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Acknowledgments

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The availability of class actions as a means of vindicating the rights of people who could not effectively bring suit on an individual basis is important to maintaining honesty and fairness in the securities markets.

Private securities lawsuits deter malfeasance, compensate investors, and help ensure the integrity of the markets, while simultaneously enabling individual consumers who have purchased stock to seek redress in a way that would not otherwise be possible.

The U.S. Chamber of Commerce and its "Institute for Legal Reform," however, disregard the data showing that restricting consumers' access to the court system harms consumers and the financial marketplace in general. Instead, they argue that securities class action lawsuits are burdensome to companies and not useful for policing misconduct.

On February 5, 2014, the U.S. Chamber Institute for Legal Reform issued a paper entitled *What's Wrong with Securities Class Action Lawsuits*? This paper was published in conjunction with an effort by certain business interests with the intent to overturn the landmark Supreme Court decision in *Basic Inc. v. Levinson* (1988). *Basic* ratified the "fraud-on-the-market" presumption followed by lower courts for many years enabling securities fraud class action lawsuits to be brought. The "fraud-on-the-market" rule is a rebuttable presumption that securities prices in an open and developed market like the New York Stock Exchange reflect material public information and that investors rely on the integrity of the market price.

Under this presumption, consumers who bought or sold stock during the relevant time period are able to bring their fraud claims without proving that they personally knew of and relied on a misrepresentation in making their decision to buy or sell. The assumption is that the information (or omission) is "baked into" the market price. This presumption is vital to consumers; without it, securities class actions would be impossible, because each individual stockholder would have to show that he or she knew of and relied on the misrepresentation, and the case could not be tried in class form.

The Supreme Court will consider whether to abolish the necessary fraud-on-the-market presumption in *Halliburton Co. v. Erica P. John Fund*, which is being argued before the Court on March 5, 2014.

In an amicus brief, the Chamber urges the Court to overrule *Basic* and eliminate the fraud-on-the-market presumption. It maintains that private securities lawsuits hurt U.S. companies and are ineffective for dealing with misconduct. The Chamber proposes that the U.S. Securities and Exchange Commission (SEC) be given exclusive responsibility for enforcing federal securities laws, yet even the SEC disagrees with the Chamber's position. Moreover, the Chamber's arguments are disproven by the academic literature, and much of the information in the report is dated and biased. The facts refute the Chamber's advocacy.

1. Private Securities Lawsuits Are Important To Institutional Investors.

The Chamber's description of securities class actions as abusive, lawyer-driven cases ignores that securities lawsuits are increasingly brought by large, professionally managed institutional investors.

Institutional investors contribute a substantial portion of the capital invested in the nation's securities markets, and 1995 legislation endorsed a leading role for them in securities litigation.[1] In addition, Congress recognized that institutional investors have a long-term perspective that aligns their interests with those of the companies in which they invest. Institutional investors have no incentive to favor meritless securities litigation, which only harms their own investments, but they have a strong interest in policing fraud and enforcing the securities laws. Thus, it is telling that institutional investors strongly favor the *Basic* presumption and that institutional investors representing millions of retirees and pension fund beneficiaries and trillions of dollars of assets under management filed two briefs in support of the fraud-on-the-market presumption in the *Halliburton* case.

In 2007, pension funds were named as lead plaintiffs in 48% of securities class actions. Those cases represented 60% of the cases settling that year, and 94% of the total settlement dollars.[2] By 2012, pension funds were projected to constitute 75% of the lead plaintiffs.[3]

The Chamber proposes that, even without class actions, investors would be free to sue on their own. However, the facts show that individual suits by institutional investors are rare[4] and also rely on the fraud-on-the-market presumption.[5] Investors using passive investment strategies (such as index fund investors) also rely on the integrity of the market (within the meaning of *Basic*) and the presumption that relevant public information is incorporated into price.

Indeed, the investment strategies of institutional investors are built on the bedrock premise that U.S. securities markets are fundamentally fair and that prices reflect available public information. If the Supreme Court were suddenly to hold that these assumptions are false, it would topple the central pillar of many investing strategies. Institutional investors warned the Supreme Court in the *Halliburton* case that overturning *Basic* would force the re-evaluation of many settled investment practices and the adoption of new and unpredictable guidelines. At the very least, institutional investors would face a host of additional burdens and expenses:

- Institutional investors would incur greater costs because they would be forced to create the capacity to collect and review the disclosures of thousands of companies if they sought to retain any possibility of asserting a fraud claim by showing individualized "eyeball" reliance.

- The prospect of increased monitoring of corporate disclosures would create an incentive to reduce the number of holdings, thereby reducing diversity and increasing risk within their portfolios.

- The additional burdens could create less willingness to invest in companies or sectors with an unproven track record, distorting the securities markets and potentially reducing the funds available for innovative ventures.

• Institutional investors would be faced with the Hobson's choice of either abandoning the advantage of low-cost passive investment strategies (such as indexing) or absorbing the losses occasioned by corporate fraud.

2. Private Securities Lawsuits Deter Fraud.

The empirical evidence also refutes the Chamber's criticisms of private securities actions. Studies show that private actions play a key role in deterring securities fraud which is beneficial for Main Street. For example, one recent study by Stephen Choi, professor of law at NYU, and A.C. Pritchard, professor of law at the University of Michigan, found that private class actions are more effective than SEC investigations at deterring securities fraud and lead to a higher incidence of top officer resignations. The study concluded that the evidence "is consistent with private class actions pursuing more egregious securities law violations than SEC investigations and imposing greater sanctions against companies."[6] The authors explain, "[O]ur findings are consistent with the private enforcement providing at least as much deterrent value, if not more, than public enforcement."[7]

Another study by Jonathan M. Karpoff of the University of Washington, D. Scott Lee of the University of Nevada, Las Vegas, and Gerald S. Martin of American University confirmed the importance of private actions.[8] The study examined the sizes, types, and determinants of legal penalties imposed for all 697 enforcement actions initiated by the SEC for financial misrepresentation from 1978 through 2004. The penalties included private class action awards, monetary penalties imposed by the SEC and Department of Justice, and such non-monetary sanctions as censures, trading suspensions, and jail time. The study concluded: "Contrary to many criticisms of private lawsuits and regulatory actions, we find that legal penalties are highly systematic, and in particular, are positively related to the size and severity of the harm from the misconduct."[9] "These results indicate that, for the United States at least, private and public enforcement activities both are important in the control of managerial opportunism."[10]

3. Private Securities Lawsuits Compensate Investors.

Private class actions are also far more effective at returning compensation to victims than government suits. A comprehensive empirical study of all types of class action settlements for the years 2006 and 2007 showed securities class actions recovering more value for plaintiffs than any other type by a startling amount.[11] For the two years studied, securities class action settlements constituted 73% and 76% of the amount of monetary value recovered in *all* class actions.[12] The closest comparator in both years clocked in at only 7% of the total.[13] These numbers show what an important remedy these suits provide for investors and the public.

The comparative results between what the SEC and private litigants recover are stark. For example, in actions against Enron and aiders and abettors in the Enron fraud, the SEC recovered $440 million while investors recovered about $7.3 billion from private suits.[14] The SEC settlement fund in connection with Worldcom was $750 million—at the time the largest in the agency's history –compared to $6.1 billion recovered in the private action.[15] Notably, the private settlement with WorldCom included $24.75 million from individual directors, while the SEC fine was paid only by the company.[16] The SEC did not recover anything for investors in the Cendant litigation, but the private action recovered $3.2 billion.[17] Similarly, while the SEC settled with Charter Communications in return for a cease-and-desist promise not to violate the securities laws again, the private lawsuits were settled for a $64 million cash fund and an $80 million equity distribution.[18]

4. Private Securities Lawsuits Are Necessary To Maintain Investor Confidence.

The U.S. has the best and strongest financial markets in the world, due in no small part to its vigorous anti-fraud laws and investor protection. Studies have shown that strong enforcement of securities fraud statutes leads to market integrity and investor confidence.

Empirical studies of capital formation validate the connection between protection from fraud and capital formation. For example, one scholar has explained that "recent research documents significant adverse consequences of the failure of a legal regime to protect investors... [P]oor investor protection policies, through their adverse effect on capital market development, retard economic growth."[19] Simply put, investors fear fraud much more than they fear securities litigation.[20] Robust free markets work best only when investors feel confident enough to take business risks without the added fear of fraud.

The economic data strongly support the view that regulation of financial markets in the U.S. actually enhances its competitive position against other markets. Recent studies have found that foreign companies listing their stocks on their home exchanges and in the United States are able to raise capital on better terms, at a lower net cost than companies that list only outside the United States.[21] Economists refer to this as a cross-listing premium.[22] By contrast, companies that cross-list in their home exchanges and London, which is widely recognized to have less rigorous regulations than the United States, do not enjoy the cross listing premium.[23] This premium exists in the United States because of the superior protections that the regulatory regime in the United States provides investors.[24]

After the financial crisis of 2008, many small investors fled U.S. stock markets out of concern that the system was stacked against them. Many such investors are only now beginning to return. This Court should not create a major roadblock to private securities fraud actions, given the important enforcement role they play. To do so would risk loss of investor confidence that would have severe repercussions for U.S. capital markets.

5. The SEC Does Not Have The Resources To Assume Exclusive Responsibility for Enforcing the Securities Laws.

The SEC simply does not have the resources to police the markets without the essential supplement of private securities litigation. The drastic expansion of the SEC's responsibilities, the astonishing growth of trading technologies and strategies,[25] and the shrinking budgets of federal agencies, means that the SEC cannot be the sole entity responsible for the enforcement of the Nation's securities laws. Congress's response to the financial crisis caused the SEC's responsibilities to explode. The implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, 124 Stat. 1376) ("Dodd-Frank") "thrust [the SEC] into the driver's seat for issuing 100 new rules, creating five new offices, producing more than 20 studies and reports, overseeing the over-the-counter derivatives market and hedge fund advisers, registering municipal advisors and security-based swap market participants, and creating a new whistleblower program, among other new duties."[26] In addition, "[t]he Jumpstart Our Business Startups Act of 2012 added more to the plate, directing the SEC to write rules and issue studies on capital formation, disclosure, and registration requirements."[27]

A GAO report conducted in 2009 measured exactly how overstretched the agency had become. As its responsibilities were expanding, the number of investigative attorneys at the SEC dropped 11.5 percent between 2004 and 2008, from 566 to 501.[28] Total staffing for the Enforcement Division declined between 2005 and 2008.[29] From 2002 to 2008, the number of investigations and enforcement actions remained level[30] – fewer people were doing roughly the same amount of work as the financial crisis brewed. "In interviews and small group meetings, Enforcement management and investigative attorneys agreed that resource challenges have affected their ability to bring enforcement actions."[31] Unsurprisingly, both penalties and disgorgements exacted by the SEC have plummeted: since a high in 2005, penalties have fallen 84 percent, and disgorgements are down 68 percent since their peak in 2006.[32]

The SEC's responsibilities have come at the cost of enforcement of securities laws, particularly in a time of budgetary sequester and government shutdown. In the words of one federal judge, "the SEC has been hard hit by budget limitations," which have forced the agency to husband its resources and instead "to focus on the smaller, easily resolved cases that will beef up their statistics when they go to Congress begging for money."[33] Even before the sequester hit the SEC, one manager in the Enforcement Division told the GAO that "the division did not have enough resources to pursue many leads involving offering fraud and market manipulation."[34]

6. Criticisms of Private Securities Lawsuits Are Overblown.

The evidence also demonstrates that the criticisms of private securities actions are exaggerated. For example, the so-called "in terrorem" effect of securities class actions is not supported by the data: 77% of securities class actions are resolved before a motion for class certification is even filed.[35] NERA Economic Consulting "did not find reliable statistical relationships between the resolution of a motion for class certification and expected settlements."[36]

The evidence shows that the Chamber's "circularity" argument – the contention that private securities actions simply transfer money from one innocent investor to another – is flawed because it ignores incentive effects. The threat of civil liability leads officers and directors (who are often shareholders themselves) as well as large investors to establish procedures to reduce the incidence of fraud in the first place.[37] Long-term shareholders in particular, such as institutional investors, comprise an integral part of the mechanism that deters managerial fraud.[38] Indeed, the fact that institutional investors support private securities lawsuits shows that the circularity argument is false.

The claim that securities lawsuits are abusive and meritless does not withstand scrutiny, either. The evidence shows that, even before legislative reforms enacted in 1995, securities lawsuits were generally meritorious.[39] Since 1995, the meritorious nature of suits has only become clearer.[40] Nearly two-thirds (64%) of class actions are resolved after a court has adjudicated a motion to dismiss,[41] which is a preliminary legal indicator that the suit has some merit. If anything, the evidence is that "highly meritorious suits are brought, but settled for too little."[42]

Finally, criticisms that attorneys' fees are too high are unsupported by the facts. Investors typically pay less than 20 percent of their recoveries to their attorneys,[43] even though securities cases have substantial contingent risk and high litigation costs.[44] This is substantially less than the 33 to 40 percent range of attorneys' fees for other kinds of contingency cases. Further, evidence also shows that fees in securities cases drop as a percentage as the amount of the recovery increases.[45]

7. Private Securities Lawsuits Have Bipartisan Support.

The SEC has always recognized the important role private suits play in enforcing federal law. In 1988, the SEC, under the Administration of President George H.W. Bush, urged the Supreme Court to adopt the fraud-on-the-market presumption and warned that, without it, private securities class actions would face insuperable hurdles. The same is true today. Without the important check provided by *Basic* and private securities actions, the integrity of U.S. capital markets will be diminished, and investor confidence in the fundamental fairness of the financial system will decline.

Accordingly, in the *Halliburton* case now pending before the Supreme Court, the SEC has asked the Court to reaffirm the fraud-on-the-market presumption and has forcefully reiterated that private securities class actions are a vital complement to SEC enforcement.

Numerous other parties filed briefs in *Halliburton* to support the fraud-on-the-market presumption. Professor Charles Fried, who in 1988 served as the U.S. Solicitor General and represented the SEC, filed a brief urging the Court to adhere to its decision in *Basic.* Former SEC Chairmen William H. Donaldson and Arthur Levitt, Jr. agreed. Twenty-one States filed a brief debunking the Chamber's criticisms of private securities actions. Fourteen academic economists, including Eugene Fama of the University of Chicago (who shared in last year's Nobel Prize), submitted a brief supporting the fraud-on-the-market presumption. More than two dozen other scholars (including Donald Langevoort of Georgetown, erroneously cited by the Chamber as a critic of private securities actions) did so as well.[46]

Conclusion

Private securities class action lawsuits play a vital role in enforcing the federal securities laws. They deter wrongdoing, compensate investors, and help ensure the integrity of the capital markets for the public. The SEC cannot perform the job alone. There is bipartisan recognition of the importance of private lawsuits, and the Chamber's criticisms are disproven by the evidence.

Notes

[1] Private Securities Litigation Reform Act of 1995 (PSLRA), Pub. L. No. 104-67, 109 Stat. 737 (1995).

[2] Grace Lamont, PricewaterhouseCoopers, 2007 Securities Litigation Study 33 (Apr. 8, 2008), http://www.pwc.com/en_US/us/forensic-services/assets/2007_security_litigation_study.pdf.)

[3] Patricia Etzold, et al., PricewaterhouseCoopers, 2012 Securities Litigation Study 24 (fig. 16), http://www.pwc.com/en_US/us/forensic-services/publications/assets/pwc-2012-securities-litigation-study.pdf.

[4] Amir Rozen, Joshua B. Schaeffer & Christopher Harris, *Opt-Out Cases in Securities Class Action Settlements* (Cornerstone Research 2013) at 2 (noting that there were only 38 opt-outs among 1,272 securities class-action settlements).

[5] *See, e.g.*, *Black v. Finantra Capital, Inc.*, 418 F.3d 203, 209 (2d Cir. 2005); *In re Merrill Lynch & Co. Research Reports Sec. Litig.*, 568 F. Supp. 2d 349, 358-59 (S.D.N.Y. 2008); *In re Cendant Corp.*, Nos. 98-CV-1664, 98-CV-0381, 98-CV-0759, 2005 WL 3500037, at *3-4 (D.N.J., Dec. 21, 2005); *Argent Classic Convertible Arbitrage Fund L.P. v. Rite Aid Corp.*, 315 F. Supp. 2d 666, 676-77 (E.D. Pa. 2004); *Shanahan v. Vallat*, No. 03-civ-3496, 2004 WL 2937805, at *5 (S.D.N.Y. Dec. 19, 2004).

[6] *Id.* (quoting abstract).

[7] *Id.*

[8] The Legal Penalties for Financial Misrepresentation (May 2, 2007) (available at http://ssrn.com/abstract=933333).

[9] *Id.* at 1 (quoting Abstract).

[10] *Id.* at 3-4 (emphasis in original).

[11] Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. EMPIRICAL LEGAL STUD. 811, 825-30 (2010).

[12] *Id.* at 825 (table 4). Even though securities class action settlements totaled $16 billion and $8 billion for 2006 and 2007 respectively (*id.*), securities class action settlements recover on average only 3% of investor losses (Cornerstone Research, *Securities Class Action Settlements—2012 Review and Analysis* 8 (fig. 7) (2013)). As enormous as the amount of these settlements are, they pale in comparison to the losses they are attempting to compensate.

[13] Fitzpatrick, 7 J. EMPIRICAL LEGAL STUD. at 825 (table 4).

[14] *Compare* Securities and Exchange Comm'n, *Enron*, http://www.sec.gov/divisions/enforce/claims/enron.htm *with* Kristen Hays, "Enron Settlement: $7.2 Billion to Shareholders," *Houston Chronicle*, http://www.chron.com/business/enron/article/Enron-settlement-7-2-billion-to-shareholders-1643123.php (Sep. 9, 2008).

[15] *Compare* AccountingWeb, "$750 Million MCI/WorldCom Settlement is Largest in SEC History," http://www.accountingweb.com/topic/750-million-mciworldcom-settlement-largest-sec-history (Jul. 7, 2003) *with Settlements*, http://www.worldcomlitigation.com/html/citisettlement.html (visited Jan. 5, 2014). The website http://www.worldcomlitigation.com is the information site administered by Lead Counsel.

[16] AccountingWeb, *supra*; http://www.worldcomlitigation.com, *supra*.

[17] *See In re Cendant Corp. Litig.*, 264 F.3d 201, 217 (3d Cir. 2001).

[18] *Compare* Business Wire, "Charter Communications Reaches Settlement in Class Action and Derivative Lawsuits," http://www.businesswire.com/news/home/20040805005892/en/Charter-Communications-Reaches-Settlement-Class-Action-Derivative (Aug. 5, 2004) *with* Stipulation of Settlement, Dkt. 292, *In re Charter Comm'cns, Inc., Sec. Litig.*, No. 02-cv-1186, §1.26 (Feb. 17, 2005, E.D. Mo.).

[19] Andrei Shleifer, *Inefficient Markets: An Introduction to Behavioral Finance* 1984 (Oxford 2000) (citations omitted).

[20] Joel Seligman, *The Merits Do Matter: A Comment on Professor Grundfest's "Disimplying Private Rights of Action Under the Federal Securities Laws: The Commission's Authority,"* 108 HARV. L. REV. 438, 439-42 (1994).

[21] Craig Doidge *et al.*, *Has New York Become Less Competitive in Global Markets? Evaluating Foreign Listing Choices Over Time* 5, 29 (Fisher Coll. of Bus. Working Paper Series, Paper No. 2007-03-012, 2007), *available at* http://www.ssrn.com/abstract=982193; Luzi Hail and Christian Leuz, *International Differences in the Cost of Equity Capital: Do Legal Institutions and Securities Regulations Matter?*, 44 J. OF ACCOUNTING RES. 485, 485 (2006).

[22] Doidge, *supra*, at 3.

[23] *Id.* at 31.

[24] *Id.* at 29.

[25] *FY14 CFTC, SEC Budget Hearing*, Subcomm. on Fin. Servs. and Gen. Gov., Sen. Approps. Comm., 113th Cong. 7 (2013) (statement of Mary Jo White, Chair, Securities and Exchange Comm'n).

[26] *FY14 CFTC, SEC Budget Hearing*, Subcomm. on Fin. Servs. and Gen. Gov., Sen. Approps. Comm., 113th Cong. 7 (2013) (statement of Sen. Mark Udall).

[27] *Id.*

[28] U.S. Gov't Accountability Office, GAO-09-358, Securities and Exchange Commission: Greater Attention Needed to Enhance Communication and Utilization of Resources in the Division of Enforcement 4 (2009) ("GAO Report").

[29] *Id.* at 17.

[30] *Id.* at 21-22.

[31] *Id.* at 23.

[32] *Id.* at 37.

[33] Jed S. Rakoff, "The Financial Crisis: Why Have No High-Level Executives Been Prosecuted?", *The New York Review of Books* (Jan. 9, 2014), http://www.nybooks.com/articles/archives/2014/jan/09/financial-crisis-why-no-executive-prosecutions.

[34] GAO Report at 24. Promising cases were closed and some – including several involving the subprime mortgage crisis – went unstaffed. (*Id.*) The problems were pervasive: "investigative attorneys with whom we spoke cited a number of resource challenges that have undercut their efforts, causing significant delays in bringing cases, reducing the number of cases that can be brought, and potentially undermining the quality of cases." (*Id.*) Because of

difficulties conducting thorough investigations, attorneys simply relied on representations made by defense counsel. (*Id.* at 25.)

[35] Renzo Comolli, *et al.*, NERA, *Recent Trends in Securities Class Action Litigation: 2012 Full -Year Review* 20 (fig. 18) (2013), http://www.nera.com/nera-files/PUB_Year_End_Trends_2012_1113.pdf.

[36] NERA, *Dynamic Litigation Analysis: Predicting Securities Class Action Settlements as a Case Evolves* 4-5 (2013). While NERA did find a robust relationship between settlement size and the *filing* of a motion for class certification, the report rightly points out that may be as much a reflection of strategic maneuvering rather than some coercive force exerted by the class certification mechanism. (NERA, *Dynamic Litigation Analysis*, *supra*, at 5.)

[37] Lawrence E. Mitchell, *The "Innocent Shareholder": An Essay on Compensation and Deterrence In Securities Class Actions* 61 (Geo. Wash. Univ. Law Sch. Public Law Research Paper No. 404, 2008), *available at* http://ssrn.com/abstract=1118471.

[38] *See* Merritt B. Fox, *Why Civil Liability for Disclosure Violations When Issuers Do Not Trade*, 2009 WIS. L. REV. 297.

[39] Seligman, *The Merits Do Matter: A Comment on Professor Grundfest's "Disimplying Private Rights of Action Under the Federal Securities Laws: The Commission's Authority,"* 108 HARV. L. REV. 438, 448-54 (1994).

[40] James D. Cox, *et al.*, *There Are Plaintiffs And ... There Are Plaintiffs: An Empirical Analysis of Securities Class Action Settlements*, 61 VAND. L. REV. 355, 379-84 (2008) (arguing that the vast majority of suits are not strike suits, and that the PSLRA works to keep the number down); Marilyn F. Johnson, *et al.*, *Do the Merits Matter More? The Impact of the Private Securities Litigation Reform Act* 3-7, 28-30 (U. Mich., John M. Olin Ctr. for Law & Econ., Working Paper No. 02-011, 2006), http://papers.ssrn.com/abstract=883684 (concluding that post-PSLRA lawsuits tend to be more meritorious than pre-PSLRA suits); Stephen J. Choi, *The Evidence on Securities Class Actions*, 57 VAND. L. REV. 1465, 1492-98 (2004) (canvassing post-PSLRA empirical analysis showing a reduction in frivolous suits); James D. Cox, *Making Securities Class Actions Virtuous*, 39 ARIZ. L. REV. 497, 503-08 (1997) (criticizing contrary results).

[41] Ellen M. Ryan, *et al.*, Cornerstone Research, *Securities Class Action Settlements: 2012 Review and Analysis* 6 (2012)

[42] Cox, 39 ARIZ. L. REV. at 502.

[43] The "empirical evidence strongly suggests that class actions generate adequate compensation for claimants." Myriam Gilles and Gary B. Friedman, *Exploding the Class Action Agency Costs Myth: The Social Utility of Entrepreneurial Lawyers*, 155 U. PA. L. REV. 103, 131 (2006). According to a Class Action Reports analysis of 1,120 class actions from 1990 through 2003, for every dollar recovered, 81.6 cents went to class members, while 18.4 cents went to pay attorneys and other costs. *Id.*

[44] Michael A. Perino, *Markets and Monitors: The Impact of Competition and Experience on Attorneys' Fees in Securities Class Actions* 19 (St. John's Univ. Sch. of Law Legal Studies Research Paper Series, Paper No. 06-0034, 2006), *available at* http://ssrn.com/abstract=870577 ("The entrepreneurial plaintiffs' lawyer filing a securities class action obviously bears risk, both in terms of the possibility of non-payment should the case not result in a settlement and, even if a settlement is likely, in terms of how long it will take to reach that settlement and collect its contingency fee.").

[45] Elaine Buckberg et al., NERA Economic Consulting, *Recent Trends in Shareholder Class Action Litigation: Are WorldCom and Enron the New Standard?* 7 (July 2005).

[46] The briefs in the *Halliburton* case are available at http://www.scotusblog.com/case-files/cases/halliburton-co-v-erica-p-john-fund-inc/.