

# Attorneys Fees in Class Actions: Empirical Evidence

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# Attorneys Fees

The ultimate question: is the fee  
“reasonable”

Methods for calculating a fee:

- Percentage
- Lodestar
- Mixed
- Judicial Discretion

Fee Awards in Settled Securities Class Actions 1991-1996: NERA Data

Settlement Range (millions)	Number of Settlements	Total Value of Settlements	Total Attorney Fees	Average Attorney Fees as a Percentage of Settlement	Median Attorney Fees as a Percentage of Settlement
\$0.00-\$0.99	37	\$24,696,750	\$7,617,600	30.38%	30.00%
\$1.00-\$1.99	66	\$96,506,502	\$30,642,005	31.88%	33.33%
\$2.00-\$9.99	245	\$1,184,141,901	\$381,149,262	32.11%	33.33%
\$10.00-\$49.99	76	\$1,488,892,280	\$471,161,635	31.72%	33.15%
\$50+	9	\$571,650,000	\$179,920,000	31.48%	30.00%
<b>Total</b>	<b>433</b>	<b>\$3,365,887,433</b>	<b>\$1,070,490,502</b>	<b>31.84%</b>	<b>33.33%</b>

Source: Denise N. Martin, Vinita M. Juneja, Todd S. Foster, and Frederick C. Dunbar, Recent Trends IV: What Explains Filings and Settlements in Shareholder Class Actions? Table 9 (1996).

Fee and Expense Awards in Settled Securities Class Actions 1991-1996:  
NERA Data

<b>Settlement Range (millions)</b>	<b>Number of Settlements</b>	<b>Total Value of Settlements</b>	<b>Total Attorney Fees and Expenses</b>	<b>Average Attorney Fees and Expenses as a Percentage of Settlement</b>	<b>Median Attorney Fees and Expenses as a Percentage of Settlement</b>
\$0.00-\$0.99	<b>12</b>	<b>\$8,340,000</b>	<b>\$2,930,867</b>	<b>35.86%</b>	<b>34.17%</b>
\$1.00-\$1.99	<b>10</b>	<b>\$14,600,000</b>	<b>\$4,625,958</b>	<b>32.02%</b>	<b>31.67%</b>
\$2.00-\$9.99	<b>51</b>	<b>\$254,692,708</b>	<b>\$90,703,632</b>	<b>35.63%</b>	<b>36.21%</b>
\$10.00-\$49.99	<b>31</b>	<b>\$575,640,000</b>	<b>\$208,189,333</b>	<b>35.84%</b>	<b>33.33%</b>
\$50+	<b>3</b>	<b>\$194,000,000</b>	<b>\$39,625,000</b>	<b>20.05%</b>	<b>18.80%</b>
<b>Total</b>	<b>107</b>	<b>\$1,047,272,708</b>	<b>\$346,074,790</b>	<b>34.94%</b>	<b>34.64%</b>

Source: Denise N. Martin, Vinita M. Juneja, Todd S. Foster, and Frederick C. Dunbar,  
Recent Trends IV: What Explains Filings and Settlements in Shareholder Class Actions? Table 9 (1996).

Plaintiffs' Attorneys Fees by Federal Circuit: NERA Data

Circuit	Number of Settlements	Settlements as a Percentage of Total	Total Value of Settlements	Total Attorney Fees	Average Attorney Fee as a Percentage of Settlement
		(Percent)	------(Dollars)-----		(Percent)
D.C.	2	0.46%	\$6,750,000	\$2,200,000	31.67%
First	26	6.00	82,633,902	25,677,884	30.99
Second	69	15.94	440,285,121	139,037,770	31.48
Third	58	13.39	423,292,596	132,738,442	32.00
Fourth	12	2.77	75,325,000	23,716,667	32.78
Fifth	26	6.00	262,720,500	81,420,017	30.73
Sixth	13	3.00	120,875,000	36,921,000	31.00
Seventh	18	4.16	149,933,784	48,375,833	31.83
Eighth	12	2.77	52,175,000	17,640,500	32.47
Ninth	155	35.80	1,379,894,030	450,725,681	32.57
Tenth	13	3.00	203,650,000	62,038,333	32.13
Eleventh	29	6.70	168,352,500	49,998,375	29.92
Total	433	100.00%	\$3,365,887,433	\$1,070,490,502	31.84%

**Source: Denise N. Martin, Vinita M. Juneja, Todd S. Foster, and Frederick C. Dunbar, Recent Trends IV: What Explains Filings and Settlements in Shareholder Class Actions? Table 12b (1996).**

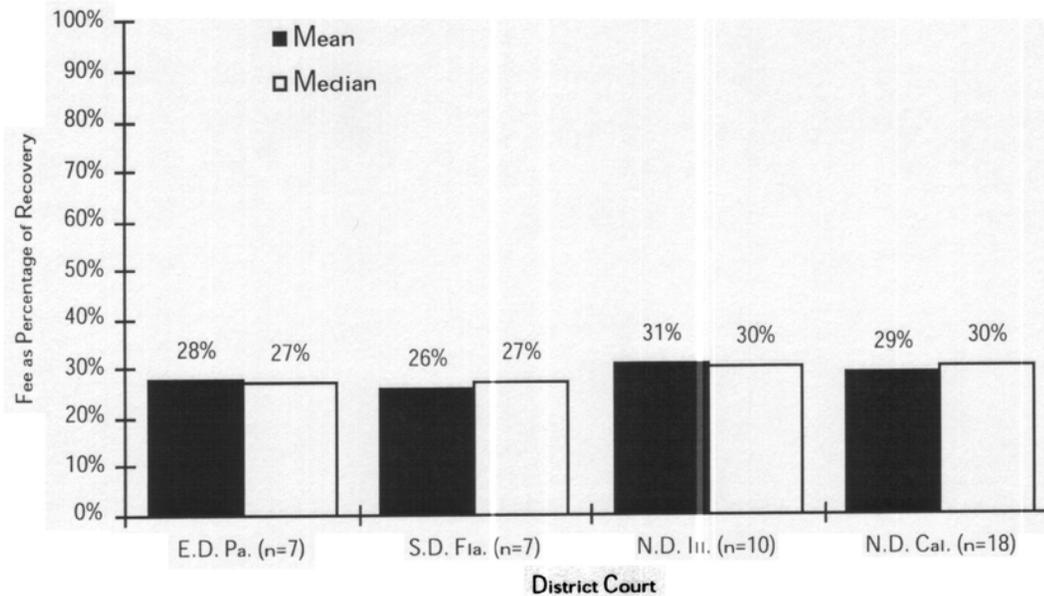
Fee Awards in Settled Securities Class Actions 1991-1999: NERA Data

	<i>1991</i>	<i>1992</i>	<i>1993</i>	<i>1994</i>	<i>1995</i>	<i>1996</i>	<i>1997</i>	<i>1998</i>	<i>Jun-99</i>	<i>1991 to Jun-1999</i>
<i>Number of Settlements</i>	48	79	90	101	104	104	98	80	29	733
<i>Average Settlement (millions)</i>	\$6.3	\$9.9	\$8.3	\$6.1	\$10.7	\$7.0	\$7.9	\$11.0	\$6.0	\$8.3
<i>Total Value of Settlements (millions)</i>	\$304.8	\$778.5	\$749.1	\$615.9	\$1,108.7	\$722.9	\$769.8	\$876.3	\$174.2	\$6,100.2
<i>Median Settlement (millions)</i>	\$3.7	\$5.0	\$4.4	\$3.6	\$4.8	\$4.1	\$3.2	\$5.8	\$4.3	\$4.2
<i>Number of Settlements Indicating Plaintiffs Attorney Fees</i>	42	69	80	98	93	99	86	78	25	670
<i>Average Plaintiffs' Attorney Fees (millions)</i>	\$2.1	\$2.7	\$2.0	\$2.0	\$3.5	\$2.2	\$2.5	\$3.4	\$2.0	\$2.5
<i>Average Plaintiffs' Attorney Fees as a Percentage of Average Settlement (Row 6 / Row 2)</i>	33%	27%	24%	34%	33%	31%	32%	31%	33%	30%

Source: Todd S. Foster, Denise N. Martin, Vinita M. Juneja, Frederick C. Dunbar, Trends in Securities Litigation and the Impact of PSLRA, Figure 12 (June 1999).

## Percentage Fees in Four Federal District Courts

**Figure 72: Mean and Median Fee-Recovery Rates in Certified Cases Using Percentage of Recovery Method and Providing Net Monetary Distribution to Class**



*Note:* "Net monetary distribution" is net of attorneys' fees and administrative expenses.

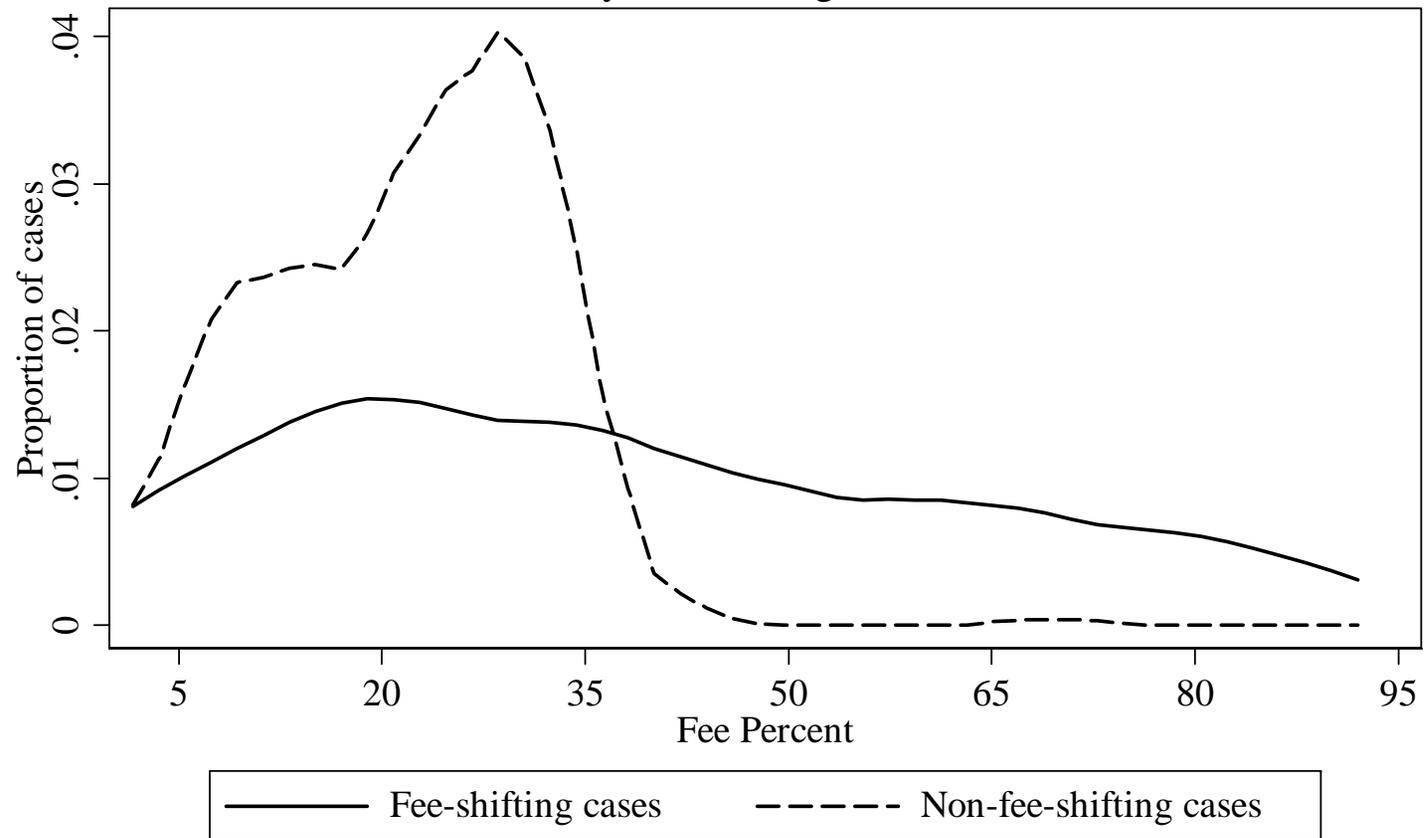
Source: Thomas E. Willging, Laural L. Hooper & Robert J. Niemic, Empirical Study of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rules 151 (1996).

### Percentage Fee Awards, CAR Data

Recovery Range (\$ millions)	No. of Cases	Aggregate Class Recovery (\$ millions)	Fees & Costs as % of Recovery
> \$100	64	28,424,575	15.1
\$75 < \$100	26	2,232,434	20.9
\$50 < \$75	37	2,168,715	23.6
\$30 < \$50	67	2,496,418	24.8
\$20 < \$30	65	1,586,256	25.8
\$10 < \$20	153	2,171,199	27.9
\$5 < \$10	217	1,478,543	30.4
\$3 < \$5	142	542,235	31.6
\$2 < \$3	98	232,727	30.5
\$1 < \$2	123	172,466	31.9
< \$1	128	69,272	31.4

**Source: Stuart J. Logan, Jack Moshman & Beverly C. Moore, Jr.,  
Attorney Fee Awards in Common Fund Class Actions, 24 Class Action Rep. 169 (2003).**

Figure 2. Distribution of Attorney Fee Awards, 1993-2002  
by Fee-Shifting Status



Note. Kernel density estimates. Source: Reported class action settlements with fee awards

## Fee Percent Summary by Legal Regime and Case Category

Category	Non-fee-shifting cases				Fee-shifting cases			
	Mean	Median	Std. dev.	N	Mean	Median	Std. dev.	N
<b>A. Published Opinion Data</b>								
Antitrust	21.4	23.3	9.9	36	-	-	-	-
Civil Rights	37.0	37.0	1.4	2	26.1	31.3	17.3	7
Consumer	16.2	13.0	10.6	52	55.2	51.8	20.2	18
Corporate	20.4	20.0	11.5	15	-	-	-	-
Employment	25.3	23.4	9.6	7	37.5	31.8	21.7	16
ERISA/Pension	22.0	24.0	7.8	7	24.4	16.2	26.4	15
Mass Tort	18.3	18.7	7.0	7	-	-	-	-
Securities	24.1	25.0	8.9	142	-	-	-	-
Tax Refund	13.1	11.5	9.7	6	-	-	-	-
Tort	17.9	19.6	9.2	10	-	-	-	-
Other	24.8	27.5	8.1	19	22.5	23.0	20.4	3
<b>Total</b>	<b>21.9</b>	<b>23.2</b>	<b>9.9</b>	<b>303</b>	<b>37.5</b>	<b>33.0</b>	<b>25.9</b>	<b>59</b>

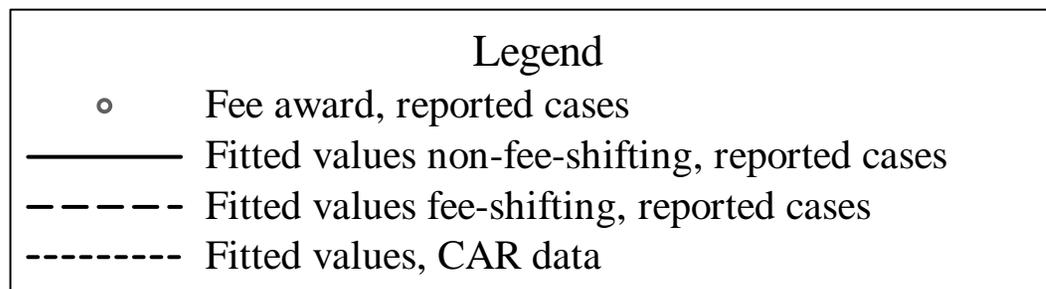
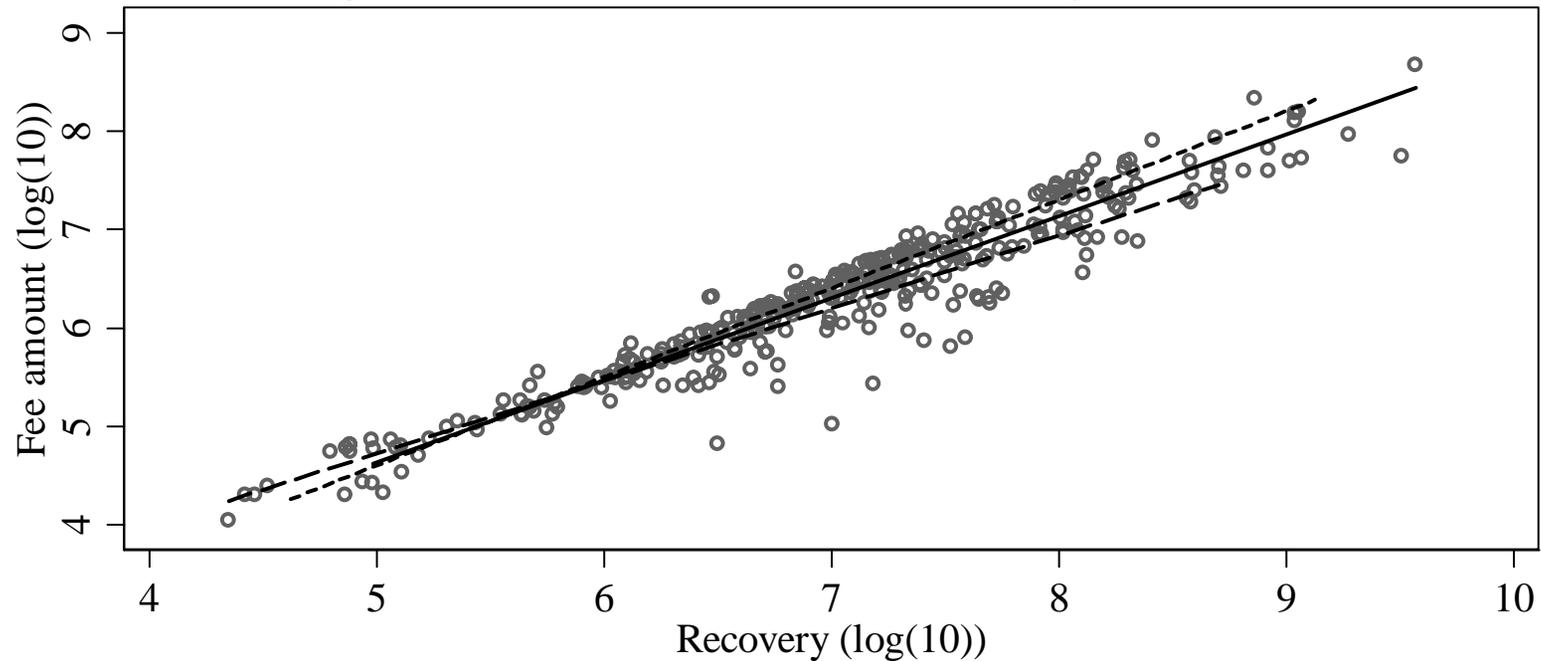
## Fee Percent Summary by Legal Regime and Case Category

B. Class Action Reports Data, 1993-2002								
Antitrust	26.8	28.4	7.1	31	-	-	-	-
Consumer	24.3	25.0	8.5	48	-	-	-	-
Civil Rights	23.5	25.5	11.0	4	-	-	-	-
Derivative	33.3	33.3		1	-	-	-	-
Employment	25.5	25.7	7.6	17	-	-	-	-
Environmental	30.5	30.5	7.8	2	-	-	-	-
Government regulation	29.7	29.7		1	-	-	-	-
Labor/wage/pension	22.9	26.4	10.6	30	-	-	-	-
Mass Tort	17.6	17.0	6.9	8	-	-	-	-
Securities	27.9	30.0	7.4	483	-	-	-	-
Taxpayer	3.5	3.5		1	-	-	-	-
Utilities	20.3	20.3	1.7	2	-	-	-	-
Social Welfare/entitlements	16.9	16.9	4.4	2	-	-	-	-
Total	27.0	30.0	7.9	630	-	-	-	-

### Fee Percent Summary by Fee Method and Legal Regime

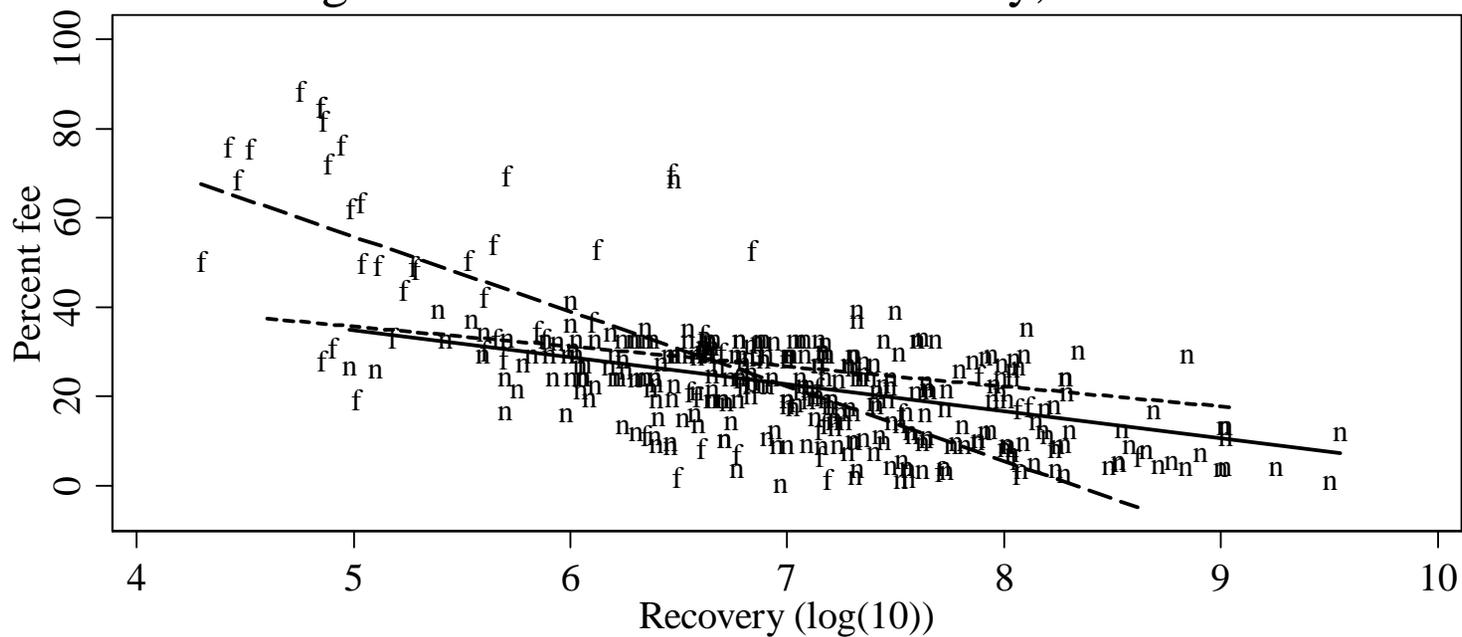
Fee method	Non-fee-shifting cases				Fee-shifting cases			
	Mean	Median	Std. dev.	N	Mean	Median	Std. dev.	N
A. Published Opinion Data								
Percent	22.3	24.0	9.9	197	26.7	30.0	14.1	17
Mixed percent/lodestar	22.9	25.0	9.0	68	24.3	23.0	10.8	9
Pure lodestar	17.2	16.5	10.5	38	46.6	50.1	28.4	33
B. Class Action Reports Data (CAR), 1993-2002								
Percent	27.5	30.0	7.5	370	-	-	-	-
Lodestar	26.3	29.6	8.4	260	-	-	-	-

Figure 3. Fee Amount vs. Recovery, 1993-2002



Sources: Reported class action settlements with fee awards; 24 Class Action Rep. 169

Figure 4. Fee Percent vs. Recovery, 1993-2002

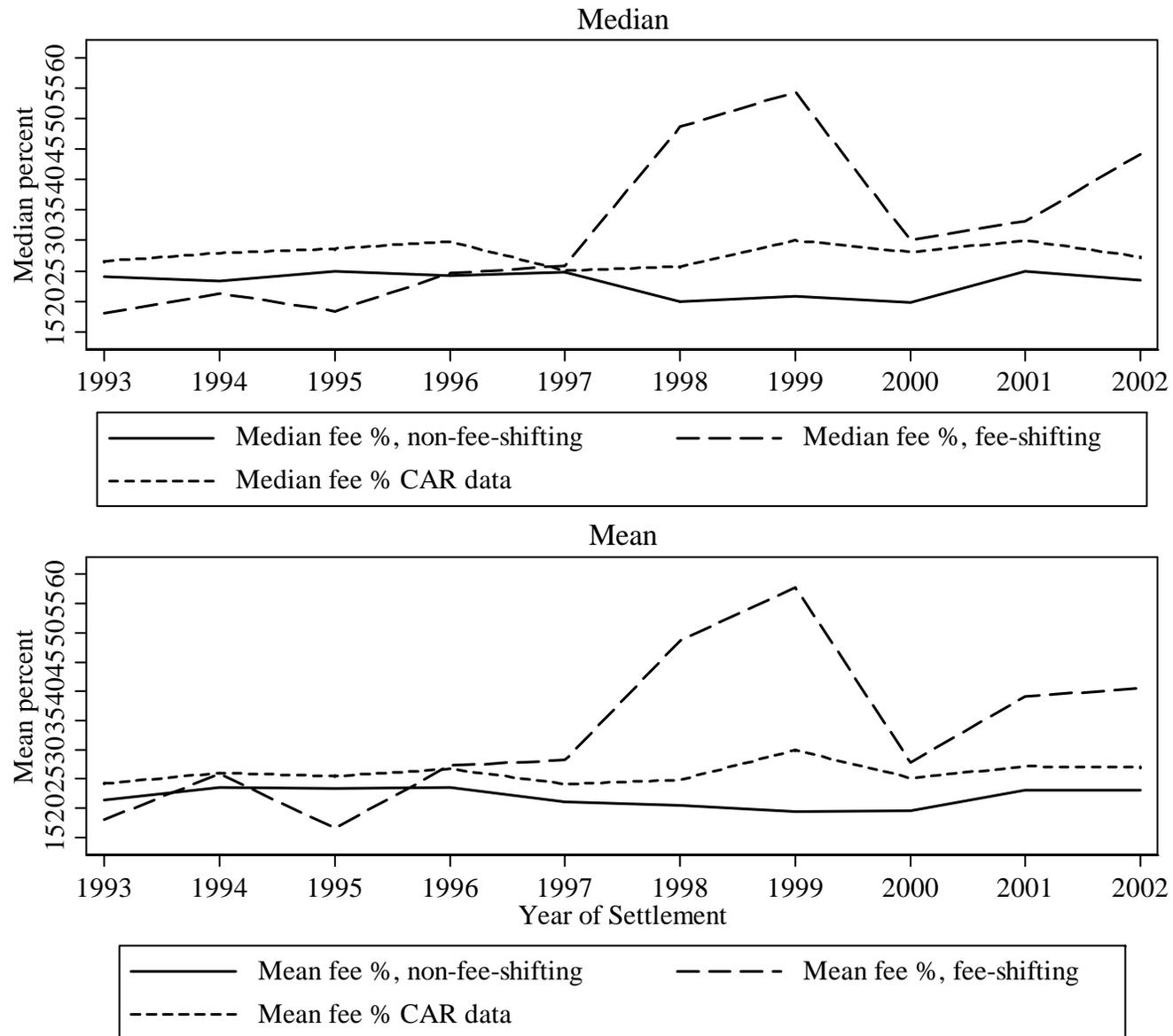


**Legend**

- f = fee-shifting reported case; n = non-fee-shifting reported case
- Fitted values, non-fee-shifting, reported cases
- Fitted values, fee-shifting, reported cases
- ..... Fitted values, CAR data

Sources: Reported class action settlements with fee awards; 24 Class Action Rep. 169

Figure 7. Fee Percents Over Time



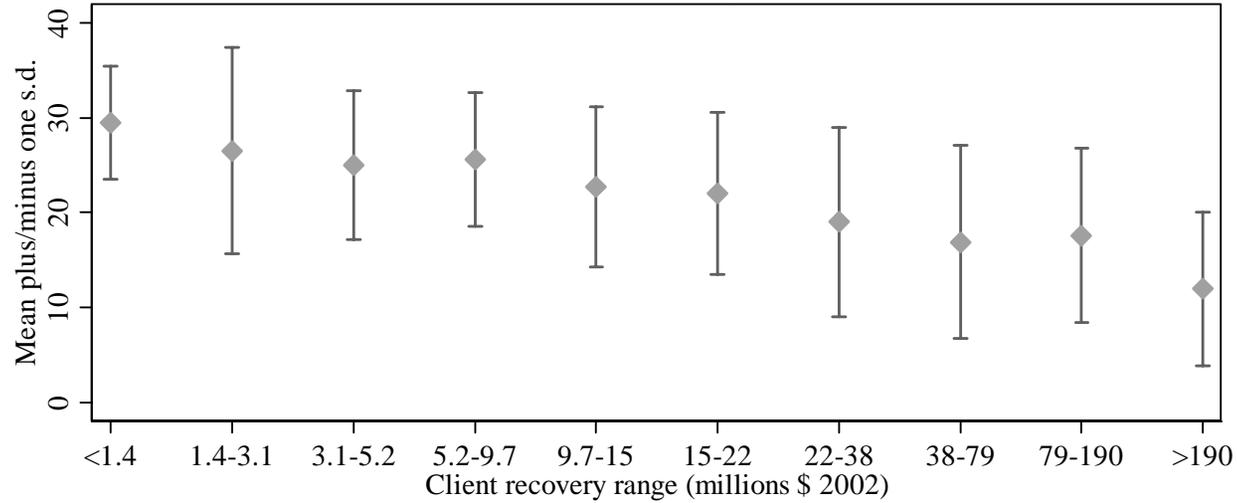
Sources: Reported class action settlements with fee awards; 24 Class Action Rep. 169

## Class Action Reports Data

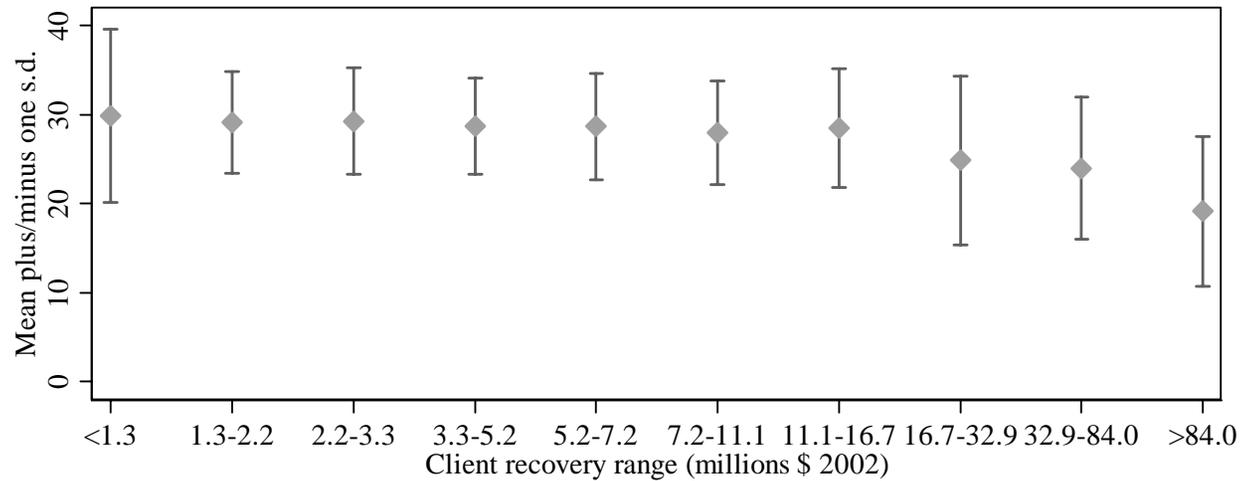
Client recovery decile	Recovery range in decile (\$ millions)	Mean recovery in decile (\$ millions)	Mean fee percent	All cases		Non-securities cases		
				Median fee percent	Standard dev., fee percent	Mean fee percent	Median fee percent	Standard dev., fee percent
Less than 10%	< 1.4	0.8	30.0	30.0	9.9	30.9	33.2	8.2
10 to 20%	1.4 to 3.1	2.3	29.2	30.0	5.4	25.6	25.0	6.9
20 to 30%	3.1 to 5.2	4.3	28.9	30.0	6.1	26.5	26.4	7.9
30 to 40%	5.2 to 9.7	7.2	28.7	30.0	5.3	28.9	29.6	5.1
40 to 50%	9.7 to 15	12.0	28.0	30.0	6.1	27.3	25.0	5.2
50 to 60%	15 to 22	18.8	26.7	28.0	7.8	26.6	30.0	7.9
60 to 70%	22 to 38	30.4	24.8	25.0	9.7	22.1	23.4	10.1
70 to 80%	38 to 79	53.7	24.3	25.4	8.5	23.9	25.5	9.0
80 to 90%	79 to 190	122.2	20.3	20.8	7.5	19.5	20.2	8.3
Greater than 90%	> 190	929.1	16.4	17.6	9.6	17.6	16.4	10.6

Figure 8. Fee Percent Range (one standard deviation)

at Levels of Client Recovery: Reported Decision Data



CAR Data



—| Mean + 1 s.d./Mean - 1 s.d.      ◆ Mean fee percent