiff's Proposed Findings of Fact and Conclusion of Law
  - Schlichter Bogard & Denton Selected Attorneys Biography
  - Banner Defendants' Final Proposed Findings of Fact and Conclusion of Law
  - Findings of Fact and Conclusions of Law Entered Upon Trial on the Merits to the Court
  - Final Judgement
  - Case Docket Sheet

- *Ramsey*, *et al. v. Philips North America LLC.,* No. 18-1099 (S.D. Ill.)
  - Complaint
  - Settlement Agreement
  - Joint Motion for Preliminary Approval and Brief in Support
  - Motion for Class Certification and Brief in Support
  - Preliminary Approval Order
  - Case Docket Sheet

- *Spano*, *et al. v. Boeing Company, et al.,* No. 09-3001 (7th Cir.)
  - Appellees' Brief

- *Spano, et al. v. Boeing Company, et al.,* No. 06-743 (S.D. Ill.)
  - Memorandum and Order granting Motion for Attorneys' Fees and Costs

- *Tibble, et al. v. Edison International, et al.*, No. 07-5359 (C.D. Cal.)
  - Findings of Fact and Conclusions of Law
  - Plaintiffs' Trial Brief

- *Tibble, et al. v. Edison International, et al.*, No. 10-56406 (9th Cir.)
  - Appellants' 3rd Brief on Cross
  - Appellees' Cross Appellants 2nd Brief Cross Appeal
  - Plaintiffs' Appeal

  - Reply Brief of Appellants'
  - Supplemental Brief of Appellants

- *Tibble, et al. v. Edison International, et al.*, No. 11-56628 (9th Cir.)
  - Appellants' Brief
  - Appellants' Reply Brief

- *Tibble, et al. v. Edison International, et al.*, No. 13-550 (S. Ct.)
  - Supreme Court Brief

- *Tracey*, *et al. v. The Massachusetts Institute of Technology, et al.,* No. 16-11620 D. Mass.)
  - Second Amended Complaint
  - Settlement Agreement
  - Memorandum in Support of Unopposed Motion for Preliminary Approval of Class Settlement
  - Case Docket Sheet

- *Troudt, et al. v. Oracle Corporation, et al.*, No. 16-00175 (D. Colo.)
  - Order Granting in Part Motion for Class Certification
  - Order Overruling Objections and Adopting Recommendation
  - Plaintiffs' Motion to Certify Class and Memo in Support
  - Plaintiffs' Response to Defendants' Superseding Motion to Dismiss the Complaint
  - Reply in Support of Motion for Class Certification

- *Tussey, et al. v. ABB, Inc.*, *et al*., No. 06-4305 (W.D. Mo.)
  - Order and Judgment

- *Tussey, et al. v. ABB, Inc.*, *et al.,* No. 12-2056 (8th Cir.)
  - Appellees' Brief

- *Waldbuesser, et al. v. Northrop Grumman Corp, et al.*, No. 06-6213 (C.D. Cal.)
  - Order granting Motion for Attorneys' Fees and Costs
  - Plaintiffs' Proposed Findings of Fact and Conclusions of Law

GEORGETOWN LAW
Center on Ethics and the Legal Profession

Thomson Reuters Institute

2022 Report on the State of the Legal Market

A challenging road to recovery

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A challenging road to recovery

The past year marked another extraordinary one for the legal industry as law firms began to emerge from the worst of the pandemic and moved toward some semblance of normalcy. From a financial standpoint, demand growth continued to rise at a healthy pace, mirroring the trend seen in the second half of 2020.[1] Firms were also able to maintain a fairly steady increase in working rates, while achieving very strong realization, again reflecting a pattern seen in 2020.

That said, however, the year had its challenges as well.

The demand increase experienced over the year — especially in the corporate, M&A, and real estate practice areas — led firms to increase associate and other professional staff hiring quite aggressively. As a result, we saw hiring across the market grow at levels unseen for a decade. This hiring surge was accompanied by dramatic increases in associate compensation, resulting in significant growth in direct expenses for firms in the second half of the year.

> ***"[R]ecruiting and retaining both legal and other professional staff may well prove to be among the biggest post-pandemic challenges confronting law firms in 2022."***

Unfortunately, the effects of this hiring surge were also tempered by a dramatic rise in associate turnover, with firms seeing their associate turnover rates increase to record levels. As a result, by year's end, many firms found themselves locked in an expensive war for talent that was complicated by unprecedented problems of retaining the talent already in house. These problems of recruiting and retaining both legal and other professional staff may well prove to be among the biggest post-pandemic challenges confronting law firms in 2022.

Of course, law firms are not unique in this respect. In the face of the so-called *Great Resignation*, businesses across the economy are confronting similar issues of how to entice their employees back into the office environment while, at the same time, providing the support and flexibility necessary to meet the needs of anxious people whose attitudes toward work and life may very well have shifted during months of pandemic-driven isolation. And all

1 Financial data for this report is provided by Thomson Reuters Financial Insights®. This data is based on reported results from 171 U.S.-based law firms, including 51 Am Law 100 firms, 55 Am Law Second Hundred firms, and 65 additional Midsize firms (outside of the Am Law 200).

of these factors may force serious reconsideration of how all businesses (including law firms) think about their traditional talent models.

Lessons of the pandemic

Mark Twain once said that "history doesn't repeat itself, but it often rhymes." In that context, it is interesting to consider our current experience of emerging from the global COVID-19 pandemic by reflecting on an earlier pandemic and the lessons we might take from it.

From early 1665 to mid-1666, London experienced a devastating wave of bubonic plague that killed an estimated 100,000 people, almost one-quarter of the city's population, in just 18 months. As the disease spread, those with the means to do so left the city, while those left behind quarantined as best they could. Not surprisingly, the economy of London came to an abrupt halt.

In September 1666, as the plague began to subside, London was hit with a second disaster — a four-day fire that swept through the central part of the city and destroyed everything in its path. The *Great Fire of London* (as it was called) destroyed 13,200 houses, 87 parish churches, St. Paul's Cathedral, and most government buildings within the medieval city walls. The fire ruined city merchants and property owners, making recovery from the pandemic even more difficult.

As London faced the daunting task of rebuilding, skilled workers were in short supply and in great demand. The population was traumatized and dispirited, and a full-scale rebellion against the monarchy was feared. Ways of bringing the community back together became an urgent priority.

At about this time, Sir Christopher Wren was given the commission to redesign and rebuild St. Paul's Cathedral, a project that would employ hundreds of laborers and skilled workmen. The story is that, as the project got underway, Wren, who was not personally known by many of the workers, stopped and asked three workers who were all engaged in the same task what they were doing. He received three very different answers. The first said, "I am cutting this stone." The second answered, "I am earning three shillings, six pence per day." The third man straightened up, squared his shoulders, and still holding his mallet and chisel, replied, "I am helping Sir Christopher Wren build this great cathedral."

In his short visit, Wren received three different answers and three very different motivations. For one worker, it was just a job. For another, it was just about the money. But, for the third, it was about pride in participating in something important, something bigger than himself.

This parable has lessons for our time. As firms face the challenges of hiring, training, and retaining associates and other professional staff, it is important to remember that employee

satisfaction with a job comes primarily from factors *other* than compensation. We have known for decades that money alone is insufficient to create either satisfaction or loyalty.

> ***"Paying [employees] what they think they are worth does not in itself create satisfaction."***

Looking at the groundbreaking research of psychologist Frederick Herzberg in the 1950s,[2] we know that paying employees less than what they think they deserve creates *dissatisfaction*, but paying them what they think they are worth does not in itself create satisfaction. Job satisfaction depends instead on intangible factors like experiencing feelings of value and meaning in the work, being appreciated and recognized, having opportunities for growth and personal satisfaction, believing that you are making a contribution to something larger than yourself, and more. It's about making a job more than "just a job" or "just about the money."

We will explore some of the ways that innovative law firms are seeking to address these and related issues in the sections that follow. But first, we will turn to a more detailed review of law firm financial performance during 2021.

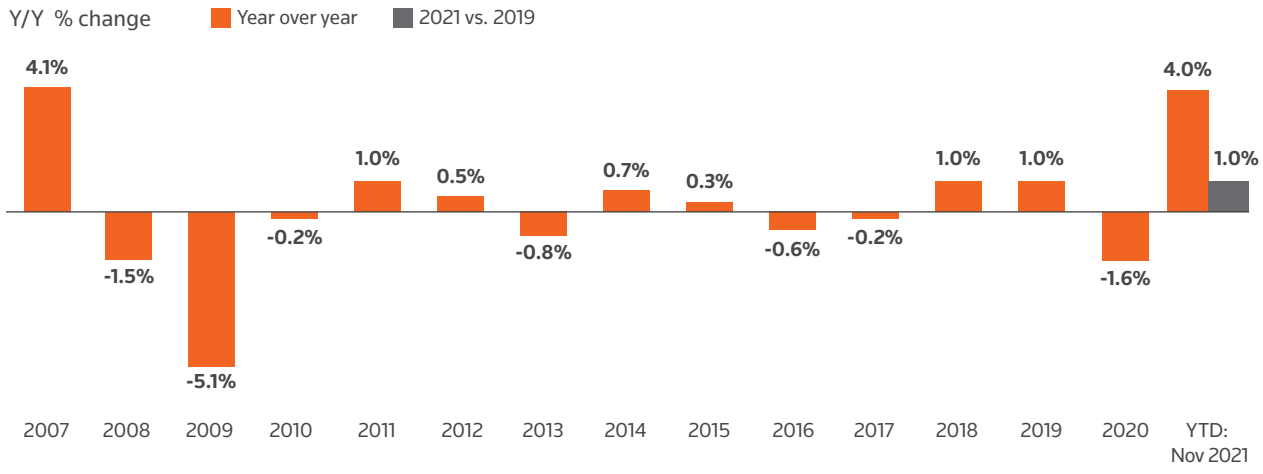
2 Frederick Herzberg was a professor at the University of Utah and, before that, at Case Western Reserve University. He was one of the most influential names in business management, particularly for his motivator-hygiene theory and ideas relating to job enrichment. His 1968 publication "One More Time, How Do You Motivate Employees?" in the *Harvard Business Review* set the record for the most frequently requested reprint in the history of that publication.

Review of law firm performance in 2021

During the past year, law firms continued to perform well financially despite the challenges posed by the COVID-19 pandemic. As compared to 2020, most financial indicators showed strong improvement in 2021, though it must be remembered that 2020 was a highly anomalous year.[3] However, even compared to 2019 (the last "normal" statistical year), firms in 2021 recorded steady financial improvement on most indicators, albeit more modestly than in the 2020 comparison.

After a disappointing start in Q1 2021, demand soared thereafter. Indeed, during Q2 and Q3, demand posted its two strongest quarterly growth rates in the last decade, ending up 4.0% (on a YTD basis) compared to 2020, although only up 1.0% compared to 2019. (These results are shown in Figure 1 below.) In the YTD vs. 2020 comparison, we see in the dispersion data set out in Figure 2 that all three law firm segments had over 70% of firms in the positive territory as to demand growth.

Figure 1: **Growth in demand for law firm services**

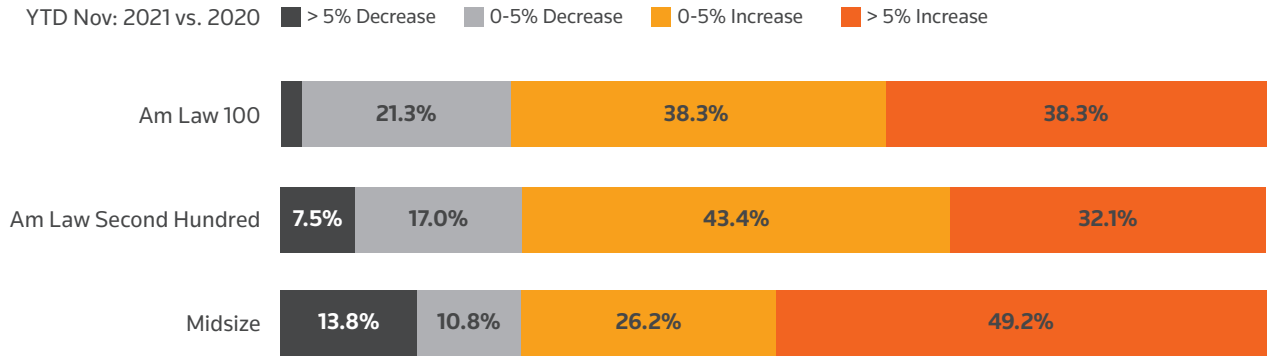


All timekeepers. Billable time type; non-contingent matters.

Source: Thomson Reuters 2022

3 From March until August 2020, as the impacts of the pandemic spread across the entire economy, law firms experienced a dramatic decline in demand, hitting a serious negative growth rate of -6% in the second quarter of the year. Demand growth reversed, however, during the remainder of the year and, because of substantial rate increases and hiring and expense cutbacks, firms were able to end 2020 with record profits. Because of the extreme roller-coaster nature of 2020, it is a difficult year to use for statistical comparison purposes.

Figure 2: Dispersion of demand growth among law firms

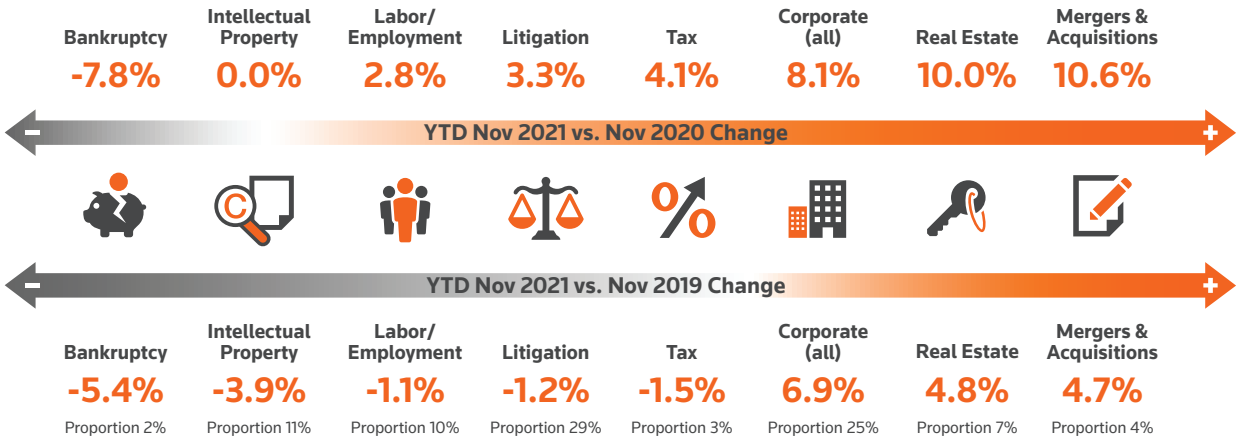


All timekeepers. Billable time type; non-contingent matters.

Source: Thomson Reuters 2022

Demand growth, as shown below in Figure 3, was driven primarily by real estate and corporate (including M&A) practice areas, although almost all practice areas experienced some amount of growth compared to 2020 — as seen with the numbers on top of Figure 3. Compared to 2019, however, demand growth — as shown with the numbers on the bottom of Figure 3 — was more modest, with only the corporate (including M&A) and real estate practices showing positive growth. This corporate and real estate practice surge sufficiently offset the much smaller recovery against pre-pandemic levels in other practice areas, such as litigation, labor & employment, and intellectual property.

Figure 3: Practice demand growth



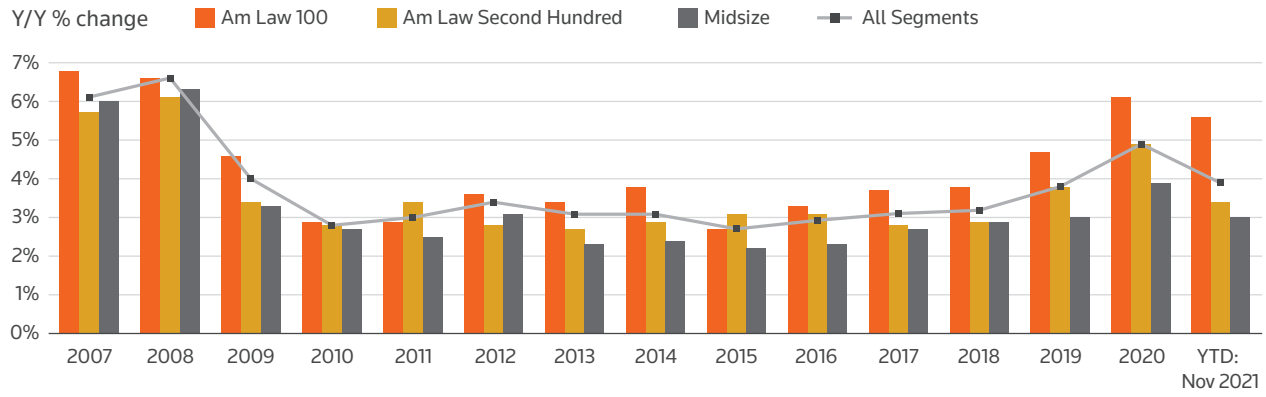
All timekeepers. Billable time type; non-contingent matters.

Source: Thomson Reuters 2022

Law firms continued to increase their billing rates during 2021 on a fairly aggressive basis. As can be seen in Figure 4 below, through November 2021, worked rates for all timekeepers[4] across all firms grew 3.9% on a YTD basis, with Am Law 100 law firms leading with a rate surge of 5.6%.

Increases for other market segments were more modest, with Am Law Second Hundred firms recording a 3.4% increase and Midsize law firms growing rates at 3.0%. While rate growth cooled for all segments compared to 2020's pace, Am Law 100 firms were able to maintain growth above 5%. The corporate work surge noted previously was heavily consolidated among Am Law 100 firms, and it appears that as demand overwhelmed capacity, it allowed these larger firms to be a bit more selective in the work they took on, which had a meaningful impact on rate growth in that sector.

Figure 4: **Worked rate growth by segment**



All timekeepers. Billable time type; non-contingent matters.

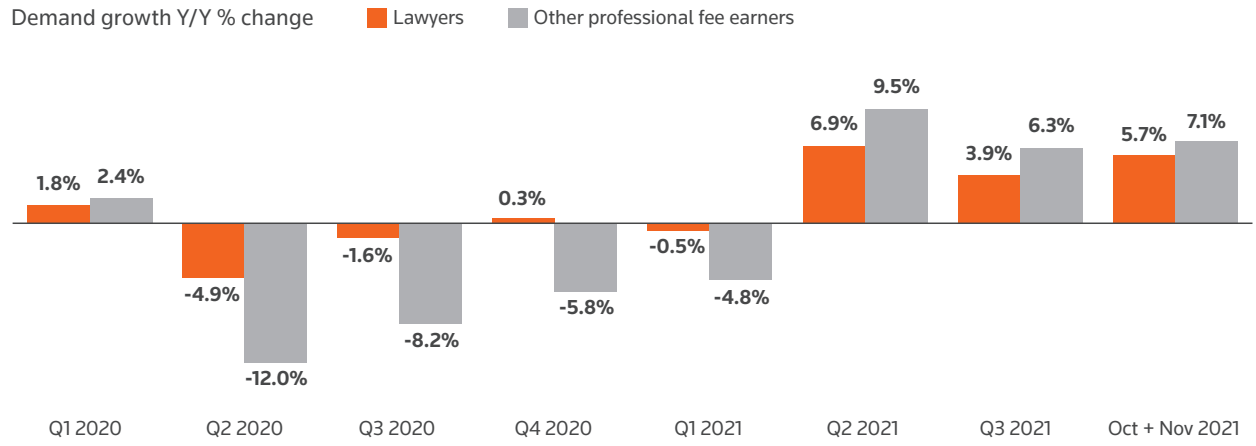
Source: Thomson Reuters 2022

One interesting aspect of these rate increases was that firms employed a different mix of hours and timekeepers in 2021 than they did the previous year. During 2020, the number of hours that other professional fee earners[5] worked dropped dramatically, hitting a low point with a negative growth rate of -12.0% in Q2 2020. Lawyer demand also dropped in 2020, albeit more modestly.

These trends have now reversed dramatically in 2021, however. As indicated in Figure 5, starting in Q2 2021, other professional fee earners have experienced growth rates much higher than lawyers. This reversal in the mix of timekeepers somewhat reduced the average worked rate during 2021, and thus we saw less growth in worked rates, as can be seen in Figure 4.

4 Worked rates, also referred to as negotiated rates, are the rates that a firm agrees to with particular clients for work on given matters.
5 "Other professional fee earners" covers all timekeepers other than lawyers. It includes paralegals, project managers, non-lawyer specialists, and others.

Figure 5: **Timekeeper shifts of 2020 reversed in 2021**

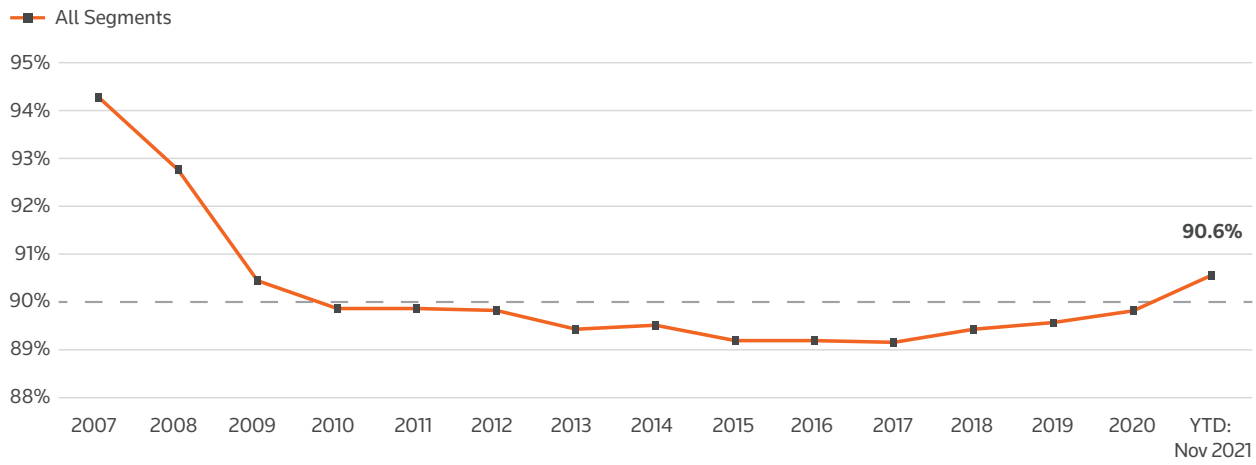


Includes billable and contingent matters.

Source: Thomson Reuters 2022

Despite the near 4% increase in worked rates, we also saw a substantial jump in the realization rates that firms experienced during the past year. In 2021, as shown in Figure 6, the average collection realization against worked rates across the market was 90.6%, the highest level seen since 2009. Each segment saw improvement in its realization rate as 2021 went along. Through the end of November, the Am Law Second Hundred firms led with a 91.6% realization rate, followed closely by Midsize firms at 91.1%, and lastly, by Am Law 100 firms at 88.7%.

Figure 6: **Collection realization against worked (negotiated/agreed)**

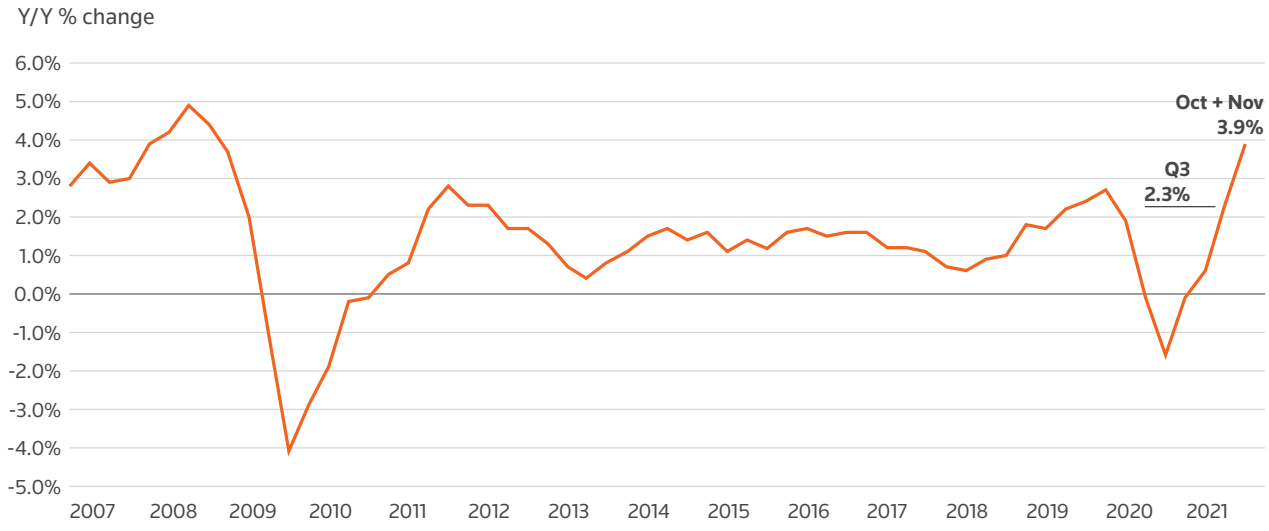


Lawyers only. Billable time type; non-contingent matters.

Source: Thomson Reuters 2022

In terms of growth in lawyer headcount, the rate of increase ramped up steadily during the first half of 2021 and grew substantially during the second half of the year, as many firms brought in *two* new classes of associates (the 2021 class and the class that was deferred from 2020). As a result, as shown in Figure 7, by the end of November, lawyer headcount growth was up 3.9%, the highest level seen in more than a decade.

Figure 7: **Lawyer (FTE) growth**



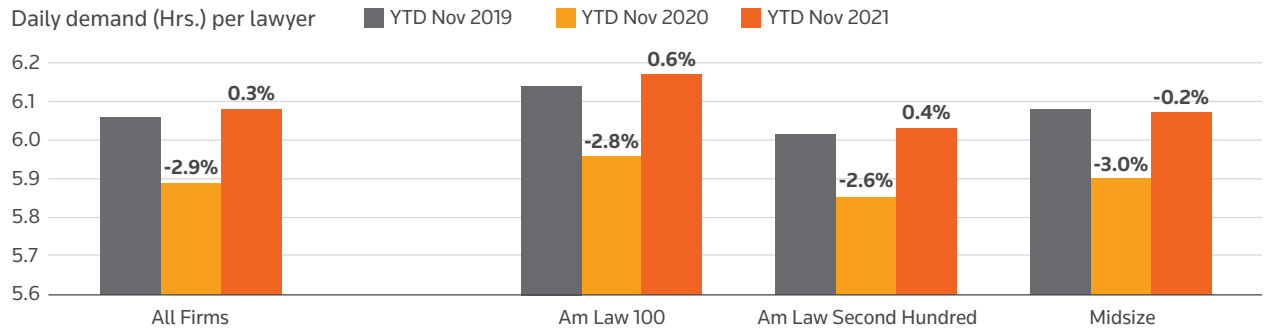
Lawyers only.

Source: Thomson Reuters 2022

The significant growth in lawyer headcount during 2021 offset the increase in demand to moderate any growth in productivity. As can be seen in Figure 8, on a YTD basis through November 2021, productivity improved as compared to 2020, but was only 0.3% above the average daily demand per lawyer in 2019. As can also be seen, Am Law 100 firms fared a bit better in this regard than other segments of the market.

To see the overall productivity picture from a broader perspective, as shown in Figures 9 and 10, the average billable hours worked per lawyer per month in 2021 were still substantially below the average hours seen prior to the financial crisis of 2007-'08, resulting in a substantial hit to law firm revenues. In 2007, the average billable hours were 134 per lawyer per month, or 10 hours per month *higher* than the 124 billable hours per lawyer per month recorded in 2021. If we applied the average worked rate charged by firms in 2021 ($533), the decline in billable hours since 2007 would represent a current cost to the average law firm of $5,330 per lawyer per month, or $63,960 per lawyer per year.

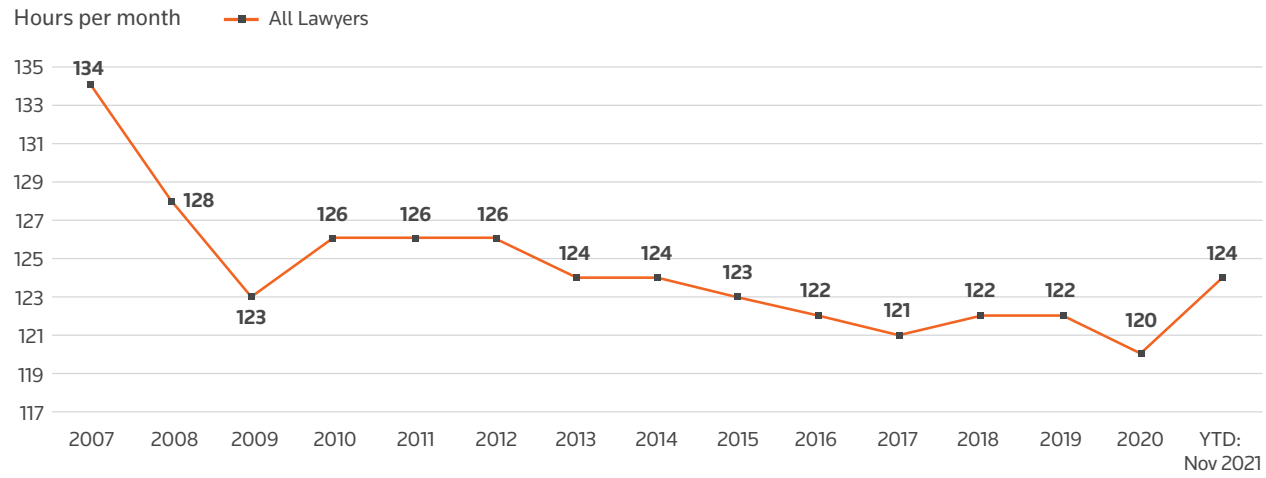
Figure 8: **Average daily demand per lawyer**



*Lawyers only. Billable time type; non-contingent matters. *Percentages measure change from YTD Nov 2019.*

Source: Thomson Reuters 2022

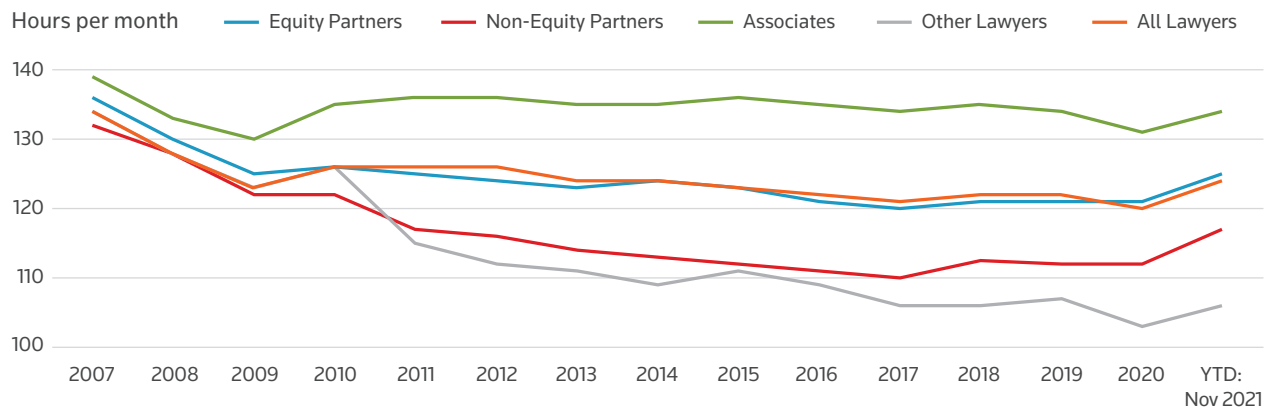
Figure 9: **Hours worked per lawyer**



Lawyers only. Billable time type; non-contingent matters.

Source: Thomson Reuters 2022

Figure 10: **Hours worked per lawyer**

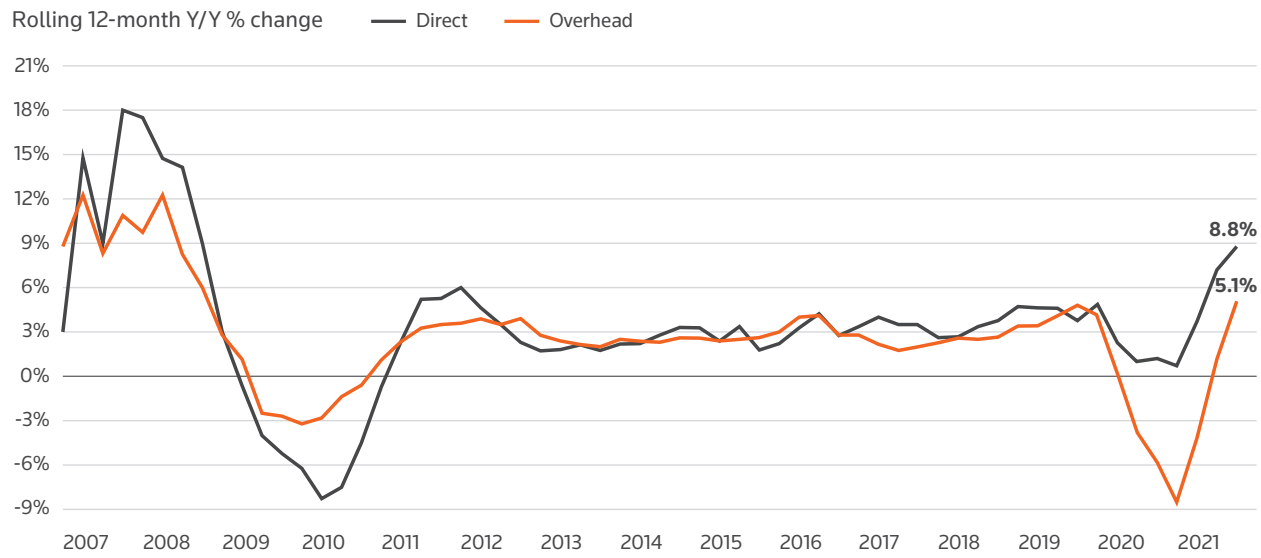


Lawyers only. Billable time type; non-contingent matters.

Source: Thomson Reuters 2022

On the expense side, 2021 saw a sharp increase in direct expenses and overhead expenses by November.[6] As set out in Figure 11 below, direct expenses rose a whopping 8.8% (on a rolling 12-month change basis), while overhead expenses grew at 5.1%. The steep acceleration in overhead expenses isn't as important as that of direct expenses, at least at the moment. Although recording strong growth against 2020's low overhead figures, firms have thus far held the growth of their indirect expenses to roughly pre-pandemic levels.

Figure 11: **Expense growth**

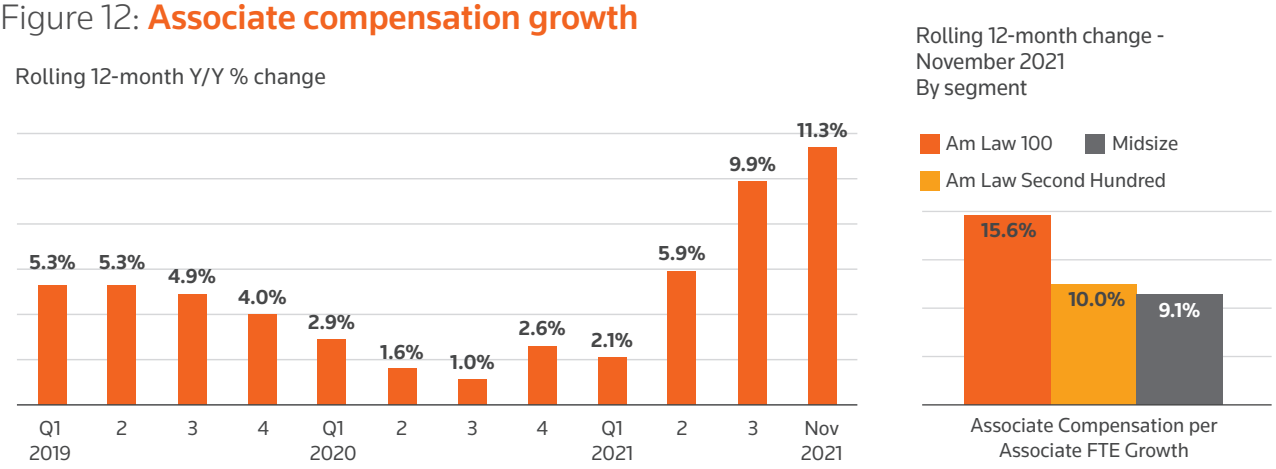


Source: Thomson Reuters 2022

The increase in direct expenses reflected primarily the sharp growth in associate compensation across the market. As indicated in Figure 12, average associate compensation rose by 11.3% per full-time equivalent (FTE) in the 12 months ending in November 2021. For Am Law 100 firms, the increase averaged over 15%.

6 For these purposes, direct expenses refer to those expenses related to fee earners, primarily the compensation and benefits costs of lawyers and other timekeepers. Overhead (or indirect) expenses refer to all other expenses of the firm, including occupancy costs, administrative and staff compensation and benefits, technology costs, recruiting costs, business development costs, and more.

Figure 12: **Associate compensation growth**

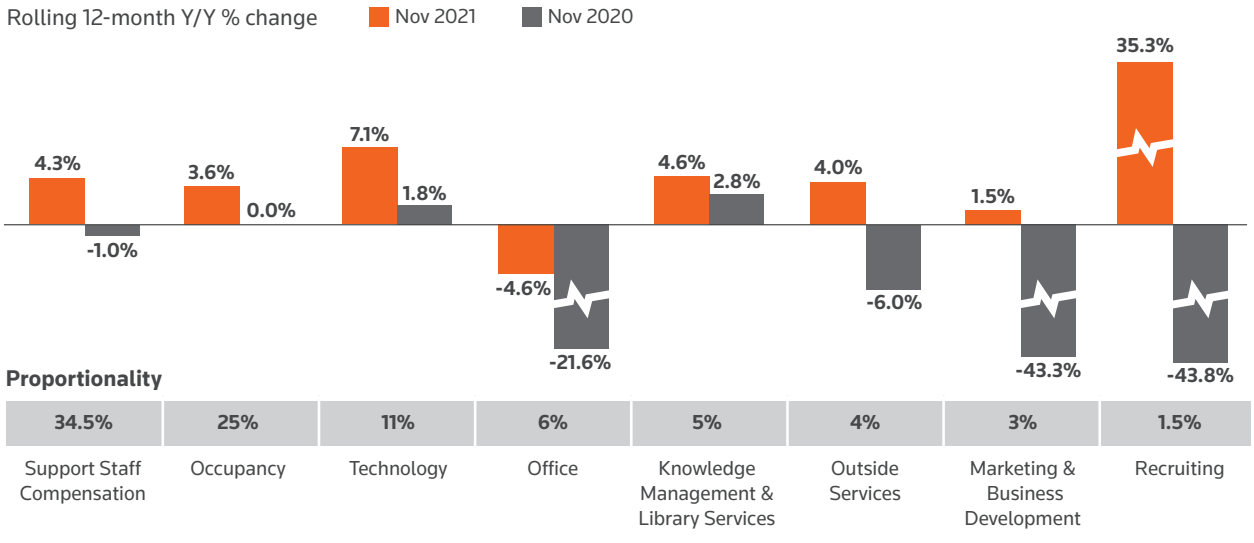


Associate compensation divided by associate FTEs.

Source: Thomson Reuters 2022

Figure 13 shows the details of the increases in overhead expenses through November 2021. As can be seen, the largest increases have been for staff compensation, technology, knowledge management & library services, outside services, and recruiting. Expense line items which were dramatically lower in 2020, such as office expenses continued to see contraction in 2021. Marketing & business development expenses, while moving back into positive territory in 2021, have yet to achieve pre-pandemic levels.

Figure 13: **Overhead detail**

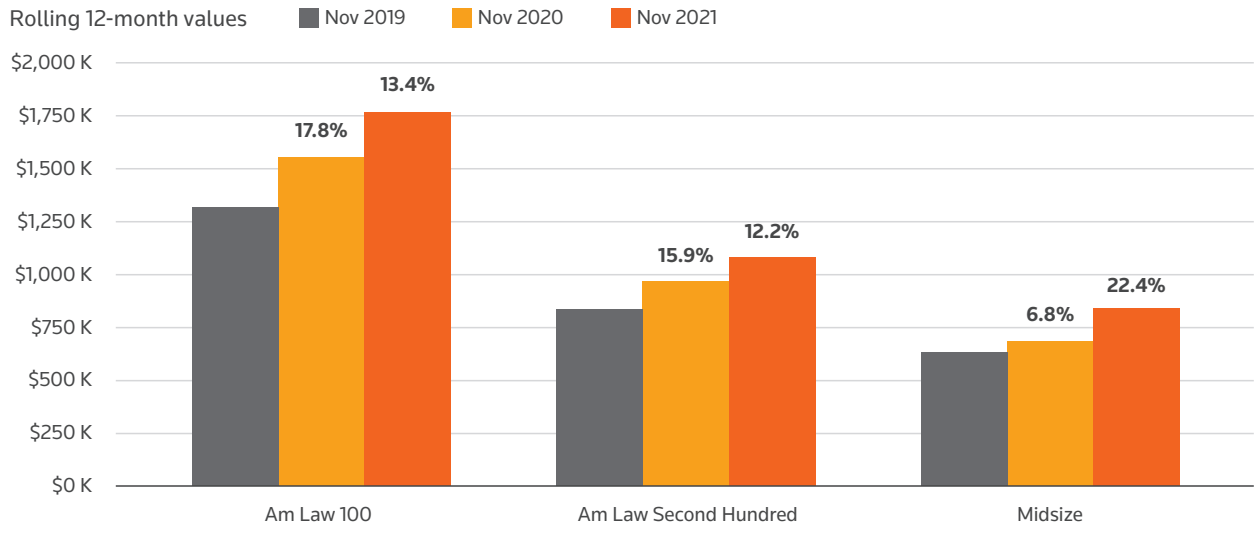


Source: Thomson Reuters 2022

The combined results from the above-described indicators suggest that law firms should end 2021 in good financial shape. Figure 14 shows profits per equity partner (PPEP) on a rolling 12-month value basis over the past three years, broken out by law firm segment. As can be seen, all segments of the market seem well positioned for continued profit growth in 2021.

Am Law firms that had stronger growth in PPEP in 2020 are still seeing double-digit growth in 2021. Midsize firms have had strong revenue and more modest cost pressures, leading to a 22.4% average growth rate in PPEP for that sector.

Figure 14: **Profit per equity partner growth**



**Percentages relate to PPEP growth from the previous 12-month period.*

Source: Thomson Reuters 2022

Managing the road back

As law firms come out of the worst impacts of the pandemic and seek to resume "normal" operations, they must confront the challenges of life in a post-pandemic world. Notwithstanding the fact that most firms have survived the pandemic quite well from a financial standpoint, the new work environment that is emerging in the post-COVID era will be distinctly different from anything that firms have encountered before. It is a safe assumption that adapting successfully to these changes will be the primary challenge confronting law firms in 2022.

In the sections that follow, we address four separate but interrelated issues we believe are likely to dominate the attention of law firm leaders in the coming year. These issues include: (*i*) responding to the fierce competition for legal and other professional talent; (*ii*) facing the crisis of retaining the talent firms already have; (*iii*) successfully navigating the hybrid work model; and (*iv*) remaining operationally flexible in responding to further changes that may emerge in the market.

Responding to the competition for talent

In the *2021 Law Firm Business Leaders Report* — a survey of the business leaders of 55 U.S. law firms that was published in October by the Thomson Reuters Institute and the Georgetown Law Center — firm executives identified the greatest risks to profitability their firms would likely face in 2022. The three highest risks to profitability all involved talent and the intense competition reflected in the currently raging talent war.

In order of priority, the risks included: (*i*) lawyer recruitment and retention; (*ii*) poaching of staff by competitors; and (*iii*) increasing associate salaries. These results were in stark contrast to the 2020 survey in which talent issues didn't even make the top five risks threatening law firm profitability.

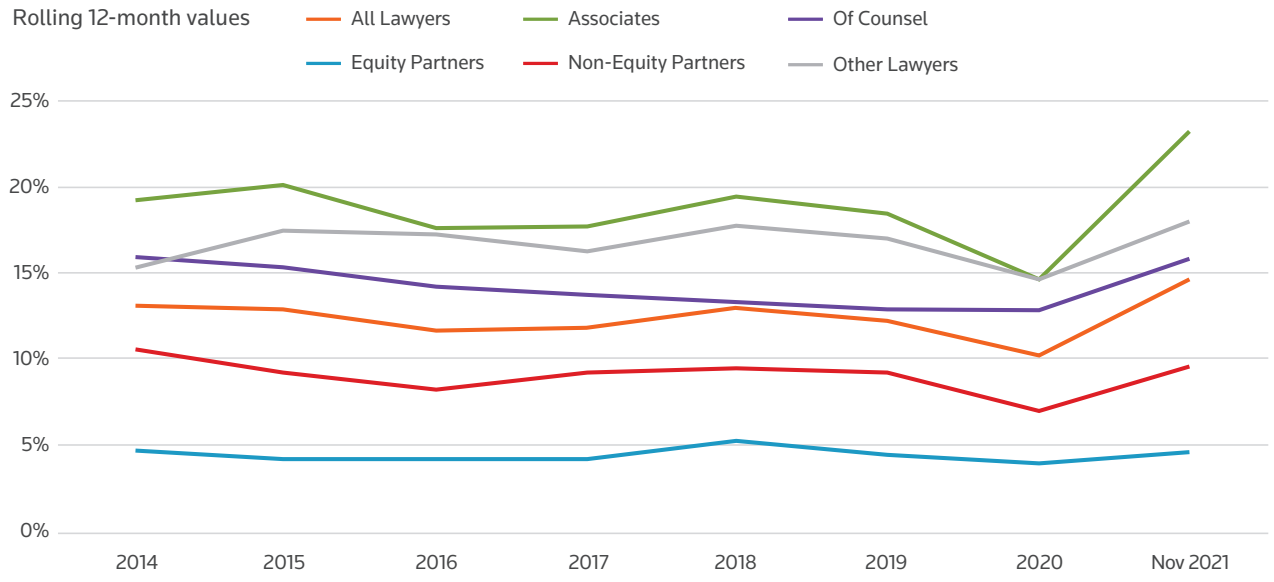
As previously noted, these results are particularly interesting given the focus that firms have had on hiring and retention during 2021, especially in the latter part of the year. Over the past several months, firms across the market have increased associate compensation significantly through salary adjustments and bonus payments. As previously noted, by the end of November 2021, associate compensation for all segments of the market had increased 11.3%, on a rolling 12-month basis. The increase was even higher — more than 15% — among Am Law 100 firms.

The salary increases positively impacted law firm recruiting, although the benefits skewed toward smaller firms. On a YTD basis, lawyer headcount grew 1.5% in November 2021 as compared to November 2020, with most of that growth occurring among Midsize and Am Law Second Hundred firms. Interestingly, headcount growth would be even larger if it were not offset by a significant and concurrent increase in turnover rates.

As shown in Figures 15 and 16 below, the associate turnover rate for all firms reached 23.2% through November 2021 on a rolling 12-month basis. This is significantly above the 18.7% rate experienced in 2019 (the last "normal" year). For Am Law 100 firms, the turnover rate hit 23.7% during the same period, compared to 22.1% for the Am Law Second Hundred and 22.0% for Midsize firms.

In stark terms, at the end of November 2021, all law firms were edging dangerously close to losing almost one-quarter of their associates in 2021!

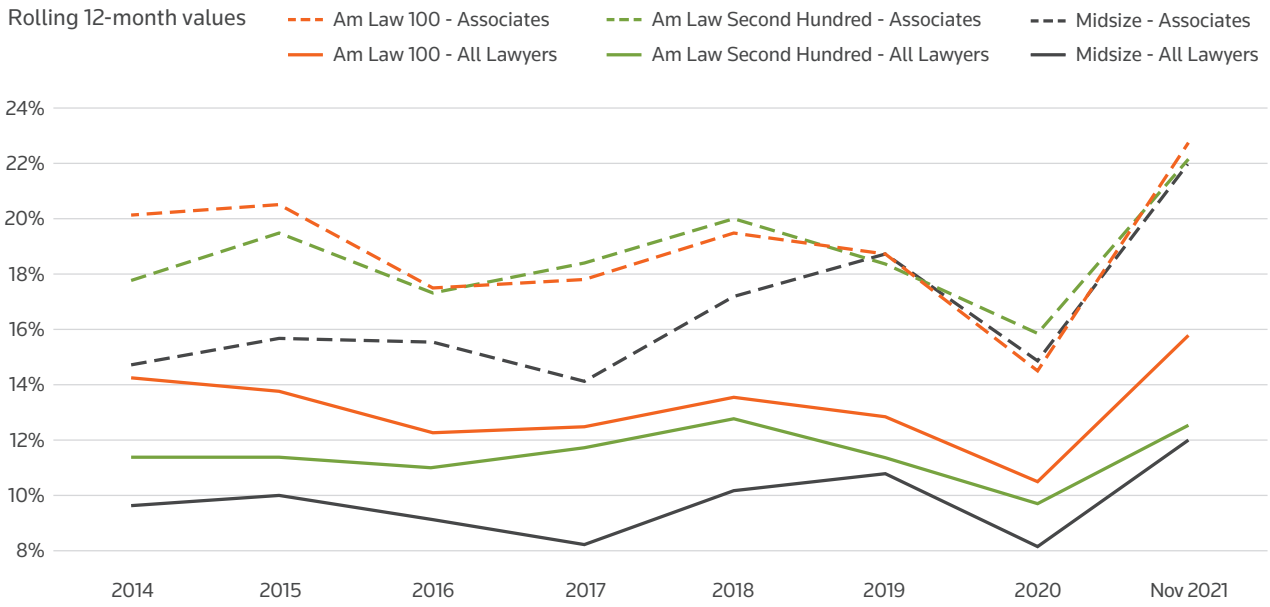
Figure 15: **Turnover analysis**



Turnover = The number of lawyers who left the firm divided by the number of lawyers at the beginning of the time period.

Source: Thomson Reuters 2022

Figure 16: **Turnover analysis by segment**



Turnover = Number of lawyers who left the firm divided by the number of lawyers at the beginning of the time period. *Source: Thomson Reuters 2022*

At the same time, the dramatic increase in associate compensation has placed law firms under growing economic pressure. As previously observed, through November 2021, direct expenses grew by a whopping 8.8%, on a rolling 12-month basis. For Am Law 100 firms, the expense growth was even higher — at 11.9%. This surge in direct expenses was the highest seen since the financial crisis of 2007-'08. And it's a change that will surely impact law firm profitability in the coming year. Yet, the lawyer headcount growth achieved through this enormous outlay of cash was comparatively modest — only 0.9% for Am Law 100 firms for YTD 2021 as compared to YTD 2020.

This data leads inevitably to the question of whether the approach to the talent war that is being taken by most firms is sustainable for the long term. In response to the fierce competition for talent, firms are spending *huge* amounts of money and putting their profits at increasing risk for fairly modest returns — at least if you consider the real costs of high levels of lawyer turnover.

The intriguing question thus becomes, whether refocusing recruitment strategies to emphasize factors other than (or in addition to) compensation might not prove more productive?

This question is particularly important as firms confront the realities of a post-pandemic workforce. As shown in phenomena like *The Great Resignation*, having spent months in pandemic-related isolation, many workers are returning to the labor market with very different attitudes and expectations than they may have had before. Many are more

concerned about flexibility and personal control over their working arrangements than simply how much money they're making. And, like the third worker questioned by Sir Christopher Wren, increasing numbers of young professionals appear more focused on meaning and purpose than simply having a job.

To succeed in the war for talent, it is likely that firms will need to focus as much on these issues as on compensation levels. The market for talent has shifted — certainly for the short term and perhaps for longer — and the competitive factors have expanded. The traditional law firm response of just throwing more money at the problem is not likely to work as well going forward.

Facing the retention crisis

As noted above, associate turnover rates in law firms have hit record high levels.

Emerging from the pandemic, the attitudes of associates toward life and work have clearly changed, and the loyalty of associates to their law firms has waned. About 27% of the 3,700 associates from 77 Am Law 200 firms surveyed by The American Lawyer for its *2021 Midlevel Associates Survey*, said they would leave their current law firm for higher compensation. More importantly, 60% of respondents said they would consider leaving their firm for a better work-life balance.[7]

These survey results may well have been driven in part by the increased workloads experienced by many lawyers — particularly those in the frothy corporate and real estate practice areas — during the past year. And interestingly, the pushback against perceived long working hours[8] was more of an issue with associates than it was with middle-aged lawyers.

Further, the Thomson Reuters' *Stellar Performance: Skills and Progression Mid-Year Survey*,[9] found that:

> Young professionals are placing more explicit emphasis on work/life balance, mental well-being, leisure, and other activities outside work than was evident in previous generations. A higher proportion of the professional workforce are mothers and, as men now take more active roles in child-rearing, it means that younger professionals as a group are juggling more domestic responsibilities alongside their paid jobs. Today's under-40s are also conscious that their working lives will likely be much longer than those of their older colleagues, which further influences their perspective. Collectively, these factors mean than long working hours are a potential push factor for younger talent to leave law firms.[10]

7 Dylan Jackson, "The Reluctant Return," *The American Lawyer*, Sept. 2021, at 32, 34-36.
8 It is critical to note that perception is very important here. Although there is a widely shared belief among younger lawyers that current billable hours must be at record levels, in fact (as previously noted) that is not the case. The 124 average billable hours per month worked by lawyers in November 2021 were about 10% less than the 134 billable hours per month worked by lawyers in 2007. *Source: Thomson Reuters*.
9 Thomson Reuters *Stellar Performance: Skills and Progression Mid-Year Survey* 2021, Thomson Reuters Institute, Nov. 2021 ("Skills and Progression 2021 Survey"). Survey conducted in September 2021 of 1,170 client-nominated Stand-Out lawyers (majority Partners) from more than 50 countries across all sizes of law firms.
10 *Id.*, at 9.

The reactions of younger lawyers stood in stark contrast to the attitudes of lawyers in the middle-age groups (spanning 40- to 60-year-olds). Lawyers in that cohort were comfortable working 10% more hours than the younger lawyers in the survey.[11]

As firms move back toward "normalcy," it should also be noted that retention issues are not limited to associates. Although it receives far less attention in the legal press, there are also serious retention challenges with respect to professional staff other than lawyers. As noted by one commentator:

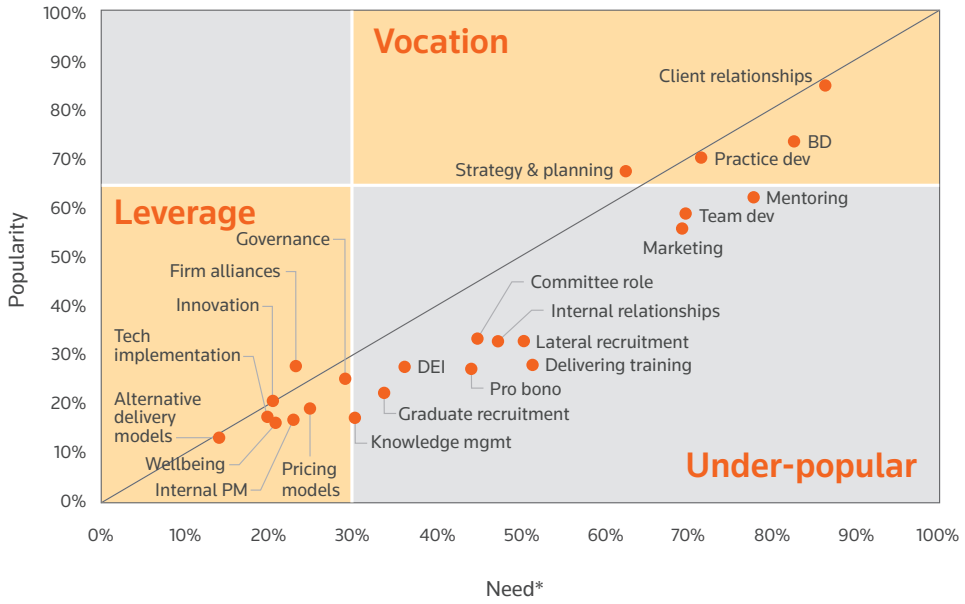
> Taken together, the events of the past 18 months have given business professionals a sense that they deserve better treatment — and some evidence that they've earned it. They have shown that they don't need someone looking over their shoulder to get work done. Now, in a tight talent market, many feel empowered to shop around to improve their compensation and working conditions. Law firms may have to confront something they haven't seen in the legal industry in quite a while: leverage owned by those who are not attorneys.
>
> It may be an oversimplification to say there is a caste system in law firms separating attorneys from everyone else, but there are reasons that trope exists. The pandemic has laid bare some of the ways it manifests, all while redefining the dynamic between attorneys and staff and raising questions about whether those distinctions should continue.[12]

The threat of losing key business professionals is particularly serious given the growing dependence on such persons in most law firms of any significant size. In its *Stellar Performance: Skills and Progression Mid-Year Survey*, Thomson Reuters noted that one change emerging in the post-pandemic world is that most lawyers want to reduce their commitments to non-billable administrative activities that are not directly related to client relationships and business development. As shown in Figure 17 below, lawyers surveyed indicated a strong desire to limit their involvement in such activities as marketing, training, diversity initiatives, lateral and graduate recruitment, and knowledge management, among others. For these latter activities, lawyers appear willing to delegate responsibilities to support professionals and to those partners who might specifically wish to be involved.[13]

11 *Id*. It should be noted that middle-aged lawyers were not seeking more billable hours but rather more time to engage in client relationship building, practice and business development, strategic planning, and the like.
12 Patrick Smith, "Ready for a Change," *The American Lawyer*, Sept. 2021, at 46, 47.
13 *Skills and Progression 2021 Survey*, at 9.

Figure 17: **Popularity gap for recruitment, people development and marketing**

Firm need versus popularity



Vocation = It feels like a calling and people get a lot out of it – most are happy to be involved

Leverage = doesn't need everyone to be involved, just needs to be the right lawyers, leveraging support professionals

Under-popular = fewer people want to be involved than currently are

- **Delegate** to support professionals within the firm
- **Optimize** by making sure partners who do want to be involved have the opportunity
- **Reward** by factoring into compensation

* *Need* is a measurement of the proportion of lawyers who currently have this responsibility.

Base: Current (1155); Ideal (1123).

Source: Thomson Reuters 2022

Firms are responding to this retention crisis in a variety of ways. Almost all firms have ratcheted up compensation, added special work bonuses, or implemented signing or referral bonuses. A few firms have taken measures to try and protect their legal and professional staffs from poaching, including paying lawyers to stay off LinkedIn, removing associate biographies from firm websites, and discouraging networking and bar association involvement that might expose lawyers to competitors. Some law firms have contacted their recently departed lawyers, asking them to come back and promising high-profile work and mentoring. Other firms have promised a shorter timeline for promotions.[14]

Some Midsize firms have taken a more creative approach, providing more work flexibility by basing associate compensation not on hours billed but rather on tasks accomplished and quality of work. Such an approach obviously requires close supervision by practice or team leaders, but it can be an effective way of helping associates maintain more control over their own working lives.[15]

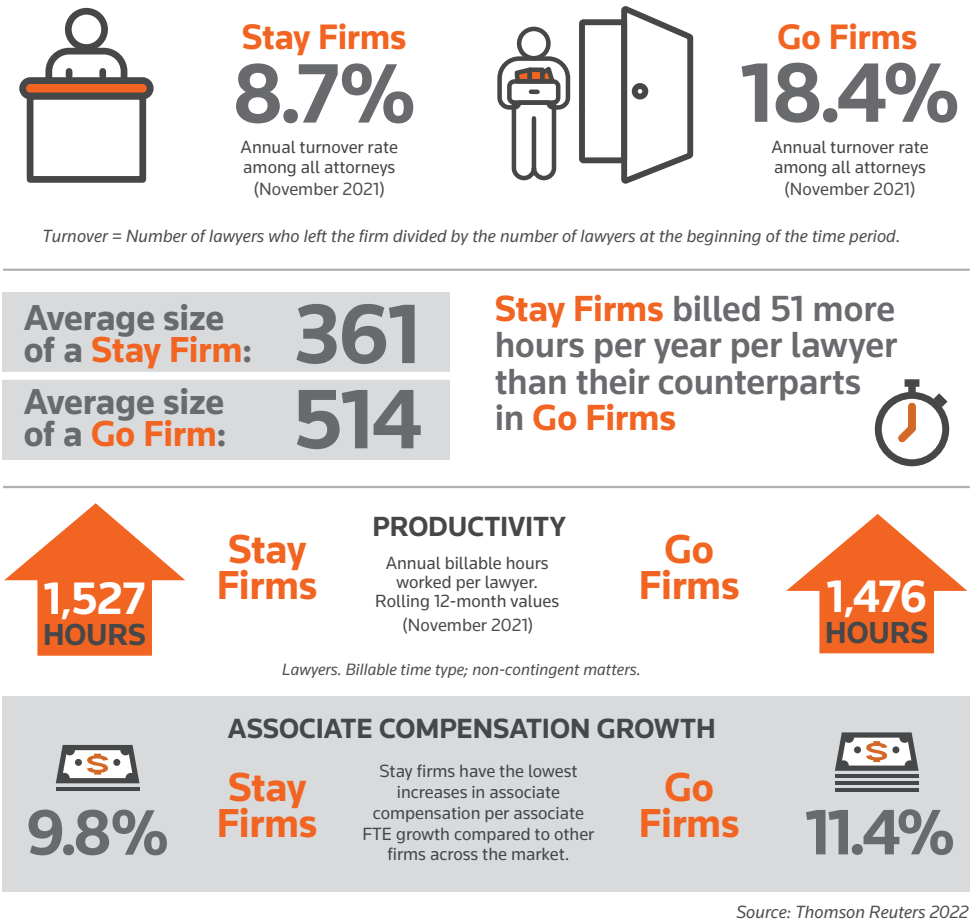
Apart from these economically oriented actions, most firms have also taken a range of steps to provide critical support to both legal and professional staff as they return to the office on some basis. Recognizing that the pandemic has caused increased chronic stress, anxiety, depression, and trauma, many firms have established counseling and wellness programs to assist staff in their return. There are also a wide variety of social and recreational activities planned by many firms to ease the transition and to rebuild firm culture.

14 Lizzy McLellan, *The American Lawyer* (on-line ed.), Nov. 9, 2021.
15 Patrick Smith, "Ready for a Change," *The American Lawyer*, Sept. 2021, at 46, 47.

All of these efforts are important and necessary, but they are likely not sufficient to bend the curve on the rising turnover rate that law firms are experiencing. Achieving that goal will require firms to reimagine their structures and operations in the post-pandemic world to provide the real "glue" that we know is necessary to bind people to organizations — feelings of value and meaning in their work, feeling appreciated and recognized, having opportunities for growth and personal satisfaction, and believing that they are making a contribution to something larger than themselves.

Interestingly, there is data that indicates that some firms are, in fact, succeeding at these efforts. Preliminary results from a special study of Thomson Reuters data to be released in the spring show, as indicated in Figure 18 below, there is a considerable spread between the 25% of firms with the lowest current and historic turnover rates (dubbed "Stay" firms) and the 25% of firms with the highest turnover rates (dubbed "Go" firms).[16] Through November 2021, Stay firms recorded an annual turnover rate of 8.7%, compared to 18.4% for Go firms.

Figure 18: **Stay firms vs. Go firms**



Source: Thomson Reuters 2022

16 In creating these categories, Thomson Reuters ranked law firms according to various turnover classifications and controlled for the individual firm's leverage, which tended in inflate turnover figures. The resulting analysis allows for a closer look at the "glue" which holds lawyers to their firm, rather than the innate structure of headcount.

The analysis also shows that Stay firms have unique and somewhat surprising characteristics that set them apart from other firms in the market. First, low-turnover firms tend to be smaller than others, with the average size of a Stay firm being 361 lawyers (even after adjusting for firm leverage). That compares to an average size of 514 lawyers among the 25% of firms with the highest turnover rates. This does not, of course, mean that larger firms inevitably have high turnover. Indeed, more than 24% of *low-turnover* firms are in the Am Law 100. It may mean, however, that the larger (and perhaps more dispersed) a law firm becomes, the harder it is to create the cultural glue necessary in the organization and the more focused firm leadership needs to be on issues like retention and employee engagement.

Second, the data indicates that Stay firms have consistently higher productivity (in terms of billable hours per lawyer) than other firms. Indeed, through November 2021, lawyers in Stay firms billed 51 more hours per year than their counterparts in Go firms. If measured by the average hourly worked rate of $533 for all firms across the market, that difference accounts for $27,183 per lawyer per year. Although still preliminary, this finding suggests that, contrary to popular belief, high law firm turnover rates may not be as driven by increased working hours as many have supposed.

> ***"Of course, compensation is important, but real satisfaction comes from other less tangible factors."***

And third, preliminary data shows that Stay firms have the lowest increases in associate compensation per associate FTE growth compared to other firms across the market. Taken together, this data clearly suggests that the loyalty that lawyers feel to their firms and the willingness they have to work hard is not simply, or even primarily, driven by compensation. Of course, compensation is important, but real satisfaction comes from other less tangible factors.

These factors should not be taken as a suggestion that lawyers are happy staying at firms that work them harder and pay them less. In fact, there is compelling evidence to the contrary. But these preliminary findings, which will be explored in more depth later this year, suggest that lawyers who are more likely to stay at their current firms are more productive and are not staying because of market-leading pay increases.

Navigating the hybrid work model

It is now clear that one of the enduring effects of the COVID-19 pandemic will be the so-called hybrid work model, combining both remote work with some amount of in-office time. Although law firms are currently "all over the lot" in terms of the appropriate hybrid mix, there seems to be some emerging consensus that most firms will probably require about three days a week in the office for most lawyers. Determining that requirement, however, is the easy part. For most law firms, actually implementing hybrid working arrangements will not be a simple matter.

While most lawyers favor the hybrid approach, there are also strong concerns about the format and overall fairness of such arrangements, including worries about the impact of hybrid arrangements on lawyer assignments, evaluations, advancement, compensation, and mentoring and coaching. As one observer noted in a recent *Harvard Business Review* article on law firm hybrid transitions:

> Going from a totally remote or totally office-centric workplace to a hybrid arrangement is a major culture shock. There will be turbulence. People working from home may feel left out. In-office workers may suspect their colleagues aren't putting in a full day's work and grow resentful. New employees may struggle to connect with new colleagues they may never meet.
>
> Consequently, leaders must give a lot of thought to how they'll create bonds between people and maintain and shape the company's culture. This will require managers to be active, involved, and creative. They must reach out and create ways for people to get together, seizing opportunities for in-person interaction whenever possible...
>
> Lastly, any vestige of suspicion that people not present in the office can't be hard at work must be erased. Employees and managers will have to learn how to build trust through meeting objectives, not the sight of someone sitting in front of a screen.[17]

Apart from the obvious logistical challenges of providing guidance and oversight by capable team and practice leaders, the implementation of hybrid working arrangements presents the equity challenge of neutralizing the often unconscious bias of "out of sight, out of mind." It also forces firms to consider the "casual assignments" that can arise from stopping by someone's office or the impression of "busy-ness" from seeing someone in the office late or on a weekend. These are all issues of concern for persons who may be working on a largely remote basis and may be especially acute concerns for female lawyers.

There are also potential equity issues with respect to law firm professional and support staff. While most firms have clearly focused on hybrid working arrangements for lawyers, many have failed to think through similar approaches for their professional and support staff. That, in turn, has led to feelings of resentment. As one commentator observed:

> [A]ssociates are more bullish on a hybrid future than nonlawyer professionals, some of whom would be happy to leave their commutes in the past. It's a reminder that the deepest rift within law firms isn't between generations but between lawyers and staff — and that firms have no easy task trying to keep everyone satisfied as they welcome their teams back to the office... A number of staffers... fear that a return to the office will inherently be a return to second-class citizenship.[18]

17 Robert Sher, "Lessons from One Law Firm's Pre-Pandemic Shift to Hybrid Work," *Harvard Business Review* (on-line ed.), June 23, 2021.
18 Dan Packel, "A Workforce Divided," *The American Lawyer*, Sept. 2021, at 25.

To deal effectively with these challenges, law firms will need to provide different and more effective mechanisms for supervision and oversight, training, support, and the development of firm culture and comradery. Without careful attention to these issues, hybrid working models may result in far more problems than benefits for many law firms.

Remaining operationally flexible

If there is one lesson we've learned from the pandemic experience of the past two years, it is that law firm leaders must remain flexible in responding to rapidly changing events. Actually, law firms — for the most part — did quite a remarkable job of adjusting to the new realities of work during the COVID-19 pandemic crisis.

By Spring 2020, the legal industry had successfully migrated to a totally remote working environment with surprising agility and in an astonishingly short period of time, often literally a few days. Firms were also able to adjust their return-to-the-office plans to accommodate the uncertainties of emerging new variants. Such operational flexibility will continue to be critical as law firms move into 2022.

> ***"If there is one lesson we've learned from the pandemic . . . it is that law firm leaders must remain flexible in responding to rapidly changing events."***

From an operational standpoint, the pandemic has already altered our thinking in several fundamental ways. *First*, the pandemic has conclusively demonstrated that remote working can be done successfully. In fact, disruptions resulting from work-at-home arrangements were less serious than most firms expected. Thomson Reuters reports that the number of lawyers who now want to work remotely at least one day a week has doubled from pre-pandemic levels and is now at about 86% of lawyers.[19] Clearly, hybrid working arrangements are here to stay.

Second, the pandemic has shown that remote working does not necessarily result in lower productivity. As previously illustrated,[20] YTD productivity levels through November 2021 were essentially the *same* as productivity levels during the same period in 2019. This is consistent with findings from other professional service industries as well.

Third, the pandemic has broadened the acceptance of the role of technology in the effective delivery of legal services. Despite expense cuts, law firms increased their technology spend by 7.1% during the 12-month period through November 2021.[21]

Fourth, the pandemic has shown that firms can achieve more efficiency through some operational changes, including:

- adapting to more efficient use of office and administrative space;

19 Source: Thomson Reuters, from *2021 Annual Stellar Performance Survey*.
20 *See* Figure 9, *supra*.
21 *See* Figure 13, *supra*.

- rethinking changes in staffing and work patterns;
- altering levels of secretarial support;
- reducing expectations for in-person meetings, and
- cutting "unnecessary" business travel.

And *fifth*, the pandemic has demonstrated the importance of sound financial practices, encouraging many firms to more rigorously manage timekeeping, billings, and collections. These efforts have resulted in noticeable upticks in cash collections and a shortening of most firms' billing and collection cycles.[22]

Moving forward, firms will need to incorporate all of these learnings into their own strategies, which of course, will require continued openness and flexibility.

A key element of a successful strategy is the centering of all a firm's operations and activities around its key value proposition. Whatever successes that law firms have achieved in reaching such alignment in the past, the pandemic has — through no fault of the firms themselves — thrown them off-center. In response, firms need to take deliberate actions to establish a new "normalcy" that can successfully support their strategies going forward. This will require firm leadership to be fully engaged, transparent, and accountable for leading their firms in the coming transition.

Key actions that should be considered include:

- establishing clear written plans and policies laying out the firm's expectations regarding employees' return to the office, safety protocols, and hybrid work arrangements;
- delivering frequent and empathetic communications tailored around the realization that different persons will be dealing with return-to-work issues in different ways;
- providing resources for lawyer and professional staff support through wellness and mental health programs;
- offering adequate technical and administrative support for work-at-home arrangements;
- taking a flexible approach to remote work, part-time work, and flex-time arrangements;
- developing policies and procedures to assure equity and fairness in assignment, evaluation, compensation, and promotion decisions, especially in regard to lawyers and professional staff taking advantage of remote working arrangements;
- creating policies and procedures to provide adequate supervision and oversight for remote working situations;

22 Gretta Rusanow, Managing Director and Head of Advisory Services, Law Firm Group, Citi Private Bank, Remarks at The 20th Annual Law Firm COO & CFO Forum, Oct. 28, 2021.

- modifying training programs to treat lawyers and professional staff equitably regardless of their in-person or remote working status;
- making appropriate investments in technology to keep the firm on the cutting edge of digital communications and artificial intelligence-assisted work processes; and
- finding additional ways to foster social engagement and comradery within the firm.

For the near term, law firms need to pay particular attention to helping their lawyers and professional staff recover from what has been a traumatic and life-changing experience since the onset of the pandemic. And it is important to remember that what emerges in this process *will* be different from what firms had in place before.

The pandemic forced most people to reflect on their lives in new ways, and it resulted in many people altering their personal values, reassessing their work-life balance, and rethinking their professional commitments. Law firms must find a way to align these changes in a manner that can support and enhance each firm's basic strategy — and leadership flexibility will be the key to making that happen.

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NEWS

Raising Billing Rates in 2023 Becomes a 'Singular Focus' for Law Firms

"We're seeing higher planned rate increases at this point than we've ever seen, and we've been tracking this for 15 years," said a Wells Fargo analyst.

November 22, 2022 at 05:00 AM

Lawyer Rates and Arrangements

Andrew Maloney
Editorial

What You Need to Know

- About 98% of law firm leaders say they definitely or probably will increase rates next year.
- Analysts at Wells Fargo Legal Specialty Group also say firm leaders are eyeing higher planned rate increases than any time in the last 15 years.
- Worked rate increases, compared with standard rate increases, could be a separate story, though those have also increased.

Law firms are preparing "aggressive" billing rate increases for 2023, seeking to overcome inflation amid challenges in their demand and productivity, according to legal industry analysts.

Law firm leaders told Wells Fargo Legal Specialty Group they will raise rates on average around 7% or 8%—before discounting—in 2023.

"We're seeing higher planned rate increases at this point than we've ever seen, and we've been tracking this for 15 years," said Owen Burman, senior consultant for the legal specialty group, in an interview.

An average billing rate increase of 5.9% has driven much of the revenue growth so far this year, Wells Fargo's report last week found. And revenue, based on the group's survey of 65 Am Law 100 and 31 Second Hundred firms, has grown 4.6% through the third quarter, down from 14.4% at the same time last year.

Last year, the group asked firm leaders what kind of standard rate increases they expected in 2022, and the average was around 6.5%, Burman noted. That didn't quite come to fruition this year, and part of the reason was the practice mix, as pricier corporate work tailed off. The expected numbers obviously may not come to fruition next year, either.

While not all the factors behind a rate increase are clear, "inflation is definitely a consideration in being aggressive on the rate increases, and trying to make up for two years in which the rate increases did not cover inflation," Burman said.

Meanwhile, in a separate survey, law firm business leaders were nearly unanimous in saying they're likely to increase rates next year.

About 98% of firm managing partners and C-suite leaders said they will "probably" or "definitely" increase billing rates next year to improve their financial performance, a "stunning" number that shows firms "clearly see their path to continued profitability running through the valley of steadily rising billing rates," according to the 2022 Law Firm Business Leaders report from Thomson Reuters.

That's an increase from last year's survey, when about 85% said they would probably or definitely increase rates.

The response last year was the sixth-most popular option firm leaders chose when asked how likely they were to implement each of several options for improving financial performance. This year, raising rates was the most popular choice out of 24 options.

"Clearly, there seems to be an almost singular focus among law firm business leaders toward raising rates as the performance strategy of choice, perhaps because such a unilateral move is relatively easy to accomplish as compared to encouraging cross-selling of services throughout the firm or evaluating and then deciding which services or clients are no longer profitable for the firm to manage," the analysts wrote.

The report counted responses from 50 leaders at a mix of local, regional and national firms, with a plurality of them grossing more than $200 million per year in revenue.

The expected rise in billing rates could propel another trend: an increasingly "mobile" legal demand. Clients have been more willing to shop around this year, analysts have said, because it can save them money. The willingness to move practices such as litigation down-market is another reason that smaller firms have had a relatively better 2022 in terms of demand and revenue growth.

For years before, noted Bill Josten, strategic content manager for Thomson Reuters, Am Law 100 firms have had the highest billing rates, rate growth and highest growth in demand, so there's seemingly been a bit of immunity to increasing rates.

But "that may be starting to catch up a bit," Josten said in an interview. "We saw Am Law 100 firms coming in third out of three tracts we have for demand growth."

However, he also noted that standard billing rates may not be the most indicative metric of where prices ultimately settle. Some firms may ask for a higher standard rate, then a larger discount on top of it, as a strategy.

Josten's group tracks growth in worked rates—the prices paid after negotiations—to gauge billing. Those have also noticeably increased. Am Law 100 firms saw a 6.7% increase in worked rates in the third quarter this year; Second Hundred firms saw 4.7%; and firms beyond the Am Law 200 saw a healthy 4% increase, according to the group's latest Law Firm Financial Index report.

“So continuing to watch what that worked rate performance growth is really going to be a tale of the tape,” Josten said.

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NEWS

Inflation May Be Beating Billing Rates Increases

The new findings point to even more troubling signs for 2022 law firm profits.

October 12, 2022 at 05:00 AM

Law Firm Profitability

Andrew Maloney
Editorial

What You Need to Know

- Average billing rates have increased this year, and over the last few years, but not enough to keep up with inflation.
- Billing rate increases haven't matched the CPI increase since 2019.

This article has been updated to include more context and comments from the rate report's author.

Law firm billing rates have increased across all law positions in 2022, but not necessarily enough to keep pace with inflation.

That's according to new reports released this week that point to some more challenges for law firm profits.

The average going rate for partners in the United States this year is about $749 per hour, an increase from about $738 in 2021 (+1.5%), according to a report from Wolters Kluwer ELM Solutions. Last year, the average going rate for partners rose from about $705 in 2020 (+4.7%).

The mean going rate for associates in 2022 is about $546, an increase from $541 the previous year (+0.9%). Last year, the number increased from $503 (+7.6%). And the average going rate for paralegals this year is about $247, an increase from $244 the previous year. The mean going rate last year for paralegals increased from $232 in 2020 (+5.2%).

The report's figures are generated from corporations and law firms' own e-billing and time management software, illustrating the actual rates charged by law firms on invoices submitted and approved for payment.

Those topline figures don't properly account for timekeepers who left the profession or otherwise stopped billing though, said Nate Cemenska, director for legal operations and industry insights for Wolters Kluwer ELM Solutions.

"If they stopped doing billable work, that could depress the average rate charged by that class of timekeepers, even if the timekeepers who kept working got pretty big rate increases," he said in an email.

If the rates of timekeepers are calculated to account for that effect, the rates are still on an upward trajectory, he said. The average increase for partners in 2021 was 3.3%, and in 2022 it's 4.8%, he noted, using that approach for calculations. For associates in 2021, the increase was 6.9%, and in 2022, it's 7.8%.

But inflation is still proving to be a challenge for law firm billing rates. Although the consumer price index has increased about 14% since the end of 2019, average law firm rates have increased by about 11% during that time span, according to a separate report from the legal tech company Clio. The report is partly based on a survey of a variety of law firms, including small, midsize and large.

Other analysts have previously noted that the gap between billing rate increases and inflation would challenge firms, suggesting they make course corrections to remain profitable.

Clio's Legal Trends Report suggests they may already be doing so. In addition to identifying a gap between inflation and billing rates, it also found that utilization rates — the percent of a workday put toward billable hours — have increased from 31% last year to 33% this year, while collection and utilization rates held steady at 89% and 84%, respectively.

That coincides with a nuanced demand environment. While the largest firms have seen it decrease, Second Hundred and smaller firms have notched modest increases in demand so far this year.

"The fact that firms haven't increased rates to match inflation may be due to lawyers successfully capitalizing on increased demand—recording more billable hours and increasing revenues, thereby reducing pressure to increase rates," the legal trends report states. "Firms may also be feeling pressured to remain competitive when it comes to attracting clients—especially if they struggled previously."

Indeed, even as median outside counsel spend has increased, clients have simultaneously reported using fewer law firms in recent years.

Wells Fargo Private Bank Legal Specialty Group earlier this year found standard law firm (rack) rates had increased by about 5.8%, less than the increases in 2021 (6.7%) and 2020 (5.9%).

The firm leaders surveyed by the bank last year also said they had expected rate increases of roughly 6% to 7%, Joe Mendola, senior director of sales for the Wells Fargo group, told The American Lawyer in August. He added that he thought firms would have raised them more this year if they had a do-over, and that if inflation remains high next year, he expected that “standard rate increases will be above what they were this time around.”

The Clio report this week noted that this strategy of hiking up billing rates, of course, comes with risks.

“Potential clients are also struggling with the burdens of inflation and may find higher lawyer rates unappealing,” the report stated. “As a result, they might opt to handle legal issues on their own or hire a more affordable lawyer. Therefore, law practices may also want to consider a range of factors beyond just increasing their rates.”

Some of those factors could include shifting real estate and property spending to complement remote work, as well as adopting technology to increase efficiency in other areas.

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ANALYSIS

As Billing Rates Skyrocket, Historic Fee Leaders Find Company at $2,000 Per Hour

Weil, Kirkland, Skadden and Latham once outpaced the rest of Big Law on what they could charge, but that may begin to change.

July 28, 2022 at 05:00 AM

Lawyer Rates and Arrangements

Dan Roe
Reporter

What You Need to Know

- Big Law bankruptcy rates are on the rise, with 2022 rate hikes of 12.3% compared with 5.3% in 2021 for a group of top firms.
- After years of charging substantially more than smaller bankruptcy practices, restructuring lawyers at top bankruptcy firms are being outpriced by competitors.
- Rate pushback is unlikely, one bankruptcy scholar said, even as rates for top-billing partners surpass $2,000.

In the past few decades, four law firms—Weil, Gotshal & Manges; Kirkland & Ellis; Skadden, Arps, Slate, Meagher & Flom; and Latham & Watkins—have represented close to one-third of large public companies in Chapter 11 bankruptcy proceedings. For their services, the firms have traditionally charged higher rates than other large firms with less extensive bankruptcy practices. But their fee dominance may be beginning to wane.

Last year, the average rate for top-billing partners among the four historically dominant firms was $1,838. By comparison, top-billing partners among a group of seven Am Law 100 firms with smaller restructuring practices averaged $1,674. This year, not only are rate hikes up across the board—our total group of 11 firms raised rates an average of 12.3% in 2022 versus 5.3% in 2021—but Big Law's other bankruptcy practitioners are catching up with the leaders, drawing even and in some cases surpassing the rates in the top four.

While the seven smaller firms comprise 5.5% of large debtor representations since 1979—the opening date for the Florida-UCLA-LoPucki Bankruptcy Research Database—a review of their recent fee applications revealed they charged an average of $1,979 for top-billing partners this year, $21 shy of the top four firms' average of $2,000.

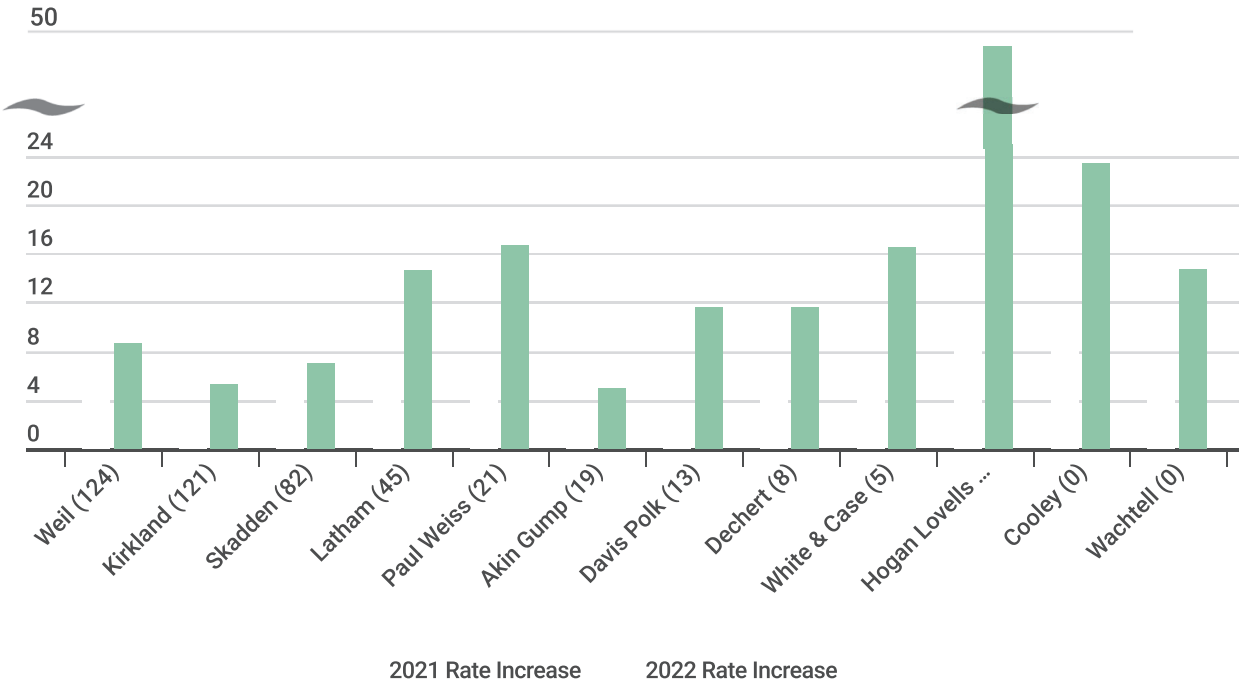
Bankruptcy Rates Surpass $2,000

Several firms leapfrogged the $2,000 mark in recent fee applications. Having charged $1,735 for 2021 work in the April 2020 bankruptcy of Diamond Offshore Drilling, Paul, Weiss, Rifkind, Wharton & Garrison restructuring co-chair Paul Basta upped his rate to $2,025 for 2022.

In the July bankruptcy of cryptocurrency lender Voyager Digital, Quinn Emanuel Urquhart & Sullivan restructuring chair Susheel Kirpalani offered a 10% discount on his rack rate of $2,130. The firm had previously asked for up to $1,595 for top-billing partners in the 2020 J.C. Penney bankruptcy.

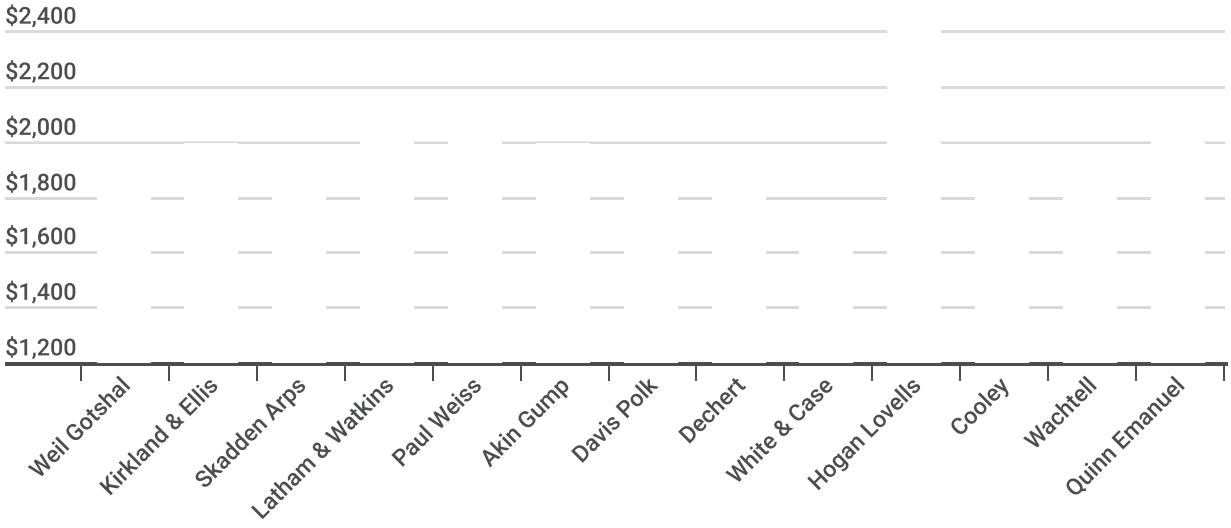
And in May, Hogan Lovells partner and frequent SCOTUS litigator Neal Katyal asked for $2,450 per hour for his work on the bankruptcy of LTL Management, a company created last year to allow Johnson & Johnson to offload its liability for nearly 40,000 lawsuits linking its talc-based baby powder to cancer. (Katyal may be an outlier for Hogan—the firm asked for a maximum rate of $1,780 in 2022 fee applications for its work on the bankruptcy of opioid manufacturer Mallinckrodt Pharmaceuticals—so his rate was excluded from our averages.)

Approved Rate Increases in Corporate Bankruptcy



Sources: Federal court records, Florida-UCLA-LoPucki Bankruptcy Research Database

Approved Bankruptcy Rates in 2022



Source: Federal court records

ALM. Design by David Palmer/ALM

In the past year, three of the top four firms raised their top partner rates less significantly, with Kirkland recording the smallest year-over-year rate hike at 5%. Meanwhile, Latham & Watkins pushed rates up 14.6%, to $2,075 from $1,810.

In an interview, UCLA law professor Lynn LoPucki said the incentives of bankruptcy lawyers and judges facilitate frequent and aggressive rate hikes. “There’s no market. These are debtors’ attorneys fees being paid with other people’s money, so it’s better to transmit a symbol that we are really good because we charge $2,000 an hour,” said LoPucki, whose Florida-UCLA-LoPucki Bankruptcy Research Database tracks large bankruptcies. “That’s better than the message of we’ll do your case for less, because the debtor doesn’t care if it gets done for less. The courts are supposed to be controlling the fees, but they know there’s no market.”

Last year was historically quiet for commercial Chapter 11, with just eight large public restructurings (by LoPucki’s definition, which includes public companies with $100 million or more in assets by 1980 dollars or about $360 million today). But 2020 had 56 large bankruptcies, and those involving major retailers or manufacturers with significant tort liability continue to generate fees.

Rates Obscure the Bigger Picture: Hours

Total fees—not hourly rates—are how Big Law firms run up extreme tabs, LoPucki said. By January 2022, the 2018 Sears bankruptcy had generated more than $250 million in professional fees, with more than $150 million going to Weil Gotshal, Akin Gump Strauss Hauer & Feld, and advisory firm FTI Consulting.

“You can take a rate and say to someone, ‘You didn’t charge that hourly rate on your last case,’” LoPucki said. “But it’s pretty hard to argue hours—nobody can show how long a particular case should take.” In regression analyses, LoPucki found that rates were ineffective at predicting the total cost of a bankruptcy, whereas debtor assets, days between petition filing and confirmation, and the total number of professionals working on a bankruptcy were more telling variables.

And with the advent of prepackaged, 24-hour bankruptcies, such as the 2021 bankruptcy of department store chain Belk, firms may avoid public fee applications altogether.

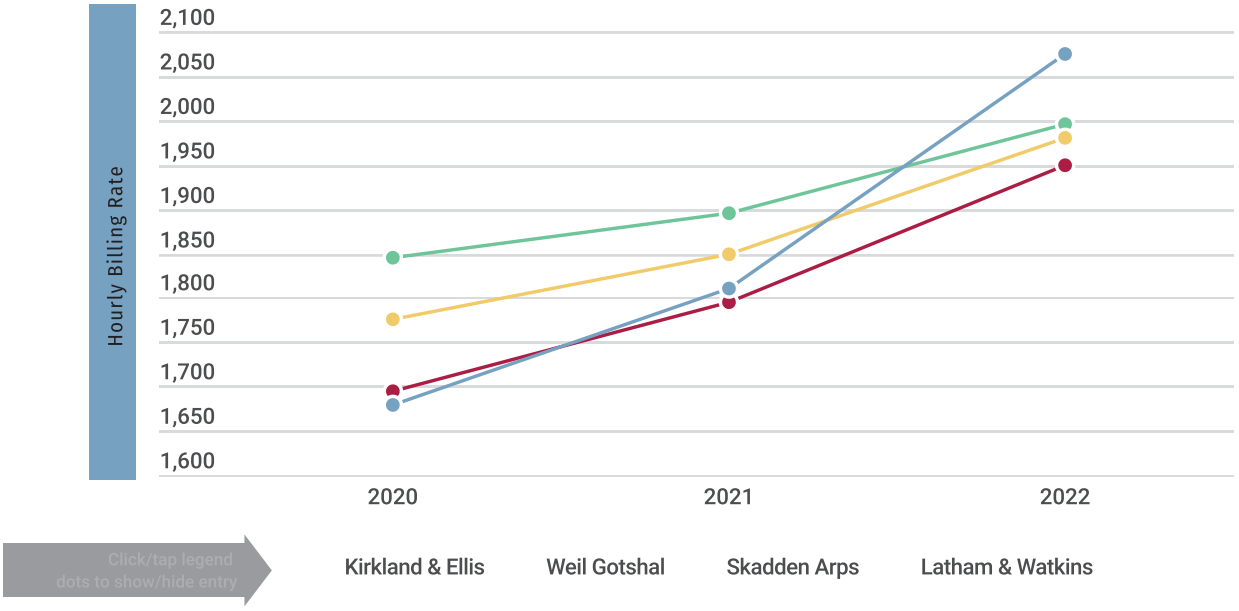
“[Kirkland] filed documents saying they were going to apply, the court signed orders saying they were going to apply, and then they never applied. They beat the fee disclosure system almost completely,” LoPucki said. “Of course, Kirkland & Ellis does not tell us how much the fees were before or after the bankruptcy, so they may have run up huge fees getting ready for the prepackaged case.”

So while Katyal’s $2,450 hourly rate may have been bold, New Jersey Bankruptcy Judge Michael B. Kaplan ultimately approved it after several objections. And as a handful of bankruptcy judges balance multiyear bankruptcies of opioid manufacturers, recent crypto Chapter 11s, and predicted insolvency in retail, LoPucki said rate pushback is unlikely, especially in favorable courts in Texas and Delaware.

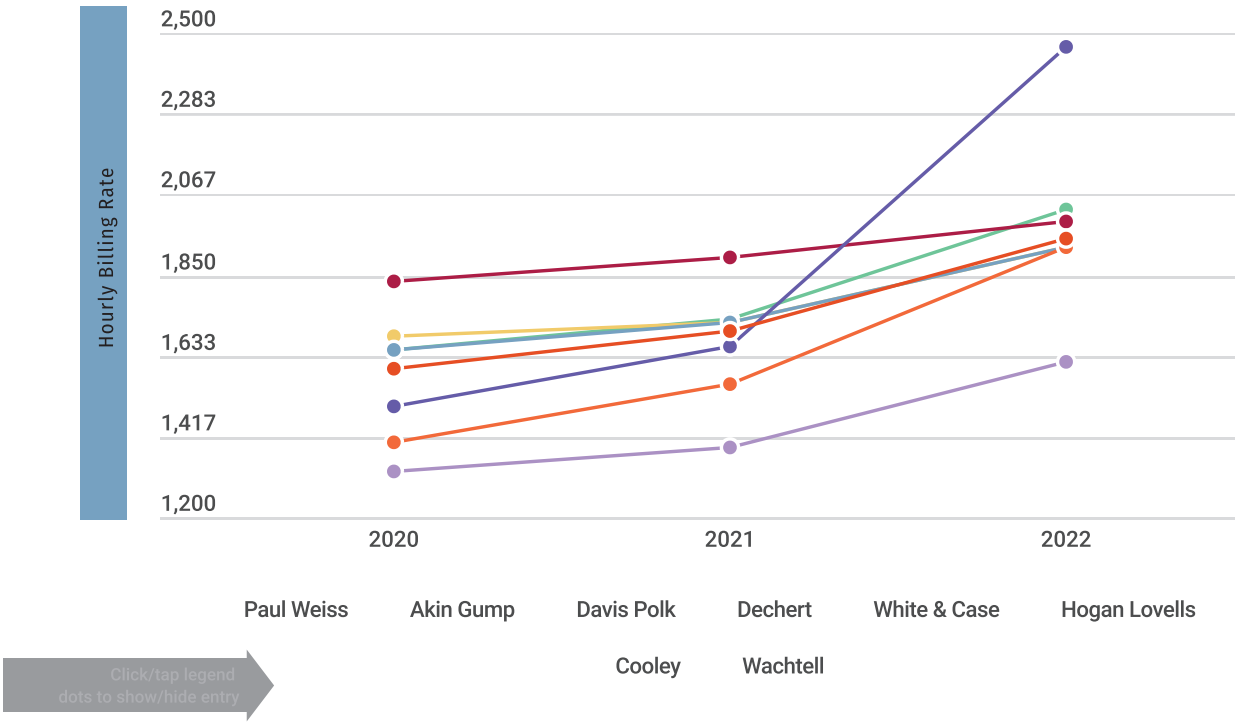
“If someone comes in and shows a judge that an attorney billed more than 24 hours in a day, that judge is going to come back to fees,” LoPucki said. “But if it’s simply that these fees are really high … the courts are competing for cases. The courts that get almost all of the cases are not going to cut the fees.”

This story was updated to more accurately reflect LoPucki’s definition of favorable bankruptcy courts.

Approved Billing Rates at Top 4 Bankruptcy Firms



Approved Billing Rates at Other Firms



Source: Federal court records

ALM. Design by David Palmer/ALM

How we reported this article: We identified large bankruptcies by the Florida-UCLA-LoPucki Bankruptcy Research Database and searched bankruptcy court records for fee applications in Chapter 11 bankruptcies between 2018 and 2022, arriving at a list of 11 Am Law 100 firms with approved fee applications in 2020, 2021, and 2022. Our top-billing-

rate statistics cite the high end of firms' stated billing rates in their fee applications, which may vary by partner staffing. Our analysis found fee data for a 12th firm, Quinn Emanuel, in 2020 and 2022 but not 2021, so the firm was only included in our chart of 2022 top-billing rates.

RELATED STORIES

Kirkland and Weil's Fees in Chapter 11 Work Highlight Big Law Allure to Bankruptcy

'Aggressive' Rate Hikes Expected in 2022 as Demand Surges and Supply Lags

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

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ATTORNEYS FOR DEBTOR

In re:	Chapter 11
LTL MANAGEMENT LLC,[1]	Case No.: 21-30589 (MBK)
Debtor.	Judge: Michael B. Kaplan
	Hearing Date: February 27, 2022

SUMMARY COVER SHEET AND STATEMENT FOR SECOND INTERIM FEE APPLICATION OF HOGAN LOVELLS US LLP FOR ALLOWANCE OF FEES AND REIMBURSEMENT OF EXPENSES AS COUNSEL FOR CHAPTER 11 DEBTOR FOR THE PERIOD JUNE 1, 2022 THROUGH SEPTEMBER 30, 2022

[1] The last four digits of the Debtor's taxpayer identification number are 6622. The Debtor's address is 501 George Street, New Brunswick, New Jersey 08933.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

D.N.J. LBR 2016-1, FEE APPLICATION COVER SHEET

Debtor: LTL Management LLC	Applicant: Hogan Lovells US LLP (Retained by Order Entered June 15, 2022, Authorizing Retention *Nunc Pro Tunc* to April 4, 2022 [Dkt. 851])
Case No.: 21-30589-MBK	Client: LTL Management LLC
Chapter: 11	Case Filed: October 14, 2021 (the "Petition Date")

SECOND INTERIM FEE APPLICATION OF HOGAN LOVELLS US LLP FOR ALLOWANCE OF FEES AND REIMBURSEMENT OF EXPENSES AS COUNSEL FOR CHAPTER 11 DEBTOR FOR THE PERIOD JUNE 1, 2022 TO SEPTEMBER 30, 2022

SECTION 1
FEE SUMMARY

☒ Interim Fee Application No. 2 or ☐ Final Fee Application

Summary of Amounts Requested for the Period from June 1, 2022 to September 30, 2022 (the "Second Interim Statement Period").

	FEES	EXPENSES
TOTAL PREVIOUS FEES REQUESTED:	$1,937,119.09	$1,021.16
TOTAL FEES ALLOWED TO DATE:	$0	$0
TOTAL RETAINER (IF APPLICABLE):	$0	$0
TOTAL FEE EXAMINER ADJUSTMENT:	$0	$0
TOTAL HOLDBACK (IF APPLICABLE):	$387,423.82	$0
TOTAL RECEIVED BY APPLICANT:	$591,208.00	$15.00

Fee Total:	$1,749,315.19
Disbursement Total:	$1,021.16
Total Fee Application:	$1,750,336.35

Name of Professional & Title	Year of Admission	Hours	Rate	Fees
Neal Kumar Katyal, Partner	1999	331.3	$2,465.00	$816,654.50
Sean Marotta, Partner	2010	174.3	$1,115.00	$194,344.50
		4.20	$500.70 (travel)	$2,102.94
Will Havemann, Senior Associate	2014	177.5	$1,035.00	$183,712.50
		4.10	$517.50 (travel)	$2,121.75
Jo-Ann Sagar, Senior Associate	2015	260.0	$1,035.00	$269,100
		2.0	$517.50 (travel)	$1,035.00
Patrick Valencia, Associate	2018	201.1	$830.00	$166,913.00
		5.30	$415.00 (travel)	$2,199.50
Catherine Stetson, Partner	1994	14.70	$1,320.00	$19,404.00
Jessica L. Ellsworth, Partner	2001	10.30	$1,210.00	$12,463.00
Matthew J. Higgins, Senior Associate	2016	18.20	$995.00	$18,109.00
Danielle C. Desaulniers Stempel, Senior Associate	2017	8.10	$895.00	$7,249.50
Katherine Wellington, Senior Associate	2013	4.20	$1,055.00	$4,431.00
Nathaniel Zelinsky, Associate	2019	11.10	$830.00	$9,213.00
Johannah Walker, Associate	2018	10.40	$830.00	$8,632.00
Dana Raphael, Associate	2020	5.00	$685.00	$3,425.00
Heather A. Briggs, Paralegal	N/A	48.6	$525.00	$25,515.00
Leah A. Walker, Paralegal	N/A	0.3	$500.00	$150.00

Brenda A. Fitzgerald, Practice Support Administrative Assistant	N/A	0.5	$425.00	$212.50
Montana Erin Love, Researcher	N/A	8.5	$275.00	$2,337.50
Total		1299.7		$1,749,315.19

SUMMARY OF SERVICES

SERVICES RENDERED	HOURS	FEES
a) **Asset Analysis and Recovery:** Identification and review of potential assets including causes of action and non-litigation recoveries.	0	$0.00
b) **Asset Disposition:** Sales, leases, abandonment and related transaction work.	0	$0.00
c) **Avoidance Action Litigation:** Preference and fraudulent transfer litigation.	0	$0.00
d) **Business Operations:** Issues related to debtor-in-possession operating in chapter 11 such as employee, vendor, tenant issues and other similar problems.	0	$0.00
e) **Case Administration:** Coordination and compliance activities, including preparation of statement of financial affairs, schedules, list of contracts, United States Trustee interim statements and operating reports; contacts with the United States Trustee; general creditor inquires.	0	$0.00
f) **Claims Administration and Objections:** Specific claim inquiries; bar date motions; analyses, objections and allowance of claims.	0	$0.00
g) **Employee Benefits/Pensions:** Review issues such as severance, retention, 401K coverage and continuance of pension plan.	0	$0.00
h) **Fee/Employment Applications:** Preparations of employment and fee applications for self or others; motions to Establish interim procedures.	6.1	$9,771.50
i) **Fee/Employment Objections:** Review of an objections to the employment and fee applications of others.	0	$0.0
j) **Financing:** Matters under 361, 363 and 364 including cash collateral and secured clams; loan document analysis.	0	$0.00
k) **Litigation:** Other than Avoidance Action Litigation (there should be a separate category established for each major matter).	1278	$1,732,279.9
l) **Meeting of Creditors:** Preparing for and attending the conference of creditors, the 341(a) meeting and other creditors' committee meetings.	0	$0.00
m) **Plan and Disclosure Statement:** Formulation, presentation and confirmation; compliance with the plan confirmation order, related orders and rules; disbursement and case closing activities, except those related to allowance and objections to allowance of claims.	0	$0.00

SERVICES RENDERED	HOURS	FEES
n) **Relief from Stay Proceedings:** Matters relating to termination or continuation of automatic stay under 362.	0	$0.00
o) **Accounting/Auditing:** Activities related to maintaining and auditing books of account, preparation of financial statements and account analysis.	0	$0.00
p) **Business Analysis:** Preparation and review of company business plan; development and review of strategies; preparation and review of cash flow forecasts and feasibility studies.	0	$0.00
q) **Corporate Finance:** Review financial aspects of potential mergers, acquisitions and disposition of company or subsidiaries.	0	$0.00
r) **Data Analysis:** Management information systems review, installation and analysis, construction, maintenance and reporting of significant case financial data, lease rejection, claims, etc.	0	$0.00
s) **Litigation Consulting:** Providing consulting and expert witness services related to various bankruptcy matters such as insolvency, feasibility, avoiding actions; forensic accounting, etc.	0	$0.00
t) **Reconstruction Accounting:** Reconstructing books and records from past transactions and bringing accounting current.	0	$0.00
u) **Tax Issues:** Analysis of tax issues and preparation of state and federal tax returns.	0	$0.00
v) **Valuation:** Appraise or review appraisals of assets.	0	$0.00
w) **Travel Time**	15.6	$7,459.19
SERVICE TOTALS	**1299.7**	$1,749,315.19

SECTION III SUMMARY OF DISBURSEMENTS

DISBURSEMENTS	AMOUNT
a) **Filing Fees** Payable to Clerk of Court.	00.00
b) **Computer Assisted Legal Research** Westlaw, Lexis and a description of manner calculated.	00.00
c) **Pacer Fees** Payable to the Pacer Service Center for search and/or print.	00.00
d) **Fax** Include per page fee charged.	00.00
e) **Case Specific Telephone/Conference Call Charges** Including Court Conference and/or Hearings. Exclusive of overhead charges.	00.00
f) **In-house Reproduction Services** Exclusive of overhead charges.	$979.6
g) **Outside Reproduction Services** Including scanning services.	00.00
h) **Other Research** Title searches, UCC searches, Asset searches, Accurint.	00.00
i) **Court Reporting** Transcripts.	00.00
j) **Travel** Mileage, tolls, airfare, parking.	$41.56
k) **Courier & Express Carriers** Overnight and personal delivery.	00.00
l) **Postage**	00.00
m) **Other**	00.00
DISBURSEMENTS TOTAL:	$1,021.16

I certify under penalty of perjury that the above is true.

Date: December 13, 2022

/s/ Neal Kumar Katyal
Signature

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

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ATTORNEYS FOR DEBTOR

In re:	Chapter 11
LTL MANAGEMENT LLC,[1]	Case No.: 21-30589 (MBK)
Debtor.	Judge: Michael B. Kaplan
	Hearing Date: February 27, 2022

TO: HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY JUDGE

Hogan Lovells US LLP (the "Firm" or "Applicant"), special counsel for LTL Management, LLC, Chapter 11 Debtor (the "Debtor"), hereby submits its Second Interim Fee Application for Allowance of Fees and Reimbursement of Expenses as Counsel for the Debtor for the Period from June 1, 2022 to September 30, 2022 (the "Application"), pursuant to 11 U.S.C. §§ 330 and 331 and the *Order Establishing Procedures for Interim Compensation and*

[1] The last four digits of the Debtor's taxpayer identification number are 6622. The Debtor's address is 501 George Street, New Brunswick, New Jersey 08933.

Reimbursement of Retained Professionals (the "Interim Compensation Order") [Dkt. No. 761]. By this Application, the Firm seeks allowance of compensation in the amount of $1,749,315.19[1] and reimbursement of actual and necessary expenses in the amount of $1,021.16, for the period of June 1, 2022 to September 30, 2022 (the "Compensation Period"). In support of this application, the Firm respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. Sections 157 and 1334. Venue is proper pursuant to 28 U.S.C. Sections 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. Sections 157(b)(2). The statutory predicates for the relief requested herein are Sections 330 and 331 under Title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time (the "Bankruptcy Code" or "Code").

2. By Order dated June 15, 2022, the Court authorized the Debtor to retain the Firm as Special for the Debtor effective as of April 4, 2022. A true and correct copy of the Order authorizing the Firm's retention is annexed hereto as **Exhibit A**.

3. In accordance with Rule 2016-1 of the Local Rules for the District of New Jersey and the United States Trustee Fee Guidelines, annexed to this Application as **Exhibit B** are detailed time records of the Firm's services that were included in Monthly Fee Statements previously filed and served in accordance with the Interim Compensation Order and rendered during the applicable time period, describing the nature of the services rendered to the Debtor each day, the time devoted to such services in increments of one-tenth of an hour, and the identity of all professionals and paraprofessionals performing the services. Also annexed hereto

[1] In preparing this interim fee application, Hogan Lovells has determined to decrease its request for fees by $195.40.

as **Exhibit C** are detailed descriptions of the Firm's actual expenses, to the extent any were incurred during the relevant time period.

4. The Firm has expended a total of 1,299.7 hours rendering services as the Debtor's counsel during the Compensation Period, having a value of $1,749,510.59. The blended hourly rate for attorneys is $1,100.00 and the total blended hourly rate is $942.65. The blended rate for the Compensation Period by the various categories of professionals and paraprofessionals is:

- Partner: $1,527.50
- Associate: $910.00
- Paralegal and Practice Support: $431.25

The rates charged by the Firm are reasonable and reflect the Firm's conscientious efforts to have personnel with appropriate experience, and where possible with lower hourly rates, perform services whenever the complexities and exigencies of the matter permitted.

5. During the Compensation Period, the Firm filed the Monthly Fee Statements[1] below, and held back 20% of fees requested for each Monthly Fee Statement period:

- Third Monthly Fee Statement for the Period of 6/1/2022 through 6/30/2022 [Dkt. 3185] ($14,454.50 held back);
- Fourth Monthly Fee Statement for the Period of 7/01/2022 through 7/31/2022 [Dkt. 3186] ($95,825.80 held back);
- Fifth Monthly Fee Statement for the Period of 8/01/2022 through 8/31/2022 [Dkt. 3443] ($82,319.28 held back);
- Sixth Monthly Fee Statement for the Period of 9/01/2022 through 9/31/2022 [Dkt. 3444] ($157,302.54 held back);

[1] Both the Debtor and the United States Trustee were served the four Monthly Fee Statements and will be served this Interim Fee Application upon filing. Epiq serves all fee applications and Monthly Fee Statements in accordance with the requirements of the interim compensation order, which provides for service on the Debtor and the U.S. Trustee, among other parties. Additionally, the Debtor received the Monthly Fee Statements that make up the Application before the Application was filed, and reviews those Monthly Fee Statements.

6. No objections to the Third and Fourth Monthly Fee Statements were filed and the Firm filed certifications of no objection related to each Monthly Fee Statement. [Dkt. Nos. 3283, 3284]. As of the time of this Application, no objections to the Fifth and Sixth Monthly Fee Statements have been received, but the time for objections has not yet passed.

7. During the Compensation Period, the Firm was required to furnish substantial services to the Debtor, which occupied various professionals within the Firm. To assist the Court in evaluating the nature, extent and reasonableness of the compensation requested, the following is a narrative summary of some of the more significant services rendered:

SUMMARY DESCRIPTION OF SERVICES DURING THE COMPENSATION PERIOD

8. The Firm rendered professional services to the Debtor as necessary and appropriate in furtherance of the Debtor's duties and functions in the Chapter 11 Case.

A. Litigation

9. The Firm has been responsible for the defense on appeal of the Court's orders finding that the Debtor's Chapter 11 Case was not filed in bad faith and prohibiting the commencement or continuation of talc-related claims against the Debtor's affiliates, insurers, and third-party retailers.

10. During the Compensation Period, the Firm addressed procedural matters relating to the briefing schedule in the Third Circuit and coordinated with Jones Day and claimants' counsel regarding designations for and preparation of the joint appendix, including preparing a motion to seal confidential documents. The Firm further analyzed claimants' opening briefs, researched, drafted, revised, and filed Debtor's Third Circuit response brief defending the Court's dismissal and stay orders and coordinated with *amici curiae* that showed interested in

participating in the case. Finally, the Firm prepared for and presented oral argument in the Third Circuit defending the Court's dismissal and stay orders.

B. Retention Application.

11. The U.S. Trustee objected to retention of the Firm as appellate counsel for the Debtor. During the Compensation period, the Firm revised the reply in support of the Firm's retention application initially prepared by Jones Day and telephonically attended the hearing on the U.S. Trustee's objection, resulting in the successful retention of the Firm.

12. In rendering services to the Debtor during the Chapter 11 Case, the Firm's legal team has been composed primarily of professionals with extensive experience in appellate litigation. These professionals have coordinated assignments both internally and with other professionals of the Debtor and co-counsel to maximize efficiency and avoid any duplication of effort.

13. All services were rendered by Applicant at the request of the Debtor and were necessary, reasonable and appropriate under the circumstances and beneficial to the estate at the time the services were rendered. The compensation sought by the Firm in this Application is comparable to or less than customary compensation sought by comparably skilled professionals in cases under the Bankruptcy Code. In addition, the compensation sought is based on Applicant's standard and usual rates for similar services in representations other than under the Bankruptcy Code.

14. The services provided by Applicant during the Compensation Period were rendered to ensure no unnecessary duplication and are grouped into the billing categories. The attorneys and professionals who rendered services relating to each category are identified in the

above attachment and summaries of the hours and fees of each for the Compensation Period and the total compensation by billing category is included herein.

15. Given the nature and value of the services that Applicant provided to the Debtor as described herein, the amounts sought under this Application are fair and reasonable under section 330 of the Bankruptcy Code given the complexity of the case; the time expended by attorneys and professionals; the nature and extent of the services rendered; the value of such services; and the costs of comparable services other than in a case under the Bankruptcy Code.

16. The Firm has received no payment and no promises for payment from any source for services rendered in connection with this case other than those in accordance with the Bankruptcy Rules. There is no agreement or understanding between Applicant and any other person (other than members of Applicant) for the sharing of compensation to be received for the services rendered in the case.

CERTIFICATION OF COUNSEL

17. A Certification of Counsel is attached hereto as **Exhibit D**.

COMPLIANCE WITH GUIDELINES

18. The Firm believes that this Application substantially complies with the local rules of this Court and the United States Trustee's guidelines for fee applications. To the extent there has not been material compliance with any particular rule or guideline, the Firm respectfully requests a waiver or an opportunity to cure.

CONCLUSION

WHEREFORE, the Firm respectfully requests entry of an Order (a) approving and allowing on an interim basis (i) compensation for the Applicant for its duly authorized, necessary and valuable services to the Debtor during the Compensation Period in the aggregate amount of $1,749,315.19 and (ii) reimbursement of actual and necessary expenses incurred during the

Compensation Period of $1,021.16; (b) directing the Debtor to pay the outstanding amounts in accordance with the priorities of the Bankruptcy Code; and (c) granting such other and further relief as the Court deems just and proper.

Dated: December 13, 2022
Washington, D.C.

Respectfully submitted,

/s/ Neal Kumar Katyal

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Special Counsel to Debtor Voyager Digital, LLC

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
VOYAGER DIGITAL HOLDINGS, INC., *et al.*,[1]	:	Case No. 22-10943 (MEW)
Debtors.	:	(Jointly Administered)

SUMMARY SHEET FOR FIRST INTERIM FEE APPLICATION OF QUINN EMANUEL URQUHART & SULLIVAN, LLP FOR ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSES INCURRED AS SPECIAL COUNSEL FOR VOYAGER DIGITAL LLC FOR THE PERIOD FROM JULY 13, 2022 THROUGH AND INCLUDING OCTOBER 31, 2022

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital, Ltd. (7224); and Voyager Digital, LLC (8013). The location of the Debtors' principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003.

Basic Information	
Name of Applicant:	Quinn Emanuel Urquhart & Sullivan, LLP
Name of Client:	Voyager Digital, LLC
Petition Date:	July 5, 2022
Date of Order Approving Employment and Retention:	August 4, 2022, *nunc pro tunc* to July 13, 2022[2]
This Interim Application	
Time Period Covered:	July 13, 2022 through October 31, 2022
Total Hours Billed	2,709.00
Total Fees Requested:	$3,162,787.20[3]
Total Expenses Requested	$21,084.61
Total Fees and Expenses Requested:	$3,183,871.81
Blended Rate for Attorneys:	$1,377.98
Blended Rate for All Timekeepers:	$1,297.23
Rate Increases Not Previously Approved or Disclosed:	N/A
Total Professionals:	17
Total Professionals Billing Less than 15 Hours	6
Historical	
Fees Approved to Date:	$0
Expenses Approved to Date:	$0
Total Fees and Expenses Approved to Date:	$0
Approved Amounts Paid to Date:	$0
Fees Paid Pursuant to Monthly Statements, Not Yet Allowed:	$2,530,229.76
Expenses Paid Pursuant to Monthly Statements, Not Yet Allowed:	$21,094.86[4]
Related Information and Case Status	
This is an interim application.	
The Court has entered the Order (I) Directing Joint Administration of the Chapter 11 Cases and (II) Granting Related Relief [ECF No. 18].	

---

2 This Court approved the retention of Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel") as Special Counsel to Voyager Digital LLC ("Voyager LLC") on August 4, 2022, *nunc pro tunc* to July 13, 2022. [ECF No. 242].

3 Quinn Emanuel agreed with Voyager LLC to a 10% discount off of its customary fees. Accordingly, Quinn Emanuel only seeks approval herein of 90% of its customary fees as set forth in the monthly invoices to Voyager LLC (the "Net Billed Fees"). *See*, *e.g.*, Quinn Emanuel's *First Monthly Fee Statement* [ECF No. 358], at 10.

4 In Quinn Emanuel's first invoice to Voyager LLC, Voyager LLC was incorrectly billed $9.00 for "Word processing," and $1.25 for "Velobind," for a total of $10.25 (the additional $2.50 in Velobind charges in this invoice were proper). These items should not have been billed to Voyager LLC. Quinn Emanuel also incorrectly requested approval for both of these items in its First Fee Statement [ECF No. 358], at 8. Quinn Emanuel is not requesting allowance of this $10.25 herein, and is in the process of refunding this $10.25 charge to Voyager LLC.

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Special Counsel to Debtor Voyager Digital, LLC

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
VOYAGER DIGITAL HOLDINGS, INC., *et al.*,	:	Case No. 22-10943 (MEW)
Debtors.	:	(Jointly Administered)

FIRST INTERIM APPLICATION OF QUINN EMANUEL URQUHART & SULLIVAN LLP FOR ALLOWANCE OF INTERIM COMPENSATION FOR PROFESSIONAL SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES INCURRED AS SPECIAL COUNSEL TO VOYAGER DIGITAL LLC FROM JULY 13, 2022 THROUGH AND INCLUDING OCTOBER 31, 2022

Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel"), Special Counsel to Voyager Digital LLC (the "Company" or "Voyager LLC"), hereby submits this application (the "Application" or the "First Interim Application") pursuant to sections 330 and 331 of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code"), Rule 2016 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules"), Rule 2016-1 of the Local Bankruptcy Rules for the Southern District of New York (as amended, the "Local Bankruptcy Rules"), the Amended Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases, dated January 29, 2013 (the "Local Guidelines"), the United States Trustee Appendix B Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases, effective November 1, 2013 (the "U.S. Trustee Guidelines" and, together with the Local Guidelines, the "Guidelines"), and this Court's *Order (i) Establishing Procedures for Interim Compensation and Reimbursement of Expenses For Retained Professionals; and (ii) Granting Related Relief*, entered on August 4, 2022 [ECF No. 236] (the "Interim Compensation Order"), for interim allowance of compensation for professional services rendered by Quinn Emanuel to Voyager LLC for the period from July 13, 2022 through and including October 31, 2022 (the "Interim Application Period") and reimbursement of actual and necessary expenses incurred by Quinn Emanuel in connection with rendering such services during the Interim Application Period.

Pursuant to the Guidelines, Quinn Emanuel submits the declaration of Susheel Kirpalani, a Quinn Emanuel partner (the "Kirpalani Declaration"), regarding Quinn Emanuel's compliance with the Guidelines, which is attached hereto as **Exhibit A** and is incorporated herein by reference. In further support of this Application, Quinn Emanuel respectfully represents as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding under 28 U.S.C. § 157(b)(2).

2. The bases for the relief requested herein are sections 330 and 331 of the Bankruptcy Code, Bankruptcy Rule 2016, Local Bankruptcy Rule 2016-1(a), and the Interim Compensation Order.

Background

3. On July 5, 2022 (the "Petition Date"), Voyager LLC, Voyager Digital Holdings, Inc. ("Voyager Holdings"), and Voyager Digital Ltd. ("Voyager Ltd." and collectively with Voyager LLC and Voyager Holdings, the "Debtors") each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

4. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [ECF No. 18] .

5. On July 19, 2022, the United States Trustee for the Southern District of New York appointed an official committee of unsecured creditors (the "Committee"). *See Notice of Appointment of Official Committee of Unsecured Creditors* [ECF No. 102]. No trustee or examiner has been appointed in these cases.

6. Additional information regarding the Debtors' business, capital structure, and the circumstances leading to the filing of these cases is set forth in the *Declaration of Stephen Ehrlich,*

Chief Executive Officer of the Debtors in Support of Chapter 11 Petitions and First Day Motions [ECF No. 15].

7. On July 5, 2022, the board of directors of Voyager LLC formally established the special committee (the "Special Committee"), comprising independent directors Timothy Pohl and Jill Frizzley (the "Independent Directors") and vested it with authority to, among other things (a) investigate any historical transactions, public reporting, or regulatory issues undertaken by Voyager LLC that the Special Committee deemed necessary or appropriate, and the facts and circumstances surrounding such transactions; (b) interview and solicit information and views from management, representatives, consultants, advisors, or any other party in connection with any historical transactions undertaken by Voyager LLC that the Special Committee deems necessary or appropriate; (c) request documentation and information regarding Voyager LLC's business, assets, properties, liabilities and business dealings with respect to any historical transactions undertaken by Voyager LLC that the Special Committee deems necessary and appropriate to review; (d) perform any other activities consistent with the matters described herein or as the Special Committee or Voyager LLC's board of directors otherwise deems necessary or appropriate; and (e) conduct an independent investigation with respect to any potential estate claims and causes of action against insiders of Voyager LLC, including any claims arising from loans made to Three Arrows Capital ("3AC"). The Special Committee was also vested with sole authority to prosecute, settle, or extinguish any and all claims and causes of action arising from the historical transactions investigated by the Special Committee ((a)-(e), the ("Special Committee's Mandate")).

8. To aid the Special Committee with its Mandate, on July 21, 2022, Voyager LLC sought the retention of Quinn Emanuel to provide independent advice to, and act at the exclusive

direction of, the Special Committee. *See Debtor Voyager Digital, LLC's Application for Entry of An Order, Pursuant to 11 U.S.C. §§ 327(e) and 328(a) and Fed. R. Bankr. P. 2014, 2016 and 5002 Authorizing Employment and Retention of Quinn Emanuel Urquhart & Sullivan, LLP as Special Counsel to Voyager Digital, LLC, Effective July 13, 2022* [ECF No. 125].

9. On August 4, 2022, the Court issued the *Order Authorizing Debtor Voyager Digital, LLC to Employ and Retain Quinn Emanuel Urquhart & Sullivan, LLP as Special Counsel Effective July 13, 2022* [ECF No. 242] (the "Retention Order"), authorizing Voyager LLC to employ and retain Quinn Emanuel as its counsel effective as of July 13, 2022.

10. During the Interim Fee Period, Quinn Emanuel and the Special Committee conducted a comprehensive investigation (the "Investigation") into the historical transactions, public reporting, and regulatory issues, as outlined in the Special Committee Mandate, to determine whether any estate causes of action relating to those issues existed and were worth pursuing by Voyager LLC. During the Investigation, Quinn Emanuel sought and received information relating to, among other things: Voyager LLC's loans to third parties, with a particular focus on the 3AC Loan; the diligence performed in connection with those loans; Voyager LLC's risk committee; Voyager LLC's staking of customer cryptocurrency assets; Voyager LLC's regulatory compliance; Voyager LLC's communications with the public; Voyager LLC's pre-petition payments to insiders and certain third parties; and other aspects of Voyager LLC's business. Voyager LLC collected and provided to the Special Committee responsive documents from its internal hard copy and electronic files, its outside counsel, and various third parties (*e.g.*, cryptocurrency custodians and exchanges). Among many other things, Voyager LLC collected email, Slack communications, and, in certain cases, Telegram and cell phone data from a dozen Voyager LLC employees, including Voyager LLC's most senior officers and others. In addition

to several voluminous spreadsheets of data, Voyager LLC produced more than 11,000 documents—collectively totaling more than 40,000 pages.

11. Additionally, Quinn Emanuel interviewed 12 Voyager LLC employees regarding the range of topics most relevant to the Investigation, including Stephen Ehrlich (Chief Executive Officer ("CEO")), Gerard Hanshe (Chief Operations Officer), Evan Psaropoulos (Chief Commercial Officer ("CCO")), Ashwin Prithipaul (Chief Financial Officer), Pamela Kramer (Chief Marketing Officer), David Brosgol (General Counsel), Marshall Jensen (Head of Corporate Development), Ryan Whooley (Treasury Director), Jon Brosnahan (Treasurer), Brian Silard (Treasury Team), David Brill (Deputy General Counsel), and Manisha Lalwani (in-house regulatory counsel).

12. Throughout the course of the Investigation, Quinn Emanuel also provided regular updates to members of the Special Committee. In particular, Quinn Emanuel held five formal videoconference meetings with the Special Committee concerning the status of the Investigation, including facts learned, impressions obtained, and relevant legal documents and standards.

13. At the conclusion of the Investigation, on October 7, 2022, Quinn Emanuel delivered to the Special Committee a comprehensive report (the "Investigation Report"), setting forth, among other things, the factual record developed over the course of the Investigation, the legal framework of potential estate causes of action, and Quinn Emanuel's legal conclusions and recommendations.

14. Upon review of the Investigation Report, the Special Committee concluded that the estate had colorable claims against its CEO and CCO related to the 3AC Loan. On behalf of the Special Committee, Quinn Emanuel then negotiated independent settlements with each of the CEO and CCO concerning the estate's claims against them.

15. Additional information regarding the Investigation, including the Company's settlements with its CEO and CCO, is set forth in detail in the *First Amended Disclosure Statement Relating to the Second Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [ECF No. 540] at 48–50.

16. Following the conclusion of the Investigation, Quinn Emanuel assisted the Special Committee with several other matters that the Special Committee deemed necessary and appropriate, including the preparation of presentation materials concerning the Investigation, the analysis of possible causes of action by and against Voyager LLC related to certain pre-petition intercompany transactions, and the representation of Voyager LLC with respect to a potential claim against Voyager LLC asserted by the estate of Celsius Network LLC and/or an affiliated debtor ("Celsius").

Compensation Procedures

17. The Retention Order authorizes Quinn Emanuel to receive interim and final compensation pursuant to the procedures set forth in the Bankruptcy Code, the Bankruptcy Rules, the Guidelines, and the local rules and orders of this Court.

18. On August 4, 2022, the Court entered the Interim Compensation Order, [ECF No. 236] which approved certain compensation procedures for these cases (the "Compensation Procedures"). Pursuant to the Compensation Procedures, retained professionals such as Quinn Emanuel are authorized to serve monthly fee statements (each, a "Monthly Statement") on or after the 20th day of each month following the month for which compensation is sought or as soon thereafter as practicable. Provided that no objection to a Monthly Statement is raised, Voyager LLC is authorized to pay such professionals an amount equal to eighty percent (80%) of the fees and one hundred percent (100%) of the expenses requested in such Monthly Statement.

19. In addition, the Compensation Procedures provide that, beginning with the period ending on October 31, 2022, and at four-month intervals thereafter, retained professionals are authorized to file interim applications with the Court for the allowance of compensation and reimbursement of expenses sought in the monthly fee statements submitted during the applicable Interim Fee Period (as defined in the Interim Compensation Order).[5] Upon allowance by the Court of a professional's interim fee application, Voyager LLC is authorized to promptly pay such professional all unpaid fees and expenses for the applicable Interim Fee Period.

Compensation Paid and Its Sources

20. All services during the Interim Fee Period for which compensation is requested by Quinn Emanuel were performed for or on behalf of Voyager LLC. Except as provided in this Application, Quinn Emanuel has not received any payment or promises of payment from any source for services rendered or to be rendered in any capacity whatsoever in connection with matters covered by this Application. A certification confirming Quinn Emanuel's compliance with the Guidelines is annexed hereto as **Exhibit A**.

21. To the extent that billable time or disbursement charges for services rendered or expenses incurred which relate to the Interim Application Period were not processed prior to the preparation of this Application, Quinn Emanuel reserves the right to request compensation for such services and reimbursement of such expenses in a future fee application.

22. These professional services were rendered by Quinn Emanuel's partners, associates, other attorneys and paraprofessionals.

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[5] The Interim Compensation Order further provides: "Each Professional shall file its first Interim Fee Application on or before December 20, 2022, and the first Interim Fee Application shall cover the Interim Fee Period from the Petition Date (or the effective date of the Professional's retention) through and including October 31, 2022." *Id.* at 4.

Billing History

23. Pursuant to the terms of the Compensation Procedures, Quinn Emanuel served four Monthly Statements for the services rendered and expenses incurred during the Interim Application Period as follows:

ECF No.	Period Covered by Monthly Statement	Total Fees Requested in Fee Statements	Total Expenses Requested in Fee Statements	Objection Deadline	Total Amounts Received	Total Amounts Outstanding
ECF No. 358	July 13, 2022 - July 31, 2022	$195,264.00 (80% of $244,080.00)	$137.65[6]	September 13, 2022	$195,401.65	$48,816.00
ECF No. 474	August 1, 2022 - August 31, 2022	$1,193,484.96 (80% of $1,491,856.20)	$9,489.87	October 13, 2022	$1,202,974.83	$298,371.24
ECF No. 603	September 1, 2022 - September 30, 2022	$876,515.04 (80% of $1,095,643.80)[7]	$5,021.25	November 15, 2022	$881,536.29	$219,128.76
ECF No 674	October 1, 2022 - October 31, 2022	$264,965.76 (80% of $331,207.20)	$6,446.09	December 8, 2022	$271,411.85	$66,241.44
Total		$2,530,229.76	$21,094.86[8]	N/A	$2,551,324.62	$632,557.44

[6] As stated above, $9.00 in costs for "Word processing" and $1.25 for "Velobind" were incorrectly billed to Voyager LLC. Quinn Emanuel is in the process of refunding these amounts. Accordingly, this figure, and the total costs incurred are $10.25 higher than the actual billings to Voyager LLC following the refunding of the $10.25.

[7] In Exhibit A to the *Third Monthly Fee Statement* [ECF No. 603], the "Total Hours" and "Total Fees" displayed are incorrect. The proper number of "Total Hours" for the *Third Monthly Fee Statement* is 983.6, and the proper amount of "Total Fees" is $1,217,382.00 as reflected in the "Total Fees Billed to Voyager LLC After Application of 10% Discount" in Exhibit A and elsewhere in the *Third Monthly Fee Statement* [ECF No. 603].

[8] Following the above mentioned refund of $10.25, Quinn Emanuel is actually requesting expenses of $21,084.61, as stated in the Summary Sheet above, and elsewhere.

24. Quinn Emanuel maintains detailed time records of services rendered by its professionals and paraprofessionals. Copies of these time records have been filed on the docket with Quinn Emanuel's Monthly Statements.

Relief Requested

25. In this application, Quinn Emanuel is requesting entry of an order granting the interim allowance of (i) compensation for the actual, reasonable and necessary professional services that Quinn Emanuel has rendered to Voyager LLC in the amount of $3,162,787.20 and (ii) the actual, reasonable and necessary out-of-pocket expenses incurred in representing Voyager LLC in the amount of $21,084.61.

26. In accordance with the Guidelines, the following exhibits are attached to this Application:

a. **Exhibit A** is the Kirpalani Declaration.

b. **Exhibit B** is a schedule of the number of hours billed by partners, of counsel, associates, contract attorneys, and paraprofessionals during the Interim Application Period with respect to each of the subject matter categories Quinn Emanuel has established in accordance with its internal billing procedures. Quinn Emanuel attorneys and paraprofessionals have billed a total of 2,709 hours in connection with this matter during the Interim Application Period.

c. **Exhibit C** is a schedule providing certain information regarding Quinn Emanuel attorneys and paraprofessionals for whose work compensation is sought in this Application, including position, level of experience, hourly rate, total hours spent working in these cases during the Interim Application Period, and amount of compensation sought on account thereof.

d. **Exhibit D** contains a summary schedule of the actual and necessary out-of-pocket expenses incurred by Quinn Emanuel during the Interim Application Period.

e. **Exhibit E** contains a disclosure of "customary and comparable compensation" charged by Quinn Emanuel's professionals and paraprofessionals, including a summary of the blended hourly rates of the applicable timekeepers (segregated by rank) as compared to the blended hourly rates for all timekeepers in Quinn Emanuel's U.S. Offices.

f. **Exhibit F** contains Quinn Emanuel's budget and staffing plans for these cases during the Interim Application Period.

Summary of Legal Services Rendered

27. During the Interim Application Period, Quinn Emanuel provided reasonable and appropriate professional services to Voyager LLC that were necessary to the administration of these cases.

28. To provide a meaningful summary of Quinn Emanuel's services rendered on behalf of Voyager LLC, Quinn Emanuel has established, in accordance with its internal billing procedures, certain subject matter categories tailored to these cases. The following is a summary of professional services rendered for the subject matter categories during the Interim Application Period.

29. During the Interim Application Period, Quinn Emanuel: (a) billed 2,709.0 hours; (b) incurred $3,514,208 in total fees ($3,162,787.20 following application of the agreed 10% discount) and (c) incurred $21,084.61 in expenses.

VO01: Case Administration—46.8 Hours—$13,106.50 ($11,795.85 following application of the 10% discount)

30. During the Interim Application Period, Quinn Emanuel attorneys and paraprofessionals spent a total of 46.8 hours on administrative tasks necessary to facilitate the Investigation, including processing and loading document productions onto Quinn Emanuel's review platform, executing document searches and creating review batches, and preparing hard copy document binders for attorney review and witness interviews.

VO02: Fee Applications—22.0 Hours—$23,894.50 ($21,505.05 following application of the 10% discount)

31. During the Interim Application Period, Quinn Emanuel attorneys and paraprofessionals spent a total of 22.0 hours preparing and revising the *First Monthly Fee Statement of Quinn Emanuel Urquhart & Sullivan LLP for Compensation for Services Rendered as Special Counsel to Voyager Digital, LLC During the Period of July 13, 2022 through July 31, 2022* [ECF No. 358]; the *Second Monthly Fee Statement of Quinn Emanuel Urquhart & Sullivan LLP for Compensation for Services Rendered as Special Counsel to Voyager Digital, LLC During the Period of August 1, 2022 through August 31, 2022* [ECF No. 474]; the *Third Monthly Fee Statement of Quinn Emanuel Urquhart & Sullivan LLP for Compensation for Services Rendered as Special Counsel to Voyager Digital, LLC During the Period of September 1, 2022 through September 30, 2022* [ECF No. 603]; the *Fourth Monthly Fee Statement of Quinn Emanuel Urquhart & Sullivan LLP for Compensation for Services Rendered as Special Counsel to Voyager Digital, LLC During the Period of October 1, 2022 through October 31, 2022* [ECF No. 674] and this first Interim Fee Application.

VO03: Employment Applications—56.1 Hours—$71,883.00 ($64,694.70 following application of the 10% discount)

32. During the Interim Application Period, Quinn Emanuel billed 56.1 hours preparing *Debtor Voyager Digital, LLC's Application for Entry of An Order, Pursuant to 11 U.S.C. §§ 327(e) and 328(a) and Fed. R. Bankr. P. 2014, 2016 and 5002 Authorizing Employment and Retention of Quinn Emanuel Urquhart & Sullivan, LLP as Special Counsel to Voyager Digital, LLC, Effective July 13, 2022* [ECF No. 125], the *Declaration of Susheel Kirpalani in Support of Debtor Voyager Digital, LLC's Application for Entry of an Order Pursuant to 11 U.S.C. §§ 327(e) and 328(a) and Fed. R. Bankr. P. 2014, 2016, and 5002 Authorizing Employment and Retention of Quinn Emanuel Urquhart & Sullivan, LLP as Special Counsel to Voyager Digital, LLC Effective*

July 13, 2022 [ECF No. 125 at 46–63] (the "First Kirpalani Declaration"), the *Supplemental Declaration of Susheel Kirpalani in Connection with Employment as Special Counsel to Debtor Voyager Digital, LLC* [ECF No. 668] (the "Supplemental Kirpalani Declaration"), and the *Second Supplemental Declaration of Susheel Kirpalani in Connection with Employment as Special Counsel to Debtor Voyager Digital, LLC* [ECF No. 693] (the "Second Supplemental Kirpalani Declaration").

VO05: Special Committee Investigation—2,584.1 hours—$3,405,324.00 ($3,064,791.60 following application of the 10% discount)

33. During the Interim Application Period, Quinn Emanuel attorneys spent a total of 2,584.1 hours on tasks related to the Investigation (summarized above, *supra* ¶¶ 7-16), including requesting and reviewing substantial amounts of documents, interviewing witnesses, attending meetings and hearings, conducting legal analyses, and preparing memoranda, including the comprehensive Investigation Report.

Summary of Actual and Necessary Expenses Incurred

34. During the Interim Application Period, certain documents required Document Reproduction. The $50.10 in document reproduction fees incurred represent the actual cost to Quinn Emanuel.

35. During the Interim Application Period, certain documents required Color Document Reproduction. The $74.80 in color document reproduction fees represent the actual cost to Quinn Emanuel.

36. During the Interim Application Period, Velobind services were required. The $2.50 in velobinding fees represent the actual cost to Quinn Emanuel.

37. During the Interim Application Period, Express Mail services were required. The $671.71 in express mail fees represent the actual cost to Quinn Emanuel.

38. During the Interim Application Period, Document Services were required. These services included drilling, punching, and color printing for binders used during witness interviews. The $9,797.45 in document services represent the actual cost to Quinn Emanuel.

39. During the Interim Application Period, Online Research was required. This research was conducted outside of Quinn Emanuel's subscription, and thus costs were incurred. The $153.00 in online research represents the actual cost to Quinn Emanuel.

40. During the Interim Application Period, Messenger Services were required. The $814.67 in messenger services represent the actual cost to Quinn Emanuel.

41. During the Interim Application Period, Local Meals were required. The $466.11 in local meals represent the actual cost to Quinn Emanuel.

42. During the Interim Application Period, Conference Fees were required. The $350 in conference fees represent the actual cost to Quinn Emanuel.

43. During the Interim Application Period, Meals During Travel were required. The $34.16 in meals during travel represent the actual cost to Quinn Emanuel.

44. During the Interim Application Period, Hotel Stays were required to facilitate witness interviews. The $3,383.72 in hotel stays represent the actual cost to Quinn Emanuel.

45. During the Interim Application Period, Out-of-Town-Travel was required. The Out-of-Town Travel expenses included taxis to and from airports and hotels in order to facilitate witness interviews. The $499.06 in out of town travel represent the actual cost to Quinn Emanuel.

46. During the Interim Application Period, Air Travel was required to facilitate witness interviews. The $2,770.60 in air travel represents the actual cost to Quinn Emanuel.

47. During the Interim Application Period, Local Business Travel was required to facilitate witness interviews. The $180.52 in local business travel represents the actual cost to Quinn Emanuel.

48. During the Interim Application Period, Travel was required. This travel included use of a car service from an airport to a hotel in order to facilitate witness interviews. The $72.45 in travel represents the actual cost to Quinn Emanuel.

49. During the Interim Application Period, Litigation Support Costs, in the form of RelOne Active Hosting (per GB) was required. The $263.76 in RelOne Active Hosting represent the actual cost to Quinn Emanuel.

50. During the Interim Application Period, Litigation Support Costs, in the form of a RelOne User Fee was required. The $1,500 in RelOne User Fee represents the actual cost to Quinn Emanuel.

51. The actual expenses incurred in providing professional services to Voyager LLC were necessary, reasonable, and justified under the circumstances.

52. Quinn Emanuel has made every effort to minimize disbursements of this nature in these cases. Quinn Emanuel regularly reviews its bills to ensure that Voyager LLC is only billed for services that were actual and necessary.

Basis for Relief

53. Section 331 of the Bankruptcy Code provides for interim compensation for services rendered and reimbursement of expenses in chapter 11 cases and incorporates the substantive standards of section 330 to govern the award of such compensation.

> [A]ny professional person . . . may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered . . . or reimbursement for expenses . . . as is provided under section 330 of this title. . . .

11 U.S.C. § 331.

54. With respect to the level of compensation, section 330(a)(1)(A) of the Bankruptcy Code provides, in pertinent part, that the Court may award to a professional person "reasonable compensation for actual, necessary services rendered[.]" Section 330(a)(3), in turn, provides that:

> In determining the amount of reasonable compensation to be awarded to . . . [a] professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and expertise in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

11 U.S.C. § 330(a)(3).

55. Quinn Emanuel respectfully submits that the services for which it seeks compensation in this Application were, at the time rendered, necessary for and beneficial to the Debtor Voyager LLC. Quinn Emanuel performed the services for Voyager LLC efficiently and effectively, and the results obtained benefited not only Voyager LLC, but also its creditors and other parties in interest. Quinn Emanuel further submits that the compensation requested herein is reasonable in light of the nature, extent, and value of the services rendered.

56. During the Interim Application Period, Quinn Emanuel's hourly billing rates for attorneys ranged from $425.00 to $2,130.00, prior to the application of the agreed 10% discount referenced above. These rates and the corresponding rate structure reflect the great complexity, high stakes, and severe time pressures involved in these cases. These hourly rates and the rate structure are equivalent to the hourly rates and corresponding rate structure used by Quinn Emanuel not only for restructuring, workout, bankruptcy, insolvency, and comparable matters, but also for other complex corporate, securities, and litigation matters, whether in-court or otherwise, regardless of whether a fee application is required. Quinn Emanuel strives to be efficient in the staffing of all of its matters.

57. Moreover, Quinn Emanuel's hourly rates are set at a level designed to compensate Quinn Emanuel fairly for the work of its attorneys and paraprofessionals and to cover certain fixed overhead expenses. Hourly rates vary with the experience and seniority of each individual performing a particular service. These hourly rates are subject to yearly adjustments to reflect economic and other conditions and are consistent with the rates charged by comparable firms.

58. In sum, Quinn Emanuel respectfully submits that the professional services provided by its attorneys and paraprofessionals on behalf of Voyager LLC during the Interim Application Period were necessary and appropriate given the relevant factors set forth in section 330 of the Bankruptcy Code, *i.e.*, the complexity of these cases, the time expended, the nature and extent of the services provided, the value of such services, and the cost of comparable services outside of bankruptcy. Accordingly, Quinn Emanuel respectfully submits that approval of compensation for the fees incurred for professional services and reimbursement of expenses sought herein is warranted.

Reservation of Rights

59. Although every effort has been made to include all fees and expenses incurred during the Interim Application Period, some fees and expenses might not be included in this Application due to delays in connection with accounting and processing of such time and expenses or for other reasons. Accordingly, Quinn Emanuel reserves the right to make further applications to this Court for the allowance of additional fees and expenses incurred during the Interim Application Period that are not included herein.

Notice

60. Notice of this Application will be provided in accordance with the procedures set forth in the *Final Order (I) Establishing Certain Notice, Case Management, and Administrative Procedures and (II) Granting Related Relief* [ECF No. 240]. Voyager LLC respectfully submits that no further notice is required.

No Prior Request

61. No previous request for the relief sought herein has been made by Quinn Emanuel to this or any other Court.

Conclusion

WHEREFORE, Quinn Emanuel respectfully requests that the Court enter an order (i) allowing on an interim basis, (a) compensation to Quinn Emanuel of $3,162,787.20 for reasonable and necessary professional services rendered to Voyager LLC, and (b) $21,084.61 for reimbursement of actual and necessary costs and expenses incurred by Quinn Emanuel, for a total of $3,183,871.81; and (ii) granting such other relief as the Court deems proper and just.

Respectfully submitted this 20th day of December, 2022.

New York, New York

QUINN EMANUEL URQUHART & SULLIVAN, LLP

/s/ **SUSHEEL KIRPALANI**

Susheel Kirpalani
Katherine Lemire
Kate Scherling
Zachary Russell
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Facsimile: (212) 849-7100

Special Counsel to Debtor Voyager Digital LLC.

Exhibit A

Kirpalani Declaration

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
VOYAGER DIGITAL HOLDINGS, INC., *et al.*,[9]	:	Case No. 22-10943 (MEW)
Debtors.	:	(Jointly Administered)

DECLARATION OF SUSHEEL KIRPALANI IN SUPPORT OF INTERIM APPLICATION OF QUINN EMANUEL URQUHART & SULLIVAN, LLP FOR ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSES INCURRED AS SPECIAL COUNSEL FOR VOYAGER DIGITAL, LLC FOR THE PERIOD FROM JULY 13, 2022, THROUGH AND INCLUDING OCTOBER 31, 2022

[9] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital, Ltd. (7224); and Voyager Digital, LLC (8013). The location of the Debtors' principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003.

1. I am a partner at Quinn Emanuel Urquhart & Sullivan LLP ("Quinn Emanuel"), counsel to Voyager Digital LLC ("Voyager LLC"). I am admitted to the bar in the State of New York and have been admitted to practice in the United States Bankruptcy Court for the Southern District of New York. I am one of the lead Quinn Emanuel attorneys working on Voyager LLC's chapter 11 case and I am familiar with the work performed on behalf of Voyager LLC by Quinn Emanuel.

2. I have read the foregoing *First Interim Application of Quinn Emanuel Urquhart & Sullivan LLP for Allowance of Interim Compensation for Professional Services Rendered and Reimbursement of Expenses Incurred as Special Counsel to Voyager Digital LLC from July 13, 2022 Through and Including October 31, 2022* (the "First Interim Application").[10] To the best of my knowledge, information and belief, the statements contained in the First Interim Application are true and correct and comply in material part with Local Bankruptcy Rule 2016-1(a) and the Local Guidelines.

3. In accordance with the Local Guidelines, I certify that:

a. I have read the First Interim Application.

b. To the best of my knowledge, information, and belief formed after reasonable inquiry, the fees and disbursements sought fall within the Local Guidelines;

c. The fees and disbursements sought are billed at rates in accordance with those customarily charged by Quinn Emanuel and generally accepted by Quinn Emanuel's clients[11]; and

d. In providing a reimbursable service, Quinn Emanuel does not make a profit on that service, whether the service is performed by Quinn Emanuel in-house or through a third party.

[10] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the First Interim Application.

[11] Indeed, Quinn Emanuel and Voyager LLC agreed to a 10% discount on Quinn Emanuel's customary fees.

4. In accordance with the Local Guidelines, and as required by the Interim Compensation Order, I also certify that Quinn Emanuel has complied with provisions requiring it to provide Voyager LLC, the official committee of unsecured creditors (the "Committee"), and the U.S. Trustee with a statement of Quinn Emanuel's fees and disbursements accrued during the previous month.

5. In accordance with the Local Guidelines, I further certify that Voyager LLC, the Committee, and the U.S. Trustee are each being provided with a copy of this Application.

6. Quinn Emanuel responds to the questions identified in the U.S. Trustee Guidelines as follows:

Question: Did you agree to any variations from, or alternatives to, your standard or customary billing rates, fees or terms for services pertaining to this engagement that were provided during the First Interim Application Period? If so, please explain.

Response: Yes. As stated in footnote 3 of the First Interim Application, Quinn Emanuel agreed with Voyager LLC to a 10% discount of its customary fees.

Question: If the fees sought in this fee application as compared to the fees budgeted for the time period covered by this fee application are higher by 10% or more, did you discuss the reasons for the variation with the client?

Response: Not applicable.

Question: Have any of the professionals included in this fee application varied their hourly rate based on the geographic location of the bankruptcy case?

Response: No.

Question: Does this fee application include time or fees related to reviewing the time records or preparing, reviewing, or revising invoices? (This is limited to work involved in preparing and editing billing records that would not be compensable outside of bankruptcy and does not include reasonable fees for preparing a fee application.). If so, please quantify by hours and fees.

Response: No.

Question: Does the Application include time or fees for reviewing time records to redact any privileged or other confidential information? If so, please quantify hours and fees.

Response: No.

7. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: December 20, 2022
New York, New York

/s/ Susheel Kirpalani
Susheel Kirpalani
Partner, Quinn Emanuel Urquhart & Sullivan, LLP

Exhibit B

Summary of Fees By Subject Matter

Task Code	Project Category	Total Hours Billed	Amount
VO01	Case Administration	46.8	$13,106.50
VO02	Fee Applications	22.0	$23,894.50
VO03	Employment Applications	56.1	$71,883.00
VO05	Special Committee Investigation	2,584.1	$3,405,324.00
	TOTALS:	2,709.0	$3,514,208.00[12]

[12] As stated in footnote 3 above, the Net Billed Fees (which are the only fees requested herein) represent 90% of the total fees in the four invoices referenced herein.

Exhibit C

Attorneys and Paraprofessionals' Information

Name	Position	Bar Admission	Hourly Rate	Total Hours Billed	Total Fees Incurred
Susheel Kirpalani	Partner	1998	$2,130	260.9	$555,717.00
Danielle Gilmore	Partner	CA 1994	$1,770	15.8	$27,966.00
Katherine Lemire	Partner	1998	$1,770	136.9	$242,313.00
Eric M. Kay	Counsel	1996	$1,465	99.8	$146,207.00
Daniel Holzman	Counsel	1999	$1,350	139.8	$188,730.00
Katherine A. Scherling	Counsel	2010	$1,350	430.2	$580,770.00
Zachary Russell	Associate	2017	$1,270	624.3	$779,657.00
Meredith Mandell	Associate	2017	$1,270	293.9	$367,221.00
Joanna Caytas	Associate	2018	$1,165	492.1	$554,060.50
Daniel Needleman	Attorney	1999	$425	6.7	$2,847.50
Caitlin Garvey	Paralegal	N/A	$480	93.8	$45,024.00
Kathyann Small	Paralegal	N/A	$480	11.5	$5,520.00
James Bandes	Litigation Support	N/A	$250	1.3	$325.00
Steven Wong	Litigation Support	N/A	$175	97.8	$17,115.00
Anthony Bentancourt	Litigation Support	N/A	$175	.2	$35.00
Jet Ma	Litigation Support	N/A	$175	3.1	$542.50
Daryl Lyew	Litigation Support	N/A	$175	.9	$157.50
		TOTALS:	--- [13]	2,709.0	$3,514,208.00

[13] The blended rate for attorneys is $1,377.98/hour. The blended rate for paraprofessionals excluding litigation support is $480.00/hour. The blended rate for litigation support is $175.94/hour.

Exhibit D

Summary of Expenses Incurred During the Interim Application Period

(July 13, 2022 – October 31, 2022)

Expense Categories	Amount
Document Reproduction	$50.10
Color Document Reproduction	$74.80
Velobind	$2.50
Express Mail	$671.71
Document Services	$9,797.45
Messenger Services	$814.67
Local Meals	$466.11
Conference Fees	$350.00
Meals During Travel	$34.16
Hotel	$3,383.72
Out of Town Travel	$499.06
Air Travel	$2,770.60
Online Research	$153.00
Local Business Travel	$180.52
Travel	$72.45
Litigation Support (RelOne Active Hosting (per GB)	$263.76
Litigation Support (RelOne User Fee)	$1,500
TOTALS:	$21,084.61

Exhibit E

Customary and Comparable Compensation

Category of Timekeeper	Blended Hourly Rate		Blended Hourly Rate
	Billed Firm-wide for preceding fiscal year (FY2021)	Billed Firm-wide July 1, 2022 through October 31, 2022	Billed to In Re Voyager Holdings S.A. et al from July 13, 2022 through October 31, 2022[14]
Partner	$1,235.77	$1,351.65	$1,997.09
Counsel	$1,099.72	$1,137.24	$1,367.13
Associate	$866.66	$967.54	$1,206.08
Attorney (staff attorneys)	$383.55	$402.64	$425.00
Paraprofessional	$360.30	$405.30	$480.00
Litigation Support	$190.84	$186.61	$175.94
Aggregated	$933.13	$1,003.55	$1,297.23

[14] Each blended rate on this matter is prior to application of the 10% discount described in footnote 3 above.

Exhibit F

Quinn Emanuel Budget and Staffing Plan

Quinn Emanuel and Voyager LLC have not agreed on either a budget or a staffing plan.

Exhibit 3

Summary of Timekeepers

Name of Professional Person	Title	Department	Date of Admission	Hourly Billing Rate ($)[1]	Total Billed Hours	Total Compensation ($)
Paul M. Basta	Partner	Bankruptcy	1993	$1,675.69	63.20	$105,903.50
Tracey A. Zaccone	Partner	Corporate	1998	$1,674.45	120.30	$201,436.00
Robert Holo	Partner	Tax	1993	$1,665.69	42.80	$71,291.50
Julia Wood	Partner	Litigation	1997	$1,657.00	51.00	$84,507.00
Jean McLoughlin	Partner	Employee Benefits	1995	$1,654.21	10.10	$16,707.50
Peter E. Fisch	Partner	Corporate	1990	$1,650.00	0.20	$330.00
Andrew Finch	Partner	Litigation	1998	$1,550.00	0.50	$775.00
Sarah Stasny	Partner	Corporate	2010	$1,440.00	0.50	$720.00
Claudine K Meredith-Goujon	Partner	Corporate	1999	$1,355.00	0.40	$542.00
Robert Britton	Partner	Bankruptcy	2008	$1,308.77	165.70	$216,862.50
John Weber	Partner	Bankruptcy	2013	$1,295.00	0.50	$647.50
Caith Kushner	Partner	Corporate	2006	$1,271.35	139.30	$177,099.50
Jason Tyler	Counsel	Corporate	2012	$1,205.71	6.30	$7,596.00
Meghan E. Fox	Counsel	Employee Benefits	2010	$1,201.26	14.30	$17,178.00
Lisa Krau Eisenberg	Counsel	Employee Benefits	2010	$1,200.00	28.50	$34,200.00
Marta P. Kelly	Counsel	Corporate	2000	$1,200.00	4.10	$4,920.00
William O'Brien	Counsel	Corporate	1987	$1,200.00	1.50	$1,800.00
Lyudmila Bondarenko	Associate	Corporate	2006	$1,170.00	10.30	$12,051.00
Christopher Hopkins	Associate	Bankruptcy	2014	$1,105.83	441.50	$488,226.00
Andrew Krause	Associate	Corporate	2014	$1,067.36	8.90	$9,499.50
Brian Kirkup	Associate	Corporate	2012	$1,065.00	20.00	$21,300.00
Alexandra F. Leavy	Associate	Corporate	2015	$1,032.55	150.60	$155,501.50
Alison R. Benedon	Associate	Litigation	2017	$997.11	3.80	$3,789.00
Zachary B. Kaye	Associate	Litigation	2016	$991.55	14.80	$14,675.00
Alice Nofzinger	Associate	Bankruptcy	2017	$982.83	451.00	$443,257.00
Katherine Shaia	Associate	Corporate	2018	$980.00	25.00	$24,500.00
Reuven P. Garrett	Associate	Tax	2016	$980.00	1.10	$1,078.00
Jennifer McWhaw	Associate	Corporate	2019	$978.13	59.50	$58,198.50
William D. Roth	Associate	Tax	2016	$972.66	69.30	$67,405.50
Felicia A. Siegel	Associate	Corporate	2016	$955.00	0.40	$382.00
Hannah J. Blonshteyn	Associate	Corporate	2016	$955.00	5.90	$5,634.50
Shamara R. James	Associate	Bankruptcy	2018	$924.61	314.70	$290,976.00
John Ross Kim	Associate	Corporate	2018	$886.45	50.40	$44,677.00
Casey J. Olbrantz	Associate	Litigation	2018	$880.00	2.50	$2,200.00
Paul Nolle	Associate	Corporate	2018	$880.00	7.00	$6,160.00

[1] On December 17, 2020, Paul, Weiss filed the *Notice of Annual Rate Increase by Paul, Weiss, Rifkind, Wharton & Garrison LLP* [ECF No. 786]. The hourly billing rate reflected is the total compensation divided by the total billed hours for each professional person.

Name of Professional Person	Title	Department	Date of Admission	Hourly Billing Rate ($)[1]	Total Billed Hours	Total Compensation ($)
Rebecca B. Schwartz	Associate	Corporate	2018	$880.00	1.40	$1,232.00
Cecily Ran Deng	Associate	Corporate	2019	$845.64	85.80	$72,555.50
Alexandra Shofe	Associate	Corporate	2019	$775.00	0.90	$697.50
Jorge Gonzalez-Corona	Associate	Bankruptcy	2020	$718.77	354.00	$254,444.00
Tyler F. Zelinger	Associate	Bankruptcy	Not yet admitted	$685.12	219.20	$150,178.00
Edward Lee	Associate	Litigation	2020	$680.93	21.40	$14,572.00
Ruel V. Jerry	Associate	Corporate	Not yet admitted	$677.70	63.40	$42,966.00
Ryan Rizzuto	Associate	Litigation	Not yet admitted	$671.52	61.80	$41,500.00
Iryna Malakhouskaya	Associate	Tax	2019	$665.00	26.10	$17,356.50
Justin Jennewine	Associate	Employee Benefits	Not yet admitted	$665.00	29.80	$19,817.00
Timothy Carney	Paralegal	Litigation	N/A	$405.00	0.60	$243.00
Christopher Tarrant	Paralegal	Bankruptcy	N/A	$392.67	28.60	$11,230.50
Michael Holden	Paralegal	Corporate	N/A	$380.00	0.90	$342.00
Jorge Velazquez	Paralegal	E-Discovery	N/A	$360.00	0.20	$72.00
Michael Johnson	Paralegal	Litigation	N/A	$360.00	0.10	$36.00
Priscilla Abraham	Paralegal	Litigation	N/A	$360.00	0.20	$72.00
Hannah Cutler	Paralegal	Bankruptcy	N/A	$340.00	0.20	$68.00
Beth Lewitzky	Paralegal	Research	N/A	$325.00	1.00	$325.00
Ai Na Liu	Paralegal	Research	N/A	$285.00	5.00	$1,425.00
Karen Bradley	Paralegal	Research	N/A	$285.00	0.30	$85.50
Graphic Specialist	Paralegal	Trial Services & Support	N/A	$255.00	0.80	$204.00
		TOTAL			**3,187.60**	**$3,221,448.00**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
DIAMOND OFFSHORE DRILLING, INC., *et al.*,[1]	)	Case No. 20-32307 (DRJ)
	)	(Jointly Administered)
Debtors.	)	

ORDER GRANTING THE THIRD INTERIM FEE APPLICATION OF PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP, ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION, FOR THE PAYMENT OF COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR THE PERIOD FROM NOVEMBER 1, 2020 THROUGH JANUARY 31, 2021
(Relates to Docket No. 1109)

Upon the *Third Interim Fee Application of Paul, Weiss, Rifkind, Wharton & Garrison LLP, Attorneys for the Debtors and Debtors-in-Possession, for the Payment of Compensation and Reimbursement of Expenses for the Period From November 1, 2020 Through January 31, 2021* (the "Fee Application")[2] of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") for entry of an order (this "Order") pursuant to sections 330 and 331 of title 11 of the United States Code (the "Bankruptcy Code"), rule 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and rule 2016-1 of the Local Bankruptcy Rules for the Southern District of Texas (the

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are: Diamond Offshore Drilling, Inc. (1760), Diamond Offshore International Limited (4671), Diamond Offshore Finance Company (0712), Diamond Offshore General Company (0474), Diamond Offshore Company (3301), Diamond Offshore Drilling (UK) Limited (1866), Diamond Offshore Services Company (3352), Diamond Offshore Limited (4648), Diamond Rig Investments Limited (7975), Diamond Offshore Development Company (9626), Diamond Offshore Management Company (0049), Diamond Offshore (Brazil) L.L.C. (9572), Diamond Offshore Holding, L.L.C. (4624), Arethusa Off-Shore Company (5319), Diamond Foreign Asset Company (1496). The Debtors' primary headquarters and mailing address is 15415 Katy Freeway, Houston, TX 77094.

[2] Capitalized terms used but not defined herein have the meanings ascribed to them in the Fee Application.

"Local Rules"), (a) awarding Paul, Weiss compensation for professional services provided in the amount of $3,221,448.00 and reimbursement of actual and necessary expenses in the amount of $13,423.98 that Paul, Weiss incurred for the period from November 1, 2020 through January 31, 2021 (the "Fee Period"); (b) authorizing and directing the Debtors to remit payment to Paul, Weiss for such fees and expenses; and (c) granting such other relief as is appropriate under the circumstances, all as more fully set forth in the Fee Application; and this Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of Texas*, dated May 24, 2012; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties-in-interest; and this Court having found that the Debtors' notice of the Fee Application and opportunity for a hearing on the Fee Application were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Fee Application and having heard the statements in support of the relief requested therein at the hearing, if any, before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Fee Application and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. Compensation to Paul, Weiss for professional services rendered during the Fee Period is allowed on an interim basis in the amount of $3,221,448.00.

2. Reimbursement to Paul, Weiss for expenses incurred during the Fee Period is allowed on an interim basis in the amount of $13,423.98.

3. Paul, Weiss is awarded on an interim basis fees and costs as an administrative expense for the period from November 1, 2020 through January 31, 2021, as follows:

Fees:	$3,221,448.00
Expenses:	$13,423.98
Total:	$3,234,871.98

4. The Debtors are authorized to pay Paul, Weiss all fees and expenses allowed pursuant to this Order.

5. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Signed: April 05, 2021.

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBERT FORD, et al., Plaintiffs, v. TAKEDA PHARMACEUTICALS U.S.A., INC., et al., Defendants.	No. 1:21-cv-10090-WGY

I, James C. Sturdevant, declare as follows:

1. I am an attorney admitted to the practice of law in all courts of the State of California and Connecticut. I am admitted to practice in all federal district courts in California and Connecticut, the Second, Fourth, and Ninth Circuit Courts of Appeals, and the United States Supreme Court. I am a graduate of Boston College School of Law where I received my J.D. in 1972, and of Trinity College, where I received a B.A. in 1969. A complete recitation of my experience and background is included in my current personal resume, which is attached hereto as Exhibit A.

2. I have concentrated on litigation, both at the trial and appellate levels, throughout my forty-five plus year legal career. From 1972 through May, 1978, I was employed with the Tolland-Windham Legal Assistance Program, Inc., and Connecticut Legal Services, Inc., where I concentrated on significant housing, food and unemployment compensation litigation primarily in federal courts, legislation and administrative advocacy. Beginning in October, 1978, I initiated and directed all major litigation for the San Fernando Valley Neighborhood Legal Services, Inc. program in Southern California. In 1980, I formed my own private practice, The Sturdevant Law Firm, focusing on unfair business practices and civil rights cases. Since 1986, I have

concentrated on lender liability, consumer protection class actions, complex employment discrimination cases, disability access, and unlawful/unfair business practice cases.

3. I have had extensive experience in representing consumers and low-income and other individuals in consumer class actions, employment discrimination cases, environmental litigation, disability access, unfair business practices litigation, and other public interest actions in both state and federal courts. I have handled the pre-trial, trial, and most of the appellate work for cases in my firm in which I was lead or co-counsel. A summary of examples of recent significant litigation in which I am or have been involved is described in my firm's resume, Exhibit B.

4. I have been regarded as one of the nation's most respected consumer rights and class action attorneys. I received the 2019 CLAY Award with my team of attorneys for securing a unanimous decision from the California Supreme Court in *De La Torre v. CashCall, Inc.*, 5 Cal. 5th 966 (2018). In that case, which by that time had lasted more than ten years, the Court held that interest rates between 96% and 135% on $2,600 loans payable over three and one-half years may be determined unconscionable in isolation from other loan terms and circumstances. The Court also held that borrowers may seek affirmative relief from unconscionable loans under California's Unfair Competition Law. Trial Lawyers nominated me for Trial Lawyer of the Year for Public Justice (now Public Justice) in 2004 for my work in *Miller v. Bank of America,* which is described in some detail in my firm resume. The Consumer Attorneys of California named me 2004 Trial Lawyer of the Year for work in that same case; the San Francisco Trial Lawyers Association named me 2002 Trial Lawyer of the Year for my work in *Ting v. AT&T*, which is also described in my firm resume; and I have received numerous other awards for outstanding advocacy on behalf of consumers and workers.

5. I serve and have served on numerous national, state and local boards and committees concerned with civil litigation and amicus curiae work, and I and my firm have authored a significant number of briefs and amicus briefs on the issues of mandatory arbitration, federal preemption, the interpretation of consumer protection statutes and attorneys' fees, among many other subjects.

6. I am well acquainted with the reputation and practice of Jerome J. Schlichter, founding partner of Schlichter Bogard & Denton, which prosecuted this case as Class Counsel prior to the class action settlement. I have known Mr. Schlichter for many years and am familiar with the fact that he and his firm have done excellent work over the last three decades in advancing the rights of workers and individuals in a variety of class action cases in the employment discrimination field and, in recent years, national class actions involving fiduciary breaches and excessive fees in 401(k) and 403(b) plans.

7. Schlichter Bogard & Denton has been at the forefront of ERISA fiduciary breach class actions brought on behalf of employees in 401(k) and 403(b) plans. The firm first filed excessive fee cases involving 401(k) plans in 2006. Starting in 2016, Schlichter Bogard & Denton expanded their national ERISA practice by filing similar excessive fee cases involving 403(b) plans sponsored by private universities.

8. To my knowledge, Schlichter Bogard & Denton was the first firm in the country to bring excessive fee lawsuits involving 401(k) and 403(b) plans. Prior to Schlichter Bogard & Denton filing these lawsuits, there were no lawyers or law firms in the country handling such cases. Consequently, no law firm has developed the expertise in these types of cases that Schlichter Bogard & Denton has over the last 14 years, and no other law firm in the country, to

my knowledge, has taken an ERISA 401(k) or 403(b) excessive fee case to trial prior to Schlichter Bogard & Denton.

9. I am also aware of no other law firm that has achieved the success that Schlichter Bogard & Denton has in bringing ERISA class actions for excessive fees. The public has been well served by the actions of these attorneys. Schlichter Bogard & Denton has indeed functioned as private attorneys general.

10. Moreover, no other law firm in the United States has had a 401(k) or 403(b) case taken by the United States Supreme Court. Schlichter Bogard & Denton has had two cases in which the Supreme Court granted their request for a writ of certiorari. *Hughes v. Northwestern Univ.*, 142 S. Ct. 737 (2022); *Tibble v. Edison*, 575 U.S. 523 (2015). Schlichter Bogard & Denton not only won those two cases, but it obtained unanimous Supreme Court decisions in them, benefitting participants in such plans throughout the country.

11. Complex class actions, such as those brought by Schlichter Bogard & Denton, require representation of the class at a very high level throughout the matter. My firm and I have been involved in several ERISA class actions. In my experience, ERISA class actions and other complex class actions are national in scope, involve complex federal laws and regulations, and typically encompass parties, discovery, and attorneys from all over the United States. A plaintiff's ERISA practice is therefore complex, highly specialized, time-consuming, and expensive to pursue. To my knowledge, there are very few attorneys and law firms willing and capable of handling large ERISA cases representing plaintiffs on a contingent basis. For these reasons, ERISA fiduciary breach litigation in any federal judicial district should be considered both very risky and national in scope.

12. In my personal experience and opinion, ERISA cases and other complex class actions are defended with a "blank check" for defense costs, meaning that defendants are willing to devote massive resources and spend substantial sums for defense costs and expert witnesses. In my experience, defense firms often spend multiples more in time and expenses to defend these cases, and are paid on a monthly basis, as compared to the plaintiffs' lawyers representing the participants and beneficiaries who typically work on a contingency fee basis. Some of these defense firms charge as much as $2,000 per hour or more. *See, e.g.*, Roy Strom, *Big Law Rates Topping $2,000 Leave Value 'In Eye of Beholder'*, Bloomberg Law (June 9, 2022), https://news.bloomberglaw.com/business-and-practice/big-law-rates-topping-2-000-leave-value-in-eye-of-beholder.

13. Moreover, ERISA class actions, as recognized by courts throughout the country, have a "significant risk of nonpayment" due to "novel" legal issues and "adverse precedents." *Kruger v. Novant Health, Inc.*, No. 14-208, 2016 WL 6769066, at *4 (M.D.N.C. Sept. 29, 2016); *see also Kelly v. Johns Hopkins Univ.*, No. 1:16-CV-2835-GLR, 2020 WL 434473, at *3 (D. Md. Jan. 28, 2020).

14. Because of this, I understand that for complex class actions outside the Ninth Circuit, the market rate for plaintiffs' lawyers who handle these class actions is 33 1/3% of any monetary recovery. With few exceptions not applicable here, I would not agree to accept such a complex and risky case on a contingency fee basis for less than 33 1/3%, nor am I personally aware of any prominent plaintiffs' lawyer or law firm that would take on such risky representation for less than 33 1/3% of any monetary recovery.

15. I am aware that numerous other federal district courts around the country have approved a rate of 33 1/3% of any recovery, plus costs, for Schlichter Bogard & Denton in other

recent 401(k) and 403(b) settlements, reflecting judicial acknowledgment of the concerns I describe above:

- *Gordan v. Mass. Mut. Life Ins. Co.*, No. 13-cv-30184-MAP, Doc. 136 (D. Mass. Oct. 31, 2016)
- *Sweda v. Univ. of Pa.*, No. 16-4329, 2021 U.S. Dist. LEXIS 239990 (E.D. Pa. Dec. 14, 2021)
- *Cates v. Trs. of Columbia Univ.*, No. 16-06524, 2021 U.S. Dist. LEXIS 200890 (S.D. N.Y. Oct. 18, 2021)
- *Pledger v. Reliance Tr. Co.*, No. 15-4444, 2021 WL 2253497 (N.D. Ga. Mar. 8, 2021)
- *Henderson v. Emory University*, No. 16-2920, 2020 WL 9848978 (N.D. Ga. Nov. 4, 2020)
- *Marshall v. Northrop Grumman Corp.*, No. 16-6794, 2020 WL 5668935 (C.D. Cal. Sept. 18, 2020)
- *Troudt v. Oracle Corp*, No. 16-00175-REB-SKC, Doc. 236 (D. Col. July 10, 2020)
- *Kelly v. Johns Hopkins Univ.*, No. 16-2835-GLR, 2020 WL 434473, at *2 (D. Md. Jan. 28, 2020);
- *Tussey v. ABB, Inc.,* No. 06-04305-NKL, Doc. 869 (W.D. Mo. August 16, 2019);
- *Sims v. BB&T Corp.,* No. 15-1705, 2019 WL 1993519 (M.D.N.C. May 6, 2019);
- *Clark v. Duke*, No. 16-01044, Doc. 166 (M.D.N.C. June 24, 2019);
- *Cassell v. Vanderbilt Univ.*, No. 16-02086, Doc. 174 (M.D. Tenn. Oct. 22, 2019);
- *Bell v. Pension Comm. Of ATH Holding Co., LLC*, No. 15-02062, Doc. 380 (S.D. Ind. Sept. 4, 2019)
- *Ramsey v. Philips N. Am. LLC*, No. 18-CV-1099-NJR-RJD, 2018 U.S. Dist. LEXIS 226672 (S.D. Ill. Oct. 15, 2018)
- *Spano v. Boeing Co.*, No. 06-cv-743, 2016 U.S. Dist. LEXIS 161078 (S.D. Ill. Mar. 31, 2016)

- *Krueger v. Ameriprise Fin., Inc.,* No. 11-2781, 2015 U.S. Dist. LEXIS 91385 (D. Minn. July 13, 2015)

- *Abbott v Lockheed Martin Corp.*, No. 06-701, 2015 U.S. Dist. LEXIS 93206 (S.D. Ill. July 17, 2015)

- *Beesley v. Int'l Paper Co.*, No. 06-703, 2014 U.S. Dist. LEXIS 12037 (S.D. Ill. Jan. 31, 2014)

- *Nolte v. Cigna Corp.*, No. 07-2046, 2013 U.S. Dist. LEXIS 184622 (C.D. Ill. Oct. 15, 2013)

- *George v. Kraft Foods Global, Inc.*, Nos. 08-3899, 07-1713, 2012 U.S. Dist. LEXIS 166816 (N.D. Ill. June 26, 2012)

- *Will v. Gen. Dynamics Corp.*, No. 06-698, 2010 U.S. Dist. LEXIS 123349 (S.D. Ill. Nov. 22, 2010)

- *Martin v. Caterpillar Inc.*, No. 07-1009, 2010 U.S. Dist. LEXIS 145111 (C.D. Ill. Sept. 10, 2010)

16. In my experience and opinion, because of the significant cost and extensive resources required to pursue ERISA class actions through judgment, individual named plaintiffs could not afford to hire a lawyer unless it was on a contingency fee basis. I am personally not aware of any plaintiff's lawyer or law firm that would be willing to handle an ERISA class action other than for a percentage of any monetary recovery.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on January 20, 2023 in San Rafael, California.

/s/ James C. Sturdevant
James C. Sturdevant

JAMES C. STURDEVANT

The Sturdevant Law Firm,
A Professional Corporation
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- Born Salt Lake City, Utah, May 9, 1947

EDUCATION

- J.D., 1972, Boston College Law School; Winner, The Wendell F. Grimes Moot Court Competition.

- B.A., 1969, Trinity College, Connecticut (History); Dean's List, Senior Year.

Admitted to Bar: 1973, Connecticut and U.S. District Court, District of Connecticut;
1974, U.S. Court of Appeals, Second Circuit;
1976, U.S. Supreme Court;
1979, U.S. Court of Appeals, Ninth Circuit;
1980, California and U.S. District Court, Central District of California;
1981, U.S. District Court, Northern and Eastern Districts of California;
2006, U.S. District Court, Southern District of California.

EMPLOYMENT

- The Sturdevant Law Firm (previously Sturdevant & Sturdevant, and Sturdevant & Elion), June, 1986 - Present. Small plaintiffs' firm with emphasis on consumer protection class actions, lender liability, employment discrimination, civil rights, and unlawful, unfair and fraudulent business practice cases.

- Law Offices of James C. Sturdevant, May, 1980 - May, 1986. Private practice with concentration on unfair business practices and civil rights cases.

- San Fernando Valley Neighborhood Legal Services, Inc., October, 1978 - May, 1980. Housing Task Force Director for merged statewide program. Overall responsibility for initiation and direction of all major litigation, legislation and administrative rule-making in housing.

- Tolland-Windham Legal Assistance Program, Inc., and Connecticut Legal Services, Inc., September, 1972 - April 1978. Reginald Heber Smith Community Lawyer Fellowship and Senior Attorney in Rockville office. Overall responsibility for initiation and direction of program's housing, food and unemployment compensation litigation, legislation and administrative advocacy.

The Sturdevant Law Firm specializes in complex and class litigation on behalf of plaintiffs involving unlawful, unfair and fraudulent business practices and consumer protection. Most of the firm's work takes place in the state and federal trial courts in the Bay Area. The founder of the firm has been engaged in the practice of law for more than 48 years. He has tried and settled many class actions, unlawful business practices cases, and civil rights cases.

The firm litigates in the substantive areas of consumer protection, insurance packing, employment discrimination, misleading advertising and misrepresentations in consumer contracts involving consumer goods and services, challenges to mandatory, pre-dispute arbitration clauses, financial institution charges and practices, fair debt collection practices, Title IX and disability discrimination, vocational school fraud, unlawful charges for financial and mortgage-related services, and toxic torts.

REPRESENTATIVE CASES

- *Badie v. Bank of America*, No. 944916 (San Francisco Superior Court), a class action lawsuit challenging Bank of America's attempt to impose unilaterally alternative dispute resolution ("AD R") on its checking and credit card account customers, thus depriving them of access to the courts and of their constitutional rights to trial by judge or jury. Plaintiffs challenged both the procedure utilized by the bank in imposing ADR on its customers as well as the substance of the bank's chosen ADR "agreements." The Bank's policy and procedure required no informed consent or signature; the policy was imposed automatically when a customer wrote a check or used a credit card. Plaintiffs sought relief from Bank of America's practices under two California consumer protection statutes: The Consumer Legal Remedies Act (California Civil Code § 1750, *et seq*.) and the Unfair Competition Law (California Business and Professions Code § 17200, *et seq*.). After nearly a four-week trial, the trial court issued its decision in August 1994, to uphold the bank's attempted modification of its contracts although finding no evidence that a substantial portion of the customers read or were aware of the arbitration/reference provisions. In November 1998, the Court of Appeal reversed. It concluded that the ADR clause was a new material term to the agreement which required clear, unmistakable consent by the customer. It found that the bank breached the covenant of good faith and fair dealing, that the policy favoring arbitration does not come into play until there is found to be an enforceable agreement containing the arbitration clause and that the waiver of the constitutional right to a jury trial requires unambiguous consent. *Badie v. Bank of America* (Cal. App. 1st Dist., 1998) 67 Cal.App.4th 779, 79 Cal.Rptr.2d 273.

- *Beasley v. Wells Fargo Bank*, San Francisco Superior Court Case No. 861555, a statewide class of credit card holders in . The jury awarded the class $5.2 million in 1989 after a six-week trial for unlawful liquidated damages imposed through excessive late fees and overlimit charges. Defendant was also ordered to pay the costs of distributing the damage award to the class. A related case handled by the firm, *Kovitz v. Crocker National Bank, et al.*, San Francisco Superior Court Case No. 868914, settled in 1990 for $3.78 million in damages for a statewide class of Crocker Bank cardholders, contingent upon plaintiffs' success on the bank's appeal in *Beasley*. The damages judgment in *Beasley* was upheld on appeal in *Beasley v. Wells Fargo Bank, N.A*. (1991) 235 Cal.App.3d 1383. Also upheld separately was the trial court's order of attorneys' fees, costs and expenses of nearly $2 million under Code of Civil Procedure §1021.5, California's private attorney general statute. *Beasley v. Wells Fargo Bank*, N.A. (1991) 235 Cal.App.3d 1385; 235 Cal.App.3d 1407. The bank's petitions for review of both opinions were denied in March 1992. Following distribution of the damages fund in these actions, approximately $3.3 million of undistributed residue was given to non-profit consumer education, advocacy, and legal services organizations for the creation of a *cy pres* remedy to address consumer credit and finance issues in California.

- *Hood, et al. v. Santa Barbara Bank & Trust, et al.*, Santa Barbara Superior Court Case No. 1156354, a proposed national class action challenging the unlawful, unfair and deceptive practices of defendants Santa Barbara Bank & Trust and Jackson Hewitt tax preparation services in connection with the seizure of income tax refunds without prior notice and any judicial process to effectuate third-party debt collection after individuals apply for and are denied Refund Anticipation Loans. On September 28, 2006, the Second District Court of Appeal issued a favorable decision holding that federal law protections of banks does not bar a consumer's right to challenge the banks' debt collection practices, 143 Cal.App.4th 526, *rehearing denied* (Oct 26, 2006), *review denied* (Jan 03, 2007). In 2008, the parties entered into a nationwide class settlement agreement, approved by the court in May, 2009, which created a nationwide settlement fund of $8.5 million and a substantially changed notice to RAL applicants.

- *Mansourian v. U.C. Regents*, United States District Court (ED. Cal.), Case No. S-03-2591 FCD EFB, a Title IX athletics case, brought by former women students who were intercollegiate wrestlers at the University of California, Davis, against the University and certain of its officials for discrimination under Title IX and the Equal Protection Clause. The University of California and former UC Davis students and women wrestlers Arezou Mansourian, Christine Ng, and Lauren Mancuso, on Feb. 16, 2012, reached an agreement to settle the issues remaining after the findings made by a federal judge last August in the liability phase of trial in the case. The court found that the University violated Title IX of the Education Amendments of 1972 by not sufficiently expanding intercollegiate athletic opportunities for female students at UC Davis between 1998 and 2005, the years that plaintiffs were in attendance. The court dismissed Plaintiffs' claim against four University employees (all now retired), holding that they did not violate the Equal Protection Clause or were entitled to qualified immunity in their handling of plaintiffs' requests relating to women's wrestling.

  Plaintiffs appealed and the Ninth Circuit reversed the district court's grant of summary judgment and held as well that the defendant university was not entitled to summary judgment on the alternative ground that it had complied with Title IX. It also reversed the order dismissing the plaintiffs' equal protection claim and remanded for further proceedings consistent with its opinion. *Mansourian v. Regents of the Univ. of Cal.*, 602 F.3d 957 (2010).

  The damages phase of the trial on the Title IX claim was scheduled to start on March 5, 2012. The parties chose instead to resolve all remaining issues, including any possible appeals, with payment by the University of $1,350,000 to plaintiffs' counsel for attorneys' fees and costs incurred during the lengthy case. The case was dismissed on April 12, 2012.

- *Miller v. Bank of America, et al.*, San Francisco Superior Court Case No. 301917, a statewide class action lawsuit against Bank of America challenging the bank's practice of seizing exempt funds from Social Security direct deposit accounts to satisfy claims it has against the account holders, in violation of the public policy record established in *Kruger v. Wells Fargo Bank* (1974) 11 Cal. 3d 352, the Consumer Legal Remedies Act, Civil Code section 1750 et seq., and the Unfair Competition Law, Business and Professions Code section 17200 et seq. In 2003, the Honorable Anne Bouliane certified the case as a statewide class action consisting of more than 1.1 million customers. After a five-week jury trial in February 2004, the jury awarded damages exceeding $1.25 billion consisting of more than $75 million in compensatory damages, $1,000 in special statutory damages to each class member, and $275,000 to the named plaintiff for emotional distress. This was the largest verdict in the history of

San Francisco After the jury verdict, Judge Bouliane heard additional equitable claims and in December 2004 issued a decision finding that Bank of America had engaged in "unconscionable," "unlawful," "fraudulent," and "unfair" conduct, ordered the Bank to "immediately implement whatever procedures or other means are necessary to prevent exempt Social Security funds and other governmental benefits from being subject to such setoffs or collection efforts," ordered the Bank to make restitution of over $284 million to the class. A final judgment and permanent injunction were issued in March 2005. The bank appealed the judgment and obtained a stay of enforcement. The Court of Appeal reversed, 144 Cal. App. 4th 1301, 51 Cal. Rptr. 3d 223 (2006). On June 1, 2009, the California Supreme Court affirmed the Court of Appeal holding that California's public policy of protecting exempt funds from bank seizure applied only to separate accounts, not fees collected from a single account. *Miller v. Bank of America* (2009) 46 Cal. 4th 630.

- *O'Donovan v. CashCall*, United States District Court, (N.D. Cal.), Case No. C 08-03174 MEJ. A lawsuit against CashCall representing a class of borrowers who received $2,600 loans at interest rates above 90 percent, was filed in the Northern District Federal Court in San Francisco on July 1, 2008. The complaint alleges CashCall's business practices violate numerous consumer protection and debt collection laws. CashCall makes millions of dollars in unsecured personal loans to consumers every year at exorbitantly high and unconscionable interest rates, the majority of which are in excess of 90 percent interest per year.

  CashCall targets consumers in distress who have limited credit alternatives and are financially unable to repay its loans as the loan terms require. It structures its loans so that they are effectively interest-only over much of the loan term, therefore requiring consumers to pay its extremely high interest charges for several years, without any significant reduction in their loan balances. Its high interest rates, oppressive loan terms, and protracted repayment time make it impossible for most consumers who fall prey to its advertisements to pay off their loans within any reasonable time period, even to pay their loans according to a schedule without defaulting. CashCall secures its profit by collecting high interest payments, while the outstanding principal balance is barely reduced while pumping its customers' loan balances up by adding on late fees and insufficient fund charges. Once a customer falls behind in payments, CashCall turns to coercive collection practices to keep the customer paying. A significant percentage of consumers, estimated at 45%, default on their loans, and the percentage of customers CashCall pursues with collectors is extremely high. In collecting its loans, CashCall makes frequent and repeated harassing telephone calls to a consumer's residence, place of employment, and/or cellular phone, up to multiple times a day, for days or weeks in a row, demanding payment of outstanding debt. During these phone calls, CashCall uniformly employs aggressive tactics, including abusive tone and language, harassing tone and language, and providing incorrect or misrepresentative information to convince consumers to make payments.

  The district court certified two California sub-classes totaling approximately 135,000 individuals.

  1. The Loan Unconscionability Class: All individuals who, while residing in California, borrowed from $2,500 to $2,600 at an interest rate of 90% or higher from CashCall, Inc. for personal, family or household use on or after June 30, 2004 through July 10, 2011.

  2. The Conditioning Class: All individuals who, while residing in California, borrowed money from CashCall, Inc. for personal, family, or household use on or after March 13, 2006 through July 10,

2011 and were charged an NSF Fee.

After extensive discovery, plaintiffs and CashCall each filed a motion for partial summary judgment on October 17, 2013, on the conditioning class, and defendant filed a motion for summary judgment on the unconscionability class. On July 30, 2014, the district court issued an extensive memorandum and order granting plaintiffs' motion for summary judgment on the conditioning claim and denying CashCall's motion for summary judgment on the unconscionability claim. *De La Torre v. CashCall, Inc*., 2014 U.S. Dist. LEXIS 105313 (2014). A trial on damages for the conditioning claim and liability and restitution on the unconscionability claim was held in May, 2015. Plainitffs prevailed with the Court awarding statutory damages. Subsequently the parties settled the conditioning claims for statutory damages and attorneys' fees at then current rates. CashCall changed its lending practice in 2011, eliminating the condition.

As to the unconscionability claims, the district court initially denied CashCall's motion for summary judgment, then reversed itself on reconsideration, concluding that it lacked jurisdiction to determine unconscionability without determining the appropriate interest rate. Plaintiffs appealed. The Ninth Circuit certified the question to the California Supreme Court of whether the interest rate alone could render the loans unconscionable. In August, 2018, the California Supreme Court issued its opinion answering the question in the affirmative and holding for the first time that individuals could bring an affirmative claim for relief under California's UCL on the ground of unconscionability for price unconscionability. *De La Torre v. CashCall, Inc*., 5 Cal.5th 966 (Cal. 2018).

The 9th Circuit reversed the grant of summary judgment and remanded. *De La Torre v. CashCall, Inc.*, 904 F.3d 866 (9th Cir. 2018). On remand the district Court dismissed the case for want of a federal claim. Plaintif refiled in state court. *De La Torre v. CashCall*, San Mateo Superior Court Case No. 19CIV 01235. The trial Court re-certified the statewide class in January 20, 2020 and denied CashCall's motion for summary judgment on February 25, 2021.

A 13-day bench trial commenced on March 8, 2021 and concluded in mid-May, 2021. On November 7, 2022, the trial court issued a proposed Statement of Decision confirming certification of the statewide class of 135,000 borrowers and concluding that CashCall's loan terms and business model were unconscionable. The court awarded the class more than $235 million in restitution.

**Kirola v. City and County of San Francisco*, United States District Court (N.D. Cal.), Case No. 07-3685 SBA. Plaintiffs filed this proposed class action to address the City and County of San Francisco's long standing and continuing failure to satisfy its legal obligation to provide access to its programs, services and activities for wheelchair users and other persons with mobility disabilities. That obligation arises under Title II of the Americans With Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973, as well as California Government Code § 11135, et seq., the Unruh Civil Rights Act, Cal. Civ. Code §§ 51 et seq., and the Disabled Persons Act, Cal. Civ. Code §§ 54 *et seq*. The district court certified a class of approximately 21,000 persons in 2010. Plaintiffs seek injunctive relief in this action on behalf of themselves and other members of the class, to assure that full and equal access is provided in the reasonable future. The case went to a non-jury trial on April 4, 2011, and was fully briefed post trial in August, 2011. The district court finally issued its decision in November, 2014 dismissing all of the claims *Kirola v. City and County of San Francisco*, 74 F.Supp.3d 1187 (N.D. Cal. 2014). Plaintiff appealed.

The Ninth Circuit reversed. *Kirola . City and County of San Francisco*, 860 F.3d 1164 (9th Cir. 2017). The Court of Appeals concluded that the district court incorrectly concluded that Ms. Kirola lacked standing to pursue claims on her own behalf and on behalf of the class. It also held that district courtourt erroneously concluded that ADAAG did not apply to the City's pedestrian rights of way, parks, playgrounds, or other recreational facilities. The Court of Appeals further held that the district court's rejection of the testimony of Plaintiffs' expert witnesses was improper because, although the rejection of the testimony was characterized as based on credibility determinations, they were, in fact, grounded on this Court's misapprehension of the governing law regarding the standards applicable to facilities that were newly constructed or altered. Finally, the Court of Appeals rejected the proposition, advanced by the City and adopted by this Court, that class-wide injunctive relief was not warranted. The Court of Appeals concluded its opinion by issuing highly prescriptive instructions to the district court on the issues to be re-examined on remand and the law to be applied in that re-examination.

On remand the district court ordered the parties to mediate. That failed. The City filed a motion for judgment in September, 2018 in derogation of the Ninth Circuit's opinion. After nearly twenty-nine months, the district granted the motion and dismissed the case. *Kirola v. City & County of San Francisco*, 2021 U.S. Dist. LEXIS _____ (N.D. Cal. March 12, 2021). Plaintiff and the plaintiff class have again appealed.

- *In Re: Chase Bank USA, N.A. "Check Loan" Contract Litigation*, U.S. District Court (N.D. Cal.),MDL No. 2032, Case No. 3:09-md-02032-MMC. The Sturdevant Law Firm was a member of the Executive Committee on this nationwide class action on behalf of Chase credit card customers whose "life of the loan" credit card terms and conditions were unilaterally changed to increase the minimum payment from 2% to 5% with little or no notice. Plaintiffs and the class they have been appointed to represent are credit cardholders who accepted Defendant Chase Bank's offer of a low APR "check loan" that would remain fixed for the "life of the loan." They paid an up-front fee in exchange for their low APRs and, unlike many of Chase's cardholders, managed to avoid all the built-in traps that would have compromised their ability to maintain the benefits of that low APR.

  Chase reaped some $180 million in up-front transaction fees from the group of cardholders that now comprise Plaintiffs and the class. After that, however, Chase decided that it could profit even more if it eliminated that particular group's side of the bargain-the low APRs. So in the middle of the recent economic crisis, Chase notified Plaintiffs and the class that it was more than doubling their monthly payments unless they agreed to surrender their low, fixed APRs and agree to a higher, variable APR.

  Plaintiffs filed suit, alleging that singling them out for a minimum monthly payment increase under Chase's standard Cardmember Agreement-while leaving the payment terms unchanged for the other 99% of Chase's customers subject to the same Cardmember Agreement-constituted a violation of the implied covenant of good faith and fair dealing. Plaintiffs also asked the court to certify the implied covenant claims for class treatment. On May 13, 2011, the district court granted Plaintiffs' motion for class certification, reasoning that whether Chase's conduct was arbitrary or unreasonable and whether that conduct frustrated its customers' reasonable expectations were common questions that could be adjudicated for all using common proof-much of which

comprised the voluminous evidentiary record the district court considered in reaching its decision. The Ninth Circuit Court of Appeals denied Chase's request for immediate review. A settlement was reached late 2012, and was the court approved on November 2, 2012 a $100 million settlement of the case.

- *Juarez v. Jani-King of California, Inc., et al*., U.S District Court, Northern District of California Case No. CV 09-03495 SC. This is a case brought by janitorial workers against a national janitorial cleaning company for violations of the California Labor Code. California law provides that when a worker claiming violations of the Labor Code offers evidence that she has performed services for another, an employment relationship is presumed and the burden is on the employer to prove an independent contractor relationship. The district court denied class certification in 2011. *Juarez v. Jani-King of California*, 273 F.R.D. 571 (N.D. Cal. 2011). The district court then granted summary judgment to Defendants on Counts 1-5 and 8-13 of Plaintiffs' First Amended Complaint and Plaintiffs' complaint was dismissed with prejudice in 2012.Plaintiffs appealed. On the eve of oral argument in 2015, the California granted review in *Dynamex v. Superior Court*, raising issues about the proper test to apply in determining whether is an employee or some other category of worker. Last year, the California Supreme Court issued a unanimous opinion demonstrating that the test applied by the district court was erroneous. 4 Cal. 5th 903, 416 P.3d 1 (2018), reh'g denied (June 20, 2018). In response, The Ninth Circuit vacated the decision below and directed the district court to reconsider the judgment in this case in light of the California Supreme Court's decision in *Dynamex. Juarez v. Jani-King of Cal.* 728 Fed. Appx 755 (9th Cir. 2018). The case is now back before the district court which has granted plaintiff's motion to vacate the prior summary judgment and will next consider plaintiff's renewed motion for class certification.

  After a further stay of proceedings triggered by the 9th Circuit's certification to the California Supreme Court as to whether the Dynamex decision was retroactive, the California Supreme Court ruled unanimously that it was. *Vasquez v. Jan-Pro Franchising Int'l, Inc*. 10 Cal.5th 944 (2021). Subsequently, in 2021 the parties settled the case for more than $15 million to the class of janitors plus structural relief to JaniKing's practices.

- Lead counsel for the plaintiff class in *Singleton, et al. v. Regents of the University of California*, Case No. 807233-1 (Alameda Superior Court) filed in December 1998. On January 22, 2001, Judge Ronald Sabraw certified a class of all current, former and future female employees at the Lawrence Livermore National Laboratory employed in five different departments from October 1, 1988, to the present and who are, have been or may in the future be adversely affected by discrimination based on gender and rate of pay and promotional opportunities. The class is comprised of more than 3,000 women. In October 2003, after extensive litigation and discovery, the parties entered into a proposed class settlement. The settlement agreement provides $9.7 million to 3,200 women who worked at Livermore Lab since 1996, plus a 1% raise for approximately 2,500 women who are currently employed at the Lab. That raise amounts to approximately $1.3 million. In addition, the settlement agreement provides comprehensive injunctive relief and monitoring provisions designed to eliminate the Lab's practice of pay and promotion discrimination in the future, as well as attorneys' fees. The settlement was approved in February 2004.

- *Ting v. AT&T*, U.S. District Court, Northern District of California, Case No. C 012969 BZ ADR, a class action lawsuit against AT&T on behalf of seven million California consumers. In its landmark

ruling, the court found that the mandatory arbitration clause was illegal, unconscionable, and unenforceable because it sought to strip consumers of legal rights and remedies available to them in a judicial forum, including consequential and punitive damages, the right to file and participate in class actions, the right to recover costs upon prevailing, and the right to a public forum. *Ting v. AT&T*, 182 F.Supp.2d 902 (N.D. Cal. 2002). The Ninth Circuit affirmed in most respects in a significant opinion. 319 F.3d 1126 (9th Cir.), *cert. denied*, 540 U.S. 811 (2003).

- *Hood, et al. v. Santa Barbara Bank & Trust, et al.*, Santa Barbara Superior Court Case No. 1156354, a proposed national class action challenging the unlawful, unfair and deceptive practices of defendants Santa Barbara Bank & Trust and Jackson Hewitt tax preparation services in connection with the seizure of income tax refunds without prior notice and any judicial process to effectuate third-party debt collection after individuals apply for and are denied Refund Anticipation Loans. On September 28, 2006, the Second District Court of Appeal issued a favorable decision holding that federal law protections of banks does not bar a consumer's right to challenge the banks' debt collection practices, 143 Cal.App.4th 526, *rehearing denied* (Oct 26, 2006), *review denied* (Jan 03, 2007). In 2008, the parties entered into a nationwide class settlement agreement, approved by the court in May, 2009, which created a nationwide settlement fund of $8.5 million and a substantially changed notice to RAL applicants.

- *Californians for Disability Rights v. Meryvn's, LLC*, Alameda County Superior Court Case No. 2002-51738, an action challenging Mervyn's practice of denying access to its stores to individuals with mobility disabilities. Following a lengthy bench trial, the trial court issued judgment for Mervyn's, finding that its conduct did not violate federal or state disability access laws. On appeal, the Court reversed and held that plaintiff made a prima facie showing that removal of architectural barriers in public accommodations was readily achievable; and the availability of new and remodeled stores owned by defendant, in which stores' architectural barriers had been eliminated, did not satisfy defendant's obligation, under ADA, of making defendant's goods and services available to disabled individuals through alternative methods that were readily achievable. *Californians for Disability Rights v. Mervyn's* (2008) 165 Cal.App.4th 571.

- *The Providian Credit Card Cases*, San Francisco Superior Court, Judicial Council Coordination Proceeding No. 4085, a nationwide consumer class action challenging the unlawful, unfair, and deceptive practices of defendants Providian Financial Corporation, Providian Bank, Providian National Bank, and Providian Bancorp Services in connection with advertising and soliciting of credit card holders. The trial court approved a nationwide settlement of $105 million, plus injunctive relief.

PUBLICATIONS

* REGULATION OR DEREGULATION, VERDICT MAGAZINE, JULY, 2020

* Using the Unconscionability Doctrine as a Sword, *Verdict* Magazine, September, 2018

* Prohibited Provisions in Settlement Agreements, *Plaintiff* Magazine, September, 2018

* *Epic Systems v. Lewis*: The Nail in the Coffin for Employee Rights, *Verdict* Magazine, August, 2018

* Mandatory Pre Dispute Arbitration Uber Alles, *Verdict* Magazine, August, 2017

- "Mandatory Pre-Dispute Arbitration – Where Do We Go From Here?", *Verdict*, October, 2013.

* "Predatory Practices in Financial Services," *Verdict*, April, 2010

- "The Critical Importance of Creating An Evidentiary Record to Prove That a Mandatory Pre-Dispute Arbitration Clause Is Unconscionable," *Forum*, October, 2002 (Vol. 32, No. 8)

- "Unconscionable Consumer Arbitration Agreements," *Verdict*, July, 2002 (Vol. 8, No. 3)

- "Cy Pres Remedies in Consumer Class Actions: Providing Complete Monetary Relief to Absent Class Members," *San Francisco Attorney*, February/March, 1997 (Vol. 23, No. 1)

- "Voir Dire In Class Actions," *Forum*, 2004.

* "The Critical Importance of Creating An Evidentiary Record to Prove That a Mandatory Pre-Dispute Arbitration Clause Is Unconscionable," *Forum*, October, 2002 (Vol. 32, No. 8)

- "Unconscionable Consumer Arbitration Agreements," *Verdict*, July, 2002 (Vol. 8, No. 3)

- "The Critical Importance of Creating An Evidentiary Record to Prove That a Mandatory Pre-Dispute Consumer Arbitration Agreements Are Unconscionable," *Verdict*, July, 2002 (Vol. 8, No. 3)

MONOGRAPHS

- The Right to Treatment after *Rouse v. Cameron*: A Valuable Right or Simply Another Legal Basis for the Confinement of the Mentally Ill? (1972)

- *Wyman v. James*: The Constitutional Infirmities and Practical Consequences of the Warrantless Home Visit for Welfare Recipients (1971)

BOARDS OF DIRECTORS

- Advocates for the West – 2014 through January, 2018

- Alliance for Justice - 2011 through 2013

- Litigation Section of the Bar Association of San Francisco Executive Committee - 1997 through 2005

  - President - 2000-2001

- Consumer Attorneys of California - 1993 through 2006
  - President - 2003-2004

- Equal Justice Works - 2006 through 2013

- Equal Rights Advocates – 2013 through 2020

- Henry's Fork Foundation - 1993 to 1999

- Lawyers' Committee for Civil Rights in San Francisco – 2008 through 2020
  - Chair of Development, 2011 to 2018
  * Chair of Governance, 2018-2020

- National Association of Consumer Advocates – 2006 to 2011
  - Founding Member
  - Member of the Board of Directors – 2004 to 2010
  - Chair of Amicus Curiae Committee – 2003 to the present

- National Consumer Law Center
  - Partners Council Regarding Development – 2005 to the present

- Public Justice (formerly Trial Lawyers for Public Justice) - 1998 through July, 2006
  - Executive Committee - 2004

- San Francisco Trial Lawyers Association - 1998 through August, 2005

- Speak Out California - 2007 to the present

OTHER PROFESSIONAL ACTIVITIES

- Member of the Judicial Council of California Civil and Small Claims Advisory Committee, 2000 – 2005; Complex Litigation Subcommittee, 2000 - 2005;

- Member of the State Bar of California ADR Task Force, 1998.

- Member of the Board of Directors of the Bar Association of San Francisco, 1991-1992.

- Co-leader of a Bench-Bar Committee to create and implement a judge pro tem program for the San Francisco Superior Court, 1989-1991;

- Co-Chairman, State Courts Civil Litigation Committee of the Bar Association of San Francisco, 1988 - 1996;

- Co-Chair of Consumer Attorneys of California Amicus Curiae Committee, 1997 through 2005

(except 2004), and Vice Chair of Legislative Committee.

- Numerous seminars for the National Consumer Law Center, National Association of Consumer Advocates, Consumer Attorneys of California, San Francisco Trial Lawyers Association, Practicing Law Institute, and other CLE providers on insurance fraud, excessive bank fees, strategies and remedies for employment discrimination cases, alternative dispute resolution, redlining and rights and remedies for unlawful business practices, 1990 - Present.

HONORS AND AWARDS

* 2019 CLAY Award with my team of attorneys for securing a unanimous decision from the California Supreme Court in *De La Torre v. CashCall, Inc.*, 5 Cal. 5th 966 (2018). In that case, which by that time had lasted more than ten years, the Court held that interest rates between 96% and 135% on $2,600 loans payable over three and one-half years may be determined unconscionable in isolation from other loan terms and circumstances. The Court also held that borrowers may seek affirmative relief from unconscionable loans under California's Unfair Competition Law.

- 2004 Trial Lawyer of the Year, Consumer Attorneys of California, for work in *Miller v. Bank of America*.
- 2004 Trial Lawyer of the Year finalist, Trial Lawyers for Public Justice, for work in *Miller v. Bank of America*.
- 2003 Trial Lawyer of the Year finalist, Consumer Attorneys of California, for work in *Ting v. AT&T*.
- 2002 Trial Lawyer of the Year, San Francisco Trial Lawyers Association, for work in *Ting v. AT&T*.
- 2002 Public Justice Achievement Award, Trial Lawyers for Public Justice, for work in *Ting v. AT&T*.
- Community Award from the East San Jose Community Law Center and Santa Clara University School of Law, 1998.
- President's Pro Bono Service Award from the California State Bar, 1995.
- Sixth Annual Vern Countryman Consumer Law Award from the National Consumer Law Center for significant contributions to the rights and welfare of low income consumers, 1995.
- Outstanding Law Firm in Public Service awarded by the Bar Association of San Francisco in 1992.

THE STURDEVANT LAW FIRM

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FIRM RESUME

The Sturdevant Law Firm is a small firm which specializes in complex and class litigation on behalf of plaintiffs. The firm litigates in the substantive areas of consumer protection, financial institution practices, fair debt collection practices, false and misleading advertising, employment discrimination, disability discrimination, civil rights, and wage and hour matters. Most of the firm's work takes place in the state and federal trial courts in the Bay Area. The founder of the firm, James C. Sturdevant, has been engaged in the practice of law for over 47 years. He has tried or settled many class actions, unlawful business practices cases, and civil rights cases.

Representative cases include:

- *O'Donovan v. CashCall*, United States District Court, (N.D. Cal.), Case No. C 08-03174 MEJ. A lawsuit against CashCall representing a class of borrowers who received $2,600 loans at interest rates above 90 percent, was filed in the Northern District Federal Court in San Francisco on July 1, 2008. The complaint alleges CashCall's business practices violate numerous consumer protection and debt collection laws. CashCall makes millions of dollars in unsecured personal loans to consumers every year at exorbitantly high and unconscionable interest rates, the majority of which are in excess of 90 percent interest per year.

  CashCall targets consumers in distress who have limited credit alternatives and are financially unable to repay its loans as the loan terms require. It structures its loans so that they are effectively interest-only over much of the loan term, therefore requiring consumers to pay its extremely high interest charges for several years, without any significant reduction in their loan balances. Its high interest rates, oppressive loan terms, and protracted repayment time make it impossible for most consumers who fall prey to its advertisements to pay off their loans within any reasonable time period, even to pay their loans according to a schedule without defaulting. CashCall secures its profit by collecting high interest payments, while the outstanding principal balance is barely reduced while pumping its customers' loan balances up by adding on late fees and insufficient fund charges. Once a customer falls behind in payments, CashCall turns to coercive collection practices to keep the customer paying. A significant percentage of consumers, estimated at 45%, default on their loans, and the percentage of customers CashCall pursues with collectors is extremely high. In collecting its loans, CashCall makes frequent and repeated harassing telephone calls to a consumer's residence, place of employment, and/or cellular phone, up to multiple times a day, for days or weeks in a row, demanding payment of outstanding debt. During these phone calls, CashCall uniformly employs aggressive tactics, including abusive tone and language,

harassing tone and language, and providing incorrect or misrepresentative information to convince consumers to make payments.

The district court certified two California sub-classes totaling approximately 135,000 individuals.

1. The Loan Unconscionability Class: All individuals who, while residing in California, borrowed from $2,500 to $2,600 at an interest rate of 90% or higher from CashCall, Inc. for personal, family or household use on or after June 30, 2004 through July 10, 2011.

2. The Conditioning Class: All individuals who, while residing in California, borrowed money from CashCall, Inc. for personal, family, or household use on or after March 13, 2006 through July 10, 2011 and were charged an NSF Fee.

After extensive discovery, plaintiffs and CashCall each filed a motion for partial summary judgment on October 17, 2013, on the conditioning class, and defendant filed a motion for summary judgment on the unconscionability class. On July 30, 2014, the district court issued an extensive memorandum and order granting plaintiffs' motion for summary judgment on the conditioning claim and denying CashCall's motion for summary judgment on the unconscionability claim. *de la Torre v. CashCall, Inc*., 2014 U.S. Dist. LEXIS 105313 (2014). A trial on damages for the conditioning claim and liability and restitution on the unconscionability claim was held in May, 2015. Plainitffs prevailed with the Court awarding statutory damages. Subsequently the parties settled the conditioning claims for statutory damages and attorneys' fees. CashCall changed its lending practice in 2011, eliminating the condition.

As to the unconscionability claims, the district court initially denied CashCall's motion for summary judgment, then reversed itself on reconsideration, concluding that it lacked jurisdiction to determine unconscionability without determining the appropriate interest rate. Plaintiffs appealed. The Ninth Circuit certified the question to the California Supreme Court of whether the interest rate alone could render the loans unconscionable. In August, 2018, the California Supreme Court issued its opinion answering the question in the affirmative and holding for the first time that individuals could bring an affirmative claim for relief under California's UCL on the ground of unconscionability for price unconscionability. *De La Torre v. CashCall, Inc*., 5 Cal.5th 966 (Cal. 2018). The Ninth Circuit reversed the grant of summary judgment. On remand the district court dismissed the case for want of a federal question.

Plaintiff refiled the unconscionability claim in San Mateo County in March, 2019. Statewide class certification was granted in January, 2020. The trial judge denied CashCall's motion for summary judgment in February, 2021.

A 13-day bench trial commenced on March 8, 2021 and concluded in mid-May, 2021. On November 7, 2022, the trial court issued a proposed Statement of Decision confirming certification of the statewide class of 135,000 borrowers and concluding that CashCall's loan terms and business model were unconscionable. The court awarded the class more than $235 million in restitution.

**Kirola v. City and County of San Francisco*, United States District Court (N.D. Cal.), Case No. 07-3685 SBA. Plaintiffs filed this proposed class action to address the City and County of San Francisco's long standing and continuing failure to satisfy its legal obligation to provide access to its programs, services and activities for wheelchair users and other persons with mobility disabilities. That obligation arises under Title II of the Americans With Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973, as well as California Government Code § 11135, et seq., the Unruh Civil Rights Act, Cal. Civ. Code §§ 51 et seq., and the Disabled Persons Act, Cal. Civ. Code §§ 54 *et seq*. The district court certified a class of approximately 21,000 persons in 2010. Plaintiffs seek injunctive relief in this action on behalf of themselves and other members of the class, to assure that full and equal access is provided in the reasonable future. The case went to a non-jury trial on April 4, 2011, and was fully briefed post trial in August, 2011. The district court finally issued its decision in November, 2014 dismissing all of the claims *Kirola v. City and County of San Francisco*, 74 F.Supp.3d 1187 (N.D. Cal. 2014). Plaintiff appealed.

The Ninth Circuit reversed. *Kirola . City and County of San Francisco*, 860 F.3d 1164 (9th Cir. 2017). The Court of Appeals concluded that the district court incorrectly concluded that Ms. Kirola lacked standing to pursue claims on her own behalf and on behalf of the class. It also held that the district court erroneously concluded that ADAAG did not apply to the City's pedestrian rights of way, parks, playgrounds, or other recreational facilities. The Court of Appeals further held that the district court's rejection of the testimony of Plaintiffs' expert witnesses was improper because, although the rejection of the testimony was characterized as based on credibility determinations, they were, in fact, grounded on this Court's misapprehension of the governing law regarding the standards applicable to facilities that were newly constructed or altered. Finally, the Court of Appeals rejected the proposition, advanced by the City and adopted by this Court, that class-wide injunctive relief was not warranted. The Court of Appeals concluded its opinion by issuing highly prescriptive instructions to the district court on the issues to be re-examined on remand and the law to be applied in that re-examination. On remand the district court ordered the parties to mediate. That failed. The City filed a motion for judgment in September, 2018 in derogation of the Ninth Circuit's opinion. After nearly twenty-nine months, the district granted the motion and dismissed the case. *Kirola v. City & County of San Francisco*, 2021 U.S. Dist. LEXIS _____ (N.D. Cal. March 12, 2021). Plaintiff and the plaintiff class have again appealed.

- *In Re: Chase Bank USA, N.A. "Check Loan" Contract Litigation*, U.S. District Court (N.D. Cal.),MDL No. 2032, Case No. 3:09-md-02032-MMC. The Sturdevant Law Firm was a member of the Executive Committee on this nationwide class action on behalf of Chase credit card customers whose "life of the loan" credit card terms and conditions were unilaterally changed to increase the minimum payment from 2% to 5% with little or no notice. Plaintiffs and the class they have been appointed to represent are credit cardholders who accepted Defendant Chase Bank's offer of a low APR "check loan" that would remain fixed for the "life of the loan." They paid an up-front fee in exchange for their low APRs and, unlike many of Chase's cardholders, managed to avoid all the built-in traps that would have compromised their ability to maintain the benefits of that low

APR.

Chase reaped some $180 million in up-front transaction fees from the group of cardholders that now comprise Plaintiffs and the class. After that, however, Chase decided that it could profit even more if it eliminated that particular group's side of the bargain-the low APRs. So in the middle of the recent economic crisis, Chase notified Plaintiffs and the class that it was more than doubling their monthly payments unless they agreed to surrender their low, fixed APRs and agree to a higher, variable APR.

Plaintiffs filed suit, alleging that singling them out for a minimum monthly payment increase under Chase's standard Cardmember Agreement-while leaving the payment terms unchanged for the other 99% of Chase's customers subject to the same Cardmember Agreement-constituted a violation of the implied covenant of good faith and fair dealing. Plaintiffs also asked the court to certify the implied covenant claims for class treatment. On May 13, 2011, the district court granted Plaintiffs' motion for class certification, reasoning that whether Chase's conduct was arbitrary or unreasonable and whether that conduct frustrated its customers' reasonable expectations were common questions that could be adjudicated for all using common proof-much of which comprised the voluminous evidentiary record the district court considered in reaching its decision. The Ninth Circuit Court of Appeals denied Chase's request for immediate That c2012 a $100 million settlement of the case.

- *Juarez v. Jani-King of California, Inc., et al*., U.S District Court, Northern District of California Case No. CV 09-03495 SC. This is a case brought by janitorial workers against a national janitorial cleaning company for violations of the California Labor Code. California law provides that when a worker claiming violations of the Labor Code offers evidence that she has performed services for another, an employment relationship is presumed and the burden is on the employer to prove an independent contractor relationship. The district court denied class certification in 2011. *Juarez v. Jani-King of California*, 273 F.R.D. 571 (N.D. Cal. 2011). The district court then granted summary judgment to Defendants on Counts 1-5 and 8-13 of Plaintiffs' First Amended Complaint and Plaintiffs' complaint was dismissed with prejudice in 2012.Plaintiffs appealed. On the eve of oral argument in 2015, the California granted review in *Dynamex v. Superior Court*, raising issues about the proper test to apply in determining whether is an employee or some other category of worker. In 2018 the California Supreme Court issued a unanimous opinion demonstrating that the test applied by the district court was erroneous. 4 Cal. 5th 903, 416 P.3d 1 (2018), reh'g denied (June 20, 2018). In response, The Ninth Circuit vacated the decision below and directed the district court to reconsider the judgment in this case in light of the California Supreme Court's decision in *Dynamex. Juarez v. Jani-King of Cal.* 728 Fed. Appx 755 (9th Cir. 2018). The case returned to the district court which granted plaintiff's motion to vacate the prior summary judgment.

  After Plaintiffs filed motions for class certification and partial summary judgment, the Ninth Circuit certified to the California Supreme Court the issue of whether *Dynamex* is retroactive. After a further stay of proceedings triggered by the 9th Circuit's certification to the California Supreme Court as to whether the Dynamex decision was retroactive, the California Supreme Court ruled unanimously that it was. *Vasquez v. Jan-Pro Franchising*

Int'l, Inc. 10 Cal.5th 944 (2021).

Subsequently, in 2021 the parties settled the case for more than $15 million to the class of janitors plus structural relief to JaniKing's practices.

- *Miller v. Bank of America, et al.*, San Francisco Superior Court Case No. 301917, a statewide class action lawsuit against Bank of America challenging the bank's practice of seizing exempt funds from Social Security direct deposit accounts to satisfy claims it has against the account holders, in violation of the public policy record established in *Kruger v. Wells Fargo Bank* (1974) 11 Cal.3d 352, the Consumer Legal Remedies Act, Civil Code section 1750 et seq., and the Unfair Competition Law, Business and Professions Code section 17200 et seq. In 2003, the Honorable Anne Bouliane certified the case as a statewide class action consisting of more than 1.1 million customers. After a five-week jury trial in February 2004, the jury awarded damages exceeding $1.2 billion consisting of more than $75 million in compensatory damages, $1,000 in special statutory damages to each class member, and $275,000 to the named plaintiff for emotional distress. After the jury verdict, Judge Bouliane heard additional equitable claims and in December 2004 issued a decision finding that Bank of America had engaged in "unconscionable," "unlawful," "fraudulent," and "unfair" conduct, ordered the Bank to "immediately implement whatever procedures or other means are necessary to prevent exempt Social Security funds and other governmental benefits from being subject to such setoffs or collection efforts," ordered the Bank to make restitution of over $284 million to the class. A final judgment and permanent injunction were issued in March 2005. The bank appealed the judgment and obtained a stay of enforcement. The Court of Appeal reversed, 144 Cal.App.4th 1301, 51 Cal.Rptr.3d 223 (2006). On June 1, 2009, the California Supreme Court affirmed the Court of Appeal holding that California's public policy of protecting exempt funds from bank seizure applied only to separate accounts, not fees collected from a single account. *Miller v. Bank of America* (2009) 46 Cal.4th 630.

- *Hood, et al. v. Santa Barbara Bank & Trust, et al.*, Santa Barbara Superior Court Case No. 1156354, a proposed national class action challenging the unlawful, unfair and deceptive practices of defendants Santa Barbara Bank & Trust and Jackson Hewitt tax preparation services in connection with the seizure of income tax refunds without prior notice and any judicial process to effectuate third-party debt collection after individuals apply for and are denied Refund Anticipation Loans. On September 28, 2006, the Second District Court of Appeal issued a favorable decision holding that federal law protections of banks does not bar a consumer's right to challenge the banks' debt collection practices, 143 Cal.App.4th 526, *rehearing denied* (Oct 26, 2006), *review denied* (Jan 03, 2007). In 2008, the parties entered into a settlement agreement, subject to court approval in May, 2009, which creates a nationwide settlement fund of $8.5 million and a substantially changed notice to RAL applicants.

- *Californians for Disability Rights v. Meryvn's, LLC*, Alameda County Superior Court Case No. 2002-51738, an action challenging Mervyn's practice of denying access to its stores to individuals with mobility disabilities. Following a lengthy bench trial, the trial court issued judgment for Mervyn's, finding that its conduct did not violate federal or state disability access laws. On appeal, the Court reversed and held that plaintiff made a prima facie showing that removal of architectural barriers in public accommodations was readily achievable; and the availability of new and remodeled stores owned by defendant, in which stores' architectural barriers had been eliminated, did not satisfy defendant's obligation, under ADA, of making defendant's goods and services available to disabled individuals through alternative methods that were readily achievable. *Californians for Disability Rights v. Mervyn's* (2008) 165 Cal.App.4th 571.

- *The Providian Credit Card Cases*, San Francisco Superior Court, Judicial Council Coordination Proceeding No. 4085, a nationwide consumer class action challenging the unlawful, unfair, and deceptive practices of defendants Providian Financial Corporation, Providian Bank, Providian National Bank, and Providian Bancorp Services in connection with advertising and soliciting of credit card holders. The trial court approved a nationwide settlement of $105 million, plus injunctive relief.

- *Ting v. AT&T*, U.S. District Court, Northern District of California, Case No. C 012969 BZ ADR, a class action lawsuit against AT&T on behalf of seven million California consumers. In its landmark ruling, the court found that the mandatory arbitration clause was illegal, unconscionable, and unenforceable because it sought to strip consumers of legal rights and remedies available to them in a judicial forum, including consequential and punitive damages, the right to file and participate in class actions, the right to recover costs upon prevailing, and the right to a public forum. *Ting v. AT&T*, 182 F.Supp.2d 902 (N.D. Cal. 2002). The Ninth Circuit affirmed in most respects in a significant opinion. 319 F.3d 1126 (9th Cir.), *cert. denied*, 540 U.S. 811 (2003).

- Co-counsel for plaintiffs in *Kilgore v. KeyBank*, No. 09-16703 (9th Cir.), a class action on behalf of students of the failed Silver State Helicopters vocational school against KeyBank for predatory lending practices. The complaint alleges KeyBank USA, N.A. violated California's Unfair Competition Laws. The lawsuit against KeyBank USA, N.A. and its affiliated entities seeks to prohibit KeyBank from enforcing loans it made to California students who enrolled in Silver State, financed their tuition through KeyBank but had not completed their education when the school shut its doors without warning and filed for bankruptcy. The suit, brought under California's UDAP consumer protection law, alleges that KeyBank engaged in a pattern and practice of aiding and abetting vocational school fraud practices of the defunct helicopter school by intentionally omitting from its loan documents a notice (FTC Holder Rule) required by the Federal Trade Commission's consumer protection regulations. The lawsuit alleges KeyBank intentionally omitted the notice – and required Silver State to omit it from its contracts – so it could argue in court that it is not contractually bound by the FTC Holder Rule. The lawsuit seeks to end this unfair and deceptive practice in California. The district court denied KeyBank's motion to compel arbitration but dismissed the amended complaint because of federal preemption. The Ninth Circuit reversed based on intervening US Supreme Court decisions.

- Co-counsel for plaintiffs (Chair of Committee for California law claims) in *In re Bank of America Wage and Hour Employment Practices Litigation*, U.S. District Court, District of Kansas Case No. 2138, a multi-district proceeding bringing together numerous actions brought against Bank of America (BofA) on behalf of current and former non-exempt retail branch and call center employees seeking damages, including back pay for unpaid wages, overtime and other related remedies, penalties and restitution. The suit alleges that BofA's policy and practice is to deny earned wages, including overtime pay, to its non-exempt hourly employees at its retail branch and call center facilities throughout the country. In particular, BofA requires its employees to be present and perform work in excess of eight hours per day and/or forty hours per work week but fails to pay them overtime accordingly, and further fails to pay for all straight time hours worked. BofA additionally fails to properly pay overtime on non-discretionary bonuses provided to its non-exempt employees. BofA's deliberate failure to pay its retail branch and call center employees their earned wages and overtime compensation violates the federal Fair Labor Standards Act (FLSA), the California Labor Code, the California Business & Professions Code, the Revised Code of Washington and the Washington Administrative Code, as well as other state labor laws nationwide. The consolidated complaint was filed in the U.S. District Federal Court for Kansas on June 4, 2010. After extensive discovery and motion practice the district court approved a nationwide settlement in 2013 for FLSA claims.

- *Morales v. JP Morgan Chase Bank*, U.S. District Court, Northern District of California Case No. 10-02068 LB, a California statewide class action lawsuit of California homeowners against Chase Bank for failure to comply with its obligations under federal program, HAMP, designed to modify mortgages. The lawsuit charges that Chase breached its trial period contracts with them and violated HAMP program requirements. It also alleges that Chase unlawfully promised permanent modifications at the end of the trial modification period - and dragged the trial periods out – as a debt collection tactic, in violation of California's Fair Debt Collection Practices Act. The homeowners are sued for an injunction requiring Chase to give them the permanent modifications it promised. HAMP modifications reduce mortgage payments to 31% of the homeowners' income for five years by reducing the interest rate and in some cases extending the term of the loan.

- *Badie v. Bank of America*, No. 944916 (San Francisco Superior Court), a class action lawsuit challenging Bank of America's attempt to impose unilaterally alternative dispute resolution ("AD R") on its checking and credit card account customers, thus depriving them of access to the courts and of their constitutional rights to trial by judge or jury. Plaintiffs challenged both the procedure utilized by the bank in imposing ADR on its customers as well as the substance of the bank's chosen ADR "agreements." The Bank's policy and procedure required no informed consent or signature; the policy was imposed automatically when a customer wrote a check or used a credit card. Plaintiffs sought relief from Bank of America's practices under two California consumer protection statutes: The Consumer Legal Remedies Act (California Civil Code § 1750, *et seq*.) and the Unfair Competition Law (California Business and Professions Code § 17200, *et seq*.). After nearly a four-week trial, the trial court issued its decision in August 1994, to uphold the bank's attempted modification of its contracts although finding no evidence that a

substantial portion of the customers read or were aware of the arbitration/reference provisions. In November 1998, the Court of Appeal reversed. It concluded that the ADR clause was a new material term to the agreement which required clear, unmistakable consent by the customer. It found that the bank breached the covenant of good faith and fair dealing, that the policy favoring arbitration does not come into play until there is found to be an enforceable agreement containing the arbitration clause and that the waiver of the constitutional right to a jury trial requires unambiguous consent. *Badie v. Bank of America* (Cal. App. 1st Dist., 1998) 67 Cal.App.4th 779, 79 Cal.Rptr.2d 273.

- *Hitz v. First Interstate Bank*, San Francisco Superior Court Case No. 870897, a statewide class action on behalf of credit card holders under California consumer protection laws. Following a six-week court trial in 1992, the court in July 1993 awarded the class more than $13.9 million in excessive late and overlimit credit card charges collected by the bank from February 1983 through October 1991. The damages awarded were based on the Court's ruling that the bank violated California's liquidated damages statute designed to protect consumers in adhesionary consumer transactions. The judgment requires the bank, in addition, to pay all costs of identifying and distributing the damage fund to the statewide class. The court also ruled that the bank was engaged in a continuing unlawful business practice and awarded substantial attorneys' fees. The bank's appeal was partially successful. It obtained a reversal of that portion of the damages concerning the calculation of the benefit conferred by breach through interest earnings on delinquent and overlimit balances. In all other respects, the trial court's decision was affirmed. *Hitz v. First Interstate Bank* (1995) 38 Cal.App.4th 274.

- *Beasley v. Wells Fargo Bank*, San Francisco Superior Court Case No. 861555, a statewide class of credit card holders in . The jury awarded the class $5.2 million in 1989 after a six-week trial for unlawful liquidated damages imposed through excessive late fees and overlimit charges. Defendant was also ordered to pay the costs of distributing the damage award to the class. A related case handled by the firm, *Kovitz v. Crocker National Bank, et al.*, San Francisco Superior Court Case No. 868914, settled in 1990 for $3.78 million in damages for a statewide class of Crocker Bank cardholders, contingent upon plaintiffs' success on the bank's appeal in *Beasley*. The damages judgment in *Beasley* was upheld on appeal in *Beasley v. Wells Fargo Bank, N.A*. (1991) 235 Cal.App.3d 1383. Also upheld separately was the trial court's order of attorneys' fees, costs and expenses of nearly $2 million under Code of Civil Procedure §1021.5, California's private attorney general statute. *Beasley v. Wells Fargo Bank*, N.A. (1991) 235 Cal.App.3d 1385; 235 Cal.App.3d 1407. The bank's petitions for review of both opinions were denied in March 1992. Following distribution of the damages fund in these actions, approximately $3.3 million of undistributed residue was given to non-profit consumer education, advocacy, and legal services organizations for the creation of a *cy pres* remedy to address consumer credit and finance issues in California.

- *Yu v. Signet Bank/Virginia, et al.*, Alameda County Superior Court Case No. H-184674-8, a proposed statewide consumer class action alleging that defendant Signet Bank/Virginia and its successor engaged in a long-term unlawful business practice of filing collection actions against California consumer credit card customers in municipal courts in the State of Virginia, knowing such practice to be illegal, for the purpose of obtaining

unconstitutional default judgments and wage garnishment orders in Virginia which were then enforced against California consumers without having been domesticated in the courts of this State. Defendants' motion for summary judgment was granted on February 18, 1997. In February 1999, the Court of Appeal reversed. *Yu v. Signet Bank* (1999) 69 Cal.App.4th 1377. It held that the complaint properly alleged abuse of process for an out-of-state credit card issuer to sue California residents in the municipal court in Richmond, Virginia without obtaining personal jurisdiction and then seeking to garnish the wages of the California resident through a Virginia office of the California employer.

On remand, the trial court sustained a demurrer to an amended complaint on the ground that defendants' distant forum abuse policies and practices were protected by the litigation privilege, Civil Code § 47(b), and that *Barquis v. Merchants Collection Association* (1972) 7 Cal.3d 94, on which the *Yu I* court ruled, had been sharply limited by subsequent cases. The trial court deemed as moot defendants' motion under the anti-SLAPP statute, Code of Civil Procedure § 425.16, based upon the litigation privilege and the First Amendment. The parties filed separate appeals.

On October 30, 2002, the Court issued an opinion reversing the judgment sustaining the demurrer based on law of the case and affirming denial of the special motion to strike under the anti-SLAPP statute. *Yu v. Signet Bank/Virginia* (2002) 103 Cal.App.4th 298, 126 Cal.Rptr.2d 516 (*Yu II*). In sweeping language, the Court held that plaintiffs have a cause of action under *Barquis* for abuse of process based on the banks' practice of distant forum abuse and also for violation of the Unfair Competition Law, Bus. & Prof. Code § 17200. Separately, the Court held that plaintiffs met the "minimal merit" prong of the standard relative to the plaintiffs' possibility of success on the merits, *citing Navellier v. Sletten* (2002) 29 Cal.4th 82, 89. At trial, the Court of Appeal held that, in addition to their economic damages, plaintiffs could recover damages for emotional distress and punitive damages "if their allegations of malice or oppression are credited." 126 Cal.Rptr.2d at 533. Independently, it held that plaintiffs had demonstrated a probability of success on their underlying claim, as they had presented triable issues of fact on their abuse of process and Unfair Competition Law claims previously. After remand, the case settled for nearly $15 million.

- Lead counsel for the plaintiff class in *Singleton, et al. v. Regents of the University of California*, Case No. 807233-1 (Alameda Superior Court) filed in December 1998. On January 22, 2001, Judge Ronald Sabraw certified a class of all current, former and future female employees at the Lawrence Livermore National Laboratory employed in five different departments from October 1, 1988, to the present and who are, have been or may in the future be adversely affected by discrimination based on gender and rate of pay and promotional opportunities. The class is comprised of more than 3,000 women. In October 2003, after extensive litigation and discovery, the parties entered into a proposed class settlement. The settlement agreement provides $9.7 million to 3,200 women who worked at Livermore Lab since 1996, plus a 1% raise for approximately 2,500 women who are currently employed at the Lab. That raise amounts to approximately $1.3 million. In addition, the settlement agreement provides comprehensive injunctive relief and monitoring provisions designed to eliminate the Lab's practice of pay and promotion

discrimination in the future, as well as attorneys' fees. The settlement was approved in February 2004.

- Lead counsel for the plaintiff class in *Patterson v. ITT Consumer Financial Corporation, et al.*, San Francisco Superior Court Case No. 936818. This case challenged the defendant finance companies' and their affiliated insurance companies' deceptive and unlawful practices in advertising and soliciting consumer small loans, insurance packing on the loans, the churning of consumer loan accounts in order to maximize insurance sales and profits, forcing consumers to sign unconscionable arbitration provisions, failing to pay disability insurance benefits to disabled insured customers, and in engaging in unlawful and abusive loan collection practices. Plaintiffs sought injunctive relief, restitution and damages on behalf of a class of ITT customers throughout California. ITT's arbitration clause was ruled unconscionable and unenforceable by the trial court. That ruling was upheld on appeal. Defendants' requests for review by the California Supreme Court and the United States Supreme Court were denied. *Patterson v. ITT Consumer Financial Corp*. (1993) 14 Cal.App.4th 1659. In June 1995, the court granted final approval of a settlement in the action that provided approximately $4 million in direct and indirect monetary benefits to the plaintiffs and consumer class, as well as significant injunctive relief.

- Co-counsel for the certified plaintiff class in *Czechowski v. Tandy Corp*., Case No. 892821 (San Francisco Superior Court). Plaintiffs sued Tandy Corporation in state court alleging that Tandy had denied accrued vacation benefits to its terminated employees in violation of California law. The case was removed to federal court, but plaintiffs successfully obtained a remand to state court in February 1990. *Czechowski v. Tandy Corp.*, 731 F.Supp. 406 (N.D. Cal. 1990). In May 1990, the Court certified a class of all persons who at the time of termination of employment were California residents and who were not paid or will not be paid accrued vacation benefits from October 12, 1983 forward. In June 1990, plaintiffs achieved comprehensive summary adjudication on both liability and willfulness issues. In April 1991, the parties entered into a settlement, which received judicial approval, providing up to $16 million dollars to the class of approximately 25,000 individuals and a change in Tandy's practice in the future.

- Co-counsel in *Equal Employment Opportunity Commission v. Pan American World Airways, et al*., Civil No. C-81-3636 RFP (N.D. Cal.), for more than 60 former Pan Am pilots who were terminated on their sixtieth birthdays. Pan Am refused to allow the former pilots to down-bid to the position of flight engineer and continue in service. The EEOC offered in 1983 to enter into settlement of all claims with Pan Am. Claimants successfully challenged the fairness of the proposed consent decree under which they would have received either $4,000 for full back pay or an opportunity to attempt to fly as a flight engineer. In 1988, the EEOC and Pan Am entered into a new agreement providing less than $300 per pilot for each month of retirement, payment over two years without interest, and an opportunity to become a flight engineer. Since full back pay is the basic remedy for age discrimination, the Court rejected the settlement as totally inadequate for years of discrimination. After a two-month jury trial in 1988, the parties, including the pilot/claimants, settled the case for $17.2 million plus prospective relief and attorneys' fees. The settlement was upheld on appeal. 897 F.2d 1499 (9th Cir.), cert.

denied, 498 U.S. 815 (1990).

- *Sanwa Bank California v. Faafiu*, Alameda County Superior Court Case No. H1683848, a proposed statewide class action on behalf of cross-complainants. Sanwa brought an action against Mr. and Mrs. Faafiu alleging that they had defaulted under the terms of an automobile sales financing agreement, after they failed to maintain property damage insurance coverage on the vehicle. Sanwa procured collateral protection insurance and charged the Faafius' loan with the costs of this forced placed insurance. The Faafius cross-complained alleging that Sanwa's collateral protection insurance program constituted illegal and unfair business practices under California Business and Professions Code §§ 17200 and 17500, because the purchase of the insurance required additional payments of principal and interest that doubled the initial cost of the car under the financing agreement. Under the terms of the settlement agreement approved by the trial court, 4,697 loan customers of Sanwa Bank who had collateral protection insurance forced against them between January 1, 1989, and April 1, 1992 benefited from the common settlement fund of $1,100,000.00.

- *Toussaint v. Gomez*, Civil No. C-73-1422 SAW (N.D. Cal.), a statewide class of inmates confined in administrative segregation units at San Quentin, Folsom, Soledad, and DVI. The complaint sought relief for violations of the cruel and unusual punishment clause of the Eighth Amendment in all phases of confinement at those institutions. The conditions challenged include: double-celling in an average cell size of 48 square feet; lack of adequate heating, food, medical and psychiatric care, exercise, lighting, ventilation, education and work programs, visiting privileges, law library privileges and mail; and lengthy confinement in administrative segregation without adequate safeguards. The Court issued a permanent injunction in 1984 after finding that conditions at San Quentin and Folsom constituted cruel and unusual punishment in violation of the Eighth Amendment. In 1991, contempt proceedings were initiated to seek relief from systemic violations of the preliminary injunction at Soledad. After the hearing, on plaintiffs' request, the Court appointed a Monitor to investigate the violations resulting in the entry of a permanent injunction in 1992. The permanent injunction was dissolved in 1997 after years of compliance by defendants.

- Co-counsel for plaintiff in *Citizens for a Better Environment v. San Jose*, Civil No. C93 0111 THE, (N.D. Cal. 1993), a lawsuit challenging the release of excessive quantities of metals into the San Francisco Bay by San Jose's Water Pollution Control Plant. That case resulted in a consent decree, which was signed in November 1993, requiring San Jose to establish a $2 million fund to help small businesses invest in pollution prevention technology and reduce their discharges of copper and nickel to the plant. The decree also requires San Jose to pay $375,000.00 over three years to help fund an innovative pollution prevention center in Santa Clara County which will study ways to further reduce the discharge of toxic pollutants to the South Bay and will be a model of cooperation between the City's environmental groups and industry representatives. The decree further required the City to conduct pollution prevention audits for the 50-100 largest industrial dischargers of copper and nickel. These audits will help companies save money by identifying the maximum reductions in toxic metals pollution possible from each plant so that cleaning up pollution will pay for itself within a five-year period.

- *Citizens for a Better Environment, et al. v. Wilson, et al*., Civil Nos. C 89-2044 and C 89-2064 THE (N.D. Cal.). In 1982, state and local agencies prepared a plan for achieving federal Clean Air Act Standards in the San Francisco Bay Area. The goal of the 1982 Bay Area Air Quality Plan was to implement control measures that would result in the attainment of ozone and carbon monoxide standards no later than 1987 and in reasonable further progress in the interim. The plaintiffs claimed that the defendants failed to carry out several provisions of the 1982 Plan and sought a determination of liability as well as imposition of a remedial plan including injunctive relief and conformity to the 1982 Plan. On motions for summary judgment, the Court ruled that MTC and certain other defendants had failed to conform with the 1982 Plan. 731 F.Supp. 1448 (N.D. Cal. 1990). Subsequently, in December 1990, the Court issued an injunction enjoining the approval by MTC of future projects until the Court had been presented with and had approved a conformity assessment program consistent with the Clean Air Act, including the 1990 amendments to that Act. In March 1991, the Court considered the further revised Conformity Plan developed by defendants as a result of this litigation and approved it in all respects save one. The District Court's ruling was upheld on appeal. MTC's appeal from that injunction was rejected by the Ninth Circuit in October 1991 and the remaining issues were settled in 1992.

- *In re GCC Richmond Works Cases*, Judicial Council Coordination Proceeding No. 2906 (Contra Costa County Superior Court), a proposed class action arising out of the release of toxic chemicals of oleum and sulfuric acid in Richmond, California on July 26, 1993. James C. Sturdevant served as the Chair of the Discovery Committee, one of the four committees created to organize and oversee the coordinated complex toxic tort litigation. The parties in this complex case, involving more than seventy coordinated cases covering some 65,000 individuals, entered into a global settlement in which the defendants paid up to $180 million to the settlement class for personal injury and punitive damages claims. The settlement was approved in October 1995.

- *Genzale, et al. v. Zenzi's Beauty College, et al*., Case No. 930702 (San Francisco Superior Court) and Tillis, et al. v. Bank of America, N.T. & S.A., et al., No. BC073448 (Los Angeles County Superior Court), two class action cases involving vocational school fraud. Plaintiffs in these cases, former students of vocational schools, sued the schools in state court, alleging violations of California's unfair business practices statutes and the California Education Code, as well as claims of fraud and breach of contract. The students claimed that the schools made misrepresentations about educational services, training, access to equipment, and facilities at the time the students enrolled, and failed to refund money to withdrawing students as required by the Education Code. When the students enrolled, they each became obligated for thousands of dollars in student loans. The schools failed to provide the promised education and the students, unable to find jobs, are now in default on the loans which in the aggregate total millions of dollars. Following a five-week bench trial in the Genzale case, the trial court in June 1997 awarded the affected class members over $328,000, and doubled that amount, as a statutory penalty under Education Code § 94319(c) to over $656,200. The damages awarded were based on the court's findings that the school had violated provisions of the Maxine Waters Act, Education Code § 94316, et seq., which set mandatory disclosure requirements related to course completion rates, job placement rates, and license exam pass rates, and the itemization of equipment provided by the school, and charged to the students. The Court of Appeal affirmed the liability determinations and the damages

award to the subclass in May 1999.

- *Murphy v. Wells Fargo Bank*, San Francisco Superior Court Case No. 978007, statewide proposed class action under California consumer protection laws. Plaintiff sued the bank challenging its long-standing practice of placing a "freeze" or "hold" on its customers' Social Security Direct Deposit accounts (the "SSDD accounts") and imposing a $25 to $30 legal processing fee in response to levies issued by third party creditors and imposing a bank processing fee for each levy, in violation of the provisions under California's Enforcement of Judgments Law and Unfair Practices Act. In December 1997, the Court approved a classwide settlement that provided a settlement fund of $90,000 plus interest to class members, and an agreement by Wells Fargo Bank to (i) halt its practice of "freezing" or "holding" funds in the SSDD accounts and charging a legal processing fee; (ii) pay all costs of notice and distribution of the settlement fund; and (iii) pay reasonable attorneys' fees and actual costs and expenses awarded by the court.