

# Appendix 3

## Declaration of Professor Geoffrey Miller

*In re: Equifax Inc. Customer Data Security Breach Litigation,*  
No. 17-md-2800-TWT (N.D. Ga.)

Plaintiffs' Motion for Final Approval of Settlement

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

	)	MDL Docket No. 2800
In re: Equifax, Inc. Customer	)	Case No.: 1:17-md-2800-TWT
Data Security Breach Litigation	)	
	)	ALL ACTIONS
	)	

**DECLARATION OF PROFESSOR GEOFFREY P. MILLER**

I, Geoffrey P. Miller, declare as follows:

1. I am the co-author of several leading empirical studies of attorneys’ fees in class action litigation and a frequent expert witness on issues relating to class actions and attorneys’ fees. Two objections argue that the fee award here should be no more than 10% because the settlement is a “megafund.” (Doc. 880 at 12-15; Doc. 876 at 18-19). One cites an empirical study I co-authored in support of their objection (*id.* at 18). I have been retained by plaintiffs’ counsel to opine on the reasonableness of their request for attorneys’ fees and, more specifically, on the applicability of my academic work on which the objectors rely. As described below, it is my opinion that the empirical study I co-authored and other applicable precedent supports the reasonableness of the requested fee.

**Background and Qualifications**

2. As set forth in my resume attached hereto as Appendix 1, I am the

Stuyvesant Comfort Professor of Law at NYU Law School, where I serve as co-faculty director of the Center on Civil Justice and Senior Faculty Fellow of the Program on Corporate Compliance and Enforcement. I am a founder, past president and former Senior Fellow of the Society for Empirical Legal Studies, a scholarly organization devoted to statistical methods in law. I am a member of the American Law Institute, the Reporter on the ALI's Principles of the Law, Compliance, Risk Management and Enforcement, and a 2011 inductee in the American Academy of Arts and Sciences.

3. For nearly thirty years, I have been involved in the area of class actions and complex litigation as a teacher, scholar, attorney, consultant, and expert witness. I am presently teaching or have taught classes covering the issue of attorneys' fees, including Civil Procedure, Complex Litigation, Corporations, Professional Responsibility, and Securities Regulation. I have lectured on attorneys' fees issues in continuing legal education seminars and participated in academic conferences and meetings devoted to these issues. I was a member of the advisory committee for the American Law Institute's Principles of the Law project on Aggregate Litigation, which, among other topics, addressed questions of attorneys' fees in class actions and related types of cases.

4. I have frequently consulted with attorneys to assist with issues pertaining to awards of attorneys' fees. I have been qualified as an expert and

testified in cases in state and federal courts across the United States, including testimony on the topic of attorneys' fees.

5. I have published widely cited studies of attorneys' fees in class action cases. These include the following:

- Theodore Eisenberg, Geoffrey Miller, and Roy Germano, *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. Law Review 937 (2017) (hereinafter cited as the "2017 Eisenberg-Miller-Germano Study").

- Theodore Eisenberg and Geoffrey Miller, *Attorneys' Fees and Expenses in Class Action Settlements: 1993-2008*, 7 Journal of Empirical Legal Studies 248 (2010) (hereinafter cited as the "2010 Eisenberg-Miller Study").

- Theodore Eisenberg, Geoffrey Miller, and Michael Perino, *A New Look at Judicial Impact: Attorneys' Fees in Securities Class Actions after Goldberger v. Integrated Resources, Inc.*, 29 Washington University Journal of Law & Policy 5-35 (2009).

- Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 Journal of Empirical Legal Studies 51 (2004).

6. My research articles on class action cases, especially in the area of attorneys' fees, have been cited as authority by many state and federal courts. A list

of cases citing to my research is provided as Appendix 2.

### Materials Consulted

7. In preparing this opinion, I have reviewed pleadings and other documents in this case, discussed this matter with counsel, and investigated appropriate case law and secondary authorities. Based on my review of the record and other work, I am familiar with the underlying facts, the history of this litigation and the settlement discussions, the terms of the settlement, and other relevant matters.

### Opinion

8. I am aware that the Court's responsibility is to determine a reasonable fee and that the role of an expert witness is necessarily limited. However, I hope that the opinions expressed below can offer assistance to the Court in carrying out that responsibility.

9. *Camden I Condominium Ass'n, Inc. v. Dunkle*, 946 F.2d 768 (11th Cir. 1991) governs the award of fees in common fund cases in this Circuit and sets forth two core principles governing the court's assessment of counsel's fee request: (a) it mandates the use of the percentage method, under which the fee is calculated as a percentage of the class benefit; and (b) it identifies 25% as an appropriate "benchmark" fee.

10. Counsel seek a fee of \$77.5 million, equal to 20.4% of the minimum

cash settlement fund. That fee is obviously reasonable under *Camden I*. The fee request is even more reasonable when valued as a percentage of total settlement benefit, including nonpecuniary benefits. The requested fee would be reasonable even if it were calculated based on the originally-agreed \$310 million cash fund; in that case it would equal 25% of the class recovery, exactly equal to the *Camden I* benchmark. In short, no matter how the percentage fee is calculated, it is reasonable under *Camden I*.

11. The benchmark discussed in the *Camden I* case is not a hard-and-fast rule, but rather a guide or point estimate of a reasonable fee. *Camden I* identified a number of factors derived from *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir.1974) that courts may consider when determining whether the fee applicable in a particular case should deviate from the 25% benchmark.

12. In my opinion, the adjustment factors discussed in *Camden I* support the reasonableness of counsel's fee request. This opinion is not altered by the objectors' arguments relating to the fact that this case involves a "megafund" settlement. Although a variety of factors are relevant to this conclusion, I will focus on four in particular: awards in similar cases, as judged by a comparison between counsel's fee request and percentage fee awards in comparable cases; the time and labor required, judged by an analysis of counsel's lodestar and lodestar multiplier; the undesirability of the case, judged by the risk counsel took on in bringing the

action, and the nonmonetary benefits afforded by the settlement.<sup>1</sup>

### Percentage Fee Awards

13. Examination of awards in similar cases requires a comparison of the percentage fee sought in the present case with percentage fees awarded in cases with comparable attributes. This comparison is facilitated by an extensive body of empirical research on attorneys' fee awards. The use of such research is by now a well-accepted – indeed, nearly ubiquitous – feature of class action adjudication. *See, e.g., In re Heartland Payments Systems, Inc. Customer Data Security Breach Litigation*, 851 F.Supp.2d 1040, 1080-1081 (S.D. Tex. 2012) (Rosenthal, J.) (“[Judges] increasingly consider empirical studies analyzing class-action-settlement fee awards to set the appropriate percentage benchmark or to test the reasonableness

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<sup>1</sup> Although I will not address them further in this report, several other *Camden I* factors speak in support of counsel's fee request. These include: (a) the novelty and difficulty of the questions at issue (many of the factual issues were highly technical and several major legal issues were unresolved, such as whether Equifax had a legal duty to safeguard personal information and whether plaintiffs' injuries were legally cognizable and proximately caused by Equifax); (b) the skill required to properly perform the legal services (the leadership team, in my opinion, functioned superbly under intense pressure and the glare of public scrutiny); (c) the preclusion of other employment (counsel could have been working on other matters but for their involvement in this case); and (d) the amount involved and the results obtained (this settlement vastly exceeds any previous data breach case; by comparison, the second largest data breach settlement on record, *In re: Yahoo! Inc. Customer Data Security Breach Litig.*, No. 16-md-02752-LHK (N.D. Cal.), involving more than one billion breached accounts, includes a lower cash component (\$117.5 million) and fewer years of guaranteed credit monitoring).

of a given benchmark. . . . Using these studies alleviates the concern that the number selected is arbitrary.”). I am the co-author of several such frequently-cited empirical studies, including the 2017 Eisenberg-Miller-Germano Study and the 2010 Eisenberg-Miller Study.

14. A comparison with awards granted in the Eleventh Circuit demonstrates that the requested fee is below the average percentage fee award. Even though *Camden I* specified a 25% benchmark, fees awarded in the Eleventh Circuit since *Camden I* are often substantially higher than 25%. For example, the 2017 Eisenberg-Miller-Germano Study, which involved a comprehensive analysis of 458 reported class action settlements from state and federal courts around the country during the five years from 2009 to 2013, reports that median fee awards in the Eleventh Circuit were 33% and mean awards were 30%. See 2017 Eisenberg-Miller-Germano Study at 951 & Table 3. Fitzpatrick’s study of 444 federal class action settlement from 2006 and 2007 finds mean fee awards in the Eleventh Circuit of 28.1% and median awards of 30.0%. Brian Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 *Journal of Empirical Legal Studies* 811, Table 9 (2010). These studies demonstrate that the requested fee is reasonable when judged against post-*Camden I* fee awards in this Circuit.

15. The requested fee can also be compared with awards across the country as a whole. The 2017 Eisenberg-Miller-Germano Study reports nationwide mean



percentage fee awards of 27% and median awards of 29%. The 2010 Eisenberg-Miller Study found nationwide mean fees of 24% and nationwide median fees of 25%. Fitzpatrick found that mean fees across all federal circuits were 25.7% and median fees were 25.0%. Brian Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 *Journal of Empirical Legal Studies* 811, 835 & Table 8 (2010). The fee requested in the present case is entirely reasonable when judged against this nationwide data.

16. Several studies of percentage fees in class action settlements report that percentage fees tend to decline with class recovery. For cases in the highest decile of class recovery (>\$67.5 million), Eisenberg, Miller, and Germano find that the mean percentage fee was 22.3%. *Id.* at 948 & Figure 5. Counsel's fee request is well within the range of reason when judged against this figure. The 2010 Eisenberg-Miller Study, examining earlier settlements, found that for the highest decile of class recovery (>\$175.5 million), the mean fee was 12.0% and the median fee was 10.2%. The percentage fees reported in this earlier study, however, was pulled down by the lower fee percentages awarded in the very largest cases, where recoveries can exceed \$1 billion and fee percentages are significantly lower than the average for all cases.

17. In order to investigate this issue further in response to the cited objections, I calculated the mean percentage fee in the Eisenberg-Miller-Germano data for cases with recoveries between \$325 million and \$425 million. The mean

percentage fee for those cases was 19.7%. A review of the most recent data thus reveals that fee awards in comparable cases were remarkably close to the 20.4% of the cash settlement fund requested by counsel in this case.

18. Cases in this Circuit and elsewhere confirm that there is nothing unusual about counsel's fee request. Fees of 30% or even higher are awarded in "megafund" cases that generate excellent results under conditions of elevated risk. An example is the decision of the Southern District of Florida in *In re Checking Account Overdraft Litigation*, 830 F.Supp.2d 1330 (S.D. Fla. 2011), awarding a 30% fee on a \$410 million recovery in light of the risks of the case and the outstanding results achieved. The settlement now before this Court presents similar features: an excellent recovery for the class, a complex case involving millions of class members, and elevated litigation risks. Other fee awards of 30% or more in megafund cases in the Eleventh Circuit display similar features. *See, e.g., Allapattah Services, Inc. v. Exxon Corp.*, 454 F.Supp.2d 1185, 1210 (S.D. Fl. 2006); *In re Managed Care Litigation*, No. 00-md-1224, 2003 WL 22850070 (S.D. Fl., October 23, 2003); *Gutter v. E.I. Dupont De Nemours & Co.*, No. 95-2152-CIV-Gold (S.D. Fla., May 30, 2003).

19. For the foregoing reasons, I see no merit to the argument, advanced by certain objectors, that the appropriate percentage award here should be no more than 10% of the recovery. Although the number of cases with recoveries this large is

limited, I am confident that the fee requested in the present case is in line with fees awarded in cases of similar size.

Lodestar “Cross-check”

20. One of the *Johnson* factors is that of “time and labor required.” Analysis of this factor can involve a lodestar “cross-check” of counsel’s fee request. The empirical studies are useful in conducting a cross-check here. I will focus on the lodestar multiplier (the ratio of the fee request to counsel’s lodestar fee).

21. The 2017 Eisenberg-Miller-Germano Study found a strong positive association between class recovery and lodestar multiplier: as recoveries grow larger, so do multipliers. For 35 cases with recoveries in excess of \$67.5 million, the mean multiplier reported in Eisenberg, Miller and Germano’s study was 2.72 – almost identical to the multiplier requested in the present case. The same conclusion follows from the 2010 Eisenberg-Miller Study. For cases with class recoveries of more than \$175.5 million, this study reports a mean multiplier of 3.18. A similar pattern emerges when the range of cases is narrowed to recoveries around the cash benefit obtained for the class in the present case. I computed the mean multipliers for cases in the Eisenberg-Miller-Romano data with recoveries between \$325 million and \$425 million: it was 2.88. Based on this data, I am confident that counsel’s requested multiplier of 2.79 is reasonable in light of fee awards in cases of this dimension.

### Risk

22. Fee awards in class action settlements are significantly and positively correlated with risk. The 2010 Eisenberg-Miller Study found that in eight of ten case categories (including consumer class actions such as this one), cases with high risk resulted in higher fee percentages. The 2017 Eisenberg-Miller-Germano Study reports a more complex relationship between case risk and percentage fees, but confirms that high-risk consumer cases tend to generate higher fees. The reason for the association between risk and fee awards is straightforward: class action attorneys are appropriately compensated for taking on cases presenting higher risks of generating no recovery and no fee.

23. This case presented substantial risk. The law on liability for data breaches has been evolving over the past decade, and continues to present numerous problems for plaintiffs. In pursuing their claims, counsel faced many potential hurdles, any one of which could have been fatal or severely damaging. For example, plaintiffs needed to prove that they suffered legally cognizable injuries proximately caused by the Equifax data breach. Another daunting challenge was presented by *McConnell v. Georgia Department of Labor*, 814 S.E.2d 790 (Ga. Ct. App. 2018), which held there is no legal duty under Georgia law to safeguard personal information. That holding was affirmed by the Georgia Supreme Court after this case settled. Equifax raised several other non-frivolous arguments in its motion to

dismiss. The Court accepted many of these arguments, dismissing plaintiffs' claims for unjust enrichment, breach of express and implied contract, and for violation of FCRA and the Georgia Fair Business Practices Act.

24. Because this case presented substantial risks, the Court can appropriately take this factor into account as a plus factor when determining the appropriateness of counsel's fee request.

#### Nonpecuniary Benefits

25. According to Professor Fitzpatrick's study, only about one-quarter of federal court class action settlements provide for injunctive relief, *see* Fitzpatrick, *supra* at 824, suggesting that in about three-quarters of the cases included in the 2010 study that I co-authored no injunctive relief was obtained.

26. A larger fee may be justified where, as here, a settlement provides substantial non-monetary benefits. *See, e.g., Camden I*, 946 F. 2d at 755 (authorizing consideration of non-monetary benefits); *George v. Acad. Mortgage Corp.*, 2019 WL 1324023, at \*14 (N.D. Ga. Mar. 20, 2019) ("Although the monetary benefit of the Settlement Fund alone justifies Class Counsel's attorney's fees, the Court also considers the value of the non-monetary relief that Plaintiffs achieved for the Class Members by prosecuting this action and achieving settlement through Class Counsel's efforts"); *Poertner v. Gillette Co.*, 618 Fed. Appx. 624, 628-29 (11th Cir. 2015) (per curiam), *cert. denied sub nom. Frank v. Poertner*, 136 S.Ct. 1453 (2016)

(courts may consider the non-monetary relief provided to the class as “part of the settlement pie”).

27. This case generated significant non-pecuniary benefits, including Equifax’s commitment to make costly changes to its business practices and the class-wide availability of credit monitoring. These benefits could legitimately be included in the denominator used to calculate the percentage fee; and if they were, the percentage fee becomes eminently reasonable even under objectors’ jaundiced view of counsel’s fee request. If these nonpecuniary benefits are not included in the calculation of the percentage fee, they should be considered as factors counting in favor of the requested award.

28. The non-monetary benefits in this case need to be kept in mind when comparing the requested fee to the statistical findings in the 2010 study, which reflect a data set in which many recoveries did not provide for injunctive relief.

#### Concluding Remarks

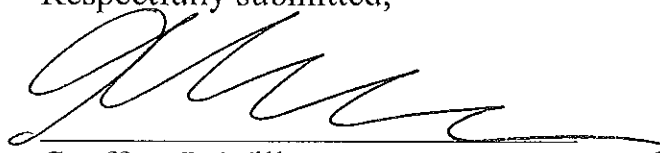
29. I will conclude by summarizing some of the defects in objectors’ submissions. These objectors distort the *Camden I* analysis by ignoring important matters that speak in favor of counsel’s fee request: the higher-than-normal risk of this case, which justifies fees that compensate counsel for the increased chance of getting no fee at the end of the day, and the substantial nonpecuniary benefits obtained by counsel on behalf of the class. Further, these objectors wrongly contend

that empirical data requires that counsel receive no more than a 10% fee. As described above, the leading studies do not substantiate this argument. Rather, they support the conclusion that counsel's fee request is reasonable in light of awards in similar cases.

30. I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed on December 4, 2019, at New York, New York.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'G. Miller', written over a horizontal line.

Geoffrey P. Miller

**Appendix 1: Resume**

**GEOFFREY P. MILLER**

New York University Law School  
40 Washington Square South Suite 411G  
New York, New York 10012  
(212) 998-6329 (office)  
(212) 995-4659 (fax)  
geoffrey.miller@nyu.edu

**Work Experience**

New York University Law School (1995-present)  
Stuyvesant P. Comfort Professor of Law  
Co-Director, Program in Corporate Compliance and Enforcement (2014-2017)  
Senior Faculty Fellow, Program in Corporate Compliance and Enforcement  
(2017-present)  
Faculty Co-Director, Center on Civil Justice at NYU Law School (2015-present)  
Faculty Director, NYU Center for Financial Institutions (1994-present)  
Co-Director, NYU Center for Law, Economics and Organization (2006-2012)  
Chair, Academic Personnel Committee (1999-2000; 2004-2006)  
Chair, Promotions and Tenure Committee (2007-2009; 2018-2019)

University of Chicago Law School (1983-1995)  
Kirkland & Ellis Professor (1989-1995)  
Editor, Journal of Legal Studies (1989-1995)  
Director, Program in Law and Economics (1994-1995)  
Director, Legal Theory Workshop (1989-1993)  
Associate Dean (1987-1989)  
Professor of Law (1987-1989)  
Assistant Professor of Law (1983-1987)

Distinguished Visiting Professor, Vanderbilt Law School, 2014  
Visiting Professor, University of Frankfurt, Summer 2013  
Faculty Member, Study Center Gerzensee, Switzerland, Spring 2012, Summer 2016  
Visiting Lecturer, University of Genoa Department of Law, 2011  
Visiting Lecturer, Collegio Carlo Alberto (Moncalieri, Italy), 2011, 2013  
Visiting Scholar, European University Institute, Florence, Italy, Fall/Winter 2010



Visiting Chair on Private Actors and Globalisation, Hague Institute for the Internationalisation of Law, Fall/Winter 2010

Robert B. and Candace J. Haas Visiting Professor of Law, Harvard Law School, Fall 2009

Max Schmidheiny Guest Professor, University of St. Gallen, Switzerland Summer 2009

Faculty Member, NYU-NUS in Singapore, 2009, 2011, 2013

Fresco Endowed Professor of Law, University of Genoa, Italy, Summer 2008, Spring 2009, Summer 2010

Visiting Scholar, University of Minnesota Law School, Spring 2008

Visiting Lecturer, University of Bolzano, Italy, Summer 2007

Commerzbank Visiting Professor, Institute for Law & Finance, University of Frankfurt, Germany, Summer 2004, Summer 2005, Summer 2010

Visiting Professor, Columbia Law School, Fall 2001

Visiting Professor, University of Sydney, Australia, Summer 2002; Summer 2006; Spring 2009

Zaeslin Visiting Professor, University of Basel, Switzerland, Summers 2001-2019

Visiting Scholar, CentER for Economic Research, Tilburg, Holland, Summer 1996

John M. Olin Visiting Scholar, Cornell University Law School, Summer 1992, Spring 1996; Winter 1997, Summer 2005, Spring 2008, Spring 2009, Spring 2010

Visiting Scholar, Bank of Japan, Spring 1995

Visiting Professor, New York University Law School, Fall 1994

Consultant, Federal Reserve Bank of Chicago, 1992-1994

Visiting Scholar, New York University Law School, Fall 1993

Simpson Grierson Butler White Visiting Professor, University of Auckland, New Zealand, Summer 1993

Associate, Ennis, Friedman, Bersoff & Ewing  
Washington, D.C. (1982-83)

Attorney Adviser, Office of Legal Counsel  
U.S. Department of Justice (1980-82)

Clerk, Hon. Byron R. White  
Supreme Court of the United States (1979-80)

Clerk, Hon. Carl McGowan  
U.S. Court of Appeals, District of Columbia (1978-79)

Scholarly and Law Reform Activities

Member, American Law Institute (elected 2015)

American Law Institute, Reporter, Principles of the Law, Compliance, Enforcement, and Risk Management for Corporations, Nonprofits, and Other Organizations (2014-present)

Fellow, American Academy of Arts and Sciences (elected 2011)

Society for Empirical Legal Studies

Fellow (2014-present)

Co-Founder and Co-President (2006-2007)

Board Member (2006-2014)

#### Corporate Service

Member of the Board of Directors, State Farm Bank (2010-present) – board and committee service for midsize bank with \$16 billion in assets. Audit Committee Chair (2015-present)

#### Education

Columbia Law School, J.D. (1978)

Editor-in-Chief, Columbia Law Review (1977-78)

Princeton University, A.B. *magna cum laude* (1973)

#### Publications

##### Books

The Economics of Securities Law I (editor) (Edward Elgar 2016)

The Economics of Securities Law II (editor) (Edward Elgar 2016)

The Economics of Financial Law I (editor) (Edward Elgar 2016)

The Economics of Financial Law II (editor) (Edward Elgar 2016)

Banking Law and Regulation, Little, Brown & Co. 1992 (with Jonathan R. Macey); Second Edition, Aspen Law & Business 1997 (with Jonathan R. Macey), Third Edition, Aspen Law & Business 2001 (with Jonathan R. Macey and Richard Scott Carnell); Fourth Edition, Aspen Law & Business 2008 (with Richard Scott Carnell and Jonathan R. Macey), under title “The Law of Banking and Financial Institutions); Fifth Edition (with Richard Scott Carnell and Jonathan R. Macey), under title “The Law of Financial Institutions, Wolters Kluwer Law & Business (2013)

[translated into Chinese, The Commercial Press, 2016]; Sixth Edition, under title “The Law of Financial Institutions,” Wolters Kluwer Law & Business (2017)

Banking Law and Regulation: Statutory and Case Supplement (Little, Brown & Co. 1992; Second Edition, Aspen Law & Business, 1997) (with Jonathan R. Macey), Third Edition, Aspen Law & Business, 2000) (with Jonathan R. Macey and Richard Scott Carnell); Fourth Edition, Aspen Law & Business 2008 (with Richard Scott Carnell and Jonathan Macey)

Banking Law and Regulation: Teacher’s Manual (1992; Second Edition 1997; Third Edition 2001, Fourth Edition 2008) (with Jonathan R. Macey and Richard Scott Carnell)

The Law of Governance, Risk Management and Compliance (Wolters Kluwer Law and Business 2014); Second Edition 2017, Third Edition 2020.

The Law of Governance, Risk Management and Compliance Teachers Manual (Wolters Kluwer Law and Business, 2014; Second Edition 2017, Third Edition 2020.

The Governance of International Banking (co-authored with Fabrizio Cafaggi, with Tiago Andreotti, Maciej Borowicz, Agnieszka Janczuk, Eugenia Macchiavello and Paolo Saguato) (Edward Elgar 2013)

Ways of a King: Legal and Political Ideas in the Bible (Vandenhoeck & Ruprecht 2011)

Trust, Risk, and Moral Hazard in Financial Markets (Il Mulino 2011)

The Origins of the Necessary and Proper Clause (with Gary Lawson, Robert Natelson, and Guy Seidman) (Cambridge University Press 2010)

The Economics of Ancient Law (editor) (Edward Elgar 2010)

Bank Mergers and Acquisitions (editor, with Yakov Amihud) (Kluwer Academic Publishers 1998)

La Banca Central en América Latina: Aspectos Económicos y Jurídicos [Central Banks in Latin America and Their New Legal Structure] (in Spanish) (editor, with Ernesto Aguirre and Roberto Junguito Bonnet) (Tercer Mundo: Bogotá 1997)

Costly Policies: State Regulation and Antitrust Exemption in Insurance Markets (AEI Press 1993) (with Jonathan R. Macey)

#### Articles

Civil Procedure

Regional Common Law (manuscript 2019) (with Yun-chien Chang)

Do Judges Matter? (manuscript 2019) (with Yun-chien Chang)

Attorneys' Fees in Class Actions: 2009-2013, 92 NYU Law Review 937 (With Theodore Eisenberg and Roy Germano)

A New Procedure for State Court Personal Jurisdiction (manuscript on file with the author)

An Information-Forcing Approach to the Motion to Dismiss, 5 Journal of Legal Analysis 437-465 (2014) (with Samuel Issacharoff)

In Search of the Most Adequate Forum: State Court Personal Jurisdiction, 2 Stanford Journal of Complex Litigation 1 (2014)

Group Litigation in the Enforcement of Tort Law, in Jennifer Arlen, ed., *The Economics of Torts* (2013)

The Quasi-Class Action Method of Managing Multi-District Litigations: Problems and a Proposal, 63 Vanderbilt Law Review 107 (2010) (with Charles Silver)

Will Aggregate Litigation Come to Europe?, 62 Vanderbilt Law Review 177-210 (2009) (with Samuel Issacharoff)

Preliminary Judgments, 2010 University of Illinois Law Review 165 (2009)

A New Look at Judicial Impact: Attorneys' Fees in Securities Class Actions after *Goldberger v. Integrated Resources, Inc.*, 29 Washington University Journal of Law & Policy 5-35 (2009) (with Theodore Eisenberg and Michael Perino)

Punti cardine in tema di class action negli Stati Uniti e in Italia (Cutting-Edge Issues in U.S. and Italian Class Action Litigation), 2008 *Analisi Giuridica dell'Economia* 211-230 (2008)

Compensation and Deterrence in Consumer Class Actions in the United States, in Fabrizio Cafaggi and Hans W. Micklitz, eds., *New Frontiers in Consumer Protection: The Interplay Between Private and Public Enforcement* 263-282 (2009)

Pleading after *Tellabs*, 2009 Wisconsin Law Review 507-534 (2009)

Mandatory Arbitration for Customers But Not For Peers, 92 *Judicature* 118-123 (2009) (with Theodore Eisenberg and Emily Sherwin)

Arbitration's Summer Soldiers: An Empirical Study of Arbitration Clauses in Consumer and Non-Consumer Contracts, 41 *University of Michigan Journal of Law Reform* 871-96 (2008) (with Theodore Eisenberg and Emily Sherwin); reprinted in 7 *ICFAI University Journal of Alternative Dispute Resolution* (Hyderabad, India)

Reversal, Dissent, and Variability in State Supreme Courts: The Centrality of Jurisdictional Source, 89 *Boston University Law Review* 2009 (2009) (with Theodore Eisenberg)

All-or-Nothing Versus Proportionate Damages, 38 *Journal of Legal Studies* 345-382 (2009) (with Shmuel Leshem)

Judicial Review of Class Action Settlements, 1 *Journal of Legal Analysis* 167-205 (2008) (with Jonathan R. Macey)

Do Juries Add Value? Evidence From an Empirical Study of Jury Trial Waiver Clauses in Large Corporate Contracts, 4 *Journal of Empirical Legal Studies* 539 (2007) (with Theodore Eisenberg)

The Flight from Arbitration: An Empirical Study of *Ex Ante* Arbitration Clauses in Publicly-Held Companies' Contracts, 56 *DePaul Law Review* 335 (2007) (with Theodore Eisenberg), reprinted in 49 *Corporate Practice Commentator* 323 (2007)

Rethinking Certification and Notice in Opt-Out Class Actions, 74 *University of Missouri Kansas City Law Review* 637 (2006)

Incentive Awards to Class Action Plaintiffs: An Empirical Study, 53 *UCLA Law Review* 1303 (2006) (with Theodore Eisenberg)

Review of the Merits in Class Action Certification, 33 *Hofstra Law Review* 51 (2004)

The Role of Opt-Outs and Objectors in Class Action Litigation: Theoretical and Empirical Issues, 57 *Vanderbilt Law Review* 1529 (2004) (with Theodore Eisenberg)

Competing Bids in Class Action Settlements, 31 *Hofstra Law Review* 633-650 (2003)

On the Costs of Civil Justice, 80 *University of Texas Law Review* 2115 (2002)

Class Actions in the Gulf States: Empirical Analysis of a Cultural Stereotype, 74 *Tulane Law Review* 681 (2000)

Full Faith and Credit to Settlements in Overlapping Class Actions: A Reply to Kahan and Silberman, 73 *New York University Law Review* 1167-1178 (1998)

Nonpecuniary Class Action Settlements, 60 *Law and Contemporary Problems* 97-155 (1997) (with Lori Singer)

Class Actions, in I *New Palgrave Dictionary of Economics and the Law* 257-262 (Peter Newman, ed., Macmillan Press 1998)

The Legal-Economic Analysis of Comparative Civil Procedure, 45 *American Journal of Comparative Law* 905-19 (1997)

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Settlement of Litigation: A Critical Retrospective, in Larry Kramer, ed., *Reforming the Civil Justice System* 13-37 (NYU Press 1996)

Expanding on the Fifty Percent Hypothesis: A Multimodal Approach to the Selection of Cases for Litigation, 25 *Journal of Legal Studies* 233 (1996) (with Daniel Kessler and Thomas Meites)

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Introduction: Economic Analysis of Civil Procedure, 23 *Journal of Legal Studies* 303 (1994)

Auctioning Class Action and Derivative Suits: A Rejoinder, 87 *Northwestern Law Review* 701 (1992) (with Jonathan R. Macey)

The Plaintiffs' Attorney's Role in Class Action and Derivative Litigation: Economic Analysis and Recommendations for Reform, 58 *University of Chicago Law Review* 1 (1991) (with Jonathan R. Macey), reprinted in Franklin A. Gevurtz, *Corporate Law Anthology* 186-194 (1997)

Some Thoughts on the Equilibrium Hypothesis, 69 *Boston University Law Review* 561 (1989)

Some Agency Problems in Settlement, 16 Journal of Legal Studies 189 (1987)

An Economic Analysis of Rule 68, 15 Journal of Legal Studies 93 (1986)

The Public Interest in Attorneys' Fees Awards for Public Interest Litigation, 47 Law and Contemporary Problems 233 (1984) (with Robert V. Percival), reprinted in University of Chicago Law School Record (1989)

Note, Aldinger v. Howard and Pendent Jurisdiction, 77 Columbia Law Review 127 (1977)

#### Legal Ethics/Legal Profession

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The Dark Age: How the Biblical Narratives Demonstrate the Necessity for Law and Government (NYU School of Law, Public Law Research Paper No. 10-18)

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Book Reviews

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Love & Joy: Law, Language and Religion in Ancient Israel, by Yochanan Muffs, 58 Journal of Near Eastern Studies 144-45 (1999)

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#### Major Lectures

Revelation as a Source of Legal Authority (Keynote Address, Conference on Religious Liberty, Touro Law School 2013)

Trust, Risk, and Moral Hazard in Financial Markets (University of Genoa, Fresco Chair Lectures in Law and Finance, June 2010)

A Simple Theory of Takeover Regulation in the United States and Europe; Intellectual Hazard (Commerzebank Lectures, University of Frankfurt, May 2010)

The European Union's Takeover Directive and Its Implementation in Italy (University of Rome III, 2008)

Catastrophic Financial Failures: Enron, HIH and More (Ross Parsons Lecture, Sydney, Australia, 2002)

Das Kapital: Solvency Regulation of the American Business Enterprise (Coase Lecture, University of Chicago Law School, 1993)

Banking in the Theory of Finance; The Simple Economics of Litigation and Settlement; The Economic Structure of Corporation Law (University of Auckland, New Zealand, 1993)

#### Journal Referee Reports

American Law and Economics Review

Journal of Legal Studies

Journal of Law, Economics and Organization

Review of Law and Economics

#### Conferences Organized

Law and Banking Conference 2019 (Paris), 2018 (New York), 2017 (Bad Homburg, co-sponsored with University of Frankfurt); 2016 (New York); 2015 (Zurich); 2014 (New York); 2013 (Zurich); 2012 (New York); 2011 (Florence)

Achieving and Responsible Enterprise: Principles of Effective Compliance and Enforcement (May 8, 2015)

Global Economic Policy Forum, New York 2013 (keynote speakers included Federal Reserve Bank of New York President William Dudley and former Governor of the Bank of England Baron King of Lothbury); New York 2008 (keynote speaker was Jean-Claude Trichet, Chairman of the European Central Bank); 2007 (keynote speaker was Ben Bernanke, Chairman of the Board of Governors of the Federal Reserve)

The Good Bank Debate (New York 2013) (co-sponsored with Mazars)

Judicial Dialogue on Mass Litigation, Florence Italy, October 15-16, 2010 (co-organizer of conference co-sponsored by NYU Law School, the American Law Institute, and the European University Institute)

Finlawmetrics 2010: Central Banking, Regulation & Supervision after the Financial Crisis (co-sponsor and member of steering committee)

Finlawmetrics 2009: After The Big Bang: Reshaping Central Banking, Regulation and Supervision (Milan, Italy, Spring 2009) (co-sponsor and member of steering committee)

NYU Global Economic Policy Forum 2009: The Future of Regulation and Capital Markets (November 5, 2009) (co-organized with Professor Alan Rechtschaffen and with the NYU Law School Alumni Association)

Third Annual Conference on Empirical Legal Studies (Cornell University, Ithaca, New York, Fall 2008) (co-organizer)

Second Annual Conference on Empirical Legal Studies (New York, New York, November 10-11, 2007). Major conference (425 participants) exploring all aspects of the empirical study of law. Co-organized with Jennifer Arlen, Bernard Black, Theodore Eisenberg and Michael Heise.

First Annual Conference on Empirical Legal Studies (Austin, Texas, October 2006). Major conference exploring all aspects of the empirical study of law. Co-organized with Jennifer Arlen, Bernard Black, Theodore Eisenberg and Michael Heise.

Conference on Legal Aspects of the International Activities of Central Banks, Lima Peru, October 1997. This conference, co-sponsored by the central bank of Peru, brought together leaders in the legal and economic issues facing central banks in the management of their external reserves.

Conference on the Governance of Institutional Investors (New York, New York, February 14, 1997). This conference, sponsored by the NYU Stern School of Business Salomon Center in association with the New York University Law School Center for the Study of Central Banks, brought together top executives, attorneys, scholars and others interested in the management and organization, both economic and legal, of the nation's large institutional investors, including its mutual fund industry.

Conference on Bank Mergers and Acquisitions (New York, New York, October 11, 1996). This conference, sponsored by the NYU Stern School of Business Salomon Center in association with the New York University Law School's Center for the Study of Central Banks, brought together leading academics, lawyers, and investment bankers to discuss some of the broader implications of bank mergers and acquisitions. Co-organizer of this conference was Professor Yakov Amihud of the Stern School's Finance Department.

Conference in Central Banks in Latin America (Bogota, Colombia, February, 1996). This conference, co-sponsored by the central bank of Colombia with technical assistance from the Legal Affairs Department of the International Monetary Fund, brought together leaders of Latin American central banks, the international financial community, and scholars from a variety of disciplines, to discuss issues related to the independence of central banks and economic development.

Conference on Central Banks in Asia (Shanghai, China, October, 1995). This conference, co-sponsored with KPMG-Peat Marwick, brought together leaders from commercial banks, investment banks, and industrial firms, as well as central bankers, to discuss Asian central banks to address issues such as the proposed law granting a degree of independence to the central bank of China.

Conference on Ancient Law (Berkeley, California, March 1995). This conference, organized with Professors James Lindgren of Chicago-Kent Law School and Laurent Mayali of the University of California at Berkeley Law School, brought together important figures from a variety of disciplines interested in Ancient Law.

Conference on Central Banks in Eastern Europe and the Newly Independent States (Chicago, Illinois, April 1994). This conference brought together the Prime Minister of Estonia, three present or former Ministers of Finance of Eastern European states (including Boris Fyoderov,

former Finance Minister of the Russian Republic), the heads of the central banks of eleven nations in Eastern Europe and the Newly Independent States, together with a wide variety of highly-placed officials from these countries and from the west, to discuss issues related to the independence of central banks and economic development.

#### Professional Memberships and Positions

New York State Bar

District of Columbia Bar

American Bar Association

American Law Institute (1988-1996; 2017-present)

Member, Paolo Baffi Centre Scientific Advisory Board, Milan, Italy (2008- 2016)

Member, International Academic Council, University of St. Gallen,  
Switzerland (2004-2016)

Chairman, Section on Business Associations, American Association of Law  
Schools (1995)

Member of the Board of Directors, American Law and Economics Association  
(1995-1998)

Member of the Foreign Advisory Committee, Latin American Law and  
Economics Association (1995-2000)

Member of the Foreign Advisory Board, Universidad Tucurato Di Tella School of Law,  
Buenos Aires, Argentina (1992-1999)

Member of the Editorial Board, Supreme Court Economic Review

Member of the Advisory Board, University of Hong Kong Faculty of Law Asian Institute  
of International Financial Law (2001-present)

#### Courses

Governance, Risk and Compliance (Study Center Gerzensee, Switzerland 2016)

Law and Business of Bitcoin and Block Chain (2015; 2017; 2019) (with David Yermack)

Compliance and Risk Management for Attorneys (2014, 2015, 2017)

Legal Profession (1985-93; 1996-98; 2003-2007; 2013; 2019)

The Crisis of 2008 (2009, 2010)

Reading Class: Restructuring Finance (2009); Cutting Issues in Finance (2014-2015);

Reading Class: Law and Politics in Shakespeare (2015-2016; 2019)

Property (1986-87)

Corporations (1985-88; 1991-93; 1997-2000; 2005; 2008; 2012; 2014; 2016)

Seminar on Separation of Powers (1985, 1987)

Civil Procedure (1983-84; 2004-2005; 2011; 2013; 2016; 2018-2019)

Federal Regulation of Banking (1983, 1989-93; 1995-97; 2003, 2006-2010; 2012; 2015)

Law and Business of Banking (2012; with Gerald Rosenfeld)



Land Development (1984-85)  
Securities Law (1990-91)  
Workshop in Legal Theory (1989-91)  
Seminar on Financial Institutions (1992-93) (with Merton Miller)  
Ethics in Class Action Practice (Continuing Legal Education Seminar 2002-2005)  
Law and Economics (University of Basel, Switzerland 2005, 2007-2014)  
Advanced Seminar on Law and Economics (University of Genoa, Italy 2008)  
Banking and the Financial Crisis (University of Genoa, Italy 2009)  
Trust, Risk, and Moral Hazard in Financial Markets (University of Genoa, Italy, 2010)  
International Banking (University of Sydney, Australia, 2002, 2006)  
Introduction to Banking Law (University of Basel, Switzerland 2001, 2002, 2003, 2004, 2009, 2010; 2011; 2012; 2013; 2014; 2015; 2016; 2017; 2018)  
Banking in the Theory of Finance (University of Frankfurt, Germany 2004, 2005)  
Banking Regulation in Crisis (University of Frankfurt, Germany, 2010)  
Banking: Law and Economics Issues after the Financial Crisis (Study Center Gerzensee, 2012)

Expert Witness Testimony (past five years)

Dyer v. Wells Fargo Bank, N.A., Case No. C-13 2858, Northern District of California (2014) (declaration on fees)

US. Foodservice Inc. Pricing Litigation, Case No. 3:07-md-1894, District of Connecticut (2014) (declaration on fees)

Kacsuta v. Lenovo (United States) Inc., Case No. SACV 13-00316-CJC, Central District of California (2014) (declaration on fees)

De Leon v. Bank of America, Case No. 6:09-cv-1251-Orl-JA KRS, Middle District of Florida (2014) (declaration on fees)

Chieftain Royalty Co. v. SM Energy Co., Case No. DIV-011-177-D (Western District of Oklahoma 2015) (declaration on settlement and fees; declaration on remand)

In re General Motors LLC Ignition Switch Litigation, No. 14-MD-2543 (Southern District of New York 2016) (declaration on motion to dismiss lead counsel)

In re General Motors LLC Ignition Switch Litigation, No. 14-MD-2543 (Southern District of New York 2016) (declaration on confidentiality of case files)

In re Life Partners Holdings, Inc., No. 15-40289-RFN (Northern District of Texas 2016) (declaration on fees)

Rhea v. Apache Corporation, Case No. 6:14-cv-00433-FHS (Eastern District of Oklahoma 2016) (declaration on class certification)

Hooker v. Sirius XM Radio, Inc., No. 4:13-cv-00003 (Eastern District of Virginia 2016) (declaration on fees and fairness of the settlement)

Axiom Investment Advisors, LLC v. Barclays Bank PLC, Case No. 15-cv-9323-LGS (Southern District of New York 2017) (declaration on fees)

Marcus v. JC Penney Company, Inc., Civil Action No. 6:13-cv-00736-RWS-KNM (Eastern District of Texas 2017) (declaration on fees)

Thomas v. Wells Fargo Bank, Case No. 15-cv-03194 (Central District of California 2017) (declaration on fees)

United States of America ex rel. Trakhter v. Provider Services, Inc., (Southern District of Ohio 2017) (declaration on fees)

White v. Experian Information Services, Inc. Case No. 05-CV-1070 2017) (declaration on fairness of settlement and fees)

In Re: Takata Airbag Products Liability Litigation, Case No. 1:15-md-02599-FAM (Southern District of Florida 2017) (declaration on fees)

Rierdon v. XTO Energy, Inc., No 6:16-cv-00087-KEW (Eastern District of Oklahoma 2017) (declaration and testimony on fees)

In Re Cnova N.V. Securities Litigation, No. 16 CV 444-LTS (Southern District of New York 2017) (declaration on fees)

In Re: Syngenta Corn Litigation, MDL No. 2591 (District of Kansas 2018) (expert reports on fees)

Linneman V Vita-Mix Corporation, No. 1:15-Cv-748 (Southern District of Ohio 2018) (declaration and deposition on fees)

Cockerell Oil Properties v. Unit Petroleum Co., No. 6:16-CV-00135-KEW (Eastern District of Oklahoma 2019) (declaration on fees)

Chieftain Oil Company v. Marathon Oil Company, No. CIV-17-334-SPS (Eastern District of Oklahoma 2019) (declaration on fees)

#### Other Activities

Fellow, Society for Empirical Legal Studies (2015-present)

Member, Board of Directors, American Law and Economics Association (1996-1999)

Member, Board of Advisors, The Independent Review (1996-present)

Member, Board of Advisors, Asian Institute of International Financial Law (2001-present)

Member, Editorial Advisory Board, Supreme Court Economic Review (1995-2001)

Member, Editorial Advisory Board, The Brookings-Wharton Papers on Financial Policy (1997-present)

President, Section on Financial Institutions and Consumer Financial Services, American Association of Law Schools (1999)

President, Section on Business Associations, American Association of Law Schools (1995)

Member, Board of Contributors, American Bar Association Preview of Supreme Court Cases (1985-1993)

Consultant, Administrative Conference of the United States (1988-89; 1991-1992)

Board of Directors and Volunteer Listener, D.C. Hotline (1980-83)

#### Awards

1992 Paul M. Bator Award for Excellence in Teaching, Scholarship and Public Service, from the Federalist Society for Law and Public Policy Studies

Podell Distinguished Teaching Award (NYU Law School 2016)

Languages

Reading knowledge of Spanish, French, and Italian.

Blog Posts

Whistleblowing in the Wind, Compliance and Enforcement (June 29, 2016)

Banking's Cultural Revolution, Compliance and Enforcement (June 8, 2016)

Breach of Contract ≠ Fraud, Compliance and Enforcement (May 25, 2016)

Judges are not Potted Plants, Compliance and Enforcement (May 18, 2016)

Compliance Goes to School, Compliance and Enforcement (May 12, 2016)

CFPB Issues Proposed Consumer Arbitration Rule, Compliance and Enforcement (May 5, 2016)

FSOC Socked, Compliance and Enforcement (April 28, 2016)

Compliance and Risk Management: Area for Legal Teaching and Scholarship?, Harvard Law School Forum on Corporate Governance and Financial Regulation (May 22, 2014)

Shorter Works

Defusing The Banks' Financial Time Bomb: Without Tough Reforms, Writes Robert Pozen, We'll Probably Face An Ugly Repeat of Recent History (Business Week, March 11, 2010)

Why Interstate Banking is in the National Interest, Testimony Before the Subcommittee on Financial Institutions Supervision, Regulation and Deposit Insurance of the House Committee on Banking, Housing and Urban Affairs (September 29, 1993)

Challenging the Concept of the Common Law as a Closed System, Columbia Law School Report, Autumn, 1993 (with Norman Silber)

The Insurance Industry's Antitrust Exemption: A Longstanding Tradition Faces its Greatest Challenge, 1992-93 ABA Preview of Supreme Court Cases 198 (1993)

Shootout at the Escheat Corral, 1992-93 ABA Preview of Supreme Court Cases (1993)

Choices and Chances for Consumers, Legal Times, Oct. 12, 1992, at 29-30.

Impeachment Procedures: An Unexplored Territory in the Separation of Powers, 1992-93 ABA Preview of Supreme Court Cases 39 (1992)

An (Ex)changing of the Guard, 21 Journal of Legal Studies iii (1992)

Revisiting the Contingency Factor in Fee-Shifting Awards, 1991-92 ABA Preview of Supreme Court Cases 327 (1992)

The Foreign Sovereign Immunities Act and the Market for Public International Debt, 1991-92 ABA Preview of Supreme Court Cases 307 (1992)

Return of the Tenth Amendment?: Federal Control and State Autonomy over Low Level Radioactive Wastes, 1991-92 ABA Preview of Supreme Court Cases 284 (1992)

What are the Limits on Congressional Power to Influence Pending Cases?, 1991-92 ABA Preview of Supreme Court Cases 158 (1991)

RICO Standing for Securities Fraud: Does the Purchaser-Seller Rule of Rule 10b-5 Apply?, 1991-92 ABA Preview of Supreme Court Cases 155 (1991)

Banking and Investment: Introduction to UPA Index and Microfiche Collection (University Publications of America 1991)

Source of Strength in the Court: Can Bank Holding Companies be Required to Support Failing Subsidiary Banks?, 1991-92 ABA Preview of Supreme Court Cases 42 (1991)

Source of Strength: A Source of Trouble, Legal Times, September 30, 1991 (Special Supplement, pp. 22-25)

The Once and Future American Banking Industry, The American Enterprise (with Jonathan R. Macey)(1991)

The Former Stockholder as Plaintiff in Short-Swing Trading Cases, 1990-91 ABA Preview of Supreme Court Cases (1991)

Disposing of Demand Excuse in Derivative Litigation, 1990-91 ABA Preview of Supreme Court Cases (1991)

Up in the Air: Can Congress Require States to Appoint Members of Congress to State Agencies?, 1990-91 ABA Preview of Supreme Court Cases 294 (1991)

The Statute of Limitations under Rule 10b-5, 1990-91 ABA Preview of Supreme Court Cases (1991)

Tort Claims Against Federal Banking Agencies: New Hope For Shareholders and Officers of Failed Depository Institutions?, 1990-91 ABA Preview of Supreme Court Cases 94 (1991)

Punitive Damages Redux: If the Eighth Amendment Doesn't Apply, What About the Due Process Clause?, 1990-91 ABA Preview of Supreme Court Cases 47 (1990)

Quandaries of Causation: Proxy Solicitation in Freeze-Out Mergers, 1990-91 ABA Preview of Supreme Court Cases 57 (1990)

Racial Statesmanship, Legal Times S31 (July 23, 1990)

Eurodollars, Sovereign Risk, and the Liability of U.S. Banks for Deposits in Foreign Branches, 1989-90 ABA Preview of Supreme Court Cases 281 (1990)

When is a Note a Note?, 1989-90 ABA Preview of Supreme Court Cases 18 (1990)

Interstate Banking and the Commerce Clause, 1989-90 ABA Preview of Supreme Court Cases 168 (1990)

Federal Courts, Municipalities, and the Contempt Power, 1989-90 ABA Preview of Supreme Court Cases 37 (1989)

Shoe Could Still Drop on Issue of Punitive Damages, National Law Journal (August 21, 1989)

Punitive Damages and the Constitution, 1988-89 ABA Preview of Supreme Court Cases 391 (1989)

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Stockholders, Arbitration, and the Securities Act of 1933, 1988-89 ABA Preview of Supreme Court Cases 383 (1989)

Appropriations Riders, Nondisclosure Agreements, and the Separation of Powers, 1988-89 ABA Preview of Supreme Court Cases 375 (1989)

Judicial Appointments and the ABA: Business as Usual or Brand New World?, 1988-89 ABA Preview of Supreme Court Cases 379 (1989)

S & L Receiverships, State Law, and the Federal Courts, 1988-89 ABA Preview of Supreme Court Cases 255 (1989)

The Non-delegation Doctrine in Taxation: A Different Constitutional Calculus?, 1988-89 ABA Preview of Supreme Court Cases 261 (1989)

Bankruptcy, Tax Liens, and Post-Petition Interest, 1988-89 ABA Preview of Supreme Court Cases (1989)

Federal Courts, State Taxes: A Vexing Dilemma For the Enforcement of Civil Rights in a Federal System, 1989-90 ABA Preview of Supreme Court Cases 95 (1988)

Separation of Powers and the Sentencing Commission, 1988-89 ABA Preview of Supreme Court Cases 23 (1988)

Administering the Savings and Loan Crisis: New Problems for the FSLIC, 1988-89 ABA Preview of Supreme Court Cases (1988)

Federal Procurement and the Separation of Powers, 1988-89 ABA Preview of Supreme Court Cases 26 (1988)

Thinking About a Career in Law, 1988-89 Talbot's Student Planning Book 32 (1988)

Carl McGowan: A Great Judge Remembered, 56 George Washington Law Review 697 (1988)

Separation of Powers: The Independent Counsel Case Tests the Limits, 1987-88 ABA Preview of Supreme Court Cases 390 (1988)

Decisionmaking in Collegial Bodies, Judicature, April/May 1988

The FDIC, Bank Officers and the Due Process Clause, 1987-88 ABA Preview of Supreme Court Cases 326 (1988)

Farm Foreclosures in Bankruptcy, 1987-88 ABA Preview of Supreme Court Cases 199 (1988)

Equal Access to Justice and Government Litigation, 1987-88 ABA Preview of Supreme Court Cases 160 (1988)

The Time Value of Money in Bankruptcy Cases, 1987-88 ABA Preview of Supreme Court Cases 116 (1987)

Getting the Fee First? Attorneys and the SSI Program 1987-88 ABA Preview of Supreme Court Cases 118 (1987)

The Farmer and the FDIC, 1987-88 ABA Preview of Supreme Court Cases 48 (1987)

Testing the Limits of Securities Fraud: Financial Gossip in the Court, 1987-88 ABA Preview of Supreme Court Cases 26 (1987)

Checks and Balances in the Twenty-First Century, 33 University of Chicago Law School Record 7 (1987)

Separation of Powers May Become Focus Over NSC, Legal Times, Dec. 15, 1986, at 15

If a Bank is a Broker, is a Brokerage a Branch? 1986-87 ABA Preview of Supreme Court Cases 65 (1986)

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The Contingency Factor in Attorney's Fees Reconsidered, 1986-87 ABA Preview of Supreme Court Cases 20 (1986)

Restitution and Bankruptcy in a Federal System, 1986-87 ABA Preview of Supreme Court Cases (1986)

Don't Limit Contingent Fees, Chicago Tribune, June 11, 1986

The Budget and the Separation of Powers: Gramm-Rudman in the Court, 1985-86 ABA Previews of Supreme Court Cases 359 (1986)

Keeping Attorneys' Fees in Proportion, 1985-86 ABA Preview of Supreme Court Cases 325 (1986)



Must the Federal Government Pay Interest on Attorneys' Fees Awards?, 1985-86 ABA Preview of Supreme Court Cases 241 (1986)

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The FCC as Cop: Forcing State Public Service Commissions to Obey Federal Agency Orders, 1985-86 ABA Preview of Supreme Court Cases 191 (1986)

Preemption, Public Utilities, and Power Over Telephone Rate-Setting, 1985-86 ABA Preview of Supreme Court Cases 187 (1986)

A Bank is a Bank is a Bank -- or is it?, 1985-86 ABA Preview of Supreme Court Cases 67 (1985)

Settlement Offers Conditioned on Waiver of Attorneys' Fees: A Legal and Ethical Dilemma Confronts the Court, 1985-86 ABA Preview of Supreme Court Cases 55 (1985)

Bankruptcy and the Environment: The Case of Hazardous Wastes, 1985-86 ABA Preview of Supreme Court Cases 25 (1985)

A Different Approach to Interstate Banking, American Banker (August 8, 1985)

The SEC as Censor: Is Banning an Investment Advice Newsletter a Prior Restraint of the Press?, 1984-85 ABA Preview of Supreme Court Cases 243 (1985)

Enforcing Federal Rights in State Courts, 1984-85 ABA Preview of Supreme Court Cases 277 (1985)

Interstate Banking and the Constitution, 1984-85 ABA Preview of Supreme Court Cases 364 (1985)

The "Sale of Business" Doctrine in the Supreme Court, 1984-85 ABA Preview of Supreme Court Cases 344 (1985)

Sale of Business Revisited: Does the Doctrine Apply to Partial Sales of Corporate Control, 1984-85 ABA Preview of Supreme Court Cases 347 (1985)

Six Cases Shape Business Law, American Bar Association Journal 124 (Jan. 1985)

Offers of Settlement in Civil Rights Cases Pose Attorneys' Fees Question, 1984-85 ABA Preview of Supreme Court Cases 105 (1984)

Using Bankruptcy to Avoid Liability for Cleaning up Toxic Wastes, 1984-85 ABA Preview of Supreme Court Cases 36 (1984)

A Judicial Footnote Cemented the New Deal, Wall Street Journal, September 13, 1984

May Bank Holding Companies Provide Discount Brokerage Savings?, 1984-85 ABA Preview of Supreme Court Cases 575 (1984)

Blum v. Stenson: Fundamental Questions About Attorneys' Fees Awards to Public Interest Lawyers, 1984-85 ABA Preview of Supreme Court Cases 301 (1984)

Myths on the Midway, 30 Chicago Law School Record 13 (1984)

Smith v. Robinson: Another Step Towards Solving the Attorneys' Fees Puzzle? 1983-84 ABA Preview of Supreme Court Cases 437 (1984)

Securities Industry Association v. Board of Governors: Can Banks Distribute Commercial Paper? 1983-84 ABA Preview of Supreme Court Cases 425 (1984)

The "7-Eleven" Case: Arbitration v. Litigation in a Federal System, 1983-84 ABA Preview of Supreme Court Cases 161 (1983)

The Bildisco Case: Reconciling Federal Bankruptcy and Labor Policies, 1983-84 ABA Preview of Supreme Court Cases 169 (1983)

The "Daily Income Fund" Case: What Role Should a Mutual Fund's Board of Directors Play in Disputes over Investment Advisor Fees, 1983-84 ABA Preview of Supreme Court Cases 107 (1983)

Pulliam v. Allen: Should State Judges who Act Unconstitutionally Pay the Plaintiff's Attorneys' Fees?, 1983-84 ABA Preview of Supreme Court Cases 115 (1983)

"Shortsighted" Bill Proposes D.C. Court Divestiture, Legal Time of Washington, August 16, 1982

The Tax Bill May Be Unconstitutional, Baltimore Sun, August 16, 1982 (with Donald N. Bersoff)



## Appendix 2

### **Cases Citing to Geoffrey Miller's Research on Attorneys' Fees in Class Action and Derivative Litigation**

- *Tussey v. ABB, Inc.*, 2019 WL 3859763 (W.D. Missouri 2019)
- *In re Yahoo! Inc. Customer Data Security Breach Litigation*, 2019 WL 387322 (N.D. California 2019) (referring to Eisenberg and Miller's study of class action attorneys' fees as a "leading study")
- *Grice v. Pepsi Beverages Co.*, 363 F.Supp.3d 401 (S.D.N.Y. 2019) ("[c]ourts often look to empirical evidence of attorney's fees awarded in similar cases as a starting point for the baseline reasonable fee inquiry")
- *Hale v. State Farm Mutual Automobile Insurance Company*, 2018 WL 6606079 (S.D. Illinois 2018)
- *Cabot East Broward 2 LLC v. Cabot*, 2018 WL 5905415 (S.D. Florida 2018)
- *In re Vioxx Products Liability Litigation*, 2018 WL 4613941 (E.D. Louisiana 2019)
- *Rodman v. Safeway Inc.*, 2018 WL 4030558 (N.D. California 2018)
- *Welsh v. Navy Federal Credit Union*, 2018 WL 7283639 (W.D. Texas 2018)
- *In re Anthem, Inc. Data Breach Litigation*, 2018 WL 3960068 (N.D. California 2018) ("leading study")
- *Carrel v. MedPro Group, Inc.*, 2018 WL 3617258 (N.D. Indiana 2018)
- *Rudman v. CHC Group Ltd.*, 2018 WL 3594828 (S.D.N.Y. 2018)
- *In re Akorn, Inc. Securities Litigation*, 2018 WL 2688877 (N.D. Illinois 2018)
- *Leung v. XPO Logistics, Inc.*, 326 F.R.D. 185 (N.D. Illinois 2018)
- *Xiao Ling Chen v. XpresSpa at Terminal 4 JFK LLC*, 2018 WL 1633027 (E.D.N.Y. 2018)
- *In re: National Collegiate Athletic Association Athletic Grant-In-Aid Cap Antitrust Litigation*, No. 4:14-cv-02758-CW, 2017 WL 6040065 (N.D. Ca. 2017)
- *In re Sears, Roebuck and Co. Front-Loading Washer Products Liability Litig.*, --- F.3d ---, 2017 WL 3470400 (7<sup>th</sup> Cir. 2017)
- *Good v. West Virginia-American Water Co.*, 2017 WL 2884535 (S.D. W.Va. 2017);
- *Chieftain Royalty Company v. Enervest Energy Institutional Fund XIII-A*, 861 F.3d 1182 (10<sup>th</sup> Cir. 2017)
- *Nitsch v. DreamWorks Animation SKG Inc.*, 2017 WL 2423161 (N.D. Ca. 2017)
- *McGreevy v. Life Alert Emergency Response, Inc.*, --- F.Supp.3d ---, 2017 WL 1534452 (S.D.N.Y. 2017)
- *Seijas v. Republic of Argentina*, 2017 WL 1511352 (S.D.N.Y. 2017)
- *Brown v. Rita's Water Ice Franchise Company LLC*, --- F.Supp.3d ----2017 WL 1021025 (E.D. Pa. 2017);
- *Thomas v. FTS USA, LLC*, 2017 WL 1148283 (E.D. Va. 2017);
- *Briggs v. PNC Financial Services Group, Inc.*, 2016 WL 7018566 (N.D. Ill. 2016);
- *Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215 (N.D. Ill. 2016);
- *In re TRS Recovery Services, Inc. and Telecheck Services, Inc., Fair Debt Collection Practices Act (FDCPA) Litigation*, 2016 WL 543137 (D. Me. 2016);
- *In re Urethane Antitrust Litigation*, 2016 WL 406-156 (D. Kan., July 29, 2016);
- *Laffitte v. Robert Half Intern., Inc.* 1 Cal.5th 480 376 P.3d 672 (Cal. 2016);
- *In re Polyurethane Foam Antitrust Litigation*, -- F.Supp.3d ---- 2015 WL 7348208 (N.D. Oh. 2015);
- *In re: Cathode Ray Tube (CRT) Antitrust Litigation*, 2016 WL 721680 (N.D. Ca. 2016);
- *In re High-Tech Employee Antitrust Litigation*, 2015 WL 5158730 (N.D. Ca. 2015);

- *Palmer v. Dynamic Recovery Solutions, LLC*, 2016 WL 2348704 (M.D. Fla. 2016);
- *In re: Sears, Roebuck and Co. Front-Loading Washer Products Liability Litigation*, 2016 WL 4765679 (N.D. Ill. 2016);
- *In re Pool Products Distribution Market Antitrust Litigation*, 2015 WL 4528880 (E.D. La. 2015);
- *Abbott v. Lockheed Martin Corp.*, 2015 WL 4398475 (S.D. Ill. 2015);
- *Craftwood Lumber Company v. Interline Brands, Inc.*, 2015 WL 2147679 (N.D. Ill. 2015);
- *In re IndyMac Mortgage-Backed Securities Litigation*, 94 F.Supp.3d 517 (S.D.N.Y. 2015);
- *Wilkins v. HSBC Bank Nevada, N.A.*, 2015 WL 890566 (N.D. Ill. 2015);
- *In re Capital One Telephone Consumer Protection Act Litigation*, 80 F.Supp.3d 781 (N.D. Ill. 2015);
- *In re Dairy Farmers of America, Inc.*, 80 F.Supp.3d 838 (N.D. Ill. 2015);
- *In re Colgate-Palmolive Co. ERISA Litigation*, 36 F.Supp.3d 344 (S.D.N.Y. 2014);
- *Haggart v. United States*, 116 Fed. Cl. 131 (Ct. Fed. Claims 2014);
- *Richardson v. L'Oreal USA, Inc.*, --- F.Supp.2d ----, 2013 WL 5941486 (D.D.C. 2013);
- *Swift v. Direct Buy, Inc.*, 2013 WL 5770633 (N.D. Ind. 2013);
- *Singleton v. Domino's Pizza, LLC*, --- F.Supp.2d ----, 2013 WL 5506027 (D.Md. 2013);
- *In re Schering-Plough Corp. Enhance Securities Litigation*, 2013 WL 5505744 (D.N.J. 2013);
- *In re Vioxx Products Liability Litigation*, 2013 WL 5295707 (E.D. La. 2013);
- *Evans v. TIN, Inc.*, 2013 WL 4501061 (E.D.La. 2013);
- *Silverman v. Motorola Solutions, Inc.*, --- Fed.Appx. ----, 2013 WL 4082893 (7th Cir. 2013);
- *City of Pontiac General Employees' Retirement System v. Lockheed Martin Corp.* --- F.Supp.2d ---, 2013 WL 3796658 (S.D.N.Y. 2013);
- *Gortat v. Capala Bros.*, --- F.Supp.2d ----, 2013 WL 2566622 (E.D.N.Y. 2013);
- *In re Southeastern Milk Antitrust Litigation*, 2013 WL 2155387 (E.D. Tenn. 2013);
- *Strawn v. Farmers Ins. Co. of Oregon*, 353 Or. 210, 297 P.3d 439 (Or. 2013);
- *Heekin v. Anthem, Inc.*, 2012 WL 5878032 (S.D. Ind. 2012);
- *Espenscheid v. DirectSat USA, LLC*, 688 F.3d 872, 877 (7<sup>th</sup> Cir. 2012);
- *In re Trans Union Corp. Privacy Litig.*, 629 F.3d 741, 744 (7th Cir. 2011);
- *Allapattah Servs., Inc. v. Exxon Corp.*, 362 F.3d 739, 760 (11th Cir. 2004) (Judges Tjoflat and Birch, dissenting from denial of en banc review);
- *Strawn v. Farmers Ins. Co. of Oregon*, 353 Or. 210, 297 P.3d 439 (2013);
- *In re Amaranth Natural Gas Commodities Litig.*, No. 07-6377, 2012 U.S. Dist. LEXIS 82599, at \*7 n.12 (S.D.N.Y. June 11, 2012);
- *Board of Trustees of AFTRA Ret. Fund v. JPMorgan Chase Bank, N.A.*, No. 09-686, 2012 U.S. Dist. LEXIS 79418, at \*5 n.12 (S.D.N.Y. June 7, 2012);
- *Lane v. Page*, No. 06-1071, 2012 U.S. Dist. LEXIS 74273, at \*161 (D.N.M. May 22, 2012);
- *Silverman v. Motorola, Inc.*, No. 07-4507, 2012 U.S. Dist. LEXIS 63477, at \*15 (N.D. Ill. May 7, 2012);
- *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, MDL No. 09-2046, 2012 U.S. Dist. LEXIS 37326, at \*94, \*116 (S.D. Tex. Mar. 20, 2012);
- *Walsh v. Popular, Inc.*, No. 09-1552, 2012 U.S. Dist. LEXIS 32991, at \*24 (D.P.R. Mar. 12, 2012);

- *Am. Int'l Group, Inc. v. Ace Ina Holdings, Inc.*, No. 07-2898, 2012 U.S. Dist. LEXIS 25265, at \*59 (N.D. Ill. Feb. 28, 2012);
- *Ebbert v. Nassau County*, 05-5445, 2011 U.S. Dist. LEXIS 150080, at \*41 (E.D.N.Y. Dec. 22, 2011);
- *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1336 n.4 (S.D. Fla. 2011);
- *Latorraca v. Centennial Techs., Inc.*, No. 97-10304, 2011 U.S. Dist. LEXIS 135435, at \*11 (D. Mass. Nov. 22, 2011);
- *In re Ky. Grilled Chicken Coupon Mktg. & Sales Litig.*, 2011 WL 5599129 (N.D. Ill. Nov. 16, 2011);
- *Pavlik v. FDIC*, No. 10-816, 2011 U.S. Dist. LEXIS 126016, at \*11 (N.D. Ill. Nov. 1, 2011);
- *In re Trans Union Corp. Privacy Litigation*, --- F.3d --- (7th Cir. 2011);
- *Thoroughgood v. Sears, Roebuck & Co.*, 627 F.3d 289 (7th Cir. 2010);
- *Rodriguez v. West Publishing Corp.*, 563 F.3d 948 (9th Cir. 2009);
- *Allapattah Services, Inc. v. Exxon Corp.*, 362 F.3d 739 (11th Cir. 2004);
- *In re Cendent Corp. Litigation*, 264 F.3d 201 (3d Cir. 2001);
- *Scardeletti v. Debarr*, 265 F.3d 195 (4th Cir. 2001);
- *AUSA Life Ins. Co. v. Ernst & Young*, 206 F.3d 202 (2d Cir., 2000);
- *Davis v. Carl Cannon Chevrolet-Olds, Inc.*, 182 F.3d 792 (11th Cir. 1999);
- *In re Vioxx Products Liability Litigation*, 2011 WL 3563004 (E.D.La. 2011);
- *Wren v. RGIS Inventory Specialists*, 2011 WL 1230826 (N.D.Ca. 2011);
- *In re AT&T Mobility Wireless Data Services Sales Tax Litigation*, 2011 WL 2173746 (N.D.Ill. 2011);
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- *In re Lawnmower Engine Horsepower Marketing & Sales Practices Litigation*, --- F.Supp.2d ----, 2010 WL 3310264 (E.D.Wis. 2010);
- *Klein v. O'Neal, Inc.*, 705 F.Supp.2d 632 (N.D.Tex. 2010);
- *In re Marsh Erisa Litigation*, 265 F.R.D. 128 (S.D.N.Y. 2010);
- *In re MetLife Demutualization Litigation*, 689 F.Supp.2d 297 (E.D.N.Y. 2010);
- *Braud v. Transport Service Co. of Illinois*, 2010 WL 3283398 (E.D.La. 2010);
- *Fiala v. Metropolitan Life Ins. Co., Inc.*, 27 Misc.3d 599, 899 N.Y.S.2d 531, 2010 N.Y. Slip Op. 20071 (N.Y.Sup., 2010);
- *In re Revlon, Inc. Shareholders Litigation*, 990 A.2d 940 (Del.Ch. 2010);
- *Strawn v. Farmers Ins. Co. of Oregon*, 226 P.3d 86 (Or. App. 2010);
- *In re Trans Union Corp. Privacy Litigation*, 2009 WL 4799954 (N.D.Ill. 2009);
- *Hall v. Children's Place Retail Stores, Inc.*, 669 F. Supp. 2d 399 (S.D.N.Y. 2009);
- *Loudermilk Services, Inc. v. Marathon Petroleum Co. LLC*, 623 F.Supp.2d 713 (S.D.W.Va. 2009);
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