UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

No. 3:12-cv-00456-MOC-DSC
(Consolidated with Nos. 3:12-cv-00474 and 3:12-cv-00624)

MAURINE NIEMAN, Plaintiffs, vs. DUKE ENERGY CORPORATION, et al., Defendants.	CLASS ACTION MEMORANDUM OF LAW IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

Page

Page

Page

Page

Page

STATUTES

OTHER AUTHORITIES

I. INTRODUCTION

Lead Plaintiffs and Lead Counsel have succeeded in obtaining a $146,250,000 cash settlement for the benefit of the Settlement Class. This significant recovery is one of the top five recoveries in a securities class action in the Fourth Circuit and the largest ever in North Carolina. This outstanding recovery has been obtained through the experience, skill and efforts of Lead Counsel at an early stage of the litigation thus avoiding the substantial expense, delay, risk and uncertainty of continued litigation. Indeed, early settlements are encouraged by courts and are consistent with the purposes of the Federal Rules of Civil Procedure, which "'shall be construed and administered to ensure the just, speedy, and inexpensive determination of every action.'" *In re Xcel Energy, Inc.*, 364 F. Supp. 2d 980, 992 (D. Minn. 2005) (quoting Fed. R. Civ. P. 1). As Professor James Cox, a securities law specialist at Duke University, told the Associated Press following the initial disclosure of the Settlement, the "$146 million [recovery] is ***off the charts***." Emery P. Dalesio, *Duke Energy to Pay $146M to Settle Lawsuit Over CEO Ouster, Duke Energy Settles Lawsuit Over Post-Merger Ouster of its CEO in 2012 for $146 Million, Associated Press*, Mar. 10, 2015. Moreover, as discussed in the Settlement Brief, the Settlement Amount represents more than 26% of the likely maximum estimated damages suffered by the Settlement Class, an outstanding recovery by any measure.

As compensation for their efforts in achieving this result, Lead Counsel seek an award of 24.5% of the Settlement Fund, plus expenses in the amount of $191,738.27, plus interest at the same rate and the same period of time as that earned by the Settlement Fund until paid. The requested fee award is consistent with awards in this Circuit, and decisions throughout the United States. The requested fee is also reasonable and is warranted in light of the substantial recovery obtained for the Settlement Class, the efforts and skill of Lead Counsel in obtaining this excellent result and the

significant risks in bringing and prosecuting this Action. The $146,250,000 recovery will allow members of the Settlement Class to recover for their losses in Duke common stock now instead of having to wait through many more years of continued litigation with no guarantee of a recovery larger than the one obtained here or any recovery at all.

This litigation was prosecuted under the provisions of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), and therefore was extremely risky and difficult from the outset. The effect of the PSLRA is to make it harder for investors to bring and successfully conclude securities class actions. In recognizing the significant challenges investors face under the PSLRA, retired Supreme Court Justice Sandra Day O'Connor recognized: "To be successful, a securities class-action plaintiff must thread the eye of a needle made smaller and smaller over the years by judicial decree and congressional action." *Alaska Elec. Pension Fund v. Flowserve Corp.*, 572 F.3d 221, 235 (5th Cir. 2009). Although Lead Plaintiffs and their counsel believe they would get past defendants' objections to Judge Cayer's recommendation on the motion to dismiss, continued litigation would be fraught with risk and delay with the ultimate outcome uncertain.

Notwithstanding the significant challenges inherent in this litigation, Lead Counsel undertook the representation of the Settlement Class entirely on a contingent fee basis and no payment has been made to date for their services or the litigation expenses advanced on behalf of the Settlement Class. Lead Counsel firmly believe that the outstanding recovery obtained for the Settlement Class is a direct result of their diligent and effective advocacy, as well as their reputations as attorneys who are unwavering in their dedication to the interest of the class and unafraid to zealously prosecute a meritorious case through trial and subsequent appeals.

Importantly, the 24.5% fee request has been reviewed and approved by the Lead Plaintiffs, a prophylactic process envisioned by Congress when it enacted the PSLRA.[1] In determining that the proposed 24.5% fee was reasonable, Lead Plaintiffs "took into account fees awarded in similar cases and Lead Counsel's high-quality representation and diligence in prosecuting this litigation." Amalgamated Bank Decl., ¶5; Friesen Decl., ¶5; Bacino Decl., ¶5. Lead Plaintiffs were actively involved in the litigation, and believe that the Settlement represents an excellent recovery for the Settlement Class. Amalgamated Bank Decl., ¶4; Friesen Decl., ¶4; Bacino Decl., ¶4. Because of this involvement, and, in the case of Amalgamated Bank, their experience in this type of litigation, Lead Plaintiffs are in a unique position to evaluate the work of counsel, the results achieved and the effort required to obtain this outstanding result. As the Third Circuit held in *In re Cendant Corp. Litigation*, 264 F.3d 201 (3d Cir. 2001), "courts should afford a presumption of reasonableness to fee requests submitted pursuant to an agreement between a properly-selected lead plaintiff and properly selected lead counsel." *Id*. at 220.

As discussed herein, as well as in the Settlement Brief and the Joint Declaration, the expenses requested are also reasonable in amount and were necessarily incurred for the successful prosecution of this Action. Finally, the request of Lead Plaintiff Amalgamated Bank for reimbursement of its time and expenses of $20,612.50 in its representation of the Settlement Class is in accordance with the PSLRA and is both fair and reasonable.

[1] The following Lead Plaintiff declarations are being concurrently filed in support of final approval of the Settlement and the reasonableness of the request for an award of attorneys' fees and expenses: Declaration of Amalgamated Bank Executive Vice President and General Counsel Deborah Silodor ("Amalgamated Bank Decl."); Declaration of Gerald and Carolyn Friesen in Support of Motion for Final Approval of Class Action Settlement and Award of Attorneys' Fees and Expenses ("Friesen Decl."); and Declaration of Craig Bacino in Support of Motion for Final Approval of Class Action Settlement and Award of Attorneys' Fees and Expenses ("Bacino Decl.").

II. ARGUMENT

A. The Appropriate Method for Awarding Attorneys' Fees in Common Fund Cases Is a Reasonable Percentage of the Fund Recovered

For their efforts in creating a $146,250,000 common fund for the benefit of the Settlement Class, Lead Counsel seek a reasonable percentage of the fund recovered as attorneys' fees. Over the last few decades, the "percentage-of-the recovery" method of awarding fees has become an accepted, if not the prevailing, method for awarding fees in common fund cases throughout the United States. This is particularly true in securities fraud class actions, where the PSLRA dictates that attorneys' fees shall not exceed a "reasonable percentage" of the damages recovered for the class. 15 U.S.C. §77z-1(a)(6) and 15 U.S.C. §78u-4(a)(6).[2]

A percentage fee award is also appropriate because it encourages counsel to obtain the maximum recovery for the class at the earliest possible stage of the litigation and, hence, most fairly correlates plaintiffs' counsel's compensation to the benefit achieved for the class. This rule, also known as the "common fund doctrine," is firmly rooted in American case law. *See, e.g., Trustees v. Greenough*, 105 U.S. 527 (1882); *Cent. R.R. & Banking Co. v. Pettus*, 113 U.S. 116 (1885). In *Blum v. Stenson*, 465 U.S. 886 (1984), for example, the Supreme Court recognized that under the common fund doctrine a reasonable fee may be based "on a percentage of the fund bestowed on the class." *Id*. at 900 n.16. Moreover, authority supporting the percentage-of-recovery method in federal courts throughout the United States is overwhelming.[3] According to the *Manual for Complex Litigation*,

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[2] *See also In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 355 (S.D.N.Y. 2005) (the PSLRA contemplates that "the percentage method will be used to calculate attorneys' fees in securities fraud class actions").

[3] Two circuits have ruled that the percentage method is ***mandatory*** in common fund cases. *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261 (D.C. Cir. 1993); *Camden I Condo. Ass'n v. Dunkle*, 946 F.2d 768, 774-75 (11th Cir. 1991). Other circuits and commentators have expressly approved the use of the percentage method. *Gottlieb v. Barry*, 43 F.3d 474 (10th Cir. 1994) (authorizing percentage method and holding that use of lodestar/multiplier method was abuse of discretion);

"the vast majority of courts of appeals now permit or direct district courts to use the percentage-fee method in common-fund cases." *See Manual for Complex Litigation* §14.121, at 187 (4th ed. 2004).

The rationale for compensating counsel in common fund cases on a percentage basis is sound. First, it is consistent with the practice in the private marketplace where contingent fee attorneys are customarily compensated by a percentage of the recovery.[4] Second, it more closely aligns the lawyers' interest in being paid a fair fee with the interest of the class in achieving the maximum possible recovery in the most efficient amount of time.[5]

Numerous courts have criticized the so-called "lodestar method" – basing fees on the time the plaintiffs' attorneys billed to the case – for encouraging plaintiffs' counsel to needlessly drag out complex litigations for years in order to run up "lodestar" hours, even when their clients' and the class' interests would be much better served by an earlier, more efficient settlement of a case based

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Brown v. Phillips Petroleum Co., 838 F.2d 451, 454 (10th Cir. 1988) (citing *Blum*, 465 U.S. at 900, n.16 recognizing both "implicitly" and "explicitly" that a percentage recovery is reasonable in common fund cases); *Harman v. Lyphomed, Inc.*, 945 F.2d 969, 975 (7th Cir. 1991); Report of the Third Circuit Task Force, *Court Awarded Attorney Fees*, 108 F.R.D. 237, 254 (Oct. 8, 1985).

[4] Courts are encouraged to look to the private marketplace in setting a percentage fee. *See In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992) ("The judicial task might be simplified if the judge and the lawyers [spent] their efforts on finding out what the market in fact pays not for the individual hours but for the ensemble of services rendered in a case of this character."); *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956 (7th Cir. 2013) (approving 27.5% fee of $200,000,000 settlement based on a market rate analysis).

[5] In *Kirchoff v. Flynn*, 786 F.2d 320 (7th Cir. 1986), the court stated:

> The contingent fee uses private incentives rather than careful monitoring to align the interests of lawyer and client. The lawyer gains only to the extent his client gains . . . . The unscrupulous lawyer paid by the hour may be willing to settle for a lower recovery coupled with a payment for more hours. Contingent fees eliminate this incentive and also ensure a reasonable proportion between the recovery and the fees assessed to defendants . . . .
>
> At the same time as it automatically aligns interests of lawyer and client, rewards exceptional success, and penalizes failure, the contingent fee automatically handles compensation for the uncertainty of litigation.

Id. at 325-26.

on arm's-length negotiations conducted by experienced counsel.[6]

The percentage approach also recognizes that the quality of counsel's services is measured best by the results achieved and is most consistent with the system typically used in the marketplace to compensate attorneys in non-class contingency cases. "The percentage method better aligns the incentives of plaintiffs' counsel with those of the class members because it bases the attorneys' fees on the results they achieve for their clients, rather than on the number of motions they file, documents they review or hours they work . . . . The percentage method also accords with the overwhelming prevalence of contingency fees in the market for plaintiffs' counsel." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 991 F. Supp. 2d 437, 440 (E.D.N.Y. 2014); *see also Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172, 184 (W.D.N.Y. 2011) (the "advantages of the percentage method . . . are that it provides an incentive to attorneys to resolve the case efficiently and to create the largest common fund out of which payments to the class can be made, and that it is consistent with the system typically used by individual clients to compensate their attorneys").

Importantly, it is generally accepted in the Fourth Circuit that there is a preference for awarding attorneys' fees based on a common fund recovery pursuant to the percentage-of-recovery method. *See, e.g., Goldenberg v. Marriott PLP Corp.*, 33 F. Supp. 2d 434, 438 (D. Md. 1998) (noting endorsement of percentage-of-recovery method by several courts in the Fourth Circuit);

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[6] *See, e.g., In re "Agent Orange" Prod. Liab. Litig.*, 611 F. Supp. 1296, 1306 (E.D.N.Y. 1985) (criticizing lodestar approach as one that "tends to encourage excess discovery, delays and late settlements, while it discourages rapid, efficient and cheaper resolution of litigation"), *aff'd in part and rev'd in part*, 818 F.2d 226 (2d Cir. 1987); *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 821 (3d Cir. 1995) (noting that lodestar method has been criticized for giving plaintiffs' counsel "the incentive to delay settlement in order to run up fees"); *In re Thirteen Appeals Arising out of the San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 307 (1st Cir. 1995) (lodestar method creates "'a disincentive for the early settlement of cases'") (citation omitted); *Shaw v. Toshiba Am. Info. Sys.*, 91 F. Supp. 2d 942, 964 (E.D. Tex. 2000) ("Again, simply put, the lodestar method rewards plodding mediocrity and penalizes expedient success.").

Smith v. Krispy Kreme Doughnut Corp., No. 1:05CV00187, 2007 U.S. Dist. LEXIS 2392, at *3-4, (M.D.N.C. Jan. 10, 2007) (finding reasonable fee is normally a percentage of class recovery). Percentage-of-recovery fees also have the salutary effect of conserving judicial resources. Percentage fees are simple to calculate, are not subject to manipulations and do not require the court to "second guess" each and every decision made by counsel during the course of a complex case.[7]

B. Lead Counsel's Fee Request Is Reasonable Under Fourth Circuit Criteria

Given the outstanding "off the charts" result achieved in this Action, Lead Counsel's requested fees representing 24.5% of the Settlement Fund is fair and reasonable under Fourth Circuit law. To determine the reasonableness of the percentage fee, this Court may elect to apply all or some of the factors outlined by the Fifth Circuit in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), which were adopted by the Fourth Circuit in *Barber v. Kimbrell's*, 577 F.2d 216, 226 (4th Cir. 1978). The *Johnson* factors are: (1) amount involved and results obtained; (2) novelty and difficulty of the issues; (3) skill required to perform the legal services properly; (4) time and labor required; (5) whether the fee is fixed or contingent; (6) awards in similar cases; (7) customary fee; (8) undesirability of the case; (9) experience, reputation, and ability of the attorneys; (10) preclusion of other employment; (11) nature and length of professional relationship with the client; and (12) time limitations imposed by the client or the circumstances. *Johnson*, 488 F.2d at 717-19. The weight given to each of the *Johnson* factors varies from case to case, and "rarely are all of the *Johnson* factors applicable." *See, e.g.*, *Phillips Petroleum*, 838 F.2d at 456.[8]

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[7] *See Strang v. JHM Mortg. Sec. Ltd. P'ship*, 890 F. Supp. 499, 503 (E.D. Va. 1995) ("the percentage method is more efficient and less burdensome than the traditional lodestar method, and offers a more reasonable measure of compensation for common fund cases").

[8] The following factors do not pertain to this litigation: Preclusion of other employment; time limitations imposed by the client or the circumstances; and the nature and length of the professional relationship with the client. Thus, Lead Counsel will not analyze these factors.

As described below, an analysis of the applicable factors supports the requested fee.

1. The Amount Involved and the Results Obtained

Courts have consistently recognized that the result achieved is one of the most important factors considered in assessing a fee award. In *Hensley v. Eckerhart*, 461 U.S. 424 (1983), the Supreme Court confirmed that, in assessing the reasonableness of a fee, the "most critical factor is the degree of success obtained." *Id*. at 436; *see also In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 630 (D. Colo. 1976) ("the amount of the recovery, and end result achieved are of primary importance, for these are the true benefit to the client").

Through their intensive efforts during the prosecution and settlement of this litigation, Lead Counsel have obtained a recovery of $146,250,000. This is the largest recovery in a securities class action in the history of North Carolina, the fifth largest recovery in a securities class action in Fourth Circuit history and one of the 100 largest recoveries ever in a securities class action. The Settlement is not only large relative to other cases, but represents a significant recovery for Settlement Class Members. With the assistance of in-house and independent experts, Lead Counsel estimate that the Settlement Class's likely recoverable damages if successful at trial were approximately $560 million. The Settlement therefore represents approximately 26.2% of the maximum likely recoverable damages – and does so while avoiding the substantial risks Lead Plaintiffs faced in establishing the Settlement Class's full amount of damages at trial. *See* Joint Decl., ¶¶71, 101.

The $146,250,000 settlement here far outweighs the average recovery in securities fraud class actions, particularly for a case of this size. According to a recent report published by Cornerstone Research, the median settlement in securities class actions in 2014 (not including the large portion of cases that are dismissed or otherwise recover nothing for the class) was $6.0

million.[9] Accordingly, the recovery in this case was more than ***24 times larger*** than the average recovery achieved in similar cases. More importantly, the same report found that during the period 2005 to 2013, cases with estimated damages between $500 million and $999 million settled, on average, for only 1.8% of damages. *Id.* at 9. In this case, an average settlement would have recovered less than $10 million for the Settlement Class. The $146,250,000 recovery here is more than ***14 times larger*** than the median recovery in similarly sized cases.

This is an excellent result by any measure. Indeed, media coverage following the initial disclosure of the Settlement confirmed that it was an outstanding result for Duke investors. As noted previously, renowned securities law professor James Cox described the settlement as "off the charts." Similarly, a *Wall Street Journal* story on March 10, 2015 headlined the $146,250,000 recovery and reported that lawsuits, such as this one, "which typically allege that boards sold for too little, failed to disclose key points about the deal, or both, have long been common but ***rarely yield any additional money for investors***." Liz Hoffman, *Duke Energy to Pay $146 Million to Settle Merger Suit*, *Wall St. J.*, Mar. 10, 2015 (emphasis added). That Lead Counsel secured such an outstanding result quickly, efficiently and in the face of significant risks demonstrates that the requested fee of 24.5% is both reasonable and fair.

2. The Novelty and Difficulty of the Legal and Factual Issues

Courts have recognized that the novelty and difficulty of the claims in a case are significant factors to be considered in making a fee award. *See Johnson*, 488 F.2d at 718; *see also In re Charter Commc'ns, Inc.*, No. 4:02-CV-1186 CAS, 2005 U.S. Dist. LEXIS 14772, at *47-*48 (E.D. Mo. June 30, 2005) ("Securities fraud class actions are by their nature, complex and difficult to prove."). As

[9] *See* Laarni T. Bulan, Ellen M. Ryan & Laura E. Simmons, *Securities Class Action Settlements: 2014 Review and Analysis*, at 6 (Cornerstone Research 2015), *available at* https://www.cornerstone.com/.

discussed in the Joint Declaration and the Settlement Brief, substantial risks and uncertainties in this type of litigation under the PSLRA, and in this case in particular, made it far from certain that a recovery, let alone $146,250,000, would ultimately be obtained. From the outset, this Action was difficult and highly uncertain, with no assurance whatsoever that the Action would survive defendants' vigorous attacks on the pleadings, motion(s) for summary judgment, trial and appeal. As the court noted in *In re Ikon Office Solutions, Inc.*, 194 F.R.D. 166 (E.D. Pa. 2000),

> [t]here were the legal obstacles of establishing scienter, damages, causation . . . . The court also acknowledges that securities actions have become more difficult from a plaintiff's perspective in the wake of the PSLRA . . . . The Act imposes many new procedural hurdles [and] substantially alters the legal standards applied to securities fraud claims in ways that generally benefit defendants rather than plaintiffs.

Id. at 194-95.

After Congress enacted the PSLRA, courts across the country – and especially in this Circuit – repeatedly dismissed a high percentage of cases at the pleading stage due to failure to meet the PSLRA's heightened pleading standards, making it clear that the risk of no recovery (and hence no fee) has increased exponentially, even in high-profile criminal cases. *See, e.g.*, *Goldstein v. MCI Worldcom*, 340 F.3d 238, 241 (5th Cir. 2003) (affirming dismissal of securities action against Bernard Ebbers and WorldCom even though Ebbers was later convicted criminally). In fact, a study of securities class actions filed and resolved between January 2000 and December 2012, found that ***59%*** of cases filed in the Fourth Circuit were dismissed in defendants' favor.[10]

Even assuming Lead Plaintiffs survived the pleading stage and possible interlocutory appeals, they faced substantial hurdles. With respect to the Securities Act claims, defendants repeatedly argued that the "effective date" of the offering documents for purposes of assessing the

[10] *See* Dr. Renzo Comolli, Sukaina Klein, Dr. Ronald I. Miller & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2012 Full-Year Review*, at 18, Figure 16 (NERA Jan. 29, 2013).

falsity of defendants' statements was in July 2011, long before much of the evidence surrounding defendants' alleged plan to oust William Johnson was generated. The definition and timing of when the offering documents became effective was sure to pervade the case through summary judgment and trial, not to mention posing a substantial risk of interlocutory appeal.

Even assuming Lead Plaintiffs prevailed on the effective date issue, defendants insisted, and were prepared to present experts to testify, that the stock price declines suffered by Duke were unrelated to the alleged misstatements in the offering documents and, in any event, Duke's stock price increases in the period following the end of the Settlement Class Period mitigated any damages. Although Lead Counsel worked extensively with loss causation and damages experts, and believed they would be able to refute defendants' causation defense, the jury would have been presented with expert testimony opining that there were no or very little damages as a result of any alleged violations of the Securities Act. As a result, the crucial element of damages would almost certainly have been reduced at trial to a "battle of the experts." *See, e.g.*, *Cendant*, 264 F.3d at 239 ("establishing damages at trial would lead to a 'battle of experts' . . . with no guarantee whom the jury would believe").

With respect to the Exchange Act claims, Lead Plaintiffs would have the substantial burden of proving, *inter alia*, that each of the defendants was responsible for an omission or a misstatement that was material, that the omission or misstatement impacted the market price of Duke securities and caused damage to the Settlement Class, and that each defendant acted with scienter. *See generally In re PEC Solutions, Inc. Sec. Litig.*, 418 F.3d 379, 387 (4th Cir. 2005). Defendants strenuously argued that their statements were not false and that they had no duty to disclose the corporate board's internal deliberations. Indeed, defendants maintained that Board deliberations regarding Johnson's CEO role continued through the end of the Settlement Class Period and, thus,

there was never anything definitive to disclose to shareholders before July 3, 2012. Moreover, defendants argued that investors were always aware that Duke's Board could exercise its discretion to replace Duke's CEO at any time. The burden would be on Lead Plaintiffs to establish both that defendants had the legal obligation to disclose their consideration of or determination to replace Duke's CEO, as well as to prove that their concerns had become material as of the start of the Settlement Class Period. The legal and factual disputes about the duty to disclose, the materiality of the allegedly omitted information and defendants' intent and scienter were sure to be the primary focus at summary judgment and trial. Moreover, defendants indicated that they had strong reliance defenses – *i.e.*, that their decision not to disclose the Board's deliberations was considered and approved by others – and that, given such reliance, they could not have acted with any intent to commit fraud. In opting to settle the litigation, Lead Plaintiffs and Lead Counsel considered, among other things, the fact that if defendants prevailed on any one of these issues, the Settlement Class would recover nothing.

As with the Securities Act claims, defendants also made it clear that they and their experts would challenge Lead Plaintiffs' allegations regarding loss causation and damages. To prevail on their Exchange Act claims, Lead Plaintiffs would be required to prove that defendants' alleged misstatements and omissions caused or maintained inflation in the price of Duke's common stock, and that, in response to the disclosures of the true facts, the price of Duke's common stock dropped, damaging Lead Plaintiffs and the Settlement Class. *See Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 341-42 (2005). Lead Plaintiffs also would be required to prove the amount of the artificial inflation that came out of Duke's common stock following the July 2012 disclosures. Lead Counsel worked extensively with loss causation and damages experts to identify specifically when Duke's common stock price was inflated, the disclosures that revealed to true facts about Duke's CEO, the

amount of inflation that was removed from Duke's stock price as a result of those disclosures, and the amount of the stock price decline from July 3, 2012 to July 9, 2012 that could have been caused by macroeconomic, microeconomic or company-specific news unrelated to the alleged fraud. This economic analysis included constructing detailed statistical event studies and accounting for numerous variables that may have impacted Duke's stock price during and immediately after the Settlement Class Period. Defendants and their experts undertook a similar task. Not surprisingly, the parties arrived at very different conclusions, with defendants insisting that Lead Plaintiffs and the Settlement Class had not suffered any recoverable damages. Again, this dispute would come down to a "battle of the experts," with the jury forced to choose between highly reputable experts and vastly different opinions regarding complex issues. *See, e.g., In re EVCI Career Colls. Holding Corp. Sec. Litig.*, No. 05 Civ. 10240 (CM), 2007 U.S. Dist. LEXIS 57918, at *24 (S.D.N.Y. July 27, 2007) (noting unpredictability of battle of damage experts).

As a result of the foregoing risks, even if a jury were to find in Lead Plaintiffs' favor on the issue of liability, there was no assurance that the Settlement Class would be able to recover any damages. And, even if Lead Plaintiffs were ultimately successful at trial, the Action would likely continue through one or more levels of appellate review. A victory at the trial stage certainly would not guarantee ultimate success. Both trial and judicial review are unpredictable and could seriously and adversely affect the scope of an ultimate recovery, if not the recovery itself. Indeed, as one court has observed:

> Even a victory at trial is not a guarantee of ultimate success. If plaintiffs were successful at trial and obtained a judgment for substantially more than the amount of the proposed settlement, the defendants would appeal such judgment. An appeal could seriously and adversely affect the scope of an ultimate recovery, if not the recovery itself.

In re Warner Commc'ns Sec. Litig., 618 F. Supp. 735, 747-48 (S.D.N.Y. 1985) (citing numerous

examples), *aff'd*, 798 F.2d 35 (2d Cir. 1986).

A good example of the risks and delays inherent in securities litigation, even after a jury verdict in favor of the class, is *Jaffe v. Household International, Inc.*, No. 1:02-CV-05893 (N.D. Ill.) ("*Household*"). In *Household*, a large securities class action case filed in 2002 that was prosecuted by Robbins Geller, plaintiffs obtained a jury verdict in their favor on May 7, 2009 after a month-long trial and seven years of costly and contentious litigation. Because of post-verdict challenges, a judgment was not entered until October 17, 2013, which was then appealed. After 13 years of litigation, and six years after a favorable jury verdict, the Seventh Circuit ruled on May 21, 2015 that the defendants are entitled to a new trial limited to the issue of loss causation. As a result, not a single class member has received a penny from the defendants and the case is like to continue for years. Here, as in *Household*, Lead Plaintiffs could not be certain that they could promptly collect on a post-trial monetary judgment even if they did reach and prevail at trial.

There is simply no question that, absent settlement, this Action faced tremendous risk of years of additional litigation with no guarantee of any recovery. Accordingly, the novelty and difficulty of the legal and factual questions in this Action support the requested fee award.

3. The Skill Requisite to Perform the Legal Service Properly

This Settlement was achieved by Lead Counsel, two of the preeminent class action securities litigation firms in the country, with decades of experience in prosecuting and trying complex class actions.[11] Lead Counsel's experience and skill were demonstrated by the efficient and highly effective prosecution of this Action, culminating in the outstanding settlement before the Court. In short, the result achieved is the clearest reflection of counsel's skill and expertise. *See In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 261 (D. Del. 2002) (class counsel "showed their

[11] *See* the firm resumes of Lead Counsel which are attached as Exhibit C to the Robbins Geller Fee Declaration and Exhibit 3 to the Kessler Topaz Fee Declaration.

effectiveness in the case at bar through the favorable cash settlement they were able to obtain"), *aff'd*, 391 F.3d 516 (3d Cir. 2004). As the court recognized in *Edmonds v. United States*, 658 F. Supp. 1126 (D.S.C. 1987), the "prosecution and management of a complex national class action requires unique legal skills and abilities." *Id*. at 1137. In the instant matter, Lead Counsel achieved an early and highly favorable result, due in large part to their experience and expertise in litigating complex class actions.

The quality of opposing counsel is also important in evaluating the quality of services rendered by Lead Counsel. *See Schwartz v. TXU Corp.*, No. 3:02-cv-2243-K, 2005 U.S. Dist. LEXIS 27077, at *100 (N.D. Tex. Nov. 8, 2005) (weighing standing of opposing counsel when determining attorneys' fees "because such standing reflects the challenges faced by plaintiffs' attorneys"). The defendants are represented by both Sidley Austin LLP and Womble Carlyle Sandridge & Rice, LLP, highly experienced and very capable law firms with national reputations for vigorous advocacy in the defense of complex actions. Notwithstanding this formidable opposition, Lead Counsel's ability to present a strong case and to demonstrate their willingness and ability to continue to vigorously prosecute the Action through trial and the inevitable appeals enabled Lead Counsel to achieve a highly favorable settlement for the benefit of the Settlement Class.

4. The Time and Labor Involved

This case was carefully and comprehensively investigated and has been vigorously and efficiently litigated since its commencement. Lead and Liaison Counsel have marshaled considerable resources and time in the research, investigation and prosecution of this Action against formidable defendants. During the course of the Action, Lead Counsel: (1) reviewed and analyzed countless publicly filed documents, including thousands of pages of documents submitted by Duke and Progress to the SEC and regulatory agencies, such as the North Carolina Utilities Commission;

(2) reviewed and analyzed press releases, public statements, news articles, securities analysts' reports and other publications disseminated by or concerning Duke and Progress over a period of more than 40 months; (3) reviewed and analyzed statements, e-mails and sworn testimony from current and former Duke and Progress executives and directors; (4) consulted with experts in the fields of loss causation and damages; (5) thoroughly researched and analyzed the law pertinent to the claims and defenses asserted, including novel issues regarding liability and scienter; (6) developed and filed the fact-specific, 338-paragraph Corrected Consolidated Complaint ("Complaint); (7) researched and filed comprehensive briefing in response to Defendants' motion to dismiss the Complaint; (8) fully briefed defendants' objections to Judge Cayer's Order; (9) prepared for and argued defendants' objection before this Court; and (10) engaged in extensive arm's-length settlement negotiations directly with defendants and their counsel, as well as with the assistance of the Honorable Layn R. Phillips (Ret.), including the exchange and presentation of evidence and expert testimony on critical aspects of the claims and defenses. Counsel spent approximately 6,900 combined attorney and paraprofessional hours in prosecuting this case on behalf of the Settlement Class resulting in a lodestar of $4,091,730.25.

While the Settlement occurred at an early stage of the Action, counsel spent significant time and resources representing the Settlement Class. It was only after Lead Counsel fully vetted, scrutinized and carefully analyzed the $146,250,000 Settlement that they became satisfied that the recovery was an outstanding resolution of this complex action. Here, Lead Counsel were aggressive, efficient and highly successful in the prosecution of this Action, resulting in a substantial and certain monetary recovery for the Settlement Class that represents the largest settlement of a securities class action in North Carolina and the fifth largest securities class action settlement in the Fourth Circuit. *See McKnight v. Circuit City Stores, Inc.*, 14 Fed. App'x 147, 149 (4th Cir. 2001) ("the most critical

factor in calculating a reasonable fee award is the degree of success obtained'") (citation omitted). The recovery for the Settlement Class, at an early stage in the Action, is just the sort of result the percentage fee method was designed to reward. Rather than unnecessarily labor for several more years, billing hours, incurring even more significant expenses and delaying any potential recovery, or no recovery at all, the skill, efficiency and acumen of counsel have produced significant benefits for the Settlement Class. As a result, this factor strongly supports approval of the requested fee.

5. The Contingent Nature of the Fee Weighs in Favor of the Requested Award

A determination of a fair fee must include consideration of the contingent nature of the fee and the significant risks of non-recovery taken on by Lead Plaintiffs.

> It is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for winning contingency cases. *See* Richard Posner, *Economic Analysis of Law* §21.9, at 534-35 (3d ed. 1986). Contingent fees that may far exceed the market value of the services if rendered on a non-contingent basis are accepted in the legal profession as a legitimate way of assuring competent representation for plaintiffs who could not afford to pay on an hourly basis regardless whether they win or lose.

In re Wash. Pub. Power Supply Sys. Sec. Litig., 19 F.3d 1291, 1299 (9th Cir. 1994).

Lead Counsel have prosecuted this litigation for years on a wholly contingent basis and have borne all the possible risks, including surviving dispositive motions, obtaining class certification, proving liability, causation and damages, prevailing in the "battle of the experts" and litigating the case through trial and possible appeals. Lead Counsel understood from the outset that they were embarking on a complex, expensive and potentially lengthy litigation, which could require the investment of millions of dollars and many thousands of hours of attorney time, with no guarantee of ever being compensated for the investment of such time and money. Lead Counsel also understood that defendants were well-financed and would (and, in fact, did) retain large and highly experienced corporate defense firms to mount a strong defense. In undertaking this risk, Lead Counsel were

obligated to, and did, ensure that sufficient resources were dedicated to the prosecution of this Action. *See generally* Joint Decl., ¶¶103-106.

The risks of contingent litigation are highlighted by the fact that a dramatic change in the law can result in the dismissal of a claim after a great deal of time and effort has been expended on the case. Recently, the Supreme Court has shown great interest in class action cases generally, as well as securities cases in particular. *See, e.g., Halliburton Co. v. Erica P. John Fund, Inc.*, __ U.S. __, 134 S. Ct. 2398 (2014); *Comcast Corp. v. Behrend*, __ U.S. __, 133 S. Ct. 1426 (2013); *Wal-Mart Stores, Inc. v. Dukes*, __ U.S. __, 131 S. Ct. 2541 (2011); *AT&T Mobility LLC v. Concepcion*, __ U.S. __, 131 S. Ct. 1740 (2011); *Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247 (2010). As a result of these and other developments, many cases are lost on summary judgment after thousands of hours have been invested in successfully opposing motions to dismiss and pursuing discovery. Indeed, recent cases demonstrate the real risks associated with such developments. *See, e.g., In re Vivendi Universal, S.A. Sec. Litig.*, 842 F. Supp. 2d 522 (S.D.N.Y. 2012) (granting judgment on the pleadings following change of law in *Morrison*); *In re Williams Sec. Litig. - WCG Subclass*, 558 F.3d 1130, 1143 (10th Cir. 2009) (affirming grant of summary judgment for energy company based on Supreme Court decision in *Dura*).[12] Thus, there existed a very real risk that Lead Counsel (and the Settlement Class) would invest substantial resources and years of efforts and receive nothing. *See Eatinger v. BP America Prod. Co.*, No. 07-1266-EFM-KMH, slip op. at 14 (D. Kan. Sept. 17, 2012) ("Finally, the contingent nature of the case meant that at the end of the day, Class Counsel

[12] Indeed, even plaintiffs who survive summary judgment and succeed at trial may find their judgment overturned on appeal or on a post-trial motion. *See, e.g., In re BankAtlantic Bancorp, Sec. Litig.*, No. 07-61542-CIV-UNGARO, 2011 U.S. Dist. LEXIS 48057 (S.D. Fla. Apr. 25, 2011) (court granted defendants' judgment as a matter of law on the basis of loss causation, overturning jury verdict and award in plaintiff's favor), *aff'd*, 688 F.3d 713 (11th Cir. 2012); *Robbins v. Koger Props.*, 116 F.3d 1441, 1448-49 (11th Cir. 1997) (jury verdict of $81 million for plaintiffs against an accounting firm reversed on appeal on loss causation grounds and judgment entered for defendant).

could have been left with no fee and no recovery of the enormous expenses that it had paid and carried for years.").

Because the fee in this matter was entirely contingent and fraught with risk, the only certainty was that there would be no fee without a successful result. Lead Counsel committed significant resources of both time and money to the vigorous and successful prosecution of this Action for the benefit of the Settlement Class and were fully prepared to litigate through trial, if necessary, to recover the damages suffered by Lead Plaintiffs and the Settlement Class. The contingent nature of counsel's representation strongly favors approval of the requested fee.

6. Awards in Securities Class Actions and the Customary Fees in This Type of Litigation

As discussed above, it is customary in common fund cases, and particularly in securities class actions, to award fees as a percentage of the recovery. An appropriate fee is intended to approximate what counsel would receive if they were bargaining for their services in the open marketplace. *See Missouri v. Jenkins*, 491 U.S. 274, 285 (1989). In cases such as this, that "marketplace" can be assessed by evaluating the fees awarded in other complex class action cases.

Supreme Court Justices Brennan and Marshall observed in their concurring opinion in *Blum*: "In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery." *Blum*, 465 U.S. at 903. Similarly, in the securities class action context, Judge Marvin Katz of the Eastern District of Pennsylvania noted that in private contingent litigation, fee contracts have traditionally ranged between 30% and 40% of the total recovery. *Ikon*, 194 F.R.D. at 194. In the Fourth Circuit, courts routinely award fees in excess of 25% of the recovery achieved. *See In re Coventry Healthcare, Inc. Sec. Litig.*, No. 8:09-cv-02337-AW, slip op. (D. Md Oct. 29, 2013) (awarding fees of 27.5% of recovery, plus expenses); *Hardwick v. Rent-A-Center, Inc.*, No. 3:06-cv-00901, slip op. (S.D. W.Va. Feb. 3, 2009)

(awarding fees of 33% of recovery, plus expenses); *In re Constellation Energy Grp., Inc. Sec. Litig.*, No. 1:08-cv-02854-CCB, slip op. (D. Md. Nov. 4, 2013) (awarding fees of 33.3% of recovery, plus expenses); *In re aaiPharma Inc. Sec. Litig.*, No. 7:04-CV-27-D, slip op. (E.D. N.C. Oct. 2, 2007) (awarding fees of 30% of recovery, plus expenses); *see also In re Merry-Go-Round Enters.*, 244 B.R. 327 (D. Md. 2000) (holding that 40% negotiated contingency fee on $185 million settlement was appropriate in bankruptcy context). Thus, the requested 24.5% fee is at or below the low end of what courts have found to be the customary contingent fee in the private marketplace.

The Third Circuit, in *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294 (3d Cir. 2005), a case in which fees of 25% of the $126.6 million common fund were awarded, considered three studies regarding attorneys' fees in common fund cases:

> In comparing this fee request to awards in similar cases, the District Court found persuasive three studies referenced by Professor Coffee: one study of securities class action settlements over $10 million that found an average percentage fee recovery of 31%; a second study by the Federal Judicial Center of all class actions resolved or settled over a four-year period that found a median percentage recovery range of 27-30%; and a third study of class action settlements between $100 million and $200 million that found recoveries in the 25-30% range were "fairly standard." . . . We see no abuse of discretion in the District Court's reliance on these studies.

Id. at 303; *see also In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587, 590-91 (E.D. Pa. 2005) (awarding 25% fee on remand).

Consistent with the Third Circuit's commentary, the requested fee of 24.5% is reasonable when set in the context of analogous fee awards in securities fraud class actions where the settlement fund ranged between $100 million and $300 million. *See, e.g., In re Comverse Tech., Inc. Sec. Litig.*, No. 06-CV-1825(NGG)(RER), 2010 U.S. Dist. LEXIS 63342, at *23 (E.D.N.Y. June 24, 2010) (awarding 25% fee on $225 million settlement fund even though outcome of litigation was clear at outset); *CompSource Okla. v. BNY Mellon, N.A.*, No. CIV 08-469-KEW, 2012 U.S. Dist. LEXIS 185061, at *21-*22 (E.D. Ok. Oct. 25, 2012) (awarding 25% fee on $280 million settlement

fund); *Silverman v. Motorola, Inc.*, No. 07 C 4507, 2012 U.S. Dist. LEXIS 63477 (N.D. Ill. May 12, 2012) (awarding 27.5% fee of $200 million settlement fund), *aff'd*, 739 F.3d 956 (7th Cir. 2013); *In re Williams Sec. Litig.*, No. 02-CV-72-SPF (FHM), slip op. at 2 (N.D. Okla. Feb. 12, 2007) (awarding 25% fee of $311 million settlement fund).[13] These cases demonstrate that the requested fee of 24.5% is, if anything, ***below*** what is customary and awarded in similar cases, and is certainly reasonable given Lead Counsel's exemplary recovery for the Settlement Class here.

7. The Undesirability of the Case Supports the Requested Attorneys' Fees and Expenses

Large securities cases have often been recognized as "undesirable" due to the financial burden on counsel, and the time demands of litigating class actions of this size and complexity. *See, e.g.*, *Eatinger*, No. 07-1266-EFM-KMH, slip op. at 13 ("The time, effort, and out-of-pocket investment makes a class action undesirable to most attorneys."); *Millsap v. McDonnell Douglas Corp.*, No. 94-CV-633-H(M), 2003 U.S. Dist. LEXIS 26223, at *41 (N.D. Okla. May 28, 2003) ("This case is . . . undesirable, in the way that all contingent fee cases are undesirable, because it produced no income, but has required significant expenditures . . . ."). Notably, in this case only two firms other than Lead Counsel even moved to lead the litigation and Amalgamated Bank was the only institutional investor to move to be appointed Lead Plaintiff. This demonstrates that the vast majority of the securities bar and its sophisticated investor clients that are routinely involved in this type of litigation deemed this case to either be undesirable or too risky. Compare, for example, the recent high-profile securities case involving Petrobras. In that case, more than 10 law firms moved to be appointed lead counsel and more than 10 institutional investors moved to be appointed lead

[13] *See also In re Deutsche Telekom AG Sec. Litig.*, No. 00-CV-9475 (NRB), 2005 U.S. Dist. LEXIS 45798, at *12-*13 (S.D.N.Y. June 14, 2005) (awarding 28% fee on $120 million settlement fund); *In re Old CCA Sec. Litig.*, No. 3:99-0458, 2001 U.S. Dist. LEXIS 21942 (M.D. Tenn. Feb. 9, 2001) (awarding 30% fee on $104 million settlement fund); *Ikon*, 194 F.R.D. at 194 (awarding 30% fee on $111 million settlement fund).

plaintiff. *In re Petrobras Sec. Litig.*, No. 14-cv-9662 (JSR) (S.D.N.Y). As the Seventh Circuit recently recognized, the"[l]ack of competition [to serve as lead counsel] not only implies a higher fee but also suggests that most members of the securities bar saw this litigation as too risky for their practices." *Silverman*, 739 F.3d at 958.

8. The Experience, Reputation and Ability of Lead Counsel

The skill required and the experience, reputation, and ability of the attorneys also support the requested fee award. *See Johnson*, 488 F.2d at 717-19. Lead Counsel are among the nation's preeminent law firms in class action securities litigation and have successfully litigated and tried many of the largest securities actions in U.S. history. *See* firm resumes attached as Exhibit 3 to the Kessler Topaz Decl. and Exhibit C to the Robbins Geller Decl. Lead Counsel's experience and reputation for unflagging prosecution of securities claims, were integral in identifying the strengths and weaknesses of the claims, mediating with defendants on an equal footing and efficiently resolving this case on terms extremely favorable to the Settlement Class. The fact that Lead Counsel obtained a $146,250,000 recovery for the Settlement Class is a testament to their ability, experience and reputation.

9. Lead Plaintiffs' Approval and the Reaction to the Requested Fee by the Settlement Class Supports the Reasonableness of Lead Counsel's Fee Request

Although not specifically cited as a factor for consideration by the Fourth Circuit, courts also recognize the significance of the lead plaintiffs' support for the requested fee. *See, e.g.*, *In re Veeco Instruments Sec. Litig*., No. 05 MDL 01695 (CM), 2007 U.S. Dist. LEXIS 85554, at *25 (S.D.N.Y. Nov. 7, 2007) ("public policy considerations support the award in this case because the Lead Plaintiff . . . – a large public pension fund – conscientiously supervised the work of lead counsel and has approved the fee request"). The Lead Plaintiffs, including Amalgamated Bank, a sophisticated

institutional investor that was intimately involved in all aspects of the litigation, including personally attending and participating in mediation sessions with defendants and their counsel, support the 24.5% fee request. *See* Amalgamated Bank Decl., ¶5; Friesen Decl., ¶5; Bacino Decl., ¶5. Their support for the requested fee weighs heavily in favor of granting the 24.5% fee.

The reaction of the Settlement Class also supports the requested fee. As of May 22, 2015, the Claims Administrator has sent the Notice to over 440,000 potential Settlement Class Members and nominees, informing them that Lead Counsel intended to apply to the Court for an award of attorneys' fees in an amount of 24.5% of the Settlement Amount, plus interest earned at the same rate and for the same period as earned by the Settlement Fund. *See* Declaration of Carole K. Sylvester Regarding Execution of Notice Plan, ¶¶3-10, submitted herewith. While the objection deadline does not expire until June 8, 2015, to date, to counsel's knowledge, not a single objection has been received. This fact further supports an award of the requested 24.5% fee.

C. Lead Counsel Are Entitled to an Award of Their Reasonable Litigation Expenses

Payment of reasonable costs and expenses to counsel who create a common fund is both necessary and routine. *Strang*, 890 F. Supp. at 503. "'It is well-established that plaintiffs who are entitled to recover attorneys' fees are also entitled to recover reasonable litigation-related expenses as part of their overall award.'" *Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 689 (D. Md. 2013) (citation omitted). "Examples of costs that have been charged include necessary travel, depositions and transcripts, computer research, postage, court courts, and photocopying." *Id.* (citations omitted).

Here, Lead Counsel request an award of litigation expenses and charges, in the amount of $191,738.27 incurred to date in connection with the prosecution of the Action on behalf of the Settlement Class, plus interest on such amount at the same rate as earned by the Settlement Fund.

These expenses reflect reasonable costs and expenses expended for purposes of prosecuting this Action, including the retention of consultants and experts, legal research fees and mediation expenses. *See* Kessler Topaz Decl., ¶¶8-10; Robbins Geller Decl., ¶¶6-8; Dhamian Blue Decl., ¶¶6-8. The Court-approved Notice that was sent to Settlement Class Members confirmed that Lead Counsel would seek payment of expenses not to exceed $250,000, plus interest earned thereon at the same rate as the Settlement Fund. To date, to counsel's knowledge, no objections have been received. Accordingly, Lead Counsel respectfully request an award of $191,738.27 for these reasonable litigation expenses.

D. The Requested PSLRA-Expense Award for Lead Plaintiff Amalgamated Bank Should Be Approved

Pursuant to the PSLRA, the Court may also award "reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of a class." 15 U.S.C. §77z-1(a)(4) and 15 U.S.C. §78u-4(a)(4). Lead Plaintiff Amalgamated Bank requests reimbursement of $20,612.50. *See* Amalgamated Bank Decl., ¶6.

As set forth in its declaration, Amalgamated Bank, in fulfillment of its responsibilities to the Settlement Class, (i) engaged in numerous meetings, phone conferences and correspondence with Lead Counsel; (ii) participated in the litigation and provided input into the prosecution of the case; (iii) kept fully informed regarding case status; (iv) reviewed documents filed in this Action, including the Complaint and motion to dismiss briefing; (v) consulted with counsel and provided input regarding litigation and settlement strategy; (vi) participated in and was kept informed about all aspects of the mediation and settlement negotiations; and (vii) reviewed, discussed with counsel and provided comments on the Stipulation of Settlement and other settlement provisions and

documents. Amalgamated Decl., ¶3.[14] These are precisely the types of activities that courts have found to support awards to lead plaintiffs. *See, e.g., In re Am. Int'l Grp., Inc.*, No. 04 Civ. 8141 (DAB), 2010 U.S. Dist. LEXIS 129196, at *19 (S.D.N.Y. Dec. 2, 2010) (granting PSLRA award of $30,000 to institutional lead plaintiffs "to compensate them for the time and effort they devoted on behalf of a class"); *In re Flag Telecom Holdings*, No. 02-CV-3400 (CM) (PED), 2010 U.S. Dist. LEXIS 119702, at *38 (S.D.N.Y. Nov. 5, 2010) (approving award of $100,000 to lead plaintiff for time spent on the litigation).[15] The request by Lead Plaintiff Amalgamated Bank is supported by a sworn declaration, including a description of the hours directly dedicated to the Action. Lead Plaintiff Amalgamated Bank's request is reasonable, fully justified under the PSLRA and should be granted.

III. CONCLUSION

For all of the foregoing reasons, Lead Counsel respectfully request the Court to award attorneys' fees of 24.5% of the Settlement Fund and expenses in the amount of $191,738.27, plus interest at the same rate as earned by the Settlement Fund, and $20,612.50 to Lead Plaintiff Amalgamated Bank for the time it spent representing the Settlement Class.

DATED: May 22, 2015

Respectfully submitted,

KESSLER TOPAZ MELTZER & CHECK, LLP
Eli R. Greenstein (*pro hac vice*)
Stacey M. Kaplan (*pro hac vice*)

ROBBINS GELLER RUDMAN & DOWD LLP
Tor Gronborg (*pro hac vice*)
Jeffrey D. Light

[14] Lead Plaintiffs Gerald and Carolyn Friesen and Craig Bacino are not seeking PSLRA-expense awards.

[15] *See also Veeco*, 2007 U.S. Dist. LEXIS 85554, at *38 (characterizing such awards as "'routine[]'") (citation omitted); *Xcel*, 364 F. Supp. 2d at 1000 (awarding $100,000 collectively to lead plaintiffs who "fully discharged their PSLRA obligations and have been actively involved throughout the litigation [including] communicat[ing] with counsel [and] review[ing] counsels' submissions").

/s/ Eli R. Greenstein
ELI R. GREENSTEIN

One Sansome Street, Suite 1850
San Francisco, CA 94104
Telephone: 415/400-3000
415/400-3001 (fax)
E-mail: egreenstein@ktmc.com
E-mail: skaplan@ktmc.com

KESSLER TOPAZ MELTZER
& CHECK, LLP
Gregory M. Castaldo
Jennifer L. Enck
280 King of Prussia Road
Radnor, PA 19087
Telephone: 610/667-7706
610/667-7056 (fax)
E-mail: gcastaldo@ktmc.com
E-mail: jenck@ktmc.com

/s/ Tor Gronborg
TOR GRONBORG

655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)
E-mail: torg@rgrdlaw.com
E-mail: jeffl@rgrdlaw.com

ROBBINS GELLER RUDMAN
& DOWD LLP
Paul Geller (*pro hac vice*)
David J. George (*pro hac vice*)
Elizabeth A. Shonson (*pro hac vice*)
120 East Palmetto Park Road, Suite 500
Boca Raton, FL 33432
Telephone: 561/750-3000
561/750-3364 (fax)
E-mail: pgeller@rgrdlaw.com
E-mail: dgeorge@rgrdlaw.com
E-mail: eshonson@rgrdlaw.com

Lead Counsel for Lead Plaintiffs

BLUE STEPHENS & FELLERS LLP
Dhamian A. Blue (N.C. Bar #31405)
Daniel T. Blue, Jr. (N.C. Bar #5510)
Daniel T. Blue, III (N.C. Bar #27720)

205 Fayetteville Street, Suite 300
Raleigh, NC 27601
Telephone: 919/833-1931
919/933-8009 (fax)
E-mail: dab@bluestephens.com
E-mail: danblue@bluestephens.com
E-mail: dtb3@bluestephens.com

Liaison Counsel for Lead Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 22, 2015.

/s/ Eli R. Greenstein
Eli R. Greenstein

Mailing Information for a Case 3:12-cv-00456-MOC-DSC

Electronic Mail Notice List
The following are those who are currently on the list to receive e-mail notices for this case.

- **Steven M. Bierman**
  sbierman@sidley.com,emalin@sidley.com
- **Dhamian A. Blue**
  dab@bluestephens.com,danblue@bluestephens.com
- **Paul Jeffrey Geller**
  e_file_fl@rgrdlaw.com,pgeller@rgrdlaw.com,swinkles@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **David J George**
  dgeorge@rgrdlaw.com,kdouglas@rgrdlaw.com,e_file_sd@rgrdlaw.com,e_file_fl@rgrdlaw.com
- **Eli R. Greenstein**
  egreenstein@ktmc.com,jhouston@ktmc.com,rnathcook@ktmc.com,yjayasuriya@ktmc.com
- **Tor Gronborg**
  torg@rgrdlaw.com,hectorm@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Debbie Weston Harden**
  dharden@wcsr.com,shanley@wcsr.com,brsmith@wcsr.com,rferguson@wcsr.com
- **Stacey M. Kaplan**
  skaplan@ktmc.com
- **Jeffrey D. Light**
  jeffl@rgrdlaw.com
- **L. Bruce McDaniel**
  mcdas@mcdas.com,kbwatt@mcdas.com
- **William Everett Moore , Jr**
  bmoore@gastonlegal.com,mcarpenter@gastonlegal.com,selliott@gastonlegal.com,mrcarpenter@gastonlegal.com
- **Claire J. Rauscher**
  CRauscher@wcsr.com
- **David A. Rosenfeld**
  drosenfeld@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Jennifer Sarnelli**
  JSARNELLI@GARDYLAW.COM
- **Elizabeth A Shonson**
  eshonson@rgrdlaw.com,e_file_sd@rgrdlaw.com,e_file_fl@rgrdlaw.com