IN THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA
CASE NO. 2D10-762

SAL FINANCIAL SERVICES, INC., ET AL.,

Appellants,

v.

RICHARD GAUZZA, ROBERT LUCCI, ET AL.,

Appellees.

ON APPEAL FROM THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA, CIVIL DIVISION

Honorable Charles E. Williams

BRIEF AMICUS CURIAE OF THE SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION IN SUPPORT OF APPELLANTS

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PRELIMINARY STATEMENT

The Securities Industry and Financial Markets Association ("SIFMA") respectfully submits this brief as *amicus curiae* to address the misperception underlying the decision below that an attorney's fee award in a securities arbitration should be multiplied to provide a "reasonable attorney's fee" under the applicable fee-shifting statute, §517.211(6), Fla. Stat. (2009).

While it is SIFMA's view that fee multipliers are unnecessary and inappropriate in securities litigation as a general matter, securities arbitrations are particularly inappropriate matters for fee multipliers, because the securities arbitration system was created and designed to provide an efficient, accessible, and affordable alternative to litigation. Moreover, consumers who desire representation in arbitration proceedings are served by a dedicated and well-compensated securities bar — as this very case shows, as the Claimant's attorney's fees resulted in a lodestar fee calculation, *pre-multiplier*, of more than double the maximum ethically-permissible contingency fee. Because fee multipliers increase the cost of securities arbitration to the detriment of the investing public, and because the purpose of fee multipliers is not to provide "a windfall for lawyers," *Lane v. Head*, 566 So. 2d 508, 511 (Fla. 1990), the lodestar multiple of hours worked times hourly rate should establish the "reasonable attorney's fee" in securities arbitrations. An additional fee multiplier should not be allowed.

IDENTITY OF AMICUS CURIAE

SIFMA brings together the shared interests of hundreds of securities firms, banks, and asset management companies. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation, and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association.

STATEMENT OF INTEREST

SIFMA has an interest in supporting a fair and affordable dispute resolution mechanism for its members and the public. Understanding that the relationships between its members and the public at times lead to disputes, it is SIFMA's view that all parties benefit from the fair assessment and allocation of the reasonable costs of the resulting arbitration proceedings.

Where, as here, the prevailing party in a securities arbitration is eligible under state law for the award of a statutory "reasonable fee," that fee award should reflect the prevailing party's reasonable costs of arbitration. The use of fee multipliers unnecessarily and inappropriately inflates those costs and provides a windfall for lawyers, the burden of which is ultimately paid for by the investing public.

SOURCE OF AUTHORITY

SIFMA has sought leave of the Court by motion to file this Brief. Defendant/Appellant consents to SIFMA's motion. Plaintiff/Appellee does not.

ARGUMENT

The issue on this appeal is not fee *shifting* — the Florida Securities Act expressly provides that "[i]n any action brought under this section . . . the court shall award reasonable attorneys' fees to the prevailing party unless the court finds that the award of such fees would be unjust." §517.211(6), Fla. Stat. The issue is fee *enhancement* — the award of far more than the statutorily-authorized "reasonable fee" through the application of fee multipliers, as the Circuit Court did below.

In authorizing a fee multiplier — and doubling the fee award from the $198,675 lodestar to a $397,350 "enhanced fee" — the Circuit Court misapplied the Florida Supreme Court's fee-shifting jurisprudence and misapprehended the need for fee multipliers in the context of securities arbitration. First, the fee-shifting statute was intended to compensate prevailing parties for the actual cost of litigation; "[t]here clearly was no intent on the part of the legislature to *increase* the amount of attorney's fees . . . for the prevailing party's counsel." *Standard Guar. Ins. Co. v. Quanstrom*, 555 So. 2d 828, 831 (Fla. 1990) (emphasis added). Second, securities arbitration procedures are specifically designed by the Financial

Industry Regulatory Authority ("FINRA") under the supervision of the Securities and Exchange Commission ("SEC"), to be more streamlined than litigation, enhancing access to a dispute resolution forum and reducing further the justification for multiplying or enhancing the prevailing attorney's fee.

I. THE PURPOSE OF THE SECURITIES FEE SHIFTING STATUTE DOES NOT SUPPORT FURTHER ENHANCEMENT OF FEES IN SECURITIES LITIGATION.

Since the Florida Supreme Court endorsed the "lodestar" approach to fee awards in 1985, courts have consistently warned that those awards should fairly reflect the costs of litigation, should avoid arbitrariness, and should not provide a windfall to the prevailing attorney. Fee enhancements like that awarded in this case are grossly inconsistent with these instructions.

In *Florida Patient's Compensation Fund v. Rowe*, the Court first "adopt[ed] the federal lodestar approach for computing reasonable attorney fees" under a state fee-shifting statute because the lodestar approach provided "a suitable foundation for an objective structure" for calculating fee awards. 472 So. 2d 1145, 1146, 1150 (Fla. 1985). Five years later, the Court further embraced an objective approach to fee calculation and warned against excessive awards, holding that a fee multiplier is *not* mandatory in cases involving contingency fee agreements. *Quanstrom*, 555 So. 2d at 830. Observing that the "lodestar method was not originally created to apply to personal injury cases" at all, but rather was established "for the purpose of

obtaining public enforcement of [legislative] acts," the Court reaffirmed the lodestar approach for private litigation with the assumption and intention that "the fee would not be significantly different in amount than it would be absent the statutory [fee-shifting] provision." *Id.* at 831.[1]

After Florida adopted the federal approach to fee calculation in *Rowe* and *Quanstrom*, the U.S. Supreme Court continued to stress that courts applying the same approach should avoid "enhancing" fee awards over and above the lodestar, because fee enhancement can lead to double-counting and excessive awards. The Court has invoked a "'strong presumption' that the lodestar represents the 'reasonable' fee," and "placed upon the fee applicant who seeks more than that the burden of showing that 'such an adjustment is *necessary* . . . .'" *City of Burlington v. Dague*, 505 U.S. 557, 562 (1992) (citations omitted). Dealing specifically with contingency fee cases, the Court has rejected the use of fee multipliers to compensate for the "risk of loss" in any particular case, because the relevant factors associated with risk of loss are already accounted for in the lodestar. *Id.* at

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[1] One judge has described *Quanstrom* as imposing "two 'caps' on the amount of attorney's fees that can be awarded . . . . The first cap limited the fee to the parties' agreement; the second cap was to insure in so far as reasonably possible that the awarded fee would reimburse plaintiff for the fee he obligated himself to pay his attorney." *See Tetrault v. Fairchild*, 799 So. 2d 226, 230 n.3 (Fla. 5th DCA 2001) (Harris, J., concurring).

562-63.[2] And in April 2010, the Court reaffirmed the twin propositions that "a 'reasonable' fee is a fee that is sufficient to induce a capable attorney to undertake the representation of a meritorious . . . case," and that "the lodestar method yields a fee that is presumptively sufficient to achieve this objective." *Perdue v. Kenny A.*, 130 S. Ct. 1662, 1672 (2010); *see also id.* at 1678 (Thomas, J., concurring) ("[T]he lodestar calculation will in virtually every case already reflect all indicia of attorney performance relevant to a fee award.").

Securities litigation generally involves tort and contract claims between individual investors and their brokers or investment advisers. As private actions between contracting parties, securities litigation is not within the "special class of cases" involving the private enforcement of public policy. *Quanstrom*, 555 So. 2d at 831; *see also Raymond, James & Assocs., Inc. v. Wieneke*, 591 So. 2d 956, 958

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[2] Specifically,

> The risk of loss in a particular case (and, therefore, the attorney's contingent risk) is the product of two factors: (1) the legal and factual merits of the claim, and (2) the difficulty of establishing those merits. The second factor, however, is ordinarily reflected in the lodestar — either in the higher number of hours expended to overcome the difficulty, or in the higher hourly rate of the attorney skilled and experienced enough to do so. . . . The first factor (relative merits of the claim) is not reflected in the lodestar, but there are good reasons why it should play no part in the calculation of the award. . . . [T]he consequence of awarding contingency enhancement to take account of this "merits" factor would be to provide attorneys with the same incentive to bring relatively meritless claims as relatively meritorious ones. . . . We think that an unlikely objective of the "reasonable fees" provisions.

Id. (citations omitted).

(Fla. 2d DCA 1991) (same). Under *Quanstrom*, a "reasonable fee" in such a tort or contract case must be justified based on certain factors:

> (1) whether the relevant market requires a contingency fee multiplier to obtain competent counsel; (2) whether the attorney was able to mitigate the risk of nonpayment in any way; and (3) whether any of the factors set forth in *Rowe* are applicable, especially, the amount involved, the results obtained, and the type of fee arrangement between the attorney and his client.[3]

Quanstrom, 555 So. 2d at 834. The specific "criteria and factors" used in setting a reasonable attorney's fee in a given case "must be consistent with the purpose of the fee-authorizing statute or rule." *Id.*

In this regard, the Florida Supreme Court has observed that the "primary rationale for the contingency risk multiplier [in contract or tort cases] is to provide access to competent counsel for those who could not otherwise afford it." *Bell v.*

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[3] The complete list of factors set forth in *Rowe* is as follows:

(1) The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly.

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.

(3) The fee customarily charged in the locality for similar legal services.

(4) The amount involved and the results obtained.

(5) The time limitations imposed by the client or by the circumstances.

(6) The nature and length of the professional relationship with the client.

(7) The experience, reputation, and ability of the lawyer or lawyers performing the services.

(8) Whether the fee is fixed or contingent.

472 So. 2d at 1150.

U.S.B. Acquisition Co., Inc., 734 So. 2d 403, 411 (Fla. 1999); *see also Sarkis v. Allstate Ins. Co.*, 863 So. 2d 210, 216 (Fla. 2003) (identifying the purpose of "encourag[ing] lawyers to accept representation at the inception of certain cases"); *Lane*, 566 So. 2d at 510 (identifying the purpose of "encourag[ing] attorneys to take cases under contingency-fee arrangements"). The Court has continued to stress, however, that providing access does not mean providing a bonus, as "[t]he policy underlying [fee multipliers] does not authorize a windfall for lawyers." *Lane*, 566 So. 2d at 511.

Plaintiffs' counsel do not need the incentive of a fee multiplier to take on securities litigation. Members of the securities bar frequently handle multiple cases — and a successful claim in one case can lead to follow-on claims by additional investors, as this very case shows. *See* Br. of Appellant Sterne Agee at 5, 8-9 (counsel represented five clients in connection with this single matter, four of whom received settlements without arbitration).[4] Moreover, attorneys further

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[4] Representing multiple claimants is far from unusual, as attorneys frequently use an initial claim to identify additional claimants based on the same or similar facts. *See, e.g.*, Marketwire, *The Securities Law Firm of Klayman & Toskes Files Arbitration Claim on Behalf of a Family Trust*, http://www.marketwire.com/press-release/Securities-Law-Firm-Klayman-Toskes-Files-Arbitration-Claim-on-Behalf-Family-Trust-That-1054265.htm (Oct. 2, 2009) (quoting one securities attorney stating that "[w]hile we have been contacted by numerous investors who lost money" in one investment vehicle, "we believe that we have only seen the tip of the iceberg," and that the firm "anticipate[s] filing additional securities arbitration claims in the coming weeks."); Elizabeth Stull, *Rochester-Area Retirees' Claims Mount*, Rochester

mitigate their risk of nonpayment through fee provisions such as the provision in this case, under which Mr. Gauzza's attorney was entitled to the "higher" of either the lodestar amount or the contingency fee.

Because the lodestar method "produces an award that *roughly* approximates the fee that the prevailing attorney would have received if he or she had been representing a paying client who was billed by the hour in a comparable case," *Perdue*, 130 S. Ct. at 1672, the lodestar model decouples the attorneys' fee award from the damages award in contingency-fee cases, "often (perhaps, generally) result[ing] in a larger fee award than the contingent-fee model" in low-damages cases. *Dague*, 505 U.S. at 566. The lodestar model thus more than compensates attorneys for the costs of representation, providing ample inducement to take on meritorious cases of all types. Even in this case, which resulted in nearly $200,000 in compensatory and punitive damages, the lodestar calculation was more than double the 40% contingency fee. A further "fee-enhancing" multiplier (which unequally works "to increase a [lodestar] fee award but not to reduce it," *id.*) is not necessary to provide an attorney a "reasonable fee" in these circumstances. *See also Perdue,* 130 S. Ct. at 1673 (observing that the lodestar "yields a fee that is

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Daily Record, Apr. 1, 2009 (noting that one attorney "represents scores of retirees" in cases against one institution "and has heard from many others"); Investment News, http://www.investmentnews.com/article/20070801/REG/70801017 (Aug. 1, 2007) (noting that attorneys in one securities arbitration "anticipate filing more claims against [the same institution] on behalf of other institutional and individual investors who have lost money in the fund").

presumptively sufficient to achieve th[e] objective" of inducing a capable attorney to take on a meritorious case). Indeed, it is manifestly inappropriate, as "[u]nder *Rowe*, it was contemplated that the multiplier would only be employed *if the lodestar was less than the lawyer would receive under his contingency arrangement*." *Tetrault*, 799 So. 2d at 231 (Harris, J., concurring).

II. BECAUSE SECURITIES ARBITRATION IS STREAMLINED, EFFICIENT, AND ACCESSIBLE, FEE ENHANCEMENTS ARE NOT NECESSARY TO ATTRACT COUNSEL TO MERITORIOUS CASES.

Fee enhancement is especially inappropriate in the context of securities arbitration. "Arbitration, a quick, fair, and relatively inexpensive method of dispute resolution, has long been used in the securities industry." Sec. Indus. Conf. on Arb., The Arbitrator's Manual 1 (Aug. 2007), *available at* http://www.finra.org/web/groups/arbitrationmediation/@arbmed/@neutrl/documents/arbmed/p009668.pdf.[5] Consistent with the general modern trend of support for arbitration, the U.S. Supreme Court has agreed that arbitration under the auspices of Self-Regulatory Organizations ("SROs") and the supervision of the SEC is a fair and adequate procedure for the protection of investor rights. *See Rodriguez de*

[5] *See also* Michael A. Perino, Report to the Securities and Exchange Commission Regarding Arbitrator Conflict Disclosure Requirements in NASD and NYSE Securities Arbitrations 3 (Nov. 4, 2002), *available at* http://www.sec.gov/pdf/arbconflict.pdf ("The benefits of arbitration are well known. It provides a streamlined, expeditious, and final mechanism for resolving disputes through the use of experts in the matters at issue.").

Quijas v. Shearson/Am. Express, Inc., 490 U.S. 477 (1989); *Shearson/Am. Express, Inc. v. McMahon*, 482 U.S. 220 (1987).

FINRA is an independent regulator, supervised by a Board of Governors made up of public and industry representatives. Since the consolidation of NASD and the regulatory, enforcement, and arbitration functions of the NYSE and NASD in 2007, FINRA has operated the largest dispute resolution forum in the securities industry, FINRA Dispute Resclution. *See* FINRA, About the Financial Industry Regulatory Authority, http://www.finra.org/AboutFINRA/index.htm; FINRA, FINRA Dispute Resolution Fact Sheet, http://www.finra.org/ArbitrationMediation/AboutFINRADR/Overview/FactSheet/. FINRA provides a unique arbitration process through rules — subject to evaluation and recommendation by a National Arbitration and Mediation Committee composed of public and industry representatives, as well as public comment, review, and approval by the SEC[6] — that are designed to minimize the time and expense necessary to arbitrate disputes and provide an efficient alternative to litigation. One survey estimated that

[6] *See* FINRA, National Arbitration and Mediation Committee, http://www.finra.org/ArbitrationMediation/AboutFINRADR/NationalArbitrationMediationCommittee/index.htm; 15 U.S.C. § 78s (2006).

disputes submitted to arbitration are resolved 40 percent faster than cases filed in federal court, and at a fraction of the cost.[7]

FINRA arbitration is less costly and less time intensive than traditional litigation for a number of reasons. Through its web site, FINRA provides comprehensive resources to investors who wish to understand the arbitration process or initiate arbitration on their own. *See* FINRA, Arbitration and Mediation, http://www.finra.org/ArbitrationMediation/index.htm. Moreover, several aspects of the arbitration process, such as modest filing fees, limited motions practice, narrowly tailored discovery, relaxed pleading standards, and selection of a convenient location for the arbitration hearing, reduce the burden and expense of arbitration, resulting in a dispute resolution mechanism that is accessible to the investing public.

First, the fees required to initiate a proceeding are relatively low. "[B]roker-dealers . . . bear about 75 percent of the cost of administering the [arbitral] forum,"[8] and FINRA arbitration requires only modest filing fees from investors. *See* FINRA Code of Arbitration Procedure § 12900(a). Filing fees for investors

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[7] SIFMA, White Paper on Arbitration in the Securities Industry 26-29, App. B (Oct. 2007), *available at* http://www.sifma.org/regulatory/pdf/arbitration-white-paper.pdf.

[8] NASD Dispute Resolution, The Arbitration Policy Task Force Report—A Report Card 25 (July 27, 2007), *available at* http://www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p036466.pdf.

are smaller than those for member firms. For example, an investor claiming damages of $5,000 must pay a $175 filing fee, while a member firm claiming damages of $5,000 must pay a $525 filing fee. *Id.* at § 12900(a), (b). In addition, payment of the filing fee may be deferred for investors who demonstrate financial hardship, and a partial refund will issue to any claimant if a claim is settled or withdrawn more than 10 days before a hearing on the merits. *Id.* at § 12900(a), (c).

Second, the FINRA rules encourage decisions on the merits and discourage motions practice like that employed in court proceedings. The FINRA rules specifically prohibit motions to dismiss prior to the presentation of the claimant's case-in-chief except in limited circumstances and assess the costs relating to unsuccessful motions against the movant. *Id.* at § 12504(a)(1) ("Motions to dismiss a claim prior to the conclusion of a party's case in chief are discouraged in arbitration."); *id.* at § 12504(a)(9) ("If the panel denies a motion under this rule, the panel must assess forum fees associated with hearings on the motion against the moving party."); *id.* at § 12504(a)(10) ("If the panel deems frivolous a motion filed under this rule, the panel must also award reasonable costs and attorneys' fees to any party that opposed the motion."). These rules were adopted "to make the forum accessible to investors, particularly those with small claims, by minimizing the number of motions to dismiss filed in the forum, and by shifting the costs and fees associated with denied motions to dismiss to the moving party." SEC Release

No. 34-59189 at 33 (Dec. 31, 2008), *available at* http://www.sec.gov/rules/sro/finra/2008/34-59189.pdf. At least partially as a result, 18% of investor claims were considered on the merits after a hearing in 2009, as compared to 2% of federal cases that reach a trial. *See* FINRA, Dispute Resolution Statistics, http://www.finra.org/ArbitrationMediation/AboutFINRADR/Statistics/; *see also* U.S. Courts, Caseload Statistics 2009, http://www.uscourts.gov/Statistics/FederalJudicialCaseloadStatistics/FederalJudicialCaseloadStatistics2009.aspx.

Third, the FINRA rules substantially streamline discovery. In arbitration, "[t]he parties must cooperate to the fullest extent practicable in the exchange of documents and information to expedite the arbitration." FINRA Code of Arbitration Procedure § 12505. The general rule is disclosure, not discovery, and many familiar but expensive litigation discovery practices are limited or barred. *See id.* at § 12507(a)(1) ("Standard interrogatories are generally not permitted in arbitration."); *id.* at § 12510 ("Depositions are strongly discouraged in arbitration," and may be conducted "[u]pon motion of a party, . . . but only under very limited circumstances"); *id.* at § 12512(a) ("To the fullest extent possible, parties should produce documents and make witnesses available to each other without the use of subpoenas."); *id.* at §§ 12506(a), (b) ("When the Director serves the statement of claim, the Director will notify parties of the location of the FINRA Discovery

Guide and Document Production Lists on FINRA's Web site," and the parties must "produce to all other parties all documents in their possession or control that are described" in the Document Production Lists.[9]).

Fourth, hearings are generally held at the location closest to the claimant's residence at the time of the events giving rise to the dispute. FINRA Code of Arbitration Procedure § 12213(a). FINRA has 72 hearing locations, including at least one in every state and six in Florida (including in Tampa). FINRA, Dispute Resolution Regional Offices and Hearing Locations, http://www.finra.org/ArbitrationMediation/Contacts/DRRegionalOfficesHearing Locations/.

Fifth, FINRA provides for a "simplified arbitration" procedure for claims of less than $25,000. FINRA Code of Arbitration Procedure § 12800. Simplified arbitrations are decided by a single public arbitrator, "based on the pleadings and other materials submitted by the parties," and without a hearing unless requested by the customer. *Id.* at § 12800(c). These procedures were instituted specifically to "encourage" claimants to file their disputes. *See, e.g.*, Gross & Shabman, *A*

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[9] The FINRA Discovery Guide, available on the FINRA web site at http://www.finra.org/web/groups/arbitrationmediation/@arbmed/@arbrul/documents/arbmed/p018922.pdf, provides parties with guidance on which documents they should exchange without arbitrator or staff intervention (called Document Production Lists) and provides guidance to arbitrators in determining which documents parties are presumptively required to produce.

Primer on FINRA Simplified Arbitration, 1754 Practising L. Inst./Corp. L. & Prac. Course Handbook Series 349, 356 (Aug. 12, 2009) ("[S]implified arbitration is not only expedient, but it also provides access to justice . . . .").

Finally, the FINRA Rules are flexible with respect to who may represent an investor, allowing investors to represent themselves. FINRA Code of Arbitration Procedure §§ 12208(a), (c). This Rule allows claimants who "may be unable to retain an attorney because the attorney may believe that the attorney's share of any award would be too small to justify the effort" to pursue a small value claim through arbitration. SEC Release No. 34-56540 at 3 (Sept. 26, 2007), *available at* http://www.sec.gov/rules/sro/nasd/2007/34-56540.pdf. For investors who desire counsel, FINRA directs investors to the SEC, American Bar Association, and Public Investors Arbitration Bar Association web sites to view directories of attorneys who specialize in securities complaints. FINRA, How to Find an Attorney, http://www.finra.org/ArbitrationMediation/Parties/Overview/HowToFindAnAttorney/. In addition, 14 law schools offer pro bono arbitration services for investors with small claims through securities arbitration clinics. *Id.* FINRA recently announced a grant to launch four additional clinics, including one at Florida International University College of Law. Press Release, FINRA Investor Educ. Found., *FINRA Foundation Announces $1 Million in Grants to Fund*

Securities Advocacy Clinics (Jan. 28, 2010), *available at* http://www.finra.org/Newsroom/NewsReleases/2010/P120794.

These fundamental distinctions between FINRA proceedings and litigation further counsel against the application of fee multipliers in securities arbitrations. The streamlined aspects of these proceedings reduce the investment required by attorneys and increase the likelihood that plaintiffs with meritorious cases can obtain counsel. *See Rowe*, 472 So. 2d at 1150 (factors relevant to a fee award include "[t]he time and labor required."). Indeed, there is no basis for concluding that investors with meritorious claims require fee enhancement to attract competent counsel.[10] And while some evidence suggests that the lowest-value claims (less than $10,000) may not justify the efforts of an attorney, that is a consequence of claims that are too low to litigate efficiently in any forum, not the absence of fee multipliers — and, as noted, alternatives such as legal clinics exist to assist investors with these claims. *See* SIFMA White Paper, *supra*, at 29, n.125. This Court has previously rejected the proposition that "the state has any compelling

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[10] Here, the Magistrate Judge recommended and the Circuit Court affirmed an award of a fee multiplier based on Mr. Gauzza's attorney's self-serving testimony that he would not have taken on the case without the possibility of a contingency fee multiplier. Recommended Judgment ¶¶ 41-42. A party's "say-so" as to the availability of counsel is insufficient to justify fee enhancement. *Gimenez v. Am. Sec. Ins. Co.*, No. 8:08-cv-2495-T-24-TGW, 2009 WL 2256088, at *3 (M.D. Fla. July 28, 2009). Moreover, justifying fee enhancement based on counsel's expectation of fee enhancement (which may or may not be justified under the law) is "obviously circular." *Dague*, 505 U.S. at 564.

reason to promote securities litigation involving [such] small amounts in controversy," *Wieneke*, 591 So. 2d at 958, and in any event the theoretical possibility of small-value claims certainly does not justify the massive fee-multiplier awarded in this case.

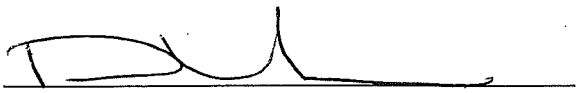
CONCLUSION

For the foregoing reasons, SIFMA respectfully submits that the Circuit Court's judgment approving the application of a fee multiplier should be reversed.

(Attorney's Signature Appears on the Following Page)

Dated: July 12, 2010

Respectfully submitted,



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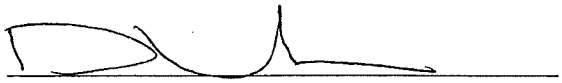

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