UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re GENWORTH FINANCIAL, INC. SECURITIES LITIGATION	Master File No. 1:14-cv-02392-AKH
	CLASS ACTION
This Document Relates To: ALL ACTIONS.	JOINT DECLARATION OF JONATHAN GARDNER AND DOUGLAS R. BRITTON IN SUPPORT OF CLASS REPRESENTATIVES' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION AND CLASS COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND PAYMENT OF LITIGATION EXPENSES

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We, JONATHAN GARDNER and DOUGLAS R. BRITTON, declare as follows pursuant to 28 U.S.C. §1746:

1. Jonathan Gardner is a partner of the law firm of Labaton Sucharow LLP ("Labaton Sucharow") and Douglas R. Britton is a partner of the law firm of Robbins Geller Rudman & Dowd, LLP ("Robbins Geller"). Labaton Sucharow and Robbins Geller serve as Court-appointed Class Counsel for Class Representatives, the City of Hialeah Employees' Retirement System ("City of Hialeah") and New Bedford Contributory Retirement System ("New Bedford") (collectively, "Class Representatives" or "Lead Plaintiffs"), and the certified Class in the Litigation. We have been actively involved in prosecuting and resolving the Litigation, are familiar with its proceedings, and have personal knowledge of the matters set forth herein based upon our supervision and participation in all material aspects of the Litigation.[1]

2. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, we submit this declaration in support of Class Representatives' Motion for Final Approval of Class Action Settlement and Plan of Allocation. We also submit this declaration in support of Class Counsel's Motion for an Award of Attorneys' Fees and Payment of Litigation Expenses. Both motions have the full support of the Class Representatives. *See* Declaration of Robert Williams III in Support of Motion for Final Approval of Settlement and Application for an Award of Attorneys' Fees and Expenses and Plaintiffs' Expenses Pursuant to 15 U.S.C. §78u-4(a)(4) ("Williams Decl."), dated September 19, 2017, and Declaration on behalf of New Bedford in Support of Motion for Final

[1] All capitalized terms used herein that are not otherwise defined shall have the meanings provided in the Stipulation and Agreement of Settlement, dated as of June 15, 2017 (Dkt. No. 152-1) (the "Stipulation"), which was entered into by and among (a) Class Representatives, on behalf of themselves and the Class; and (b) Genworth Financial, Inc. ("Genworth" or the "Company") and Michael D. Fraizer ("Fraizer") and Martin P. Klein ("Klein") (collectively, the "Individual Defendants," and, together with Genworth, the "Defendants").

Approval of Class Action Settlement and Award of Attorneys' Fees and Expenses Pursuant to 15 U.S.C. §78u-4(a)(4) ("New Bedford Decl."), dated October 5, 2017.

I. PRELIMINARY STATEMENT

3. The proposed Settlement now before the Court provides for the resolution of all claims in the Litigation in exchange for a cash payment of $20,000,000. As detailed herein, Class Representatives and Class Counsel respectfully submit that the Settlement represents a very favorable result for the Class in light of the significant risks in the Litigation.

4. This case has been vigorously litigated from its commencement in April 2014 through the execution of the Stipulation. The Settlement was achieved only after Class Counsel, *inter alia*, as detailed herein: (i) conducted a thorough and wide-ranging investigation concerning the allegedly fraudulent misrepresentations/omissions made by Defendants; (ii) prepared and filed a detailed Amended Complaint for Violation of the Federal Securities Law (the "Complaint"); (iii) researched and drafted an opposition to Defendants' comprehensive motion to dismiss the Complaint; (iv) prepared and filed a detailed Second Amended Class Action Complaint (the "Second Amended Complaint") in response to the Court's order requiring a further amended pleading; (v) successfully opposed Defendants' motion to dismiss the Second Amended Complaint; (vi) successfully opposed Defendants' motion for reconsideration of the Court's order denying the motion to dismiss the Second Amended Complaint; (vii) successfully moved for class certification; (viii) engaged in extensive fact discovery, which included Class Counsel obtaining and analyzing approximately 2.1 million pages of documents from Defendants and approximately 227,000 pages of documents from non-parties; (ix) took four depositions of current or former Genworth employees (including the depositions of the two Individual Defendants and the two most senior executives in the Australian subsidiary at issue in the case); (x) defended two Class Representative depositions and the deposition

of one of Class Representatives' investment managers; (xi) deposed two confidential witnesses; and (xii) conferred with experts on accounting, damages and loss causation issues, as well as an industry expert on issues pertaining to the mortgage industry in general as well as specifically in Australia.

5. The Class Representatives and Class Counsel believe that the Settlement is in the best interests of the Class. Due to their efforts, briefly described in the foregoing paragraph, the Class Representatives and Class Counsel are well-informed of the strengths and weaknesses of the claims and defenses in the Litigation. As discussed in further detail below, the Settlement was achieved in the face of vigorous opposition by Defendants who would have, had the Settlement not been reached, continued to raise numerous defenses. For example, Defendants would have continued to raise serious arguments concerning scienter, including, that the Individual Defendants, located in the United States, did not have information concerning the specifics of how Genworth's Australian mortgage insurance ("MI") unit experienced a spike in claims during the Class Period. Additionally, Defendants would likely argue that Genworth's Australian MI unit had a sufficient level of reserves at all relevant times and that it, in fact, increased the reserves during the Class Period, an issue that would have ultimately come down to a disputed "battle of the experts." These defenses, along with disputed issues of damages, would have put the Class at risk of recovering nothing or an amount significantly less than the negotiated Settlement.

6. With respect to the proposed Plan of Allocation for the settlement proceeds, as discussed in further detail below, the proposed Plan of Allocation was developed with the assistance of the Class Representatives' damages expert, and provides for the distribution of the Net Settlement Fund to Class Members who submit Claim Forms that are approved for payment by the Court on a *pro rata* basis based on their losses attributable to the alleged fraud.

7. With respect to the Fee and Expense Application, as discussed in Class Counsel's Memorandum of Law in Support of Motion for an Award of Attorneys' Fees and Payment of Litigation Expenses ("Fee Memorandum"), the requested fee of 30% of the Settlement Fund is fair both to the Class and to Class Counsel, and warrants the Court's approval. This fee request is within the range of fee percentages frequently awarded in this type of action and, under the particular facts of this case, is justified in light of the benefits that Class Counsel conferred on the Class, the risks they undertook, the quality of their representation, the nature and extent of the legal services, and the fact that Class Counsel pursued the case at their financial risk. Class Counsel are not requesting a multiplier on their lodestar.

II. FACTUAL BACKGROUND

8. As set forth in the Second Amended Complaint, Genworth is a financial security company engaged in providing insurance, wealth management, investment and financial solutions to more than 15 million customers, with a presence in more than 25 countries. Second Amended Complaint, ¶2. Genworth's businesses in Canada and Australia historically had generated strong margins and consistent earnings in the years prior to and up to the Class Period, and were viewed as the Company's highest return business. *Id.*, ¶4.

9. The Second Amended Complaint alleges that, throughout the Class Period, Defendants made misrepresentations and omissions about the strength of Genworth's Australian MI subsidiary and the Australian housing market in advance of a minority share initial public offering of that Australian MI unit (the "IPO"), which was necessary to transfer as much as $720 million in capital from that unit to other Genworth units. *Id.*, ¶¶4-14, 46. Defendants represented that the IPO was on track for the second quarter of 2012 ("2Q12") and would occur from a "position of strength" based on the Australian MI unit's purported stability and the robustness of Genworth's risk

management procedures. *Id.*, ¶¶1-15, 58, 94, 106. The Second Amended Complaint alleges that, in truth and unbeknownst to Genworth's investors, the Australian MI unit suffered massive exposure to low-documentation loans susceptible to income manipulations. *Id.*, ¶¶81, 88.

10. While representing to investors that the strength of Genworth's Australian MI unit and risk management procedures would allow the IPO to go forward as planned in 2Q12, Defendants allegedly hid from investors the massive losses Genworth was experiencing and the increased reserves required as a result of its exposure to the deteriorating high-risk, low-documentation loans. *Id.*, ¶¶7-18, 45, 59-75. When the truth came out on April 17, 2012 that Genworth had to delay the IPO due to the "elevated loss experience in Australia" resulting from increased delinquencies and claims, the stock price dropped 24% in a single day on heavy trading. *Id.*, ¶¶17, 21-24, 109-114. On May 2, 2012, Defendants confirmed the magnitude and reason for Genworth's "higher losses" as "primarily due to loss reserve strengthening of $82 million before taxes" and driven by the Queensland economic downturn, among other reasons. *Id.*, ¶¶116-117.

11. The Second Amended Complaint was brought against Genworth and two of its officers, Frazier (Chief Executive Officer, President, and Chairman of Board of Directors during the Class Period) and Klein (Chief Financial Officer and Executive Vice President during the Class Period), for violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§78j(b), 78t(a), and Rule 10b-5 promulgated thereunder, 17 C.F.R. §240.10b-5.

III. PROCEDURAL HISTORY

A. Commencement of the Litigation and Appointment of Lead Plaintiffs and Lead Counsel

12. In April 2014, an initial securities class action complaint was filed in the United States District Court for the Southern District of New York on behalf of investors in Genworth. Dkt. No. 2.

13. Pursuant to §21D(a)(3) of the Exchange Act, 15 U.S.C. §78u-4(a)(3)(B), as amended by the Private Securities Litigation Reform Act of 1995 ("PSLRA"), on June 3, 2014, City of Hialeah and New Bedford moved for appointment as Lead Plaintiffs and further moved the Court to appoint Labaton Sucharow and Robbins Geller as Lead Counsel. Dkt. No. 9.

14. On July 28, 2014, the Court entered an Order appointing City of Hialeah and New Bedford as Lead Plaintiffs pursuant to the PSLRA and consolidating related securities class actions into the litigation, *In re Genworth Financial, Inc. Securities Litigation*, No. 14-cv-02392. Dkt. No. 20. By the same Order, the Court approved Lead Plaintiffs' selection of Labaton Sucharow and Robbins Geller as Lead Counsel for the Class. *Id*.

B. The Complaint and Defendant's Motion to Dismiss the Complaint

15. The Class Representatives filed the first amended Complaint on October 3, 2014, alleging violations of §§10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder. Dkt. No. 26. Defendants moved to dismiss the Complaint on December 2, 2014. Dkt. No. 29. Lead Plaintiffs opposed the motion on February 2, 2015. Dkt. No. 34. Defendants filed a reply brief in further support of their motion to dismiss the Complaint on March 4, 2015. Dkt. No. 38.

16. On March 25, 2015, the Court denied Defendants' motion to dismiss, but dismissed the Complaint, without prejudice, subject to revision of its form. Dkt. No. 41. The Court granted plaintiffs leave to file a second amended complaint.

C. The Second Amended Complaint

17. On April 17, 2015, Lead Plaintiffs filed the Second Amended Complaint. Dkt. No. 42. The Second Amended Complaint was the result of a significant effort by Class Counsel that included, among other things, the review and analysis of: (i) documents filed publicly by the

Company with the U.S. Securities and Exchange Commission ("SEC"); (ii) press releases, news articles, conference call transcripts, and other public statements issued by or concerning Genworth; (iii) research reports issued by financial analysts concerning Genworth's business; (iv) press releases, reports and filings by or concerning Genworth's Australian subsidiary; (v) transcripts, government records, and media reports about the Australian housing market and economy; and (vi) review of other publicly available information and data concerning Genworth, its securities, and the markets therefor. The investigation also included Class Counsel's in-house investigators interviewing 35 individuals who were either former Genworth employees or other persons with potentially relevant knowledge, two of whom were cited to in the Second Amended Complaint as confidential witnesses.

18. As noted above, the Second Amended Complaint alleged that throughout the Class Period, Defendants reassured investors that the Australian MI unit was financially stable and that no market conditions existed that would jeopardize the timing of the IPO. However, Defendants allegedly failed to disclose skyrocketing claims during the Class Period, mainly in Queensland and in low-documentation loan portfolios, exceeding Genworth Australia's reserves. On April 17, 2012, Genworth announced a delay in the IPO due to "business performance in Australia" and the first-ever reported loss by the Australia MI unit. The Second Amended Complaint further alleged that the price of Genworth's publicly traded common stock was artificially inflated as a result of Defendants' allegedly false and misleading statements, and declined when the truth was revealed.

19. On May 8, 2015, Defendants moved to dismiss the Second Amended Complaint. Dkt. No. 44. Defendants' motion cited dozens of cases and raised numerous legal issues aimed at undermining Class Representatives' claims and allegations.

20. Regarding falsity, Defendants argued, among other things, that:

(a) Lead Plaintiffs failed to plead that Defendants' statements concerning Genworth Australia's financial performance and results were false because plaintiffs failed to specifically allege when and by how much Genworth Australia's true delinquency rates were higher than disclosed.

(b) Lead Plaintiffs' assertions about undisclosed "increasing claims" did not demonstrate falsity given that Genworth disclosed delinquency rates each quarter. Furthermore, Lead Plaintiffs' reliance on Confidential Witness 1 ("CW1") for this assertion should be rejected because CW1's assertions are not corroborated and come from a former Genworth computer technician three years after the fact.

(c) Lead Plaintiffs failed to plead that Defendants' reported loss reserves were false because Lead Plaintiffs failed to set forth when and by how much Genworth's reserve increases were insufficient, much less explain how Genworth's reserve estimates were wrong and fraudulent.

(d) Lead Plaintiffs failed to plead that Defendants' statements in February and March 2012 concerning the planned Australia IPO were false.

21. Regarding scienter, Defendants argued, among other things, that:

(a) Lead Plaintiffs failed to plead any discernible motive for the alleged fraud.

(b) Lead Plaintiffs' attempt to plead scienter by alleging that Defendants possessed non-public information that contradicted their public statements, based on the assertions of two confidential witnesses, failed because the allegations of the confidential witnesses are not reliable and should not be credited.

(c) Regarding the Individual Defendants, the Second Amended Complaint failed to plead that either Frazier or Klein acted with any motive or intent to defraud, nor are either of them alleged to have personally benefited from the alleged fraud in any way.

22. Defendants also argued that the PSLRA's safe harbor protects Genworth's forward-looking statements concerning the IPO because Genworth's statements about the IPO are protected under the "meaningful cautionary language prong" and, independently, the "no actual knowledge" prong.

23. Defendants also argued that Lead Plaintiffs failed to establish control-person liability under §20(a) of the Exchange Act.

24. On May 26, 2015, the Lead Plaintiffs filed their opposition to Defendants' motion to dismiss. Dkt. No. 51.

25. Regarding falsity, the Lead Plaintiffs argued, among other things, that:

(a) Lead Plaintiffs demonstrated how Defendants' allegedly misleading loss ratios – which purportedly reflected accurate claims and loss reserves – gave rise to the misleading impression that the Australian MI unit was stable and that no market conditions existed that would jeopardize the IPO. Lead Plaintiffs also identified when and by how much Genworth's reserves were insufficient.

(b) Lead Plaintiffs pled CW1's account regarding the spike in claims with requisite particularity and CW1's account establishes that Defendants had access to information directly contradicting their statements that the Australian MI unit was stable and that no market conditions existed to jeopardize the IPO.

(c) Defendants improperly viewed the statements regarding the IPO in isolation, but viewed collectively with the misleading Class Period loss ratios, Defendants' statements that the Queensland risks had been mitigated, and the February 2012 statements that the IPO remained on track, the March 2012 statements about the IPO further bolstered the misleading impression that the Australian MI unit was stable and that no market conditions existed to jeopardize the IPO.

26. Regarding scienter, Lead Plaintiffs argued, among other things, that:

(a) Defendants disregarded their motive to conceal the Australia MI unit's problems to ensure a successful and timely IPO, allowing the Company to raise capital for its struggling U.S. MI unit. Disclosure of the Australian MI unit's true condition would have jeopardized the acquisition of this critical funding.

(b) Scienter was inferred from Company admissions that problems had arisen during the Class Period: Jerome Upton (Chief Financial Officer of Genworth's Global Mortgage Insurance) admitted that the Company saw increasing delinquency levels and lender proceedings delays, during the Company's May 2, 2012 conference call.

(c) The "core operations" inference imputed knowledge to the Individual Defendants: knowledge that Genworth Australia's claims were increasing to the point of outstripping available reserves was imputable to the Individual Defendants because the Australian MI unit was critical to Genworth's operations, was one of only two business units paying regular dividends, and was the designated unit to supply an influx of needed capital to the holding company.

(d) The magnitude of the reserve charge supported a strong inference of scienter.

27. On June 5, 2015, Defendants filed a reply brief in further support of their motion to dismiss, arguing, among other things, that Lead Plaintiffs failed to follow the Court's instructions to replead their claims plainly and clearly and that they have not articulated a cogent theory of scienter. Dkt. No. 52. Defendants also argued that statements about the IPO are protected by the PSLRA safe harbor and that the findings in *In re Millennial Media, Inc. Sec. Litig.*, No. 14 Civ. 7923 (PAE), 2015 WL 3443918 (S.D.N.Y. May 29, 2015) support rejection of the allegations by the confidential witnesses. *Id.*

D. The Court Denies Defendants' Motion to Dismiss the Second Amended Complaint

28. On June 16, 2015, the Court denied Defendants' motion to dismiss the Second Amended Complaint. Dkt. No. 53. The Court found that "[t]he Second Amended Complaint adequately and plausibly alleges the material allegations of a securities fraud action" and, that "[t]he facts as alleged, which I must accept as true, give rise to a strong inference of scienter, regardless of the refutations set out in defendants' brief." *Id*. at 2-3.

29. On September 18, 2015, Defendants filed their Answer to the Second Amended Complaint, denying the Second Amended Complaint's substantive allegations and raising 28 affirmative defenses. Dkt. No. 63.

30. On January 22, 2016, Defendants moved for reconsideration of the Court's denial of their motion to dismiss. Dkt. No. 88. On February 8, 2016, the Class Representatives filed their opposition to Defendants' reconsideration motion. Dkt. No. 98. On February 17, 2016, Defendants filed a reply brief in support of their motion for reconsideration. Dkt. No. 102. On March 3, 2016, the Court denied Defendants' motion for reconsideration. Dkt. No. 112.

E. Certification of the Class

31. On January 29, 2016, City of Hialeah and New Bedford filed their motion for class certification, arguing that that the action was appropriate for class action treatment and that all the requirements of Federal Rule of Civil Procedure 23 were satisfied. Dkt. No. 91. City of Hialeah and New Bedford also requested that the Court appoint Labaton Sucharow and Robbins Geller as Class Counsel. *Id*.

32. In connection with the class certification motion, City of Hialeah and New Bedford submitted a report from Steven P. Feinstein, Ph.D., CFA, opining on whether the market for

Genworth common stock was efficient during the Class Period and whether damages are subject to a common methodology. Dkt. No. 94.

33. As set forth below, City of Hialeah and New Bedford produced documents to Defendants concerning their investments and adequacy as Class Representatives beginning in November 2015. Representatives from both City of Hialeah and New Bedford were deposed on December 17, 2015 and December 11, 2015, respectively, in connection with the class certification motion. Additionally, a representative of Boston Company Asset Management, an investment manager for New Bedford was deposed on December 15, 2015.

34. Defendants filed their brief in opposition to the class certification motion on February 22, 2016. Dkt. No. 107. Defendants argued that the motion should be denied for several reasons. Defendants argued that the Class Representatives failed to support the proposed start date of the Class Period (November 3, 2011, the date of Genworth's third quarter 2011 disclosure) because they failed to support any knowingly false statement made by Defendants on that date. Defendants also argued that the Class Representatives' trading patterns subjected them to unique defenses. In particular, Defendants argued that neither Class Representative purchased Genworth stock for the first three months of the Class Period and both continued to purchase after the revelation of the alleged fraud on April 17, 2012. Defendants argued that the Class definition is deficient because it includes purchasers of Genworth options even though neither Class Representative purchased any Genworth stock options.

35. City of Hialeah and New Bedford filed their reply brief on March 4, 2016. Dkt. No. 114. The Class Representatives argued that Defendants' opposition primarily rehashes arguments from their motion to dismiss and for reconsideration, and contains merits-based arguments inappropriate at the class certification stage. Regarding Defendants' arguments related to

trading in Genworth securities, City of Hialeah and New Bedford argued that their post-Class Period purchases do not defeat adequacy because courts in this District frequently and properly appoint class representatives who make post-class period purchases; and regarding options, the law does not require class representatives to have purchased every kind of security to represent a class of traders in all Genworth securities.

36. The Court granted the class certification motion on March 7, 2016, certifying the Class, appointing Lead Plaintiffs as Class Representatives, and appointing Lead Counsel as Class Counsel. Dkt. No. 118.

IV. DISCOVERY

37. Following the lifting of the PSLRA stay after the Court's decision on the motion to dismiss the Second Amended Complaint, the Class Representatives moved forward with merits discovery. Class Counsel promptly propounded detailed discovery requests and engaged in a thorough and extremely labor intensive meet and confer and letter-writing process with Defendants on the scope of discovery, ultimately obtaining more than 2 million pages of documents from Defendants and thousands of pages of documents from non-parties. Class Counsel also took four merits depositions. (As noted above, Class Counsel also defended three Class Representative depositions (including the investment manager of one of the Class Representatives), and defended one deposition of a confidential witness and took one confidential witness deposition).

A. Discovery Propounded on Defendants

1. Document Discovery

38. The Class Representatives served their first set of document requests, interrogatories, and requests for admission on Defendants on September 21, 2015. Defendants filed their responses

and objections to the Class Representatives' first set of document requests, interrogatories and requests for admission on November 20, 2015.

39. The Class Representatives served their second set of document requests on Defendants on December 9, 2015 and their third set of document requests on Defendants on January 11, 2016. The Class Representatives served their second set of interrogatories on Defendants on February 3, 2016. Defendants filed their responses and objections to the Class Representatives' second set of document requests on December 17, 2015 and their responses and objections to the Class Representatives' third set of document requests on February 10, 2016. Defendants filed their responses and objections to the Class Representatives' second set of interrogatories on March 4, 2016.

40. The Class Representatives' above discovery requests prompted numerous meet-and-confer conferences with Defendants as well as an extensive letter writing campaign between the Parties that spanned the course of several months, as to the scope and manner of the document production, including issues pertaining to search terms and custodians for electronically stored information, the relevant time period for the production, and the deadline for Defendants' to complete their document production. Status conferences were also held before the Court, where the Parties discussed the progress of discovery efforts, as well as any disputes that arose. Through these meet and confers and the protracted letter writing effort, the Parties successfully came to agreement on many issues. Some issues, however, required court intervention.

41. On November 23, 2015, the Parties submitted a joint letter to the Court outlining two discovery disputes that the Parties were not able to resolve. Dkt. No. 75. Defendants sought an Order from the Court compelling Lead Plaintiffs to supplement their responses to certain of Defendants first set of interrogatories, and Lead Plaintiffs sought an Order compelling Defendants to

cooperate in the development of custodians, search terms, and other retrieval methods for documents responsive to Lead Plaintiffs' first request for production of documents. By the time the Court convened the Parties for a status conference on January 8, 2016, both issues had been resolved. However, at the January 8, 2016 status conference, Lead Plaintiffs raised another dispute pertaining to the relevant time period for the production: Lead Plaintiffs requested documents for a two year period (January 1, 2011 through December 31, 2012) while Defendants agreed to produce for a one year period. At the status conference, the Court instructed the Parties to resolve the issue and, during a recess, the Parties came to agreement and informed the Court that the issue has been resolved.

42. As a result of Class Counsel's vigorous efforts, Defendants produced approximately 2.1 million pages of documents. Among the types of documents Defendants produced in response to the Class Representatives' requests, and following agreement as to the scope of such production, were documents and communications related to, among others: (i) aged arrears or outstanding mortgage delinquencies for the Australian MI unit; (ii) the Australian MI unit's insurance claims pipeline; (iii) the Australian MI unit's claim reserve levels and average reserve per delinquency; (iv) the Australian MI unit's forecasted and actual loss ratios; and (v) and the Australian MI unit's loss mitigation strategies.

43. A team of experienced attorneys and forensic accountants was assembled to review and analyze the production. These attorneys and forensic accountants were focused on reviewing Defendants' document production for the purpose of depositions (both preparing for and as exhibits), and ultimately trial, with many of them assisting in additional stages of deposition preparation. The review was structured to limit overall cost, with the bulk of the initial review being conducted by attorneys experienced in electronic document discovery.

44. The document review attorneys utilized review guidelines and protocols that were put in place and monitored to ensure a dynamic and high quality review. This supervision included the creation of a set of relevant materials and information and in-person instruction from more senior attorneys on the litigation team.

45. The document review attorneys did not only review documents. They also participated in frequent meetings with more senior attorneys and senior forensic accountants to discuss important documents, discovery preparation efforts, and case strategy.

46. In order to facilitate a cost and time-efficient document review process, all of the documents were placed in an electronic database that was created by and maintained in-house at Robbins Geller. A platform called Relativity was used to organize the data. In order to efficiently focus on the most relevant documents, attorneys used the document platform and its analytical tools to analyze and search the data. One such analytical tool is called Story Engine which is a deep analysis tool with a "visualization" of connections between email recipients and issues. The Relativity platform also provided for de-duping and email threading to narrow the universe of documents that needed to be individually reviewed. Once the universe of documents was narrowed, attorneys conducted targeted searching through text, author and/or recipients, type of document (*e.g.*, emails, memoranda, SEC filings), date, Bates number, etc. to identify relevant, irrelevant, and hot documents for additional review by members of the litigation team.

2. Depositions

47. Class Counsel conducted four fact depositions. The Parties worked hard, with the Court's assistance, to streamline the deposition schedule and to focus the list of witnesses with relevant testimony. Class Counsel retained and consulted with counsel in Australia so that the depositions of the Australian witnesses, both former employees of Genworth, were made without the

need to go through Hague proceedings and complied with prevailing Australian law while at the same time allowing for an American style deposition under oath in Australia.

48. The depositions Class Counsel conducted in connection with fact discovery included:

(a) Michael Frazier on September 21, 2016 in New York, New York (President, Chief Executive Officer, and Chairman of the Board of Directors of Genworth during the Class Period).

(b) Martin Klein on September 28, 2016 in New York, New York (Chief Financial Officer and Executive Vice President of Genworth during the Class Period).

(c) Anne O'Driscoll on November 10, 2016 and November 11, 2016 in Sydney, Australia (Chief Financial Officer of Genworth Australia during the Class Period).

(d) Ellen Frances Comerford on November 16, 2016 and November 17, 2016 in Sydney, Australia (Chief Executive Officer and Managing Director at Genworth Australia during the Class Period).

49. The witnesses provided information regarding key aspects of the claims and defenses, including their knowledge of the state of rising mortgage delinquencies in Australia during the Class Period, the adequacy of reserve levels set by the Australian MI unit and approved by Genworth to cover expected claims, the actions undertaken to mitigate rising claims, and any communications between persons within the Australian MI unit and Genworth US and/or the Individual Defendants.

50. The Parties were preparing for additional depositions at the time the Settlement was reached.

B. Discovery Propounded on Class Representatives

51. Pursuant to the Civil Case Management Plan, Defendants, by letter dated October 16, 2015, set forth 18 categories of documents that they believed should be produced by Lead Plaintiffs.

Following an extensive letter writing campaign on the scope of this production, the Class Representatives produced responsive documents beginning in November 2015.

52. On October 16, 2015, Defendants served City of Hialeah and New Bedford with interrogatories related to class issues. City of Hialeah and New Bedford served Defendants with their responses and objections on November 16, 2015. The Parties also exchanged comprehensive letters on the Class Representatives' responses to the interrogatories that spanned the course of several months.

53. Defendants also served deposition notices or subpoenas on Class Representatives and their investment managers. The depositions taken of the Class Representatives and their investment managers are set forth below:

(a) Defendants deposed Gerard H. Arnaudet, Executive Director at New Bedford, who testified as a Rule 30(b)(6) witness for New Bedford, on December 11, 2015 in Boston, Massachusetts.

(b) Defendants deposed Julianne McHugh, who testified as a representative of Boston Company Asset Management, an investment manager for New Bedford, on December 15, 2015 in Boston, Massachusetts.

(c) Defendants deposed Robert Worth Williams III, who testified as a Rule 30(b)(6) witness for City of Hialeah, on December 17, 2015 in Hialeah, Florida.

C. Non-Party Discovery

54. The Class Representatives also served non-party discovery, including subpoenas, to Genworth's lead managers for the IPO (Goldman Sachs Group Inc., Macquarie Group Limited, and UBS AG) as well as Genworth's auditor, KPMG-US and KPMG-Australia, and Genworth's actuary, Finity Consulting Pty Limited. Subpoenas were also served on BNY Mellon, State Street Bank &

Trust Company, Rhumbline Advisers LP, and Highfields Capital Management LP. Approximately 227,000 pages of documents were produced by various non-parties.

55. Documents requested of KPMG-Australia proved to be a difficult and a time-consuming issue. Counsel for KPMG-US appeared before the Court for a status conference on April 5, 2016, to update the Court with the status of the production on KPMG-Australia, seeking, namely, KPMG-Australia's deal/due diligence files for the IPO and work papers for audit years 2011 and 2012. Following extensive back and forth between Class Counsel, counsel for KPMG-US and counsel for KPMG-Australia, as well as guidance from the Court, KPMG-Australia agreed to produce documents in connection with the Litigation outside the Hague Convention.

56. As noted above, the depositions of both confidential witnesses were taken by the Parties.

D. Experts

57. In connection with the Class Representatives' motion for class certification, filed with the Court on January 29, 2016, the Class Representatives submitted an expert report by Steven P. Feinstein, Ph.D., CFA, who was retained by Class Counsel to provide an expert opinion on market efficiency.

58. The Class Representatives also consulted with an accounting expert, D. Paul Regan, and an industry expert, Jenny Boddington, on issues pertaining to the mortgage industry. Ms. Boddington reviewed and analyzed certain key documents produced by Defendants and certain deposition testimony by Genworth witnesses and was preparing to submit an expert report when the Litigation was resolved.

V. SETTLEMENT NEGOTIATIONS

59. During the course of the Litigation, the Parties explored the possibility of a negotiated resolution of the Litigation. Various telephonic conferences, in person discussions, and emails were

exchanged between the Parties discussing possible settlement. Following an in-person settlement meeting on March 21, 2017, the Parties' efforts culminated in an agreement to resolve the Litigation. Following this agreement, the Parties worked on the terms of the Stipulation, which was executed by the Parties on June 15, 2017.

60. On June 21, 2017, the Class Representatives moved for preliminary approval of the Settlement. Dkt. No. 151. On July 31, 2017, the Court entered the Order Preliminarily Approving Settlement and Providing for Notice ("Preliminary Approval Order"), authorizing that notice of the Settlement be sent to Class Members and scheduling the Settlement Hearing for November 15, 2017 to consider whether to grant final approval of the Settlement. Dkt. No. 156.

VI. CLASS REPRESENTATIVES' COMPLIANCE WITH PRELIMINARY APPROVAL ORDER AND REACTION OF THE CLASS TO DATE

61. Pursuant to the Preliminary Approval Order, the Court appointed Gilardi & Co. LLC ("Gilardi") as Claims Administrator in the Litigation and instructed Gilardi to disseminate copies of the Notice of Pendency and of Proposed Class Action Settlement and Motion for Attorneys' Fees and Expenses and Claim Form (collectively the "Notice Packet") by mail and to publish the Summary Notice.

62. The Notice, attached as Exhibit A to the Declaration of Carole K. Sylvester Regarding Notice Dissemination, Publication and Requests for Exclusion Received to Date ("Sylvester Decl.") (filed herewith), provides potential Class Members with information about the terms of the Settlement and contains, among other things: (i) a description of the Litigation and the Settlement; (ii) the terms of the proposed Plan of Allocation; (iii) an explanation of Class Members' right to participate in the Settlement; (iv) an explanation of Class Members' rights to object to the Settlement, the Plan of Allocation, and/or the request for attorneys' fees and expenses, or exclude themselves from the Class; and (v) the manner for submitting a Claim Form in order to be eligible

for a payment from the net proceeds of the Settlement. The Notice also informs Class Members of Class Counsel's intention to apply for an award of attorneys' fees in an amount not to exceed 30% of the Settlement Fund and for payment of litigation expenses in an amount not to exceed $675,000.

63. As detailed in the Sylvester Declaration, Gilardi mailed Notice Packets to potential Class Members as well as banks, brokerage firms, and other third party nominees whose clients may be Class Members. Sylvester Decl., ¶¶4-11. In total, to date, Gilardi has mailed over 28,000 Notice Packets to potential nominees and Class Members by first-class mail, postage prepaid. *Id.* To disseminate the Notice, Gilardi obtained the names and addresses of potential Class Members from listings provided by Genworth's transfer agent and from banks, brokers and other nominees. *Id.*

64. On August 22, 2017, Gilardi caused the Summary Notice to be published in *The Wall Street Journal* and to be transmitted over the *Business Wire*. *Id.*, ¶14 & Ex. D.

65. Gilardi also maintains and posts information regarding the case and Settlement on a dedicated website established for the Litigation, www.Genworth2017SecuritiesSettlement.com, to provide Class Members with information concerning the Settlement, as well as downloadable copies of the Notice Packet, the Stipulation, the Preliminary Approval Order, and other relevant documents. *Id.*, ¶13.

66. Pursuant to the terms of the Preliminary Approval Order, the deadline for Class Members to submit objections to the Settlement, the Plan of Allocation, and/or the application for attorneys' fees and expenses, or to request exclusion from the Class is October 25, 2017. To date, no objections to the Settlement or the fee and expense application have been received, and only one request for exclusion has been received. *Id.*, ¶15. Should any objections or additional requests for exclusion be received, Class Representatives will address them in their reply papers, which are due to be filed with the Court on November 8, 2017.

VII. RISKS FACED BY CLASS REPRESENTATIVES IN THE ACTION

67. Based on the extensive investigation and discovery conducted by Class Counsel, Class Counsel believe that the evidence adduced was instrumental in obtaining this excellent result. Nevertheless, a settlement was reached because the Class Representatives and Class Counsel also realize that they faced considerable challenges and defenses on critical elements of the claims if the Litigation were to continue through further discovery, summary judgment and trial, as well as the inevitable appeals that would follow even if the Class Representatives were able to obtain a favorable verdict against Defendants.

68. In agreeing to settle, the Class Representatives and Class Counsel weighed, among other things, the substantial cash benefit to Class Members against: (i) the uncertainties associated with trying complex securities cases; (ii) the difficulties and challenges involved in proving falsity, scienter, loss causation, and damages; (iii) the fact that, even if the Class Representatives prevailed at summary judgment and trial, any monetary recovery could have been less than the Settlement Amount; and (iv) the delays that would follow even a favorable final judgment, including appeals.

69. The Class Representatives and Class Counsel also considered that the alleged violations concerning the adequacy of reserves would have been difficult to present to a jury and were vigorously disputed by Defendants who offered credible alternative explanations and defenses. The claims against Defendants presented significant liability risks simply given the highly fact-intensive and intricate nature of the alleged fraud at issue and the vigorous opposition Defendants were advancing.

A. Risks Concerning Liability

70. With respect to falsity, Defendants argued, among other things, that they had no duty to disclose the decreasing quality and increasing number and value of insurance claims in Australia

or that the accounting and disclosure rules applicable to the expected losses associated with the insurance claims in Australia were subject to multiple interpretations. As a result, Defendants contended that Genworth's disclosure of, and accounting for, the mortgage insurance claims in Australia was correct and did not violate GAAP and that Defendants' other challenged statements were not actionable.

71. Defendants' primary defense was that they did not act with scienter, which is generally the most difficult element of a securities fraud claim for a plaintiff to prove. In this case, Defendants had numerous scienter arguments that posed very significant hurdles to proving that they acted with an intent to commit securities fraud or with severe recklessness. First, the Individual Defendants would have argued that as the senior most executives of Genworth, a U.S. holding company, they did not have knowledge that there was an impending spike in claims in the Australian MI unit. Defendants would have argued that the evidence simply does not allow Class Representatives to tie what was happening in Australia back to the Individual Defendants. Indeed, Defendants would have pointed to internal emails to show that once the Individual Defendants understood the severity of the spike in claims, they ordered a deep dive into the circumstances, followed shortly thereafter by public disclosure. As the Court noted during the preliminary approval hearing, with respect to setting reserves, "which is done at a relatively high level of the company, and you would have to prove not only negligence, but a certain almost indifference to facts immediately in front of a CFO and the failure to be attentive to those facts." July 28, 2017 Fairness Hearing Transcript at 8:19-23, attached hereto as Exhibit 1. Second, Defendants would contend that Genworth's independent actuary, Finity, as well as the Company's auditor, KPMG, approved the loss reserves and found them adequate. Indeed, Defendants would argue that there was no indication that the financial statements were questioned by the actuary and the auditor. Further, although the

Class Representatives believed that Defendants did not raise the loan loss reserve sufficiently during the Class Period, Defendants disagreed and would have presented evidence that the loss reserve number increased ***enough***. The issue of the sufficiency of the loss reserve would have been hotly contested by the Parties, and would have required competing expert testimony. As the Court previously noted:

> The concept of adequacy of reserves is one of the most difficult accounting problems there are. It requires reasonable estimations and a certain skeptical attitude is required by the auditors, but the application of that is not very easy. The plaintiff would have to show by expert proof the range of reserves that would be appropriate for insurance with regard to various kinds of issues that are alleged in the complaint, which is the case of claims and the like. Those are difficult issues.

Id. at 7:16-24. Moreover, even if the Class Representatives were able to prove that the loss reserves were not sufficient, there still remained the risk in proving that the Individual Defendants knew of these facts.

72. Third, the discovery to date has shown that the Class Representatives faced an especially uphill battle in proving scienter for the first half of the Class Period. Defendants would argue that there was no evidence indicating that there was any spike in claims at that time. Thereafter, in February and March 2012, there were positive statements being made by Genworth senior management that the IPO was on track, among other statements. At the same time, there are certain documents indicating that Genworth senior management in the United States were advised of the impending claims spike in early 2012.

73. Even though the evidence to date shows that Defendants may have been advised of the spike in claims in March 2012, Defendants would argue, that as soon as the Individual Defendants learned of the impending spike in claims in Australia in March 2012, they conducted a deep dive to figure out the cause. In particular, Defendants would contend that Genworth (Frazier included) directed a deeper dive into understanding the claims process at Genworth Australia as soon

as they were informed, in March 2012, of internal forecasting showing a significant increase in claim number and size (severity) requiring a significant increase in claim reserves. Defendants would contend that following the deep dive, the Company timely announced the IPO delay on April 17, 2012, and therefore they did nothing wrong.

74. For all these reasons, there was a very significant risk that the Court on summary judgment, or a jury after trial, could have concluded that Defendants did not act with scienter.

B. Risks Related to Damages

75. Even assuming that the Class Representatives overcame the above risks and successfully established liability, they faced serious risks in proving damages and loss causation. According to analyses prepared by the Class Representatives' damages expert, if the Class Representatives were able to prove liability for the entire Class Period (November 3, 2011 through April 17, 2012), maximum recoverable damages would be approximately $219 million. However, as described above, proving scienter for the entire Class Period would be challenging, given the amount of evidence tying the Individual Defendants' knowledge in the second half of 2011 to a spike in claims in the Australian MI unit. If the Class Period began on February 3, 2012 or March 29, 2012 (when Defendants were making positive statements regarding the Australian MI unit's financials and the Australian IPO and where proving scienter would be less difficult for the reasons detailed above), damages, according to the Class Representatives' damages expert, would be approximately $170 million and $90 million, respectively.

76. Second, Defendants would have argued that the Company's disclosure on April 17, 2012 that the IPO would be delayed and that the Australian MI unit was expecting a loss, consisted of press releases and earnings announcements where a variety of information – including many pieces of information unrelated to the alleged fraud – was disclosed to the market and impacted

Genworth stock price. Defendants would have further argued that the Class Representatives bear the burden of proof in "disaggregating" the impact of this "confounding," non-fraud information from the impact of the information at issue. Defendants would have argued that disaggregating cannot be done, and that even if it could, it would substantially reduce damages.

77. Furthermore, in order to recover any damages at trial, the Class Representatives would have to prevail at many stages in the litigation – namely, Defendants' motion for summary judgment and then at trial and, even if the Class Representatives prevailed at those stages, appeals would likely follow. At each of these stages, there would be significant risks attendant to the continued prosecution of the Litigation, and no guarantee that further litigation would have resulted in a higher recovery, or any recovery at all.

VIII. THE PLAN OF ALLOCATION

78. Pursuant to the Preliminary Approval Order, and as set forth in the Notice, all Class Members who wish to participate in the distribution of the Net Settlement Fund must submit a valid Claim Form, including all required information, postmarked no later than November 22, 2017. As provided in the Notice, after deduction of Court-awarded attorneys' fees and expenses, Notice and Administration Expenses, and all applicable Taxes and Tax Expenses, the balance of the Settlement Fund will be distributed according to the plan of allocation approved by the Court.

79. The proposed Plan of Allocation, which is set forth in full in the Notice (Sylvester Dec., Ex. A at 7-9), was designed to achieve an equitable and rational distribution of the Net Settlement Fund, but it is not a damages analysis that would be submitted at trial. Class Counsel developed the Plan of Allocation in close consultation with the Class Representatives' damages expert and believe that the Plan of Allocation provides a fair and reasonable method to equitably distribute the Net Settlement Fund among Authorized Claimants.

80. In developing the Plan of Allocation, the Class Representatives' damages expert calculated the estimated amount of artificial inflation in the per share closing prices of Genworth common stock which allegedly was proximately caused by Defendants' alleged false and misleading statements and omissions. In calculating the estimated artificial inflation allegedly caused by those misrepresentations and omissions, the Class Representatives' damages expert considered price changes in Genworth common stock in reaction to public disclosures that allegedly corrected the respective alleged misrepresentations and omissions, adjusting those price changes for factors that were attributable to market or industry forces, and for non-fraud related Genworth-specific information.

81. Under the Plan of Allocation, a "Recognized Loss Amount" will be calculated for each purchase or acquisition of publicly-traded Genworth common stock by an eligible Class Member during the Class Period. In general, the Recognized Loss Amount will be the difference between the estimated artificial inflation on the purchase date and the estimated artificial inflation on the sale date, or the difference between the actual purchase price and the sales price, whichever is less. Under the Plan of Allocation, claimants who purchased shares during the Class Period but did not hold those shares through April 17, 2012 (the corrective disclosure date) will have no Recognized Loss Amount as to those transactions.

82. Gilardi, under Class Counsel's direction, will determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's total Recognized Claim compared to the aggregate Recognized Claims of all Authorized Claimants. Calculation of Recognized Claims will depend upon several factors, including when the Authorized Claimant purchased shares during the Class Period and whether these shares were sold during the Class Period, and if so, when.

83. To date, there have been no objections to the Plan of Allocation.

84. In sum, the proposed Plan of Allocation, developed in consultation with Class Representatives' damages expert, was designed to fairly and rationally allocate the Net Settlement Fund among Authorized Claimants. Accordingly, Class Counsel respectfully submit that the proposed Plan of Allocation is fair, reasonable, and adequate and should be approved.

IX. CLASS COUNSEL'S APPLICATION FOR ATTORNEYS' FEES AND EXPENSES IS REASONABLE

A. Consideration of Relevant Factors Justifies an Award of a 30% Fee

85. Class Counsel, on behalf of Plaintiffs' Counsel,[2] seek a fee award of 30% of the Settlement Amount. Class Counsel were aided in this case by Motley Rice, which assisted with discovery efforts, research, and motion practice, as well as additional counsel for New Bedford, Thornton, and fund counsel for the City of Hialeah, Cypen, which provided additional legal assistance to the Class Representatives throughout the litigation. Any attorneys' fees awarded by the Court will be allocated among Class Counsel, Motley Rice, Thornton, and Cypen, pursuant to agreements with Class Counsel. Class Counsel also request payment of expenses in connection with the prosecution of the Litigation from the Settlement Fund in the amount of $576,767.58.

86. Class Counsel submit that, for the reasons discussed below and in the accompanying Fee Memorandum, such awards would be reasonable and appropriate under the circumstances before the Court.

1. Class Representatives Support the Fee and Expense Application

87. Class Representative City of Hialeah is a defined benefit retirement plan administered by a seven-member Board of Trustees that provides retirement and related services to employees of

[2] "Plaintiffs' Counsel" refers to Robbins Geller, Labaton Sucharow, Motley Rice, LLC ("Motley Rice"), the Thornton Law Firm ("Thornton"), and Cypen & Cypen ("Cypen").

the City of Hialeah, Florida. City of Hialeah oversees approximately $650 million in assets as of September 19, 2017. Williams Decl., ¶1.

88. Class Representative New Bedford is a public pension system administered by a five-member board for the purpose of providing disability, retirement, and related services to public employees of the City of New Bedford, Massachusetts and their beneficiaries. New Bedford oversees more than $250 million in assets on behalf of thousands of participants and beneficiaries. New Bedford Decl., ¶1.

89. The Class Representatives have evaluated and fully support the fee and expense application. Williams Decl., ¶4; New Bedford Decl., ¶6. In coming to this conclusion, the Class Representatives – who were substantially involved in the prosecution of the Litigation and negotiation of the Settlement – considered the recovery obtained as well as Class Counsel's substantial effort in obtaining the recovery. The Class Representatives take their roles as Class Representatives seriously to ensure that Class Counsel's fee request is fair in light of work performed and the result achieved for the Class. *Id*.

2. The Time and Labor of Class Counsel

90. The investigation, prosecution, and settlement of the claims asserted in the Litigation required extensive efforts on the part of Class Counsel, given the complexity of the legal and factual issues raised by the Class Representatives' claims, the fact that much of the Litigation involved activity that took place in Australia within a subsidiary of the Company, and the vigorous defenses mounted by Defendants. The many tasks undertaken by Class Counsel in this case are detailed above (*see, e.g.*, ¶¶12-60).

91. As also more fully set forth above, the Litigation was prosecuted for more than three years and settled only after Class Counsel overcame multiple legal and factual challenges. Among

other efforts, Class Counsel conducted a comprehensive investigation into the Class's claims; researched and prepared a detailed Complaint and Second Amended Complaint; briefed thorough oppositions to Defendants' motions to dismiss the Complaint and Second Amended Complaint; successfully overcame Defendants' motion for reconsideration of the Court's order denying the motion to dismiss the Second Amended Complaint; successfully moved for class certification; obtained approximately 2.1 million pages of documents produced by Defendants and approximately 227,000 pages of documents produced by various non-parties; took four depositions of representatives of the Company (including the Individual Defendants); defended the depositions of the Class Representatives and one of the Class Representatives' investment managers; and engaged in a hard-fought settlement process with experienced defense counsel.

92. At all times throughout the pendency of the Litigation, Class Counsel's efforts were driven and focused on advancing the Litigation to bring about the most successful outcome for the Class, whether through settlement or trial.

93. Filed herewith are declarations from Plaintiffs' Counsel, which are submitted in support of the request for an award of attorneys' fees and payment of litigation expenses. *See* Declaration of Jonathan Gardner Filed on Behalf of Labaton Sucharow LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Labaton Sucharow Decl."); Declaration of Douglas R. Britton Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Robbins Geller Decl."); Declaration of James M. Hughes Filed on Behalf of Motley Rice LLC in Support of Class Counsel's Application for Award of Attorneys' Fees and Expenses ("Motley Rice Decl.").

94. Included with these declarations are schedules that summarize the time of each firm, as well as each firm's litigation expenses by category (the "Fee and Expense Schedules"). The

attached declarations and the Fee and Expense Schedules report the amount of time spent by attorneys and professional support staff and the associated "lodestar" calculations, *i.e.*, their hours multiplied by their current rates. As explained in each declaration, they were prepared from contemporaneous daily time records regularly prepared and maintained by the respective firms, which are available at the request of the Court.

95. The hourly rates of Plaintiffs' Counsel here range from $650.00 to $950.00 for partners, $510.00 to $775.00 for of counsel, and $335.00 to $585.00 for staff attorneys and associates. *See* Robbins Geller Decl., Ex. A; Labaton Sucharow Decl., Ex. A; Motley Rice Decl., Ex. A. It is respectfully submitted that the hourly rates for attorneys and professional support staff included in these schedules are reasonable and customary within the commercial litigation bar. Exhibit 2, attached hereto, is a table of billing rates for defense firms compiled by Labaton Sucharow from fee applications submitted by such firms in bankruptcy proceedings nationwide in 2016. The analysis shows that across all types of attorneys, plaintiffs' counsel's rates here are consistent with, or lower than, the firms surveyed.

96. Plaintiffs' Counsel have collectively expended 21,481.75 hours prosecuting the Litigation. *See* Robbins Geller Decl., ¶4; Labaton Sucharow Decl., ¶4; Motley Rice Decl., ¶4. The resulting collective lodestar is $10,717,448.25. *Id.* The requested fee of 30% of the Settlement Amount ($6,000,000 before interest, at the same rate as is earned by the Settlement Fund) results in a fractional or negative "multiplier" of 0.56 on the lodestar. The following is a summary table of the lodestars and expenses of Plaintiffs' Counsel:

FIRM NAME	HOURS	LODESTAR	EXPENSES
Robbins Geller	10,004.65	$5,165,766.50	$335,802.02
Labaton Sucharow	11,357.60	5,494,813.00	240,570.27
Motley Rice	119.50	56,868.75	395.29
TOTAL	**21,481.75**	**$10,717,448.25**	**$576,767.58**

3. The Risks and Unique Complexities of the Litigation

97. This Litigation presented substantial challenges from the outset of the case. The specific risks Class Representatives faced in proving Defendants' liability and damages are detailed in ¶¶70-77 above. These case-specific risks are in addition to the more typical risks accompanying securities class action litigation, such as the fact that this Litigation is governed by stringent PSLRA requirements and case law interpreting the federal securities laws and was undertaken on a contingent basis.

4. The Quality of Class Counsel's Representation

98. Class Counsel Labaton Sucharow and Robbins Geller are among the most experienced and skilled securities litigation law firms in this practice area. The expertise and experience of their attorneys are described in their firm resumes. Labaton Sucharow Decl., Ex. G; Robbins Geller Decl., Ex. G. Since the passage of the PSLRA, Labaton Sucharow and Robbins Geller have been approved by courts to serve as lead counsel in numerous securities class actions throughout the United States, and in several of the most significant federal securities class actions in history.

99. For example, Labaton Sucharow has served as lead counsel in a number of high profile matters, for example: *In re Am. Int'l Grp., Inc. Sec. Litig.*, No. 04-8141 (S.D.N.Y.) (representing the Ohio Public Employees Retirement System, State Teachers Retirement System of Ohio, and Ohio Police & Fire Pension Fund and reaching settlements of $1 billion); *In re HealthSouth Corp. Sec. Litig.*, No. 03-1500 (N.D. Ala.) (representing the State of Michigan Retirement System, New Mexico State Investment Council, and the New Mexico Educational Retirement Board and securing settlements of more than $600 million); *In re Countrywide Sec. Litig.*, No. 07-5295 (C.D. Cal.) (representing the New York State and New York City Pension Funds

and reaching settlements of more than $600 million); *In re Schering-Plough Corp. / ENHANCE Sec. Litig.*, No. 08-397 (DMC) (JAD) (D.N.J.) (representing Massachusetts Pension Reserves Investment Management Board and reaching a settlement of $473 million). *See* Labaton Sucharow Decl., Ex. G.

100. High profile matters handled by Robbins Geller include: *In re Enron Corp. Sec. Litig.*, No. H-01-3624 (S.D. Tex.) (representing The Regents of the University of California and recovering in excess of $7.2 billion for investors); *Jaffe v. Household Int'l, Inc.*, No. 02-C-05893 (N.D. Ill.) (largest securities class action settlement following a trial: $1.575 billion); *In re UnitedHealth Group, Inc. PSLRA Litig.*, No. 06-CV-1691 (D. Minn.) (recovering over $925 million and representing the California Public Employees' Retirement System); *In re Cardinal Health, Inc. Sec. Litig.*, No. C2-04-575 (S.D. Ohio) (representing Amalgamated Bank and others and recovering $600 million for investors); *In re HealthSouth Corp. Sec. Litig.*, No. CV-03-BE-1500-S (N.D. Ala.) (representing Central States SE and SW Areas Pension Fund and others, and obtaining a combined recovery of $671 million); and *In re Dynegy, Inc. Sec. Litig.*, No. H-02-1571 (S.D. Tex.) (representing the Regents of the University of California and recovering $474 million). *See* Robbins Geller Decl., Ex. G.

5. Standing and Caliber of Opposing Counsel

101. The quality of the work performed by Class Counsel in attaining the Settlement should also be evaluated in light of the quality of the opposition. Defendants are represented by Dentons US LLP, a well-known and respected law firm with attorneys who vigorously represented the interests of their clients. In the face of this experienced, formidable, and well-financed opposition, Class Counsel was nonetheless able to achieve a settlement very favorable to the Class.

6. The Contingent Nature of the Fee

102. From the outset, Class Counsel understood that they were embarking on a complex, expensive, and lengthy litigation with no guarantee of ever being compensated for the substantial investment of time and money the case would require. In undertaking that responsibility, Class Counsel were obligated to ensure that sufficient resources were dedicated to the prosecution of the Litigation, and that funds were available to compensate staff and to cover the considerable costs that a case such as this requires. With an average time of several years for these cases to conclude (and this case has been no different), the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis. Plaintiffs' Counsel received no compensation during the course of the Litigation but have incurred 21,481.75 hours of time for a total lodestar of $10,717,448.25 and have incurred $576,767.58 in expenses in prosecuting the Litigation for the benefit of the Class.

103. Class Counsel also bore the risk that no recovery would be achieved. Even with the most vigorous and competent of efforts, success in contingent-fee litigation, such as this, is never assured.

104. Class Counsel know from experience that the commencement of a class action does not guarantee a settlement. To the contrary, it takes hard work and diligence by skilled counsel to develop the facts and theories that are needed to sustain a complaint or win at trial, or to convince sophisticated defendants to engage in serious settlement negotiations at meaningful levels.

105. Class Counsel is aware of many hard-fought lawsuits where, because of the discovery of facts unknown when the case was commenced, or changes in the law during the pendency of the case, or a decision of a judge or jury following a trial on the merits, excellent professional efforts of members of the plaintiffs' bar produced no fee for counsel.

106. Federal Circuit court cases include numerous opinions affirming dismissals with prejudice in securities cases. The many appellate decisions affirming summary judgments and directed verdicts for defendants show that surviving a motion to dismiss is not a guarantee of recovery. *See, e.g.*, *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376 (9th Cir. 2010); *In re Silicon Graphics Sec. Litig.*, 183 F.3d 970 (9th Cir. 1999); *Phillips v. Scientific-Atlanta, Inc.*, 489 F. App'x. 339 (11th Cir. 2012); *In re Smith & Wesson Holding Corp. Sec. Litig*, 669 F.3d 68 (1st Cir. 2012); *McCabe v. Ernst & Young, LLP*, 494 F.3d 418 (3d Cir. 2007); *In re Digi Int'l Inc. Sec. Litig*., 14 F. App'x. 714 (8th Cir. 2001); *Geffon v. Micrion Corp*., 249 F.3d 29 (1st Cir. 2001).

107. Successfully opposing a motion for summary judgment is also not a guarantee that plaintiffs will prevail at trial. While only a few securities class actions have been tried before a jury, several have been lost in their entirety, such as *In re JDS Uniphase Securities Litig.*, No. C-02-1486 CW (EDL), slip op. (N.D. Cal. Nov. 27, 2007), or substantially lost as to the main case, such as *In re Clarent Corp. Securities Litig.*, No. C-01-3361 CRB, slip op. (N.D. Cal. Feb. 16, 2005).

108. Even plaintiffs who succeed at trial may find their verdict overturned on appeal. *See, e.g.*, *Ward v. Succession of Freeman*, 854 F.2d 780 (5th Cir. 1998) (reversing plaintiffs' jury verdict for securities fraud); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning plaintiffs' verdict obtained after two decades of litigation); *Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408 (7th Cir. 2015) (reversing and remanding jury verdict of $2.46 billion after 13 years of litigation on loss causation grounds and error in jury instruction under *Janus Capital Grp, Inc. v. First Derivative Traders*, 564 U.S. 135 (2011)); *Robbins v. Koger Props., Inc*., 116 F.3d 1441 (11th Cir. 1997) (reversing $81 million jury verdict and dismissing case with prejudice). And, the path to maintaining a favorable jury verdict can be arduous and time consuming. *See, e.g.*, *In re Apollo Grp., Inc. Sec. Litig.*, No. CV-04-2147-PHX-JAT, 2008 WL 3072731 (D. Ariz. Aug. 4,

2008), *rev'd*, No. 08-16971, 2010 WL 5927988 (9th Cir. June 23, 2010) (trial court rejecting unanimous verdict for plaintiffs, which was later reinstated by the Ninth Circuit Court of Appeals) and judgment re-entered (*id.*) after denial by the Supreme Court of the United States of defendants' petition for writ of certiorari (*Apollo Grp. Inc. v. Police Annuity & Benefit Fund*, 562 U.S. 1270 (2011)).

109. As discussed in greater detail above, this case was fraught with significant risk factors concerning liability and damages. Class Representatives' success was by no means assured. Defendants disputed whether the Class Representatives could establish scienter and would no doubt contend, as the case proceeded to trial, that even if liability existed, the amount of damages was substantially lower than the Class Representatives alleged. Were this Settlement not achieved, and even if the Class Representatives prevailed at trial, the Class Representatives and Class Counsel faced potentially years of costly and risky trial and appellate litigation against Defendants, with ultimate success far from certain and the prospect of no recovery significant. Class Counsel respectfully submit that based upon the considerable risk factors present, this case involved a very substantial contingency risk to counsel.

B. Request for Litigation Expenses

110. Class Counsel seek payment from the Settlement Fund of $576,767.58 in litigation expenses reasonably and necessarily incurred by Plaintiffs' Counsel in connection with commencing and prosecuting the claims against Defendants.

111. From the beginning of the case, Class Counsel were aware that they might not recover any of their expenses, and, at the very least, would not recover anything until the Litigation was successfully resolved. Thus, Class Counsel were motivated to take steps to manage expenses without jeopardizing the vigorous and efficient prosecution of the case. Certain of the expenses

were paid out of a joint litigation fund created and maintained by Robbins Geller (the "Litigation Expense Fund"). A description of those expenses paid from the Litigation Expense Fund, organized by category, is included as Exhibit F to the individual firm declaration submitted on behalf of Robbins Geller. *See* Robbins Geller Decl., Ex. F.

112. As set forth in the Fee and Expense Schedules and the Summary Table of Lodestars and Expenses, Plaintiffs' Counsel's total litigation expenses in connection with the prosecution of the Litigation, including those expenses paid from the Litigation Expense Fund as well as additional expenses paid separately by each firm, total $576,767.58. *See* Robbins Geller Decl., Exs. A-B; Labaton Sucharow Decl., Exs. A-B; Motley Rice Decl., Exs. A-B. As attested to, these expenses and charges are reflected on the books and records maintained by each firm. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of counsel's expenses. These expenses are set forth in detail in Plaintiffs' Counsel's declarations, which identify the specific category of expense – *e.g.*, experts' fees, travel costs, transcripts, online/computer research, and photocopying.

113. Of the total amount of expenses, $80,882.25 or approximately 14% of total expenses, was expended on experts in the fields of damages, loss causation, accounting, and industry practice. Robbins Geller Decl. at 6; Labaton Sucharow Decl. at 2. These experts were valuable for Class Counsel's analysis and development of the claims, discovery efforts, and settlement.

114. Of the total amount of expenses, $63,048.02 or approximately 11 % of total expenses, was expended on electronic document hosting. Robbins Geller Decl. at 4-5. The Class here reaped the benefits of the latest technology which allowed Class Counsel to conduct intelligent searches, using de-duping algorithms, clustering (artificial intelligence technology that groups documents by

related concepts), as well as other enhancements that substantially reduced the amount of attorney time needed to review documents.

115. Additionally, $130,609.02 or approximately 23% relates to travel, business transportation, and work-related meals. Robbins Geller Decl. at 2-3 & Ex. D; Labaton Sucharow Decl. at 2 & Ex. D. In connection with the extensive discovery taken and defended by Class Counsel in the Litigation, Class Counsel was required to travel to Australia and seeks payment for the costs of this travel.

116. The other expenses for which Class Counsel seek payment are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, legal and factual research, duplicating costs, and court reporting services.

117. All of the litigation expenses, which total $576,767.58, were necessary to the successful prosecution and resolution of the claims against Defendants.

X. REIMBURSEMENT OF CLASS REPRESENTATIVES' EXPENSES IS FAIR AND REASONABLE

118. Additionally, in accordance with 15 U.S.C. §78u-4(a)(4), the Class Representatives seek reimbursement of their reasonable costs and expenses (including lost wages) incurred in connection with their work representing the Class in the aggregate amount of $11,548. The amount of time and effort devoted to this Litigation by each of the Class Representatives is detailed in the Williams Declaration and New Bedford Declaration. Class Counsel respectfully submit that the amounts requested by the Class Representatives are consistent with Congress's intent, as expressed in the PSLRA, of encouraging institutional investors to take an active role in commencing and supervising private securities litigation.

119. As discussed in the Fee Memorandum and in the Class Representatives' supporting declarations, the Class Representatives have been committed to pursuing the Class's claims since they became involved in the Litigation. As large institutional investors, the Class Representatives have actively and effectively fulfilled their obligations as representatives of the Class, complying with all of the many demands placed upon them during the litigation and settlement of the Litigation, and providing valuable assistance to Class Counsel. For instance, the Class Representatives engaged in time-consuming discovery efforts and searches to locate and produce documents responsive to Defendants' discovery requests. William Decl., ¶3; New Bedford Decl., ¶5. In addition, the Class Representatives prepared for, and testified at, depositions in connection with the class certification motion. *Id.* These efforts required employees of the Class Representatives to dedicate time and resources to the Litigation that they would have otherwise devoted to their regular duties.

120. The efforts expended by the Class Representatives during the course of the Litigation are precisely the types of activities courts have found to support reimbursement to class representatives, and support Class Representatives' request for reimbursement.

XI. THE REACTION OF THE CLASS TO THE FEE AND EXPENSE APPLICATION

121. As mentioned above, consistent with the Preliminary Approval Order, more than 28,000 Notices have been mailed to potential Class Members advising them that Class Counsel would seek an award of attorneys' fees not to exceed 30% of the Settlement Fund, and payment of expenses in an amount not greater than $675,000. *See* Sylvester Decl., Ex. A at 3, 9. Additionally, the Summary Notice was published in *The Wall Street Journal*, and transmitted over the *Business Wire*. *Id.*, ¶14. The Notice and the Stipulation have also been available on the settlement website maintained by the Claims Administrator. *Id.*, ¶13. While the deadline set by the Court for Class Members to object to the requested fees and expenses has not yet passed, to date no objections have

been received. Class Counsel will respond to any objections received in their reply papers, which are due on November 8, 2017.

XII. CONCLUSION

122. In view of the significant recovery to the Class and the substantial risks of this Litigation, as described above and in the accompanying memorandum of law, the Class Representatives and Class Counsel respectfully submit that the Settlement should be approved as fair, reasonable, and adequate and that the proposed Plan of Allocation should likewise be approved as fair, reasonable, and adequate. In view of the significant recovery in the face of substantial risks, the quality of work performed, the contingent nature of the fee, and the standing and experience of Class Counsel, as described above and in the accompanying memorandum of law, Class Counsel respectfully submit that a fee in the amount of 30% of the Settlement Amount be awarded and that litigation expenses be paid in full.

We declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 11th day of October, 2017.

JONATHAN GARDNER

DOUGLAS R. BRITTON

CERTIFICATE OF SERVICE

I, Douglas R. Britton, hereby certify that on October 11, 2017, I authorized a true and correct copy of the JOINT DECLARATION OF JONATHAN GARDNER AND DOUGLAS R. BRITTON IN SUPPORT OF CLASS REPRESENTATIVES' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION AND CLASS COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND PAYMENT OF LITIGATION EXPENSES, to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such public filing to all counsel registered to receive such notice.

s/ Douglas R. Britton
DOUGLAS R. BRITTON

EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

IN RE: GENWORTH FINANCIAL, INC. SECURITIES LITIGATION 14 Civ. 2392 AKH

----------x

July 28, 2017
11:00 a.m.

Before:

HON. ALVIN K. HELLERSTEIN,

District Judge

(In open court)

(Case called)

THE COURT: Mr. Gardner.

MR. GARDNER: Good morning, your Honor.

THE COURT: Good morning.

MR. GARDNER: With permission, may I use the podium, your Honor?

THE COURT: Please. It is preferable.

MR. GARDNER: Good morning, your Honor.

We're here, as you know, for the preliminary approval of settlement in this PSLRA securities class action litigation. We're asking your Honor to preliminary approve the settlement so that we might send out notice to class members so they have an opportunity to see what the settlement is and voice their opinion of whether they approve the settlement, they want to opt out of the settlement or object to the settlement or some aspect of it.

At this stage, your Honor, as you know, all that is required is a preliminary evaluation as to whether or not there is any obvious deficiencies in the settlement.

THE COURT: I never understood basically what I'd do on the preliminary that I don't do on the final.

MR. GARDNER: I think judges are different.

Preliminary approval is simply to get out notice to see if class members, if they're going to object. At a final

approval, we will put in a lot more papers supporting the settlement, going through why we think the settlement is fair.

THE COURT: I think some of my colleagues haven't been doing preliminary approvals. It is now embedded into the revised Rule 23. I am not sure it is effective. I have done preliminary approvals before. Therefore, I have no problem about a preliminary approval.

I feel that if there is an obvious flaw in the settlement, that I don't point it out at the preliminary, it will be difficult for me to raise that problem on the final approval.

MR. GARDNER: I think that is fair.

THE COURT: I would like to subject this evaluation to perhaps a little more exacting standard than you suggest.

MR. GARDNER: That is a fair point.

We tried in our papers, your Honor, to give you information about what the challenges in the case were and why we believe that the $20 million settlement that we achieved in this case is a very good result for the class in the circumstances of the case. We are proud of that settlement and we are confident that settlement class members, when they get notice, will think that we did a good job on their behalf as well.

Let me start by, I think the first place to start is to reassure your Honor or to prove to you that this was an

arm's length negotiated settlement.

THE COURT: I will tell you my misgivings.

I have read the papers. First of all, what this case is all about, plaintiffs allege that during the class period, November 3, 2011 through April 17, 2012, defendants made materially false statements and omitted material information in violation of Section 10-b of the Exchange Act regarding the financial stability of Genworth's Australian mortgage insurance unit, the adequacy of loss reserves in the Australian mortgage insurance unit due to increased claims of a large size, lost pressures from flooding in Queensland in Australia in early 2011, and paid a reserve for that and whether the Australian IPO would proceed as planned in the second quarter of 2012.

There was extensive motion practice. I recall that I did not approve the first iteration of your complaint and let you amend. I finally did approve it. There was litigation over the class certification. I granted you certification on March 7, 2016. Wasn't notice ever sent?

MR. GARDNER: We have not sent the notice out.

THE COURT: Why wasn't the notice sent if I certified the class March 7th, 2016? It is over a year ago.

MR. GARDNER: That is a good question, your Honor.

We have been having had some settlement discussions with the defendants. We would prefer, much prefer for a number of reasons not to send out dual notices in cases. One, it is a

cost saving measure. Sending out notice is expensive to mail notice to potential class members.

THE COURT: Rule 11 provides that notice certification should be done in the first practicable moment.

MR. GARDNER: I think the notice requirement is absolutely required before trial so that individual class members have the opportunity to opt out prior to trial after class is certified. I don't know that there is any rule that requires it at any particular time post-class certification.

THE COURT: It has a major impact on statute of limitations.

MR. GARDNER: Potentially. This is not a case that plaintiffs were itching to go litigate, your Honor. As you know, sometimes following a corrective disclosure, there is five or six or more complaints filed within a short period of time. This is not one of those cases. This is a case in which the original complaint was filed almost two years.

THE COURT: I remember this well and I think discovery in this practice in this case is contested. Substantial discovery had to be conducted in Australia.

MR. GARDNER: Correct.

THE COURT: It was expensive and difficult. You have given me an explanation regarding certification and notice, and I think in the future I've got to consider when there should be certification and when there should be notification.

If there is certification, I believe that there should be a requirement of prompt notice thereafter, but I have never focused on that problem in terms of any kind of motion practice with the attorneys in the case, and I think I need to develop a practice.

MR. GARDNER: Understood, your Honor.

THE COURT: Anyway, the parties engaged in extensive discovery over two years, over a dozen different parties were subpoenaed, over two million documents were produced and reviewed, nine depositions were taken in Australia and the United States. There were numerous conferences held with the court during the summer of 2016 to resolve disputes, document production and depositions.

Both sides engaged damage experts and both sides have exchanged opinions with regard to damages. So it is on the basis of that that a settlement is proposed. Did you have the help of a mediator in this case, Mr. Gardner?

MR. GARDNER: No, your Honor. I think this is the first case I have had in the last 10 years where we negotiated directly with the other party without the help of a mediator.

THE COURT: Well, my standard is this. I have to make a preliminary evaluation as to the fairness, reasonableness and adequacy of the settlement. Both sets of counsel are experienced. You have been before me and your firm has been before me in many class action securities suits. I respect

your capabilities and the zealous way that you represent your clients.

MR. GARDNER: Thank you, your Honor.

THE COURT: I know you drive to bargain hard. Similarly, the defendants are experienced and capable and they're not giving money away. So there is a presumption of fairness, adequacy and reasonableness because of the arm's length negotiations between experienced, capable counsel after meaningful discovery. There has been meaningful discovery.

However, I must go on to determine not only about the negotiating process, which was intensively fair, I believe, but also in terms of the settlement itself, it appears to be fair, adequate and reasonable. In assessing the substantive fairness of a settlement, I've considered several factors:

The complexity, expense and likely duration of the litigation. This case is complex. The concept of adequacy of reserves is one of the most difficult accounting problems there are. It requires reasonable estimations and a certain skeptical attitude is required of the auditors, but the application of that is not very easy. The plaintiff would have to show by expert proof the range of reserves that would be appropriate for insurance with regard to various kinds of issues that are alleged in the complaint, which is the case of claims and the like. Those are difficult issues.

It seems to me from the recitation of discovery, that

most of that was finished and you were going to experts on damages, but there may have been more and, however, it was finished or not, whether it was finished or not, the expense and difficulty of a trial loomed ahead. So the timing of this settlement was appropriate. I can't tell about the reaction of the class to the settlement because we are not at that stage.

The third criterion is the stage of the proceedings and the amount of discovery completed. I've commented on that.

As to the risks of establishing liability, what do you say about that, Mr. Gardner?

What risks did you see that are different from the way you assessed the case at the outset?

MR. GARDNER: There were significant risks, your Honor. I would point directly to our ability to establish scienter with respect to the two individual defendants. The two individual defendants were the CEO and CFO of Genworth Financial, which is a holding company in the United States.

THE COURT: If everybody would go about reasonableness of setting of reserves, which is done at a relatively high level of the company, and you would have to prove not only negligence, but a certain almost indifference to facts immediately in front of a CFO and the failure to be attentive to those facts.

MR. GARDNER: Correct.

THE COURT: It is not easy to prove, but you assumed

that when you started this case.

MR. GARDNER: That is true, your Honor, there were challenges from the beginning of the case. In addition to the ones your Honor highlighted, the defendants very much relied upon during the course of the litigation and negotiations that they had an independent actuary, they had an independent accountant that blessed these numbers. In fact, the loss reserve number they increased during the class period. Our argument and challenge was that they didn't increase it enough. We were arguing degrees.

THE COURT: What did you find out during discovery about that?

MR. GARDNER: We found out that was going to be a challenge.

THE COURT: Did you examine the actuaries?

MR. GARDNER: There were two depositions left to take in Australia, and one was of the actuary, one was of the accountant. We had already taken the CEO and CFO of the Australian subsidiary's deposition.

What we learned was we could show what happened, we can show that the loss reserves weren't sufficient, we can show that the Australian subsidiary knew there was going to be a slog or spike of large claims coming in the first quarter of 2012.

The challenge was going to be tracing that up to the

individual defendants in New York. We did not have good evidence, documents that were going to help us establish that. There was going to be a corporate scienter argument we were going to have to try to make.

THE COURT: What was the process? Someone in Australia would have been estimated the reserves?

MR. GARDNER: Correct.

THE COURT: And that would have been passed up to New York?

MR. GARDNER: Correct, eventually.

What we found is late in the class period, somewhere around March of 2012, there was a change in the severity of the claims that changed the loss reserves that they became aware, Australian subsidiary became aware of and that then went up to the U.S. holding company. So it seemed from the evidence that I've seen that that took place in or around March, which is right before the end of the class period.

There are also some documents that indicate that the individual defendants became aware of that and started to deep-dive into what actually was going on in Australia and announced the truth in April.

THE COURT: I would think, Mr. Gardner, that proper activity by a CFO at the headquarters level would be to evaluate the reserves at the insurance company because that is key, the reserves are key to the profitability of the company.

Information would have been supplied to headquarters that justified the reserves that were taken, either too high or too low. It was that mix of information that had to be subjected to examination by you and your experts.

Were they?

MR. GARDNER: Yes, they were. We had an expert who we consulted with and looked at the mix of information that went up to the New York subsidiary. We were going to have a hard time, frankly, with the accounting part of this case, with the loss reserves. We were going to make the argument that the loss reserves weren't high enough, and I think we would have had an expert opine that they weren't high enough. Then we were going to be relying upon an inference that the individual defendants would have been aware of that fact.

The other part of the claim --

THE COURT: They would have all the information before them, and it is basically the same information that was made at the subsidiary level?

MR. GARDNER: And we would have made a core operations argument that the individual, this subsidiary was responsible for the majority of the profits of this company during the class period. It was a very important subsidiary to the company, and so the individual defendants should have been aware or were reckless in not being aware of the specifics of what was going on at the subsidiary.

THE COURT: What about the profitability of the consolidated company depended on the profitability of the Australian subsidiary?

MR. GARDNER: Correct.

THE COURT: If the reserves are marked up, that would have impinged on the profits?

MR. GARDNER: Yes, yes.

THE COURT: And --

(Multiple voices)

THE COURT: -- and a dangerous state. I can't relitigate this. My days of litigating are over a long time ago. Now I am a Judge.

I understand your risks, but they were formidable when you began the case. As gatekeeper, I let you go ahead, but I am not sure I have enough to evaluate or will ever have enough to evaluate the reasonableness of the settlement.

How does $20 million come about? What factor is it of the total damages you could have recovered?

MR. GARDNER: Obviously, the $20 million was a negotiated number.

THE COURT: Of course, but --

MR. GARDNER: As much as we could --

(Multiple voices)

THE COURT: Just a minute. Coming into the negotiations, you opted to make the first offer, the first

demand. In order to make a demand, you had to have a sense of the total damages that you were likely to recover if you won, discounted by the risks of winning, but you have to have in mind the total. What was the total?

MR. GARDNER: So the total damages for the entire class period, if we were able to prove the entire class period, was $219 million, pursuant to our expert's analysis using a traditional trading model to aggregate damages in this case.

THE COURT: Did defendants give you an alternate estimate of the total damage recovery, assuming you could prove the case?

MR. GARDNER: Well, their estimate was zero. They never gave us a specific -- they didn't give us a, if you prove your case, we think your damages are X. They didn't, they never gave us that number. They said we don't think you're going to prove your case. We don't think you can establish scienter, we don't think you have loss causation.

THE COURT: You never got a estimate of damage from them?

MR. GARDNER: I don't believe so, no, your Honor.

THE COURT: $20 million is less than 10 percent of your total expected recovery?

MR. GARDNER: 9 percent, your Honor.

THE COURT: That is not very good.

MR. GARDNER: If I would, what I was saying before is

as part of our risk analysis or evaluation of this case, we felt better that we would be able to establish scienter further on into the class period, specifically in March. So we did an analysis. If we picked up the class --

THE COURT: After reserves had been increased, by your judgment, not increased enough?

MR. GARDNER: Correct, and there was correspondence back to the U.S. holding company about the fact that there was going to be this big spike in claims and how it was going to impact the company, et cetera. If you pick up the class period on a statement that we allege to be false on March 29th, 2012, the damages would be $90 million.

THE COURT: March 29, 2012?

MR. GARDNER: Correct.

THE COURT: To April 17, 2012?

MR. GARDNER: Correct.

THE COURT: Would have led to a $90,000 recovery?

MR. GARDNER: That would have been $90 million damage, aggregate damage number. So, Judge, off of that, that is a 22 percent recovery, which in a securities class action case I think is extraordinarily high.

I know your Honor might not agree with that, but having done this for a long time, I can tell you the average recoveries in these cases tend to be 10 percent and below of the aggregate, the biggest possible damage number you can get.

That number is an aggregate calculated by doing estimates. It also doesn't encounter any disaggregation.

THE COURT: What does that mean?

MR. GARDNER: There are multiple pieces of information that come out on the corrected disclosure date and only one of which relates to the fraud. Plaintiff's burden is to disaggregate, pull apart those different pieces of information and estimate the amount of the spot drop in damages that relate just to the fraud.

THE COURT: So you're saying that loss causation issues would have reduced the total damages from $90 million to some lower figure?

MR. GARDNER: Potentially. We would have argued no. The defendants would have argued yes.

THE COURT: Have you traced the performance of the stock against comparable stocks?

MR. GARDNER: Yes. So part of our event study to tease out this part of the drop that is just related to the fraud is we run an events study which accounts for market and industry movement. When we calculate what we think is what we call the abnormal stock drop, that is just company-specific. It takes out market and industry movement on that day.

THE COURT: What did you learn from that?

MR. GARDNER: That the drop on April 18th, 2012, the corrected disclosure, was statistically significant at the 99

percent level, meaning there was no chance that that was a movement by chance or volatility, that it moved I think a dollar, a little over a dollar abnormal down. Once you take out the market and industry effect, the abnormal stock drop on that date in total was a little over a dollar.

THE COURT: That multiplies to what?

MR. GARDNER: Well, you take the dollar --

THE COURT: A dollar inflation?

MR. GARDNER: -- a dollar seven and you multiply that by another estimate, which our damages expert multiplies that by the number of damaged shares that he estimates, that those are the shares that are purchased in the class period that he estimates are held past the corrected disclosure.

In this case, I think he estimated that to be around 144 million damaged shares. So you multiply 107 by the number of damaged shares, and that is how you come up with the per share calculation of what each share is damaged by.

THE COURT: But if you run that number starting not from the beginning of the class period, but from March 29th, 2012, what do you get?

MR. GARDNER: Hold on one second, your Honor. I have that. (Pause) From March 29th, we have the aggregate damages as just a little bit below 90 million. The damages shares estimate is 52.8 million. If you do the math there, that comes out to 38 cents per share.

THE COURT: What is the total?

MR. GARDNER: It is $88.4 million we estimated in total aggregate damages for that short class period.

THE COURT: So you're now up to about 25 percent?

MR. GARDNER: If that were to be what ultimately, if we lost the early part of the class period at summary judgment or trial and we only recovered for that short class period, that would have been, that would have been the damages and this settlement would have been a --

THE COURT: In the distribution of the settlement, would you make a distinction between members of the class who purchased prior to March 2012?

MR. GARDNER: That is a great question, your Honor. The answer is --

THE COURT: I am very flattered by your approval of my question.

MR. GARDNER: Thank your Honor.

The answer is we thought about that. It would complicate the plan of allocation, and we ultimately decided to make the plan of allocation simpler so people can understand it and the claims administrator can administer it in an efficient manner.

The other thing I would say, your Honor, is because we think the strength of the case is at the end, close to the corrected disclosure, my experience, my belief is that more

people who purchased shares at the end of the class period are likely to have held over the corrected disclosure versus people who bought back in November, they're less likely to have held through April. Therefore, I think the bulk of the settlement will go to those folks.

THE COURT: What is the average shareholder?

MR. GARDNER: Holder?

THE COURT: Holding?

MR. GARDNER: I don't know the answer to that question. I know that there are -- I looked this up yesterday -- I think that there is somewhere like 55 million. I don't want to get the number wrong.

THE COURT: Do you have the number outstanding?

MR. GARDNER: There over 500 million shares outstanding during the class period. I don't know what the average holding was. I don't know that there is any statistic that I am aware of that would give you that number.

What I can tell your Honor is that over, I think over 90 percent of the shares during the class period were held by institutions. So my guess would be that the average shareholding is relatively high. Institutions tend to hold in bigger numbers.

THE COURT: The recovery could be significant?

MR. GARDNER: Per shareholder because they're institutions, I believe that the recovery per shareholder, per

damaged shareholder is going to be relatively high.

THE COURT: Is there anything the defendants want to say?

MR. KATTAN: Nothing, your Honor, other than obviously --

THE COURT: Would you like to say nothing eloquently?

MR. KATTAN: It was Genworth's position at the start this cause was without merit. We felt that when the confidential witnesses recanted their testimony, and we feel that the documents, the documents and the testimony that was given confirmed there was no fraud or recklessness here, and this is a fair result.

THE COURT: So I should have been stricter at the outset of the case?

MR. KATTAN: No, your Honor. No, your Honor.

THE COURT: Okay.

MR. GARDNER: I don't want to let that go by --

THE COURT: You don't have to answer to it. I examined the merits at the outset. I think I made a reasonable decision.

MR. GARDNER: I agree, your Honor.

THE COURT: I don't want to second-guess.

MR. GARDNER: The fact is the witnesses did not recant.

THE COURT: That is not important to me at this point

in time. There is nothing in the complaint that caused me to have any kind of question about your good faith.

MR. GARDNER: Thank your Honor. I know your firm and I respect your firm. I have been not always easy on your firm, but I respect your firm.

MR. GARDNER: I would say you have always been fair.

THE COURT: Well, I grant preliminary approval of the settlement. I think we have been through a rather intensive discussion of the merits of the settlement, and I think it passes the threshold. The best judge of the merits are the lawyers who do the case.

MR. GARDNER: Thank your Honor.

THE COURT: And given the capability, experience and very able presentation, Mr. Gardner, it seems to me this is a fair and adequate settlement, and I so find.

I haven't really looked at the notice. Let me first look at the order. Tell me about Gilardi & Company claims administrator.

MR. GARDNER: Gilardi is a well recognized national claims administrator that both the Robbins Geller firm and Labaton firm have worked with numerous times. I believe that they are the claims administrator that your Honor approved of in the Pfizer settlement that was before you, and I believe they're doing a good job of going through the claims process here.

THE COURT: How are their expenses compared to others?

MR. GARDNER: If it is okay your Honor, Mr. Pintar was the person directly involved in negotiating with Gilardi.

THE COURT: Speak from where you are.

MR. PINTAR: Your Honor, let me address expenses because I do have numbers for you. That was one of the primary reasons we chose Gilardi in addition to their experience and their responsiveness. We worked with them, as Mr. Gardner said, in the Pfizer and many other cases. Here is where the expenses come down.

Based on a predictor tool that Gilardi has, I can give you all the factors that go into it, but I don't think you need that. They're estimating upwards of 500,000 notices will go out, and based on that estimate, the upper end would be $650,000 for those notices, roughly a buck 25 per notice.

Now, let's assume we don't know how many notices will go out. Assume $500,000 for the upper end. The predictor tool assumes 75,000 claims, and that is a typical securities class action. If that is the case, then the cost of the claims portion would be $475,000.00, which breaks down to $6.30 per claim, for a total upper end $1.1 million. Obviously, it could go below that. Our experience with them is this predictor tool is fairly accurate, so that is what we're anticipating at this point as at or below 1.1.

THE COURT: What about their profits on this? How do

they charge?

MR. PINTAR: I don't have their profit margin on it.

THE COURT: Are they giving you a flat rate or adjustable rate? Are they giving you a flat rate for how much it will cost?

MR. PINTAR: No. I didn't mean to interrupt.

It is based on the number of claims and the number of notice is that go out. Typically what happens is we will get invoiced along the way. We scrutinize every invoice based on the time spent by every member of their team from management down to claims person, in the mail room, and then their hard costs, printing, mailing, et cetera.

I can tell you that for the notices, the primary component is hard costs of printing and mailing. We did not ask them for flat cost per se, and the reason for that is there are just a lot of variables in this process.

THE COURT: So how much do you estimate the cost of administration would be?

MR. PINTAR: $1.1 million or less is our best estimate at this point.

THE COURT: In terms of how much you pay them, is there an upset price of any kind? How do you plan that? How do you plan how much it will cost?

MR. PINTAR: We pay that out of the settlement fund again as the invoices are received and approved by our office

and by co-lead counsel.

THE COURT: So the expense of the administration is really 5 percent of the settlement?

MR. PINTAR: In this case, that's correct, that is our best estimate.

THE COURT: Is that a yardstick that is reasonable?

MR. PINTAR: We believe so, your Honor. In fact, I can tell you that the notice, the $1.25 per notice is standard in the industry and the $6.30 is extremely competitive.

THE COURT: It would be much better if a large portion of people getting notice could be given electronically. I know brokers don't tend to give you the email addresses. I suspect they don't want to because they don't want to give away their mailing lists.

Have you ever tried to get those?

MR. PINTAR: We have, your Honor, and you're absolutely correct on the push-back that we're getting. Also that information is protected as confidential by certain of the brokers, so it is just difficult.

We're happy to send it out. We would be thrilled to get email lists.

THE COURT: Funds are deposited when, Mr. Gardner?

MR. GARDNER: I believe the funds are going to be in an escrow account held at Citibank.

THE COURT: They're deposited when? On approval?

Finality?

MR. GARDNER: I believe there is a timing mechanism in the settlement agreement that is --

MR. KATTAN: It is 21 days.

MR. GARDNER: They need to fund the settlement within 21 days of preliminary approval.

THE COURT: So 21 days from today?

MR. GARDNER: Correct.

THE COURT: Or the time I sign the order?

MR. GARDNER: Assuming your Honor signs the order.

THE COURT: Does the settlement agreement provide for no reversion?

MR. GARDNER: Yes, your Honor.

THE COURT: Where is that?

MR. GARDNER: The settlement agreement itself is attached as an exhibit, and if you look at -- it is Page 20, and I am looking at document 152-1. Page 20, Paragraph 14. The settlement is not a claims-made settlement. No defendant or other person or entity who or which paid any portion of the settlement amount shall have any right to the return of the settlement fund or any portion thereof for any reason whatsoever, et cetera, et cetera.

THE COURT: How many distributions are planned?

MR. GARDNER: It is hard to determine. I believe there will be -- my experience is there is probably two.

Typically, there are two distributions just because people don't cash checks for whatever reason. There is enough.

THE COURT: Should that be built into my order?

MR. GARDNER: I don't think that it is necessary to do that. I think your order gives the claims administrator the authority to administer the settlement as supervised by the lead counsel.

THE COURT: The fewer distributions, the less the costs.

MR. GARDNER: We would be thrilled to do just one. My experience is that is not reality.

THE COURT: I think two is appropriate. If there is more than that, it is expensive. What happens if at the end of the process and there is money left over, what are you doing with that?

MR. GARDNER: There is a cy-pres provision in the agreement that the money will be donated to the Council of Institutional Investors Research & Education Fund. It is a non-profit.

THE COURT: I am not in favor of cy-pres.

Since people are recovering much less than 100 cents on the dollar, why don't we distribute to those plaintiffs who have appeared and received checks and cashed them?

MR. GARDNER: That is the multiple distribution process. In other words, that is what we want to do until we

get so little left that it doesn't make sense to make another distribution. We can make as many distributions as we want to.

THE COURT: Where is that provision? Is that in the settlement agreement?

MR. GARDNER: It is in the settlement notice.

THE COURT: It should be in either the order or the notice.

MR. GARDNER: It is in the notice, Page 18, and I am looking at Document 150-1. It is the paragraph that starts the second full paragraph on Page 18, if there is any balance remaining.

THE COURT: There shouldn't be any balance at all left over from reallocation.

MR. GARDNER: There is a de minimis provision we have just above that where we say we won't distribute if the claim is $10.00 or less because the amount of money it takes for Gilardi to actually process and mail it is more than $10.00. It is cost ineffective to actually mail it.

If there is a sufficient number of under $10.00, there is going to be some amount of money left over at the end. It is just unavoidable. It is usually a very small amount. My priority is to get as much money to class members as possible, so I am happy to make as many distributions as necessary to get people who cash their checks as much money as possible, but there is always some small amount at the end that is just not

feasible to distribute any more.

(Pause)

THE COURT: On Page 5 of the notice, in the last sentence before Category IV, instead of 100 percent claim rate, can we use the rate that you find to be the average rate on class actions? There is an average rate.

MR. GARDNER: That is subject to some debate. I don't know that there is any definitive study or analysis that I'm comfortable citing as the definitive claim rate. I think it varies from case to case.

THE COURT: Let's say 25 percent.

MR. GARDNER: I know this was an issue in Pfizer, your Honor, and the parties went back, and you said put in a range, and they came up with a range of 20 to 85 percent as what they put in the notice in that particular case. I don't know that any one particular claims rate is correct.

THE COURT: 100 percent is fictitious.

MR. GARDNER: In the notice we do say that we expect it to be less than 100 percent, but we don't put a particular percentage on it. We can put a range on it if your Honor would --

THE COURT: Assuming a 25 to 75 percent claim rate, put that, and put down what's yielded in that.

MR. GARDNER: Okay, we can do that.

THE COURT: I would like you to add a sentence that is

a little bit redundant, "The court will determine the fairness of the fee. The court will determine the fee that is reasonable in the circumstances of this case."

MR. GARDNER: Yes, sir.

THE COURT: Okay, I will approve the order and the notice. Will you submit this to me by noon on Monday?

MR. GARDNER: Yes, your Honor.

THE COURT: Putting in the dates that we fixed, and I need to give you a date for the hearing. Once I fix that, do you want to call my Law Clerk, Michael, on Monday to get a date.

MR. GARDNER: We can do it that way.

A hundred days between now and then, I am calculating mid-November would be the appropriate time-frame for a final approval hearing. If you pick November 15th, that will be my birthday. I am always happy to be in court on a final approval hearing on my birthday.

THE COURT: 4:00 o'clock, November 15th, 2017 in this Court room.

MR. GARDNER: Thank your Honor.

THE COURT: Is there anything more I need to do today?

MR. GARDNER: No, sir.

THE COURT: You have given a very able presentation, Mr. Gardner and Mr. Pintar.

(Court adjourned)

EXHIBIT 2

	Count	Low	25th Percentile	Median	75th Percentile	High
		Rate (%Diff.)	Rate (%Diff.)	Rate (%Diff.)	Rate (%Diff.)	Rate (%Diff.)
All Partners						
All Firms Sampled	245	$525 **(+0%)**	$930 **(+15%)**	$1,025 **(+17%)**	$1,200 **(+26%)**	$1,425 **(+45%)**
Labaton Sucharow LLP	26	$525	$806	$875	$950	$985
Senior Partners						
All Firms Sampled	191	$875 **(+14%)**	$1,044 **(+19%)**	$1,150 **(+24%)**	$1,275 **(+34%)**	$1,425 **(+45%)**
Labaton Sucharow LLP	21	$765	$875	$925	$950	$985
Mid-Level Partners						
All Firms Sampled	32	$675 **(-16%)**	$850 **(+6%)**	$940 **(+18%)**	$1,025 **(+28%)**	$1,165 **(+46%)**
Labaton Sucharow LLP	4	$800	$800	$800	$800	$800
Junior Partners						
All Firms Sampled	22	$525 **(+0%)**	$900 **(+71%)**	$940 **(+79%)**	$975 **(+86%)**	$1,050 **(+100%)**
Labaton Sucharow LLP	1	$525	$525	$525	$525	$525
Of Counsel						
All Firms Sampled	81	$660 **(+20%)**	$775 **(+11%)**	$818 **(+9%)**	$978 **(+22%)**	$1,145 **(+39%)**
Labaton Sucharow LLP	9	$550	$700	$750	$800	$825

	Count	Low	25th Percentile	Median	75th Percentile	High
		Rate (%Diff.)	Rate (%Diff.)	Rate (%Diff.)	Rate (%Diff.)	Rate (%Diff.)
All Associates						
All Firms Sampled	345	$350 **(+0%)**	$550 **(+25%)**	$675 **(+35%)**	$795 **(+38%)**	$945 **(+30%)**
Labaton Sucharow LLP	32	$350	$440	$500	$575	$725
Senior Associates						
All Firms Sampled	67	$450 **(+6%)**	$725 **(+32%)**	$830 **(+44%)**	$885 **(+48%)**	$920 **(+27%)**
Labaton Sucharow LLP	17	$425	$550	$575	$600	$725
Mid-Level Associates						
All Firms Sampled	151	$375 **(-12%)**	$666 **(+51%)**	$735 **(+65%)**	$803 **(+67%)**	$945 **(+89%)**
Labaton Sucharow LLP	12	$425	$440	$445	$481	$500
Junior Associates						
All Firms Sampled	127	$350 **(+0%)**	$475 **(+36%)**	$560 **(+60%)**	$605 **(+73%)**	$870 **(+105%)**
Labaton Sucharow LLP	3	$350	$350	$350	$350	$425
Paralegals						
All Firms Sampled	149	$85 **(-74%)**	$265 **(-18%)**	$315 **(-3%)**	$345 **(+6%)**	$445 **(+16%)**
Labaton Sucharow LLP	15	$325	$325	$325	$325	$385