

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
IN RE : MDL No. 1409
: :
: :
CURRENCY CONVERSION FEE : M 21-95
ANTITRUST LITIGATION : :
: :
----- X
THIS DOCUMENT RELATES TO: : Index No. 05 CV 7116 (WHP)
: :
: :
ROBERT ROSS, et al., : :
: :
Plaintiffs, : :
: :
-against- : :
: :
BANK OF AMERICA, N.A, et al., : :
: :
Defendants. : Jury Trial Demanded
: :
----- X

**CLASS PLAINTIFFS' MOTION FOR APPROVAL OF ATTORNEYS' FEES AND
REIMBURSEMENT OF LITIGATION EXPENSES PURSUANT TO
RULE 23(h) OF THE FEDERAL RULES OF CIVIL PROCEDURE**

Pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, Representative Plaintiffs Robert Ross, Andrea Kune, Woodrow Clark, S. Byron Balbach, Jr., Matthew Grabell, Paul Impellezzeri and Richard Mandell (collectively "Class Plaintiffs") on behalf of themselves and the certified Class and Subclass (the "Class") respectfully move for approval of the partial payment of attorneys' fees and reimbursement of litigation expenses (including notice costs) in the amount of \$2,350,000. This request comes in conjunction with Class Plaintiffs' request for

final approval of settlements with four out of seven defendants in this matter.¹

In support of their Motion, Class Plaintiffs state as follows:

1. Class Plaintiffs bring their claims on behalf of a Class certified pursuant to Rule 23(b)(2). They allege that Defendants² violated the antitrust laws by conspiring together and with others to impose arbitration clauses (that, *inter alia*, barred class actions against them) on their cardholders. The relief requested in their complaint seeks to reform Defendants' conduct with respect to arbitration and class actions. Class Plaintiffs have not brought any damages claim. They state a claim for fees pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26 (providing in pertinent part, "[i]n any action under this section in which the plaintiff substantially prevails, the court shall award the cost of suit, including a reasonable attorney's fee, to such plaintiff"). Class Plaintiffs and their counsel have diligently and vigorously prosecuted these claims for nearly five years as of this date.

2. The request for approval of this award of fees satisfies the pertinent legal standards. Plaintiffs' counsel would receive less than 34.6% of the \$5,525,494.00 of attorneys'

¹ The Settling Defendants are (i) JP Morgan Chase & Co. and Chase Bank USA, N.A. ("Chase"); (ii) Bank of America, N.A. (USA) (n/k/a FIA Card Services, Inc.) and Bank of America, N.A. ("Bank of America"); (iii) Capital One Bank (USA), N.A. and Capital One, N.A. ("Capital One"); and (iv) HSBC Finance Corporation and HSBC Bank Nevada, N.A. ("HSBC"). One additional defendant, the National Arbitration Forum ("NAF"), has reached a tentative accord with Plaintiffs, which agreement has not received preliminary approval as of this writing. None of the payments for which notification is sought here are the subject of Plaintiffs' agreement with NAF. The remaining defendants, who are actively litigating this case, are Citigroup Inc, Citibank (South Dakota), N.A., Citibank USA, N.A., Universal Financial Corp., Universal Bank, N.A., and Citicorp Diners Club Inc. (collectively, "Citi") and DFS Services LLC, Discover Financial Services, and Discover Bank (collectively, "Discover").

² In addition to the Settling Defendants, Defendants include (i) Citigroup Inc, Citibank (South Dakota), N.A., Citibank USA, N.A., Universal Financial Corp., Universal Bank, N.A., Citicorp Diners Club Inc (together, "Citigroup"), (ii) Novus Credit Services, Inc., Discover Financial Services, and Discover Bank ("Discover") and (iii) the National Arbitration Forum ("NAF") are Defendants in this matter. The NAF has reached a tentative accord with Plaintiffs, which agreement has not received preliminary approval as of this writing.

fees incurred as of May 1, 2010, leaving them with some \$3,610,375 in uncompensated time as of that date. (In the event of further settlements (including with the NAF) or a litigated judgment against any of the remaining defendants, Class Plaintiffs intend to seek further payment for their uncompensated time.)

3. The results of counsel's efforts are excellent. The Settlements concurrently before the Court provide the Class with relief that encompasses much of what they sought when bringing this action. The proposed Settlements, reached after arm's length negotiations, provide for (i) the immediate cessation of the Settling Defendants' enforcement of their arbitration clauses and class action bans, (ii) removal of these clauses for three and one-half years from the terms applicable to their consumer and small business cardholders, and (iii) other relief provided in the Settlements, which relief is described more fully in the accompanying Memorandum in Support of Class Plaintiffs' Motion For Final Approval of Class Action Settlements with Bank of America, Capital One, Chase, and HSBC.

4. The fees and reimbursements here are by agreement between Class Plaintiffs and the Settling Defendants. As to each Settling Defendant, fees were not negotiated until after the parties had reached agreement on all the substantive terms of the settlement for that defendant. The fees requested do not in any way reduce the relief provided to the Class.

5. The agreed fees and reimbursements are appropriate. Fed. R. Civ. P. 23(h). First, the Settling Defendants have agreed to pay the award in addition to the relief provided in the Settlements. Hence, the award of fees and expenses will *not* reduce the relief to the class. Second, where sophisticated counsel have negotiated fee awards at arm's length, and those fees do not reduce the relief afforded to a class, the fee requests are reviewed less rigorously. Third, the requested fee and expense award is eminently reasonable when cross-checked under a

“presumptively reasonable fee” (formerly lodestar) analysis. Accordingly, Class Counsel respectfully request that the Court approve the requested payment and reimbursement in full.

6. As of May 1, 2010, Counsel had devoted 15,172 hours and \$303,385.82 in out-of-pocket expenses (excluding \$131,495 expended in notice costs) to pursuing these claims. Counsel have efficiently and effectively prosecuted the Class’s claims, which claims raise novel legal, and complex factual, issues. Counsel have provided representation of the highest quality, especially in pursuing a difficult appeal from this Court’s initial dismissal of the Class’s claims.

7. The firm-by-firm breakdown of these fees is as follows:

Firm	Hours	Lodestar	Expenses
Law Offices of Brian Barry	81.65	\$49,085.00	\$1,642.56
Berger & Montague, P.C.	10,035.40	\$3,540,134.25	\$232,673.69
Berman DeValerio	905.35	\$286,817.00	\$8,624.12
Cohen Milstein Sellers & Toll, PLLC	449.95	\$127,742.50	\$15,691.30
Edelman, Combs, Lattuner & Goodwin, LLC	111.10	\$29,164.00	\$1,316.88
Edelson & Associates, LLC	849.20	\$373,833.00	\$10,854.04
Hulett Harper Stewart LLP	363.55	\$159,155.25	\$3,844.42
Kaplan Fox & Kilsheimer LLP	51.50	\$27,870.00	\$463.81
Kohn, Swift & Graf, P.C.	291.40	\$102,198.50	\$1,753.69
Robbins Geller Rudman & Dowd LLP	708.50	\$335,720.00	\$22,017.85
Scott + Scott LLP	1,273.55	\$458,607.00	\$4,494.31
Steyer Lowenthal Boodrookas Alvarez & Smith, LLP	14.00	\$6,681.25	\$9.15
Stull, Stull & Brody	37.25	\$28,486.25	\$0.00
Subtotal of Expenses Before Cost of Notice			\$303,385.82
<i>Cost of Notice (Paid From Escrow)</i>			\$131,495.00
TOTALS	15,172.40	\$5,525,494.00	\$434,880.82

8. Summary notice of this request for an award of attorneys’ fees has been disseminated to (i) Class members in the general public by the publication of notice in the *Wall Street Journal* and *USA Today*, and distribution over PR Newswire; (ii) Class members, many of

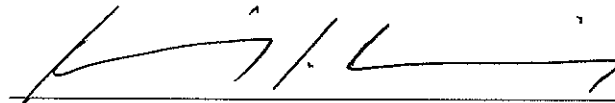
whom are claimants in the settlement of underlying matter *In re Currency Conversion Fee Antitrust Litig.*, Master File No. 21-95, 01-md-1409 (Pauley, J.), via the www.ccfsettlement.com website used generally for communications about that settlement; (iii) Class members who are attorneys (and thus perhaps best situated to understand the nuances of Plaintiffs' claims and the proposed Settlements) by publication in the May 2010 issue of the *ABA Journal*, and (iv) eight established consumer advocacy groups that have a history of advocating on behalf of consumers on issues relating to credit cards and consumer credit generally.

In further support of their motion, Class Plaintiffs also proffer the accompanying Declarations of Merrill G. Davidoff, Nicholas Urban, Brian Barry (for Law Offices of Brian Barry), Charles P. Goodwin (for Berger & Montague, P.C.), Peter A. Pease (for Berman DeValerio Pease Tabacco Burt & Pucillo), Benjamin D. Brown (for Cohen Milstein Sellers & Toll, PLLC), James O. Lattuner (for Edelman, Combs, Lattuner & Goodwin, LLC), Marc H. Edelson (for Edelson & Associates, LLC), Dennis Stewart (for Hulett Harper Stewart LLP), Gregory K. Arenson (for Kaplan Fox & Kilsheimer LLP), William E. Hoese (for Kohn, Swift & Graf, P.C.), Bonny E. Sweeny (for Robbins Geller Rudman & Dowd LLP), Christopher M. Burke (for Scott + Scott LLP), Allan Steyer (for Steyer Lowenthal Boodrookas Alvarez & Smith, LLP) and Aaron Brody (for Stull, Stull & Brody).

For the above reasons, and for those stated in the accompanying Memorandum, Class Plaintiffs respectfully request that the Court approve the partial payment of attorneys' fees and reimbursement of litigation expenses (including notice costs) in the amount of \$2,350,000.

DATED: May 28, 2010

Respectfully submitted,



Merrill G. Davidoff, Esquire (MD-4099)
Charles P. Goodwin, Esquire
David A. Langer, Esquire
BERGER & MONTAGUE, P.C.
1622 Locust Street
Philadelphia, PA 19103
215-875-3000
215-875-4673 Fax

Gregory K. Arenson, Esquire
Jason A. Zweig, Esquire
KAPLAN FOX & KILSHEIMER LLP
850 Third Avenue, 14th Floor
New York, NY 10022
212-687-1980
215-687-7714 Fax

Bonny Sweeney, Esquire
Alexandra S. Bernay, Esquire
GELLER RUDMAN ROBBINS & DOWD LLP
655 West Broadway, Suite 1900
San Diego, CA 92101
619-231-1058
619-231-7423 Fax

Dennis Stewart, Esquire
HULETT HARPER STEWART LLP
525 B Street, Suite 760
San Diego, CA 92101
619-338-1133
619-338-1139 Fax

Christopher M. Burke, Esquire
Kristen M. Anderson, Esquire
SCOTT + SCOTT, LLP
600 B Street, Suite 1500
San Diego, CA 92101
619-233-4565
619-233-0508 Fax