

Spotlight: Second Circuit

This chart—which stretches across two pages—summarizes the thirty-nine class action attorney fee awards from the Second Circuit previously reported in the DIGEST. We provide the full case name and citation. For now, we include both federal and state cases together. The state case names appear in italics. Here, there are four (*Cox v. Microsoft Corp.*, *Brody v. Catell*, *Froese v Hugo Boss USA, Inc.*, and *Spring Partners, LLC v. Scharf*). Because of limited space, we have simplified some details on this chart. Readers are reminded to consult the case abstracts for the full details. We provide the volume and page number.

In a slight change from last month, we group the cases by substantive topic first, then arrange them by settlement benefits from highest recovery to lowest. There are four antitrust cases (with one also categorized as consumer), six consumer cases, and three employment cases (one involving discrimination and two involving wages and benefits). Not surprisingly, most of the cases (twenty-six) involve securities. The highest recovery was almost \$455 million (*In re Adelpia*

Communications Corp. Securities and Derivative Litigation) and the lowest recovery was \$61,000+ (*Davern v. Arrow Financial Services, LLC*).

As with our regular summary charts, this chart provides: settlement amount, attorney fees, both in dollar amounts and as a percentage of the recovery, any multiplier explicitly or implicitly awarded, and our substantive topic label. We provide the full case citation following the case name. We have added a few more categories drawn from information provided in the abstracts: expenses, hours, and judge.

We combine the information on named plaintiff/PSLRA lead plaintiff payments in one column; we list a single total amount even where more than one plaintiff received an award. One case (*In re American Express Financial Advisors Securities Litigation*) granted an award both to the named plaintiff and to the lead plaintiff under the PSLRA.

We have made two additional calculations. First, we calculated the years a case was pending from filing date to the date the fee was awarded. Here, the longest case lasted for 9.8

Case name, Citation	Substantive Topic	Settlement Benefits	Attorney Fees*
<i>Cox v. Microsoft Corp.</i> , No. 105193/2000 (N.Y. Sup. Ct. N.Y. Co. Feb. 2, 2007)	Antitrust & Consumer	\$182,886,885	\$16,459,820
In re Ethylene Propylene Diene Monomer (EPDM) Antitrust Litigation, No. 03-md-1542 (D. Conn. May 9, 2007)	Antitrust	\$82,245,000 (partial settlements)	\$17,829,000
In re Stock Exchanges Options Trading Antitrust Litigation, 2006 U.S. Dist. LEXIS 87825 (S.D.N.Y. Dec. 4, 2006)	Antitrust	\$46,899,798	\$11,090,511
In re High Pressure Laminates Antitrust Litigation, 00-md-1368 (S.D.N.Y. Oct. 25, 2006)	Antitrust	\$40,500,000	\$13,500,000
In Re "A Million Little Pieces" Litigation, No. 06-md-1771 (S.D.N.Y. Dec. 4, 2007)	Consumer	\$2,350,000	\$783,333
White v. First American Registry, Inc., 2007 U.S. Dist. LEXIS 18401 (S.D.N.Y. Mar. 7, 2007)	Consumer	\$1,900,000+	\$861,319
Limpert v. Cambridge Credit Counseling Corp. , No. 03-5986 (E.D.N.Y. Dec. 13, 2006)	Consumer	\$1,760,000-\$4,760,000+	\$528,000-\$1,428,000
Reade-Alvarez v. Eltman, Eltman & Cooper, P.C., 2006 U.S. Dist. LEXIS 89226 (E.D.N.Y. Dec. 11, 2006)	Consumer	\$69,000+	\$49,275
Davern v. Arrow Financial Services, LLC, No. 06-6655 (E.D.N.Y. Sept. 7, 2007)	Consumer	\$61,000+	\$30,000◇
In re WorldCom, Inc., No. 02-13533 (Bankr. S.D.N.Y. May 30, 2007) [Du v. WorldCom, Inc., No. 00-10327 (C.D. Cal.)]	Consumer	TSU	\$104,938
Murphy v. Super Steel Schenectady, Inc. , No. 06-480 (N.D.N.Y. Apr. 23, 2007)	Empl.-Discrim.	\$1,250,000+	\$424,000
Sines v. Service Corp. Int'l, 2006 U.S. Dist. LEXIS 25072 (S.D.N.Y. May 1, 2006)	Empl.-Wages & Benefits	\$4,450,000	\$890,000
Velez v. Majik Cleaning Service, Inc., 2007 U.S. Dist. LEXIS 46223, No. 03-8698 (S.D.N.Y. June 22, 2007)	Empl.-Wages & Benefits	\$235,000	\$65,772
In re Adelpia Communications Corp. Securities and Derivative Litigation, 2006 U.S. Dist. LEXIS 84621 (S.D.N.Y. Nov. 16, 2006)	Securities	\$454,953,437	\$97,360,035

Key: * = attorney fees generally do not include expenses unless otherwise indicated in case abstract.
 + = settlement also includes significant non-cash relief (e.g., injunctive or equitable).
 ◇ = paid separately by Defendant in addition to other settlement benefits.
 ≤1 = requested fee represents no more than lodestar.

years (*In re Sterling Foster & Co., Inc. Securities Litigation*), and the shortest was about nine months (*Davern*).

Second, we calculated the average resulting hourly rate — i.e., the fee divided by the total number of hours. (Note, this is not the lodestar rate charged to paying clients but is derived from the actual fee awarded.) As described in the full abstracts, the hours and hourly rates generally include support staff time in addition to attorney time.

We repeat some abbreviations, such as “TSU” in the Settlement Benefits column for “Total Settlement Value Unknown” (see, e.g., *In re WorldCom, Inc.*) and “+” for those cases where there is an unvalued non-cash component above the known aspect of the settlement (see, e.g., *White v. First American Registry, Inc.*). Generally, the amount reported for the fees column does not include expenses. In a few cases, however, the fee does include an unknown amount of expenses. Please read the case abstracts.

When possible, we have calculated the fee as a percentage of the total settlement. Here, the highest resultant percentage

was 49.2%, but this was in *Davern*, the \$61,000 case, and varies greatly from the next highest percentage, 33.9%, that appears in *Murphy v. Super Steel Schenectady, Inc.* The lowest percentage was 6.4% in *In re Hibernia Foods, PLC Securities Litigation*.

We also provide the multiplier either as explicitly awarded by the court or by calculating it from the underlying fee data. Sometimes, there is no multiplier data. Often the attorneys requested a fee that was less than their lodestar. Here, the highest multiplier awarded was 10.26 (*In re Doral Financial Corp. Securities Litigation*), thirteen cases had multipliers less than or equal to 1.0, and in one case, the judge specifically denied a multiplier (*In re Stock Exchanges Options Trading Antitrust Litigation*).

Finally, it is important to note that in our regular charts, we sometimes added footnotes to highlight why a certain component was slightly different. We have omitted those here.

(case continued)	Fees as % of Benefits	Expenses	Multiplier	Hours	Average hourly rate as awarded	Tot. NPA / PSLRA award	Judge	Yrs. Pend.	Vol. Page #
(Microsoft)	9.0%	Denied	1.53	34,000	\$484.11	NPA \$15,000	Moskowitz, Karla	6.9	1-133
(Ethylene)	21.7%	\$2,155,356	1.31	NS	Unknown		Underhill, Stefan R.	3.7	1-168
(Stock Exchanges)	23.6%	\$732,539	Denied	26,504	\$418.45	NPA \$3,650	Casey, Richard Conway	7.8	1-006
(High Pressure)	33.3%	\$3,570,570	NS	NS	Unknown	NPA \$130,000	Brieant, Charles L.	6.0	1-035
(AMLPL)	33.33%	\$14,801	1.05	1,721	\$455.15	NPA \$16,500	Holwell, Richard J.	1.5	1-389
(First Am.)	30.4%	\$75,000	≤1	1,956	\$440.35	NPA Denied	Kaplan, Lewis A.	3.0	1-111
(Limpert)	30.0%	\$101,251	≤1	9,000	\$58.67-\$158.67	NPA \$35,000	Platt, Thomas, C.	3.1	1-108
(Reade-Alvarez)	NA	\$725	≤1	132	\$373.30	NPA \$2,000	Sifton, Charles P.	2.6	1-041
(Davern)	49.20%	Included in AF	NS	NS	Unknown	NPA \$1,000	Feuerstein, Sandra J.	0.7	1-280
(WorldCom)	Unknown	Included in AF	≤1	NS	Unknown	NPA \$100	Gonzalez, Arthur J.	6.7	1-213
(Murphy)	33.9%	\$20,000	1.23	1,000	\$424.00	NPA \$1,145,000	Sharpe, Gary L.	1.0	1-148
(Sines)	20.0%	\$78,148	1.23	NS	Unknown		Castel, P. Kevin	2.8	1-017
(Velez)	28.0%	\$9,000	NS	NS	Unknown	NPA NS	Fox, Kevin Nathaniel	3.6	1-255
(Adelphia)	21.4%	\$1,455,131	2.89	83,038	\$1,172.48		McKenna, Lawrence M.	4.6	1-049

Key: NS = not stated in order/opinion/supporting papers.
 TSU - total settlement value unknown (e.g., non-quantified, non-monetary). See case abstract for specifics.
 Unknown = not possible to calculate because some component(s) value presently unknown (e.g., non-quantified, non-monetary).

(chart continued on pages 86-87)