UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE TOWER GROUP INTERNATIONAL, LTD. SECURITIES LITIGATION	Master File No. 1:13-cv-5852-AT Date: November 23, 2015 Time: 4:15 p.m. Judge: Hon. Analisa Torres Courtroom: 15D

MEMORANDUM OF LAW
IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF
ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES AND OTHER AUTHORITIES

I. INTRODUCTION

Court-appointed Lead Counsel Bernstein Litowitz Berger & Grossmann LLP ("Bernstein Litowitz" or "BLB&G"), Saxena White P.A. ("Saxena White") and Bernstein Liebhard LLP ("Bernstein Liebhard"; collectively with BLB&G and Saxena White, "Lead Counsel"), having recovered $20.5 million for the benefit of the Settlement Classes, respectfully apply for an award of attorneys' fees in the amount of 25% of the Settlement Amount, plus interest.[1] Lead Counsel also seek $235,934.52 in reimbursement of Plaintiffs' Counsel's Litigation Expenses reasonably and necessarily incurred to prosecute the Action, as well as $2,922.00 and $7,000.00, respectively, as reimbursement for Lead Plaintiffs KCERS' and ADAR Funds' costs and expenses directly related to their representation of the Settlement Classes, as authorized by the Private Securities Litigation Reform Act of 1995 (the "PSLRA").[2]

Throughout the litigation, the stakes have been large, the risks substantial, and the battles hard-fought. The likelihood of succeeding, and then recovering, against the Tower Defendants was highly uncertain. Lead Counsel nevertheless undertook this representation on a contingency basis, with no guarantee of success or recovery. They faced substantial risks establishing liability, defeating defenses, proving damages, and establishing that a class action was appropriate for litigation purposes. Indeed, the Court has since granted the motion to dismiss filed by the remaining defendant, PricewaterhouseCoopers LLP ("PwC") with respect to the inadequacy of the

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[1] BLB&G and Saxena White are counsel for Lead Plaintiffs Kansas City, Missouri Employees' Retirement System ("KCERS"), Jacksonville Police and Fire Pension Fund ("Jacksonville P&F"), and Oklahoma Firefighters Pension & Retirement System ("Oklahoma Firefighters"), and Bernstein Liebhard is counsel for Lead Plaintiffs ADAR Enhanced Investment Fund, Ltd., and ADAR Investment Fund, Ltd. ("ADAR Funds") (collectively, "Lead Plaintiffs").

[2] Lead Plaintiffs respectfully refer the Court to the accompanying Joint Declaration of James A. Harrod, Joseph A. White, III, and U. Seth Ottensoser in Support of Final Approval of Class Action Settlement with Tower Defendants, Approval of the Plan of Allocation, and Approval of Lead Counsel's Application for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses ("Lead Counsel Decl.") for a detailed description of the case and the Settlement. Unless otherwise noted, capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement dated July 20, 2015 (ECF No. 148, the "Stipulation" or the "Stip.").

scienter allegations against PwC. ECF No. 155 (Memorandum and Order entered September 18, 2015).

As detailed in the accompanying Lead Counsel Declaration, Lead Counsel vigorously pursued this litigation. Among other things, Lead Counsel conducted a thorough investigation in order to prepare the Complaints, including review and analysis of Tower's public filings with the Securities and Exchange Commission (the "SEC"), conference call transcripts, presentations, and press releases; research and analyst reports concerning Tower; news and media reports concerning Tower; and the private placement materials issued in conjunction with the March 2013 merger between Canopius and Tower Group, Inc. Lead Counsel also identified and interviewed numerous percipient witnesses. Lead Counsel opposed motions to dismiss; engaged and consulted with experts in several areas requiring specialized knowledge; researched the law applicable to the claims and potential defenses; and engaged in a thorough mediation with experienced defense counsel and successfully negotiated a favorable settlement. *See* Lead Counsel Decl. Section II.

Given the substantial recovery obtained for the Settlement Classes, the complexity and amount of work involved, the skill and expertise required, and the significant risks that counsel undertook, the requested award of 25% of the Settlement Amount is fair and reasonable. Federal courts in this District and throughout the nation have awarded the same or greater percentage fees in other similarly complex class litigation. A lodestar cross-check confirms that the requested fee, which represents a multiplier of less than 1.5, is fair and reasonable. Moreover, Lead Plaintiffs have reviewed and endorsed the fairness and reasonableness of the requested fee. *See* Lead Plaintiff Declarations, attached to the Lead Counsel Declaration as Exhibits 1A, 1B, 1C, and 1D.

As required by the Court's August 13, 2015 Order Preliminarily Approving Settlement and Providing for Notice (the "Preliminary Approval Order," ECF No. 152), copies of the Notice have been mailed to more than 47,000 potential members of the Settlement Classes and their nominees. A Summary Notice was also published in *Investor's Business Daily* and over the *PR Newswire*, and Settlement documents are available on the website created specifically for this Settlement, and Lead Counsel's websites. *See* Declaration of Adam D. Walter Re Notice Dissemination and

Publication ("Walter Decl."), attached as Exhibit 2 to the Lead Counsel Decl., ¶¶8, 9, 12. The Notice advised potential members of the Settlement Classes that Lead Counsel would seek attorneys' fees in an amount not to exceed 25% of the Settlement Amount, plus interest earned at the same rate and for the same period as earned by the Settlement Fund. The Notice further advised potential members of the Settlement Classes that Lead Counsel would apply for the reimbursement of Litigation Expenses paid or incurred by Plaintiffs' Counsel in an amount not to exceed $600,000.00, and for reimbursement of the costs and expenses of Lead Plaintiffs in accordance with the PSLRA. *See* Walter Decl., Ex. A, ¶5, 72.

While the deadline for members of the Settlement Classes to object to the requested attorneys' fees and expenses has not yet passed, to date, no one has objected to Lead Counsel's application for fees and expenses.[3]

For the reasons set forth below, Lead Counsel respectfully request that the Court approve their application for attorneys' fees and expenses.

II. ARGUMENT

A. Lead Counsel Are Entitled To An Award Of Attorneys' Fees From The Common Fund

The Supreme Court has long recognized that "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." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000). Courts recognize that awards of fair attorneys' fees from a common fund "serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons," and therefore to discourage future alleged misconduct of a similar nature. *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570,

[3] The deadline for submitting objections, if any, is October 28, 2015, which is twenty-one days prior to the date initially set for the Settlement Hearing, November 18, 2015. In any event, if any objections are received either before or after that deadline, they will be addressed in Lead Plaintiffs' reply papers to be filed one week prior to the Settlement Hearing.

585 (S.D.N.Y. 2008); *see In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115808, at *2 (S.D.N.Y. Nov. 7, 2007) (same); *see also In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 165 (S.D.N.Y. 2011) (an award of appropriate attorneys' fees should "provid[e] lawyers with sufficient incentive to bring common fund cases that serve the public interest" and "attract well-qualified plaintiffs' counsel who are able to take a case to trial, and who defendants understand are able and willing to do so") (citations omitted). Indeed, the Supreme Court has emphasized that private securities actions, such as this one, are "an essential supplement to criminal prosecutions and civil enforcement actions" brought by the SEC. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007); *accord Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (private securities actions provide "'a most effective weapon in the enforcement' of the securities laws and are 'a necessary supplement to [SEC] action.'") (quoting *J.I. Case Co. v. Borak*, 377 U.S. 426, 432 (1964)). Compensating plaintiffs' counsel for the risks they take in bringing these actions is essential because "[s]uch actions could not be sustained if plaintiffs' counsel were not to receive remuneration from the settlement fund for their efforts on behalf of the class." *Hicks v. Morgan Stanley*, 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005).

B. The Court Should Award A Reasonable Percentage Of The Common Fund

Most courts, including this Court, have found that the percentage-of-the-fund method, under which counsel is awarded a percentage of the fund that they recovered, is the preferred means to determine a fee because it "directly aligns the interests of the class and its counsel, mimics the compensation system actually used by individual clients to compensate the attorneys, provides a powerful incentive for the efficient prosecution and early resolution of litigation, and preserves judicial resources." *Monzon v. 103W77 Partners, LLC*, 13 Civ. 5951, ECF No. 49 (S.D.N.Y. Mar. 5, 2015) (Torres, J.) (citing *Sewell v. Bovis Lend Lease, Inc.*, 2012 WL 1320124, at *10 (S.D.N.Y. Apr. 16, 2012) ("[The percentage] method is similar to private practice where counsel

operates on a contingency fee, negotiating a reasonable percentage of any fee ultimately awarded.").[4]

The Supreme Court has indicated that attorneys' fees in common-fund cases generally should be based on a percentage of the fund. *See Blum v. Stenson,* 465 U.S. 886, 900 n.16 (1984) ("under the 'common fund doctrine,' . . . a reasonable fee is based on a percentage of the fund bestowed on the class"). The Second Circuit has expressly approved the percentage method, recognizing that "the lodestar method proved vexing" and had resulted in "an inevitable waste of judicial resources."[5] The Second Circuit, and the courts in this District, acknowledge that the

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[4] *See also Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005); *Hayes v. Harmony Gold Mining Co. Ltd.,* 509 Fed. Appx. 21, 24 (2d Cir. 2013) (unpubl.) ("[A]s the district court recognized, the prospect of a percentage fee award from a common settlement fund, as here, aligns the interests of class counsel with those of the class."); *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 991 F. Supp. 2d 437, 440 (E.D.N.Y. 2014) ("The percentage method better aligns the incentives of plaintiffs' counsel with those of the class members because it bases the attorneys' fees on the results they achieve for their clients, rather than on the number of motions they file, documents they review, or hours they work. The percentage method also accords with the overwhelming prevalence of contingency fees in the market for plaintiffs' counsel . . . .") (citation omitted); *Davis v. J.P. Morgan Chase & Co.,* 827 F. Supp. 2d 172, 184 (W.D.N.Y. 2011) (the "advantages of the percentage method . . . are that it provides an incentive to attorneys to resolve the case efficiently and to create the largest common fund out of which payments to the class can be made, and that it is consistent with the system typically used by individual clients to compensate their attorneys").

Courts have also historically used the lodestar method for awarding plaintiffs' counsel attorneys' fees, where counsel are awarded the product of their number of hours, multiplied by their reasonable rate, and enhanced by a "multiplier." Specifically, under the lodestar method, a court first multiplies the number of hours each attorney or paraprofessional spent on the case by each attorney's and paraprofessional's reasonable hourly rate; and second, the court adjusts that lodestar figure (by applying a multiplier) to reflect such factors as the risk and contingent nature of the litigation, the result obtained and the quality of the attorney's work. A lodestar cross-check on the requested percentage-of-the-fund fee request is addressed below in Section II.E.

[5] *Goldberger*, 209 F.3d at 48-50 (holding that either the percentage-of-the-fund method or lodestar method may be used to determine appropriate attorneys' fees); *see also In re Bank of Am. Corp. Sec., Derivative, & ERISA Litig*. ("*BofA*"), 772 F.3d 125, 134 (2d Cir. 2014) (affirming award, over objections, of attorneys' fees equaling over 6% of $2.425 billion settlement fund); *Savoie v. Merchs. Bank*, 166 F.3d 456, 460 (2d Cir. 1999) (the "percentage-of-the-fund method has been

"trend in this Circuit is toward the percentage method."[6] All federal Courts of Appeal to consider the matter have approved of the percentage method, with two circuits ***requiring*** its use in common-fund cases.[7]

The PSLRA also supports use of the percentage-of-the-fund method, as it provides that "[t]otal attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a *reasonable percentage* of the amount" recovered for the class. 15 U.S.C. § 78u-1(a)(6) (emphasis added). Several courts have concluded that Congress, in using this language, expressed a preference for the percentage method when determining attorneys' fees in securities class actions.[8]

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deemed a solution to certain problems that may arise when the lodestar method is used in common fund cases.").

[6] *Wal-Mart*, 396 F.3d at 121; see *also Davis*, 827 F. Supp. 2d at 183-85; *Payment Card Interchange Fee,* 991 F. Supp. 2d at 440 ("The trend in this Circuit, and the method I adopt here, is a percentage of the fund."); *In re Comverse Tech., Inc. Sec. Litig.*, 2010 WL 2653354, at *2 (E.D.N.Y. June 24, 2010); *In re Am. Int'l Grp, Inc. 2008 Sec. Litig.,* 08-cv-4772-LTS-DCF (S.D.N.Y.), Order filed March 20, 2015 (ECF No. 517); *Flores v. Anjost Corp.*, 2014 WL 321831 (S.D.N.Y. Jan. 29, 2014) (Torres, J.) ("The trend in this Circuit is to use the percentage of the fund method to compensate attorneys in common fund cases like this one.").

[7] *See In re Thirteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 305-07 (1st Cir. 1995); *In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006); *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 642-43 (5th Cir. 2012); *Rawlings v. Prudential-Bache Props., Inc.*, 9 F.3d 513, 515-17 (6th Cir. 1993); *Harman v. Lyphomed, Inc.*, 945 F.2d 969, 975 (7th Cir. 1991); *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *Gottlieb v. Barry*, 43 F.3d 474, 483 (10th Cir. 1994); *Camden I Condo. Ass'n v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1269-71 (D.C. Cir. 1993). The Eleventh and District of Columbia Circuits have required the use of the percentage method in common-fund cases. *See Camden*, 946 F.2d at 774; *Swedish Hosp.*, 1 F.3d at 1271.

[8] *See, e.g., Telik*, 576 F. Supp. 2d at 586; *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 355 (S.D.N.Y. 2005); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 370 (S.D.N.Y. 2002).

C. The Requested Attorneys' Fees Are Reasonable Under The Percentage-Of-The-Fund Method

The Supreme Court has recognized that an appropriate court-awarded fee is intended to approximate what counsel would receive if they were bargaining for the services in the marketplace. *See Missouri v. Jenkins*, 491 U.S. 274, 285-86 (1989). If this were a non-representative action, the customary fee arrangement would be contingent, on a percentage basis, and in the range of 30% to 33% of the recovery. *See Blum*, 465 U.S. at 903-04 ("In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery.") (Brennan, J., concurring).

Moreover, at 25%, the requested fee is equal to, or less than, the percentage fee awards granted in many other comparable securities class actions within the Second Circuit.[9] Indeed, courts within this District have recently recognized that 25% "is an 'increasingly used benchmark.'" *City of Pontiac Gen. Emps.' Ret. Sys. v. Lockheed Martin Corp.*, 954 F. Supp. 2d 276, 281 (S.D.N.Y. 2013) (awarding 25% of $19.5 million settlement fund). Further, the Honorable John Gleeson recently reviewed the fee awards in class actions. *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, 991 F. Supp. 2d 437, 443 (E.D.N.Y. Jan. 10, 2014). Based on Judge Gleeson's graduated fee schedule, settlements of this magnitude ($20.5 million) would receive fees of approximately 31.5%.[10]

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[9] *See, e.g., Citiline Holdings, Inc. v. iStar Fin., Inc.*, No. 1:08-cv-03612-RJS, slip op. at 1 (S.D.N.Y. Apr. 5, 2013), ECF No. 127 (awarding 30% of $29 million settlement fund); *In re Sadia S.A. Sec. Litig.*, 2011 WL 6825235, at *3 (S.D.N.Y. Dec. 28, 2011) (awarding 30% of $27 million settlement fund); *In re L.G. Philips LCD Co. Sec. Litig.*, No. 1:07-cv-00909-RJS, slip op. at 1 (S.D.N.Y. Mar. 17, 2011), ECF No. 82 (awarding 30% of $18 million settlement fund); *In re Am. Bank Note Holographics, Inc. Sec. Litig.*, 127 F. Supp. 2d 418, 433 (S.D.N.Y. 2001) (awarding 25% of $21 million settlement fund); *Hayes v. Harmony Gold Mining Co.*, 2011 WL 6019219, at *1 (S.D.N.Y. Dec. 2, 2011) (awarding 33.3% of $9 million settlement fund), *aff'd*, 509 F. App'x 21 (2d Cir. 2013) (unpubl.); *In re Acclaim Entm't, Inc. Sec. Litig.*, Master File No. 2:03-CV-1270 (JS) (ETB), slip op. at 9 (E.D.N.Y. Oct. 2, 2007), ECF No. 147 (awarding 30% of $13.65 million settlement); *Hicks*, 2005 WL 2757792, at *9-10 (awarding 30% of $10 million settlement fund).

[10] Judge Gleeson's research revealed that courts generally awarded 33% of the first $10 million, and decreased the marginal percentage of recovery to 30% for the next $10 million - $50 million.

The requested 25% fee is also well within the range of percentage fees awarded in other , non securities, complex class actions within the Second Circuit (including by this Court) further confirming the reasonableness of the requested 25% award. *See, e.g., Monzon, supra,* 13 Civ. 5951, ECF No. 49 (S.D.N.Y. Mar. 5, 2015) (Torres, J.) (awarding fees of 1/3 of settlement amount in wage-and-hour case, representing 1.59 multiplier); *Flores v. Anjost Corp.*, 11 Civ. 1531, 2014 WL 321831 (S.D.N.Y. Jan. 29, 2014) (Torres, J.) (awarding fees of 1/3 of settlement amount in wage-and-hour case); *Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172, 185-86 (W.D.N.Y. 2011) (awarding one-third of $42 million settlement fund in wage-and-hour case).

Courts have repeatedly awarded fees of 25% or more where a settlement was reached during the pendency of a motion to dismiss or shortly after, and where no or very limited formal discovery had been obtained as a result of the PSLRA discovery stay. *See In re L.G. Philips LCD Co. Sec. Litig.*, slip op. at 1 (awarding 30% of $18 million settlement fund, representing a multiplier of 3.17, where settlement was reached while motion to dismiss was pending); *Taft v. Ackermans*, 2007 WL 414493, at *10 (S.D.N.Y. Jan. 31, 2007) (awarding 30% of $15.2 million settlement fund, representing a 1.44 multiplier, where settlement was reached while motion to dismiss was pending); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 370 (S.D.N.Y. 2002) (awarding 33.3% of $11.5 million settlement fund, representing a 4.65 multiplier, where settlement was reached while motions to dismiss were pending); *In re Am. Express Fin. Advisors Sec. Litig*., No. 04 Civ. 1773 (DAB), slip op. at 8 (S.D.N.Y. July 18, 2007), ECF No. 170 (awarding 27% of $100 million settlement fund, representing a 2.8 multiplier, where settlement was reached while motion to dismiss was pending).

Indeed, as this Court has recognized, one of the merits of awarding fees on a percentage basis is that it does not penalize attorneys for achieving a prompt resolution of a case, where, as

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Id. at 445. Applied here, the award would be 33% of the first $10 million, and 30% of the next $10.5 million, resulting in an award of $6.45 million, or approximately 31.5% of the $20.5 million Settlement Amount.

here, sufficient information about the value of the claims could be determined through investigation and careful analysis of the legal and factual issues, thus avoiding the need for costly and lengthy formal discovery. *See Monzon,* 13 Civ. 5951, ECF No. 49 (S.D.N.Y. Mar. 5, 2015) (Torres, J.) (recognizing that the percentage method "provides a powerful incentive for the efficient prosecution and early resolution of litigation"); *see also Wal-Mart,* 396 F.3d at 121 (one of the merits of the percentage method is that it "provides a powerful incentive for the efficient prosecution and early resolution of litigation") (citation omitted); *Savoie*, 166 F.3d at 461 (the percentage method "removes disincentives to prompt settlement").

D. A Review Of The *Goldberger* Factors Confirms That The Requested 25% Fee Is Fair And Reasonable

The Second Circuit recently reiterated that the appropriate criteria to consider when reviewing a request for attorneys' fees in a common-fund case include the "*Goldberger*" factors:

> (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 the representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.

Goldberger, 209 F.3d at 50 (internal quotes and citation omitted), *cited in BofA*, 772 F.3d at 134 (affirming attorneys' fee award, over objection, that was "based upon an application of the criteria set out in *Goldberger*"). Consideration of these factors demonstrates that the fee requested by Lead Counsel is reasonable.

1. The Time And Labor Expended By Plaintiffs' Counsel Support The Requested Fee

The work undertaken by Plaintiffs' Counsel in prosecuting this complex securities class action and arriving at this Settlement has been time-consuming and challenging. Over the past two years, Plaintiffs' Counsel dedicated a large amount of labor, time, and money to pursue and resolve the claims successfully. Lead Counsel's efforts included, among other things:

- Performing an in-depth review and analysis of (a) Tower's SEC filings; (b) research reports by securities and financial analysts; (c) transcripts of Tower's earnings conference calls and industry conferences; (d) publicly available presentations by Tower; (e) Tower's press releases; (f) news and media reports concerning Tower and other facts related to this action; (g) private placement materials issued in conjunction with the March 2013 merger between Canopius and Tower Group, Inc.;

(h) materials obtained through freedom of information requests to various of Tower's regulators; and (i) data reflecting the pricing of Tower common stock (Lead Counsel Decl. ¶¶27);

- Conducting a thorough investigation identifying and interviewing potential percipient witnesses, including the twelve witnesses with direct knowledge as alleged in the Complaint (*id* ¶28);

- Conferring extensively with experts and consultants concerning the specialized areas of accounting for loss reserves, actuarial processes, loss causation and damages, and foreign law (*id*. ¶¶27, 30);

- Drafting detailed complaints, including the 156-page Amended Complaint based on Lead Counsel's extensive factual investigation and legal research into the applicable claims (*id*. ¶¶16, 17, 19);

- Preparing extensive briefing, and supplemental briefing, in response to motions to dismiss the Complaint, including in response to the Tower Defendants' argument that ACP was not liable on a successor liability theory (*id*. ¶¶18, 19, 21-24);

- Obtaining and analyzing information demonstrating the Tower Defendants' limited ability to pay a substantial judgment (*id.* ¶34); and

- Drafting Lead Plaintiffs' mediation statement and supplemental statements, analyzing the Tower Defendants' mediation statement, and preparing for and participating in the mediation process, including a full-day mediation session held at JAMS (*id*. ¶¶32-35).

In total, as set forth in the respective declarations, Plaintiffs' Counsel expended 6,032.80 hours prosecuting the Action through July 21, 2015, the day Lead Plaintiffs submitted the proposed Settlement to the Court for preliminary approval. *See* Exhibits 4A, 4B, 4C, 4D, and 4E. The significant amount of time and effort devoted to this case by Plaintiffs' Counsel confirms that the fee requested here is reasonable.

2. The Magnitude And Complexity Of The Action Support The Requested Fee

Courts have long recognized that securities class actions are "notably difficult and notoriously uncertain." *In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *27 (S.D.N.Y. Nov. 8, 2010) (quoting *In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 281 (S.D.N.Y. 1999)).

This case was no exception. This is a case with a complex fact pattern, a nearly four year class period, and challenging issues involving insurance loss reserves, internal controls, and accounting issues. Litigation of the claims against the Tower Defendants raised many complex issues, as is evidenced by the over 900 pages of briefing and exhibits dedicated to addressing the Tower Defendants' multiple arguments in their motion to dismiss. The litigation also raised a number of complex questions that required substantial efforts by Lead Counsel, often through analysis of the factual record and consultation with experts. Lead Counsel's consultation with experts was necessarily extensive given the complex nature of the subject matter underlying the claims. Lead Counsel undertook to create a compelling record addressing these and other complicated issues. Lead Counsel Decl. Section II.

Accordingly, the magnitude and complexity of the Action support the conclusion that the requested fee is fair and reasonable.

3. The Risks Of The Litigation Support The Requested Fee

The risk of the litigation is often considered the most important *Goldberger* factor. *See Goldberger,* 209 F.3d at 54; *Comverse*, 2010 WL 2653354, at *5; *Telik,* 576 F. Supp. 2d at 592. The Second Circuit has recognized that the risk associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee award:

> 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), *abrogated on other grounds by Goldberger*, 209 F.3d 43 (2d Cir. 2000). The Court should bear in mind that "[l]ittle about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation." *Comverse*, 2010 WL 2653354, at *5.

The underlying facts in the case involved dense and highly specialized factual questions concerning insurance loss reserves, financial accounting and internal disclosure controls. While Lead Plaintiffs believe that the claims have merit, they recognize that this case presented

substantial risks and uncertainties from the outset, which made it far from certain that any recovery would ultimately be obtained for the Settlement Classes. As discussed in the Lead Counsel Declaration and in the memorandum of law in support of the Settlement, there were substantial risks here with respect to the ability to, among other things: (i) plead and prove that the defendants made material misstatements or omissions; (ii) plead and prove scienter; (iii) plead and prove that the alleged misstatements, rather than other factors, were the causes of the Settlement Classes' losses; and (iv) overcome Tower's arguments and defenses to the Settlement PPC's claims. Lead Counsel Decl. Section III.B.

While Lead Plaintiffs and Lead Counsel believe that the Settlement Classes have strong claims, they recognize that they faced significant risks in establishing all the elements of their claims. Indeed, the Court has since granted the motion to dismiss filed by PwC with respect to the inadequacy of the scienter allegations against it.

In addition, Lead Plaintiffs and Lead Counsel understand the Tower Defendants' inability to withstand a substantial judgment – combined with the parties' disputed arguments regarding ACP's successor liability, and the diminishing available insurance proceeds – presented a substantial risk of diminished recovery, or even no recovery at all, had Lead Plaintiffs continued to litigate the Action against them. Accordingly, the risks faced by Lead Counsel were very real. In the face of these uncertainties, Lead Counsel undertook this case on a wholly contingent basis, knowing that the litigation could last for years and would require them to devote substantial attorney time and a significant expenditure of litigation expenses with no guarantee of compensation. *Id.* "There are numerous class actions in which counsel expended thousands of hours and yet received no remuneration whatsoever despite their diligence and expertise." *Veeco*, 2007 WL 4115808, at *6. Lead Counsel's assumption of this contingency-fee risk strongly supports the reasonableness of the requested fee. *See FLAG Telecom*, 2010 WL 4537550, at *27 ("the risk associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee award"); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 148 (S.D.N.Y.

2010) ("There was significant risk of non-payment in this case, and Plaintiffs' Counsel should be rewarded for having borne and successfully overcome that risk.").

4. The Quality Of Lead Counsel's Representation Supports The Requested Fee

The quality of the representation is another important factor that supports the reasonableness of the requested fee. The quality of the representation here is best evidenced by the quality of the result achieved. *See Goldberger,* 209 F.3d at 55; *Veeco*, 2007 WL 4115808, at *7; *Global Crossing,* 225 F.R.D. at 467. The quality of Lead Counsel's efforts in the litigation to date, together with their substantial experience in securities class actions and their commitment to the litigation, provided Lead Counsel with the leverage necessary to negotiate the favorable Settlement.

The skill and substantial experience of counsel in the specialized field of shareholder securities litigation also support the reasonableness of the requested fee. *See Teachers' Ret. Sys. of La. v. A.C.L.N., Ltd.*, 2004 WL 1087261, at *6 (S.D.N.Y. May 14, 2004). Lead Counsel specialize in complex securities litigation, and are highly experienced in such litigation, with a successful track record in securities cases throughout the country. *See* Lead Counsel Decl. ¶83 and Lead Counsel's firm biographies attached thereto as Exhibits 4A-5, 4B-4, and 4C-4.

Finally, courts repeatedly recognize that the quality of the opposition faced by plaintiffs' counsel should also be taken into consideration in assessing the quality of counsel's performance. *See, e.g., Marsh*, 265 F.R.D. at 148 ("The high quality of defense counsel opposing Plaintiffs' efforts further proves the caliber of representation that was necessary to achieve the Settlement"); *Veeco*, 2007 WL 4115808, at *7 (among the factors supporting a 30% award of attorneys' fees was that defendants were represented by "one of the country's largest law firms"); *Adelphia*, 2006 WL 3378705, at *3 ("The fact that the settlements were obtained from defendants represented by 'formidable opposing counsel from some of the best defense firms in the country' also evidences the high quality of lead counsels' work").

Here, Lead Counsel were opposed in this case by a very skilled and highly-respected defense firm representing the Tower Defendants, Willkie Farr & Gallagher LLP, who spared no effort in the defense of their clients. In the face of this knowledgeable and formidable defense, Lead Counsel were nonetheless able to develop a case that was sufficiently strong to persuade the Tower Defendants and their insurance carriers to settle on terms that are favorable to the Settlement Classes. Lead Counsel Decl. ¶84.

5. Second Circuit Precedent Supports The 25% Fee As A Reasonable Percentage Of The Total Recovery

Courts have interpreted the next factor – the requested fee in relation to the settlement – as requiring the review of the fee requested in terms of the percentage it represents of the total recovery. "When determining whether a fee request is reasonable in relation to a settlement amount, 'the court compares the fee application to fees awarded in similar securities class-action settlements of comparable value.'" *Comverse*, 2010 WL 2653354, at *3. As discussed above, the requested 25% fee is well within the range of percentage fees that courts in the Second Circuit and around the country have awarded in class actions. Accordingly, the requested fee is reasonable in relation to the size of the Settlement.

6. Public Policy Considerations Support The Requested Fee

Public policy strongly favors rewarding firms for bringing successful securities actions like this one. *See FLAG Telecom*, 2010 WL 4537550, at *29 (if the "important public policy [of enforcing the securities laws] is to be carried out, the courts should award fees which will adequately compensate Lead Counsel for the value of their efforts, taking into account the enormous risks they undertook"); *Maley*, 186 F. Supp. 2d at 373 ("In considering an award of attorney's fees, the public policy of vigorously enforcing the federal securities laws must be considered."); *Hicks*, 2005 WL 2757792, at *9 ("To make certain that the public is represented by talented and experienced trial counsel, the remuneration should be both fair and rewarding."). Accordingly, public policy favors granting Lead Counsel's fee and expense application here.

7. Lead Plaintiffs' Approval And The Settlement Classes' Reaction Support The Requested Fee

Lead Plaintiffs were actively involved in the prosecution and settlement in this Action, and have approved the requested fee. *See* Lead Plaintiff Decls., Exhibits 1A, 1B, 1C, and 1D to the Lead Counsel Decl. Lead Plaintiffs are precisely the type of sophisticated and financially interested investors that Congress envisioned serving as fiduciaries when it enacted the PSLRA. The PSLRA was intended to encourage institutional investors to assume control of securities class actions in order to "increase the likelihood that parties with significant holdings in issuers, whose interests are more strongly aligned with the class of shareholders, will participate in the litigation and exercise control over the selection and actions of plaintiff's counsel." H.R. Conf. Rep. No. 104-369, at *32 (1995), reprinted in 1995 U.S.C.C.A.N. 730, 731. Congress believed that these institutions would be in the best position to monitor the prosecution and to assess the reasonableness of counsel's fee requests. Accordingly, Lead Plaintiffs' endorsement of the fee request supports its approval as fair and reasonable. *See, e.g., Veeco*, 2007 WL 4115808, at *8 ("public policy considerations support the award in this case because the Lead Plaintiff . . . – a large public pension fund – conscientiously supervised the work of lead counsel and has approved the fee request").

The reaction of the Settlement Classes also supports the requested fee. As of October 7, 2015, the Claims Administrator has sent the Notice to over 47,000 potential members of the Settlement Classes and their nominees (Walter Decl. ¶8), informing them that, among other things, Lead Counsel intended to apply to the Court for an award of attorneys' fees in an amount not to exceed 25% of the Settlement Amount. Walter Decl., Ex. A, ¶5, 72. While the time to object to the fee application does not expire until October 28, 2015, to date, not a single objection has been received. Should any objections be received, Lead Counsel will address them in their reply papers. The lack of objection from members of the Settlement Classes strongly demonstrates their approval of the Settlement.

E. A Lodestar Cross-Check Confirms The Reasonableness Of The Fee Request

To ensure the reasonableness of a fee awarded under the percentage-of-the-fund method, the Second Circuit encourages district courts to cross-check the proposed award against counsel's lodestar. *See Goldberger*, 209 F.3d at 50; *Payment Card Interchange Fee*, 991 F. Supp. 2d at 447-48. In cases like this, fees representing multiples of the lodestar are regularly awarded to reflect the contingency-fee risk and other relevant factors. *See, e.g.*, *FLAG Telecom*, 2010 WL 4537550, at *26 ("Under the lodestar method, a positive multiplier is typically applied to the lodestar in recognition of the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors."); *Comverse*, 2010 WL 2653354, at *5 ("Where … counsel has litigated a complex case under a contingency fee arrangement, they are entitled to a fee in excess of the lodestar.").

Accordingly, in complex contingent litigation, lodestar multipliers between 2 and 5 are commonly awarded.[11] Here, a lodestar cross-check fully supports the requested percentage fee. In this entirely contingent action that raised myriad complex issues, Lead Counsel and additional Plaintiffs' Counsel collectively devoted at least 6,032.80 hours of attorney and other professional

[11] *See Wal-Mart*, 396 F.3d at 123 (upholding multiplier of 3.5 as reasonable on appeal); *Payment Card Interchange Fee*, 991 F. Supp. 2d at 447-48 (awarding fee representing a multiplier of 3.41, which was "comparable to multipliers in other large, complex cases"); *Davis*, 827 F. Supp. 2d at 185 (awarding fee representing a multiplier of 5.3, which was "not atypical" in similar cases); *Cornwell v. Credit Suisse Grp.*, No. 08-cv-03758 (VM), ECF No. 117 (S.D.N.Y. July 18, 2011) (awarding fee representing a multiplier of 4.7); *Comverse*, 2010 WL 2653354, at *5 (awarding fee representing a 2.78 multiplier); *Telik*, 576 F. Supp. 2d at 590 ("In contingent litigation, lodestar multiples of over 4 are routinely awarded by courts, including this Court."); *In re Bisys Sec. Litig.*, No. 04 Civ. 3840 (JSR), 2007 WL 2049726, at *3 (S.D.N.Y. July 16, 2007) (awarding 30% fee representing a 2.99 multiplier and finding that the multiplier "falls well within the parameters set in this district and elsewhere"); *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 135 (D.N.J. 2002) (a 4.3 multiplier was appropriate in light of the contingency risk and the quality of the result achieved); *Maley*, 186 F. Supp. 2d at 369 (awarding fee equal to a 4.65 multiplier, which was "well within the range awarded by courts in this Circuit and courts throughout the country").

support time in the prosecution and investigation of the Action.[12] Plaintiffs' Counsel's total lodestar, derived by multiplying the hours spent by each attorney and paraprofessional by their current hourly rates, is $3,481,747.50.[13]

The requested fee of 25% of the Settlement Amount will equal $5.125 million (plus interest), which represents a multiplier of only 1.47 on Plaintiffs' Counsel's lodestar amount. Thus, the 25% fee requested is well within the range awarded in cases of this type. The Second Circuit recently affirmed a $152.4 million attorneys' fee award resulting in a 1.73 multiplier. *BofA,* 772 F.3d at 134; *see also N.J. Carpenters Vacation Fund v. The Royal Bank of Scot. Grp., PLC,* No. 08-CV-5093 (LAP), ECF No. 286 (S.D.N.Y. Nov. 5, 2014) (awarding fees representing 2.27

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[12] "Plaintiffs' Counsel" consist of the Court-appointed Lead Counsel for the Class; additional counsel for Lead Plaintiff Jacksonville P&F, Klausner Kaufman Jensen & Levinson; and additional counsel for Lead Plaintiff KCERS, Philip A. Klawuhn & Associates P.C.

[13] *See* Exhibits 4A, 4B, 4C, 4D, and 4E to the Lead Counsel Decl. As set forth in the Lead Counsel Declarations, the hourly rates are the same as, or comparable to, the rates submitted by the respective Lead Counsel law firms for lodestar cross-checks in other securities class action litigation fee applications that have been granted within this Circuit and others nationwide. *See, e.g.*, *In re Bear Stearns Mortgage Pass-Through Certificates Litig.*, 08-cv-08093-LTS (S.D.N.Y.) (ECF No. 273-6); *In re Morgan Stanley Mortgage Pass-Through Certificates Litig.,* 09-cv-2137 (KBF) (S.D.N.Y.) (ECF No. 328); *Plumbers' & Pipefitters' Local #562 Supplemental Plan & Trust v. J.P. Morgan Acceptance Corp. I* ("*J.P. Morgan*"), 08-cv-1713 (PKC) (E.D.N.Y.) (ECF No. 222-5); *In re SMART Techs., Inc. S'holder Litig.,* No. 11-CV-7673 (KBF) (S.D.N.Y.) (ECF No. 182-4); *In re The Reserve Primary Fund Sec. & Derivative Class Action Litig.,* 08-cv-8060-PGG (S.D.N.Y.) (ECF No. 101-4); *MissPERS v. Goldman Sachs Grp., Inc.* ("*Goldman Sachs*"), No. 09-cv-1110-HB (S.D.N.Y.) (ECF No. 147-2); *Schuler v. NIVS IntelliMedia Technology Group, Inc.*, 11-cv-2484-KMW (W.D.N.Y.) (ECF No. 120); *Fernandez v. Knight Capital Group, Inc.*, 2:12-cv-06760-MCA-SCM (D.N.J.) (ECF No. 81-2); *In re ModusLink Global Solutions Sec. Litig.*, 12-CV-11044-DJC (D. Mass.) (ECF No. 75-2); *In re Marsh & McLennan Cos., Inc. Sec. Litig.*, 04 Civ. 8144(CM), 2009 WL 5178546, at *17 (S.D.N.Y. Dec. 23, 2009) ("Courts in this Circuit and around the country have repeatedly found rates similar to those charged by Lead Counsel to be reasonable in other securities class actions."). Both the Supreme Court and courts in this Circuit have long approved the use of current hourly rates to calculate the base lodestar figure as a means of compensating for the delay in receiving payment that is inherent in class actions, inflationary losses, and the loss of access to legal and monetary capital that could otherwise have been employed had class counsel been paid on a current basis during the pendency of the litigation. *See In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.*, 724 F. Supp. 160, 163 (S.D.N.Y. 1989); *Veeco*, 2007 WL 4115808, at *9; *Missouri,* 491 U.S. at 284.

multiplier); *MissPERS v. Merrill Lynch & Co. Inc.,* No. 08-cv-10841-JSR-JLC, ECF No. 186 (S.D.N.Y. May 8, 2012) (awarding fees representing 2.3 multiplier); *J.P. Morgan, supra* (awarding fees representing 1.83 multiplier); *In re Wells Fargo Mortg.-Backed Certificates Litig.* ("*Wells Fargo*"), No. 09-CV-1376-LHK (PSG), ECF No. 475 (N.D. Cal. Nov. 14, 2011) (awarding fees representing 2.82 multiplier); *see also In re Am. Int'l Group, Inc. 2008 Sec. Litig.,* 08-cv-4772-LTS-DCF, ECF No. 517 (S.D.N.Y. Mar. 20, 2015) (awarding fees representing 1.5 multiplier). Moreover, it should be emphasized that the lodestar "crosscheck" is exactly that – a rough crosscheck that is not intended to supplant the primacy of the percentage-based method.

Lead Counsel's requested 25% fee is well within the range of what courts in this Circuit and throughout the country commonly award in complex class actions such as this one, when calculated as a percentage of the fund, and pursuant to a lodestar cross-check.

F. Plaintiffs' Counsel's Litigation Expenses Are Reasonable And Should Be Approved For Reimbursement

Lead Counsel's fee application includes a request for reimbursement of Litigation Expenses that were reasonably incurred in furtherance of the claims on behalf of the Settlement Classes. These expenses are documented expenses properly recovered by counsel. *See, e.g.*, *In re China Sunergy Sec. Litig.,* No. 07 Civ. 7895 (DAB), 2011 WL 1899715, at *6 (S.D.N.Y. May 13, 2011) (in a class action, attorneys should be compensated "for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they were 'incidental and necessary to the representation'"); *FLAG Telecom*, 2010 WL 4537550, at *30 ("It is well accepted that counsel who create a common fund are entitled to the reimbursement of expenses that they advanced to a class.").

As set forth in detail in the Plaintiffs' Counsel Declarations (Exhibits 4A-2, 4A-3, 4B-2, 4C-2, 4D-2, and 4E-2), and summarized in Exhibits 4 and 4F, Lead Counsel request reimbursement of $235,934.52 in expenses for prosecuting the Action for the benefit of the Settlement Classes, to be paid out of the Settlement Amount. The expenses are the types that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These

expenses include expert fees, computerized research, mediation costs, travel expenses, photocopying, long distance telephone charges, postage and delivery expenses, and filing fees. *See* Ex. 4E, Schedule of Expenses by Category.

The Notice informed potential members of the Settlement Classes that Lead Counsel would apply for reimbursement of Plaintiffs' Counsel's Litigation Expenses in an amount not to exceed $600,000.00. Walter Decl., Ex. A, ¶¶5, 72. The expenses actually requested, $235,934.52, are less than one-half of the maximum amount stated in the Notice. To date, no member of the Settlement Classes has objected to the request for reimbursement of expenses.

G. Lead Plaintiffs KCERS And ADAR Funds Should Be Awarded Their Reasonable Costs And Expenses Under The PSLRA

Lead Counsel also seek approval for $2,922.00 in costs and expenses incurred by Lead Plaintiff KCERS, and $7,000.00 in costs and expenses incurred by Lead Plaintiff ADAR Funds, directly relating to their representation of the Settlement Classes. The PSLRA specifically provides that an "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class" may be made to "any representative party serving on behalf of a class." 15 U.S.C. §78u-4(a)(4). Numerous courts have approved such awards under the PSLRA to compensate class representatives for the time and effort they spent, and costs they incurred, on behalf of the class, and the Second Circuit recently affirmed the district court's award of costs to representative plaintiffs totaling over $453,000.00.[14]

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[14] *BofA,* 772 F.3d at 133 (affirming district court's award of costs totaling over $453,000 to representative plaintiffs); *see also Fannie Mae, supra* (awarding lead plaintiffs costs totaling approximately $114,000); *Am. Int'l Grp.*, 2012 WL 345509, at *6 ("Courts in [the Second] Circuit routinely award . . . costs and expenses both to reimburse the named plaintiffs for expenses incurred through their involvement with the action and lost wages, as well as to provide an incentive for such plaintiffs to remain involved in the litigation and to incur such expenses in the first place.") (citing *Hicks,* 2005 WL 2757792, at *10); *SMART, supra* (awarding lead plaintiff costs totaling $15,000); *In re Direxion Shares ETF Trust*, No. 09-cv-8011-KBF, ECF No. 201 (S.D.N.Y. May 10, 2013) (awarding lead plaintiffs costs totaling $27,600); *In re Monster Worldwide, Inc. Sec. Litig.*, 2008 WL 9019514, at *2 (S.D.N.Y. Nov. 25, 2008) (awarding class representative costs totaling $7,303.08); *see also In re Morgan Stanley Mortgage Pass-Through*

As set forth in the Lead Plaintiff Declarations (Exhibits 1A, 1B, 1C and 1D), Lead Plaintiffs supervised Lead Counsel, participated in all aspects of the litigation, remained informed throughout the settlement negotiations, and ultimately approved the Settlement. For example, Lead Plaintiff KCERS reviewed all significant pleadings in the Action, received regular reports regarding developments in the Action, communicated with Lead Counsel Bernstein Litowitz and KCERS' outside counsel, Philip Klawuhn, regarding case strategy and related matters, and consulted with Bernstein Litowitz and Klawuhn regarding efforts to mediate and negotiate the Settlement, including by participating in correspondences concerning appropriate amounts to settle and by conveying appropriate settlement authority. *See* Lead Counsel KCERS Decl., Exhibit 1A to Lead Counsel Decl. In connection with its service to the Settlement Classes, Lead Plaintiff KCERS seeks reimbursement of the $2,922.00 in fees and expenses it paid to its outside counsel, Plaintiffs' Counsel Philip Klawuhn, for work performed at the beginning of the case, from October 9, 2013, to November 27, 2013. KCERS believed that it was appropriate in fulfillment of its fiduciary duties as a Lead Plaintiff to retain outside counsel in order to assist KCERS in consulting with Lead Counsel, evaluating the viability of possible claims, and seeking lead plaintiff appointment.[15] Courts have awarded reimbursement to institutional investor lead plaintiffs, like KCERS, for such fees and expenses paid to outside counsel.[16]

Certificates Litig., 09-cv-2137 (KBF) (S.D.N.Y.) (ECF No. 328) (awarding lead plaintiff costs totaling $19,925.00); *J.P. Morgan, supra* (awarding lead plaintiff costs totaling $19,572.50); *Goldman Sachs*, *supra* (awarding lead plaintiff costs totaling $25,230); *Wells Fargo, supra* (awarding lead plaintiffs costs totaling $17,700.00).

[15] *See id.* ¶11; *see also* Klawuhn Decl., Exhibit 4E to Lead Counsel Decl. As explained in the Klawuhn Declaration (¶6), the time spent by Mr. Klawuhn for work performed at the beginning of the case, from October 9, 2013, to November 27, 2013, for which Mr. Klawuhn's law firm has been paid, and for which Lead Plaintiff KCERS seeks reimbursement, is not also included in the lodestar information provided in Mr. Klawuhn's Declaration.

[16] *See, e.g., In re Cardinal Health Inc. Sec. Litig.*, No. 04-575 (ALM), ECF Nos. 319-6, 319-7, 319-9 (S.D. Ohio Sept. 17, 2007) (awarding reimbursement of approximately $62,000 for payments to outside counsel for time spent monitoring the litigation for the lead plaintiffs); *In re*

Lead Plaintiff ADAR Funds is seeking reimbursement of $7,000.00 in lost wages related to their direct and active participation on behalf of the Settlement Classes. ADAR Funds employees spent a total of 35 hours on the Action. *See* Lead Plaintiff ADAR Funds Decl., Exhibit 1D, ¶10. As set forth in the ADAR Funds Declaration, the ADAR Funds were involved in the litigation, including by conferring with Lead Counsel Bernstein Liebhard, reviewing significant pleadings, receiving regular reports regarding developments in the Action, and consulting with Bernstein Liebhard regarding the mediation and related negotiations. *Id.* ¶6. These are the types of activities that courts have found to support awards to class representatives.[17]

The Notice sufficiently informed potential members of the Settlement Classes that such expenses would be sought. *See BofA*, 772 F.3d at 132-33 (affirming district court's holding of notice as sufficient, finding that comparable notice "unequivocally conveys the relevant

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Bristol-Myers Squibb Sec. Litig., No. 00-1990 (SRC), ECF Nos. 362-22 (D.N.J. May 4, 2006) (awarding reimbursement of approximately $53,000 for payments to outside counsel for time spent monitoring the litigation for the lead plaintiff); *In re Qwest Commc'ns Int'l, Inc. Sec. Litig.*, No. 01-cv-1451-REB-KLM, ECF No. 1158 (D. Colo. Dec. 23, 2008) (awarding reimbursement of $2,500 in costs and expenses that were for "time billed on an hourly basis by its outside counsel" who assisted the Fund in its "case management oversight."); *see also In re Elec. Data Sys. Corp. Sec. Litig.*, 6:03-CV-110, ECF No. 292 (E.D. Tex. Mar. 7, 2006) (approving reimbursement for amounts paid to Lead Plaintiff's outside counsel for fees and expenses); *id.* ECF No. 281, at pp. 20-21 (explaining request to reimburse for fees and expenses paid to outside counsel retained by Lead Plaintiff which enhanced Lead Plaintiff's fulfillment of its duties as Lead Plaintiff; citing to *Feder v. Elec. Data Sys. Corp.*, 429 F.3d 125, 128 (5th Cir. Oct. 24, 2005) (approving Lead Plaintiff's retention of outside counsel)).

[17] *See, e.g., In re Am. Int'l Grp., Inc. Sec. Litig.*, No. 04 Civ. 8141 (DAB), 2010 WL 5060697, at *3 (S.D.N.Y. Dec. 2, 2010) (granting PSLRA award of $30,000 to institutional lead plaintiffs "to compensate them for the time and effort they devoted on behalf of a class"); *FLAG Telecom*, 2010 WL 4537550, at *31 (approving award of $100,000 to Lead Plaintiff for time spent on the litigation); *Veeco*, 2007 WL 4115808, at *12 (characterizing such awards as "routine" in this Circuit); *see also In re Xcel Energy, Inc. Sec., Derivative & ERISA Litig.*, 364 F. Supp. 2d 980, 1000 (D. Minn. 2005) (awarding $100,000 collectively to lead plaintiffs who "fully discharged their PSLRA obligations and have been actively involved throughout the litigation [including] . . . communicat[ing] with counsel . . . [and] review[ing] counsels' submissions").

information to the respective class members").[18] The requests by Lead Plaintiffs KCERS and ADAR Funds are supported by declarations including detailed accounting of the hours dedicated to the litigation and explanation of the time and expenses incurred. Their requests are reasonable and fully justified under the PSLRA and should be granted.

III. CONCLUSION

Lead Counsel respectfully request that the Court award them attorneys' fees of 25% of the Settlement Amount, plus interest earned at the same rate and for the same time period as the Settlement Fund; $235,934.52 in Plaintiffs' Counsel's Litigation Expenses; and $2,922.00 as reimbursement to Lead Plaintiff KCERS and $7,000.00 as reimbursement to Lead Plaintiff ADAR Funds, as authorized by the PSLRA.

Dated: October 14, 2015
New York, New York

Respectfully submitted,

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[18] Like the Second Circuit found sufficient in BofA, here, the Notice disclosed that Lead Counsel's request for reimbursement of Litigation Expenses "may include an application for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiffs directly related to their representation of the Settlement Classes," and further disclosed the approximate expected cost per share of requested fees and expenses is $0.07 per affected share of Tower common stock and $0.10 per share of affected share of Canopius stock. Walter Decl., Ex. A, ¶¶5, 72.

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