UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE BANK OF AMERICA CORP. SECURITIES, DERIVATIVE, AND EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA) LITIGATION	Master File No. 09 MDL 2058 (PKC) ECF CASE
THIS DOCUMENT RELATES TO: Consolidated Securities Action	

MEMORANDUM OF LAW IN SUPPORT OF CO-LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

Dated: February 19, 2013

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

OTHER AUTHORITIES

Court-appointed Co-Lead Counsel, Bernstein Litowitz Berger & Grossmann LLP ("BLB&G"), Kaplan Fox & Kilsheimer, LLP ("Kaplan Fox"), and Kessler Topaz Meltzer & Check, LLP ("KTMC") (collectively, "Co-Lead Counsel"), having achieved a Settlement providing for a recovery of $2,425,000,000 in cash (the "Settlement Amount") for the benefit of the Class in this action, as well as the agreement of Bank of America Corporation ("BoA") to implement or continue certain significant corporate governance changes, respectfully submit this memorandum of law in support of their motion, pursuant to Fed. R. Civ. P. 23(h), for an award of attorneys' fees in the amount of $158,549,766.46, representing 6.56% of the Settlement Amount net of Plaintiffs' Counsel's expenses (*i.e.*, 6.56% of the $2,425,000,000 Settlement Amount less expenses of $8,082,828.32) plus interest on such amount at the same rate as earned by the Settlement Fund.[1] Co-Lead Counsel also seek reimbursement of $8,082,828.32 in litigation expenses that were reasonably and necessarily incurred by Plaintiffs' Counsel in prosecuting and resolving the Action, as well as awards pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA") for costs and expenses incurred by Lead Plaintiffs directly related to their representation of the Class in the total amount of $453,003.04.

[1] Lead Plaintiffs, the State Teachers Retirement System of Ohio ("STRS Ohio"); the Ohio Public Employees Retirement System ("Ohio PERS"); the Teacher Retirement System of Texas ("Texas Teachers"); Stichting Pensioenfonds Zorg en Welzijn, represented by PGGM Vermogensbeheer B.V. ("PGGM"); and Fjärde AP-Fonden ("AP-4"), are simultaneously submitting herewith the Joint Declaration of Steven B. Singer, Frederic S. Fox, and David Kessler in Support of (A) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation and (B) Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Joint Declaration" or "Joint Decl."). The Court is respectfully referred to the Joint Declaration for a detailed description of, *inter alia*, the history of the Action; the nature of the claims asserted; the negotiations leading to the Settlement; the value of the Settlement to the Class, as compared to the risks and uncertainties of continued litigation; and a description of the services Co-Lead Counsel provided for the benefit of the Class. Unless otherwise noted, capitalized terms have the meanings set out in the Joint Declaration and in the Stipulation and Agreement of Settlement dated as of November 30, 2012 (the "Stipulation").

PRELIMINARY STATEMENT

The settlement of this Action for $2.425 billion in cash, plus corporate governance reforms, represents an outstanding result. The Settlement is the fourth largest ever funded by a single corporate defendant for violations of the federal securities laws (and overall the sixth largest securities class action settlement in history); the largest resolving a claim under Section 14(a) of the Exchange Act; and by far the largest securities class action settlement related to the subprime financial crisis. We respectfully submit that this exceptional result was achieved through the skill, tenacity and effective advocacy of Co-Lead Counsel, who vigorously litigated this Action for more than three-and-a-half years on a purely contingent fee basis against numerous highly skilled defense counsel. The Settlement was achieved only weeks before trial and in the face of numerous hurdles and risks that posed a real threat of obtaining no recovery for the Class, much less the exceptional Settlement now before the Court for approval.

As detailed in the accompanying Joint Declaration and Section IV.A below, Plaintiffs' Counsel dedicated very substantial resources to this litigation having collectively spent over 193,500 hours in its prosecution. Co-Lead Counsel's efforts included, among other things: drafting two detailed amended complaints; successfully moving for partial modification of the PSLRA's mandatory discovery stay; opposing two rounds of Defendants' motions to dismiss; obtaining class certification in a vigorously contested motion; engaging in extensive fact and expert discovery, including participation in 61 depositions and the review of more than 4.75 million pages of documents; opposing Defendants' motions for summary judgment and preparing Lead Plaintiffs' own motion for partial summary judgment; and preparing for trial, including briefing motions *in limine* and *Daubert* motions.

The Settlement is a particularly exceptional result when considered in light of the considerable risks and challenges confronted in this Action from the outset. As set forth in detail in the Joint Declaration, Lead Plaintiffs faced substantial hurdles in establishing Defendants' liability with respect to both their fraud claims under Section 10(b) and their negligence claims under Section 14(a). For example, Lead Plaintiffs faced the risk that the Court or a jury could find that Defendants did not act recklessly or negligently in failing to disclose Merrill's fourth-quarter 2008 losses and the bonus agreement; that the alleged omissions were immaterial in light of other information in the market; or that Defendants had no duty to disclose the allegedly omitted information. There were also substantial risks in establishing loss causation and damages. The relative paucity of case law establishing the remedies available to Class Members under Section 14(a), including whether the Section 14(a) remedy was direct or derivative and the proper measure of damages it provided, presented significant risks. We also faced substantial risks in proving that the series of alleged corrective disclosures in January 2009 identified by Lead Plaintiffs had, in fact, revealed the information that they had alleged was previously undisclosed; and that the price declines on the identified corrective disclosure dates were caused by the alleged corrective disclosures. *See* Joint Decl. ¶¶ 125-145 and Section IV.B herein.

As compensation for their efforts on behalf of the Class, Co-Lead Counsel request a fee award in the amount of $158,549,766.46 plus interest, and reimbursement of the litigation expenses incurred in connection with the prosecution and resolution of the Action in the amount of $8,082,828.32. The requested attorneys' fees are significantly below the range of fees commonly awarded in comparable settlements, whether considered as a percentage of the Settlement or on a multiplier basis. Indeed, the requested fee represents a multiplier of approximately 1.8 on Plaintiffs' Counsel's total lodestar, a multiplier that is well below the range typically awarded in complex class actions with substantial contingency risks such as this one.

Lead Plaintiffs, each of which is a sophisticated institutional investor, have evaluated Co-Lead Counsel's application for fees and expenses and have endorsed it as fair and reasonable. *See* Neville Decl. ¶¶ 8-9; Becker Decl. ¶¶ 8-9; Wei Decl. ¶¶ 9-10; Groenewout-Hendriks Decl. ¶¶ 8-9; and Kåremer Decl. ¶¶ 8-9, attached as Exhibits 2 - 6 to the Joint Decl. The 6.56% net fee award requested is consistent with or below the amounts set forth in the retainer agreements entered into at the outset of the Action by each of the Lead Plaintiffs with the Co-Lead Counsel firm they respectively retained. Joint Decl. ¶¶ 180-181, 197. The fact that the requested fee is consistent with retainer agreements entered into by sophisticated Lead Plaintiffs appointed pursuant to the PSLRA, and has been reviewed and endorsed by Lead Plaintiffs at the conclusion of the Action, is another significant factor strongly supporting approval of the fee request.

In addition, pursuant to the Court's Order Preliminarily Approving Proposed Settlement and Providing for Notice dated December 4, 2012 (ECF No. 771) (the "Preliminary Approval Order"), more than 3.2 million copies of the Settlement Notice have been mailed to potential Class Members and nominees, and the Summary Notice was published once in each of *The Wall Street Journal*, *The New York Times*, and *Financial Times* and transmitted once over the *PR Newswire*. *See* Affidavit of Stephen J. Cirami Regarding (A) Mailing of the Settlement Notice and Proof of Claim Form; (B) Publication of the Summary Notice; and (C) Report on Opt-Ins Received to Date, attached as Exhibit 7 to the Joint Decl. ("Cirami Aff."), at ¶¶ 6-7. The Settlement Notice advised potential Class Members that Co-Lead Counsel would seek fees equal to 6.56% of the Settlement Fund and reimbursement of litigation expenses and PSLRA awards in an amount not to exceed $17.5 million. *See* Cirami Aff. Exhibit A, at ¶¶ 5, 103. While the deadline set by the Court for Class Members to object to the requested attorneys' fees and expenses has not yet passed, to date, only one objection to the amount of attorneys' fees and expenses set forth in the Settlement Notice has been received. *See* Joint Decl. at ¶¶ 178, 212.[2]

Thus, Co-Lead Counsel respectfully request that the Court approve their application for an award of attorneys' fees and reimbursement of litigation expenses and PSLRA awards.

ARGUMENT

I. CO-LEAD COUNSEL ARE ENTITLED TO AN AWARD OF ATTORNEYS' FEES FROM THE COMMON FUND

The Supreme Court has long recognized that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000). Courts recognize that awards of fair attorneys' fees from a common fund "serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons, and to discourage future misconduct of a similar nature." *In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400 (CM)(PED), 2010 WL 4537550, at *23 (S.D.N.Y. Nov. 8, 2010)

[2] A copy of the objection submitted by Scott Boatwright is attached as Exhibit 9 to the Joint Declaration. Mr. Boatwright's primary objection is that the fee request is not "reasonable compensation for the work of Co-Lead Counsel in this case." Mr. Boatwright, however, acknowledges that his knowledge of the litigation is "limited to press reports and the Notice of Proposed Settlement and Plan of Allocation" and that he does not have the necessary information to fully assess the fees sought by Co-Lead Counsel. Co-Lead Counsel will post this memorandum, along with the other documents in support of the Settlement and fee request, including the Joint Declaration which details the extensive time and effort expended by Co-Lead Counsel during the pendency of this Action, on the website, www.boasecuritieslitigation.com, for review by Class Members. The deadline for the submission of objections is March 5, 2013. Should any additional objections be received, Co-Lead Counsel will address them, along with Mr. Boatwright's objection, in reply papers, which will be filed with the Court on March 29, 2013. Counsel is also aware of another potential objection which was served upon defense counsel by Mr. Robert Shattuck in a separate matter and which states that it will also be filed in the ***Bank of America*** matter at the appropriate time. As of this date, however, the objection has yet to be filed in this Action or served upon Co-Lead Counsel in accordance with the Preliminary Approval Order. If filed and served in a timely fashion, Co-Lead Counsel will also address the Shattuck Objection in our reply papers.

(internal quotation marks omitted); *see In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115808, at *2 (S.D.N.Y. Nov. 7, 2007) (same).

Indeed, the Supreme Court has emphasized that private securities actions, such as the instant Action, are "an essential supplement to criminal prosecutions and civil enforcement actions" brought by the SEC. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007); *accord Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (private securities actions provide "'a most effective weapon in the enforcement' of the securities laws and are 'a necessary supplement to [SEC] action.'") (citation omitted)). Compensating plaintiffs' counsel for the risks they take in bringing these actions is essential, because "[s]uch actions could not be sustained if plaintiffs' counsel were not to receive remuneration from the settlement fund for their efforts on behalf of the class." *Hicks v. Morgan Stanley*, No. 01 Civ. 10071 (RJH), 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005).

II. THE COURT SHOULD AWARD A REASONABLE PERCENTAGE OF THE COMMON FUND

Co-Lead Counsel submit that this Court should award a fee based on a percentage of the common fund obtained for the Class. The Second Circuit has expressly approved the percentage method, recognizing that it "directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) ("*Visa*"); *see also Goldberger*, 209 F.3d at 48-50 (holding that either the percentage or lodestar method may be used, but noting that "the lodestar method proved vexing" and had resulted in "an inevitable waste of judicial resources"); *Savoie v. Merchs. Bank*, 166 F.3d 456, 460 (2d Cir. 1999) (the "percentage-of-the-fund method has been deemed a solution to certain problems that may arise when the lodestar method is used in common fund cases"). The Supreme Court has also endorsed the percentage method, stating that "under the 'common fund doctrine' . . . a reasonable fee is based on a percentage of the fund bestowed on the class." *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984).

District Courts repeatedly recognize the benefits of the percentage method in common fund cases. As the Second Circuit has noted, the "trend in this Circuit is toward the percentage method." *Visa*, 396 F.3d at 121; *see Fogarazzo v. Lehman Bros., Inc.*, No. 03-cv-5194 (SAS), 2011 WL 671745, at *2 (S.D.N.Y. Feb. 23, 2011); *In re Comverse Tech., Inc. Sec. Litig.*, No. 06-CV-1825 (NGG), 2010 WL 2653354, at *2 (E.D.N.Y. June 24, 2010); *In re Marsh & McLennan Cos. Sec. Litig.*, No. 04 Civ. 8144 (CM), 2009 WL 5178546, at *14 (S.D.N.Y. Dec. 23, 2009).

Additionally, the percentage method is what Lead Plaintiffs, who were vigilant in their responsibility to the Class in negotiating the fee agreements with their respective counsel, chose as the method for determining the fees that Co-Lead Counsel could seek. Joint Decl. ¶¶ 180-181.

III. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE UNDER EITHER THE PERCENTAGE-OF-THE-FUND METHOD OR THE LODESTAR METHOD

A. The Requested Attorneys' Fees Are Reasonable Under the Percentage-of-the-Fund Method

The Supreme Court has recognized that an appropriate court-awarded fee is intended to approximate what counsel would receive if they were bargaining for the services in the marketplace. *See Missouri v. Jenkins*, 491 U.S. 274, 285-86 (1989). If this were a non-representative action, the customary fee arrangement would be contingent, on a percentage basis, and in the range of 30% to 33% of the recovery. *See Blum v. Stenson*, 465 U.S. at 903 ("In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery.") (Brennan, J., concurring).

In securities class actions, attorneys' fees awarded routinely range from 20% to 33% of the settlement fund and commonly represent multipliers of 3 to 4.5 of counsel's lodestar. *See* 4

NEWBERG ON CLASS ACTIONS § 14:6 (4th ed. 2012) ("In the normal range of common fund recoveries in securities and antitrust suits, common fee awards fall in the 20 to 33 per cent range"); *Visa*, 396 F.3d at 123 ("multipliers of between 3 and 4.5 have become common") (quoting *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 489 (S.D.N.Y. 1998)).

In the handful of securities class action cases like this one in which settlements of over a billion dollars have been obtained, fee awards have been granted in the range of 7% to 14.5% of the recovery, and the fee awards represent, on average, a lodestar multiplier of nearly 3.5. *See* Appendix A hereto. The fee requested here, at 6.56% and a 1.8 multiplier, is significantly lower than awards in comparable cases on both a percentage and a multiplier basis. *See, e.g., In re Enron Corp. Sec., Derivative & ERISA Litig.*, 586 F. Supp. 2d 732, 778-79 (S.D. Tex. 2008) (awarding 9.52% of $7.227 billion settlement fund, representing a 5.2 multiplier); *In re Tyco Int'l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 265-71 (D.N.H. 2007) (awarding 14.5% of $3.2 billion settlement fund, representing a 2.7 multiplier); *In re Royal Ahold N.V. Sec. & ERISA Litig.*, 461 F. Supp. 2d 383, 387 (D. Md. 2006) (awarding 12% of $1.1 billion settlement fund, representing a 2.57 multiplier); *In re McKesson HBOC, Inc. Sec. Litig.*, No. 99-CV-20743 (N.D. Cal. 2006, 2007 & 2008) (awarding 7.6% of $1.04 billion total settlement fund, representing a 2.1 multiplier)[3]; *In re Nortel Networks Corp. Sec. Litig.*, Civil Action No. 05-MD-1659 (LAP),

---

[3] Fees in *McKesson* were awarded in three separate orders for an aggregate award of 7.6% of the $1.04 billion total settlement representing a collective lodestar multiplier of 2.1. *See In re McKesson HBOC, Inc. Sec. Litig.*, No. 99-CV-20743, slip op. at 1 (N.D. Cal. Feb. 24, 2006), ECF No. 1444; *In re McKesson HBOC, Inc. Sec. Litig.*, No. 99-CV-20743, slip op. at 1 (N.D. Cal. Apr. 13, 2007), ECF No. 1560; and *In re McKesson HBOC, Inc. Sec. Litig.*, No. 99-CV-20743, slip op. at 1 (N.D. Cal. Jan. 18, 2008), ECF No. 1727 (attached hereto as Exhibit 1).

slip op. at 10 (S.D.N.Y. Dec. 26, 2006), ECF No. 77 (attached hereto as Exhibit 2) (awarding 8% of $1.04 billion settlement fund, representing a 4.8 multiplier).[4]

B. The Requested Attorneys' Fees Are Reasonable Under the Lodestar Method

To ensure the reasonableness of a fee awarded under the percentage-of-the-fund method, the Second Circuit encourages district courts to "cross-check" the proposed award against counsel's lodestar. *See Goldberger*, 209 F.3d at 50.[5] In cases of this nature, fees representing multiples above the lodestar are regularly awarded to reflect the contingency fee risk and other relevant factors.

As noted above, in complex class actions with significant contingency risks, lodestar multipliers between 3 and 4.5 are commonly awarded. *See Visa*, 396 F.3d at 123 (upholding multiplier of 3.5 as reasonable on appeal and quoting district court's statement that "multipliers of between 3 and 4.5 have become common"); *In re Deutsche Telekom AG Sec. Litig.*, Civil Action No. 00-CV-9475 (NRB), 2005 U.S. Dist. LEXIS 45798, at *13-*14 (S.D.N.Y. June 9, 2005) (awarding fee representing a 3.96 multiplier); *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 354 (S.D.N.Y. 2005) (awarding fee representing a 4.0 multiplier); *Maley v. Del*

[4] In securities class actions that have resulted in settlements in the hundreds of millions of dollars, courts have often awarded attorneys' fees of 18% or more of the settlement amount, with multipliers of 3 or higher. *See, e.g.*, *In re Cardinal Health, Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 770 (S.D. Ohio 2007) (awarding 18% of $600 million settlement fund, representing a 6 multiplier); *In re BankAmerica Corp. Sec. Litig.*, 228 F. Supp. 2d 1061, 1066 (E.D. Mo. 2002) (awarding 18% of $490 million settlement fund, representing a 3 multiplier); *In re DaimlerChrysler AG Sec. Litig.*, Master File No. 00-0993 (KAJ), slip op. at 1 (D. Del. Feb. 5, 2004), ECF No. 971 (attached hereto as Exhibit 3) (awarding 22.5% of $300 million settlement fund, representing a 4.2 multiplier).

[5] Under the lodestar method, the court multiplies the number of hours each attorney spent on the case by each attorney's reasonable hourly rate; and second, the court adjusts that lodestar figure (by applying a multiplier) "to reflect litigation risk, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors." *FLAG Telecom*, 2010 WL 4537550, at *23; *see also Marsh & McLennan*, 2009 WL 5178546, at *20 (same); *see generally Lindy Bros. Builders, Inc. v. Am. Radiator & Standard Sanitary Corp.*, 487 F.2d 161, 167-69 (3d Cir. 1973), *subsequently refined in Lindy Bros. Builders, Inc. v. Am. Radiator & Standard Sanitary Corp.*, 540 F.2d 102, 116-18 (3d Cir. 1976) (*en banc*).

Global Techs. Corp., 186 F. Supp. 2d 358, 369, 371 (S.D.N.Y. 2002) (awarding fee representing a 4.65 multiplier, which was "well within the range awarded by courts in this Circuit and courts throughout the country"); *NASDAQ Market-Makers*, 187 F.R.D. at 487-89 (awarding fee representing a 3.97 multiplier). Indeed, in the nine securities class actions that settled for more than $1 billion, the average cross-check multiplier was nearly 3.5. *See* Appendix A hereto.

Plaintiffs' Counsel have spent a total of 193,547 hours of attorney and other professional support time prosecuting the Action. *See* Joint Decl. ¶ 190. Plaintiffs' Counsel's lodestar is $88,307,135.[6] *See id*. The requested 6.56% fee, which amounts to $158,549,766.46 (without interest), represents a multiplier of 1.8. Thus, the fee requested is well below the range of fees routinely awarded, whether calculated as a percentage of the fund or under the lodestar method.

Additionally, as set forth below, the factors established for the review of attorneys' fee awards by the Second Circuit in *Goldberger* also strongly support a finding that the requested fee is reasonable and Lead Plaintiffs have reviewed and approved the request.

IV. OTHER FACTORS CONSIDERED BY COURTS IN THE SECOND CIRCUIT CONFIRM THAT THE REQUESTED FEE IS FAIR AND REASONABLE

The Second Circuit has set forth the following criteria that courts should consider when reviewing a request for attorneys' fees in a common fund case:

> (1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.

Goldberger, 209 F.3d at 50 (internal quotes and citation omitted). Consideration of these factors, together with the analyses above, demonstrates that the fee requested is fair and reasonable.

---

[6] *See supra* n. 5. The Supreme Court and courts in this Circuit have approved the use of current hourly rates to calculate the base lodestar figure as a means of compensating for the delay in receiving payment, inflationary losses, and the loss of interest. *See Missouri v. Jenkins*, 491 U.S. at 284; *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 589 n.10 (S.D.N.Y. 2008); *Veeco*, 2007 WL 4115808 at *9.

A. The Time and Labor Expended Support the Requested Fee

Co-Lead Counsel vigorously litigated this Action for more than three-and-a-half years before the Settlement was reached just weeks before trial was scheduled to begin. As discussed in the Joint Declaration, Co-Lead Counsel exerted tremendous efforts in pursuing the claims of Lead Plaintiffs and the Class. Co-Lead Counsel's efforts included, among other things:

- conducting an extensive pre-filing investigation into the Class's claims and drafting two detailed amended complaints (*id.* ¶¶ 38-43, 59-61);
- successfully moving for partial modification of the PSLRA discovery stay and obtaining key documents that Defendants had previously produced to government regulators and Congress (*id.* ¶¶ 44-46, 80-85);
- successfully opposing Defendants' motions to dismiss in two separate rounds of briefing (*id.* ¶¶ 47-50, 57, 62-64);
- successfully opposing Defendants' efforts to seek certification of a question regarding Lead Plaintiffs' Section 14(a) claim to the Delaware Supreme Court (*id.* ¶¶ 51-53, 57);
- successfully opposing Defendants' efforts to seek interlocutory appeal of certain issues decided by the Court in connection with Defendants' motion to dismiss the First Amended Complaint or reconsideration of those issues (*id.* ¶ 58);
- successfully moving for class certification, which included substantial class certification discovery over a short time period (including 16 depositions that Co-Lead Counsel either defended or participated in); and successfully opposing Defendants' petition for interlocutory appellate review of the Court's order granting class certification (*id.* ¶¶ 67-77);
- engaging in an extensive, highly contested and fast-paced discovery program, which included taking or participating in 45 fact and expert merits depositions and reviewing and analyzing more than 4.75 million pages of documents (*id.* ¶¶ 87-95);
- opposing Defendants' motions for summary judgment (*id.* ¶¶ 96, 100-102);
- preparing Lead Plaintiffs' own motion for partial summary judgment concerning the alleged falsity and materiality of statements related to the projected accretive/dilutive impact of the Merger (*id.* ¶¶ 97-99);
- submitting a total of 12 reports from six different experts over the course of the litigation in the areas of damages, corporate disclosure requirements, valuation and solvency, and accounting for goodwill (*id.* ¶¶ 108-116, 217); and

- engaging in extensive pre-trial preparations, including preparing or responding to eight *Daubert* motions and 32 motions *in limine*, as well as exchanging exhibit lists, deposition lists, jury verdict forms, jury instructions, voir dire and draft pre-trial orders (*id*. ¶¶ 103-105).

Substantial time was also required to negotiate the Settlement. There were negotiations and mediation efforts over several years, including several rounds of in-person and telephonic mediation at which Co-Lead Counsel and defense counsel made presentations regarding liability and damages and provided expert presentations. Joint Decl. ¶¶ 153-160.

As noted above, Plaintiffs' Counsel have expended more than 193,500 hours investigating, prosecuting and resolving this Action with a total lodestar value of over $88,000,000. Joint Decl. ¶ 190. The enormous amount of time and effort devoted to this case by Plaintiffs' Counsel and the efficient and effective management of the litigation confirm that the fee request here is reasonable.

B. <u>The Risks of Litigation Support the Requested Fee</u>

The risk of litigation is one of the most important *Goldberger* factors. *See Goldberger*, 209 F.3d at 54; *Telik*, 576 F. Supp. 2d at 592 ("'the risk of the litigation' is a pivotal factor in assessing the appropriate attorneys' fees"). The Second Circuit has recognized that the risk associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee award:

> No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended.

City of Detroit v. Grinnell Corp., 495 F.2d 448, 470 (2d Cir. 1974) (citation omitted), *abrogated on other grounds by Goldberger*, 209 F.3d 43. "Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation." *Teachers' Ret. Sys.*

of La. v. A.C.L.N., Ltd., No. 01-CV-11814 (MP), 2004 WL 1087261, at *3 (S.D.N.Y. May 14, 2004); *see also In re Am. Bank Note Holographics Inc. Sec. Litig.*, 127 F. Supp. 2d 418, 433 (S.D.N.Y. 2001) (it is "appropriate to take this [contingent-fee] risk into account in determining the appropriate fee to award").

As the Court is aware from the extensive briefing in the case, including the Parties' respective motions for summary judgment, there were numerous, substantial risks relating to Lead Plaintiffs' ability to establish liability, loss causation and damages that made it far from certain that any recovery, let alone a recovery in the magnitude of the $2.425 billion Settlement, would ultimately be obtained for the Class.

As discussed in greater detail in the Joint Declaration and in the memorandum of law in support of the Settlement, Co-Lead Counsel faced substantial risks in establishing Defendants' liability with respect to both Lead Plaintiffs' fraud claims under Section 10(b) and their negligence claims under Section 14(a). With respect to Lead Plaintiffs' claims regarding the failure to disclose Merrill's fourth-quarter 2008 losses, there was a significant risk that the Court or a jury could find that Defendants did not act recklessly (as required for establishing a Section 10(b) claim) or negligently (as required for the Section 14(a) claims) in failing to disclose the losses, particularly in light of the evidence that in-house and outside counsel were closely involved in the decision not to disclose the losses and that Defendants did not obtain a personal financial benefit from the non-disclosure of the losses. Joint Decl. ¶¶ 125-128. There were also substantial risks that Defendants could prevail in their contentions that the loss forecasts were only interim in nature and, therefore, too uncertain to be disclosed; and/or that Defendants had no duty to disclose the losses as they were intra-quarter results. *Id.* ¶¶ 129-130. Defendants also contended that the non-disclosure of the fourth-quarter losses was immaterial in light of the massive losses Merrill reported in previous quarters, and the detailed risk disclosures in Merrill's and BoA's SEC filings, and further argued that the market understood that Merrill was continuing to report enormous losses in the fourth quarter of 2008. *Id.* ¶ 131.

Lead Plaintiffs' claims regarding the failure to disclose Merrill's bonuses faced similar risks. For example, there was a risk that the Court or a jury could conclude, as Defendants argued, that the non-disclosure of the bonus agreement in the Proxy was immaterial because the market knew that Merrill would be paying bonuses prior to the close of the Merger. *Id.* ¶¶ 132. There was also a risk that the Court or a jury could find that non-disclosure of the bonus agreement was not intentionally false or reckless (with respect to Section 10(b)) nor negligent (with respect to Section 14(a)) in light of Defendants' arguments that the decision to disclose the schedule of bonuses was left entirely up to BoA's and Merrill's attorneys, and that none of the Individual Defendants were recipients of the bonuses. *Id.* ¶¶ 133.

Co-Lead Counsel also recognized that there were additional substantial risks in establishing loss causation and damages. The limited case law establishing the remedies available to Class Members under Section 14(a), including whether the Section 14(a) remedy was direct or derivative and the proper measure of damages it provided, presented additional risks to the prosecution of the Action. Joint Decl. ¶¶ 135-137. Throughout the litigation, Defendants argued that Plaintiffs could not recover under Section 14(a) for a stock price drop resulting from the disclosure of information allegedly improperly concealed from voters on a merger. *Id.* ¶¶ 138-139. The measure of damages under Section 14(a) under the particular facts of this case was a novel issue, and an adverse ruling by the Court or on appeal on this issue would have arguably eliminated Lead Plaintiffs' Section 14(a) claim. Co-Lead Counsel also faced substantial risks in proving that the series of alleged corrective disclosures in January 2009 identified by Plaintiffs had, in fact, revealed the information that Plaintiffs had alleged was previously undisclosed; and that the price declines on the identified corrective disclosure dates were caused by the alleged corrective disclosures as opposed to being the result of other adverse information about BoA unrelated to the allegations in the Action or other market or industry factors. *Id.* ¶¶ 140-145.

In the face of these uncertainties regarding the outcome of the case, Co-Lead Counsel undertook this case on a wholly contingent basis, knowing that the litigation could last for years and would require devotion of a substantial amount of attorney time and a significant advance of litigation expenses with no guarantee of compensation. "In numerous class actions, including complex securities cases, plaintiffs' counsel have expended thousands of hours and advanced significant out-of-pocket expenses and received no remuneration whatsoever." *Marsh & McLennan*, 2009 WL 5178546, at *18. Co-Lead Counsel's assumption of this contingency fee risk and extensive and intense litigation of the Action in the face of these risks further support the reasonableness of the requested fee. *See FLAG Telecom*, 2010 WL 4537550, at *27 ("the risk associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee award"); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 148 (S.D.N.Y. 2010) ("There was significant risk of non-payment in this case, and Plaintiffs' Counsel should be rewarded for having borne and successfully overcome that risk.").

C. <u>The Magnitude and Complexity of the Action Support the Requested Fee</u>

The magnitude and complexity of the Action and the novelty and complexity of legal issues raised also support the requested fee. Courts have long recognized that securities class action litigation is "notably difficult and notoriously uncertain." *FLAG Telecom*, 2010 WL 4537550, at *27 (quoting *In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 281 (S.D.N.Y. 1999)). And this case was, in many ways, more complex than the average securities class action, as it involved claims under Section 14(a) of the Exchange Act as well as Section 10(b) of the Exchange Act and Section 11 of the Securities Act. As noted above and in the Joint Declaration, the litigation raised a number of complex and novel questions, and required an enormous undertaking by the Parties and the Court over an extended period of time. *See* Joint Decl. ¶¶ 204.

D. The Quality of Co-Lead Counsel's <u>Representation Supports the Requested Fee</u>

The quality of the representation by Co-Lead Counsel is another important factor that supports the reasonableness of the requested fee. Co-Lead Counsel submit that the quality of their representation in this Action is best evidenced by the quality of the result achieved. *See Goldberger*, 209 F.3d at 55; *Veeco*, 2007 WL 4115808, at *7; *WorldCom*, 388 F. Supp. 2d at 358; *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 467 (S.D.N.Y. 2004). The cash settlement of $2.425 billion − the fourth largest securities class action settlement ever paid by a single corporate defendant – combined with the Corporate Governance Enhancements to be implemented or maintained by BoA, is an extraordinary result for the Class, particularly in light of the significant risks in the Action. Joint Decl. ¶¶ 199-200. Co-Lead Counsel obtained this result where there was neither a financial restatement involved (in contrast to the vast majority of comparable mega-settlements, including all of the larger PSLRA settlements) nor a criminal conviction related to the alleged misconduct. *Id*.

Co-Lead Counsel submit that the quality of their efforts in the litigation, their substantial experience in securities class actions, their commitment to the litigation and their demonstrated willingness to bring the case to trial, were key elements in enabling them to negotiate this Settlement. *See WorldCom*, 388 F. Supp. 2d at 359 ("If the Lead Plaintiff had been represented by less tenacious and competent counsel, it is by no means clear that it would have achieved the success it did here on behalf of the Class. . . . While some significant recovery in a case of this magnitude may seem a foregone conclusion now, the recovery achieved here was never certain. . . . it is likely that less able plaintiffs' counsel would have achieved far less"); *see also Tyco*, 535 F. Supp. 2d at 261 (finding the settlement to be "the product of arms-length negotiations by highly skilled and diligent counsel on both sides" and that "'the advocacy on both sides of the case was outstanding,' and both sides were prepared to try the case if settlement talks failed").

Significantly, Co-Lead Counsel uncovered important facts that were not alleged by any regulator. For example, Co-Lead Counsel uncovered evidence concerning the material negative impact of Merrill's fourth-quarter losses on Merrill and BoA prior to the vote on the Merger, including evidence that Merrill's losses had, according to Lead Plaintiffs, (i) caused a liquidity crisis at Merrill that forced BoA to issue billions of dollars in debt; (ii) severely eroded Merrill's capital, which forced BoA to order Merrill to sell billions of dollars of assets; and (iii) significantly decreased Merrill's earnings power going forward. Joint Decl. ¶ 97. Co-Lead Counsel also obtained unique testimony from Defendant Kenneth Lewis, BoA's former CEO admitting that the Proxy's statements concerning the accretive/dilutive impact of the Merger were not accurate as of the time of the shareholder vote. *Id.* ¶¶ 98-99. This evidence formed the basis for Lead Plaintiffs' motion for partial summary judgment.

Courts have recognized that the quality of the opposition faced by plaintiffs' counsel should also be taken into consideration in assessing the quality of counsel's performance. *See, e.g., In re Adelphia Commc'ns Corp. Sec. & Derivative Litig.,* No. 03 MDL 1529 LMM, 2006 WL 3378705, at *3 (S.D.N.Y. Nov. 16, 2006) ("The fact that the settlements were obtained from defendants represented by 'formidable opposing counsel from some of the best defense firms in the country' also evidences the high quality of lead counsels' work") (citation omitted);

Teachers' Ret. Sys., 2004 WL 1087261, at *7 ("The quality of opposing counsel is also relevant in evaluating the quality of services rendered by Plaintiffs' Counsel."). Here, Defendants were represented by many of the nation's most elite defense firms. *See* Joint Decl. ¶ 203. Notwithstanding this formidable opposition, Co-Lead Counsel's ability to present a strong case and demonstrate their willingness to continue to trial enabled them to achieve the very favorable settlement for the benefit of the Class.

E. <u>The Requested Fee in Relation to the Settlement</u>

Courts have interpreted this factor as requiring the review of the fee requested in terms of the percentage it represents of the total recovery. The requested 6.56% net fee award is well within the range of fees that courts in the Second Circuit and around the country have awarded in comparable cases, and is fully justified by the work performed and the result obtained.

F. <u>Public Policy Considerations Support the Requested Fee</u>

A strong public policy concern exists for rewarding firms for bringing successful securities litigation. *See FLAG Telecom*, 2010 WL 4537550, at *29 (if the "important public policy [of enforcing the securities laws] is to be carried out, the courts should award fees which will adequately compensate Lead Counsel for the value of their efforts, taking into account the enormous risks they undertook"); *Maley*, 186 F. Supp. 2d at 373 ("In considering an award of attorney's fees, the public policy of vigorously enforcing the federal securities laws must be considered."); *Hicks*, 2005 WL 2757792, at *9 ("To make certain that the public is represented by talented and experienced trial counsel, the remuneration should be both fair and rewarding.") (citation omitted); *see also Basic Inc. v. Levinson*, 485 U.S. 224, 230-31 (1988) (the federal securities laws are remedial in nature, and the courts must encourage private lawsuits to effectuate their purpose of protecting investors). The Supreme Court has emphasized that private securities actions such as this provide "'a most effective weapon in the enforcement' of the securities laws and are 'a necessary supplement to [SEC] action.'" *Bateman*, 472 U.S. at 310 (citation omitted); *see also Tellabs*, 551 U.S. at 313. Accordingly, public policy favors granting Co-Lead Counsel's fee and expense application here.

G. <u>The Requested Fee Has Been Approved by Lead Plaintiffs</u>

Each of the Court-appointed Lead Plaintiffs in this Action is a sophisticated institutional investor and each Lead Plaintiff entered into a retainer agreement with its respective counsel at the outset of the Action. Joint Decl. ¶¶ 180-181. Under the retainer agreements, Co-Lead Counsel agreed to undertake the litigation on an entirely contingent basis, meaning that Co-Lead Counsel would not be compensated at all, nor reimbursed for any expenses they incurred on behalf of the Class, unless they obtained a recovery for the Class. *Id.* ¶ 180. Generally, the retainer agreements provided that attorneys' fees would be based on a "fee grid" in which percentage attorneys' fees would be adjusted based upon the amount recovered and the stage of the proceedings, with the permissible fee percentage decreasing with the size of the settlement amount and increasing as the case got closer to trial. *Id.* At the outset of the Action, Lead Plaintiffs insisted and agreed that the lowest fee grid among the retainer agreements that each had negotiated with their respective counsel firms would be utilized to calculate the percentage of attorneys' fees that Co-Lead Counsel would be allowed to apply for in connection with a settlement of the Action. *Id.* ¶ 181. In accordance with that agreement, Co-Lead Counsel are requesting a fee of 6.56% of the Settlement Fund net of Plaintiffs' Counsel's expenses, a request which was evaluated and approved by Lead Plaintiffs after the Settlement was achieved. *Id.* ¶¶ 181, 197.

The fact that the requested attorneys' fees are based upon retainer agreements negotiated with sophisticated Lead Plaintiffs at the outset of the Action strongly supports the reasonableness of the requested fee. The PSLRA was intended to encourage institutional investors like Lead

Plaintiffs to assume control of securities class actions in order to "increase the likelihood that parties with significant holdings in issuers, whose interests are more strongly aligned with the class of shareholders, will participate in the litigation and exercise control over the selection and actions of plaintiff's counsel." H.R. Conf. Rep. No. 104-369, at *27 (1995), reprinted in 1995 U.S.C.C.A.N. 730, 731. Congress believed that these institutions would be in the best position to monitor the ongoing prosecution of the litigation and assess the reasonableness of counsel's fee request. As set forth in the respective Lead Plaintiff Declarations (*see* Joint Decl. Exs. 2-6), each of the Lead Plaintiffs was actively involved in the prosecution and resolution of the Action and, have a firm basis for assessing the reasonableness of the fee request before approving it.

While a district court is not required to adhere to such a retainer agreement, *see Visa*, 396 F.3d at 123-24, Courts have found that such agreements should be given great weight. As Judge Cote observed in *WorldCom*, "when class counsel in a securities lawsuit have negotiated an arm's-length agreement with a sophisticated lead plaintiff possessing a large stake in the litigation, and when that lead plaintiff endorses the application following close supervision of the litigation, the court should give the terms of that agreement great weight." *WorldCom*, 388 F. Supp. 2d at 356; *see also Global Crossing*, 225 F.R.D. at 466 ("in class action cases under the PSLRA, courts presume fee requests submitted pursuant to a retainer agreement negotiated at arm's length between lead plaintiff and lead counsel are reasonable"); *Comverse*, 2010 WL 2653354, at *4 ("The fact that this fee request is the product of arm's-length negotiation between Lead Counsel and the lead plaintiff is significant.").

H. <u>The Reaction of the Class to Date Supports the Requested Fee</u>

The reaction of the Class to date also supports the requested fee. As of February 14, 2013, the Claims Administrator has disseminated the Settlement Notice to more than 3.2 million potential Class Members and nominees informing them of, among other things, Co-Lead

Counsel's intention to apply to the Court for an award of attorneys' fees of 6.56% of the Settlement Fund and reimbursement of up to $17,500,000 in expenses and PSLRA awards. Joint Decl. ¶ 212. While the time to object to the fee and expense application does not expire until March 5, 2013, to date, only one objection to the amount of attorneys' fees and expenses set forth in the Settlement Notice has been received. *Id.* Co-Lead Counsel will address all objections received in their reply papers to be filed with the Court on March 29, 2013.

V. THE EXPENSES INCURRED ARE REASONABLE AND WERE NECESSARY TO ACHIEVE THE BENEFIT OBTAINED

Co-Lead Counsel's fee application includes a request for reimbursement of litigation expenses that were reasonably incurred and necessary to the prosecution of this Action. *See* Joint Decl. ¶ 213. These expenses are properly recovered by counsel. *See In re China Sunergy Sec. Litig.,* No. 07 Civ. 7895 (DAB), 2011 WL 1899715, at *6 (S.D.N.Y. May 13, 2011) (in a class action, attorneys should be compensated "for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they were 'incidental and necessary to the representation'") (citation omitted); *FLAG Telecom*, 2010 WL 4537550, at *30 ("It is well accepted that counsel who create a common fund are entitled to the reimbursement of expenses that they advanced to a class."). As set forth in detail in the Joint Declaration, Plaintiffs' Counsel incurred $8,082,828.32 in litigation expenses on behalf of the Class in the prosecution of the Action. Joint Decl. ¶ 215. Reimbursement of these expenses is fair and reasonable.

Of the total expenses, the vast majority was related to experts. Specifically, $4,462,782.80, or 55%, was expended on experts and consultants, including a trial consulting firm to prepare exhibits for trial, conduct jury focus groups and mock trials and analyze the results of the deliberations of mock jurors. Joint Decl. ¶ 217. Co-Lead Counsel retained seven experts and consultants in multiple disciplines whose work was critical to the development of the case. *Id.* ¶¶ 108-116, 217. During the course of the litigation, these experts produced a total of 12 reports and six of them were deposed by Defendants. *Id.* ¶ 217.

Another large component of the expenses, $1,115,997.14, or 13.9%, was for outside vendors to provide the necessary services for electronic database document review that enabled our discovery team to efficiently and effectively search and review the more than 4.75 million pages of documents produced to Plaintiffs. Joint Decl. ¶ 218. Additionally, Co-Lead Counsel paid $302,553.76 for fees assessed by the mediator in this matter, Judge Phillips. *Id.* ¶ 219.

The other expenses for which Co-Lead Counsel seek reimbursement are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, court fees, court reporters, out-of-town travel, and copying costs. *Id.* ¶¶ 219. The foregoing expense items are billed separately by Plaintiffs' Counsel, and such charges are not duplicated in the firm's hourly billing rates.[7]

The Settlement Notice informed potential Class Members that Co-Lead Counsel would apply for reimbursement of litigation expenses and PSLRA awards in an amount not to exceed $17,500,000. The total amount of expenses requested is well below the amount listed in the Settlement Notice and, to date, there has been no objection to the request for expenses.

VI. LEAD PLAINTIFFS SHOULD BE AWARDED THEIR REASONABLE COSTS AND EXPENSES UNDER 15 U.S.C. § 78u-4(a)(4)

In connection with their request for reimbursement of litigation expenses, Co-Lead Counsel also seek $453,003.04 in PSLRA awards for Lead Plaintiffs representing the costs and expenses incurred by them directly relating to their representation of the Class. The PSLRA

[7] No expenses for general overhead are included in the expenses for which reimbursement is sought and expenses incurred as a result of disbursements by Co-Lead Counsel to an outside service provider reflect the actual amount billed by the service provider and do not include any surcharge over that amount. Joint Decl. ¶ 215.

specifically provides that an "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class" may be made to "any representative party serving on behalf of a class." 15 U.S.C. § 78u-4(a)(4). Moreover, "Courts in [the Second] Circuit routinely award such costs and expenses both to reimburse the named plaintiffs for expenses incurred through their involvement with the actions and lost wages, as well as to provide an incentive for such plaintiffs to remain involved in the litigation and to incur such expenses in the first place." *Hicks*, 2005 WL 2757792, at *10.

As set forth in the declarations of representatives of the respective Lead Plaintiffs, the Lead Plaintiffs were extremely active and vigilant in their representation of the Class. As required and envisioned by the PSLRA, their claims for reimbursement of expenses are based upon the substantial amount of time devoted to the Action by employees of Lead Plaintiffs. *See* Lead Plaintiffs' respective declarations attached as Exhibits 2-6 to the Joint Declaration.

Lead Plaintiffs have been committed to pursuing their claims against the Defendants in for more than three years. These large institutions have actively and effectively fulfilled their obligations as representatives of the Class, complying with all of the many demands placed upon them, and providing valuable assistance to Co-Lead Counsel. In devoting substantial effort to the commencement of, oversight of, and participation in this Action on behalf of the Class, as detailed in the Joint Declaration and Lead Plaintiffs' declarations, Lead Plaintiffs, among other things: (i) participated in discussions with Co-Lead Counsel concerning significant developments in the litigation, including case strategy and the retention of experts and consultants; (ii) reviewed and commented on all significant pleadings and briefs; (iii) supervised the production of discovery, including gathering and reviewing documents in response to discovery requests; (iv) prepared and sat for depositions in furtherance of their motion for class certification; (v) worked cooperatively with the other Court-appointed Leads Plaintiffs throughout the litigation; and (vi) prepared for and fully participated in the protracted settlement negotiations on behalf of the Class. *See* Neville Decl. at ¶¶ 4-6, 13; Becker Decl. at ¶¶ 4-6, 13; Wei Decl. at ¶¶ 4-7; Groenewout-Hendriks Decl. at ¶¶ 4-6, 13; and Kåremar Decl. at ¶¶ 4-6, 12.

The foregoing efforts by Lead Plaintiffs are precisely the types of activities Courts have found to support reimbursement to class representatives. *See, e.g.*, *Marsh & McLennan*, 2009 WL 5178546, at *21 (awarding $144,657 to the New Jersey Attorney General's Office and $70,000 to certain Ohio pension funds, to compensate them "for their reasonable costs and expenses incurred in managing this litigation and representing the Class" and noting that these efforts were "precisely the types of activities that support awarding reimbursement of expenses to class representatives"); *In re Satyam Computer Servs. Ltd. Sec. Litig.*, No. 09-MD-2027-BSJ, slip. op. at 3-4 (S.D.N.Y. Sept. 13, 2011), ECF No. 365 (attached hereto as Exhibit 4) (awarding an aggregate amount of $195,111 as reimbursement for the costs and expenses of class representatives directly relating to their services in representing the class); *In re Royal Dutch/Shell Transp. Sec. Litig.*, No. 04-cv-374 (JAP), slip. op. at 14 (D.N.J. Sept. 26, 2008), ECF No. 525 (attached hereto as Exhibit 5) (awarding $150,000 to Pennsylvania State Employees' Retirement System and the Pennsylvania Public School Employees' Retirement System for reimbursement of reasonable costs and expenses). As Judge Sweet observed in *In re Gilat Satellite Networks, Ltd.*, "[s]ince the tasks undertaken by employees of Lead Plaintiffs reduced the amount of time those employees would have spent on other work and these tasks and rates appear reasonable to the furtherance of the litigation, the motion for . . . expenses for Lead Plaintiffs is granted." No. CV-02-1510 (CPS)(SMG), 2007 WL 2743675, at *19 (E.D.N.Y. Sept. 18, 2007). Similarly, in *In re American International Group, Inc. Securities Litigation*, Judge

Batts found that "the request of [lead plaintiffs] OPERS and STRS Ohio for reimbursement of $71,910.00 in lost wages related to their active participation in this action is reasonable," No. 04 Civ. 8141 (DAB), 2012 WL 345509, at *6 (S.D.N.Y. Feb. 2, 2012).[8] Here, the awards sought by Lead Plaintiffs are reasonable and fully justified under the PSLRA based on their extensive involvement in the Action and should be granted.

The Settlement Notice to Class Members stated that the Litigation Expenses requested by Co-Lead Counsel may include the reasonable costs and expenses of Lead Plaintiffs. To date, there have been no objections to this request. Co-Lead Counsel respectfully request that the Court award $34,375.00 to STRS Ohio; $19,263.66 to Ohio PERS; $14,065.00 to Texas Teachers; $259,610.98 to PGGM; and $125,688.40 to AP-4[9] as compensation for their reasonable costs and expenses incurred in representing the Class.

CONCLUSION

For the foregoing reasons, Co-Lead Counsel respectfully request that the Court award $158,549,766.49 (plus interest) in attorneys' fees, reimbursement of $8,028,828.32 in litigation expenses that Plaintiffs' Counsel incurred in connection with the prosecution of this Action and $453,003.04 in PSLRA awards representing Lead Plaintiffs' costs and expenses.

[8] While this Court and several others in this Circuit have declined to award costs and expenses to representative plaintiffs under the PSLRA, in those cases no record was presented demonstrating that the time spent resulted in a tangible cost or expense to the plaintiff. *See, e.g.*, *In re AMF Bowling Sec. Litig.*, 334 F. Supp. 2d 462, 470 (S.D.N.Y. 2004). In contrast, here, Lead Plaintiffs' declarations establish that the time dedicated to the Action by their employees was time that these salaried employees could not devote to other work for Lead Plaintiffs and thus resulted in a tangible cost to the institutional Lead Plaintiffs. Additionally, the hourly rates for which reimbursement is sought are based on the annual salaries of the respective Lead Plaintiff personnel who worked on this Action.

[9] The requested PSLRA awards for PGGM and AP-4 were determined by converting their respective currencies, the euro and the Swedish krona, to US dollars. The United States Dollar-Euro exchange rate reported by the European Central Bank for the close of trading at 5 p.m. eastern standard time on February 15, 2013 was $1.3325 per euro, while the United States Dollar-Swedish Krona exchange rate reported by the Sveriges Riksbank (Swedish Central Bank) was $0.1579 per krona.

Dated: February 19, 2013

Respectfully submitted,

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

By: /s/ *Steven B. Singer*
Max W. Berger
Steven B. Singer
1285 Avenue of the Americas
New York, NY 10019
Tel: (212) 554-1400
Fax: (212) 554-1444

KAPLAN FOX & KILSHEIMER LLP

By: /s/ *Frederic S. Fox*
Robert N. Kaplan
Frederic S. Fox
850 Third Avenue, 14th Floor
New York, NY 10022
Tel: (212) 687-1980
Fax: (212) 687-7714

KESSLER TOPAZ MELTZER & CHECK, LLP

By: /s/ *David Kessler*
David Kessler
Gregory M. Castaldo
280 King of Prussia Road
Radnor, PA 19087
Tel: (610) 667-7706
Fax: (610) 667-7056

Co-Lead Counsel

#698230

Appendix A

Attorneys' Fee Awards in PSLRA Actions with Settlements of $1 Billion and greater

	Case	**Settlement Amount (in millions)**	**Fee Award %**	**Multiplier**	**Stage of Case Upon Settlement**
1	Enron[1]	$7,227	9.52%	5.2	Weeks away from trial
2	WorldCom[2]	$6,133	5.48%	4.0	Various
3	Cendant[3]	$3,318	1.7%	4.2	Class Certification
4	Tyco[4]	$3,200	14.5%	2.7	End of merits discovery / submission of expert reports
5	AOL Time Warner[5]	$2,500	5.9%	3.69	Merits discovery
6	Nortel I[6]	$1,142	3%	2.04	Class Certification
7	Royal Ahold[7]	$1,100	12%	2.57	Class Certification
8	Nortel II[8]	$1,043	8%	4.8	Class Certification
9	McKesson[9]	$1,043	7.6%	2.1	Merits discovery
Average of settlements $1 billion or greater:			7.52%	3.47	

[1] *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 586 F. Supp. 2d 732, 778-79 (S.D. Tex. 2008).

[2] *In re WorldCom, Inc. Sec. Litig.,* No. 02 CIV 3288 (DLC), 2004 WL 2591402, at *16-*23 (S.D.N.Y. 2004); *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 353-59 (S.D.N.Y. 2005).

[3] *In re Cendant Corp. Litig.,* 243 F. Supp. 2d 166, 172-74 (D.N.J. 2003).

[4] *In re Tyco Int'l, Ltd. Multidistrict Litig.,* 535 F. Supp. 2d 249, 265-71 (D.N.H. 2007).

[5] *In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, No. 02 Civ. 5575 (SWK), 2006 WL 3057232, at *18, *28 (S.D.N.Y. Oct. 25, 2006).

[6] *In re Nortel Networks Corp. Sec. Litig.*, Civil Action No. 01-CV-1855 (RMB), slip op. at 10 (S.D.N.Y. Jan. 29, 2007), ECF No. 194, *aff'd*, 539 F.3d 129 (2d Cir. 2008).

[7] *In re Royal Ahold N.V. Sec. & ERISA Litig.*, 461 F. Supp. 2d 383, 387 (D. Md. 2006).

[8] *In re Nortel Networks Corp. Sec. Litig.*, Civil Action No. 05-MD-1659 (LAP), slip op. at 10 (S.D.N.Y. Dec. 26, 2006), ECF No. 77.

[9] *In re McKesson HBOC, Inc. Sec. Litig.*, No. 99-CV-20743, slip op. at 1 (N.D. Cal. Feb. 24, 2006), ECF No. 1444; *In re McKesson HBOC, Inc. Sec. Litig.*, No. 99-CV-20743, slip op. at 1 (N.D. Cal. Apr. 13, 2007), ECF No. 1560; *In re McKesson HBOC, Inc. Sec. Litig.*, No. 99-CV-20743, slip op. at 1 (N.D. Cal. Jan. 18, 2008), ECF No. 1727.

Exhibit 1

FILED

FEB 2 4 2006

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re McKESSON HBOC, INC. SECURITIES LITIGATION	Master File No. 99-CV-20743 RMW (PVT) And Related Cases CLASS ACTION
This Document Relates To: ALL ACTIONS.	Date: January 27, 2006 Time: 9:00 a.m. Place: Courtroom 6, Fourth Floor Judge: The Honorable Ronald M. Whyte

[P~~ROPOSED~~] ORDER AWARDING ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

THIS MATTER having come before the Court on January 27, 2006, on the motion of Lead Plaintiff for an award of attorneys' fees and reimbursement of expenses;

And it appearing that a notice of the hearing, substantially in the form approved by the Court, containing a description of the fee request was mailed to all potential Settlement Class Members reasonably identifiable, as shown by the records of McKesson and HBOC, at the respective addresses set forth in such records;

And it appearing that a summary notice of the hearing substantially in the form approved by the Court was published in *The Wall Street Journal* and over the *PRNewswire* pursuant to the specifications of the Court;

And the Court, having considered all papers filed and proceedings conducted herein, and otherwise having determined the fairness and reasonableness of the fee request;

And, it appearing that the fee request is supported by Lead Plaintiff and is fully supported by documents and declarations showing their fairness and reasonableness to the Settlement Class;

IT IS HEREBY ORDERED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation of Settlement dated February 11, 2005 (the "Stipulation").

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all members of the Settlement Class who have not timely and validly requested exclusion.

3. The Motion with respect to the fee request sought in connection with the Settlement is hereby GRANTED.

4. The Court hereby awards Lead Counsel attorneys' fees of $74.8 million (7.79% of the $960 million Settlement Amount) payable to Lead Counsel. The Court also awards Lead Counsel reimbursement of litigation expenses in the amount of $5,254,408.18. The Court also awards Lead Plaintiff reimbursement of its expenses in the amount of $4,689.47. The Court awards interest on the attorneys' fees payable to Lead Counsel from the $960 million Settlement

Amount and the litigation expenses awarded herein calculated for the same time period and at the same rate as that earned on the Settlement Amount.

5. The Court finds that an award of attorneys' fees of 7.79% of the Settlement Amount is fair and reasonable and below the Ninth Circuit's "benchmark" fee under the "percentage-of-recovery" method. The Court finds that the fee award is fair and reasonable in light of the following factors: the results achieved; the risks and uncertainties of the litigation; the skill and quality of work by Lead Counsel; Lead Counsel has received no compensation for its investigation and litigation of the claims against McKesson and HBOC and any fee award has always been at risk and completely contingent on the result achieved; the institutional Lead Plaintiff negotiated and supports the fee and expense request before the Court; and the reaction of the Settlement Class.

6. The Court further finds that the request for reimbursement of expenses is reasonable in light of Lead Counsel's prosecution of this action against McKesson and HBOC on behalf of the Settlement Class.

7. There is no just reason for delay in the entry of this Order Granting Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Expenses, and immediate entry of this Order by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

DATED: 2/24, 2006

Ronald M. Whyte

THE HONORABLE RONALD M. WHYTE
United States District Court Judge

Submitted by:

BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP
ALAN SCHULMAN
ROBERT S. GANS
DAVID R. STICKNEY
TIMOTHY A. DeLANGE
12481 High Bluff Drive, Suite 300
San Diego, CA 92130
Tel: (858) 793-0070
Fax: (858) 793-0323
-and-
MAX W. BERGER
ROCHELLE FEDER HANSEN
1285 Avenue of the Americas
New York, NY 10019
Tel: (212) 554-1400
Fax: (212) 554-1444

BARRACK, RODOS & BACINE
LEONARD BARRACK
GERALD J. RODOS
M. RICHARD KOMINS
JEFFREY A. BARRACK
3300 Two Commerce Square
2001 Market Street
Philadelphia, PA 19103
Tel: (215) 963-0600
Fax: (215) 963-0838
-and-
STEPHEN R. BASSER
402 West Broadway, Suite 850
San Diego, CA 92101
Tel: (619) 230-0800
Fax: (619) 230-1874

Attorneys for Lead Plaintiff The New York
State Common Retirement Fund and
Co-Lead Counsel for the Class

FILED

2007 APR 13 A 10: 00

RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST OF CA. S.J

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re McKESSON HBOC, INC. SECURITIES LITIGATION	Master File No. 99-CV-20743 RMW (PVT) And Related Cases CLASS ACTION
This Document Relates To: ALL ACTIONS.	Date: April 13, 2007 Time: 9:00 a.m. Place: Courtroom 6, Fourth Floor Judge: The Honorable Ronald M. Whyte

RMW

[~~PROPOSED~~] ORDER AWARDING ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES IN CONNECTION WITH THE SETTLEMENT WITH ARTHUR ANDERSEN LLP

Lead Counsel's Application For An Award Of Attorneys' Fees And Reimbursement Of Expenses Related To The Settlement With Arthur Andersen LLP ("Fee and Expense Request") duly came before the Court for hearing on April 13, 2007, pursuant to the Court's Order preliminarily approving of the Settlement with Arthur Andersen LLP ("Andersen"). The Court has considered the Fee and Expense Request and all supporting and other related materials, including the matters presented at the April 13, 2007 hearing. Due and adequate notice having been given to the Settlement Class as required in said preliminary approval Order, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the proceedings and good cause appearing therefor,

IT IS HEREBY ORDERED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation And Agreement Of Settlement Between Lead Plaintiff And Defendant Arthur Andersen LLP dated December 19, 2006 (the "Stipulation").

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all members of the Settlement Class who have not timely and validly requested exclusion.

3. The Fee and Expense Request sought in connection with the Andersen Settlement is hereby GRANTED.

4. The Court hereby awards Lead Counsel attorneys' fees of $4,495,000 (6.2% of the $72.5 million Settlement Amount) payable to Lead Counsel. The Court also awards Lead Counsel reimbursement of litigation expenses in the amount of $1,615,338.55. The Court also awards Lead Plaintiff reimbursement of its expenses in the amount of $3,571.11. The Court awards interest on the attorneys' fees payable to Lead Counsel from the $72.5 million Settlement Amount and the litigation expenses awarded herein calculated for the same time period and at the same rate as that earned on the Settlement Amount.

5. The Court finds that an award of attorneys' fees of 6.2% of the Settlement Amount is fair and reasonable and below the Ninth Circuit's "benchmark" fee under the "percentage-of-recovery" method. The Court finds that the fee award is fair and reasonable in

light of the following factors, among others: the results achieved; the risks and uncertainties of the litigation; the skill and quality of work by Lead Counsel; Lead Counsel has received no compensation for its investigation and litigation of the claims against Andersen and any fee award has always been at risk and completely contingent on the result achieved; the institutional Lead Plaintiff negotiated and supports the Fee and Expense Request before the Court; and the reaction of the Settlement Class.

6. The Court further finds that the request for reimbursement of expenses is reasonable in light of Lead Counsel's prosecution of this action against Andersen on behalf of the Settlement Class.

7. There is no just reason for delay in the entry of this Order, and immediate entry of this Order by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

DATED: 4/13, 2007

Ronald M. Whyte
THE HONORABLE RONALD M. WHYTE
United States District Court Judge

Submitted by:

BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP
DAVID R. STICKNEY
TIMOTHY A. DeLANGE
BENJAMIN GALDSTON
12481 High Bluff Drive, Suite 300
San Diego, CA 92130
Tel: (858) 793-0070
Fax: (858) 793-0323
-and-
MAX W. BERGER
ROCHELLE FEDER HANSEN
1285 Avenue of the Americas
New York, NY 10019
Tel: (212) 554-1400
Fax: (212) 554-1444

BARRACK, RODOS & BACINE
LEONARD BARRACK
GERALD J. RODOS
M. RICHARD KOMINS
JEFFREY A. BARRACK
3300 Two Commerce Square
2001 Market Street
Philadelphia, PA 19103
Tel: (215) 963-0600
Fax: (215) 963-0838
-and-
STEPHEN R. BASSER
402 West Broadway, Suite 850
San Diego, CA 92101
Tel: (619) 230-0800
Fax: (619) 230-1874

Attorneys for Lead Plaintiff The New York
State Common Retirement Fund and
Co-Lead Counsel for the Class

Filed
JAN 18 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re McKESSON HBOC, INC. SECURITIES LITIGATION	Master File No. 99-CV-20743 RMW (PVT) And Related Cases CLASS ACTION
This Document Relates To: ALL ACTIONS.	Date: January 18, 2008 Time: 9:00 a.m. Place: Courtroom 6, Fourth Floor Judge: The Honorable Ronald M. Whyte

[~~PROPOSED~~] ORDER AWARDING ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES IN CONNECTION WITH THE SETTLEMENT WITH BEAR STEARNS & CO. INC.

Lead Counsel's Application For An Award Of Attorneys' Fees And Reimbursement Of Expenses Related To The Settlement With Bear, Stearns & Co. Inc. ("Fee and Expense Request") duly came before the Court for hearing on January 18, 2008, pursuant to the Court's Order preliminarily approving of the Settlement with Bear, Stearns & Co. Inc. and McKesson Corporation ("Bear Stearns Settlement"). The Court has considered the Fee and Expense Request and all supporting and other related materials, including the matters presented at the January 18, 2008 hearing. Due and adequate notice having been given to the Settlement Class as required in said preliminary approval Order, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the proceedings and good cause appearing therefor,

IT IS HEREBY ORDERED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation And Agreement Of Settlement Between Lead Plaintiff; Bear, Stearns & Co. Inc.; And McKesson Corporation dated September 24, 2007 (the "Stipulation").

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all members of the Settlement Class who have not timely and validly requested exclusion.

3. The Fee and Expense Request sought in connection with the Bear Stearns Settlement is hereby GRANTED.

4. The Court hereby awards Lead Counsel attorneys' fees of $400,000 (4% of the $10 million Settlement Amount) payable to Lead Counsel. The Court also awards Lead Counsel reimbursement of litigation expenses in the amount of $633,555.78. The Court also awards Lead Plaintiff reimbursement of its expenses in the amount of $2,104.87. The Court awards interest on the attorneys' fees payable to Lead Counsel from the $10 million Settlement Amount and the expenses awarded herein calculated for the same time period and at the same rate as that earned on the Settlement Amount.

5. The Court finds that an award of attorneys' fees of 4% of the Settlement Amount is fair and reasonable and below the Ninth Circuit's "benchmark" fee under the "percentage-of-

Case 5:99-cv-20743-RMW Document 828 Filed 01/18/08 Page 3 of 4

recovery" method. The Court finds that the fee award is fair and reasonable in light of the following factors, among others: the results achieved; the risks and uncertainties of the litigation; the skill and quality of work by Lead Counsel; and any fee award has always been at risk and completely contingent on the result achieved; the institutional Lead Plaintiff negotiated and supports the Fee and Expense Request before the Court; and the reaction of the Settlement Class.

6. The Court further finds that the request for reimbursement of expenses is reasonable in light of Lead Counsel's prosecution of this action against Bear Stearns on behalf of the Settlement Class.

7. There is no just reason for delay in the entry of this Order, and immediate entry of this Order by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

DATED: 1/18, 2008

Ronald M. Whyte
THE HONORABLE RONALD M. WHYTE
United States District Court Judge

Submitted by:

BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP
DAVID R. STICKNEY
TIMOTHY A. DeLANGE
BENJAMIN GALDSTON
12481 High Bluff Drive, Suite 300
San Diego, CA 92130
Tel: (858) 793-0070
Fax: (858) 793-0323
-and-
MAX W. BERGER
ROCHELLE FEDER HANSEN
1285 Avenue of the Americas
New York, NY 10019
Tel: (212) 554-1400
Fax: (212) 554-1444

BARRACK, RODOS & BACINE
LEONARD BARRACK
GERALD J. RODOS
M. RICHARD KOMINS
JEFFREY A. BARRACK
3300 Two Commerce Square
2001 Market Street
Philadelphia, PA 19103
Tel: (215) 963-0600
Fax: (215) 963-0838
-and-
STEPHEN R. BASSER
402 West Broadway, Suite 850
San Diego, CA 92101
Tel: (619) 230-0800
Fax: (619) 230-1874

Attorneys for Lead Plaintiff The New York
State Common Retirement Fund and
Co-Lead Counsel for the Class

Exhibit 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re NORTEL NETWORKS CORP. SECURITIES LITIGATION	:	Civil Action No. 05-MD-1659 (LAP)
	:	CLASS ACTION
This Document Relates To:	:	
ALL ACTIONS.	:	

ORDER AND FINAL JUDGMENT

On the 26th day of October, 2006, a hearing having been held before this Court to determine: (1) whether the terms and conditions of the Stipulation and Agreement of Settlement dated June 20, 2006 (the "Stipulation") are fair, reasonable and adequate for the settlement of all claims asserted by the U.S. Global Class against the Defendants in the Complaint now pending in this Court under the above caption, including the release of the Defendants and the Released Parties, and should be approved; (2) whether judgment should be entered dismissing the Complaint on the merits and with prejudice in favor of the Defendants and as against all persons or entities who are members of the U.S. Global Class herein who have not requested exclusion therefrom; (3) whether to approve the Plan of Allocation as a fair and reasonable method to allocate the settlement proceeds among the members of the U.S. Global Class; and (4) whether and in what amount to award Lead Plaintiffs' Counsel fees and reimbursement of expenses. The Court having considered all matters submitted to it at the hearing and otherwise; and it appearing that a notice of the hearing substantially in the form approved by the Court (including French language versions sent to addresses in Quebec, Canada) was mailed to all persons or entities reasonably identifiable, who purchased common stock of Nortel Networks Corporation ("Nortel"), or call options on Nortel common stock, or wrote (sold) put options on Nortel common stock during the period between April 24, 2003 through April 27, 2004, inclusive (the "Class Period"), except those persons or entities excluded from the definition of the U.S. Global Class, as shown by the records of Nortel's transfer agent, at the respective addresses set forth in such records, as set forth in the Affidavit of Neil L. Zola Regarding the Mailing of the Nortel II Notice and Proof of Claim Form, dated September 1, 2006, and in the Supplemental Affidavit of David A. Isaac Relating to Late Exclusions and Late Objections, dated October 23, 2006 (the "Supplemental Isaac Affidavit"), and that a summary notice of the hearing substantially in the form approved by the Court was published pursuant to the Notice Plan, as set forth in the Declaration of Jeanne C. Finegan, APR, dated October 18, 2006, and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested by Lead Plaintiffs' Counsel; and all capitalized terms used herein having the meanings as set forth and defined in the Stipulation.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Court has jurisdiction over the subject matter of the Action, the Lead Plaintiffs, all U.S. Global Class Members, and the Defendants.

2. The Court finds that the prerequisites for a class action under (United States) Federal Rules of Civil Procedure 23(a) and (b)(3) have been satisfied in that: (a) the number of U.S. Global Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the U.S. Global Class; (c) the claims of the U.S. Global Class Representatives are typical of the claims of the U.S. Global Class they seek to represent; (d) the Class Representatives have and will fairly and adequately represent the

interests of the U.S. Global Class; (e) the questions of law and fact common to the members of the U.S. Global Class predominate over any questions affecting only individual members of the U.S. Global Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

3. Pursuant to Rule 23 of the (United States) Federal Rules of Civil Procedure this Court hereby finally certifies this action as a class action on behalf of all persons and entities who purchased Nortel common stock, or purchased call options on Nortel common stock, or wrote (sold) put options on Nortel common stock (collectively, "Nortel Securities") during the period between April 24, 2003 through April 27, 2004, inclusive, and who suffered damages thereby, including, but not limited to, those persons or entities who traded in Nortel Securities on the New York Stock Exchange and/or the Toronto Stock Exchange. Excluded from the U.S. Global Class are (i) the Defendants; (ii) James Kinney (Finance Chief for Nortel's Wireless Networks Division, Richardson, Texas), Ken Taylor (Vice President for Nortel's Enterprise Networks Division, Raleigh, North Carolina), Craig Johnson (Finance Director for Nortel's Wireline Networks Division, Richardson, Texas), Doug Hamilton (Finance Director for Nortel's Optical Networks Group, Montreal, Quebec), Michael Gasnier (Vice President of Finance for Europe), Robert Ferguson (Vice President of Finance for China), and William Bowrey (Controller for Asia); (iii) members of the immediate family of each of the Defendants and/or any of the individuals referenced above; (iv) any entity in which any Defendant and/or any of the individuals referenced above has a controlling interest; (v) any parent, subsidiary or affiliate of Nortel; (vi) any person who was an officer or director or Nortel or any of its subsidiaries or affiliates during the Class Period; and (vii) the legal representatives, heirs, predecessors, successors or assigns of any of the excluded persons or entities. Also excluded from the U.S.

Global Class for this Action are the persons and/or entities who have requested exclusion from the U.S. Global Class by filing a request for exclusion on or before October 26, 2006, as listed on Exhibit C to the Supplemental Affidavit Relating to Additional Late Exclusions and Objections (Third GCG Report), sworn to by Randi Alarcon Collotta on December 18, 2006.

4. Notice of the pendency of this Action as a class action and of the proposed Settlement was given to all U.S. Global Class Members who could be identified with reasonable effort. The form and method of notifying the U.S. Global Class of the pendency of the action as a class action and of the terms and conditions of the proposed Settlement met the requirements of Rule 23 of the (United States) Federal Rules of Civil Procedure, Section 21D(a)(7) of the (United States) Securities Exchange Act of 1934, 15 U.S.C. 78u-4(a)(7), as amended, including by the (United States) Private Securities Litigation Reform Act of 1995 (the "PSLRA"), Rule 23.1 of the Local Rules of the Southern and Eastern Districts of New York, due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

5. The Settlement is approved as fair, reasonable and adequate. Subject to the terms and provisions of the Stipulation and the conditions therein being satisfied, the parties are directed to consummate the Settlement.

6. The Gross Settlement Shares are to be issued solely in exchange for bona fide outstanding claims. All parties to whom it is proposed to issue such securities have had the right to appear at the hearing on the fairness of the Settlement and adequate notice has been given to all such parties. The Court recognizes and acknowledges that one consequence of its approval of the Settlement at the Settlement Fairness Hearing is that, pursuant to Section 3(a)(10) of the

Case 1:09-cv-02559-KCP Document 8-2 Filed 12/26/13 Page 5 of 13

(United States) Securities Act of 1933, as amended, 15 U.S.C. § 77c(a)(1), the Gross Settlement Shares may be distributed to Class Members (and to Plaintiffs' Counsel as may be awarded by the respective Courts for attorneys' fees) without registration and compliance with the prospectus delivery requirements of the U.S. securities laws as the Gross Settlement Shares will be exempt from registration under the (United States) Securities Act of 1933, 15 U.S.C. § 77c(a)(1), as amended, pursuant to Section 3(a)(10) thereunder. The Court also acknowledges that Nortel will rely on such 3(a)(10) exemption (and Nortel will not register the Gross Settlement Shares under the (United States) Securities Act of 1933) based on this Court's approval of the fairness of the Settlement.

7. The Complaint, which the Court finds was filed on a good faith basis in accordance with the Private Securities Litigation Reform Act and Rule 11 of the (United States) Federal Rules of Civil Procedure based upon all publicly available information, is hereby dismissed in its entirety with prejudice and without costs, except as provided in the Stipulation, as against the Defendants.

8. Lead Plaintiffs and each U.S. Global Class Member who has not validly opted out, whether or not such U.S. Global Class Member executes and delivers a Proof of Claim, on behalf of themselves, their heirs, executors, administrators, successors and assigns, are hereby permanently barred and enjoined from instituting, commencing or prosecuting any and all claims, debts, demands, rights or causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, provincial, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured,

Case 1:05-md-01659-LAP Document 828-3 Filed 12/01/13 Page 7 of 14

whether class or individual in nature, including both known claims and Unknown Claims, (i) that have been asserted in this Action by the U.S. Global Class Members or any of them against any of the Released Parties, or (ii) that could have been asserted in any forum by the U.S. Global Class Members or any of them against any of the Released Parties which arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Complaint and which relate to the purchase of Nortel common stock or call options on Nortel common stock or the sale of put options on Nortel common stock during the Class Period, or (iii) any oppression or other claims under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended, that arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions during the Class Period, set forth or referred to in the Nortel II Actions, (the "Settled Claims"), against any and all of the Defendants, their past or present subsidiaries, parents, principals, affiliates, general or limited partners or partnerships, successors and predecessors, heirs, assigns, officers, directors, agents, employees, attorneys, advisors, investment advisors, investment bankers, underwriters, insurers, co-insurers, re-insurers, attorneys, accountants, auditors, consultants, administrators, executors, trustees, personal representatives, immediate family members and any person, firm, trust, partnership, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any of the Defendants, and the legal representatives, heirs, executors, administrators, trustees, successors in interest or assigns of the Defendants (the "Released Parties"); *provided, however*, that "Settled Claims" does not mean or include (a) claims, if any, against the Released Parties arising under the (United States) Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et seq.* ("ERISA") which are not common to all U.S. Global Class Members and which are the subject of an action pending before the Judicial Panel on Multidistrict Litigation, denominated *In re Nortel Networks Securities and "ERISA" Litigation*, MDL Docket No. 1537; (b) the action in *Rohac, et al. v. Nortel Networks Corporation, et al.*, Court File No. 04-CV-3268 (Ont. Sup. Ct. J.); and (c) the application brought in *Indiana Electrical Workers Pension Trust Fund IBEW and Laborers Local 100 and 397 Pension Fund v. Nortel Networks Corporation*, Ontario Superior Court of Justice, Court File No. 49059, for leave pursuant to the Canada Business Corporations Act to commence a representative action in the name of and on behalf of Nortel against certain of the Released Parties (the "Derivative Application"). Each U.S. Global Class Member who has not validly opted out has fully, finally, and forever released, relinquished, and discharged all Settled Claims against the Released Parties and each such U.S. Global Class Member is bound by this judgment, including without limitations, the release of claims as set forth in the Stipulation. The Settled Claims are hereby compromised, settled, released, discharged and dismissed as against the Released Parties on the merits and with prejudice by virtue of the proceedings herein and this Order and Final Judgment.

9. Defendants Nortel, John Edward Cleghorn, Robert Ellis Brown, Robert Alexander Ingram, Guylaine Saucier, and Sherwood Hubbard Smith, Jr., and the successors and assigns of any of them, are hereby permanently barred and enjoined from instituting, commencing or prosecuting any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, provincial, local, statutory or common law or any other law, rule or regulation, including both known claims and unknown claims, that have been or could have been asserted in the Action or any forum by the Defendants or any of them or the successors and assigns of any of them against any of the Lead Plaintiffs, U.S. Global Class Members or their attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of the Action

(except for claims to enforce the Settlement, confidentiality obligations or in respect of the Derivative Application) (the "Settled Defendants' Claims"). The Settled Defendants' Claims of all the Released Parties are hereby compromised, settled, released, discharged and dismissed on the merits and with prejudice by virtue of the proceedings herein and this Order and Final Judgment. In the event that any of the Released Parties asserts against the Lead Plaintiff, any U.S. Global Class Member or their respective counsel, any claim that is a Settled Defendants' Claim, then Lead Plaintiff, such U.S. Global Class Member or counsel shall be entitled to use and assert such factual matters included within the Settled Claims only against such Released Party in defense of such claim but not for the purposes of asserting any claim against any Released Party.

10. Pursuant to the PSLRA, the Released Parties are hereby discharged from all claims for contribution by any person or entity other than by Released Parties, whether arising under state, provincial, federal or common law, based upon, arising out of, relating to, or in connection with the Settled Claims of the U.S. Global Class or any U.S. Global Class Member. Accordingly, to the full extent provided by the PSLRA, the Court hereby bars all claims for contribution: (a) against the Released Parties by any person or entity other than the Released Parties; and (b) by the Released Parties against any person or entity other than the Released Parties.

11. Neither this Order and Final Judgment, the Stipulation, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any of the documents or statements referred to therein shall be:

Case 1:05-cv-02052-LAP Document 827 Filed 02/16/13 Page 9 of 13

(a) offered or received against the Defendants as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any of the Defendants with respect to the truth of any fact alleged by any of the plaintiffs or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of the Defendants;

(b) offered or received against the Defendants as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any Defendant;

(c) offered or received against the Defendants as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the Defendants, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; provided, however, that Defendants may refer to it to effectuate the liability protection granted them hereunder;

(d) construed against the Defendants as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; or

(e) construed as or received in evidence as an admission, concession or presumption against Lead Plaintiffs or any of the U.S. Global Class Members that any of their claims are without merit, or that any defenses asserted by the Defendants have any merit, or that damages recoverable under the Complaint would not have exceeded the Gross Settlement Fund.

12. The Plan of Allocation is approved as fair and reasonable, and Plaintiffs' Counsel and the Claims Administrator are directed to administer the Stipulation in accordance with its terms and provisions.

13. The Court finds that all parties and their counsel have complied with each requirement of Rule 11 of the (United States) Federal Rules of Civil Procedure as to all proceedings herein.

14. Lead Plaintiffs' Counsel in this Action are hereby awarded attorneys' fees in the amount of 8.0 % of the Gross Cash Settlement Fund (net of litigation expenses awarded in the next sentence), and 8.0 % of the Gross Settlement Shares, which amounts the Court finds to be fair and reasonable. Lead Plaintiffs' Counsel are hereby awarded $3,020,416.60 in reimbursement of expenses, which expenses shall be paid to Plaintiffs' Lead Counsel from the Gross Cash Settlement Fund with interest from the date such Gross Cash Settlement Fund was funded to the date of payment at the same net rate that the Gross Cash Settlement Fund earns. The award of attorneys' fees shall be allocated among plaintiffs' counsel in a fashion which, in the opinion of Plaintiffs' Lead Counsel, fairly compensates such counsel for their respective contributions in the prosecution and settlement of the Action.

15. The fees and expenses of plaintiffs' counsel in the Canadian Actions, as determined by the Canadian Courts shall be paid from the Gross Settlement Fund.

16. Lead Plaintiff Ontario Teachers' Pension Plan Board is hereby awarded $20,000.00, and the Department of the Treasury of the State of New Jersey and its Division of Investment is hereby awarded $ 17,000.00 . Such awards are for

reimbursement of their reasonable costs and expenses (including lost wages) directly related to its representation of the U.S. Global Class.

17. In making this award of attorneys' fees and reimbursement of expenses to be paid from the Gross Settlement Fund, the Court has considered and found that:

(a) the Settlement has created a cash fund of $370,157,428 that is already on deposit earning interest, and will also provide for the benefit of the Class 314,333,875 shares of Nortel common stock as may be adjusted in accordance with paragraph 4(d) of the Stipulation;

(b) The Settlement will entitle the Class to receive one-quarter of any actual gross recovery by Nortel in the existing litigation by Nortel against Frank Dunn, Douglas Beatty and Michael Gollogly (including the value of any monetary benefit that Nortel might receive from the defendants by way of forgiveness or cancellation of any monetary debt owed by Nortel to such defendants), excluding attorneys' fees and expenses awarded by the court, if any;

(c) Nortel has agreed to adopt the corporate governance enhancements described in Appendix A to Tab 1 to Exhibit A of the Stipulation;

(d) As set forth in the Supplemental Isaac Affidavit, over 1,015,000 copies of the Notice were disseminated to putative Class Members indicating that Lead Plaintiffs' Counsel were moving for attorneys' fees in the amount of up to 10% of the Gross Settlement Fund less litigation expenses awarded by the Court, and for reimbursement of expenses in an amount of approximately $4.3 million, and twenty-eight (28) objections were filed against the terms of the proposed Settlement or the ceiling on the fees and expenses requested by Lead Plaintiffs' Counsel contained in the Notice;

(e) Lead Plaintiffs' Counsel have conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

(f) The action involves complex factual and legal issues and was actively prosecuted over 2 years and, in the absence of a settlement, would involve further lengthy proceedings with uncertain resolution of the complex factual and legal issues;

(g) Had Lead Plaintiffs' Counsel not achieved the Settlement there would remain a significant risk that Lead Plaintiffs and the Class may have recovered less or nothing from the Defendants;

(h) Lead Plaintiffs' Counsel have devoted over 58,700 hours, with a lodestar value of approximately $17.43 million, to achieve the Settlement; and

(i) The amount of attorneys' fees awarded and expenses reimbursed from the Settlement Fund are fair and reasonable and consistent with awards in similar cases.

18. Any appeal or any challenge affecting the approval of (a) the Plan of Allocation submitted by Lead Plaintiffs' Counsel and/or (b) this Court's approval regarding any attorneys' fees and expense application shall in no way disturb or affect the finality of the other provisions of this Final Judgment.

19. Jurisdiction is hereby retained over the parties and the U.S. Global Class Members for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Stipulation and this Order and Final Judgment, and including any application for fees and expenses incurred in connection with administering and distributing the settlement proceeds to the members of the U.S. Global Class.

20. In the event that the Settlement does not become Final in accordance with the terms of the Stipulation, or is terminated pursuant to ¶ 27 of the Stipulation, this judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and in such event all orders entered and released by and in accordance with the Stipulation.

21. Without further order of the Court, the parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

22. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the (United States) Federal Rules of Civil Procedure.

Dated: New York, New York
December 26, 2006

Loretta A. Preska

LORETTA A. PRESKA
UNITED STATES DISTRICT JUDGE

Exhibit 3

COPY

973

FILED
CLERK U.S. DISTRICT COURT
DISTRICT OF DELAWARE
2004 FEB -5 PM 3:25

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE DAIMLERCHRYSLER AG SECURITIES LITIGATION

Master File No. 00-0993 (KAJ)

ORDER AWARDING LEAD PLAINTIFFS' COUNSELS' ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

THIS MATTER having come before the Court on December 5, 2003, on the application of Lead Plaintiffs' Counsel for an award of attorneys' fees and reimbursement of expenses incurred in the above-captioned action; the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of this action to be fair, reasonable and adequate and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation of Settlement dated September 29, 2003 (the "Stipulation").

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all Members of the Settlement Class who have not timely and validly requested exclusion.

3. The Court hereby awards Lead Plaintiffs' Counsel reimbursement of $2,908,451.15 million in litigation expenses, plus one-half the cost of the Special Master in participating in and preparing a report on the settlement. The Court also awards Lead Plaintiffs' Counsel attorneys' fees in the amount of $66,845,600, which is 22.5% of the Settlement Funds

(less expenses), together with the interest earned thereon for the same period and at the same rate as that earned on the Settlement Fund until paid. Said fees and expenses shall be allocated among plaintiffs' counsel by Lead Counsel in a manner which, in Lead Counsel's good faith judgment, reflects each such counsel's contribution to the institution, prosecution and resolution of the Litigation. The Court finds that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method.

4. The awarded attorneys' fees and expenses shall be paid to Lead Counsel subject to the terms, conditions and obligations of the Stipulation and in particular ¶¶ 22-24 thereof, which terms, conditions and obligations are incorporated herein.

IT IS SO ORDERED.

DATED: Feb. 5, 2004

Kent A. Jordan
THE HONORABLE KENT A. JORDAN
UNITED STATES DISTRICT JUDGE

(311966)

Exhibit 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: SATYAM COMPUTER SERVICES LTD. SECURITIES LITIGATION	:	No.: 09-MD-2027-BSJ

ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

This matter came on for hearing on September 8, 2011 (the "Settlement Hearing") on the motion of Lead Counsel to determine, among other things, whether and in what amount to award Lead Counsel in the above-captioned consolidated securities class action (the "Action") fees and reimbursement of expenses.

The Court having considered all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that notices of the Settlement Hearing substantially in the form approved by the Court were mailed to all Class Members who or which could be identified with reasonable effort, except those persons or entities excluded from the definition of the Class, and that summary notices of the hearing substantially in the form approved by the Court were published in *The Wall Street Journal*, *Investor's Business Daily* and *The Financial Times* and transmitted over *Business Wire* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order Awarding Attorneys' Fees and Expenses incorporates by reference the definitions in the Stipulations and Agreements of Settlement (the "Settlement Stipulations") and all

terms used herein shall, with respect to the respective Settlement Stipulations, have the same meanings as set forth in the applicable Settlement Stipulations.[1]

2. The Court has jurisdiction to enter this Order Awarding Attorneys' Fees and Expenses, and over the subject matter of the Action and all parties to the Action, including all Class Members.

3. Notice of Lead Counsel's application for attorneys' fees and reimbursement of expenses was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the Class of the motion for attorneys' fees and expenses constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice of the motion and satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995 (15 U.S.C. § 78u-4, et seq.) (the "PSLRA"), and all other applicable law and rules.

4. Lead Counsel are hereby awarded attorneys' fees in the amount of 17% of the total Settlement Funds, as well as 17% of any additional Settlement Funds recovered by Satyam from the PwC Entities, net of any taxes withheld from the Initial Escrow Accounts and ultimately paid pursuant to Indian tax law, and $1,027,076.94 in reimbursement of litigation expenses advanced or incurred by Lead Counsel collectively while prosecuting this Action (which expenses shall be paid from the Settlement Funds) with interest on such fees and expenses at the same rate as earned by the Settlement Funds from the dates the Settlement Funds were funded to the date of payment, which sums the Court finds to be fair and reasonable. The foregoing award of Attorneys' Fees and

---

[1] The Settlement Stipulations are: the Stipulation and Agreement of Settlement with Defendant Satyam Computer Services Ltd., dated February 16, 2011 (the "Satyam Stipulation") and the Stipulation and Agreement of Settlement between Lead Plaintiffs and the PwC Entities, dated April 27, 2011 (the "PwC Entities Stipulation") entered into by and among Lead Plaintiffs and the Settling Defendants (together, the "Settlement Stipulations").

Expenses shall be payable immediately in accordance with the terms set forth in ¶¶ 19 and 16, respectively of the Satyam Stipulation and the PwC Entities Stipulation. The award of attorneys' fees shall be allocated among Plaintiffs' Counsel in a manner which, in the opinion of Lead Counsel, fairly compensates Plaintiffs' Counsel for their respective contributions in the prosecution and settlement of the Action.

5. Also in accordance with the terms set forth in ¶¶ 20 and 17, respectively of the Satyam Stipulation and the PwC Entities Stipulation, Lead Counsel who seek to be paid their share of the attorney fee and expense award prior to the Effective Date shall be jointly and severally obligated to make appropriate refunds or repayments of attorneys' fees and expenses and any interest thereon paid to Lead Counsel to the Settlement Funds or to the Settling Defendants who contributed the Settlement Funds in direct proportion to their contributions to the Settlement Funds, as applicable, plus accrued interest at the same net rate as is earned by the Settlement Funds, if the Settlements are terminated pursuant to the terms of the Stipulations or if, as a result of any appeal or further proceedings on remand, or successful collateral attack, the award of attorneys' fees and/or litigation expenses is reduced or reversed by final non-appealable court order.

6. Class Representative the Public Employees' Retirement System of Mississippi is awarded $14,400 as reimbursement for its costs and expenses directly relating to its services in representing the Class.

7. Class Representative Mineworkers' Pension Scheme is awarded $98,711 as reimbursement for its costs and expenses directly relating to its services in representing the Class.

8. Class Representative SKAGEN AS is awarded $59,000 as reimbursement for its costs and expenses directly relating to its services in representing the Class.

9. Class Representative Sampension KP Livsforsikring A/S is awarded $21,000 as reimbursement for its costs and expenses directly relating to its services in representing the Class.

10. Subclass Representative Brian F. Adams is awarded $2,000 as reimbursement for his costs and expenses directly relating to his services in representing the Class and Subclass.

11. A litigation fund in the amount of $1,000,000 from the Satyam Settlement Fund shall be established to fund the continued prosecution of the Action against the Non-Settling Defendants.

12. In making this award of attorneys' fees, and reimbursement of expenses to be paid from the Settlement Funds, the Court has considered and found that:

(a) The Settlements have created a total settlement amount of $150.5 million in cash that is already on deposit and has been earning interest, and that numerous Class Members who submit acceptable Proofs of Claim will benefit from the Settlements created by the efforts of Lead Counsel;

(b) The fee sought by Lead Counsel has been reviewed and approved as fair and reasonable by the Court-appointed Lead Plaintiffs, sophisticated institutional investors that were substantially involved in all aspects of the prosecution and resolution of the Action;

(c) To date, over 208,000 copies of the Notices were disseminated to putative Class Members stating that Lead Counsel were moving for attorneys' fees not to exceed 17% of proposed Settlements and reimbursement of expenses incurred in connection with the prosecution of this Action. Only one objection to the terms of the Settlement and the fees and expenses requested by Lead Counsel contained in the Notice was received, although it was untimely and not filed with the Court as required by the Preliminary Approval Orders. The objector has not proven that he is a member of the Class, nor does he have standing; even if he did, his objection has been considered and overruled;

(d) Lead Counsel have conducted the litigation and achieved the Settlements with skill, perseverance and diligent advocacy;

(e) The Action involves complex factual and legal issues and, in the absence of settlement, would involve lengthy proceedings with uncertain resolution of the complex factual and legal issues;

(f) Had the Settlements not been achieved, there would remain a significant risk that Lead Plaintiffs and the other members of the Class may have recovered less or nothing from the Settling Defendants; and

(g) The amount of attorneys' fees awarded and expenses reimbursed from the Settlement Funds are fair and reasonable and consistent with awards in similar cases.

13. Any appeal or any challenge affecting this Court's approval regarding any attorneys' fees and expense application shall in no way disturb or affect the finality of the Judgments entered with respect to the Settlements.

14. Continuing jurisdiction is hereby retained over the parties and the Class Members for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Settlement Stipulations and this Order, including any further application for fees and expenses incurred in connection with administering and distributing the settlement proceeds to the members of the Class.

15. In the event that any of the Settlements are terminated or do not become Final or the Effective Date does not occur in accordance with the terms of the applicable Settlement Stipulation(s), this Order, except for ¶ 5 above, shall be rendered null and void to the extent provided by the applicable Settlement Stipulation(s) and shall be vacated in accordance with the terms of the applicable Settlement Stipulation(s).

16. There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

Dated: New York, New York
September 13, 2011

Barbara S. Jones

Honorable Barbara S. Jones
UNITED STATES DISTRICT JUDGE

Exhibit 5

Case closed

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE ROYAL DUTCH/SHELL TRANSPORT SECURITIES LITIGATION	**Civil Action No. 04-374 (JAP)** **(Consolidated Cases)** **Hon. Joel A. Pisano**

ORDER APPROVING SETTLEMENT

WHEREAS, the Class Representatives[1] and the Settling Companies entered into a May 13, 2008 Stipulation of Settlement filed with this Court on June 17, 2008; and

WHEREAS, on June 17, 2008, the Court entered its Findings and Order Preliminarily Certifying a Class for Settlement Purposes and Preliminarily Approving Proposed Settlement (the "Preliminary Approval Order") in which the Court preliminarily certified a class in this Action for settlement purposes under Fed. R. Civ. P. 23(b)(3), ordered individual and publication notice be provided to Class Members, scheduled a Fairness Hearing for September 26, 2008 and provided Class Members with an opportunity to object to, or exclude themselves from, the proposed settlement; and

WHEREAS, the Court held a Fairness Hearing on September 26, 2008 to determine, among other things, whether to give final approval to the Settlement Agreement; and

1. Unless otherwise specifically defined in this Order, the capitalized terms have the same meaning as attributed to them in the May 13, 2008 Settlement Agreement. The relevant definitions are set out in Appendix A.

WHEREAS, the Court is contemporaneously issuing a Judgment under Fed. R. Civ. P. 58 that, among other things, finally certifies a settlement Class, approves the Settlement Agreement and dismisses the Class Members' claims with prejudice as to all defendants;

NOW THEREFORE, based on the submissions of the Settling Parties, on the argument of counsel at the Fairness Hearing, and on this Court's Findings of Fact and Conclusions of Law, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. **Incorporation of Settlement Documents** – This Order Approving Settlement (the "Order") incorporates and makes a part hereof:

a. The Stipulation of Settlement entered into on May 13, 2008 and

b. Exhibits A through J to the Stipulation of Settlement.

The Stipulation of Settlement and all exhibits thereto shall be referred to collectively as the "Settlement Agreement."

2. **Jurisdiction** – The Court has personal jurisdiction over all Class Members (as defined below) and has subject matter jurisdiction over this Action, including, without limitation, jurisdiction to approve the Settlement Agreement and the Settlement Distribution Plan, grant final certification of the Class for settlement purposes and dismiss the Action with prejudice; *provided however*, that nothing in this paragraph 2 shall constitute a basis for nor give rise to personal jurisdiction over the Settling Companies or any of the Companies whose principal places of business are located outside of the United States to the extent such jurisdiction does not already exist (such jurisdiction existing as to the Settling Companies with respect to the Settlement Agreement).

3. **Final Class Certification**

a. The Lead Plaintiffs appointed by this Court on June 30, 2004, pursuant to 15 U.S. C. § 78u-4(a)(3), are hereby appointed, for settlement purposes only, as Class Representatives in respect of the Class for purposes of Federal Rule of Civil Procedure 23. Bernstein Liebhard & Lifshitz, LLP, which was appointed by the Court to serve as Lead Counsel on June 30, 2004, pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v), is hereby appointed, for settlement purposes only, as counsel for the Class pursuant to Federal Civil Procedure 23(c)(1)(B) and (g).

b. The Class that this Court preliminarily certified in the Preliminary Approval Order is hereby finally certified for settlement purposes under Fed. R. Civ. P. 23(b)(3). The Class consists of all persons or entities who, from April 8, 1999 through March 18, 2004, inclusive, (*i*) purchased stock or stock equivalents (including American Depositary Receipts) issued by Royal Dutch Petroleum Company ("Royal Dutch") or The "Shell" Transport and Trading Company, p.l.c. ("Shell Transport"), Royal Dutch or Shell Transport call options (or like instruments), or Royal Dutch or Shell Transport put options (or like instruments) on a United States exchange or market, and/or (*ii*) purchased Royal Dutch or Shell Transport stock or stock equivalents, Royal Dutch or Shell Transport call options (or like instruments), or Royal Dutch or Shell Transport put options (or like instruments) on one or more exchanges or markets outside the United States and at the time of purchase, were residents or citizens of, or were incorporated in or created under the laws of, the United States (including its states, territories and possessions); *provided however*, that persons and entities who purchased United States Shares and at the time of such purchase, were residents or citizens of, or were incorporated in or created under the laws of, any Forum other than the United States (including its states, territories and possessions) shall be Class Members only with respect to their purchase of United States Shares and not with respect to any Home Exchange Shares they purchased. The Class certified for settlement purposes in this Action shall not include:

(1) such persons or entities who submitted valid and timely requests for exclusion from the Class in accordance with the procedures set out in paragraph 10 of the Preliminary Approval Order;

(2) such persons or entities who settled an actual or threatened lawsuit or other proceeding with the Companies, or any of them, and released the Companies from any further claims concerning the recategorization of certain of the Companies' oil and gas reserves;

(3) any person or entity that is a defendant in the Action;

(4) any entity in which a defendant in the Action has a Controlling Interest;

(5) any person or entity that has a Controlling Interest in a defendant in this Action, or

(6) the officers, directors, Affiliates, legal representatives, heirs, predecessors, successors or assigns of any defendant in this Action.

4. **Issue for Certification** -- The issue that the Court is deciding on a class-wide basis is whether the terms of the settlement are fair, reasonable and adequate pursuant to Fed. R. Civ. P. 23(e) and governing law construing that Rule. In making that determination, the Court also has considered – as discussed in paragraph 6 below – whether proper notice of the settlement was given under Fed. R. Civ. 23(c)(2)(B) and 23(e)(1) to the settlement Class and any other relevant persons so that the settlement's terms will have binding effect, as discussed in paragraph 11 below.

5. **Adequacy of Representation** – Class Representatives and Class Counsel have fully and adequately represented the Class for purposes of entering into and implementing the settlement and have satisfied the requirements of Fed. R. Civ. P. 23(a)(4) and 23(g)and the Private Securities Litigation Reform Act of 1995 (the "PSLRA").

6. **Notice –** The Court finds that the Notice, Summary Notice and Claim Form were simply written and readily understandable, and that the Notice, Summary Notice and notice methodology: (*i*) constituted the best practicable notice, (*ii*) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and the claims in the Action, their ability to have access to discovery materials produced to the Class Representatives by the defendants, their right to object to the proposed settlement and to appear at the Fairness Hearing, and their right to exclude themselves from the Class, (*iii*) were reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notice and (*iv*) met all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the PSLRA, the Rules of the Court, and any other applicable law.

7. **Final Settlement Approval –** The three objections that were submitted regarding the Settlement Agreement, the Attorneys' Fees Award and/or the Attorneys' Expenses Award are hereby overruled and denied. The terms and provisions of the Settlement Agreement have been entered into in good faith and are hereby fully and finally approved as fair, reasonable and adequate as to, and in the best interests of, each of the Settling Parties and the Class Members, and in full compliance with all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the PSLRA, the Rules of the

Court and any other applicable law. The Settling Parties and their counsel are hereby directed to implement and consummate the Settlement Agreement according to its terms and provisions.

8. **Settlement Distribution Plan –** The Settlement Distribution Plan is approved as a fair and reasonable method to allocate the settlement proceeds among Class Members, and the Settling Parties, through the Court-approved Administrator, are directed to implement and administer the Settlement Distribution Plan in accordance with its terms and provisions.

9. **Participation of ERISA Plans** – The Court finds that (*i*) among the Members of the Class on whose behalf Class Representatives have asserted claims for relief under the federal securities laws are certain ERISA plans associated with the Settling Companies (the "ERISA Plans"), (*ii*) the settlement of this Action arises from a genuine controversy between the Class Members and the Settling Companies, is not the result of collusion, and was not procured by fraud or misrepresentation, (*iii*) the Settlement Agreement was negotiated by the Court-appointed Class Counsel, who have acted in the best interest of Class Representatives and the Class, which includes the ERISA Plans, in negotiating the Settlement Agreement vigorously and at arm's length, (*iv*) Class Counsel has no relationship to, or interest in, any of the defendants that might affect their judgment as counsel for Class Representatives or Class Members, (*v*) the interests of Class Representatives and the nature of their claims are identical with those of the Class, which includes the ERISA Plans, (*vi*) the ERISA Plans do not have any additional or independent claims that arise out of the Claims made in this Action above and beyond those asserted by Class Representatives on behalf of Class Members, and the ERISA Plans' participation in the Settlement Agreement is not less favorable than that of Class Representatives and other Class Members, (*vii*) the Settlement Agreement is not part of an agreement, arrangement or understanding designed to benefit Shell, but rather is designed to benefit Class Representatives

and Class Members (including the ERISA Plans), as well as Home Exchange Purchasers, (*viii*) an independent fiduciary retained by the relevant ERISA Plans has concluded that relief provided by the Settlement Agreement is reasonable in light of the ERISA Plans' likelihood of full recovery, the risks and costs of litigation, and the value of the claims foregone, and the fiduciary has thus determined that the ERISA Plans should participate in the Settlement Agreement without objecting to any of its provisions and (*ix*) accordingly, the negotiation and consummation of the Settlement Agreement by Class Representatives on behalf of the Class Members, which includes the ERISA Plans, satisfy the conditions of the class exemption published by the Department of Labor at 68 Fed. Reg. 75632 (Dec. 31, 2003), and, in any event, do not constitute "prohibited transactions" as defined by ERISA §§ 406(a)-(b), 29 U.S.C. §§ 1106(a)-(b).

10. **Supplemental Settlement Amounts** – The Court finds that

a. to the extent the Home Exchange Share Percentage (as calculated pursuant to Section I.A.49 of the Settlement Agreement) is greater than 3%, payment of the Supplemental Home Exchange Settlement Amount (as set out in Section III.C of the Settlement Agreement) is necessary to correct a disproportionate receipt of settlement relief by Home Exchange Purchasers under the Non-U.S. Settlement Agreement; and

b. if, within one thousand ninety-five (1,095) days following the Execution Date, the Settling Companies agree to pay or cause to be paid an Additional Non-U.S. Settlement Amount and the Dutch Court subsequently issues a Non-U.S. Settlement Binding Declaration, payment of the Supplemental Upside Protection Amount (as set out in Section III.E of the Settlement Agreement) is necessary to correct a disproportionate receipt of settlement relief by Home Exchange Purchasers under the Non-U.S. Settlement Agreement.

11. **Binding Effect** – The terms of the Settlement Agreement and of this Order and the accompanying Judgment shall be forever binding on the Settling Companies, the Class Representatives and all Class Members, as well as their heirs, executors, administrators, beneficiaries, predecessors, successors, Affiliates and assigns as to all claims and issues that have or could have been raised in this Action.

12. **Termination of the Settlement Agreement** – In the event the Settlement Agreement is terminated as provided in Section XIV of the Settlement Agreement, all terms and conditions set out in the Settlement Agreement other than the terms set out in Section XIV.D shall become null and void and of no further force and effect. The Settlement Agreement shall not be used or referred to for any purpose whatsoever in this or any proceeding, and all negotiations and proceedings relating to the Settlement Agreement shall be deemed to be withdrawn without prejudice as to the rights of each of the Settling Parties, who shall be restored to their respective positions as of May 13, 2008.

13. **Release** – The Release as set forth in Section X.A of the Settlement Agreement (and as set out in Appendix B to this Order) is expressly incorporated herein in all respects. The Release shall be effective as of the Approval Date; *provided however*, that notwithstanding anything in the Settlement Agreement, the Release or the Claim Form, the Release shall not bar Class Members from receiving relief with respect to their Home Exchange Shares pursuant to the terms of the Non-U.S. Settlement Agreement.

14. **Permanent Injunction** – All Class Members (and their heirs, executors and administrators, beneficiaries, predecessors, successors, Affiliates and assigns), any person or entity claiming by or through a Class Member, and any person or entity representing any or all Class Members, are permanently enjoined from filing, commencing, prosecuting, intervening in,

participating in (as class members or otherwise), or receiving any benefits or other relief from, any other lawsuit, arbitration or other proceeding against any or all Releasees or order in any jurisdiction entered against any or all Releasees that is based upon, arises out of or relates to any Released Claims. All persons or entities are permanently enjoined from organizing any Class Members for purposes of pursuing as a purported class action (including by seeking to amend a pending complaint to include claims that are based upon, arise out of or relate to any Released Claims, or by seeking class certification in a pending action) any other lawsuit against any or all Releasees that is based upon, arises out of or relates to any Released Claims.

15. **Contribution Bar Order –** In accordance with 15 U.S.C. § 78u-4(f)(7)(A), any and all claims for contribution arising out of any Released Claim, including, but not limited to, any claim that is based upon, arises out of or relates to the Action, or the transactions and occurrences referred to in the Complaint (*i*) by any person or entity against the Settling Companies and (*ii*) by the Settling Companies against any person or entity other than as set out in 15 U.S.C. § 78u-4(f)(7)(A)(ii), are hereby permanently barred, extinguished, discharged, satisfied, and unenforceable. Accordingly, without limitation to any of the above, (*i*) all persons and entities are hereby permanently enjoined from commencing, prosecuting, or asserting against any of the Settling Companies any such claim for contribution and (*ii*) the Settling Companies are hereby permanently enjoined from commencing, prosecuting, or asserting against any person or entity any such claim for contribution. In accordance with 15 U.S.C. § 78u-4(f)(7)(B), any final verdict or judgment that may be obtained by or on behalf of the Class or a Class Member against any person or entity shall be reduced by the greater of (*i*) an amount that corresponds to the percentage of responsibility of the Settling Companies for the loss to the Class or a Class Member or (*ii*) the amount paid by or on behalf of the Settling Companies to the Class in

connection with the Settlement Agreement. However, notwithstanding anything stated in this Contribution Bar Order or in the Settlement Agreement, in the event that any person or entity commences against any of the Releasees any claim for contribution that is based upon, arises out of or relates to the Action, or the transactions and occurrences referred to in the Complaint, and such claim is not barred pursuant to this paragraph 15 or is otherwise not barred by the Contribution Bar Order, neither the Contribution Bar Order nor the Settlement Agreement shall bar claims by that Releasee against such petitioner.

16. **Complete Bar Order** – The Court finds that the Settlement Agreement represents a good faith settlement of all Released Claims of all Class Members sufficient to discharge the Settling Companies and the Releasees of all Released Claims of all Class Members. In order to effectuate such settlement, the Court hereby enters the following bar:

a. Any and all persons and entities are permanently barred, enjoined and restrained from commencing, prosecuting or asserting any claim against any Releasee arising under state, federal or common law, however styled (whether for indemnification or contribution or otherwise denominated, including, without limitation, claims for breach of contract and for misrepresentation), where the alleged injury or damage to such person or entity is that person's or entity's alleged liability to the Class or a Class Member, whether such claim is based upon, arises out of, or relates to any Released Claim belonging to the Class or a Class Member, including, but not limited to, any claim that is based upon, arises out of or relates to the Action, or the transactions and occurrences referred to in the Complaint, whether such claims are legal or equitable, known or unknown, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, including, without limitation, any claim in which a person or entity seeks to recover from any of the Releasees (*i*) any amounts such person or entity may become liable to pay to the

Class or any of the Class Members and/or (*ii*) any costs, expenses, or attorneys' fees from defending any claim by the Class or any of the Class Members. All such claims are hereby extinguished, discharged, satisfied and unenforceable, subject to a hearing to be held by the Court, if necessary. The provisions of this paragraph 16.a are intended to preclude any liability of any of the Releasees to any person or entity for indemnification, contribution, or otherwise respecting any claim based upon, arising out of, or relating to any Released Claim belonging to the Class or a Class Member, where the alleged injury or damage to such person or entity is that person's or entity's alleged liability to the Class or a Class Member in the Action, including, but not limited to, any claim that is based upon, arises out of or relates to the Action, or the transactions and occurrences referred to in the Complaint; *provided* that, with respect to any judgment against any person or entity on behalf of the Class or such Class Member based upon, arising out of, or relating to any Released Claim belonging to the Class or a Class Member, including, but not limited to, any claim that is based upon, arises out of or relates to the Action, or the transactions and occurrences referred to in the Complaint, that person or entity shall be entitled to a credit of the greater of (*i*) an amount that corresponds to the percentage of responsibility of the Settling Companies for the loss to the Class or such Class Member or (*ii*) the aggregate amount of all payments made under Sections III.A through III.H of the Settlement Agreement; *provided further* that nothing in this Complete Bar Order shall prevent a putative Class Member who validly requested exclusion from the Class from pursuing any claim other than a claim barred by the Contribution Bar Order against any Releasee where such claim is based upon, arises out of, or relates to any Released Claim, including, but not limited to, any claim that is based upon, arises out of or relates to the Action, or the transactions and occurrences referred to in the Complaint. If any provision of this paragraph 16.a is subsequently held to be unenforceable, such provision shall be substituted with such other provision as may be necessary to afford all of the Releasees the fullest protection permitted by law from any claim that arises out of or relates to any Released Claim belonging to the Class or a Class Member, including, but not limited to, any claim that is based upon, arises out of or relates to the Action, or the transactions and occurrences referred to in the Complaint.

b. Each and every Releasee is permanently barred, enjoined and restrained from commencing, prosecuting or asserting any claim against any person or entity (including any other Releasee) arising under state, federal, or common law, however styled (whether for indemnification or contribution, or otherwise denominated, including, without limitation, claims for breach of contract and for misrepresentation), where the alleged injury or damage to the Releasee is the Releasee's alleged liability to the Class or a Class Member, whether such claim is based upon, arises out of, or relates to any Released Claim belonging to the Class or a Class Member, including, but not limited to, any claim that is based upon, arises out of or relates to the Action, or the transactions and occurrences referred to in the Complaint, whether such claims are legal or equitable, known or unknown, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, including, without limitation, any claim in which the Releasee seeks to recover from any person or entity, including another Releasee, (*i*) any amounts such Releasee has or may become liable to pay to the Class or any of the Class Members and/or (*ii*) any costs, expenses, or attorneys' fees from defending any claim by the Class or by any of the Class Members. All such claims are hereby extinguished, discharged, satisfied and unenforceable. However, notwithstanding anything stated in this Complete Bar Order or in the Settlement Agreement, if any person or entity commences against any of the Releasees any action asserting a claim that is based upon, arises out of, or relates to any Released Claim belonging to the Class or a Class

Member, including, but not limited to, any claim that is based upon, arises out of or relates to the Action, or the transactions and occurrences referred to in the Complaint, and if such claim is not barred by a court pursuant to paragraphs 15 and/or 16.a above or is otherwise not barred by the Complete Bar Order, neither the Complete Bar Order nor the Settlement Agreement shall bar claims by that Releasee against such person or entity.

17. **No Admissions –** Neither this Order and the accompanying Judgment nor the Settlement Agreement, nor any of the provisions of the Settlement Agreement or any negotiations leading to its execution, nor any other documents referred to in this Order or the accompanying Judgment, nor any action taken to carry out this Order and the Judgment is, may be construed as, offered as, received as, used as or deemed to be evidence of any kind in this Action, any other action, or any other judicial, administrative, regulatory or other proceeding, or may be construed as, offered as, received as, used as or deemed to be evidence or an admission or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including but not limited to the Settling Companies, or as a waiver by the Settling Companies of any applicable defense. Entering into, or carrying out the terms of, the Settlement Agreement, and any negotiations or proceedings related to it, shall not under any circumstances be construed as, offered as, received as, used as or deemed to be evidence of, an admission or concession as to the Class Representatives or any Class Members that any of their claims are without merit, or that the Settling Companies' denials or defenses are meritorious, and shall not be offered or received in evidence in this Action, any other action, or any other judicial, administrative, regulatory or other proceeding against any Settling Party hereto for any purpose whatsoever, except as evidence of the terms of the Settlement Agreement or to enforce the provisions of this Order, the accompanying Judgment or the Settlement Agreement; *provided however*, that this

Order, the accompanying Judgment and the Settlement Agreement may be filed in any action against or by the Settling Companies or other Releasees to support a defense of *res judicata*, collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim.

18. **Enforcement of Settlement –** Nothing in this Order or the accompanying Judgment shall preclude any action to enforce the terms of the Settlement Agreement.

19. **Attorneys' Fees Award and Attorney's Expenses Award** – Class Counsel are hereby awarded Attorneys' Fees in the amount of $30,000,000.00 and Attorneys' Expenses in the amount of $3,000,000.00, which amounts the Settling Companies shall pay or cause to be paid in accordance with the terms of the Settlement Agreement. In no event will the Attorneys' Fees Award or the Attorneys' Expenses Award be subtracted from any amounts due under Sections III.A through III.F of the Settlement Agreement.

20. **Class Representatives' Expense Award –** Pursuant to 15 U.S.C. § 78u-4(a)(4), the Court hereby awards to the Class Representatives' expenses in the amount of $150,000.00 to compensate the Class Representatives for their reasonable costs and expenses directly relating to their representation of the Class. In no event will the Class Representatives' Expense Award be subtracted from any amounts due under Sections III.A through III.F of the Settlement Agreement.

21. **No Other Payments –** Paragraphs 19 and 20 of this Order cover, without limitation, any and all claims for attorneys' fees, attorneys' expenses, Class Representatives' expenses, costs or disbursements incurred by Class Counsel or any other counsel of record representing Class Members in this Action, or incurred by the Class Representatives or Class

Members, or any of them, in connection with or related in any manner to this Action, the settlement of this Action and the administration of the Settlement Agreement except to the extent otherwise specified in this Order, the accompanying Judgment and the Settlement Agreement.

22. **Modification of Settlement Agreement –** The parties are hereby authorized, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement that are not materially inconsistent with this Order and the accompanying Judgment and do not materially limit the rights of Class Members under the Settlement Agreement; *provided* that a decision by Class Representatives to modify the Settlement Distribution Plan shall not be deemed to be a change that materially limits the rights of Class Members under the Settlement Agreement to the extent such modification involves an amount that is equal to or less than ten percent (10%) of the Net Cash Settlement Amount.

23. **Findings of Fact and Conclusions of Law** – The Settling Parties have been directed jointly to prepare proposed findings of fact and conclusions of law in support of the Court's Judgment and this Order.

24. **Retention of Jurisdiction** – The Court has jurisdiction to enter this Order and the accompanying Judgment. Without in any way affecting the finality of this Order or the accompanying Judgment, this Court expressly retains exclusive and continuing jurisdiction as to all matters relating to the administration, consummation, enforcement and interpretation of the Settlement Agreement, and of this Order and the accompanying Judgment, and for any other necessary purposes, including, without limitation:

a. enforcing the terms and conditions of the Settlement Agreement and resolving any disputes, claims or causes of action that, in whole or in part, are related to or arise out of the Settlement Agreement, this Order or the Judgment (including, without limitation, whether a person or entity is or is not a Class Member, and whether claims or causes of action allegedly related to this Action are or are not barred by the Judgment or Release);

b. entering such additional orders as may be necessary or appropriate to protect or effectuate this Order and the accompanying Judgment, including, without limitation, any order needed to (*i*) dismiss the Complaint with prejudice, (*ii*) permanently enjoin Class Members from initiating or pursuing related proceedings or (*iii*) ensure the fair and orderly administration of this Settlement Agreement; and

c. entering any other necessary or appropriate orders to protect and effectuate this Court's retention of continuing jurisdiction; *provided, however*, that nothing in this paragraph 24 is intended to restrict the ability of the parties to exercise their rights under paragraph 22 of this Order; *provided further* that nothing in this paragraph 24 shall constitute a basis for nor give rise to personal jurisdiction over the Settling Companies or any of the Companies whose principal places of business are located outside of the United States to the extent such jurisdiction does not already exist (such jurisdiction existing as to the Settling Companies with respect to the Settlement Agreement).

25. **Rule 11 Findings –** The Court finds that the Complaint was filed as to all defendants (including those who were dismissed from the Action prior to the execution of the Settlement Agreement) on a good faith basis and in accordance with the PSLRA and Rule 11 of the Federal Rules of Civil Procedure based upon all publicly available information. The Court finds that all Settling Parties and their counsel have complied with each requirement of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings herein.

26. **Dismissal of Action –** This Action, including all individual claims and Class claims resolved by it, is hereby dismissed on the merits and with prejudice as to all defendants,

without fees or costs to any Settling Party except as otherwise provided in this Order, the accompanying Judgment and the Settlement Agreement.

27. **Entry of Judgment** – The Court will separately enter the accompanying Judgment in accordance with Fed. R. Civ. P. 58.

SO ORDERED this 26 day of Sept, 2008.

HONORABLE JOEL A. PISANO
UNITED STATES DISTRICT COURT JUDGE