

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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

**DECLARATION OF BRIAN BARRY IN SUPPORT OF LAW OFFICE OF BRIAN
BARRY'S APPLICATION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF
EXPENSES**

I, Brian Barry, declare as follows:

1. I am the sole partner of the Law Office of Brian Barry ("the Firm"). My firm has acted as counsel to Plaintiffs Andrea Kune, Woodrow Clark and Paul Impellezzeri in this action.
2. I am submitting this Declaration in support of Class Plaintiffs' application for an award of attorneys' fees for services rendered in the above-captioned litigation and for reimbursement of costs and expenses incurred in connection with this litigation.

3. The Firm's compensation for the services rendered on behalf of Plaintiffs and the Settlement Class is wholly contingent, and the firm has been completely at risk that it would not receive any compensation for prosecuting these claims against the defendants.

4. All attorneys, paralegals and clerks at my firm are instructed to keep contemporaneous time records reflecting the time spent on this and other matters.

5. Attached as Exhibit 1 hereto is a précis of the Firm's qualifications and accomplishments.

6. During the period from the inception of the case through May 20, 2010, the Firm performed 81.65 hours of work in connection with this litigation. Specifically, meetings with clients, reviewing and commenting on draft pleadings, responding to discovery sent to my clients, and arranging depositions of my clients.

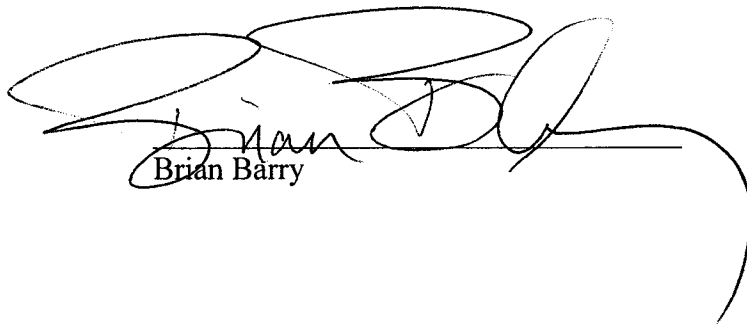
7. The total lodestar amount for attorney/professional support staff time based on the firm's rates, at the time of accrual, is \$48,285. Attached hereto as Exhibit 2 is a schedule containing a detailed summary indicating amount of time – by category – spent by myself and my associates who were involved in this litigation, the number of hours worked, their rates and their respective lodestar values. The rates at which the firm seeks compensation are its usual and customary hourly rates charged for its attorney' and professionals' services in similar complex class action litigation and do not include charges for expense items, which are billed separately. The schedule was prepared from contemporaneous, daily time records regularly prepared and maintained by my firm. None of the time included in this fee application represents any work done in connection with preparing this Declaration or otherwise related to petitioning for award of attorneys' fees or seeking reimbursement of costs.

8. All of the services performed by the Firm in connection with this litigation were reasonably necessary in the prosecution of this case. There has been no unnecessary duplication of services for which the firm now seeks compensation.

9. During the period from inception of this litigation through May 20, 2010, the Firm incurred unreimbursed expenses in connection with the prosecution of this litigation in the sum of \$1,642.56 These expenses were reasonably and necessarily incurred in connection with this litigation and are detailed in the chart attached as Exhibit 3.

10. The expenses incurred are reflected on the books and records of the Firm. These books and records are prepared from checks, expense vouchers and other source materials which are regularly kept and maintained by the firm and accurately represent the expenses incurred.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 25th day of May, 2010.



Brian Barry

Exhibit 1

LAW OFFICES OF BRIAN BARRY

Attorneys At Law

1801 Avenue of the Stars, Suite 307
Los Angeles, California 90067

Telephone (310) 788-0831
Facsimile (310) 788-0841

FIRM RESUME

The Law Offices of Brian Barry, located in Los Angeles, California, has specialized in complex class action litigation for over 20 years, litigating numerous cases in both state and federal courts throughout the United States.

The firm was Co-Lead Counsel in *In Re Heritage Bond Litigation*, 02 ML 1475, pending in the United States District Court for the Central District of California. The Class members in the Heritage Bond action suffered approximately \$80 million in damages from eleven (11) defaulted bond offerings, which provided the foundation of an enormous Ponzi scheme. A global settlement was reached in the Class Action totaling nearly \$30 million. Authorized claimants received between 36 and 57% of their losses back through the settlement.

In the course of the firm's three-year discovery investigation into the Heritage Bond offerings, over 1.2 million pages of documents were obtained in discovery (all of which were reviewed and coded into a database), over 45 depositions were taken, numerous motions to compel and motions for evidentiary sanctions were filed, and a substantial amount of written discovery was propounded. Early in the Heritage Bond Litigation, the firm successfully moved to open the grand jury files relating to the Department of Justice's investigation into the Heritage

Bond debacle and successfully moved to obtain the transcripts of the depositions taken by the Securities and Exchange Commission. The firm has cooperated with many governmental entities investigating those involved with the Heritage Bond offerings (including the Securities and Exchange Commission, the Department of Justice, the Internal Revenue Service and the Department of Health and Human Services) by providing a substantial amount of information and documentation unearthed in discovery. To date, these governmental investigations have resulted in the filing of a civil complaint by the SEC against five (5) individuals involved in the bond offerings.

The firm is responsible for obtaining a number of favorable opinions in the *In re Heritage Bond Litigation* which have promoted the rights of investors in prosecuting these types of actions, including: *In re Heritage Bond Litigation*, 220 F.R.D. 624 (C.D. Cal. 2004) (deeming requests for admission admitted for failure to adequately and/or timely respond); *In re Heritage Bond Litigation*, 2004 WL 1638201 (C.D. Cal. July 12, 2004) (granting motion to certify the class); *In re Heritage Bond Litigation*, 2004 WL 1970058 (C.D. Cal. July 23, 2004) (granting motion to compel production of documents withheld on a variety of privileges, including, attorney-client, work product, and privacy, et. al.); *In re Heritage Bond Litigation*, 2004 WL 1638200 (C.D. Cal. June 28, 2004) (granting summary judgment on claim of negligence against the corporate controller for creating and processing dummy invoices, and failing to exercise due diligence when participating in the transfer of corporate funds); *In re Heritage Bond Litigation*, 2004 WL 2297981 (C.D. Cal. September 27, 2004) (granting motion for entry of \$28 million judgment against the corporate controller). Thereafter, pursuant to an assignment from the corporate controller, the firm handled a State Court appeal against the insurance companies that

issued insurance to Heritage. The insurance companies had obtained a summary judgment ruling finding that the policies did not provide coverage for the claims asserted in the underlying investor cases, which ruling was upheld on appeal. *Medill v. Westport*, 143 Cal.App.4th 819.

The Court approved the Global settlement in *In re Heritage Bond Litigation*, 2005 WL 1594403 (C.D. Cal. June 10, 2005). The Court noted the settlement of 36-38% of the class' total net loss was an "exceptional result", and "The Court finds that Class Counsel performed at a high level of skill in litigating this action for over three years." It went on to say that the "case cannot be considered a garden variety securities class action" as "Various issues litigated in this case concern relatively uncharted territory", including issues that were of "first impression for district courts within the Ninth Circuit" which required "extensive legal research and analysis". "In addition, the action was based on theories of tort law, contract law and federal and state statutory laws, and marked by extensive motion practice, discovery, oral argument and settlement negotiations." The court noted the case was also factually complex and found the "quality of Class Counsel's effort, experience and skill is demonstrated in the exception result achieved."

ANTI-TRUST AND CONSUMER RIGHTS LITIGATION

The firm is currently involved in the following cases, *SRAM (ND CA-partial settlements of approx. \$25 million)*, *LCD displays (ND CA- partial settlements of \$15 million)*, *TransPacific Air Passenger (ND CA)*, *Air Cargo (ED NY- partial settlement \$75 million)*, *In re Processed Egg Products (ED PA)* and *Chocolate Confectionary (MD PA)* and *Aftermarket Filters (ND ILL)* and *Arbitration Collusion (SDNY)*. The firm has been actively involved in a number of other cases which have resulted in substantial recoveries, to wit: The firm was actively involved *In re Currency Conversion Fee Antitrust Litigation*. The action related to the fees charged by

Visa, Mastercard and the issuing banks to users who utilize their credit cards overseas. A settlement of over \$355 million was reached. The firm also actively prosecuted a case for California purchasers of *Neoprene*, which settled for over \$4.65 million in 2006. Previously the firm was active in a case brought on behalf of pharmacies subscribing to a computer service from the Hearst Corporation, which settled for \$2.5 million (*First Data*); and was involved in the *In re Stock Exchange Options Trading Antitrust Litigation* (\$44 million settlement), and the *Microsoft* California state case.

SECURITIES AND CORPORATE GOVERNANCE LITIGATION

Since its formation in 1989, the firm has been appointed lead counsel or has been significantly involved in numerous securities cases wherein significant recoveries were obtained for class members. Some of the actions that highlight the firm's accomplishments are as follows:

- In October 2002, the Honorable Victoria Chaney, Los Angeles Superior Court, approved a class action settlement of \$1 million on behalf of investors in *Busybox.com*, which resulted in a distribution to class members of approximately 25% of their damages. Since that time, the Department of Justice and the Securities and Exchange Commission have taken action against a number of the same individuals named in the class action, alleging facts identical to those alleged in the class action complaint.
- The firm was Lead Counsel in *Kune v. Parretti, et al.*, a derivative action involving Giancarlo Parretti and Pathe Communications Corp.'s takeover of MGM and numerous dealings between Pathe and Mr. Parretti's European companies. People were served in Europe, including Mr. Parretti's former partner, Florio Fiorini, who was served while in a Swiss jail. Numerous depositions were taken both in the U.S. and in Italy. After three (3)

years of litigation and substantial motion practice, the case settled for \$4 million. Since that time, the U.S. government has indicted Mr. Parretti and his former partner Mr. Fiorini (who ended up serving time in a Swiss prison previously). The U.S. is attempting to extradite them for prosecution in the U.S. based on the scheme detailed in the derivative action. A scandal and resulting investigation in France into Credit Lyonnais (the bank behind Messers. Parretti and Fiorini) resulted in many senior bankers resigning as a result of their involvement in the scheme as well.

- The firm was Co Lead Counsel in *Eric Goldstein v. Lazertron Corp.*, an action seeking damages for Lazertron shareholders from the merger with Acclaim Entertainment. Shortly after delaying the merger, so as to readjust the stock swap ratio in its favor (as its stock price had recently increased), Acclaim disclosed massive write-downs and restated its financial results. The case settled for approximately \$2.1 million in cash and warrants. By the time the warrants were issued, the warrants were \$6 in the money, making the settlement worth substantially more.
- The firm was Lead Counsel in *Shores v. Samuel Goldwyn Company*, an action seeking damages for Goldwyn shareholders from the merger of Goldwyn and Metromedia International Group Inc. The Proxy for the merger did not disclose that Metromedia would be conducting a secondary offering within days after pricing the stock swap ratio for the merger. For purposes of the merger, Metromedia stock was valued at \$14 per share. Three days later the secondary offering went out at \$11 per share. A settlement was reached that returned 25% of the alleged damages to Goldwyn shareholders.
- The firm was Co Lead Counsel in two Washington state court cases, one a class action

(*Ceraldi v. American United Global Inc.*) and one a derivative action (*Binder v. Rubin, et al.*) involving American United Global Inc. (AUGI). The action alleged self-dealing and breach of fiduciary duty by the Chairman and the other directors. The Chairman agreed to repay the Company \$2.8 million to settle the derivative case and the stockholders received \$2.5 million in cash and stock in a subsidiary of AUGI to settle the class action. Certain corporate governance issues were agreed to as well as a result of the settlement.

- In *Kravitz v. Iwerks Entertainment Inc.*, the firm was Lead Counsel. The action involved an entertainment company that builds motion simulation rides and large screen theaters. The company's IPO went from single digits to the high 30's, and then retreated to approximately \$4 per share. The case alleged omissions of material fact in the Prospectus and settled for approximately \$5 million.
- The firm was Co Lead in an action involving the private placements in *AirPrime* and *Chapparal Networks*, through LLC's controlled by Robert Harvey, both of which settled for approximately 15% of investors losses.
- The firm settled a derivative action pending in N.Y. State Court involving *Dyntek Inc.* and obtained corporate stock valued at over \$700,000 from the former Chairman and a cash payment of \$300,000 from the insurance carrier in 2002. Certain corporate governance issues were agreed to as well as a result of the settlement.

The firm was also actively involved in actions such as *Asia Pulp & Paper* (\$46 million settlement), *KPNQwest* (\$15 million settlement), and the *In re IPO Securities Litigation* (\$585 million settlement).

OTHER

The firm has represented individual investors in court proceedings and in arbitrations before various arbitration panels, such as (1) the representation of an investor who lost \$1 million in a company's stock which resulted in a recovery of \$750,000 within the first year of litigation; and (2) the representation of a disabled immigrant, with no investment experience and a yearly income of \$25,000, who lost over \$15,000 in a six week period after being pressured into opening a commodities futures option account. The case settled for \$20,000 within months of the filing.

ATTORNEY BIOGRAPHIES

Brian Barry graduated from Syracuse University in 1983 with a B.S. in Marketing and from Fordham University Law School in 1987. He has been a member of the State Bar of California since 1988 and is admitted to practice in the United States District Court for the Central, Northern and Southern Districts of California, as well as the Ninth Circuit.

Prior to forming the firm, Mr. Barry worked in the securities fraud class action litigation field at Stull Stull & Brody. Upon graduating from law school, he relocated to Los Angeles and worked on numerous class actions on behalf of Stull Stull & Brody, including *In re Gibraltar Financial Securities Litigation*, one of the first cases relating to the savings and loan debacle in the U.S. and which settled for \$8.5 million; and *In re Cannon Group Securities Litigation*, where there was a \$33.5 million settlement relating to the collapse of an independent motion picture company, due to financial statements that were misleading because of improper film amortization, which had the effect of inflating earnings.

Mr. Barry also instituted numerous cases while working for Stull Stull & Brody, including the first case of what became *In re New World Securities Litigation*, where there was a \$5 million settlement, and the second case of what became *In re De Laurentiis Entertainment Group, Inc. Securities Litigation*, where there was a \$9.5 million settlement. Both of these cases were due to the collapse of independent motion picture companies. Additionally Mr. Barry was involved in cases against two health care companies; *Zucker v. Maxicare Health Plans, Inc.*, which settled for \$9 million, and *In re Beverly Enterprises Securities Litigation*, where there was a substantial settlement as well. Like the *Gibraltar* action, these cases marked the beginning of a line of cases filed against companies in this field.

In addition to the class action work, Mr. Barry has handled 25 criminal appeals for indigent defendants through the California Appellate Project; a state bar funded non-profit organization. He has also worked in the entertainment law industry; handling various litigations between producers and film companies, managers and artists, as well as transactional work.

Jill Levine - Ms. Levine graduated Magna Cum Laude from Hunter College, City University of New York in 1993 with a degree in psychology. In 1999 she graduated from Fordham University School of Law in the top 25% of her class. While in laws school she interned for Magistrate Judge Henry Pitman of the Southern District of New York. She joined the firm as Of Counsel in October 1999. Since then, she has attained bar membership in both California and New York State and primarily worked on securities and antitrust class action litigation, including extensive work on the *Heritage Bond* case, as well as *Asia Pulp & Paper*, *Stock Options Antitrust*, *Neoprene*, *Busybox*, *Currency Conversion*, *IPO Securities* and *Oracle* class actions.

Jeffrey C. Shea was born in Providence, Rhode Island on January 13, 1972. He graduated from Providence College (B.A. 1994) and earned his law degree from Catholic University (J.D. 1997). Mr. Shea was admitted to the Maryland bar in 1997 and the California bar in 2001. His practice areas include antitrust and securities class action litigation. Mr Shea began working as Of Counsel for the firm in April 2003, working extensively on the *Heritage Bond* case, *SRAM and LCD*. Mr. Shea was a member of a team of attorneys managing discovery on behalf of California consumers in an antitrust class action against *Microsoft*, and also assisted in representing a corporate plaintiff in \$1.05 billion anti-trust jury verdict against *United States Tobacco (UST)*. Mr. Shea also represented consumer classes in several states (CA, MA, KS, WI) in unfair competition actions against UST. Mr. Shea participated in the representation of the plaintiff in a Qui Tam action concerning underpayment of royalties on federal and state oil and gas leases. Prior to entering private practice, Mr. Shea was a professional staff member for the Subcommittee on Civil Service in the United States House of Representatives.

Kathleen Langan –Ms. Langan has a bachelor's degree from Manhattan School of Music and a J.D. from Fordham University School of Law in 1989, where she served as associate editor of the Fordham International Law Journal. She is admitted to practice in New York and California. She began working as Of Counsel for the firm in April 2003 and worked extensively on the *Heritage Bond AirPrime/Chapparral, SRAM and LCD*. Ms. Langan also specializes in business transactional law, having practiced corporate, securities and general business law in New York, Los Angeles and London with Rogers & Wells. Ms. Langan has advised businesses ranging from start-ups to NYSE-listed companies on all aspects of their operations, and specializes in compliance with securities laws, the negotiation of public and private merger

acquisition and financing transactions, private placements, commercial loans, venture capital transactions, and asset-based financings. She also advises clients with respect to commercial law, stock option plans, shareholder agreements, employment agreements and other business and employment matters

Rick Xiao- a native of China, Mr. Xiao graduated from Southwestern University School of Law in 2000 where he was a recipient of the John J. Schumacher Minority Leadership Scholarship (3-year full tuition). He is admitted to practice in California. He joined the firm as Of Counsel in 2004 and worked on the *Heritage Bond*, *Asia Pulp*, *AirPrime/Chapparal* and *LCD* cases. Prior to that he worked in litigation at Schaffer, Lax, McNaughton & Chen, Los Angeles, California, 2000-2003.

Exhibit 2

Exhibit 3

Ross, et al. v. Bank of America, N.A. (USA), et al., No. 05 CV 07116 (WHP)

A related case in *In re Currency Conversion Fee Antitrust Litigation*, MDL No. 1409, Master File No. M21-95 (S.D.N.Y.)

Firm Name:

Reporting Period:

DESCRIPTION	TOTAL EXPENSES
Assessments	
Legal Research -- Computer/Lexis/Westlaw	
Court Fees	
Court Reporters/Transcripts	
Experts	
In-House Photocopying	
Outside Photocopying	\$426.00
Postage/Express Mail/Messenger	\$26.25
Long Distance Telephone/Facsimile	
Travel	\$1,190.31
Witness/Service Fees	
Other (describe)	
TOTALS	\$1,642.56