Exhibit 15

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ATTORNEYS' FEES IN CLASS ACTIONS: 2009–2013

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INTRODUCTION

When a class action settles (or, rarely, when it generates a litigated outcome), the court is faced with the job of awarding an appropriate attorneys' fee. The issue is important. If fees are set too low, counsel will not receive fair compensation for their services to the class. Worse yet, if fees are too low, then qualified counsel will not bring these cases in the first place. Injured parties will receive no

* Professor Eisenberg was the Henry Allen Mark Professor of Law and Adjunct Professor of Statistical Sciences at Cornell University. Although Professor Eisenberg died before this paper was written, we have followed the methodology he developed in earlier papers on attorneys' fees co-authored with Professor Miller. He is in every sense a co-author of the present paper. The authors would like to thank the excellent research assistants who contributed to this project: Lauren Citrome, Colin S. Huston-Liter, Adam Karman, Jacob Millikin, Jack B. Neff, Joshua Matthew Pirutinsky, Jeremy Schiffres, and Peter Van Valkenburgh.

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redress, and potential wrongdoers will no longer be deterred out of fear of potential class action liability. If fees are set too high, attorneys will receive an unjustified windfall, and some of the benefits that should have gone to class members will be diverted to class counsel. Excessive class counsel fees might also induce class counsel to bring weak cases. Setting an appropriate counsel fee is thus crucial to the effective functioning of class action litigation.

But how is the court to determine the fee? In ordinary cases, the fee is determined by private negotiation between lawyer and client, subject only to minimal regulations against unfair or exorbitant fees. Not so for class actions: In these cases, there is no negotiation over fees between class counsel and absent class members. There may be a retainer agreement between counsel and the representative plaintiff, which can provide valuable information, but the retainer agreement cannot bind absent class members. Unlike most issues presented to a court in litigation, moreover, the judge cannot rely on adversarial presentation to inform her of the possibilities for decision. In "common fund" cases, the fee is taken out of the class recovery.[1] At this stage, class counsel has a potential conflict with their own clients because each dollar that goes to the attorneys is a dollar that does not go to class members. Defendants, for their part, have no stake in how the settlement amounts are distributed between class counsel and class members. Even in consumer cases where the defendant agrees to pay the class's counsel fees, the adversarial process is disarmed because the settlement includes the defendant's agreement to pay the fee up to a specified amount. Adversarial presentation is not completely absent: Objectors may take issue with the size of the fee request, for example. But even when their objections are bona fide, objectors can rarely mount an effective challenge to the fee request: They usually have limited time and resources and have limited access to the relevant facts.

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[1] *See* Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980) (noting that the common fund doctrine derives from the equitable principle that those benefitting from a fund should share costs); Florida v. Dunne, 915 F.2d 542, 545 (9th Cir. 1990) (endorsing percentage-of-recovery method for common fund calculation); Brown v. Phillips Petroleum Co., 838 F.2d 451, 454 (10th Cir. 1988) (exploring the "basic differences in the rationale for calculating attorneys' fees in common fund cases"); *In re* Fine Paper Antitrust Litig., 751 F.2d 562, 583 & n.19 (3d Cir. 1984) (noting that there are different public policy considerations in common fund and fee-shifting cases); *In re* Smithkline Beckman Corp. Sec. Litig., 751 F. Supp. 525, 532–33 (E.D. Pa. 1990) (explaining the rationale behind using different fee-setting methods in common fund and statutory fee-shifting cases); Mashburn v. Nat'l Healthcare, Inc., 684 F. Supp. 679, 689 (M.D. Ala. 1988) (explaining the differences between common fund and statutory fee-setting).

A review of other class action fee awards is central to the court's analysis.[2] But here, too, the courts face a difficulty. Over the past few decades, courts have ruled on thousands of class action fee requests. No judge has the time to engage in a comprehensive review of awards in similar cases, and the cases provided to the court by counsel may not be an unbiased sample of awards in similar cases because counsel's interest is in persuading the court that their fee request is reasonable.

Here is where the empirical analysis of law can offer genuine help. Although courts are not able to conduct a thorough review of awards in similar cases, empirical researchers can do so. The analysis of class counsel fees is thus a telling example of the potential benefits of empirical analysis of law as a discipline: It can both illuminate legal practices and help researchers better understand the operation of our legal system, and it can also offer judges concrete assistance when deciding important and difficult litigation issues.

Federal judges recognize the value of empirical research in the area of class action attorneys' fees and rely extensively on those studies when assessing fee requests in particular cases.[3] The leading empirical studies are papers by two of the authors of the present paper (Eisenberg and Miller) published in 2004 and 2010, and a 2010 paper by Professor Brian Fitzpatrick.[4] These authors use contrasting, but complementary, approaches to the topic. Eisenberg and Miller's studies are broad—covering all reported decisions in which fees could be determined over two time periods: The first Eisenberg and Miller paper reported on 362 opinions issued in the years 1993–2002,[5] and the second Eisenberg and Miller paper examined data from nearly 700 common-fund settlements between 1993 and 2008.[6] Fitzpatrick, in contrast, focused on a shorter time period but included unreported as

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[2] *See, e.g.*, Johnson v. Ga. Highway Express, Inc., 488 F.2d 714, 717–19 (5th Cir. 1974) (referring to factors for fee calculation, including "[a]wards in similar cases" (emphasis omitted)).

[3] *See, e.g.*, *In re* Heartland Payments Sys., Inc. Customer Data Sec. Breach Litig., 851 F. Supp. 2d 1040, 1080–81 (S.D. Tex. 2012) ("District courts increasingly consider empirical studies analyzing class-action-settlement fee awards to set the appropriate percentage benchmark or to test the reasonableness of a given benchmark. . . . Using these studies alleviates the concern that the number selected is arbitrary.").

[4] Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 J. Empirical Legal Stud. 27 (2004) [hereinafter Eisenberg & Miller I]; Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: 1993–2008*, 7 J. Empirical Legal Stud. 248 (2010) [hereinafter Eisenberg & Miller II]; Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical Legal Stud. 811 (2010).

[5] Eisenberg & Miller I, *supra* note 4, at 45.

[6] *See* Eisenberg & Miller II, *supra* note 4, at 251 (stating that the total sample size was 689 cases).

well as reported cases: He analyzed nearly 700 common-fund settlements in 2006 and 2007.[7] The whole of this literature is more than the sum of its parts; even though Eisenberg/Miller and Fitzpatrick examined somewhat different data sets, the empirical results they reported were remarkably consistent.

The data examined in these studies did not extend past 2008. Much has happened during the ensuing years—most importantly, the financial crisis of 2007–2009, and the legal, political, and attitudinal changes associated with that event.[8] Those events were of such a magnitude as to raise the question whether the patterns observed in previous years would continue as they had before, or whether some significant long-term changes would be observed.

This study seeks to answer that question. We study 458 cases reported in the five years from 2009–2013. Our present study examined a larger number of cases per year than we had examined in previous research, due to the increased availability of PACER as a resource to supplement information that could be obtained from reported decisions alone. This resulted in more comprehensive coverage and also generated a somewhat greater number of smaller-value cases in the overall mix. The overarching headline of the present study is that despite the financial crisis and its many effects on our national life, little has changed in class action attorneys' fees. Average fee percentages are in line with prior studies. We continue to find a "scaling" effect, in the sense that fees as a percentage of the recovery tend to decrease as the size of the recovery increases—an effect that appears to be due to the economies of scale that can sometimes be achieved in very large cases.[9] The key fee determinant continues to be the size of the class recovery: The amazingly regular relationship between these variables continues in the present data.[10] As in the previous

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[7] *See* Fitzpatrick, *supra* note 4, at 813 (reviewing 688 published and unpublished class action settlements).

[8] The financial crisis exacerbated public distrust in financial institutions and thus might have resulted in higher class action awards against those institutions, or against big business in general, and might have increased counsel fees as a way of rewarding and incentivizing litigation against these institutions. Studies of the crisis are legion; for a sampling, see, for example, BEN S. BERNANKE, THE FEDERAL RESERVE AND THE FINANCIAL CRISIS (2013); ALAN S. BLINDER, AFTER THE MUSIC STOPPED: THE FINANCIAL CRISIS, THE RESPONSE, AND THE WORK AHEAD (2013); TIMOTHY F. GEITHNER, STRESS TEST: REFLECTIONS ON FINANCIAL CRISES (2014); GARY B. GORTON, SLAPPED BY THE INVISIBLE HAND: THE PANIC OF 2007 (2010); MERVYN KING, THE END OF ALCHEMY: MONEY, BANKING AND THE FUTURE OF THE GLOBAL ECONOMY (2016); MICHAEL LEWIS, PANIC: THE STORY OF MODERN FINANCIAL INSANITY (2009).

[9] Eisenberg & Miller I, *supra* note 4, at 28; Eisenberg & Miller II, *supra* note 4, at 263–64.

[10] Eisenberg & Miller I, *supra* note 4, at 28; Eisenberg & Miller II, *supra* note 4, at 250.

Eisenberg/Miller studies,[11] we find that fees are a function of the risk of the case—large fees in high-risk cases—although in the most recent data the effect is only weakly statistically significant. As in prior work,[12] we document an inverse relationship between the percentage fee and the lodestar multiplier (the enhancement factor that applies when fees are determined on the basis of hours and hourly rate)[13]: Cases with lower percentage fees are associated with higher multipliers—a factor we associate with the economies of scale that can be realized for legal representation in large cases. Likewise, and for similar reasons, lodestar multipliers tend to rise with the size of class recovery.

I
Empirical Analysis

Our data set consists of all class action cases reported during the 2009–2013 period from which usable information on counsel fees could be obtained.[14] We harvested this data using the same technique as in our prior studies: We conducted a search of reported cases using

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[11] Eisenberg & Miller I, *supra* note 4, at 77; Eisenberg & Miller II, *supra* note 4, at 279.

[12] Eisenberg & Miller I, *supra* note 4, at 39, 55; Eisenberg & Miller II, *supra* note 4, at 273–74.

[13] *See infra* Section I.B describing fee calculation methods.

[14] We conducted our research as follows. First, we searched the Westlaw™ database for all state and federal decisions, using the search term: "settlement" & "class action" & approv! & attorney! /2 fee! & DA(aft 1-1-2000) & TI("et al." "et anon." other! "behalf" "similarly" "class" representative! "in re" derivative! shareholder!). We reviewed the results of that search and weeded out cases that were obviously not relevant (for example, lawsuits that were neither class action nor derivative cases). Where necessary, we supplemented the information obtained from a review of the published opinion by information obtained about the case from the federal courts PACER database. We coded the cases for a variety of variables. Most of these have a straightforward interpretation. The class recovery was the total quantified recovery for the class. This included monetary recovery and other non-monetary recovery the value of which was quantified by the court. The fee was the fee awarded by the court. We coded the method of fee calculation by a review of the methodology used by the court. Sometimes the court was explicit about its methodology; at other times, the methodology could be determined by an analysis of the court's calculations. In many cases, the court used both the percentage and the lodestar methods as cross checks. Case types were usually straightforward to code; in rare cases of ambiguity the coder used judgment to assign the case to the category that was most pertinent. As in the previous Eisenberg and Miller studies, we coded risk as "high" if the court described it in these terms in the opinion awarding fees. A case was coded as "low" in risk if the court described it in these terms or if the case followed on criminal or civil enforcement actions involving the same or overlapping facts. We coded a settlement as involving "soft relief" if it included a significant element of nonpecuniary relief that was not measured in the dollar value obtained for the class. A case was designated as a settlement class if the settlement included an agreement to certify the matter as a class action. Our measure of costs was the amount of expenses and court costs awarded to class counsel by the court (if any). We also included shareholders' derivative cases, but there were too few of these in our data set to generate reliable results.

computerized legal research tools, and then supplemented that research by examining the federal court's PACER database in order to locate additional pertinent information.[15] This resulted in a larger number of cases harvested and analyzed per year because the PACER data was more comprehensive in the more recent data. We begin by examining short- and long-term trends in recoveries and fees over time. We follow by investigating potential determinants of fee awards and fee percentages.

A. Class Recoveries and Attorneys' Fees over Time

Figure 1 shows mean and median recoveries and mean and median attorneys' fees from 2003–2013. The data have been adjusted for inflation and transformed into base 10 logarithms to account for the fact that the distributions are skewed heavily to the left with a few extreme outliers. Logging the data helps to normalize the distributions and reduce the influence of outliers on the mean. These units are interpretable as powers of 10. A value of 6, for instance, is equal to 10^6, or $1,000,000. Figure 1a shows recoveries and fees for all cases from 2003–2013. It appears from these data that recoveries and fees decreased over the 2003–2013 period, particularly after the onset of the financial crisis in 2007–2008. We urge caution, however, in interpreting Figure 1a. PACER, the database we used to build these data sets, became more available and more complete over the years we are examining. As a result, more cases with small recoveries came into the database over time. We therefore believe that the presence of more large-recovery cases in the earlier years of the series is driving up the mean and median values in the 2003–2008 data set compared to the 2009–2013 data set.

To account for this possibility, we split our sample into cases with recoveries of less than $50 million (Figure 1b) and recoveries greater than $50 million (Figure 1c). Figure 1b shows that among cases with recoveries of less than $50 million, mean and median recoveries and fees held more or less constant between 2003 and 2013. A t-test indicates that the mean fee in 2013 was not statistically different than the mean fee in 2003. Figure 1c indicates that among cases with recoveries greater than $50 million, recoveries and fees did not follow a discernable up or down pattern over the 2003–2013 period. It is therefore safe to say that recoveries and fees did not increase over the 2003–2013 period.

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[15] *See* Eisenberg & Miller I, *supra* note 4, at 44 (describing search methodology); Eisenberg & Miller II, *supra* note 4, at 251 (same).

FIGURE 1. CLASS RECOVERY AND ATTORNEY FEES OVER TIME, MEAN AND MEDIAN (LOG 10), 2003–2013

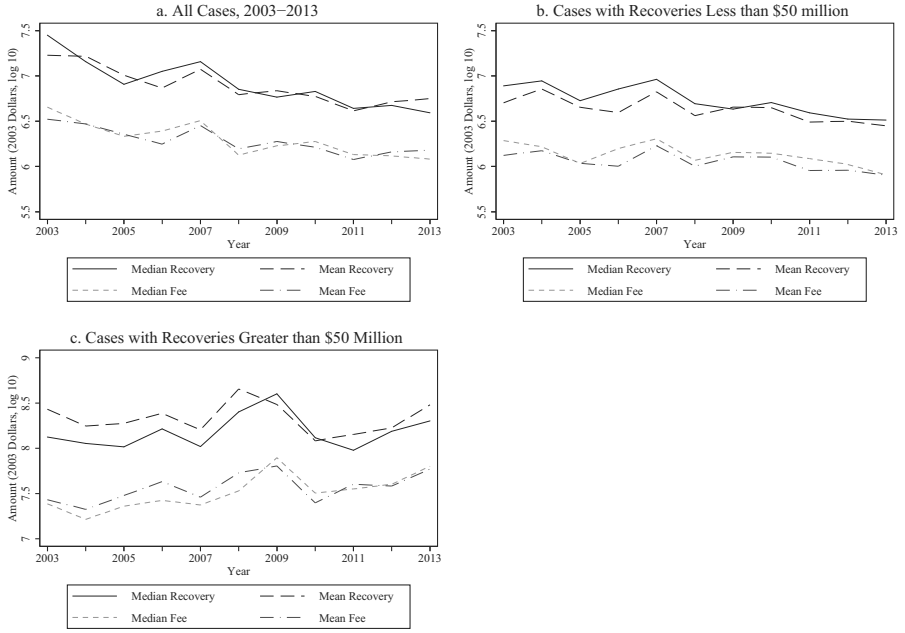
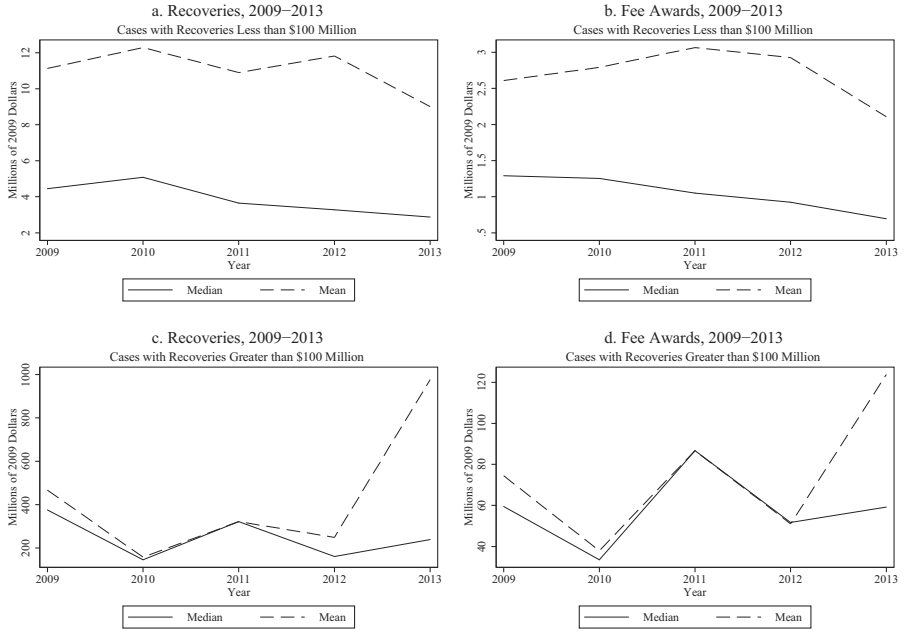


Figure 2 presents median and mean recoveries and fees during the 2009–2013 period, the focus of this article. The data have been adjusted for inflation and disaggregated by cases with recoveries of less than $100 million (Figures 2a and 2b) and cases with recoveries greater than $100 million (Figures 2c and 2d). The majority of cases during the 2009–2013 period (92%) had recoveries under $100 million. Figure 2a shows that the mean recovery for these smaller cases ranged from a low of $9 million in 2013 to a high of $12.2 million in 2010; the median recovery ranged from a low of $2.9 million in 2013 to a high of $5.1 million in 2010. Figure 2b shows that the mean fee award for cases with recoveries under $100 million increased from $2.6 million in 2009 to $3.1 million in 2011, then decreased to $2.1 million by 2013. Median fees, on the other hand, decreased steadily from a high of $1.3 million in 2009 to a low of $695,000 in 2013.

Looking now at cases with recoveries greater than $100 million, we see greater volatility in annual changes in mean and median recoveries and fees. Figure 2c shows that the mean recovery decreased from $467 million in 2009 to $158 million in 2010, then went back up to $322 million in 2011 and back down to $249 million in 2012. The mean recovery then surged in 2013 to a staggering $976 million—an increase that was driven primarily by an unprecedented settlement by Visa,

Mastercard, and other credit card companies worth $7.25 billion.[16] As a point of reference, note that only 1.5% of class action cases over the 2009–2013 period resulted in recoveries greater than $500 million. The three largest recoveries after $7.25 billion were $1.08 billion,[17] $926 million,[18] and $730 million.[19] Figure 2d depicts similar volatility in mean and median fees for cases with recoveries greater than $100 million. The mean fee, for instance, decreased from $74.4 million in 2009 to $37.9 million in 2010. It then rose to $86.7 million in 2011, decreased to $51 million in 2012, and surged to $124 million in 2013.

FIGURE 2. RECOVERIES AND FEES IN INFLATION-ADJUSTED DOLLARS, 2009–2013.



B. Fee Method and the Strong Linear Fee-Recovery Relationship

Attorneys' fees are calculated using the lodestar method, a percentage method, a mix of the two methods, or by leaving the fee to

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[16] Robb Mandelbaum, *Visa and MasterCard Settle Lawsuit, but Merchants Aren't Celebrating*, N.Y. TIMES, Aug. 9, 2012, at B6. This settlement was thrown out in June 2016. Rachel Abrams, *Credit Card Settlement Overturned on Appeal*, N.Y. TIMES, July 1, 2016, at B3.

[17] *In re* TFT-LCD (Flat Panel) Antitrust Litig., No. M 07-1827 SI, 2013 WL 1365900, at *7 (N.D. Cal. Apr. 3, 2013).

[18] *In re* UnitedHealth Grp. Inc. PSLRA Litig., 643 F. Supp. 2d 1094, 1099 (D. Minn. 2009).

[19] *In re* Citigroup Inc. Bond Litig., 988 F. Supp. 2d 371, 372 (S.D.N.Y. 2013).

judicial discretion. The lodestar method involves multiplying the reasonable hours expended by attorneys by a reasonable hourly rate, then using certain factors to adjust the fee award up or down. The percentage method multiplies the gross recovery by a fixed percentage to determine the fee award. The mixed method usually employs a percentage method, which is then crosschecked with the lodestar method to ensure that the percentage method has not resulted in an excessively high fee. Table 1 shows the breakdown of cases by fee calculation methodology for cases in which the methodology could be determined.[20]

TABLE 1. FREQUENCY OF METHOD USED, 2009–2013.

	N	*% of Cases in Time Period*
Lodestar	27	6.29
Percent	230	53.61
Both	164	38.23
Discretion	8	1.86
Total	429	100

The vast majority of fee awards during the 2009–2013 period were decided using the percentage method or the mixed method. The percentage method was used in 53.61% of cases and used in combination with a lodestar check in an additional 38.23% of cases. The use of the pure lodestar method, on the other hand, was used in only 6.29% of cases during the 2009–2013 period. This is down from 13.6% during the 1993–2002 period[21] and 9.6% during the 2003–2008 period.[22]

Not surprisingly, we find that the strong positive relationship between fee award and recovery amount that we reported in analyses of 1993–2008 data[23] persists over the 2009–2013 period as well. Figure 3a shows the relationship between fee awards and class recoveries for all cases (n = 458) and Figure 3b shows the relationship between fee awards and recoveries for cases where recoveries were larger than $100 million (n = 34). Both figures indicate that these variables are strongly correlated, even in cases with large recoveries. When all cases are assessed, the correlation coefficient is 0.99. This is comparable to

[20] Often the method of calculating the fee was explicit in the cases. Where it was not, we coded the method if it could reasonably be deduced from the court's analysis; if not, we omitted the information.

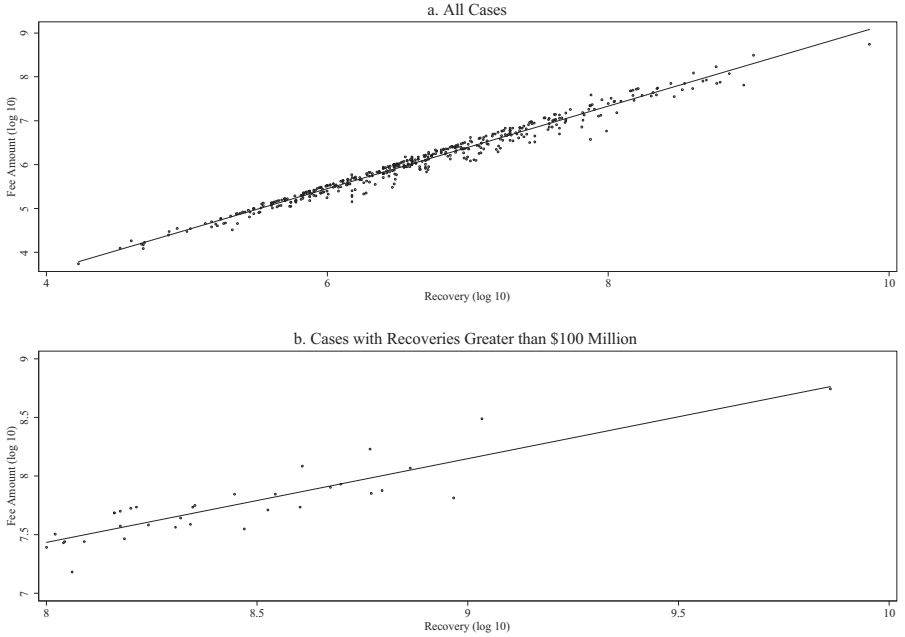
[21] Eisenberg & Miller II, *supra* note 4, at 267.

[22] *Id.*

[23] *Id.* at 253–54.

what we reported in our analyses of the 1993–2008 data.[24] When the 34 outlying cases are assessed independently, the correlation coefficient remains high at 0.89. This 0.89 correlation is stronger than the 0.77 correlation coefficient we reported for cases with large recoveries over the 1993–2008 period.[25] While both correlations are strong, the stronger correlation we find in the 2009–2013 data suggests that the percentage method is being used more often in large-recovery cases in recent years compared to past years.

FIGURE 3. FEES AS A FUNCTION OF RECOVERY, 2009–2013

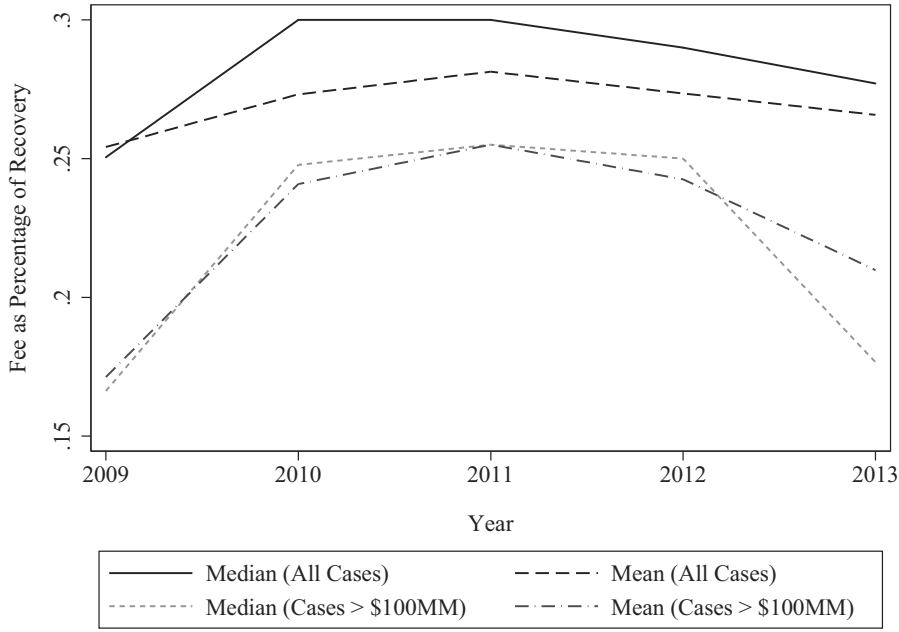


An important difference between Figures 3a and 3b is the slope of the regression lines. When all cases are assessed, the slope of the line in Figure 3a is nearly equal to one. This signifies that, in general, attorneys' fees increase in direct proportion to increases in recovery amounts. As recoveries become very large, however, the fee increases at a slower pace. So although the recovery size has a significant influence on the fee size, the fee-to-recovery ratio tends to be lower in cases with very large recoveries. How much lower? Figure 4 shows the mean and median fee-to-recovery ratios over the 2009–2013 period for all cases and for cases with recoveries larger than $100 million. Between 2009 and 2013, the mean and median ratio fluctuated from a

[24] *See id.* at 253 (finding a 0.94 correlation coefficient).
[25] *Id.* at 254.

minimum of 0.25 to a maximum of 0.30. The average fee percentage during this period, in other words, was between 25% and 30% of the gross recovery. On average, fees were 27% of gross recovery during the 2009–2013 period, which is higher than the average fee percentage of 23% that we reported in our analyses of the 1993–2008 period.[26] Figure 4 also shows that the fee-to-recovery ratio over the 2009–2013 period was lower for cases with recoveries larger than $100 million. Looking only at cases with recoveries larger than $100 million, we see that mean and median fee percentages varied from a low of 16.6% in 2009 to a high of 25.5% in 2011—variation that is probably due to the significantly smaller number of very large cases in our data set.

FIGURE 4. MEAN AND MEDIAN FEE PERCENTAGES, 2009–2013



C. *Scaling Effect*

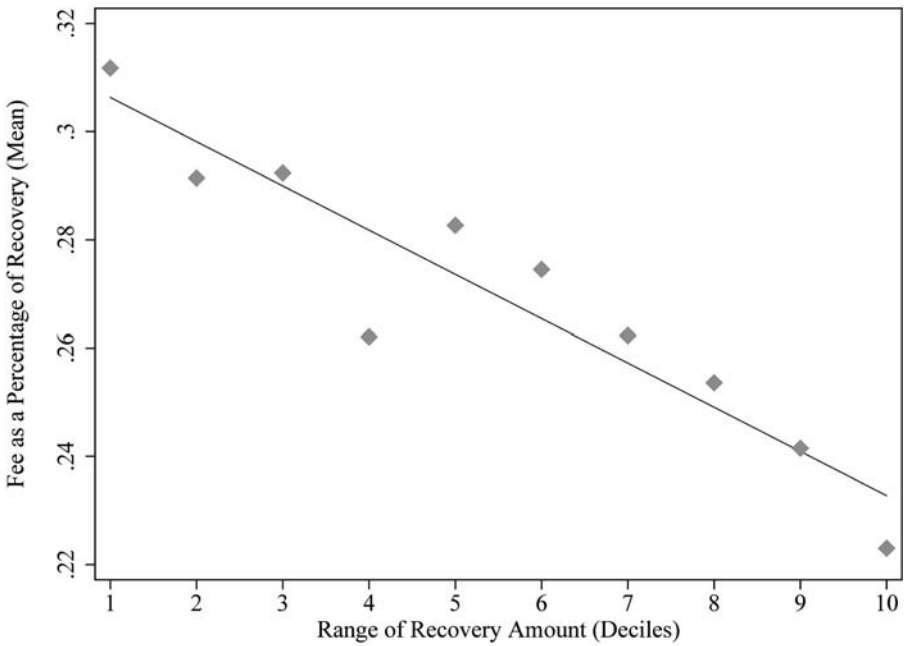
The flatter slope we observed in Figure 3b and the lower fee percentages we see in Figure 4 for cases with recoveries larger than $100 million are indicative of a scaling effect that we discussed in prior studies.[27] Figure 5 presents more insight into this hypothesized scaling effect by breaking recoveries into deciles of about 45 cases each and showing corresponding mean and median fee percentages for cases with recovery amounts in those ranges. The first marker on the x-axis

[26] *Id.* at 258.

[27] *Id.* at 263–64; Eisenberg & Miller I, *supra* note 4, at 54–55, 64.

of Figure 5, for instance, represents the first decile, or cases with recovery amounts under $400,000. The second marker represents the second decile, or cases with recovery amounts in the range of $400,000 to $750,000, and so on all the way up to the tenth marker, which represents the tenth decile, or cases with recovery amounts exceeding $67.5 million. Figure 5 indicates that as recovery amount increases, the ratio of the size of the attorneys' fee relative to the size of the recovery (i.e., the fee percentage) tends to decrease. This is especially true for recoveries in ranges higher than the fifth decile, in which the maximum amount is $3.9 million. Average fee percentages range between 28% and 31% for cases with recoveries of less than $3.9 million. Beyond $3.9 million, average fee percentages fall steadily from 27.4% in the sixth decile to 22.3% in the tenth decile.

FIGURE 5. FEE PERCENTAGE, BY CLASS RECOVERY AMOUNT (DECILE RANGES), 2009–2013



Class recovery ranges are as follows. First decile: less than $400,000; second decile: $400,000–$750,000; third decile: $750,000–$1.4 million; fourth decile: $1.4–$2.65 million; fifth decile: $2.65–$3.9 million; sixth decile: $3.9–$6.5 million; seventh decile: $6.5–$12 million; eighth decile: $12–$23.4 million; ninth decile: $23.5–$67.5 million; tenth decile: greater than $67.5 million.

D. Locale and Case Category

Table 2 shows the 10 federal district courts with the most class action cases. By far the largest number of class action cases was brought in the Southern District of New York and the Northern District of California. The Southern District of New York accounted for 76 of the 458 cases in the data set and the Northern District of California accounted for 53. These are the only two districts that account for more than 10% of the total cases by themselves, and combined they account for over 25% of all cases. Only one other district, the Southern District of California, accounted for more than 5% of the cases in the sample. Table 2 shows some variation in the mean and median fee percentages, attorneys' fees, and recoveries awarded in these districts. Of note is the large average recovery in the Eastern District of New York. This $381.96 million average recovery—nearly eight times larger than the overall average recovery—is driven by the record credit card settlement mentioned earlier. Examining median values, which are less sensitive to outliers than the mean, we see that the largest median recoveries were awarded in the District of New Jersey ($11.38 million), the Eastern District of New York ($9.25 million), and the District of Minnesota ($8.95 million). The lowest average fee percentages were 24%, awarded in the Central District of California and the Western District of Washington; the highest were 30%, awarded in the Eastern District of Pennsylvania and the District of New Jersey.

Table 2 shows that the difference in fee percentages between state courts and federal courts that we discussed in our analyses of the 1993–2008 period has not carried over to the 2009–2013 period.[28] Note that the mean and median fee percentages in state courts were 27% and 30%, respectively, which are nearly identical to the fee percentages for federal courts. It is also important to note that only a small fraction of cases were brought to state courts—1.7% of all cases in our data set. Over the 1993–2008 period, more than 10% of cases were state cases.[29] This shift from state to federal courts suggests that the Class Action Fairness Act of 2005[30] may have been successful in routing class action cases away from state courts to federal courts.[31]

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[28] *See* Eisenberg & Miller II, *supra* note 4, at 259 tbl.3, 261 (finding that the mean fee-to-recovery ratio was lower in state courts than in federal courts).

[29] *See id.* at 257 tbl.1 (stating that 10.89% of the study's opinions were brought in state courts).

[30] Class Action Fairness Act of 2005 (CAFA), Pub. L. No. 109-2, 119 Stat. 4 (codified as amended at 28 U.S.C. §§ 1332(d), 1453, 1711–1715 (2012)).

[31] *See* Tanoh v. Dow Chem. Co., 561 F.3d 945, 952 (9th Cir. 2009) ("[T]he Act's purposes make[ ] clear [that] CAFA was designed primarily to curb perceived abuses of

TABLE 2. FEE AND CLASS RECOVERIES, BY LOCALE, 2009–2013

		Recoveries		*Fees*		*Fee Percentages*	
Court	*N*	*Mean (millions of dollars)*	*Median (millions of dollars)*	*Mean (millions of dollars)*	*Median (millions of dollars)*	*Mean (%)*	*Median (%)*
S.D.N.Y.	78	63.77	3.7	11.14	1.04	27	31
N.D. Cal.	53	37.2	5.13	10.34	1.32	26	25
S.D. Cal.	24	6.03	2.58	1.45	0.61	25	25
C.D. Cal.	21	30.88	3.63	5.36	0.88	24	25
E.D.N.Y.	21	381.96	9.25	36.08	2.56	27	30
E.D. Pa.	19	15.74	4	4.92	1	30	30
D.N.J.	18	41.78	11.38	8.66	3.77	30	33
E.D. Cal.	16	1.52	0.93	0.45	0.25	31	31
D. Minn.	10	100.43	8.95	8.55	1.99	26	29
W.D. Wash.	9	27.53	2.75	5.83	0.55	24	21
State	8	33.08	21.5	8.37	5	27	30
Federal	6	14.25	1.79	4.26	0.57	29	30
Appeal	3	30.48	42	7.65	10.5	27	25
Other	172	21.5	3.39	5.38	0.99	27	29
Total	458	48.53	3.93	8.20	0.99	27	29

At the federal level, if the circuit has issued a binding opinion regarding fee awards, that opinion will dictate how fees are awarded within the circuit. Table 3 explores variation between circuits. This table presents the mean and median of the fee award, the recovery, and fee-to-recovery ratio (excluding state cases) for each circuit. The largest median recoveries were in the Fifth Circuit ($13.75 million), the D.C. Circuit ($11.64 million), and the First Circuit ($8.2 million). The highest median fees were awarded in the Fifth Circuit ($2.66 million), the D.C. Circuit ($2.21 million), and the Seventh Circuit ($2.17 million). Mean fee percentages ranged from a low of 19% in the D.C. Circuit to a high of 30% in the Eleventh Circuit. The D.C. Circuit and the Eleventh Circuit also registered the highest and lowest median fee percentages at 19% and 33%, respectively.

the class action device which, in the view of CAFA's proponents, had often been used to litigate multi-state or even national class actions in state courts." (citing CAFA § 2)).

TABLE 3. FEE AND CLASS RECOVERIES, BY FEDERAL CIRCUIT, 2009–2013

		Recoveries		*Fees*		*Fee Percentages*	
Circuit	*N*	*Mean (millions of dollars)*	*Median (millions of dollars)*	*Mean (millions of dollars)*	*Median (millions of dollars)*	*Mean (%)*	*Median (%)*
1st	11	45.77	8.2	9.62	1.85	26	23
2nd	116	113.14	3.38	14.31	0.99	28	30
3rd	46	24.48	6.45	5.84	1.71	29	32
4th	22	25	3.66	5.9	0.91	26	25
5th	12	27.72	13.75	6.61	2.66	23	24
6th	23	23.2	5.2	6.38	1.5	26	30
7th	14	30.76	7.38	9.17	2.17	28	30
8th	21	50.74	4.2	5.04	1.11	29	32
9th	144	23.86	3	5.96	0.78	26	25
10th	18	30.07	6.21	7.5	1.36	27	25
11th	11	2.2	2.02	0.65	0.65	30	33
D.C.	6	34.72	11.64	6.57	2.21	19	19
Fed.	6	14.25	1.79	4.26	0.57	29	30
Total	450	48.8	3.83	8.2	1	27	29

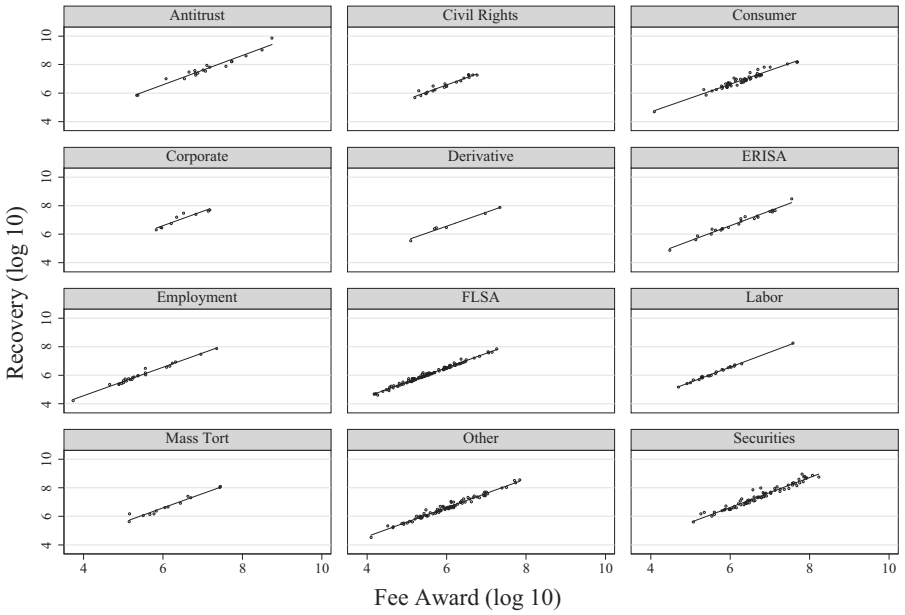
Table 4 shows the mean and median of fee, recovery, and ratio of fee to recovery by case type. The most common class action case category during the 2009–2013 period was Fair Labor Standards Act (FLSA) cases with 108 cases. The next largest case categories were Securities (74), Consumer (52), Employment (25), Labor (23), Employee Retirement Income Security Act (ERISA) (22), Civil Rights (21), and Antitrust (19). Excluding Truth in Lending Act (TILA) cases—a category with data for just two cases, one of which had a relatively low recovery and the other a very high recovery—we find that the categories with the highest median recoveries were Antitrust ($37.3 million) and Securities ($22.25 million). Major case categories with the lowest median recoveries were Employment ($670,000) and FLSA ($1,025,000). Again excluding TILA cases, the highest median fees were awarded in Antitrust ($10.25 million), Securities ($5.16 million), and Products Liability ($4.56 million) cases. Major case categories with the lowest median fee awards were Employment ($170,000), FLSA ($300,000), and Labor ($330,000). The mean of the fee percentage ranged from a low of 23% in Securities, up to 28%–30% in Fair Labor Standards Act, Employment, Civil Rights, and Products Liability.

TABLE 4. FEE AND CLASS RECOVERIES, BY CASE CATEGORY, 2009–2013

		Recoveries		*Fees*		*Fee Percentages*	
Case Category	*N*	*Mean (millions of dollars)*	*Median (millions of dollars)*	*Mean (millions of dollars)*	*Median (millions of dollars)*	*Mean (%)*	*Median (%)*
Antitrust	19	501.09	37.3	64.1	10.25	27	30
Civil Rights	21	6.51	3	1.66	0.91	28	30
Consumer	52	18.8	8.75	4.81	2.21	26	25
Corporate	9	19.47	16	5.01	2.2	27	29
Derivative	6	18.68	2.88	5.61	0.77	29	31
Employment	25	5.6	0.67	1.63	0.17	28	30
ERISA	22	25.75	6.6	4.92	1.75	26	26
FCRA	4	1.34	1.41	0.34	0.36	29	29
FDCPA	2	0.41	0.41	0.1	0.1	26	26
FLSA	108	4.15	1.03	1.19	0.3	30	33
Health Care	5	72.08	4	14.64	1.21	28	30
Labor	23	9.44	1	2.17	0.33	29	30
Mass Tort	13	23.34	4.2	5.5	1.11	27	28
Other	60	13.27	4.14	3.11	1.04	25	25
Products Liability	10	24.99	16.2	7.47	4.56	28	30
Securities	74	106.45	22.25	18.75	5.16	23	25
TILA	2	168.4	168.4	25.75	25.75	23	23
Unknown	3	0.86	1	0.22	0.18	27	30

Figure 6 demonstrates that the positive relationship between fee amount and recovery amount is strong across case categories. This result is consistent with findings reported for the 1993–2008 period.[32]

FIGURE 6. FEE AND RECOVERY BY CASE CATEGORY, 2009–2013



[32] Eisenberg & Miller II, *supra* note 4, at 263.

Table 5 shows the breakdown of the four largest case types among the 10 district courts with the most class action cases. These case types include FLSA, Securities, Consumer, and Employment. For each case category, the first column (*N*) shows how many cases of that type were brought in various districts, while the second column (%) shows the percentage of each category's cases that were brought in a particular district. The large percentage of cases in the Southern District of New York is mostly attributable to its dominance in FLSA and Securities cases—the two most common case categories. Nearly 40% of all FLSA cases and more than 28% of Securities cases were brought in the Southern District of New York. The Southern District of New York also has a sizeable fraction of Employment cases. The Northern District of California dominates in Consumer cases and Employment. It holds twice as many Consumer cases as the District of New Jersey and nearly twice as many Employment cases as the Eastern District of California.

TABLE 5. CLASS ACTION CASES BY LOCALE AND CASE CATEGORY, 2009–2013

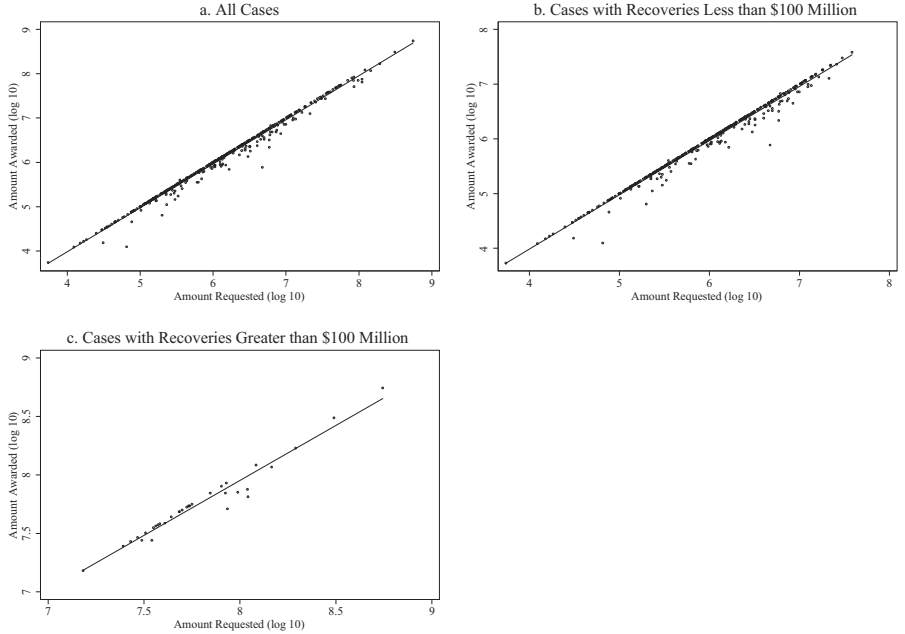
	All Categories		*FLSA*		*Securities*		*Consumer*		*Employment*	
Locale	*N*	%	*N*	%	*N*	%	*N*	%	*N*	%
S.D.N.Y.	78	17.03	43	39.81	21	28.38	0	0	3	12
N.D. Cal.	53	11.57	10	9.26	5	6.76	10	19.23	7	28
S.D. Cal.	24	5.24	3	2.78	3	4.05	4	7.69	1	4
C.D. Cal.	21	4.59	5	4.63	2	2.70	4	7.69	3	12
E.D.N.Y.	21	4.59	8	7.41	4	5.41	2	3.85	1	4
E.D. Pa.	19	4.15	2	1.85	3	4.05	3	5.77	0	0
D.N.J.	18	3.93	3	2.78	3	4.05	5	9.62	0	0
E.D. Cal.	16	3.49	3	2.78	0	0	0	0	4	16
D. Minn.	10	2.18	0	0	1	1.35	1	1.92	0	0
W.D. Wash.	9	1.97	0	0	1	1.35	2	3.85	0	0
State	8	1.75	0	0	2	2.70	1	1.92	0	0
Federal	6	1.31	0	0	0	0	0	0	1	4
Appeal	3	0.66	1	0.93	1	1.35	0	0	0	0
Other	172	37.55	30	27.78	28	37.84	20	38.46	5	20
Total Number of Cases	458	100	108	100	74	100	52	100	25	100

E. Fee Requests

In 78% of cases, the requested fee was awarded. Figure 7a shows the strong positive relationship between the fee requested and the fee awarded for all cases in our data set. This relationship holds up not only in typical cases with recoveries less than $100 million (Figure 7b), but also in cases with recoveries greater than $100 million (Figure 7c). Exact fee requests were not granted in 100 of the 452 cases examined. In only six of those cases did the courts grant a fee that was higher than the fee requested, and most of those were only nominally

higher.[33] In the remaining 94 cases, the fee granted was less than what was requested. The fee granted was between 1% and 25% lower than the amount requested in 47 of the 94 cases, between 26% and 49% lower than the amount requested in 28 of the 94 cases, and between 50% and 83% lower than the amount requested in just nine of the 94 cases. This tells us that even when courts do not grant fees exactly as requested, they typically award amounts that are close to the amount requested. Only in rare instances do courts grant fees that are significantly lower than the amount requested.

FIGURE 7. FEE AWARDS AS A FUNCTION OF FEE REQUESTS, 2009–2013



Courts may be willing to grant fee requests because fee requests are standardized around certain common fee percentages, as evidenced by Figure 8. Figure 8 shows the frequency with which particular fee percentages were requested during the 2009–2013 period. By far, the most popular fee percentage requested was between 33% and 34%—i.e., one-third—of the gross recovery. Nearly 29% of cases were in the 33%–34% fee range. The next most popular fee requests were 25% and 30% of gross recovery. A 25% fee request was made in 12% of cases, and a fee request of 30% was made in 11% of cases.

[33] In one of the six cases, however, the fee granted was significantly higher than the fee requested: 14%, or $1.1 million.

Overall, a fee request between 25% and 34% of the gross recovery was made in 72% of cases during the 2009–2013 period.

FIGURE 8. COMMON FEE REQUESTS, 2009–2013

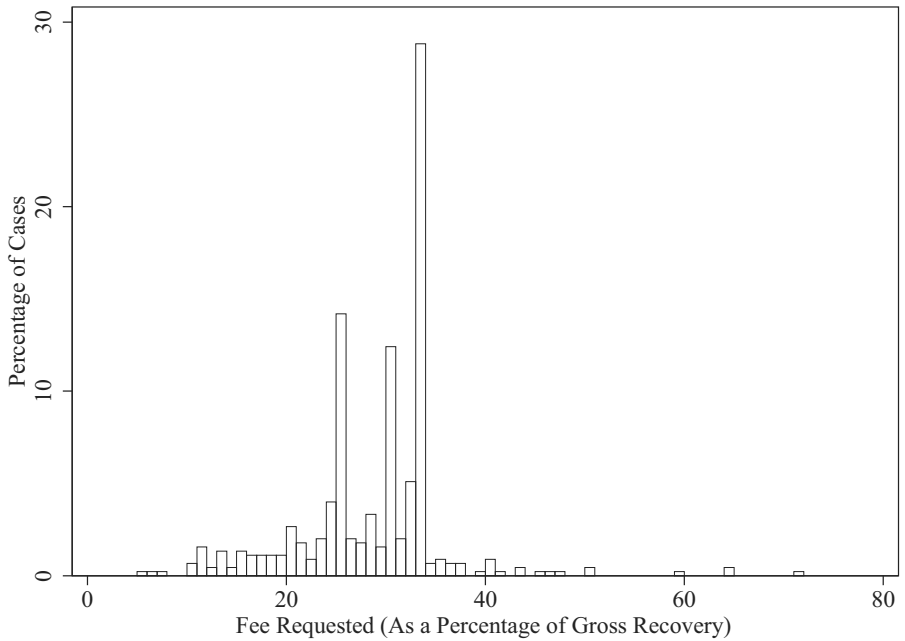
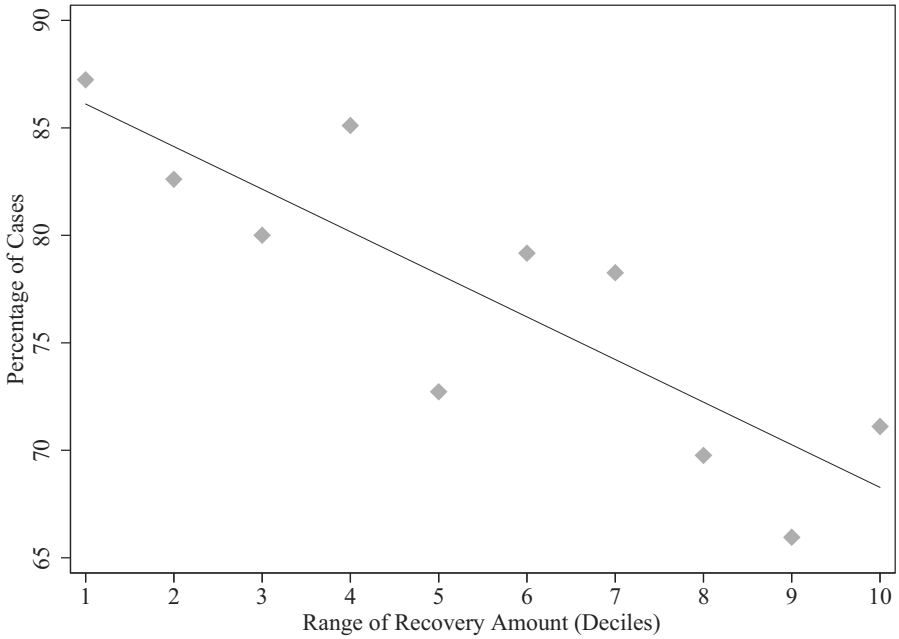


Figure 9 suggests that judges are more likely to scrutinize fee requests in high-recovery cases. Here, we see that the likelihood that a fee request will be granted decreases as the size of the recovery increases. Cases in the two lowest-recovery deciles, for instance, had requested fees granted 85% of the time, compared to 60%–71% of the time in the two highest-recovery deciles.

FIGURE 9. PERCENTAGE OF CASES WHERE FEE GRANTED WAS SAME AS FEE REQUESTED, BY CLASS RECOVERY AMOUNT (DECILE-RANGES), 2009–2013



Note: Class recovery ranges are as follows. First decile: less than $400,000; second decile: $400,000–$750,000; third decile: $750,000–$1.4 million; fourth decile: $1.4–$2.65 million; fifth decile: $2.65–$3.9 million; sixth decile: $3.9–$6.5 million; seventh decile: $6.5–$12 million; eighth decile: $12–$23.4 million; ninth decile: $23.5–$67.5 million; tenth decile: greater than $67.5 million.

Are fee requests granted in full at the same rate, or do grant rates vary according to case type or jurisdiction? Table 6 explores these questions. It discloses a surprising degree of variation. Fees were granted in full in each of the 10 Products Liability cases in the data set but only granted in full in half of the Truth in Lending, Fair Credit Reporting, and Fair Debt Collection Practices cases. The District of New Jersey granted more than 94% of fee requests in full, compared with the Northern District of California, which granted only about 57%. The differences might be due to norms or conventions that arise in specialized contexts or particular courts.

Table 6. Percentage of Cases Full Fee Granted, by Case Type and District, 2009–2013

A. Case Type

	N	*Full Fee Request Granted (% of Cases)*
Products Liability	10	100.0
FLSA	108	87.0
Labor	23	87.0
Derivative	6	83.3
Health Care	5	80.0
Other	60	80.0
Corporate	9	77.8
Mass Tort	13	76.9
Antitrust	19	73.7
Consumer	52	73.1
Civil Rights	21	71.4
Securities	74	70.3
Employment	25	68.0
Unknown	3	66.7
ERISA	22	63.6
FCRA	4	50.0
FDCPA	2	50.0
TILA	2	50.0

B. District

	N	*Full Fee Request Granted (% of Cases)*
D.N.J.	18	94.4%
E.D. Pa.	19	89.5%
S.D. Cal.	24	87.5%
E.D.N.Y.	21	85.7%
E.D. Cal.	16	81.3%
S.D.N.Y.	78	74.4%
W.D. Wash.	9	77.8%
C.D. Cal.	21	61.9%
D. Minn.	10	60.0%
N.D. Cal.	53	58.5%

F. Risk

Eisenberg and Miller's study of 1993–2008 data presented evidence in support of the hypothesis that high-risk cases are associated with higher percentage fees.[34] They found that for each case category except one, cases with high risk resulted in a higher fee percentage on average.[35] Table 7, Panel A suggests that the association between risk and fee percentage continues in the 2009–2013 data. However, the association is not as clear-cut. In the four largest case categories (FLSA, Consumer, Employment, and Securities), only high-risk cases in the Consumer and Employment categories had significantly higher fee percentages compared to low- and medium-risk cases. FLSA cases show a small increase in fee percentage for high-risk cases, while Securities cases actually show a lower fee percentage for high-risk cases. Table 7, Panel B shows that when all categories are combined, we see little difference between the mean fee percentages in high-risk cases and those in low- and medium-risk cases. The high-risk cases have a mean fee percentage that is 1% greater than the low- and medium-risk cases, and that difference is not statistically significant. High-risk cases, on the other hand, do have larger fee awards. The mean fee award for high-risk cases was $15.3 million, while the mean fee award for low- and medium-risk cases was $4.76 million—a statistically significant difference ($p < 0.05$). The median fee awards are also different. The median fee award for high-risk cases was $1.73 million, while the median fee award for low- and medium-risk cases was $943,000—a difference of $787,000 ($p < 0.05$).

[34] Eisenberg & Miller II, *supra* note 4, at 265.
[35] *Id.*

TABLE 7. MEAN FEE PERCENTAGE, BY RISK LEVEL, 2009–2013

A. By Case Category

	High Risk		*Low/Medium Risk*	
	N	*Mean Fee %*	*N*	*Mean Fee %*
ERISA	9	27.21	12	24.52
FCRA	1	21.42	3	31.68
FDCPA	1	27.87	1	25
FLSA	23	30.41	79	29.99
TILA	1	15.25	1	30
Antitrust	10	26.49	5	24.91
Civil Rights	4	32.5	12	27.2
Consumer	17	27.27	32	24.27
Corporate	5	30.46	4	22.02
Derivative	4	26.55	1	36.69
Employment	4	30.96	20	27.31
Health Care	2	26.67	3	28.53
Labor	12	29.11	10	28.57
Mass Tort	2	27.92	9	26.95
Products Liability	-	-	10	28.47
Securities	20	23.06	50	24.04
Other	8	28.74	47	24.58

B. All Categories Combined

	N	*Mean Fee %*	*Mean Fee Award (millions of dollars)*	*Median Fee Award (millions of dollars)*
High Risk	123	27.6	15.3	1.73
Low/Medium Risk	302	26.7	4.76	0.943
Difference		0.9	10.54	0.787

G. Opt-Outs and Objectors

Table 8 reports the relationship between the fee percentage and two class action case characteristics: whether any objection was filed (Panel A) and whether any class members opted out (Panel B). We find that cases with no objectors obtained a statistically significantly higher fee percentage on average than cases with objectors ($p < 0.01$),

but a lower average fee award. The mean fee award for cases with objectors was $13.2 million compared to a mean fee award of $3.73 million for cases with no objectors. This difference is statistically significant ($p < 0.01$). Cases with no opt-outs generated a statistically significantly higher fee percentage on average than cases with opt-outs ($p < 0.01$), but a lower average fee award. The mean fee award for cases with opt-outs was $6.79 million compared to a mean fee award of $2.22 million for cases with no opt-outs.

TABLE 8. OBJECTORS AND OPT-OUTS, 2009–2013

A. Presence of an Objector

	N	*Fee %*	*Mean Fee Award (millions of dollars)*	*Median Fee Award (millions of dollars)*
Objection Filed	269	24.53	13.2	2.85
No Objector	189	28.24	3.73	0.55
Difference		-3.70	9.45	2.3

B. Number of Opt-Outs

	N	*Fee %*	*Mean Fee Award (millions of dollars)*	*Median Fee Award (millions of dollars)*
One or More Opt-Outs	187	26.49	6.79	1.20
No Opt-Outs	91	28.82	2.22	0.35
Difference		-2.32	4.57	0.85

We also examined the frequency of objectors and opt-outs. As in prior work,[36] we find that both opt-outs and objectors were uncommon. Objectors averaged only 0.115% of the class in the 286 cases for which this information was available—approximately one objector for every 1000 class members. Opt-outs averaged 0.544% of the class in the 244 cases for which this information was available—approximately one opt-out per 200 class members.

[36] *See* Theodore Eisenberg & Geoffrey Miller, *The Role of Opt-Outs and Objectors in Class Action Litigation: Theoretical and Empirical Issues*, 57 VAND. L. REV. 1529, 1546 & tbl.1 (2004) (stating that the median percentage of opt-outs was 0.1% and the median percentage of objectors was zero).

H. Soft Relief

Some class action settlements include items of "soft" relief—our term for nonpecuniary relief that is not measured in the dollar value obtained for the class. One might expect that the presence of such soft relief would lead to larger attorneys' fees because courts would reward counsel for obtaining a result that benefited class members, even if the amount of the benefit could not be quantified.[37] Table 9 examines this question and finds that percentage fees tended to be lower in cases where soft relief constituted an important part of the recovery obtained by the class, although the differences were only weakly significant for mean fee percentage ($p = 0.066$) and not significant for mean fee amount ($p = 0.8905$).

TABLE 9. THE IMPACT OF SOFT RELIEF ON FEES, 2009–2013

	N	*Mean Fee %*	*Mean Fee Award (millions of dollars)*	*Median Fee Award (millions of dollars)*
Not Significant	371	27.44	6.39	0.98
Significant	55	25.65	6.8	1.2

I. Settlement Classes

Many class actions are resolved as settlement classes—meaning that the parties settle the class certification issue at the same time as they settle the merits, and present both agreements to the judge for approval at the fairness hearing.[38] Settlement classes were common in our data, constituting approximately three-quarters of the cases: Of the 422 cases for which data were available, 318 were settlement classes and 104 were litigation classes. Table 10 shows significant variation in the frequency of settlement classes across case types.

[37] *See* Staton v. Boeing Co., 327 F.3d 938, 974 (9th Cir. 2003) (holding that while the value of injunctive relief can rarely be included in the calculation of the common fund, "courts should consider the value of the injunctive relief obtained as a 'relevant circumstance' in determining what percentage of the common fund class counsel should receive as attorneys' fees" (quoting Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1049 (9th Cir. 2002))).

[38] *See* FED. R. CIV. P. 23(e)(2) (stating that a proposal to settle a class action that binds class members can only be approved "after a hearing and on finding that it is fair, reasonable, and adequate").

TABLE 10. FREQUENCY OF SETTLEMENT CLASSES BY CASE TYPE, 2009–2013

	Total Number of Cases by Type	*Number of Settlement Classes*	*% Settlement Classes*
ERISA	20	15	75.00
FCRA	4	4	100.00
FDCPA	2	0	0.00
FLSA	99	83	83.84
Other	55	37	67.27
TILA	2	2	100.00
Antitrust	16	11	68.75
Civil Rights	19	14	73.68
Consumer	51	39	76.47
Corporate	7	3	42.86
Derivative	4	2	50.00
Employment	23	19	82.61
Health Care	5	3	60.00
Labor	23	17	73.91
Mass Tort	10	7	70.00
Products Liability	10	9	90.00
Securities	69	51	73.91
Unknown	3	2	66.67

Table 11 shows that settlement classes were significantly associated with higher mean fee amount ($p = 0.0069$), but not with mean fee percentage ($p = 0.695$).

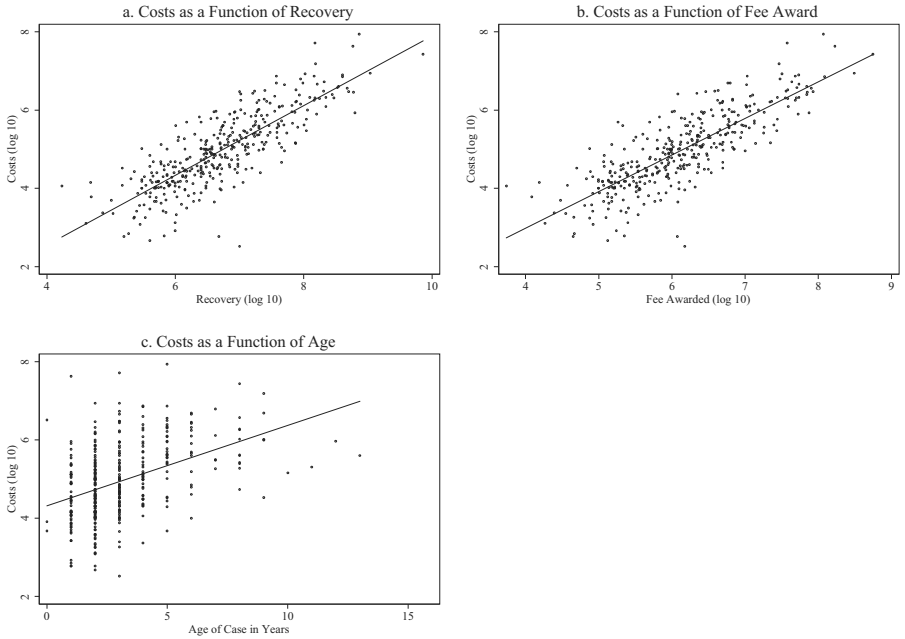
TABLE 11. THE IMPACT OF SETTLEMENT CLASSES ON FEES, 2009–2013

	N	*Mean Fee %*	*Mean Fee Award (millions of dollars)*	*Median Fee Award (millions of dollars)*
No	104	26.81	16.1	1.07
Yes	318	27.15	5.6	0.99

J. Costs and Expenses

As we found with the previous data,[39] costs and expenses tended to make up a relatively low percentage of the recovery. For the 379 cases in this data set where data were available, the median costs as a percentage of recovery were 1.71%, while mean costs as a percentage of recovery were 3.93%. To dig deeper, we explored cost as a function of three variables: recovery, fee award, and the age of the case. These relationships are shown in Figure 10. The graphs show a strong association between costs and both recovery ($r = 0.81$) and fees ($r = 0.81$), and a relatively strong association between costs and age ($r = 0.43$).

FIGURE 10. COSTS AS A FUNCTION OF RECOVERY, FEES, AND AGE, 2009–2013



K. Fee Methods and Multipliers

Although the pure lodestar method was rarely used during the 2009–2013 period, courts frequently used the percentage method with a lodestar check. This means computing the lodestar fee and adjusting the percentage fee if it markedly deviates from the lodestar calculation. The multiplier is calculated by dividing the fee award by the

[39] *See* Eisenberg & Miller II, *supra* note 4, at 274 (finding that from 1993 to 2002, mean costs were 2.8% of recovery and median costs were 1.7% while, from 2003 to 2008, mean costs were 2.7% of recovery and median costs were 1.7%).

lodestar. Table 12 reports the average multiplier in each federal circuit and for each case category. The mean multipliers ranged from 0.57 in the Eleventh Circuit to 2.52 in the First Circuit, and from 0.52 in FDCPA cases to 4.61 in Health Care cases. These two categories, however, have one and two cases, respectively, so they are not necessarily representative of the larger sample; of categories with at least five cases, the mean multiplier ranged from 0.92 for ERISA cases to 1.81 for Securities cases. In contrast to our analysis of 1993–2008 data,[40] we did not find a statistically significant difference in the multiplier if there was a fee-shifting statute available: The 42 cases available with no statute had an average multiplier of 1.82, and the 49 cases with a fee-shifting statute had an average multiplier of 1.63.

[40] *Id.* at 273.

TABLE 12. MEAN MULTIPLIER BY CIRCUIT AND CASE CATEGORY, 2009–2013

A. Circuit

	N	*Mean Multiplier*
1st	5	2.4
2nd	76	1.93
3rd	41	1.35
4th	11	1.4
5th	6	1.75
6th	16	1.13
7th	7	1.76
8th	17	1.47
9th	97	1.26
10th	9	1.18
11th	4	0.57
Federal	2	1.96
D.C.	2	1.33
Total	294	1.48

B. Case Type

	N	*Mean Multiplier*
Antitrust	15	1.61
Civil Rights	10	1.51
Consumer	36	1.32
Corporate	6	1
Derivative	3	0.74
Employment	16	1.28
ERISA	15	0.88
FCRA	4	1.72
FDCPA	1	0.52
FLSA	68	1.54
Health Care	2	4.61
Labor	13	1.06
Mass Tort	8	1.18
Other	33	1.65
Products Liability	8	1.08
Securities	57	1.79
TILA	2	1.94
Total	297	1.48

Figure 11 shows the relationship between fee percentage and multiplier and the relationship between recovery size and the multiplier. In our previous studies of the 1993–2002 and 2003–2008 periods, we hypothesized and presented evidence for a negative correlation between the multiplier and the fee percentage.[41] The logic was that a high multiplier indicates that the fee percentage is too high under the percentage method and should be brought into check. As Figure 11a shows, the relationship still appears to be negative during the 2009–2013 period; however, the relationship is weaker. We suspect that this change from prior periods could be due to increasing convergence in the legal community around acceptable fee percentages. Figure 11b shows the relationship between the multiplier and recovery amount. As we found previously,[42] higher multipliers are associated with higher recoveries.

FIGURE 11. RELATIONSHIPS BETWEEN MULTIPLIERS AND FEE PERCENT & RECOVERY SIZE, 2009–2013

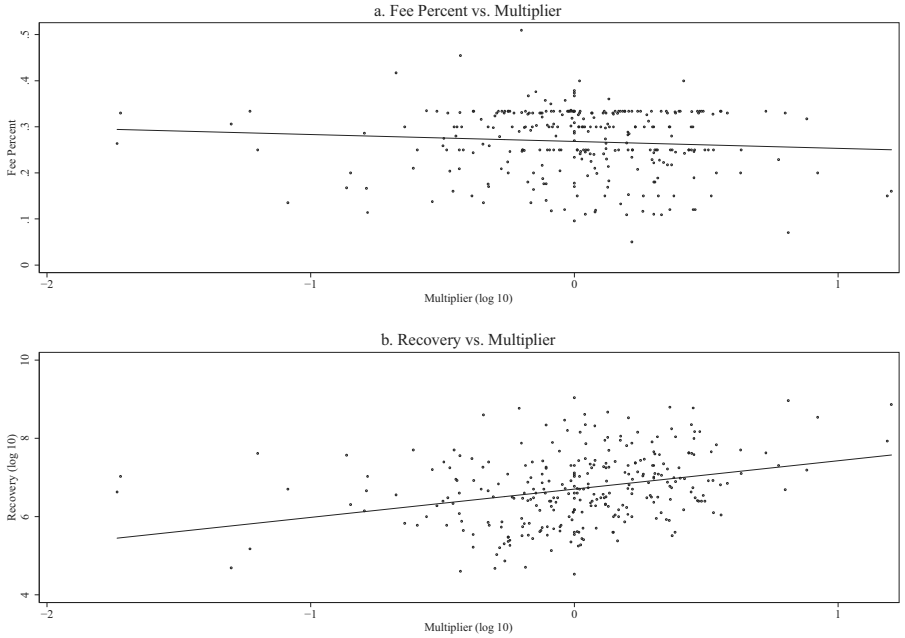


Table 13 shows the mean and standard deviation of the multiplier by recovery size deciles. Here we see that the multiplier is relatively low in the first two deciles and relatively high in the last decile. It is worth noting that the standard deviation of the multiplier tends to

41 *Id.* at 273–74.
42 *Id.* at 274.

increase with the recovery amount, suggesting that there is more variation in the multiplier at higher recovery levels.

TABLE 13. MEAN, MEDIAN, AND STANDARD DEVIATION OF MULTIPLIER, CONTROLLING FOR CLASS RECOVERY AMOUNT, 2009–2013

Range of Class Recovery Amount (Millions)	*Mean*	*Median*	*SD*	*N*
Recovery <=0.4	0.85	0.67	0.52	33
Recovery > 0.4 <= 0.75	0.72	0.74	0.32	25
Recovery > 0.75 <= 1.4	1.49	1.42	0.93	20
Recovery > 1.4 <= 2.65	1.26	1.15	0.79	29
Recovery > 2.65 <= 3.9	1.28	1.2	0.75	26
Recovery > 3.9 <= 6.5	1.37	1.03	1.28	29
Recovery > 6.5 <=12	1.48	1.09	0.98	34
Recovery > 12 <= 23.4	1.86	1.35	1.58	29
Recovery > 23.4 <= 67.5	1.65	1.5	1.27	32
Recovery > 67.5	2.72	1.5	3.59	35

L. Regression Analysis

This section uses regression analysis to explore the effects of some of the variables mentioned above on the fees awarded in class action settlements. The dependent variable is the log-transformed fee award. The key independent variables are the log-transformed gross recovery amount and fee request, both of which we found to be strongly correlated with the fee award in figures presented earlier. Our models also control for variables that appear as if they might have an impact on the fee, such as the costs and expenses requested by the plaintiffs' attorneys, and dummy variables identifying high-risk cases, cases where the pure lodestar method was used in lieu of the percentage method or percentage method with lodestar check, cases where opt-outs and objectors were present, and cases where the defendant paid the fee. In some models we included fixed effects for case categories and federal circuits. Table 14 presents summary statistics for the dependent and independent variables.

TABLE 14. SUMMARY STATISTICS

Variable	*N*	*Mean*	*Std. Dev.*	*Min*	*Max*
Fee Award (log)	458	6.061025	0.8359642	3.736243	8.744136
Gross Recovery (log)	458	6.648762	0.8789425	4.230449	9.860338
Fee Request (log)	454	6.089077	0.8392878	3.736243	8.744136
Costs and Expenses (log)	371	4.961283	0.9602119	2.522444	7.940662
High Risk Case	425	0.2894118	0.4540238	0	1
Lodestar Method Used	429	0.0629371	0.2431333	0	1
Incentive Bonus (log)	318	4.202167	0.5929221	1.431364	7.164353
Case with Objectors	343	0.4489796	0. 4981168	0	1
Case with Opt-Outs	278	0.6726619	0. 4700881	0	1
Soft Relief Significant	426	0.129108	0.3357137	0	1
Settlement Class	422	0.7535545	0.4314525	0	1
Defendant Pays Fee	453	0.1059603	0.308127	0	1

Table 15 presents regression results. Considering the strong positive relationships we observed in Figures 3a and 7a, we are not surprised to find that gross recovery and fee request are reliable predictors of fee award. Models 1 and 2 show that a one-unit increase in the gross recovery or fee request results in a near-one-unit increase in the fee awarded. The R-squared for these models demonstrates that on their own, gross recovery and fee request account for 97.7% and 99% of variance in the dependent variable, respectively. When we put the variables for gross recovery and fee request on the right-hand side of the same regression model, we notice that the variable for fee request has a larger substantive effect on the dependent variable than does the gross recovery variable. This may be due to the fact that the size of the gross recovery influences the amount requested by the plaintiffs' attorneys, and the amount requested then tends to determine the fee award. The strong association between fee award and both the recovery amount and the fee request are robust to the inclusion of several additional controls (Models 4–8). These relationships continue to hold up in models where fixed effects for case category and circuit are added (Models 9–11).

Other variables that appeared to be associated with higher or lower fees in Sections A–M also demonstrate statistically significant associations in the regression models, although not to the extent that the variables for gross recovery and fee request do. First, we find that all else equal, cases determined by the pure lodestar method result in a lower fee on average than cases determined by the percentage method or the percentage method with lodestar check (Models 6–11).

The difference between fees determined by the lodestar method or others, however, is substantively small—only about 1% on average on the log 10 scale in which the dependent variable has been coded. Second, we find evidence that high-risk cases are more likely to result in higher fees (Model 5). The substantive effect of this variable, however, is small compared to the effects of the fee requested and gross recovery variables. In crosstabs presented in Table 8, we observed that cases with opt-outs and cases without objectors had higher average fees. The statistically significant differences we reported earlier, however, are not robust to the addition of control variables. We also included a dummy variable for cases where the defendant paid the fee. Although we found this variable to have a statistically significant effect in our analyses of the 1993–2002 period,[43] it is not statistically significant here. The presence of soft relief or settlement classes is not statistically significant. Finally, the size of the incentive award is significantly associated with higher fee awards in most specifications of the model.

Conclusion

In sum, our regression models show that the size of the recovery and the fee requested are by far the strongest predictors of attorneys' fees in class actions. The strong associations hold up across locales and case types and are robust to the inclusion of several control variables. We also find that high-risk cases are, all else equal, associated with somewhat higher fees on average, and that cases that use the pure lodestar method are associated with somewhat lower fees. A pronounced scaling effect exists: Higher recoveries are associated with lower percentage fees and higher lodestar multipliers. There appears to be a trend towards convergence in fee awards, indicating that courts are gaining experience in this area and, possibly, that they are relying more heavily on the robust empirical literature on fee awards. Overall, our data are broadly consistent with the results of studies of fee awards in earlier time periods. Together with other empirical research, the results of our study can provide useful information to attorneys, judges, and policymakers interested in rationalizing and improving the procedures and methodology used for calculating fees in class action cases.

[43] Eisenberg & Miller I, *supra* note 4, at 77.

Table 15. Regression Results. Dependent Variable: Fee Award (log 10)

VARIABLES	(1) Fee (log)	(2) Fee (log)	(3) Fee (log)	(4) Fee (log)	(5) Fee (log)	(6) Fee (log)	(7) Fee (log)	(8) Fee (log)	(9) Fee (log)	(10) Fee (log)	(11) Fee (log)
Gross Recovery (log)	0.940***		0.230***	0.148***	0.142***	0.133***	0.166***	0.182***	0.183***	0.196***	0.196***
	(0.00677)		(0.0268)	(0.0286)	(0.0285)	(0.0289)	(0.0337)	(0.0416)	(0.0461)	(0.0434)	(0.0448)
Fee Request (log)		0.992***	0.754***	0.832***	0.832***	0.842***	0.802***	0.797***	0.798***	0.784***	0.795***
		(0.00478)	(0.0281)	(0.0298)	(0.0297)	(0.0300)	(0.0345)	(0.0430)	(0.0472)	(0.0448)	(0.0458)
Costs and Expenses (log)				0.00929	0.0114*	0.0102	0.0107	0.00313	0.000710	-0.00385	-0.000486
				(0.00673)	(0.00676)	(0.00682)	(0.00734)	(0.00887)	(0.00932)	(0.00913)	(0.00949)
High Risk Case					0.0179**	0.0146*	0.0240***	0.0224*	0.0200	0.0183	0.0263**
					(0.00842)	(0.00844)	(0.00923)	(0.0122)	(0.0127)	(0.0126)	(0.0128)
Lodestar Method Used						-0.0799***	-0.0756***	-0.0555**	-0.0608**	-0.0749***	-0.109***
						(0.0161)	(0.0200)	(0.0234)	(0.0267)	(0.0265)	(0.0313)
Incentive Bonus (log)							0.0269***	0.0282***	0.0274***	0.0224**	0.0146
							(0.00799)	(0.00976)	(0.0102)	(0.0101)	(0.0114)
Case with Objectors								-0.0225*	-0.0185	-0.00795	-0.0150
								(0.0125)	(0.0130)	(0.0125)	(0.0141)
Case with Opt-Outs								-0.0143	-0.0122	-0.0127	-0.00337
								(0.0122)	(0.0127)	(0.0124)	(0.0125)
Soft Relief Significant									-0.0143	-0.00734	-0.000316
									(0.0168)	(0.0166)	(0.0195)
Settlement Class									-0.0102	-0.0149	-0.00938
									(0.0151)	(0.0148)	(0.0157)
Defendant Pays Fee									-0.000656	-0.0252	-0.0259
									(0.0257)	(0.0247)	(0.0243)
Constant	-0.189***	0.0154	-0.0626**	-0.0366	-0.0153	-0.00633	-0.0968**	-0.124**	-0.113*	-0.0670	-0.131*
	(0.0454)	(0.0294)	(0.0287)	(0.0299)	(0.0303)	(0.0307)	(0.0415)	(0.0582)	(0.0631)	(0.0676)	(0.0687)
Category Fixed Effects	No	No	No	No	No	No	No	No	Yes	No	Yes
Circuit Fixed Effects	No	No	No	No	No	No	No	No	No	Yes	Yes
Observations	458	454	454	371	353	339	242	142	136	136	136
R-squared	0.977	0.990	0.991	0.993	0.993	0.993	0.993	0.993	0.993	0.994	0.996

Standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.10