

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

ARKANSAS TEACHER RETIREMENT SYSTEM,  
on behalf of itself and all others similarly situated,

Plaintiffs,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 11-cv-10230 MLW

ARNOLD HENRIQUEZ, MICHAEL T. COHN,  
WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND,  
and those similarly situated,

Plaintiffs,

v.

STATE STREET BANK AND TRUST COMPANY,  
STATE STREET GLOBAL MARKETS, LLC and DOES 1-20,

Defendants.

No. 11-cv-12049 MLW

THE ANDOVER COMPANIES EMPLOYEE SAVINGS AND  
PROFIT SHARING PLAN, on behalf of itself, and JAMES  
PEHOUSHEK-STANGELAND, and all others similarly situated,

Plaintiffs,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 12-cv-11698 MLW

**THE HAMILTON LINCOLN LAW INSTITUTE'S CENTER FOR CLASS  
ACTION FAIRNESS'S MOTION FOR LEAVE TO FILE ADDITIONAL EXHIBIT**

In accordance with Local Rule 7.1, *amicus curiae* the Hamilton Lincoln Law Institute’s Center for Class Action Fairness (“CCAF”) seeks leave of this Court to file the attached academic study to be considered as an additional exhibit to CCAF’s Post-Hearing *Amicus* (Dkt. 583). The paper was first posted online July 16, 2019: Stephen J. Choi, Jessica Erickson & A.C. Pritchard, *Working Hard or Making Work? Plaintiffs’ Attorneys Fees in Securities Fraud Class Actions*, available online at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3420222](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3420222).

CCAF has attempted to confer with the parties on the motion. Richard Heimann advised that Lieff opposes the motion, “and if you persist we will reply to the court regarding your deliberate flouting of the local rules regarding deadlines for filings.” Counsel for Labaton and TLF advise that they agree with Lieff’s position. At this time, CCAF has not received responses from the remaining parties. (CCAF regrets the hours-late filing of the Post-Hearing *Amicus*. In particular, we apologize for and retract the last sentence of the first full paragraph on page 12, which should not have been added given that the briefs were meant to be filed simultaneously. However, we do not believe the late filing has bearing on this motion.)

#### **MEMORANDUM IN SUPPORT OF MOTION**

CCAF attorneys only became aware of the paper today, or else it would have been attached to the Post-Hearing *Amicus*. It appears relevant to the Court’s decision.

In general, *amicus* briefs are liberally permitted when relevant and helpful. Dkt. 127 at 4-7. The standard for evaluating submission of a relevant and helpful exhibit should be no different. During this litigation, CCAF filings have repeatedly been helpful to the Court. *See* Dkt. 192 (finding *amicus* brief “helpful”); Dkt. 460 at 8 (same); Dkt. 448 (Pub. Tr. 8/13/2018) at 20 (“I found the memoranda you’ve submitted both in 2017 [and recently] to be helpful. For example, you’re the one who identified the Rule 60(b) issue, which was helpful; and some of the authorities in your recent briefs were -- recent brief were helpful, citing cases that I read with care, citing of the statement were

helpful.”); Dkt. 519 (Tr. 11/7/2018) at 96 (“very helpful” submissions); Dkt. 560 (Tr. 6/24/2019) at 15 (“helpful”).

WHEREFORE, CCAF respectfully requests that the Court accept the attached document as a supplemental exhibit to its Post-Hearing *Amicus* brief.

Respectfully submitted,

Dated: July 18, 2019

/s/ M. Frank Bednarz  
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*Attorneys for Amicus Curiae  
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**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(A)(2)**

I certify that on July 18, 2019, CCAF emailed counsel for the parties and counsel for the Special Master in a good faith effort to narrow or resolve the issues raised in this motion. All three Class Counsel firms oppose CCAF's motion. At the time of filing, counsel for CCAF has not heard the position of the remaining parties.

Dated: July 18, 2019

/s/ M. Frank Bednarz  
M. Frank Bednarz

**CERTIFICATE OF SERVICE**

I certify that on July 18, 2019, I served a copy of the forgoing on all counsel of record by filing a copy via the ECF system.

Dated: June 18, 2019

/s/ M. Frank Bednarz  
M. Frank Bednarz

## Working Hard or Making Work? Plaintiffs' Attorneys Fees in Securities Fraud Class Actions

Stephen J. Choi, Jessica Erickson & A.C. Pritchard\*

July 2019

**Abstract:** In this paper, we study attorneys' fees awarded in the largest securities class actions: "mega-settlements." Consistent with prior work, we find larger fee awards but lower percentages in these cases. We also find that courts are more likely to reject or modify fee requests made in connection with the largest settlements. We conjecture that this scrutiny provides an incentive for law firms to bill more hours, not to advance the case, to help justify large fee awards—"make work." The results of our empirical tests are consistent with plaintiffs' attorneys investing more time in litigation against larger companies, particularly when there are multiple lead counsel firms. Using a difference-in-difference analysis, we show that "make work" increased in cases with multiple lead counsel after the Supreme Court validated a "price impact" defense in the *Halliburton II* case. We find a similar pattern with relative efficiency, with more hours per litigation day. We also find that courts award higher multipliers in cases with pre-litigation observable characteristics that indicate a lower risk of dismissal – and a correspondingly higher probability of settlement – particularly against larger companies. Overall, our results suggest that plaintiffs' attorneys are receiving windfall fee awards in mega-settlement cases at shareholders' expense.

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\* Murray and Kathleen Bring Professor of Law, New York University; Professor of Law, University of Richmond; and Frances and George Skestos Professor of Law, University of Michigan, respectively. The authors are grateful to participants at workshops at the University of Texas and Vanderbilt University, as well as the National Business Law Scholars Conference, for helpful suggestions on earlier drafts. Pritchard acknowledges the generous financial support of the William W. Cook Endowment of the University of Michigan Law School.

## 1. Introduction

The role of plaintiffs' attorneys in securities fraud class actions has been controversial for decades, with the relationship between plaintiffs' attorneys and class representatives raising the most fraught questions. Class counsel typically have a much greater interest in the outcome of the class action—in the form of the fee award by the court if the litigation produces a settlement for the class—than the representative plaintiff, who typically will only receive a small percentage of any settlement. Because fee awards are typically taken out of the settlement amount, class counsel and class members have potentially conflicting interests, but the representative plaintiff's relatively modest stake in the settlement means that monitoring of this conflict may be lax. Lax monitoring could allow plaintiffs' attorneys to overreach in the fees they request.

The Federal Rules of Civil Procedure attempt to check this potential overreaching by requiring judicial scrutiny of class action settlements and determination of the fee award. There are recurring questions, however, about the rigor of court review. Congress attempted to rein in fee awards when it adopted the Private Securities Litigation Reform Act of 1995, which limits awards to a "reasonable" percentage of the settlement. There is evidence that this reform has put downward pressure on the average fee award, but eye-popping numbers still show up in the largest cases. For example, in a settled securities class action filed in 2014 in the Southern District of New York against the Brazilian state-controlled Petroleo Brasileiro SA, plaintiffs' attorneys received a fee award of \$186.5 million after working 324,307 hours and obtaining a settlement of \$3 billion.

The enormous fee awards seen in cases with the largest settlements—"mega-settlements"—are the focus of this paper. Specifically, we investigate whether the fee awards

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that accompany mega-settlements compensate plaintiffs' attorneys for risks they take on when working on contingency cases. Alternatively, courts may be rewarding attorneys simply for winning the lead counsel spot in the largest cases – a reward by association – without regard to the amount of effort needed to prosecute such cases or the actual risk faced by the plaintiffs' attorneys. This question has important implications for courts trying to calibrate the appropriate fee award in securities class actions. It should also matter to policymakers considering potential reforms to the fee-setting process.

We find evidence of “make work” – hours billed in the largest cases not to advance the case but instead to support a big fee award. The results of our empirical tests are consistent with plaintiffs' attorneys investing more time in litigation against larger companies, particularly when there are multiple lead counsel firms. Using a difference-in-difference analysis, we show that “make work” increased in cases with multiple lead counsel after the Supreme Court validated a “price impact” defense in the *Halliburton II* case.<sup>1</sup> We find a similar pattern with relative efficiency, with more hours per litigation day. We also find that courts award higher multipliers in cases with pre-litigation observable characteristics that indicate a lower risk of dismissal – and a correspondingly higher probability of settlement – particularly against larger companies. These cases presumably pose less risk to plaintiffs' attorney because of their higher ex ante probability of settlement. This result undermines the theory that multipliers compensate plaintiffs' attorneys for taking on cases which pose a higher risk of non-recovery.

Overall, our results suggest that plaintiffs' attorneys are receiving windfall fee awards in mega-settlement cases at shareholders' expense. Although there typically is strong evidence of

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<sup>1</sup> *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398 (2014).

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corporate wrongdoing in cases leading to the mega-settlements, this evidence often comes to light prior to the involvement of plaintiffs' attorneys through restatements, SEC and other government investigations, and/or the termination of top officers. We conjecture that courts are conflating valuable fraud claims with the incremental value provided by a plaintiffs' attorney in litigating the case. If the pre-existing evidence of fraud is strong, plaintiffs' attorneys face less risk and there is less need for these attorneys to develop innovative legal theories and uncover evidence. Knowing that a large settlement is likely, plaintiffs' attorneys may anticipate a need to justify a large fee award—leading them to “make work.”

We proceed as follows. Part 2 reviews the relevant literature and develops our hypotheses. Part 3 describes our dataset and variables. Part 4 presents our empirical tests. Part 5 concludes with a discussion of the potential policy implications of our findings.

## 2. Background

### 2.1 Literature

Only one empirical study has focused specifically on attorneys' fees in securities class actions. Lynn Baker, Michael Perino, and Charles Silver examined 431 securities class actions that settled in federal district court between 2007 and 2012. (Baker, et al., 2015). A number of other empirical studies, however, have looked at attorneys' fees as part of broader studies into securities class actions. (Choi, 2011; Cox & Thomas 2006; Choi & Thompson 2006; Perino, 2003) Additionally, the economic consulting firm NERA has collected descriptive data, including data related to attorneys' fees, on every securities class action filed since 1996. (NERA, 2019).

Other researchers have examined attorneys' fees in class actions more generally. Theodore Eisenberg, Geoffrey Miller, and Roy Germano, for example, examined the award of



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attorneys' fees in class actions filed between 1993 and 2013, primarily focusing on reported cases during this period<sup>2</sup> (Eisenberg, et al., 2017; Eisenberg & Miller 2010; Eisenberg & Miller 2004). Professor Brian Fitzpatrick conducted a similar study, examining all class action settlements approved by federal courts during the two-year period from 2006 to 2007. (Fitzpatrick, 2010).

Together, these studies offer significant insight into the award of attorneys' fees in these lawsuits. Some of these findings confirm the conventional wisdom. For example, given that courts typically award plaintiffs' attorneys a percentage of the overall recovery,<sup>3</sup> one would anticipate that fees increase as settlement amounts increase, and the data bear this out. At the same time, however, several studies have shown that attorneys receive a smaller percentage of the recovery as the size of the recovery increases. In securities class actions, for example, NERA found that, in cases involving a settlement amount of less than \$10 million, the median fee award was approximately 30 percent of the settlement amount. In cases with settlements over \$1 billion, the median fee award was approximately 15 percent. (NERA, 2019).

The studies also provide insights into the methods courts use to set fees. Under Rule 23 of the Federal Rules of Civil Procedure, federal courts can only award "reasonable attorney's fees."<sup>4</sup> The Private Securities Litigation Reform Act narrows this further, providing that fees cannot exceed a "reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class."<sup>5</sup> In securities class actions, the responsibility for ensuring that fee awards comply with these limits falls on both lead plaintiffs, who are supposed to monitor

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<sup>2</sup> The first two studies were published by Theodore Eisenberg and Geoffrey Miller alone. Roy Germano was added as an additional co-author of the third study.

<sup>3</sup> See, e.g., 15 U.S. Code § 78u-4(a)(6) (limiting fees to a "reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class").

<sup>4</sup> Fed. R. Civ. P. 23(h).

<sup>5</sup> 15 U.S. Code § 78u-4(a)(6)

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fee requests, and courts, which ultimately have the responsibility to set these fees. Despite this dual monitoring, the empirical evidence suggests that neither group is particularly good at carrying out their responsibilities.

In enacting the PSLRA, Congress envisioned that institutional investors would negotiate fees as part of the process of selecting their counsel in securities class actions. The Baker, Perino, and Silver study (2015), however, did not find much evidence that institutional lead plaintiffs reach ex ante agreements with their counsel regarding fees. Specifically, the lead plaintiff candidate or the court only discussed an ex ante agreement during the appointment process in approximately 11 percent of cases, and even when they did, judges rarely seemed to consider these ex ante agreements in setting fees.

Ex post, institutional lead plaintiffs may exercise more oversight over fee requests, although the evidence is mixed here as well. Choi, Fisch, and Pritchard (2005) report that attorney fees, measured as a percentage of the recovery, are if anything higher with private institutional lead plaintiffs after the enactment of the PSLRA compared with the pre-PSLRA period; they also report that no significant correlation exists between fees and public pension funds after the enactment of the PSLRA once they control for the size of the case. A later study by Choi (2011), however, examining securities class actions filed from 2003 to 2005, found that certain types of lead plaintiffs—those with larger claimed losses, institutional plaintiffs, and those that frequently serve as lead plaintiff—are associated with lower mean fees as a percentage of the settlement. That study also finds more hours worked by attorneys with institutional investor lead plaintiffs. Perino (2012), too, after controlling for case quality, finds that cases with public pension lead plaintiffs have larger recoveries, but lower fee requests and fee awards, than cases with other

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lead plaintiff types. Perino also finds a spill-over effect: fee requests have declined generally over time, suggesting that lower fees negotiated by institutional investors have reduced the going rate in cases with individual investors serving as lead plaintiffs as well.

Choi, Johnson-Skinner, and Pritchard (2011) study the relation between campaign contributions to politicians who govern institutional lead plaintiffs and the level of attorneys' fees in securities class actions. They find that state pension funds generally pay lower attorneys' fees when they serve as lead plaintiffs in securities class actions than do individual investors serving in that capacity, and larger funds negotiate for lower fees. This differential disappears, however, when they control for campaign contributions made to officials with influence over state pension funds. This effect is most pronounced for state pension funds that receive the largest campaign contributions and that associate repeatedly as lead plaintiff with a single plaintiffs' attorney firm. Thus, pay to play appears to increase agency costs borne by shareholders in securities class actions, undermining one of Congress's principal goals in adopting the PSLRA. They do not, however, find any correlation between campaign contributions and weaker cases. It appears that plaintiffs' attorneys are only willing to invest in access to potential lead plaintiffs for cases in which there is likely to be competition to serve as lead counsel.

On balance, these studies suggest that the rise of institutional investors may have reduced fee percentages on average, although that trend appears to have taken time to develop post-PSLRA. The studies do not, however, support the conclusion that institutional shareholders are consistently the active watchdogs that Congress envisioned when it adopted the lead plaintiff provision of the PSLRA.

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Substantial doubts also persist about the role of judges in overseeing attorneys' fees. Rule 23 and the PSLRA both contemplate that judges will protect class members by rejecting unreasonable fee requests. The Baker, Perino, and Silver study (2015) found, however, that judges typically rubberstamp these requests in securities class actions. Judges award the fees requested by plaintiffs' counsel in approximately 85 percent of cases, although judges in districts that see a high volume of securities class actions are more likely to cut fees than judges in low-volume districts. Other than this specific finding, however, they observe that fee cuts are "essentially random events, driven more by judges' predilections and biases than the merits of the fee requests." They argue that their findings reveal that "the current system of ex post fee-setting in securities class actions is deeply flawed."

The studies also shed light into how judges use lodestar figures in reviewing fee requests. In calculating fee awards, judges often require documentation of the plaintiffs' attorneys' hours and lodestar as a way of cross-checking the reasonableness of the fees.<sup>6</sup> Yet the Baker, Perino, and Silver study found that lodestar cross-checks can have unintended consequences. All else being equal, judges award higher fees when fee requests include a lodestar cross-check than when these requests rely solely on the percentage method. They conclude that attorneys may be using lodestar data strategically, including it only when their requests may otherwise appear excessive. (Baker, et al., 2015).

Other studies, not focusing on securities class actions, are more sanguine about the use of lodestar multipliers. For example, Eisenberg, Miller, and Germano concluded that judges appropriately use lodestar multipliers to reward attorneys for reaching settlements in riskier

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<sup>6</sup> See, e.g., *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000).

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cases. (Eisenberg, et al., 2017; Eisenberg & Miller 2010; Eisenberg & Miller 2004). They also find, however, that judges use higher multipliers in larger cases. Brian Fitzpatrick found that multipliers on the whole were fairly small, suggesting that courts may be awarding fees that are too low, especially in smaller cases. (Fitzpatrick, 2010). He found that, in all of the cases in which the multipliers were ascertainable, there was a median lodestar multiplier of 1.34.<sup>7</sup> He concluded that the lodestar numbers were “fairly parsimonious for the risk that goes into any piece of litigation and cast doubt on the notion that the percentage-of-the-settlement method results in windfalls to class counsel.”

## 2.2 Hypotheses

The existing studies shed light on attorneys’ fees in securities class actions generally, but they do not examine how fee requests and awards diverge when cases have radically different amounts at stake. There is a significant difference between the \$10 to \$20 million settlements in typical securities class actions and the \$3 billion settlement in the Petrobras litigation. To date, however, researchers have not examined how these differences influence the incentives that underlie fee requests and awards, at least beyond the general finding that plaintiffs’ attorneys receive higher fees in securities class actions that end with larger settlements.

The purpose of this study is to compare fee requests and awards in the highest-stakes cases with those in other securities class actions. Do plaintiffs’ attorneys invest more time in higher-stakes litigation? If so, is this additional time driven by the needs of the litigation or the desire to justify a higher fee request? And do judges serve as a meaningful check on fee requests

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<sup>7</sup> If the court only used the lodestar method to determine the fee, the median multiplier was 0.92. If the court used the lodestar to crosscheck the reasonableness of the fee, the median multiplier was 1.34.

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in cases that generate the largest settlements? To shed light on these questions, we postulate the following series of hypotheses regarding the behavior of plaintiffs' attorneys and the responses of judges.

**Hypothesis 1: Courts will rarely reject fee awards, except in the largest cases.**

Judges are the ultimate arbiters of fee awards in securities class actions, and plaintiffs' attorneys therefore know that they will have to justify their fee requests to the court if and when the case settles. Judges have significant incentives, however, to approve fee requests to purge complicated cases from their docket. Judges may also be poorly placed to second-guess fee requests after the fact, especially in larger cases, which may have voluminous time records. If judges are unlikely to reject fee awards, plaintiffs' attorneys will have more leeway to inflate their fee requests.

This hypothesis finds support in the findings of Baker et al. (2015), who find that rejections of fee applications are essentially random. They did not examine, however, whether judges' review of fee applications varied with the amount at stake in the litigation. Plaintiffs' attorneys have strong incentives in high-stakes litigation to inflate their hours to justify large fees. That incentive structure would suggest that those cases warrant greater judicial scrutiny of fee applications. Moreover, the sheer magnitude of the fee requests in the mega-settlements may provoke greater judicial scrutiny. We hypothesize that judges may be more likely to reject fee awards in higher-stakes litigation than in low settlement value cases.

**Hypothesis 2: Plaintiffs' attorneys work significantly more hours in the top decile of settlements and receive significantly higher fees from these settlements.**

Our second hypothesis builds on the prior empirical research, which finds that judges in securities class actions typically award the plaintiffs' attorneys a percentage of the settlement

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fund as attorneys' fees. Given this finding, we predict that plaintiffs' attorneys will receive significantly higher fees in the top decile of settlements in securities class actions. Even in these larger cases, however, judges typically use a lodestar cross-check to confirm the reasonableness of the fee award. We posit that plaintiffs' attorneys will work significantly more hours in these larger cases to justify the larger fee awards. We therefore predict that the top decile of cases will result in both larger fee awards and higher lodestar numbers.

**Hypothesis 3: Higher-stakes litigation will induce greater resistance from defendants, raising the marginal benefit from more work by plaintiffs' attorneys (the "working hard" hypothesis).**

Our data show that attorneys' fees in securities class actions rarely exceed one-third of the total settlement amount, regardless of the amount of the lodestar presented in the fee application. This de facto cap on fees as a percentage of the settlement amount (referred to as the "de facto 33% cap") suggests that plaintiffs' attorneys cannot expect to be compensated for hours they put into the case that would exceed this cap. (Or to put it differently, they will receive a lower average hourly rate if they exceed a certain threshold.)

In higher-stakes litigation, plaintiffs' attorneys are unlikely to run up against this de facto cap because the expected settlement value is so large that any credible lodestar amount will still be well below a third of the settlement. Moreover, in higher stakes litigation, plaintiffs' attorneys are likely to meet greater resistance from the defense, justifying greater investment in the litigation. The functional lack of a cap in these cases means that plaintiffs' attorneys can invest more hours into building the cases—for example, by researching possible claims, pouring through discovery, and filing and responding to motions—because they know that they are likely to be paid for this work if the case settles.

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In smaller cases, however, the expected cap may constrain attorney hours. If plaintiffs' attorneys have already put in enough hours to justify a fee of one-third of the settlement amount, investing more hours into the litigation will not offer the plaintiffs' attorneys any direct return. Only efforts that are likely to substantially increase the settlement size or the likelihood of settlement – by more than three expected dollars for every dollar invested – will be worthwhile from the attorney's perspective. Plaintiffs' attorneys in these cases may limit their efforts in smaller cases to avoid investing too much in the litigation. Consequently, we predict that higher-stakes litigation raises the marginal benefit from more work on the part of plaintiffs' attorneys and thus will correspond to more investment of attorney hours.

**Hypothesis 4: Higher-stakes litigation will encourage plaintiffs' attorneys to inflate their hours by doing work that is not necessary (the "make work" hypothesis).**

Not all of this additional work in higher-stakes litigation may be necessary. Given that the attorneys' fees in higher-stakes litigation are typically well below the de facto 33% cap, plaintiffs' attorneys have more leeway in these cases to inflate their hours. A higher lodestar may help justify a fee award that is 25% of the settlement fund, rather than 20%, a difference that can amount to tens of millions of dollars in the largest cases. In contrast, in smaller cases in which the lodestar is already pushing close to the de facto 33% cap, plaintiffs' attorneys will have little incentive to inflate their hours, as it will not increase their share of the settlement. We therefore predict that, in higher-stakes litigation, plaintiffs' attorneys will be more likely to inflate their hours by doing work that is not necessary.

**Hypothesis 5: Multipliers used in awarding fees will not track the risk of litigation.**

We also predict the multiplier used by courts in awarding attorneys' fees will not track the riskiness of the claims asserted in the lawsuit. In theory, courts apply a multiplier to the



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Iodestar to compensate plaintiffs' attorneys for the risk of spending time and money litigating a case that does not produce a settlement fund from which a fee can be awarded. That theory suggests that courts should use a higher multiplier in riskier cases and a lower multiplier in cases that are less vulnerable to dismissal. We posit, however, that courts will use the multiplier to reward plaintiffs' attorneys for obtaining substantial settlements in actions with more egregious securities law violations. Such cases will generally have a low rate of dismissal because there will be strong evidence of a material misstatement and scienter, the critical hurdles for a complaint to survive a motion to dismiss.

### 3. Dataset and Variable Description

Our study includes every securities class action with a disclosure claim filed in federal court between 2005 and 2016, a total of 1719 cases. We reviewed court dockets and case filings to gather information on the contest for lead plaintiff, including the number of applicants, the alleged losses of the appointed lead plaintiff, and the law firm(s) appointed as lead counsel and local counsel. We also coded the allegations in the final consolidated complaint, as well as potentially dispositive motions (motion to dismiss, class certification, and summary judgment). We then documented the final resolution of each case. In every case that ended with a settlement, we collected data regarding the terms of the settlement, the fees requested by lead counsel and awarded by the court, and the hours worked and Iodestar data. Finally, we supplemented the litigation data with the defendant corporations' market capitalization measured on the last day of the class period, which we obtained from CRSP.

Panel A of Table 1 reports summary statistics on the variables related to the outcome of the action. Settlement is the fraction of actions that result in settlement among those actions in

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our dataset that reached a final outcome; nearly half of the resolved cases ended with a settlement. Settlement Amount is the size of the settlement in millions of dollars. If the action did not result in settlement (typically because it was dismissed), then we code the Settlement Amount as zero. The mean Settlement Amount is \$18.8 million. Conditional on a settlement, the mean Settlement Amount is \$39.5 million.

Attorney Fee Award is the amount of fees awarded to plaintiffs' attorneys in the action in millions of dollars.<sup>8</sup> The median is only \$1.9 million, but the mean is \$6.5 million, suggesting that the latter number is skewed by the fee awards in the largest cases. Attorney Hours is the number of hours in thousands as reported by the plaintiffs' attorney firms with their motions for attorneys' fees. We only have data on attorney hours when there is a settlement and the plaintiffs' attorneys submit a motion for attorneys' fees, but hours are reported in 93.4% of the settled cases (or 694 cases). Hourly Fee is the Attorney Fee Award divided by Attorney Hours (reported in dollars per hour). The average rate is \$688 per hour. Percent of Settlement is the Attorney Fee Award divided by the Settlement Amount.<sup>9</sup> Both the mean and median are about a quarter of the settlement amount. Lodestar is the billing number in millions of dollars that the plaintiffs' attorney firms report in the motion for attorneys' fees. The lodestar represents the number of hours times the hourly rate for the plaintiffs' attorney firms. Note that this quoted hourly rate is largely hypothetical; these firms rarely work for clients who directly pay their bills. Multiplier is the Attorney Fee Award divided by the Lodestar Amount. The mean multiplier is 1.365, but the median is only 1.105, so most cases have only a modest or no multiplier. There are

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<sup>8</sup> Note that attorneys' fees are only awarded in a settled action.

<sup>9</sup> Percent of Settlement is defined only for settled actions.

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a substantial number of cases with a multiplier less than one (43.8% of the cases where there is data on the multiplier), referred to as a “negative” multiplier. We find the negative multipliers principally in cases with small settlements, which reinforces the idea of a de facto cap on fees for smaller cases. Lastly, Reject Fee is the fraction of cases where the awarded fee is lower than the requested fee. Note that in 21.2% of the cases for which we have data on the requested fee, the court rejected the requested fee and awarded a lower fee.

Panel B of Table 1 reports summary statistics on the variables that relate to the litigation process in the action. Class Certification Filing is defined as equal to 1 if plaintiffs filed a motion for class certification and 0 otherwise; 21.5% of the cases reached this stage. Summary Judgment Filing is defined as equal to 1 if any defendant filed a motion for summary judgment and 0 otherwise; less than 5% of the cases got that far. Lead Plaintiff Decision Docket is the docket number of the federal district court’s final lead plaintiff decision. Dismissal Decision Docket is the docket number of the federal district court’s decision on the final motion to dismiss. Complaint Docket is the docket number of the final complaint filing in the action.

Panel C of Table 1 reports summary statistics on lead plaintiffs and lead counsel firms. Lead Plaintiff Number is the number of lead plaintiffs; the mean is just shy of two. Lead Plaintiff Any Institution is defined as 1 if any of the lead plaintiff is an institutional investor, and 0 otherwise. The institutional investors in our sample are primarily state and local pension funds, and labor union pension funds; institutional investors appear as lead plaintiffs in 55.1% of the cases. Lead Plaintiff Initial Motions is the initial number of motions for lead plaintiff. This number is a proxy for initial interest among lead plaintiff firms in the litigation. The mean is just below three. Lead Counsel Number is the number of law firms appointed as lead counsel (mean = 1.3).

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Multiple Lead Counsel is defined as 1 if the number of lead counsel law firms is greater than one and 0 otherwise; thirty percent of the cases have more than one lead counsel firm. Big Law Firm is defined as 1 if any of the lead counsel law firms acts as lead counsel in at least 100 of the class actions in our sample and 0 otherwise.

Panel D of Table 1 reports summary statistics on the allegations in the class action (the “Case Characteristic” variables). The Case Characteristic variables include the following, all obtained from the last filed complaint.<sup>10</sup> Although information may come to light after the last filed complaint, we focus on the allegations specified in the complaint as a measure of the information that the plaintiffs considered important at the time of the filing of the final complaint: 1) Accounting restatement (Restatement); 2) SEC investigation or enforcement action (SEC Action); 3) or other government action (Other Gov Action);<sup>11</sup> 4) termination of a top officer, (Officer Termination);<sup>12</sup> 5) a Section 11 allegation (Section 11); 6) a Section 12 allegation (Section 12); 7) or other allegation is made (Other Allegation); 8) a violation of GAAP accounting without a restatement (Accounting); 9) Merger (Merger); 10) option backdating (Backdating); 11) the late 2000s credit crisis (Credit Crisis); 12) an initial public offering (IPO); and 13) a violation of the Foreign Corrupt Practices Act (FCPA). We also track from the complaint: 14) the total number of officer and director defendants (No. Officer & Director Defendants); 15) whether an underwriter is a defendant (Underwriter); and 16) whether an accounting firm is a defendant (Accounting Firm). We track those SIC 2-digit industries (SIC 28, SIC 36, and SIC 73) with at least 100 cases in

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<sup>10</sup> Most cases include a Rule 10b-5 count, so we do not separately code for this.

<sup>11</sup> We limit both SEC Action and Other Gov Action to conduct that is the substantially the same as that alleged in the complaint.

<sup>12</sup> This category includes Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Treasurer, Chief Technology Officer, Chief Information Officer, Chief Compliance Officer, President, and General Counsel.

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our dataset that have firm defendants that operate in the specific industry (“Industry Effects” controls). Finally, we track the federal district courts with at least 50 cases in our dataset (CD CAL, ND CAL, SDNY, NJ, MA, ND ILL, SD FL) ( “Court Effects” controls).

## 4. Empirical Analysis

### 4.1 Initial Observations

We start by examining the differences among class actions in the dataset, in particular whether actions with the largest settlements have characteristics that distinguish them from smaller settlements. Table 2 reports the Settlement Amount and Attorney Fee Award by settlement decile. Mega-settlements are not the norm: 90% of the class actions that settle result in a settlement award of under \$50 million and attorneys’ fees of under \$10 million.

The top decile of settlements, however, differs considerably. The mean Settlement Amount of the top decile is \$295.5 million and the mean Attorney Fee Award is \$39.5 million. The top decile also stands out as having the highest Hourly Fee (\$938.3 per hour), but the smallest Attorney Fees Percent of Settlement. Plaintiffs’ attorneys make more in terms of dollars in top decile settlements, but, consistent with prior research, those fee awards are a smaller percentage of settlement amount.

Importantly for our analysis, out of the 713 settlements with information on the plaintiffs’ attorney fee award in our dataset, only two exceeded one-third of the settlement amount, and even then only marginally (one was 33.6% and the other 34%). We also see that the type of lead plaintiff and lead counsel firm differs for the top decile settlements. Institutional investors act as lead plaintiff for almost all of the top decile settlements. Big Law Firms are also more likely to act as lead counsel for the top decile settlements.

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For our analysis of attorneys' fees, we focus on: 1) the number of hours reported and 2) the multiplier. The Attorney Fee Award is a function of the hourly rate x the number of hours x the multiplier.<sup>13</sup> To confirm that hours relate to fee awards, we estimate an OLS regression with Attorney Fee Award as the dependent variable. We include hours and multiplier as independent variables. The results (untabulated) confirm that hours reported in fee requests correlate positively with awards. The coefficients for both Hours and Multiplier are positive and significant at the 1% level. These results hold when we add indicator variables for the circuits in which the district courts sit and year effects.

#### 4.2 Potential Stakes and a Proxy for Incentives for Make Work

To assess attorneys' incentives to invest in litigation, we construct a measure of potential stakes observable at the time of the filing of the initial complaint. Higher stakes litigation will raise the marginal benefit from more work on the part of plaintiffs' attorneys and thus will correspond to more justifiable work hours—the “working hard” hypothesis. At the same time, higher stakes litigation may also result in more make work—the “making work” hypothesis—because the expected attorneys' fees for large cases are typically well below the de facto limit on fees of 33% cap. Without that hard constraint, attorneys may have more leeway to inflate their hours. For smaller stakes litigation, if the minimum number of plaintiffs' attorney hours to litigate an action already results in attorneys' fees that exceed one third of the expected settlement, then investing more time will not offer the plaintiffs' attorneys a direct return since additional

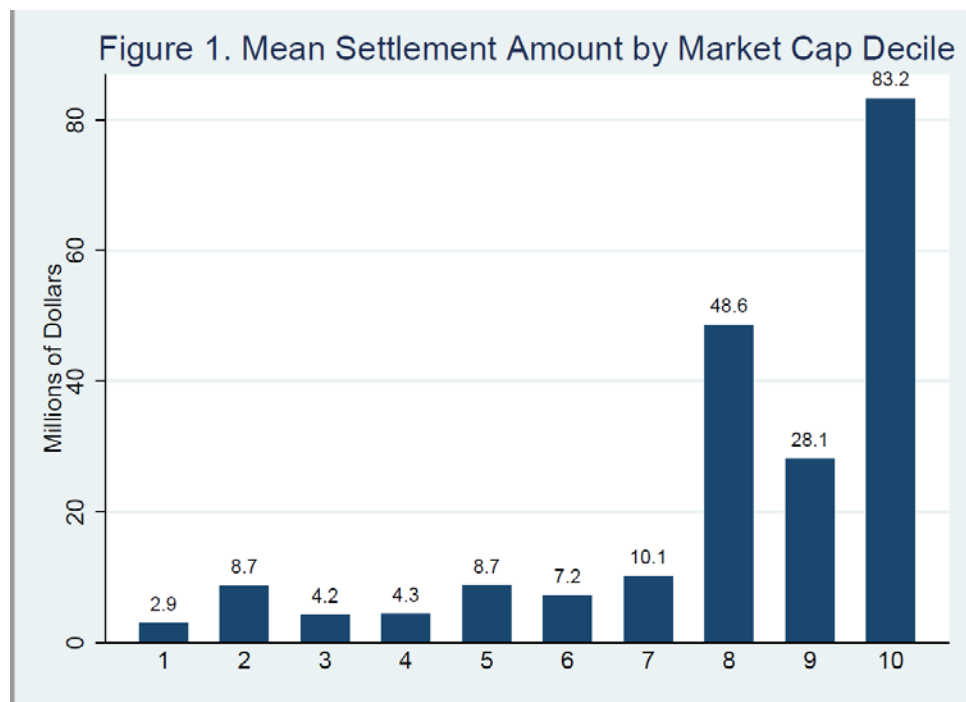
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<sup>13</sup> We do not focus on the hourly rate in this paper. Although there are interesting questions on the benchmarks plaintiffs' attorneys use to set the hourly rate in their fee requests in securities class actions, we leave this for future research.

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hours will not garner a larger fee award. Of course, more hours may still be worthwhile if they increase the probability or size of a settlement by a sufficient amount (in other words they represent “working hard”). Plaintiffs’ attorneys constrained by the de facto 33% cap will not have an incentive to simply “make work” to inflate hours if the additional hours do not substantially increase the probability or size of settlement.

For our measure of potential litigation stakes, we use the market capitalization of the defendant firm measured at the last day of the class period, which will typically be the day before the last alleged corrective disclosure event. We assume that greater market capitalization positively correlates with potential damages and the expected settlement amount. Larger market capitalization firms may also have more generous D&O policies that would also correspond to a higher expected settlement amount. Accordingly, we construct an indicator variable, Large Market Cap, for firms in the top decile of market capitalization for our sample.



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To assess the relation between our measure of potential litigation stakes and the expected settlement amount, we compare the awarded settlement amount for the Large Market Cap actions with actions against smaller companies. Figure 1 depicts the mean settlement amount for each market capitalization decile. The mean Settlement Amount for the Large Market Cap actions is \$83.2 million compared with a mean \$13.5 million for the actions in the other nine market capitalization deciles (difference significant at the 1% level). Large Market Cap would appear to be a reasonable proxy for the potential litigation stakes.

Do higher litigation stakes correspond with greater plaintiffs' attorney hours? Yes. The mean hours for Large Market Cap actions that settle in our sample is 55.7 thousand hours and the mean hours for non-Large Market Cap actions that settle is 8.6 thousand hours. This difference is significant at the 1% level.

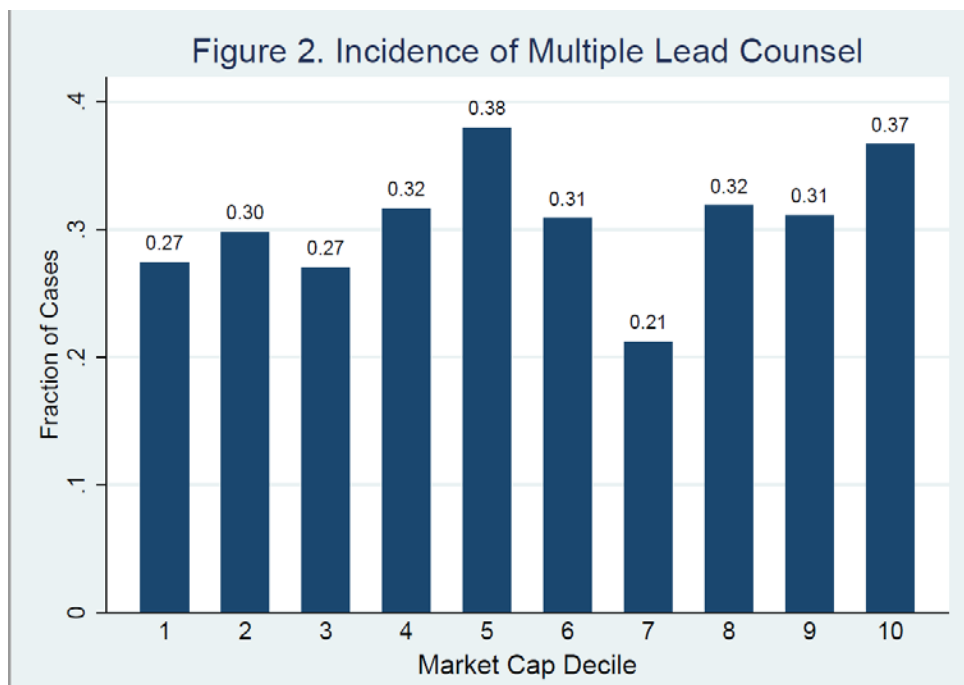
To distinguish between whether Large Market Cap actions have more hours because such actions require greater work by plaintiffs' attorneys—"working hard"—or, in contrast, because plaintiffs' attorneys take advantage of the relatively large settlement amounts in such actions to make unjustified work to extract greater rents from the class—"making work"—we use a proxy that we conjecture is correlated with making work but not with working hard. This proxy is the number of lead counsel firms associated with the litigation. In the majority of class actions in our sample, there is only a single lead plaintiff firm. Thirty percent of the cases, however, have multiple lead plaintiff firms. Having more lead counsel could result in a greater possibility for duplicative work as each firm strives to bill hours for the same matter. Depositions, for example, may have multiple attorneys from different plaintiffs' attorney firms attend (and billing hours) when there are multiple lead counsel firms.



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Prior work (Choi (2011)) has indicated that multiple motions for lead plaintiffs correlate with multiple lead counsel firms. Typically, each motion is brought by a potential lead counsel firm. The multiple motions are frequently combined as one motion before the court appoints a lead plaintiff. The desire of plaintiffs' attorney firms to limit competition among themselves and to remain part of the litigation (and get fees) appears to drive the presence of multiple lead counsel firms. We are skeptical that multiple law firms are required to litigate even the largest cases because the large plaintiffs' attorney firms all have many lawyers and significant experience litigating securities class actions. Moreover, contract lawyers can be easily hired for routine work such as document review.

The concern is that more lead counsel firms correspond with more duplicative work and a need to increase attorneys' fees to compensate the different firms involved in the litigation—which will increase “make work.” Figure 2 shows that there are multiple lead counsel actions in each market cap decile. The percentage of actions with multiple lead counsel ranges from a high of 38.0% in market cap decile 4 (the fourth smallest decile) to a low of 21.2% in market cap decile 7 (the fourth largest market cap decile).

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### 4.3 Judicial Scrutiny of Fees

Attorneys' investment in cases occurs against the backdrop of judicial review of fee requests. Our hypothesis is that courts rarely reject fee awards. We recognize, however, that larger cases—and larger fee requests—might signal to courts that attorneys have an incentive to “make work,” which may invite closer scrutiny of fee awards in this category of cases.

We examine the likelihood that courts will reject fee requests, including modifications that lower the awarded attorneys' fees below the request fees, in cases with differing amounts at stake. Figure 3 depicts the fraction of requested fees that are rejected or modified by the court in determining the attorney fee award.

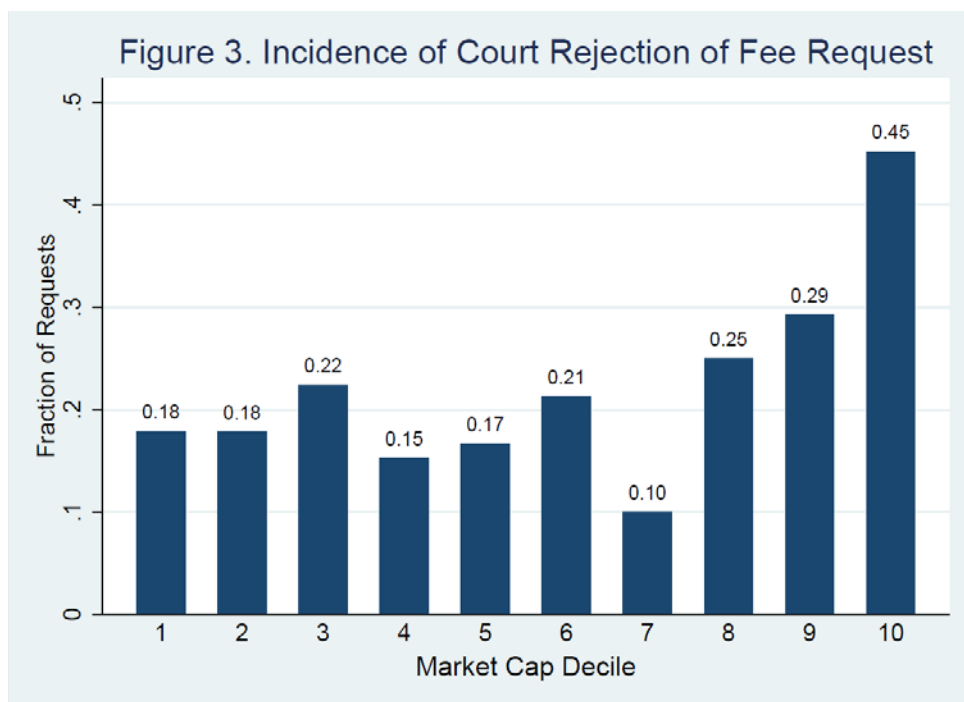
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Figure 3 shows that courts rejected 45.0% of the fee requests in the Large Market Cap decile, considerably higher than for the other deciles in which courts rejected only 19.7% of the fee requests (difference significant at the 1% level).

These findings shows that courts do reject or reduce fee requests in some cases, but that the largest cases receive more scrutiny. We conjecture that this more exacting scrutiny gives attorneys an incentive to report a large number of hours in the cases against the biggest companies to bolster their argument for a large fee award. To assess the effect of litigation stakes on the likelihood of rejection of a fee award by the court in a multivariate framework, we estimate a logit model as follows:

$$\begin{aligned}
 \text{Prob}(\text{Reject Fee}_i) = & \alpha \\
 & + \beta_1 \text{Large Market Cap}_i + \beta_2 \text{Multiple Lead Counsel}_i \\
 & + \beta_3 \text{Large Market Cap} \times \text{Multiple Lead Counsel}_i \\
 & + \text{Lodestar}_i + \text{Requested Attorneys Fee}_i + \text{Big Law Firm}_i \\
 & + \text{Industry Effects} + \text{Court Effects} + \text{Year Effects} + \varepsilon_i
 \end{aligned}$$

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We control for other factors that may influence a court in rejecting a fee request in addition to Large Market Cap. We include an indicator variable for Multiple Lead Counsel and an interaction term between Large Market Cap and Multiple Lead Counsel. We include the Lodestar amount because courts may be more comfortable awarding higher fees if more hours are reported. On the other hand, Figure 3 suggests that larger requests may invite more scrutiny, so we include the amount of the Requested Attorney Fee. We include the presence of a Big Law Firm, which may have greater credibility as a repeat player. Finally, we include our Industry Effects and Court Effects controls, as well as year fixed effects. We estimate the model with robust standard errors. We report the results in Table 3.

The coefficient for Large Market Cap is positive and significant at the 5% level, which is consistent with more scrutiny in the largest cases. The coefficients for Multiple Lead Counsel and the interaction term with Large Market Cap are insignificant, however, suggesting that courts do not give greater scrutiny when multiple lead counsel have been appointed. This is perhaps not too surprising, given that the court appointed the multiple lead counsel at the outset of the case. Rejecting the fee from multiple lead counsel would indicate that the court had encouraged inefficiency with its initial appointment.

Consistent with the pattern seen in Figure 3, the larger fee requests seem to invite greater scrutiny; the coefficient for Requested Attorneys' Fee is positive and significant at the 1% level. Greater lodestars, however, make rejection less likely.<sup>14</sup> This finding suggests that attorneys can

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<sup>14</sup> We also ran the model with an additional interaction variable between Large Market Cap and Lodestar (untabulated). The interaction variable was insignificant. This result is consistent with Lodestar being an important factor in all cases, but not more important in the largest cases.

Separately, we compare cases with and without a lodestar submitted. We find no significant difference between cases with and without a lodestar with respect to settlement size or amount of attorneys' fees, but cases

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reduce their likelihood of having their fee request rejected by submitting a greater lodestar. Bolstering the lodestar, however, would provide an impetus for “making work.” We explore that possibility in the analysis that follows.

#### 4.4 Working Hard versus Making Work

##### 4.4.1. Hours Generally

To distinguish between the working hard and making work hypotheses, we utilize the presence of multiple lead counsel as our proxy for when plaintiffs’ attorneys will have a greater incentive to generate duplicative hours, making unnecessary work. We start with a multivariate ordinary least squares model using hours as the dependent variable and multiple lead counsel and Large Market Cap as independent variables .

$$\begin{aligned} \text{Attorney Hours}_i = & \alpha + \beta_1 \text{Multiple Lead Counsel}_i \\ & + \beta_2 \text{Large Market Cap}_i + \beta_3 \text{Lead Plaintiff Initial Motions}_i \\ & + \beta_4 \text{Lead Plaintiff Any Institution}_i \\ & + \beta_5 \text{Big Law Firm}_i + \text{Year Effects} + \varepsilon_i \end{aligned}$$

We add several control variables associated with the lead plaintiff motions, lead plaintiffs, and lead counsel firms that may correspond to both case merits and hours worked. We add the number of initial lead plaintiff motions (Lead Plaintiff Initial Motions) to control for the level of interest among potential lead plaintiffs and lead plaintiff firms. This interest may correspond to otherwise unobservable characteristics associated with either the merits of the action or the likelihood of a large settlement. We add an indicator variable for whether any lead plaintiff is an institutional investor (Lead Plaintiff Any Institution); institutional investors may have greater

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with a lodestar have significantly higher attorneys’ fees as a percentage of the settlement (t-test significant at the 1% level).

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ability and incentive to monitor the work of plaintiffs' attorney firms. We add an indicator variable for Big Law Firm to control for the additional resources of law firms that have the size and specialization to bring numerous securities class actions. We include the Case Characteristic variables as well as the Industry Effects and Court Effects controls. We include year fixed effects and estimate the model with robust standard errors. We report the results in Model 1 of Table 4.

In Model 1 of Table 4, note that the coefficient on Multiple Lead Counsel is positive and significant at the 5% level. Multiple Lead Counsel corresponds to 4.1 thousand more attorney hours. This is consistent with the making work hypothesis.

To identify causality between attorneys with greater incentives to make unnecessary work—cases with multiple lead counsel—we perform a difference-in-difference analysis comparing the differential in hours between multiple and single lead counsel actions for the bottom nine market cap deciles and the top market cap decile (Large Market Cap). We predict that the incentive for making work will be strongest for actions against Large Market Cap defendants with multiple lead counsel. In these cases, plaintiffs' attorneys are unlikely to be constrained by the de facto 33% cap on plaintiffs' attorney fee awards. For this analysis, we add an interaction term for Large Market Cap x Multiple Lead Counsel to Model 1 of Table 4 and report the results in Model 2 of Table 4.

In Model 2 of Table 4, the coefficient on Large Market Cap x Multiple Lead Counsel is positive and significant at the 5% level. The coefficient for Multiple Lead Counsel is insignificant in this model, which is consistent with less incentive for make work in smaller cases, which are more likely to be constrained by the 33% cap. The differential between Multiple Lead Counsel

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and single lead counsel cases increases by 28.9 thousand hours for the Large Market Cap decile. This is consistent with attorneys with the greatest incentive to make work doing so when the de facto 33% cap is unlikely to limit fees.

*4.4.2. Hours After a Market Shock*

Our data is cross-sectional and may not control for every aspect of the characteristics of a case. The differential in the level of hours for cases with multiple lead counsel and large market capitalization defendants may be due to other factors that correlate with multiple lead counsel and large market capitalization defendants but are not causally related to making work.

To identify further the relationship between the incentive to make work and plaintiffs' attorney hours, we utilize the Supreme Court's *Halliburton II* decision as a shock to securities litigation practice. We examine whether this shock resulted in a differential change in the number of hours for cases with multiple lead counsel and large market capitalization defendants.

*Halliburton II* affirmed that defendants could challenge class certification by arguing that the alleged corrective disclosures did not have "price impact." Defendants can show the absence of price impact by demonstrating that there is no statistically significant price reaction on the corrective disclosure dates. On the one hand, asserting a lack of price impact generally implies a more vigorous defense effort, which may require plaintiffs' attorneys to respond with a corresponding increase in hours. On the other hand, if plaintiffs' attorneys seek to inflate hours and face only the constraint of being able to justify their hours minimally before a judge, litigating price impact issues opens up the possibility for more make work.

The *Halliburton II* shock to securities class action practice allows us to utilize a triple difference-in-difference framework to assess whether the difference in hours between Large

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Market Cap actions and non-Large Market Cap actions increases after *Halliburton II*. An increase in the difference in difference between Large Market Cap and non-Large Market Cap firms for cases involving Multiple Lead Counsel (as opposed to non-Multiple Lead Counsel actions) would indicate greater make work. By contrast, if *Halliburton II* increased the need to work, we would expect an equal increase for cases with and without multiple lead counsel. Put another way, if we are correct in our conjecture that multiple lead counsel is not correlated with the need to work, but only the desire to make work, then *Halliburton II*—by opening up more possibilities to justify make work—should correspond to increased hours in particular for Large Market Cap companies with Multiple Lead Counsel compared with other actions.

For our triple difference-in-difference framework, we add an indicator variable for *Halliburton II* and interaction terms for Large Market Cap x *Halliburton II*, Multiple Lead Counsel x *Halliburton II*, and *Halliburton II* x Large Market Cap x Multiple Lead Counsel to Model 3 of Table 4. The *Halliburton II* x Large Market Cap x Multiple Lead Counsel triple interaction term allows us to distinguish the differential impact of *Halliburton II* on Large Market Cap actions with and without Multiple Lead Counsel. We report the results in Model 3 of Table 4.

In Model 3 of Table 4, the coefficient on Large Market Cap x Multiple Lead Counsel x *Halliburton II*, the triple interaction term, is positive and significant at the 1% level. In addition, the size of both coefficients is large, equal to 102.6 thousand hours. Post-*Halliburton II*, the number of hours increased for the Large Market Cap actions involving Multiple Lead Counsel. Those are the cases in which the informal 33% cap on plaintiffs' attorney's fees is less likely to constrain fee applications. By contrast, for Large Market Cap cases without Multiple Lead Counsel, we find a statistically significant *decline* in hours after *Halliburton II*.



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If “make work” causally explains a portion of the increase in hours after *Halliburton II* for Large Market Cap actions, then one might expect more hours spent on each specific litigation task, as more duplicative work occurs. To test this hypothesis, we examine whether work efficiency decreased after *Halliburton II*. Again we focus in particular on actions against Large Market Cap companies involving Multiple Lead Counsel firms.

We use two measures of work efficiency. First, we look at the plaintiffs’ attorney hours per docket entry—controlling for case characteristics and other factors, higher hours per docket entry indicates less efficiency. Second, we look at the plaintiffs’ attorney hours per day in litigation (measured from the calendar date of the first docket entry to the calendar date of the docket entry with the final resolution of the case)—again controlling for case characteristics and other factors, higher hours per calendar day in litigation again indicates less efficiency.

For each measure we estimate an ordinary least squares model with the same independent variables as in Model 3 of Table 4 (with the Case Characteristic, Industry Effects, and Court Effects variables). We report the results for plaintiffs’ attorney hours per docket entry (Model 1) and plaintiffs’ attorney hours per day in litigation (Model 2) in Table 5.

In Table 5, the coefficients on Large Market Cap x Multiple Lead Counsel x *Halliburton II*, the triple interaction term, are positive in both models. However, the triple interaction term is significant only in Model 2 at the 1% level. The coefficient in Model 2 is economically meaningful, corresponding to 99.0 more hours per calendar day in litigation for plaintiffs’ attorneys. This increase in hours per day indicates a decreased efficiency in work in actions against Large Market

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Cap companies after *Halliburton II* involving Multiple Lead Counsel. This finding is consistent with the “make work” hypothesis.

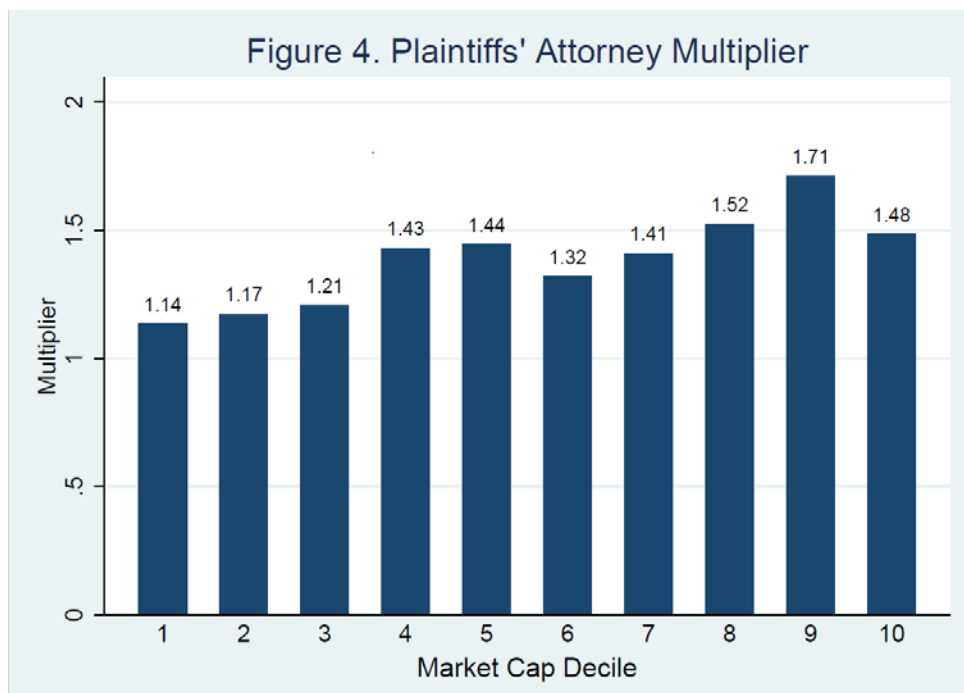
#### **4.5 The Multiplier**

The fee award that plaintiffs’ attorneys receive depends on both: 1) the hourly rate times the number of hours (the Lodestar); and 2) a risk multiplier that plaintiffs’ attorneys will typically request and that courts will often grant (the Multiplier). Plaintiffs’ attorneys will apply for a multiplier to the lodestar to compensate them for the risk that they may expend resources in litigation and not receive any compensation.

Do courts calibrate the multiplier to compensate plaintiffs’ attorneys for the actual risk they face in litigation? Or does the multiplier compensate plaintiffs’ attorneys – at the expense of the class – for something other than risk? We conjecture that courts—impressed by large settlement amounts—may be particularly likely to grant generous multipliers in Large Market Cap cases.

We test the hypothesis that courts award higher multipliers, rather to reward plaintiffs’ attorneys for obtaining a settlement in actions with more egregious securities law violations, without regard to risk. Although suits against defendants who commit egregious securities law violations may provide deterrent value, such suits typically have a low probability of dismissal, and thus, subject plaintiffs’ attorneys to less risk of uncompensated expenditures of time and money. In theory, therefore, these cases should have lower multipliers.

We start by assessing the relation between the multiplier and the potential litigation stakes. Figure 4 depicts the mean multiplier for each market cap decile.

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Note that the top three deciles have multipliers (1.53, 1.71, and 1.48 for deciles 8, 9, and 10 respectively) which generally are higher than the other deciles. Overall, the multiplier shows an upward trend with defendant-company size.

#### 4.5.1 *Probability of Settlement and the Multiplier*

We assess whether the multiplier goes up or down with the risk of settlement. If the multiplier compensates attorneys for a higher risk of a dismissal, then we expect that the multiplier should decrease as the ex ante probability of settlement increases. If the multiplier instead rewards plaintiffs' attorneys litigating cases involving more egregious securities laws violations, then we expect that the multiplier should go up with the probability of settlement. This would be a counterintuitive result because such cases are easier to prosecute and more likely to achieve financial recovery because of the presence of observable indicia of wrongdoing prior to suit filing. We assume here that more egregious violations are less likely to get dismissed.

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To distinguish between the two possible relations between the multiplier and the probability of settlement, we first estimate a logit model for the probability of settlement using the Case Characteristic variables and the Industry Effects and Court Effects controls as the independent variables. We predict the probability of settlement for each action using the estimated logit model (Settlement Probability). Second, we estimate the following ordinary least squares model using the Multiplier as the dependent variable.

$$\begin{aligned} \text{Multiplier}_i = & \alpha + \beta_1 \text{Lodestar}_i + \beta_2 \text{Settlement Probability}_i \\ & + \beta_3 \text{Large Market Cap}_i \\ & + \beta_4 \text{Settlement Probability} \times \text{Large Market Cap}_i \\ & + \text{Year Effects} + \varepsilon_i \end{aligned}$$

We include the Lodestar as an independent variable because, all else equal, we expect courts to be less likely to award large multipliers on top of large lodestars. We expect that plaintiffs' attorneys will push hardest for a high multiplier in cases involving a Large Market Cap defendant firm. In those cases fees are unlikely to be constrained by the de facto 33% cap on attorneys' fees. Accordingly, we include an interaction term between Settlement Probability and Large Market Cap. We include year fixed effects and estimate the model with robust standard errors. We report the results in Model 1 of Table 6. To assess whether the characteristics of the lead plaintiff and lead counsel firms affect the multiplier, we add Lead Plaintiff Initial Motions, Lead Plaintiff Any Institution, and Big Law Firm variables to Model 1 and report the results as Model 2 of Table 6.

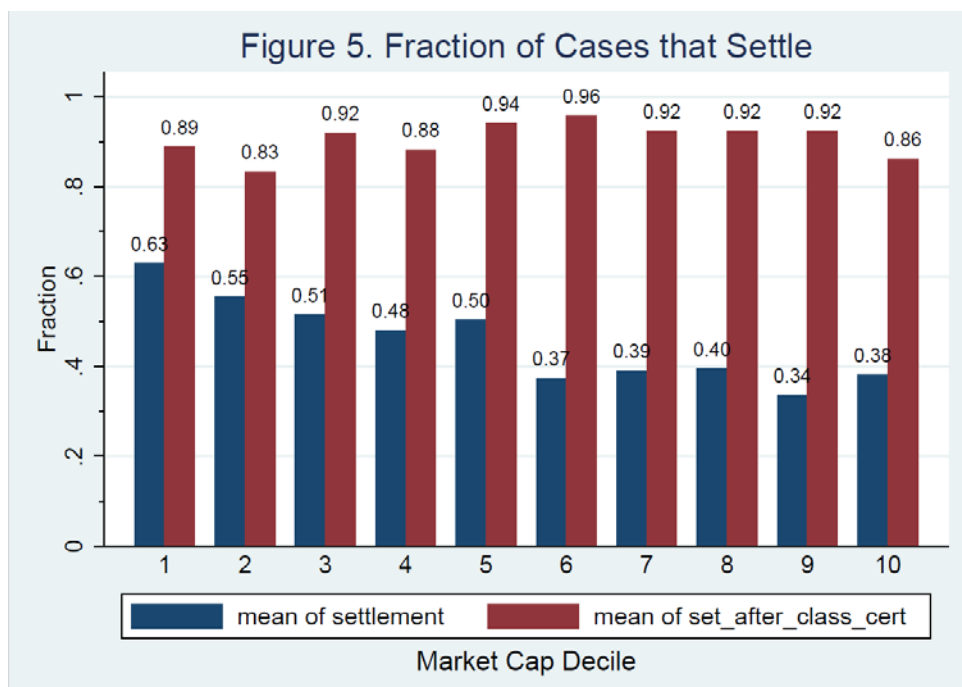
In both Models 1 and 2, the coefficient on Settlement Probability is positive and significant at the 5% level. Rather than decreasing with settlement probability, the multiplier goes up in cases that are more likely to settle. This pattern is inconsistent with the multiplier compensating for the risk of non-settlement. Instead, the result is consistent with courts using the multiplier to

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reward plaintiffs' attorneys for litigating more egregious securities law violations. In addition, the interaction term between Settlement Probability and Large Market Cap is positive and significant at the 10% and 5% levels in Models 1 and 2 respectively. The relation between more egregious securities law violations and larger multipliers is stronger for the Large Market Cap cases. In these cases plaintiffs' attorneys' fees are unlikely to be constrained by the de facto 33% cap. Finally, note that the coefficient on Big Law Firm in Model 2 is positive and significant at the 1% level. Larger plaintiffs' law firms garner higher multipliers.

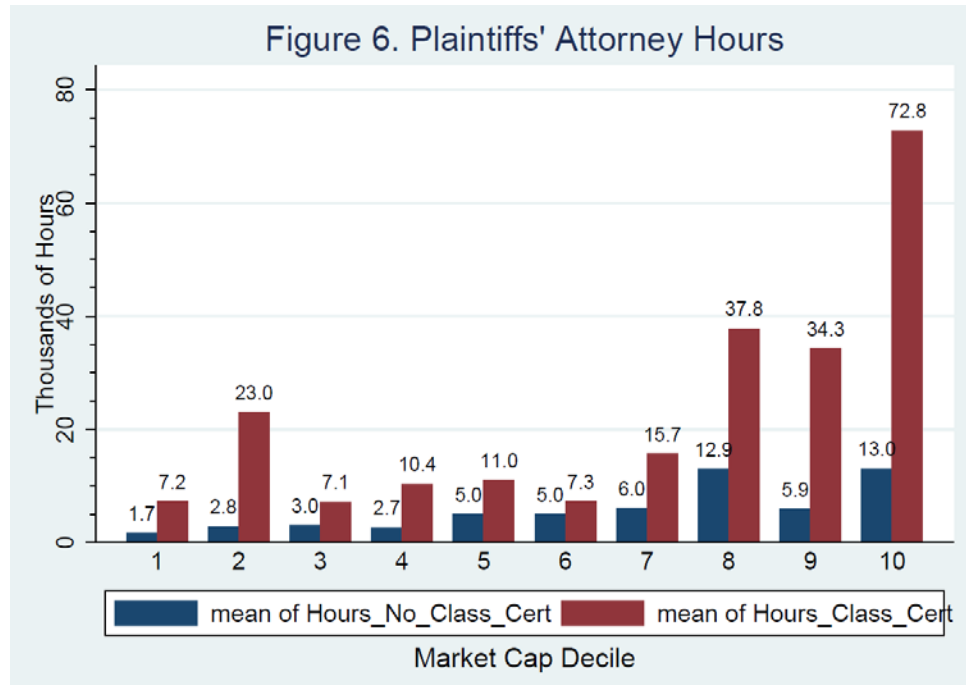
*4.5.2. The Multiplier, Hours, and the Stage of Litigation*

Is this higher multiplier for Large Market Cap actions justified by the risk of non-settlement? Figure 5 depicts the fraction of cases that settle for each market cap decile (in blue). Note that the fraction of cases that settle is only 0.38 in the Large Market Cap decile. Standing alone, this would suggest that the mean multiplier of 1.48 for the Large Market Cap decile undercompensates plaintiffs' attorneys for the risk of non-settlement.

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Note, however, from Figure 5 that the fraction of cases that settle once a class certification motion has been filed rises to 0.86 in the Large Market Cap decile, which corresponds to a multiplier of only 1.16. For plaintiffs' attorneys that pass the motion to dismiss and reach the class certification stage, the risk of non-settlement is far lower, regardless of market cap decile.

Figure 6 compares the mean plaintiffs' attorney hours for actions that settle without a motion for Class Certification being filed with case that reach the Class Certification Filing stage. The hour differential between actions that do and do not reach the Class Certification Filing stage increases as the market capitalization decile increases, spiking sharply in the Large Market Cap decile (decile 10).

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Among the Large Market Cap actions, the stage that the litigation reaches before settlement corresponds to plaintiffs' attorney hours. For Large Market Cap actions that settle, the mean hours for actions with a Class Certification Filing is 72.8 thousand hours. That figure is nearly six times the 13.0 thousand hours for actions without a Class Certification Filing.

We do a multivariate test of the increase with market capitalization decile in the differential in hours for actions that do and do not reach the Class Certification Filing stage. We estimate the following ordinary least squares model with Attorney Hours as the dependent variable.

$$\begin{aligned}
 \text{Attorney Hours}_i = & \alpha + \beta_1 \text{Large Market Cap}_i \\
 & + \beta_2 \text{Class Certification Filing}_i \\
 & + \beta_3 \text{Large Market Cap}_i \times \text{Class Certification Filing}_i \\
 & + \beta_4 \text{Lead Plaintiff Initial Motions}_i \\
 & + \beta_5 \text{Lead Plaintiff Any Institution}_i \\
 & + \beta_6 \text{Big Law Firm}_i + \text{Case Characteristic Variables} \\
 & + \text{Industry Effects} + \text{Court Effects} + \text{Year Effects} + \varepsilon_i
 \end{aligned}$$

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We include Large Market Cap, Class Certification Filing, and an interaction term between Large Market Cap and Class Certification Filing in the model. This allows us to assess the relation between the hours that plaintiffs' attorneys put into litigation higher stakes—for which the de facto 33% cap on attorneys fees is less likely to apply—and litigation that reaches the class certification stage—for which the risk of non-settlement declines. We also include the Case Characteristic variables as well as year fixed effects. We include our Industry Effects and Court Effects controls as well as year fixed effects and estimate the model with robust standard errors. Model 1 of Table 7 reports the results.

In Model 1 the coefficient on Class Certification Filing is positive and significant at the 1% level. Non-Large Market Cap actions that reach the Class Certification Filing stage correspond to 9.6 thousand more plaintiffs' attorney hours. Note also that the interaction term between Large Market Cap and Class Certification Filing is positive and significant at the 1% level. Large Market Cap actions that reach the Class Certification Filing stage correspond to 38.3 thousand more hours compared with Large Market Cap actions that do not reach the Class Certification Filing stage.<sup>15</sup> Class Certification Filing corresponds with considerably more hours for Large Market Cap actions. This is consistent with plaintiffs' attorneys who are not limited by the de facto 33% plaintiffs' attorneys fee cap investing more time once the risk of non-settlement diminishes.

Although we observe a correspondence between Large Market Cap actions that reach the Class Certification Filing stage and more plaintiffs' attorney hours, our data do not show whether these hours are incurred after the filing of the class certification motion. Typically fee applications

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<sup>15</sup> This corresponds to the sum of the coefficients on Class Certification Filing and Large Market Cap x Class Certification Filing in Model 1 of Table 8. The sum is different from zero at the 1% confidence level.



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do not break hours down by stage of litigation. It is possible that the Large Market Cap x Class Certification Filing actions have greater hours because plaintiffs' attorneys expend more hours at earlier stages in the litigation.

Although fee applications typically lack granular data on when hours are worked, we do have data on the docket number for different milestones in litigation that usually occur prior to the Class Certification Filing. If the Large Market Cap x Class Certification Filing actions involve more hours at an earlier stage, we expect that the docket numbers for the lead plaintiff decision (Lead Plaintiff Decision Docket), the final motion to dismiss (Dismissal Decision Docket), and the final complaint filing (Complaint Docket) should be greater for Large Market Cap x Class Certification Filing actions compared with other actions. To test this possibility, we re-estimate Model 1 of Table 7 replacing Attorney Hours with the following dependent variables: Lead Plaintiff Decision Docket (Model 2), Dismissal Decision Docket (Model 3), and Complaint Docket (Model 4).

In Models 2 through 4 of Table 7 the interaction terms between Large Market Cap x Class Certification Filing are not significantly different from zero. We find no evidence that the Large Market Cap x Class Certification Filing actions correspond to greater litigation activity prior to the Class Certification Filing. This supports the view that plaintiffs' attorneys in Large Market Cap actions accelerate their hours when the filing of the class certification motion becomes likely. At this point, the risk of non-settlement has declined substantially.

The fact that plaintiffs' attorneys invest more in litigation for Large Market Cap actions that reach the Class Certification Filing stage may indicate that plaintiffs' attorneys in other situations may invest sub-optimally—from the class's perspective—low resources into the

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litigation. Once relieved of the de facto 33% cap on plaintiffs' attorneys' fees and the risk of non-settlement, plaintiffs' attorneys may be free to invest a more optimal level of resources into the litigation, in other words "working hard". The same relief of constraints on plaintiffs' attorneys' fees, however, may lead plaintiffs' attorneys to increase unnecessary "make work" solely to justify higher fees.

To distinguish between these two possibilities, we use the presence of Multiple Lead Counsel, our proxy for when plaintiffs' attorneys have a greater incentive to make work. We predict that plaintiffs' attorneys with more incentive to "make work" will tend to increase hours disproportionately after the motion to dismiss and once the litigation nears the class certification stage. This will occur when: 1) the de facto 33% cap on plaintiffs' attorney fee awards is less likely to apply (the Large Market Cap decile); 2) the risk of non-settlement is the lowest (after the filing of the Class Certification motion), and 3) there are Multiple Lead Counsel (with the greatest incentive to "make work").

To test this prediction we re-estimate Model 1 of Table 7 with the addition of the Multiple Lead Counsel indicator variable, an interaction term between Multiple Lead Counsel x Class Certification Filing, and a triple interaction term between Large Market Cap x Class Certification Filing x Multiple Lead Counsel. The triple interaction term allows us to assess the difference in hours for Large Market Cap actions that reach a Class Certification Filing both with and without Multiple Lead Counsel. Table 8 reports the results from the model.

In the model in Table 8 the coefficient on Large Market Cap x Class Certification Filing x Multiple Lead Counsel is positive and significant at the 1% level. In addition, the magnitude of the coefficient is economically meaningful, corresponding to 36.3 thousand more hours for Large

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Market Cap actions that reach the Class Certification Filing stage and have Multiple Lead Counsel compared with Large Market Cap actions that reach the Class Certification Filing stage without Multiple Lead Counsel. This is consistent with plaintiffs' attorneys looking to "make work" when the risk of non-settlement declines after the filing of the class certification motion.

## 5. Conclusion

Our empirical findings shed light on how plaintiffs' attorneys litigate securities class actions with the most money at stake. We find that plaintiffs' attorneys put in far more hours in the top decile of settlements, and they are rewarded with far higher fees. This finding suggests that being appointed as lead counsel in a securities class action that is likely to end with a large settlement is like receiving a winning lottery ticket. The data also suggests, however, that at least part of the increased hours in these large settlements may result from attorneys doing work that is not necessary, especially in cases with multiple lead counsel. We also find evidence that plaintiffs' attorneys may work less efficiently in cases with the largest stakes.

Despite the increased risk of agency costs in these cases, we find that courts do not serve as a meaningful check on the fees awarded to lead counsel, although we do find evidence that courts are more willing to push back against fee requests for the Largest Market Cap decile of cases. Fee requests accompanied by larger lodestars, however, are less likely to be rejected by courts.

Our study also provides new insight into how courts view multipliers, which are one of the most important components of a fee award. We find that courts do not use the multiplier to reward plaintiffs' attorneys for taking on riskier cases. Instead, courts often use the multiplier to reward plaintiffs' attorneys for litigating more egregious securities law violations, even though

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these cases have a higher probability of a non-dismissal outcome and therefore pose less, not more, risk to plaintiffs' attorneys.

Our research, however, also has limitations. Most significantly, we cannot directly observe whether firms are inflating their hours by doing unnecessary work. In addition, we have no metric for assessing the hourly rates quoted by firms in their fee applications. Without direct evidence of inflated hours, we have to rely on proxies, such as the presence of multiple lead counsel or increased hours at certain stages of the litigation, and these proxies have their own limitations. We also recognize that the larger-stakes cases may differ from other securities class actions in ways that our data does not capture. For example, defendants may have a greater incentive to mount a strong defense in cases with higher stakes, which may offer an alternative explanation for at least some of the additional hours that plaintiffs' attorneys invest in these cases. Our study also suggests that further research into smaller cases may be useful, as our findings suggest that plaintiffs' attorneys may have a different business model in these cases.

Overall, the evidence presented here adds to a chorus of concerns over agency costs in securities class actions. Prior studies have looked at securities class actions generally, but this is the first study to focus on the heightened agency costs in those securities class actions that have the most at stake, the "mega-settlements." Our research suggests that these cases present a real risk that plaintiffs' attorneys may be running the clock – at shareholders' expense – to bolster their argument for a large fee award.

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*Working Hard, or Making Work?***Table 1: Case Characteristics****Panel A**

<b>Variable</b>	<b>N</b>	<b>Mean</b>	<b>Median</b>	<b>Standard Deviation</b>
Settlement	1562	0.476	0.000	0.500
Settlement Amount	1562	18.805	0.000	116.403
Attorney Fee Award	714	6.480	1.882	15.382
Attorney Hours	694	11.487	3.276	27.177
Hourly Fee	686	687.823	553.730	504.227
Percent of Settlement	714	0.252	0.250	0.064
Lodestar	695	5.232	1.643	12.033
Multiplier	687	1.365	1.105	0.992
Reject Fee	707	0.212	0.000	0.409

**Panel B**

<b>Variable</b>	<b>N</b>	<b>Mean</b>	<b>Median</b>	<b>Standard Deviation</b>
Class Certification Filing	1691	0.215	0.000	0.411
Summary Judgment Filing	1689	0.046	0.000	0.210
Lead Plaintiff Decision Docket	1567	35.230	30.000	21.798
Dismissal Decision Docket	1340	89.925	74.000	67.363
Complaint Docket	1708	56.055	44.000	62.068

**Panel C**

<b>Variable</b>	<b>N</b>	<b>Mean</b>	<b>Median</b>	<b>Standard Deviation</b>
Lead Plaintiff Number	1588	1.898	1.000	1.333
Lead Plaintiff Any Institution	1589	0.551	1.000	0.498
Lead Plaintiff Initial Motions	1612	2.942	2.000	2.012
Lead Counsel Number	1614	1.329	1.000	0.534
Multiple Lead Counsel	1614	0.300	0.000	0.459
Big Law Firm	1719	0.490	0.000	0.500

*Working Hard, or Making Work?***Panel D**

<b>Variable</b>	<b>N</b>	<b>Mean</b>	<b>Median</b>	<b>Standard Deviation</b>
Restatement	1701	0.228	0.000	0.420
SEC Action	1701	0.228	0.000	0.419
Other Gov Action	1701	0.249	0.000	0.432
Officer Termination	1701	0.453	0.000	0.498
Section 11	1719	0.192	0.000	0.394
Section 12	1719	0.170	0.000	0.376
Other Allegation	1719	0.029	0.000	0.168
Accounting	1701	0.250	0.000	0.433
Merger	1700	0.051	0.000	0.220
Backdating	1701	0.023	0.000	0.150
Credit Crisis	1701	0.083	0.000	0.276
FDA	1700	0.120	0.000	0.325
IPO	1701	0.109	0.000	0.311
FCPA	1701	0.019	0.000	0.136
No. Officer & Director Defendants	1719	4.724	3.000	3.763
Underwriter	1718	0.152	0.000	0.359
Accounting Firm	1719	0.082	0.000	0.274
SIC 28	1719	0.087	0.000	0.282
SIC 73	1719	0.086	0.000	0.281
SIC 36	1719	0.070	0.000	0.255
CD CAL	1719	0.088	0.000	0.283
ND CAL	1719	0.097	0.000	0.295
SDNY	1719	0.268	0.000	0.443
NJ	1719	0.044	0.000	0.204
MA	1719	0.040	0.000	0.196
ND ILL	1719	0.030	0.000	0.171
SD FL	1719	0.030	0.000	0.171

*Working Hard, or Making Work?***Table 2: Settlement Size and Attorneys' Fees**

<b>Settlement Decile</b>	<b>Settlement</b>	<b>Fee Award</b>	<b>Hourly Fee</b>	<b>Attorney Fees %</b>	<b>Institutional Lead Plaintiff</b>	<b>Big Law Firm</b>
1	1.1	0.3	431.9	0.268	0.237	0.132
2	2.1	0.6	475.3	0.270	0.361	0.370
3	3.0	0.8	645.4	0.278	0.372	0.250
4	4.2	1.1	751.4	0.274	0.507	0.425
5	6.4	1.7	569.8	0.271	0.506	0.468
6	9.0	2.3	700.8	0.254	0.621	0.567
7	13.0	3.3	700.1	0.250	0.808	0.722
8	21.4	5.1	824.4	0.238	0.643	0.657
9	41.8	9.7	864.8	0.234	0.838	0.770
10	295.5	39.5	938.3	0.185	0.958	0.811

Settlement and Fee Award are in millions of dollars.



*Working Hard, or Making Work?***Table 3: Attorney Fee Request Rejection**

	<b>Model 1 Rejection</b>
Large Market Cap	1.245* (2.44)
Multiple Lead Counsel	-0.0687 (-0.29)
Large Market Cap x Multiple Lead Counsel	-0.752 (-0.85)
Lodestar	-7.74e-08** (-3.13)
Requested Attorneys' Fees	6.55e-08** (4.05)
Big Law Firm	-0.146 (-0.69)
Constant	-1.877** (-5.15)
Industry Controls	Yes
Court Controls	Yes
Year Fixed Effects	Yes
<i>N</i>	685
Pseudo <i>R</i> <sup>2</sup>	0.1256

z statistics in parentheses

+  $p < 0.10$ , \*  $p < 0.05$ , \*\*  $p < 0.01$

*Working Hard, or Making Work?***Table 4: Hours**

	<b>Model 1 Hours</b>	<b>Model 2 Hours</b>	<b>Model 3 Hours</b>
Large Market Cap	31.08** (4.84)	20.15** (3.20)	19.44** (2.97)
Multiple Lead Counsel	4.077* (2.01)	2.315 (1.17)	2.191 (1.00)
Large Market Cap x Multiple Lead Counsel		28.86* (2.14)	25.80+ (1.80)
<i>Halliburton II</i>			0.432 (0.12)
Large Market Cap x <i>Halliburton II</i>			-24.91** (-2.72)
Multiple Lead Counsel x <i>Halliburton II</i>			1.816 (0.45)
<i>Halliburton II</i> x Large Market Cap x Multiple Lead Counsel			102.6** (5.82)
Lead Plaintiff Initial Motions	1.047* (2.10)	1.104* (2.25)	1.167* (2.14)
Lead Plaintiff Any Institution	5.821** (4.84)	5.707** (4.78)	5.744** (4.45)
Big Law Firm	4.921** (3.00)	4.750** (2.98)	5.132** (3.03)
Restatement	-5.439* (-2.19)	-4.753* (-1.98)	-4.682+ (-1.86)
SEC Action	1.414 (0.77)	1.379 (0.77)	1.379 (0.71)
Other Gov Action	5.583** (2.86)	5.539** (2.87)	6.059** (2.86)
Officer Termination	2.131 (1.31)	1.639 (1.05)	2.109 (1.28)
Section 11	-3.566 (-1.43)	-3.932 (-1.53)	-4.110 (-1.45)
Section 12	2.256 (1.00)	2.863 (1.29)	2.449 (1.06)

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Other Allegation	8.994 (1.20)	6.432 (0.92)	1.208 (0.24)
Accounting	0.687 (0.30)	1.584 (0.74)	2.636 (1.15)
Merger	3.929 (0.79)	2.311 (0.52)	-0.0883 (-0.02)
Backdating	-5.584 (-1.42)	-5.313 (-1.38)	-6.394 (-1.58)
Credit Crisis	4.299 (0.94)	4.915 (1.08)	3.744 (0.80)
FDA	-0.489 (-0.17)	-0.0968 (-0.03)	2.248 (0.73)
IPO	-7.306* (-2.31)	-7.190* (-2.31)	-7.109* (-2.09)
FCPA	14.79 (0.67)	14.53 (0.66)	14.16 (0.65)
No. Officer & Director Defendants	1.476** (3.17)	1.464** (3.18)	1.741** (3.43)
Underwriter	5.955* (1.99)	5.360* (1.74)	4.972 (1.51)
Accounting Firm	7.655* (2.22)	7.488* (2.17)	6.631* (1.94)
Constant	-17.83** (-3.86)	-17.28** (-3.72)	-19.09** (-3.86)
Industry Controls	Yes	Yes	Yes
Court Controls	Yes	Yes	Yes
Year Fixed Effects	Yes	Yes	Yes
<i>N</i>	680	680	628
adj. <i>R</i> <sup>2</sup>	0.349	0.364	0.378

*t* statistics in parentheses

+  $p < 0.10$ , \*  $p < 0.05$ , \*\*  $p < 0.01$

*Working Hard, or Making Work?***Table 5: Efficiency**

	<b>Model 1 Hours/ Docket Entry</b>	<b>Model 2 Hours/ Litigation Day</b>
Large Market Cap	65.42** (3.81)	16.53+ (1.95)
Multiple Lead Counsel	14.01** (3.14)	0.828 (0.76)
Large Market Cap x Multiple Lead Counsel	26.85 (0.82)	0.424 (0.04)
<i>Halliburton II</i>	0.896 (0.08)	4.462+ (1.71)
Large Market Cap x <i>Halliburton II</i>	20.55 (0.98)	-17.05+ (-1.73)
Multiple Lead Counsel x <i>Halliburton II</i>	18.96 (1.38)	1.295 (0.48)
<i>Halliburton II</i> x Large Market Cap x Multiple Lead Counsel	44.90 (1.15)	99.00** (8.09)
Lead Plaintiff Initial Motions	1.326 (1.41)	0.695* (2.07)
Lead Plaintiff Any Institution	21.49** (6.57)	3.804** (5.07)
Big Law Firm	9.988** (2.68)	2.165+ (1.70)
Restatement	-4.963 (-0.92)	-0.484 (-0.27)
SEC Action	1.750 (0.39)	0.909 (0.89)
Other Gov Action	10.75* (2.22)	2.799* (2.18)
Officer Termination	3.216 (0.77)	0.944 (1.20)
Section 11	-2.814 (-0.41)	-1.006 (-0.64)
Section 12	6.336 (1.19)	-0.326 (-0.26)

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Other Allegation	-7.146 (-0.66)	-1.091 (-0.31)
Accounting	7.411 (1.43)	1.151 (1.11)
Merger	-4.426 (-0.51)	-0.289 (-0.15)
Backdating	-6.714 (-0.71)	-3.439 (-1.48)
Credit Crisis	20.61* (2.35)	-0.971 (-0.43)
FDA	8.864 (1.13)	0.950 (0.52)
IPO	-12.87* (-1.97)	-2.738 (-1.47)
FCPA	3.678 (0.15)	15.87 (0.89)
No. Officer & Director Defendants	1.308 (1.45)	0.800** (2.62)
Underwriter	-1.697 (-0.22)	2.423 (1.41)
Accounting Firm	2.076 (0.32)	0.217 (0.10)
Constant	-10.94 (-1.24)	-10.65** (-3.32)
Industry Controls	Yes	Yes
Court Controls	Yes	Yes
Year Fixed Effects	Yes	Yes
<i>N</i>	625	628
adj. <i>R</i> <sup>2</sup>	0.357	0.271

*t* statistics in parentheses

+  $p < 0.10$ , \*  $p < 0.05$ , \*\*  $p < 0.01$

*Working Hard, or Making Work?***Table 6: Multiplier**

	Model 1		Model 2
	Multiplier	Multiplier	
Lodestar	-0.0105** (-3.34)	-0.0133** (-3.46)	
Settlement Probability	0.456* (2.45)	0.366* (2.08)	
Large Market Cap	-0.641 (-1.33)	-0.860+ (-1.79)	
Large Market Cap x Settlement Probability	1.735+ (1.83)	2.094* (2.21)	
Lead Plaintiff Initial Motions		0.00754 (0.43)	
Lead Plaintiff Any Institution		0.110 (1.55)	
Big Law Firm		0.330** (4.33)	
Constant	1.163** (7.11)	0.858** (5.67)	
Year Fixed Effects	Yes	Yes	
<i>N</i>	681	672	
adj. <i>R</i> <sup>2</sup>	0.042	0.078	

*t* statistics in parentheses+  $p < 0.10$ , \*  $p < 0.05$ , \*\*  $p < 0.01$

*Working Hard, or Making Work?***Table 7: Class Certification Stage of Litigation**

	<b>Model 1 Attorney Hours</b>	<b>Model 2 Lead Plaintiff Decision Docket</b>	<b>Model 3 Dismissal Decision Docket</b>	<b>Model 4 Complaint Docket</b>
Large Market Cap	2.462 (0.63)	4.773* (2.22)	15.16** (2.87)	9.710* (1.96)
Class Certification Filing	9.794** (6.41)	-0.177 (-0.16)	9.526** (2.61)	13.66** (4.01)
Large Market Cap x Class Certification Filing	37.94** (4.21)	-2.188 (-0.67)	14.38 (0.77)	31.09 (1.11)
Lead Plaintiff Initial Motions	1.023* (2.17)	6.186** (20.49)	10.21** (11.40)	8.286** (9.26)
Lead Plaintiff Any Institution	4.706** (4.39)	2.639** (3.17)	3.472 (1.40)	4.586* (2.21)
Big Law Firm	4.000** (2.80)	-0.0705 (-0.08)	7.181* (2.53)	3.656 (0.95)
Restatement	-5.688* (-2.46)	2.071 (1.62)	3.412 (0.78)	-1.578 (-0.32)
SEC Action	1.223 (0.71)	1.059 (0.87)	19.70** (3.72)	17.03** (3.50)
Other Gov Action	5.742** (3.14)	0.807 (0.76)	17.53** (4.19)	11.34** (3.41)
Officer Termination	2.664+ (1.80)	-0.162 (-0.19)	6.135* (2.13)	6.702** (2.75)
Section 11	-2.017 (-0.87)	-5.226** (-2.60)	-7.692 (-1.12)	-5.913 (-1.00)
Section 12	2.691 (1.22)	3.347+ (1.73)	8.597 (1.54)	4.651 (0.88)
Other Allegation	8.123 (1.17)	2.136 (0.87)	13.64 (1.14)	8.876 (0.93)
Accounting	-1.672 (-0.80)	-1.067 (-0.99)	-1.667 (-0.41)	-2.883 (-0.66)
Merger	3.505 (0.78)	1.635 (0.78)	25.35+ (1.67)	9.031 (1.28)
Backdating	-4.991	6.540+ (1.67)	-1.627	-15.04

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	(-1.33)	(1.68)	(-0.11)	(-1.63)
Credit Crisis	5.180 (1.19)	2.092 (1.18)	0.161 (0.02)	5.947 (0.91)
FDA	-1.870 (-0.70)	-1.042 (-0.86)	-0.230 (-0.06)	2.533 (0.58)
IPO	-7.810* (-2.58)	2.503 (1.51)	-8.991 (-1.43)	-3.599 (-0.63)
FCPA	15.28 (0.71)	3.582 (1.12)	23.80 (1.21)	1.719 (0.17)
No. Officer & Director Defendants	1.339** (3.13)	0.363* (2.01)	2.748** (3.57)	2.578* (2.23)
Underwriter	5.763* (2.10)	3.976+ (1.81)	24.54** (3.10)	10.87 (1.37)
Accounting Firm	7.020* (2.13)	1.790 (0.84)	42.69** (4.71)	18.54** (2.59)
Constant	-18.03** (-3.86)	13.81** (6.13)	12.61+ (1.66)	-7.473 (-1.38)
Industry Controls	Yes	Yes	Yes	Yes
Court Controls	Yes	Yes	Yes	Yes
Year Fixed Effects	Yes	Yes	Yes	Yes
<i>N</i>	679	1519	1292	1556
adj. <i>R</i> <sup>2</sup>	0.414	0.470	0.419	0.281

*t* statistics in parentheses

+  $p < 0.10$ , \*  $p < 0.05$ , \*\*  $p < 0.01$



*Working Hard, or Making Work?***Table 8: Multiple Lead Counsel and the Class Certification Stage of Litigation**

	<b>Attorney Hours</b>
Large Market Cap	4.846 (1.25)
Multiple Lead Counsel	0.183 (0.14)
Large Market Cap x Multiple Lead Counsel	-8.960 (-0.96)
Class Certification Filing	7.596** (4.02)
Large Market Cap x Class Certification Filing	8.078 (1.58)
Multiple Lead Counsel x Class Certification Filing	22.65* (2.21)
Class Certification Filing x Large Market Cap x Multiple Lead Counsel	36.27+ (1.88)
Lead Plaintiff Initial Motions	1.014* (2.09)
Lead Plaintiff Any Institution	4.480** (4.22)
Big Law Firm	3.855** (2.63)
Restatement	-5.111* (-2.27)
SEC Action	1.133 (0.70)
Other Gov Action	5.428** (3.10)
Officer Termination	1.987 (1.46)
Section 11	-1.705 (-0.78)
Section 12	3.246 (1.54)
Other Allegation	3.430 (0.53)

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Accounting	-0.693 (-0.34)
Merger	1.765 (0.45)
Backdating	-4.855 (-1.33)
Credit Crisis	5.503 (1.27)
FDA	-1.504 (-0.57)
IPO	-7.723** (-2.61)
FCPA	14.52 (0.65)
No. Officer & Director Defendants	1.303** (3.00)
Underwriter	3.966 (1.54)
Accounting Firm	6.853* (2.08)
Constant	-17.24** (-3.73)
Industry Controls	Yes
Court Controls	Yes
Year Fixed Effects	Yes
<i>N</i>	679
adj. <i>R</i> <sup>2</sup>	0.436

*t* statistics in parentheses

+  $p < 0.10$ , \*  $p < 0.05$ , \*\*  $p < 0.01$

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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ARKANSAS TEACHER RETIREMENT SYSTEM,  
on behalf of itself and all others similarly situated,

Plaintiff,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

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No. 11-cv-10230 MLW

ARNOLD HENRIQUEZ, MICHAEL T. COHN, WILLIAM R.  
TAYLOR, RICHARD A. SUTHERLAND, and those similarly  
situated,

Plaintiff,

v.

STATE STREET BANK AND TRUST COMPANY, STATE  
STREET GLOBAL MARKETS, LLC and DOES 1-20,

Defendants.

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No. 11-cv-12049 MLW

THE ANDOVER COMPANIES EMPLOYEE SAVINGS AND  
PROFIT SHARING PLAN, on behalf of itself, and JAMES  
PEHOUSHEK-STANGELAND, and all others similarly  
situated,

Plaintiff,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

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No. 12-cv-11698 MLW

**LIEFF CABRASER HEIMANN & BERNSTEIN, LLP'S OPPOSITION TO  
THE HAMILTON LINCOLN LAW INSTITUTE'S CENTER FOR CLASS  
ACTION FAIRNESS'S MOTION FOR LEAVE TO FILE ADDITIONAL EXHIBIT**

The Court was very clear, prior to setting a July 17 deadline<sup>1</sup> for any memoranda concerning the “implications of the June 24, 25, and 26, 2019 hearings,”<sup>2</sup> that the parties and any *amici* were to file their submissions simultaneously, and (addressing the parties directly) stated “[i]f you think you have to reply, you’ll ask me.” Hearing Tr., June 26, 2019, at 252:9-10. That remark by the Court could not have been lost on Mr. Bednarz (counsel for the Hamilton Lincoln Law Institute’s Center for Class Action Fairness (“CCAF”)), because it was in direct response to his request for permission to file a reply in response to any “new” argument about contract and staff attorneys. *Id.* at 252:4-6.

Section K of the Administrative Procedures for Electronic Case Filing in the United States District Court for the District of Massachusetts (“APECF”) (as amended through July, 2011) provides that “all electronic transmissions of documents must be completed prior to 6:00 PM, Eastern Standard (or Daylight Savings) Time, on the date on which it is due, in order to be considered timely filed that day” (emphasis in original); *see also* L.R. 5.4(d) of the United States District Court for the District of Massachusetts (same). Failure to comply with the Local Rules for this District or the APECF (*see* APECF § C.3) is subject to sanctions, pursuant to L.R. 1.3, which may include “dismissal, default, or the imposition of other sanctions.”

CCAF flouted the Court’s deadline, and filed its memorandum, declaration, and exhibits nearly six hours late (11:55 pm, to be exact) on July 17. *See* ECF No. 583. Accordingly, CCAF’s submission was not “timely filed that day.” Further, circumstances suggest CCAF’s action was deliberate. In its brief, CCAF purported to respond to points made by the other parties in their filings earlier that day, including accusing Lief Cabraser of “chutzpah”<sup>3</sup> for something Lief Cabraser had argued in its timely-filed memorandum. *See* ECF No. 583 at 12.

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<sup>1</sup> Order dated July 3, 2019 (ECF No. 574).

<sup>2</sup> Order dated June 28, 2019 (the “June 28 Order”) (ECF No. 564).

<sup>3</sup> This accusation by CCAF is more than a little ironic, considering its purposefully-tardy filing.

Accordingly, not only did CCAF ignore the deadline, it also ignored the Court’s directive—made in direct response to CCAF’s question at the June 26 hearing—that the parties simultaneously file their papers and not engage in “reply” arguments without permission. The appropriate response to this is to reject CCAF’s filing.<sup>4</sup> *See* APECF § C.3 and L.R. 1.3; *see also* *Carpenter v. Rivera*, 2014 WL 4928963, at \*2 (D. Mass. Sept. 30, 2014) (because “[u]nder this Court’s Local Rules, all electronic transmissions of documents must be completed prior to 6:00 p.m. to be considered timely filed that day,” motion for reconsideration under Fed. R. Civ. P. 59(e) filed “six minutes late” was deemed filed the following day, resulting in denial of motion).<sup>5</sup>

When Mr. Bednarz contacted the other parties yesterday for their consent to his motion to file an additional exhibit, I (the undersigned) responded to him as follows:

You filed your memo six hours late yesterday and took that opportunity to reply to certain of our arguments in our timely filed memo. It appears that your late filing, in violation of the rules of the court, was deliberate. We oppose this request now and if you persist we will reply to the court regarding your deliberate flouting of the local rules regarding deadlines for filings.

In his filing last night (*see* ECF No. 584 at 1), Mr. Bednarz truncated the position I conveyed to him, and has made no effort to dispute that CCAF’s earlier tardiness was deliberate. The proper response to this is to reject CCAF’s request for permission to tardily file an additional exhibit.

Moreover, because no discovery or other means of testing the accuracy or credibility of the contentions contained in CCAF’s proposed new exhibit will take place—as contrasted with the

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<sup>4</sup> The Special Master also missed the 6 pm EDT deadline (by 1 minute). *See* ECF No. 582. Unlike CCAF’s tardiness, that timing, along with the fact that the Special Master (unlike CCAF) did not include argument purporting to respond to arguments filed by another party that same day, suggests inadvertence.

<sup>5</sup> Although *Carpenter* involved Fed. R. Civ. P. 6(b)(2), which specifically disallows courts from extending the time for certain specific submissions and is not implicated here, Judge Hillman wrote separately that given his “pointed admonition” regarding deadlines, “counsel’s failure to timely file the motion exhibits a disrespect for this Court’s orders and rules,” and that “even if the Court had the power to extend the deadline, I would not find that Plaintiff has established cause for doing so.” *Id.* at n. 2.

extensive review conducted by the Special Master of the quality and extent of the work performed by plaintiffs' counsel—CCAF's motion should be denied.

Dated: July 19, 2019

Respectfully submitted,

By: /s/ Richard M. Heimann

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**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will thereby be served on this date upon counsel of record for each party identified on the Notice of Electronic Filing.

July 19, 2019

/s/ Richard M. Heimann  
Richard M. Heimann