

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

IN RE SOLARWINDS CORPORATION  
SECURITIES LITIGATION

Case No. 1:21-cv-00138-RP

CLASS ACTION

**DECLARATION OF JONATHAN D. USLANER  
IN SUPPORT OF: (I) LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL  
OF SETTLEMENT AND PLAN OF ALLOCATION; AND (II) LEAD COUNSEL'S  
MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES**

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**EXHIBIT LIST**

<b>Ex. No.</b>	<b>Description</b>
1	Declaration of Michelle Yoshida in Support of Motion for Final Approval of Class Action Settlement (“Yoshida Decl.”)
2	Declaration of Kristin O’Brien, Executive Director of the New York City District Council of Carpenters Pension Fund, in Support of: (I) Lead Plaintiff’s Motion for Final Approval of Settlement and Plan of Allocation; and (II) Lead Counsel’s Motion for Attorneys’ Fees and Litigation Expenses (“O’Brien Decl.”)
3	CORNERSTONE RESEARCH, SECURITIES CLASS ACTION SETTLEMENTS: 2022 REVIEW AND ANALYSIS (2023)
4	Declaration of Alexander P. Villanova Regarding (A) Mailing of Notice and Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date (“Villanova Decl.”)
5	Summary of Plaintiffs’ Counsel’s Lodestar and Expenses
5A	Declaration of Jonathan D. Uslaner on Behalf of Bernstein Litowitz Berger & Grossmann LLP in Support of Lead Counsel’s Motion for Attorneys’ Fees and Litigation Expenses
5B	Declaration of Frank B. Burney on behalf of Martin & Drought, P.C. in Support of Lead Counsel’s Motion for Attorneys’ Fees and Litigation Expenses
6	Plaintiffs’ Counsel’s Total Expenses by Category
7	<i>Berger v. Compaq Computer Corp.</i> , Civil Action No. 98-1148, slip op. (S.D. Tex. Nov. 22, 2002), ECF No. 148

JONATHAN D. USLANER declares as follows:

1. I am a partner in the law firm of Bernstein Litowitz Berger & Grossmann LLP (“BLB&G”). BLB&G was appointed as Lead Counsel for Lead Plaintiff New York City District Council of Carpenters Pension Fund (“Lead Plaintiff” or “NYC Carpenters”) in the above-captioned action (the “Action”). I have personal knowledge of the matters set forth herein based on my active participation in all aspects of the prosecution and settlement of the Action.<sup>1</sup>

2. The proposed Settlement before the Court provides for the resolution of the claims in the Action in exchange for a cash payment of \$26,000,000.00, plus interest, for the benefit of the Settlement Class. The Settlement Amount has been paid into an escrow account and is earning interest. As detailed herein, the Settlement provides a significant benefit to the Settlement Class by conferring a substantial, certain, and near-term recovery while avoiding the significant risks of continued litigation, including the risk that the Settlement Class could recover nothing or less than the Settlement Amount after years of additional litigation, appeals, and delay.

3. The proposed Settlement is the result of extensive efforts by Lead Plaintiff and Lead Counsel, which included, among other things: (i) conducting an extensive investigation into the alleged fraud, including interviews of dozens of former employees of SolarWinds and a thorough review of public information such as filings with the U.S. Securities and Exchange Commission (“SEC”), analyst reports, conference call transcripts, and news articles; (ii) drafting an initial complaint and a detailed consolidated Complaint based on Lead Counsel’s extensive

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<sup>1</sup> All capitalized terms that are not otherwise defined herein shall have the meanings provided in the Stipulation and Agreement of Settlement dated November 28, 2022 (ECF No. 97-1) (the “Stipulation”), which was entered into by and among (i) Lead Plaintiff, on behalf of itself and the Settlement Class, and (ii) defendants SolarWinds Corporation (“SolarWinds” or the “Company”), Kevin B. Thompson, Timothy Brown, Silver Lake Group L.L.C., Silver Lake Technology Management, L.L.C., and Thoma Bravo, LP (collectively, “Defendants”).

investigation; (iii) opposing Defendants' motions to dismiss the Complaint through detailed briefing; (iv) conducting substantial fact discovery, including exchanging initial disclosures, document requests, and interrogatories, and obtaining and reviewing over 600,000 pages of documents from Defendants and non-parties; (v) drafting a motion for class certification, which included an expert report on market efficiency and class-wide damages; (vi) consulting extensively with experts on loss causation, damages, market efficiency, and cybersecurity throughout the Action; and (vii) engaging in extended arm's-length settlement negotiations, which included two full-day mediation sessions with Michelle Yoshida of Phillips ADR Enterprises, an experienced mediator. As a result of these efforts, Lead Plaintiff and Lead Counsel were well-informed of the strengths and weaknesses of the claims and defenses in the Action at the time they achieved the proposed Settlement.

4. The \$26 million Settlement was based on a mediator's recommendation made by Ms. Yoshida at the conclusion of the second mediation session. Ms. Yoshida has submitted a declaration describing the mediation process (attached as Exhibit 1). As Ms. Yoshida states in her declaration, "the negotiations between the Parties were vigorous and conducted at arm's length and in good faith." Yoshida Decl. ¶ 10.

5. Lead Plaintiff—a sophisticated institutional investor that actively participated in the Action—endorses the approval of the Settlement. *See* Declaration of Kristin O'Brien, Executive Director of NYC Carpenters ("O'Brien Decl."), attached hereto as Exhibit 2, at ¶¶ 3-7.

6. As discussed in further detail below, the proposed Plan of Allocation, which was developed with the assistance of Lead Plaintiff's damages expert, provides for the equitable distribution of the Net Settlement Fund to Settlement Class Members who submit Claim Forms

that are approved for payment by the Court on a *pro rata* basis fairly based on losses attributable to the alleged fraud.

7. For its efforts in achieving the Settlement, Lead Counsel requests a fee of 25% of the Settlement Fund, net of Litigation Expenses, for Plaintiffs' Counsel.<sup>2</sup> As discussed in the Fee Memorandum, the requested fee is consistent with the percentage fees that courts within this Circuit typically award for similarly sized class action settlements. Moreover, the requested percentage fee will result in a lodestar multiplier of approximately 1.9, which is well within the range of multipliers typically awarded in securities class actions. Lead Counsel respectfully submits that the requested 25% fee is fair and reasonable in light of the result achieved in the Action, the efforts of Plaintiffs' Counsel, and the risks and complexity of the litigation.

## **I. HISTORY OF THE ACTION**

### **A. Background**

8. Defendant SolarWinds Corporation is a software company that sells network monitoring software, with major customers that include large corporations and agencies of the United States government. At all relevant times, SolarWinds common stock traded on the New York Stock Exchange ("NYSE") under the ticker symbol "SWI."

9. On December 13, 2020, the press reported that cybercriminals had infiltrated certain of SolarWinds' servers, causing SolarWinds customers to download malware uploaded during the cyberattack.

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<sup>2</sup> Plaintiffs' Counsel consists of Lead Counsel BLB&G and Liaison Counsel Martin & Drought, P.C. ("Martin & Drought").

**B. The Commencement of the Action and the Appointment of Lead Plaintiff and Lead Counsel**

10. In January and February 2021, related putative class actions were filed in the United States District Court for the Western District of Texas (the “Court”) against SolarWinds alleging violations of the federal securities laws.

11. In accordance with the PSLRA, Lead Counsel caused a notice to be published in a national newswire service on February 9, 2021 advising potential class members of the pendency of the action, the claims asserted, and the deadline by which putative class members could move the Court for appointment as lead plaintiff.

12. On March 9, 2021, NYC Carpenters moved for appointment as Lead Plaintiff and to consolidate the three putative class actions. (ECF No. 18.) No other class member filed a motion for appointment as Lead Plaintiff.

13. On March 11, 2021, the Court entered an order appointing NYC Carpenters as Lead Plaintiff for the Action, approving NYC Carpenters’ selection of BLB&G as Lead Counsel, and consolidating the actions. (ECF No. 19.)

**C. The Investigation and Filing of the Complaint**

14. In connection with this matter, Lead Counsel undertook an extensive investigation into the alleged fraud and potential claims that could be asserted in the Action. The investigation included a thorough review of public information such as SEC filings, analyst reports, conference call transcripts, and news articles.

15. In connection with its investigation, Lead Counsel and its in-house investigators also conducted an extensive search to locate former employees of SolarWinds and other industry participants who might have relevant information pertaining to the claims asserted in the Action. This included contacting over 200 former SolarWinds employees believed to possess potentially



relevant information. Lead Counsel and/or its in-house investigators spoke to 55 of these individuals, and Lead Counsel included detailed information received from 11 of these former SolarWinds employees in the Complaint.

16. On June 1, 2021, Lead Plaintiff filed and served the Consolidated Complaint for Violations of the Federal Securities Laws (ECF No. 26) (the “Complaint”). The detailed, 100-page Complaint asserts claims against all Defendants under Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder, and against Defendants Thompson, Brown, Thoma Bravo, LP, Silver Lake Technology Management, L.L.C., and Silver Lake Group L.L.C. under Section 20(a) of the Exchange Act.

17. The Complaint alleged that during the period from October 18, 2018 through December 17, 2020, inclusive (the “Class Period”), Defendants made false statements concerning SolarWinds’ cybersecurity program, including that it adhered to specific cybersecurity practices set forth in a “Security Statement” on its website. The Complaint alleged that such statements were false and misleading because SolarWinds allegedly sacrificed robust cybersecurity protocols in favor of increasing profitability, and that in reality, SolarWinds failed to follow certain cybersecurity practices. The Complaint further alleged that the price of SolarWinds’ common stock was artificially inflated during the Class Period, and declined when the truth was revealed following the cyberattack on SolarWinds.

**D. Defendants’ Motions to Dismiss**

18. On August 2, 2021, Defendants filed and served four motions to dismiss the Complaint. (ECF Nos. 41-45.) The motions included over 80 pages of briefing and were supported by over 475 pages of exhibits. In their motions, Defendants argued that the Complaint should be dismissed because Lead Plaintiff had not alleged any materially false and misleading statements made by Defendants during the Class Period; that certain challenged statements were

non-actionable because they were puffery or forward-looking; and that the Complaint failed to allege facts giving rise to a strong inference of scienter.

19. On October 1, 2021, Lead Plaintiff filed and served a 73-page omnibus memorandum of law in opposition to Defendants' motions to dismiss (ECF No. 55), as well as an opposition to Defendants' request for judicial notice (ECF No. 54). Lead Plaintiff explained that the Complaint adequately identified the false and misleading statements and omissions, detailed the reasons why each challenged statement was false or omitted material facts, and raised a strong inference of scienter. Lead Plaintiff also filed an objection to Defendants' request for judicial notice of various exhibits. (ECF No. 54.)

20. On November 1, 2021, Defendants filed and served reply papers in support of their motions to dismiss the Complaint. (ECF Nos. 58-63.)

21. On March 30, 2022, the Court entered an Order denying Defendants' motions to dismiss the Complaint, except as to Defendant Thompson. The Court also denied Defendants' request for judicial notice. (ECF No. 64.)

22. On April 8, 2022, Lead Plaintiff filed a motion for clarification pursuant to Federal Rule of Civil Procedure 60(a) concerning the Court's ruling on Defendant Thompson's motion to dismiss. Specifically, Lead Plaintiff sought clarification of whether the Court intended to dismiss all claims against Defendant Thompson, or just Lead Plaintiff's 10(b) claims against him. (ECF No. 67.)

23. On April 20, 2022, Defendant Thompson filed an opposition to Plaintiff's motion for clarification and cross-moved for an entry of final judgment against him. (ECF Nos. 68-69.) Lead Plaintiff opposed the motion for entry of final judgment on April 22, 2022, and Defendant Thompson filed a reply on April 25, 2022. (ECF Nos. 70-71.)

24. On August 19, 2022, the Court granted Lead Plaintiff's motion for clarification, and denied Defendant Thompson's motion for entry of final judgment. (ECF No. 91.)

25. On May 18, 2022, Defendants SolarWinds, Brown, Silver Lake, and Thoma Bravo filed their answers to the Complaint. (ECF Nos. 72, 73, 75.) Defendant Thompson filed his answer on September 28, 2022. (ECF No. 92.) Among other things, Defendants' Answers denied Lead Plaintiff's allegations of wrongdoing and asserted various defenses to the claims pled against them.

**E. The Parties Conduct Extensive Fact Discovery**

26. Discovery in the Action commenced in April 2022, following the Court's decision on Defendants' motions to dismiss.

27. Lead Plaintiff served its First Set of Requests for the Production of Documents to Defendants on April 19, 2022, and its Second Set of Requests for the Production of Documents on May 10, 2022. Meanwhile, Defendants served to Lead Plaintiff their First Set of Document Requests on June 3, 2022.

28. On May 19, 2022, following extensive meet-and-confers, the Parties submitted a proposed Scheduling Order to the Court. (ECF No. 78.)

29. On June 7, 2022, the Court held an initial pretrial conference (ECF No. 89) and entered a Scheduling Order (ECF No. 90). The deadlines set forth in the Scheduling Order required Lead Plaintiff to file its motion for class certification by September 30, 2022 and the Parties to complete fact discovery by March 15, 2023. (*Id.*)

30. On June 1, 2022, the Parties exchanged their Initial Disclosure Statements pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure.

31. The Parties also negotiated the terms of the protective order governing the treatment of documents and other information produced in discovery, which the Parties submitted to the

Court on May 19, 2022. (ECF No. 79.) The Court entered the stipulated protective order on May 24, 2022. (ECF No. 81.)

**1. Document Discovery**

32. Defendants served their Responses and Objections to Lead Plaintiff's First Set of Requests for Production of Documents on May 19, 2022 and began the production of documents later that month. In the months that followed, Lead Counsel engaged in numerous meet-and-confers with counsel for Defendants, both by telephone and in person, and conducted extensive negotiations over the scope and adequacy of Defendants' discovery responses, including relating to the search terms to be used and the date range with which documents would be searched and produced. After hard-fought negotiations, Defendants agreed to produce virtually all of the materials requested by Lead Plaintiff.

33. Lead Plaintiff also subpoenaed ten non-parties, including relevant SolarWinds directors, former employees, and consultants.

34. Lead Plaintiff served a set of interrogatories on Defendants on June 17, 2022. Defendants served their responses to Lead Plaintiff's First Set of Interrogatories on July 18, 2022.

35. In response to Lead Plaintiff's requests for production of documents and subpoenas, Defendants and non-parties produced over 600,000 pages of documents to Lead Plaintiff. Lead Counsel reviewed, analyzed, and coded the documents received. In reviewing the documents, attorneys were tasked with making several analytical determinations as to the documents' importance and relevance. Specifically, they determined whether the documents were "hot," "relevant," "adverse hot," or "not relevant." They also assessed which specific key issues the documents concerned. Lead Counsel's partners structured the document review to include regular team meetings to discuss the documents of highest interest and other issues that arose during the document review. Through these meetings, Lead Counsel ensured that all attorneys involved in

the review understood the developing nature of the evidence and focused document review on the key issues in the Action.

36. Lead Counsel also assisted Lead Plaintiff in searching for and producing documents in its own files responsive to Defendants' requests for production of documents. Defendants served their First Request for Production of Documents to Lead Plaintiff on June 3, 2022, which requested 35 categories of documents. Lead Plaintiff filed their Responses and Objections to Defendants' requests on August 4, 2022 and began producing documents to Defendants in September 2022. In total, Lead Plaintiff produced nearly 35,000 pages of documents to Defendants in response to their requests. Lead Plaintiff also responded to interrogatories propounded by Defendants.

## **2. Discovery Disputes**

37. Discovery in the Action was highly contested. Lead Counsel and Defendants' Counsel exchanged numerous letters and participated in numerous meet-and-confer sessions regarding, among other things, the scope of the documents collected and produced, the adequacy of the search terms and date range of productions, and the adequacy of responses to interrogatories. Through their extensive and good-faith negotiations, the Parties were able to resolve their dispute disputes without requiring the Court's intervention.

### **F. Lead Plaintiff's Motion for Class Certification**

38. On September 30, 2022, Lead Plaintiff filed its motion for class certification. (ECF No. 93.) The motion was supported by a memorandum of law and an expert report by Dr. Steven P. Feinstein, Lead Plaintiff's market efficiency expert. In his report, Dr. Feinstein opined that SolarWinds' common stock traded in an efficient market during the Class Period and that per-share damages could be measured for all class members using a common methodology. (ECF No. 93-3.)

**G. Work with Experts**

39. Throughout the Action, Lead Plaintiff retained several highly qualified experts and consultants in disciplines including damages, loss causation, market efficiency, and cybersecurity to assist in the prosecution of this Action. Lead Counsel consulted extensively with these experts and consultants throughout the litigation, including both before and after filing the Complaint in this Action. Lead Plaintiff's experts and consultants included: (a) Steven P. Feinstein, a financial economist who served as Lead Plaintiff's expert on market efficiency and class-wide damages; (b) Michael Hartzmark, a financial economist who provided Lead Plaintiff with expert advice on damages and loss causation issues; and (c) Professor Justin Capos, who provided expert advice on cybersecurity issues.

40. Lead Counsel consulted with these experts in preparing the Complaint, in reviewing documents produced in discovery, and in preparation for settlement negotiations. In addition, after the Settlement was reached, Lead Counsel worked with Dr. Hartzmark's team to develop the Plan of Allocation.

**H. The Parties' Mediation Efforts and the Settlement of the Action**

41. The Parties first began exploring the possibility of a mediation while Defendants' motions to dismiss were pending in the fall of 2021. The Parties conferred and selected Michelle Yoshida to serve as the mediator for the Action. Ms. Yoshida is an experienced mediator of securities class actions and other complex litigation. On November 19, 2021, the Parties exchanged detailed mediation statements addressing issues of liability and damages. A mediation session with Ms. Yoshida was held on December 6, 2021. At the mediation session, the Parties engaged in vigorous settlement negotiations with Ms. Yoshida's assistance, but they were not able to reach an agreement.

42. Following the Court's denial of Defendants' motions to dismiss, and after extensive fact discovery, the Parties engaged in further discussions concerning a possible settlement of the Action. To this end, the Parties scheduled an additional mediation session before Ms. Yoshida. On September 15, 2022, the Parties exchanged new mediation statements, which contained numerous exhibits of documents produced during the course of discovery.

43. The second mediation session with Ms. Yoshida was conducted on October 26, 2022. At the conclusion of the second mediation, Ms. Yoshida issued a mediator's recommendation to the Parties that the Action be resolved in exchange for payment of \$26,000,000 in cash, which the Parties accepted.

44. The Parties' agreement-in-principle to settle the Action was memorialized in a term sheet executed on October 28, 2022. Over the next few weeks, the Parties negotiated the full terms of the Settlement and drafted the Stipulation and related papers, including the notices to be provided to the Settlement Class.

45. On November 28, 2022, the Parties executed the Stipulation (ECF No. 97-1), which sets forth the terms of the Parties' agreement to settle all claims asserted in the Action for \$26,000,000.00, subject to the Court's approval. That same day, Lead Plaintiff and SolarWinds entered into a Supplemental Agreement, which provides that SolarWinds has the right to terminate the Settlement if the number of persons who request exclusion from the Settlement Class reaches a certain threshold. *See* Stipulation ¶ 36

#### **I. The Court Grants Preliminary Approval of the Settlement**

46. On December 8, 2022, Lead Plaintiff filed a motion for preliminary approval of the Settlement. (ECF No. 97.)

47. Following a hearing on February 7, 2023, the Court entered the Order Preliminarily Approving Settlement and Authorizing Dissemination of Notice of Settlement (ECF No. 103) (the

“Preliminary Approval Order”) which, among other things: (a) preliminarily approved the Settlement; (b) approved the form of Notice, Summary Notice, and Claim Form; (c) authorized notice to be provided to Settlement Class Members through mailing of the Notice and Claim Form, posting of the Notice and Claim Form on a Settlement website, and publication of the Summary Notice in *The Wall Street Journal* and over the *PR Newswire*; (d) established procedures and deadlines by which Settlement Class Members could participate in the Settlement, request exclusion from the Settlement Class, or object to the Settlement, the proposed Plan of Allocation, and/or the fee and expense application; and (e) set a schedule for the filing of opening papers and reply papers in support of the proposed Settlement, Plan of Allocation, and the Fee and Expense Application. The Court also scheduled the Settlement Fairness Hearing for July 28, 2023 at 2:00 p.m. to determine, among other things, whether the Settlement should be finally approved.

## II. RISKS OF CONTINUED LITIGATION

48. The Settlement provides a certain and substantial benefit to the Settlement Class in the form of a \$26,000,000 cash payment. Lead Plaintiff and Lead Counsel believe that the proposed Settlement is a very favorable result for the Settlement Class.

49. From the outset of this case, Lead Plaintiff faced substantial challenges to establish Defendants’ liability. Multiple securities class actions arising from cybersecurity issues have been dismissed at the pleadings stage. *See, e.g. Reidinger v. Zendesk, Inc.*, 2021 WL 796261 (N.D. Cal. Mar. 2, 2021) (dismissed for failure to adequately plead falsity and scienter); *In re Capital One Consumer Data Security Breach Litig.*, No. 1:19-cv-1472 (AJT/JFA) (E.D. Va. Sept. 13, 2022), ECF No. 2262 (dismissed for failure to adequately plead scienter); *Doyun Kim v. Advanced Micro Devices, Inc.*, 2019 WL 2232545 (N.D. Cal. May 23, 2019) (dismissed for failure to adequately plead falsity and scienter); *In re Marriott Int’l, Inc.*, 31 F.4th 898 (4th Cir. 2022) (affirming dismissal for failure to adequately plead falsity). In addition, the related derivative action against



SolarWinds was also dismissed for failure to adequately allege that the Company's board failed to conduct adequate oversight, *see Constr. Indus. Laborers Pension Fund v. Bingle*, 2022 WL 4102492, at \*1 (Del. Ch. Sept. 6, 2022), and that dismissal was recently affirmed on appeal. *See Constr. Indus. Laborers Pension Fund v. Bingle*, 2023 WL 3513271 (Del. May 17, 2023).

50. Industry observers have called the proposed \$26 million Settlement of this Action “significant and noteworthy,” because of the contrast in the outcome here to the “number of high-profile [cybersecurity] cases have been dismissed, including against Capital One, Marriott, and Zendesk (as well as a derivative action against SolarWinds).” Kevin LaCroix & Jarret Sena, *SolarWinds Agrees to \$26 Million Payout Over Massive Data Breach*, THE D&O DIARY (Nov. 22, 2022).<sup>3</sup>

51. Notwithstanding its success at the pleading stage, Lead Plaintiff faced meaningful risks throughout the remainder of the litigation with respect to proving liability and recovering full damages in this case. Absent a settlement, Lead Plaintiff would still need to prevail at several additional stages of the litigation, including defeating Defendants' anticipated motions for summary judgment, prevailing at trial, and overcoming any appeals. At each of these stages, Lead Plaintiff would have faced significant risks related to establishing liability and full damages, including, among other things, overcoming Defendants' falsity and scienter challenges. Even after any trial, Lead Plaintiff would have faced post-trial motions, including a potential motion for judgment as a matter of law, as well as further appeals that might have prevented Lead Plaintiff from successfully obtaining a recovery for the Settlement Class.

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<sup>3</sup> Available at: <https://www.dandodiary.com/2022/11/articles/securities-litigation/guest-post-solarwinds-agrees-to-26-million-payout-over-massive-data-breach/>.

**A. Risks Concerning Liability**

52. Lead Plaintiff and Lead Counsel believe that the claims asserted against Defendants in the Action are meritorious. They recognize, however, that this Action presented meaningful risks to establishing Defendants' liability. As discussed further below, Defendants vigorously argued that their challenged statements about SolarWinds' cybersecurity protocols were not false or misleading when made, and, in any event, Defendants did not have any intent to mislead investors.

**1. Falsity**

53. Lead Plaintiff and Lead Counsel recognized that, while they prevailed at the motion to dismiss stage, they may have been unable to convince a jury of Defendants' liability. Among other things, Lead Plaintiff recognized the challenges in proving that Defendants' statements were materially false and misleading when made. Lead Plaintiff and Lead Counsel anticipated that Defendants would contend that SolarWinds did, in fact, have sufficient cybersecurity practices and protocols in place during the Class Period. Specifically, Defendants were expected to argue that SolarWinds (i) had a dedicated Information Security Team, (ii) had written information security policies, (iii) trained its employees on cybersecurity, (iv) enforced a policy requiring the use of complex passwords, (v) imposed role-based limitations on users' access to Company systems, and (vi) adhered to the voluntary guidance of the NIST Cybersecurity Framework.

54. In addition, Lead Plaintiff and Lead Counsel anticipated that Defendants would argue that the alleged deficiencies in SolarWinds' cybersecurity systems did not cause the cyberattack at issue, but that the cyberattack was the result of a very sophisticated cyber-attacker that would have succeeded regardless of the alleged deficiencies in SolarWinds' cybersecurity controls. Defendants were expected to point to the fact that the federal government and several

industry experts have concluded that Russia was responsible for the cyberattack, and have called it the most sophisticated hack in history.

## **2. Materiality**

55. Defendants were expected to further challenge the materiality of some—if not all—of the alleged misstatements concerning SolarWinds’ commitment to cybersecurity, and the maintenance of good cyber-hygiene. Specifically, Defendants would have argued that these alleged misstatements were vague and optimistic statements of a company’s strengths that constitute corporate puffery under the law, and are thus immaterial or non-actionable. Lead Counsel anticipates that Defendants would have attempted to point to contemporaneous analyst and market commentary that did not credit Defendants’ statements to investors, as purported proof of their immateriality.

## **3. Scienter**

56. If able to prove that Defendants’ statements were false or misleading, Lead Plaintiff would still need to demonstrate to a jury that Defendants made the misstatements with scienter—*i.e.*, an intent to defraud or with deliberate recklessness. Defendants vigorously argued that their statements were true and that they had no motive to commit fraud.

57. Lead Counsel anticipates that Defendants would point to, among other things, the absence of suspicious “insider sales” by Defendant Brown to show an absence of scienter, and argue that the allegedly suspicious insider sales by Defendants Thoma Bravo and Silver Lake had no bearing on decision-making or knowledge within SolarWinds.

## **B. Risks Related to Loss Causation and Damages**

58. Even assuming that Lead Plaintiff and Lead Counsel overcame Defendants’ arguments and established liability at trial, Lead Plaintiff would have still confronted additional challenges in establishing loss causation and damages.

59. Lead Plaintiff and Lead Counsel anticipate that Defendants would argue at summary judgment, trial, and subsequent stages of the proceedings, that the declines in the price of SolarWinds common stock were not caused entirely—or at all—by the alleged corrective disclosures. Rather, Defendants were expected to argue that investors’ losses were caused by a sophisticated and illegal cybersecurity attack—and not caused by allegedly misleading statements or omissions or alleged deficiencies in the Company’s cybersecurity controls. Relatedly, Defendants were expected to argue that the cyberattack was so sophisticated that it would have defeated even the most robust security measures and, thus, the price declines that resulted from its disclosure could not be causally connected to Defendants’ alleged misstatements about the quality of SolarWinds’ cybersecurity controls.

**C. The Settlement Amount Compared to the Likely Maximum Damages that Could Be Proved at Trial**

60. The Settlement Amount—\$26 million in cash, plus interest—represents a significant recovery for the Settlement Class. The Settlement is more than double the size of the median securities class-action settlement in the Fifth Circuit from 2013 to 2022 (\$10.7 million). *See* CORNERSTONE RESEARCH, *SECURITIES CLASS ACTION SETTLEMENTS: 2022 REVIEW AND ANALYSIS* (2023), attached hereto as Exhibit 3, at 19.

61. The \$26 million Settlement is also a favorable result when it is considered in relation to the maximum amount of damages that realistically could be established at trial—even assuming that Lead Plaintiff and the Settlement Class prevailed on all liability issues, including falsity and scienter. Assuming Lead Plaintiff prevailed on all liability issues (which was far from certain), Lead Counsel understands, based on expert analysis, that the maximum total damages that Lead Plaintiff could establish at trial would be approximately \$130 million to \$200 million. Thus, the \$26,000,000 recovery contemplated by the Settlement represents approximately 13% to

20% of the absolute maximum potential damages, which is a highly favorable result for the Settlement Class in this Action.

62. Given the meaningful litigation risks, and the immediacy and amount of the \$26,000,000 recovery for the Settlement Class, Lead Plaintiff and Lead Counsel believe that the Settlement is fair, reasonable, and adequate, and is in the best interest of the Settlement Class.

### **III. LEAD PLAINTIFF'S COMPLIANCE WITH THE COURT'S PRELIMINARY APPROVAL ORDER REQUIRING ISSUANCE OF NOTICE**

63. The Court's Preliminary Approval Order directed that the Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice") and Proof of Claim and Release Form ("Claim Form") be disseminated to potential members of the Settlement Class. The Preliminary Approval Order also set July 7, 2023 as the deadline for Settlement Class Members to submit objections to the Settlement, the Plan of Allocation, or the Fee and Expense Application; to request exclusion from the Settlement Class; and to submit Claim Forms.

64. In accordance with the Preliminary Approval Order, Lead Counsel instructed Epiq Class Action & Claims Solutions ("Epiq"), the Court-approved Claims Administrator, to begin disseminating copies of the Notice and the Claim Form by mail and to publish the Summary Notice. The Notice contained, among other things, a description of the Action, the Settlement, the proposed Plan of Allocation, and Settlement Class Members' rights to participate in the Settlement, object to the Settlement, the Plan of Allocation, and/or the Fee and Expense Application, or exclude themselves from the Settlement Class. The Notice also informed Settlement Class Members of Lead Counsel's intent to apply for an award of attorneys' fees in an amount not to exceed 25% of the Settlement Fund, and for Litigation Expenses in an amount not to exceed \$500,000.

65. In order to disseminate the Notice and Claim Form (together, the “Notice Packet”), Epiq obtained information from SolarWinds and from banks, brokers, and other nominees regarding the names and addresses of potential Settlement Class Members. The accompanying Declaration of Alexander P. Villanova, attached hereto as Exhibit 4, provides additional information about the Claims Administrator’s distribution of the Notice Packet. *See Villanova Decl.* ¶¶ 2-8.

66. Epiq began mailing copies of the Notice Packet to potential Settlement Class Members and nominee owners on March 9, 2023. *Id.* ¶¶ 3-5. As of June 22, 2023, Epiq disseminated a total of 24,946 Notice Packets to potential Settlement Class Members and nominees. *Id.* ¶ 8.

67. On March 21, 2023, in accordance with the Preliminary Approval Order, Epiq caused the Summary Notice to be published in *The Wall Street Journal* and to be transmitted over the *PR Newswire*. *Id.* ¶ 9.

68. Lead Counsel also caused Epiq to establish a dedicated settlement website, [www.SolarWindsSecuritiesLitigation.com](http://www.SolarWindsSecuritiesLitigation.com), to provide potential Settlement Class Members with information concerning the Settlement and access to copies of the Notice and Claim Form, as well as copies of the Stipulation, Preliminary Approval Order, and other relevant documents. *See Villanova Decl.* ¶ 13. That website became operational on March 9, 2023. *Id.* Lead Counsel also made copies of the Notice and Claim Form and other documents available on its own website, [www.blbglaw.com](http://www.blbglaw.com). Lead Counsel and Epiq have regularly monitored the settlement website to ensure that it is operating correctly. Lead Counsel and Epiq will continue to monitor and to update the settlement website as needed as the settlement process continues. For example, Lead Plaintiff’s papers in support of its motion for final approval of the Settlement and Lead Counsel’s

papers in support of its motion for attorneys' fees and litigation expenses will be made available on the website after they are filed, and any orders entered by the Court in connection with the motions will also be posted.

69. As noted above, the deadline for Settlement Class Members to file objections to the Settlement, Plan of Allocation, or Fee and Expense Application, or to request exclusion from the Settlement Class is July 7, 2023. To date, no requests for exclusion have been received, *see* Villanova Decl. ¶ 14, and no objections to the Settlement, Plan of Allocation, or Lead Counsel's Fee and Expense Application have been received. Lead Counsel will file reply papers on or before July 21, 2023, that will address any requests for exclusion and objections that may be received.

#### **IV. ALLOCATION OF THE PROCEEDS OF THE SETTLEMENT**

70. Pursuant to the Preliminary Approval Order, and as set forth in the Notice, all Settlement Class Members who want to be eligible to participate in the distribution of the Net Settlement Fund must submit a valid Claim Form with all required information postmarked (if mailed) or submitted online no later than July 7, 2023. As set forth in the Notice, the Net Settlement Fund will be distributed among Settlement Class Members who submit eligible claims according to a plan of allocation approved by the Court.

71. Lead Counsel consulted with Lead Plaintiff's damages expert in developing the proposed plan of allocation for the Net Settlement Fund (the "Plan of Allocation"). Lead Counsel believes that the Plan of Allocation provides a fair and reasonable method to equitably allocate the Net Settlement Fund among Settlement Class Members who suffered losses as result of the conduct alleged in the Action.

72. The Plan of Allocation is set forth at pages 13 to 16 of the Notice. *See* Villanova Decl., Ex. A at pp. 13-16. As described in the Notice, calculations under the Plan of Allocation

are intended as a method to weigh the claims of Settlement Class Members against one another for the purposes of making an equitable allocation of the Net Settlement Fund. *See* Notice ¶ 72.

73. In developing the Plan of Allocation, Lead Plaintiff's damages expert calculated the estimated amount of artificial inflation in the per-share closing price of SolarWinds common stock which allegedly was proximately caused by Defendants' alleged materially false and misleading statements and omissions during the Class Period. *See* Notice ¶ 73. In calculating the estimated artificial inflation, Lead Plaintiff's expert considered price changes in SolarWinds common stock in reaction to certain public announcements allegedly revealing the truth concerning Defendants' alleged misrepresentations and omissions, adjusting for price changes that were attributable to market or industry forces. *Id.* ¶ 74. The estimated artificial inflation in SolarWinds common stock during the Class Period is set out in Table A of the Notice. *See* Notice at p. 16.

74. Recognized Loss Amounts are calculated under the Plan of Allocation for each purchase or acquisition of SolarWinds common stock during the Class Period that is listed on a Claimant's Claim Form and for which adequate documentation is provided. In general, Recognized Loss Amounts are calculated as the lesser of: (a) the difference between the amount of alleged artificial inflation at the time of purchase or acquisition and the time of sale, or (b) the difference between the purchase price and the sale price for the shares. *See* Notice ¶ 76. Claimants who purchased and sold all their SolarWinds shares before the first alleged corrective disclosure, or who purchased and sold all their SolarWinds shares between two consecutive dates on which artificial inflation was allegedly removed from the price of the stock (that is, they did not hold the shares over a date where artificial inflation was allegedly removed from the stock price), will have no Recognized Loss Amount under the Plan of Allocation with respect to those



transactions because the level of artificial inflation is the same between the corrective disclosures, and any loss suffered on those sales would not be the result of the alleged misstatements in the Action. *See id.* ¶¶ 76, 78.

75. As stated in the Notice, and in accordance with the PSLRA, Recognized Loss Amounts for shares of SolarWinds common stock sold during the 90-day period after the end of the Class Period are further limited to the difference between the purchase price and the average closing price of the stock from the end of the Class Period to the date of sale. Notice ¶ 78(c)(ii). Recognized Loss Amounts for SolarWinds common stock still held as of the close of trading on March 17, 2021, the end of the 90-day period, will be the lesser of (a) the amount of artificial inflation on the date of purchase or (b) the difference between the purchase price and \$16.04, the average closing price for the stock during that 90-day period. *Id.* ¶ 78(d).

76. The sum of a Claimant's Recognized Loss Amounts for all of his, her, or its purchases of SolarWinds common stock during the Class Period is the Claimant's "Recognized Claim." Notice ¶ 79. The Plan of Allocation also limits Claimants' Recognized Claim based on whether they had an overall market loss in their transactions in SolarWinds common stock during the Class Period. A Claimant's Recognized Claim will be limited to the amount of his, her, or its market loss in SolarWinds common stock transactions during the Class Period, and Claimants who have an overall market gain are not eligible for a recovery. *Id.* ¶¶ 86-87.

77. The Net Settlement Fund will be allocated to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Claims. Notice ¶¶ 88-89. If an Authorized Claimant's *pro rata* distribution amount calculates to less than ten dollars, no payment will be made to that Authorized Claimant. *Id.* ¶ 90. Those funds will be included in the distribution to the Authorized Claimants whose payments exceed the ten-dollar minimum.

78. One hundred percent of the Net Settlement Fund will be distributed to Authorized Claimants. If any funds remain after the initial *pro rata* distribution, as a result of uncashed or returned checks or other reasons, subsequent cost-effective distributions to Authorized Claimants will be conducted. Notice ¶ 91. Only when the residual amount left for re-distribution to Settlement Class Members is so small that a further re-distribution would not be cost effective (for example, where the administrative costs of conducting the additional distribution would largely subsume the funds available), will those funds be donated to non-sectarian, not-for-profit, 501(c)(3) organization(s), to be recommended by Lead Counsel and approved by the Court. *Id.*

79. In sum, the Plan of Allocation was designed to fairly and rationally allocate the proceeds of the Net Settlement Fund among Settlement Class Members based on damages they suffered on purchases of SolarWinds common stock that were attributable to the misconduct alleged in the Action. To date, no objections to the proposed Plan of Allocation have been received.

## **V. THE FEE AND EXPENSE APPLICATION**

80. In addition to seeking final approval of the Settlement and Plan of Allocation, Lead Counsel is applying to the Court, on behalf of Plaintiffs' Counsel, for an award of attorneys' fees of 25% of the Settlement Fund, net of Litigation Expenses, plus interest earned at the same rate as the Settlement Fund (the "Fee Application"). Lead Counsel also requests payment for litigation expenses incurred by Plaintiffs' Counsel in connection with the prosecution and settlement of the Action in the amount of \$270,449.02. Lead Counsel further requests reimbursement to Lead Plaintiff in the amount of \$22,760.30 for costs and expenses that Lead Plaintiff incurred directly related to its representation of the Settlement Class, in accordance with the PSLRA, 15 U.S.C. § 78u-4(a)(4). The requested attorneys' fees, litigation expenses, and PSLRA awards are to be paid from the Settlement Fund. The legal authorities supporting the requested fee and expenses

are discussed in Lead Counsel's Fee Motion. The primary factual bases for the requested fee and expenses are summarized below.

**A. The Fee Application**

81. Lead Counsel is applying for a fee award to be paid from the Settlement Fund on a percentage basis. As set forth in the accompanying Fee Motion, the percentage method is the appropriate method of fee recovery because it aligns the lawyers' interest in being paid a fair fee with the interest of Lead Plaintiff and the Settlement Class in achieving the maximum recovery in the shortest amount of time required under the circumstances and taking into account the litigation risks faced in a class action. Use of the percentage method has been recognized as appropriate by the Fifth Circuit in comparable cases.

82. Based on the quality of the result achieved, the extent and quality of the work performed by Plaintiffs' Counsel, the significant risks of the litigation, and the fully contingent nature of the representation, Lead Counsel respectfully submits that the requested fee award is reasonable and should be approved. As discussed in the Fee Motion, a 25% fee award is fair and reasonable for attorneys' fees in common fund cases such as this and is within the range of percentages awarded in securities class actions in this Circuit with comparable settlements.

**1. Lead Plaintiff Has Authorized and Supports the Fee Application**

83. Lead Plaintiff has evaluated the Fee Application and believes that it is fair and reasonable in light of the result obtained for the Settlement Class, the substantial risks in the litigation, and the work performed by Plaintiffs' Counsel. *See* O'Brien Decl. ¶ 8.

**2. The Time and Labor of Plaintiffs' Counsel**

84. Attached as Exhibits 5A and 5B are declarations from myself on behalf of BLB&G and Frank B. Burney on behalf of Martin & Drought in support of Lead Counsel's motion for attorneys' fees and litigation expenses ("Fee and Expense Declarations"). The Fee and Expense

Declarations indicate the amount of time spent by each attorney and the professional support staff employed by each firm, and the lodestar calculations based on their current hourly rates, as well as a schedule of expenses incurred by the firm, delineated by category. These Declarations were prepared from contemporaneous daily time records and expense records regularly maintained and prepared by the respective firms, which are available at the request of the Court.

85. As set forth in the Fee and Expense Declarations, Plaintiffs' Counsel have collectively expended 6,292.2 hours in the prosecution of this Action from its inception through May 30, 2023, with a total lodestar of \$3,398,326.25. Lead Counsel's lodestar represented 99% of the total lodestar of all Plaintiffs' Counsel. The requested fee results in a multiplier of approximately 1.9 of Plaintiffs' Counsel's lodestar. As discussed in the Fee Motion, the requested multiplier is well within the range of fee multipliers typically awarded in comparable securities class actions and in other class actions involving significant contingency fee risk, in this Circuit and elsewhere.

86. As described above in greater detail, the work that Plaintiffs' Counsel performed in this Action included: (i) conducting an extensive investigation into the claims asserted, including through a detailed review of public documents and interviews with dozens of witnesses believed to potentially have information about the claims at issue in the Action; (ii) researching and drafting an initial complaint and a detailed consolidated Complaint; (iii) fully briefing Lead Plaintiff's opposition to Defendants' four motions to dismiss the Complaint; (iv) issuing document requests and obtaining and reviewing over 600,000 pages of documents; (v) serving ten document subpoenas to relevant non-party witnesses; (vi) moving for class certification, which included an expert report from Lead Plaintiff's financial economics expert on the efficiency of the market for SolarWinds common stock and the calculation of damages on a class-wide basis;

(vii) consulting extensively throughout the litigation with a variety of experts and consultants, including a cybersecurity expert and experts in market efficiency, loss causation, and damages; and (viii) engaging in extensive arm's-length settlement negotiations to achieve the Settlement, including two full-day mediation sessions with Ms. Yoshida of Phillips ADR.

87. Plaintiffs' Counsel devoted substantial time to the prosecution of the Action. I maintained control of and monitored the work performed by other lawyers at BLB&G. While I personally devoted substantial time to this case, and personally reviewed and edited all pleadings, court filings, and other correspondence prepared on behalf of Lead Plaintiff, other experienced attorneys at my firm were involved in settlement negotiations and other matters. More junior attorneys and paralegals also worked on matters appropriate to their skill and experience level. Throughout the litigation, Plaintiffs' Counsel maintained an appropriate level of staffing that avoided unnecessary duplication of effort and ensured the efficient prosecution of this litigation.

### **3. The Skill and Experience of Plaintiffs' Counsel**

88. As demonstrated by the firm resume attached as Exhibit 5A-3 hereto, Lead Counsel is among the most experienced and skilled law firms in the securities litigation field, with a long and successful track record representing investors in such cases. BLB&G is consistently ranked among the top plaintiffs' firms in the country. Further, BLB&G has taken complex cases such as this to trial, and it is among the few firms with experience doing so on behalf of plaintiffs in securities class actions. Liaison Counsel Martin & Drought is also high skilled and extremely knowledgeable counsel.

89. As reflected in its Firm Resume, Bernstein Litowitz has obtained numerous significant settlements. Bernstein Litowitz served as Lead Counsel in *In re WorldCom, Inc. Securities Litigation*, No. 02-cv-3288 (S.D.N.Y.), in which recoveries obtained for the class totaled in excess of \$6 billion. Bernstein Litowitz also secured a resolution of \$2.43 billion for

the class in *In re Bank of America Corp. Securities, Derivative & “ERISA” Litigation*, No. 09-md-2058 (S.D.N.Y.); a \$1.06 billion recovery for the class in *In re Merck & Co., Inc. Securities, Derivative & “ERISA” Litigation*, No. 05-cv-1151 (D.N.J.); and a \$730 million settlement on behalf of the class in *In re Citigroup Inc. Bond Action Litigation*, No. 08-cv-9522 (S.D.N.Y.); see also *In re Turquoise Hill Res. Ltd. Sec. Litig.*, 2021 WL 148752, at \*11 (S.D.N.Y. Jan. 15, 2021) (appointing Bernstein Litowitz, “a firm highly experienced in securities class action litigation,” as class counsel); *Cohen v. Luckin Coffee Inc.*, 2020 WL 3127808, at \*8 (S.D.N.Y. June 12, 2020) (appointing Bernstein Litowitz class counsel); *In re Signet Jewelers Ltd. Sec. Litig.*, 2019 WL 3001084, at \*9 (S.D.N.Y. July 10, 2019) (same).

90. Lead Plaintiff previously filed with the Court and provided to Lead Plaintiff the order issued by a court in the Northern District of California in an unrelated action where BLB&G served as lead counsel for the lead plaintiff in that case, SEB Investment Management AB, and as class counsel for the certified class. See ECF No. 93-6 (attaching *SEB Inv. Mgmt. AB v. Symantec Corp.*, 2021 WL 1540996 (N.D. Cal. Apr. 20, 2021)). The order was discussed further in Lead Plaintiff’s papers filed in connection with Lead Plaintiff’s motion for class certification. See ECF No. 93-1, at 2-3. Since that order, the court in *Symantec* granted final approval of the \$70 million settlement in that action, commenting on the record that Bernstein Litowitz “did a good job, so thank you for that.” See *SEB Inv. Mgmt. AB v. Symantec Corp.*, No. 3:18-cv-2902-WHA, ECF No. 425 at 18 (N.D. Cal. Feb. 10, 2022). Additionally, courts have repeatedly approved BLB&G as lead counsel and class counsel in securities class actions after being apprised of the *Symantec* order, including in *Nykredit Portefølje Admin. A/S v. ProPetro Holding Corp.*, No. MO:19-CV-217-DC, slip op. at 3-4 (W.D. Tex. May 11, 2023), ECF No. 177; *In re Venator Materials PLC Sec. Litig.*, No. 4:19-cv-03464, slip op. at 3-4 (S.D. Tex. Sept. 15, 2022),

ECF No. 128; *In re Synchrony Fin. Securities Litig.*, 3:18-CV-1818 (VAB), 2023 WL 1503032, at \*2 (D. Conn. Feb. 3, 2023); *Hartel v. SelectQuote, Inc.*, 21 CIV. 6903 (AKH), 2022 WL 4057445, at \*3 (S.D.N.Y. Sept. 2, 2022); *Rasella v. Musk*, 342 F.R.D. 74, 79 (S.D.N.Y. 2022); *In re EQT Corp. Securities Litig.*, 2:19-CV-00754-RJC, 2022 WL 3293518, at \*10 (W.D. Pa. Aug. 11, 2022); *City of Riviera Beach Gen. Emps.' Ret. Sys. V. Vertiv Holdings Co.*, No. 1:22-cv-03572-GHW, ECF No. 16 at 2 (S.D.N.Y. June 22, 2022); *City of Sunrise Firefighters' Pension Fund v. Oracle Corp.*, 2022 WL 1459567, at \*5 (N.D. Cal. May 9, 2022); *Bricklayers' & Allied Craftworkers Local #2 Albany v. New Oriental Educ. & Tech. Grp. Inc.*, 2022 WL 1515451, at \*5 (S.D.N.Y. May 13, 2022); *City of Miami Firefighters' & Police Officers' Ret. Tr. v. Cerence Inc.*, 2022 WL 1505907, at \*2 (D. Mass. May 12, 2022); and *Homyk v. ChemoCentryx, Inc.*, No. 4:21-cv-03343-JST, slip op. at 6 (N.D. Cal. Jan. 28, 2022), ECF No. 32.

#### **4. Standing and Caliber of Defendants' Counsel**

91. Throughout this Action, Defendants were represented by attorneys from King & Spalding LLP, Ropes & Gray LLP, Willkie Farr & Gallagher LLP, Edmundson Shelton Weiss PLLC, and Kirkland & Ellis LLP—all of which are highly experienced and highly skilled law firms that zealously represented their clients. In the face of this skillful and well-financed opposition, Lead Counsel was nonetheless able to develop a case that was sufficiently strong to persuade Defendants to settle the case on terms that will significantly benefit the Settlement Class.

#### **5. The Risks of Litigation and the Need to Ensure the Availability of Competent Counsel in High-Risk Contingent Cases**

92. The prosecution of these claims was undertaken entirely on a contingent-fee basis, and the considerable risks assumed by Plaintiffs' Counsel in bringing this Action to a successful conclusion are described above. Here, the risks assumed by Plaintiffs' Counsel, and the time and expenses incurred without any payment, were extensive.

93. From the outset, Plaintiffs' Counsel understood that they were embarking on a complex, expensive, lengthy, and hard-fought litigation with no guarantee of ever being compensated for the substantial investment of time and the outlay of money that vigorous prosecution of the case would require. In undertaking that responsibility, Lead Counsel was obligated to ensure that sufficient resources (in terms of attorney and support staff time) were dedicated to the litigation, and that Lead Counsel would further advance all of the costs necessary to pursue the case vigorously on a fully contingent basis, including funds to compensate vendors and consultants and to cover the considerable out-of-pocket costs that a case such as this typically demands. Because complex securities litigation generally proceeds for several years before reaching a conclusion, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis. Indeed, Plaintiffs' Counsel have received no compensation during the two-year duration of this Action and no reimbursement of out-of-pocket expenses, yet they have devoted more than 6,200 hours and incurred more than \$270,000 in expenses in prosecuting this Action for the benefit of SolarWinds investors.

94. Plaintiffs' Counsel also bore the risk that no recovery would be achieved. As discussed above, from the outset this case presented a number of significant risks and uncertainties.

95. The Settlement was reached only after Lead Counsel had overcome Defendants' motions to dismiss, conducted substantial discovery, and filed Lead Plaintiff's class certification motion. Lead Counsel's persistent efforts in the face of significant risks and uncertainties have resulted in a significant and certain recovery for the Settlement Class.

## **6. The Reaction of the Settlement Class to the Fee Application**

96. As noted above, as of June 22, 2023, over 24,000 Notice Packets had been sent to potential Settlement Class Members advising them that Lead Counsel would apply for attorneys'



fees in an amount not to exceed 25% of the Settlement Fund. *See Villanova Decl.* ¶ 8 and Ex. A (Notice ¶¶ 5, 54). In addition, the Court-approved Summary Notice has been published in *The Wall Street Journal* and transmitted over the *PR Newswire*. *See Villanova Decl.* ¶ 9. To date, no objections to the request for attorneys' fees have been received.

97. In sum, Lead Counsel prosecuted this case without any compensation or guarantee of success over the past two years. Based on the favorable result obtained, the quality of the work performed, the risks of the Action, and the contingent nature of the representation, Lead Counsel respectfully submits that the requested fee is fair and reasonable.

**A. The Litigation Expense Application**

98. Lead Counsel also seeks payment from the Settlement Fund of \$270,449.02 for litigation expenses reasonably incurred by Plaintiffs' Counsel in connection with the prosecution and resolution of the Action (the "Expense Application").

99. From the outset of the Action, Plaintiffs' Counsel have been aware that they might not recover any of their expenses (if the litigation was unsuccessful), and, further, if there were to be reimbursement of expenses, it would not occur until the Action was successfully resolved, often a period lasting several years. Plaintiffs' Counsel also understood that, even assuming that the case was ultimately successful, reimbursement of expenses would not necessarily compensate them for the lost use of funds advanced by them to prosecute the Action. Consequently, Plaintiffs' Counsel were motivated to, and did, take significant steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the case.

100. As set forth in the Fee and Expense Declarations included in Exhibit 5, Plaintiffs' Counsel have incurred a total of \$270,449.02 in unreimbursed litigation expenses in connection with the prosecution of the Action. The expenses are summarized in Exhibit 6, which identifies each category of expense, e.g., expert fees, mediation fees, on-line legal and factual research,

document management costs, telephone, and photocopying expenses, and the amount incurred for each category. These expenses are reflected on the books and records maintained by Plaintiffs' Counsel, which are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred. These expenses are recorded separately by Plaintiffs' Counsel and are not duplicated by the firms' hourly rates.

101. Of the total amount of expenses, \$184,342.25, or approximately 68%, was expended for the retention of experts. As discussed above, Lead Counsel consulted with experts in financial economics and cybersecurity during its investigation and the preparation of the Complaint and during the course of discovery, and Lead Plaintiff's class certification motion was accompanied by an expert report on the efficiency of the market for SolarWinds common stock and calculation of damages on a class-wide basis. These experts' advice was instrumental in Lead Counsel's appraisal of the claims and in helping achieve the favorable result.

102. The cost of on-line factual research was \$22,547.93 and the cost for on-line legal research was \$19,703.91, which together account for approximately 16% of the total expenses.

103. Another significant cost was the expense of document management and litigation support, which included the costs of creating and maintaining the database containing the documents produced in the Action. These document management costs in total came to \$19,806.80, or approximately 7% of the total expenses.

104. Lead Plaintiff's share of the mediation costs paid to Phillips ADR for the services of Ms. Yoshida were \$13,580.00 or 5% of the total expenses.

105. Lead Counsel also incurred \$4,375.00 in attorneys' fees for independent counsel, Hach Rose Schirripa & Cheverie LLP, who represented a former SolarWinds employee that Lead

Counsel contacted during the course of its investigation and who wished to be represented by independent counsel.

106. The other expenses for which Plaintiffs' Counsel seek payment 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, service of process costs, the costs of publishing the notice required by the PSLRA at the outset of the case, copying costs, telephone charges, and postage and delivery expenses.

107. In addition, Lead Plaintiff seeks reimbursement for the reasonable costs and expenses that it incurred directly in connection with its representation of the Settlement Class. Such payment is expressly authorized and anticipated by the PSLRA, as more fully discussed in the Fee Motion at 18-19. Specifically, Lead Plaintiff seeks reimbursement of \$22,760.30 for 60 hours expended in connection with the Action by its Executive Director, Chief Financial Officer, and other staff, as well as for 26.3 hours spent on the Action by the NYC Carpenters' counsel. *See* O'Brien Decl. ¶¶ 10-14.

108. The Notice informed potential Settlement Class Members that Lead Counsel would be seeking reimbursement of Litigation Expenses in an amount not to exceed \$500,000, which might include a request for a PLSRA award for Lead Plaintiff. Notice ¶¶ 5, 54. The total amount requested, \$293,209.32, which includes \$270,449.02 for Plaintiffs' Counsel's litigation expenses and \$22,760.30 for Lead Plaintiff's requested PSLRA award, is well below the \$500,000 that Settlement Class Members were advised could be sought. To date, no objection has been raised as to the maximum amount of expenses set forth in the Notice.

109. The expenses incurred by Plaintiffs' Counsel and Lead Plaintiff were reasonable and necessary to represent the Settlement Class and achieve the Settlement. Accordingly, Lead

Counsel respectfully submits that the application for payment of Litigation Expenses from the Settlement Fund should be approved.

110. Attached hereto is a true and correct copy of the following document cited in the Fee Motion:

Exhibit 7 *Berger v. Compaq Computer Corp.*, Civil Action No. 98-1148, slip op. (S.D. Tex. Nov. 22, 2002), ECF No. 148

## **VI. CONCLUSION**

111. For all the reasons set forth above, Lead Plaintiff respectfully submits that the Settlement and the Plan of Allocation should be approved as fair, reasonable, and adequate. Lead Counsel further submits that the requested fee in the amount of 25% of the Settlement Fund, net of expenses, should be approved as fair and reasonable, and the request for payment of total Litigation Expenses in the amount of \$293,209.32, should also be approved.

I declare, under penalty of perjury that the foregoing is true and correct. Executed on June 23, 2023.

/s/ Jonathan D. Uslaner  
JONATHAN D. USLANER

**CERTIFICATE OF SERVICE**

I hereby certify that on June 23, 2023, I electronically filed the foregoing by using the court's CM/ECF system. Per agreement among the parties, all parties will be served by the CM/ECF system.

By: /s/ Jonathan D. Uslaner  
Jonathan D. Uslaner

# **Exhibit 1**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

IN RE SOLARWINDS CORPORATION  
SECURITIES LITIGATION

Case No. 1:21-cv-00138-RP

CLASS ACTION

**DECLARATION OF MICHELLE YOSHIDA IN SUPPORT OF  
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

I, MICHELLE YOSHIDA, declare:

1. I submit this Declaration in my capacity as the mediator in the above-captioned securities class action (“Action”) and in connection with the proposed settlement of claims asserted in the Action (the “Settlement”). I make this Declaration based on personal knowledge and am competent to so testify.

2. While the mediation process is confidential, the Parties have authorized me to inform the Court of the matters set forth herein in support of final approval of the Settlement. My statements and those of the Parties during the mediation process are subject to a confidentiality agreement and Federal Rule of Evidence 408. The Parties agreed that the confidentiality agreement extends to all statements made during the course of the mediation and any materials generated for the purpose of mediation. By making this declaration, there is no intention on either my part or the Parties’ part to waive the provisions of the confidentiality agreement or the protections of Rule 408.

**I. BACKGROUND AND QUALIFICATIONS**



3. I have worked as a full-time mediator and arbitrator since 2007. I currently work as a mediator, arbitrator and special master with Phillips ADR Enterprises, P.C. (“Phillips ADR”), which is based in Corona Del Mar, California. I joined Phillips ADR at its founding in November 2014. Prior to joining Phillips ADR, I worked as a mediator, arbitrator and special master with Weinstein Melnick LLC.

4. Over the past 15 years, I have served as a mediator and arbitrator in connection with numerous large, complex cases, including securities cases such as this one. I have been involved in the mediation of hundreds of disputes, involving a myriad of diverse matters, including financial and accounting cases, securities and derivative matters, insurance coverage, regulatory matters, professional liability, employment, ERISA, and trustee issues.

5. Prior to becoming a mediator, I worked as a trial attorney in private practice, litigating complex business matters including contract, insurance coverage, intellectual property, real estate, regulatory, and white-collar matters.

## **II. THE ARM’S-LENGTH SETTLEMENT NEGOTIATIONS**

6. On December 7, 2021, the Parties participated in a full-day mediation session before me via Zoom conference.

7. In advance of this mediation session, the Parties prepared and exchanged confidential mediation statements addressing liability and damages, and submitted those mediation statements to me together with numerous exhibits. During the mediation, counsel for Lead Plaintiff and the Defendants presented arguments regarding their clients’ respective positions. The work that went into the mediation statements and competing presentations and arguments was substantial.



8. During the mediation session, I engaged in extensive discussions with counsel on both sides in an effort to find common ground between the Parties' respective positions and separately challenged each side to address potential weaknesses in or counterarguments to their key positions and arguments. No agreement among the Parties was reached at that mediation.

9. After the Court issued its ruling on Defendants' Motions to Dismiss the Complaint, the Parties scheduled a second mediation session with me for October 26, 2022. The Parties again exchanged and submitted detailed mediation statements, and included additional supporting exhibits. At the full-day mediation session on October 26, 2022, counsel for the Parties engaged in robust negotiations regarding their clients' positions in the litigation. At the conclusion of the mediation session, I made a mediator's recommendation that the Parties settle the Action in return for a cash payment for the benefit of the Settlement Class of \$26,000,000, which the Parties accepted.

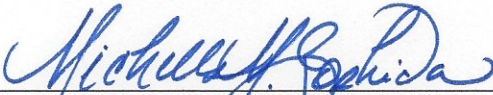
10. Because the Parties submitted their mediation statements and arguments in the context of a confidential mediation process pursuant to Federal Rule of Evidence 408, I cannot reveal their content. I can say, however, that the arguments and positions asserted by all involved were the product of substantial work, they were complex and adversarial and reflected a detailed understanding of the strengths and potential weaknesses of the claims and defenses at issue in this case. The mediation process was a hard-fought negotiation from beginning to end and was conducted by experienced and able counsel on both sides. Throughout the mediation process, the negotiations between the Parties were vigorous and conducted at arm's length and in good faith.

### III. CONCLUSION

11. I understand that the Court will make its own determination as to the fairness, reasonableness and adequacy of the Settlement under applicable legal standards. Based on my experience as a mediator, I believe that the Settlement represents a recovery and outcome that is reasonable, fair and adequate for the Settlement Class and all Parties involved, allowing each to avoid the burdens and risks associated with litigating claims of this complexity to trial. I support the Court's approval of the Settlement in all respects.

12. Lastly, the advocacy on both sides of the case was excellent. All counsel displayed the highest level of professionalism in zealously and capably representing their respective clients.

I declare under penalty of perjury that the foregoing facts are true and correct and that this Declaration was executed this 15th day of June 2023.

  
MICHELLE YOSHIDA, ESQ.  
PHILLIPS ADR ENTERPRISES, P.C.

# **Exhibit 2**



**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

IN RE SOLARWINDS CORPORATION  
SECURITIES LITIGATION

Case No. 1:21-cv-00138-RP

CLASS ACTION

**DECLARATION OF KRISTIN O'BRIEN, EXECUTIVE DIRECTOR  
OF NEW YORK CITY DISTRICT COUNCIL OF CARPENTERS PENSION FUND,  
IN SUPPORT OF: (I) LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL  
OF SETTLEMENT AND PLAN OF ALLOCATION; AND (II) LEAD COUNSEL'S  
MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES**

I, Kristin O'Brien, hereby declare as follows:

1. I am the Executive Director of the New York City District Council of Carpenters Pension Fund ("NYC Carpenters" or the "Fund"), the Court-appointed Lead Plaintiff in the above-captioned securities class action (the "Action").<sup>1</sup>

2. I am aware of and understand the requirements and responsibilities of a class representative in a securities class action, including those set forth in the Private Securities Litigation Reform Act of 1995 ("PSLRA"). I have personal knowledge of the matters set forth in this Declaration, as I, along with my colleagues at NYC Carpenters, have been directly involved in monitoring and overseeing the prosecution of the Action, as well as the negotiations leading to the Settlement, and I could and would testify competently to these matters.

3. I submit this Declaration in support of (a) Lead Plaintiff's motion for final approval of the proposed Settlement and Plan of Allocation, and (b) Lead Counsel's motion for attorneys'

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<sup>1</sup> Unless otherwise defined in this Declaration, all capitalized terms have the meanings set out in the Stipulation and Agreement of Settlement dated November 28, 2022 (ECF No. 97-1).

fees and Litigation Expenses, including NYC Carpenters' application pursuant to 15 U.S.C. § 78u-4(a)(4) for reimbursement of its reasonable costs directly relating to the work performed by NYC Carpenters personnel in connection with its representation of the Settlement Class in this Action.

**I. NYC Carpenters' Oversight of the Action**

4. NYC Carpenters is a multiemployer pension plan that provides retirement benefits to over 30,000 working and retired carpenters who are members of the New York City District Council of Carpenters, and their families. As of June 30, 2022, the Fund had approximately \$4.4 billion in assets under management. NYC Carpenters purchased SolarWinds common stock during the Class Period and suffered damages as a result of the violations of the federal securities laws alleged in the Action.

5. On March 11, 2021, the Court entered an Order appointing NYC Carpenters as the Lead Plaintiff in the Action pursuant to the PSLRA, and approved Lead Plaintiff's selection of Bernstein Litowitz Berger & Grossmann LLP ("BLB&G") as Lead Counsel.

6. NYC Carpenters closely supervised, carefully monitored, and was actively involved in all material aspects of the prosecution and resolution of the Action. On behalf of the NYC Carpenters, I had numerous communications during the litigation with BLB&G. I received periodic status reports from BLB&G on case developments and participated in discussions with counsel concerning the prosecution of the Action, the strengths of and risks to the claims, and potential settlement. Throughout the course of this Action, NYC Carpenters personnel: (a) communicated with BLB&G by email and telephone calls regarding the posture and progress of the case; (b) reviewed all significant pleadings and briefs filed in this Action; (c) consulted with BLB&G concerning the settlement negotiations as they progressed; and (d) evaluated and approved the proposed Settlement.

## **II. NYC Carpenters Endorses Approval of the Settlement**

7. Based on its involvement throughout the prosecution and resolution of the Action, NYC Carpenters believes that the proposed Settlement is fair, reasonable, and adequate to the Settlement Class. NYC Carpenters believes that the Settlement represents a very favorable recovery for the Settlement Class, in light of the significant risks of continuing to prosecute the claims in this case, including the risks of establishing liability and proving damages. Therefore, NYC Carpenters endorses approval of the Settlement by the Court.

## **III. NYC Carpenters Approves of and Supports Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses**

8. NYC Carpenters takes seriously its role as a class representative to ensure that the attorneys' fees are fair in light of the result achieved in the action and reasonably compensate Plaintiffs' Counsel for the work involved and the substantial risks they undertook in litigating the action. NYC Carpenters approves the attorney's fees requested by Lead Counsel as fair and reasonable in light of the work performed by Plaintiff's Counsel, the risks of the litigation, and the recovery obtained for the Settlement Class in this Action.

9. NYC Carpenters further believes that Plaintiffs' Counsel's Litigation Expenses are reasonable and represent costs and expenses necessary for the prosecution and resolution of the claims in the Action. Based on the foregoing, and consistent with its obligation to the class to obtain the best result at the most efficient cost, NYC Carpenters fully supports Lead Counsel's motion for attorneys' fees and Litigation Expenses

10. NYC Carpenters understands that reimbursement of a class representative's reasonable costs and expenses is authorized under the PSLRA. For this reason, in connection with Lead Counsel's request for reimbursement of Litigation Expenses, NYC Carpenters seeks

reimbursement for the costs and expenses that NYC Carpenters incurred directly relating to its representation of the Settlement Class.

11. My primary responsibility at NYC Carpenters involves overseeing all aspects of the fund's operations, including overseeing litigation matters involving the fund, such as NYC Carpenters' activities in securities class actions where (as here) it has been appointed as a Lead Plaintiff. Robert W. Lesniewski, NYC Carpenters' Chief Financial Officer, also assisted in overseeing the litigation.

12. NYC Carpenters seeks reimbursement in the amount of \$8,762.80 for time that I and other NYC Carpenters staff devoted to this Action, as follows:

<b>Name</b>	<b>Title</b>	<b>Hours</b>	<b>Hourly Rate<sup>2</sup></b>	<b>Total</b>
Kristin O'Brien	Executive Director	25	\$156.59	\$3,914.75
Robert W. Lesniewski	Chief Financial Officer	20	\$165.08	\$3,301.60
Theresa Lannizzi	Director of Operations	5	\$89.25	\$446.25
Anne Massa	Director of Finance and Investments	5	\$123.63	\$618.15
Benjamin Lambert	Director of Information Technology	5	\$96.41	\$482.05
<b>TOTAL:</b>		<b>60</b>		<b>\$8,762.80</b>

I and other NYC Carpenters staff spent time, among other things, communicating with BLB&G, reviewing significant court filings, responding to discovery requests, and participating in the settlement negotiations and the mediation process. The time that we devoted to the representation of the Settlement Class in this Action was time that we otherwise would have spent on other work for NYC Carpenters and, thus, represented a cost to NYC Carpenters.

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<sup>2</sup> The hourly rates used for purposes of this request for myself and the other NYC Carpenters staff who worked on this Action are based on the annual salaries of the respective personnel.

13. In addition, NYC Carpenters has incurred \$13,997.50 in expenses for work performed by its fund counsel that advised in connection with the Action. Elizabeth O’Leary of Kauff McGuire & Margolis LLP spent a total of 11.3 hours working on this litigation on behalf of NYC Carpenters, including advising the Fund concerning litigation strategy and the mediation process. Ms. O’Leary’s regular rate is \$575 per hour for a total of \$6,497.50. Marty Glennon of Archer, Byington, Glennon & Levine LLP spent a total of 15 hours working on this litigation on behalf of NYC Carpenters, including advising the Fund concerning litigation strategy and the mediation process. Mr. Glennon’s regular rate is \$500 per hour for a total of \$7,500. The hours expended by Ms. O’Leary and Mr. Glennon on this matter were separate and apart from other legal work that they and their firms performed on behalf of NYC Carpenters. The expense of compensating Ms. O’Leary and Mr. Glennon’s firms for this work would not have been incurred but for NYC Carpenters’ service as Lead Plaintiff in this Action. Thus, NYC Carpenters seeks reimbursement for \$13,997.50 for this expense.

14. In total, NYC Carpenters seeks reimbursement of \$8,762.80 of costs for the value of the time its employees devoted to the Action and \$13,997.50 for the fees of outside counsel that advised NYC Carpenters in connection with the Action.

#### **IV. Conclusion**

15. In conclusion, NYC Carpenters was actively involved throughout the prosecution and settlement of the Action. NY Carpenters strongly endorses the Settlement as fair, reasonable, and adequate, and believes it represents a favorable recovery for the Settlement Class in light of the risks of continued litigation. NYC Carpenters further supports Lead Counsel’s motion for attorneys’ fees and Litigation Expenses and believes that it represents fair and reasonable compensation for counsel in light of the recovery obtained for the Settlement Class, the substantial work conducted, and the litigation risks. And finally, NYC Carpenters requests reimbursement



under the PSLRA for the value of time dedicated by its employees as set forth above. Accordingly, NYC Carpenters respectfully requests that the Court approve (i) Lead Plaintiff's motion for final approval of the proposed Settlement and Plan of Allocation; and (ii) Lead Counsel's motion for attorneys' fees and Litigation Expenses.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge and belief, and that I have authority to execute this Declaration on behalf of NYC Carpenters.

Executed this 22nd day of June, 2023.



Kristin O'Brien  
Executive Director  
New York City District Council of  
Carpenters Pension Fund

#3284062

# **Exhibit 3**



# CORNERSTONE RESEARCH

Economic and Financial Consulting and Expert Testimony

## Securities Class Action Settlements

2022 Review and Analysis

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Analyses in this report are based on 2,116 securities class actions filed after passage of the Private Securities Litigation Reform Act of 1995 (Reform Act) and settled from 1996 through year-end 2022. See page 16 for a detailed description of the research sample. For purposes of this report and related research, a settlement refers to a negotiated agreement between the parties to a securities class action that is publicly announced to potential class members by means of a settlement notice.

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# 2022 Highlights

In 2022, the number of settled cases reached its highest level in 15 years, increasing 21% relative to 2021. The median settlement amount, median “simplified tiered damages,” and median total assets of the defendant issuer also rose dramatically.<sup>1</sup>

- In 2022, the number of securities class action settlements increased to 105 with a total settlement value of over \$3.8 billion, compared to 87 settlements in 2021 with a total value of \$1.9 billion. (page 3)
- The median settlement amount of \$13.0 million represents an increase of 46% from 2021, while the average settlement amount (\$36.2 million) increased by 63%. (page 4)
- The \$3.8 billion total settlement dollars were 97% higher than the prior year. (page 3)
- There were eight mega settlements (equal to or greater than \$100 million), ranging from \$100 million to \$809.5 million. (page 3)
- The increase in the proportion of “midsize” settlement amounts (\$10 million to \$50 million) was accompanied by a decrease in the proportion of cases that settled for less than \$10 million. (page 4)
- Median “simplified tiered damages” increased more than 125% and reached a record high.<sup>2</sup> (page 5)
- Median “disclosure dollar losses”<sup>3</sup> grew by more than 160%, also reaching an all-time high. (page 5)
- Compared to defendant firms involved in cases that settled in 2021, defendant firms involved in 2022 settlements were 97% larger, as measured by median total assets. (page 5)
- The historically low rate of settled cases involving a corresponding action by the U.S. Securities and Exchange Commission (SEC) observed in 2021 persisted in 2022, remaining below 9%. (page 11)

Figure 1: Settlement Statistics

(Dollars in millions)

	2017–2021	2021	2022
Number of Settlements	395	87	105
Total Amount	\$16,714.3	\$1,932.4	\$3,805.5
Minimum	\$0.3	\$0.7	\$0.7
Median	\$10.2	\$8.9	\$13.0
Average	\$42.3	\$22.2	\$36.2
Maximum	\$3,496.8	\$202.5	\$809.5

Note: Settlement dollars are adjusted for inflation; 2022 dollar equivalent figures are presented.

# Author Commentary

## Findings

The year 2022 was a record year for settlement activity. The number of securities class action settlements in 2022 increased sharply from 2021 and reached levels not observed since 2007. This sharp increase was accompanied by dramatic growth in case settlement amounts, “simplified tiered damages” (our rough proxy for potential shareholder losses), and the size of issuer defendant firms.

The historically high number of settlements in 2022 can be explained by the elevated number of case filings in 2018–2020, when over 70% of these settled cases were filed.

The median settlement amount is the highest since 2018. This was likely driven by the record-high level of “simplified tiered damages,” an estimate of potential shareholder losses that our research finds is the single most important factor in explaining settlement amounts.

The all-time-high median “simplified tiered damages” reflects a number of factors such as larger issuer defendants (measured by the company’s total assets) and larger disclosure dollar losses (a measure of the change in the issuer defendant’s market capitalization following the class-ending alleged corrective disclosure). Institutional investors are more likely to serve as lead plaintiffs in larger cases, i.e., cases with relatively high “simplified tiered damages.” Consistent with this observation, institutional investor involvement as lead plaintiffs for 2022 settled cases was higher than the prior year and the 2017–2021 average. Larger cases also tend to take longer to settle, and accordingly, we observe an increase in the median time to settlement in 2022 relative to prior years.

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*2022 was an interesting year as settlement activity reached historically high levels across several dimensions, including the number and size of settlements, and a record-high for our proxy for potential shareholder losses.*

*Dr. Laarni T. Bulan  
Principal, Cornerstone Research*

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In contrast to the historic highs, settlements in relation to our proxy for potential shareholder losses declined sharply. In particular, both the median and average settlement as a percentage of “simplified tiered damages” in 2022 fell to their lowest levels among post–Reform Act years. These low levels are consistent with a low presence in 2022 of factors often associated with higher settlement amounts, such as the presence of an SEC action, criminal charges, or accounting irregularities.<sup>4</sup>

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*Securities class action settlements in 2022 involved substantially larger cases with larger issuer defendant firms. Overall, these cases took longer to resolve and reached more advanced litigation stages before settlement than in prior years.*

*Dr. Laura E. Simmons  
Senior Advisor, Cornerstone Research*

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## Looking Ahead

In light of the reduced level in the number of securities class action case filings in 2021–2022, we may begin to see a slowdown or flattening out in settlement activity in the upcoming years,<sup>5</sup> absent a decrease in dismissal rates.

Given that SEC enforcement actions have tended to increase subsequent to when a new SEC Chair is sworn in (which last occurred in 2021), we may also begin to see a reversal in the frequency of corresponding SEC actions among settled cases in the near term. For additional details, see Cornerstone Research’s *SEC Enforcement Activity: Public Company and Subsidiaries—FY 2022 Update*.

As discussed in Cornerstone Research’s *Securities Class Action Filings—2022 Year in Review*, certain issues have emerged as focus areas in securities class actions. In particular, 26% of all core federal filings in 2020–2022 were related to special purpose acquisition company (SPAC), COVID-19, or cryptocurrency matters. While very few of these types of cases have settled to date, we expect increased settlement activity for these cases in the future.

—Laarni T. Bulan and Laura E. Simmons

# Total Settlement Dollars

As has been observed in prior years, the presence or absence of just a few very large settlements can have a substantial effect on total settlement dollars for a given year.

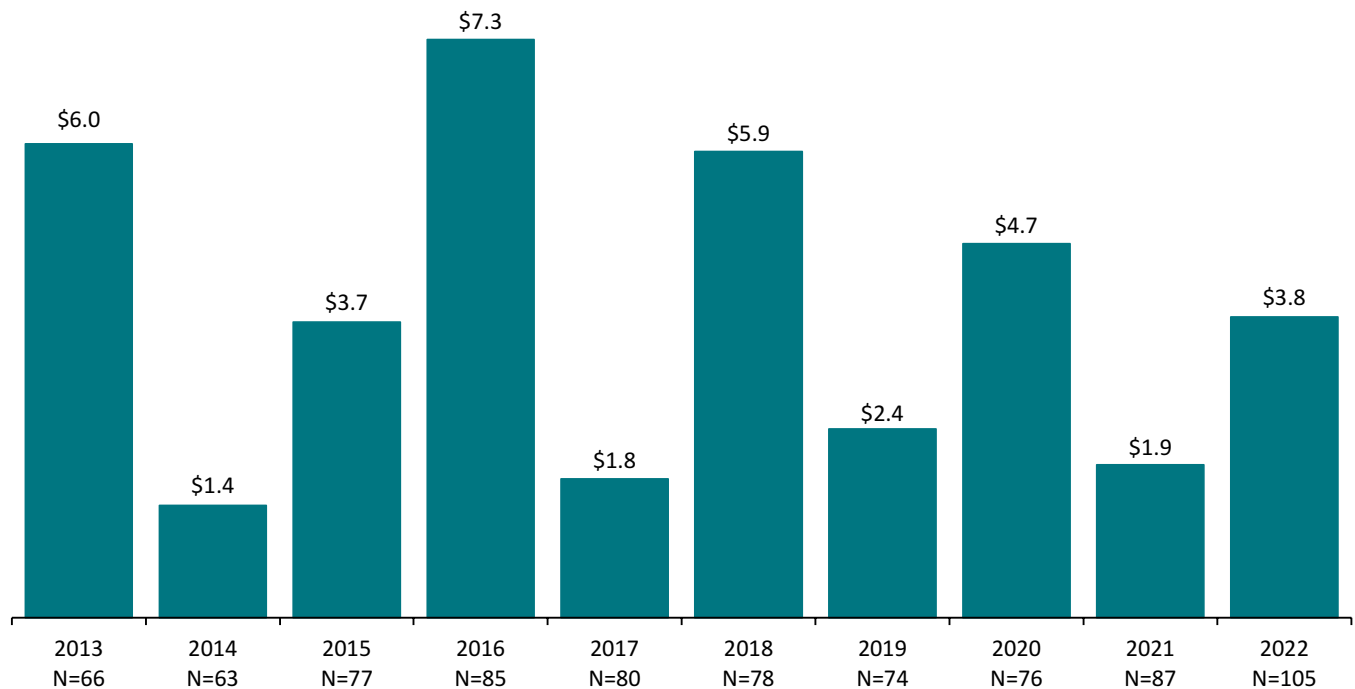
- The number of settlements in 2022 (105 cases) continued the upward trend since 2019 and represented a 38% increase from the prior nine-year average (76 cases).
- An increase in the number of mega settlements (i.e., settlements equal to or greater than \$100 million) contributed to total settlement dollars nearly doubling in 2022 compared to the prior year.

- There were eight mega settlements in 2022, ranging from \$100 million to \$809.5 million. Eight such settlements is the highest number since 2016.
- A decline in the proportion of very small settlements further contributed to the growth in total settlement dollars. Only 23% of settlements in 2022 were for less than \$5 million, compared to 33% of cases settled in the prior nine years.

*The number of settlements in 2022 was the highest number since 2007.*

Figure 2: Total Settlement Dollars 2013–2022

(Dollars in billions)



Note: Settlement dollars are adjusted for inflation; 2022 dollar equivalent figures are presented. “N” refers to the number of cases.



# Settlement Size

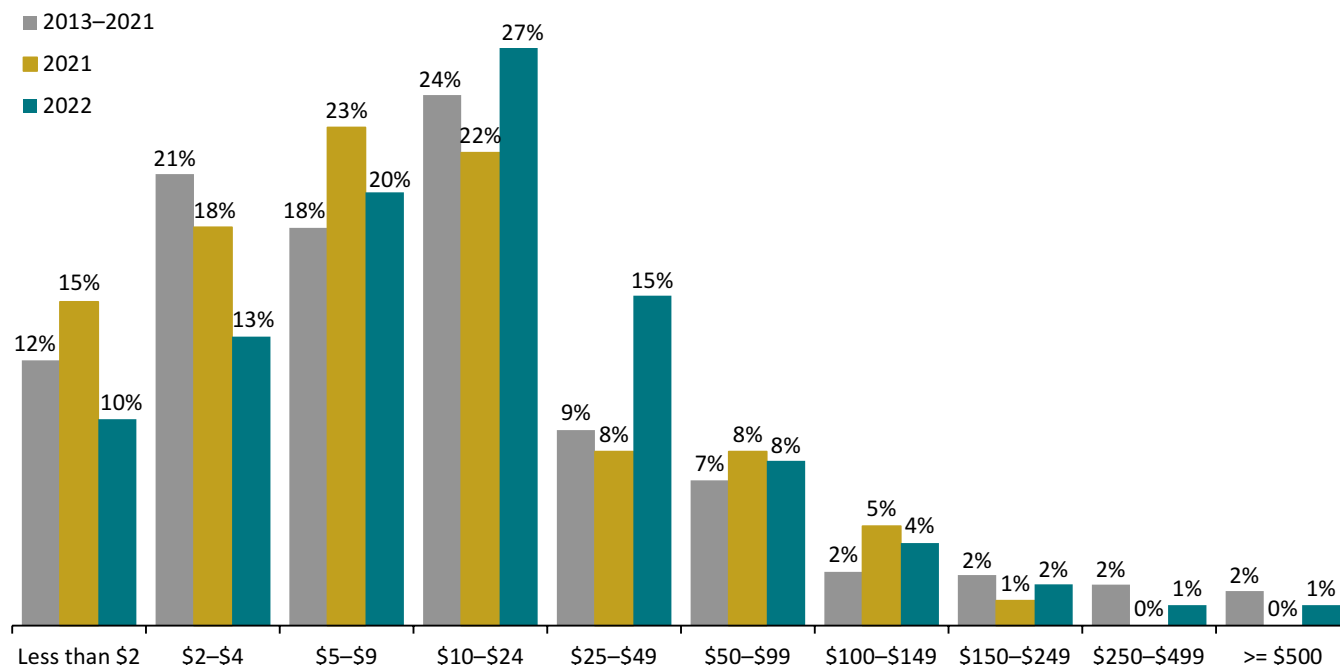
- The median settlement amount in 2022 was \$13.0 million, a 46% increase from 2021 and a 34% increase from the prior nine-year median. Median values provide the midpoint in a series of observations and are less affected than averages by outlier data.
- The average settlement amount in 2022 was \$36.2 million, a 63% increase from 2021. (See [Appendix 1](#) for an analysis of settlements by percentiles.)
- In 2022, 42% of cases settled for between \$10 million and \$50 million, compared to only 30% in 2021 and 34% in 2013–2021.

*The median settlement amount in 2022 was the highest since 2018.*

- The increase in the proportion of these “midsize” settlement amounts (\$10 million to \$50 million) was accompanied by a decrease in the proportion of cases that settled for less than \$10 million—43% in 2022 compared to 56% in 2021 and 51% in the prior nine years.

**Figure 3: Distribution of Settlements 2013–2022**

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2022 dollar equivalent figures are presented.

# Type of Claim

## Rule 10b-5 Claims and “Simplified Tiered Damages”

“Simplified tiered damages” uses simplifying assumptions to estimate per-share damages and trading behavior for cases involving Rule 10b-5 claims. It provides a measure of potential shareholder losses that allows for consistency across a large volume of cases, thus enabling the identification and analysis of potential trends.<sup>6</sup>

Cornerstone Research’s analysis finds this measure to be the most important factor in estimating settlement amounts.<sup>7</sup> However, this measure is not intended to represent actual economic losses borne by shareholders. Determining any such losses for a given case requires more in-depth economic analysis.

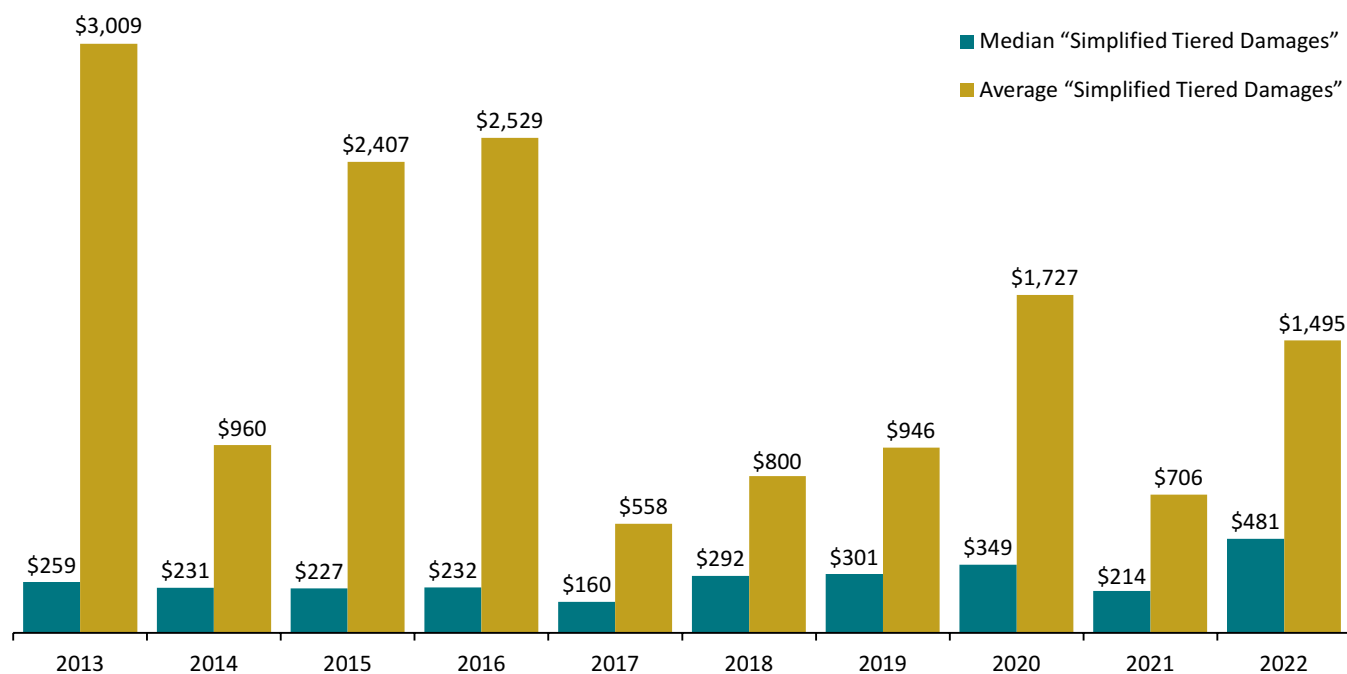
- Similar to settlement amounts, the median “simplified tiered damages” in 2022 increased 125% compared to 2021 and was over 100% higher than the median of settled cases for the prior nine years.

- In 2022, nearly half of settlements with Rule 10b-5 claims involved “simplified tiered damages” over \$500 million, an all-time high.
- Higher “simplified tiered damages” are typically associated with larger issuer defendants. Consistent with this, the median total assets of issuer defendants in 2022 settled cases was 97% higher than the median total assets for 2021 settled cases.
- Higher “simplified tiered damages” are also generally associated with larger disclosure dollar losses. In 2022, the median DDL grew by more than 160% compared to 2021, reaching an all-time high.

*Median “simplified tiered damages” reached an all-time high in 2022.*

Figure 4: Median and Average “Simplified Tiered Damages” in Rule 10b-5 Cases 2013–2022

(Dollars in millions)

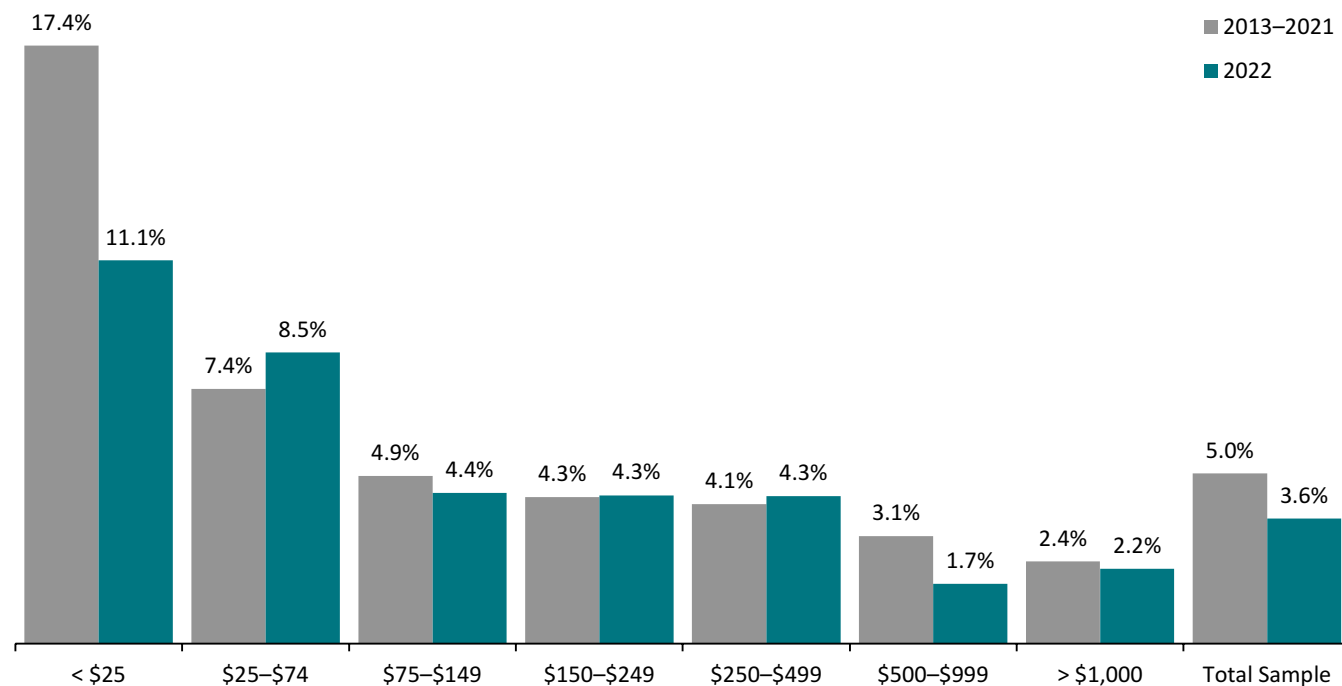


Note: “Simplified tiered damages” are adjusted for inflation based on class period end dates for common stock only; 2022 dollar equivalent figures are presented. Damages are estimated for cases alleging a claim under Rule 10b-5 (whether alone or in addition to other claims).

- Only 4% of settlements in 2022 had “simplified tiered damages” less than \$25 million, the lowest observed to date.
- Cases with smaller “simplified tiered damages” are more likely to be associated with issuers that had been delisted from a major exchange and/or declared bankruptcy prior to settlement. In 2022, the percentage of such issuers for settled cases was at an all-time low (11%).
- The 2022 median and average settlement as a percentage of “simplified tiered damages” of 3.6% and 5.4%, respectively, are all-time lows. (See [Appendix 5](#) for additional information on median and average settlements as a percentage of “simplified tiered damages.”)

Figure 5: Median Settlement as a Percentage of “Simplified Tiered Damages” by Damages Ranges in Rule 10b-5 Cases 2013–2022

(Dollars in millions)



Note: Damages are estimated for cases alleging a claim under Rule 10b-5 (whether alone or in addition to other claims).

## '33 Act Claims and "Simplified Statutory Damages"

For Securities Act of 1933 ('33 Act) claim cases—those involving only Section 11 and/or Section 12(a)(2) claims—potential shareholder losses are estimated using a model in which the statutory loss is the difference between the statutory purchase price and the statutory sales price, referred to here as "simplified statutory damages." Only the offered shares are assumed to be eligible for damages.<sup>8</sup>

- In 2022, there were nine settlements for cases with only '33 Act claims, in line with the average from 2017 to 2020 and well below the historically high number of 16 settlements observed in 2021.

- The median settlement as a percentage of simplified statutory damages in 2022 and 2021 were 4.7% and 4.4%, respectively—the lowest levels since 2002. (See *Appendix 6 for additional information on median and average settlements as a percentage of "simplified statutory damages."*)
- The average settlement amount for cases with only '33 Act claims was \$7.3 million in 2022, compared to \$14.9 million during 2013-2021.

*In 2022, the median settlement amount for cases with only '33 Act claims was \$7.0 million, the lowest since 2013.*

Figure 6: Settlements by Nature of Claims 2013–2022

(Dollars in millions)

	Number of Settlements	Median Settlement	Median "Simplified Statutory Damages"	Median Settlement as a Percentage of "Simplified Statutory Damages"
Section 11 and/or Section 12(a)(2) Only	82	\$9.2	\$145.2	8.7%

	Number of Settlements	Median Settlement	Median "Simplified Tiered Damages"	Median Settlement as a Percentage of "Simplified Tiered Damages"
Both Rule 10b-5 and Section 11 and/or Section 12(a)(2)	123	\$15.4	\$355.7	6.3%
Rule 10b-5 Only	581	\$9.0	\$250.1	4.5%

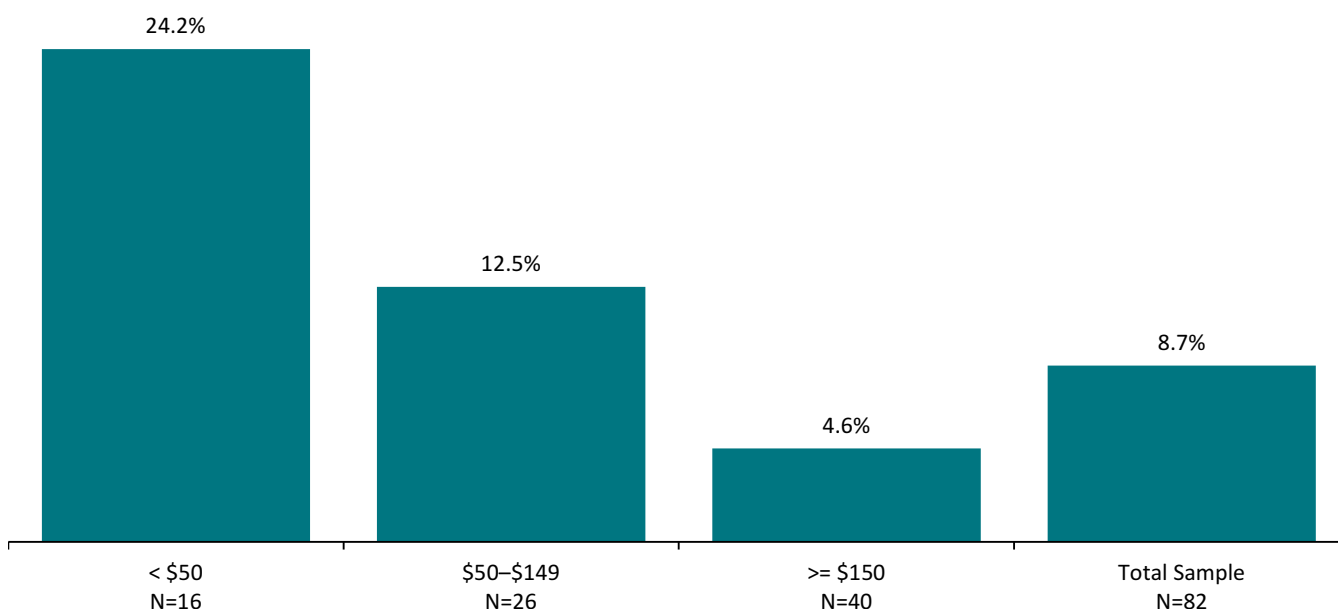
Note: Settlement dollars and damages are adjusted for inflation; 2022 dollar equivalent figures are presented.

- Settlements as a percentage of the simplified proxies for potential shareholder losses used in this report are typically smaller for cases that have larger estimated damages. As with cases with Rule 10b-5 claims, this finding holds for cases with only '33 Act claims.
- In the past decade, over 85% of the settled '33 Act claim cases involved an underwriter (or underwriters) as a named codefendant.
- Over 80% of '33 Act claim cases that settled in 2013–2022 involved an initial public offering (IPO).

*Consistent with the lower median settlement amount among '33 Act claim cases, the median “simplified statutory damages” in 2022 declined by 61% from the median in 2021 and was the lowest since 2016.*

Figure 7: Median Settlement as a Percentage of “Simplified Statutory Damages” by Damages Ranges in '33 Act Claim Cases 2013–2022

(Dollars in millions)



Jurisdictions of Settlements of '33 Act Claim Cases

	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
State Court	1	0	2	4	5	4	4	7	6	6
Federal Court	7	2	2	6	3	4	5	1	10	3

Note: “N” refers to the number of cases. This analysis excludes cases alleging Rule 10b-5 claims..

# Analysis of Settlement Characteristics

## GAAP Violations

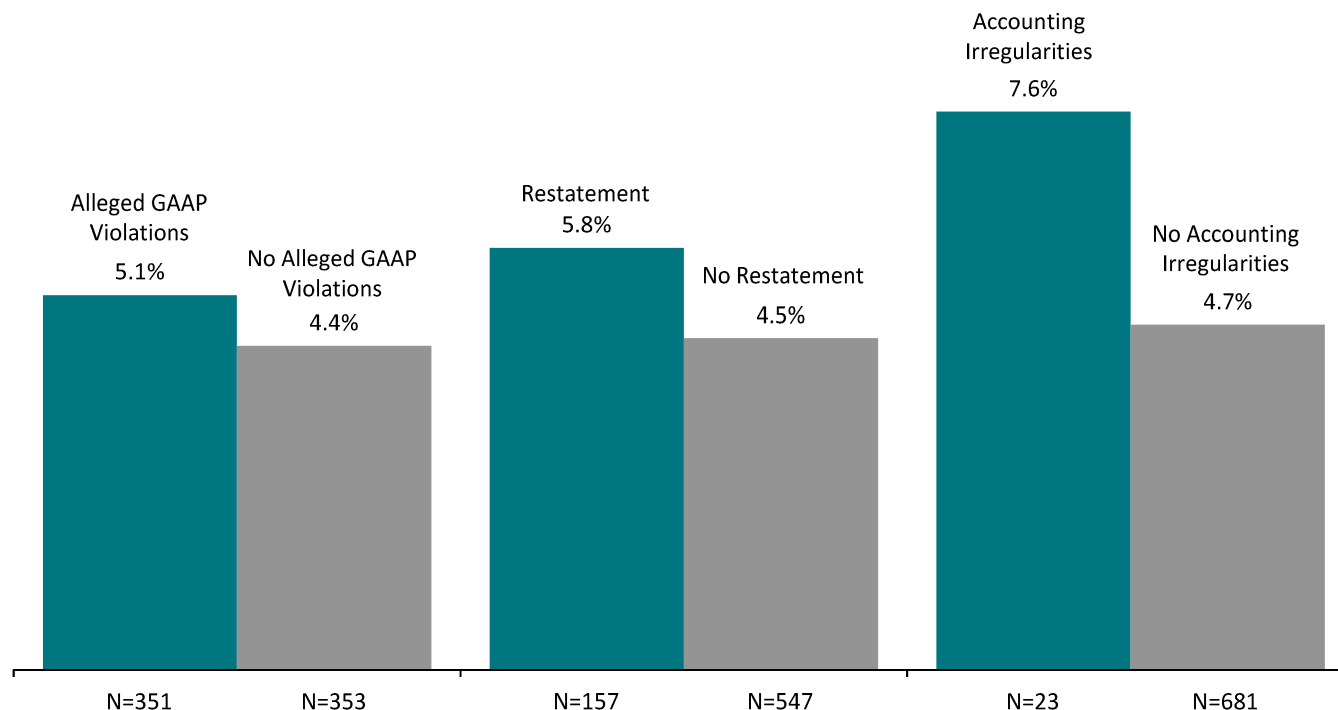
This analysis examines allegations of GAAP violations in settlements of securities class actions involving Rule 10b-5 claims, including two sub-categories of GAAP violations—financial statement restatements and accounting irregularities.<sup>9</sup> For further details regarding settlements of accounting cases, see Cornerstone Research’s annual report on *Accounting Class Action Filings and Settlements*.<sup>10</sup>

- For the first time since 2017, the median settlement amount for cases involving GAAP allegations was larger than that for non-GAAP cases. Notably, in 2022 the median settlement amount for GAAP cases was more than double that of non-GAAP cases.
- As noted in prior years, settlements as a percentage of “simplified tiered damages” for cases involving GAAP allegations are typically higher than for non-GAAP cases. This result has continued despite a relatively low number of cases involving a financial restatement. For example, only 11% of settlements in 2022 involved a restatement of financial statements.

- Auditor codefendants were involved in only 3% of settled cases, consistent with 2021 but substantially lower than the average from 2013 to 2021.
- The infrequency of cases alleging accounting irregularities continued in 2022 at less than 2% of settled cases.

*The proportion of settled cases in 2022 with Rule 10b-5 claims alleging GAAP violations remained at a historically low level.*

Figure 8: Median Settlement as a Percentage of “Simplified Tiered Damages” and Allegations of GAAP Violations 2013–2022



Note: “N” refers to the number of cases. This analysis is limited to cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

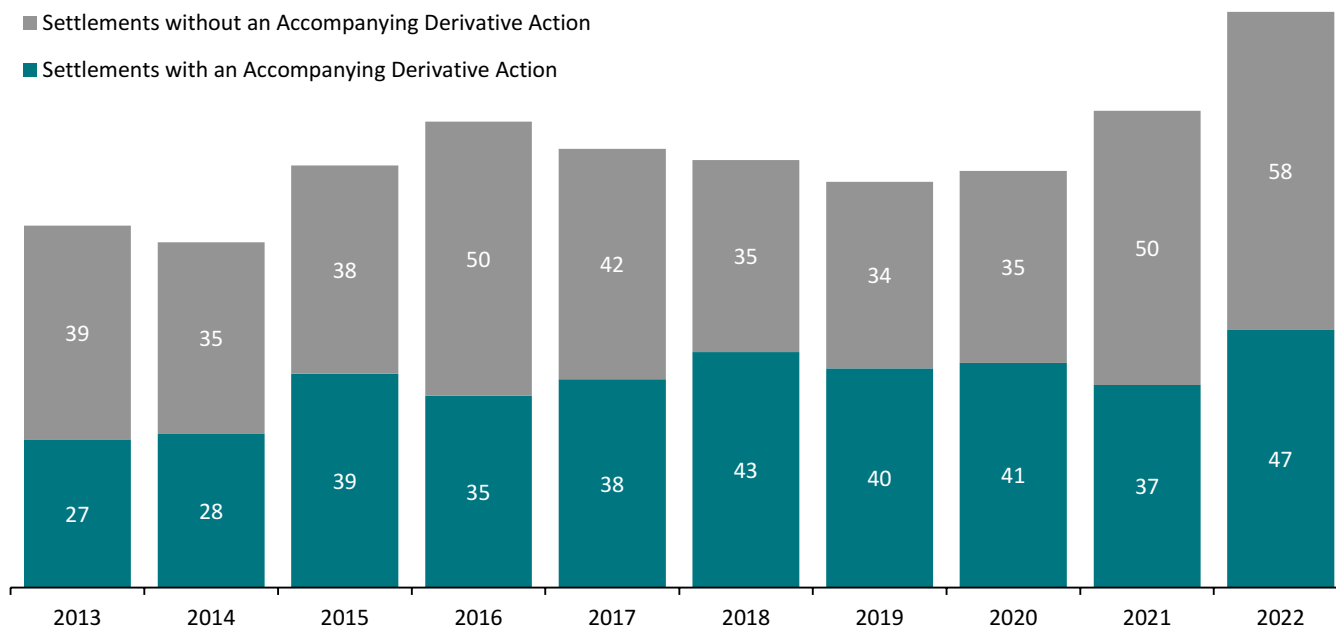
## Derivative Actions

- Securities class actions often involve accompanying (or parallel) derivative actions with similar claims, and such cases have historically settled for higher amounts than securities class actions without corresponding derivative matters.<sup>11</sup>
- In 2022, the median settlement amount for cases with an accompanying derivative action was approximately 28% higher than for cases without (\$14.1 million versus \$11.0 million, respectively).
- For cases settled during 2018–2022, 38% of parallel derivative suits were filed in Delaware. California and New York were the next most common venues for such actions, representing 22% and 15% of such settlements, respectively.

*Although the proportion of cases involving accompanying derivative actions in 2022 was higher compared to 2021, it was below the average for 2018–2021.*

- It is commonly understood that most parallel derivative suits do not settle for monetary amounts (other than plaintiffs’ attorney fees). However, the likelihood of a monetary settlement among parallel derivative actions is higher when the securities class action settlement is large, as shown in Cornerstone Research’s *Parallel Derivative Action Settlement Outcomes*.<sup>12</sup>

Figure 9: Frequency of Derivative Actions 2013–2022

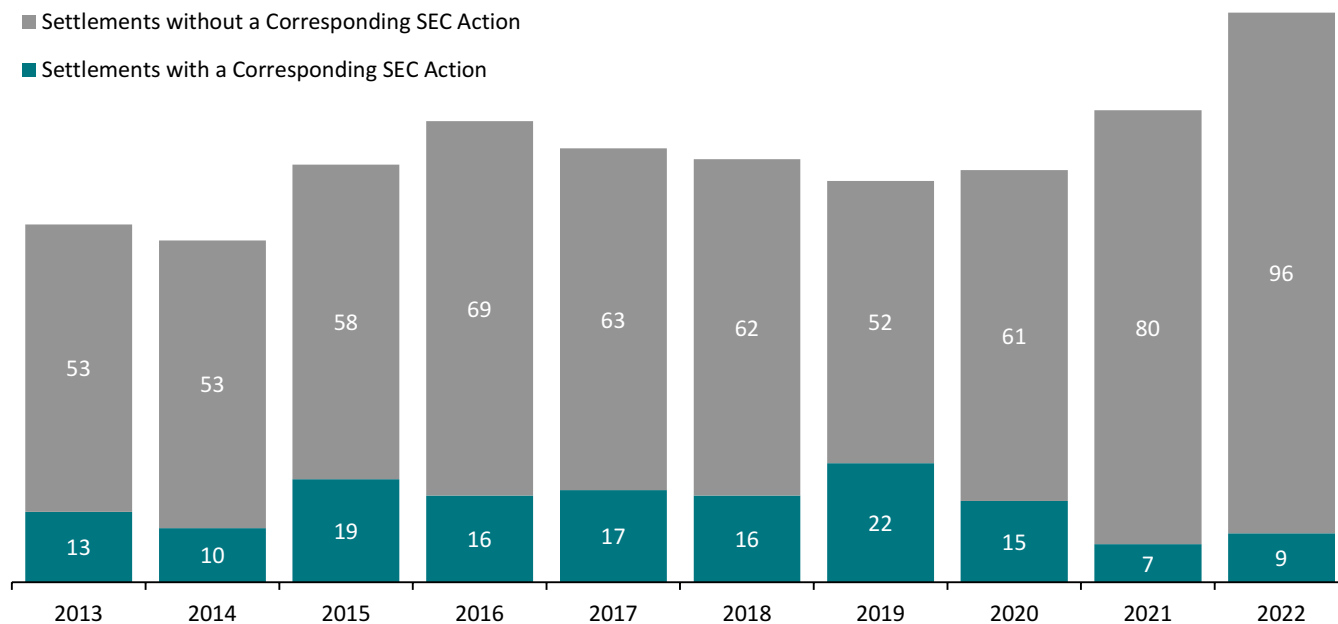


## Corresponding SEC Actions

- Historically, cases with an accompanying SEC action have typically been associated with substantially higher settlement amounts.<sup>13</sup> However, this pattern did not hold in 2022.
- The median settlement amount in 2022 for cases that involved a corresponding SEC action was less than 5% higher than the median for cases without such an action. In contrast, in 2021, the median settlement amount for cases with an accompanying SEC action was more than double that for cases without such an action.
- Both “simplified tiered damages” and DDL were lower in 2022 for cases with a corresponding SEC action when compared to those without, at 72% and 83% lower, respectively.
- Settled cases in 2022 with a corresponding SEC action were nearly 10% quicker to reach settlement, on average, compared to cases without such an action. In contrast, in 2021, cases with corresponding SEC actions took over 20% longer to reach a settlement than cases without corresponding SEC actions.
- The number of settled cases in 2022 involving either a corresponding SEC action or criminal charge remained below 13%, compared to an average of 24% for the years 2013–2021.

*Settled cases involving SEC actions in 2022 were considerably smaller than cases without accompanying SEC actions.*

Figure 10: Frequency of SEC Actions  
 2013–2022





## Institutional Investors

As discussed in prior reports, increasing institutional participation as lead plaintiffs in securities litigation was a focus of the Reform Act.<sup>14</sup> Indeed, in years following passage of the Reform Act, institutional investor involvement as lead plaintiffs did increase, particularly in larger cases, that is, cases with higher “simplified tiered damages.”

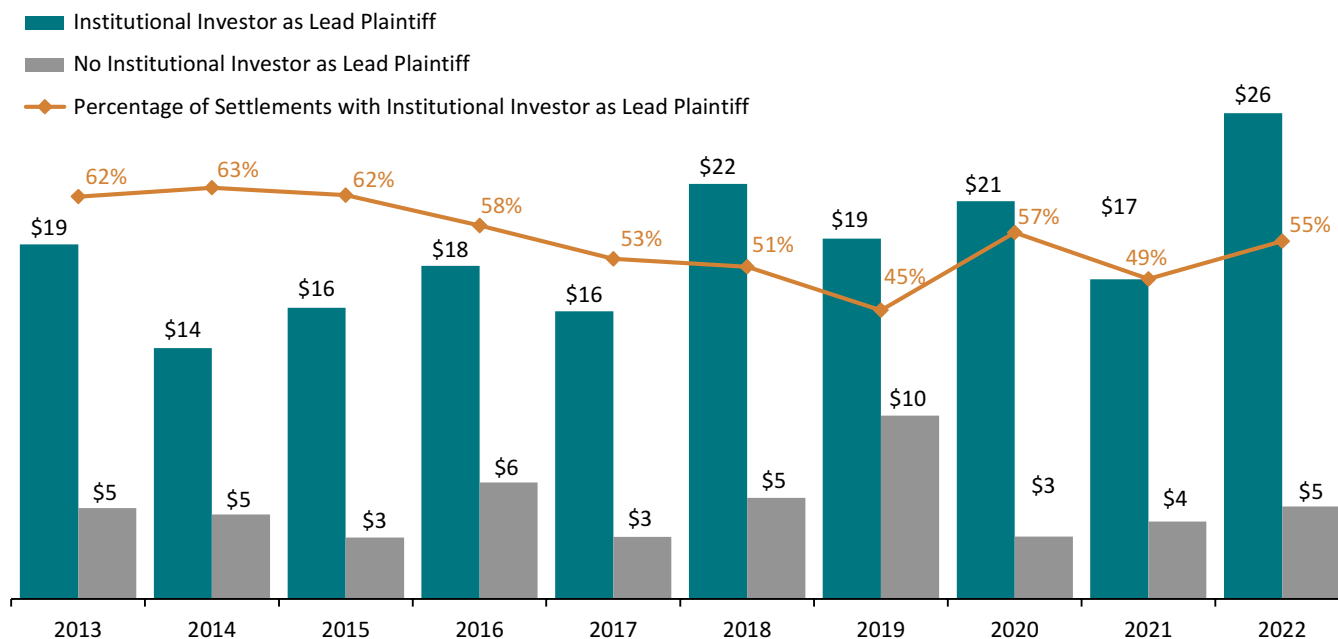
- In 2022, for cases involving an institutional investor as lead plaintiff, median “simplified tiered damages” and median total assets were five times and eight times higher, respectively, than the median values for cases without an institutional investor as a lead plaintiff.
- Since passage of the Reform Act, public pension plans have been the most frequent type of institutional lead plaintiff.

- In 2022, a public pension plan served as lead plaintiff in two-thirds of cases with an institutional lead plaintiff. Moreover, in six of the seven mega settlement cases in 2022 involving an institutional lead plaintiff, the institutional investor was a public pension plan.
- Institutional participation as lead plaintiff continues to be associated with particular plaintiff counsel. For example, an institutional investor served as a lead plaintiff in 2022 in over 85% of settled cases in which Robbins Geller Rudman & Dowd LLP and/or Bernstein Litowitz Berger & Grossmann LLP served as lead plaintiff counsel. In contrast, institutional investors served as lead plaintiffs in 21% of cases in which The Rosen Law Firm, Pomerantz LLP, or Glancy Prongay & Murray LLP served as lead plaintiff counsel.

*Of the eight mega settlement cases in 2022, seven included an institutional lead plaintiff.*

Figure 11: Median Settlement Amounts and Institutional Investors 2013–2022

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2022 dollar equivalent figures are presented.

# Time to Settlement and Case Complexity

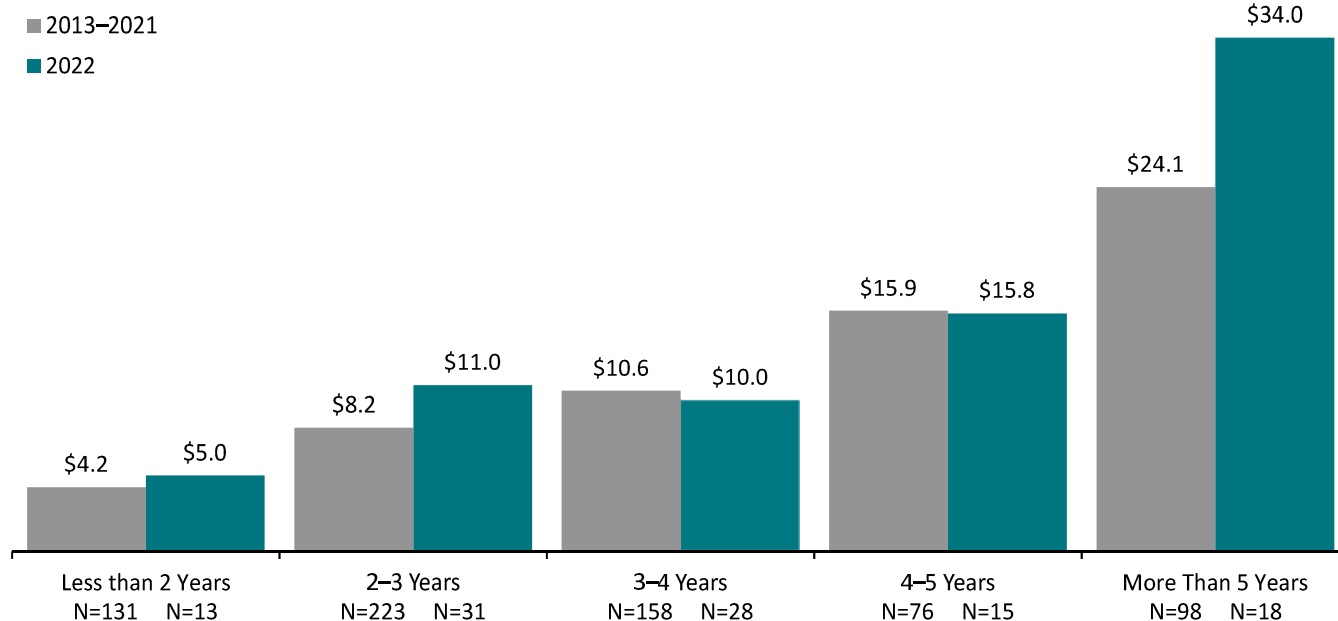
- Overall, the median time from filing to settlement hearing date in 2022 was longer—3.2 years for 2022 settlements, compared to 2.9 years for 2013–2021 settlements.
- Cases involving an institutional lead plaintiff continued to take longer to settle. In particular, settlements in 2022 with institutional lead plaintiffs took 33% longer to settle than cases not involving an institutional lead plaintiff.

*Only 42% of cases in 2022 reached a settlement hearing date within three years of filing, the lowest percentage in the prior nine years.*

- Larger cases (as measured by higher “simplified tiered damages”) often take longer to resolve. Consistent with this, in 2022, the median time to settlement for cases that settled for at least \$100 million was over 5.5 years—an all-time high for such cases.

Figure 12: Median Settlement by Duration from Filing Date to Settlement Hearing Date 2013–2022

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2022 dollar equivalent figures are presented. “N” refers to the number of cases.

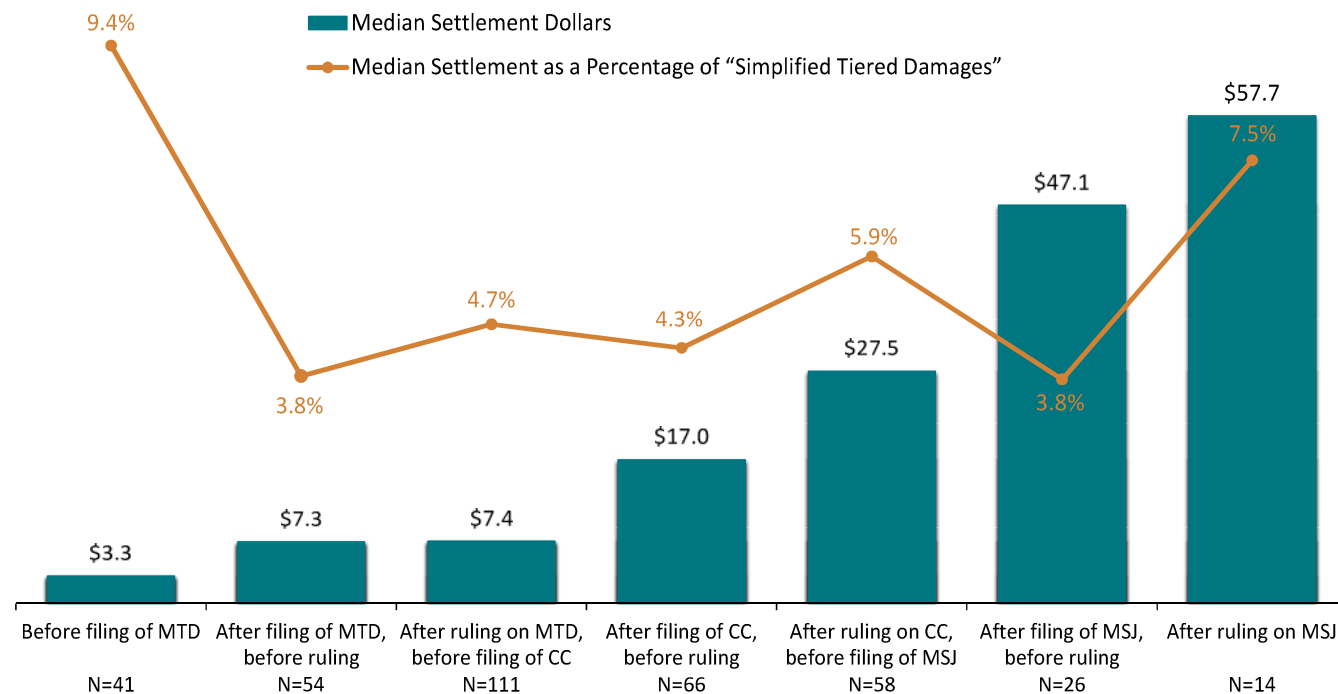
# Case Stage at the Time of Settlement

In collaboration with Stanford Securities Litigation Analytics (SSLA),<sup>15</sup> this report analyzes settlements in relation to the stage in the litigation process at the time of settlement.

- Cases settling at later stages continue to be larger in terms of total assets and “simplified tiered damages.”
- In particular, the median issuer defendant total assets for 2022 cases that settled after the ruling on a motion for class certification was over four times the median for cases that settled prior to such a motion being ruled on.
- In 2022, cases where a motion for class certification was filed were nearly three times as likely to have either Robbins Geller Rudman & Dowd LLP and/or Bernstein Litowitz Berger & Grossmann LLP as lead plaintiff counsel than The Rosen Law Firm, Pomerantz LLP, or Glancy Prongay & Murray LLP.
- Cases settling at later stages often included an institutional investor lead plaintiff. For example, in 2022, an institutional investor served as lead plaintiff 69% of the time for cases that settled after the filing of a motion for class certification (slightly higher than the percentage over the prior four years), compared to 44% for cases that settled prior to the filing of a motion for class certification (38% in the prior four years)
- Overall, compared to settlements in 2021, a larger proportion of cases in 2022 did not reach settlement until after a motion for class certification was filed. In addition, 14% of 2022 settled cases were resolved after a summary judgment motion, compared to less than 9% for 2018–2021 settlements.

Figure 13: Median Settlement Dollars and Resolution Stage at Time of Settlement 2018–2022

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2022 dollar equivalent figures are presented. “N” refers to the number of cases. MTD refers to “motion to dismiss,” CC refers to “class certification,” and MSJ refers to “motion for summary judgment.” This analysis is limited to cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

# Cornerstone Research's Settlement Analysis

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This research applies regression analysis to examine the relations between settlement outcomes and certain securities case characteristics. Regression analysis is employed to better understand the factors that are important for estimating what cases might settle for, given the characteristics of a particular securities class action.

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## Determinants of Settlement Outcomes

Based on the research sample of cases that settled from January 2006 through December 2022, important determinants of settlement amounts include the following:

- “Simplified tiered damages”
- Maximum Dollar Loss (MDL)—the dollar-value change in the defendant firm’s market capitalization from its class period peak to the trading day immediately following the end of the class period.
- Most recently reported total assets of the issuer defendant firm
- Number of entries on the lead case docket
- Whether there were accounting allegations
- Whether there was a corresponding SEC action against the issuer, other defendants, or related parties
- Whether there were criminal charges against the issuer, other defendants, or related parties with similar allegations to those included in the underlying class action complaint
- Whether there was an accompanying derivative action

- Whether Section 11 and/or Section 12(a) claims were alleged in addition to Rule 10b-5 claims
- Whether the issuer defendant was distressed
- Whether an institution was a lead plaintiff
- Whether securities other than common stock/ADR/ADS, were included in the alleged class

Cornerstone Research analyses show that settlements were higher when “simplified tiered damages,” MDL, issuer defendant asset size, or the number of docket entries was larger, or when Section 11 and/or Section 12(a) claims were alleged in addition to Rule 10b-5 claims.

Settlements were also higher in cases involving accounting allegations, a corresponding SEC action, criminal charges, an accompanying derivative action, an institution involved as lead plaintiff, or securities in addition to common stock included in the alleged class.

Settlements were lower if the issuer was distressed.

More than 75% of the variation in settlement amounts can be explained by the factors discussed above.

## Research Sample

- The database compiled for this report is limited to cases alleging Rule 10b-5, Section 11, and/or Section 12(a)(2) claims brought by purchasers of a corporation's common stock. The sample contains only cases alleging fraudulent inflation in the price of a corporation's common stock.
- Cases with alleged classes of only bondholders, preferred stockholders, etc., cases alleging fraudulent depression in price, and mergers and acquisitions cases are excluded. These criteria are imposed to ensure data availability and to provide a relatively homogeneous set of cases in terms of the nature of the allegations.
- The current sample includes 2,116 securities class actions filed after passage of the Reform Act (1995) and settled from 1996 through 2022. These settlements are identified based on a review of case activity collected by Securities Class Action Services LLC (SCAS).<sup>16</sup>
- The designated settlement year, for purposes of this report, corresponds to the year in which the hearing to approve the settlement was held.<sup>17</sup> Cases involving multiple settlements are reflected in the year of the most recent partial settlement, provided certain conditions are met.<sup>18</sup>

## Data Sources

In addition to SCAS, data sources include Dow Jones Factiva, Bloomberg, the Center for Research in Security Prices (CRSP) at University of Chicago Booth School of Business, Standard & Poor's Compustat, Refinitiv Eikon, court filings and dockets, SEC registrant filings, SEC litigation releases and administrative proceedings, LexisNexis, Stanford Securities Litigation Analytics (SSLA), Securities Class Action Clearinghouse (SCAC), and public press.

# Endnotes

- <sup>1</sup> Reported dollar figures and corresponding comparisons are adjusted for inflation; 2022 dollar equivalent figures are analyzed.
- <sup>2</sup> “Simplified tiered damages” are calculated for cases that settled in 2006 or later, following the U.S. Supreme Court’s 2005 landmark decision in *Dura Pharmaceuticals Inc. v. Broudo*, 544 U.S. 336. “Simplified tiered damages” is based on the stock-price drops on alleged corrective disclosure dates as described in the settlement plan of allocation.
- <sup>3</sup> Disclosure Dollar Loss or DDL is the dollar-value change in the defendant firm’s market capitalization between the end of the class period and the trading day immediately following the end of the class period.
- <sup>4</sup> Accounting irregularities reflect those cases in which the defendant has reported the occurrence of accounting irregularities (intentional misstatements or omissions) in its financial statements.
- <sup>5</sup> *Securities Class Action Filings—2022 Year in Review*, Cornerstone Research (2023).
- <sup>6</sup> The “simplified tiered damages” approach used for purposes of this settlement research does not examine the mix of information associated with the specific dates listed in the plan of allocation, but simply applies the stock price movements on those dates to an estimate of the “true value” of the stock during the alleged class period (or “value line”). This proxy for damages utilizes an estimate of the number of shares damaged based on reported trading volume and the number of shares outstanding. Specifically, reported trading volume is adjusted using volume reduction assumptions based on the exchange on which the issuer defendant’s common stock is listed. No adjustments are made to the underlying float for institutional holdings, insider trades, or short-selling activity during the alleged class period. Because of these and other simplifying assumptions, the damages measures used in settlement outcome modeling may differ substantially from damages estimates developed in conjunction with case-specific economic analysis.
- <sup>7</sup> Laarni T. Bulan, Ellen M. Ryan, and Laura E. Simmons, *Estimating Damages in Settlement Outcome Modeling*, Cornerstone Research (2017).
- <sup>8</sup> The statutory purchase price is the lesser of the security offering price or the security purchase price. Prior to the first complaint filing date, the statutory sales price is the price at which the security was sold. After the first complaint filing date, the statutory sales price is the greater of the security sales price or the security price on the first complaint filing date. Similar to “simplified tiered damages,” the estimation of “simplified statutory damages” makes no adjustments to the underlying float for institutional holdings, insider trades, or short-selling activity.
- <sup>9</sup> The two sub-categories of accounting issues analyzed in Figure 8 of this report are (1) restatements—cases involving a restatement (or announcement of a restatement) of financial statements; and (2) accounting irregularities.
- <sup>10</sup> *Accounting Class Action Filings and Settlements—2022 Review and Analysis*, Cornerstone Research (2023), forthcoming in spring 2023.
- <sup>11</sup> To be considered an accompanying or parallel derivative action, the derivative action must have underlying allegations that are similar or related to the underlying allegations of the securities class action and either be active or settling at the same time as the securities class action.
- <sup>12</sup> *Parallel Derivative Action Settlement Outcomes*, Cornerstone Research (2022).
- <sup>13</sup> As noted previously, it could be that the merits in such cases are stronger, or simply that the presence of a corresponding SEC action provides plaintiffs with increased leverage when negotiating a settlement. For purposes of this research, an SEC action is evidenced by the presence of a litigation release or an administrative proceeding posted on [www.sec.gov](http://www.sec.gov) involving the issuer defendant or other named defendants with allegations similar to those in the underlying class action complaint.
- <sup>14</sup> See, for example, *Securities Class Action Settlements—2006 Review and Analysis*, Cornerstone Research (2007) and Michael A. Perino, “Have Institutional Fiduciaries Improved Securities Class Actions? A Review of the Empirical Literature on the PSLRA’s Lead Plaintiff Provision,” St. John’s Legal Studies Research Paper No. 12-0021 (2013).
- <sup>15</sup> Stanford Securities Litigation Analytics (SSLA) tracks and collects data on private shareholder securities litigation and public enforcements brought by the SEC and the U.S. Department of Justice. The SSLA dataset includes all traditional class actions, SEC actions, and DOJ criminal actions filed since 2000. Available on a subscription basis at <https://sla.law.stanford.edu/>.
- <sup>16</sup> Available on a subscription basis. For further details see <https://www.issgovernance.com/securities-class-action-services/>.
- <sup>17</sup> Movements of partial settlements between years can cause differences in amounts reported for prior years from those presented in earlier reports.
- <sup>18</sup> This categorization is based on the timing of the settlement hearing date. If a new partial settlement equals or exceeds 50% of the then-current settlement fund amount, the entirety of the settlement amount is re-categorized to reflect the settlement hearing date of the most recent partial settlement. If a subsequent partial settlement is less than 50% of the then-current total, the partial settlement is added to the total settlement amount and the settlement hearing date is left unchanged.

# Appendices

## Appendix 1: Settlement Percentiles

(Dollars in millions)

Year	Average	10th	25th	Median	75th	90th
2013	\$90.8	\$2.4	\$3.8	\$8.2	\$27.9	\$103.6
2014	\$22.5	\$2.1	\$3.5	\$7.4	\$16.3	\$61.8
2015	\$48.6	\$1.6	\$2.7	\$8.0	\$20.1	\$116.1
2016	\$86.1	\$2.3	\$5.1	\$10.4	\$40.2	\$178.0
2017	\$22.0	\$1.8	\$3.1	\$6.3	\$18.2	\$42.3
2018	\$75.6	\$1.8	\$4.2	\$13.1	\$28.8	\$57.3
2019	\$32.3	\$1.7	\$6.4	\$12.6	\$22.9	\$57.2
2020	\$62.3	\$1.6	\$3.6	\$11.1	\$22.9	\$60.3
2021	\$22.2	\$1.9	\$3.4	\$8.9	\$19.3	\$63.3
2022	\$36.2	\$2.0	\$5.0	\$13.0	\$33.0	\$71.8

Note: Settlement dollars are adjusted for inflation; 2022 dollar equivalent figures are presented.

## Appendix 2: Settlements by Select Industry Sectors 2013–2022

(Dollars in millions)

Industry	Number of Settlements	Median Settlement	Median “Simplified Tiered Damages”	Median Settlement as a Percentage of “Simplified Tiered Damages”
Financial	92	\$14.8	\$293.3	5.0%
Healthcare	20	\$14.2	\$189.4	6.4%
Pharmaceuticals	119	\$7.6	\$237.6	3.8%
Retail	50	\$13.2	\$294.2	4.8%
Technology	103	\$9.3	\$315.9	4.6%
Telecommunication	26	\$10.5	\$311.0	4.4%

Note: Settlement dollars and “simplified tiered damages” are adjusted for inflation; 2022 dollar equivalent figures are presented. “Simplified tiered damages” are calculated only for cases involving Rule 10b-5 claims (whether alone or in addition to other claims).

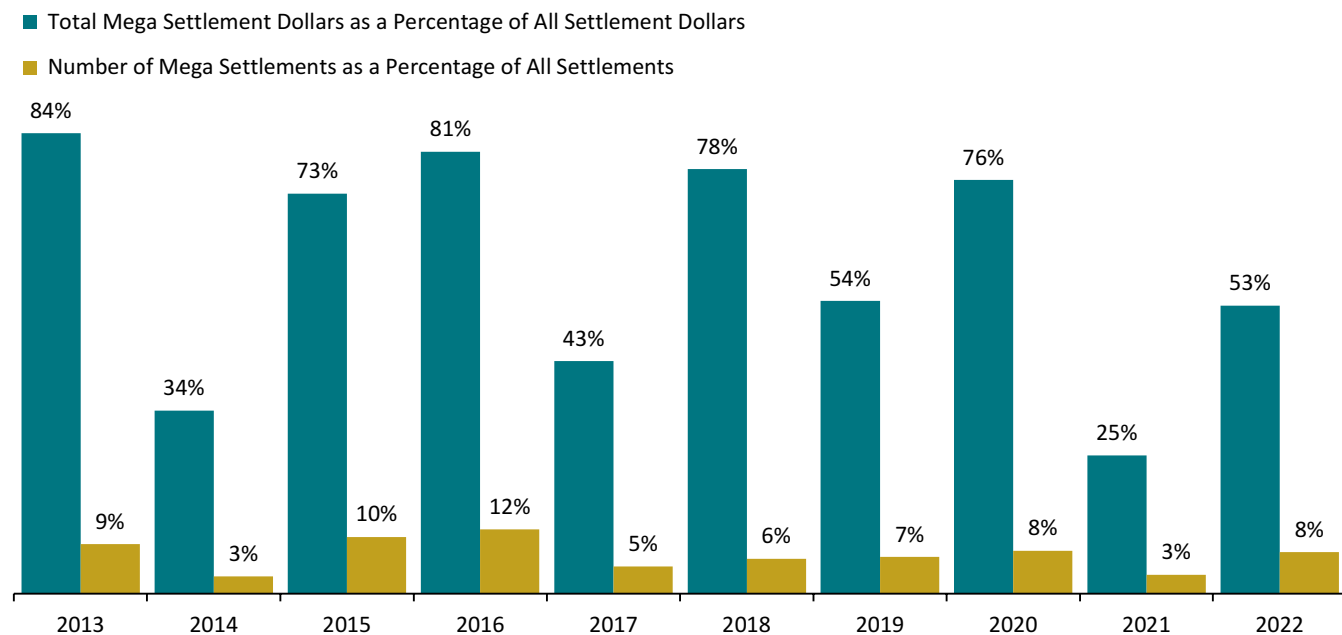
### Appendix 3: Settlements by Federal Circuit Court 2013–2022

(Dollars in millions)

Circuit	Number of Settlements	Median Settlement	Median Settlement as a Percentage of “Simplified Tiered Damages”
First	21	\$12.4	3.0%
Second	202	\$9.0	5.0%
Third	81	\$7.5	4.9%
Fourth	26	\$22.9	3.8%
Fifth	38	\$10.7	4.9%
Sixth	32	\$13.5	7.4%
Seventh	37	\$15.5	3.6%
Eighth	14	\$46.4	5.1%
Ninth	191	\$7.6	4.6%
Tenth	17	\$10.2	5.8%
Eleventh	37	\$11.9	4.9%
DC	5	\$33.7	2.4%

Note: Settlement dollars are adjusted for inflation; 2022 dollar equivalent figures are presented. Settlements as a percentage of “simplified tiered damages” are calculated only for cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

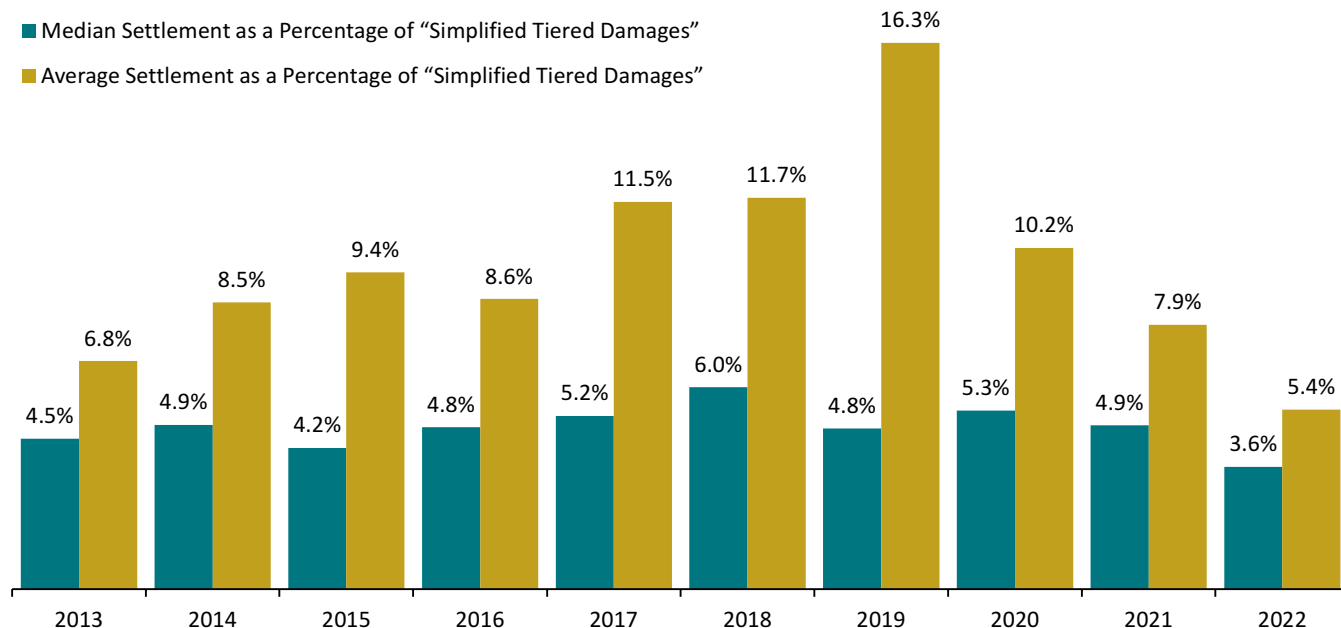
### Appendix 4: Mega Settlements 2013–2022



Note: Mega settlements are defined as total settlement funds equal to or greater than \$100 million.

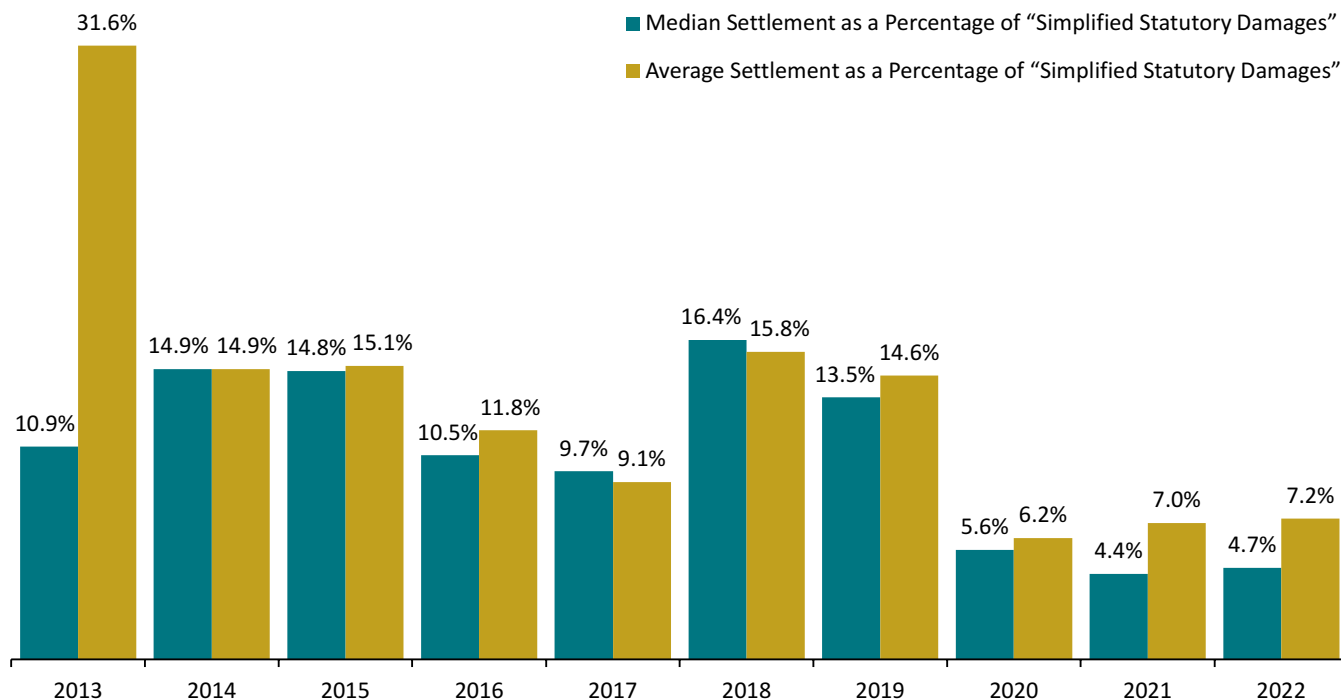


**Appendix 5: Median and Average Settlements as a Percentage of “Simplified Tiered Damages”  
2013–2022**



Note: “Simplified tiered damages” are calculated only for cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

**Appendix 6: Median and Average Settlements as a Percentage of “Simplified Statutory Damages”  
2013–2022**

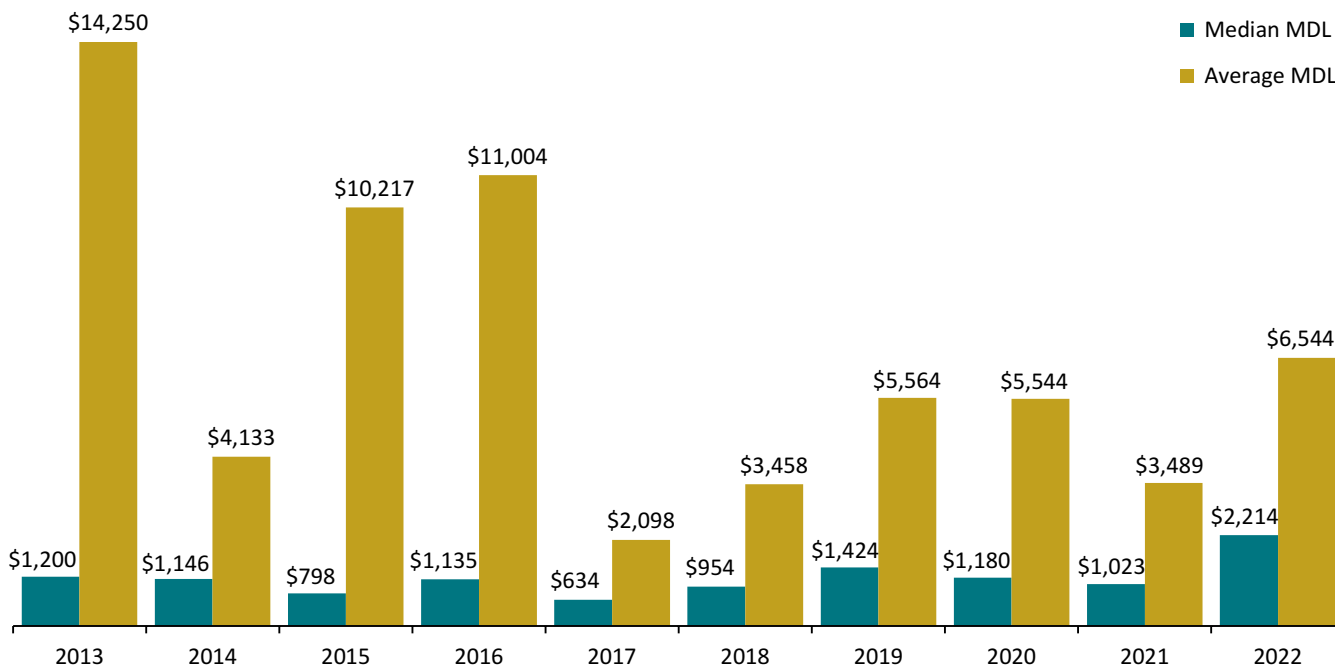


Note: “Simplified statutory damages” are calculated only for cases alleging Section 11 (‘33 Act) claims and no Rule 10b-5 claims.

**Appendix 7: Median and Average Maximum Dollar Loss (MDL)**

2013–2022

(Dollars in millions)

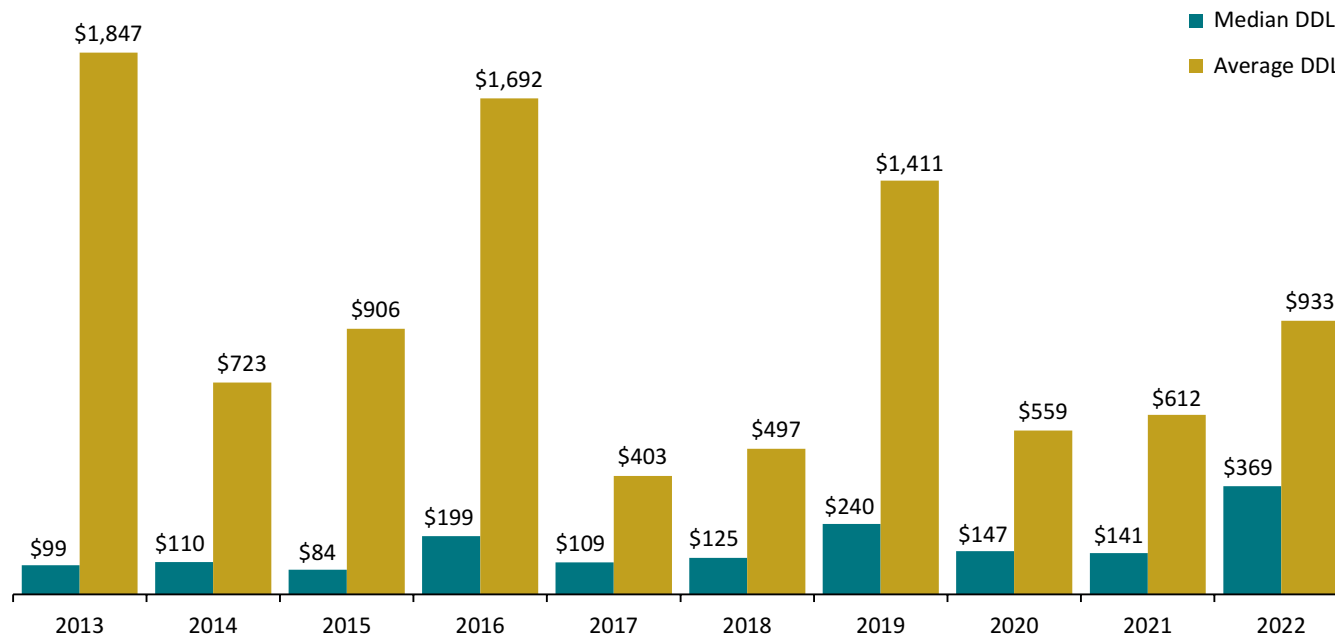


Note: MDL is adjusted for inflation based on class period end dates; 2022 dollar equivalents are presented. MDL is the dollar value change in the defendant firm’s market capitalization from the trading day with the highest market capitalization during the class period to the trading day immediately following the end of the class period. This analysis excludes cases alleging ‘33 Act claims only.

**Appendix 8: Median and Average Disclosure Dollar Loss (DDL)**

2013–2022

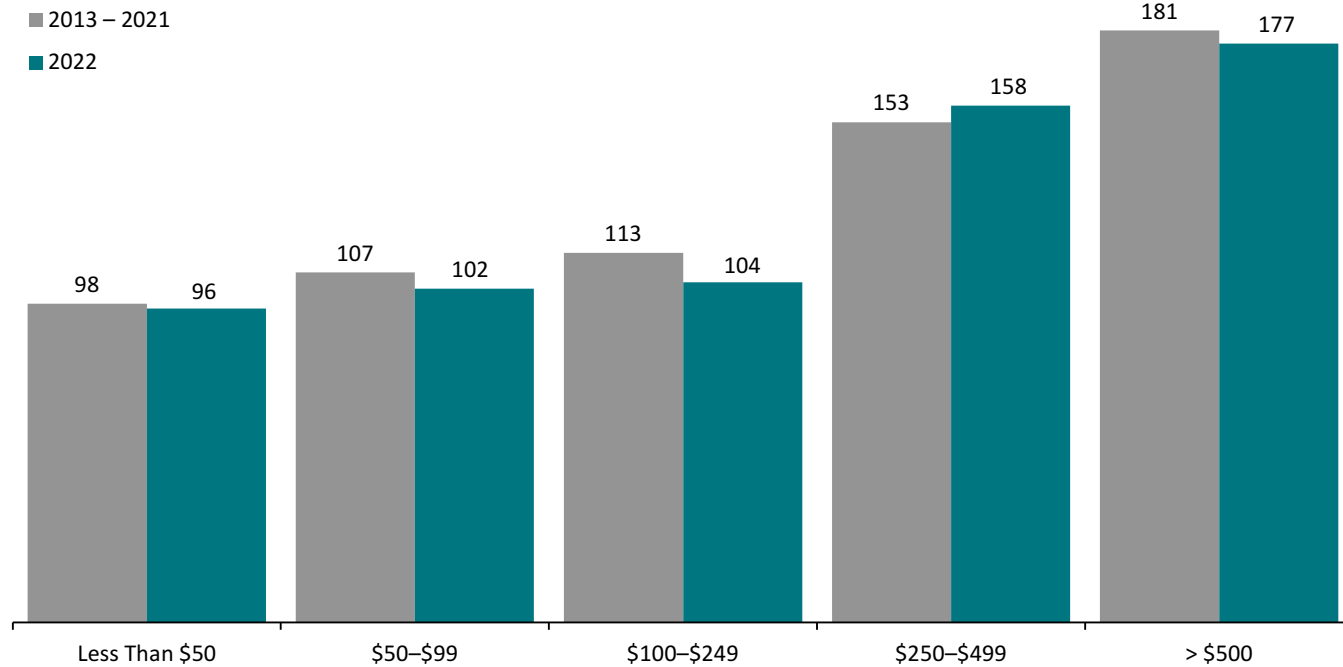
(Dollars in millions)



Note: DDL is adjusted for inflation based on class period end dates; 2022 dollar equivalents are presented. DDL is the dollar-value change in the defendant firm’s market capitalization between the end of the class period and the trading day immediately following the end of the class period. This analysis excludes cases alleging ‘33 Act claims only.

Appendix 9: Median Docket Entries by “Simplified Tiered Damages” Range  
2013–2022

(Dollars in millions)



Note: “Simplified tiered damages” are calculated only for cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

# About the Authors

## **Laarni T. Bulan**

Ph.D., Columbia University; M.Phil., Columbia University; B.S., University of the Philippines

Laarni Bulan is a principal in Cornerstone Research's Boston office, where she specializes in finance. Her work has focused on securities and other complex litigation addressing class certification, damages, and loss causation issues, firm valuation, and corporate governance, executive compensation, and risk management issues. She has also consulted on cases related to insider trading, market manipulation and trading behavior, financial institutions and the credit crisis, derivatives, foreign exchange, and securities clearing and settlement.

Dr. Bulan has published notable academic articles in peer-reviewed journals. Her research covers topics in dividend policy, capital structure, executive compensation, corporate governance, and real options. Prior to joining Cornerstone Research, Dr. Bulan had a joint appointment at Brandeis University as an assistant professor of finance in its International Business School and in the economics department.

## **Laura E. Simmons**

Ph.D., University of North Carolina at Chapel Hill; M.B.A., University of Houston; B.B.A., University of Texas at Austin

Laura Simmons is a senior advisor with Cornerstone Research. She has more than 25 years of experience in economic consulting. Dr. Simmons has focused on damages and liability issues in securities class actions, as well as litigation involving the Employee Retirement Income Security Act (ERISA). She has also managed cases involving financial accounting, valuation, and corporate governance issues. She has served as a testifying expert in litigation involving accounting analyses, securities case damages, ERISA matters, and research on securities lawsuits.

Dr. Simmons's research on pre- and post-Reform Act securities litigation settlements has been published in a number of reports and is frequently cited in the public press and legal journals. She has spoken at various conferences and appeared as a guest on CNBC addressing the topic of securities case settlements. She has also published in academic journals, including research focusing on the intersection of accounting and litigation. Dr. Simmons was previously an accounting faculty member at the Mason School of Business at the College of William & Mary. From 1986 to 1991, she was an accountant with Price Waterhouse.

The authors gratefully acknowledge the research efforts and significant contributions of their colleagues at Cornerstone Research in the writing and preparation of this annual update. The views expressed herein do not necessarily represent the views of Cornerstone Research.

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Please direct any questions and requests for additional information to the settlement database administrator at [settlementdatabase@cornerstone.com](mailto:settlementdatabase@cornerstone.com).

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# **Exhibit 4**

**FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

IN RE SOLARWINDS CORPORATION  
SECURITIES LITIGATION

Case No. 1:21-cv-00138-RP

CLASS ACTION

**DECLARATION OF ALEXANDER P. VILLANOVA REGARDING (A) MAILING OF  
NOTICE AND CLAIM FORM; (B) PUBLICATION OF THE SUMMARY NOTICE;  
AND (C) REPORT ON REQUESTS FOR EXCLUSION RECEIVED TO DATE**

I, Alexander P. Villanova, declare and state as follows:

1. I am a Senior Project Manager employed by Epiq Class Action & Claims Solutions, Inc. (“Epiq”). Pursuant to the Court’s February 8, 2023 Order Preliminarily Approving Settlement and Authorizing Dissemination of Notice of Settlement (ECF No. 103) (the “Preliminary Approval Order”), Epiq was authorized to act as the Claims Administrator in connection with the Settlement of the above-captioned class action.<sup>1</sup> The following statements are based on my personal knowledge and information provided by other Epiq employees working under my supervision and, if called on to do so, I could and would testify competently thereto.

**DISSEMINATION OF THE NOTICE PACKET**

2. Pursuant to the Preliminary Approval Order, Epiq was responsible for mailing the Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for Attorneys’ Fees and Litigation Expenses (the “Notice”) and the Proof of Claim and Release Form (the “Claim Form”) (collectively, the Notice and Claim Form are referred to as

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<sup>1</sup> Unless otherwise defined herein, all capitalized terms shall have the same meaning as set forth in the Stipulation and Agreement of Settlement dated November 28, 2022 (ECF No. 97-1) (the “Stipulation”).

the “Notice Packet”), to potential Settlement Class Members. A copy of the Notice Packet is attached hereto as Exhibit A.

3. On February 8, 2023, Epiq received an Excel file from Lead Counsel, which Lead Counsel had received from Defendants’ Counsel, containing names and addresses of persons and entities who were identified by SolarWinds Corporation (“SolarWinds”) as record purchasers of SolarWinds common stock during the Class Period. Epiq extracted these records from the file and, after clean-up and de-duplication, there remained 496 unique names and addresses. Epiq formatted the Notice Packet, and caused it to be printed, personalized with the name and address of each potential Settlement Class Member posted for first-class mail, postage prepaid, and mailed to the 496 potential Settlement Class Members on March 9, 2023.

4. As in most class actions of this nature, the large majority of potential Settlement Class Members are beneficial purchasers whose securities are held in “street name” – *i.e.*, the securities are purchased by brokerage firms, banks, institutions and other third-party nominees in the name of the nominee, on behalf of the beneficial purchasers. Epiq maintains and updates an internal list of the largest and most common banks, brokers and other nominees. At the time of the initial mailing, Epiq’s internal broker list contained 1,040 mailing records. On March 9, 2023, Epiq caused Notice Packets to be mailed to the 1,040 mailing records contained in its internal broker list.

5. In total, 1,536 copies of the Notice Packet were disseminated to potential Settlement Class Members and nominees on March 9, 2023.

6. The Notice itself and a cover letter that accompanied the Notice Packet mailed to Nominees (as well as an email sent to Nominees) directed those who purchased or otherwise acquired SolarWinds common stock during the Class Period for the beneficial interest of a person



or entity other than themselves to either: (i) request, within seven (7) calendar days of receipt of the Notice, additional copies of the Notice Packet from the Claims Administrator, and send a copy of the Notice Packet to such beneficial owners, no later than seven (7) calendar days after receipt of the copies of the Notice Packet; or (ii) provide Epiq with the names, addresses, and email addresses (if available) of such beneficial owners no later than seven (7) calendar days after such nominees' receipt of the Notice.

7. Epiq monitored the responses received from brokers and other nominees and followed up by email and, if necessary, phone calls to ensure that nominees provided timely responses to Epiq's mailing. Through June 22, 2023, Epiq mailed an additional 5,815 Notice Packets to potential members of the Settlement Class whose names and addresses were received from individuals, entities, or nominees requesting that Notice Packets be mailed to such persons and entities, and mailed another 17,595 Notice Packets in bulk to nominees who requested Notice Packets to forward to their customers. Each of the requests was responded to in a timely manner, and Epiq will continue to timely respond to any additional requests received.

8. Through June 22, 2023, a total of 24,946 Notice Packets have been disseminated to potential Settlement Class Members and nominees. In addition, Epiq has re-mailed 19 Notice Packets to persons who original mailing was returned by the U.S. Postal Service and for whom updated addresses were provided to Epiq by the Postal Service or obtained from other commercial databases.

#### **PUBLICATION OF THE SUMMARY NOTICE**

9. In accordance with paragraph 7(d) of the Preliminary Approval Order, Epiq caused the Summary Notice of (I) Pendency of Class Action and Proposed Settlement, (II) Settlement Fairness Hearing; and (III) Motion for Attorneys' Fees and Litigation Expenses (the "Summary

Notice”) to be published once in *The Wall Street Journal* and to be transmitted over the *PR Newswire* on March 21, 2023. Attached as Exhibit B is a Confirmation of Publication attesting to the publication of the Summary Notice in *The Wall Street Journal* and a screen shot attesting to the transmittal of the Summary Notice over the *PR Newswire*.

### **CALL CENTER SERVICES**

10. Epiq reserved a toll-free phone number for the Settlement, 1-877-890-0042, which was set forth in the Notice, the Claim Form, the published Summary Notice, and on the Settlement website.

11. The toll-free number connects callers with an Interactive Voice Recording (“IVR”). The IVR provides callers with pre-recorded information, including a brief summary about the Action and the option to request a copy of the Notice Packet. The toll-free telephone line with pre-recorded information is available 24 hours a day, 7 days a week. Callers can request to speak with a live representative from 8:00 a.m. to 8:00 p.m. Central time, except for weekends and holidays. During other hours, callers may leave a message for an agent to call them back.

12. Epiq made the toll-free phone number and IVR available on March 9, 2023, the same date Epiq began mailing the Notice Packets.

### **WEBSITE**

13. Epiq established and currently maintains a website dedicated to this Settlement ([www.SolarWindsSecuritiesLitigation.com](http://www.SolarWindsSecuritiesLitigation.com)) to provide additional information to Settlement Class Members. Users of the website can download copies of the Notice, the Claim Form, the Stipulation, the Preliminary Approval Order, and the Complaint, among other relevant documents. The website address was set forth in the published Summary Notice, the Notice, and the Claim Form. The website was operational beginning on March 9, 2023, and is accessible 24 hours a day,


7 days a week. Epiq will continue operating, maintaining and, as appropriate, updating the website until the conclusion of this administration.

**EXCLUSION REQUESTS RECEIVED TO DATE**

14. Pursuant to the Preliminary Approval Order, Settlement Class Members who wish to be excluded from the Settlement Class are required to request exclusion in writing so that the request is received by July 7, 2023. This deadline has not yet passed. Through June 22, 2023, Epiq has not received any requests for exclusion. Epiq will submit a supplemental declaration after the July 7, 2023 deadline for requesting exclusion that will address any requests for exclusion received.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 23, 2023, at Beaverton, Oregon.



---

Alexander P. Villanova

# Exhibit A

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

IN RE SOLARWINDS CORPORATION  
SECURITIES LITIGATION

Case No. 1:21-cv-00138-RP

CLASS ACTION

**NOTICE OF (I) PENDENCY OF CLASS ACTION AND  
PROPOSED SETTLEMENT; (II) SETTLEMENT FAIRNESS HEARING;  
AND (III) MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES**

***A Federal Court authorized this Notice. This is not a solicitation from a lawyer.***

**NOTICE OF PENDENCY OF CLASS ACTION:** Please be advised that your rights may be affected by the above-captioned securities class action (the "Action") pending in the United States District Court for the Western District of Texas (the "Court"), if, during the period from October 18, 2018 through December 17, 2020, inclusive (the "Class Period"), you purchased or otherwise acquired the common stock of SolarWinds Corporation ("SolarWinds" or the "Company") and were damaged thereby.<sup>1</sup>

**NOTICE OF SETTLEMENT:** Please also be advised that the Court-appointed Lead Plaintiff New York City District Council of Carpenters Pension Fund ("Lead Plaintiff"), on behalf of itself and the Settlement Class (as defined in ¶ 25 below), has reached a proposed settlement of the Action for \$26,000,000.00 in cash.

**PLEASE READ THIS NOTICE CAREFULLY. This Notice explains important rights you may have, including the possible receipt of a payment from the Settlement. If you are a member of the Settlement Class, your legal rights will be affected whether or not you act.**

**If you have any questions about this Notice, the proposed Settlement, or your eligibility to participate in the Settlement, please DO NOT contact the Court, the Office of the Clerk of the Court, Defendants, or their counsel. All questions should be directed to Lead Counsel or the Claims Administrator (see ¶ 71 below).**

1. **Description of the Action and the Settlement Class:** This Notice relates to a proposed Settlement of claims in a pending securities class action brought by investors against SolarWinds and certain of its executives and controlling entities. The SolarWinds Defendants are (i) SolarWinds; (ii) SolarWinds' former Chief Executive Officer, Kevin B. Thompson, and (iii) SolarWinds' Chief Information Security Officer and Vice President of Security Architecture, Timothy Brown. The Controlling Entity Defendants are Silver Lake Group L.L.C., Silver Lake Technology Management, L.L.C., and Thoma Bravo, LP. Lead Plaintiff alleges that the SolarWinds Defendants violated the federal securities laws by making false and misleading statements regarding SolarWinds' business. A more detailed description of the Action is set forth in ¶¶ 11-24 below. As noted below, Defendants have denied and continue to deny all claims and allegations of wrongdoing asserted against them in the Action. The proposed Settlement, if approved by the Court, will settle claims of the Settlement Class, as defined in ¶ 25 below.

2. **Statement of the Settlement Class's Recovery:** Subject to Court approval, Lead Plaintiff, on behalf of itself and the Settlement Class, has agreed to settle the Action in exchange for \$26,000,000.00 in cash (the "Settlement Amount") to be deposited into an escrow account. The Net Settlement Fund (*i.e.*, the Settlement Amount plus any and all interest earned thereon (the "Settlement Fund") less (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court; (iv) any attorneys' fees awarded by the Court; and (v) any other costs or fees approved by the Court) will be distributed in accordance with a plan of allocation that is approved by the Court. The proposed plan of allocation (the "Plan of Allocation") is attached hereto as Appendix A.

3. **Estimate of Average Amount of Recovery Per Share:** Based on Lead Plaintiff's damages expert's estimate of the number of shares of SolarWinds common stock purchased during the Class Period that may have been affected by the conduct at issue in the Action, and assuming that all Settlement Class Members elect to participate in the Settlement, the estimated average recovery (before the deduction of any Court-approved fees, expenses, and costs as described herein) is \$0.62 per affected share of SolarWinds common stock. Settlement Class Members should note,

<sup>1</sup> All capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated November 28, 2022 (the "Stipulation"), which is available at [www.SolarWindsSecuritiesLitigation.com](http://www.SolarWindsSecuritiesLitigation.com).

however, that the foregoing average recovery per share is only an estimate. Some Settlement Class Members may recover more or less than this estimated amount depending on, among other factors, when and at what prices they purchased/acquired or sold their SolarWinds common stock, and the total number and value of valid Claim Forms submitted. Distributions to Settlement Class Members will be made based on the Plan of Allocation set forth in Appendix A or such other plan of allocation as may be ordered by the Court.

4. **Average Amount of Damages Per Share:** The Parties do not agree on the average amount of damages per share that would be recoverable if Lead Plaintiff were to prevail in the Action. Among other things, Defendants do not agree with the assertion that they violated the federal securities laws or that any damages were suffered by any members of the Settlement Class as a result of their conduct.

5. **Attorneys’ Fees and Expenses Sought:** Plaintiff’s Counsel have been prosecuting the Action on a wholly contingent basis since its inception in 2021, have not received any payment of attorneys’ fees for their representation of the Settlement Class, and have advanced the funds to pay expenses necessarily incurred to prosecute this Action. Court-appointed Lead Counsel, Bernstein Litowitz Berger & Grossmann LLP, will apply to the Court for an award of attorneys’ fees for Plaintiff’s Counsel in an amount not to exceed 25% of the Settlement Fund. In addition, Lead Counsel will apply for payment of Litigation Expenses incurred in connection with the institution, prosecution, and resolution of the Action in an amount not to exceed \$500,000, which may include an application for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiff directly related to its representation of the Settlement Class, pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”). Any fees and expenses awarded by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses. The estimated average cost for such fees and expenses, if the Court approves Lead Counsel’s fee and expense application, is \$0.17 per affected share of SolarWinds common stock.

6. **Identification of Attorneys’ Representative:** Lead Plaintiff and the Settlement Class are represented by John Rizio-Hamilton, Esq. of Bernstein Litowitz Berger & Grossmann LLP, 1251 Avenue of the Americas, 44th Floor, New York, NY 10020, 1-800-380-8496, settlements@blbglaw.com.

7. **Reasons for the Settlement:** Lead Plaintiff’s principal reason for entering into the Settlement is the substantial and certain recovery for the Settlement Class without the risk or the delays inherent in further litigation. Moreover, the substantial recovery provided under the Settlement must be considered against the significant risk that a smaller recovery—or indeed no recovery at all—might be achieved after contested motions, a trial of the Action, and the likely appeals that would follow a trial. This process could be expected to last several years. Defendants, who deny that they have committed any act or omission giving rise to liability under the federal securities laws, are entering into the Settlement solely to eliminate the uncertainty, burden, and expense of further protracted litigation.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:</b>	
<b>SUBMIT A CLAIM FORM POSTMARKED NO LATER THAN JULY 7, 2023.</b>	This is the only way to be eligible to receive a payment from the Settlement Fund. If you are a Settlement Class Member and you remain in the Settlement Class, you will be bound by the Settlement as approved by the Court and you will give up any Released Plaintiff’s Claims (defined in ¶ 35 below) that you have against Defendants and the other Defendants’ Releasees (defined in ¶ 36 below), so it is in your interest to submit a Claim Form.
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION SO THAT IT IS RECEIVED NO LATER THAN JULY 7, 2023.</b>	If you exclude yourself from the Settlement Class, you will not be eligible to receive any payment from the Settlement Fund. This is the only option that allows you ever to be part of any other lawsuit against any of the Defendants or the other Defendants’ Releasees concerning the Released Plaintiff’s Claims.
<b>OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS RECEIVED NO LATER THAN JULY 7, 2023.</b>	If you do not like the proposed Settlement, the proposed Plan of Allocation, or the request for an award of attorneys’ fees and Litigation Expenses, you may write to the Court and explain why you do not like them. You cannot object to the Settlement, the Plan of Allocation, or the fee and expense request unless you are a Settlement Class Member and do not exclude yourself from the Settlement Class.

<b>GO TO A HEARING ON JULY 28, 2023 AT 2:00 P.M., AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS RECEIVED NO LATER THAN JULY 7, 2023.</b>	Filing a written objection and notice of intention to appear by July 7, 2023 allows you to speak in Court, at the discretion of the Court, about the fairness of the proposed Settlement, the Plan of Allocation, and/or the request for attorneys’ fees and Litigation Expenses. If you submit a written objection, you may (but you do not have to) attend the hearing and, at the discretion of the Court, speak to the Court about your objection.
<b>DO NOTHING.</b>	If you are a member of the Settlement Class and you do not submit a valid Claim Form, you will not be eligible to receive any payment from the Settlement Fund. You will, however, remain a member of the Settlement Class, which means that you give up your right to sue about the claims that are resolved by the Settlement and you will be bound by any judgments or orders entered by the Court in the Action.

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### WHY DID I GET THIS NOTICE?

8. The Court directed that this Notice be mailed to you because you or someone in your family or an investment account for which you serve as a custodian may have purchased or otherwise acquired SolarWinds common stock during the Class Period. The Court has directed us to send you this Notice because, as a potential Settlement Class Member, you have a right to know about your options before the Court rules on the proposed Settlement. Additionally, you have the right to understand how this class action lawsuit may generally affect your legal rights. If the Court approves the Settlement and the Plan of Allocation (or some other plan of allocation), the Claims Administrator selected by Lead Plaintiff and approved by the Court will make payments pursuant to the Settlement after any objections and appeals are resolved.

9. The purpose of this Notice is to inform you of the existence of this case, that it is a class action, how you might be affected, and how to exclude yourself from the Settlement Class if you wish to do so. It is also being sent to inform you of the terms of the proposed Settlement and of a hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement, the proposed Plan of Allocation, and the motion by Lead Counsel for an award of attorneys' fees and payment of Litigation Expenses (the "Settlement Fairness Hearing"). See ¶¶ 60-61 below for details about the Settlement Fairness Hearing, including the date and location of the hearing.

10. The issuance of this Notice is not an expression of any opinion by the Court concerning the merits of any claim in the Action, and the Court still has to decide whether to approve the Settlement. If the Court approves the Settlement and a plan of allocation, then payments to Authorized Claimants will be made after any appeals are resolved and after the completion of all claims processing. Please be patient, as this process can take some time to complete.

### WHAT IS THIS CASE ABOUT?

11. SolarWinds is an Austin, Texas based company that provides software products used to monitor information technology networks. The Company's flagship product is its Orion platform, which provides a suite of software tools widely used by government agencies and Fortune 500 companies to monitor their networks. In this Action, Lead Plaintiff alleges that the SolarWinds Defendants made a series of misleading statements during the Class Period (from October 18, 2018 through December 17, 2020, inclusive) regarding SolarWinds' security controls and commitment to prioritizing customers' security. Lead Plaintiff further alleges that the Company failed to employ the represented cybersecurity safeguards and that, as a result of vulnerabilities in the Company's cybersecurity protections, SolarWinds and its customers were particularly susceptible to cyber-attacks. Lead Plaintiff further alleges that these misrepresentations and omissions caused SolarWinds' common stock to trade at artificially inflated prices during the Class Period and that the Company's stock price declined as a result of a series of disclosures in December 2020.

12. In January and February 2021, certain related class actions were filed in the United States District Court for the Western District of Texas (the "Court"), alleging violations of the federal securities laws.

13. On March 11, 2021, the Honorable Robert Pitman consolidated the actions and ordered that all future filings in the consolidated action be made in Case No. 1:21-cv-00138-RP, under the caption *In re SolarWinds Corp. Securities Litigation*. The Court also appointed New York City District Council of Carpenters Pension Fund as Lead Plaintiff and approved Bernstein Litowitz Berger & Grossmann LLP as Lead Counsel.

14. On June 1, 2021, Lead Plaintiff filed and served its Consolidated Complaint for Violations of the Federal Securities Laws (the "Complaint") asserting claims against the SolarWinds Defendants under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder, and against defendants Thompson, Brown, Thoma Bravo, LP, Silver Lake Technology Management, L.L.C., and Silver Lake Group L.L.C. under Section 20(a) of the Exchange Act. Among other things, the Complaint alleged that the SolarWinds Defendants made materially false and misleading statements about SolarWinds' cybersecurity, including about SolarWinds' efforts to ensure the security of its software products and, by extension, its customers' data. The Complaint further alleged that the price of SolarWinds common stock was artificially inflated as a result of the SolarWinds Defendants' allegedly false and misleading statements and declined when the truth was revealed.

15. On August 8, 2021, Defendants filed motions to dismiss the Complaint. On October 1, 2021, Lead Plaintiff filed its memorandum of law in opposition to the motions to dismiss, and, on November 1, 2021, Defendants filed their reply papers.



16. The Parties began exploring the possibility of a settlement in the fall of 2021. The Parties agreed to engage in private mediation and retained Michelle Yoshida to act as mediator in the Action (the “Mediator”). On December 7, 2021, counsel for the Parties participated in a full-day mediation session before the Mediator. In advance of that session, the Parties exchanged and submitted detailed mediation statements to the Mediator. The session ended without any agreement being reached.

17. On March 30, 2022, the Court entered its Order denying, in part, and granting, in part, Defendants’ motions to dismiss the Complaint. Specifically, the Court denied the motions with respect to Defendants SolarWinds, Brown, Silver Lake, and Thoma Bravo, and granted Defendant Thompson’s motion with respect to Lead Plaintiff’s Section 10(b) claim against him.

18. On May 18, 2022, Defendants SolarWinds, Brown, Silver Lake, and Thoma Bravo filed their answers to the Complaint. Defendant Thompson filed his answer on September 28, 2022. Among other things, Defendants’ Answers denied Lead Plaintiff’s allegations of wrongdoing and asserted various defenses to the claims pled against them.

19. Discovery in the Action commenced in May 2022. Defendants produced more than 125,000 documents, totaling more than 600,000 pages, to Lead Plaintiff. In addition, the Parties met and conferred and exchanged numerous letters concerning disputed discovery issues over several months.

20. On September 30, 2022, Lead Plaintiff filed its motion for class certification and appointment of class representative and class counsel, which was accompanied by a report from Lead Plaintiff’s expert on market efficiency and common damages methodologies. The motion for class certification was pending when the Parties reached their agreement to settle.

21. After the Court issued its ruling on defendants’ motions to dismiss the Complaint, the Parties renewed their settlement discussions, and agreed to engage in a second full-day mediation session before the Mediator on October 26, 2022. The Parties exchanged and submitted additional detailed mediation statements to the Mediator, including supporting exhibits.

22. Following the second mediation session, the Parties reached an agreement in principle to settle the Action pursuant to the Mediator’s recommendation. The Parties’ agreement-in-principle was memorialized in a term sheet executed by the Parties on October 28, 2022 (the “Term Sheet”). The Term Sheet set forth, among other things, the Parties’ agreement to settle and release all claims against Defendants in the Action in return for a cash payment of \$26,000,000.00 for the benefit of the Settlement Class, subject to the Court’s approval, certain terms and conditions and the execution of a customary “long form” stipulation and agreement of settlement and related papers.

23. On November 28, 2022, the Parties entered into the Stipulation and Agreement of Settlement, which sets forth the terms and conditions of the Settlement. The Stipulation is available at [www.SolarWindsSecuritiesLitigation.com](http://www.SolarWindsSecuritiesLitigation.com).

24. On February 8, 2023, the Court preliminarily approved the Settlement, authorized this Notice to be disseminated to potential Settlement Class Members, and scheduled the Settlement Fairness Hearing to consider whether to grant final approval to the Settlement.

**HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT?  
WHO IS INCLUDED IN THE SETTLEMENT CLASS?**

25. If you are a member of the Settlement Class, you are subject to the Settlement, unless you timely request to be excluded. The Settlement Class consists of:

all persons who purchased or otherwise acquired the common stock of SolarWinds from October 18, 2018 through December 17, 2020, inclusive (the “Class Period”), and who were damaged thereby (the “Settlement Class”).

Excluded from the Settlement Class are: (i) Defendants; (ii) any current or former officers or directors of any Defendant who served in such capacities during the Class Period; (iii) members of the immediate family of each of the Individual Defendants or any current or former officer or director of any Defendant who served in such capacities during the Class Period; (iv) any entity that any excluded person owns or controls or owned or controlled during the Class Period; (v) any affiliates, parents, or subsidiaries of any Defendant; and (vi) the legal representatives, heirs, successors, and assigns of any such excluded persons. Also excluded from the Settlement Class are any persons or entities who or which exclude themselves by submitting a request for exclusion in accordance with the requirements set forth in this Notice. *See* “What If I Do Not Want To Be A Member Of The Settlement Class? How Do I Exclude Myself,” on page 10 below.

**Please note: Receipt of this Notice does not mean that you are a Settlement Class Member or that you will be entitled to a payment from the Settlement. If you are a Settlement Class Member and you wish to be eligible to receive a payment from the Settlement, you are required to submit the Claim Form that is being distributed with this Notice and the required supporting documentation as set forth therein postmarked no later than July 7, 2023.**

### **WHAT ARE LEAD PLAINTIFF'S REASONS FOR THE SETTLEMENT?**

26. Lead Plaintiff and Lead Counsel believe that the claims asserted against Defendants have merit. They recognize, however, the very substantial risks they would face in establishing liability and damages through the Court's ruling on class certification, summary judgment, pre-trial motions, a trial, and appeals, as well as the length and expense to the Settlement Class of continued proceedings. The risks of continued litigation concerned each main element of Lead Plaintiff's claims. To start, Lead Plaintiff faced challenges in proving that the SolarWinds Defendants made materially false and misleading statements during the Class Period. For example, Defendants contended that the Company's alleged cybersecurity deficiencies did not cause the cyberattack whose revelation prompted the disclosures concerning SolarWinds' cybersecurity practices and protocols, noting that several industry experts have concluded that Russia was responsible for the cyberattack, and that it was purportedly the most sophisticated hack in history. Further, Lead Plaintiff faced challenges in proving scienter—*i.e.*, that Defendants knowingly or recklessly deceived investors. The Court found that Lead Plaintiff failed to adequately allege Defendant Thompson's scienter, and there was a meaningful risk that the Court or jury may find that Defendants Brown and SolarWinds also lacked scienter on a complete record at summary judgment or trial.

27. Lead Plaintiff also faced further risks relating to proof of loss causation and damages. For example, as noted above, Defendants argued that investors' losses were caused by a sophisticated and illegal cybersecurity attack—and were not caused by allegedly misleading statements or omissions or alleged deficiencies in the Company's cybersecurity controls. Defendants argued that none of the cybersecurity deficiencies alleged in the Complaint, even if they existed, were the cause of the hack, and that the hack was so sophisticated that it would have defeated even the most robust security measures. If Defendants had succeeded on their loss causation and damages arguments, the recoverable damages would have been substantially less than the amount provided in the Settlement or even zero.

28. In light of these risks, the amount of the Settlement, and the immediacy of recovery to the Settlement Class, Lead Plaintiff and Lead Counsel believe that the proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class. The Settlement provides a substantial benefit to the Settlement Class, namely \$26,000,000.00 in cash (less the various deductions described in this Notice), as compared to the risk that the claims in the Action would produce a smaller recovery, or no recovery at all, after summary judgment, trial, and appeals, possibly years in the future.

29. Defendants have denied the claims asserted against them in the Action and deny that the Settlement Class was harmed or suffered any damages as a result of the conduct alleged in the Action. Defendants have agreed to the Settlement solely to eliminate the burden and expense of continued litigation. Accordingly, the Settlement may not be construed as an admission of any wrongdoing by Defendants.

### **WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?**

30. If there were no Settlement and Lead Plaintiff failed to establish any essential legal or factual element of its claims against Defendants, neither Lead Plaintiff nor the other members of the Settlement Class would recover anything from Defendants. Also, if Defendants were successful in defeating class certification, narrowing the Class Period, or proving any of their defenses, either at summary judgment, at trial, or on appeal, the Settlement Class could recover substantially less than the amount provided in the Settlement, or nothing at all.

### **HOW ARE SETTLEMENT CLASS MEMBERS AFFECTED BY THE ACTION AND THE SETTLEMENT?**

31. As a Settlement Class Member, you are represented by Lead Plaintiff and Lead Counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file a notice of appearance on your behalf and must serve copies of his or her appearance on the attorneys listed in the section entitled, "When And Where Will The Court Decide Whether To Approve The Settlement?," on page 10 below.

32. If you are a Settlement Class Member and do not wish to remain a Settlement Class Member, you may exclude yourself from the Settlement Class by following the instructions in the section entitled, “What If I Do Not Want To Be A Member Of The Settlement Class? How Do I Exclude Myself?,” on page 10 below.

33. If you are a Settlement Class Member and you wish to object to the Settlement, the Plan of Allocation, or Lead Counsel’s application for attorneys’ fees and Litigation Expenses, and if you do not exclude yourself from the Settlement Class, you may present your objections by following the instructions in the section entitled, “When And Where Will The Court Decide Whether To Approve The Settlement?,” on page 10 below.

34. If you are a Settlement Class Member and you do not exclude yourself from the Settlement Class, you will be bound by any orders issued by the Court. If the Settlement is approved, the Court will enter a judgment (the “Judgment”). The Judgment will dismiss with prejudice the claims against Defendants and will provide that, upon the Effective Date of the Settlement, Lead Plaintiff and each of the other Settlement Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such only, and any other person or entity purporting to claim through or on behalf of them directly or indirectly in such capacity only, will have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged any or all of the Released Plaintiff’s Claims (as defined in ¶ 35 below) against Defendants and the other Defendants’ Releasees (as defined in ¶ 36 below), and will forever be barred and enjoined from prosecuting or otherwise pursuing, whether directly or in any other capacity, any or all of the Released Plaintiff’s Claims against any of the Defendants’ Releasees.

35. “Released Plaintiff’s Claims” means all claims (including Unknown Claims), debts, disputes, demands, rights, actions or causes of action, liabilities, damages, losses, obligations, sums of money due, judgments, suits, amounts, matters, issues and charges of any kind whatsoever (including, but not limited to, any claims for interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses, amounts, or liabilities whatsoever), whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, foreseen or unforeseen, whether individual or class in nature, whether arising under federal or state statutory or common law or any other law, rule, or regulation, whether foreign or domestic, that Lead Plaintiff or any other member of the Settlement Class: (i) (A) asserted in any of the complaints filed in the Action; or (B) could have asserted in the Action or in any other action or in any other forum that arise out of, are based upon, are related to, or are in consequence of any of the facts, allegations, transactions, matters, events, disclosures, non-disclosures, occurrences, representations, statements, acts or omissions, or failures to act that were involved, set forth, or referred to in any of the complaints filed in the Action, or that otherwise would have been barred by res judicata had the Action been fully litigated to a final judgment; *and* (ii) relate to the purchase or sale of publicly-traded SolarWinds common stock during the Class Period. Released Plaintiff’s Claims do not include, settle, or release (i) any claims asserted in any derivative action, including, without limitation, the claims asserted in *David Sobel, Derivatively on Behalf of Nominal Defendant SolarWinds Corporation v. Kevin B. Thompson, et al.*, Case No. 1:21-cv-272-RP (W.D. Tex.) and/or *Construction Industry Laborers Pension Fund, Central Laborers’ Pension Fund, Lawrence Miles, and Brian Seavitt, Derivatively on Behalf of SolarWinds Corporation v. Mike Bingle, et al.*, Case No. 2021-0940-SG (Del. Ch.); (ii) any claims relating to the enforcement of the Settlement; and (iii) any claims of any person or entity who or which submits a request for exclusion that is accepted by the Court.

36. “Defendants’ Releasees” means Defendants and their current and former parents, affiliates, subsidiaries, officers, directors, agents, successors, predecessors, assigns, assignees, partnerships, partners, trustees, trusts, employees, Immediate Family Members, insurers, reinsurers, and attorneys.

37. “Unknown Claims” means any Released Plaintiff’s Claims which Lead Plaintiff or any other Settlement Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, and any Released Defendants’ Claims which any Defendant does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, which, if known by him, her, or it, might have affected his, her, or its decision(s) with respect to this Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement, Lead Plaintiff and Defendants shall expressly waive, and each of the other Settlement Class Members shall be deemed to have waived, and by operation of the Judgment or the Alternate Judgment, if applicable, shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Lead Plaintiff and Defendants acknowledge, and each of the other Settlement Class Members shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement.

38. The Judgment will also provide that, upon the Effective Date of the Settlement, Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such only, and any other person or entity purporting to claim through or on behalf of them directly or indirectly in such capacity only, will have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged any or all of the Released Defendants' Claims (as defined in ¶ 39 below) against Lead Plaintiff and the other Plaintiff's Releasees (as defined in ¶ 40 below), and will forever be barred and enjoined from prosecuting or otherwise pursuing whether directly or in any other capacity any or all of the Released Defendants' Claims against any of the Plaintiff's Releasees.

39. "Released Defendants' Claims" means all claims (including Unknown Claims), debts, disputes, demands, rights, actions or causes of action, liabilities, damages, losses, obligations, sums of money due, judgments, suits, amounts, matters, issues and charges of any kind whatsoever (including, but not limited to, any claims for interest, attorneys' fees, expert or consulting fees, and any other costs, expenses, amounts, or liabilities whatsoever), whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, foreseen or unforeseen, whether arising under federal or state statutory or common law or any other law, rule, or regulation, whether foreign or domestic, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims asserted in the Action. Released Defendants' Claims do not include, settle, or release (i) any claims relating to the enforcement of the Settlement; (ii) any claims against any person or entity who or which submits a request for exclusion that is accepted by the Court; and (iii) any claims belonging to any of the Defendants against any of their respective insurers.

40. "Plaintiff's Releasees" means Lead Plaintiff, all other plaintiffs in the Action, and all other Settlement Class Members, and their respective current and former parents, affiliates, subsidiaries, officers, directors, agents, successors, predecessors, assigns, assignees, partnerships, partners, trustees, trusts, employees, Immediate Family Members, insurers, reinsurers, and attorneys.

#### HOW DO I PARTICIPATE IN THE SETTLEMENT? WHAT DO I NEED TO DO?

41. To be eligible for a payment from the Settlement, you must be a member of the Settlement Class and you must timely complete and return the Claim Form with adequate supporting documentation ***postmarked (if mailed), or submitted online at [www.SolarWindsSecuritiesLitigation.com](http://www.SolarWindsSecuritiesLitigation.com) no later than July 7, 2023.*** A Claim Form is included with this Notice, or you may obtain one from the website maintained by the Claims Administrator for the Settlement, [www.SolarWindsSecuritiesLitigation.com](http://www.SolarWindsSecuritiesLitigation.com). You may also request that a Claim Form be mailed to you by calling the Claims Administrator toll free at 1-877-890-0042 or by emailing the Claims Administrator at [info@SolarWindsSecuritiesLitigation.com](mailto:info@SolarWindsSecuritiesLitigation.com). **Please retain all records of your ownership of and transactions in SolarWinds common stock, as they will be needed to document your Claim.** The Parties and Claims Administrator do not have information about your transactions in SolarWinds common stock.

42. If you request exclusion from the Settlement Class or do not submit a timely and valid Claim Form, you will not be eligible to share in the Net Settlement Fund.

#### HOW MUCH WILL MY PAYMENT BE?

43. At this time, it is not possible to make any determination as to how much any individual Settlement Class Member may receive from the Settlement.

44. Pursuant to the Settlement, Defendants have agreed to pay or caused to be paid a total of \$26,000,000 in cash (the "Settlement Amount"). The Settlement Amount will be deposited into an escrow account. The Settlement Amount plus any interest earned thereon is referred to as the "Settlement Fund." If the Settlement is approved by the Court and the Effective Date occurs, the "Net Settlement Fund" (that is, the Settlement Fund less (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court; (iv) any attorneys' fees awarded by the Court; and (v) any other costs or fees approved by the Court) will be distributed to Settlement Class Members who submit valid Claim Forms, in accordance with the proposed Plan of Allocation or such other plan of allocation as the Court may approve.



45. The Net Settlement Fund will not be distributed unless and until the Court has approved the Settlement and a plan of allocation, and the time for any petition for rehearing, appeal, or review, whether by certiorari or otherwise, has expired.

46. Neither Defendants nor any other person or entity that paid any portion of the Settlement Amount on their behalf are entitled to get back any portion of the Settlement Fund once the Court's order or judgment approving the Settlement becomes Final. Defendants shall not have any liability, obligation, or responsibility for the administration of the Settlement, the disbursement of the Net Settlement Fund, or the plan of allocation.

47. Approval of the Settlement is independent from approval of a plan of allocation. Any determination with respect to a plan of allocation will not affect the Settlement, if approved.

48. Unless the Court otherwise orders, any Settlement Class Member who or which fails to submit a Claim Form postmarked on or before July 7, 2023 shall be fully and forever barred from receiving payments pursuant to the Settlement but will in all other respects remain a member of the Settlement Class and be subject to the provisions of the Stipulation, including the terms of any Judgment entered and the releases given. This means that each Settlement Class Member releases the Released Plaintiff's Claims (as defined in ¶ 35 above) against the Defendants' Releasees (as defined in ¶ 36 above) and will be barred and enjoined from prosecuting any of the Released Plaintiff's Claims against any of the Defendants' Releasees whether or not such Settlement Class Member submits a Claim Form.

49. Participants in, and beneficiaries of, a SolarWinds employee benefit plan covered by ERISA ("ERISA Plan") should NOT include any information relating to their transactions in SolarWinds common stock held through the ERISA Plan in any Claim Form that they submit in this Action. They should include ONLY those shares that they purchased or acquired outside of the ERISA Plan. Claims based on any ERISA Plan's purchases or acquisitions of SolarWinds common stock during the Class Period may be made by the plan's trustees.

50. The Court has reserved jurisdiction to allow, disallow, or adjust on equitable grounds the Claim of any Settlement Class Member.

51. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her, or its Claim and the subject matter of the Settlement.

52. Only Settlement Class Members, *i.e.*, persons and entities who purchased or otherwise acquired SolarWinds common stock during the Class Period and were damaged as a result of such purchases or acquisitions, will be eligible to share in the distribution of the Net Settlement Fund. Persons and entities that are excluded from the Settlement Class by definition or that exclude themselves from the Settlement Class pursuant to request will not be eligible for a payment and should not submit Claim Forms. The only security that is included in the Settlement is SolarWinds common stock.

**53. Appendix A to this Notice sets forth the Plan of Allocation for allocating the Net Settlement Fund among Authorized Claimants, as proposed by Lead Plaintiff. At the Settlement Hearing, Lead Plaintiff will request the Court approve the Plan of Allocation. The Court may modify the Plan of Allocation, or approve a different plan of allocation, without further notice to the Settlement Class.**

**WHAT PAYMENT ARE THE ATTORNEYS FOR THE SETTLEMENT CLASS SEEKING?  
HOW WILL THE LAWYERS BE PAID?**

54. Plaintiff's Counsel have not received any payment for their services in pursuing claims asserted in the Action on behalf of the Settlement Class, nor have Plaintiff's Counsel been paid for their litigation expenses. Before final approval of the Settlement, Lead Counsel will apply to the Court for an award of attorneys' fees for Plaintiff's Counsel in an amount not to exceed 25% of the Settlement Fund. At the same time, Lead Counsel also intends to apply for payment of Litigation Expenses incurred by Plaintiff's Counsel in an amount not to exceed \$500,000, which may include an application for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiff directly related to its representation of the Settlement Class, pursuant to the PSLRA. The Court will determine the amount of any award of attorneys' fees or Litigation Expenses. Such sums as may be approved by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses.

**WHAT IF I DO NOT WANT TO BE A MEMBER OF THE SETTLEMENT CLASS?  
HOW DO I EXCLUDE MYSELF?**

55. Each Settlement Class Member will be bound by all determinations and judgments in this lawsuit, whether favorable or unfavorable, unless such person or entity mails or delivers a written Request for Exclusion from the Settlement Class, addressed to *SolarWinds Securities Litigation*, EXCLUSIONS, c/o Epiq, P.O. Box 3217, Portland, OR 97208-3217, that is accepted by the Court. The Request for Exclusion must be **received no later than July 7, 2023**. You will not be able to exclude yourself from the Settlement Class after that date. Each Request for Exclusion must (i) state the name, address, and telephone number of the person or entity requesting exclusion, and in the case of entities, the name and telephone number of the appropriate contact person; (ii) state that such person or entity “requests exclusion from the Settlement Class in *In re SolarWinds Corp. Securities Litigation*, Case No. 1:21-cv-138-RP”; (iii) state the number of shares of SolarWinds common stock that the person or entity requesting exclusion purchased/acquired and/or sold during the Class Period (*i.e.*, from October 18, 2018 through December 17, 2020, inclusive), as well as the dates, number of shares, and prices of each such purchase/acquisition and sale; and (iv) be signed by the person or entity requesting exclusion or an authorized representative. A Request for Exclusion that does not provide all the information called for in this paragraph and is not received within the time stated above will be invalid and will not be allowed. Lead Counsel may request that the person or entity requesting exclusion submit additional transaction information or documentation sufficient to prove his, her, or its holdings and trading in SolarWinds common stock.

56. If you do not want to be part of the Settlement Class, you must follow these instructions for exclusion even if you have pending, or later file, another lawsuit, arbitration, or other proceeding relating to any Released Plaintiff’s Claim against any of the Defendants’ Releasees.

57. If you ask to be excluded from the Settlement Class, you will not be eligible to receive any payment out of the Net Settlement Fund.

58. SolarWinds has the right to terminate the Settlement if valid requests for exclusion are received from persons and entities entitled to be members of the Settlement Class in an amount that exceeds an amount agreed to by Lead Plaintiff and SolarWinds.

**WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT? DO I HAVE TO COME TO THE HEARING? MAY I SPEAK AT THE HEARING IF I DON’T LIKE THE SETTLEMENT?**

59. **Settlement Class Members do not need to attend the Settlement Fairness Hearing. The Court will consider any submission made in accordance with the provisions below even if a Settlement Class Member does not attend the hearing. You can participate in the Settlement without attending the Settlement Fairness Hearing.**

60. **Please Note:** The date and time of the Settlement Fairness Hearing may change without further written notice to the Settlement Class. In addition, the COVID-19 pandemic is a fluid situation that creates the possibility that the Court may decide to conduct the Settlement Fairness Hearing by video or telephonic conference, or otherwise allow Settlement Class Members to appear at the hearing by phone, without further written notice to the Settlement Class. **In order to determine whether the date and time of the Settlement Fairness Hearing have changed, or whether Settlement Class Members must or may participate by phone or video, it is important that you monitor the Court’s docket and the Settlement website, [www.SolarWindsSecuritiesLitigation.com](http://www.SolarWindsSecuritiesLitigation.com), before making any plans to attend the Settlement Hearing. Any updates regarding the Settlement Fairness Hearing, including any changes to the date or time of the hearing or updates regarding in-person or remote appearances at the hearing, will be posted to the Settlement website, [www.SolarWindsSecuritiesLitigation.com](http://www.SolarWindsSecuritiesLitigation.com). If the Court requires or allows Settlement Class Members to participate in the Settlement Fairness Hearing by telephone or video conference, the information for accessing the telephone or video conference will be posted to the Settlement website, [www.SolarWindsSecuritiesLitigation.com](http://www.SolarWindsSecuritiesLitigation.com).**

61. The Settlement Fairness Hearing will be held on **July 28, 2023 at 2:00 p.m.**, before the Honorable Robert Pitman at the United States District Court for the Western District of Texas, Courtroom 4 of the United States Courthouse, 501 West Fifth Street, Austin, Texas 78701, to determine, among other things, (i) whether the proposed Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to the Settlement Class, and should be finally approved by the Court; (ii) whether, for purposes of the Settlement only, the Action should be certified as a class action on behalf of the Settlement Class, Lead Plaintiff should be certified as Class Representative for the Settlement Class, and Lead Counsel should be appointed as Class Counsel for the

Settlement Class; (iii) whether the Action should be dismissed with prejudice against Defendants and the Releases specified and described in the Stipulation (and in this Notice) should be granted; (iv) whether the proposed Plan of Allocation should be approved as fair and reasonable; (v) whether Lead Counsel's motion for attorneys' fees and Litigation Expenses should be approved; and (vi) any other matters that may properly be brought before the Court in connection with the Settlement. The Court reserves the right to certify the Settlement Class; approve the Settlement, the Plan of Allocation, and Lead Counsel's motion for attorneys' fees and Litigation Expenses; and/or consider any other matter related to the Settlement at or after the Settlement Fairness Hearing without further notice to the members of the Settlement Class.

62. Any Settlement Class Member who or which does not request exclusion may object to the Settlement, the proposed Plan of Allocation, or Lead Counsel's motion for attorneys' fees and Litigation Expenses. Objections must be in writing. You must file any written objection, together with copies of all other papers and briefs supporting the objection, electronically with the Court or by letter mailed to the Clerk's Office at the United States District Court for the Western District of Texas, Austin Division at the address set forth below **on or before July 7, 2023**. You must also serve the papers on Lead Counsel and on SolarWinds' Counsel at the addresses set forth below so that the papers are **received on or before July 7, 2023**.

<b>CLERK'S OFFICE</b>	
United States District Court Western District of Texas, Austin Division Clerk's Office United States Courthouse 501 West Fifth Street, Suite 1100 Austin, TX 78701	
<b>LEAD COUNSEL</b>	<b>SOLARWINDS' COUNSEL</b>
<b>Bernstein Litowitz Berger &amp; Grossmann LLP</b> John Rizio-Hamilton, Esq. 1251 Avenue of the Americas, 44th Floor New York, NY 10020	<b>King &amp; Spalding LLP</b> Paul R. Bessette, Esq. Michael J. Biles, Esq. 500 W. 2nd Street, Suite 1800 Austin, TX 78701

63. To object, you must send a letter stating that you object to the Settlement. Your objection must include: (1) the name of this proceeding, *In re SolarWinds Corporation Securities Litigation*, Case No. 1:21-cv-138-RP; (2) the objector's full name, current address, and telephone number; (3) the objector's signature; (4) a statement providing the specific reasons for the objection, including a detailed statement of the specific legal and factual basis for each and every objection and whether the objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class; and (5) documents sufficient to prove membership in the Settlement Class, including documents showing the number of shares of SolarWinds common stock that the objecting Settlement Class Member purchased/acquired and/or sold during the Class Period, as well as the dates, number of shares, and prices of each such purchase/acquisition and sale. The documentation establishing membership in the Settlement Class must consist of copies of brokerage confirmation slips or monthly brokerage account statements, or an authorized statement from the objector's broker containing the transactional and holding information found in a broker confirmation slip or account statement.

64. You may not object to the Settlement, the Plan of Allocation, or Lead Counsel's motion for attorneys' fees and Litigation Expenses if you exclude yourself from the Settlement Class or if you are not a member of the Settlement Class.

65. You may file a written objection without having to appear at the Settlement Fairness Hearing. You may not, however, appear at the Settlement Fairness Hearing to present your objection unless you first file and serve a written objection in accordance with the procedures described above, unless the Court orders otherwise.

66. If you wish to be heard orally at the hearing in opposition to the approval of the Settlement, the Plan of Allocation, or Lead Counsel's motion for attorneys' fees and Litigation Expenses, assuming you timely file and serve a written objection as described above, you must also file a notice of appearance electronically with the Court or by letter mailed to the Clerks' office and serve it on Lead Counsel and on SolarWinds' Counsel at the addresses set forth in ¶ 62 above so that it is **received on or before July 7, 2023**. Objectors and/or their counsel may be heard orally at the discretion of the Court.

67. You are not required to hire an attorney to represent you in making written objections or in appearing at the Settlement Fairness Hearing. However, if you decide to hire an attorney, it will be at your own expense, and that attorney must file a notice of appearance with the Court and serve it on Lead Counsel and SolarWinds' Counsel at the addresses set forth in ¶ 62 above so that the notice is **received on or before July 7, 2023**.

68. The Settlement Fairness Hearing may be adjourned by the Court without further written notice to the Settlement Class. If you plan to attend the Settlement Fairness Hearing, you should confirm the date and time with Lead Counsel.

**69. Unless the Court orders otherwise, any Settlement Class Member who does not object in the manner described above will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the proposed Settlement, the proposed Plan of Allocation, or Lead Counsel's motion for an award of attorneys' fees and Litigation Expenses. Settlement Class Members do not need to appear at the Settlement Fairness Hearing or take any other action to indicate their approval.**

#### WHAT IF I BOUGHT SHARES ON SOMEONE ELSE'S BEHALF?

70. If you purchased or otherwise acquired shares of SolarWinds common stock during the period from October 18, 2018 through December 17, 2020, inclusive, for the beneficial interest of persons or organizations other than yourself, you must either (i) within seven (7) calendar days of receipt of this Notice, request from the Claims Administrator sufficient copies of the Notice and Claim Form (the "Notice Packet") to forward to all such beneficial owners and within seven (7) calendar days of receipt of those Notice Packets forward them to all such beneficial owners; or (ii) within seven (7) calendar days of receipt of this Notice, provide a list of the names, addresses, and email addresses (if available) of all such beneficial owners to *SolarWinds Securities Litigation*, c/o Epiq, P.O. Box 3217, Portland, OR 97208-3217. If you choose the second option, the Claims Administrator will send a copy of the Notice Packet to the beneficial owners. Upon full compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred, by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Copies of this Notice and the Claim Form may also be obtained from the Settlement website, [www.SolarWindsSecuritiesLitigation.com](http://www.SolarWindsSecuritiesLitigation.com), by calling the Claims Administrator toll-free at 1-877-890-0042, or by emailing the Claims Administrator at [info@SolarWindsSecuritiesLitigation.com](mailto:info@SolarWindsSecuritiesLitigation.com).

#### CAN I SEE THE COURT FILE? WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?

71. This Notice contains only a summary of the terms of the proposed Settlement. For more detailed information about the matters involved in this Action, you are referred to the papers on file in the Action, including the Stipulation, which may be inspected during regular office hours at the Office of the Clerk, United States District Court for the Western District of Texas, Austin Division, United States Courthouse, 501 West Fifth Street, Suite 1100, Austin, TX 78701. Additionally, copies of the Stipulation and any related orders entered by the Court will be posted on the Settlement website, [www.SolarWindsSecuritiesLitigation.com](http://www.SolarWindsSecuritiesLitigation.com).

All inquiries concerning this Notice and the Claim Form should be directed to:

SolarWinds Securities Litigation  
c/o Epiq  
P.O. Box 3217  
Portland, OR 97208-3217  
1-877-890-0042  
[info@SolarWindsSecuritiesLitigation.com](mailto:info@SolarWindsSecuritiesLitigation.com)  
[www.SolarWindsSecuritiesLitigation.com](http://www.SolarWindsSecuritiesLitigation.com)

and/or

John Rizio-Hamilton, Esq.  
Bernstein Litowitz Berger  
& Grossmann LLP  
1251 Avenue of the Americas,  
44th Floor  
New York, NY 10020  
1-800-380-8496  
[settlements@blbglaw.com](mailto:settlements@blbglaw.com)

**DO NOT CALL OR WRITE THE COURT, THE OFFICE OF THE CLERK OF THE COURT, DEFENDANTS, OR THEIR COUNSEL REGARDING THIS NOTICE.**

Dated: March 9, 2023

By Order of the Court  
United States District Court  
Western District of Texas



APPENDIX APROPOSED PLAN OF ALLOCATION

72. The objective of the Plan of Allocation is to equitably distribute the Net Settlement Fund to those Settlement Class Members who had economic losses as a result of the alleged violations of the federal securities laws. The calculations made pursuant to the Plan of Allocation are not intended to be estimates of, nor indicative of, the amounts that Settlement Class Members might have been able to recover after a trial. Nor are the calculations pursuant to the Plan of Allocation intended to be estimates of the amounts that will be paid to Authorized Claimants pursuant to the Settlement. The computations under the Plan of Allocation are only a method to weigh the claims of Claimants against one another for the purposes of making *pro rata* allocations of the Net Settlement Fund.

73. In developing the Plan of Allocation, Lead Plaintiff's damages expert calculated the estimated amounts of artificial inflation in the per share closing price of SolarWinds common stock which allegedly was proximately caused by Defendants' alleged materially false and misleading statements and omissions.

74. In calculating the estimated artificial inflation allegedly caused by Defendants' alleged misrepresentations and omissions, Lead Plaintiff's damages expert considered price changes in SolarWinds common stock in reaction to certain public announcements allegedly revealing the truth concerning Defendants' alleged misrepresentations and omissions. These inflation amounts were adjusted for price changes that were attributable to market or industry factors. The estimated artificial inflation in SolarWinds common stock is stated in Table A attached to the end of this Notice.

75. In order to have recoverable damages, the disclosure of the allegedly misrepresented information must be the cause of the decline in the price of SolarWinds common stock. In this case, Lead Plaintiff alleges that Defendants made false statements and omitted material facts during the Class Period (*i.e.*, from October 18, 2018 through December 17, 2020, inclusive), which had the effect of artificially inflating the price of SolarWinds common stock. Lead Plaintiff further alleges that corrective information was released to the market during the Class Period, which partially removed the artificial inflation from the price of SolarWinds common stock on December 14, 2020, December 15, 2020, and December 18, 2020.

76. Recognized Loss Amounts are based primarily on the difference in the amount of alleged artificial inflation in the price of SolarWinds common stock at the time of purchase or acquisition and at the time of sale or the difference between the actual purchase price and sale price. Accordingly, in order to have a Recognized Loss Amount under the Plan of Allocation, a Settlement Class Member who or which purchased or otherwise acquired SolarWinds common stock prior to the first corrective disclosure on December 14, 2020 must have held his, her, or its shares of SolarWinds common stock through at least December 13, 2020. A Settlement Class Member who or which purchased or otherwise acquired SolarWinds common stock from December 14, 2020 through December 17, 2020 must have held those shares through at least one of the later dates where new corrective information was released to the market and partially removed the artificial inflation from the price of SolarWinds common stock.

CALCULATION OF RECOGNIZED LOSS AMOUNTS

77. Based on the formula stated below, a "Recognized Loss Amount" will be calculated for each purchase or acquisition of SolarWinds common stock during the Class Period that is listed on the Claim Form and for which adequate documentation is provided. If a Recognized Loss Amount calculates to a negative number or zero under the formula below, that number will be zero.

78. For each share of SolarWinds common stock purchased or otherwise acquired during the period from October 18, 2018 through December 17, 2020, including in SolarWinds' October 18, 2018 Initial Public Offering, and:

- a) Sold before December 14, 2020, the Recognized Loss Amount will be \$0.00.
- b) Sold from December 14, 2020 through and including December 17, 2020, the Recognized Loss Amount will be ***the lesser of:*** (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table A *minus* the amount of artificial inflation per share on the date of sale as stated in Table A; or (ii) the purchase/acquisition price *minus* the sale price.
- c) Sold from December 18, 2020 through the close of trading on March 17, 2021, the Recognized Loss Amount will be ***the least of:*** (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table A; (ii) the purchase/acquisition price *minus* the average closing price between December 18, 2020 and the date of sale as stated in Table B attached at the end of this Notice; or (iii) the purchase/acquisition price *minus* the sale price.

- d) Held as of the close of trading on March 17, 2021, the Recognized Loss Amount will be the lesser of:
- (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table A; or
  - (ii) the purchase/acquisition price minus \$16.04.<sup>2</sup>

### **ADDITIONAL PROVISIONS**

79. **Calculation of Claimant's "Recognized Claim":** A Claimant's "Recognized Claim" will be the sum of his, her, or its Recognized Loss Amounts as calculated under ¶ 78 above.

80. **FIFO Matching:** If a Settlement Class Member made more than one purchase/acquisition or sale of SolarWinds common stock during the Class Period, all purchases/acquisitions and sales will be matched on a First In, First Out ("FIFO") basis. Class Period sales will be matched against purchases/acquisitions in chronological order, beginning with the earliest purchase/acquisition made during the Class Period.

81. **Purchase/Sale Prices:** For the purposes of calculations in ¶ 78 above, "purchase/acquisition price" means the actual price paid, excluding any fees, commissions, and taxes, and "sale price" means the actual amount received, not deducting any fees, commissions, and taxes.

82. **"Purchase/Acquisition/Sale" Dates:** Purchases or acquisitions and sales of SolarWinds common stock will be deemed to have occurred on the "contract" or "trade" date as opposed to the "settlement" or "payment" date. The receipt or grant by gift, inheritance, or operation of law of SolarWinds common stock during the Class Period will not be deemed a purchase, acquisition, or sale of SolarWinds common stock for the calculation of a Claimant's Recognized Loss Amount, nor will the receipt or grant be deemed an assignment of any claim relating to the purchase/acquisition/sale of SolarWinds common stock unless (i) the donor or decedent purchased or otherwise acquired or sold such SolarWinds common stock during the Class Period; (ii) the instrument of gift or assignment specifically provides that it is intended to transfer such rights; and (iii) no Claim was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to shares of such shares of SolarWinds common stock.

83. **Short Sales:** The date of covering a "short sale" is deemed to be the date of purchase or acquisition of the SolarWinds common stock. The date of a "short sale" is deemed to be the date of sale of the SolarWinds common stock. In accordance with the Plan of Allocation, however, the Recognized Loss Amount on "short sales" and the purchases covering "short sales" is zero.

84. In the event that a Claimant has an opening short position in SolarWinds common stock, the earliest purchases or acquisitions of SolarWinds common stock during the Class Period will be matched against such opening short position, and not be entitled to a recovery, until that short position is fully covered.

85. **Common Stock Purchased/Sold Through the Exercise of Options:** Option contracts are not securities eligible to participate in the Settlement. With respect to SolarWinds common stock purchased or sold through the exercise of an option, the purchase/sale date of the security is the exercise date of the option and the purchase/sale price is the exercise price of the option.

86. **Market Gains and Losses:** The Claims Administrator will determine if the Claimant had a "Market Gain" or a "Market Loss" with respect to his, her, or its overall transactions in SolarWinds common stock during the Class Period. For purposes of making this calculation, the Claims Administrator will determine the difference between (i) the Claimant's Total Purchase Amount<sup>3</sup> and (ii) the sum of the Claimant's Total Sales Proceeds<sup>4</sup> and the Claimant's Holding Value.<sup>5</sup> If the Claimant's Total Purchase Amount minus the sum of the Claimant's Total Sales Proceeds and the Holding Value is a positive number, that number will be the Claimant's Market Loss; if the number is a negative number or zero, that number will be the Claimant's Market Gain.

<sup>2</sup> Pursuant to Section 21D(e)(1) of the Exchange Act, "in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market." Consistent with the requirements of the Exchange Act, Recognized Loss Amounts are reduced to an appropriate extent by taking into account the closing price of SolarWinds common stock during the "90-day look-back period," December 18, 2020 through and including March 17, 2021. The mean (average) closing price for SolarWinds common stock during this 90-day look back period was \$16.04.

<sup>3</sup> The "Total Purchase Amount" is the total amount the Claimant paid (excluding any fees, commissions, and taxes) for all shares of SolarWinds common stock purchased/acquired during the Class Period.

<sup>4</sup> The total amount received (not deducting any fees, commissions, and taxes) for shares of SolarWinds common stock sold during the Class Period is the "Total Sales Proceeds."

<sup>5</sup> The Claims Administrator will ascribe a "Holding Value" of \$14.18 to each share of SolarWinds common stock purchased/acquired during the Class Period that was still held as of the close of trading on December 17, 2020.

87. If a Claimant had a Market Gain with respect to his, her, or its overall transactions in SolarWinds common stock during the Class Period, the value of the Claimant's Recognized Claim will be zero, and the Claimant will in any event be bound by the Settlement. If a Claimant suffered an overall Market Loss with respect to his, her, or its overall transactions in SolarWinds common stock during the Class Period but that Market Loss was less than the Claimant's Recognized Claim calculated pursuant to ¶¶ 78-79 above, then the Claimant's Recognized Claim will be limited to the amount of the Market Loss.

88. **Determination of Distribution Amount:** If the sum total of Recognized Claims of all Authorized Claimants who are entitled to receive payment out of the Net Settlement Fund is greater than the Net Settlement Fund, each Authorized Claimant will receive his, her, or its *pro rata* share of the Net Settlement Fund. The *pro rata* share will be the Authorized Claimant's Recognized Claim divided by the total of Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund.

89. If the Net Settlement Fund exceeds the sum total amount of the Recognized Claims of all Authorized Claimants entitled to receive payment out of the Net Settlement Fund, the excess amount in the Net Settlement Fund will be distributed *pro rata* to all Authorized Claimants entitled to receive payment.

90. If an Authorized Claimant's Distribution Amount calculates to less than \$10.00, no distribution will be made to that Authorized Claimant.

91. After the initial distribution of the Net Settlement Fund, the Claims Administrator will make reasonable and diligent efforts to have Authorized Claimants cash their distribution checks. To the extent any monies remain in the Net Settlement Fund after the initial distribution, if Lead Counsel, in consultation with the Claims Administrator, determines that it is cost-effective to do so, the Claims Administrator, no less than six (6) months after the initial distribution, will conduct a re-distribution of the funds remaining after payment of any unpaid fees and expenses incurred in administering the Settlement, including for such re-distribution, to Authorized Claimants who have cashed their initial distributions and who would receive at least \$10.00 from such re-distribution. Additional re-distributions to Authorized Claimants who have cashed their prior checks may occur thereafter if Lead Counsel, in consultation with the Claims Administrator, determines that additional re-distributions, after the deduction of any additional fees and expenses incurred in administering the Settlement, including for such re-distributions, would be cost-effective. At such time as it is determined that the re-distribution of funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance will be contributed to non-sectarian, not-for-profit, 501(c)(3) organization(s), to be recommended by Lead Counsel and approved by the Court.

92. Payment pursuant to the Plan of Allocation, or such other plan of allocation as may be approved by the Court, will be conclusive against all Authorized Claimants. No person shall have any claim against Lead Plaintiff, Plaintiff's Counsel, Lead Plaintiff's damages or consulting experts, Defendants, Defendants' Counsel, or any of the other Plaintiff's Releasees or Defendants' Releasees, or the Claims Administrator or other agent designated by Lead Counsel arising from distributions made substantially in accordance with the Stipulation, the plan of allocation approved by the Court, or further Orders of the Court. Lead Plaintiff, Defendants, and their respective counsel, and all other Defendants' Releasees, shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Fund or the Net Settlement Fund; the plan of allocation; the determination, administration, calculation, or payment of any Claim or nonperformance of the Claims Administrator; the payment or withholding of Taxes; or any losses incurred in connection therewith.

93. The Plan of Allocation stated herein is the plan that is being proposed to the Court for its approval by Lead Plaintiff after consultation with their damages expert. The Court may approve this plan as proposed or it may modify the Plan of Allocation without further notice to the Class. Any Orders regarding any modification of the Plan of Allocation will be posted on the Settlement website, [www.SolarWindsSecuritiesLitigation.com](http://www.SolarWindsSecuritiesLitigation.com).

**TABLE A****Estimated Artificial Inflation in SolarWinds Common Stock  
from October 18, 2018 through December 17, 2020**

<b>Transaction Date Range</b>	<b>Artificial Inflation Per Share</b>
October 18, 2018 through December 13, 2020	\$9.09
December 14, 2020	\$5.26
December 15, 2020 through December 17, 2020	\$3.38
December 18, 2020 or later	\$0.00

**TABLE B****90-Day Look-Back Table for SolarWinds Common Stock  
(Average Closing Price: December 18, 2020 – March 17, 2021)**

<b>Date</b>	<b>Average Closing Price Between 12/18/2020 and Date Shown</b>	<b>Date</b>	<b>Average Closing Price Between 12/18/2020 and Date Shown</b>
12/18/2020	\$14.18	2/3/2021	\$15.60
12/21/2020	\$15.15	2/4/2021	\$15.64
12/22/2020	\$15.40	2/5/2021	\$15.68
12/23/2020	\$15.55	2/8/2021	\$15.72
12/24/2020	\$15.59	2/9/2021	\$15.76
12/28/2020	\$15.46	2/10/2021	\$15.80
12/29/2020	\$15.40	2/11/2021	\$15.83
12/30/2020	\$15.34	2/12/2021	\$15.87
12/31/2020	\$15.30	2/16/2021	\$15.89
1/4/2021	\$15.22	2/17/2021	\$15.90
1/5/2021	\$15.15	2/18/2021	\$15.91
1/6/2021	\$15.09	2/19/2021	\$15.91
1/7/2021	\$15.06	2/22/2021	\$15.91
1/8/2021	\$15.08	2/23/2021	\$15.90
1/11/2021	\$15.08	2/24/2021	\$15.89
1/12/2021	\$15.07	2/25/2021	\$15.89
1/13/2021	\$15.04	2/26/2021	\$15.89
1/14/2021	\$15.05	3/1/2021	\$15.91
1/15/2021	\$15.10	3/2/2021	\$15.92
1/19/2021	\$15.14	3/3/2021	\$15.92
1/20/2021	\$15.16	3/4/2021	\$15.92
1/21/2021	\$15.20	3/5/2021	\$15.92
1/22/2021	\$15.23	3/8/2021	\$15.93
1/25/2021	\$15.26	3/9/2021	\$15.94
1/26/2021	\$15.33	3/10/2021	\$15.95
1/27/2021	\$15.42	3/11/2021	\$15.97
1/28/2021	\$15.47	3/12/2021	\$15.98
1/29/2021	\$15.51	3/15/2021	\$16.01
2/1/2021	\$15.55	3/16/2021	\$16.02
2/2/2021	\$15.58	3/17/2021	\$16.04

*In re SolarWinds Corporation Securities Litigation*  
Toll-Free Number: (877) 890-0042  
Email: [info@SolarWindsSecuritiesLitigation.com](mailto:info@SolarWindsSecuritiesLitigation.com)  
Website: [SolarWindsSecuritiesLitigation.com](http://SolarWindsSecuritiesLitigation.com)

**PROOF OF CLAIM AND RELEASE FORM**

To be eligible to receive a share of the Net Settlement Fund in connection with the Settlement of this Action, you must complete and sign this Proof of Claim and Release Form (“Claim Form”) and mail it by first-class mail to the address below, or submit it online at [SolarWindsSecuritiesLitigation.com](http://SolarWindsSecuritiesLitigation.com), with supporting documentation, *postmarked (if mailed) or received no later than July 7, 2023.*

**Mail to:**                    *SolarWinds Securities Litigation*  
  c/o Epiq  
  P.O. Box 3217  
  Portland, OR 97208-3217

Failure to submit your Claim Form by the date specified will subject your claim to rejection and may preclude you from being eligible to receive any money in connection with the Settlement.

**Do not mail or deliver your Claim Form to the Court, the Parties to the Action, or their counsel. Submit your Claim Form only to the Claims Administrator at the address set forth above.**

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**PART I – CLAIMANT INFORMATION**

The Claims Administrator will use this information for all communications regarding this Claim Form. If this information changes, you **MUST** notify the Claims Administrator in writing at the address above. Complete names of all persons and entities must be provided.

Beneficial Owner's First Name	MI	Beneficial Owner's Last Name
<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>

Co-Beneficial Owner's First Name	MI	Co-Beneficial Owner's Last Name
<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>

Entity Name (if Beneficial Owner is not an individual)

Representative or Custodian Name (if different from Beneficial Owner[s] listed above)

Address 1 (street name and number)

Address 2 (apartment, unit or box number)

City	State	ZIP Code
<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>

Country

Last four digits of Social Security Number or Taxpayer Identification Number

Telephone Number (Day)

Telephone Number (Evening)

Email address (Email address is not required, but if you provide it you authorize the Claims Administrator to use it in providing you with information relevant to this claim)

Account Number (where securities were traded)

Claimant Account Type (check appropriate box)

- |                                      |   |                                 |
|--------------------------------------|---|---------------------------------|
| <input type="checkbox"/> Individual  | <input type="checkbox"/> IRA/401K                     | <input type="checkbox"/> Estate |
| <input type="checkbox"/> Joint       | <input type="checkbox"/> Pension Plan                 | <input type="checkbox"/> Trust  |
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Other _____ (please specify) |                                 |



## PART II – GENERAL INSTRUCTIONS

1. It is important that you completely read the Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for Attorneys’ Fees and Litigation Expenses (the “Notice”) that accompanies this Claim Form, including the Plan of Allocation of the Net Settlement Fund set forth in the Notice. The Notice describes the proposed Settlement, how Settlement Class Members are affected by the Settlement, and the manner in which the Net Settlement Fund will be distributed if the Settlement and Plan of Allocation are approved by the Court. The Notice also contains the definitions of many of the defined terms (which are indicated by initial capital letters) used in this Claim Form. By signing and submitting this Claim Form, you will be certifying that you have read and that you understand the Notice, including the terms of the releases described therein and provided for herein.

2. By submitting this Claim Form, you will be making a request to share in the proceeds of the Settlement described in the Notice. If you are not a Settlement Class Member (see the definition of the Settlement Class on page 5 of the Notice), or if you, or someone acting on your behalf, submitted a request for exclusion from the Settlement Class, do not submit a Claim Form. **You may not, directly or indirectly, participate in the Settlement if you are not a Settlement Class Member.** Thus, if you are excluded from the Settlement Class, any Claim Form that you submit, or that may be submitted on your behalf, will not be accepted.

3. **Submission of this Claim Form does not guarantee that you will share in the proceeds of the Settlement. The distribution of the Net Settlement Fund will be governed by the Plan of Allocation set forth in the Notice or by such other plan of allocation as the Court approves.**

4. On the Schedule of Transactions in Part III of this Claim Form, provide all of the requested information with respect to your holdings, purchases, acquisitions, and sales of SolarWinds common stock (including free transfers and deliveries), whether such transactions resulted in a profit or a loss. **Failure to report all transaction and holding information during the requested time period may result in the rejection of your claim.**

5. **Please note:** Only purchases or acquisitions of SolarWinds common stock from October 18, 2018 through December 17, 2020 are eligible under the Settlement and the proposed Plan of Allocation set forth in the Notice. However, under the “90-day look-back period” (described in the Plan of Allocation), sales of SolarWinds common stock during the period from December 18, 2020 through the close of trading on March 17, 2021 will be used for purposes of calculating Recognized Loss Amounts under the Plan of Allocation. Therefore, in order for the Claims Administrator to be able to balance your claim, the requested purchase information during this period must also be provided.

6. You are required to submit genuine and sufficient documentation for all of your transactions in and holdings of SolarWinds common stock set forth in the Schedule of Transactions in Part III. Documentation may consist of copies of brokerage confirmation slips or monthly brokerage account statements, or an authorized statement from your broker containing the transactional and holding information found in a broker confirmation slip or account statement. The Parties and the Claims Administrator do not independently have information about your investments in SolarWinds common stock. **IF SUCH DOCUMENTS ARE NOT IN YOUR POSSESSION, PLEASE OBTAIN COPIES OF THE DOCUMENTS OR EQUIVALENT DOCUMENTS FROM YOUR BROKER. FAILURE TO SUPPLY THIS DOCUMENTATION MAY RESULT IN THE REJECTION OF YOUR CLAIM. DO NOT SEND ORIGINAL DOCUMENTS.**

7. **Please keep a copy of all documents that you send to the Claims Administrator. Also, do not highlight any portion of the Claim Form or any supporting documents.**

8. Use Part I of this Claim Form entitled “CLAIMANT INFORMATION” to identify the beneficial owner(s) of SolarWinds common stock. The complete name(s) of the beneficial owner(s) must be entered. If you held the SolarWinds common stock in your own name, you were the beneficial owner as well as the record owner. If, however, your shares of SolarWinds common stock were registered in the name of a third party, such as a nominee or brokerage firm, you were the beneficial owner of these shares, but the third party was the record owner. The beneficial owner, not the record owner, must sign this Claim Form to be eligible to participate in the Settlement. If there were joint beneficial owners each must sign this Claim Form and their names must appear as “Claimants” in Part I of this Claim Form.

9. **One Claim should be submitted for each separate legal entity or separately managed account.** Separate Claim Forms should be submitted for each separate legal entity (e.g., an individual should not combine his or her IRA transactions with transactions made solely in the individual’s name). Generally, a single Claim Form should

be submitted on behalf of one legal entity including all holdings and transactions made by that entity on one Claim Form. However, if a single person or legal entity had multiple accounts that were separately managed, separate Claims may be submitted for each such account. The Claims Administrator reserves the right to request information on all the holdings and transactions in SolarWinds common stock made on behalf of a single beneficial owner.

10. Agents, executors, administrators, guardians, and trustees must complete and sign the Claim Form on behalf of persons represented by them, and they must:

- (a) expressly state the capacity in which they are acting;
- (b) identify the name, account number, Social Security Number (or taxpayer identification number), address, and telephone number of the beneficial owner of (or other person or entity on whose behalf they are acting with respect to) the SolarWinds common stock; and
- (c) furnish herewith evidence of their authority to bind to the Claim Form the person or entity on whose behalf they are acting. (Authority to complete and sign a Claim Form cannot be established by stockbrokers demonstrating only that they have discretionary authority to trade securities in another person's accounts.)

11. By submitting a signed Claim Form, you will be swearing that you:

- (a) own(ed) the SolarWinds common stock you have listed in the Claim Form; or
- (b) are expressly authorized to act on behalf of the owner thereof.

12. By submitting a signed Claim Form, you will be swearing to the truth of the statements contained therein and the genuineness of the documents attached thereto, subject to penalties of perjury under the laws of the United States of America. The making of false statements, or the submission of forged or fraudulent documentation, will result in the rejection of your claim and may subject you to civil liability or criminal prosecution.

13. Payments to eligible Authorized Claimants will be made only if the Court approves the Settlement, after any appeals are resolved, and after the completion of all claims processing.

14. **PLEASE NOTE:** As set forth in the Plan of Allocation, each Authorized Claimant shall receive his, her, or its *pro rata* share of the Net Settlement Fund. If the prorated payment to any Authorized Claimant calculates to less than \$10.00, it will not be included in the calculation, and no distribution will be made to that Authorized Claimant.

15. If you have questions concerning the Claim Form, or need additional copies of the Claim Form or the Notice, you may contact the Claims Administrator, Epiq, at the above address, by email at [info@SolarWindsSecuritiesLitigation.com](mailto:info@SolarWindsSecuritiesLitigation.com), or by toll-free phone at (877) 890-0042, or you can visit the website, [SolarWindsSecuritiesLitigation.com](http://SolarWindsSecuritiesLitigation.com), where copies of the Claim Form and Notice are available for downloading.

16. **NOTICE REGARDING ELECTRONIC FILES:** Certain claimants with large numbers of transactions may request, or may be requested, to submit information regarding their transactions in electronic files. To obtain the **mandatory** electronic filing requirements and file layout, you may visit the settlement website at [SolarWindsSecuritiesLitigation.com](http://SolarWindsSecuritiesLitigation.com) or you may email the Claims Administrator's electronic filing department at [info@SolarWindsSecuritiesLitigation.com](mailto:info@SolarWindsSecuritiesLitigation.com). **Any file not in accordance with the required electronic filing format will be subject to rejection.** The **complete** name of the beneficial owner of the securities must be entered where called for (*see* ¶ 8 above). No electronic files will be considered to have been submitted unless the Claims Administrator issues an email confirming receipt of your submission. **Do not assume that your file has been received until you receive that email. If you do not receive such an email within 10 days of your submission, you should contact the electronic filing department at [info@SolarWindsSecuritiesLitigation.com](mailto:info@SolarWindsSecuritiesLitigation.com) to inquire about your file and confirm it was received.**

#### IMPORTANT: PLEASE NOTE

**YOUR CLAIM IS NOT DEEMED FILED UNTIL YOU RECEIVE AN ACKNOWLEDGEMENT POSTCARD. THE CLAIMS ADMINISTRATOR WILL ACKNOWLEDGE RECEIPT OF YOUR CLAIM FORM BY MAIL, WITHIN 60 DAYS. IF YOU DO NOT RECEIVE AN ACKNOWLEDGEMENT POSTCARD WITHIN 60 DAYS, CALL THE CLAIMS ADMINISTRATOR TOLL FREE AT (877) 890-0042.**



**PART III – SCHEDULE OF TRANSACTIONS IN SOLARWINDS COMMON STOCK**

The only eligible security is the common stock of SolarWinds Corporation (“SolarWinds”) (Ticker: NYSE: SWI, CUSIP: 83417Q105). Do not include information regarding securities other than SolarWinds common stock. Please include proper documentation with your Claim Form as described in detail in Part II – General Instructions, ¶ 6, above.

**1. PURCHASES/ACQUISITIONS FROM OCTOBER 18, 2018 THROUGH DECEMBER 17, 2020** – Separately list each and every purchase or acquisition (including free receipts) of SolarWinds common stock from October 18, 2018 through the close of trading on December 17, 2020, including in SolarWinds’ October 18, 2018 Initial Public Offering. (Must be documented.)

Date of Purchase/Acquisition (List Chronologically) (Month/Day/Year)	Number of Shares Purchased/ Acquired	Purchase/Acquisition Price Per Share	Total Purchase/Acquisition Price (excluding any taxes, commissions, and fees)	Confirm Proof of Purchase Enclosed
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>

**2. PURCHASES/ACQUISITIONS FROM DECEMBER 18, 2020 THROUGH MARCH 17, 2021** – State the total number of shares of SolarWinds common stock purchased or acquired (including free receipts) from December 18, 2020 through the close of trading on March 17, 2021. If none, write “zero” or “0.”

**3. SALES FROM OCTOBER 18, 2018 THROUGH MARCH 17, 2021** – Separately list each and every sale or disposition (including free deliveries) of SolarWinds common stock from October 18, 2018 through the close of trading on March 17, 2021. (Must be documented.)

**IF NONE,  
CHECK  
HERE**

Date of Sale (List Chronologically) (Month/Day/Year)	Number of Shares Sold	Sale Price Per Share	Total Sale Price (not deducting any taxes, commissions, and fees)	Confirm Proof of Sale Enclosed
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>

**4. HOLDINGS AS OF MARCH 17, 2021** – State the total number of shares of SolarWinds common stock held as of the close of trading on March 17, 2021. (Must be documented.) If none, write “zero” or “0.”

Confirm  
Proof of  
Position  
Enclosed

**IF YOU REQUIRE ADDITIONAL SPACE FOR THE SCHEDULE ABOVE, ATTACH EXTRA SCHEDULES IN THE SAME FORMAT. PRINT THE BENEFICIAL OWNER’S FULL NAME AND LAST FOUR DIGITS OF SOCIAL SECURITY/TAXPAYER IDENTIFICATION NUMBER ON EACH ADDITIONAL PAGE. IF YOU DO ATTACH EXTRA SCHEDULES, CHECK THIS BOX.**

## PART IV – RELEASE OF CLAIMS AND SIGNATURE

### YOU MUST ALSO READ THE RELEASE AND CERTIFICATION BELOW AND SIGN ON PAGE 7 OF THIS CLAIM FORM.

I (we) hereby acknowledge that, pursuant to the terms set forth in the Stipulation, without further action by anyone, upon the Effective Date of the Settlement, I (we), on behalf of myself (ourselves) and my (our) (the claimant(s)) heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such only, and any other person or entity purporting to claim through or on behalf of them directly or indirectly in such capacity only, shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged any or all of the Released Plaintiff's Claims against Defendants and the other Defendants' Releasees, and shall forever be barred and enjoined from prosecuting or otherwise pursuing whether directly or in any other capacity, any or all of the Released Plaintiff's Claims against any of the Defendants' Releasees.

### CERTIFICATION

By signing and submitting this Claim Form, the claimant(s) or the person(s) who represent(s) the claimant(s) agree(s) to the release above and certifies (certify) as follows:

1. that I (we) have read and understand the contents of the Notice and this Claim Form, including the releases provided for in the Settlement and the terms of the Plan of Allocation;
2. that the claimant(s) is a (are) Settlement Class Member(s), as defined in the Notice, and is (are) not excluded by definition from the Settlement Class as set forth in the Notice;
3. that the claimant(s) did **not** submit a request for exclusion from the Settlement Class;
4. that I (we) own(ed) the SolarWinds common stock identified in the Claim Form and have not assigned the claim against any of the Defendants or any of the other Defendants' Releasees to another, or that, in signing and submitting this Claim Form, I (we) have the authority to act on behalf of the owner(s) thereof;
5. that the claimant(s) has (have) not submitted any other claim covering the same purchases of SolarWinds common stock and knows (know) of no other person having done so on the claimant's (claimants') behalf;
6. that the claimant(s) submit(s) to the jurisdiction of the Court with respect to claimant's (claimants') claim and for purposes of enforcing the releases set forth herein;
7. that I (we) agree to furnish such additional information with respect to this Claim Form as Lead Counsel, the Claims Administrator, or the Court may require;
8. that the claimant(s) waive(s) the right to trial by jury, to the extent it exists, and agree(s) to the determination by the Court of the validity or amount of this Claim, and waive(s) any right of appeal or review with respect to such determination;
9. that I (we) acknowledge that the claimant(s) will be bound by and subject to the terms of any judgment(s) that may be entered in the Action; and
10. that the claimant(s) is (are) NOT subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code because (i) the claimant(s) is (are) exempt from backup withholding or (ii) the claimant(s) has (have) not been notified by the IRS that he, she, or it is subject to backup withholding as a result of a failure to report all interest or dividends or (iii) the IRS has notified the claimant(s) that he, she, or it is no longer subject to backup withholding. **If the IRS has notified the claimant(s) that he, she, it, or they is (are) subject to backup withholding, please strike out the language in the preceding sentence indicating that the claim is not subject to backup withholding in the certification above.**

UNDER THE PENALTIES OF PERJURY, I (WE) CERTIFY THAT ALL OF THE INFORMATION PROVIDED BY ME (US) ON THIS CLAIM FORM IS TRUE, CORRECT, AND COMPLETE, AND THAT THE DOCUMENTS SUBMITTED HEREWITH ARE TRUE AND CORRECT COPIES OF WHAT THEY PURPORT TO BE.

Signature of claimant

Date   -   -      
MM DD YYYY

Print claimant name here

Signature of joint claimant, if any

Date   -   -      
MM DD YYYY

Print joint claimant name here

***If the claimant is other than an individual, or is not the person completing this form, the following also must be provided:***

Signature of person signing on behalf of claimant

Date   -   -      
MM DD YYYY

Print name of person signing on behalf of claimant here

Capacity of person signing on behalf of claimant, if other than an individual, e.g., executor, president, trustee, custodian, etc. (Must provide evidence of authority to act on behalf of claimant – see ¶ 10 on page 4 of this Claim Form.)

**REMINDER CHECKLIST**

1. Sign the above release and certification. If this Claim Form is being made on behalf of joint claimants, then both must sign.
2. Attach only *copies* of acceptable supporting documentation as these documents will not be returned to you.
3. Do not highlight any portion of the Claim Form or any supporting documents.
4. Keep copies of the completed Claim Form and documentation for your own records.
5. The Claims Administrator will acknowledge receipt of your Claim Form by mail, within 60 days. Your claim is not deemed filed until you receive an acknowledgement postcard. **If you do not receive an acknowledgement postcard within 60 days, please call the Claims Administrator toll free at (877) 890-0042.**
6. If your address changes in the future, or if this Claim Form was sent to an old or incorrect address, you must send the Claims Administrator written notification of your new address. If you change your name, inform the Claims Administrator.
7. If you have any questions or concerns regarding your claim, contact the Claims Administrator at the address below, by email at [info@SolarWindsSecuritiesLitigation.com](mailto:info@SolarWindsSecuritiesLitigation.com), or by toll-free phone at (877) 890-0042, or you may visit [SolarWindsSecuritiesLitigation.com](http://SolarWindsSecuritiesLitigation.com). DO NOT call SolarWinds or its counsel with questions regarding your claim.

THIS CLAIM FORM MUST BE MAILED TO THE CLAIMS ADMINISTRATOR BY FIRST-CLASS MAIL OR SUBMITTED ONLINE AT [SOLARWINDSSECURITIESLITIGATION.COM](http://SOLARWINDSSECURITIESLITIGATION.COM), **POSTMARKED (OR RECEIVED) NO LATER THAN JULY 7, 2023**. IF MAILED, THE CLAIM FORM SHOULD BE ADDRESSED AS FOLLOWS:

*In re SolarWinds Corporation Securities Litigation*  
c/o Epiq  
P.O. Box 3217  
Portland, OR 97208-3217

A Claim Form received by the Claims Administrator shall be deemed to have been submitted when posted, if a postmark date on or before **July 7, 2023**, is indicated on the envelope and it is mailed First Class, and addressed in accordance with the above instructions. In all other cases, a Claim Form shall be deemed to have been submitted when actually received by the Claims Administrator.

You should be aware that it will take a significant amount of time to fully process all of the Claim Forms. Please be patient and notify the Claims Administrator of any change of address.

# Exhibit B

## CONFIRMATION OF PUBLICATION

IN THE MATTER OF: *SolarWinds Securities Litigation*

I, Kathleen Komraus, hereby certify that

(a) I am the Media & Design Manager at Epiq Class Action & Claims Solutions, a noticing administrator, and;

(b) The Notice of which the annexed is a copy was published in the following publications on the following dates:

*3.21.2023 – Wall Street Journal*

*3.21.2023 – PR Newswire*

X *Kathleen Komraus*

\_\_\_\_\_  
(Signature)

Media & Design Manager

\_\_\_\_\_  
(Title)

BUSINESS NEWS

Tensions Rise in Port Labor Talks

By PAUL BERGER

Tensions in long-running contract talks at West Coast ports are worsening, with employers accusing unionized dockworkers of slowing cargo handling at the ports of Los Angeles and Long Beach, the nation's busiest gateway for imported consumer goods.

The sharp rhetoric marks a shift from a longstanding agreement to maintain public silence on issues around the negotiations, which began last spring. The two sides appear to be no closer to bridging the gap on their disagreements, pointing to the possibility of deeper disruptions to U.S. trade flows.

The Pacific Maritime Association, which represents ocean carriers and port employers, said Monday that dockworkers at the ports of Los Angeles and Long Beach had stopped staggering work shifts during mediations starting this past Wednesday.

The PMA said that has forced terminals to shut down every day for an hour in the afternoon and another hour at night, interruptions that have triggered "significant delays" in cargo operations and long backups of trucks at terminal gates.

Willie Adams, the president of the International Longshore and Warehouse Union representing dockworkers, said his members are allowed to take a lunch break just like everyone else.

Union officials said truck backups can form outside terminals for many reasons and that the PMA was highlighting the recent queues to influence public opinion.

The exchanges between the PMA and the ILWU mark the first time the two sides have launched public bars since negotiations began in May 2022 on a multiyear contract covering more than 22,000 dockworkers at 29 ports from California to Washington.

West Coast dockworkers have been working without a contract since the last agreement expired in July.

As recently as Feb. 23, the PMA and the ILWU issued a joint statement saying the parties "continue to negotiate and remain hopeful of reaching a deal soon." Talks were scheduled to resume Tuesday, according to the PMA.

Previous contract negotiations over the past two decades have been contentious and marked by freight delays that cost individual retailers millions of dollars in increased expenses and lost sales as



The talks stalled last summer and have sputtered as dockworkers and employers struggled to find common ground on a range of issues.

dockworkers slowed operations and employers locked out workers. Shipping-industry executives and Biden administration officials had hoped the current talks would go more smoothly, given that they came so soon after cargo bottlenecks at West Coast ports during the Covid-19 pandemic underlined the critical role the gateways play in the U.S. economy.

Some administration and industry officials had hoped a deal would be reached by early fall.

The talks stalled last summer and have sputtered since then as dockworkers and employers struggled to find common ground on a range of issues that include the

assignment of jobs and the use of automated handling equipment on the docks. Although there have been some sporadic disruptions in California and Washington since the talks began, last week's slowdowns at Los Angeles and Long Beach mark the first time actions have affected so many cargo-handling operations at once.

Many importers last summer started diverting cargoes to East and Gulf Coast ports in anticipation of potential labor disruptions, and a decline in the cargo volumes at Los Angeles and Long Beach, the main gateways for U.S. trade with Asia, has accelerated this year. Combined container im-

ported 38% last month from a year earlier, to their lowest level since March 2020. Port of Los Angeles Executive Director Gene Seroka shared the drop on factors including a reduction in global trade and on cargo being diverted because of the labor negotiations. "Cargo owners have made it clear that they want the certainty of a signed deal," Mr. Seroka said Friday.

The PMA said the previous contract gave employers the right to assign staggered shifts during mediations. The employer group said that because the contract expired, there is no mechanism to arbitrate the dispute and to require dockworkers to maintain uninterrupted operations.

Gerber Formula Recalled Over Bacteria

By COLIN KELLABER

Perrigo Co. is recalling several batches of Gerber brand baby Formula because of the possible presence of a common bacteria.

The Dublin-based company said the recall involves certain lots of Gerber Good Start SoothePro powdered formula that were made in January at its plant in Eau Claire, Wis.

Perrigo said it is recalling the formula out of an abundance of caution because of the potential presence of Cronobacter sakazakii, a bacterium commonly found in the environment that causes no symptoms in most people but can lead to poor feeding, excessive crying or low energy in premature infants, infants under 2 months of age or infants with weakened immune systems.

Perrigo said no distributed product has tested positive for the presence of Cronobacter and that no adverse events have been reported.

The company said the recall doesn't affect any other products made at the Eau Claire plant, which it acquired last year from Nestlé SA, or any other of its other facilities.

The Perrigo recall comes on the heels of last year's baby formula shortage sparked by supply-chain problems and the shutdown of an Abbott Laboratories plant as a result of bacterial contamination.

Bed Bath Stock Falls 21%, Complicating Fundraising

By ALEXANDER GLADSTONE

Bed Bath & Beyond Inc.'s shares fell 21% Monday after the retailer disclosed substantial dilution from a recent equity deal, potentially preventing it from raising more money from a crucial investor, hedge fund Hudson Bay Capital Management LP.

The home-goods retailer's stock closed at 81 cents Monday, after it said Friday that the number of its common shares had nearly tripled to at least 335 million as of March 15 from 117 million as of late January.

The number of shares outstanding ballooned because investors including Hudson Bay have been converting their preferred shares into new common shares in recent weeks as the result of the company's equity deal the company struck last month. Those investors put in an initial \$225 million and agreed to fund an additional \$80 million over 10 months provided that certain conditions are met, including Bed Bath & Beyond maintaining a certain volume-weighted-average price threshold for its stock.

The company raised an addi-



The retailer avoided bankruptcy after striking the Hudson Bay deal.

tional \$125 million through the deal as of March 7, bringing the total amount raised to at least \$360 million.

Last week, Bed Bath & Beyond reached an amendment with Hudson to temporarily lower the stock-price threshold to \$1 until April 3, from an original threshold of at least \$1.25.

The company said that the amendment would "facilitate further funding of up to \$100 million in April 2023."

However, with the stock dropping to less than \$1 on

Monday, Bed Bath & Beyond could potentially violate the price threshold. If that happens, Hudson Bay and other investors won't have to exercise warrants to purchase more preferred shares, hedge-fund analysts said. The retailer narrowly avoided bankruptcy after striking the deal with Hudson Bay, and has been using the proceeds from the transaction to buy inventory.

Bed Bath & Beyond and Hudson Bay didn't respond to requests to comment.

Growth Investor JMI Equity Collects \$2.4 Billion for Fund

By TED BUNKER

Growth investor JMI Equity overcame a difficult fundraising market to wrap up its 11th main fund with commitments of \$2.4 billion, completing a fundraising drive during a period when many smaller firms struggled to reach their capital goals.

The Baltimore firm said it had a \$2 billion target for the new vehicle, JMI Equity Fund XI, when it first registered the fund with the Securities and Exchange Commission in February 2022.

A JMI Equity spokesman said the firm would not comment on the fundraising effort.

Last year saw a rapid deflation of the market in which private-equity firms raise funds, data provider Preqin Ltd. has said. The London researcher has said that combined, funds

raised for private equity and venture capital fell 15% last year to \$785.9 billion compared with 2021. Analysts also have said that conditions last year made it far tougher for firms looking to raise smaller funds compared with those seeking \$10 billion or more.

Backers of Fund XI include the State of Wisconsin Investment Board, which pledged \$75 million during the first quarter of last year, and the Massachusetts Pension Reserves Investment Management Board, which committed up to \$100 million in late 2022, according to public disclosures by both pension managers.

JMI Equity, whose managing general partners work from Baltimore and La Jolla, Calif., began the new fundraising drive about a year after closing JMI Equity Fund X LP with commitments of about \$1.7 bil-

lion. The new fund is about 48% bigger than its predecessor.

The investment strategy pursued by JMI Equity focuses on software and technology-related services and can include majority and minority stakes in target businesses, mainly in North America, according to a regulatory filing. JMI typically writes initial checks of \$25 million to \$250 million per investment, according to a news release. Overall, the firm managed about \$75 billion at the end of 2021, the regulatory filing shows.

JMI Equity said it is backing three businesses through the new pool so far, including software maker Businessolver Inc., which specializes in company benefits management, property marketing technology specialist Visiting Media LLC, and project-management application maker Unnet Inc.

ADVERTISEMENT THE Marketplace To advertise: 800-366-3375 or WSJ.com/classifieds CLASS ACTION IN RE SOLARWINDS CORPORATION SECURITIES LITIGATION SUMMARY NOTICE OF (1) PENDENCY OF CLASS ACTION AND (2) PENDING OF ASSET PROTECTION HEARING AND JUDGMENT FOR ATTORNEY'S FEES AND LITIGATION EXPENSES TO: All persons who purchased or otherwise acquired SolarWinds Corporation ("SolarWinds") common stock during the period from October 18, 2018 through December 17, 2020, inclusive (the "Class Period"), and who were damaged thereby (the "Settlement Class"). PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS WILL BE AFFECTED BY A CLASS ACTION LAWSUIT PENDING IN THIS COURT. YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Western District of Texas (the "Court"), that the above-captioned securities class action (the "Settlement Class") is pending in this Court. YOU ARE ALSO NOTIFIED that Lead Plaintiff in the Action, on behalf of itself and the Settlement Class, has executed a proposed settlement of the Action for \$30,000,000 in cash (the "Settlement"). If approved, the Settlement will resolve all claims in the Action. A hearing will be held on July 28, 2023 at 2:00 p.m. before the Honorable Robert Pitman at the United States District Court for the Western District of Texas, Austin Division, Courtroom 4 of the United States Courthouse, 501 West Fifth Street, Austin, Texas 78701, to determine (i) whether the proposed Settlement should be approved as fair, reasonable, and adequate; (ii) whether, for purposes of the proposed Settlement only, the Action should be certified as a class action on behalf of the Settlement Class; Lead Plaintiff should be certified as Class Representative of the Settlement Class, and Lead Counsel should be appointed as Class Counsel for the Settlement Class; (iii) whether the Action should be dismissed with prejudice against Defendants, and the Releases specified and described in the Stipulation and Agreement of Settlement dated November 29, 2022 (and in the Notice) should be granted; (iv) whether the proposed Plan of Allocation should be approved as fair and reasonable; and (v) whether Lead Counsel's application for an award of attorneys' fees and expenses should be approved. If you are a member of the Settlement Class, your rights will be affected by the pending Action and the Settlement, and you may be entitled to share in the Net Settlement Fund. If you have not yet received the Notice and Claim Form, you may obtain copies of these documents by contacting the Claims Administrator at SolarWinds Securities Litigation, c/o Equi, P.O. Box 3217, Portland, OR 97208-3217, 1-877-800-0442, info@SolarWindsSecuritiesLitigation.com. Copies of the Notice and Claim Form can also be downloaded from the Settlement website, www.SolarWindsSecuritiesLitigation.com. If you are a member of the Settlement Class, in order to be eligible to receive a payment from the Settlement, you must submit a Claim Form postmarked (or submitted online) no later than July 7, 2023. If you are a Settlement Class Member and do not submit a proper Claim Form, you will not be eligible to receive a payment from the Settlement, but you will nevertheless be bound by any judgments or orders entered by the Court in the Action. If you are a member of the Settlement Class and wish to exclude yourself from the Settlement Class, you must submit a request for exclusion such that it is received no later than July 7, 2023 in accordance with the instructions set forth in the Notice. If you properly exclude yourself from the Settlement Class, you will not be bound by any judgments or orders entered by the Court in the Action, and you will not be eligible to receive a payment from the Settlement. Any objections to the proposed Settlement, the proposed Plan of Allocation, or Lead Counsel's motion for attorneys' fees and expenses must be filed with the Court and delivered to Lead Counsel and SolarWinds' Counsel such that they are received no later than July 7, 2023, in accordance with the instructions set forth in the Notice. Please do not contact the Court, the Office of the Clerk of the Court, Defendants, or their counsel regarding this notice. All questions about this notice, the proposed Settlement, or your eligibility to participate in the Settlement should be directed to the Claims Administrator or Lead Counsel. Requests for the Notice and Claim Form should be made to: SolarWinds Securities Litigation, c/o Equi, P.O. Box 3217, Portland, OR 97208-3217, 1-877-800-0442, info@SolarWindsSecuritiesLitigation.com, www.SolarWindsSecuritiesLitigation.com. Inquiries, other than requests for the Notice and Claim Form, should be made to Lead Counsel: John Rizzo-Hamilton, 348 Bernersville Avenue, Berwyn & Coopers LLP, 1251 Avenue of the Americas, 44th Floor, New York, NY 10020, 1-800-393-8496, settlements@bjbllaw.com. By Order of the Court



# Bernstein Litowitz Berger & Grossmann LLP Announces Proposed Settlement of Class Action Involving Purchasers of SolarWinds Corporation Common Stock

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NEWS PROVIDED BY

**Bernstein Litowitz Berger & Grossmann LLP →**

Mar 21, 2023, 08:00 ET

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AUSTIN, Texas, March 21, 2023 /PRNewswire/ --

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

IN RE SOLARWINDS CORPORATION SECURITIES LITIGATION
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Case No. 1:21-cv-00138-RP

CLASS ACTION

**SUMMARY NOTICE OF (I) PENDENCY OF CLASS ACTION  
AND PROPOSED SETTLEMENT; (II) SETTLEMENT FAIRNESS HEARING; AND  
(III) MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES**

**TO: all persons who purchased or otherwise acquired SolarWinds Corporation ("SolarWinds") common stock during the period from October 18, 2018 through December 17, 2020, inclusive (the "Class Period"), and who were damaged thereby (the "Settlement Class")<sup>1</sup>:**

**PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS WILL BE AFFECTED BY A CLASS ACTION LAWSUIT PENDING IN THIS COURT.**



YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Western District of Texas (the "Court"), that the above-captioned securities class action (the "Action") is pending in the Court.

YOU ARE ALSO NOTIFIED that Lead Plaintiff in the Action, on behalf of itself and the Settlement Class, has reached a proposed settlement of the Action for \$26,000,000 in cash (the "Settlement"). If approved, the Settlement will resolve all claims in the Action.

A hearing will be held on **July 28, 2023 at 2:00 p.m.**, before the Honorable Robert Pitman at the United States District Court for the Western District of Texas, Austin Division, Courtroom 4 of the United States Courthouse, 501 West Fifth Street, Austin, Texas 78701, to determine: (i) whether the proposed Settlement should be approved as fair, reasonable, and adequate; (ii) whether, for purposes of the proposed Settlement only, the Action should be certified as a class action on behalf of the Settlement Class, Lead Plaintiff should be certified as Class Representative for the Settlement Class, and Lead Counsel should be appointed as Class Counsel for the Settlement Class; (iii) whether the Action should be dismissed with prejudice against Defendants, and the Releases specified and described in the Stipulation and Agreement of Settlement dated November 28, 2022 (and in the Notice) should be granted; (iv) whether the proposed Plan of Allocation should be approved as fair and reasonable; and (v) whether Lead Counsel's application for an award of attorneys' fees and expenses should be approved.

**If you are a member of the Settlement Class, your rights will be affected by the pending Action and the Settlement, and you may be entitled to share in the Net Settlement Fund.** If you have not yet received the Notice and Claim Form, you may obtain copies of these documents by contacting the Claims Administrator at: *SolarWinds Securities Litigation*, c/o Epiq, P.O. Box 3217, Portland, OR 97208-3217, 1-877-890-0042, [info@SolarWindsSecuritiesLitigation.com](mailto:info@SolarWindsSecuritiesLitigation.com). Copies of the Notice and Claim Form can also be downloaded from the Settlement website, [www.SolarWindsSecuritiesLitigation.com](http://www.SolarWindsSecuritiesLitigation.com).

If you are a member of the Settlement Class, in order to be eligible to receive a payment from the Settlement, you must submit a Claim Form **postmarked (or submitted online) no later than July 7, 2023**. If you are a Settlement Class Member and do not submit a proper Claim Form, you will not be eligible to receive a payment from the Settlement, but you will nevertheless be bound by any judgments or orders entered by the Court in the Action.

If you are a member of the Settlement Class and wish to exclude yourself from the Settlement Class, you must submit a request for exclusion such that it is **received no later than July 7, 2023**, in accordance with the instructions set forth in the Notice. If you properly exclude yourself from the Settlement Class, you will not be bound by any judgments or orders entered by the Court in the Action and you will not be eligible to receive a payment from the Settlement.

Any objections to the proposed Settlement, the proposed Plan of Allocation, or Lead Counsel's motion for attorneys' fees and expenses must be filed with the Court and delivered to Lead Counsel and SolarWinds' Counsel such that they are **received no later than July 7, 2023**, in accordance with the instructions set forth in the Notice.

**Please do not contact the Court, the Office of the Clerk of the Court, Defendants, or their counsel regarding this notice. All questions about this notice, the proposed Settlement, or your eligibility to participate in the Settlement should be directed to the Claims Administrator or Lead Counsel.**

Requests for the Notice and Claim Form should be made to:

*SolarWinds Securities Litigation*  
c/o Epiq  
P.O. Box 3217  
Portland, OR 97208-3217  
1-877-890-0042

[info@SolarWindsSecuritiesLitigation.com](mailto:info@SolarWindsSecuritiesLitigation.com)  
[www.SolarWindsSecuritiesLitigation.com](http://www.SolarWindsSecuritiesLitigation.com)

Inquiries, other than requests for the Notice and Claim Form, should be made to Lead Counsel:

John Rizio-Hamilton, Esq.  
Bernstein Litowitz Berger & Grossmann LLP  
1251 Avenue of the Americas, 44th Floor  
New York, NY 10020  
1-800-380-8496  
[settlements@blbglaw.com](mailto:settlements@blbglaw.com)

By Order of the Court

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<sup>1</sup> Certain persons and entities are excluded from the Settlement Class by definition, as set forth in the full Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for Attorneys' Fees and Litigation Expenses (the "Notice"), available at

URL// [www.SolarWindsSecuritiesLitigation.com](http://www.SolarWindsSecuritiesLitigation.com)

SOURCE Bernstein Litowitz Berger & Grossmann LLP

# **Exhibit 5**

**EXHIBIT 5**

*In re SolarWinds Corporation Securities Litigation*  
Case No. 1:21-cv-00138-RP (W.D. Tex.)

**SUMMARY OF PLAINTIFFS' COUNSEL'S  
LODESTAR AND EXPENSES**

<b>Ex.</b>	<b>FIRM</b>	<b>HOURS</b>	<b>LODESTAR</b>	<b>EXPENSES</b>
5A	Bernstein Litowitz Berger & Grossmann LLP	6,246.00	\$3,371,281.25	\$269,504.27
5B	Martin & Drought, P.C.	46.20	\$27,045.00	\$944.75
	<b>TOTAL:</b>	<b>6,292.20</b>	<b>\$3,398,326.25</b>	<b>\$270,449.02</b>

# **Exhibit 5A**

**FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

IN RE SOLARWINDS CORPORATION  
SECURITIES LITIGATION

Case No. 1:21-cv-00138-RP

CLASS ACTION

**DECLARATION OF JONATHAN D. USLANER  
ON BEHALF OF BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP  
IN SUPPORT OF LEAD COUNSEL’S MOTION FOR  
ATTORNEYS’ FEES AND LITIGATION EXPENSES**

I, Jonathan D. Uslaner, hereby declare as follows:

1. I am a partner in the law firm of Bernstein Litowitz Berger & Grossmann LLP (“BLB&G”). I submit this declaration in support of Lead Counsel’s motion for an award of attorneys’ fees in connection with services rendered by Plaintiffs’ Counsel in the above-captioned securities class action (“Action”), as well as for payment of Litigation Expenses incurred by my firm in connection with the Action.<sup>1</sup> Unless otherwise stated, I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

2. My firm, as Lead Counsel for Lead Plaintiff and the Settlement Class, was involved in all aspects of the prosecution and resolution of the Action, as set forth in my Declaration in Support of: (I) Lead Plaintiff’s Motion for Final Approval of Settlement and Plan of Allocation; and (II) Lead Counsel’s Motion for Attorneys’ Fees and Litigation Expenses.

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<sup>1</sup> All capitalized terms that are not otherwise defined herein shall have the meanings set forth in the Stipulation and Agreement of Settlement dated November 28, 2022 (ECF No. 97-1).

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by each BLB&G attorney and professional support staff employee who devoted ten (10) or more hours to the Action from its inception through and including May 30, 2023, and the lodestar calculation for those individuals based on their current hourly rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the hourly rates for such personnel in their final year of employment with my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by BLB&G. All time expended in preparing this application for fees and expenses has been excluded.

4. BLB&G reviewed these time and expense records to prepare this Declaration. The purpose of this review was to confirm both the accuracy of the time entries and expenses and the necessity for, and reasonableness of, the time and expenses committed to the litigation. I believe that the time reflected in the firm's lodestar calculation and the expenses for which payment is sought as stated in this Declaration are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation.

5. The hourly rates for the BLB&G attorneys and professional support staff employees included in Exhibit 1 are their standard rates and are the same as, or comparable to, the rates submitted by my firm and accepted by courts for lodestar cross-checks in other class action fee applications. *See, e.g., In re Venator Materials PLC Sec. Litig.*, No. 4:19-cv-03464 (S.D. Tex. Sept. 15, 2022), ECF No. 129; *see also, e.g., Pub. Empls' Ret. Sys. of Miss. v. Mohawk Indus., Inc.*, Civ. A. No. 4:20-cv-00005-VMC (N.D. Ga. May 31, 2023), ECF No. 138; *In re Frontier Commc'ns. S'holder Litig.*, No. 3:17-cv-01617-VAB (D. Conn. May 20, 2022), ECF



No. 214; *In re Merit Med. Sys., Inc. Sec. Litig.*, No. 8:19-cv-02326-DOC-ADS (C.D. Cal. Apr. 15, 2022), ECF No. 118.

6. My firm's rates are set based on periodic analysis of rates used by firms performing comparable work and that have been approved by courts. Different timekeepers within the same employment category (*e.g.*, partners, associates, paralegals, etc.) may have different rates based on a variety of factors, including years of practice, years at the firm, year in the current position (*e.g.*, years as a partner), relevant experience, relative expertise, and the rates of similarly experienced peers at our firm or other firms.

7. The number of hours expended by BLB&G in the Action, from inception through May 30, 2023, as reflected in Exhibit 1, is 6,246. The lodestar for my firm, as reflected in Exhibit 1, is \$3,371,281.25.

8. As set forth in Exhibit 2 hereto, BLB&G is seeking payment for \$269,504.27 in expenses incurred in connection with the prosecution and resolution of the Action. Expense items are reported separately and are not duplicated in my firm's hourly rates. The following is additional information regarding certain of these expenses:

a. **Experts & Consultants** (\$184,342.25). Lead Plaintiff retained and consulted with highly qualified experts in financial economics and the cybersecurity industry to assist in the prosecution of this Action.

(1) Lead Plaintiff incurred \$169,641.00 for work performed by Dr. Steven P. Feinstein, a financial economist who served as Lead Plaintiff's expert on market efficiency and class-wide damages, and his team at Crowinshield Financial Research. Dr. Feinstein submitted an expert report in connection with Lead Plaintiff's motion for class certification in which he opined that SolarWinds' common stock traded in an efficient market during

the Class Period and that per-share damages could be measured for all class members using a common methodology.

(2) Lead Plaintiff also incurred \$9,641.25 for work performed by Dr. Michael Hartzmark and his team at Forensic Economics. Dr. Hartzmark provided Lead Plaintiff with expert advice on damages and loss causation issues in connection with preparing the Complaint and for purposes of settlement negotiations. Dr. Hartzmark and his team also assisted in the preparation of the Plan of Allocation.

(3) Lead Counsel also consulted Professor Justin Capos, who provided expert advice on cybersecurity issues and incurred \$5,060.00 for that work.

b. **Mediation** (\$13,580.00). This represents Lead Plaintiff's share of fees paid to Phillips ADR Enterprises, P.C. for the services of the mediator, Michelle Yoshida. Ms. Yoshida conducted two formal mediation sessions in December 2021 and October 2022 that led to the Settlement of the Action.

c. **Online Factual Research** (\$22,547.93) and **Online Legal Research** (\$19,703.91). The charges reflected are for out-of-pocket payments to vendors such as Westlaw, Lexis/Nexis, Refinitiv, Bureau of Nation Affairs, Thompson Reuters, Court Alert, and PACER for research done in connection with this litigation. These resources were used to obtain access to court filings, to conduct legal research and cite-checking of briefs, and to obtain factual information regarding the claims asserted through access to various financial databases and other factual databases. These expenses represent the actual expenses incurred by BLB&G for use of these services in connection with this litigation. There are no administrative charges included in these figures. Online research is billed to each case based on actual usage at a charge set by the vendor. When BLB&G

utilizes online services provided by a vendor with a flat-rate contract, access to the service is by a billing code entered for the specific case being litigated. At the end of each billing period, BLB&G's costs for such services are allocated to specific cases based on the percentage of use in connection with that specific case in the billing period.

d. **Document Management & Litigation Support** (\$19,806.80). BLB&G seeks \$19,806.80 for the costs associated with establishing and maintaining the internal document database that was used by Lead Counsel to process and review the documents produced by Defendants in this Action. BLB&G charges a rate of \$4 per gigabyte of data per month and \$17 per user to recover the costs associated with maintaining its document database management system, which includes the costs to BLB&G of necessary software licenses and hardware. BLB&G has conducted a review of market rates charged for the similar services performed by third-party document management vendors and found that its rate was at least 80% below the market rates charged by these vendors, resulting in a savings to the class.

e. **Special Counsel** (\$4,375.00). Lead Counsel incurred \$4,375.00 in attorneys' fees for the retention of independent counsel, Hach Rose Schirripa & Cheverie LLP, to represent a former SolarWinds employee that Lead Counsel contacted during the course of its investigation and who wished to be represented by independent counsel. Similar expenses have routinely been approved by courts. *See, e.g., SEB Inv. Mgmt. AB v. Symantec Corp.*, No. C 18-02902-WHA, slip op. at 15 (N.D. Cal. Feb. 10, 2022) (awarding expenses reimbursing class counsel for the costs of paying for independent counsel for third-party witnesses); *In re Willis Towers Watson PLC Proxy Litig.*, No. 1:17-cv-1338-AJT-JFA, slip op. at 1-2-3 (E.D. Va. May 21, 2021), ECF No. 347 (same); *In re Impinj*,

*Inc. Sec. Litig.*, No. 3:18-cv-05704-RSL, slip op. at 1 (W.D. Wash. Nov. 20, 2020), ECF No. 106 (same). *Okla. Law Enforcement Ret. Sys. v. Adeptus Health Inc.*, Case No. 4:17-CV-0449-ALM, slip op. at 2 (E.D. Tex. May 20, 2020), ECF No. 289 (same).

f. **Working Meals** (\$493.39). In-office working meals are capped at \$25 per person for lunch and \$40 per person for dinner.

9. The expenses incurred by BLB&G in the Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred. I believe these expenses were reasonable and expended for the benefit of the Settlement Class in the Action.

10. With respect to the standing of my firm, attached hereto as Exhibit 3 is a firm résumé, which includes information about my firm and biographical information concerning the firm's attorneys.

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

Dated: June 23, 2023

Respectfully submitted,

/s/ Jonathan D. Uslander  
Jonathan D. Uslander

**EXHIBIT 1**

*In re SolarWinds Corporation Securities Litigation*  
Case No. 1:21-cv-00138-RP (W.D. Tex.)

**BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP****TIME REPORT**

From Inception Through May 30, 2023

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>LODESTAR</b>
<b>Partners</b>			
John Rizio-Hamilton	215.75	\$1,150	\$248,112.50
Hannah Ross	24.00	\$1,150	\$27,600.00
Gerald Silk	31.00	\$1,250	\$38,750
Jonathan D. Uslander	665.00	\$975	\$648,375.00
<b>Senior Counsel</b>			
David L. Duncan	72.50	\$825	\$59,812.50
Catherine Van Kampen	22.25	\$775	\$17,243.75
<b>Associates</b>			
Girolamo Brunetto	205.75	\$650	\$133,737.50
Benjamin Horowitz	759.25	\$475	\$360,643.75
Thomas Sperber	509.25	\$475	\$241,893.75
<b>Staff Attorneys</b>			
Ryan Candee	717.75	\$450	\$322,987.50
Juan Lossada	818.75	\$450	\$368,437.50
Uju Chukwuanu	843.25	\$425	\$358,381.25
<b>Financial Analysts</b>			
Nick DeFilippis	14.00	\$650	\$9,100.00
Rachel Graf	25.50	\$400	\$10,200.00
Tanjila Sultana	37.50	\$475	\$17,812.50
Adam Weinschel	36.75	\$600	\$22,050.00

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>LODESTAR</b>
<b>Investigators</b>			
Amy Bitkower	50.00	\$600	\$30,000.00
Jacob Foster	108.50	\$325	\$35,262.50
Jenna Goldin	379.50	\$425	\$161,287.50
<b>Case Managers &amp; Paralegals</b>			
Cindy Bomzer-Stein	108.50	\$325	\$35,262.50
Khristine De Leon	37.25	\$325	\$12,106.25
Janielle Lattimore	40.25	\$400	\$16,100.00
Matthew Mahady	28.25	\$375	\$10,593.75
Matthew Molloy	74.75	\$325	\$24,293.75
Toby Saviano	41.00	\$375	\$15,375.00
Melody Yaghoubzadeh	279.75	\$375	\$104,906.25
<b>Litigation Support</b>			
Julio Velazquez	61.75	\$400	\$24,700.00
<b>Managing Clerk</b>			
Mahiri Buffong	38.25	\$425	\$16,256.25
<b>TOTALS:</b>	<b>6,246.00</b>		<b>\$3,371,281.25</b>

**EXHIBIT 2**

*In re SolarWinds Corporation Securities Litigation*  
Case No. 1:21-cv-00138-RP (W.D. Tex.)

**BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP****EXPENSE REPORT**

<b>CATEGORY</b>	<b>AMOUNT</b>
Service of Process	\$928.20
PSLRA Notice	\$2,175.00
Online Factual Research	\$22,547.93
Online Legal Research	\$19,703.91
Document Management & Litigation Support	\$19,806.80
Telephone	\$762.64
Postage & Express Mail	\$557.76
Local Transportation	\$231.39
Working Meals	\$493.39
Experts & Consultants	\$184,342.25
Special Counsel	\$4,375.00
Mediation	\$13,580.00
<b>TOTAL:</b>	<b>\$269,504.27</b>

**EXHIBIT 3**

*In re SolarWinds Corporation Securities Litigation*  
Case No. 1:21-cv-00138-RP (W.D. Tex.)

**BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP**

**FIRM RESUME**





*Bernstein Litowitz Berger & Grossmann LLP*  
*Attorneys at Law*

# Firm Resume

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*Since our founding in 1983, Bernstein Litowitz Berger & Grossmann LLP has obtained many of the largest monetary recoveries in history—over \$37 billion on behalf of investors. Unique among our peers, the firm has obtained the largest settlements ever agreed to by public companies related to securities fraud, including four of the ten largest in history. Working with our clients, we have also used the litigation process to achieve precedent-setting reforms which have increased market transparency, held wrongdoers accountable and improved corporate business practices in groundbreaking ways.*

## Firm Overview

Bernstein Litowitz Berger & Grossmann LLP (BLB&G), a national law firm with offices located in New York, California, Delaware, Louisiana, and Illinois, prosecutes class and private actions on behalf of individual and institutional clients. The firm's litigation practice areas include securities class and direct actions in federal and state courts; corporate governance and shareholder rights litigation, including claims for breach of fiduciary duty and proxy violations; mergers and acquisitions and transactional litigation; alternative dispute resolution; and distressed debt and bankruptcy. We also handle, on behalf of major institutional clients and lenders, more general complex commercial litigation involving allegations of breach of contract, accountants' liability, breach of fiduciary duty, fraud, and negligence.

We are the nation's leading firm representing institutional investors in securities fraud class action litigation. The firm's institutional client base includes U.S. public pension funds the New York State Common Retirement Fund; the California Public Employees' Retirement System (CalPERS); the Los Angeles County Employees Retirement Association (LACERA); the Chicago Municipal, Police and Labor Retirement Systems; the Teacher Retirement System of Texas; the Arkansas Teacher Retirement System; the Florida State Board of Administration; the Public Employees' Retirement System of Mississippi; the New York State Teachers' Retirement System; the Ohio Public Employees Retirement System; the State Teachers Retirement System of Ohio; the Oregon Public Employees Retirement System; the Virginia Retirement System; the Louisiana School, State, Teachers and Municipal Police Retirement Systems; the Public School Teachers' Pension and Retirement Fund of Chicago; the New Jersey Division of Investment of the Department of the Treasury; TIAA-CREF and other private institutions; as well as numerous other public and Taft-Hartley pension entities. Our European client base includes APG; Aegon AM; ATP; Blue Sky Group; Hermes IM; Robeco; SEB; Handelsbanken; Nykredit; PGB; and PGGM, among others.

## More Top Securities Recoveries

Since its founding in 1983, BLB&G has prosecuted some of the most complex cases in history and has obtained over \$37 billion on behalf of investors. Unique among its peers, the firm has negotiated and obtained many of the largest securities class action recoveries in history, including:

- *In re WorldCom, Inc. Securities Litigation – \$6.19 billion recovery*
- *In re Cendant Corporation Securities Litigation – \$3.3 billion recovery*

- *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation* – \$2.43 billion recovery
- *In re Nortel Networks Corporation Securities Litigation (Nortel II)* – \$1.07 billion recovery
- *In re Merck & Co., Inc. Securities Litigation* – \$1.06 billion recovery
- *In re McKesson HBOC, Inc. Securities Litigation* – \$1.05 billion recovery

Based on our record of success, BLB&G has been at the top of the rankings by ISS Securities Class Action Services (ISS-SCAS), a leading industry research publication that provides independent and objective third-party analysis and statistics on securities-litigation law firms, since its inception. In its most recent report, [\*Top 100 U.S. Class Action Settlements of All-Time\*](#), ISS-SCAS once again ranked BLB&G as the top firm in the field for the eleventh year in a row. BLB&G has served as lead or co-lead counsel in 37 of the ISS-SCAS's top 100 U.S. securities-fraud settlements—more than twice as many as any other firm—and recovered over \$26 billion for investors in those cases, nearly \$10 billion more than any other plaintiffs' securities firm.

## Giving Shareholders a Voice and Changing Business Practices for the Better

BLB&G was among the first law firms ever to obtain meaningful corporate governance reforms through litigation. In courts throughout the country, we prosecute shareholder class and derivative actions, asserting claims for breach of fiduciary duty and proxy violations wherever the conduct of corporate officers and/or directors, or M&A transactions, seek to deprive shareholders of fair value, undermine shareholder voting rights, or allow management to profit at the expense of shareholders.

We have prosecuted seminal cases establishing precedent which has increased market transparency, held wrongdoers accountable, addressed issues in the boardroom and executive suite, challenged unfair deals, and improved corporate business practices in ground-breaking ways.

From setting new standards of director independence, to restructuring board practices in the wake of persistent illegal conduct; from challenging the improper use of defensive measures and deal protections for management's benefit, to confronting stock options backdating abuses and other self-dealing by executives; we have confronted a variety of questionable, unethical and proliferating corporate practices. Seeking to reform faulty management structures and address breaches of fiduciary duty by corporate officers and directors, we have obtained unprecedented victories on behalf of shareholders seeking to improve governance and protect the shareholder franchise.

## Practice Areas

### Securities Fraud Litigation

Securities fraud litigation is the cornerstone of the firm's litigation practice. Since its founding, the firm has had the distinction of having tried and prosecuted many of the most high-profile securities fraud class actions in history, recovering billions of dollars and obtaining unprecedented corporate governance reforms on behalf of our clients. BLB&G continues to play a leading role in major securities litigation pending in federal and state courts, and the firm remains one of the nation's leaders in representing institutional investors in securities fraud class litigation.

The firm also pursues direct actions in securities fraud cases when appropriate. By selectively opting out of certain securities class actions, we seek to resolve our clients' claims efficiently and for substantial multiples of what they might otherwise recover from related class action settlements.

Our attorneys have extensive experience in the laws that regulate the securities markets and in the disclosure requirements of corporations that issue publicly traded securities. Many also have accounting backgrounds. The group has access to state-of-the-art, online financial wire services and databases, which enable it to instantaneously investigate any potential securities fraud action involving a public company's debt and equity securities. Biographies for our attorneys can be accessed on the firm's website by clicking [here](#).

### Corporate Governance and Shareholder Rights

Our Corporate Governance and Shareholder Rights attorneys prosecute derivative actions, claims for breach of fiduciary duty, and proxy violations on behalf of individual and institutional investors in state and federal courts throughout the country. We have prosecuted actions challenging numerous highly publicized corporate transactions which violated fair process, fair price, and the applicability of the business judgment rule, and have also addressed issues of corporate waste, shareholder voting rights claims, and executive compensation.

Our attorneys have prosecuted numerous cases regarding the improper "backdating" of executive stock options which resulted in windfall undisclosed compensation to executives at the direct expense of shareholders—and returned hundreds of millions of dollars to company coffers. We also represent institutional clients in lawsuits seeking to enforce fiduciary obligations in connection with Mergers & Acquisitions and "Going Private" transactions that deprive shareholders of fair value when participants buy companies from their public shareholders "on the cheap." Although enough shareholders accept the consideration offered for the transaction to close, many sophisticated investors correctly recognize and ultimately enjoy the increased returns to be obtained by pursuing appraisal rights and demanding that courts assign a "true value" to the shares taken private in these transactions.

Our attorneys are well versed in changing SEC rules and regulations on corporate governance issues and have a comprehensive understanding of a wide variety of corporate law transactions and both substantive and courtroom expertise in the specific legal areas involved. As a result of the firm's high-profile and widely recognized capabilities, our attorneys are increasingly in demand with institutional investors who are exercising a more assertive voice with corporate boards regarding corporate governance issues and the boards' accountability to shareholders.

## Distressed Debt and Bankruptcy

BLB&G has obtained billions of dollars through litigation on behalf of bondholders and creditors of distressed and bankrupt companies, as well as through third-party litigation brought by bankruptcy trustees and creditors' committees against auditors, appraisers, lawyers, officers and directors, and other defendants who may have contributed to client losses. As counsel, we advise institutions and individuals nationwide in developing strategies and tactics to recover assets presumed lost as a result of bankruptcy. Our record in this practice area is characterized by extensive trial experience in addition to successful settlements.

## Commercial Litigation

BLB&G provides contingency fee representation in complex business litigation and has obtained substantial recoveries on behalf of investors, corporations, bankruptcy trustees, creditor committees, and other business entities. We have faced down the most powerful and well-funded law firms and defendants in the country—and consistently prevailed. For example, on behalf of the bankruptcy trustee, the firm prosecuted *BFA Liquidation Trust v. Arthur Andersen*, arising from the largest non-profit bankruptcy in U.S. history. After two years of litigation and a week-long trial, the firm obtained a \$217 million recovery from Andersen for the Trust. Combined with other recoveries, the total amounted to more than 70 percent of the Trust's losses.

Having obtained huge recoveries with nominal out-of-pocket expenses and fees of less than 20 percent, we have repeatedly demonstrated that valuable claims are best prosecuted by a first-rate litigation firm on a contingent basis at negotiated percentages. Legal representation need not compound the risk and high cost inherent in today's complex and competitive business environment. We are paid only if we (and our clients) win. The result: the highest quality legal representation at a fair price.

## Alternative Dispute Resolution

BLB&G offers clients an accomplished team and a creative venue in which to resolve conflicts outside of the litigation process. We have experience in U.S. and international disputes and our attorneys have led complex business-to-business arbitrations and mediations domestically and abroad representing clients before all the major arbitration tribunals, including the American Arbitration Association, FINRA, JAMS, International Chamber of Commerce, and the London Court of International Arbitration.

Our lawyers have successfully arbitrated cases that range from complex business-to-business disputes to individuals' grievances with employers. It is our experience that in some cases, a well-executed arbitration process can resolve disputes faster, with limited appeals and with a higher level of confidentiality than public litigation.

In the wake of the credit crisis, for example, we successfully represented numerous former executives of a major financial institution in arbitrations relating to claims for compensation. We have also assisted clients with disputes involving failure to honor compensation commitments, disputes over the purchase of securities, businesses seeking compensation for uncompleted contracts, and unfulfilled financing commitments.

## Feedback from The Courts

Throughout the firm's history, many courts have recognized the professional excellence and diligence of the firm and its members. A few examples are set forth below.

### *In re WorldCom, Inc. Securities Litigation*

- The Honorable Denise Cote of the United States District Court for the Southern District of New York

"I have the utmost confidence in plaintiffs' counsel...they have been doing a superb job...The Class is extraordinarily well represented in this litigation."

"The magnitude of this settlement is attributable in significant part to Lead Counsel's advocacy and energy...The quality of the representation given by Lead Counsel...has been superb...and is unsurpassed in this Court's experience with plaintiffs' counsel in securities litigation."

"Lead Counsel has been energetic and creative...Its negotiations with the Citigroup Defendants have resulted in a settlement of historic proportions."

\* \* \*

### *In re Clarent Corporation Securities Litigation*

- The Honorable Charles R. Breyer of the United States District Court for the Northern District of California

"It was the best tried case I've witnessed in my years on the bench...."

"[A]n extraordinarily civilized way of presenting the issues to you [the jury]...We've all been treated to great civility and the highest professional ethics in the presentation of the case..."

"These trial lawyers are some of the best I've ever seen."

\* \* \*

### *Landry's Restaurants, Inc. Shareholder Litigation*

- Vice Chancellor J. Travis Laster of the Delaware Court of Chancery

"I do want to make a comment again about the excellent efforts...put into this case...This case, I think, shows precisely the type of benefits that you can achieve for stockholders and how representative litigation can be a very important part of our corporate governance system...you hold up this case as an example of what to do."

\* \* \*

### *McCall V. Scott (Columbia/HCA Derivative Litigation)*

- The Honorable Thomas A. Higgins of the United States District Court for the Middle District of Tennessee

"Counsel's excellent qualifications and reputations are well documented in the record, and they have litigated this complex case adeptly and tenaciously throughout the six years it has been pending. They assumed an enormous risk and have shown great patience by taking this case on a contingent basis, and despite an early setback they have persevered and brought about not only a large cash settlement but sweeping corporate reforms that may be invaluable to the beneficiaries."

## Significant Recoveries

BLB&G is counsel in many diverse nationwide class and individual actions and has obtained many of the largest and most significant recoveries in history. The firm has successfully identified, investigated, and prosecuted many of the most significant securities and shareholder actions in history, recovering billions of dollars on behalf of defrauded investors and obtaining groundbreaking corporate-governance reforms. These resolutions include six recoveries of over \$1 billion, more than any other firm in our field. Examples of cases with our most significant recoveries include:

### Securities Class Actions

**Case:** *In re WorldCom, Inc. Securities Litigation*

**Court:** United States District Court for the Southern District of New York

**Highlights:** \$6.19 billion securities fraud class action recovery—the second largest in history; unprecedented recoveries from Director Defendants.

**Case Summary:** Investors suffered massive losses in the wake of the financial fraud and subsequent bankruptcy of former telecom giant WorldCom, Inc. This litigation alleged that WorldCom and others disseminated false and misleading statements to the investing public regarding its earnings and financial condition in violation of the federal securities and other laws. It further alleged a nefarious relationship between Citigroup subsidiary Salomon Smith Barney and WorldCom, carried out primarily by Salomon employees involved in providing investment banking services to WorldCom, and by WorldCom's former CEO and CFO. As Court-appointed Co-Lead Counsel representing Lead Plaintiff the New York State Common Retirement Fund, we obtained unprecedented settlements totaling more than \$6 billion from the Investment Bank Defendants who underwrote WorldCom bonds, including a \$2.575 billion cash settlement to settle all claims against the Citigroup Defendants. On the eve of trial, the 13 remaining "Underwriter Defendants," including J.P. Morgan Chase, Deutsche Bank and Bank of America, agreed to pay settlements totaling nearly \$3.5 billion to resolve all claims against them. Additionally, the day before trial was scheduled to begin, all of the former WorldCom Director Defendants agreed to pay over \$60 million to settle the claims against them. An unprecedented first for outside directors, \$24.75 million of that amount came out of the pockets of the individuals—20% of their collective net worth. *The Wall Street Journal*, in its coverage, profiled the settlement as having "shaken Wall Street, the audit profession and corporate boardrooms." After four weeks of trial, Arthur Andersen, WorldCom's former auditor, settled for \$65 million. Subsequent settlements were reached with the former executives of WorldCom, and then with Andersen, bringing the total obtained for the Class to over \$6.19 billion.



- Case:** *In re Cendant Corporation Securities Litigation*
- Court:** United States District Court for the District of New Jersey
- Highlights:** \$3.3 billion securities fraud class action recovery – the third largest in history; significant corporate governance reforms obtained.
- Summary:** The firm was Co-Lead Counsel in this class action against Cendant Corporation, its officers and directors and Ernst & Young (E&Y), its auditors, for their role in disseminating materially false and misleading financial statements concerning the company’s revenues, earnings and expenses for its 1997 fiscal year. As a result of company-wide accounting irregularities, Cendant restated its financial results for its 1995, 1996, and 1997 fiscal years and all fiscal quarters therein. Cendant agreed to settle the action for \$2.8 billion and to adopt some of the most extensive corporate governance changes in history. E&Y settled for \$335 million. These settlements remain the largest sums ever recovered from a public company and a public accounting firm through securities class action litigation. BLB&G represented Lead Plaintiffs CalPERS (the California Public Employees’ Retirement System), the New York State Common Retirement Fund and the New York City Pension Funds, the three largest public pension funds in America, in this action.
- Case:** *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation*
- Court:** United States District Court for the Southern District of New York
- Highlights:** \$2.425 billion in cash; significant corporate governance reforms to resolve all claims. This recovery is by far the largest shareholder recovery related to the subprime meltdown and credit crisis; the single largest securities class action settlement ever resolving a Section 14(a) claim—the federal securities provision designed to protect investors against misstatements in connection with a proxy solicitation; the largest ever funded by a single corporate defendant for violations of the federal securities laws; the single largest settlement of a securities class action in which there was neither a financial restatement involved nor a criminal conviction related to the alleged misconduct; and one of the 10 largest securities class action recoveries in history.
- Summary:** The firm represented Co-Lead Plaintiffs the State Teachers Retirement System of Ohio, the Ohio Public Employees Retirement System, and the Teacher Retirement System of Texas in this securities class action filed on behalf of shareholders of Bank of America Corporation (BAC) arising from BAC’s 2009 acquisition of Merrill Lynch & Co., Inc. The action alleges that BAC, Merrill Lynch, and certain of the companies’ current and former officers and directors violated the federal securities laws by making a series of materially false statements and omissions in connection with the acquisition. These violations included the alleged failure to disclose information regarding billions of dollars of losses which Merrill had suffered before the BAC shareholder vote on the proposed acquisition, as well as an undisclosed agreement allowing Merrill to pay billions in bonuses before the acquisition closed despite these losses. Not privy to these material facts, BAC shareholders voted to approve the acquisition.

- Case:** *In re Nortel Networks Corporation Securities Litigation (Nortel II)*
- Court:** United States District Court for the Southern District of New York
- Highlights:** Over \$1.07 billion in cash and common stock recovered for the class.
- Summary:** This securities fraud class action charged Nortel Networks Corporation and certain of its officers and directors with violations of the Securities Exchange Act of 1934, alleging that the Defendants knowingly or recklessly made false and misleading statements with respect to Nortel's financial results during the relevant period. BLB&G clients the Ontario Teachers' Pension Plan Board and the Treasury of the State of New Jersey and its Division of Investment were appointed as Co-Lead Plaintiffs for the Class in one of two related actions (Nortel II), and BLB&G was appointed Lead Counsel for the Class. In a historic settlement, Nortel agreed to pay \$2.4 billion in cash and Nortel common stock to resolve both matters. Nortel later announced that its insurers had agreed to pay \$228.5 million toward the settlement, bringing the total amount of the global settlement to approximately \$2.7 billion, and the total amount of the Nortel II settlement to over \$1.07 billion.
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- Case:** *In re Merck & Co., Inc. Securities Litigation*
- Court:** United States District Court, District of New Jersey
- Highlights:** \$1.06 billion recovery for the class.
- Summary:** This case arises out of misrepresentations and omissions concerning life-threatening risks posed by the "blockbuster" COX-2 painkiller Vioxx, which Merck withdrew from the market in 2004. In January 2016, BLB&G achieved a \$1.062 billion settlement on the eve of trial after more than 12 years of hard-fought litigation that included a successful decision at the United States Supreme Court. This settlement is the second-largest recovery ever obtained in the Third Circuit, one of the top 11 securities recoveries of all time, and the largest securities recovery ever achieved against a pharmaceutical company. BLB&G represented Lead Plaintiff the Public Employees' Retirement System of Mississippi.
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- Case:** *In re McKesson HBOC, Inc. Securities Litigation*
- Court:** United States District Court for the Northern District of California
- Highlights:** \$1.05 billion recovery for the class.
- Summary:** This securities fraud litigation was filed on behalf of purchasers of HBOC, McKesson, and McKesson HBOC securities, alleging that Defendants misled the investing public concerning HBOC's and McKesson HBOC's financial results. On behalf of Lead Plaintiff the New York State Common Retirement Fund, BLB&G obtained a \$960 million settlement from the company; \$72.5 million in cash from Arthur Andersen; and, on the eve of trial, a \$10 million settlement from Bear Stearns & Co. Inc., with total recoveries reaching more than \$1 billion.

**Case:** *HealthSouth Corporation Bondholder Litigation*

**Court:** United States District Court for the Northern District of Alabama

**Highlights:** \$804.5 million in total recoveries.

**Summary:** In this litigation, BLB&G was the appointed Co-Lead Counsel for the bond holder class, representing Lead Plaintiff the Retirement Systems of Alabama. This action arose from allegations that Birmingham, Alabama based HealthSouth Corporation overstated its earnings at the direction of its founder and former CEO Richard Scrushy. Subsequent revelations disclosed that the overstatement actually exceeded over \$2.4 billion, virtually wiping out all of HealthSouth's reported profits for the prior five years. A total recovery of \$804.5 million was obtained in this litigation through a series of settlements, including an approximately \$445 million settlement for shareholders and bondholders, a \$100 million in cash settlement from UBS AG, UBS Warburg LLC, and individual UBS Defendants, and \$33.5 million in cash from the company's auditor. The total settlement for injured HealthSouth bond purchasers exceeded \$230 million, recouping over a third of bond purchaser damages.

**Case:** *In re Washington Public Power Supply System Litigation*

**Court:** United States District Court for the District of Arizona

**Highlights:** Over \$750 million—the largest securities fraud settlement ever achieved at the time.

**Summary:** BLB&G was appointed Chair of the Executive Committee responsible for litigating on behalf of the class in this action. The case was litigated for over seven years, and involved an estimated 200 million pages of documents produced in discovery; the depositions of 285 fact witnesses and 34 expert witnesses; more than 25,000 introduced exhibits; six published district court opinions; seven appeals or attempted appeals to the Ninth Circuit; and a three-month jury trial, which resulted in a settlement of over \$750 million—then the largest securities fraud settlement ever achieved.

**Case:** *In re Lehman Brothers Equity/Debt Securities Litigation*

**Court:** United States District Court for the Southern District of New York

**Highlights:** \$735 million in total recoveries.

**Summary:** Representing the Government of Guam Retirement Fund, BLB&G successfully prosecuted this securities class action arising from Lehman Brothers Holdings Inc.'s issuance of billions of dollars in offerings of debt and equity securities that were sold using offering materials that contained untrue statements and missing material information.

After four years of intense litigation, Lead Plaintiffs achieved a total of \$735 million in recoveries consisting of: a \$426 million settlement with underwriters of Lehman securities offerings; a \$90 million settlement with former Lehman directors and officers; a \$99 million settlement that resolves claims against Ernst & Young, Lehman's former auditor (considered one of the top 10 auditor settlements ever achieved); and a \$120 million settlement that resolves claims against UBS Financial

Services, Inc. This recovery is truly remarkable not only because of the difficulty in recovering assets when the issuer defendant is bankrupt, but also because no financial results were restated, and the auditors never disavowed the statements.

**Case:** *In re Citigroup, Inc. Bond Action Litigation*

**Court:** United States District Court for the Southern District of New York

**Highlights:** \$730 million cash recovery; second largest recovery in a litigation arising from the financial crisis.

**Summary:** In the years prior to the collapse of the subprime mortgage market, Citigroup issued 48 offerings of preferred stock and bonds. This securities fraud class action was filed on behalf of purchasers of Citigroup bonds and preferred stock alleging that these offerings contained material misrepresentations and omissions regarding Citigroup's exposure to billions of dollars in mortgage-related assets, the loss reserves for its portfolio of high-risk residential mortgage loans, and the credit quality of the risky assets it held in off-balance sheet entities known as "structured investment vehicles." After protracted litigation lasting four years, we obtained a \$730 million cash recovery—the second largest securities class action recovery in a litigation arising from the financial crisis, and the second largest recovery ever in a securities class action brought on behalf of purchasers of debt securities. As Lead Bond Counsel for the Class, BLB&G represented Lead Bond Plaintiffs Minneapolis Firefighters' Relief Association, Louisiana Municipal Police Employees' Retirement System, and Louisiana Sheriffs' Pension and Relief Fund.

**Case:** *In re Schering-Plough Corporation/Enhance Securities Litigation; In re Merck & Co., Inc. Vytarin/Zetia Securities Litigation*

**Court:** United States District Court for the District of New Jersey

**Highlights:** \$688 million in combined settlements (Schering-Plough settled for \$473 million; Merck settled for \$215 million) in this coordinated securities fraud litigations filed on behalf of investors in Merck and Schering-Plough.

**Summary:** After nearly five years of intense litigation, just days before trial, BLB&G resolved the two actions against Merck and Schering-Plough, which stemmed from claims that Merck and Schering artificially inflated their market value by concealing material information and making false and misleading statements regarding their blockbuster anti-cholesterol drugs Zetia and Vytarin. Specifically, we alleged that the companies knew that their "ENHANCE" clinical trial of Vytarin (a combination of Zetia and a generic) demonstrated that Vytarin was no more effective than the cheaper generic at reducing artery thickness. The companies nonetheless championed the "benefits" of their drugs, attracting billions of dollars of capital. When public pressure to release the results of the ENHANCE trial became too great, the companies reluctantly announced these negative results, which we alleged led to sharp declines in the value of the companies' securities, resulting in significant losses to investors. The combined \$688 million in settlements (Schering-Plough settled for \$473 million; Merck settled for \$215 million) is the second largest securities recovery ever in the Third Circuit, among the top 25

settlements of all time, and among the ten largest recoveries ever in a case where there was no financial restatement. BLB&G represented Lead Plaintiffs Arkansas Teacher Retirement System, the Public Employees' Retirement System of Mississippi, and the Louisiana Municipal Police Employees' Retirement System.

**Case:** *In re Lucent Technologies, Inc. Securities Litigation*

**Court:** United States District Court for the District of New Jersey

**Highlights:** \$667 million in total recoveries; the appointment of BLB&G as Co-Lead Counsel is especially noteworthy as it marked the first time since the 1995 passage of the Private Securities Litigation Reform Act that a court reopened the lead plaintiff or lead counsel selection process to account for changed circumstances, new issues, and possible conflicts between new and old allegations.

**Summary:** BLB&G served as Co-Lead Counsel in this securities class action, representing Lead Plaintiffs the Parnassus Fund, Teamsters Locals 175 & 505 D&P Pension Trust, Anchorage Police and Fire Retirement System, and the Louisiana School Employees' Retirement System. The complaint accused Lucent of making false and misleading statements to the investing public concerning its publicly reported financial results and failing to disclose the serious problems in its optical networking business. When the truth was disclosed, Lucent admitted that it had improperly recognized revenue of nearly \$679 million in fiscal 2000. The settlement obtained in this case is valued at approximately \$667 million, and is composed of cash, stock, and warrants.

**Case:** *In re Wachovia Preferred Securities and Bond/Notes Litigation*

**Court:** United States District Court for the Southern District of New York

**Highlights:** \$627 million recovery—among the largest securities class action recoveries in history; third-largest recovery obtained in an action arising from the subprime mortgage crisis.

**Summary:** This securities class action was filed on behalf of investors in certain Wachovia bonds and preferred securities against Wachovia Corp., certain former officers and directors, various underwriters, and its auditor, KPMG LLP. The case alleged that Wachovia provided offering materials that misrepresented and omitted material facts concerning the nature and quality of Wachovia's multibillion-dollar option-ARM (adjustable-rate mortgage) "Pick-A-Pay" mortgage loan portfolio, and that Wachovia's loan loss reserves were materially inadequate. According to the Complaint, these undisclosed problems threatened the viability of the financial institution, requiring it to be "bailed out" during the financial crisis before it was acquired by Wells Fargo. The combined \$627 million recovery obtained in the action is among the 20 largest securities class action recoveries in history, the largest settlement ever in a class action case asserting only claims under the Securities Act of 1933, and one of a handful of securities class action recoveries obtained where there were no parallel civil or criminal actions brought by government authorities. The firm represented Co-Lead Plaintiffs Orange County Employees Retirement System and Louisiana Sheriffs' Pension and Relief Fund in this action.

- Case:** *Bear Stearns Mortgage Pass-Through Litigation*
- Court:** United States District Court for the Southern District of New York
- Highlights:** \$500 million recovery—the largest recovery ever on behalf of purchasers of residential mortgage-backed securities.
- Summary:** BLB&G served as Co-Lead Counsel in this securities action, representing Lead Plaintiffs the Public Employees’ Retirement System of Mississippi. The case alleged that Bear Stearns & Company, Inc. sold mortgage pass-through certificates using false and misleading offering documents. The offering documents contained false and misleading statements related to, among other things, (1) the underwriting guidelines used to originate the mortgage loans underlying the certificates; and (2) the accuracy of the appraisals for the properties underlying the certificates. After six years of hard-fought litigation and extensive arm’s-length negotiations, the \$500 million recovery is the largest settlement in a U.S. class action against a bank that packaged and sold mortgage securities at the center of the 2008 financial crisis.
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- Case:** *Gary Hefler et al. v. Wells Fargo & Company et al.*
- Court:** United States District Court for the Northern District of California
- Highlights:** \$480 million recovery—the fourth largest securities settlement ever achieved in the Ninth Circuit and the 32nd largest securities settlement ever in the United States.
- Summary:** BLB&G served as Lead Counsel for the Court-appointed Lead Plaintiff Union Asset Management Holding, AG in this action, which alleged that Wells Fargo and certain current and former officers and directors of Wells Fargo made a series of materially false statements and omissions in connection with Wells Fargo’s secret creation of fake or unauthorized client accounts in order to hit performance-based compensation goals. After years of presenting a business driven by legitimate growth prospects, U.S. regulators revealed in September 2016 that Wells Fargo employees were secretly opening millions of potentially unauthorized accounts for existing Wells Fargo customers. The Complaint alleged that these accounts were opened in order to hit performance targets and inflate the “cross-sell” metrics that investors used to measure Wells Fargo’s financial health and anticipated growth. When the market learned the truth about Wells Fargo’s violation of its customers’ trust and failure to disclose reliable information to its investors, the price of Wells Fargo’s stock dropped, causing substantial investor losses.
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- Case:** *Ohio Public Employees Retirement System v. Freddie Mac*
- Court:** United States District Court for the Southern District of Ohio
- Highlights:** \$410 million settlement.
- Summary:** This securities fraud class action was filed on behalf of the Ohio Public Employees Retirement System and the State Teachers Retirement System of Ohio alleging that Federal Home Loan Mortgage Corporation (Freddie Mac) and certain of its current and former officers issued false and misleading



statements in connection with the company's previously reported financial results. Specifically, the Complaint alleged that the Defendants misrepresented the company's operations and financial results by having engaged in numerous improper transactions and accounting machinations that violated fundamental GAAP precepts in order to artificially smooth the company's earnings and to hide earnings volatility. In connection with these improprieties, Freddie Mac restated more than \$5 billion in earnings. A settlement of \$410 million was reached in the case just as deposition discovery had begun and document review was complete.

**Case:** *In re Refco, Inc. Securities Litigation*

**Court:** United States District Court for the Southern District of New York

**Highlights:** Over \$407 million in total recoveries.

**Summary:** The lawsuit arises from the revelation that Refco, a once prominent brokerage, had for years secreted hundreds of millions of dollars of uncollectible receivables with a related entity controlled by Phillip Bennett, the company's Chairman and Chief Executive Officer. This revelation caused the stunning collapse of the company a mere two months after its initial public offering of common stock. As a result, Refco filed one of the largest bankruptcies in U.S. history. Settlements have been obtained from multiple company and individual defendants, resulting in a total recovery for the class of over \$407 million. BLB&G represented Co-Lead Plaintiff RH Capital Associates LLC.

**Case:** *In re Allergan, Inc. Proxy Violation Securities Litigation*

**Court:** United States District Court for the Central District of California

**Highlights:** Litigation recovered over \$250 million for investors while challenging an unprecedented insider trading scheme by billionaire hedge fund manager Bill Ackman.

**Summary:** As alleged in groundbreaking litigation, billionaire hedge fund manager Bill Ackman and his Pershing Square Capital Management fund secretly acquired a near 10% stake in pharmaceutical concern Allergan, Inc. as part of an unprecedented insider trading scheme by Ackman and Valeant Pharmaceuticals International, Inc. What Ackman knew—but investors did not—was that in the ensuing weeks, Valeant would be launching a hostile bid to acquire Allergan shares at a far higher price. Ackman enjoyed a massive instantaneous profit upon public news of the proposed acquisition, and the scheme worked for both parties as he kicked back hundreds of millions of his insider-trading proceeds to Valeant after Allergan agreed to be bought by a rival bidder. After a ferocious three-year legal battle over this attempt to circumvent the spirit of the U.S. securities laws, BLB&G obtained a \$250 million settlement for Allergan investors, and created precedent to prevent similar such schemes in the future. The Plaintiffs in this action were the State Teachers Retirement System of Ohio, the Iowa Public Employees Retirement System, and Patrick T. Johnson.

## Corporate Governance and Shareholders' Rights

**Case:** *City of Monroe Employees' Retirement System, Derivatively on Behalf of Twenty-First Century Fox, Inc. v. Rupert Murdoch, et al.*

**Court:** Delaware Court of Chancery

**Highlights:** Landmark derivative litigation established unprecedented, independent Board-level council to ensure employees are protected from workplace harassment while recouping \$90 million for the company's coffers.

**Summary:** Before the birth of the #metoo movement, BLB&G led the prosecution of an unprecedented shareholder derivative litigation against Fox News parent 21st Century Fox, Inc. arising from the systemic sexual and workplace harassment at the embattled network. After nearly 18 months of litigation, discovery and negotiation related to the shocking misconduct and the Board's extensive alleged governance failures, the parties unveil a landmark settlement with two key components: 1) the first ever Board-level watchdog of its kind—the "Fox News Workplace Professionalism and Inclusion Council" of experts (WPIC)—majority independent of the Murdochs, the Company and Board; and 2) one of the largest financial recoveries—\$90 million—ever obtained in a pure corporate board oversight dispute. The WPIC serves as a model for public companies in all industries. The firm represented 21st Century Fox shareholder the City of Monroe (Michigan) Employees' Retirement System.

**Case:** *In re McKesson Corporation Derivative Litigation*

**Court:** United States District Court, Northern District of California, Oakland Division and Delaware Chancery Court

**Highlights:** Litigation recovered \$175 million and achieved substantial corporate governance reforms.

**Summary:** BLB&G represented the Police & Fire Retirement System City of Detroit and Amalgamated Bank in this derivative class action arising from the company's role in permitting and exacerbating America's ongoing opioid crisis. The complaint, initially filed in Delaware Chancery Court, alleged that defendants breached their fiduciary duties by failing to adequately oversee McKesson's compliance with provisions of the Controlled Substances Act and a series of settlements with the Drug Enforcement Administration intended to regulate the distribution and misuse of controlled substances such as opioids. Even after paying fines and settlements in the hundreds of millions of dollars, McKesson was sued in the National Opioid Multidistrict Litigation. In May 2018, our clients joined a substantially similar action being litigated in California federal court. Acting as co-lead counsel, BLB&G played a major role in litigating the case, opposing a motion to stay the action by a special litigation committee, and engaging in extensive pretrial discovery. Ultimately, \$175 million was recovered for the benefit of McKesson's shareholders in a settlement that also created substantial corporate-governance reforms to prevent a recurrence of McKesson's inadequate legal compliance efforts.



- Case:** *UnitedHealth Group, Inc. Shareholder Derivative Litigation*
- Court:** United States District Court for the District of Minnesota
- Highlights:** Litigation recovered over \$920 million in ill-gotten compensation directly from former officers for their roles in illegally backdating stock options, while the company agreed to far-reaching reforms aimed at curbing future executive compensation abuses.
- Summary:** This shareholder derivative action filed against certain current and former executive officers and members of the Board of Directors of UnitedHealth Group, Inc. alleged that the Defendants obtained, approved and/or acquiesced in the issuance of stock options to senior executives that were unlawfully backdated to provide the recipients with windfall compensation at the direct expense of UnitedHealth and its shareholders. The firm recovered over \$920 million in ill-gotten compensation directly from the former officer Defendants—the largest derivative recovery in history. As feature coverage in *The New York Times* indicated, “investors everywhere should applaud [the UnitedHealth settlement]....[T]he recovery sets a standard of behavior for other companies and boards when performance pay is later shown to have been based on ephemeral earnings.” The Plaintiffs in this action were the St. Paul Teachers’ Retirement Fund Association, the Public Employees’ Retirement System of Mississippi, the Jacksonville Police & Fire Pension Fund, the Louisiana Sheriffs’ Pension & Relief Fund, the Louisiana Municipal Police Employees’ Retirement System and Fire & Police Pension Association of Colorado.
- Case:** *Caremark Merger Litigation*
- Court:** Delaware Court of Chancery – New Castle County
- Highlights:** Landmark Court ruling ordered Caremark’s board to disclose previously withheld information, enjoined a shareholder vote on the CVS merger offer, and granted statutory appraisal rights to Caremark shareholders. The litigation ultimately forced CVS to raise its offer by \$7.50 per share, equal to more than \$3.3 billion in additional consideration to Caremark shareholders.
- Summary:** Commenced on behalf of the Louisiana Municipal Police Employees’ Retirement System and other shareholders of Caremark RX, Inc., this shareholder class action accused the company’s directors of violating their fiduciary duties by approving and endorsing a proposed merger with CVS Corporation, all the while refusing to fairly consider an alternative transaction proposed by another bidder. In a landmark decision, the Court ordered the Defendants to disclose material information that had previously been withheld, enjoined the shareholder vote on the CVS transaction until the additional disclosures occurred, and granted statutory appraisal rights to Caremark’s shareholders—forcing CVS to increase the consideration offered to shareholders by \$7.50 per share in cash (over \$3 billion in total).

**Case:** *In re Pfizer Inc. Shareholder Derivative Litigation*

**Court:** United States District Court for the Southern District of New York

**Highlights:** Landmark settlement in which Defendants agreed to create a new Regulatory and Compliance Committee of the Pfizer Board to be supported by a dedicated \$75 million fund.

**Summary:** In the wake of Pfizer’s agreement to pay \$2.3 billion as part of a settlement with the U.S. Department of Justice to resolve civil and criminal charges relating to the illegal marketing of at least 13 of the company’s most important drugs (the largest such fine ever imposed), this shareholder derivative action was filed against Pfizer’s senior management and Board alleging they breached their fiduciary duties to Pfizer by, among other things, allowing unlawful promotion of drugs to continue after receiving numerous “red flags” that Pfizer’s improper drug marketing was systemic and widespread. The suit was brought by Court-appointed Lead Plaintiffs Louisiana Sheriffs’ Pension and Relief Fund and Skandia Life Insurance Company, Ltd. In an unprecedented settlement reached by the parties, the Defendants agreed to create a new Regulatory and Compliance Committee of the Pfizer Board of Directors (the “Regulatory Committee”) to oversee and monitor Pfizer’s compliance and drug marketing practices and to review the compensation policies for Pfizer’s drug sales related employees.

**Case:** *Miller et al. v. IAC/InterActiveCorp et al.*

**Court:** Delaware Court of Chancery

**Highlights:** This litigation shut down efforts by controlling shareholders to obtain “dynastic control” of the company through improper stock class issuances, setting valuable precedent and sending a strong message to boards and management in all sectors that such moves will not go unchallenged.

**Summary:** BLB&G obtained this landmark victory for shareholder rights against IAC/InterActiveCorp and its controlling shareholder and chairman, Barry Diller. For decades, activist corporate founders and controllers sought ways to entrench their position atop the corporate hierarchy by granting themselves and other insiders “supervoting rights.” Diller laid out a proposal to introduce a new class of non-voting stock to entrench “dynastic control” of IAC within the Diller family. BLB&G litigation on behalf of IAC shareholders ended in capitulation with the Defendants effectively conceding the case by abandoning the proposal. This became a critical corporate governance precedent, given the trend of public companies to introduce “low” and “no-vote” share classes, which diminish shareholder rights, insulate management from accountability, and can distort managerial incentives by providing controllers voting power out of line with their actual economic interests in public companies.

**Case:** *In re News Corp. Shareholder Derivative Litigation*

**Court:** Delaware Court of Chancery – Kent County

**Highlights:** An unprecedented settlement in which News Corp. recouped \$139 million and enacted significant corporate governance reforms that combat self-dealing in the boardroom.

**Summary:** Following News Corp.'s 2011 acquisition of a company owned by News Corp. Chairman and CEO Rupert Murdoch's daughter, and the phone-hacking scandal within its British newspaper division, we filed a derivative litigation on behalf of the company because of institutional shareholder concern with the conduct of News Corp.'s management. We ultimately obtained an unprecedented settlement in which News Corp. recouped \$139 million for the company coffers, and agreed to enact corporate governance enhancements to strengthen its compliance structure, the independence and functioning of its board, and the compensation and clawback policies for management.

## Clients and Fees

We are firm believers in the contingency fee as a socially useful, productive and satisfying basis of compensation for legal services, particularly in litigation. Wherever appropriate, even with our corporate clients, we encourage retentions in which our fee is contingent on the outcome of the litigation. This way, it is not the number of hours worked that will determine our fee, but rather the result achieved for our client. The firm generally negotiates with our clients a contingent fee schedule specific to each litigation, and all fee proposals are approved by the client prior to commencing litigation, and ultimately by the Court.

Our clients include many large and well-known financial and lending institutions and pension funds, as well as privately held companies that are attracted to our firm because of our reputation, expertise, and fee structure. Most of the firm's clients are referred by other clients, law firms and lawyers, bankers, investors, and accountants. A considerable number of clients have been referred to the firm by former adversaries. We have always maintained a high level of independence and discretion in the cases we decide to prosecute. As a result, the level of personal satisfaction and commitment to our work is high.

## In The Public Interest

Bernstein Litowitz Berger & Grossmann LLP is guided by two principles: excellence in legal work and a belief that the law should serve a socially useful and dynamic purpose. Attorneys at the firm are active in academic, community and pro bono activities, and regularly participate as speakers and contributors to professional organizations. In addition, the firm endows a public interest law fellowship and sponsors an academic scholarship at Columbia Law School. Highlights of our community contributions include the following:

### **Bernstein Litowitz Berger & Grossmann Public Interest Law Fellows**

BLB&G is committed to fighting discrimination and effecting positive social change. In support of this commitment, the firm donates funds to Columbia Law School to create the Bernstein Litowitz Berger & Grossmann Public Interest Law Fellowship. This fund at Columbia Law School provides Fellows with 100% of the funding needed to make payments on their law school tuition loans so long as such graduates remain in the public interest law field. The BLB&G Fellows are able to begin their careers free of any school debt if they make a long-term commitment to public interest law.

### **Firm Sponsorship of Her Justice**

BLB&G is a sponsor of Her Justice, a not-for-profit organization in New York City dedicated to providing *pro bono* legal representation to indigent women, principally vulnerable women, in connection with the myriad legal problems they face. The organization trains and supports the efforts of New York lawyers who provide *pro bono* counsel to these women. Several members and associates of the firm volunteer their time to help women who need divorces from abusive spouses, or representation on issues such as child support, custody, and visitation. To read more about Her Justice, visit the organization's website at <http://www.herjustice.org/>.

### **Firm Sponsorship of City Year New York**

BLB&G is also an active supporter of City Year New York, a division of AmeriCorps. The program was founded in 1988 as a means of encouraging young people to devote time to public service and unites a diverse group of volunteers for a demanding year of full-time community service, leadership development and civic engagement. Through their service, corps members experience a rite of passage that can inspire a lifetime of citizenship and build a stronger democracy.

### **Max W. Berger Pre-Law Program**

In order to encourage outstanding minority undergraduates to pursue a meaningful career in the legal profession, the Max W. Berger Pre-Law Program was established at Baruch College. Providing workshops, seminars, counseling and mentoring to Baruch students, the program facilitates and guides them through the law school research and application process, as well as placing them in appropriate internships and other pre-law working environments.

## Our Attorneys

BLB&G employs a dedicated team of attorneys, including partners, counsel, associates, and senior staff attorneys. Biographies for each of our attorneys can be found on our website by clicking [here](#). On a case-by-case basis, we also make use of a pool of staff attorneys to supplement our litigation teams. The BLB&G team also includes investigators, financial analysts, paralegals, electronic-discovery specialists, information-technology professionals, and administrative staff. Biographies for our investigative team are available on our website by clicking [here](#), and biographies for the leaders of our administrative departments are viewable [here](#).

## Partners

**Max Berger**, Founding Partner, has grown BLB&G from a partnership of four lawyers in 1983 into what the *Financial Times* described as “[one of the most powerful securities class action law firms in the United States](#)” by prosecuting seminal cases which have increased market transparency, held wrongdoers accountable, and improved corporate business practices in groundbreaking ways.

Described by sources quoted in leading industry publication *Chambers USA* as “the smartest, most strategic plaintiffs’ lawyer [they have] ever encountered,” Max has litigated many of the firm’s most high-profile and significant cases and secured some of the largest recoveries ever achieved in securities fraud lawsuits, negotiating seven of the largest securities fraud settlements in history, each in excess of a billion dollars: *Cendant* (\$3.3 billion), *Citigroup-WorldCom* (\$2.575 billion), *Bank of America/Merrill Lynch* (\$2.4 billion), *JPMorgan Chase-WorldCom* (\$2 billion), *Nortel* (\$1.07 billion), *Merck* (\$1.06 billion), and *McKesson* (\$1.05 billion). Max’s prosecution of the *WorldCom* litigation, which resulted in unprecedented monetary contributions from WorldCom’s outside directors (nearly \$25 million out of their own pockets on top of their insurance coverage) “shook Wall Street, the audit profession and corporate boardrooms.” (*The Wall Street Journal*)

Max’s cases have resulted in sweeping corporate governance overhauls, including the creation of an independent task force to oversee and monitor diversity practices (*Texaco* discrimination litigation), establishing an industry-accepted definition of director independence, increasing a board’s power and responsibility to oversee internal controls and financial reporting (*Columbia/HCA*), and creating a Healthcare Law Regulatory Committee with dedicated funding to improve the standard for regulatory compliance oversight by a public company board of directors (*Pfizer*). His cases have yielded results which have served as models for public companies going forward.

Most recently, before the #metoo movement came alive, on behalf of an institutional investor client, Max handled the prosecution of an unprecedented shareholder derivative litigation against Fox News parent 21st Century Fox, Inc. arising from the systemic sexual and workplace harassment at the embattled network. After nearly 18 months of litigation, discovery, and negotiation related to the shocking misconduct and the Board’s extensive alleged governance failures, the parties unveiled a landmark settlement with two key components: 1) the first ever Board-level watchdog of its kind—the “Fox News Workplace Professionalism and Inclusion Council” of experts (WPIC)—majority independent of the Murdochs, the Company and Board; and 2) one of the largest financial recoveries—\$90 million—ever obtained in a pure corporate board oversight dispute. The WPIC is expected to serve as a model for public companies in all industries.

Max's work has garnered him extensive media attention, and he has been the subject of feature articles in a variety of major media publications. *The New York Times* highlighted his remarkable track record in an October 2012 profile entitled "[Investors' Billion-Dollar Fraud Fighter](#)," which also discussed his role in the *Bank of America/Merrill Lynch Merger* litigation. In 2011, Max was twice profiled by *The American Lawyer* for his role in negotiating a \$627 million recovery on behalf of investors in the *In re Wachovia Corp. Securities Litigation*, and a \$516 million recovery in *In re Lehman Brothers Equity/Debt Securities Litigation*. For his outstanding efforts on behalf of WorldCom investors, he was featured in articles in *BusinessWeek* and *The American Lawyer*, and *The National Law Journal* profiled Max (one of only eleven attorneys selected nationwide) in its annual 2005 "Winning Attorneys" section. He was subsequently featured in a 2006 *New York Times* article, "A Class-Action Shuffle," which assessed the evolving landscape of the securities litigation arena.

### **One of the "100 Most Influential Lawyers in America"**

Widely recognized as the "Dean" of the U.S. plaintiff securities bar for his remarkable career and his professional excellence, Max has a distinguished and unparalleled list of honors to his name.

- He was selected as one of the "100 Most Influential Lawyers in America" by *The National Law Journal* for being "front and center" in holding Wall Street banks accountable and obtaining over \$5 billion in cases arising from the subprime meltdown, and for his work as a "master negotiator" in obtaining numerous multi-billion dollar recoveries for investors.
- Described as a "standard-bearer" for the profession in a career spanning nearly 50 years, he is the recipient of *Chambers USA's* award for Outstanding Contribution to the Legal Profession. In presenting this prestigious honor, *Chambers* recognized Max's "numerous headline-grabbing successes," as well as his unique stature among colleagues—"warmly lauded by his peers, who are nevertheless loath to find him on the other side of the table." Max has been recognized as a litigation "star" and leading lawyer in his field by *Chambers* since its inception.
- *Benchmark Litigation* recently inducted him into its exclusive "Hall of Fame" and named him a 2021 "Litigation Star" in recognition of his career achievements and impact on the field of securities litigation.
- Upon its tenth anniversary, *Lawdragon* named Max a "Lawdragon Legend" for his accomplishments. He was recently inducted into *Lawdragon's* "Hall of Fame." He is regularly included in the publication's "500 Leading Lawyers in America" and "100 Securities Litigators You Need to Know" lists.
- *Law360* published a special feature discussing his life and career as a "Titan of the Plaintiffs Bar," named him one of only six litigators selected nationally as a "Legal MVP," and selected him as one of "10 Legal Superstars" nationally for his work in securities litigation.
- Max has been regularly named a "leading lawyer" in the *Legal 500 US Guide* where he was also named to their "Hall of Fame" list, as well as *The Best Lawyers in America*® guide.
- Max was honored for his outstanding contribution to the public interest by Trial Lawyers for Public Justice, which named him a "Trial Lawyer of the Year" Finalist in 1997 for his work in *Roberts, et al. v. Texaco*, the celebrated race discrimination case, on behalf of Texaco's African-American employees.

Max has lectured extensively for many professional organizations, and is the author and co-author of numerous articles on developments in the securities laws and their implications for public policy. He was chosen, along with



several of his BLB&G partners, to author the first chapter—“Plaintiffs’ Perspective”—of Lexis/Nexis’s seminal industry guide *Litigating Securities Class Actions*. An esteemed voice on all sides of the legal and financial markets, in 2008 the SEC and Treasury called on Max to provide guidance on regulatory changes being considered as the accounting profession was experiencing tectonic shifts shortly before the financial crisis.

Max also serves the academic community in numerous capacities. A long-time member of the Board of Trustees of Baruch College, he served as the President of the Baruch College Fund from 2015-2019 and now serves as its Chairman. In May 2006, he was presented with the Distinguished Alumnus Award for his contributions to Baruch College, and in 2019, was awarded an honorary Doctor of Laws degree at Baruch’s commencement, the highest honor Baruch College confers upon an individual for non-academic achievement. The award recognized his decades-long dedication to the mission and vision of the College, and in bestowing it, Baruch's President described Max as “[one of the most influential individuals in the history of Baruch College](#).” Max established the [Max Berger Pre-Law Program at Baruch College](#) in 2007.

A member of the Dean's Council to Columbia Law School as well as the Columbia Law School Public Interest/Public Service Council, Max has taught Profession of Law, an ethics course at Columbia Law School, and serves on the Advisory Board of Columbia Law School’s Center on Corporate Governance. In February 2011, Max received Columbia Law School's most prestigious and highest honor, “The Medal for Excellence.” This award is presented annually to Columbia Law School alumni who exemplify the qualities of character, intellect, and social and professional responsibility that the Law School seeks to instill in its students. As a recipient of this award, Max was [profiled](#) in the Fall 2011 issue of *Columbia Law School Magazine*. Max is a member of the American Law Institute and an Advisor to its Restatement Third: Economic Torts project. Max [recently endowed the Max Berger '71 Public Interest/Public Service Fellows Program at Columbia Law School](#). The program provides support for law students interested in pursuing careers in public service. Max and his wife, Dale, previously endowed the [Dale and Max Berger Public Interest Law Fellowship at Columbia Law School](#) and, under Max’s leadership, BLB&G also created the Bernstein Litowitz Berger & Grossmann Public Interest Law Fellowship at Columbia.

Among numerous charitable and volunteer works, Max is a significant and long-time contributor to Her Justice, a non-profit organization in New York City dedicated to providing *pro bono* legal representation to indigent women, principally survivors of intimate partner violence, in connection with the many legal problems they face. In recognition of their personal support of the organization, Max and his wife, Dale Berger, were awarded the “Above and Beyond Commitment to Justice Award” by Her Justice in 2021 for being steadfast advocates for women living in poverty in New York City. In addition to his personal support of Her Justice, Max has ensured BLB&G's long-time involvement with the organization. Max is also an active supporter of City Year New York, a division of AmeriCorps, dedicated to encouraging young people to devote time to public service. In July 2005, he was named City Year New York’s “Idealist of the Year,” for his commitment to, service for, and work in the community. A celebrated photographer, Max has held two successful photography shows that raised hundreds of thousands of dollars for City Year and Her Justice.

**Education:** Columbia Law School, 1971, J.D., Editor of the *Columbia Survey of Human Rights Law*; Baruch College-City University of New York, 1968, B.B.A., Accounting

**Bar Admissions:** New York; United States District Court for the Eastern District of New York; United States District Court for the Southern District of New York; United States Court of Appeals for the Second Circuit; United States



Court of Appeals for the Third Circuit; United States Court of Appeals for the Sixth Circuit; Supreme Court of the United States

**John Rizio-Hamilton** is one of America's top shareholder litigators. He works on the most complex and high-stakes securities class action cases, and has recovered billions of dollars on behalf of institutional investor clients. Highlights of John's trial experience include the following:

- Led the trial team that recovered \$240 million for investors in *In re Signet Jewelers Limited Securities Litigation*, a precedent-setting case that marks the first successful resolution of a securities fraud class action based on allegations of sexual harassment. To our knowledge, it is also the first time claims of this nature have been certified for class treatment in the securities context and is one of the very few securities fraud cases in which statements in a Code of Conduct have been held actionable. This case sends a message to corporate executives and corporate boards that alleged systemic sexual harassment and gender discrimination can have serious ramifications through securities fraud class actions. Both the class certification decision and the Judge's decision that the Company's statements about gender equality and sexual harassment could be actionable in a securities class action are landmark decisions that exceed even the significant financial recovery achieved for shareholders.
- Key part of the trial team that prosecuted *In re Bank of America Securities Litigation*, which settled for \$2.425 billion, "the largest securities class action recovery related to the subprime meltdown," per *Law360*, the largest security ever resolving violations of Sections 14(a) and 10(b) of the Securities Exchange Act, and one of the top securities litigation recoveries in history.
- Served as counsel on behalf of the institutional investor plaintiffs in *In re Citigroup, Inc. Bond Action Litigation*, which settled for \$730 million, the second largest recovery ever in a securities class action brought on behalf of purchasers of debt securities.
- Member of the team that prosecuted the *In re Wachovia Corp. Bond/Notes Litigation*, in which the firm recovered a total of \$627 million on behalf of investors, one of the 15 largest securities class action recoveries in history.
- Key member of the team that recovered \$150 million for investors in *In re JPMorgan Chase & Co. Securities Litigation*, a securities fraud class action arising out of misrepresentations and omissions concerning JPMorgan's Chief Investment Office, the company's risk management systems, and the trading activities of the so-called "London Whale."

In addition to his direct litigation responsibilities, John is responsible for the firm's client outreach in Canada, where he advises institutional investor clients on potential securities fraud and investor claims. He is one of the partners who oversees the firm's Global Securities and Litigation Monitoring Team, which monitors global equities traded in non-U.S. jurisdictions on prospective and pending international securities matters, and provides critical analysis of options to recover losses incurred on securities purchased in non-U.S. markets. John also manages the firm's settlements and claims administration department, which is responsible for obtaining court approval of all settlements and for distribution of the proceeds to investment class members.

For his remarkable accomplishments, John was named a "Litigation Trailblazer" by *The National Law Journal*. He has been recognized as a "Litigation Star" by *Benchmark Litigation*, and by *Law360* as a "Rising Star," a "Legal MVP," and

one of the country's "Top Attorneys Under 40." John is regularly named to lists of leading practitioners by *Lawdragon* and Thomson Reuters' *Super Lawyers*.

Before joining BLB&G, John clerked for the Honorable Chester J. Straub of the United States Court of Appeals for the Second Circuit, and the Honorable Sidney H. Stein of the United States District Court for the Southern District of New York.

**Education:** Brooklyn Law School, 2004, J.D., *summa cum laude*, Editor-in-Chief of the Brooklyn Law Review; first-place winner of the J. Braxton Craven Memorial Constitutional Law Moot Court Competition; Johns Hopkins University, 1997, B.A., with honors

**Bar Admissions:** New York; United States District Court for the Southern District of New York

**Hannah Ross** has over two decades of experience as a civil and criminal litigator. A former prosecutor, she has been a key member and leader of trial teams that have recovered billions of dollars for investors.

Hannah is widely recognized by industry observers for her professional achievements, including by the leading industry ranking guide *Chambers USA*, in which she was recognized as a "notable practitioner" in the Nationwide Securities Litigation Plaintiff category. Named a "Litigation Star," a "Top U.S. Woman Litigator" and one of the "Top 250 Women in Litigation" in the nation by *Benchmark Litigation*, she has earned praise as one of the elite in the field. Hannah has been recognized by *The National Law Journal* as a member of the "Elite Women of the Plaintiffs' Bar" list three times and as a "Litigation & Plaintiffs' Lawyer Trailblazer," named a New York "Super Lawyer" by Thomson Reuter's Super Lawyers magazine, honored as a "Titan of the Plaintiffs Bar" by legal newswire *Law360*, and named one of the top female litigators in the country (1 of 9 finalists for its "Best in Litigation" category) by *Euromoney/Legal Media Group*. She has also been named to an exclusive group of notable practitioners by *Legal 500* for her achievements, and included on the lists of the "500 Leading Lawyers in America" and "500 Leading Plaintiff Financial Lawyers" compiled by leading industry publication *Lawdragon*.

Hannah is a member of the firm's Executive Committee. In addition to her direct litigation responsibilities, she is one of the senior partners at the firm responsible for client development and client relations. A significant part of her practice is dedicated to initial case evaluation and counseling the firm's institutional investor clients on potential claims. Hannah is also one of the partners who oversees the firm's Global Securities and Litigation Monitoring Team, which monitors global equities traded in non-U.S. jurisdictions on prospective and pending international securities matters. In that capacity, she advises the firm's institutional investor clients on their options to recover losses incurred on securities purchased in non-U.S. markets. Hannah is the Chair of the firm's Diversity Committee and Co-Chair of the firm's Forum for Institutional Investors and Women's Forum. She serves on the Corporate Leadership Committee of the New York Women's Foundation and recently concluded a three-year term on the Council of Institutional Investors' Market Advisory Council.

Hannah led the BLB&G team that recovered nearly \$2 billion for 35 institutions that invested in the Allianz Structured Alpha Funds. She was a senior member of the team that prosecuted *In re Bank of America Securities Litigation*, which resulted in a landmark settlement shortly before trial of \$2.425 billion, one of the largest securities recoveries ever obtained, and by far the largest recovery achieved in a litigation arising from the financial crisis. Most recently, she was the lead partner in the securities class action arising from the failure of major mid-Atlantic bank Wilmington Trust, which settled for \$210 million. Hannah was also a senior member of the trial team that prosecuted the

litigation arising from the collapse of former leading brokerage MF Global, which recovered \$234.3 million on behalf of investors. In addition, she led the prosecution against Washington Mutual and certain of its former officers and directors for alleged fraudulent conduct in the thrift's home lending operations, an action which settled for \$216.75 million and represents one of the largest settlements achieved in a case related to the fallout of the subprime crisis and the largest recovery ever achieved in a securities class action in the Western District of Washington. Hannah was also a key member of the team prosecuting *In re The Mills Corporation Securities Litigation*, which settled for \$202.75 million, one of the largest recovery ever achieved in a securities class action in Virginia and the Fourth Circuit.

She has been a member of the trial teams in numerous other major securities litigations resulting in recoveries for investors in excess of \$6 billion. These include securities class actions against Nortel Networks, New Century Financial Corporation, and the Federal Home Loan Mortgage Corporation ("Freddie Mac"), as well as *In re Altisource Portfolio Solutions S.A. Securities Litigation*, *In re DFC Global Corp. Securities Litigation*, *In re Tronox Securities Litigation*, *In re Delphi Corporation Securities Litigation*, *In re Affiliated Computer Services, Inc. Derivative Litigation*, *In re OM Group, Inc. Securities Litigation*, and *In re BioScrip, Inc. Securities Litigation*.

Hannah has also served as an adjunct faculty member in the trial advocacy program at the Dickinson School of Law of the Pennsylvania State University. Before joining BLB&G, Hannah was a prosecutor in the Massachusetts Attorney General's Office as well as an Assistant District Attorney in the Middlesex County (Massachusetts) District Attorney's Office.

**Education:** Penn State Dickinson School of Law, 1998, J.D., Woolsack Honor Society; Comments Editor, Dickinson Law Review; D. Arthur Magaziner Human Services Award; Cornell University, 1995, B.A., *cum laude*

**Bar Admissions:** New York; Massachusetts; United States District Court for the Southern District of New York; United States Court of Appeals for the Second Circuit

**Jerry Silk's** practice focuses on representing institutional investors on matters involving federal and state securities laws, accountants' liability, and the fiduciary duties of corporate officials, as well as general commercial and corporate litigation. He also advises creditors on their rights with respect to pursuing affirmative claims against officers and directors, as well as professionals both inside and outside the bankruptcy context.

Jerry is a member of the firm's Executive Committee. He also oversees the firm's case development and client advisory group, in which he, along with a group of attorneys, financial analysts and investigators, counsels institutional clients on potential legal claims. In December 2014, Jerry was recognized by *The National Law Journal* in its inaugural list of "Litigation Trailblazers & Pioneers" — one of several lawyers in the country who have changed the practice of litigation through the use of innovative legal strategies — in no small part for the critical role he has played in helping the firm's investor clients recover billions of dollars in litigation arising from the financial crisis, among other matters.

In addition, *Lawdragon* magazine, which has named Jerry one of the "100 Securities Litigators You Need to Know," one of the "500 Leading Lawyers in America," and one of America's top 500 "Rising Stars" in the legal profession, also profiled him as part of its "Lawyer Limelight" special series, discussing subprime litigation, his passion for plaintiffs' work and the trends he expects to see in the market. Recognized as one of an elite group of notable practitioners, *Chambers USA* continuously ranks Jerry nationally "for his expertise in a range of cases on the plaintiff side." He is

also named as a "Litigation Star" by *Benchmark*, is recommended by the *Legal 500 USA* guide in the field of plaintiffs' securities litigation, and has been selected by Thomson Reuters as a *Super Lawyer* every year since 2006.

In the wake of the financial crisis, he advised the firm's institutional investor clients on their rights with respect to claims involving transactions in residential mortgage-backed securities (RMBS) and collateralized debt obligations (CDOs). His work representing Cambridge Place Investment Management Inc. on claims under Massachusetts state law against numerous investment banks arising from the purchase of billions of dollars of RMBS was featured in a 2010 *New York Times* article by Gretchen Morgenson titled, "[Mortgage Investors Turn to State Courts for Relief.](#)"

Jerry also represented the New York State Teachers' Retirement System in a securities litigation against the General Motors Company arising from a series of misrepresentations concerning the quality, safety, and reliability of the Company's cars, which resulted in a \$300 million settlement. He was also a member of the litigation team responsible for the successful prosecution of *In re Cendant Corporation Securities Litigation* in the District of New Jersey, which was resolved for \$3.2 billion. In addition, he is actively involved in the firm's prosecution of highly successful M&A litigation, representing shareholders in widely publicized lawsuits, including the litigation arising from the proposed acquisition of Caremark Rx, Inc. by CVS Corporation — which led to an increase of approximately \$3.5 billion in the consideration offered to shareholders.

A graduate of the Wharton School of Business, University of Pennsylvania and Brooklyn Law School, in 1995-96, Jerry served as a law clerk to the Hon. Steven M. Gold, U.S.M.J., in the United States District Court for the Eastern District of New York.

Jerry lectures to institutional investors at conferences throughout the country, and has written or substantially contributed to several articles on developments in securities and corporate law, including his most recent article, "[SEC Statement On Emerging Markets Is A Stunning Failure](#)," which was published by *Law360* on April 27, 2020. He has authored numerous additional articles, including: "Improving Multi-Jurisdictional, Merger-Related Litigation," *American Bar Association* (February 2011); "The Compensation Game," *Lawdragon*, (Fall 2006); "Institutional Investors as Lead Plaintiffs: Is There A New And Changing Landscape?," *75 St. John's Law Review* 31 (Winter 2001); "The Duty To Supervise, Poser, Broker-Dealer Law and Regulation," 3rd Ed. 2000, Chapter 15; "Derivative Litigation In New York after *Marx v. Akers*," *New York Business Law Journal*, Vol. 1, No. 1 (Fall 1997).

He has also been a commentator for the business media on television and in print. Among other outlets, he has appeared on NBC's *Today*, and CNBC's *Power Lunch*, *Morning Call*, and *Squawkbox* programs, as well as being featured in *The New York Times*, *Financial Times*, *Bloomberg*, *The National Law Journal*, and the *New York Law Journal*.

**Education:** Brooklyn Law School, 1995, J.D., *cum laude*; Wharton School of the University of Pennsylvania, 1991, B.S., Economics

**Bar Admissions:** New York; United States District Court for the Southern District of New York; United States District Court for the Eastern District of New York; United States Court of Appeals for the Second Circuit

**Jonathan Uslaner** prosecutes class and direct actions on behalf of the firm's institutional investor clients and has litigated many of the firm's most high-profile litigations, including *In re Bank of America Securities Litigation*, which resulted in a historic settlement shortly before trial of \$2.43 billion, one of the largest shareholder recoveries ever

obtained; *In re Wells Fargo & Company Securities Litigation*, which reached a \$1 billion settlement agreement that, if approved, will be among the top six U.S. securities class action settlements in the past decade and among the top 17 of all time; *In re Cobalt International Energy, Inc. Securities Litigation*, which resulted in settlements totaling up to \$335.3 million after years of hard-fought litigation; *In re Genworth Financial, Inc. Securities Litigation*, which settled for \$219 million, the largest recovery ever obtained in a securities class action in Virginia; *In re JPMorgan Chase & Co. Securities Litigation*, which settled for \$150 million; *In re Wells Fargo Mortgage-Backed Certificates Litigation*, which settled for \$125 million; *In re Rayonier Securities Litigation*, which settled for \$73 million; and *In re RH, Inc. Securities Litigation*, which settled for \$50 million.

Jonathan is also actively involved in the firm's direct action opt-out practice. He represented numerous clients in opt-out actions brought against American Realty Capital Properties, which resulted in settlements totaling \$85 million, and more recently represented 18 institutional clients in opt-out actions brought against Valeant Pharmaceuticals, Inc., which resulted in confidential settlements.

Jonathan is an editor of the American Bar Association's *Class Actions and Derivative Suits Committee's Newsletter*. He has authored numerous articles relating to class actions and the federal securities laws, which have appeared in *Pensions & Investments*, and *SACRS Magazine*, and has a [recurring column with Reuters](#). Jonathan has also been a member of the Board of Governors of the Association of Business Trial Lawyers (ABTL).

For his achievements, Jonathan has been recognized by noted legal industry ranking guide *Chambers USA*, with the guide describing him as an "expert plaintiff securities litigator," and quoting market sources who describe Jonathan as "an excellent lawyer and a strong advocate for his clients" and "a fierce advocate for his clients and tough opponent." Jonathan has also been recognized by *Benchmark Litigation* as a "Litigation Star" and as a member of the "500 Leading Plaintiff Financial Lawyers" list by *Lawdragon*.

Jonathan is a board member of UCPLA, a non-profit organization dedicated to advancing the independence, productivity and full citizenship of individuals with developmental and intellectual disabilities. He serves on UCPLA's Nominating and Governance Committee and its Merger Committee. He has also been a board member of Home of Guiding Hands, a non-profit organization that serves individuals with developmental disabilities and their families. For his work and contributions to the organization, he was named "Volunteer of the Year."

Prior to joining BLB&G, Jonathan was a senior litigation associate at the law firm of Skadden, Arps, Slate, Meagher & Flom LLP, where he successfully prosecuted and defended claims from the discovery stage through trial. He also gained significant trial experience as a volunteer prosecutor for the City of Inglewood, California, as well as a judicial extern for Justice Steven Wayne Smith of the Supreme Court of Texas.

**Education:** The University of Texas School of Law, 2005, J.D., University of Texas Presidential Academic Merit Fellowship; Articles Editor, *Texas Journal of Business Law*; Duke University, 2001, B.A., *magna cum laude*, William J. Griffith Award for Leadership; Chairperson, Duke University Undergraduate Publications Board

**Bar Admissions:** California; United States District Court for the Central District of California; United States District Court for the Northern District of California; New York; United States District Court for the Southern District of New York



## Senior Counsel

**David Duncan's** practice concentrates on the settlement of class actions and other complex litigation and the administration of class action settlements.

Prior to joining BLB&G, David worked as a litigation associate at Debevoise & Plimpton, where he represented clients in a wide variety of commercial litigation, including contract disputes, antitrust and products liability litigation, and in international arbitration. In addition, he has represented criminal defendants on appeal in New York State courts and has successfully litigated on behalf of victims of torture and political persecution from Sudan, Côte d'Ivoire and Serbia in seeking asylum in the United States.

While in law school, David served as an editor of the *Harvard Law Review*. After law school, he clerked for Judge Amalya L. Kearsse of the U.S. Court of Appeals for the Second Circuit.

**Education:** Harvard Law School, 1997, J.D., *magna cum laude*; Harvard College, 1993, A.B., *magna cum laude*, Social Studies

**Bar Admissions;** New York; Connecticut; United States District Court for the Southern District of New York

**Catherine Van Kampen's** law practice concentrates on class action settlement administration. She manages the firm's qualified settlement funds and claims administration for settlements achieved by the firm. Catherine is responsible for initiating and managing the claims administration process and working with the Court-appointed claims administrators and investment banks for the benefit of the Classes represented by the firm. Catherine works closely with the firm's partners to apply for Court approval in various jurisdictions throughout the United States for the disbursement of settlement funds. She regularly interfaces with institutional and retail investors to explain the claims administration process and to assist them with filing their claims.

Catherine also has extensive experience in complex litigation and litigation management, having served as a team leader and overseen attorney teams in many of the firm's most high-profile cases during the 2008 Financial Crisis. Catherine has worked on more than two dozen high-value cases. Fluent in Dutch, she has served as the lead investigator and led discovery efforts in actions involving international corporations and financial institutions headquartered in Belgium and the Netherlands. She is certified in E-Discovery and Healthcare Compliance.

Prior to joining BLB&G, Catherine focused on complex litigation initiated by institutional investors and the Federal Government. She has worked on litigation and investigations related to regulatory enforcement actions, corporate governance, and compliance matters as well as conducted extensive discovery in English and Dutch in cross-border litigation.

Since attending law school, Catherine has been deeply committed to public and pro bono service to underserved communities. Through her volunteer work, Catherine has been a champion of social change and justice, particularly for immigrant and refugee women and children. As a member of the New York City Bar Association's United Nations Committee and African Affairs Committee, she spearheaded organizing the highly successful and widely-praised International Law Conference on the Status of Women, Pro Bono Engagement Fair, EPIQ Women Awards and Huntington Her Hero Awards, featuring the Under Secretary and Special Representative to the Secretary General of the United Nations for the Prevention of Violence Against Women, and other prominent, progressive women's

advocates from the New York Legal Community. In recognition of her work, Catherine was appointed Co-Chair of the United Nations Committee and a Member of the Council for International Affairs in September of 2021.

A committed humanitarian, Catherine was honored as the 2018 Ambassador Medalist at the New Jersey Governor's Jefferson Awards for Outstanding Public Service for her international humanitarian and pro bono work with refugees. The Jefferson Awards, issued by the Jefferson Awards Foundation that was founded by Jacqueline Kennedy Onassis, are awarded by state governors and are considered America's highest honor for public service bestowed by the United States Senate. Catherine was also honored in Princeton, New Jersey, by her high school alma mater, Stuart Country Day School, in its 2018 Distinguished Alumnae Gallery for her humanitarian and pro bono efforts on behalf of Yezidi and Christian women and children afflicted by war in Iraq and Syria. In 2020, Catherine was accepted as a *SHESOURCE* legal expert advocating for the needs of immigrant and refugee women by the Women's Media Center, founded by Gloria Steinem, Jane Fonda, and Robin Morgan. In 2021, Catherine was appointed a Global Goals Ambassador for Clean Water and Sanitation by the United Nations Association of the USA, the sister organization of the United Nations Foundation USA founded by Eleanor Roosevelt. She is a recipient of several honors recognizing her pro bono work and commitment to social issues, including an invitation to attend the 2020 Tory Burch Foundation Embrace Ambition Summit and an appointment to the Advisory Board of the National Center for Girls' Leadership in Princeton, New Jersey, in 2021.

Catherine is an active member of the American Bar Association, New York Bar Association, New York City Bar Association, New Jersey Bar Association, and the National Association of Women Lawyers. In 2020, Catherine was appointed to the New York State Bar Association's President's Leadership Development Committee. In 2021, Catherine was appointed to the New Jersey State Bar Association's Class Actions, International Law and Organizations, and Special Civil Part Committees. In 2022, Catherine was appointed as Co-chair of the American Bar Association's International Law Section — Women's Interest Network. As part of her pro bono legal work, she serves on two Boards of international NGOs serving refugees and internally displaced persons in the Middle East and Africa and rescuing exploited and trafficked women and girls. Closer to home, Catherine serves as an advisor to minority business owners in the New York City area on legal issues impacting their businesses.

Catherine clerked for the Honorable Mary M. McVeigh in the Superior Court of New Jersey where she was trained as a court-certified mediator. While in law school she interned at the Center for Social Justice's Immigration Law Clinic at Seton Hall University School of Law. Catherine is a Graduate of the American Inns of Court.

**Education:** Indiana University, 1988, B.A., Political Science; Seton Hall University School of Law, 1998, J.D.

**Bar Admissions:** New York; New Jersey

## Associates

**Jimmy Brunetto** practices out of the firm's New York office, prosecuting securities fraud, corporate governance, and shareholder rights litigation on behalf of the firm's institutional investor clients. He is a member of the firm's case development and client advisory group, in which he, as part of a team of attorneys, financial analysts, and investigators, counsels public pension funds and other institutional investors on potential legal claims.

Prior to joining the firm, Jimmy investigated and prosecuted securities fraud with the New York State Office of the Attorney General's Investor Protection Bureau, where he worked on a number of high-profile matters. While in law

school, Jimmy was honored as a John Marshall Harlan Scholar and served as a Staff Editor for the *New York Law School Law Review*.

**Education:** New York Law School, 2011, J.D., cum laude, John Marshall Harlan Scholar; Staff Editor, New York Law School Law Review; University of Florida, 2007, B.A., cum laude, Political Science; University of Florida, 2007, B.S.B.A, Finance

**Bar Admissions:** New York

**Benjamin (“Will”) Horowitz** [Former Associate] practiced out of the New York office\* in the securities litigation department. He represented the firm’s institutional investor clients in securities fraud-related matters.

Prior to joining the firm, Will was an associate practicing litigation at Gibson, Dunn & Crutcher. Will is a graduate of Stanford Law School, where he was a member of the *Stanford Journal of Criminal Law and Policy* and participated in the Environmental Law Clinic. He graduated *summa cum laude* from Yale University, where he received his Bachelor of Arts degree in history.

\*Not admitted to practice in New York.

**Education:** Stanford Law School, 2018, J.D., Yale University, 2012, B.A.

**Bar Admissions:** California, Missouri

**Thomas Sperber** is an associate practicing out of the New York office prosecuting securities fraud, corporate governance, and shareholder rights litigation on behalf of the firm’s institutional investor clients.

Prior to joining the firm, Thomas was a law clerk for the Honorable K. Michael Moore, Chief Judge of the United States District Court for the Southern District of Florida. He is a graduate of Fordham University School of Law, where he was an associate editor of the *Fordham Law Review*.

**Education:** Fordham University School of Law, 2018, J.D., Associate Editor, *Fordham Law Review*; Binghamton University - State University of New York, 2014, B.A.

**Bar Admissions:** New York

## Senior Staff Attorneys

**Ryan Candee** is a senior staff attorney practicing out of the New York office. Since joining the firm 10 years ago, he has focused on the prosecution of securities fraud class actions.

Ryan works primarily with the securities litigation group but also in the corporate governance department. Prior to joining the firm he worked in a similar role at Kaplan Fox & Kilsheimer and as an associate at Dorsey LLP after graduating from New York University School of Law.

**Education:** New York University School of Law, 2002, J.D., Journal of International Law and Politics; University of Minnesota, 1994, B.A.



**Bar Admissions:** New York; United States District Court for the Southern District of New York; United States District Court for the District of North Dakota

**Juan Lossada** is a senior staff attorney practicing out of the Los Angeles office. Since joining the firm, he has focused on the prosecution of securities fraud class actions including *Impinj*, *Symantec*, *Mattel*, *Oracle*, *Solar Winds*, *Meta Platforms* and *Wells Fargo* (2020 case).

Prior to joining the firm, Juan worked as a commercial litigation associate and has also practiced at various other law firms.

Juan received his J.D. from the University of Southern California, Gould School of Law and his B.S. in Biology from the University of Southern California.

**Education:** University of Southern California, Gould School of Law, J.D., Staff Editor for the *Southern California Law Review*; Judicial Law Clerk Externship, California Court of Appeal, 2nd Dist. University of Southern California, B.S., Biology

**Bar Admissions:** California; United States District Court for the Central District of California

## Staff Attorneys

**Uju Chukwuanu** has worked on several matters at BLB&G, including *Lehigh County Employees' Retirement System v. Novo Nordisk A/S et al.*; and *In re SCANA Corporation Securities Litigation*.

Prior to joining the firm, Uju was an attorney at Lehman Brothers Holdings Inc. (in Estate), where she worked on litigation involving disputed collateral and derivatives portfolio valuations.

**Education:** University of Nigeria, Enugu Campus, LL.B., Honors, *cum laude*, 2001. Nigerian Law School Abuja, Nigeria, B.L., Honors, 2002. The University of Texas School of Law at Austin, LL.M., 2009.

**Bar Admissions:** New York.

# **Exhibit 5B**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

IN RE SOLARWINDS CORPORATION  
SECURITIES LITIGATION

Case No. 1:21-cv-00138-RP

CLASS ACTION

**DECLARATION OF FRANK B. BURNEY ON BEHALF OF  
MARTIN & DROUGHT, P.C. IN SUPPORT OF MOTION FOR  
ATTORNEYS' FEES AND LITIGATION EXPENSES**

I, FRANK B. BURNEY, declare as follows:

1. I am a partner in the law firm of Martin & Drought, P.C. (“Martin & Drought”). I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.<sup>1</sup>

2. My firm has acted as Liaison Counsel for Lead Plaintiff and the Settlement Class in this Action. In this capacity, we worked with Lead Counsel throughout the litigation, including by reviewing pleadings and briefs, assisting with court filings, preparing for and participating in court conferences, and communicating with Lead Counsel about case strategy.

3. The information in this declaration regarding Martin & Drought’s time and expenses is taken from time and expense printouts and supporting documentation prepared and/or maintained by Martin & Drought in the ordinary course of business. I reviewed these printouts (and backup documentation where necessary or appropriate) in connection with preparing this declaration.

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<sup>1</sup> Unless otherwise defined in this Declaration, all capitalized terms have the meanings set out in the Stipulation and Agreement of Settlement dated November 28, 2022 (ECF No. 97-1).

4. I conducted a review of the time and expense reports to confirm that the reports were accurate, and also to evaluate whether the time and expenses committed to the litigation were necessary and reasonable. As a result of this review, I can confirm that the time reflected in Martin & Drought's lodestar calculation and expenses for which payment is sought as set forth in this declaration are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation. In addition, I believe that the expenses are all of a type that would normally be charged to a fee-paying client in the private marketplace.

5. Attorneys at Martin & Drought spent a total of 46.2 hours working on this litigation from its inception through May 30, 2023. A breakdown of the lodestar is provided in Exhibit 1. The schedule in Exhibit 1 was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. All time expended on the application for fees and expenses has been excluded.

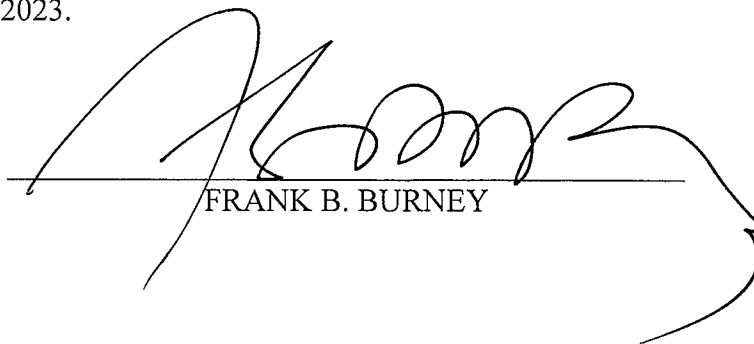
6. The lodestar amount for my firm's time based on Martin & Drought's personnel's current rates is \$27,045.00. The hourly rates shown in Exhibit 1 are the usual and customary rates set by the firm for each individual.

7. Martin & Drought also seeks payment of \$944.75 for the unreimbursed expenses it incurred in connection with the prosecution of the litigation. Those expenses are summarized by category in Exhibit 2.

8. The expenses pertaining to this case are reflected in the books and records of Martin & Drought. These books and records are prepared from receipts, expense vouchers, check records, and other documents and are an accurate record of the expenses.

9. Martin & Drought's firm resume, which includes a professional biography of the attorneys who worked on this action, is attached as Exhibit 3.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge. Executed this 13<sup>th</sup> day of June, 2023.



FRANK B. BURNEY

**EXHIBIT 1**

*In re SolarWinds Corp. Sec. Litig.*,  
No. 1:21-cv-00138-RP

**MARTIN & DROUGHT, P.C.**  
**TIME REPORT**

Inception through and including May 30, 2023

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>LODESTAR</b>
<b>Partners</b>			
Mathis B. Bishop	2.25	\$300	\$675.00
Frank B. Burney	35.95	\$600	\$21,570.00
Gerald T. Drought	8.00	\$600	\$4,800.00
<b>TOTALS:</b>	<b>46.20</b>		<b>\$27,045.00</b>

**EXHIBIT 2**

*In re SolarWinds Corp. Sec. Litig.*,  
No. 1:21-cv-00138-RP

**MARTIN & DROUGHT, P.C.**  
**EXPENSE REPORT**

<b>CATEGORY</b>	<b>AMOUNT</b>
Court Fees	\$700.00
Hand Delivery Charges	\$209.67
Photocopying & Scanning	\$35.08
<b>TOTAL:</b>	<b>\$944.75</b>

**EXHIBIT 3**

*In re SolarWinds Corp. Sec. Litig.*,  
No. 1:21-cv-00138-RP

**MARTIN & DROUGHT, P.C.**  
**FIRM BIOGRAPHY**



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Mobile (210) 289-5843

FRANK BURLESON BURNEY

EMPLOYMENT:

Martin & Drought, P.C., San Antonio, Texas (1981 - Present) Partner of international law firm with offices in Texas and Mexico. Practice is concentrated in municipal incentives, governmental affairs, non-profits, public employee benefit plans, land use, financial institutions, real estate, and general corporate and transactional practice. Registered lobbyist with City of San Antonio.

Clerk, 13th Court of Appeals, Corpus Christi, Texas (1981)

Briefing Attorney for Justice Horace S. Young, 13th Court of Appeals, Corpus Christi, Texas (1979 - 1980)

Congressional Intern for Congressman Robert Krueger, San Antonio, Texas (1977)

EDUCATION:

St. Mary's School of Law, San Antonio, Texas, Doctor of Jurisprudence (1979)

Duke University, Durham, North Carolina, B.A. in Political Science and World Comparative Area Studies - Latin America (1976)

Oxford University, Queens College, Oxford, England (Summer 1977)

Centro Intercultural de Documentación, Cuernavaca, Mexico (Fall 1972). Fluency in Spanish

The Hill School, Pottstown, Pennsylvania (1972)

HONORS AND ACTIVITIES:

Legal:

Outstanding Young Lawyer - San Antonio (1988)

San Antonio Young Lawyers Association:  
President (1986 - 1987)  
Director (1983 - 1984)

San Antonio Bar Association:  
Director (1986 - 1988)

San Antonio Bar Foundation:  
Chair (1997-1998)

Texas Association of Bank Counsel:  
Director (1989 - 1992)

Texas Young Lawyers Association:  
Director (1987 - 1989)

National Association of Public Pension Attorneys  
Member (1997- Present)

Texas C-BAR  
Board Member (2001-2002)

International:

Mayor's Committee for the North American Development Bank  
(1993-1994)

Jalisco-Texas Bilateral Commission:  
Chair (1991-1993)

Mayor's Committee for NAFTA  
Steering Committee (1993 - 1994)

Mayor's Committee for the Institute for the Study of  
Western Hemispheric Trade  
Chair (1991 - 1992)

Counsel to Consulado General de Mexico-San Antonio  
(1993 -1998)

Free Trade Alliance San Antonio :  
Director (1994 - 2000)  
Chair - Mexico Group (1993)

Salute to Mexico - Splendors Art Exhibit  
Steering Committee (1991)

NAD Bank Commission (1993-94)

Instituto Cervantes

Civic:

Joint Civilian Orientation Conference (2003)  
Department of Defense

San Antonio Zoning Commission:  
Chair (1991 - 1993)  
Commissioner (1987 - 1991)

Texas Lyceum:  
Chair (1994)

Greater San Antonio Chamber of Commerce:  
Vice-Chair (2011)  
Board of Directors (2009-2015 & 2021)  
Chair, Public Affairs Council (2010)  
Chair, Legislative Water Committee (2006-2007)  
Co-Chair, Legislative Committee (2004-2005)  
Public Affairs Steering Committee (1990-Present)

Hispanic Chamber:  
Board of Directors (2015-2017)

Duke University:  
2004 Charles A. Duke Award for Outstanding  
Volunteer Service  
Duke Club - San Antonio (President, 2001 - Present)  
Alumni/Recruitment Committee (1985 - Present)

San Antonio Public Library Foundation:  
Director (1997-2005)

Rotary Club of San Antonio (World's largest club):  
President (2002)

US Army All-American Bowl (2003-2018):  
Chair

University of Incarnate Word:  
Development Board (1997-1999)

San Antonio Bond Issues:  
(Chair/Treasurer/Steering Committee)  
Bonds (2017)  
Aquifer Protection/Linear Parks (2014)  
Pre-K 4 SA (2012)  
Build SA Now (2012)  
Propositions 1 & 2 (2010)  
On Your Terms (2008)  
Foundation for the Future (2007)  
SAFE SA (2005)  
Water for All & Linear Parks (2005)  
Four For All (2004)  
People's Nine (2003)  
Fluoride (2000)  
Better Future (2000)  
Bonds (1999)  
Bonds (1994)

The University of Texas Marine Science Institute:  
Advisory Council (1988 - 1994)

World Affairs Council of San Antonio:  
Trustee (1988 - 1991)

South Texas Chamber of Commerce:  
Director (1987 - 1988)

Leadership San Antonio:  
Alumni Committee (1985 - 1986)  
Steering Committee (1984 - 1985)  
Participant (1983 - 1984)

North Loop 410 Association:  
President (1986)

Charitable:

Phil Hardberger Conservancy:  
Board (2010-Present)

The One Hundred Club of San Antonio  
President (2006-2008)  
Board Member (2001 - 2008)

Southwest School of Art:  
Chair (1993-1997)  
Trustee (1982 - 2004)  
Legal Advisor (1983 - Present)

Nature Conservancy:  
Advisory Board Chair (2001-2002)  
Advisory Board (1993 - Present)

Business Committee for the Arts:  
Director (1989 - 1991)

American Red Cross, San Antonio Chapter:  
Director (1981 - 1986)  
Legal Advisor (1981 - 1994)

Fiesta San Antonio Commission  
Legal Advisor (1983 - Present)  
Order of the Cascaron (1994)

San Antonio Museum Association:  
Latin American Committee (2014-Present)  
Young Art Patrons - Director (1981 - 1988)

American Cancer Society: Cattle Baron's Fundraiser  
Underwriting Chairman (1990 - 1993)

Big Brothers and Big Sisters of America:  
Director (1989 -1990)

Texas Accountants and Lawyers for the Arts:  
(1987 - 1991)

Politics:

Burney is active in local, state and national politics, having served in many capacities, including legal counsel and fundraising.

PROFESSIONAL ASSOCIATIONS:

Texas Bar Association

San Antonio Bar Association

National Association of Public Pension Attorneys

San Antonio Bar Foundation: Fellow

Texas Association of Bank Counsel

Burney is a frequent speaker on land use, pension, banking and real estate matters.

# MARTIN & DROUGHT, P.C.

ATTORNEYS AT LAW

*with offices in*

SAN ANTONIO, TEXAS

AND

MCALLEN, TEXAS

*and Independent Affiliates in*  
MEXICO, D.F. AND MONTERREY, MEXICO

2023

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San Antonio, Texas 78205  
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(210) 227-7924 FAX

Martin & Drought, P.C.'s lawyers have been providing high-quality legal services to individuals and businesses for more than forty years. Our clients are served through offices in Texas, located in San Antonio and McAllen, and in the Republic of Mexico, through the firm's presence in Mexico City, Monterrey, and Reynosa, Mexico. Unlike many firms, which have corresponding foreign law firms, Martin & Drought, P.C. employs attorneys licensed in Mexico who are residents in its Texas offices.

This strategic geographic placement of the firm's resources allows the firm's practice to encompass the full range of commercial and legal issues facing individuals and business organizations in today's global economy. Although the firm is not rigidly departmentalized, many of the firm's lawyers have earned reputations for quality representation in specific areas of the law, including the following: international commercial litigation, commercial litigation; products liability litigation; personal injury litigation; general civil litigation; oil and gas litigation; life insurance product class action litigation; international trade finance and banking; maquiladora plant formation and Mexico business representation; labor matters in the United States and Mexico; real estate; land planning; pension funds; governmental affairs, and bankruptcy.

The firm enjoys preeminent status at the frontier of current international commercial, legal and political issues. Indeed, the firm's lawyers are frequently called upon by state, federal and foreign governmental officials seeking advice and counsel in the process of globalizing our hemispheric economy.

Martin & Drought, P.C. prides itself on responding to its clients' needs and on its ability to conceptualize and execute creative solutions to the issues facing its clients. Our clients include many national and international corporations, financial institutions and real estate companies, consumer groups, charitable organizations and individuals throughout this hemisphere.

### **INTERNATIONAL SECTION**

Comprised of highly skilled and dedicated, bilingual and bicultural international attorneys from both Mexico and the United States who understand and appreciate the intricacies of doing business in both countries, the firm's international section is uniquely qualified to represent companies with operations in both the United States and Mexico. The international section of Martin & Drought, P.C. is well known for specializing and being pioneers in the establishment of production ("maquiladora") operations in Mexico, and our attorneys have decades of experience in this unique area of practice. The firm represents, has established production operations and has structured transactions in Mexico for such entities and multinational corporations as AT&T, Ametek, Bissell, General Electric, Matsushita (Panasonic), Emerson Electric, Bombardier, Fujitsu, Olson Metal Products, PaTx, Staktek, Hoffman, Johnson Controls, Pentair, R.R. Donnelley & Sons, Siemens, TI Group, LG Electronics, Invensys and many others. More recently, the firm has expanded its real estate practice in Mexico representing industrial and commercial developers, including U.S. REIT's with operations in Mexico, as well as developers in tourist destinations from Cabo San Lucas to the Mayan Riviera.

Moreover, our attorneys are versed in all manners of international business and corporate transactions, including the structuring of foreign investments, corporate formation and governance, mergers and acquisitions, joint ventures, international banking transactions, foreign real estate transactions, international trade and customs matters, environmental, regulatory and administrative issues, taxation and intellectual property matters.

Martin & Drought, P.C. maintains an excellent reputation for providing legal services to Mexican, Latin American, European and Asian clients with business interests in the United States. The firm represents such clients in joint ventures with United States companies, in international trade matters, corporate formation and governance, real estate transactions, estate planning,

regulatory and administrative affairs, and immigration, and has over the years developed a solid reputation for representing foreign individuals and companies in litigation in United States courts.

Martin & Drought, P.C. maintains permanent offices in San Antonio, McAllen and has an affiliated office in Mexico City, and has affiliated Mexican offices in Reynosa and Monterrey, and relies on a vital network of professional and governmental contacts in such diverse areas of Mexico as Guadalajara, Queretaro, Matamoros, Ciudad Juarez, Torreon, Hermosillo, Ciudad Victoria, Merida and Saltillo. Martin & Drought, P.C. has positioned itself to provide the full services of a Mexican law firm while affording its clients the comfort and security of working with a United States law firm. The result has been a reputation for skill and professionalism that recognizes no border.

## **LITIGATION SECTION**

The litigation section of Martin & Drought, P.C. provides a full range of litigation services in United States courts, as well as in Mexico. Martin & Drought, P.C.'s litigation attorneys represent a wide variety of businesses and individuals in these areas, including domestic and international commercial litigation, consumer class action litigation, oil and gas litigation, employment litigation, and products liability and personal injury litigation. Furthermore, the firm directly provides labor litigation representation in the courts and labor tribunals of Mexico, and is able to assist its clients with other types of litigation in Mexico through its various affiliations with Mexican counsel.

In terms of litigation in the United States, the firm's attorneys are experienced in a wide variety of areas of litigation and other forms of dispute resolution, including mediation and arbitration. Business clients are served by the firm in most areas of commercial litigation, including disputes involving contracts, partnerships, investments, trade secrets, employment, oil and gas, real estate, debtor/creditor, personal injury defense and deceptive trade litigation. In the area of bankruptcy law, Martin & Drought, P.C. has for many years had an established practice in representation of entities of all types, including creditors, debtors, trustees and creditor committees. The firm represents a wide variety of United States and Mexican citizens in both their personal and business litigation needs, including class action litigation involving insurance products, personal injury, legal and medical malpractice, contract, real estate, probate, and foreign investment litigation and arbitration.

The firm has one of the most sophisticated insurance product litigation practices in the United States. Representing both individuals and classes from the United States, Mexico and other countries, Martin & Drought, P.C. has been at the forefront of representing defrauded investors who purchased all types of insurance products, including life insurance, annuities and other types



of insurance. The firm has been especially active in representing educators who are victims to the numerous investment frauds in the 403(b) market.

In the area of international litigation, the firm has developed a solid reputation for representing businesses and individuals from various parts of the world in litigation in United States and Mexico. The firm has experience in representing U.S. and Mexican importers and exporters in litigation against multinational corporations; representing U.S. and Mexican importers in international letter of credit litigation against foreign exporters and banks; representing foreign investors in international securities fraud litigation against foreign banks, Big 5 accounting firms and other aiders and abettors; and representing Mexico-based maquiladoras in litigation in United States courts. Furthermore, Martin & Drought, P.C. provides litigation services to its clients involved in labor disputes in Mexico, and is also able to provide general litigation services in Mexico through its network of affiliated attorneys in Mexico. The firm is thus uniquely positioned to provide international litigation services to resolve disputes on both sides of the U.S.-Mexico border.

## **TRANSACTIONAL SECTION**

The Transactional Section of the firm represents small, medium and large businesses, as well as individuals and quasi-governmental entities, on a wide variety of matters which may be best described as contractual or transactional in nature. The partners in this section have over 80 years of combined experience in handling a diverse array of complex commercial matters involving, for example, asset acquisition and disposition, real estate development and construction, real estate mortgage loan transactions, asset-based commercial loans, formation and operation of business entities (such as corporations, partnerships and limited liability companies), real estate acquisitions, leases for shopping centers, office building and industrial properties, and product manufacturing, distribution and sales. In addition, our business attorneys deal on a regular basis with pension funds and a broad spectrum of regulatory issues such as environmental compliance, land use and zoning, and governmental permitting. Our clientele can confidently rely on the attorneys in our Transactional Section to assist them promptly and professionally with virtually any situation in which legal services in the nature of contract preparation and negotiation are required.

## PARTNERS:

**Gerald T. Drought**, admitted to Bar, 1972, Texas; also admitted to practice before the U.S. District Court for the Southern, Western and Northern Districts of Texas; U.S. Court of Appeals, Fifth Circuit; U.S. Supreme Court. Preparatory Education: University of Texas at Austin (B.B.A. in Finance, with honors, 1970). Legal Education: University of Houston (J.D., with honors, 1972; Order of the Barons/Delta Theta Phi). Member: San Antonio Bar Association, State Bar of Texas (Special Counsel, Commission for Lawyer Discipline, 1994), San Antonio Trial Lawyers Association, Texas Association of Bank Counsel, Association of Attorney – Mediators, San Antonio Chapter, San Antonio Bar Association Fee Dispute Committee, Alamo Kiwanis Club (Director 1997-98), Million Dollar Advocates Forum. Fellow: San Antonio and Texas Bar Foundations, Aircraft Owners & Pilots Association (AOPA). President and Chairman of the Firm (Head of Firm's Litigation Section). Languages: Spanish Competent and English. Mediator: ADR Training - Attorney Mediators Institute, March 1996. Recognitions: Selected by peers as a Texas Super Lawyer "Best Attorneys in Texas" – Texas Monthly issues 2003 & 2004; Selected by peers as one of the best attorneys in San Antonio – 2004 issue of Scene In SA Magazine "San Antonio Best Attorneys." Practice Areas: Business and General Litigation. Board Certified, Civil Trial Law, Texas Board of Legal Specialization. **E-Mail:** [gdrought@mdtlaw.com](mailto:gdrought@mdtlaw.com)

**S. Carl Friedsam**, admitted to Bar, 1979, Texas. Preparatory Education: North Texas State University (B.B.A., magna cum laude, 1976). Legal Education: Texas Tech University (J.D., with honors, 1979). Member: Texas Association of Bank Counsel, San Antonio Bar Association, State Bar of Texas and American Judicature Society. Boards and Activities: Goodwill Industries of San Antonio (Legal Advisor); Family Services (Chairman of the Board, 2005-2006, Board Member) and San Antonio Art Institute (Board Member). Practice Areas: Real Estate; Business Law; Commercial Law. **E-Mail:** [scfriedsam@mdtlaw.com](mailto:scfriedsam@mdtlaw.com)

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**Michael G. Colvard**, admitted to Bar, 1979, Texas; also admitted to practice before the Supreme Court of the United States, U.S. Court of Appeals, Fifth Circuit; U.S. District Court for the Southern, Northern and Western Districts of Texas; Texas Supreme Court. Preparatory Education: Southwest Texas State University (B.A., highest honors, 1976). Legal Education: St. Mary's University of San Antonio (J.D., 1979; Phi Alpha Delta). Law Clerk for Hon. Bert W. Thompson, Bankruptcy Court, Western District of Texas (1979-81). Member: San Antonio Bar Association, State Bar of Texas, San Antonio Bankruptcy Bar Association, American Bankruptcy Institute. U.S. Army, 1970-72. Practice areas: Collection/Bankruptcy Law; Creditor's Rights and Commercial Litigation; Business Law. Board Certified/Business Bankruptcy - American Board of Certification; Board Certified/Business and Consumer Bankruptcy - Texas Board of Legal Specialization. **E-Mail:** [mcolvard@mdtlaw.com](mailto:mcolvard@mdtlaw.com)

**Jon D. Lowe**, admitted to Bar, 1982, Texas. Preparatory and Legal Education: University of Texas (B.A., with honors, 1977; J.D., 1982; Phi Beta Kappa). Member: State Bar of Texas (Real Estate, Probate and Trust Law Section), San Antonio Bar Association (Real Estate, Environmental and International Law Sections), Texas Association of Bank Counsel, University of Texas Law School Alumni Association. Fellow, San Antonio Bar Foundation. Practice Areas: Real Estate and Construction Law; Banking Law; Corporate and General Business Law; Commercial Transactions; Public Pension Plans. Board Certified/Commercial Real Estate Law, Texas Board of Legal Specialization. **E-Mail:** [jlowe@mdtlaw.com](mailto:jlowe@mdtlaw.com)

**Hector Coronado De Anda**, admitted in 1972, Mexico (not admitted in United States). Preparatory Education: Nuevo Leon State University (B.A., 1965); Education: Nuevo Leon State University, School of Law (J.D. 1972); New York University School of Law (Masters in Comparative Jurisprudence, 1973). Mr. Coronado is a bilingual Mexican attorney who, prior to joining Martin & Drought, P.C., headed the international legal section of Monterrey-based conglomerate, CEMEX. He has been in-house counsel to several Mexican industrial groups, including Saltillo Industrial Group (GIS), Protexa, Proeza, Conductores Monterrey Group (Industrias AXA), and Alfa Industrial Group. Practice areas: Foreign Investments; Corporate, Mergers, Acquisitions and Joint Ventures, Commercial, Banking and Finance, Administrative, Civil and Intellectual Property law. Language: Spanish and English; Resident: McAllen office. Practice Areas: Foreign Investment; Corporate Law; Commercial Law; Joint Ventures; Finance; Real Estate. **E-Mail:** [hcoronado@mdtlaw.com](mailto:hcoronado@mdtlaw.com)

**Jorge A. Garcia-Adame**, admitted in 1992, Mexico. Education: Instituto Tecnológico y de Estudios Superiores de Monterrey (J.D., with honors, 1991); Graduate studies include Mexican Legislation applied to Foreign Trade, The University of Texas School of Law (Master of Comparative Jurisprudence, 1993); Member: American Bar Association (International Section), San Antonio Bar Association (International Section), Texas-Mexico Bar Association. Fraternity: Phi Delta Phi, International Chapter. Speaker: Seminars on Mexican Business, Transactional Issues and NAFTA. Author of a number of articles on Mexican Law issues affecting International transactions, including the maquiladora industry. Frequent speaker at seminars and trade meetings about Mexican business and maquiladoras. Worked with clients setting up and restructuring over 30 maquiladoras throughout Mexico. Practice Areas: Corporate Law; International Business Transactions; Foreign Investments; Real Estate; Joint Ventures; Maquiladoras; NAFTA. Licensed only in Mexico. Languages: Spanish and English. **E-Mail:** [jgarcia@mdtlaw.com](mailto:jgarcia@mdtlaw.com)

**Vincent A. Notzon**, admitted to Bar, 1993, Texas; also admitted to practice before the U.S. Court of Appeals, Fifth Circuit; U.S. District Courts for the Northern, Southern and Western Districts of Texas. Preparatory Education: University of Texas at Austin (BBA/Finance 1989). Legal Education: The University of Texas School of Law (J.D., 1993). Member: State Bar of Texas, American Bar Association (Litigation Section), San Antonio Bar Association, Texas Young Lawyers Association, San Antonio Young Lawyers Association. Boards and Activities: Spyglass Hill Homeowners Association (Board of Directors 1994-present). Practice Areas: Civil Litigation; Insurance Products Litigation; Products Liability; Lender Liability; Complex Class Action Litigation. Languages: Spanish and English. **E-Mail:** [vnotzon@mdtlaw.com](mailto:vnotzon@mdtlaw.com)

**Matthew Carson Cottingham Miles**, admitted to Bar, 1997, Texas; also admitted to practice before the United States District Court, Northern District of Texas, 1999. Education: Texas Tech University School of Law (J.D., 1997); Washington and Lee University (B.A., 1994). Board Certified in Oil, Gas and Mineral Law, Texas Board of Legal Specialization, 2003. Commercial Real Estate Law, Texas Board of Legal Specialization, 2005. Member: State Bar of Texas, San Antonio Bar Association Natural Resources Section (Past-Chairman), San Antonio Young Lawyers Association, San Antonio Bar Foundation. Texas Monthly – Texas Rising Star, 2006. Author: *The Edwards Aquifer Water Crisis* 6 S.C. Env't'l L.J. 213 (1997); *A Statutory Lien with An Attitude*, Texas Real Estate, Probate and Trust Law Reporter (October 2004), Author/Speaker: *Vacancies*, Fall Advanced Oil, Gas & Energy Resources Law Course (2004). Co-Author, *So Your Client Thinks He Wants to Buy Only the Surface*. . . State Bar of Texas Oil, Gas and Energy Resources Law Section Report (December 2006). Practice Areas: Real Estate (including Land Use Planning and Natural Resources) and Corporate Law. **E-Mail:** [mcmiles@mdtlaw.com](mailto:mcmiles@mdtlaw.com)

**Mathis B. Bishop**, admitted to Bar 2004, Texas; also admitted to practice before the United States District Courts for the Eastern, Southern, and Western Districts of Texas; also admitted to practice in Federal Court, Eastern District of Wisconsin. College Education: University of Texas (B.A., 2000); Legal Education: University of Texas School of Law (J.D., 2004). Member: State Bar of Texas; San Antonio Bar Association (Member, Litigation Section); San Antonio Young Lawyers Association; Texas Young Lawyers Association. Practice Area: Litigation. **E-Mail:** [mbishop@mdtlaw.com](mailto:mbishop@mdtlaw.com)

**Paul J. Benavides**, admitted to Bar 2014, Texas. Preparatory Education: McCoy College of Business, Texas State University (BBA, Finance 2011). Legal Education: St. Mary's University School of Law (J.D., 2014). While in law school, Mr. Benavides served as a judicial intern for the Honorable Chief Justice Nathan L. Hecht of the Supreme Court of Texas and for Honorable Rebecca Simmons of the Fourth Court of Appeals. Mr. Benavides advises clients on matters related to oil and gas, including leasing, acquisition, pipeline easements, seismic operations, and surface use, along with commercial real estate matters involving leasing, acquisition, and financing. Professional Achievements: Co-Author with M.C. Cottie Miles, *Contracting for Clarity: Practical Solutions for Drafting Around the Current State of the Law Affecting Overriding Royalty Interest*, 46 Tex. Tech. L. Rev. 1043 (2014). Practice Areas: Oil and Gas/Energy, Commercial Real Estate. Languages: English and Spanish. **E-Mail:** [pbenavides@mdtlaw.com](mailto:pbenavides@mdtlaw.com)

### **RETIRED SHAREHOLDER**

**James N. Martin**, admitted to Bar, 1963, Texas; also admitted to practice before the U.S. Supreme Court and U.S. Court of Military Appeals. Preparatory Education: Texas A & M University (B.A., 1954). Legal Education: The University of Texas School of Law (J.D., 1963). Member: San Antonio Bar Association (President, 1981-82), State Bar of Texas, Texas Bar Foundation (Life Fellow), San Antonio Bar Foundation, Present Director of San Antonio Warm Springs Rehabilitation Hospital. Warm Springs Foundation, Former Director of Harry Jersig Center for Learning Disabilities, San Antonio Easter Seals Foundation, Texas Advisory Commission on Intergovernmental Relations, University of Texas Law, Dean's Round Table. Cmdr., U.S. Navy, 1954-59 and 1961-62. Practice Areas: Real Estate; Business Law.

**ASSOCIATES**  
**(In Alphabetical Order):**

**Roxana De Leon Fuentes**, admitted in 1997, Mexico (not admitted in United States); Mrs. De Leon Fuentes represents and assists clients in all matters related to their operations and transactions in Mexico and Latin America. Her practice concentrates on representing foreign investors in Mexico. She has participated in the development and expansion of operations of US companies into Mexico through the Maquila Industry Program (IMMEX). Legal Education: Centro de Estudios Tecnologicos Industrial y de Servicios No. 52, Mexico City (Bachelors Degree in Accounting, 1990); Universidad Nacional Autonoma de Mexico (J.D. 1997); Member: Free Trade Alliance. Practice Areas: Corporate, Real Estate and Immigration in Mexico. Languages: Spanish and English **E-Mail:** [rfuentes@mdtlaw.com](mailto:rfuentes@mdtlaw.com)

# **Exhibit 6**



**EXHIBIT 6**

*In re SolarWinds Corporation Securities Litigation*  
Case No. 1:21-cv-00138-RP (W.D. Tex.)

**PLAINTIFFS' COUNSEL'S TOTAL EXPENSES BY CATEGORY**

<b>CATEGORY</b>	<b>AMOUNT</b>
Court Fees	\$700.00
Service of Process	\$928.20
PSLRA Notice Cost	\$2,175.00
On-Line Factual Research	\$22,547.93
On-Line Legal Research	\$19,703.91
Document Management/Litigation Support	\$19,806.80
Telephone	\$762.64
Postage & Express Mail	\$557.76
Hand Delivery Charges	\$209.67
Local Transportation	\$231.39
Internal Copying & Printing	\$35.08
Working Meals	\$493.39
Experts	\$184,342.25
Independent Counsel	\$4,375.00
Mediation	\$13,580.00
<b>TOTAL:</b>	<b>\$270,449.02</b>

# **Exhibit 7**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
ENTERED

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

NOV 25 2002

Michael N. Milby, Clerk of Court

BERGER, et al.,

Plaintiffs,

Consolidated Civil Action No. 98-1148

v.

COMPAQ COMPUTER CORP., et al.,

Defendants.

**ORDER AWARDING PLAINTIFFS' COUNSEL'S FEES, COSTS AND EXPENSES**

This matter came before the Court for hearing pursuant to the Order of this Court, entered July 1, 2002, on the application of the parties for approval of the settlement set forth in the Stipulation of Settlement dated as of June 21, 2002 (the "Stipulation") and the application of Plaintiffs' Lead Counsel for (a) an award of attorneys' fees; plus (b) reimbursement of actual costs and expenses, including the fees, costs and expenses of any experts or consultants, incurred in connection with prosecuting the Litigation, plus any interest on such attorneys' fees, costs and expenses at the same rate and for the same periods as earned by the Settlement Fund (until paid) as may be awarded by the Court. Due and adequate notice complying with Federal Rule of Civil Procedure 23 and the requirements of due process having been given to the Settlement Class as required in said Order, and the court having considered all papers filed and proceedings had herein, and otherwise being fully informed in the premises, and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

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01/02/11 7:11

1. This Order incorporates by reference the definitions in the Stipulation, and all terms used herein shall have the same meanings set forth in the Stipulation.

2. This Court has jurisdiction over the subject matter of the Litigation and over all parties to the Litigation, including all Members of the Class.

3. The Notice of Pendency and Proposed Settlement of Class Action given to the Class was the best notice practicable under the circumstances of these proceedings and of the matters set forth therein, including the proposed settlement set forth in the Stipulation and the proposed fees, costs and expenses applied for pursuant to the Fee and Expense Application, to all persons entitled to such Notice, and said Notice fully satisfied the requirements of Federal Rule of Civil Procedure 23 and the requirements of due process.

4. Plaintiffs' Counsel is entitled to an award of attorneys' fees in the amount of \$8,603,700.00, representing 30% of the Settlement Fund, and to reimbursement of costs and expenses in the amount of \$770,935.02, plus interest on such amounts in proportion to the interest earned on the Settlement Fund. Such amounts are reasonable and appropriate under the circumstances of this case. Payment is to be made from the Settlement Fund, and is to be allocated among Plaintiffs' Counsel, pursuant to the terms of the Stipulation and this Order.

5. The attorneys' fees, costs and expenses, including the fees, costs and expenses of experts and consultants, as awarded in the preceding paragraph, shall be paid to the Receiving Agent from the Settlement Fund, as ordered, immediately after the entry of this Order awarding such fees, costs and expenses, and shall be subject to the undertaking of the Receiving Agent annexed hereto as Exhibit A. In the event that, after payment to the Receiving Agent, the attorneys' fees, costs and expenses award is reduced or reversed for any reason, including, without limitation, appeal, further proceeding on remand or successful collateral attack, then the

Receiving Agent shall make (and/or cause Plaintiffs' Counsel to make) repayment to the Settlement Fund within ten business days of the entire amount required by any court or appellate court, with accrued interest at the average rate earned on the Settlement Fund from the time of withdrawal from the Settlement Fund until the date of the refund. Before paying any portion of the attorneys' fees, costs and expenses award to any other Plaintiffs' Counsel, the Receiving Agent shall obtain from such Plaintiffs' Counsel who receive any payment of attorneys' fees, costs and expenses their agreement that they accept payment subject to the joint and several obligation of each and every agreeing Plaintiffs' Counsel (including their respective partners, shareholders and/or firms) who receives payments to make repayment as may be required in accordance with this paragraph 5. Furthermore, such agreement of Plaintiffs' Counsel (including their respective partners, shareholders and/or firms) shall include their agreement that they remain subject to the continuing jurisdiction of this Court for the purpose of enforcing their joint and several obligation to repay required attorneys' fees, costs and expenses to the Settlement Fund as provided in this paragraph 5.

*The Court believes that the fees paid to date are sufficient to cover any additional work to be performed on this case.*

6. Plaintiffs' Counsel are granted leave to file a supplemental petition(s) for ~~fees and~~ expenses upon good cause shown, as well as for ~~fees and~~ expenses incurred in connection with the notice and administration of the Settlement.

*If Plaintiff believes there are extraordinary circumstances warranting additional fees*

7. Without affecting the finality of this Order in any way, this Court hereby retains continuing jurisdiction over hearing and determining applications for additional attorneys' fees, costs, interest and reimbursement of expenses in the Litigation.

8. In the event that the settlement does not become effective in accordance with the terms of the Stipulation, or in the event that the Settlement Fund, or any portion thereof, is returned to the Defendants, then this Order shall be rendered null and void to the extent

*Plaintiffs' Counsel may present a petition to the Court requesting additional fees but Plaintiffs must be notified.*

*(WDD)*

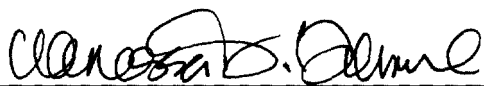
provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

9. There is no just reason for delay in the entry of judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, and the Clerk is hereby directed to enter judgment in accordance with this Order and Final Judgment.

10. Without in any way affecting the finality of this Order Awarding Plaintiffs' Counsel's Fees, Costs and Expenses, this Court shall retain continuing jurisdiction over the Litigation and the parties to the settlement to enter any future orders as may be necessary for the purposes of effectuating the settlement and enforcing the Final Judgment.


IT IS SO ORDERED

DATED: Nov. 22, 2002

  
THE HONORABLE VANESSA GILMORE  
UNITED STATES DISTRICT JUDGE

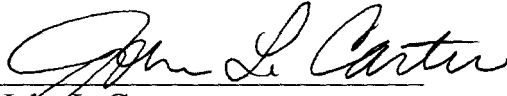
Agreed:

HOEFFNER & BILEK L.L.P.

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