U.S. CHAMBER
Institute for Legal Reform

Frequent Filers

Repeat Plaintiffs in Shareholder Litigation

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U.S. CHAMBER
Institute for Legal Reform

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Prepared for the U.S. Chamber Institute for Legal Reform by

Stephen J. Choi, New York University
Jessica Erickson, University of Richmond
Adam C. Pritchard, University of Michigan

Introduction

In recent years, shareholder litigation against public corporations has grown into a substantial financial enterprise controlled by relatively few shareholders and the law firms that represent them. With increasing frequency, these shareholders are state or municipal pension funds. Their lawyers are private law firms that are hired by the state (or another government unit) to pursue the case on a contingency fee basis, meaning the firm is paid a percentage of the judgment or settlement if its client, the state, is successful.

In identifying and then pursuing shareholder cases against individual companies, these pension funds exhibit an unusual degree of investor activism. It is an investment maxim that diversifying one's stock portfolio will maximize returns while minimizing risk. Although some companies' stock will increase in value and other companies' stock may perform poorly, aggregate returns in a diversified portfolio will be relatively stable. As a result, reasonable investors generally do not focus on the performance of any one company's shares, but on the performance of the portfolio as a whole. Reinforcing this behavior is the fact that an individual shareholder, who typically holds only a small percentage of ownership, has little influence over today's publicly-held American corporation. That includes a lack of influence over corporate misconduct, such as fraud and self-dealing, that could hurt returns.

To address the problem of insider wrongdoing, government regulators have turned to mandatory public disclosures made in the company's filings with the federal Securities & Exchange Commission (SEC) and elsewhere. In Louis Brandeis's words, "sunlight is the best disinfectant." Disclosure is unlikely to curb wrongdoing, however, unless disclosure obligations are backed by enforcement. Government enforcement—by the SEC, the Justice Department, and state attorneys general—puts teeth into mandatory disclosure. But unlike most other countries, the U.S. does not leave enforcement exclusively to government action. Individual investors can sue in class actions, either representing other shareholders or derivatively, on behalf of the corporation itself. These suits seek redress for fraud and breaches of fiduciary duty by insiders.

The deterrent potential of shareholder class and derivative actions suits is affected, however, by the same disincentives that prevent individual shareholders from monitoring each corporation in an investment portfolio. Although litigation is ostensibly brought on behalf of all investors, a single investor's stake in a lawsuit is generally too small to warrant active attention. It is a puzzle, then, why some investors—often state and municipal pension funds—appear again and again as representative plaintiffs in securities fraud and fiduciary duty class actions. Why do these frequent filers care enough to file lawsuit after lawsuit?

> “The lawyer will typically receive a contingency fee of between 10% and 25% percent of the recovery in a securities class action.”

One clue to unraveling this puzzle is that the repeat plaintiffs in these class actions are generally represented by the same law firm, or one chosen from a small circle of firms. The economics of these suits are such that the plaintiffs’ law firm will have a much greater financial interest in the lawsuit than the investor it nominally represents. The lawyer will typically receive a contingency fee of between 10 and 25 percent of the recovery in a securities class action; in fiduciary suits, attorneys’ fees may be the *only* monetary portion of the settlement. Moreover, the lawyers will typically front the cost of the litigation. Given the lawyers’ dominant economic interest, it is no surprise that they control decision-making in these lawsuits. Most observers agree that the plaintiffs in the suits are, generally speaking, mere figureheads who only nominally oversee the lawsuits that are brought on their behalf.[1] This lack of oversight is likely to be particularly acute when the plaintiff is a frequent filer. Frequent filers seem to have sufficient interest in an individual company’s alleged wrongdoing to file a lawsuit, but their interest in actively monitoring the lawyers who bring these suits on their behalf is a different matter altogether.

This paper provides illustrative examples of the repeat-plaintiff phenomenon in shareholder class and derivative actions, and the consequences to the investors those suits are intended to benefit.

Frequent Filer in Federal Securities Class Actions: Mississippi PERS[2]

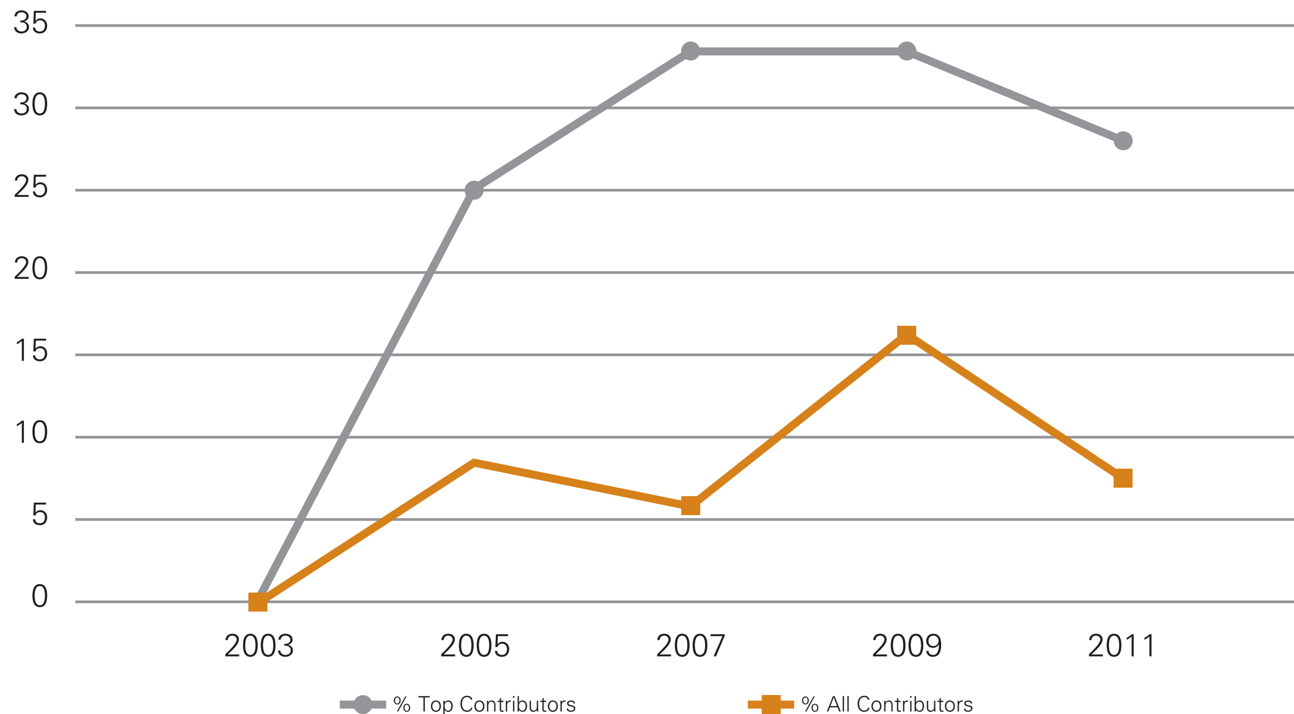
Frequent filers have been a long-standing phenomenon in securities class actions. For some time it was rumored that repeat filers were induced to become named plaintiffs with side payments from the class action lawyers representing them and the class. Those rumors appear to have been well-founded; for example, several former partners of the Milberg Weiss law firm went to prison for concealing such payments from courts overseeing securities class actions.[3] Payments to class representatives raised concerns that they would have little interest in protecting the interests of absent class members. That concern was particularly salient when it came to the plaintiff negotiating with the attorney over his or her fee.[4]

To address this concern, Congress singled out lead plaintiffs for reform when it adopted the Private Securities Litigation Reform Act (PSLRA) in 1995.[5] Specifically, Congress included a provision in the PSLRA prohibiting non-pro-rata payments to the lead plaintiff, which presumably included side payments from the attorney to the lead plaintiff.[6] On the question of repeat plaintiffs, the PSLRA bans shareholders, absent court permission, from serving as a lead plaintiff in more than five securities class actions in a three-year period.[7] As an alternative to figurehead repeat plaintiffs with nominal stakes in the litigation, Congress enacted a rebuttable presumption that the lead plaintiff in a securities class action will be the shareholder applicant with the largest financial stake in the litigation.[8] Large shareholders, the theory went, would have more of an incentive to oversee lawyers who represent the class. Congress hoped that institutional shareholders serving as lead plaintiffs would actively negotiate with class counsel over attorneys' fees, which would lead to a larger share of the recovery accruing to the class members.

> Mississippi PERS was named lead plaintiff in 16 securities class actions between 2005 and 2011, notwithstanding the PSLRA's prohibition against appearing more than five times in a three-year period.

Despite these reforms, frequent filers continue to appear in securities class actions. Rather than individual investors, however, these repeat plaintiffs are pension funds managed by state and local governments and labor unions. One particularly active plaintiff is the Public Employees' Retirement System of Mississippi (Mississippi PERS). Our research found that Mississippi PERS was named lead plaintiff in 16 securities class actions between 2005 and 2011, notwithstanding the PSLRA's prohibition against appearing more than five times in a three-year period. This prohibition was raised in four of the cases in which Mississippi PERS sought lead plaintiff status, and each time, the court granted Mississippi PERS permission to serve as lead plaintiff, based on the preference expressed by Congress in the PSLRA for institutional investors as lead plaintiffs.[9]That explains how Mississippi PERS got around the PSLRA's prohibition against "professional" plaintiffs. But why was Mississippi PERS interested in serving as lead plaintiff in the first place? Jim Hood was elected Attorney General of Mississippi in 2003, and in Mississippi, the attorney general has the final authority regarding selection of outside counsel for Mississippi PERS.[10] We obtained a list of the top 20 contributors to Hood's campaign for each election year.[11] We then removed single issue and public subsidy contributors, as well as contributions by the candidate, from the top 20 contributors. Chart 1 show contributions from plaintiffs' class action firms, both as a percentage of Hood's top contributors, as well as of all his contributors. Hood received no campaign contributions from securities class actions firms in 2003. Since that time, however, Hood has attracted considerable financial support from a number of plaintiffs' firms: three firms in 2005, twelve in 2007, five in 2009, and nine in 2011.

Chart 1: Securities Plaintiffs' Firms Contributions To Jim Hood



To offer a relevant baseline, we also analyzed contributions made in 2010 to Martha Coakley, the Massachusetts Attorney General. Massachusetts is not as active as Mississippi as a lead plaintiff in securities litigation.[12] We looked at 2010, which represents the latest election year for the Massachusetts Attorney General and provides the closest comparison contribution year for the 2011 election year for the Mississippi Attorney General. Securities class action firms are a much smaller percentage of the top contributors to Coakley (5.6%), and they provide only a *de minimis* amount of her campaign funds (0.1%).[13] Compare that latter number to the 16.3% of all contributions received by Hood in 2009. Moreover, securities class action firms making contributions to Hood did not have a general interest in Mississippi politics. His plaintiffs' firm contributors were all out-of-state, and they made no contributions to other candidates for statewide office in Mississippi. Coakley's law firm contributors, by contrast, were all residents of Massachusetts, and they made two-thirds of their contributions to Massachusetts candidates other than Coakley.

Which plaintiffs' class action firms were Hood's most ardent supporters? Table 1 sets forth the firms that made contributions to Hood's campaign during the relevant time period, their percentage of his total contributions, and the number of times those firms appeared in cases representing Mississippi PERS and a shareholder class. We include contributions by: (a) the plaintiff firm name (this also includes individual attorney contributions where the attorney listed the plaintiff firm as their place of employment); (b) the named partners of the plaintiff firm; and (c) those attorneys named in the consolidated complaint as associated with the plaintiff firms for the Mississippi PERS lead plaintiff class actions from 2005 to 2011.

Table 1: Securities Plaintiff Attorney Contributions to Jim Hood, 2005-2011

Firm	Amount	%	Cases
Bernstein Litowitz Berger & Grossman	$122,000	3.1%	10
Labaton Sucharow	$90,000	2.3%	2
Wolf Popper	$67,000	1.7%	3
Kaplan Fox, Kilsheimer	$51,750	1.3%	1
Barroway Topaz (f/k/a Shiffrin & Barroway)	$42,530	1.1%	1
Chitwood Harley Harnes	$31,750	0.8%	2
Lieff Cabraser Heimann & Bernstein	$32,000	0.8%	1
Bernstein Liebhard & Lifshitz	$30,000	0.8%	0
Kirby McInerney & Squire	$30,000	0.8%	0
Baron & Budd	$19,200	0.5%	2
Nix, Patterson & Roach LLP	$16,666	0.4%	1
Grant & Eisenhofer	$15,000	0.4%	3
Motley Rice	$10,000	0.3%	1
Cohen Milstein Sellers & Toll	$9,420	0.2%	2
Zimmerman Reed	$8.950	0.2%	1
Lockridge Grindal Nauen	$5,500	0.1%	1
Cauley Bowman Carney & Williams	$5,000	0.1%	1
Total	**$586,772**	**14.9%**	

Bernstein Litowitz and its lawyers are the leading contributors to Hood, and Hood appears to be a fervent admirer of Bernstein Litowitz. Between 2005 and 2011, the firm represented Mississippi PERS in ten separate class actions.

In conjunction with the plaintiffs' firm contributions, Table 2 sets out the participation by Mississippi PERS as lead counsel in securities class actions between 2005 and 2011, along with the plaintiffs' firms that represented the pension fund and the class in those lawsuits. We also show whether any of those firms had made a contribution to Hood's campaign prior to their selection as lead counsel, the attorneys' fee requested in the case, and the value of the settlement.

Table 2: Mississippi PERS Lawsuits and Lead Counsel

Defendant Company	Filing Year	Lead Counsel	Contribution Pre-Filing	Requested Atty Fee %	Settlement ($ Million)
Visteon	2005	Baron & Budd	1	—	Dismissed
Delphi	2005	Nix, Patterson & Roach Bernstein Litowitz Berger & Grossman Grant & Eisenhofer Schiffrin & Barroway	1	18	342.1
Boston Scientific	2005	Zimmerman Reed Lockridge Grindal Nauen	0	—	Dismissed
Sears Holdings	2006	Grant & Eisenhofer Lerach Coughlin et al. Gardy & Notis	0	—	Dismissed
Semtech	2007	Cauley Bowman Carney & Williams Baron & Budd	1	17	20
Ambac Financial	2008	Bernstein Litowitz Berger & Grossman Kaplan Fox, Kilsheimer	1	17	33
Schering-Plough	2008	Labaton Sucharow Bernstein Litowitz Berger & Grossman	1	Pending	473
Maxim Integrated	2008	Bernstein Litowitz Berger & Grossman Chitwood Harley Harnes	1	17	173
J.P. Morgan Acceptance	2008	Wolf Popper Bernstein Litowitz Berger & Grossman	1	—	Pending
Bear Stearns	2008	Cohen Milstein Sellers & Toll Bernstein Litowitz Berger & Grossman	1	—	Pending
Credit-Based Asset Servicing	2008	Bernstein Litowitz Berger & Grossman	1	17	315
Satyam	2009	Grant & Eisenhofer Bernstein Litowitz Berger & Grossman	1	17	301
Royal Bank of Scotland	2009	Labaton Sucharow Wolf Popper Cohen Milstein Sellers & Toll	1	—	Dismissed
State Street	2009	Berman DeValerio et al. Bernstein Litowitz Berger & Grossman Motley Rice	1	—	Pending
Amedisys	2010	Bernstein Litowitz Berger & Grossman Wolf Popper	1	—	Pending
Diamond Foods	2011	Chitwood Harley Harnes Lieff Cabraser Heimann & Bernstein	1	—	Pending

> "The rewards for the firms selected by Mississippi PERS have been substantial. Six of the ten cases in which Bernstein Litowitz—Hood's largest donor among the class action firms—has participated as lead counsel have settled, with an average settlement of $272.9 million. The fees requested by Bernstein Litowitz and other firms representing Mississippi PERS average $46.4 million per settlement."

In only two cases did firms representing Mississippi PERS in a securities class action not make a contribution to Jim Hood's election campaign before being selected as lead counsel. Not surprisingly, firms from both of those cases subsequently became Hood contributors. Notwithstanding this pattern, courts have rejected challenges to Mississippi PERS participation as lead plaintiff based on allegations that the state selects lead counsel due to "pay-to-play." Absent specific evidence linking the selection of counsel to campaign contributions, courts are reluctant to question the lead plaintiff's selection of counsel, despite the court's obligation to protect the interests of absent class members.[14]

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The Mississippi legislature has attempted to address the issue of frequent filers in part by passing legislation in 2012 to ensure transparency in the use of outside counsel to represent the state. Mississippi law now places a number of conditions on the state's retention of outside counsel, including requiring a written finding that the assistance of outside counsel is in the public interest and cost-effective; imposing tiered limits on contingency fees, with an aggregate cap, and prohibiting outside counsel from receiving a fee based on the amount of penalties or civil fines; mandating public posting of contracts with and payments to outside counsel on the Internet; and requiring outside counsel to maintain detailed records of the actual time and expenses incurred during the representation.[15]

Frequent Filer in State Fiduciary Duty Suits: Sanjay Israni

The problem of frequent filers is not limited to state pension funds, nor is it limited to federal lawsuits. Although institutions like Mississippi PERS now serve as plaintiffs in most federal securities class actions, individuals continue to dominate in shareholder lawsuits filed under state law.

State law offers two common ways for shareholders to challenge the actions of corporate management. First, shareholders can file merger or acquisition litigation, alleging that a corporation's board of directors breached its fiduciary duties by agreeing to sell the corporation for a price below its true value. Second, shareholders can file derivative litigation, alleging that the board of directors breached its fiduciary duties in managing the company. Repeat plaintiffs frequently file both types of lawsuits. A recent study found that repeat plaintiffs have filed more than 400 such lawsuits since the beginning of 2007.[16]

Frequent filers face far fewer constraints in state court than they do in federal court. As noted above, the PSLRA bans shareholders from serving as a lead plaintiff in more than five securities class actions in a three-year period. No such limit, however, applies under state law, allowing serial plaintiffs to file lawsuits as often as they want. In addition, the PSLRA includes a rebuttable presumption that the lead plaintiff in a securities class action will be the shareholder applicant with the largest financial stake in the litigation. State laws do not include comparable provisions, allowing shareholders who own only a few shares in the target company to control the litigation. These gaps in state law have allowed many of the problems Congress tried to curtail in federal securities class actions with the PSLRA to migrate to the state courts.

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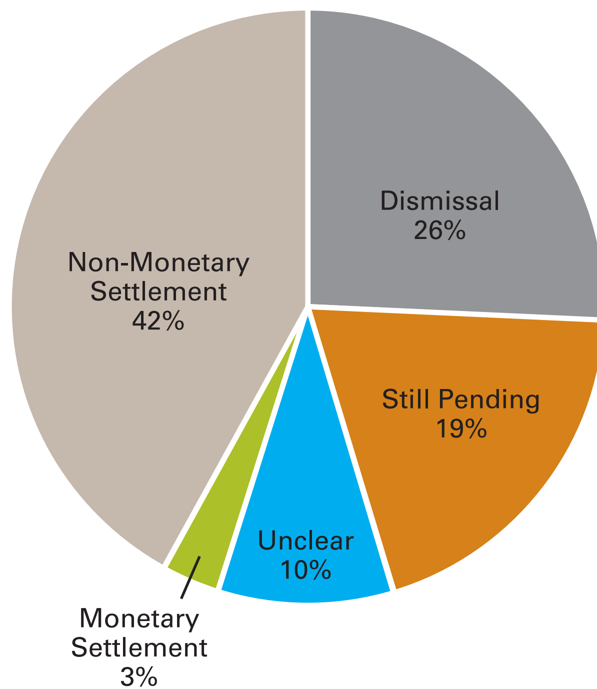
Chart 2: Outcomes of Sanjay Israni's Lawsuits



A plaintiff named Sanjay Israni illustrates the impact of frequent filers in these lawsuits. In the early years after the passage of the PSLRA, Israni filed a small number of securities class actions.[17] As institutions became more significant players in these suits, however, Israni moved on to state law claims. Since the middle of 2009, Israni has filed 31 shareholder lawsuits, nearly all of which are based on alleged violations of state law: 26 more suits than Israni would have been eligible to file under the PSLRA. However, the absence of applicable state law poses no obstacles to Israni's frequent filings.

Israni's enthusiasm for filing suits has not been matched by corresponding justified benefit to his fellow shareholders. To date, 25 of his lawsuits have concluded, of which information was available for 22 of them. Eight of these lawsuits were dismissed, either by the court or because Israni chose not to pursue the litigation. The remaining suits settled. Of these settlements, only one included a cash payment to the shareholders or the plaintiff corporation, with the remainder of the cases settling for exclusively non-monetary consideration. Chart 2 at left shows the outcomes of Israni's lawsuits.

The non-monetary settlements included terms now common in state shareholder lawsuits. In derivative settlements, corporations often agree to change their corporate governance policies to settle the lawsuit.[18] In merger and acquisition settlements, corporations frequently agree to make additional disclosures to their shareholders or relatively minor changes to the terms of the merger.[19] The Delaware Court of Chancery has criticized these settlements, stating that they can amount to little more than a "Kabuki dance."[20] Despite such criticism of these types of settlements, they remain a common—and cheap—means of resolving shareholder lawsuits.

> “Israni received incentive payments for serving as a plaintiff in three of these suits, ranging from $1,000 to $7,500,24 while his lawyers collected fees that averaged over $500,000 per case. Israni and his attorneys profited from these lawsuits even though the shareholders they supposedly represented received no monetary consideration.”

In Israni’s one case that produced a monetary settlement, he may not deserve much of the credit. This settlement occurred in a derivative lawsuit challenging public disclosures made by a Utah energy company, EnergySolutions, Inc. Israni filed his lawsuit in Utah federal court,[21] but he soon dismissed his suit in favor of a similar suit filed by other shareholders in New York state court.[22] The New York lawsuit eventually settled for $6.5 million, but the settlement agreement made little mention of Israni or his lawsuit.[23] In other words, Israni’s sole monetary victory was likely due to the efforts of other shareholder plaintiffs.

Although shareholders have received little financial benefit from Israni’s lawsuits, they have been lucrative for Israni and his attorneys. Israni received incentive payments for serving as a plaintiff in three of these suits, ranging from $1,000 to $7,500,[24] while his lawyers collected fees that averaged over $500,000 per case. Israni and his attorneys profited from these lawsuits even though the shareholders they supposedly represented received no monetary consideration.

Like most frequent filers, Israni filed many of his lawsuits using the same law firm. In nearly two-thirds of his cases, the same small law firm is listed as “of counsel.”[25] The named partner at this law firm is himself a frequent filer in shareholder lawsuits. This lawyer, as well as a family foundation and an individual who appears to be his wife, have all served as plaintiffs in approximately 12 shareholder lawsuits.[26] Although courts have traditionally looked unfavorably on lawyers or their family members serving as plaintiffs in shareholder lawsuits, no court appears to have acknowledged the lawyer’s role in these cases.

Israni and his lawyers may well be committed advocates for investors. According to affidavits filed in his lawsuits, Israni is a Certified Public Accountant with a background in finance.[27] Yet it is fair to ask whether anyone can properly monitor such a large number of lawsuits, particularly in light of the scant returns Israni and his lawyers have produced for Israni’s fellow shareholders.

Conclusion

Lack of litigation oversight by frequent filers leads to two significant consequences. First, class action attorneys often collect substantial contingency fees, which reduce the recovery that would otherwise go to shareholders or the corporation. Even where the percentage paid to the lawyers is lower than the percentage they would garner in a non-class-action lawsuit, the overall fee is often exorbitant given the size of the settlements in these class actions. Second, class action attorneys are given free rein to bring extortionate suits which corporations feel compelled to settle for nuisance value. Those settlements primarily benefit lawyers. The cost of these nuisance settlements, ironically, is ultimately borne by shareholders, as they increase corporate expenses and reduce corporate profits.

Given the well-known problems in shareholder litigation, the class action system needs active named plaintiffs who can devote the appropriate time necessary to oversee the litigation and fulfill their obligations to the shareholders they purport to represent. Additionally, greater transparency is needed when government officials or entities retain lawyers to represent state and municipal pension funds in securities class action lawsuits. Transparency is important to assure that the choice of counsel is not the result of improper influence, and that legal fees being paid by government pension funds and other class members are appropriate and proportional to the effort expended.

End Notes

[1] As one prominent (now disbarred) plaintifffs' attorney famously put it, "I have the greatest practice of law in the world. … I have no clients." William P. Barrett, *I Have No Clients*, FORBES, Oct. 11, 1993, at 52 (quoting William Lerach).

[2] This is a case study of contributions to one politician in a state with a retirement fund that is active in securities class action litigation compared with a similar level politician in a state that is less active in such litigation. We will be issuing a more comprehensive paper in October that will examine this issue for politicians, including not only the attorney general but the governor and state treasurer as well, for several additional states that are active in securities class action litigation (including Louisiana, North Carolina and Oklahoma), and for comparable level politicians at states not active in securities litigation.

We believe the observed phenomenon is not limited to Jim Hood and Mississippi. For example, the top 20 contributors to North Carolina State Treasurer Janet Cowell's 2012 election campaign include three attorneys from Wolf Popper LLP, a plaintiffs' class action law firm. (*See* http://followthemoney.org/database/StateGlance/candidate.phtml?c=141471). Wolf Popper LLP in turn lists the State of North Carolina Retirement System as one of its clients. (*See* http://www.wolfpopper.com/pressrelease.cfm/ID/903). In addition, several attorneys from Bernstein Litowitz Berger & Grossmann LLP, another plaintiffs' class action law firm, contributed to Cowell's 2012 election. (*See* http://followthemoney.org/). Bernstein Litowitz Berger & Grossman LLP is one of the co-lead counsel in a securities class action lawsuit now pending against Facebook relating to Facebook's IPO. The North Carolina Department of the State Treasurer on behalf of the North Carolina Retirement Systems is one of the lead plaintiffs in the Facebook class action. (*See* Facebook Complaint available at http://securities.stanford.edu/1048/FB00_01/2013228_r01c_12MD02389.pdf).

[3] *See* Molly Selvin, *Plaintiff-for-hire Sentenced: A Retired Lawyer Gets Home Detention in the Milberg Weiss Case*, L.A. TIMES, Jan. 29, 2008.

[4] *See* Elliot J. Weiss & John S. Beckerman, *Let the Money Do the Monitoring: How Institutional Investors Can Reduce Agency Costs in Securities Class Actions*, 104 YALE L.J. 2053, 2065 (1995) ("The conflicts of interest inherent in such actions lead some plaintiffs' attorneys—critics would say most—to give considerable weight to their interest in maximizing their fee income when deciding on what terms to settle class actions.").

[5] Pub. L. 104-67, 109 Stat. 737 (1995), (codified as amended in scattered sections of 15 U.S.C.).

[6] 15 U.S.C. § 78u-4(a)(2)(A)(vi).

[7] 15 U.S.C.. § 78u-4(a)(3)(B)(vi), (4).

[8] 15 U.S.C. §§ 78u-4(a)(3)(B)(iii)–(v).

[9] *See, e.g.*, Iron Workers Local No. 25 Pension Fund v. Credit-Based Asset Servicing and Securitization LLC, 616 F. Supp 2d 461, 467 (S.D.N.Y. 2009).

[10] Miss. Code Ann. § 7-5-1.

[11] *See* www.followthemoney.org.

[12] We checked from 2005 to 2011 on Westlaw's securities docket database and Stanford's securities class action clearinghouse. The Massachusetts Pension Reserves Investment Management Board was involved in very few cases. For example it was the lead plaintiff in an action against Fannie Mae that was transferred and consolidated with many other actions relating to Fannie Mae. Other than this one consolidated action, we found no other actions involving a Massachusetts state pension fund in our research.

[13] *See* www.followthemoney.org.

[14] *See, e.g.,* Nate Raymond, *Judge certifies Diamond Food class despite 'pay to play' claims*, Thomson Reuters News & Insight (May 10. 2013).

[15] Miss. Code Ann. § 7-5-8.

[16] Jessica Erickson, *The New Professional Plaintiffs in Shareholder Litigation*, 65 Fla. L. Rev. 1075 (2013).

[17] *See, e.g.,* Israni v. GRIC Communications, et al., Case No. 1:01CV08087 (S.D.N.Y. Aug. 24, 2001).

[18] *See, e.g.,* Israni v. Thomson, Case No. 4:10-cv-01117 (N.D. Cal. Mar. 16, 2010).

[19] Israni v. Ness Techs., Case No. 6569 (Del. Ch. June 15, 2011).

[20] *In re* Revlon, Inc. Sareholders Litigation, 990 A.2d 940, 945 (Del. 2010).

[21] *See* Verified Shareholder Derivative Complaint, Israni v. Creamer et al., Case No. 2:10-cv-00849 (D. Utah Aug. 25, 2010).

[22] *See* Notice and Motion of Voluntary Dismissal, Israni v. Creamer et al., Case No. 2:10-cv-00849 (D. Utah Oct. 9, 2010).

[23] *See* Stipulation of Compromise and Settlement, Fish v. Lindsay Goldberg & Bessemer, L.P., et al., Case No. 651708/2010, (N.Y. Sup. Ct. Nov. 30, 2012).

[24] *See, e.g.,* Order Awarding Plaintiffs' Counsel Attorneys' Fees and Expenses and Plaintiffs' Case Contribution Awards, In re Accuray, Inc. S'holder Derivative Litig., Case No. 09-05580 (N.D. Cal. May 6, 2011).

[25] *See, e.g.*, Verified Class Action Complaint, Israni v. RightNow Techs. et al., Case No. 6977 (Del. Ch. Oct. 25, 2011) (listing the Law Offices of Marc Henzel as "of counsel" in the case).

[26] *See, e.g.*, Cindy Henzel v. XO Holdings Inc, Case No. 6150 (Del. Ch. Jan. 26, 2011); Marc Henzel v. Dollar Thrifty Automotive Group, Inc., et al., Case No. CJ-2010-02761 (Okla. Dist. Ct. Aug. 28, 2010); Henzel Family Foundation v. Burke et al, Case No. 1805 (Del. Ch. Nov. 23, 2005).

[27] *See* Affidavit of Co-Lead Plaintiff Sanjay Israni, In re Lawson Software, Inc. S'holder Litig., Case No. 6443 (Del. Ch. Nov. 28, 2011).

U.S. CHAMBER
Institute for Legal Reform

202.463.5724 main
202.463.5302 fax

1615 H Street, NW
Washington, DC 20062

instituteforlegalreform.com