

Attorney Fees in Class Actions

Deborah R. Hensler
Stanford Law School

Attorney Fees Are At the Core of the Controversy Over Class Actions

- Critics charge that class action attorneys manufacture cases to obtain fees
 - Litigation is perceived as “frivolous”, “just not worth it,” unnecessary addition to existing regulation
 - Fees are perceived as outsized, compared to benefits to class
- Evidence is mainly anecdotal
 - Statistical data pertain mainly to securities class actions, often don’t report final outcomes

Rand Used a Case Study Method to Study Outcomes

- Selected 10 cases for close analysis
- Focused on small damages consumer class actions and mass tort class actions
- Looked only at recently filed and terminated cases that were resolved as class actions
 - All 10 cases were settled
- Tried to avoid high-profile cases
- Reviewed public documents and interviewed key participants
 - Plaintiff attorneys
 - Defense and corporate counsel
 - Public interest attorneys and other observers

Profile of Consumer Class Action Case Studies

	<i>Subject</i>	<i>Court, Filing Date</i>	<i>Scope</i>
<i>Bausch & Lomb</i>	Contact lens pricing	(Fed) Northern AL, 1994	Nationwide
<i>GW Bank</i>	Brokerage products sales	(Fed) Central CA, 1995	Statewide
<i>Sec Pacific Housing Svcs</i>	Collateral insurance protection charges	(Fed) Southern Miss, 1996	Nationwide
<i>Sac. Cable</i>	Late fees	(St) Sacramento Co, CA, 1994	Metro area subscribers
<i>Heilig-Meyers</i>	Credit life insurance premium charges	(St) Fayette Co, AL, 1994	Statewide
<i>Allstate/ Farmers</i>	Auto insurance premium charges	(St) Zevala Co, TX, 1995	Statewide

Profile of Mass Tort Class Action Case Studies

	<i>Subject</i>	<i>Court, Filing Date</i>	<i>Scope</i>
<i>Blood Prod.</i>	Personal injury, product defect	(Fed)Northern Illinois, 1993	Nationwide
<i>Harcros Chemical Factory</i>	Personal injury & property damage, toxic exposure	(St) Orleans Parish, Louisiana, 1989	Neighborhood residents
<i>Louisiana-Pac Wood Siding</i>	Property damage, product defect	(Fed) Oregon, 1995	Nationwide (except FL)
<i>Shell et al.</i>	Property damage, product defect, polybutylene pipes	(St) Obion County, TN, 1995	Nationwide

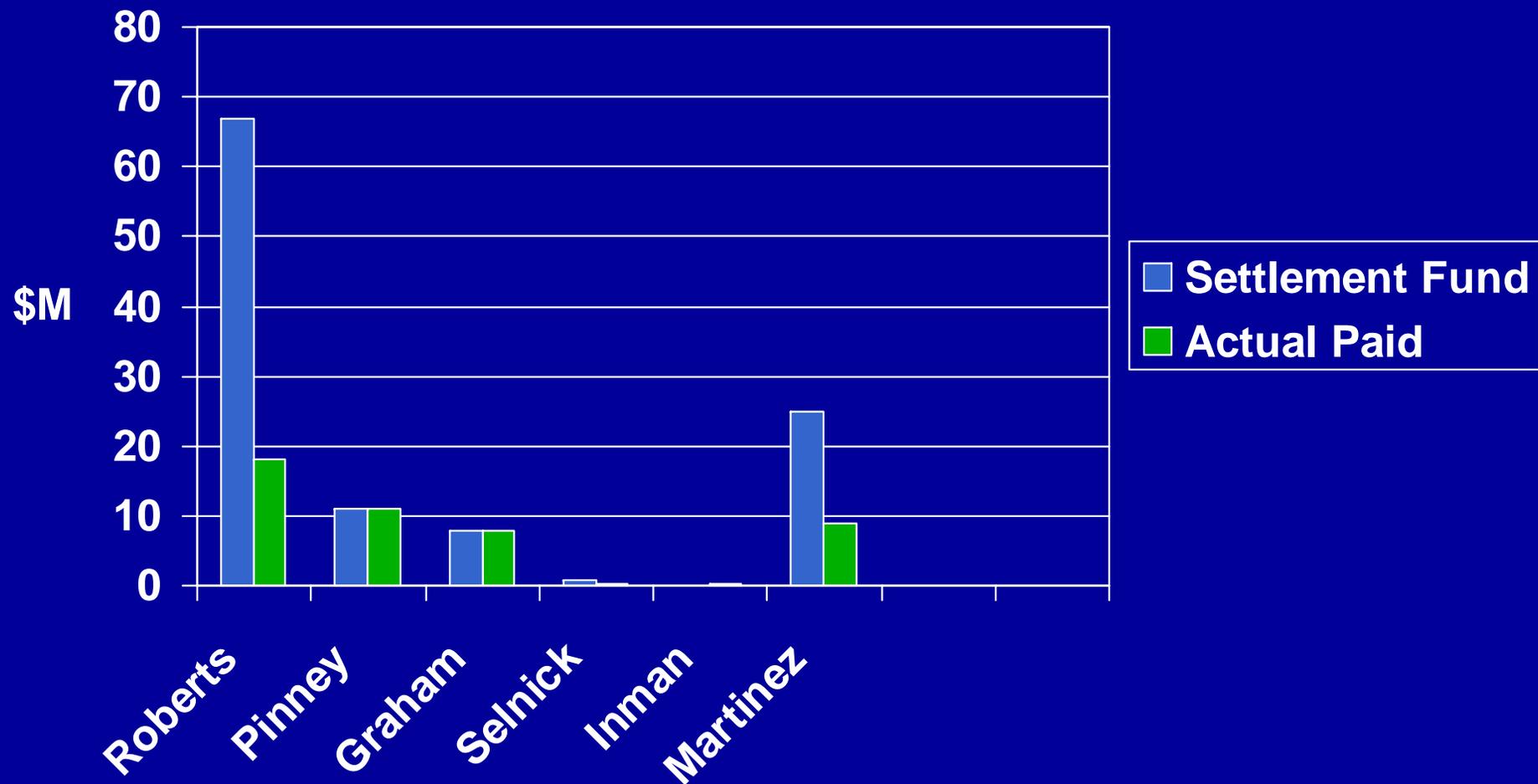
Attorney Fees Are Popularly Compared to What Individual Class Members Receive

	Class Counsel Fees & Expense (\$M)	Individual Cash Benefits (\$)
Roberts v. Bausch & Lomb	8.500	Unknown (Sealed)
Pinney v. Great Western Bank	5.223	1448.89
Graham v. Security Pacific	1.920	130.71
Selnick v. Sacramento Cable	0.511	35.58
Inman v. Heilig Meyers	0.580	45.79
Martinez/Sendejo v. Allstate/Farmers	11.288	5.75
In re Louisiana-Pacific	25.200	4367.27
Cox v. Shell	75.000	2914.33

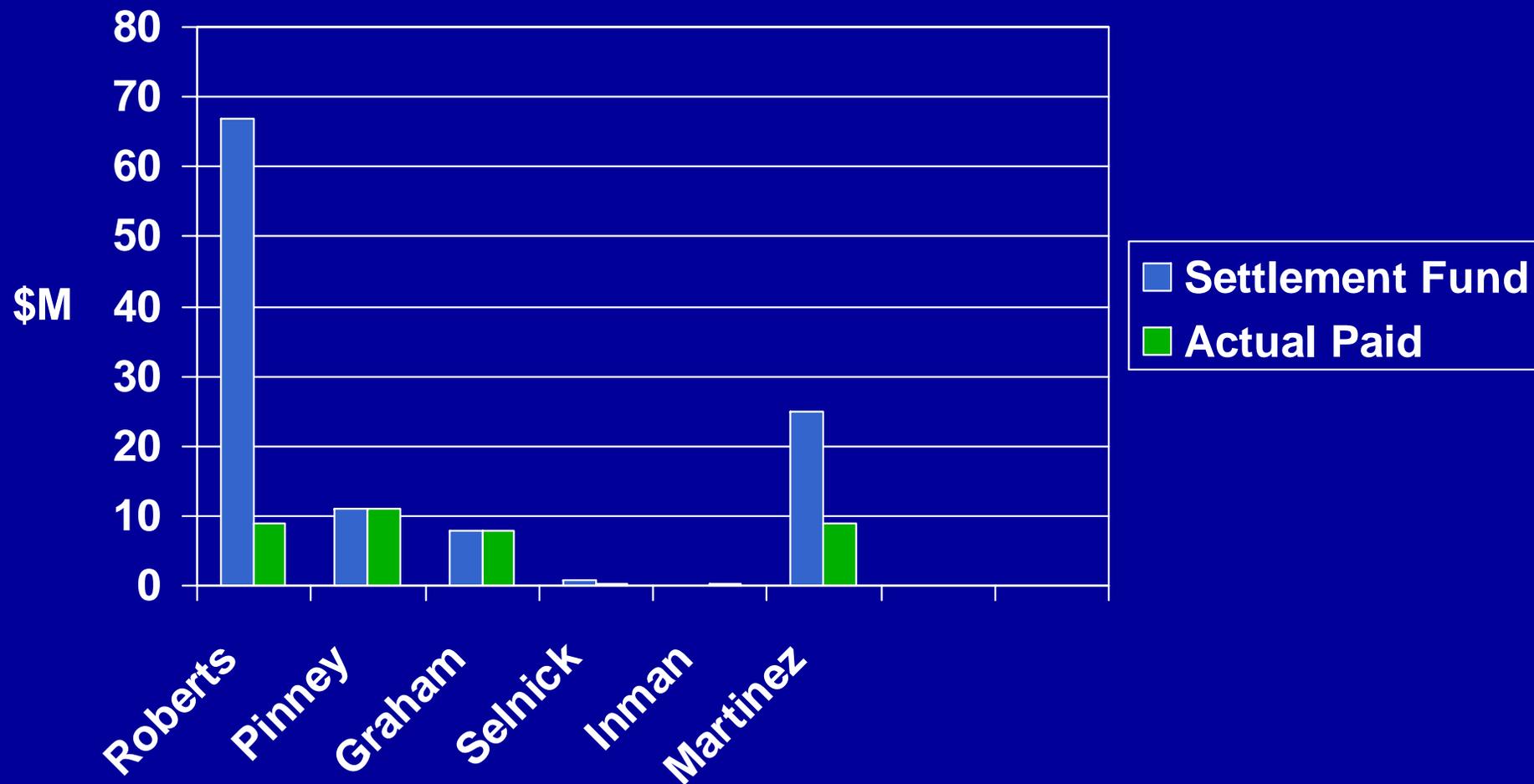
Appropriate Comparison is Attorney Fees Relative to Total Class Member Benefits

	Class Counsel Fees & Expense (\$M)	Total Compensation Fund (\$M)
Roberts v. Bausch & Lomb	8.500	67.000
Pinney v. Great Western Bank	5.223	11.232
Graham v. Security Pacific	1.920	7.868
Selnick v. Sacramento Cable	0.511	0.929
Inman v. Heilig Meyers	0.580	Unknown
Martinez/Sendejo v. Allstate/Farmers	11.288	25.235
In re Louisiana-Pacific	25.200	470.054
Cox v. Shell	75.000	838.000

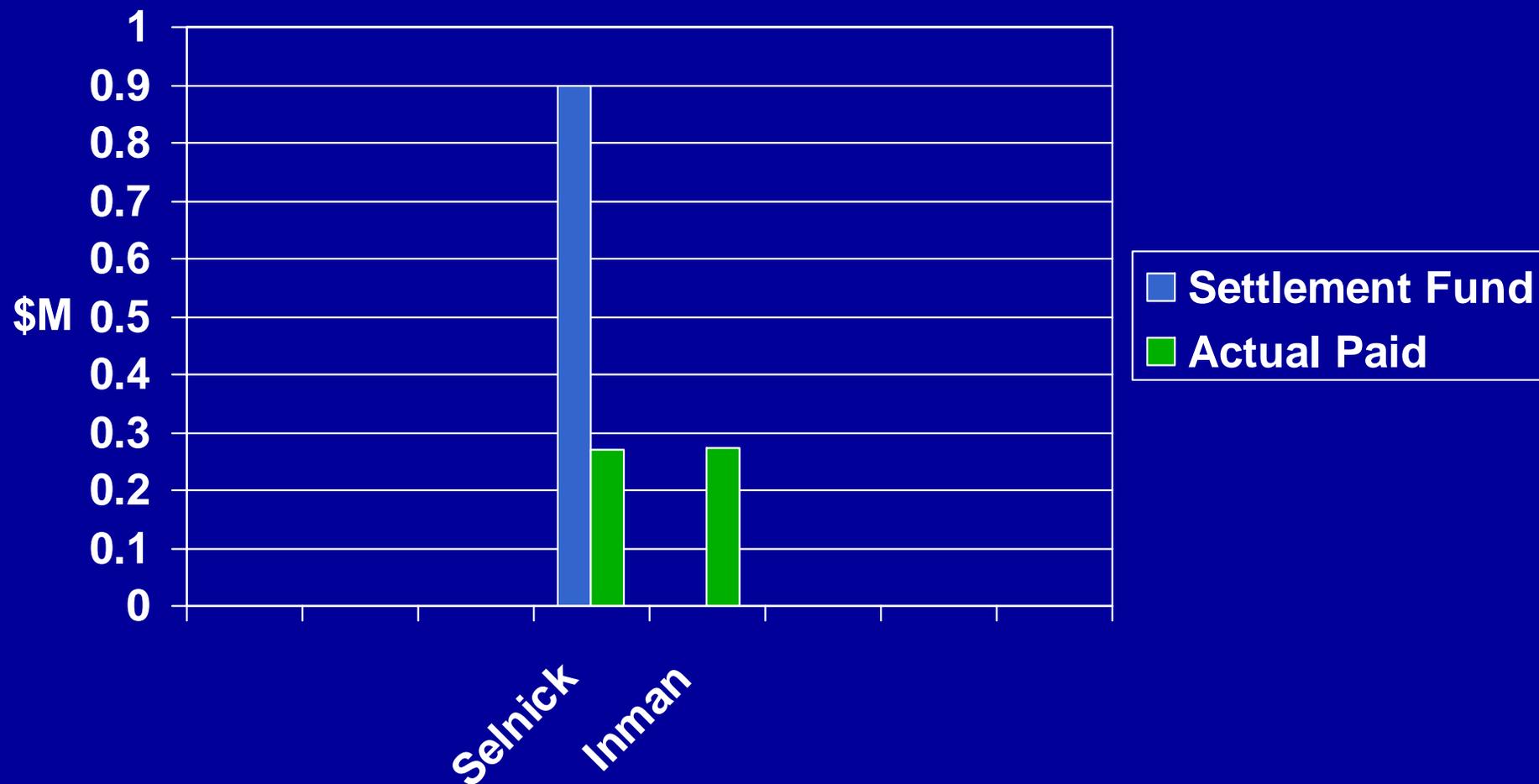
But Settlement Funds Do Not Always Equal Actual Benefits



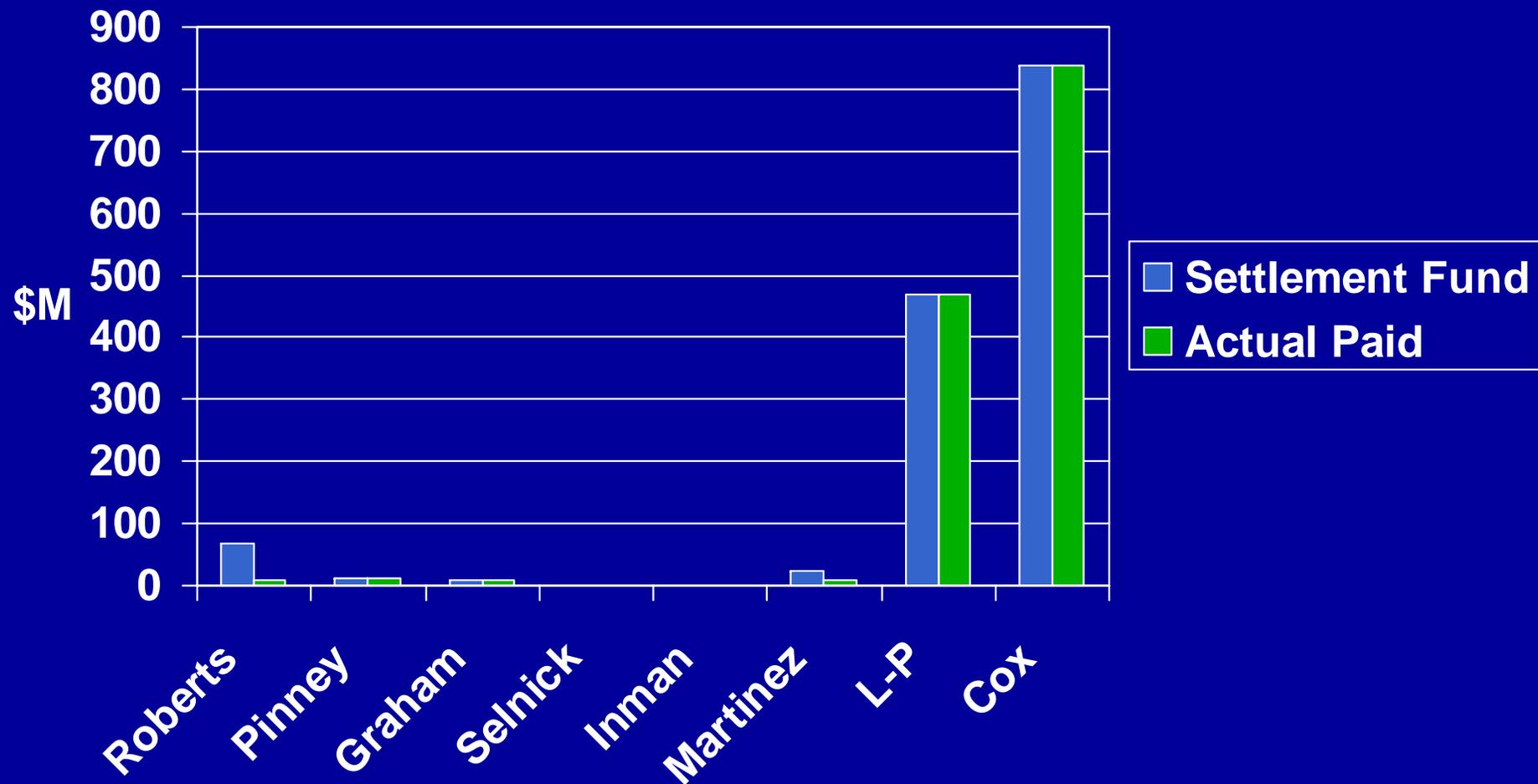
But Settlement Funds Do Not Always Equal Actual Benefits



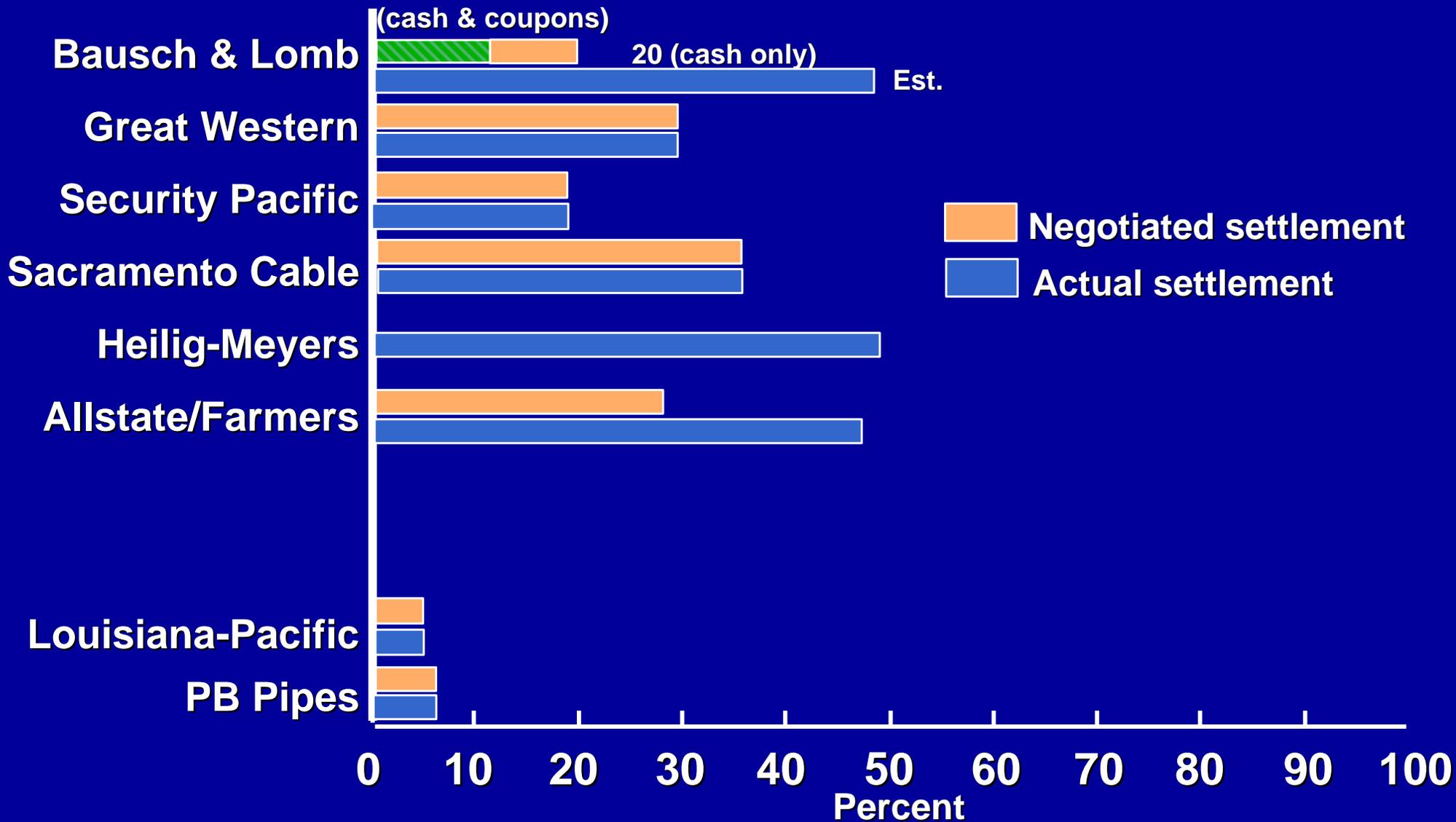
But Settlement Funds Do Not Always Equal Actual Benefits



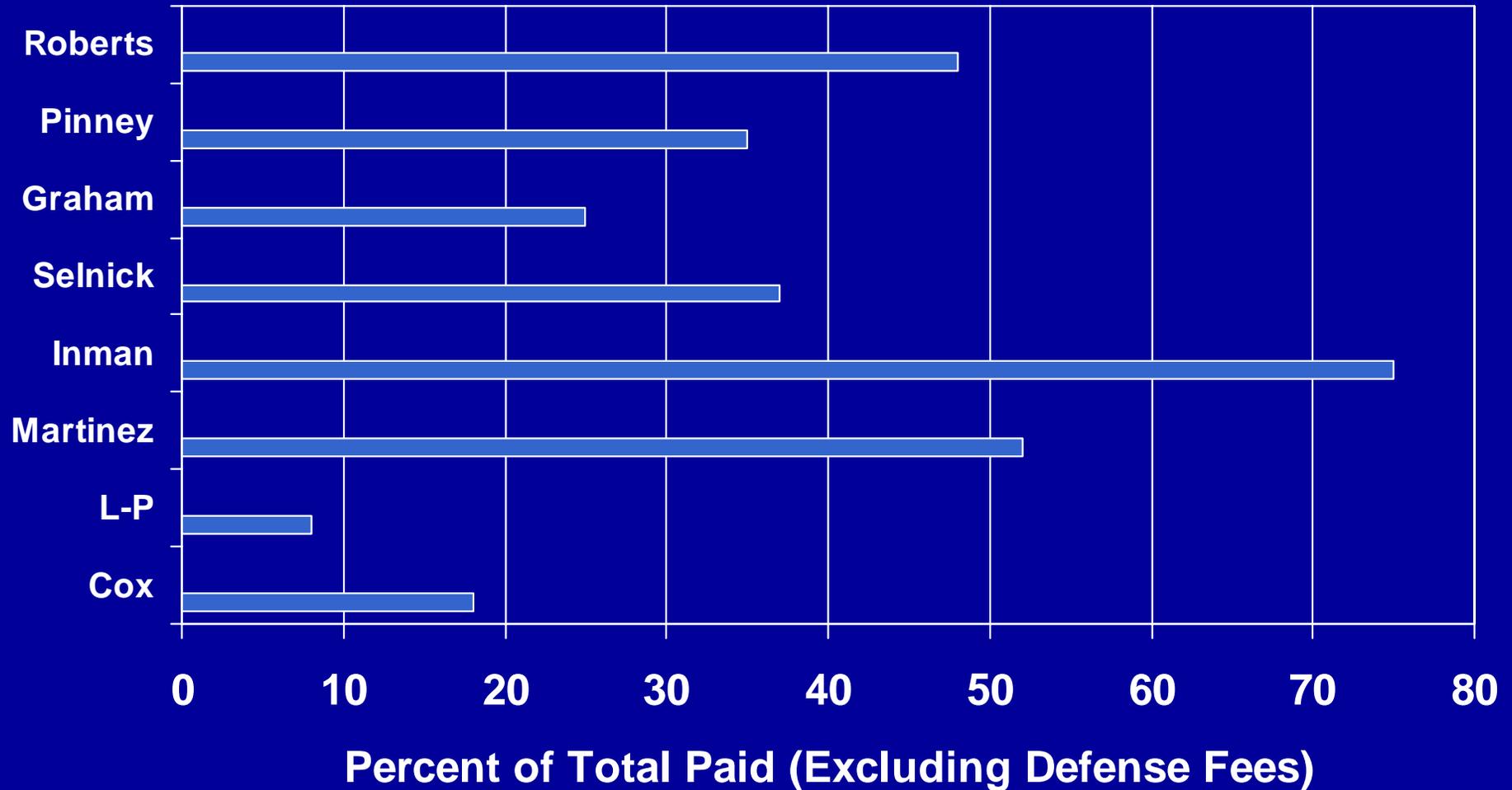
But Settlement Funds Do Not Always Equal Actual Benefits



Class Counsel Fees and Expenses as a Share of Negotiated and Actual Settlement Value (Evidence from 10 Class Actions)



Administrative Costs Make Transaction Cost Ratio Higher



But Some Benefits Are Not Included in Settlement Fund Value

- Changes in practice occurred in all 6 consumer cases Rand studied
 - In 4 cases, changes were direct or indirect effect of suit
- Legislative changes occurred as result of 3 of the consumer cases
 - In 1 of these, change was pro-business
- Product defect cases followed product change or removal from market or state A.G. investigation

Fee Regime Doesn't Seem to Matter

	Approach	Evidence of Hours
Roberts	POF (inferred)	No
Pinney	POF	Yes
Graham	POF (inferred)	No
Selnick	POF (inferred)	Yes
Inman	Unknown	No
Martinez	POF (inferred)	Yes
L-P	POF	No
Cox	POF	Yes

Class Counsel's Hourly Rates Varied Dramatically

Case	Fees Net of Expenses/Reported Hours
Pinney	\$320
Selnick	\$834
Martinez	\$735
Cox	\$1956

Notice & Disbursement Procedures Matter

- Direct distribution gets more benefits to class members
 - All current policy holders received compensation from Allstate/Farmers
 - Less than 1 percent of former policy holders collected
- Pro rata payout to all claimants disburses total settlement fund
 - Fluid recovery/cy pres awards may distract attention from disbursement procedures

Judicial Attention Can Produce Better Benefit-Cost Ratio

- More attention to settlement details
 - Better use of objectors & intervenors
- Closer scrutiny of non-cash components
 - Including evidence of coupon redemption in similar cases
- Direct links between fees and benefits actually achieved
 - Periodic fee payments
- On the record reporting of outcomes
 - Including coupon redemption