IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE LONDON SILVER FIXING, LTD. ANTITRUST LITIGATION	14-MD-02573-VEC 14-MC-02573-VEC
This Document Relates to: ALL ACTIONS	The Honorable Valerie E. Caproni

DECLARATION OF VINCENT BRIGANTI

I, Vincent Briganti, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a member of the Bar of this Court and chairman of the law firm Lowey Dannenberg, P.C. ("Lowey").

2. I respectfully submit this declaration in support of Interim Co-Lead Counsel's Motion for Award of Attorneys' Fees and Reimbursement of Expenses in connection with services rendered in the above-captioned action ("Action").[1]

3. Lowey is counsel of record for Representative Plaintiff J. Scott Nicholson and serves as the Court-appointed Interim Co-Lead Counsel in this Action together with Grant & Eisenhofer PA ("Grant & Eisenhofer").

4. The statements herein are true to the best of my personal knowledge, information and belief based on Lowey's books and records and information received from Lowey attorneys and staff. Lowey's time and expense records are prepared and maintained by the firm in the ordinary course of business.

5. I am the partner who oversaw my firm's involvement in the Action, together with partners Thomas Skelton and Christian Levis, and senior associate Johnathan Seredynski. Lowey's time and expense records (including, where necessary and appropriate, backup documentation) have been reviewed to confirm both the accuracy of the entries as well as the necessity for and reasonableness of the time and expenses expended in this litigation. As a result of this review, certain reductions were made to both time and expenses either in the exercise of billing judgment or to conform with Lowey and Grant & Eisenhofer's application seeking appointment as Interim Co-Lead Counsel in this Action and Lowey's practice. As a result of this review and related reductions,

[1] Unless otherwise defined herein, all capitalized terms have the same meanings ascribed to them in the Stipulation and Agreement of Settlement with Deutsche Bank, dated September 6, 2016 (the "Settlement Agreement"), attached as Exhibit 1 to the Declaration of Vincent Briganti, Esq. dated October 17, 2016. ECF No. 156-1.

the time reflected in Lowey's lodestar calculation and the expenses for which payment is sought are reasonable in amount and were necessary to prosecute the Action and resolve the Settlement before the Court. In addition, these expenses are often charged by Lowey to its fee-paying clients.

6. The schedule attached as Exhibit A is a summary reflecting the amount of time (after any applicable reductions) spent by Lowey's attorneys and professional support staff involved in this litigation from the inception of the case in 2014 through October 31, 2020. Timekeepers billing less than fifteen (15) hours have been excluded, and the time and lodestar reflected in Exhibit A does not include any time for work relating to the preparation of this motion for an award of attorneys' fees and reimbursement of expenses. Further, work relating to first-level document review was capped at $250 per hour. As a result, the reflected lodestar for certain timekeepers is less than the product of their total hours and their hourly rate.

7. The number of hours spent on this Action by Lowey attorneys and support staff from inception through October 31, 2020 is 27,833.00. The total lodestar value of these professional services based on current rates is $18,772,282.00. The hourly rates for Lowey's attorneys and professional support staff listed in the schedule in Exhibit A are the firm's current usual and customary rates set by the firm for each individual. These hourly rates are the firm's regular rates charged for their services for contingent matters and to clients in non-contingent matters. For any personnel no longer employed by Lowey, the lodestar calculation is based on the billing rates for such personnel in his or her final year of employment. Lowey's lodestar figures do not include charges for expense items. Each attorney and support staff listed below was a full-time employee of the firm while working on this case.

8. The work Lowey performed (either individually or in collaboration with Grant & Eisenhofer) on behalf of the putative class in connection with the prosecution of this Action from

its inception through October 31, 2020 is set forth in the Joint Declaration of Vincent Briganti and Robert Gerard Eisler, filed herewith, and includes, but is not limited to, the following:

a) performed a comprehensive investigation of the Silver market;

b) engaged economics and industry experts to develop economic evidence of the alleged manipulation;

c) drafted and amended consolidated class action complaints based on information developed from investigations, economic analysis, and regulatory disclosures;

d) collaborated with Grant & Eisenhofer on the strategy for opposing Defendants' motions to dismiss;

e) analyzed and prepared arguments to refute the contentions in Defendants' motions to dismiss;

f) prepared a tutorial to help educate the Court on the silver market and the London Silver Fixing;

g) conferred with experts regarding the scope of information requests for use in issuing party document requests and subpoenas;

h) negotiated case management orders, ESI and deposition protocols;

i) negotiated the scope of discovery with defendants and third parties, including among other things, the production of custodial and non-custodial documents, audio files, and transaction data; use of search terms; selection of document custodians; and the number of depositions of each defendant;

j) analyzed millions of pages of documents produced in discovery and identified through Interim Co-Lead Counsel's investigation;

k) developed and revised strategy as review of documents received in discovery progressed;

l) researched complex legal issues relating to antitrust and CEA claims, foreign data privacy, and scope of discovery;

m) coordinated with Representative Plaintiffs to prepare responses to The Bank of Nova Scotia and HSBC's requests for production;

n) prepared and served multiple subpoenas; and

o) engaged in lengthy settlement discussions and frequently exchanged correspondence in an effort to reach a resolution.

A breakdown of Lowey's hours by month is also reflected in Exhibit A.

9. To share in the cost of litigation, Interim Co-Lead Counsel (and certain Plaintiffs' Counsel) contributed to a litigation fund administered by Lowey. Lowey also separately incurred expenses in prosecuting the Action. From the inception of the Action through October 31, 2020, the expenses paid by the litigation fund totaled $575,265.67 and the separate expenses paid by Lowey totaled $251,167.65. The category of expenses paid by the litigation fund and by Lowey are summarized in Exhibit B.

10. The expenses described herein are contained in Lowey's books and records. These books and records are prepared from expense vouchers, check records, receipts and other source materials and are an accurate record of the expenses.

11. Expense items are billed separately, and such charges are not duplicated in the firm's current billing rates. Further, expense items do not contain any general overhead costs, and do not contain a surcharge over the amount paid to the corresponding vendor(s). Charges for in-house photocopying were capped at $0.10 and all air travel was limited to coach class seats. Meal expenses were capped at $50-$75 per day for lunch and dinner and permitted only when traveling.

12. The major categories in which Lowey incurred expenses include:

a) **Expert fees:** $575,265.67 (litigation fund expense); $55,896.16 (Lowey expense). Collaboration with experts has been an integral part of Lowey and Grant & Eisenhofer's strategy to advance the action. Since 2014, Lowey has consulted with leading economics and industry experts to develop the theory of the case, support Representative Plaintiffs' allegations, and inform counsel's litigation and discovery strategy. Throughout the investigation and prosecution of this Action, Lowey corresponded with experts regarding economic analysis performed on the Silver market and worked closely with experts to understand the impact of such analysis on the allegations of Representative Plaintiffs' claims. Experts also assisted with the discovery strategy, analysis of discovery materials, and the development of the Distribution Plan.

b) **Document production/discovery:** $144,315.44 (Lowey expense). Lowey's in-house technological capabilities and e-discovery infrastructure allowed Interim Co-Lead Counsel to manage e-discovery in a cost-efficient manner as compared to the cost of the same services provided by a third-party vendor. Discovery-related expenses in this action include e-discovery platform licensing fees and technical assistance costs.

c) **Computer/on-line research:** $21,829.56 (Lowey expense). Lowey pays a bundled rate to use Westlaw's services and allocates the cost according to usage during the billing period through the use of a case code. Lowey's bundled rate provides for significant savings as compared to the typical market rate charged by Westlaw.

d) **Meals, travel and lodging:** $6,660.45 (Lowey expense). In connection with prosecution of this case, Lowey paid for travel and meal expenses relating to, among other things, travel to the JPML hearing in Louisville, KY, meetings with Grant & Eisenhofer and counsel in the *Gold* case, and travel to attend the trial of a trader charged by the U.S. Department of Justice relating to the misconduct alleged in this Action.

13. A true and correct copy of Lowey's updated firm resume is attached as Exhibit C.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 21, 2021 in White Plains, New York.

/s/ Vincent Briganti
Vincent Briganti

EXHIBIT A

ATTORNEY	ROLE[2]	RATE	HOURS	LODESTAR[3]
Geoffrey M. Horn	P	1025	302.10	309,652.50
Peter St. Phillip, Jr.	P	1025	47.40	48,585.00
Thomas M. Skelton	P	1025	6,413.60	6,573,940.00
Vincent Briganti	P	1025	1,804.70	1,849,817.50
Barbara J. Hart	P	980	1,023.40	1,002,932.00
Richard W. Cohen	P	945	31.80	30,051.00
Margaret C. MacLean	P	850	16.80	14,280.00
Christian Levis	P	775	2,409.70	1,863,317.50
Raymond Girnys	P	775	584.10	452,677.50
Frank Strangeman	SA	675	390.90	258,970.00
Johnathan P. Seredynski	SA	675	1,894.30	1,264,457.50
Sitso Bediako	SA	675	414.20	279,585.00
Deborah Rogozinski	SA	620	71.00	44,020.00
Jennifer Tembeck	SA	620	26.00	16,120.00
John D'Amico	A	620	397.40	108,970.00
Roland R. St. Louis III	A	620	1,736.50	1,060,979.00
Scott Papp	SA	620	266.60	165,292.00
Sung-Min Lee	A	600	17.50	10,500.00

[2] "P" refers to Partners, "SA" refers to Senior Associates, "A" refers to Associates, and "PL" refers to paralegals of the Firm. "AA" refers to law graduates who are awaiting admission.

[3] The reflected lodestar in some instances is less than the product of the attorney's total hours and hourly rate due to first-level document review performed at the rate of $250 per hour.

ATTORNEY	ROLE[2]	RATE	HOURS	LODESTAR[3]
Ian Sloss	A	550	57.80	31,790.00
Lee J. Lefkowitz	A	550	256.00	140,800.00
Anthony Christina	A	455	39.10	17,790.50
Charles Z. Kopel	A	455	484.00	168,021.50
Claire N. Feigenbaum	A	455	46.30	21,066.50
Jennifer Risener	A	435	122.60	53,331.00
Amanda G. Fiorilla	A	430	45.80	14,654.00
Bracha Gefen	A	430	953.90	410,177.00
Craig Maider	A	430	55.60	18,670.00
Henry J. Kusjanovic	SA	430	51.60	22,188.00
Samantha L. Breitner	A	430	94.20	39,390.00
Sylvie Bourassa	A	430	1,234.70	348,941.00
Lee Yun Kim	A	410	24.00	9,840.00
Amir Alimehri	A	410	160.80	57,384.00
Luke Goveas	AA	400	31.80	12,720.00
Melissa Cabrera	A	400	170.00	61,880.00
Michelle Conston	A	400	910.10	364,040.00
Christina McPhaul	A	400	66.40	23,035.00
Timothy B. Rode	A	390	173.30	67,587.00
Peter Demato, Jr.	A	380	294.40	110,637.00
Matthew Acocella	A	375	407.00	136,362.50
Matthew Roberts	A	370	356.20	96,262.00

ATTORNEY	ROLE[2]	RATE	HOURS	LODESTAR[3]
Anthony Odorisi	A	365	332.90	118,173.50
Julia R. McGrath	A	365	492.90	154,482.00
Edward Chimney	A	350	215.30	55,345.00
Adam Settle	A	325	33.50	9,357.50
Anita Davis	A	325	88.70	28,827.50
Garam Choe	A	325	1,720.30	544,810.00
Matthew Guarnero	A	325	598.50	179,437.50
Katherine Vogel	PL	315	64.10	20,191.50
Romina Curecheriu	AA	300	140.00	36,200.00
Gregory Santiago	PL	170	32.50	5,525.00
Joanne Mannion	PL	170	76.90	13,073.00
Kemly Bracero	PL	170	25.00	4,250.00
Maribel Valentin	PL	170	63.30	10,761.00
Stephen Fay	PL	170	65.50	11,135.00
TOTAL			**27,833.00**	**18,772,282.00**

Hours by Month	
Month	Hours
January 2014	-
February 2014	-
March 2014	-
April 2014	0.90
May 2014	139.90
June 2014	-
July 2014	81.60
August 2014	169.90

Hours by Month	
Month	Hours
September 2014	63.20
October 2014	145.30
November 2014	468.80
December 2014	91.30
January 2015	293.60
February 2015	80.40
March 2015	145.30
April 2015	254.90

Hours by Month	
Month	Hours
May 2015	28.80
June 2015	386.00
July 2015	557.20
August 2015	119.60
September 2015	120.50
October 2015	-
November 2015	2.80
December 2015	12.80

Hours by Month	
Month	Hours
January 2016	124.10
February 2016	124.20
March 2016	140.70
April 2016	503.80
May 2016	132.80
June 2016	203.90
July 2016	520.70
August 2016	502.30
September 2016	454.40
October 2016	1,226.70
November 2016	1,204.30
December 2016	545.90
January 2017	744.50
February 2017	605.30
March 2017	176.70
April 2017	297.50
May 2017	211.30
June 2017	428.40
July 2017	248.80
August 2017	628.30

Hours by Month	
Month	Hours
September 2017	820.90
October 2017	845.90
November 2017	1,074.20
December 2017	526.00
January 2018	211.40
February 2018	186.50
March 2018	82.70
April 2018	373.40
May 2018	142.60
June 2018	93.40
July 2018	173.70
August 2018	564.20
September 2018	367.10
October 2018	437.60
November 2018	413.50
December 2018	293.50
January 2019	409.00
February 2019	358.40
March 2019	647.60
April 2019	276.80

Hours by Month	
Month	Hours
May 2019	261.80
June 2019	146.80
July 2019	172.60
August 2019	247.00
September 2019	281.00
October 2019	373.80
November 2019	126.50
December 2019	205.30
January 2020	477.70
February 2020	344.90
March 2020	482.80
April 2020	637.50
May 2020	468.40
June 2020	551.10
July 2020	410.80
August 2020	667.30
September 2020	756.80
October 2020	735.10

EXHIBIT B

Expense Report
From case inception (2014) through October 31, 2020

CATEGORY	Litigation Fund	Lowey
Court Costs	$0.00	$697.00
Experts/consultants	$575,265.67	$55,896.19
Federal Express	$0.00	$443.11
Hearing Transcripts	$0.00	$2,344.41
Computer Research	$0.00	$21,829.56
Messenger/delivery	$0.00	$22.00
Photocopies - in House	$0.00	$13,069.10
Postage	$0.00	$53.04
Service of Process	$0.00	$207.55
Special Supplies	$0.00	$667.32
Telephone/telecopier	$0.00	$2,067.86
Travel	$0.00	$6,660.45
Miscellaneous	$0.00	$2,894.62
Document Production / Discovery	$0.00	$144,315.44
TOTAL	$575,265.67	$251,167.65

EXHIBIT C

LOWEY DANNENBERG

Antitrust Litigation

Firm Resume

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Contents

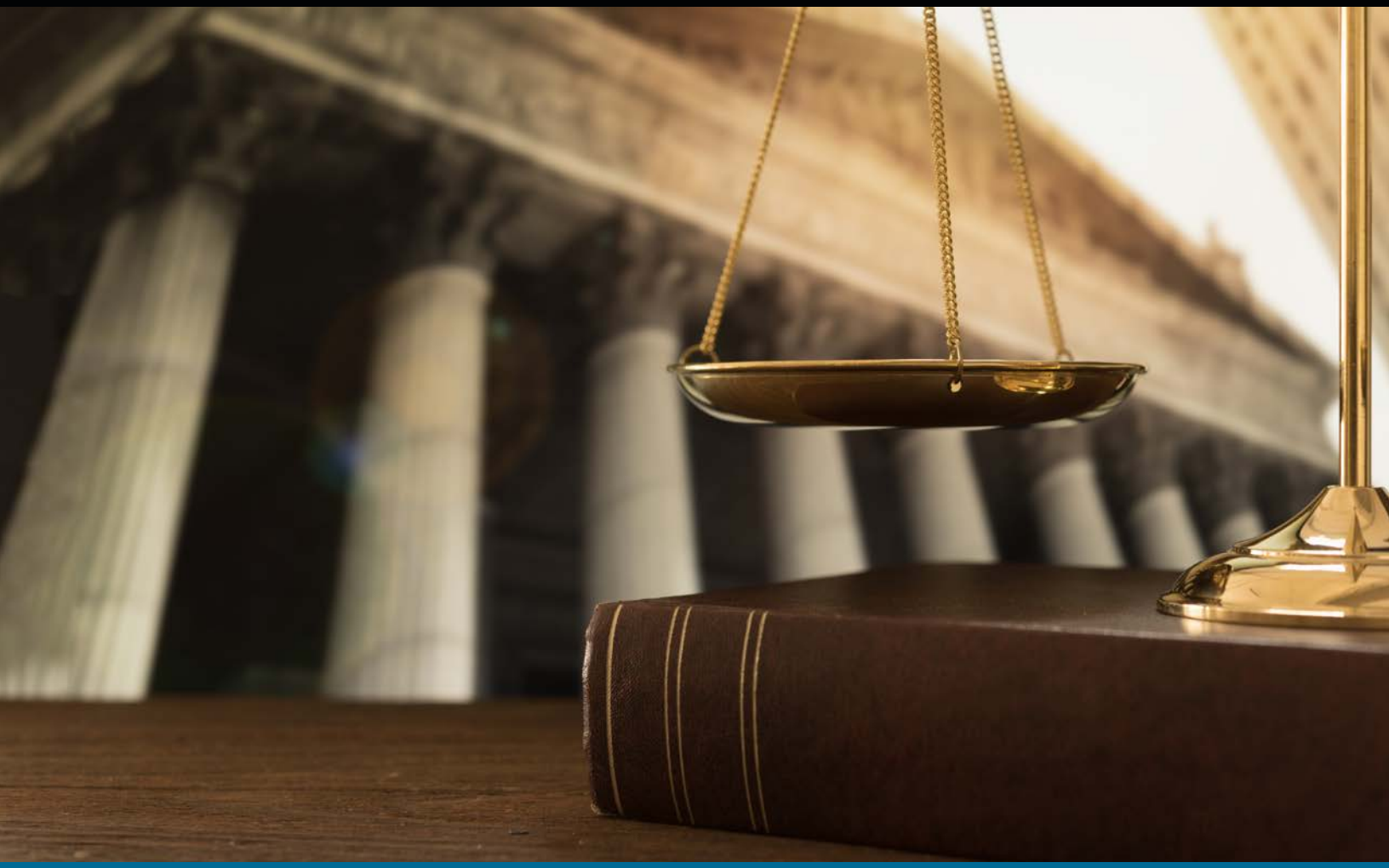
LOWEY DANNENBERG

Firm Overview

Since the firm's founding by Stephen Lowey in the 1960s, Lowey Dannenberg, P.C. ("Lowey Dannenberg") has represented sophisticated clients in complex federal antitrust, commodities, and securities litigation. Lowey Dannenberg also regularly represents some of the world's largest health insurers in healthcare cost recovery actions.

Lowey Dannenberg has recovered billions of dollars for its clients and the classes they represent. Those clients include some of the nation's largest pension funds, e.g., the California State Teachers' Retirement System ("CalSTRS"), the Treasurer of the Commonwealth of Pennsylvania and the Pennsylvania Treasury Department, the New York State Common Retirement Fund, and the New York City Pension Funds; sophisticated institutional investors, including Federated Investors, which manages more than $355 billion in assets; and Fortune 100 companies like Aetna, Anthem, CIGNA, Humana, and Verizon.

Aetna and Humana have publicly lauded Lowey in Corporate Counsel Magazine as their "Go To" outside counsel because of the firm's years of service to Fortune 100 health insurers in opt-out litigation involving state and federal fraud claims.



Financial Antitrust Class Actions

Lowey Dannenberg regularly serves as court appointed lead or co-lead counsel on some of the most important and complex antitrust class actions against some of the world's largest corporations, financial institutions, and producers. The firm has more than 45 attorneys who specialize in prosecuting these cases, including the following representative matters.

> *The Court itself had occasion to notice the high quality of [Lowey Dannenberg's] work, both in briefs and oral argument. Moreover, counsels' achievement in obtaining valuable recompense and forward-looking protections for its clients is particularly noteworthy given the caliber and vigor of its adversaries.*
>
> Judge Jed Rakoff, In re GSE Bonds Antitrust Litigation, No. 19-CV-1704 (S.D.N.Y.)

In re GSE Bonds Antitrust Litigation

Lowey Dannenberg serves as Court-appointed Co-Lead Counsel in an antitrust class action alleging that several of the world's largest banks and brokers conspired to fix the prices of debt securities issued by government sponsored entities (e.g., Fannie Mae, Freddie Mac, Federal Farm Credit Banks, and Federal Home Loan Banks) between 2009 and 2016. *In re GSE Bonds Antitrust Litigation*, No. 19-cv-1704 (S.D.N.Y.) (Rakoff, J.).

On June 16, 2020, Judge Jed S. Rakoff finally approved settlements with all defendants totaling more than $386 million. Judge Rakoff praised "the high quality of [Lowey's] work, both in briefs and oral argument," and Lowey's achievement in "obtaining valuable recompense and forward-looking protections for its clients" in the face of vigorous opposition from adversaries of the highest caliber. *See In re GSE Bonds Antitrust Litig.*, No. 19-CV-1704 (JSR), 2020 WL 3250593 (S.D.N.Y. June 16, 2020). Notably, in addition to the substantial financial recovery in the case, Lowey worked closely with its client, the Treasurer of the Commonwealth of Pennsylvania, to curb future misconduct and successfully negotiated settlement provisions that required each defendant to maintain or create a compliance program designed prevent and detect future anticompetitive conduct in the GSE Bond Market.

In re Mexican Government Bonds Antitrust Litigation

Lowey Dannenberg serves as Court-appointed sole Lead Counsel in a class action against 10 global financial institutions that allegedly violated the Sherman Act by colluding to fix the prices of debt securities issued by the Mexican Government between 2006 and 2016. Plaintiffs are eight institutional investors that transacted in Mexican government debt, including directly with Defendants. The case is pending before Judge J. Paul Oetken in the Southern District of New York. On December 16, 2020, Judge Oetken preliminarily approved a settlement with Defendants JP Morgan Chase and Barclays PLC for $20.7 million. *In re Mexican Government Bonds Antitrust Litigation*, 1:18-cv-02830 (S.D.N.Y).

In re European Government Bonds Antitrust Litigation

Lowey Dannenberg serves as court-appointed co-lead counsel in *In re European Government Bonds Antitrust Litigation*, Case No. 19-cv-2601 (VM) (S.D.N.Y.). The case is currently pending before Judge Victor Marrero in the Southern District of New York, and involves alleged price-fixing by dealers responsible for bringing bonds issued by Eurozone member countries to the secondary market. On July 23, 2020, Judge Marrero sustained antitrust claims against three dealers and allowed Plaintiffs to seek leave to replead their claims against the remaining defendants. *In re European Gov't Bonds Antitrust Litig.*, No. 19-cv-2601 (VM), 2020 WL 4273811 (S.D.N.Y. July 23, 2020).

Sullivan, et al. v. Barclays plc, et al. (Euribor)

Lowey Dannenberg is co-lead counsel prosecuting claims against international financial institutions responsible for setting the Euro Interbank Offered Rate ("Euribor"), a global reference rate used to benchmark, price and settle over $200 trillion of financial products. Co-Lead Plaintiffs include the California State Teachers' Retirement System ("CalSTRS"). So far, Lowey Dannenberg has recovered a total of $491.5 million for Euribor-based derivatives investors, which includes (1) a $94 million settlement with Barclays plc and related Barclays entities; (2) a $45 million settlement with Defendants HSBC Holdings plc and HSBC Bank plc; (3) a $170 million settlement with Defendants Deutsche Bank AG and DB Group Services (UK) Ltd.; and (4) a $182.5 million settlement with Defendants Citigroup Inc., Citibank, N.A., JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A.

The claims against the remaining defendants in the case are presently on appeal before the United States Court of Appeals, Second Circuit.

Laydon v. Mizuho Bank, Ltd., et al.; Sonterra Capital Master Fund Ltd., et al. v. UBS AG, et al. (Yen-LIBOR and Euroyen TIBOR)

Lowey Dannenberg is sole lead counsel prosecuting claims against international financial institutions responsible for intentional and systematic manipulation of the London Interbank Offered Rate ("LIBOR") for the Japanese Yen and Euroyen TIBOR (the Tokyo Interbank Offered Rate). The firm represents clients in two actions relating to manipulation of products price-based on these benchmarks ("Euroyen-based derivatives"): *Laydon v. Mizuho Bank, Ltd. et al.*, 12-cv-03419 (S.D.N.Y.) (Daniels, J.) (involving exchange based Euroyen-based derivatives) and *Sonterra Capital Master Fund, Ltd. et al. v. UBS AG et al.*, 15-cv-5844 (Daniels, J.) (involving over-the-counter Euroyen-based derivatives). Co-Lead Plaintiffs in the *Sonterra* matter include CalSTRS. In the *Sonterra* action, Lowey Dannenberg recently prevailed on its appeal before the United States Court of Appeals, Second Circuit, which reversed the lower court's dismissal of the case. *Sonterra Capital Master Fund Ltd. v. UBS AG*, 954 F.3d 529 (2d Cir. 2020).

Lowey Dannenberg has thus far recovered $307 million for the Settlement Class and received substantial cooperation from settling defendants that it is using in the actions against the remaining defendants. In 2016, Judge Daniels granted final approval of a $35 million settlement with HSBC Holdings plc and HSBC Bank plc, a $23 million settlement with Citigroup, Inc. and several Citi entities, and a cooperation settlement with R.P. Martin. In 2017, Judge Daniels granted final approval of a $77 million settlement with Deutsche Bank AG and DB Group Services (UK) Ltd. and a $71 million settlement with JPMorgan Chase & Co. and related entities. On July 12, 2018, Judge Daniels granted final approval of a $30 million settlement with the The Bank of Tokyo-Mitsubishi UFJ, Ltd. and Mitsubishi UFJ Trust and Banking Corporation. In December 2019, the court finally approved two sets of settlements, one with Bank of Yokohama, Ltd., Shinkin Central Bank, The Shoko Chukin Bank, Ltd., Sumitomo Mitsui Trust Bank, Ltd. and Resona Bank, Ltd. for $31.75 million, and the second with Mizuho Bank, Ltd., Mizuho Corporate Bank, Ltd., and Mizuho Trust & Banking Co., Ltd., The Norinchukin Bank, and Sumitomo Mitsui Banking Corporation for $39.25 million.

In re London Silver Fixing Ltd., Antitrust Litig.

Lowey Dannenberg is serving as co-lead counsel on behalf of a class of silver investors, including Commodity Exchange Inc. ("COMEX") silver futures contracts traders, against banks that allegedly colluded to fix the London Silver Fix, a global benchmark that impacts the value of more than $30 billion in silver and silver-based financial instruments. Judge Valerie E. Caproni sustained Sherman Antitrust Act and CEA claims alleged in Lowey Dannenberg's complaint, which relied predominately on sophisticated econometric analysis that Lowey Dannenberg developed in conjunction with a team of leading financial markets experts. *See In re London Silver Fixing Ltd., Antitrust Litig.*, No. 14-md-2573, 2016 WL 5794777 (S.D.N.Y. Oct. 3, 2016). In appointing Lowey Dannenberg, the Court praised Lowey Dannenberg's experience, approach to developing the complaint, attention to detail, and the expert resources that the firm brought to bear on behalf of the class. *See In re London Silver Fixing Ltd., Antitrust Litig.*, Case No. 14-md-2573 (VEC), ECF No. 17 (Nov. 25, 2014 S.D.N.Y.) (Caproni, J.). On November 23, 2016, Judge Caproni granted preliminary approval of a $38 million settlement with Deutsche Bank AG and several of its subsidiaries. *See* Order Preliminarily Approving Class Action Settlement

and Conditionally Certifying a Settlement Class, *In re London Silver Fixing, Ltd., Antitrust Litig.*, No. 14-md-2573 (S.D.N.Y. Nov. 23, 2016), ECF No. 166. The case is ongoing against the remaining defendants.

Dennis, et al. v. JPMorgan Chase & Co., et al.

Lowey Dannenberg is co-lead counsel in an antitrust class action against numerous global financial institutions responsible for setting the Australian Bank Bill Swap Reference Rate ("BBSW"), pending before Judge Lewis A. Kaplan in the Southern District of New York. *Dennis, et al. v. JPMorgan Chase & Co., et al.*, No. 16-cv-6496 (LAK) (S.D.N.Y.). The case alleges that the defendants engaged in uneconomic transactions in Prime Bank Bills, a type of short-term debt instrument, to manipulate BBSW. In addition to prevailing against most of the defendants on their motions to dismiss, (*see Dennis v. JPMorgan Chase & Co.*, 343 F. Supp. 3d 122 (S.D.N.Y. 2018), *adhered to on denial of reconsideration*, No. 16-CV-6496 (LAK), 2018 WL 6985207 (S.D.N.Y. Dec. 20, 2018); *Dennis v. JPMorgan Chase & Co.*, 439 F. Supp. 3d 256 (S.D.N.Y. 2020)), Lowey Dannenberg has thus far negotiated a settlement with the JPMorgan defendants for $7 million, while also receiving cooperation to use in prosecuting the action against the remaining defendants. This litigation is ongoing.

Packaged Seafood Antitrust Litigation

Lowey was selected for a leadership position in *In re Packaged Seafood Antitrust Litigation*, MDL No. 2670 (2015 S.D. Cal.). Lowey represents a class of direct purchasers alleging that the world's largest producers conspired to inflate the price of packaged seafood. Government prosecutions related to the plaintiffs' allegations have already resulted in criminal convictions and guilty pleas. As a member of the Plaintiffs' Steering Committee, Lowey helps to guide the litigation. Class certification has been granted.

Commodities Litigation

Lowey Dannenberg has successfully prosecuted the most important and complex commodity manipulation actions since the enactment of the Commodity Exchange Act ("CEA"). As court-appointed lead counsel, Lowey Dannenberg has a history of successfully certifying classes of investors harmed by market manipulation schemes.

Sumitomo

In *In re Sumitomo Copper Litigation* ("*Sumitomo*"), Master File No. 96 CV 4854 (S.D.N.Y.) (Pollack, J.), Lowey Dannenberg was appointed as one of three executive committee members. Stipulation and Pretrial Order No. 1, dated October 28, 1996, at ¶ 13. Plaintiffs' counsel's efforts in *Sumitomo* resulted in a settlement on behalf of the certified class of more than $149 million, which represented **the largest** class action recovery in the history of the CEA at the time. *In re Sumitomo Copper Litig.*, 182 F.R.D. 85, 95 (S.D.N.Y. 1998). One of the most able and experienced United States District Court judges in the history of the federal judiciary, the Honorable Milton Pollack, took note of counsel's skill and sophistication:

> *The unprecedented effort of Counsel exhibited in this case led to their successful settlement efforts and its vast results. Settlement posed a saga in and of itself and required enormous time, skill and persistence. Much of that phase of the case came within the direct knowledge and appreciation of the Court itself. Suffice it to say, the Plaintiffs' counsel did not have an easy path and their services in this regard are best measured in the enormous recoveries that were achieved under trying circumstances in the face of natural, virtually overwhelming, resistance.*

In re Sumitomo Copper Litig., 74 F. Supp. 2d 393, 396 (S.D.N.Y. 1999).

In re Natural Gas

Lowey Dannenberg served as co-lead counsel in *In re Natural Gas Commodity Litigation*, Case No. 03 CV 6186 (VM) (S.D.N.Y.) ("*In re Natural Gas*"), which involved manipulation of the price of natural gas futures contracts traded on the NYMEX by more than 20 large energy companies.

Plaintiffs alleged that Defendants, including El Paso, Duke, Reliant, and AEP Energy Services, Inc., manipulated the prices of NYMEX natural gas futures contracts by making false reports of the price and volume of their trades to publishers of natural gas price indices across the United States, including Platts. Lowey Dannenberg won significant victories throughout the litigation, including:

- defeating Defendants' motions to dismiss (*In re Natural Gas*, 337 F. Supp. 2d498 (S.D.N.Y. 2004));
- prevailing on a motion to enforce subpoenas issued to two publishers of natural gas price indices for the production of trade report data (*In re Natural Gas*, 235 F.R.D. 199 (S.D.N.Y. 2005)); and
- successfully certifying a class of NYMEX natural gas futures traders who were harmed by defendants' manipulation of the price of natural gas futures contracts traded on the NYMEX from January 1, 2000 to December 31, 2002. *In re Natural Gas*, 231 F.R.D. 171, 179 (S.D.N.Y. 2005), *petition for review denied*, *Cornerstone Propane Partners, LP, et al. v. Reliant Energy Services, Inc., et al.*, Docket No. 05-5732 (2d Cir. August 1, 2006).

The total settlement obtained in this complex litigation—$101 million—was at the time, the **third largest** recovery in the history of the CEA.

Amaranth

Lowey Dannenberg served as co-lead counsel in *In re Amaranth Natural Gas Commodities Litigation*, Master File No. 07 Civ. 6377 (S.D.N.Y) (SAS) ("*Amaranth*"), a certified CEA class action alleging manipulation of NYMEX natural gas futures contract prices in 2006 by Amaranth LLC, one of the country's largest hedge funds prior to its widely-publicized multi-billion dollar collapse in September 2006. Significant victories Lowey Dannenberg achieved in the *Amaranth* litigation include:

- On April 27, 2009, Plaintiffs' claims for primary violations and aiding-and-abetting violations of the CEA against Amaranth LLC and other Amaranth defendants were sustained. *Amaranth*, 612 F. Supp. 2d 376 (S.D.N.Y. 2009).
- On April 30, 2010, the Court granted Plaintiffs' motion for pre-judgment attachment pursuant to Rule 64 of the Federal Rules of Civil Procedure and Section 6201 of the New York Civil Practice Law and Rules against Amaranth LLC, a Cayman Islands company and the "Master Fund" in the Amaranth master-feeder-fund hedge fund family. *Amaranth*, 711 F. Supp. 2d 301 (S.D.N.Y. 2010).
- On September 27, 2010, the Court granted Plaintiffs' motion for class certification. *Amaranth*, 269 F.R.D. 366 (S.D.N.Y. 2010). In appointing Lowey Dannenberg as co- lead counsel for plaintiffs and the Class, the Court specifically noted "the impressive resume" of Lowey Dannenberg and that "Plaintiffs' counsel has vigorously represented the interests of the class throughout this litigation." On December 30, 2010, the Second Circuit Court of Appeals denied Amaranth's petition for appellate review of the class certification decision.
- On April 11, 2012, the Court entered a final order and judgment approving the $77.1 million settlement reached in the action. The $77.1 million settlement is **more than ten times greater** than the $7.5 million joint settlement achieved by the Federal Energy Regulatory Commission ("FERC") and the Commodity Futures Trading Commission ("CFTC") against Amaranth Advisors LLC and at that time, represented the **fourth largest** class action recovery in the 85-plus year history of the CEA.

Pacific Inv. Mgmt. Co. ("PIMCO")

Lowey Dannenberg served as counsel to certified class representative Richard Hershey in a class action alleging manipulation by PIMCO of the multi-billion-dollar market of U.S. 10-Year Treasury Note futures contracts traded on the Chicago Board of Trade ("CBOT"). *Hershey v. Pacific Inv. Management Co. LLC*, 571 F.3d 672 (7th Cir. 2009). The case settled in 2011 for $118.75 million, the **second largest** recovery in the history of the CEA at that time.

Optiver

Lowey Dannenberg acted as co-lead counsel in a proposed class action alleging that Optiver US, LLC and other Optiver defendants manipulated NYMEX light sweet crude oil, heating oil, and gasoline futures contracts prices in violation of the Sherman Antitrust Act and CEA. *In re Optiver Commodities Litigation*, Case No. 08 CV 6842 (S.D.N.Y.) (LAP), Pretrial Order No. 1, dated February 11, 2009. The Honorable Loretta A. Preska of the Southern District of New York granted final approval of a $16.75 million settlement in June 2015.

White v. Moore Capital Management, L.P.

Lowey Dannenberg acted as counsel to a class representative in an action alleging manipulation of NYMEX palladium and platinum futures prices in 2007 and 2008 in violations of the Sherman Antitrust Act, CEA, and RICO. *White v. Moore Capital Management, L.P.*, Case No. 10 CV 3634 (S.D.N.Y.) (Pauley, J.). Judge William H. Pauley III granted final approval of a settlement in the amount of $70 million in 2015.

In re Crude Oil Commodity Futures Litigation

Lowey Dannenberg served as counsel to a class representative and large crude oil trader in a Sherman Antitrust Act class action involving the alleged manipulation of NYMEX crude oil futures and options contracts. *In re Crude Oil Commodity Futures Litigation*, Case No. 11-cv-03600 (S.D.N.Y.) (Forrest, J.). The Court granted final approval to a $16.5 million settlement in January 2016.

Kraft Wheat Manipulation

Lowey Dannenberg serves as court-appointed co-lead counsel for a class of wheat futures and options traders pursuing claims against Kraft Foods Group, Inc. and Mondelēz Global LLC (collectively, "Kraft"), alleging Kraft manipulated the prices of Chicago Board of Trade wheat futures and options contracts. On June 27, 2016, Judge Edmond E. Chang denied Kraft's motion to dismiss Plaintiffs' CEA, Sherman Act and common law unjust enrichment claims relating to Kraft's alleged "long wheat futures scheme." *See Ploss v. Kraft Foods Grp., Inc.*, 197 F. Supp. 3d 1037 (N.D. Ill. 2016). On January 3, 2020, Judge Chang certified a class of wheat futures and options traders to bring the claims in the case. *See Ploss v. Kraft Foods Grp., Inc.*, 431 F. Supp. 3d 1003 (N.D. Ill. 2020). Kraft filed a petition to the United States Court of Appeals for the Seventh Circuit, seeking permission to immediately appeal the Judge Chang's certification of the class, which was denied on February 21, 2020. The case is currently pending before Judge John F. Knees in the Northern District of Illinois.

Lansing Wheat Manipulation

Lowey Dannenberg is serving as co-lead counsel for a class of wheat futures and options traders pursuing claims against Lansing Trade Group, LLC and Cascade Commodity Consulting, LLC, alleging they manipulated the prices of Chicago Board of Trade wheat futures and options contracts in 2015. *See Budicak, et al. v. Lansing Trade Group, LLC, et al.*, No. 19 CV 2499 (JAR) (D. Kan.). On March 25, 2020, Chief District Judge Julie A. Robinson denied Defendants motions to dismiss and sustained claims under the Sherman Act, the CEA, and for unjust enrichment. *Budicak, Inc. v. Lansing Trade Grp., LLC*, No. 2:19-CV-2449-JAR-ADM, 2020 WL 2892860 (D. Kan. Mar. 25, 2020).

The Andersons Wheat Manipulation

Lowey Dannenberg is leading the prosecution of claims on behalf of a class of wheat futures and options traders against The Andersons, Inc. for alleged manipulation of the wheat futures and options market in the fourth quarter of 2017. The case is currently pending before The Honorable Charles R. Norgle, Sr. in the Northern District of Illinois. *Dennis v. The Andersons Inc.*, Case No. 20-cv-04090 (N.D. Ill.).

SPOOFING LITIGATION

Lowey Dannenberg continues to innovate and is at the forefront of litigation under the CEA arising from claims of market participants spoofing various futures markets.

In re JPMorgan Precious Metals Spoofing Litigation

Lowey Dannenberg serves as Court-appointed sole Lead Counsel in a commodities manipulation class action against JPMorgan and several of its traders, alleging spoofing in the market for precious metals futures and options between 2009 and 2015. The case is pending before Judge Gregory H. Woods in the Southern District of New York, No. 18-CV-10356.

Boutchard, et al. v. Gandhi, et al. — E-mini Index Futures Spoofing

Lowey Dannenberg is leading the prosecution of claims on behalf of a class of investors that transacted E-mini Index Futures (e.g., Dow, S&P, Nasdaq) and options against Tower Research Capital LLC and several of its traders for alleged spoofing violations between 2012 and 2014. The case is currently pending before Judge John J. Tharp, Jr. in the Northern District of Illinois, No. 18-CV-7041.

In re Merrill, BOFA, and Morgan Stanley Spoofing Litigation

Lowey Dannenberg serves as Court-appointed co-Lead Counsel in a commodities manipulation class action against Bank of America, Merrill Lynch, and Morgan Stanley, and several of their former traders, alleging spoofing in the market for precious metals futures and options between 2007 and 2014. The case is pending before Judge Lewis J. Liman in the Southern District of New York, No. 19-CV-6002.

JPMorgan Treasuries Spoofing

On October 9, 2020, the Court appointed Lowey Dannenberg to serve as Interim Co-Lead Counsel in a commodities manipulation class action against JPMorgan, alleging manipulation in the market for U.S. Treasuries futures and options between 2009 and the present. The case is pending before Judge Paul A. Engelmayer in the Southern District of New York, *Proctor, III, et al. v. JP Morgan Chase & Co., et al*, No. 20-CV-5360.

Deutsche Treasury and Eurodollar Spoofing

On September 1, 2020, Lowey Dannenberg was appointed Interim Co-Lead Counsel in a commodities manipulation class action against Deutsche Bank, alleging manipulation in the market for U.S. Treasury and Eurodollar futures and options throughout 2013. The case is pending before Judge Joan B. Gottschall in the Northern District of Illinois, *Rock Capital Markets, LLC v. Deutsche Bank Securities Inc.*, No. 20-CV-3638.

Healthcare: Prescription Overcharge Antitrust Litigation

Lowey Dannenberg is the nation's premier pharmaceutical recovery law firm. It is known in the healthcare industry for its market-leading initiatives, depth of experience, and consistent results. The Firm's advice is valued by the largest health benefits companies in the United States, including Aetna CVS, Anthem, the Blue Cross and Blue Shield Association, Cigna, HCSC, Humana, and numerous other companies. Lowey Dannenberg's expertise was highlighted when Aetna and Humana each identified Lowey as a "Go-to Law Firm" for litigation services Corporate Counsel magazine's *"In House Law Departments at the Top 500 Companies."*

Health insurers routinely turn to Lowey Dannenberg for its industry expertise, particularly in the areas of:

- **Defective Drugs and Products** – Litigating on behalf of insurers to recover overpayments for defective drugs and medical products, including those manufactured in violation of FDA standards
- **Prescription Drug and Device Price Manipulation** – Recovering overcharges from prescription drug and medical device price manipulation, including "generic delay" cases, price fixing, and "off-label" marketing
- **Lien Recovery** – Prosecuting and negotiating medical lien reimbursements in mass tort litigation
- **Class Action Defense** – Representing health insurers facing class actions in state and federal courts

Drugs Failing to Meet FDA's Manufacturing Standards

- ***Blue Cross Blue Shield Ass'n, et al. v. GlaxoSmithKline LLC.*** Lowey Dannenberg and its co-counsel represented 39 health insurers (accounting for 60% of the U.S. market for non-governmental health insurance) in a novel recovery action seeking billions in damages against British drug maker GlaxoSmithKline for selling prescription drugs manufactured under conditions that amounted to egregious violations of federal standards. After defeating summary judgment (*Blue Cross Blue Shield Ass'n v. GlaxoSmithKline LLC*, 417 F. Supp. 3d 531 (E.D. Pa. 2019)), the parties confidentially settled on the literal eve of trial.
- ***Rezulin Litigation.*** Lowey Dannenberg, representing a class of endpayers, made law that has influenced every third party payer prescription drug case since. Louisiana BlueCross BlueShield ("LABCBS"), sued Warner Lambert and Pfizer for alleged misrepresentations about the qualities of their antidiabetic medication, Rezulin, injuring LABCBS in excessive purchases of the drug. Lowey successfully argued to reverse dismissal of LABCBS' class action in a precedent-setting appeal to the Second Circuit. This case established the direct rights (as contrasted with derivative, and more limited, subrogation rights) of third-party payers to sue pharmaceutical manufacturers for drug overcharges for defective drugs. *Desiano v. Warner-Lambert Co.*, 326 F.3d 339 (2d Cir. 2003).

"Pay-for-Delay" Antitrust Claims

- **Aggrenox Generic Delay Litigation:** Lowey Dannenberg represented Humana and 10 other health insurers in a generic delay antitrust case against defendant Boehringer Ingelheim Pharmaceuticals, Inc., the Aggrenox brand manufacturer, and generic manufacturer Barr Pharmaceuticals Inc. (later acquired by Teva Pharmaceuticals), before Judge Stefan R. Underhill in the District of Connecticut in connection with their antitrust claims. Class actions on behalf of direct purchasers reached a $146 million settlement and indirect purchasers reached a $54 million settlement. The litigation asserted claims under state antitrust law, claiming a $100 million co-promotion agreement was a disguised pay-for-delay, and as a result, insurers overpaid for Aggrenox. Lowey achieved a confidential settlement on behalf of Humana; other insurers are continuing to litigate their claims. *Humana Inc. v. Boehringer Ingelheim Pharma GmbH & Co. KG*, et al., No. 3:14-cv- 00572 (D. Conn.).

- **Lidoderm Generic Delay Litigation:** Lowey Dannenberg represented 21 health insurers in connection with their antitrust claims against sellers of branded and generic Lidoderm. *Government Employees Health Association v. Endo Pharmaceuticals, Inc., et al.*, No. 3:14-cv-02180-WHO (N.D. Cal.).
- **Hytrin Generic Delay Litigation:** Lowey Dannenberg represented a class health insurers asserting antitrust claims against Abbott Laboratories and Geneva Pharmaceuticals, sellers of branded and generic Hytrin, and ultimately settled the case for $28.7 million. *In re Terazosin Hydrochloride Antitrust Litig.*, No. 1:99-MD-01317 (S.D. Fl.).
- **Cardizem CD Generic Delay Litigation:** In 1998, Lowey Dannenberg filed the first-ever generic delay class action antitrust cases for endpayers (a term reflecting consumers and health insurers). Those cases were centralized by the Judicial Panel on Multidistrict Litigation ("JPML") under the caption *In re Cardizem CD Antitrust Litigation*, MDL No. 1278 (E.D. Mich.). After the court certified a class (200 F.R.D. 326 (E.D. Mich. 2001)) and affirmed partial summary judgment for plaintiffs (332 F.3d 896 (6th Cir. 2003)), the case was settled for $80 million.
- ***Federal Trade Commission v. Actavis*, 570 U.S. 756 (2013).** America's Health Insurance Plans (AHIP), the national trade association representing health insurers, retained Lowey Dannenberg to represent it before the United States Supreme Court as *amicus curiae* in a seminal "pay-for-delay" pharmaceutical case. *Federal Trade Commission v. Actavis*, 570 U.S. 756 (2013).

Price Fixing of Pharmaceutical Drugs

- **Generic Pharmaceuticals Price Fixing.** Lowey Dannenberg represents 34 of the nation's largest health insurers, including Anthem, Aetna, Cigna, Humana, and 22 BlueCross BlueShield licensees in connection with their claims relating to widespread price-fixing of generic pharmaceutical products. Lowey Dannenberg's clients collectively purchased billions of dollars of these drugs during the alleged price-fixing conspiracies. Some of this litigation has been centralized before the Honorable Cynthia M. Rufe in *In re Generic Pharmaceuticals Pricing Antitrust Litig.*, MDL No. 2724 (E.D. Pa.).

Deceptive Marketing Claims

- ***In re Neurontin Marketing and Sales Practices Litig.*** Lowey represented Aetna in an individual action seeking recovery against Pfizer for its off-label marketing of Neurontin and served as class counsel on the Plaintiff's Steering Committee. The firm secured the first-ever verdict in history against a pharmaceutical manufacturer finding it engaged in a RICO enterprise by fraudulently marketing its drug, resulting in a $142 million trebled award. This pivotal decision reversed a negative trend in off-label drug marketing cases. The Court's conclusion that "Aetna's economic injury was a foreseeable and natural consequence" of Pfizer's scheme represents a common-sense application of the law to the economic realities of the prescription drug market.

  Lowey later argued and won a landmark RICO decision in the United States Court of Appeals for the First Circuit, holding drug manufacturers accountable to health insurers for damages attributable to marketing fraud. *In re Neurontin Mktg. & Sales Practices Litig.*, 712 F.3d 51 (1st Cir. 2013).
- ***Warfarin Sodium Antitrust Litig.*** Lowey Dannenberg represented health insurers asserting antitrust and unfair trade practices claims against DuPont Pharmaceuticals Company. *In re Warfarin Sodium Antitrust Litigation*, 391 F.3d 516 (3rd Cir. 2004).

Class Action Defense/Lien Recovery Cases

- Lowey Dannenberg secured judgments dismissing the class action lawsuits, which sought to apply New York State's anti-subrogation law to void health insurance plans' subrogation and reimbursement rights in New York. *Meek-Horton v. Trover, et al.*, 910 F. Supp. 2d 690 (S.D.N.Y. 2013); *Potts v. Rawlings Co. LLC*, 897 F. Supp. 2d 185 (S.D.N.Y. 2012).
- Lowey Dannenberg defended Aetna and secured judgments dismissing the class action lawsuits seeking to bar certain reimbursement lien recoveries under New Jersey law. *Minerley v. Aetna, Inc.*, No. 13-cv-1377, 2019 WL 2635991 (D.N.J. June 27, 2019), *aff'd*, No. 19-2730, 2020 WL 734448 (3d Cir. Feb. 13, 2020) and *Roche v. Aetna, Inc.*, 165 F. Supp. 3d 180 (D.N.J. 2016), *aff'd*, 681 F. App'x 117 (3d Cir. 2017).
- Lowey Dannenberg successfully established Medicare Advantage Organizations' reimbursement recovery rights under the Medicare Secondary Payer Act. *In re Avandia Mktg., Sales Practices & Prod. Liab. Litig.*, 685 F.3d 353, 367 (3d Cir. 2012).

Securities Litigation

Lowey Dannenberg has represented clients in cases involving financial fraud, auction rate securities, options backdating, Ponzi schemes, challenges to unfair mergers and tender offers, statutory appraisal proceedings, proxy contests and election irregularities, failed corporate governance, stockholder agreement disputes, and customer/brokerage firm arbitration proceedings.

Its securities litigation practice group has recovered billions of dollars in the aggregate on behalf of defrauded investors. But the value of Lowey's accomplishments is measured by more than dollars. The firm has also achieved landmark, long term corporate governance changes at public companies, including reversing results of elections and returning corporate control to the companies' rightful owners, its stockholders.

Lowey Dannenberg's public pension fund clients include the California State Teachers' Retirement System (CalSTRS), New York City Pension Funds, the New York State Common Retirement Fund, the Maryland Employees' Retirement System, and the Ohio Public Employees' Retirement Plan. Representative institutional investor clients include Federated Investors, Inc., Glickenhaus & Co., Millennium Partners LLP, Karpus Investment Management LLP, Amegy Bank, Monster Worldwide Inc., Zebra Technologies, Inc., and Delcath Systems, Inc.

Notable Recoveries

Notable achievements for our securities clients include the following:

- *Norfolk County Retirement System v. Community Health Systems, Inc., et al.* 11-cv-0433 (M.D. Tenn.). Lowey Dannenberg recovered $53 million on behalf of Lead Plaintiff, the New York City Pension Funds, and the certified class of investors in Community Health System common stock. As Lead Counsel in this hard-fought and long-standing securities class action, Lowey Dannenberg charged Community Health Systems, one of the largest for-profit hospital systems in the United States, with failing to disclose that its highly-touted growth and performance were achieved through a scheme to improperly inflate Medicare patient admissions. U.S. District Judge Eli J. Richardson addressed Lowey Dannenberg's efforts at the final approval hearing finding that *"counsel for plaintiff has been diligent, very diligent, has worked very hard, knows the case, knows the facts, is very experienced in these sorts of securities fraud class actions, and has gone to the mat for their client for many years."* During the litigation, Lowey Dannenberg achieved a unanimous reversal of the lower court's dismissal of the case before the Sixth Circuit Court of Appeals and successfully opposed Supreme Court review. *Norfolk Cty. Ret. Sys. v. Community Health Sys., Inc.*, 877 F.3d 687 (6th Cir. 2017), cert. denied 139 S. Ct. 310 (2018). Following extensive discovery, the court preliminarily approved the settlement in January 2020, which the Court approved and made final on June 19, 2020.
- *In re Beacon Associates Litigation*, 09-CV-0777 (S.D.N.Y.); *In re J.P. Jeanneret Associates, Inc., et al.*, 09-cv-3907 (S.D.N.Y.). Lowey Dannenberg represented several unions, which served as Lead Plaintiffs, in litigation arising from Bernie Madoff's Ponzi scheme. On March 15, 2013, the Honorable Colleen McMahon of the United States District Court for the Southern District of New York granted final approval of the $219.9 million settlement of Madoff feeder-fund litigation encompassing the *In re Beacon* and *In re Jeanneret* class actions. Lowey Dannenberg, as Liaison Counsel, was instrumental in achieving this outstanding result. The settlement covered several additional lawsuits in federal and New York state courts against the settling defendants, including suits brought by the United States Secretary of Labor and the New York Attorney General. Plaintiffs in these cases asserted claims under the federal securities laws, ERISA, and state laws arising out of hundreds of millions of dollars of losses sustained

by unions and other investors in Bernard Madoff feeder funds. The settlement recovered an extraordinary 70% of investors' losses. This settlement, combined with anticipated recovery from a separate liquidation of Madoff assets, is expected to restore the bulk of losses to the pension funds for the local unions and other class members. In granting final approval, Judge McMahon praised both the result and the lawyering in these coordinated actions, noting that "[i]n the history of the world there has never been such a response to a notice of a class action settlement that I am aware of, certainly, not in my experience," and that "[t]he settlement process really was quite extraordinary." In her written opinion, Judge McMahon stated that "[t]he quality of representation is not questioned here, especially for those attorneys (principally from Lowey Dannenberg) who worked so hard to achieve this creative and, in my experience, unprecedented global settlement." *In re Beacon Associates Litig.*, 09 CIV. 777 CM, 2013 WL 2450960, at *14 (S.D.N.Y. May 9, 2013).

- *In re Juniper Networks, Inc. Sec. Litig.*, No. C-06-04327 JW (N.D. Cal.). In 2010, as lead counsel for the Lead Plaintiff, the New York City Pension Funds, Lowey Dannenberg achieved a settlement in the amount of $169.5 million, one of the largest settlements in an options backdating case, after more than three years of hard-fought litigation.
- *In re ACS Shareholder Litigation*, Consolidated C.A. No. 4940-VCP (Del. Ch.). Lowey Dannenberg successfully challenged a multi-billion-dollar merger between Xerox Corp. and Affiliated Computer Systems ("ACS"), which favored Affiliated's CEO at the expense of our client, Federated Investors, and other ACS shareholders. In expedited proceedings, Lowey achieved a $69 million settlement as well as structural protections in the shareholder vote on the merger. The settlement was approved in 2010.
- *In re Bayer AG Securities Litigation*, 03 Civ. 1546 (WHP) (S.D.N.Y.). We represented the New York State Common Retirement Fund as Lead Plaintiff in a securities fraud class action arising from Bayer's marketing and recall of its Baycol drug. Lowey Dannenberg was appointed as lead counsel for the New York State Common Retirement Fund at the inception of merits discovery, following the dismissal of the New York State Common Retirement Fund's former counsel. The class action settled for $18.5 million in 2008.
- *In re WorldCom Securities Litigation*, Master File No. 02 Civ. 3288 (DLC) (S.D.N.Y.). Lowey Dannenberg's innovative strategy and zealous prosecution produced an extraordinary recovery in the fall of 2005 for the New York City Pension Funds in the *WorldCom Securities Litigation*, substantially superior to that of any other WorldCom investor in either class or opt-out litigation. Following our advice to opt out of a class action in order to litigate their claims separately, the New York City Pension Funds recovered almost $79 million, including 100% of their damages resulting from investments in WorldCom bonds.
- *Federated American Leaders Fund, Inc.*, No. 08-cv-01337-PB (D.N.H.). In 2008, Lowey Dannenberg successfully litigated an opt-out case on behalf of client Federated Investors, Inc., arising out of the *Tyco Securities Litigation*. The client asserted claims unavailable to the class (including a claim for violation of § 18 of the Securities Exchange Act of 1934 and a claim for violations of the New Jersey RICO statute). Pursuit of an opt-out strategy resulted in a recovery of substantially more than the client would have received had it merely remained passive and participated in the class action settlement.
- *In re Philip Services Corp., Securities Litigation*, No. 98 Civ. 835 (AKH) (S.D.N.Y.). On March 19, 2007, the United States District Court for the Southern District of New York approved a $79.75 million settlement of a class action, in which Lowey Dannenberg acted as Co-Lead Counsel, on behalf of United States investors of Philip Services Corp., a bankrupt Canadian resource recovery company. $50.5 million of the settlement was paid by the Canadian accounting firm of Deloitte & Touche, LLP, perhaps the largest recovery from a Canadian auditing firm in a securities class action, and among the largest obtained from any accounting firm. Earlier in the litigation, the United States Court of Appeals for the Second Circuit issued a landmark decision protecting the rights of United States citizens to sue foreign companies who fraudulently sell their securities in the United States. *DiRienzo v. Philip Services Corp.*, 294 F.3d 21 (2d Cir. 2002).

- *In re New York Stock Exchange/Archipelago Merger Litigation*, No. 601646/05 (N.Y. Sup. Ct.). Lowey Dannenberg acted as co-lead counsel for a class of seatholders seeking to enjoin the merger between the New York Stock Exchange ("NYSE") and Archipelago Holdings, Inc. As a result of the action, the merger terms were revised, providing the seatholders with more than $250 million in additional consideration. Further, the NYSE agreed to retain an independent financial adviser to report to the court as to the fairness of the deal to the NYSE seatholders. Plaintiffs also provided the court with their expert's analysis of the new independent financial adviser's report so that seatholders could assess both reports prior to the merger vote. The court noted that "these competing presentations provide a fair and balanced view of the proposed merger and present the NYSE Seatholders with an opportunity to exercise their own business judgment with eyes wide open. The presentation of such differing viewpoints ensures transparency and complete disclosure." *In re New York Stock Exchange/ Archipelago Merger Litigation*, No. 601646/05, 2005 WL 4279476, at *14 (N.Y. Sup. Ct. Dec. 5, 2005).
- *Delcath Systems, Inc. v. Ladd, et al.*, No. 06 Civ. 6420 (S.D.N.Y.). On September 25, 2006, Lowey Dannenberg helped Laddcap Value Partners win an emergency appeal, reversing a federal district court's order disqualifying the votes Laddcap solicited to replace the board of directors of Delcath Systems, Inc. Prior to Lowey Dannenberg's involvement in the case, on September 20, 2006, the district court enjoined Laddcap, Delcath's largest stockholder, from submitting stockholder consents on the grounds of alleged and unproven violations of federal securities law. After losing an injunction proceeding in the district court on September 20, 2006, and with the election scheduled to close on September 25, 2006, Laddcap hired Lowey Dannenberg to prosecute an emergency appeal, which Lowey won on September 25, 2006, the last day of the election period. *Delcath Systems, Inc. v. Ladd*, 466 F.3d 257 (2d Cir. 2006). Shortly thereafter, the case settled with Laddcap gaining seats on the board, reimbursement of expenses, and other benefits.
- *Salomon Brothers Municipal Partners Fund, Inc. v. Thornton*, No. 05-cv-10763 (S.D.N.Y.). Lowey Dannenberg represented Karpus Investment Management in its successful proxy contest and subsequent litigation to prevent the transfer of management by Citigroup to Legg Mason of the Salomon Brothers Municipal Partners Fund. We defeated the Fund's preliminary injunction action which sought to compel Karpus to vote shares it had solicited by proxy but withheld from voting in order to defeat a quorum and prevent approval of the transfer. *Salomon Brothers Mun. Partners Fund, Inc. v. Thornton*, 410 F. Supp. 2d 330 (S.D.N.Y. 2006).
- *In re DaimlerChrysler AG Sec. Litigation*, Master Docket No. 00-993-JJF (D. Del.). Lowey Dannenberg represented Glickenhaus & Co., a major registered investment advisor and, at the time, the second largest stockholder of Chrysler, in an individual securities lawsuit against DaimlerChrysler AG. Successful implementation of the firm's opt-out strategy led to a recovery for its clients far in excess of that received by other class members. *See Tracinda Corp. v. DaimlerChrysler AG*, 197 F. Supp. 2d 42 (D. Del. 2002); *In re DaimlerChrysler AG Sec. Litig.*, 269 F. Supp. 2d 508 (D. Del. 2003).
- *Doft & Co. v. Travelocity.com, Inc.*, No. Civ. A. 19734 (Del. Ch.). Following a three-day bench trial in a statutory appraisal proceeding, the Delaware Chancery Court awarded the firm's clients, an institutional investor and investment advisor, $30.43 per share plus compounded prejudgment interest, for a transaction in which the public shareholders who did not seek appraisal were cashed out at $28 per share. *Doft & Co. v. Travelocity.com, Inc.*, No. Civ. A. 19734, 2004 WL 1152338 (Del. Ch. May 20, 2004), *modified*, 2004 WL 1366994 (Del. Ch. June 10, 2004).
- *MMI Investments, LP v. NDCHealth Corp., et al.*, 05 Civ. 4566 (S.D.N.Y.). Lowey Dannenberg filed an individual action on behalf of hedge fund, MMI Investments, asserting claims for violations of the federal securities laws and the common law, including claims not available to the class, most notably a claim for violation of § 18 of the Securities Exchange Act of 1934 and a claim for common law fraud. After zealously litigating the client's claims, the Firm obtained a substantial settlement, notwithstanding the fact that the class claims were dismissed.
- *Omnicare, Inc. v. NCS Healthcare, Inc.* Lowey Dannenberg, as Co-Lead Counsel on behalf of an institutional investor, obtained an injunction

from the Delaware Supreme Court, enjoining a proposed merger between NCS Healthcare, Inc. and Genesis Health Ventures, Inc., in response to Lowey Dannenberg's argument that the NCS board breached its fiduciary obligations by agreeing to irrevocable merger lock-up provisions. As a result of the injunction, the NCS shareholders were able to benefit from a competing takeover proposal by Omnicare, Inc., a 300% increase from the enjoined transaction, providing NCS's shareholders with an additional $99 million. *Omnicare, Inc. v. NCS Healthcare, Inc.*, 818 A.2d 914 (Del. 2003).

- *meVC Draper Fisher Jurvetson Fund 1, Inc. v. Millennium Partners.* Lowey Dannenberg successfully represented an affiliate of Millennium Partners, a major private investment fund, in litigation in the Delaware Chancery Court over a board election. Lowey's efforts resulted in the voiding of two elections of directors of meVC Draper Fisher Jurvetson Fund 1, Inc., a NYSE-listed closed end mutual fund, on grounds of breach of fiduciary duty. In a subsequent proxy contest litigation in the United States District Court for the Southern District of New York, the entire board of directors was ultimately replaced with Millennium's slate. *meVC Draper Fisher Jurvetson Fund 1, Inc. v. Millennium Partners*,260 F. Supp. 2d 616 (S.D.N.Y. 2003); *Millenco L.P. v. meVC Draper Fisher Jurvetson Fund 1, Inc.*, 824 A.2d 11 (Del. Ch. 2002).
- *In re CINAR Securities Litigation*, Master File No. 00 CV 1086 (E.D.N.Y. Dec. 2, 2002). Lowey Dannenberg acted as Lead Counsel, obtaining a $27.25 million settlement on behalf of client the Federated Kaufmann Fund and a class of purchasers of securities of CINAR Corporation. The court found that "the quality of [Lowey Dannenberg's] representation has been excellent."
- *In re Reliance Securities Litigation*, MDL No. 1304 (D. Del. 2002). In proceedings in which Lowey Dannenberg acted as co-counsel to a Bankruptcy Court-appointed estate representative, the firm obtained recoveries in a fraudulent conveyance action totaling $106 million.

Consumer Protection

Lowey Dannenberg has served as lead or co-lead counsel in many challenging consumer protection cases. The firm has recovered millions of dollars on behalf of consumers injured as a result of unfair business practices. The firm's Consumer Protection Group has experience litigating class actions under state and federal consumer protection law and before state and federal courts.

In re FedLoan Student Loan Servicing Litigation

Attorneys from Lowey Dannenberg serve as co-lead counsel. Judge C. Darnell Jones, II appointed Lowey Dannenberg attorneys as Co-Lead Counsel and Executive Committee members in *In re FedLoan Student Loan Servicing Litigation*, No. 18-MD-2833 (E.D. Pa.) ("*FedLoan*"). Lowey Dannenberg filed the first action in the *FedLoan* litigation alleging that one of the nation's largest student loan servicers, the Pennsylvania Higher Education Assistance Agency, failed to properly service student loans in order to maximize the fees it received from the Department of Education under its loan servicing contract. The alleged scheme harmed student loan borrowers by causing them to accrue additional interest on their loans, improperly extending their repayment terms, and erroneously placing their loans into forbearance. The litigation is ongoing.

Broder v. MBNA Corp.

Lowey Dannenberg served as Lead Counsel in *Broder v. MBNA Corp.*, No. 605153/98 (Sup. Ct., N.Y. County), and recovered $22.8 million dollars on behalf of a class of holders of credit cards issued by MBNA Bank, who took cash advances in response to a deceptive MBNA promotion. The Court noted that Lowey Dannenberg is an "able law firm having long-standing experience in commercial class action litigation."

In Re Archstone Westbury Tenant Litigation

As lead counsel, Lowey Dannenberg successfully represented a class of renters of mold-infested apartments in a $6.3 million settlement of a complex landlord-tenant class action in *In Re Archstone Westbury Tenant Litigation*, Index No. 21135/07 (N.Y. Sup. Ct. Nassau County).

Lyons v. Litton Loan Servicing LP

In *Lyons v. Litton Loan Servicing LP, et al.*, No. 13-cv-00513 (S.D.N.Y.), Lowey Dannenberg served as Class Counsel and recovered $4.1 million on behalf of a class of homeowners alleging that mortgage servicers colluded to force them to buy unnecessary lender-placed insurance.

In re Warfarin Sodium Antitrust Litigation

In *In re Warfarin Sodium Antitrust Litigation*, 391 F.3d 516 (3rd Cir. 2004), the Third Circuit Court of Appeals affirmed the United States District Court for the District of Delaware's approval of a $44.5 million class action settlement paid by DuPont Pharmaceuticals to consumers and third-party payers nationwide to settle claims of unfair marketing practices in connection with the prescription blood thinner, Coumadin. Lowey Dannenberg, appointed by the District Court to the Plaintiffs' executive committee as the representative of third-party payers, successfully argued the appeal.

Snyder v. Nationwide Insurance Company

In *Snyder v. Nationwide Insurance Company*, Index No. 97/0633 (Sup. Ct. Onondaga Co. December 17, 1998), Lowey Dannenberg, as co-lead counsel, secured a $100 million dollar settlement for consumers purchasing "vanishing premium" life insurance policies. In approving the settlement, the Court found that the attorneys of Lowey Dannenberg are "great attorneys" who did a "very, very good job" for the class.

Privacy Class Actions and Data Breach Class Actions

Lowey Dannenberg is at the forefront of some of the most high-profile and largest privacy cases in the country, including those involving new and emerging technology.

Lowey Dannenberg represents both consumers and financial institutions in some of the largest data breach class actions this year, including those affecting tens of millions of customers across the hospitality, healthcare, and retail industries.

PRIVACY CLASS ACTIONS

In re Google Assistant Privacy Litigation

Lowey Dannenberg serves as co-lead counsel in one of the largest privacy cases in the country representing a class of consumers against tech giant Google. Plaintiffs' claims arise out of Google's unlawful and intentional recording of plaintiffs' and class members' confidential communications without their consent through its Google Assistant software. On May 6, 2020, Judge Beth L. Freeman of the Northern District of California denied defendant's motion to dismiss the complaint and sustained several claims, including those under the Stored Communications Act and California's Unfair Competition Law. The outcome of this action will have a significant impact on privacy rights in the digital space.

Lopez v. Apple, Inc.

Similar to the case above, Lowey Dannenberg serves as co-lead counsel in a class action on behalf of consumers alleging that Apple unlawfully and intentionally recorded plaintiffs' and class members' confidential communications without their consent through its Siri-enabled devices. This case is currently pending in the Northern District of California before District Judge Jeffrey S. White.

In re Apple Processor Litigation

Lowey Dannenberg currently serves as co-lead counsel in a proposed class action against Apple alleging that plaintiffs and the class were harmed by Apple's failure to disclose defects in its central processing units that Apple designed and placed in millions of its devices, which exposed users' sensitive personal information to unauthorized third parties.

DATA BREACH CLASS ACTIONS

In re Wawa, Inc. Data Security Litigation

Lowey Dannenberg has been appointed co-lead counsel in a class action against Wawa, Inc. on behalf of a class of financial institutions affected by Wawa Inc.'s failure to properly secure their card processing system. As a result of Wawa Inc.'s conduct, unauthorized third parties were able to gain access to customers' payment card information for over 9 months. The data breach is estimated to have impacted more than 30 million individuals at 850 locations.

In re Rutter's Inc. Data Security Breach Litigation

Lowey Dannenberg is serving as co-lead counsel in a class action on behalf of consumers against Rutter's Holdings, Inc. The action arises out of Rutter's Holdings, Inc.'s failure to secure its point-of-sale system, which allowed hackers to compromise customers' payment card information. The breach is estimated to have lasted approximately eight months.

Cohen v. Northeast Radiology, P.C. et al.

Lowey Dannenberg is currently litigating the largest medical imaging data breach. Lowey Dannenberg represents class members impacted by the data breach as a result of a medical imaging company's failure to protect its servers, which housed approximately 1.2 million of their clients' medical records, including more than 61 million medical images.

Lowey Dannenberg's Recognized Expertise

Courts have repeatedly recognized the attorneys of Lowey Dannenberg as expert practitioners in the field of complex litigation.

For example, on March 15, 2013, the Honorable Colleen McMahon of the United States District Court for the Southern District of New York granted final approval of the $219 million settlement of Madoff feeder-fund litigation encompassing the In re Beacon and In re Jeanneret class actions. In a subsequent written decision, with glowing praise, Judge McMahon stated:

- "The quality of representation is not questioned here, especially for those attorneys (principally from Lowey Dannenberg) who worked so hard to achieve this creative and, in my experience, unprecedented global settlement."
- "I thank everyone for the amazing work that you did in resolving these matters. **Your clients—all of them—have been well served**."
- "Not a single voice has been raised in opposition to this remarkable settlement, or to the Plan of Allocation that was negotiated by and between the Private Plaintiffs, the NYAG and the DOL."
- "All formal negotiations were conducted with the assistance of two independent mediators - one to mediate disputes between defendants and the investors and another to mediate claims involving the Bankruptcy Estate. Class Representatives and other plaintiffs were present, in person or by telephone, during the negotiations. The US Department of Labor and the New York State Attorney General participated in the settlement negotiations. **Rarely has there been a more transparent settlement negotiation. It could serve as a prototype for the resolution of securities-related class actions, especially those that are adjunctive to bankruptcies.**"
- **"The proof of the pudding is that an astonishing 98.72% of the Rule 23(b)(3) Class Members who were eligible to file a proof of claim did so (464 out of 470), and only one Class Member opted out [that Class Member was not entitled to recover anything under the Plan of Allocation]. I have never seen this level of response to a class action Notice of Settlement, and I do not expect to see anything like it again."**
- "**I am not aware of any other Madoff-related case in which counsel have found a way to resolve all private and regulatory claims simultaneously and with the concurrence of the SIPC/Bankruptcy Trustee**. Indeed, I am advised by Private Plaintiffs' Counsel that the Madoff Trustee is challenging settlements reached by the NYAG in other feeder fund cases [Merkin, Fairfield Greenwich] which makes the achievement here **all the more impressive**."

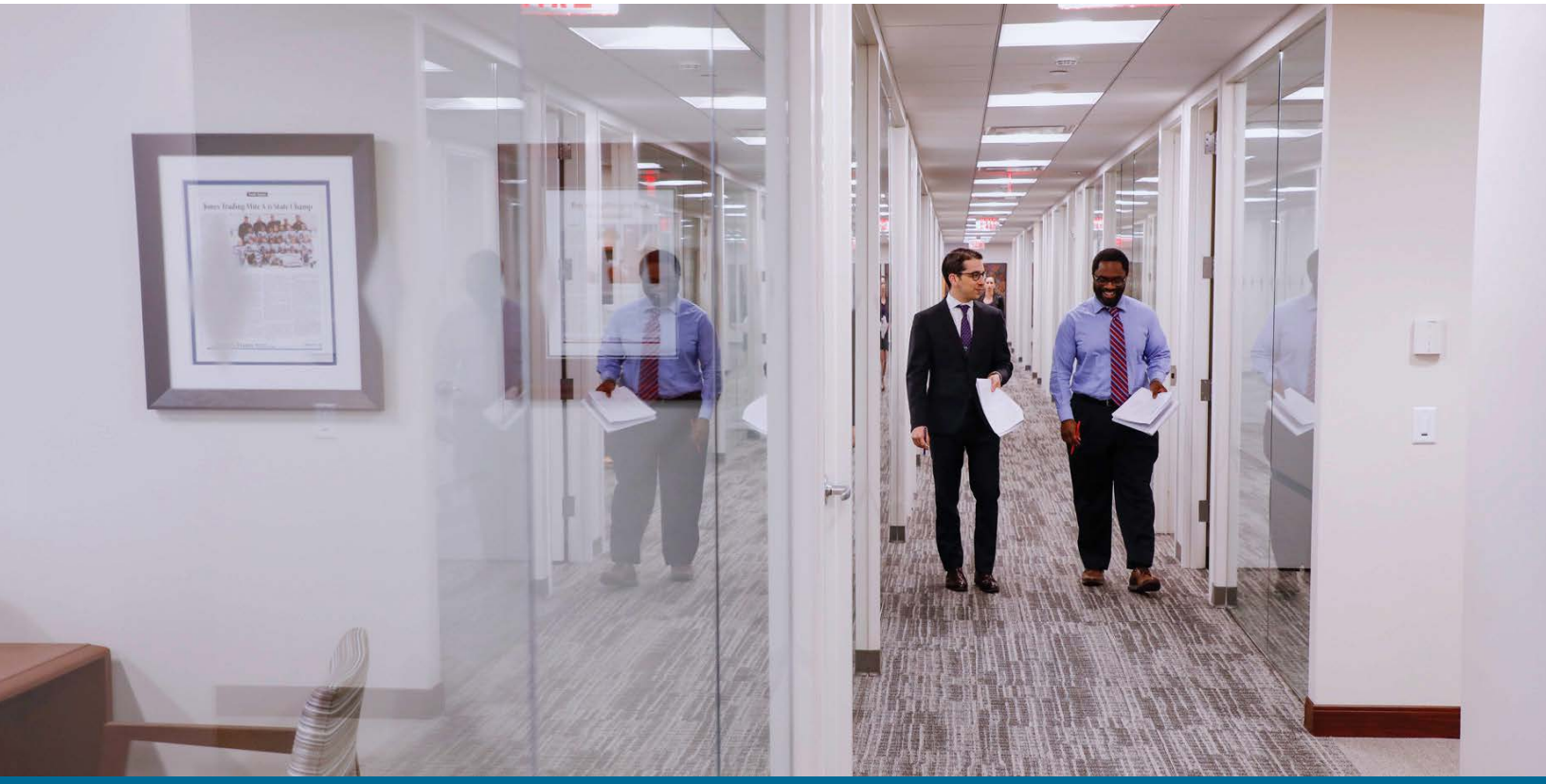
In *Juniper Networks, Inc. Securities Litigation*, the court, in approving the settlement, acknowledged that "[t]he successful prosecution of the complex claims in this case required the participation of highly skilled and specialized attorneys." *In re Juniper Networks, Inc.*, C06-04327, Order dated August 31, 2010 (N.D. Cal.). In the *WorldCom Securities Litigation*, the court repeatedly praised the contributions and efforts of the firm. On November 10, 2004, the court found that "the Lowey Firm . . . has worked tirelessly to promote harmony and efficiency in this sprawling litigation .

[Lowey Dannenberg] has done a superb job in its role as Liaison Counsel, conducting itself with professionalism and efficiency . . . ." *In re WorldCom, Inc. Securities Litigation*, No. 02 Civ. 3288, 2004 WL 2549682, at *3 (S.D.N.Y. Nov. 10, 2004).

In the *In re Bayer AG Securities Litigation*, 03 Civ. 1546, 2008 WL 5336691, at *5 (S.D.N.Y. Dec. 15, 2008) order approving a settlement of $18.5 million for the class of plaintiffs, Judge William H. Pauley III noted that the attorneys from Lowey Dannenberg are "nationally recognized complex class action litigators, particularly in the fields of securities and shareholder representation," that "provided high-quality representation."

In the *In re Luminent Mortgage Capital, Inc., Securities Litigation*, No. C07-4073 (N.D. Cal.) hearing for final approval of settlement and award of attorneys' fees, Judge Phyllis J. Hamilton noted that "[t]he $8 million settlement . . . is excellent, in light of the circumstance." Judge Hamilton went on to say that "most importantly, the reaction of the class has been exceptional with only two opt- outs and no objections at all received." *See* Tr. of Hearing on Plaintiff's Motion for Final Approval of Settlement/Plan of Allocation and for an Award of Attorneys' Fees and Reimbursement of Expenses, *In re Luminent Mortgage Capital, Inc., Securities Litigation*, No. C07-4073-PJH (N.D. Cal. Apr. 29, 2009), ECF No. 183.

LOWEY DANNENBERG



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