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13 *Plaintiffs' Co-Lead Counsel*

15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
17 **SOUTHERN DIVISION**

18 IN RE WELLS FARGO COLLATERAL
19 PROTECTION INSURANCE
20 LITIGATION

Case Number: 8:17-ML-2797-AG-KES

**DECLARATION OF PROFESSOR
BRIAN T. FITZPATRICK IN
SUPPORT OF PLAINTIFFS'
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT
AND APPROVAL OF PLAINTIFFS'
MOTION FOR ATTORNEYS' FEES
AND COSTS**

25 Date: October 28, 2019
26 Time: 10:00 am
27 Courtroom: 10D

28 Hon. Andrew J. Guilford

1 have been based on samples of cases that were not intended to be representative of the
2 whole (such as settlements approved in published opinions), my study attempted to examine
3 every class action settlement approved by a federal court over a two-year period, 2006-
4 2007. *See id.* at 812-13. As such, not only is my study an unbiased sample of settlements,
5 but the number of settlements included in my study is several times the number of
6 settlements per year that has been identified in any other empirical study: over this two-year
7 period, I found 688 settlements, including 169 from the Ninth Circuit alone. *See id.* at 817.
8 I presented the findings of my study at the Conference on Empirical Legal Studies at the
9 University of Southern California School of Law in 2009, the Meeting of the Midwestern
10 Law and Economics Association at the University of Notre Dame in 2009, and before the
11 faculties of many law schools in 2009 and 2010. This study has been relied upon by a
12 number of courts, scholars, and testifying experts.¹ I will draw upon this study in this
13 declaration.

14
15 ¹ *See, e.g., Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) (relying on article to
16 assess fees); *James v. China Grill Mgmt., Inc.*, 2019 WL 1915298, at *2 (S.D.N.Y. Apr. 30, 2019)
17 (same); *Grice v. Pepsi Beverages Co.*, 363 F. Supp. 3d 401, 407 (S.D.N.Y. 2019) (same); *Alaska Elec.*
18 *Pension Fund v. Bank of Am. Corp.*, 2018 WL 6250657, at *2 (S.D.N.Y. Nov. 29, 2018) (same); *Rodman*
19 *v. Safeway Inc.*, 2018 WL 4030558, at *5 (N.D. Cal. Aug. 23, 2018) (same); *Little v. Washington Metro.*
20 *Area Transit Auth.*, 313 F. Supp. 3d 27, 38 (D.D.C. 2018) (same); *Hillson v. Kelly Servs. Inc.*, 2017 WL
21 3446596, at *4 (E.D. Mich. Aug. 11, 2017) (same); *Good v. W. Virginia-Am. Water Co.*, 2017 WL
22 2884535, at *23, *27 (S.D.W. Va. July 6, 2017) (same); *McGreevy v. Life Alert Emergency Response,*
23 *Inc.*, 258 F. Supp. 3d 380, 385 (S.D.N.Y. 2017) (same); *Brown v. Rita's Water Ice Franchise Co. LLC,*
24 2017 WL 1021025, at *9 (E.D. Pa. Mar. 16, 2017) (same); *In re Credit Default Swaps Antitrust Litig.*,
25 2016 WL 1629349, at *17 (S.D.N.Y. Apr. 24, 2016) (same); *Gehrich v. Chase Bank USA, N.A.*, 316
26 F.R.D. 215, 236 (N.D. Ill. 2016); *Ramah Navajo Chapter v. Jewell*, 167 F. Supp. 3d 1217, 1246 (D.N.M.
27 2016); *In re: Cathode Ray Tube (Crt) Antitrust Litig.*, 2016 WL 721680, at *42 (N.D. Cal. Jan. 28, 2016)
28 (same); *In re Pool Products Distribution Mkt. Antitrust Litig.*, 2015 WL 4528880, at *19-20 (E.D. La.
July 27, 2015) (same); *Craftwood Lumber Co. v. Interline Brands, Inc.*, 2015 WL 2147679, at *2-4 (N.D.
Ill. May 6, 2015) (same); *Craftwood Lumber Co. v. Interline Brands, Inc.*, 2015 WL 1399367, at *3-5
(N.D. Ill. Mar. 23, 2015) (same); *In re Capital One Tel. Consumer Prot. Act Litig.*, 2015 WL 605203, at
*12 (N.D. Ill. Feb. 12, 2015) (same); *In re Neurontin Marketing and Sales Practices Litigation*, 2014 WL
5810625, at *3 (D. Mass. Nov. 10, 2014) (same); *Tennille v. W. Union Co.*, 2014 WL 5394624, at *4 (D.
Colo. Oct. 15, 2014) (same); *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F.Supp.3d 344, 349-51
(S.D.N.Y. 2014) (same); *In re Payment Card Interchange Fee and Merchant Discount Antitrust*
Litigation, 991 F.Supp.2d 437, 444-46 & n.8 (E.D.N.Y. 2014) (same); *In re Federal National Mortgage*
Association Securities, Derivative, and "ERISA" Litigation, 4 F.Supp.3d 94, 111-12 (D.D.C. 2013)
(same); *In re Vioux Products Liability Litigation*, 2013 WL 5295707, at *3-4 (E.D. La. Sep. 18, 2013)
(same); *In re Black Farmers Discrimination Litigation*, 953 F.Supp.2d 82, 98-99 (D.D.C. 2013) (same);

1 5. In addition to my empirical works, I have also published many papers on how
2 law-and-economics theory affects the incentives of attorneys and others in class action
3 litigation. *See, e.g.*, Brian T. Fitzpatrick, *The End of Objector Blackmail?*, 62 Vand. L. Rev.
4 1623 (2009); Brian T. Fitzpatrick, *Do Class Action Lawyers Make Too Little*, 158 U. Pa. L.
5 Rev. 2043 (2010) (hereinafter “Class Action Lawyers”). The culmination of these papers
6 is a book that will be published in October by the University of Chicago Press entitled THE
7 CONSERVATIVE CASE FOR CLASS ACTIONS. I will also draw upon this work in this
8 declaration. I am compensated at an hourly rate of \$950 for my time on this matter.

9 6. It is my understanding that, based on a continued analysis of claims that has
10 taken place since the parties reached the Settlement, the parties now anticipate that
11 Defendants will pay at least \$432.4 million in cash to the Settlement Class pursuant to the
12 Settlement Allocation and Distribution Plans(ECF No. 262-3). This sum does not include
13 the \$36.5 million in attorneys’ fees and costs that Defendants have agreed to pay to Class
14 Counsel. I also understand that, days before this litigation was filed, Wells Fargo
15 announced a proposed “remediation” program, which included \$64 million of cash
16 remediation on CPI policies placed between 2012 and 2017. I have been asked by Co-
17 Lead Counsel to deduct the proposed pre-litigation \$64 million cash remediation from the
18 post-litigation \$432.4 cash settlement and assume that the settlement in this case is valued
19 at approximately \$368 million in cash, and to opine on three matters:

- 20 • First, does the law-and-economics research suggest that courts should pay
21 class counsel a smaller fee percentage when they secure a \$368 million
22 settlement than when they secure a smaller settlement?
23

24
25 *In re Southeastern Milk Antitrust Litigation*, 2013 WL 2155387, at *2 (E.D. Tenn., May 17, 2013)
26 (same); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040,
27 1081 (S.D. Tex. 2012) (same); *Pavlik v. FDIC*, 2011 WL 5184445, at *4 (N.D. Ill. Nov. 1, 2011) (same);
28 *In re Black Farmers Discrimination Litig.*, 856 F. Supp. 2d 1, 40 (D.D.C. 2011) (same); *In re AT & T
Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1033 (N.D. Ill. 2011) (same); *In re
MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 359 (E.D.N.Y. 2010) (same).

- Second, what does the empirical data suggest are typical fee awards for \$368 million class action settlements?
- Third, what does the empirical data suggest about the need for private class action lawsuits when government agencies are pursuing the same wrongdoer?

7. I summarize my opinions here:

- First, the law-and-economics research suggests that it is not appropriate to pay class action lawyers a smaller percentage when they secure bigger settlements. This incentivizes class counsel either to accept smaller settlement offers when larger ones were possible with a bit more work or to redirect their efforts away from bigger cases toward smaller cases. Neither of these things is in the best interest of class members. This is why studies of how sophisticated corporations pay lawyers they hire on contingency do not show them reducing fee percentages as recoveries increase.
- Second, despite this law-and-economics research, some courts do reduce percentages simply because a settlement is bigger. Even still, the average fee award in settlements around the size of the settlement here is 17.8% and the median is 19.5%, both *well above* the request here.
- Third, there have been several comparative studies of the recoveries in private class action litigation versus recoveries by government agencies for the same wrongdoing, and the studies almost all show that private class action lawsuits make defendants pay more than the government does, and that much, much more of what is recovered in private litigation is returned to the victims. These studies suggest that government enforcement does not render private enforcement unnecessary. To the contrary: the law would not be enforced very effectively *without* private enforcement to supplement the government's efforts.

1 8. Let me turn first to the law-and-economics research on class action litigation.
2 As I explain in detail in my forthcoming book, this research suggests that it is not in the
3 best interest of class members to pay class counsel a smaller percentage when they recover
4 more money for the class. It is easy to why using a simple numerical example. Consider
5 what would happen if courts awarded class counsel 25% of settlements when they were
6 under \$100 million but only 20% of settlements when were are over \$100 million. Rational
7 lawyers would then prefer to settle cases for \$90 million (*i.e.*, a \$22.5 million fee award)
8 rather than \$110 million (*i.e.*, a \$22 million fee award). Such incentives are obviously not
9 good for class members. As no less of a law-and-economics authority that Judge
10 Easterbrook put it: “Private parties would never contract for such an arrangement, because
11 it would eliminate counsel’s incentive to press for more [money] from the defendants.” *In*
12 *re Synthroid Marketing Litig.*, 264 F.3d 712, 718 (2001).

13 9. Courts attuned to these perverse incentives (including Judge Easterbrook)
14 sometimes slash fee percentages on a marginal basis rather than an absolute basis—e.g.,
15 award 25% of the first \$100 million, but 20% thereafter. Although this has the virtue of not
16 incentivizing counsel to settle for less in a given case, it does give them an incentive to
17 redirect their efforts from bigger cases to smaller ones. For example, if class counsel believe
18 that a court would award them only 20% once they hit \$100 million but 25% before then,
19 then they might redirect their efforts once they received a \$100 million settlement offer to
20 smaller cases where they could still return 25% on their time. Again, such incentives are
21 not good for class members. *See* Richard Epstein, *Class Actions: The Need for a Hard*
22 *Second Look*, 4 Civil Justice Report 11 (2002) (“It has been suggested that the fee . . . be
23 ‘tapered,’ so that the percentage take is reduced with an increase in the size of the class
24 settlement In general, however, this does not seem to be the right approach.”). Indeed,
25 if anything, the research suggests that courts should use marginal *increasing* percentages
26 not marginal decreasing percentages. *See* John C. Coffee, *Understanding the Plaintiff’s*
27 *Attorney: The Implications of Economic Theory for Private Enforcement of Law Through*
28 *Class and Derivative Actions*, 86 Columbia Law Review 669, 697 (1986) (“The most

1 logical answer to this problem of premature settlement would be to base fees on a graduated,
2 increasing percentage of the recovery formula—one that operates, much like the Internal
3 Revenue Code, to award the plaintiff’s attorney a marginally greater percentage of each
4 defined increment of the recovery.”); Jill E. Fisch, *Lawyers on the Auction Block:
5 Evaluating the Selection of Class Counsel by Auction*, 102 Columbia Law Review 650, 678
6 (2002) (“[The] last dollars of recovery are generally the most costly to produce.”).

7 10. All of this theory is confirmed by studies of what sophisticated corporate
8 clients do when they hire lawyers on contingency. The best study of this sort looks at how
9 corporations hire law firms in patent litigation, cases that can involve hundreds of millions
10 or even billions of dollars. See David Schwartz, *The Rise of Contingency Fees in Patent
11 Litigation*, 64 Ala. L. Rev. 335 (2012). Corporate clients do *not* use marginal declining fee
12 percentages. They use either flat percentages or percentages that *increase* as the case
13 prolongs. Indeed, the average flat percentage in such cases is 38.6% and the average
14 increasing percentage varies from 28% to 40.2% as the case unfolds. *Id.* at 360. All these
15 numbers are *well above* the fee percentage requested here.

16 11. Let me turn next to the data on how courts award fees. My empirical study
17 found that the average and median fee percentage in all cases were 25.4% and 25%,
18 respectively. See Fitzpatrick, *Empirical Study*, *supra*, at 833-34, 838. The other empirical
19 studies are in basic agreement. See Theodore Eisenberg & Geoffrey P. Miller, *Attorneys’
20 Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. Empirical L. Stud. 248,
21 260 (2010) (hereinafter “Eisenberg-Miller 2010”) (finding mean and median of 24% and
22 25%); Eisenberg-Miller 2017, *supra*, at 951 (finding mean and median of 27% and 29%).

23 12. Nonetheless, despite the law-and-economics research cited above, some
24 courts—but by no means all—reduce fee percentages simply because the settlements are
25 large. In particular, my empirical study showed that settlement size had a statistically
26 significant but inverse relationship with fee percentage. See Fitzpatrick, *Empirical Study*,
27 *supra*, at 838, 842-44. The other empirical studies of class actions have found the same
28 thing. See *Eisenberg-Miller 2010*, *supra*, at 264; *Eisenberg-Miller 2017*, *supra*, at 947-48.

1 13. But even with some courts doing this, the fee request here is still *well below*
2 the typical fee percentage in cases of this size. The mean and median fee percentages
3 awarded in the eight settlements in my dataset between \$250 and \$500 million were 17.8%
4 and 19.5%, respectively—almost *twice* what the fee request here is. See Fitzpatrick,
5 *Empirical Study, supra*, at 839. (The Eisenberg-Miller studies did not break down their
6 data into size ranges above \$175.5 million in their 2010 study or \$67.5 million in their 2017
7 study. Thus, their top groupings lump together settlements like this one with multi-*billion-*
8 dollar settlements—where the average fee percentage goes even *lower*. As such, in my
9 opinion, my study’s grouping of the data allow for more accurate and precise baselining of
10 settlements of this size than do their groupings.)

11 14. Let me turn finally to the comparative data on the efficacy of private class
12 action litigation versus government enforcement. I collected this data for my forthcoming
13 book. The existing studies do not come from the consumer fraud realm, but from the realms
14 of securities fraud and antitrust. Nonetheless, they show that the private bar more
15 effectively enforces the law than government agencies do, even when they pursue the same
16 cases.

17 15. For example, empirical studies by Professor John Coffee of Columbia Law
18 School have found that “damages paid in [private] securities class actions are usually (but
19 not always) a multiple of those paid to the SEC” when they both pursue the same
20 wrongdoer. John Coffee, *ENTREPRENEURIAL LITIGATION: ITS RISE, FALL, AND FUTURE*
21 *1542–1543* (2015) (tbls. 2 & 3). Indeed, perhaps the most exhaustive study of the SEC
22 found that private lawyers recover four times more when both pursue the same defendant.
23 See Nishal Ray Ramphal, *The Role of Public and Private Litigation in the Enforcement of*
24 *Securities Laws in the United States* 22, 53 (PhD Diss., RAND Graduate School, 2007)
25 (tbls. 1 & 17) (“Class actions are more effective in obtaining investor restitution recovering
26 on average almost four times more than the corresponding enforcement action.”).

27 16. Much the same is true of the studies of antitrust enforcement. The leading
28 study found that, between 1990 and 2007, the private bar recovered more than four times

1 as much money as the “acclaimed anti-cartel program of the DOJ Antitrust Division” (the
2 most meaningful government enforcer of antitrust law). Joshua P. Davis and Robert H.
3 Lande, *Toward an Empirical and Theoretical Assessment of Private Antitrust Enforcement*,
4 36 Seattle L. Rev. 1269, 1276-78 (2013). Industry-specific studies have found even more
5 dramatic differences between private and government antitrust recoveries. *See, e.g.*,
6 Michael Block, Frederick Nold, and Joseph Sidak, *The Deterrent Effect of Antitrust*
7 *Enforcement*, 89 J. Pol. Econ. 429, 441 n.35 (1981) (“[S]ettlements in class actions for price
8 fixing in the bread industry were almost 10 times greater than government-imposed fines.”).

9 17. The studies cited above only calculated how much each enforcer made
10 defendants pay out—i.e., the deterrence value of enforcement. They did not calculate how
11 much of that money was returned to victims—i.e., the compensatory value of enforcement.
12 The numbers there are even more starkly in favor of private class action lawsuits. To begin
13 with, the government often does not even *try* to distribute its recoveries to injured persons;
14 for example, federal law often requires “all civil penalties must be paid to the U.S.
15 Treasury.” Urska Velikonja, *Public Compensation for Private Harm: Evidence from the*
16 *SEC’s Fair Fund Distributions*, 67 Stanford Law Review 331, 341 n.63 (2015) (citing 15
17 USC 78u(d)(3)(C)(i)).

18 18. But even when the law does allow the government to compensate people, I
19 have found no evidence that the government is any better than private lawyers. This stands
20 to reason: both private lawyers and the government tend to rely on the same companies to
21 find injured persons and send them the money. *See* Office of Claims and Refunds Annual
22 Report 2017 2 (Washington, D.C.: Federal Trade Commission, 2017) (“Generally, the FTC
23 gets claims from 5 to 20 percent of potential claimants.”). For example, the SEC has “the
24 most extensive and sustained effort by a public agency to compensate the victims of
25 misconduct.” Velikonja, *supra*, at 334. Although in recent years the SEC “has distributed
26 between 75% and 90% of all collected sanctions,” *id.* at 334 n.12, private lawyers who sue
27 companies for securities frauds have distributed roughly 85% of their settlements to victims,
28 too. We know this because securities fraud class action settlements are almost always

1 distributed *pro rata* and lawyers are only paid 15% of those settlements in fees, leaving
2 85% to go to the victims. See Fitzpatrick, *Empirical Study, supra*, at 831.

3 19. All of this has led me to conclude that private enforcement still has a very big
4 role to play—indeed, often the biggest role to play—even when the government is already
5 on the case. No one understands this better than the government itself. As the SEC once
6 put it: “given the limited enforcement resources of the Commission, the private right of
7 action is vital to effective enforcement of [the securities fraud statute].” Brief for The
8 Securities And Exchange Commission as Amicus Curiae in Support of Partial Affirmance
9 at 6, *Herman & MacLean v. Huddleston*, 459 U.S. 375 (1983) (Nos. 81-680 & 81-1076).

10
11
12 I declare under penalty of perjury that the foregoing is true and correct. Executed
13 on August 26, 2019 at Nashville, Tennessee.

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ACADEMIC APPOINTMENTS

VANDERBILT UNIVERSITY LAW SCHOOL, *Professor*, 2012 to present

- *FedEx Research Professor*, 2014-2015; *Associate Professor*, 2010-2012; *Assistant Professor*, 2007-2010
- Classes: Civil Procedure, Complex Litigation, Federal Courts, Comparative Class Actions
- Hall-Hartman Outstanding Professor Award, 2008-2009
- Vanderbilt's Association of American Law Schools Teacher of the Year, 2009

HARVARD LAW SCHOOL, *Visiting Professor*, Fall 2018

- Classes: Civil Procedure, Litigation Finance

FORDHAM LAW SCHOOL, *Visiting Professor*, Fall 2010

- Classes: Civil Procedure

EDUCATION

HARVARD LAW SCHOOL, J.D., *magna cum laude*, 2000

- Fay Diploma (for graduating first in the class)
- Sears Prize, 1999 (for highest grades in the second year)
- *Harvard Law Review*, Articles Committee, 1999-2000; Editor, 1998-1999
- *Harvard Journal of Law & Public Policy*, Senior Editor, 1999-2000; Editor, 1998-1999
- Research Assistant, David Shapiro, 1999; Steven Shavell, 1999

UNIVERSITY OF NOTRE DAME, B.S., Chemical Engineering, *summa cum laude*, 1997

- First runner-up to Valedictorian (GPA: 3.97/4.0)
- Steiner Prize, 1997 (for overall achievement in the College of Engineering)

CLERKSHIPS

HON. ANTONIN SCALIA, Supreme Court of the United States, 2001-2002

HON. DIARMUID O'SCANNLAIN, U.S. Court of Appeals for the Ninth Circuit, 2000-2001

EXPERIENCE

NEW YORK UNIVERSITY SCHOOL OF LAW, Feb. 2006 to June 2007
John M. Olin Fellow

HON. JOHN CORNYN, United States Senate, July 2005 to Jan. 2006
Special Counsel for Supreme Court Nominations

SIDLEY AUSTIN LLP, Washington, DC, 2002 to 2005
Litigation Associate

BOOKS

THE CONSERVATIVE CASE FOR CLASS ACTIONS (University of Chicago Press, forthcoming 2019)

ACADEMIC ARTICLES

Can the Class Action be Made Business Friendly?, 24 N.Z. BUS. L. & Q. 169 (2018)

Can and Should the New Third-Party Litigation Financing Come to Class Actions?, 19 THEORETICAL INQUIRIES IN LAW 109 (2018)

Scalia in the Casebooks, 84 U. CHI. L. REV. 2231 (2017)

The Ideological Consequences of Judicial Selection, 70 VAND. L. REV. 1729 (2017)

Judicial Selection and Ideology, 42 OKLAHOMA CITY UNIV. L. REV. 53 (2017)

Justice Scalia and Class Actions: A Loving Critique, 92 NOTRE DAME L. REV. 1977 (2017)

A Tribute to Justice Scalia: Why Bad Cases Make Bad Methodology, 69 VAND. L. REV. 991 (2016)

The Hidden Question in Fisher, 10 NYU J. L. & LIBERTY 168 (2016)

An Empirical Look at Compensation in Consumer Class Actions, 11 NYU J. L. & BUS. 767 (2015)
(with Robert Gilbert)

The End of Class Actions?, 57 ARIZ. L. REV. 161 (2015)

The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure, 98 VA. L. REV. 839 (2012)

Twombly and Iqbal Reconsidered, 87 NOTRE DAME L. REV. 1621 (2012)

An Empirical Study of Class Action Settlements and their Fee Awards, 7 J. EMPIRICAL L. STUD. 811 (2010) (selected for the 2009 Conference on Empirical Legal Studies)

Do Class Action Lawyers Make Too Little?, 158 U. PA. L. REV. 2043 (2010)

Originalism and Summary Judgment, 71 OHIO ST. L.J. 919 (2010)

The End of Objector Blackmail?, 62 VAND. L. REV. 1623 (2009) (selected for the 2009 Stanford-Yale Junior Faculty Forum)

The Politics of Merit Selection, 74 MISSOURI L. REV. 675 (2009)

Errors, Omissions, and the Tennessee Plan, 39 U. MEMPHIS L. REV. 85 (2008)

Election by Appointment: The Tennessee Plan Reconsidered, 75 TENN. L. REV. 473 (2008)

Can Michigan Universities Use Proxies for Race After the Ban on Racial Preferences?, 13 MICH. J. RACE & LAW 277 (2007)

BOOK CHAPTERS

Do Class Actions Deter Wrongdoing? in THE CLASS ACTION EFFECT (Catherine Piché, ed., Éditions Yvon Blais, Montreal, 2018)

Judicial Selection in Illinois in AN ILLINOIS CONSTITUTION FOR THE TWENTY-FIRST CENTURY (Joseph E. Tabor, ed., Illinois Policy Institute, 2017)

Civil Procedure in the Roberts Court in BUSINESS AND THE ROBERTS COURT (Jonathan Adler, ed., Oxford University Press, 2016)

Is the Future of Affirmative Action Race Neutral? in A NATION OF WIDENING OPPORTUNITIES: THE CIVIL RIGHTS ACT AT 50 (Ellen Katz & Samuel Bagenstos, eds., Michigan University Press, 2016)

ACADEMIC PRESENTATIONS

The Indian Securities Fraud Class Action: Is Class Arbitration the Answer?, Ninth Annual Emerging Markets Finance Conference, Mumbai, India (Dec. 14, 2018)

MDL: Uniform Rules v. Best Practices, Miami Law Class Action & Complex Litigation Forum, University of Miami Law School, Miami, Florida (December 7, 2018) (panelist)

Third Party Finance of Attorneys in Traditional and Complex Litigation, George Washington Law School, Washington, D.C. (November 2, 2018) (panelist)

MDL at 50 - The 50th Anniversary of Multidistrict Litigation, New York University Law School, New York, New York (October 10, 2018) (panelist)

The Discovery Tax, Law & Economics Seminar, Harvard Law School, Cambridge, Massachusetts (September 11, 2018)

Empirical Research on Class Actions, Civil Justice Research Initiative, University of California at Berkeley, Berkeley, California (Apr. 9, 2018)

A Political Future for Class Actions in the United States?, The Future of Class Actions Symposium, University of Auckland Law School, Auckland, New Zealand (Mar. 15, 2018)

The Indian Class Actions: How Effective Will They Be?, Eighth Annual Emerging Markets Finance Conference, Mumbai, India (Dec. 19, 2017)

Hot Topics in Class Action and MDL Litigation, University of Miami School of Law, Miami, Florida (Dec. 8, 2017) (panelist)

Critical Issues in Complex Litigation, Contemporary Issues in Complex Litigation, Northwestern Law School (Nov. 29, 2017) (panelist)

The Conservative Case for Class Actions, Consumer Class Action Symposium, National Consumer Law Center, Washington, DC (Nov. 19, 2017)

The Conservative Case for Class Actions—A Monumental Debate, ABA National Institute on Class Actions, Washington, DC (Oct. 26, 2017) (panelist)

One-Way Fee Shifting after Summary Judgment, 2017 Meeting of the Midwestern Law and Economics Association, Marquette Law School, Milwaukee, WI (Oct. 20, 2017)

The Conservative Case for Class Actions, Pepperdine Law School Malibu, CA (Oct. 17, 2017)

One-Way Fee Shifting after Summary Judgment, Vanderbilt Law Review Symposium on The Future of Discovery, Vanderbilt Law School, Nashville, TN (Oct. 13, 2017)

The Constitution Revision Commission and Florida's Judiciary, 2017 Annual Florida Bar Convention, Boca Raton, FL (June 22, 2017)

Class Actions After Spokeo v. Robins: Supreme Court Jurisprudence, Article III Standing, and Practical Implications for the Bench and Practitioners, Northern District of California Judicial Conference, Napa, CA (Apr. 29, 2017) (panelist)

The Ironic History of Rule 23, Conference on Secrecy, Institute for Law & Economic Policy, Naples, FL (Apr. 21, 2017)

Justice Scalia and Class Actions: A Loving Critique, University of Notre Dame Law School, South Bend, Indiana (Feb. 3, 2017)

Should Third-Party Litigation Financing Be Permitted in Class Actions?, Fifty Years of Class Actions—A Global Perspective, Tel Aviv University, Tel Aviv, Israel (Jan. 4, 2017)

Hot Topics in Class Action and MDL Litigation, University of Miami School of Law, Miami, Florida (Dec. 2, 2016) (panelist)

The Ideological Consequences of Judicial Selection, William J. Brennan Lecture, Oklahoma City University School of Law, Oklahoma, City, Oklahoma (Nov. 10, 2016)

After Fifty Years, What's Class Action's Future, ABA National Institute on Class Actions, Las Vegas, Nevada (Oct. 20, 2016) (panelist)

Where Will Justice Scalia Rank Among the Most Influential Justices, State University of New York at Stony Brook, Long Island, New York (Sep. 17, 2016)

The Ironic History of Rule 23, University of Washington Law School, Seattle, WA (July 14, 2016)

A Respected Judiciary—Balancing Independence and Accountability, 2016 Annual Florida Bar Convention, Orlando, FL (June 16, 2016) (panelist)

What Will and Should Happen to Affirmative Action After Fisher v. Texas, American Association of Law Schools Annual Meeting, New York, NY (January 7, 2016) (panelist)

Litigation Funding: The Basics and Beyond, NYU Center on Civil Justice, NYU Law School, New York, NY (Nov. 20, 2015) (panelist)

Do Class Actions Offer Meaningful Compensation to Class Members, or Do They Simply Rip Off Consumers Twice?, ABA National Institute on Class Actions, New Orleans, LA (Oct. 22, 2015) (panelist)

Arbitration and the End of Class Actions?, Quinnipiac-Yale Dispute Resolution Workshop, Yale Law School, New Haven, CT (Sep. 8, 2015) (panelist)

The Next Steps for Discovery Reform: Requester Pays, Lawyers for Civil Justice Membership Meeting, Washington, DC (May 5, 2015)

Private Attorney General: Good or Bad?, 17th Annual Federalist Society Faculty Conference, Washington, DC (Jan. 3, 2015)

Liberty, Judicial Independence, and Judicial Power, Liberty Fund Conference, Santa Fe, NM (Nov. 13-16, 2014) (participant)

The Economics of Objecting for All the Right Reasons, 14th Annual Consumer Class Action Symposium, Tampa, FL (Nov. 9, 2014)

Compensation in Consumer Class Actions: Data and Reform, Conference on The Future of Class Action Litigation: A View from the Consumer Class, NYU Law School, New York, NY (Nov. 7, 2014)

The Future of Federal Class Actions: Can the Promise of Rule 23 Still Be Achieved?, Northern District of California Judicial Conference, Napa, CA (Apr. 13, 2014) (panelist)

The End of Class Actions?, Conference on Business Litigation and Regulatory Agency Review in the Era of Roberts Court, Institute for Law & Economic Policy, Boca Raton, FL (Apr. 4, 2014)

Should Third-Party Litigation Financing Come to Class Actions?, University of Missouri School of Law, Columbia, MO (Mar. 7, 2014)

Should Third-Party Litigation Financing Come to Class Actions?, George Mason Law School, Arlington, VA (Mar. 6, 2014)

Should Third-Party Litigation Financing Come to Class Actions?, Roundtable for Third-Party Funding Scholars, Washington & Lee University School of Law, Lexington, VA (Nov. 7-8, 2013)

Is the Future of Affirmative Action Race Neutral?, Conference on A Nation of Widening Opportunities: The Civil Rights Act at 50, University of Michigan Law School, Ann Arbor, MI (Oct. 11, 2013)

The Mass Tort Bankruptcy: A Pre-History, The Public Life of the Private Law: A Conference in Honor of Richard A. Nagareda, Vanderbilt Law School, Nashville, TN (Sep. 28, 2013) (panelist)

Rights & Obligations in Alternative Litigation Financing and Fee Awards in Securities Class Actions, Conference on the Economics of Aggregate Litigation, Institute for Law & Economic Policy, Naples, FL (Apr. 12, 2013) (panelist)

The End of Class Actions?, Symposium on Class Action Reform, University of Michigan Law School, Ann Arbor, MI (Mar. 16, 2013)

Toward a More Lawyer-Centric Class Action?, Symposium on Lawyering for Groups, Stein Center for Law & Ethics, Fordham Law School, New York, NY (Nov. 30, 2012)

The Problem: AT & T as It Is Unfolding, Conference on AT & T Mobility v. Concepcion, Cardozo Law School, New York, NY (Apr. 26, 2012) (panelist)

Standing under the Statements and Accounts Clause, Conference on Representation without Accountability, Fordham Law School Corporate Law Center, New York, NY (Jan. 23, 2012)

The End of Class Actions?, Washington University Law School, St. Louis, MO (Dec. 9, 2011)

Book Preview Roundtable: Accelerating Democracy: Matching Social Governance to Technological Change, Searle Center on Law, Regulation, and Economic Growth, Northwestern University School of Law, Chicago, IL (Sep. 15-16, 2011) (participant)

Is Summary Judgment Unconstitutional? Some Thoughts About Originalism, Stanford Law School, Palo Alto, CA (Mar. 3, 2011)

The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure, Northwestern Law School, Chicago, IL (Feb. 25, 2011)

The New Politics of Iowa Judicial Retention Elections: Examining the 2010 Campaign and Vote, University of Iowa Law School, Iowa City, IA (Feb. 3, 2011) (panelist)

The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure, Washington University Law School, St. Louis, MO (Oct. 1, 2010)

Twombly and Iqbal Reconsidered, Symposium on Business Law and Regulation in the Roberts Court, Case Western Reserve Law School, Cleveland, OH (Sep. 17, 2010)

Do Class Action Lawyers Make Too Little?, Institute for Law & Economic Policy, Providenciales, Turks & Caicos (Apr. 23, 2010)

Originalism and Summary Judgment, Georgetown Law School, Washington, DC (Apr. 5, 2010)

Theorizing Fee Awards in Class Action Litigation, Washington University Law School, St. Louis, MO (Dec. 11, 2009)

An Empirical Study of Class Action Settlements and their Fee Awards, 2009 Conference on Empirical Legal Studies, University of Southern California Law School, Los Angeles, CA (Nov. 20, 2009)

Originalism and Summary Judgment, Symposium on Originalism and the Jury, Ohio State Law School, Columbus, OH (Nov. 17, 2009)

An Empirical Study of Class Action Settlements and their Fee Awards, 2009 Meeting of the Midwestern Law and Economics Association, University of Notre Dame Law School, South Bend, IN (Oct. 10, 2009)

The End of Objector Blackmail?, Stanford-Yale Junior Faculty Forum, Stanford Law School, Palo Alto, CA (May 29, 2009)

An Empirical Study of Class Action Settlements and their Fee Awards, University of Minnesota School of Law, Minneapolis, MN (Mar. 12, 2009)

The Politics of Merit Selection, Symposium on State Judicial Selection and Retention Systems, University of Missouri Law School, Columbia, MO (Feb. 27, 2009)

The End of Objector Blackmail?, Searle Center Research Symposium on the Empirical Studies of Civil Liability, Northwestern University School of Law, Chicago, IL (Oct. 9, 2008)

Alternatives To Affirmative Action After The Michigan Civil Rights Initiative, University of Michigan School of Law, Ann Arbor, MI (Apr. 3, 2007) (panelist)

OTHER PUBLICATIONS

9th Circuit Split: What's the math say?, DAILY JOURNAL (Mar. 21, 2017)

Former clerk on Justice Antonin Scalia and his impact on the Supreme Court, THE CONVERSATION (Feb. 24, 2016)

Lessons from Tennessee Supreme Court Retention Election, THE TENNESSEAN (Aug. 20, 2014)

Public Needs Voice in Judicial Process, THE TENNESSEAN (June 28, 2013)

Did the Supreme Court Just Kill the Class Action?, THE QUARTERLY JOURNAL (April 2012)

Let General Assembly Confirm Judicial Selections, CHATTANOOGA TIMES FREE PRESS (Feb. 19, 2012)

"Tennessee Plan" Needs Revisions, THE TENNESSEAN (Feb. 3, 2012)

How Does Your State Select Its Judges?, INSIDE ALEC 9 (March 2011) (with Stephen Ware)

On the Merits of Merit Selection, THE ADVOCATE 67 (Winter 2010)

Supreme Court Case Could End Class Action Suits, SAN FRANCISCO CHRONICLE (Nov. 7, 2010)

Kagan is an Intellect Capable of Serving Court, THE TENNESSEAN (Jun. 13, 2010)

Confirmation “Kabuki” Does No Justice, POLITICO (July 20, 2009)

Selection by Governor may be Best Judicial Option, THE TENNESSEAN (Apr. 27, 2009)

Verdict on Tennessee Plan May Require a Jury, THE MEMPHIS COMMERCIAL APPEAL (Apr. 16, 2008)

Tennessee’s Plan to Appoint Judges Takes Power Away from the Public, THE TENNESSEAN (Mar. 14, 2008)

Process of Picking Judges Broken, CHATTANOOGA TIMES FREE PRESS (Feb. 27, 2008)

Disorder in the Court, LOS ANGELES TIMES (Jul. 11, 2007)

Scalia’s Mistake, NATIONAL LAW JOURNAL (Apr. 24, 2006)

GM Backs Its Bottom Line, DETROIT FREE PRESS (Mar. 19, 2003)

Good for GM, Bad for Racial Fairness, LOS ANGELES TIMES (Mar. 18, 2003)

10 Percent Fraud, WASHINGTON TIMES (Nov. 15, 2002)

OTHER PRESENTATIONS

Does the Way We Choose our Judges Affect Case Outcomes?, American Legislative Exchange Council 2018 Annual Meeting, New Orleans, Louisiana (August 10, 2018) (panelist)

Oversight of the Structure of the Federal Courts, Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts, United States Senate, Washington, D.C. (July 31, 2018)

Where Will Justice Scalia Rank Among the Most Influential Justices, The Leo Bearman, Sr. American Inn of Court, Memphis, TN (Mar. 21, 2017)

Bringing Justice Closer to the People: Examining Ideas for Restructuring the 9th Circuit, Subcommittee on Courts, Intellectual Property, and the Internet, United States House of Representatives, Washington, D.C. (Mar. 16, 2017)

Supreme Court Review 2016: Current Issues and Cases Update, Nashville Bar Association, Nashville, TN (Sep. 15, 2016) (panelist)

A Respected Judiciary—Balancing Independence and Accountability, Florida Bar Annual Convention, Orlando, FL (June 16, 2016) (panelist)

Future Amendments in the Pipeline: Rule 23, Tennessee Bar Association, Nashville, TN (Dec. 2, 2015)

The New Business of Law: Attorney Outsourcing, Legal Service Companies, and Commercial Litigation Funding, Tennessee Bar Association, Nashville, TN (Nov. 12, 2014)

Hedge Funds + Lawsuits = A Good Idea?, Vanderbilt University Alumni Association, Washington, DC (Sep. 3, 2014)

Judicial Selection in Historical and National Perspective, Committee on the Judiciary, Kansas Senate (Jan. 16, 2013)

The Practice that Never Sleeps: What's Happened to, and What's Next for, Class Actions, ABA Annual Meeting, Chicago, IL (Aug. 3, 2012) (panelist)

Life as a Supreme Court Law Clerk and Views on the Health Care Debate, Exchange Club, Nashville, TN (Apr. 3, 2012)

The Tennessee Judicial Selection Process—Shaping Our Future, Tennessee Bar Association Leadership Law Retreat, Dickson, TN (Feb. 3, 2012) (panelist)

Reexamining the Class Action Practice, ABA National Institute on Class Actions, New York, NY (Oct. 14, 2011) (panelist)

Judicial Selection in Kansas, Committee on the Judiciary, Kansas House of Representatives (Feb. 16, 2011)

Judicial Selection and the Tennessee Constitution, Civil Practice and Procedure Subcommittee, Tennessee House of Representatives (Mar. 24, 2009)

What Would Happen if the Judicial Selection and Evaluation Commissions Sunset?, Civil Practice and Procedure Subcommittee, Tennessee House of Representatives (Feb. 24, 2009)

Judicial Selection in Tennessee, Chattanooga Bar Association, Chattanooga, TN (Feb. 27, 2008) (panelist)

Ethical Implications of Tennessee's Judicial Selection Process, Tennessee Bar Association, Nashville, TN (Dec. 12, 2007)

PROFESSIONAL ASSOCIATIONS

Member, American Law Institute
Referee, Journal of Law, Economics and Organization
Referee, Journal of Empirical Legal Studies

Reviewer, Oxford University Press
Reviewer, Supreme Court Economic Review
Member, American Bar Association
Member, Tennessee Advisory Committee to the U.S. Commission on Civil Rights
Board of Directors, Tennessee Stonewall Bar Association
American Swiss Foundation Young Leaders' Conference, 2012
Bar Admission, District of Columbia

COMMUNITY ACTIVITIES

Board of Directors, Nashville Ballet, 2011-2017; Nashville Talking Library for the Blind, 2008-2009