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Working Hard or Making Work? Plaintiffs' Attorney Fees in Securities Fraud Class Actions

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In this article, we study attorney fees awarded in the largest securities class actions: "mega-settlements." Consistent with prior work, we find larger fee awards but lower percentages in these cases. We also find that courts are more likely to reject or modify fee requests made in connection with the largest settlements. We conjecture that this scrutiny provides an incentive for law firms to bill more hours, not to advance the case, but to help justify large fee awards—"make work." The results of our empirical tests are consistent with plaintiffs' attorneys investing more time in litigation against larger companies, with the largest potential damages, particularly when there are multiple lead counsel firms. We find a similar pattern with relative efficiency, with more hours per docket entry for the largest-stake cases with multiple lead counsel firms. Overall, our results suggest that plaintiffs' attorneys are receiving windfall fee awards in at least some mega-settlement cases at shareholders' expense.

I. Introduction

The role of plaintiffs' attorneys in securities fraud class actions has been controversial for decades, with the relationship between plaintiffs' attorneys and class representatives raising the most fraught questions. Class counsel typically have a much greater interest in the outcome of the case—in the form of the fee award by the court if the litigation produces a settlement for the class—than the representative plaintiff, who typically will receive only a small percentage of any settlement. Because fee awards are typically taken out of the settlement amount, class counsel and class members have potentially

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conflicting interests. The representative plaintiff's relatively modest stake in the settlement, however, means that monitoring of this conflict may be lax. Lax monitoring could allow plaintiffs' attorneys to overreach in the fees they request.

The Federal Rules of Civil Procedure attempt to check this potential overreaching by requiring judicial scrutiny of class action settlements and determination of the fee award. There are recurring questions, however, about the rigor of court review. Congress attempted to rein in fee awards when it adopted the Private Securities Litigation Reform Act of 1995, which limits awards to a "reasonable" percentage of the settlement. There is evidence that this reform has put downward pressure on the average fee award, but eye-popping numbers still show up in the largest cases. For example, in a securities class action filed in 2014 in the Southern District of New York against the Brazilian state-controlled Petroleo Brasileiro SA, plaintiffs' attorneys received a fee award of $186.5 million after working 324,307 hours and obtaining a settlement of $3 billion.

The enormous fee awards seen in cases with the largest settlements—"mega-settlements"—are the focus of this article. Specifically, we investigate whether the fee awards that accompany mega-settlements compensate plaintiffs' attorneys for risks they take on when working on contingency cases. Alternatively, courts may be rewarding attorneys simply for winning the lead counsel spot in the largest cases—a reward by association—without regard to the effort needed to prosecute such cases or the actual risk faced by the plaintiffs' attorneys. This question has important implications for courts trying to calibrate fee awards in securities class actions. It should also matter to policymakers considering potential reforms to the fee-setting process.

We find evidence of "make work"—hours billed in the largest cases not to advance the case but to support a big fee award. The results of our empirical tests are consistent with plaintiffs' attorneys investing more time in litigation against larger companies, with the largest potential damages, particularly when there are multiple lead counsel firms. We find a similar pattern with relative efficiency, with more hours per docket entry for the largest-stake cases with multiple lead counsel firms.

Overall, our results suggest that plaintiffs' attorneys are receiving windfall fee awards in at least some mega-settlement cases at shareholders' expense. Although there typically is strong evidence of corporate wrongdoing in cases leading to the mega-settlements, this evidence often comes to light prior to the involvement of plaintiffs' attorneys through restatements, SEC and other government investigations, and/or the termination of top officers. We conjecture that courts are conflating valuable fraud claims with the incremental value provided by a plaintiffs' attorney in litigating the case. If the preexisting evidence of fraud is strong, plaintiffs' attorneys face less risk and there is less need for these attorneys to develop innovative legal theories and uncover evidence. Knowing that a large settlement is likely, plaintiffs' attorneys may anticipate a need to justify a large fee award—leading them to "make work."

We proceed as follows. Section II reviews the relevant literature and develops our hypotheses. Section III describes our dataset and variables. Section IV presents our empirical tests. Section V concludes with a discussion of the potential policy implications of our findings.

II. Background

II.A. Literature

Only one empirical study has focused specifically on attorney fees in securities class actions. Lynn Baker, Michael Perino, and Charles Silver examined 431 securities class actions that settled in federal district court between 2007 and 2012 (Baker et al. 2015). A number of other empirical studies, however, have looked at attorney fees as part of broader examinations of securities class actions (Choi 2011; Choi & Thompson 2006; Cox & Thomas 2006; Perino 2003) Additionally, the economic consulting firm NERA has collected descriptive data, including data related to attorney fees, on every securities class action filed since 1996 (Boettrich & Starykh 2019).

Other researchers have examined attorney fees in class actions more generally. Theodore Eisenberg, Geoffrey Miller, and Roy Germano, for example, examined the award of attorney fees in class actions filed between 1993 and 2013, primarily focusing on reported cases during this period (Eisenberg et al. 2017; Eisenberg & Miller 2004, 2010).[1] Brian Fitzpatrick conducted a similar study, examining all class action settlements approved by federal courts during the two-year period from 2006 to 2007 (Fitzpatrick 2010).

Together, these studies offer significant insight into the award of attorney fees in these lawsuits. Some of their findings confirm the conventional wisdom. For example, given that courts typically award plaintiffs' attorneys a percentage of the overall recovery,[2] one would anticipate that fees increase as settlement amounts increase, and the data bear this out. At the same time, however, several studies have shown that attorneys receive a smaller percentage of the recovery as the size of the recovery increases. In securities class actions, for example, NERA found that in cases involving a settlement amount of less than $10 million, the median fee award was approximately 30 percent of the settlement amount. In cases with settlements over $1 billion, the median fee award was approximately 15 percent (Boettrich & Starykh 2019).

The studies also shed light on the methods courts use to set fees. Under Rule 23 of the Federal Rules of Civil Procedure, federal courts can only award "reasonable attorney's fees."[3] The Private Securities Litigation Reform Act (PSLRA) narrows this further, providing that fees cannot exceed a "reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class."[4] In securities class actions, the responsibility for ensuring that fee awards comply with these limits falls on both lead plaintiffs,

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[1]The first two studies were published by Theodore Eisenberg and Geoffrey Miller alone. Roy Germano was added as an additional co-author of the third study.

[2]See, e.g., 15 U.S.C. § 78u–4(a)(6) (limiting fees to a "reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class").

[3]Fed. R. Civ. P. 23(h).

[4]15 U.S.C. § 78u–4(a)(6).

who are supposed to monitor fee requests, and courts, which ultimately have the responsibility to set these fees. Despite this dual monitoring, the empirical evidence suggests that neither group is particularly good at carrying out its responsibilities.

In enacting the PSLRA, Congress envisioned that institutional investors would negotiate fees as part of the process of selecting their counsel in securities class actions. The Baker et al. study (2015), however, did not find much evidence that institutional lead plaintiffs reach ex ante agreements with their counsel regarding fees. Specifically, the lead plaintiff candidate or the court discussed an ex ante agreement during the appointment process in only approximately 11 percent of cases, and even when they did, judges rarely seemed to consider these ex ante agreements in setting fees.

Ex post, institutional lead plaintiffs may exercise more oversight over fee requests, although the evidence is mixed here as well. Choi et al. (2005) report that attorney fees, measured as a percentage of the recovery, are if anything higher with private institutional lead plaintiffs after the enactment of the PSLRA compared with the pre-PSLRA period; they also report that no significant correlation exists between fees and public pension funds after the enactment of the PSLRA once they control for the size of the case. A later study by Choi (2011), however, examining securities class actions filed from 2003 to 2005, found that certain types of lead plaintiffs—those with larger claimed losses, institutional plaintiffs, and those that frequently serve as lead plaintiff—are associated with lower mean fees as a percentage of the settlement. That study also finds more hours worked by attorneys with institutional investor lead Perino (2012), too, after controlling for case quality, finds that cases with public pension lead plaintiffs have larger recoveries, but lower fee requests and fee awards, than cases with other lead plaintiff types. Perino also finds a spill-over effect: fee requests have generally declined over time, suggesting that lower fees negotiated by institutional investors have reduced the going rate in cases with individual investors serving as lead plaintiffs as well.

Choi et al. (2011) study the relation between campaign contributions to politicians who govern institutional lead plaintiffs and the level of attorney fees in securities class actions. They find that state pension funds generally pay lower attorney fees when they serve as lead plaintiffs in securities class actions than do individual investors serving in that capacity, and larger funds negotiate for lower fees. This differential disappears, however, when they control for campaign contributions made to officials with influence over state pension funds. This effect is most pronounced for state pension funds that are controlled by individuals who receive the largest campaign contributions and that associate repeatedly as lead plaintiff with a single plaintiffs' attorney firm. Thus, pay to play appears to increase agency costs borne by shareholders in securities class actions, undermining one of Congress's principal goals in adopting the PSLRA. Choi et al. (2011) do not, however, find any correlation between campaign contributions and weaker cases. It appears that plaintiffs' attorneys are willing to invest in access to potential lead plaintiffs only for cases in which there is likely to be competition to serve as lead counsel.

On balance, these studies suggest that the rise of institutional investors may have reduced fee percentages on average, although that trend appears to have taken time to develop post-PSLRA. The studies do not, however, support the conclusion that institutional shareholders are consistently the active watchdogs that Congress envisioned when it adopted the lead plaintiff provision of the PSLRA.

Substantial doubts also persist about the role of judges in overseeing attorney fees. Rule 23 and the PSLRA both contemplate that judges will protect class members by rejecting unreasonable fee requests. The Baker et al. study (2015) found, however, that judges typically rubberstamp these requests in securities class actions. Judges award the fees requested by plaintiffs' counsel in approximately 85 percent of cases, although judges in districts that see a high volume of securities class actions are more likely to cut fees than judges in low-volume districts. Other than this specific finding, however, they observe that fee cuts are "essentially random events, driven more by judges' predilections and biases than the merits of the fee requests." The authors argue that their findings reveal that "the current system of ex post fee-setting in securities class actions is deeply flawed."

The studies also shed light on how judges use lodestar figures in reviewing fee requests. The lodestar is typically reported by plaintiffs' attorneys in their attorney fee motion and equals the number of hours worked times the hourly rate for each attorney. In calculating fee awards, judges often require documentation of the plaintiffs' attorneys' hours and lodestar as a way of cross-checking the reasonableness of the fees.[5] Yet the Baker et al. study found that lodestar cross-checks can have unintended consequences. All else equal, judges award higher fees when fee requests include a lodestar cross-check than when these requests rely solely on the percentage method. The authors conclude that attorneys may be using lodestar data strategically, including it only when their requests may otherwise appear excessive (Baker et al. 2015).

II.B. Hypotheses

The existing studies shed light on attorney fees in securities class actions generally, but they do not examine how fee requests and awards diverge when cases have radically different amounts at stake. There is a significant difference between the $10–$20 million settlements in typical securities class actions and the $3 billion settlement in the Petrobras litigation. To date, however, researchers have not examined how these differences influence the incentives that underlie fee requests and awards, at least beyond the general finding that plaintiffs' attorneys receive higher fees in securities class actions that end with larger settlements.

The purpose of this study is to compare fee requests and awards in the highest-stakes cases with those in other securities class actions. Do plaintiffs' attorneys invest more time in higher-stakes litigation? If so, is this additional time driven by the needs of the litigation or the by the desire to justify a higher fee request? Do judges serve as a meaningful check on fee requests in cases that generate the largest settlements? To shed light on these questions, we postulate the following series of hypotheses regarding the behavior of plaintiffs' attorneys and the responses of judges.

Hypothesis 1: Courts will rarely reject fee awards, except in the largest cases.

[5]See, e.g., Goldberger v. Integrated Res., Inc., 209 F.3d 43, 50 (2d Cir. 2000).

Judges are the ultimate arbiters of fee awards in securities class actions, and plaintiffs' attorneys therefore know that they will have to justify their fee requests to the court if and when the case settles. Judges have significant incentives, however, to approve fee requests so as to purge complicated cases from their docket. Judges may also be poorly placed to second-guess fee requests after the fact, especially in larger cases, which may require reviewing voluminous time records. If judges are unlikely to reject fee awards, plaintiffs' attorneys will have more leeway to inflate their fee requests.

This hypothesis finds support in the findings of Baker et al. (2015), who find that rejections of fee applications are essentially random. They did not examine, however, whether judges' review of fee applications varied with the amount at stake in the litigation. Plaintiffs' attorneys have strong incentives in high-stakes litigation to inflate their hours to justify large fees by doing either duplicative or unnecessary work. That incentive structure would suggest that those cases warrant greater judicial scrutiny of fee applications. Moreover, the sheer magnitude of the fee requests in the mega-settlements may provoke greater judicial scrutiny. We hypothesize that judges may be more likely to reject fee awards in higher-stakes litigation than in low-settlement-value cases.

Hypothesis 2: Plaintiffs' attorneys work significantly more hours in the top decile of settlements and receive significantly higher fees from these settlements.

Our second hypothesis builds on the prior empirical research, which finds that judges in securities class actions typically award the plaintiffs' attorneys a percentage of the settlement fund as attorney fees. Given this finding, we predict that plaintiffs' attorneys will receive significantly higher fees in the top decile of settlements in securities class actions. Even in these larger cases, however, judges typically use a lodestar cross-check to confirm the reasonableness of the fee request. We posit that plaintiffs' attorneys will work significantly more hours in these larger cases to justify the larger fee awards. We therefore predict that the top decile of cases will result in both larger fee awards and higher lodestar numbers.

Hypothesis 3: Higher-stakes litigation will induce greater resistance from defendants, raising the marginal benefit from more work by plaintiffs' attorneys (the "working hard" hypothesis).

Our data show that attorney fees in securities class actions rarely exceed one-third of the total settlement amount, regardless of the amount of the lodestar presented in the fee application. This consistent finding, which we call the "de facto 33 percent cap," suggests that plaintiffs' attorneys cannot expect to be compensated for hours they put into the case that would exceed this percentage. (Or to put it differently, they will receive a lower average hourly rate if they exceed a certain threshold.)

In higher-stakes litigation, plaintiffs' attorneys are unlikely to run up against this de facto cap because the expected settlement value is so large that any credible lodestar amount will still be well below a third of the settlement. Moreover, in higher-stakes litigation, plaintiffs' attorneys are likely to meet greater resistance from the defense, justifying greater investment in the litigation. The functional lack of a cap in these cases means

that plaintiffs' attorneys can invest more hours into building the cases—for example, by investigating and researching possible claims, poring through discovery, and filing and responding to motions—because they know that they are likely to be paid for this work if the case settles.

In smaller cases, however, the expected cap may constrain attorney hours. If plaintiffs' attorneys have already put in enough hours to justify a fee of one-third of the settlement amount, investing more hours in the litigation will not offer the plaintiffs' attorneys any direct return. Only efforts that are likely to substantially increase the settlement size or the likelihood of settlement—by more than three expected dollars for every dollar invested—will be worthwhile from the attorney's perspective. Plaintiffs' attorneys may limit their efforts in smaller cases to avoid investing too much in the litigation. Consequently, we predict that higher-stakes litigation raises the marginal benefit from more work on the part of plaintiffs' attorneys and thus will correspond to more investment of attorney hours.

Hypothesis 4: Higher-stakes litigation will encourage plaintiffs' attorneys to inflate their hours by doing work that is not necessary (the "make work" hypothesis).

Not all this additional work in higher-stakes litigation may be necessary. Given that the attorney fees in higher-stakes litigation are typically well below the de facto 33 percent cap, plaintiffs' attorneys have more leeway in these cases to inflate their hours. A higher lodestar may help justify a fee award that is 25 percent of the settlement fund, rather than 20 percent, a difference that can amount to tens of millions of dollars in the largest cases. In contrast, in smaller cases in which the lodestar is already pushing close to the de facto 33 percent cap, plaintiffs' attorneys will have an incentive to conserve their hours, as spending more time will not increase their share of the settlement. We therefore predict that in higher-stakes litigation, plaintiffs' attorneys will be more likely to inflate their hours by doing work that is not necessary.

III. Dataset and Variable Description

Our study includes every securities class action with a disclosure claim filed in federal court between 2005 and 2016, a total of 1,719 cases; 1,556 of those cases had been resolved by the time we did our analysis. We initially identified the class actions in our dataset using data provided to us by Professor Michael Klausner at Stanford Law School and from Cornerstone Research. We reviewed court dockets and case filings on Bloomberg Law to gather information on the contest for lead plaintiff, including the number of applicants, the alleged losses of the appointed lead plaintiff, and the law firm(s) appointed as lead counsel.[6] We also coded the allegations in the final

[6]The coverage on Bloomberg Law is comprehensive, but not universal, particularly for cases earlier in our sample period, so there is some variation on the number of observations for our variables.

consolidated complaint. We then documented the final resolution of each case. In every case that ended with a settlement, we collected data regarding the terms of the settlement, the fees requested by lead counsel and awarded by the court, and the hours worked and lodestar data. We supplemented the litigation data with the defendant corporations' market capitalization measured on the last day of the class period, which we obtained from CRSP. Market capitalization is our proxy for the coverage limits of the directors' and officers' liability policy, which is a critical factor limiting settlement sizes.

Panel A of Table 1 reports the fraction of cases that resulted in a settlement, which is nearly half the resolved cases (47.7 percent). Panel A also reports the fraction of cases with an attorney fee motion where the court rejected the motion at least partially (21.2 percent).

Panel B of Table 1 reports further summary statistics on the variables related to those cases that settled. Settlement Amount is the size of the settlement in millions of dollars conditional on a settlement. The mean Settlement Amount is $39.5 million while the median is $7.5 million.

Attorney Fee Award is the amount of fees awarded to plaintiffs' attorneys in settled cases in millions of dollars. The median is only $1.9 million, but the mean is $6.5 million, suggesting that the latter number is skewed by the fee awards in the largest cases. Attorney Hours is the number of hours in thousands as reported by the plaintiffs' attorney firms with their motions for attorney fees. We have data on attorney hours only when there is a settlement and the plaintiffs' attorneys submit a motion for attorney fees, but hours are reported in 93 percent of the settled cases (or 693 cases). Hourly Fee is the Attorney Fee Award divided by Attorney Hours (reported in dollars per hour). The average rate is $688 per hour. Percent of Settlement is the Attorney Fee Award divided by the Settlement Amount. Both the mean and median are about a quarter of the settlement amount. Lodestar is the billing number in millions of dollars that the plaintiffs' attorney firms report in the motion for attorney fees. The lodestar (in millions) represents the number of hours times the hourly rate for the plaintiffs' attorney firms. This quoted hourly rate is largely hypothetical; these firms rarely work for clients who directly pay their bills. Multiplier is the Attorney Fee Award divided by the Lodestar Amount.

Panel C of Table 1 reports summary statistics on lead plaintiffs and lead counsel firms. Lead Plaintiff Number is the number of lead plaintiffs; the mean is just shy of two. Lead Plaintiff Any Institution is defined as 1 if any of the lead plaintiffs is an institutional investor, and 0 otherwise. The institutional investors in our sample are primarily state and local pension funds and labor union pension funds; institutional investors appear as lead plaintiffs in 54.9 percent of the cases. Lead Plaintiff Initial Motions is the initial number of motions for lead plaintiff. This number is a proxy for initial interest among lead plaintiff firms in the litigation. The mean is just below three. Lead Counsel Number is the number of law firms appointed as lead counsel (mean = 1.3). Multiple Lead Counsel is defined as 1 if the number of lead counsel law firms is greater than one and 0 otherwise; 30 percent of the cases have more than one lead counsel firm. Big Law Firm is defined as 1 if any of the lead counsel law firms acts as lead counsel in at least 100 of the class actions in our sample and 0 otherwise.

Panel D of Table 1 reports summary statistics on the allegations in the class action (the "Case Characteristic" variables). The Case Characteristic variables include the

Table 1: Case Characteristics

Panel A

Variable	N	*Fraction of Cases*
Settlement outcome	1,556	0.477
Reject fee	707	0.212

Panel B

Variable	N	*Mean*	*Median*	SD
Settlement amount	742	39.508	7.500	166.499
Attorney fee award	714	6.479	1.882	15.383
Attorney hours	693	11.480	3.255	27.193
Hourly fee	686	687.977	553.730	504.105
Percent of settlement	714	0.252	0.250	0.064
Lodestar	694	5.227	1.643	12.040
Multiplier	687	1.365	1.105	0.992

Panel C

Variable	N	*Mean*	*Median*	SD
Lead plaintiff number	1,589	1.870	1.000	1.281
Lead plaintiff any institution	1,589	0.549	1.000	0.498
Lead plaintiff initial motions	1,609	2.955	2.000	2.048
Lead counsel number	1,612	1.325	1.000	0.538
Multiple lead counsel	1,612	0.299	0.000	0.458
Big law firm	1,612	0.609	1.000	0.488

Panel D

Variable	N	*Mean*	*Median*	SD
Restatement	1,693	0.229	0.000	0.420
SEC action	1,693	0.228	0.000	0.420
Other Gov. action	1,693	0.249	0.000	0.433
Officer termination	1,693	0.454	0.000	0.498
Section 11	1,703	0.187	0.000	0.390
Section 12	1,703	0.166	0.000	0.372
Other allegation	1,703	0.029	0.000	0.167
Accounting	1,693	0.250	0.000	0.433
Merger	1,692	0.051	0.000	0.221
Backdating	1,693	0.023	0.000	0.150
Credit crisis	1,693	0.083	0.000	0.275
FDA	1,692	0.120	0.000	0.325
IPO	1,693	0.106	0.000	0.308
FCPA	1,693	0.019	0.000	0.136
No. officer & director defendants	1,703	4.707	3.000	3.751
Underwriter	1,702	0.147	0.000	0.355
Accounting firm	1,703	0.083	0.000	0.276
SIC 28	1,723	0.087	0.000	0.282
SIC 73	1,723	0.086	0.000	0.280
SIC 36	1,723	0.070	0.000	0.255

Table 1: *Continued*

Panel D

Variable	N	*Mean*	*Median*	SD
CD CAL	1,723	0.088	0.000	0.283
ND CAL	1,723	0.093	0.000	0.291
SDNY	1,723	0.265	0.000	0.441
NJ	1,723	0.044	0.000	0.204
MA	1,723	0.039	0.000	0.195
ND ILL	1,723	0.030	0.000	0.171
SD FL	1,723	0.030	0.000	0.171

following, all obtained from the last filed complaint.[7] Although information may come to light after the last filed complaint, we focus on the allegations specified in the complaint as a measure of the information that the plaintiffs considered important at the time of the filing of the final complaint: (1) accounting restatement (Restatement); (2) SEC investigation or enforcement action (SEC Action); (3) other government action (Other Gov. Action);[8] (4) termination of a top officer, (Officer Termination);[9] (5) a Section 11 allegation (Section 11); (6) a Section 12 allegation (Section 12); (7) other alleged violation of the securities laws (Other Allegation); (8) a violation of GAAP accounting without a restatement (Accounting); (9) Merger (Merger); (10) option backdating (Backdating); (11) the late 2000s credit crisis (Credit Crisis); (12) an initial public offering (IPO); and (13) a violation of the Foreign Corrupt Practices Act (FCPA). We also track from the complaint: (14) the total number of officer and director defendants (No. Officer & Director Defendants); (15) whether an underwriter is a defendant (Underwriter); and (16) whether an accounting firm is a defendant (Accounting Firm). We track those SIC two-digit industries (SIC 28, SIC 36, and SIC 73) with at least 100 cases in our dataset that have firm defendants that operate in the specific industry (the "Industry Controls"). Finally, we track the federal district courts with at least 50 cases in our dataset (CD CAL, ND CAL, SDNY, NJ, MA, ND ILL, SD FL) (the "Court Controls").

IV. Empirical Analysis

IV.A. Initial Observations

We start by examining the differences among class actions in the dataset, in particular whether actions resulting in the largest settlements have characteristics that distinguish

[7]Most cases include a Rule 10b-5 count, so we do not separately code for this.

[8]We limit both SEC Action and Other Gov Action to conduct that is substantially the same as that alleged in the complaint.

[9]This category includes chief executive officer, chief financial officer, chief operating officer, treasurer, chief technology officer, chief information officer, chief compliance officer, president, and general counsel.

Table 2: Settlement Amount and Attorney Fees

Settlement Decile	*Settlement Amount*	*Fee Award*	*Hourly Fee*	*Attorney Fees %*	*Institutional Lead Plaintiff*	*Big Law Firm*
1	1.1	0.3	431.9	0.268	0.237	0.474
2	2.1	0.6	475.3	0.270	0.375	0.575
3	3.0	0.8	645.4	0.278	0.367	0.519
4	4.2	1.1	751.4	0.274	0.507	0.479
5	6.4	1.7	569.8	0.271	0.506	0.506
6	9.0	2.3	700.8	0.254	0.621	0.642
7	12.9	3.2	727.1	0.250	0.795	0.689
8	21.1	5.0	791.2	0.239	0.653	0.640
9	41.6	9.7	864.8	0.234	0.849	0.781
10	295.5	39.5	938.3	0.185	0.958	0.797

NOTES: The Settlement Amount is in millions of dollars and includes only settled cases.

them from smaller settlements. Table 2 reports the Settlement Amount and Attorney Fee Award by settlement decile. Mega-settlements are not the norm: 90 percent of the class actions that settle result in a settlement award of under $50 million and attorney fees of under $10 million.

The top decile of settlements, however, differs considerably. The mean Settlement Amount of the top decile is $295.5 million and the mean Attorney Fee Award is $39.5 million. The top decile also stands out as having the highest Hourly Fee ($938 per hour), but attorney fees for this decile are the smallest Percent of Settlement. Plaintiffs' attorneys make more absolute dollars in top decile settlements, but, consistent with prior research, those fee awards are a smaller percentage of settlement amount.

Importantly for our analysis, out of the 714 settlements with information on the plaintiffs' attorney fee award in our dataset, only two exceeded one-third of the settlement amount, and even then only marginally (one was 33.6 percent and the other 34 percent). We also see that the type of lead plaintiff and lead counsel firm differs for the top decile settlements. Institutional investors act as lead plaintiff for almost all the top decile settlements. Big Law Firms are also more likely to act as lead counsel for the top decile settlements.

For our analysis of attorney fees, we focus on the number of hours reported by plaintiffs' attorneys in their motions for attorney fees. The Attorney Fee Award is a function of the hourly rate × the number of hours × the multiplier.[10] To confirm that hours relate to fee awards, we estimate an OLS regression with Attorney Fee Award as the dependent variable. We include hours and multiplier as independent variables. The results (untabulated) confirm that hours reported in fee requests correlate positively with awards. The coefficients for both Hours and Multiplier are positive and significant at the

[10]The multiplier is a risk adjustment applied to the hourly rate × the number of hours to compensate plaintiffs' attorneys for the risks they bear in the litigation (which include the risk of not receiving any compensation if the case is dismissed). We leave a more in-depth examination of the multiplier to future research. We also do not focus on the hourly rate in this article. Although there are interesting questions relating to the benchmarks plaintiffs' attorneys use to set the hourly rate in their fee requests, we leave this for future research as well.

1 percent level. These results hold when we add indicator variables for the circuits in which the district courts sit and year effects.

IV.B. Potential Stakes and a Proxy for Incentives for Make Work

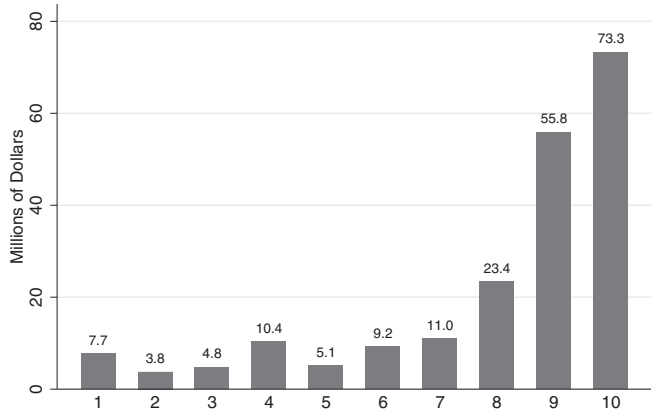
To assess attorneys' incentives to invest in litigation, we construct a measure of potential stakes observable at the time of the filing of the initial complaint. Higher-stakes litigation will raise the marginal benefit from more work on the part of plaintiffs' attorneys and thus will correspond to more justifiable work hours—the "working hard" hypothesis. At the same time, higher-stakes litigation may also result in work that merely adds to the lodestar—the "making work" hypothesis—because the expected attorney fees for large cases are typically well below the de facto 33 percent cap. Without that hard constraint, attorneys may have more leeway to inflate their hours by doing duplicative or unnecessary work. For smaller-stakes litigation, if the minimum number of plaintiffs' attorney hours to litigate an action already results in attorney fees that exceed one third of the settlement, then investing more time will not produce a direct return for the plaintiffs' attorneys since additional hours will not garner a larger fee award. Of course, more hours may still be worthwhile if they increase the probability or size of a settlement by a sufficient amount (in other words, they represent "working hard"). Plaintiffs' attorneys constrained by the de facto 33 percent cap will not have an incentive to simply "make work" to inflate hours if the additional hours do not substantially increase the probability or size of settlement.

For our measure of potential litigation stakes, we use the market capitalization of the defendant firm measured at the last day of the class period, which will typically be the day before the last alleged corrective disclosure event. We assume that greater market capitalization positively correlates with potential damages. Larger market capitalization firms tend to have more generous D&O policies, which would also correspond to a higher expected settlement amount. Accordingly, we construct an indicator variable, Large Market Cap, for firms in the top decile of market capitalization for our sample.

To assess the relation between our measure of potential litigation stakes and the settlement amount that plaintiffs' attorney can expect to achieve in each market cap decile, we compute the expected settlement amount for each market capitalization decile. We define the expected settlement amount as equal to the mean settlement amount for cases in our sample in each decile; we treat cases that did not result in a monetary recovery (i.e., cases that were dismissed) as equal to a zero settlement amount. Figure 1 depicts the mean expected settlement amount for each market capitalization decile, showing a steep increase for the largest deciles.

Comparing the expected settlement amount for the Large Market Cap decile with actions against companies in the lower deciles, the mean expected settlement amount for the Large Market Cap decile is $73.3 million, while the mean is $13.7 million for the actions in the lower deciles (difference significant at the 1 percent level). Large Market Cap would appear to be a reasonable proxy for the potential litigation stakes. (We use alternative measures of litigation stakes in our robustness analysis.)

Figure 1: Mean expected settlement amount by market cap decile.

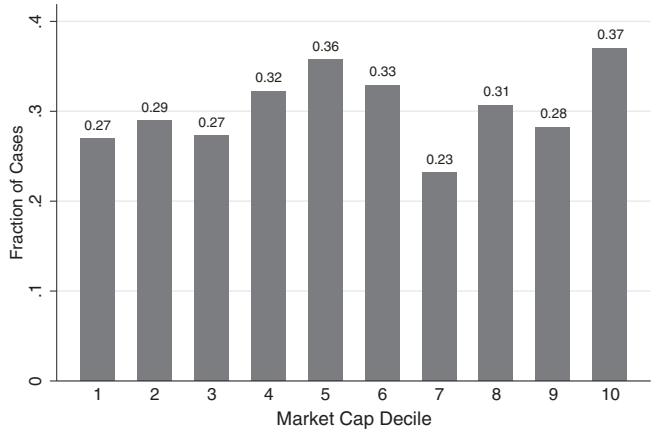


Do higher litigation stakes correspond with greater plaintiffs' attorney hours? Yes. The mean hours for Large Market Cap actions that settle in our sample is 55,300 hours and the mean hours for non-Large Market Cap actions that settle is 8,700 hours. This difference is significant at the 1 percent level.

To distinguish between whether Large Market Cap actions have more hours because such actions require greater work by plaintiffs' attorneys—"working hard"—or, in contrast, because plaintiffs' attorneys take advantage of the relatively large settlement amounts in such actions to engage in unjustified work so as to extract larger fees from the class—"making work"—we use a proxy that we conjecture is correlated with making work but not with working hard: the number of firms appointed as lead counsel. In the majority of class actions in our sample, there is only a single lead plaintiff firm. In 30 percent of the cases, however, the court appoints multiple lead plaintiff firms. Having more lead counsel could create pressure for duplicative work as each firm bills hours for the same matter. Depositions, for example, may have multiple attorneys from different plaintiffs' attorney firms attend (and billing hours) when there are multiple lead counsel firms, even if only one attorney is asking questions. We are skeptical that multiple law firms are required to litigate even the largest cases because the large plaintiffs' attorney firms all have many lawyers and significant experience litigating securities class actions. Moreover, contract lawyers can easily be hired for routine work such as document review, so firms can scale up if the litigation demands it.

We posit that multiple lead counsel firms correspond with more duplicative work and a need to increase attorney fees to compensate the different firms involved in the litigation—which will increase "make work." Figure 2 shows that there are multiple lead counsel actions in each market cap decile, which would seem to undercut the argument that multiple lead counsel are a response to the workload expected for the case. Although market cap decile 10 (the largest market cap decile) has the highest incidence of multiple lead counsel (37 percent of cases), it is closely followed by market cap decile 5 with 36 percent.

Figure 2: Incidence of multiple lead counsel.



Market cap decile 7 (the fourth largest) has the lowest incidence at 23 percent of cases. Thus, Figure 2 also suggests that law firms do not join together in an attempt to diversify their risk in the higher-stakes cases; multiple lead counsel are represented in every decile.

In a companion paper (Choi et al. 2020), we show that most initial motions for lead plaintiff are filed with only a single law firm as the proposed lead counsel. These filings indicate that, at least when the litigation is commenced, the majority of movants represent to the court that a single law firm is capable of prosecuting the litigation. Our companion paper demonstrates that prior relationships among plaintiffs' attorney firms and between plaintiffs' attorney firms and institutional investors correspond with the presence of multiple lead counsel firms, and not the specific characteristics of the case. For initial motions, the presence of a relationship between attorney firms and certain institutional investor movants for lead plaintiff corresponds with motions that propose multiple lead counsel. We also find that although the typical class action has several lead plaintiff motions, many of these motions will either be withdrawn or combined before the judge chooses the lead plaintiff and lead counsel. When motions combine, the number of lead counsel appointed typically increases. The existence of prior relationships between law firms corresponds with the decision to withdraw or combine. Finally, our companion paper finds that the correspondence of prior relationships between law firms on decisions to withdraw or combine does not increase with our proxies for the importance of synergies between law firms, such as smaller firms benefiting from the resources of other firms. Accordingly, we use the presence of multiple lead counsel as a proxy for the incentive to "make work."

IV.C. Judicial Scrutiny of Fees

Attorneys invest in cases knowing that there will be judicial review of fee requests. Table 1 shows that courts generally approve fee awards. Larger cases—and larger fee requests—

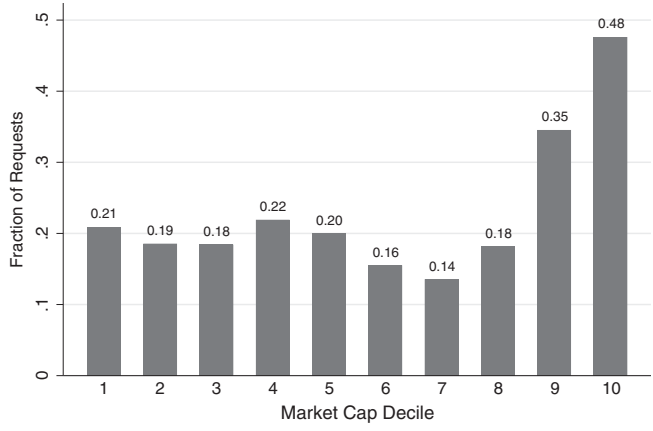
might signal to courts, however, that attorneys have an incentive to "make work." Thus, larger cases may invite closer scrutiny of fee requests. We examine the likelihood that courts will reject fee requests, including modifications that reduce the awarded attorney fees, in cases with differing amounts at stake. Figure 3 depicts the fraction of fee requests that are rejected or reduced by the court in determining the attorney fee award.

Figure 3 shows that courts rejected 47.6 percent of the fee requests in the Large Market Cap decile, more than twice the rate for the other deciles, in which courts rejected only 19.5 percent of the fee requests (difference significant at the 1 percent level).

These findings show that courts do reject or reduce fee requests in some cases, and that the largest cases are reviewed more skeptically. We conjecture that this more demanding scrutiny gives attorneys an incentive to report a large number of hours in the cases against the biggest companies to bolster their argument for a large fee award. To assess the likelihood of rejection of a fee award by the court in a multivariate framework, we estimate a logit model as follows:

$$\begin{aligned} Prob(RejectFee_i) = {} & \alpha + {}_1 Multiple\ Lead\ Counsel_i \\ & + {}_2 ln(Market\ Capitalization)_i \\ & + {}_3 Large\ Market\ Cap_i \\ & + {}_4 Large\ Market\ Cap \times Multiple\ Lead\ Counsel_i \\ & + {}_5 Lodestar_i + {}_6 Requested\ AttorneysFee_i \\ & + {}_7 Big\ LawFirm_i + Industry\ Controls \\ & + Court\ Controls + Year\ Effects + \varepsilon_i \end{aligned}$$

Figure 3: Incidence of court rejection of fee request.



We posit that there is a discontinuous increase in the incentive to make work for the very largest class actions, for which the 33 percent de facto cap on attorney fees as a percentage of settlement amount is not a constraint. Large Market Cap allows us to roughly capture this discontinuous increase. To control for the possibility that the incentive to make work may increase continuously with market capitalization, we include the log of market capitalization as an independent variable in the model (ln(Market Capitalization)).

To test for whether judges are more likely to reject fees for cases with multiple lead counsel, we include an indicator variable for Multiple Lead Counsel and an interaction term between Large Market Cap and Multiple Lead Counsel. We control for other factors that may influence a court in rejecting a fee request in addition to Large Market Cap. We include the Lodestar amount because courts may be more comfortable awarding higher fees if attorneys report more hours. On the other hand, Figure 3 suggests that larger requests may invite more scrutiny, so we include the amount of the Requested Attorney Fee. We include the presence of a Big Law Firm, which may have greater credibility as a repeat player. Finally, we include our Industry and Court Controls, as well as year fixed effects. We estimate the model with robust standard errors. We report the results in Table 3.

The coefficient for Large Market Cap is positive and significant at the 5 percent level, which is consistent with more scrutiny in the largest cases. Measured at the mean values for the independent variables, the probability of a judge rejecting some part of the attorney fee request is 31.1 percentage points higher for class actions against Large Market Cap defendants. The coefficients for Multiple Lead Counsel and the interaction term between Multiple Lead Counsel and Large Market Cap, however, are insignificant. Thus, we do not find evidence that courts scrutinize more closely when multiple lead counsel have been appointed. This is perhaps not too surprising, given that the court appointed the multiple lead counsel at the outset of the case. Rejecting the fee from multiple lead counsel would indicate that the court had encouraged inefficiency with its initial appointment.[11]

Consistent with the pattern seen in Figure 3, the larger fee requests seem to invite greater scrutiny; the coefficient for Requested Attorney Fees is positive and significant at the 1 percent level. For a $1 million increase in the requested attorney fees, the probability of a judge rejecting some part of the attorney fee request is 1.1 percentage points higher (measured at the mean values for the independent variables). Greater lodestars,

[11]Most actions in our dataset with multiple lead counsel had two lead counsel firms (92 percent). Only 7 percent of the actions with multiple lead counsel had three lead counsel firms and 1 percent had four lead counsel firms. As a robustness test, we replaced the Multiple Lead Counsel indicator variable and interaction between Multiple Lead Counsel and Large Market Cap with a variable for the number of lead counsel and interaction between the number of lead counsel and Large Market Cap. Unreported, we obtained the same qualitative results as in Table 3. Neither the coefficients on the number of lead counsel nor the interaction between the number of lead counsel and Large Market Cap were significantly different from zero.

Table 3: Attorney Fee Request Rejection

	Model 1 Rejection
Multiple lead counsel	−0.062
	(−0.25)
ln(Market capitalization)	−0.037
	(−0.55)
Large market cap	1.474*
	(2.49)
Large market cap × Multiple lead counsel	−0.810
	(−0.90)
Lodestar	−0.084**
	(−3.24)
Requested attorney fees	0.072**
	(4.05)
Big law firm	−0.090
	(−0.41)
Constant	−1.494+
	(−1.67)
Industry controls	Yes
Court controls	Yes
Year fixed effects	Yes
N	637
Pseudo R^2	0.130

$^{+}p < 0.10$;
$^{*}p < 0.05$;
$^{**}p < 0.01$.
NOTE: *z* statistics in parentheses.

however, make rejection less likely; the coefficient for Lodestar is negative and significant at the 1 percent level. The probability of a judge rejecting some part of the attorney fee request is 1.3 percent lower for a $1 million increase in the lodestar.[12] We also ran the model with an additional interaction variable between Large Market Cap and Lodestar (untabulated). The interaction variable was insignificant. We find no evidence that the lodestar is more important in the largest cases.

[12]Lodestar and the Requested Attorney Fees are correlated (correlation coefficient = 0.89). We re-estimate the model in Table 3 with Requested Attorney Fees and not Lodestar. The coefficient on Requested Attorney Fees is positive and significant at the 1 percent level, consistent with the model in Table 3. We re-estimate the model in Table 3 with Lodestar and not Requested Attorney Fees. The coefficient on Lodestar is no longer significantly different from zero. Although Lodestar and Requested Attorney Fees are correlated, they capture two opposing forces on a judge's incentive to reject fees: the presence of evidence that work was in fact conducted by the plaintiffs' attorney firms (as represented by the Lodestar) and the attempt by plaintiffs' attorneys to receive more than the lodestar by arguing for risk compensation in the form of a multiplier above the lodestar (as represented by the Requested Attorney Fees).

Separately, we compare cases with and without a lodestar submitted. We find no significant difference between cases with and without a lodestar with respect to settlement size or amount of attorney fees, but cases with a lodestar have significantly higher attorney fees as a percentage of the settlement (t test significant at the 1 percent level). These findings suggests that attorneys can reduce their likelihood of having their fee request rejected by submitting a greater lodestar. Bolstering the lodestar, however, would provide an impetus for "making work." We explore that possibility in the analysis that follows.

IV.D. Working Hard Versus Making Work

Hours Generally

To distinguish between the working hard and making work hypotheses, we use the presence of multiple lead counsel as our proxy for when plaintiffs' attorneys will have a greater incentive to generate duplicative hours, making unnecessary work. We start with a multivariate ordinary least squares model using hours as the dependent variable and Multiple Lead Counsel, ln(Market Capitalization), and Large Market Cap as independent variables.

$$\begin{aligned} \textit{Attorney Hours}_i = \quad & \alpha + {}_1\textit{Multiple Lead Counsel}_i \\ & + {}_2 ln(\textit{Market Capitalization})_i \\ & + {}_3\textit{Large Market Cap}_i \\ & + {}_4\textit{Lead Plaintiff Initial Motions}_i \\ & + {}_5\textit{Lead Plaintiff Any Institution}_i \\ & + {}_6\textit{Big Law Firm}_i + \textit{Industry Controls} \\ & + \textit{Court Controls} + \textit{Year Effects} + \varepsilon_i \end{aligned}$$

We include several control variables associated with the lead plaintiff motions, lead plaintiffs, and lead counsel firms that may correspond to both case merits and hours worked. We add the number of initial lead plaintiff motions (Lead Plaintiff Initial Motions) to control for the level of interest among potential lead plaintiffs and lead plaintiff firms. This interest may correspond to otherwise unobservable characteristics associated with either the merits of the action or the likelihood of a large settlement. We add an indicator variable for whether any lead plaintiff is an institutional investor (Lead Plaintiff Any Institution); institutional investors may have greater ability and incentive to monitor the work of plaintiffs' attorney firms. We add an indicator variable for Big Law Firm to control for the additional resources of law firms that have the size and specialization to bring numerous securities class actions. We include the Case Characteristic variables as well as the Industry and Court Controls. We include year fixed effects and estimate the model with robust standard errors. We report the results in Model 1 of Table 4.

The coefficient on Multiple Lead Counsel is positive and weakly significant at the 10 percent level. Multiple Lead Counsel corresponds to 3,731 more attorney hours. This is consistent with the making work hypothesis.[13]

To help identify causality between attorneys with greater incentives to make unnecessary work—cases with multiple lead counsel—we perform a difference-in-difference analysis comparing the differential in hours between multiple and single lead counsel actions for the bottom nine market cap deciles and the top market cap decile (Large Market Cap). We predict that the incentive for making work will be strongest for actions against Large Market Cap defendants with multiple lead counsel. In these cases, plaintiffs' attorneys are unlikely to be constrained by the de facto 33 percent cap on plaintiffs' attorney fee awards. For this analysis, we add an interaction term for Large Market Cap × Multiple Lead Counsel to Model 1 of Table 4 and report the results in Model 2 of Table 4.

In Model 2 of Table 4, the coefficient on Large Market Cap × Multiple Lead Counsel is positive and significant at the 1 percent level. The coefficient for Multiple Lead Counsel is insignificant in this model. Thus, we find no evidence that Multiple Lead Counsel corresponds with greater incentives to make work in the smaller market capitalization deciles. These deciles are more likely to be constrained by the 33 percent cap. The differential between Multiple Lead Counsel and single lead counsel cases increases by 35,610 hours for the Large Market Cap decile. This is consistent with attorneys with the greatest incentive to make work doing so in cases for which the de facto 33 percent cap is unlikely to constrain fees.

Our selection of Large Market Cap as a proxy for the litigation with the highest stakes giving plaintiffs' attorneys the greatest incentive to make work only imprecisely captures this incentive.[14] As a robustness test, we rerun the models using two alternative measures of the stakes of the litigation. The first estimates class period losses defined as the return a buy-and-hold investor who purchased at the beginning of the class period

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[13]Although we include indicator variables for the federal district courts with at least 50 cases in our dataset, it is possible that attorney behavior in the Ninth Circuit may vary from that in other circuits. For the time period of our dataset, the Ninth Circuit employed an informal 25 percent benchmark on attorney fees as a percent of the settlement. Despite this benchmark, a number of class actions in the Ninth Circuit in our dataset settled for more than 25 percent of the settlement. For example, the top 5 percent of attorney fee award percentages in the Ninth Circuit were at 33 percent. As well, even if the Ninth Circuit's 25 percent benchmark constrains awards, it is unlikely to affect attorney behavior in the Large Market Cap decile where attorney fees are routinely less than 25 percent of the settlement amount. For the Large Market Cap decile in our sample, the mean attorney fees for the Ninth Circuit (18.7 percent) were not significantly different from the mean attorney fees for the other circuits (18.8 percent). To test the impact of the Ninth Circuit in our multivariate model for attorney hours, we add an indicator variable for the Ninth Circuit to Model 1 of Table 4. We also add an interaction term between Large Market Cap and Ninth Circuit. Unreported, neither the coefficients on Ninth Circuit or the Large Market Cap × Ninth Circuit interaction term are significantly different from zero.

[14]Nonetheless, higher levels of market capitalization correspond with the expected settlement amount, as indicated in Figure 1. We regressed the expected settlement amount, equal to the settlement amount in the case of a settlement outcome and zero in the case of a no-recovery outcome such as a dismissal, on ln(Market Capitalization) and the square of ln(Market Capitalization). Unreported, the coefficient on ln(Market Capitalization) was negative and significant at the 5 percent level and the coefficient on the square of ln(Market Capitalization) was positive and significant at the 1.1 percent level, indicating that higher levels of market capitalization are correlated with increasing expected settlement amounts.

Table 4: Hours and Proxies for Large-Stakes Litigation

	Model 1	*Model 2*
	Hours (1,000s)	*Hours (1,000s)*
Multiple lead counsel	3.731^{+}	1.367
	(1.66)	(0.62)
Ln(Market capitalization)	2.420**	2.490**
	(4.54)	(4.74)
Large market cap	21.23**	8.395
	(3.17)	(1.30)
Large market cap × Multiple lead counsel		35.61**
		(2.75)
Lead plaintiff initial motions	1.132*	1.217*
	(2.15)	(2.35)
Lead plaintiff any institution	3.753**	3.423*
	(2.68)	(2.49)
Big law firm	5.106**	5.042**
	(2.80)	(2.85)
Restatement	−5.078*	−4.032^{+}
	(−1.97)	(−1.65)
SEC action	−0.103	−0.0776
	(−0.05)	(−0.04)
Other gov. action	5.199*	5.075*
	(2.56)	(2.56)
Officer termination	3.573*	2.922^{+}
	(2.06)	(1.75)
Section 11	−1.527	−1.961
	(−0.60)	(−0.74)
Section 12	2.044	2.722
	(0.91)	(1.23)
Other allegation	11.00	6.764
	(1.22)	(0.82)
Accounting	1.359	2.674
	(0.57)	(1.22)
Merger	2.810	0.235
	(0.49)	(0.05)
Backdating	−11.85**	−11.13**
	(−2.91)	(−2.81)
Credit crisis	4.156	5.298
	(0.90)	(1.18)
FDA	−0.346	0.109
	(−0.12)	(0.04)
IPO	−7.915*	−7.684*
	(−2.40)	(−2.38)
FCPA	16.01	15.97
	(0.63)	(0.63)
No. officer & director defendants	1.574**	1.567**
	(3.33)	(3.38)
Underwriter	5.298+	4.757
	(1.75)	(1.50)
Accounting firm	9.338*	8.990*

Table 4: *Continued*

	Model 1	*Model 2*
	Hours (1,000s)	*Hours (1,000s)*
	(2.47)	(2.39)
Constant	−48.07**	−48.21**
	(−5.37)	(−5.39)
Industry controls	Yes	Yes
Court controls	Yes	Yes
Year fixed effects	Yes	Yes
N	630	630
Adj. R^2	0.385	0.407

$^{+}p < 0.10$;
$^{*}p < 0.05$;
$^{**}p < 0.01$.

NOTE: *t* statistics in parentheses. Hours is defined as the number of hours submitted in the motion for attorney fees in the class action in question in thousands.

and held until the day after the end of the class period experienced relative to the return from the alternative of purchasing stock that performed similar to the S&P 500 index during the same period (the "Adjusted Class Period Return"). We multiply the adjusted class period return by the number of shares outstanding for the corporate defendant on the last day of the class period to obtain an estimate of potential class period losses ("Class Period Loss"). The second measure is potential securities class action damages as calculated by Cornerstone Research ("Cornerstone Damages").[15] The results for these estimations (untabulated) are qualitatively similar to the models presented in Table 4.[16]

[15]The Cornerstone Research estimate of potential damages for a class action is based on stock price movements on specific corrective disclosure dates identified in the plan of allocation contained in the settlement notice for the class action and assumes the entire price change on these dates is attributable to damages. Because this measure does not adjust for possible confounding information, it likely overstates the true recoverable damages. For cases with Rule 10b-5 allegations, we used Cornerstone Research's "Simplified Tiered Damages." See Cornerstone Research, Securities Class Action Settlements: 2019 Review and Analysis (2019) at endnote 6 p. 18 ("Because of these and other simplifying assumptions, the [simplified tiered] damages measure used in settlement outcome modeling may be overstated relative to damages estimates developed in conjunction with case-specific economic analysis."). Note that the Simplified Tiered Damages are correlated with market capitalization of the defendant company. See id. at 5. For cases with only Section 11 and/or Section 12(a)(2) claims, we used Cornerstone Research's "Simplified Statutory Damages" measure based on the difference between the statutory purchase price and the statutory sales price. See id. at p. 7. The "Simplified Statutory Damages" do not consider possible loss causation defenses and make a number of simplifying assumptions and thus only imperfectly capture Section 11 damages.

[16]Our tests using the first alternative measure find that the interaction term between Large Class Period Loss × Multiple Lead Counsel is positive and significant at the 5 percent level, with Large Class Period Loss cases with multiple lead counsel corresponding to 32,580 more hours compared with Large Class Period Loss cases with a single lead counsel. Our second set of tests using the Cornerstone measure of damages had slightly more mixed results. The interaction term between Large Class Period Loss × Multiple Lead Counsel is not significant at conventional levels of significance when focused on cases in the top 10 percent of the distribution of Cornerstone damages. When we rerun the tests using an indicator variable for cases in the top 20 percent of the distribution of Cornerstone Damages and an interaction with Multiple Lead Counsel, however, the results are significant. These results are consistent with multiple lead counsel corresponding to greater hours for larger-stake cases, albeit with a more expansive definition of large stakes.

Overall, our finding suggest that attorneys are more likely to make work in cases for which the de facto 33 percent cap does not constrain fees.[17]

Hours and a Continuous Measure of Stakes

To test whether Multiple Lead Counsel correspond to greater hours worked compared with single lead counsel as the stakes in the litigation increase without utilizing a specific breakpoint, we re-estimate Model 2 of Table 4 replacing Large Market Cap and the Large Market Cap × Multiple Lead Counsel interaction term with the square of ln(Market Capitalization) and an interaction term between the square of ln(Market Capitalization) × Multiple Lead Counsel. The model is as follows:

$$\begin{aligned} Attorney\,Hours_i = {} & \alpha + {}_1 Multiple\,Lead\,Counsel_i \\ & + {}_2 ln(Market\,Capitalization)_i \\ & + {}_3 ln(Market\,Capitalization)_i^2 \\ & + {}_4 ln(Market\,Capitalization)_i^2 \times Multiple\,Lead\,Counsel_i \\ & + {}_5 Lead\,Plaintiff\,\,Initial\,Motions_i \\ & + {}_6 LeadPlaintiff\,Any\,Institution_i \\ & + {}_7 Big\,LawFirm_i + Industry\,Controls \\ & + Court\,Controls + Year\,Effects + \varepsilon_i \end{aligned}$$

We report the results in Model 1 of Table 5.

The coefficient on the square of ln(Market Capitalization) × Multiple Lead Counsel is positive and significant at the 1 percent level. The increase in the positive relationship between market capitalization and the number of hours for larger market capitalization cases is greater for cases with multiple lead counsel compared with single lead counsel. This is consistent with our tests in Table 4.

[17]As an additional robustness test, we replaced the Multiple Lead Counsel indicator variable and interactions with Multiple Lead Counsel with a variable for the number of lead counsel and interactions with the number of lead counsel in Models 2 and 3 of Table 4. Unreported, we obtained qualitative results similar to those in Models 2 and 3 of Table 4. We did the same replacement for our robustness tests using Large Class Period Loss and Large Cornerstone Damages. The coefficient on the interaction terms between the number of lead counsel and Large Market Cap, Large Class Period Loss, and Large Cornerstone Damages are all positive. The interaction terms are significant at the 1 percent level, 5 percent level, and 28.6 percent level (insignificant), respectively.

Table 5: Hours and Continuous Measures of Large Stakes

	Model 1 *Hours (1,000s)*
Multiple lead counsel	−18.76*
	(−2.46)
ln(Market capitalization)	−15.42**
	(−3.17)
ln(Market capitalization)^2	0.682**
	(3.53)
ln(Market capitalization)^2 × Multiple lead counsel	0.129**
	(2.77)
Lead plaintiff initial motions	1.187*
	(2.18)
Lead plaintiff any institution	3.556**
	(2.62)
Big law firm	4.976**
	(2.79)
Restatement	−5.096*
	(−2.04)
SEC action	−0.331
	(−0.17)
Other gov action	4.955*
	(2.39)
Officer termination	3.678*
	(2.18)
Section 11	−1.710
	(−0.66)
Section 12	1.524
	(0.68)
Other allegation	9.516
	(1.12)
Accounting	1.836
	(0.81)
Merger	3.630
	(0.67)
Backdating	−12.17**
	(−3.06)
Credit crisis	2.340
	(0.50)
FDA	1.006
	(0.38)
IPO	−7.958*
	(−2.42)
FCPA	17.43
	(0.69)
No. officer & director defendants	1.604**
	(3.48)
Underwriter	6.220*
	(2.07)
Accounting firm	8.136*
	(2.09)

Table 5: *Continued*

	Model 1 *Hours (1,000s)*
Constant	67.05*
	(2.17)
Industry controls	Yes
Court controls	Yes
Year fixed effects	Yes
N	549
Adj. R^2	0.492

$^{+}p < 0.10$;
$^{*}p < 0.05$;
$^{**}p < 0.01$.

NOTE: t statistics in parentheses. Hours is defined as the number of hours submitted in the motion for attorney fees in the class action in question in thousands.

As a robustness test, we repeated the analysis in Table 5 using our two alternate measures of stakes, Class Period Loss and Cornerstone Damages. The results of these estimations (untabulated) were qualitatively similar to the result of the model in Table 5.[18]

One caveat to our results is that our data are cross-sectional and may not control for every aspect of the characteristics of a case. The differential in the level of hours for cases with multiple lead counsel and large market capitalization defendants may be due

[18]For the first robustness model, we add ln(Class Period Loss) to Model 1 of Table 5. We replace the square of ln(Market Capitalization) and the square of ln(Market Capitalization) × Multiple Lead Counsel interaction term with the square of ln(Class Period Loss) and an interaction for the square of ln(Class Period Loss) × Multiple Lead Counsel. The coefficient on the square of ln(Class Period Loss) × Multiple Lead Counsel is positive and significant at the 5 percent level, consistent with our tests in Table 4. For the larger-stake cases measured by Class Period Loss, cases with multiple lead counsel correspond to greater hours compared with cases with a single lead counsel.

In the second model, we add ln(Cornerstone Damages) to Model 1 of Table 5. We replace the square of ln(Market Capitalization) and the square of ln(Market Capitalization) × Multiple Lead Counsel interaction term with the square of ln(Cornerstone Damages) and an interaction for the square of ln(Cornerstone Damages) × Multiple Lead Counsel. The coefficient on the square of ln(Cornerstone Damages) × Multiple Lead Counsel is positive and significant at the 10 percent level. Unlike our test in Model 4 of Table 4 above, for the larger stake cases measured by Cornerstone Damages, cases with multiple lead counsel weakly correspond to greater hours compared with cases with a single lead counsel.

Our theory is that the differential in hours for multiple lead counsel and single lead counsel will appear for cases only at the upper range of stakes. Accordingly, we do not include interactions between Multiple Lead Counsel and ln(Market Capitalization), ln(Class Period Loss), and ln(Cornerstone Damages) in the model in Table 5. As a robustness test, we include these additional interaction terms in Model 1 of Table 5 and the models using alternative measures of litigation stakes. Unreported, we obtain similar qualitative results as in Table 5. The interactions between Multiple Lead Counsel and the square of ln(Market Capitalization), ln(Class Period Loss), and ln(Cornerstone Damages) remain positive and significant at the 5 percent, 5 percent, and 10 percent levels respectively. Interestingly, the coefficients on the interactions between Multiple Lead Counsel and ln(Market Capitalization), ln(Class Period Loss), and ln(Cornerstone Damages) are negative and significant at the 10 percent levels. For cases at the lower range of stakes, multiple lead counsel corresponds with fewer hours compared with single lead counsel.

Table 6: Efficiency

	Model 1 *Hours per Docket Entry*
Multiple lead counsel	−30.99*
	(−1.97)
ln(Market capitalization)	−34.84**
	(−3.57)
ln(Market capitalization)^2	1.643**
	(4.21)
ln(Market capitalization)^2 × Multiple lead counsel	0.269**
	(2.68)
Lead plaintiff initial motions	1.577+
	(1.72)
Lead plaintiff any institution	13.84**
	(4.25)
Big law firm	7.687*
	(2.10)
Restatement	−3.193
	(−0.65)
SEC action	−2.918
	(−0.68)
Other gov. action	10.54*
	(2.24)
Officer termination	6.294
	(1.57)
Section 11	4.384
	(0.71)
Section 12	5.303
	(1.05)
Other allegation	−1.406
	(−0.13)
Accounting	9.986*
	(1.97)
Merger	0.0885
	(0.01)
Backdating	−21.49*
	(−2.29)
Credit crisis	14.26+
	(1.71)
FDA	4.950
	(0.80)
IPO	−13.86*
	(−2.31)
FCPA	1.882
	(0.07)
No. officer & director defendants	0.829
	(0.99)
Underwriter	−0.392
	(−0.06)
Accounting firm	3.705
	(0.55)

Table 6: *Continued*

	Model 1 *Hours per Docket Entry*
Constant	170.5**
	(2.80)
Industry controls	Yes
Court controls	Yes
Year fixed effects	Yes
N	627
Adj. R^2	0.428

$^{+}p < 0.10$;
$^{*}p < 0.05$;
$^{**}p < 0.01$.

NOTE: *t* statistics in parentheses. Hours per Docket Entry is defined as the number of hours submitted in the motion for attorney fees divided by the total number of docket entries in the federal district court civil docket for the class action in question.

to other factors that correlate with multiple lead counsel and large market capitalization defendants but are not causally related to making work.

Work Efficiency

If "make work" causally explains a portion of the greater hours in the largest-stake cases with multiple lead counsel compared with single lead counsel, then one might expect more hours spent on each specific litigation task, as more duplicative work occurs. It is possible that bringing additional personnel into litigation tasks may improve the quality of briefs and motions, but it is less likely that adding lawyers to deposition staffing, conference calls, and the like, will yield benefits for the class. To test this hypothesis, we examine whether work efficiency is lower for the largest-stake cases with Multiple Lead Counsel compared with single lead counsel. Again we focus in particular on actions against Large Market Cap companies involving Multiple Lead Counsel firms. As our measure of work efficiency we look at the plaintiffs' attorney hours per docket entry in the federal district court civil docket for the class action—controlling for case characteristics and other factors, higher hours per docket entry indicate less efficiency.

We use the hours per docket entry as the dependent variable in an ordinary least squares model with the same independent variables as the model in Table 5. We also include Case Characteristics, Industry Controls, Court Controls, and Year Effects. We report the results for plaintiffs' attorney hours per docket entry in Table 6.

In Table 6, the coefficient on the square of ln(Market Capitalization) × Multiple Lead Counsel is positive and significant at the 1 percent level. As the square of our measure of the stake of litigation increases, the differential between hours for multiple lead counsel and single lead counsel increases. This is consistent with growing inefficiency of hours on the part of multiple lead counsel compared with single lead counsel for the very largest stake cases.

As a robustness test, we repeat the model estimated in Table 6, substituting our alternative measure of stakes, Class Period Loss and Cornerstone Damages, for Market Capitalization. The results of these estimations (untabulated) are qualitatively similar to the results presented in Table 6, albeit at weaker levels of significance (the coefficient for the square of ln(Class Period Loss) × Multiple Lead Counsel is significant at the 5 percent level, and the coefficient for the square of ln(Cornerstone Damages) × Multiple Lead Counsel is significant at the 10 percent level).

V. Conclusion

Our empirical findings shed light on how plaintiffs' attorneys litigate securities class actions with the most money at stake. We find that plaintiffs' attorneys put in far more hours in the top decile of settlements, and they are rewarded with far higher fees. The data also suggest, however, that at least part of the increased hours in these large settlements may result from attorneys doing work that is not necessary, especially in cases with multiple lead counsel. We also find evidence that plaintiffs' attorneys may work less efficiently in cases with the largest stakes. These findings suggest that being appointed as lead counsel in a securities class action that is likely to end with a large settlement is like receiving a winning lottery ticket.

Despite the increased risk of agency costs in these cases, we find that courts do not serve as a meaningful check on the fees awarded to lead counsel, although we do find evidence that courts are more willing to push back against fee requests for the Largest Market Cap decile of cases. Fee requests accompanied by larger lodestars, however, are less likely to be rejected by courts, which suggests that the lodestar cross-check used by most courts creates an incentive for making work.

Our research, however, also has limitations. Most significantly, we cannot directly observe whether firms are inflating their hours by doing unnecessary work. Nor can we observe any billing time for work not done. In addition, we have no metric for assessing the hourly rates quoted by firms in their fee applications. Without direct evidence of inflated hours, we have to rely on the presence of multiple lead counsel as a proxy, and this proxy has its own limitations. Our results demonstrate a correspondence between multiple lead counsel and greater hours (as well as inefficiency in the use of hours) with the securities class actions with the largest stakes. We cannot rule out the possibility, however, that some other factor may causally determine hours that is correlated with large-stake cases with multiple lead counsel. Larger-stakes cases may differ from other securities class actions in ways that our analysis does not capture. For example, defendants have more incentive to mount a strong defense in cases with higher stakes, which may offer an alternative explanation for at least some of the additional hours that plaintiffs' attorneys invest in these cases.

Overall, the evidence presented here adds to a chorus of concerns over agency costs in securities class actions. Prior studies have looked at securities class actions generally, but this is the first study to focus on the heightened agency costs in those securities class actions that have the most at stake, the "mega-settlements." Our research suggests

that these mega-cases present a real risk that plaintiffs' attorneys may be running the clock—at shareholders' expense—to bolster their argument for a large fee award. Our study also suggests that further research into smaller cases may be useful, as our findings suggest that plaintiffs' attorneys may have a different business model in these cases.

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