IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. **01-cv-1451-REB-CBS**

(Consolidated with Civil Action Nos. 01-cv-1472-REB-CBS, 01-cv-1527-REB-CBS, 01-cv-1616-REB-CBS, 01-cv-1799, REB-CBS, 01-cv-1930-REB-CBS, 01-cv-2083-REB-CBS, 02-cv-0333-REB-CBS, 02-cv-0374-REB-CBS, 02-cv-0507-REB-CBS, 02-cv-0658-REB-CBS, 02-cv-755-REB-CBS, 02-cv-798-REB-CBS and 04-cv-0238-REB-CBS)

In re QWEST COMMUNICATIONS INTERNATIONAL, INC. SECURITIES LITIGATION

NOTICE OF OBJECTIONS

OBJECTORS ELDON **GRAHAM**, HAZEL **FLOYD**, MARY M. **HULL**, and the **ASSOCIATION OF U S WEST RETIREES**, by and through their counsel Curtis L. Kennedy, hereby object to Lead Counsel's pending request for an award of attorneys' fees of $96,000,000.00 plus expenses of $2,219,063.84. OBJECTORS state as follows:

A. <u>Introduction and Background</u>.

1. On June 20, 2001 Morgan Stanley publicly revealed its analysis of potential accounting problems at Qwest Communication International, Inc. On July 27, 2001, this securities class action was promptly filed against Qwest and other defendants. In a nutshell, this case is about Qwest's fraudulent scheme causing its stock to be artificially inflated in violation of federal securities laws. While Lead Counsel are due get credit for being the first to commence a civil action against Qwest just before the federal government law enforcement agencies got their act together, it is all too obvious that Lead Counsel are the mere jackals to the government's lions, feasting after both the United States Securities Exchange Commission and the United States Justice Department made the kill. Lead Counsel take *too* much credit and, unlike the jackal, they seek the lion's share of the Settlement Fund recovery.

2. In November 2005, the parties executed a "Stipulation of Settlement." [1] There will be a Settlement Fund established in the amount of $400 million. The Settlement Fund will first be used to pay the expenses of sending out the class notice and claim form. Then, the Settlement Fund will be used to pay the attorneys' fees and expenses. The attorneys are asking for $96 million in fees, plus $2.2 million for expenses and costs. Then, the Settlement Fund will be used to pay expenses of administration. What's left will be distributed to class members.

3. These objections are being filed by class members pursuant to the January 5, 2006 Notice of Pendency and Partial Settlement of Class Action (the "Class Notice"). Each OBJECTOR was a shareowner of securities issued by U S WEST, Inc., which securities were converted to securities of Qwest Communications International, Inc. upon the merger of U S WEST and Qwest on or about June 30, 2000. The Association of U S WEST Retirees (AUSWR) [2] is a non profit organization of retirees and last owner of record of at least 100 shares of U S WEST common stock converted into Qwest common stock upon the merger. At the time of the U S WEST - Qwest merger, Eldon Graham was last owner of record of at least 1,300 shares of U S WEST common stock converted into Qwest common stock. At the time of the U S WEST - Qwest merger, Hazel Floyd was last owner of record of at least 160 shares of U S WEST common stock converted into Qwest common stock. Likewise, at the time of the U S WEST - Qwest merger, Mary M. Hull was last owner of record of at least 100 shares of U S

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[1] The Stipulation resolves claims against all defendants except Former Qwest CEO Joseph P. Nacchio and Former Qwest CFO Robert S. Woodruff.

[2] The official website for the Association of U S WEST Retirees (www.uswestretiree.org) reports that it is the umbrella organization of six retiree groups within the former U S WEST area consisting of fourteen states. AUSWR was formed in August 1999. AUSWR's Board of directors consists of elected retirees from U S WEST/Qwest.

WEST common stock converted into Qwest common stock. Each OBJECTOR continued to retain the Qwest common stock obtained upon the merger of U S WEST and Qwest through at least February 12, 2002. Each OBJECTOR is a member of the class as defined by this Court's order and each OBJECTOR has standing to challenge or advocate for changes in the proposed settlement. [3] Each OBJECTOR has not requested to be excluded from the Settlement Class.

4. There will be a hearing on Tuesday, May 19, 2006, at 10:00 a.m. in Courtroom A-105 of the Denver Federal Court to determine the fairness of the proposed settlement and an award of attorneys' fees and expenses ("Settlement Hearing").

5. OBJECTORS contend that Lead Counsel can be reasonably compensated by a fee which is substantially less than the $96 million pay day they seek, OBJECTORS intend to appear at the Settlement Hearing, and they object as set forth herein.

B. Argument and Objections

1. The Class Notice is Inadequate and Materially Misleading; There Has Been Inadequate Disclosure of the Hours Expended As the Basis for Lead Counsel's Request For an Award of Attorney's Fees and There Has Been Inadequate Disclosure And Lack of Detail of the Expenses Incurred.

6. While the Class Notice need not give all the details of settlement, it must "fairly apprise" the class members of the terms of the proposed settlement and their options. *Gottlieb v. Wiles*, 11 F.3d 1004, 1013 (10th Cir. 1999). OBJECTORS object on the basis that the Class Notice is materially misleading and confusing to the reasonable class member.

7. For instance, the class notice states on page 7 at Paragraph 2: "For shares of

[3] These objections are timely filed by the due date, Thursday, March 23, 2006.

common stock that were ***acquired in the June 30, 2000 merger with U.S. West,*** and f) retained at the end of February 12, 2002, the claim per share is $13.95 per share." A reasonable class member who acquired at least 1,000 shares in the June 30, 2000 merger and kept those shares through at least February 12, 2002 is led to believe he or she will be submitting a claim for an award of $1,395.00, a sizable chunk of money. In that same paragraph, the notice woefully fails to clearly inform the claimant that his or her claim will be distributed on a pro-rata basis and, therefore, his or her actual award per share will be substantially less than $13.95 per share. This has led to widespread confusion amongst U S WEST/Qwest retiree class members who have inundated AUSWR leadership for clarification. Lead Counsel strategically chose not to provide either a telephone number or email address on the Class Notice, so as to hamper class members efforts to make contact and get informed. The only means for a class member to seek an explanation from Lead Counsel is to send a letter, an inexcusably slow process.

8. Also, the Class Notice is misleading with respect to the amount of attorneys' fees and costs to be sought by Lead Counsel. The Class Notice states on page 10 in Section X. "APPLICATION FOR FEES AND EXPENSES - At the Settlement Hearing, Lead Counsel will request the Court to award attorneys' fees of up to 24% of the Settlement Fund, plus reimbursement of expenses, not to exceed $5.2 million, which were incurred in connection with the Litigation, plus interest thereon." Many reasonable class members have been led to believe that an award of Lead Counsel's fees plus expenses will not exceed a total of $5.2 million. [4]

[4] The class notice should have clearly stated as follows: Lead Counsel will apply to the Court at the Settlement Hearing for an award of attorneys' fees of up to 24% of the Settlement Fund or $96 million, plus reimbursement of litigation expenses not to exceed $5.2 million which were incurred in connection with the Litigation.

9. Moreover, the Class Notice is inadequate because it fails to inform class members about the amount of fees to be requested by Lead Counsel, but simply gives notice of the fee's outside limit. Certainly, there is no disclosure about the 5.1 *multiplier* or more of the hourly rates Lead Counsel is seeking to be paid for every hour spent by every attorney partner, attorney associate, paralegal or document clerk on this case, not matter how important or insignificant the nature of the task performed during the litigation.

10. Lead Counsel did not publicly disclose any material information about their request for attorneys' fees until more than six (6) weeks after the Class Notice was mailed. In order to learn about Lead Counsel's fee request, a person must retrieve the court filings submitted on February 27, 2006 (Docket Nos. 928-939) consisting of 52 separate entries or a total 834 pages that can only be downloaded through Public Access to Court Electronic Records (PACER) at the rate of $.08 per page for a total charge of $66.72. Indeed, for hundreds of thousands of stockholders the cost of retrieving and downloading that material information easily *exceeds* any financial benefit they will obtain from the Settlement Fund!

11. At the very least, Lead Counsel should have posted at a dedicated free website detailed information about the number and nature of attorney hours expended in this case, the loadstar amount and detailed itemization of the expenses incurred. [5] Lead Counsel's dearth of disclosures in the Class Notice reflects a very cavalier approach to seeking an exorbitant amount of attorneys' fees and expenses in shareholder lawsuits settled well before trial on the merits.

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[5] Lead Counsel established a website where a class member can retrieve the Stipulation of Settlement, its exhibits, and additional copies of the Class Notice and Proof of Claim and Release forms. Curiously, absolutely nothing related to Lead Counsel's request for attorneys' fees and expenses is available at that website. See www.gilardi.com. and click on "Qwest Communications."

12. For all the foregoing reasons, Lead Counsel should be required to provide a revised Class Notice and post material information about their requested fees and expenses at a free dedicated Internet website.

2. The Requested Fee Award Sought by Lead Counsel is Extremely Outrageous.

A. Lead Counsel Should Be Required To Submit Detailed Time Records, Not Generalized Summaries.

13. Lead Counsel seeks an award pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"). The PSLRA states 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). "The legislation's primary purpose was to prevent fee awards under the lodestar method from taking up too great a percentage of the total recovery." *Powers v. Eichen*, 229 F.3d 1249, 1258 (9th Cir. 2000) (citing H.R. Conf. Rep. 104-369 (1995).

14. In "Lead Counsel's Motion for Award of Attorneys' Fees and Reimbursement of Expenses" (Docket No. 929), Lead Counsel seek attorney's fees of $96 million, plus costs of $2.2 million. Even more, Lead Counsel wants to be paid interest! OBJECTORS contend that an award of $96 million is unjustified. In this case, there wasn't a total victory after a trial. Moreover, Lead Counsel benefitted tremendously by the actions of the federal government, including the United States Congress. While OBJECTORS believe that Lead Counsel should be paid a fair fee for services rendered, OBJECTORS object to any fees award that is not based upon either a smaller percentage of the fund method or some reasonable loadstar calculation.

15. The award of attorney's fees to plaintiffs in shareholder lawsuits is based upon the common benefit doctrine, an exception to the American Rule that prevailing litigants must pay their own attorney's fees. *Hall v. Cole*, 412 U.S. 1, 5 (1973). It applies where the plaintiff's successful litigation confers a substantial benefit on all of the shareholders of the defendant corporation. *Boeing Co. v. Van Gemert,* 444 U.S. 472, 481 (1980).

16. Lead Counsel contend that "Plaintiffs' counsel and their para-professionals and in-house experts expended 53,895.87 hours to this Litigation with a resulting lodestar of $18,547,453.65. The requested $96 million fee represents a multiple of approximately 5.1 times the lodestar." (Docket 929-1, p. 25). **Simply put, Lead Counsel is requesting a payment of more than $1,750 for <u>every</u> hour every person spent allegedly working on this case. That figure simply shocks the conscience of every non-institutional shareholder**.

17. Therefore, OBJECTORS demand there be an evidentiary hearing to take evidence on the reasonable hourly rates for the attorneys involved in pursuing the case and the amount of time and effort expended.

18. In determining the amount of attorney's fees to be award, the Court should consider the "*Johnson* factors," referred to in *Brown v. Petroleum Co.,* 838 F.2d 451, 454 (10th Cir. 1988) (applying factors enunciated in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d. 714, 717 (5th Cir. 1974). [6] Factors which militate for a reduction in the $96 million amount

[6] The Johnson factors include: "the time and labor required, the novelty and difficulty of the question presented by the case, the skill requisite to perform the legal service properly, the preclusion of other employment by the attorneys due to acceptance of the case, the customary fee, whether the fee is fixed or contingent, any time limitations imposed by the client or the circumstances, the amount involved and the results obtained, the experience, reputation and ability of the attorneys, the 'undesirability' of the case, the nature and length of the professional relationship with the client, and awards in similar cases." *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974).

requested, include the fact the amount recovered is a fraction of the potential liability. The settlement may have been a reasonable option, but is by no means a home run. Additionally, apparently, there has been no client actively scrutinizing attorney bills on a monthly basis, thus, giving Lead Counsel little incentive to minimize duplication of time spent or increase efficiency. OBJECTORS expect the attorney time records will show that the lawyers had a tendency to expand the time required for various projects, added as many bodies as possible, and were not as careful as they should have been in recording time, resulting in a highly inflated calculation of recorded time. OBJECTORS contend the Court should require Lead Counsel to present proof of "meticulous time records that 'reveal . . . all hours for which compensation is requested and how those hours were allotted to specific tasks.'" *Jane L. v. Bangerter*, 61 F.3d 1505, 1510 (10th Cir. 1996) (quoting *Ramos v. Lamm*, 713 F.2d 546, 553 (10th Cir. 1983).

B. The Awards in Similar *Megafund* Securities Cases Recoveries Weigh in Favor of Awarding Far Less Than $96 Million or 24% of the Settlement Fund.

19. In support of the motion for an award of attorney's fees, Lead Counsel filed numerous unreported case decisions and cited several dozen published case decisions. Curiously, Lead Counsel did not even mention the Tenth Circuit's leading decision in *Rosenbaum v. MacAllister*, 64 F.3d 1439 (10th Cir. 1995). **Probably, Lead Counsel would prefer no attention be paid to the *Rosenbaum* decision, so as not to become publicly embarrassed by their obvious gluttony**. In *Rosenbaum*, the appellate court said "our conscience is shocked by an award of a 3.16 multiplier that results in a fee equal to more than $900 per hour for every attorney, paralegal, and law clerk who worked on the case." *Id.* at 1467-68.

20. Here, Lead Counsel is requesting a multiplier of 5.1 which result causes even more shock to a reasonable person's conscience. Lead Counsel is requesting a $96 million payment which when divided by 53,895.87 hours works out to be more than $1,750 for every hour any person - no matter what his or her role - allegedly worked on this case. Surely, such an award would constitute a substantial windfall to the attorneys to the detriment of the class members who stand to recover only pennies on the dollar.

21. Lead Counsel, whose primary law practice and office is based in San Diego, California, within the Ninth Circuit Court of Appeals, does not cite to that appellate court's leading case decision of *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002). In *Vizcaino*, the Ninth Circuit provided an appendix demonstrating that the vast majority of fee awards in common fund cases that settled for $50 to $200 million between 1996 and 2001 resulted in a fee award within the 1.0 to 4.0 lodestar range. *Id.* 290 F.3d at 1051, n.6 and Appendix.

22. Furthermore, in the supporting brief Lead Counsel refers to an *outdated* 1996 report by the National Economic Research Associates (NERA), an economics consulting firm. (See Docket 929-1, p. 32 and Docket 929-20). An *updated* NERA report in July 2005 shows that **fee percentages decline to** 26% in settlements in the $25-$100 million range and **19% in settlements of over $100 million**. See Exhibit 1 filed herewith, Elaine Buckberg, Ph.D, Todd Foster, Ronald I. Miller, Ph.D., *Recent Trends in Shareholder Class Action Litigation: Are WorldCom and Enron the New Standard?* at 7 (NERA July 2005).

23. Courts typically reduce the percentage of the fee as the size of the recovery increases and utilize the lodestar method to confirm that the percentage amount does not award

counsel an exorbitant hourly rate. See *In re Bristol-Myers Squibb Securities Litigation*, 361 F. Supp.2d 229, 230 (SD NY 2005), in which the court awarded a fee of $12 million representing approximately 4% of a $300 million settlement; *In re Prudential Ins. Co. of America Sales Practices Litig*., 962 F.Supp. 572, 585 (D.N.J.1997), reversed and remanded, 148 F.3d 283 (3d Cir.1998) (noting that percentage awards in megafund cases range from 4.1 percent to 17.92 percent of fund); *Duhaime v. John Hancock Mut. Life Ins*., 989 F.Supp. 375 (D. Mass.1997) (applying 9.3 percent to a common fund over $300 million). Where the fund is unusually large, courts have used a "sliding scale, with the percentage decreasing as the magnitude of the fund increased ..." *Manual for Complex Litigation, Third*, § 24.12 at 189, Federal Judicial Center (1995) (citations omitted). *See e.g., Branch v. FDIC*, 1998 WL 151249 (March 24, 1998) (applying 14 percent up to $22 million; 12 percent of the next $10 million, and 5 percent over and above $32 million).

24. One example where the trial court applied such a sliding scale is the case of *In re Lucent Techs., Inc. Sec. Litig.*, 327 F. Supp. 426, 432 (D. N.J. 2004), where the settlement fund was a whopping $517 million. The court awarded attorneys' fees of 17% of the settlement fund was cross-checked against the lodestar of 61,354 documented attorney hours and resulted in a multiple of 2.13. *Id.* at 443.

25. In other types of civil actions where a class recovers more than $75-$200 million, courts weight the economies of scale inherent in class actions in fixing a percentage to yield a recovery of reasonable fees. Accordingly, fees even in the low range of 6-10 percent are common in megafund cases. See *In re Washington Public Power Supply Sys. Sec. Litig.*, 779 F.Supp. 1063 (D. Ariz.1990) (awarding fee of 4.9 percent of $690 million common fund); *In re*

MGM Grand Hotel Fire Litig., 660 F.Supp. 522 (D. Nev.1987) (awarding 7 percent of $205 million recovery); *In re Corrugated Container Antitrust Litig.*, 1983-2 Trade Cas (CCH) ¶ 65,628 (S.D. Tex. September 1, 1983) (awarding fee of 9 percent of $366 million fund); *In re Folding Carton Antitrust Litig.*, 84 F.R.D. 245 (N.D.Ill.1979) (awarding fee of 6.6 percent of $200 million class settlement); *but see In re Shell Oil Refinery*, 155 F.R.D. 552, 573-74 (E.D. La.1993) (on a recovery of $170 million, the court awarded counsel fees comprising 17.92 percent of that recovery).

26. Even in the very case that Lead Counsel places significant reliance upon, the court was careful not to over indulge the plaintiffs' team of attorneys. In the supporting brief, Lead Counsel extol the virtues of Senior Judge Katz's reasoning to grant an attorneys' fees award of 30% of the $111 million settlement fund in the case of *In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166 (E.D. Pa 2000). (See Docket 929-1 at p. 20 - listing, and p. 21 - discussion). What Lead Counsel fails to report is that Judge Katz cross-checked his award and found it to be only 2.43 times the loadstar on 47,814 hours of documented attorney time, while saying "the hours do not appear to be inflated and the hourly rates are appropriate." *Id.* at 195.

27. Similarly in another case Lead Counsel relies upon, *In re Lease Oil Antitrust Litig.*, 186 F.R.D. 403 (S.D. Tex. 1999), the award of attorneys' fees was 25% of the $190 million settlement fund, but the total attorney hours expended was 132,000 hours which made the award to be 1.35 multiplier on the lodestar. *Id.* at 448. Again, the trial court took into account the plaintiffs' attorneys actual regular hourly rates.

3. Lead Counsel Has Cleverly Hidden Within The Inflated "Request For Attorneys' Fees" Over 8,400 Hours Of Work Performed by Accountants.

28. Lead Counsel has disingenuously factored into the exorbitant attorneys' fees request thousands of non-attorney time, work performed by *in-house* accountants. OBJECTORS contend Lead Counsel is trying to pull a fast one upon unsuspecting class members. The PSLRA does not consider accountant and investigator time the same as billable attorney time. When the Court cross-checks its attorneys' fee award with the lodestar multiplier, the Court should not include the following in-house accountant and investigator time:

NAME		HOURS	RATE	LODESTAR
Alvarado, Edward	(FA)	633.75	300	$190,125.00
Azevedo, Kerri	(FA)	741.50	300	222,450.00
Hanselman, Susan K.	(FA)	552.50	310	171,275.00
Mitrovich, Risto	(FA)	1,225.00	340	416,500.00
Rudolph, Andrew J.	(FA)	2,542.50	425	1,080,562.50
Forensic Accountants	(FA)	1,886.75	125-425	321,976.25
Barhoum, Anthony J.	(EA)	237.25	290	68,802.50
Economic/Damage Analysts	(EA)	135.75	260-290	37,080.00
Investigators		187.75	200-335	54,256.25
MIS		340.00	190-225	73,422.50
TOTAL		**8,482.75**		**$2,636,450.00**

(See Docket 939-1, pp. 2-3). Lead Counsel impermissibly tallies up all this non-lawyer time and lumps it into the alleged lodestar of over 53,895.87 billable attorney hours and seeks at least a 5.1 multiplier on all of that. In short, Lead Counsel is trying to recover $10 million as attorneys'

fees for work performed by its in house workers and accountants. That's not right. The Court should not grant an enhanced *attorneys*' fees award based upon *accountant* time.

29. Moreover, OBJECTORS contend the class members' Settlement Fund should not be charged *phantom* hourly rates for Lerach's in-house accountant's work if the law firm was not actually charged those same hourly rates. The Settlement Fund should only be charged the actually charges incurred by the law firm, not the market value of someone's services who are on the internal payroll of the law firm. Therefore, Lead Counsel should make complete disclosure of the ***true*** actual out-of-pocket expenses the law firm incurred for having in-house accountants perform their accounting work, not what Lead Counsel believe those in-house accountants could have charged on the open market, had they not been in-house employees.

30. The Court should be most skeptical about granting Lead Counsel's request for an enhanced attorneys' fee award equivalent to $6,907,250.00 (or at least $1,750.00 times the 3,947 hours) for work allegedly performed by an unidentified "Document Clerk." Lead counsel don't give the courtesy of naming this person, someone who supposedly worked almost three times as many hours as any single attorney. (See Docket 939-1, p. 2). [7] But, Lead Counsel include in the 53,895.87 total attorney lodestar hours the 3,947 hours allegedly worked by this "Document Clerk" whose hourly rates are shown to be $135-200.

[7] Likewise, Lead Counsel don't give the courtesy of naming "Paralegal 1, Paralegal II and Paralegal III" who allegedly have a combined 7,205.75 hours in the case. Again, Lead Counsel has included all that time in the enhanced fee request of an average $1,750 per hour or a total of $12,610,062.50 for paralegal time in this litigation. (See the chart within Lerach Attorney Michael Dowd's Declaration, Docket 939-1, p. 3).

3. <u>There Is Insufficient Documentation To Justify Reimbursement of Requested Expenses</u>.

31. Lead Counsel have not provided sufficient documentation or explanation about the $2.219,063.84 million in alleged expenses and, the Court should not take for granted that all those expenses, including expert witness fees, were either necessary or reasonable and, therefore, should be charged against the Settlement Fund. For instance, there are no receipts for any of the alleged $394,891.69 "meals, hotels and transportation" the Lerach law firm seeks to charge the Settlement Fund (See Docket 939-1, pp. 11-23).

32. The photocopying charge rate of $.25 per copy is excessive. (See Docket 939-1, p. 23). Considering the Lerach law firm allegedly made 885,001 copies, there should be a volume discount charged to the Settlement Fund and the requested reimbursement of $221,250.25 should be substantially reduced. Likewise, Lead Counsel devote a mere paragraph statement about the $135,024.64 legal research charges the Lerach law firm allegedly incurred. Lead Counsel should provide the necessary receipts and invoices.

33. OBJECTORS request opportunity to examine the list of expenses and explanation given for them in order to determine reasonableness. It is unreasonable for Lead Counsel to take for granted that class members and the Court will simply acquiesce to plans to charge the Settlement Fund with undocumented and insufficiently explained $2.2 million in expenses.

34. OBJECTORS concede the nature of high stakes shareholder litigation justifies large legal fees and substantial costs and expenses. However, succeeding in a shareholder action where the settlement falls in place after a punishing SEC penalty ($250 million), criminal plea bargains within the cast of Defendant characters and further criminal prosecutions, should not be the equivalent of holding a winning lottery ticket. OBJECTORS are not alone in their protests

that the requested over $1,750 for every hour of work allegedly performed by lawyer associates, paralegals and clerks, at rates that significantly enhance profits to the lawyer partners of the law firms involved in the case is just not appropriate. While the reward for success should justifiably be substantial, that does not necessarily equate to rates that are forty or fifty time higher than the average wage earner.

4. The Court Should Postpone the Final Hearing For Determining Attorneys' Fees Until After Lead Counsel Submits Detail Concerning The Hours Expended, Rates Charged and Sufficient Documentation For The Alleged Expenses For Which Reimbursement Is Sought From The Settlement Fund.

35. In this $400 million common fund recovery case, the Court has a special duty to protect the interests of the class. On the issue of how much attorney's fees should be paid to the Named Plaintiffs' counsel, the lawyers now occupy a position adversarial to the interests of the class. OBJECTORS contend this Court must assume the role of fiduciary for the class of shareholders. See e.g., *Brown v. Phillips Petroleum Company*, 838 F.2d 451, 456 (10th Cir. 1988) ("The trial judge in a common fund case must 'act as a fiduciary for the beneficiaries' of the fund."); *In re Copley Pharmaceutical, Inc.,"Albuterol" Products Liability Litigation,* 1 F.Supp.2d 1407, 1409 (D. WY 1998, Judge Brimmer) ("When an attorney makes a claim for fees from a common fund, his interest is 'adverse to the interest of the class in obtaining recovery because the fees come out of the common fund set up for the benefit of the class.' [citations omitted] this divergence of interests requires a court to assume a fiduciary role when reviewing a fee application, because there is often no one to argue for the interests of the class."); *In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 109 F.3d 602, 608 (9th Cir. 1997) ("In a common fund case, the judge must look out for the interests of the

beneficiaries, to make sure that they obtain sufficient financial benefit after the lawyers are paid. Their interests are not represented in the fee award proceedings by the lawyers seeking fees from the common fund.").

36. Therefore, OBJECTORS contend that it is *premature* to hold a final hearing on determining an award of attorney's fees and expenses, because Lead Counsel provided insufficient documentation. OBJECTORS request that at the May 19, 2006 Settlement Hearing, the Court withhold decision on an award of attorneys' fees and expenses. After Lead Counsel provide their documentation, OBJECTORS and class members should be afforded opportunity to further respond to the request for payment of fees and expenses by the Settlement Fund.

WHEREFORE, OBJECTORS and class members ASSOCIATION OF U S WEST RETIREES, ELDON GRAHAM, HAZEL FLOYD and MARY M. HULL submit their objections as stated herein. OBJECTORS request the Court to scrutinize Lead Counsel's request for expenses to be charged to the Settlement Fund and limit recovery to only those expenses that were necessary and reasonable, an amount substantially less than $2.2 million presently requested. OBJECTORS also request an order limiting Lead Counsel's fee recovery to substantially less than the 24% of the Settlement Fund or $96 million being sought. Any fee award should be cross-checked under the lodestar method with a result that does not exceed a reasonable multiplier, certainly far less than the 5.1 multiplier contemplated by Lead Counsel.

Moreover, OBJECTORS request a postponement of the May 19, 2006 Settlement Hearing for determination of attorney's fees and expenses to be paid out of the Settlement Fund until after Lead Counsel has provided sufficient documentation and OBJECTORS and class

members have sufficient opportunity to further respond to that request.

Dated: March 6, 2006.

s/ Curtis L. Kennedy
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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of March, 2006, a true and correct copy of the above and foregoing document, together with Exhibit 1, was electronically filed with the Clerk of the Court using the CM/ECF system and a courtesy copy was emailed to counsel of record in accordance with the January 5, 2006 Class Notice as follows:

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and a copy of the same was sent via email to OBJECTORS - Association of U S WEST Retirees, Eldon H. Graham, Hazel A. Floyd and Mary M. Hull.

s/ Curtis L. Kennedy

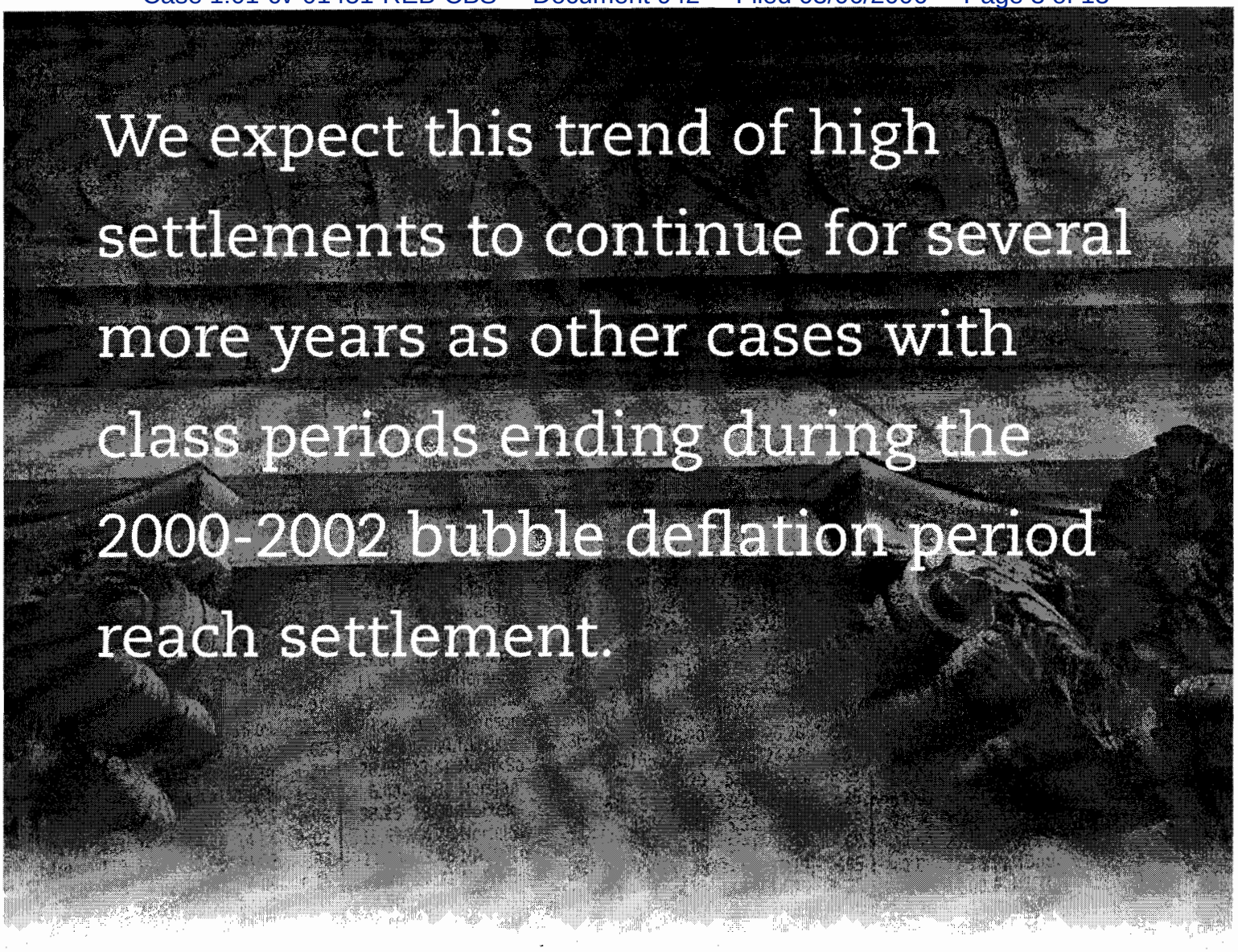
Exhibit 1

NERA
Economic Consulting

Recent Trends in Shareholder Class Action Litigation: Are WorldCom and Enron the New Standard?

Elaine Buckberg, Ph.D.
Todd Foster
Ronald I. Miller, Ph.D.

How Markets Work℠



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Recent Trends in Shareholder Class Action Litigation: Are WorldCom and Enron the New Standard?

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July 2005

Top Ten Securities Class Action Settlements

Ranking	Company	Year	Settlement Value ($MM)
1	WorldCom, Inc. *	2005	$6,127
2	Enron Corp. **	2005	4,747
3	Cendant Corp. ***	2000	3,528
4	Lucent Technologies, Inc.	2003	517
5	BankAmerica Corp.; NationsBank Corp.	2002	490
6	Raytheon Company	2004	460
7	Waste Management Inc.	2002	457
8	Rite Aid Corporation	2003	320
9	DaimlerChrysler AG	2003	300
10	Oxford Health Plans, Inc.	2003	300

* *Includes settled and pending settlements from the following parties: ABN Amro, Arthur Andersen LLP, Bank of America, Citigroup, Deutsche Bank, JPMorgan Chase, Lehman Brothers, Credit Suisse First Boston Corp., UBS Warburg, Goldman Sachs, WestLB AG, and various directors.*

** *This is a partial settlement involving Bank of America, Andersen Worldwide Société Coopérative, Enron's Board of Directors, and Lehman Brothers. It also includes tentative settlements with Citigroup and JP Morgan Chase for a total of $4.2 billion (as of June 20, 2005).*

*** *The settlement value incorporates a $341 million settlement in the Cendant PRIDES case.*

WorldCom: A New Record Settlement

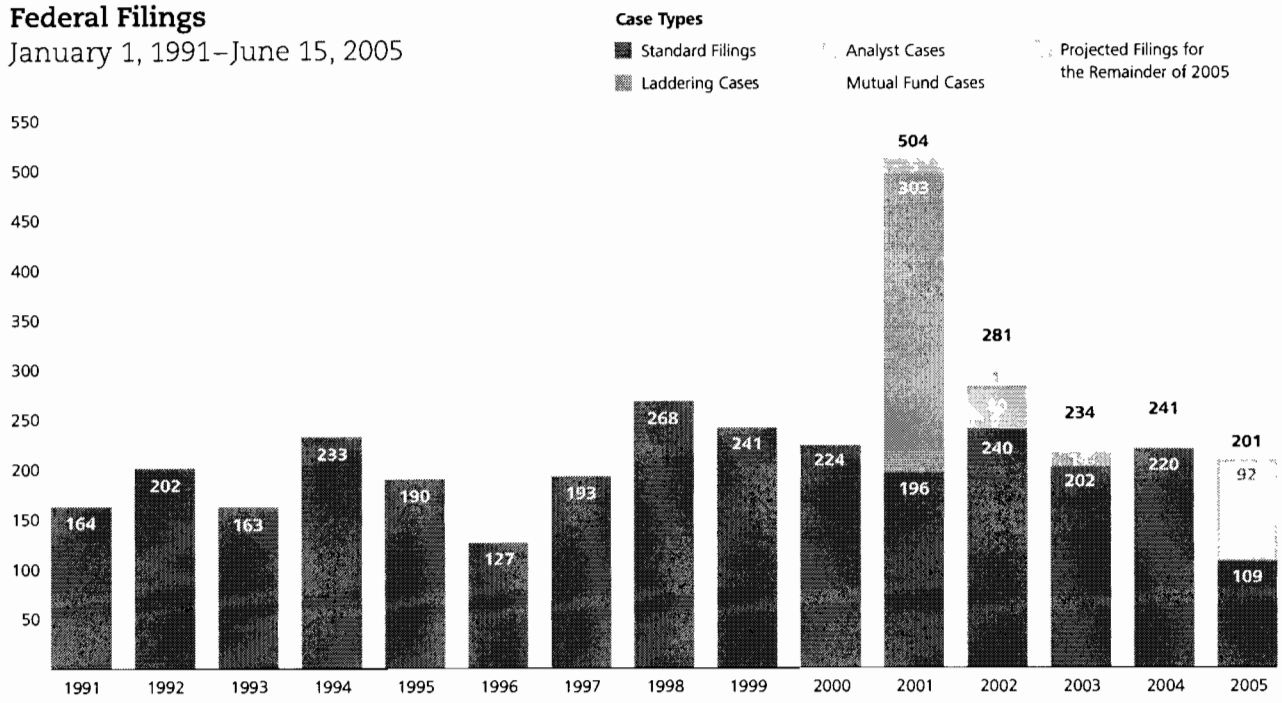
The WorldCom shareholder class action settlement has now topped $6.1 billion, reflecting the contributions of eight investment banks, Arthur Andersen, and personal contributions by its directors.[2] The WorldCom settlement is nearly 75% larger than the prior record settlement in Cendant, which reached $3.5 billion including the Cendant PRIDES settlement. The WorldCom settlement is striking not only in its size, but also in its composition. Outside co-defendants have financed nearly the entire settlement, with the exception of the directors' contributions. Whereas settlements on behalf of directors are typically wholly paid by D&O insurance, several insurers rescinded their coverage on grounds that their policies do not apply in the event of a finding of fraud. Plaintiffs succeeded in compelling ten WorldCom directors to make settlement payments of $18 million, negotiated as 20% of their personal assets, toward a settlement of $54 million on their behalf.[3]

The Enron shareholder class action may be on track for a yet-larger settlement, following preliminary settlement agreements by JPMorgan Chase for $2.2 billion, Citigroup for $2.0 billion, and over $500 million from members of the board of directors, Arthur Andersen, and two other investment banks.[4] Former directors will contribute $13 million in personal assets toward a settlement of $168 million on their behalf.[5] Another five investment banks which have not yet settled are named as underwriter defendants.

The record breaking WorldCom settlement compensates record breaking investor losses, larger by a substantial multiple than in any other settled case filed since 1991, even if common stock alone is considered, although the WorldCom class also included a substantial amount of debt. Investor losses, a simplified plaintiffs' style measure of damages, is the single most powerful predictor of settlement size.[6] In the Enron case, investor losses on common stock would rank fourth if compared to other settled cases; the Enron class action also includes debt and other securities, where each additional security type included in the class can dramatically increase settlement size.

Federal Filings

January 1, 1991–June 15, 2005



Filings Dip in Early 2005

Based on the 109 filings through June 15, 2005, courts will receive fewer filings this year. If filings continue at the same pace for the remainder of the year, plaintiffs will file 201 cases in 2005, compared to 241 in 2004 and a post-PSLRA average of 211 filings each year, excluding the laddering, analyst, and mutual fund cases.[7] However, the slowing in early 2005 may be reversed by a faster than normal pace of filings in the remaining months of the year.

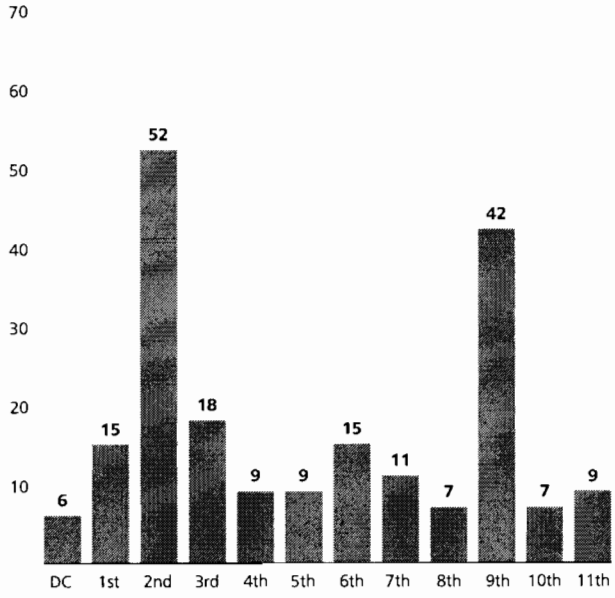
The drop in federal filings in the first six months of the year can be attributed to a sharp drop in Ninth Circuit filings. It may be that plaintiffs' firms in the Ninth Circuit chose to delay certain filings until after the *Dura* decision[8] by the Supreme Court in order to determine what they would need to do to plead loss causation. The Supreme Court's April 19, 2005 decision reversed the Ninth Circuit's decision in *Dura* and rejected the Ninth Circuit's view that a demonstration of inflation on date of purchase was sufficient to satisfy the loss causation requirement. Instead, plaintiffs' counsel must ultimately prove that a misrepresentation proximately caused plaintiffs' economic loss. Ninth Circuit plaintiffs' firms may file an unusually high number of cases in the remaining months of 2005, including cases that they would otherwise have filed earlier in the year.

Firms Face a 2% Chance of Suit Each Year

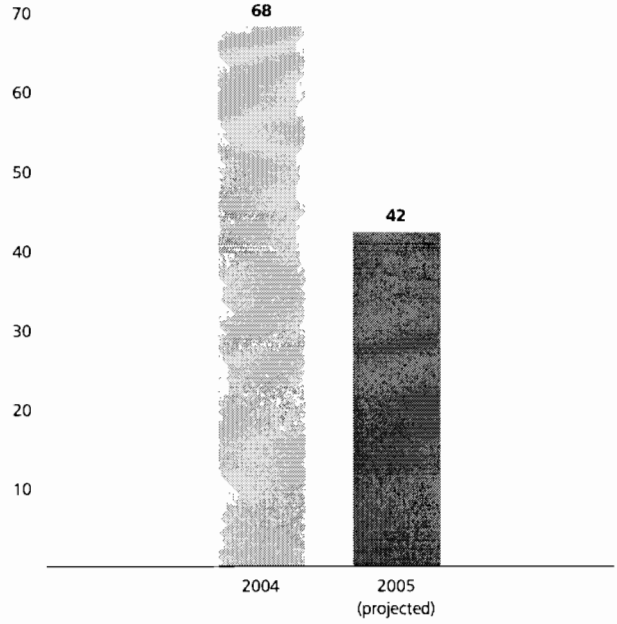
	1995	2004	Change
No. of Publicly Traded Companies	11,688	11,875	1.6%
Annual Filings	190	241	26.8%
Probability of Securities Class Action (SCA)	1.6%	2.0%	24.8%
Probability of Dismissal	20.3%	39.3%	93.6%
Probability of SCA that Survives Motion to Dismiss	1.3%	1.2%	-4.9%

Based on the 2004 filing rate, over a five-year period, the average public corporation faces a 10% probability that it will face at least one shareholder class action lawsuit.[9] The annual likelihood of a suit has risen 25% since 1995, from 1.6% to 2.0%. However, the increased likelihood of a suit is offset by the increased dismissal rate such that the probability of a company facing a suit that survives a motion to dismiss is nearly constant, at 1.2% in 2004 versus 1.3% in 1995.

2005 Federal Filings by Circuit (projected)



2004 vs. 2005 Federal Filings for 9th Circuit

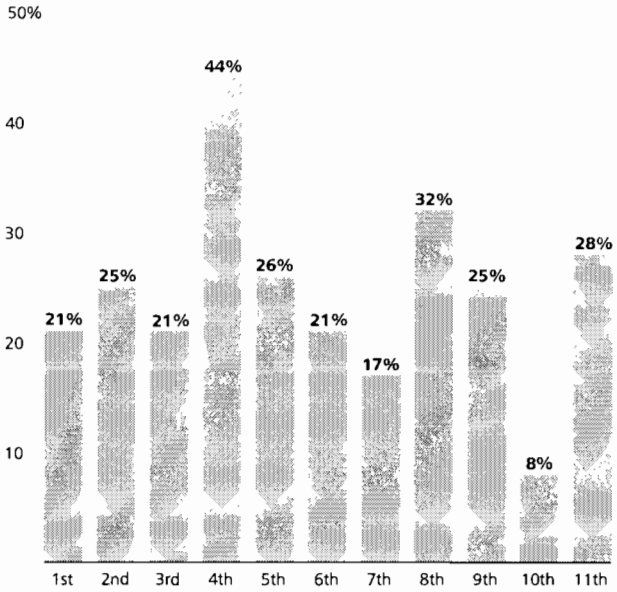


Dismissals

Dismissal rates nearly doubled after the passage of the Private Securities Litigation Reform Act ("PSLRA") in December 1995.[10] Of cases filed between 1991 and 1995, dismissals accounted for 20.3% of dispositions. Of cases filed between 1996 and 2002, dismissals accounted for 39.3% of dispositions, a statistically significant increase of over 90%.[11] Our post-PSLRA dismissal rate may be slightly overstated, as it may include some dismissals without prejudice that will be reversed by amended and better-pled complaints or dismissals with prejudice that will be successfully appealed.

Dismissal rates vary by circuit. Both the Second and Ninth Circuits, which together receive the preponderance of cases, dismiss approximately 25% of cases within two years of the filing date. The Fourth Circuit has the highest rate, dismissing nearly 45% of filings within two years.

Dismissal Rates by Circuit Within Two Years of Filing



Settlements Head for New Highs in 2005

Even if we exclude the WorldCom and Enron settlements, 2005 is likely to bring new highs in both mean and median settlements. In the first six months of 2005, the mean settlement value reached $25.8 million, exceeding the prior high of $23.5 million in 2002.[12]

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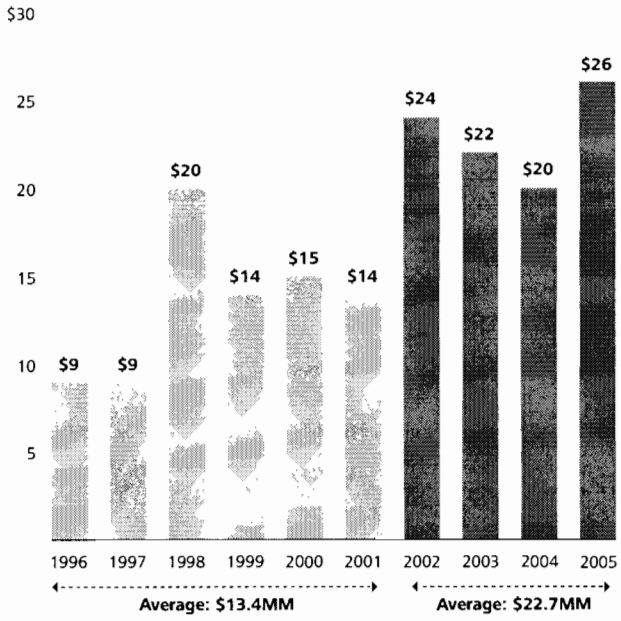
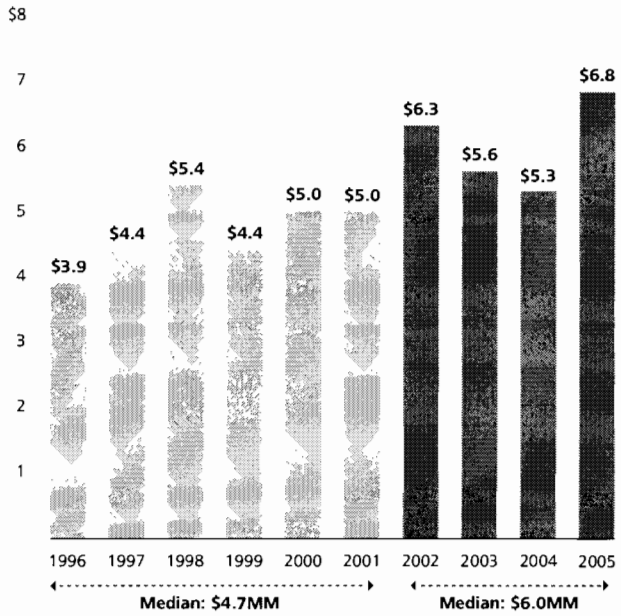
Average Settlements Have Been Rising
Average Settlement Value ($MM)



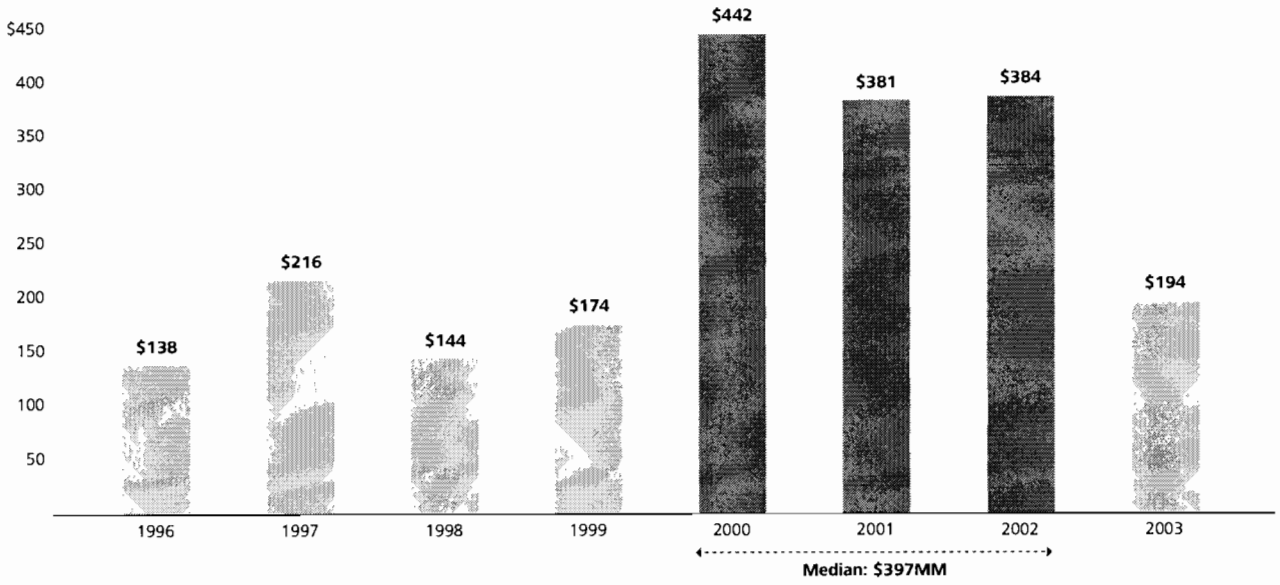
Goodbye to Nuisance Suits

If we look at median settlement values, 2005 will set another record. In the first six months of the year, the median settlement value rose to $6.8 million from $5.3 million in 2004, a 28% increase. The driving factor behind this increase is the sharp reduction in settlements under $3 million, which accounted for nearly 45% of settlements in 1996 but account for less than 26% of settlements thus far in 2005. Taken with the substantial increase in dismissal rates since PSLRA, this suggests that cases that formerly settled for small sums are instead being dismissed.

Median Settlements Will Hit New High
Median Settlement Value ($MM)



Median Investor Losses
By End-of-Class Period Year ($MM)



Settlements May Have Further to Fall, But It May Take a Few Years

Settlements in 2002-2005 have been substantially higher than in the prior post-PSLRA years of 1996-2001, averaging $22.7 million versus $13.4 million for the earlier years.[13] Our analysis indicates that this is due to higher investor losses in suits settled in 2002-2005, including a number of lawsuits with class periods ending during the collapse of the stock market bubble in 2000-2002.

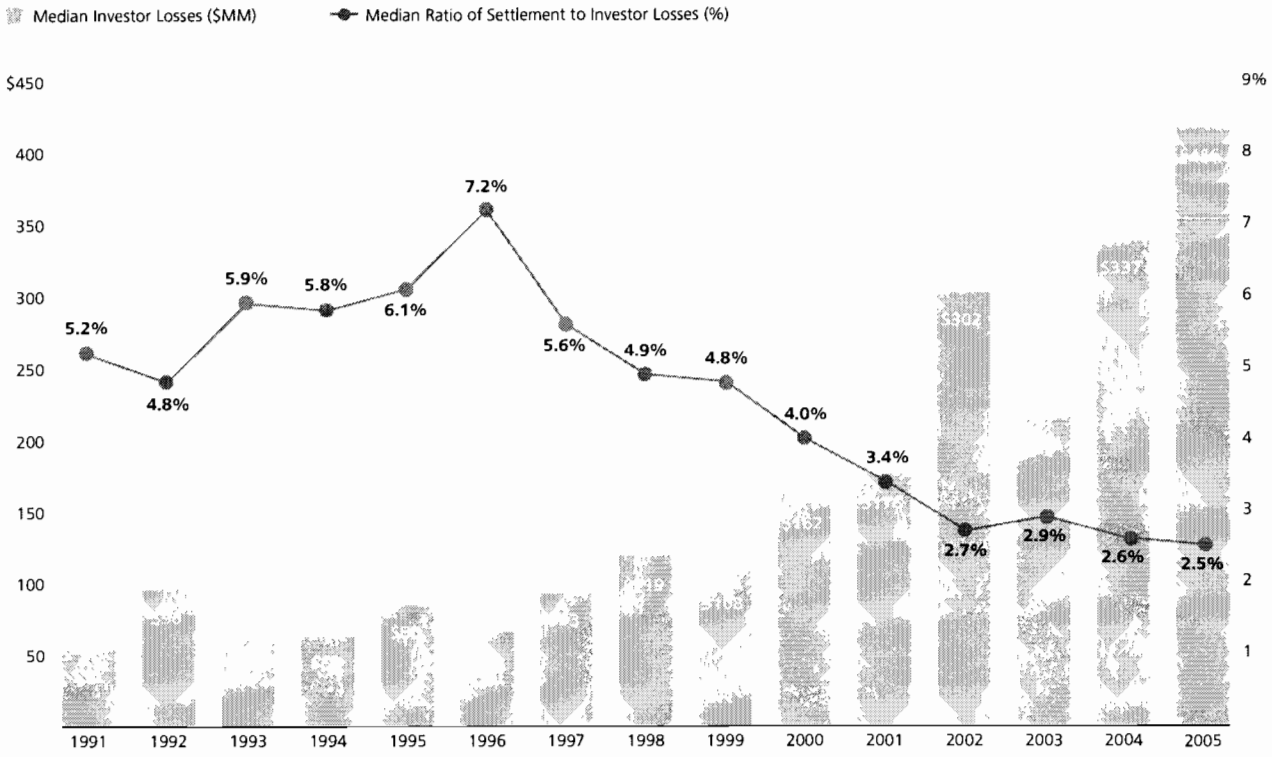
We expect this trend of high settlements to continue for several more years as other cases with class periods ending during the 2000-2002 bubble deflation period reach settlement. Our projection rests on our analysis of median investor losses by end-of-class-period year for settled cases. For settled cases, median investor losses for cases with class periods ending in 2000-2002 are $397 million—more than 80% higher than the maximum for any prior end-of-class-period year. If the size of investor losses does not affect the speed of settlement, then we can expect that unsettled cases with class periods ending in 2000-2002 will settle for amounts similar to the already settled cases from the same period.

Because just under 50% of cases that settle do so within five years of the filing date, it will be several more years before most of these cases with class periods ending in 2000-2002 are settled. If cases continue to progress at their historical rates, approximately half of cases with class periods ending in 2000 will have settled by the end of 2005. Approximately half of those cases with class periods ending in 2001 will have settled by the end of 2006, and half of those with class periods ending in 2002 will have settled by the end of 2007.[14]

We find no statistically significant change in settlement values since the passage of Sarbanes-Oxley, once we control for other factors including investor losses. Higher investor losses explain the rise in settlements, as we will discuss further below.

Investor Losses Have Risen More Rapidly than Settlements

January 1, 1991–June 15, 2005



Explaining Settlements

NERA has estimated a settlement prediction model that explains over 60% of the variation in settlements, using data on settled cases filed after January 1, 1996. This section discusses the sensitivity of settlement values to various lawsuit characteristics, based on that model; all the sensitivity measures described are calculated controlling for other characteristics of the suit and changes in the consumer price index.

Trends in investor losses explain both the headline settlements of recent years and trends in median settlements. On average, a 1.0% increase in investor losses results in a 0.4% increase in the size of the expected settlement, meaning that settlements tend to increase far less than one-for-one with investor losses. Investor losses—an estimate of what investors lost over a class period relative to an investment in the S&P—are the single most powerful, publicly available determinant of settlements, explaining approximately 50% of the variation.

We use investor losses as a proxy for the damage estimates presented by the plaintiffs' side prior to settlement because we generally do not have access to the plaintiffs' actual figures.

Following the bursting of the 1990s stock market bubble, average investor losses ballooned from $140 million in the average suit settling in 1996 to $1.0 billion in 2002 and $2.5 billion in 2003. After dipping to $1.7 billion in 2004, average investor losses in cases settling in the first six months of 2005 have set a new high of $3.5 billion (excluding WorldCom and Enron). Median investor losses have risen steadily in the last two years to $416 million for cases settling in early 2005 from $337 million in 2004 and $215 million in 2003. Taking a longer-term perspective, 2005 median investor losses were more than six times the 1996 median of $66 million.

Settlements increase by approximately one-third if an IPO is involved.

Settlement values rise dramatically with the inclusion of each class of securities other than common stock in a class action suit. Effectively, the claims of the holders of these other securities represent losses above and beyond—and not captured by our measure of—investor losses on common stock.

As settlements rise, plaintiffs' counsel is taking home a smaller percentage of settlements, yet larger paychecks.

Settlements increase with the depth of the defendants' pockets. For each 1.0% increase in the company's market capitalization on the day after the end of the class period, the typical settlement will increase 0.1%. But this effect may be offset if the company's fortunes change on the way to settlement. If the defendant firm is in bankruptcy or has a stock price of less than $1.00 per share on the settlement date, the settlement will typically be approximately one-third lower. The involvement of company co-defendants can lead to larger settlements. In cases with an accounting firm co-defendant, settlements increase by more than two-thirds, controlling for all other characteristics of the case.

Cases with accounting allegations result in higher settlements for several additional reasons. The presence of any one of three accounting factors—accounting issues, accounting irregularities, or restatements—will raise average settlement values by approximately 20%. More often, two or more of these accounting variables will apply to the same case, further increasing the likely settlement.

One of Congress's major goals for the PSLRA was to involve institutional investors as lead plaintiffs, with the intention that institutional investor plaintiffs play a more active role in litigation and generate better outcomes for plaintiffs. Controlling for other case characteristics, cases with an institutional investor lead plaintiff settle for a statistically significant one-third more on average. Possible reasons for higher settlements in cases with institutional investors as lead plaintiffs include the retention of more effective plaintiffs' counsel in those cases, the lead plaintiff's more effective supervision of counsel and own contribution to strategy, or both. Alternatively, it may reflect a tendency for institutional investors to get involved in cases where the allegations have greater merit or the defendants' capacity to pay in relation to potential damages is greater.

Our model also indicates that settlements increase by approximately one-third if an IPO is involved. All such cases involve potential Section 11 claims, which have the potential to result in higher alleged damages than the accompanying 10b-5 claims.

While defendants' resources and the characteristics of a case affect settlements, only the health services sector pays markedly different settlements than other industries. Settlements involving companies in the health services sector are typically one-third higher than settlements involving any other industry, controlling for other case characteristics. This finding may relate to the existence of concurrent billing fraud allegations against health services companies brought under the federal False Claims Act.

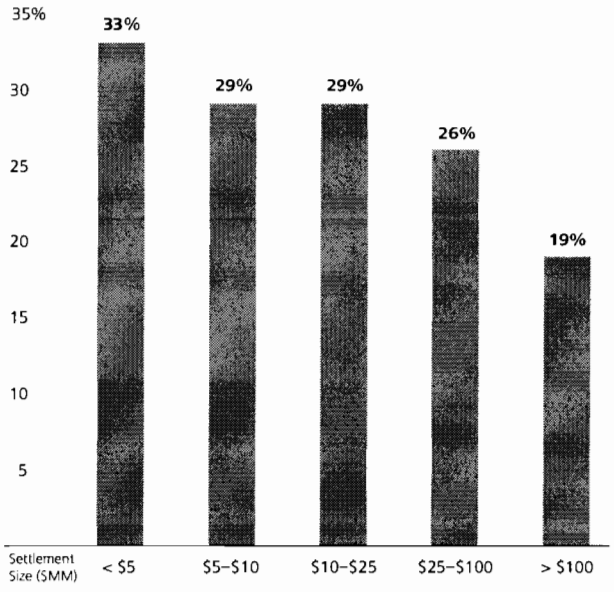
The Plaintiffs' Bar's Share

As settlements rise, plaintiffs' counsel is taking home a smaller percentage of settlements, yet larger paychecks. The fee percentages requested by plaintiffs' counsel have fallen in recent years, although 33% is still the most frequent percentage, requested in over 40% of cases. We find that fee percentages are lower for cases with larger settlements.

However, as median and mean settlements have climbed, so have plaintiffs' attorneys' total fees in the average shareholder class action. The average settlement in 2005 will yield over $6 million in fees to plaintiffs' counsel, as compared to $3.6 million in 2000.

Bigger Settlements Yield Lower Percentage Fees

Fees as a Percentage of Settlement



Conclusion

Settlement of the WorldCom and Enron shareholder class actions will bring to an end two of the cases that epitomized the alleged mega-frauds that occurred during the stock market bubble and were revealed by its bursting. But these cases are part of a broader process in which shareholder class action cases with class periods ending during the bear market of 2000-2002 are reaching settlement. Large settlements in many of these cases are consistent with large losses. Indeed, we do not find a statistically significant change in the relationship between investor losses and settlement size, even when the WorldCom settlement is considered. Large settlements are likely to continue for several years as these bear market cases progress toward settlement.

End Notes

1 This edition of NERA's research on recent trends in securities class action litigation expands on previous work by our colleagues Lucy Allen, Frederick C. Dunbar, Vinita M. Juneja, Denise Neumann Martin, Stephanie Plancich, and David I. Tabak. We gratefully acknowledge their contribution to previous editions as well as this current version. In addition, the authors thank Christopher Enright and D.J. Percella for supervising the research effort. These individuals receive credit only for improving this paper; all errors and omissions are ours.

2 With the exception of Citigroup's $2.575 billion contribution, the components of the settlement remain tentative, pending court approval. WorldCom, which emerged from bankruptcy as MCI in April 2004, made no contribution.

3 "Ex-directors of WorldCom in $54 mln settlement," Reuters, January 7, 2005, 1:10 p.m. and Stipulation of Settlement, In Re WorldCom, Inc. Securities Litigation, Master File No. 02 Civ. 3288, January 7, 2005.

4 Citigroup and JPMorgan Chase's settlements have not yet received court approval.

5 "Enron directors agree to $168 mln settlement," Reuters, January 7, 2005, 6:39 p.m.

6 We use investor losses as a proxy for the damages estimates presented by plaintiffs' side prior to settlement because we generally do not have access to plaintiffs' figures.

7 The post-PSLRA average is calculated for 1996-2004, excluding all laddering, analyst, or mutual fund cases. Excluding 1996, the 1997-2004 average is 223 standard filings per year.

8 Broudo, et al. v. Dura Pharmaceutical, et al., 339 F.3d 933 (9th Cir. 2003).

9 The probability of not facing a suit is 98.0% per year. Assuming that the probability of facing a suit in each year is independent and compounding over five years yields a 90.4% chance of no suit, or a 9.6% chance of at least one suit, in five years.

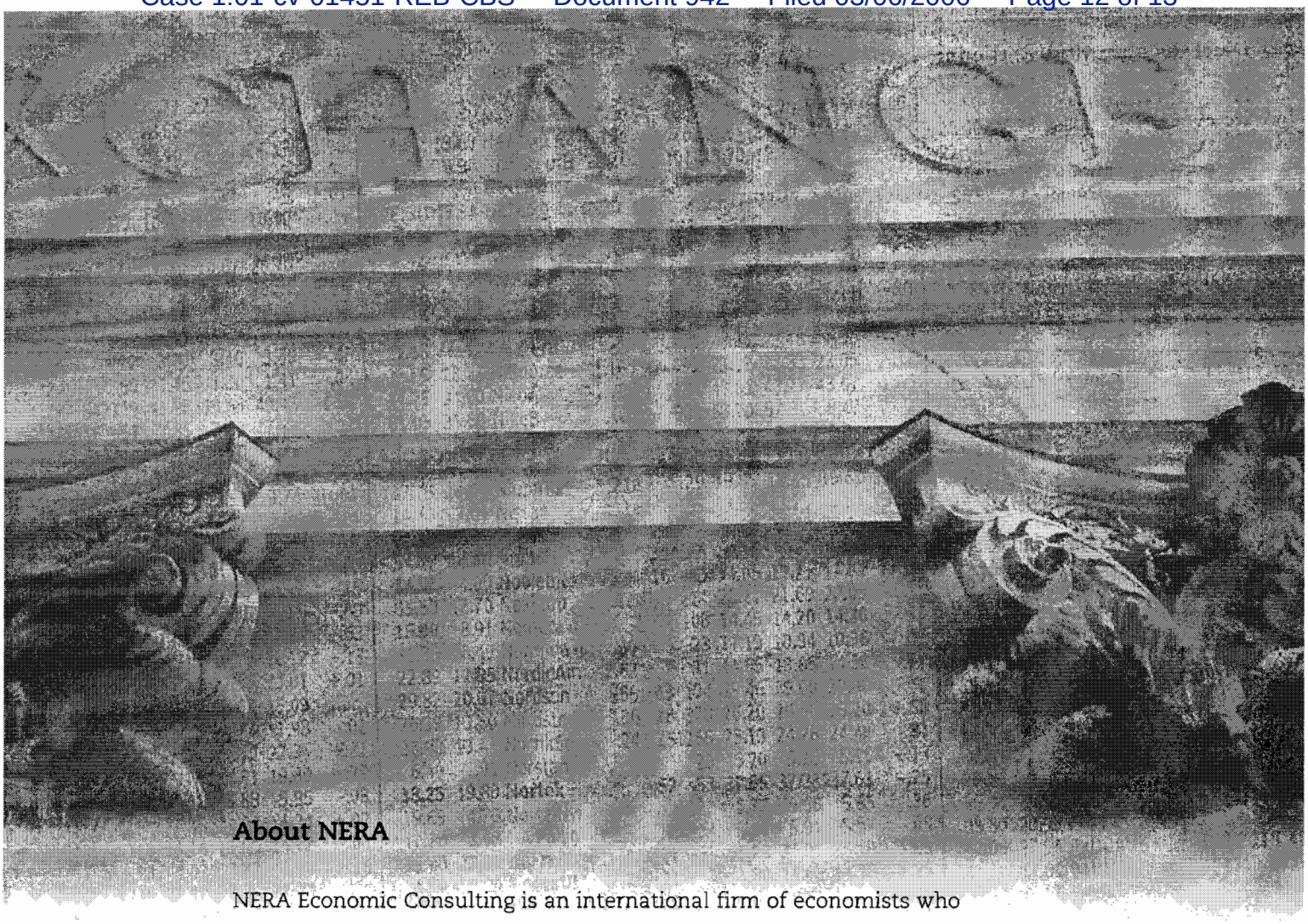
10 Our dismissal statistics include summary judgments but exclude partial dismissals.

11 Because it is not uncommon for judges to take up to two years from the filing date to rule on motions to dismiss, it would be premature to evaluate dismissal rates of cases filed in 2003-2005.

12 Excluding Cendant from the 2000 average.

13 These statistics exclude the Cendant, Enron, and WorldCom settlements; if we include them, the jump is from an average of $17.1 million to $57.4 million.

14 This approximation assumes that most suits are filed in the same year as the class period ends, although the statute of limitations allowed one year from disclosure to filing prior to the passage of Sarbanes-Oxley on July 25, 2002 and two years since the passage of Sarbanes-Oxley.



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