UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF ARKANSAS

ROBERT MURRAY, On Behalf of Himself and All Others Similarly Situated, Plaintiff, vs. EARTHLINK HOLDINGS CORP., et al. Defendants.	No. 4:18-cv-00202-JM CLASS ACTION DECLARATION OF DAVID A. KNOTTS IN SUPPORT OF SETTLEMENT MOTIONS

I, DAVID A. KNOTTS, declare as follows:

1. I am an attorney at the law firm of Robbins Geller Rudman & Dowd LLP ("Robbins Geller"), counsel for Lead Plaintiff in the above-captioned case. I am admitted *pro hac vice* in this Action.[1] I submit this Declaration in support of the Motions for Final Approval of Settlement and Approval of Plan of Allocation, Attorneys' Fees and Litigation Expenses, and Award to Lead Plaintiff Pursuant to 15 U.S.C. §78u-4(a)(4). I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

I. INTRODUCTION

2. Lead Plaintiff and Plaintiff's Counsel have vigorously prosecuted these claims for the past six years. Based on this effort, Lead Plaintiff and Plaintiff's Counsel succeeded in obtaining an $85 million recovery for the Settlement Class. Plaintiff's Counsel believes that the proposed Settlement represents an excellent result in this Action. The extraordinary nature of the Settlement and the extreme risk that Plaintiff's Counsel faced when pursuing this litigation is illustrated by the rarity of this result, across multiple metrics. As further discussed below, the $85 million Settlement:

- constitutes the largest securities class action recovery ever achieved in this District;
- constitutes the second largest such recovery ever achieved in any Arkansas federal court;
- is the largest securities class action recovery in the Eighth Circuit in over five years;
- is tied for the sixth largest such recovery in Eighth Circuit history, out of 179 total securities class actions filed in the Eighth Circuit;
- is over five times the median securities settlement amount of $15 million in 2023; and

[1] Unless otherwise stated or defined in this Declaration, all capitalized terms used herein shall have the meanings provided in the Stipulation of Settlement dated September 4, 2024 (the "Stipulation"). ECF 182.

- as described in greater detail below, represents 22% of Lead Plaintiff's estimated recoverable damages, an amount many times greater than the 4.6% median percentage recovery for securities cases in the Eighth Circuit from 2014 to 2023.

See infra, ¶115.

3. This result was achieved in the face of long odds. There was no preexisting blueprint for litigating these claims. This case involved no accounting restatement or pre-lawsuit investigation or finding of wrongdoing by the SEC, DOJ, or any other entity that could have given Plaintiff's Counsel a head start in litigating these claims. As a result, Plaintiff's Counsel had to develop the strategy, evidence, and theories of liability from scratch. Defendants frequently referred to this case as "a meritless securities class action" and a "groundless lawsuit" with "weak" facts that were "grossly insufficient under Eighth Circuit precedent." *See, e.g.*, ECF 26 at 1, 8; ECF 41 at 2; ECF 81 at 22-23. In the face of these risks, Lead Plaintiff and Plaintiff's Counsel litigated this case for six years, conducted extensive discovery, persevered in multiple contested motions, and achieved this groundbreaking Settlement for the benefit of the proposed class.

4. Perhaps for these reasons, other law firms, and other EarthLink stockholders, viewed this case as far too risky to pursue. Lead Plaintiff was a retail investor holding 10,000 EarthLink shares before the Merger. Other retail and institutional investors likely held far more shares of EarthLink in connection with the Merger, entitling them to a presumption of leadership in any contested leadership motion. But despite Lead Plaintiff's widely publicized notice of this Action, and a 60-day waiting period to allow all potential plaintiffs to come forward, no other law firm or stockholder sought a leadership role in this case. None stepped forward to litigate this Action on behalf of former EarthLink stockholders. *See infra*, ¶¶119-120.

5. Lead Plaintiff and Plaintiff's Counsel were well informed of the strengths and weaknesses of the claims in the Action at the time they reached the proposed Settlement. As described in further detail herein, Plaintiff's Counsel devoted over 11,000 hours and advanced over

$636,000 in costs on a contingent basis over a span of six years, all without any assurance of recovery. During that time, Plaintiff's Counsel successfully opposed Defendants' four motions to dismiss; fully briefed and argued a motion for class certification; prevailed on two fiercely-contested discovery motions; took or defended multiple depositions; obtained and processed for review nearly 1.5 million pages of documents; and fully briefed a unique, offensive pleadings motion that highlighted the strengths of this case and applied additional pressure on Defendants.

6. The parties reached the Settlement after contentious arm's-length negotiations, including formal mediation sessions overseen by Robert A. Meyer, a respected mediator with extensive experience mediating large complex class actions. Following two in-person mediation sessions on February 27, 2024 and April 8, 2024, and four weeks of complex arm's-length negotiations thereafter, the parties accepted a mediator's proposal on May 6, 2024 to settle all claims in exchange for $85 million in cash. The tireless efforts of Lead Plaintiff and Plaintiff's Counsel were responsible for creating this $85 million asset for the benefit of the Settlement Class.

7. Plaintiff's Counsel believes that the Settlement is an outstanding outcome and that its approval would be in the best interests of the Settlement Class. As detailed herein, the proposed $85 million Settlement represents a substantial percentage of the estimated recoverable damages that Lead Plaintiff reasonably believed could be established at trial. Lead Plaintiff also faced significant risks in establishing Defendants' liability and proving damages.

8. Thus, as explained further below, the Settlement provides a considerable benefit to the Settlement Class by conferring a substantial, certain, and immediate recovery while avoiding the risks of continued litigation, including the substantial risk that the Settlement Class could recover far less than $85 million (or nothing at all) after years of additional litigation and delay.

9. Lead Plaintiff also seeks approval of the proposed Plan of Allocation. As discussed in further detail below, the Plan of Allocation, which is set forth in the Notice mailed to Settlement

Class Members, provides for the distribution of the Net Settlement Fund to Settlement Class Members who submit Proofs of Claim that are approved for payment by the Court on a *pro rata* basis based on their recognized claim compared to the total recognized claims of all Authorized Claimants. The Plan of Allocation, developed in consultation with Lead Plaintiff's damages expert, is substantially similar to other plans approved in similar securities class actions.

10. In addition, Plaintiff's Counsel is applying for an award of attorneys' fees of 32% of the Settlement Fund. Over the past six years of litigation, Plaintiff's Counsel spent over 11,000 hours working to overcome substantial obstacles and achieve this Settlement for the class. Plaintiff's Counsel prosecuted this case on a fully contingent basis and incurred significant litigation expenses and thus bore all the risk of an unfavorable result. As discussed in the Motion for Attorneys' Fees and Litigation Expenses, the requested fee of 32% of the Settlement Fund – which Lead Plaintiff has reviewed and approved – is well within the range of percentage awards granted by courts in this Circuit and elsewhere in similarly sized securities class action settlements. Plaintiff's Counsel respectfully submits that the fee request is fair and reasonable considering the risks and complexity of the litigation, the efforts of Plaintiff's Counsel, and the result achieved in the Action. Further, the fee and expense application also seeks payment of litigation expenses incurred by Plaintiff's Counsel in connection with the institution, prosecution, and settlement of the Action totaling $636,422.45.

II. HISTORY AND PROSECUTION OF THE ACTION

A. Background and Pre-Lawsuit Investigation

11. The Merger between EarthLink and Windstream closed on February 27, 2017. On August 3, 2017, Windstream announced that it was eliminating its dividend, sending its shares plummeting. This also potentially harmed the former EarthLink shareholders who, like Lead Plaintiff, continued to hold the Windstream shares they received in connection with the Merger.

12. This dividend cut caused Lead Plaintiff and Plaintiff's Counsel to be concerned that Windstream was not disclosing an underlying, deeper problem with its business. As Lead Plaintiff alleged, analysts were also concerned, including one analyst who noted on a conference call with Windstream management that: "'so much damage had been done to the stock that no management team would have ever knowingly done what they did if there hadn't been some house-on-fire problem inside the business . . . .'" ECF 74, ¶151. But the full extent of the underlying issues was not publicly known.

13. As a result, Plaintiff's Counsel engaged in significant investigation and analysis of Windstream. A searching, detailed, and extensive investigation would be necessary to develop claims that would stand a chance of surviving the pleading stage. As Defendants would later argue, claims "under Section 14(a) are subject to particularized pleading requirements. 'Under the PSLRA's heightened pleading instructions, [a complaint] must: (1) "specify each statement alleged to have been misleading [and] the reason or reasons why the statement is misleading."'" ECF 26 at 15.

14. In recognition of those issues, Plaintiff's Counsel engaged in a detailed review and analysis of available facts in order to determine whether to file a complaint and, if so, to draft a strong pleading with multiple theories for relief. Most notably, Plaintiff's Counsel exhaustively reviewed and analyzed information regarding Windstream's business fundamentals and public representations then conducted a detailed comparison of that information with the disclosures in the Merger-related Offering Documents. In addition, Plaintiff's Counsel retained and consulted with a corporate finance and valuation expert regarding both EarthLink's and Windstream's expected business outlook relative to statements in the Offering Documents. All of this hard work uncovered claims missed by all other law firms and investors of EarthLink and Windstream.

B. Lead Plaintiff Initiates the Litigation, No Other Stockholder or Law Firm Seeks to Lead the Action

15. After that extensive investigation, on March 19, 2018, Lead Plaintiff filed a class action lawsuit on behalf of the former stockholders of EarthLink who received Windstream shares traceable to the Offering Documents in connection with the Merger. ECF 1. The complaint alleged that the Defendants – EarthLink, EarthLink's former Board of Directors, Windstream, the Windstream Board of Directors, and certain Windstream officers – violated federal securities laws by distributing misleading proxy and registration statements to effectuate the Merger. ECF 1 at 2-3. The complaint alleged violations of §11 of the Securities Act of 1933 (the "1933 Act"), §§14(a) and 20(a) of the Securities Exchange Act of 1934 (the "1934 Act") and U.S. Securities and Exchange Commission ("SEC") Rule 14a-9 promulgated thereunder.

16. Not long after filing the initial complaint, on April 5, 2018, Plaintiff's Counsel published the statutory notice to investors and putative class members, informing them of the pendency of the action, the claims asserted, and the right to seek appointment as lead plaintiff within 60 days. ECF 5 at 4, Ex. A. After the 60-day notice period expired, on June 4, 2018, Plaintiff filed a motion requesting an order: (1) appointing Plaintiff as lead plaintiff pursuant to the Private Securities Litigation Reform Act of 1995; and (2) approving Plaintiff's selection of Robbins Geller Rudman & Dowd LLP as Lead Counsel. ECF 4.

17. No other stockholder filed a similar motion. At the time, no other law firm expressed interest in litigating this case. As a result, Plaintiff's motion was unopposed. The Court granted that motion on June 22, 2018 and named Mr. Murray as Lead Plaintiff and Robbins Geller Rudman & Dowd LLP as Lead Counsel. ECF 13.

18. On July 27, 2018, Lead Plaintiff filed the Amended Complaint, asserting violations of largely the same securities laws as the original complaint. ECF 18. The Amended Complaint alleged in greater detail that the Offering Documents touted the purported successful transformation

of Windstream's business, the stability and likely increase of Windstream's dividend, and that Windstream was a strong, successful business. *Id.* The alleged undisclosed truth, however, was that Windstream's business was crumbling, its debt was unstable, and its dividend was on the verge of being eliminated. *Id.* at 2-3. As a result of the alleged misrepresentations and omissions in the Offering Documents, former EarthLink stockholders voted in favor of the Merger, thus permitting the Merger to close. Plaintiff alleged that proposed class members were harmed when Windstream stock price deteriorated after the close of the Merger. ECF 18 at 2-3.

C. Defendants' Initial Motions to Dismiss

19. Defendants filed two separate Motions to Dismiss the Amended Complaint on September 13, 2018. ECF 21-27. The EarthLink and Windstream Defendants argued that Lead Plaintiff's claim was barred by the statute of limitations and that the statements in question were inactionable as forward-looking statements of opinion accompanied by cautionary language. ECF 21 at 2-4. The EarthLink Individual Defendants asserted that "Plaintiff's allegations fail to show a single misleading statement or actionable omission" because "the allegedly omitted facts were fully consistent with the disclosures that Windstream was highly indebted, losing customers, facing intense pricing pressure from big cable and telecom companies and under no obligation to continue paying any dividends." ECF 26 at 3, 8.

20. Defendants' opening and reply briefs contained the following remarks regarding the strength of Lead Plaintiff's claims:

- "This is a meritless securities class action . . . ." *Id.* at 1.
- "Plaintiff does not cite a single case in any jurisdiction where dismissal was denied under facts remotely as weak as those alleged here." ECF 41 at 2.
- "This case has all the telltale signs of a groundless strike suit that should be dismissed on the pleadings." *Id.* at 11.
- "In sum, this is a groundless lawsuit . . . . Omitted facts are only actionable if they are materially inconsistent with the affirmative disclosures. Here, the allegedly

omitted facts were fully consistent with the disclosures that Windstream was highly indebted, losing customers, facing intense pricing pressure from big cable and telecom companies and under no obligation to continue paying any dividends." ECF 26 at 8.

- "Plaintiff's allegations fail to show a single misleading statement or actionable omission." *Id.* at 3.

- "Plaintiff likewise fails to plead anything resembling particularized facts supporting a 'strong inference' that any Defendant had 'actual knowledge' that the forward-looking statements were false (which, again, they were not)." *Id.* at 23.

21. These statements underscore the risk that Lead Plaintiff faced when litigating and eventually obtaining what is now set to be the largest securities settlement in the Eighth Circuit over the past five years.

22. Plaintiff's Counsel exhaustively researched, drafted, and filed a 39-page Omnibus Motion to Dismiss Opposition Brief on October 19, 2018 in support of the claims as alleged. ECF 37.

D. Windstream and EarthLink File Bankruptcy Petitions, Lead Plaintiff Secures a Carve-Out from the Stay

23. On February 25, 2019, while the initial motions to dismiss were pending, Windstream and its affiliated subsidiaries, including EarthLink, filed voluntary petitions for reorganization under Chapter 11 of the United States Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court" and the "Bankruptcy Proceeding").

24. At the outset of the Chapter 11 Cases, Lead Counsel retained Lowenstein Sandler LLP ("LS") as bankruptcy counsel to aid in protecting the rights of Lead Plaintiff and the proposed class. LS and its bankruptcy attorneys assigned to this matter are noted for their work representing the interests of shareholders, investors, and consumers in class action and other litigation against corporate defendants that are in bankruptcy.

25. Upon the filing of the Chapter 11 Cases, this action was automatically stayed with respect to the entity defendants in this action. On April 5, 2019, the Windstream Debtors filed an

adversary proceeding against Lead Plaintiff (among others) in the Bankruptcy Court seeking to enjoin the continued prosecution of this action against the non-debtor defendants. *Windstream Holdings, Inc. and EarthLink Holdings Corp. v. Yadegarian et al.*, Case No. 19-08247 (Bankr. S.D.N.Y.). LS, on behalf of Lead Plaintiff and at the direction of Lead Counsel, opposed the relief requested in the adversary proceeding and concurrently sought automatic stay relief to enable this action to proceed alongside the Chapter 11 Cases.

26. On June 17, 2019, the Bankruptcy Court granted Lead Plaintiff's motion to lift the automatic stay to enable this Court to hear and rule on Defendants' pending motions to dismiss notwithstanding the pending Chapter 11 Cases. *See* Case No. 19-22312 (Bankr. S.D.N.Y.), ECF 701 (order granting motion for limited relief from the automatic stay). The Bankruptcy Court's order extended the automatic stay in Windstream's bankruptcy case to the non-debtor defendants in this action, but with a carve-out "solely to the extent necessary to permit the Arkansas District Court to conduct oral argument and rule on the pending Motions to Dismiss with respect to all defendants in the Securities Litigation." ECF 50-1 at 2.

27. In the Bankruptcy Proceeding, LS filed a proof of claim on behalf of Lead Plaintiff and the proposed class in this Action against defendant Windstream on July 15, 2019.

E. The Hearing on the Initial Motions to Dismiss

28. Following the Bankruptcy Court's stay ruling, on August 22, 2019, the Court held a hearing on the motions to dismiss. ECF 53, 83 (transcript). During that hearing, which lasted three hours, the Court denied the motions to dismiss with respect to Defendants' statute of limitations arguments, but took the remainder of the motions under advisement. ECF 83 at 17-18, 89. The Court concluded the hearing by noting the complexity of the matter and stating, "I want to commend everybody. It was well argued and helpful. Sometimes it's well argued and not that helpful. But your presentations were both [well argued and helpful]." *Id.* at 89.

F. Plaintiff's Counsel and Lead Plaintiff Thwart Defendants' Attempt to Release These Claims in Bankruptcy

29. On April 1, 2020, the Windstream Debtors filed a proposed chapter 11 plan of reorganization (as amended from time to time, the "Plan") and an accompanying disclosure statement. *See* Case No. 19-22312 (Bankr. S.D.N.Y.), ECFs 1631, 1632. The original Plan included a third-party release that threatened to release the claims of Lead Plaintiff and the proposed class in this Action against not only Windstream and EarthLink, but also the individual defendants, imperiling this Action in its entirety.

30. LS, on behalf of Lead Plaintiff, filed an objection to the disclosure statement and proposed solicitation procedures for the Plan. *See* Case No. 19-22312 (Bankr. S.D.N.Y.), ECF 2165. The objection challenged the Plan's proposed release of the individual defendants from claims asserted against them in this Action. That objection eventually yielded the consensual resolution of substantially all of Lead Plaintiff's concerns through amendments to the Plan and disclosure statement. The most important of those amendments was the categorical exclusion of Lead Plaintiff and members of the Settlement Class from the definition of "Releasing Parties" under the Plan, thereby preserving their claims in this Action. *See* Case No. 19-22312 (Bankr. S.D.N.Y.), ECF 2201, at 19 n.2. Without these efforts, the members of the proposed class in this Action would have seen all of their claims summarily eviscerated.

31. The Bankruptcy Court entered an order (the "Confirmation Order") confirming Windstream's Chapter 11 Plan of Reorganization on June 26, 2020, and the effective date of the Plan occurred on September 21, 2020 (the "Effective Date"). Pursuant to paragraph 113 of the

Confirmation Order and Article XII.F of the Plan, the automatic stay in Windstream's chapter 11 case expired on the Effective Date and this Action was no longer stayed.[2]

32. Lead Plaintiff's efforts in connection with the Windstream Debtors' Chapter 11 Cases thereby preserved the claims of the putative class against all of the defendants in this Action over the Windstream debtors' efforts to obtain a third-party release of such claims.

G. Lead Plaintiff Amends the Complaint After an Extensive Review of Windstream's Bankruptcy Filings

33. While this case was on hiatus, Plaintiff's Counsel stayed active and continued to mine the massive bankruptcy docket and filings for information relating to the origination of Windstream's problems. Plaintiff's Counsel uncovered that, in its own bankruptcy filings, Windstream essentially admitted that it was previously aware of many of the structural problems with the Uniti Arrangement – the same Uniti Arrangement that led to the bankruptcy. On May 21, 2020, Lead Plaintiff notified the Court of the following developments:

> [I]n connection with the pending Motions to Dismiss, Lead Plaintiff apprises the Court that in Bankruptcy Court litigation related to Windstream's 2015 spinoff of Uniti, and in other related matters, Windstream and other parties have filed documents and made statements on the record that would feature in any amended complaint in this matter, should one become warranted pursuant to the Court's ruling on the pending Motions to Dismiss. While many such documents remain under seal or redacted, even the limited information in the public domain (arising since the operative pleading in this case) supports Lead Plaintiff's allegations of undisclosed problems with Windstream's dividend and capital structure in existence at the time of the Offering Documents at issue in this case. Particularly in light of this additional information, Lead Plaintiff therefore maintains his request that any adverse ruling on the pending Motions to Dismiss be made without prejudice to file an amended complaint.

ECF 56 at 1-2.

[2] Paragraph 96 of the Plan Confirmation Order provided that the claims of Lead Plaintiff and the putative class against defendants Windstream and EarthLink were "preserved solely to the extent of, and any recovery on account thereof shall be limited to, proceeds of available insurance, if any."

34. On October 9, 2020, Lead Plaintiff notified the Court that the automatic stay had terminated on September 21, 2020, the Effective Date of Windstream's Plan. ECF 61. As the Stay Order was no longer in effect, Lead Plaintiff explained that he was "now able to share some of those facts [arising in Windstream's Bankruptcy proceeding] with the Court." *Id.* at 1. Lead Plaintiff did so in that filing, and requested a status conference. *Id.* at 3. Lead Plaintiff again requested a status conference on April 7, 2021. ECF 65.

35. After Plaintiff's Counsel had reviewed, analyzed, and distilled thousands of relevant pages from the Bankruptcy Proceeding into an amended pleading, on May 11, 2021, Lead Plaintiff filed a Motion for Leave to Amend the First Amended Complaint (which attached the new pleading). ECF 68-69.

36. Upon obtaining Defendants' stipulation to Lead Plaintiff's leave to amend, on May 27, 2021, Lead Plaintiff filed his Second Amended Class Action Complaint for Violations of Federal Securities Laws, again asserting violations of §§11, 12(a)(2) and 15 of the 1933 Act, §§14(a) and 20(a) of the 1934 Act and SEC Rule 14a-9 promulgated thereunder (the "Second Amended Complaint"). ECF 74. Based on the recently uncovered information, Lead Plaintiff alleged that, at the time of the Merger, Windstream was already crumbling given a pernicious and structurally flawed "disguised financing" transaction that mandated billions in above-market annual "rent" payments. *Id.*, ¶7. The Second Amended Complaint further alleged, also based on documents uncovered in the Bankruptcy Proceeding, that by the time Defendants issued the Offering Documents, Windstream had already planned to eliminate its dividend. *Id.*, ¶¶85-86.

H. Defendants File the Next Round of Motions to Dismiss, Which the Court Denies

37. Defendants filed Motions to Dismiss the Second Amended Complaint on July 15, 2021. ECF 78-82. In addition to their arguments that the claims were substantively dismissible,

Defendants claimed that the applicable statute of repose barred Lead Plaintiff's claims. ECF 79 at 1.

Defendants again strongly criticized the likelihood of success of these claims:

- "Plaintiff's allegations that Windstream should have disclosed the Lease violated the Indebtedness Covenant are equally meritless. Most fundamentally, it rests on Plaintiff's rank speculation that the lease payments should have been treated as debt." *Id.* at 24-25.

- "Plaintiff appears to view this ever-changing suit as a game of whack-a-mole: As Defendants bat down one specious set of claims, Plaintiff resurfaces with a new complaint advancing a completely different theory." ECF 81 at 1.

- "Plaintiff's scienter allegations against the EarthLink Directors are grossly insufficient under Eighth Circuit precedent, which requires that Plaintiff must 'raise a strong inference of scienter for each defendant and with respect to each alleged misrepresentation.' Courts have granted or affirmed dismissal for lack of scienter on far stronger allegations than those made here . . . ." *Id.* at 22-23.

38. Lead Plaintiff filed an omnibus motion to dismiss opposition brief on September 7, 2021. ECF 84. In short, Lead Plaintiff argued:

> The Complaint adds allegations supporting the plausibility of the claims already pleaded. In particular, the Complaint alleges that the Offering Documents failed to disclose that:
>
> - Windstream predicated its accounting, financial reporting, and capital structure upon now-admitted misrepresentations to the SEC and IRS;
>
> - as Windstream ultimately admitted in detailed filings throughout its bankruptcy proceeding, the Uniti Arrangement was not a "true lease," but was in actuality a "disguised financing arrangement" representing billions of dollars in additional debt;
>
> - Windstream's $650 million per year payments under the Uniti Arrangement were not set at fair market value and, as a result of the harmful impact of those inflated and over-market payments, Windstream was unable to sufficiently invest in its network to remain competitive; and
>
> - the Uniti Arrangement placed Windstream in violation of multiple covenants in its debt indentures.
>
> When Windstream ultimately disclosed these preexisting facts after the Merger, the market was shocked. The purportedly safe and reliable Windstream shares that EarthLink stockholders voted to receive in the Merger ultimately plunged from $39.25 per share to zero.

Id. at 2.

39. On June 30, 2023, the Court denied Defendants' Motions to Dismiss the Second Amended Complaint. ECF 96. The Court ruled, in part:

> Applying the above pleading requirements to the SAC, the Court finds that Plaintiff has sufficiently stated a claim for each of his alleged securities violations. . . . The parties well and fully briefed the law as it relates to Plaintiff's specific allegations. Plaintiff's chief complaints are that the Offering Documents contained misleading half-truths and material omissions regarding Windstream's long-term debt levels and the sustainability of the dividend. The Court finds that the bold, italicized statements in SAC ¶¶135-137, 139-140, 145, and 146-149 – particularly in light of the omissions alleged in SAC ¶¶138(a)-(j), 141, 150(a)-(j), 151 – are sufficient to state a claim for violations of §14(a) of the Exchange Act and §§11, 12(a)(2) of the Securities Act. . . . Taking Plaintiff's allegations as true and drawing reasonable inferences in his favor, the SAC is sufficient to survive Defendants' motions to dismiss.

Id. at 10.

40. On July 21, 2023, Defendants filed their Answers to the Second Amended Complaint. ECF 103, 104. Defendants denied the vast majority of Lead Plaintiff's allegations. *Id.* In addition, Defendants each asserted 36 affirmative defenses, including that the alleged misstatements concerned non-actionable matters of opinion, or were puffery or soft information, rather than matters of material fact; that Lead Plaintiff knew, or in the exercise of reasonable care could have known, of the alleged untruths and/or omissions of which they complained; and that the misstatements and omissions alleged in the Complaint caused no damages. *Id*.

I. Plaintiff's Counsel Designs an Extensive and Strategic Multi-Phase Document Discovery Plan

41. The expansive scope and complexity of the underlying facts in this case made it particularly challenging to craft a targeted discovery plan. The Action involved three extraordinarily complex multi-billion-dollar corporate transactions spanning time periods from 2013 through 2020. The challenge for Plaintiff's Counsel was to develop a discovery plan that would obtain the key, previously-hidden corporate evidence regarding all three transactions, but in a targeted manner that

would not be undermined by well-founded burden and overbreadth objections from Defendants and the relevant third parties.

42. Windstream initially developed the first transaction, the Uniti Arrangement, in 2013. In a complex series of financial maneuvers, Windstream established a new publicly-traded REIT, spun a large part of Windstream's network assets out to the REIT – eventually known as Uniti – in exchange for cash and stock, and then retained the use of those same assets for $650 million annual "lease" payments. Much of the relevant documentations regarding the Uniti Transaction was dated from 2013 to 2015 and existed in the files of Windstream, Uniti, and a number of third party advisors, including Ernst & Young and Stephens, Inc.

43. Windstream engineered the second transaction, the Merger, in late 2016 and early 2017. EarthLink and Windstream conducted due diligence, then negotiated and agreed that EarthLink common stock would be exchanged for 0.818 shares of Windstream common stock. Upon close of the Merger, Windstream's stockholders owned approximately 51% and EarthLink stockholders received approximately 49% of the combined company. The relevant documents regarding the Merger were dated from 2016 to 2017 and existed in the files of EarthLink, Windstream, the Individual Defendants, and a number of third-party accounting and financial advisors, including Ernst & Young, Goldman Sachs, JP Morgan, Foros Securities, and Barclays Capital.

44. Windstream's third transaction, the Bankruptcy Proceeding, was filed in 2019 and completed in 2020. During its bankruptcy, Windstream pursued an adversary proceeding against Uniti seeking to recharacterize the master lease in the Uniti Transaction as a financing agreement. That adversary proceeding culminated in settlement that "included a complex series of transactions

. . . that provided debtors with more than $1.2 billion in present value."[3] The relevant documents regarding the Bankruptcy Proceeding were dated from 2013 to 2020 and existed in the files of Windstream, Uniti, and a number of relevant third parties, as well as in filings on the bankruptcy docket.

45. In light of the complexities of these transactions and the lengthy time period involved, Plaintiff's Counsel developed a strategic, multi-phased document discovery plan to obtain the relevant evidence. In Phase I, Plaintiff's Counsel worked to obtain the documents and transcripts that Defendants and third parties had already produced in three lawsuits comprising the Related Litigations.[4] In Phase II, Plaintiff's Counsel sought "core documents" regarding the Merger from both companies, including board minutes, board presentations, and due diligence summaries. In Phase III, Plaintiff's Counsel obtained Merger-related emails, using search terms crafted from those core documents. In Phase IV, Plaintiff's Counsel attempted to identify and remediate Defendants' document retention issues. And Phase V involved extensive third party discovery. Many of these phases occurred simultaneously given Plaintiff's Counsel's push to keep this case on schedule. Each step is broken down in more detail below.

1. Phase I: Documents from the Related Litigations

46. On July 13, 2023, in advance of the parties' Rule 26(f) conference, Plaintiff's Counsel provided Defendants with a draft discovery plan and case schedule, which proposed an initial production of documents from the Related Litigations and core Merger documents. ECF 126,

[3] *In re Windstream Holdings, Inc*., 2021 WL 2581301, at *2 (S.D.N.Y. June 23, 2021), *aff'd*, 2022 WL 14199458 (2d Cir. Oct. 25, 2022).

[4] The "Related Litigations" include: *Windstream Holdings, Inc. v. Uniti Group Inc.*, No. 7:19-AP-08279 (Bankr. S.D.N.Y.), *In re Uniti Group Securities Litigation*, No. 4:19-cv-00756 (E.D. Ark.), and *U.S. Bank National Association v. Windstream Services, LLC*, No. 1:17-CV-07857 (S.D.N.Y.).

¶5; ECF 126-4. At the ensuing discovery conference, Defendants' counsel expressed reluctance at the speed of the litigation proposed by Lead Plaintiff.

47. Shortly after the Rule 26(f) conference, on August 7, 2023, Lead Plaintiff served requests for production on the Windstream Defendants (ECF 126-5) and the EarthLink Defendants (ECF 126-6). The requests, *inter alia*, sought "[a]ll documents, deposition transcripts and exhibits, or trial exhibits and demonstratives produced or received by You" and "[u]nredacted copies of all currently redacted and/or sealed filings and exhibits in Your possession, custody, or control" from the Related Litigations.

48. On August 28, 2023, the parties submitted a Joint Report of the Parties' Planning Meeting ("Joint Discovery Report"). ECF 106. At Lead Plaintiff's insistence, Defendants agreed on the initial scope of production and case schedule, setting September 29, 2023 as the deadline for "Parties Complete Initial Productions of Documents." *Id.* at 1-2. Those initial documents included everything produced by any Defendant in the Related Litigations. *Id.* The Joint Discovery Report also set January 26, 2024 as the deadline for "Substantial Completion of Parties' Document Productions." *Id.* at 2.

49. On September 29, 2023, the Windstream Defendants produced just 879 documents, 213 of which were duplicates. The EarthLink Defendants produced no documents.

50. Plaintiff's Counsel went to work. Given the fast approaching discovery deadlines, in just one week, Plaintiff's Counsel had reviewed each of those 879 documents and determined that they did not constitute all requested and responsive documents from the Related Litigations. As a result, just eight days after receiving the production, on October 6, 2023, Plaintiff's Counsel wrote to Defendants' counsel to request a meet and confer. ECF 126, ¶19; ECF 126-13. The detailed letter described with specificity the documents missing from the September 29, 2023 production, with cited examples from the Related Litigations. The letter noted that the 879 documents reflected only

a small portion of the over 20,000 responsive documents from the Related Litigations and consisted of a small assortment of deposition exhibits, a few deposition transcripts, some trial exhibits, and some sealed filings, but only an unexplained and unaccounted for subset of each of these categories. ECF 126, ¶19.

51. Additional discussions between the parties proved unsuccessful and, on October 20, 2023, Lead Plaintiff filed a Motion to Compel All Defendants to Produce Documents. ECF 123-126. Plaintiff argued that, "[i]n light of their multiple blown deadlines, reversals of positions, and refusal to commit to any date certain for production, it has become abundantly clear that Defendants will not timely produce documents unless ordered to do so." ECF 124 at 1. The Motion involved two primary issues: Defendants' missed deadlines to produce documents from the Related Litigations and Defendants' lack of Merger-related documents produced (as described in Phase II below).

52. Lead Plaintiff's Motion to Compel explained that by September 29, 2023, Defendants had produced a mere 879 documents from the Related Litigations, despite evidence indicating that Defendants had produced over 20,000 documents to other parties in those same cases. ECF 124. Defendants opposed the motion and Lead Plaintiff filed a reply brief on November 14, 2023.

53. On December 4, 2023, the Court granted Plaintiff's Motion to Compel. ECF 140. The Court ordered Defendants to produce Documents from Related Litigations and Formal Merger-Related Documents by December 21, 2023, and Other Merger-Related Documents by January 26, 2024. *Id.* This was a significant victory that allowed Lead Plaintiff to obtain crucial discovery while keeping the Action on schedule.

54. Lead Plaintiff's Motion to Compel prompted Defendants to produce a significant number of documents from the Related Litigations. On October 27, 2023 and November 3, 2023, Defendants produced a combined 21,049 documents and 308,765 pages from the Related Litigations.

Plaintiff's Counsel assigned a dedicated group of several attorneys to work full time on document review for this Action. Plaintiff's Counsel prioritized these documents for review using date ranges and algorithm-based predictive coding applications. Many of these documents were ultimately utilized as exhibits in depositions and undoubtedly impacted settlement discussions as well.

2. Phase II: Merger-Related Core Documents

55. Plaintiff's Counsel pursued Phase II, the Formal Merger-Related Documents, simultaneous with Phase I. By way of background, the claims against the EarthLink Defendants involve a negligence standard and their formal Merger-related documents could show their due diligence (or lack thereof) of Windstream's problems. Further, Windstream's own Merger-related analysis could prove whether its own undisclosed problems were in existence at that time, which was a key disputed issue in this Action.

56. In the parties' early scheduling discussions, Plaintiff's Counsel proposed a phased approach to discovery of Merger-related documents, involving an initial production of "easily accessible" formal board materials, followed by the negotiation of reasonable electronic search terms. These initial documents included:

> Formal Merger-related documents of both EarthLink and Windstream, including relevant board minutes, financial advisor presentations, management presentations to the board, management presentations to the counter-party to the Merger, confidentiality agreements between EarthLink and Windstream, and any officer level diligence summaries or valuation summaries of either EarthLink or Windstream.

ECF 106 at 5. Once Defendants produced their Formal Merger-Related Documents, Plaintiff's Counsel intended to utilize those documents to craft an ESI search protocol including search terms, custodians, and date ranges for Defendants' Merger-related emails and the other Merger-related documents.

57. Immediately following the August 28, 2023 Joint Discovery Report, Plaintiff's Counsel conducted extensive negotiations with Defendants' counsel regarding the production of

Core Merger Documents, through multiple emails, letters, and phone conversations. Those meet and confer efforts were not successful.

58. Lead Plaintiff's October 20, 2023 Motion to Compel All Defendants to Produce Documents (described above) also included requests for the Merger-related documents. The Motion to Compel pointed out that although the discovery period was halfway over, "to date, Defendants have produced zero documents about [the merger at the heart of Plaintiff's allegations]. And half of the Defendants – the EarthLink Defendants – have not produced a single document in this case at all." ECF 124 at 1. Lead Plaintiff noted that Defendants "appear to be attempting to 'run out the clock' by delaying production of the easily-produced Formal Merger-Related Documents, then using that delay to claim that there is not enough time to review and produce ESI." *Id.* at 17.

59. As further described above, on December 4, 2023, the Court granted Plaintiff's Motion to Compel and ordered Defendants to produce Formal Merger-Related Documents by December 21, 2023, and Other Merger-Related Documents by January 26, 2024. ECF 140. As a result, Defendants produced 236 Formal Merger-Related Documents (6,009 pages) on December 15, 2023.

3. Phase III: Defendants' Emails Regarding the Merger

60. Plaintiff's Counsel sought to use the Formal Merger-Related Documents to craft informed, targeted search terms to obtain relevant emails regarding the Merger. As a result, three days after the Court's Motion to Compel ruling, Plaintiff's Counsel wrote to Defendants on December 7, 2023, asking them to "begin a rolling production of the Formal Merger Related documents to ensure that the documents are not back-loaded towards the deadline of December 21, 2023." ECF 152-1.

61. Upon receiving the 236 Formal Merger-Related Documents on December 15, 2023, Plaintiff's Counsel quickly began reviewing and analyzing those documents in order to craft a

reasonable set of search terms, custodians, and date ranges for the production of ESI. This involved identifying the key individuals involved in putting together and conducting diligence regarding this complex corporate merger, analyzing documents to identify key words and other relevant terms that would return key emails in an electronic search, and identifying a targeted set of date ranges for relevant documents.

62. The prompt return of targeted, well-crafted ESI protocols to Defendants was crucial to ensuring a complete production of Merger-related ESI by the existing document production deadlines. After working through the holidays to analyze the Merger-related documents and craft those protocols, on December 27, 2023, Plaintiff's Counsel provided Defendants a series of "ESI Protocol Proposals for both companies' respective executives and outside directors." To give the Court a sense of the effort involved, those protocols are attached hereto as Exhibit A.[5]

63. Defendants thereafter produced ESI regarding the Merger and related post-close issues on and in the following dates, subjects, and amounts:

Date of Production	**Description**	**# of Documents**	**# of Pages**
January 19, 2024	Windstream's merger-related and post-close documents.	2,198	15,958
January 25, 2024	Windstream's merger-related and post-close documents.	5,165	58,162
January 26, 2024	Windstream's merger-related and post-close documents.	778	5,176
January 26, 2024	EarthLink's merger-related documents.	269	2,334
February 8, 2024	EarthLink Director Defendant Salemme's merger-related and post-close documents.	274	975
February 14, 2024	EarthLink Director Defendant McGuire's merger-related and post-close documents.	5	20

[5] ECF 152-1 (Exhibit 1 of Declaration of Noelle Reed in support of Defendants' motion for a protective order).

Date of Production	Description	# of Documents	# of Pages
February 16, 2024	EarthLink Director Defendant McGuire's post-close documents.	2	2
March 1, 2024	Windstream Director Defendants' merger-related and post-close emails and attachments.	58	82
March 6, 2024	EarthLink Director Defendant Stoll's merger-related and post-close documents.	107	173
March 26, 2024	Windstream Director Defendant Diefenderfer's post-close hard copy presentation.	1	39
TOTAL		**8,857 Documents**	**82,921 Pages**

64. Plaintiff's Counsel's team of attorneys reviewed the documents, analyzed their impact on the claims, and processed many such documents for use as deposition exhibits.

4. Phase IV: Identification and Remediation of Defendants' Document Retention Issues

65. Lead Plaintiff's efforts to address Defendants' document retention issues began in the Bankruptcy Proceeding, while this Action was stayed. Lead Plaintiff sought to ensure that Windstream and its affiliates did not destroy documents upon emerging from their bankruptcy proceedings. After modifying the release that attempted to extinguish these claims, Plaintiff's Counsel, through LS, filed a limited objection to confirmation of the Plan in order to confirm Windstream's obligation to retain documents. Lead Plaintiff's objection was resolved through a consensual representation by counsel for the Windstream Debtors on the record at the Plan confirmation hearing that the Windstream Debtors would continue to abide by their obligations to preserve evidence in connection with this Action.

66. During Lead Plaintiff's full-court press to secure Defendants' timely production of documents, Plaintiff's Counsel noticed that Defendants' counsel was not timely responding to the ESI Protocols that had been transmitted by Lead Plaintiff on December 27, 2023. Repeated attempts

to ascertain the details of Defendants' document collection efforts were met with silence. Thus, Plaintiff's Counsel drafted, and on January 18, 2024, Lead Plaintiff served, interrogatories to each of the EarthLink Individual Defendants and Windstream Directors concerning document search, collection, production, and destruction issues. ECF 157, ¶4. Lead Plaintiff served interrogatories to Windstream and EarthLink on January 30, 2024 covering the same set of issues.

67. On a January 26, 2024 meet and confer call, counsel for Defendants disclosed that the emails of all four top EarthLink executives at the time of the Merger, including Defendant/CEO Eazor and the CFO, had not been retained. ECF 157, ¶6; *see also* ECF 152-4. On the call, Defendants' counsel stated that they were not prepared to discuss how, when, or why the destruction of the custodians' documents happened. ECF 157, ¶6. The same day, Plaintiff's Counsel drafted and sent a letter expressing concern about this revelation and seeking further clarity as to the deleted documents, also noting that Rule 30(b)(6) testimony on these issues would likely be required. ECF 152-4.

68. Lead Plaintiff served Rule 30(b)(6) deposition notices to both EarthLink and Windstream, seeking testimony regarding the collection, preservation, and purported deletion of highly relevant Merger-related documents. ECF 152-2, 152-3. Plaintiff's Counsel believed that Rule 30(b)(6) depositions could help identify responsive documents that were missing and give rise to targeted discovery requests to efficiently obtain any missing records. In addition, Rule 30(b)(6) depositions in this case could have assisted in enabling forensic analysis, rectifying deletions, locating missing files, or identifying additional sources or custodians of discoverable documents. For example, Defendants refused to provide information regarding the existence of other methods of preserved electronic communication, *e.g.*, personal email accounts, text messages, or retained chats. Defendants would not answer questions about whether records of other EarthLink executives are still in existence and could be produced. A Rule 30(b)(6) witness, however, could have been prepared to

answer such questions. Lead Plaintiff propounded interrogatories to all defendants on the same issues.

69. Defendants responded that they were not willing to sit for the noticed depositions. Following subsequent meet and confer, Defendants filed a Motion for a Protective Order Regarding Depositions on February 8, 2024, asking the Court to enter a protective order prohibiting the Rule 30(b)(6) depositions sought by Lead Plaintiff. ECF 150-152. Lead Plaintiff filed an opposition brief on February 22, 2024. ECF 156-157.

70. The Court conducted a hearing on the Motion for Protective Order on April 5, 2024. At that hearing, the Court ordered Defendants to file a letter with the Court by April 19, 2024 that fully explained various issues of document collection, retention, deletion, and potential alternate custodians. *See* ECF 173. Defendants filed that letter shortly before the parties reached a settlement.

5. Phase V: Document Collection from Third Parties

71. From August 29 to September 15, 2023, Lead Plaintiff served subpoenas on non-parties Foros Securities, Barclays Capital, Goldman Sachs, JP Morgan Chase, Kroll, Ernst & Young, Stephens, Aurelius, US Bank, and Uniti Group. In addition to Merger-related requests, those subpoenas also sought the production of documents from the Related Litigations.

72. Plaintiff's Counsel engaged in extensive negotiations with many of these third parties over search terms, custodians, and time frames for production. These third parties were well-capitalized and many were represented by some of the largest defense firms in the world, such as Foros Securities (represented by Alston & Bird LLP), Goldman Sachs (represented by Ropes & Gray LLP), JP Morgan (represented by Jones Day), Kroll (represented by Faeger Drinker Biddle & Reath LLP), Stephens (represented by Quattlebaum, Grooms, & Tull PLLC), Uniti Group (represented by Davis Polk & Wardwell LLP), Aurelius (represented by Friedman Kaplan Seiler Adelman & Robbins LLP), and US Bank (represented by Maslon LLP).

73. The documents and deposition testimony obtained from these third parties were crucial in building support for Lead Plaintiff's claims. Plaintiff's Counsel introduced several such documents as exhibits at depositions and would have featured many such documents at any trial in this Action.

74. In total, Defendants and non-parties produced more than 130,000 documents, totaling over 1.4 million pages.

Producing Party	Number of Documents Produced	Total Number of Pages Produced
Defendants		
EarthLink Director Defendants	282	1,598
Marc Stoll	107	173
Windstream	30,726	426,406
Third Parties		
Barclays Capital	11,408	162,480
Ernst & Young	19,894	102,333
Foros Securities	2,537	35,118
Goldman Sachs	4,085	52,104
JP Morgan	17,488	83,909
Kroll	158	3,275
Stephens	11,712	92,866
Uniti Group	33,683	439,775
US Bank	410	16,974
TOTAL	**132,490**	**1,417,011**

J. Fact and Expert Witness Depositions

75. At the time of settlement, six depositions had already occurred, including Defendants' economic expert, multiple former EarthLink and Windstream directors, and Lead Plaintiff. Fifteen additional depositions had been scheduled at the time of the settlement. Below is a chart of the depositions taken by Lead Plaintiff:

Deponent	Date of Deposition	Deposition Location
Lucy Allen, Defendants' expert	December 13, 2023	New York, NY

Deponent	Date of Deposition	Deposition Location
Garry McGuire, former EarthLink Board member	February 16, 2024	Nashville, TN
Kathy Lane, former EarthLink Board member	February 29, 2024	Needham, MA
Carol Armitage, former Windstream Board member	March 14, 2024	Kingston, NY
Jeannie Diefenderfer, former Windstream Board member	March 29, 2024	Morristown, NJ

76. The testimony elicited during these depositions was supportive of Lead Plaintiff's claims. We recognize, however, that there was also information elicited during these depositions that a jury could view as supportive of Defendants' positions. Nevertheless, these depositions, and the documents discussed therein, provided Plaintiff's Counsel with a solid basis to understand the risks and strengths of the case; how to move forward with the litigation, including the anticipated defense against Defendants' likely motion for summary judgment motion; and how to prepare for trial.

K. Lead Plaintiff Produces Discovery and Litigates Class Certification

77. In connection with Lead Plaintiff's impending motion for class certification, on September 27, 2023, Defendants served their First Request for the Production of Documents on Lead Plaintiff. Plaintiff's Counsel prepared responses and objections to these requests and worked with Lead Plaintiff to gather potentially relevant and responsive materials. After Plaintiff's Counsel conducted a review of these documents for privilege and relevance, Lead Plaintiff began producing documents on September 29, 2023. Lead Plaintiff produced to Defendants over 150 documents, totaling 7,787 pages.

78. On October 12, 2023, Lead Plaintiff filed his Motion for Class Certification seeking (i) his appointment as Class Representative, (ii) Robbins Geller's appointment as Class Counsel, and

(iii) certification of the proposed Class. ECF 118-121. Lead Plaintiff then sat for a deposition in Little Rock on November 8, 2023. Defendants introduced 17 exhibits, comprised of hundreds of pages. Mr. Murray performed admirably in five hours of intense questioning by a senior securities partner at one of the largest corporate defense firms in the world.

79. Defendants filed a brief opposing class certification, in part based on an expert report authored by economist Lucy P. Allen, Senior Managing Director at NERA Economic Consulting. ECF 135.

80. Plaintiff's Counsel deposed Ms. Allen on December 13, 2023 in New York City, where Ms. Allen is located. The deposition lasted from roughly 10:00 a.m. to 3:30 p.m. Plaintiff's Counsel worked extensively with their own retained economic expert, Matthew D. Cain, Ph.D. (as described in more detail below) to prepare for that deposition. Plaintiff's Counsel believes that such preparation was useful to undermine Ms. Allen's testimony in opposition to class certification. Plaintiff's Counsel therefore incorporated much of that testimony into Lead Plaintiff's class certification reply brief, filed on December 20, 2023.

81. After full briefing on the Motion for Class Certification, the Court held a hearing on that motion on February 15, 2024 and took the matter under advisement. ECF 155. At that hearing, Plaintiff's Counsel provided the Court with a detailed PowerPoint presentation, which matched the standards with the relevant evidence on each contested issue. The Court concluded the hearing by remarking, "I'm not being facetious when I say this was fun. It was well briefed, well argued, and I appreciate it because this is a chewy case with some thorny issues, and so y'all's effort to spoon feed me on this is appreciated." ECF 162 at 55. The Court had not issued a ruling on the Motion for Class Certification at the time the parties notified the Court of this Settlement.

L. Lead Plaintiff's Retention of Experts

82. In addition to conducting comprehensive fact discovery, Lead Plaintiff and Plaintiff's Counsel retained multiple well-qualified experts while investigating and prosecuting the case. Plaintiff's Counsel aided the experts' analysis through careful review of the discovery record. While these retained experts did not ultimately testify, each assisted the mediation effort and, at the time of settlement, multiple such experts were preparing an expert report, set to be exchanged on August 6, 2024. These contemplated expert opinions concerned damages, accounting, merger due diligence, and corporate valuation. Lead Plaintiff retained the following experts:

- Bjorn Steinholt: Mr. Steinholt is a CPA and managing director at Caliber Advisors, a full-service financial valuation and economic consulting firm, and has over 30 years of experience providing capital markets consulting, including analyzing and valuing investments. Lead Plaintiff retained Mr. Steinholt to opine and testify on issues relating to market efficiency, loss causation, and damages under securities laws. Mr. Steinholt was preparing an expert report at the time of settlement and later developed the Plan of Allocation based upon the analyses he performed in this litigation.

- William H. Purcell: Mr. Purcell has over 50 years of experience in investment banking, and as such has provided extensive advice and assistance to companies and organizations on due diligence, financing issues, valuations, fairness opinions, and other related issues. Mr. Purcell has also served as a director of various companies, and thus has experience with fiduciary duties, disclosure duties, diligence, and the general responsibilities of a board member. Mr. Purcell also has extensive experience as a consulting and testifying expert regarding adequate due diligence. Mr. Purcell was preparing a report regarding the due diligence conducted in connection with the Merger.

- Matthew D. Cain, Ph.D.: Dr. Cain is a Senior Fellow, Berkeley Center for Law and Business, University of California, Berkeley and has a Ph.D. in finance. Dr. Cain is an expert in securities litigation, corporate disclosures, M&A litigation, private equity, valuation, insider trading, and corporate governance. Here, Dr. Cain provided non-testifying consulting analysis regarding damages under the securities laws.

- Hemming Morse: Lead Plaintiff engaged Stu Harden of Hemming Morse, a firm devoted to financial and forensic accounting. Mr. Harden has been an auditor for over 30 years and is a member of the Emerging Issues Task Force (EITF) of the Financial Accounting Standards Board, which establishes accounting standards in the U.S. Here, Mr. Harden was evaluating and potentially preparing an expert report regarding a number of accounting issues related to Windstream's accounting disclosures and the Uniti Arrangement.

- David W. Larue: Professor Larue is a Professor Emeritus, University of Virginia and has taught undergraduate and graduate courses on financial accounting, federal taxation, economic analysis, and international finance and business at the McIntire School of Commerce. Professor Larue has chaired and served on committees and task forces for numerous accounting organizations, including the Tax Section of the American Institute of Certified Public Accountants (AICPA). Here, Professor Larue was evaluating and potentially preparing an expert report regarding a number of accounting issues related to Windstream's accounting issues and the Uniti Arrangement.

- HKA Global, LLC: HKA Global, LLC, through David Bones, provided Lead Counsel with detailed analysis and assistance on issues relating to the value of Windstream and EarthLink common stock, the opinions of Defendants' financial advisors, and the valuation impact and reliability of various financial projections in the record. Mr. Bones is an economic damages expert with 17 years of experience in commercial damages and construction matters. Mr. Bones is a member of the National Association of Certified Valuators and Analysts and a member of the Association of Certified Fraud Examiners.

- RGL, Inc.: RGL, Inc., through CPA Matthew Morris, provided Lead Counsel with detailed analysis and assistance on issues relating to the value of EarthLink and Windstream common stock, the fairness opinions of both companies' financial advisors, and the valuation impact and reliability of various financial projections in the record.

83. These experts played a valuable role in preparing Plaintiff's Counsel for mediation and would have had a significant impact had this case proceeded to a jury trial in November 2024.

M. Lead Plaintiff's Novel Offensive Pleadings Motion Places Additional Pressure on Defendants

84. While discovery was ongoing, Plaintiff's Counsel developed a strategy designed to resolve crucial elements of the claims in Lead Plaintiff's favor before trial. Two unique factual issues gave rise to this plan. First, in litigation that led to Windstream's bankruptcy filing, the United States District Court for the Southern District of New York issued a post-trial ruling that the Uniti Arrangement breached Windstream's debt covenants and that Windstream was judicially estopped from asserting otherwise. Second, Windstream characterized the Uniti Arrangement in its bankruptcy proceeding in ways that potentially supported Lead Plaintiff's claims of misleading disclosures and omissions regarding that transaction.

85. Plaintiff's Counsel conceived a plan to file a partial motion for judgment on the pleadings as to these issues, utilizing the doctrines of both collateral and judicial estoppel. This unique strategy required extensive research. Plaintiff's Counsel identified no similar motions for partial judgment on the pleadings ever filed by a plaintiff in any securities case. On January 19, 2024, Plaintiff's Counsel completed a nineteen-page, single spaced, internal memorandum analyzing the complicated procedural and legal issues and likelihood of success on such a motion.

86. After further research and analysis by Plaintiff's Counsel, Lead Plaintiff filed the Motion for Partial Judgment on the Pleadings on February 23, 2024. ECF 159-161. The motion stated that resolution of certain issues would "substantially streamlin[e] briefing and trial. In particular, resolving the narrow legal issue of whether Windstream is collaterally and/or judicially estopped from relitigating specific facts now would [spare] the Court and the parties significant time and effort in needlessly duplicating prior litigations." ECF 160 at 5. The motion also argued, "[t]here is simply no need to repeat that process here, or relitigate issues that Windstream has judicially admitted, when those previously resolved issues can (and should) be conclusively established in this litigation through just one straightforward pleadings motion." *Id.* As a result, the motion requested an order for partial judgment on the pleadings finding that:

- Defendants are collaterally estopped from denying that the Uniti Arrangement breached Section 4.19 of the Indenture;
- Defendants are collaterally estopped from relitigating whether they are judicially estopped from denying that the Uniti Arrangement breached Section 4.19 of the Indenture;
- Defendants are judicially estopped from denying, or taking a position inconsistent with, the fact that, as a result of the inflated and over-market Master Lease payments, Windstream was unable to sufficiently invest in its network to remain competitive;
- Defendants are judicially estopped from denying, or taking a position inconsistent with, the fact that Windstream was economically compelled to renew the Master Lease beyond its initial 15-year term;

- Defendants are judicially estopped from denying, or taking a position inconsistent with, the fact that the Uniti Arrangement was not a "true lease," but instead was a "disguised financing arrangement"; and

- Shimer and Turek's Sixth Affirmative Defense (asserted in EarthLink Directors' Answer to Second Amended Complaint) is dismissed.

Id. at 5-6. Defendants likely knew that such a ruling may have provided Lead Plaintiff with a clear pathway to liability.

87. Defendants strongly opposed the motion. Defendants filed an opposition brief on March 22, 2024 (ECF 168-169), and Lead Plaintiff filed a reply brief on April 5, 2024 (ECF 172). After that briefing, the Court set a hearing on that motion for May 17, 2024.

88. The Court removed that hearing date from the docket after being notified of a settlement in principle. There can be no doubt, however, that this unique and strategic motion applied additional pressure on Defendants by illuminating the risk that crucial issues of liability could be resolved against them at trial. And even if the initial motion itself was not successful, it could set the stage for subsequent motion for summary judgment briefing and a streamlining of the issues of trial.

N. Mediation and Settlement

89. Amid that multifaceted litigation, the parties held two in-person mediation sessions with Robert A. Meyer, an experienced mediator. The first mediation occurred on February 27, 2024. In advance of the mediation, the parties exchanged and submitted to Mr. Meyer detailed mediation briefs, which addressed the evidence and legal arguments each side believed supported their respective claims and defenses. Although the parties did not reach a resolution that day, discussions continued with the assistance of Mr. Meyer.

90. On April 8, 2024, the parties conducted a second in-person mediation. The parties again exchanged detailed, updated, and responsive mediation briefs, also submitted to Mr. Meyer. Again, the parties did not reach a settlement on that day, but discussions continued.

91. Following another four weeks of complex arm's-length negotiations, on May 6, 2024, the parties accepted a "Mediator's Proposal" from Mr. Meyer to resolve the litigation in exchange for an $85 million payment for the benefit of the proposed class. On that day, the parties notified the Court of a settlement in principle and jointly requested that the Court stay discovery and all non-settlement-related proceedings, including the May 17, 2024 hearing on Lead Plaintiff's Motion for Partial Judgment on the Pleadings.

92. The parties spent weeks negotiating the final terms of the Settlement as embodied in the Stipulation and the exhibits thereto, exchanging multiple drafts of those documents. On September 4, 2024, the parties executed the Stipulation. ECF 182.[6] Pursuant to the terms of the Stipulation, Defendants and their insurers paid the full $85 million into an escrow account by November 15, 2024. That money is currently in the Escrow Account and is collecting interest for the benefit of the Settlement Class.

III. RISKS OF CONTINUED LITIGATION

93. Lead Plaintiff and Plaintiff's Counsel developed a thorough understanding of the strengths and potential weaknesses of the claims. We were preparing to try this case in front of a jury and believe that we had gathered substantial evidence to support that endeavor.

94. Nonetheless, we also faced considerable challenges and defenses – both factual and legal – if the Action were to continue through trial, as well as the inevitable appeal that would follow even if Lead Plaintiff won a favorable verdict.

95. In sum, the Settlement provides an immediate and certain benefit to the Settlement Class in the form of $85 million cash payment and represents a significant portion of the recoverable

[6] The parties also entered into a confidential Supplemental Agreement setting forth the conditions under which Windstream may terminate the Settlement if the Court provided Settlement Class Members with an additional opportunity to request exclusion from the Settlement Class and the subsequent requests for exclusion reached a certain threshold.

damages in the Action. Plaintiff's Counsel believes that the proposed Settlement is an outstanding result for the Settlement Class considering these risks of continued litigation. Some of the most serious of those risks are discussed below.

A. Risks Concerning Liability

96. While Plaintiff's Counsel believes that the claims asserted against Defendants in the Action are meritorious, we recognize that this Action presented several substantial risks to establishing Defendants' liability.

97. ***First***, while any jury trial is always an uncertain endeavor, the almost decade-long lapse of time between the events at issue (some of which arose in 2013) and the trial date (November 2024) presented potential difficulties of evidentiary proof. Not only did this timing interval cause apparent gaps in witness recollection, but it also increased the risk that documents could be deleted or go missing over time. Indeed, both of those issues squarely arose in this case. With respect to witness recollection, Lead Plaintiff's first fact deposition was of former EarthLink board member Garry McGuire, which took place on February 16, 2024. Despite voting in favor of the Merger and recommending it to EarthLink shareholders, Mr. McGuire substantively responded to very few questions, while answering "I don't remember" or "I don't recall" a total of 157 times and answering with some variation of "this was seven [or eight] years ago" a total of 42 times. ECF 156 at 5-6. For example, Mr. McGuire testified as follows:

> Q. There's a portion that says "Combined company management team also to be mutually agreed upon." Was that ultimately mutually agreed upon between the companies?
>
> A. I don't remember.
>
> Q. Who participated in those negotiations regarding who would be on the combined company management team?
>
> A. I don't remember.
>
> Q. Did you participate?

A. I don't remember. It's seven years ago.

Id.

Q. Did you do anything to make sure that stockholders had Windstream's views regarding whether it expected to continue to pay the dividend post close?

MR. STOKES: Objection. Form.

THE WITNESS: I don't remember.

Id.

Q. . . . So can you tell me anything that you did to make sure that that representation [in the Proxy] was accurate?

A. I don't remember anything from seven years ago on this transaction.

Id. Moreover, as noted above, Lead Plaintiff and Plaintiff's Counsel uncovered significant issues of document retention on the part of Defendants. In late January 2024, Defendants disclosed that the emails of four top EarthLink executives during the Merger, including Defendant and CEO Joseph Eazor, had been deleted. *Id.* at 1, 5. Likewise, Mr. McGuire testified that "the day the merger closed, I shredded all – any and all documents that I had." *Id.* at 6-7. While Plaintiff's Counsel was confident that we could assemble significant supporting evidence through other channels, the multi-year lapse in time between the events at issue and the trial would likely present obstacles when trying the case to a jury.

98. ***Second***, Defendants consistently argued that several of the challenged statements were inactionable under the PSLRA's safe harbor for forward-looking statements. On this issue, Defendants argued that Lead Plaintiff "fails to plead anything resembling particularized facts supporting a 'strong inference' that any Defendant had 'actual knowledge' that the forward-looking statements were false (which, again, they were not)." ECF 26 at 23 (parentheses in original). Defendants relatedly claimed that "[t]he 'omissions' Plaintiff complains of were simply alternative

forward-looking statements and different opinions than the ones defendants expressed." ECF 40 at 2-3.

99. ***Third***, Defendants argued that their public disclosures were actually consistent with what Lead Plaintiff claimed they concealed from stockholders. For example, Defendants argued that "[o]mitted facts are only actionable if they are materially inconsistent with the affirmative disclosures. Here, the allegedly omitted facts were fully consistent with the disclosures that Windstream was highly indebted, losing customers, facing intense pricing pressure from big cable and telecom companies and under no obligation to continue paying any dividends." ECF 26 at 8. Defendants also claimed that "the Proxy accurately disclosed the combined company's indebtedness … and fully disclosed both companies' financial performance through the third quarter of 2016 so that investors had full visibility regarding both companies' financial performance." ECF 41 at 1.

100. ***Fourth***, Defendants claimed that because Windstream never filed a restatement admitting to any accounting errors, Lead Plaintiff could not plead a claim based on disclosures regarding the level of Windstream's debt incurred by the Uniti Arrangement. On this point, Defendants argued that Lead Plaintiff's "principal theory is that Windstream admitted that the Lease with Uniti was a 'disguised financing' rather than a 'true lease,' so it should have accounted for its lease payments as debt." ECF 79 at 2-3. But, as Defendants claimed, "Plaintiff cites nothing – no law, no GAAP rule, and no internal document – supporting this inference. . . . Plaintiff's naked assumption does not raise a plausible inference that the accounting treatment for the lease payments was improper." *Id.*

101. ***Fifth***, even if Lead Plaintiff prevailed at trial, Lead Plaintiff would still have to prevail on the appeals that would likely follow. At each of those stages, there are significant risks attendant to the continued prosecution of the Action, and there is no guarantee that further litigation would have resulted in a higher recovery, or any recovery at all.

B. Risks Concerning Damages

102. Even assuming that Lead Plaintiff overcame each of the above risks and successfully established liability, we also faced substantial risks in proving damages and loss causation. Indeed, throughout the litigation, Defendants maintained that, even if liability were established, Lead Plaintiff's claims did not give rise to any cognizable damages. Relatedly, Defendants contended that Lead Plaintiff could not show loss causation on the 1934 Act claims to support his damages theory.

103. At trial, for example, Defendants would have argued that the bulk of classwide damages under the 1933 Act claims were based on misstatements regarding Windstream's dividend, which Defendants claimed were non-actionable forward-looking statements. Without those statements in the case, Defendants claimed that damages under the 1933 Act claims were almost non-existent.

104. Defendants would have also argued at summary judgment and trial that any misrepresentations regarding the Uniti Arrangement did not give rise to damages. Windstream made certain corrective disclosures during the Bankruptcy Proceeding, when its stock was no longer publicly traded. Defendants would therefore claim that such disclosures could not cause damages to Lead Plaintiff or the putative class. Relatedly, Defendants made a loss causation argument by asserting that "while Plaintiff appears to claim damages based on the stock price decline after Windstream reduced its dividend, such damages cannot be attributed to the Proxy because Windstream's Board had full authority to reduce the dividend (a fact that the Proxy disclosed)." ECF 26 at 25 (parentheses in original).

105. Lead Plaintiff would have vigorously disputed all of these arguments, but they did not exist without risk. Had a jury accepted Defendants' arguments at trial (even in part), damages could have been significantly reduced, or eliminated entirely. Lead Plaintiff thus faced the prospect of advancing all the way to trial and winning the liability phase, but recovering nothing for the Class

and losing the case. That is precisely what happened in both the *Trados* and *PLX* merger cases – plaintiffs proved liability in a merger trial, but the court found that damages were zero. *See In re Trados Inc. S'holder Litig.*, 73 A.3d 17 (Del. Ch. 2013) (unfair sale process by fiduciaries nevertheless produced a fair price); *In re PLX Tech. Inc. S'holders Litig.*, 2018 WL 5018535 (Del. Ch. Oct. 16, 2018) (activist who aided and abetted the board's breach of fiduciary duty was not liable for any damages because the court had determined the amount of damages to be zero).

106. In addition to those substantive legal issues, a recent report from Cornerstone summarizing settlements in securities cases observed: "Issuers that have been delisted from a major exchange and/or declared bankruptcy prior to settlement are generally associated with lower [securities] settlement amounts."[7] Here, Windstream and EarthLink both entered and emerged from bankruptcy protection during the Action. Paragraph 96 of Windstream's Plan Confirmation Order provided that the claims of Lead Plaintiff and the putative class against Windstream and EarthLink were "preserved solely to the extent of, and any recovery on account thereof shall be limited to, proceeds of available insurance, if any." *See supra*, ¶31 n.2. These issues could have impacted Lead Plaintiff's ability to recover the full extent of potential damages at trial.

107. Moreover, even if Lead Plaintiff was successful at trial, Defendants could have challenged the damages of each and every large Settlement Class Member in post-trial proceedings, potentially substantially reducing any aggregate recovery. And as described further below, the $85 million Settlement represents a substantial percentage of the damages that could reasonably be expected to be proved at trial. Particularly considering the significant litigation risks discussed above, the Settlement represents a very favorable resolution of the Action for Settlement Class Members.

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[7] Laarni T. Bulan and Laura E. Simmons, *Securities Class Action Settlements: 2023 Review and Analysis*, at 4 (Cornerstone Research 2024) ("Cornerstone Report"), attached hereto as Exhibit B.

108. Given the complexity of this case and the risks and delay inherent in continued litigation, the $85 million Settlement is an exceptional result. Taking into account that the case has been litigated for six years and the significant amount of the recovery, the Settlement here falls well within the range of reasonableness in light of the attendant risks and uncertainties of litigation, and should be finally approved.

IV. ALLOCATION OF THE PROCEEDS OF THE SETTLEMENT

109. Lead Plaintiff has proposed a Plan of Allocation to govern the method by which Settlement Class Members' claims will be calculated, and the proceeds of the Settlement will be allocated among Settlement Class Members who submit valid Proofs of Claim and suffered economic losses because of the alleged misstatements.

110. Lead Plaintiff engaged Mr. Steinholt (whose credentials are described herein) to develop the Plan of Allocation based upon the event studies and analyses he performed in this Action. Mr. Steinholt employed generally accepted and widely used methodologies to analyze damages for the claims at issue in this case.

111. As described in the Notice, the objective of the Plan of Allocation is to equitably distribute the Net Settlement Fund among Settlement Class Members based on their respective economic losses resulting from the alleged misrepresentations and omissions in the Offering Documents. In this case, given the similarity of the claims and damages issues brought under both the 1933 Act and the 1934 Act, as well as the specific statutorily-prescribed methodology for calculating damages under the 1933 Act, the statutory damages formula set forth in §11(e) of the 1933 Act serves as the basis for the calculation of the Recognized Loss Amounts under the Plan of Allocation. The Plan of Allocation therefore generally tracks the statutory §11(e) formula. Under the Plan of Allocation, each eligible Settlement Class Member's "Recognized Loss Amount" will be calculated according to the formulas described in the Notice.

112. In sum, the Plan of Allocation represents a reliable method by which to weigh, in a fair and equitable manner, the claims of Authorized Claimants against one another for the purpose of making *pro rata* allocations of the Net Settlement Fund. To date, there have been no objections filed to the Plan of Allocation.

V. THE FEE AND EXPENSE APPLICATION

113. In addition to seeking final approval of the Settlement and approval of the Plan of Allocation, Plaintiff's Counsel is applying for an award of attorneys' fees and payment of expenses incurred by Plaintiff's Counsel during the course of the Action. Specifically, Plaintiff's Counsel is applying for attorneys' fees in the amount of 32% of the Settlement Fund (or $27.2 million) and for litigation expenses in the total amount of $636,422.45, as well as interest earned thereon on both amounts, at the same rate over the same time period as the Settlement Fund. As noted above, Plaintiff's Counsel's fee and expense application is consistent with the amounts set forth in the Notice and, to date, no objections to Plaintiff's Counsel's request for attorneys' fees and expenses has been received.

114. Below is a summary of the primary factual bases for Plaintiff's Counsel's fee and expense application. A full analysis of the factors considered by courts in this Circuit when evaluating requests for attorneys' fees and expenses from a common fund, as well as the supporting legal authority, is presented in the accompanying Memorandum of Law in Support of Motion for Attorneys' Fees, Litigation Expenses, and Award to Lead Plaintiff Pursuant to 15 U.S.C. §78u-4(a)(4) ("Fee Memorandum").

A. The Favorable Settlement Achieved

115. Courts have consistently recognized that the result achieved is a key factor to be considered in making a fee award. *See* Fee Memorandum, §III(C)(1). Here, the $85 million Settlement is of a record-breaking magnitude and provides an immediate cash recovery to a large

class of investors. As noted above, the extraordinary nature of the Settlement achieved by Plaintiff's Counsel is illustrated by the rarity of this result, across multiple metrics. The $85 million Settlement:

- constitutes the largest securities class action recovery ever achieved in this District, out of 11 total securities class actions filed in the Eastern District of Arkansas;[8]
- constitutes the second largest such recovery ever achieved in any Arkansas federal court, out of 14 total securities class actions filed in the Western and Eastern Districts of Arkansas;
- is the largest securities class action recovery in the Eighth Circuit in over five years;
- is tied for the sixth largest such recovery in Eighth Circuit history, out of 179 total securities class actions filed in the Eighth Circuit;
- is over five times the 2023 median securities settlement amount of $15 million;[9] and
- represents 22% of the proposed class's estimated aggregate damages under the Section 11 claim, which presented the cleanest and likeliest path to recovery of the various claims asserted in the Action.[10] A recent Cornerstone study found that that the median settlement as a percentage of estimated damages was 6.6% on cases settled in 2023 involving claims under both the 1933 and 1934 Acts.[11] The same study found a 4.6% median percentage recovery for securities cases in the Eighth Circuit from 2014 to 2023.[12] The estimated 22% recovery as a percentage of estimated damages is thus over many times greater than typical settlements of similar cases, both nationwide and in the Eighth Circuit.

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[8] Statistics obtained from searches conducted on the Stanford Law School Securities Class Action Clearinghouse, available at https://securities.stanford.edu/index.html.

[9] Cornerstone Report at 4.

[10] Lead Plaintiff's damages expert estimated that aggregate damages under the Section 11 claim amounted to $388,104,644. Lead Plaintiff's damages expert estimated that aggregate damages under Section 14(a) amounted to $309,508,409, when using a trading model to account for sales of Windstream's declining stock following the Merger.

[11] Cornerstone Report at 8.

[12] *Id.* at 20.

B. The Risks of Litigation and the Need to Ensure the Availability of Competent Counsel in High-Risk Contingent Cases

116. The years of extensive motion practice, discovery, and bankruptcy litigation presented obstacles that Plaintiff's Counsel overcame. In order to secure this recovery, Plaintiff's Counsel analyzed a large quantity of complex documents concerning multiple complex corporate transactions; secured key admissions on these complex issues in depositions; and used this fact discovery to assemble a compelling presentation of evidence in connection with settlement discussions.

117. As set forth in the accompanying memorandum, the risks faced by Plaintiff's Counsel in prosecuting this Action are relevant to the Court's consideration of an award of attorneys' fees, as well as its approval of the Settlement. Here, Defendants adamantly denied, and continue to deny, any wrongdoing and, if the Action had continued, would have aggressively litigated their defenses through trial, and the appeals that would inevitably follow. As detailed in §III above, Plaintiff's Counsel and Lead Plaintiff faced significant risks to proving Defendants' liability and damages at all remaining stages of this litigation.

118. As described above, this was not a typical case in terms of the risk undertaken by Plaintiff's Counsel. And Defendants' counsel exhausted every possible strategy in an effort to end the Action without any recovery for the Settlement Class. Despite that, Plaintiff's Counsel still did not rush to settle this case. The first mediation in this Action did not occur until February 2024, roughly six years after Plaintiff's Counsel filed the case. Unlike defense counsel, who are paid on an hourly rate and reimbursed their expenses on a regular basis, Plaintiff's Counsel have not been compensated for any time or expense since this case and its predecessor began.

119. While the Settlement represents an impressive recovery for the Settlement Class, this result was far from guaranteed, nor was it even remotely foreseeable to other members of the plaintiffs' bar. At this Action's inauspicious beginning, no other law firm even attempted to seek a

leadership role in the Action. Plaintiff's Counsel accepted the representation on a contingent basis in a securities class action wherein, even if a recovery was obtained, any payment for Plaintiff's Counsel's services was likely to be delayed for several years.

120. Only after Lead Plaintiff filed an amended complaint with a deeply researched and further detailed theory of the case did other members of the plaintiffs' bar finally react. Two plaintiffs with the same last name later filed copycat derivative cases in this Court ostensibly on behalf of Windstream (which cases were extinguished and dismissed when those plaintiffs lost standing in connection with Windstream's bankruptcy). *See Graham v. Thomas*, No. 4:18-cv-755-JM (E.D. Ark., filed Oct. 12, 2018); *Graham v. Wells*, No. 4:18-cv-709-JM (E.D. Ark., filed Sep. 26, 2018). Another plaintiff later filed a tagalong §11 case in Georgia state court (which that court stayed long ago, in favor of Lead Plaintiff's more comprehensive claims in this Court). *See Yadegarian v. Shimer*, No. 2018-cv-308935 (Fulton Cnty. Super. Ct., filed Aug. 10, 2018). None of those cases advanced past the pleading stage or involved meaningful discovery.

121. When committing over 11,000 hours of attorney and professional time and incurring over $636,000 in expenses while litigating this Action, Plaintiff's Counsel fully assumed the risk of an unsuccessful result. Plaintiff's Counsel have received no compensation for their services during the course of this Action and any fees awarded to Plaintiff's Counsel have always been at risk and are completely contingent on the result achieved. Because the fee to be awarded in this matter is entirely contingent, the only certainty from the outset was that there would be no fee without a successful result for the Settlement Class.

122. Lead Plaintiff continued to face massive risk at trial. A multi-week jury trial involving a complicated subject matter, where many issues would be resolved through a "battle of the experts," is always an uncertain undertaking. In addition, most of the fact witnesses in this case had been employed by Windstream and EarthLink or were well-compensated advisors of those

entities. And there are scores of lawsuits where – because of changes in the law during the pendency of the case, or a decision of a jury following a trial on the merits, or a reversal on appeal – similarly long and hard-fought litigation efforts resulted in no fees, and massive expenses, for plaintiffs' counsel to bear. These cases include some that were litigated by the undersigned Lead Counsel. Indeed, the following cases provide examples where the same team of Robbins Geller attorneys litigating this case also litigated cases at least through summary judgment or trial, but lost:

- *Laborers' Loc. #231 Pension Fund v. Cowan*, 2020 WL 1304041 (D. Del. Mar. 19, 2020) (motion for summary judgment granted after years of fact and expert discovery, dismissing 1934 Act claims regarding a merger, later affirmed by the Third Circuit);

- *PLX*, 2018 WL 5018535 (post-trial ruling where the trial court found liability for aiding and abetting a breach of fiduciary duty, but the trial court ruled in favor of the defendant after finding that the plaintiffs had failed to prove damages, a decision affirmed over a year later by the Delaware Supreme Court);

- *Air Prods. & Chems., Inc. v. Airgas, Inc.*, 16 A.3d 48 (Del. Ch. 2011) (after a week-long trial in October 2010 and subsequent three-day evidentiary hearing in January 2011, the court ruled in favor of the defendants, denied the shareholder plaintiffs' request for relief, and dismissed the case with prejudice); and

- *Elloway v. Pate*, 238 S.W.3d 882, 889 (Tex. App. Houston [14th Dist.] 2007) (the trial court entered a take nothing judgment, which the Court of Appeals of Texas affirmed, after a three-week jury trial in the Texas District Court of Harris County).

123. In *Cowan*, for example, Lead Counsel brought claims under §14(a) of the 1934 Act regarding the $356 million merger of Lionbridge and HIG. After surviving the defendants' motion to dismiss, the case proceeded to extensive discovery, much like this Action. 2020 WL 1304041. The defendants filed their motion for summary judgment shortly after the close of that very lengthy and costly discovery process. *Id.* at *1. The court granted the motion and entered a judgment in favor of the defendants. *Id.* at *5. The court found, in part, that "the Lionbridge directors uniformly testified that they believed the [fairness] opinion was a positive reason supporting their decision to recommend the merger notwithstanding the fact that the projections on which [the bankers] relied did not account for future acquisitions." *Id.* at *3. The decision was later upheld by the Third

Circuit. *Laborers Local No. 231 Pension Fund v. Cowan*, 837 F. App'x 886, 893 (3d Cir. 2020). As noted above, Defendants put forth very similar arguments here. *Supra*, ¶¶98-108. *Cowan* illustrates the very real risk that Plaintiff's Counsel faced in this Action.

124. On the other hand, that same team of Robbins Geller attorneys have taken merger-related shareholder class action cases to trial and won. *See, e.g.*, *In re Rural Metro Corp. Stockholders Litig.*, 88 A.3d 54 (Del. Ch. 2014); *In re Dole Food Co., Inc. S'holders Litig.*, 2015 WL 5052214 (Del. Ch. Aug. 27, 2015). The fact that Defendants and their counsel know that the leading members of the plaintiffs' bar are able to, and will, go to trial even in large, complex, and high-risk cases gives rise to meaningful settlements in actions like this one.

125. The losses suffered by class counsel in other actions where insubstantial settlement offers were rejected, and where class counsel ultimately received little or no fee, should not be ignored. The undersigned counsel knows from personal experience that despite the most vigorous and competent of efforts, attorneys' success in contingent litigation is never assured.

C. The Time and Labor Devoted to the Action by Plaintiff's Counsel

126. Plaintiff's Counsel invested over 11,000 hours of attorney and professional time over the course of six years and incurred over $636,000 in expenses prosecuting this case for the benefit of the Settlement Class. *See* accompanying Declaration of David A. Knotts Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Robbins Geller Fee and Expense Declaration"); Declaration of Michael S. Etkin Filed on Behalf of Lowenstein Sandler LLP; Declaration of Randall K. Pulliam Filed on Behalf of Carney Bates & Pulliam, PLLC; Declaration of Brett M. Middleton Filed on Behalf of Johnson Fistel LLP (collectively, the "Fee and Expense Declarations").

127. As more fully described above, Plaintiff's Counsel: (i) conducted an exhaustive investigation into the claims before filing; (ii) researched and prepared multiple detailed complaints;

(iii) successfully opposed Defendants' four motions to dismiss; (iv) engaged bankruptcy counsel to object to a plan of reorganization that would have released the claims in this case for no consideration to the proposed class; (v) served document requests, interrogatories on Defendants, and engaged in numerous meet and confers regarding the scope of the discovery requested and the objections thereto; (vi) reviewed and analyzed the resulting productions of more than 1.4 million pages of documents produced from Defendants and nine third parties; (vii) responded to Defendants' document requests and interrogatories; (viii) retained multiple experts who were in the midst of preparing expert reports; (ix) moved for class certification; and (x) prepared for and engaged in settlement negotiations with Defendants, including two formal, in-person mediation sessions. Plaintiff's Counsel advanced the litigation to achieve the most successful outcome for the proposed class, whether through settlement or trial, by the most efficient means possible.

128. The time devoted to this Action by Plaintiff's Counsel is set forth in the accompanying Fee and Expense Declarations. Included in those declarations are schedules that summarize the time expended by the attorneys and professional support staff at Plaintiff's Counsel, as well as expenses ("Fee and Expense Schedules"). The Fee and Expense Schedules report the amount of time spent by each attorney and professional support staff employee who worked on the Action and their resulting "lodestar," *i.e.*, their hours multiplied by their current hourly rates.

129. Lead Counsel's time comprises a large majority of the time expended by Plaintiff's Counsel in this case. The hourly rates of Lead Counsel here range from $875 to $1,200 per hour for partners, $375 to $685 per hour for associates, and $300 to $410 per hour for paralegals. *See* Robbins Geller Fee and Expense Declaration, Ex. A. These hourly rates are reasonable for this type of complex litigation.

130. In total, from the inception of this Action through September 6, 2024 – the date the stipulation of settlement and preliminary approval papers were filed with the Court – Plaintiff's

Counsel expended over 11,000 hours (after reductions) on the investigation, prosecution, and resolution of the claims against Defendants, for a total lodestar of $7,570,234.60.

131. Plaintiff's Counsel will continue to perform legal work on behalf of the Settlement Class should the Court approve the Settlement. None of that additional time is included in the Fee and Expenses Schedules submitted herewith, nor will any payment for that additional time be requested. Additional resources have been and will be expended by Plaintiff's Counsel assisting Settlement Class Members with their Proofs of Claim and related inquiries and working with the Claims Administrator, Verita Global, to ensure the smooth progression of claims processing. For example, one court recently commended Robbins Geller's post-settlement work in another matter as follows: "Class Counsel deserves credit for their assiduousness in working through these challenges. Class Counsel received an award of fees and expenses based on the benefits they conferred in the litigation. That award did not take into account the subsequent burdens associated with a lengthy period of settlement administration." *In re PLX Tech. Inc. Stockholders Litig.*, 2022 WL 1133118, at *1 (Del. Ch. Apr. 18, 2022). Plaintiff's Counsel will seek no additional legal fees for this work.

D. The Quality of the Representation by Plaintiff's Counsel

132. The skill and diligence of Plaintiff's Counsel also supports the requested fee. As demonstrated by the firm résumé included as Exhibit F to the Robbins Geller Fee and Expense Declaration, Robbins Geller is an experienced and skilled law firm in the securities litigation field, with a long and successful track record of representing investors in such cases. The additional firms involved are also widely recognized as experts in their fields and brought those significant resources to bear in this case. The substantial result achieved for the Settlement Class here reflects the superior quality of this representation.

133. As noted, there was no preexisting blueprint for litigating these claims. This case involved no accounting restatement or pre-lawsuit investigation or finding of wrongdoing by the

SEC, DOJ, or any other entity that could have given Plaintiff's Counsel a head start in litigating these claims. As a result, Plaintiff's Counsel had to develop the strategy, evidence, and theories of liability from scratch. Defendants described the Action as "a meritless securities class action" and a "groundless lawsuit" with "weak" facts that were "grossly insufficient under Eighth Circuit precedent." *See, e.g.*, ECF 26 at 1, 8; ECF 41 at 2; ECF 81 at 22-23. In the face of these risks, Lead Plaintiff and Plaintiff's Counsel litigated this case for six years, conducted extensive discovery, persevered in multiple contested motions, and achieved this groundbreaking Settlement for the benefit of the proposed class.

134. Gathering the evidence proving these claims was not easy, but Plaintiff's Counsel developed and executed a discovery plan that provided immense returns for the Settlement Class. *See supra*, ¶¶41-74. Plaintiff's Counsel worked to compile evidence in a strategic, multi-phased document discovery plan. In Phase I, Plaintiff's Counsel worked to obtain the documents and transcripts that Defendants and third parties had already produced in three lawsuits comprising the Related Litigation. In Phase II, Plaintiff's Counsel sought "core documents" regarding the Merger from both companies, including board minutes, board presentations, and due diligence summaries. In Phase III, Plaintiff's Counsel obtained Merger-related emails, using search terms crafted from those core documents. In Phase IV, Plaintiff's Counsel attempted to identify and remediate Defendants' document retention issues. And Phase V involved extensive third party discovery. Many of these phases occurred simultaneously given Plaintiff's Counsel's push to keep this case on schedule.

135. In Windstream's bankruptcy proceeding, Windstream and EarthLink attempted to secure a complete release of the claims in this Action, for no consideration to the putative class. *Id.*, ¶¶29-32. Lead Plaintiff and Plaintiff's Counsel hired bankruptcy counsel, submitted Proofs of Claim, objected to the proposed release, and secured the ability to pursue these claims following

Windstream's bankruptcy proceeding, for the benefit of the putative class. *Id.* Without those efforts, the Settlement Class would have been left with nothing.

136. Following Windstream's bankruptcy proceeding, Lead Plaintiff and Plaintiff's Counsel: (a) prevailed on multiple motions to dismiss; (b) prevailed on a motion to compel, which resulted in the production of nearly 1.5 million pages of documents; (c) took multiple fact and expert depositions; and (d) achieved this groundbreaking settlement over fierce resistance and long odds.

137. The quality and vigor of opposing counsel is also relevant in evaluating the quality of the services rendered by Plaintiff's Counsel. Defendants were represented by attorneys from prominent, aggressive, and experienced law firms, Skadden, Arps, Slate, Meagher & Flom LLP and Norton Rose Fulbright. Plaintiff's Counsel also obtained valuable and sensitive documents over the strenuous objections of multiple third parties represented by some of the largest defense firms in the world, including Alston & Bird LLP, Ropes & Gray LLP, Jones Day, Faeger Drinker Biddle & Reath LLP, and Davis Polk & Wardwell LLP. The ability of Plaintiff's Counsel to obtain such a favorable settlement for the Settlement Class in the face of such formidable opposition further confirms the superior quality of the representation.

E. Plaintiff's Counsel's Request for Litigation Expenses Warrants Approval

1. Plaintiff's Counsel Seeks Payment of Reasonable and Necessary Litigation Expenses from the Settlement Fund

138. Plaintiff's Counsel seeks payment from the Settlement Fund of $636,422.45 for expenses, costs, and charges that were reasonably and necessarily incurred by Plaintiff's Counsel in connection with the Action. The Notice informed the Settlement Class that Plaintiff's Counsel will apply for payment of litigation expenses in an amount not to exceed $950,000.00. The amount of litigation expenses requested by Plaintiff's Counsel is therefore substantially below the maximum expense amount set forth in the Notice.

139. From the inception of this Action, Plaintiff's Counsel were aware that we might not recover any of the expenses we incurred in prosecuting the claims against Defendants and, at a minimum, would not recover any expenses until the Action was successfully resolved. Plaintiff's Counsel also understood that, even assuming the Action was ultimately successful, an award of expenses would not compensate counsel for the lost use or opportunity costs of funds advanced to prosecute the claims against Defendants.

140. We were therefore motivated to, and did, take appropriate steps to avoid incurring unnecessary expenses and to minimize costs without compromising the vigorous and efficient prosecution of the Action. Plaintiff's Counsel maintained strict control over the expenses in this Action by leanly staffing depositions, motions, and substantive work in this case.

141. Plaintiff's Counsel's expenses are summarized in the Fee and Expense Declarations, which identify each category of expense and the amount incurred for each. Plaintiff's Counsel's expenses include charges for, among other things: (i) experts in connection with various stages of the litigation; (ii) establishing and maintaining a database to house the hundreds of thousands of documents produced in discovery; (iii) deposition and travel-related expenses; (iv) online factual and legal research; (v) mediation; and (vi) photocopies. Courts have consistently found that these kinds of expenses are payable from a fund recovered by counsel for the benefit of a class.

142. The largest component of Lead Counsel's expenses (*i.e.*, $449,678.50 or approximately 71% of their total expenses) was incurred for experts and consultants. As detailed above, Lead Counsel retained several highly qualified expert witnesses and consultants, including Bjorn Steinholt, William H. Purcell, Matthew D. Cain, Ph. D., Hemming Morse, David W. Larue, HKA Global, LLC, and RGL, Inc. *See supra*, ¶82. These experts and consultants were essential to the prosecution of the Action.

143. Another significant expense (*i.e.*, $24,180.35) was incurred for legal and factual research. This amount includes charges for computerized research services such as Westlaw and PACER. It is standard practice for attorneys to use online services to assist them in researching legal and factual issues, and indeed, courts recognize that these tools create efficiencies in litigation and ultimately save money for clients and the class.

144. The other expenses for which Plaintiff's Counsel seeks 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: deposition transcripts, videography, and court hearing transcripts ($20,715.55); transportation, hotels, and travel expenses ($32,058.56); and copying ($4,622.90). Plaintiff's Counsel also incurred a total of $66,500.72 for document hosting and management/litigation support. All of the litigation expenses incurred by Plaintiff's Counsel were reasonable and necessary to the successful litigation of the Action, and are described in more detail in the Fee and Expense Declarations.

2. Reimbursement to Lead Plaintiff Is Fair and Reasonable

145. The PSLRA specifically provides that an "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class" may be made to "any representative party serving on behalf of a class." 15 U.S.C. §78u-4(a)(4). Accordingly, Lead Plaintiff seeks reimbursement of his reasonable costs incurred directly for his work supervising counsel and participating in the litigation in the amount of $20,000. *See* Declaration of Robert Murray, ¶12, submitted herewith.

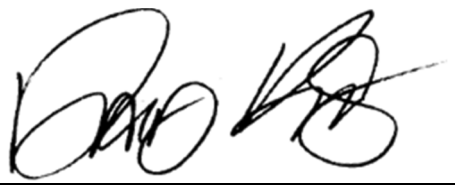
146. As discussed in the Fee Memorandum and in Lead Plaintiff's supporting declaration, Lead Plaintiff has been fully committed to pursuing the proposed class's claims since he became involved in the litigation six years ago. Lead Plaintiff provided valuable assistance to Plaintiff's Counsel during the prosecution and resolution of the Action. Moreover, the efforts expended by

Lead Plaintiff during the course of this Action, as set forth in his declaration submitted herewith – including communicating with Plaintiff's Counsel, reviewing pleadings and motion papers, gathering and reviewing documents in response to discovery requests, preparing for deposition and being deposed, and participating in the settlement negotiations – are precisely the types of activities courts have found to support reimbursement to class representatives, and fully support the request for reimbursement here.

VI. CONCLUSION

147. For all the reasons set forth above, Plaintiff's Counsel respectfully submit that the Settlement and the Plan of Allocation should be approved as fair, reasonable, and adequate. Plaintiff's Counsel further submit that the requested fee in the amount of 32% of the Settlement Fund should be approved as fair and reasonable, and the request for Plaintiff's Counsel's litigation expenses in the amount of $636,422.45, and Lead Plaintiff's award in the total amount of $20,000, should also be approved.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed in San Diego, California this 2nd day of January 2025.



DAVID A. KNOTTS

EXHIBIT A

Jaime McDade

From: Lion Wintemute
Sent: Wednesday, December 27, 2023 9:52 PM
To: David Knotts; 'Reed, Noelle M'; Hampton, Wallis M; 'Peter A. Stokes'
Cc: Virginia Milstead; Noam Mandel; Teo Doremus; EarthlinkRGRD
Subject: RE: EarthLink/Windstream Securities Litigation
Attachments: EarthLink Executives ESI Protocol.docx; EarthLink Outside Directors ESI Protocol.docx; Windstream Executives ESI Protocol.docx; Windstream Outside Directors ESI Protocol.docx

Counsel,

Please find the attached ESI Protocol Proposals for both companies' respective executives and outside directors. To the extent that Defendants contend that any aspect of this protocol is too burdensome, please immediately provide de-duplicated hit reports, broken out by custodian and search term. We are available anytime to discuss, including the rest of this week or early next week.

Best,
Lion

From: David Knotts <DKnotts@rgrdlaw.com>
Sent: Thursday, December 7, 2023 5:34 PM
To: 'Reed, Noelle M' <Noelle.Reed@skadden.com>; Hampton, Wallis M <Wallis.Hampton@skadden.com>; 'Peter A. Stokes' <peter.stokes@nortonrosefulbright.com>
Cc: Virginia Milstead <Virginia.Milstead@skadden.com>; Noam Mandel <Noam@rgrdlaw.com>; Lion Wintemute <LWintemute@rgrdlaw.com>; Teo Doremus <TDoremus@rgrdlaw.com>; EarthlinkRGRD <EarthlinkRGRD@rgrdlaw.com>
Subject: EarthLink/Windstream Securities Litigation

Counsel,
Regarding the deadlines in the attached order, please note that Defendants previously agreed in the Joint Rule 26(f) Report that "The parties shall produce documents responsive to written production on a rolling basis and the parties shall use best efforts to ensure that document productions are not back-loaded towards the overall production deadlines." ECF 106 at 4. The Court has now indicated that it is willing to enforce the positions taken in that Report. Accordingly, please immediately begin a rolling production of the Formal Merger Related documents to ensure that the documents are not back-loaded towards the deadline of December 21, 2023.

Producing these documents sooner rather than later has an added benefit in that it will also allow more time for Defendants to apply search terms, review, and produce the next set of documents by the January 26, 2024 deadline. Once we receive a reasonably complete set of Formal Merger Documents, we will very promptly review and provide ESI Protocols (including search terms, date ranges, and custodians) that Defendants should utilize for the subsequent production of ESI, *i.e.,* the "Other Merger-Related Documents." The collection of all relevant sources of ESI should already be in process by now.

In short, Defendants should have more than enough time to complete a full production of responsive ESI by the Court-ordered deadlines and we are willing to work with you to help make that happen, but we urge Defendants to move promptly in the meantime.

Best,

David Knotts
Robbins Geller Rudman & Dowd LLP
655 West Broadway, Suite 1900
San Diego, CA 92101
(619) 231-1058

EARTHLINK EXECUTIVES ESI PROTOCOL

BASIC SEARCH FUNCTIONALITY AND ADDITIONAL AGREEMENTS

1. Search terms will be run without reference to capitalization.

2. If any burden or relevance objection is asserted in connection with any search terms, the objecting party will immediately provide reports on the number of unique hits per search term/custodian.

3. Defendants shall disclose to Plaintiff any proposed modifications to these search parameters. The parties agree to meet and confer regarding any proposed modifications.

4. In addition to the search terms contained herein, Defendants shall manually search for and collect all responsive documents outside of the date range contained above for Requests 14, 15, 17, and 23.

5. Plaintiff reserves the right to identify additional terms, custodians, or date ranges as documents are received and reviewed. In that event, Plaintiff will provide his proposed justification for doing so and Plaintiff recognizes that Defendants reserve all rights to object to the production of additional material.

6. If any Defendant or custodian manually created or kept an email, electronic, or hard copy folder dedicated to the Merger, the EarthLink sale process, EarthLink or Windstream valuations, or EarthLink or Windstream projections, the entire folder should be produced (after attorney review for privilege) without application of search terms, date limitations, or any other restriction identified herein.

7. The parties agree to meet and confer to determine every location, including all email addresses, that might include discoverable material.

8. To the extent any Defendant or custodian utilized text messages, instant messaging, or any other form of written non-email electronic communication (*i.e.*, Telegram, Skype, Microsoft Teams, WhatsApp, Slack, Reuters or Bloomberg messaging, shared Notes app messaging) to communicate regarding the sale process, the Acquisition, Windstream, or EarthLink's business prospects during the relevant time period:

   (a) Defendants shall disclose the existence of any such messaging program/application and review the communications on the applicable phones, devices, programs, or applications; and

   (b) Defense counsel will review all text messages (or similar communications) between a custodian, on the one hand, and all EarthLink directors, all Windstream directors and officers, and/or all EarthLink or Windstream Advisors in connection with the Merger on the other hand, without application of the search terms. For all other text and similar messages, Defendants will run the proposed search terms (provided that for any email

addresses or names contained herein, the search terms shall include that person's applicable telephone number or user ID utilized for non-email electronic communications).

9. For each person's name contained as a search term, that person's relevant email address(es) shall also be included as a term.

10. Defendants will produce all non-privileged documents that hit on the parameters identified herein and are responsive to any category in Plaintiff's document requests served on Defendants in this action, without regard to the non-privilege based objections contained in Defendants' responses and objections. If, in the course of document review, a Defendant later propose to exclude any such documents from the production, he or she will promptly inform Plaintiff so that the parties can meet and confer regarding the proposed exclusions.

11. EarthLink and/or Windstream will produce the entire electronic diligence data room that Windstream made available to EarthLink in connection with Merger-related due diligence (without application of search terms).

CUSTODIANS

1. Joseph F. Eazor
2. Louis Alterman
3. Brad Ferguson
4. Alexander Kalish

DATE RANGE

Start Date: 9/1/2016
End Date: 3/1/2017

TERMS

A. Merger-Related and Windstream Code Names

1. Elaeis
2. Europa
3. Washington[1]
4. "Project Timebomb"
5. RITE

[1] "Washington" and was a code name used for Windstream in connection with the Merger. In the event that this term results in a disproportionate number of unique and irrelevant hits based on a sampling of unique hits, we are willing to discuss the addition of limiting terms and connectors.

B. Merger Due Diligence, Offering Documents, and Windstream-Related Terms

6. *Windstream*
7. Gunderman
8. Hinson
9. Moody w/2 Kris*
10. Stopford
11. Thomas w/2 (Anthony or Tony)
12. "Exchange Ratio"
13. "Transaction Review Committee" or TRC
14. "Communications Sales & Leasing" or CSAL or CS&L or CSL or Uniti
15. "650m" or "650 Million"
16. (Capitaliz* or Operat*) w/2 Lease
17. SLB or Leaseback or "Lease Back"
18. "REIT Spin*" or "REIT Separation"
19. "Restricted Payment*" or RP or RPs
20. "Debt Covenant*"
21. "Disguised Financing"
22. "True Lease"
23. Aurelius
24. Proxy
25. "Registration Statement"
26. "S-4"
27. Dividend*
28. Bringdown or "Bring Down"

C. Merger Due Diligence Consultants, Advisors, and Bankers

29. Caggiano
30. Post w/2 Charl*
31. Slocumb
32. Turpin
33. Valenti
34. WINNIE
35. Zubieta
36. FOROS
37. Frencia
38. Getsie
39. *GOLDMAN* or GS
40. Manas
41. Mann
42. Ronen
43. Tofsky
44. FTI
45. Jagtap
46. Taylor w/2 Carlyn

47. Verbinnen
48. EY
49. Ernst
50. Gersack
51. Taylor w/2 Matt*
52. Ward w/2 Rich*
53. AGC
54. "Management Plan"

D. Merger Due Diligence and Valuations of Windstream and EarthLink

55. (CLEC or ILEC) w/2 ("Small Business*" or SMB)
56. (Management or Mgmt) w/2 (*Forecast* or Projection*)
57. "Broadband Net Adds"
58. OIBDAR
59. OIBDA
60. "CLEC Gross Margin"
61. "ILEC Field Ops"
62. "ILEC Monthly SMB Sales"
63. "Monthly ARPU"

POST-CLOSE TERMS FOR EAZOR

CUSTODIANS

1. Joseph F. Eazor

POST-CLOSE DATE RANGES AND TERMS

1. 7/26/2017 – 8/10/2017: Windstream or Dividend*
2. 9/14/2017 – 9/28/2017: Windstream or Aurelius
3. 7/21/2018 – 8/3/2018: Windstream or Bankrupt*

EARTHLINK OUTSIDE DIRECTORS ESI PROTOCOL

BASIC SEARCH FUNCTIONALITY AND ADDITIONAL AGREEMENTS

1. Search terms will be run without reference to capitalization.

2. If any burden or relevance objection is asserted in connection with any search terms, the objecting party will immediately provide reports on the number of unique hits per search term/custodian.

3. Defendants shall disclose to Plaintiff any proposed modifications to these search parameters. The parties agree to meet and confer regarding any proposed modifications.

4. In addition to the search terms contained herein, Defendants shall manually search for and collect all responsive documents outside of the date range contained above for Requests 14, 15, 17, and 23.

5. Plaintiff reserves the right to identify additional terms, custodians, or date ranges as documents are received and reviewed. In that event, Plaintiff will provide his proposed justification for doing so and Plaintiffs recognize that Defendants reserve all rights to object to the production of additional material.

6. If any Defendant manually created or kept an email, electronic or hard copy folder dedicated to the Merger, the EarthLink sale process, EarthLink or Windstream valuations, or EarthLink or Windstream projections, the entire folder should be produced (after attorney review for privilege) without application of search terms, date limitations or any other restriction identified herein.

7. The parties agree to meet and confer to determine every location, including all email addresses, that might include discoverable material.

8. To the extent any Defendant utilized text messages, instant messaging, or any other form of written non-email electronic communication (*i.e.*, Telegram, Skype, Microsoft Teams, WhatsApp, Slack, Reuters or Bloomberg messaging, shared Notes app messaging) to communicate regarding the sale process, the Acquisition, Windstream, or EarthLink's business prospects during the relevant time period:

   (a) Defendants shall disclose the existence of any such messaging program/application and review the communications on the applicable phones, devices, programs, or applications; and

   (b) Defense counsel will review all text messages (or similar communications) between a custodian, on the one hand, and all EarthLink directors, all Windstream directors and officers, and/or all EarthLink or Windstream Advisors in connection with the Merger on the other hand, without application of the search terms. For all other text and similar messages, Defendants will run the proposed search terms (provided that for any email addresses or names contained herein, the search terms shall include that person's applicable telephone number or user ID utilized for non-email electronic communications).

9. For each person's name contained as a search term, that person's relevant email address(es) shall also be included as a term.

10. Defendants will produce all non-privileged documents that hit on the parameters identified herein and are responsive to any category in Plaintiffs' document requests served on Defendants in this action, without regard to the non-privilege based objections contained in Defendants' responses and objections to those document requests. If, in the course of document review, a Defendant later propose to exclude any such documents from the production, he or she will promptly inform Plaintiffs so that the parties can meet and confer regarding the proposed exclusions.

CUSTODIANS

1. Julie A. Shimer
2. Susan D. Bowick
3. Kathy S. Lane
4. Garry K. McGuire
5. R. Gerard Salemme
6. Marc F. Stoll
7. Walter L. Turek

MERGER DATE RANGE

Start Date: 9/1/2016
End Date: 3/1/2017

TERMS

A. Merger-Related and Windstream Code Names

1. Elaeis
2. Europa
3. Washington[1]
4. RITE

B. Directors, Merger Due Diligence, Offering Documents, and Windstream-Related Terms

5. *Directors will not search their own name, but will search the terms corresponding to their fellow directors, as well as email addresses for each of the names below:
   (a) Bowick
   (b) Lane w/2 Kat*

[1] "Washington" was a code word used for Windstream in connection with the Merger. In the event that this term results in a disproportionate number of unique and irrelevant hits based on a sampling of unique hits, we are willing to discuss limiters and/or connectors to that term.

(c) McGuire w/2 Garry
(d) Salemme
(e) Shimer
(f) Stoll
(g) Turek

6. *Windstream*
7. Gunderman
8. Hinson
9. Moody w/2 Kris*
10. Thomas w/2 (Anthony or Tony)
11. "Exchange Ratio"
12. "Communications Sales & Leasing" or CSAL or CS&L or CSL or Uniti
13. "Disguised Financing"
14. "Management Plan"
15. Bringdown or "Bring Down"

C. Merger Due Diligence Consultants, Advisors, and Bankers

16. Caggiano
17. Post w/2 Charl*
18. Slocumb
19. Turpin
20. Valenti
21. WINNIE
22. Zubieta
23. *Foros*
24. Getsie
25. *GOLDMAN* or GS
26. Manas
27. Mann
28. Ronen
29. Tofsky
30. EY
31. Ernst
32. Gersack
33. Taylor w/2 Matt*
34. Ward w/2 Rich*

POST-CLOSE TERMS FOR NON-CONTINUING EARTHLINK OUTSIDE DIRECTORS

CUSTODIANS

1. Susan D. Bowick
2. Kathy S. Lane
3. Garry K. McGuire
4. R. Gerard Salemme

POST-CLOSE DATE RANGES AND TERMS

1. 7/26/2017 – 8/10/2017: Windstream or Dividend*
2. 9/14/2017 – 9/28/2017: Windstream or Aurelius
3. 7/21/2018 – 8/3/2018: Windstream or Bankrupt*

POST-CLOSE TERMS FOR CONTINUING EARTHLINK OUTSIDE DIRECTORS

CUSTODIANS

1. Julie A. Shimer
2. Marc F. Stoll
3. Walter L. Turek

POST-CLOSE DATE RANGE

Start Date: 2/28/2017
End Date: 3/19/2018

TERMS

1. (*christopher.c.king* or Grumbos) and (reaction and analyst*)
2. (*christopher.c.king* or Grumbos) and “investor* reaction*”
3. (*christopher.c.king* or Grumbos) and (feedback and analyst*)
4. (*christopher.c.king* or Grumbos) and “investor* feedback”

WINDSTREAM EXECUTIVES ESI PROTOCOL

BASIC SEARCH FUNCTIONALITY AND ADDITIONAL AGREEMENTS

1. Search terms will be run without reference to capitalization.

2. If any burden or relevance objection is asserted in connection with any search terms, the objecting party will immediately provide reports on the number of unique hits per search term/custodian.

3. Defendants shall disclose to Plaintiff any proposed modifications to these search parameters. The parties agree to meet and confer regarding any proposed modifications.

4. In addition to the search terms contained herein, Defendants shall manually search for and collect all responsive documents outside of the date range contained above for Requests 3, 4, 32, and 35.

5. Plaintiff reserves the right to identify additional terms, custodians, or date ranges as documents are received and reviewed. In that event, Plaintiff will provide his proposed justification for doing so and Plaintiff recognizes that Defendants reserve all rights to object to the production of additional material.

6. If any Defendant or custodian manually created or kept an email, electronic or hard copy folder dedicated to the Merger, the EarthLink sale process, EarthLink or Windstream valuations, or EarthLink or Windstream projections, the entire folder should be produced (after attorney review for privilege) without application of search terms, date limitations or any other restriction identified herein.

7. The parties agree to meet and confer to determine every location, including all email addresses, that might include discoverable material.

8. To the extent any Defendant or custodian utilized text messages, instant messaging, or any other form of written non-email electronic communication (*i.e.*, Telegram, Skype, Microsoft Teams, WhatsApp, Slack, Reuters or Bloomberg messaging, shared Notes app messaging) to communicate regarding the sale process, the Acquisition, Windstream, or EarthLink's business prospects during the relevant time period:

   (a) Defendants shall disclose the existence of any such messaging program/application and review the communications on the applicable phones, devices, programs, or applications; and

   (b) Defense counsel will review all text messages (or similar communications) between a custodian, on the one hand, and all EarthLink directors, all Windstream directors and officers, and/or all EarthLink or Windstream Advisors in connection with the Merger on the other hand, without application of the search terms. For all other text and similar messages, Defendants will run the proposed search terms (provided that for any email

addresses or names contained herein, the search terms shall include that person's applicable telephone number or user ID utilized for non-email electronic communications).

9. For each person's name contained as a search term, that person's relevant email address(es) shall also be included as a term.

10. Defendants will produce all non-privileged documents that hit on the parameters identified herein and are responsive to any category in Plaintiff's document requests to Defendants in this action, without regard to the non-privilege based objections contained in Defendants' responses and objections to those document requests. If, in the course of document review, a Defendant later propose to exclude any such documents from the production, he or she will promptly inform Plaintiffs so that the parties can meet and confer regarding the proposed exclusions.

11. Windstream and/or EarthLink will produce the entire electronic diligence data room that Windstream made available to EarthLink in connection with Merger-related due diligence (without application of search terms).

CUSTODIANS

1. Tony Thomas
2. Robert Gunderman
3. Kristi Moody
4. John P. Fletcher
5. Matthew Dement

MERGER DATE RANGE

Start Date: 8/1/2016
End Date: 4/1/2017

TERMS

A. Relevant Code Names

1. Europa
2. "Project Timebomb"
3. RITE

B. Merger Due Diligence, Relevant Windstream Issues, Offering Documents, and EarthLink-Related Terms

4. EarthLink or ELNK
5. Alterman
6. DeSimone
7. Dobbins

8. Eazor
9. Ferguson w/2 Brad*
10. Kalish
11. Vaswani
12. "Restricted Payment*"
13. “Debt compliance”
14. “Debt Covenant*”
15. “Disguised Financing”
16. Indenture
17. “Leverage Ratio”
18. “True Lease”
19. “Registration Statement”
20. “S-4”
21. Dividend*
22. "Communications Sales & Leasing" or CSAL or CS&L or CSL or Uniti
23. "650m" or "650 Million"
24. (Lease or Rent*) w/3 (Pmt* or Pay* or Rate or Market)
25. (Capitaliz* or Operat*) w/2 Lease
26. SLB or Leaseback or “Lease Back”
27. Bringdown or “Bring Down”

C. Merger Due Diligence, Projections, and Valuations of Windstream

28. “Broadband Net Adds”
29. OIBDAR
30. OIBDA
31. “CLEC Gross Margin”
32. “ILEC Field Ops”
33. “ILEC Monthly SMB Sales”
34. “Monthly ARPU”
35. "3 Year" w/3 (Plan* or *Forecast*)
36. "5 Year" w/3 (Plan* or *Forecast* or Capex or "Capital Expenditure")
37. (Management or Mgmt) w/2 (*Forecast* or Projection*)
38. (2017* or FY17*) w/3 (Plan* or *Forecast*)
39. (Copper or Fiber) w/15 ("Capital Expenditure*" or CapEx)
40. (Upside or Downside) w/2 scenario*
41. “Base Case”
42. “Capital Allocation”
43. “Board Plan”

D. Merger Consultants, Auditors, and Bankers

44. Barclays
45. Valenti
46. JPMorgan or JPM or "J.P. Morgan"
47. WINNIE
48. Caggiano

49. Turpin
50. EY
51. Ernst
52. Gersack
53. Foros
54. Manas
55. *Goldman* or GS
56. Tofsky
57. AGC
58. FTI
59. Jagtap
60. Taylor w/2 Carlyn

POST-CLOSE TERMS REGARDING STOCK MOVEMENT FOR THOMAS AND GUNDERMAN

CUSTODIANS

1. Tony Thomas
2. Robert Gunderman

POST-CLOSE DATE RANGE

Start Date: 2/28/2017
End Date: 3/19/2018

TERMS

1. (*christopher.c.king* or Grumbos) and (reaction and analyst*)
2. (*christopher.c.king* or Grumbos) and "investor* reaction*"
3. (*christopher.c.king* or Grumbos) and (feedback and analyst*)
4. (*christopher.c.king* or Grumbos) and "investor* feedback"

WINDSTREAM OUTSIDE DIRECTORS ESI PROTOCOL

BASIC SEARCH FUNCTIONALITY AND ADDITIONAL AGREEMENTS

1. Search terms will be run without reference to capitalization.

2. If any burden or relevance objection is asserted in connection with any search terms, the objecting party will immediately provide reports on the number of unique hits per search term/custodian.

3. Defendants shall disclose to Plaintiff any proposed modifications to these search parameters. The parties agree to meet and confer regarding any proposed modifications.

4. In addition to the search terms contained herein, Defendants shall manually search for and collect all responsive documents outside of the date range contained above for Requests 3, 4, 32, and 35.

5. Plaintiff reserves the right to identify additional terms, custodians, or date ranges as documents are received and reviewed. In that event, Plaintiff will provide his proposed justification for doing so and Plaintiff recognizes that Defendants reserve all rights to object to the production of additional material.

6. If any Defendant manually created or kept an email, electronic or hard copy folder dedicated to the Merger, the EarthLink sale process, EarthLink or Windstream valuations, or EarthLink or Windstream projections, the entire folder should be produced (after attorney review for privilege) without application of search terms, date limitations or any other restriction identified herein.

7. The parties agree to meet and confer to determine every location, including all email addresses, that might include discoverable material.

8. To the extent any Defendant utilized text messages, instant messaging, or any other form of written non-email electronic communication (*i.e.*, Telegram, Skype, Microsoft Teams, WhatsApp, Slack, Reuters or Bloomberg messaging, shared Notes app messaging) to communicate regarding the sale process, the Acquisition, Windstream, or EarthLink's business prospects during the relevant time period:

   (a) Defendants shall disclose the existence of any such messaging program/application and review the communications on the applicable phones, devices, programs, or applications; and

   (b) Defense counsel will review all text messages (or similar communications) between a custodian, on the one hand, and all EarthLink directors, all Windstream directors and officers, and/or all EarthLink or Windstream Advisors in connection with the Merger on the other hand, without application of the search terms. For all other text and similar messages, Defendants will run the proposed search terms (provided that for any email addresses or names contained herein, the search terms shall include that person's applicable telephone number or user ID utilized for non-email electronic communications).

9. For each person's name contained as a search term, that person's relevant email address(es) shall also be included as a term.

10. Defendants will produce all non-privileged documents that hit on the parameters identified herein and are responsive to any category in Plaintiff's document requests served on Defendants in this action, without regard to the non-privilege based objections contained in Defendants' responses and objections to requests for production. If, in the course of document review, a Defendant later propose to exclude any such documents from the production, he or she will promptly inform Plaintiffs so that the parties can meet and confer regarding the proposed exclusions.

CUSTODIANS

1. Jeffrey T. Hinson
2. Carol B. Armitage
3. Samuel E. Beall III
4. Jeannie Diefenderfer
5. William G. LaPerch
6. Larry Laque
7. Michael G. Stoltz
8. Alan L. Wells

DATE RANGE

Start Date: 9/1/2016
End Date: 4/1/2017

TERMS

A. Relevant Code Names

1. Europa
2. "Project Timebomb"
3. RITE

B. EarthLink-Related Terms and Relevant Windstream Issues

4. EarthLink or ELNK
5. "Disguised Financing"
6. "True Lease"
7. "Communications Sales & Leasing" or CSAL or CS&L or CSL or Uniti
8. Alterman
9. DeSimone
10. Dobbins
11. Eazor
12. Ferguson w/2 Brad*
13. Kalish

14. Vaswani
15. Bringdown or “Bring Down”

C. Projections and Valuations of Windstream

16. “Broadband Net Adds”
17. OIBDAR
18. OIBDA
19. “CLEC Gross Margin”
20. “ILEC Field Ops”
21. “ILEC Monthly SMB Sales”

D. Merger Consultants, Auditors, and Bankers

22. Barclays
23. Valenti
24. JPMorgan or JPM or "J.P. Morgan"
25. WINNIE
26. Caggiano
27. Turpin
28. EY
29. Ernst
30. Gersack
31. Foros
32. Manas
33. *Goldman* or GS
34. Tofsky
35. AGC
36. FTI
37. Jagtap
38. Taylor w/2 Carlyn

POST-CLOSE TERMS REGARDING STOCK MOVEMENT FOR ALL WINDSTREAM OUTSIDE DIRECTORS

CUSTODIANS

1. Jeffrey T. Hinson
2. Carol B. Armitage
3. Samuel E. Beall III
4. Jeannie Diefenderfer
5. William G. LaPerch
6. Larry Laque
7. Michael G. Stoltz
8. Alan L. Wells

POST-CLOSE DATE RANGE

Start Date: 2/28/2017
End Date: 3/19/2018

TERMS

1. (*christopher.c.king* or Grumbos) and (reaction and analyst*)
2. (*christopher.c.king* or Grumbos) and "investor* reaction*"
3. (*christopher.c.king* or Grumbos) and (feedback and analyst*)
4. (*christopher.c.king* or Grumbos) and "investor* feedback"

EXHIBIT B

CORNERSTONE RESEARCH

Economic and Financial Consulting and Expert Testimony

Securities Class Action Settlements

2023 Review and Analysis

Table of Contents

Figures and Appendices

Analyses in this report are based on nearly 2,200 securities class actions filed after passage of the Private Securities Litigation Reform Act of 1995 (Reform Act) and settled from 1996 through year-end 2023. See page 17 for a detailed description of the research sample. For purposes of this report and related research, a settlement refers to a negotiated agreement between the parties to a securities class action that is publicly announced to potential class members by means of a settlement notice.

2023 Highlights

In 2023, while the number of settled securities class actions declined 21% relative to the 15-year high in 2022, the median settlement amount, median "simplified tiered damages," and median total assets of issuer defendants all remained at historically elevated levels.[1]

- There were 83 securities class action settlements in 2023 with a total settlement value of approximately $3.9 billion, compared to 105 settlements in 2022 with a total settlement value of approximately $4.0 billion. (page 3)
- The median settlement amount of $15 million is the highest level since 2010 and represents an increase of 11% from 2022, while the average settlement amount ($47.3 million) increased by 25% over 2022. (page 4)
- There were nine mega settlements (equal to or greater than $100 million), with a total settlement value of $2.5 billion. (page 3)
- In 2023, 34% of cases settled for more than $25 million, the highest percentage since 2012. (page 4)
- Median "simplified tiered damages" declined 16% from the record high in 2022, but remained at elevated levels compared to the prior nine years.[2] (page 5)
- Issuer defendant firms involved in cases that settled in 2023 were 19% larger than defendant firms in 2022 settlements as measured by median total assets, which reached its highest level since 1996. (page 5)
- The median duration from the case filing to the settlement hearing date of 3.7 years in 2023 was unusually high. Since the Reform Act's passage, the time to settle reached this level in only one other year (2006). (page 14)

Figure 1: Settlement Statistics

(Dollars in millions)

	2018–2022	2022	2023
Number of Settlements	420	105	83
Total Amount	$19,545.7	$3,974.7	$3,927.3
Minimum	$0.4	$0.7	$0.8
Median	$11.7	$13.5	$15.0
Average	$46.5	$37.9	$47.3
Maximum	$3,640.9	$842.9	$1,000.0

Note: Settlement dollars are adjusted for inflation; 2023 dollar equivalent figures are presented.

Author Commentary

Insights and Findings

Continuing an increase observed in 2022, the size of settled cases in 2023 (measured by the median settlement amount) reached the highest level in over a decade. This occurred despite a decline in median "simplified tiered damages," a measure of potential shareholder losses that our research finds to be the single most important factor in explaining individual settlement amounts.

The size of the issuer defendant firms involved in cases settled in 2023 (measured by median total assets) also increased. Indeed, median total assets for defendants in 2023 settlements reached an all-time high among post–Reform Act settlements and was 19% higher than in 2022. Issuer defendant assets serve, in part, as a proxy for resources available to fund a settlement and are highly correlated with settlement amounts. Thus, the increase in defendant assets likely contributed to the growth in settlement amounts in 2023.

One factor causing the increase in asset size of defendant firms in cases settled in 2023 may be that, overall, these firms were more mature than in prior years. Specifically, the median age as a publicly traded firm was 16 years, compared to the median age of 11 years for cases settled from 2014 to 2022. In addition, the percentage of cases settled in 2023 that involved firms in the financial sector (over 15%) was higher than the prior nine-year average. Firms in the financial sector involved in securities class action settlements have consistently reported higher total assets than other issuer firm defendants.

In 2023, cases took longer to settle. They also reached more advanced stages prior to resolution, including a smaller proportion of cases settled before a ruling on class certification compared to prior years. Since longer periods to reach settlement are also correlated with higher settlement amounts, this increase is consistent with the higher overall median settlement value.

Securities class actions settled in 2023 continued to take longer to resolve—disruptions associated with the COVID-19 pandemic may have contributed to this increase.

Dr. Laarni T. Bulan
Principal, Cornerstone Research

Longer times to reach a settlement and more advanced litigation stages are also typically correlated with greater case activity, as measured by the number of entries on the court dockets. Surprisingly, the median number of docket entries increased only slightly compared to 2022. This, and the fact that over 80% of cases settled in 2023 had been filed by the end of 2020, suggests that the lengthened time to settlement can potentially be explained by delays related to the COVID-19 pandemic.

The size of issuer defendants in 2023 settlements surpassed even the previous record in 2022, in part due to an increase in the number of financial sector defendants to the highest level in the last decade.

Dr. Laura E. Simmons
Senior Advisor, Cornerstone Research

Looking Ahead

While we do not necessarily expect new record highs in settlement dollars in the upcoming years, it is possible that settlement amounts will remain at relatively high levels, based on recent trends in securities class action filings, including elevated levels of Disclosure Dollar Loss and Maximum Dollar Loss. (See Cornerstone Research's *Securities Class Action Filings—2023 Year in Review*.)

Further, the most recent emergence of case filings related to the 2023 bank failures, combined with a relatively high proportion in the last few years of settled cases involving financial firms, may result in a continued rise in the asset size of issuer defendants involved in settlements. This may also contribute to high settlement amounts.

Additionally, considering the levels of filing activity in recent years, we do not anticipate dramatic increases in the number of cases settled in the upcoming years.

—Laarni T. Bulan and Laura E. Simmons

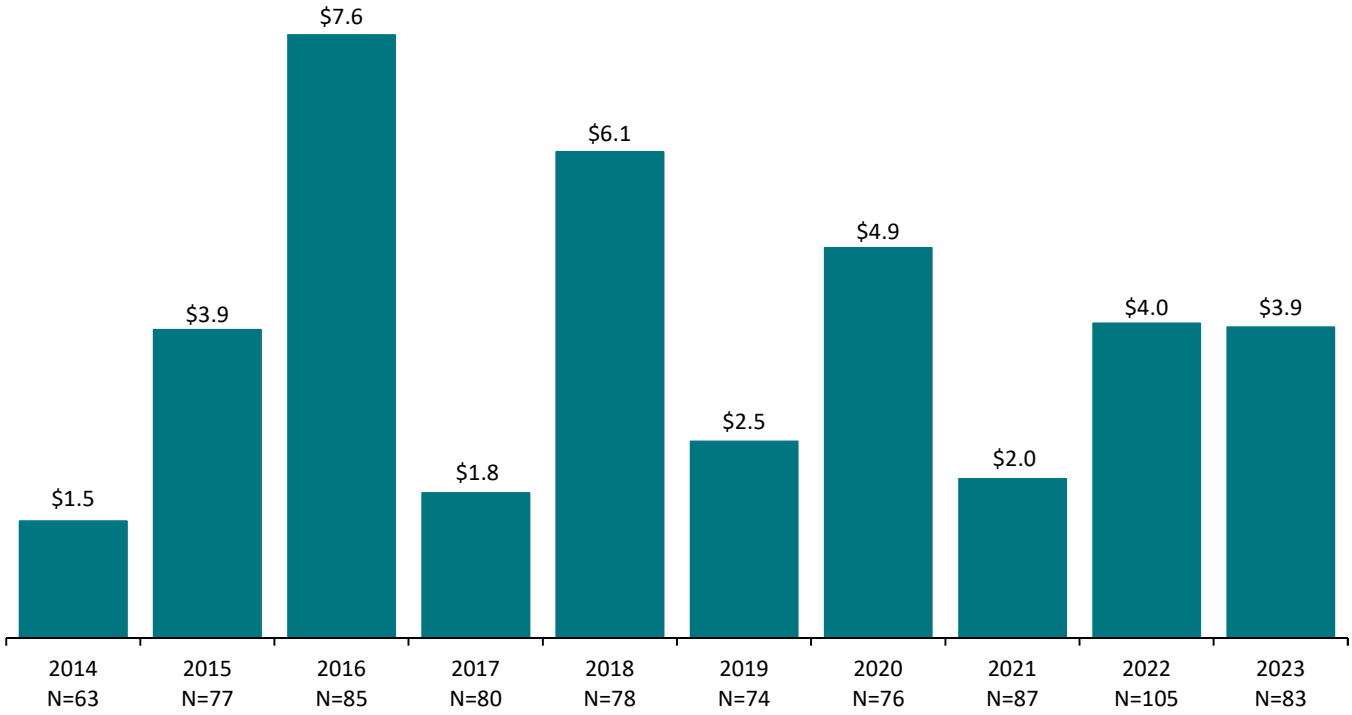
Total Settlement Dollars

- While the number of settlements in 2023 declined by more than 20% from 2022, 2023 total settlement dollars were roughly the same as in 2022.
- The nine mega settlements in 2023—the highest number since 2016—ranged from $102.5 million to $1 billion. *(See Appendix 4 for an analysis of mega settlements.)*
- Cases involving institutional investors as lead plaintiffs represented 86% of total settlement dollars in 2023, in line with the percentage in 2022.

Mega settlements accounted for nearly two-thirds of 2023 total settlement dollars, up from 52% in 2022.

Figure 2: Total Settlement Dollars
2014–2023

(Dollars in billions)



Note: Settlement dollars are adjusted for inflation; 2023 dollar equivalent figures are presented. “N” refers to the number of cases.

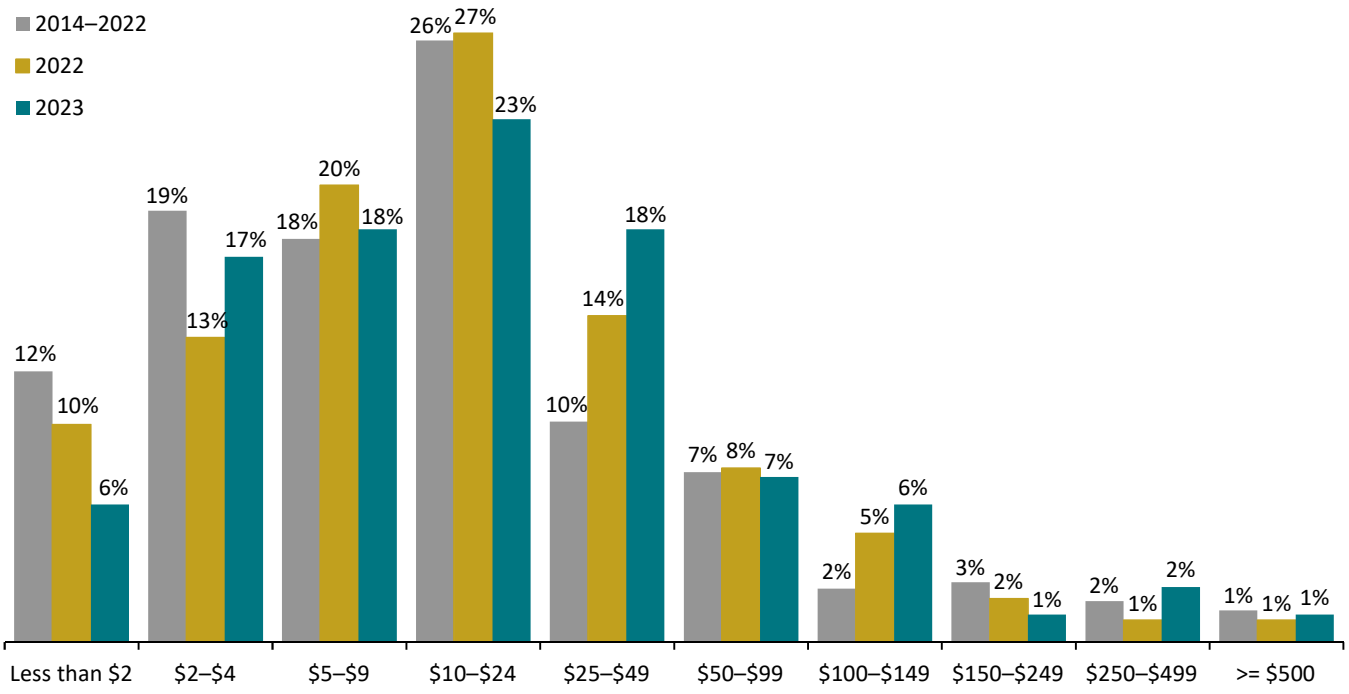
Settlement Size

- The median settlement amount in 2023 was $15 million, an 11% increase from 2022 and 44% higher than the 2014–2022 median ($10.4 million). Median values provide the midpoint in a series of observations and are less affected than averages by outlier data.
- The average settlement amount in 2023 was $47.3 million, a 25% increase from 2022. (*See Appendix 1 for an analysis of settlements by percentiles*.)
- In 2023, 6% of cases settled for less than $2 million, the lowest percentage since 2013.

The median settlement amount in 2023 reached the highest level since 2010.

- The percentage of settlement amounts greater than $25 million (34%) was the highest since 2012, driven in part by the continued increase in settlement amounts in the $25 million to $50 million range.
- Issuers that have been delisted from a major exchange and/or declared bankruptcy prior to settlement are generally associated with lower settlement amounts. The number of such issuers declined from 10% in 2022 to a new all-time low of 7% in 2023, contributing to the higher overall median settlement amount in 2023.[3]

Figure 3: Distribution of Settlements
2014–2023
(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2023 dollar equivalent figures are presented. Percentages may not sum to 100% due to rounding.

Type of Claim

Rule 10b-5 Claims and "Simplified Tiered Damages"

"Simplified tiered damages" uses simplifying assumptions to estimate per-share damages and trading behavior for cases involving Rule 10b-5 claims. It provides a measure of potential shareholder losses that allows for consistency across a large volume of cases, thus enabling the identification and analysis of potential trends.[4]

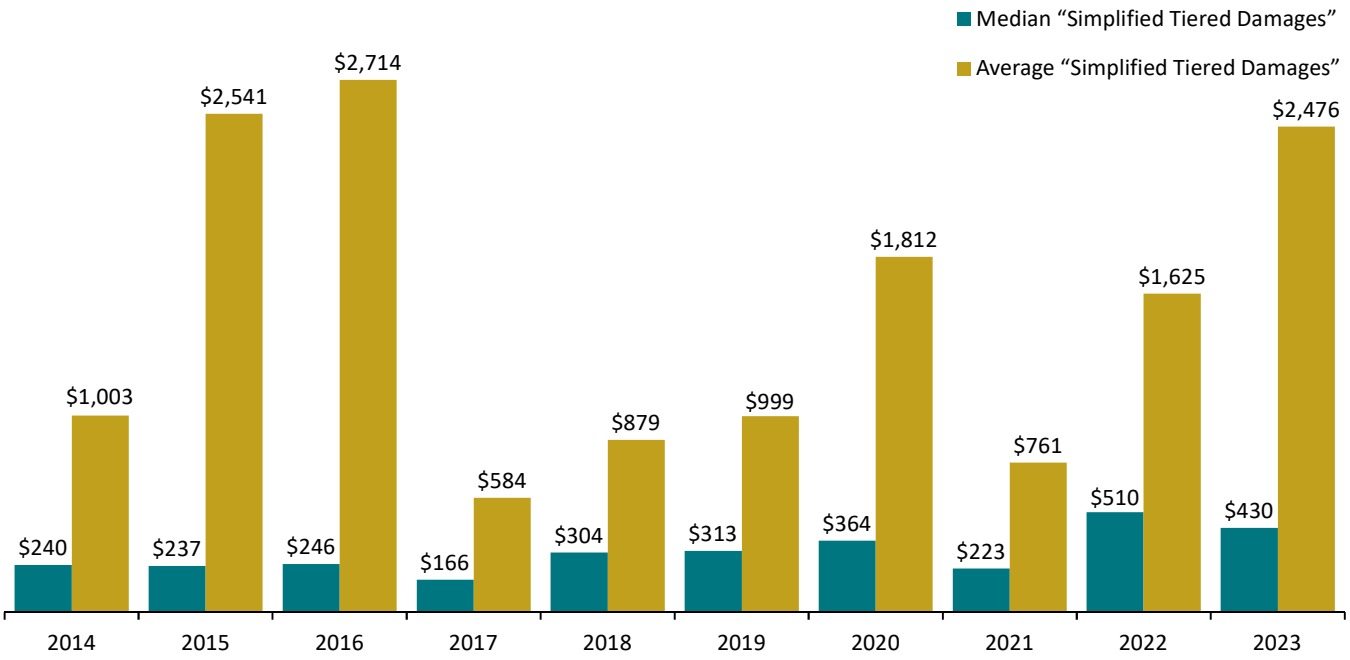
Cornerstone Research's analysis finds this measure to be the most important factor in estimating settlement amounts.[5] However, this measure is not intended to represent actual economic losses borne by shareholders. Determining any such losses for a given case requires more in-depth economic analysis.

Median "simplified tiered damages" remained at elevated levels in 2023.

- In 2023, the average "simplified tiered damages" was nearly six times as large as the median, the largest difference since 2016. This difference was primarily driven by seven cases with "simplified tiered damages" exceeding $5 billion.
- Higher "simplified tiered damages" are typically associated with larger issuer defendants. Consistent with the elevated levels of "simplified tiered damages," the median total assets of issuer defendants among settled cases in 2023 was $3.1 billion—154% higher than the prior nine-year median and higher than any other post–Reform Act year.
- Higher "simplified tiered damages" are also generally associated with larger Maximum Dollar Loss (MDL).[6] In 2023, the median MDL fell only slightly from the historical high in 2022. *(See Appendix 7 for additional information on median and average MDL.)*

Figure 4: Median and Average "Simplified Tiered Damages" in Rule 10b-5 Cases
2014–2023

(Dollars in millions)



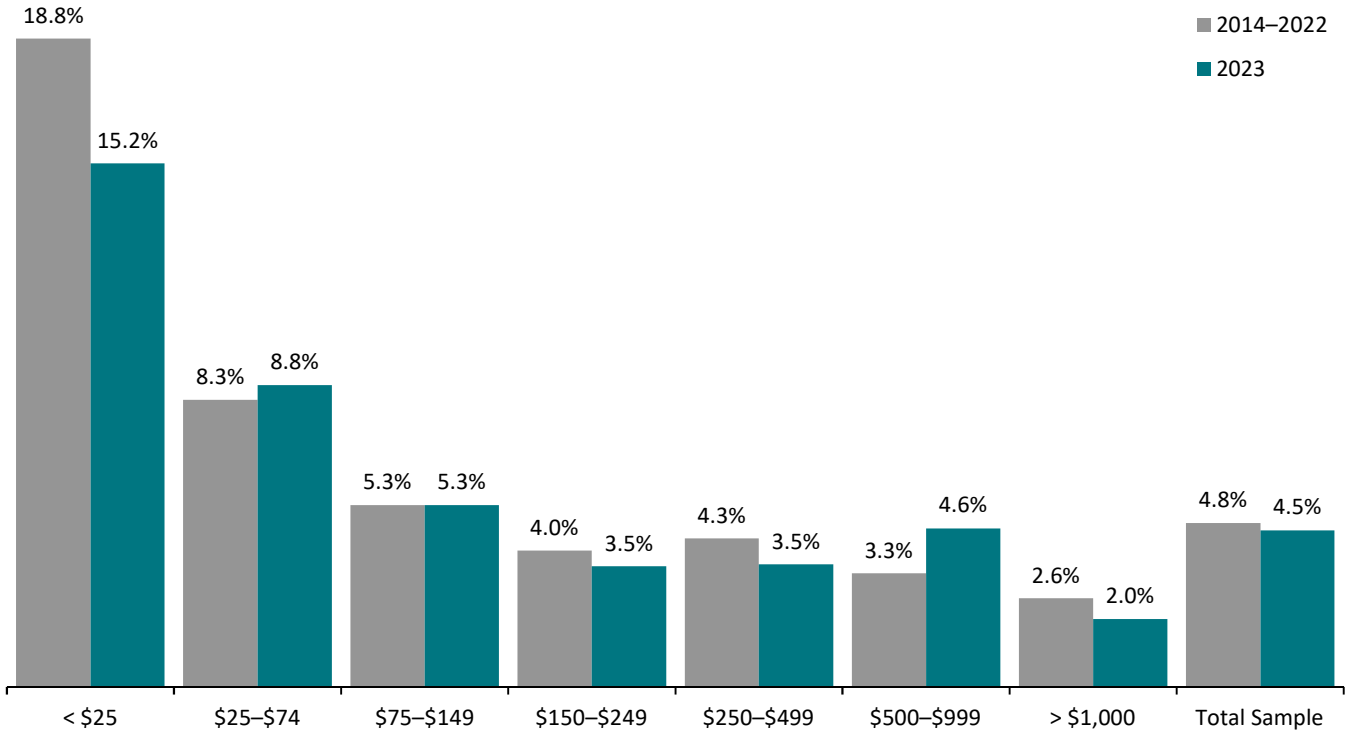
Note: "Simplified tiered damages" are adjusted for inflation based on class period end dates and are estimated for common stock only; 2023 dollar equivalent figures are presented. Damages are estimated for cases alleging a claim under Rule 10b-5 (whether alone or in addition to other claims).

Type of Claim (continued)

- Larger cases, as measured by "simplified tiered damages," typically settle for a smaller percentage of damages.
- In 2023, the overall median settlement as a percentage of "simplified tiered damages" of 4.5% increased 27% from 2022, but was in-line with the prior nine-year average percentage. *(See Appendix 5 for additional information on median and average settlement as a percentage of "simplified tiered damages.")*
- The median settlement as a percentage of "simplified tiered damages" of 4.6% for cases with "simplified tiered damages" from $500 million to $1 billion reached a five-year high in 2023.

Figure 5: Median Settlement as a Percentage of "Simplified Tiered Damages" by Damages Ranges in Rule 10b-5 Cases 2014–2023

(Dollars in millions)



Note: Damages are estimated for cases alleging a claim under Rule 10b-5 (whether alone or in addition to other claims).

Plaintiff-Estimated Damages

In their motions for settlement approval, plaintiffs typically report an estimate of aggregate damages ("plaintiff-estimated damages").[7]

As explained in Cornerstone Research's *Approved Claims Rates in Securities Class Actions* (2020), "plaintiff-estimated damages" are often represented as plaintiffs' "best-case scenario" or the "maximum potential recovery" calculated by plaintiffs. However, the authors highlight a "selection bias" present in these data due to potential plaintiff counsel incentives to report "the lower end of the range of estimated total aggregate damages" to be able "to demonstrate to the court a high settlement amount relative to potential recovery." To the extent such incentives exist, their impact may vary across cases. Detailed information on plaintiffs' methodology to determine the reported amount is not disclosed. Hence, it is not possible to determine from the settlement documents the degree to which the methodologies employed are consistent across cases.

With the significant caveats above, "plaintiff-estimated damages" represent an additional measure of potential shareholder losses that may be used alongside "simplified tiered damages" in conjunction with settlement analyses.

Type of Claim (continued)

’33 Act Claims and “Simplified Statutory Damages”

For Securities Act of 1933 (’33 Act) claim cases—those involving only Section 11 and/or Section 12(a)(2) claims—potential shareholder losses are estimated using a model in which the statutory loss is the difference between the statutory purchase price and the statutory sales price, referred to here as “simplified statutory damages.”[8]

- There were 10 settlements for cases with only ’33 Act claims in 2023, with the majority of those cases filed in federal court (7) as opposed to state court (3).[9]
- In 2023, the percentage of cases with an underwriter defendant was 70%, down from the prior nine-year average of 88%.
- The median length of time from case filing to settlement hearing date for ’33 Act claim cases was greater than four years—the longest observed duration in any post–Reform Act year for this type of case.

In 2023, the median settlement amount for cases with only ’33 Act claims was $13.5 million, an 85% increase from 2022.

Figure 6: Settlements by Nature of Claims
2014–2023

(Dollars in millions)

	Number of Settlements	Median Settlement	Median “Simplified Statutory Damages”	Median Settlement as a Percentage of “Simplified Statutory Damages”
Section 11 and/or Section 12(a)(2) Only	84	$9.9	$158.1	7.5%

	Number of Settlements	Median Settlement	Median “Simplified Tiered Damages”	Median Settlement as a Percentage of “Simplified Tiered Damages”
Both Rule 10b-5 and Section 11 and/or Section 12(a)(2)	123	$14.7	$307.4	6.6%
Rule 10b-5 Only	596	$10.3	$291.7	4.5%

Note: Settlement dollars and damages are adjusted for inflation; 2023 dollar equivalent figures are presented.

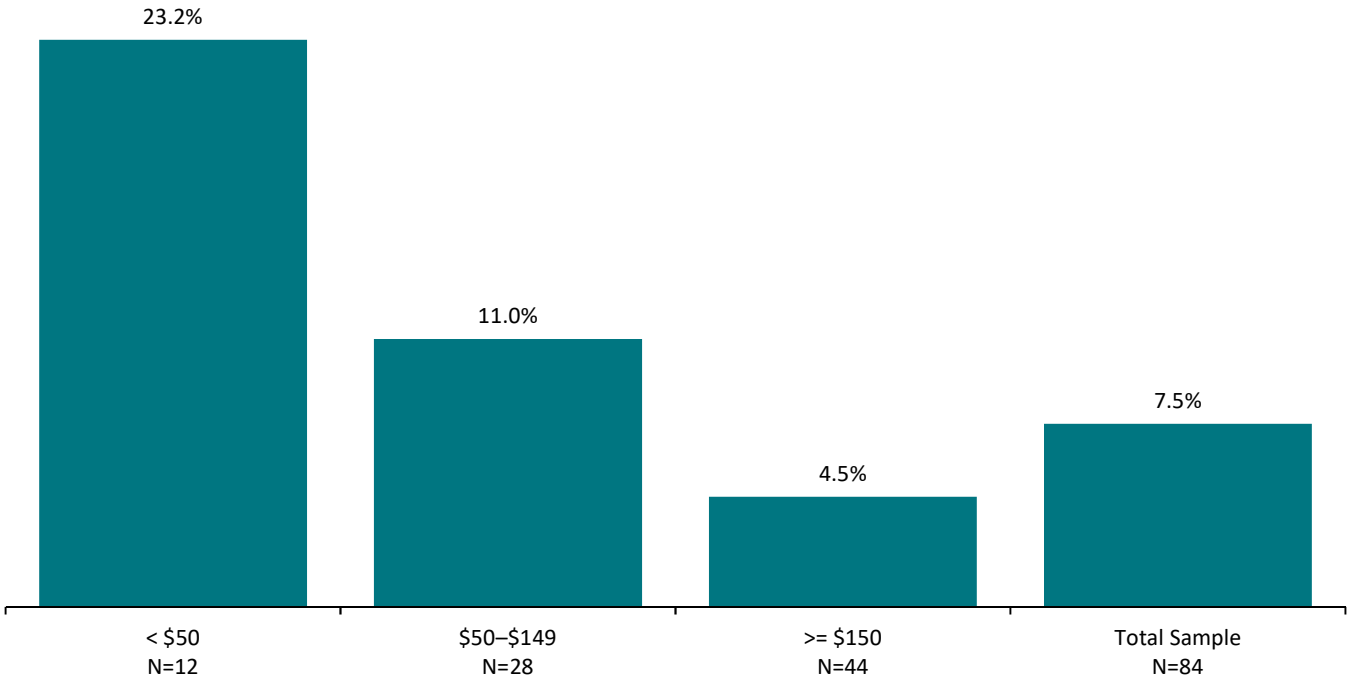
Type of Claim (continued)

- Over 2014–2023, the median size of issuer defendants (measured by total assets) was 40% smaller for cases with only ’33 Act claims relative to those that also included Rule 10b-5 claims.
- The smaller size of issuer defendants in cases with only ’33 Act claims is consistent with most of these cases involving initial public offerings (IPOs). From 2014 through 2023, 80% of all cases with only ’33 Act claims have involved IPOs.
- In 2023, however, the median total assets for settled cases with only ’33 Act claims ($2.5 billion) was over four times as large as the median total assets for such cases in 2014–2022 ($580 million).

The median “simplified statutory damages” in 2023 increased by 115% from the 2022 median and represents the third highest since 1996.

Figure 7: Median Settlement as a Percentage of “Simplified Statutory Damages” by Damages Ranges in ’33 Act Claim Cases 2014–2023

(Dollars in millions)



Jurisdictions of Settlements of ’33 Act Claim Cases

	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
State Court	0	2	4	5	4	4	7	6	6	3
Federal Court	2	2	6	3	4	5	1	10	3	7

Note: “N” refers to the number of cases. This analysis excludes cases alleging Rule 10b-5 claims.

Analysis of Settlement Characteristics

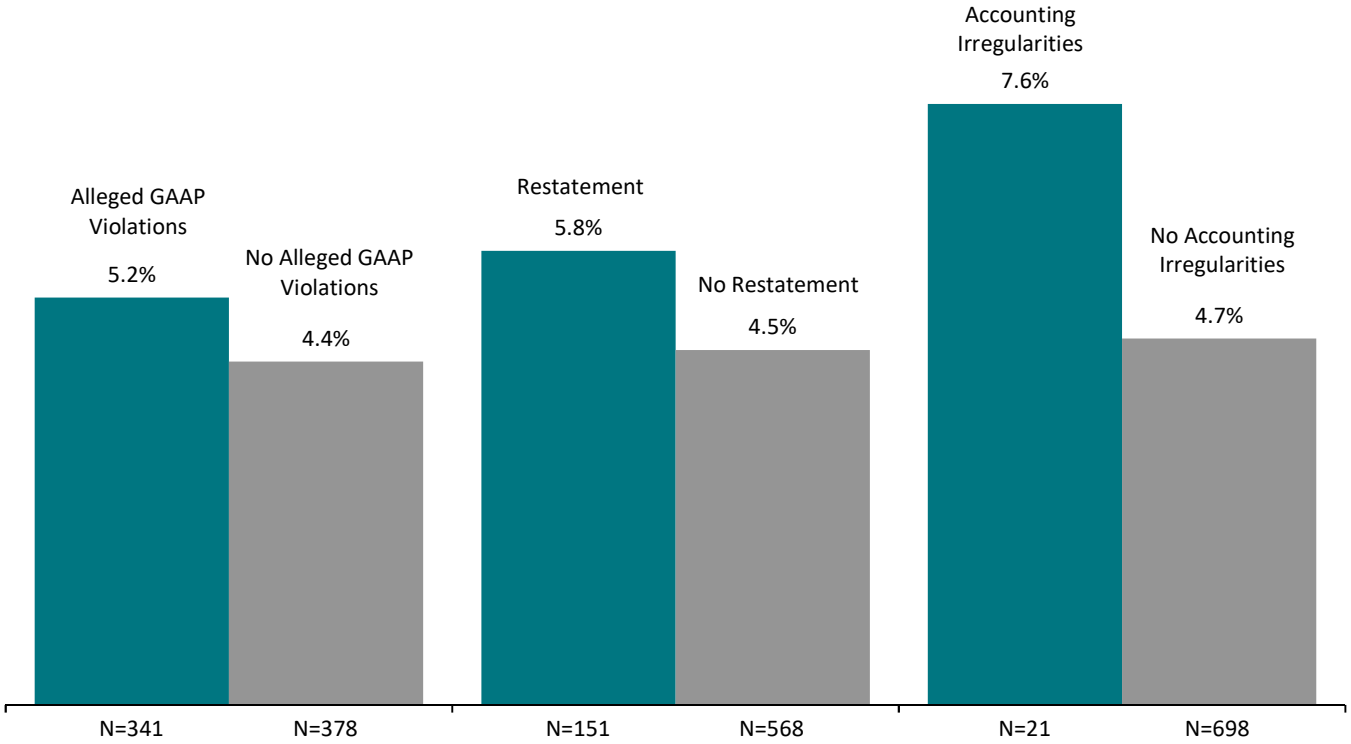
GAAP Violations

This analysis examines allegations of GAAP violations in settlements of securities class actions involving Rule 10b-5 claims, including two sub-categories of GAAP violations—financial statement restatements and accounting irregularities.[10] For further details regarding settlements of accounting cases, see Cornerstone Research's annual report on *Accounting Class Action Filings and Settlements*.[11]

- The percentage of settled cases in 2023 alleging GAAP violations (37%) remained well below the prior nine-year average (49%).
- Contributing to the low number of GAAP cases settled in 2023 were continued low levels of cases involving financial statement restatements and accounting irregularities. In particular, 14% of settled cases in 2023 involved a restatement of financial statements, compared to 22% for the prior nine years. Only 1% of settled cases in 2023 involved accounting irregularities.
- Auditor codefendants were involved in only 2% of settled cases, consistent with the past few years but substantially lower than the average from 2014 to 2022.

In 2023, the median settlement as a percentage of "simplified tiered damages" for cases with alleged GAAP violations increased nearly 25% from 2022.

Figure 8: Median Settlement as a Percentage of "Simplified Tiered Damages" and Allegations of GAAP Violations 2014–2023



Note: "N" refers to the number of cases. This analysis is limited to cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

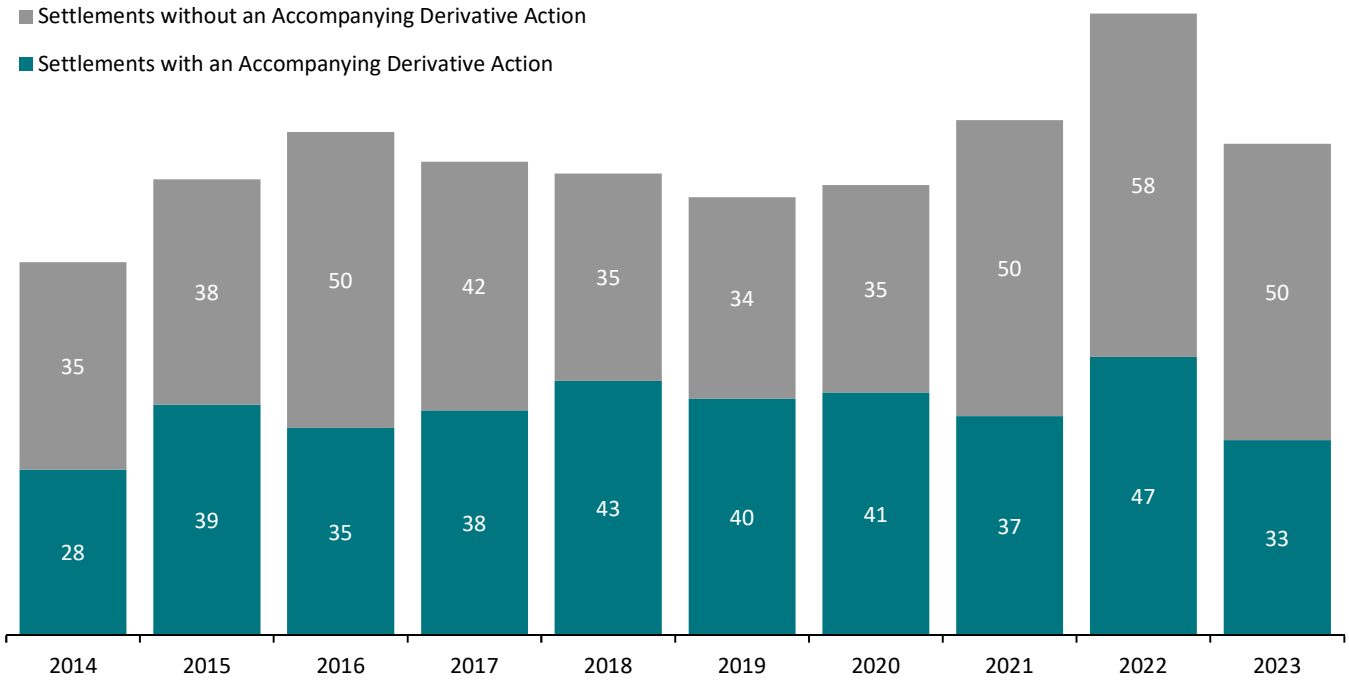
Derivative Actions

- Securities class actions often involve accompanying (or parallel) derivative actions with similar claims, and such cases have historically settled for higher amounts than securities class actions without accompanying derivative matters.[12]
- The percentage of cases involving accompanying derivative actions in 2023 (40%) was the lowest since 2011, in part driven by a reduction in the number of cases filed in Delaware (13) compared to the prior four-year average (17).
- For cases settled during 2019–2023, 40% of parallel derivative suits were filed in Delaware. California and New York were the next most common venues, representing 19% and 17% of such settlements, respectively.

In 2023, the median settlement amount for cases with an accompanying derivative action was $21 million, over 40% higher than in 2022.

- It is commonly understood that most parallel derivative actions do not settle for monetary amounts (other than plaintiffs' attorney fees). However, the likelihood of a monetary settlement among parallel derivative actions is higher when the securities class action settlement is large, as shown in Cornerstone Research's *Parallel Derivative Action Settlement Outcomes*.[13]

Figure 9: Frequency of Derivative Actions
2014–2023



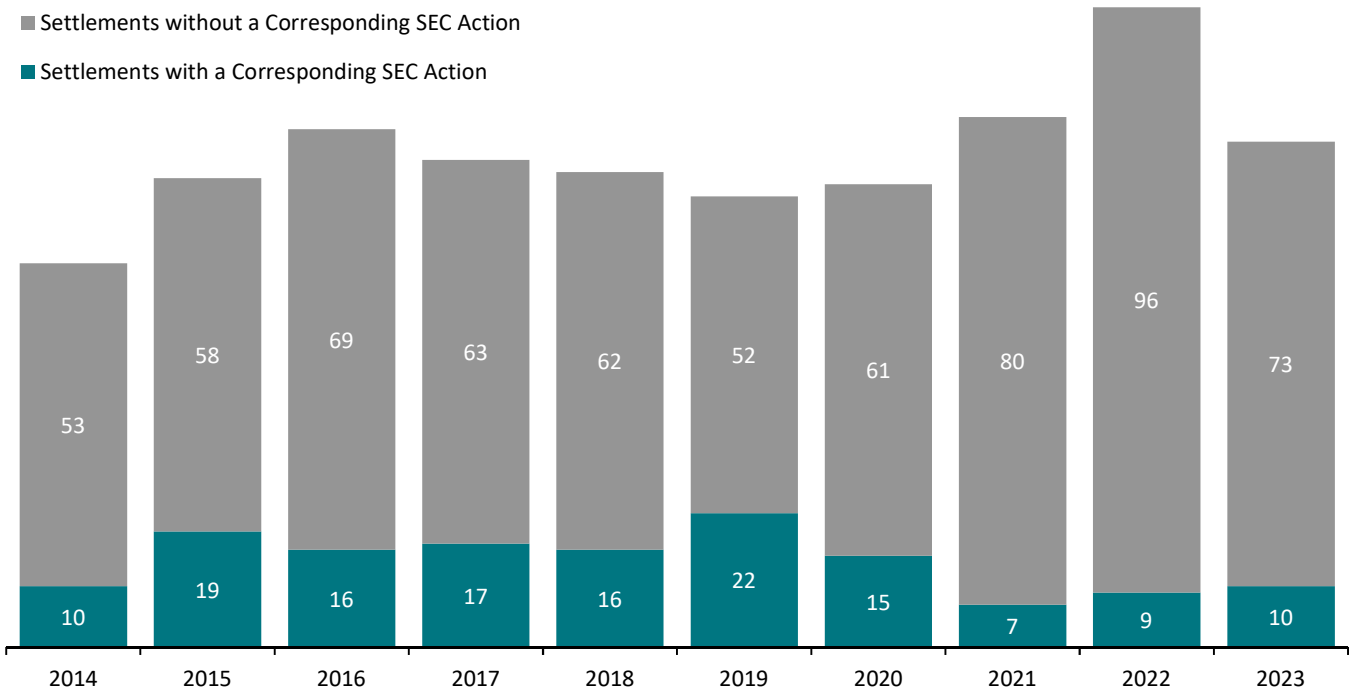
Corresponding SEC Actions

- The percentage of settled cases in 2023 involving a corresponding SEC action was 12%. This represents a slight rebound from 2021 and 2022, when this percentage was less than 10%, but is still well below the prior nine-year average of 19%.

Over the past 10 years, nearly 75% of settled cases involving SEC actions also involved a restatement of financial statements or alleged GAAP violations.

- Historically, cases with a corresponding SEC action have typically been associated with substantially higher settlement amounts.[14] However, this pattern did not hold in 2023 when, for the third time in the past 10 years, the median settlement amount for cases with a corresponding SEC action was less than that for cases without such an action.
- Among 2023 settled cases that involved a corresponding SEC action, 70% also had an institutional investor as a lead plaintiff, up from 33% in 2022.

Figure 10: Frequency of SEC Actions
2014–2023



Institutional Investors

As discussed in prior reports, increasing institutional investor participation as lead plaintiff in securities litigation was a focus of the Reform Act.[15] Indeed, in years following passage of the Reform Act, institutional investor involvement as lead plaintiffs did increase, particularly in cases with higher "simplified tiered damages."

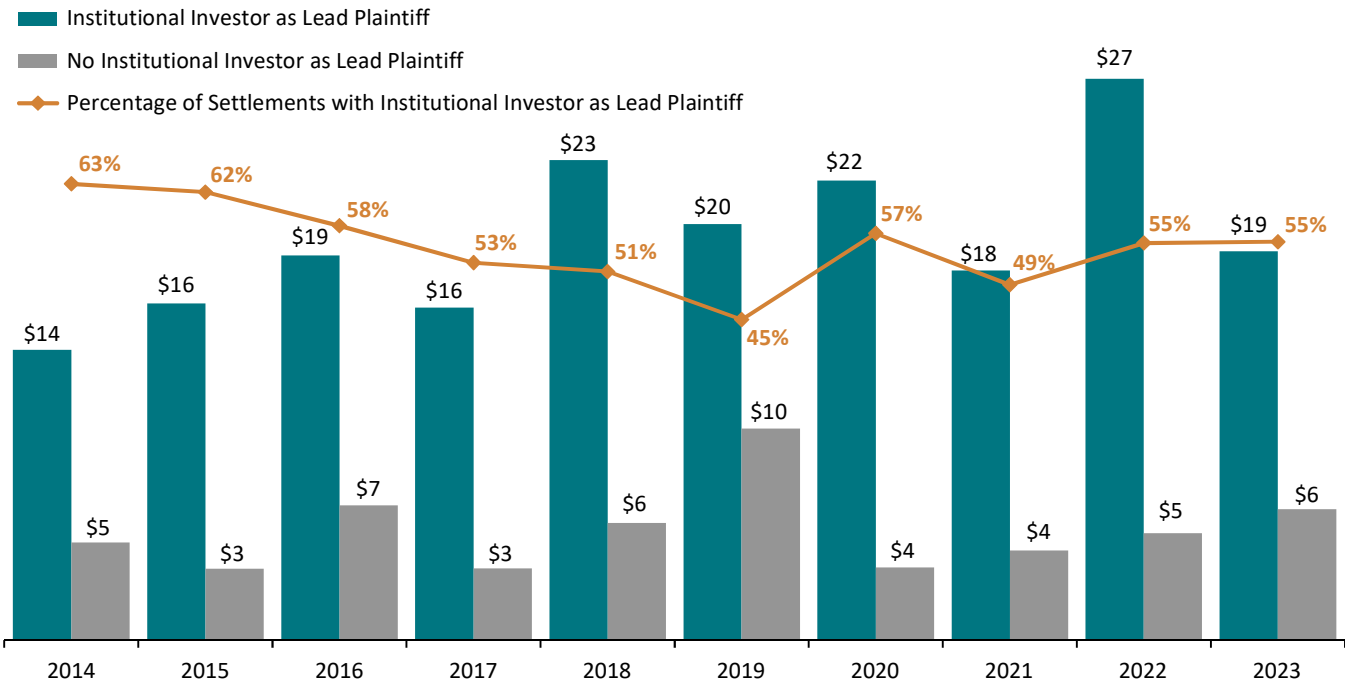
- In 2023, for cases involving an institutional investor as lead plaintiff, median "simplified tiered damages" and median total assets were two times and nine times higher, respectively, than the median values for cases without an institutional investor as a lead plaintiff.

All nine mega settlements in 2023 included an institutional investor as lead plaintiff.

- In 2023, a public pension plan served as lead plaintiff in nearly two-thirds of cases with an institutional lead plaintiff.
- Institutional investor participation as lead plaintiff continues to be associated with particular plaintiff counsel. For example, in 2023 an institutional investor served as a lead plaintiff in over 88% of settled cases in which Robbins Geller Rudman & Dowd LLP ("Robbins Geller") and/or Bernstein Litowitz Berger & Grossmann LLP ("Bernstein Litowitz") served as lead or co-lead plaintiff counsel. In contrast, institutional investors served as lead plaintiff in 21% of cases in which The Rosen Law Firm, Pomerantz LLP, or Glancy Prongay & Murray LLP served as lead or co-lead plaintiff counsel.

Figure 11: Median Settlement Amounts and Institutional Investors
2014–2023

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2023 dollar equivalent figures are presented.

Time to Settlement and Case Complexity

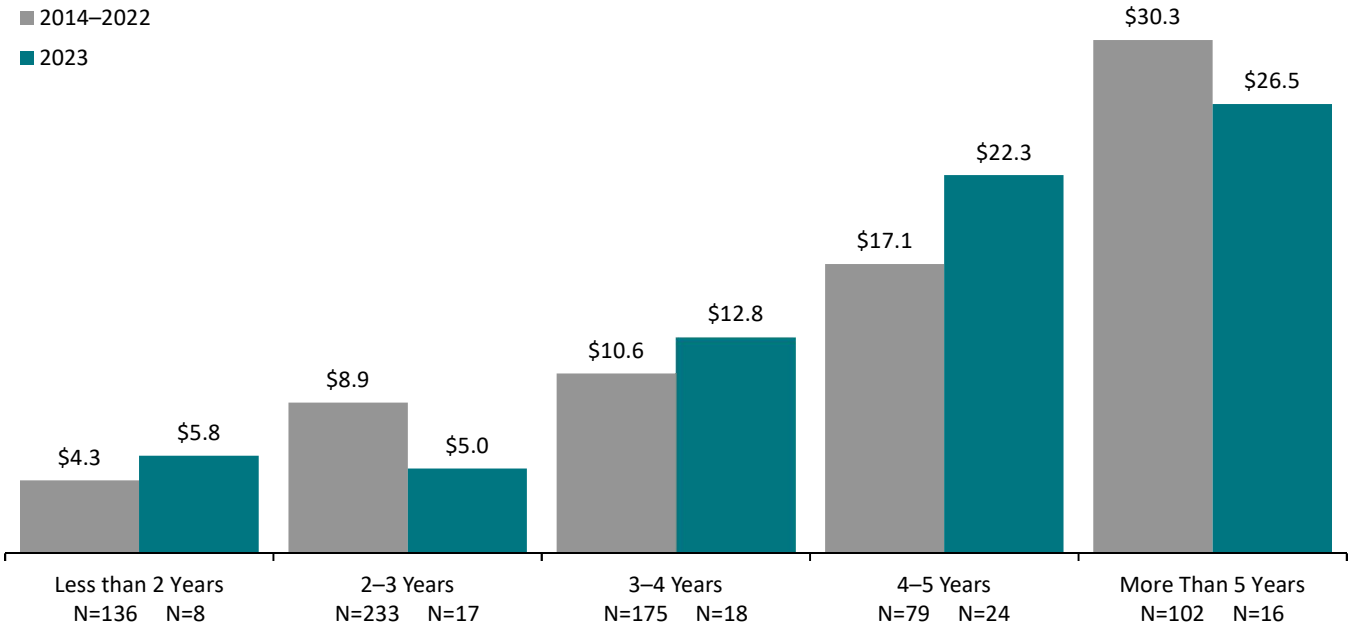
- Overall, less than one-third of cases settled in 2023 settled within three years of filing.
- Cases involving an institutional lead plaintiff continued to take longer to settle. In particular, cases settled in 2023 with an institutional lead plaintiff had a median time to settle of over 4.2 years compared to 3.4 years for cases without an institutional lead plaintiff.
- In 2023, the median time to settle for cases with GAAP allegations was almost a year longer than the median for cases without GAAP allegations.

The median time from filing to settlement hearing date in 2023 (3.7 years) was up nearly 17% from 2022.

- Historically, cases with The Rosen Law Firm, Pomerantz LLP, or Glancy Prongay & Murray LLP as lead or co-lead plaintiff counsel settled within three years of case filing. However, cases settled in 2023 with these firms acting as plaintiff counsel collectively took 3.9 years to settlement, a level reached in only one other year (2009). These three law firms were lead or co-lead plaintiff counsel in approximately 30% of cases in 2023.
- The presence of Robbins Geller as lead or co-lead plaintiff counsel is associated with a longer duration between filing and settlement. Cases settled in 2023 with Robbins Geller acting as lead or co-lead plaintiff counsel (28% of settled cases) had a median time to settle of 4.1 years compared to 3.5 years for cases in which the law firm was not involved.[16]
- The number of docket entries can be viewed as a proxy for the time and effort expended by plaintiff counsel and/or case complexity. Median docket entries in 2023 (142) increased only slightly from 2022 (138).

Figure 12: Median Settlement by Duration from Filing Date to Settlement Hearing Date
2014–2023

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2023 dollar equivalent figures are presented. "N" refers to the number of cases.

Case Stage at the Time of Settlement

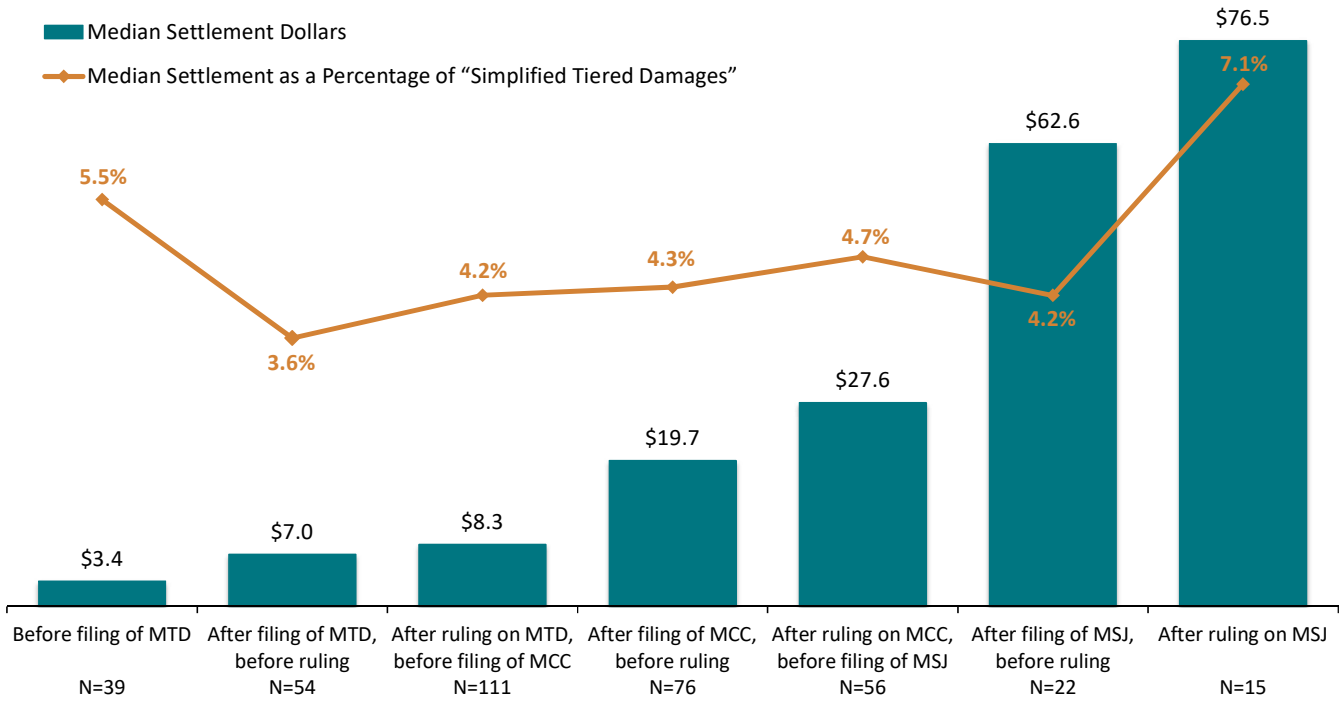
Using data obtained through collaboration with Stanford Securities Litigation Analytics (SSLA), this report analyzes settlements in relation to the stage in the litigation process at the time of settlement.

- Cases settling at later stages continue to be larger in terms of total assets and "simplified tiered damages."
- For example, both median total assets and median "simplified tiered damages" for cases that settled in 2023 after the ruling on a motion for class certification were over two times the respective medians for cases that settled in 2023 prior to such a motion being ruled on.
- In the five-year period from 2019 through 2023, over 90% of cases settled prior to the filing of a motion for summary judgment.
- In 2023, cases settling at later stages continued to include an institutional lead plaintiff at a higher percentage. Specifically, 68% of cases that settled after the filing of a motion for class certification involved an institutional lead plaintiff compared to 41% of cases that settled prior to the filing of such a motion.

In 2023, the percentage of cases settling prior to the filing of a motion to dismiss continued to decline—from 14% of cases in 2019 to 7% of cases in 2023.

Figure 13: Median Settlement Dollars and Resolution Stage at Time of Settlement
2019–2023

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2023 dollar equivalent figures are presented. "N" refers to the number of cases. MTD refers to "motion to dismiss," MCC refers to "motion for class certification," and MSJ refers to "motion for summary judgment." This analysis is limited to cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

Cornerstone Research's Settlement Analysis

This research applies regression analysis to examine the relations between settlement outcomes and certain securities case characteristics. Regression analysis is employed to better understand the factors that are important for estimating what cases might settle for, given the characteristics of a particular securities class action.

Determinants of Settlement Outcomes

Based on the research sample of cases that settled from January 2006 through December 2023, important determinants of settlement amounts include the following:

- "Simplified tiered damages"
- Maximum Dollar Loss (MDL)—the dollar-value change in the defendant issuer's market capitalization from its class period peak to the first trading day without inflation
- The most recently reported total assets prior to the settlement hearing date for the defendant issuer
- Number of entries on the lead case docket
- Whether there were accounting allegations
- Whether there was an SEC action with allegations similar to those included in the underlying class action complaint, as evidenced by a litigation release or an administrative proceeding against the issuer, officers, directors, or other defendants
- Whether there were criminal charges against the issuer, officers, directors, or other defendants with allegations similar to those included in the underlying class action complaint
- Whether there was a derivative action with allegations similar to those included in the underlying class action complaint
- Whether, in addition to Rule 10b-5 claims, Section 11 claims were alleged and were still active prior to settlement
- Whether the issuer has been delisted from a major exchange and/or has declared bankruptcy (i.e., whether the issuer was "distressed")
- Whether an institutional investor acted as lead plaintiff
- Whether securities other than common stock/ADR/ADS were included in the alleged class

Cornerstone Research analyses show that settlements were higher when "simplified tiered damages," MDL, issuer defendant asset size, or the number of docket entries was larger, or when Section 11 claims were alleged in addition to Rule 10b-5 claims.

Settlements were also higher in cases involving accounting allegations, a corresponding SEC action, criminal charges, an accompanying derivative action, an institutional investor lead plaintiff, or securities in addition to common stock included in the alleged class.

Settlements were lower if the issuer was distressed.

More than 75% of the variation in settlement amounts can be explained by the factors discussed above.

Research Sample

- The database compiled for this report is limited to cases alleging Rule 10b-5, Section 11, and/or Section 12(a)(2) claims brought by purchasers of a corporation's common stock. The sample contains only cases alleging fraudulent inflation in the price of a corporation's common stock.
- Cases with alleged classes of only bondholders, preferred stockholders, etc., cases alleging fraudulent depression in price, and mergers and acquisitions cases are excluded. These criteria are imposed to ensure data availability and to provide a relatively homogeneous set of cases in terms of the nature of the allegations.
- The current sample includes nearly 2,200 securities class actions filed after passage of the Reform Act (1995) and settled from 1996 through 2023. These settlements are identified based on a review of case activity collected by Securities Class Action Services LLC (SCAS).[17]
- The designated settlement year, for purposes of this report, corresponds to the year in which the hearing to approve the settlement was held.[18] Cases involving multiple settlements are reflected in the year of the most recent partial settlement, provided certain conditions are met.[19]

Data Sources

In addition to SCAS, data sources include Dow Jones Factiva, Bloomberg, the Center for Research in Security Prices (CRSP) at University of Chicago Booth School of Business, Standard & Poor's Compustat, Refinitiv Eikon, court filings and dockets, SEC registrant filings, SEC litigation releases and administrative proceedings, LexisNexis, Stanford Securities Litigation Analytics (SSLA), Securities Class Action Clearinghouse (SCAC), and public press.

Endnotes

1 Reported dollar figures and corresponding comparisons are adjusted for inflation; 2023 dollar equivalent figures are presented in this report.

2 "Simplified tiered damages" are calculated for cases that settled in 2006 or later, following the U.S. Supreme Court's 2005 landmark decision in *Dura Pharmaceuticals Inc. v. Broudo*, 544 U.S. 336. "Simplified tiered damages" is based on the stock-price declines associated with the alleged corrective disclosure dates that are described in the settlement plan of allocation.

3 Comparison to "all-time" refers to the inception of Cornerstone Research's database of post–Reform Act settlements beginning in 1996.

4 The "simplified tiered damages" approach used for purposes of this settlement research does not examine the mix of information associated with the specific dates listed in the plan of allocation, but simply applies the stock price movements on those dates to an estimate of the "true value" of the stock during the alleged class period (or "value line"). This proxy for damages utilizes an estimate of the number of shares damaged based on reported trading volume and the number of shares outstanding. Specifically, reported trading volume is adjusted using volume reduction assumptions based on the exchange on which the issuer defendant's common stock is listed. No adjustments are made to the underlying float for institutional holdings, insider trades, or short-selling activity during the alleged class period. Because of these and other simplifying assumptions, the damages measures used in settlement benchmarking may differ substantially from damages estimates developed in conjunction with case-specific economic analysis.

5 Laarni T. Bulan, Ellen M. Ryan, and Laura E. Simmons, *Estimating Damages in Settlement Outcome Modeling*, Cornerstone Research (2017).

6 MDL is the dollar-value change in the defendant issuer's market capitalization from its class period peak to the first trading day without inflation.

7 Catherine J. Galley, Nicholas D. Yavorsky, Filipe Lacerda, and Chady Gemayel, *Approved Claims Rates in Securities Class Actions: Evidence from 2015–2018 Rule 10b-5 Settlements*, Cornerstone Research (2020). Data on "plaintiff-estimated damages" is made available to Cornerstone Research through collaboration with Stanford Securities Litigation Analytics (SSLA). SSLA tracks and collects data on private shareholder securities litigation and public enforcements brought by the SEC and the U.S. Department of Justice (DOJ). The SSLA dataset includes all traditional class actions, SEC actions, and DOJ criminal actions filed since 2000. Available on a subscription basis at https://sla.law.stanford.edu/.

8 The statutory purchase price is the lesser of the security offering price or the security purchase price. Prior to the first complaint filing date, the statutory sales price is the price at which the security was sold. After the first complaint filing date, the statutory sales price is the greater of the security sales price or the "value" of the security on the first complaint filing date. For purposes of "simplified statutory damages," the "value" of the security on the first complaint filing date is assumed to be the security's closing price on this date. Similar to "simplified tiered damages," the estimation of "simplified statutory damages" makes no adjustments to the underlying float for institutional holdings, insider trades, or short-selling activity.

9 As noted in prior reports, the March 2018 U.S. Supreme Court decision in *Cyan Inc. v. Beaver County Employees Retirement Fund* (*Cyan*) held that '33 Act claim securities class actions could be brought in state court. While '33 Act claim cases had often been brought in state courts before *Cyan*, filing rates in state courts increased substantially following this ruling. This trend reversed, however, following the March 2020 Delaware Supreme Court decision in *Salzberg v. Sciabacucchi* upholding the validity of federal forum-selection provisions in corporate charters. See, for example, *Securities Class Action Filings—2021 Year in Review*, Cornerstone Research (2022).

10 The two sub-categories of accounting issues analyzed in Figure 8 of this report are (1) restatements—cases involving a restatement (or announcement of a restatement) of financial statements, and (2) accounting irregularities.

11 *Accounting Class Action Filings and Settlements—2023 Review and Analysis*, Cornerstone Research, forthcoming in spring 2024.

12 To be considered an accompanying (or parallel) derivative action, the derivative action must have underlying allegations that are similar or related to the underlying allegations of the securities class action and either be active or settling at the same time as the securities class action.

13 *Parallel Derivative Action Settlement Outcomes*, Cornerstone Research (2022).

14 As noted in prior reports, it could be that the merits in such cases are stronger, or simply that the presence of a corresponding SEC action provides plaintiffs with increased leverage when negotiating a settlement. For purposes of this research, an SEC action is evidenced by the presence of a litigation release or an administrative proceeding posted on www.sec.gov involving the issuer defendant or other named defendants with allegations similar to those in the underlying class action complaint.

15 See, for example, *Securities Class Action Settlements—2006 Review and Analysis*, Cornerstone Research (2007); Michael A. Perino, "Have Institutional Fiduciaries Improved Securities Class Actions? A Review of the Empirical Literature on the PSLRA's Lead Plaintiff Provision," St. John's Legal Studies Research Paper No. 12-0021 (2013).

16 Although Robbins Geller is associated with a longer duration to settlement, its presence as lead or co-lead plaintiff counsel is not associated with significantly higher settlements as a percentage of "simplified tiered damages."

17 Available on a subscription basis. For further details see https://www.issgovernance.com/securities-class-action-services/.

18 Movements of partial settlements between years can cause differences in amounts reported for prior years from those presented in earlier reports.

19 This categorization is based on the timing of the settlement hearing date. If a new partial settlement equals or exceeds 50% of the then-current settlement fund amount, the entirety of the settlement amount is re-categorized to reflect the settlement hearing date of the most recent partial settlement. If a subsequent partial settlement is less than 50% of the then-current total, the partial settlement is added to the total settlement amount and the settlement hearing date is left unchanged.

Appendices

Appendix 1: Settlement Percentiles

(Dollars in millions)

Year	*Average*	10th	25th	*Median*	75th	90th
2014	*$23.5*	$2.2	$3.7	*$7.7*	$17.0	$64.4
2015	*$50.6*	$1.7	$2.8	*$8.4*	$20.9	$120.9
2016	*$89.6*	$2.4	$5.3	*$10.9*	$41.9	$185.4
2017	*$22.9*	$1.9	$3.2	*$6.5*	$19.0	$44.0
2018	*$78.7*	$1.8	$4.4	*$13.7*	$30.0	$59.6
2019	*$33.6*	$1.7	$6.7	*$13.1*	$23.8	$59.6
2020	*$64.9*	$1.6	$3.8	*$11.5*	$23.8	$62.8
2021	*$23.1*	$1.9	$3.5	*$9.3*	$20.1	$65.9
2022	*$37.9*	$2.1	$5.2	*$13.5*	$36.4	$74.8
2023	*$47.3*	$3.0	$5.0	*$15.0*	$33.3	$101.0

Note: Settlement dollars are adjusted for inflation; 2023 dollar equivalent figures are presented.

Appendix 2: Settlements by Select Industry Sectors
2014–2023

(Dollars in millions)

Industry	Number of Settlements	Median Settlement	Median "Simplified Tiered Damages"	Median Settlement as a Percentage of "Simplified Tiered Damages"
Financial	91	$17.8	$313.3	5.3%
Technology	106	$9.4	$318.2	4.3%
Pharmaceuticals	122	$8.5	$242.5	3.9%
Telecommunication	28	$11.4	$381.0	4.4%
Retail	51	$15.2	$350.4	4.6%
Healthcare	21	$10.1	$240.4	6.0%

Note: Settlement dollars and "simplified tiered damages" are adjusted for inflation; 2023 dollar equivalent figures are presented. "Simplified tiered damages" are calculated only for cases involving Rule 10b-5 claims (whether alone or in addition to other claims).

Appendices (continued)

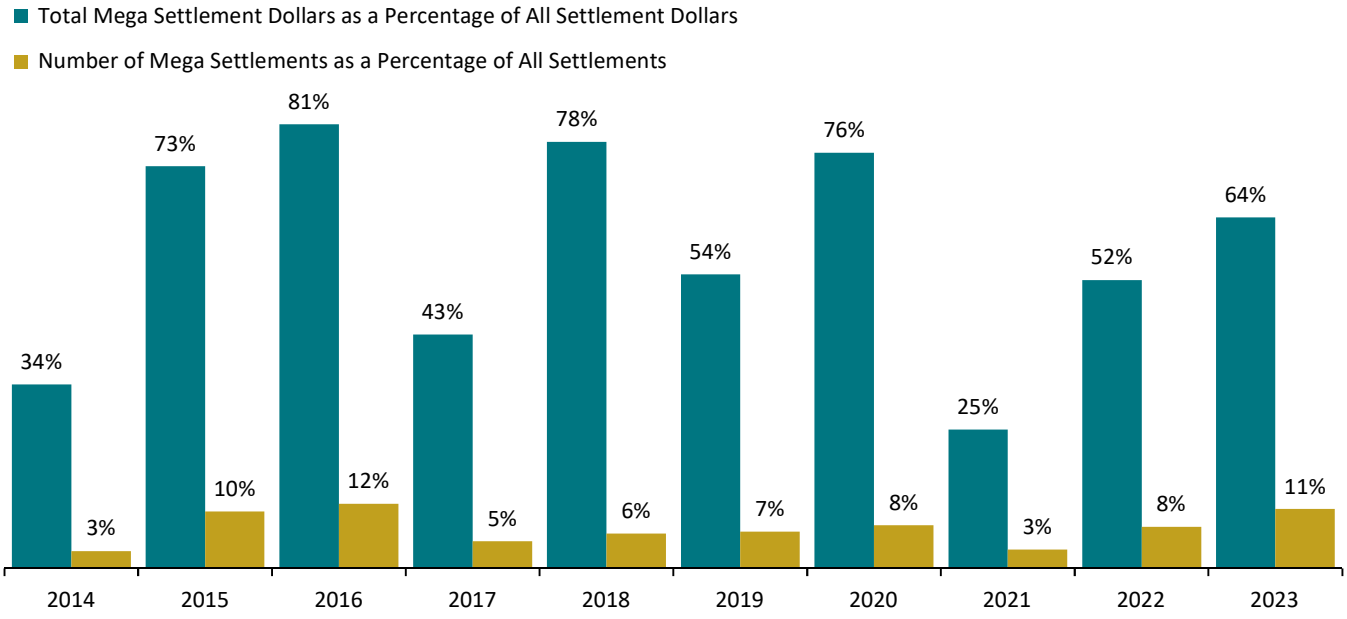
Appendix 3: Settlements by Federal Circuit Court
2014–2023

(Dollars in millions)

Circuit	Number of Settlements	Median Settlement	Median Settlement as a Percentage of "Simplified Tiered Damages"
First	20	$14.1	2.8%
Second	212	$8.9	4.9%
Third	85	$7.3	4.9%
Fourth	23	$24.5	3.9%
Fifth	38	$11.7	4.7%
Sixth	35	$15.8	6.7%
Seventh	40	$18.0	3.7%
Eighth	14	$48.3	4.6%
Ninth	190	$9.0	4.4%
Tenth	19	$12.4	5.3%
Eleventh	36	$13.7	4.7%
DC	4	$27.9	2.2%

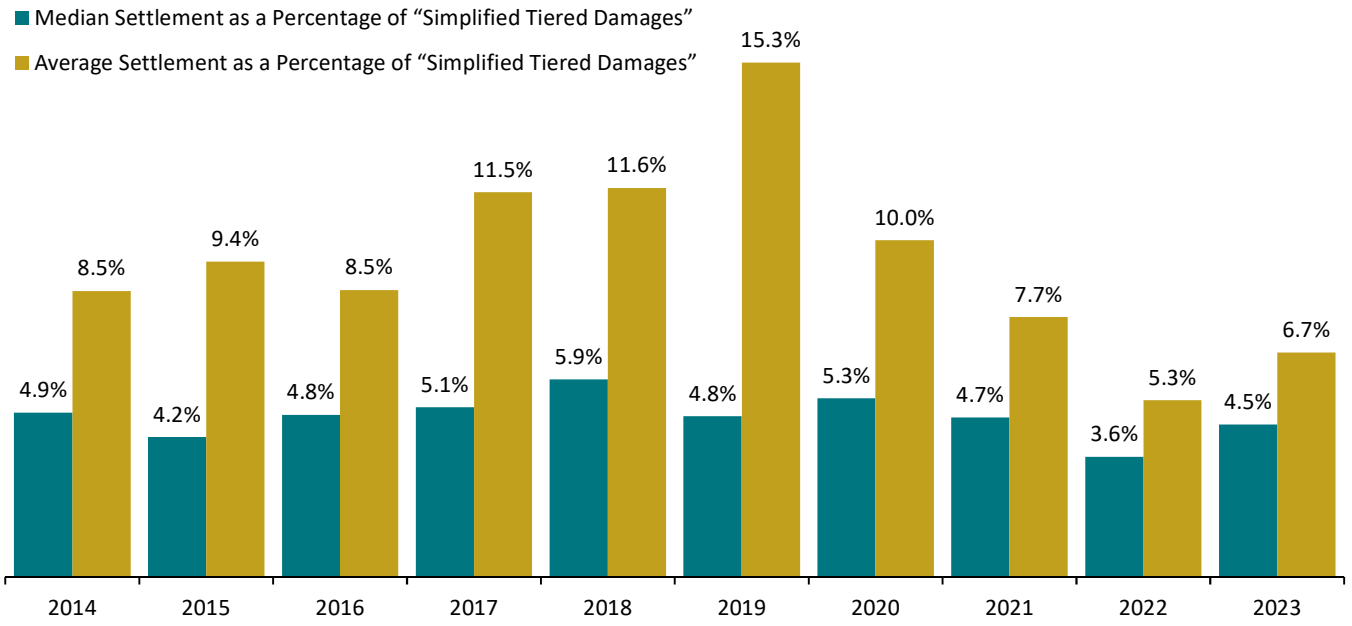
Note: Settlement dollars are adjusted for inflation; 2023 dollar equivalent figures are presented. Settlements as a percentage of "simplified tiered damages" are calculated only for cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

Appendix 4: Mega Settlements
2014–2023



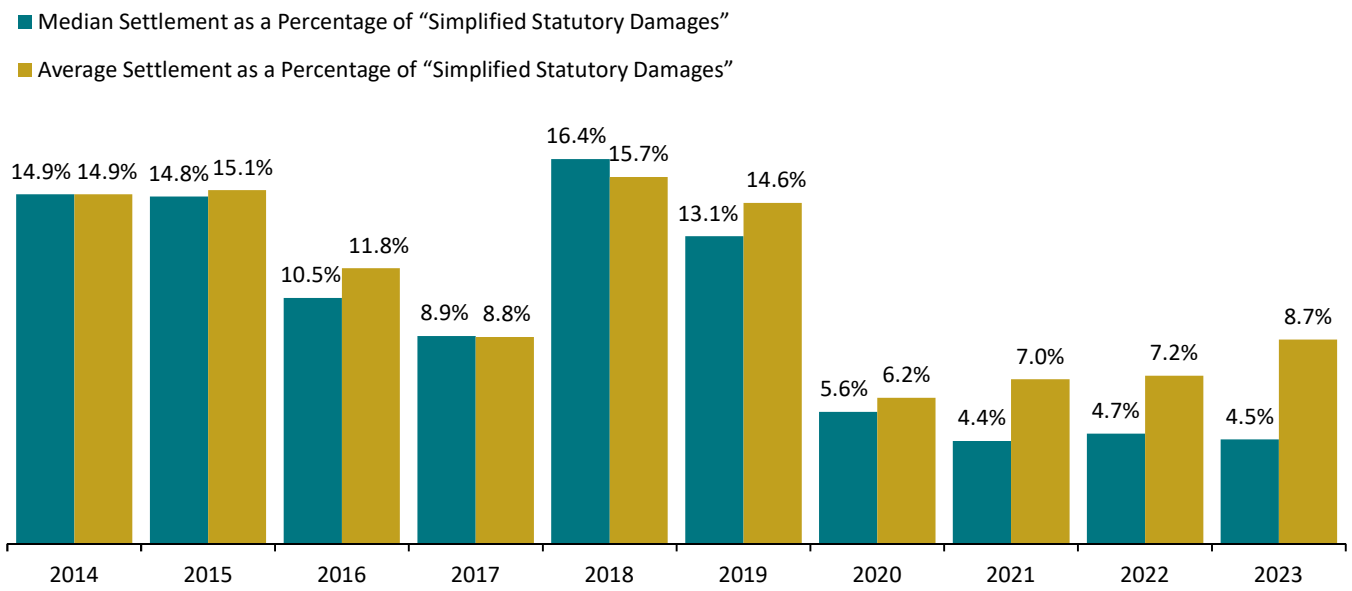
Note: Mega settlements are defined as total settlement funds equal to or greater than $100 million.

Appendix 5: Median and Average Settlements as a Percentage of "Simplified Tiered Damages" 2014–2023



Note: "Simplified tiered damages" are calculated only for cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

Appendix 6: Median and Average Settlements as a Percentage of "Simplified Statutory Damages" 2014–2023

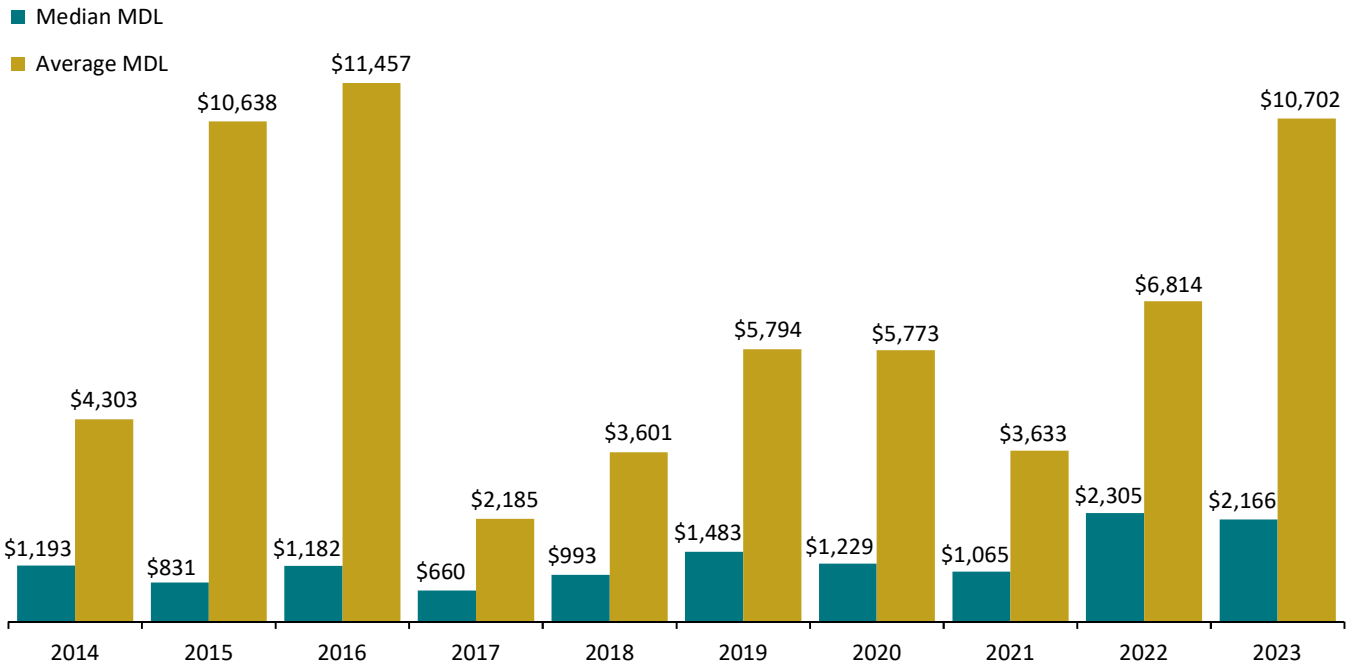


Note: "Simplified statutory damages" are calculated only for cases alleging Section 11 ('33 Act) claims and no Rule 10b-5 claims.

Appendices (continued)

Appendix 7: Median and Average Maximum Dollar Loss (MDL)
2014–2023

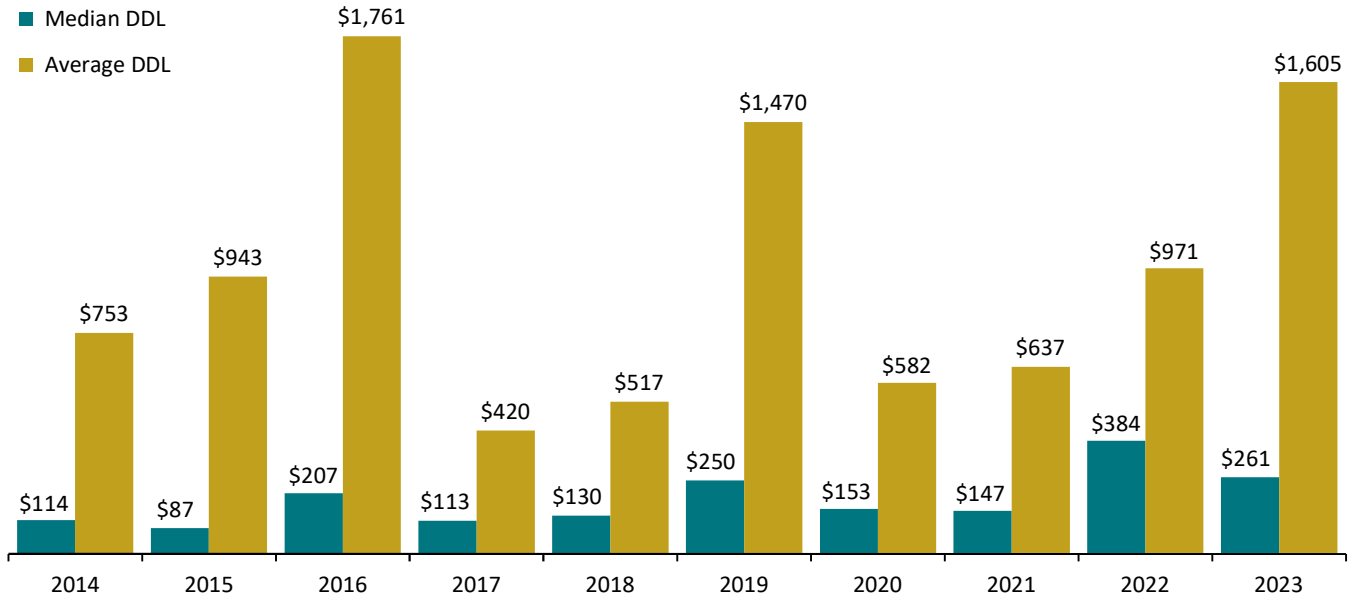
(Dollars in millions)



Note: MDL is adjusted for inflation based on class period end dates; 2023 dollar equivalents are presented. MDL is the dollar-value change in the defendant issuer's market capitalization from its class period peak to the first trading day without inflation. This analysis excludes cases alleging '33 Act claims only.

Appendix 8: Median and Average Disclosure Dollar Loss (DDL)
2014–2023

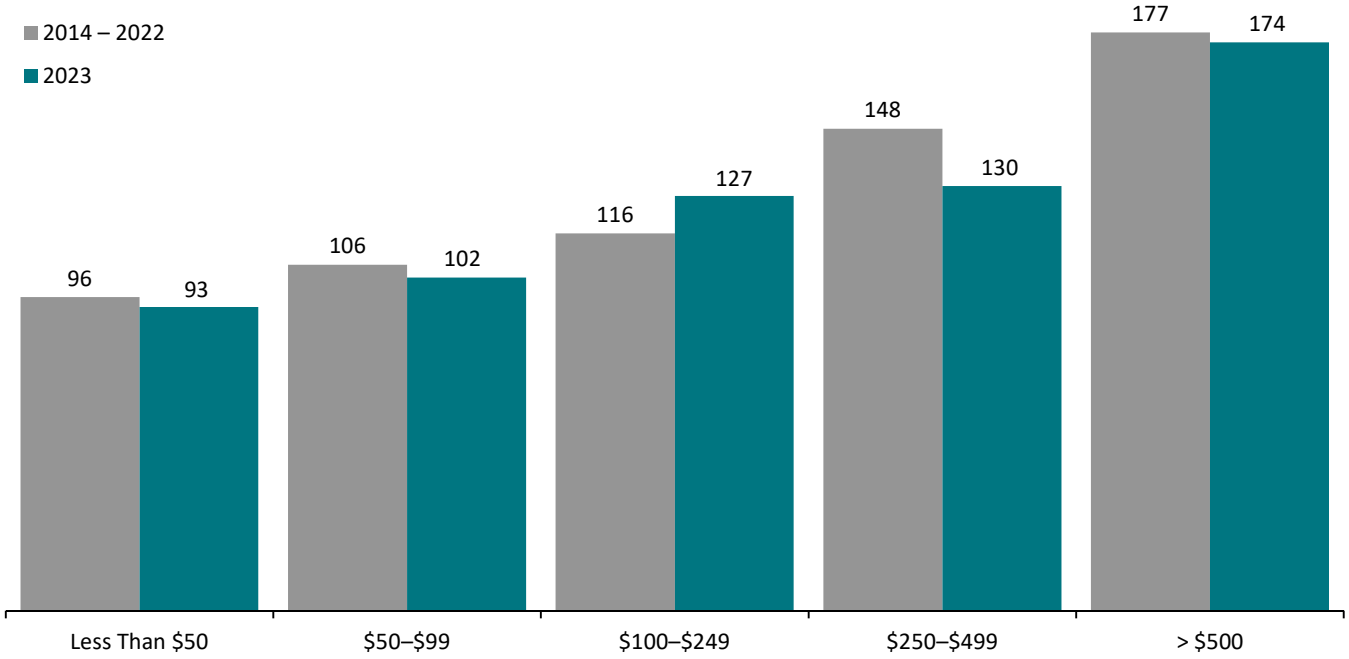
(Dollars in millions)



Note: DDL is adjusted for inflation based on class period end dates; 2023 dollar equivalents are presented. DDL is the dollar-value change in the defendant firm's market capitalization between the end of the class period to the first trading day without inflation. This analysis excludes cases alleging '33 Act claims only.

Appendix 9: Median Docket Entries by "Simplified Tiered Damages" Range
2014–2023

(Dollars in millions)



Note: "Simplified tiered damages" are calculated only for cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

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