

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE LIBOR-BASED FINANCIAL INSTRUMENTS ANTITRUST LITIGATION)	MDL No. 2262
THIS DOCUMENT RELATES TO: Case No. 12-CV-1025 (NRB))	Master File No. 1:11-md-02262-NRB ECF Case

**MEMORANDUM IN SUPPORT OF CLASS COUNSEL’S MOTION
FOR AWARD OF ATTORNEYS’ FEES, REIMBURSEMENT OF
LITIGATION EXPENSES, AND SERVICE AWARDS**

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Bondholder Settlement Class Counsel

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Morris and Morris LLC Counselors At Law and Weinstein Kitchenoff & Asher LLC, Court appointed Bondholder Settlement Class Counsel (“Class Counsel”) hereby respectfully move the Court for an award of attorneys’ fees, reimbursement of litigation expenses, and a service award for Plaintiffs Ellen Gelboim and Linda Zacher (“Bondholder Plaintiffs”¹). This motion is submitted in connection with the settlements between the Bondholder Plaintiffs and defendants MUFG Bank, Ltd., f/k/a Bank of Tokyo-Mitsubishi UFJ Ltd. (“MUFG”), Credit Suisse Group AG (“Credit Suisse”), and The Norinchukin Bank (“Norinchukin”) (collectively, the “Subsequent Settlements,”² with MUFG, Credit Suisse and Norinchukin collectively referred to as the “Settling Defendants”).³

I. INTRODUCTION

After nearly ten years of hard-fought litigation on behalf of the Bondholder Class, and having already recovered \$68,625,000.00, Class Counsel have now recovered an additional \$1,749,000.00⁴ pursuant to the Subsequent Settlements (the “Subsequent Settlement Funds”). Class Counsel request an award of attorneys’ fees of 28% of the Subsequent Settlement Funds.

¹ Unless otherwise defined herein, all capitalized terms have the meaning ascribed to them in the Settlement Agreements with the Settling Defendants. All references to docket entries in this memorandum are to Case No. 11-md-2262 (S.D.N.Y.).

² The Court previously granted final approval to settlements between Bondholder Plaintiffs and seven of the Defendants in this litigation: Barclays Bank plc, UBS AG, HSBC Bank plc, Citibank, N.A. and Citigroup Inc., JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A., Bank of America Corporation and Bank of America, N.A., and the Royal Bank of Scotland Group plc (the “Initial Settlements”). *See* Final Judgment and Order, (ECF No. 3246), dated December 16, 2020 (the “Final Judgment and Order”). The Initial Settlements created an aggregate Settlement Fund of \$68.625 million, plus interest.

³ The Subsequent Settlement Agreements are dated September 20, 2021 (MUFG), September 21, 2021 (Credit Suisse), and September 27, 2021 (Norinchukin), and were submitted to the Court as Exhibits 1, 2, and 3, respectively, to the Declaration of Karen L. Morris and Robert S. Kitchenoff in Support of Bondholder Plaintiffs Motion for Preliminary Approval, ECF. No. 3563-3.

⁴ Separately, MUFG paid \$750,000.00, Credit Suisse paid \$550,000.00, and Norinchukin paid \$449,000.00.

The application is well within the range of awards found to be reasonable under Second Circuit precedents. It aligns with awards regularly approved in comparable multi-defendant antitrust class actions and will reward Class Counsel for the excellent results they have obtained for the Bondholder Class. The Subsequent Settlements were achieved after years of contentious litigation, despite two dismissals by this Court, the latter upheld by the Second Circuit's December 30, 2021 decision which has resulted in the termination of the Bondholder Action as to the remaining non-settling defendants. Class Counsel additionally seek reimbursement of \$1,556.00 in litigation expenses they incurred on behalf of the Bondholder Settlement Class in connection with the prosecution of the Bondholder Action from October 31, 2020 to January 31, 2023⁵ (*see* Section III.B. below).

The requested fee of 28% of the Settlement Fund is well within the range regularly approved by courts in this Circuit and around the country. *In re Intercept Pharm., Inc. Sec. Litig.*, No. 1:14-cv-01123-NRB, 2016 U.S. Dist. LEXIS 138413, at *3 (S.D.N.Y. Sep. 8, 2016) (Buchwald, J.) (awarding attorneys' fees of 28.63% of \$55 million settlement fund); *In re Facebook, Inc. IPO Sec. & Deriv. Litig.*, No. 12-2389, 2015 U.S. Dist. LEXIS 152668, at *15-*18 (S.D.N.Y. Nov. 9, 2015) (awarding 33% of \$26.5 million settlement); *see also In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2013 WL 1365900, at *8 (N.D. Cal. Apr. 3, 2013) (awarding attorneys' fees of 28.6% of a \$1.08 billion settlement). The Court previously awarded a 28% fee⁶ to Class Counsel in connection with the Initial Settlements. Final Judgment and Order (ECF No. 3246) at 9.

⁵ In connection with the Initial Settlements, Class Counsel were reimbursed for expenses incurred from inception of the litigation through October 30, 2020. *See* Declaration of Karen L. Morris and Robert S. Kitchenoff in Support of Class Counsel's Motion for Award of Attorneys' Fees ("Counsel Initial Settlements Declaration"), ECF No. 3228, ¶ 61.

⁶ The 28% fee was paid net of approximately \$2.5 million in expenses incurred to that date. ECF No. 3228, ¶¶ 62-63.

A 28% fee here results in a multiplier of less than 1.0 for work performed by Class Counsel since October 1, 2020,⁷ which is well below the range of multipliers regularly approved by courts in this Circuit, and meets the relevant *Goldberger* factors used to measure reasonableness. *In re Lloyd's Am. Trust Fund Litig.*, No. 96 Civ. 1262 RWS, 2002 WL 31663577, at *27 (S.D.N.Y. Nov. 26, 2002) (“Here, the resulting multiplier of 2.09 is at the lower end of the range of multipliers awarded by courts within the Second Circuit.”). Moreover, when added to the fees previously approved by the Court in connection with the Initial Settlements, a 28% fee award here produces a lodestar multiplier of less than 1.0.

The requested award is further justified by the outstanding results achieved for the Settlement Class through the efforts of Class Counsel in vigorously pursuing the complex claims at issue in this case in the face of significant risks and substantial expense, entirely on a contingent basis.

II. BACKGROUND

Class Counsel have worked tirelessly in litigating the Bondholder Action from September 2011 to the present. The Declaration of Karen L. Morris and Robert S. Kitchenoff in Support of Class Counsel’s Motion for Award of Attorneys’ Fees, Reimbursement of Litigation Expenses and Service Awards (“Counsel Declaration”) filed herewith describes this work over the course of the litigation, including, *inter alia*, drafting multiple pleadings, research and analysis in support of briefing before this Court, the Second Circuit, and the Supreme Court on motions to dismiss and other relief, work building a comprehensive factual record, and close coordination with consulting experts. Class Counsel’s efforts throughout the litigation underpinned their settlement efforts, which first resulted in \$68,625,000 from the Initial Settlements, and now the

⁷ In the Final Judgment and Order, the Court awarded attorneys’ fees for work performed from inception of the litigation through September 30, 2020. *See* Counsel Initial Settlements Declaration, ¶ 7.

additional \$1,749,000 from the Subsequent Settlements presently before the Court.

In 2021, following the May 2020, oral argument before the Second Circuit on the second dismissal of the Bondholder Action, but prior to the Court of Appeals' December 2021 ruling upholding that dismissal, Class Counsel entered into contemporaneous but separate settlement negotiations with MUFG, Credit Suisse, and Norinchukin. These settlement negotiations were hard-fought and arm's length. As the result of these negotiations, Class Counsel successfully created the Subsequent Settlement Funds for the benefit of the Subsequent Settlement Classes.

The Court preliminarily approved the Subsequent Settlements, approved the notice program (the "Additional Notice Plan"), and preliminarily approved the Plan of Allocation on November 7, 2022. ECF No. 3578.

Because of the Second Circuit's December 2021 decision, the dismissal of the Bondholder Action is now final.⁸ Thus, the Subsequent Settlements are the *only* remaining opportunity for members of the Bondholder Class to recover on the claims in the litigation. And accordingly, the Subsequent Settlements are excellent results for the Subsequent Settlement Classes. The additional \$1,749,000 recovery, resulting in an aggregate settlement amount in the litigation of \$70,375,000, achieved by Class Counsel working on a wholly contingent basis and incurring litigation expenses on behalf of the Bondholder Class, merits the attorney's fee award, expense reimbursement, and Class Plaintiff awards requested here.

⁸ Because no party timely sought certiorari review, the Second Circuit decision is final. *See* 28 U.S.C. § 2101(c). The only remaining Court proceedings in the Bondholder Action are final approval of the Subsequent Settlements (including the instant motion) and distribution of the aggregate Bondholder settlement funds to the members of the Settlement Classes.

III. ARGUMENT

A. The Fee Request Is Fair And Reasonable

1. Class Counsel are Entitled to Fees from the Common Fund

“[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). This is a “salient exception to [the] general rule” “that litigants are expected to pay their own expenses, including their own attorneys’ fees, to prosecute or defend a lawsuit.” *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 47 (2d Cir. 2000). “The [common-fund] doctrine rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant’s expense.” *Boeing*, 444 U.S. at 478. The common-fund doctrine is therefore rooted in the courts’ “historic power of equity to permit” a person who secures a fund for the benefit of others to collect a fee directly from the fund. *Alyeska Pipeline Serv. Co. v. Wilderness Soc’y*, 421 U.S. 240, 257 (1975) (citation omitted). This principle applies to class-action settlements. *Fresno County Employees’ Retirement Ass’n v. Isaacson*, 925 F.3d 63, 72 (2d Cir. 2019) (“[W]here a class action results in a common-fund settlement for the benefit of the class, the common-fund doctrine applies.”).

The purposes of the doctrine are to fairly and adequately compensate class counsel for services rendered; to ensure that all class members contribute equally towards the costs associated with litigation pursued on their behalf; and to encourage skilled counsel to represent those who seek redress for injury inflicted on an entire class and thereby discourage future misconduct of a similar nature.

Fleisher v. Phoenix Life Ins. Co., No. 11-cv-8405, 2015 WL 10847814, at *14 (S.D.N.Y. Sept. 9, 2015).

2. The Requested Fee is Fair and Reasonable under the Percentage Method – the Method Preferred in the Second Circuit

a) The percentage method is preferred in the Second Circuit

The Second Circuit’s preferred method for calculating a fair and reasonable attorneys’ fee is to award “some percentage of the recovery as a fee.” *Goldberger*, 209 F.3d at 47. “The trend in this Circuit is toward the percentage method” because it “directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation.” *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (quotation marks and citation omitted); *accord, In re BioScrip, Inc. Secs. Litig.*, No. 13-cv-6922 (AJN), 2017 WL 3208941, at *16 (S.D.N.Y. July 26, 2017) (noting that “the trend in this Circuit has been toward the use of a percentage of recovery as the preferred method of calculating the award for class counsel in common fund cases” (quotation marks omitted)); *Johnson v. Brennan*, No. 10 Civ. 4712(CM), 2011 WL 4357376, at *14 (S.D.N.Y. Sept. 16, 2011) (“[C]ourts prefer the percentage method” of awarding attorneys’ fees in class action cases.). In short, as the Second Circuit has explained, it is the “simpler” method for determining a reasonable fee. *Goldberger*, 209 F.3d at 47.

b) The requested fee is fair and reasonable.

A fee of 28% of the Subsequent Settlement Funds is fair and reasonable, and is well within the range regularly approved by courts in this Circuit and around the country. *See, e.g.*, Final Judgment and Order, ECF No. 3246, December 16, 2020 (Buchwald, J. awarded attorneys’ fees of 28% (net of expenses) to Bondholder Class Counsel in connection with the Initial Settlements.); *In re Intercept Pharm., Inc. Sec. Litig.*, No. 1:14-cv-01123-NRB, 2016 U.S. Dist. LEXIS 138413, at *3 (S.D.N.Y. Sep. 8, 2016) (Buchwald, J.) (awarding attorneys’ fees of 28.63% of \$55 million settlement fund before expenses with interest as “appropriate, fair, and

reasonable under the ‘percentage-of-recovery’ method”); *In re BHP Billiton Secs. Litig.*, No. 16-cv-01445 (NRB), 2019 U.S. Dist. LEXIS 63598 (S.D.N.Y. Apr. 10, 2019) (Buchwald, J.) (awarding 30% of a \$50 million settlement before expenses with interest).

c) The requested fee is reasonable under a lodestar crosscheck

The reasonableness of Class Counsel’s requested fee is confirmed by the lodestar “crosscheck.” The Second Circuit has “counseled that the district court should use the lodestar as a ‘baseline’ against which to cross-check a percentage fee.” *Goldberger*, 209 F.3d at 72. The “lodestar” is calculated by multiplying the number of hours each attorney or firm professional expended on the litigation by his or her current hourly rate and totaling the amounts for all timekeepers. Then, “a multiplier is typically applied to the lodestar.” *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 468 (S.D.N.Y. 2004). Ordinarily, “[t]he multiplier represents the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors.” *Id.* (citing *Goldberger*, 209 F.3d at 47). “A district court relying on the cross-check approach need not ‘exhaustively scrutinize[]’ ‘the hours documented by counsel.’” *In re BioScrip, Inc.*, 2017 WL 3208941, at *17 (quoting *Goldberger*, 209 F.3d at 50).

From October 1, 2020 through January 31, 2023, Class Counsel have spent 3,071.7 hours, representing a combined lodestar of \$3,114,351.50, in vigorously prosecuting the Bondholder Action. *See* Counsel Declaration, ¶ 10. This investment includes time and efforts in negotiating the Subsequent Settlements, expended with no assurance either of payment for their services or recoupment of their out-of-pocket litigation expenses. *Id.*, ¶ 8.

The requested fee represents a lodestar multiplier of less than 1.0. *Id.*, ¶ 11. Courts in this Circuit regularly approve multipliers ranging up to eight. *See Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481 (S.D.N.Y. 2013) (“Courts regularly award lodestar multipliers of up to eight

times the lodestar”). The crosscheck multiplier reflected here confirms the reasonableness of Class Counsel’s requested fee.

Class Counsel’s hourly rates are also reasonable. The time is billed based on Class Counsel’s standard hourly rates. *Id.*, ¶ 9; *Luciano v. Olsten Corp.*, 109 F.3d 111, 115 (2d Cir. 1997) (“The ‘lodestar’ figure should be ‘in line with those [rates] prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.’” (quoting *Blum v. Stenson*, 465 U.S. 886, 896 n.11 (1984))). Class Counsel’s hourly rates are market rates for plaintiff and defense-side law firms of similar quality, litigating matters of similar magnitude. Sara Randazzo & Jacqueline Palank, *Legal Fees Cross New Mark: \$1,500 an Hour*, *The Wall Street Journal*, Feb. 16, 2016 (surveying attorneys’ fees “filings over the past three months in about two dozen bankruptcy cases” and finding that “[f]or lawyers at the very top of th[e] fields [of high-stakes litigation and appeals], hourly rates can hit \$1,800 or even \$1,950” and citing a 2011 article and observing that the increases in hourly rates “mak[e] the \$1,000-an-hour legal fees that once seemed so steep look quaint by comparison”).⁹

d) The Goldberger factors support the requested fee award

Under either the percentage method or the lodestar multiplier approach, the “‘*Goldberger* factors ultimately determine the reasonableness of a common fund fee.’” *Wal-Mart*, 396 F.3d at 121. Those factors, which the Court weighs in its discretion, are:(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 (citation omitted). Consideration of each of these factors confirms that the requested 28% fee is reasonable.

⁹ <https://www.wsj.com/articles/legal-fees-reach-new-pinnacle-1-500-an-hour-1454960708>.

(1) Time and labor expended by counsel (Factor 1)

The first factor – the time and labor expended by counsel – strongly supports the Court’s award of the requested fee. Since October 1, 2020, Class Counsel have spent a total of 3,071.7 hours prosecuting this case and, as discussed above, the resulting lodestar multiplier is less than 1.0, and thus, firmly below the range approved by courts in this Circuit. The substantial time devoted to this litigation over almost ten years reflects the immense effort Class Counsel have exerted in prosecuting this case and is reasonable, particularly given the complex nature of this action. Class Counsel have, among other things:

- Conducted an initial investigation of this case to develop the facts and legal theories that formed the basis of the allegations in the Bondholder complaint and drafted and filed the original complaint, the first amended complaint, and the proposed second amended complaint.
- Defended the first amended complaint from two Rule 12(b) motions to dismiss filed by Defendants and from their opposition to the Bondholder Plaintiffs’ motion for leave to file the proposed second amended complaint.
- Performed legal research and wrote letters to the Court, *inter alia*, providing supplemental authority, seeking relief, addressing discovery requests, and presenting scheduling issues.
- Worked closely throughout the litigation, in connection with the development of legal analysis and the settlements, with consulting experts in economics and finance, and industry consultants. These efforts were instrumental in developing studies and analysis to support the drafting of the complaints, arguments on appeal, and negotiations related to both the Initial Settlements and the Subsequent Settlements.
- Pursued two appeals of the dismissal of the Bondholder Plaintiffs’ antitrust claims to the Second Circuit and obtained *certiorari* and successfully argued before the Supreme Court, in the process overturning unfavorable pre-existing Second Circuit law.
- Reviewed and analyzed documents and audio tapes produced by Defendants, as well as trial transcripts and evidence from criminal trials both in the United States and the United Kingdom relating to LIBOR manipulation, documentation in connection with regulatory settlements, testimony before the U.K. Parliament, production from the Bank of England and the U.S. Federal Reserve, and other publicly available information, and worked diligently to compile a comprehensive factual record in the case which underpinned all settlement efforts undertaken by Class Counsel.

- Successfully pursued discovery from third party brokers.
- Investigated available data sources and worked with consulting experts to develop damages estimates which was directly relevant to work in the litigation and all settlement efforts.
- Worked closely with Bondholder Plaintiffs' consulting expert in reviewing and analyzing Defendants' transactional data, bid/ask data from Bloomberg and ICAP, and other available relevant data supporting the expert's regression analysis model, devised to calculate but-for values, and in developing an expert report supporting the model for settlement purposes.
- Negotiated with Bloomberg Financial LP to obtain the Bloomberg Bulk Data¹⁰ and worked closely in conjunction with the Claims Administrator, Bondholders' consulting experts, and technical personnel from Bloomberg to format, analyze, and interpret the data to facilitate administration of claims in connection with the Initial Settlements. This work will be equally relevant to administration of claims efforts related to the Subsequent Settlements as well.
- Created and continuously updated and expanded detailed mediation statements and other extensive background memoranda, with relevant documentary support, based on Class Counsel's analysis and continual development of the factual record, which work was instrumental in supporting the negotiations of all the Settlements.
- Undertook arm's-length negotiations with multiple defendants, and successfully achieved each of the Settlements.
- Successfully briefed motions for preliminary approval of both the Initial Settlements and the Subsequent Settlements.
- Worked with consulting experts and the Claims Administrator to develop a Plan of Allocation and two different notice plans, drafted the Proof of Claim Form and the different forms of notice implemented in connection with the Initial Settlements and the Subsequent Settlements, successfully briefed motions for approval of the two separate comprehensive notice plans, and closely supervised implementation of the notice plans approved by the Court in connection with the administration of claims submitted in both the Initial Settlements and the Subsequent Settlements.
- Worked closely with the Claims Administrator, including directing weekly status calls, to monitor and oversee the claims administration and review processes in connection with

¹⁰ The Bloomberg Bulk Data included information regarding CUSIP numbers of the relevant LIBOR-based debt securities, whether (and if so, when during the Class Period) such securities defaulted or stopped paying interest, and other matter pertinent to determining if a holder was damaged.

the Initial Settlements. This work has resulted in an effective template of procedures and processes directly applicable to the review and administration of new claims submitted in connection with the Subsequent Settlements.

See Counsel Declaration, ¶ 8.

In sum, Class Counsel devoted substantial time and financial resources in prosecuting this case on behalf of the Bondholder Class.

(2) Magnitude and complexity of the litigation (Factor 2)

The second factor – the magnitude and complexities of the litigation – also strongly supports award of the requested fee. “Federal antitrust cases are complicated, lengthy, and bitterly fought.” *Wal-Mart*, 396 F.3d at 118. No other case more strongly embodies the challenges faced by plaintiffs in antitrust litigation than this one. The Bondholder Action was commenced eleven years ago, has undergone multiple rounds of briefing, and been dismissed twice. Although Bondholder Plaintiffs’ antitrust claim was reinstated by the Second Circuit in 2016, that was only after Class Counsel succeeded in overturning established Second Circuit precedent on appellate jurisdiction. The second dismissal of that claim was ultimately upheld by the Second Circuit.

(3) Risk of the litigation (Factor 3)

The third factor – the risk of the litigation – strongly supports award of the requested fee. As the above recitation demonstrates, Class Counsel have faced significant risks in this litigation.

The courts have long recognized that the risk inherent in a contingent fee is a major factor in the determination of a reasonable fee. *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 470 (2d Cir. 1974), abrogated on other grounds, *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43 (2d Cir. 2000) (identifying “the risk of the litigation (*i.e.*, the contingent nature of the fee)”). That

risk arises the moment counsel commit to bringing and maintaining the litigation and continues throughout the case until an actual recovery is achieved. As the Second Circuit recently explained,

The plaintiff class is ... appropriately charged for contingency risk where such risk is appreciable because the class has benefited from class counsel's decision to devote resources to the class's cause at the expense of taking other cases. That is, because class counsel has decided to represent the plaintiff class, class counsel's ability to freely represent other clients is limited by the risk she has assumed that the class's cause will be unsuccessful. The class, having been enriched by counsel's acceptance of its cause at the expense of other clients' causes, may be charged for counsel's assumption of risk on its behalf.

Fresno County Emp'ees. Ret. Ass'n, 925 F.3d at 70. Thus, "[n]o 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."

Grinnell., 495 F.2d at 470. Here, since October 1, 2020, Class Counsel have invested 3,071.7 hours of time with a lodestar value of \$3,114,351.50 without any guarantee they would be compensated for their efforts or reimbursed for any of the litigation expenses they have incurred since October 31, 2020.

Moreover, Class Counsel would not have been compensated at all for their time or expenses since the Initial Settlements had they been unsuccessful in securing any additional settlements. *See id.*, 495 F.2d at 471 ("[D]espite the most vigorous and competent of efforts, success is never guaranteed.") The risk of no recovery in complex class actions is real and supports the request by Class Counsel.

There were several components to the contingency risk Class Counsel bore in this case. Throughout the eleven years this case was in active litigation, Class Counsel faced significant risks of establishing liability. Despite their belief in the merits of the case, over the course of the litigation, Bondholder Plaintiffs' antitrust claims were twice dismissed, and the second dismissal

was ultimately upheld by the Second Circuit.

Another component of the risk Class Counsel faced pertained to establishing damages. The damages estimate in this case was heavily expert-driven, and, although Class Counsel were confident of their ability to prove damages, the expected expert battle, both at class certification and at trial, added substantial risk to the Bondholder Plaintiffs' claims. *See In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 02-civ-3400 (WCC), 2010 WL 4537550, at *18 (S.D.N.Y. 2010) (noting that the burden in proving the extent of the class's damages weighed in favor of approving fee request, and that "[t]he jury's verdict . . . would . . . depend on its reaction to the complex testimony of experts, a reaction that is inherently uncertain and unpredictable").

From the outset of this litigation the only certainties were that there would be no attorneys' fees or reimbursement of expenses without a successful result, and that they could only achieve a successful result after lengthy, difficult, and expensive effort.

(4) Quality of the representation (Factor 4)

The fourth factor - the quality of representation - also supports the award of the requested fee. Courts have consistently recognized that the result achieved is a major factor to be considered in making a fee award and in assessing the quality of the representation. *See, e.g., Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983). Class Counsel respectfully submit that the additional \$1,749,000 in Subsequent Settlement Funds provides strong evidence of the quality of their representation, especially since that amount is being paid even though at the time, the Bondholder Plaintiffs' claims had been dismissed for a second time and were entirely dependent for reinstatement upon an appeal which ultimately ruled against those claims.

"To determine the 'quality of the representation,' courts review, among other things, the recovery obtained and the backgrounds of the lawyers involved in the lawsuit." *Taft v.*

Ackermans, 03-civ-7951 (PKL), 2007 WL 414493, at *10 (S.D.N.Y. Jan. 31, 2007); *Fleisher*, 2015 WL 10847814, at *22. Class Counsel’s background is set out in Exhibits 1 and 2 to the Counsel Decl. “The quality of opposing counsel is also important in evaluating the quality of Lead Counsel’s work.” *Id.*, 2015 WL 10847814, at *22. Courts recognize that the caliber of the opposition faced by plaintiffs’ counsel aids assessment of the quality of the plaintiffs’ counsel’s performance. *See Anwar v. Fairfield Greenwich Ltd.*, 09-civ-0118 (VM), 2012 WL 1981505, at *2 (S.D.N.Y. June 1, 2012) (considering “the quality and vigor of opposing counsel”). Settling Defendants are represented by skilled and highly regarded counsel from some of the largest and most prestigious law firms in the United States, with well-deserved reputations for vigorous advocacy in the defense of complex civil cases. The same true of the non-settling defendants. *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 357-58 (S.D.N.Y. 2005) (“Lead Counsel obtained remarkable settlements for the Class while facing formidable opposing counsel from some of the best defense firms in the country.”).

(5) Requested fee in relation to the settlement (Factor 5)

The fifth factor – the requested fee in relation to the settlement – also supports the requested fee, as discussed *supra* at Sections A.1. and 2.

(6) Public policy considerations (Factor 6)

Finally, the sixth factor – public policy considerations – weighs heavily in favor of the requested fee. Public policy considerations strongly favor incentivizing skilled private attorneys to undertake class action litigation both to vindicate the rights of class members and the law enforcement function of private action litigation. *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d at 359 (“[T]o attract well-qualified plaintiffs’ counsel who are able to take a case to trial, and who defendants understand are able and willing to do so, it is necessary to provide

appropriate financial incentives.”); *Hicks v. Stanley*, 01-civ-10071 (RJH), 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005) (“To make certain that the public is represented by talented and experienced trial counsel, the remuneration should be both fair and rewarding.”). This is particularly so in antitrust cases, where Congress has expressed its intention to incentivize private enforcement actions by rewarding attorneys’ fees and treble damages to successful plaintiffs. See Clayton Act § 4, 15 U.S.C. § 15; *Perma Life Mufflers, Inc. v. International Parts Corp.*, 392 U.S. 134, 139 (1968) (“The purposes of the antitrust laws are best served by insuring that the private action will be an ever-present threat to deter anyone contemplating business behavior in violation of the antitrust laws.”). As the Second Circuit has explained, “private enforcement depends on the willingness of affected [plaintiffs] to enter the fray and risk substantial money, time, and effort in lawsuits that have even more uncertainty of outcome than ordinary litigation.” *Consolidated Gold Fields PLC v. Minorco, S.A.*, 871 F.2d 252, 260 (2d Cir. 1989).

Those interests apply in this case, which has required a substantial investment of attorney time and expenses with no compensation for their services until a decade into the litigation. To incentivize the very best private attorneys to take on complex, lengthy, difficult, and expensive class actions, the Court should award a fee sufficient to justify Class Counsel’s opportunity cost of foregoing hourly and fixed-fee cases where counsel would be assured of compensation regardless of the outcome of the litigation at hand.

B. The Request For Reimbursement Of Litigation Expenses Is Reasonable

Class Counsel request reimbursement in the amount of \$1,556.00 for unreimbursed out-of-pocket litigation expenses reasonably and necessarily incurred in connection with the prosecution of the Bondholder Action since October 31, 2020. Counsel Declaration, ¶ 12.

“[C]ounsel is entitled to reimbursement from the common fund for reasonable litigation expenses.” *Athale v. Sinotech Energy Limited*, 11 Civ. 05831 (AJN), 2013 WL 11310686, at *9 (S.D.N.Y. Sept. 4, 2013). *See also Anwar*, 2012 WL 1981505, at *3 (“Courts routinely note that counsel is entitled to reimbursement from the common fund for reasonable litigation expenses.” (citation omitted)).

The expenses incurred by Class Counsel include legal research and data analysis and licensing fees in connection with this litigation. Courts regularly approve reimbursement of expenses in much greater amounts than here requested. *In re Credit Default Swaps Antitrust Litig.*, 13-md-2476 (DLC), 2016 WL 2731524, at *18 (S.D.N.Y. Apr. 26, 2017) (approving \$10 million in expenses); *Dial Corp. v. News Corp.*, 317 F.R.D. 426, 438 (S.D.N.Y. 2016) (approving \$7.5 million in expenses). Indeed, “[t]he fact that Class Counsel [were] willing to [incur these expenses], where reimbursement was entirely contingent on the success of this litigation, is perhaps the best indicator that the expenditures were reasonable and necessary.” *Fleisher*, 2015 WL 10847814, at *23.

C. Service Awards For The Named Plaintiffs Are Appropriate

Class Counsel also seek incentive awards of \$2,500 each for Bondholder Plaintiffs Ellen Gelboim and Linda Zacher, as stated in the notice. “Courts consistently approve awards in class action lawsuits to compensate named plaintiffs for the services they provide and burdens they endure during litigation.” *Anwar*, 2012 WL 1981505, at *3.

The Bondholder Plaintiffs provided invaluable service to the class by, for example, providing evidence to assist in the development of the Bondholder Plaintiffs’ claims, responding to questions from counsel about documents and data provided, attending the hearing of the matter in the U.S. Supreme Court, staying actively apprised of pleadings, briefing, and evolving

settlement negotiation, and approving, *inter alia*, terms and conditions of the Subsequent Settlements. Providing this service to the class required the Bondholder Plaintiffs to dedicate time and resources. Indeed, the Bondholder Plaintiffs' continued faith in, and dedication to the Bondholder Action, even after the repeated dismissal of their claims by the Court, was essential in securing the Subsequent Settlements. Counsel Declaration, ¶ 13. Courts routinely approve service awards to class representatives who provide these types of services to a class. *See, e.g., Sewell v. Bovis Lend Lease, Inc.*, No. 09 Civ. 6548 (RLE), 2012 WL 1320124, at *15 (S.D.N.Y. Apr. 16, 2012) (approving incentive awards where the named plaintiffs "served class members by providing counsel with relevant documents in their possession, assisting counsel to prepare for the mediation, participating in litigation strategy, and reviewing and commenting on the terms of the settlement. (internal quotation marks omitted)).

It is respectfully submitted that the Court should grant incentive awards of \$2,500 to each of the Bondholder Plaintiffs.

IV. CONCLUSION

For the foregoing reasons, Class Counsel respectfully request that the Court award attorneys' fees of 28% of the Subsequent Settlement Funds, in the amount of \$489,720, reimbursement of litigation expenses in the amount of \$1,556.00, and service awards of \$2,500 to each of the two Bondholder Plaintiffs.

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Respectfully submitted,

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