

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

IMRAN KHAN, et al.,

*Plaintiffs,*

v.

BOARD OF DIRECTORS OF PENTEGRA  
DEFINED CONTRIBUTION PLAN, et al.,

*Defendants.*

No. 7:20-cv-07561

**NOTICE OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT  
OF EXPENSES, AND CASE CONTRIBUTION AWARDS FOR CLASS  
REPRESENTATIVES**

Please take notice that, upon the accompanying Memorandum of Law, dated September 26, 2025, and the declarations of Troy A. Doles, Jerome J. Schlichter, and Sanford Jay Rosen, Plaintiffs Imran Khan, Joan Bullock, and Pamela Joy Wood will move this Court before the Honorable Philip M. Halpern, at the Honorable Charles L. Brieant, Jr. Federal Building and Courthouse for the Southern District of New York, 300 Quarropas St., White Plains, New York 10601, on November 26, 2025 at 10:00 a.m., for an order granting Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and Case Contribution Awards for Class Representatives. Prior to the Final Approval Hearing set on the same date, Plaintiffs shall submit a proposed order granting Plaintiffs' Motion for the Court's consideration.

Please take notice that opposing papers, if any, shall be served no later than October 10, 2025.

September 26, 2025

Respectfully submitted,

/s/ Troy A. Doles  
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*Class Counsel for Plaintiffs*

### **CERTIFICATE OF SERVICE**

I hereby certify that on September 26, 2025, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the attorneys of record.

/s/ Troy A. Doles  
*Class Counsel for Plaintiffs*

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**PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR  
ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND CASE  
CONTRIBUTION AWARDS FOR CLASS REPRESENTATIVES**

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## INTRODUCTION

On April 23, 2025, Schlichter Bogard LLC (“Schlichter Bogard” or “Class Counsel”) obtained the largest jury verdict recorded for an ERISA class action lawsuit alleging excessive administrative fees in the amount of **\$38,760,232**. This judgment was obtained in favor of Plaintiffs and similarly situated Plan participants who participated in the Pentegra Defined Contribution Plan for Financial Institutions (the “Plan”). On May 1, 2025, the parties settled this matter resolving all claims for an amount of **\$48,500,000**, which exceeded the amount of the verdict. In achieving this landmark decision and subsequent settlement, Schlichter Bogard devoted **16,000** hours of attorney and non-attorney time. Schlichter Bogard’s unwavering commitment to this case over a period of five years, risking over \$1 million in costs and carrying the costs for years for the benefit of employees and retirees in the Plan, unquestionably “illustrates an exceptional example of a private attorney general[.]” *Will v. Gen. Dynamics Corp.*, No. 06-698, 2010 U.S. Dist. LEXIS 123349, at \*8–9 (S.D. Ill. Nov. 22, 2010) (speaking of Schlichter Bogard’s work).

Under the common fund doctrine, the Court should award Class Counsel attorneys’ fees of \$16,513,179 (one-third of the common fund or “Gross Settlement Balance”) and the reimbursement of reasonable litigation expenses of \$1,044,209.46, most of which is for the costs of the necessary experts resulting in the jury’s verdict.<sup>1</sup> Fed. R. Civ. P. 23(h); *US Airways, Inc. v. McCutchen*, 569 U.S. 88, 96 (2013) (“Under [the common fund doctrine], ‘a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.’”) (quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)).

In ERISA class actions, such as this, district courts routinely approve a one-third

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<sup>1</sup> The Gross Settlement Balance means the Gross Settlement Amount, including any accrued interest. Dkt. 302-1 § 2.43.

percentage from the settlement's common fund as the award for attorneys' fees. This Court should do the same. It is also the percentage fee to which the Named Plaintiffs and Class Representatives have agreed on behalf of the Class. A separate lodestar analysis overwhelmingly confirms the reasonableness of Class Counsel's fee request. Class Counsel also seeks reasonable and appropriate case contribution awards of \$25,000 each for Class Representatives Imran Khan, Joan Bullock, and Pamela Joy Wood, who were dedicated at every stage of this case in securing a successful result for the Class. Similar to Class Counsel's attorneys' fee request, district courts consistently approve such case contribution awards under similar circumstances in ERISA class actions handled by Class Counsel.

For these reasons and those set forth below, Class Counsel respectfully requests that the Court grant this motion.

### **BACKGROUND**

Plaintiffs Imran Khan and Joan Bullock, individually and as representatives of a class of similarly situated Plan participants and beneficiaries, filed this action on September 15, 2020 against Defendants Board of Directors of Pentegra Defined Contribution Plan ("Board"), Pentegra Services, Inc. ("PSI"), John E. Pinto, Sandra L. McGoldrick, Lisa A. Schlehuber, Michael N. Lussier, William E. Hawkins, Jr., Brad Elliott, and George W. Hermann (collectively "Defendants"). Dkt. 1. They alleged that Defendants breached their fiduciary duties by failing to monitor and control the Plan's administrative fees and by causing the Plan to pay unreasonable investment management fees. *Id.* (Counts I and III). They further alleged that Defendants committed prohibited transactions by causing the Plan to pay Plan assets to PSI through the use of PSI-subadvised investments and PSI's proprietary recordkeeping services. *Id.* (Count II). Plaintiffs

also brought a derivative claim against the Board for failing to monitor delegated fiduciaries. *Id.* (Count IV).

On October 13, 2020, a similar but separate ERISA action was filed in this Court, No. 20-8503, by Plaintiffs Richard Greenberg, Gregory S. Digsby, Lindsey Clark, and Chrystal Lewis, individually and as representatives of a class of Plan participants and beneficiaries, against the Board, PSI, and John Does 1–20 (the “*Greenberg* action”). The *Khan* Plaintiffs filed a Motion for Appointment of Schlichter Bogard as Interim Class Counsel on November 25, 2020 (Dkt. 60), which was opposed by the *Greenberg* plaintiffs. Dkts. 73, 73-1. The *Greenberg* plaintiffs responded to the *Khan* Plaintiffs’ motion and filed a cross-motion to be appointed as interim lead counsel. Dkt. 75. On Defendants’ motion, the two cases were consolidated, *see* Dkt. 72, and on December 28, 2020, the *Khan* Plaintiffs filed a consolidated amended complaint (Dkt. 74), which added Pamela Joy Wood as a Named Plaintiff.

On February 19, 2021, the Court appointed Schlichter Bogard (then known as Schlichter Bogard & Denton, LLP) as interim class counsel. Dkt. 84. On March 5, 2021, Plaintiffs filed an amended consolidated class action complaint, adding additional facts based on recently produced contracts between the Plan and PSI. Dkt. 92; *see* Dkt. 85. On June 24, 2021, given the consolidated nature of the proceedings and with the parties’ consent, the Court formally dismissed the *Greenberg* action. Dkt. 115. Then on January 27, 2022, on Plaintiffs’ motion, the Court withdrew the *Greenberg* plaintiffs as named plaintiffs in the consolidated action, without prejudice to a later determination as to whether they would qualify as Class members should a Class be certified. Dkt. 142.

On March 23, 2022, the Court partially granted Defendants’ motion to dismiss (Dkt. 93) by dismissing Plaintiffs’ loyalty claims. Dkt. 149. In all other respects, however, the motion was

denied. On September 26, 2023, the Court certified a class of “[a]ll participants and beneficiaries of the [Plan] from September 15, 2014 through the date of judgment, excluding Defendants.” Dkt. 191.<sup>2</sup> The Court appointed Schlichter Bogard as Class Counsel, appointed Named Plaintiffs Khan, Bullock, and Wood as Class Representatives. *Id.* That same day, the Court granted in part and denied in part Defendants’ motion to strike Plaintiffs’ jury demand, allowing Plaintiffs’ claims for money damages to be tried to a jury and ordering the remaining issues to be tried before the Court. Dkt. 190.

On October 10, 2023, Plaintiffs withdrew Count III concerning the payment of excessive investment management fees. Dkt. 195. Ultimately, and in preparation for trial and to streamline the action for presentation to the jury, Plaintiffs voluntarily elected not to pursue their claim in Count IV that the Board failed to monitor delegated fiduciaries. Dkt. 268 at 4. That left two claims to be tried: Count I – breach of fiduciary duty concerning fees for recordkeeping and administrative services (29 U.S.C. §§ 1104(a)(1)(B) and 1105(a)); and Count II – prohibited transactions (29 U.S.C. § 1106). *See id.* at 3.

The parties engaged in substantial and hotly contested discovery. The Court first entered a scheduling order (Dkt. 118), a jointly negotiated protective order (Dkt. 119), and a stipulation for discovery of hard copy documents and electronically stored information (Dkt. 120). With those preliminary matters resolved, the parties engaged in written discovery and engaged the Court to resolve contested discovery disputes as necessary. Dkt. 136. Plaintiffs substantially prevailed on those disputes. *Id.* Discovery continued with the production of approximately 500,000 pages of documents produced by the parties or relevant third parties. See Declaration of Troy A. Doles (“Doles Decl.”) ¶24.

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<sup>2</sup> By agreement of the parties and in order to accomplish notice to all Class members in this Settlement, the settlement Class Period ends on April 30, 2025, rather than “through the date of judgment.” Dkt. 302-1 § 2.15.

In order to properly and efficiently review the produced documents, Schlichter Bogard developed systems and instituted processes to systematically and methodically categorize documents in appropriate electronic folders. *Id.* ¶25. In order to properly categorize the documents, it was incumbent on Schlichter Bogard to review ***all*** of the documents produced. *Id.* The categories created by Schlichter Bogard included, among other things, detailed financial documents, extensive transactional data, contracts, policies and procedure manuals, meeting minutes, materials, and internal analyses of PSI's administrative services delivery models. *Id.* Once properly analyzed for categorization, each document produced was thoroughly analyzed. *Id.* Separately, Schlichter Board categorized and thoroughly reviewed ***every*** email correspondence produced. This level of review required extensive coordination, discussions, and meetings led by senior partners at Schlichter Bogard. *Id.* Only ***attorneys*** analyzed and thoroughly reviewed these materials produced by Defendants and third parties. *Id.* ¶¶23–27.

Once these materials were thoroughly reviewed and analyzed, the deposition stage of discovery commenced. In total, the parties took 17 depositions. *Id.* ¶¶28, 34. This included 11 party and third-party depositions and 6 expert depositions. *Id.* In many instances, these depositions continued for the duration of the day, taking the full time permitted under the Federal Rules of Civil Procedure. To properly conduct these depositions, Schlichter Bogard devoted substantial time to prepare to take or defend these depositions. *Id.* ¶29.

After numerous in-person pre-trial conferences, trial commenced on April 15, 2025. On April 23, 2025, the jury returned a verdict in Plaintiffs' favor and against all Defendants on Count I. The jury awarded damages of \$38,760,232. Apr. 23, 2025 Minute Entry. While the jury was deliberating, the Court held a short bench trial on Count II, receiving into evidence a declaration from Plaintiffs' expert witness, Clay Busker, that set forth certain calculations concerning the

Plan's prohibited payments to PSI. Dkt. 277-1. The Court ordered the parties to jointly submit updated proposed findings of fact and conclusions of law on Count II and Plaintiffs' requested equitable relief on Counts I and II no later than May 2, 2025.

Prior to the deadline for the parties to submit updated proposed findings of fact and conclusions of law, the parties engaged in extensive and substantial discussions to fully resolve this case. These discussions were unquestionably at arm's length and intense. Ultimately, on May 1, 2025, the parties reached a settlement and notified the Court of same on May 2, 2025. Dkt. 294. As a condition of the Settlement, Plaintiffs required that Defendants pay the full settlement amount into an interest-bearing account before preliminary approval to benefit the Class by increasing the amount of the common fund created. Dkt. 302-2. On July 2, 2025, Plaintiffs moved for preliminary approval of the class-wide Settlement. Dkt. 300. On July 2, 2025, the Court promptly granted preliminary approval. Dkt. 294.

## ARGUMENT

### **I. Class Counsel's attorneys' fee request unquestionably meets Second Circuit standards.**

Under the common fund" doctrine, Class Counsel is entitled to an award of reasonable attorneys' fees from the settlement proceeds. Fed. R. Civ. P. 23(h). "It is well-established under the common fund doctrine that 'attorneys who create a fund for the benefit of a class of plaintiffs are entitled to reasonable compensation from that fund.'" *Fikes Wholesale, Inc. v. Visa U.S.A., Inc.*, 62 F.4th 704, 723 (2d Cir. 2023) (quoting *Victor v. Argent Classic Convertible Arbitrage Fund L.P.*, 623 F.3d 82, 84 (2d Cir. 2010)). An award is also authorized by both the common fund doctrine and the Settlement. *Boeing*, 444 U.S. at 478; Dkt. 302-1 at §§ 2.6, 7.1; *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000).

In the Second Circuit, “both the lodestar and the percentage of the fund methods are available to district judges in calculating attorneys’ fees in common fund cases.” *Goldberger*, 209 F.3d at 50. However, the “trend in the Circuit is towards the percentage method” because it “directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation.” *Wal-Mart Stores, Inc. v Visa U.S.A., Inc.*, 396 F.3d 96, 122 (2d Cir. 2005) (internal citations omitted); *see also Bekker v. Neuberger Berman Grp. 401k Plan Inv. Comm.*, 504 F. Supp. 3d 265, 269 (S.D.N.Y. 2020) (citing *McDaniel v. Cnty. of Schenectady*, 595 F.3d 411, 422 (2d Cir. 2010)) (“courts in the Second Circuit prefer using the percentage method for calculating common-fund attorney fees”); *Strougo ex rel. Brazilian Equity Fund, Inc. v. Bassini*, 258 F. Supp. 2d 254, 261 (S.D.N.Y. 2003) (finding the percentage method preferable as it avoids the “dubious merits of the lodestar approach”); *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 586 (S.D.N.Y. 2008) (noting that the percentage method absolves district courts from taking on the cumbersome task of computing a lodestar). Further, “[t]he percentage method also ‘mimics the compensation system actually used by individual clients to compensate their attorneys.’” *Kirby v FIC Restaurants, Inc.*, No. 19-1306, 2020 U.S. Dist. LEXIS 178109, at \*13 (N.D.N.Y. Sept. 28, 2020) (internal citations omitted).

District courts in the Second Circuit analyze six factors to determine the reasonableness of a fee award in a common fund case:

(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation . . . ; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.

*Goldberger*, 209 F.3d at 50. (internal quotations omitted). Each of the *Goldberger* factors overwhelmingly supports Class Counsel’s requested attorneys’ fees.

**A. Class Counsel was required to devote very significant time and labor to the settled claims. (Factor 1)**

Successfully prosecuting and settling the claims in this action demanded considerable time and labor, making this fee request unquestionably reasonable. Class Counsel expended 16,000 hours on this case.<sup>3</sup> They successfully litigated this case for over *five* years, surviving Defendants' motion to dismiss and their opposition to class certification, and obtained a substantial verdict following a jury trial—the *largest* jury trial verdict in an ERISA excessive fee case. During the discovery phase, in particular, Class Counsel reviewed approximately 500,000 pages of documents, extensively reviewed and analyzed virtually every document produced, successfully engaged in discovery disputes, and took or defended 17 depositions. Doles Decl. ¶¶24, 28, 34. Moreover, the attorney and non-attorney hours spent on this case do not include time spent preparing this motion. Class Counsel has also committed to work significant additional hours in the future without compensation for: (1) the preparation for and attendance at the final approval hearing; (2) handling numerous calls from Class members regarding the terms of the Settlement; and (3) coordinating with the Settlement Administrator to ensure the terms of the Settlement are met. *Id.* ¶¶48–49.

Without question, Class Counsel dedicated a tremendous amount of time and labor leading to the ultimate significant success of this litigation. The time and labor Class Counsel devoted to this action is consistent with other ERISA class actions handled by the firm, each of which involved the same commitment as that herein to pursue the case to the fullest, no matter how much in time that required. *See, e.g., Cates v. Trs. of Columbia Univ.*, No. 16-6524-GBD, 2021 U.S. Dist. LEXIS 200890, at \*8 (S.D.N.Y. Oct. 18, 2021) (13,188 hours of attorney hours and 2,288

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<sup>3</sup> As noted in the Doles Declaration, Class Counsel exercised their judgment and eliminated over 660 hours even though such time was devoted to the case. Doles Decl. ¶9.



hours of non-attorney hours); *Munro v. Univ. of S. Cal.*, No. 16-6191, Dkt. 384 at 16 (C.D. Cal. Aug. 24, 2023) (13,285.2 attorney hours and 1,393.3 non-attorney hours); *Sims v. BB&T Corp.*, No. 15-1705, 2019 U.S. Dist. LEXIS 75839, at \*14 (M.D.N.C. May 6, 2019) (14,605.70 attorney hours and 1,951.70 non-attorney hours); *Clark v. Duke*, No. 16-1044, 2019 U.S. Dist. LEXIS 105696, at \*11 (M.D.N.C. June 24, 2019) (7,841.60 attorney hours and 661.30 non-attorney hours); *Spano v. Boeing Co.*, No. 06-743, 2016 U.S. Dist. LEXIS 161078, at \*10 (S.D. Ill. Mar. 31, 2016) (21,986.8 attorney hours and 4,828.2 non-attorney hours); *Abbott v. Lockheed Martin Corp.*, No. 06-701, 2015 U.S. Dist. LEXIS 93206, at \*10–11 (S.D. Ill. July 17, 2015) (20,124 attorney hours and 4,960 non-attorney hours); *Krueger v. Ameriprise Fin., Inc.*, No. 11-2781, 2015 U.S. Dist. LEXIS 91385, at \*6–7 (D. Minn. July 13, 2015) (27,991 attorney hours and 2,716 non-attorney hours); *Tussey v. ABB, Inc.*, No. 06-4305, 2012 U.S. Dist. LEXIS 157428, at \*14 (W.D. Mo. Nov. 2, 2012) (25,160.8 hours of attorney and non-attorney hours).

**B. This litigation was complex and demanding. (Factor 2)**

Without a doubt, ERISA claims are quite “complex.” *Cates*, 2021 U.S. Dist. LEXIS 200890, at \*11–12; *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02-3400-CM-PED, 2010 U.S. Dist. LEXIS 119702, at \*82 (S.D.N.Y. Nov. 8, 2010); *Tussey*, 2012 U.S. Dist. LEXIS 157428, at \*10, *vacated and remanded*, 746 F.3d 327 (8th Cir. 2014) (it is “well established that complex ERISA litigation” requires “special expertise”). And as the Supreme Court has recognized, “ERISA is a comprehensive and reticulated statute . . . and is enormously complex and detailed[.]” *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 447 (1999) (internal quotations and citations omitted). Excessive 401(k) fee litigation, such as this, which this firm pioneered, “entails complicated ERISA claims” and “novel questions of law.” *Martin v. Caterpillar, Inc.*, No. 07-1009, 2010 U.S. Dist. LEXIS 82350, at \*7 (C.D. Ill. Aug. 12, 2010); *Tussey*, 2012 U.S. Dist. LEXIS 157428, at \*6–7 (the “case also involved significant novel legal questions regarding the

extent of the fiduciary duties owed by plan administrators under ERISA and will have a general deterrent effect on similarly situated fiduciaries”). As a result, few firms “are capable of handling this type of national litigation.” *Abbott*, 2015 U.S. Dist. LEXIS 93206, at \*11; *Cates*, 2021 U.S. Dist. LEXIS 200890, at \*8 (“the number of plaintiff’s firms which have the necessary expertise and are willing take the risk and devote the resources to litigate complex claims is small”); *Sims*, 2019 U.S. Dist. LEXIS 75839, at \*4 (“[i]t is unsurprising that only a few firms might invest the considerable resources to ERISA class actions such as this, which require considerable resources and hold uncertain potential for recovery”); *Clark*, 2019 U.S. Dist. LEXIS 105696, at \*11 (Schlichter Bogard “demonstrated diligence, skill, and determination in this matter and, more generally, in an area of law in which few attorneys and law firms are willing or capable of practicing”); Declaration of Jerome J. Schlichter (“Schlichter Decl.”) ¶16; Declaration of Sanford Jay Rosen (“Rosen Decl.”) ¶¶53, 84, 89.

Accordingly, litigating ERISA 401(k) breach of fiduciary duty claims necessarily requires deep, specialized knowledge of retirement plan industry practices. *Cates*, 2021 U.S. Dist. LEXIS 200890, at \*11; *Clark*, 2019 U.S. Dist. LEXIS 105696, at \*9 (“a national market rate is appropriate for matters involving complex issues requiring specialized expertise, such as ERISA class actions”) (citation omitted); *Sims*, 2019 U.S. Dist. LEXIS 75839, at \*11–12 (same). The difficulty of this case is amplified by the fact that Defendants retained a global law firm that employed attorneys from multiple offices throughout the nation. The subject matter is highly technical. It involves 401(k) industry practices, prudent fiduciary practices, conflicts of interest related to prohibited transactions, and the recordkeeping and administration of a more complex retirement plan, requiring use of multiple experts for all parties. Doles Decl. ¶¶31–32. Moreover, in the pre-trial conferences conducted in this case, this Court repeatedly noted the complexity of the issues

in this case and the difficulty in conveying this to the jury. *See, e.g.*, Nov. 26, 2024 Hr’g Tr. at 7:4–6 (“I’ve been thoroughly impressed with the manner and the dexterity and the complexity of some of the issues and how the jury actually reacts.”). Without question, the difficulty of this ERISA action justifies the requested fee award.

**C. Class Counsel overcame substantial risk of non-recovery. (Factor 3)**

“The Second Circuit [in *Goldberger*] has identified the risk of success as perhaps the foremost factor to be considered in determining a reasonable award of attorneys’ fees.” *In re Global Crossing Litig.*, 225 F.R.D. 436, 467 (S.D.N.Y. 2004) (internal quotations omitted); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 147 (S.D.N.Y. 2010) (noting and citing same). The risk inherent in contingent fee cases is clear:

No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended.

*City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 470 (2d Cir. 1974) (citation omitted). “Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation.” *In re Comverse Tech., Inc. Sec. Litig.*, No. 06-1825, 2010 U.S. Dist. LEXIS 63342, at \*15 (E.D.N.Y. June 24, 2010) (citation omitted); *see also In re Am. Bank Note Holographics, Inc. Sec. Litig.*, 127 F. Supp. 2d 418, 433 (S.D.N.Y. 2001) (it is “appropriate to take this [contingent-fee] risk into account in determining the appropriate fee to award”).

Class Counsel’s assumption of this risk strongly supports the reasonableness of the requested fee. *See Cates*, 2021 U.S. Dist. LEXIS 200890, at \*6 (noting “significant risk of nonpayment in in this complex ERISA class action”); *Flag Telecom*, 2010 U.S. Dist. LEXIS 119702, at \*79 (“Courts in the Second Circuit have recognized that the risk associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee

award.”); *Marsh*, 265 F.R.D. at 148 “There was significant risk of non-payment in this case, and Plaintiffs’ Counsel should be rewarded for having borne and successfully overcome that risk.”).

The risk that Class Counsel faced to obtain a successful outcome for Class members was very real. Judgments in favor of the defendants from trials in ERISA litigation illustrate the difficulty of obtaining a successful verdict or judgment. *See, e.g., Mills v. Molina Healthcare, Inc.*, No. 22-1813, 2024 U.S. Dist. LEXIS 50572 (C.D. Cal. Mar. 20, 2024); *Lauderdale v. NFP Ret., Inc.*, No. 21-301, 2024 U.S. Dist. LEXIS 31527 (C.D. Cal. Feb. 23, 2024); *see also Reetz v. Aon Hewitt Inv. Consulting, Inc.*, 74 F.4th 171 (4th Cir. 2023) (affirming judgment in favor of fiduciary defendant); *Sacerdote v. New York Univ.*, 328 F. Supp. 3d 273 (S.D.N.Y. 2018) (judgment in favor of defendants); *Vellali v. Yale Univ.*, No. 16-1345, Dkt. 575 (D. Conn. June 28, 2023) (same).

Although Plaintiffs secured a successful jury verdict, there was no guarantee that the verdict would be affirmed on appeal. Moreover, this Court emphasized on multiple occasions during pre-trial conferences the risk inherent in this litigation for both sides. Apr. 17, 2025 Trial Tr. at 854:11–19 (encouraging the parties to discuss a resolution because it will be “extremely difficult” for the jury understand the “enormous” amount of evidence); Nov. 26, 2024 Hr’g Tr. at 4:2 (“there’s a fair amount of money at risk here”); *id.* at 9:4–12 (noting the “risk” to all parties); Apr. 3, 2024 Hr’g Tr. at 17:18 (case is “complicated enough”). If the Second Circuit were to find that Plaintiffs were not entitled to a jury trial on their claims for money damages currently on appeal in *Vellali v. Yale University*, No. 23-1082 (2d Cir.), that would present another obstacle to Class Counsel to obtain a successful recovery for the Class. To be clear, the Court’s decision on Plaintiffs’ request for a jury trial was well-reasoned and in accord with binding Second Circuit authority. *See* Dkt. 190.

#### **D. Class Counsel provided experienced and sophisticated representation. (Factor 4)**

Class Counsel is the most experienced law firm in the United States in handling ERISA

class actions involving 401(k) plans. As noted below, Schlichter Bogard pioneered the entire field of excessive fee litigation, conducted the first ever trial of such a case, has tried more cases than any other firm, and is widely recognized as the preeminent firm in the field. Without question, Class Counsel is the “preeminent firm in 401(k) fee litigation,” having “achieved unparalleled results on behalf of its clients” in the face of “enormous risks.” *Nolte v. Cigna Corp.*, No. 07-2046, 2013 U.S. Dist. LEXIS 184622, at \*8 (C.D. Ill Oct. 15, 2013); *Abbott*, 2015 U.S. Dist. LEXIS 93206, at \*4–5 (the firm is the “pioneer and the leader in the field”); *Sims*, 2019 U.S. Dist. LEXIS 75839, at \*4 (“[i]t is unsurprising that only a few firms might invest the considerable resources to ERISA class actions such as this, which require considerable resources and hold uncertain potential for recovery”). They are clearly “experts in ERISA litigation.” *Cates*, 2021 U.S. Dist. LEXIS 200890, at \*14 (citing *Krueger v. Ameriprise Fin., Inc.*, No. 11-2781, 2015 U.S. Dist. LEXIS 91385, at \*6 (D. Minn. July 13, 2015)); *Tussey v. ABB, Inc.*, No. 06-4305, 2019 U.S. Dist. LEXIS 138880, at \*18 (W.D. Mo. Aug. 16, 2019) (noting same); *see also In re Northrop Grumman Corp. ERISA Litig.*, No. 06-6213, 2017 U.S. Dist. LEXIS 223293, at \*10–11 (C.D. Cal. Oct. 24, 2017) (Schlichter Bogard is “highly experienced”).

Other district courts across the country recognize the reputation, skill, and determination of Class Counsel. *See, e.g., Ford v. Takeda Pharms. U.S.A., Inc.*, No. 21-10090, 2023 U.S. Dist. LEXIS 93286, at \*4 (D. Mass. Mar. 31, 2023) (Schlichter Bogard’s “work on this case was exemplary and benefitted the Class by securing both monetary and affirmative relief”); *Pledger v. Reliance Tr. Co.*, No. 15-4444, 2021 U.S. Dist. LEXIS 105868, at \*21 (N.D. Ga. Mar. 8, 2021) (“Class Counsel are highly experienced and recognized experts in ERISA litigation.”); *Trout v. Oracle Corp.*, No. 16-175, Dkt. 236 at 6 (D. Colo. July 10, 2020) (Schlichter Bogard “have shown their ability by achieving the excellent result obtained for the class” and “admirably served as

private attorneys general in this instance, fulfilling one of the purposes of ERISA”); *Kruger v. Novant Health, Inc.*, No. 14-208, 2016 U.S. Dist. LEXIS 193107, at \*8 (M.D.N.C. Sept. 29, 2016) (“Class Counsel’s efforts have not only resulted in a significant monetary award to the class but have also brought improvement” to the plans). The quality of the professional legal services had to be exceptional to navigate the complex area of ERISA fiduciary breach litigation. *Tussey*, 2012 U.S. Dist. LEXIS 157428, at \*10 (it is “well established that complex ERISA litigation” requires “special expertise”); *Nolte*, 2013 U.S. Dist. LEXIS 184622, at \*9 (“Simply litigating this case required Class Counsel to be of the highest caliber — and to obtain this historic result required extraordinary skill and determination.”); *Krueger*, 2015 U.S. Dist. LEXIS 91385, at \*6 (requires “extraordinary skill and determination”).

Moreover, Class Counsel has taken three cases that were dismissed to the Supreme Court, including one from the Second Circuit. *Tibble v. Edison Int’l*, 135 S. Ct. 1823 (2015); *Hughes v. Nw. Univ.*, 142 S. Ct. 737, 738 (2022); *Cunningham v. Cornell Univ.*, 145 S. Ct. 1020 (2025). Not only were these the only excessive fee cases taken by the Supreme Court, but the firm successfully obtained reversals in *each case*. Further, the successful reversals obtained by the firm in each of these Supreme Court cases were *unanimous*. The firm also has obtained multiple favorable reversals of dismissal or summary judgment orders on appeal, again including one before the Second Circuit. *E.g.*, *Sacerdote v. N.Y. Univ.*, 9 F.4th 95 (2d Cir. 2021); *Johnson v. Parker-Hannifin Corp.*, 122 F.4th 205 (6th Cir. 2024); *Sweda v. Univ. of Pa.*, 923 F.3d 320 (3d Cir. 2019); *Tibble v. Edison Int’l*, 843 F.3d 1187, 1197 (9th Cir. 2016); *George v. Kraft Foods Global, Inc.*, 641 F.3d 786, 796 (7th Cir. 2011).

#### **E. The requested fee is reasonable in relation to the Settlement. (Factor 5)**

Courts have interpreted this factor as requiring the review of the fee request in terms of the percentage it represents of the total recovery. *Fikes*, 62 F.4th at 723–24; *Wal-Mart Stores*, 396

F.3d at 123. Class Counsel secured a settlement valued in excess of \$48.5 million, almost \$10 million *more*—not less—than the amount of the verdict. This demonstrates the strength of the underlying verdict. In addition, Class Counsel successfully negotiated the deposit of the *full* monetary amount of the Settlement into an interest-bearing account no later than May 17, 2024. Dkt. 302-1 § 5.1. This provided substantial benefit to Class members because the monetary amount of the common fund increased in value by over *one million* (\$49,539,537 as of September 19, 2025) due to accrued interest. Doles Decl. ¶61.

Their requested attorneys’ fee for one-third of the monetary recovery is overwhelmingly recognized as the market rate in settlements handled by Class Counsel and by district courts in the Second Circuit. *See Cates*, 2021 U.S. Dist. LEXIS 200890, at \*18–19 (“In similar ERISA excessive fee cases, and in particular those brought by [Schlichter Bogard], district courts have consistently recognized that a one-third fee is the market rate.”) (citation omitted); *Bekker*, 504 F. Supp. 3d at 270 (“In numerous prior settlements of 401(k) fee cases, class counsel have been awarded one-third of the monetary recovery to the plans.”); *Marsh*, 265 F.R.D. at 149 (approving a one-third fee); *Kruger*, 2016 U.S. Dist. LEXIS 193107, at \*7–8 (“A one-third fee is consistent with the market rate in settlements concerning this particularly complex area of law.”); *see also generally Chabak v. Somnia Inc.*, No. 22-9341 (PMH), 2025 U.S. Dist. LEXIS 80550, at \*4 (S.D.N.Y. Apr. 28, 2025) (approving class counsel’s fee request and collecting cases where a one-third fee was approved as reasonable); *Carver vs. Bank of New York Mellon*, No. 17-10231-JPO, Dkt. 11 (S.D.N.Y. May 23, 2019) (awarding one-third attorneys’ fees in an ERISA breach of fiduciary duty action); *Leber v. The Citigroup 401(k) Pension Plan Investment Committee, et al.*, No. 07-9329-SHS, Dkt. 294 (S.D.N.Y. Jan. 3, 2019) (same); *Osberg v. Foot Locker, Inc.*, No. 07-1358-KBF, Dkt. 426 (S.D.N.Y. June 6, 2018) (same); *see also Schlichter Decl.* ¶24.

Beyond the monetary recovery for the Class, Class Counsel also obtained *significant* non-monetary relief on behalf of Class members, which further enhances the Settlement's value and should be considered by the Court. *Kruger*, 2016 U.S. Dist. LEXIS 193107, at \*8 (“Considering the non-monetary benefits and relief created by counsel’s efforts is important because it encourages attorneys to obtain meaningful affirmative relief.”); *Kelly v. Johns Hopkins Univ.*, No. 16-2835, 2020 U.S. Dist. LEXIS 14772, at \*14 (D. Md. Jan. 28, 2020) (“The affirmative relief herein is extensive and provides substantial additional value to the class.”). Under Article 10 of the Settlement Agreement (Dkt. 302-1), Defendants have agreed to engage an independent fiduciary to guide their actions. Second, they must conduct certain requests for proposals (“RFP”) for administrative services, which will assure reasonable pricing for those services. Third, they must implement certain reforms to the Plan’s Board composition and governance structure, and provide notice to Class Counsel within 30 days after Defendants complete the RFP(s) and implement the reforms. All of these have significant value for Plan participants going forward and will provide long-term benefits for all participants.

Additionally, rather than having to wait years after additional litigation, Class members reap their monetary benefits now. *See Kruger*, 2016 U.S. Dist. LEXIS 193107, at \*16 (“the class will receive compensation and be able to invest those funds immediately, rather than having to wait as long as a decade as other classes in similar 401(k) cases have had to do”). This provides a valuable benefit. And finally, for participants currently in the Plan, their funds will be deposited directly into their tax-deferred plan account, rather than creating a taxable obligation at this point. The Investment Company Institute estimates that the benefit of the present value of tax deferral for 20 years is an additional 18.6%,<sup>4</sup> making the actual value to the Class of the monetary portion

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<sup>4</sup> *Abbott v. Lockheed Martin Corp.*, No. 06-701, Dkt. 497 at 37 (S.D. Ill. Apr. 14, 2015) (Report of the Special



of the Settlement **\$58,753,891**. Accordingly, Class Counsel’s requested fee award is approximately 28% of this amount.

**F. Public policy encourages private actions under ERISA. (Factor 6)**

When “awarding attorneys’ fees in common fund cases ‘the Second Circuit and courts in this district . . . also have taken into account the social and economic value of class actions, and the need to encourage experienced and able counsel to undertake such litigation.’” *In re J.P. Morgan Stable Value Fund ERISA Litig.*, No. 12-2548-VSB, 2019 U.S. Dist. LEXIS 163884, at \*12 (S.D.N.Y. Sept. 23, 2019) (internal citation omitted). A strong public policy concern exists for rewarding firms for bringing successful ERISA suits because “Congress passed ERISA to promote the important goals of protecting and preserving the retirement savings of American workers. The ERISA statute itself specifically encourages private enforcement.” *Marsh*, 265 F.R.D. at 149–50. Awards of reasonable attorneys’ fees encourage “private attorneys to prosecute class actions on a contingent basis . . . on behalf of those who otherwise could not afford to prosecute.” *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 373 (S.D.N.Y. 2002); *see also Spann v. AOL Time Warner*, No. 02-8328-DLC, 2005 U.S. Dist. LEXIS 10848, at \*3–4 (S.D.N.Y. June 7, 2005) (awarding one-third fee in an ERISA fiduciary breach case, noting that lawsuits such as this create incentives for fiduciaries to comply with ERISA).

This case has clearly promoted the public’s interest. Without Class Counsel’s actions in prosecuting this case, over five years, Class members’ rights would not have been vindicated, and they would not have experienced the substantial monetary and non-monetary relief this Settlement provides. *See Cates*, 2021 U.S. Dist. LEXIS 200890, at \*20 (recognizing same). Obtaining the substantial verdict, and thereafter settling for more than that verdict, is noteworthy to other 401(k)

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Master) (citing Peter Brady, *Marginal Tax Rates and the Benefits of Tax Deferral*, Investment Company Institute, Sept. 17, 2013, available at [http://www.ici.org/viewpoints/view\\_13\\_marginal\\_tax\\_and\\_deferral](http://www.ici.org/viewpoints/view_13_marginal_tax_and_deferral)).

employers who sponsor plans on behalf of their employees and increases the public interest in plan sponsors adhering to their strict fiduciary responsibilities under ERISA.

**II. A lodestar cross-check overwhelmingly confirms the reasonableness of Class Counsel’s request for attorneys’ fees.**

“The trend in the Second Circuit has been to apply the percentage method and loosely use the lodestar method as a ‘baseline’ or ‘cross check.’” *Tiro v. Pub. House Investments, LLC*, No. 11-7679-CM, 2013 U.S. Dist. LEXIS 129258, at \*46 (S.D.N.Y. Sept. 10, 2013) (citation omitted). Although numerous courts across the country in similar cases have approved the percentage method, *Goldberger* notes that “the lodestar remains useful as a baseline even if the percentage method is eventually chosen.” *Sines v. Service Corp. Int’l*, No. 03-5465-PKC, 2006 U.S. Dist. LEXIS 25072, at \*5 (S.D.N.Y. May 1, 2006) (internal citations omitted).

“Of course, where used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court . . . Instead, the reasonableness of the claimed lodestar can be tested by the court’s familiarity with the case (as well as encouraged by the strictures of Rule 11).” *Silberblatt v. Morgan Stanley*, 524 F. Supp. 2d 425, 434 (S.D.N.Y. Nov. 19, 2007) (internal citations omitted). Class Counsel need only submit documentation appropriate to meet the burden establishing an entitlement to an award, not to satisfy “*green-eyeshade accountants*.” *Fox v. Vice*, 563 U.S. 826, 838 (2011) (emphasis added).

ERISA litigation involves a national market because the number of firms which have the necessary expertise and are willing to take the risk and devote the resources to litigate complex claims is small. *Abbott*, 2015 U.S. Dist. LEXIS 93206, at \*11; Schlichter Dec. ¶¶24; Doles Decl. ¶¶5–7; Rosen Decl. ¶¶36, 84–85, 92. Class Counsel has brought ERISA actions across the country defended by national firms with ERISA expertise, such as Defendants’ counsel in this case. Schlichter Dec. ¶23. Accordingly, the relevant hourly rate is the “nationwide market rate.”

*Kruger*, 2016 U.S. Dist. LEXIS 193107, at \*12; *Clark*, 2019 U.S. Dist. LEXIS 105696, at \*8–9; *Sims*, 2019 U.S. Dist. LEXIS 75839, at \*12; *Tussey v. ABB, Inc.*, No. 06-4305, 2015 U.S. Dist. LEXIS 164818, at \*5, 7 (W.D. Mo. Decl. 9, 2015); *Beesley v. Int’l Paper Co.*, No. 06-703, 2014 U.S. Dist. LEXIS 12037, \*11 (S.D. Ill. Jan. 31, 2014).

The opinion of a leading independent national expert on attorneys’ fees in complex class actions, Sanford Jay Rosen, is contained in an attached declaration. *See Ford*, 2023 U.S. Dist. LEXIS 93286, at \*6 (“Mr. Sanford J. Rosen, a recognized expert on attorneys’ fees, has opined that these reasonable rates should be updated for current conditions.”); *Ramsey v. Philips N. Am. LLC*, No. 18-1099, 2018 U.S. Dist. LEXIS 226672, at \*11 (S.D. Ill. Oct. 15, 2018) (“Sanford Rosen, a recognized expert in attorney fee litigation, opined that these rates are well within the rates charged by national attorneys of equivalent skill and expertise.”); *Cates*, 2021 U.S. Dist. LEXIS 200890, at \*10 (noting Mr. Rosen as a “recognized expert”). Mr. Rosen has over 50 years of wide-ranging experience, a vast amount of which is on the subject of attorneys’ fees. Rosen Decl. ¶¶4–30. According to the declaration of Mr. Rosen, the following national rates are reasonable to compute Class Counsel’s lodestar: \$1,550 for attorneys with at least 25 years of experience; \$1,300 for attorneys with 15–24 years of experience; \$950 for attorneys with 5–14 years of experience; \$725 for attorneys with 0–4 years of experience; and \$475 for paralegals and law clerks. Doles Decl. ¶¶6; Rosen Decl. ¶¶77–78, 82–85. As set forth in his declaration, Mr. Rosen specifically assessed the reasonableness of Class Counsel’s requested rates relative to those rates charged by national attorneys of equivalent experience, skill, and expertise in complex class actions. Rosen Decl. ¶¶73–89.

The rates deemed reasonable by Mr. Rosen reflect an approximate annual increase of 6% (3% per year) from the 2023 rates two years ago, which district courts previously approved for

Class Counsel when approving class action settlements in similar ERISA litigation. *Id.* ¶¶34–35, 79–82. The 2023 rates were as follows: \$1,370 for attorneys with at least 25 years of experience; \$1,165 for attorneys with 15–24 years of experience; \$840 for attorneys with 5–14 years of experience; \$635 for attorneys with 0–4 years of experience; and \$425 for paralegals and law clerks. *Id.* ¶79; *Williams*, Dkt. 269 at 15. In awarding Class Counsel a one-third fee from the common fund, these rates were approved and/or used by multiple courts in prior years before the increases in the last two years. *See, e.g., Ford*, 2023 U.S. Dist. LEXIS 93286, at \*6–7 (finding rates “reasonable” based on the declaration of Mr. Rosen); *Williams*, Dkt. 269 at 15; *Munro*, Dkt. 384 at 16.

Using Class Counsel’s reasonable hourly rates for 2025 multiplied by the number of hours devoted to this case, the lodestar is \$16,708,137.50, creating a multiplier *of less than one* (0.99). Doles Decl. ¶8. All of these hours are contingent-fee hours, and the fact that the courts recognize, as set forth above, that contingent fees should reflect more than a billing rate of attorneys paid without risk. Thus, a multiplier for risk is necessary. *McDaniel*, 595 F.3d at 424 (“level of risk associated with litigation, for example, which is ‘perhaps the foremost factor’ to be considered in assessing the propriety of a multiplier”) (citation omitted).

Here, as noted, *there is no multiplier at all* in Class Counsel’s requested fee. A range of multipliers of one to eight times the lodestar has been approved by district courts in the Second Circuit and in ERISA cases. *See, e.g., Fikes*, 62 F.4th at 723–24 (affirming multiplier of 2.45); *Wal-Mart Stores*, 396 F.3d at 123 (approving multiplier of 3.5); *Cates*, 2021 U.S. Dist. LEXIS 200890, at \*10; *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 353 (S.D.N.Y. 2014) (approving a fee award with a multiplier of five and finding in a review of 96 ERISA cases that “the implied multiplier ranged from less than one to eight times the lodestar”); *Maley*, 186 F.

Supp. 2d at 369 (a multiplier of 4.65 was “well within the range awarded by courts in this Circuit and courts throughout the country”). The requested fee is unquestionably reasonable.

### **III. The Court should reimburse Class Counsel for reasonable litigation expenses incurred.**

Class Counsel has advanced and is entitled to reimbursement of litigation expenses of \$1,044,209.46 advanced in prosecuting this case. Fed. R. Civ. P. 23(h). A cost award is authorized by both the parties’ Settlement Agreement and the common fund doctrine. Dkt. 302-1 (§ 7.1); *Kelly*, 2020 U.S. Dist. LEXIS 14772, at \*21. “Attorneys who create a common fund for the benefit of a class are entitled to reimbursement of reasonable litigation expenses from the fund.” *Sweda v. Univ. of Pa.*, No. 16-4329, 2021 U.S. Dist. LEXIS 239990, at \*20 (E.D. Pa. Dec. 14, 2021) (citation omitted); *Kruger*, 2016 U.S. Dist. LEXIS 193107, at \*16. Class Counsel seeks reimbursable expenses that include expert fees, travel, mediation, deposition, and computerized legal research, among others. *Cates*, 2021 U.S. Dist. LEXIS 200890, at \*21 (citing *Alba Conte*, 1 Attorney Fee Awards § 2:19 (3d ed. 2004)); *Phillips v. Triad Guar., Inc.*, No. 09-71, 2016 U.S. Dist. LEXIS 60950, at \*28 (M.D.N.C. May 9, 2016); *Sims*, 2019 U.S. Dist. LEXIS 75839, at \*17; *Brown v. Rita’s Water Ice Franchise Co. LLC*, 242 F. Supp. 3d 356, 371 (E.D. Pa. 2017); *Doles Decl.* ¶¶52–55.

Approximately 80% of these advanced expenses were for expert witnesses. *Doles Decl.* ¶¶53–55. Class Counsel could not have obtained the result in this case without their valuable contributions to this case by using their expertise and specialized knowledge to educate the jury on prudent fiduciary practices, the administrative services provided to more complex 401(k) plans, and the losses caused by Defendants’ breaches of fiduciary duties. Their expenses were necessarily substantial. Class Counsel’s experts devoted an immense amount of time preparing for and submitting their detailed expert reports, preparing for and sitting for lengthy depositions, attending

days of trial, and ultimately preparing for and testifying at trial. *Id.* ¶¶31–35.

Class Counsel had a strong incentive to limit their out-of-pocket costs. There was no guarantee of recovery in light of the complexity of issues and the vigorous defense mounted. Although the costs incurred were substantial, they were consistent with what would be expected in a case of this magnitude that was litigated for years, proceeded through verdict, and ultimately settled after trial. *See, e.g., Tussey v. ABB, Inc.*, No. 06-4305, 2019 U.S. Dist. LEXIS 138880, at \*18 (W.D. Mo. Aug. 16, 2019) (\$2.3 million); *Spano*, 2016 U.S. Dist. LEXIS 161078, at \*3 (\$1.8 million); *Beesley*, 2014 U.S. Dist. LEXIS 12037, at \*3–4, 15 (\$1.6 million); *Munro*, Dkt. 384 at 17 (\$1.2 million); *In re Northrop Grumman ERISA Litig.*, 2017 U.S. Dist. LEXIS 223293, at \*24 (\$1.2 million); *Kanawi v. Bechtel Corp.*, No. 06-5566, Dkt. 828 at 4–5 (N.D. Cal. Mar. 1, 2011) (\$1.5 million) (all cases handled by Class Counsel).

#### **IV. The Court should approve case contribution award for the Named Plaintiffs and Class Representatives.**

A case contribution award for the Class Representatives is intended to “compensate [them] for any personal risk incurred by the individual[s] or any additional effort expended by the individual for the benefit of the lawsuit.” *Dornberger v. Metro. Life Ins. Co.*, 203 F.R.D. 118, 124 (S.D.N.Y. 2001). Such an award is meant to reimburse the Class Representatives who take “on a variety of risks and tasks when they commence representative actions, such as complying with discovery requests and often must appear as witnesses in the action.” *Marsh*, 265 F.R.D. at 150; *see also Roberts v. Texaco*, 979 F. Supp. 185, 187–88 (S.D.N.Y. 1997) (approving incentive awards for a class plaintiff who “provided valuable assistance to counsel in prosecuting the litigation”).

In this case, Named Plaintiffs and Class Representatives Khan, Bullock, and Wood provided invaluable assistance to Class Counsel. *See Doles Decl.* ¶¶56–60. They also spent hours

collecting documents and responding to written discovery requests, preparing for and sitting for their depositions, and testifying at and attending trial (for Khan and Wood). *Id.* Importantly, these individuals risked their reputations and alienation from employers “in bringing an action against a prominent company in their community.” *Kruger*, 2016 U.S. Dist. LEXIS 193107, at \*17; *see also* Doles Decl. ¶56. If this case was unsuccessful, they *all* faced a motion for entry of significant attorneys’ fees and costs against them *personally* if the litigation was not successful. 29 U.S.C. § 1132(g); Fed. R. Civ. P. 54(d); Dkt. 151 at 48 (requesting that that “Defendants be awarded their costs, expenses, and reasonable attorneys’ fees”); *Hecker v. Deere & Co.*, 556 F.3d 575, 591 (7th Cir. 2009) (upholding an order assessing costs against the named plaintiffs for \$219,211). “This risk is undeniable.” *Cates*, 2021 U.S. Dist. LEXIS 200890, at \*23. Simply put, their contributions were invaluable to the ultimate success of this litigation.

A case contribution award of \$25,000 each is unquestionably reasonable and appropriate, given the facts here and their assistance in bringing this action that benefitted tens of thousands of similarly situated Plan participants and beneficiaries. In such contentious and difficult litigation over claims of breach of ERISA’s fiduciary duties, the standard incentive award is \$25,000. *See, e.g., Cates*, 2021 U.S. Dist. LEXIS 200890, at \*23; *Sweda*, 2021 U.S. Dist. LEXIS 239990, at \*24 (citing *Pledger*, 2021 U.S. Dist. LEXIS 105868, at \*27–28, and *Henderson v. Emory Univ.*, No. 16-2920, 2020 U.S. Dist. LEXIS 218676, at \*13–14 (N.D. Ga. Nov. 4, 2020)); *Tussey*, 2019 U.S. Dist. LEXIS 138880, at \*17–18; *Kruger*, 2016 U.S. Dist. LEXIS 193107, at \*17–18; *Marshall v. Northrop Grumman Corp.*, No. 16-6794, 2020 U.S. Dist. LEXIS 177056, at \*31 (C.D. Cal. Sept. 18, 2020); *Waldbuesser v. Northrop Grumman Corp.*, No. 06-6213, 2017 U.S. Dist. LEXIS 223293, at \*19–24 (C.D. Cal. Oct. 24, 2017); *Cassell v. Vanderbilt Univ.*, No. 16-2086, 2019 U.S. Dist. LEXIS 242062, at \*13 (M.D. Tenn. Oct. 22, 2019); *Clark*, 2019 U.S. Dist. LEXIS 105696,

at \*15–16; *Spano*, 2016 U.S. Dist. LEXIS 161078, at \*13; *Abbott*, 2015 U.S. Dist. LEXIS 93206, at \*14; *Krueger*, 2015 U.S. Dist. LEXIS 91385, at \*11; *Beesley*, 2014 U.S. Dist. LEXIS 12037, at \*14–15; *Nolte*, 2013 U.S. Dist. LEXIS 184622, at \*15–16 (all awarding \$25,000 in case contribution awards in cases handled by Class Counsel); *see also Dial Corp. v. News Corp.*, 317 F.R.D. 426, 439 (S.D.N.Y. 2016) (approving case contribution awards of \$50,000).

The total amount requested is a small fraction of the monetary settlement achieved for Class members. The case contribution awards represent just 0.15% of the total monetary recovery. This is further evidence to support the case contribution awards requested here.

### **CONCLUSION**

Class Counsel respectfully requests that the Court grant their motion and award Class Counsel attorneys' fees in the amount of \$16,513,179, reimbursement of costs in the amount of \$1,044,209.46, and case contribution awards of \$25,000 each for Class Representatives Imran Khan, Joan Bullock, and Pamela Joy Wood.



September 26, 2025

Respectfully Submitted,

/s/ Troy A. Doles

Jerome J. Schlichter (admitted *pro hac vice*)

Troy A. Doles (admitted *pro hac vice*)

Nathan D. Stump (admitted *pro hac vice*)

Kurt C. Struckhoff (admitted *pro hac vice*)

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*Class Counsel for Plaintiffs*

### **CERTIFICATE OF SERVICE**

I hereby certify that on September 26, 2025, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the attorneys of record.

/s/ Troy A. Doles

*Class Counsel for Plaintiffs*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

IMRAN KHAN, et al.,

*Plaintiffs,*

v.

BOARD OF DIRECTORS OF PENTEGRA  
DEFINED CONTRIBUTION PLAN, et al.,

*Defendants.*

No. 7:20-cv-07561

**DECLARATION OF TROY A. DOLES**

I, Troy A. Doles, declare as follows:

1. I am a partner of the law firm of Schlichter Bogard LLC and Class Counsel for Plaintiffs in this case (referred to herein as “Schlichter Bogard” or “Class Counsel”). I am familiar with the facts set forth below and able to testify to them.

2. I received my Bachelor of Arts from Indiana University in 1992 and my Juris Doctorate from Saint Louis University School of Law in 1996. I have been in the private practice of law for almost 30 years. I have been involved in national ERISA excessive fee class actions involving defined contribution plans since 2006.

3. I have been active in all aspects of this litigation. I am familiar with the facts set forth below and able to testify to them based on my personal knowledge or review of the records and files maintained by Schlichter Bogard in the regular course of its representation of Plaintiffs in this case.

4. I am licensed to practice law in the States of Missouri and Illinois. I am admitted to practice in the United States Supreme Court and numerous Circuit Courts of Appeals and District Courts across the country.

#### **SCHLICHTER BOGARD'S HOURLY RATES AND HOURS**

5. Numerous courts have approved the hourly rates of Schlichter Bogard serving in a class counsel role in ERISA class actions. As listed below, Class Counsel's rates from 2023 have been approved by several courts.

<b>Experience</b>	<b>Rate</b>
25 Years +	\$ 1,370.00
15-24 Years	\$ 1,165.00
5-14 Years	\$ 840.00
0-4 Years	\$ 635.00
Paralegal	\$ 425.00

*See Williams v. Centerra Group, LLC*, No. 20-4220, Dkt. 269 at 15 (D.S.C. Sept. 17, 2024); *Munro v. Univ. of So. Cal.*, No. 16-6191, Dkt. 384 at 16 (C.D. Cal. Aug. 24, 2023); *Takeda Pharms. U.S.A., Inc.*, No. 21-10090, 2023 U.S. Dist. LEXIS 93286, at \*6–7 (D. Mass. Mar. 31, 2023).

6. Since the approval of their 2023 rates, Schlichter Bogard updated those rates to reflect reasonable hourly rates for 2025 in complex, national class action litigation, such as this matter. As detailed in the supporting Declaration of Sanford Jay Rosen, these updated rates (set forth below) are well within the range of reasonable rates for this year.

<b>Experience</b>	<b>Rate</b>
25 Years +	\$ 1,550.00
15-24 Years	\$ 1,300.00
5-14 Years	\$ 950.00
0-4 Years	\$ 725.00
Paralegal	\$ 475.00

7. To calculate the lodestar in this matter, Schlichter Bogard applied these 2025 rates to the number of hours incurred by attorneys and non-attorneys for this litigation. This calculation

is shown in the following table, which includes a summary by years of experience for attorneys. To provide further detail for the Court regarding the time devoted by attorneys and non-attorneys to this litigation, Schlichter Bogard also itemized this time by biller and by category of the work performed, which is further described in detail below. *See infra* ¶¶ 10–47.

<b>Experience</b>	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
25 Years +	4,741.10	\$ 1,550.00	\$ 7,348,705.00
15-24 Years	2,953.40	\$ 1,300.00	\$ 3,839,420.00
5-14 Years	742.80	\$ 950.00	\$ 705,660.00
0-4 Years	4,965.80	\$ 725.00	\$ 3,600,205.00
<b>Attorney Total</b>	<b>13,403.10</b>		<b>\$15,493,990.00</b>
<b>Paralegal</b>	<b>2,556.10</b>	<b>\$ 475.00</b>	<b>\$ 1,214,147.50</b>
<b>Total</b>	<b>15,959.20</b>		<b>\$16,708,137.50</b>

8. Based on Schlichter Bogard’s 2025 hourly rates and the hours devoted to this matter, a lodestar analysis reveals a total lodestar fee of \$16,708,137.50. Thus, based on the requested fee in this matter, Schlichter Bogard’s fee request results in a multiplier of 0.99 of the total lodestar fee.

9. Based on my review of Schlichter Bogard’s time entries, a total time of 15,959.20 hours were devoted in this action. Based on my review of these entries, I exercised my informed judgment by eliminating certain time entries. This resulted in eliminating over 660 hours. Accordingly, Schlichter Bogard spent over 16,000 hours litigating this case.

**SCHLICHTER BOGARD'S TOTAL TIME BY BILLER AND CATEGORY**

Time Keeper	Position	Total Hours	Complaint	Dismiss	Interim CC	Discovery	Deposition	Expert	Class Cert	Trial	Settlement
Chen Kasher	Attorney	15.4								14.2	1.2
Angela Yokley	Paralegal	17.7								16.7	1
Amy Ritter	Attorney	17.8								17.8	
Josh Katz	Attorney	17.1						0.4	16.7		
Sophia Worth	Paralegal	26.4								25.6	0.8
Rachel Lincoln	Paralegal	28.8	7.1	1.9	19.1	0.4		0.3			
Horace Payne	Paralegal	34	11.5	0.4	9.3	12.5		0.3			
Eva Durchholz	Paralegal	35.5	3.2	5.2	8.3	6.8	10.9	0.7	0.4		
Grady Nance	Paralegal	32.6						28.6	2.4	1.4	0.2
Gary Drag	Attorney	38.2	33.3	2.7		2.2					
Josh Lohn	Attorney	51.5	51.5								
Hannah Chandler	Attorney	57.5				57.5					
James Casagrand	Attorney	61.2	61.2								
Tyler Collins	Paralegal	82.3				5.9	0.1	14.7	3.6	56	2
Isabel Anderson	Paralegal	113.1							0.2	110	2.9
Patrick Kutz	Attorney	114.1				64.2	38.8		0.2	8.1	2.8
Sean Soyars	Attorney	151	5.1	90.3	3.9	2.3		2.8	34.7	8.9	3
Alex Braitberg	Attorney	157.7	123	4.4	19.8	4.5		1.2	1.2	2.6	1
Sean Milford	Attorney	159.4				26.9	117.3		0.5	8.3	6.4
Ike Frankel	Attorney	168.7								168.7	
Jerry Schlichter	Attorney	255.2	36.3	21.4	26.2	19.9	0.5	3.6	5	64.1	78.2
Adam Schaffer	Attorney	266.1				266.1					
Scott Bumb	Attorney	279.1	45.1			23.8	101.3	1.9	21.5	83.5	2
Kayla Arenschield	Paralegal	406.8							0.2	402.8	3.8
Ally Edwards	Paralegal	511.4				135.4	69.6	306.4			
Heather Lea	Attorney	836.7	1.5	0.4	2.3	7.9		376.3	1.5	444.3	2.5
Nathan Stump	Attorney	920.1				0.4		2.1	1.6	852.7	63.3
Kurt Struckhoff	Attorney	1045.6	48.2	17.4	23.4	30.5	0.3	9.2	1.8	880.6	34.2
Jeremy Beaird	Attorney	1076	11.4			967.7	88.6	8.3			
Rebekah Freisinger	Paralegal	1267.5	16.5	1.7	21.8	189.7	59.2	55.5	2.2	871.5	49.4
Phil Abbott	Attorney	1341				1087.3	220.3	32.6	0.8		
Amy Newell	Attorney	1887.8				1341.6	456	76.9	3.9	9.4	
Troy Doles	Attorney	4485.9	86.6	41.1	74.2	791.6	492.2	569.5	99	2244	87.7
		15959.2	541.5	186.9	208.3	5045.1	1655.1	1491.3	197.4	6291.2	342.4
Percentage of Total			3.39%	1.17%	1.31%	31.61%	10.37%	9.34%	1.24%	39.42%	2.15%

**DESCRIPTION OF CATEGORIES OF WORK PERFORMED*****Investigation and Preparation of Complaint***

10. In 2020, Schlichter Bogard devoted substantial time investigating potential claims at issue in this lawsuit. The attorneys conducted an in-depth investigative analysis and research of publicly available documents, including participant statements, prospectuses, Pentegra Defined Contribution Plan for Financial Institutions (the “Plan”) Forms 5500 filed with the Department of Labor, Plan participant communications, and advertisement materials, among other sources. The investigation included many meetings with Plan participants. These meetings were invaluable to the attorneys in gaining additional understanding relating to the operation and administration of

the Plan, as well as fee disclosures concerning the Plan's overall investments and administrative expenses.

11. During the investigation, Schlichter Bogard conducted extensive research and legal analysis of potential claims and performed financial analyses of the Plan's estimated losses. This required an itemization and evaluation of all expenses paid by the Plan for investment and administrative services. This research was substantial given the matter in which Defendants reported Plan fees over time. Once a decision was made to pursue an action against the Defendants, Schlichter Bogard then began their preparation and drafting of the complaint.

12. The firm filed the complaint on September 15, 2020. *Khan et al. v. Board of Directors of Pentegra Defined Contribution Plan*, No. 20-7561, Dkt. 1 (S.D.N.Y.). The complaint contained factually detailed allegations regarding the claims at issue. In total, the complaint was 64 pages in length and contained over 181 separately numbered paragraphs.

13. On October 13, 2020, a similar but separate ERISA action was filed in the same Court, *Greenberg et al. v. Board of Directors of Pentegra Defined Contribution Plan*, No. 20-8503, Dkt. 1 (S.D.N.Y) (herein "*Greenberg*").

14. Defendants requested that the two actions be consolidated. Dkt. 56. On December 11, 2020, the Court consolidated the *Khan* and *Greenberg* actions. Dkt. 72.

15. On December 29, 2020, a Consolidated Class Action Complaint was filed. Dkt. 74. On March 5, 2021, an Amended Consolidated Complaint was filed adding additional facts based on recently produced contracts between the Plan and Pentegra as ordered by the Court. Dkt. 92.

16. Class Counsel devoted approximately 541 hours (or 3.39% of the total hours) investigating claims prior to drafting and filing the complaint and the subsequent amendments.

***Motion to Dismiss***

17. Defendants filed their motion to dismiss on April 1, 2021. Dkt. 93. Defendants raised complex legal arguments that addressed all of Plaintiffs' claims. Class Counsel spent extensive time responding to these arguments, which included conducting research and analysis of relevant authority. Plaintiffs filed their opposition on June 4, 2021. Dkt. 98. The Court partially granted Defendants' motion to dismiss by dismiss relating to Plaintiffs' loyalty claims, but denied Defendants' motion in all other respects. Dkt. 149.

18. In responding to Defendants' motion to dismiss, Class Counsel devoted approximately 186.9 hours (or 1.17% of total hours).

***Motion for Appointment of Interim Class Counsel***

19. As noted above, on October 13, 2020, *Greenberg* was filed. Schlichter Board filed a Motion for Appointment as Interim Class Counsel on November 25, 2020. Dkt. 60. Counsel for the *Greenberg* plaintiffs filed a Cross-Motion for Appointment of Capozzi Adler, P.C. as Interim Lead Class Counsel, or in the Alternative, Interim Co-Lead Class Counsel on December 18, 2020. Dkt. 73. Defendants filed an initial response in opposition to the *Khan* Plaintiffs' motion on December 3, 2020 (Dkt. 68), and a second opposition was filed on December 28, 2025 (Dkt. 75). On February 19, 2021, the Court appointed Schlichter Bogard LLC (then known as Schlichter Bogard & Denton, LLP) as interim class counsel. Dkt. 84.

20. Class Counsel devoted over 208 hours vigorously seeking to be appointed as Class Counsel (or 1.31% of total hours).

***Motion for Class Certification***

21. Plaintiffs filed their motion for class certification on January 6, 2023. Dkt. 170. The briefing, accompanied by declarations and relevant Plan documents, was extensive and took

significant time to prepare. Dkts. 172 – 172-21. Prior to this briefing, the Court required meet and confer conferences and held a pre-motion hearing on this issue. On September 26, 2023, the Court granted the motion and certified a class of “[a]ll participants and beneficiaries of the [Plan] from September 15, 2014 through the date of judgment, excluding Defendants.” Dkt. 191.

22. Class Counsel devoted over 197 hours (or 1.24% of the total hours) to class certification.

***Document Discovery and Review***

23. The Court entered a Civil Case Discovery Plan and Scheduling Order on September 7, 2021. Dkt. 118. The parties conferred and submitted a Protective Order and a Stipulation and Order on Discovery of Hard Copy Documents and Electronically Stored Information for the Court’s approval. The Court entered the Protective Order on September 29, 2021. Dkt. 121. Plaintiffs served their initial disclosures on September 21, 2021. On March 26, 2021, Plaintiffs served written discovery on Defendants. Apart from extensive discussions with their clients, Schlichter Bogard reviewed and analyzed all materials provided by their clients, including participant communications received by them from Pentegra.

24. Throughout the course of discovery, Schlichter Bogard diligently reviewed and analyzed close to half a million pages of produced materials. This included materials produced by third parties in response to served subpoenas. A detailed review and analysis of all documents and materials produced was critical to the development of Plaintiffs’ theories and claims. Without a detailed understanding of the core materials to support their claims, including a significant email production with attachments, Plaintiffs would have been unable to successfully prosecute this action.



25. To support those efforts, Schlichter Bogard developed a document review and analysis protocol for systematically and methodically evaluating the document productions. It was incumbent on Class Counsel to review each and every document produced in this litigation. And they did so. The ongoing review and analysis of the document production was aided by countless internal discussions and meetings to ensure a proper and efficient evaluation process, as well as to inform the litigation strategy when responding to particular motions and other challenges presented by Defendants over the course of the litigation.

26. This analysis was incredibly time consuming given the unique production of internal pricing information, general ledgers, pricing scenarios, and recordkeeping service delivery methods unique to Defendants' services. Again, this review was critical to the ultimate success of this case at trial. Indeed, these materials and the analysis devoted to these materials significantly contributed to Plaintiffs' ultimate successful damages theory.

27. Class Counsel devoted approximately 5,045.1 hours (or 31.61% of the total hours) on discovery related tasks. While most of these hours were spent analyzing documents produced by Defendants and third parties, a substantial portion of these hours included preparing for and responding to discovery requests and research related to discovery issues.

### ***Depositions***

28. Apart from ongoing tasks related to the document production, Class Counsel either defended or took the depositions of 11 fact witnesses. Each of the fact witness depositions required extensive preparation and ongoing coordination among the litigation team to ensure effective examinations.

29. In preparation for these depositions, Schlichter Bogard attorneys met internally, both in large and small groups, to thoroughly discuss the factual issues, the legal theories at issue,

the development of the case, and other issues that arose during the litigation. Those internal meetings were critical for the development of thorough deposition outlines and memoranda that in turn were used as trial strategy memoranda and trial witness outlines.

30. Class Counsel devoted 1,655.1 hours (or 10.37% of the total hours) on these tasks.

*Experts*

31. ERISA litigation is highly technical, including facts about prudent practices, industry best practices, fiduciary practices, and complex financial matters, all requiring use of experts. Class Counsel worked extensively with multiple expert witnesses, both consulting and testifying. This work included numerous discussions and conference calls to discuss the unique facts and circumstances in this case and industry practices.

32. Ultimately, the parties disclosed six expert witnesses, four for Plaintiffs and two for Defendants. These specific experts were in the fields of multiple employer plans, administrative costs, fiduciary practices, and damages.

33. Class Counsel devoted significant time and effort working and collaborating with their experts to prepare their reports and in preparation for their depositions, particularly due to the complex issues these experts addressed in their reports. Class Counsel also conducted thorough research and analysis concerning the foundation for these experts' opinions and the bases for those opinions offered by Defendants' experts.

34. All experts were deposed in this case. These depositions, both taking and defending, required an incredible amount of preparation, research and analysis.

35. In all, Class Counsel devoted 1491.3 hours (or 9.34% of the total hours) working with experts on the preparation of the necessary disclosures, calculations, and reports, taking depositions, and working with experts during trial testimony.

***Trial***

36. Not surprisingly, Class Counsel devoted a substantial amount of the total time preparing for trial.

37. Preparing any ERISA class action for trial is an incredibly complex and difficult task. The issues involve little known and unique matters pertaining to the delivery of recordkeeping and administrative services to a qualified defined contribution plan.

38. Unlike trials in most ERISA class actions, however, preparing for this trial was extraordinary for two significant reasons. The case was to be tried to a jury, and the Court allotted only a handful of days to try the case.

39. As with any case, after years of substantial discovery, Plaintiffs' trial presentation strategy must be refined. In this case, Class Counsel was required to not only refine its presentation, but do so in a manner that a jury would not only understand these issues but also to understand them in merely a matter of a few days. This effort was extraordinary and unlike any case in my 30-year career.

40. This posed an incredible challenge that required incredible amounts of time, discussions, and conferences developing an understandable and compelling trial presentation. This strategy required the development of numerous trial strategy memoranda that included an overall strategy, an issue-by-issue strategy, an expert strategy, and witness strategy. I personally led all these efforts and devoted incredible amounts of time developing these trial strategy memoranda.

41. The parties filed their initial pretrial documents with the Court on February 29, 2024. Dkts. 199–204. Pursuant to the Court’s direction, the parties modified their filings and refiled the pretrial documents on May 3, 2024 (Dkts. 209–214), July 19, 2024 (Dkts. 248–251), and September 27, 2024 (Dkts. 260–267). To meet the Court’s pretrial deadlines, the parties negotiated internal deadlines to exchange their pretrial disclosures, including exhibit lists, witness lists, stipulated facts, deposition designations, and a proposed jury packet including instructions, *voir dire*, and verdict forms. The Court entered the parties’ final Pretrial Order on October 9, 2024. Dkt. 268. Throughout this time, the parties attended pretrial conferences on April 3, 2024, June 11, 2024, August 26, 2024, and November 26, 2024.

42. Other time-consuming pretrial matters included multiple “branches” of motions in *limine* relating to factual issues and expert opinion. These matters were fully briefed and argued to the Court in advance of trial. Dkt. 247.

43. Trial commenced on April 15, 2025. As the Court is aware, the trial testimony was intense and required substantial preparation. As with any trial, morning matters were commonly addressed at the start of each trial day. On April 23, 2025, the jury returned a verdict in Plaintiffs’ favor and against all Defendants on Count I. The jury found losses in the amount of \$38,760,232.

44. While the jury was deliberating, the Court held a short bench trial on Count II (Prohibited Transactions), receiving into evidence a declaration from Plaintiffs’ expert witness, Clay Busker, that set forth certain calculations concerning the fees the Plan paid to Pentegra. Dkt. 277-1. The parties were ordered to jointly submit updated proposed findings of fact and conclusions of law on Count II and the equitable relief, if any, to be ordered by the Court on Counts I and II no later than May 2, 2025.

45. Class Counsel devoted 6,291.2 hours (or 39.42% of the total hours) preparing for and attending trial.

***Settlement***

46. The parties engaged in settlement discussions throughout the litigation, including formal mediations on October 1, 2024 and January 9, 2025. On May 1, 2025, the parties reached an agreement to fully and finally resolve all claims. On May 2, 2025, the parties informed the Court of their settlement.

47. Class Counsel devoted 342.4 hours (or 2.15% of the total hours) in settlement discussions and related matters.

***Future Additional Time***

48. In the future, Schlichter Bogard will spend significant additional time and expense, without additional compensation, on a variety of settlement matters. For instance, with approximately 58,000 current and former participants who are delivered notices, in my experience, the firm will receive a high volume of calls from Class members to address questions related to the Settlement. Class Counsel will also work with the Settlement Administrator to facilitate the Settlement during the Settlement Period.

49. The Settlement Agreement provides that Class Counsel will continue to monitor and enforce the terms of the Settlement Agreement.

50. Class Counsel will not request an additional award of attorneys' fees for its future services to the Plan and the Class members.

51. The description of the time and effort that Class Counsel expended during this litigation illustrates the determination Schlichter Bogard displayed throughout all aspects of this litigation. The attorney and non-attorney hours were reasonably and efficiently expended to obtain

a successful recovery on behalf of the Class. Without committing the necessary resources to diligently pursue Plaintiffs' claims, a favorable recovery that benefits thousands of Class members would not have been possible.

### **EXPENSES**

52. In coordination with the Lead Paralegal and the Office Administrator at Schlichter Bogard, I reviewed the expenses incurred listed below and ensured that they represented an accurate accounting of Schlichter Bogard's costs in this matter. The incurred case expenses total \$1,044,209.46.

53. Not surprisingly, a substantial portion of these expenses reflect expert and consultant services. Plaintiffs presented four experts at trial, and all were, unquestionably, well-received by the jury. The use of highly trained and experienced experts is a critical necessity in ERISA class actions, and these expenses are within the range of other expert fees in related cases.

54. These expenses include those incurred or to be incurred through the date of the Final Fairness Hearing, such as travel and lodging expenses for Class Counsel.

55. Below is a list of expenses according to their categories:

Depositions	\$ 51,923.68
Experts and Consultants	\$ 804,855.82
Filing Fees, Hearing Transcripts, Subpoena Services and Related Costs	\$ 11,770.36
Mediation and Settlement Expenses	\$ 12,937.50
Copies and Postage	\$ 4,737.26
Data Development and Document Organization	\$ 30,565.50
Research and Investigation	\$ 2,206.31
Travel, Lodging, and Parking	\$ 49,181.37
Trial Expenses	\$ 76,031.66
<b>Total Expenses</b>	<b>\$1,044,209.46</b>

### **CLASS REPRESENTATIVES**

56. It has been my experience that participants are hesitant to bring these large, complex suits against their employer or that relate to their employer for fear of alienation. The

Class Representatives, who are current and former participants in the Plan, were not promised any additional compensation beyond being treated like any other Class Member. Class Counsel did not instruct the Class Representatives to keep records of their time spent devoted to this case.

57. Class Counsel met with the Class Representatives during the entire tenure of this litigation. Beginning in 2020, Class Counsel began working with the Class Representatives, which included multiple meetings, calls, and sharing of information and documents related to the Plan. Each Class Representative assisted with responding to discovery requests, searched for and provided responsive documents, and otherwise assisted Class Counsel with issues as they arose.

58. Each Class Representative spent hours preparing for and attending their deposition and preparing for and attending trial. Given the compressed trial schedule, only Mr. Khan and Ms. Wood testified at trial. Ms. Bullock did appear at trial and attended the jury selection and opening statements.

59. Finally, each Class Representative discussed and approved the terms of the Settlement with Class Counsel. Throughout the litigation, and now throughout the settlement process, Class Counsel and Class Representatives have worked together to ensure the best outcome for the Class. This includes numerous communications by phone, email, and mail.

60. Given the incredible success in this case, it is beyond debate that each Class Representative played an incredibly important role in the case.

61. Through vigorous settlement discussions, Class Counsel successfully negotiated the immediate deposit of the full settlement amount early allowing substantial interest to be earned for the benefit of the Class. This provided a substantial benefit to Class members because the monetary amount of the common fund increased in value by over *one million* (\$49,539,537 as of September 19, 2025) due to accrued interest.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on September 26, 2025 in Galveston, Texas.

/s/ Troy A. Doles

Troy A. Doles



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

IMRAN KHAN, et al.,

*Plaintiffs,*

v.

No. 7:20-cv-07561

BOARD OF DIRECTORS OF PENTEGRA  
DEFINED CONTRIBUTION PLAN, et al.,

*Defendants.*

**DECLARATION OF SANFORD JAY ROSEN**

I, Sanford Jay Rosen, hereby declare as follows:

1. I am an attorney at law, admitted to practice in California, the Supreme Court of the United States, multiple United States Courts of Appeals, and several District Courts around the country. A complete recitation of my experience and background is included in my firm biography attached hereto as **Exhibit 1**. See <https://rbgg.com/attorneys/partners/sanford-jay-rosen/>.

2. I have been retained by Plaintiffs' counsel to express my expert opinion concerning certain points in support of Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and Case Contribution Awards for the Class Representatives, and to the reasonableness of Schlichter Bogard LLC's requested hourly rates. The materials I considered in forming my opinions are set forth in **Exhibit 2**. My review of these materials, as well as my knowledge over the years about Schlichter Bogard LLC, have informed me of Plaintiffs' attorneys, including their backgrounds, reputations, the quality of their work, and the results they achieve for their clients that are recited in this declaration. The case-specific materials similarly have informed me about the facts of this case.

3. As of January 1, 2025, I am compensated at the rate of \$1,625 per hour. This is my firm-approved and customary 2025 hourly rate that I charge and am paid as an expert and an attorney and claim in attorneys' fees applications. My opinions and compensation are not dependent on my opinions or the outcome in this matter.

### GENERAL BACKGROUND

4. Briefly summarized, my background is as follows: I am a 1962 graduate of Yale Law School and have been a licensed attorney since that year. After working as a federal judicial clerk, I was a law professor from 1963 to 1971, with my principal courses being constitutional law, labor law, and civil rights/civil liberties law. I was the Assistant Legal Director of the American Civil Liberties Union (ACLU) National Office from 1971 to 1973, and I was the Legal Director of the Mexican American Legal Defense and Educational Fund (MALDEF) from 1973 to 1975. Since 1976, I have been in private practice as senior partner, managing partner, or sole principal of a small law firm. I am now one of two Founding Partners of Rosen Bien Galvan & Grunfeld LLP, a 27-lawyer litigation firm in San Francisco.

5. My practice, while a law professor, a ranking ACLU and MALDEF lawyer, and a private attorney, has involved numerous civil rights and class action matters. While in private practice I have also handled consumer, commercial, and other matters. My practice, and that of my firm, is and has been national in scope and emphasizes complex litigation in varied fields of the law. I have tried numerous cases to juries, bench, special masters, and arbitrators in jurisdictions around the country, including in: San Francisco, California; Denver, Colorado; Arlington, Virginia; New York, New York; Baltimore, Maryland; Cleveland, Ohio; Honolulu and Kauai, Hawaii; and Saipan (the Commonwealth of the Northern Mariana Islands). In private practice, I have represented both plaintiffs and defendants in numerous employment cases, including individuals, groups of individuals, and classes in discrimination, wrongful termination, and sexual harassment cases. I also represent middle and high-ranking executives regarding their employment contracts, both entering and exiting from major companies. I am also a highly experienced appellate lawyer, having argued five times before the Supreme Court of the United States, and at least thirty times before nine of the United States Courts of Appeals. Additionally, I have briefed an even greater number of appeals. Until recently, I was active as an arbitrator, mediator, and early neutral evaluator. I have also served as a settlement judge *pro tem* and a special master.

## LITIGATION BACKGROUND

6. My experience includes handling labor-intensive, complex, class action and multi-party litigation. In private practice on the plaintiffs' side, I represented a large class of end users of certain anti-hypertensive drugs against several international pharmacy companies. This case, *Center for Elders Independence, et al. v. Biovail Corporation, et al.*, No. CV 03320 (San Joaquin Superior Court), ultimately settled. I also successfully concluded a settlement and prosecuted attorneys' fee claims in an unfair competition case against State Farm Insurance Co., *Waul v. State Farm Insurance Co.*, No. CGC 02-412248 (San Francisco Superior Court). I represented large consumer classes in several cases challenging non-sufficient funds charges imposed by numerous California banks. Each of these cases culminated in successful settlements, including substantial attorneys' fees. *See, e.g., Rebney v. Wells Fargo Bank*, 232 Cal. App. 3d 1344 (1991). Similarly, I have successfully tried two class action cases involving conditions of confinement in the California prison system, each of which yielded substantial attorneys' fees awards. I also successfully represented most of an opt-in class of former PanAm pilots (a role similar to interveners), resulting—after 30 days of jury trial—in the largest ADEA settlement (nearly \$20 million) to that date. *EEOC v. Pan American World Airways, Inc.*, 796 F.2d 314 (9th Cir. 1986).

7. My firm has been highly successful as lead class counsel in numerous cases alleging constitutional and ADA claims against the State of California's governor and prison authorities. For example, we are lead counsel in what is now styled *Coleman v. Newsom, et al.* (No. 90-520) and were lead co-counsel in the consolidated case, which includes *Coleman*, decided by the Supreme Court of the United States affirming a prison population reduction order entered by a statutory three judge district court. *Brown v. Plata*, 563 U.S. 493 (2011). The *Coleman* case remains active as to implementation of court orders both in the district court and in the U.S. Court of Appeals for the Ninth Circuit. I was a lead counsel and attorneys' fees' counsel in the two prison conditions class actions that had lengthy trials and required decades of litigation and significant post-trial oversight. My firm is or has been lead or co-lead in prison and jail conditions and First Amendment cases in California and other states, such as Arizona, Hawaii, Nebraska, and New

Mexico. *See Sabata v. Nebraska Department of Correctional Services*, No. 17-3107 (D. Neb. 2017); *Prison Legal News v. Charles L. Ryan*, No. 15-2245 (D. Ariz.); *Human Rights Defense Center v. Michelle Lujan Grisham*, No. 24-1091 (D.N.M.); *Human Rights Defense Center v. Johnson*, No. 25-311 (D. Hawaii).

8. My firm is often lead or co-lead in disability rights cases and wage and hour class action cases in addition to those identified above. *See, e.g., Quinby v. ULTA Salon, Cosmetics & Fragrance, Inc.*, No. 15-4099, Dkt. 54 (N.D. Cal. Jan. 18, 2017) (granting final approval order of class action settlement, including attorneys' fees in a misclassification wage and hour case); *Stiner v. Brookdale Senior Living, Inc.*, 354 F. Supp. 3d 1046 (N.D. Cal. 2019) (denying motion to dismiss, holding the ADA applies to assisted living facilities); *Stiner v. Brookdale Senior Living, Inc.*, 383 F. Supp. 3d 949 (N.D. Cal. 2019) (denying motion for certification of interlocutory appeal).

9. The firm is co-counsel in several class action cases around the country representing participants in the Salvation Army adult rehabilitation centers and adult rehabilitation programs, who perform labor in support of the organization as a condition of their enrollment, in several lawsuits alleging that the Salvation Army violated federal law and many states' laws when it failed to pay minimum wage to these workers. The firm filed the first of these cases in the San Francisco Superior Court. *Spilman v. The Salvation Army*, No. CGC-21-591364. Subsequently on March 9, 2022, we filed *Clancy v. The Salvation Army*, No. 22-979 (N.D. Ill.); *Alvear v. The Salvation Army*, No. 22-1250 (N.D. Ga.); and *Geiser v. The Salvation Army*, No. 22-1968 (S.D.N.Y.).

10. The firm and I also frequently represent plaintiffs in complex collective and representative actions. For example, I have represented multiple plaintiffs in labor-intensive consolidated actions, most notably the victims of the May 4, 1970, National Guard Shootings at Kent State University. *See, e.g., Krause v. Rhodes*, 570 F.2d 563 (6th Cir. 1977); *Krause v. Rhodes*, 671 F.2d 212 (6th Cir. 1982).

11. As a mediator or early neutral evaluator, I have facilitated resolution of class actions and other complex matters. I have served as an arbitrator in such matters as well.

12. I have also handled several ERISA matters. Following settlement of *Pan American World Airways, Inc.*, discussed above, I sued PanAm on behalf of a number of the pilots due to PanAm's underfunding of their pension plan. That suit was settled with PanAm and the Pension Benefit Guaranty Corporation. In addition, I was a mediator or Early Neutral Evaluator for the United States District Court for the Northern District of California in resolving ERISA claims. I was also an arbitrator, selected from the Federal Mediation and Conciliation panel and the American Arbitration Association panel, tasked to resolve claims under ERISA. On occasion, I have counseled business clients in ERISA-related matters.

13. In addition, my firm represented the Retired Employees Association of Orange County in *Retired Employees Assn. of Orange County, Inc. v. County of Orange*, 52 Cal. 4th 1171, 134 Cal. Rptr. 3d 779, 266 P.3d 287 (2011), *remanded by* 663 F.3d 1292 (9th Cir. 2011). We also litigated on behalf of retired firefighters and police officers in Los Angeles to challenge a health benefit rollback. *Los Angeles Retired Fire and Police Association v. City of Los Angeles*, No. B140201, Superior Court of Los Angeles (filed Nov. 1, 2012). We prevailed in the trial court to restore the benefits. Although the court of appeals reversed and ruled in favor of the city, the city was forced to concede that the retirees had a vested right to the health benefit. *Fry v. City of Los Angeles*, 245 Cal. App. 4th 539 (2016).

14. On the defendants' side, my firm and I have represented the State of California's Public Utility Commission (PUC) in a number of employment discrimination matters, including an age discrimination class action and the Ninth Circuit appeal in another age discrimination case. *Crommie v. State of California, Public Utilities Comm'n*, 840 F. Supp. 719 (N.D. Cal. 1994), *aff'd sub nom Mangold v. California Public Utilities Comm'n*, 67 F.3d 1470 (9th Cir. 1995). I was also involved in the PUC's successful defense of a case alleging anti-Semitism in employment in the United States District Court for the Northern District of California. Additionally, my firm and I represented the County of Contra Costa in a major sexual harassment whistleblower case, which settled after I completed plaintiff's 13-day deposition and before plaintiff took any depositions. I have also represented employers in other wrongful termination matters.

15. I have represented numerous public entities and officials in various litigation and pre-litigation matters ranging from contract to employment law matters. These include the Dominican Republic; the Public Utilities Commission of the State of California; the General Counsel of the California Agricultural Relations Board; the East Bay Regional Park District; the County of Contra Costa, CA; the Ravenswood City Elementary School District; and the Human Rights Commission of the City and County of San Francisco. I have also been retained on occasion by Bay Area Rapid Transit (BART) to represent supervisory personnel in labor-management matters. In 2023 and 2024, the California Civil Rights Department (CRD) retained me and my firm, at our full rates, to separately represent two of its attorneys who were under attack by defendants in a complex sexual discrimination and harassment class action that the CRD was prosecuting.

16. My firm and I have long represented the Human Rights Defense Center (HRDC) and its affiliated companies, including Prison Legal News (PLN), in numerous cases in California, Arizona, Hawaii, Nevada, and New Mexico to secure their rights, and those of other publishers whose publications have been banned or censored by prison and jail authorities. My firm has a long history in this line of cases, three of which are active, and two more of which will be filed this year.

17. The first of these cases that we filed was *Prison Legal News v. Schwarzenegger* (*sub nom. Prison Legal News v. Newsom*), No. 07-02058 (N.D. Cal. 2007), in which a pre-litigation settlement was negotiated in 2006. In this case, the court upheld the district court's award of attorneys' fees for my 2008 rate. *See Prison Legal News v. Schwarzenegger*, No. 07-2058, 2008 WL 11411620 (N.D. Cal. Dec. 5, 2008), *aff'd in part, vacated in part, remanded*, 608 F.3d 446 (9th Cir. 2010). Since the *Newsom* case, we have represented this client in about 30 additional cases and are consistently paid our hourly rates. I was counsel of record for PLN and several other publisher, distributor, and reporter organizations on an *amicus curiae* brief in *Beard v. Banks*, 548 U.S. 521 (2006). The Supreme Court framed the issue before it as whether "a Pennsylvania prison policy that 'denies newspapers, magazines, and photographs' to a group of dangerous and

recalcitrant inmates ‘violate[s] the First Amendment.’” Applying *Turner v. Safley*, 482 U.S. 78 (1987) and *Overton v. Bazzetta*, 539 U.S. 126 (2003), the Court reversed the Third Circuit and held that Pennsylvania’s policy did not violate the First Amendment, with Justices Stevens and Ginsburg dissenting.

18. Since 2020, my attorney billing rates have been approved and adopted by several courts. Most recently, in *United States ex rel. Thrower v. Academy Mortgage Corp.*, No. 16-2120, 2024 WL 4194800, at \*4 (N.D. Cal. Sept. 13, 2024), a False Claims Act case, in which I am lead fees counsel, the district court adopted my firm’s 2023 billing rates, including for my work (\$1,475 per hour). *See also United States ex rel. Thrower v. Academy Mortgage Corp.*, No. 16-2120-EMC, Dkt. 508-1 ¶ 6 (Rosen Declaration providing rate). In *Prison Legal News v. Ryan*, No. 15-2245, 2024 WL 1195548, at \*2 (D. Ariz. Mar. 20, 2024), the district court also awarded my firm’s 2023 rates including my rate of \$1,475 per hour. *See also Prison Legal News v. Ryan*, No. 15-2245, Dkt. 365-1 (Rosen Declaration with rates). Earlier, the Ninth Circuit Commissioner awarded my firm’s 2022 billing rates, including my rate of \$1,350 per hour. In *Andrews v. Equinox Holdings*, 570 F. Supp. 3d 803, 807–08 (N.D. Cal. 2021), the district court approved my firm’s 2021 billing rates, including my rate of \$1,250 per hour. In *Human Rights Defense Center v. County of Napa*, No. 20-1296, 2021 WL 1176640, at \*11 (N.D. Cal. Mar. 28, 2021), the court awarded my firm’s 2020 rates for work done that year, including my rate of \$1,100 per hour.

### **ATTORNEYS’ FEE LITIGATION BACKGROUND**

19. I am highly familiar with billing rates for law firms that have a sophisticated practice involving large, complex class action cases. My law firm and I have handled a vast number of fee disputes and claims on behalf of our firm and many other firms as well as many co-counsel arising in such cases. My law firm has many clients who pay their fees at our hourly rates, in addition to our common fund, statutory fee shifting, and contingency fee clients.

20. I have tried several attorneys’ fees matters to judgment. I have been responsible for briefing, presenting documentation, and conducting evidentiary proceedings and oral arguments in scores of attorneys’ fees matters in trial courts, arbitrations, and special master proceedings.



These include the matters described in paragraph 18, above. In addition to presenting my own firm's attorneys' fees claims, I regularly represent other lawyers, law firms, and civil rights organizations in attorneys' fees matters, including many major law firms. I have also served as a mediator in resolving cases that have included substantial attorneys' fees components, and I have decided attorneys' fees issues as an arbitrator.

21. I have been responsible for briefing and conducting oral argument in state and federal appellate courts in more than ten attorneys' fees matters, including, among others: *Gates v. Deukmejian*, 987 F.2d 1392 (9th Cir. 1993); *Gates v. Rowland*, 39 F.3d 1439 (9th Cir. 1994); *Gates v. Gomez*, 60 F.3d 525 (9th Cir. 1995); *Gates v. Shinn*, Nos. 95-15402-15403 (unpublished Memorandum dated April 8, 1996); *Holland v. Roeser*, 37 F.3d 501 (9th Cir. 1994); *Rebney v. Wells Fargo Bank*, 232 Cal. App. 3d 1344 (1991); *Davis v. California Department of Corrections*, No. A076411 (First District Oct. 31, 1997). Last week, I argued one of the two Ninth Circuit appeals in the *Thrower* case. *See* Ninth Circuit, Nos. 24-4103 and 24-6427. I was also special fees counsel in *Finkelstein v. Bergna*, 805 F. Supp. 1235 (N.D. Cal. 1992), and have been special fees counsel in many other district court cases.

22. My firm won several significant additional attorneys' fees cases, including: *National Federation of the Blind v. Uber Technologies, Inc.*, No. 14-4086, Dkt. 203 (N.D. Cal. Nov. 8, 2019); *Cole v. County of Santa Clara*, No. 16-6594 (N.D. Cal. Mar. 21, 2019); *L.H. v. Brown*, 848 F. Supp. 2d 1141 (E.D. Cal. 2011); *Armstrong v. Brown*, 805 F. Supp. 2d 918 (N.D. Cal. 2011); *L.H. v. Schwarzenegger*, 645 F. Supp. 2d 888 (E.D. Cal. 2009); *Prison Legal News v. Schwarzenegger*, 561 F. Supp. 2d 1095 (N.D. Cal. 2008); *Prison Legal News v. Schwarzenegger*, 608 F.3d 446 (9th Cir. 2010); *Armstrong v. Davis*, 318 F.3d 965 (9th Cir. 2003); *Greene v. Dillingham Construction Company*, 101 Cal. App. 4th 418 (2002); *Lucas v. White*, 63 F. Supp. 2d 1047 (N.D. Cal. 1999). In several of these cases, I was lead fees counsel.

23. I was counsel of record on an *amicus curiae* brief in *Perdue v. Kenny A.*, 559 U.S. 542 (2010), in which the Supreme Court held that in appropriate cases, attorneys for civil rights plaintiffs are entitled to enhancement of their fees for quality of representation and results. I was



also counsel of record on an *amicus curiae* brief filed in the Supreme Court of the United States in *City of Burlington v. Dague*, 505 U.S. 557 (1992) on behalf of the ACLU, the NAACP Legal Defense Fund, MALDEF, and numerous other pro bono organizations and private law firms. I was lead counsel on an *amicus curiae* brief in the California Supreme Court in *County of Santa Clara v. Superior Court (Atlantic Richfield)*, 50 Cal.4th 35 (2010) on behalf of a number of leading legal ethics professors. The case involved the question of whether public entities can retain private contingent fee lawyers in public nuisance cases.

24. I have published numerous articles and lectured frequently in Practicing Law Institute (PLI), California's Continuing Education of the Bar (CEB), ATLA, and State Bar of California Labor Section programs and elsewhere on the subject of statutory attorneys' fees, as well as on the subject of establishing and financing of plaintiffs' civil rights practices. In the Spring of 2012, the CEB published its practice guide, "Employment Damages and Remedies," which includes a chapter written by me and senior counsel Michael Freedman on "Attorney Fees and Costs." We have updated that chapter, most recently for publication this year.

25. Federal and state courts, including United States District Courts in California, and elsewhere around the nation, at least one California Court of Appeal, and several California Superior Courts, have frequently recognized me as an expert on attorneys' fees matters. I have testified as an attorneys' fees expert several times in depositions and in court three times: once in a bench trial in the United States District Court in Colorado, once before a Los Angeles Superior Court jury, and once at a bench trial in Alameda County Superior Court. My testimony focused on attorneys' fees topics such as reasonable rates, billing practices, and expenditures of time.

26. I have been retained as an expert on attorneys' fees matters both by proponents and opponents of fee claims. For example, on the plaintiffs' side, I testified by declarations in support of class counsel's attorneys' fees in a wage and hour case against Apple that had been litigated for more than seven years, including a jury trial. *Felczer, et al. v. Apple Inc.*, No. 37-2011-00102593 (San Diego CA Superior Court). I also testified by declaration before the EEOC in *Goel v. Robert Wilke Secretary, Dep't of Veterans' Affairs*, EEOC Case No. 560-2017-00302X.

27. On fees opponents' side, I was retained as an expert in a real estate dispute resulting in a decision of the United States District Court for the Northern District of California in *Stonebrae, L.P. v. Toll Bros.*, No. 08-0221, 2011 WL 1334444, at \*8 (N.D. Cal. Apr. 7, 2011), *aff'd*, 521 F. App'x 592 (9th Cir. 2013). I was retained as an expert in *Post Properties, LP v. Post Street Renaissance Partners*, No. 12-640048 (San Francisco Superior Court) and testified by way of a declaration opposing a fee claim in that wrongful detainer case. I was retained and testified at deposition as an expert in support of a fee claim as damages in a tort of another case in Santa Clara CA Superior Court, *Gagnard v. Campi Properties Inc.*, No. 10-167727. I was retained to testify at a jury trial on behalf of defendants in San Francisco Superior Court as an expert on *quantum meruit* fees in a legal malpractice matter arising from a law firm's False Claims Act representation. *Packard, Packard & Johnson v. Hinshaw and Culbertson*, No. 16-55441 (San Francisco CA Superior Court). After my deposition, the case settled before going to trial.

28. Recently, I testified as an expert by declaration in support of the attorneys' fees claims for defendants who had succeeded in California SLAPP actions. *See, e.g., White v. Gabriel*, No. 22-408831 (Superior Court County of Santa Clara) (Corrected Order May 24, 2024).

29. Continuously since 1976, I have been a senior partner, managing partner, or sole principal of a small law firm. In these capacities, I have been setting billing rates and practices for more than 40 years. I also frequently employ other law firms to work for my clients and thereby become familiar with their rates and practices.

30. I constantly familiarize myself with the rates charged and the billing and work practices of lawyers throughout the nation in a number of additional ways: (1) from my own involvement in attorneys' fees litigation and expert consultations and testimony; (2) by discussing attorneys' fees, billing, and work practices with other attorneys; (3) by representing other attorneys seeking fees; (4) by obtaining declarations from other attorneys regarding market rates, attorneys' fees, billing and work practices; (5) by discovering the rates charged by opposing parties' counsel; (6) by reviewing surveys, legal newspapers, reported decisions, and treatises regarding prevailing attorneys' rates, fees, billing and work practices; (7) by reviewing attorneys' fees applications and

awards in cases throughout the nation, as well as published and unpublished decisions and orders throughout the nation; (8) by reviewing rates charged by, and billing and work practices of, other firms that my firm has retained or associated with; and (9) by conducting research in my preparation for testimony as an expert.

### **RECENT AND EXPECTED INCREASES IN BILLING RATES**

31. Based on my above-referenced familiarity and experience with trends in attorney fee rates and annual increases, it is particularly important to note the recent percentage increases in attorney fee rates. Notably, my rate has increased about 60% since 2000.

32. In 2019 and 2020, percentage increases in fee rates remained relatively constant at 3.3% and 3.5%.<sup>1</sup> During the pandemic, however, reported increases from the top 100 law firms in the country reported an increase of 5.6% for 2021 and 5.9% in 2022.<sup>2</sup>

33. Despite these increases and the slow but evolving resolution of the pandemic, rising inflation proved to be a “challenge for law firm billing rates.”<sup>3</sup> In particular, and despite the above-referenced relative increases, the billing rates did not keep pace with the rising inflation.<sup>4</sup>

34. Law firm rates continued to rise sharply during 2023.<sup>5</sup> During that year, law firm billing rates increased by more than 6%.<sup>6</sup> In a continued departure from historic increases in law firm billing rates, in 2024, billing rates increased at their fastest pace since the global financial

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<sup>1</sup> See 2021 CounselLink’s ELM Trends Report, available at <https://counsellink.com/trends/>.

<sup>2</sup> 2022 Report on the State of the Legal Market, Thomson Reuters Institute, Thomson Reuters, at 7, [https://www.thomsonreuters.com/en-us/posts/wp-content/uploads/sites/20/2022/01/State-of-Legal-Market-Report\\_Final.pdf](https://www.thomsonreuters.com/en-us/posts/wp-content/uploads/sites/20/2022/01/State-of-Legal-Market-Report_Final.pdf) (noting Am Law 100 law firms leading with a rate surge of 5.6%); Andrew Maloney, “Rising Billing Rates in 2023 Becomes a ‘Singular Focus’ for Law Firms,” *American Lawyer*, Nov. 22, 2022, available at <https://www.law.com/americanlawyer/2022/11/22/raising-billing-rates-in-2023-becomes-a-singular-focus-for-law-firms-405-113467/> (noting average billing rate increase of 5.9% for 2022).

<sup>3</sup> Andrew Maloney, Inflation May Be Beating Billing Rate Increases, *American Lawyer*, Oct. 12, 2022, available at <https://www.law.com/americanlawyer/2022/10/12/billing-rate-increases-have-significantly-slowed-even-as-inflation-took-off#:~:text=Law%20firm%20billing%20rates%20have,challenges%20for%20law%20firm%20profits.>

<sup>4</sup> *Id.*

<sup>5</sup> 2024 Report on the State of the US Legal Market, Thomson Reuters Institute, Thomson Reuters, <https://www.thomsonreuters.com/en-us/posts/wp-content/uploads/sites/20/2024/01/State-of-US-Legal-Market-2024.pdf> attached here as **Exhibit 3**.

<sup>6</sup> *Id.* at 2; see also 2023 Trends Report Mid-Year Special Edition: Update on Outside Counsel Billing Rates, CounselLink, available at [https://ln-counsellink.lexisnexis.com/l/1020222/2023-09-20/h7zt/1020222/1695204948QMAAtO7C/CL\\_Trends\\_Report\\_Mid\\_Year\\_Special\\_Edition\\_FINAL091923.pdf](https://ln-counsellink.lexisnexis.com/l/1020222/2023-09-20/h7zt/1020222/1695204948QMAAtO7C/CL_Trends_Report_Mid_Year_Special_Edition_FINAL091923.pdf) (for mid-year 2023, noting average billing rate increase from 2022 of 5.7%).

crisis, averaging 6.5% growth.<sup>7</sup>

35. Accordingly, reputable authorities and those I personally consider reliable in this area are reporting an expected increase in rates for 2025 of at least 7 to 9%.<sup>8</sup>

### **SCHLICHTER BOGARD LLC PIONEERED THE FIELD OF NATIONAL ERISA 401(K) LITIGATION**

36. I am familiar with the work, results, and reputation of Schlichter Bogard LLC. I know that it has a national ERISA practice, involving highly complex class actions filed across the country in federal district courts including California, Colorado, Connecticut, Georgia, Indiana, Illinois, Maryland, Massachusetts, Minnesota, Missouri, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Washington, and Wisconsin.

37. The excessive fee cases brought by the firm beginning in 2006 were unlike any complex ERISA class action ever brought at the time. This law firm is acknowledged as the pioneering law firm in the field. *Abbott v. Lockheed Martin Corp.*, No. 06-701, 2015 WL 4398475, at \*1 (S.D. Ill. July 17, 2015). Prior to Schlichter Bogard LLC, neither the Department of Labor

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<sup>7</sup> 2025 Report on the State of the US Legal Market, Thomson Reuters Institute, Thomson Reuters, at 7, available at <https://www.thomsonreuters.com/en-us/posts/wp-content/uploads/sites/20/2025/01/State-of-the-US-Legal-Market-Report-2025.pdf> attached here as **Exhibit 4**; see also Paul Rogerson, “A dollar a second? Hourly rates rock at top global law firms,” *The Law Society Gazette*, Apr. 25, 2025, available at <https://www.lawgazette.co.uk/news-focus/a-dollar-a-second-hourly-rates-rocket-at-top-global-firms/5123091.article> (noting average law firm billing rate increases during 2024 of 5.1%).

<sup>8</sup> Listed billing rates, court awards, and published articles show that attorney billing rates continue to grow rapidly. See, e.g., Andrew Maloney, “Healthy Billing Rate Hikes Aren’t Just for the Am Law 50,” *Law.com*, May 7, 2025, available at <https://www.law.com/americanlawyer/2025/05/06/healthy-billing-rate-hikes-arent-just-for-the-am-law-50> (more than half of surveyed firms increased rates on average by 7%); Debra Cassens Weiss, “Some top partners in BigLaw will bill nearly \$3,000 per hour next year, data says,” *ABA Journal*, Sept. 26, 2024, available at <https://www.abajournal.com/news/article/some-top-partners-in-biglaw-will-bill-nearly-3000-an-hour-next-year-report-says> (listing BigLaw 2024 rates for partners that range up to \$2,720 per hour); Dan Roe, “Top Big Law Partners Are Earning More Than \$2,400 Now, As Rates Continue to Climb,” *Law.com*, Jan. 18, 2024, available at <https://www.law.com/americanlawyer/2024/01/10/top-restructuring-partners-are-earning-more-than-2400-per-hour-as-rates-continue-to-climb/?slreturn=20250520195818> (listing numerous firm rates, some approaching \$2,600 per hour); Debra Cassens Weiss, “This BigLaw firm charges nearly \$2,500 per hour for top billers’ bankruptcy work,” *ABA Journal*, Dec. 19, 2023, available at <https://www.abajournal.com/news/article/this-biglaw-firm-charges-nearly-2500-an-hour-for-top-billers-bankruptcy-work> (referring to Kirkland & Ellis’s rates); Vaidehi Mehta, “Billing Rates Surge Past \$2k in the World of High-Stakes Litigation,” *FindLaw*, Sept. 27, 2023, available at <https://www.findlaw.com/legalblogs/practice-of-law/billing-rates-surge-past-2k-in-the-world-of-high-stakes-litigation/>; Roy Strom, “Rising Rates Are Law Firms’ Salve as Layoffs and Pay Cuts Surge,” *Bureau of National Affairs, Inc.*, Jan. 19, 2023, available at <https://news.bloomberglaw.com/business-and-practice/rising-rates-are-law-firms-salve-as-layoffs-and-pay-cuts-surge> (rates for commercial firms who submitted new 2023 hourly rates reflected increases over 2022 rates of nearly 10% on average for top partners and 9% for top associates).

nor any private law firm in the United States brought an excessive fee class action involving a 401(k) plan in the 30-plus years of ERISA. *Spano v. Boeing Co.*, No. 06-743, 2016 WL 3791123, at \*3 (S.D. Ill. Mar. 31, 2016). Numerous federal district courts have cited the staggering or “enormous risks of representing employees and retirees in this area.” *Nolte v. Cigna Corp.*, No. 07-2046, 2013 WL 12242015, at \*2 (C.D. Ill. Oct. 15, 2013); *Will v. General Dynamics Corp.*, No. 06-698, 2010 WL 4818174, at \*3 (S.D. Ill. Nov. 22, 2010).

38. Schlichter Bogard LLC’s expertise in this area has been recognized by numerous federal courts. For example, Judge Harold Baker in the Central District of Illinois noted that the firm is “the preeminent firm in 401(k) fee litigation” and that its work has “led to dramatic changes in the 401(k) industry, which have benefitted employees and retirees throughout the country by bringing sweeping changes to fiduciary practices.” *Nolte*, 2013 WL 12242015, at \*3. In fact, “the fee reduction attributed to [Schlichter Bogard LLC’s] fee litigation and the Department of Labor’s fee disclosure regulations approach \$2.8 billion in annual savings for American workers and retirees.” *Id.* at \*2.

39. Judge Susan R. Nelson in the District of Minnesota recognized that “litigating the complex issues in [the] case required the attorneys to exercise extraordinary skill and determination. In fact, another judge in this Circuit has noted that [Schlichter Bogard LLC] are ‘experts in ERISA litigation.’” *Krueger v. Ameriprise Fin., Inc.*, No. 11-2781, 2015 WL 4246879, at \*2 (D. Minn. July 13, 2015) (quoting *Tussey v. ABB, Inc.*, No. 06-4305, 2012 WL 5386033, at \*3 (W.D. Mo. Nov. 2, 2012)). Judge Nanette Laughrey recognized the firm’s “significant, national contribution” in “clarif[ying] ERISA standards in the context of investment fees.” *Tussey*, 2015 WL 8485265, at \*2. In fact, “[t]he litigation educated plan administrators, the Department of Labor, the courts and retirement plan participants about the importance of monitoring recordkeeping fees and separating a fiduciary’s corporate interest from its fiduciary obligations.” *Id.*

40. Moreover, Judge G. Patrick Murphy in the Southern District of Illinois recognized that “[Schlichter Bogard LLC’s] work throughout this litigation illustrates an exceptional example

of a private attorney general risking large sums of money and investing many thousands of hours for the benefit of employees and retirees” and “[l]itigating the case required Class Counsel to be of the highest caliber and committed to the interests of the participants and beneficiaries of the General Dynamics 401(k) Plans.” *Will*, 2010 WL 4818174, at \*3. Judge David R. Herndon similarly noted that the firm “[l]itigat[ed] this case against formidable defendants and their sophisticated attorneys,” which “required Class Counsel to demonstrate extraordinary skill and determination.” *Beesley v. Int’l Paper Co.*, No. 06-703, 2014 WL 375432, at \*2 (S.D. Ill. Jan. 31, 2014).

41. In another 401(k) excessive fee case in the District of Massachusetts, Judge Michael A. Ponsor stated that “Class Counsel has demonstrated extraordinary resourcefulness, skill, efficiency and determination” and the “exceptional result in [the] case is the direct result of Class Counsel’s unique expertise and outstanding effort.” *Gordan v. Mass. Mut. Life Ins. Co.*, No. 13-30184, 2016 U.S. Dist. LEXIS 195935, at \*7–8 (D. Mass. Nov. 3, 2016).

42. In addressing the efforts of Class Counsel, Chief Judge Osteen of the Middle District of North Carolina noted as follows:

Class Counsel’s efforts have not only resulted in a significant monetary award to the class but have also brought improvement to the manner in which the Plans are operated and managed which will result in participants and retirees receiving significant savings in the coming four years.

*Kruger v. Novant Health, Inc.*, No. 14-208, 2016 U.S. Dist. LEXIS 193107, at \*8 (M.D.N.C. Sep. 29, 2016).

43. Schlichter Bogard’s experience and resources expended in those matters contributed to efficiently litigating and resolving this case. *See Ramsey v. Phillips N. Am. LLC*, No. 18-1099, Dkt. 27 at 6–7 (N.D. Ill. Oct. 15, 2018) (“This Court believes that the early settlement in this case was reached due to [Schlichter Bogard LLC’s] established reputation”).

44. On June 24, 2019, U.S. District Judge Catherine Eagles “recognized the experience, reputation, and ability” of Plaintiffs’ counsel and found that the firm “demonstrated diligence,

skill, and determination in this matter and, more generally, in an area of law in which few attorneys and law firms are willing or capable of practicing.” *Clark v. Duke Univ.*, No. 16-1044, 2019 WL 2579201, at \*3 (M.D.N.C. June 24, 2019). In another ERISA class action, Judge Eagles recognized the “skill and determination” of Class Counsel and noted that “[i]t is unsurprising that only a few firms might invest the considerable resources to ERISA class actions such as this, which require considerable resources and hold uncertain potential for recovery.” *Sims v. BB&T Corp.*, No. 15-732, 2019 WL 1993519, at \*3 (M.D.N.C. May 6, 2019).

45. On January 28, 2020, U.S. District Judge George L. Russell III stated that “[Schlichter Bogard LLC] are Class Counsel of the highest caliber.” *Kelly v. Johns Hopkins Univ.*, No. 16-2835, 2020 WL 434473, \*4 (D. Md. Jan. 28, 2020).

46. On March 8, 2021, U.S. District Judge Mark H. Cohen observed that “Class Counsel are highly experienced and recognized experts in ERISA litigation... Class Counsel’s unique experience representing plaintiffs like Class Members in this case supports Plaintiffs’ fee request.” *Pledger v. Reliance Tr. Co.*, No. 15-4444, 2021 U.S. Dist. LEXIS 105868, at \*21 (N.D. Ga. Mar. 8, 2021).

47. Judge George B. Daniels recognized and repeated the firm’s accolades in approving Schlichter Bogard LLC’s fee request:

Class Counsel is not only highly experienced in handling ERISA class actions involving 401(k) and 403(b) plans, but “pioneer[ed] . . . the field of retirement plan litigation.” Class Counsel is the “preeminent firm” in excessive fee litigation, having “achieved unparalleled results on behalf of its clients” in the face of “enormous risks.” Class Counsel are “experts in ERISA litigation,” and “highly experienced.” The firm also obtained a significant victory in the Supreme Court, which in 2015 unanimously held that an ERISA fiduciary has a continuing duty to monitor plan investments and remove imprudent ones. Courts across the country have recognized the reputation, skill, and determination of Class Counsel in pursuing relief on behalf of retirement plan participants. Recently, Judge Blackburn of the District of Colorado wrote that Class Counsel “have shown their ability by



achieving the excellent result obtained for the class” and “admirably served as private attorneys general in this instance, fulfilling one of the purposes of ERISA.”

*Cates v. Trs. of Columbia Univ.*, No. 16-6524, 2021 U.S. Dist. LEXIS 200890, at \*13–14 (S.D.N.Y. Oct. 18, 2021) (internal citations omitted).

48. In my experience, this is a remarkable record of federal judges around the country praising a law firm for its stellar work and results in protecting the rights of employees and retirees in retirement plans. I have rarely seen or heard of such a consistent pattern of such accolades.

49. Schlichter Bogard LLC’s work has also been featured in the New York Times, Wall Street Journal, Reuters, and Bloomberg, among other media outlets. *See, e.g.*, Anne Tergesen, *The Lawyer on a Quest to Lower Your 401(k) Fees*, Wall St. J. (June 9, 2017);<sup>9</sup> Anne Tergesen, *401(k) Fees, Already Low, Are Heading Lower*, Wall St. J. (May 15, 2016);<sup>10</sup> Gretchen Morgenson, *A Lone Ranger of the 401(k)’s*, N.Y. Times (Mar. 29, 2014);<sup>11</sup> Floyd Norris, *What a 401(k) Plan Really Owes Employees*, N.Y. Times (Oct. 16, 2014);<sup>12</sup> Sara Randazzo, *Plaintiffs’ Lawyer Takes on Retirement Plans*, Wall St. J. (Aug. 25, 2015);<sup>13</sup> Jess Bravin and Liz Moyer, *High-Court Ruling Adds Protections for Investors in 401(k) Plans*, Wall St. J. (May 18, 2015);<sup>14</sup> Mark Miller, *Are 401(k) Fees Too High? The High Court May Have an Opinion*, Reuters (May 1, 2014);<sup>15</sup> Greg Stohr, *401(k) Fees at Issue as Court Takes Edison Worker Appeal*, Bloomberg (Oct. 2, 2014).<sup>16</sup>

50. Based on my personal experience and review of court filings by Schlichter Bogard LLC in this and many other cases, including Appellate and Supreme Court filings, Schlichter Bogard LLC has displayed extraordinary skill in litigating complex ERISA issues. Not only is Schlichter Bogard LLC the first firm to ever bring 401(k) and 403(b) excessive fee cases, having

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<sup>9</sup> Available at <https://www.wsj.com/articles/the-lawyer-on-a-quest-to-lower-your-401-k-fees-1497000607> (“Companies now are so worried about suits alleging mismanagement of these retirement plans that 401(k) industry consultants have coined a term for the threat: ‘getting Schlichterized.’”).

<sup>10</sup> Available at <http://www.wsj.com/articles/401-k-fees-already-low-are-heading-lower-1463304601>.

<sup>11</sup> Available at [http://www.nytimes.com/2014/03/30/business/a-lone-ranger-of-the-401-k-s.html?\\_r=0](http://www.nytimes.com/2014/03/30/business/a-lone-ranger-of-the-401-k-s.html?_r=0).

<sup>12</sup> Available at [http://www.nytimes.com/2014/10/17/business/what-a-401-k-plan-really-owes-employees.html?\\_r=0](http://www.nytimes.com/2014/10/17/business/what-a-401-k-plan-really-owes-employees.html?_r=0).

<sup>13</sup> Available at <http://blogs.wsj.com/law/2015/08/25/plaintiffs-lawyer-takes-on-retirement-plans/>.

<sup>14</sup> Available at <http://www.wsj.com/articles/high-court-ruling-adds-protections-for-investors-in-401-k-plans-1431974139>.

<sup>15</sup> Available at <http://www.reuters.com/article/us-column-miller-401fees-idUSBREA400J220140501>.

<sup>16</sup> Available at <http://www.bloomberg.com/news/articles/2014-10-02/401-k-fees-at-issue-as-court-takes-edison-worker-appeal>.



literally created the space, but no other firm has obtained the kinds of results for plan participants and beneficiaries as Schlichter Bogard LLC, while overcoming tremendous obstacles and facing the enormous risk of non-payment in hard-fought litigation.

51. Cases of this caliber with these types of well-funded defendants require specialized knowledge and the ability to fund what amounts to an opposition to a blank-check defense. For example, I am aware that in the first full trial of a 401(k) excessive fee case under ERISA—*Tussey v. ABB, Inc.*—defendants, as of January 2010, had paid *over \$42.5 million* in attorneys’ fees. The case was then litigated for nearly *another decade*, including two appeals, two remands, a petition for writ of certiorari, and further proceedings in the district court, before finally settling in April 2019, resulting in much more in fees paid to defendants’ attorneys.

52. In ERISA cases brought by Schlichter Bogard LLC, plan sponsor defendants retain some of the largest and most well-known law firms in the nation. These law firms have significant resources that make prosecution of these cases extraordinarily difficult. A sample of opposing counsel in these types of cases are listed below:

Case	Opposing Counsel
<i>Tibble v. Edison</i> , 575 U.S. 523 (2015)	O’Melveny <sup>17</sup>
<i>Sims v. BB&amp;T Corp.</i> , No. 15-1705, 2019 U.S. Dist. LEXIS 75839 (M.D.N.C. May 6, 2019)	Groom Law Group <sup>18</sup>
<i>Kelly v. Johns Hopkins Univ.</i> , No. 16-2835, 2020 WL 434473 (D. Md. Jan. 20, 2020)	Morgan Lewis
<i>Ramos v. Banner Health</i> , No. 15-2556, 2018 WL 4700707 (D. Colo. Aug. 8, 2018)	McDermott Will & Emery
<i>Tussey v. ABB, Inc.</i> , No. 06-4305, 2019 WL 3859763 (W.D. Mo. August 16, 2019)	Bryan Cave
<i>Munro v. Univ. of S. Cal.</i> , No. 16-6191, 2016 WL 11185428 (C.D. Cal. Dec. 2, 2016)	Gibson Dunn
<i>Clark v. Duke</i> , No. 16-1044, 2019 WL 2579201 (M.D.N.C. June 24, 2019)	Morgan Lewis
<i>In re Northrop Grumman Corp. ERISA Litig.</i> , No. 06-6213, 2017 WL 9614818 (C.D. Cal. Oct. 24, 2017)	Mayer Brown
<i>Gordan v. Mass. Mut. Life Ins. Co.</i> , No. 13-30184, 2016 WL 11272044 (D. Mass. Nov. 3, 2016)	Goodwin Proctor

<sup>17</sup> The case resulted in the Supreme Court of the United States unanimously ruling in Plaintiffs’ favor.

<sup>18</sup> Groom Law Group is defense counsel in this case.

Case	Opposing Counsel
<i>Spano v. Boeing Co.</i> , No. 06-743, 2016 WL 3791123 (S.D. Ill. Mar. 31, 2016)	O'Melveny
<i>Krueger v. Ameriprise Fin., Inc.</i> , No. 11-2781, 2015 WL 4246879 (D. Minn. July 13, 2015)	O'Melveny
<i>Hughes v. Northwestern Univ.</i> , No. 16-8157, 2018 WL 2388118 (N.D. Ill. May 25, 2018) <sup>19</sup>	Willkie Farr & Gallagher
<i>Martin v. Caterpillar Inc.</i> , No. 07-1009, 2010 WL 11614985 (C.D. Ill. Sept. 10, 2010)	Seyfarth Shaw
<i>Sacerdote v. New York Univ.</i> , No. 16-6284, 2018 WL 840364 (S.D.N.Y. Feb. 13, 2018)	DLA Piper
<i>Pledger v. Reliance Tr. Co.</i> , No. 15-4444, 2021 WL 2253497 (N.D. Ga. Mar. 8, 2021)	O'Melveny Alston & Bird

53. Complex cases, such as this case, typically last numerous years and involve many discovery battles, intense motion practice, and multiple experts that often involve some of the nation's foremost experts in the field. If tried, an appeal is almost certain. This type of litigation is risky and extremely costly. I am aware of no firm filing a 401(k) excessive fee case prior to those first cases brought by Schlichter Bogard LLC in 2006, nor am I aware of any firms having committed the resources that Schlichter Bogard LLC has to this type of litigation. It is therefore not surprising that Schlichter Bogard LLC stands alone in this niche, given the complexities of the issues and the risks it incurs.

54. Another example of Schlichter Bogard LLC displaying their tremendous skill and determination in securing a significant recovery for plan participants is their extraordinary work in the landmark *Tibble v. Edison* case, which was filed in 2007. Upon petition by the plaintiffs, the United States Supreme Court granted the plaintiffs' Writ of Certiorari and—in a 9-0 unanimous decision—vacated the Ninth Circuit's affirmance of the summary judgment order and held that an ERISA fiduciary has a continuing duty to monitor plan investments and remove imprudent ones regardless of whether they were added to the 401(k) plan prior to the statutory period. *Tibble v. Edison Int'l*, 135 S. Ct. 1823 (2015). On remand from the Supreme Court, the Ninth Circuit *en banc* vacated the Court's summary judgment ruling that Plaintiffs' claims as to retail share mutual

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<sup>19</sup> Like *Tibble*, *Hughes* also resulted in the Supreme Court unanimously ruling in Plaintiffs' favor.

funds added prior to the statutory period were barred and remanded to the Court to determine on an open record whether Defendants violated their continuing duty to monitor Plan investments. *Tibble v. Edison Int'l*, 843 F.3d 1187, 1199 (9th Cir. 2016). Following remand, in August 2017, the district court held that the defendants were liable for breaching their duty to monitor plan investments and awarded over \$13.1 million in plan losses and investment opportunity. *Tibble*, No. 07-5359, 2017 WL 3523737 (C.D. Cal. Aug. 16, 2017); *Tibble*, ECF Nos. 413, 570. This was a landmark, precedent-setting case, the significance of which cannot be overstated. It was the first and only ERISA 401(k) excessive fee case taken by the Supreme Court. Schlichter Bogard LLC persevered for over ten years through multiple appeals to dramatically increase the recovery for the Plan from \$370,372 to over \$13.1 million.

55. In 2022, Class Counsel brought the United States Supreme Court its second-ever ERISA excessive fees case, this time in a 403(b) plan. Again, the U.S. Solicitor General wrote an amicus brief in support of Class Counsel's position, along with the AARP, the National Pension Rights Center, and other nonprofits. Again, mutual fund industry groups and the Chamber of Commerce filed amicus briefs opposing the plaintiffs. The Supreme Court again agreed with Class Counsel, and again did so unanimously, holding that the inclusion of prudent options in a plan does not offset the inclusion of imprudent options, and that a plan sponsor must monitor each fund in a plan and remove those that are imprudent. *Hughes v. Northwestern Univ.*, 142 S. Ct. 737 (2022).

56. Recently, in *Cunningham v. Cornell University*, the United States Supreme Court issued the third-ever ERISA excessive fee decision involving Cornell University's 403(b) plan. 145 S. Ct. 1020 (2025). Similar to the prior ERISA cases brought before the Supreme Court by Class Counsel, the Supreme Court issued a unanimous 9-0 decision reversing the Second Circuit's decision that the plaintiffs must plausibly allege at the pleadings stage that no prohibited

transaction exemption applies to prohibited transactions claims under 29 U.S.C. § 1106(a)(1)(C). The Supreme Court clarified that an ERISA plaintiff must only plausibly allege that a fiduciary engaged in a prohibited transaction.

57. There is no other law firm in the United States which has literally pioneered and created an entire field of litigation, and then obtained three separate United States Supreme Court successful decisions, all of them unanimous. This remarkable history has benefitted American workers and retirees enormously.

**SCHLICHTER BOGARD LLC OBTAINED A SUBSTANTIAL RECOVERY FOR THE PENTEGRA CLASS AFTER SUBSTANTIAL INVESTIGATION AND LITIGATION**

58. Schlichter Bogard LLC has devoted significant time and resources investigating potential claims in this matter initially starting in 2012, and briefly recommencing in 2015, before further investigating potential claims in 2020. *See* Dkt. 61 at 15. This knowledge and expertise significantly aided its efforts in the *Khan* case. During the course of their pre-filing investigation, it is my personal knowledge and understanding that they analyzed hundreds of publicly filed documents with the Department of Labor, regulatory filings, fund offering statements, and a variety of other resources to support their claims.

59. Following these extensive efforts, on September 15, 2020, Plaintiffs filed their complaint in the United District Court for the Southern District of New York, alleging that Defendants Board of Directors of Pentegra Defined Contribution Plan (Board), Pentegra Services, Inc. (PSI), John E. Pinto, Sandra L. McGoldrick, Lisa A. Schlehuber, Michael N. Lussier, William E. Hawkins, Jr., Brad Elliott, and George W. Hermann (collectively Defendants) breached their fiduciary duties and committed prohibited transactions under ERISA pertaining to the recordkeeping and administrative fees charged to the Pentegra Defined Contribution Plan for Financial Institutions (the Plan), among other allegations, causing millions of dollars in losses to Plan participants' retirement savings.

60. After Plaintiffs filed suit, a similar but separate ERISA action was filed by another set of plaintiffs. The two actions were consolidated, and the Court appointed Schlichter Bogard LLC as interim class counsel. Dkt. 84. On March 5, 2021, Plaintiffs filed an amended consolidated class action complaint, which added additional facts based on recently produced contracts between the Plan and PSI. Dkt. 92.

61. On April 1, 2021, Defendants filed a motion to dismiss Plaintiffs' complaint. Dkt. 93. Similar to other ERISA class actions, the briefing addressed complex factual and legal issues, and Defendants attempted to rely on outside evidence in support of their motion. On March 23, 2022, the Court partially granted Defendants' motion dismissing Plaintiffs' loyalty claims but otherwise denied their motion. Dkt. 149.

62. On January 6, 2023, Defendants moved to strike Plaintiffs' jury demand. Dkt. 167. Notably, on September 26, 2023, the Court denied Defendants' motion in part permitting Plaintiffs' breach of fiduciary duty claims seeking money damages to be tried before a jury and the remaining claims to be tried before the Court. Dkt. 190. In my experience, ERISA fiduciary breach claims are rarely tried before a jury, and the decision that Schlichter Bogard LLC obtained on the jury demand issue is a prime example of the quality of work performed by the firm.

63. Plaintiffs also moved for class certification on January 6, 2023. Dkt. 170. Their motion was vigorously contested. Dkt. 177. Over Defendants' objections, the Court certified a class of "[a]ll participants and beneficiaries of the [Plan] from September 15, 2014 through the date of judgment, excluding Defendants[,]" appointed Schlichter Bogard LLC as Class Counsel, and the Named Plaintiffs as Class representatives. Dkt. 191.

64. During the course of discovery, Defendants and third parties produced over 58,000 documents, including Plan-related materials, contracts and other agreements with service providers, fiduciary committee minutes and supporting materials, e-mail communications, and other documents. The parties also agreed to exchange electronically stored information after negotiating key custodians and search terms.

65. Apart from document discovery, Schlichter Bogard LLC took seven depositions of Defendants' current or former fact witnesses, one third-party fact witness, and two defense expert witnesses and defended the depositions of their five experts and three Named Plaintiffs.

66. Following expert discovery, Defendants did not move for summary judgment. However, in preparation for trial, the parties each moved *in limine* to exclude certain evidence at trial, including damages calculations performed by Plaintiffs' experts. The Court granted in part and denied in part the parties' motions.

67. The parties participated in several final pretrial conferences before the trial ultimately commenced on April 15, 2025. Prior to trial, the parties submitted their Joint Findings of Fact and Conclusions of Law pertaining to Plaintiffs' prohibited transaction claims and equitable relief, Jury Instructions, Verdict Form, Joint Exhibit List, and Joint Pre-Trial Order (which included their respective Witness Lists). In accordance with the Court's directives and/or through the parties' meet-and-confer process, the parties submitted multiple revised versions of these documents leading up to trial.

68. The jury trial commencing on April 15, 2025, concluded on April 23, 2025. The jury awarded damages in the amount of \$38,760,232. The verdict was unanimous. To my knowledge, this is the largest jury verdict on any ERISA excessive fee claim involving a 401(k) plan in history. Following the jury trial, the Court ordered the parties to submit revised Findings of Fact and Conclusions of Law on the non-jury portion of the trial relating to Plaintiffs' prohibited transaction claims and equitable relief.

69. On May 2, 2025, the parties informed the Court that they reached a settlement in principle. Dkt. 294. The Court then stayed all remaining deadlines. The terms of the settlement were finalized on July 2, 2025, Dkt. 302-1, and Plaintiffs contemporaneously moved for preliminary approval of the class action settlement, Dkt. 302. The Court promptly entered an order preliminarily approving the settlement that day. Dkt. 304.

70. Under the terms of the settlement, Defendants agreed to pay \$48.5 million. They also agreed to significant affirmative relief tied to the fiduciary breach claims asserted by Plaintiffs,

including the hiring of an independent fiduciary to oversee the Request for Proposal (RFP) process for recordkeeping, administrative, and fiduciary services, and the replacement of Defendant Board members. *See* Dkt. 302-1, Art. 10 – Additional Terms.

71. The results obtained by Schlichter Bogard LLC demonstrate their extraordinary skill in complex class action litigation and unusual ability to obtain a substantial settlement that exceeded the verdict entered by the jury.

72. This litigation involved attorneys from Groom Law Group (Groom), a nationally recognized defense firm. In my experience, large defense firms that are retained by out-of-town clients will bill at their national rates. Therefore, in my experience, a firm like Groom would have charged Defendants at the firm's Washington, D.C. rates, where its lead partner in this case is located.

**THE FEE REQUESTED BY SCHLICHTER BOGARD LLC IS EMINENTLY  
REASONABLE, CONSISTENT WITH THE MARKET RATES FOR NATIONAL  
FIRMS IN COMPLEX LITIGATION, AND PROVIDES NOTHING FOR FUTURE  
WORK ON THE CASE**

73. As previously noted, there is no other law firm in the United States that has literally pioneered and created an entire field of litigation, and then obtained numerous successful Supreme Court successful decisions, all of them unanimous. This is a remarkable history that has benefitted American workers and retirees.

74. I understand that Class Counsel is seeking one-third of the Settlement Fund Balance in attorneys' fees. The Settlement Fund Balance is valued at \$49,539,537. Accordingly, Class Counsel is seeking \$16,513,179 in attorneys' fees to compensate them for their efforts in securing the valuable settlement and for the enormous risk of non-payment should the jury's verdict be reversed by the Second Circuit on appeal that is inherent in complex ERISA 401(k) fiduciary breach class actions, such as this one.<sup>20</sup>

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<sup>20</sup> The Settlement Fund Balance refers to the Gross Settlement Amount, including any accrued interest or earnings 10 business days prior to the Final Fairness Hearing.

75. In my experience, the percentage-of-recovery method for calculating attorneys' fees in common fund cases is the preferred and adopted approach for determining reasonable attorneys' fees. This is true for ERISA common fund cases. In addition, a one-third fee is consistent with the market rate in complex ERISA 401(k) class actions.

76. In making their attorneys' fees request, I believe that Schlichter Bogard LLC is complying with the favored approach of the Second Circuit concerning attorneys' fees claims and awards in common fund class action cases. In the Second Circuit, "both the lodestar and the percentage of the fund methods are available to district judges in calculating attorneys' fees in common fund cases." *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000). The "trend in the Circuit is towards the percentage method" because it "directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96 (2d Cir. 2005) (internal citations omitted).

77. In applying a lodestar check, Schlichter Bogard LLC has requested the following hourly rates: \$1,550 for attorneys with at least 25 years of experience; \$1,300 for attorneys with 15–24 years of experience; \$950 for attorneys with 5–14 years of experience; \$725 for attorneys with 0–4 years of experience; and \$475 for paralegals and law clerks. These rates were recently submitted by Schlichter Bogard LLC in making their attorneys' fee request of one-third of the common fund in a similar ERISA class action. *See Binder v. PPL Corp.*, No. 22-133 (E.D. Pa.) (Dkt. 165-1, filed June 3, 2025). On July 22, 2025, the Eastern District of Pennsylvania approved the firm's request for attorneys' fees. *Binder*, No. 22-133, Dkt. 168 (E.D. Pa. July 22, 2025).

78. In making any fee claims, like Schlichter Bogard LLC and consistent with *Missouri v. Jenkins*, 491 U.S. 274, 284 (1989), my firm and those we represent in making fee claims, request and are awarded our current billing rates as a means of compensating for delay in payment or loss of interest. Based on my analysis of national rates and the increases from prior years, the rates listed above are well within the range of reasonable rates for this year.



79. Schlichter Bogard LLC's rates from earlier years have been approved by multiple courts. On September 17, 2024, the District of South Carolina approved Schlichter Bogard LLC's attorneys' fees of one-third of the settlement proceeds in an ERISA class action, relying in part on 2023 hourly rates used in a lodestar cross-check. *Williams v. Centerra Group, LLC*, No. 20-4220, Dkt. 269 at 15 (D.S.C. Sept. 17, 2024). That lodestar calculation used the following now two-year-old rates: for attorneys with at least 25 years of experience, \$1,370 per hour; for attorneys with 15–24 years of experience, \$1,165 per hour; for attorneys with 5–14 years of experience, \$840 per hour; for attorneys with 0–4 years of experience, \$635 per hour; and for paralegals and law clerks, \$425 per hour. *Id.*

80. The now two-year-old 2023 rates used in *Williams* were previously approved in August of 2024 by the Central District of California in *Munro v. Univ. of So. Cal.*, No. 16-6191, Dkt. 384 at 16 (C.D. Cal. Aug. 24, 2023), and in March of 2023 by the District of Massachusetts in *Ford v. Takeda Pharms. U.S.A., Inc.*, No. 21-10090, 2023 U.S. Dist. LEXIS 93286, at \*6–7 (D. Mass. Mar. 31, 2023).

81. Prior to that, numerous courts have approved Schlichter Bogard LLC's requested fee rates involving complex claims of fiduciary breaches in defined contribution plans from their most experienced attorneys to their junior lawyers and paralegals, including in this District. *See Sweda v. Univ. of Pa.*, No. 16-4329, 2021 U.S. Dist. LEXIS 239990 (E.D. Pa. Dec. 14, 2021); *Cates v. Trs. of Columbia Univ.*, No. 16-06524, 2021 U.S. Dist. LEXIS 200890 (S.D.N.Y. Oct. 18, 2021); *Pledger v. Reliance Tr. Co.*, No. 15-4444, 2021 U.S. Dist. LEXIS 105868 (N.D. Ga. Mar. 8, 2021); *Kelly v. The Johns Hopkins Univ.*, No. 16-2835, Dkt. 94 (D. Md. Jan. 28, 2020); *Cassell v. Vanderbilt University*, No. 16-2086, Dkt. 174 (M.D. Tenn. Oct. 22, 2019); *Bell v. Pension Comm. of ATH Holding Co., LLC*, No. 15-2062, 2019 WL 4193376 (S.D. Ind. Sept. 4, 2019); *Clark v. Duke Univ.*, No. 16-1044, 2019 WL 2579201 (M.D.N.C. June 24, 2019); *Sims v. BB&T Corp.*, No. 15-732, 2019 WL 1993519 (M.D.N.C. May 6, 2019).

82. Schlichter Bogard LLC's 2025 requested rates herein represent an approximate 6% annual increase from two years ago in 2023, using the rates used in *Williams*, *Munro*, and *Ford*.

This increase is consistent with other top firms reporting increases on average of 6% based on recent surveys and studies.

83. I am familiar with the rates charged by attorneys nationally in major markets, including New York, Washington, D.C., Philadelphia, Chicago, Los Angeles, and San Francisco. The hourly rates requested by Schlichter Bogard LLC are well within the rates charged by attorneys of equivalent experience, skill, and expertise for comparable services.

84. For this type of complex class action litigation, a national rate for attorneys' fees applies, and the firms which defend these cases are national firms. Because of the unique nature of Schlichter Bogard LLC's practice, the fact that few other firms are bringing innovative 401(k) lawsuits like the case at bar, the outstanding quality of the firm's work, and the results they achieve for their clients, the firm and their attorneys should be compensated at rates reflective of the top of the national legal market.

85. Not only are these requested fees entirely reasonable, but they are also on par with fees reported by national law firms almost *nine years ago*.<sup>21</sup> According to multiple sources,

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<sup>21</sup> Sara Randazzo and Jacqueline Palank, "Legal Fees Cross New Mark: \$1,500 an Hour," Wall St. J., Feb. 9, 2016, available at <https://www.wsj.com/articles/legal-fees-reach-new-pinnacle-1-500-an-hour-1454960708> ("senior partners routinely charge between \$1,200 and \$1,300 an hour, with top rates at several large law firms exceeding \$1,400"); Martha Neil, "Top Partner Billing Rates at BigLaw Firms Approach \$1,500 Per Hour," ABA Journal, Feb. 8, 2016, available at [http://www.abajournal.com/news/article/top\\_partner\\_billing\\_rates\\_at\\_biglaw\\_firms\\_nudge\\_1500\\_per\\_hour](http://www.abajournal.com/news/article/top_partner_billing_rates_at_biglaw_firms_nudge_1500_per_hour) (noted billing rates as high as \$1,475); *In re SRC Liquidation, LLC*, No. 15-10541-BLS, Dkt. 1404 (Bankr. D. Del.) (filed Dec. 15, 2015), Final Application of Gibson, Dunn & Crutcher LLP as General Bankruptcy and Restructuring Co-Counsel for Debtors and Debtors-in Possession for Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred for the Final Period Mar. 12, 2015–Nov. 19, 2015 at 4 (2015 fee application of Gibson Dunn revealing rates for partners in bankruptcy case as high as \$1,475).

prominent partners at some large firms more recently bill rates up to \$2,000 per hour.<sup>22</sup> With some anticipating that rates in 2025 will approach or exceed \$3,000 per hour.<sup>23</sup>

86. Over two years ago, in October of 2022, it was reported that national law firms such as Willkie Farr & Gallagher — the firm Schlichter Bogard LLC *defeated* in the United States Supreme Court in *Hughes v. Northwestern*, *supra* — requested up to \$2,050 for its top-billing partners.<sup>24</sup> Similarly, Kirkland & Ellis requested \$1,995 for its top-billing partners.<sup>25</sup>

87. As of December 2022, Hogan Lovells US LLP requested \$2,465 per hour for a partner with 23 years of experience, \$995 per hour for a seventh-year associate, and \$685 per hour for a third-year associate. *See Exhibit 5* at 3–4. That same month, Quinn Emanuel Urquhart & Sullivan, LLP requested \$2,130 per hour for a partner with 25 years of experience, \$1,350 for an attorney with 13 years of experience, and \$1,165 per hour for a fifth-year associate. *See Exhibit 6* at 28. In April 2021, a federal court approved a request from Paul, Weiss, Rifkind, Wharton & Garrison LLP for \$1,440 per hour for a partner with 13 years of experience, \$980 per hour for a fifth-year associate, and \$685 per hour for an associate who had not yet been admitted to the bar. *See Exhibits 7 and 8*. These rates are conservative because they do not reflect the annual increases in billing rates since 2023.

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<sup>22</sup> *See, e.g.*, Mike Scarcella and Marcia Coyle, “What New Supreme Court Cases Reveal Account Big Law Billing Rates,” Law360, Aug. 27, 2019, available at <https://www.law.com/nationallawjournal/2019/08/27/what-new-supreme-court-cases-reveal-about-big-law-billing-rates/> (discussing rates ranging from \$900 to \$1,745 per hour); Aeberle Coe, “What Do the Highest-Paid Lawyers Make an Hour?,” Law360, May 11, 2016, available at <https://www.law360.com/legalindustry/articles/794929/what-do-the-highest-paid-lawyers-make-an-hour-> (noting that research conducted by the BTI Consulting Group revealed that rates “reached \$2,000 per hour” in 2016, up from the previous high of \$1,600 per hour in 2015); Karen Sloan, “\$1,000 Per Hour Isn’t Rare Anymore,” Nat’l L.J., Jan. 13, 2014, available at <https://www.law.com/nationallawjournal/almID/1202637587261/> (noting that “four-figure hourly rates for in-demand partners at the most prestigious firms don’t raise eyebrows—and a few top earners are closing in on \$2,000 an hour”).

<sup>23</sup> Mimi Lamarre and Andrew Maloney, “Senior Partners Approach \$3,000 an Hour, As More Billing Rate Hikes Expected in 2025,” American Lawyer, Sept. 24, 2024, available at <https://www.law.com/americanlawyer/2024/09/24/senior-partners-approach-3000-an-hour-as-more-billing-rate-hikes-expected-in-2025/>.

<sup>24</sup> Dan Roe, “Willkie Tops \$2,000/Hour, Kirkland Reveals \$16 Million Advance Retainer in Cineworld Bankruptcy,” The American Lawyer, Oct. 12, 2022, available at <https://www.law.com/americanlawyer/2022/10/12/willkie-tops-2000hour-kirkland-reveals-16-million-advance-retainer-in-cineworld-bankruptcy/>.

<sup>25</sup> *Id.*

88. In my experience, the hourly rates set forth above are those charged where full payment is expected promptly upon the rendition of the billing and without consideration of factors other than hours and rates. If any substantial part of the payment were to be contingent or deferred for any substantial period of time, for example, the fee arrangement would be adjusted accordingly to compensate the attorneys for those factors.

89. The expense, deferred payment, and inherent risk involved in public interest common fund class action litigation has not diminished over the years; to the contrary, these cases are in many ways more difficult than ever. As a result, the few who are willing to take on such cases can only continue to do so if their fee awards reflect true market value.

**A LODESTAR CROSS-CHECK CONFIRMS THE REASONABLENESS OF THE REQUESTED FEE**


90. Class Counsel requests that the Court award attorneys' fees of one-third of the Settlement Fund Balance (or \$16,513,179). This request represents a lodestar multiplier less than 1 at this time, with many more hours to be spent. Multipliers are commonly awarded in common fund cases for both risk and delay. Here, nothing is included for the firm's work going forward.

91. In my opinion, the attorney's fee of one-third of the common fund that Schlichter Bogard LLC seeks here is entirely appropriate, given the risk of litigation and outlay of funds, and especially the outstanding monetary results achieved by the settlement and the firm's exceptional skill. *Cf. Perdue v. Kenny A*, 559 U.S. 542 (2010) (plaintiffs' statutory attorneys' fees may be enhanced for extraordinary quality of representation and results).

92. Based on the facts above and my experience, the fee rates proposed by Schlichter Bogard LLC are reasonable. Not only are these rates consistent with national rates commensurate with the type of unique, ground-breaking litigation brought by the firm, they are lower than the rates charged by the firms defending these cases and are further appropriately aligned with the rates sought by plaintiffs' firms in complex class action litigation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 22, 2025 at San Francisco, California.

  
\_\_\_\_\_  
Sanford Jay Rosen



## Sanford Jay Rosen

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E: srosen@rbgg.com

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### **PRESENT:**

Founding Partner in a firm of twenty-seven lawyers specializing in complex litigation.

### **LAW PRACTICE:**

My experience includes a wide variety of civil work for plaintiffs and defendants, including class actions, and criminal defense work. I have secured many judgments and settlements of over a million dollars.

I have presented oral argument in the U.S. Supreme Court in five cases, in the U.S. Courts of Appeals for nine of the Circuits more than 30 occasions (more than half of which have been in the Ninth Circuit), and before the California Supreme Court and Courts of Appeal more than 10 times. I have briefed many more appeals for parties and for *amici curiae*.

I have tried numerous civil cases to jury and bench in federal district courts in California, Colorado, New York, Ohio and Virginia, and in California state courts; misdemeanors in Maryland state courts; and arbitrations and special proceedings in California, Hawaii and the Commonwealth of the Northern Mariana Islands.

I also represent parties in employment contract negotiations, and work as a testifying expert witness on attorneys' fees and billing practices issues. I have also worked as an arbitrator, mediator, early neutral evaluator and been a special master.

### **BAR ADMISSIONS:**

1. Connecticut (August 14, 1962) (inactive), District of Columbia (November 30, 1973) (inactive), California (December 18, 1974)
2. Supreme Court of the United States (March 1, 1966)
3. U.S.C.A.'s for all of the Circuits, except the First and Eleventh Circuits
4. U.S.D.C.'s: N.D. Cal., E.D. Cal., C.D. Cal., N. D. Ohio, D. Md., D. Conn., S.D.N.Y.

### **BAR ASSOCIATIONS (PARTIAL LIST):**

- |   |                                     |
|---|-------------------------------------|
| 1. California State Bar                 | 4. American Bar Association         |
| 2. Bar Association of San Francisco     | 5. American Association for Justice |
| 3. District of Columbia Bar Association | 6. Consumer Lawyers of California   |

### **EDUCATION:**

Cornell University, A.B., 1959; Yale Law School, L.L.B., 1962.



### **BIOGRAPHICAL LISTING AND RATINGS:**

1. Martindale Hubbell; A-V rating
2. Northern California Super Lawyers (since 2004)
3. *The Best Lawyers in America* (since 2013)
4. Lawdragon 500 Leading Plaintiff Employment Lawyers (since 2018)

### **HONORS:**

- |   |  |
|---|--|
| <ol style="list-style-type: none"> <li>1. Council on Legal Education Opportunity (CLEO) Edge Founders Award 2018</li> <li>2. CLEO Diversity Pioneer Honoree, 2008</li> <li>3. NAACP LDF Cooperating Attorney Honoree, 1995</li> </ol> | <ol style="list-style-type: none"> <li>4. Prisoner's Union's Free Person Honoree, 1993</li> <li>5. Legal Services Honoree, MALDEF, 1987</li> <li>6. Bouton Law Lecturer, Princeton University, 1971</li> </ol> |
|---|--|

### **PAST LEGAL EMPLOYMENT:**

1. Principal, Rosen & Associates, 1990.
2. Partner, Rosen & Phillips, 1986 to 1989.
3. Principal, Law Offices of Sanford Jay Rosen, 1982 to 1985.
4. Partner, Rosen, Remcho & Henderson (after 1980, Rosen & Remcho), 1976 to 1982.
5. Legal Director, MALDEF, 1973 to 1975.
6. Assistant Legal Director, ACLU (National Office), 1971 to 1973; Special counsel, May through August 1970 and 1975 to 1983 (Kent State Litigation Project).
7. University of Texas at Austin, Visiting Professor of Law, 1970 to 1971.
8. Associate Director, Council on Legal Education Opportunity, 1969 to 1970.
9. School of Law, University of Maryland, 1963 to 1971:
  - (a) Assistant Professor, 1963 to 1966;
  - (b) Associate Professor, 1966 to 1969 (tenured);
  - (c) Professor, 1969 to 1971 (tenured).
10. Law Clerk, Chief Judge Simon E. Sobeloff, U.S.C.A. for the 4<sup>th</sup> Circuit, 1962 to 1963.

### **ALTERNATIVE DISPUTE RESOLUTION SERVICES :**

1. American Arbitration Association National Employment, Labor, Employee Benefits and Commercial Dispute Resolution Panels until 2025.
2. Labor Management Relations Arbitrator, 1965 to 2025:
  - (a) American Arbitration Association;
  - (b) in the past on other specific panels and the Federal Mediation and Conciliation Service for more than 40 years.
3. Early Neutral Evaluator, U.S.D.C., N.D. Cal., 1987-2023.
4. Mediator, U.S.D.C., N.D. Cal., since 1993-2023.
5. Acting Monitor, U.S.D.C., N.D. Cal., *San Francisco Firefighters Case*, 1989.
6. Mediator, Cal. Court of Appeal, 1st Dist., 2004-2013.
7. Pro Tem Judge, Superior Court, City and County of San Francisco, 1990-2018.
8. *Ad hoc* Admin. Law Officer, California's Agricultural Labor Relations Board, 1975-80.
9. Member Dalkon Shield damages arbitration panel for Northern California, 1991 to 1993.



**GOVERNMENT BOARDS:**

1. Member, Baltimore, MD Community Relations Commission, 1966 to 1969.
2. Member, State of Maryland's Patuxent Institution Board of Review (a prison parole board), the Patuxent's Advisory Board and its Board of Governors, 1967 to 1969.
3. Member, Mayor of Baltimore's Committee on Administration of Criminal Justice Under Emergency Conditions, 1968.
4. Member, National Advisory Committee [of the U.S. HEW] project to draft a uniform Child Abuse and Neglect Law, 1974 to 1975.

**SELECTED ADDITIONAL PROFESSIONAL ACTIVITIES:**

1. Attorney Delegate from the U.S. D.C. N.D. Cal. to the 9th Circuit Judicial Conference, 1996 to 1998.
2. Permanent Member, Fourth Circuit Judicial Conference, since 1967 now *emeritus*.
3. Member, ABA Litigation Section's Committee to Study Rule 11, 1986 to 1989.
4. Co-chairperson and/or Faculty Member, Practicing Law (PLI) Institute programs on Civil Litigation, Federal Civil Rights Litigation, and/or Attorneys' Fees, 1976 to 1989; Faculty in other federal practice and attorneys' fees programs--most recently in 2004.
5. Faculty, California's Continuing Education of the Bar (CEB), Federal Litigation Program, 1986; Fundamentals of Civil Litigation Before Trial, 1988; (Chair) Litigating Civil Rights Cases in Federal and State Court, 1989, 1992, 1995 and 1996.
6. Faculty, Georgetown University Law Center's CLE § 1983 Civil Rights Litigation Program, 1993.
7. Faculty, ATLA's Civil Rights Section Civil Rights CLE Program, 1992 and 1993 (Moderator), 1996, 1998; Employment Rights Section CLE Program Faculty, 1999; Civil Rights Section and Minority Caucus CLE, 2003.
8. Treasurer, Exec. Committee and Chair of Education Committee of ATLA's Civil Rights Section, 1992 to 1993; 1993 to 1994; Civil Rights Newsletter Editor, 1994 to 1999; Member, Constitutional Litigation Committee, 1996.
9. Faculty, California Employment Lawyers Association CLE Program, 1999.
10. Faculty, Los Angeles Consumer Lawyers CLE Program, 2001.
11. Faculty, California State Bar Labor Section CLE, 2002.
12. Faculty, Lorman CLE on Police Misconduct and Institutional Reform in California, 2005.

**SELECTED PUBLICATIONS:**

1. *Fair Representation, Contract Breach and Fiduciary Obligations*, 15 HASTINGS L.J. 391 (1964).
2. *The Individual Worker in Grievance Arbitration*, 24 MD. L. REV. 233 (1964).
3. *The Law and Racial Discrimination in Employment*, 53 CAL. L. REV. 279 (1965); *revised and reprinted in* EMPLOYMENT, RACE AND POVERTY (Ross & Hill eds., Harcourt, Brace and World 1966); CORPORATE COUNSEL'S ANNUAL 1966 (Matthew Bender & Co. 1966).
4. Review of *Marshall, The Negro and Organized Labor*, 75 Yale L.J. 682 (1966).
5. *Division of Authority Under Title VII of the Civil Rights Act of 1964: A Preliminary Study in Federal-State and Interagency Relations*, 34 GEO. WASH. L. REV. 846 (1966).





6. *Contemporary Winds and Currents in Criminal Law, With Special Reference to Constitutional Criminal Procedure*, 27 MD. L. REV. 103 (1967), revised and reprinted in SOURCEBOOK FOR PROSECUTORS (PLI 1969).
7. Review of *Sovern, Legal Restraints on Racial Discrimination in Employment*, 81 HARV. L. REV. 276 (1967).
8. *Preemption and Exemption Under the National Labor Relations Act: Myths, Long Standing Questions and Recent Developments*, 21 N.Y.U. ANN. CONF. ON LAB. 243 (1969).
9. *Civil Disobedience and Other Such Techniques: Law Making Through Law Breaking*, 37 GEO. WASH. L. REV. 435 (1969).
10. Co-author of Comment on *Powell v. McCormack*, 17 U.C.L.A. L. REV. 58 (1969).
11. *Equalizing Access to Legal Education: Special Programs for Law Students Not Admissible by Ordinary Criteria*, 1970 TOLEDO L. REV. 321 (1970).
12. *The Greening of the Scranton Commission: Campus Unrest and Change in America*, 71 COLUM. L. REV. 1120 (1971); 57 AAUP BUL. 506 (Dec. 1971).
13. Co-author of *Your Rights Before the Grand Jury*, ACLU Pamphlet (Feb. 1972).
14. Co-author of *Your Right to Government Information*, ACLU Pamphlet (Feb. 1973).
15. Review of several books on Treason, 51 TEX. L. REV. 817 (1973).
16. *Judge Sobeloff's Public School Race Segregation Decisions*, 34 MD. L. REV. 498 (1974)
17. Co-author of *State and Local Regulation of Religious Solicitation of Funds: A Constitutional Perspective*, 446 ANNALS 166 (Nov. 1979).
18. *The Legal Battle: Finishing Unfinished Business*, in KENT STATE/MAY 4: ECHOES THROUGH A DECADE (Scott L. Bills ed., 1982).
19. *Seeking Environmental Justice For Minorities and Poor People* (with Tom Nolan), TRIAL MAGAZINE, Dec. 1994.
20. *Defeating Efforts to Delay Section 1983 cases*, TRIAL MAGAZINE, Aug. 1999.
21. *Acknowledging a Military Wrong*, TRIAL MAGAZINE, Apr. 2001.
22. *A Strike Against Qualified Immunity*, co-authored with Geri Lyn Green, THE RECORDER, October 1, 2010
23. *Attorneys' Fees, Costs and Interest* (with Michael Freedman), in CALIFORNIA EDUCATION OF THE BAR (CEB) EMPLOYMENT LAW PRACTICE GUIDE (Spring 2012).
24. *Seeking Justice in Their Memory – Victims of the Kent State Shootings*, THE RECORDER, May 4, 2012
25. *Online Bickel symposium: How I spent my summer of 1961*, SCOTUSblog (Aug. 17, 2012, 12:56 P.M.), available at <http://www.scotusblog.com/2012/08/online-bickel-symposium-how-i-spent-mysummer-of-1961/>.
26. *Same Sex Marriage: The Time Has Come*, The Recorder, June 28, 2013
27. *The Rights of Transgender Prisoners*, Daily Journal, June 17, 2015
28. *SF Jail Housing Policy a Big Step*, Daily Journal, Sept. 21, 2015
29. *Toward a More Perfect Union: Restoring Felons Who Have Served Their Time to Full Citizenship*, co-authored with Jeffrey Bornstein, Daily Journal, May 10, 2016
30. *Have You Actually Read the Directive on Use of Restrooms by Transgender Students?*, Daily Journal, May 19, 2016
31. *Anti-discrimination laws in jeopardy across the board*, , Sept. 25, 2017
32. *NIFLA v Becerra: folly, fallout and follow-up*, Daily Journal, July 3, 2018



33. New Justices and shifting public opinion make Title VII cases hard to predict, *Daily Journal*, May 7, 2019
34. The increasing positioning and politicizing of federal courts, *Daily Journal*, Feb. 23, 2020
35. Response to a *Column on overturned conviction is wrong on the facts and the law*, *Daily Journal*, March 3, 2020
36. “The Kent State Shootings After Nearly 50 Years,” in *The Cost of Freedom*, edited by Susan Ehrenich, Kent State University Press, 2020
37. *Bostock Opinions Rewrite the Likely Future of the US Supreme Court*, *Daily Journal*, June 22, 2020
38. *Take Qualified Immunity Out of the Equation*, *Daily Journal*, May 4, 2021
39. *Case pits LGBTQ access to public accommodations against vendors’ First Amendment rights*, *Daily Journal*, March 9, 2022 (with Thomas Nolan)
40. Numerous articles in the *Huffington Post*, available at <https://www.huffingtonpost.com/sanford-jay-rosen>. or <https://rbgg.com/attorneys/partners/sanford-jay-rosen/>
41. Additional reviews and essays in the Boston College Industrial and Labor Relations Review; the Brooklyn, California Western, George Washington, Maryland (2) and Pennsylvania Law Reviews; The Journal of Legal Education; The Law Library Journal; The Maryland Law Forum (2); The Cornell Industrial and Labor Relations Review; The Baltimore Sun (2); Patterns of Prejudice (2); Civil Liberties (4); and the Kent Left Studies/Left Review.
42. Numerous print and outline articles on federal and state civil practice and procedure subjects, on attorneys’ fees, and on employment and civil rights litigation, commencing 1976, up to the present, for the Practicing Law Institute, California’s CEB, ATLA (now AAJ), the Georgetown Law Center, the California State Bar Employment Section and other CLE provider organizations.
43. Co-Author with Michael Freedman of Chapter in *Employment Damages and Remedies* entitled “Attorney Fees, Costs and Remedies,” California Continuing Education of the Bar, since 2012 with annual updates.
44. Public lectures at Princeton University, the University of Texas (Austin), Kent State University and Emerson College; panel and other presentations at the Yale Law School.
45. Testimony to congressional committees.
46. Author and editor of comprehensive set of materials to guide appointed counsel for indigent prisoners in cases filed under 42 U.S.C. § 1983 for the U.S.D.C., N.D. Cal. (1988; 2nd ed. 1990; 3rd ed. 1992; and 4th ed. (for both the N.D and the E.D.) 1996).
47. ACLU Know Your Rights Pamphlets before Grand Juries and using the FOIA.

### **SELECTED CASES:**

*U.S. Supreme Court:* My first Supreme Court argument was in *Whitehill v. Elkins*, 389 U.S. 54 (1967), in which the Supreme Court declared most of Maryland’s loyal-security statute unconstitutional, overruling its previous decision sustaining that law. The four other cases I briefed and argued in the Supreme Court of the United States are: *Connell v. Higginbotham*, 403 U.S. 207 (1971) (in which the Court recognized due process rights of non-tenured public employees); *Socialist Labor Party v. Gilligan*, 406 U.S. 583 (1972) (which the Court dismissed as unripe); *Communist Party of Indiana v. Whitcomb*, 414 U.S. 441 (1974) (in which for the first



time the Court applied full blown First Amendment standards to declare unconstitutional a civil disability as opposed to a criminal sanction); and *Collins v. City of Harker Heights*, 503 U.S. 115 (1992) (in which the Court significantly clarified the elements and liability standards for many 42 U.S.C. § 1983 claims and for municipal liability in § 1983 actions). I also have prepared petitions, briefs and motions in numerous other Supreme Court cases.

Select Other Appeals: Among the other appeals in which I have been lead counsel and won are: (1) *Landmark Screens, LLC v. Morgan, Lewis & Bockius, LLP*, 676 F.3d 1354 (Fed. Cir. 2012), reversing district court orders to hold that equitable tolling extends time to file an actual fraud claim and damages not cut off as a matter of law upon granting of a reissue patent; (2) *Prison Legal News v. Schwarzenegger*, 608 F.3d 446 (9th Cir. 2010), affirming the power of a federal district court to order monitoring to ensure publisher's First Amendment rights to send books and magazines into state institutions; (3) *Davis v. California Department of Corrections* (Oct. 31, 1997, Cal. Ct. App. A076411), upholding in unpublished opinion multimillion dollar fee award under the Unruh Act, including a 1.25 multiplier; (4) *Holland v. Roeser*, 37 F.3d 501 (9th Cir. 1994), holding that Rule 68 Offers of Judgment do not cut off fees for making a subsequent fee application unless the offer is unambiguous on the issue (I prepared only the successful Petition for Rehearing/Suggestion of Rehearing *en Banc* that caused the panel to reverse itself); (5) four appeals (one unreported) in *Gates v. Deukmejian*, including 987 F.2d 1392 (9th Cir. 1993), 39 F.3d 1439 (9th Cir. 1994) and 60 F.3d 525 (9th Cir. 1995), a prison conditions case; (6) *Rebney v. Wells Fargo Bank*, 232 Cal. App. 3d 1344 (1991), a consumer class action attorney fee matter; (7) *Lucas Valley Home Owners Ass'n v. County of Marin*, 233 Cal. App. 3d 130 (1991), involving the validity under zoning law and constitutional law of a conditional use permit issued to a synagogue, the real-party-in-interest Chabad of Marin; (8) eight appeals in *Toussaint v. McCarthy*, including 926 F.2d 800 (9th Cir. 1990), 826 F.2d 901 (9th Cir. 1987), 801 F.2d 1080 (9th Cir. 1986), and 722 F.2d 1490 (9th Cir. 1984), a prison conditions case; (9) two appeals in *EEOC v. Pan American World Airways, Inc.*, 796 F.2d 314 (9th Cir. 1986) and 897 F.2d 1499 (9th Cir. 1990), concerning two appeals -- one involving the appeal ability of a decision rejecting on grounds of inadequacy a settlement sponsored by the EEOC that my clients opposed, and the other affirming adoption of the nearly \$20 million settlement of this federal Age Discrimination in Employment case that I crafted after a two-month long jury trial; (10) *People v. Mroczko*, 35 Cal.3d 86 (1984), in which the California Supreme Court unanimously reversed my client's capital conviction for murder in a decision establishing the rule in California that each indigent criminal defendant presumptively must be represented by his own appointed attorney; (11) several appeals arising out of the May 4, 1970 shooting of students at Kent State University, including 671 F.2d 212 (6th Cir. 1982) and 570 F.2d 563 (6th Cir. 1977), the civil rights-wrongful death and bodily injury cases I successfully appealed, retried and settled; (12) *Familias Unidas v. Briscoe*, 544 F.2d 182 (5th Cir. 1976), an appeal overturning discovery sanctions and the First Amendment in a case involving a Texas statute that required disclosure of a civil rights organization's membership list; (13) *Marin City Council v. Marin County Redevelopment Agency*, 416 F. Supp. 707 (N.D. Cal. 1976), involving a complex case where the court rejected a claim that HUD and a developer (my client) had provided insufficient federally assisted low-cost housing in a Marin County housing development. The decision was affirmed by the Ninth Circuit in an unpublished opinion; (14) *Evergreen v. Foundation Films, Inc. v. Davis*, where I succeeded before the Ninth Circuit on an expedited appeal involving the motion picture rights to Dee Brown's BURY MY HEART AT WOUNDED KNEE; (15) *Vinyl Products Inc. v. Armstrong*



*Asphalt*, in which the California Court of Appeal reversed a JNOV in a negligence and breach of warranty case in an unpublished decision; (15) *United States v. Hawthorne*, 370 F.2d 330 (4th Cir. 1966), which constitutional narrowed the scope of the 1961 Federal Criminal Travel Act on constitutional grounds. I also participated in the briefing of many other cases including *Weeks v. Baker & McKenzie*, 63 Cal. App. 4th 1128 (1998) (sexual harassment case); *Greene v. Dillingham Construction NA*, 101 Cal. App. 4th 418 (2002) (attorneys' fees appeal); and *Gober v. Ralphs Grocery Company*, 128 Cal. App. 4th 648 (2005), 137 Cal. App. 4th 204 (2006), and No. D050962 (Cal. App. 4th Dist., Sept. 30, 2008) (unpublished) (punitive damages and attorneys' fees in sexual harassment case).

*Three-Judge District Court:* I won summary judgment motions for plaintiffs before three-judge district courts in the District of Columbia. *Williams v. Blount*, 314 F. Supp. 1356 (D.D.C. 1970), declaring censorship of Williams' newspaper violated procedural due process of law. *Hiss v. Hampton*, 338 F. Supp. 1141 (D.D.C. 1972), declaring the "Hiss Act," which denied Alger Hiss and others their U.S. government service annuities, an unconstitutional *ex post facto* law.

*Amicus Curiae Briefs:* I was Counsel of Record on *amicus curiae* briefs in *Hollingsworth v. Perry*, 570 U.S. 693 (2013), challenging California Proposition 8's ban of same-sex marriages, and in *United States v. Windsor*, 570 U.S. 744 (2013), challenging the federal "Defense of Marriage Act." I was lead counsel in numerous U.S. Supreme Court cases to vindicate the women's right to choose and those of LGBTQ and disabled people-- *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016), *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 584 U.S. — (2018), *NIFLA v. Becerra*, 585 U.S. — (2018), *Bostock v. Clayton County, Georgia*, No. 17-168; *Altitude Express, Inc. v. Zarda*, No. 17-1623 and *R.G. & G.R. Harris Funeral Homes, Inc. v. E.E.O.C.*, 590 U. S. — (2020), *Fulton v. City of Philadelphia*, 593 US — (2021) and *303 Creative LLC v. Elenis*, 600 US — (2023). I was also Counsel of Record on *amicus curiae* briefs in *Perdue v. Kenny A*, 559 U.S. —, 130 S. Ct. 1662 (2010), in which the Supreme Court held that civil rights plaintiffs' attorneys fees can be enhanced for quality of representation and results, *City of Burlington v. Dague*, 505 U.S. 557 (1992), urging the Court to permit enhancements of fee awards above the "loadstar" amount in appropriate cases pursuant to environmental fee shifting statutes, and in *Beard v. Banks*, 548 U.S. 521 (2006) in support of a First Amendment challenge to a Pennsylvania prison policy that denied certain prisoners access to any newspapers, magazines, and photographs. I was Lead counsel on an *amicus curiae* brief in the California Supreme Court in *County of Santa Clara v. Superior Court (Atlantic Richfield)*, 50 Cal.4th 35 (2010), in which the Court held that public entities can retain private contingent fee lawyers in public nuisance cases. I was lead counsel on an *amicus curiae* brief in *Ibrahim v. Department of Homeland Security*, 669 F.3d 983 (9th Cir. 2012), in which the court held that plaintiff could challenge her inclusion on watch and no fly lists, and on *amici curiae* briefs in support of California SB 1172, which prohibits sexual reorientation "therapy" to minors in *Welch v. Brown*, and *Pickup v. Brown*, 728 F.3d 1042 (9th Cir. 2013), in support of New Jersey's law in *King v. New Jersey*, 767 F.3d 216 (3d Cir. 2014), and in support of Maryland's law in *Doyle v. Hogan*, 1 F.4<sup>th</sup> 29 (2021).

*Representative Additional Trial Work Matters:* I have taken to judgment and settled numerous police and prison misconduct civil rights cases. For example, in 2014 and 2015, I settled two cases in the U.S. D. C for the District of Hawaii against the Corrections Corporation of America and the State of Hawaii arising out of the killings of two Hawaii inmates in a CCA prison in





Arizona. The terms of the settlements are confidential. (*Estate of Nunuha v. State of Hawaii* and *Estate of Medina v. State of Hawaii*). I tried for two months and then settled a prison conditions case securing an agreement requiring California to improve medical and mental health care, treatment of HIV prisoners, and conditions of confinement for certain California prisoners. See *Gates v. Deukmejian*, 987 F.2d 1392 (9th Cir. 1993), *Gates v. Rowland*, 39 F.3d 1439 (9th Cir. 1994), and *Gates v. Gomez*, 60 F.3d 525 (9th Cir. 1995). After a two-month trial, I secured a permanent injunction ending deplorable prison conditions in California's prison segregation units. See, e.g., *Toussaint v. McCarthy*, 926 F.2d 800 (9th Cir. 1990), 826 F.2d 901 (9th Cir. 1987), and 801 F.2d 1080 (9th Cir. 1986). I brought to re-trial and then successfully settled the Kent State Civil Damages cases in the United States District Court for the Northern District of Ohio. See *Krause v. Rhodes*. Earlier I had tried to a plaintiff's judgment several students' challenge to sweep searches of the Kent State campus following the May 4, 1970 shootings. Similarly, I have tried and settled numerous high value employment cases. In *Andrews v. Equinox Holdings, Inc.*, No. 20-CV-00485-SK, 2021 WL 5275822 (N.D. Cal. Nov. 9, 2021), on the verge of trial I settled an age discrimination case for a recovery of just under \$2,000,000 for damages and attorneys' fees. In 2000, I tried *Yarborough v. PeopleSoft* to a jury in Alameda Superior Court, representing a woman who had been discharged by her employer for discriminatory reasons, securing a judgment of \$5.45 million. In *EEOC v. Pan American World Airways, Inc.*, I represented a large group of former Pan Am pilots in a two month jury trial of their age discrimination claims and secured a \$20 million dollar settlement. The settlement, which the Ninth Circuit affirmed, was the largest ADEA settlement to date. See *EEOC v. Pan Am. World Airways, Inc.*, 796 F.2d 314 (9th Cir. 1986), and 897 F.2d 1499 (9th Cir. 1990). In *Stewart v. County of Sonoma*, I represented a female sheriff's deputy in her successful sexual case before a jury in the U.S. District Court for the N.D. CA. In *Sergeants for a Fair Lieutenants' Exam vs. City and County of San Francisco* tried in San Francisco Superior Court a challenge to the San Francisco Police Department's promotional exam on behalf of approximately 100 police officers, securing relief for many of my clients as well as attorney's fees. In addition to successfully prosecuting dozens of attorney's fees claims, I have also tried several attorney's fees matters. For example, in 1999-2000 in *Rotbart v. Feliciano*, I tried to a Special Master in Saipan and then to an arbitrator in Hawaii and secured my client's multi-million-dollar *quantum meruit* attorney's fee for his representation of an heir of DHL founder Larry Hillblom.

*Death Penalty Matters:* In addition to Richard Mroczko, whose case is described above, I have successfully represented other persons sentenced to death. Perhaps most notably, I have been representing Demetrie Mayfield for 40 years. Starting in the mid-1980's, I was appointed to represent him in his appeal to the California Supreme Court and in his state habeas corpus evidentiary hearing. We were unsuccessful in the California Supreme Court, and other attorneys were appointed to represent Mr. Mayfield in the federal courts. We submitted an amicus curiae brief in the Ninth Circuit supporting reversal of Mr. Mayfield's conviction and death sentence. *Mayfield v. Woodford*, 270 F.3d 915 (9th Cir. 2001) (en banc). My colleagues and I developed most of the record on basis of which the Ninth Circuit vacated his death sentence and sent the case back to the California state courts for retrial as to penalty. Subsequently Mr. Mayfield was sentenced to life without the possibility of parole. In 2018 I submitted a clemency application for Mr. Mayfield to California Governor Jerry Brown. He granted that application on



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December 24, 2018, making Mr. Mayfield eligible for possible parole. I then represented Mr. Mayfield in his parole proceedings, and he was paroled in 2020. He is successfully living as a free person since his release. Over the years, I have represented other criminal defendants in sentence reduction and parole proceedings.

## MATERIALS CONSIDERED

In addition to the materials identified in this declaration, I also considered the following documents outlined below from this class action and others handled by Schlichter Bogard LLC.

*Khan, et al. v. Board of Directors of Pentegra Defined Contribution Plan, et al.* case documents:

- Consolidated Class Action Complaint (Dkt. 74)
- Memorandum of Law in Opposition to Defendants' Motion to Dismiss Amended Complaint (Dkt. 98)
- Memorandum of Law in Further Support of Defendants' Motion to Dismiss Pursuant to Rule 12(b)(6) (Dkt. 103)
- Reply in Further Support of Defendants' Request for Judicial Notice (Dkt. 104)
- Memorandum of Law in Support of Defendants' Motion to Dismiss Pursuant to Rule 12(b)(6) (Dkt. 106)
- Memorandum Opinion and Order on Defendants' Motion to Dismiss (Dkt. 149)
- Defendants' Memorandum of Law in Support of Their Motion to Strike Plaintiffs' Jury Demand (Dkt. 168)
- Memorandum in Opposition to Defendants' Motion to Strike Plaintiffs' Jury Demand (Dkt. 169)
- Memorandum in Support of Plaintiffs' Motion for Class Certification (Dkt. 171)
- Defendants' Memorandum of Law in Opposition to Plaintiffs' Motion for Class Certification (Dkt. 177)
- Defendants' Reply Memorandum of Law in Support of their Motion to Strike Plaintiffs' Jury Demand (Dkt. 180)
- Reply in Support of Plaintiffs' Motion for Class Certification (Dkt. 181)
- Opinion & Order on Defendants' Motion to Strike Jury Demand (Dkt. 190)
- Opinion & Order on Plaintiffs' Motion to Certify Class (Dkt. 191)
- Memorandum in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Settlement (Dkt. 301)
- Declaration of Troy A. Doles (Dkt. 302)
- Settlement Agreement and Exhibits (Dkt. 302-1)
- Settlement Term Sheet (Dkt. 302-2)
- Order Granting Unopposed Motion for Preliminary Approval of Class Action Settlement (Dkt. 304)
- Case Docket Sheet

Representative Schlichter Bogard case filings:

- *Binder, et al. v. PPL Corporation, et al.*, No. 22-133 (E.D. Pa.)
  - Order on Attorneys' Fees
  - Complaint
  - Memorandum of Law in Support of Defendants' Motion to Dismiss Plaintiffs' Complaint
  - Memorandum in Opposition to Defendants' Motion to Dismiss
  - Reply in Support of Defendants' Motion to Dismiss Plaintiffs' Complaint

- Memorandum and Opinion on Motion to Dismiss
- Order Denying Motion to Dismiss and Request for Judicial Notice
- Motion for Summary Judgment
- Memorandum of Law in Support of Defendants' Motion for Summary Judgment
- Memorandum in Opposition to Defendants' Motion for Summary Judgment
- Reply Memorandum in Further Support of Defendants' Motion for Summary Judgment
- Order on Motion for Summary Judgment
- Defendants' Motion *in Limine* to Exclude Pre-Repose Period Testimony from Plaintiffs' Experts
- Memorandum of Law in Support of Defendants' Motion *in Limine* to Exclude Pre-Repose Period Testimony from Plaintiffs' Experts
- Plaintiffs' Memorandum in Opposition to Defendants' Motion *in Limine* to Exclude Pre-Repose Period Testimony
- Reply in Support of Defendants' Motion *in Limine* to Exclude Pre-Repose Period Testimony from Plaintiffs' Experts
- Order Denying Defendants' Motion *in Limine* to Exclude Pre-Repose Period Testimony from Plaintiffs' Experts
- Plaintiffs' Motion *in Limine* to Exclude Expert Testimony of Cynthia Steer Under Federal Rule of Evidence 702
- Plaintiffs' Memorandum in Support of Motion to Exclude Expert Testimony of Cynthia Steer Under Federal Rule of Evidence 702
- Defendants' Opposition to Plaintiffs' Motion to Exclude Expert Testimony of Cynthia Steer Under Federal Rule of Evidence 702
- Order Denying Plaintiffs' Motion *in Limine* to Exclude Expert Testimony of Cynthia Steer
- Case Docket Sheet
- *Bell, et al. v. Ath Holding Company, LLC, et al.*, No. 15-2602 (S.D. Ind.)
  - Memorandum in Opposition of Defendants' Motion to Dismiss
  - Memorandum in Support of Plaintiffs' Motion for Class Cert
  - Order on Motion to Dismiss
  - Reply in Support of Plaintiffs' Motion for Class Certification
- *Cates, et al. v. The Trustees of Columbia University in the City of New York, et al.*, No. 16-06524 (S.D.N.Y.)
  - Order granting Motion for Attorneys' Fees and Costs
  - Memorandum in Support of Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and Case Contribution Awards
- *Ford, et al. v. Takeda Pharmaceuticals U.S.A., Inc., et al.*, No. 21-10090 (D. Mass.)
  - Second Amended Complaint
  - Settlement Agreement
  - Memorandum in Support of Unopposed Motion for Preliminary Approval of Class Settlement



- Memorandum in Support of Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and Case Contributions Awards for Named Plaintiffs
- Case Docket Sheet
- *Gordan, et al. v. Massachusetts Mutual Life Insurance Co., et al.*, No. 13-30184 (D. Mass.)
  - Order granting Motion for Attorneys' Fees and Costs
  - Memorandum in Support of Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and Case Contribution Awards
- *In re Northrop Grumman Corporation ERISA Litigation*, No. 06-6213 (C.D. Cal.)
  - Memorandum in Support of Motion for Class Certification
  - Order Granting Joint Stipulation re Class Cert Hearing
- *Jennifer Sweda, et al. v. University of Pennsylvania, et al.*, No. 17-3244 (E. D. Pa.)
  - Order granting Motion for Attorneys' Fees and Costs
  - Memorandum in Support of Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and Case Contribution Awards
- *Krueger, et al. v. Ameriprise Financial, Inc., et al.*, No. 11-2781 (D. Minn.)
  - Memorandum in Support of Motion to Certify Class Action
  - Order on Class Certification
  - Order on Motion to Dismiss Granted in Part Denied in Part
  - Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Dismiss
  - Reply in Support of Class Certification
- *Kruger, et al. v. Novant Health, Inc., et al.*, No. 14-208 (M.D. N.C.)
  - Opposition to Motion to Dismiss
  - Order Denying Defendants' Motion to Dismiss
  - Order Granting Motion for Attorneys' Fees
  - Declaration of Jerome Schlichter in Support of Motion for Class Certification
  - Declaration of Karen Ferguson in Support of Motion for Attorneys' Fees
  - Declaration of Thomas Theado in Support of Motion for Attorneys' Fees
- *Munro, et al. v. University of Southern California, et al.*, No. 16-6191 (C.D. Cal.)
  - Memorandum in Support of Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and Incentive Awards for Class Representatives
- *Pledger, et al. v. Reliance Trust Company, et al.*, No. 15-04444 (N.D. Ga.)
  - Order granting Motion for Attorneys' Fees and Costs
  - Memorandum in Support of Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and Case Contribution Awards
- *Ramos, et al. v. Banner Health, et al.*, No. 15-02556 (D. Colo.)
  - Amended Complaint
  - Plaintiff's Proposed Findings of Fact and Conclusion of Law
  - Schlichter Bogard & Denton Selected Attorneys Biography

- Banner Defendants' Final Proposed Findings of Fact and Conclusion of Law
- Findings of Fact and Conclusions of Law Entered Upon Trial on the Merits to the Court
- Final Judgement
- Case Docket Sheet
- *Ramsey, et al. v. Philips North America LLC.*, No. 18-1099 (S.D. Ill.)
  - Complaint
  - Settlement Agreement
  - Joint Motion for Preliminary Approval and Brief in Support
  - Motion for Class Certification and Brief in Support
  - Preliminary Approval Order
  - Case Docket Sheet
- *Spano, et al. v. Boeing Company, et al.*, No. 09-3001 (7th Cir.)
  - Appellees' Brief
- *Spano, et al. v. Boeing Company, et al.*, No. 06-743 (S.D. Ill.)
  - Memorandum and Order granting Motion for Attorneys' Fees and Costs
- *Tibble, et al. v. Edison International, et al.*, No. 07-5359 (C.D. Cal.)
  - Findings of Fact and Conclusions of Law
  - Plaintiffs' Trial Brief
- *Tibble, et al. v. Edison International, et al.*, No. 10-56406 (9th Cir.)
  - Appellants' 3rd Brief on Cross
  - Appellees' Cross Appellants 2nd Brief Cross Appeal
  - Plaintiffs' Appeal
  - Reply Brief of Appellants'
  - Supplemental Brief of Appellants
- *Tibble, et al. v. Edison International, et al.*, No. 11-56628 (9th Cir.)
  - Appellants' Brief
  - Appellants' Reply Brief
- *Tibble, et al. v. Edison International, et al.*, No. 13-550 (S. Ct.)
  - Supreme Court Brief
- *Tracey, et al. v. The Massachusetts Institute of Technology, et al.*, No. 16-11620 (D. Mass.)
  - Second Amended Complaint
  - Settlement Agreement
  - Memorandum in Support of Unopposed Motion for Preliminary Approval of Class Settlement
  - Case Docket Sheet

- *Troudt, et al. v. Oracle Corporation, et al.*, No. 16-00175 (D. Colo.)
  - Order Granting in Part Motion for Class Certification
  - Order Overruling Objections and Adopting Recommendation
  - Plaintiffs' Motion to Certify Class and Memo in Support
  - Plaintiffs' Response to Defendants' Superseding Motion to Dismiss the Complaint
  - Reply in Support of Motion for Class Certification
- *Turner, et al. v. Schneider Electric Holdings, Inc., et al.*, No. 20-11006 (D. Mass.)
  - Plaintiffs' Memorandum in Support of their Unopposed Motion for Attorneys' Fees, Reimbursement of Expenses, and Class Representative Awards
- *Tussey, et al. v. ABB, Inc., et al.*, No. 06-4305 (W.D. Mo.)
  - Order and Judgment
- *Tussey, et al. v. ABB, Inc., et al.*, No. 12-2056 (8th Cir.)
  - Appellees' Brief
- *Wachala, et al. v. Astellas US LLC, et al.*, No. 20-3882 (N.D. Ill.)
  - Memorandum in Support of Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and Case Contribution Awards for Class Representatives
- *Waldbuesser, et al. v. Northrop Grumman Corp, et al.*, No. 06-6213 (C.D. Cal.)
  - Order granting Motion for Attorneys' Fees and Costs
  - Plaintiffs' Proposed Findings of Fact and Conclusions of Law
- *Williams, et al. v. Centerra Group, et al.*, No. 20-4220 (D.S.C.)
  - Plaintiffs' Memorandum in Support of their Motion for Attorneys' Fees, Reimbursement of Expenses, and Class Representatives' Compensation
  - Declaration of Jerome J. Schlichter in Support of Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and Class Representatives' Compensation

GEORGETOWN LAW  
Center on Ethics and the Legal Profession

Thomson Reuters Institute

# 2024 Report on the State of the US Legal Market

The Challenge of Targeting the Right Markets  
with the Right Offerings




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## Executive summary

Leaning on the historical example of Pan Am Airways, the *2024 Report on the State of the US Legal Market* highlights fundamental shifts in the legal marketplace over the past 15 years and how law firm leaders who fail to respond to those changes and pivot quickly enough to prepare for the future may see their firms destined for the same fate as Pan Am.

Key among the report's findings is the shift from what the report dubs "the Transactional Decade" of the 2010s — a period marked by easy-to-borrow money and strong performance for law firms' transactional practices — to the more recent period in which the majority of growth in demand for law firm services has relied on counter-cyclical practices like litigation, bankruptcy, and labor & employment, which tend to run counter to general economic conditions.

The report also discusses the rapid increase in the pace of law firm rate growth, particularly over the past few years. In 2023, the rates clients agreed to pay law firms for new matters grew by more than 6%, with every segment of law firms seeing aggressive increases in worked rates on par with the pace seen prior to the Great Financial Crisis of 2008-'11 (GFC). At the same time, however, many law firms have seen their ability to collect on those increasing rates falter, and clients have become more aggressive about trying to tier work to lower-cost firms as a way to control costs.



***Key to law firm performance today is the shift from the Transactional Decade of the 2010s to the growing recent strength of counter-cyclical practices.***

**Among other key findings in the report:**

**Different segments of law firms have taken drastically different approaches to staffing strategies** with the largest firms actively cutting back on associate headcount, which continues to become more expensive due to salary increases. Meanwhile, Midsize law firms have grown associate ranks aggressively.

**Expenses have moderated somewhat compared to 2022**, but the general picture for expenses remains unclear due to persistent high growth in overhead expenses and a seeming resurgence in direct expense growth due to new increases in salary and associate hiring trends.

**Sagging productivity and declining realization have combined to put a pinch on law firm profitability growth** such that even the high pace of rate growth has been largely unable to remedy the situation.

**Buyers of legal services seem to be reverting to prior preferences for specialist knowledge, responsiveness, and global coverage** when they select their outside counsel.

Unsurprisingly, the advent of generative artificial intelligence (Gen AI) also factors heavily into the analysis of what lies in store for the legal industry in 2024 and beyond. On the whole, law firm leaders appear to be optimistic about the potential that Gen AI offers for the future of the practice of law, but some skepticism remains. The report offers a look at three of the potential scenarios that may befall the legal industry as Gen AI comes into its own, each with varying degrees of impact on how law firms serve their clients and the level of mutual benefit this technology could bring to legal industry stakeholders.

# The State of the US Legal Market

Pan American Airways (popularly known as Pan Am) was the world's largest international air carrier for much of the 20th century. It was a pioneer in the modern airline industry, introducing a long list of innovations including jet travel, jumbo jets, scheduled round-the-world service, and computerized reservation systems. For 25 years following World War II, Pan Am literally dominated the market for international air travel. Unfortunately, however, this success was not to last. Perhaps lulled into a false sense of security by its extraordinary competitive dominance, Pan Am's management failed to appreciate the dramatic changes that were underway in the US airline industry. And that lack of perception ultimately proved fatal to efforts to revive the airline following a series of unexpected economic blows. What was once one of the premier service providers in its industry found itself stuck with the wrong routes and the wrong planes, and management's efforts to change proved too late to save the company.

Pan Am's operating model was to fly passengers to foreign destinations from two primary *gateway ports* — New York and Los Angeles. Anticipating an increase in international travel in the years following World War II, the airline doubled down on its gateway strategy by investing heavily in large aircraft that could carry previously

***What was once one of the premier service providers in its industry found itself stuck with the wrong routes and the wrong planes and its efforts to change proved too late.***

unimagined numbers of passengers. In 1966, for example, Pan Am became the first customer for the Boeing 747, placing a \$525 million order for 25 of the aircraft. In fact, the iconic Boeing 747 was "made to order" to Pan Am's specifications for a plane two-and-a-half times larger than the Boeing 707. In 1964, the airline launched PANAMAC, a large computer that occupied an entire floor of the Pan Am Building in midtown Manhattan to manage worldwide airline and hotel reservations. Promoting itself as the *World's Most Experienced Airline*, Pan Am flew 150 jets to 86 countries on every continent except Antarctica. It became the gold standard of air travel, and its brand became an icon for quality and first-rate service. During the late 1960s and early 1970s — at the peak of its performance — Pan Am's cash reserves totaled some \$1 billion. In 1970, it carried 11 million passengers over 20 billion miles. By all outward appearances, the Pan Am strategy seemed to be working well. Significant market changes, however, were already in play.

One of the most important of these changes was growing competition from other airlines, in both the domestic and international US air passenger markets. As competition from airlines

like TWA, United, Braniff, and Northwest grew, it soon became apparent that Pan Am was at a serious disadvantage because the company lacked a US domestic network to feed flights into its gateway hubs in New York and Los Angeles. Although Pan Am coveted domestic routes for some time, it was not until 1980 that it acquired National Airlines in an effort to expand its network. Unfortunately, that acquisition ultimately did little to feed Pan Am's gateway ports. Pan Am's focus on trying to protect its international routes using the same strategy that had served it well for a quarter century left it unprepared to respond effectively to an increasingly competitive US market.

Compounding the problem, Pan Am was also too dependent on jumbo jets. The airline had invested in its large fleet of Boeing 747s in the mid-1960s, expecting that air travel would continue to increase. Unfortunately, it did not. The oil crisis in 1973 dramatically increased the cost of aviation fuel, triggering an economic slowdown that resulted in a sharp reduction in air travel just as Pan Am was rolling out its new jumbo fleet. The downturn thus hit Pan Am particularly hard, given its large fleet of jumbo jets and its exclusive reliance on long-haul international routes. Strategically, Pan Am was simply not positioned as well as

its smaller, more diversified, and more nimble competitors to weather the economic storm.

***It is a key job of management to prepare for unexpected but inevitable crises by keeping their organizations risk resilient and on a sound strategic footing.***

By the mid-1970s, Pan Am had lost hundreds of millions of dollars in accumulated losses and its debts approached \$1 billion. As the company's

financial condition worsened, management began to dispose of non-core assets like real estate and hotels, and tried to restructure its fleet. By 1985, however, as the airline continued to operate in dire financial straits, core assets had to be put on the table. That year, Pan Am sold its entire Pacific Division (which comprised 25% of its route system) to United for \$750 million.

The final blow came three years later in December 1988 in the form of a terrorist bomb on Pan Am Flight 103 over Lockerbie, Scotland. The incident resulted in the loss of 270 lives and had a profound impact on the public's perception of Pan Am's safety and security. The resulting decline in bookings further exacerbated the airline's financial problems. From that point, it was only a matter of time until the inevitable conclusion. In January 1991, Pan Am filed for bankruptcy protection.

Of course, no one at Pan Am could have foreseen the terrorist bombing over Scotland or perhaps even the oil crisis in 1973, but it is a key job of management to prepare for unexpected but inevitable crises by keeping their organizations risk-resilient and on a sound strategic footing. And this is precisely where the leadership of Pan Am stumbled — by continuing to follow a highly vulnerable strategy even as changes in market conditions



made the strategy increasingly risky. For years, management stuck with the model of an international-only airline flying out of key gateway cities with a fleet of fuel-inefficient jumbo jets, and without the benefit of a domestic feeder network. When they finally realized they were too focused on the wrong routes with the wrong equipment, it was too late.

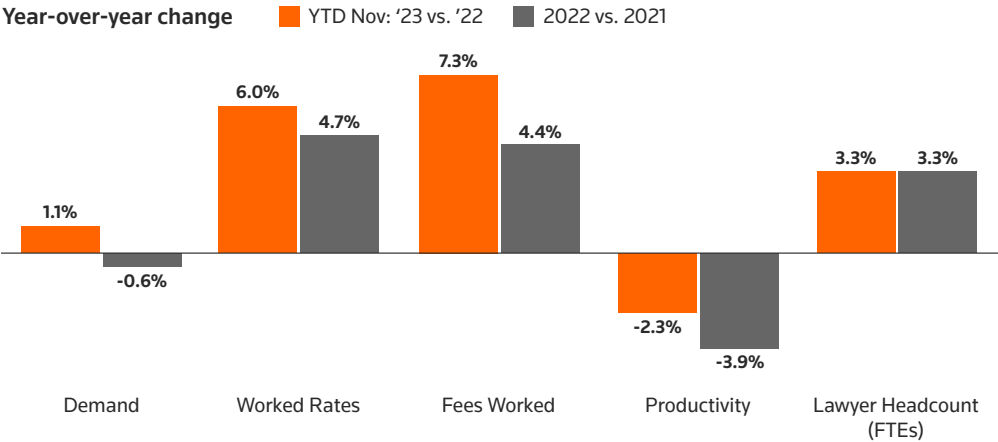
This recounting of the failure of Pan Am's leadership to fully appreciate the fundamental changes at play in the airline industry and to take early steps to mitigate the risks those changes posed for the company, holds an important lesson for law firm leaders today. Dating back to at least the GFC in the late-2000s, there have been fundamental changes in the balance of power in the legal market that have increasingly challenged most of the traditional assumptions about how law firms should be run and how legal services should be delivered. Some law firms have responded proactively to these changes, but many have not, relying instead on tactics that served them well in the past but are no longer as effective. Moreover, as was the case with Pan Am, market conditions have been such that the full effects of the changes have, to some extent, been masked until the economic crises of the last couple of years.

# The financial picture of 2023

To begin to understand what the future holds, we must first understand where we are today and how we arrived here. The first component of that is understanding where today’s law firms stand financially.

Across the legal industry, 2023 proved to be an encouraging — though not outstanding — year, at least according to many financial indicators. Legal demand, worked rates, fees worked, and attorney headcount all posted positive numbers, buoying a legal market that continues to be plagued by weak demand growth and declines in productivity. As expense growth moderated throughout the year, these factors combined to help many firms return to profitability.

Figure 1: **Key performance measures**



All timekeepers; billable time type; non-contingent matters.

Source: Thomson Reuters 2024

## Demand

Demand for legal services<sup>1</sup> grew by an average of 1.1% across the industry.<sup>2</sup> However, the distribution of demand growth is somewhat telling. In last year’s edition of this report, we discussed the concept

Demand growth	YTD Nov 2023
Am Law 100	0.0%
Am Law Second Hundred	0.6%
Midsized	2.4%

Source: Thomson Reuters 2024

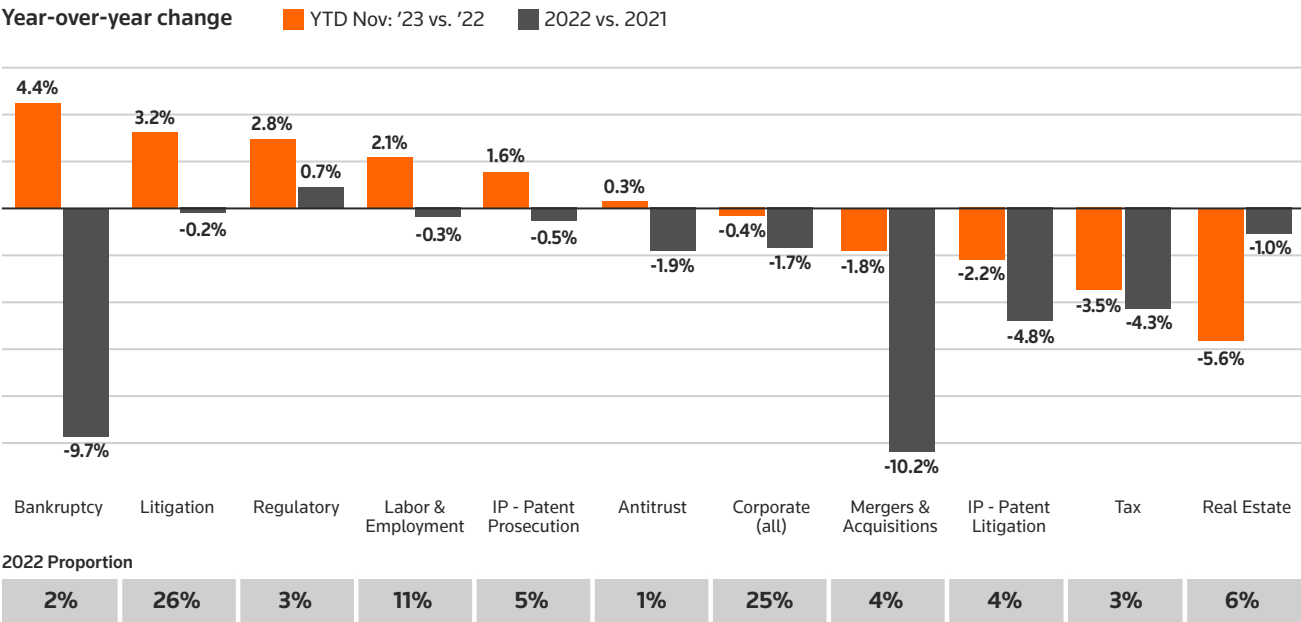
<sup>1</sup> For the purposes of this report, demand is defined as total billable hours worked. Demand growth metrics report the year-over-year change in total billable hours for the average law firm during the period examined.

<sup>2</sup> Financial data for this report is provided by Thomson Reuters Financial Insights. Data is based on reported results from 179 US-based law firms, including 48 Am Law 100 firms, 49 Am Law Second Hundred firms, and 82 Midsized firms (US-based firms ranked outside of the Am Law Second Hundred). Legal buyer sentiment data is from Thomson Reuters Market Insights, which provides legal buyer information from around the globe based on annual interviews with around 2,500 legal buyers with revenues above \$50 million (US).

of demand mobility as a contributing factor for the strong demand growth performance of Midsize law firms compared to their Am Law-ranked peers. That same trend was in effect for much of 2023 as Midsize law firms once again led the market for demand growth, growing demand by an average of 2.4%. Am Law 100 firms, by contrast, posted flat demand growth, while average demand for the Am Law Second Hundred grew by 0.6%.

To understand the differences in demand growth across market segments, it is necessary to take a deeper look at the growth in particular practices.

Figure 2: Practice demand growth

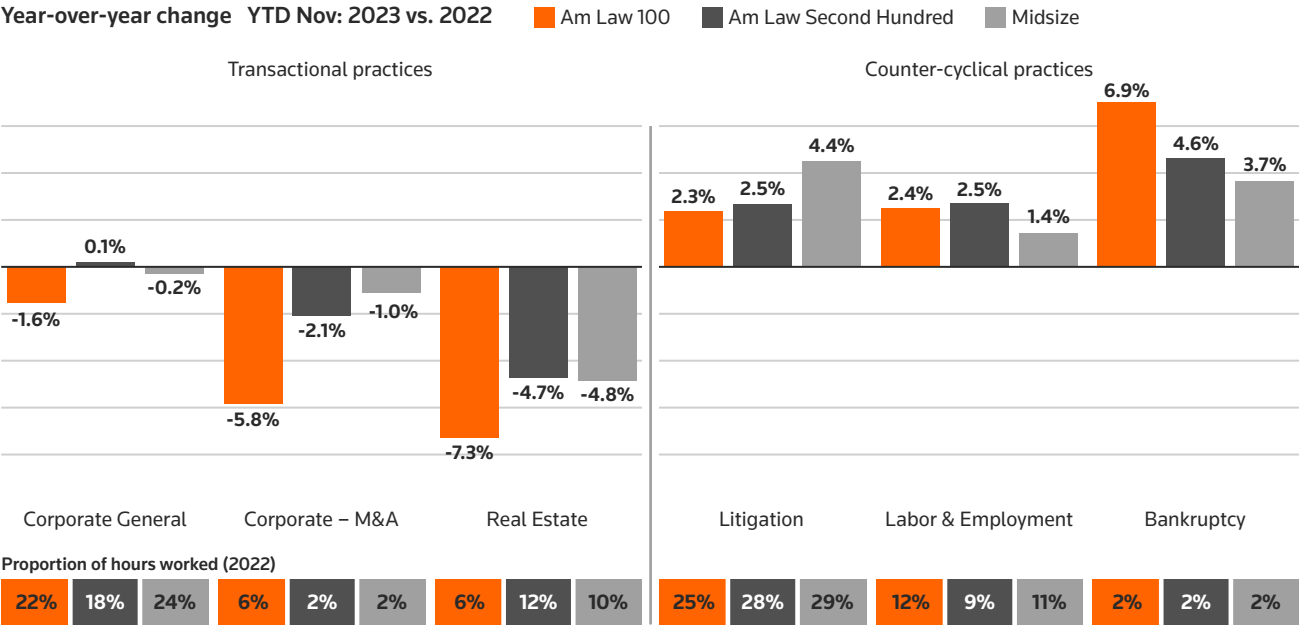


All timekeepers. Billable time type; non-contingent matters. Source: Thomson Reuters 2024

Those who have followed our reporting throughout the past year will be well acquainted with our ongoing discussion of the shifting balance between transactional and counter-cyclical practices. Counter-cyclical practices are those that trend upwards as the economy falters, including litigation, labor & employment, and bankruptcy. Litigation, which accounts for slightly more than one-quarter of all demand hours tracked, was the biggest driver of overall demand growth in 2023, growing by a 15-year high of 3.2%. This historic boost, coupled with uplifts from the other counter-cyclical practices, as well as smaller lifts from regulatory, patent prosecution, and antitrust work, pushed the legal market as whole into positive territory despite the continuing contraction of transactional practices.

The differences in practice demand, however, can help explain the uneven distribution of results across market segments in 2023.

Figure 3: Transactional vs counter-cyclical practice demand growth by segment



All timekeepers. Billable time type; non-contingent matters.

Source: Thomson Reuters 2024

All segments of law firms saw a lift from the continued strong performance of counter-cyclical practices, but with key differences. For Am Law 100 law firms, for example, the biggest counter-cyclical boost came from growth in bankruptcy hours, which account for only a small proportion of total demand in the Am Law 100. By contrast, Midsize law firms saw their biggest counter-cyclical gain in litigation hours, a much more significant lift due to the practice’s much larger proportional share.

Am Law 100 law firms, however, were simultaneously hit with significantly larger contractions in transactional practices, a result that ensured a flat overall growth rate for the year.

The client view of their legal spend

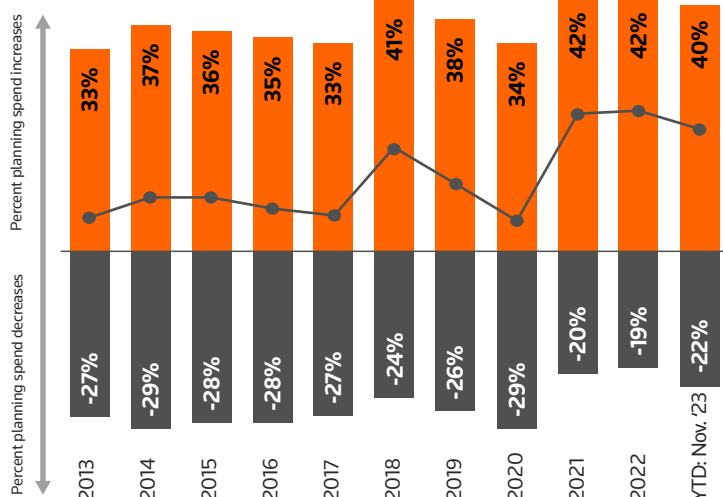
The future may hold good things for law firms looking to grow demand, whether they hope to do so through capturing market share from competitor firms or through winning more new business from clients.

Figure 4: **Net spend anticipation****Total legal spend anticipation: Global companies with \$1B+ in annual revenue**

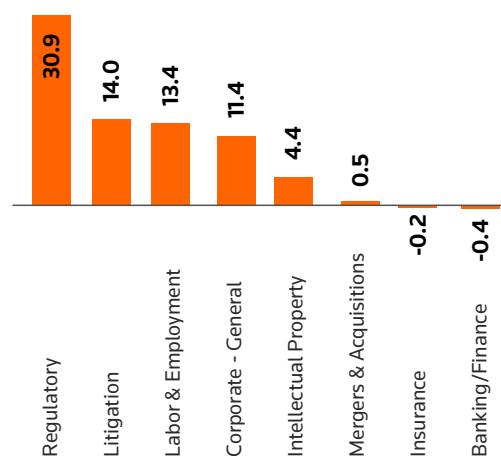
(Percent of buyers planning to increase versus planning to decrease)

**Overall by year**

■ Plan to increase 
 ■ Plan to decrease 
 ● Net spend anticipation

**2023 Net spend anticipation by practice**

■ YTD: Nov. 2023



Source: Thomson Reuters 2024

On balance, far more clients report that they expect to spend more on outside counsel in the coming 12 months than say they expect their outside counsel spend to decrease. Two-in-five general counsel (GCs) said they expect outside counsel spend to increase, double the percentage who said they anticipate a decrease. The result is a Net Spend Anticipation<sup>3</sup> (NSA) score of 18, nearly on par with the figures posted for this metric in 2021 and 2022.

Looking at NSA scores by practice area, we see that on balance, GCs foresee an increase in spend to continue to drive counter-cyclical practices like labor & employment and litigation. Interestingly, however, regulatory work and corporate matters are also seen as areas ripe for additional spend in the coming year.

It's important to note that NSA does not track the size of anticipated increases — an anticipated modest increase in spend would count the same in this metric as an anticipated doubling of the budget — but the overall perspective that spend across a wide range of practice areas could increase, including potentially some transactional practices, may be an indicator of potential demand growth for law firms in 2024.

It may seem incongruent that in-house counsel plan to both handle more matters internally, as we discuss later in this report, and increase their outside counsel spend, but it can perhaps be explained. As matter volumes increase, many corporate law departments struggle with

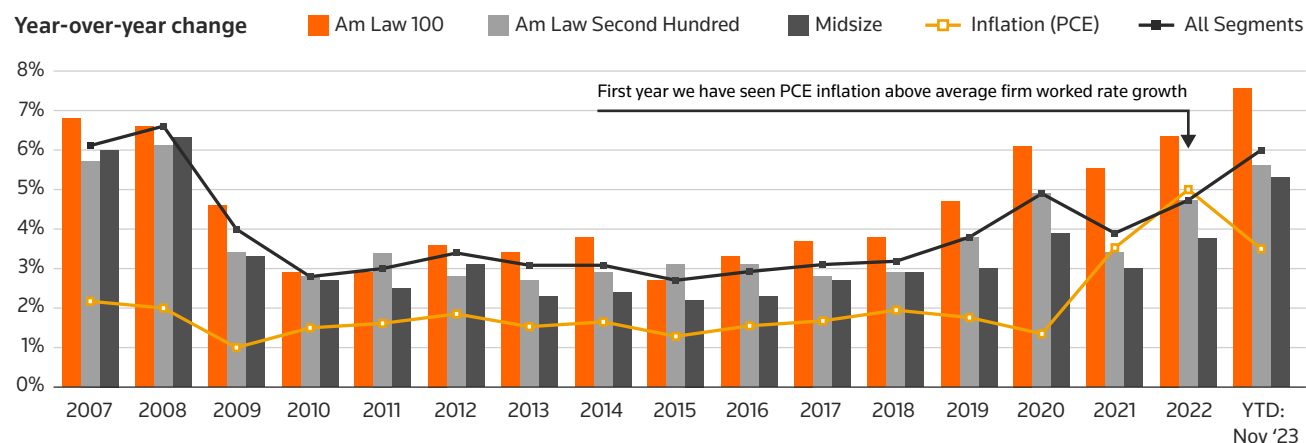
<sup>3</sup> Interviewees were asked whether they expect their outside counsel spend to increase, decrease, or stay the same over the next 12 months. Net Spend Anticipation is calculated by subtracting the percentage of respondents who said they anticipate a decrease from those who said they anticipate an increase.

capacity. They recognize that, despite a desire to do more work in-house, they will not be able to undertake a large-scale shift away from their outside law firms. At the same time, many GCs are anticipating an increase in outside counsel spend because they are anticipating an increase in law firm rates, an eventuality that seems quite likely given the trends of the past few years. Consequently, corporate general counsel could, quite understandably, intend to do more work within their own departments but still anticipate having to spend more on outside counsel.

## Law firm rates

Law firm rates continued to rise sharply in 2023, reflecting a trend that has been ongoing for more than a decade, although sharply accelerating since 2019.

Figure 5: **Worked rate growth**



All timekeepers. Billable time type; non-contingent matters.  
Inflation (PCE) measure = Personal Consumption Expenditures Excluding Food and Energy.

Source: Thomson Reuters 2024

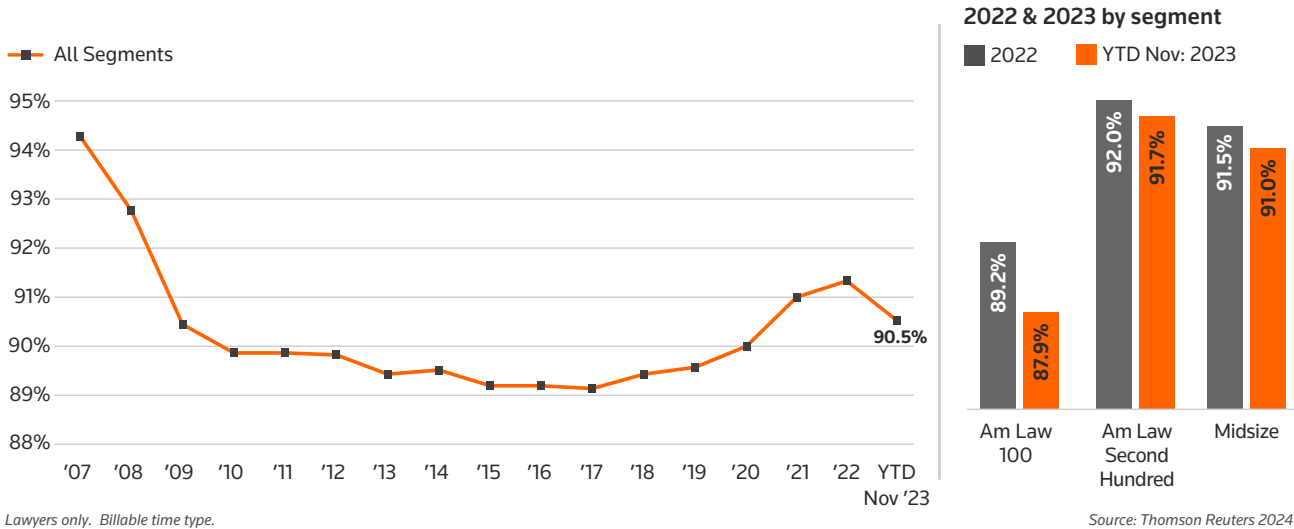
Worked rates, the negotiated rates clients agree to pay to law firms for particular matters, have risen at a relatively dramatic pace over the past five years. The past two years, in particular, have seen the pace of worked rate growth begin to rival figures from before the GFC of the late-2000s.

In 2022, the market saw a rare phenomenon as worked rate growth was actually eclipsed by the growth in inflation, an occurrence never before seen in our data. In response, many law firms pursued aggressive rate growth strategies in 2023, leading all three major law firm segments to post worked rate growth averages not seen since 2008.

The positivity from rate growth, however, was tempered by the fact that, as rates grew, collected realization against those higher rates softened. By and large, that was not due

to clients pushing back on invoices. Instead, it can be largely attributed to attorneys within the law firms proactively adjusting bills *downward* before they were sent to clients.<sup>4</sup> This increase in write-downs resulted in a decrease in a metric known as billing realization. And as we’ve seen for several years now, as *billing realization* improves, so does the percentage of the worked rate the law firm actually collects, known as *collected realization*. However, when billing realization declines, so too does collected realization. From at least the second quarter of 2022 through almost the end of 2023, law firm billing realization fell, ending the year with law firms collecting an average 90.5% of their worked rates. Recent stabilization in realization is encouraging, but realization remains 0.8 percentage points *below* its 2022 peak and more than a full percentage point down for the Am Law 100.

Figure 6: **Collected realization against worked rates**

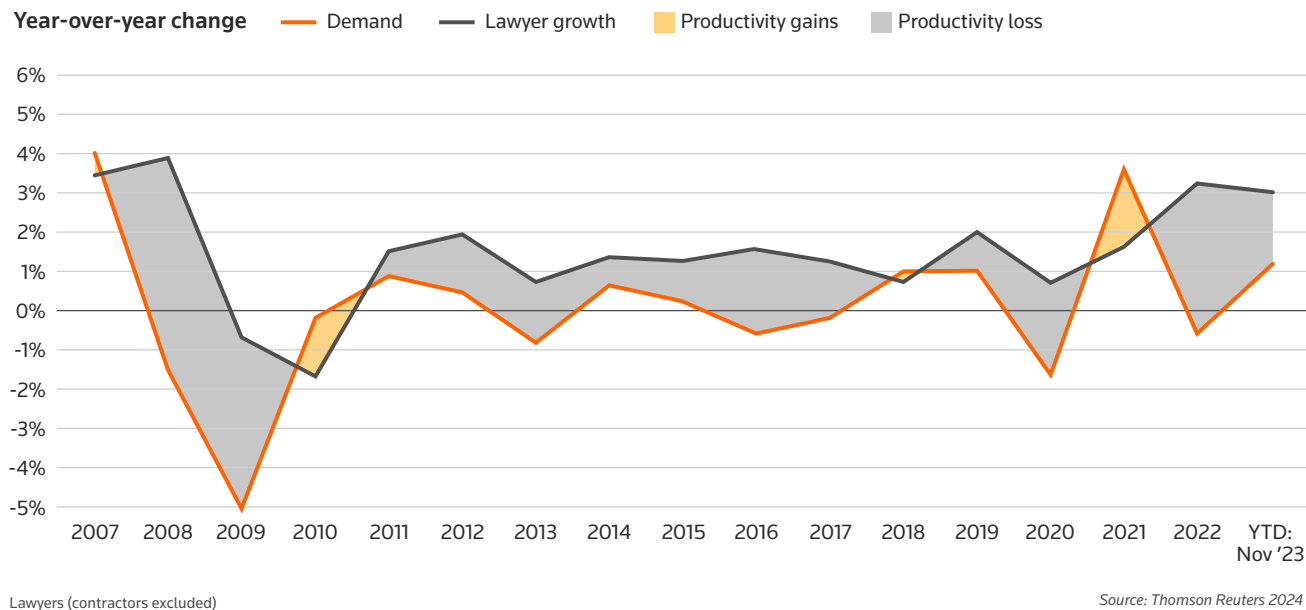


### Attorney headcount and productivity

Since 2012, lawyer headcount growth has routinely outpaced growth in demand. In fact, only in rare cases has the opposite been true. This discrepancy is understandable as most law firms want to ensure they have the resources to meet unexpected spikes in demand growth such as occurred at the end of the GFC in 2010 and 2011. The downside of this strategy, however, is that this imbalance can place a drag on attorney productivity. For most of the past decade, demand has fluctuated between slight growth and slight contraction. At the same time, attorney headcount has grown relatively consistently, and at times quite aggressively. The result is many more attorneys vying for a share of work — a formula for declining per-lawyer productivity.

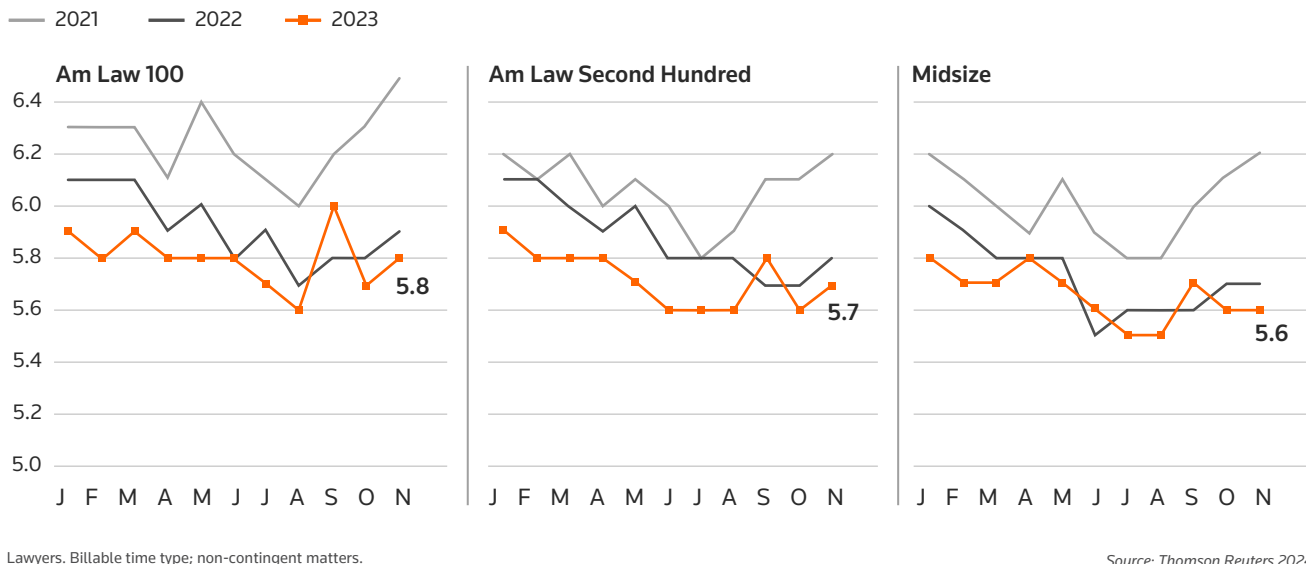
<sup>4</sup> For a more complete discussion of some of the factors negatively impacting realization, see the Thomson Reuters Institute report *Law Firm Rates in 2023* at <https://www.thomsonreuters.com/en-us/posts/legal/law-firm-rates-report-2023>.

Figure 7: Demand vs. lawyer (FTE) growth



Like other metrics, however, productivity in 2023 varied among different market segments. This is best seen by looking at productivity on a per-lawyer basis.

Figure 8: Average daily demand per lawyer (FTE)



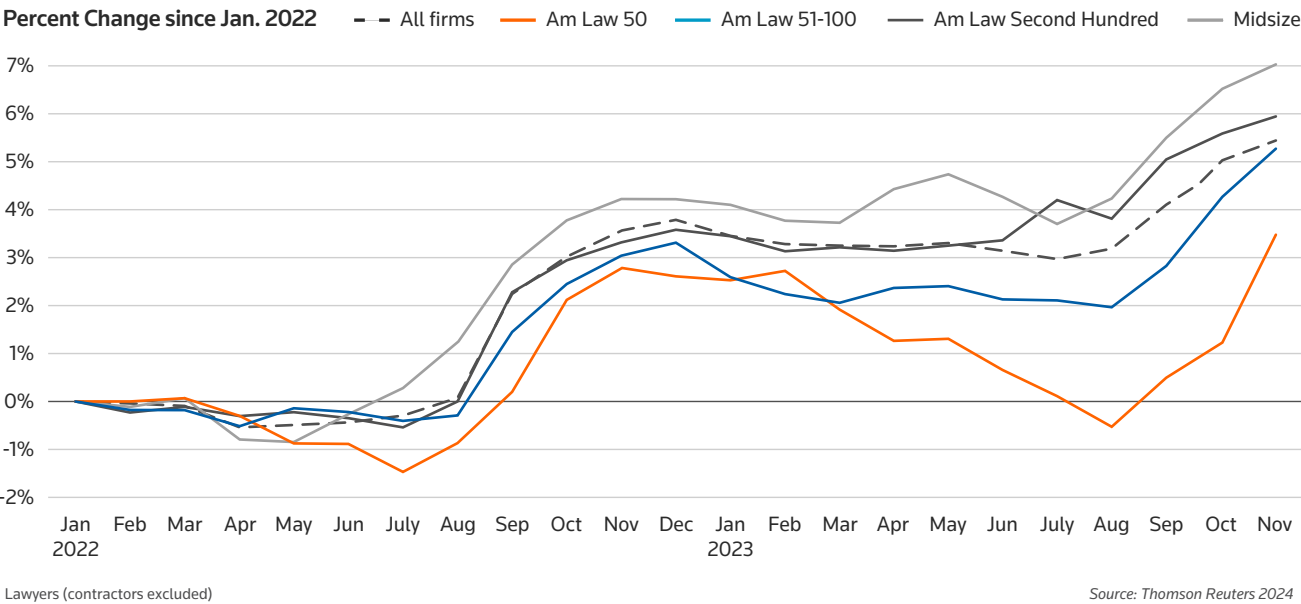
Midsize law firms saw the highest demand growth of any segment for the year.<sup>5</sup> However, because of different strategies for headcount growth across the market, the advantage that Midsize firms gained in demand growth did not translate into a similar lead in productivity. In

<sup>5</sup> See supra at pp 7-8.



terms of average daily demand (ADD) — essentially, the hours put into work-in-progress per lawyer per day — Midsize law firms trailed Am Law 100 firms by an appreciable margin. This resulted primarily from differences in how the segments approached headcount management in 2023.

Figure 9: **Lawyer FTE growth – change since January 2022**



If we set January 2022 as a baseline point, we can see stark differences between the segments. Midsize law firms, in particular, stand out as leading the way in headcount growth, adding in excess of 7% more lawyer full-time equivalents (FTEs). At the same time, Am Law 50 firms pursued aggressive reductions in associate headcount throughout most of 2023.

Even accounting for the 2023 associate class hired in the fall, overall headcount was quite similar to where it stood in November 2022. This stands in stark contrast to the practices of even Am Law 51-100 firms.

These differences in strategies were also evident in the hiring trends from this past fall.

Figure 10: **Diverging strategies – staffing decisions**

Segment	Year long actions	2023's Associate class
	Associate headcount change Nov '23 vs. Jan '23	First year associate headcount change Sep-Nov '23 vs. Sep-Nov '22
Am Law 100	+1.7%	-15.2%
Am Law Second Hundred	+8.5%	-9.8%
Midsize	+11.8%	-3.2%

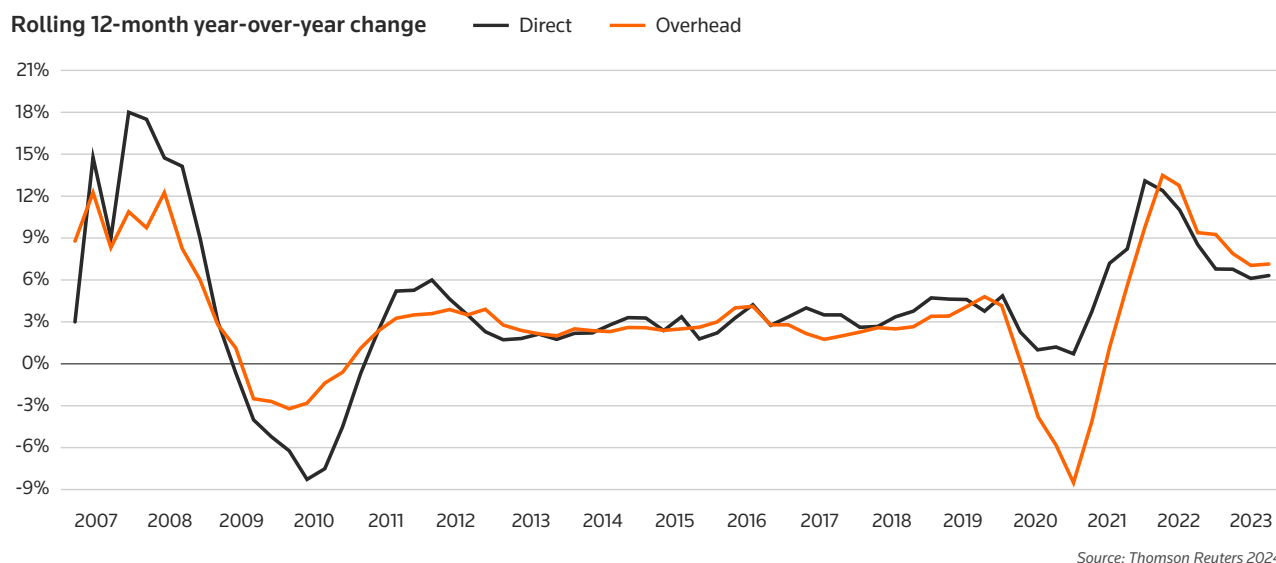
Source: Thomson Reuters 2024

On average, even after bringing in fall classes, associate ranks for the average Am Law 100 law firm had grown only 1.7% compared to the start of the year. Midsize law firms, by contrast, saw their associate headcount grow by 11.8% throughout the year.

## Expenses and investments

On the whole, expenses and profitability trended in a favorable direction for the legal market in 2023. While growth rates for both direct and overhead expenses<sup>6</sup> remained higher than typical industry levels over the last decade, the fact that growth in each category shifted down throughout the year is encouraging.

Figure 11: **Expense growth**

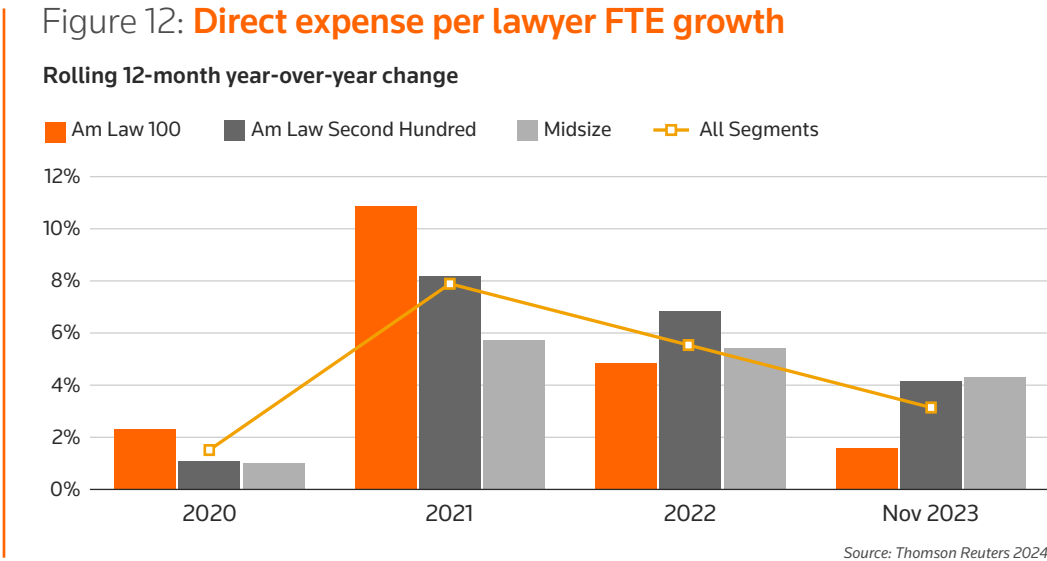


This decline in overall expense growth has been driven by a few key factors.

While direct expenses continue to be a burden on firms' bottom lines, the fundamental drivers of this category's growth have shifted since the intense competition for talent in 2021 and 2022. At least until recently, law firms, in general, were benefitting from more stable attorney salary scales following intense salary wars of those years. That calming of salary increases had finally allowed the increasing cost of attorney salaries to be normalized over time. This, in turn, translated into an expense growth picture in which a single factor — increasing headcount — was the primary driver of aggregate direct expenses growth. More recent events indicate this normalization may be short-lived, however, as another round of associate salary increases may be in the offing.<sup>7</sup>

<sup>6</sup> For these purposes, direct expenses refer to those expenses related to fee earners, primarily the compensation and benefits costs of lawyers and other timekeepers. Overhead (or indirect) expenses refer to all other expenses of the firm, including occupancy costs, administrative and staff compensation and benefits, technology costs, business development expenses, and more.

<sup>7</sup> See, e.g., Zaretsky, Stacy, "Associate Compensation Scorecard: Biglaw's 2023 Cash Bash," *Above the Law* December 1, 2023, available at <https://abovethelaw.com/2023/12/biglaw-raise-bonus-tracker-2023>.



The trend of single-factor-driven direct expense growth, in which headcount growth is the sole driving factor, had its most apparent benefits within the Am Law 100, which saw essentially flat direct expense growth on a per-lawyer basis. For that segment, aggregate direct expense growth expanded in line with headcount.

Midsize law firms saw some cooling in their aggregate direct expenses throughout 2023, despite their aggressive headcount growth and stickier per-lawyer costs. This was primarily due to Midsize firms’ growth rates being compared against less-dramatic increases from the previous year. Firms in this segment had much more steady, normalized growth in direct-per-lawyer expenses than firms in either the Am Law 100 or Second Hundred segments.

Am Law Second Hundred firms, on the other hand, saw the worst of both worlds, with persistently higher direct-expense-per-lawyer growth than their Midsize law firm colleagues, driven by more aggressive salary increases than Midsize firms. Am Law Second Hundred firms also enacted less aggressive headcount controls than did firms in the Am Law 100.

With overhead (indirect) expenses, firms across the board saw increases partially driven by return-to-office strategies<sup>8</sup> (especially among Am Law 100 firms), and higher core<sup>9</sup> overhead costs, which are much harder to reduce on a month-to-month basis. The average firm saw its overhead expense growth climb by 7.1%, with core overhead expense growth accelerating to 6.3% from last year’s 4.5%.

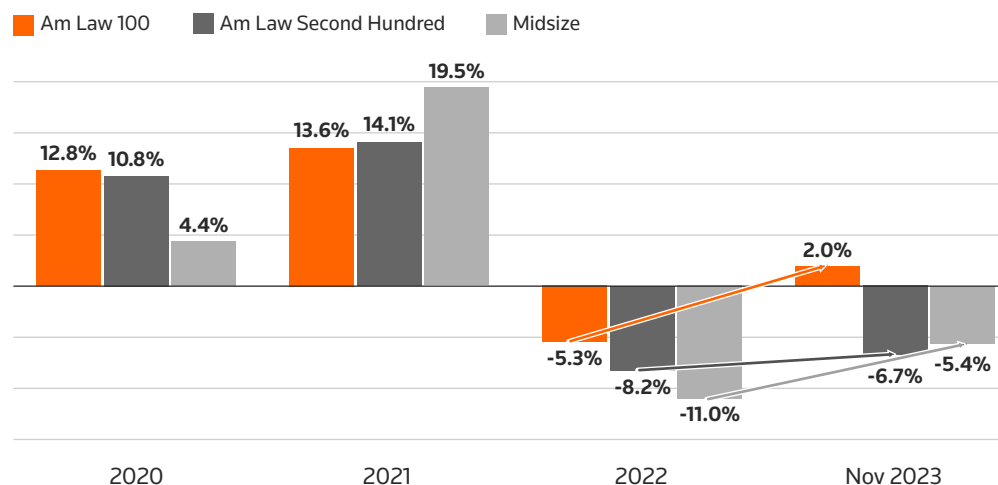
Despite the improvements seen in the rate of overall expense growth, the persistence of increasing expenses, coupled with the other factors we’ve discussed, resulted in 2023 being a challenging year for many law firms in terms of profitability.

<sup>8</sup> Return-to-office expenses include office expenses associated with actually operating the office space, marketing & business development, recruiting, and other related expenses.

<sup>9</sup> Core overhead expenses include support/professional staff compensation, benefits, occupancy (leases), technology, knowledge management, and similar expenses.

Figure 13: Profit per lawyer growth

Rolling 12-month year-over-year change



Source: Thomson Reuters 2024

Even as rates grew at a decade-high pace and counter-cyclical practices provided some demand growth, it was, for the most part, not enough to overcome the drag placed on profitability by declining realization, softening productivity, and still-elevated expense growth.

Interestingly, even though the Am Law 100 and Midsize law firms experienced roughly parallel trajectories in their profitability improvement throughout the year, they did so based on widely divergent strategies.

For the Am Law 100, improvement in the profitability picture was driven by a combination of the high pace of rate growth and sharp headcount reduction, *i.e.*, expense management. These elements, while successful in the short term, carry potential longer-term implications as clients potentially push back on rate structures or look to move work to lower-cost firms, and as smaller associate classes pose their own potential risks to future leverage.

For Midsize firms, they too were more aggressive about worked rate growth, but to much less of an extent than their larger competitors. Yet, they were quite aggressive about hiring. The improvement in profitability for Midsize firms was more organic, benefiting from rate increases and a second year of market-leading demand growth. This too, however, presents potential future pitfalls should demand shift back to larger firms. Given their efforts to staff up, many Midsize law firms may find themselves in a position of having a larger supply of lawyers than their demand is able to support.

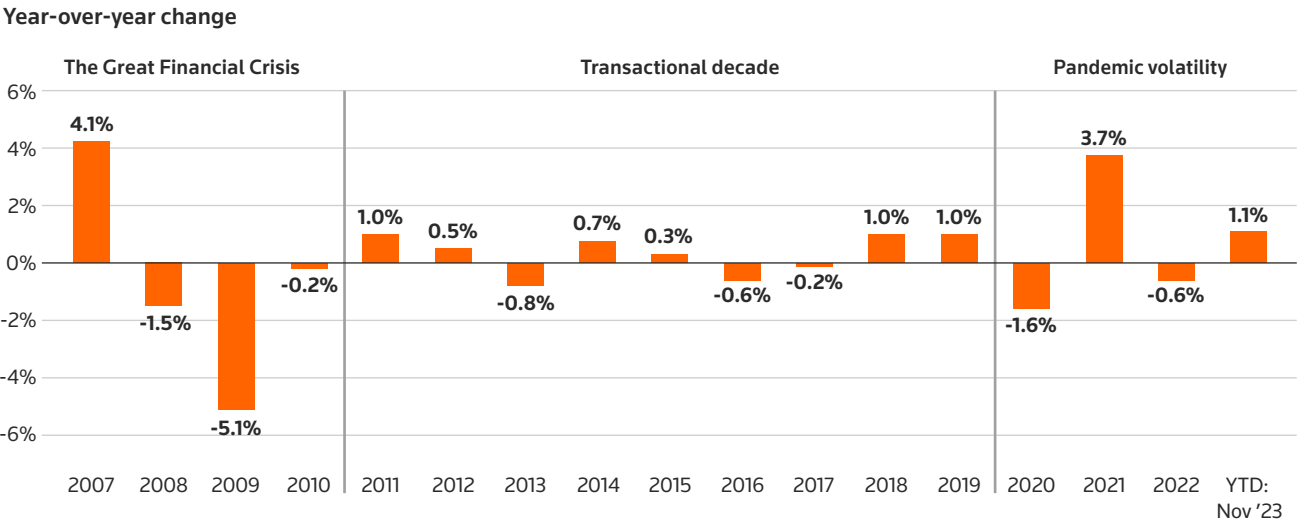
# How did we get here?

## Ripples from the past reverberating today

As indicated in the data described above, it has become increasingly apparent over the past couple of years that a *sorting out* is occurring in the legal market in which certain firms and sectors are performing significantly better than others. To understand why this is happening — and especially, why it is happening *now* — requires a deeper look at the underlying forces that have been at play in the legal market over the past several years. While such an exercise in their own market may have proven useful to the leaders of Pan Am many years ago had it been done, today such an undertaking is critical for law firm leaders as it may provide helpful insights about where the legal market is headed in both 2024 and the years beyond.

For the purposes of our analysis, we have undertaken a look back at law firm performance data over the past 15 years, *i.e.*, since the onset of the GFC in late-2007-2008.

Figure 14: **Historical demand growth**



All timekeepers. Billable time type; non-contingent matters.

Source: Thomson Reuters 2024

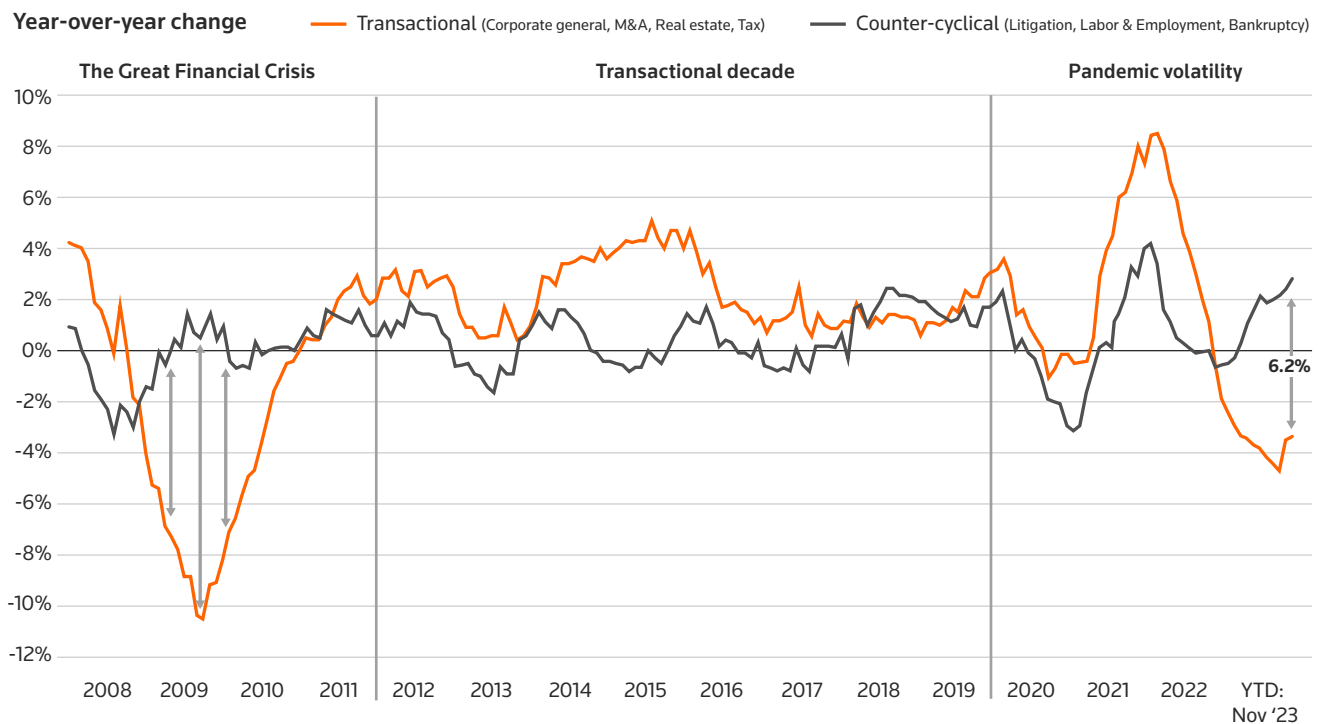
During the period of the GFC and immediately after, market power shifted decisively from law firms to their clients, rapidly moving from a sellers' to a buyers' market for legal services in all segments. Prior to the GFC, law firms largely controlled all important decisions regarding legal matters — from planning and scheduling to staffing, daily managing, and of course, pricing. After the GFC, this was no longer the case. Clients emerged from the crisis firmly in control of all aspects of their matters. They began monitoring the work of their outside law

firms, providing direct oversight of the day-to-day management of their matters. To win work, a law firm now needed to show it could deliver quality outcomes efficiently, cost effectively, and more predictably than its competitors.

At the same time, from 2011 through early-2020, the legal industry entered a period we call the Transactional Decade, in which the legal market enjoyed an unprecedented 10 years of low-interest rates that drove demand in transactional practices, particularly corporate finance and M&A. This development supported law firm revenues despite the underlying market changes that followed the GFC. Law firms in all segments of the market, most particularly the Am Law 100, benefitted from increased demand for services related to transactional matters, as reflected in steady profit growth throughout the decade.

The relative strength of transactional practices continued into the period of volatility around the onset of the global pandemic in early-2020. In fact, demand growth in transactional practices<sup>10</sup> outpaced growth in counter-cyclical practices<sup>11</sup> in nearly every year through 2022. By 2023, however, demand for transactional work fell into negative growth territory, leading to a 6.2% gap between the two practice groupings on a rolling 12-month basis as of November 2023.

Figure 15: **Transactional vs. counter-cyclical growth (2008-2023)**



All timekeepers. Billable time type; non-contingent matters.

Source: Thomson Reuters 2024

<sup>10</sup> For our purposes in this report, transactional practices include general corporate, M&A, real estate, and tax practices.

<sup>11</sup> For our purposes in this report, counter-cyclical practices include litigation, bankruptcy, and labor & employment.

## Clients asserting their new-found influence

Following the GFC, the fundamental shift in market power from law firms to their clients continued to grow. For example, corporate clients came to regard their outside lawyers more as *vendors* rather than *trusted advisors*, as reflected in the increased involvement of corporate procurement departments in the selection and management of outside law firms, as well as in the marked increase in the use of request-for-proposals (RFPs) and other competitive processes to select outside counsel.

The new market forces were also apparent in the growing use of budgets for all major projects and the imposition of client-mandated budget caps. In addition, clients became enamored of disaggregating (or *unbundling*) legal work to assemble virtual teams of different firms and outside lawyers to work on a single matter. It also became a common practice for clients

to impose outside counsel guidelines (OCGs) that supplemented (or usually superseded) provisions in engagement agreements, sometimes changing important terms.

***There is no question that, during the Transactional Decade, clients increasingly turned to lower-priced firms for many of the services that they had previously sought from firms higher in the market ranks.***

Firms, unfortunately for them, were slow to respond to these new client pressures, doing so mostly reactively. However, the full impact of the market changes were at least partially cushioned by strong transactional demand growth. Thus, many firms failed to notice as clients quietly pushed certain kinds of legal work down market — a concept we called *demand mobility* in last year's report.

There is no question that, during the Transactional Decade, clients increasingly turned to lower-priced firms for many of the services that they had previously sought from firms higher in the market ranks. Thus, we saw the shifting of certain transactions from Am Law 100 firms to Am Law Second Hundred firms or to Midsize firms. Similarly, there was a clear shift in litigation demand away from higher- to lower-priced service providers. These shifts were subtle, however, as clients simply moved some of their business to a different segment of the market, without notifying their prior providers. As a result, some firms retained a false sense of security even as client work was slipping away.

It has only been during the period of volatility that began with the global Covid-19 pandemic in 2020 and continues today with a prolonged period of economic uncertainty that we have been able to see the full impact of the fundamental market shifts that occurred some 10 years ago. This period of volatility has dramatically increased competition across the market and has resulted — not surprisingly — in a sorting out of firms in terms of financial performance that we expect to continue into 2024 and beyond. It is also a development that law firm leaders need to more fully understand to guide their firms forward successfully.

# The past as prologue?

Against this background of overall market performance and a look at the key drivers of that performance over the past decade or so, we can turn to how these developments may translate into future opportunities for law firms.

Increasing rates have really been the underlying foundation of improved profitability for most law firms since the GFC, particularly because, as we’ve shown, demand growth has been relatively lackluster for most of that period.

Law firm worked rates have experienced tremendous growth in just the past few years; however, growth in top-line rates has not necessarily been mirrored all the way down to increases in collections.<sup>12</sup>

Increases in rates may have also masked the important phenomenon of demand mobility that has been underway for some time. This year, we can see that the effects of this demand mobility are being felt not only in demand performance, but also in overall legal market economics.

Figure 16 shows the evident disconnect between the worked rate growth experienced by law firms and the effective rates paid by clients. Essentially, even as law firm rates have gone up aggressively, clients have found ways to reduce timekeeper costs across the board through reallocation of work. And we see that it doesn’t take much to reduce what clients are paying for outside legal counsel. Using current average collected rate figures for each segment, we crafted a scenario (seen in Figure 17) in which the current outside counsel utilization of a hypothetical corporate law department was split fairly evenly between Am Law 100, Second Hundred, and Midsize law firms.

Figure 16: **Changes in rates paid by clients**

Average law firm worked rate increase 5.7% – YTD June 2023			
Company size by annual revenue	Timekeeper classification		
	Partner	Of Counsel	Associate
Under \$500M	-1.1%	-3.0%	-3.7%
\$500M - \$2B	-4.6%	-2.4%	-6.1%
\$2B - \$10B	-2.1%	-3.4%	-3.0%
\$10B +	-6.8%	-7.5%	-8.0%

Source: Thomson Reuters 2024

<sup>12</sup> See supra. at 8-9.



Figure 17: **How clients can save on legal costs, while firms raise rates**

Segment	Law firm name	Collected rates		Collected rate growth	Proportion of work client assigns to each firm		
		YTD: Q2 2022	YTD: Q2 2023	YTD Q2: 2023	YTD: 2022	YTD: 2023	Change
Midsize	Firm A	\$405	<b>\$419</b>	3.3%	30%	<b>50%</b>	<b>+20</b>
Am Law Second Hundred	Firm B	\$449	<b>\$465</b>	3.6%	35%	<b>30%</b>	<b>-5</b>
Am Law 100	Firm C	\$611	<b>\$638</b>	4.3%	35%	<b>20%</b>	<b>-15</b>

Average collected rate growth for law firms	Average rate that the client sees across their roster		Growth rate the client experienced
	YTD: Q2 2022	YTD: Q2 2023	(YTD Q2: 2023 vs. 2022)
<b>3.4%</b>	\$492*	\$476*	<b>-3.3%</b>

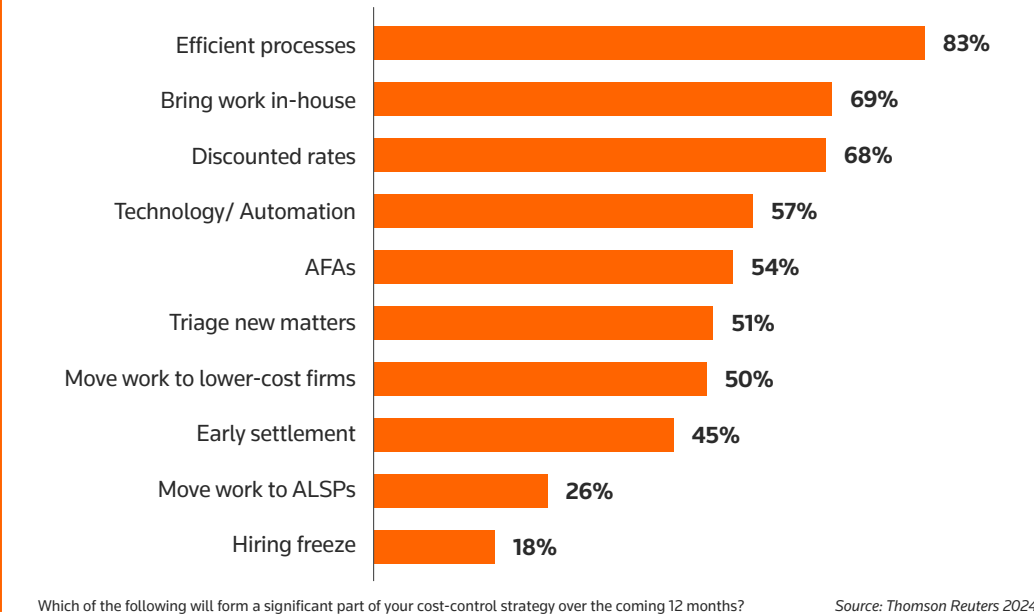
\*Calculated using sum product of the collected rate(\$ and proportion for work.

Source: Thomson Reuters 2024

By shifting work away from more expensive firms and toward lower-cost ones, our hypothetical law department was able to capture a 3.3% reduction in their average paid rate, an appreciable difference given the number of law firm hours the average corporate law department pays for in a year. Obviously, the higher the portion of work directed to Am Law 100 law firms, particularly Am Law 100 partners, the greater the potential cost savings from later tiering of work.

None of this, of course, should discourage law firms from pursuing rate increases. Many will rightly point out that even with higher rates and shifting demand, realization has remained relatively strong and large law firms have, for the most part, maintained profitability. However, it is vital to recognize the pressure in-house counsel are under to curtail their costs.

Figure 18: **General counsel cost control strategies**



Looking ahead to 2024 and beyond, it’s obvious that clients are likely to continue to be quite aggressive about moving work to more cost-effective law firms, given the potential savings they could see. Law firms looking to retain clients in this environment will need to focus on emphasizing the value and efficiency their work provides to the client while avoiding the pitfalls of devaluing work by emphasizing price. As much as clients are looking to cut costs, they are also being asked to do more with less — those law firms that can demonstrate these capabilities will be better positioned to retain client work.

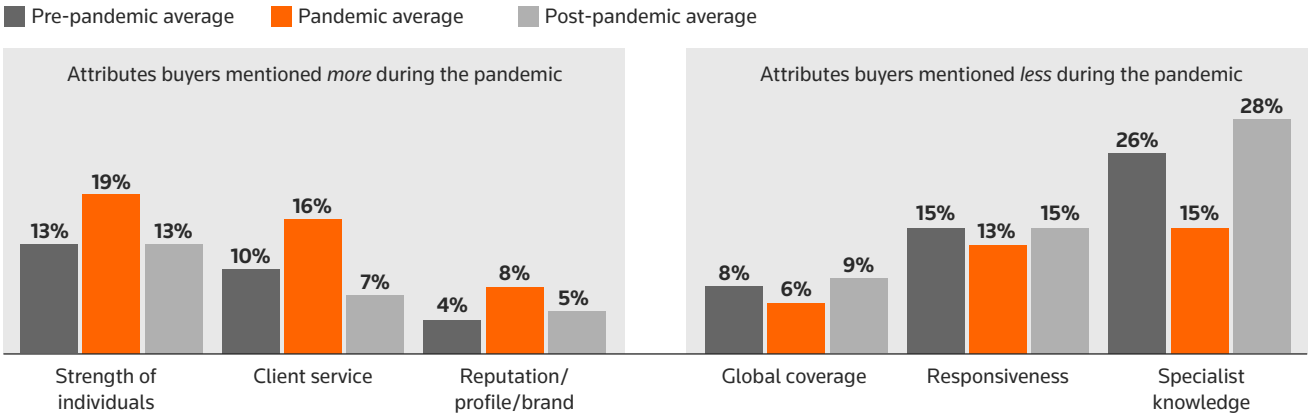
Similar to demand mobility, there has been an impactful shift in client expectations. As we have noted, immediately following the GFC, client expectations for their outside law firms shifted toward demands for higher levels of efficiency, cost effectiveness, and predictability in the delivery of legal services. These expectations changed somewhat during the unprecedented pandemic crisis, as clients tended to revert to their more trusted advisors to help guide their decisions. As the effects of the pandemic have waned, however, there is strong evidence that clients are returning to their pre-pandemic expectations of favoring firms that meet their broader needs — and that is also likely to have major implications for law firm leaders into 2024 and beyond.

With clients once again placing a particular premium on specialist knowledge, they are looking to hire experts who can supplement the broad spectrum of knowledge available in-house. Clients are also looking for support internationally and are evaluating firms more objectively on their strengths in these required areas, rather than homing in on specific favored lawyers.

Law firm leaders today must understand this change in client expectations and adapt to focus on value provided, efficiencies gained, and expertise offered if they are going to flourish in the years ahead. In short, they must do what the leaders of Pan Am did not — understand their customers’ desires were changing and pivot their service to the marketplace.

Figure 19: **Changes in client favorability drivers**

Notable changes in favorability drivers over time



Source: Thomson Reuters 2024

## What successful firms can teach us about the future

Against this background, it is useful to consider the strategies of those law firms that appear to have been most successful in recent years. In 2023, we reviewed the financial results for almost 100 law firms over a 10-year period (2013-2022), ranking the firms' compound annual growth rate performance on the basis of revenue per lawyer and profit per lawyer. Those law firms ranked in the top quartile were designated *Dynamic Firms*, and those ranked in the bottom quartile were designated *Static Firms*.<sup>13</sup>

Not surprisingly, Dynamic Firms exceeded Static Firms (and all other firms) in demand growth, worked rate growth, fees worked growth,<sup>14</sup> productivity, and — perhaps surprisingly — lawyer headcount growth.<sup>15</sup> Demographically, Dynamic Firms did not fit a single segment profile, yet there were several key traits that they seemed to share:

- An ability to *read the market* more astutely than their competitors, shifting their practice mix and presumably staffing toward transactional work during the Transactional Decade more quickly than others. They also gradually shifted their practices away from price-sensitive areas and focused on market choices that played to their strengths.<sup>16</sup>
- An ability to balance demand growth and staffing projections better than other firms. Indeed, they experienced only minimal productivity losses despite having stronger headcount growth than other sectors.<sup>17</sup>
- A willingness to expand roles for non-lawyer professionals and more robust investment in technology, marketing & business development, and high-level support staff,<sup>18</sup> as well as smart investments in people, both for fee earners and support staff.<sup>19</sup> In addition, these firms were able to consistently *push work down* the firm's food chain, thus optimizing profit potential through leverage.<sup>20</sup>

In short, Dynamic Firms simply adjusted to the new market realities faster than their competitors — a lesson lost on the leaders of Pan Am. As a result, today's Dynamic Firms are likely better positioned to take advantage of the next wave of change in the legal market — the impacts of generative AI.

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13 Thomson Reuters Institute, *2023 Dynamic Law Firms Report: What Has Set High-Growth Law Firms Apart for the Last Decade?* at 4-5. Available at: <https://www.thomsonreuters.com/en-us/posts/legal/dynamic-law-firms-report-2023>.

14 "Fees worked growth" is a firm's total billable hours for a given period multiplied by the average worked rate.

15 Dynamic Law Firms Report, at 6.

16 *Id.* at 8-13.

17 *Id.* at 17-19.

18 *Id.* at 22-25.

19 *Id.* at 25.

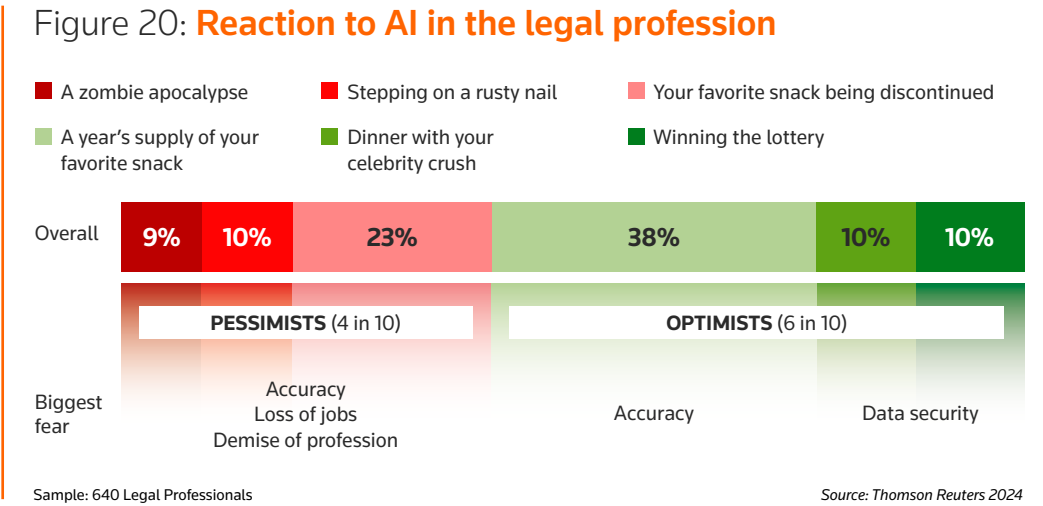
20 *Id.* at 18-19.

# The potential impact of Gen AI

Another factor likely to have a massive impact on many aspects of law firm business such as lawyer headcount, law firm service delivery, pricing, and probably nearly everything else, is generative AI.

A detailed discussion of the challenges posed by Gen AI to the legal market is beyond the scope of this report;<sup>21</sup> however, its potential future impact should not be ignored nor understated.

AI has been in use in law firms for a long time, albeit under different names and in different forms. Recent technology advances in Gen AI large language models have brought its potential into sharp focus along with controversy. Today, just half of large law firms report having an overarching digital transformation strategy at the C-Suite level, even as Gen AI<sup>22</sup> continues to evolve very fast with the pace of adoption hitting unprecedented levels.



Not surprisingly, the future potential impact of Gen AI on the legal profession is viewed by law firm leaders with a mix of optimism and caution.<sup>23</sup> Yet, a significant number of legal professionals expressed optimism about AI’s ability to enhance productivity and efficiency (with 45% saying this) and to free up time for higher-level tasks (38%).

<sup>21</sup> For in-depth discussions of generative AI and its impact on the legal market, see Thomson Reuters Institute, *Digital Strategy Report: How Law Firms Are Tying Digital Transformation Efforts to Overall Firm Strategy* (2023) available at [https://www.thomsonreuters.com/en-us/posts/wp-content/uploads/sites/20/2023/06/Digital-Strategy-Report\\_2023.pdf](https://www.thomsonreuters.com/en-us/posts/wp-content/uploads/sites/20/2023/06/Digital-Strategy-Report_2023.pdf); and Thomson Reuters Institute, *ChatGPT and Generative AI within Law Firms: Law Firms See Potential, Eye Practical Use Cases and More Knowledge around Risks* (2023) available at <https://www.thomsonreuters.com/en-us/posts/technology/chatgpt-generative-ai-law-firms-2023/>.

<sup>22</sup> *Digital Strategy Report: How Law Firms Are Tying Digital Transformation Efforts to Overall Firm Strategy* (2023).

<sup>23</sup> Thomson Reuters *Future of Professionals* report (2023); available at <https://www.thomsonreuters.com/en/campaigns/future-of-professionals.html>.

This brings up another crucial lesson for law firm leaders as they guide their firms into 2024 and beyond: The need to communicate the value that Gen AI-driven efficiencies offer to clients. While much of the early focus for leadership around Gen AI will be on navigating ethical issues, ensuring data accuracy, and enhancing data security, as their employees adapt to this evolving technological landscape, smart leaders will be paying attention to how they can best communicate these benefits to their clients.

To see how this could play out, let's look at a few hypothetical scenarios of what might result from increased Gen AI in the legal industry.<sup>24</sup>

### **Scenario One — The rising tide**

In this first scenario, the increasing application of Gen AI significantly enhances both client value and law firm profits. Clients benefit from higher-quality advice, faster service, and more creative solutions, while firms see reduced operational costs and improved labor efficiency. This leads to a shift in team composition within law firms as roles for AI-trained lawyers and legal technologists increase. Concurrent with this, the traditional pathway from associate to partner changes, as does the law firm pricing model and the methods of lawyers' internal education.

While the ability for law firms to showcase their value to clients is very likely challenged by this scenario, those firms that can harness innovation to demonstrate that value will more easily be able to differentiate themselves in the crowded legal market going forward.

### **Scenario Two — A lopsided landscape**

A second scenario involves clients greatly leveraging Gen AI to assert further control over legal services, diminishing law firms' traditional roles to an even greater extent and enabling the vast majority of the technology's value to be claimed by clients at the expense of firms. Here, clients may handle more legal work in-house, relying on external providers only for final validations. Clients also might demand more competitive pricing models from law firms, with capped fees and full transparency, given that Gen AI is doing some of the heaviest lifting — an attitude some clients have already expressed.

Emboldened by this, clients could push further to diversify their legal service providers, enlisting software vendors and consultancies, and dramatically increasing competition for law firms. As mentioned above, for those firms that adopt new innovations but aren't successful at articulating their benefits to clients, this scenario could be especially painful.

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24 Adapted from the 2023 *Australia: State of the Legal Market Report* by Thomson Reuters and the University of Melbourne. Available at: <https://www.thomsonreuters.com/en-us/posts/legal/australia-state-of-the-legal-market-report-2023>.

### **Scenario Three — No big thing**

Another potential scenario is perhaps the least imaginative but is a constant consideration, nevertheless. In it, Gen AI simply does not have a significant strategic impact on law firms, serving instead as an advanced tool for knowledge management and search functions but not substantially altering current legal practices or the overall balance between law firm and client. Gen AI finds utility in operations, marketing, IT, and HR but does not notably change client benefits or firm costs.

While seemingly implausible, it should be noted that some version of this scenario is likely to crop up in isolated pockets. Some firms, practice areas, and regions at one time or another may see little actual difference compared to a world in which the full impact of the latest technology never materialized. Forward-looking law firm leaders need to assess the potential impact of Gen AI on a case-by-case basis, identifying areas where it may be insignificant or, conversely, where it could offer significant opportunities for value growth and an enhanced client experience.

### **We're only at the beginning of the AI journey**

These scenarios are, of course, only a few visions of the potential future. They are by no means mutually exclusive, or even the only possible directions Gen AI will evolve in the legal industry. Time, deeper research, and experience will lead to much more robust understandings of the intricacies of how Gen AI will impact particular practices, industries, firms, and even specific lawyers. At present, though it is important for law firm leaders to understand that this evolution will happen with or without them. Planning for scenario three is likely to be the riskiest approach. And indeed, most law firms seem to be working toward scenario one, at least in certain contexts.


For now, use cases for generative AI in law firms are primarily internally focused, but that will rapidly change over time. Longer term (3-10 years), the technology promises to transform the way law firms work and are structured, as it forces new pricing and leverage models, new ways of relating to clients, and new forms of collaborative partnerships both among firms and with non-law firm providers.

## Conclusion

The primary challenge facing law firm leaders today and in the coming years is their ability to recognize that the legal market has changed fundamentally since the GFC, and that these changes are, in fact, likely accelerating. Although the impact of these changes was difficult to parse in the more robust conditions of the Transactional Decade, they clearly altered the power relationship in the market, shifting it to clients from their outside counsel. Only recently have we begun to understand more completely the full impact of this fundamental market shift.

Today's law firm leaders can choose to ignore these changes but, like the leaders of Pan Am, they do so at their peril. To be sure, embracing the new market realities will be challenging as they run counter to many of the instincts, training, and experience that many senior lawyers hold. What is required, however, is an openness to new ways of thinking about structuring the delivery of legal services in a market that no longer rewards many of the traditional ways of doing things. Along with that, of course, is the keen necessity to be able to communicate with clients the enhanced value the firm can now offer.

Leaders who can rise to this challenge will be able to lead their firms confidently into the future. Those who do not, will — like the leaders of Pan Am — leave their organizations ill-equipped and vulnerable to the vagaries of the marketplace, often offering the wrong services in the wrong ways and wondering why nothing they do is working like it used to.



***Leaders who are open to new ways of thinking about legal services and communicating with clients will be able to lead their firms confidently into the future.***

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# 2025 Report on the State of the US Legal Market

Embracing Change in the Era of Innovation



Thomson Reuters  
Institute

Exhibit 4 at 1

## In Memoriam

### Dedicated to the memory of James “Jim” Jones IV (1945-2024)



It is with great sadness and profound gratitude that we dedicate the 2025 Report on the State of the US Legal Market to the memory of our good friend and colleague, Jim Jones.

Jim's obituary captures well his contributions to the legal field:

*With a career spanning over five decades, Jim's legacy is defined by his remarkable contributions to the legal field, his commitment to public service, and his tireless efforts to uplift his community.*

Jim's career spanned both private and public service, including as assistant to the general counsel of the United States Air Force, managing partner of Arnold & Porter, general counsel at APCO

Worldwide, chairman of the Pro Bono Institute and Hildebrandt International (later Hildebrandt Baker Robbins), and founder of Legal Management Resources LLC.

Jim was known for his important contributions to the legal academy as a Senior Fellow at the Center for the Study of the Legal Profession at Georgetown Law Center and through the founding of the Master's program in Law Firm Management at The George Washington University College of Professional Studies.

Jim was widely recognized for his expertise and thought leadership, earning multiple awards and countless accolades for his writing and speaking.

It was in this capacity that we at the Thomson Reuters Institute were privileged to collaborate with Jim for more than 15 years through many evolutions of this report, the development of the Alternative Legal Service Providers report, the annual Law Firm COO/CFO Forum event, and countless other occasions for which we are forever thankful.

Jim embodied the phrase "love what you do, and you'll never work a day in your life," as his joy and passion for his work and the legal profession was always evident.

Everyone who was fortunate enough to learn from Jim's well-earned wisdom and insights was better for it. He will be greatly missed.

A handwritten signature in black ink, which appears to read "Michael Abbott". The signature is fluid and cursive.

Michael Abbott  
Head of Thomson Reuters Institute



## Executive summary

The rapidly evolving landscape of the legal industry throughout the past year may have finally pushed law firms toward an answer to the question “is law a profession or a business?”

While the year-end results for many law firms are encouragingly strong, the underlying factors of the marketplace clearly point to the need for law firms to operate increasingly like the sophisticated businesses they are. That will include working with their clients to consider how the shifting fundamentals of the market will impact the delivery of legal services and the overall business model of the practice of law.

This year’s report highlights significant shifts in law firm business models, driven by changing client expectations, competitive market dynamics, and advancements in technology.

### Key Findings:

1. **Rethinking the law firm pricing model** – The traditional billable hour model, long a cornerstone of law firm economics, is under increasing pressures. Discussions around alternative pricing models that focus on the value of the outcome, rather than the amount of time spent, reflect a broader shift towards client-centric practices.
2. **The strength of 2024 law firm economic performance** – Despite uncertainty in the broader economy, law firms have shown resilience, with strong profits per equity partner and overall profitability. This success is attributed to strategic adjustments in compensation structures, performance expectations, and partnership models.
3. **Continued strong growth in demand for law firm services and billing rates** – The legal market in 2024 experienced historic, broad-based growth in demand for law firm services across various practice areas. Billing rates also saw significant increases, continuing their strong upward trajectory and defying historical patterns.
4. **Controlled expense management and the need for strategic investment** – Law firms have managed to control expenses effectively, with a notable focus on technology and knowledge management investments. This strategic spending, and the need to continue to update existing data infrastructure, are essential for adapting to the rapidly changing technological environment.
5. **The shifting law firm talent model** – The composition of law firms is evolving, with a shift towards more experienced lateral hires, growth in two-tier partner structures, and a reduction in junior associate hiring. This trend reflects the changing demands of the market and the impact of generative AI on legal work.
6. **Future challenges facing law firms** – The report underscores the need for law firms to continue adapting to technological advancements, particularly generative AI, which is expected to transform legal services, influence client expectations, and necessitate new pricing models.

The coming year is likely to highlight the importance of agility and innovation in the legal industry – traits which are not historical strong points for the majority of law firms. However, the evidence shows that even in an environment in which law firm business models are changing at an unprecedented rate, law firms themselves have rarely been more successful.

## Rethinking the law firm business model

American lawyers have fiercely debated whether the practice of law could be described as a *business* as well as a profession. Opponents of the idea passionately argue that applying commercial concepts to legal practice undercuts the core principles of the profession by focusing on the self-interests of lawyers rather than their obligations to act only in the best interests of their clients. Proponents, on the other hand, point out that successful legal practices have always blended lawyers' business interests with their professional obligations. The growth and expansion of law firms, as well as dramatic changes in the legal market, have pushed the profession toward greater recognition of the need to apply sound business principles to the growing business of law.

Yet, despite this recognition, most law firms still adhere to familiar management patterns drawn from earlier and simpler times when firms were much smaller, more closely knit communities of familiar colleagues, most of whom had grown up in their firms together.

Reflecting this fact, most law firms retained their traditional partnership models — highly leveraged, single-tier partnerships that aspired to lock-step compensation systems. Leaders of these firms believed in growing and promoting talent from within the firm, and regarded their partners as permanent colleagues, all of whom were expected to work collaboratively together.

A further common tenant of that template, of course, has been an historic adherence to the concept of the *billable hour model*. Despite the well-documented faults in this method of billing, from its overreliance on inputs rather than outputs, its inflexibility and its increasingly obsolete nature in regard to the rise of technology-driven automation, the billable hour has remained a fixture of firms for over half a century.

Evolution is well underway, however, and 2024 appears to be the year in which the pressures of change in law firm economics and structure have become inescapable.

At least since the global financial crisis (GFC) that began in 2008, the market for law firm services has become far more competitive, shifting from a sellers' to a buyers' market, driven primarily by a dramatic change in client expectations to be in control of all major decisions related to the planning, scheduling, staffing, and pricing of their matters.

The market for legal talent has also become more competitive, with lateral partner moves and mergers reaching record levels, even during a period of significant economic uncertainty. This has forced many firms to pursue both offensive and defensive talent strategies to both expand and protect their key clients and practices. The most significant of these changes came in the form of reductions in the ranks of equity partners, along with changes to their compensation structures, performance expectations, and more. Other firms altered their partnership tiering as they ramped up their numbers of non-equity partners. Firms have also reduced the pace of associate hiring and the size of their summer associate programs.<sup>1</sup>

Most law firms finished 2024 with strong profits per equity partner, continuing their performance from 2023. In many cases, however, that achievement was possible only because of fundamental changes in the economic and compensation models of the firms themselves — changes that would have been hard to imagine a few short years ago.

Clearly, law firms have embraced commercial realities and are moving decisively to protect themselves as viable businesses, even at the price of giving up traditional models. As the vision for tomorrow

<sup>1</sup> Engelland, B., *Law Firm COO & CFO Forum: Preparing for the law firm of 2034*; Thomson Reuters Institute (Nov. 20, 2024) (<https://www.thomsonreuters.com/en-us/posts/legal/coo-cfo-forum-law-firm-2034>).

evolves and generative artificial intelligence and other advancing technologies play ever larger roles in the delivery of legal services, it is likely that even more significant changes will be required. For now, however, it appears the proverbial genie is out of the bottle, with the changes to the world of large law firms set to only accelerate if anything. The financial successes of 2024 may well provide the solid footing needing for law firms to confidently launch into the future rather than waiting for the impetus for change to become unavoidable.

## Law firm performance in 2024: A year of anomalies

The performance of law firms in 2024 is perhaps best reflected in the performance of three key metrics where results this year have been surprisingly strong but historically atypical in the post-GFC era: demand, rates, and expenses.

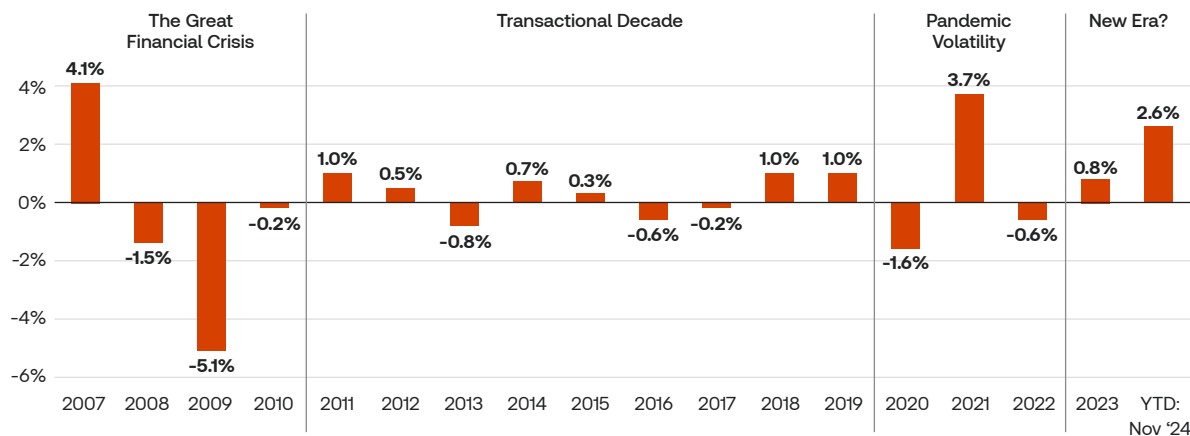
### Demand: Growth in all sectors

To be sure, law firm demand<sup>2</sup> has seen<sup>3</sup> a historic growth surge, with the average law firm experiencing growth in demand of 2.6% in 2024. For the large law firm industry, this is incredibly atypical, as firms in that category averaged 0.1% annual demand growth from 2007 to 2023. The level of demand growth seen in 2024 is comparable only to the pandemic-era bounce back from historic lows, when law firm demand grew 3.7% on average in 2021. This growth was, however, measuring from the *collapse* of demand that defined 2020, in contrast to 2024 which is measuring on top of 2023's already strong growth. In other words, the 2024 demand performance is far stronger and more *real* than 2021's bounce back.

FIGURE 1:

### Historic demand growth

Year-over-year percent change



Source: Thomson Reuters 2025

<sup>2</sup> For the purposes of this report, demand is defined as total billable hours worked. Demand growth metrics report the year-over-year change in total billable hours for the average law firm during the period examined.

<sup>3</sup> Financial data for this report is provided by Thomson Reuters Financial Insights. Data is based on reported results from 183 US-based law firms, including 51 Am Law 100 firms, 52 Am Law Second Hundred firms, and 80 Midsize firms (US-based firms ranked outside of the Am Law Second Hundred). Legal buyer sentiment data is from Thomson Reuters Market Insights, which provides legal buyer information from around the globe based on annual interviews with around 2,500 legal buyers with revenues above \$50 million (US).

Moreover, this demand growth did not come from just one practice area or even a small group of practices, but rather from a general swell of demand across both transactional<sup>4</sup> and counter-cyclical<sup>5</sup> practice groups. This is not to say that growth in all practices was equally robust, but many practices that had previously been holding the market back rebounded into positive territory this year, while stronger practices from 2023 maintained or even accelerated their growth pace.

Major transactional practices — corporate (all), real estate, and tax — that were all drags on firm performance in 2023, improved significantly in 2024. The result was a transactional category that, as a whole, rebounded from a 2.3% contraction in 2023 to 1.6% growth as of November of 2024 on a year-to-date basis. Although transactional demand has not yet fully recovered to the heights of 2021, the fact that it is now returning to growth mode means that counter-cyclical practices that have performed exceptionally over the past few years will no longer experience as much drag from transactional work.

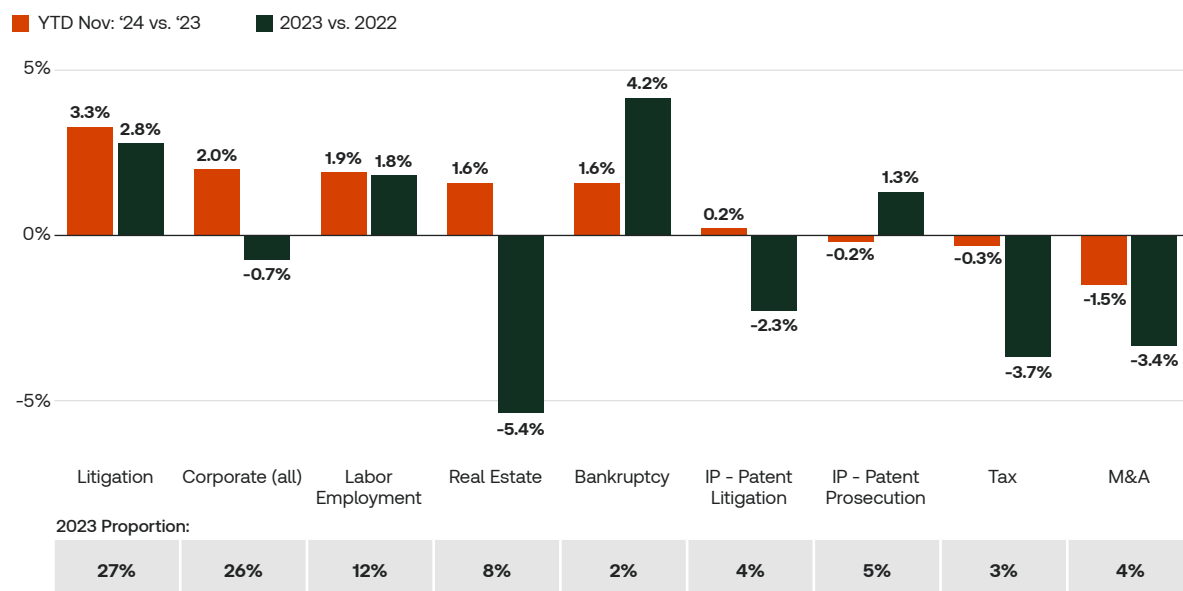
Indeed, if counter-cyclical practices (such as litigation) had simply *maintained* their growth paces in 2024, law firms would already have performed better than the previous couple of years. Instead, what happened was an *acceleration*.

Litigation demand grew 3.3% in 2024 on top of its 2.8% growth in 2023. This, coupled with steady performance from labor & employment, accounted for almost 40% of all lawyer work hours in 2024, meaning the performance of these two practices was far more impactful than the moderate deceleration of smaller practices such as bankruptcy and patent prosecution. The end result was a massive, if highly unusual, surge in overall demand across a number of diverse practices.

FIGURE 2:

## Practice demand growth

Year-over-year percent change



Source: Thomson Reuters 2025

<sup>4</sup> For our purposes in this report, transactional practices include general corporate, M&A, real estate, and tax practices.

<sup>5</sup> For our purposes in this report, counter-cyclical practices include litigation, bankruptcy, and labor & employment.

Moreover, the demand surge across practices occurred in every segment of the market. Midsize firms saw their demand growth increase from 2023, when mobile demand<sup>6</sup> from price-conscious clients flowed from Am Law 100 firm down to Midsize firms, providing a major growth opportunity for the latter. Am Law 100 firms also had a better year themselves, notching a two-percentage point increase in demand growth compared to 2023. That upswing in demand, combined with leading worked rate growth, significantly boosted Am Law 100 firms' top and bottom lines. Indeed, Am Law 100 firms were the only market segment to grow fees worked<sup>7</sup> by double digits compared to 2023. Am Law Second Hundred firms also had a good year, driven by a surge in both transactional and counter-cyclical demand, nearly matching Am Law 100 firms in fees worked despite lagging nearly three percentage points in worked rate growth.

#### The TR Institute's View:

Ultimately, every law firm segment walked away from 2024 with something to brag about in terms of demand growth, although some had weightier hauls than others. Of course, the billable rate factor had a significant influence on firms' results as well. The good news is that, again, every segment experienced strong rate growth. The bad news is that the future capacity for such continued growth may be more in question.

## Rates: Defying the law of gravity

In a continued departure from historic patterns, law firm billing rates in 2024 accelerated at their fastest pace since the GFC, averaging 6.5% growth despite weakening inflation. That resulted in *real* growth, or the amount of worked rate growth beyond inflation, at a pace double the yearly average of the past decade. This, of course, comes on top of multiple years of high rate growth for the industry. At the same time, pushback from clients appears minimal, with realization rates holding relatively steady and demand increasing for almost all segments and practice areas.

Obviously, there are questions as to how long such growth can continue in the absence of inflation as a justification, but if the signals from other regions such as Australia (which is about halfway through its fiscal year) are any indication, firms so far are managing to continue defying the gravitational forces that should be slowing the pace of rate growth.

<sup>6</sup> Mobile demand refers to the phenomena, prominent in 2022 and 2023, in which considerable volumes of work flowed from top level Am Law firms to smaller, less expensive Midsize firms. This greatly boosted Midsize demand and fees worked performance.

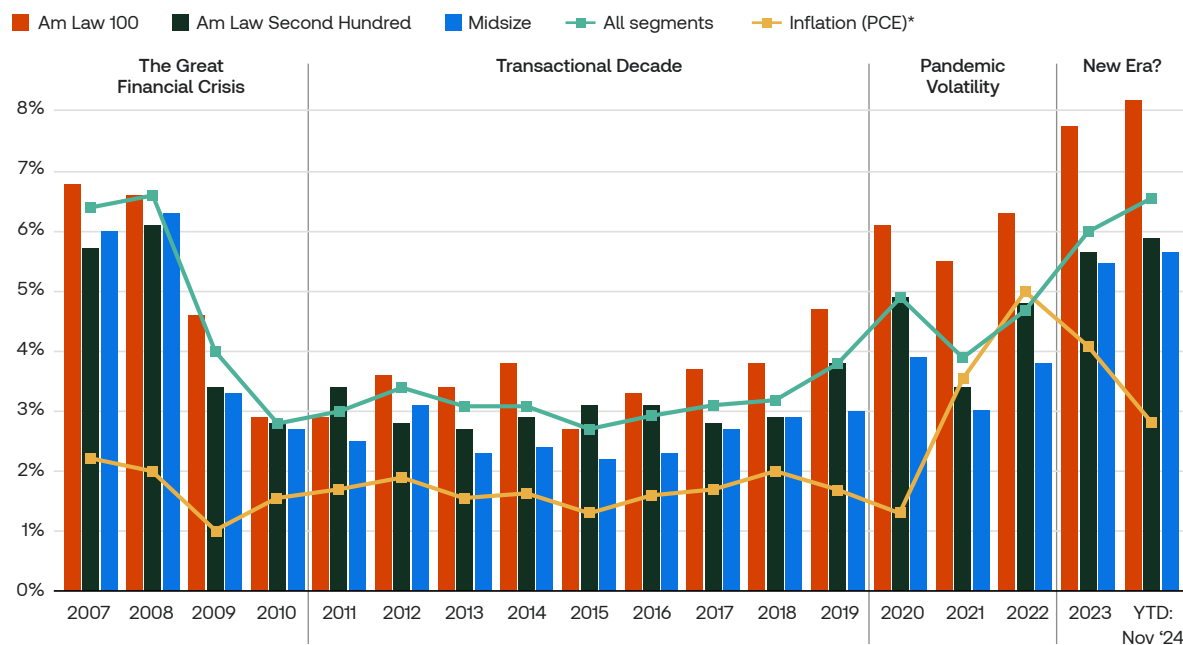
<sup>7</sup> Fees worked growth is a firm's total billable hours for a given period multiplied by the average worked rate.



FIGURE 3:

**Worked rate growth vs. inflation**

Year-over-year percent change



PCE Inflation measure (as of October 2024) = Personal Consumption Expenditures Excluding Food and Energy.

Source: Thomson Reuters 2025

One possible reason for this high performance in rate growth may be that law firm hiring over the last couple of years has focused less on new associates and more on experienced laterals, changing the population distribution within firms, a trend we will explore in greater detail a bit later. Thus, as firms become more top heavy with experienced associates and partners, the average rate charged by the firm moves upwards as well, inflating rate growth as a result.

### The TR Institute's View:

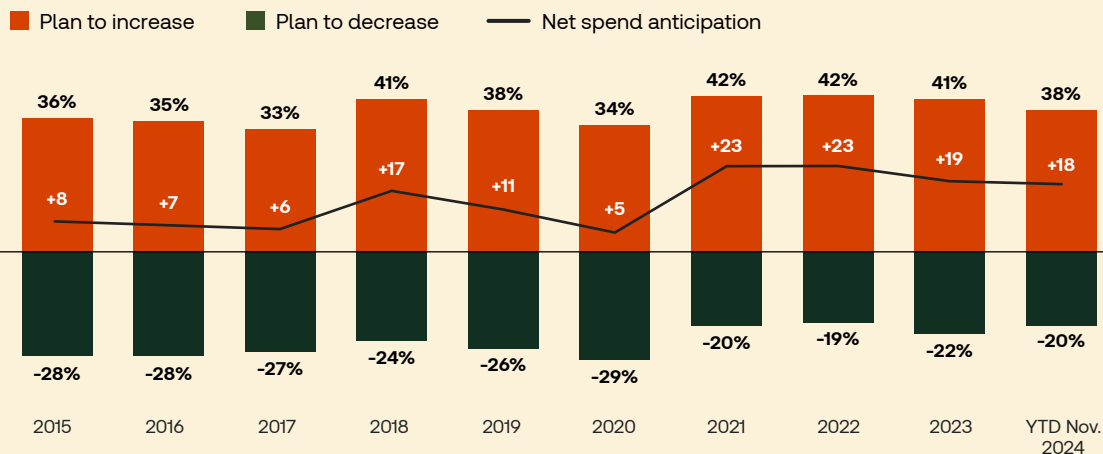
While these factors may have made 2024 an incredibly successful year for firms from a rate-setting perspective, it does beg the question for 2025: *if inflation remains relatively low, how much are clients prepared to push back on further rate increases?* As the record of the past several years plainly demonstrates, as long as law firms experience a *net gain* from rate increases — a situation in which client push back *does not* result in a drop in realization rates that cancels out the amount of any increases — it is likely that firms will continue raising rates. And there seems to be little evidence that realization rates are dropping rapidly enough at the moment to halt that process.

This conclusion is bolstered by data from law firm clients themselves. As noted in the Thomson Reuters Institute's *Law firm rates in 2024* report,<sup>8</sup> corporate general counsel, on balance, expect their spending on outside counsel to increase over the next 12 months. From the survey results<sup>9</sup> very few see such expenses decreasing.

FIGURE 4:

### Net spend anticipation

**Total legal spend anticipation: Global companies with \$1B+ in annual revenue**  
(percentage of buyers planning to increase versus planning to decrease)



Source: Thomson Reuters 2025

<sup>8</sup> *Law firm rates in 2024*; Thomson Reuters Institute (Sept. 17, 2024); available at [www.thomsonreuters.com/en-us/posts/legal/law-firm-rates-report-2024](https://www.thomsonreuters.com/en-us/posts/legal/law-firm-rates-report-2024).

<sup>9</sup> For these answers, we calculated a *Net Spend Anticipation* by subtracting the percentage of respondents who said they anticipate a decrease from those who said they anticipate an increase.

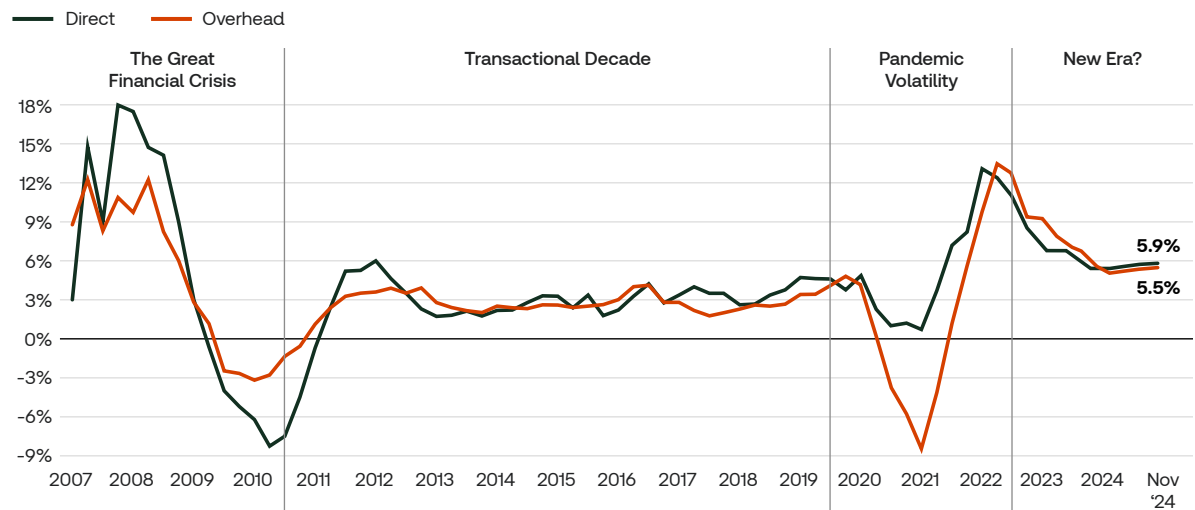
## Expenses: The cost of chasing opportunity

The third historically atypical behavior of the market in 2024 related to expense growth, which leveled off from its pandemic heights, but is still at a level far in excess of historical norms. From 2012 to the beginning of the pandemic in 2020, law firms averaged an expense growth of around 3% for both direct and overhead expenses.<sup>10</sup> Instead of returning to those levels, however, today's law firm expenditures continued to grow at a much faster pace, with an average expense growth north of 5% over the 12-month period ending in November 2024 and began trending up in recent quarters.

FIGURE 5:

### Expense growth

Rolling 12-month change



Source: Thomson Reuters 2025

### The TR Institute's View:

Unlike in previous years, expansion in expenses has been driven neither by rising associate costs nor inflation.<sup>11</sup> Related factors such as occupancy and office expenses also remained well below the average overhead rate. It should be noted, however, that early returns from the 2024 bonus season and the 2025 associate pay scales are on the historically high side and may lead to the re-ignition of another compensation war in the coming year.

In the present, however, higher expenses appear to be the table stakes for firms chasing the cornucopia of business opportunities available to them, as well as the cost of adapting to a shifting technological environment. Tech spending as well as knowledge management costs came in well above the historical average level, followed by outside services, marketing and business development, and (as an outlier) benefits.

<sup>10</sup> For these purposes, direct expenses refer to those expenses related to fee earners, primarily the compensation and benefits costs of lawyers and other timekeepers. Overhead (or indirect) expenses refer to all other expenses of the firm, including occupancy costs, administrative and staff compensation and benefits, technology costs, business development expenses, and more.

<sup>11</sup> Associate compensation expenses grew less than 3% per associate on average.

## Firm profitability and profit per lawyer

Over the 12-month period ending in November, the average law firm grew their profit per lawyer by 8.3%, returning to the records that firms set in 2020 and 2021. This is somewhat deceptive, however, considering 2022 was an especially poor year. In many ways, firms spent 2023 stanching the bleeding and 2024 has been a slow crawl back to where firms were before the early 2022 crash. Luckily, many firms seemed to have succeeded in returning to their peaks, with the average firm returning to nearly the same profit-per-lawyer (PPL) levels they experienced during the heights of the 2021 transactional boom.

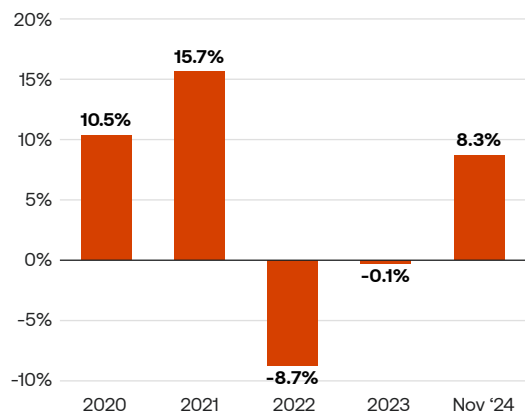
Yet there is more to this story than revenue and expenses. While PPL was solid in 2024, profits per equity partner (PPEP) were even better, reaching above 11.6% growth year-over-year. This growth beyond PPL is due in part to the increasing leverage of non-equity partners over equity partners that firms currently enjoy. This leverage provides greater profits to equity partners when good times are plentiful but forces them to bear greater expenses when they're not.

This kind of leverage is likely to accelerate as law firms continue to modify their structural and compensation models to meet current market realities.

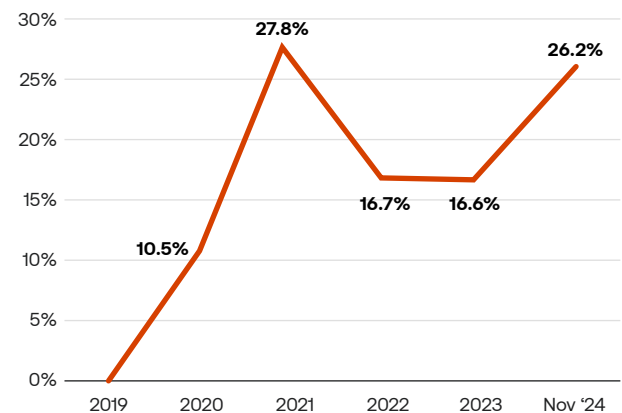
FIGURE 6:

### Profit per lawyer growth

Profit per lawyer growth  
Rolling 12-month change



### Profit per lawyer growth since 2019



Source: Thomson Reuters 2025

The successes of 2024 should not, however, be understood to be reasons to stand firm. Indeed, even as law firms enjoy strong financial tailwinds, the market in which they operate is evolving rapidly. Law firms themselves have also started to take new shapes, both in response to innovations they have witnessed as well as in anticipation of what may come.

## The changing composition of law firms

Over the last several years, law firms have significantly shifted their hiring practices to adjust to myriad challenges — the pandemic, tight labor markets, and the potential impact of generative AI (GenAI). As a result, the overall composition of law firms has changed drastically over the last decade, with significant developments that likely are intertwined with the increasing commercial focus of law firms.

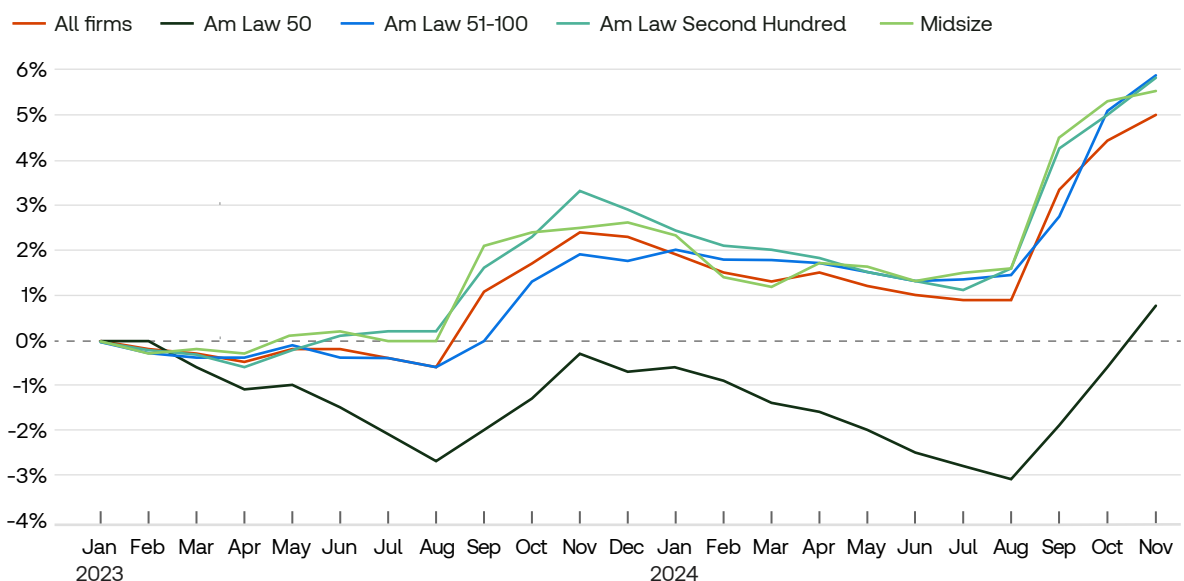
First, the pandemic delayed an entire class of law students at a time when firms were facing a surge of transactional demand, forcing lawyers into heavy work rotations that threatened burnout and ignited a talent war that saw associate salaries rise at an astonishing rate. This was followed by a rapid cooldown period, as legal demand slackened and firms tried to unwind from remote working models, with varying levels of success.<sup>12</sup>

Firms now seem to be returning to form when it comes to hiring, building talent from both luring lateral hires and bringing on more typical levels of first year associates, after having brought on notably smaller classes in 2023 when demand was more uncertain. However, while firms in the Am Law 51-200 and beyond have made notable gains in their scale, Am Law Top 50 firms have more or less been in a holding pattern with their late 2022 levels. While this segment has brought on a 2024 class in line with other segments, they have been more aggressive in trimming headcount through 2024 to a much greater extent than the other segments, as they were in 2023. Clearly, something else is happening here. While by no means destiny, other segments tend to follow the Am Law Top 50's path, meaning what is today a unique strategy for the segment may become the primary strategy for the market in a few years' time.

FIGURE 7:

### Lawyer FTE growth – change since January 2023

Percent change since January 2023 | By segment



Source: Thomson Reuters 2025

<sup>12</sup> See the 2024 Law Firm Office Attendance Policies Report, Thomson Reuters Institute (April 8, 2024); available here: [www.thomsonreuters.com/en-us/posts/legal/law-firm-office-attendance-policies-report-2024](https://www.thomsonreuters.com/en-us/posts/legal/law-firm-office-attendance-policies-report-2024).

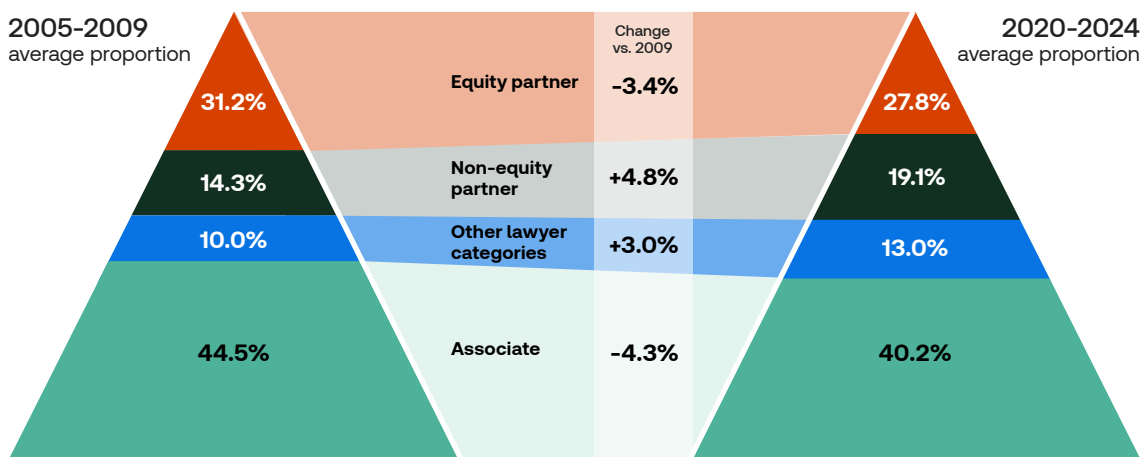
Over the past several years and particularly since the GFC, the composition and structure of law firms has been steadily changing. Firms have seen an increasing proportion of non-equity partners, and a reduction in the percentage of equity partners and associates. Within the equity partner and associate categories however, we have seen further shifts with a higher proportion of senior equity partners and associates rather than junior roles. For equity partners specifically - those partners who survived the GFC have accrued years of experience, further skewing the balance as fewer and fewer fresh partners have joined firms.

This indicates a growing difficulty for associates to advance to any level of partnership, as evidenced by a much-reduced class of partners with up to 10 years of experience across all segments, especially in Midsize law firms.

Indeed, the largest demographic changes for associates have occurred in the immediate aftermath of the GFC and have continued, albeit at a slower pace. What has been a more recent development, however, has been the bifurcation of the partnership, with a notable decrease in the ratio of *equity partners* as a proportion of the firm and a rise in the proportion of *non-equity partners*. While this effect was underway prior to the pandemic, the post-pandemic atmosphere has seen a further acceleration in this direction, in direct contrast to the structural proportion of associates, which remains unchanged since 2019.

FIGURE 8:

### Law firm talent - population pyramid



Source: Thomson Reuters 2025

## The next major challenge

As firms strategize on how to navigate economic changes, it's essential to recognize that they're also operating in a rapidly evolving technological environment, one in which the theoretical challenges of the past are becoming very real practical challenges today.

In the Thomson Reuters *2024 Future of Professionals Report*, published in July, the results of a survey of 1,253 legal professionals showed that more than three-quarters of them said that they believe AI will have “a *high or transformative impact* on their work over the next five years,” with 43% saying they believe the impact would be *transformative*.<sup>13</sup> On average, survey respondents predicted that more than half of their work would utilize new AI-powered technologies within the next five years.<sup>14</sup>

Of particular concern to law firm leaders, however, was that 44% of respondents predicted that GenAI will result in a *decline* in the use of billable hours pricing models over the next five years. As the report states: “As routine work becomes more efficient, firms understand that they will need to develop new pricing models that reflect the *value* of work product provided, rather than simply the *time* it has taken.”<sup>15</sup>

### Does rethinking the business model mean rethinking the billable hour?

While the billable hour, upon which law firms have become reliant, began simply as a way of valuing legal services, it mutated into the dominant model for the evaluation of lawyer performance; for measuring the economic value of matters, clients, and practices; and for setting economic goals. By the 1980s, the billable hour had become the linchpin of law firm management.

The billable hour model satisfied clients' demands for more insight into the work of their outside lawyers and enhanced productivity as firms adopted policies requiring lawyers to bill a certain number of minimum hours each year. However, the model itself contains inherent flaws that have become increasingly evident over time.

One of the most serious inherent flaws was the fact that the billable hour model defined value by focusing solely on *inputs* (that is, *time invested*) and not on *results* (the *value* of the matter to the client). As a consequence, the relationship between inputs and results became seriously distorted, and this distortion grew as the price of the inputs, in the form of hourly rates, soared over the past 40 years. Clients became increasingly aware of the distortion, particularly after the GFC, as evidenced by their demands for budgets or caps on legal fees for particular matters.

Despite this pushback, clients generally tolerated dramatic increases in hourly rates — rates in excess of \$1,000 per hour are no longer uncommon for many partners. The development and adoption of GenAI, however, could fundamentally alter this result. Although still in the early stages, the rapid growth of AI technologies promises to improve efficiency in the performance of legal tasks quite dramatically. As one legal commentator has noted, “[w]ithin a few years, depending on the nature of the tasks and how complex they are (or aren't), what once occupied 100 hours of a lawyer's time will take closer to 90, or maybe 70, or even 50.”<sup>16</sup>

<sup>13</sup> *Future of Professionals Report – AI-Powered Technology & the Forces Shaping Professional Work*, Thomson Reuters (July 2024), <https://www.thomsonreuters.com/en/c/future-of-professionals.html>.

<sup>14</sup> *Id.* at 10.

<sup>15</sup> *Id.* at 23.

<sup>16</sup> Jordan Furlong, *This Is How the Billable Hour Dies* (August 16, 2023), 4, <https://jordanfurlong.substack.com/p/this-is-how-the-billable-hour-dies>.

In such circumstances, it is hard to imagine that clients will not insist on being charged less for the services performed, at least if the value of such services continues to be measured on an *inputs* basis.<sup>17</sup>

In Formal Opinion 512, issued on July 29, 2024, the American Bar Association’s Standing Committee on Ethics and Professional Responsibility reviewed the lawyer’s ethical obligations in using GenAI tools in stunningly blunt terms. The committee stated that while GenAI tools “may provide lawyers with a faster and more efficient way to render legal services to their clients[...] lawyers who bill clients an hourly rate for time spent on a matter must bill for their actual time.”

The end goal, the committee continued, should be “solely to compensate the lawyer fully for time reasonably expended, an approach that if followed will not take advantage of the client.”<sup>18</sup>

The committee also recognized that the same standards should be applied to the use of GenAI in matters charged on a fixed fee or contingent fee basis.

*The factors set forth in Rule 1.5(a) also apply when evaluating the reasonableness of charges for GenAI tools when the lawyer and client agree on a flat or contingent fee. For example, if using a GenAI tool enables a lawyer to complete tasks much more quickly than without the tool, it may be unreasonable under Rule 1.5 for the lawyer to charge the same flat fee when using the GenAI tool as when not using it. A fee charged for which little or no work was performed is an unreasonable fee.*<sup>19</sup>

While ABA Formal Opinion 512 has been widely criticized for being overly broad in its application, it does underscore the inherent fallacy built into the billable hour model, even if that model is unlikely to go away anytime soon, if ever. As the use of GenAI tools continues to expand, however, it is becoming increasingly obvious that the legal profession must rethink how it defines *value* when pricing legal services. Continued reliance on an inputs-driven model is simply not viable in the long term.

## Impact on lawyers

Apart from its key role in pricing legal work, law firms also have become reliant on the billable hour as the primary means for defining and evaluating their lawyers’ performances – perhaps overly so. Indeed, despite the obvious issues raised by such reliance, law firms have almost universally settled on the total number of hours that a lawyer bills as the primary measure of *productivity*,<sup>20</sup> logically implying that it must bear some direct relationship to firm profitability.

The problem is that over the past decade or so, our data has convincingly demonstrated that productivity (as so measured) simply is no longer directly tied to law firm profits. Over the last 10 years, we have seen law firm profits per lawyer grow year-over-year while at the same time, billable hours worked per lawyer have steadily and significantly declined. We are thus left with the obvious question of whether the billable hour metric is the best way to measure an individual lawyer’s contribution.

<sup>17</sup> It is also worth noting that, in this scenario, rates could be driven down by other market forces as well. If all lawyers experience improved efficiencies at the rates noted, there will be a lot of excess capacity in the market, incentivizing firms to either reduce their number of lawyers or find ways of increasing the demand for their services. To accomplish the latter in a newly efficient market, firms would likely have to lower their fees to attract new business and that in itself could ultimately drive down hourly rates.

<sup>18</sup> ABA Formal Opinion 512, *Generative Artificial Intelligence Tools* (July 29, 2024), 12.

<sup>19</sup> *Id.*

<sup>20</sup> Even within Thomson Reuters Institute’s own reporting, the primary measure used for productivity has been the “average daily demand per full-time equivalent” – a metric based on the number of billable hours per lawyer reported per working day. And, in our annual *State of the US Legal Market* reports, we have, for many years, reported the decline in billable hours worked per lawyer – again using average billable hours worked by month by firm lawyers as the measure of productivity.



In a recent white paper on *Relative Performance Measures*, the Thomson Reuters Institute summed up the problem as follows:

*In theory, a lawyer who bills a high number of hours, but with low collections and low overall profits would measure well on the current productivity metric, while a lawyer who completes a high number of tasks quickly on a fixed fee basis could be slighted for poor performance based simply on the fact that the work was completed quickly, even if it was highly lucrative to the firm...*

*Clearly, a new way of evaluating lawyers' contribution is needed.<sup>21</sup>*

To be sure, most law firms would say that their internal processes take some account of a lawyer's profitability to the firm in making compensation and advancement decisions, however, it is clear that a lawyer's total number of billable hours usually remains the primary basis for such decisions.

To consciously use a system that undervalues genuine productivity and efficiency in favor of one that continues to focus primarily on how much time is required to complete a task has been at least a questionable business judgment in the past. Going forward, with the growth of GenAI technologies and their inevitable impact on law firm pricing models, it becomes an even more important issue.

The *Relative Performance Measures* paper suggests a new productivity metric to help firms assess the value of their individual lawyers in a more accurate way. This metric, called the *relative performance measure* (RPM), evaluates each lawyer's performance in generating fees in the firm's time and billing system, and the firm's ability to collect those fees, not just in absolute terms but as a measure relative to the performing lawyer's own peers. These peers are other lawyers similarly situated in terms of the nature of the firm, practice, status, location, etc., either within the lawyer's own firm or within a population of competitor firms.

In this way, the RPM model is a good example of the kind of creative thinking that is needed if the legal profession is going to replace the billable hour as the organizing assumption of law firm economics, value, and structure. Again, this is not something that will happen overnight. Rather, it will take time for the legal industry to wean itself from a system that has dominated it for 50 years. However, it is clearly time to begin experimenting.

<sup>21</sup> *Relative Performance Measures – Building a Better Productivity Metric*, Thomson Reuters Institute (2024), 3. <https://www.thomsonreuters.com/en-us/posts/legal/relative-performance-measures-report-2024>

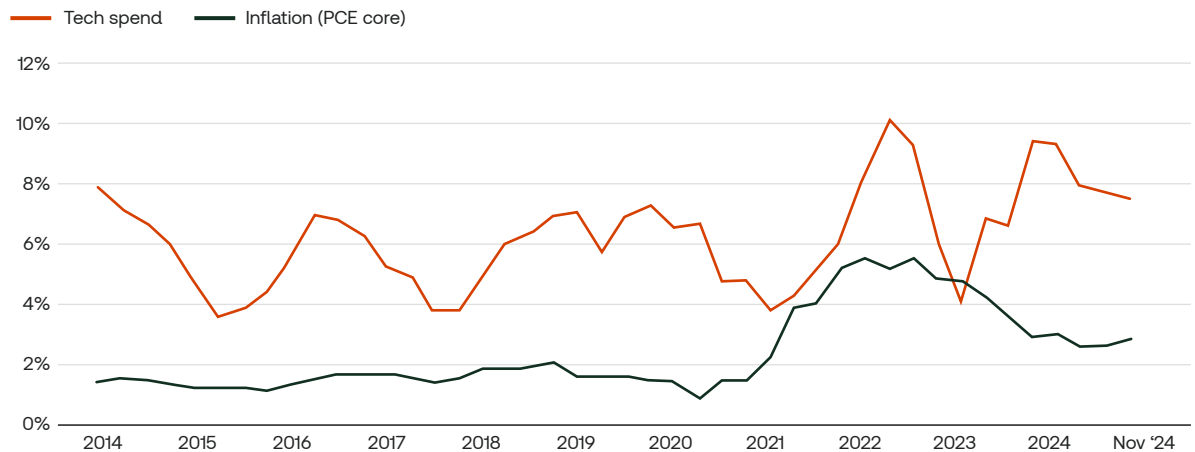
## The challenge of technological debt

The broadening of GenAI technologies and their ultimate impact on the legal industry are inevitable, even though there is legitimate debate about the timing. There is no debate, however, over the idea that adapting to new technologies will be very expensive for law firms. Reflecting this reality, law firm spending on technology is growing at an unprecedented rate. Indeed, over the course of 2024, firms increased their technology spending at a historically high pace even as inflation receded.

FIGURE 9:

### Tech spend vs. inflation

Rolling 12-month change



PCE Inflation measure (as of Oct 2024) = Personal Consumption Expenditures Excluding Food and Energy.

Source: Thomson Reuters 2025

Complicating the issue is the fact that GenAI systems rely on quality data to function effectively and create competitive advantages. Law firms that are not up to date in managing their current data will be under increasing pressure to modernize their data management and processing capabilities. Putting off such modernization will leave them with obsolete systems that will impede their capacity to adopt the new technologies. Yet, the costs of modernization and tight expense budgets will tempt many firms to try and *patch up* their old systems to last a few more years rather than making current investments to solve their problems in the long term.

This leads directly to the problem of *technological debt*, a concept that is well known in other industries.

The concept of technological debt involves incurring future costs due to expedient but suboptimal decisions made during a period of technological development or implementation. These decisions often prioritize quick delivery over thoroughness or a continuation of the status quo instead of a costly or risky evolution, leading to complications and increased maintenance efforts down the line. The longer this tech debt is held, the greater the cost becomes until it finally reaches a breaking point.

In the end, of course, the technological debt must be paid if the organization is to survive. That payment, however, will be *in addition* to the costs that will still have to be invested in the new technology.

There are, however, proven techniques to minimize or sometimes even avoid the additional costs associated with technological debt. These include:

- Collaborative industry initiatives that involve joint research projects, shared training facilities, and industry-wide standards for workforce development;
- Use of simulation and modeling tools to play out the implications of new technology developments before trying to deploy them in the *real world*; and
- Development of a long-term technology roadmap that ensures that the industry remains adaptable and ready to leverage emerging technologies. Such a roadmap would include:
  - a comprehensive, multi-year vision that outlines planned upgrades, new technology adoption, and how these plans align with overall business objectives;
  - risk mitigation practices to safeguard against unexpected disruptions;
  - prioritized funding for technology upgrades and maintenance;
  - long-term, flexible planning for financial fluctuations by allocating resources for both prosperous periods and lean times; and
  - Regular reviews and updates of the roadmap to take account of changes in technology, market trends, and business priorities

Even if the full impact of GenAI is still five or more years away, firms are already incurring costs to update and maintain their current data management and processing systems. Full implementation of new GenAI technology will likely require additional *new* investment on top of these already sunk costs, and there probably will be a transition period in which firms will be funding *both* their new and their increasingly obsolete systems.

Dealing with these increased costs will be an economic challenge. It thus seems apparent that law firms need to begin developing long-range plans to meet this challenge and strategies to mitigate the potentially negative impact of their adoption of GenAI systems. Given the short-term capital structures of firms, the investment hurdles will be difficult. That means that starting these internal conversations and getting buy-in from key partners for the changes that will be required is a critical first step. However, the ongoing evolution of law firms, from a technological, commercial, and cultural perspective means that they are more prepared than ever to clear hurdles that may have once seemed unsurmountable.

## Conclusion

The financial results from 2024 show the strong resilience of the US legal market. Driven by solid demand growth across both counter-cyclical and transactional practices as well as by continuing growth in worked rates, most law firms are well positioned to end the year with healthy growth in their profits per lawyer, notwithstanding expense levels that remain much higher than historic norms. These results reflect business decisions by many firms to modify their economic and compensation models to sustain profitability and to remain competitive in today's highly volatile talent market.

These changes, although sound from a business standpoint, would have been hard to imagine even a few short years ago. In the past year, firms continued to constrain growth in their equity partner ranks and increased their expectations for partner performance at all levels. To keep high-producing partners, firms often lowered the compensation of other partners, increased bonus pools, and widened the gap between their lowest and highest compensated partners. Most single-tier partnership firms have now converted to multi-tier structures, while others have ramped up their numbers of non-equity partners. Firms have also continued to reduce their historic rates of associate hiring and have continued to exert controls over additional direct and overhead expense growth.

In short, in 2024 we saw firms taking steps to ensure their continuing success in a changing market, even though their actions required fundamental changes in their traditional models. Going forward, it is quite likely that even more fundamental changes will be needed as a result of the rapid spread of GenAI technology and the transformative effects it is likely to have on the underlying economic assumptions that have guided law firms over the past 50 years.

## Looking ahead

In 2025, law firms will be required to continue to navigate a complex landscape shaped by shifting demand and expense dynamics. According to predictive models based on our Financial Insights data, demand growth will likely weaken in 2025 compared to 2024, although it will likely not reach the low levels observed in late-2022 and 2023. This subdued demand will reflect the historic difficulty of firms' ability to achieve long-run demand growth, as well as uncertain broader conditions in the US and global economies.

That said, the results of the recent US election could boost firm demand above these levels, as higher levels of economic and geopolitical instability typically result in clients turning to their lawyers for risk reduction, at least in the short term.<sup>22</sup>

Expense growth, on the other hand, is projected to remain at historically elevated levels, posing additional pressure on profits in combination with the revenue difficulties projected by lower demand. Factors include the ongoing implementation of GenAI technologies which, although promising in the long run, are currently costly and require significant attention.

Moreover, with inflation trending downwards and interest rates decreasing (which could add further upside for transactional practices), firms might contain expense growth through excess prepayments and by enhancing their collection efforts, potentially setting the stage for a stronger performance as the year progresses.

<sup>22</sup> Engelland, B. *What does a second Trump term mean for law firms in 2025 and beyond?*; Thomson Reuters Institute (Dec. 16, 2024) (<https://www.thomsonreuters.com/en-us/posts/legal/trump-impact-law-firms>)

The primary change, of course, could be to the use of the billable hour pricing model. As routine work becomes more efficient, it will become increasingly necessary for firms to develop new models that reflect the value of the legal work performed and not just the amount of time it takes. This change will also impact the way firms measure and reward lawyer performance, as well as how they think about and plan for technology investments.

## Visions of the firm of tomorrow

The changes currently underway have the potential to transform the delivery of legal services far more profoundly than any we have seen thus far. Despite the unprecedented changes to firms' commercial and talent models, firms have succeeded financially all the while. We expect the technological changes to provide further financial dividends for those firms that execute this evolution effectively. While they are not likely to occur immediately, they may well have a substantial impact within the next five years or so. Considering the time that will be needed to plan for and successfully implement new systems that can accommodate these dramatically new market realities, it would be prudent for firms to initiate processes now to prepare themselves for these changes. Given the resilience and flexibility that we have seen in the US legal market this past year, we have no doubt that firms are more than capable of taking on this extraordinary challenge in a way they were not just a few years ago.

## Credits

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Center on Ethics and the Legal Profession

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The Center on Ethics and the Legal Profession  
[www.law.georgetown.edu/legal-profession](https://www.law.georgetown.edu/legal-profession).



**Thomson Reuters  
Institute**

**Exhibit 4 at 22**

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

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ATTORNEYS FOR DEBTOR

In re:

LTL MANAGEMENT LLC,<sup>1</sup>

Debtor.

Chapter 11

Case No.: 21-30589 (MBK)

Judge: Michael B. Kaplan

**Hearing Date: February 27, 2022**

**SUMMARY COVER SHEET AND STATEMENT FOR SECOND  
INTERIM FEE APPLICATION OF HOGAN LOVELLS US LLP FOR  
ALLOWANCE OF FEES AND REIMBURSEMENT OF EXPENSES AS  
COUNSEL FOR CHAPTER 11 DEBTOR FOR THE PERIOD JUNE 1, 2022  
THROUGH SEPTEMBER 30, 2022**

<sup>1</sup> The last four digits of the Debtor's taxpayer identification number are 6622. The Debtor's address is 501 George Street, New Brunswick, New Jersey 08933.



Case 21-30589-MBK Doc 3472 Filed 12/13/22 Entered 12/13/22 22:06:11 Desc Main Document Page 2 of 14

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

**D.N.J. LBR 2016-1, FEE APPLICATION COVER SHEET**

Debtor: LTL Management LLC

Applicant: Hogan Lovells US LLP (Retained by Order Entered June 15, 2022, Authorizing Retention *Nunc Pro Tunc* to April 4, 2022 [Dkt. 851])

Case No.: 21-30589-MBK

Client: LTL Management LLC

Chapter: 11

Case Filed: October 14, 2021 (the "Petition Date")

**SECOND INTERIM FEE APPLICATION OF HOGAN LOVELLS US LLP FOR  
ALLOWANCE OF FEES AND REIMBURSEMENT OF EXPENSES AS COUNSEL  
FOR CHAPTER 11 DEBTOR FOR THE PERIOD JUNE 1, 2022 TO SEPTEMBER  
30, 2022**

**SECTION 1  
FEE SUMMARY**

☒ Interim Fee Application No. 2                      or                      ☐ Final Fee Application

Summary of Amounts Requested for the Period from June 1, 2022 to September 30, 2022 (the "Second Interim Statement Period").

	<u>FEES</u>	<u>EXPENSES</u>
TOTAL PREVIOUS FEES REQUESTED:	\$1,937,119.09	\$1,021.16
TOTAL FEES ALLOWED TO DATE:	\$0	\$0
TOTAL RETAINER (IF APPLICABLE):	\$0	\$0
TOTAL FEE EXAMINER ADJUSTMENT:	\$0	\$0
TOTAL HOLDBACK (IF APPLICABLE):	\$387,423.82	\$0
TOTAL RECEIVED BY APPLICANT:	\$591,208.00	\$15.00
Fee Total:	\$1,749,315.19	
Disbursement Total:	\$1,021.16	
Total Fee Application:	\$1,750,336.35	

<b>Name of Professional &amp; Title</b>	<b>Year of Admission</b>	<b>Hours</b>	<b>Rate</b>	<b>Fees</b>
Neal Kumar Katyal, Partner	1999	331.3	\$2,465.00	\$816,654.50
Sean Marotta, Partner	2010	174.3	\$1,115.00	\$194,344.50
		4.20	\$500.70 (travel)	\$2,102.94
Will Havemann, Senior Associate	2014	177.5	\$1,035.00	\$183,712.50
		4.10	\$517.50 (travel)	\$2,121.75
Jo-Ann Sagar, Senior Associate	2015	260.0	\$1,035.00	\$269,100
		2.0	\$517.50 (travel)	\$1,035.00
Patrick Valencia, Associate	2018	201.1	\$830.00	\$166,913.00
		5.30	\$415.00 (travel)	\$2,199.50
Catherine Stetson, Partner	1994	14.70	\$1,320.00	\$19,404.00
Jessica L. Ellsworth, Partner	2001	10.30	\$1,210.00	\$12,463.00
Matthew J. Higgins, Senior Associate	2016	18.20	\$995.00	\$18,109.00
Danielle C. Desaulniers Stempel, Senior Associate	2017	8.10	\$895.00	\$7,249.50
Katherine Wellington, Senior Associate	2013	4.20	\$1,055.00	\$4,431.00
Nathaniel Zelinsky, Associate	2019	11.10	\$830.00	\$9,213.00
Johannah Walker, Associate	2018	10.40	\$830.00	\$8,632.00
Dana Raphael, Associate	2020	5.00	\$685.00	\$3,425.00
Heather A. Briggs, Paralegal	N/A	48.6	\$525.00	\$25,515.00
Leah A. Walker, Paralegal	N/A	0.3	\$500.00	\$150.00

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Brenda A. Fitzgerald, Practice Support Administrative Assistant	N/A	0.5	\$425.00	\$212.50
Montana Erin Love, Researcher	N/A	8.5	\$275.00	\$2,337.50
Total		1299.7		\$1,749,315.19

**SUMMARY OF SERVICES**

<b>SERVICES RENDERED</b>	<b>HOURS</b>	<b>FEES</b>
a) <b>Asset Analysis and Recovery:</b> Identification and review of potential assets including causes of action and non-litigation recoveries.	0	\$0.00
b) <b>Asset Disposition:</b> Sales, leases, abandonment and related transaction work.	0	\$0.00
c) <b>Avoidance Action Litigation:</b> Preference and fraudulent transfer litigation.	0	\$0.00
d) <b>Business Operations:</b> Issues related to debtor-in-possession operating in chapter 11 such as employee, vendor, tenant issues and other similar problems.	0	\$0.00
e) <b>Case Administration:</b> Coordination and compliance activities, including preparation of statement of financial affairs, schedules, list of contracts, United States Trustee interim statements and operating reports; contacts with the United States Trustee; general creditor inquiries.	0	\$0.00
f) <b>Claims Administration and Objections:</b> Specific claim inquiries; bar date motions; analyses, objections and allowance of claims.	0	\$0.00
g) <b>Employee Benefits/Pensions:</b> Review issues such as severance, retention, 401K coverage and continuance of pension plan.	0	\$0.00
h) <b>Fee/Employment Applications:</b> Preparations of employment and fee applications for self or others; motions to Establish interim procedures.	6.1	\$9,771.50
i) <b>Fee/Employment Objections:</b> Review of an objections to the employment and fee applications of others.	0	\$0.0
j) <b>Financing:</b> Matters under 361, 363 and 364 including cash collateral and secured claims; loan document analysis.	0	\$0.00
k) <b>Litigation:</b> Other than Avoidance Action Litigation (there should be a separate category established for each major matter).	1278	\$1,732,279.9
l) <b>Meeting of Creditors:</b> Preparing for and attending the conference of creditors, the 341(a) meeting and other creditors' committee meetings.	0	\$0.00
m) <b>Plan and Disclosure Statement:</b> Formulation, presentation and confirmation; compliance with the plan confirmation order, related orders and rules; disbursement and case closing activities, except those related to allowance and objections to allowance of claims.	0	\$0.00

<b>SERVICES RENDERED</b>	<b>HOURS</b>	<b>FEES</b>
n) <b>Relief from Stay Proceedings:</b> Matters relating to termination or continuation of automatic stay under 362.	0	\$0.00
o) <b>Accounting/Auditing:</b> Activities related to maintaining and auditing books of account, preparation of financial statements and account analysis.	0	\$0.00
p) <b>Business Analysis:</b> Preparation and review of company business plan; development and review of strategies; preparation and review of cash flow forecasts and feasibility studies.	0	\$0.00
q) <b>Corporate Finance:</b> Review financial aspects of potential mergers, acquisitions and disposition of company or subsidiaries.	0	\$0.00
r) <b>Data Analysis:</b> Management information systems review, installation and analysis, construction, maintenance and reporting of significant case financial data, lease rejection, claims, etc.	0	\$0.00
s) <b>Litigation Consulting:</b> Providing consulting and expert witness services related to various bankruptcy matters such as insolvency, feasibility, avoiding actions; forensic accounting, etc.	0	\$0.00
t) <b>Reconstruction Accounting:</b> Reconstructing books and records from past transactions and bringing accounting current.	0	\$0.00
u) <b>Tax Issues:</b> Analysis of tax issues and preparation of state and federal tax returns.	0	\$0.00
v) <b>Valuation:</b> Appraise or review appraisals of assets.	0	\$0.00
w) <b>Travel Time</b>	15.6	\$7,459.19
<b>SERVICE TOTALS</b>	<b>1299.7</b>	<b>\$1,749,315.19</b>

**SECTION III SUMMARY OF DISBURSEMENTS**

<b>DISBURSEMENTS</b>	<b>AMOUNT</b>
a) <b>Filing Fees</b> Payable to Clerk of Court.	00.00
b) <b>Computer Assisted Legal Research</b> Westlaw, Lexis and a description of manner calculated.	00.00
c) <b>Pacer Fees</b> Payable to the Pacer Service Center for search and/or print.	00.00
d) <b>Fax</b> Include per page fee charged.	00.00
e) <b>Case Specific Telephone/Conference Call Charges</b> Including Court Conference and/or Hearings. Exclusive of overhead charges.	00.00
f) <b>In-house Reproduction Services</b> Exclusive of overhead charges.	\$979.6
g) <b>Outside Reproduction Services</b> Including scanning services.	00.00
h) <b>Other Research</b> Title searches, UCC searches, Asset searches, Accurint.	00.00
i) <b>Court Reporting</b> Transcripts.	00.00
j) <b>Travel</b> Mileage, tolls, airfare, parking.	\$41.56
k) <b>Courier &amp; Express Carriers</b> Overnight and personal delivery.	00.00
l) <b>Postage</b>	00.00
m) <b>Other</b>	00.00
<b>DISBURSEMENTS TOTAL:</b>	\$1,021.16

I certify under penalty of perjury that the above is true.

Date: December 13, 2022

/s/ Neal Kumar Katyal

Signature

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

**WOLLMUTH MAHER & DEUTSCH LLP**

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(Admitted *pro hac vice*)  
ATTORNEYS FOR DEBTOR

In re:

LTL MANAGEMENT LLC,<sup>1</sup>

Debtor.

Chapter 11

Case No.: 21-30589 (MBK)

Judge: Michael B. Kaplan

Hearing Date: February 27, 2022

**TO: HONORABLE MICHAEL B. KAPLAN  
UNITED STATES BANKRUPTCY JUDGE**

Hogan Lovells US LLP (the “Firm” or “Applicant”), special counsel for LTL Management, LLC, Chapter 11 Debtor (the “Debtor”), hereby submits its Second Interim Fee Application for Allowance of Fees and Reimbursement of Expenses as Counsel for the Debtor for the Period from June 1, 2022 to September 30, 2022 (the “Application”), pursuant to 11 U.S.C. §§ 330 and 331 and the *Order Establishing Procedures for Interim Compensation and*

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<sup>1</sup> The last four digits of the Debtor's taxpayer identification number are 6622. The Debtor's address is 501 George Street, New Brunswick, New Jersey 08933.

*Reimbursement of Retained Professionals* (the “Interim Compensation Order”) [Dkt. No. 761].

By this Application, the Firm seeks allowance of compensation in the amount of \$1,749,315.19<sup>1</sup> and reimbursement of actual and necessary expenses in the amount of \$1,021.16, for the period of June 1, 2022 to September 30, 2022 (the “Compensation Period”). In support of this application, the Firm respectfully represents as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. Sections 157 and 1334. Venue is proper pursuant to 28 U.S.C. Sections 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. Sections 157(b)(2). The statutory predicates for the relief requested herein are Sections 330 and 331 under Title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time (the “Bankruptcy Code” or “Code”).

2. By Order dated June 15, 2022, the Court authorized the Debtor to retain the Firm as Special for the Debtor effective as of April 4, 2022. A true and correct copy of the Order authorizing the Firm’s retention is annexed hereto as **Exhibit A**.

3. In accordance with Rule 2016-1 of the Local Rules for the District of New Jersey and the United States Trustee Fee Guidelines, annexed to this Application as **Exhibit B** are detailed time records of the Firm’s services that were included in Monthly Fee Statements previously filed and served in accordance with the Interim Compensation Order and rendered during the applicable time period, describing the nature of the services rendered to the Debtor each day, the time devoted to such services in increments of one-tenth of an hour, and the identity of all professionals and paraprofessionals performing the services. Also annexed hereto

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<sup>1</sup> In preparing this interim fee application, Hogan Lovells has determined to decrease its request for fees by \$195.40.



as Exhibit C are detailed descriptions of the Firm's actual expenses, to the extent any were incurred during the relevant time period.

4. The Firm has expended a total of 1,299.7 hours rendering services as the Debtor's counsel during the Compensation Period, having a value of \$1,749,510.59. The blended hourly rate for attorneys is \$1,100.00 and the total blended hourly rate is \$942.65. The blended rate for the Compensation Period by the various categories of professionals and paraprofessionals is:

- Partner: \$1,527.50
- Associate: \$910.00
- Paralegal and Practice Support: \$431.25

The rates charged by the Firm are reasonable and reflect the Firm's conscientious efforts to have personnel with appropriate experience, and where possible with lower hourly rates, perform services whenever the complexities and exigencies of the matter permitted.

5. During the Compensation Period, the Firm filed the Monthly Fee Statements<sup>1</sup> below, and held back 20% of fees requested for each Monthly Fee Statement period:

- Third Monthly Fee Statement for the Period of 6/1/2022 through 6/30/2022 [Dkt. 3185] (\$14,454.50 held back);
- Fourth Monthly Fee Statement for the Period of 7/01/2022 through 7/31/2022 [Dkt. 3186] (\$95,825.80 held back);
- Fifth Monthly Fee Statement for the Period of 8/01/2022 through 8/31/2022 [Dkt. 3443] (\$82,319.28 held back);
- Sixth Monthly Fee Statement for the Period of 9/01/2022 through 9/31/2022 [Dkt. 3444] (\$157,302.54 held back);

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<sup>1</sup> Both the Debtor and the United States Trustee were served the four Monthly Fee Statements and will be served this Interim Fee Application upon filing. Epiq serves all fee applications and Monthly Fee Statements in accordance with the requirements of the interim compensation order, which provides for service on the Debtor and the U.S. Trustee, among other parties. Additionally, the Debtor received the Monthly Fee Statements that make up the Application before the Application was filed, and reviews those Monthly Fee Statements.

6. No objections to the Third and Fourth Monthly Fee Statements were filed and the Firm filed certifications of no objection related to each Monthly Fee Statement. [Dkt. Nos. 3283, 3284]. As of the time of this Application, no objections to the Fifth and Sixth Monthly Fee Statements have been received, but the time for objections has not yet passed.

7. During the Compensation Period, the Firm was required to furnish substantial services to the Debtor, which occupied various professionals within the Firm. To assist the Court in evaluating the nature, extent and reasonableness of the compensation requested, the following is a narrative summary of some of the more significant services rendered:

**SUMMARY DESCRIPTION OF SERVICES DURING THE COMPENSATION PERIOD**

8. The Firm rendered professional services to the Debtor as necessary and appropriate in furtherance of the Debtor's duties and functions in the Chapter 11 Case.

**A. Litigation**

9. The Firm has been responsible for the defense on appeal of the Court's orders finding that the Debtor's Chapter 11 Case was not filed in bad faith and prohibiting the commencement or continuation of talc-related claims against the Debtor's affiliates, insurers, and third-party retailers.

10. During the Compensation Period, the Firm addressed procedural matters relating to the briefing schedule in the Third Circuit and coordinated with Jones Day and claimants' counsel regarding designations for and preparation of the joint appendix, including preparing a motion to seal confidential documents. The Firm further analyzed claimants' opening briefs, researched, drafted, revised, and filed Debtor's Third Circuit response brief defending the Court's dismissal and stay orders and coordinated with *amici curiae* that showed interested in

participating in the case. Finally, the Firm prepared for and presented oral argument in the Third Circuit defending the Court's dismissal and stay orders.

**B. Retention Application.**

11. The U.S. Trustee objected to retention of the Firm as appellate counsel for the Debtor. During the Compensation period, the Firm revised the reply in support of the Firm's retention application initially prepared by Jones Day and telephonically attended the hearing on the U.S. Trustee's objection, resulting in the successful retention of the Firm.

12. In rendering services to the Debtor during the Chapter 11 Case, the Firm's legal team has been composed primarily of professionals with extensive experience in appellate litigation. These professionals have coordinated assignments both internally and with other professionals of the Debtor and co-counsel to maximize efficiency and avoid any duplication of effort.

13. All services were rendered by Applicant at the request of the Debtor and were necessary, reasonable and appropriate under the circumstances and beneficial to the estate at the time the services were rendered. The compensation sought by the Firm in this Application is comparable to or less than customary compensation sought by comparably skilled professionals in cases under the Bankruptcy Code. In addition, the compensation sought is based on Applicant's standard and usual rates for similar services in representations other than under the Bankruptcy Code.

14. The services provided by Applicant during the Compensation Period were rendered to ensure no unnecessary duplication and are grouped into the billing categories. The attorneys and professionals who rendered services relating to each category are identified in the

above attachment and summaries of the hours and fees of each for the Compensation Period and the total compensation by billing category is included herein.

15. Given the nature and value of the services that Applicant provided to the Debtor as described herein, the amounts sought under this Application are fair and reasonable under section 330 of the Bankruptcy Code given the complexity of the case; the time expended by attorneys and professionals; the nature and extent of the services rendered; the value of such services; and the costs of comparable services other than in a case under the Bankruptcy Code.

16. The Firm has received no payment and no promises for payment from any source for services rendered in connection with this case other than those in accordance with the Bankruptcy Rules. There is no agreement or understanding between Applicant and any other person (other than members of Applicant) for the sharing of compensation to be received for the services rendered in the case.

#### **CERTIFICATION OF COUNSEL**

17. A Certification of Counsel is attached hereto as **Exhibit D**.

#### **COMPLIANCE WITH GUIDELINES**

18. The Firm believes that this Application substantially complies with the local rules of this Court and the United States Trustee's guidelines for fee applications. To the extent there has not been material compliance with any particular rule or guideline, the Firm respectfully requests a waiver or an opportunity to cure.

#### **CONCLUSION**

**WHEREFORE**, the Firm respectfully requests entry of an Order (a) approving and allowing on an interim basis (i) compensation for the Applicant for its duly authorized, necessary and valuable services to the Debtor during the Compensation Period in the aggregate amount of \$1,749,315.19 and (ii) reimbursement of actual and necessary expenses incurred during the

Compensation Period of \$1,021.16; (b) directing the Debtor to pay the outstanding amounts in accordance with the priorities of the Bankruptcy Code; and (c) granting such other and further relief as the Court deems just and proper.

Dated: December 13, 2022  
Washington, D.C.

Respectfully submitted,

/s/ Neal Kumar Katyal  
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SEAN MAROTTA  
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*Special Counsel to Debtor Voyager Digital,  
LLC*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	: Chapter 11
VOYAGER DIGITAL HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	: Case No. 22-10943 (MEW)
Debtors.	: (Jointly Administered)
-----X	

**SUMMARY SHEET FOR FIRST INTERIM FEE APPLICATION OF QUINN  
EMANUEL URQUHART & SULLIVAN, LLP FOR ALLOWANCE OF  
COMPENSATION AND REIMBURSEMENT OF EXPENSES INCURRED AS SPECIAL  
COUNSEL FOR VOYAGER DIGITAL LLC FOR THE PERIOD FROM JULY 13, 2022  
THROUGH AND INCLUDING OCTOBER 31, 2022**

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital, Ltd. (7224); and Voyager Digital, LLC (8013). The location of the Debtors' principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003.

<b>Basic Information</b>	
Name of Applicant:	Quinn Emanuel Urquhart & Sullivan, LLP
Name of Client:	Voyager Digital, LLC
Petition Date:	July 5, 2022
Date of Order Approving Employment and Retention:	August 4, 2022, <i>nunc pro tunc</i> to July 13, 2022 <sup>2</sup>
<b>This Interim Application</b>	
Time Period Covered:	July 13, 2022 through October 31, 2022
Total Hours Billed	2,709.00
Total Fees Requested:	\$3,162,787.20 <sup>3</sup>
Total Expenses Requested	\$21,084.61
Total Fees and Expenses Requested:	\$3,183,871.81
Blended Rate for Attorneys:	\$1,377.98
Blended Rate for All Timekeepers:	\$1,297.23
Rate Increases Not Previously Approved or Disclosed:	N/A
Total Professionals:	17
Total Professionals Billing Less than 15 Hours	6
<b>Historical</b>	
Fees Approved to Date:	\$0
Expenses Approved to Date:	\$0
Total Fees and Expenses Approved to Date:	\$0
Approved Amounts Paid to Date:	\$0
Fees Paid Pursuant to Monthly Statements, Not Yet Allowed:	\$2,530,229.76
Expenses Paid Pursuant to Monthly Statements, Not Yet Allowed:	\$21,094.86 <sup>4</sup>
<b>Related Information and Case Status</b>	
This is an interim application.	
The Court has entered the Order (I) Directing Joint Administration of the Chapter 11 Cases and (II) Granting Related Relief [ECF No. 18].	

<sup>2</sup> This Court approved the retention of Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel") as Special Counsel to Voyager Digital LLC ("Voyager LLC") on August 4, 2022, *nunc pro tunc* to July 13, 2022. [ECF No. 242].

<sup>3</sup> Quinn Emanuel agreed with Voyager LLC to a 10% discount off of its customary fees. Accordingly, Quinn Emanuel only seeks approval herein of 90% of its customary fees as set forth in the monthly invoices to Voyager LLC (the "Net Billed Fees"). See, e.g., Quinn Emanuel's *First Monthly Fee Statement* [ECF No. 358], at 10.

<sup>4</sup> In Quinn Emanuel's first invoice to Voyager LLC, Voyager LLC was incorrectly billed \$9.00 for "Word processing," and \$1.25 for "Velobind," for a total of \$10.25 (the additional \$2.50 in Velobind charges in this invoice were proper). These items should not have been billed to Voyager LLC. Quinn Emanuel also incorrectly requested approval for both of these items in its First Fee Statement [ECF No. 358], at 8. Quinn Emanuel is not requesting allowance of this \$10.25 herein, and is in the process of refunding this \$10.25 charge to Voyager LLC.

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Kate Scherling  
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*Special Counsel to Debtor Voyager Digital,  
LLC*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X	:	
In re:	:	Chapter 11
	:	
VOYAGER DIGITAL HOLDINGS, INC., <i>et al.</i> ,	:	Case No. 22-10943 (MEW)
	:	
Debtors.	:	(Jointly Administered)
	:	
-----X		

**FIRST INTERIM APPLICATION OF QUINN EMANUEL URQUHART & SULLIVAN  
LLP FOR ALLOWANCE OF INTERIM COMPENSATION FOR PROFESSIONAL  
SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES INCURRED AS  
SPECIAL COUNSEL TO VOYAGER DIGITAL LLC FROM JULY 13, 2022  
THROUGH AND INCLUDING OCTOBER 31, 2022**



Quinn Emanuel Urquhart & Sullivan, LLP (“Quinn Emanuel”), Special Counsel to Voyager Digital LLC (the “Company” or “Voyager LLC”), hereby submits this application (the “Application” or the “First Interim Application”) pursuant to sections 330 and 331 of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”), Rule 2016 of the Federal Rules of Bankruptcy Procedure (as amended, the “Bankruptcy Rules”), Rule 2016-1 of the Local Bankruptcy Rules for the Southern District of New York (as amended, the “Local Bankruptcy Rules”), the Amended Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases, dated January 29, 2013 (the “Local Guidelines”), the United States Trustee Appendix B Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases, effective November 1, 2013 (the “U.S. Trustee Guidelines” and, together with the Local Guidelines, the “Guidelines”), and this Court’s *Order (i) Establishing Procedures for Interim Compensation and Reimbursement of Expenses For Retained Professionals; and (ii) Granting Related Relief*, entered on August 4, 2022 [ECF No. 236] (the “Interim Compensation Order”), for interim allowance of compensation for professional services rendered by Quinn Emanuel to Voyager LLC for the period from July 13, 2022 through and including October 31, 2022 (the “Interim Application Period”) and reimbursement of actual and necessary expenses incurred by Quinn Emanuel in connection with rendering such services during the Interim Application Period.

Pursuant to the Guidelines, Quinn Emanuel submits the declaration of Susheel Kirpalani, a Quinn Emanuel partner (the “Kirpalani Declaration”), regarding Quinn Emanuel’s compliance with the Guidelines, which is attached hereto as **Exhibit A** and is incorporated herein by reference. In further support of this Application, Quinn Emanuel respectfully represents as follows:

### **Jurisdiction and Venue**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding under 28 U.S.C. § 157(b)(2).

2. The bases for the relief requested herein are sections 330 and 331 of the Bankruptcy Code, Bankruptcy Rule 2016, Local Bankruptcy Rule 2016-1(a), and the Interim Compensation Order.

### **Background**

3. On July 5, 2022 (the “Petition Date”), Voyager LLC, Voyager Digital Holdings, Inc. (“Voyager Holdings”), and Voyager Digital Ltd. (“Voyager Ltd.” and collectively with Voyager LLC and Voyager Holdings, the “Debtors”) each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

4. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [ECF No. 18] .

5. On July 19, 2022, the United States Trustee for the Southern District of New York appointed an official committee of unsecured creditors (the “Committee”). *See Notice of Appointment of Official Committee of Unsecured Creditors* [ECF No. 102]. No trustee or examiner has been appointed in these cases.

6. Additional information regarding the Debtors’ business, capital structure, and the circumstances leading to the filing of these cases is set forth in the *Declaration of Stephen Ehrlich*,

*Chief Executive Officer of the Debtors in Support of Chapter 11 Petitions and First Day Motions*  
[ECF No. 15].

7. On July 5, 2022, the board of directors of Voyager LLC formally established the special committee (the “Special Committee”), comprising independent directors Timothy Pohl and Jill Frizzley (the “Independent Directors”) and vested it with authority to, among other things (a) investigate any historical transactions, public reporting, or regulatory issues undertaken by Voyager LLC that the Special Committee deemed necessary or appropriate, and the facts and circumstances surrounding such transactions; (b) interview and solicit information and views from management, representatives, consultants, advisors, or any other party in connection with any historical transactions undertaken by Voyager LLC that the Special Committee deems necessary or appropriate; (c) request documentation and information regarding Voyager LLC’s business, assets, properties, liabilities and business dealings with respect to any historical transactions undertaken by Voyager LLC that the Special Committee deems necessary and appropriate to review; (d) perform any other activities consistent with the matters described herein or as the Special Committee or Voyager LLC’s board of directors otherwise deems necessary or appropriate; and (e) conduct an independent investigation with respect to any potential estate claims and causes of action against insiders of Voyager LLC, including any claims arising from loans made to Three Arrows Capital (“3AC”). The Special Committee was also vested with sole authority to prosecute, settle, or extinguish any and all claims and causes of action arising from the historical transactions investigated by the Special Committee ((a)-(e), the (“Special Committee’s Mandate”)).

8. To aid the Special Committee with its Mandate, on July 21, 2022, Voyager LLC sought the retention of Quinn Emanuel to provide independent advice to, and act at the exclusive

direction of, the Special Committee. *See Debtor Voyager Digital, LLC's Application for Entry of An Order, Pursuant to 11 U.S.C. §§ 327(e) and 328(a) and Fed. R. Bankr. P. 2014, 2016 and 5002 Authorizing Employment and Retention of Quinn Emanuel Urquhart & Sullivan, LLP as Special Counsel to Voyager Digital, LLC, Effective July 13, 2022* [ECF No. 125].

9. On August 4, 2022, the Court issued the *Order Authorizing Debtor Voyager Digital, LLC to Employ and Retain Quinn Emanuel Urquhart & Sullivan, LLP as Special Counsel Effective July 13, 2022* [ECF No. 242] (the “Retention Order”), authorizing Voyager LLC to employ and retain Quinn Emanuel as its counsel effective as of July 13, 2022.

10. During the Interim Fee Period, Quinn Emanuel and the Special Committee conducted a comprehensive investigation (the “Investigation”) into the historical transactions, public reporting, and regulatory issues, as outlined in the Special Committee Mandate, to determine whether any estate causes of action relating to those issues existed and were worth pursuing by Voyager LLC. During the Investigation, Quinn Emanuel sought and received information relating to, among other things: Voyager LLC’s loans to third parties, with a particular focus on the 3AC Loan; the diligence performed in connection with those loans; Voyager LLC’s risk committee; Voyager LLC’s staking of customer cryptocurrency assets; Voyager LLC’s regulatory compliance; Voyager LLC’s communications with the public; Voyager LLC’s pre-petition payments to insiders and certain third parties; and other aspects of Voyager LLC’s business. Voyager LLC collected and provided to the Special Committee responsive documents from its internal hard copy and electronic files, its outside counsel, and various third parties (*e.g.*, cryptocurrency custodians and exchanges). Among many other things, Voyager LLC collected email, Slack communications, and, in certain cases, Telegram and cell phone data from a dozen Voyager LLC employees, including Voyager LLC’s most senior officers and others. In addition

to several voluminous spreadsheets of data, Voyager LLC produced more than 11,000 documents—collectively totaling more than 40,000 pages.

11. Additionally, Quinn Emanuel interviewed 12 Voyager LLC employees regarding the range of topics most relevant to the Investigation, including Stephen Ehrlich (Chief Executive Officer (“CEO”)), Gerard Hanshe (Chief Operations Officer), Evan Psaropoulos (Chief Commercial Officer (“CCO”)), Ashwin Prithipaul (Chief Financial Officer), Pamela Kramer (Chief Marketing Officer), David Brosgol (General Counsel), Marshall Jensen (Head of Corporate Development), Ryan Whooley (Treasury Director), Jon Brosnahan (Treasurer), Brian Silard (Treasury Team), David Brill (Deputy General Counsel), and Manisha Lalwani (in-house regulatory counsel).

12. Throughout the course of the Investigation, Quinn Emanuel also provided regular updates to members of the Special Committee. In particular, Quinn Emanuel held five formal videoconference meetings with the Special Committee concerning the status of the Investigation, including facts learned, impressions obtained, and relevant legal documents and standards.

13. At the conclusion of the Investigation, on October 7, 2022, Quinn Emanuel delivered to the Special Committee a comprehensive report (the “Investigation Report”), setting forth, among other things, the factual record developed over the course of the Investigation, the legal framework of potential estate causes of action, and Quinn Emanuel’s legal conclusions and recommendations.

14. Upon review of the Investigation Report, the Special Committee concluded that the estate had colorable claims against its CEO and CCO related to the 3AC Loan. On behalf of the Special Committee, Quinn Emanuel then negotiated independent settlements with each of the CEO and CCO concerning the estate’s claims against them.

15. Additional information regarding the Investigation, including the Company's settlements with its CEO and CCO, is set forth in detail in the *First Amended Disclosure Statement Relating to the Second Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [ECF No. 540] at 48–50.

16. Following the conclusion of the Investigation, Quinn Emanuel assisted the Special Committee with several other matters that the Special Committee deemed necessary and appropriate, including the preparation of presentation materials concerning the Investigation, the analysis of possible causes of action by and against Voyager LLC related to certain pre-petition intercompany transactions, and the representation of Voyager LLC with respect to a potential claim against Voyager LLC asserted by the estate of Celsius Network LLC and/or an affiliated debtor ("Celsius").

#### **Compensation Procedures**

17. The Retention Order authorizes Quinn Emanuel to receive interim and final compensation pursuant to the procedures set forth in the Bankruptcy Code, the Bankruptcy Rules, the Guidelines, and the local rules and orders of this Court.

18. On August 4, 2022, the Court entered the Interim Compensation Order, [ECF No. 236] which approved certain compensation procedures for these cases (the "Compensation Procedures"). Pursuant to the Compensation Procedures, retained professionals such as Quinn Emanuel are authorized to serve monthly fee statements (each, a "Monthly Statement") on or after the 20th day of each month following the month for which compensation is sought or as soon thereafter as practicable. Provided that no objection to a Monthly Statement is raised, Voyager LLC is authorized to pay such professionals an amount equal to eighty percent (80%) of the fees and one hundred percent (100%) of the expenses requested in such Monthly Statement.

19. In addition, the Compensation Procedures provide that, beginning with the period ending on October 31, 2022, and at four-month intervals thereafter, retained professionals are authorized to file interim applications with the Court for the allowance of compensation and reimbursement of expenses sought in the monthly fee statements submitted during the applicable Interim Fee Period (as defined in the Interim Compensation Order).<sup>5</sup> Upon allowance by the Court of a professional's interim fee application, Voyager LLC is authorized to promptly pay such professional all unpaid fees and expenses for the applicable Interim Fee Period.

#### **Compensation Paid and Its Sources**

20. All services during the Interim Fee Period for which compensation is requested by Quinn Emanuel were performed for or on behalf of Voyager LLC. Except as provided in this Application, Quinn Emanuel has not received any payment or promises of payment from any source for services rendered or to be rendered in any capacity whatsoever in connection with matters covered by this Application. A certification confirming Quinn Emanuel's compliance with the Guidelines is annexed hereto as **Exhibit A**.

21. To the extent that billable time or disbursement charges for services rendered or expenses incurred which relate to the Interim Application Period were not processed prior to the preparation of this Application, Quinn Emanuel reserves the right to request compensation for such services and reimbursement of such expenses in a future fee application.

22. These professional services were rendered by Quinn Emanuel's partners, associates, other attorneys and paraprofessionals.

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<sup>5</sup> The Interim Compensation Order further provides: "Each Professional shall file its first Interim Fee Application on or before December 20, 2022, and the first Interim Fee Application shall cover the Interim Fee Period from the Petition Date (or the effective date of the Professional's retention) through and including October 31, 2022." *Id.* at 4.

**Billing History**

23. Pursuant to the terms of the Compensation Procedures, Quinn Emanuel served four Monthly Statements for the services rendered and expenses incurred during the Interim Application Period as follows:

ECF No.	Period Covered by Monthly Statement	Total Fees Requested in Fee Statements	Total Expenses Requested in Fee Statements	Objection Deadline	Total Amounts Received	Total Amounts Outstanding
ECF No. 358	July 13, 2022 - July 31, 2022	\$195,264.00 (80% of \$244,080.00)	\$137.65 <sup>6</sup>	September 13, 2022	\$195,401.65	\$48,816.00
ECF No. 474	August 1, 2022 - August 31, 2022	\$1,193,484.96 (80% of \$1,491,856.20)	\$9,489.87	October 13, 2022	\$1,202,974.83	\$298,371.24
ECF No. 603	September 1, 2022 - September 30, 2022	\$876,515.04 (80% of \$1,095,643.80) <sup>7</sup>	\$5,021.25	November 15, 2022	\$881,536.29	\$219,128.76
ECF No 674	October 1, 2022 - October 31, 2022	\$264,965.76 (80% of \$331,207.20)	\$6,446.09	December 8, 2022	\$271,411.85	\$66,241.44
<b>Total</b>		\$2,530,229.76	\$21,094.86 <sup>8</sup>	N/A	\$2,551,324.62	\$632,557.44

<sup>6</sup> As stated above, \$9.00 in costs for “Word processing” and \$1.25 for “Velobind” were incorrectly billed to Voyager LLC. Quinn Emanuel is in the process of refunding these amounts. Accordingly, this figure, and the total costs incurred are \$10.25 higher than the actual billings to Voyager LLC following the refunding of the \$10.25.

<sup>7</sup> In Exhibit A to the *Third Monthly Fee Statement* [ECF No. 603], the “Total Hours” and “Total Fees” displayed are incorrect. The proper number of “Total Hours” for the *Third Monthly Fee Statement* is 983.6, and the proper amount of “Total Fees” is \$1,217,382.00 as reflected in the “Total Fees Billed to Voyager LLC After Application of 10% Discount” in Exhibit A and elsewhere in the *Third Monthly Fee Statement* [ECF No. 603].

<sup>8</sup> Following the above mentioned refund of \$10.25, Quinn Emanuel is actually requesting expenses of \$21,084.61, as stated in the Summary Sheet above, and elsewhere.



24. Quinn Emanuel maintains detailed time records of services rendered by its professionals and paraprofessionals. Copies of these time records have been filed on the docket with Quinn Emanuel's Monthly Statements.

**Relief Requested**

25. In this application, Quinn Emanuel is requesting entry of an order granting the interim allowance of (i) compensation for the actual, reasonable and necessary professional services that Quinn Emanuel has rendered to Voyager LLC in the amount of \$3,162,787.20 and (ii) the actual, reasonable and necessary out-of-pocket expenses incurred in representing Voyager LLC in the amount of \$21,084.61.

26. In accordance with the Guidelines, the following exhibits are attached to this Application:

- a. **Exhibit A** is the Kirpalani Declaration.
- b. **Exhibit B** is a schedule of the number of hours billed by partners, of counsel, associates, contract attorneys, and paraprofessionals during the Interim Application Period with respect to each of the subject matter categories Quinn Emanuel has established in accordance with its internal billing procedures. Quinn Emanuel attorneys and paraprofessionals have billed a total of 2,709 hours in connection with this matter during the Interim Application Period.
- c. **Exhibit C** is a schedule providing certain information regarding Quinn Emanuel attorneys and paraprofessionals for whose work compensation is sought in this Application, including position, level of experience, hourly rate, total hours spent working in these cases during the Interim Application Period, and amount of compensation sought on account thereof.
- d. **Exhibit D** contains a summary schedule of the actual and necessary out-of-pocket expenses incurred by Quinn Emanuel during the Interim Application Period.
- e. **Exhibit E** contains a disclosure of "customary and comparable compensation" charged by Quinn Emanuel's professionals and paraprofessionals, including a summary of the blended hourly rates of the applicable timekeepers (segregated by rank) as compared to the blended hourly rates for all timekeepers in Quinn Emanuel's U.S. Offices.

- f. **Exhibit F** contains Quinn Emanuel's budget and staffing plans for these cases during the Interim Application Period.

**Summary of Legal Services Rendered**

27. During the Interim Application Period, Quinn Emanuel provided reasonable and appropriate professional services to Voyager LLC that were necessary to the administration of these cases.

28. To provide a meaningful summary of Quinn Emanuel's services rendered on behalf of Voyager LLC, Quinn Emanuel has established, in accordance with its internal billing procedures, certain subject matter categories tailored to these cases. The following is a summary of professional services rendered for the subject matter categories during the Interim Application Period.

29. During the Interim Application Period, Quinn Emanuel: (a) billed 2,709.0 hours; (b) incurred \$3,514,208 in total fees (\$3,162,787.20 following application of the agreed 10% discount) and (c) incurred \$21,084.61 in expenses.

**VO01: Case Administration—46.8 Hours—\$13,106.50 (\$11,795.85 following application of the 10% discount)**

30. During the Interim Application Period, Quinn Emanuel attorneys and paraprofessionals spent a total of 46.8 hours on administrative tasks necessary to facilitate the Investigation, including processing and loading document productions onto Quinn Emanuel's review platform, executing document searches and creating review batches, and preparing hard copy document binders for attorney review and witness interviews.

**VO02: Fee Applications—22.0 Hours—\$23,894.50 (\$21,505.05 following application of the 10% discount)**

31. During the Interim Application Period, Quinn Emanuel attorneys and paraprofessionals spent a total of 22.0 hours preparing and revising the *First Monthly Fee Statement of Quinn Emanuel Urquhart & Sullivan LLP for Compensation for Services Rendered as Special Counsel to Voyager Digital, LLC During the Period of July 13, 2022 through July 31, 2022* [ECF No. 358]; the *Second Monthly Fee Statement of Quinn Emanuel Urquhart & Sullivan LLP for Compensation for Services Rendered as Special Counsel to Voyager Digital, LLC During the Period of August 1, 2022 through August 31, 2022* [ECF No. 474]; the *Third Monthly Fee Statement of Quinn Emanuel Urquhart & Sullivan LLP for Compensation for Services Rendered as Special Counsel to Voyager Digital, LLC During the Period of September 1, 2022 through September 30, 2022* [ECF No. 603]; the *Fourth Monthly Fee Statement of Quinn Emanuel Urquhart & Sullivan LLP for Compensation for Services Rendered as Special Counsel to Voyager Digital, LLC During the Period of October 1, 2022 through October 31, 2022* [ECF No. 674] and this first Interim Fee Application.

**VO03: Employment Applications—56.1 Hours—\$71,883.00 (\$64,694.70 following application of the 10% discount)**

32. During the Interim Application Period, Quinn Emanuel billed 56.1 hours preparing *Debtor Voyager Digital, LLC's Application for Entry of An Order, Pursuant to 11 U.S.C. §§ 327(e) and 328(a) and Fed. R. Bankr. P. 2014, 2016 and 5002 Authorizing Employment and Retention of Quinn Emanuel Urquhart & Sullivan, LLP as Special Counsel to Voyager Digital, LLC, Effective July 13, 2022* [ECF No. 125], the *Declaration of Susheel Kirpalani in Support of Debtor Voyager Digital, LLC's Application for Entry of an Order Pursuant to 11 U.S.C. §§ 327(e) and 328(a) and Fed. R. Bankr. P. 2014, 2016, and 5002 Authorizing Employment and Retention of Quinn Emanuel Urquhart & Sullivan, LLP as Special Counsel to Voyager Digital, LLC Effective*

July 13, 2022 [ECF No. 125 at 46–63] (the “First Kirpalani Declaration”), the *Supplemental Declaration of Susheel Kirpalani in Connection with Employment as Special Counsel to Debtor Voyager Digital, LLC* [ECF No. 668] (the “Supplemental Kirpalani Declaration”), and the *Second Supplemental Declaration of Susheel Kirpalani in Connection with Employment as Special Counsel to Debtor Voyager Digital, LLC* [ECF No. 693] (the “Second Supplemental Kirpalani Declaration”).

**VO05: Special Committee Investigation—2,584.1 hours—\$3,405,324.00 (\$3,064,791.60 following application of the 10% discount)**

33. During the Interim Application Period, Quinn Emanuel attorneys spent a total of 2,584.1 hours on tasks related to the Investigation (summarized above, *supra* ¶¶ 7-16), including requesting and reviewing substantial amounts of documents, interviewing witnesses, attending meetings and hearings, conducting legal analyses, and preparing memoranda, including the comprehensive Investigation Report.

#### **Summary of Actual and Necessary Expenses Incurred**

34. During the Interim Application Period, certain documents required Document Reproduction. The \$50.10 in document reproduction fees incurred represent the actual cost to Quinn Emanuel.

35. During the Interim Application Period, certain documents required Color Document Reproduction. The \$74.80 in color document reproduction fees represent the actual cost to Quinn Emanuel.

36. During the Interim Application Period, Velobind services were required. The \$2.50 in velobinding fees represent the actual cost to Quinn Emanuel.

37. During the Interim Application Period, Express Mail services were required. The \$671.71 in express mail fees represent the actual cost to Quinn Emanuel.

38. During the Interim Application Period, Document Services were required. These services included drilling, punching, and color printing for binders used during witness interviews. The \$9,797.45 in document services represent the actual cost to Quinn Emanuel.

39. During the Interim Application Period, Online Research was required. This research was conducted outside of Quinn Emanuel's subscription, and thus costs were incurred. The \$153.00 in online research represents the actual cost to Quinn Emanuel.

40. During the Interim Application Period, Messenger Services were required. The \$814.67 in messenger services represent the actual cost to Quinn Emanuel.

41. During the Interim Application Period, Local Meals were required. The \$466.11 in local meals represent the actual cost to Quinn Emanuel.

42. During the Interim Application Period, Conference Fees were required. The \$350 in conference fees represent the actual cost to Quinn Emanuel.

43. During the Interim Application Period, Meals During Travel were required. The \$34.16 in meals during travel represent the actual cost to Quinn Emanuel.

44. During the Interim Application Period, Hotel Stays were required to facilitate witness interviews. The \$3,383.72 in hotel stays represent the actual cost to Quinn Emanuel.

45. During the Interim Application Period, Out-of-Town-Travel was required. The Out-of-Town Travel expenses included taxis to and from airports and hotels in order to facilitate witness interviews. The \$499.06 in out of town travel represent the actual cost to Quinn Emanuel.

46. During the Interim Application Period, Air Travel was required to facilitate witness interviews. The \$2,770.60 in air travel represents the actual cost to Quinn Emanuel.

47. During the Interim Application Period, Local Business Travel was required to facilitate witness interviews. The \$180.52 in local business travel represents the actual cost to Quinn Emanuel.

48. During the Interim Application Period, Travel was required. This travel included use of a car service from an airport to a hotel in order to facilitate witness interviews. The \$72.45 in travel represents the actual cost to Quinn Emanuel.

49. During the Interim Application Period, Litigation Support Costs, in the form of RelOne Active Hosting (per GB) was required. The \$263.76 in RelOne Active Hosting represent the actual cost to Quinn Emanuel.

50. During the Interim Application Period, Litigation Support Costs, in the form of a RelOne User Fee was required. The \$1,500 in RelOne User Fee represents the actual cost to Quinn Emanuel.

51. The actual expenses incurred in providing professional services to Voyager LLC were necessary, reasonable, and justified under the circumstances.

52. Quinn Emanuel has made every effort to minimize disbursements of this nature in these cases. Quinn Emanuel regularly reviews its bills to ensure that Voyager LLC is only billed for services that were actual and necessary.

#### **Basis for Relief**

53. Section 331 of the Bankruptcy Code provides for interim compensation for services rendered and reimbursement of expenses in chapter 11 cases and incorporates the substantive standards of section 330 to govern the award of such compensation.

[A]ny professional person . . . may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered . . . or reimbursement for expenses . . . as is provided under section 330 of this title. . . .

11 U.S.C. § 331.

54. With respect to the level of compensation, section 330(a)(1)(A) of the Bankruptcy Code provides, in pertinent part, that the Court may award to a professional person “reasonable compensation for actual, necessary services rendered[.]” Section 330(a)(3), in turn, provides that:

In determining the amount of reasonable compensation to be awarded to . . . [a] professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
- (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and expertise in the bankruptcy field; and
- (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

11 U.S.C. § 330(a)(3).

55. Quinn Emanuel respectfully submits that the services for which it seeks compensation in this Application were, at the time rendered, necessary for and beneficial to the Debtor Voyager LLC. Quinn Emanuel performed the services for Voyager LLC efficiently and effectively, and the results obtained benefited not only Voyager LLC, but also its creditors and other parties in interest. Quinn Emanuel further submits that the compensation requested herein is reasonable in light of the nature, extent, and value of the services rendered.

56. During the Interim Application Period, Quinn Emanuel's hourly billing rates for attorneys ranged from \$425.00 to \$2,130.00, prior to the application of the agreed 10% discount referenced above. These rates and the corresponding rate structure reflect the great complexity, high stakes, and severe time pressures involved in these cases. These hourly rates and the rate structure are equivalent to the hourly rates and corresponding rate structure used by Quinn Emanuel not only for restructuring, workout, bankruptcy, insolvency, and comparable matters, but also for other complex corporate, securities, and litigation matters, whether in-court or otherwise, regardless of whether a fee application is required. Quinn Emanuel strives to be efficient in the staffing of all of its matters.

57. Moreover, Quinn Emanuel's hourly rates are set at a level designed to compensate Quinn Emanuel fairly for the work of its attorneys and paraprofessionals and to cover certain fixed overhead expenses. Hourly rates vary with the experience and seniority of each individual performing a particular service. These hourly rates are subject to yearly adjustments to reflect economic and other conditions and are consistent with the rates charged by comparable firms.

58. In sum, Quinn Emanuel respectfully submits that the professional services provided by its attorneys and paraprofessionals on behalf of Voyager LLC during the Interim Application Period were necessary and appropriate given the relevant factors set forth in section 330 of the Bankruptcy Code, *i.e.*, the complexity of these cases, the time expended, the nature and extent of the services provided, the value of such services, and the cost of comparable services outside of bankruptcy. Accordingly, Quinn Emanuel respectfully submits that approval of compensation for the fees incurred for professional services and reimbursement of expenses sought herein is warranted.



**Reservation of Rights**

59. Although every effort has been made to include all fees and expenses incurred during the Interim Application Period, some fees and expenses might not be included in this Application due to delays in connection with accounting and processing of such time and expenses or for other reasons. Accordingly, Quinn Emanuel reserves the right to make further applications to this Court for the allowance of additional fees and expenses incurred during the Interim Application Period that are not included herein.

**Notice**

60. Notice of this Application will be provided in accordance with the procedures set forth in the *Final Order (I) Establishing Certain Notice, Case Management, and Administrative Procedures and (II) Granting Related Relief* [ECF No. 240]. Voyager LLC respectfully submits that no further notice is required.

**No Prior Request**

61. No previous request for the relief sought herein has been made by Quinn Emanuel to this or any other Court.

**Conclusion**

WHEREFORE, Quinn Emanuel respectfully requests that the Court enter an order (i) allowing on an interim basis, (a) compensation to Quinn Emanuel of \$3,162,787.20 for reasonable and necessary professional services rendered to Voyager LLC, and (b) \$21,084.61 for reimbursement of actual and necessary costs and expenses incurred by Quinn Emanuel, for a total of \$3,183,871.81; and (ii) granting such other relief as the Court deems proper and just.

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Respectfully submitted this 20th day of December, 2022.

New York, New York

**QUINN EMANUEL URQUHART &  
SULLIVAN, LLP**

/s/ **SUSHEEL KIRPALANI**

Susheel Kirpalani

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*Special Counsel to Debtor Voyager  
Digital LLC.*

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**Exhibit A**

**Kirpalani Declaration**

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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	:
In re:	: Chapter 11
	:
VOYAGER DIGITAL HOLDINGS, INC., <i>et al.</i> , <sup>9</sup>	: Case No. 22-10943 (MEW)
	:
Debtors.	: (Jointly Administered)
	:
-----X	

**DECLARATION OF SUSHEEL KIRPALANI IN SUPPORT OF INTERIM  
APPLICATION OF QUINN EMANUEL URQUHART & SULLIVAN, LLP  
FOR ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSES  
INCURRED AS SPECIAL COUNSEL FOR VOYAGER DIGITAL, LLC FOR THE  
PERIOD FROM JULY 13, 2022, THROUGH AND INCLUDING OCTOBER 31, 2022**

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<sup>9</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Voyager Digital Holdings, Inc. (7687); Voyager Digital, Ltd. (7224); and Voyager Digital, LLC (8013). The location of the Debtors' principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003.

1. I am a partner at Quinn Emanuel Urquhart & Sullivan LLP (“Quinn Emanuel”), counsel to Voyager Digital LLC (“Voyager LLC”). I am admitted to the bar in the State of New York and have been admitted to practice in the United States Bankruptcy Court for the Southern District of New York. I am one of the lead Quinn Emanuel attorneys working on Voyager LLC’s chapter 11 case and I am familiar with the work performed on behalf of Voyager LLC by Quinn Emanuel.

2. I have read the foregoing *First Interim Application of Quinn Emanuel Urquhart & Sullivan LLP for Allowance of Interim Compensation for Professional Services Rendered and Reimbursement of Expenses Incurred as Special Counsel to Voyager Digital LLC from July 13, 2022 Through and Including October 31, 2022* (the “First Interim Application”).<sup>10</sup> To the best of my knowledge, information and belief, the statements contained in the First Interim Application are true and correct and comply in material part with Local Bankruptcy Rule 2016-1(a) and the Local Guidelines.

3. In accordance with the Local Guidelines, I certify that:

- a. I have read the First Interim Application.
- b. To the best of my knowledge, information, and belief formed after reasonable inquiry, the fees and disbursements sought fall within the Local Guidelines;
- c. The fees and disbursements sought are billed at rates in accordance with those customarily charged by Quinn Emanuel and generally accepted by Quinn Emanuel’s clients<sup>11</sup>; and
- d. In providing a reimbursable service, Quinn Emanuel does not make a profit on that service, whether the service is performed by Quinn Emanuel in-house or through a third party.

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<sup>10</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the First Interim Application.

<sup>11</sup> Indeed, Quinn Emanuel and Voyager LLC agreed to a 10% discount on Quinn Emanuel’s customary fees.

4. In accordance with the Local Guidelines, and as required by the Interim Compensation Order, I also certify that Quinn Emanuel has complied with provisions requiring it to provide Voyager LLC, the official committee of unsecured creditors (the “Committee”), and the U.S. Trustee with a statement of Quinn Emanuel’s fees and disbursements accrued during the previous month.

5. In accordance with the Local Guidelines, I further certify that Voyager LLC, the Committee, and the U.S. Trustee are each being provided with a copy of this Application.

6. Quinn Emanuel responds to the questions identified in the U.S. Trustee Guidelines as follows:

**Question:** Did you agree to any variations from, or alternatives to, your standard or customary billing rates, fees or terms for services pertaining to this engagement that were provided during the First Interim Application Period? If so, please explain.

Response: Yes. As stated in footnote 3 of the First Interim Application, Quinn Emanuel agreed with Voyager LLC to a 10% discount of its customary fees.

**Question:** If the fees sought in this fee application as compared to the fees budgeted for the time period covered by this fee application are higher by 10% or more, did you discuss the reasons for the variation with the client?

Response: Not applicable.

**Question:** Have any of the professionals included in this fee application varied their hourly rate based on the geographic location of the bankruptcy case?

Response: No.

**Question:** Does this fee application include time or fees related to reviewing the time records or preparing, reviewing, or revising invoices? (This is limited to work involved in preparing and editing billing records that would not be compensable outside of bankruptcy and does not include reasonable fees for preparing a fee application.). If so, please quantify by hours and fees.

Response: No.

**Question:** Does the Application include time or fees for reviewing time records to redact any privileged or other confidential information? If so, please quantify hours and fees.

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Response: No.

7. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing  
is true and correct to the best of my knowledge and belief.

Dated: December 20, 2022  
New York, New York

/s/ Susheel Kirpalani  
Susheel Kirpalani  
Partner, Quinn Emanuel Urquhart & Sullivan, LLP

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**Exhibit B**

**Summary of Fees By Subject Matter**

<b>Task Code</b>	<b>Project Category</b>	<b>Total Hours Billed</b>	<b>Amount</b>
VO01	Case Administration	46.8	\$13,106.50
VO02	Fee Applications	22.0	\$23,894.50
VO03	Employment Applications	56.1	\$71,883.00
VO05	Special Committee Investigation	2,584.1	\$3,405,324.00
	<b>TOTALS:</b>	2,709.0	\$3,514,208.00 <sup>12</sup>

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<sup>12</sup> As stated in footnote 3 above, the Net Billed Fees (which are the only fees requested herein) represent 90% of the total fees in the four invoices referenced herein.



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**Exhibit C**

**Attorneys and Paraprofessionals' Information**

<b>Name</b>	<b>Position</b>	<b>Bar Admission</b>	<b>Hourly Rate</b>	<b>Total Hours Billed</b>	<b>Total Fees Incurred</b>
Susheel Kirpalani	Partner	1998	\$2,130	260.9	\$555,717.00
Danielle Gilmore	Partner	CA 1994	\$1,770	15.8	\$27,966.00
Katherine Lemire	Partner	1998	\$1,770	136.9	\$242,313.00
Eric M. Kay	Counsel	1996	\$1,465	99.8	\$146,207.00
Daniel Holzman	Counsel	1999	\$1,350	139.8	\$188,730.00
Katherine A. Scherling	Counsel	2010	\$1,350	430.2	\$580,770.00
Zachary Russell	Associate	2017	\$1,270	624.3	\$779,657.00
Meredith Mandell	Associate	2017	\$1,270	293.9	\$367,221.00
Joanna Caytas	Associate	2018	\$1,165	492.1	\$554,060.50
Daniel Needleman	Attorney	1999	\$425	6.7	\$2,847.50
Caitlin Garvey	Paralegal	N/A	\$480	93.8	\$45,024.00
Kathyann Small	Paralegal	N/A	\$480	11.5	\$5,520.00
James Bandes	Litigation Support	N/A	\$250	1.3	\$325.00
Steven Wong	Litigation Support	N/A	\$175	97.8	\$17,115.00
Anthony Bentancourt	Litigation Support	N/A	\$175	.2	\$35.00
Jet Ma	Litigation Support	N/A	\$175	3.1	\$542.50
Daryl Lyew	Litigation Support	N/A	\$175	.9	\$157.50
<b>TOTALS:</b>			--- <sup>13</sup>	2,709.0	\$3,514,208.00

<sup>13</sup> The blended rate for attorneys is \$1,377.98/hour. The blended rate for paraprofessionals excluding litigation support is \$480.00/hour. The blended rate for litigation support is \$175.94/hour.

**Exhibit D****Summary of Expenses Incurred During the Interim Application Period****(July 13, 2022 – October 31, 2022)**

<b>Expense Categories</b>	<b>Amount</b>
Document Reproduction	\$50.10
Color Document Reproduction	\$74.80
Velobind	\$2.50
Express Mail	\$671.71
Document Services	\$9,797.45
Messenger Services	\$814.67
Local Meals	\$466.11
Conference Fees	\$350.00
Meals During Travel	\$34.16
Hotel	\$3,383.72
Out of Town Travel	\$499.06
Air Travel	\$2,770.60
Online Research	\$153.00
Local Business Travel	\$180.52
Travel	\$72.45
Litigation Support (RelOne Active Hosting (per GB)	\$263.76
Litigation Support (RelOne User Fee)	\$1,500
<b>TOTALS:</b>	<b>\$21,084.61</b>

**Exhibit E****Customary and Comparable Compensation**

Category of Timekeeper	Blended Hourly Rate		Blended Hourly Rate
	Billed Firm-wide for preceding fiscal year (FY2021)	Billed Firm-wide July 1, 2022 through October 31, 2022	Billed to In Re Voyager Holdings S.A. et al from July 13, 2022 through October 31, 2022 <sup>14</sup>
Partner	\$1,235.77	\$1,351.65	\$1,997.09
Counsel	\$1,099.72	\$1,137.24	\$1,367.13
Associate	\$866.66	\$967.54	\$1,206.08
Attorney (staff attorneys)	\$383.55	\$402.64	\$425.00
Paraprofessional	\$360.30	\$405.30	\$480.00
Litigation Support	\$190.84	\$186.61	\$175.94
Aggregated	\$933.13	\$1,003.55	\$1,297.23

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<sup>14</sup> Each blended rate on this matter is prior to application of the 10% discount described in footnote 3 above.

**Exhibit F**

**Quinn Emanuel Budget and Staffing Plan**

Quinn Emanuel and Voyager LLC have not agreed on either a budget or a staffing plan.

**Exhibit 3**

**Summary of Timekeepers**

<u>Name of Professional Person</u>	<u>Title</u>	<u>Department</u>	<u>Date of Admission</u>	<u>Hourly Billing Rate (\$)<sup>1</sup></u>	<u>Total Billed Hours</u>	<u>Total Compensation (\$)</u>
Paul M. Basta	Partner	Bankruptcy	1993	\$1,675.69	63.20	\$105,903.50
Tracey A. Zacccone	Partner	Corporate	1998	\$1,674.45	120.30	\$201,436.00
Robert Holo	Partner	Tax	1993	\$1,665.69	42.80	\$71,291.50
Julia Wood	Partner	Litigation	1997	\$1,657.00	51.00	\$84,507.00
Jean McLoughlin	Partner	Employee Benefits	1995	\$1,654.21	10.10	\$16,707.50
Peter E. Fisch	Partner	Corporate	1990	\$1,650.00	0.20	\$330.00
Andrew Finch	Partner	Litigation	1998	\$1,550.00	0.50	\$775.00
Sarah Stasny	Partner	Corporate	2010	\$1,440.00	0.50	\$720.00
Claudine K. Meredith-Goujon	Partner	Corporate	1999	\$1,355.00	0.40	\$542.00
Robert Britton	Partner	Bankruptcy	2008	\$1,308.77	165.70	\$216,862.50
John Weber	Partner	Bankruptcy	2013	\$1,295.00	0.50	\$647.50
Caith Kushner	Partner	Corporate	2006	\$1,271.35	139.30	\$177,099.50
Jason Tyler	Counsel	Corporate	2012	\$1,205.71	6.30	\$7,596.00
Meghan E. Fox	Counsel	Employee Benefits	2010	\$1,201.26	14.30	\$17,178.00
Lisa Krau Eisenberg	Counsel	Employee Benefits	2010	\$1,200.00	28.50	\$34,200.00
Marta P. Kelly	Counsel	Corporate	2000	\$1,200.00	4.10	\$4,920.00
William O'Brien	Counsel	Corporate	1987	\$1,200.00	1.50	\$1,800.00
Lyudmila Bondarenko	Associate	Corporate	2006	\$1,170.00	10.30	\$12,051.00
Christopher Hopkins	Associate	Bankruptcy	2014	\$1,105.83	441.50	\$488,226.00
Andrew Krause	Associate	Corporate	2014	\$1,067.36	8.90	\$9,499.50
Brian Kirkup	Associate	Corporate	2012	\$1,065.00	20.00	\$21,300.00
Alexandra F. Leavy	Associate	Corporate	2015	\$1,032.55	150.60	\$155,501.50
Alison R. Benedon	Associate	Litigation	2017	\$997.11	3.80	\$3,789.00
Zachary B. Kaye	Associate	Litigation	2016	\$991.55	14.80	\$14,675.00
Alice Nofzinger	Associate	Bankruptcy	2017	\$982.83	451.00	\$443,257.00
Katherine Shaia	Associate	Corporate	2018	\$980.00	25.00	\$24,500.00
Reuven P. Garrett	Associate	Tax	2016	\$980.00	1.10	\$1,078.00
Jennifer McWhaw	Associate	Corporate	2019	\$978.13	59.50	\$58,198.50
William D. Roth	Associate	Tax	2016	\$972.66	69.30	\$67,405.50
Felicia A. Siegel	Associate	Corporate	2016	\$955.00	0.40	\$382.00
Hannah J. Blonshteyn	Associate	Corporate	2016	\$955.00	5.90	\$5,634.50
Shamara R. James	Associate	Bankruptcy	2018	\$924.61	314.70	\$290,976.00
John Ross Kim	Associate	Corporate	2018	\$886.45	50.40	\$44,677.00
Casey J. Olbrantz	Associate	Litigation	2018	\$880.00	2.50	\$2,200.00
Paul Nolle	Associate	Corporate	2018	\$880.00	7.00	\$6,160.00

<sup>1</sup> On December 17, 2020, Paul, Weiss filed the *Notice of Annual Rate Increase by Paul, Weiss, Rifkind, Wharton & Garrison LLP* [ECF No. 786]. The hourly billing rate reflected is the total compensation divided by the total billed hours for each professional person.

<u>Name of Professional Person</u>	<u>Title</u>	<u>Department</u>	<u>Date of Admission</u>	<u>Hourly Billing Rate (\$)<sup>1</sup></u>	<u>Total Billed Hours</u>	<u>Total Compensation (\$)</u>
Rebecca B. Schwartz	Associate	Corporate	2018	\$880.00	1.40	\$1,232.00
Cecily Ran Deng	Associate	Corporate	2019	\$845.64	85.80	\$72,555.50
Alexandra Shofe	Associate	Corporate	2019	\$775.00	0.90	\$697.50
Jorge Gonzalez-Corona	Associate	Bankruptcy	2020	\$718.77	354.00	\$254,444.00
Tyler F. Zelinger	Associate	Bankruptcy	Not yet admitted	\$685.12	219.20	\$150,178.00
Edward Lee	Associate	Litigation	2020	\$680.93	21.40	\$14,572.00
Ruel V. Jerry	Associate	Corporate	Not yet admitted	\$677.70	63.40	\$42,966.00
Ryan Rizzuto	Associate	Litigation	Not yet admitted	\$671.52	61.80	\$41,500.00
Iryna Malakhouskaya	Associate	Tax	2019	\$665.00	26.10	\$17,356.50
Justin Jennewine	Associate	Employee Benefits	Not yet admitted	\$665.00	29.80	\$19,817.00
Timothy Carney	Paralegal	Litigation	N/A	\$405.00	0.60	\$243.00
Christopher Tarrant	Paralegal	Bankruptcy	N/A	\$392.67	28.60	\$11,230.50
Michael Holden	Paralegal	Corporate	N/A	\$380.00	0.90	\$342.00
Jorge Velazquez	Paralegal	E-Discovery	N/A	\$360.00	0.20	\$72.00
Michael Johnson	Paralegal	Litigation	N/A	\$360.00	0.10	\$36.00
Priscilla Abraham	Paralegal	Litigation	N/A	\$360.00	0.20	\$72.00
Hannah Cutler	Paralegal	Bankruptcy	N/A	\$340.00	0.20	\$68.00
Beth Lewitzky	Paralegal	Research	N/A	\$325.00	1.00	\$325.00
Ai Na Liu	Paralegal	Research	N/A	\$285.00	5.00	\$1,425.00
Karen Bradley	Paralegal	Research	N/A	\$285.00	0.30	\$85.50
Graphic Specialist	Paralegal	Trial Services & Support	N/A	\$255.00	0.80	\$204.00
		<b>TOTAL</b>			<b>3,187.60</b>	<b>\$3,221,448.00</b>



ENTERED  
04/05/2021

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:

DIAMOND OFFSHORE DRILLING, INC., *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11  
)  
) Case No. 20-32307 (DRJ)  
)  
) (Jointly Administered)  
)  
)  
)

**ORDER GRANTING THE THIRD INTERIM FEE APPLICATION OF  
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP, ATTORNEYS  
FOR THE DEBTORS AND DEBTORS-IN-POSSESSION, FOR THE PAYMENT  
OF COMPENSATION AND REIMBURSEMENT OF EXPENSES  
FOR THE PERIOD FROM NOVEMBER 1, 2020 THROUGH JANUARY 31, 2021  
(Relates to Docket No. 1109)**

Upon the *Third Interim Fee Application of Paul, Weiss, Rifkind, Wharton & Garrison LLP, Attorneys for the Debtors and Debtors-in-Possession, for the Payment of Compensation and Reimbursement of Expenses for the Period From November 1, 2020 Through January 31, 2021* (the “Fee Application”)<sup>2</sup> of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) for entry of an order (this “Order”) pursuant to sections 330 and 331 of title 11 of the United States Code (the “Bankruptcy Code”), rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rule 2016-1 of the Local Bankruptcy Rules for the Southern District of Texas (the

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: Diamond Offshore Drilling, Inc. (1760), Diamond Offshore International Limited (4671), Diamond Offshore Finance Company (0712), Diamond Offshore General Company (0474), Diamond Offshore Company (3301), Diamond Offshore Drilling (UK) Limited (1866), Diamond Offshore Services Company (3352), Diamond Offshore Limited (4648), Diamond Rig Investments Limited (7975), Diamond Offshore Development Company (9626), Diamond Offshore Management Company (0049), Diamond Offshore (Brazil) L.L.C. (9572), Diamond Offshore Holding, L.L.C. (4624), Arethusa Off-Shore Company (5319), Diamond Foreign Asset Company (1496). The Debtors’ primary headquarters and mailing address is 15415 Katy Freeway, Houston, TX 77094.

<sup>2</sup> Capitalized terms used but not defined herein have the meanings ascribed to them in the Fee Application.



“Local Rules”), (a) awarding Paul, Weiss compensation for professional services provided in the amount of \$3,221,448.00 and reimbursement of actual and necessary expenses in the amount of \$13,423.98 that Paul, Weiss incurred for the period from November 1, 2020 through January 31, 2021 (the “Fee Period”); (b) authorizing and directing the Debtors to remit payment to Paul, Weiss for such fees and expenses; and (c) granting such other relief as is appropriate under the circumstances, all as more fully set forth in the Fee Application; and this Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of Texas*, dated May 24, 2012; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties-in-interest; and this Court having found that the Debtors’ notice of the Fee Application and opportunity for a hearing on the Fee Application were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Fee Application and having heard the statements in support of the relief requested therein at the hearing, if any, before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Fee Application and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. Compensation to Paul, Weiss for professional services rendered during the Fee Period is allowed on an interim basis in the amount of \$3,221,448.00.

2. Reimbursement to Paul, Weiss for expenses incurred during the Fee Period is allowed on an interim basis in the amount of \$13,423.98.

3. Paul, Weiss is awarded on an interim basis fees and costs as an administrative expense for the period from November 1, 2020 through January 31, 2021, as follows:

Fees:	\$3,221,448.00
Expenses:	\$13,423.98
Total:	\$3,234,871.98

4. The Debtors are authorized to pay Paul, Weiss all fees and expenses allowed pursuant to this Order.

5. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

**Signed: April 05, 2021.**

  
\_\_\_\_\_  
DAVID R. JONES  
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

IMRAN KHAN, et al.,

*Plaintiffs,*

v.

No. 7:20-cv-07561

BOARD OF DIRECTORS OF PENTEGRA  
DEFINED CONTRIBUTION PLAN, et al.,

*Defendants.*

**DECLARATION OF JEROME J. SCHLICHTER**

I, Jerome J. Schlichter, declare as follows:

1. I am the founding partner of the law firm of Schlichter Bogard LLC, Class Counsel for Plaintiffs in the above-referenced matter (herein referred to as “Schlichter Bogard” or “Class Counsel”). This declaration is submitted in support of Plaintiffs’ Motion for Attorneys’ Fees, Reimbursement of Expenses, and Class Representatives’ Compensation. I am familiar with the facts set forth below and able to testify to them.

2. I received my Bachelor’s degree in Business Administration from the University of Illinois in 1969, with honors, and was a James Scholar. I received my Juris Doctorate from the University of California at Los Angeles (UCLA) Law School in 1972, where I was an Associate Editor of UCLA Law Review. I am licensed to practice law in the states of Illinois, Missouri, and California and am admitted to practice before the Supreme Court of the United States, the Second, Third, Fourth, Seventh, Eighth, Ninth, and Tenth Circuit Courts of Appeals and numerous U.S. District Courts. I have also been an Adjunct Professor teaching trial practice at Washington

University School of Law and have been repeatedly selected by my peers for the list of The Best Lawyers in America.

3. Through over 45 years of practice, I have handled, on behalf of plaintiffs, substantial personal injury cases, civil rights class actions, mass torts claims, and fiduciary breach litigation under the Employee Retirement Income Security Act (ERISA). In 2014, I was ranked number 4 in a list of the 100 most influential people nationally in the 401(k) industry in the industry publication 401(k) Wire. Examples of class action cases I have successfully handled include: *Brown v. Terminal Railroad Association*, a race discrimination case in the Southern District of Illinois on behalf of all African-American and Hispanic employees at a railroad; *Mister v. Illinois Central Gulf Railroad*, 832 F.2d 1427 (7th Cir. 1987), a failure-to-hire class action brought on behalf of hundreds of African-American applicants from East St. Louis, Illinois at a major railroad which was tried to conclusion, successfully appealed to the Seventh Circuit Court of Appeals, and finally concluded with more than \$10 million for the class after 12-and-a-half years of litigation; *Wilfong v. Rent-A-Center*, No. 00-680, 2002 U.S. Dist. LEXIS 28016 (S.D. Ill. 2002), a nationwide gender discrimination in employment case on behalf of women, which was successfully settled for \$47 million and substantial affirmative relief to the class of thousands, after I defeated the defendant's attempt to conduct a reverse auction.

4. In addition to this case, my firm has been named class counsel in numerous cases involving claims of fiduciary breaches in large retirement plans. *See, e.g., Berkelhammer v. ADP TotalSource Grp.*, No. 20-5696, Dkt. 270 (D.N.J. Feb. 13, 2025); *Harmon v. Shell Oil Co.*, No. 20-21, 2025 U.S. Dist. LEXIS 18545 (S.D. Tex. Feb. 3, 2025); *Ahmed v. Liberty Mutual Grp. Inc.*, No. 20-30056, Dkt. 73 (D. Mass. June 8, 2023); *Ford v. Takeda Pharms. U.S.A., Inc.*, No. 21-10090, Dkt. 101 (D. Mass. Nov. 21, 2022); *Wachala v. Astellas US LLC*, No. 20-3882, 2022 U.S.

Dist. LEXIS 24052 (N.D. Ill. Feb. 10, 2022); *Lauderdale v. NFP Ret., Inc.*, No. 21-301, 2022 U.S. Dist. LEXIS 95857 (C.D. Cal. Feb. 16, 2022); *Sweda v. Univ. of Pa.*, No. 16-4329-GEKP, 2021 U.S. Dist. LEXIS 121336 (E.D. Pa. June 28, 2021); *Pledger v. Reliance Trust Co.*, No. 15-04444, 2020 U.S. Dist. LEXIS 25548, at \*4 (reaffirming appointment); *Munro v. Univ. of S. Cal.*, No. 16-6191, 2019 U.S. Dist. LEXIS 226682 (C.D. Cal. Dec. 20, 2019); *Vellali v. Yale Univ.*, 333 F.R.D. 10 (D. Conn. 2019); *Kelly v. The Johns Hopkins Univ.*, No. 16-2835, Dkt. 87 (D. Md. Aug. 16, 2019); *Bell v. Pension Comm. of ATH Holding Co., LLC*, No. 15-2062, 2019 U.S. Dist. LEXIS 11369 (S.D. Ind. Jan. 24, 2019); *Cunningham v. Cornell Univ.*, No. 16-6525, 2019 U.S. Dist. LEXIS 10357 (S.D.N.Y. Jan. 22, 2019); *Cassell v. Vanderbilt Univ.*, No. 16-2086, 2018 U.S. Dist. LEXIS 181850 (M.D. Tenn. Oct. 23, 2018); *Cates v. Trs. of Columbia Univ.*, No. 16-6524, Dkt. 218 (S.D.N.Y. Nov. 15, 2018); *Henderson v. Emory Univ.*, No. 16-2920, 2018 U.S. Dist. LEXIS 180349 (N.D. Ga. Sept. 13, 2018); *Tracey v. MIT*, No. 16-11620, 2018 U.S. Dist. LEXIS 179945 (D. Mass. Oct. 19, 2018); *Ramsey v. Philips N. Am.*, No. 18-1099, Dkt. 19 (S.D. Ill. June 12, 2018); *Sacerdote v. N.Y. Univ.*, No. 16-6284, 2018 U.S. Dist. LEXIS 23540 (S.D.N.Y. Feb. 13, 2018); *Clark v. Duke Univ.*, No. 16-1044, 2018 U.S. Dist. LEXIS 62532 (M.D.N.C. Apr. 13, 2018); *Ramos v. Banner Health*, 325 F.R.D. 382 (D. Colo. 2018); *Troudt v. Oracle Corp.*, 325 F.R.D. 373 (D. Colo. 2018); *Pledger v. Reliance Tr. Co.*, 325 F.R.D. 373 (N.D. Ga. 2017); *Marshall v. Northrop Grumman Corp.*, No. 16-6794, 2017 U.S. Dist. LEXIS 222531 (C.D. Cal. Nov. 2, 2017); *Sims v. BB&T Corp.*, No. 15-732, 2017 U.S. Dist. LEXIS 137738 (M.D.N.C. Aug. 28, 2017); *Gordan v. Mass. Mutual Life Ins. Co.*, No. 13-30184, Dkt. 112 (D. Mass. June 22, 2016); *Kruger v. Novant Health*, No. 14-208, Dkt. 53 (M.D.N.C. May 17, 2016); *Kreuger v. Ameriprise Fin., Inc.*, 304 F.R.D. 559, 574 (D. Minn. 2014); *Abbott v. Lockheed Martin*, No. 06-701, Dkt. 403 (S.D. Ill. Aug. 1, 2014); *Beesley v. Int'l Paper Co.*, No. 06-703, Dkt. 542 (S.D. Ill. Oct. 10, 2013); *Nolte*

*v. Cigna Corp.*, No. 07-2046, 2013 U.S. Dist. LEXIS 101165, at \*6–7 (C.D. Ill. July 3, 2013); *Will v. Gen. Dynamics*, No. 06-698, 2010 U.S. Dist. LEXIS 95630, at \*5–6 (S.D. Ill. Aug. 9, 2010); *Martin v. Caterpillar Inc.*, No. 07-1009, Dkt. 173 (C.D. Ill. April 21, 2010); *George v. Kraft Foods Global Inc.*, 251 F.R.D. 338 (N.D. Ill. 2008); *Taylor v. United Techs. Corp.*, No. 06-1494, 2008 U.S. Dist. LEXIS 43655 (D. Conn. June 3, 2008); *Kanawi v. Bechtel Corp.*, 254 F.R.D. 102 (N.D. Cal. 2008); *Tussey v. ABB, Inc.*, No. 06-4305, 2007 U.S. Dist. LEXIS 88668 (W.D. Mo. Dec. 3, 2007); *Loomis v. Exelon Corp.*, No. 06-4900, 2007 U.S. Dist. LEXIS 46893 (N.D. Ill. June 26, 2007).

5. My work in plaintiffs’ class action cases has been noted by federal judges. Honorable Judge James Foreman, in the *Mister* case, *supra*, speaking of my efforts, stated:

This Court is unaware of any comparable achievement of public good by a private lawyer in the face of such obstacles and enormous demand of resources and finance.

Order on Attorney’s Fees, *Mister v. Illinois Central Gulf R.R.*, No. 81-3006 (S.D. Ill. 1993).

6. Honorable Judge David R. Herndon wrote, regarding my and the firm’s handling of the *Wilfong* class action, *supra*:

Class counsel has appeared in this court and has been known to this Court for approximately 20 years. This Court finds that Mr. Schlichter’s experience, reputation and ability are of the highest caliber. Mr. Schlichter is known well to the District Court Judge and this Court agrees with Judge Foreman’s review of Mr. Schlichter’s experience, reputation and ability.

Order on Attorney’s Fees, *Wilfong v. Rent-A-Center*, No. 0068-DRH (S.D. Ill. 2002). Judge Herndon also noted in *Wilfong* that I “performed the role of a ‘private attorney general’ contemplated under the common fund doctrine, a role viewed with great favor in this Court” and described my action as “an example of advocacy at its highest and noblest purpose.” *Id.*

7. In *Beesley v. International Paper*, a 401(k) ERISA excessive fee case that resulted in a settlement of \$30 million plus substantial affirmative relief following seven years of litigation,

Judge David Herndon observed: “Litigating this case against formidable defendants and their sophisticated attorneys required Class Counsel to demonstrate extraordinary skill and determination. Schlichter, Bogard & Denton and lead attorney Jerome Schlichter’s diligence and perseverance, while risking vast amounts of time and money, reflect the finest attributes of a private attorney general.” *Beesley v. Int’l Paper Co.*, No. 06-703, 2014 U.S. Dist. LEXIS 12037, at 8 (S.D. Ill. Jan. 31, 2014). Similarly, in *Abbot v. Lockheed Martin*, a 401(k) excessive fee case that took over nine years, Honorable Chief Judge Reagan observed that “[t]he law firm Schlichter, Bogard & Denton has had a humongous impact over the entire 401(k) industry, which has benefitted employees and retirees throughout the country by bringing sweeping changes to fiduciary practices.” *Abbott v. Lockheed Martin Corp.*, No. 06-701, 2015 U.S. Dist. LEXIS 93206, at 9 (S.D. Ill. July 17, 2015).

8. In *Will v. General Dynamics*, another ERISA excessive fee case, Honorable Judge Patrick Murphy found that litigating the case and achieving a successful result for the class “required Class Counsel to be of the highest caliber and committed to the interests of the participants and beneficiaries of the General Dynamics 401(k) Plans.” *Will v. General Dynamics Corp.*, No. 06-698, 2010 U.S. Dist. LEXIS 123349, at 9 (S.D. Ill. Nov. 22, 2010).

9. Honorable Judge Baker, in *Nolte v. Cigna*, commented that Schlichter Bogard LLC is the “preeminent firm in 401(k) fee litigation” and has “persevered in the face of the enormous risks of representing employees and retirees in this area.” *Nolte v. Cigna Corp.*, No. 07-2046, Dkt. 413 at 1, 5 (C.D. Ill. Oct. 15, 2013).

10. In approving another settlement including \$32 million plus significant affirmative relief, Honorable Chief Judge William Osteen in *Kruger v. Novant Health, Inc.*, No. 14-208, Dkt. 61 at 7–8 (M.D.N.C. Sept. 29, 2016) found that “Class Counsel’s efforts have not only resulted in

a significant monetary award to the class but have also brought improvement to the manner in which the Plans are operated and managed which will result in participants and retirees receiving significant savings[.]”

11. I have also spoken on ERISA litigation breach of fiduciary duty claims at national ERISA seminars as well as other national bar seminars.

12. In the decades of my private practice, I have never been reprimanded, sanctioned, or otherwise disciplined with respect to any aspect of the practice of law.

13. Since 2005, my firm and I have been investigating, preparing, and handling, on behalf of plan participants, numerous cases against fiduciaries of large 401(k) plans alleging fiduciary breaches including excessive fees, conflicts of interests and prohibited transactions under ERISA. My firm has filed these cases in numerous judicial districts throughout the United States, including districts within the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits.

14. Schlichter Bogard pioneered 401(k) excessive fee cases. Before we filed the first cases in 2006, no law firm in the United States had ever filed such a case, and the Department of Labor, which regulates 401(k) plans, had never brought an excessive fee case. The firm handled the first full trial of such a case, resulting in a judgment for the plaintiffs that was affirmed in part by the Eighth Circuit. *Tussey v. ABB, Inc.*, No. 06-4305, 2012 U.S. Dist. LEXIS 45240 (W.D. Mo. Mar. 31, 2012), *aff'd in part, rev'd in part*, 746 F.3d 327 (8th Cir. 2014). As Judge Laughrey noted in that case, “[i]t is well established that complex ERISA litigation involves a national standard and special expertise. Plaintiffs’ attorneys are clearly experts in ERISA litigation.” *Tussey v. ABB, Inc.*, No. 06-4305, 2012 U.S. Dist. LEXIS 157428, at \*9–10 (W.D. Mo. Nov. 2, 2012), *rev'd on other grounds*, 746 F.3d 327 (8th Cir. 2014) (citations omitted).



15. In the second 401(k) excessive fee trial, *Tibble v. Edison Int'l*, which originated in the Central District of California, the United States Supreme Court granted our petition for writ of certiorari in the first and only ERISA 401(k) excessive fee case taken by the Supreme Court. In a 9-0 unanimous decision, the Supreme Court vacated the Ninth Circuit's affirmance of the summary judgment order and held that an ERISA fiduciary has a continuing duty to monitor plan investments and remove imprudent ones regardless of when they were added. *Tibble v. Edison Int'l*, 575 U.S. 523 (2015). This was a landmark decision in ERISA litigation. Sitting *en banc*, ten judges of the Ninth Circuit on remand then unanimously vacated a Ninth Circuit panel decision and remanded to the district court to determine whether the defendants violated their continuing duty to monitor the 401(k) plan's investments, stating that "cost-conscious management is fundamental to prudence in the investment function." *Tibble v. Edison Int'l*, 843 F.3d 1187, 1197–98 (9th Cir. 2016) (citation omitted). Following remand, in August 2017, the plaintiffs obtained a judgment of \$13.4 million in plan losses and investment opportunity. *Tibble*, No. 07-5359, 2017 U.S. Dist. LEXIS 130806 (C.D. Cal. Aug. 16, 2017); *Tibble*, Dkt. Nos. 570, 572.

16. Before my firm brought ERISA 401(k) excessive fee cases, virtually no firm was willing to bring such a case, and I know of no other firm that has made anything close to the financial and attorney commitment to such cases as my firm to this date.

17. Several of the 401(k) cases my office filed were dismissed and the dismissals upheld by Courts of Appeals. *Loomis v. Exelon Corp.*, 658 F.3d 667 (7th Cir. 2011); *Renfro v. Unisys Corp.*, 671 F.3d 314 (3d Cir. 2011); *Hecker v. Deere & Co.*, 556 F.3d 575 (7th Cir. 2009). Others had summary judgment granted against the plaintiffs in whole or in part. *Kanawi v. Bechtel Corp.*, 590 F. Supp. 2d 1213 (N.D. Cal. 2008); *Taylor v. United Techs. Corp.*, No. 06-1494, 2009 U.S. Dist. LEXIS 19059 (D. Conn. Mar. 3, 2009), *aff'd*, 354 F. App'x 525 (2d Cir. 2009); *George*

*v. Kraft Foods Global, Inc.*, 684 F. Supp. 2d 992 (N.D. Ill. 2010), *rev'd in part*, 641 F.3d 786 (7th Cir. 2011); *Tibble v. Edison Int'l*, 639 F. Supp. 2d 1074 (C.D. Cal. 2009), *aff'd*, 729 F.3d 1110 (9th Cir. 2013), *vacated*, 575 U.S. 523, (2015), *aff'd on remand*, 820 F.3d 1041 (9th Cir. 2016).

18. As a practical matter, litigants such as Class Representatives Imran Khan, Joan Bullock, and Pamela Joy Wood cannot afford to pursue litigation against fiduciaries of 401(k) plans sponsored by large companies, such as Pentegra Services, Inc., on any basis other than a contingent fee arrangement. I know of no law firm in the United States that would consider handling such a case as this or that would handle any ERISA class action, with an expectation of anything but a percentage of the common fund created.

19. Moreover, I know of no law firm that would agree to handle such a case on a contingent hourly rate basis. Defendants' attorneys in these cases are paid according to their hourly rate without delay, without taking the risk of loss, and without advancing and risking expenses.

20. The contingency fee agreements entered into between my firm and each of the Class Representatives Imran Khan, Joan Bullock, and Pamela Joy Wood in this case provide for our fee to be one-third of any recovery plus expenses. The plaintiffs in other ERISA fiduciary breach cases brought by my firm have also signed similar agreements calling for a one-third contingency fee plus expenses. I know of no firm in the country that accepts such cases for less than a one-third contingency fee.

21. Prior to this lawsuit, my firm did not have a professional relationship with any of the Class Representatives.

22. These kinds of cases involve tremendous risk, require finding and obtaining opinions from expensive and unconflicted consulting and testifying experts in finance, investment management, fiduciary practices, recordkeeping, and related fields. Further, in my experience,

these cases are always extremely hard-fought and well-defended. Recent judgments in favor of the defendants following trial in ERISA litigation further illustrate the difficulty of obtaining a successful judgment. *See, e.g., Mills v. Molina Healthcare, Inc.*, No. 22-1813, 2024 U.S. Dist. LEXIS 50572 (C.D. Cal. Mar. 20, 2024); *Lauderdale v. NFP Ret., Inc.*, No. 21-301, 2024 U.S. Dist. LEXIS 31527 (C.D. Cal. Feb. 23, 2024); *Vellali v. Yale Univ.*, No. 16-1345, Dkt. 575 (D. Conn. June 28, 2023).

23. A law firm that brings a putative class action such as this must be prepared to finance the case through trial and appeals, all at substantial expense. These cases are defended by sophisticated national firms with ERISA experience and vast resources. This has been my experience in handling these types of cases. For example, in *Tussey v. ABB*, seven experts testified at trial, and the two defendant groups therein had a total of fifteen or more lawyers present in the courtroom throughout the month-long trial. In addition, all parties, including plaintiffs, had a technology team present throughout. Our firm expended over \$2,000,000 in expenses by the conclusion of the trial and carried those expenses until recovery 14 years after litigation began, and after over 25,000 attorney hours were spent.

24. Based on my experience, the market for experienced and competent lawyers willing to pursue 401(k) ERISA litigation is a national market, and the rate of 33 1/3% of any recovery, plus expenses, is necessary to bring such cases. This is the rate that a qualified and experienced attorney would negotiate at the beginning of the litigation and the rate found reasonable in similar 401(k) and 403(b) ERISA fee cases in numerous federal district courts, including:

Case	Fee %
<i>Binder v. PPL Corporation</i> , No. 22-133, Dkt. 168 (E.D. Pa. July 22, 2025)	33.33%
<i>Williams v. Centerra Group, LLC</i> , No. 20-4220, Dkt. 269 (D.S.C. Sept. 17, 2023)	33.33%

Case	Fee %
<i>Wachala v. Astellas US LLC</i> , No. 20-3882, Dkt. 241 (N.D. Ill. Nov. 2, 2023)	33.33%
<i>Munro v. Univ. of S. Cal.</i> , No. 16-06191, Dkt. 384 (C.D. Cal. Aug. 24, 2023)	33.33%
<i>Ford v. Takeda Pharms. U.S.A., Inc.</i> , No. 21-10090, 2023 U.S. Dist. LEXIS 93286 (D. Mass. Mar. 31, 2023)	33.33%
<i>Marshall v. Northrop Grumman Corp.</i> , No. 16-6794, 2020 U.S. Dist. LEXIS 177056 (C.D. Cal. Sep. 18, 2020)	33.33%
<i>In re Northrop Grumman Corp. ERISA Litig.</i> , No. 06-6213, 2017 U.S. Dist. LEXIS 223293 (C.D. Cal. Oct. 24, 2017)	33.33%
<i>Sweda v. Univ. of Pa.</i> , No. 16-4329, 2021 U.S. Dist. LEXIS 239990 (E.D. Pa. Dec. 14, 2021)	33.33%
<i>Cates v. Trs. of Columbia Univ.</i> , No. 16-6524, 2021 U.S. Dist. LEXIS 200890 (S.D.N.Y. Oct. 18, 2021)	33.33%
<i>Pledger v. Reliance Tr. Co.</i> , No. 15-4444, 2021 U.S. Dist. LEXIS 105868 (N.D. Ga. Mar. 8, 2021)	33.33%
<i>Henderson, et al. v. Emory University, et al.</i> , No. 16-2920, 2020 U.S. Dist. LEXIS 218676 (N.D. Ga. Nov. 4, 2020)	33.33%
<i>Troudt v. Oracle Corp.</i> , No. 16-00175, Dkt. No. 236 (D. Col. July 10, 2020)	33.33%
<i>Kelly v. Johns Hopkins Univ.</i> , No. 16-2835, 2020 U.S. Dist. LEXIS 14772 (D. Md. Jan. 28, 2020)	33.33%
<i>Cassell v. Vanderbilt Univ.</i> , No. 16-2086, 2019 U.S. Dist. LEXIS 242062 (M.D. Tenn. Oct. 22, 2019)	33.33%
<i>Tussey v. ABB, Inc.</i> , No. 06-4305, 2019 U.S. Dist. LEXIS 138880 (W.D. Mo. August 16, 2019)	33.33%
<i>Sims v. BB&amp;T Corp.</i> , No. 15-1705, 2019 U.S. Dist. LEXIS 75839 (M.D.N.C. May 6, 2019)	33.33%
<i>Clark v. Duke</i> , No. 16-1044, 2019 U.S. Dist. LEXIS 105696 (M.D.N.C. June 24, 2019)	33.33%
<i>Ramsey v. Phillips N.A.</i> , No. 18-1099, 2018 U.S. Dist. LEXIS 226672 (S.D. Ill. Oct. 15, 2018)	33.33%
<i>Gordan v. Mass. Mut. Life Ins. Co.</i> , No. 13-30184, 2016 U.S. Dist. LEXIS 195935 (D. Mass. Nov. 3, 2016)	33.33%
<i>Kruger v. Novant Health, Inc.</i> , No. 14-208, 2016 U.S. Dist. LEXIS 193107 (M.D.N.C. Sept. 29, 2016)	33.33%
<i>Spano v. Boeing Co.</i> , No. 06-743, 2016 U.S. Dist. LEXIS 161078 (S.D. Ill. Mar. 31, 2016)	33.33%
<i>Abbott v Lockheed Martin Corp.</i> , No. 06-701, 2015 U.S. Dist. LEXIS 93206 (S.D. Ill. July 17, 2015)	33.33%
<i>Krueger v. Ameriprise Fin., Inc.</i> , No. 11-2781, 2015 U.S. Dist. LEXIS 91385 (D. Minn. July 13, 2015)	33.33%
<i>Beesley v. Int'l Paper Co.</i> , No. 06-703, 2014 U.S. Dist. LEXIS 12037 (S.D. Ill. Jan. 31, 2014)	33.33%
<i>Nolte v. Cigna Corp.</i> , No. 07-2046, 2013 U.S. Dist. LEXIS	33.33%

Case	Fee %
184622 (C.D. Ill. Oct. 15, 2013)	
<i>Will v. Gen. Dynamics Corp.</i> , No. 06-698, 2010 U.S. Dist. LEXIS 123349 (S.D. Ill. Nov. 22, 2010)	33.33%
<i>Martin v. Caterpillar Inc.</i> , No. 07-1009, 2010 U.S. Dist. LEXIS 145111 (C.D. Ill. Sept. 10, 2010)	33.33%

25. This kind of long-term, expensive commitment of time and resources is needed if plan participants are to receive compensation for their losses in such cases. Because my firm has committed to doing this in each case we pursue, it is my opinion that defendants take into account this firm's long-term commitment to these cases in assessing their costs and the likelihood of success.

26. My firm devoted almost 16,000 hours of attorney and non-attorney time to prosecuting the ERISA claims on behalf of the Plan participants and beneficiaries. Because my firm works solely on a contingency fee basis, and there is a limited number of active cases it can handle at any given point, the decision to pursue this class action and commit significant resources to obtain a successful recovery on behalf of the class through potentially years of litigation impacts the firm's ability to handle other class actions or pursue other less risky matters.

27. By my firm obtaining this settlement for the Class without further delay, the Class members will benefit by not only avoiding risk but also avoiding what would have been substantial costs and delay for trial and potential appeals. In addition, they will benefit by being able to invest their recoveries and benefit from the earnings much earlier than if there had been years of delay.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and that this declaration was executed this 26<sup>th</sup> day of September 2025, in St. Louis, Missouri.

/s/ Jerome J. Schlichter  
Jerome J. Schlichter