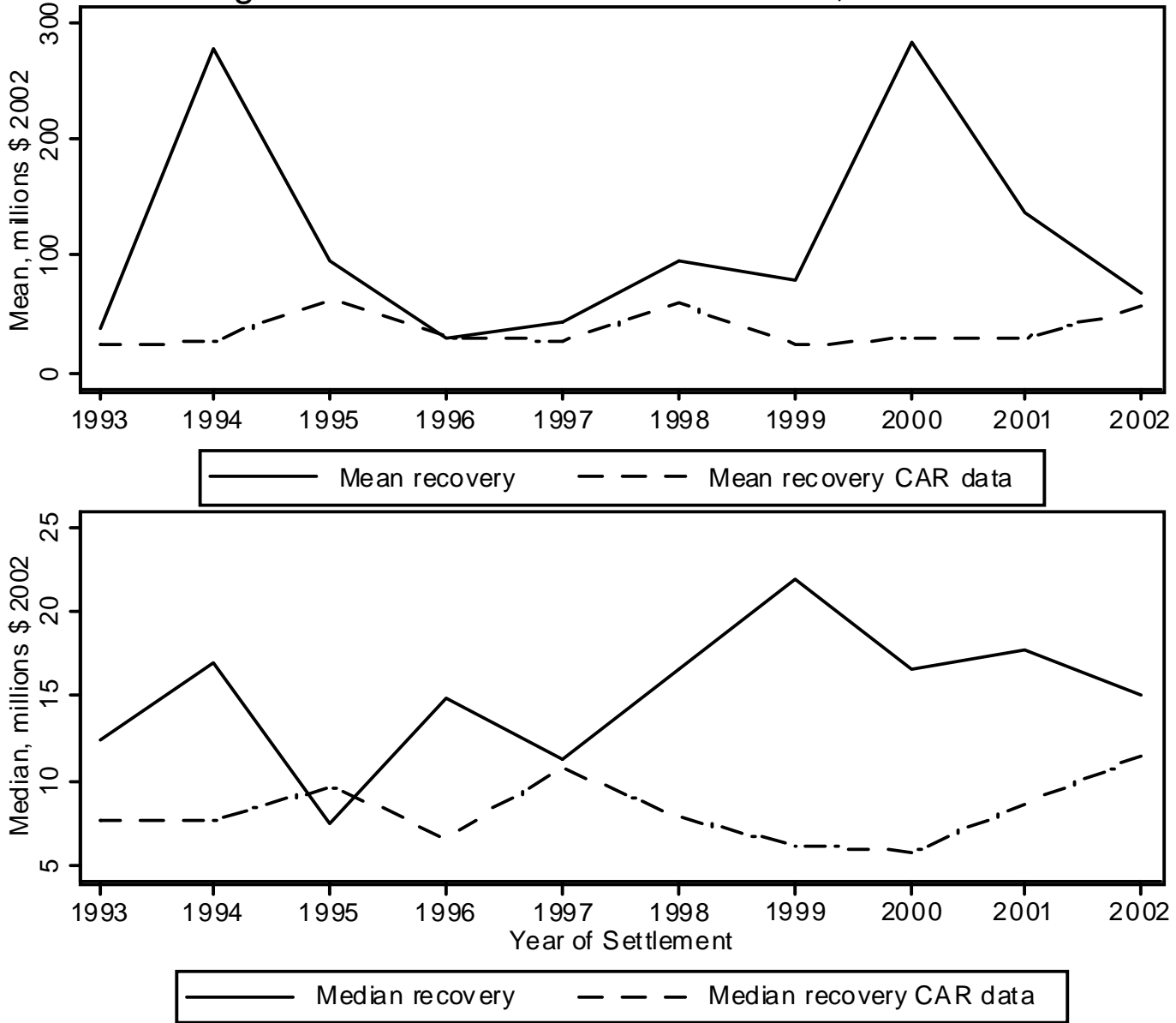


# Attorney Fees in Class Action Settlements: An Empirical Study

*Theodore Eisenberg and Geoffrey P. Miller\**

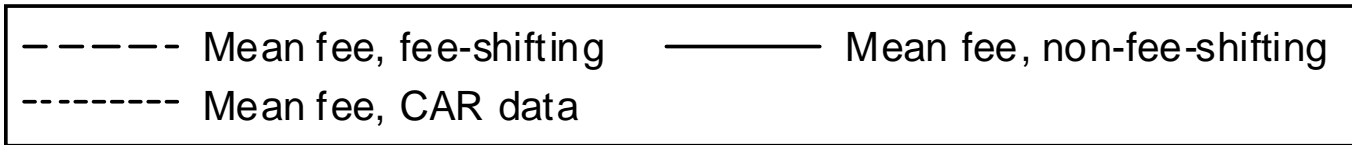
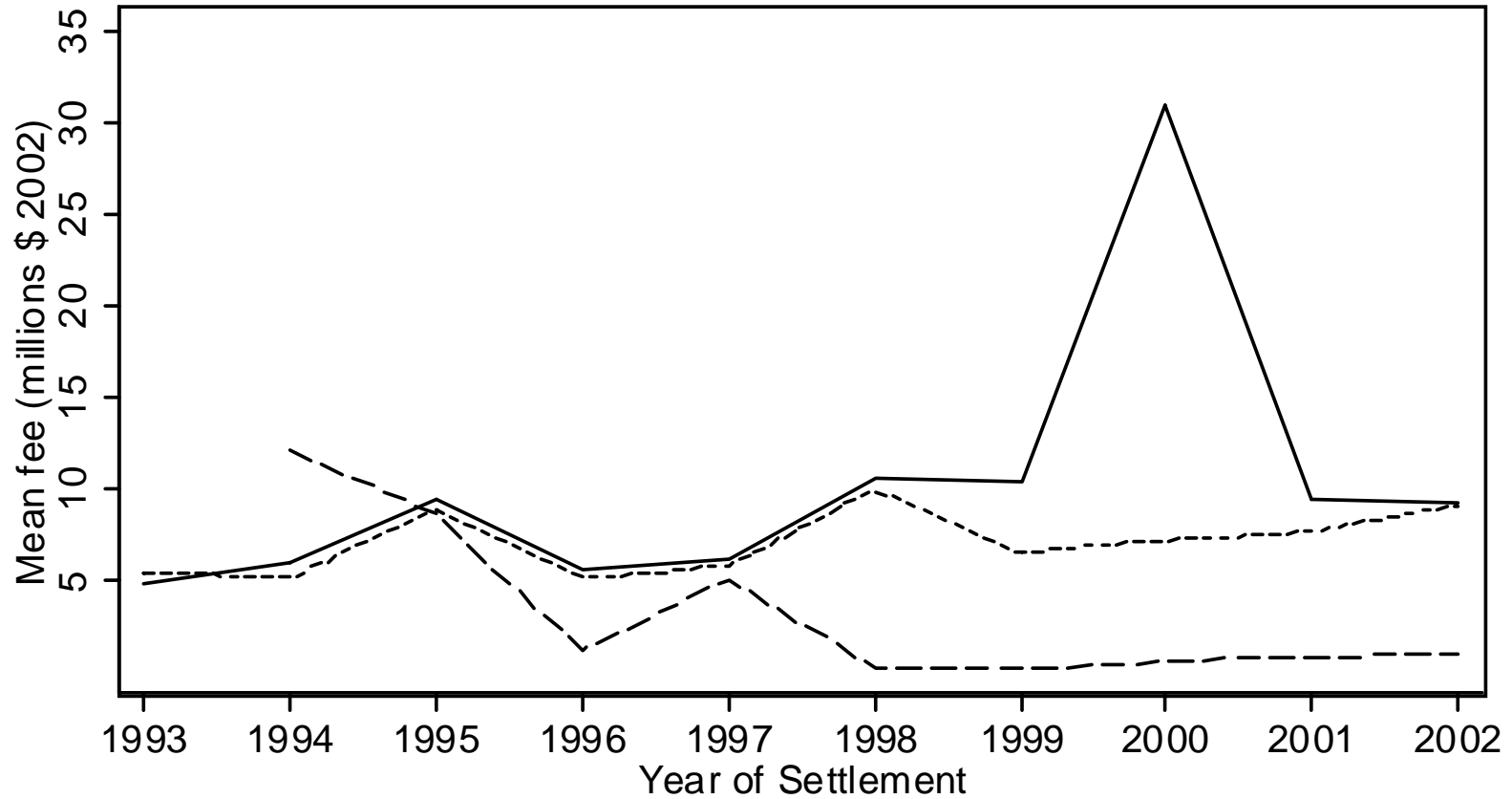
Study of two comprehensive class action case data sets covering 1993–2002 shows that the amount of client recovery is overwhelmingly the most important determinant of the attorney fee award. Even in cases in which the courts engage in the lodestar calculation (the product of reasonable hours and a reasonable hourly rate), the client’s recovery generally explains the pattern of awards better than the lodestar. Thus, the time and expense of a lodestar calculation may be wasteful. We also find no robust evidence that either recoveries for plaintiffs or fees of their attorneys increased over time. The mean fee award in common fund cases is well below the widely quoted one-third figure, constituting 21.9 percent of the recovery across all cases for a comprehensive data set of published cases. A scaling effect exists: fees constitute a lower percent of the client’s recovery as the client’s recovery increases. Fees are also correlated with risk: the presence of high risk is associated with a higher fee, while low-risk cases generate lower fees. Fees as a percent of class recovery were found to be higher in federal than state court. The presence of “soft” relief (such as injunctive relief or coupons) has no material effect on the fee, regardless of whether the soft relief was included in the quantified benefit for the class used as the basis for computing the attorney fee. The study also addresses costs and expenses. Like fees, these display significant scale effects. The article proposes a simple methodology by which courts can evaluate the reasonableness of fee requests.

Figure 1. Time Trends in Recoveries, 1993-2002



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

### Mean Fee Award



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

### Figure 6. Class Action Attorney Fee Awards Over Time

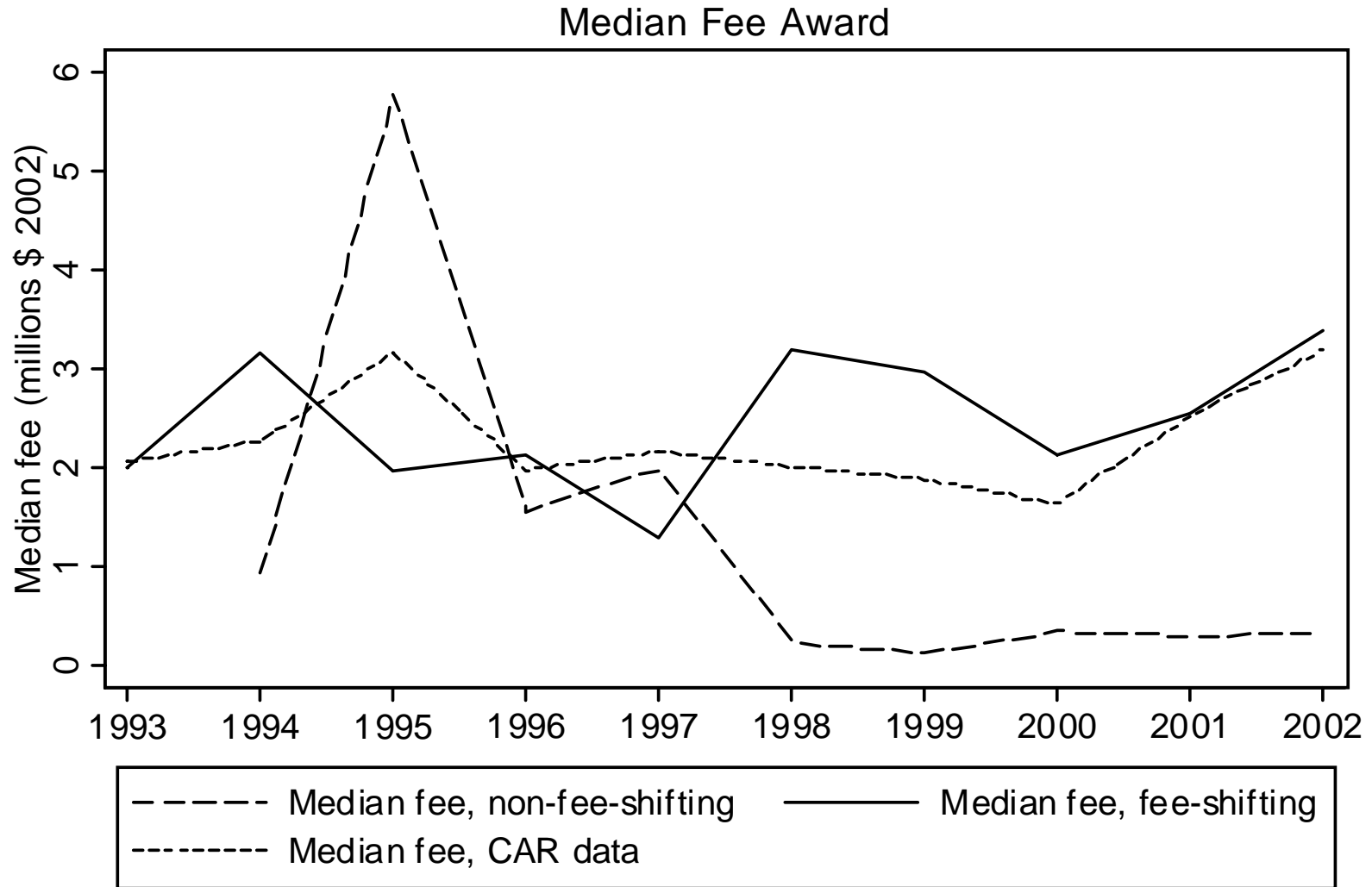
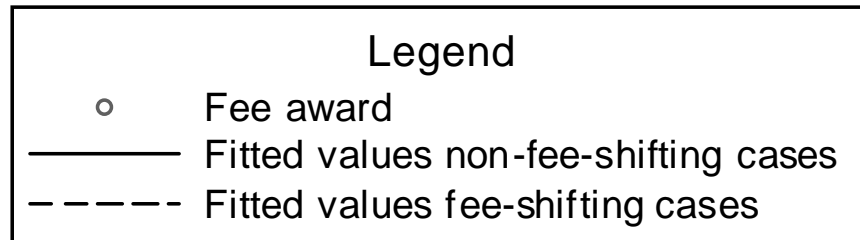
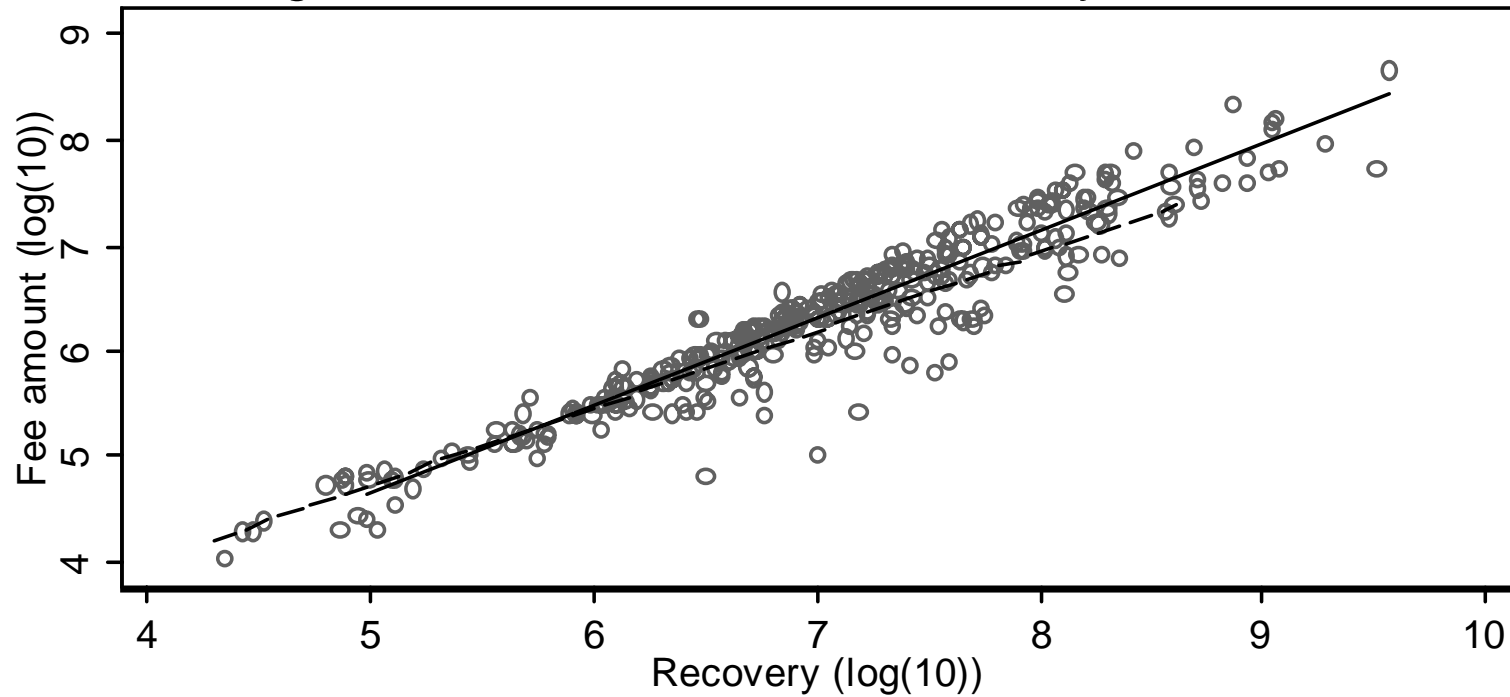
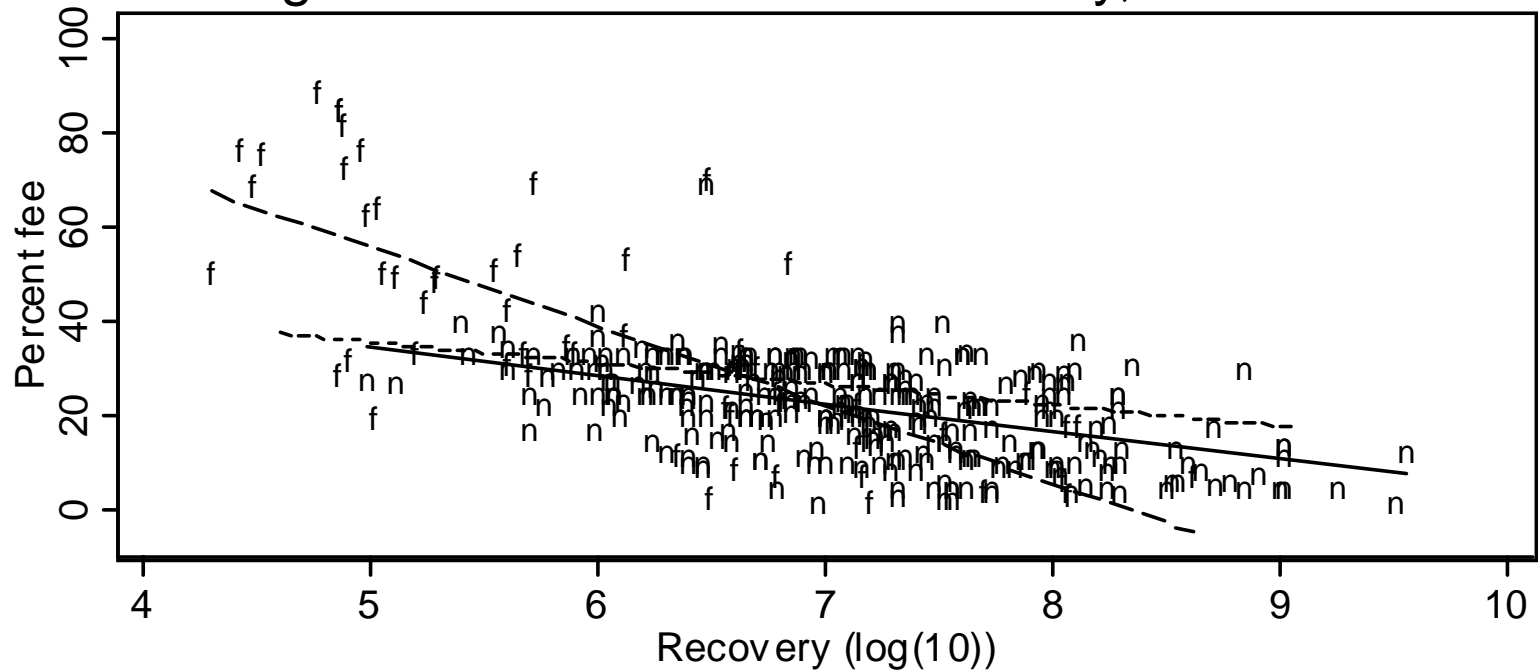


Figure 3. Fee Amount vs. Recovery, 1993-2002



Source: Reported Class Action Settlements with Fee Awards

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

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Figure 8: Fee percent range (one standard deviation) at levels of client recovery.

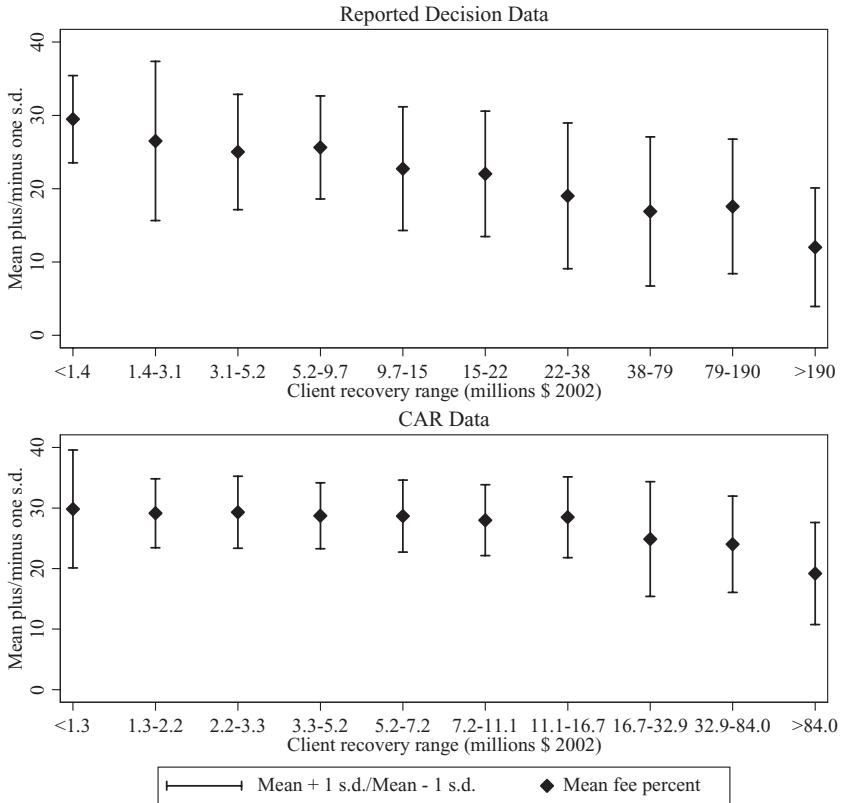


Table 1: Fee-Award Percent Summary by Legal Regime and Case Category

Category	<i>Non-Fee-Shifting Cases</i>				<i>Fee-Shifting Cases</i>			
	Mean	Median	SD	N	Mean	Median	SD	N
A. Published Opinion Data, 1993–2002								
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
Total	21.9	23.2	9.9	303	37.5	33.0	25.9	59
B. Class Action Reports Data (CAR), 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	—	—	—	—

NOTE: Fee shifting and non-fee-shifting are the two legal regimes for the published opinion data. The CAR data include only common fund cases. The first column identifies the case categories, which differ between the two data sets.

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

Table 5: Analysis of Securities Cases and Nonsecurities Non-Fee-Shifting Cases

	1	2	3	4	5	6
	<i>Securities Cases</i>		<i>Nonsecurities Cases</i>		<i>CAR Securities Cases</i>	
	<i>Fee Amount</i>	<i>Fee Percent</i>	<i>Fee Amount</i>	<i>Fee Percent</i>	<i>Fee Amount</i>	<i>Fee Percent</i>
Gross recovery (log)	0.854** (26.00)	-0.661** (4.76)	0.832** (37.61)	-0.757** (8.85)	0.916** (53.43)	-0.444** (5.31)
Lodestar dummy	-0.064+ (1.80)	-0.353* (2.21)	-0.005 (0.10)	-0.032 (0.20)	-0.048** (3.16)	-0.227** (3.04)
Post-PSLRA dummy	0.089* (2.60)	0.465** (2.81)	-0.000 (0.01)		-0.011 (0.72)	-0.066 (0.93)
Defendant pays	-0.581** (4.69)	-2.308** (4.35)	-0.196** (2.87)	-0.718** (3.35)		
Age (log years)	0.029 (0.78)	0.132 (0.87)	0.077* (2.05)	0.325* (2.35)	0.039* (2.35)	0.233** (2.91)
Appellate opinion	-0.063 (0.67)	-0.120 (0.27)	-0.012 (0.20)	-0.115 (0.52)		
Multiplier (log)	0.045 (1.26)	0.112 (0.73)	-0.059 (1.51)	-0.172 (1.22)	-0.030 (0.79)	-0.107 (0.58)
High-risk case dummy	0.100** (2.76)	0.476** (2.91)	0.103+ (1.90)	0.521* (2.47)		
Low-risk case dummy	-0.182** (3.26)	-0.768** (3.39)	-0.095 (1.53)	-0.411+ (1.79)		
Objector dummy	-0.045 (1.07)	-0.106 (0.52)	-0.013 (0.27)	-0.053 (0.29)		
Nonincluded soft relief	0.021 (0.42)	0.044 (0.19)	-0.000 (0.00)	-0.234 (1.16)		
Included soft relief	-0.150 (0.71)	-0.213 (0.31)	0.011 (0.17)	0.054 (0.21)		
Settlement class	-0.073* (2.07)	-0.337+ (1.89)	0.014 (0.28)	0.035 (0.19)		
Federal case dummy			0.153* (2.38)	0.599** (2.90)		
Constant	0.387+ (1.71)	9.530** (9.88)	0.312* (2.04)	9.283** (15.77)	-0.013 (0.11)	8.168** (14.57)
Observations	119	119	139	154	436	436
Adj. R <sup>2</sup>	0.94	0.46	0.91	0.49	0.94	0.16

Robust *t* statistics in parentheses.

+ significant at 10%; \*significant at 5%; \*\*significant at 1%.

NOTE: Dependent variables are fee percent, transformed to square roots, and fee amount, transformed to logs. For the published opinion data, the sample includes only non-fee-shifting cases. Variables not in the *CAR* models are not readily available in the *CAR* data.

SOURCES: Reported class actions with fee awards, 1993–2002; 24 *Class Action Rep.* 169.