UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE MBIA, INC., SECURITIES LITIGATION	File No. 08-CV-264-KMK

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

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Dated: November 10, 2011

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Court-appointed Lead Counsel, Bernstein Litowitz Berger & Grossmann LLP ("Lead Counsel"), having achieved a recovery of $68 million in cash (the "Settlement Amount") for the benefit of the Class in this action, respectfully submits this memorandum of law in support of its motion, pursuant to Fed. R. Civ. P. 23(h), for an award of attorneys' fees in the amount of 22% of Settlement Fund (*i.e.,* 22% of the Settlement Amount with interest on such amount at the same rate as earned by the Settlement Fund).[1] Lead Counsel also seeks reimbursement of $602,251.90 in litigation expenses that it reasonably and necessarily incurred in prosecuting and resolving the Action, as well as the reimbursement of $15,000 in costs and expenses incurred by Lead Plaintiff directly related to its representation of the Class.

PRELIMINARY STATEMENT

The $68 million proposed Settlement of the Action represents an excellent recovery for the Class. This substantial monetary recovery was achieved through the skill, tenacity and effective advocacy of Lead Counsel, who litigated this Action on a purely contingent fee basis against highly skilled defense counsel. The Settlement was achieved in the face of numerous hurdles and risks that posed the risk of no recovery (or a substantially lesser recovery) for the Class.

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[1] Lead Plaintiff, the Teachers' Retirement System of Oklahoma ("Lead Plaintiff" or "OTRS"), is simultaneously submitting herewith the Declaration of Steven B. Singer in Support of (A) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation and (B) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Singer Declaration" or "Singer Decl."). The Court is respectfully referred to the Singer Declaration for a detailed description of, *inter alia*: the history of the Action, the nature of the claims asserted; the negotiations leading to the Settlement; the value of the Settlement to the Class, as compared to the risks and uncertainties of continued litigation; and a description of the services Lead Counsel provided for the benefit of the Class. Unless otherwise noted, capitalized terms have the meanings set out in the Singer Declaration and in the Stipulation and Agreement of Settlement dated September 6, 2011 (the "Stipulation").

As detailed in the accompanying Singer Declaration, Lead Counsel vigorously pursued this litigation from its outset by, among other things, (i) conducting a substantial factual investigation into the alleged fraud, including interviews with numerous former MBIA employees and a broad review of publicly available information; (ii) preparing two detailed amended complaints based on this investigation; (iii) consulting with experts in structured finance products, accounting, loss causation and damages; (iv) opposing two rounds of motions to dismiss by Defendants; and (v) engaging in extensive settlement negotiations over the course of several months that included preparing multiple mediation statements and participating in two formal mediation sessions conducted by retired Judge Daniel Weinstein. In addition, following the agreement in principle to settle, Lead Counsel engaged in substantial due diligence discovery to confirm the adequacy of the Settlement, including reviewing tens of thousands of pages of internal MBIA documents and conducting interviews with several key MBIA employees.[2]

The Settlement achieved by Lead Counsel's efforts will result in Class Members recovering a substantial percentage of their likely recoverable damages, and is a particularly favorable result when considered in light of the considerable risks confronted in this case. For example, Defendants had plausible arguments (i) that they had not made any material misstatements or omissions, based on their detailed disclosures of the Company's CDO-related exposure, (ii) that any misstatements or omissions were, at most, the result of negligence and not fraud, and (iii) that the price of MBIA common stock had not declined as a result of the disclosure of the allegedly concealed facts, but had reacted to other news regarding the Company

[2] Lead Counsel interviewed MBIA's current head of investor relations, who also held that position during the Class Period; the Managing Director of Insured Portfolio Management who, during the Class Period, was a Managing Director and Head of Structured Finance Insurance Portfolio Management; and Individual Defendant Chaplin, who is currently President and Chief Financial Officer of MBIA. *See* Singer Decl. at ¶ 25.

or the broader financial crisis. Further, there was a considerable risk with respect to the collectability of any judgment that might be obtained against Defendants in the Action, given MBIA's financial condition and the fact that Defendants' available insurance would be substantially reduced by the costs of the ongoing litigation. In light of these issues, Lead Counsel respectfully submits that the Settlement is a testament to its hard work and the quality of its representation.

Given the excellent recovery obtained for the benefit of the Class, the complexity and amount of work involved, the skill and expertise required, and the risks that counsel undertook, Lead Counsel submits that the requested award of 22% of the Settlement Fund and reimbursement of counsel's expenses in the amount of $602,251.90, is fair and reasonable. Federal courts in this District and throughout the nation have awarded substantially greater fees and expense reimbursement in securities class actions such as this. Moreover, the requested fee represents a multiplier of approximately 2.89 on the total value of the time that Lead Counsel has dedicated to the Action, a multiplier that is well within the range awarded in complex class actions with substantial contingency risks.

Lead Plaintiff, a sophisticated institutional investor, has reviewed and endorsed the requested fee as fair and reasonable. *See* Declaration of Regina Switzer, Assistant Attorney General for the State of Oklahoma, attached as Exhibit 2 to the Singer Declaration ("Switzer Decl."), at ¶¶ 12-13. This endorsement is a significant factor in assessing fee and expense requests under the Private Securities Litigation Reform Act of 1995 (the "PSLRA"). In addition, pursuant to the Court's Order Preliminarily Approving Proposed Settlement and Providing for Notice dated September 20, 2011 (ECF No. 76) (the "Preliminary Approval Order"), more than 109,000 copies of the Notice have been mailed to potential Class Members and a Summary

Notice was published in *Investor's Business Daily* and transmitted over the *PR Newswire*. *See* Affidavit of Jose C. Fraga Regarding (A) Mailing of the Notice and Proof of Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date, Exhibit 1 to the Singer Decl. ("Fraga Aff."), at ¶¶ 6-7. The Notice advised potential Class Members that Lead Counsel would seek fees of 22% of the Settlement Fund and reimbursement of litigation expenses (including reimbursement of the reasonable costs and expenses of Lead Plaintiff directly related to its representation of the Class) in an amount not to exceed $750,000. *See* Fraga Aff. Exh. A at ¶¶ 5, 71. While the deadline set by the Court for Class Members to object to the requested attorneys' fees and expenses has not yet passed, to date no objection to Lead Counsel's application for fees and expenses has been received. *See* Singer Decl. at ¶ 62.[3]

For all the reasons set forth below, Lead Counsel respectfully requests that the Court approve its application for an award of attorneys' fees and reimbursement of expenses.

ARGUMENT

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

The Supreme Court has long recognized that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000). Courts recognize that awards of fair attorneys' fees from a common fund "serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons," and

[3] The deadline for the submission of objections is November 25, 2011. Should any objections be received, Lead Counsel will address them in reply papers, which will be filed with the Court on December 8, 2011.

therefore to discourage future alleged misconduct of a similar nature. *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 585 (S.D.N.Y. 2008); *see In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115808, at *2 (S.D.N.Y. Nov. 7, 2007) (same).

Indeed, the Supreme Court has emphasized that private securities actions, such as the instant Action, are "an essential supplement to criminal prosecutions and civil enforcement actions" brought by the SEC. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007); *accord Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (private securities actions provide "'a most effective weapon in the enforcement' of the securities laws and are 'a necessary supplement to [SEC] action.'") (quoting *J.I. Case Co. v. Borak*, 377 U.S. 426, 432 (1964)). Compensating plaintiffs' counsel for the risks they take in bringing these actions is essential, because "[s]uch actions could not be sustained if plaintiffs' counsel were not to receive remuneration from the settlement fund for their efforts on behalf of the class." *Hicks v. Morgan Stanley*, No. 01 Civ. 10071 (RJH), 2005 WL 2757792, at *9 (S.D.N.Y. 2005).

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

Lead Counsel respectfully submits that this Court should award a fee based on a percentage of the common fund obtained for the Class. The Second Circuit has expressly approved the percentage method, recognizing that "the lodestar method proved vexing" and had resulted in "an inevitable waste of judicial resources." *See Goldberger*, 209 F.3d at 48-50 (holding that either the percentage of fund method or lodestar method may be used to determine appropriate attorneys' fees); *Savoie v. Merchs. Bank*, 166 F.3d 456, 460 (2d Cir. 1999) (stating that the "percentage-of-the-fund method has been deemed a solution to certain problems that may arise when the lodestar method is used in common fund cases"). More recently, the Second Circuit has reiterated its approval of the percentage method, stating that it "directly aligns the

interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation," and has noted that the "trend in this Circuit is toward the percentage method." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005); *see also Fogarazzo v. Lehman Bros., Inc.*, No. 03-cv-5194 (SAS), 2011 WL 671745, at *2 (S.D.N.Y. Feb. 23, 2011); *In re Comverse Tech., Inc. Sec. Litig.*, No. 06-CV-1825 (NGG), 2010 WL 2653354, at *2 (E.D.N.Y. June 24, 2010).

The text of the PSLRA also supports awarding attorneys' fees using the percentage-of-the-fund method in securities law cases, as it provides that "[t]otal attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a *reasonable percentage* of the amount" recovered for the class. 15 U.S.C. § 78u-4(a)(6) (emphasis added). Several courts have concluded that, in using this language, Congress expressed a preference for the percentage method, as opposed to the lodestar method, when determining attorneys' fees in securities class actions. *See In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 355 (S.D.N.Y. 2005); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 370 (S.D.N.Y. 2002).

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

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

The Supreme Court has recognized that an appropriate court-awarded fee is intended to approximate what counsel would receive if they were bargaining for the services in the marketplace. *See Missouri v. Jenkins*, 491 U.S. 274, 285-86 (1989). If this were a non-representative action, the customary fee arrangement would be contingent, on a percentage basis, and in the range of 30% to 33% of the recovery. *See Blum v. Stenson*, 465 U.S. 886, 903 (1984)

("In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery.") (Brennan, J., concurring).

The fee requested here was negotiated with and is endorsed by Lead Plaintiff and, at 22%, is well within the range of percentage fees awarded in the Second Circuit in comparable cases. For example, in another recently settled securities class action, Judge Marrero awarded fees of 27.5% of a $70 million settlement fund, in a case that, like this one, involved alleged non-disclosures of a company's exposure to residential mortgage-backed securities ("RMBS") and collateralized debt obligations ("CDOs"). *See Cornwell v. Credit Suisse Group*, No. 08-cv-03758 (VM), slip op. at 2 (S.D.N.Y. July 18, 2011) (attached hereto as Exhibit 1). A review of attorneys' fees typically awarded in class actions with comparably sized settlements in this Circuit also strongly supports the reasonableness of the 22% request. *See, e.g., In re Priceline.com, Inc. Sec. Litig.*, No. 3:00-CV-1884 (AVC), 2007 WL 2115592, at *5 (D. Conn. 2007) (awarding 30% of $80 million settlement fund); *In re Philip Servs. Corp. Sec. Litig.*, No. 98 Civ. 835 (AKH), 2007 WL 959299, at *3 (S.D.N.Y. March 28, 2007) (awarding 26% of $79.75 million settlement fund); *In re Am. Express Fin. Advisors Sec. Litig.*, No. 04 Civ. 1773 (DAB), slip op. at 8 (S.D.N.Y. July 18, 2007) (awarding 27% of $100 million settlement fund) (attached hereto as Exhibit 2).

Indeed, fee awards of 22% and higher are common in securities class actions in this Circuit even when the size of the settlement fund is considerably larger. *See, e.g., Comverse*, 2010 WL 2653354, at *4 (awarding 25% of $225 million settlement fund); *In re Deutsche Telekom AG Sec. Litig.*, No. 00-CV-9475 (NRB), 2005 U.S. Dist. LEXIS 45798, at *12-*13 (S.D.N.Y. June 9, 2005) (awarding 28% of $120 million settlement fund); *In re Oxford Health Plans, Inc. Sec. Litig.*, MDL No. 1222, 2003 U.S. Dist. LEXIS 26795, at *13 (S.D.N.Y. June 12,

2003) (awarding 28% of $300 million settlement fund); *Kurzweil v. Philip Morris Cos.*, No. 94 Civ. 2373 (MBM), 1999 WL 1076105, at *1 (S.D.N.Y. Nov. 30, 1999) (awarding 30% of $123.8 million settlement fund); *In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 400 (S.D.N.Y. 1999) (awarding 27.5% of $116.6 million settlement fund); *In re Prudential Sec. Inc. Limited P'ships Litig.*, 912 F. Supp. 97, 103-04 (S.D.N.Y. 1996) (awarding 27% of $110 million settlement fund).[4]

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

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

[4] A review of fee awards in securities class action cases from other jurisdictions further confirms the reasonableness of the requested 22% award. *See, e.g., Billitteri v. Securities Am., Inc.*, No. 3:09-cv-1568, 2011 WL 3585983, at *9 (N.D. Tex. Aug. 4, 2011) (awarding 25% of $80 million settlement fund); *In re Cigna Corp. Sec. Litig.*, No. 02-8088, 2007 WL 2071898, at *5 (E.D. Pa. July 13, 2007) (awarding 23% of $93 million settlement fund); *In re Xcel Energy, Inc. Sec., Derivative & ERISA Litig.*, 364 F. Supp. 2d 980, 998-99 (D. Minn. 2005) (awarding 25% of $80 million settlement fund); *see also, e.g., In re Mercury Interactive Corp. Sec. Litig.*, No. 5:05-cv-03395-JF, 2011 WL 826797, at *2 (N.D. Cal. Mar. 3, 2011) (awarding 22% of $117.5 million settlement fund); *In re Schering-Plough Corp. Sec. Litig*., No. 01-829, 2009 WL 5218066, at *5-*6 (D.N.J. Dec. 31, 2009) (awarding 23% of $165 million settlement fund); *In re CMS Energy Sec. Litig.*, No. 02-CV-72004 (GCS), 2007 U.S. Dist. LEXIS 96786, at *14-*15 (E.D. Mich. Sept. 6, 2007) (awarding 22.5% of $200 million settlement fund); *Schwartz v. TXU Corp.*, No. 3:02-CV-2243-K, 2005 WL 3148350, at *24, *34 (N.D. Tex. Nov. 8, 2005) (awarding 22.2% of $149.75 million settlement fund); *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587, 590-91 (E.D. Pa. 2005) (awarding 25% of $126.6 million settlement fund); *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1337 (S.D. Fla. 2001) (awarding 25% of $110 million settlement fund).

[5] Under the lodestar method, the court multiplies the number of hours each attorney spent on the case by each attorney's reasonable hourly rate; and second, the court adjusts that lodestar figure (by applying a multiplier) to reflect such factors as the risk and contingent nature of the litigation, the result obtained and the quality of the attorney's work. *See, e.g., Lindy Bros. Builders, Inc. v. Am. Radiator & Standard Sanitary Corp.*, 487 F.2d 161, 167-69 (3d Cir. 1973), *subsequently refined in Lindy Bros. Builders, Inc. v. Am. Radiator & Standard Sanitary Corp.*, 540 F.2d 102, 116-18 (3d Cir. 1976) (*en banc*). Courts are encouraged to award a multiplier because calculation of the lodestar is "simply the beginning of the analysis" *In re Med. X-Ray*

multiples above the lodestar are regularly awarded to reflect the contingency fee risk and other relevant factors.

In complex contingent litigation lodestar multipliers between 2 and 5 are commonly awarded. *See Wal-Mart*, 396 F.3d at 123 (upholding multiplier of 3.5 as reasonable on appeal); *Credit Suisse*, slip op. at 4 (awarding 27.5% fee on $70 million settlement, representing a multiplier of 4.7) (attached hereto as Exhibit 1); *Comverse*, 2010 WL 2653354, at *5 (awarding about 2.8 times lodestar, and noting that "[w]here … counsel has litigated a complex case under a contingency fee arrangement, they are entitled to a fee in excess of the lodestar"); *In re Adelphia Commc'ns Corp. Sec. & Derivative Litig.*, No. 03 MDL 1529, 2006 WL 3378705, at *3 (S.D.N.Y. Nov. 16, 2006) (awarding fee representing a 2.89 multiplier); *Deutsche Telekom*, 2005 U.S. Dist. LEXIS 45798, at *13-*14 (awarding fee representing a 3.96 multiplier); *Xcel Energy*, 364 F. Supp. 2d at 999 (awarding fee representing a 4.7 multiplier); *Maley*, 186 F. Supp. 2d at 371 (awarding fee equal to a 4.65 multiplier, which was "well within the range awarded by courts in this Circuit and courts throughout the country").

Here, the lodestar cross-check fully supports the requested percentage fee. Lead Counsel has spent a total of 11,072.75 hours of attorney and other professional support time prosecuting the Action. *See* Singer Decl. at ¶ 53. Lead Counsel's lodestar, derived by multiplying the hours spent by each attorney and paraprofessional by their current hourly rates, is approximately $5,181,000.[6] *See id*. The requested 22% fee, which amounts to $14,960,000 (without interest),

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Film Antitrust Litig., No. CV-93-5904, 1998 WL 661515, at *7 (E.D.N.Y. Aug. 7, 1998) (quoting *In re Warner Communc'ns Sec. Litig.*, 618 F. Supp. 735, 747 (S.D.N.Y. 1985), *aff'd* 798 F.2d 35 (2d Cir. 1986)).

[6] The Supreme Court and courts in this Circuit have approved the use of current hourly rates to calculate the base lodestar figure as a means of compensating for the delay in receiving payment, inflationary losses, and the loss of interest. *See Missouri v. Jenkins*, 491 U.S. at 284; *Veeco*,

represents about 2.89 times Lead Counsel's lodestar amount. Thus, the 22% fee requested is well within the range of fees routinely awarded.

In sum, Lead Counsel's requested fee award is well within the range of what courts in this Circuit and throughout the country commonly award in complex class actions such as this one, whether calculated as a percentage of the fund or in relation to Lead Counsel's lodestar. Moreover, as discussed below, Lead Plaintiff has reviewed and approved the requested fee and the factors established for the review of attorneys' fee awards by the Second Circuit in *Goldberger* also strongly support a finding that the requested fee is reasonable.

IV. OTHER FACTORS CONSIDERED BY COURTS IN THE SECOND CIRCUIT CONFIRM THAT THE REQUESTED 22% FEE IS FAIR AND REASONABLE

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

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

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

A. The Time and Labor Expended by Lead Counsel Support the Requested Fee

As noted above, Lead Counsel has expended more than 11,000 hours prosecuting this Action. Lead Counsel's efforts included a thorough investigation of the factual and legal issues raised in the Action, which entailed: (i) locating and interviewing numerous former MBIA

2007 WL 4115808 at *9; *In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.*, 724 F. Supp. 160, 163 (S.D.N.Y. 1989).

employees; (ii) retaining and consulting with experts on structured finance products, accounting, loss causation and damages; (iii) reviewing a large volume of publicly available information concerning MBIA, including the Company's SEC filings, analyst research reports, investor presentations, news articles and other public data, and (iv) conducting legal research into the claims against Defendants and their possible defenses. *See* Singer Decl. at ¶¶ 6, 17. Lead Counsel also spent substantial time and effort preparing the two detailed amended complaints, and in preparing briefing in response to Defendants' original and renewed motions to dismiss. *Id*. at ¶¶ 18-23. Following the Court's decision on the motion to dismiss, Lead Counsel continued its investigation of MBIA, and in particular focused on obtaining evidence relating to the *scienter* of the Individual Defendants. *Id*. at ¶ 21. By the time the Settlement was reached, Lead Counsel had completed a significant amount of work in prosecuting the litigation.

A substantial amount of time was also required to negotiate the Settlement. Lead Counsel engaged in two formal mediation sessions, prepared several detailed mediation statements and conducted additional negotiations with Defendants' Counsel between the mediation sessions. *See* Singer Decl. at ¶¶ 32-34. These prolonged negotiation efforts were conducted under the auspices of Judge Weinstein, a well-respected and experienced mediator. *Id*. at ¶ 5. On July 7, 2011, at the end of the second full day of formal mediation, Lead Plaintiff reached the agreement in principle to settle with Defendants. Thereafter, in connection with due diligence discovery undertaken to assess the reasonableness of the Settlement, Lead Counsel obtained, reviewed and analyzed tens of thousands of pages of internal MBIA documents and conducted several interviews with key employees of MBIA. *Id*. at ¶ 25. Throughout the litigation, Lead Counsel staffed the matter efficiently and avoided any unnecessary duplication of effort.

The significant amount of time and effort devoted to this case by Lead Counsel and the efficient and effective management of the litigation confirm that the fee request here is reasonable.

B. The Risks of the Litigation Support the Requested Fee

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

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

City of Detroit v. Grinnell Corp., 495 F.2d 448, 470 (2d Cir. 1974) (citation omitted), *abrogated on other grounds by Goldberger*, 209 F.3d 43. "Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation." *Teachers' Ret. Sys. v. A.C.L.N., Ltd.,* No. 01-CV-11814, 2004 WL 1087261, at *3 (S.D.N.Y. May 14, 2004); *see also In re Am. Bank Note Holographics Inc. Sec. Litig.*, 127 F. Supp. 2d 418, 433 (S.D.N.Y. 2001) (it is "appropriate to take this [contingent-fee] risk into account in determining the appropriate fee to award").

While Lead Counsel believed that the claims of Lead Plaintiff and the Class had merit, Lead Counsel recognized that there were a number of substantial risks in the litigation and Lead Plaintiff's ability to establish liability and damages in the Action and collect on a judgment against Defendants was far from certain. Indeed, this case presented substantial risks and uncertainties from the time it was filed, which made it far from certain that any recovery, let

alone a substantial settlement of $68 million in cash, would ultimately be obtained for the Class. If Defendants were to prevail, the Class – and therefore Lead Counsel – would receive nothing.

As discussed in greater detail in the Singer Declaration and in the memorandum of law in support of the Settlement, there were substantial risks here with respect to Lead Plaintiff's ability to prove that Defendants had made material misrepresentations or misleading omissions; that Defendants had acted with *scienter*; and that the alleged misrepresentations were the cause of the Class's losses. Moreover, Lead Counsel also considered there to be a substantial risk that, even if Lead Plaintiff were successful in establishing liability and damages, Defendants might not be able to pay a substantial judgment, in light of MBIA's financial condition and the depletion of the Defendants' insurance coverage over time.

The first risk faced by Lead Counsel and Lead Plaintiff is that they would not be able to establish that Defendants had misrepresented MBIA's exposure to CDOs and CDO-squared securities. Defendants would have continued to argue that they had made detailed disclosures on this subject – including reports posted on the Company's website that provided statistics on the composition of MBIA's multi-sector CDO portfolio and statements made during conference calls with analysts (including a conference call in August 2007 that specifically focused on the issue). Singer Decl. at ¶ 28. Defendants had plausible arguments that they had made the required disclosures regarding MBIA's total exposure to CDOs backed by subprime mortgages, and that they did not have an independent legal obligation to separately disclose MBIA's exposure to the CDO-squared securities. *Id*. Defendants would also have continued to argue that the alleged omissions, if any, were not material to investors in light of the other detailed disclosures that the Company had made. *Id*.

Proving that Defendants' alleged misstatements had been made with *scienter* would also have been challenging. Singer Decl. at ¶ 29. Defendants would have continued to argue vigorously that any omissions in MBIA's disclosures were, at most, the result of negligence and not fraud. In support of this argument, Defendants would have been able to argue that (i) the Company had specifically disclosed the exposure at issue to its rating agencies and the New York State Insurance Department; (ii) they had no incentive to hide MBIA's exposure to CDO-squared securities because these securities were rated triple-A during the Class Period; and (iii) they lacked a motive to commit fraud because the Individual Defendants had not sold any stock and the Company had not conducted any public offerings during the Class Period. *Id*. Additionally, Defendants would have continued to argue that the undisclosed CDO-squared exposure made up only a small part of MBIA's total insurance portfolio, and that the Individual Defendants did not have detailed knowledge about the CDO-squared exposure necessary to support a claim that they were reckless in not disclosing that information. *Id*. The significance of the risks of proving *scienter* in this Action were underscored by the fact that the claims asserted against the Individual Defendants in First Amended Complaint were dismissed by the Court on the grounds that Lead Plaintiff had not adequately plead facts establishing that they acted recklessly or with fraudulent intent. *Id*.

Lead Counsel would have also faced challenges in proving loss causation. In this Action, Lead Plaintiff had the burden of proving that the price of MBIA common stock declined as a result of the disclosure of the allegedly concealed facts about MBIA's exposure to the CDO-squared securities, rather than other news or market factors. Here, Defendants had argued, and would have continued to argue, that the stock price decline that occurred after the December 19, 2007 disclosure was not a response to the alleged corrective disclosure, but was due to what they

claimed was the over-reaction of one analyst to the news (and that other analysts disagreed with that analyst). Singer Decl. at ¶ 30. Defendants could also point to the fact that Fitch, one of the credit rating agencies, had placed MBIA on "negative rating watch" on the same day that the market price reacted to the principal alleged corrective disclosure, creating a situation in which it might be difficult for Lead Plaintiff to prove whether the price declines were reacting entirely to the alleged corrective disclosures or this other news. *Id*.

In addition to the risks of establishing liability and damages, Lead Counsel believed that there was a genuine risk that Defendants would not be able to satisfy a meaningful judgment in the Class's favor even if Lead Plaintiff were to prevail at trial and on any subsequent appeals. Singer Decl. at ¶ 31. Defendants' ability to pay a substantial judgment was a significant risk in this Action because of MBIA's financial condition and the fact that MBIA had lost its triple-A rating, which was critical to its ability to generate new business. *Id*. Moreover, because Defendants' insurance coverage was a wasting asset, the amount available to satisfy a judgment was continually being reduced by the ongoing costs of this Action and the other litigation against MBIA. *Id*.

In the face of these uncertainties regarding the outcome of the case, Lead Counsel undertook this case on a wholly contingent basis, knowing that the litigation could last for years and would require devotion of a substantial amount of attorney time and a significant expenditure of litigation expenses with no guarantee of compensation. "In numerous class actions, including complex securities cases, plaintiffs' counsel have expended thousands of hours and advanced significant out-of-pocket expenses and received no remuneration whatsoever." *Marsh & McLennan*, No. 04 Civ. 8144 (CM), 2009 WL 5178546, at *18 (S.D.N.Y. Dec. 23, 2009). Lead Counsel's assumption of this contingency fee risk supports the reasonableness of

the requested fee. *See In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400, 2010 WL 4537550, at *27 (S.D.N.Y. Nov. 8, 2010) ("the risk associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee award"); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 148 (S.D.N.Y. 2010) ("There was significant risk of non-payment in this case, and Plaintiffs' Counsel should be rewarded for having borne and successfully overcome that risk.").

C. The Magnitude and Complexity of the Action Support the Requested Fee

The magnitude and complexity of the Action also support the requested fee. Courts have long recognized that securities class action litigation "is notably difficult and notoriously uncertain." *Flag Telecom*, 2010 WL 4537550, at *27 (quoting *In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 281 (S.D.N.Y. 1999)). This case was no exception. As noted above and in the Singer Declaration, the litigation raised a number of complex questions that would have required extensive efforts by Lead Counsel and consultation with experts to bring to resolution. To build the case, Lead Counsel had to conduct an extensive factual investigation, including numerous witness interviews and a broad review of available documents. Lead Counsel's consultation with experts at early stages of the case was extensive given the complex and technical nature of subject matter underlying the Class's claims. The numerous arguments raised in Defendants' motion to dismiss the First Amended Complaint and the Individual Defendants' arguments to dismiss the Second Amended Complaint are also indicative of the many issues that the Action would present and the vigorous defense that Defendants' Counsel could be expected to mount throughout the course of the litigation.

If the Action had not been settled, there would have been substantial litigated document discovery; numerous depositions; and, in light of the specialized and technical issues in the case,

particularly extensive expert discovery. Accordingly, the magnitude and complexity of this Action supports the conclusion that the requested fee is reasonable and fair.

D. The Quality of Lead Counsel's Representation Supports the Requested Fee

The quality of the representation by Lead Counsel is another important factor that supports the reasonableness of the requested fee. The quality of Lead Counsel's representation is best evidenced by the quality of the result achieved. *See Goldberger*, 209 F.3d at 55; *Veeco*, 2007 WL 4115808, at *7; *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 467 (S.D.N.Y. 2004). Here, the Settlement provides for recovery of a significant percentage of the Class's likely provable damages and represents an outstanding result for the Class. *See* Singer Decl. at ¶ 35. Lead Counsel respectfully submits that the quality of its efforts in the litigation to date, together with its substantial experience in securities class actions and its commitment to the litigation provided it with the leverage necessary to negotiate this significant Settlement. *See Teachers' Ret. Sys.,* 2004 WL 1087261, at *6 (noting that the skill and prior experience of counsel in the specialized field of shareholder securities litigation is relevant in determining fair compensation).

The quality of Lead Counsel's work is further demonstrated by the fact that this substantial result was achieved without Lead Counsel benefiting from any investigation or action brought by the Securities and Exchange Commission or the Department of Justice and without the benefit of any formal restatement of MBIA's financial statements. *See Flag Telecom*, 2010 WL 4537550, at *27 (the absence of any governmental action on which plaintiff could "piggy-back" supported the award of the requested fee); *In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 173 (3d Cir. 2006) (conclusion that fee award was reasonable was strengthened by fact that class counsel were not aided by the efforts of any governmental investigation, thus, "the entire value of the benefits accruing to class members is properly attributable to the efforts of class counsel");

Xcel Energy, 364 F. Supp. 2d at 999 (the fact that plaintiff's counsel had not benefited from any "meaningful governmental investigation . . . [or] restatement of financials" supported award of fees of 25% of $80 million settlement).

Courts have repeatedly recognized that the quality of the opposition faced by plaintiffs' counsel should also be taken into consideration in assessing the quality of the counsel's performance. *See, e.g., Veeco*, 2007 WL 4115808, at *7 (among factors supporting 30% award of attorneys' fees was that defendants were represented by "one of the country's largest law firms"); *In re Adelphia Commc'ns Corp. Sec.*, 2006 WL 3378705, at *3 ("The fact that the settlements were obtained from defendants represented by 'formidable opposing counsel from some of the best defense firms in the country' also evidences the high quality of lead counsel's work"); *Teachers' Ret. Sys.*, 2004 WL 1087261, at *7 ("The quality of opposing counsel is also relevant in evaluating the quality of services rendered by Plaintiffs' Counsel."). Here, MBIA and the Individual Defendants were represented by Debevoise & Plimpton LLP, one of the country's most prestigious law firms, which skillfully and effectively represented its clients. *See* Singer Decl. at ¶ 55. Notwithstanding this formidable opposition, Lead Counsel's ability to present a strong case and to demonstrate its willingness to continue to vigorously prosecute the Action enabled it to achieve a very favorable settlement for the benefit of the Class.

E. The Requested Fee in Relation to the Settlement

Courts have interpreted this factor as requiring the review of the fee requested in terms of the percentage it represents of the total recovery. "When determining whether a fee request is reasonable in relation to a settlement amount, 'the court compares the fee application to fees awarded in similar securities class-action settlements of comparable value.'" *Comverse*, 2010 WL 2653354, at *3. As discussed in detail in Part III above, the requested 22% fee is well within the range of percentage fees that courts in the Second Circuit and around the country have

awarded in comparable cases. Accordingly, the 22% fee requested is reasonable in relation to the size of the Settlement.

F. Public Policy Considerations Support the Requested Fee

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

G. The Approval of Lead Plaintiff and the Reaction of the Class Support the Requested Fee

Lead Plaintiff, OTRS, which was actively involved in the prosecution, mediation and settlement of this Action, has approved the requested fee. *See* Switzer Decl., attached as Exhibit 2 to the Singer Decl., at ¶¶ 12-13. OTRS is a paradigmatic example of the type of sophisticated and financially interested investor that Congress envisioned serving as a fiduciary for the class

when it enacted the PSLRA. The PSLRA was intended to encourage institutional investors like OTRS to assume control of securities class actions in order to "increase the likelihood that parties with significant holdings in issuers, whose interests are more strongly aligned with the class of shareholders, will participate in the litigation and exercise control over the selection and actions of plaintiff's counsel." H.R. Conf. Rep. No. 104-369, at *27 (1995), reprinted in 1995 U.S.C.C.A.N. 730, 731. Congress believed that these institutions would be in the best position to monitor the ongoing prosecution of the litigation and to assess the reasonableness of counsel's fee request. Moreover, Lead Plaintiff played an active role in the litigation, including attending in person the hearing on the motion to dismiss and both mediation sessions, and closely supervised the work of Lead Plaintiff. *See* Switzer Decl. at ¶¶ 6-7. Accordingly, the endorsement of the fee by Lead Plaintiff as fair and reasonable supports approval of the fee. *See Comverse*, 2010 WL 2653354, at *4 ("The fact that this fee request is the product of arm's-length negotiation between Lead Counsel and the lead plaintiff is significant."); *Veeco*, 2007 WL 4115808, at *8 ("public policy considerations support the award in this case because the Lead Plaintiff . . . – a large public pension fund – conscientiously supervised the work of lead counsel and has approved the fee request").

The reaction of the Class to date also supports the requested fee. As of November 8, 2011, the Claims Administrator has disseminated the Notice to more than 109,000 potential Class Members informing them, among other things, that Lead Counsel intended to apply to the Court for an award of attorneys' fees of 22% of the Settlement Fund and up to $750,000 in expenses. Singer Decl. at ¶ 62. While the time to object to the fee and expenses application does not expire until November 25, 2011, to date, not a single objection has been received. *Id.* Should any objections be received, Lead Counsel will address them in reply papers.

V. LEAD COUNSEL'S EXPENSES ARE REASONABLE AND WERE NECESSARILY INCURRED TO ACHIEVE THE BENEFIT OBTAINED

Lead Counsel's fee application includes a request for reimbursement of litigation expenses that were reasonably incurred and necessary to the prosecution of this Action. *See* Singer Decl. at ¶¶ 63-70. These expenses are properly recovered by counsel. *See In re China Sunergy Sec. Litig.,* No. 07 Civ. 7895 (DAB), 2011 WL 1899715, at *3 (S.D.N.Y. May 13, 2011) (in a class action, attorneys should be compensated "for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they were 'incidental and necessary to the representation'") (citation omitted); *Flag Telecom*, 2010 WL 4537550, at *30 ("It is well accepted that counsel who create a common fund are entitled to the reimbursement of expenses that they advanced to a class"). As set forth in detail in the Singer Declaration, Lead Counsel incurred $602,251.90 in litigation expenses on behalf of the Class in the prosecution of the Action. Singer Decl. at ¶ 65. Reimbursement of these expenses is fair and reasonable. The expenses for which Lead Counsel seeks reimbursement are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, expert fees, computerized research, mediation costs, travel expenses, photocopying, long distance telephone and facsimile charges, postage and delivery expenses, and filing fees. *Id*. at ¶¶ 66-69. The foregoing expense items are billed separately by Lead Counsel, and such charges are not duplicated in the firm's hourly billing rates.

The Notice informed potential Class Members that Lead Counsel would apply for reimbursement of litigation expenses in an amount not to exceed $750,000, which may include the reasonable costs and expenses of Lead Plaintiff directly related to its representation of the Class. The total amount of expenses requested is well below the amount listed in the Notice and, to date, there has been no objection to the request for expenses.

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

In connection with its request for reimbursement of litigation expenses, Lead Counsel also seeks reimbursement of $15,000 in costs and expenses incurred directly by Lead Plaintiff OTRS. The PSLRA specifically provides that an "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class" may be made to "any representative party serving on behalf of a class." 15 U.S.C. §78u-4(a)(4). Here, as set forth in the Switzer Declaration, OTRS seeks an award of $15,000 for the 120 hours spent in furthering and supervising the Action for the benefit of the Class. *See* Switzer Decl. at ¶ 15. As described in the Switzer Declaration, OTRS took an active role in the litigation, including reviewing significant pleadings and briefs in the Action, communicating extensively with Lead Counsel regarding strategy and developments in the Action, attending the hearing on Defendants' motion to dismiss, and taking a direct role in the settlement negotiations, including attending both mediation sessions. *Id*. at ¶¶ 6-7.

Numerous courts have approved reasonable awards to compensate lead plaintiffs for the time and effort they spent on behalf of a class. In *Marsh & McLennan*, the court awarded $144,657 to the New Jersey Attorney General's Office and $70,000 to certain Ohio pension funds, to compensate them "for their reasonable costs and expenses incurred in managing this litigation and representing the Class." 2009 WL 5178546, at *21. As the court noted, their efforts were "precisely the types of activities that support awarding reimbursement of expenses to class representatives." *Id*.; *see also Flag Telecom*, 2010 WL 4537550, at *31 (approving award of $100,000 to Lead Plaintiff for time spent on the litigation); *Veeco*, 2007 WL 4115808, at *12 (awarding institutional lead plaintiff $15,900 for time spent supervising litigation, and characterizing such awards as "routine" in this Circuit).

The award sought by OTRS is reasonable and fully justified under the PSLRA based on its extensive involvement in the Action from inception to settlement and should be granted.

CONCLUSION

For the foregoing reasons, Lead Counsel respectfully requests that the Court award attorneys' fees of 22% of the Settlement Fund, $602,251.90 in reimbursement of the reasonable litigation expenses Lead Counsel incurred in connection with the prosecution of this Action and $15,000 in reimbursement of Lead Plaintiff's costs and expenses.

Dated: November 10, 2011

Respectfully submitted,

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

/s Steven B. Singer

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#594883

Exhibit 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KEVIN CORNWELL, Individually and On Behalf of All Others Similarly Situated, Plaintiff, vs. CREDIT SUISSE GROUP, et al., Defendants.	Civil Action No. 08-cv-03758(VM) **(Consolidated)** CLASS ACTION ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

THIS MATTER having come before the Court on July 18, 2011, on the motion of Lead Plaintiffs' counsel for an award of attorneys' fees and expenses incurred in the Action; the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of the Action to be fair, reasonable, and adequate and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Settlement Agreement dated March 7, 2011.

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

3. Counsel for the Lead Plaintiffs are entitled to a fee paid out of the common fund created for the benefit of the Settlement Class. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478-79 (1980). In class action suits where a fund is recovered and fees are awarded therefrom by the court, the Supreme Court has indicated that computing fees as a percentage of the common fund recovered is the proper approach. *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984). The Second Circuit recognizes the propriety of the percentage-of-the-fund method when awarding fees. *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005).

4. Lead Plaintiffs' counsel have moved for an award of attorneys' fees of 27.5% of the Settlement Fund, plus interest.

5. This Court adopts the percentage-of-recovery method of awarding fees in this case, and concludes that the percentage of the benefit is the proper method for awarding attorneys' fees in this case.

6. The Court hereby awards attorneys' fees of 27.5% of the Settlement Fund, plus interest at the same rate as earned on the Settlement Fund. The Court finds the fee award to be fair and reasonable. The Court further finds that a fee award of 27.5% of the Settlement Fund is consistent with awards made in similar cases.

7. Said fees shall be allocated among plaintiffs' counsel by Co-Lead Counsel in manner which, in their good faith judgment, reflects each counsel's contribution to the institution, prosecution and resolution of the Action.

8. The Court hereby awards expenses in an aggregate amount of $285,072.62, plus interest.

9. In making this award of attorneys' fees and expenses to be paid from the Settlement Fund, the Court has considered each of the applicable factors set fort in *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000). In evaluating the *Goldberger* factors, the Court finds that:

(a) Counsel for Lead Plaintiffs expended considerable effort and resources over the course of the Action researching, investigating and prosecuting Lead Plaintiffs' claims. Lead Plaintiffs' counsel have represented that they have reviewed tens of thousands of pages of documents, interviewed witnesses and opposed legally and factually complex motions to dismiss. The parties also engaged in settlement negotiations that lasted several months. The services provided by Lead Plaintiffs' counsel were efficient and highly successful, resulting in an outstanding recovery for the Settlement Class without the substantial expense, risk and delay of continued litigation. Such efficiency and effectiveness supports the requested fee percentage.

(b) Cases brought under the federal securities laws are notably difficult and notoriously uncertain. *In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, No. MDL 1500, 2006 U.S. Dist. LEXIS 17588, at *31 (S.D.N.Y. Apr. 6, 2006). "[S]ecurities actions have become more

difficult from a plaintiff's perspective in the wake of the PSLRA." *In re Ikon Office Solutions, Inc., Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000). Despite the novelty and difficulty of the issues raised, and the procedural posture of the case, Lead Plaintiffs' counsel secured an excellent result for the Settlement Class.

(c) The recovery obtained and the backgrounds of the lawyers involved in the lawsuit are the best evidence that the quality of Lead Plaintiffs' counsel's representation of the Settlement Class supports the requested fee. Lead Plaintiffs' counsel demonstrated that notwithstanding the barriers erected by the PSLRA, they would develop evidence to support a convincing case. Based upon Lead Plaintiffs' counsel's diligent efforts on behalf of the Settlement Class, as well as their skill and reputations, Lead Plaintiffs' counsel were able to negotiate a very favorable result for the Settlement Class. Lead Plaintiffs' counsel are among the most experienced and skilled practitioners in the securities litigation field, and have unparalleled experience and capabilities as preeminent class action specialists. Their efforts in efficiently bringing the Action to a successful conclusion against the Defendants are the best indicator of the experience and ability of the attorneys involved. In addition, Defendants were represented by highly experienced lawyers from a prominent firm. The standing of opposing counsel should be weighed in determining the fee, because such standing reflects the challenge faced by plaintiffs' attorneys. The ability of Lead Plaintiffs' counsel to obtain such a favorable settlement for the Settlement Class in the face of such formidable opposition confirms the superior quality of their representation and the reasonableness of the fee request.

(d) The requested fee of 27.5% of the settlement is within the range normally awarded in cases of this nature.

(e) Public policy supports the requested fee, because the private attorney general role is "'vital to the continued enforcement and effectiveness of the Securities Acts.'" *Taft v. Ackermans*, No. 02 Civ. 7951(PKL), 2007 U.S. Dist. LEXIS 9144, at *33 (S.D.N.Y. Jan. 31, 2007) (citation omitted).

(f) Lead Plaintiffs' counsel's total lodestar is $4,049,631.50. A 27.5% fee represents a multiplier of 4.7. Given the public policy and judicial economy interests that support the expeditious settlement of cases, *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 373 (S.D.N.Y. 2002), the requested fee is reasonable.

10. The awarded attorneys' fees and expenses, and interest earned thereon, shall be paid to Co-Lead Counsel from the Settlement Fund immediately after the date this Order is executed subject to the terms, conditions, and obligations of the Settlement Agreement and in particular ¶6.2 thereof, which terms, conditions, and obligations are incorporated herein.

IT IS SO ORDERED.

Dated: New York, NY
18 July, 2011

THE HONORABLE VICTOR MARRERO
UNITED STATES DISTRICT JUDGE

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CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2011, I submitted the foregoing to orders_and judgments@nysd.uscourts.gov and e-mailed to the e-mail addresses denoted on the Court's Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 11, 2011.

s/ Ellen Gusikoff Stewart
ELLEN GUSIKOFF STEWART

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Exhibit 2

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re AMERICAN EXPRESS FINANCIAL ADVISORS SECURITIES LITIGATION

Master File No. 04 Civ. 1773 (DAB)

ORDER AND FINAL JUDGMENT

On July 13, 2007, the Court held a hearing to determine (1) whether the terms and conditions of the Stipulation of Settlement dated January 18, 2007 ("Stipulation")[1] are fair, reasonable, and adequate for the settlement of all claims asserted on behalf of the Class in the above-captioned Action, including the release of Defendants, Nominal Defendants, and the other Released Persons, and should be approved; (2) whether judgment should be entered dismissing the Action on the merits and with prejudice in favor of Defendants and Nominal Defendants and as against all Class Members who are not Opt-Outs; (3) whether the Plan of Allocation proposed by Plaintiffs' Co-Lead Counsel is a fair, reasonable, and adequate method of allocating the settlement proceeds among the Class Members; (4) whether and in what amount Plaintiffs' Co-Lead Counsel should be awarded attorneys' fees and reimbursement of expenses; and (5) whether and in what amount incentive awards should be given to the lead plaintiffs in the instant action and in a related action, known as *Haritos v. American Express Financial Advisors, Inc.*, Case No. 02-2255 PHX-PGR, pending in the United States District Court for the District of Arizona ("Haritos").

1. All defined terms have the same meaning as defined in the Stipulation of Settlement dated January 18, 2007.

The Court, having considered all matters submitted to it at the hearing and otherwise; and it appearing from the submissions of the parties that, in accordance with the Court's Order Provisionally Certifying Class, Directing Dissemination of Notice, and Setting Settlement Fairness Hearing, dated February 14, 2007 ("Notice Order"), a notice of the Settlement and Final Fairness Hearing, substantially in the form approved by the Court, was mailed to all Class Members who could be identified with reasonable effort, using the information provided by Defendant American Express Financial Advisors, Inc. or its successor, Ameriprise Financial Services, Inc. (collectively, "AEFA"), pursuant to the Notice Order; and it appearing that a summary notice of the Settlement and Final Fairness Hearing, substantially in the form approved by the Court, was published once in the national edition of The Wall Street Journal and Parade Magazine in accordance with the Notice Order; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested by Plaintiffs' Co-Lead Counsel; and all defined terms used herein having the meanings as set forth and defined in the Stipulation,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

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

2. The Court makes a final determination that, for the purposes of the Settlement, the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that (a) the Class is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Class; (c) Plaintiffs' claims are typical of the claims of the Class they seek to represent; (d) Plaintiffs and their counsel will fairly and adequately represent the interests of the Class; (e) questions of

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

3. Pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, and, for the purposes of the Settlement, this Court hereby makes final its certification of the Action as a class action on behalf of the following Class:

All Persons who, at any time during the Class Period:

(i) Paid a fee for financial advice, financial planning, or Financial Advisory Services;

(ii) Purchased any of the Non-Proprietary Funds through AEFA or for which AEFA was listed as the broker;

(iii) Purchased any of the AXP Funds through AEFA or for which AEFA was listed as the broker; and/or;

(iv) Paid a fee for financial advice, financial planning, or other financial advisory services rendered in connection with an SPS, WMS and/or SMA account.

Excluded from the Class are Defendants, Nominal Defendants, members of Defendant James M. Cracchiolo's immediate family, any entity in which any Defendant or Nominal Defendant has or had a controlling interest, and the employees, agents, legal affiliates, or representatives who had been employees, agents, legal affiliates or representatives during the Class Period, heirs, controlling persons, successors, and predecessors in interest or assigns of any such excluded party, and all persons and entities who timely and properly requested exclusion from the Class pursuant to the Mailed Notice or Publication Notice disseminated in accordance with the Notice

Order, and six persons whose tardy exclusions are excused due to extenuating circumstances. Those six persons are: Carroll Neinhaus, James King, Dorothy King, Muriel Wester, Joseph Centineo and Ester Saabye.

4. Plaintiffs assert claims against Defendants under Sections 12(a)(2) and 15 of the Securities Act of 1933; Section 10(b) of the Securities Exchange Act of 1934 and Securities and Exchange Commission Rules 10b-5(a)-(c) and 10b-10 promulgated thereunder; Section 20(a) of the Securities Exchange Act of 1934; the Investment Advisers Act of 1940, 15 U.S.C. §§ 80b-5, 80b-6; the Minnesota Uniform Deceptive Trade Practices Act, Minnesota Consumer Fraud Act, Minnesota False Advertisement Act, and Minnesota Unlawful Trade Practices Act; and for breach of fiduciary duty and unjust enrichment. The Complaint alleges that Defendants engaged in a common course of conduct that included, among other things, misrepresentations and omissions in connection with the (a) marketing and sale of financial plans and advice to Defendants' clients; (b) the marketing, recommending, and sale of certain non-proprietary mutual funds that paid inadequately disclosed compensation to Defendants for such promotion; and (c) the marketing, recommending, and sale of Defendants' proprietary mutual funds and other proprietary products. For purposes of the Settlement only, the Court makes final its certification of these claims for class treatment.

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby makes final its appointment of Plaintiffs (Leonard D. Caldwell, Carol M. Anderson, Donald G. Dobbs, Kathie Kerr, Susan M. Rangeley, and Patrick J. Wollmering) as representatives of the Class for purposes of the Settlement.

6. Having considered the factors described in Rule 23(g)(1) of the Federal Rules of Civil Procedure, the Court hereby makes final its appointment of Plaintiffs' counsel, the law

firms of Girard Gibbs LLP, Milberg Weiss LLP, and Stull Stull & Brody, as counsel for the Class for purposes of the Settlement.

7. In accordance with the Notice Order, individual notice of the pendency of this Action as a class action and of the proposed Settlement was given to all Class Members who could be identified with reasonable effort, using the information provided by Defendant AEFA, supplemented by published notice. The form and method of notifying the Class of the pendency of the Action as a class action, the terms and conditions of the Settlement, and the Final Fairness Hearing met the requirements of Rule 23 of the Federal Rules of Civil Procedure; Section 21D(a)(7) of the Securities Exchange Act of 1934 (as amended by the Private Securities Litigation Reform Act of 1995), 15 U.S.C. § 78u-4(a)(7); and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

8. The Settlement is approved as fair, reasonable, and adequate, and the Parties are directed to consummate the Settlement in accordance with the terms and provisions of the Stipulation.

9. The Complaint, which the Court finds was filed on a good-faith basis in accordance with the Private Securities Litigation Reform Act of 1995, based upon publicly available information, is hereby dismissed with prejudice and without costs, except as provided in the Stipulation, as against Defendants.

10. Class Members, and the successors and assigns of any of them, are hereby permanently barred and enjoined from instituting, commencing, or prosecuting, either directly or in any other capacity, any and all Released Claims against any and all Released Persons. The Released Claims are hereby compromised, settled, released, discharged, and dismissed as to all

Class Members and their successors and assigns and as against the Released Persons on the merits and with prejudice by virtue of the proceedings herein and this Order and Final Judgment.

11. Defendants and Nominal Defendants and their successors and assigns are hereby permanently barred and enjoined from instituting, commencing, or prosecuting, either directly or in any other capacity, any and all Settled Defendants' Claims against any Plaintiffs, Class Members, or their attorneys. The Settled Defendants' Claims of all Defendants and Nominal Defendants are hereby compromised, settled, released, discharged, and dismissed on the merits and with prejudice by virtue of the proceedings herein and this Order and Final Judgment.

12. The Released Persons are hereby discharged from all claims for indemnity and contribution by any person or entity, whether arising under state, federal or common law, based upon, arising out of, relating to or in connection with the Released Claims of the Class or any Class Member, other than claims for indemnity or contribution asserted by a Released Person against another Released Person. Accordingly, the Court hereby bars all claims for indemnity and/or contribution by or against the Released Persons based upon, arising out of, relating to, or in connection with the Released Claims of the Class or any Class Member; provided, however, that this bar order does not prevent any Released Person from asserting a claim for indemnity or contribution against another Released Person.

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

(a) offered or received against Defendants or Nominal Defendants as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any Defendant with respect to the truth of any fact alleged by Plaintiffs, the

certification of the class, or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of Defendants or Nominal Defendants;

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

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

(d) construed as an admission or concession that the consideration given under the Stipulation represents the amount which could be or would have been recovered after dispositive motions or trial; or

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

14. The Plan of Allocation proposed by Plaintiffs' Co-Lead Counsel for allocating the proceeds of the Settlement is approved as fair, reasonable, and adequate, and the Claims Administrator is directed to administer the Settlement and allocate the Settlement Fund in accordance with its terms and provisions.

15. The Court finds that all Parties and their counsel have complied with each requirement of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings herein.

16. Plaintiffs' Co-Lead Counsel are hereby awarded 27 percent of the Settlement Fund in attorneys' fees, which sum the Court finds to be fair and reasonable, and $597,204 in reimbursement of expenses, which fees and expenses shall be paid to Plaintiffs' Co-Lead Counsel from the Settlement Fund with interest at the same net rate that the Settlement Fund earns, from the date the Court approves the Fee and Expense Award. Plaintiffs' Co-Lead Counsel shall allocate the award of attorneys' fees among themselves according to their own agreement, and among any other counsel in a fashion that, in the opinion of Plaintiffs' Co-Lead Counsel, fairly compensates such counsel for their contribution to the prosecution of the Action.

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

(a) The Settlement has created a fund of $100,000,000 in cash that is already on deposit, plus interest thereon, and that numerous Class Members who file acceptable Proof of Claim forms will benefit from the Settlement created by Plaintiffs' Co-Lead Counsel;

(b) The Settlement obligates Defendants to pay all reasonable expenses of notice and settlement administration and to adopt remedial measures negotiated with Plaintiffs' Co-Lead Counsel and designed to address the issues giving rise to the Action;

(c) Over 3,012,814 copies of the Settlement Notice were disseminated to putative Class Members indicating that Plaintiffs' Co-Lead Counsel were moving for attorneys' fees and reimbursement of expenses in the requested amounts, and there were approximately 80 written comments and objections in opposition to the proposed Settlement and/or the fees and expenses requested by Plaintiffs' Co-Lead Counsel which have been considered by the Court and the Court overrules; DAB 7/18/07

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

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

(f) Had Plaintiffs' Co-Lead Counsel not achieved the Settlement, there would remain a significant risk that the Class would recover significantly less or nothing from Defendants and/or Nominal Defendants;

(g) Plaintiffs' Co-Lead Counsel have submitted affidavits showing that they expended over 24,000 hours, with a lodestar value of $9,572,865, in prosecuting the Action and achieving the Settlement; and

(h) The amounts of attorneys' fees awarded and expenses reimbursed from the Settlement Fund are consistent with awards in similar cases.

18. Plaintiffs' Co-Lead Counsel are authorized to pay, from the amount awarded by the Court for attorneys' fees, incentive awards of $5,000 each to each of the six class representatives in this action and each of the five plaintiffs in the related Haritos case.

19. Exclusive jurisdiction is hereby retained over the Parties and the Class Members for all matters relating to this Action and the Settlement, including (a) the administration, interpretation, effectuation, or enforcement of the Stipulation and this Order and Final Judgment; (b) any application for fees and expenses incurred in connection with administering and distributing the Settlement proceeds to the Class Members; (c) any dispute over attorneys' fees or expenses sought in connection with the Action or the Settlement; and (d) determination whether, in the event an appeal is taken from any aspect of the Judgment approving the Settlement or any award of attorneys' fees, notice should be given under Federal Rule of Civil Procedure 23(d), at the appellant's expense, to some or all members of the Class apprising them of the pendency of the appeal and such other matters as the Court may order.

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

DATED: July 18, 2007

Deborah A. Batts

THE HONORABLE DEBORAH A. BATTS
UNITED STATES DISTRICT JUDGE