UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE AMERICAN INTERNATIONAL GROUP, INC. SECURITIES LITIGATION	:	ECF CASE
	:	Master File No. 04 Civ. 8141 (DAB) (AJP)
This Document Relates To: All Actions	:	Oral Argument Requested

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

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PRELIMINARY STATEMENT

Labaton Sucharow LLP and Hahn Loeser & Parks LLP, Court-appointed Lead Counsel for the Ohio Public Employees Retirement System ("OPERS"), State Teachers Retirement System of Ohio ("STRS Ohio") and the Ohio Police & Fire Pension Fund ("OP&F") (collectively, "Lead Plaintiff" or the "Ohio State Funds") and the Settlement Class, respectfully submit this memorandum of law in support of, *inter alia*: (1) their motion, pursuant to Rules 23(h) and 54(d)(2) of the Federal Rules of Civil Procedure, on behalf of all plaintiffs' counsel ("Plaintiffs' Counsel") who contributed to the prosecution of the above-captioned action (the "Action"), for an award of attorneys' fees and reimbursement of litigation expenses to be paid out of the Cash Settlement Account, and (2) Lead Plaintiff's application for reimbursement of its reasonable costs and expenses (including lost wages) directly relating to the representation of the Settlement Class, pursuant to the Private Securities Litigation Reform Act ("PSLRA"), 15 U.S.C. §78u-4 (a)(4).[1]

Lead Plaintiff has reached a proposed settlement of the claims alleged against Defendant General Reinsurance Corporation ("Gen Re" and, together with Lead Plaintiff, the "Settling Parties"), former Gen Re CEO Ronald E. Ferguson and former Gen Re executives Richard Napier and John B. Houldsworth (collectively, the "Gen Re Defendants") in the Action for $72 million in cash (the "Settlement") under the terms set forth in the Agreement. The Settlement represents an outstanding result for the proposed Settlement Class and would resolve the Class claims against the Gen Re Defendants, which have been the subject of nearly eight years of litigation.

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[1] All capitalized terms not defined herein are defined in the Agreement of Compromise and Settlement, dated February 24, 2009 (the "Agreement"). Ex. 1. All exhibits referenced herein are annexed to the accompanying Declaration of Thomas A Dubbs in Support of Proposed Class Settlement, Plan of Allocation and Award of Attorneys' Fees and Expenses ("Dubbs Declaration"), dated July 26, 2013. For clarity, citations to exhibits that themselves have attached exhibits, will be referenced as "Ex. ___ - ___." The first numerical reference refers to the designation of the entire exhibit attached to the Dubbs Declaration and the second reference refers to the exhibit designation within the exhibit itself. Also herein, "¶ __" and "¶¶ __" refer to paragraphs of the Dubbs Declaration.

Indeed, in combination with the three previously Court-approved partial class action settlements in this Action—*i.e.*, the $725 million settlement with AIG (the "Company Settlement"), the $115 million settlement with the "Starr Defendants" (the "Starr Settlement") and the $97.5 million settlement with PricewaterhouseCoopers LLP (the "PwC Settlement")—the Settlement would completely resolve this Action and bring the total amount of the Settlement Class recovery to more than ***$1 billion***, which represents the ***10th largest*** securities class action recovery of all time. ¶ 5.

Lead Counsel respectfully seeks an award of attorneys' fees in the amount of 13.25% of the net Settlement Amount.[2] As discussed in Section I, *infra*, the fee request is very fair and reasonable when one considers: (i) the outstanding result for the Settlement Class; (ii) the amount of work done by Lead Counsel to achieve this result; (iii) the risks involved in prosecuting the claims against the Gen Re Defendants; and (iv) the amount of fees awarded by courts within this Circuit and in other circuits in comparable cases.

Lead Counsel also seeks reimbursement of $525,000 for litigation expenses reasonably incurred in the course of pursuing the claims against the Gen Re Defendants. As discussed in Section II, *infra*, this request is also reasonable, as litigation expenses incurred are the type that are regularly reimbursed by courts within this Circuit and they were necessary for the thorough prosecution of the claims.

Finally, as discussed in Section III, *infra*, Lead Plaintiff seeks reimbursement pursuant to the PSLRA of $4,885 for lost wages relating to the time expended by OPERS and STRS Ohio in representing the Settlement Class.

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[2] The net Settlement Amount is $72 million, minus litigation expenses. If the requested expenses are awarded by the Court, the fee request would be 13.25% of $71.475 million and total $9,470,437.50.

To date, no Settlement Class Members have filed objections to Lead Counsel's fee and expense requests.[3] Accordingly, Lead Counsel's fee and expense request should be granted.

ARGUMENT

I. LEAD COUNSEL IS ENTITLED TO THE REASONABLE ATTORNEYS' FEE REQUESTED HEREIN

In connection with the $115 million Starr Settlement, this Court recently approved Lead Counsel's request for an attorneys' fee award 13.25% of the net settlement fund—the same percentage requested here—reasoning that such an award "was in line with awards in similar cases, that it reflected the complexity of this Action and Lead Counsel's efforts, and that it was consistent with the agreement executed by Lead Counsel and the Ohio Attorney General's Office." *In re AIG, Inc. Sec. Litig.* ("*AIG*"), No. 04 Civ. 8141 (DAB), 2013 WL 1499412, at *3 (Apr. 11, 2013) ("Starr Settlement Approval Order"); *see also AIG*, No. 04 Civ. 8141 (DAB), 2012 WL 345509, at *2 (S.D.N.Y. Feb. 2, 2012) ("Company Settlement Approval Order") (approving a 13.25% attorneys' fee award in connection with the Company Settlement, finding, *inter alia*, that "a fee award of [13.25%] of the Net Settlement is consistent with, if not lower than, awards made in similar cases").

For all of the same reasons, this Court should approve Lead Counsel's request here.

A. A Fee of 13.25% Is Fair, Reasonable, and Comparable to Fees Awarded in Similar Cases

As noted, the Court recently approved a 13.25% attorneys' fee award in connection with the Starr Settlement. *AIG*, 2013 WL 1499412, at *8 (Starr Settlement Approval Order).

Indeed, a 13.25% attorneys' fee award falls well within, if not at the lower end of, the range of fees typically awarded by courts in common-fund cases in this Circuit since *Goldberger*. *See Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 370 (S.D.N.Y. 2002) (McMahon, J.) ("Courts in this

[3] The time for Settlement Class Members to object to the application for attorneys' fees and reimbursement of litigation expenses will expire on August 20, 2013. Any objections received will be addressed in Lead Plaintiff's reply submission, which will be filed with the Court on or before August 29, 2013.

Circuit have awarded fees ranging from 15% to 50% of the settlement fund.") (awarding 33-1/3% fee). In securities class actions and other common fund cases with comparable recoveries, courts in this District have often awarded fees ranging from 24% to 30% of the settlement fund. *See, e.g.*, *In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, 246 F.R.D. 156, 178 (S.D.N.Y. 2007) (awarding 24% of $133 million settlement); *In re Philip Servs. Corp. Sec. Litig.*, No. 98-cv-835 (AKH), 2007 WL 959299, at *3 (S.D.N.Y. Mar. 28, 2007) (awarding 26% of $79.750 million settlement); *In re Deutsche Telekom AG Sec. Litig.*, No. 00-cv-9475 (NRB), 2005 U.S. Dist. LEXIS 45798, at *12-13 (S.D.N.Y. June 9, 2005) (awarding 28% of $120 million settlement); *Kurzweil v. Philip Morris Cos.*, No. 94-cv-2373 (MBM), 1999 WL 1076105, at *1 (S.D.N.Y. Nov. 30, 1999) (awarding 30% of $123.8 million settlement).[4]

Accordingly, the amount of the fee request here is below the range of fees awarded by courts in this District in comparable cases.

B. The Requested 13.25% Fee Is Appropriate Under the *Goldberger* Factors

In determining a reasonable attorneys' fee, district courts are guided by the factors first articulated by the Second Circuit in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974). As summarized more recently in *Goldberger*, these factors include:

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

Goldberger v. Integrated Resources, Inc., 209 F.3d 43, 50 (2d Cir. 2000) (following *Grinnell*).

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[4] When the Settlement is viewed as part of the combined total of the Settlements in the Action approved by the Court to date (*i.e.*, $1.0095 billion), the combined fee request of approximately 12.43% is also within the range of other court-approved fees. *See, e.g.*, *In re HealthSouth Corp. Sec. Litig.*, No. 03-1500-S, slip op. (N.D. Ala. July 26, 2010) (Ex. 20) (awarding 15.3% of $804.5 million settlement); *Carlson v. Xerox Corp.*, 596 F. Supp. 2d 400 (D. Conn. 2009) (awarding 16% of $750,000,000 settlement); *In re Tyco Int'l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 270 (D.N.H. 2007) (awarding 14.5% of $3.2 billion settlement).

As discussed in detail below, application of these criteria here shows that Lead Counsel's fee request is clearly reasonable and warranted.

1. <u>The Time and Labor Expended by Plaintiffs' Counsel</u>

Since the initiation of the Action, Lead Counsel has tirelessly pursued the claims against the Gen Re Defendants over nearly eight years of litigation that has included:

- Motions to dismiss and for judgment on the pleadings filed by the Gen Re Defendants;
- Fact and expert discovery related to class certification, followed by a contested motion for class certification;
- The review and analysis of more than 46 million pages of documents by Defendants and non-parties prior to the Settlement, and an additional 7 million pages after the settlement, including approximately 9 million pages directly relating to the Gen Re Defendants or the Gen Re Transaction; and
- 47 depositions of fact and expert witnesses prior to the Settlement (and 50 additional depositions after reaching the proposed Settlement);
- Review and analysis the all of the trial exhibits and the voluminous trial testimony from the five-week federal criminal trial of Gen Re Defendant Ferguson in *U.S. v. Ferguson*; and
- An appeal to the Second Circuit.

¶¶ 42-72.

As detailed in the declarations submitted by Lead Counsel and other Plaintiffs' Counsel who contributed to the prosecution of the Action, Exs. 9 to 16, Plaintiffs' Counsel have devoted substantial time and effort to the prosecution of the claims against the Gen Re Defendants in this Action and to the settlement of the claims on terms very favorable to the Settlement Class. Plaintiffs' Counsel collectively devoted 9,005.14 hours to prosecution of the claims against the Gen Re Defendants, resulting in a combined "lodestar" amount of $4,129,905.02 at Counsel's regular and

current billing rates. *See* Ex. 18 (Summary Lodestar and Expense Table). As explained by the Second Circuit in *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2d Cir. 1998), "current rates, rather than historical rates, should be applied in order to compensate for the delay in payment." *See also In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115808, at *9 (S.D.N.Y. Nov. 7, 2007) (McMahon, J.) (reasoning that "use of current rates to calculate the lodestar figure has been repeatedly endorsed by courts as a means of accounting for the delay in payment inherent in class actions and for inflation"). If the Court approves the Settlement, Lead Counsel will also devote additional hours to the settlement administration and distribution process, without any additional compensation.

With respect to billing rates, Lead Counsel submits that the rates billed, averaging $415.70 per hour for attorneys, and $245.00 for all professionals,[5] are comparable to those of peer plaintiffs' and defense-side law firms litigating matters of similar magnitude in this District. Exs. 9 to 16. Sample defense firm billing rates, gathered by Labaton Sucharow from bankruptcy court filings between 2007 and 2012, in many cases exceeded these rates. Ex. 17.

It is customary and appropriate to apply an attorney's normal hourly billing rate, so long as that rate conforms to the billing rate charged by others with similar experience in the community where the counsel practices (*i.e.*, the "market rate"). *See Blum v. Stenson*, 465 U.S. 886, 895 (1984); *see also Luciano v. Olsten Corp.*, 109 F.3d 111, 115 (2d Cir. 1997) ("The 'lodestar' figure should be 'in line with those [rates] prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.'") (quoting *Blum*, 465 U.S. at 896 n.11).

With respect to the hours worked, Lead Counsel submits that the substantial time devoted to litigating the claims against the Gen Re Defendants reflects the tremendous effort needed to prosecute those claims and to bring them to a favorable resolution. There are a number of core

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[5] The hourly billing rates of Plaintiffs' Counsel ranged from $410 to $975 for partners, $550 to $775 for Of Counsels, and $250 to $665 for associates. *See* Exs. 9 to 16.

attorneys on the case who have devoted large amounts of their time to the litigation over the course of nearly eight years in order to insure continuity and to build on their knowledge base. Document review was structured to limit overall cost, with the bulk of the initial review being conducted by junior attorneys hired by Labaton Sucharow. These junior attorneys were trained and supervised by senior Labaton attorneys and worked closely with accounting experts and insurance experts in order to insure the quality of their work. ¶¶ 59-60.

In addition, substantial effort went into investigating the claims against the Gen Re Defendants; drafting three consolidated amended complaints; responding to the Gen Re Defendants' motions to dismiss; reviewing and analyzing the 46 million page document production (produced prior to the Settlement), including approximately 9 million pages directly relating to the Gen Re Defendants or the Gen Re Transaction; conducting class discovery; preparing for fact depositions; extensively analyzing loss causation issues, damages issues and complex accounting issues; and taking or defending 47 depositions of fact and expert witnesses by the time of the Settlement. ¶¶ 37-63.

Lead Counsel submits that the first *Goldberger* factor weighs strongly in favor of the requested attorneys' fee.

2. <u>The Magnitude and Complexities of the Litigation</u>

Courts have long recognized that shareholder class actions are notoriously complex and difficult to prosecute. *See, e.g.*, *Fogarazzo v. Lehman Bros., Inc.*, No. 03-cv-5194 (SAS), 2011 WL 671745, at *3 (S.D.N.Y. Feb. 23, 2011) (Scheindlin, J.) ("securities actions are highly complex"); *Merrill Lynch Research Reports*, 246 F.R.D. at 172 ("Securities class litigation is notably difficult and notoriously uncertain.").

Here, in addition to the complex issues of law and fact associated with securities class actions generally, the claims against the Gen Re Defendants presented a *sui generis* fraud involving

extraordinarily complex accounting issues. ¶¶ 17-18. As the Court is well aware, the Action arises from, *inter alia*, material misstatements and omissions allegedly made by Defendants in connection with a massive alleged accounting fraud at American International Group, Inc. ("AIG" or the "Company") that resulted in the Company restating nearly four years of earnings. One of the most significant transactions that made up the alleged accounting fraud was a sham reinsurance deal between AIG and Gen Re (the "Gen Re Transaction") that allegedly artificially inflated AIG's claims reserves by $500 million. *See* Consolidated Third Amended Class Action Complaint (the "Complaint") ¶¶ 11, 18-27, 314-464.

Lead Counsel, with the assistance of highly skilled insurance and accounting experts, devoted thousands of hours to (i) learning the applicable accounting rules; and (ii) analyzing numerous AIG accounting documents and PwC workpapers in order to piece together the documentation and fully understand the Gen Re Transaction. Indeed, the relevant issues were so complex that it took ***five weeks*** to complete the federal criminal trial of Gen Re Defendant Ferguson and four others in *U.S. v. Ferguson*, which was based solely on the Gen Re Transaction. ¶ 75.

In addition, efforts to reach the Settlement and resolve the claims against the Gen Re Defendants, involved years of extensive arm's-length negotiations including informal and formal discussions, face-to-face meetings, and two separate mediation sessions. The first mediation took place in March 2006 before mediator Kenneth Feinberg, who was later appointed by the Honorable Loretta A. Preska to oversee the distribution of AIG's settlement with the Securities and Exchange Commission ("SEC"). ¶¶ 64-65. The second took place in December 2008 before former United States District Judge Layn R. Phillips. *Id.* In addition, numerous settlement-related conferences took place over several months at the end of 2008. *Id.* These negotiations were well-informed by the years of litigation and discovery discussed above. *Id.*

At every juncture, Lead Counsel rose to newly presented challenges and was fully prepared to litigate this Action to judgment. Considering the magnitude and complexity of the claims and the result achieved, the fee request is entirely warranted.

3. <u>The Risks of the Litigation</u>

"The Second Circuit has identified 'the risk of success as "perhaps the foremost" factor to be considered in determining' a reasonable award of attorneys' fees." *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 467 (S.D.N.Y. 2004) (Lynch, J.) (quoting *Goldberger*, 209 F.3d at 54); *see also In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 592 (S.D.N.Y. 2008) (McMahon, J.) ("Courts have repeatedly recognized that 'the risk of the litigation' is a pivotal factor in assessing the appropriate attorneys' fees to award to plaintiffs' counsel in class actions."). Courts continue to recognize that "[l]ittle about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation." *Teachers' Ret. Sys. of La. v. A.C.L.N., Ltd.*, No. 01 Civ. 11814 (MP), 2004 WL 1087261, at *3 (S.D.N.Y. May 14, 2004) (Pollack, J.).

Here, the litigation risk was very significant and fully supports the fee request. Lead Counsel undertook this action on a strictly contingent-fee basis, and prosecuted the claims against the Gen Re Defendants with no guarantee of compensation or recovery of any litigation expenses. *See In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 399 (S.D.N.Y. 1999) (Pollack, J.) (class counsel not only undertook risks of litigation, but advanced its own funds and financed the litigation).[6]

The claims against the Gen Re Defendants presented particularly significant risks. Perhaps most significant was the threat of dismissal, a risk that in fact materialized. ECF 557 (September 10, 2010 Order dismissing Lead Plaintiff's claims with respect to the Gen Re Defendants).

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[6] Lead Counsel's risk encompasses not just the risk of non-payment, but also the risk of underpayment. *See In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 569-70 (7th Cir. 1992) (reversing district court's fee award where court failed to account for, among other things, risk of underpayment to counsel).

Even if the case against the Gen Re Defendants survived dismissal, without the Settlement, years of litigation would remain ahead. The prosecution of the claims would have required additional fact and expert discovery, hotly contested motions under *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993) (and likely *Daubert* hearings), summary judgment briefing on numerous issues, including loss causation and, of course, trial preparation and a trial. These efforts would require additional large expenditures of time and money over an extended period. *See In re Prudential Ins. Co. Am. Sales Practices Litig. Agent Actions*, 148 F.3d 283, 318 (3d Cir. 1998) ("[T]rial of this class action would be a long, arduous process requiring great expenditures of time and money on behalf of both the parties and the court.").

Moreover, the accounting fraud alleged with respect to the Gen Re Transaction is, at its crux, based on violations of very complex accounting rules, which might not be easily understood by a jury. In addition, it would have been challenging to prove the individual Gen Re Defendants' scienter to a jury.

The risks related to establishing loss causation also support the fee request. The Gen Re Defendants would likely argue at summary judgment and at trial that Lead Plaintiff could not establish loss causation against them unless Lead Plaintiff could show precisely how much of any decline was caused by each alleged corrective disclosure relating to the Gen Re Transaction, as opposed to other AIG or industry-related news that was made public on the alleged corrective disclosure dates. Indeed, Gen Re raised the issue of loss causation at the motion to dismiss stage, arguing, in part, that the then-operative complaint disclosed a host of AIG "firm-specific facts" and "changed economic circumstances" that came to light on one of the alleged corrective disclosure dates for the Gen Re Transaction—March 30, 2005—which were not alleged to relate to the Gen Re Defendants. ECF 188 at 5. Moreover, Defendant Ferguson raised a similar loss causation argument in 2010, in response to Lead Plaintiffs' petition for permission to appeal from the Court's

order certifying a litigation class in this Action (the "Class Certification Order"). ECF 45 (Defendant Ronald E. Ferguson's Answer to the Petition of Lead Plaintiffs for Permission to Appeal Pursuant to Federal Rule of Civil Procedure 23(f), *In re American International Group, Inc. Securities Litigation*, Nos. 10-847(L), 10-849, 10-950 (2d Cir. Mar. 31, 2010)).

Lead Plaintiff and Lead Counsel strongly believe that loss causation and resulting damages can be established with respect to the claims against the Gen Re Defendants. *See, e.g.*, ECF 356-3 (Declaration of John D. Finnerty, Ph.D. in Support of Lead Plaintiff's Motion for Class Certification) ¶ 35 (On March 30, 2005, "AIG announced that it had concluded that its documentation of [the Gen Re Transaction] was improper.") However, any resolution of damages issues necessarily would involve a "battle of the experts," with the concomitant risk that the jury could simply credit the Defendants' experts over those of Lead Plaintiffs. *See Hicks v. Stanley*, No. 01-civ-10071 (RJH), 2005 WL 2757792, at *6 (S.D.N.Y. Oct. 24, 2005) (Holwell, J.) (reasoning that "a 'battle of the experts' . . . creates a significant obstacle to plaintiffs in establishing liability"); *In re Am. Bank Note Holographics, Inc. Sec. Litig.*, 127 F. Supp. 2d 418, 426-27 (S.D.N.Y. 2001) (McMahon, J.) ("In such a battle, Plaintiffs' Counsel recognize the possibility that a jury could be swayed by experts for Defendants, who could minimize or eliminate the amount of Plaintiffs' losses"). Lead Plaintiff recognizes that at summary judgment or trial the Court or a jury could credit the Gen Re Defendants' arguments and determine that the class suffered no (or significantly smaller) recoverable damages relating to the Gen Re Transaction. *See, e.g.*, *Gordon Partners v. Blumenthal*, No. 02 Civ. 7377 (LAK), 2007 WL 1438753, at *3 (S.D.N.Y. May 16, 2007) (Kaplan J.) (granting motion for summary judgment for, *inter alia*, failure to demonstrate loss causation), *aff'd* 293 F. Appx. 815 (2d Cir. 2008); *In re Omnicom Grp., Inc. Sec. Litig.*, 541 F. Supp. 2d 546, 554-55 (S.D.N.Y. 2008) (Pauley, J.) (same), *aff'd* 597 F.3d 501 (2d Cir. 2010).

It was therefore far from assured that a jury would have found the Gen Re Defendants liable in this Action. There was also a further risk that any finding against the Gen Re Defendants could have been overturned on appeal. *See, e.g.*, *AUSA Life Ins. Co. v. Ernst & Young*, 39 F. App'x 667, 674 (2d Cir. 2002) (affirming district court's dismissal after a full bench trial); *Winkler v. NRD Mining, Ltd.*, 198 F.R.D. 355, 374 (E.D.N.Y. 2000) (granting defendants' motion for judgment as a matter of law after jury verdict for plaintiffs). Indeed, the criminal convictions of four former Gen Re officers relating to the Gen Re Transaction —including that of Gen Re Defendant Ferguson—were all vacated on appeal. ¶ 35 (citing *U.S. v. Ferguson*, 653 F.3d 61 (2d Cir. 2011), *amended and superseded by* 676 F.3d 260 (2d Cir. 2011)).

Accordingly, Lead Counsel submits that an analysis of the risks faced by the Settlement Class strongly supports the fee request.

4. The Quality of Representation

Lead Counsel also respectfully submits that the quality of its representation supports the reasonableness of the fee request.

Given the factual intricacies of the claims, the presence of numerous contested issues, and the resources possessed by the Gen Re Defendants, this Action required the expertise and capacity of Lead Counsel and its proven ability to prosecute cases over an extended period and through trial. As the Court is aware, Labaton Sucharow has many years of experience in complex federal civil litigation, particularly the litigation of securities and other class actions. Ex. 9-C. Likewise, Hahn Loeser, one of Ohio's largest and most respected law firms, has served as lead counsel in, and has defended, many class actions in the securities area, as well as in the areas of banking law, privacy, real estate, and antitrust law. Ex. 10-C.

This Court has repeatedly found that Labaton Sucharow and Hahn Loeser have skillfully and vigorously represented Class Members in the Action and achieved excellent recoveries on their

behalf. *AIG*, 265 F.R.D. 157, 168 (S.D.N.Y. 2010) (Class Certification Order); *see also AIG*, 2012 WL 345509, at *2-3 (Company Settlement Approval Order); *AIG*, 2013 WL 1499412, at *5 (Starr Settlement Approval Order); *AIG*, No. 04 Civ. 8141 (DAB), 2010 WL 5060697, at *3 (S.D.N.Y. Dec. 2, 2010) ("PwC Settlement Approval Order"), *aff'd on other grounds*, 452 F. App'x 75 (2d Cir. 2012), *cert denied*, *Rothstein v. Ohio Pub. Emp. Ret. Sys.*, 133 S. Ct. 280 (2012). Likewise, this Settlement represents a highly favorable result for the Settlement Class in the face of uniquely difficult financial and legal circumstances, and is attributable to the diligence, determination, creativity, and hard work of Lead Counsel.

The quality of opposing counsel is also important in evaluating the quality of Lead Counsel's work. *See In re Adelphia Commc'n Corp. Sec. & Derivative Litig.*, No. 03 Civ. 5755, 2006 WL 3378705, at *3 (S.D.N.Y. Nov. 16, 2006) (McKenna, J.) ("The fact that the settlements were obtained from defendants represented by 'formidable opposing counsel from some of the best defense firms in the country' also evidences the high quality of lead counsels' work."). The skill, tenacity, experience and resources of the Gen Re Defendants' counsel—including Munger, Tolles & Olson, LLP; Arnold & Porter LLP; and Paul, Hastings, Janofsky & Walker LLP—are well known.

5. <u>The Fee Request in Relation to the Results Achieved</u>

The fifth *Goldberger* factor, the relation of the fees to the Settlement, also supports the requested attorneys' fee here.

As discussed in Section I.A., *supra*, the 13.25% fee request is well within the range of fees that have regularly been awarded by courts in this District in comparable cases. Moreover, the Settlement provides the Settlement Class with an all-cash recovery of $72 million. Lead Plaintiff is not aware of any similar recovery in any private securities fraud class action from a third party situated such as Gen Re.

By comparison, the settlement reached between Gen Re and the U.S. Government in January 2010 concerning the Gen Re Transaction amounted to just $31.7 million, including $12.2 million paid to the SEC and $19.5 million paid to the U.S. Postal Inspection Service Consumer Fraud Fund. ¶ 32.

Furthermore, when the Settlement is considered in combination with the three other partial class action settlements in this Action—*i.e.*, the $725 million Company Settlement, the $115 million Starr Settlement and the $97.5 million PwC Settlement—the recovery for the Class totals more than ***$1 billion***, which represents the ***10th largest*** securities class action recovery of all time. ¶ 5.

Lead Counsel submits that given these factors, the results achieved amply support the fee request.

6. Public Policy Considerations Support the Fee Request

Courts in the Second Circuit have held that "[p]ublic policy concerns favor the award of reasonable attorneys' fees in class action securities litigation." *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02-cv-3400 (CM), 2010 WL 4537550, at *29 (S.D.N.Y. Nov. 8, 2010) (McMahon, J.). Specifically, "[i]n order to attract well-qualified plaintiffs' counsel who are able to take a case to trial, and who defendants understand are able and willing to do so, it is necessary to provide appropriate financial incentives." *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005) (Cote, J.). Moreover, attorneys' fees must be sufficient to encourage plaintiffs' counsel to bring securities class actions that supplement the efforts of the SEC and help deter future wrongdoing. *See Maley*, 186 F. Supp. 2d at 373 ("In considering an award of attorney's fees, the public policy of vigorously enforcing the federal securities laws must be considered.").

Indeed, the Supreme Court has repeatedly emphasized the importance of private securities class actions. *See, e.g.*, *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007) ("This Court has long recognized that meritorious private actions to enforce federal antifraud securities

laws are an essential supplement to criminal prosecutions and civil enforcement actions brought, respectively, by the Department of Justice and the Securities and Exchange Commission.").

As a practical matter, lawsuits such as this one can be maintained only if competent counsel can be retained to prosecute them. This will occur if courts award reasonable and adequate compensation for such services where successful results are achieved, often after years of litigation. As Judge Brieant has noted:

> A large segment of the public might be denied a remedy for violations of the securities laws if contingent fees awarded by the courts did not fairly compensate counsel for the services provided and the risks undertaken.

In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig., 724 F. Supp. 160, 169 (S.D.N.Y. 1989) (Brieant, J.).

Lead Counsel's willingness to assume the risks of this litigation resulted in a substantial benefit to the Settlement Class. Public policy supports awarding Lead Counsel's reasonable attorneys' fees and expenses.

C. The Class's Reaction to the Fee Request to Date

"The reaction by members of the Class," while not one of the formal *Goldberger* factors, "is entitled to great weight by the Court." *Maley*, 186 F. Supp. 2d at 374; *see also In re Prudential Sec. Inc. Ltd. P'ship Litig.,* 985 F. Supp. 410, 416 (S.D.N.Y. 1997) (Pollack, J.) ("In determining the reasonableness of a requested fee, numerous courts have recognized that the lack of objection from members of the class is one of the most important reasons.").

Pursuant to the Court's order preliminarily approving the Settlement (ECF 687), Lead Counsel caused nearly ***2.4 million*** copies of the Notice of Proposed Settlement, Motion for Attorneys' Fees and Expenses Award and Fairness Hearing ("Notice") and Proof of Claim forms ("Proof of Claim"), and nearly 230,000 copies of the Release Forms (when applicable), to be disseminated to potential Settlement Class Members. *See* Ex. 3 (Declaration of Eric Schachter of

Rust Consulting, Inc., dated July 24, 2013) ¶¶ 9, 13. A Summary Notice of Pendency and Proposed Settlement of Class Action ("Summary Notice") regarding the Settlement and the Fairness Hearing was published in *The Wall Street Journal* on June 11, 2013, and transmitted over *PR Newswire* on June 13, 2013. *Id.* ¶ 14. The Notice and Proof of Claim and Release Form were also posted on Labaton Sucharow's website and the website dedicated to the Settlement (which included a link to the websites for the PwC and Company Settlements) created by the Administrator, for easy downloading by potential claimants. ¶ 12. The Notice advised Settlement Class Members of the procedures and deadlines for objecting to any aspect of the Settlement. It specifically advised that Counsel intended to seek an award of attorneys' fees of 13.25% of the Settlement and reimbursement of expenses not to exceed $525,000. In addition, the Notice informed Settlement Class Members that Lead Plaintiff could seek up to $10,000 for reimbursement of its time and expenses. *See* Notice, Ex. 3-A, at 2. In fact, Lead Counsel seeks fees based on the *net* Settlement Amount (*i.e.* $72 million minus $525,000) and reimbursement of expenses of $525,000, and Lead Plaintiff seeks reimbursement of only $4,885 for its lost wages.

Although the deadline to object to the fee request is not until August 20, 2013, to date there have been no objections by putative Settlement Class Members to the request for fees and expenses. After the objection deadline has passed, Lead Counsel will address the substance of any objections in its reply papers, which will be filed with the Court on or before August 29, 2013.

II. LEAD COUNSEL SHOULD BE REIMBURSED FOR LITIGATION EXPENSES REASONABLY INCURRED IN CONNECTION WITH THIS ACTION

In addition to a reasonable attorneys' fee, Lead Counsel respectfully seeks reimbursement in the amount of $525,000 for litigation expenses reasonably incurred in connection with prosecuting the claims against the Gen Re Defendants. This is the amount reported to the Settlement Class in the Notice. Ex. 3-A, at 2. It is, in fact, less than the amount of the actual litigation expenses that

Plaintiffs' Counsel incurred in connection with the prosecution of the claims against the Gen Re Defendants, which total $531,826.12. Exs. 9 to 16 and 18.

Lead Counsel has submitted declarations attesting to the accuracy of their expenses and it is well-established that such expenses are properly recovered by counsel. *See, e.g.*, *In re Indep. Energy Holdings PLC Sec. Litig.*, 302 F. Supp. 2d 180, 183 n.3 (S.D.N.Y. 2003) (Scheindlin, J.) (court may compensate class counsel for reasonable litigation expenses necessary to representation of class); *In re Arakis Energy Corp. Sec. Litig.*, No. 95-cv-3431, 2001 WL 1590512, at *17 n.12 (E.D.N.Y. Oct. 31, 2001) ("Courts in the Second Circuit normally grant expense requests in common fund cases as a matter of course.").

Where applicable, Plaintiffs' Counsel's declarations, annexed as Exhibits 9 to 16 of the Dubbs Declaration, itemize the various categories of expenses incurred. Lead Counsel submits that these expenses were reasonably and necessarily incurred in prosecuting the claims against the Gen Re Defendants and achieving the proposed Settlement. Lead Counsel further submits that these expenses, which include costs such as expert and consultant fees, the cost of mediation, the costs of establishing and using an electronic database to conduct discovery, and the costs related to taking depositions "are the type for which 'the paying, arms' length market' reimburses attorneys" and should therefore be reimbursed from the Settlement Fund. *Global Crossing*, 225 F.R.D. at 468; *see also* ¶¶ 105-111.

The most significant expense was the cost of consulting and testifying experts who provided critical assistance in the areas of accounting, insurance, loss causation, and damages.[7] As discussed above, securities cases involving accounting issues require extensive and costly expert analysis. Expert expenses totaled $437,576.16, and represented more than 82% of total expenses. ¶ 108, Ex. 9-B. Lead Counsel received crucial advice and assistance from these highly experienced experts

[7] The accounting expert Lead Plaintiff used to assist with analyzing defendants' accounting documents and prepare for depositions on accounting issues served in the same capacity in the *Enron* litigation.

throughout the course of the litigation. Their expertise enabled counsel to fully frame the issues, gather relevant evidence, make a realistic assessment of provable damages, and structure a resolution of the claims.

Additionally, Lead Counsel paid $56,622.68 for mediation fees assessed by the mediators used in this matter. ¶ 109. These impartial "referees" were instrumental in enabling the Settling Parties to define and eventually narrow the areas of dispute so that a resolution could be reached. *Id.*

III. THE OHIO STATE FUNDS ARE ENTITLED TO REIMBURSEMENT OF REASONABLE COSTS AND EXPENSES, INCLUDING LOST WAGES

The PSLRA limits a class representative's recovery to an amount "equal, on a per share basis, to the portion of the final judgment or settlement awarded to all other members of the class," but also provides that "[n]othing in this paragraph shall be construed to limit the award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of a class." 15 U.S.C. §78u-4(a)(4).

Given that the central objective of the PSLRA was to "protect investors who join class actions against lawyer-driven lawsuits by . . . increasing the likelihood that parties with significant holdings in issuers . . . will participate in the litigation and exercise control over the selection and actions of plaintiff's counsel," *In re Cavanaugh*, 306 F.3d 726, 737 (9th Cir. 2002), it would be unreasonable to deny reimbursement to class plaintiffs, like the Ohio State Funds, for devoting time to the litigation. *See also In re Xcel Energy, Inc. Sec., Derivative & "ERISA" Litig.*, 364 F. Supp. 2d 980, 1000 (D. Minn. 2005) (recognizing the important public policy role of lead plaintiffs, "if there were no individual shareholders willing to step forward and pursue a claim on behalf of other investors, many violations of law might go unprosecuted.").

Here, OPERS seeks $2,483 in lost wages, Ex. 4 (Declaration of OPERS General Counsel, Julie E. Becker, Esq.) ¶ 16, and STRS Ohio seeks $2,402 in lost wages, Ex. 5 (Declaration of STRS

Ohio General Counsel, William J. Neville, Esq.) ¶ 14. Together, OPERS and STRS Ohio seek just $4,885 in lost wages related to their active participation in this Action.

This request relates to approximately 30 hours of time that has not been previously reimbursed by the Court and is well below the $10,000 expense cap reported in the Notice. To date, there have been no objections to this request. Overall, OPERS and STRS Ohio have devoted at least 710 hours to the Action, including meetings with counsel, time devoted to responding to extensive document requests and interrogatories and producing more than 260,000 pages of documents, preparation for and attendance at ten class discovery depositions, many of which lasted an entire day, review of court filings and correspondence and telephone conversations with counsel. Exs. 4 and 5. While assisting with the prosecution of this Action and the claims against the Gen Re Defendants, OPERS and STRS Ohio employees were unable to perform their regular responsibilities on behalf of their Funds, which lost those services. *Id.*

As explained in counsels' declarations, the hourly rates utilized are based on the Ohio State Funds' employees' annual salaries with benefits and related administrative overhead (*e.g.*, $175 per hour for general counsel of the Funds). *See In re Charter Commc'ns, Inc. Sec. Litig.*, No. 02-cv-1506 (CAS), 2005 WL 4045741, at *24-25 (E.D. Mo. June 30, 2005) (Shaw, J.) (awarding institutional lead plaintiff $26,625 based on managing director's estimated hourly rate of $300, and noting that "Courts in this District have routinely approved such reimbursements").

This Court has previously awarded reasonable payments to compensate OPERS and STRS Ohio for their litigation efforts on behalf of the Settlement Class in connection with the Company, Starr and PwC Settlements. *See AIG*, 2012 WL 345509, at *6 (Company Settlement Approval Order, awarding $71,910); *AIG*, 2013 WL 1499412, at *8 (Starr Settlement Approval Order, awarding $7,805); *AIG*, 2010 WL 5060697, at *3 (PwC Settlement Approval Order, awarding $30,000). Many other courts have also approved such payments. *See, e.g.*, *In re Satyam Computer*

Services Ltd. Sec. Litig., No. 09-2027, slip op. (S.D.N.Y. Sept. 13, 2011) (Jones, J.) (Ex. 20) (awarding $193,111 to four institutional lead plaintiffs); *In re Marsh & McLennan Cos., Inc. Sec. Litig.*, 2009 WL 5178546, at *21 (S.D.N.Y. Dec. 23, 2009) (awarding $144,657 to NJ Attorney General's Office and $70,000 to Ohio Funds); *In re General Motors Corp. Sec. & Derivative Litig.*, No. MDL 1749, slip op. (E.D. Mich. Jan. 6, 2009) (awarding $184,205 to two institutional class representatives and $1,000 to each of the named plaintiffs).

Lead Counsel and the Ohio State Funds respectfully submit that the $4,885 sought, based on Lead Plaintiff's extensive involvement in the Action from inception to settlement, is eminently reasonable and should be granted.

CONCLUSION

For the foregoing reasons, Lead Counsel respectfully requests that this Court award attorneys' fees of 13.25% of the net Settlement Amount; reimbursement of litigation expenses in the amount of $525,000; and reimbursement of Lead Plaintiff's expenses in the amount of $4,885. A proposed order will be submitted with Lead Counsel's reply papers.

Dated: New York, New York
July 26, 2013

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