

MONTANA

BOARD OF INVESTMENTS

BOARD ADOPTED POLICY

POLICY NUMBER: 10.251

EFFECTIVE DATE: November 30, 2021

TITLE: Decision Criteria to Pursue Litigation

SUPERSEDES: Governance Manual
February 2021

BOARD ADOPTION: November 30, 2021

REVIEWED:

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

A. Will the Board add value by volunteering to lead or co-lead litigation in view of the fiduciary responsibilities (as class action lead or co-lead plaintiff), administrative burdens, and cost associated with separate litigation and acting as lead or co-lead plaintiff?

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. Is the Board receiving fair value for its claims? Does the likely gain to the Board to be achieved by objecting to or commenting on a settlement outweigh the costs of engaging counsel to file the objection/comment? Should the Board risk losing the certain recovery the settlement provides to opt out of the class and pursue separate claims independently?

1. Financial value of settlement to 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.