

# MONTANA

## BOARD OF INVESTMENTS

## BOARD ADOPTED POLICY

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POLICY NUMBER: 10.251

EFFECTIVE DATE: September 23, 2022

TITLE: Decision Criteria to Pursue Litigation

SUPERSEDES: November 30, 2021

BOARD ADOPTION: November 30, 2021

REVIEWED: June 23, 2022

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### I. Considerations in Deciding on Separate Litigation, Lead, or Co-Lead Plaintiff Status

A. When deciding to act as a lead or co-lead or to engage in separate litigation, the Board shall consider, as appropriate, the following:

1. Size of the Board's damages measured by standards applicable to securities litigation.
2. Strength of claims, including evaluation of defenses.
3. Special circumstances which render the Board's claims different from, stronger, or weaker than claims of typical class members such that it would be in the interest of the Board to act as lead or co-lead plaintiff.
4. Venue of litigation.
5. Resources available to pay a significant judgment.
  - a) Financial condition of potential defendants.
  - b) Availability of insurance.
  - c) Potential for bankruptcy.
6. Qualifications of other lead plaintiff candidates and their counsel and the likelihood that the Board would be selected as lead or co-lead plaintiff.
7. Relation of claims to other corporate governance issues of special interest to the Board and impact on other Board holdings.
8. Potential for non-monetary remedies of special importance to the Board which other class members/lead plaintiffs may not pursue.
9. Costs to the Board of separate litigation/lead or co-lead plaintiff status such as discovery, legal fees, and Board staff time and resources needed to monitor litigation more actively.
10. Potential exposure to counterclaims/court costs and willingness of litigation counsel to indemnify the Board against such exposure.

### II. Board Considerations in Deciding to Opt Out, Object to, or Comment on Settlements

A. In deciding whether to opt out, object to, or comment on settlements, the Board shall consider, as appropriate, the following:

1. Financial value of settlement to the class and the Board in particular.
2. The presence or absence of non-monetary aspects of settlement such as corporate governance.
3. Amount of attorney's fees sought and merits of attorney's fee claim.
4. Expense and risk, including value which might be lost if settlement is disrupted or rejected, associated with opting out, commenting, or objecting in relation to expected benefits of doing so.

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Adopted: November 30, 2021

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Authority: Montana Constitution, Article VIII, Section 13  
Section 2-15-1808, MCA  
Section 17-6-201, MCA

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